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PROCEEDINGS AND DEBATES OF THE 95th CONGRESS
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PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

## SENATE—*Friday, August 25, 1978*

*(Legislative day of Wednesday, August 16, 1978)*

The Senate met at 8:15 a.m., on the expiration of the recess, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

### PRAYER

The Honorable CARL T. CURTIS, a Senator from the State of Nebraska, offered the following prayer:

Our Father, who art in heaven, in whom we live and move and have our being, we thank Thee for Thy guiding hand in the founding of our country, and we humbly pray that Thou will bless and preserve the United States of America. Imbue the citizens of our Republic with patriotism, honesty, and self-reliance. Open our minds to the truth that blessed is the nation whose God is the Lord. Give us vision that we perish not. Make us a nation of uncommon men and women. Forgive our national and personal sins and make us worthy of the liberty and freedom that is ours. Renew in us the faith of our fathers and accept our thanks for our many blessings.

We pray Thy blessing upon the Senate of the United States, the Members, their staffs, and all who labor in this place. May every action taken this day and always, be in accord with Thy holy will. We ask in the name of Thy Son, our Saviour, Jesus Christ. Amen.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., August 25, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. BURDICK thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

### THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### SENATOR CURTIS CONGRATULATED

Mr. ROBERT C. BYRD. Mr. President, it always gives me great pride when a Member of our own delivers the prayer before the session begins. CARL CURTIS this morning has performed that high calling. It reminds me of that passage in the Scripture, I think it was Isaiah, who said, "Here am I; send me."

I congratulate the Senator from Nebraska. I congratulate him on his patriotism, his steadfast integrity, and on his unshakable belief in the Creator who rules over the destinies of men and nations. He is a fine Senator.

Mr. CURTIS. Mr. President, I thank the distinguished leader very much.

### EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are a few nominations that are ready for confirmation. I ask unanimous consent, if it meets with the approval of the distinguished acting Republican leader, that the Senate go into executive session to consider the nominations on the calendar, all of which have been cleared, I believe.

Mr. STEVENS. That is correct, Mr. President.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will read the first nomination.

### DEPARTMENT OF STATE

The second assistant legislative clerk read the nomination of Mary S. Olmsted, of Tennessee, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Solomon Islands.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### INTERNATIONAL ATOMIC ENERGY AGENCY CONFERENCE REPRESENTATIVES

The second assistant legislative clerk read the nomination of Dale D. Myers, of Virginia, to be the representative of the United States of America to the 22d session of the General Conference of the International Atomic Energy Agency.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

The second assistant legislative clerk read the nomination of Gerald C. Smith, of the District of Columbia, and Roger Kirk, of the District of Columbia, to be alternate representatives of the United States of America to the 22d session of the General Conference of the International Atomic Energy Agency.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed.

### U.S. AIR FORCE

The second assistant legislative clerk read the nomination of Maj. Gen. Howard MacLane to be lieutenant general.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### U.S. NAVY

The second assistant legislative clerk read the nomination of Vice Adm. Harry D. Train II to be admiral.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

The second assistant legislative clerk read the nomination of Adm. Isaac C. Kidd, Jr., to be placed on the retired list in the grade of admiral.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nomination of Tyree A. Richburg, of Alabama, to be U.S. marshal for the southern district of Alabama.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

## DEPARTMENT OF THE INTERIOR

The second assistant legislative clerk read the nomination of Roger A. Markle, of Utah, to be Director of the Bureau of Mines.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

## DEPARTMENT OF ENERGY

The second assistant legislative clerk read the nomination of Ruth C. Clusen, of Wisconsin, to be an Assistant Secretary of Energy (Environment).

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

## NEW REPORTS

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

The second assistant legislative clerk read the nominations of Marian Pearlman Nease, of Maryland; Frank F. Jestrab, of North Dakota; A. E. Lawson, of Pennsylvania; Richard V. Backley, of Virginia, and Jerome R. Waldie, of Maryland, to be members of the Federal Mine Safety and Health Review Commission.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed.

## NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE ARMY AND NAVY

The second assistant legislative clerk proceeded to read sundry nominations in the Army and in the Navy placed on the Secretary's desk.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

(All nominations confirmed today are printed at the end of the Senate proceedings.)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move en bloc to reconsider the vote by which the various nominees were confirmed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I make that motion.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominees.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## TAX CONVENTION WITH THE REPUBLIC OF KOREA

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that it be in order at any time to order the yeas and nays on the tax convention with the Republic of Korea.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that when the legislative business is completed today, the Senate proceed with a vote on the tax convention with the Republic of Korea.

Mr. STEVENS. Reserving the right to object, Mr. President, I had been of the understanding that last evening, the Senator from West Virginia, the distinguished majority leader, indicated that would be called up the week of the 11th. Was I mistaken?

Mr. ROBERT C. BYRD. I did not understand it was to be the week of the 11th. I understood it was to be at a time when the Senator from Alaska is here. If he prefers that it be the week of the 11th, that will be agreeable to me.

Mr. STEVENS. I make that request. I shall not be able to return until the 11th.

Mr. ROBERT C. BYRD. All right. The Senator will not be able to do it today?

Mr. STEVENS. It may be possible to do it later today.

Mr. ROBERT C. BYRD. All right, then, we will leave that in abeyance.

Does the Senator from South Dakota need any additional time over and above his 15 minutes?

Mr. McGOVERN. I think not.

Mr. ROBERT C. BYRD. If he does, Mr. President, I ask unanimous consent that my remaining time may be allotted to him.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McGOVERN. I thank the distinguished majority leader.

Mr. STEVENS. Mr. President, I yield to the majority leader part of the minority leader's time.

## CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders numbered 1054 and 1055.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## BROADER ELIGIBILITY FOR THE JUNIOR RESERVE OFFICERS' TRAINING CORPS PROGRAM

The bill (H.R. 7161) to amend title 10, United States Code, to allow nationals, as well as citizens, of the United States to participate in the Junior Reserve Officers' Training Corps program, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1135), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

H.R. 7161 is designed to permit nationals of the United States, as well as citizens, to participate in the Junior Reserve Officers' Training Corps program.

The bill will have the effect of permitting a Junior Reserve Officers' Training Corps program to be established in American Samoa.

BACKGROUND

The Junior Reserve Officers Training Corps was established to provide a vehicle for developing informed and responsible citizens, to help form habits of self-discipline in the student participants, and to provide information on the basic elements and requirements of national security. One of the requirements established for Junior ROTC at the time of its enactment (Public Law 88–647, October 13, 1964) was that student participants must be citizens of the United States. That provision, found in section 2031 (b) (1) of title 10, United States Code, has effectively prevented the establishment of a Junior ROTC program in American Samoa, since its residents are not U.S. citizens but U.S. nationals under relevant immigration and nationality statutes.

The House-passed bill, H.R. 7161, would simply broaden the coverage of the Junior ROTC program to both nationals and citizens, making it possible for a unit to be established in American Samoa. The report of the House Committee on Armed Services noted the desire of American Samoans to establish such a program, and the inequity in the present statutory language. The House report also cited the consistent and significant contributions made by residents of American Samoa to the defense of the United States since it became a U.S. territory in 1900.

The committee fully endorses the change proposed in H.R. 7161 A similar Senate bill, S. 1607, would accomplish the same statutory change.

## U.S.S. "WYOMING"

The bill (H.R. 8471) to authorize the Governor of the State of Wyoming to exhibit the nameplate, ship's bell, and silver service of the U.S.S. *Wyoming* without restriction as to the place of such exhibition, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. I move to reconsider the vote and lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1136) explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The legislation authorizes the Governor of the State of Wyoming to exhibit the nameplate, ship's bell, and silver service of the U.S.S. *Wyoming* without restriction as to the place of such exhibition.

BACKGROUND

Existing law, Public Law 397, 79th Congress, 60 Stat. 234, provides for exhibition of the nameplate, the ship's bell, and the silver service of the U.S.S. *Wyoming* at the University of Wyoming. The State government now desires to display the silver service at the Wyoming State Museum.

Senators Wallop and Hansen had introduced S. 1908 to convey title of these items to the Governor of Wyoming and to provide for display of the silver service at the Wyoming State Museum. H.R. 8471 provides the State of Wyoming with some flexibility for display of these items with title remaining with the Department of the Navy. Senators Wallop and Hansen wrote the committee requesting that H.R. 8471, as passed by the House, be favorably reported.

## ORDER OF BUSINESS

Mr. STEVENS. Mr. President, there is no request for time on our side. If the Senator from South Dakota needs extra time, we will be happy to yield him our time.

Mr. McGOVERN. I appreciate that.

## SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from South Dakota (Mr. McGOVERN) is recognized for not to exceed 15 minutes.

## A QUESTION OF CONSCIENCE AND CIVILIZATION

Mr. McGOVERN. Mr. President, a generation ago the world stood silently on the sidelines while Hitler systematically exterminated 6 million of our fellow humans. When the full horror of this genocide finally struck the conscience of humanity, we vowed "Never again." Never again would we remain silent in the face of such barbarism. There was, of course, a special horror about Hitler's diabolical plot to exterminate an entire people identified by a common religious heritage. The crime of Hitler stands alone in its terrifying dimensions.

But, however different in concept and execution, a massive slaughter is once again taking place in our time. For the past 3 years in beautiful, ancient Cambodia, a band of murderous thugs has been systematically killing their fellow citizens. Two million Cambodians are said to have been destroyed. But the world turns its face and stills its voice and dulls its conscience. Nothing is done.

The United Nations, charged with the maintenance or restoration of international peace and security, does nothing. Our own Government, while proclaiming its concern for human rights, is seemingly ineffective in confronting the issues of life and death in Cambodia. Cambodia's chief ally, China, seems to be doing nothing to contain the slaughter; indeed, it provides arms and support to the Cambodian regime.

We have rightfully deplored the mistrial of two dissident citizens of the Soviet Union, but where is our voice in international councils about the 2 million people who may have died in Cambodia? Do we turn away because of the bitter mistakes we made for so long in Vietnam, which helped to unleash the savagery of Cambodia? Do we turn away, because Cambodia is small and weak? Do we turn away, because Cambodians are orientals far from our shores?

Mr. President, it is well known that I hate needless and ill-conceived military ventures. That is why I opposed our military intervention against Ho Chi Minh's popularly based revolution for independence in Vietnam.

But to hate a needless and foolish intervention that served no good purpose does not give us the excuse to do nothing in the face of mass murder in another time and place and under vastly differing circumstances. Cambodia challenges the conscience and decency of the world. It cries out for a carefully conceived response from the international community to end the slaughter.

I call upon our Government to pursue this matter at the Security Council of the United Nations. Will we wait until 6 million Cambodians have died before we recognize that another holocaust is unfolding in our time? Or will we proceed under chapter VII of the U.N. Charter to challenge the conscience and civil instincts of the world community in taking collective action to halt the slaughter of the innocents?

Cambodia puts the question of human rights before humanity in its starkest form. If we fail at least to ask the questions, and to seek the answers, and to consider what action is appropriate for the United Nations, then let us dip the standard of human rights and confess the impotence of the world community to respond to the world's most flagrant evil.

Frequently, during my long years of opposition to our interference in the Vietnamese struggle for independence, I quoted Edmund Burke's words:

A conscienctious man would be cautious how he dealt in blood.

But I have never forgotten that there are times when interference is necessary to stop needless bloodletting. That is why as a young man I volunteered with millions of others to halt the blood purge of Adolf Hitler. That is why I believe the nations of the world must counsel together on what steps are most appropriate to end the blood purge in Cambodia. That is why I authored legislation that was approved by the Senate and House conferees on this year's State Department authorization bill in which "Congress urges the President to move aggressively to support multilateral action by the United Nations and other international organizations, and to encourage bilateral action by countries having more extensive relations with Cambodia and Uganda, to bring about a lessening of such brutal and inhumane practices."

At the very least, let us put Cambodia on the agenda for debate at the next meeting of the United Nations Security Council.

Mr. President, since I made reference to the tragedy in Cambodia several days ago, in a hearing before a subcommittee of the Committee on Foreign Relations, there have been considerable comments about the queries that I have raised. The Department of State briefing officer, on August 22 of this week, was queried at some length about the issues which I had raised. I ask unanimous consent that appropriate excerpts from the news briefing of the Department of State of August 22 be printed at this point in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPT, NEWS BRIEFING, DEPARTMENT OF STATE

Q. Tom, would you like to comment on Senator McGovern's proposal for a multinational peacekeeping force in Cambodia?

A. Yes. The United States does not intend to initiate an effort to resolve the terrible human rights situation in Kampuchea by military force, nor are we aware of any international support for a plan to affect the situation in Kampuchea through the use of military force.

The United States' position on Cambodia is clear. The President has described the Kampuchean Government as the worst violator of human rights in the world, and the United States Government recognizes that the extent of human rights abuses in Kampuchea makes the situation there a special case. Although the United States has no means of direct influence in Phnom Penh, we will continue to do everything in our power through consultations with other governments, through efforts at the United Nations, and in other international fora, to focus international attention on the inhuman situation in Kampuchea—this in order to seek an end to the monstrous human rights violations there.

Q. Tom, you said the United States does not intend to initiate an effort. Would you join one?

A. That's a hypothetical situation. As I say, we know of no support in the international community for resolving that situation by military force. It's an entirely hypothetical question.

Q. Tom, when you say, "this in order to seek an end to the monstrous human rights violations there," how do you propose to seek an end?

A. I think as I noted, we don't have relations with Kampuchea; therefore, we don't have a way of talking directly through normal diplomatic channels. But we are in consultation with other governments about this situation. We are active in the United Nations. I might add that the Subcommittee on Minorities, the United Nations Human Rights Commission will begin a scheduled meeting this coming Monday on this situation in Kampuchea.

Q. Which subcommittee is that, Tom?

A. It is the Subcommittee on Minorities of the U.N. Human Rights Commission.

Q. Well, my question goes to—so you're consulting with other governments about what?

A. About the human rights situation in Cambodia. We're trying to focus international attention on the situation there, and I think there have been a variety of govern-

ments which have talked with the Cambodians about what has been occurring inside Kampuchea.

Q. I think there's considerable international attention focused on it. What are you going to do once you have the international attention focussed on it?

A. We are hopeful that this will help to bring about an end to the human rights abuses which have been occurring inside Cambodia. But what we are not considering is a unilateral military action by the United States to resolve the situation.

Q. No one suggested unilateral military action. Senator McGovern's proposal, as I recall it, was that through the Security Council at the U.N. some kind of international military action be taken. Why does the United States oppose that?

A. Let me reiterate what I said before, which was, that we are not aware of any support in the international community for resolving this terrible situation by the use of military force.

Now as to what we would do if there was such support, that is a hypothetical situation, which simply does not exist now.

Q. What about economic sanctions, Tom? Would the United States favor the imposition of global economic sanctions against the regime in Kampuchea?

A. I don't have anything to offer you on that question at the moment.

Q. On the question of not being aware of any international efforts to resolve this by force, it is a fact that Vietnam is engaged in combat with Kampuchea and is supported by the Soviet Union; and indeed the President's National Security Advisor remarked a few months ago that he regarded this as a proxy war. Would you care to enter that mine field and tell us whether you feel that is not or is an international effort?

A. I'm not sure I would care to enter that mine field. When I said we are not aware of any international support, I think I was talking about a very broad-based collection of many, many nations around the world. Obviously, I have seen reports of the fighting in Cambodia, and along that border. I have nothing to say about that.

Q. Have we talked to the Chinese about this, and maybe they could use whatever influence they have with Phnom Penh on that?

A. I'm not in a position to answer that question.

Q. If I may follow that, when you say you know of no international support for military efforts, do you know this because you have discussed such an idea with various governments?

A. I am not aware of how we came to the knowledge which would allow us to make this statement.

Q. When you say that you can't answer that question on China, does that come under the heading of private diplomatic conversations?

A. Yes, but I am not necessarily meaning to confirm that that subject matter has arisen.

Q. When you talk about discussing it with nations that have contacts with the government in Phnom Penh, you're only talking about two or three to begin with, and only one that has any real influence, and that's China.

A. I'm sorry, I'm not going to be in a position to go into our diplomatic conversations.

Q. It's on the record already, Tom.

A. Well, I'll have to dig it out then.

Q. When you say the U.S. does not intend to initiate efforts to resolve this terrible human rights situation by military force, do you intend or would you be willing to initiate efforts to resolve it using some other kind of pressure, such as economic, or trying to isolate Cambodia?

A. Let me take the question as to whether consideration is being given to economic means.

Q. Also, arms embargo against Cambodia.

A. I'm not aware that we're shipping any arms to Cambodia.

Q. No, no. I'm talking about initiating a global arms embargo against Cambodia.

Q. Sure. What we're trying to find out is, are you going to do anything beyond saying that they're naughty for what they're doing?

A. Well, I'm simply not going to accept that kind of characterization of policy. We do not have diplomatic relations with Cambodia. We have, in a whole variety of ways, through the U.N. and other international fora, tried to focus international attention on this problem; what we regard as a problem, and what many people around the world regard as a problem. But, I will be glad to take those two specific questions.

Q. The point, I think, is that although Dick phrased it in a humorous fashion, U.S. policy does appear to be somewhat empty, rhetorical and nothing else. What, if anything, has the United States done beyond rhetorical flourishes, beyond encouraging others to make rhetorical flourishes, to do anything about what is going on inside Cambodia?

A. Look, I think Hodding has said up here on many occasions, it just doesn't work that way any more that every time we say something, everybody falls in line. We have limited means of talking directly with the Cambodians. We have limited, if not so, economic relations with Cambodia.

Q. The thrust of my question is what, if anything—you have all kinds of means to marshal international support for non-military programs; and the impression that I get, or the inference that I draw, is that the United States has done absolutely nothing beyond the rhetorical.

Now, if I'm incorrect in that assumption, I wish you would set the record straight.

A. I have promised to take the question on the question of economic sanctions and on the question of an internationally agreed to arms embargo.

Q. Or anything else. If you would just broaden the question to that. Anything beyond words?

A. I will try to get a more complete answer as to what we are presently doing with regard to the situation in Cambodia. I have taken the question as to what future options may be under consideration. Now, Ted, as usual I want to warn you away from any certainty of getting an answer to what we might be considering doing in the future. But I will try.

Q. I've been here long enough not to have any great expectations.

A. Well, I haven't been here very long, but that's one expectation I'm—

Q. Is any effort being made to establish relations with Cambodia since they've made some overtures in the last few weeks?

A. I have nothing to offer on that question.

Q. Does the United States want diplomatic relations with Cambodia?

A. I don't think I have anything to say about that matter.

Q. I'm just curious, you know. There are a number of countries which have been making diplomatic overtures, and it's becoming increasingly unclear whether the President is adhering to his policy of wanting relations with all countries.

A. There may have been some guidance about that recently. Let me try to dig it out and see what it says.

Q. On a somewhat related matter, the Congressmen who were visiting Hanoi apparently have received a very cordial reception which indicates from the stories the Vietnamese are quite eager to have some greater development of relations with the United States. Does the U.S. have any date now to meet with the Vietnamese, or any plan to respond to the various private and public overtures which they have made to the United States?

A. To answer your specific question, there has been no date set for a meeting with the Vietnamese. We agreed at the last time that we met with them, that we would meet with them at some future time; and that is still our intention, but no date has been set. I have nothing new to offer you on the state of U.S.-Vietnamese relations.

Mr. McGOVERN. Mr. President, there have also been numerous editorials written, commenting, in the last few days, on questions I have raised relative to the possibility of some international response to the situation in Cambodia. Some of those editorials have been critical, some have been generally supportive of the concerns that I expressed.

Two of the critical editorials would include an editorial in the August 23 issue of the Washington Star entitled "Senator McGovern On Cambodia," and an editorial in the Wall Street Journal of the same day entitled "McGovern The Hawk." Then there was a generally supportive editorial in the Boston Globe of August 23 entitled "McGovern and Indochina—Again."

I ask unanimous consent that these representative editorials of the pro and con response to the concerns I have raised also be printed in the RECORD at this point.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows.

[From the Washington Star, Aug. 23, 1978]

SENATOR McGOVERN ON CAMBODIA

Senator McGovern is undoubtedly right when he says people are likely to misunderstand his latest remarks on Cambodia. To some it will indeed seem that the Democratic leader who was so strong against U.S. military intervention designed to forestall a communist tyranny in Vietnam now looks with enthusiasm at the idea of military intervention to overthrow communist tyranny in Vietnam's next-door neighbor.

However, Senator McGovern has made it clear that he doesn't mean American troops when he suggests that somebody ought to do something about the Cambodian government killing more than a third of the country's population. What the senator was actually suggesting was that the U.N. consider on a philosophic level where international responsibility begins and ends in cases of genocide. After the Holocaust in which Hitler killed six million Jews, we did say it shouldn't happen again, didn't we? But the most Senator McGovern was urging was the appropriateness of multilateral action, perhaps by some of the smaller countries near Cambodia, to soften the inhumane policies of Cambodia's rulers if not to replace them.

Lest any eyebrows should still be up, it is possible to clarify the clarifications and see an internal consistency in the senator's reasoning. The first thing to remomber is his belief that the state of, shall we say, civil liberties in Cambodia is our fault. It's part of "the legacy of Vietnam." Had American bombing not torn the country apart, it would never have fallen into the hands of murderous fanatics.

Presumably the senator's theory is that except for American influence, Cambodia might have been controlled by the kind of "popularly supported revolution" that is now rearranging things in Vietnam. If boatloads of refugees fleeing Cambodia can be found floating side by side with boatloads of refu-

gees fleeing Vietnam, that's a coincidence. Naturally there would be former lackeys of the Americans who would try to get out of doing their share in building the new Vietnam.

The senator's faith in the Hanoi regime is central to his thinking about the rest of Southeast Asia. Since Hanoi has been engaged in a bitter border war with the Cambodians, it is easier for Senator McGovern to notice Cambodian imperfections. The senator has said nothing about a liberation aspect to the fighting, and neither have the Vietnamese; to most outsiders, the war appears to be a matter of simple power rivalries, sharpened by historic tribal hatreds of the sort that cause wars among capitalist countries. But to have Cambodians fighting Vietnamese makes people of the McGovern point of view readier to wax indignant about human rights in Cambodia.

For all the momentary embarrassments of a seeming about-face on a Southeast Asian question, Senator McGovern's outrage over the Cambodian severities makes sense on other grounds too. What better proof that George McGovern, champion of the idea that civic well-being and international altruism prevail in Cuba, is no uncritical admirer of Marxist regimes? His readiness to see fiendishness in Phnom Penh—and Solzhenitsyn himself couldn't have been more outspoken about it—just shows how well Senator McGovern knows the difference between repressive totalitarian communists and popularly supported people's democracies that may have to slap a wrist once in a while.

We hope this clears up any misunderstandings about Senator McGovern's consistency as a thinker in the foreign policy area. And we are glad he noticed what's been going on in Cambodia.

---

[From the Wall Street Journal, Aug. 23, 1978]

MCGOVERN THE HAWK

Sen. George McGovern said something Monday that will almost surely find a place in future history books on American foreign policy. Sen. McGovern, you will scarcely forget, was one of the public figures who insisted most stridently that this country had to get out of our immoral war in Indochina. As of Monday, the Senator thinks that we ought to consider getting back in.

The occasion was a Senate Foreign Relations subcommittee hearing on developments in Indochina since the U.S. withdrew from the place in 1975. In the course of its inquiries the subcommittee has been getting the latest news and estimates of the slaughter in Cambodia, whose present Communist rulers have starved, worked, shot, beaten and hacked to death upwards of a million of the country's citizens out of a total population of some eight million. Sen. McGovern judged that the Communists' achievements made the Nazis' extermination program against the Jews "look very tame" by comparison.

Then the Senator asked, "Do we sit on the sidelines and watch a population slaughtered, or do we marshal military force and put an end to it?" He further commented that "we ought not to dismiss out of hand" the possibility of action by the international community. He made clear that he wasn't proposing unilateral U.S. involvement; what would be appropriate was a military operation mounted by the UN. He knew there was little realistic hope of the UN's following his suggestion. But he said, "One would think the international community would at least condemn the situation and move to stop what appears like genocide."

There is a truly mind-boggling quality to a statement like this. Nearly 20 years ago, American liberals came to power in this country exhorting us to take a more vigorous and expansive view of our role as leader of the free world. They came complete with a theory of counterinsurgency, "winning the hearts and minds of the people." When the then-existing government of South Vietnam failed to fully adopt this prescription, they blithely arranged its overthrow. Upon discovering the price of the commitment thereby sealed, they set about toppling the American President, who inherited the aftermath of the coup. Not content when American troops were finally withdrawn, they set about slashing, on the grounds that the South Vietnamese government was "immoral," the aid funds it needed to maintain any pro-Western presence in Indochina. Now, having finished the task of destroying that presence, they are shocked and dismayed by the news of the grim and brutal world that resulted.

One of the few good things to come out of the sordid end of our Indochina campaign was a period of relative silence from the people who took us through all its painful contortions. They should have the grace to maintain their quiet for at least a while longer.

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[From the Boston Globe, Aug. 23, 1978]

MCGOVERN AND INDOCHINA—AGAIN

Sen. George McGovern has the often discomforting knack of raising tough questions—on Vietnam, on busing, on CIA credibility. Monday, he did it again by suggesting the possibility of sending an international military force into Cambodia to topple the monstrous regime there. The ironic effect of his suggestion may have been to give comfort to his habitual conservative critics while disquieting his liberal allies. Yet, the truth is that no one can take comfort from what he said, for he has focused critical attention on maybe the most heinous script being played out on the world stage.

No one knows exactly what is happening inside Cambodia, but, from reports of the half-million or more refugees that have fled the Khmer Rouge regime in the last three years, no one doubts that it is diabolical. While a half million have fled, untold thousands—amounting, by some estimates, to one-seventh of Cambodia's population—have been killed. Millions more have been relocated from urban centers to the rural countryside where they have been impressed in slave-like conditions as agricultural laborers. McGovern said the situation "is the most extreme I've heard of . . . Based on the percentage of the population that appears to have died, this makes Hitler's operation look tame."

There are many who, in assessing the situation, will want to look backward. Those who opposed our withdrawal from Vietnam will be quick to say that they had always warned McGovern and others in the antiwar movement of the "bloodbath" that would ensue. Yet, of course, the "bloodbath" they warned against was to have occurred in Vietnam—and it has not. McGovern himself took the opposite tack—suggesting that the United States was responsible for the destruction of Cambodia, the triumph of the Khmer Rouge and the resulting massacre. Yet, of course, despite the substantially greater damage the United States inflicted in Vietnam, no comparable horror has befallen that country.

What has happened in Cambodia is not susceptible to any grand theorizing. The government has fallen into the hands of a small group of young and fanatical outlaws who renounce most contact with the outside world and who apparently set out to impose their ideal society by destroying a civilization. While they have set out to annihilate the past, it is not yet clear that they have begun to build any kind of a future. It is not clear what they control or how they control it; it is not certain that a successful "judo chop" at the Cambodian government—one State Department officer's description of what Vietnam failed to achieve last year—would really change much.

The State Department officer, Douglas Pike, suggested that only a village-by-village occupation could work, that its prospects were doubtful and that such an attempt would mean "stepping deeper into the swamp."

Maybe China, the one major country with some reasonable relations with Cambodia, can bring increased pressure to bear. Certainly as China moves to take a more active role in the international community, it must demonstrate a maximum effort to curtail activity in Cambodia that is offensive to all organized society. And as McGovern and Sen. Robert Dole suggested Monday, international efforts to pressure Cambodia—through the UN—ought to be attempted.

By most assessments, however, neither approach is likely to bring success. And as civilized society in Cambodia continues to disintegrate, a world community that once declared "never again" will have to wrestle continuously with its conscience.

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## THE CAMBODIAN HOLOCAUST

Mr. DOLE. Mr. President, I want to commend the Senator from South Dakota for bringing this issue to the attention of the Senate once again, for the Cambodia holocaust has not yet received the full public attention that it deserves.

One thing about Senator MCGOVERN'S statement of last week is that it did focus attention on what has been a very serious problem, and continues to be a very serious problem.

The U.S. Congress can perform a valuable humanitarian service in devoting appropriate time and efforts to the plight of the unfortunate people of Cambodia.

### A MATTER OF PUBLIC AWARENESS

The wanton murder and destruction of the Khmer (K'mere) people and their culture has proceeded unhindered for 3 years now. Can a Nation such as ours, which has raised its voice against violations of human rights in other parts of the world, which struggled to overcome the excesses of the Nazis in the Second World War, which clamors for adherence to basic norms of human rights and dignity, really claim to be sincere without expressing outrage at this martyrdom of an entire people?

With our help, the world must be made aware of the brutality of the Communist Cambodian regime. Public opinion must be motivated and mobilized against the government of "Democratic Kampuchea." In this way, popular support can be generated for the kind of international pressure that is not only warranted in this situation, but which is demanded by all principles of human justice.

### AN ACTIVE FEW

So far, a relatively few individuals in this country have devoted their efforts to directing public attention to the Cambodian genocide. These have included certain journalists, such as columnist Jack Anderson, certain organizations, such as the International Rescue Committee, directed by Mr. Leo Cherne, and private

individuals, such as Mr. Chhang Song, the former minister of information of the Republic of Cambodia.

The Senator from Kansas joined these efforts last November in proposing Senate Resolution 323, which condemns the atrocities in Cambodia, and which calls upon the President to take effective measures to register the concern of the American people and to cooperate with other nations in an effort to bring these human rights violations to an end.

More recently, on July 31, I sponsored an amendment to direct our representative to the International Monetary Fund to oppose financial assistance for the Cambodian regime. The amendment was approved by the Senate after a tabling motion was defeated, 30 to 57. The action reflects, I think, a reticence by this body to shore up the Communist Cambodian Government with international financial aid.

NEED FOR DIRECT PRESSURE

What we need to do now is to deny the Communist regime the economic and diplomatic support it needs to survive. This could be more effectively achieved by using our contacts with those few countries which do have diplomatic relations with the Cambodian Government—and I have the People's Republic of China in mind—to pressure the Kampuchean Government to moderate its policies. It should be incumbent on the administration to utilize its increasing ties and contacts with the PRC to influence them to cooperate in condemning this criminal situation and pressing for its end. No regime can survive for long in total isolation. Few nations maintain contacts with the Cambodian regime, and we should make every effort to utilize the leverage that exists.

PRACTICAL LIMITS TO CONDEMNATION

Public condemnations and resolutions of denunciation are necessary as an initial step. But there are practical limits to their effectiveness. Ultimately, they must be accompanied by more substantive steps. For the sake of the Cambodian people, substantive steps are needed now. On August 3, the Senator from Kansas proposed an amendment to the State-Justice-Commerce Department appropriations bill, urging the Attorney General to use his parole authority to allow the emigration of 15,000 Cambodian refugees, mostly from that refugee camps, to the United States.

REFUGEES A VALUABLE TESTIMONY

The terrible nature of the "restructuring" of Cambodian society has been emphasized by the stream of refugees, fleeing at great personal risk: Those who have "voted with their feet" by escaping into neighboring Thailand. The escape from Cambodia to the relative safety of these camps in Thailand involves great risks across terrain so difficult, so thoroughly mined and patroled, that it is remarkable that anyone would attempt it, let alone succeed. And yet each month an average of some 50 Cambodians make their way through to one of the four camps in Thailand. Only through the testimony of these courageous people has the world been alerted to the actual extent of this targedy. By allowing the immigration of these people to the United States, we can help relieve the pressure on refugee camps in Thailand, and insure that additional Cambodian refugees can be accomodated by that country in the months ahead.

CAMBODIAN REFUGEE PROBLEM

By now there are about 15,000 Cambodians concentrated in four refugee camps in Thailand. Their outlook for resettlement in that country is dim. The Thais have been more than generous and merciful in accepting these people, but their burden is not getting any lighter. On the contrary, they are also hosts to those fleeing from Vietnam and Laos, and the heavy stream of refugees from all three Communist nations is not abating. The great majority of those Cambodians now in Thailand have been there for nearly the entire 3 years since the calamity began—those who escaped at the outset when they had the chance. In Thailand, they are considered a transient burden. The situation of these people is grave. Their camps are close to the Cambodian border, where they are in danger of reprisals from the Communists. The living standards are minimal. The Thais cannot be expected to completely shoulder the cost of maintaining a higher standard of living for these people when they have obligations to their own people. This has had its strains—last November, Thailand declared that all further refugees would be considered illegal immigrants and subject to forcible repatriation, even at the risk of death in the country from which they came.

OBSTACLES FACING CAMBODIAN REFUGEES

Our Government has taken steps to help. In June, the Attorney General announced a special immigration program for 25,000 Indochinese refugees. But, ironically, those who have left the worst hell of all among the Indochinese countries—the Cambodians—are those who will be helped the least by the new parole program. This is simply because permission to come to the United States is granted in priority order: First, to those who have close family relationships in the United States; and second, to those refugees who were directly employed by the U.S. Government in the past. Few Cambodians qualify for either of these criteria. And those two categories alone fill virtually all of the parole numbers authorized by the new program. Under present immigration laws, then, few Cambodians stand a chance to escape this unfortunate situation. As these categories stand, they face great obstacles.

PAROLE AMENDMENT

With this in mind, I feel that it is not only appropriate, but most urgent, that some action be taken to relieve the Cambodian refugees as a special group: They have been singled out for extraordinary brutality by the government of their country; they have little hope of qualifying for emigration to the United States under present laws; and their need is most pressing. By allowing their immigration, we can give a sign that the United States still stands behind its commitment to support those peoples of the world who are victims of oppression and tryanny, as we have in the past.

A SIGN OF CONCERN AND COMMITMENT

In this manner, we give those Camlief, and demonstrate to the world that we are concerned about the fate of those people, about the situation in Cambodia, bodians now in Thailand immediate reand that we are willing to take on our responsibility, as the leader of the free world, in attempting to alleviate this tragedy.

IMMIGRATION ONLY AN INITIAL STEP

Mr. President, this humanitarian parole, which I sincerely hope the Attorney General heeds, is only an initial step toward a comprehensive mobilization of opinion and action against this great international crime. It is my hope, that the conscience of the world will be stirred enough by the terrible excesses of the Cambodian Communists to prompt a more active approach toward alleviating the plight of these innocent people This is a test for the conscience of the United States and for the free world as humanitarians and defenders of international freedom.

Mr. President, let me again commend the distinguished Senator from South Dakota. Though I may not totally agree with his statement of last week, or inquiry of last week, which is really what it was, it is an indication that there is more and more attention being focused by Members of Congress on what I consider to be a very grave problem. Certainly Senator McGOVERN is a leader in Congress, one who spoke out strongly about the war in Vietnam and one who has now become very active in some of the tragic aftermaths of that conflict.

So knowing the distinguished Senator from South Dakota, I know he will persist, and I am pleased that he has taken his position and demonstrated his interest and his concern. I trust that it continues.

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## MR. JOSEPH L. RAUH, JR.

Mr. McGOVERN. Mr. President, on another matter, one of the most distinguished, long-time voices of American liberalism is Mr. Joseph L. Rauh, Jr., the Washington attorney. It has been my privilege to know Mr. Rauh as a friend during all of the years I have been here in Washington since the days I arrived as a new Member of the House of Representatives in 1956.

I have always found him to be one of the most intellectually honest and compassionate men in our national life.

In the August 19 issue of the Washington Post, Mr. Rauh has written a stimulating article entitled "Who Says Liberalism Is Dead?"

At a time when that question is being raised pro and con in all parts of the country, I think it would be interesting to the Members of the Congress to read Mr. Rauh's words. So I ask unanimous consent that his article of August 19 be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 19, 1978]

WHO SAYS LIBERALISM IS DEAD?

(By Joseph L. Rauh, Jr.)

Every time the conventional wisdom gets practically unanimous in Washington—"Truman is done" (1947–48), "Johnson can't be toppled" (1968), "Muskie is a shoo-in" (1972)—things are fairly sure to turn out quite the opposite. So it doesn't take much courage to attack the present conventional wisdom that liberalism is dead or at least dying.

Actually, the most significant vital signs point the other way—that liberalism is quite alive and well:

While columnists and editorial writers prate about failings of New Deal and Great Society social programs, the public demands one of the biggest social programs of them all, national health insurance, and the present political struggle is not over whether there should be such a program but over the time period necessary to phase it into the economy.

With all the cannonading for tax reduction and spending restrictions, the attack never focuses on any particular New Deal or Great Society program. The Proposition 13 and the Kemp-Roth backers don't level their fire at particular programs to be curtailed or repealed, but rely for support on Pavlovian antipathy to the very real unfairness of the present tax system. Despite all the demagoguery calling for a rollback of big government, the "welfare state" social programs are so deeply imbedded in the system that no one seriously proposes their curtailment or demise.

On the civil-liberties front, even so hateful a group as the Nazis was given full First Amendment protection for the recent march in Chicago, and the bill for a revised criminal code, supported by most of the Senate's most distinguished liberals, is being held up in the House not because it is too liberal but because leading members of the House feel it doesn't do enough to rectify existing law with anti-civil-liberties aspects.

On the civil-rights front, the Supreme Court, often a bellwether of the public mood, used its *Bakke* decision not only to validate race-conscious preferences for education, employment, etc., but to announce that goals and timetables and even quotas are within constitutional sanction where there are legislative, judicial, executive or administrative findings of past discriminaton to back them up.

The Moynihan-Meany-Jackson hardliners have, thus far at least, had only minimal success in their attempts to reopen the cold war and this despite considerable Soviet provocation.

Many large labor unions are coalescing with liberal groups more closely than they have for years.

The nation's conservative party, the Republicans, have made little if any progress in broadening their ranks.

Every poll shows Sen. Edward Kennedy (D-Mass.), who has a near-perfect voting record over the years on the Americans for Democratic Action and other liberal scorecards, far and away the No. 1 choice of Democrats for 1980.

Of course, a number of problems for liberals do inhere in the current political situation. For example, many of today's issues are incremental ones extending or improving upon the more fundamental economic reforms of Franklin Roosevelt or civil-rights reforms of Lyndon Johnson and thus far less easy to dramatize than earlier more fundamental changes. Then, too, 45 years of social change in the interest of a more egalitarian society was bound to produce a certain amount of the tired "we-have-done-enough for *them*" syndrome and the self-interested "we have to be with the winner this time" syndrome.

And, finally, the hardest time for liberals is when there is a middle-of-the-road Democrat in the White House. It is easy to work in support of a liberal Democratic president. It is not too hard to work in opposition to a conservative Republican president. But a non-ideological middle-of-the-road Democrat in the White House creates a sort of no-man's land with maximum uncertainty as to who is doing what to whom.

But whether the next surge of liberal successes comes from a left-turn in the White House (Truman made his big shift leftward as the 1948 election neared), or from the fine young liberals in the administration banding together to demand more vigorous action, or from the deep belief of the American people in the role of government as the builder of an ever-fairer society, conservatives are clucking much too soon.

## ORDER OF BUSINESS

Mr. McGOVERN. Mr. President, I have nothing further to add to the discussion at this time. I know that other Senators who have been deeply concerned about this issue, including the Senator from Kansas, Mr. DOLE, and the Senator from New Jersey, Mr. CASE, will also be speaking out today and I welcome their contributions and their leadership.

I yield back the remainder of my time.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Kansas (Mr. DOLE) is to be recognized for not to exceed 15 minutes.

Mr. STEVENS. Mr. President, has the Senator from South Dakota used the time I yielded to him?

The ACTING PRESIDENT pro tempore. No, he did not.

Mr. STEVENS. Mr. President, I ask unanimous consent that the quorum call be charged to that time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Mississippi (Mr. STENNIS) is recognized for and is in control of 60 minutes.

## VETO OF THE MILITARY AUTHORIZATION BILL

Mr. STENNIS. Mr. President, I am delighted to have some time this morning to discuss a very important matter, my main purpose being to get into the official record some thoughts I have and an analysis I have made of the President's veto message with reference to the military authorization bill.

I emphasize that this discussion is for the benefit of the Senate, the press, and the public—even the President, himself—and is not any kind of attack on what the President has done with reference to vetoing the bill.

I have no feeling of resentment. Naturally, I was disappointed, because the committee had worked on it all year. But the President has to perform his constitutional duties, as I told him the morning a few of us were at the White House, at his invitation, when he told us the veto would come.

I attribute nothing except good faith to the President and to Secretary Brown, who also is involved in the matter. But I will spare no language in pointing out what I shall call errors of fact or mistakes of fact that were made in presenting this matter to the President and in getting up the facts to present to Mr. Brown.

I have asked our Senate Armed Services Committee staff, assisted in some degree by the staff of the Appropriations Subcommittee on the Department of Defense, to go very carefully into the facts I am going to mention and to be certain that they have probed deeply and have obtained the real facts. They have assured me that they have done this. I know them personally, and I know their competence, and I know how they approach matters. I adopt the figures and everything else as mine for this speech.

I emphasize again that I am talking about mistakes of fact or errors of information or errors of fact on the part of the President and Mr. Brown, the Secretary of Defense, rather than any kind of wrongdoing or willfulness or anything else.

Mr. President, the Senator from New Hampshire (Mr. MCINTYRE), who is a very important and essential part of our work in the Armed Services Committee, handles the research and development section of the bill. About $12 billion annually is now going into that field. The members of that subcommittee perform a valuable task. He will be here, and I will yield some time to him.

Mr. President, I will take these matters up one group at a time.

Mr. Carter's veto message says:

> The bill I am returning does not spend wisely. Instead, it actually would lead to less defense capability than I have requested. It does this by eliminating funds for high priority defense requirements and adding funds for purposes which do not meet our defense needs. Most notably, it would take nearly $2 billion from the total and set it aside for purchase of a nuclear powered aircraft carrier.

Mr. President, I note here that the issue with President Carter is not so much a carrier. He said later that he would approve a large carrier, and said later that it would come up in the fiscal 1980 budget. So, really, he approves of the large carrier, but it is just a variance of 1 year, the only difference being the type of power that is used in the carrier. That is a very significant fact in this matter.

We have to go back into this matter—either override the veto or rewrite a bill, if we can. That is a big "if."

I refer now to the statement about spending the money, eliminating funds for high priority defense. The eliminated funds for high priority requirements are identified in the veto message as follows: $800 million of the required $1 billion increase for Army weapons and equipment; $200 million for Air Force weapons and equipment; $500 million of the requested $1 billion increase for readiness funds; $500 million for research and development.

Now I will take them up. First, of course, we developed these facts months and months after the President's budget was finished. We have capable men who examine and cross-examine knowledgeable people about the various line items, as to whether the need has slipped, whether there is a change of facts, what the capability is of the manufacturer, and so forth.

Congress then, of course, has to make some changes, and uses their judgment, as was done in this bill.

In all this process to which I have referred, here is the source of the money that allowed us to add the nuclear carrier. This is the way it came about: $910 million of these reductions that President Carter talked about resulted from the slipping of a Trident submarine into fiscal year 1980 because of construction delays. There is no doubt about that fact. All agreed, including the company that makes it.

A savings result of $600 million from the Presidential decision to hold the fiscal year 1979 military and civilian pay raises to 5.5 percent, plus the usual absorption by DOD of some pay raise costs. That is an item that was worked out, and I commend the President very highly with reference to that saving, which is justified without releasing anything else.

A reduction of $200 million in military construction projects that were deferred or financed differently.

Mr. President, members of the committee learn a good deal about these military construction projects over the years. I was chairman of that subcommittee for some 10 years, and I have not forgotten some of the fundamentals I learned there. We go after it, frankly.

And if there is any fat in there or anything that has delayed construction or may not be built, and they want to use the money for something else, we take it out, and that is what happened here. It added up to a $200 million reduction in military construction projects that were deferred or financed differently.

And these happened in the ordinary course of getting into these bills. There is a $120 million reduction in research and development programs and a $100 million reduction in nuclear weapons programs, and as I recall it was not in dispute about that reduction in this field of nuclear weapons which runs into billions of dollars, and $300 million reduction in procurement not reclamaed, not reclamaed by the Department of Defense. Listen at that now. Matters that we took out that were not even reclamaed. They did not come back and ask for reconsideration of $300 million.

I will have to move on. The items not challenged by the Department of Defense included $127 million for the XM–1 tank program that DOD had agreed was overfunded.

The second item is $113 million for A–4 aircraft. According to their testimony this item could be taken out.

Twenty-three million dollars for DDG–2 conversions based upon DOD modification of the program. Here is where they found a way to save some money on a modification program, and we took that money out.

Twenty-seven million dollars for MK–46 torpedoes, based upon lower unit costs, lower unit costs, Mr. President. Think of that. They actually found something in the bill where they could get it for less, and we took that money out.

Now, going to another item, impact on weapons and equipment for the Army. The President's veto message says:

> I requested a $1 billion increase to strengthen our ground forces, particularly our NATO-oriented forces, by providing more helicopters, combat vehicles and ammunition for our front-line forces. Adding the nuclear-powered aircraft carrier means eliminating $800 million of that increase.

Mr. President, here are the facts: The vetoed bill provides $3.24 billion for Army procurement. This was a $621 million or 24-percent increase over fiscal year 1978 Army procurement.

Regarding the specific areas that are mentioned in the veto message, the following actions were taken:

The vetoed bill eliminated eight helicopters costing $45 million from the President's request. These helicopters were for forces in Korea and were older models. Deferral of this expenditure will not affect NATO initiatives and will permit procurement of newer model helicopters in the future.

If anyone knows what we are going to do about this Korea situation, knows for certain about the Korean removal they know a lot more than I do. But there is a matter totally unrelated to this Army procurement for NATO. Still it is stuck in here by someone as one of the reasons.

Combat vehicles: As mentioned previously, the XM–1 tank program was cut by $127 million. DOD agreed that this cut was appropriate based upon the program status.

However, the vetoed bill funded several additional initiatives for NATO-oriented combat vehicles that were beyond the President's request. For instance, $34 million for modification of an additional 160 M60A1 tanks to the improved M60A3 configuration.

We have men on the committee that know something about these tanks, and this was gone into with the Army $39 million for development, with West Germany, of the 120 millimeter tank gun; and $39 million to begin production of the infantry fighting vehicle. In other words, we said on that infantry fighting vehicle, "Don't put it off until next year; start now, start production now."

Funding for Army ammunition is not included in H.R. 10929, the vetoed bill. It is not even in it. There is no authorization that has to be made for ammunition.

In the House appropriations bill, $349 million was cut from the budget request for Army ammunition.

This shows that those who got the facts up jumped from one bill to the other.

The DOD had not requested restoration of $73 million of this cut mainly because funds requested for fiscal year 1979 could not be spent during that year. The Senate Appropriations Committee has been considering a cut of Army ammunition by $324 million, or $25 million less than the House cut. So there is an area here that certainly requires a careful look and a decision. We are getting into it when the lightning struck on this veto. But Chairman MAGNUSON just suspended the whole thing.

In summary, the President's initiatives for Army ground forces have been supported by Congress and in some cases exceeded by the vetoed bill: Other than the cuts in helicopter and XM–1 tank programs, only an additional $16 million was cut from the budget request for the Army procurement of $3.43 billion. Think of that. That was such an overwhelming approval. While DOD and Congress disagree on about $250 to $275 million in ammunition cuts, the Appropriations Committees believe that the requested expenditures are unwarranted.

I refer that to the Appropriations Committee because what was done by the House Appropriations Committee is mixed all up in this veto message all the way through.

Impact on weapons and equipment for the Air Force: President Carter in his veto message said:

> I requested more funds for airlift, electronic warfare equipment and electronically guided ordnance. Adding the nuclear-powered aircraft carrier means eliminating $200 million of this increase.

Mr. President, with all deference, that is a mistaken statement of fact. It had nothing to do with the carrier, and I have a detailed explanation of that item here. It is very involved.

It goes into the discussion about the civil reserve, air fleet modifications, and so forth.

The facts show that the money was not materially reduced for the airlift, electronic equipment, and so forth.

The Senator from New Hampshire (Mr. MCINTYRE) may have some special remarks on that, and I will move along because of time.

While some reordering of priorities occurred in Air Force weapons and equipment, the President's funding level has been sustained. In addition, there is a substantial increase in aircraft procurement provided by H.R. 10929.

Now, Mr. President, again with reference to the President's responsibility, he said in the veto message:

I requested an increase of $1 billion for items which are not glamorous, but which provide the immediate fighting capability of our forces—funds (requiring appropriation but not prior authorization) for repairs of weapons, spare parts for vehicles and aircraft, ship overhauls, training of personnel, communications, and logistical support to move equipment to where it is needed. Adding the nuclear-powered aircraft carrier means eliminating half of that increase in fighting capability—some $500 million.

Now, Mr. President, as a matter of fact, here we went into great detail on some of the proposed reductions by the executive branch for training and restored, put back in, some of that money. But before addressing the impact of congressional action, it should be noted that the budget requested, the President's budget requested, a decrease in training manpower of 6,800 Army military personnel and 1,300 civilians, and 10,500 Navy military personnel and 800 civilians. This would result in a reduction in training courses, the number of people who would be trained, and the number of instructors.

The budget requested a manpower decrease of 35,600 in the Naval Reserve.

The budget contained no provisions to address the declining strength of the Reserves, and other items here, Mr. President.

Now, this is something that the committees of Congress went into a few years ago. An amendment was passed making civilian and military personnel—an authorization requirement. Always theretofore the Appropriations Committee only had looked into these matters. They did the best job they could. in the rush of things. The committee members of the Armed Services Committee have delved into this. I appointed the Senator from Georgia (Mr. NUNN) as chairman of a subcommittee there, and other able members on that subcommittee, and they charged the breastworks and have led the fight for some of these reductions over a period of years. But this year—and I say this with all deference—there hsa been more urging of reductions from the Senate than there has the House, and we settle these matters in conference, sometimes after a great deal of effort, but this year even those of us who had been insistent on these personnel considerations thought that the budget went too far with reference to training personnel in particular. We restored more than the budget asked for in the authorization bill, the bill that has been vetoed.

If we had gone by the President's request, it would not have required as much money. So I tell you there is no basis for this talk about every time we turn around we did something to make room for a carrier. It is just not correct, they are not true facts, and here is an illustration of the way the committee was going down the line trying to work these matters out on a basis of what was sound and what was better, and let the totals fall where they would, with two exceptions: I think every man on our committee who wrote this vetoed bill did not want to go beyond—any appreciable amount anyway—the President's request, the executive budget. I think every man wanted to come within the legislative budget, our budget, the Muskie-Bellmon committee budget. I know I did not, and I was going to do all I could to keep from doing that, not only on the ground that we must not just throw money in because we want to, but because that committee stopped us here on the floor of the Senate once after we came back from conference because we had not been conscious enough of their ceiling. That committee has come a long way, and I commend them for it.

So we have an eye on those two things regardless of whatever else we did, and we came in with bills, put the essentials in as we saw them, without running over.

Now, I have a detailed analysis here of the President's statement with reference to these $1 billion items which I will enumerate in detail. It is here for the press to see if they wish, for the people, the membership, the people-at-large, anyone to see, that this is an attempt to bring in the hard facts upon which our bill is based, upon which the President's veto message—not to his blame really, but he got some of the wrong facts.

The budget requested a decrease of civilians for aircraft maintenance in the Navy and Air Force and a corresponding decrease in the operational readiness rates of Navy and Air Force aircraft. In the Air Force, one out of every eight civilian reductions was in the maintenance area. Testimony by Assistant Secretary White revealed that, "Reductions in maintenance were made in the very final changes in the budget because of financial constraints."

Testimony by Deputy Secretary Duncan indicated that "tight overall fiscal constraints" were the cause of the overall decline in readiness rates from those that were achieved in fiscal year 1978 primarily through increases in readiness funding by the Congress.

Discussion of congressional actions on readiness items is facilitated by addressing H.R. 10929 and the appropriations bills separately. H.R. 1099 gives readiness a shot in the arm:

Made increases in Army and Navy military manpower for training programs above the President's requests;

Increased Naval Reserve manpower by 35,600 to provide help in Navy base operations;

Provided $25 million to increase Selected Reserve strengths;

Provides for an increase of 1,000 civilians for aircraft maintenance in the Navy and 400 civilians for aircraft maintenance in the Air Force to correct the decline in operational readiness rates presented as a part of the President's budget;

Funded all but $10 million of a budget request of $2,058 million for spare parts; and

Funded all but $31 million of a budget request of $2,825 million for weapons modifications.

Regarding the appropriations bill the President requested $37.4 billion for operations and maintenance. The House appropriations bill funded all of this amount except for $37.7 million or a cut of about one-tenth of one percent. One substantial improvement for readiness included in the bill was the addition of $170 million to readiness-related depot maintenance funding. Moreover, the current DOD request for operations and maintenance, identified in the reclama to this House bill, is for $48.8 million less than the amount that would be appropriated by the House bill. The Senate Appropriations Committee is considering a smaller cut from the President's request—$22.9 million—than was made in the House and has planned to add $145 million for readiness-related depot maintenance.

The House Appropriations bill has made and the Senate Appropriations Committee is considering an accounting change that may have lead to some confusion and apparently is the source of the veto message charge of a $500 million cut in readiness funds. The accounting changes within operations and maintenance being considered is to create a new $500 million fund to accommodate increased costs that occur as a result of fluctuations in the value of the dollar overseas. The House made and the Senate Appropriations Committee is considering a reduction of about $500 million in funds requested for inflation to offset the creation of this new fund. The basic fact is that there is a need within the O. & M. account to offset the reduced buying power of the dollar in the future. The creation of this fund provides an orderly process for doing so rather than forcing absorption of these cuts in important O. & M. programs at a later date. This action is merely a transfer from one inflation account to another.

The statement in the veto message that $500 million has been cut from readiness items is unfounded. In fact, as in the past, the Congress has again augmented the budget request in several areas to improve readiness.

Mr. President, as I indicated before, the time allotted here this morning was going to be used in part by the Senator from New Hampshire. I ask unanimous consent that I may yield now to the Senator from New Hampshire 15 minutes of the allotted time.

The PRESIDING OFFICER (Mr. MORGAN). Without objection, the Senator from New Hampshire is recognized.

Mr. STENNIS. First, let me just say this, Mr. President: I want to say it strongly for the record. This man went out into the wilderness a few years ago at my request and urging. Somebody had challenged me on the floor about 10 years ago when I was handling a bill—I was not chairman of the subcommittee, but I was handling it—and I was challenged to explain the $7 or $8 billion worth of research and development money, and I could not do it. So I made up my mind then to handle it better and persuaded the Senator from New Hampshire to handle it, and he has done an amazing job. No one knows how many nights, days, months he works on these bills, and I have never seen him come out with a set of facts that failed to stand up. I might not always agree with him. He is

no chiseler either on this money. He is concerned, and I want to thank him publicly again for the marvelous work he does year after year, and I hope he gets some satisfaction out of it. He deserves the satisfaction and the credit, great credit.

Mr. McINTYRE. Mr. President, I thank the distinguished and able chairman of our committee. I am grateful to him not only for the leadership that he gives to us but, of course, for the longstanding ability that he has manifested in this important field of national security.

Mr. President, like many of those who serve on the Armed Services Committees of the House of Representatives and the Senate, I was generally stunned and taken aback when the President announced his decision to veto the authorization bill for this fiscal year, 1979.

Part of the rationale given for the veto of the Department of Defense Appropriation Authorization Act of 1979 is that the bill penalizes research and development programs in order to fund a nuclear-powered aircraft carrier. In his veto message to the Congress, the President stated:

* * * to sustain our position of excellence in a world of weapons increasingly dependent on technology, I requested a three percent real growth in defense research and development. Adding the nuclear powered aircraft carrier leads to an actual reduction in research and development.

Careful examination of the research and development portion of the bill, however, does not bear this out.

For fiscal year 1978 Congress appropriated $11.4 billion for research and development. For fiscal year 1979 the Department of Defense requested $12.47 billion, and the bill in question authorized $12.25 billion. This is an increase of $840 million over that appropriated for research and development in fiscal year 1978, a total increase of about 8 percent. The real growth rate that would result depends on the actual rate of inflation, but at a minimum this bill provides between 1 and 2 percent real growth.

In deciding to veto this bill the President looked beyond the authorization bill, projecting the impact into the Department of Defense appropriations bill. Therefore, to understand the entire issue we must look at the appropriations bill. The Defense approriations bill is not yet completed but if the final R. & D. total is midway between the House and Senate versions, the real funds available for R. & D. will be about the same as last year. It is highly unlikely that there will be an actual reduction, and there could be as much as 1 percent real growth. So I must conclude that the President was misinformed when he stated that adding a nuclear carrier leads to a reduction from last year's level for research and development.

The changes, both reductions and additions, made in the research and development program were made on the merits of each issue. They were not made to reach some arbitrary total or to provide funds for some pet project. I would have preferred to authorize more for research and development, and, in fact, the Senate version of the bill added $87 million to the President's request. The House version of the bill reduced the President's request by $635 million. The final figure was a reduction of $209 million. However, each item was thoroughly reviewed and debate on the merits of that program, not to reach a preset total. To suggest that no cuts should be made in the budget request implies two questionable assertions. First, that the budget submitted by the Department of Defense has no soft spots and can stand up to the closest scrutiny. Second, that Congress is not entitled to its own view on the priority and importance among 800 separate programs. I cannot believe that the President feels this to be the case.

The net reduction of $209 million in our authorization bill results from program reduction totaling $611 million and program additions totaling $402 million. It is important to note that the Department of Defense did not challenge $130 million of the reduction or $143 million of the additions. Let me cite some of the other program reductions to illustrate that, indeed, there are soft spots in the budget request, and that Congress has exercised its responsibility in searching out these soft spots. First is the question of continuing research for the B–1 bomber. $105 million was requested by the Department of Defense to continue research and development on the B–1, a plane that will not go into production.

The bill provides $55 million to complete construction of a fourth aircraft and to continue testing of those components such as engines and electronic countermeasure systems which may have application to future aircraft. This resulted in a reduction of $50 million from the DOD request.

A second area of significant reductions was in terminally guided submunitions. This is an exciting, new area of technology which shows promise for improving the ability of our forces to attack large tank concentrations. However, this new area of technology has fallen prey to normal bureaucratic competition. Funds were requested in eight separate programs spread out among the Army, Air Force, and Defense Advanced Research Projects Agency (referred to as DARPA). Unfortunately, many of the programs were only vaguely defined, and were, at best, attempts to get a foot in the door in the competition to be the leader in this new area.

The authorization bill reduced the funding for these programs by $35 million and the conferees had strong words urging DOD to gain control of these programs, and to limit interservice competition. This is an area where, time and time again, we see examples of their interservice rivalry.

Another major area of reduction was in Navy V/STOL aircraft. $75 million was requested by the administration to continue research and development of Navy V/STOL aircraft by the testimony presented. But the Department of Defense has not yet defined the missions of V/STOL aircraft. That is, should these planes be used for air defense interceptors, attack aircraft, or antisubmarine warfare and so forth. Recent events indicate that the Navy is rethinking the entire plan for V/STOL aircraft. They are going back and looking at it all over again, their interim plan for the short takeoff and landing aircraft.

The bill provides $23.5 million to continue development of basic V/STOL technology. This is a reduction of over $50 million, but is entirely appropriate since there is such uncertainty as to where the Navy is going on V/STOL.

Another area of reduction was in what has become known as the "studies and analysis" area. Both Houses of Congress expressed concern over the proliferation of studies, particularly those which seem to only result in the need for more studies and which are used as an excuse for slowing the development and fielding of new systems. Funds were asked for two programs, one in the Air Force and one in the Navy, to have contractors study what studies were needed. Both of these programs were eliminated. In another case, one Navy program manager had commissioned a study with the sole purpose of proving his program was needed. The authorization bill reduced money available for studies by $35 million from the $228 million requested.

These four areas represent reductions of about $175 million. Other examples could be cited to show that, indeed, the Department of Defense request needed careful scrubbing. However, I think these four areas make my point very well.

Let me now turn to some of the additions that were made to the budget request. These resulted from a different viewpoint as to the proper priority of certain programs. Clearly, Congress has not only the right, but the responsibility to speak with regard to how our Armed Forces are equipped.

This does not mean that the Armed Services Committee has understanding and knowledge of defense issues superior to that of the leaders of the Department of Defense. I would estimate that 90 percent of the time we accept the judgments and decisions of the military experts. But commonsense, sharpened by years of reviewing defense budgets leads us to ask that certain areas, either over looked by the Pentagon, or lost in interservice rivalry, be explored. This does not mean we have the time or knowledge to examine each type of rifle or backpack. But we do have a responsibility to speak on the key policy questions that will determine our future security.

One of the most significant initiatives included in this bill coincides with what appears to be a basic concern of the administration, that is building a Navy of highly capable ships, but in adequate numbers to cover the vast areas of possible conflict. To do this will require new concepts of ship design and construction. The budget submitted by the administration was particularly weak in this area. The program developed by Congress in the authorization bill includes the following initiatives in this area.

Three million dollars for design studies for a lower cost SSBN–X to complement the very large and very expensive Trident submarine.

That is the nuclear ballistic submarine to complement the very large and very

expensive Trident submarine. The Trident submarines were estimated initially to cost about $750 million and are now running about $1.4 billion.

Constraints on development of a new attack submarine until it can be demonstrated that the R. & D. programs for submarines will reverse the cost-growth trend in attack submarines.

Eighty million dollars for the surface effect ship. A ship that could travel at 80 knots and be a great submarine hunter.

Twenty-five million dollars for the design of a new light carrier.

Seven million dollars to explore new modularity ship-design concepts that would facilitate mounting of weapons aboard ships.

One million dollars to explore a new ship design called SWATH which has potential to be a highly stable aircraft platform.

SWATH refers to small waterborne area twin hull, which has the potential to be a highly stable aircraft platform.

These initiatives will give the President a wide range of options to accomplish our common goal of an affordable, effective Navy.

The sum of $87.4 million was added for the AV–8B program, a Marine Corps V/STOL fighter. In this case, the Congress was saying that in their judgment the Marine Corps should move ahead with the development of an improved V/STOL aircraft, as opposed to buying the 20-year-old A–4M aircraft. In the case of the Marine Corps, a mission and role for the V/STOL aircraft has been clearly defined, and it would seem to be a regression in our force development to buy old aircraft when there are advantages in moving ahead in this new area.

Ten million dollars was added to this bill to begin design studies for a theater mobile ballistic missile as a complement to some of our existing forces, and as a way to counter Soviet activity in the short-range ballistic missile area. Again, Congress is saying this is an area that was neglected in the budget submission, but one of critical importance.

These examples illustrate the nature of the additions made by Congress. They are not done frivolously or with parochial constituent interest in mind. They are done because of a deep concern for the future combat capability of our forces.

Careful review and scrutiny of the Department of Defense research and development program has been done each year and will continue to be done regardless of what happens to the other parts of the budget. To judge whether the R. & D. budget is adequate solely on its total is not responsible. The important question is what that budget will do for this country. The R. & D. program authorized by this bill is strong in all of the important areas including technology base, strategic programs, and general purpose forces.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. STENNIS. Mr. President, I yield an additional 5 minutes to the Senator.

Mr. McINTYRE. It provides nearly $2 billion for sustaining and strengthening our technology base. This is an increase of 11 percent over last year.

In the strategy area this bill provides for a number of opinions that will give the weapons for preserving the strategic balance in the years ahead. These include: $158 million for advanced ICBM technology; $55 million to continue development and testing of those parts of the B–1 which may have application to future manned bombers; $20.6 million for the cruise missile carrier; $237 million for the air-launched cruise missile; $152 million for the sea-launched cruise missile; $3 million to consider another submarine to complement the Trident; $5 million to do initial studies of the Trident II missile; and $20 million to do initial design studies of a mobile theater nuclear ballistic missile.

I am satisfied that this bill provides not only the options but the hardware development to give the President the weapons he needs to sustain the strength and effectiveness of our strategic forces.

The bill also provides for a dazzling array of systems for our conventional forces. These include: $35.6 million for the 120 mm tank gun, a cooperative development program with West Germany; $78 million to continue development of the XM–1 tank; $228 million for the Patriot air defense system; $22 million for the Roland air defense system which starts production in 1979; $177 million for the advanced attack helicopter, the helicopter that will fly off our ships and hunt the submarines with new electronic devices that the world has never before seen; $95 million for the LAMPS Mark III ASW helicopter; and $498 million for the F–18 fighter.

Mr. President, I cite this list of programs to illustrate we are not standing still. We are improving our forces. We hear so much, I hear so much, of the growing Russian threat—and I do not belittle it—that I think it needs to be pointed out from time to time that we are not standing idly by. This bill will continue our commitment to a strong defense.

In summary, Mr. President, it is incorrect to state that the reductions made in the research and development program will cause an actual reduction from last year's program. I would have preferred to authorize more for R. & D. and indeed the Senate bill provided $87 million more than requested by the President. However, the House bill reduced R. & D. by $635 million.

In the conference, through the leadership of our distinguished chairman of the committee, we were able to restore all the $209 million.

We got the House to come up almost $400 million from where they had been when we entered the conference.

This reduction would still provide for 1 percent real growth.

The appropriations bill will reduce the R. & D. program some more but I do not think it will fall below the real value of last year's program.

Further, Mr. President, it is totally incorrect to state that these reductions were made to fund a nuclear powered carrier. These reductions were made as a result of careful review of many programs. I know in this regard I speak for my colleagues on the Research and Development Subcommittee Senators CULVER, ANDERSON, BARTLETT, and GOLDWATER.

Even with those conflicting views, we were able to bring to the full committee a unanimous subcommittee report.

As I said, in that report to the full committee, we had advocated $87 million more than the President requested in his defense budget. I am proud of that record by the Research and Development Subcommittee and we shall continue to call them as we see them, regardless of the outcome of the veto.

I thank my chairman for yielding to me in order that I might vent my feelings on this issue.

Mr. STENNIS. I thank the Senator very much, indeed. He has done more than express his feelings; he has stated facts here for the record.

Mr. President, if there is any doubt about these facts that the Senator from New Hampshire has given, I challenge the press to look into them enough to know, and if they can find any basis for challenging our committee or the statements of the Senator from New Hampshire, bring them out. That is the way we have worked on this matter. He knows what he is talking about and his figures are correct.

After all is said and done, Mr. President, there is reduction here or there, some, but in the end, as the Senator said, there is far more in here, considerably more, at least, than there was in this category last year. It is an increase and not a decrease. I am certain that, in the field of technology, there are no reductions, or virtually none, unless it is just something where a lagging program lost a lot of time; but in the field of pure research or technology research and all of those items that are really scientific research, there are additions rather than reductions.

Some of the big money in this $12 billion plus comes from development, and that includes prototypes. That is big money. There is where you have slippages, there is where there can be some reduction. But if we had this confined to research and technological advancement, items of that nature, there would be nothing said about reductions for R. & D.

Here is another thing that we are up against: There is a lot of sentiment at the Pentagon—and the reason I know this is they came to me soon after I appointed this subcommittee and Senator McINTYRE got into it, saying that our committee ought to look upon the R. & D. recommendations as sacred ground and not intervene and not look at what is behind the scenes; in other words, not examine them, just give them a blank check. Well, we could not do that. That is why we created this subcommittee and that is why we required authorization.

In the old days, there was no authorization required. The Appropriations Committee just made the best guess they could, a lick and a promise, and then went. But this has gotten down to a minute examination, here, as Senator McINTYRE has gone on.

Mr. President, one other word: The idea that was put out was that there was a great effort or connivance, or whatever you want to call it, to make room here for a carrier, something glamorous, at the expense of these other programs. They made the President think that that was it. That is what his veto message sums up.

Mr. President, we have many conflicting elements—the competing contractors. The plane manufacturers, and the shipbuilders and the missile makers and all of that group, that is all piled up on our doorstep. We had the old B–1 fight, remnants of it, coming in on us this year from every direction, fragments of that fight still flying around.

Every Senator is on the spot, to a degree, about things that go on in his own State—I mean either military programs or the lack of them. So we have to adjust for all those matters.

All of these organizations and appropriations finally find their way through the respective committees, House and Senate, and they finally find their way to the floor and are passed on, out in the open, and voted on in the same way. Then that bill or those bills go to a conference. There the fur flies, sure enough.

My point is that it is impossible to have any kind of scheme to eliminate a whole lot of things in order to make room for something. It just does not happen that way. Then, when, finally, the matter is agreed on in conference, it comes back to each House and is subject to debate on the final version.

When we finished this bill that had been vetoed, I went to the press gallery and stated all the main points—to the press, to the public, to the membership, to everyone. Then the matter lay here about a week. Then we took up the conference report when it came over and there had been not a single protest filed with us about that conference report. The committee heard nothing. They were not all just happy, but they were not displeased. They knew the problems of legislation. The press covered it to a degree so the public was informed.

And when we brought that conference report on this vetoed bill back here a week after all this exposure, there was not a single murmur from a single Senator, although notice was given that it was coming, that we were going to take it up. The leadership on each side notified through the telephones and so forth. Not one single murmur.

That does not mean every Senator was for everything that was in it, but it meant the legislative processes had been completed and we had a bill that I thought was the best balanced bill that we had gotten out in several years in this new regime.

Just a word here about the carrier. I have already said as far as the President is concerned, he is not opposed to a carrier. He said he would approve one next year, a big one. It is just a question of what method of power that is debatable itself. The veto based upon a deletion of these other items.

But back to the ships. For 3 consecutive years at least, we have had a madhouse, to a degree, in our committee about ships because there was no forward-looking plan upon which the Navy was agreed with the administrations—I say plural—the retiring one and the incoming one. And we got recommendations here, there, and yonder. I said one time, we had four navies in our committee room going around in different ways. Once we had one from former Senator Taft, who had been on the committee and worked on it. But anyway, we had all those claims that were piling up and required money. Nobody was doing anything about getting those out. Our committee met that issue about putting money in every year, authorizations and appropriations, too, because I thought that was part of the roadblock.

This bill that has been vetoed is the first bill that put in some line items that relate to the new Navy—I mean meaningful line items. They were not large amounts of money, but it was the beginning of thought with reference to a V/STOL-type plane for use on a new-type carrier and a new so-called smaller carrier, each one of those items—the new-type carrier and the plane that goes with it—being 12 or 14 years in advance. That is a surprise to me; it is to everybody. But it is a fact.

So we are talking about a navy, something to fill in here in the interim. But so far as legislation is concerned, this vetoed bill goes further, I think, than anything with reference to the possible new-type navy than any executive recommendation we have had from any source, either the past administration or the present one.

I have no fight with anyone. I have no hard feelings with anyone—not anyone—about this. But I am determined that we get the facts out.

I challenge the press now to look at this evaluation, look at it any way, and if it is not substantially correct, let us know. We want only the facts as they really are.

In spite of all that has been said and done, the veto message convinces me that the President did not have all the facts before him when he had that message prepared. I know he did not write all of it. My Lord, he does as great a volume of work as any President that ever came along. He should have a lot of help. I am not imputing any bad motives or anything like that. But this is serious business.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STENNIS. I thank the Chair very much and I thank the Senator from New Hampshire again.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have a little time left under the leader's time and I seek to utilize that at this time.

The PRESIDING OFFICER. The Senator shall proceed.

## POSSIBLE TREATMENT OF A STRATEGIC ARMS PACT AS AN AGREEMENT RATHER THAN AS A TREATY

Mr. ROBERT C. BYRD. Mr. President, questions have been raised about the possible treatment of a strategic arms pact with the Soviet Union as an "agreement" rather than as a treaty.

There should be no question. If an arms limitation pact is successfully negotiated with the Soviet Union, I strongly urge that the basic document should be submitted to the Senate in the form of a treaty.

Because of my very strong feelings on this matter, and because I have been hearing speculation to the effect that such a pact might be submitted to both Houses as an agreement, rather than as a treaty, I wrote to President Carter on August 15, urging that such a pact be submitted as a treaty and not as an executive agreement.

As set forth in my letter to President Carter, I believe there are compelling constitutional grounds for insisting that the document take the form of a treaty.

An international pact as significant to the security interests of the United States must receive full status as a treaty. It is of such consequence that it must merit the confidence of the American people and it must merit the confidence of the Senate.

The administration should not resort to an end run around the Senate.

Now, I have had no definite information that this is about to happen, but I have heard it a number of times.

Because of that, I wrote to the President on August 15 to express my concerns. A pact as important as this must be sound in every respect and be able to withstand the constitutional test of advice and consent.

As I told President Carter in my letter, I am hopeful that a good—and I underline the word "good," I stress the word "good," I emphasize the word "good"—SALT treaty—fully protective of our interests and those of our NATO allies—can be negotiated. This is a matter of primordial importance. However, such an arms limitation pact has to be submitted to the Senate in the appropriate form—as a treaty. The Senate will insist that it have the opportunity to exercise its constitutional prerogative.

I want to read my letter to the President.

I have not received a reply to this hour.

OFFICE OF THE MAJORITY LEADER,
*Washington, D.C., August 15, 1978.*

The PRESIDENT,
*The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: I understand that consideration is being given to the submission of a strategic arms pact with the Soviet Union—if and when one is successfully negotiated—to the House and Senate for their joint action. This course of action would involve treating the pact as an "agreement" rather than a treaty.

With great respect for your prerogatives as Chief Executive, I must strongly urge you not to take this course. In the field of foreign affairs the roles of the Executive and the Congress are restricted by the principles of the Constitution. The limitations, indeed the requirements of Article II, Section 2, with regard to the treaty-making power cannot be lightly waived. As set forth unambiguously in that section, the United States may become a party to a treaty only through the action of the President, by and with the advice and consent of two-thirds of the Senate.

An international pact which is so significant to the security interests of the United

States must, I believe, receive full status as a treaty which meets the full and only Constitutional definition of a treaty: one which is submitted to the Senate and must obtain a "super majority" in that body before it may be ratified by the Executive. As discussed at the Constitutional Convention and in the Federalist Papers, Article II, Section 2 was intended to impart a "peculiar propriety" to the union of the Executive and the Senate in the treaty area. It is incumbent upon both the Senate and the Executive to maintain this special relationship. If such an arms limitation pact is successfully negotiated, I strongly believe that the basic document should be submitted to the Senate in the form of a treaty.

A strategic arms pact with the Soviet Union is of such consequence that it must merit the confidence of the American people and broad support within the Senate.

I hope that a good SALT treaty, fully protective of our security interests and those of our allies, can be negotiated. I believe this to be a matter of highest importance. We want to do all in our power to reduce the threat of nuclear conflict. However, such a pact must be sound in every respect and able to withstand the Constitutional test of advice and consent.

Sincerely,

ROBERT C. BYRD,
*Majority Leader.*

So, Mr. President, I reiterate that I have heard, on several occasions, reports that there might be an attempt to avoid proceeding through the treaty process, which is clearly set forth in the Constitution, in the event a SALT pact is agreed upon by the administration.

I want again to urge that that approach not be utilized. I want to again urge that the matter be put at rest, as a matter of fact.

If the administration is not considering that approach, then I think it should say so, because if such a pact cannot stand the scrutiny and the careful and thorough study that is normally given to a treaty by the U.S. Senate, then there are serious questions in my mind as to whether or not such an agreement would be fully protective of the interests of the United States and our NATO allies.

So I urge, with all the sincerity I can muster, that such an approach not be utilized. If such a pact can stand the test, if the pact is in the protective interests of the United States and our NATO allies, then two-thirds of the Senate can be convinced, if the case is there and the case is made properly.

However, if there is any doubt that such a pact would stand that kind of scrutiny, then, in my judgment, the American people will not have faith and trust in that pact. If they observe what appears to be an attempt to make an end run, around the due constitutional process which provides that treaties have to be made by and with the advice and consent of the Senate, then the American people are going to be pretty dubious, and so am I, and so are a lot of Senators, in my judgment—pretty dubious about what is in that pact and why such an approach is being taken.

I hope that the reports are not well founded. I hope the administration will put them to rest, because I can say this—and I think I can say it with modest sincerity: If that is the approach that is going to be taken, then the administration is in for a very tough time.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. ROBERT C. BYRD. I yield to the Senator from Illinois.

Mr. STEVENSON. I thank the distinguished majority leader.

## ADDITIONAL COPIES OF REPORT AND HEARINGS ON THE KOREAN INFLUENCE INQUIRY—SENATE CONCURRENT RESOLUTION 105

Mr. STEVENSON. Mr. President, I send a concurrent resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 105) authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. STEVENSON. Mr. President, this has been cleared on both sides and with the chairman and the ranking minority member of the Rules Committee, as well as the Ethics Committee and the minority leader.

Mr. President, this resolution would authorize printing, for the use of the Senate Select Committee on Ethics, 5,000 additional copies of its final report to the Senate on the Korean influence inquiry.

I know of no objection to the resolution, and I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to, as follows:

S. CON. RES. 105

*Resolved by the Senate (the House of Representatives concurring)*, That there be printed for the use of the Senate Select Committee on Ethics five thousand additional copies of its final report to the Senate, and two thousand additional copies of volume II of its executive session hearings, on the Korean influence inquiry.

## SPECIAL ORDER

Mr. ROBERT C. BYRD. Mr. President, I yield whatever time I have remaining to the Senator from Kansas.

The PRESIDING OFFICER. Under the previous order, the Senator from Kansas (Mr. DOLE) is recognized for not to exceed 15 minutes, plus the time yielded by the majority leader.

## SALT TREATY

Mr. DOLE. Mr. President, I share the views just expressed by the distinguished majority leader with reference to SALT.

When we stop to consider that the American people, in a recent survey by, I believe, the New York Times and CBS—a rather significant survey—indicated that for the first time they believe the Soviets are ahead of us militarily, then I think we want to focus very carefully on what could be, as the distinguished majority leader said, an end run around the Senate of the United States.

As one of those Senators who would like very much to support a good SALT agreement, I would find it very difficult if an effort were made to present it to us in some way other than a treaty. As a treaty, we could discuss it fully and it would require a two-thirds vote.

On the basis of that report, I hope the administration will follow the usual procedure; because, as the distinguished majority leader has indicated, there might be significant difficulty otherwise.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time I will consume now not be charged against the Senator from Kansas.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TIME LIMITATION AGREEMENT—S. 2266

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar No. 1026, S. 2266, the bankruptcy bill, is called up and made the pending business before the Senate, there be a time agreement as follows:

One hour on the bill, to be divided equally between Mr. DECONCINI and Mr. WALLOP; 30 minutes on any amendment; 15 minutes on any debatable motion, appeal, or point of order, if such is submitted to the Senate; with the exception that there be no time limit on any amendment dealing with railroads; and that the agreement be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement is as follows:

*Ordered*, That when the Senate proceeds to the consideration of S. 2266 (Order No. 1026), a bill to establish a uniform law on the subject of bankruptcies, debate on any amendment (except any amendment dealing with railroads, on which there shall be no time limitation) shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 15 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

*Ordered further*, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Arizona (Mr. DECONCINI) and the Senator from Wyoming (Mr. WALLOP): *Provided*, That the said Senators, or either of them, may,

from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

## COMPREHENSIVE EMPLOYMENT AND TRAINING ACT AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, under the order previously entered I ask that the Chair lay before the Senate Calendar Order No. 821, the CETA bill.

The PRESIDING OFFICER (Mr. LEAHY). The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2570) to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes.

The Senate resumed consideration of S. 2570.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 minute from Mr. NELSON'S time.

## FEDERAL EMPLOYEES PART-TIME CAREER EMPLOYMENT ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1037.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 518) to provide increased employment opportunity by executive agencies of the U.S. Government for persons unable to work standard working hours, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs with an amendment to strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Employees Part-Time Career Employment Act of 1978".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and

(2) part-time permanent employment—

(A) provides older individuals with a gradual transition into retirement;

(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

(C) provides parents opportunities to balance family responsibilities with the need for additional income;

(D) benefits students who must finance their own education or vocational training;

(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

(b) The purpose of this Act is to provide increased part-time career employment opportunities throughout the Federal Government.

PART-TIME CAREER EMPLOYMENT PROGRAM

SEC. 3. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter VIII—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

"§ 3391. Definitions

"For the purpose of this subchapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) a military department;

"(C) an agency in the judicial branch;

"(D) the Library of Congress;

"(E) the Botanic Garden; and

"(F) the Office of the Architect of the Capitol; but does not include—

"(i) a Government controlled corporation;

"(ii) the Tennessee Valley Authority;

"(iii) the Alaska Railroad;

"(iv) the Virgin Island Corporation;

"(v) the Panama Canal Company;

"(vi) the Federal Bureau of Investigation, Department of Justice;

"(vii) the Central Intelligence Agency; and

"(viii) the National Security Agency, Department of Defense; and

"(2) 'part-time career employment' means part-time employment of 10, 20, or 30 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

"§ 3392. Establishment of part-time career employment programs

"(a)(1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

"(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

"(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3393 of this title;

"(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

"(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

"(E) procedures for notifying the public of vacant part-time positions in such agency, utilizing facilities and funds otherwise available to such agency for the dissemination of information.

"(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

"(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

"(b)(1) The Civil Service Commission, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this subchapter.

"(2) The Commission shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

"(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

"(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

"(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

"§ 3393. Limitations

"(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

"(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment.

"§ 3394. Personnel ceilings

"In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"§ 3395. Nonapplicability

"(a) If, on the date of enactment of this subchapter, there is in effect respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this subchapter shall not apply to those positions.

"(b) This subchapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS–16 of the General Schedule.

"§ 3396. Regulations

"Before any regulation is prescribed under this subchapter, a copy of the proposed regulation shall be published in the Federal Register and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this subchapter.

"§ 3397. Reports

"(a) Each agency shall prepare and transmit on a biannual basis a report to the Civil Service Commission on its activities under this subchapter, including—

"(1) details on such agency's progress in meeting part-time career employment goals established under section 3392 of this title; and

"(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this subchapter, together with a statement of the measures taken to overcome such impediments.

"(b) The Commission shall include in its annual report under section 1308 of this title a statement of its activities under this subchapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this subchapter.

"§ 3398. Employee organization representation

"If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent

all employees within that unit employed on a part-time career employment basis.".

(b) Subpart B of the table of chapters of part III of the analysis of chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"Subchapter VII—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

"Sec.
"3391. Definitions.
"3392. Establishment of part-time career employment programs.
"3393. Limitations.
"3394. Personnel ceilings.
"3395. Nonapplicability.
"3396. Regulations.
"3397. Reports.
"3398. Employee organization representation.".

SEC. 4. (a) Section 8347(g) of title 5, United States Code, is amended by adding at the end thereof the following: "However, the Commission may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(b) Section 8716(b) of such title 5 is amended—

(1) by striking out of the second sentence "or part-time";

(2) by striking out "or" at the end of clause (1);

(3) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or"; and

(4) by adding at the end thereof the following:

"(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(c)(1) Section 8913(b) of such title 5 is amended—

(A) by striking out "or" at the end of clause (1);

(B) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or "; and

(C) by adding at the end thereof the following:

"(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(2)(A) Section 8906(b) of such title 5 is amended—

(i) by striking out "paragraph (2)" in paragraph (1) and inserting in lieu thereof "paragraphs (2) and (3)"; and

(ii) by adding at the end thereof the following new paragraph:

"(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3391 (2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Commission)".

(B) The amendments made by subparagraph (A) shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis.

SEC. 5. Each report prepared by an agency under section 3397(a) of title 5, United States Code (as added by this Act), shall, to the extent practicable, indicate the extent to which part-time career employment opportunities have been extended by such agency during the period covered by such report to each group referred to in subparagraphs (A), (B), (C), and (D) of section 2(a)(2) of this Act.



UP AMENDMENT NO. 1779

Mr. ROBERT C. BYRD. Mr. President, I send to the desk two amendments and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes unprinted amendment numbered 1779.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12 line 1, strike "10, 20 or 30," and insert in lieu thereof, "16 to 32."

On page 15, line 4, after the word "workweek." insert the following additional language: "This section shall become effective on October 1, 1979."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1116), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

I. PURPOSE OF LEGISLATION

The purpose of S. 518 is to encourage the use of part-time career employment in the Federal government by requiring each agency to establish a program to provide for increased part-time career employment opportunities.

II. SUMMARY OF LEGISLATION

S. 518, the Federal Employment Part-Time Career Employment Act:

(1) Requires the creation of a part-time career employment program in every Federal agency to promote the creation of part-time job opportunities at all civil service grade levels up to grade 16 (GS–16). By using the term "part-time career employment," the legislation makes clear the intent to encourage permanent part-time work, rather then temporary or intermittent employment. The number of part-time work opportunities created would be established by an annual goal set at the discretion of each agency. The program would entail the review of positions as they become open to ascertain whether they are appropriate for conversion to part-time slots; and procedures and criteria for establishing or converting such positions.

(2) Requires the Civil Service Commission to provide technical assistance and to advise and assist agencies in the establishment and maintenance of their part-time career employment program.

(3) Requires the Civil Service Commission to conduct a research and demonstration program with respect to part-time career opportunities in the Federal Government.

(4) Provides that an agency shall not abolish any position occupied by an employee in order to make the duties of that position available to be performed on a part-time basis. The legislation also provides that no full-time employee can be coerced into taking a part-time position as a condition of continued employment.

(5) Changes the current method for determining personnel ceilings in each agency by requiring the counting of employees on the basis of the fractional part of the 40-hour week actually worked.

(6) Prorates fringe benefits for part-time employees, including Government contribution to employee health insurance, on the basis of hours worked. Those employees currently working for the government on a permanent part-time basis would continue to receive benefits in accordance with current law and regulations.

III. LEGISLATIVE HISTORY

S. 518 was introduced on January 31, 1977, by Senator Nelson. Similar legislation had passed the Senate in the previous Congress, but was not considered by the House of Representatives. On March 13, 1978, however, the House did approve part-time legislation, H.R. 10126, by a vote of 294–84.

On June 29, 1978, the committee held hearings on S. 518 and H.R. 10126, as well as S. 517 and H.R. 7814, legislation dealing with flexible work hours in the Federal Government. At that time, the committee received testimony from Senator Gaylord Nelson; Representative Yvonne Brathwaite Burke; Representative Patricia Schroeder; Ersa Poston, U.S. Civil Service Commissioner, representing the administration's viewpoint; J. Gene Randolph, Executive Director of the National Federation of Federal Employees; Dr. Carol Greenwald, Commissioner of Banks, State of Massachusetts; Lynne Revo Cohen, director of Part-time Employment for the Women's Lobby, Inc.; and Dr. Fred Best of the National Commission for Manpower Policy. The committee has also received and benefited from a large number of written statements and letters concerning the need for legislation like S. 518.

On July 24, 1978, the committee considered S. 518 and unanimously adopted an amendment in the nature of a substitute. The bill approved by the committee differs from the bill as introduced in the following ways. The substitute:

(1) Deletes the requirement that agencies make available 2 percent of all their positions for permanent part-time workers every year for five years until at least a 10-percent level is attained.

(2) Changes the definition for part-time career employment from anything less than 40 hours per week to employment of 10, 20, or 30 hours per week.

(3) Allows agencies to prorate health benefits to employees based on the number of hours worked, eliminating the argument that the bill would increase the costs incurred by Government.

(4) Requires the Civil Service Commission to conduct a research and demonstration program to evaluate and assess the impact of part-time career opportunities in the Federal Government.

Overall, S. 518, as reported by the committee, mirrors H.R. 10126, the House-passed legislation, except for the definition of part-time career employment and the handling of fringe benefits.

IV. NEED FOR LEGISLATION

1. THE CURRENT SITUATION

In the past few years, there has been an increasing demand on the part of many Americans for productive, challenging em-

ployment which can be performed on a regular basis, working substantially less than a 40-hour week. The committee believes that S. 518 would represent a significant first legislative step in response to this interest in part-time work. Moreover, the committee believes such a step is overdue and that the Federal Government bears a particular responsibility to act in this area.

Approximately 17 percent[1] of those employed in the private sector in the United States are working on a part-time basis. These part-time jobs are generally clustered at the low end of the employment spectrum. For instance, a Labor Department report notes that the average hourly wage for women working part-time is $2.87, 98 cents below the wage of full-time women workers. As Lynne Cohen testified to the committee, "part of the difference is due to lower pay within the same occupations; part is due to part-time workers being in occupations that have lower wages for everyone."

Any simple profile of the present situation in the private sphere tends to mask significant progress which has taken place in recent years. An article in the June 1978 issue of Changing Times magazine reported:

Not everyone wants or can manage a full-time job. But until recent years, your chances of getting someone to hire you on a part-time basis were pretty limited. You could work for a retail store or a fast-food place, maybe be on call with a temporary help agency, sometimes get a regular arrangement with a bank or other company that needed to smooth out the work flows peculiar to its operation.

Today the picture is much bigger and better. Companies and government agencies are discovering the advantages of hiring part-time workers. There is a push to make part-time work a permanent fixture of payrolls.

The Federal Government has lagged far behind the private sphere in providing and improving part-time employment opportunities of any type. In 1977, only 2.3 percent of the Federal work force were permanent part-time employees. Moreover, 89 percent of the part-time federal jobs are in the lower grade levels, primarily in the clerical, food and medical services.

This record is particularly disappointing because the issue of increasing part-time employment opportunities in the Federal Government is not new. Fifteen years ago the President's Commission on the Status of Women recommended that the Federal Government establish a permanent structure for part-time job opportunities in Federal agencies. Since that time, the Civil Service Commission has reiterated that position in its booklet, "A Point of View."

The Department of Labor has also endorsed increased part-time employment opportunities. A 1975 GAO study cited major benefits for the Federal Government which would be derived from the increased use of part-time employees. In 1975 also, the Senate passed legislation sponsored by Senator Tunney, which would have mandated each agency in the Federal Government to fill 2 percent of its positions for each of the next 5 years with part-time employees. Despite this string of reports and initiatives, the number of people employed part-time in the Federal Government remains very low.

As Senator Nelson, sponsor of S. 518, has stated:

The Federal Government is the Nation's largest employer, but certainly not the most innovating one. The enactment of part-time legislation would authorize the Federal Government to undertake some very significant initiatives to enhance its position as a model employer—one which public and private employers could look to for leadership.

Most studies indicate that the failure to provide decent part-time employment opportunities reflects adherence by employers to certain preconceptions about part-time workers. Traditionally, those interested in working less than full-time have been stereotyped as unreliable and uncommitted. As Dr. Carol Greenwald, an economist and Commissioner of Banking in Massachusetts testified to the committee:

Firms have resisted part-time employment for a variety of philosophical and administrative reasons. Philosophically, they have viewed part-time work as not legitimate, legitimacy being defined as what men do. One can't be serious about a job if one wants to work part-time. . . . Management ignores the fact that what is considered full-time is not an immutable fact of nature, and that there have been more changes in what is full-time working during this century than there had been in the previous thousand years.

The same point was made by Professor William B. Werther in a March 1976 article entitled, "Mini-Shifts: An Alternative to Overtime," where he wrote that most managers do not regard part-timers as mature, dependable workers because they associate the concept of part-time work with young and inexperienced transient workers.

The committee believes that this stereotype is seriously misleading. It certainly confuses the concepts of temporary or intermittent work on one hand with part-time permanent employment on the other. Even a cursory review of the individuals and groups who stand to benefit most from S. 518 shows that there are many good reasons why people would want to work less than 40 hours a week, at least during some period of their lives. The Committee believes that permitting, even encouraging, individuals to work part-time when they want to further vitally important social policies.

[1] 17 percent is the figure most commonly cited. Depending on the definition of part-time work used, certain studies put the figure as high as 22 percent. See Stanley D. Nollen and Virginia H. Martin, "Alternative Work Schedules Part 2: Permanent Part-Time Employment," AMACOM, a Division of American Management Associates 1978.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1066, H.R. 10126.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title.

The legislative clerk read as follows:

H.R. 10126, a bill to amend title 5, United States Code, to establish a program to increase part-time career employment within the civil service, reported without amendment.

The Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the language of Senate bill S. 518, as amended, be inserted in lieu thereof; that the bill proceed to third reading; that it be passed; and that the motion to reconsider laid on the table and that S. 518 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill, as amended, is passed, and the motion to lay on the table the motion to reconsider is agreed to.

Mr. ROBERT C. BYRD. And S. 518 is indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are three additional measures that have been cleared with the minority side. I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1004, Calendar Order No. 1052, ond Calendar Order No. 1072.

The PRESIDING OFFICER. Without objection, it is so ordered.

## DISCONTINUANCE OF ANNUITY PAYMENTS FOR EMPLOYMENT OF A JUSTICE OR JUDGE

The Senate proceeded to consider the bill (H.R. 4320) to amend chapter 83 of title 5, United States Code, to discontinue civil service annuity payments for periods of employment as a justice or judge of the United States, and for other purposes, which had been reported from the Committee on Governmental Affairs with amendments as follows:

On page 3, line 12, after "3." insert "(a)";

On page 4, beginning with line 6, insert the following:

(b) Notwithstanding the provisions of section 8339(k) (2) of title 5, United States Code, an annuitant—

(1) who was unmarried at the time of retiring under subchapter III of chapter 83 of such title,

(2) who married after retiring during the period beginning on January 9, 1971, and ending on the day before the date one year before the date of the enactment of this Act, and

(3) who certifies to the Civil Service Commission that he was unable to file a timely election under such provision of law by reason of his faiure to receive notification of his right to file such an election,

may irrevocably elect, in a signed writing received in the Commission within one year after the effective date of this section, a reduction in his current annuity in accordance with the provisions of section 8339(j) of title 5, United States Code, but only if at the time of such election he deposits an amount equal to the amount by which, if he had filed an election on the last day on which he could timely file under such section 8339(k)(2), his annuity would have been reduced during the period beginning on the first day his annuity would have been reduced if he had so filed and ending on the day before a reduction is to take effect under this subsection. The reduction in annuity resulting from an election filed under this subsection is effective the first day of the month after the election is received in the Commission.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1082), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF AMENDMENTS

The amendments permit an unmarried annuitant, who married between January 8, 1971, and the day before the date 1 year before the date of the enactment of this legislation, 1 additional year in which to elect a reduced annuity to provide a survivor benefit, provided such annuitant deposits an amount equal to the amount by which his annuity would have been reduced if he had made a timely election for a reduced annuity under the provisions of section 8339(k), title 5, United States Code.

PURPOSE

The primary purpose of H.R. 4320, as amended, is to authorize the discontinuance of civil service annuity payments to former

civil service employees who, on or after the effective date of this legislation, are appointed as justices or judges of the United States. Annuity payments would be resumed upon resignation or retirement from regular active service as such a justice or judge.

The bill, as amended, would also reopen for 1 year an opportunity provided under Public Law 91–658 for annuitants who had been unmarried at the time of retirement, but who had married prior to that law's enactment on January 8, 1971, to elect within 1 year following such date of enactment a reduced annuity with a survivor annuity payable to a spouse.

In addition, the bill, as amended, permits unmarried annuitants, who married between January 8, 1971, and 1 year prior to the date of enactment, an additional year to elect a reduced annuity to provide a survivor benefit, provided such annuitant pays into the civil service retirement fund the amount which would have been deducted had an election been made at the time of marriage.

COMMITTEE ACTION

H.R. 4320 was the subject of hearings by the Subcommittee on Civil Service and General Services on May 17, 1978. Statements in support of the legislation were received from Hon. Gladys Spellman, Representative of Maryland, and Mr. Thomas Tinsley, Director, Bureau of Retirement, Insurance and Occupational Health, U.S. Civil Service Commission.

Thereafter, the subcommittee on July 12, 1978, recommended favorable action by the full committee on the bill, as amended.

BACKGROUND

As a general policy, annuitants under the civil service retirement system who are reemployed in the Federal Government are not entitled to receive both the annuity and the full salary during the period of reemployment. This policy is established under two provisions of law.

The first provision (5 U.S. Code 8344(a)) applies to most annuitants, other than retired Members of Congress, who are reemployed in Federal positions, and requires that an amount equal to the annuity allocable to the period of actual employment shall be deducted from the pay.

The second provision (5 U.S. Code 8344(d)) applies only to a retired Member of Congress receiving an annuity who is reemployed in an appointive or elective Federal position and requires that the annuity payments be discontinued during the reemployment and resumed in the same amount upon termination of the employment.

However, an annuitant, other than a retired Member of Congress, who is appointed as a justice or judge of the United States is not subject, under existing law, to any reduction, either in his civil service annuity or in his judicial pay. There is no specific provision of law authorizing the discontinuance of the annuity of such a justice or judge, such as there is under 5 U.S. Code 8344(d) in the case of a retired Member of Congress. The provisions of section 8344(a) authorizing an amount equal to the annuity to be deducted from the pay cannot be applied to the pay of a justice or judge, since article III of the Constitution prohibits the salary of a justice or judge from being diminished during his continuance in office.

The provisions of section 1, the bill, as amended, will place a restriction on the payment of civil service annuities to retirees from civil service positions who are appointed as justices or judges on or after the effective date of the Act. This restriction is identical to the one which now applies to retired Members of Congress—that is, upon reemployment as a justice or judge, the annuity payments will be discontinued during such employment and resumed in the same amount upon resignation or retirement from regular active service as such a justice or judge. The discontinuance of the annuity during such employment will have no effect whatever on any survivor rights that otherwise may be available.

Upon further study of this issue, the committee finds that much confusion and some controversy exists due to the differing interpretations and the administrative decisions based on the interpretations which have been handed down.

Since the pay of a justice or judge could not be reduced due to the constitutional prohibition, the Commission, until recently, took the alternative action of suspending payment of their annuities in order to avoid the dual payment of retirement annuity and salary. This action was based, in part, on a 1966 General Accounting Office decision (45 Comp. Gen. 383) concerning retirement benefits in the case of a judge who, on the basis of service in the executive branch, had established entitlement to a civil service annuity prior to his appointment as a judge. The Administrative Office of the U.S. Courts requested a decision as to whether he was entitled to receive the salary of his judicial office without reduction on account of the civil service annuity he was receiving. The Comptroller General held that, while the judge was entitled to full salary because of the constitutional prohibition against diminishing the compensation of a judge, the payment of his annuity was not authorized while he was in regular active service as a district judge.

In 1973, a judge of the Court of Claims appealed to the Civil Service Commission's Board of Appeals and Review the decision of the Commission's Bureau of Retirement, Insurance, and Occupational Health that he could not receive a civil service annuity during his tenure as a judge of the Court of Claims. In his appeal the judge stated his disagreement with the prior decision, as not being grounded in law. After the Board of Appeals and Review sustained the Bureau's decision on the basis of the GAO decision, the GAO decided to review its position on the issue. As a result, the General Accounting Office wrote to the General Counsel of the Civil Service Commission on August 29, 1974, expressing the view that GAO should not have considered the question of eligibility for a civil service annuity and that the 1966 decision was incorrect.

In 1975, the General Counsel of the Civil Service Commission and the Acting Assistant Attorney General reviewed this question and concluded that the suspension of the annuities of other than former Members of Congress was without authority of law.

In the absence of legal authority to suspend the judges' annuities, the Civil Service Commission concluded, in January 1976, that it could no longer continue the administrative practice of suspending their annuities, except in the case of retired Members of Congress. Also, any other judges who become entitled to annuity while serving as judges, and who apply for such annuity, will be entitled to receive payment thereof.

This decision is applicable only in those cases where the annuity is based on prior service in the civil service of the Government. Payment of annuity is still barred, however, to retired Members of Congress who are serving as justices or judges. Under the provisions of section 8344(d) of title 5, United States Code, the payment of annuity to Member annuitants is discontinued during reemployment and resumed in the same amount on termination of the reemployment.

The committee finds that there are 481 active justices and judges and 174 retired justices and judges who are receiving continuation of pay under 28 U.S.C. 371. At least 90 of these individuals have more than 5 years of prior civil service and a possible claim to at least a deferred annuity at age 62. The amount of annuity payable, though, will vary with each individual case. Back annuity totaling more than $200,000 is being paid to four judges whose annuities had actually been suspended under the prior practice. Eleven more judges have a vested title to deferred annuity which will be paid upon application for it. At least 70 judges have a vested title to deferred annuity based on more than 5 years of creditable service before they became judges, but they technically voided their annuity title by taking a refund upon being appointed a judge. To the extent that they relied on advice that payment of annuity to which they might become entitled at age 62 would be suspended during their active service as a judge, the refunds might be held as erroneous, but it is at best very questionable as to whether the Commission has any legal authority to permit them to make a redeposit and reestablish title to deferred annuity. Section 2 of the bill will give the right to redeposit.

Another provision of the bill (section 3), unrelated to the payment of civil service annuities to judges, would reopen for 1 year an opportunity given in 1971 by Public Law 91–658 for annuitants who had been unmarried at the time of retirement, but who had married prior to the law's enactment on January 8, 1971, to elect within 1 year after the law's enactment, a reduced annuity with a survivor annuity payable to their spouses. The new opportunity for such annuitants to elect a reduced annuity with survivor annuity payable to their spouses would be limited to annuitants who certify to the Civil Service Commission that they were unable to file a timely election under the 1971 law by reason of their failure to receive notification of their right to file such an election.

In addition, H.R. 4320, as amended, will permit a second group of unmarried annuitants, who married between January 8, 1971, and 1 year prior to the enactment of this legislation, 1 additional year in which to elect a reduced annuity to provide a survivor benefit, provided such annuitant deposits into the Civil Service Retirement Fund an amount equal to that which would have been deducted had a timely election been made under the provisions of Public Law 91–658.

Under the provisions of the new subsection (g) of section 8344, as added by the first section of the bill, a former employee or a former Member who becomes employed as a justice or judge of the United States, as defined by 28 U.S.C. 451, may apply for and be paid, in accordance with 5 U.S.C. 8342(a), the amount by which his lump-sum credit exceeds the total annuity paid to him, notwithstanding the time limitation on filing such an application presently contained in section 8342(a) of title 5.

Mr. STEVENS. Mr. President. Under existing law, U.S. justices and judges who are retired Federal employees are permitted to receive both full salary and annuity during periods of reemployment. I wish to support H.R. 4320 which, if enacted would place Federal justices and judges under the same provisions of existing law as relating to the reemployment of all other Federal employees.

In addition, there are judges who are appointed to the bench and who erroneously assume they are no longer entitled to retirement benefits. They void their rights to an annuity by taking a refund from their retirement contributions. H.R. 4320 gives them 1 year to redeposit the refund with interest and reestablish their right to the annuity.

The bill also covers annuitants who were unmarried at the time of retirement but married before the "second

spouse law" was enacted—January 1971. It grants them 1 additional year to elect a reduction in annuities to cover their spouse if they can show they failed to receive notification of the change in law.

Finally, anyone married after January 8, 1971, but 1 year prior to this bill's enactment, also has 1 year to elect a reduction. The requirement is that he redeposits the amount of the annuity he received over and above the reduced amount he should have received if he had made the timely reduction. In addition to the benefits which H.R. 4320 would have for those concerned, it is estimated that enactment of the bill will result in a reduction in Federal expenditures.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## PAPAGO INDIAN LANDS

The bill (H.R. 8397) to provide that a certain tract of land in Pinal County, Ariz., held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1133), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of this legislation is to formally declare that a 20-acre tract of land, now held by the United States in trust for the Papago Tribe of Arizona, is part of the Papago Indian Reservation.

BACKGROUND

The 20-acre tract of land, which the Papago people call Florence Village, is located approximately 30 miles from the main Papago Reservation. It lies adjacent to the city limits of Florence, Ariz. Papago tribal members originally settled the general area in the late 1800's, while pursuing agricultural employment there.

Sometime in 1917, the present site of Florence Village was occupied, and there are now some 40 people living there. Title to the tract was conveyed by the non-Indian owners to the United States by gift deed for the benefit of the Papago Tribe on December 30, 1974. The Secretary of the Interior then took the land into trust for the tribe, pursuant to the provisions of the act of June 18, 1934, chapter 576, section 5 (48 Stat. 985; 25 U.S.C. 465).

Prior to 1974, the Florence Villagers occupied the tract with the verbal consent of the owners, and paid annual taxes on the land. The residents are members of the Papago Tribe.

Although the tract is now Papago trust land, the Secretary of the Interior is statutorily precluded from administratively declaring the land to be formally a part of the Papago Indian Reservation. Section 4 of the act of March 3, 1927 (55 Stat. 1347; 25 U.S.C. 398d) prohibits the changing of any boundary of an Executive order Indian reservation except by act of Congress. Additionally, section 2 of the act of May 25, 1919 (40 Stat. 570; 25 U.S.C. 211) proscribes the creation of, or addition to, any Indian reservation within either New Mexico or Arizona except by act of Congress.

Thus, H.R. 8397 must be enacted to effectively annex this 20-acre tract of land as a part of the Papago Indian Reservation.

NEED

Denials or delays in the delivery of Federal program services have been experienced, due to Florence Village's nonreservation status. Assistance in the areas of housing improvement and development of sanitary facilities are vitally needed. Tribal jurisdiction over the tract may be questioned without formal reservation status. Enactment of H.R. 8397 will provide access to programs and services to resolve many of these problems.

## NATIONAL PORT WEEK

The joint resolution (H.J. Res. 773) authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning September 17, 1978, as "National Port Week," was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## PASCUA YAQUI INDIANS OF ARIZONA—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on S. 1633 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1633) to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of July 11, 1978.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

## COMPREHENSIVE EMPLOYMENT AND TRAINING ACT AMENDMENTS OF 1978

The Senate continued with the consideration of S. 2570.

The PRESIDING OFFICER. Who yields time? Does the Senator from Wisconsin seek recognition? If neither side yields time, time runs equally against both sides.

Mr. NELSON addressed the Chair.

The PRESIDING OFFICER. At the present time the parliamentary situation is that time is running equally against both sides. If the Senator from Wisconsin seeks recognition, time is running against him.

Mr. NELSON. Time is running against time on the bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. Equally divided.

The PRESIDING OFFICER. Does the Senator seek recognition?

Mr. NELSON. Yes, Mr. President. I have some additional material which is entitled "Further Analysis S. 2570" which goes into much greater detail than the material put into the RECORD prior to this. I ask unanimous consent that this analysis of S. 2570 be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

FURTHER ANALYSIS OF S. 2570—STATEMENT OF PURPOSE

The CETA statement of purpose is amended to stress the goals of increased earned income for the program's participants and program coordination under the Act with other related programs such as economic development, community development, vocational education, vocational rehabilitation, and social service programs.

TITLE I—ADMINISTRATIVE PROVISIONS

*Summary*

Title I authorizes the administrative and general provisions applicable to all programs. Among such provisions are those governing the designation of prime sponsors; Secretary's authority; program planning; grievance procedures; planning councils; authorizations of appropriations; conditions applicable to employment, wages, and labor standards; reports; program discrimination, and program abuses.

*Authorizations of appropriations*

An authorization of appropriations of such sums as may be necessary is provided for four years (fiscal year 1979 through fiscal year 1982) for Title I (Administrative Provisions), II (Comprehensive Employment and Training Services), III (Special Federal Responsibilities), IV–B (Job Corps), IV–C (Summer Youth Program), and VI (Public Service Employment Program).

An authorization of appropriations of $3 million for fiscal year 1979 and such sums as may be necessary for the three succeed-

ing fiscal years is provided for Title V (National Commission for Employment and Training Policy).

An authorization of appropriations of $400 million for fiscal year 1979 and such sums as may be necessary for fiscal year 1980 is provided for Title VII (Private Sector Opportunities for the Economically Disadvantaged).

An authorization of appropriations of such sums as may be necessary for fiscal years 1979 and 1980 is provided for Titles VIII and IV, Parts A and D, (Youth Employment and Demonstration Projects Act and Young Adult Conservation Corp).

Titles VII and IV, Parts A and D are authorized for only two years because they are demonstration programs.

Up to 20 percent of the funds appropriated for the Act (exclusive of funds appropriated for Titles II–D and VI) is authorized for Title III programs and activities.

Between $3 million and $5 million of Title III funds annually are set aside for purposes of the National Occupational Information Coordinating Committee.

*Prime sponsor designation*

The current system for designating prime sponsors is retained by the bill reported by the Senate Human Resources Committee. However, S. 2570 further provides that a prime sponsor which has performed effectively in the past, and has been determined by the Secretary to have the capability for continued effective performance in the future, shall be designated a prime sponsor regardless of whether its population declines below 100,000 persons.

To promote local participation in CETA programs, a provision has been added which directs State prime sponsors to allow subareas to assist in the planning and delivery of services in their subareas. However, this provision is not intended to designate such subareas as program agents.

The Secretary is authorized to act as the prime sponsor for all employment programs which would normally be run by a prime sponsor when no prime sponsor applies to serve an area or when employment services are discontinued as a result of action by the Secretary on a complaint or in disapproving a prime sponsor's plan. This provision expands the Secretary's current authority to administer only existing Title I programs in such circumstances and assures that participants will not be denied services in such cases.

*Comprehensive employment and training plan*

The CETA grant system directs a prime sponsor to submit a comprehensive employment and training plan. It consists of a comprehensive employment and training agreement and an annual employment and training plan. The comprehensive employment and training agreement serves as the long-term charter governing the operation of a prime sponsor's program. The annual employment and training plan describes a prime sponsor's proposed activities and contains other program information for the fiscal year for which the prime sponsor is seeking CETA funds.

The annual employment and training plan includes modifications of the comprehensive employment and training agreement resulting from changed labor market conditions or other factors; a description of the eligible population identified by age, race, sex, and national origin, and the proposed activities and the services to be provided to these persons; the prime sponsor's performance and placement goals and the relationship of such goals to the Secretary's performance standards; proposed efforts to involve the private sector in CETA programs; and the prime sponsor's budget for the program year.

*Outreach and placement procedures*

Included in the information which prime sponsors submit in the comprehensive employment and training agreement is a description of the methods which they use to identify and place participants in programs.

The Committee report states that prime sponsors should employ a variety of outreach services to notify all segments of the community about the availability of CETA opportunities. The Committee bill requires prime sponsors to use objective placement procedure which are free of bias or stereotyped attitudes.

Intensive outreach programs and objective placement procedures are necessary to assure that various groups of unemployed persons are served equitably.

The Subcommittee on Employment, Poverty, and Migratory Labor received testimony at the CETA hearings that women and older American have not been served in certain CETA programs proportionate to their representation in the eligible population. Their underrepresentation has been particularly significant in the high wage public service employment programs.

CHARACTERISTIC OF CETA PARTICIPANTS PERCENT DISTRIBUTION

| | Title I | Title II | Title VI |
|---|---|---|---|
| Fiscal year 1977: | | | |
| Male | 51.5 | 60.0 | 64.1 |
| Female | 48.5 | 40.0 | 35.9 |
| Age: | | | |
| Under 22 | 51.7 | 20.3 | 20.3 |
| 22 to 44 | 40.8 | 64.2 | 64.9 |
| 45 to 54 | 4.3 | 9.6 | 9.2 |
| 55 and over | 3.1 | 5.9 | 5.6 |
| First half of fiscal year 1978: | | | |
| Male | 48.9 | 55.7 | 62.7 |
| Female | 51.1 | 44.3 | 37.3 |
| Age: | | | |
| Under 22 | 49.9 | 20.3 | 20.4 |
| 22 to 44 | 42.4 | 64.9 | 65.6 |
| 45 to 54 | 4.4 | 9.3 | 8.6 |
| 55 and over | 3.3 | 5.6 | 5.4 |

Although reliable statistics indicating the wage rates of older Americans in CETA programs are not available, survey statistics submitted by the Department of Labor indicate that women, regardless of their academic qualifications, on an average receive lower wages than men performing public service employment.

FISCAL YEAR 1977 CETA PSE ENROLLEES BY EDUCATION AT ENTRY, SEX, AND BEGINNING WAGE (ESTIMATES BASED ON CLMS DATA)

| Beginning hourly wage | 12 yr (less than high school) | | | High school degree or equivalent | | | 12 yr (more than high school) | | |
|---|---|---|---|---|---|---|---|---|---|
| | Male | Female | Total | Male | Female | Total | Male | Female | Total |
| Total | 79,346 | 28,154 | 107,500 | 85,548 | 58,727 | 144,276 | 78,915 | 58,098 | 137,013 |
| Percent (total) | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| $2.76 | 26,046 | 16,866 | 42,912 | 13,716 | 19,785 | 33,500 | 7,439 | 10,637 | 18,076 |
| Percent | 35 | 64 | 42 | 17 | 35 | 24 | 10 | 20 | 14 |
| $2.76 to $3.00 | 9,094 | 2,355 | 11,449 | 8,386 | 8,280 | 16,666 | 5,310 | 4,698 | 10,008 |
| Percent | 12 | 9 | 11 | 10 | 15 | 12 | 7 | 9 | 8 |
| $3.01 to $3.25 | 6,997 | 2,580 | 9,577 | 7,064 | 8,356 | 15,419 | 4,034 | 4,221 | 8,255 |
| Percent | 9 | 10 | 9 | 9 | 15 | 11 | 6 | 8 | 6 |
| $3.26 to $3.50 | 9,269 | 1,497 | 10,766 | 11,533 | 6,578 | 18,111 | 7,341 | 7,984 | 15,325 |
| Percent | 12 | 6 | 11 | 14 | 12 | 13 | 10 | 15 | 12 |
| $3.51 to $3.75 | 5,022 | 664 | 5,686 | 6,932 | 5,185 | 12,117 | 6,965 | 3,683 | 10,648 |
| Percent | 7 | 3 | 6 | 9 | 9 | 9 | 9 | 7 | 8 |
| $3.75 to $4.00 | 5,461 | 1,042 | 6,503 | 7,252 | 2,905 | 10,157 | 6,628 | 4,019 | 10,647 |
| Percent | 7 | 4 | 6 | 9 | 5 | 7 | 9 | 7 | 8 |
| $4.01 to $4.50 | 7,138 | 1,090 | 8,228 | 13,483 | 3,094 | 16,577 | 17,399 | 7,301 | 24,700 |
| Percent | 10 | 4 | 8 | 17 | 6 | 12 | 24 | 13 | 19 |
| $4.51 to $5.00 | 5,273 | 77 | 5,350 | 9,245 | 1,757 | 11,002 | 12,995 | 6,527 | 19,522 |
| Percent | 7 | ---------- | 5 | 11 | 3 | 8 | 18 | 12 | 15 |
| $5.01 | 1,185 | ---------- | 1,185 | 3,383 | 331 | 3,714 | 5,852 | 5,379 | 11,231 |
| Percent | 2 | ---------- | 2 | 4 | 1 | 3 | 8 | 10 | 9 |
| NA | 3,862 | 1,984 | 5,845 | 4,555 | 2,457 | 7,011 | 4,953 | 3,649 | 8,601 |
| Percent | | | | | | | | | |
| Average | 3.24 | 2.76 | 3.12 | 3.64 | 3.11 | 3.42 | 4.12 | 3.75 | 3.96 |
| Median [1] | 3.08 | 2.66 | 2.93 | 3.50 | 3.00 | 3.31 | 3.97 | 3.47 | 3.81 |

[1] The lower limit of the $2.76 interval was set at $2.30.

The foregoing statistics may be the result of a number of factors including de jure and de facto discrimination practices in the development and administration of CETA programs.

The hiring and employment practices of prime sponsors may also reflect popular myths concerning women and older workers. Among such myths is the belief that these groups as a whole are interested in or capable of performing only a limited range of work; that they universally lack the stamina to perform labor intensive jobs; and that they do not need higher paying jobs or skilled training opportunities because they are temporary or secondary wage earners.

As women enter the labor market in record numbers, frequently as primary wage earners, and as they branch into fields traditionally occupied by men, myths concerning the female worker are slowly disappearing.

Likewise, the increasing longevity of Americans, coupled with the need of many older

citizens to work beyond the normal retirement period in order to sustain their basic needs, is reshaping public opinion concerning the older worker.

The Subcommittee received testimony that certain laws and directives establishing job referral and placement priorities for veterans limits the ability of prime sponsors to serve other groups. For example, many prime sponsors use the Employment Service as a primary or sole source of CETA job referrals. The Employment Service is directed by law to list certain job orders for Vietnam-era veterans prior to making them available to the general public. Women and older Americans are at a disadvantage in applying for positions which are listed in this manner, since only a small percentage of these persons are Vietnam-era veterans.

The testimony indicated that a Departmental policy which directs prime sponsors to award Vietnam-era veterans 35 percent of public service employment positions has a detrimental effect upon the prime sponsor's ability to assist other eligible groups. Moreover, many prime sponsors are unable to meet this goal because there is an insufficient number of eligible veterans in their jurisdictions. For these reasons and because the unemployment rate for Vietnam-era veterans ages 20–34 has been lower than the national unemployment rate for men the same age throughout the entire year, the Committee bill prohibits the establishment of national or local hiring goals for veterans.

*Civil rights enforcement*

The Department of Justice recently completed a review of the Department of Labor's civil rights enforcement practices. The Chairman of the Senate Human Resources Subcommittee on Employment, Poverty and Migratory Labor wrote the Attorney General concerning this review. In response the Department of Justice Civil Rights Division made several observations concerning Labor's civil rights enforcement practices.

If a prime sponsor is determined to have been maintaining discriminatory employment practices or otherwise failing to serve equitably the eligible CETA population, CETA provides that a prime sponsorship may be terminated after an opportunity is provided for a hearing. Though Justice stated that between July 1, 1974, and September 30, 1977, the Department of Labor reported 283 findings of noncompliance with Title VI of the Civil Rights Act, none of these findings have resulted in an administrative hearing being brought against the recipient of funds who was in noncompliance.

The Department of Justice stated that the Department of Labor does not uniformly apply standards for investigating and evaluating compliance with civil rights laws. Different standards prevail in the various regional offices.

Justice noted that Labor does not have a uniform system for monitoring the number, type, and status of cases, but rather occasionally conducts *ad hoc* reviews of regional civil rights programs. All regional offices are required to maintain Title VI complaint logs which are routinely forwarded to Labor. However, since Title VI is only applicable to discrimination on the basis of race, color, and national origin, these are the only types of complaints which are logged. Thus, complaints on the ground of discrimination on the basis of age, sex, handicap, religion, or political belief are not discovered by Labor except during a regional monitoring visit.

No overall statistics are available which provide information on the number of unresolved findings of noncompliance, their current status or age. Though the Attorney General may take action against a recipient of CETA funds upon notification by the Secretary of Labor that the recipient is in noncompliance with nondiscrimination provisions, Labor has never filed a Report of Noncompliance with Justice.

The Justice Department letter stated that there are an inadequate number of equal opportunity staff in the Department of Labor's regional offices. Though current CETA regulations require that Labor initiate a prompt investigation regarding discrimination complaints, a regional survey by Justice indicates that an average of 42.9 percent of such cases between October 1, 1976, and March 31, 1978, were back-logged in excess of 180 days.

The Committee bill modifies CETA's nondiscrimination provisions and enhances a complainant's ability to pursue civil rights remedies.

S. 2570 expands the grounds for filing a nondiscrimination complaint to include discrimination on the basis of handicap, political affiliation, religious belief, or age.

To assure that discrimination and other complaints are swiftly and appropriately resolved, the Committee bill requires recipients of CETA financial assistance to maintain both a formal and informal grievance procedure, and establishes a time frame for the processing of such complaints.

The current law provides that a prime sponsorship may be revoked upon a finding that the prime sponsor is maintaining a pattern or practice of discrimination or otherwise has failed to make employment services available equitably among significant segments of the eligible population. The Committee bill further provides that a ground for the termination of financial assistance is the failure to provide participants with employment opportunities at a level of skill and renumeration that are commensurate with their capabilities and not based upon stereotyped attitudes.

Appropriate Administrative action also is necessary to protect adequately civil rights under CETA. Labor should take appropriate action with respect to the problems identified during Justice's review. Further, the Secretary of Labor should individually monitor prime sponsors who fail to serve equitably significant segments of the eligible population, both with respect to the number of persons served from such groups and the nature of the employment service provided to them. When a prime sponsor fails to correct inequities, the Secretary should take appropriate remedial action.

*Service to those most in need*

S. 2570 requires prime sponsors to specify services for those who are experiencing severe hardship in obtaining employment, including those who lack credentials and need remedial skill development. The Committee is concerned that persons who lack academic credentials or skill training are not receiving appropriate consideration for employment services by prime sponsors.

Approximately 75 percent of all public service employment participants in fiscal year 1977 held high school diplomas and many of them held advanced degrees. The Secretary of Labor should establish procedures to assure that CETA positions are available to persons who would be unemployed absent such opportunities.

The failure to target CETA programs on persons who face the greatest employment barriers will continue the public criticism that the Congress has wasted taxpayers' money by creating federally assisted jobs for persons . . .

EDUCATIONAL ATTAINMENT OF CETA PARTICIPANTS FISCAL YEAR 1977

| | Title I | Title II | Title VI |
|---|---|---|---|
| Education: | | | |
| 8 grades or less | 10.0 | 7.3 | 8.2 |
| 9 to 11 | 39.8 | 15.2 | 18.9 |
| 12 and over | 50.2 | 77.5 | 72.8 |
| Education: | | | |
| 8 grades or less | 9.4 | 6.0 | 8.0 |
| 9 to 11 | 39.7 | 14.1 | 19.5 |
| 12 and over | 51.0 | 79.9 | 72.5 |

A survey of CETA participants in public service employment programs shows the following level of educational attainment beyond grade 12.

| | *In percent* |
|---|---|
| 13–15 years of education | 23.5 |
| 16 years of education | 10.6 |
| More than 16 years | 5.5 |

*Prime sponsor plan*

S. 2570 modifies the review process pertaining to the approval of a prime sponsor's annual plan. The Committee bill provides that the prime sponsor is to transmit the plan to the local planning council, the private industry council, the State employment and training council, appropriate units of general local government, and labor organizations. It must make the plan available to the State of legislature, general public appropriate community-based organizations, and educational agencies. These groups are allowed at least thirty days to review and comment upon the plan.

The prime sponsor is to consider the comments and recommendations made by all of these groups and is to pay special consideration to the remarks of the local planning council. The final decision with respect to plan modification, prior to its submission to the Secretary, lies with a prime sponsor. However, if the Secretary directs a prime sponsor to modify its plan as a result of the Secretary's review of the recommendations made by the Governor, the State employment and training council, or the prime sponsor planning council, the prime sponsor must explain its reasons for rejecting such recommendations.

The Committee bill provides that each prime sponsor must maintain a readily accessible and complete copy of the comprehensive employment and training plan for review by the public. This is intended to assure full public disclosure of the prime sponsors programs.

The expanded review process provided under the Committee bill will assure that a prime sponsor's plan has the benefit of the comments of the whole community.

*Complaints and sanctions*

The Committee bill modifies the current complaints and sanctions provisions. All recipients must establish formal and informal grievance procedures, including provisions for hearings. Time frames are established for handling complaints. At the prime sponsor level, an aggrieved party may seek an informal or formal determination of a complaint. The Secretary is charged with requiring prime sponsors to establish a formal process which requires that, when a hearing is requested, a determination on the merits be made within 60 days. A party who wishes to appeal to the Secretary either the formal or informal decision of the prime sponsor has the right to a due process hearing and a determination on the merits of the case within 120 days after exhausting the prime sponsor's grievance procedure.

The grounds for revoking a prime sponsorship have been expanded to include failing to materially expend funds within a reasonable time, failing to give due consideration to persons in areas of chronic and concentrated unemployment and failing to provide recipients with employment and training at levels of skill that are commensurate with their capabilities and not based upon stereotyped attitudes.

*Prime sponsor planning council*

The Committee bill modifies provisions governing the prime sponsor planning councils with respect to the membership of the council, its functions, and its staff.

The chairman of a prime sponsor planning council is to be a public member and the council membership must be representative of significant segments of the eligible population. The Committee believes that by requiring the council to be composed of men and women who represent various ethnic,

racial and age groups, the employment needs of the total community served will be considered in the council deliberations.

The council is to meet at least 6 times a year in meetings which are open and accessible to the public, and is to have a full-time staff which is funded by the prime sponsor. A full-time staff will assist the council to carry forth its responsibilities and will help to avoid conflicts of interest which otherwise might arise were the staff both to serve the council and perform services for the prime sponsor.

*State employment and training council*

The Committee bill makes similar modifications of provisions pertaining to the State employment and training council. The State council is required to have a public member as chairman, to meet at least 6 times a year in meetings which are open and accessible to the public, and to have a full-time staff.

Additionally, the membership of the council is changed to increase the coordination of employment activities within the State and to assure broad community consideration of employment policies. Under the new provisions, representatives of labor, business, and agricultural employers and workers comprise one-fourth of the membership of the council; community representatives one-fourth; representatives of local governments, including prime sponsors, comprise at least one-fourth; and representatives of service deliverers, including representatives of State agencies which have a direct interest in employment and human resource policies, comprise no more than one-fourth.

PART B—GENERAL PROVISIONS

*Special consideration for community based organizations*

The Committee bill provides that the Secretary is to give special consideration to community based organizations which have demonstrated effectiveness in the delivery of employment programs. There are certain community based organizations which, though recent arrivals in the manpower field, have expertise in delivering other services to the poverty community. Where such expertise is established, it is expected that such agencies also will be given careful consideration as deliverers of manpower services, particularly in programs intended to assist economically disadvantaged persons.

*Reporting requirements*

S. 2570 modifies the provisions of the current CETA law with respect to the reports which the Secretary of Labor is directed to provide to the Congress. These changes were prompted by what the Committee perceives to be a lack of basic program data essential for reviewing program effectiveness, including cost effectiveness, and determining whether specific programs are meeting the purposes and objectives of the Act.

For instance, though certain termination data is available, it is impossible to determine what happened to the participant. "Positive termination", for example, is a term used by the Department of Labor to describe a variety of termination situations. It may mean that a participant upon leaving a particular program entered the military, returned to school, or simply transferred to another CETA program.

S. 2570 directs the Secretary to provide pre-enrollment and post-enrollment follow-up data including information on various employees' retention rates in unsubsidized jobs and whether workers experience an increase or decrease in earnings after receiving CETA services. Such information should help to identify the kinds of employment services which assist program participants to successfully transition from CETA programs to unsubsidized employment.

Prime sponsors who have adequate labor information systems will not find this change in reporting burdensome. The Secretary should make technical assistance available to prime sponsors to develop or improve existing information systems. As noted by the National Commission for Manpower Policy, "such a system would contribute to the development of better performance standards; it would help prime sponsors improve the management of their programs; and it would provide the Department of Labor and the Congress with the information they need to maintain effective oversight of CETA."

A recent publication of the Department of Labor, Employment and Training Administration, recommends as a first priority for the successful management of an on-the-job training program the establishment of an adequate information system. The Committee bill provides for expanded on-the-job training opportunities. Thus, the availability of adequate labor information systems also would assist program management.

The establishment of management information systems would make essential data readily accessible and at the same time reduce the paperwork and reporting burden of prime sponsors.

TITLE II—COMPREHENSIVE EMPLOYMENT AND TRAINING SERVICES

*Summary*

Title II provides a program of comprehensive employment services for primarily structurally unemployed persons. Major modifications of the program from the current CETA law include targeting services on economically disadvantaged persons, participant employability assessment, special provisions relating to services for youth and older workers, mandatory training and supportive services provisions, and the addition of an upgrading and retraining program, as well as a public service employment program.

PART A—FINANCIAL ASSISTANCE PROVISIONS

*Allocation formula*

For Parts B and C, the Committee bill retains the current allocation formula in Title I, except that 85 percent rather than 80 percent of the funds appropriated for these programs is allocated by formula. The formula provides: of the amount available for distribution by formula, 50 percent is allocated to each State on the basis of the State's manpower allotment for the preceding fiscal year compared to the sums received by all States for these activities in that year; 37½ percent is allocated to States on the basis of the relative number of unemployed persons residing within the State compared to the number in all States; and 12½ percent is allocated to each State on the basis of the relative number of adults in low-income families residing within the State compared to the total number in all States. Not less than $2 million is to be set aside for distribution to the United States Trust territories, Guam, the Virgin Islands, American Samoa, and the Northern Marianas.

Of the remaining amount, 5 percent is available for vocational education assistance; 1 percent is available for operation of the State employment and training councils; 1 percent is available for States to establish linkages between prime sponsors and educational agencies providing training programs; 4 percent is available for the Governors' coordination and special services responsibilities under section 105; and the remainder of funds is available for discretionary distribution by the Secretary of Labor.

PART B—SERVICES FOR THE ECONOMICALLY DISADVANTAGED

Part B of Title II authorizes services for economically disadvantaged persons who are unemployed, underemployed, or in school youths. Supported work programs, part-time, flexitime and other alternative working arrangements, client outreach, classroom education, institutional skill training, on-the-job training, work experience, supportive services, and a variety of other activities are authorized.

PART C—UPGRADING AND RETRAINING

Part C authorizes occupational upgrading and retraining programs. These programs assist persons, regardless of their income, to be upgraded in their current employment, or retrained if they have received a bona fide notice of layoff, and are unlikely to find a similar job in that locale.

If either upgrading or retraining programs involve jobs covered by collective bargaining agreements, the programs must have the concurrence of labor organizations representing the employees in those jobs.

Since these activities are the only Title II programs which are not targeted on economically disadvantaged persons, the Committee has limited the authorization of appropriations for these programs to 5 percent of those funds allocated under Part A.

PART D—PUBLIC SERVICE EMPLOYMENT OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

Part D provides for a public service employment program. However, comprehensive employment and training services authorized under Part B are permissible activities.

*Eligibility*

As with services authorized by Part B, program participation is limited to persons who are economically disadvantaged. Additionally, persons seeking services under this part must have been unemployed for 12 or more weeks.

*Wages*

Wages are limited to $10,000 per year adjusted upward on the basis of a wage adjustment index issued by the Secretary, but in no case may wages be increased by more than 20 percent. Prime sponsors are not permitted to supplement wages. Thus, in the highest wage areas, the maximum wage a person would receive is $12,000.

*Length of program participation*

Persons may hold Title II public service jobs for 78 weeks within a five year period, though no more than 28 weeks prior to October 1, 1978, shall be counted as part of the 78 weeks. Program participation may be extended for 6 months in areas of high unemployment as determined by the regulations of the Secretary.

*Authorization of appropriations*

An authorization of appropriations of such sums as may be necessary for fiscal years 1979 and the succeeding three fiscal years is provided. In order to assure that there is a large public service employment program for the structurally unemployed, the Committee bill provides that no funds may be made available for Title VI until a minimum of three billion dollars is first made available for Title II, Part D.

*Training and supportive services*

The Committee bill requires all Title II public service employment under it to be accompanied by appropriate training and supportive services. Individuals who lack job skills or prior employment experience will be able to participate in CETA programs more successfully if such programs are accompanied by training and supportive services. To assure that adequate funds are made available for these purposes, not less than 90 percent of the funds allocated for Part D are to be expended for wages, employment benefits, training, and supportive services. The remaining funds may be used for administrative and other allowable costs.

*Allocation formula*

The Committee bill provides that 85 percent of the funds available for Part D are to be distributed by formula. Not less than 2 percent is to be allocated to Native American entities. The remaining amount is available to the Secretary for his discretionary distribution to prime sponsors and Native American entities.

Of the amount distributed by formula, funds are allocated to prime sponsors in the following manner: one-third on the basis of the relative number of unemployed persons who reside in areas within the jurisdiction of each applicant as compared to the number of unemployed persons who reside in all such areas in all States; one-third on the basis of the relative excess number of unemployed persons (the number in excess of 4½ percent) who reside in areas within the jurisdiction of the applicant as compared to the excess number of unemployed persons who reside within the jurisdiction of all prime sponsors; and one-third to prime sponsors on the basis of the number of unemployed persons residing in areas of substantial unemployment (areas with an unemployment rate equal to or in excess of 6½ percent) within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all areas of substantial unemployment.

SPECIAL FEDERAL RESPONSIBILITIES

*Summary*

Title III directs the Secretary to provide special programs for workers who are in need of supplementary services beyond the scope of Title II programs, including programs for Native Americans and migrant and seasonal farmworkers. The Secretary of Labor is also authorized to conduct programs of research, training, and evaluation.

PART A—SPECIAL NATIONAL PROGRAMS AND ACTIVITIES

*National programs*

The Committee bill modifies provisions relating to special national programs and activities so as to define more precisely the ways in which national program resources may be used. The Secretary is authorized to carry out programs which meet the employment-related needs of persons who face particular disadvantages in specific and general labor markets or occupations; programs which are most appropriately administered at the national level; programs which foster linkages with private sector employers; programs which eliminate or reduce critical skill shortages; and programs which serve those who become unemployed as a result of a large-scale loss of jobs in a locality. The Secretary is authorized to provide continued support for programs of demonstrated effectiveness. Additionally, the Secretary is directed to establish programs for displaced homemakers, offenders, persons of limited English-language proficiency, older workers, single parents, and the handicapped.

*Displaced homemakers*

In September, 1977, the Subcommittee on Employment, Poverty, and Migratory Labor held 2 days of hearings concerning displaced homemakers. A displaced homemaker is an individual who is frequently in their middle or older years, who has been absent from the labor force or working in the home for a substantial number of years, and who becomes "displaced" from his family role as a result of such occurrences as the death of a spouse, a divorce, or the disability of the primary wage earner.

The Committee agreed that the severity of the employment barriers faced by this group merits special attention through a program administered nationally by the Secretary. The authorization provides that the Secretary shall make funds available to conduct employment and training programs through multi-purpose projects or otherwise. Such programs may offer a full array of employment services including appropriate supportive services.

The original displaced homemaker amendment offered a set-aside of Title III funds for the establishment of a displaced homemaker program. The Committee, in lieu of a set-aside, agreed to accept a commitment made by the Department of Labor's Assistant Secretary for Employment and Training, Ernest Green, during full Committee consideration of the legislation that the Department would make available at least $5 million in fiscal year 1979 for funding displaced homemaker programs.

The Department also agreed to establish a special task force on displaced homemakers to coordinate the Deapartment's efforts in this area. The task force is to be composed of representatives of the Women's Bureau and the Employment and Training Administration.

*Native American Programs*

The Committe bill retains the provisions of the current CETA law with respect to Native American employment programs. However, the Committe bill increases the authorization of appropriations for Native American programs from an amount equal to not less than 4 percent of the title II funds which are distributed by formula under Part A, to an equivalent of 4½ percent of such funds. This action was taken because amendments to CETA in 1976 added native Hawaiians to the definition of "Native Americans". Additional funds are required to serve this enlarged group of Native Americans.

*Migrant and seasonal farmworkers programs*

The Committe bill retains the provisions of the current CETA law with respect to migrant and seasonal farmworkers programs. The Office of National Programs remains responsible for the administration of the program in recognition of the interestate nature of migrant and seasonal employment.

S. 2570 continues the current authorization of appropriations for this program, which is an amount equal to not less than 5 percent of the Title II funds which are distributed by formula under Part A.

*Job search and relocation*

The Committee bill adds a provision which authorizes the Secretary of Labor to carry out job search and relocation activities through agreements with States, State agencies, and prime sponsors. Under the provisions, job search assistance may be provided to economically disadvantaged, unemployed and underemployed persons, and relocation loans and grants may be provided to involuntarily unemployed individuals who have bona fide offers of employment.

PART B—RESEARCH, TRAINING, AND EVALUATION

*Research and demonstration projects*

The Secretary's research and demonstration authority in the areas of supported work, job sharing and other flexible employment arrangements, and welfare demonstration projects has been expanded. The Committee bill also authorizes a voucher demonstration project and an incentive program for prime sponsors who transition a significant number of Title II participants into unsubsidized employment.

*Welfare demonstration projects*

The purpose of the welfare demonstration projects is to test and analyze various employment programs as alternatives to public assistance for employable persons.

Welfare demonstration projects will provide information relevant to the successful implementation of an employment approach to meeting the income maintenance needs of low-income persons. This information will be useful regardless of whether or not Congress passes a comprehensive welfare reform package in the near future. All of the major welfare reform alternatives being considered by the Congress contain sizable programs of employment and training assistance to low-income families. The demonstrations will be conducted so that it will be possible to generalize the findings to a variety of different employment approaches.

Program participation will be voluntary. In a household headed by two adults, only one person may participate in the program at any given time. The decision of which person that will be is left to the choice of the family unit. In order to increase the opportunities of program participants to obtain unsubsidized employment, appropriate training and supportive services will be made available to all participants.

*Evaluations and incentive grants*

The bill authorizes an incentive grants program for prime sponsors who have conducted effective Title II programs. Grants are awarded based upon special evaluations which are to consider, among other things, the costs and difficulties encountered in assisting structurally unemployed persons. The Committee believes that prime sponsors who conduct successful programs should be rewarded for optimizing their resources without compromising client services. Such awards may also encourage other prime sponsors to develop innovative methods for assisting the transition of structurally unemployed persons to unsubsidized employment.

The Secretary is directed to establish in fiscal year 1979 a special voucher project to demonstrate the efficacy of providing vouchers to economically disadvantaged persons who are unemployed or underemployed. These vouchers entitle private employers to provide employment and/or training to such individuals in amounts equal to the value of the voucher, pursuant to the regulations of the Secretary.

The Committee agreed that the Secretary shall consider the following principles when developing regulations for this project:

1. Eligibility of participants is to be limited to persons who are unemployed, or underemployed, and disadvantaged.

2. Vouchers shall be issued by prime sponsors to enhance the employability of individual. Vouchers shall be worth up to $1.00 per hour of paid work by the participant to offset the lower productivity of eligible individuals. Factors to be considered in determining the value of the vouchers shall include, but not be limited to, participant employability, local wage rates and labor market conditions.

3. Vouchers shall be portable between employers, not committing the employer or employee to continue the work arrangement other than by mutual agreement, and shall be valid for up to eighteen months, as determined by the Secretary.

4. Procedures shall be established to insure that currently employed individuals are not displaced by voucher-eligible employees.

5. Voucher eligible employees shall be paid at a rate not less than the higher of the Federal on State minimum wage or the rate paid by that employer to other individuals performing the same or similar work.

6. In choosing prime sponsors to participate in this project, the Secretary shall select sites in such a manner as to insure an appropriate mix of rural and urban areas, of different concentrations of eligible participants, of different regions and labor markets and of different categories of price sponsors.

7. Participating prime sponsors shall integrate vouchers into their comprehensive services, and utilize a significant proportion of available vouchers for individuals completing training programs, so as to direct voucher recipients toward jobs with meaningful advancement opportunities.

The Secretary is instructed to prepare and submit a report to the Congress evaluating the effectiveness of this demonstration project. The Secretary's report shall include an evaluation of the project's effectiveness in increasing the employability and earnings of eligible groups, the willingness of private sector employers to participate, the desirability and skill level of jobs obtained by

participants, the displacement of regular employees as a result of the voucher program, the administrative feasibility of the program and any other factors deemed important by the Secretary.

TITLE IV—YOUTH PROGRAMS

The Committee bill places all youth programs in Title IV. Part A of Title IV consists of three programs enacted last year under the Youth Employment Demonstration Projects (YEDPA)—Youth Incentive Entitlement Pilot Projects, Youth Community Conservation and Improvement Projects, and Youth Employment and Training Programs. Part B authorizes the Job Corps; Part C authorizes the Summer Youth Program; and, Part D authorizes the fourth program which was enacted as part of the YEDPA—Young Adult Conservation Corps.

YEDPA was passed by the Congress last year. The Committee believes that these programs should be reexamined after they have had time to become fully operational and their impact has been analyzed. Thus, the Committee makes only minimal changes in these programs and authorizes them only through fiscal year 1980.

The Youth Employment and Training Programs is amended to authorize a demonstration program to test the efficacy of providing incentives to private industry to establish additional employment opportunities for youth. The Secretary is directed to provide a subsidy of up to $2,500 per worker to employers to hire economically disadvantaged youth. The Secretary is authorized to establish a maximum of ten such demonstration programs in urban and rural areas with high youth unemployment.

TITLE V—NATIONAL COMMISSION FOR EMPLOYMENT AND TRAINING POLICY

The current CETA law, Title V, provides for a national commission to examine national employment policies and to advise the Secretary of Labor concerning such policies.

The Committee bill modifies Title V. The membership of the Commission is increased from 17 to 27 persons. The Secretary of Housing and Urban Development, the Chairman of the Equal Employment Opportunity Commission, the Director of the Community Services Administration, the Director of the ACTION agency and an additional six public members are added to the Commission's membership. The name of the Commission is changed from the National Commission for Manpower Policy to the National Commission for Employment and Training Policy. The advisory role of the Commission is amended so that it is responsible for advising the President and the Congress on national employment and training issues.

The Commission currently is funded from a variety of sources, including the Department of Labor, other Federal agencies and private foundations. The Committee bill provides the Commission with an authorization of appropriation of three million dollars for fiscal year 1979 and such sums as may be necessary for the three succeeding fiscal years.

TITLE VI—PUBLIC SERVICE EMPLOYMENT PROGRAM

*Summary*

The purpose of Title VI in both the current CETA law and S. 2570 is to provide transitional public service employment jobs, to persons who are countercyclically unemployed. However, S. 2570 substantially modifies the eligibility, wage, and project provisions.

*Eligibility*

S. 2570 provides that eligibility for Title VI services is limited to an individual who has been unemployed for 45 days or more and whose family income over the preceeding 3 months, which when annualized, does not exceed 85% of the lower living standard income level as compiled by the Bureau of Labor Statistics.

Under the provisions of the 1976 CETA amendments, all Title VI public service employment positions funded in addition to those positions existing on June 30, 1976, are to be filled by persons who meet strict eligibility criteria, and these jobholders also are to be employed in 12 month projects. Generally, persons are qualified for these positions if their previous annual family income is no more than 70 percent of the BLS lower living standard budget and if they have been unemployed for at least 15 weeks, exhausted unemployment insurance, compensation benefits, or if they are receiving AFDC. One-half of the vacancies below the June 30, 1976, sustainment level created by attrition also are required to be filled by persons who meet the strict eligibility criteria set forth above.

The remaining 50% of the jobs below the June 30, 1976, sustainment level, however, can be filled by persons without regard to income eligibility requirements so long as they have been unemployed for a brief period of time—15 days in areas having at least 7% unemployment rate, or 30 days in an area with an unemployment rate of less than 7%.

S. 2570 would eliminate these "sustainment jobs" provisions from the CETA law. This means that all positions which become available either by attrition or by new program dollars would have to meet the targeted eligibility criteria of the new Title VI program.

*Length of program participation*

Program participation is limited to one year within a five year period, though it may be extended for a period of no more than 6 months in areas of high unemployment. Under current law, a person may participate in CETA programs for an undefined period.

*Projects*

Current law provides that funds expended for Title VI sustainment positions may be used for both activities of an unlimited duration and projects which are twelve months in length. Testimony received by the Committee indicates that projects tend to reduce the rate of fiscal substitution. Thus, the Committee bill provides that all public service employment under Title VI is to be only in projects. The projects are to be of limited duration, but may be extended beyond twelve months upon review by the prime sponsor at least once a year, in accordance with regulations issued by the Secretary. The Committee intends that the Secretary, in extending such projects, assure that they are not merely increments of existing municipal services, but rather that they involve work which the prime sponsor would not finance in the absence of federal assistance.

*Wages*

S. 2570 amends the current law by restricting the total wages which may be paid to a Title VI jobholder. As in current law, a maximum federal wage base of $10,000 is provided. S. 2570 provides that this federal base may be adjusted upward to $12,000 on the basis of a wage index. Thus, high wage areas will have a higher federal wage base than low wage areas. Supplementation of the Federal wage base by local resources is limited under the Committee bill to a maximum amount equivalent to 10 percent of a prime sponsor's Title VI allocation, no individual may have his federal base salary supplemented by more than 20 percent. Thus, in the highest wage areas, the maximum wage a Title VI participant may receive is $14,400.

*Allocation formula*

The Committee bill retains the same allocation formula as the one currently used to distribute Title VI funds except that 85 percent rather than 90 percent of the funds available are to be distributed by formula.

S. 2570 provides that not less than 85 percent of the amount available for Title VI is to be allocated to prime sponsors in accordance with the following formula: 50 percent is allocated on the basis of the relative number of unemployed persons who reside in areas within the jurisdiction of each prime sponsor compared to the number of unemployed persons who reside in all such areas in all states; 25 percent is allocated on basis of the number of unemployed persons residing in areas of substantial unemployment (areas with an unemployment rate equal to or in excess of 6½ percent) within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all areas of substantial unemployment; and 25 percent is allocated on the basis of the relative excess number of unemployed persons (the number of unemployed persons in excess of 4½ percent) who reside within the jurisdiction of the prime sponsor compared to the total excess number of unemployed persons who reside within the jurisdictions of all eligible prime sponsors.

The Secretary must reserve an amount of not less than 2 percent of the sums available for Title VI for Native American entities. The Secretary may use the remaining amount in his discretion to assist prime sponsors and Native American entities.

*Training and supportive services*

S. 2570 provides that not less than 10 percent of the funds allocated to prime sponsors for public service employment under Title VI shall be used to provide training and employability counseling and other services. Under current law, 85 percent of Title VI allocations may be used only for wages and fringe benefits for employees. The remaining 15 percent may be used for allowable costs, including administration, equipment, supplies, and materials. There is no specific allowance for training funds, although prime sponsors are authorized to use available funds from the 15 percent allowance for training. Under the Committee bill, not less than 80 percent is to be used for wages and fringe benefits, not less than 10 percent for training and other services for participants, and the remainder for administrative costs.

Training and employability services under Title VI are necessary because due to the new limitations on program participation, many participants who will be required to leave the program on September 1, 1979, will be ill-equipped to undertake employment in the private sector. Many Title VI employees have been drawn over the past year from the ranks of the long-term unemployed and from low-income households pursuant to eligibility standards enacted by the Congress in October 1976. These participants have been afforded work, but many have been provided with little or no training. Lack of funds for this purpose, combined with the urgency with which Title VI employment projects were established, account for the lack of training. For these reasons, the Committee believes it is important that funds be made available in Title VI specifically for training and employability counseling and services.

In order to assure that a maximum of the allocation is expended for client services, the Secretary should assure that the administrative fee retained by prime sponsors upon subcontracting with a program agent is the actual costs incurred in administering the program.

*Verification of eligibility*

Public service employment programs have demonstrated an ability to rapidly expand. Under President Carter's economic stimulus package the number of public service positions more than doubled to over 750,000 in a little more than one year. Notwithstanding such rapid expansion, few serious problems were encountered. However, it does appear that in the rush to fill these positions, par-

ticipant eligibility verification was lax. Based upon a recent survey by the Comptroller General, the General Accounting Office reported that approximately 10 percent of all public service employment participants in the programs surveyed were ineligible. Though this situation may have been difficult to avoid as a result of the rapid build-up of the public service jobs programs, the Committee considers the high percentage of ineligible CETA participants to be a serious problem. The Committee urges the Department of Labor to develop a method of verifying participant eligibility statements. Every CETA position obtained by an ineligible person eliminates a position for someone who may not otherwise have the opportunity to be employed, but for federally assisted employment programs.

TITLE VII—PRIVATE SECTOR OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

Title VII authorizes prime sponsors to establish private industry councils. The purpose of the councils is to involve the private sector and labor in the development and implementation of CETA programs, so as to increase private sector training and job placements for economically disadvantaged workers.

*Council responsibilities*

The councils will assist prime sponsors to develop and implement employment programs in private businesses and industries. Programs primarily will consist of on-the-job training with private employers. The councils are authorized to undertake a variety of other activities, such as developing linkages between educational institutions and employment programs, and disseminating information to private employers to encourage their participation in CETA programs.

The councils will serve as the focal point for the business perspective on CETA matters. They should both advise the prime sponsor of the viewpoint of private enterprise and translate to fellow members of the business community the advantages of working closely with the CETA program. It is the committee's intent that funds available under Title VII be used for additional innovative sector progams and that prime sponsors will continue without reduction their existing sector efforts under other parts of CETA. Also, the committee recognizes the existence of many community-based organizations and other service deliverers who are currently engaged in successful private sector programs with the prime sponsor and it expects that the prime sponsor will closely coordinate the activities of all these deliverers with the councils to ensure an expansion in service levels, to avoid competition, and to take advantage of the effectiveness of current deliverers of services.

*Council membership*

It is the responsibility of the prime sponsor to appoint the members of the private industry council and to designate a chairman. Business, including small and minority business, and labor are to be represented on the Council. Though a majority of the Council's membership must be business representatives, the prime sponsor may also appoint representatives of community-based organizations, educational agencies and institutions, and client groups. In order to provide substantial cross-fertilization between the local prime sponsor planning council and the private industry council, the chairman, or a designee of the chairman, of the prime sponsor planning council is to serve as an ex officio, nonvoting member of the private industry council, and the chairman, or a designee of the chairman of the private industry council is to serve that same capacity on the local planning council.

Business representation on the council may consist of an existing organization, or a newly formed organization and members of the prime sponsor planning council. However, representation of a variety of business organizations on the council is preferable in order to encourage the involvement of a wide spectrum of the business community in CETA programs.

*Integration of the private industry council and the local planning council*

The private industry councils will assist prime sponsors in relating the planning and operation of the prime sponsor's other programs and activities to the private sector. Recognizing that there is a CETA planning council in each area and that the prime sponsor itself is ultimately responsible for all CETA operations, it is the committee's intent to assure the integration of the private industry council with existing CETA functions.

In addition to the respective chairman of the local planning council and the private industry council serving as ex-officio members on one another's councils, both councils are required to provide copies of one another's plan to each other for comment. These recommendations are to be considered by each respective body in developing its programs. The legislation provides that the comments of the prime sponsor planning council must have been satisfactorily considered prior to submission of the private industry plan to the Secretary.

*Prime sponsor authority*

While the private industry council is under the authority of the prime sponsor, the council is to have major responsibility for the development of Title VII programs. However, the role of the prime sponsor is imminent as the Secretary may not authorize any program which does not have the approval of the prime sponsor. If part of the plan fails as a result of the prime sponsor's refusal to approve a particular program, the Secretary is to finance the remainder of the plan.

*Financial assistance provisions*

Ninety-five percent of the funds available for title VII are to be allocated on an equitable basis among participating prime sponsors taking into account the factors used to distribute funds for Title II, Parts A, B and C. Of the remaining available amount, the Secretary is to provide financial assistance to prime sponsors who join together to establish a single private industry council to Native American prime sponsors who operate programs on the reservation.

*Miscellaneous provisions*

The general and administrative provisions of title II are applicable to title VII.

Mr. NELSON. Mr. President, I ask unanimous consent that Steve Paradise and Mike Forcey have the privilege of the floor during the course of the consideration of the pending legislation and the rollcall votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, I have some technical amendments, if the Senator from Kansas does not mind.

Mr. DOLE. Go ahead.

UP AMENDMENT NO. 1780

(Purpose: To strengthen the provisions relating to the Commission for Employment Policy

Mr. NELSON. Mr. President, I send to the desk an unprinted amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes certain technical corrections as unprinted amendment numbered 1780.

The amendment is as follows:

On page 363, beginning with line 12, strike out through line 19 on page 368 and insert in lieu thereof the following:

"TITLE V—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

"STATEMENT OF PURPOSE

"SEC. 501. The purpose of this title is to establish a National Commission for Employment Policy which will have the responsibility for examining broad issues of development, coordination and administration of employment and training programs, and for advising the President and the Congress on national employment and training issues.

"COMMISSION ESTABLISHED

"SEC. 502. (a) There is established a National Commission for Employment Policy (formerly known as the National Commission for Manpower Policy and hereinafter referred to as the 'commission'). The Commission shall be composed of 15 members selected as follows:

"(1) The Secretary of Labor, the Secretary of Health, Education, and Welfare, the Administrator of Veterans' Affairs, the Chairman of the Equal Employment Opportunity Commission, the Director of the Community Services Administration;

"(2) A representative of the National Advisory Council on Vocational Education established under section 162 of the Vocational Education Act of 1963; and

"(3) Nine members broadly representative of labor, industry, commerce, education (including vocational and technical education), veterans, State and local elective officials, community based organizations, individuals served by employment and training programs and of the general public, appointed by the President.

"(b) The term of office of each member of the Commission appointed under clause (3) of subsection (a) shall be 3 years except that—

"(1) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and

"(2) the members first taking office shall serve as designated by the President, four for terms of two years, and five for terms of three years.

"(c) (1) The Chairman shall be selected by the President from among members appointed pursuant to clause (3) of subsection (a).

"(2) The Commission shall meet not fewer than 3 times a year at the call of the Chairman.

"(3) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Any recommendation may be passed only by a majority of the members present. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

"(d) There shall be an Executive Director of the Commission who shall be appointed by the President.

"FUNCTIONS OF THE COMMISSION

"SEC. 503. The Commission shall—

"(1) identify the employment goals and needs of the nation, and assess the extent

to which employment and training, vocational education, institutional training, vocational rehabilitation, economic opportunity programs, public assistance policies, employment-related tax policies, labor exchange policies, and other policies and programs under this Act and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

"(2) develop and make appropriate recommendations (including recommendations responsive to requests made by the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives), and develop innovative approaches, designed to meet the needs and goals described in clause (1);

"(3) examine and evaluate the effectiveness of any federally assisted employment and training programs (including programs assisted under this Act), with particular reference to the contributions of such programs to the achievement of objectives sought by the recommendations made under clause (2) of this section;

"(4) examine and evaluate major Federal programs which are intended to, or potentially could, contribute to achieving major objectives of existing employment and training and related legislation or those objectives set forth in the recommendations of the Commission. Particular attention shall be given to the programs which are designed, or could be designed, to develop information and knowledge about employment and training problems through research and demonstration projects or to train personnel in fields (such as occupational counseling, guidance, and placement) which are vital to the success of employment and training programs;

"(5)(i) identify, after consultation with the National Advisory Council on Vocational Education, the employment and training and vocational education needs of the Nation and assess the extent to which employment and training, vocational education, vocational rehabilitation, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (ii) comment, at least once annually, on the reports of the National Advisory Council on Vocational Education which comments shall be included in one of the reports submitted by the National Commission pursuant to this title and in one of the reports submitted by the National Advisory Council on Vocational Education pursuant to section 162 of the Vocational Education Act of 1963; and

"(6) evaluate and continue to study and make recommendations to the Congress on the impact of energy shortages and new energy developments upon employment and training needs and include the findings and recommendations with respect thereto in the reports required by section 505;

"(7) study and make recommendations on how, through policies and actions in the public and private sectors, the Nation can attain and maintain full employment, with special emphasis on the employment difficulties faced by the segments of the labor force that experience differentially high rates of unemployment;

"(8) identify and assess the goals and needs of the Nation with respect to economic growth and work improvements, including but not limited to conditions of employment, organizational effectiveness and efficiency, alternative working arrangements, and technological changes;

"(9) examine and evaluate the relationships between employment and training programs assisted under this Act with programs under parts A and C of title IV of the Social Security Act and related public assistance programs under the Social Security Act; and

"(10)(i) examine and evaluate the eligibility standards set forth in titles II and VI of the Comprehensive Employment and Training Act of 1973, as amended, to determine their impact on single heads of households (especially women and older Americans); and (ii) submit a report, no later than July 1, 1979, to Congress, for appropriate referral, on the Commission's findings together with any proposed changes in the Comprehensive Employment and Training Act of 1973, as amended, concerning the eligibility standards for such single heads of households.

"ADMINISTRATIVE PROVISIONS

"SEC. 504. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman is authorized to—

"(1) prescribe such rules and regulations as may be necessary;

"(2) appoint and fix the compensation of such staff personnel as the Chairman deems necessary, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and the general schedule pay rates, appoint not to exceed 3 additional professional personnel;

"(3) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code;

"(4) accept voluntary and uncompensated services of professional personnel, consultants, and experts, notwithstanding any other provision of law;

"(5) accept in the name of the United States and employ or dispose of gifts or bequests to carry out the functions of the Commission under this title;

"(6) enter into contracts and make such other arrangements and modifications, as may be necessary;

"(7) conduct such studies, hearings, research activities, demonstration projects, and other similar activities as the Commission deems necessary to enable the Commission to carry out its functions under this title;

"(8) use the services, personnel, facilities, and information of any department, agency, and instrumentality of the executive branch of the Government and the services, personnel, facilities, and information of State and local public agencies and private research agencies, with the consent of such agencies, with or without reimbursement therefor; and

"(9) make advances, progress, and other payments necessary under this Act without regard to the provisions of section 3648 of the revised statutes as amended (31 U.S.C. 529).

"(b) Upon request made by the Chairman of the Commission, each department, agency, and instrumentality of the executive branch of the Government is authorized and directed to make its services, personnel, facilities, and information (including computer-time, estimates, and statistics) available to the greatest practicable extent to the Commission in the performance of its functions under this Act.

"REPORTS

"SEC. 505. The Commission shall make at least annually a report of its findings and recommendations to the President and the Congress. The annual report required by the previous sentence shall be transmitted to the President and to the Congress not later than February 1 in the year succeeding the fiscal year for which the report is being made. The Commission may make such interim reports or recommendations to the Congress, the President, Secretary of Labor, or to the heads of other Federal departments and agencies, and in such form, as it may deem desirable.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 506. There are authorized to be appropriated $3,000,000 for the fiscal year 1979 and such sums as may be necessary for the three succeeding fiscal years, for the purpose of carrying out this title."

On page 384, line 6, insert "(1)" after "(a)".

On page 384, between lines 13 and 14, insert the following:

(2) The National Commission for Manpower Policy in existence on the day before the date of enactment of this Act shall continue in existence until the National Commission for Employment Policy is appointed pursuant to title V of the Comprehensive Employment and Training Act (as amended by section 2 of this Act).

On page 181, in the table of contents, strike out title V and items 501 through 505 and insert in lieu thereof the following:

"TITLE V—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

"SEC. 501. Statement of purpose.
"SEC. 502. Commission established.
"SEC. 503. Functions of the Commission.
"SEC. 504. Administrative provisions.
"SEC. 505. Reports.
"SEC. 506. Authorization of appropriations.

Mr. NELSON. Mr. President, today Senators JAVITS, BELLMON, DOMENICI, and I are offering an amendment to establish an independent Commission on Employment Policy. This Commission would replace the present advisory body responsible for examining and evaluating this Nation's employment and training programs and policies, the National Commission for Manpower Policy.

This amendment would reconstitute the present Commission and establish it as an independent Commission. The Commission is renamed the Commission for Employment Policy. The number of members on the Commission is decreased, and its functions are modified.

Under this amendment, the following Federal members would serve on the Commission: the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Administrator of the Veterans' Affairs, the Chairman of the Equal Employment Opportunity Commission, and the Director of the Community Services Administration.

As in current law, the President is to appoint the public members and to designate the Chairman of the Commission from among the public appointees.

The purpose of the Commission is amended to provide that the Commission is to serve as an advisory body not only to the President, as under current law, but to the Congress as well.

The functions of the Commission would include an assessment of the extent to which public assistance policies, labor exchange policies, and related employment tax policies meet the employment goals and needs of the Nation. The Commission is directed to examine ways of achieving full employment, as well as to examine employment policies with respect to economic growth and work improvements. The Commission is directed to undertake a study of the relationship between public assistance programs (including those programs established under the Social Security Act) and employment policies and to study and report to Con-

gress on the impact of eligibility criteria under titles II and VI of the Comprehensive Employment and Training Act of 1973, as amended, on single heads of households, especially women and older Americans.

The amendment modifies current law concerning Commission appointments and vacancies, meetings and voting procedures, rules and regulations, appointment and compensation of staff, the acceptance of gifts, contractual rights, and technical assistance.

The Commission is authorized for a period of 4 years. An authorization of appropriations of $3 million for the fiscal year 1979 is provided and such sums as may be necessary for the 3 succeeding fiscal years.

Mr. President, the National Commission for Manpower Policy was enacted as part of the Comprehensive Employment and Training Act (CETA) in 1973. The Commission now has the responsibility to advise the Secretary of Labor on employment policies, and it has submitted an annual report and other reports to the President and the Congress.

The Commission's studies and reports have been very useful. Its reports are timely and nationally cited as authoritative sources on employment issues. However, the Commission's present dependency on Federal agencies for the bulk of their resources creates uncertainty because of the ad hoc nature of this funding arrangement, and it has severely limited the Commission's ability to pursue independently its objectives or to develop a long range agenda.

This amendment would reconstitute the Commission and establish it as an independent Commission with an authorization of appropriations of $3 million for fiscal year 1979 and such sums as may be necessary for the 3 succeeding fiscal years. The amendment also requires that other Federal agencies provide appropriate technical assistance in furtherance of the Commission's work.

During fiscal year 1978, the Commission's budget is estimated at $2.6 million. The majority of the Commission's funds now are provided by the Department of Labor. However, with the exception of a basic operating budget provided by Labor to support the Commission's staff and the regular meetings of the Commission, the Commission must solicit further funds from the Labor Department and other Federal agencies and the public to support the balance of its responsibilities. This means that resources to undertake special studies and reports, conferences, and other basic administrative and technical support activities are, at best, very uncertain.

Mr. President, last year the Congress directed the Commission to report on the implementation of public service employment programs under CETA. This year the Commission delivered to the Congress, in time for its deliberations on the reauthorization of CETA, a three-volume report on public service employment job creation.

The Commission is now studying the problem of youth unemployment and the role of the private sector in federally assisted employment programs.

This amendment would direct the Commission to examine a number of employment programs and related policies which will be of particular interest to the Congress next year. The amendment would direct the Commission to examine labor exchange programs, employment related tax policies, full employment policies, economic growth and work improvements, the relationship between public assistance programs and Federal employment programs, and the eligibility criteria for single heads of households under titles II and VI of CETA.

This amendment will provide the Commission with a more stable source of funding. It will no longer be dependent on the good will and concurrence of Federal agencies to support its objectives. A stable source of revenue is essential both to maintain the independent advisory nature of the Commission and to provide the Commission with sufficient lead time in which to formulate major undertakings. It will also assure that the work of the Commission is not interrupted due to an unexpected cut back in funding.

Mr. President, we have agreed on this amendment with the ranking Republican member of the Subcommittee on Employment, Poverty, and Migratory Labor (Mr. JAVITS), as well as Senators BELLMON and DOMENICI. I think it is noncontroversial. Would the Senator from New York wish to comment?

Mr. President, I do not believe there is any controversy on this legislation, and I am prepared to yield back the remainder of my time and let the Senator from New York proceed.

Mr. JAVITS. Mr. President, I ask unanimous consent that the following staff people may have access to the floor during consideration of this measure: Diane Kamino for the committee, Chip Waggoner and Sally Crossman for Senator STEVENS, and Jeff Boothe for Senator MARK O. HATFIELD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. I thank the Chair.

Mr. President, I regret very much that I was not here as soon as Senator NELSON started, but my problem was that we had a meeting of the Human Resources Committee to report out some bills, and my presence there was essential.

Mr. President, I have already made my opening statement on this bill, which is contained in the RECORD of August 22. I believe the bill is now truly in balance.

The staff, I think, is entitled to enormous commendation for the degree to which an effort has been made to adjust different aspects of the bill to the views of our colleagues insofar as it could humanly be done. Much ingenuity has been demonstrated in that regard respecting every aspect of the bill, including the authorization, which comes, of course, under our scrutiny altogether at this time.

I would like, because it is so critically important at this point by way of supplementing my own statement, to ask unanimous consent to have printed in the RECORD as a part of this debate an extraordinary summary of a study made by the Department of Labor, which has ascertained the postprogram experience for those who were in the CETA program and who terminated their work under the program.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[U.S. Department of Labor, Employment and Training Administration]

SUMMARY OF HIGHLIGHTS OF CONTINUOUS LONGITUDINAL MANPOWER SURVEY (CLMS) FOLLOWUP REPORT NO. 1, POST-PROGRAM EXPERIENCE AND PRE-POST COMPARISONS FOR TERMINEES WHO ENTERED CETA IN JANUARY-JUNE 1975

This is the first CLMS followup report. From interviews conducted about 18 months after entry, it presents data on how CETA participants have fared after leaving CETA and how their postprogram employment and earnings compare to their preprogram levels.

The data are on participants who entered CETA in January to June 1975, were enrolled in Titles I, II, or VI adult-oriented programs (class training, on-the-job training, adult work experience, and public service employment), and had been terminated by the time of followup interviews about 18 months after entry.

The report focuses on an estimated 320,000 such terminees (about two-thirds of all the January-June 1975 entrants) who had been out of the program at least 3 months and, for longer-term data, a subgroup of 193,000 who had been out for at least a year. All terminees are included, whatever the reasons for termination, so the data cover early dropouts as well as "completers."

Caution: This is the pilot CLMS followup effort. It is on participants enrolled in CETA's first year, is limited to early postprogram experience (3 months to a year), and does not include postprogram data on those still in the program 18 months after entry. For these and other reasons, it should be regarded only as a first general indication of how CETA participants make out after termination.

The key findings in brief are:

CETA participants had more employment and earnings after the program than before.

The improvement was accomplished despite more difficult economic conditions in the postprogram period which may have restrained the gain. (The national unemployment rate in the preprogram period was a bit over 5 percent, while in the postprogram period it averaged around 8 percent.)

Postprogram employment and earnings improved gradually over time. They were higher a year after termination from the program than in the first months after leaving the program.

The overall gain masks major differences between participants who had stable employment backgrounds and participants who had histories of limited employment.

Those with relatively good employment and earnings the year before entering CETA had a good level after the programs too, although it did not quite get back up to the preprogram level. Because they did not gain their prior level, they pulled down the all-terminee average gain.

Those with little employment and earnings before enrolling in CETA had a modest average level after the program, but that modest level was a very considerable gain over their low preprogram record. They therefore had much greater gains than the average for all terminees.

Over four-fifths of terminees gave a position rating to the CETA programs: 59 percent said they were "satisfied" with it, and 22 percent more said they were "very satisfied."

The following pages present highlight findings in a bit more detail.

Employment Experience: (1) Three months after leaving the CETA program, 58 percent of the terminees were employed. Some 25 percent were unemployed at that time and 17 percent were out of the labor force (primarily in school or another training program, in an

institution, or not seeking work because of family responsibilities, ill health, or other reasons).

This was much better than their status shortly (1 month) before they entered the program: Over twice as many were employed, unemployment was down by half, and the not-in-the-labor-force percentage was down by a third. The specific data, for the 320,000 terminees out at least 3 months, are:

| Point in time | Labor force status (percent) | | |
|---|---|---|---|
| | Employed | Unemployed | Not in labor force |
| 3 mo after termination | 58 | 25 | 17 |
| 1 mo before entry | 26 | 49 | 25 |
| Change: 1 mo before to 3 mo after | +32 | −24 | −8 |

(2) A sizable improvement over status shortly before entry was to be expected, however, for the group had a rather low employment level then (which was the basis for their being enrolled in CETA). There would likely have been improvement over the low level even if there were no program, although it is uncertain how quickly or how much in the absence of the program.

If we look further back before entry to the program to find a "more normal" prior period for them, and select 12 months before entry as a "before" measure, we find that 3-months-after record still is better, but only slightly: The proportion employed is up a bit, but unemployment is up too, as the main change was a decline in the number out of the labor force. The specific data for the 320,000 terminees are:

| Point in time | Labor force status (percent) | | |
|---|---|---|---|
| | Employed | Unemployed | Not in labor force |
| 3 mo after termination | 58 | 25 | 17 |
| 12 mo before entry | 51 | 21 | 28 |
| Change: 12 mo before to 3 mo after | +7 | +4 | −11 |

(3) It must be recognized that these before and after records were under different economic conditions. The 12-months-before of this group occurred in January to June 1974, when the national unemployment rate averaged 5.1 percent. The 3-months-after point occurred between Spring 1975 and late 1976, a period when national unemployment averaged 8.1 percent (low of 7.4 and high of 9.1%). The postprogram experience was clearly in a more difficult economic period which may have restrained the extent of postprogram improvement.

(4) Did postprogram employment at 3 months after hold steady, deteriorate or improve over time? The indication from data on those out at least a year is that there was gradual improvement during the first postprogram year: 54 percent were employed 1 month after termination, 57 percent after 3 months, and 62 percent at the 12-month-after point. (The group out of the program at least a year had been in the program an average of only 3 months and so are made up heavily of early dropouts or those in relatively brief programs.) The trend data on this group of 193,000 early terminees out at least a year are:

| Time point after termination | Labor Force Status (percent) | | |
|---|---|---|---|
| | Employed | Unemployed | Not in labor force |
| 1 mo | 54 | 28 | 18 |
| 3 mo | 57 | 25 | 18 |
| 6 mo | 57 | 24 | 18 |
| 9 mo | 60 | 21 | 19 |
| 12 mo | 62 | 22 | 16 |

(5) The overall data for all the terminees obscure major differences among subgroups. The most marked differences are related to prior employment history, as summarized below. (Differences by demographic characteristics and by program activity are also presented in this report.)

To compare the pre/post experience of those with good vs. poor pre-entry employment records, the terminees out at least 3 months were classified into 4 groups according to their predominant labor force status in the year before they entered CETA.

(a) Predominantly employed. These were the people employed 90% or more of the preprogram year. This subgroup, who can be characterized roughly as "cyclically unemployed" enrollees, made up 15% of the terminee group.

(b) Predominantly unemployed. These were persons with severe unemployment records, unemployed 50% or more of the pre-entry year. These "structurally unemployed" were 25% of the total terminees.

(c) Predominantly not in the labor force. These were primarily in school or not seeking work for 50% or more of the preprogram year. This subgroup, basically entrants or reentrants to the labor force, were 24% of the total group.

(d) Other were persons with a more mixed record who did not fit in any of the 3 preceding mutually exclusive categories. They generally had some extensive unemployment but not for as much as 50% of the year. They accounted for 36% of the terminee group.

The attached Table 1 shows the labor force status of each of these subgroups 3 months after termination compared to 12 months before entry to CETA. The subgroup predominantly employed the year before entry did relatively well after leaving the program: 67 percent were employed 3 months after termination. But because they also had a very high-pre-entry level (97 percent were employed 12 months before program entry), and some did not recover from the difficulties that led them to enter CETA, the subgroup as a whole fell far short of recovering to its high 12 months-before level.

Those who were predominantly unemployed the year before entry had a "modest" postprogram employment level: 50 percent employed 3 months after termination (vs. 67 percent for those who had a predominantly employed history). But because their pre-entry employment level had been quite low (31 percent employed 12 months before entry), their modest postprogram level of 50 percent employed represented a very substantial gain.

Those who were predominantly not in the labor force the year before entry to CETA also had a modest postprogram employment level (46 percent employed 3 months after termination) which was substantially higher than the level 12 months before entry (15 percent). But they also had sizable flow into unemployment and a substantial return to not-in-the-labor-force status, as many who sought to enter or reenter employment were apparently unable to do so quickly.

Finally, for the "other" group, which had a more mixed history the year before entry, the postprogram employment level was relatively high (67 percent employed 3 months after termination), but their level at 12 months before entry was also fairly high (70 percent employed) so this subgroup did not quite recover fully to its 12-months preprogram level.

In sum, the breakdown by prior employment history indicates that (a) the subgroups with better employment records before the program also had better records after the program, but did not get back up to the employment levels they had a year before entry, while (b) the subgroups who had limited employment the year before entry did not attain a high employment level after the program, but that level was a considerable gain over their preprogram level.

Earnings Experience: The findings on earnings before and after the program basically parallel the findings on employment status. Again, the extent of change depends in part on which pre-entry period is used to represent the before-program level.

(1) Earnings in the first quarter after leaving the program were up sharply over earnings in the quarter before entry to the program. The average annual earnings rate of all the terminees in the first 3 months after termination ($4,080, including those with no earnings) was $2,310 or 130% more than the same group's annual earnings rate ($1,770) in the 3 months before entry to the program.

(2) Since the earnings rate in the quarter just before entry was depressed by the fact that most enrollees had little or no earnings in that period, comparisons have been made with earlier periods too. Compared to earnings the full year before entry ($2,790), the annual earnings rate in the first quarter after termination was $1,290 or 46% higher. Compared to the earnings rate in the 4th quarter (months 10 to 12) before entry ($3,340), the first postprogram quarter's earnings rate was $740 or 22% higher.

(3) These overall data mask major differences among groups with different pre-entry employment histories. For the four classifications of predominant pre-entry experience cited earlier, the attached Table 2 presents annualized earnings for both the first quarter before entry and the fourth quarter before entry, compared to earnings in the first quarter after termination.

The table shows that the average rise in annualized earnings for all terminees of 130%, from the first quarter before to the first quarter after, was a product of three quite separate patterns: One subgroup roughly got back to its earlier level, another improved by 125%, and the other two improved over 500%. Specifically:

(a) Those predominantly employed the year before entry had the highest postprogram earnings, but did not recover their high pre-entry earnings level. Their earnings the first quarter after termination were 8% less than in the first quarter before entry.

(b) Those predominantly unemployed or not in the labor force the year before entry had lower postprogram earnings than the group who had been predominantly employed the year before, but their lower level still was a huge improvement over their very much lower pre-entry earnings. They earned roughly 500% more in the first quarter after termination than in the first quarter before program entry.

(c) The "other" group, with a mixed employment record the year before entry, gained about as much in dollar terms as the predominantly unemployed and not-in-the-labor force groups, but because their pre-entry earnings had been higher than those other groups, their percentage increase was of course smaller, about 125%.

If annualized earnings for the first quarter after termination are compared to an earlier pre-entry period, the fourth quarter before entry, the average change for all terminees was a 22% increase ($740 gain in annual earnings). Within this average, there was a much greater gain for those who had been predominantly unemployed in the preprogram year ($1,610 or 85%) or predominantly not in the labor force (increase of $2,300 or 258%). On the other hand, those who had been predominantly employed had lower earnings after the program than a year earlier ($1,100 or 19% less), because some did not recover to their former levels and pulled down the group's postprogram average. This was true too of the "other" group, whose average annual earnings in the first quarter after termination were less ($290 or 6%) than in their fourth quarter before program entry.

(4) Looking at each program activity separately, the largest pre-to-post earnings gains were experienced by terminees from public service employment and on-the-job training programs, with classroom training lagging behind a bit, and those in adult work experience programs experiencing the least change. The attached Table 3 presents the data for each activity. (These data do not enable appropriate comparison of the relative effectiveness of each activity, because there is considerable variation in who is served in each activity and for other reasons). Future CLMS reports will attempt to develop better bases for comparing the different activities.

Satisfaction with CETA: Terminees were asked about their "satisfaction" with the CETA program. Although this is a soft measure of program performance, it is noteworthy that 81% gave positive responses: 22% said they were "very satisfied" and 59% selected "satisfied" as their answer. Of the remaining 19% who gave negative responses, 13% said they were "dissatisfied" with their CETA experience, while only 6% chose "very dissatisfied" as their response.

There was a slight difference between activities: 77% rated classroom training as satisfactory, while on-the-job training, work experience, and public service employment were each rated satisfactory by 83%.

Other Data: The report presents detailed additional data on (1) in-program experience, including occupation of training or employment, wages and earnings while enrolled, length of stay, and proportions receiving ancillary manpower or supportive service in addition to their principal activity, and (2) variations in program outcome by selected demographic characteristics.

TABLE 1.—PREPOST CHANGES IN LABOR FORCE STATUS FOR CETA TERMINEES[1] BY PREDOMINANT LABOR FORCE STATUS IN PREPROGRAM YEAR

| Predominant status in year before entry and points in time | Labor force status (percent) | | |
|---|---|---|---|
| | Employed | Unemployed | Not in labor force |
| All terminees:[1] | | | |
| 3 mo after termination | 58 | 25 | 17 |
| 12 mo before termination | 51 | 21 | 28 |
| Change: 12 mo before to 3 mo after | +7 | +4 | −11 |
| Predominantly employed: | | | |
| 3 mo after termination | 67 | 20 | 13 |
| 12 mo before entry | 97 | 2 | 1 |
| Change: 12 mo before to 3 mo after | −30 | +18 | +12 |
| Predominantly unemployed: | | | |
| 3 mo after termination | 50 | 35 | 15 |
| 12 mo before entry | 31 | 57 | 12 |
| Change: 12 mo before to 3 mo after | +19 | −22 | +3 |
| Predominantly not in labor force: | | | |
| 3 mo after termination | 46 | 24 | 30 |
| 12 mo before entry | 15 | 6 | 79 |
| Change: 12 mo before to 3 mo after | +31 | +18 | −49 |
| Other (no predominant status in prior year): | | | |
| 3 mo after termination | 67 | 22 | 11 |
| 12 mo before entry | 70 | 13 | 18 |
| Change: 12 mo before to 3 mo after | −3 | +9 | −7 |

[1] Estimates for 320,900 terminees out at least 3 mo who had entered CETA in January–June 1975.

Source: CLMS Followup Report No. 1.

TABLE 2.—PRE-POST AVERAGE ANNUAL EARNINGS LEVELS AND CHANGES FOR CETA TERMINEES[1] BY PREDOMINANT LABOR FORCE STATUS IN PREPROGRAM YEAR

| | Employment experience in year before entry | | | | |
|---|---|---|---|---|---|
| | All terminees | Predominantly employed | Predominantly unemployed | Predominantly not in labor force | Other |
| Number of terminees | 320,900 | 48,400 | 81,000 | 76,600 | 114,900 |
| Time periods: | | | | | |
| 1st quarter after termination | $4,080 | $4,830 | $3,510 | $3,190 | $4,760 |
| 1st quarter before entry | 1,770 | 5,210 | 570 | 560 | 2,120 |
| Change: | | | | | |
| 1st quarter before | +2,310 | −380 | +2,940 | +2,630 | +2,640 |
| 1st quarter after (percent) | (+131) | (−8) | (+516) | (+470) | (+125) |
| 4th quarter before entry | 3,340 | 5,930 | 1,900 | 890 | 5,050 |
| Change: | | | | | |
| 4th quarter before | +740 | −1,100 | +1,610 | +2,300 | −290 |
| 1st quarter after (percent) | (+22) | (−19) | (+85) | (+258) | (−6) |

[1] Estimates are for terminees out at least 3 mo who had entered CETA in Jan.–June 1975. Annualized earnings average include terminees with zero earnings.

Source: CLMS Followup Report No. 1.

TABLE 3.—PRE-POST AVERAGE ANNUAL EARNINGS LEVELS AND CHANGES FOR CETA TERMINEES BY CETA PROGRAM ACTIVITY

| | CETA program activity[2] | | | | |
|---|---|---|---|---|---|
| | All terminees | Classroom training | On-the-job training | Adult work experience | Public service employment |
| Number of terminees | 320,900 | 73,700 | 31,800 | 48,700 | 145,300 |
| Time periods: | | | | | |
| 1st quarter after termination | $4,080 | $3,000 | $5,190 | $3,010 | $4,720 |
| 1st quarter before entry | 1,770 | 1,480 | 2,500 | 1,620 | 1,830 |
| Change: | | | | | |
| 1st quarter before | +2,310 | +1,520 | +2,690 | +1,390 | +2,890 |
| 1st quarter after (percent) | (+131) | (+103) | (+108) | (+86) | (+158) |
| 4th quarter before entry | 3,340 | 2,550 | 3,660 | 3,050 | 3,820 |
| Change: | | | | | |
| 4th quarter before | +740 | +450 | +1,530 | −40 | +900 |
| 1st quarter after (percent) | (+22) | (+18) | (+42) | (−1) | (+24) |

[1] Estimates are for terminees out at least 3 mo who had entered CETA in Jan.–June 1975. Annualized earnings average includes terminees with zero earnings.

[2] Does not include 21,400 in multiple activities.

Source: CLMS Followup Report No. 1.

TABLE 56.—CETA TERMINEES OUT AT LEAST 3 MO ENROLLED DURING JANUARY–JUNE 1975: PERCENT OF TERMINEES NOT IN LABOR FORCE BY PROGRAM ACTIVITY AND SELECTED TIME POINTS

| Time points | Program activity | | | | | |
|---|---|---|---|---|---|---|
| | Classroom training | On-the-job training | Adult work experience | Public service employment | Multiple activities | All |
| Estimated number | 73,700 | 31,800 | 48,700 | 145,300 | 21,400 | 320,900 |
| Prior to entry: | | | | | | |
| 12 mos | 33 | 28 | 25 | 27 | (28) | 28 |
| 9 mos | 31 | 25 | 23 | 23 | (25) | 25 |
| 6 mos | 29 | 26 | 25 | 23 | (24) | 25 |
| 3 mos | 30 | 27 | 26 | 21 | (23) | 25 |
| 1 mo | 33 | 25 | 23 | 20 | (30) | 25 |
| 1 day | 37 | (22) | 22 | 18 | (34) | 24 |
| After termination: | | | | | | |
| Day after | 37 | (14) | 22 | 17 | (18) | 22 |
| 1 mo | 23 | (11) | 20 | 15 | (13) | 17 |
| 3 mos | 21 | (11) | 20 | 16 | (10) | 17 |

TABLE 57.—CETA TERMINEES OUT AT LEAST 12 MO ENROLLED DURING JANUARY–JUNE 1975: PERCENT OF TERMINEES EMPLOYED BY PROGRAM ACTIVITY AND SELECTED TIME POINTS

| Time points | Program activity | | | | | |
|---|---|---|---|---|---|---|
| | Classroom training | On-the-job training | Adult work experience | Public service employment | Multiple activities | All |
| Estimated number | 47,600 | 21,000 | 30,800 | 85,500 | 8,500 | 193,500 |
| Prior to entry: | | | | | | |
| 12 mos | 44 | 53 | 51 | 55 | (52) | 51 |
| 9 mos | 44 | 56 | 49 | 59 | (50) | 53 |
| 6 mos | 42 | 53 | 47 | 53 | (44) | 49 |
| 3 mos | 31 | 42 | 38 | 42 | (35) | 38 |
| 1 mo | 24 | 37 | 30 | 25 | (31) | 27 |
| 1 day | 20 | 42 | 29 | 27 | (26) | 27 |
| After termination: | | | | | | |
| Day after | 31 | 70 | 55 | 62 | (56) | 54 |
| 1 mo | 44 | 70 | 52 | 57 | (62) | 54 |
| 3 mos | 46 | 66 | 52 | 60 | (77) | 57 |
| 6 mos | 49 | 69 | 52 | 60 | (64) | 57 |
| 9 mos | 50 | 72 | 56 | 63 | (68) | 60 |
| 12 mos | 54 | 73 | 55 | 65 | (69) | 62 |

TABLE 58.—CETA TERMINEES OUT AT LEAST 12 MOS ENROLLED DURING JANUARY–JUNE 1975: PERCENT OF TERMINEES UNEMPLOYED BY PROGRAM ACTIVITY AND SELECTED TIME POINTS

| Time points | Program activity | | | | | |
|---|---|---|---|---|---|---|
| | Classroom training | On-the-job training | Adult work experience | Public service employment | Multiple activities | All |
| Estimated number | 47,600 | 21,000 | 30,800 | 85,500 | 8,500 | 193,500 |
| Prior to entry: | | | | | | |
| 12 mos | 23 | (18) | (24) | 17 | (19) | 20 |
| 9 mos | 22 | (17) | 26 | 18 | (24) | 21 |
| 6 mos | 28 | (19) | 26 | 24 | (30) | 25 |
| 3 mos | 36 | (29) | 34 | 37 | (42) | 35 |
| 1 mo | 41 | 37 | 44 | 54 | (39) | 46 |
| 1 day | 42 | 36 | 46 | 55 | (41) | 47 |
| After termination: | | | | | | |
| Day after | 27 | (16) | (21) | 20 | (18) | 21 |
| 1 month | 32 | (19) | 29 | 28 | (21) | 28 |
| 3 mos | 32 | (21) | 27 | 23 | (13) | 25 |
| 6 mos | 30 | (19) | 28 | 22 | (18) | 24 |
| 9 mos | 24 | (17) | (22) | 21 | (13) | 21 |
| 12 mos | 25 | (17) | (24) | 21 | (15) | 22 |

TABLE 59.—CETA TERMINEES OUT AT LEAST 12 MOS ENROLLED DURING JANUARY–JUNE 1975: PERCENT OF TERMINEES NOT IN LABOR FORCE BY PROGRAM ACTIVITY AND SELECTED TIME POINTS

| Time points | Program activity | | | | | |
|---|---|---|---|---|---|---|
| | Classroom training | On-the-job training | Adult work experience | Public service employment | Multiple activities | All |
| Estimated number | 47,600 | 21,000 | 30,800 | 85,500 | 8,500 | 193,500 |
| Prior to entry: | | | | | | |
| 12 mos | 33 | (29) | 26 | 28 | (29) | 29 |
| 9 mos | 34 | (27) | 25 | 22 | (26) | 26 |
| 6 mos | 31 | (28) | 26 | 23 | (26) | 26 |
| 3 mos | 33 | (29) | 28 | 21 | (23) | 26 |
| 1 mo | 36 | (26) | 26 | 21 | (30) | 26 |
| 1 day | 39 | (22) | 25 | 19 | (33) | 26 |
| After termination: | | | | | | |
| Day after | 42 | (14) | (24) | 18 | (26) | 25 |
| 1 mo | 24 | (11) | (20) | 15 | (17) | 18 |
| 3 mos | 22 | (13) | (21) | 17 | (10) | 18 |
| 6 mos | 22 | (12) | (20) | 18 | (18) | 18 |
| 9 mos | 25 | (11) | (22) | 16 | (18) | 19 |
| 12 mos | 21 | (10) | (22) | 14 | (16) | 16 |

Mr. JAVITS. The report focuses on some 320,000 such terminees, as they are called, about two-thirds of whom were entrants into the program in the period January to June 1975, and who had been out of the program for about 3 months when this survey was taken.

The committee findings in the survey are as follows: The CETA participants had more employment and earnings after having been through the program than before, notwithstanding that the economic conditions were more difficult in the postprogram period, as that was very much within the 1975 recession period. The postprogram employment and earnings for these terminees improved gradually over time. They were hired, for example, a year after termination of the program and in the several months after leaving the program. The overall gain was, of course, to be judged in the light of the fact that some of these people had stable employment backgrounds and others had very unstable employment backgrounds. Obviously, those who had stable employment backgrounds did better. But nonetheless, the overall result demonstrates that CETA training is effective; and it is interesting that more than 80 percent of these terminees gave a high rating to the CETA program, with 59 percent saying they were satisfied with it and 22 percent more, that is, over and above the 59 percent, saying that they were very satisfied.

The employment experience indicated the rather extraordinary development that those who went through the program had about half the rate of unemployment of those who had not gone through the program.

I think, now that they have had the program for a time, that these are extremely important overall vindications of the position which our committee and Senator NELSON and I have taken, that this is an extremely worthwhile activity. I believe, Mr. President, for that reason, the report should be submitted as a part of the record to the Senate.

Mr. President, I make the further unanimous-consent request that Karen Steidl of Senator YOUNG's staff have the privilege of the floor during the debate on this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I join Senator NELSON, who has done an extraordinary job of guidance and leadership in this program, in yielding back the time on this amendment.

Mr. NELSON. Mr. President, all time has been yielded back, I understand.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment (UP No. 1780).

The amendment was agreed to.

Mr. NELSON. Mr. President, I join Senator JAVITS in commending the staff of the minority on the committee and the staff of the majority—Scott K. Ginsburg, the staff director and counsel of the subcommittee, and Joan Hunziker—as well as the members of staffs of other committee members, who have spent an enormous amount of time in helping to design and work out a very comprehensive, significant, and important amendment to the CETA legislation. CETA legislation was introduced on February 23, 1978; it has had careful hearings and extensive drafting and redrafting. The cooperation of staffs and members of the committee, along with administration has resulted in a superb job and they are to be commended for it.

Mr. JAVITS. Will the Senator yield?

Mr. NELSON. I yield.

Mr. JAVITS. I think it would really be noninclusive if we did not add Jim O'Connell, of the minority staff.

Mr. NELSON. By all means.

UP AMENDMENT NO. 1781

Mr. NELSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes an unprinted amendment numbered 1781.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 224 line 14 insert "(1)" after "(c)" and between lines 24 and 25, insert the following: "(2) The Secretary shall facilitate the initiation and extension of projects for work on the weatherization of housing in public service employment programs carried out by prime sponsors under this Act. The Secretary shall, in coordination with other appropriate agencies, provide technical assistance and otherwise encourage prime sponsors, serving areas where such projects would significantly contribute to energy savings, to develop and continue weatherization projects as part of their public service employment programs"

Mr. NELSON. Mr. President, this amendment will instruct the Secretary of Labor to facilitate the initiation and extension of public service employment projects for work on the weatherization of housing. The amendment further provides that the Secretary shall provide technical assistance and otherwise encourage prime sponsors to develop and continue weatherization projects as part of their public service employment programs.

This amendment is necessary because many weatherization projects, especially in the Midwest and Northeast, have been terminated by prime sponsors because of the 1-year project requirement under current law. The weatherization of low-income homes is a national priority, and is also one of the most successful and productive activities undertaken by prime sponsors.

The inclusion of this amendment in the CETA legislation will assure that weatherization activities are given appropriate attention by prime sponsors.

Mr. President, I think this is a sound amendment and noncontroversial. I am prepared to yield back the remainder of my time.

Mr. JAVITS. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1782

Mr. NELSON. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes an unprinted amendment numbered 1782.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 225, line 25, strike "and the succeeding fiscal year" and insert in lieu thereof "and until such time as the Secretary determines that current population survey data is available for use on a satisfactory basis for such areas and for the remaining areas of each state,".

Mr. NELSON. Mr. President, this amendment would provide that the so-called "hold-harmless" vision for those standard metropolitan statistical areas (SMSA's) and central cities where current population survey (CPS) data had been used to determine annual employment data prior to January 1, 1978, which had been included in the committee bill, be effective through fiscal year 1979 and until such time as CPS survey data becomes available on a satisfactory basis.

The Department of Labor requested the inclusion of this amendment. It is intended to assure that once CPS data becomes available for the impacted SMSA's and central cities, the "hold harmless" provisions will be terminated. The Department of Labor now believes that such CPS data will be available in 1980 or 1981 on a quarterly basis. However, reliable quarterly data requires some expansion of the CPS interviews, which will only be undertaken if we are resolved to solve the problem that led to the inclusion of the "hold-harmless" provision. The "hold-harmless" provision will remain in effect until such CPS expansion can be implemented, and this provision will help insure that the expansion of CPS data begins as soon as possible.

Mr. President, I believe this amendment is noncontroversial. I yield back the remainder of my time.

Mr. JAVITS. I yield back my time, Mr. President.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1783

(Purpose: To require publication of substantial changes in the method of calculating unemployment)

Mr. NELSON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON), for himself and Mr. HUDDLESTON, proposes an unprinted amendment numbered 1783.

Mr. NELSON. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 225, between lines 18 and 19, insert the following:

"(e)(1) The Secretary, through the Bureau of Labor Statistics, shall publish in the Federal Register any substantial change in the method of calculating unemployment for the purpose of allocating any funds under this Act or any other Act of Congress at least 6 months prior to the effective date of the use of the changed method.

On page 225, line 19, strike out "(e)(1)" and insert in lieu thereof "(2)".

Mr. NELSON. Mr. President, this amendment would require the Secretary of Labor to publish in the Federal Register any substantial change in the method of calculating unemployment for the purpose of allocating funds under the Comprehensive Employment and Training Act of 1973, as amended, or under any other act of Congress at least 6 months prior to the effective date of the use of the changed method.

Mr. President, unemployment statistics play a prominent role in the allocation of Federal dollars to State and local areas because unemployment statistics are used in many Federal programs' allocation formulas. Whenever the method by which the unemployment rate is calculated is changed, it can have a dramatic impact on the distribution of Federal dollars throughout the country.

Last January, for example, new procedures were initiated by the Bureau of Labor Statistics (BLS) for estimating unemployment and labor statistics. These changes were undertaken to improve the accuracy of labor market statistics, statistics which are used to allocate CETA funding, antirecession assistance, and many other forms of Federal assistance to State and local governments. This new BLS methodology, however, resulted in a substantial decline in unemployment rates in some of the 28 standard metropolitan statistical areas and 9 central cities whose unemployment rates were calculated in a different manner as a result of the BLS methodological change. The decline in unemployment rates in many of these areas did not occur as a result of any economic changes in the area, but is instead a result of the change in the methodology used to calculate unemployment rates.

Without debating the merits of whether the methodological changes were appropriate, in my judgment, the January 1978 methodological changes were undertaken without adequate notice to Congress and to those areas which were to be affected by the changes.

That is why I am offering this amendment today. It will give at least 6 months of public notice in the Federal Register prior to any substantial change being implemented in the method by which unemployment rates in State and local areas are calculated. This wait and see provision will give Congress and the public the necessary time to examine proposed methodological changes in calculating unemployment rates and to study the impact these changes will have upon State and local areas.

I am prepared to yield back the remainder of my time.

Mr. BENTSEN. Will the manager of the bill yield for a request?

Mr. NELSON. Yes.

Mr. BENTSEN. I would like to be added as a cosponsor to the amendment.

Mr. NELSON. Mr. President, I ask unanimous consent that the Senator from Texas (Mr. BENTSEN) be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is all time yielded back?

Mr. JAVITS. Yes.

Mr. NELSON. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1784

(Purpose: Technical and conforming changes)

Mr. NELSON. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes an unprinted amendment numbered 1784.

Mr. NELSON. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 180, in the table of contents, section 451, insert "the" immediately after "of".

On page 180, in the table of contents, section 461, strike "development" and insert in lieu thereof "developmental".

On page 184, line 9, insert "Act" immediately after "Training".

On page 184, line 12, insert a comma after "in".

On page 184, line 13, insert a comma after "for".

On page 185, line 6, insert "a" immediately after "as" and strike "sponsors" and insert in lieu thereof "sponsor".

On page 187, line 22, strike "elevate" and insert in lieu thereof "evaluate".

On page 189, line 17, strike "insure" and insert in lieu thereof "assure".

On page 189, insert a comma at the end of line 18.

On page 192, line 4, strike "employment" and insert in lieu thereof "employment".

On page 197, line 18, strike "ensure" and insert in lieu thereof "assure".

On page 197, lines 18 and 19, strike "shall make" and insert in lieu thereof "makes".

On page 199, line 25, strike the comma after "Act".

On page 200, line 5, insert "to enforce such order" immediately after "necessary".

On page 200, line 25, insert "or investigation" immediately after "proceeding".

On page 201, strike line 1 and "or investigation," on line 2.

On page 206, line 2, insert "of" immediately after "and".

On page 207, line 7, strike "with" and insert in lieu thereof "with".

On page 207, line 17, insert "and" immediately after "employment".

On page 208, line 8, strike "agency" each time it appears and insert in lieu thereof "agencies".

On page 211, line 1, strike "such".

On page 213, line 4, strike "every" and insert in lieu thereof "each".

On page 214, line 16, strike "this Act" and insert in lieu thereof "the Comprehensive Employment and Training Act Amendments of 1978".

On page 216, line 11, insert "opportunities" immediately after "training".

On page 217, line 7, strike "this Act" and insert in lieu thereof "the Comprehensive Employment and Training Act Amendments of 1978".

On page 217, section 121(aa) is amended to read as follows:

"Prime sponsors shall provide, where such employment opportunities already exist or

where there is a reasonable expectation of a near-term expansion of such employment opportunities, appropriate employment and training opportunities in the development, conservation and use of solar, hydro-electric, and other alternative energy technologies, especially those clean, safe, renewable resources which may assist communities in resolving energy demand problems, thereby reducing their reliance on conventional nonrenewable fuels. For purposes of this subsection "solar energy technologies" shall refer to "solar energy sources" as defined in section 3 of the Solar Energy Research, Development and Demonstration Act of 1974.".

On page 219, line 11, insert "opportunities" after "training".

On page 221, line 9, strike "under this Act".

On page 233, line 3, strike out "and" and insert in lieu thereof "or".

On page 235, line 21, strike "a" and insert in lieu thereof "an annualized".

On page 235, line 25, insert "as" immediately after "level".

On page 236, strike line 10 and insert in lieu thereof:

"V of the Older Americans Act of 1965, as amended, or a handi-".

On page 238, line 22, strike "means".

On page 239, line 4, strike "cerificate" and insert in lieu thereof "certificate".

On page 242, line 14, insert a comma after "facilities" and strike "and".

On page 242, line 22, strike "needed" and insert in lieu thereof "needing".

On page 243, line 7, insert "employment" immediately after "service".

On page 244, line 13, strike "c" and insert in lieu thereof "a".

On page 250, line 9, strike semicolon.

On page 252, line 3, strike "manpower" and insert in lieu thereof "employment and training".

On page 252, line 12, strike "funds" and insert in lieu thereof "amounts available for parts A, B, and C of this title".

On page 252, line 23, insert at the beginning of the sentence " 'under".

On page 253, line 1, strike "1978)." and insert in lieu thereof "1978)'".

On page 257, line 23, strike "either".

On page 257, line 24, insert "youth" before the period.

On page 262, line 7, insert "at rates" immediately after "not" and insert "that" immediately after "than".

On page 264, line 6, strike "9" and insert in lieu thereof "90".

On page 265, line 7, strike "applicant" and insert in lieu thereof "prime sponsor".

On page 265, line 13, strike "applicant" and insert in lieu thereof "a prime sponsor".

On page 265, line 20, strike "an applicant" and insert in lieu thereof "a prime sponsor".

On page 266, lines 8 and 9, delete the parentheses.

On page 266, line 12, insert "available under this part shall be".

On page 267, line 15, insert before the period a comma and "except as provided in section 122(j)(4)(B)".

On page 270, line 8, strike "obtain" and insert in lieu thereof "retain".

On page 270, strike line 12.

On page 272, line 8, insert "other" immediately after "with".

On page 279, insert at the begining of line 2 "testing the".

On page 279, line 13, strike "the".

On page 279, line 25, strike "support" and insert in lieu thereof "supportive".

On page 280, line 14, insert "and" immediately after the semicolon.

On page 280, line 18, strike "f" and insert in lieu thereof "e".

On page 283, line 3, insert "and" immediately after "activities,".

On page 283, line 4, insert "conducted" immediately after "projects".

On page 287, lines 21 and 22, strike "efficiency" and insert in lieu thereof "efficacy".

On page 292, line 23, strike "project" and insert in lieu thereof "projects".

On page 312, line 18, strike "the" the second time it appears and insert in lieu thereof "this".

On page 326, line 1, strike "such as".

On page 326, line 3, insert "such as" immediately after "displacement".

On page 327, line 1, strike "presonnel" and insert in lieu thereof "personnel".

On page 327, line 17, strike "conpul ory" and insert in lieu thereof "compulsory".

On page 329, line 5, strike "CONSELING" and insert in lieu thereof "COUNSELING".

On page 331, between lines 6 and 7, add the following subsection:

"(1) has attained age fourteen but not attained age twenty-two at the time of enrollment;".

On page 331, line 7 is amended to read as follows:

"(2) is economically disadvantaged or is a member of a family which is economically disadvantaged who requires additional education, training, or".

On page 331, line 13, strike "2" and insert in lieu thereof "3".

On page 331, line 19, strike "3" and insert in lieu thereof "4".

On page 331, line 24, strike "4" and insert in lieu thereof "5".

On page 337, line 23, strike "ther" and insert in lieu thereof "their".

On page 339, line 19, strike "advistory" and insert in lieu thereof "advisory".

On page 339, line 22, strike "Secretary" and insert in lieu thereof "Secretary".

On page 344, line 14, strike "disicipline" and insert in lieu thereof "discipline".

On page 352, following line 25, insert the language which appears on page 372, lines 1 through 25, inclusive, and on page 373, line 1 through 21, inclusive.

On page 360, strike "subsection" and insert in lieu thereof "section 493".

On page 370, line 13, insert "(1)" after "(b)".

On page 372, strike lines 1 through 25, inclusive.

On page 373, strike lines 1 through 21, inclusive.

On page 375, line 2, insert "annualized" immediately after "whose".

On page 375, line 7, insert "(1)" immediately after "122".

On page 375, line 13, strike "Wages to".

On page 375, line 14, insert "wages" immediately after "paid".

On page 382, line 25, strike "employeee" and insert in lieu thereof "employee".

On page 387, line 9, insert a comma after "security".

On page 389, line 8, strike "94-563" and insert in lieu thereof "93-567".

On page 180, in the table of contents for the Act, the caption of Sec. 446 is amended to read "Disregarding payments".

On page 228, sec. 124(a)(2) is amended to read as follows: "A trainee receiving public assistance, or whose needs or income are taken into account in determining such public assistance payments to others, shall receive an incentive, which shall consist of disregarding up to $30 per week of the basic hourly allowance, depending upon the number of hours spent in training, in determining the amount of public assistance payments under Federal or federally assisted public assistance programs."

On page 229, between lines 4 and 5, add a new subparagraph 124(a)(4) to read as follows:

"(4) Participants may be given allowances for transportation subsistence and other expenses incurred in training or employment.".

On page 256, lines 20-23, delete subsection 211(9) and renumber the following subsections accordingly.

On page 314, line 22, at the end of subparagraph 436(a)(5), insert the following clause: "except that the provisions of section 446 of this title shall apply with respect to the disregarding of allowances".

On page 330, line 1, the caption of Sec. 446 is amended to read: "Disregarding payments".

On page 330, line 2, the word "earnings" is amended to read "payments".

On page 241, between lines 23 and 24, add the following new subsection:

"(c) The Secretary may delegate within the Department of Labor authority over the Office established pursuant to section 135 in order to effectively carry out the purposes of such section.".

Mr. NELSON. Mr. President, this is a technical amendment to the committee bill. This technical amendment is to correct minor errors in the drafting and printing of committee bill S. 2570. It makes no substantive changes in the bill. It has been considered and approved by the ranking minority member (Mr. JAVITS).

Mr. JAVITS. It is approved on this side, Mr. President.

Mr. NELSON. I yield back the remainder of my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. Did the Chair understand the Senator from Wisconsin was about to make an unanimous-consent request in behalf of the Senator from Vermont?

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Larry Patton of Senator PROXMIRE's office and Mr. Mike Choukas, of Senator LEAHY'S staff, be granted the privileges of the floor during the course of the pending legislation and any rollcall votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1785

(Purpose: To prohibit individuals who voluntarily terminate full-time employment, without good cause, from being employed in public service jobs)

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk for myself and the distinguished Senator from New Mexico (Mr. SCHMITT) and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself and Mr. SCHMITT, proposes an unprinted amendment numbered 1785.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 223, line 22, add the following new subsection:

SEC. 122. (c) No individual shall be eligible to be employed in a Public Service Employment position, if such individual has voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate no less than the Federal minimum

wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act, as amended.

On page 223, line 23, strike "(o)" and substitute "(p)".

Mr. DOLE. I ask unanimous consent that Ernest Garcia, of my staff, and John Backer, of Senator HAYAKAWA's staff, be granted the privileges of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Will the Senator yield for a unanimous-consent request?

Mr. DOLE. Yes.

Mr. HATCH. I ask unanimous consent that Mr. Ron Docksai, of my staff, be granted the privileges of the floor during the consideration of the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I first want to recognize the chairman of the Committee on Human Resources, Senator WILLIAMS and ranking Republican Senator JAVITS, and the distinguished chairman, Senator NELSON, and the distinguished members of the subcommittee for the consideration that they have given to this complex and important legislation. While I believe there is more to be done, the committee is to be commended for making constructive and important changes to this very important bill.

Mr. President, it is my understanding that the distinguished floor leaders have considered my amendment and have agreed to accept it. I am pleased to have the committee accept my amendment as I believe it contributes to the committee's overall effort in trying to make CETA an effective program.

DOLE AMENDMENT

Mr. President, my amendment simply states that no individual shall be eligible to be employed in a public service position, at any time, under title II and VI if such individual has voluntarily terminated, without good cause, previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under the Federal Labor Standards Act as amended.

PSE'S: A LIMITED APPROACH TO SOLVING UNEMPLOYMENT

Mr. President, an issue that is critical to the success and public support of the CETA program, is whether CETA participants are able to secure nonsubsidized employment after leaving the program. The CETA experience, whether in the form of training or a public service job, should give the individual significant skills to enter the regular private sector job market.

One wonders, however, how serious we are in preparing an individual for meaningful employment in the private sector job market when you consider that of the current CETA budget of $11.5 billion, $8 billion is being spent to fund 725,000 public service jobs. The crucial question in this area is what is the best way of providing people with additional skills, experience, and references so that their chances of entering the private sector will be maximized. As I have stated previously I believe the emphasis of the CETA program should be redirected from public service jobs toward training and developing programs. In this regard, I believe my amendment provides a disincentive in the misuse of public service employment and on the other hand, provides an incentive for those who are lacking job skills and experience to utilize the training programs of CETA.

ON TARGET

Mr. President, this amendment, at first glance, appears to be a rather harsh approach in addressing some of the misuse of public service employment, however, when one considers that this amendment will greatly enhance the focus of PSE's upon individuals who are in most need of employment income, it is very much in line with the original intent of public service employment. That is, to provide a temporary emergency program of public service employment to help ease the impact of high unemployment.

THOSE WHO VOLUNTARILY QUIT THEIR JOBS

Mr. President, this amendment is designed to discourage those who have full-time employment at a wage rate not less than the Federal minimum wage, from voluntarily terminating their employment to acquire a public service job under the CETA program. The intent of public service employment was never to provide alternative employment but to provide employment and income to the hard-core unemployed. I would suggest to those who would voluntarily quit their jobs in search of a higher paying job or a more meaningful job to consider participation in the CETA training programs. Job training and skills development is one of the most effective ways in alleviating hard-core unemployment and not public service employment, a program which was designed to provide temporary unemployment relief to the hard-core unemployed.

Mr. President, this amendment also takes into consideration that there will be, unfortunately, those who will be forced to terminate their employment. In these cases, that is, voluntary termination with good cause, my amendment would not apply.

Mr. President, once again, I just want to say that I am pleased to have the committee accept my amendment.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Does the distinguished Senator have a copy of his amendment? I was partially diverted by another discussion.

Mr. DOLE. I send a copy to the Senator.

Mr. President, while the distinguished floor manager is looking over the amendment, I might say that the determination of what would constitute "good cause" for terminating employment was originally addressed in my amendment by having this determination made as defined by appropriate State unemployment laws.

However, because of the diverse State interpretation of what constitutes "good cause," the need for developing a uniform standard is apparent. Therefore, it is the intent of this amendment to authorize the Secretary of Labor to promulgate the appropriate rules and regulations in defining "good cause." The Senator from Kansas would also suggest that until such rules and regulations are set by the Secretary, "good cause" will be defined as currently stated by State unemployment laws.

That is one area where I believe if the intent is not clear, we can clarify that with a brief change.

Mr. NELSON. I agree with the amendment offered by the distinguished Senator from Kansas. Persons who quit their job in the private sector or in other regular public employment should not participate in the CETA public service employment programs. The amendment by the distinguished Senator from Kansas (Mr. DOLE) would provide that a person who voluntarily quits a full-time job without good cause, and which pays at least the Federal minimum wage, is ineligible for public service employment program provided under the CETA legislation, To implement this amendment the managers of the CETA bill expect the Department of Labor to issue regulations to serve as a guide to prime sponsors as to the meaning of "without good cause," which is the language of the Senator's amendment.

There are many legitimate reasons for persons to leave their private sector jobs. For example, pregnancy, harassment, or moving from one geographical region to another would be such legitimate reasons. I think, with the Secretary having the flexibility to issue the regulations, that the proposal by the Senator from Kansas is a sound proposal. There has never been any intent, and should not be, that people who leave regular employment without good cause, where they are earning the minimum wage, go into a CETA program.

Mr. JAVITS. Will the Senator yield?

Mr. NELSON. Yes.

Mr. JAVITS. Mr. President, I think this is a good amendment and I am ready to accept it. I have just one point which we must make clear.

According to the terms of the bill, and I beg the Senator to turn to page 384, lines 6 through 15 of the bill—I shall just say it, then the Senator can catch up with it.

All the new provisions become effective and will be implemented by rules by April 1, 1979; that is, on or before April 1, 1979. Is our understanding correct, therefore, that in view of the need for the definition to accord with the pattern of the bill, this amendment would also become effective as of April 1, 1979?

Mr. DOLE. That is the understanding of the Senator from Kansas, yes.

I have just one other question. I agree with the distinguished Senator from Wisconsin with regard to the outlook, but in the interim, while the Secretary of Labor is promulgating regulations, would it be fair that we follow "good cause" as defined currently in existing State laws?

Mr. JAVITS. One of the reasons for my asking the previous question was that that becomes academic, because by April 1, he has to promulgate regula-

tions, anyway, so we do not have to worry about that.

Mr. DOLE. I thank the Senator. I understand.

Mr. NELSON. Mr. President, the distinguished ranking minority Member (Mr. JAVITS) and I agree with the amendment. We yield back the remainder of our time.

Mr. DOLE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1786

(Purpose: To provide membership for representatives of handicapped individuals on the prime sponsor's planning council)

Mr. DOLE. Mr. President, I send two amendments to the desk and ask that they be considered en bloc.

Mr. JAVITS. Mr. President, could we hear them before we vote on them?

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes unprinted amendment 1786:

On page 204, line 4, after "veterans' organizations" insert a comma and the following: "representatives of handicapped individuals".

On page 206, line 20, strike out the word "and".

On page 206, line 21, strike out the period and insert in lieu thereof a semicolon and the word "and".

On page 206, between lines 21 and 22, insert the following:

"(vi) representatives of handicapped individuals.

The PRESIDING OFFICER. Does the Senator from Kansas ask unanimous consent that they be considered en bloc?

Mr. DOLE. Yes, I do.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I think I can clarify them. There is no question on the amendments. They are direct and to the point. They amend the administrative provisions of title I to allow for greater participation with the CETA organization by handicapped consumers and representatives.

DESCRIPTION OF AMENDMENTS

My first amendment adds language to section 109 to include representatives of handicapped individuals to the list of members on the prime sponsor's planning council.

In a similar fashion, my second amendment adds representatives of handicapped individuals to the list of members comprising the State employment and training council under section 110.

Mr. President, throughout this bill, mention is frequently made of the needs of handicapped individuals and to the special disadvantages they experience in the labor market. Various sections of the bill clearly reflect the committee's views that handicapped individuals are to be regarded as legitimate recipients of CETA services.

The Senator from Kansas supports this concept, and hopes that in the future, there will be a noticeable increase in the number of disabled persons who are introduced into the labor market via CETA.

NEED FOR AMENDMENTS

As much as I support this concept, and regardless of how much I wish for these employment goals to be realized, the fact remains that the handicapped have always been eligible for CETA jobs. This bill does not change current policy in that respect.

Recognizing this, it then becomes imperative that some changes be made to S. 2570 to encourage greater participation of handicapped workers. I shall not suggest that the two amendments I offer today will remedy all the problems that contribute to the high rate of unemployment among the handicapped. However, by including the handicapped on the prime sponsor's planning council and on the State employment and training council, I feel we are moving a step or two closer to more active involvement of the handicapped within CETA.

IMPACT AND PLANNING STAGES

For the first time, these amendments allow for the handicapped to make recommendations on CETA activities at the administrative level, when reviewing the prime sponsor's plan. As members on the council, handicapped persons will be expected to evaluate and monitor the prime sponsor's employment and training programs. Membership on the council should insure that needs and concerns of the handicapped are represented at a level where critical decisions are made.

Likewise, including the handicapped on the employment and training council will allow them to check the operation of programs and the adequacy of State services. Clearly, my intention with these amendments is to help promote the participation of handicapped individuals in CETA programs.

Mr. President, I believe my amendments make desired improvements in the CETA legislation, and I urge my colleagues to accept them.

Mr. President, the bill clearly reflects the committee's concern about handicapped and I think by adding representatives, we underscore that concern that both the managers and others on the committee have. As far as I know, the amendments are acceptable.

Mr. JAVITS. Mr. President, if the Senator will yield, the amendment is acceptable to this side.

Mr. NELSON. Mr. President, we are agreeable to the amendment. I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. JAVITS. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments were agreed to.

Mr. DOLE. Mr. President, let me say that I have a fourth amendment but we shall try to work that out and offer it later today. The committee report on title VII includes a paragraph that allows representation of community-based organization and clients on the private industry councils.

We have been trying to figure out some way, without mandating representation, particularly with reference to client representation on private industry councils, and I shall be discussing it later today with the distinguished floor managers. Perhaps we can agree on some compromise that will mandate community-based organization representation only, not clients. I can discuss that later and bring up the amendment later. I thank the distinguished floor manager.

AMENDMENT NO. 3527

(Purpose: To tighten eligibility requirements for public service employment programs and to improve the opportunities for public assistance recipients to receive employment and training services)

Mr. BELLMON. Mr. President, I call up amendment No. 3527 and ask that it be considered.

The PRESIDING OFFICER. Is this the amendment on which the Senator from Oklahoma had reserved 2 hours?

Mr. BELLMON. That is correct.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma, for himself and Mr. NELSON, Mr. JAVITS, Mr. MUSKIE, Mr. RIBICOFF, Mr. BAKER, Mr. CHILES, Mr. BARTLETT, Mr. DECONCINI, Mr. DOMENICI, Mr. HATCH, and Mr. DANFORTH, proposes an amendment numbered 3527.

Mr. BELLMON. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 182, line 14, after "rehabilitation" insert a comma and the following: "public assistance".

On page 185, line 9, insert after "shall" a comma and the following: "in coordination with units of general local government,".

On page 189, line 7, after "agencies" insert a comma and the following: "State public assistance agencies".

On page 190, line 23, strike out the word "or".

On page 190, line 23, before the period insert a comma and the following: "or are public assistance recipients".

On page 195, lines 3 and 4, after "education" insert a comma and the following: "State and local public assistance agencies".

On page 204, line 5, after "agencies" insert a comma and the following: "public assistance agencies".

On page 206, between lines 14 and 15, insert the following:

"(iii) one representative of the State public assistance agency;".

On page 206, line 15, strike out "(iii)" and insert in lieu thereof "(iv)".

On page 206, line 19, strike out "(iv)" and insert in lieu thereof "(v)".

On page 206, line 21, strike out "(v)" and insert in lieu thereof "(vi)".

On page 207, line 18, after "rehabilitation" insert a comma and the following: "public assistance".

On page 218, line 21, before the period insert a comma and the following: "and to eligible persons who are public assistance recipients or who are eligible for public assistance but not receiving such assistance".

On page 243, line 20, strike out "and" the first time it appears.

On page 243, line 21, insert before the semicolon a comma and the following: "and public assistance recipient status".

On page 244, between lines 11 and 12, insert the following:

"(6) an estimate of the savings realized in public assistance, food stamps, housing

assistance, medical assistance, and other programs due to the increased employment of recipients of benefits under those programs as a result of the employment and training services provided under this Act.".

On page 260, between lines 19 and 20, insert the following:

"SERVICES FOR PUBLIC ASSISTANCE RECIPIENTS

"SEC. 216. (a) Services for public assistance recipients under this part shall be designed to assist eligible participants in overcoming the particular barriers to employment experienced by such recipients, including lack of basic educational or vocational skills, insufficient preparation for the personal adaptations necessary for labor force participation, inability to find or successfully apply for employment, inability to obtain transportation to employment opportunities, medical problems, inability to obtain satisfactory child care, and lack of appropriate job opportunities.

"(b) The Secretary shall insure that each prime sponsor's plan for serving eligible public assistance recipients under this part includes provisions for—

"(1) coordinating services assisted under this part with other programs assisted under this Act;

"(2) coordinating services assisted under this Act with services provided by State and local public assistance agencies;

"(3) assisting public assistance recipients to develop skills necessary for taking advantage of opportunities to enter or reenter the labor force, including, but not limited to—

"(A) outreach, assessment, and orientation to the local labor market and to occupational and training opportunities available in the community;

"(B) counseling, placement assistance, and job placement;

"(C) technical assistance to employers for establishing flexitime, child-care, job sharing, and other innovative arrangements suited to public assistance recipients;

"(D) activities to overcome sex and welfare status stereotyping in job placement and development; and

"(E) other activities designed to increase labor force participation rates among eligible participants who are able and willing to work but have been unable to secure employment.

On page 263, delete lines 19 through 23.

On page 263, line 15, strike out "(a)".

On page 385, between lines 12 and 13, insert the following:

"(c) The Secretary shall develop information relating to the number of individuals who have attained sixteen years of age and who are members of a family with an income which is equal to or less than 70 per centum, 85 per centum, and 100 per centum of the lower living standard income level for the jurisdiction of each prime sponsor. The Secretary shall prepare and submit, not later than one year after the date of enactment of the Comprehensive Employment and Training Act Amendments of 1978, to the President and to the Congress a report on the information required by this subsection.".

On page 267, line 3, insert "(1)" after "person".

On page 267, line 4, strike out "twelve" and insert in lieu thereof "fifteen".

On page 267, line 5, before the period insert a comma and the following: "(2) or who is, or whose family is receiving aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act, or who is receiving supplemental security income benefits under title XVI of the Social Security Act".

On page 268, line 5, after "older workers" insert a comma and the following: "public assistance recipients,".

On page 292, line 7, after "agencies" insert a semicolon and the following: "State and local public assistance agencies".

On page 294, line 2, strike out "and".

On page 294, between lines 2 and 3, insert the following:

"(L) assurances that special efforts will be made to recruit youth from families receiving public assistance, including parents of dependent children who meet the age requirement of this subpart; and".

On page 294, line 3, strike out "(L)" and insert in lieu thereof "(M)".

On page 301, line 20, before the comma insert a comma and the following: "a description of arrangements with public assistance agencies on the employment of youth from families receiving public assistance, including parents of dependent children".

On page 314, line 10, after "organizations" insert a comma and the following: "public assistance agencies".

On page 353, line 25, after "service" insert a comma and the following: public assistance agencies".

On page 374, line 25, beginning with the word "a", strike out through line 5 on page 375 and insert in lieu thereof a hyphen and the following:

"(A) an individual—

"(i) who has been unemployed for at least ten out of the twelve weeks immediately prior to a determination under this section,

"(ii) who is unemployed at the time the determination is made, and

"(iii) whose family income does not exceed 85 per centum of the lower living standard income level based on the three-month period prior to the individual's application for participation; or

"(B) an individual—

"(i) who is, or whose family is, receiving aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act, or who is receiving supplemental security income benefits under title XVI of the Social Security Act,

"(ii) who has been unemployed for at least ten out of the twelve weeks immediately prior to the determination under this section, and

"(iii) who is unemployed at the time the determination is made.".

On page 178, in the table of contents, after item "Sec. 215." insert the following new item:

"Sec. 216. Services for public assistance recipients.".

Mr. BELLMON. Mr. President, I ask unanimous consent that Mrs. Carol Cox of the Senate Budget Committee be granted the privilege of the floor during debate and votes on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BELLMON. I am pleased to say, Mr. President, that this amendment is cosponsored by the managers of the bill, Senators NELSON and JAVITS, as well as the distinguished chairman of the Budget Committee (Mr. MUSKIE) and by Senators BAKER, RIBICOFF, DANFORTH, CHILES, DOMENICI, DECONCINI, and HATCH.

I am particularly pleased also that my colleague from Oklahoma, Senator BARTLETT, is cosponsoring this amendment, and he, perhaps, will be here later to make some comments about this amendment.

This amendment thus has support on both sides of the aisle. The administration—and, yes, many of the public interest groups—support this amendment. I am encouraged, Mr. President, by this wide acceptance of the amendment. I believe it reflects a broad commitment on the part of Congress, as well as those who have worked with the program to improve CETA.

I have here a letter, Mr. President, from Secretary of Labor Marshall expressing support for my amendment. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
*August 21, 1978.*

HON. GAYLORD NELSON,
*Chairman, Subcommittee on Employment, Poverty, and Migratory Labor, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is to express the views of the Department of Labor with respect to S. 2570, the "Comprehensive Employment and Training Amendments of 1978." The Department strongly supports passage of this bill which would reauthorize the Comprehensive Employment and Training Act of 1973 (CETA) for another four years, while making important changes in the design and management requirements of the programs conducted under the umbrella of CETA.

S. 2570 makes significant improvements in CETA. The bill targets CETA towards those most in need by imposing strict income and unemployment eligibility tests. It limits the length of time any individual can stay in a CETA program so as to eliminate substitution of CETA workers for permanent workers, to increase the number of persons who can be served, and to increase the transition from CETA into regular jobs.

S. 2570 also places strict limitations on the Federal wages that can be paid PSE workers and the amount by which local jurisdictions can supplement the Federal base. This will assure that CETA jobs are not more attractive than career-type jobs in the private economy.

The bill also increases the authority of the Secretary to eliminate fraud and abuse in the CETA program by giving him increased regulatory authority and by allowing him to directly attack violations of CETA by subgrantees and subcontractors of prime sponsors if the prime sponsor takes no action.

S. 2570 simplifies the paperwork burden on prime sponsors. Prime sponsors will have to provide in their comprehensive employment and training plans each year only the information that had changed from the previous year. In addition, the information required of prime sponsors has been limited to that information that is necessary for the Secretary to determine that the program is being conducted efficiently, effectively, and in conformance with the Act's requirements and purposes.

We strongly support the passage of S. 2570. CETA has met the needs of this Nation for a program that will train the structurally unemployed so that they can have marketable skills. At the same time it has served the Nation well in a time of economic crisis by providing employment to those persons who were countercyclically unemployed.

Under the proposed legislation, an increased emphasis would be placed on training as a component of any public service employment. Special programs would be conducted to help individuals facing special disadvantages in the labor market—such as the elderly and the young, the handicapped, displaced homemakers, and those of limited English-speaking proficiency. The Job Corps and the summer youth program would be extended, as would the youth programs that are experimenting with methods for improving the unsatisfactory unemployment situation of this Nations's young adults.

In addition, title VII of the bill would introduce into CETA a major, new attempt to involve the private sector in the design and implementation of programs. Under the new Private Sector Opportunities for the Economically Disadvantaged program, the private sector of the economy would work with prime sponsors to create opportunities for the economically disadvantaged in private industry. This program represents a critical effort to create permanent, career-type jobs in the private sector for those who are not in the mainstream of the economy.

We understand that Senator Bellmon intends to offer a series of amendment to S. 2570 that would increase the integration of CETA with State public assistance offices, would increase services to those on public assistance, and would make clear the eligibility for public service employment of those families receiving aid under title IV (Aid to Families With Dependent Children) and title XVI (Supplemental Security Income) of the Social Security Act. We support the purpose of these amendments and hope they will be adopted.

The amendments also include a proposal to eliminate the requirement that before any funds can be made available for title VI countercyclical PSE, $3 billion must be made available for title II structural PSE. We support this amendment. As we have seen in the past, the needs of the economy for structural or countercyclical PSE job opportunities change over time. We do not believe that the authorizing legislation should lock CETA into so rigid a formula. We believe it would be preferable to leave the amounts for title II and title VI to the flexibility of the budget and appropriation processes.

Finally, we are opposed to any amendment that may be offered to remove the Young Adult Conservation Corps (YACC) from the jurisdiction of the Labor Department. The current arrangement, whereby the Department makes referrals to the Departments of Agriculture and the Interior for the program and also promulgates certain regulations within our specific expertise and jurisdiction, has created a strong and smoothly run program. We believe that this program stability and the benefits generated by the central coordination of all employment and training policies in the Department of Labor are essential to maintain.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAY MARSHALL,
*Secretary of Labor.*

Mr. BELLMON. Mr. President, I have a brief description of the amendment, an explanation, and I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION OF PROPOSED FLOOR AMENDMENT TO S. 2570, COMPREHENSIVE EMPLOYMENT AND TRAINING ACT AMENDMENTS OF 1978

The following is a summary of the changes the amendment would make in S. 2570.

ELIGIBILITY FOR PUBLIC SERVICE (PSE) JOBS UNDER TITLES II AND VI

Eligibility for the Title II PSE jobs—which are intended to relieve structural unemployment—would be limited to persons receiving AFDC or SSI benefits, and persons unemployed 15 weeks or more whose family incomes do not exceed 70 percent of the Bureau of Labor Statistics lower living standard for urban households. (The bill as reported by the Human Resources Committee would require 12 weeks of unemployment and would not make AFDC and SSI recipients categorically eligible for Title II jobs.)

For Title VI PSE jobs—intended to relieve cyclical unemployment—persons hired would have to be unemployed for ten out of the previous twelve weeks and either have family incomes of less than 85 percent of the Bureau of Labor Statistics lower living standard, or be receiving SSI or AFDC. (The Title VI eligibility provisions in the reported bill require ony 45 days of unemployment and do not make AFDC and SSI recipients categorically eligible.)

HIGHER PRIORITY FOR EMPLOYMENT OF PUBLIC ASSISTANCE RECIPIENTS

This amendment will emphasize throughout the CETA legislation that public assistance recipients are a high priority group for CETA employment and training services. These changes will require the Department of Labor, States and CETA prime sponsors to focus in their CETA planning and operations on steps to expand work and training opportunities for AFDC recipients.

ELIMINATION OF APPROPRIATIONS-FORCING PROVISIONS

This amendment will eliminate a provision which would require Congress to appropriate at least $3 billion for public service jobs for the structurally unemployed under Title II of the bill before any money was appropriated for counter-cyclical public jobs under Title VI. The amendment will leave Congress free to decide the levels and mix of structural and counter-cyclical public jobs in each year's appropriations process.

JUSTIFICATION FOR AMENDMENTS

These amendments will have the following benefits:

1. They will speed the re-orientation of CETA resources from attacking cyclical employment to providing increased employment and training services to people who are structurally unemployed. This shift, which is appropriate in light of the improved unemployment picture in the nation, is already contemplated by the reported bill; these amendments will emphasize and expedite this re-orientation.

2. By targeting public service jobs under Titles II and VI on more narrowly defined groups, the amendments will help minimize "skimming" more of the money will be spent in employing people who would not be able to obtain other jobs.

3. Recipients of cash public assistance benefits will receive a substantially larger share of the job and training opportunities under CETA pursuant to these amendments. The unemployment rate for employable public assistance recipients is in the 80% range. These amendments recognize that this group is at the end of the hiring line, despite the fact that they are required by provisions of the Social Security Act to register for work and accept work or training when offered. The amendments take account of the fact that, despite the emphasis placed on employment of welfare recipients in the 1976 amendments to CETA, only about 10% of total enrollments in the CETA public service employment programs are present or former recipients of AFDC. Employment of larger numbers of public assistance recipients in CETA public service jobs will help reduce expenditures for public assistance and food stamps.

4. Congress will be able to decide in the annual appropriations process the number of public service employment slots and training opportunities which should be provided in the next fiscal year and what the mix should be between jobs and training focused on the structurally unemployed and on the cyclically unemployed.

Mr. BELLMON. Mr. President, under my amendment, eligibility for the title II PSE jobs—which are intended to relieve structural unemployment—would be limited to persons receiving AFDC or SSI benefits, and persons unemployed 15 weeks or more whose family incomes do not exceed 70 percent of the Bureau of Labor Statistics lower living standard income. (The bill as reported by the Human Resources Committee would require 12 weeks of unemployment and would not make AFDC and SSI recipients automatically eligible for title II jobs.)

For title VI PSE jobs—intended to relieve cyclical unemployment—persons hired would have to be unemployed for at least 10 of the previous 12 weeks and either have family incomes of less than 85 percent of the Bureau of Labor Statistics lower living standard, or be receiving SSI or AFDC. (The title VI eligibility provisions in the reported bill require only 45 days of unemployment and do not make AFDC and SSI recipients automatically eligible.)

This amendment will also emphasize throughout the CETA legislation that public assistance recipients are a high priority group for CETA employment and training servcies. These changes will require the Department of Labor, States, and CETA prime sponsors to focus in their CETA planning and operations on steps to expand work and training opportunities for AFDC recipients.

Finally, this amendment will eliminate a provision which would require Congress to appropriate at least $3 billion for public service jobs for the structurally unemployed under title II of the bill before any money was appropriated for countercyclical public jobs under title VI. The amendment will leave Congress free to decide the levels and mix of structural and countercyclical public jobs and training programs in each year's appropriations process.

These amendments will have the following benefits:

First. They will speed the reorientation of CETA from attacking cyclical unemployment to providing increased employment and training services to people who are structurally unemployed.

Second. By targeting public service jobs under titles II and VI on more narrowly defined groups, the amendments will help minimize "skimming." More of the money will be spent in employing people who would not be able to obtain other jobs.

I want to stress to the managers of the bill that I believe it is critical that the Senate conferees not accept the much looser eligibility standards contained in the bill now pending in the House. This would, in my view, undermine the necessary targeting of CETA jobs and would make at least this Senator much less willing to support a large CETA program.

Third. Recipients of cash assistance will receive a substantially larger share of the job and training opportunities under CETA. The unemployment rate for employable recipients is in the 80 percent range.

Mr. President, I would like to reemphasize that point.

The unemployment rate for employ-

able recipients is in the 80 percent range.

This amendment is intended to closely target CETA jobs to that particular group of people.

Employment of larger numbers of public assistance recipients in CETA public service jobs will help reduce expenditures for public assistance and food stamps.

Fourth. Tighter targeting and increased emphasis on hiring of welfare recipients will reduce the inflationary effects of public service employment.

Fifth. Congress will have better control of the CETA program, as the mix of jobs and services (countercyclical and structural) will be subject to annual review through the budget and appropriations processes.

It would be impossible to discuss reauthorization of the Comprehensive Employment and Training Act (CETA), Mr. President, without adressing ourselves to the management failures and the abuses of the existing programs. We read about scandals in CETA daily, if not in the Washington Star or Washington Post—then in our hometown papers.

I am very hopeful that the passage of S. 2570 will mark the beginning of a new and better CETA, Mr. President. S. 2570, as reported by the Human Resources Committee, addresses many of the concerns we all share about the CETA program.

I commend the committee, and the staff of the committee, for the fine work that has been done in bringing S. 2570 to the Senate floor.

This amendment, Mr. President, will build upon the good work begun by the Human Resources Committee in the reported bill. It will tighten eligibility criteria for public service jobs under titles II and VI of CETA. It will improve access for welfare recipients to these jobs—and produce savings in cash assistance programs. Finally, Mr. President, this amendment will delete a requirement, which is included in the reported bill, for appropriation of $3 billion for public service jobs under title II, before any funds can be made available for title VI.

Mr. President, I urge adoption of this amendment.

While many of us have criticized the CETA programs, Mr. President, few of us will deny the need for a continued, concerted effort to provide employment for those of our citizens who suffer the burdens of unemployment—particularly those who are chronically out-of-work, the structurally unemployed.

I am prepared to argue, Mr. President, that CETA—with its basic commitment to decentralized delivery of services to the unemployed—is basically sound in concept. The problems of the unemployed in Oklahoma City, or in Tulsa, are different from the problems of the unemployed in New York City. A different mix of programs will make sense in different labor markets. Only by providing for local planning and priority setting can we hope to meet these different needs.

Federal funding for a program such as CETA with a decentralized delivery system presupposes, however, that the Federal Government has the responsibility to set and convey to State and local prime sponsors clear priorities and goals. It also presupposes a commitment on the part of the Federal administering agency (DOL) to see that these priorities and goals are met. This amendment, Mr. President, both clarifies priorities and it gives some very clear directions to the Department of Labor. Together with other amendments on which some of my colleagues have taken the lead, particularly Senator DOMENICI's antifraud and abuse amendment, which I cosponsored, this amendment can help turn CETA into a program which we can view with pride instead of embarassment.

THE SUBSTITUTION PROBLEM

One of the criticisms most often leveled at the CETA program is that State and local governments do not use public service funds to create new jobs; rather, that they use these funds to pay people they would have hired anyway to do things they would have done—absent this funding—with State/local dollars. This is referred to as "substitution." When CETA was last extended, in 1976, I offered an amendment which required a study of substitution. That study is still underway, although we received a preliminary report on it last March.

The National Commission for Manpower Policy contracted with the Brookings Institutions for a major field review of substitution in the CETA program—pursuant to my amendment. Preliminary results indicate that substitution is much less widespread in CETA than some have charged.

In its preliminary report, Brookings concluded that about 18 percent of CETA public service employment funds went to pay for positions they would label as out-and-out substitution. Brookings also concluded that about 30 percent of the funds were being used to fill positions which would otherwise have been left vacant because of severe State or local fiscal problems. This Brookings report is considerably more favorable to CETA than some other estimates of substitution rates—some had estimated substitution as high as 90 percent. Mr. President, even the substitution rates reported by Brookings are counterproductive in terms of the objectives of CETA. The Congress, of course, wants and expects that public service jobs created under CETA will be additional jobs—that they will represent a real increase in employment opportunities.

BETTER TARGETING OF CETA JOBS

To the extent that we target CETA jobs on the long-term, hardcore unemployed, we make substitution less and less likely, Mr. President. If State and local governments must hire people under CETA whom they would otherwise not hire, they are unlikely to substitute very much if at all. This amendment will tighten targeting by lengthening the required duration of unemployment, before a person will be eligible for a job under CETA as follows: In title II, the reported bill would require 12 weeks of unemployment. This amendment requires 15 weeks; in title VI, the reported bill requires 45 days of unemployment. This amendment requires unemployment during 10 out of the previous 12 weeks.

Tighter eligibility standards for CETA public service jobs has been strongly recommended by the National Commission on Manpower Policy in its latest annual report.

The Commission, Mr. President, would go even further. They recommend use of the eligibility criteria this amendment proposes for title II counterstructural jobs for title VI countercyclical jobs as well. I have been convinced, however, that in the countercyclical part of the jobs program, there is merit in having somewhat less restrictive eligibility standards so that in areas suffering especially high unemployment the working poor will become eligible for CETA jobs before they become destitute.

Tighter targeting has another important benefit, Mr. President. Most economists agree that, as unemployment declines the risk that public service jobs programs may be inflationary increases. Economists also agree, however, that to the extent such jobs are targeted on the long-term, low-skilled, structurally unemployed, that they do not place significant pressure on private sector wages and, therefore, they are much less inflationary. This is of major importance right now, as we must be very concerned about the potential inflationary impact of such programs as well as about the unemplovment problems these programs are designed to help solve.

A recent CBO analysis indicates that tighter targeting through lengthening the required weeks of unemployment is the most efficient way of reducing the eligible population for CETA.

I want to note at this point, Mr. President, that this amendment proposes no change in the income eligibility limits recommended by the Human Resources Committee. The reported bill provides that persons obtaining title II public service jobs must be from families with incomes below 70 percent of the Bureau of Labor Statistics lower living standard. This currently averages about $7,500 for a family of four. The bill provides that the family income eligibility for title VI countercyclical jobs will be 85 percent of the Bureau of Labor Statistics lower living standard—about $9,100 for a family of four.

I was initially inclined to try to move the title VI standard back to the 70 percent level. As with the weeks of unemployment standard, however, we become convinced that somewhat more flexibility is appropriate for countercyclical jobs.

PRIORITY FOR WELFARE RECIPIENTS

This amendment will build into CETA a set of unmistakably clear signals that welfare recipients are a high priority group for CETA training and public service jobs. My concern about this group of people—who have an unemployment rate of about 80 percent—stems both from the Budget Committee's efforts to identify savings in welfare programs as a result of the expansion of CETA, and from the work several of my colleagues and I have done on welfare reform during the past year.

One of the major dilemmas facing

those of us who would address the serious problems in the welfare system in this country today is the question of how to get more welfare recipients onto payrolls. To the extent that we can increase the participation of welfare recipients in the CETA program, we will reap the short-term benefit of reduced payments in existing cash assistance and food stamp programs; and we will help alleviate the perception that welfare reform presupposes the creation of huge numbers of new public jobs—on top of those funded under CETA.

This bill, as altered by the amendment we are now considering, will move the CETA program a considerable way in the directions pointed to in the welfare reform proposals contained in S. 2777. The focus on welfare recipients added by this amendment coupled with the private sector job voucher testing directed by title III of the bill, and the President's private sector initiatives incorporated in title VII of the bill, will, I believe, significantly increase the contribution CETA makes to improving the employability and increasing the employment of welfare recipients.

I am also hopeful that the tax bill we will soon consider will contain a targeted tax credit for employers who hire welfare recipients, unemployed youth, and handicapped persons. This will also help increase the private sector work opportunities for these groups. Congress thus has two big opportunities this year—the CETA bill and the tax bill—to adopt "reforms" which can help substantially on the "welfare problem" in this Nation.

ELIMINATION OF APPROPRIATIONS-FORCING PROVISIONS

In addition to tightening eligibility requirements and to increasing the emphasis on hiring welfare recipients under CETA, Mr. President, this amendment will eliminate the mandatory minimum funding requirement for title II public service jobs included in the reported bill. S. 2570, as reported by the Human Resources Committee, would require an appropriation of at least $3 billion for public service jobs under title II, before any funds could be made available for title VI.

In its report on the first budget resolution, the Budget Committee expressed its opinion that the time had come for a shift in the focus of Federal employment and training policy, from countercyclical to structural unemployment. The Budget Committee reaffirmed this position, in its report on the second budget resolution. As you would expect from my remarks on targeting, Mr. President, I wholeheartedly concur in this position.

The Human Resources Committee agreed with the Budget Committee, in this regard, Mr. President, and the reported bill reflects the Human Resources Committee's commitment to a major shift in emphasis in the CETA program from countercyclical to structural objectives.

S. 2570, as reported, groups most of the programs to serve the structurally unemployed in a new title II. The new title includes the training and employability development programs which are funded under title I of the existing law; and, as envisioned by the Human Resources Committee, it would include nearly one-half (or about 300,000 of the existing public service jobs. It couples these public service jobs for the structurally unemployed with training opportunities, counseling and placement efforts. As envisioned in the reported bill, by the end of the upcoming fiscal year, we will have the largest structural public service jobs program since the Great Depression.

As I have already stated, I believe the Human Resources Committee has presented us with a good plan for an orderly shift from the countercyclical focus of the existing programs to an emphasis on the needs of the structurally unemployed; I compliment the Human Resources Committee for its work.

S. 2570, in an effort to assure that the structurally unemployed receive the priority the Human Resources Committee feels they should receive, requires an appropriation of at least $3 billion for public service jobs under title II, before any funds can be made available for jobs under title VI (the proposed countercyclical title). While I wholeheartedly support the intent of this provision, I cannot support this kind of appropriations-forcing provision. We do not reconsider authorizing legislation annually. We do review priorities annually, through the budget and appropriations processes; and the Budget and Appropriations Committees, and the Congress, should not, I believe, be bound in this annual review by mandatory minimum appropriations provisions. Such provisions have virtually the same effect on the budget and appropriations processes as have entitlements. We already have far too little discretion in the Federal Budget—far too many "uncontrollables." For this reason, my amendment will strike this provision from S. 2570.

Lest anyone misunderstand, however, I shall support the policy which underlies the very position I move to strike. I shall resist, as we consider the second concurrent resolution on the budget, and when the Appropriations Committee considers funding for CETA, any effort to shortchange the structural programs under CETA in order to provide a higher level of jobs under the countercyclical title—title VI. I believe that the time has come to phase down countercyclical jobs—if the concept of a countercyclical jobs program which phases up and down with national unemployment is to have any credibility; but I sincerely hope the necessity of this phase down does not muddy the waters, with respect to our consideration of the needs of the structurally unemployed.

MANAGEMENT IMPROVEMENTS AND CONTROL OF FRAUD AND ABUSE

While I have the floor, Mr. President, let me say something about other amendments to this bill, of which I am a cosponsor. I enthusiastically support the amendment Senators DOMENICI and CHILES will offer which will strengthen the bill's antifraud and abuse provisions.

S. 2570, as reported, includes a number of antifraud and abuse provisions. It clarifies the responsibilities of the Secretary of Labor—particularly his responsibility to act promptly where fraud and abuse are alleged and his responsibility to withdraw funding and require repayment, where prime sponsors have misspent CETA funds. It makes it a criminal offense to misspend, embezzle, or otherwise make fraudulent use of CETA funds.

There is one major deficiency, I believe, in the antifraud and abuse provisions of the bill and that deficiency will be remedied by the Chiles-Domenici amendment. The Comptroller General, in a recent report on CETA, questions the ability of the existing CETA system to verify the eligibility of people enrolled in CETA jobs and training.

In my own State of Oklahoma, as well as here in the District of Columbia, we have had very disturbing recent reports of apparently ineligible people being hired in CETA jobs. We must end these abuses and make sure that the CETA jobs go to people who would otherwise be unemployed.

The Domenici-Chiles amendment, Mr. President, will establish a division of monitoring and compliance in the Office of the Secretary of Labor. It will charge that office specifically with investigation and action, in suspected cases of abuse or impropriety in the selection of participants. It will require the Secretary to satisfy himself that each prime sponsor's plan includes procedures for monitoring eligibility, in the prime sponsor's directly run programs, as well as in each subcontractor and subgrantee program. It will require the Secretary to establish national procedures to assure that participants are eligible. Finally, Mr. President, it will make it a criminal offense, subject to a fine of up to $10,000, for any individual to knowingly hire an ineligible participant in CETA.

I mention this amendment now Mr. President, because I believe that the adoption on my amendment—now before the Senate—and the adoption of the Domenici-Chiles antifraud and abuse amendment—when it is called up for consideration, promise a CETA program which will accomplish the objective of meeting the needs of the Nation's unemployed—particularly the structurally unemployed who must be our highest priority; and it will give us a CETA program free from scandal.

Mr. President, I urge the adoption of these amendments.

Mr. BELLMON. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Wisconsin.

Mr. NELSON. Mr. President, I ask unanimous consent that Sara H. Turner of Senator ALLEN's staff be granted the privilege of the floor during the course of the consideration of the pending legislation and the rollcall votes thereon, along with Mr. Tom Altmeyer of the committee staff during consideration of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, I commend the distinguished Senator from Oklahoma. He has carefully drafted some modifications of the legislation

which are directed toward the objectives of the legislation. Speaking for myself, I think they are improvements. I am prepared to accept the amendment.

The Bellmon amendments would have the following impact:

First. Special consideration is to be given by prime sponsors to public assistance recipients and persons eligible to receive public assistance in filling public service employment jobs;

Second. Categorical eligibility is given to SSI and AFDC recipients in public service employment programs—titles II and VI;

Third. The required number of weeks of unemployment to be eligible for public service employment in titles II and VI is increased;

Fourth. Public assistance agencies and recipients are given increased attention in the planning and implementation of the CETA programs; and

Fifth. The provision that the first $3 billion made available for public service employment is to be used for the structural public service employment program is eliminated.

First. This amendment would modify section 122(c)(1) of the committee bill. Section 122(c)(1) provides that special consideration in filling public service jobs shall be given to eligible persons who are the most severely disadvantaged in terms of their length of unemployment and their prospects for finding employment and to persons who are Vietnam-era veterans. The proposed amendment would provide special consideration in filling public service jobs to eligible public assistance recipients and to persons who are eligible for public assistance, but who are otherwise eligible to participate in public assistance programs.

Public assistance recipients have a higher rate of unemployment than any other group of persons in this Nation. Yet, in fiscal year 1977 less than 14 percent of all title II public service job holders were public assistance recipients. That same year less than 18.5 percent of all title VI public service jobholders were public assistance recipients.

It is sound policy to provide for the employment needs of public assistance recipients in CETA. Not only would State and local governments benefit from the savings which would result from the transfer of public assistance recipients to federally assisted employment programs, but CETA would be serving persons who are most disadvantaged in their prospects of finding unsubsidized employment.

Second. S. 2570 provides that in order to be eligible for public service employment programs a person must both meet an income test and be unemployed for a certain length of time.

The proposed amendment would allow AFDC and SSI recipients to participate in title II and VI public service employment programs without regard to the number of weeks which they have been unemployed.

This amendment is similar to the eligibility provisions of the current title VI public service employment program. The 1976 CETA amendments provided that an AFDC recipient who meets the income eligibility requirement is eligible for public service employment services without regard to the number of weeks that person has been unemployed.

Under the Bellmon amendment, SSI recipients would be added to the list of groups for which the number of weeks of unemployment are disregarded.

By immediately employing AFDC recipients and SSI recipients, public assistance transfers may be reduced. Further, these persons will be given an opportunity to become gainfully employed before they begin to lose their ability to gain meaningful employment as a result of their protracted welfare status.

Third. The proposed Bellmon amendment also would lengthen the required weeks of unemployment for purposes of determining eligibility for public service employment from a minimum of 12 weeks in title II to 15 weeks; and from a minimum of 45 days to 10 out of 12 weeks in title VI.

These amendments are intended to tighten eligibility requirements for these programs and thereby help to assure that only those who are having the greatest difficulties in obtaining unsubsidized employment are served.

Fourth. The Bellmon amendment provides for a variety of other modifications to S. 2570 which will increase the coordination of State and local public assistance agencies and programs with CETA programs. These amendments also will assure that the employment related needs of public assistance recipients will be appropriately considered in development and implementation of CETA programs.

Fifth. The Bellmon amendment also would delete a provision in S. 2570 which directs the Secretary to first make available from the funds available for public service employment in titles II–D and VI $3 billion for the title II–D program.

The Human Resources Committee included this provision in order to insure that the structurally unemployed persons are given appropriate services under CETA. However, the committee at the request of the chairman and ranking minority members of both the Senate Budget and Appropriations Committees—Senators MUSKIE, MAGNUSON, BELLMON, and YOUNG—have agreed to delete this provision. The committee does not agree to this amendment on any substantive ground. However, in order to reach a compromise with the Budget and Appropriations Committees, the Human Resources Committee will comply with their request.

Mr. NELSON. I would make one comment. I would have preferred to leave in the legislation the provision that the first $3 billion allocated for public service employment be used for structural public service employment. However, I understand why there is some objection to that.

My view has been and is that in the long pull the most important objective of this legislation is to get people who are structurally unemployed the opportunity for employment and training, and the full-time jobs in the private sector.

I recognize also the importance of the countercyclical parts of the bill.

In any event, I understand why the Appropriations Committee prefers not to have—and the Senator from Oklahoma prefers not to have—us specifically identify the amount. There is a sound legislative rationale for that, and, in addition, the Carter administration itself opposes it.

Therefore, I am prepared to accept the total amendment. I commend the Senator from Oklahoma for doing a very careful job of improving the language in the legislation.

Mr. JAVITS. Mr. President, I yield to the Senator from Maine.

Mr. MUSKIE. I thank the Senator from New York.

I express my appreciation to the Senator from Oklahoma and the distinguished floor managers of the bill for reaching agreement on the Bellmon amendment, which I think is a constructive contribution to the bill.

Mr. President, I support the Bellmon amendments to the Comprehensive Employment and Training Act.

Since the inception of the budget process in 1975 the Budget Committee has been actively involved in employment and training issues because of the important role these programs play in fashioning a congressional economic policy.

In the first budget resolution for fiscal year 1976 the committee supported expansion of public service jobs as part of a mix of temporary recovery programs designed to alleviate the employment effects of economic recession.

Employment issues and employment programs were again a major focus during the markup on the first concurrent resolution for fiscal year 1977. During Senate Budget Committee debate, Senator CRANSTON offered a proposal developed in cooperation with Senator KENNEDY and MONDALE to provide public service jobs targeted on the low-income, long-term unemployed. This proposal was the forerunner of the 1976 amendments to title VI of CETA.

The committee went on record at that time in support of the concept of targeted public service jobs. The committee stated:

> Although Committee members did not formally endorse any specific public service program, the discussion of funding for such programs focused on the possibility of budget savings that would result from temporary programs with low unit costs that would concentrate on hiring low-income household heads now drawing unemployment insurance or other public benefits.

In February of 1977, as a result of continuing economic problems the committee considered a third budget resolution. There was extensive debate among committee members at that time regarding the increasingly structural nature of the unemployment problem as the unemployed population became increasingly comprised of the untrained, inexperienced, young, minority, and female. The third budget resolution allowed an additional $1.5 billion for youth employment, expanded public service jobs funded under CETA from 310,000 to 725,000, and provided significant expansion

in programs targeted on older Americans and other special populations. The committee report stated:

Much of today's unemployment problem is not susceptible to the macrostimulus cure. Changing rates of participation by various groups within the labor force and changing mixes of skill requirements dictate that a more targeted approach to training and job placement is the only means of significantly reducing unemployment for a meaningful length of time. Only a relatively small portion of the existing unemployment rate appears to be cyclical in nature, about 1½ percentage points. The remainder is primarily structural, requiring job training or retraining.

In the first budget resolution for fiscal year 1978 the committee again went on record in support of targeting. The report stated:

The Committee continued its support for provisions to target CETA Title VI public service jobs on the chronically unemployed and low income individuals and recommends that any reductions in jobs that occur as the recovery proceeds be taken in nontargeted public service employment.

During consideration of the first budget resolution for fiscal year 1979 the committee noted that economic conditions had improved and that there was a reduced need for countercyclical employment subsidies. The committee recommended at that time "that half the current spending effort for public service jobs be directed toward employment and training services for the structurally unemployed."

The amendment proposed by Senator BELLMON and the floor managers of the bill further strengthens the targeting in our employment and training programs. These amendments provide individual eligibility requirements more nearly consistent with current law than those included in the reported bill. These amendments also provide categorical eligibility for welfare recipients and additional language that makes welfare recipients a high priority clientele for employment and training services throughout the CETA legislation.

An additional amendment would eliminate provisions requiring Congress to appropriate at least $3 billion for public service jobs targeted on the structurally priority implicit in this provision, I cannot support the provision—and I am glad that the Bellmon proposal has dealt with it—because it reduces the discretion of the Appropriations Committee in providing CETA funding.

I encourage Senators to support these amendments. I am delighted that agreement has been reached to accommodate what I think are the essential thrusts supported by both the floor managers of the bill and their committee and the Budget Committee.

I do not really believe this amendment reflects a sharp division in objective by the two committees.

Mr. JAVITS. Nothing Senator MUSKIE could have told me would please me more than the fact that he recognizes the same priority. Knowing how we do business around here, frankly, the fact that the priority has been eliminated by the Bellmon amendment—which I hope will be accepted, because I agree with it thoroughly—does not disturb me a bit, so long as the chairman and the ranking minority member of the Budget Committee feel that we have pointed out the right way.

I have every confidence that the Appropriations Committee will see it the same way. It is the substance that counts with me, not the pride of authorship, but that is the way we wrote it.

How does the Senator from Oklahoma feel about that priority?

Mr. BELLMON. Mr. President, I agree with the comments of the distinguished Senator from New York.

I feel that the Appropriations Committee and some of the Budget Committees share the same priority preferences with the Human Resources Committee, and I am sure there will be no problem in working out satisfactory funding levels.

Mr. JAVITS. I thank both Senators. Their help is far more important to me than the language of the bill.

I think it is useful to refer for an instant to how this came about. I spoke before the Conference of Mayors late in 1977, and the demand there very clearly by the people who are the prime sponsors—they want this program—was that they were deeply concerned that it would be cut materially and indiscriminately, realizing that one of the major problems of our country, without regard to the fact that unemployment has come down from well over 7 to 6 percent, was the structurally unemployed. That is an endemic problem in America.

They impressed this on me so much that when I came back, I put the bill in that way. That is the genesis of our approach.

Mr. MUSKIE. I think another point should be made clear in this dialog, and it is this: There is a tendency in some quarters to believe that with unemployment down to 6 percent, with many of the changes in the labor market, unemployment as a problem has been reduced to a much less important one, and I could not disagree more. When we get down to 6 percent, what we really have done is dramatize the role of structural unemployment in creating social problems, problems of instability, and problems of lack of opportunity for minorities and the unemployed that we should not overlook. I could not agree more with the Senator.

I assure the Senator that in the discussions on the second budget resolution, structural unemployment was the emphasis of the Budget Committee, and there really is absolutely no distinction between us.

With all of us watching the appropriations levels, we should keep our efforts targeted in the direction the four of us agree upon.

Mr. JAVITS. I expect that Senator BENTSEN's amendment will help us with a very informed appraisal of the finite details of the economic scene.

I say to both my colleagues that one thing I have learned—and I think members of the committee will agree with me, but I will just speak for myself—in all this manpower problem of our country is that the problem of unemployment has a triple detailing: One is the division among the unemployed. What kind are they? I will speak to that in an instant—and I will not detain the Senate long—about the relative income levels, especially of the working poor, which are recognized by Senator BELLMON's amendment.

Second, we have learned that training is a critical point. I say to Senator MUSKIE and Senator BELLMON that it would amaze many of us to realize that some people have to be trained to set the alarm, get up at 6:30, put their pants on, have breakfast, and go to work. It is amazing, but it is true. It is almost a cultural deficiency.

Third, as to education, I doubt that I will ever see the day, but I wish to see every plant at GM, Ford, and IBM also a university. There is not any reason in the world why it should not be so, especially within this century when we are going to require, and Senator BENTSEN is well acquainted with this, 25 percent of the working force, that is a working force of almost 100 million, to be professional or paraprofessional. That is how technologically advanced we will be in the requirements. The hewers of wood and drawers of water are for the birds. That is old time stuff. There are very different requirements now for any kind of employment that pays anything that is worth living on.

So those are the points which we must keep abreast of here if we are going to do manpower bills which really make sense.

Mr. President, I should just comment very briefly on only one other thing. The targeting to the structurally unemployed we have already covered, I think, very effectively, and I am very satisfied with that. I do wish to call attention to the fact that we are emphasizing, both in the program and by this amendment, the working poor, those who are in the lower economic levels because that is what this is all about. And Senator BELLMON's amendment has various provisions which deal with that, and they are entirely acceptable to us. Senator NELSON has already indicated that.

But I wish to point out also the very study that Senator MUSKIE referred to, a study of the Congressional Budget Office issued in August 1978, which shows that under our bill the universe which is being reached is reduced from what it is under current law, some 41 million workers, to 8.2 million workers. In other words, we are reducing that universe by almost 80 percent. Then these amendments which Senator BELLMON is sponsoring further help us to reduce and consolidate that position, and I think that is what the position should be.

I am well aware of Senator BELLMON's welfare reform which will tie into this, and we are moving in that direction.

I do not want it exclusive any more than we want to send only poor children to one school, and also we wish to encourage the working poor, those who are a little bit above the absolute poverty level, so they are not welfare clients.

But we certainly must narrow those parameters because the purpose of public service employment is to reach those not

only disadvantaged by lack of a job or training, but also disadvantaged by economic conditions.

I think these amendments are very constructive, and I am very pleased, especially at the high degree of understanding, which to me is even more important than cooperation, on the part of Senator BELLMON and Senator MUSKIE which dictated the relationship to our staffs and enabled us to work this out. The amendment is acceptable to me, Mr. President, and on this side I believe it is divisible, so I ask unanimous consent that it may be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. BARTLETT. Mr. President, I would like to congratulate my colleague, Mr. BELLMON, for his efforts to restrict many of the abuses that have occurred under the Comprehensive Employment Training Act. I am pleased to join as cosponsor of his amendment. Senator BELLMON has already spent a good deal of time establishing the justification for his amendment. He has described the national problems which have resulted in many of the measures contained in the Human Resources Committee bill, and the amendment which my colleague has introduced.

I would like to take the opportunity to relate some of the specific examples in my own State of Oklahoma that would have been prevented if the Bellmon amendment had been part of the existing act.

Certainly Oklahoma has had its successes, and many people who might not have had an opportunity to work or learn a job skill have been assisted. Oklahoma is not the only State that has had problems in administering the CETA program, but I think we can learn from the incidents in Oklahoma, and correct the deficiencies in the law to insure that people who really need the employment and training are reached.

It is important to note that this amendment does not make it more difficult for a long-term or chronically unemployed person to obtain a CETA position. The amendment does however, make it more difficult for persons who are not really in need of assistance to become a CETA employee, or for a sponsor to divert the funds to political purposes.

In a recent report concerning the Oklahoma CETA program to the Federal Bureau of Investigations, 50 instances of possible violations of CETA have been noted. These violations include failure to establish a priority system for hiring which led to nepotism, favoritism, patronage and preselection.

Specifically, preselection is the creation of a job for a specific person rather than creating a necessary job for which a recruiting procedure among eligible applicants is carried out.

The result of this patronage preselection has been the elimination from eligibility of many qualified persons for which the CETA program was intended.

Senator BELLMON's amendment specifically targets recipients of supplemental security income and aid for dependent children for the receipt of public service employment jobs under title 2 of the act. Title 2 is directed at the chronically unemployed. Also targeted are those individuals unemployed for more than 15 weeks whose family income does not exceed 70 percent of the Bureau of Labor Statistics' lower living standard for urban households.

Further, for title IV public service employment jobs, similar methods are used with minor modifications to address the cyclical unemployment problem.

These strategies insure that such occurrences as local politicians obtaining jobs for their relatives will be impossible.

Senator BELLMON's amendment directs the Department of Labor, States and prime sponsors to focus planning and operations on steps to expand work and training opportunities for AFDC recipients. This makes it even more difficult for nepotism abuses like those in Oklahoma to occur.

All of these provisions would made it extremely difficult to "preselect" or to fail to list all the job opportunities available under the CETA program. These practices have allegedly occurred in Oklahoma and have resulted in loss of jobs to those who truly are in need.

I do not now whether a program such as CETA can ever be made to operate without the abuses that have occurred in Oklahoma and other States. It is the type of program that entices some people to indulge their public trust to the fullest extent. However, I believe that Senator BELLMON's amendment will provide significant redirection to the entire program.●

Mr. HART. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. JAVITS. I yield.

Mr. HART. Mr. President, I ask unanimous consent that C. L. Harmar, of my staff, be accorded the privilege of the floor during debate and votes on the pending measures.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I have a similar request. I ask unanimous consent that Miss Nancy Barrow, of my staff, be accorded the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BELLMON. Mr. President, I yield back the remainder of my time.

Mr. NELSON. Mr. President, I am prepared to yield back the remainder of my time. All time is yielded back.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NELSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1787

(Purpose: To authorize a study on structural unemployment programs to be done by the Joint Economic Committee)

Mr. BENTSEN. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment numbered 1787.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 385, between lines 12 and 13, insert the following new subsection:

"(c) On or before March 1, 1979, the Joint Economic Committee shall report to Congress on the ability of targeted structural employment and training programs to achieve and sustain (1) a decrease in unemployment rates among those segments of the labor force having special difficulties in obtaining employment and (2) a decrease in the national unemployment rate without exacerbating inflation and shall make such recommendations, as the Committee deems appropriate, for improving the ability of targeted structural employment and training programs to achieve such goals. The Joint Economic Committee shall, to the extent feasible, consult with appropriate Federal agencies, the Human Resources Committee of the Senate and the Committee on Education and Labor of the House of Representatives, the Congressional Budget Office, the National Commission for Employment and Training Policy, the Board of Governors of the Federal Reserve, and other appropriate individuals, both public and private, and obtain their assistance in preparing the report."

Mr. BENTSEN. Mr. President, for the benefit of those who have been patiently waiting with their own amendments, I have two amendments here that I have discussed with the floor managers which I believe will be acceptable and should not take too long.

Mr. President, I wish to propose a short amendment to S. 2570, the CETA reauthorization bill, that will authorize the Joint Economic Committee to study and report on the impact of structural training and employment programs, such as CETA, on our economy's ability to reduce the unemployment rate without stimulating inflation. The amendment calls for the report to be completed by March 1 of next year, in time for the report's recommendations to be considered in the CETA appropriations bill.

Senator JAVITS, who is the ranking Republican Senator on the Joint Economic Committee, and who is also the minority floor manager for the CETA bill, has joined me as cosponsor of this amendment and it is at his urging and largely his inspiration that I propose this study.

Three and a half-years ago, our economy was mired in a deep recession that required highly stimulative monetary and fiscal policies. Millions of highly skilled workers had been thrown out of jobs in the cyclical downturn and appropriate macroeconomic policy measures were taken to get these workers back into the factories and construction sites where they could contribute to the productive power of our economy and earn a decent living for themselves and their families.

Today, most of these skilled workers are back on the job. The stimulative pol-

icies taken during the recession generally have been successful. Our economy has scored an extraordinary success in creating nearly 4 million additional jobs since last year. In July, 94.4 million workers were employed or 58.6 percent of the population.

But there are still more than 6 million potential workers who remain unemployed. These are not skilled workers jobless because of recessionary job cutbacks and layoffs. Instead, these persons include those segments of society that find it hardest to secure jobs—minorities, women, teenagers, new entrants to the labor force—people who have never held a job or have never been trained for a job. For example, unemployment among minority teenagers was 37 percent in July. That means hundreds of thousands of America's teenagers were forced into idleness, leading, for some, to a life of crime and, for others, to a life dependent on welfare and handouts.

Before we allocate resources to the CETA appropriations bill next spring, we need to know just how effective our dollars are going to be. We need some factual and analytical basis for determining the consequences of specific Government policy expenditures on the unemployment rate. Because our economy is vulnerable to severe imbalance resulting from an acceleration of the inflation rate, we need to choose very carefully the policies that will contribute the most benefit to the unemployed and the least detriment to price stability.

As vice chairman of the Joint Economic Committee, I believe our committee could and should undertake a study to determine the extent to which targeted structural employment and training programs can alleviate the problem of structural unemployment in the least inflationary way.

I have no preconceived notions about what the JEC study will find, no predetermined idea as to whether the report will be favorable or unfavorable. But I do believe it is essential that the CETA employment and training programs must be investigated to determine whether or not the American taxpayers are receiving full value for the billions of dollars devoted to this program.

Mr. President, I defer to the distinguished managers of the bill.

Mr. JAVITS. Mr. President, I am very pleased with what Senator BENTSEN had to say about this amendment and my part in it, and my reason for urging it upon the Joint Economic Committee was really twofold. I hope he will not mind my saying this.

He will be the chairman next year when this job is done. He has a very fine, I think as good as there is in this Chamber, touch with the business world, and it is the business world that is going to test out CETA because its graduates or terminees, as they are technically called, will be looking for jobs in the private sector. That is what this exercise is all about.

So I believe that a study really has a much better chance made that way in the Joint Economic Committee because especially under his chairmanship it will catch on to the business community.

Second, we have a very fine analysis from the Congressional Budget Office to which I have referred and Senator MUSKIE has referred. We must remember that the analysis from the Congressional Budget Office is technical. They are the technical people and the economists, and so on.

I think there is a good deal to be said for the working echelon, to wit, the Members of the House of Representatives and Senate on this joint committee. It is a joint committee giving us that study and refining its conclusions and recommendations.

Third, it is the broad relationship with all committees in the House, all committees in the Senate, and with the key Government agencies again on the top level like the Federal Reserve Board, the Treasury, the Department of Commerce, the Department of Labor, and the other economic agencies of the Government on the level which really can only be reached appropriately by Senators and Members of the House of Representatives.

The Joint Economic Committee has a splendid economic staff, which DICK BOLLING has helped to materially amplify now with this long-range study on the economy of the United States.

By the way, the study really has not had nearly enough notice considering its consequences and importance but will as its results begin to come out.

For all those reasons, Mr. President, I strongly commend this amendment to the Senate and certainly am for it myself.

Mr. NELSON. Mr. President, I agree with the remarks made by the distinguished Senator from New York. He covered the subject very well.

We are prepared to yield back the remainder of our time.

Mr. BENTSEN. I thank the distinguished manager of the bill and am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas.

The amendment was agreed to.

UP AMENDMENT NO. 1788

(Purpose: To reduce the paperwork burden and regulatory costs of administering the Comprehensive Employment and Training Act)

Mr. BENTSEN. Mr. President, I have an amendment I send to the desk and ask the clerk to report.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment numbered 1788.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 241, between lines 23 and 24, insert the following new subsection:

"(c) The Secretary shall, to the extent feasible, reduce the costs of compliance imposed on prime sponsors by rules and regulations issued under this Act including, but not limited to, the costs of applications, plan preparation, data collection, recordkeeping, report preparation, and other paperwork and regulatory cost burdens.

On page 244, line 12, insert "(1)" after "(e)".

On page 244, between lines 17 and 18, insert the following new paragraph:

"(2) In the annual report required in subsection (c), the Secretary shall include a description of the actions, if any, which the Secretary undertook during the fiscal year for which the report is made to reduce the costs of compliance imposed on the prime sponsors by rules or regulations issued under this Act, as required under section 127(c).

On page 248, line 4, insert "(a)" after "134.".

On page 249, between lines 6 and 7, insert the following new subsection:

"(b) The Secretary shall complete all audits of recipients of funds which he deems necessary in a timely fashion following the end of the fiscal year for which the audits are made. In the annual report required under section 128(c), the Secretary shall include a statement of the average delay between the end of each fiscal year and the audits of prime sponsors for such year, the actions, if any, taken by the Secretary to reduce the delay, and the additional funds and personnel the Secretary would need in order to carry out all audits within the 24 month period following the end of the fiscal year for which the audits are made.

On page 282, following line 25, add the following new subsection:

"(a) To reduce the cost of carrying out the provisions of this section, the Secretary shall consult with the National Commission on Employment and Unemployment Statistics.

On page 284, between lines 2 and 3, insert the following new subsection:

"(c) In order to reduce the paperwork burden and costs on prime sponsors, project applicants and program agents, in carrying out evaluations of the cost-effectiveness of identical or similar programs of prime sponsors, the impact of such programs on communities and agents, the implication for related programs, and the adequacy of the mechanism for the delivery of services, the Secretary shall to the maximum extent possible, consistent with the purposes of this Act, use statistical sampling techniques.

Mr. BENTSEN. Mr. President, my amendment is designed to relieve the horrendous paperwork burden imposed on the 450 city and State governments which act as prime sponsors for this program.

The regulatory and paperwork burden imposed on prime sponsors is a bottomless pit which has devoured the taxpayers money at an incredible rate. For example, in fiscal 1975, the prime sponsors had to file nearly 5 million forms or reports with the Department of Labor. By the Department's own estimate, these forms and reports took over 2 million hours to fill out.

This represents only the tip of the iceberg. When the paperwork required of the organizations who run the programs under the supervision of the prime sponsors is considered, the Commission on Federal Paperwork estimated that the CETA program absorbed more than 100 million man-hours annually just on paperwork.

That is equivalent to 50,000 full-time workers doing nothing but CETA paperwork. According to the Commission on Federal Paperwork, the total cost of all this paper shuffling was nearly $500

million. That is nonproductive expenditure of the taxpayers' money.

That was the figure for fiscal 1975, when the entire CETA program cost was about $3 billion. Today, CETA is an $11 billion program. If the compliance costs have grown apace—and there is every reason to believe they have—paperwork generated by the CETA program may now cost in excess of $1.5 billion.

This is an outrageous waste of tax dollars which should be devoted to training people for productive jobs rather than to filling out countless and often irrelevant forms.

Mr. President, all this paperwork has not produced a scandal free program. To the contrary, a program which is awash in unnecessary bureaucratic redtape and morassed in a floodtide of complex and often unnecessary rules, regulations, forms, and directives is one which cannot be managed effectively so as to prevent abuses.

So it is not surprising that the CETA program has been riddled with far too many examples of nepotism, favoritism, and payroll padding.

Mr. President, unemployment among minority teenagers was 37 percent in July. That means hundreds of thousands of America's teenagers were forced into idleness—an idleness which leads many into lives of crime, which causes many others to give up on the American system and which leads still others into lives of dependency on welfare and handouts.

We simply cannot afford to squander tax dollars earmarked to help these youngsters on mindless bureaucratic demands for more and more unnecessary and repetitive information.

The amendment I offer today will not eliminate all the waste and inefficiency in the CETA program. but it will go a long way toward alleviating a number of paperwork and regulatory problems which were first identified by the Commission on Federal Paperwork.

First, it requires the Secretary of Labor to cut the compliance costs imposed on the prime sponsors by DOL rules and regulations and to report annually to Congress on the actions taken during the previous year to cut compliance costs and regulatory burden.

Second, it requires the Labor Department to complete all audits of prime sponsors in a timely fashion, with a goal of completing audits within 2 years of the fiscal year being audited.

Third, it urges the Secretary of Labor to make full use of the findings of the Commission on Employment and Unemployment Statistics in developing hardship and local unemployment indexes, as required under the CETA reauthorization bill.

Finally, it authorizes the Labor Department to use sampling techniques wherever possible in gathering data to evaluate the effectiveness of CETA programs.

CETA is now an $11 billion program. The taxpayers of this country hold us responsible for assuring that this $11 billion is spent wisely and effectively. The American taxpayer is fed up with waste and inefficiency in Government programs.

My amendment, by cutting unnecessary paperwork and reducing the costs of complying with CETA rules and regulations, will help achieve this and provide a better managed and more effective employment and training program for unskilled and underskilled workers.

I know the Labor Department is sympathetic to this effort. My staff has worked closely with individuals at the Labor Department on this amendment, and their help is greatly appreciated. I trust that enactment of this amendment will be only the start of a major effort within the Labor Department to cut the regulatory costs of CETA programs and improve the administration of CETA.

I defer to the distinguished manager of the bill.

Mr. NELSON. Mr. President, let me say that I think the Senator from Texas has very carefully designed an excellent amendment. If there is anything that is a cause of despair among all of us it is the amount of paperwork the Government is able to generate somehow or other.

Incidentally, the Paperwork Commission concluded that the cost of paperwork in this country by all levels of government amounts to $100 billion a year.

It is my view, looking at lots of the paperwork that is required by various agencies, that 75 to 80 percent of it could be eliminated and thereby improve the efficiency and the information flow within the Government. That would mean we could also balance the budget and have a surplus if we were to save that amount.

So I am in agreement with the very fine amendment offered by the Senator from Texas.

Mr. JAVITS. Mr. President, the amendment offered by the Senator from Texas is completely acceptable to me, and I think it is in line with what the Senator has been doing very ably for all of us. It is the kind of job I would like to leave to him.

I would like to ask him one question because we do not seem to be quite as pressured on this bill as we have been on others. One thing appeals to me, and would he agree with me, that this inundation of paperwork was brought on by the same public that now demands that it cease, and I will explain why. I would just like to do that.

I have had trouble, because I have been involved in the poverty program so much for years, with agencies which are doing a marvelous job in antipoverty but have very bad records, and they have often been stripped of financing, they have been put out of business, because of the public clamor that, "Well, they don't keep accurate records. We cannot check back on every $5 that they spend. The petty cash is in disorder." So we will spend $50,000 to catch the last $5.

Business does not do that. Every chain and department store accepts 2 percent leakage minimum, that is, stealing, inefficiency, stuff disappears, and so on, but they realize that it is counterproductive.

The U.S. Government—and I am all for the amendment and I am all for cutting paperwork—but I hope the public will remember it when some Government agency has not spent $50,000 to catch the last guy who wasted or threw out in the wastebasket $10 or $20. I think that is an injunction we ought to constantly be giving ourselves as we cut paperwork. Let us cut it. I am all for it. But let us remember we do not get that free, either. There will be some price to pay, very well worth paying.

Mr. BENTSEN. The Senator makes a very good point because we are talking about putting on what we consider to be one of business' best techniques, and that is sampling techniques. Instead of checking every bloody form that is there, and, obviously, you are not going to catch everything, but if you see that there are some serious aberrations in an area, then you come in with a concentrated audit. But it results in some of the very things the Senator is talking about. These are things we should do in trying to save the taxpayers some money.

On these forms business is not totally without waste in its work on forms and having proliferation of forms. I can recall one where a management consultant told me he came into a major company and in their reorganization work asked that all forms that had to be filled out, all reports that had to be filled out, should all be sent to the president's office and not where they had been sent previously.

After 6 months he then went into the president's office where they had stacked these reports and found those that had never been asked for and never missed by the people they had previously been sent to, and he said, "Those we can eliminate."

So the same thing happens in business. You have to have these periodic purges, in effect, to try to clean up the records to see that we get effective management.

Mr. JAVITS. I thank my colleague.

Mr. BENTSEN. We are prepared to yield back the remainder of our time.

Mr. NELSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas.

The amendment was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

UP AMENDMENT NO. 1789

(Purpose: To assure inclusion of Hawaiian Natives in programs under title VII)

Mr. INOUYE. Mr. President, I ask that my amendment be called up.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. INOUYE), for himself and Mr. MATSUNAGA, proposes an unprinted amendment numbered 1789.

Mr. INOUYE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 377, line 10, strike out "section 302(c)(1)(A)" and insert "sections 302(c)(1)(A) and (B)".

On page 377, line 15, strike out "section 302(c)(1)(A)" and insert "sections 302(c)(1)(A) and (B)".

On page 377, line 14, strike out "or a Native American entity" and insert "entities described in".

Mr. INOUYE. Mr. President, I am pleased to advise the Senate that I have discussed this matter with the distinguished managers of the bill and, in fact, the members of the staff actually drafted this amendment.

Mr. President, today I ask my colleagues' most serious consideration of an amendment to the Comprehensive Employment and Training Act of 1978. This legislation as reported from the Human Resources Committee bars native Hawaiians from receiving special native American benefits provided under title VII, private sector opportunities for the economically disadvantaged programs. My amendment seeks to instate native Hawaiians in this far-reaching provision of the act, and thereby significantly increase the beneficial impact the act will have on this very important portion of my constituency.

This amendment will permit native Hawaiians to receive special native American benefits provided under title VII, the private sector opportunities for the economically disadvantaged programs.

Mr. President, as some are aware, native Hawaiians were first incorporated as native Americans in the Comprehensive Employment and Training Act in 1977. At that time they were placed along with federally and State recognized Indian tribes and bands and Alaskan Native groups in section 302(c)(1) of title III, the native American employment and training programs. This action stood as yet another recognition by the U.S. Congress of the unique relationship existing between the Hawaiian people and the Federal Government. It was moreover another affirmation of the pressing social and economic crisis faced by this native American group.

Native Hawaiians, descendants of the original inhabitants of Hawaii, like other native Americans, have the highest incidence of poverty and the highest unemployment rate of any other racial group in my State. Their level of education, skill and training is among the lowest. Their level of effective participation in the system is almost nil.

The reauthorizing legislation now being considered by the Senate continues to recognize the desperate plight of the native Hawaiian people and the ability of CETA to effectively address their unique needs. This is commendable. It does not, however, recognize the grave necessity of providing Native Hawaiians with a means to enter into the private sector of our communities through employment and training for private sector employment options that will be allowed under program options. The bill as reported from committee does allow reservation Indian tribes and Alaskan native villages and groups to share in the title's 5 percent discretionary funds.

Native Hawaiians, like American Indian tribes and Alaskan Native villages and groups, have a demonstrated need for programs specifically designed to increase their participation in the private sector. A large number, as one Department of Labor official reported during a visit to Hawaii, seek employment in entrepreneurships and small business enterprises. Though CETA offers an excellent opportunity to gain the basic knowledge required for such activity current law has prevented assistance in this area. The new title VII, Private Sector Opportunities for the Economically Disadvantaged provisions, included in the legislation before us, was created to correct this problem. Accordingly, Native Hawaiian exclusion from title VII would greatly diminish CETA's potential impact on the Native Hawaiian people.

One reason given for this exclusion is that title VII is intended only for prime sponsors who serve large populations of disadvantaged individuals. Mr. President, there are approximately 150,000 Native Hawaiians in Hawaii and an estimated 150,000 more residing in other States. Twenty-one percent of those living in Hawaii are receiving some form of welfare assistance; 11.6 percent are unemployed; and 27. 4 percent exist below the poverty line. Though these employment figures correspond with those of Indians and Alaskan Natives, very few Indian tribes and Alaskan Native villages have as many as 150,000 members. Rather tribal and village memberships range from 155,000 to numbers below 100.

Concern has also been expressed that unlike tribal and Alaskan Native reservation Indians and Alaskan Natives, native Hawaiians are eligible for CETA PSE and title VII benefits from States and county prime sponsors. Though this is true, these prime sponsors have no programs specifically designed to answer the unique needs to Hawaii's native Hawaiian people. It is clear that the vast majority of the Hawaiians in my State would prefer to and do participate in the native Hawaiian CETA prime sponsor program rather than in those of other prime sponsors.

Further, officials in the Department of Labor inform me that reservation Indians and Alaskan Natives are also eligible for assistance from other prime sponsors as well as from Native American prime sponsors. In fact, title I general population prime sponsors operating in areas with high native American populations are required to assist native Americans who seek their services, either by providing direct services or subcontracting this responsibility to a native American prime sponsor.

On July 9, 1975, the Comptroller General issued an opinion supporting this assertion. (July 9, 1975, file B14868–Comptroller General Memorandum to Department of Labor.)

Another concern expressed concentrated on the difficulty of obtaining accurate population counts of native Hawaiians. Federally funded State census runs have taken care of this problem in Hawaii. However, official data counts of the numbers of native Hawaiians residing in other States is hard to come by.

I have been working with the Census Bureau to correct this problem and am confident that the next national census will provide the most accurate count of the mainland native Hawaiian population yet obtained. In the interim, I hope that the U.S. Senate can be responsive to the needs of Hawaii's native Hawaiians.

Mr. President, native Hawaiians comprise 18 percent of the Hawaii State population yet occupy the bottom most rungs of our social and economic ladders. I hope that the U.S. Senate will once again recognize the Federal responsibility to this segment of our citizenry and the urgent need of native Hawaiians for assistance by adopting my amendment.

Mr. MATSUNAGA. Mr. President, as a cosponsor, I rise in support of the amendment offered by Hawaii's senior Senator (Mr. INOUYE) which would make native Hawaiians eligible for assistance under title VII of the Comprehensive Employment and Training Act amendments.

Under existing law, native Hawaiians, along with American Indians, Eskimos, and Aleuts, are eligible for CETA assistance as native Americans. The current law, to which native Hawaiians were added by the 94th Congress, is consistent with the Community Services Act of 1974, which defines native Hawaiians as "Native Americans."

However, in amending the Comprehensive Employment and Training Act this year, the Committee on Human Resources separated native Hawaiians from other native Americans eligible for assistance under title III of CETA. While native Hawaiians would still be eligible for certain types of CETA assistance, they would not be able to receive aid under title VII, "Private Sector Opportunities for the Disadvantaged," or would they be eligible for public service employment programs funded under CETA. The proposed amendment would enable native Hawaiians to receive assistance under title VII.

Mr. President, the exclusion of native Hawaiians from certain types of CETA programs available to other native Americans is inconsistent with the intent of the 94th Congress and it would cripple efforts currently underway to help native Hawaiians achieve self-sufficiency. In enacting special CETA provisions to benefit native Americans, Congress wisely recognized that their high rate of unemployment is related, at least in part, to their unique culture and traditions. Native Hawaiians are no different, in this respect, from American Indians and Alaskan Natives. They need the special assistance provided under CETA to overcome the disadvantages they face after years of social change and exploitation.

Although native Hawaiians have a higher rate of unemployment than the general population in the State of Hawaii, and although they comprise a disproportionate share of welfare recipients in the island State, studies have repeatedly shown that what they desire above all is self-sufficiency. They are nearly unanimous in their desire to obtain better occupational training and educational

opportunities such as are provided under the Comprehensive Employment and Training Act. I urge my colleagues not to bar this door to opportunity. The special benefits provided under CETA to native Americans could make all the difference for native Hawaiians. I am happy to be a cosponsor of the amendment offered by Senator INOUYE and I urge the Senate to act favorably on it.

Mr. INOUYE. Mr. President, I am prepared to yield back the remainder of my time.

Mr. JAVITS. Mr. President, I find this amendment entirely acceptable.

THE PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, I agree with the distinguished Senator from New York. I am prepared to yield back the remainder of my time.

Mr. INOUYE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment (UP No. 1789).

The amendment was agreed to.

UP AMENDMENT NO. 1790

Mr. CHAFEE. Mr. President, I had an amendment in the committee to establish a voucher demonstration project. That was accepted by the committee under title III, part B, section 317. The committee staff inadvertently left out the details——

The PRESIDING OFFICER. Is the Senator offering an amendment?

Mr. CHAFEE. I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) for himself and Mr. WALLOP offers an unprinted amendment numbered 1790.

Mr. CHAFEE. How much time on the amendment, Mr. President?

The PRESIDING OFFICER. Thirty minutes equally divided.

Mr. CHAFEE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 224, beginning on line 5, strike all following "industries" through line 7 and insert in lieu thereof the following: "except for those jobs (i) for which there exists a training program, approved by the Secretary, of a specified length of time designed to teach specific skills and (ii) where the rate of labor turnover does not differ substantially from the rate of labor turnover in other industries in the same area."

Mr. CHAFEE. Mr. President, as I say, in the committee I had an amendment to establish a voucher demonstration, and that was accepted, as I mentioned a moment ago. The committee staff inadvertently left out the details of the intended program from the committee report.

Since the Labor Department has had the authority to run a voucher program for years, but has not used it, I believe it is necessary to spell out in more detail than usual what we had in mind with this voucher program.

Therefore, I ask unanimous consent that a proposed explanation be printed in the RECORD, dealing with the voucher demonstration program.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

VOUCHER DEMONSTRATION PROJECT

Under current law, Section 311, the Secretary has had the authority to conduct an experimental program of issuing vouchers for subsidized private sector employment to offset the barriers to employment faced by disadvantaged persons. Thus far, the Secretary has not chosen to conduct such a program.

The Committee agreed that a voucher system deserves attention as a useful tool to encourage employment. Therefore, the Secretary is required to establish in FY 1979 a special voucher project to demonstrate the efficacy of providing vouchers to economically disadvantaged persons who are unemployed or underemployed. These vouchers shall entitle private employers who provide employment with or without training to such individuals to payment in amounts equal to the value of the voucher, pursuant to regulations of the Secretary.

The Secretary shall consider the following principles when developing regulations for this project:

1. Eligibility of participants is to be limited to persons who are unemployed, or underemployed, and disadvantaged.

2. Vouchers shall be issued by Prime Sponsors to enhance employability of individual. Vouchers shall be worth up to $1.00 per hour of paid work by the participant to offset the lower productivity of eligible individuals. Factors to be considered in determining the value of the vouchers shall include, but not be limited to, participant employability, local wage rates and labor market conditions.

3. Vouchers shall be portable between employers, not committing the employer or employee to continue the work arrangement other than by mutual agreement, and shall be valid for up to a year, as determined by the Secretary.

4. Procedures shall be established to insure that currently employed individuals are not displaced by voucher-eligible employees.

5. Voucher-eligible employees shall be paid at a rate not less than the higher of the minimum wage or the rate paid by that employer to other individuals performing the same or similar work.

6. In choosing prime sponsors to participate in this project, the Secretary shall select sites in such a manner as to insure an appropriate mix of rural and urban areas, of different concentrations of eligible participants, of different regions and labor markets and of different categories of prime sponsors.

7. Participating prime sponsors shall integrate vouchers into their comprehensive services, and utilize a significant proportion of available vouchers for individuals completing training programs, so as to direct voucher recipients toward jobs with meaningful advancement opportunities.

The Secretary is instructed to prepare and submit a report to the Congress evaluating the effectiveness of this demonstration project. The Secretary's report shall include an evaluation of the project's effectiveness in increasing the employability and earnings of eligible groups, the willingness of private sector employers to participate, the desirability and skill level of jobs obtained by participants, the administrative feasibility of the program and any other factors deemed important by the Secretary.

Mr. CHAFEE. Mr. President, in connection with the amendment which I have sent to the desk, it amends section 123 in the following manner: It leaves intact the language through line 4 and the first two words in line 5, and then inserts, after that, the following:

. . . except for those jobs (i) for which there exists a training program, approved by the Secretary, of a specified length of time designed to teach specific skills and (ii) where the rate of labor turnover does not differ substantially from the rate of labor turnover in other industries in the same area.

What I was particularly aiming at, Mr. President, is that, as provided under the prior legislation and the regulations pursuant thereto, the language specifically prohibits the training under CETA of any sewing machine operators. My language would permit the training of sewing machine operators, although it does not specifically refer to them, if it is determined that there is a need for such operators.

What I am striking at, Mr. President, is language that has grown up in the regulations which actually specifically mentions sewing machine operators in section 4 of field memorandum 285–77; and I send to the desk and ask unanimous consent to have printed in the RECORD this language, which states that CETA funds may not be used for the purpose of training sewing machine operators in the garment industry.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Employment and Training Administration]

Directive: Field Memorandum No. 285–77.
To: All Regional Administrators.
From: Floyd E. Edwards, *Administrator, Field Operations.*
Subject: Training of Sewing Machine Operators under CETA.

1. Purpose. To advise RA's of the continuing prohibition against using CETA funds for the training of sewing machine operators in the garment industry.

2. Reference. May 23, 1975, TWX to all ARDM's on same subject.

3. Background. Section 95.37(a) of the regulations states that "no participant may be enrolled in any activity or service under this act in any lower wage industry in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high (section 704(a) of the Act)." The occupation of sewing machine operator in the garment industry has long been cited as a specific occupation having these characteristics. Recent data show that this occupation continues to be characterized by high turnover and low wages.

4. Policy. CETA funds may not be used for the training of sewing machine operators in the garment industry. This prohibition applies to any job which is, in fact, a sewing machine operator job regardless of the job title by which it is classified; e.g., "Strip Sewer" of "Shirring Machine Operator."

5. Action Required. RA's should ensure that all prime sponsors are aware of this prohibition and should ensure its enforcement. If CETA funds are presently being used for the training of participants in the prohibited occupation, the contracts should be allowed to expire and no further funds obligated for this purpose.

6. Inquiries. Questions should be directed to June Sekera on 8–376–7006.

Mr. CHAFEE. Mr. President, there could well be, and we believe there is in my section of the country, a need for sewing machine operators, but that can be determined by the Secretary in the usual course, just as he determines whether there is a need for training in

this work, that work, or whatever it might be.

Up in my area, the wage for sewing machine operators is $4.27 an hour, which is, indeed, higher than the general manufacuring wage. So, Mr. President, all this amendment would do—and it is necessary in order to have the regulations changed—would be to permit the training of workers in an area such as I have described, sewing machine operators, where a specific length of time is required to teach the skill, and where the rate of turnover does not differ substantially from the rate of turnover of other industries in the same area.

I have discussed the amendment with the floor managers of this bill, and it is my understanding that it is acceptable to them, Mr. President.

Mr. NELSON. Mr. President, we have examined this amendment, and it is in conformance with the objectives of the legislation. It is carefully drafted to apply only to a training program approved by the Secretary, for a specific length of time, to teach a specific skill, and the amendment is acceptable to the manager of the bill.

Mr. JAVITS. Mr. President, the way the amendment is drafted, it would send the present language—and Members should turn to page 224, lines 1 to 5, inclusive. It would end the present language after the words "lower wage industries" and would leave the definition of lower wage industries to the Secretary.

It is my understanding that the Secretary will construe lower wage industries to mean—and now I go to the rest of the words which are going to be stricken—"lower wage industries" will mean industries where there are jobs where prior skill or training is typically not a prerequisite to hiring or where labor turnover is high.

But the amendment will now permit even jobs in those industries to be permissible for CETA jobs, if there exists a training program approved by the Secretary, of a specified length of time, designed to teach specific skills, and the rate of labor turnover does not differ substantially from the rate of labor turnover in other industries in the same area.

With that understanding of the meaning of the amendment, it is entirely acceptable to me.

Mr. CHAFEE. Yes, it is, Mr. President, and we are striking at the particular area of sewing machine operators—I cannot understand the nationwide, industrywide prohibition, I guess it was an unfortunate experience in the West and Southwest, dealing with sewing machine operators—so that the regulations specifically prohibiting the training of sewing machine operators under CETA will be changed.

There are some possibilities in our area for employment of sewing machine operators where they can validly be used, and at least we want to have the opportunity to explore that possibility. Maybe it will not work out; maybe it will be rejected. But I do not think the law should specifically prohibit this particular section of industry.

I am grateful to the managers.

I want to quit while I am ahead, Mr. President, but I would say one thing about this whole act. It seems to me we are treading that narrow line between trying to prevent scandals about having people in the program who should not be there, and at the same time tying it up so much with regulations that we prevent the program from moving on to achieve the very purposes we are seeking. Sometimes it is a very difficult path to travel.

I have always felt in Government, and this may sound like a shocking thing, that there ought to be a little waste in Government. The answer to the little bit of waste is to have so many regulations, so many rules and so many watchers that nothing can be accomplished.

I think those who have worked so hard on this legislation have done a good job trying to tread this path, and I just hope it is not so bound up with prohibitions about this person or that person coming in that we will be prevented from getting on with the training of those people we want to train.

Mr. NELSON. I agree with the statement of the Senator. I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield back the remainder of his time?

Mr. CHAFEE. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1791

(Purpose: To provide demonstration projects for training disadvantaged young adults in growth occupations)

Mr. GLENN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN) proposes an unprinted amendment numbered 1791.

Mr. GLENN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 287, between lines 12 and 13 insert the following:

"'GROWTH OCCUPATIONS DEMONSTRATION PROJECTS

"'SEC. 318. (a) The Secretary shall establish demonstration projects designed to demonstrate the effectiveness of training young adults, disadvantaged individuals and structurally unemployed individuals for jobs in growth occupations such as positions in the transportation, energy, plastics and food processing industries. In carrying out the provisions of this section the Secretary is authorized to make grants to and to enter into contracts with public agencies and private organizations.

"'(b) The Secretary shall determine growth occupations for the purpose of the demonstration projects authorized by this section.".

On page 179 in the table of contents after section 317 insert the following:

"Sec. 318. Growth occupations demonstration projects.

Mr. GLENN. This amendment would provide for demonstration projects designed to demonstrate the effectiveness of training young adults, disadvantaged individuals, and structurally unemployed individuals in jobs in growth occupations in particular, such as positions in certain parts of the transportation industry, energy, plastics, and food processing industries.

Mr. President, I want to express my basic support for S. 2570. I think that the floor managers and staff have worked diligently to improve and tighten up the CETA program. My primary concern is that the CETA program be tightly targeted so that it provides meaningful training to those most in need. The administration and the committee have worked diligently toward this goal and I support these efforts.

My concern is that the skills training that we attempt to undertake through CETA be in viable skills areas that offer the promise of long-term, productive careers. Much of the damage to the reputation of CETA has come from an image of it as being heavily involved in irrelevant or frivolous job activities.

There clearly do exist major occupations that could be termed "growth occupations." These are occupations that indicate by projection that significant opportunities will exist in future years. I believe that the Labor Department, in its job training programs and demonstration projects, should try to target these professions. For example, I refer to transportation, energy, plastics, and food-processing industries among many others which the "Occupational Outlook Handbook" indicates will show significant growth in the years ahead.

Mr. President, as a specific example of my point, let me cite the motor carrier industry. The Labor Department's Office of National Programs currently funds an on-the-job training program with the Teamsters Joint Council 40 and 53 to train men and women to be tractor trailer truck drivers. This program will have 106 enrollees. It is the sixth contract with the Teamsters Joint Council. It is an outstanding success that has trained over 800 enrollees and placed 85 percent of them in jobs averaging $7 to $8 per hour.

Mr. President, I submit that is what CETA is all about, to attempt to do exactly that. It is not only to train people but to get them jobs in private industry, to move them out into well-paying jobs.

Similarly, the cities of Cincinnati and Cleveland at separate times had highly successful truck driver training programs that immediately placed 80 to 90 percent of their graduates. These Government-sponsored programs were well received by common carriers in Ohio, especially many that are too small to initiate their own in-house training programs. These courses were so comprehensive that common carriers accepted the graduates in many instances without recourse to the standard driving tests the carriers ordinarily give to new employees.

Mr. President, the career promise that this type of effort holds for the structurally unemployed and for minority youth is obvious. We should do as much as possible in this area.

I would like to ask the distinguished floor manager of the bill who has done so much to tighten up the language in the bill, and the ranking minority member also, if they do support efforts along the lines mentioned.

Mr. NELSON. I agree with the distinguished Senator from Ohio that it is true that CETA individuals should be offered training in industries with growth potential. Section 121(i)4 of the Senate committee bill provides that—

No person shall be referred for training unless there is a reasonable expectation of employment in the occupation for which the person is being trained.

Prior to placing CETA participants in a classroom, institution, or on-the-job training, a prime sponsor should assure that there is a reasonable likelihood that private sector employment opportunities will be available to trainees in the occupation in which they are trained.

Mr. GLENN. I am very encouraged to hear the comments of the distinguished floor manager of the bill.

I would welcome any comments by the minority floor manager also. I think this can help to point out, through the legislative history of this legislation, the intent of Congress, the intent that we mean it to be meaningful employment, and not only providing immediate employment but training that can move those trainees into private industry which can help in dislocations where industries are going downhill in a particular area and people need to be trained, or taking the unemployed and the disadvantaged and moving them into productive lives in the private sector.

Mr. JAVITS. The Senator is absolutely right. It ties in with the bill very closely. To me one of the most innovative parts of the bill is the $400 million provision for training in private enterprise. I was in attendance at the White House when the President announced that program. Many of the very top executives of major American enterprises were there. It looks very promising. It is something in which I deeply believe. I think this will be a very real guideline to those authorities who are charged with carrying that out, as well as the CETA program generally.

The Senator is absolutely right. One of the most successful of the voluntary programs, such as the nongovernmental programs, are the opportunities industrialization centers, which are run by Rev. Leon Sullivan, of Philadelphia. One of the elements that has commended that program is the fact that they have tied into local business so well that very little of their training is deadend, to wit, training for which there is no job at the end of the road.

I thoroughly agree with the Senator and I assure the Senator I will do everything I can.

We have already heard from Senator NELSON, to influence the Department to administer this law, to which it is so very pertinent, in exactly that manner.

Mr. GLENN. I thank the distinguished floor manager very much. I think these comments in the RECORD this morning will indicate to those who are managing the whole CETA program that any projects they can design to demonstrate the effectiveness of training of adults, the disadvantaged, and the structurally unemployed for the growth occupations will be particularly well looked on by Congress.

Mr. President, with that type of support and with the knowledge that the distinguished floor managers of this bill will be keeping close tabs on what is going on in the future and be influencing future legislation influencing these programs, I withdraw my amendment.

The amendment was withdrawn.

UP AMENDMENT NO. 1792

(Purpose: To give preference in CETA training program benefits to the unskilled over college graduates and holders of higher education degrees)

Mr. HATCH. Mr. President, I call up an unprinted amendment and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes unprinted amendment numbered 1792.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 268, after "workers," on line 5, add "those who lack educational credentials."

Mr. HATCH. Mr. President, like many of my colleagues, I support the honorably stated purposes of this legislation. The stated purposes of any legislation are usually honorable, and in the case of CETA, all of us want to support any proper and effective effort to solve our national youth and structural unemployment problems. I believe my friends and colleagues (Mr. JAVITS and Mr. NELSON) deserve our gratitude and respect for their characteristic high-quality work in this regard. They have been willing to compromise, they have been willing to change, they have dedicated themselves and worked very hard, I think, to try to correct this bill and to make it a more just and service-type bill. I have nothing but respect for the work that they have done here.

As a member of the Senate Human Resources Committee, and as one who devoted a lot of his time to working to improve this bill, I want to vote for it. I feel that I can do so provided that the fine series of amendments to be considered by us during the full consideration of this bill are accepted, amendments which go a great distance to reinstitute respectability in the CETA program.

Respectability is a descriptive noun too seldom heard these days in the course of CETA discussions, and seldom seen in articles about CETA's administration. The series of articles on CETA in the Washington Post, in the Los Angeles Times or the New York Times all read the same. They describe the program's abuses. They quote the ballet dancers, the golfers, or the city bureaucrats, all of whom enjoy the most personalized of capital gains because of moneys they receive as CETA applicants.

Any reasonable citizen, especially anyone paying taxes, who reads any one of these stories will conclude that it would be in our national economic and ethical interest to be rid of this program; to be rid of this $11.4 billion drain on our national economy. Certainly I would, supporting all the more my own conviction that we must see this body approve amendments tightening eligibility and preventing fraud and abuse. We must approve amendments which are every bit as strong as those proposed by a number of us to assure that the scandals reported in the operation and administration of CETA are never again repeated. Senators BELLMON, BARTLETT, and DOMENICI have performed in exemplary fashion to draft a series of amendments intended to reform CETA, and I am delighted to be among their original cosponsors.

As a complement to this larger effort, I have sent to the desk the amendment I have offered is a straightforward and manageable modification in the language of S. 2570. It has the effect of expressly giving preference in CETA funding to the unskilled and needy job applicants over those who hold a college degree, a graduate school diploma, or any other certificate of higher education.

I believe the purposes of my amendment are self-evident, and it is both unfortunate and ironic that it should even have to be introduced. But of the many stories of CETA abuses which have been circulating this country—all of them accurate stories—certainly few can compete in flagrancy with stories about college graduates or other products of American education being on the CETA dole.

There have been a lot of stories about this, too many of them true. The most descriptive summary of this problem which my amendment attempts to solve was described by the distinguished economist, Mr. David Meiselman, who after conducting a thorough survey research study of the CETA program's applicant pool, concluded,

Evidence from diverse sources implies that CETA participants are best classified not as unskilled but as being from the middle of the skill range. Fewer than 46 percent of the persons hired under CETA were economically disadvantaged, using the federal government's own definition of a family earning less than the poverty threshold.

Mr. President, in a Federal program to help the hard-core unemployed develop job skills and find employment, it is wrong to see any of the funds provided given, in whole or in part, to those with higher education degrees not in dire need. Certainly American education has not waned to such a degree that college graduates need a Federal program to teach them a vocational skill; and certainly if they need it, they do not deserve it. It is the purpose of my amendment to direct the unemployment training relief to the indigent, to the unskilled and truly needy for whom this program was intended. They deserve our compassion, and they need our help, and I seek the assistance of my colleagues in righting this particular wrong.

Finally, Mr. President, I express my gratitude to my Human Resources Committee chairman and friend from New Jersey, HARRISON WILLIAMS, and to all of my colleagues on the committee for including in the final version of the re-

ported CETA bill an amendment sponsored and offered by Senator HAYAKAWA and myself. This amendment establishes a social bonus program to increase the participation of the private sector in the general effort to solve our Nation's structural unemployment problem. As this issue is addressed in the days ahead, I know that we will have the opportunity to discuss this in greater detail. Let it be said, though, that if our CETA experience to date has taught us anything, it has served to remind us of the problems inherent in any attempt to solve major social and economic problems using the arm of the Federal Government. As always, the private and independent sectors can do it better. They will do it, provided that we do not stifle their initiative, and that we give them the incentive required to conduct this major task.

On paper, as well as it is presented in theory, CETA is the best Federal aid program we have. It is decentralized. It is intended to attack the root of the welfare problem by teaching job skills rather than showering the countryside with Federal dollars, as is too often the bureaucratic custom.

But CETA, as it has been administered to date, has failed to serve its purpose, and has too often been a national disgrace. Hopefully, the problems needing solutions will get them. I believe they will if we pass the series of corrective amendments currently pending. And I hope that they will be passed, in order that I and many others can therefore vote for this legislation.

I can say this, that I expect to see changes in the administration of CETA in the future and I expect to see less ripoff from those living in the States, administering in the States, and administering in the Federal Government than has heretofore occurred. I think everybody in the Human Resources Committee feels exactly the same way.

If these things are not corrected and if they are not taken care of, we shall have to find ways other than CETA to correct these problems and provide relief for our structurally unemployed and the above 35 percent of the black youths in our society who do not have a job because now they are not only structurally unemployed but unemployable. I think it is time we did something about this major national disgrace, the biggest cancer facing our society today. I think that some aspects of this bill will help us to accomplish that and I do think my amendment will help us press on in that direction.

I believe the managers of the bill are prepared to accept my amendment. If that is so, I am prepared to yield back my time.

Mr. NELSON. Mr. President, let me say that a substantial number of criticisms that the distinguished Senator has made of the CETA program are correct. There have been sponsors in various parts of the country who have violated the spirit of the law, there are some who have violated the law. On the other hand, it is also clear that there are a large number of prime sponsors around the country who have done a very good job.

Mr. HATCH. I agree with the distinguished Senator.



Mr. NELSON. This bill, as the Senator knows, as he is a member of the committee, is a very comprehensive redesign and tightening up of the legislation in order to prevent the kind of abuses that all of us are critical of.

As the Senator knows, No. 1, we are trying to eliminate the substitution which has occurred under the law. Not all of that has been done illegally, of course, because in the historical development of this act, there have been those who, when unemployment was high, were supporting the concept of substitution.

I never did support that concept, but the law permitted it. So there was substitution that really was in compliance with the law, and then there was quite a bit that was not.

We have now targeted CETA programs to avoid that kind of question. For example, we only allow in title II, 18 months of employment, with extension under certain circumstances. Title VI, 12 months of employment. Training programs have to be developed with the concept being to get the unemployed into private employment in order to avoid the question of high-paid people being on the CETA programs.

There used to be no limit on wages, so we had people that were working in many cities at $17,000, $18,000, $19,000 a year. I have never approved of that, but it was legal because we did not limit the matching funds of the local municipality.

But in this bill, as the Senator knows, we limit the maximum that can be paid, both by the dollar amount and the number of people who can participate in the higher brackets by simply limiting to 10 percent of the Federal allocation, the amount of matching moneys the prime sponsor can contribute.

We also require that the average wage not exceed $7,800. The House, in fact, has set it at $7,000.

We emphasize, as the Senator knows, programs for the structurally unemployed and we have done a whole lot of work, in which the Senator participated very constructively, in tightening up this whole legislation, targeting it better, I think a very good job has been done by the Labor Department, the administration, by the minority and majority members and staffs, and that we have designed a very substantial improvement in the legislation which seeks to tackle very important problems in our society.

Now, the amendment of the Senator is three words. In the bill on page 219, the language would read, starting at line 3:

> Special emphasis in filling special service jobs shall be given to eligible members of groups specifically identified in section 301 (a) as facing particular labor market disadvantages, taking into account the household support obligations.

At that point, the amendment inserts three words: "and educational attainment" of persons applying for such jobs, but nothing in this act shall authorize the Secretary to establish hiring or participation goals for such persons.

Let me say, the general objective the Senator is talking about, I agree with. We are aiming and targeting, as best we can, to disadvantaged groups. Of course, an education is an advantage.

However, I want to be sure we understand the language correctly, because it reads: "taking into account the household support obligations and the educational attainment."

That is not a mandate that an education may prohibit one from receiving a job, or training under this program.

As the Senator knows, we have a provision for displaced homemakers. As the Senator will be well aware, a displaced homemaker at age 50 or 55 who has not been to college for 30 years and whose job has been for 30 years raising a family, even though that individual had a bachelor's degree in literature, or something else, does not mean one should be prohibited, now that they are displaced homemakers, with no skill that is salable, from participating in a program. Of course, we provided the displaced homemaker section here because one could have a college education and still be more advantaged than another person of a different age group, different experience, without a college education.

I am sure the Senator understands that.

Mr. HATCH. Yes.

Will the Senator yield?

Mr. NELSON. Yes.

Mr. HATCH. I agree with the Senator and I agree with the comments he has made with regard to this bill.

The Senator did have the wrong copy of my amendment. The language would apply to page 268.

Mr. NELSON. Pardon?

Mr. HATCH. It would apply to page 268, line 5.

Mr. NELSON. We were using a different one.

Mr. HATCH. An older version.

Mr. JAVITS. I think Senator HATCH will agree with me in this, the Senator did use in his presentation—and I do not want to extend this, I have nothing further to say——

Mr. HATCH. I understand.

Mr. JAVITS. But the Senator did use in his presentation the word "preference," and I think it is important we all agree, in other words, we do not want an absolute exclusion.

Mr. HATCH. No.

Mr. JAVITS. The word is "special emphasis."

Mr. HATCH. I also agree with both Senators, they are both right, that the preference is for those who lack educational credentials. But it does not foreclose those who have educational credentials, but who might otherwise be disadvantaged, such as a housewife who may have graduated from college at age 22, but now at age 55, after 33 years——

Mr. JAVITS. One with a bachelor's degree, 30 years ago, Senator HAYAKAWA understands that, might be really unemployed.

Mr. HATCH. That is right, or I presume, there are any number of other illustrative situations.

We do agree in this matter and I am hopeful the managers of the bill will accept it.

Mr. JAVITS. Mr. President, the amendment is acceptable to me.

Mr. NELSON. My marvelous contribution to the dialog was irrelevant.

Mr. JAVITS. No. It was very important.

Mr. NELSON. I stated three words, "and educational attainment," because I was addressing those three words when the Senator had in fact offered another amendment.

Mr. HATCH. I was wondering why we had that rather extensive educational dialog.

Mr. NELSON. I agree, obviously, with what was said.

Mr. HATCH. I am glad we had it. I am sure everybody else is.

Mr. NELSON. I agree with what I did say about it, and I do think it is important, but I was addressing the original amendment.

Mr. HATCH. Yes.

Mr. NELSON. Which was amended by the Senator.

I am perfectly prepared to accept the amendment.

Mr. HATCH. I thank the Senator and I yield back the remainder of my time.

Mr. NELSON. I yield back the remainder of my time.

Mr. HATCH. I move acceptance of the amendment.

The PRESIDING OFFICER (Mrs. ALLEN). The question is on agreeing to the amendment of the Senator from Utah.

So the amendment (UP No. 1792) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Senator HAYAKAWA addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida will be recognized.

Mr. CHILES. I yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

UP AMENDMENT NO. 1793

(Purpose: To provide for utilization of funds under title VI)

Mr. HAYAKAWA. Madam President, I call up an unprinted technical amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. HAYAKAWA) proposes an unprinted amendment numbered 1793.

Mr. HAYAKAWA. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 376, between lines 6 and 7, insert the following new section:

"UTILIZATION OF FUNDS

"SEC. 610. Funds available under this title to a prime sponsor may be used, with respect to individuals qualifying for assistance under this title, for programs authorized under title II (other than upgrading and retraining under part C and public service employment under part D), part A of title III, title IV, and title VII.

On page 181, in the table of contents after item sec. 609 add the following new item:

"Sec. 610 Utilization of funds.".

Mr. HAYAKAWA. Madam President, in both House and Senate versions of the CETA reauthorization bill, title II, includes a provision for the use of funds "for any programs or activities authorized by part A of title III, title IV, and title VII of this act." The House bill has an equivalent provision for title VI funds. My amendment now would add this provision to the Senate bill. The exact language has been discussed with the committee staff. The basic purpose of the amendment is of course to make unused title VI funds available for other appropriate titles of the bill.

I hope the floor managers of the bill will accept this technical amendment.

Mr. NELSON. I say to the distinguished Senator from California that I agree with the amendment. It should have been in the bill, in title VI. I am glad that the Senator from California called it to our attention and offered the amendment. I am prepared to accept it.

Mr. JAVITS. I accept the amendment.

Mr. NELSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

UP AMENDMENT NO. 1794

(Purpose: To establish a program of controlled evaluations of employment and training programs)

Mr. CHILES. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. CHILES), for himself and Mr. DOMENICI, proposes an unprinted amendment numbered 1794.

Mr. CHILES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 284, between lines 2 and 3 insert:

"Annual Evaluation Plan and Report to Congress

"(c) The Secretary shall prepare and submit to the Congress, at the same time as the President submits his budget to Congress each year, an annual evaluation plan, setting forth major themes for the areas of research, statistics, evaluation, experimentation, and demonstrations to be undertaken in the succeeding fiscal year, the program purpose and policy alternatives to which each such area is related and the current and proposed funding and staffing levels. The Secretary shall specify in the portions of the plan relating to experimentation and demonstrations the intended outcome of proposed major innovations and the amount of time required to test the innovations or to achieve adoption of the demonstration.

"(d) The Secretary shall prepare and submit to the Congress at the same time as the President submits his budget to Congress each year, an annual evaluation report for employment and training programs. The Secretary shall include in such report—

"(1) a summary of the achievements, failures, and problems of the various programs authorized in this Act in meeting the objectives of this Act;

"(2) a summary of major findings from research, evaluation, and experiments conducted in the previous fiscal year;

"(3) recommendations for program modifications based upon analysis of such findings; and

"(4) such other recommendations for legislative or administrative action as the Secretary deems appropriate.

"(e) The Secretary shall develop an ongoing program to notify prime sponsors of experiments and demonstrations to be conducted in their States and shall disseminate to prime sponsors and governors the results of all research, demonstrations, evaluations, and experiments of employment and training programs;

"(f) Funds available under this section may be transferred to any other Federal department or agency to carry out functions delegated to that department or agency pursuant to agreements with the Secretary.

CETA REAUTHORIZATION

Mr. CHILES. Madam President, I would like to say a few words in general about the CETA reauthorization bill which the Human Resources Committee has reported. I wish especially to compliment the managers of the bill, Senator NELSON and Senator JAVITS, for their continued creative leadership in this area. They, as well as Chairman WILLIAMS of the full committee, have been particularly responsive to the views of Senators who are not members of the committee, but who share their concern for the importance of this legislation. I believe this legislation responds to changing economic conditions and to the actual operating experience of the last few years, and the committee deserves praise for being willing to redirect the program this way.

I will not repeat the detailed description of the bill already provided by the managers, but I do wish to highlight several areas which I think are very important, and where the committee has responded to the suggestions which Senator DOMENICI and I offered in the bill we introduced.

First, this bill returns the emphasis of CETA from the countercyclical goal of temporary job creation to the permanent goal of aiding those persons who are least able to obtain employment. This is a shift not just of language, but of $3 billion which is moved to comprehensive employment and training programs for disadvantaged persons. In addition, the bill contains provisions to tighten up eligibility standards and prevent local governments from substituting CETA funds for their normal hiring.

Second, the committee has recognized the essentially different needs of different age groups. They have taken the first step to mandate coordination of the various youth employment programs which have proliferated in recent years. The bill also contains an older workers section, which Senator DOMENICI and I suggested. This responds to the recognition that only 2 percent of current CETA enrollees are over age 55, yet this group has faced increasing problems in staying in the labor force. The new program will not shift older workers into public jobs, but will require CETA programs to work with

private employers to keep older workers on the payroll.

Without going into the general administrative provisions in detail, I think the committee should be complimented for maintaining local flexibility and control of the program. Many provisions offered by the administration would have reduced local flexibility or added to program fragmentation and complexity. The committee has resisted the temptation to create separate program structures for every new need, but has wisely kept them within the framework of the comprehensive service plan to be developed at the local level. I hope that as the various youth programs and other experimental projects come up for renewal, we will be able to work more of them into the comprehensive framework. The job voucher demonstration project included in the committee bill has the potential for becoming a major component in the set of tools we offer to local programs, so I will discuss it at greater length.

VOUCHER DEMONSTRATION PROJECT

Madam President, I am pleased that the CETA bill reported by the Human Resources Committee goes a long way toward improving private sector involvement. If 80 percent of the jobs in our economy are private sector, then we must train people for the skills and occupations which private industry needs. Work experience in a public job is helpful to a disadvantaged person in gaining entry to the labor market, but experience in a private job offers four times as many opportunities. Part of bills S. 2805 and S. 2806, which I introduced along with Senator DOMENICI, was a permanent program of tax vouchers for employing disadvantaged youths, as well as integrating private sector involvement in all phases of CETA.

Disadvantaged youth have a cluster of attributes which keep them out of jobs: Lack of skills, no experience, poor work attitudes and expectations, too low productivity to justify the Federal minimum wage or minimum union scale. An effective program should seek to modify all of the factors, and do so in a way that is most attractive to private employers. For this reason we designed a tax voucher system that will allow this kind of private business participation without requiring any contract or grant relationship between the employer and the local CETA program.

The CETA prime sponsor would determine eligibility and issue the youth a voucher, which would entitle a private employer to a credit against his employee withholding tax, with no grant applications or paperwork. Each prime sponsor will have a set amount of voucher authorization based on the prime sponsor's allocation. Each local prime sponsor would issue to eligible youth a voucher good for a credit of 50 cents to $1 an hour. The youth would then seek employment in the private market. The voucher would entitle the employer to a reduction of his employees withholding tax equal to that 50 cents to $1 for each hour worked. The youth would be paid minimum wage, or union scale, or whatever rate the employer considered appropriate. The voucher would be portable and valid for 24 months, so that the youth and employer would not have to worry about being locked into an unsatisfactory arrangement. The employer would not have to go through the paperwork of waiting for a grant or contract. He would get the immediate cash benefit at each payroll period. All he would have to do is add a column to his withholding statement and attach the voucher along with his W-2 forms at the end of his tax year. The youth would have the benefit of a regular private sector job, paid at the same rate as his fellow workers. If he did not perform well he could be fired; if he performed well, he could get raises and promotions.

Madam President, I am gratified that the Human Resources Committee included a required demonstration of the voucher concept in the bill it reported. Unfortunately, the accompanying report language which defined the way the demonstration is to be conducted was inadvertently omitted.

I had intended to offer an amendment to insert this clarifying language into the bill. However, I accept the assurance from the managers of the bill that they will include this description in the statement of the conference managers. In order to clarify the legislative history, I ask unanimous consent that the text of the clarifying amendment be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page 287, strike lines 1 through 12 and insert:

"(b) The Secretary shall consider the following principles when developing regulations for this project:

(1) Vouchers shall be worth up to $1.00 per hour of paid work by the participant to offset the lower productivity of eligible individuals. Factors to be considered in determing the value of the vouchers shall include, but not be limited to, participant employability, local wage rates and labor market conditions. Voucher-eligible employees shall be paid at a rate not less than the higher of the minimum wage or the rate paid by that employer to other individuals performing the same or similar work.

(2) Vouchers shall be portable between employers, not committing the employer or employee to continue the work arrangement other than by mutual agreement, and shall be valid for up to two years, as determined by the Secretary.

(3) Procedures shall be established to avoid displacing currently employed individuals by voucher-eligible employees.

(4) Participating prime sponsors shall integrate vouchers into their comprehensive services, and utilize a significant proportion of available vouchers for individuals completing training programs, so as to direct voucher recipients toward jobs with meaningful advancement opportunities.

"(c) The Secretary is instructed to prepare and submit to the Congress not later than October 1, 1980, a report evaluating the effectiveness of this demonstration project. The Secretary's report shall include an evaluation of the project's effectiveness in increasing the employability and earnings of eligible groups, the willingness of private sector employers to participate, the desirability and skill level of jobs obtained by participants, the administrative feasibility of the program and any other factors deemed important by the Secretary."

EVALUATION AMENDMENT

Mr. CHILES. Madam President, as to the amendment I have sent to the desk, one of the frustrations I have had in considering CETA as a member of the Budget and Appropriations Committees is that we do not have good evaluations of the effectiveness of all the major components of the program. We get reports on bits and pieces as problems reach a crisis stage, but we have no assurance that all parts of the program are being evaluated. We are forced to allocate funds on the basis of the fine goals of the program, without clear evidence of whether the goals are being achieved. Over the last few years Congress has compounded the problem by adding different economic goals to the original program. The bill before us today goes a long way toward clarifying the objectives of the program in reducing barriers to employment.

My amendment will require the Secretary of Labor to develop an annual evaluation plan and report to Congress. This will tell us how he intends to use his broad discretionary authority to conduct experiments and demonstrations. He will have to tell us what he is going to spend and what we can expect to get out of these evaluations. More important, the Secretary will be required to report to Congress a summary of his findings on the achievements, failures, and problems in the various programs. This will allow us to put the money where it does the most good, and take any corrective actions necessary from the legislative side.

Madam President, I would not like to see this plan and report turn into a massive document loaded down with detailed descriptions of every little research project. Rather, I would hope that the Department would focus on pulling their projects together into major themes, and showing how those themes relate to the program objectives of CETA. I believe we will find in the initial attempt that there is no ongoing evaluation of how some of the basic purposes of the act are being fulfilled.

A second area addressed by this amendment is creation of an ongoing program to disseminate the results of research and evaluation. Governors and local prime sponsors should be notified about the various experimental and demonstration projects conducted in their States. They should also receive summaries of evaluation efforts conducted nationally or in other States, so that they can improve their own programs without waiting for Federal regulations.

The final provision of this amendment allows funds to be transferred among Federal departments in order to carry out experimental or demonstration projects. This is critical for areas like welfare reform, where we are trying to test out the relations among work, welfare, and food stamp programs. We have had the problem where experiments intended by Congress have been held up by administrative barriers on how to pay benefits for various programs. In any such case, the arrangement would be made pursuant to agreement of the Sec-

retary of Labor in order to protect the program purposes of CETA.

Madam President, program evaluation does not generate the kind of popular support that we get for funding services, but it is absolutely essential if we are to find out how those services can be provided most effectively.

I understand that the managers of the bill have looked at this particular amendment, and I hope that they will accept the amendment.

Mr. NELSON. Madam President, the amendment proposed by the Senator from Florida is a very good one. If there is anything that concerns us all, it is the lack of adequate information concerning the performance of programs that we legislate, but do not manage. We can design the legislation, but the management of programs is the business of the executive branch and not Congress.

We have the authority to authorize a program. We have authority to appropriate money for a program. We have authority to put in the statute the objectives of the program, and we have the oversight responsibility through the hearing process.

Nonetheless, the managers of all Federal programs are in the executive branch and not in the legislative branch.

Any program that is carefully designed to provide information, information index, if you will, of performance that is done in a manner so that Congress has better information to evaluate how well these programs perform so that we can further support them, reduce them, eliminate them, improve them, is a good concept and a good idea.

I agree with the amendment of the Senator from Florida in his mandating an annual evaluation program and it is designed in such a way that it does not go into great detail about how the Secretary must do it because I think the Senator is correct. We need to give him flexibility to produce the best information in the most efficient way so that we can judge the programs.

I am prepared to accept this very good and constructive amendment.

Mr. JAVITS. Madam President, I adopt everything that Senator NELSON has said.

I am prepared to accept the amendment.

Madam President, I yield back the remainder of my time.

Mr. JAVITS. I yield back the remainder of my time.

Mr. NELSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida.

The amendment was agreed to.

UP AMENDMENT NO. 1795

(Purpose: To provide special emphasis for services for displaced workers)

Mr. CHILES. Madam President, I send to the desk a second amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. CHILES) proposes an unprinted amendment numbered 1795.

On page 260, between lines 19 and 20, insert the following:

"SERVICES FOR DISPLACED WORKERS

"SEC. 216 (a) Services under this section shall have the purpose of overcoming the particular barriers to employment created by technological change or by the decline in local economies.

"(b) The Secretary shall insure that each prime sponsor's plans for serving eligible displaced workers under this part include:

"(1) Steps to assure that activities for displaced workers described in this section are, to the extent practicable, consistent with the overall economic development plan for the area required by section 202(b)(10) of the Public Works and Economic Development Act of 1965.

"(2) Steps to assure that private employers shall be involved in the planning and implementation of such programs for displaced workers.

"(3) Steps to assure that representatives of displaced workers shall be involved in the planning and implementation of such programs for displaced workers.

"(4) Such services may include, but not be limited to the Job Search Relocation Assistance authorized under Section 304.

(c) Each prime sponsor may use assistance available under this title for experimental projects designed to increase employment opportunities for displaced workers, with the approval of the Secretary.

(d) On page 178 in the table of contents after item "Sec. 215." insert the following: "Sec. 216. Services for displaced workers."

(e) On page 287, following line 12, insert: "Sec. 318:

"(a) The Secretary is authorized to carry out a special experimental program to link the employment and training activities of prime sponsors to a workable strategy for stimulating local private economic development and replacement of declining industries. Any determination concerning the nature of skills to be provided in training and retraining programs shall be made after consultation with agencies charged with fostering the growth or introduction of industries in a given labor market. This experiment may include use of vouchers as authorized in Section 317.

"(b) The Secretary shall take whatever action is necessary to assure that any experimental program conducted under this section is coordinated with Federal, State, Regional, and Local agencies responsible for administering and receiving funds from the Economic Development Administration pursuant to Sections 201 and 202 of the Public Works and Economic Development Act of 1965 and from the Small Business Investment Act of 1958. Activities under any such program shall be consistent with the overall economic development plan for the area required by section 242(b)(10) of the Public Works and Economic Development Act of 1965.

Mr. CHILES. Madam President, the purpose of this amendment is to restore one of the original purposes of title II of CETA, which is to provide services to workers who are displaced by technological change, by the decline of the industry in which they work or the economic decline of the area in which they live. This is a different kind of structural unemployment than that faced by persons entering the labor market for the first time. It is useless to retrain a worker unless you are also locating or expanding an industry which needs his or her new skills. This amendment therefore requires that local prime sponsors provide services appropriate to such displaced workers, and that they coordinate their efforts with the local economic development plans required under the Public Works and Economic Development Act. We also intend to offer a complementary amendment to that act, requiring economic development programs to coordinate their activities with CETA. We have two sets of Federal programs with related objectives, but we need a mechanism to get them working together.

The second section of our amendment authorizes the Secretary of Labor to carry out a special experimental program to link the employment and training activities of prime sponsors to to a workable strategy for stimulating local economic development and replacement of declining industries.

Madam President, I believe this is a problem we are all sensitive to, and we try to deal with it piecemeal by steering investment in many Federal programs to declining areas. However, we do not have an overall strategy to tie these efforts together.

We do know that availability of skilled workers is a major factor for industrial location decisions, including expansion decisions. The cost of labor is also a major factor. We ought to take advantage of the experimental authority to find out what kind of local economic development strategies will provide jobs for the people assisted by CETA, and how CETA can contribute to the success of those strategies.

Madam President, this amendment does not attempt to shift the emphasis of CETA from assisting disadvantaged individuals to assisting employers. Rather, it is a recognition of the fact that CETA acts within a set of local economic conditions, and carries that recognition to the fact that CETA can affect those conditions. The whole local structure of CETA is built on the necessity of relating employment and training programs to their local economic context. I hope the Senate will move to start the process of gathering the knowledge necessary to improve that relationship.

Madam President, the managers have looked over this amendment and I hope that they will accept it.

Mr. JAVITS. Madam President, again we understand the thrust of the amendment and we will certainly do everything we can, in the Appropriations Committee, et cetera, to enforce it, but we understand that while we do all that, I think any prime sponsor who acts under the bill is not going to expect that we are going to sue them tomorrow because we complain about how he handled this and get our money back.

In short, we understand that we mean it. We are going to enforce it. We will do our utmost to carry it out. But it does not represent a statutory requirement and condition precedent because we just could not administer it on that basis.

Mr. CHILES. I thank the distinguished Senator.

Mr. JAVITS. On that basis, Madam President, I am for the amendment.

We yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida.

The amendment was agreed to.

Mr. SCHWEIKER. Madam President, I would like to call to the attention of

my colleagues one very important provision of the committee bill. It outlines the role of community-based organizations in delivering employment and training services under CETA.

I am referring to section 123(m) of the proposed act, which provides that the Secretary and prime sponsors shall give special consideration in carrying out programs authorized by CETA to community-based organizations which have demonstrated effectiveness in the delivery of employment and training services.

I offer this provision during full committee markups of S. 2570, and I am pleased it was unanimously adopted. Our purpose is to insure maximum utilization of the effective programs offered by community-based organizations. This provision is virtually identical to one enacted last year in the Youth Employment and Demonstration Projects Act, and similar to requirements contained in the Senate-passed version of the original CETA legislation in 1973.

The record compiled by community-based organizations under CETA is impressive, as was illustrated in a recent survey of prime sponsors conducted by the Employment and Training Council of the United States Conference of Mayors. The survey included evaluations of the major national community-based organizations, opportunities industrialization centers, SER-Jobs for Progress, National Urban League, United Way/United Fund, and a wide range of local community-based organizations.

Prime sponsors rated the effectiveness of almost all community-based organizations in the top third of all organizations the prime sponsors deal with. Particularly noteworthy is the data compiled by the Conference of Mayors survey concerning the placement of trainees in permanent, unsubsidized employment during fiscal year 1977. Placement rates of trainees by community-based organizations varied from 46.6 percent to 76.6 percent. This compares very favorably to an overall CETA title I placement rate during the same period of 39 percent.

Therefore, community-based organizations have earned the special consideration our bill provides for.

Madam President, section 123(m) uses two terms I would like to elaborate on for the benefit of my colleagues. First is the term "special consideration." This term was very precisely and expertly explained by the distinguished ranking minority member of the Human Resource Committee last year during debate on the Youth Employment and Demonstration Projects Act as follows, and I quote.

> Special consideration means a strong impact . . . it means a very open door . . . it means that community-based organizations shall be used, and they shall be the ones whose services are employed unless there is a demonstrably better way.

The second critical term is "demonstrated effectiveness." By this term we contemplate a high standard of effectiveness—one which earns for the community-based organization the right to require special consideration of what it has to offer. Although the prime sponsor is not to impose upon community-based organizations higher performance standards than those which would be used in judging programs the prime sponsor directly administers, we are most anxious to see effective utilization of all CETA funds.

Appropriate considerations for determining "demonstrated effectiveness" should include an analysis of results of prior employment and training programs—or related services to the poverty community—taking proper perspective of the scope of the program, the clientele served, the similarity between past programs and the services the community-based organization is offering to perform, and other like considerations.

Careful attention could also be given, when appropriate, to the program to be offered, to the ability of the community-based organization to provide an effective outreach and recruitment mechanism to reach the hard-to-employ and economically disadvantaged, to maintain effective pretraining, in-training, and posttraining counseling, and to increase the chances for job retention.

Another possible consideration in appropriate circumstances is the value to prime sponsors, private sector employers, and the accountability of the entire CETA system, of employment and training programs which combine the functions of recruitment, counseling, training, supportive services, job placement, and followup.

Therefore, Madam President, it is not our intention to overburden the Secretary or prime sponsors with this special consideration requirement. However, it is the specific directive of section 123(m) that programs offered by effective community-based organizations are to be funded and utilized unless there is a demonstrably better way.

Madam President, I would like to ask if the managers of this bill share my understanding of the committee's intent in including section 123(m) in this bill.

Mr. JAVITS. Madam President, if the Senator will yield, I think the Senator has presented upon the basis of precedents a very fair and balanced appraisal of what we had in mind in the use of the term "special consideration."

I will say to the Senator that, having invented it, I had better learn how to live with it.

Mr. SCHWEIKER. The Senator certainly did a very fine job with that concept.

Mr. JAVITS. I thank the Senator. I am also very pleased that the Senator, in referring to what we had in mind, made it clear that it included a range of organizations, and he specifically named them in the bill because of our respect for them, the Opportunities Industrialization Centers, the SER-Jobs for Progress, the National Urban League and Main Stream, as well as a wide range of community action agencies.

I have long been a supporter of giving greater consideration to these organizations, and they also include in my own city the VFI, and I would like to call attention to the fact that Senator TOWER has been very devoted to the SER, which is essentially a Hispanic organization. The others are very well known as playing a very important part even in the history of CETA to date.

So, Madam President, I find myself, as I say, in agreement with the basic outline given to us of his understanding of the situation by Senator SCHWEIKER who has been, I might say, and quite justly, an indefatigable proponent of the usefulness of the Opportunities Industrialization Centers.

He was not here earlier when I commented upon their usefulness. I do so again. I think the record of their growth is a most extraordinary tribute to the worth of the organization, and also to Senator SCHWEIKER's advocacy of them as the Reverend Leon Sullivan comes from his State, and he has every reason to be very proud of what has been accomplished.

Mr. SCHWEIKER. I thank the distinguished Senator for his encouragement and support.

I would also like to ask the chairman, who has also been very helpful and responsive, the same question, whether this statement I made sets forth his understanding of what the intent of this section on special consideration is.

Mr. NELSON. Yes, I do agree with it.

Mr. SCHWEIKER. I sincerely thank the chairman.

AMENDMENT NO. 3526

Mr. SCHWEIKER. I call up my amendment 3526 and ask for its immediate consideration

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Pennsylvania (Mr. SCHWEIKER) proposes an amendment numbered 3526.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 200, line 10, redesignate paragraph (2) as paragraph (3); and after line 9 insert the following new paragraph:
>
> "(2) If the Secretary concludes that a public service employment program is being conducted in violation of section 121(h)(1), (h)(2), (h)(3), (j), section 122(d), (f), or section 123(h), or regulations promulgated pursuant to such sections, the Secretary shall, pursuant to paragraph (1) of this subsection, terminate or suspend financial assistance in whole or in part, order the repayment of misspent funds from sources other than funds under this Act or other funds used in connection with programs funded under this Act (unless, in view of special circumstances, the Secretary determines that requiring payment would not serve the purposes of this section), and order such other sanctions or corrective actions as are appropriate.".

Mr. SCHWEIKER. Madam President, the purpose of this amendment is to provide stronger protection against abuses of the public service employment program. Specifically, it deals with the problem of substitution of regular local government employees with CETA

workers and other flagrant abuses, such as kickbacks, political patronage, nepotism, and the like. My amendment would establish the firm rule that when such abuses occur, the Secretary shall take strong action to correct the abuse and to require reimbursement of the misspent funds.

The Secretary is given this discretionary authority in the committee bill with respect to violations of any provision of the act or of applicable regulations. My amendment would make effective, appropriate enforcement action mandatory in connection with these most critical areas of abuse.

Estimates of the extent of substitution in the public service employment program vary considerably. It is clear that many cities have become heavily dependent upon CETA workers in the composition of their work force. Whenever substitution occurs, the entire purpose of the program—to create new jobs for the unemployed—is completely defeated.

Similarly, other abuses of the program not only waste millions of Federal dollars, but jeopardize public support for the entire CETA program.

It is essential that we send a clear message to prime sponsors, to the Labor Department, and to the American people that these abuses will not be tolerated. We must also make clear that prime sponsors must effectively police their own programs, and that when they fail to do so, the Federal Government will take effective action against them.

Under my amendment, when these abuses are found, after notice and an opportunity for a fair hearing, the Secretary shall suspend funding for the program in question until the problem is corrected. If it is not corrected, then he shall terminate funding. The Secretary shall also, absent very unusual circumstances, require reimbursement of the misspent funds from funds other than those provided by CETA. Nor may reimbursement come from local funds used directly in support of CETA programs such as funds legally used to supplement public service employment wages. The intent is to insure that remedies for abuses by prime sponsors do not adversely affect the very people CETA is designed to serve.

My amendment preserves some discretion for the Secretary not to require reimbursement from the prime sponsor under very limited and special circumstances.

For example, if CETA funds are misspent by a subcontractor of a prime sponsor in spite of the exercise by the prime sponsor of extreme care and prudence in selecting the subgrantee and monitoring compliance, the Secretary might reasonably conclude that repayment by the prime sponsor would not further the need to protect the integrity of the CETA program. In such special circumstances, reimbursement could be waived. However, I must stress that the intent of this amendment is to make reimbursement of misspent funds for these particularly critical abuses the prevailing rule, and the waiver of repayment a very narrow exception.

I would also like to point out that this amendment is very similar to one adopted by the House by a vote of 407 to 1 in their version of the CETA reauthorization bill. In addition, I want to make clear, in response to some concern expressed on the House floor, that this amendment would have no retroactive application.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. SCHWEIKER. I yield.

Mr. JAVITS. That was the only thing I was going to ask the Senator. The amendment deals with strict application of the law, but I think retroactivity would be very unfortunate. The Senator makes that clear, that there will be no retroactivity.

Mr. SCHWEIKER. I thank the Senator for that suggestion. We have incorporated that. I agree with him. As a matter of basic fairness, I feel enforcement standards and policy should be clear in advance. Therefore, only conduct occuring after enactment of this bill would be specifically covered by this amendment.

Mr. President, I wish to compliment the managers of this bill for their forceful and imaginative efforts to correct the abuses which have too frequently characterized the CETA program. My amendment, I believe, is entirely consistent with these efforts. I hope the chairman and the ranking members will support it.

Mr. JAVITS. Madam President, the amendment, with the observations we have just handled in the colloquy, is entirely agreeable to me.

Mr. NELSON. Yes, I agree with the amendment. The House tackled the question, and I believe the Senator from Pennsylvania has made a substantial improvement in the approach he took.

I am prepared to yield back the remainder of my time.

Mr. JAVITS. We yield back the remainder of our time.

Mr. SCHWEIKER. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania (Mr. SCHWEIKER).

The amendment was agreed to.

UP AMENDMENT NO. 1796

Mr. METZENBAUM. Madam President, I send to the desk an unprinted amendment in behalf of myself and Senators LONG, CHILES, RIEGLE, and CANNON, and ask for its immediate consideration.

The PRESIDENT OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM), for himself, Mr. LONG, Mr. CANNON, Mr. CHILES, and Mr. RIEGLE, proposes an unprinted amendment numbered 1796.

Mr. METZENBAUM. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 214, strike out lines 20 through 25 and on page 215 strike out lines 1 and 2, and insert in lieu thereof the following:

"(o) Funds available for employment benefits under this Act may be used, for the duration of participation, for contributions on behalf of participants who are, prior to July 1, 1979, enrolled in retirement systems or plans. With respect to participants enrolled in retirement systems or plans on or after such date, except as otherwise provided in regulations promulgated by the Secretary, no funds under this Act may be used for contributions to retirement systems or plans unless such contributions bear a reasonable relationship to the cost of providing benefits to participants. Such regulations shall take into consideration circumstances where efforts are being made to change State or local laws or both affecting retirement coverage for individuals who are participants in activities funded pursuant to this Act. Pursuant to section 314 of this Act, the Secretary shall provide technical assistance to recipients to enable retirement systems or plans to comply with section 122(1) and this paragraph."

On page 223, line 4, strike the period and insert in lieu thereof a comma and add the following:

". . . but within any single classification a distinction may be made between public service employees and other employees for purposes of determining eligibility for participation in retirement systems or plans which provide benefits based on age or service or both. Nothing in this paragraph or in section 121(o) shall be deemed to require a contribution to a retirement system or plan for the purpose of providing retirement benefits based on age or service, or both, to a public service employee unless funds under this Act are available, pursuant to section 121(o) to make such contribution."

Mr. METZENBAUM. Madam President, this amendment addresses the problem of how State and local laws governing retirement benefits can adversely affect the CETA program.

In many States CETA employers are required to contribute a portion of their operating funds—moneys which could be used to create public service employment—to a retirement system. This is so in spite of the fact that CETA employment is temporary in nature and despite of the fact that the employee could never qualify for a retirement check. The net effect of such contributions is a reduction in the number of PSE participants and a waste of local government tax revenues.

Our amendment resolves this complex problem which involves over 6,000 public pension plans, 50 State retirement statutes, and the regulations of the Department of Labor. Specifically, the amendment:

Places severe restrictions on the use of Federal funds to pay retirement benefits for participants in short-term public service jobs;

Insures that no State or local tax revenues will be used to pay retirement benefits; and

Insures that Federal funds will be used to create the maximum number of public service jobs instead of increasing the coffers of retirement systems from which few PSE jobholders will ever benefit.

This amendment insures that CETA funds will not be used to finance retirement systems, but it does permit payments in those few instances where CETA workers would lose tangible benefits if not enrolled. For example, in re-

tirement systems which couple other benefits with retirement CETA participants could lose health or disability coverage if they were excluded from participating in retirement plans. The cost of separately purchasing other benefits may exceed savings gained from excluding retirement.

Exclusion from retirement plans can occur immediately in some States, if the temporary nature of CETA public service jobs is acknowledged. Implicit in our amendment is that CETA participants are recognized as temporary employees. Thus, within any single employment classification a distinction may be made between public service employees and other employees for determining eligibility for participation in retirement systems or plans.

In other cases we need more time. Since CETA participants are not Federal employees but are employees of States, counties, cities, school boards, and community-based organizations, they are subject to the laws and collective bargaining agreements governing other regular employees. To exclude retirement as a benefit requires changes in numerous State and local laws. Since it requires time to implement those changes, we have chosen July 1, 1979 as the date by which we expect those changes to be made.

Our amendment makes funds available for employment benefits for the duration of their participation for those enrolled prior to July 1, 1979. Once a CETA participant has been hired with the understanding that his employer will make payments into a retirement fund on his behalf, no local, State or Federal law can change that situation without effectively changing a condition of employment and violating personnel practices. Hence, the only solution for current CETA participants is to continue to provide for their retirement coverage out of CETA funds. Given the time limits on participation in the CETA program, this cost is of a short-term nature which will rapidly phase out. Further, the equal benefits provisions of current CETA law, as interpreted by Federal regulation, created this obligation.

Finally, our amendment provides a safeguard for the local property taxpayer by insuring that nothing in CETA can mandate the use of local property tax revenues for CETA retirement coverage.

The Department of Labor estimates that between $150 and $175 million will be saved each year by this amendment. Frankly, I am not very comfortable with those numbers. But I do know that there will be a savings—both to the Federal Government and to the State and local governments which act as the prime sponsors.

I urge adoption of the amendment.

Mr. NELSON. Madam President, this amendment creatively and successfully undertakes to resolve the problem of pension contributions for CETA employees, and I think it is a very good proposal and I am prepared to accept the amendment.

Mr. JAVITS. Madam President, the amendment, it seems to me, fits in exactly with the basic purpose of the bill which, in section 121(o) on page 214, calls for such contributions, to wit, contributions to retirement systems, to "bear a reasonable relationship to the cost of providing benefits to participants."

I believe this amendment properly implements that purpose, and it is acceptable.

Mr. METZENBAUM. Madam President, I commend both the Senator from Wisconsin and the Senator from New York for their superb leadership in sponsorship of this legislation, which I believe to be very much needed legislation, based on yeoman work in bringing it to the floor.

I am very grateful to them for indicating that the amendment is acceptable to them. Therefore, Madam President, I yield back the remainder of my time and move the adoption of the amendment.

Mr. JAVITS. I yield back the remainder of our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment (UP No. 1796) of the Senator from Ohio.

The amendment was agreed to.

AMENDMENT NO. 3528

(Purpose: Authorizes prime sponsor planning council to review efforts to reduce artificial barriers to employment, thereby emphasizing the importance of these efforts)

AMENDMENT NO. 3529

(Purpose: To add to the bill a definition of "artificial barriers to employment")

AMENDMENT NO. 3530

(Purpose: To emphasize efforts to eliminate artificial barriers to employment by including such programs in the list of topics on which the Secretary may conduct research)

AMENDMENT NO. 3531

(Purpose: To insure coordination between the prime sponsor and the resources of the juvenile court system under the Youth Employment and Training Program)

Mr. PERCY. Madam President, I call up my amendments 3528, 3529, 3530, and 3531 to the CETA bill, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. If these are the amendments of which we have had notice, while I generally call on them to be read, we are familiar with them and I will not insist on that.

The PRESIDING OFFICER. The amendments will be stated.

Mr. PERCY. I ask unanimous consent that the reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 3528

On page 204, insert immediately before the period at the end of line 23 the following: ", including efforts to reduce and eliminate artificial barriers to employment".

AMENDMENT NO. 3529

On page 230 at line 15, insert the following new paragraph and redesignate the succeeding paragraphs and references thereto accordingly:

"(1) the term 'artificial barriers to employment' refers to limitations in the terms and conditions of employment which are not directly related to the individual's qualifications to perform the duties required by the employment position."

AMENDMENT NO. 3530

On page 278 at line 17, after the word "processes" insert the following: ", including programs designed to eliminate artificial barriers to employment".

AMENDMENT NO. 3531

On page 313, at line 18, after the words, "public employment service," and before "other youth programs" insert the following: "the courts of jurisdiction for status and youthful offenders,".

On page 314, at line 14, after "public employment service system" add the following: ", and the courts of jurisdiction for status and youthful offenders".

The PRESIDING OFFICER. Will the Senator use his microphone?

Mr. PERCY. I am sorry, Madam President, I have my microphone on.

Madam President, I am proposing today for consideration four amendments to the Comprehensive Employment and Training Act. Three would clarify and emphasize the general proviso already in the bill that programs under CETA "shall contribute to the maximum extent feasible to the elimination of artificial barriers to employment and occupational advancement." The fourth would require that applicants for funds under the CETA youth programs coordinate their activities with the juvenile justice system, as well as the other youth-related agencies already enumerated in the bill.

The bill reported by the Human Resources Committee authorizes the continuation of special Federal programs for disadvantaged workers who are in need of supplementary services beyond the scope of title II programs. The Secretary of Labor is directed to establish programs for certain groups, including offenders, who have unique employment problems.

The problems of all the people targeted by the bill—the handicapped, older workers, displaced homemakers, and others—urgently need solutions that we can provide. I can speak, however, with special knowledge of the problems of offenders because I have the honor of serving as an honorary chairman of the PACE Institute in Chicago. The PACE Institute is an organization of volunteers, businesspeople, Federal and local people who, for 10 years, have worked with the inmates of Cook County, Ill., jails giving them educational and vocational training opportunities they would not otherwise have had. Madam President, I ask unanimous consent that a description of the work of the PACE Institute be printed in the RECORD at the conclusion of these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. PERCY. Under the effective leadership of the Reverend John R. Erwin, the PACE Institute has had an outstanding record of success in helping offenders become responsible members of the community, an effort which we can all recognize as a major deterrent to crime. It is because of Reverend Erwin that I have developed such an appreciation of the offender training programs

sponsored through CETA and others and an understanding of the need for the amendments I offer today. Although my amendments emphasize efforts to eliminate artificial barriers to employment for all disadvantaged groups it must be recognized that rehabilitated ex-offenders bear a uniquely heavy burden in this regard. Therefore, it is my hope that the three amendments concerning artificial barriers will be particularly helpful in assisting this group.

My fourth amendment would require that applicants for funds under the CETA youth programs coordinate their activities with the juvenile justice system as well as other youth-related agencies. I feel it makes good sense to mobilize and coordinate the efforts of all community agencies working with young people in order to maximize the effectiveness of their programs.

Madam President, I urge the Senate to adopt these simple amendments which I believe will go a long way toward improving the performance of prime sponsors and the Labor Department in addressing the special employment problems of disadvantaged groups in our country.

EXHIBIT 1

PACE PHILOSOPHY

PACE Institute, Inc., started out in 1967 with a handful of students, volunteers, and donated teaching machines to improve the lives of the inmates of the Cook County Department of Corrections. In response to a criminal justice system in which offenders are punished by incarceration that affords little chance for productive activity, PACE Institute believes that the incarcerated must be given the opportunity to grow and learn through meaningful educational activity if they so desire. Time spent doing nothing in jail leads, in the majority of cases, to repeated criminal behavior upon release. In 1978, PACE has expanded to an educational institution serving over 500 inmates a year. Housed inside the walls of the Cook County Jail, PACE (Programmed Activities for Correctional Education) provides basic academic education, vocational training, counseling, and job referral services.

It is PACE's philosophy that through its program offenders can learn to live positive lives outside the cycle of crime and that education can also reduce their rate of recidivism (return to jail). PACE has proven this with its 23% rate of recidivism (return to jail within one year after release) compared with the 80% rate of the Cook County Department of Corrections as a whole. The Institute currently is placing approximately 74% of its students in jobs, educational institutions, or vocational training schools after their release from jail.

PROGRAM PLANS

During 1978, PACE has plans for several new program initiatives. At the request of the Board of Directors of the Cook County Department of Corrections, PACE is designing an educational program to serve a greater number of the jail population on a self-selecting basis. Plans will be developed for expanded programs in (1) high school level education, (2) college level education, (3) vocational education, (4) counseling, (5) job referral, and (6) financial aid for furthering education after release.

PACE also has plans to create a formal, written curriculum in basic academic education, as well as begin new courses in vocational education—such as auto body and fender repair—so that our students acquire marketable skills.

The Institute will also be doing its own research into the most effective teaching methods in education for the incarcerated. PACE will be conducting an experimental program using slow scan TV (two-way visual/audio transmission) to instruct math and English courses—comparing this method with direct teacher-student instruction to judge the more effective technique. If the slow scan TV approach proves more beneficial there is the possibility of serving more inmates and offering more learning opportunities through this technology.

PACE also plans to work with personnel directors of major Chicago-area businesses in training inmates in how to write job applications and conduct themselves on job interviews. PACE has found through its experience that inmates lack the interpersonal communication skills necessary to "sell" themselves in the labor market. PACE also is aware that there are many personnel directors who are eager to learn how to evaluate more effectively the skills of inmates. The basic objective of this program is to improve the skills of both groups. PACE intends to get commitments from the participating businesses to hire PACE students.

Mr. PERCY. As I say, in the formation of these amendments, I have worked closely with the Reverend Erwin, for whom I have the highest respect.

Madam President, amendment No. 3528 refers to section 109 of the committee bill which requires that the prime sponsor's planning council provide a "continuing analysis of the need for employment training and related services in such area." In keeping with the overall commitment of this legislation to eliminating artificial barriers to employment, my amendment 3528 specifies that the need in the prime sponsor's community for efforts to reduce and eliminate these artificial barriers be a part of the overall analysis submitted by the council.

Amendment 3529 pertains to Part B: General Provisions of S. 2570. The bill provides that "Programs shall contribute to the maximum extent feasible to the elimination of artificial barriers to employment and occupational advancement." Nowhere in the bill, however, is there a definition of "artificial barriers." I think it would be helpful to both the administrators and the beneficiaries of these programs to have a definition to work under. The language of my amendment 3529 has been worked out carefully with the committee and I believe it is acceptable to the managers of the bill.

Amendment 3530 refers to section 311 of the bill which requires the Secretary to engage in research programs related to the purposes of the bill. In keeping, again, with the overall commitment of the bill to reduce and eliminate artificial barriers to employment, my amendment 3530 adds "programs designed to eliminate artificial barriers to employment" to the list of topics on which the Secretary of Labor may conduct studies.

Amendment 3531 concerns title VI of the bill, the reauthorization of the youth employment and training programs we passed last year. Section 436 of the bill requires that applicants for financial assistance under the youth programs show that they have coordinated with other agencies in the community that work with young people and certain types of agencies are listed. My amendment No. 3531 would include the juvenile justice system to this list. I think it makes sense to mobilize and coordinate the efforts of all community agencies working with young people in order to get the best results from these programs. The fact that the juvenile justice system is not mentioned in the bill is, I think, a small oversight I would like to correct. I move the adoption of the amendments en bloc.

Mr. JAVITS. Madam President, this amendment is uniquely appealing to me because I am the author of that section of the bill which is found under title III, section 301(b)(2), which relates expressly to offenders and an offender program. I thoroughly concur with and have worked very hard in the committee to bring about offender programs. I believe recidivism, to wit, the repetition of offenses, is one of the major problems in the administration of criminal justice, and the fact that a person has job training and the opportunities for a job is a great way to avoid recidivism.

We have an organization in New York called the Vocational Foundation, Inc., VFI, which specializes in this field and has done extraordinarily gifted work.

I am thoroughly in agreement with the Senator. I think what he has done is to take other aspects of the CETA activities and implement the offender program into those. I believe the amendment is very constructive and completely complimentary to the bill. I hope very much the Senate will accept it.

Mr. PERCY. I thank my distinguished colleague.

Mr. NELSON. Madam President, we are familiar with that very successful offender program in Illinois. We think this is a very constructive amendment to the bill. As manager, I am prepared to accept the amendment and yield back the remainder of my time.

Mr. PERCY. I yield back the remainder of my time.

Mr. JAVITS. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Illinois.

The amendments were agreed to en bloc.

Mr. PERCY. Madam President, I move to reconsider the vote by which the amendments were agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PERCY. Madam President, I wish to thank my distinguished colleagues very much for the work they have done in putting this bill together and particularly the attention they have given to the area of particular concern and interest to the Senator from Illinois. It is very much appreciated.

The Senator from Illinois would like to express appreciation also to the members of the staff of the floor managers of the bill who have worked so closely with Barbara Block, of my staff, to arrive at an agreement on these amendments.

I commend the entire committee in general for the work they have done on the bill. It is a good bill and one that I hope will bring a great many improve-

ments in the administration of the CETA program.

UP AMENDMENT NO. 1797

(Purpose: To reduce the reporting requirements of prime sponsors)

Mr. MARK O. HATFIELD. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon (Mr. MARK O. HATFIELD) proposes an unprinted amendment numbered 1797.

Mr. MARK O. HATFIELD. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 243, lines 8 to 26 and page 244 lines 1 to 11, insert in lieu thereof the following:

"(d) In order to assist the Secretary in preparing the report required by this section, the Secretary shall require as a condition of financial assistance that annual reports and evaluations be submitted in accordance with regulations. The data derived from such reports shall be compiled on a State, regional, and national basis, and shall be included in the annual report to the Congress. Such reports shall include but not be limited to the following information:

"(1) a detailed comparison of program performance with approved plan;

"(2) participant characteristics (cross-tabulated) including age, race, sex, national origin, handicap, education level, previous wage, termination wage and public assistance status;

"(3) average cost per participant, including breakdowns by wages or salaries, allowances, training, supportive services, fringe benefits, administrative costs, and by program activity;

"(4) the types of outcomes that participants experience after the program including, but not limited to, placement in the public sector, placement in the private sector, entered school, entered the military, transferred to another program under this Act, and received public assistance (cross-tabulated by program activity);

"(5) a post-enrollment followup of a statistical sample of participants of each prime sponsor which is adequate to ascertain the duration of employment and wages paid to program participants for six months following their termination from federally assisted programs."

Mr. MARK O. HATFIELD. I would like to say I have discussed this amendment with the managers of the bill, both the majority and minority managers.

Madam President, this amendment would alter the reporting requirements, as required under section 128(d), to make them more manageable and cost-effective. Under the present legislation, prime sponsors are required to compile data, which many do not have the technical capabilities to process efficiently at this time. In addition, the Department of Labor at this time does not have the capabilities to provide the necessary technical expertise to adequately assist prime sponsors in establishing the necessary data systems. As a consequence, the present requirement will cost more to implement than will be effective for the purposes of the act and will produce a surplus of information which is unnecessary.

I applaud the committee's effort to reduce paperwork for prime sponsors and the Secretary of Labor. The committee has acknowledged that the more time and money spent on this kind of paperwork will result in less funds being available for program management and monitoring. The committee has expressed the need to be able to assess the "true virtues and failures occasioned by this complex multibillion dollar program" and this objective is accomplished in this legislation. However, the problems seemingly addressed by these reporting requirements will be moot as amendments aimed at tightening eligibility requirements and increasing auditing and monitoring are adopted.

The changes I am proposing in section 128(d) will be consistent with the committee goals, while making data collection more accessible and understandable. The reduction in the volume of information required of prime sponsors will contribute to knowledge rather than bury it in a morass of trivial data.

In section 128(d)(2) the reporting requirements will increase slightly from that which is presently required under CETA. However, S. 2570 requires that cross-tabulation be conducted according to program activity. Program activities are dynamic and changing, with participants often moving and changing. Each move by a participant requires that a participant's file must be pulled to log characteristics. If we assume each participant is involved in one and a half program activities, we can predict that the reporting system would be made about three times more complex and time consuming. This is clearly information overkill.

As can be seen throughout this section, the requirements for cross-tabulation have been reduced to only those areas that are most essential and cost-effective. The purpose here is to reduce prime sponsor paperwork, as well as require only meaningful information. As I stated earlier, to require cross-tabulation for age, sex, race, national origin, and handicap for each subsection is onerous and unnecessary. Prime sponsors do not have the necessary computer capability to report this information and it is unlikely that this technical capability would be available before the authorization for this act expires.

Finally, the postenrollment followup was reduced from 1 year to 6 months enabling prime sponsors to react more quickly to deficiencies in their program's effectiveness. In addition, this will reduce the load of information that must be recorded and maintained by prime sponsors and it will eliminate the difficulties that would arise from tracking participants for a full year after termination.

The essential purpose of this amendment is to provide the information desired by the Senate in this bill, but at a cost which is not prohibitive and which will yield the desired results.

Last, I would only state as a member of the Paperwork Commission, which has now ceased to exist, that I think this is one more opportunity to stay within the requirement of the data necessary to make assessments, evaluations, and reports of various kinds, but to cut down a little on the unnecessary paperwork that I feel would be an overburden to the prime sponsors.

Mr. NELSON. I agree with the senior Senator from Oregon. The only information which would be requested is that which is absolutely necessary. As I said earlier today, of the many forms I have looked at, 80 to 90 percent of the information they are asking for is totally unnecessary. I agree with the amendment and am prepared to accept it.

Mr. JAVITS. I agree with the amendment and yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MARK O. HATFIELD. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MARK O. HATFIELD. I thank the managers.

UP AMENDMENT NO. 1798

(Purpose: To provide greater flexibility in determining wage adjustments)

Mr. STEVENS. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for himself and Mr. GRAVEL, proposes an unprinted amendment numbered 1798.

Mr. STEVENS. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 221, line 14, strike out "." and insert in lieu thereof ", except in the case of an area where the average annual wage exceeds 150 percent of the national average annual wage of all such areas."

On page 222, line 2, strike out "." and insert in lieu thereof ", except in the case of an area where the average annual wage exceeds 150 percent of the national average annual wage of all such areas."

Mr. STEVENS. Mr. President, the amendment I am offering will provide for greater flexibility in determining wage adjustments under section 122(j) for those areas of our country where the average annual wage exceeds by 150 percent the national average annual wage for all other such areas under the authority granted to the Secretary under subsection (3) of section 122(j).

For many months, as this bill was being considered by the Employment, Poverty and Migratory Labor Subcommittee and by the full Human Resources Committee, we have attempted to convince Congress that S. 2570 is too restrictive to work effectively in Alaska. I have been assured that everyone understands that Alaska needs some exemptions because of its

unique problems which set it apart from all other areas of our country. The major problem Alaska faces under the bill as written is the limitation imposed upon wages for public service employees paid under this act. Mr. President, if I may, I would like to cite a few examples of Alaska's high wage rates. First, our State's average annual wage covered by unemployment insurance is 250 percent of the national average. Second, an economically disadvantaged family of four composed of two adults and two children with no income qualifies for a minimum of $13,584 in welfare benefits within the State of Alaska.

This is $1,584 above the maximum CETA wage authorized under section 122(j). In other words, an unemployed person in Alaska could make more on welfare than by going to work as a CETA employee. Third, the average entry level wage for a State of Alaska employee is approximately $17,000 per year. The average annual salary for an Alaska State employee is $22,497 per year. Fourth, neither the State of Alaska nor the municipality of Anchorage salary classification systems provide for salaries below the $12,000 per year maximum provided for in section 122(j).

Mr. President, the CETA program is extremely important to my State, as Alaska has the highest unemployment rate of any State in the Nation. I might add that our present 10.9 percent unemployment rate represents our summer employment rate when the construction season is in high gear. Our unemployment rate in the winter far exceeds this rate. Mr. President, I am asking for support for my amendment which will provide flexibility in determining appropriate wage rates for CETA participants. Otherwise, I fear for the CETA program in Alaska. The bill prohibits the creation of new job classifications for CETA participants. It prohibits dead-end, makework jobs. The Senate report accompanying this bill provides that transitional employment is the objective of the CETA program. Mr. President, Alaska must have relief from the wage limitation provision to enable our prime sponsors to create jobs which will lead to unsubsidized employment.

Under existing law, which provides for greater supplementation, the municipality of Anchorage under title II has successfully transitioned 66 percent of their CETA participants into unsubsidized employment. The State of Alaska, representing the balance of the State, has transitioned 45 percent of its CETA participants into unsubsidized employment. I suspect this is the most successful transition of CETA participants into unsubsidized employment in the country. Under the proposed bill, this success story will end as it is not possible to transition CETA participants from dead-end jobs into meaningful, productive unsubsidized jobs.

Last, Mr. President, I would like to add that my amendment does not provide any additional money for Alaska. All it does is provide greater flexibility in determining CETA wages given Alaska's tremendously high wage structure and given the need to comply with the intent of CETA. It would be ironic if the State most in need of a strong employment and training program would be unable to effectively participate in the proposed public service employment program. Without the flexibility that my amendment will provide, it will be extremely difficult for Alaska's prime sponsors to operate an effective public service employment program. I strongly urge my colleagues to adopt my amendment and at this time I thank the able Senator from Wisconsin (Mr. NELSON), chairman of the Employment, Poverty, and Migratory Labor Subcommittee, and also the distinguished Senator from New York (Mr. JAVITS), ranking minority member, for their understanding and compassion for Alaska's problem.

Thank you, Mr. President.

Madam President, I ask unanimous consent that the statement of my colleague be printed in the RECORD in full at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY MR. GRAVEL

Mr. President, the amendment Senator Stevens and I are introducing will assure the continuation of the CETA public service employment (PSE) program in Alaska. This amendment gives the Secretary of Labor discretion to raise the wage ceiling for public service employment in States experiencing an average wage at least 150% higher than the U.S. average wage as covered by unemployment insurance.

Earlier this year, I submitted testimony to the Subcommitte on Poverty, Employment, and Migratory Labor requesting an increase in the PSE wage ceiling. At that time, I pointed out that the wage rate of $10,000 imposed in 1972 had remained stagnant, while the Consumer Price Index had risen 52.2% cent and union wages had increased at least 7.5% each year.

The Committee recommendation allowed the PSE wages to increase up to $12,000 when local wages warranted an increase. The Committee's action responds reasonably to the inflationary condition experienced by most States. However, it clearly does not respond to Alaska's needs and it renders creditable provisions of the law requiring equal pay for equal work, adherance to fringe benefit policies, and reasonable assurance of transition to a private sector job meaningless in Alaska.

The entire Alaskan delegation has worked prodigiously to illustrate the unsuspected catastrophic effect of the wage ceiling on implementation of the PSE program in Alaska. Senator Nelson and Senator Javits in an effort to insure employment to the most economically and socially disadvantaged citizens within the confines of limited resources have extracted every fact and figure marginally relevant to Alaska's situation. Once they were satisfied of the legitimacy of our request they committed themselves to resolving our serious dilemma. I commend their responsible attitude and their understanding of a critical Alaskan problem.

Let me point out that Alaska's situation is not enviable. We have the highest unemployment rate in the country. Since the implementation of CETA my State has experienced an increase in double digit unemployment. Why has CETA not worked for us and why do we need an amendment to raise the wage ceiling on public service jobs?

The answer is revealed in a few simple statistics. To be eligible for a CETA public service job, an applicant must be economically disadvantaged, that is, have an income less than 70% of the BLS Lower Living Standard Budget, which is $12,000 for an Alaskan. Yet, once eligible, an Alaskan cannot earn a wage above the level of economically disadvantaged. The unemployed with families have little choice but to opt for welfare, which in Alaska provides at least $14,000 for a family of four.

Coupled with the economic disincentive for the unemployed to participate in CETA. is the equally difficult task of finding low-paying PSE jobs in Alaska. The program functions now because in excess of 55% of PSE slots are supplemented with non-Federal funds. These supplemented jobs are not the notorious jobs contributing to substitution that have been exposed in newspaper accounts of CETA. Rather these are the entry level, unskilled positions that CETA stresses. There are, in fact, no State entry level jobs paying less than $12,000.

The reauthorization of CETA eliminates supplementation for Title II PSE, limits the maximum wage to $12,000, and requires training and supportive services. Alaska cannot administer a public service job program with these requirements. We must have the flexibility to operate a program that responds to our unusual needs.

Mr. President, Senator Stevens and I propose to allow the Secretary of Labor to raise the wage ceiling for public service jobs up to the amount our average wage exceeds the national average wage as covered by unemployment insurance. As a precondition of this secretarial waiver, a jurisdiction must experience a significantly higher wage than the national wage.

Again, I appreciate the support and assistance of my colleagues, Senator Nelson and Senator Javits, and their steadfastness in redesigning the CETA program.

Mr. STEVENS. Let me state for the RECORD that, although my colleague is not here, I am sure he would join me in commending our staff assistants, Chip Wagoner and Nancy MacWood, who have worked very hard with the majority and minority staffs of the committee handling the bill from the Human Resources Committee. I feel that this amendment is most important to people of my State.

Mr. NELSON. Madam President, may I say that we have carefully evaluated and discussed this amendment. Alaska does stand alone, is unique, in terms of the wages paid and the high cost of living. This applies to only one State, in effect, because we are using the percentage of 150. I think that Alaska, without this provision, is being rather dramatically discriminated against. I think it is a sound amendment and I am willing to accept it.

Mr. JAVITS. Madam President, this amendment provides that Alaska will have more flexibility in this area. It just determines how the funds may be assigned to them. For the reasons advanced by Senator NELSON, I find the amendment unobjectionable on this side.

Mr. STEVENS. Madam President, as I pointed out in my statement, the Senator from New York is correct. We do not seek any additional funds.

Mr. JAVITS. Mr. President, we yield back our time.

Mr. STEVENS. I yield back the remainder of my time. Mr. President.

The PRESIDING OFFICER (Mr. MELCHER). Does the Senator from Wisconsin yield back his time?

Mr. NELSON. Yes, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STEVENS. I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1799

(Purpose: To permit handicapped individuals over the age of 21 to enroll in the Job Corps, if the Secretary approves)

Mr. WILLIAMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. WILLIAMS) proposes an unprinted amendment numbered 1799.

On page 332, between lines 2 and 3, insert the following: "In the case of any handicapped individual, the Secretary may waive the maximum age requirement specified in the preceding sentence."

Mr. WILLIAMS. Mr. President, before I address myself to this amendment, and that will be brief, I should like to say a word of appreciation and applause not only for the management of the bill today on the floor by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. JAVITS), but for all of their work in bringing this measure to us. It represents the finest work in understanding problems that have developed in the CETA program, addressing them, and finding wise, very intelligent solutions to them and including them in the bill. As it develops on the floor today, the whole Senate has contributed to an understanding of this most necessary and worthy program. The Members have brought their good minds and concern to the floor with constructive amendments. What has been developed, not only by those I have mentioned, who are the leaders, but by all the Senate is a legislative masterpiece.

The fact that we have come this far without conflict in considering S. 2570 is a further tribute to the managers of the bill. They have worked tirelessly with Senators to shape further amendments which have strengthened the legislation without offending its essential principles, and I know that all of my colleagues share my deep admiration for the sensitive and expert way in which Senator NELSON and Senator JAVITS have handled this difficult responsibility.

Mr. President, I should also like to express my gratitude to all of the members of the Committee on Human Resources, who contributed greatly to developing the bill and the consensus that has formed behind it. In particular, I want to thank the distinguished Senator from West Virginia (Mr. RANDOLPH) for his special attention and many constructive suggestions for strengthening and streamlining the legislation and for his advice and assistance to me in obtaining adoption of special provisions for handicapped and older workers, who have unique needs in the labor market.

Finally, Mr. President, I should like to assure that my colleagues know how deeply we appreciate the work of the committee's dedicated staff, in particular the staff members of the subcommittee, Scott Ginsburg and Joan Hunziker for the majority and Jim O'Connell for the minority, and my assistants as chairman of the committee, Martin Jensen and Tom Lindsley. Their able assistance and technical expertise has been invaluable to the committee in shaping this legislation and to all the Members of the Senate who took a special interest in the bill.

Mr. NELSON. Mr. President, if the Senator will yield momentarily, I wish to say that this legislation is complicated. It is very important. There has been, as the Senator knows, a considerable amount of publicity here, in the Capitol, and many places around the country about certain abuses of the program, which were abuses, obviously enough, but I think exaggerated in the minds of many on how much abuse there was. Nevertheless, there were abuses and it is a difficult, complicated, controversial issue on which many months were spent in the hearings by the Human Resources Committee. They were participated in by the ranking minority member (Mr. JAVITS) as well as other members of the committee on both sides of the aisle. But even more important, the staff members who have worked on this, week after week, on the issues that have been raised by various Members of the Senate, have done a superb job in evaluating and working on the appropriate design of constructive amendments which have been offered by Members other than those on the committee. I want particularly to commend Mr. Scott Ginsburg and Ms. Joan Hunziker of the Subcommittee on Employment, Poverty, and Migratory Labor, and Mr. Jim O'Connell on the minority side for their constant, energetic and persistent work in designing a bill which I think shows the superb craftsmanship in its final result.

Mr. WILLIAMS. I certainly agree with the Senator from Wisconsin.

Has the amendment been stated, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

Mr. WILLIAMS. Mr. President, in the Job Corps, eligibility extends to economically disadvantaged young persons who are 14, but not yet 22, years of age.

The amendment would simply permit the Secretary to waive the upper age limit in the case of handicapped individuals.

Age is not a particularly useful criterion to apply to handicapped individuals. Many who have passed the age of 21, because of their handicap or disability, have been unable to develop their employability in step with others their own age. The Job Corps provides an ideal setting for doing so.

The amendment would permit the Secretary to enroll handicapped persons beyond the age of 21 in the Job Corps.

It would neither increase nor decrease any other requirement respecting accessibility to Job Corps centers, since accessibility is now required for handicapped individuals between the ages of 14 and 22.

Mr. President, I know that this amendment has been studied and understood by the managers of the bill.

Mr. NELSON. Mr. President, we have previously looked at the amendment and discussed it with the distinguished chairman of the Committee on Human Resources. It is a constructive amendment to the pending legislation. I am prepared to accept it.

I shall yield back the remainder of my time as soon as the distinguished Senator from New York has completed.

Mr. JAVITS. I want to ask one question. The Senator has named an age bracket, 14 to 22. Is that in the regulations or in the bill?

Mr. WILLIAMS. That is in the law and restated in the bill.

Mr. JAVITS. Accepting that premise, because it would have to have some reference, I do not find the amendment objectionable. What did occur to me is, if there are any pragmatic difficulties brought up by the Department, though I am told the Department thinks this is all right, we shall hear about them. But certainly as we stand here——

Mr. WILLIAMS. They are apprised and have made statements of their approval that this be included.

Mr. JAVITS. I have no objection.

I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1800

Mr. WILLIAMS. Mr. President, I have a technical amendment which I send to the desk and ask to have considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. WILLIAMS) proposes an unprinted amendment numbered 1800.

Mr. WILLIAMS. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 226, between lines 3 and 4, insert the following:

"(2) The provisions of this subsection shall not apply to allocations for any fiscal year after the fiscal year ending September 30, 1981."

Mr. WILLIAMS. Mr. President, the Senator from Wisconsin earlier today offered an amendment designed to press the administration into acting as quickly as possible to establish a sound statistical basis upon which to base the distribution of CETA funds. The amendment was adopted.

Subsequently, we discovered a technical oversight in the amendment. It inadvertantly eliminated the outside time limit by which the statistical improvement process must be completed.

My amendment would simply add September 30, 1981, as the date after which previously utilized methodology for establishing unemployment rates could no longer be used as a basis for distributing any CETA funds.

Mr. JAVITS. Mr. President, the amendment is acceptable.

Mr. NELSON. Mr. President, we agree with the proposed amendment. We are willing to accept the amendment.

I yield back the remainder of my time.

Mr. WILLIAMS. I yield back the remainer of my time.

The PRESIDING OFFICER. (Mr. ZORINSKY). All time having been yielded back, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (UP No. 1800) was agreed to.

UP AMENDMENT NO. 1801

(Purpose: Technical change regarding educational institutions)

Mr. WILLIAMS. Mr. President, I send another technical amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. WILLIAMS) proposes an unprinted amendment numbered 1801.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 196, lines 18 and 19, strike "local educational agencies" and insert in lieu thereof: "designated educational agencies and institutions."

Mr. WILLIAMS. Mr. President, during final markup of the bill, the committee divided educational agencies into two classes, for purposes of definition.

One class is "local educational agencies" as defined in the Elementary and Secondary Education Act.

The other class is "designated educational agencies and institutions" as defined in the Vocational Education Act, which includes certain postsecondary institutions.

The amendment would correct an oversight in changing the appropriate references to conform to the new definitions.

Mr. NELSON. Mr. President, we agree with that proposed change. I am prepared to accept the amendment. I yield back the remainder of my time.

Mr. JAVITS. Mr. President, the amendment is acceptable.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (UP No. 1801) was agreed to.

UP AMENDMENT NO. 1802

(Purpose: To define conditions under which CETA participants may be employed on the rehabilitation of housing for lower-income families)

Mr. WILLIAMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. WILLIAMS) proposes an unprinted amendment numbered 1802.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 224, line 14, insert (1) after (c), and between lines 24 and 25, insert the following:

"(2) The Secretary shall issue regulations setting forth conditions under which prime sponsors, in carrying out community improvement projects, community betterment activities, and public service employment projects under this Act, may provide work for eligible participants on the rehabilitation of housing for lower-income families as defined in Section 8(f)(1) of the United States Housing Act of 1937, as amended, as part of community revitalization or stabilization projects."

On page 381, line 5, strike "low-" and insert "lower".

Mr. WILLIAMS. Mr. President, S. 2570 provides for the employment of CETA workers on a variety of community improvement and community betterment projects, including rehabilitation of housing for low-income families. However, the bill does not define "low-income families" for purposes of housing rehabilitation, nor does it establish any additional conditions under which such work may be done with CETA funds.

The amendment would establish, as a condition of such projects, that the housing to be rehabilitated be limited to housing that is for "lower income families" as refined in the U.S. Housing Act of 1937 and that is identified as in need of rehabilitation under a community revitalization or stabilization project.

Such projects are assisted under programs administered by the Department of Housing and Urban Development and carried out by local chief elected officials, who are also CETA prime sponsors or program agents.

The amendment would encourage coordinated use of HUD and CETA funds in housing rehabilitation projects. By using a common definition of eligible housing, administrative complexities would be avoided.

The result of combining CETA and other Federal funds in meeting urgent community needs would be a highly visible and valuable product that would reflect positively on the CETA program.

Mr. President, I hope the managers, who I believe have been advised of this amendment, will see the wisdom of getting comparability into the two programs so that CETA employees can work on housing rehabilitation projects in coordination with HUD programs.

Mr. NELSON. I am prepared to accept the very constructive amendment.

Mr. JAVITS. Mr. President, just one question.

We would not want to see the Community Development Corporations, which are authorized under title VII of the Economic Opportunity Act, excluded from this type of activity, because they also may employ CETA workers.

Mr. WILLIAMS. That is understood.

Mr. JAVITS. That would be covered.

Mr. WILLIAMS. They are directed toward the same objectives discussed here.

Mr. JAVITS. I have no objection.

Mr. WILLIAMS. I yield back the remainder of my time.

Mr. NELSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (UP No. 1802) was agreed to.

UP AMENDMENT NO. 1803

Mr. NELSON. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes an unprinted amendment numbered 1803.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On Page 251, line 10, insert before the period: "and services, pursuant to regulations of the Secretary, to participants in programs under this Act in accordance with an agreement between the State vocational education board and the prime sponsor."

Mr. NELSON. Mr. President, this amendment would require State vocational educational boards to reach agreements with prime sponsors prior to dispensing funds provided to State vocational educational boards under title II of CETA. An amendment offered earlier in the week by Senator DOMENICI inadvertently eliminated such agreements from having to be entered into. I have checked with Senator DOMENICI, and he has no objection to this amendment.

Mr. JAVITS. That is fine with me, as long as Senator DOMENICI understands.

Mr. NELSON. We have checked with Senator DOMENICI.

Mr. President, I yield back the remainder of my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment (UP No. 1803) was agreed to.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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## ORDER TO RECOMMIT H.R. 3946 TO THE COMMITTEE ON FINANCE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 988, H.R. 3946, providing for a refundable Federal income tax credit for

educational purposes, be recommitted to the Committee on Finance.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER TO INDEFINITELY POSTPONE SENATE RESOLUTION 524

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 990, Senate Resolution 524, waiving section 303(a) of the Congressional Budget Act with respect to the consideration of H.R. 3946, be indefinitely postponed.

Mr. JAVITS. Any required clearances have been made, I gather?

Mr. ROBERT C. BYRD. These have all been cleared on the Senator's side.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 1064, 1070, and 1071.

The PRESIDING OFFICER. Without objection, it is so ordered.

## DAYS OF REMEMBRANCE OF THE HOLOCAUST

The joint resolution (H.J. Res. 1014) designating April 28 and 29 of 1979 as "Days of Remembrance of Victims of the Holocaust," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## M/S WILLIAM E. BOONE

The bill (H.R. 2952) for the relief of M. Sgt. William E. Boone, U.S. Army, retired, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## STEPHANIE JOHNSON

The bill (H.R. 7162) for the relief of Stephanie Johnson, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, that completes the measures cleared for action by unanimous consent with the minority.

I thank Mr. STEVENS and Mr. JAVITS.

## PRIVILEGE OF THE FLOOR

Mr. HEINZ. Mr. President, I ask unanimous consent that the following members of my staff have the privilege of the floor for the duration of the day: Gwen King, Mary Louise Krukowski, and Bob Hepler.

The PRESIDING OFFICER. Without objection, it is so ordered.

## COMPREHENSIVE EMPLOYMENT AND TRAINING ACT AMENDMENTS OF 1978

The Senate continued with the consideration of S. 2570.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from Illinois, on the bill.

Mr. STEVENSON. I thank the distinguished Senator from New York for yielding.

Mr. President, it would be difficult to contrive more inefficient and politically corrosive means of creating employment than by the public service employment programs of CETA. The efforts of the distinguished managers of the bill and the Human Resources Committee will do little to reform programs which in concept are defective.

This expensive measure, over $11 billion in total CETA expenditures for fiscal 1979, most for public service employees, will authorize in practice a complex form of revenue sharing for units of Government facing less critical budgetary constraints than the Federal Government. CETA frequently produces Federal support for existing jobs, instead of new jobs. New jobs are sometimes "make work" jobs. The availability of funds depends on arbitrary formulas. The CETA programs require for their implementation layers of bureaucracy and consultants which absorb funds better saved or spent elsewhere. It will continue to facilitate widespread corruption. For example, records are missing which are needed to ascertain the uses of millions of dollars of CETA funds in East St. Louis, Ill. Last fall the Department of Labor recommended that the prime sponsorship for CETA be moved from that city to the Illinois Governor's Office of Manpower and Human Development. Now that office is itself the object of an investigation into allegations of corruption. CETA spawns corruption. It produces political patronage. And it is a grossly inefficient means of providing training and jobs for those most in need of both.

The funds would be better used to reduce the Federal deficit and reform the welfare system. They could create jobs by funding essential public works, housing or transportation facilities. During the depression the Federal Government involved itself directly in the creation of jobs and good works through such instrumentalities as CCC and WPA. The legacies of those efforts enrich our lives. The legacy of CETA is a mass of public cynicism and distrust toward government.

If my vote made the difference I would hesitate to cast it against this bill. Time is needed to develop alternative means of creating employment in the public and private sectors. Time is needed for the Congress to change its habits which first create unemployment, as by its refusal to permit a subminimum wage for youth, and then require it to fund jobs for unemployed youth. We are not likely to take the time and begin the effort without some protest against our habits and their consequences, including this bill. So I intend to cast my vote to protest a well-intentioned but ill-conceived measure which by its cost and waste causes unemployment and inflation.

Mr. JAVITS. Mr. President, we are ready for another amendment, if Senator DOLE wishes to call it up.

The PRESIDING OFFICER. The Senator from Kansas.

UP AMENDMENT NO. 1804

(Purpose: To include the membership of community-based organizations in the private industry councils)

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself and Mr. SCHMITT, proposes an unprinted amendment numbered 1804.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 379, line 6, strike out "and".

On page 379, line 6, insert after "labor" a comma and the following: "community-based organizations."

On page 379, line 9, strike out "community-based organizations,".

Mr. DOLE. Mr. President, title VII of the Comprehensive Employment and Training Act is an innovative plan to coordinate private industry and CETA planners in an effort to solve the problem of structural unemployment. I am pleased to join the committee in wholeheartedly approving this measure which will foster the channeling of CETA participants into unsubsidized private sector jobs. I have long believed that, given appropriate training and employment opportunities, the vast majority of the hardcore structurally unemployed could be a viable and worthwhile part of the private sector work force. Title VII is a move in that direction, and I commend the distinguished members of the committee and, in particular, the two floor leaders of the bill for their thoughtful and innovative approach to this very serious unemployment matter.

DOLE AMENDMENT

Mr. President, the private industry councils to be set up on the local level will be the tool by which private industry will be drawn into the CETA effort. The success of title VII depends on the effectiveness of the PIC's to integrate business into CETA's goal of solving the problem of structural unemployment. S. 2570 mandates that busi-

ness, including small and minority businesses, and labor be represented on the council, a majority being business representatives. In addition to the mandated employer and labor representatives, the committee language provides that the prime sponsor may appoint representatives of community-based organizations, educational agencies, and representatives of persons eligible to participate in activities funded under this title.

My amendment to title VII would mandate the important participation on the PIC councils of existing community-based organizations under title VII. Mr. President, I firmly believe that the membership of such organizations, such as the SER-Jobs for Progress, the NAACP, the Urban League, and others would significantly enhance the effectiveness of the private industry councils. And I would further suggest that it would be unwise for us to permit their membership on the councils to be left up to the arbitrary discretion of the prime sponsor. To allow this, I believe we would be jeopardizing the potential effectiveness of the private industry council in making the private sector an integral part of CETA in the community.

MEMBERSHIP OF COMMUNITY-BASED ORGANIZATIONS ON THE PRIVATE INDUSTRY COUNCIL

Community-based organizations such as SER-Jobs for Progress, the NAACP, the Urban League, and other similar groups, have been striving for years to deal with the problem of structural, hardcore unemployment. These groups, with their experience and expertise in unemployment problem solving in their own respective communities can provide critical input to private industry councils. One has only to look at the long record of success of such groups to see that their presence on the PIC's would be a tremendous asset to business leaders who are attempting to solve structural unemployment problems. The proven effectiveness of community-based organizations clearly indicates that mandating their membership on the PIC's would provide the experience in unemployment problem solving that the business leaders will need, and would be an important linkage to the groups that local PIC's will serve. The official vote of community-based organizations on the council would be highly educational to council members not immediately involved in the delivery of manpower services. Mr. President, my amendment would serve only to strengthen the language of this bill so that representation by those who are very knowledgeable of the problems and needs of the hardcore unemployed be insured on the PIC's.

PIC'S: A REPRESENTATIVE GROUP

While the importance of input from community-based organizations is useful and important, the concept behind title VII rests on the belief that the problem of hardcore unemployment can best be alleviated through cooperation with private industry, thus the mandate for the majority of the members of the private industry council to be business representatives. This is as it should be, given the fact that the goal of title VII is to give private sector focus to local CETA programing. Mr. President, my amendment does not weaken the ability of business representatives to draw the private sector community into the private sector program, rather, through balanced representation of the private sector and community-based organizations, this amendment will aid the private industry council in helping to alleviate a very serious structural unemployment situation.

Mr. President, I urge the adoption of this important amendment.

Mr. President, as background, I think I should indicate that originally I had proposed an amendment that would mandate community-based organization representation and would mandate client representation on the private industry councils. I have since modified that amendment to eliminate a requirement for client representation on private industry councils and have retained the provision which would mandate representation by community-based organizations on private industry councils.

Specifically, I am talking about community-based organizations such as NAACP, SER-Jobs for Progress, CAP, the Urban League, and others who have had long experience in this area and who have a real interest in it.

Also, it is fair to say that the primary author of this amendment was the distinguished Senator from New York (Mr. JAVITS) in the committee. But I believe that by modifying the amendment, it is now acceptable to the floor managers, and on that basis I will not pursue it further.

Mr. JAVITS. Mr. President, I am the author of this idea, and I am very proud of it. I think it is a very good amendment, and it is acceptable to me.

Mr. NELSON. Mr. President, in all honesty I have to say I did not support including the placement of community based organizations on the private industry councils, in committee, not because I do not think the private industry councils should have representation on them from community-based organizations, but only that we should not mandate it, because all prime sponsors have other planning councils that do have representation from client organizations, community-based organizations, and in some circumstances it may be a good idea and in some circumstances it may not.

There was one other point, of course. This private industry council is entirely new. This bill only provides for representation of labor and management on the private industry councils. There were a number of people who had ideas about mandating categorical representation of many other groups.

I was concerned about expanding it beyond labor and management to leave the flexibility with the prime sponsor.

However, I am prepared to accept the amendment of the Senator from Kansas.

I yield back the remainder of my time.

Mr. DOLE. I might just say to the distinguished floor manager it had been modified, of course.

Mr. NELSON. Yes.

Mr. DOLE. Right

Mr. JAVITS. That is the reason it is acceptable.

Mr. DOLE. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). All time having been yielded back, the question is on agreeing to the amendment of the Senator from Kansas.

The amendment was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3459

(Purpose: To eliminate the Senate's advice and consent waiver respecting the creation of a sixth Department of Labor Assistant Secretary)

Mr. HELMS. Mr. President, I have an amendment No. 3459 at the desk, which I call up, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 3459.

Mr. HELMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 389, strike lines 15 through 21.

On page 389, line 22, redesignate paragraph "(c)" as paragraph "(b)" and renumber all lines accordingly.

Mr. HELMS. Mr. President, I shall be quite brief. Two paragraphs in S. 2570 would create both a new assistant secretary position in the Department of Labor and further assure that it go to Nik B. Edes, currently Labor's Deputy Undersecretary for Legislation and Intergovernmental Relations. Edes' name is not mentioned in the bill, but everyone seems to agree that he would get the job.

My amendment leaves intact the newly created position, but it does remove the "grandfather clause." Along with OMB and key House Members, I do not approve of the language which appears designed to abridge the President's authority to make an appointment to an executive level position. This sets a bad precedent for the Senate.

Our Constitution requires that the President make all executive-level appointments and that the Senate give its advice and consent after examining the nominee's fitness to hold office. This procedure should not be altered.

For that reason, I urge adoption of the amendment, and I hope that the managers of the bill will accept it.

Mr. JAVITS. Mr. President, I yield such time as he may desire to the Senator from New Jersey.

Mr. WILLIAMS. I thank the Senator from New York.

Mr. President, the purpose of section 8 of the committee's bill is to establish a sixth Assistant Secretary in the De-

partment of Labor to manage the Department's legislative affairs and intergovernmental relations.

The White House has approved the establishment of this position so as to put the Department's legislative affairs activities on a par with that of other agencies who have an Assistant Secretary for those duties.

The section also provides that the President may—and I emphasize may—fill the new position, without the necessity of nomination and confirmation by the Senate, by appointment of the person who now performs those same duties for the Department as a Deputy Undersecretary.

In offering this section as an amendment to the CETA bill in committee, it seemed to me to be unnecessary to require the White House and the Senate to undertake the cumbersome confirmation process for an individual who has been performing well in a job whose title is being changed to conform to Federal agency practice.

I understand that a member of the staff of the Office of Management and Budget has objected that waiving the confirmation process would impinge upon the President's constitutional power of appointment. This simply is not correct.

The provisions of the section would allow the President to fill the new position with anyone he chose. It would allow the President full freedom to submit a nominee for the position to the Senate for confirmation, even if that nominee were the present Deputy Undersecretary, Mr. Edes.

Under the section, Mr. Edes would fill the new position, and the Senate confirmation process would be waived, only if those were the President's wishes.

It is not my intent to embroil the Senate in any debate over the wisdom of waiving the confirmation of an appointive official.

Therefore, in the interests of resolving this matter quickly, I would have no objection to the deletion of subsection (b) of section 8.

But I believe it is important for the Department of Labor to have an Assistant Secretary for handling these duties, and since that is the wish of the President, I hope that my colleagues will agree to the establishment of the position.

Mr. JAVITS. Mr. President, in reply to the Senator, as I understand it, the establishment of the position is taken care of by page 39, lines 12 through 14. What the amendment strikes is the vesting of that position in the person holding the office which means it strikes page 39, lines 15 to 21, and it is on that basis that the amendment is acceptable to me.

Mr. NELSON. I agree with the distinguished Senator from New York.

I am prepared to yield back the remainder of my time.

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1805

(Purpose: To prevent the use of CETA funds for promoting unionization or requiring persons to join a union as a condition of receiving training under CETA programs)

Mr. HELMS. Mr. President, I have another amendment at the desk which I call up and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes unprinted amendment numbered 1805.

On page 218, between lines 4 and 5, insert the following: "(bb) No prime sponsor may use any funds received under this Act to assist or promote union organizing.

"(cc) No individual may be required to join a union as a condition of enrolling in a program assisted under this Act in which only institutional training is provided, unless such institutional training involves individuals employed under a collective-bargaining agreement which contains a union security provision.

Mr. HELMS. Mr. President, on May 8, 1978, I received a letter from Mr. Willis Lawrence, an attorney representing the Guam Employer's Council, requesting that I look into the misuse of CETA funds in the territory of Guam.

The Guam Employer's Council had previously filed a formal complaint with Labor Secretary Marshall, and I understand the Department did in fact initiate an investigation of the allegations in March of 1978. However, it appears the Labor Department has been reluctant to hold an administrative hearing either in Guam or California on the alleged violations. Indeed the investigation seems to stalled at the present time. Upon receiving Mr. Lawrence's letter and supporting documents, I wrote to Secretary Marshall urging that the investigation be completed and a hearing scheduled if necessary. That was over a month ago, I have had no response from the Secretary.

Quite timely, Inquiry magazine published just this month an article by Bill Keller which describes this misuse of CETA funds in Guam. I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. According to the complaint of the Guam Employer's Council, Labor Department officials intentionally used the CETA program to enable the Operating Engineers Union to "lock up" the construction trades on the island. In fact, the Labor Department did award a $450,000 training contract to the operating engineers. It is alleged that this was accomplished without soliciting competitive bids as required by law and further that Labor Department officials conspired with union officials to simultaneously issue regulations to restrict the use of nonunion labor.

Because of these serious allegations and because of the Labor Department's seeming inability to get to the bottom of the matter, Senator HATCH and I will in all likelihood be calling for a GAO investigation within the next several days.

Mr. President, my amendment simply forbids prime sponsors from making CETA grants to unions for the purpose of enabling them to move in and organize an area—as has been the case apparently in Guam. My amendment serves notice that federally funded CETA grants cannot be used as political payoffs to unions.

My amendment is also directed at another unfair situation. The amendment would give limited protection to a worker by not requiring him to join a union as a condition of enrolling in any institutional training program assisted by this act and sponsored by a union unless such institutional training involves individuals employed under a collective bargaining agreement.

Since unions are eligible to receive CETA grants to operate training programs—programs financed by the taxpayers—as a matter of public policy, the trainees should not be required to join the union or be forced to pay union dues. The Federal Government should not be financing training programs where the enrollees are required to join the very union which has received the Federal grant. If the worker chooses to join the union voluntarily, then that is his choice. But he should have the choice as long as he is enrolled in the federally financed training which pays his salary.

My amendment simply provides the worker some freedom of choice and further protects the integrity of the CETA program by insuring that unions will not have the unlimited use of the taxpayers' funds to enlarge their own membership rolls without any restrictions whatsoever. I am pleased that the sponsors have agreed to accept the amendment.

EXHIBIT 1

LOCKING UP GUAM FOR LOCAL 3

(By Bill Keller)

Last February, employers in the construction industry on Guam sent a formal complaint to Secretary of Labor Ray Marshall alleging that Labor Department officials in San Francisco had conspired with the Operating Engineers Union and the Dillingham Corporation to award a $1.8 million CETA contract for job-training on the island. In March the department began an investigation of the charges, but to date it has issued no finding.

If the Labor Department has been slow in making a judgment on these charges, it is not because of a lack of evidence. Indeed, interviews and government documents reveal that Labor Department officials and politicians, notably Phillip Burton (D.-Calif), attempted to use the CETA program to help the Operating Engineers lock up the construction trades on Guam. In so doing, they have apparently broken the law by circumventing competitive bidding requirements and exercising administrative powers to promote union activities and accomplish objectives bar broader than the employment and training Congress intended. They have also attempted to disable competition from Asian firms by manipulating Guam's wage and labor structures. According to these sources, the department awarded a $450,000 training contract to the union—without soliciting bids as required by law—and issued regulations that raised construction wages and restricted the use of nonunion, alien labor. When Governor Ricardo J. Bordallo of Guam

opposed these actions, Labor Department representatives threatened to withhold CETA employment and training funds as a means of obtaining his cooperation.

Oddly enough the Labor Department-Operating Engineers plan to lock up Guam's construction trades for the union had its beginnings not on Guam, but in Hawaii. Late in 1976, when unemployment in the Hawaiian building trades was high, Governor George R. Ariyoshi and representatives of various trade unions set their sights on Guam as a possible solution for the problems of Hawaii's construction business.

Guam was an obvious choice. Located 6000 miles from the West Coast of the United States, Guam is a central link in the chain of islands on which the United States has anchored its military might in the Western Pacific. Major installations on the island include a nuclear submarine base, a large naval ship repair facility, and a Strategic Air Command airfield. Military spending is almost always a boon for the construction industry, but in 1976, nature and the military combined to make Guam especially attractive to builders. In May of that year, Typhoon Pamela swept the island, causing major damage; shortly afterwards, the navy was prepared to let over $400 million in contracts for redevelopment and construction on Guam. Short-term spending of this magnitude presaged a booming economy and certain prosperity for the construction industry. Everyone, including Governor Ariyoshi's friends, wanted to share in the feast.

Especially eager was Local 3 of the International Union of Operating Engineers. Based in San Francisco, Local 3 has 35,000 members in a jurisdiction covering Northern California, Nevada, Utah, Hawaii, and the mid-Pacific Islands. Local 3 has long been interested in organizing on Guam—it assigned staff members to the island in 1963 and built offices in Agana, the capital, in 1971—but its efforts have met with little success. Union officials have conceded that as of August 1977, they had organized only about 130 of Guam's estimated 4800 construction workers. Therefore, in recent years the union has intensified its drive on Guam, hoping to cash in on what it contends will be "massive amounts of construction and industrial development in the next 10–15 years" for "storm repair," "oil deposits," and "industrial and trade zone work to supply the booming Pacific Rim economy and the entire spectrum of ocean resources development."

Also anxious to get in on the construction boom in Guam was the Dillingham Corporation of Hawaii, a multinational conglomerate with a broad range of construction operations on the Pacific coasts of the United States and Canada, and in Hawaii, Australia, and New Zealand. Already involved on Guam through its subsidiary, the Hawaiian Dredging and Construction Company, Dillingham was looking for new ways to compete against local and Asian construction firms.

But it was not easy for the Operating Engineers or Dillingham to cash in on Guam's new construction prosperity. Guam's construction industry has traditionally used foreign laborers, principally "non-immigrant aliens" from the Philippines and South Korea, who are admitted for temporary work assignments. These workers have been brought in to ease a shortage of skilled construction workers. Many Chamorros, or natives of Guam, look down on construction work. As a result, few of them have been trained in the construction trades, and those who are skilled often leave the island for the higher wages and better working conditions on Hawaii or the U.S. mainland. Hence, in March 1977, temporary alien workers held approximately 82 percent of Guam's construction jobs. Moreover, the ready availability of foreign workers has kept wages low. For example, in 1977 a construction electrician on Guam received $3.22 an hour, while his counterpart in Hawaii was paid $10.34.

The use of alien workers angers the Operating Engineers, who have termed it "the inhuman and cancerous exploitation of working people on Guam." The union asserts that the practice artificially holds down wages and forces workers to accept substandard working conditions. The union is also concerned that its efforts to organize the island have failed largely because alien workers are granted only temporary working permits and generally must acquiesce in conditions offered by their employers or face deportation. But firms on Guam, as well as many Japanese and Korean companies that do business on the island, depend on temporary alien workers to fill their demand for skilled construction artisans. Without a ready supply of relatively inexpensive Asian labor, they cannot compete with huge, off-island American firms such as Dillingham.

It was with this in mind that the Operating Engineers and their government friends developed a strategy to unionize Guam's construction trades. According to informed sources, late in 1976 Governor Ariyoshi of Hawaii and trade union representatives met with Labor Department officials, including top Labor Department regional administrators William Haltigan and Royce Hulsey. At the meeting, they asked the Labor Department not to certify aliens for employment on Guam unless the employers there first recruited in Hawaii at prevailing Hawaiian wage rates. Similar meetings were held early in 1977. During these sessions the idea first surfaced of changing the certification of aliens and increasing wage rates to aid a union takeover on Guam. According to persons present at the meetings, Labor Department officials agreed to the concept of unionization for Guam, and supported Dale Marr of Local Union 3 in his plans to use the Comprehensive Employment and Training (CETA) program as a means of locking up the island. This could be accomplished if the Labor Department paid the union to run the CETA training program on Guam. CETA funds would then be used to recruit new union members and train them in organizing techniques, as well as in construction industry trades. The new union men would then enter "open shops" on Guam and apply their newly acquired skills.

Misuse of CETA funds on Guam has been commonplace for several years, and the training program has been an annual fiasco. In December 1976, a federal audit revealed "gross mismanagement and lack of control," and questioned nearly half of all CETA expenditures, and amount exceeding $1 million. Federal correspondence with Governor Bordallo chronicles numerous violations of CETA regulations, including "loss of control over program activities," "enrolling and employing ineligible participants," and "improper expenditure of program funds." On March 10, 1977, the Labor Department fired the CETA staff on Guam and ended funding for all CETA training programs and related activities. Within a fortnight, the associate regional administrator for Region IX withdrew Guam's letter of credit for federal funds, charging that the governor had overdrawn the CETA accounts by $192,112.

In mid-August 1977, Regional Administrator Haltigan traveled to Guam to present proposals that would set up a construction-trades training program under CETA, double wages paid to construction workers over a two-year period, and provide for new alien certification procedures to be administered by the Labor Department. Local newspaper accounts of that period document the near universal panic with which the Haltigan proposals were received on Guam. On August 20, the Pacific Daily News reported, "The proposals are directly opposed by business, construction, military and government officials, who say the increases will come too soon and will have a direct negative impact on the island's economy." Haltigan's proposals included a requirement that any employer who used alien labor must pay higher rates determined by the U.S. Department of Labor. Governor Bordallo stated, "This whole thing is going to hit Guam like a bombshell."

Alone in welcoming the proposal was Local 3 of the Operating Engineers Union. In a letter to Haltigan, dated August 9, 1977, union leader Dale Marr underscored his support for the proposals and warned, "I would point out to you that you can expect formidable opposition from a number of employees of federal [Government of Guam] agencies and politicians whose ox you will be goring. We are of the opinion, however, that the Carter administration, Secretary Marshall, and above all, Don Elisburg [assistant secretary of Labor] and the American labor movement will support your efforts on all fronts. Hang tough." According to another Pacific Daily News story, the Labor Department was under acute political pressure to solve the alien labor problem on Guam. "The pressure, sources have said, comes from the Governor of Hawaii, the AFL-CIO, representatives of the Departments of Defense and Interior and unnamed persons in the White House." In confirmation, Haltigan said "Guam is something of a cause célèbre at the moment. This thing has been squirreling around at very high levels on Capitol Hill."

The new proposals and the reaction on Guam also caused consternation at the Department of Defense. On August 19, 1977, high-level Defense Department officials telegrammed Undersecretary of Labor Brown, stating that "the bidding for all construction work for military activities on Guam has been postponed because of confusion about labor availability and wage policy applicable to Guam, and that DOD's contractual efforts to carry out the typhoon damage restoration effort have come to a complete standstill." Apparently, the navy was under pressure to spend its Guam construction funds, which exceeded $400 million. It became incumbent upon the Department of Labor to produce a labor force and get Guam's house back in order—to make sure that future allocations for the navy would not be jeopardized.

On September 13, 1977, under the Immigration and Nationality Act, the Labor Department published new regulations that imposed "adverse effect rates," doubling the wages of construction workers on Guam over two years, with the first increment to become effective as of March 1, 1978. The regulations also specified new certification procedures for temporary alien workers on Guam, and provided that the certification process was to be administered by the U.S. Department of Labor. Many Guam employers reviewed the new regulations uneasily, fearing the Labor Department's new certification power. In the face of mandatory wage hikes, they questioned whether they could continue to compete with large off-island and multinational construction firms. Many cast a wary eye at the Operating Engineers Union, fully aware that the new regulations removed major barriers to a union takeover on Guam.

The Guam employers did not know that early in September the Labor Department had begun informal discussions with a private consulting firm in San Francisco. During October and November, Labor Department representatives briefed members of the firm's staff on the situation in Guam and showed them many documents and letters. The name of Congressman Phillip Burton cropped up more than once in their discussions as a reference point and, though unseen, a force to be reckoned with.

On November 16, 1977, the consultants met in San Francisco with the Department of Labor grants officer and his staff to discuss a

way to refund the Guam CETA program. At that meeting a strategy was hashed out to hire and train a new CETA staff and to tender contracts to employers on Guam who had demonstrated training capabilities. Five days later, on November 23, the consultants submitted the final proposal to Associate Regional Administrator Hulsey. According to persons who were present, during that meeting Hulsey offered to hire the consulting firm to legitimize or "launder" illegal contracts with the Dillingham Corporation and the Operating Engineers Union, Local 3. When Hulsey made the offer, he mumbled under his breath. "What's that?" one of the consultants asked. "Dillingham," he repeated, "and the Engineers. The training contracts will have to go to them." On the following day, when the firm withdrew from the proposed scheme, Hulsey stated his intention to continue without its participation or assistance.

On the afternoon of November 18, 1977, another meeting took place on the ninth floor of the Federal Building in San Francisco. Labor Department administrators Haltigan, Hulsey, and Charles Pickens met with Local Union 3 officials, including Dale Marr, and with two executives of the Dillingham Corporation. Virginia Allee, regional administrator for the Employment Standards Administration, also was present. A plan to use CETA Title I funds to train construction workers on Guam was reviewed. The sum of $1.8 million was earmarked for the Engineers Union and Dillingham. At approximately 2:45 p.m., Congressman Burton arrived. Assistant Secretary of Labor Donald Elisburg arrived a few minutes later. The group exchanged greetings and the progress of the meeting to that point was summarized. Both Burton and Elisburg agreed on the soundness of the plan and on the scheme to set the union and Dillingham up in the training business. "Burton was brought in by the Engineers," one source said. "It was a show of strength; they go back a long way together."

This entente represented the culmination of a longstanding political alliance between the Operating Engineers and the Burton machine. Burton, who presides over the House National Parks and Insular Affairs Subcommittee which oversees Guam and the Pacific Trust Territories, found himself in a position to help his friends—friends whose unquestioned loyalty could be tabulated in terms of large yearly campaign contributions and membership support. The Guam employers didn't know they never had a chance.

In December, the Labor Department sent representatives Jess Ramos and Tony Cordero to Guam to convince Governor Bordallo to go along with the union-Dillingham CETA training deal. According to informed sources, the governor relented only after he was told that his complicity was a condition for refunding the CETA programs that had been terminated six months earlier. At that time, severe media criticism had been leveled at the governor's men for bungling the program and losing the CETA revenues and jobs. Presumably to protect his own reelection prospects, Bordallo agreed to support the union-Dillingham deal through a subcontract financial arrangement.

On January 18, 1978, the *Pacific Daily News* reported an agreement to start a new construction training program on Guam. The article stated, "The agreement was reportedly reached after three days of negotiations last week in Honolulu between officials of Dillingham Construction Company, the Operating Engineers Union, GovGuam and the U.S. Department of Labor."

By late January, the Labor Department was well on its way to insuring unionizing for Guam and to meeting Defense construction industry needs. But for an indiscretion on the part of the associate regional administrator, the Labor Department might have succeeded in containing the alien problem, controlling construction industry wages, and enriching the friends of Phillip Burton—all at the expense of the people of Guam and the increasingly rebellious American taxpayer.

This indiscretion took the form of a memo to Haltigan, which fell into the hands of Michael McClure of the Guam Employers Council sometime in early February. In it, Hulsey alludes to the opposition of the Guam employers to the union-Dillingham training agreement. According to the January 30 memo, Dillingham Vice President Pete Errect suggested that the Labor Department use its new certification power to snap the already weakening opposition of the Guam employers. Hulsey wrote:

"He [Errect] said that a little pressure from us—some overt manifestation of our commitment—should do the trick.

"I asked for something more specific, and he said our most effective leverage in this situation was our certification actions. He thought that if word got out that noncooperating contractors might have their certification requests reviewed with great pains, they would become noticeably more anxious to cooperate in the program.

"I see his point and agree that he is likely right in what he says. I told him we would do whatever we could do legitimately and legally. He thought that if that were our attitude, word to that effect ought to get out. I told him we would look into the matter and take the best course available to us.

"At any rate, I agree that the opposition is weakening and full active participation by all contractors seems to be fairly imminent. We will feel our way carefully and give a fateful push when we feel the time is right."

To many Guam employers whose businesses depend on foreign workers, this memo signaled the Labor Department's determination to exclude local firms from operating the training program and, if necessary, to move against them economically—using the new labor certification procedures as a weapon. Contrary to its intended purpose, the Hulsey memo galvanized opposition to the training program. On February 10, 1978, attorneys for the Guam Employers Council, Black Construction Company, and Modular Homes, Inc. sent a formal letter of complaint to the secretary of Labor requesting an investigation. And on March 9, a suit was filed in federal district court on Guam to halt the award of the joint-union-Dillingham contract.

Representatives of the aggrieved employer organizations and their attorneys have met with the Labor Department's investigators on Guam and provided substantial documentation supporting the charges in their complaint. In San Francisco, the investigators have questioned regional Labor Department officials closely and made copies of pertinent documents in their files. According to reliable sources who request that their names be withheld, the investigation team was informed of Congressman Burton's involvement, including the meeting of November 18—in which he and Assistant Secretary of Labor Don Elisburg met with the Operating Engineers and Dillingham to approve the joint training program. In addition, they were given copies of correspondence and complete information regarding the private consulting firm through which high-ranking Labor Department officials attempted to "launder" the training contracts under investigation. Since March, four months of official silence have elapsed. According to federal regulations, the secretary of Labor must investigate all complaints promptly, publish findings within a reasonable time, and provide an administrative hearing in all appropriate cases. Despite impressive evidence, repeated efforts, and rising costs, the Guam employers and their attorneys report that they "have been unable to secure any relief, prompt or otherwise, from the Secretary of Labor."

Faced with a lawsuit in the district court and the internal Labor Department investigation, the Dillingham Corporation has backed away from the union-management deal and its coercive tactics which were revealed in the fatal Hulsey memo of January 30. On the other hand, the Operating Engineers and Labor Department regional administrators remain unflappable—seemingly oblivious to the course of recent events and unconcerned about the as-yet unpublished findings of the investigation.

On May 13, 1978, the Department of Labor awarded a construction training contract to the Operating Engineers Union in the amount of $450,000. General President Jay Turner of the union jetted to San Francisco for the signing ceremony. A union press release of May 13 said, "Turner complimented Secretary of Labor F. Ray Marshall and Representative Phil Burton (D.-San Francisco) for their cooperation in establishing the new training program." The statement quoted Turner as Saying that Burton had been very active in supporting the Department of Labor and the Operating Engineers in their efforts on Guam. The contract provides funds to train 150 workers in construction trades, and to upgrade the skills of 50 additional workers. Dale Marr, who was present both at the November 18 meeting with Burton and at the signing ceremony, characteristically predicted, "If Guam contractors do not cooperate with the government by hiring these workers once they are trained, the Labor Department undoubtedly will have to tighten its enforcement of federal wage and hour rules."

This remark makes it clear that union leaders anticipate the continued assistance of the U.S. Labor Department in their drive to organize the construction trades on Guam. And they may just be right. It is likely that most of the 200 union trainees will turn out to be union men. If 10 percent of them also receive training in organizing techniques, the union will then have a 20-man task force to spread its influence across the island. Under current regulations, no contractor who uses alien labor will be able to refuse union-trained workers. And since all contractors depend on alien labor, all will have to welcome the newly trained worker-organizers. For the next 18 months, the union can consolidate its membership while "adverse effect rates" push up industry wages.

Large American construction concerns like Dillingham are favored by these conditions. Because wages are established by the Labor Department and paid through Defense Department contracts, cooperation with the Operating Engineers becomes a viable and paid through Defense Department contracts, cooperation with the tractors will dwindle as increased payrolls and tighter controls on the use of alien labor force many contractors out of business. As wage rates in Guam approach parity with those on Hawaii and the U.S. mainland, importing American workers will become more and more common. Foreign construction firms which have traditionally depended on cheap labor and advantageous currency exchange rates for their competitive edge will be handicapped by increased unionization and Labor Department policies structured to accommodate American interests and workers on Guam.

Several unanswered questions remain. They suggest that a full congressional investigation of this matter may be appropriate: What, if anything, did Representative Burton and the governor of Hawaii get for their troubles? Was their action a political payoff involving public funds? Why has the Labor Department investigation been stalled? By what reasoning has Secretary Marshall failed to grant an administrative

hearing or, in fact, take any action in the face of blatant official wrongdoings perpetrated by top Labor Department administrators? And finally, what remedies will be available to the Guam employers when Local 3 has succeeded in locking up the island?

Mr. NELSON. Mr. President, we will go along with the amendment as presently drafted, and I am prepared to accept it.

Mr. JAVITS. Mr. President, I understand this amendment has been worked out with Senator HELMS. I am not happy with it, but in the interest of facilitating passage of the bill, I interpose no objection.

Mr. HELMS. Mr. President, I appreciate the comments of the distinguished Senator from Wisconsin and the distinguished Senator from New York. I appreciate their being willing to accept the amendment.

I would like to have the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. ZORINSKY). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, will the Senator agree to have it back-to-back with passage of the bill?

Mr. HELMS. Indeed, I do.

Mr. JAVITS. Mr. President, I ask unanimous consent that the rollcall on this amendment take place immediately prior to the vote on passage of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The bill is open to further amendment.

UP AMENDMENT NO. 1806

(Purpose: To assure that at least 90 percent of the funds used for private sector opportunities for economically disadvantaged are expended only for wages, employment benefits, training, and supportive services)

Mr. HEINZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 1806.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 382, between lines 3 and 4, insert the following:

"(c) Not less than 90 per centum of the funds allocated in accordance with the provisions of this part which are used by a prime sponsor for private sector programs under this title shall be expended only for wages, employment benefits, training, and supportive services, to persons employed in private sector jobs pursuant to this title. The remaining funds may be used for administrative and other allowable costs (such as supplies, materials, and equipment) incurred by the prime sponsor, private industry councils, project applicants or subgrantees or contractors, in accordance with such regulations as the Secretary may prescribe.

Mr. HEINZ. Mr. President, the amendment which I offer today will insure that the funds authorized to be appropriated under title VII of the CETA bill, the private sector opportunities for the economically disadvantaged, will be expended primarily for promoting job opportunities, and not for administrative costs. My amendment would require not less than 90 percent of the funds allocated under title VII to be expended only for wages, employment benefits, training, and supportive services to persons employed pursuant to the conditions of this title. The remaining funds may be used for administrative costs and other allowable costs incurred by the prime sponsor, private industry councils, or contractors according to regulations to be developed by the Secretary of Labor. This means that of the $400 million authorization, no less than $360 million would be used for wages, training, and supportive services, and $40 million for administrative costs.

I believe it is high time we moved to get the private sector more involved in our efforts to get the people in this country back to work. Public service employment, as we all know, is not the place to build permanent jobs. And if we are serious about providing permanent employment opportunities, we must look for help to the private sector. Through the effective linking of CETA prime sponsor activities and the private sector involvement we can begin to address the problem of structural unemployment that has been plaguing our Nation. Government cannot do it alone, as our past experiences in this and other programs have shown us. While the CETA program has been working to try to develop employment opportunities for the economically disadvantaged, a great deal of concern has been expressed to me that the program has trained people in areas where there are no available jobs; and that there is no mechanism to effectively match training with future projected areas of need.

Title VII is a real attempt to improve those necessary linkages between private industry and CETA prime sponsors and assure the integration of business community activities with CETA activities toward a common goal.

But I am concerned that simply authorizing a sum of money without providing some guidelines as to how it is to be spent would be irresponsible. We have already seen the results of this kind of oversight in the charges of abuse and fraud that have met other Federal programs in the past, and, indeed, this program as well. I believe that the earmarking of funds to be spent for jobs and those to be used for staff and other administrative costs would be a reasonable and responsible approach to avoiding on the front end the kind of problems that could possibly occur further down the road.

Everyone knows what is expected of each party right from the beginning. The prime sponsors and the private industry councils know what is expected of them; what they will be held accountable for in the future; and the program perimeters within which they must operate. The Department of Labor knows what the Congress expects them to monitor and enforce. Yet, my amendment still leaves for the prime sponsors and the private industry councils the flexibility necessary to carry out the program activities encouraged under this title.

In sum, I am encouraged by this attempt to change the structural direction of the CETA program and begin in earnest to put the unemployed and economically disadvantaged back to work in jobs which ultimately contribute not only to their feeling of participation and self-worth, but also to the greater productivity and real growth of our national economy.

Mr. President, I understand that the committee has reviewed the amendment I offer today and is willing to accept it.

This is an amendment that has been discussed with the committee. Its purpose is to insure that at least 90 percent of the funds used for private sector opportunities for economically disadvantaged are expended only for wages, employment benefits, training, and support services.

It is my understanding the committee has evaluated this amendment and concurs in it.

Mr. NELSON. I was momentarily diverted and did not hear the inquiry of the Senator from Pennsylvania.

Mr. HEINZ. It is my understanding that the committee has carefully looked at this amendment and feels it can accept it.

Mr. NELSON. Yes, we have looked at this amendment and that sets the same percentage limitations as in the other titles of the bill, and I have no objection to it.

Mr. JAVITS. I have no objection either.

Mr. HEINZ. I thank my colleagues.

The PRESIDING OFFICER Is all time yielded back?

Mr. JAVITS. We yield back our time.

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield back his time?

Mr. HEINZ. I do.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1807

(Purpose: To provide for private employer incentive grant projects)

Mr. HEINZ. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 1807.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 278, between lines 2 and 3 insert the following new section:

"PRIVATE EMPLOYER INCENTIVE GRANT PROJECTS

"SEC. 318. (a) In order to achieve certain national and regional priorities and to provide incentives to private employers to employ individuals eligible for assistance under this Act, particularly unemployed veterans, youths and economically disadvantaged individuals, to provide additional employment opportunities the Secretary is authorized to make grants to private employers in accordance with the provisions of this section.

"(b) No grant may be made under this section unless the Secretary determines—

"(1) that the project for which the grant is made under this section will contribute to carrying out the purposes of this Act and will contribute to attaining other national priorities including, but not limited to, better housng, health care, agriculture, and transportation;

"(2) that the project for which the grant is made under this section will have a reasonable prospect of leading to long-term employment for individuals employed with assistance under this section;

"(3) that the private employer will provide to the employee assisted under this section training designed to contribute to such long-term employment potential;

"(4) that the project assisted under this section will not result in the displacement of any other employee of the private employer participating in the project assisted under this Act;

"(5) that the grant is applied by the private employer only for wages for employees assisted under this section;

"(6) that wages paid to individuals employed with the assistance under this section will not exceed the wage rate set forth in Title VI of this Act; and

"(7) that individuals employed with assistance under this section will be paid for a period not to exceed 6 months of employment with the private employer participating in the project assisted under this Act, unless the Secretary finds that a longer period is needed in order to achieve the purposes of this section, but in any event such period shall not exceed 12 months.

"(c) The Secretary shall establish such other necessary and reasonable criteria for making grants to achieve the purposes of this section.

On page 179, in the Table of Contents, after item Sec. 305. Insert the following:

"Sec. 306. Private employer incentive grant projects."

Mr. HEINZ. Mr. President, this amendment would authorize the Secretary of Labor to do something he cannot now do, and that is to establish programs to create employment opportunities in the private sector for individuals eligible for assistance under CETA by making grants available to private employers under title III.

Title III, of course, Mr. President, is the special national programs and activities title of this bill.

I first want to commend the managers of the bill, Mr. President, and the committee for a thorough, thoughtful work product. I know that Senator WILLIAMS, Senator NELSON, and Senator JAVITS have worked extremely hard on this legislation and that they have also carefully considered the issue raised by my amendment, private sector employment incentives. My interest in such incentives has been long-standing.

Over the last several years, I have endeavored on several occasions to persuade Congress to address this important issue. In fact, the Commerce Committees of the House and Senate were agreed in 1975 to adopt this approach; that is, programs to encourage private sector employment.

Now, title VII of this bill is a step in the right direction; it encourages private sector employment opportunities.

Title VII of the bill, through the establishment of private industry councils, each established within a prime sponsor area, will allow some private sector involvement in the CETA program, and that is good. But what is also equally true, because of the local nature of each prime sponsor area, is that the impact of those job initiatives will also be local. My amendment seeks to do the same thing, to encourage private sector employment, but on a national and regional level, by giving the Secretary authority to establish a national private employment program through which it will be possible to create both private employment opportunities and address national or regional priorities in a coordinated manner.

Addressing local priorities under title VII is good, but it is not enough. It cannot possibly succeed in meeting a national or regional priority as this amendment would authorize the Secretary to do.

I am sure the committee is familiar with the criticism that some have leveled against public service jobs as "makework" or "raking leaves and sweeping streets." While this may not be a fair characterization, the fact is that many of the jobs we provide under CETA are service-oriented and do not result in the construction or rehabilitation of vital facilities, for example, schools or hospitals or housing or bridges or roads or irrigation projects or what have you.

This amendment would provide an opportunity for jobs that produce lasting public benefits. A case in point, and one I think we are all familiar with, indeed, the Senate and the House in the 94th Congress passed legislation to this effect, is; namely, the rehabilitation of unsafe rail lines. As I say, that is a case in point. That is a precedent for this kind of program.

I am as concerned about costs as anybody else. I want to explicitly and emphatically point out that this amendment does not increase any cost, does not mandate any expenditures, does not increase any authorizations in the bill.

The purpose of this amendment, as I said in the beginning, is simply to give the Secretary discretion that he does not now have to take advantage of private sector opportunities through programs which would further national and regional needs in ways not possible under title VII or any other title of this bill.

Mr. President, I think there is general agreement that giving the unemployed the means to enter the private sector will reduce the need for long-term Government support of them while, most importantly, providing these Americans with job opportunities they deserve.

My amendment is carefully drawn to achieve these goals, while insuring that the Secretary provides rigid safeguards to prevent unjustifiable expenditures. It includes provisions to prohibit displacement of any existing employees or substitution for any other expenditure. It limits grants to those projects which would have a reasonable prospect of long-term employment, and which would include employer training programs designed to contribute to such employment.

It would establish the same wage rate limit which is set forth in title VI. It would require that grants not only achieve the purpose of the bill but would also contribute to other national priorities, including, but by no means limited to, such things as better housing, health care, agriculture, and transportation.

Mr. President, I think the time has come for us to broaden our focus, to develop programs to move the unemployed into productive positions in the private sector. Such programs can, and I believe they will, provide disadvantaged individuals, unemployed individuals, young people, minorities, veterans, and other groups to which CETA is correctly and justifiably directed, with the skills and experience to secure permanent, unsubsidized jobs in the private sector.

It is to this end, and to meet these goals, Mr. President, that I direct my amendment, and I hope my colleagues will accept it.

I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I think that my attitude toward this amendment can best be characterized by a Member who approached me and said, "How are you going to handle this thing?" Because that is very accurate.

The fact is that I am extremely sympathetic to such actions, so much so that I introduced, in 1975, a bill to employ 20,000 workers on, generally speaking, a combination of public and private terms, to rehabilitate the railroads. Anybody who has taken a ride on the railroad, especially in the East, will cheer and applaud.

Our problem, Senator HEINZ, very frankly is this: You are putting your amendment in title III, which is the national projects title. Title III covers a great many people that we want to cover. They are spelled out in great detail, and as a matter of fact we have included another group today, respecting educational credentials. But they would include offenders, people of limited English language proficiency, handicapped individuals, single parents, displaced homemakers, youth, older workers, and so on—$400 million is provided for this title, and we have every right to expect that something like that is likely to be provided again.

The problem which we have is that what you want us to do is turn over this volition to a Secretary, without any more specificity, really, than that. Also, it presents some very grave union problems, Senator. I ran into that with the railroad proposition.

In addition, the bill already has two programs which are somewhat directed along these lines. One is found at section 439(a), which deals with an effort to provide particular incentives to pri-

vate business to establish additional employment opportunities for youth who have not had significant previous employment experience; this is Senator HAYAKAWA's "social bonus" program. We are to experiment with that in 10 areas. Then we have another program at page 286 of the bill, which is a voucher program. That is a well-known scheme by which we will give the individual a voucher in terms, again, of youth, to go out and see what he can do, carrying with him, as it were, the amount which the Government is willing to use to finance him in a job, and we call for a report by the Secretary no later than October 1, 1980, evaluating the effectiveness of this demonstration project.

I think the idea is a good one, as I say. I so characterized it myself when I opened, because it is something I have had very much in mind.

Pragmatically, I doubt whether we can do anything with it in CETA at this late stage of the consideration of the bill. Those are the realities of life. This would be threatening to various other vested people who will come under this national projects title, justly or unjustly.

So my feeling would be—as I say, I am very sympathetic, but my feeling would be that we need a somewhat more matured concept for this particular kind of enterprise, and as the ranking member of the committee, I would certainly do my utmost to press for a hearing upon a bill which the Senator could introduce, which could carry this idea.

I am deeply concerned that if we run the course of the hazard of a motion to table on this bill, and the amendment is tabled, while we always like to feel that tabling only means we do not want to think about it right now, actually it may mean more than that, and a very good idea may be run down the drain just because we are not ready for it on this particular bill.

I am laying that before the Senator very frankly. My colleague will expand on it.

Mr. NELSON. Mr. President, I wonder if I might make a suggestion. The objectives sought by the Senator from Pennsylvania I think everyone will agree with. It is, we find from dealing with this question in the Finance and Human Resources Committees, very complicated, but I wonder if I could make a suggestion to the Senator.

We have not had an opportunity to look at his proposal very closely, and, as the Senator from New York said, we have not had a chance to have hearings. However, there is a vehicle coming along, in the major tax bill. We have the question before us in the Finance Committee right now of expanding or modifying the current tax credit provision to employers who hire additional employees over their past number, employees in excess of 102 percent of their previous year's employees.

We will start the markup on that legislation, I believe, at the end of the first week or the beginning of the second week after we return from the Labor Day recess. I have no notion of what the Finance Committee itself may do with it or wish to do with it, but if the Senator offered his proposal as a bill, it would go to Finance in the meantime, and at least have an opportunity for everyone to take a look at the provisions of the bill; thus there would be an opportunity for the Finance Committee to consider it, and then there would be an opportunity, in the event the Finance Committee did nothing with it or did not approve of it, at least, to bring to the floor a bill that has been available to Senators for 2 or 3 weeks. If the Senator then still thought it was an amendment that ought to go on, there would still be a vehicle, which is the tax bill, to offer it on the floor at that time, rather than to this bill.

Mr. HEINZ. First, I think both of you have made excellent cases for this amendment, and I appreciate that. I understand also, Senator JAVITS, some of your concerns.

I would like to address those concerns because the Senator is a true expert in this matter and I think he is properly considered the father of the CETA legislation.

Taking the points as I recollect them, the Senator pointed out correctly that title III covers many, many groups of people. Indeed, the intention of my amendment is to cover exactly the same group. We would not be adding or subtracting any people. What we would be adding are different kinds of job opportunities if the Secretary of Labor feels that these opportunities are worthwhile and accomplish the purposes of the act.

The Senator also points out that we do delegate discretionary authority to the Secretary. This is not the first time we have done that. We have delegated a lot of authority to the various Cabinet Secretaries, and, indeed, we should.

This amendment contains most of the safeguards that anybody would reasonably want: safeguards against substitutions, safeguards to insure no diversion of the money, safeguards to insure that no outrageous wage is paid, safeguards to insure that any payment made in the form of a supplement does not go to somebody with an extremely high salary, and so forth.

If the Senator will look carefully at the third page of my amendment, he will see that we tell the Secretary to establish—and he will have to do so by regulation—such other necessary and reasonable criteria for making grants as he deems appropriate.

Therefore, he is going to be on the public record in implementing these programs, there is going to be opportunities for public comment. Senators from New York, from New Jersey, myself, anybody may comment. After all, we are the Congress, and if we do not like what the Secretary is doing we do not have to fund everything he wants to do. We have the power over the purse strings. We have the appropriations process. If we find that these programs are not working, we can terminate them, but I do not think that will be the case.

The Senator from New York, my good friend, brings up the question of union problems. I know what he is talking about. There may be matters which must be worked out, but I do not know of anybody better to deal with union disagreements of the nature we encountered on the rail jobs bill than the Secretary of Labor. If not the Secretary of Labor, who is better qualified? I do not know.

With respect to section 439 of the bill, the so-called social bonus program, that is a good program. It is directed toward youth with no job experience. However, it is also only a demonstration program. It goes just to 10 areas and those 10 areas are, once again, under the jurisdiction, so to speak, of the local prime sponsors. So it does not have the national or regional scope. It could not be used to meet those national or regional needs that I would hope would be met by my amendment.

The Senator also mentions section 317, which establishes a voucher program. Again, it is a demonstration program. Again, it is one subject to control by prime sponsors. It could not further the regional and national goals that I would hope my amendment would serve.

Finally, the Senator from New York has mentioned that he felt possibly that this amendment might create some threats to somebody or some group.

I do know this about my amendment, that it applies to the same people we are trying to help under title III and title I, the very same people, the same unemployed, the same underemployed. Those are the people who need jobs, who need permanent jobs, who need real jobs. I am a little at a loss to know exactly who we are threatening.

This simply provides an additional degree of freedom to those people we are trying to help. If we have reached the stage where freedom is a threat, then, indeed, we have changed what this country is all about.

Perhaps the Senator from New York would want to make that statement clearer. I honestly cannot see who it is that this amendment threatens.

To my good friend from Wisconsin (Mr. NELSON), I commend him and the work of the Finance Committee on the employment tax credit on which I know he is working. I do not know what the future will hold in the Finance Committee. He may or may not be able to write legislation that will be enacted into law. I do not wish to prejudge. We simply do not know.

I do know that we have precedents for this approach. The Senator from New York was kind and thoughtful enough to point out that he had supported, and the committee had passed, a similar measure, similarly targeted toward one area of our economy, the rail industry, by the creation of jobs for the unemployed restoring our railroad lines.

I would hope, Mr. President, that the committee could accept this amendment.

Mr. NELSON. Mr. President, I know the distinguished Senator from Pennsylvania is aware how complicated legislation of this kind is. Even if I studied it for the next week and reached the conclusion that this legislation was properly drafted and a good idea, that still does not permit me to support it today.

We started on this CETA legislation in February of this year. We conducted extensive hearings. The question of sub-

sidizing wages is a very complicated business, as the Senator knows.

We reported the bill more than 3 months ago. It has been here for over 3 months. The Senator now offers an amendment, which I saw for the first time 10 minutes ago, on an enormously complicated thing.

I know the Senator has thought about it because he drafted it, but those of us who are managing the legislation are certainly entitled to as much time to consider the implications of the legislation as the drafter of the amendment.

That is why I suggested what I believe to be a proper suggestion, that there is an appropriate vehicle, much more appropriate than this bill, which will be before us in 3 or 4 weeks. If the Senator would reconsider the concept of introducing it, so that it is printed, so that everyone involved has an opportunity to examine it, so that the Finance Committee has the opportunity to look at it, then if the Finance Committee did not agree, and I suspect they would not without any hearings because it is rare to adopt this kind of a complicated provision without some kind of hearings—I would feel irresponsible to accept it myself without having hearings on it—then the Senator would have the opportunity to come to the floor of the Senate 3 weeks or a month from now and say, "I introduced the legislation and I am now offering it as an appropriate amendment to the tax bill," which, in itself, will contain legislation for a tax credit, not a wage subsidy.

Then I think it would be a reasonable argument to say, "Well, the Finance Committee looked at it, the Members of the Congress have had a chance to look at it, the Senate, and the administration has had a chance to look at it. It is no surprise to anybody. Let us take it up and debate it."

Quite frankly, to ask me, as manager of the bill to accept an enormously complicated proposal, which has all kinds of implications in it, is asking much too much.

I urge the Senator to offer it today as a bill, and then bring it before the Committee on Finance. Then we shall have time to take a look at it. I might very well conclude, 3 weeks from now, when I am on the Finance Committee, that I could support it. I might conclude I cannot. But at least I would have a reason for supporting or opposing it. I cannot give any detailed analysis of the reasons pro or con at this time, since I have not had the chance to examine the legislation that the Senator from Pennsylvania, himself, has had.

Mr. HEINZ. I understand the feelings of the Senator from Wisconsin. I wish I could say it is an original amendment. It is not. We have had amendments like this before. I know the committee has had a lot of discussion about it. Notwithstanding that, even if I were to grant as 100-percent correct everything that the Senator has just asserted, the fact is that this is only permissive authority.

Even if the Secretary abused his discretion, even if he got around the regulation-writing process, even if we forgot how to read them, we still have the Committee on Appropriations as a brake if that is what the Senator is concerned about.

I just say briefly, Mr. President, and I do want to be brief because I know my colleagues want to get to a vote on this amendment, I am still concerned for those who are now unemployed. They do not much care that we, here in Washington, want to wait a month, 2 months, 4 months, 6 months, or, as in the case of the railroad jobs now, 3 years. They want decent employment opportunities. They want a chance to earn their own way. That simply is the purpose of this amendment.

I ask for the yeas and nays on the amendment. Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. NELSON. Mr. President, I move to lay the amendment on the table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I realize that the motion to table is not debatable, but I ask unanimous consent that this rollcall, too, may come back to back with the other, the rollcall on Senator HELMS' amendment and final passage.

The PRESIDING OFFICER. Is there objection?

Mr. HEINZ. When might that occur?

Mr. JAVITS. Right away. We do not know of any other amendments.

Mr. HEINZ. I have no objection.

Mr. NELSON. In what order would they come?

Mr. JAVITS. My intention, I say to the Chair, was that this tabling motion would come first, followed by Helms, followed by what is, I assume, passage.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I yield myself 2 minutes on the bill and no more, because I do not want to detain the Senate any more. I should like to answer a couple of questions, because I shall vote to table with tears in my eyes, because I really like this amendment. But I cannot do anything else, and I shall explain why.

The Senator says we are going to use all the people who are provided for by title III. I doubt very much that we are going to satisfy those who are interested in offenders—that is, criminal law offenders—those who are interested in homemakers or the older workers, or handicapped individuals, that these broad national and regional projects are going to use them. We are going to have to use an awful lot of them and use more than $400 million.

Second, the Senator has made it mandatory that grants are to be provided to private employers to defray the wage costs only of the first 6 months of employment. Well, the juxtaposition between that and CETA is very great, On the one title, it is 6 months; under another title, it is 18 months. We are only experimenting with the idea of subsidizing private business. Under no circumstances that I know of has the United States paid the compensation of CETA workers who are working for private business. This is quite a stretch of this program.

So, again, I have one last suggestion to the Senator. We have a March 1 deadline for the Joint Economic Committee study. I believe, and I counsel him as my friend—and he knows that happens to be true in this case—that he ought to take about 5 minutes and write a paragraph saying that the JEC should report back on this proposition. He does not lose anything. If he wins on his motion to table and we take his amendment, he loses nothing. But I should like to see this proposition reported on. It is going to be studied by a very competent staff and it will take just three lines to make it part of that study. Then the Senators——

The PRESIDING OFFICER (Mr. NUNN). The Senator's time has expired.

Mr. JAVITS. I yield myself another minute on the bill.

Mr. President, I suggest the absence of a quorum on my time.

Mr. ZORINSKY. Mr. President——

The PRESIDING OFFICER. Does the Senator withhold his suggestion of a quorum?

Mr. JAVITS. Of course.

Mr. ZORINSKY. Could the majority floor manager yield me 1 minute for entering a statement into the RECORD?

Mr. JAVITS. I yield 2 minutes.

Mr. ZORINSKY. Mr. President. I rise in support of this legislation. The CETA program is a good one. The Comprehensive Employment and Training Act is one instance where a Federal program has had a positive impact on many Americans. CETA strives not to foster a dependence on government, but to train men and women to be independent and productive members of society. Of course it is not perfect—it has flaws—however, I say from first-hand experience that this program can work, it will work, and it is working in many communities throughout the country in helping to create jobs, in helping to train workers and in easing the waste of human energy that comes from unemployment.

In Washington, tax dollars are spent too freely and my voting record reflects a commitment to check the spendthrift inclinations that seems to pervade this town. But commonsense and logic dictate that it is more fiscally sound and more cost-efficient to establish programs which provide job training and experience than to pay the tremendous costs associated with high unemployment. We should not give the CETA program unbridled license to expand, but any changes in the CETA entitlements contained in S. 2570 should not be made without examining the long-range cost-effectiveness of these changes. I consider myself a fiscal conservative and I ask my colleagues not only to reflect on the costs of this program, but the high price we would pay if we did not have CETA.

I know there are problems with CETA and it is not perfect. But any reform of CETA should be structured to deal with the mismanagement, waste and cor-

ruption that has plagued some CETA programs, without destroying the decentralized authority that has allowed many CETA programs to become flexible and effective tools in dealing with unemployment.

Obviously, a high degree of accountability and program monitoring must be instituted to insure the integrity of this program and provisions in the CETA legislation before Congress will help promote just that. In the act, there are sections dealing with corruption in CETA—providing criminal sanctions for such activities as kickbacks, embezzlement of funds, and obstruction of CETA investigations. Bonding is required for officers, directors, agents, and employees of CETA recipients who handle funds or property under the act. No program may involve political activities and CETA wages are limited to a reasonable and realistic figure. Discrimination is prohibited and the Secretary of Labor is given better monitoring and investigatory authority. In addition, on Tuesday, an amendment to S. 2570 by the Senator from New Mexico, Mr. DOMENICI, was unanimously adopted; this amendment will strengthen the Secretary's ability to police the program even more. This measure, as it has been amended, will go far in ending the abuses that have plagued CETA.

In recent months there have been a number of news stories about CETA programs marked by scandal and abuse. Yet, we have heard little of the good news about CETA. Why? One reason is that many prime sponsors are busy trying to help people who are out of work and who need counseling, training, and job experience. Where the prime sponsors are effective in administering comprehensive employment and training programs, they do not really have time for a comprehensive public relations campaign. There are many cases where CETA programs are working extremely well.

I have seen the CETA program firsthand in Omaha where CETA performed an excellent job of training workers who were laid off. I have seen CETA's positive impact, both in terms of dollars, wisely and prudently managed, and in terms of bettered human lives. Although many programs are a waste and some CETA programs are poorly administered, the program in Omaha is compelling evidence that CETA can succeed in helping persons become less dependent on public dollars and more productive as contributing members of their community.

I ask to have printed in the RECORD an article by Bob Armstrong, director of CETA in Omaha, that was recently printed in the Omaha World Herald. Mr. Armstrong wrote this in response to a number of articles condemning the CETA program. The article does an excellent job of pointing out the shortsightedness of many of the armchair critics of CETA and underlining the effectiveness that CETA has had in Omaha and elsewhere.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Omaha World Herald, Aug. 16, 1978]

BUILD ON SUCCESSES OF JOB PLAN

(By Robert L. Armstrong)

In the August 8 World-Herald, James J. Kilpatrick jumped on the Comprehensive Employment and Training Act (CETA) bandwagon, borrowed heavily from an article written by Ralph K. Bennett in the August issue of Reader's Digest, added a few adjectives, and became a self-proclaimed critic of CETA. I find this kind of journalistic piracy deplorable.

I should point out that there are 466 CETA programs around the country. The number of programs criticized in all of the articles written totals 22. I would be the first to admit that all CETA programs are not responsibly administered; however, the percentage is quite small and has been blown completely out of proportion. For those of us who put in long hours trying to help people in need and who are unemployed, this kind of journalism is irresponsible and immature.

If Kilpatrick and other critics properly researched CETA, they would find there are different parts or titles which make up the total act. Contrary to what Kilpatrick reported, the original intent of CETA is still intact.

Title I assists the "hard-core" unemployed by providing needed vocational and academic training: Title II provides subsidized employment for 12 months to those individuals who have skills, but are unemployed; Title III provides funding for youth programs and special projects; Title IV provides funding for the Job Corps; Title V establishes a National Commission for Manpower Policy; and Title VI (the one that has received all the criticism) provides staff funding for community projects in non-profit organizations. I might also add that Title VI was the last one developed, and was designed to ease the recession of 1975.

We have an outstanding CETA Program in Omaha. We are serving all segments of society that need our help, as intended by the act. We have not been accused or found guilty of favoritism, nepotism, political handouts, and/or mismanagement of our program.

I have never been asked or pressured, during my eight years' involvement with employment and training programs, by any elected official to put into effect any irregular or irresponsible activity. I think this speaks well for the integrity of the elected officials in the Douglas and Sarpy County area.

If more of these self-appointed CETA critics would travel beyond their typewriters and telephones and observe a CETA program in operation, then perhaps they would understand that CETA, as it currently exists, is not a bad piece of legislation.

I do not believe that a good program can be legislated. I believe that administrators and local staff, with the cooperation of the total community, can make any program work if given the flexibility to adjust their program to local needs. Omaha has done this, and done it well.

Any business organization which is successful does not scrap its entire operation because a few of its units are not functioning properly; rather they concentrate on resolving the weaknesses and bringing those sub-standard units up to par. So it should also be with CETA.

I would hate to see a good piece of legislation destroyed because of the errors of a few; instead, it should be built around the successes of the majority.

Mr. NELSON. Mr. President, I ask unanimous consent that the last two votes, the vote on the Helms amendment and the vote on final passage, be limited to 10 minutes.

The PRESIDING OFFICER (Mr. HOLLINGS). Is there objection?

Mr. SCOTT. Mr. President, reserving the right to object, could we have a 15-minute vote on the first and then 10-minute votes on all subsequent ones?

Mr. NELSON. That is my intention.

Mr. SCOTT. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, as far as I know, I do not wish to call for third reading, because we shall have another minor amendment, but just for the information of Members, I do not know of any other amendments and we are ready to vote on the tabling motion in respect of the Heinz amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the Heinz amendment on the table. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maine (Mr. MUSKIE), the Senator from Tennessee (Mr. SASSER), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Missouri (Mr. DANFORTH), the Senator from New Mexico (Mr. DOMENICI), the Senator from Maryland (Mr. MATHIAS), the Senator from Kansas (Mr. PEARSON), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 47, nays 32, as follows:

[Rollcall Vote No. 366 Leg.]

YEAS—47

| | | |
|---|---|---|
| Allen | Glenn | Nelson |
| Bayh | Hart | Pell |
| Bentsen | Hodges | Proxmire |
| Bumpers | Hollings | Randolph |
| Burdick | Inouye | Ribicoff |
| Byrd, Robert C. | Jackson | Riegle |
| Cannon | Javits | Sarbanes |
| Case | Leahy | Stafford |
| Chiles | Long | Stevenson |
| Church | Magnuson | Stone |
| Clark | Matsunaga | Talmadge |
| Cranston | McGovern | Weicker |
| Culver | McIntyre | Williams |
| Dole | Melcher | Young |
| Eagleton | Metzenbaum | Zorinsky |
| Ford | Moynihan | |

NAYS—32

| | | |
|---|---|---|
| Bellmon | Hatch | Packwood |
| Biden | Hatfield, | Percy |
| Byrd, | Mark O. | Roth |
| Harry F., Jr. | Hayakawa | Schweiker |
| Chafee | Heinz | Scott |
| Curtis | Helms | Stennis |
| DeConcini | Huddleston | Stevens |
| Durkin | Laxalt | Thurmond |
| Garn | Lugar | Tower |
| Goldwater | McClure | Wallop |
| Griffin | Morgan | |
| Hansen | Nunn | |

NOT VOTING—21

| | | |
|---|---|---|
| Abourezk | Gravel | Mathias |
| Anderson | Haskell | Muskie |
| Baker | Hatfield, | Pearson |
| Bartlett | Paul G. | Sasser |
| Brooke | Hathaway | Schmitt |
| Danforth | Humphrey | Sparkman |
| Domenici | Johnston | |
| Eastland | Kennedy | |

So the motion to lay on the table UP amendment No. 1807 was agreed to.

UP AMENDMENT NO. 1808

Mr. JAVITS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. JAVITS), on behalf of himself and Mr. Heinz, proposes an unprinted amendment numbered 1808.

Mr. JAVITS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. I will read the amendment to the Senate.

I submit this amendment on behalf of myself and Senator HEINZ. It is in deference to the fact that many of us think he had a good idea, though we voted to table. But the matter hit us at a moment when we could not take it, as managers.

So my suggestion is to give him a study, and we have one study in the bill now; so the amendment reads as follows:

On page 385 insert the following: "The Joint Economic Committee as part of the above report to the Congress, is requested to include with recommendations, if any, an analysis of the subject of incentive grants, or other assistance permissible under this act, to private employers in reducing unemployment rates among individuals eligible for assistance under this act, through national priority projects, including, but not limited to, better housing, health care, agriculture and transportation".

As one of the managers of the bill, I find the amendment acceptable.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. HEINZ. I thank the Senator from New York sincerely for his amendment. I am pleased to be a cosponsor. I appreciate his interest in obtaining a definitive recommendation in the form of a study.

I thank Senator JAVITS and Senator NELSON.

Mr. NELSON. Mr. President, the amendment offered by the distinguished Senators from New York and Pennsylvania is perfectly acceptable to me.

I yield back the remainder of my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WEICKER. Mr. President, I wonder if the distinguished managers of the bill will yield for a question.

Do they have a cost estimate for the study which is requested in this amendment?

Mr. JAVITS. I believe it will represent no greater cost than the cost we already have of the study, which is an amendment to the bill, by the Joint Economic Committee, of the subject generally.

Mr. WEICKER. So the Senator does not feel that this will add to that cost?

Mr. JAVITS. Not at all.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I do not have an amendment.

Mr. President, will the Senator yield me time on the bill?

Mr. NELSON. I yield whatever time the Senator desires from the bill.

Mr. HELMS. I thank the Senator.

Mr. President, several Senators have close schedules and need to catch planes. The yeas and nays have been ordered on an amendment which I submitted earlier this afternoon which is acceptable to the managers of the bill. To save Senators time I ask unanimous consent that the order for the yeas and nays on my amendment be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, will the Senator yield further?

Mr. NELSON. I yield.

Mr. HELMS. Mr. President, CETA has grown, in just 4 years time, from a relatively modest $1.5 billion program to $11 billion. Such incredible growth really is no surprise, because this is just another typical example of the futility of throwing tax dollar after tax dollar at a problem.

But we cannot be blind to the real problem in this country at the present time: the overburdened American taxpayer who is on the verge of total revolt against the big spending policies of this Congress, and rightfully so. If we really wanted to do something for the oppressed taxpayers of this country, we would curtail this massive CETA boondoggle.

Nearly every day I read about some new and startling example of CETA funding abuse. For many people, CETA has become a better alternative than going to work for the minimum wage. Perhaps James J. Kilpatrick has described it best:

The authors of this grotesque imposition on the taxpayers could not prevent abuses if they kept at the rewriting job till Christmas. Nothing in my experience—not food stamps, nor foreign aid, nor the old Job Corps, nor the follies of the arts and humanities people—nothing has approached the sheer mind-boggling, boondoggling waste and corruption of the CETA billions.

And millions of Americans feel exactly the same way. Typical of the many letters I have received is one that came from Mr. Daniel M. Harris of Raleigh, N.C. Listen, my colleagues, to what he wrote:

Given the choice of supporting the Carter Administration plan to maintain the present CETA program or Senator Roth's suggestion for tax cuts that will guarantee business expansion and the creation of permanent taxpaying jobs, I would support the latter. CETA will do nothing except contribute to more inflation.

Why not follow Mr. Harris' suggestion and approve the Kemp-Roth concept? Why not create real jobs, real business expansion, and real economic opportunity?

The amendments that have been adopted are just feeble gestures toward reform of the CETA boondoggle, and there is no doubt in my mind that we will be reading about massive abuses in the program this same time next year. We are not helping the taxpayers with this big spending, inflationary program. To the contrary, we would perform a great service for the American taxpayer if we just let CETA die right here today.

I thank the Senator.

AMENDMENT NO. 1805

Mr. NELSON. Mr. President, we have discussed this amendment. Speaking as manager of the bill I am prepared to accept this.

Mr. JAVITS. We have no objection.

Mr. NELSON. I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NELSON. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. No, not on passage.

Mr. JAVITS. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I yield a half minute to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Eric Hultman of the Judiciary Committee staff, be accorded the privilege of the floor during the vote on S. 2970.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, I give my utmost support to S. 2570, a bill to amend the Comprehensive Employment and Training Act of 1973 and to praise the floor manager, the able and dedicated Senator from Wisconsin, Mr. NELSON and the ranking minority member of the Subcommittee on Employment, Poverty, and Migratory Labor, Senator JAVITS of New York, and to acknowledge the important input from the Senator from New Jersey, Mr. WILLIAMS, as chairman of the Human Resources Committee.

As ranking majority member of the authorizing committee for the Comprehensive Employment and Training Act, I have worked, in conjunction with my colleagues on the committee, to revise and modify this program to facilitate the accomplishment of the program's goals as defined in the act we authored in 1973. This program, through its decentralized implementation, provides an opportunity for all Americans to be among the ranks of the employed, contributing to their families, their communities, and the country.

An ancillary benefit of this program, but of great significance, is its ability to afford our country's disadvantaged the opportunity to develop the sense of self esteem and self worth which accompanies gainful employment.

CETA reaches out to attack, head-on, one of our country's most persistent problems—chronic unemployment. Through its job training and counseling provisions, its public service employment, and its involvement of the private sector, CETA has, in large part, been responsible for reducing the rate of unemployment from greater than 8 percent in 1976 to its current level of less than 6 percent. This contribution alone should serve as a mandate to the Congress to reauthorize and offer its uncompromised support to the CETA program.

Therefore, I join with those who express genuine concern and a deep feeling of urgency about the need for passage of CETA legislation without delay and without crippling amendments.

In our State of West Virginia and throughout the Appalachian region, we are familiar with the damaging effects that follow when projects legislated begin to work and then are suddenly curtailed, weakened, cut back, or designed for built-in failure.

I am especially concerned that we not "throw out the proverbial baby with the bath water" as we try to correct problems with the program.

There are some programs that have been operating successfully under CETA. We do not hear about them. Some point with alarm to the programs that are guilty of misuse and abuse of Federal funds. Seldom is it newsmaking to report reliable, dependable programs that year after year recruit those people who need help, and give them motivational and attitudinal training as well as skills training, place them on a job and provide them with "hands-on" counseling throughout the entire process.

A program which does just this is OIC, Opportunities Industrialization Centers, founded by the Reverend Leon Sullivan, a Baptist clergyman.

Although Reverend Sullivan was originally from Charleston, W. Va., he is now based in Philadelphia, Pa., the national headquarters for OIC of America, which currently operates in 45 States.

Senator SCHWEIKER of Pennsylvania and myself have in a way symbolically reflected the contribution that our two States have made through Reverend Sullivan by cosponsoring the OIC Skills Training and Community-Based Organization Job Creation Act of 1978. When the 1978 CETA legislation was brought before the Human Resources Committee, we submitted an amendment to provide an insurance policy that this exceptionally good employment and training program and other community-based organizations will survive and continue to deliver cost-effective services, training, and job opportunities.

The track record of Opportunities Industrialization Centers in our State in Huntington and Charleston is outstanding. The 85 percent retention rate of people placed and the 78 percent rate of placement of OIC has led our businessmen and employers to regard an OIC label on a trainee as the equivalent of the label "sterling" on silver.

OIC has a reputation of producing a quality product at the least cost. At a per capita cost of $1,500 Reverend Sullivan plans to train and place 100,000 unemployed for a cost of $150 million. He has already managed, with commendation from GAO for accountability, a $100 million budget which this past year was secured through the prime sponsors and the CETA system.

A program like this one deserves special consideration by prime sponsors and is the kind of effort we should encourage. It is my judgment that programs such as OIC which were doing a good job before CETA gained the confidence and cooperation of private industry and Government. They should not be fragmented or phased out during the development of CETA during the next 4 years.

Mr. President, West Virginia, as well as the other 49 States, have benefited from the services provided by OIC and other similar community-based organizations in addressing the problems of our society's less fortunate. I recommend the CETA legislation to my Senate colleagues and strongly urge its passage.

Mr. MUSKIE. Mr. President, the legislation we consider here today, the Comprehensive Employment and Training Act Amendments of 1978, would reauthorize the major spending programs for job training and job creation included in the Federal budget.

These programs have expanded dramatically over the past 4 years from $2.5 to $12 billion in response to cyclical unemployment problems created by the recent economic downturn. The major expansion has come in public service jobs funded under CETA, which have expanded since 1974 from 50,000 jobs to the current 725,000 jobs level. The Budget Committee has supported this expansion in light of economic conditions.

During the recent recession the unemployed population was composed largely of skilled workers who required temporary jobs until regular employment became available with economic recovery. These cyclically unemployed people did not require extensive training and supportive services to make them employable.

As a result, most of the resources spent under CETA have gone in recent years to providing temporary public service employment to the cyclically unemployed.

The economy has made considerable progress during the 3 years of expansion since the severe 1974–75 recession. The unemployment rate has fallen from 8.8 percent in the second quarter of 1975 to 5.9 percent in the second quarter of 1978, entering the 5 to 6 percent range in which most economists would place the point at which inflationary pressures become significant in the labor market.

The current unemployed population contains many persons with insufficient training and work experience to make them employable. These people are the structurally unemployed. Cyclical unemployment has fallen substantially and the emphasis of economic policy should now shift more to the more difficult challenge of reducing structural unemployment while at the same time restraining inflation.

Unless job creation programs are targeted on individuals who have few opportunities in the labor market, such programs run the risk of competing with regular employers for available workers, thereby tightening labor markets and adding to inflationary pressures. The more targeted the program is on the structurally unemployed, the less risk of inflation it entails.

During consideration of the first budget resolution the committee noted the problem of structural unemployment in its discussion of CETA programs.

The committee report stated:

> This Committee believes that economic policy, while maintaining the high level of aggregate demand necessary for the success of any employment policy, must gradually shift its primary emphasis from overall economic expansion to the task of targeting employment opportunities on the structurally unemployed.

In order to shift Federal employment and training policy from its current countercyclical emphasis to a more structural focus, the report on the first budget resolution for fiscal year 1979 recommended that at least one-half the resources devoted to maintaining the current 725,000 public service jobs be redirected to structural purposes.

This bill would bring about a fundamental shift from countercyclical to structural purposes as envisioned in the first budget resolution. Senator NELSON and members of the Human Resources Committee are to be commended for re-

porting a bill which redirects this important employment and training program to the needs of the most severely unemployed.

The shift in emphasis from the countercyclical title VI to the new structural title II proposed in this bill would reduce inflationary pressures that could result from the continuation of the existing countercyclical program level during this period of economic improvement.

Moreover. to the extent that the structural portions of this bill would provide training and job experience for the unskilled and inexperienced, the program would assist recipients in obtaining permanent jobs, thereby expanding the Nation's potential output and reducing the level of unemployment which is consistent with nonaccelerating inflation.

To further counteract potential inflationary pressure, the bill would set wage limits on public service jobs and incorporate some measures to reduce substitution of Federal funds for State and local payrolls.

It is crucial that Federal dollars appropriated for countercyclical purposes be used by local governments to hire more people than they would have hired in the absence of the program. If there is simply a substitution of Federal dollars for local payrolls then the employment effects are no larger than those which would result from revenue sharing programs.

Some estimates of fiscal substitution range from 30 to 100 percent over an 18 month period. These estimates, however, tend to focus on the CETA program prior to the increased targeting included in the 1976 amendments.

A more recent and more extensive study requested by Senator Bellmon and conducted by the Brookings Institution found that of every 100 jobs funded, 18 represented positions that would have been financed out of local funds in the absence of CETA, 31 represented positions which already existed but which would have been eliminated in the absence of CETA, and 51 represented CETA-induced job creation. The study concludes that these more optimistic findings result from the increased targeting included in the CETA program in the 1976 amendments.

In light of these findings I am disturbed that targeting provisions proposed for the new countercyclical title VI are liberalized as compared with current law. I do not favor reduced targeting in title VI. The new provisions would double the size of the eligible poor of clientele and encourage CETA employers to hire those who need the jobs least. This "creaming" would encourage substitution of Federal dollars for State and local payrolls.

Furthermore, it is my view that the most needy should be served first, even in a countercyclical program.

There has been some concern that excessive targeting would slow the rate of implementation—a crucial factor in countercyclical programs. Targeting provisions in the existing CETA title VI are much more stringent than those proposed in this bill. Yet existing provisions did not impede the rapid expansion from 310,000 to 725,000 public service jobs funded in the economic stimulus appropriation.

For these reasons I will support amendments to be offered by Senator BELLMON to tighten the targeting provisions for public service employment.

In light of forecast unemployment and inflation, the second budget resolution as reported recommends that the level of countercyclical public service jobs should be phased down beginning in fiscal year 1979. S. 2570 suggests that the countercyclical jobs be funded in view of economic conditions but provides no specific phase-down mehanism and authorizes "such sums" as may be necessary. This bill leaves the appropriate funding level for countercyclical jobs to the budget and appropriations processes, where the responsibility should be.

I urge Senators, not only to support this important legislation, but to support improvement to it through amendments to target spending on the people most in need.

Mr. JAVITS. Mr. President, I ask unanimous consent to insert in the RECORD a statement by Senator MATHIAS.

STATEMENT OF SENATOR MATHIAS

Mr. President, I would like to speak briefly in support of the Comprehensive Employment and Training Act and to commend the Chairman of the Human Resources Committee and the Chairman of the Subcommittee on Employment, Poverty and Migratory Labor for their careful work in preparing this bill and in preserving the strong national commitment to assist the unemployed and disadvantaged to become productive citizens.

For the past four years, CETA has been the keystone in the domestic policy of this country. It has assumed even greater importance than we originally anticipated. The CETA system has been called on to address the persistent difficulties of moving the structurally unemployed into the economic mainstream, and it has responded. The system was used to stimulate a sagging economy and, in an eight-month period, nearly three-quarters of a million of the long-term unemployed were hired, earning income and providing needed local public services. As Congress recognized the critical nature of the problems of youth unemployment, CETA was there to launch major new initiatives and to put hundreds of thousands of youths to work.

The CETA system has, in its infancy, responded effectively to the major demands of both social and economic policy. It has been required to undergo unprecedented expansion and rapid redirection in a very short time, and it succeeded. Yet in spite of its impressive record, the CETA system has not always been judged on the total record of its solid achievement.

In the past several years, allegations of abuse have been made about corporations, about unions and even about the Presidency. In none of these cases, however, has it been proposed that to root out the abuse the institution itself be abolished. Yet some of my colleagues may feel that scattered abuses in CETA warrant crippling legislative action. I do not agree. I urge my colleagues to resist adopting amendments that would further restrict this valuable program.

It is our responsibility to act on the total record of the CETA program. The abuses that have occurred in the CETA program are serious. They demand serious responses. And I believe the bill before us today represents that response. It addresses the major shortcomings of the program without unduly restricting the flexibility of local officials to act on local needs.

The CETA program is our most important and effective national tool for putting people back to work and for helping those who have never worked gain the skills necessary to participate fully in our economy. We must remember that the national unemployment rate has fallen largely because of the responsible acts of this Congress in fully funding CETA.

In the Baltimore Metropolitan Area, the Prime Sponsor has budget authority for more than $170 million for this year. More than 150,000 people received both subsidized and unsubsidized full-time employment through CETA. An additional 28,000 youths received part-time employment. This is a substantial record of accomplishment.

It is important that the flexibility and effectiveness demonstrated by the Baltimore Metropolitan Manpower Consortium be fostered not frustrated by Congress. It is incumbent on us to ensure the continuing success of CETA. I hope we will support this bill enthusiastically and resist amendments designed to unduly hamper the achievements of the laudable goals of the program.

CETA has in great measure helped us move toward economic recovery and social stability. The program is expensive. But we must measure that expense against the cost of unemployment, lost productivity and lost hope. Those are the costs we really can't afford.

● Mr. HART. Mr. President, I would like to join my colleagues in commending Senator NELSON and other members of the Human Resources Committee for their diligent efforts to improve the Comprehensive Employment and Training Act. Because of their efforts, I will support S. 2570 in the belief that the reforms which the committee has recommended should be given an opportunity to work. S. 2570 contains many important new provisions which should improve administration of CETA programs, target assistance at those individuals with the greatest need, and discourage abuses which seriously threaten the credibility of the act.

My support of S. 2570, however, must be qualified. While I applaud the efforts of my colleagues who have worked so hard on this legislation, I am not as optimistic as some that legislative remedies can correct the abuses CETA has experienced. Certainly, clearer goals, tighter eligibility criteria, wage ceilings, improved administrative procedures, and strong enforcement provisions should discourage abuses. Many of my constituents support these reforms and have urged me not to oppose the entire program because a small number of those responsible for operating it have used it for their own purposes, in conflict with the purposes of the act.

We cannot turn our backs on those people who want to work but are unsuccessful in competing in the labor market for lack of skills or opportunities. Programs such as CETA have an important advantage over other employment policies because they can target such individuals directly. But I am concerned that CETA does not become another institution which survives long after it has outlived its purpose or its effectiveness. I am concerned that without the full cooperation and commitment of local sponsors who operate CETA programs, CETA will become another costly Federal program mired in regulations and increasingly occupied with ferreting out fraud and

abuses. The American people will not tolerate this happening and it would be tragic if our less advantaged citizens seeking gainful employment were to become victims of this all too familiar scenario.

I intend to exercise my oversight responsibilities and do what I can to see this program works by giving the taxpayers their money's worth or is terminated.●

● Mr. CRANSTON. Mr. President, I rise in support of the pending measure, S. 2570, the "Comprehensive Employment and Training Act Amendments of 1978." I would like to express my appreciation to the distinguished floor managers of this measure—Senator NELSON, the chairman of the Subcommittee on Employment, Poverty, and Migratory Labor; and Senator JAVITS, the ranking minority member of both the subcommittee and the full Human Resources Committee. I have worked very closely with them, and the other members of the committee in developing this measure. I believe the committee has done both a responsible and a magnificent job in designing the reauthorization legislation.●

● Mr. KENNEDY. Mr. President, I rise to support the reauthorization of the Comprehensive Employment and Training Act. CETA is our primary vehicle for dealing with the problems of the structurally unemployed. It is an important part of our efforts to meet the problems of the cyclically unemployed.

At any one time some 400,000 people are receiving training under CETA programs and some 725,000 people are employed through these programs. Many of those who are employed receive on-the-job training.

During the course of a year, some three times as many people rotate through these training programs, and millions benefit from the employment programs.

There is no greater purpose that this body can have than assuring employment opportunities to everyone in this country who is able to work and desires to work. The No. 1 issue in the land—the first priority on the agenda of economic justice—must continue to be providing jobs for American workers. With this act we attempt to provide the tools with which people can go out and get jobs in the private sector or in the regular public sector. We also provide the means by which those who are cyclically unemployed can make great contributions to our communities.

Mr. President, there are many important amendments which have been incorporated into our reauthorization of CETA. They make this a better bill. Senator NELSON, the chairman of the Employment, Poverty, and Migratory Labor Subcommittee of the Human Resources Committee and Senator JAVITS, who is the ranking minority on both the full committee and the subcommittee deserve great credit for the work that they have done in improving this act.

I have been particularly interested in, and am particularly pleased, with some of the changes we have made.

We have strengthened the role of the community based organizations. We have decided that title VI workers should all be employed through the project method. And, we now allow these projects to continue beyond a year; where a project has been providing valuable service to those employed in it and to the community at large, it should not be leveled at the end of 12 months.

We have added to the flexibility of prime sponsors and the equitable treatment of CETA employees by taking regional cost differences into account in setting the ceiling wage rates that may be paid to CETA employees.

We have focused more of our efforts on the structurally unemployed. Not only are the structurally unemployed given greater training opportunities, but a new section of the act, title II–D, provides public service employment positions specifically reserved for such people. That employment must be accompanied by appropriate training.

We have also improved our focus on other people who would particularly value CETA services. In title III, the Secretary of Labor is required to fund programs to help displaced homemakers. We also call for greater assistance to help ex-offenders to take regular jobs in society. We have retained the requirement that programs for Indians and migrants should be administered at the national level; elsewhere in the act we have increased the proportion of the funds which must be devoted to Native American programs.

Mr. President, two developing national concerns are reflected in amendments which I introduced and which are in this bill.

First, section 316 reflects our concern that governmental agencies be made as responsive as possible to the reasons for which they were established. In this provision, we have established that the Secretary shall award funds to prime sponsors on the basis of how well they have done in placing CETA trainees in jobs, how good those jobs are, and how long the people who have been placed hold them. The Department of Labor, in evaluating the prime sponsors which volunteer for this program, will have to control for economic conditions and for the personal characteristics of those involved, so as to avoid penalizing areas with high unemployment and to avoid "cream skimming" among the CETA eligible population. With this amendment, we will, for the first time, be rewarding those prime sponsors which really get the job done—thus helping the trainees and spending taxpayer money most effectively.

This reauthorization also incorporates amendments which I introduced which reflect our growing concern with the energy problem and the consequences of our energy policies. One amendment mandates that the Department of Labor do an employment impact statement on energy proposals coming out of the Department of Energy, as well as energy related proposals coming out of other departments, like HUD. This is important because certain energy sources which are just as efficient, employ a larger number of workers, while requiring less capital. The act is also amended so that work on solar and renewable energy sources would be eligible for CETA activity. CETA workers will now be able to install solar panels and wood burning units. Under the current authorization, they are limited to conservation activities.

Mr. President, we have before us today the legislation upon which the hope and future of so many of our fellow citizens depends. This legislation has been tailored to respond more effectively to the employment and training needs of American workers. I support its reauthorization, and I believe that my colleagues will, as well.●

Mr. McCLURE. I would like to ask? How do you perceive the role and responsibilities of the Department of Labor under the Comprehensive Employment and Training Act?

Mr. NELSON. The role of the Department is that of administrative oversight. It is supposed to assure that prime sponsors, in their plans, have given adequate attention to such concerns as client selection, selection of program operators, auditing and monitoring procedures, and other priorities expressed by Congress.

The Department is supposed to oversee the implementation of those plans, to assure that the objectives of the plans are met, that the clients who are supposed to be served are actually receiving services, to assure that funds are being spent according to plan, and according to law, and to assure that the prime sponsors have sufficient records and adequate monitoring to meet congressional expectations—both in terms of information about the program and in terms of assuring compliance with the Federal law.

It is critical to the role of the Department of Labor that the Department focus its energy on the activities of those prime sponsors who are operating programs in violation of the law or where there are allegations of impropriety. It is clear that the Department cannot give equal attention to all prime sponsors. This involves a simple ordering of priorities.

On the other hand, the Labor Department should regularly audit and review the operations of all CETA prime sponsors. It should also make technical assistance and training available to State and local governments, to help them with reporting requirements, to help them develop adequate selection procedures, to help them develop systems to audit subcontractors and subgrantees, and to help them develop programs suitable to the needs of a particular clientel.

Mr. McCLURE. How does the role of administrative oversight, which the managers have so adequately described, square with the activities of the Labor Department over the last 4 years? It seems to me that the Department has often becomed bogged down in administrative minutia and/or acted like a frustrated program operator. Let me give you some examples of what I mean. The Labor Department seems to have an overwhelming urge to tell prime sponsors what program mix the State or

locality should have to meet their clients' needs.

That is to say that it is not unusual for the Department to tell a prime sponsor they need more classroom training; or, as has clearly been the case in many areas that the prime should spend more money on on-the-job training. Now I happen to favor on-the-job training in the private sector; but I thought CETA specifically left the decision on program mix to the prime sponsors—subject to review by the Labor Department only if it appeared that certain funds or programs were being abused.

We all know of specific instances where the Labor Department has brought pressure to bear on prime sponsors to select specific subcontractors or subgrantees. In the absence of indications that there is something wrong with the State or local selection process, does the Department have any business intervening in favor of specific deliveries of service?

One more specific example of what seems to me a misuse of resources by the Department, is the retirement issue—which I understand we will see an amendment to deal with today. I have no doubt that some prime sponsors must have abused CETA, by using CETA funds to build up their retirement funds and reduce the local burden for supporting such funds. There must have been such blatant abuses to have justified the reaction of the Department. But I ask you: Would not it have been more consistent with the role of the Labor Department as you have described it either to have clamped down on those prime sponsors who were doing something wrong; or to have come to Congress and asked for some legislative remedy; or both. What I understand the Department did, however—and please correct me if I am wrong—was to issue elaborate regulations, which is some cases required prime sponsors to violate their own State laws, which in some cases required changes in existing State laws, and which have generally proved incapable of implementation.

All of this consumed a great deal of time. And yet, the Labor Department evidently has let actual cases of alleged out-and-out abuse of CETA law and hiring practices go for over a year, without reaching a final resolution, right here in the District of Columbia.

Mr. NELSON. The Department of Labor has not always exercised its administrative oversight responsibilities in the appropriate manner. There are some mitigating circumstances. First, CETA programs have grown very quickly. Second, the goals of the program, and the expectations of the Congress, have not always been clearly articulated. And finally, we expect a certain amount of dislocation in any new program.

S. 2570 takes a number of important steps to solve these problems. The reported bill contains many provisions designed specifically to make clear to the Department of Labor and to CETA prime sponsors, just exactly what the Congress expects.

A number of amendments proposed to this bill have had as their purpose an even clearer articulation on those expectations. The Labor Department is required under this bill to require specific information from the prime sponsors—as to the prime sponsors' plans for management, auditing, and monitoring of the CETA program. It is required to establish a division for monitoring and compliance, within the office of the Secretary. The Department must establish procedures for monitoring of prime sponsors and for auditing, and for assuring that prime sponsors have the capacity to assure that their subcontractors and subgrantees are properly carrying out their responsibilities.

The Department must report to Congress, as to its progress in these areas, and as to any action it takes against prime sponsors under the compliance and sanctions sections.

We have included in the bill a whole section, which amends the criminal code, to make individuals who fraudulently use CETA funds, or who knowingly hire ineligible individuals, subject to personal prosecution and fines.

We could go on and on, but the point is: if the Department fulfills the specific responsibilities assigned to it under this bill, its performance should conform much more closely to the expectations of the distinguished Senator from Idaho—and of us all. The CETA program should have a new beginning, and an opportunity to fulfill the promise we have all held for it—since its enactment—that is, it should provide an effective, manageable, decentralized delivery system to serve the Nation's unemployed.

● Mr. HATHAWAY. Mr. President, I am pleased to support the pending reauthorization of the Comprehensive Employment and Training Act. As approved by the Employment, Poverty, and Migratory Labor Subcommittee and the full Human Resources Committe, on which I am pleased to serve, it contains a number of substantial improvements and reforms to the existing program.

Key to these provisions are strengthened requirements that the employment and training opportunities under CETA be targeted to those most in need. The bill stipulates that eligibility for title II structural programs be limited to those with incomes less than 70 percent of the lower living standard for the area as defined by the Bureau of Labor Statistics. For the title VI countercyclical programs, eligibility is limited to 85 percent of the lower living standard.

The bill also imposes strict limits on the length of time an individual can participate in CETA activities, and limits the wages paid to CETA workers, as has been detailed by the Senator from Wisconsin. It also includes rigid criminal penalties for fraud and abuse of CETA funds, and links CETA programs to the private sector through private industry councils.

In addition, the bill includes a number of amendments I proposed at the subcommittee level which should improve its administration, and allow it to better fulfill its stated objectives.

First, as a result of one of my amendments, the bill will require prime sponsors, in formulating their comprehensive employment and training agreement, to include a detailed description of the methods and arrangements to be used to involve community based organizations, educational agencies, and other deliverers of services, and also the methods used to select these deliverers of services from an inventory of those potentially available.

This amendment would thereby establish a mechanism to promote greater cooperation at the local levels and at the same time provide greater accountability with respect to the utilization of public funds. While many prime sponsors are already involving all available deliverers of services to the maximum extent practicable, there are instances where resources and facilities which could be used to great advantage are somehow excluded from participation in CETA programs.

This amendment does not dictate to any prime sponsor which mix of deliverers of services to utilize. That would be contrary to the principles behind CETA, which stress local decisionmaking and responsibility. But the amendment does require the prime sponsor to set forth methods and criteria used to determine who will participate from an inventory of all those community-based organizations, educational facilities, and other deliverers of services, which expressed an interest in being a part of CETA.

This system of accountability will then be reviewed at the State and local level by the Governor, by the State employment and training council, by the prime sponsor planning council, by appropriate units of general local government, and by labor organizations in the area, as required by new section 104. With the language of this amendment, these individuals and entities will have the opportunity to review the rationale which went into determining which deliverers of services are to be relied upon, as opposed to being presented with a bottom line fait accompli.

Equally important, the community-based organizations and educational facilities will have the opportunity to assert to these bodies their ability to be relied upon and to ask that, if they are unjustifiably excluded, such a decision be reexamined.

While in most parts of the Nation, cooperation is occurring, there have been instances where individual prime sponsors have set up delivery services which are duplicative of those already existing. This amendment is intended to eliminate this practice and to encourage to the maximum extent possible the utilization of available community programs and facilities.

Further, this would not create an impossible paperwork or administrative burden on prime sponsors. On the contrary, the Department of Labor has estimated that the changes made by the reauthorization, by relying on one comprehensive agreement, along with annual plans, paperwork for prime sponsors would be cut between 20 and 33 percent.

My second amendment dealt with the overall conditions set forth for utilization of CETA funds with respect to public service employment. This amendment

modifies the condition contained in the administration bill requiring that public service jobs be provided in occupational fields which are most likely to expand within the public and private sector. The amendment added as a complementary condition that public service employment at the same time:

Shall meet community needs including but not limited to community betterment activities (including rehabilitation of public properties, assistance in the weatherization of homes occupied by low income families, demonstrations of energy conserving measures including solar energy techniques, and neighborhood revitalization), education, health care, transportation services, crime prevention and control, and environmental quality control.

Thus this language, set forth as an overall requirement on the expenditure of all CETA funds, will serve to insure that overall community needs are being met.

In the 1977 fiscal year, nearly 1 million individuals were employed in CETA funded public service employment (PSE) programs. Over $3 billion was devoted to these activities.

While many worthwhile projects were undertaken, at the same time there has been criticism in the national media regarding some make-work, leaf-raking activities. Though only a very small proportion to the overall effort, this has nonetheless served to give CETA as a whole a tarnished reputation.

This amendment would clearly stipulate that all public service employment activities should be directed toward community needs. As a condition on the utilization of such funds, this language will provide added impetus to fulfilling this goal in all parts of our Nation.

My third amendment modifies section 311 of the bill. The amendment imposes the additional requirement that the demonstration programs authorized under the act be conducted in rural as well as urban areas, in sparsely populated as well as densely populated areas, and in areas with inadequate means of transportation.

Section 311 is intended by the administration to fund demonstration projects which are to be the precursors to welfare reform. It is essential to the well-being of our Nation and to the integrity of each of our citizens that our welfare system be made to function fairly and equitably. I applaud the President's initiatives in this regard and look forward as a member of the Committee on Finance and the Committee on Human Resources to working to shape these proposals into their final form.

But in the course of demonstrating effective methods to reform this system, it is vital that these activities be conducted in all parts of our Nation. The problems of the rural poor are different from those of their urban counterparts. They are further isolated from available job opportunities and lack the resources—transportation and otherwise—to extricate themselves from their Catch 22 dilemma.

These problems may well be the most difficult to solve as we undertake welfare reform.

Yet, unless the statutory language is explicit, I fear that demonstration of welfare reform may be overly concentrated on urban centers, to the detriment of rural areas, and in the end of the detriment of the Nation as a whole to the degree that a proposed solution neglects these needs.

This amendment would clarify this situation and form the basis for mandating that rural areas be fully included. I intend to monitor this matter closely as definitive welfare reform proposals are developed, but this language will serve as an important first step to achieving our overall goals.

Fourth, I offered language requiring that the school-based youth programs in title IV be coordinated with the activities under the Career Education Incentive Act. That act, signed into law last December, is intended to give greater attention to providing career skills and knowledge in our Nation's schools, and it is appropriate that the youth programs under this bill be coordinated with it.

Finally, there has been considerable attention in recent weeks and months to abuses under CETA, which I am convinced are the rare exception rather than the rule. But to give my colleagues an example of how CETA can work extremely well, I ask unanimous consent that there be printed in the RECORD at the conclusion of my remarks an article titled "Penobscot, Maine, CETA: 'One of the Best,' " by Gloria Stevenson, which appeared in the August 1978 edition of Worklife.

[From Worklife, August 1978]

PENEBSCOT, MAINE, CETA: "ONE OF THE BEST"

(By Gloria Stevenson)

A few months ago, Newsweek magazine called the Penobscot Consortium Training and Employment Administration—a two-county program headquartered in Bangor, Maine—"one of the best local CETA programs" in the country. Noting that the consortium will serve some 4,000 persons this year, Newsweek also reported that local officials responsible for the program have "opted for professional—not political—management."

Among readers familiar with CETA, (Comprehensive Employment and Training Act), the Newsweek statements were apt to provoke several question: How does the Penobscot program operate? Is it effective in moving people into jobs? Does "professional" management mean freedom from local politics?

To seek answers to questions like these, WORKLIFE visited the $9.9 million Penobscot program and found a structure that reflects traditional Maine values of individualism, self-reliance, and pragmatism. These qualities have been present since the program's beginning in 1975.

At that time, every county in Maine was served by the balance-of-State program. But the three commissioners governing Penobscot County, population about 138,000, applied to become an independent prime sponsor. This effort was led by Earl Banks, chairman of the county commissioners and a long-time resident of the Bangor area.

Banks, then 66, had owned a successful automotive supplies store before being elected county commissioner. A firm believer in local government, he thought that Penobscot County would get better CETA services if it ran its own program rather than relying on the State. The commissioners' application was approved, and Penobscot County, which had virtually no background in the employment and training field, became a prime sponsor.

"The minute we got this thing organized," Banks recalls, "We knew it was beyond our ability to run it. We needed a professional director, and that's what we got in Chuck."

"Chuck" is Charles Tetro, now 31, who was running a county CETA program for the New Hampshire balance-of-State when the Penobscot opening arose.

He was referred to the Penobscot opening by the National Association of Counties, a political interest group with a strong interest in CETA. "I wanted a change," Tetro says, "but I wasn't hungry for a job. I was quite interested in the opening, but I wanted it on my terms."

Key among those terms was that the Penobscot County commissioners, who served as the executive board for the program, would maintain a hands-off policy toward managing the program. They agreed, and Tetro took the job. One of his first moves was to hire Earl Banks, who had finished his term as county commissioner, to be his administrative assistant.

Banks, who had long been active in both local and State civic groups, was able to introduce Tetro to organizations and individuals whose support would help the program. Through membership in the Chamber of Commerce and Rotary club, he knew most Bangor employers and was able to enlist their cooperation. His service with the Boy Scouts and on the YWCA Executive Board and the board of directors of the local community action agency had given him access to community-based organizations. He had been active in the Maine Association of Counties and the Maine Economic Development Association and knew political figures throughout the State. Through friends in the Maine AFL–CIO, he was able to help CETA establish a working relationship with organized labor.

"My contacts were what helped to put this together," Banks says." "I had the open door to the big guys and the open door to the little guys."

With Banks leading efforts to gain community acceptance, Tetro, an energetic man who thrives on innovation, was free to concentrate on program development. At the outset, Tetro, Banks, and one other person were the sole CETA employees. But Tetro hired several bright young professionals to fill key administrative posts, proposed and received funding for new programs—including a contract to run Maine's entire migrant and seasonal farmworker program, covering some 200 persons—and expanded operations considerably.

The program also grew after neighboring Hancock County, formerly served by the balance-of-State, asked to join the Penobscot program. Hancock—which includes Bar Harbor, Acadia National Park, and a variety of other woods and waterfront vacation areas—is the fastest growing county in Maine, but its population now numbers only 41,000.

"I sat down," Earl Banks recalls, "with the three Hancock County commissioners and said, 'You're welcome to join us, but we're going to run the program. You're the authority, but it has to be professionally run.' "

The commissioners agreed, and in October 1976, the two counties formed a consortium whose staff now numbers about 100. Says Banks, who still serves as Tetro's administrative assistant, "None of the six commissioners who run the program have ever made any attempt to use patronage or nepotism or to interfere—except to offer suggestions—in our operations. We have a good relationship that way."

Tetro adds. "We have about as much freedom to run a program as you can get within CETA. Since we didn't have political

constraints, we wert able to sit down and build, as an architect would, the structure to fit our program scheme."

The consortium's program design reflects, first, the needs of a rural labor market. According to the prime sponsor's last annual, plan, about 5,100 local residents will become unemployed sometime during the fiscal year. These potential CETA participants are widely dispersed over an area that measures about 130 miles from northernmost to southernmost points and 120 miles from east to west.

Women make up about 70 percent of the economically disadvantaged persons in the area. Among jobless women, many are entering or reentering the work force after being widowed, divorced, or separated. Unemployment among youth is also severe. Most jobless residents are white: Only about 55 unemployed residents are from minority groups, and most of these are Native Americans.

Like most other rural areas, Penobscot and Hancock counties lack large industries. The biggest employers are papermills, but since they experience little turnover, vacancies seldom arise. Clerical and business occupations, allied health jobs, logging, heavy equipment operation, and mechanics jobs provide some of the best local opportunities. Hancock County also offers fishing, lobstering, and tourism jobs, but these are highly seasonal.

As a result of geographic and economic conditions, area residents often travel long distances, as much as 80 miles one way, to work. Public transportation is not available, so a driver's license and reliable car—one that can brave severe winters and bumpy roads—are usually necessities for work. Lack of transportation is a special problem for women and youth.

To bridge the distance between CETA headquarters and outlying areas, the consortium has set up three local Offices of Training and Employment Programs (OTEP's,) where participants can get comprehensive intake, counseling, and job placement services. These are located in Bangor, Ellsworth (in Hancock County), and a rural area of western Penobscot County. In addition, the rural OTEP oversees several smaller satellite offices—most consisting of only one person—which serve the most remote parts of Penobscot County, while outreach staff from the Ellsworth OTEP regularly hold office hours in a variety of Hancock County locations.

The OTEP's are staffed primarily by employability developers (E.D.'s)—the name Penobscot has given counselors in order to emphasize their role in helping applicants overcome job barriers. John Dorrer, the consortium's director of policy, evaluation, and research, explains, "We want to get away from the whole social service, do-good image. The fundamental notion of what we're about is to provide participants an economic service rather than a social service."

OTEP staffs also include youth employability developers and job developers. In addition, Employment Service personnel are stationed at the Bangor OTEP part time to offer placement assistance.

"Our philosophy," says Operations Manager Barbara Hamaluk, "is that each OTEP should offer the whole array of CETA services. We're interested in providing comprehensive services at one-stop centers."

Services are also highly individualized. Each CETA applicant is interviewed at length by an E.D. who helps him or her draw up an individual employability development plan. The plan lists employment barriers such as inadequate education, lack of skills, and transportation problems. Personal problems such as alcoholism are included, too. The plan also outlines specific actions which the applicant must take in order to overcome each problem. Applicants are not enrolled as CETA participants until after this plan is completed.

The time and attention spent in applicant assessment reflect the consortium administrators' belief that CETA should confine its activities to those which are likely to improve participants' employability. "CETA has to know what it can do and what it can't do," says Charles Tetro. "We're not a therapeutic social service agency. We can't rehabilitate alcoholics, for example. But we can help them remove other labor market barriers after they've dealt with that."

Another consortium stance is that CETA participants must assume responsibility for themselves and their worklives. Tetro says, "Our communications with participants emphasize that this is a shared opportunity. We tell them that we'll do our part, but they have to do theirs." Brian Sass, an E.D. in Bangor, puts it this way: "Applicants have to convince me that they really want to help themselves. Otherwise, it just doesn't work."

The number of persons who apply for CETA services is far greater than the number selected for service. According to Barbara Hamaluk, only about 10 to 25 percent of all applicants become participants. Most others are referred to local social service and rehabilitation agencies for assistance or to the Job Service for placement assistance.

Individuals who do enter the program generally work with the same E.D. throughout their participation. Each title I participant is also immediately introduced to a job developer who will be responsible for finding an appropriate on-the-job training (OJT) slot or job opportunity as soon as the person is ready. Consortium staff believe that such one-to-one relationships mean better service to each individual.

In line with their respect for self-reliance, program administrators favor training activities that enable participants to become economically independent. "We prefer intensive investment in a few individuals to less investment in a wider range of people," Tetro says. Most title I participants go through several program components, such as classroom training, work-experience, and OJT.

Penobscot puts heavy emphasis on direct training by employers. The consortium has subcontracted with the Maine AFL–CIO to develop OJT positions in unionized occupations, and OTEP job developers seek OJT slots in other fields. Because most area employers are small, OJT opportunities are developed to meet the needs of individual participants, and most employers have only one or two trainees.

Some 500 of the 1,250 persons to be served under title I this fiscal year are scheduled to get OJT. The proportion of title I participants to be served through this form of training is thus 40 percent, much higher than the 12 percent average registered last year for all CETA programs. Moreover, all Penobscot OJT positions include employer commitments to hire participants after training, which averages about 6 months.

In addition, two local employers are conducting larger CETA training programs which also include commitments to hire. Eastern Maine Medical Center, the local hospital, is conducting a STIP project (See *STIP, the Private Sector Connection* in the April 1978 issue of WORKLIFE) to train 30 people—many of them women receiving welfare—as medical secretaries and respiratory therapy technicians. Training will last 9 months and will include classroom study, laboratory training, and a practicum at the hospital.

In the other program, a large diesel repair shop, Bean & Conquest, is providing vestibule training for 32 diesel mechanics under a title I contract. Both programs were designed by the employers to meet specific hiring needs, and both are being conducted on employers' premises by employers' staff.

The Penobscot consortium plans to move about 400 title I participants into unsubsidized jobs in fiscal year 1978, and at the end of the second quarter it was only 5 people behind its mid-year target of 186. Title I funds for the year total $1.3 million.

The consortium also expects to put 1,269 individuals in public service employment (PSE) funded under title VI this year. Penobscot's $5.7 million title VI program is called LIFTE—Local Initiative Funding for Training and Employment. The name, Charles Tetro explains, was designed to help the PSE projects concept gain local acceptance.

Penobscot now funds about 300 LIFTE projects, most with 3 or 4 employees. "We try to use LIFTE positions almost like we use work-experience," says E. D. Brian Sass, "to help individuals develop a job history and to get their work habits and skills up to the level they need for OJT." Sass also reports that staff members try to keep in touch with LIFTE participants by visiting or calling them at their worksites at least once a month.

Among ongoing LIFTE projects are these:

The Spruce Run Association, a private, nonprofit organization, has hired four persons to staff a shelter for battered women. The shelter offers temporary housing, a 24-hour telephone hot line, a crisis intervention program for the children of battered women, and personal and divorce counseling. Project employees also seek community resources needed by shelter residents. The four persons hired for the project all had previous counseling experience, but each got at least 36 hours of crisis intervention training before going to work.

The Bangor Historical Society and the Penobscot Heritage Museum have jointly hired eight persons to catalog, label, and preserve what one consortium staff member calls "a whole museum full" of previously neglected artifacts owned by these agencies. In addition, LIFTE employees now staff the museum—which was formerly open only by appointment because of lack of funds—on a regularly scheduled basis.

The Penobscot consortium has employed 20 LIFTE participants to renovate three old barracks that recently became CETA's administrative headquarters. The consortium leased the dilapidated structures—built for a Strategic Air Command base and now owned by Bangor Community College—after they had stood vacant for about 8 years.

The barracks are being revamped to accommodate offices, space for classroom and laboratory training, and sleeping quarters for CETA trainees from remote parts of the consortium area. LIFTE employees are reshaping rooms within the structures, rebuilding window frames, repairing floors, replacing plumbing, painting interior and exterior walls, and building bookcases and other furniture. The project employs eligible CETA participants and Employment Service registrants who had indicated an interest in construction work.

Sixteen teenagers employed through the Youth Community Conservation and Improvement Projects (YCCIP) program are also helping to renovate Penobscot CETA headquarters. The Maine AFL–CIO sponsors this project, which is funded under title III of CETA. Enrollees are unemployed, out-of-school youth, two of them female.

The YCCIP project is supervised by two union members with extensive experience in the construction trades. They teach basic carpentry skills, stress good work habits, and serve as mentors for participating youth.

As designed by law, YCCIP does not emphasize remedial education, formal training, or support services for participants, and Charles Tetro finds this lack disturbing. "I don't think sweat jobs per se help dropouts get jobs," he says, "although we're evaluating this project closely and will eventually see whether or not that's true."

He continues, "We haven't offered the kids any extras, but we did wait to see if they'd ask for more. And they have. Fifteen of the 16 don't have driver's licenses and some want help in getting them. Others have asked for training in welding and pouring foundations."

Combatting youth unemployment—especially among dropouts—is a consortium priority. In an effort to strengthen services to this group, Penobscot recently proposed to establish a highly innovative Job Corps center. The Employment and Training Administration has accepted the proposal, and the new center—the first in the country to be operated directly by a local prime sponsor—will open in September.

The coed center will be situated on the campus of Husson College, a small, private school about 2 miles from CETA headquarters. It will provide residential services for 250 high school dropouts and will serve another 100 commuters, most of them women receiving Aid to Families with Dependent Children.

Enrollees, who will be recruited by the consortium from throughout Maine, will live in Husson dormitories, share dining halls with regular students, and attend some classes at the school. Additional training will be provided by Bangor Community College and other training facilities used by CETA. Says Tetro, "By colocating the center on the Husson campus, we're offering a positive social environment for growth."

Center activities will include a pilot Advanced Career Training program that will provide 3 to 4 months of intensive education to enrollees who dropped out of high school shortly before graduation. The program will be geared to preparing Corpsmembers for community college enrollment.

The Job Corps center has given the consortium another opportunity to build a program from the ground up, an activity that staffers seem to relish. In other developmental projects, administrators are setting up a new program to provide CETA participants with localized job market information, gearing up for further program expansion—neighboring Piscataquis County is scheduled to join the consortium in October—and devising a sophisticated economic model for evaluating program results.

Few prime sponsors as small as the Penobscot consortium have put much emphasis on evaluation, but Penobscot administrators regard it as a key program ingredient. John Dorrer, who heads the evaluation effort says, "Evaluation of outcomes is a vital part of decisionmaking concerning the allocation of resources. It's the rationale for determining what we do in this system."

Tetro adds, "Without a sufficiently developed method of evaluating program output, nobody can say with any assurance that investments in employment and training pay off."

The concept of investment figures prominently in the consortium's overall management philosophy. Says Tetro, "We've tried to stress that employability developers are making investments in human capital formation."

Tetro often describes CETA activities in terms of costs and benefits. He says, for example, "The consortium offers relatively little work-experience. Twenty-six weeks of work-experience translates into $3,000. But there are often better ways to use that $3,000. We're looking for optimality in the training mix for each individual."

The consortium also seeks maximum program flexibility to serve individual needs. The administrative staff is organized along functional lines—planning, OTEP operations, and finance and budget, for example—rather than according to CETA titles. "This way," Tetro says, "there are no institutional constraints to providing any service for any eligible participant. And practically speaking, we can deal with any CETA legislative changes that might emerge."

Consortium staffers—all of whom but Tetro are covered by an employee merit system developed with the help of the U.S. Civil Service Commission—seem highly committed to the local CETA program and its aims. Key administrators routinely put in 60-to-70-hour weeks. Tetro reports, and OTEP staff members often arrive at work early and stay late.

Brian Sass, from the Bangor OTEP, expresses his enthusiasm by saying, "CETA is a beautiful program. It's not perfect, but it's great. It gets people jobs and it gets workers for employers.

"As an E.D., I have a chance to really get to know people, and I'm pleased when they do well. That's the nonmonetary reward. And when I see someone on the street who thanks me, that's the little—and here he makes a *p-o-o-o-f* sound—that makes everything, even the paperwork, worthwhile." ●

"CETA ARTS TRAINING IS TICKET TO GOOD POST"

● Mr. PELL. Mr. President, widespread news accounts of abuses, mismanagement, and ineffectiveness in the CETA jobs program have tended to create the impression that CETA is not accomplishing the objectives Congress intended that it should.

However, while some problems do exist—problems which are addressed and explicitly resolved in the new bill at hand—CETA had produced some notable and durable positive results.

One of the most successful and effective dimensions of the CETA program involves CETA/Arts projects, which offer highly meaningful employment opportunities to unemployed and underemployed artists, as well as a wide variety of support personnel. Approximately 10,000 such positions are currently filled in CETA/Arts projects across the country, with results that are almost uniformly positive. Such projects naturally attract popular support, and are a real credit to the overall program.

An article appearing in the August 17 edition of the Washington Post helps to illustrate my point. The article, by Post staff writer Joann Stevens, is entitled "Arts Training Is Ticket to Good Post." It describes the encouraging progress being made by Arts D.C., "a local, nonprofit agency dedicated to placing CETA participants and other artists in training programs that lead to permanent, unsubsidized jobs." Arts D.C., currently has 60 CETA arts trainees working with 36 local arts agencies. About 38 percent of the participants have found permanent employment, and Arts D.C., hopes that figure will increase to 50 percent by year's end.

Ms. Stevens' article offers convincing evidence that CETA/Arts projects do "provide training that leads to well-paying permanent jobs," thus effectuating congressional intent. As one of the successful project participants told Ms. Stevens, "I thought CETA was a very positive experience. It expanded my scope of skills, and should this job fall through, I feel I'm better qualified to find other employment."

Mr. President, I ask that Ms. Stevens' article be included at this point in the RECORD.

The article follows:

ARTS TRAINING IS TICKET TO GOOD POST

(By Joann Stevens)

Film-maker Wilfred Williams is a CETA graduate—a testimonial that the government program does provide training that leads to well-paying, permanent jobs.

Ten months ago, Williams said, he was a CETA arts management trainee making $9,500 a year. Today he earns what he calls a "satisfactory" $14,000 in a permanent, unsubsidized job as assistant director of Arts D.C., a local, nonprofit agency dedicated to placing CETA participants and other artists in training programs that lead to permanent, unsubsidized jobs.

The agency has 60 CETA arts trainees working in 36 local arts agencies, including the Capitol Ballet, the Museum of African Art and the Childrens Opera Theater.

This year, Williams said the center hopes to place half of its CETA artists in permanent positions. About 38 percent already have found permanent jobs, he added.

"One of our people got a $20,000-a-year job in New York with a public relations firm," he offered as an example. The trainee had worked with the Washington Area Filmmakers organization, and the director of a New York public relations firm had been impressed with the way the trainee had coordinated a Washington film festival, Williams said.

"A lot of stage technicians and actors are also being absorbed by different theaters."

As Williams pointed out the benefits of CETA, he chatted easily about his own lean years of employment, which he smilingly called his freelance period. That period ended one morning last October after he had read a newspaper article about city funding, through CETA programs, for unemployed artists.

Williams said he went to the unemployment office that afternoon and narrowly missed the program deadline for filing a CETA certification application. The next day he was interviewed by a prospective employer, and a few days later he began his CETA job at The Support Center, 1424 16th St. NW., as an arts management consultant to local arts groups.

"They had a CETA grant for three arts management consultants. We provided free consulting services to arts groups in the city," he said.

Information was provided about fundraising, arts management, taxes, accounting, public relations and various other issues, he said.

Williams said he worked with seven to 10 different arts groups handling most of the public relations work. One of his groups was Arts D.C. When the agency learned its assistant director was leaving her job, Williams said, he was offered the position.

A native of Brooklyn, N.Y., Williams said he rapidly developed Potomac Fever when he came here to attend Howard University 10 years ago. In 1972 he was graduated with a B.A. from the School of Communications, and for several years, he said, he worked at local radio and television stations where he earned his 3rd Class FCC license and filmed various youth documentaries and television series.

He misses the film-making, he said, but "I've found it's important to get into the administrative end, too. I thought CETA was a very positive experience. It expanded my scope of skills, and should this job fall through I feel I'm better qualified to find other employment."●

● Mr. STONE. Mr. President, I would like to direct the attention of my colleagues momentarily to a specific provision of the bill currently before us. At the beginning of this Congress legislation was introduced by the Senator from Indiana (Mr. BAYH) which was intended to

provide for the special needs of women forced into the job market through divorce or widowhood. This legislation proposes the establishment of centers for such women throughout the country, offering vocational training, job placement, guidance counseling, and referral services for health care, education and legal problems. I became a cosponsor of the Displaced Homemakers Act upon its introduction 2 years ago, and have testified on its behalf in committee hearings. The language of the bill has since been incorporated into S. 2570, the measure we are considering here today, as most existing centers for displaced homemakers are presently operating in part under grants from the Comprehensive Employment and Training Act.

Those of us committed to the resolution of this growing national problem had hoped that the incorporation of the Displaced Homemakers Act under CETA might result in the allocation of specific funds addressing these needs. Unfortunately, the $10 million originally requested under our bill has now been replaced by language directing the Secretary of Labor to "make available financial assistance," of an undetermined amount, for displaced homemaker centers. Although the committee report reflects a verbal commitment from the Secretary to spend $5 million, we believe that this amount cannot begin to scratch the surface of this growing national problem.

In 1977, there were 10 million widows and 4.9 million divorced women in the United States, and the numbers are steadily increasing. Many, middle-aged or older, are entering the job market for the very first time and are finding themselves in competition with younger and more experienced people. An overwhelming percentage of those who need financial assistance are ineligible for existing welfare, social security, or unemployment compensation programs. Furthermore, lacking job skills and self-confidence, these women face an almost insurmountable task in trying to support themselves.

At a time of heightened consciousness about unwarranted Government spending, I realize that new and relatively unproven programs are subject to reduced priority. However, many local and privately supported centers—including one which has already helped hundreds of women at Valencia Junior College in Orlando, Fla.—are already flourishing around the country, many with the benefit of CETA grants. If we do not support such a Federal program now, we will be supporting these same women later—but then it will be in programs for welfare, battered wives, alcohol, or drug abuse.

The $10 million originally requested in the Displaced Homemakers Act is the barest minimum that can be allowed if we are to establish a national commitment to the alleviation of this problem. I am hopeful that the Secretary of Labor will recognize the urgency and the economic advantage of helping this segment of our population become productive citizens.●

● Mr. NUNN. Mr. President, I would like to take just a moment to ask the distinguished floor manager of this legislation a question in regard to his interpretation of certain provisions of the CETA bill.

In reviewing this legislation, I have noticed in several places that the bill refers to "work experience programs" or "on-the-job training." I would like to know if these phrases are meant to include the very successful cooperative vocational education program. The cooperative education program assists schools in providing young people with on-the-job supervised training, mostly with the private sector, which is coordinated with in-school academic and vocational learning. There are currently 700,000 youths in this program and approximately one-half of the participants stay with their present employers after the structured program ends. The cooperative education program also has a job placement rate of over 90 percent.

I believe that it is very important to utilize existing and successful training programs in any efforts to serve our targeted youth population. I would appreciate the bill manager's comments on the cooperative education program and his views as to its potential involvement in the CETA program.

Mr. NELSON. The current CETA law permits prime sponsors to determine the appropriate mixture of services for their clients. This concept is continued under the committee bill, thus "work experience" and "on-the-job training" programs may be combined with cooperative vocational educational programs as well as other programs.●

● Mr. HUDDLESTON. Mr. President, first, I commend the distinguished floor managers of the bill for the outstanding job they have done in bringing this most important legislation before the Senate. The extension of the CETA program is of great importance to the entire country and by acting on S. 2570 now we can be assured that these vital services will continue.

I am particularly pleased to see that in the committee reported bill there is a provision which, as I understand it, will alleviate a problem that has occurred in the northern portion of my State. This past January the Bureau of Labor Statistics changed the way unemployed is estimated. Although these changes had no effect on the real level of unemployment in Kentucky, they did substantially change the unemployment rate for three northern Kentucky counties near Cincinnati. While the numbers of hardcore unemployed are increasing, the new methodology for computing unemployment statistics is causing an uncalled for, unrealistic reduction in Federal allocations for programs based on rates of unemployment in Boone, Kenton, and Campbell Counties.

Section 123(e)(1) of the bill before us directs the Secretary of Labor to provide the sufficient funds to assure that allocations under any title of the CETA program are not reduced by the termination of the use of current population surveys to determine annual unemployment data prior to January 1, 1978. This speaks directly to the problem at hand in northern Kentucky and other cities and counties adjoining metropolitan area across the country. Hopefully, those overseeing the operation of other Federal programs will take notice of this action and conform their regulations accordingly.

I might also comment here on Senator NELSON's amendment, which I have cosponsored, that mandates a 6-month notification of any changes in the methodology used to determine unemployment rates. Certainly such prenotification will prevent the kind of situation that we had in January when a sudden change had a very dramatic, negative impact on certain areas of the country. State and local officials will now at least have time to prepare for adjustments that must be made to conform with new statistical data. This too is a productive and necessary step.●

Mr. THURMOND. Mr. President, I am supporting S. 2570, the Comprehensive Employment and Training Assistance Act Amendments of 1978, because I believe that a number of changes have been made on the Senate floor which substantially improve what some have called another Government give-away program.

This legislation would extend for 4 additional years a program that was originally created to put the unemployed back to work. Because it was a new program, it was subject to certain abuses that have been published in a number of newspaper articles and editorials.

I have always opposed waste and inefficiency in Government. The taxpayers deserve to have their tax dollars spent wisely and productively. Although the CETA program has been subject to some abuse in the past, I think the Senate has taken substantial steps to curb abuses and problems in this program.

There are provisions in the bill to crack down on abuses in CETA programs that have led to embezzlement, fraud and misuse of funds. The Secretary of Labor may make use of State and local agencies, especially law enforcement agencies, to monitor and enforce the requirements of the program.

The eligibility requirements of the bill have been tightened up in order to target in on the hard-core unemployed such as welfare recipients, youth, seasonal farmworkers, women with limited educational backgrounds and disabled veterans, as well as other handicapped persons. By taking people off the welfare rolls, and training them to work on jobs that will keep them employed is the primary goal of the CETA program. The tightening of eligibility requirements should improve the record of this program.

Mr. President, $3 billion has been cut from the bill for public service employment. While this cut is contingent on certain conditions that were added in floor amendments, it recognizes that Federal spending must be reduced, and a careful reduction of this program of $3 billion will not hurt the program, but instead will help keep inflation down and make the program more acceptable to a number of people.

Finally, provisions have been added to give Congress more control over this program. Increased oversight by the Senate Human Resources Committee,

the Appropriations Committee, and the Budget Committee should lead to a more efficient program. This program is also run by State and local citizens as well as the Federal Government. Thus, increased accountability up and down the line should help to eliminate any past abuses or problems in the CETA program.

Mr. President, I am against big Government spending, but I also want to see every American have a job. Jobs mean salaries, which help feed the family. Salaries mean taxes, which help support our schools, roads, and public services. Jobs means fewer people on welfare. Any program that can achieve those objectives should be given a chance to work.

Mr. BAYH. Mr. President, I would like to take this opportunity to comment on one particular aspect of the pending CETA legislation—that portion which provides for funding of displaced homemakers programs under title III of CETA as well as under other titles of the bill.

On January 30 of this year, I introduced legislation which called for the funding of displaced homemakers programs under CETA. This legislation was cosponsored by Senators McGOVERN, HUMPHREY, RIBICOFF, CLARK, METCALF, LEAHY, MARK O. HATFIELD, PELL, ABOUREZK, RIEGLE, SARBANES, PERCY, ANDERSON, STONE, KENNEDY, CHURCH, HATHAWAY, BENTSEN, and HASKELL.

I would like to take this opportunity to thank the chairman of the Employment, Poverty and Migratory Labor Subcommittee, Senator NELSON, for incorporating much of this earlier legislation into the bill we have before us today. I would like to also thank one of my earlier cosponsors, Senator RIEGLE, for his tireless efforts in moving this legislation through the committee.

During the last 15 years, we have made great strides toward eliminating discrimination against women in employment. We have enacted the Equal Pay Act of 1963, title VII of the Civil Rights Act of 1964, and title IX of the Education Amendments of 1972. These legislative barriers against discrimination along with an increased societal awareness of the importance of the labor force participation of women have contributed to a significant increase in the number of women in the civilian work force over the last decade. In fact, during this period women accounted for nearly three-fifths of the total increase in the civil labor force. The Department of Labor now predicts that 9 out of every 10 young women will work at some time in their life.

With these employment advances for women, what have we done to assure the financial security of those 15 million married women who have chosen to be full-time homemakers? The answer is not nearly enough. To begin with, we have never adequately recognized the value of the homemaker's contribution to our Nation's economy. We have neglected the homemaker's contribution despite the fact that as early as 1918, the National Bureau of Economic Research estimated the value of the homemaker's work as one-fourth of the gross national product.

For the homemaker, who has spent a substantial number of years providing unpaid services to family members, we have provided little, if any, assistance to become a productive member of the labor force when faced with sudden financial insecurity due to death of her spouse, divorce, or loss of traditional family income. These women, who are not in the labor force and are over the age of 40, are designated "displaced homemakers." It is difficult to estimate the number of women who would qualify as "displaced homemakers" since Government statistics are not collected on homemakers as such. How we can see the scope of the problem faced by displaced homemakers by looking at some selected statistics; for example:

Thirty-five percent of all female heads of households were widowed in 1975;

Over the past decade, single parent families headed by women have grown 10 times as fast as two-parent families;

The highest rate of labor force participation by women family heads was among those 45 to 54 years of age where nearly 7 out of every 10 worked; and

In 1975, there were 10,104,000 widows and 3,978,000 divorced women; a 45 percent increase in widows since 1950 and 223 percent increase in divorcees since 1950.

What happened to these displaced homemakers once they lost their traditional source of income? Many of these women try to reenter the work force without marketable job skills or training. Unable to secure employment on their own, some of these women turn to the Federal Government for assistance. Sadly, the eligibility criteria for most Federal programs do not cover displaced homemakers.

Because there has been no nationwide program addressing the concerns of displaced homemakers, several localities have attempted to address the employment problems of these women. The most notable of these efforts have been in Baltimore, Md., and Oakland, Calif. In my own State of Indiana, the Fort Wayne displaced homemakers program has also been successful in this regard. The bill the Senate is considering today will strengthen the efforts of these programs, as well as permitting the establishment of other similar programs across the Nation.

Briefly, the CETA bill before us today would provide for the funding of displaced homemakers programs under title III of CETA, as well as other titles of the bill. While the bill does not provide for a specific set aside of $5 million for the funding of displaced homemakers programs under title III, it is the understanding of this Senator and the chairman of the committee, that the Department of Labor has committed to spending this amount on displaced homemakers programs during fiscal year 1979. This amount would be in addition to any moneys made available to displaced homemakers programs under other titles of the bill.

In defining displaced homemakers, the Human Resources Committee stated in its report that it did not place a statutory age limitation in the bill, however, the committee did believe, "in implementing the program, the Secretary should take into account and give special attention to the needs of older women who are displaced homemakers." Since the problems of displaced homemakers are too often a combination of both age discrimination and sex discrimination, I would hope the Secretary of Labor would be particularly mindful of the committee's recommendations in this area.

Statistical evidence indicated clearly that women are entering the labor force in increasing numbers for basic economic reasons. Older women, whether to support their children or themselves, are often ill prepared to enter the job market. If they do breach the barriers of age and sex discrimination they are still likely to be employed at menial, low-level occupations which provide only marginal income. This cycle can be broken only by supplementing their inadequacies of earlier education and training with counseling and training programs designed to provide better paying job opportunities. It is this need which would be addressed by the displaced homemaker provisions of the CETA legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. JAVITS. I yield back my time.

Mr. NELSON. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maine (Mr. MUSKIE), the Senator from Tennessee (Mr. SASSER), the Senator from Alabama (Mr. SPARKMAN), the Senator from Mississippi (Mr. STENNIS), the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON), the Senator from Minnesota (Mrs. HUMPHREY), and the Sen-

ator from Georgia (Mr. TALMADGE) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Missouri (Mr. DANFORTH), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), the Senator from Kansas (Mr. PEARSON), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 66, nays 10, as follows:

[Rollcall Vote No. 367 Leg.]

YEAS—66

| | | |
|---|---|---|
| Allen | Griffin | Morgan |
| Bayh | Hart | Moynihan |
| Bellmon | Hatch | Nelson |
| Bentsen | Hatfield, | Nunn |
| Biden | Mark O. | Packwood |
| Bumpers | Hayakawa | Pell |
| Burdick | Heinz | Percy |
| Byrd, Robert C. | Hodges | Randolph |
| Cannon | Hollings | Ribicoff |
| Case | Huddleston | Riegle |
| Chafee | Inouye | Sarbanes |
| Chiles | Jackson | Schweiker |
| Church | Javits | Stafford |
| Clark | Leahy | Stevens |
| Cranston | Long | Stone |
| Culver | Lugar | Thurmond |
| DeConcini | Magnuson | Tower |
| Dole | Matsunaga | Weicker |
| Durkin | McClure | Williams |
| Eagleton | McGovern | Young |
| Ford | McIntyre | Zorinsky |
| Garn | Melcher | |
| Glenn | Metzenbaum | |

NAYS—10

| | | |
|---|---|---|
| Byrd, | Helms | Scott |
| Harry F., Jr. | Laxalt | Stevenson |
| Curtis | Proxmire | Wallop |
| Hansen | Roth | |

NOT VOTING—24

| | | |
|---|---|---|
| Abourezk | Gravel | Muskie |
| Anderson | Haskell | Pearson |
| Baker | Hatfield, | Sasser |
| Bartlett | Paul G. | Schmitt |
| Brooke | Hathaway | Sparkman |
| Danforth | Humphrey | Stennis |
| Domenici | Johnston | Talmadge |
| Eastland | Kennedy | |
| Goldwater | Mathias | |

So the bill (S. 2470), as amended, was passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. NELSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NELSON. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2570.

The PRESIDING OFFICER. Without objection, it so ordered.

Mr. NELSON. Mr. President, I ask unanimous consent that S. 2570 be printed as passed by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, at a time when inflationary pressures are great—at a time when we need to do whatever we can to put an end to the cycle where wages and prices rise in an illusory attempt to "catch up" with each other—an excessive reliance on monetary and fiscal policy to reduce unemployment can prove counterproductive. Indeed, exclusive reliance on macroeconomic stimulus can leave us with an unacceptably high rate of joblessness. This is the case largely because many individuals with limited skills and experience—the structurally unemployed—would be bypassed, while the wages of skilled workers would continue to be bid up.

Fortunately, there is another way to lower the level of joblessness among the structurally unemployed, a way which will not exacerbate inflationary pressures. Job-creation programs can be targeted to those who are generally excluded from the job market because of lack of skills and experience. Such programs lead to an expansion of economic growth without a concomitant bidding up of the wages of those already employed.

In addition, it has been documented that there is a real increase in the employment and earnings potential of participants in such programs. While the increase is limited, it does indicate that these targeted programs can work to the benefit of the structurally unemployed.

Mr. President, the facts are these: We have seen a dramatic decline in joblessness over the past 19 months—from 7.4 percent in January 1977 to 6.2 percent last month. However, some segments of our society have not fully benefited from this improvement. Blacks and youths are two such groups. The joblessness rate for blacks, 12.5 percent in July, was more than twice the 5.3 percent rate for whites. The unemployment rate for youths 16 to 19 years of age was 16.3 percent.

The need to expand programs for the hard-to-employ is reflected to the Comprehensive Employment and Training Act Amendments of 1978. The amendments as reported by the Human Resources Committee call for support in fiscal year 1979 of public service jobs at the current level of 725,000. About half of these jobs would be under title II, the structural unemployment title of the bill.

Mr. President, I believe that the chairman of the Employment, Poverty, and Migratory Labor Subcommittee, Mr. GAYLORD NELSON, and the ranking minority member, Mr. JACOB JAVITS, are to be commended for their work on the Comprehensive Employment and Training Act—particularly for having partially refocused the bill on the problem of structural unemployment. With the changes they and other members of the Human Resources Committee have made, CETA will play a vital role—together with a moderate tax cut—in helping to move our Nation toward fuller employment without exacerbating inflation.

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## SECOND SUPPLEMENTAL APPROPRIATIONS, 1979—CONFERENCE REPORT

Mr. MAGNUSON. Mr. President, I submit a report of the committee of conference on H.R. 13467 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13467) making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 10, 1978.)

Mr. MAGNUSON. Mr. President, this is the supplemental appropriation bill. The committee on conference met on August 10, and a report was filed in the other body on that date and printed in the RECORD. Thus the conference report has been available now to the Members of Congress for almost 2 weeks.

The bill, as agreed to in conference, is $6,808,778,686, which is $359,668,300 under the President's budget estimates, $475,389,000 above the House bill, and approximately $89 million above the Senate bill, $89,550,000 to be exact.

It is very important that we finish this bill today because a great portion of this money involved mandatory pay raises in most of the departments of Government which were not included in the regular appropriation bills.

There are some other items in the conference report which are greater than the House or Senate bill. This was due to the lack of authorizations on some of the very necessary items or late submission of items after we marked up the regular bills.

Mr. President, I would like to review some of the matters which were in conference which have resulted in the conference report being greater than both the House and Senate bill.

The conferees deleted a Senate rescission of $30,000,000 in emergency drought and flood assistance funds available under the agricultural conservation program.

The conferees agreed to an appropriation of $52,200,000 for construction and renovation of St. Elizabeths Hospital. These funds were not contained in the Senate bill. They were in the budget.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

### PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that Ken Beadles of my staff be accorded privileges of the floor during the consideration of all the bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Ron Tammen of my staff be given privileges of the floor during debate on the tax bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, diverting from the conference report, after this when this Senator gets started on a very important matter he is going to ask unanimous consent that if Senators want

some of their staff on the floor that they go out there and drop their names in a box so that we can proceed with the Senate's business. I think that will be a good change in the rules. It is not his fault, I say to the Senator from Wisconsin.

Mr. President, I ask unanimous consent that there be printed in the RECORD, at this point, a memorandum that addresses a number of the distortions and inaccuracies that have been circulating regarding the Hart Building. I also ask unanimous consent that a fact sheet regarding the Hart Building be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEMORANDUM ON THE HART SENATE OFFICE BUILDING, AUGUST 21, 1978

The recent discussions concerning the Hart Senate Office Building have given rise to a number of distortions and inaccuracies concerning the physical characteristics of the building which it seems useful to rectify and clarify.

Without necessarily indicating the items in order of importance, the following list consists of those most often referred to:

1. The sixteen foot ceiling heights. It is useful to note that only 15% of the ceiling heights in the Hart Building, namely in the offices which are on the exterior perimeter of the building, are of that ceiling height. The balance of the building office space, that is to say 85% of it, has an eight foot ceiling height, which is less than the ceiling height in the existing Dirksen Building in the office areas. In fact, the so-called sixteen foot ceiling height is slightly less than that in the existing Russell Building built in 1910, and which is thought by most people to be the most desirable of the two present Senate Office Buildings.

The Hart Building was designed to make very efficient use of the volume in the building by providing virtually all of the floor area with low ceiling heights. The distortion associated with the comments that have been made concerning the ceiling heights have made it appear that the building has high ceilings throughout, whereas, in fact, it is an unusual circumstance and confined only to certain small areas, thus increasing the internal efficiency of the building and at the same time creating an atmosphere comparable to the Russell Building.

2. The gymnasium. The gymnasium is in fact a simple basketball court together with associated locker rooms and shower rooms. It is not usually mentioned that there are also locker rooms for male and female staff personnel, so that they can also use the physical fitness facilities. The basketball court can be divided at one end with nets so that paddle ball games can be played. It is not a large area, it has no room for spectators and is in the simplest form possible.

The so-called existing gymnasiums are, in fact, not gymnasiums at all. They are simple exercise rooms, one of which exists in the Dirksen Building and is 17 x 34 feet, slightly larger than most living rooms, with a very low ceiling height and which contains a few exercise machines; a similar room exists in the Russell Building and is about 12 x 12 feet in dimension, smaller than the size of a living room in many homes, and again with very low ceilings and containing a few exercise machines. These are by no means capable of being termed gymnasiums in the ordinary sense of that word. Thus, the facility that is being added is comparable to that which exists on the House side and would be available for health giving exercise for staff personnel as well as Senators. It is austere and simple in its design and in its characteristics. There are no steam rooms, saunas, swimming pool or any other facilities except a basketball court which can also be used alternatively for indoor tennis.

3. The Ninth Floor Dining Facility. This facility was never at any time intended to be, nor was it designed to be, a private dining room for Senators only. It is a simple dining room with an associated kitchen in which it is intended to serve buffets to the public as well as to staff personnel and Senators, similar to the function of the cafeterias presently in existence in the Dirksen Building. 80 percent of the floor on which the facility is located is devoted to the use of mechanical and electrical equipment under the roof itself; it therefore is a location which makes efficient use of an isolated area of the building.

4. The Multi-Media Room. The temporary title of this room has apparently caused a good deal of misunderstanding to arise. It is in fact a hearing and assembly room for the use of the public and the writing press, as well as for the electronic media, for those instances in which recording and reporting of hearings is desirable. It has built in facilities to enable television cameras and the writing press to be able to provide accurate reporting of events to the public and at the same time not have television equipment and cables running up and down the corridors and damaging the buildings as is presently occurring because the existing buildings were designed before the advent of television. Thus, it is not an overly decorated or opulent room; it is a simple hearing room for the use of the public.

5. The marble exterior. It is useful to recall that the exterior and the interior design of this building was the subject, for the first time in history and prior to Senate approval, of public hearings conducted by the Senate Committee on Public Works on the design of a public building. The use of marble was chosen as of architectural importance in order to match the material of the existing buildings and especially since the Hart Building is connected directly to the existing Dirksen Building. To use another material was judged to have been inappropriate in the light of the architectural and historical aura on Capitol Hill. It is further a material of extreme durability and therefore is cost beneficial in terms of maintenance, as is well known. The design is simple and dignified and was so judged by the numerous professional architectural critics that testified before the Committee, as well as by the comments made in the press which covered the hearings widely at the time.

6. Paneling in the Senator's personal offices. Wood paneling was chosen not only for the aura of quiet dignity which it exudes, but also because of its cost benefit value, in that it does not require redecorating, repainting or other costly maintenance over its life, as do plaster walls. It was felt to be an appropriate expenditure which, of course, could be eliminated, but nevertheless needs to be viewed on the basis of its cost benefit value in small areas of the building. Less than 1% of the wall area in the building has paneling.

The following general comments are also useful to note:

A. The building has a sophisticated electronic control system as well as electrical and mechanical systems which yield extremely high energy efficiency and which are designed to interconnect with the energy management program that is being installed throughout the Hill. The initial increased expenditures for energy efficiency are well known, and are deemed to be not only advisable but a necessity in the light of the present energy concerns of the nation. Just as it costs more money to insulate a private house than not to insulate it, the cost of providing sophisticated mechanical and electrical control systems in an office building costs more initially but more than pays for itself and thus is extremely cost beneficial as well as energy saving.

B. The interior of Senators' offices is austere and simple. It is by no means complicated, nor is it highly decorated or expensive either in fact or in appearance. The staff spaces are modern, simple and inexpensive to maintain. Some of the materials that have been used are deemed to be necessary as a life cycle cost benefit decision, inexpensive materials which are difficult to maintain and need to be replaced more often were avoided. This is particularly evident in examples such as baseboards which receive the continuous abuse of mops and floor polishing equipment.

C. The need for the building. The documented need has been made apparent by study after study beginning as early as 1971 indicating the extreme shortage of space with which everyone is familiar. The fact that only 67 square feet per employee exists in the average Senator's office, thus reducing productivity, generates requests for increases in staff because the working conditions often do not enable staff to produce the amount of work necessary to respond to constituent and legislative needs. With increased productivity because of increased space availability and modern configurations of furniture and word processing equipment, increases in staff in the future can be either minimized or reduced to zero.

D. It should be remembered that $18 million of the funds requested has resulted purely and simply from increases in construction costs resulting from inflation in the economy larger than that which was estimated. Thus, without any change in the original program at all, an additional $18 million is necessary in order to make up for the change in the value of the dollar that has occurred since the time the original estimates were made.

E. The vote of the House of Representatives. The vote on the floor of the House was taken without a single hearing of any kind having taken place on the House side with regard to this project since its inception five years ago, and therefore without any direct knowledge on the part of any Committee of the House nor any of the Members of the House with regard to this project; the rule of comity was thus observed during the entire development of the project. Many of the Members of the House were unfamiliar with the fact that the building is already under construction, and presumed that the funding was being requested for a future building, not yet even in the planning stage. Thus, not only was the vote not on the issue of the project as it exists, taking into account all the facts, such as the $60 million loss that would take place as a result of termination of the project, but also without regard to the needs or any other matter of fact associated with the project. It was thus obviously an uninformed vote.

F. It has been the intention from the beginning, one, to design a building which is flexible, so that the needs of the Senate in the future can be accommodated irrespective of how those needs may require the use of space, and secondly, to design a building that was austere and functional, and yet gave an appearance of dignity and decorum commensurate with the historic qualities of the Senate itself. It should be emphasized that there is nothing in the design of this building either exterior or interior which creates the feeling of opulence or excess.

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HART BUILDING FACT SHEET

COMPARABLE SQUARE FOOT COSTS OF OTHER BUILDINGS

Hart: $101 per sq. foot.
Rayburn: $186 per sq. foot.
FBI: $90 per sq. foot.

AT&T Long Lines Bldg., Bedminster, N.J.: $111 per sq. foot.

Federal Office Bldg., Albany, N.Y.: $139 per sq. foot.

Underwood Headquarters Bldg., Westwood, Mass. $110 per sq. foot.

IBM Bldg., New York City: $120 per sq. foot; ($92 per sq. foot for shell plus $30 to $40 per sq. foot to finish).

AT&T Headquarters Bldg., New York City: $170 per sq. foot ($137.50 per sq. foot for shell plus $30 to $40 sq. foot to finish).

AT&T Headquarters Building, N.Y. City will cost $110 million for 1,000 employees.

Hart Building will cost $125 million and house 3,000 employees.

Currently, about 1,700 employees are housed in the old Carroll Arms Hotel, Senate Courts and other Senate annex buildings. These buildings are not intended for use as office space. In fact, Senate rules prohibit anything larger than two drawer file cabinets for fear that a larger file cabinet would result in a collapse in the flooring with the larger file cabinet crashing through to the floor below. Also, the limited wiring capacity is inadequate for office space and the possibility of a dangerous overload is ever present.

The Hart Building is designed to house these 1,700 staff personnel now housed in substandard facilities and alleviate current overcrowding in the Russell and Dirksen Office buildings.

9 Hearings held and Senate has voted for building 4 times already.

It is true that the number of employees on the Senate rolls has increased by 150% over the past 20 years (from 2,415 in October of 1958 to 6,312 in October 1977). However, during this same period the Federal Budget for which the Congress is charged with oversight, has increased 500% (from $82.6 million in 1958 to $462.2 million in 1978). (During this period, the GNP rose by 500%, from $442.1 billion to $2043.2 billion). Does any Member seriously think he can do a quality job for his constituents here in the Senate with a 1958 level of staff which would be one-third of the current level? Increased complicity of legislation requires more staff with specialized knowledge in order to keep Senators abreast of solutions to complicated problems.

Mr. MAGNUSON. Mr. President, the Senate acted responsibly in enacting a ceiling of $135 million for the Hart Building.

Unfortunately, the action of the House of Representatives will have only one effect. It will delay the completion date with the result that the total cost will necessarily rise above the $135 million ceiling.

If the House keeps delaying, it might cause the present cost of $101 per square foot for the Hart Building to exceed the $186 per square foot cost of the Rayburn House Office Building. But I doubt that the delays would ever cause the Hart Building to approach the $250 per square foot cost of the building sponsored by the senior Senator from Rhode Island (Mr. CHAFEE). That is all I have to say about it.

The conferees agreed to the House figure for the student loan insurance fund. This is a mandatory item, and the figure agreed upon was $223 million, which is $43,939,000 above the Senate bill.

I would like to point out that the conference considered a total of 83 amendments. Of that total, the Senate receded on 6 and the House receded on 31. A total of 15 Senate amendments were further amended and agreed to by the House, and 30 amendments have been reported to the House in technical disagreement.

Mr. President, I would like to thank the members of the committee for their assistance in bringing this conference report to the floor, because of its urgency. The Senator from North Dakota (Mr. YOUNG) had a great part in this as ranking minority member; so, Mr. President, I will yield to him, but first I ask unanimous consent that immediately following my remarks there be printed in the RECORD a summary table showing the conference totals and comparative figures.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY—SUPPLEMENTAL BILL

| | New Budget authority estimates fiscal year 1978 | New Budget authority House fiscal year 1978 | New Budget authority Senate fiscal year 1978 | New Budget authority conference fiscal year 1978 | Conference compared with fiscal year 1978 estimate | Conference compared with House bill | Conference compared with Senate bill |
|---|---|---|---|---|---|---|---|
| TITLE I—GENERAL SUPPLEMENTALS | | | | | | | |
| I Agriculture: New budget (obligational) authority | 6,136,000 | 187,706,000 | 151,226,000 | 181,771,000 | +175,635,000 | −5,935,000 | +30,545,000 |
| II Foreign operations: New budget (obligational) authority | 38,394,000 | 21,250,000 | 24,305,000 | 24,015,000 | −14,379,000 | +2,765,000 | −290,000 |
| III Housing and Urban Development—Independent agencies: | | | | | | | |
| New budget (obligational) authority | 560,777,000 | 538,553,000 | 539,553,000 | 539,553,000 | −21,224,000 | +1,000,000 | |
| Appropriations | 536,477,000 | 514,253,000 | 515,253,000 | 515,253,000 | −21,224,000 | +1,000,000 | |
| Contract authority | 24,300,000 | 24,300,000 | 24,300,000 | 24,300,000 | | | |
| (Increase in limitations) | (250,000) | | | | (−250,000) | | |
| (Increased limitation for annual contract authority) | (24,300,000) | (24,300,000) | (24,300,000) | (24,300,000) | | | |
| IV Interior and related agencies: | | | | | | | |
| New budget (obligational) authority | 507,547,000 | 571,235,000 | 542,161,000 | 555,628,000 | +48,081,000 | −15,607,000 | +13,467,000 |
| (By transfer) | (6,000,000) | | | | (−6,000,000) | | |
| V Labor and Health, Education, and Welfare: | | | | | | | |
| New budget (obligational) authority | 487,752,000 | 379,674,000 | 298,325,000 | 394,964,000 | −92,788,000 | +15,290,000 | +96,639,000 |
| (Increase in limitations) | (36,797,000) | (18,797,000) | | (8,800,000) | (−27,997,000) | (−9,997,000) | (+8,800,000) |
| VI Legislative branch: New budget (obligational) authority | 60,027,550 | 9,063,050 | 74,060,550 | 74,010,550 | +13,983,000 | +64,947,500 | −50,000 |
| VII Public Works: | | | | | | | |
| New budget (obligational) authority | 5,350,000 | 8,700,000 | 8,700,000 | 8,700,000 | +3,350,000 | | |
| (By transfer) | (3,305,000) | | | | (−3,305,000) | | |
| VIII State, Justice, Commerce and the Judiciary: New budget (obligational) authority | 665,594,000 | 256,772,000 | 656,121,000 | 649,360,000 | −16,234,000 | +392,588,000 | −6,761,000 |
| IX Transportation: | | | | | | | |
| New budget (obligational) authority | 93,429,000 | 49,044,000 | 131,044,000 | 91,044,000 | −2,385,000 | +42,000,000 | −40,000,000 |
| (By transfer) | (9,000,000) | (9,000,000) | (9,000,000) | (9,000,000) | | | |
| (Appropriations to liquidate contract authority) | (9,940,000) | (9,940,000) | (9,940,000) | (9,940,000) | | | |
| (Increase in limitation on commitments) | (49,479,000) | (40,000,000) | (40,000,000) | (40,000,000) | (−9,479,000) | | |
| X Treasury, Postal Service and General Government: | | | | | | | |
| New budget (obligational) authority | 632,220,000 | 549,600,000 | 551,600,000 | 551,600,000 | −80,620,000 | +2,000,000 | |
| (Increase in limitations) | (1,027,000) | (1,027,000) | (1,027,000) | (1,027,000) | | | |
| XI Defense: | | | | | | | |
| New budget (obligational) authority | 748,000,000 | 599,766,000 | 514,766,000 | 514,766,000 | −233,234,000 | −85,000,000 | |
| (By transfer) | | | (100,000,000) | (100,000,000) | (+100,000,000) | (+100,000,000) | |
| XII Military Construction: New budget (obligational) authority | 73,540,000 | | 8,500,000 | 8,500,000 | −65,040,000 | +8,500,000 | |
| Total, title I—General supplementals: | | | | | | | |
| New budget (obligational) authority | 3,878,766,550 | 3,171,363,050 | 3,500,361,550 | 3,593,911,550 | −284,855,000 | +422,548,500 | +93,550,000 |
| (Appropriation to liquidate contract authority) | (9,940,000) | (9,940,000) | (9,940,000) | (9,940,000) | | | |
| (By transfer) | (18,305,000) | (9,000,000) | (109,000,000) | (109,000,000) | (+90,695,000) | (+100,000,000) | |
| (Increase in limitations) | (38,074,000) | (19,824,000) | (1,027,000) | (9,827,000) | (−28,247,000) | (−9,997,000) | (+8,800,000) |
| (Increased limitation for annual contract authority) | (24,300,000) | (24,300,000) | (24,300,000) | (24,300,000) | | | |
| (Increase in limitation on commitments) | (49,479,000) | (40,000,000) | (40,000,000) | (40,000,000) | (−9,479,000) | | |
| Total title II—Increased pay cost: | | | | | | | |
| New budget (obligational) authority | 3,289,680,436 | 3,197,224,136 | 3,218,867,136 | 3,214,867,136 | −74,813,300 | +17,643,000 | −4,000,000 |
| (By transfer) | (49,305,677) | (4,951,331) | (10,951,331) | (10,951,331) | (−38,354,346) | (+6,000,000) | |
| (Increase in limitations) | (125,530,000) | (118,501,000) | (118,501,000) | (118,501,000) | (−7,029,000) | | |
| (Trust fund transfer | (45,000) | | | | (−45,000) | | |
| (Transfer from Commodity Credit Corporation) | (1,036,000) | (1,036,000) | (1,036,000) | (1,036,000) | | | |
| (By transfer from FHA fund) | (10,929,000) | (10,929,000) | (10,929,000) | (10,929,000) | | | |
| Total, title III—General provisions | | −35,198,000 | | | | +35,198,000 | |

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY—SUPPLEMENTAL BILL—Continued

| | New Budget authority estimates fiscal year 1978 | New Budget authority House fiscal year 1978 | New Budget authority Senate fiscal year 1978 | New Budget authority conference fiscal year 1978 | Conference compared with fiscal year 1978 estimate | Conference compared with House bill | Conference compared with Senate bill |
|---|---|---|---|---|---|---|---|
| TITLE I—GENERAL SUPPLEMENTALS | | | | | | | |
| Grand total—Titles I, II, and III: | | | | | | | |
| New budget (obligational) authority | 7,168,446,986 | 6,333,389,186 | 6,719,228,686 | 6,808,778,686 | −359,668,300 | +475,389,500 | +89,550,000 |
| (Appropriation to liquidate contract authority) | (9,940,000) | (9,940,000) | (9,940,000) | (9,940,000) | | | |
| (By transfer) | (67,610,677) | (13,951,331) | (119,951,331) | (119,951,331) | (+52,340,654) | (+106,000,000) | |
| (Increase in limitations) | (163,604,000) | (138,325,000) | (119,528,000) | (128,328,000) | (−35,276,000) | (−9,997,000) | (+8,800,000) |
| (Trust fund transfer) | (45,000) | | | | (−45,000) | | |
| (Transfer from Commodity Credit Corporation) | (1,036,000) | (1,036,000) | (1,036,000) | (1,036,000) | | | |
| (By transfer from FHA fund) | (10,929,000) | (10,929,000) | (10,929,000) | (10,929,000) | | | |
| (Increased limitation for annual contract authority) | (24,300,000) | (24,300,000) | (24,300,000) | (24,300,000) | | | |
| (Increase in limitation on commitments) | (49,479,000) | (40,000,000) | (40,000,000) | (40,000,000) | (−9,479,000) | | |

Mr. MAGNUSON. I yield to the Senator from North Dakota.

Mr. YOUNG. Mr. President, the distinguished chairman of the Committee on Appropriations (Mr. MAGNUSON), has given us a good summary of the conference report on the second supplemental appropriations bill. I am in accord with his views.

More than half of this $6.8 billion bill agreed to by the conferees is needed to pay for the October 1, 1977, pay raise for military and civilian personnel. Overall, this bill is $359 million below the budget estimate.

I am very disturbed about the action of the House concerning the Hart Building. The rejection by the House of the conference item on the Hart Building breaks a longstanding tradition of comity between the two bodies for their respective funding requirements. I was less than enthusiastic about providing additional funds for the Hart Building, but the issue was debated at length on the Senate floor and it was the will of the Members of the Senate to provide the additional $54 million to complete the Hart Building.

It does not make sense to me to stop construction of the building when it is half completed. I was opposed to it when it was first started and I was opposed to adding all the additional employees under Senate Resolution 60, and other measures which made it necessary to provide more office space. I supported the $54 million in additional funds to complete the Hart Building because it was a far better alternative than to have spent a huge amount of money and then leave the building partially completed.

The amendment of the chairman of the Appropriations Committee (Mr. MAGNUSON) also provided a cap of $135 million for the completion of the construction of the Hart Building, which was intended to put to rest the issue of the construction of the building. Some of the opponents of the Hart Building were claiming the cost would reach at least $200 million or more.

Mr. President, I hope that the action of the House will not create a feud between the two bodies and that this problem can be resolved. I do not believe this is the time to react to the House action. I recommend that we accept the House's disagreement and approve this bill as reported by the conferees.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. INOUYE). The question is on agreeing to the conference report.

Mr. MAGNUSON. Mr. President, I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, I certainly agree with the ranking member on our side and the chairman of our committee concerning reactions to the Hart Building matter. I do not feel it is time for us to get in a feud, necessarily, and I accept Senator YOUNG's advice in that regard. But I would like to point out to the Senate that the House has increased its own contingency expenses by $14 million over last year. That is an increase of 15 percent.

We have been silent about that in the past. Those are contingent funds, and a Member who does not spend his allowance from that contingent fund may pocket the difference. It has meant that some of our colleagues on the other side have had sort of a free ride in voting against pay raises, because they could, by not spending the contingent fund, thereby have additional income from not spending for contingent expenses.

I only mention this because I think the record ought to be clear that if we are going to stop this historic practice of not looking into the expenses of the other body, I think we ought to start by looking at some of the items in the legislative appropriations bill next year.

It is my hope that the House will see fit to reconsider its action. Even though many of us had some questions about the Hart Building in the beginning, and others had questions as to whether it should continue, it was a Senate decision, and I do not believe that the House should allow this very bad precedent which it has established on a supplemental appropriation bill to continue over until next year, because while we may and I hope we will accept the request of the chairman and the ranking member that this bill be cleared, I think if this precedent persists through the balance of this year, next year we should look at every item in the House legislative appropriations bill with great care.

Mr. MAGNUSON. Mr. President, I want to express my approval of the remarks of the Senator from Alaska, and I do hope we will work this matter out. But there are so many other important, pressing items in the bill that I felt the better part of discretion now was to get this bill down to the White House. It involves paychecks early next month, and there might be some layoffs involved; and as pointed out by the Senator from North Dakota, almost half of the bill is for mandatory pay raises.

Mr. YOUNG. Two-thirds.

Mr. MAGNUSON. Two-thirds of the bill; close to $4 billion.

Mr. President, the Senator from Pennsylvania wishes to be heard on this matter. I yield to him.

Mr. SCHWEIKER. Mr. President, I join with our chairman (Mr. MAGNUSON) in recommending adoption of the conference report on the second supplemental appropriations bill for fiscal 1978.

In all, the Labor-HEW chapter of the conference report provides an additional $394,964,000 for fiscal year 1978, $96,639,000 more than the Senate version of the bill, and $15,190,000 more than the House, but $92,788,000 less than the supplemental budget request.

For the most part, the conferees accepted the Senate amendments to the House bill. Of the 17 amendments in chapter V, the House agreed to recede on 13, and accepted compromises with the Senate on 2 others.

I am deeply disappointed in the conference report's resolution of one important area, the question of funding a new influenza immunization program. I led the fight against this proposal in the Appropriations Committee and on the floor of the Senate, and I continue to believe it is very unwise to proceed with a new program this year. We do not have the scientific questions resolved: we cannot predict with certainty whether or not a flu epidemic will occur, and if it does, whether or not the vaccine will provide protection. We cannot produce a vaccine that will be free from the serious paralyzing and sometimes fatal side effect of Guillain-Barre syndrome.

There are also serious questions of liability that have not been resolved. The Secretary of HEW does not plan to have recommendations on liability policy until another 12 to 18 months have passed. Liability claims against the United States for immunization programs date back to 1972, and the total of claims from the ill-fated swine flu program is now approaching 1 billion.

It is also unclear whether or not the program as designed will have any noticeable effect on immunization rates, since it may just supplant private immunization efforts. Lastly, and this is a very serious point, attempting to gear up a new immunization program now through the end of September, when the school year is beginning, means that there will be an adverse affect on the important, proven childhood immunization program.

I do not wish to belabor these points. I am sure all my colleagues are aware of my concern. I sincerely hope that the authorizing Health Subcommittee, on which I serve as the ranking Republican member, will address these questions in the proper way before we end up with a per-

manent new influenza immunization program. I hope the conference decision of this bill does not place Congress in the position of having to appropriate additional amounts later to deal with liability and other problems that could be created by this immunization program, for which the conference report provides $8.2 million.

The House conferees agreed to the Senate amendment to provide $6 million for the rural health initiative program to expand services to medically underserved areas.

The Senate conferees receded to the House on the questions of funding for the renovation of St. Elizabeths Hospital. The agreement will provide $52.2 million to make needed repairs so the hospital can regain its accreditation.

The conferees also agreed to increase the allowance for medicare administrative expenses by $8.8 million to cover increasing costs in medicare claims processing contracts. Of this amount, $3.8 million is for outstanding bills and $5 million is for possible further cost increases arising from unanticipated growth in workload.

Under education, the Senate conferees also agreed to the House position to provide $223.9 million for the student loan insurance fund. This amount is the same as the budget request and is necessary to cover mandatory payments for federally insured student loans. The supplemental is required by unexpected growth in the number of new loans granted.

The conferees agreed to provide the positions needed by the Office for Civil Rights to comply with a court order to clear up a large backlog of discrimination complaints and to work on compliance with the new regulations covering the handicapped.

With the exception of the Russian flu immunization program, I believe we have developed an acceptable Labor-HEW chapter and I recommend its adoption.

Mr. MAGNUSON. I yield to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to ask a brief question of the chairman.

As I understand it, the additional money for the Hart Building was knocked out, as well as the cap was knocked out, so the bill is as it originally came to the floor of the Senate, with no money in it one way or the other for the Hart Building?

Mr. MAGNUSON. That is correct.

Mr. CHAFEE. So, therefore, the present appropriation for the Hart Building remains at the $85 million where it was before we started this whole business?

Mr. MAGNUSON. Yes, and then I understand—I do not have the exact figures, but within that amount there are some unspent funds.

Mr. CHAFEE. That is correct.

Mr. MAGNUSON. I think it is $32 million.

Mr. CHAFEE. No—well, whatever it is.

Mr. MAGNUSON. Whatever it is, I will put the exact figure in the RECORD.

Mr. CHAFEE. I also understand that we expect, somewhere down the road, probably early next year, that the proponents of the Hart Building will be back for more money to complete that building.

Mr. MAGNUSON. I suspect that will be true.

Mr. CHAFEE. And I suspect we will all be waiting for them.

Mr. MAGNUSON. I imagine on the first supplemental next year, they will show up and make their case.

Mr. CHAFEE. I thank the Senator.

Mr. BELLMON. Mr. President——

Mr. MAGNUSON. I yield to the Senator from Oklahoma.

Mr. BELLMON. Mr. President, I have a statement I would like to make in behalf of the chairman of the Budget Committee (Mr. MUSKIE), who could not be here.

The Senate is about to act on the conference report on H.R. 13467, the second supplemental appropriations bill for 1978. This is likely to be the last spending bill for fiscal year 1978. It provides budget authority of $6.8 billion, with outlays estimated at $5.6 billion.

As chairman of the Budget Committee, Senator MUSKIE would like to bring to the Senate's attention the current status of the budget in comparison to the final budget ceilings for fiscal year 1978 which we adopted in the second budget resolution last September.

If this bill is enacted into law, outlays for fiscal year 1978 would total $448.0 billion, a comfortable $10.3 billion below fiscal year 1978 second budget resolution ceilings.

Let me repeat that for emphasis:

If this bill is enacted into law, outlays for fiscal year 1978 would total $448.0 billion, a comfortable $10.3 billion below fiscal year 1978 second budget resolution ceilings.

Budget authority, however, would total almost $500 billion, leaving only about $0.2 billion in budget authority remaining under the second budget resolution ceiling. Any subsequent spending legislation which exceeds the remaining very small amount of budget authority would not be in order since it would cause the second budget resolution budget authority ceiling to be exceeded.

Mr. President, it now appears that fiscal 1978 will be the third consecutive year that the Congress has been successful in keeping Federal spending within its own budgetary ceilings. I offer my congratulations to Members of both the Senate and the House for this significant achievement.

I believe that our success in meeting budgetary targets is compelling evidence that the budget process is an orderly and effective tool to insure responsible Federal spending. I hope and expect that its success will continue in future years.

Mr. MAGNUSON. I want to add on behalf of the members of the Appropriations Committee, I hope this is the last one. There have been eight supplemental appropriations bills. Some were directed to specific things, like the drought money, with loans; but there have been eight. It is getting to be so that there are more supplementals than regular appropriations. All members of the committee have joined to alert the administration that we are going to put our foot down on supplementals. They better have their estimates ready for the regular bill. If there is some real emergency, we will entertain it. But they dillydally along and get them up here late. The legislative committees do not authorize. The Appropriations Committee is developing, I hope, a get-tough attitude on this, and I hope this is the last one.

Mr. BELLMON. I congratulate the chairman for taking that position.

Mr. MAGNUSON. All Members have helped me and joined with me.

Mr. HARRY F. BYRD, JR. Will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. HARRY F. BYRD, JR. As I understand the conference report now before the Senate, insofar as the new Senate Office Building is concerned, the conferees eliminated the $54 million which the Senate added to the bill.

Mr. MAGNUSON. The House did. The House eliminated it.

Mr. HARRY F. BYRD, JR. The House eliminated it.

Mr. MAGNUSON. After we had had our conference.

Mr. HARRY F. BYRD, JR. But the conference report now before the Senate——

Mr. MAGNUSON. The report now has it out.

Mr. HARRY F. BYRD, JR. It has the $54 million out.

Mr. MAGNUSON. That is right. And it has out the ceiling, too, which I was sort of hopeful would be left in. But maybe we want to change the ceiling. I do not know. I think I might agree to that.

Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LONG. Will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. LONG. Mr. President, as one Member of this body I want to go on record as supporting the chairman of the Appropriations Committee and his committee in doing their best to move forward with that office building. The reason I say that is the greatest waste in Government is to start something and never finishing it. It is like building a road that goes halfway out of town and then stops without getting it to an adjoining city. Everything you have put into it at that point is an absolute and complete waste.

I do not have the figures, but I believe the chairman and his committee have the figures, which show that we have far more people working with the amount of floor space we have in the building now than when the building was built. I recall when we built the Dirksen Building, the figures were that there were five times as many people working in that Senate Office Building as there were when the building was first built. I know that in my office as well as in a number of other offices we can find as many as eight people working in a single room back to back. That sort of crowding really is not a good idea.

I am not here to pass judgment on the design of the building. I did not look

into all that. All I want to say is that we do very much need the space. It is inefficient to be crowded together the way we have been. There is no greater waste in my judgment than to start something and not finish it.

Mr. MAGNUSON. I hope both Houses will take a good, long look at this matter. As I pointed out, there is some money available, unspent money, to continue some basic progress in the building. Then we will see where we are next year.

Mr. RANDOLPH. Will the able chairman yield?

Mr. MAGNUSON. Yes, I yield.

Mr. RANDOLPH. I wish to follow the colloquy between Senator LONG and the chairman.

I recall when we authorized this building in the committee which I chaired in 1972, the amount of money then was just in excess of $47 million. The Senator from Louisiana said, of course, when there are delays, whatever are the reasons for the delays, there is a spiraling inflation which sets in.

This is what I want to enforce, if I may: There are many Members of the Senate, and I shall not refer to them by name—their names are on the record—Members who are very conservative, Members who try to keep the cost of Government to the minimum, hoping, however, for realistic efforts. I remember one Senator who said at that time, and he is a Member of this body who, by his votes, as all others know, tries to keep down the cost of operations of the Federal Government. But he has said, "If I am to serve my constituency I must have space for the staff I am working with, and they are working with me, to serve these constituents. I cannot do it with the present quarters that I have as a Senator."

That is just an illustration of what one Member has said. I know he was speaking from personal experience in the operation of his office.

I deplore, of course, the increasing costs of any building, as do other Members, but I do know that when we begin any project, and there is a period of time that elapses before beginning the construction, with the authorizing and appropriations of moneys for that structure—or for a road or for any type of public or private structure—that the costs under the inflationary spiral rise in amounts that, frankly, make us wonder what has happened.

That is what has happened here.

I think a close look, a careful review, is certainly a good idea of the able chairman.

Mr. MAGNUSON. I thank the Senator.

Mr. LUGAR. Will the Senator yield for a comment?

Mr. MAGNUSON. I yield.

Mr. LUGAR. Mr. President, I rise simply because the comments made with regard to the bill have certainly extended the debate. The Senators from Louisiana and West Virginia have spoken well. But let me add for the record that one reason the House of Representatives apparently intruded into this question is that many Members of the House have been hearing from their constituents. Whatever our general judgments may be about service to our constituents, there are a number of our constituents who simply do not want to be served in that way, that is, with such a substantial new edifice constructed.

I think the debate can proceed at another time on this matter.

I am aware by the mail received from my constituents that they would prefer that the building be stopped. I voted in behalf of the measure of the distinguished Senator from Rhode Island last week, as an expression of that sort of feeling.

I hope as the Appropriations Committee proceeds it would be mindful of what I think is a rather substantial groundswell of opinion in the country and at least at minimum will cut the ceiling below the $135 million which was mentioned. If we are to proceed at all, we should at least do so with a great deal more prudence and sensitivity as to what is going on in this country as an expression about the building.

I thank the Senator.

Mr. MAGNUSON. Mr. President, I think the members of the Appropriations Committee have a fair knowledge of what is going on. The trouble is that so much of this got off into a tangent about whether or not there is going to be a restaurant upstairs or down in the basement, who will eat in there, and all of that, which is incidental. If the Appropriations Committee decided, we would not have to have it there.

I think the basic thing is whether or not we need some more office space. The other things, the so-called frills, those are the ones that were played up quite a bit. That need not be in there at all. There is not enough money now to continue the basic building over there instead of having the skeleton standing up there. It may end up just being a plain office building; I do not know.

I know that many of the Senators are pretty well cramped, including the Senator from Washington. We have people sitting on top of one another in my office. It is because this country is bigger; you get more mail. And when you have a $500 billion budget, I think you get just as much criticism if you do not pay attention and review that amount of money and have the help to do it as you would for building a place to house them. A $500 billion budget is a pretty big budget.

It still is—well, I guess it is the best example of our growth. It is still about 21 percent of the gross national product, $500 billion. That is the average of the last 17 years; it has been from 18, 19, to 22. It is now 21 percent of the $500 billion. But that shows you what the growth is and what we have to do. People expect us not only to give personal service, but to take a look at the expenditure of that vast amount of money.

Senators have an important part to play in that, not only the members of the Appropriations Committee, because we hear from all of them. It is a question of whether we want to spend some amount of money to be consistent with our responsibilities in carrying them out. We should not go overboard on it or do something that is wrong. But we should not base our decision on whether or not we are going to have some frill here or some frill there. We are building a building, no matter what we build over there, to last.

I have had an office for over 30 years in the same building. It is now, I think, the old one, close to 90 years old, I think; that is when they started it. You know, the only real repairs they have made are that they now find they have to change the windows over there. They had wood frames, but the wood was so good that they have lasted all these years, almost three quarters of a century. So when you do build a building, you are going to have to spend a little more money for an ordinary office building, because you want it to last.

We are working these things out to be as prudent as possible and consistent with the responsibility of Senators.

Mr. MAGNUSON. Mr. President, if there are no further comments and no further amendments, I move adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Montana (Mr. MELCHER), the Senator from New York (Mr. MOYNIHAN), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. NUNN), the Senator from Tennessee (Mr. SASSER), the Senator from Alabama (Mr. SPARKMAN), the Senator from Georgia (Mr. TALMADGE), and the Senator from Minnesota (Mrs. HUMPHREY) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Missouri (Mr. DANFORTH), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Kansas (Mr. PEARSON), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 61, nays 11, as follows:

[Rollcall Vote No. 368 Leg.]

YEAS—61

| | | |
|---|---|---|
| Allen | Glenn | Packwood |
| Bayh | Hansen | Pell |
| Bellmon | Hart | Percy |
| Bentsen | Hatfield, | Randolph |
| Bumpers | Mark O. | Ribicoff |
| Burdick | Hayakawa | Riegle |
| Byrd, Robert C. | Heinz | Sarbanes |
| Cannon | Hodges | Schweiker |
| Case | Hollings | Stafford |
| Chafee | Inouye | Stennis |
| Chiles | Jackson | Stevens |
| Church | Javits | Stevenson |
| Clark | Leahy | Stone |
| Cranston | Long | Thurmond |
| Culver | Magnuson | Tower |
| Curtis | Matsunaga | Wallop |
| DeConcini | McClure | Weicker |
| Dole | McGovern | Williams |
| Durkin | McIntyre | Young |
| Eagleton | Metzenbaum | Zorinsky |
| Ford | Morgan | |

NAYS—11

| | | |
|---|---|---|
| Biden | Hatch | Nelson |
| Byrd, | Helms | Proxmire |
| Harry F., Jr. | Laxalt | Roth |
| Garn | Lugar | Scott |

NOT VOTING—28

| | | |
|---|---|---|
| Abourezk | Griffin | Melcher |
| Anderson | Haskell | Moynihan |
| Baker | Hatfield, | Muskie |
| Bartlett | Paul G. | Nunn |
| Brooke | Hathaway | Pearson |
| Danforth | Huddleston | Sasser |
| Domenici | Humphrey | Schmitt |
| Eastland | Johnston | Sparkman |
| Goldwater | Kennedy | Talmadge |
| Gravel | Mathias | |

So the conference report (H.R. 13467) was agreed to.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House to the amendments of the Senate numbered 18, 29, 51, and 62, en bloc.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The legislative clerk read as follows:

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 18 to the aforesaid bill, and concur herein with an amendment as follows:

In lieu of the matter proposed by the said amendment, insert:

For an additional amount for influenza vaccination, $8,200,000, to remain available until September 30, 1978.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 29 to the aforesaid bill, and concur therein with an amendment as follows:

On lieu of the matter proposed by the said amendment, insert:

Special Institutions

Hereafter, Gallaudet College, Howard University, the National Technical Institute for the Deaf, and the American Printing House for the Blind are authorized to make purchases through the General Services Administration.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 51 to the aforesaid bill and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert "$50,000".

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 62 to the aforesaid bill and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: " *Provided*, That not to exceed $20,000 shall be available from existing appropriations made under this heading to be used for construction and installation of improvements to existing National Bureau of Standards buildings.".

*Resolved*, That the House insist on its disagreement to the amendments of the Senate numbered 48 and 82 to the aforesaid bill.

The PRESIDING OFFICER. Is there objection to the request that the Senate concur in the amendments of the House to the amendments of the Senate numbered 18, 29, 51, and 62?

Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I move that the Senate recede from its amendments numbered 48 and 82.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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## CONSTRUCTIVE SALE PRICE FOR EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.

Mr. ROBERT C. BYRD. Mr. President, under the previous order, I ask the Chair to lay before the Senate Calendar No. 1046.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1337) to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera.

The Senate proceeded to consider the bill which had been reported from the Committee on Finance with an amendment to strike all after the enacting clause and insert the following:

SECTION. 1. EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.

(a) IN GENERAL.—Paragraph (1) of section 4216(b) of the Internal Revenue Code of 1954 (relating to constructive sale price) is amended by inserting after the second sentence thereof the following new sentence: "In the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost)".

(b) CONFORMING AMENDMENT.—The second sentence of paragraph (1) of such section 4216(b) is amended by inserting "(other than an article the sale of which is taxable under section 4061(a))" after "sold at retail".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act.

SEC. 2. HOME PRODUCTION OF BEER AND WINE.

(a) EXEMPTION FROM TAX ON WINE.—Section 5042(a)(2) of the Internal Revenue Code of 1954 (relating to production of wine for personal consumption) is amended to read as follows:

"(2) WINE FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary—

(A) EXEMPTION.—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

"(B) LIMITATION.—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

"(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(ii) 100 gallons per calender year if there is only 1 adult in such household.

"(C) ADULT.—For purposes of ths paragraph, the term 'adult' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater."

(b) EXEMPTION FROM TAX ON BEER.—

(1) IN GENERAL.—Section 5053 of such Code (relating to exemptions from excise tax on beer) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new section:

"(e) BEER FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary, any duly registered adult may, without payment of tax, produce beer for personal or family use and not for sale if the amount of such beer on hand at any time (including beer in process) does not exceed 30 gallons. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

"(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term 'adult' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater."

(2) ILLEGALLY PRODUCED BEER.—

(A) Section 5051 of such Code (relating to imposition and rate of tax) is amended by adding at the end thereof the following new subsection:

"(c) ILLEGALLY PRODUCED BEER.—The production of any beer at any place in the United States shall be subject to tax at the rate prescribed (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

"(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use)."

(B) Section 5054(a)(3) of such Code (relating to illegally produced beer) is amended to read as follows:

"(3) ILLEGALLY PRODUCED BEER.—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

"(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(B) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use)."

(3) DEFINITION OF BREWER.—Section 5092 of such Code (defining brewer) is amended to read as follows:

"SEC. 5092. DEFINITION OF BREWER.

"Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(e)) and every person who produces beer for sale shall be deemed to be a brewer."

(4) EXEMPTION FROM CERTAIN PROVISIONS RELATING TO DISTILLING MATERIALS.—Section 5222(a)(2)(C) of which Code (relating to certain exemptions) is amended by striking

out "; or" and inserting in lieu thereof "or 5053(e); or",

(5) PENALTY FOR UNLAWFUL PRODUCTION OF BEER.—

(A) Section 5674 of such Code (relating to penalty for unlawful removal of beer) is amended to read as follows:

"SEC. 5674. PENALTY FOR UNLAWFUL PRODUCTION OR REMOVAL OF BEER.

"(a) UNLAWFUL PRODUCTION.—Any person who brews beer or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

"(b) UNLAWFUL REMOVAL.—Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both."

(B) The item relating to section 5674 in the table of sections for part III of subchapter J of chapter 51 of such Code is amended to read as follows:

"Sec. 5674. Penalty for unlawful production or removal of beer."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

SEC. 3. REFUNDS TO BE MADE TO AERIAL APPLICATORS IN CERTAIN CASES.

(a) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF GASOLINE TAX IN CERTAIN CASES.—Subsection (c) of section 6420 of the Internal Revenue Code of 1954 (defining use on a farm for farming purposes) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

"(B) if the person so using the gasoline is an aerial applicator who is the ultimate purchaser of the gasoline and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial applicator shall be treated as having used such gasoline on a farm for farming purposes."

(b) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF SPECIAL FUELS TAX IN CERTAIN CASES.—The second sentence of subsection (c) of section 6427 of such Code (relating to use for farming purposes) is amended to read as follows: "For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that 'liquid taxable under section 4041' shall be substituted for 'gasoline' each place it appears in such paragraph (4))."

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 6420(c)(3) of such Code is amended by striking out "except that" and all that follows down through the semicolon at the end of such subparagraph (A).

(d) EFFECTIVE DATE.—The amendments made by the first section of this Act shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act.

SEC. 4. PARTIAL ROLLOVERS OF LUMP SUM DISTRIBUTIONS.

(a) PARTIAL ROLLOVER PERMITTED.—Paragraph (5) of section 402(a) of the Internal Revenue Code of 1954 (relating to rollover amounts) is amended to read as follows:

"(5) ROLLOVER AMOUNTS.—

"A) GENERAL RULE.—If the balance to the credit of an employee in a qualified trust is paid to him within his taxable year in a termination or discontinuance distribution or in a lump sum distribution and he transfers all or a portion of the total taxable amount (as defined in subsection (e)(4)(D)) of the distribution to an eligible rollover source, then the amount transferred shall not be included in gross income.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(ii) TERMINATION OR DISCONTINUANCE DISTRIBUTION.—The term 'termination or discontinuance distribution' means a distribution on account of a termination of the plan of which a qualified trust is a part, or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under the plan.

"(iii) LUMPSUM DISTRIBUTION.—The term 'lump sum distribution' means a distribution described in subparagraph (A) of subsection (e)(4) (determined without regard to subparagraph (B) of that subsection).

"(iv) ELIGIBLE ROLLOVER SOURCE.—The term 'eligible rollover source' means—

"(I) an individual retirement account described in section 408(a),

"(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(III) a retirement bond described in section 409,

"(IV) a qualified trust, or

"(V) an annuity plan described in section 403(a).

"(C) SPECIAL RULES.—

"(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTIONS UNDER SECTION 408.—A transfer described in subparagraph (A) to an eligible rollover source described in subclause (I), (II), or (III) of subparagraph (B)(iv) shall be trtated as a rollover contribution as described in section 408(d)(3).

"(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYERS.—Qualified rollover sources described in subclause (IV) or (V) of subparagraph (B) shall not be treated as qualified rollover sources for transfers of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which he employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

"(iii) PROPERTY ROLLED OVER MUST BE THE PROPERTY RECEIVED.—Subparagraph (A) shall not apply to a transfer of property other than money unless the property transferred is the property which was received in the distribution.

"(iv) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.".

(b) TAXATION OF PORTION EXCLUDED FROM ROLLOVER.—Paragraph (6) of section 402(a) of such Code (relating to special rollover rules) is amended—

(1) by striking out "For purposes of paragraph (5)(A)(i)—" and inserting in lieu thereof "For purposes of paragraph (5)—", and

(2) by adding at the end thereof the following new subparagraph:

"(C) TAXATION OF NONROLLOVER PORTION.—If the total taxable amount of a distribution described in paragraph (5)(A) exceeds the amount transferred in a transfer described in such paragraph, then—

"(i) subsection (e) and section 62(11) shall not aply with respect to the distribution, and

"(ii) to the extent that the total taxable amount of such distribution exceeds the amount transferred, the excess shall be treated as ordinary income (or loss)."

(c) SPECIAL RULE.—For the purpose of applying the amendment made by subsection (a) of this section in the case of a taxpayer whose attempt to comply with the requirements of section 402(a)(5) of the Internal Revenue Code of 1954 (relating to rollover amounts) for a taxable year beginning before the date of enactment of this Act failed to meet the requirement of such section that all property received in a distribution be transferred, the provisions of such section (as amended by subsection (a)) shall be applied by treating any transfer of property made on or before the later of December 31, 1978, or the 60th day after the date of enactment of this Act as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of this subsection, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the fair market value of the property distributed on (or at any time within 60 days after) the date on which the taxpayer received the distribution.

(d) EFFECTIVE DATE.—The amendment made by subsections (a) and (b) shall apply with respect to taxable years begining after December 31, 1974.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate, following the disposition of Calendar No. 1046 under the order previously entered, I will ask the Chair to lay before the Senate Calendar No. 1032.

In the meantime, Mr. LONG has a conference report which he will call up.

## CUSTOMS PROCEDURAL REFORM—CONFERENCE REPORT

Mr. LONG. Mr. President, I submit a report of the committee of conference on H.R. 8149, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8149) to provide customs procedural reform, and for other purposes. having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 17, 1978.)

Mr. LONG. Mr. President, this bill is the most important customs legislation to come before Congress in the last 30 years.

H.R. 8149 will permit the establishment of more efficient and flexible proce-

dures for handling the documentary and financial aspects of import transactions. It will also improve the ability of the Customs Service to enforce customs laws.

H.R. 8149 will revise the customs law penalty for false statements to relate the amount of the penalty to the culpability of the offender. It will also provide due process for persons potentially liable for penalties.

The provision of H.R. 8149 which is of most interest to the general public will permit returning travelers to enter free of duty up to $300 worth of goods they purchase abroad. The next $600 worth of goods purchased by a traveler will be subject to a flat 10-percent duty. The purpose of these changes is to speed the customs processing of travelers when they return to the United States.

Mr. President, this is a good bill. It will bring many antiquated customs procedures up to date. It will help to end long delays for travelers at airports and ports. It is noncontroversial. I recommend the Senate approve the conference report.

I ask unanimous consent that a more detailed summary of the conference report be printed at this point in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

PRINCIPAL FEATURES OF THE BILL

Under present law, each importation is a separate transaction. Appropriate documents and estimated duties must be deposited at the customhouse for each entry. Under the statutory scheme, goods will not be released to the importer until they are inspected and the entry documents are verified. After release of the goods, any overpayment or underpayment of duties is settled with the importer on an entry-by-entry basis. Most goods are in fact released before all the entry documents and the estimated duties are deposited. This is permitted under customs regulations which require all documents and duties to be deposited within 10 days after the goods are released. Accounts are settled with importers under this system on an entry-by-entry basis.

The Conference Report on H.R. 8149 would permit the Secretary of the Treasury to release goods when an entry document is filed. All documents relating to the importation would have to be filed within 10 days after the entry document is filed. Estimated duties would have to be deposited within 30 days. Customs intends to send importers a periodic (monthly) consolidated statement for all entries made during the billing period. To insure compliance with this system, H.R. 8149 would impose recordkeeping requirements on importers and strengthen Customs authority to inspect import related books and records. It would also insure the collection of accurate import statistics by Customs under the new entry system.

PENALTIES

The Conference Report would amend section 592 of the Tariff Act of 1930, the penalty provision for false and material statements in the Tariff Act. Existing section 592 is strongly criticized by all segments of the importing public because it requires a fixed penalty regardless of the nature of the violation, lacks due process safeguards, and does not permit effective judicial review.

Present law prohibits the importation of goods into the United States "by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or application whatsoever" unless the person has reasonable cause to believe the truth of such statement. The penalty imposed for violation of this provision is forfeiture of the merchandise itself or a fine equal to its domestic value.

The penalty under section 592 applies without regard to the degree of culpability. The penalty of forfeiture value may be applied to a violation occurring as a result of simple negligence. While Customs has procedures for mitigation of a section 592 penalty, the issuance of the original unmitigated claim creates several problems. For example, publicly held corporations must disclose penalty claims as contingent liabilities leading to difficulties involving the corporation's financial relationships. H.R. 8149 would provide different penalties for three different degrees of culpability: fraud, gross negligence, and negligence.

Section 592 also lacks procedural safeguards for the alleged violator and does not permit effective judicial review. The respondent is forced to choose between accepting the mitigated administrative penalty or face a Government suit, in which case the claim is for full forfeiture value. The court can only decide whether or not a violation occurred. It cannot change the amount of the statutory penalty, domestic value.

The risks of litigation are enormous when the initial penalty may become the final assessment. H.R. 8149 provides procedural rules for Customs consideration of penalty cases and provides for a trial in the Federal district courts on all issues if the matter is not resolved administratively.

CUSTOMS RULINGS

The Conference Report would require the publication of precedential Customs rulings in response to requests for advice from private parties regarding import transactions.

CUSTOMHOUSE BROKER REPORTS

The Conference Report would require licensed customhouse brokers to report every 3 years to Customs. The report would state whether or not they are actively engaged in the brokerage business and their address.

PERSONAL EXEMPTIONS

The personal duty exemption for returning residents would be increased from $100 to $300. The current $100 exemption has been in effect since 1961. The proposed increases are intended to expedite the entry of travelers and account for the effects of inflation.

TEN-PERCENT DUTY FOR TRAVELERS

A 10 percent rate of duty would be applied to articles brought to the United States by individuals if the importation is not commercial and the goods are for the traveler's personal use and their value does not exceed $600. The application of tariff classification procedures to merchandise imported by travelers requires an inordinate amount of processing time, compared to the amount of duty collected, and creates a bottleneck in the processing of persons entering the country. The bill would help to eliminate the bottleneck without adversely affecting customs revenue collections.

TRAVELERS RETURNING FROM U.S. POSSESSIONS

The Conference Report would increase the personal duty exemption from $200 to $600 for U.S. residents returning from American Samoa, Guam, or the Virgin Islands of the United States. The flat rate of duty applied to articles referred to in the previous paragraph would be 5 percent for articles acquired in these U.S. insular possessions. Further, travelers returning from these possessions could have the personal exemption and flat rate provisions applied to those goods shipped home as well as to those goods accompanying the traveler through customs entry.

LIQUOR AND TOBACCO

The disparity between the rights of U.S. residents and nonresidents to enter liquor and cigarettes free of duty would be reduced. A nonresident may now bring in duty free substantially more liquor and cigarettes than may a resident. Under the bill, both resident and nonresidents would be able to import 1 liter of alchoholic beverages and 200 cigarettes duty free. This represents a cutback in present levels in all respects save the quantity of liquor which a resident may now import duty free.

TIME LIMIT ON LIQUIDATION

The Conference Report would put a 1-year limit on the time in which customs has to liquidate an entry. "Liquidation" means the final ascertainment of the amount of duties due on an entry. Eliminated by this provision would be unanticipated requests by Customs, many years after importation, for additional duties which often result in substantial losses to importers because they are unable to anticipate such duties when pricing their products. Surety companies, which are jointly liable with importers for additional duties, would be better able to control their liabilities. Sureties would also be better protected against losses resulting from the dissolution of their principals in instances where there has been undue delay in liquidating entries. Benefits to Customs would primarily relate to improved management of the liquidation process which could result in some cost savings.

COUNTERFEIT TRADEMARKS

The Conference Report changes the procedures relating to disposal of imported merchandise which violates the law prohibiting unauthorized imports of merchandise bearing a mark copying or simulating a U.S. registered trademark. The bill would require notification of the trademark owner when such goods are seized by the Customs Service.

Goods seized under this provision would be forfeited to the Government unless the trademark owner consents, in writing, to some other disposition of the goods. The Government would have to attempt to donate the forfeited goods to a Federal, State, or local government agency or to a charitable institution. One year after forfeiture, the goods could be sold at a public auction. Destruction of the goods would be permitted if they are unsafe or a hazard to health.

PREFERENTIAL TREATMENT FOR U.S. OFFICIALS

The Conference report would prohibit duty-free entry for the baggage and effects of any individual including an officer or employee of the Federal Government or Member of Congress.

AUTHORIZATION OF APPROPRIATIONS

The Conference Report would require an annual authorization of appropriations to the U.S. Customs Service beginning with fiscal year 1980. Authorizing legislation would require Finance and Ways and Means Committee review, on a regular basis, of the operations of the Customs Service. Customs now receives nearly $400 million a year for operating expenses.

Mr. MORGAN. Mr. President, with regard to the conference report on the Customs Procedural Reform Act, I wish to make a few remarks that I consider extremely important to the Members of the Senate concerning the matter that took place with regard to this bill, some acts which I think seriously infringe upon the rights of the Members of the Senate to investigate and to legislate.

A DISTURBING INFRINGEMENT

Mr. President, when I returned from Japan last spring, I was very disturbed by the impact that the dumping of Japa-

nese television sets has had on the American industry. I had advised officials of the Japanese Government that such tactics could only undermine relations between our countries. The matter was serious. Thousands of jobs had been lost in the U.S. television industry, which essentially lay in ruins.

By chance, upon my return, I met an attorney I knew, who shares my interest in antitrust law. And I might add, Mr. President, that he previously was a staff member of the Judiciary Committee in the Senate. I raised the issue of television dumping with him, and discovered that he himself was representing an American manufacturer of television sets, and was concerned about the problem. In our discussion the matter of the Customs Procedural Reform Act came up.

The act as drafted would have retroactively lowered the penalties for the false filing of customs documents, which I believe to have been part and parcel of the dumping scheme. It would have increased and shifted the burden of proof, and it may well have allowed those responsible for the dumping to escape all penalty, or at the very least to suffer only a very reduced penalty.

I ask the attorney to inform me fully of the situation, and he complied.

Disturbed by the prospects offered by H.R. 8149, Senator CURTIS and I offered an amendment to make certain that the law on the books when the violations occurred would apply to the filing of false customs documents, and not the provisions of H.R. 8149 as drafted. Senator CURTIS and I were successful, and I am very glad to see that appropriate handling of the issue is reflected in the language of the conference version of the bill. I want to commend Senator LONG, Senator RIBICOFF, and Senator CURTIS for their work on this matter in the conference committee.

But I think the Senate should know of one other result of our efforts which ought to be of great concern to all my colleagues, for it involves an infringement of any Senator's right to investigate and to legislate.

A little background is in order. One very disturbing fact about the Customs Procedural Reform Act is that attorneys representing Japanese television manufacturers had a hand in drafting the bill which came over from the House.

It is perhaps less disturbing that a highly active lobbying campaign was carried on to get the Curtis-Morgan amendment dropped in conference. That is to be expected.

But it is positively outrageous that in the middle of our attempts to make sure the amendment stayed in the bill, attorneys representing the Japanese subpenaed all the documents sent to me by the attorney from whom I had requested information, and who had petitioned me for redress.

Mind you, they did not subpena my own files. They subpenaed from the attorney copies of everything he had sent me. They subpenaed every communication between him and every Member of the Senate or House. They subpenaed his correspondence with his client. They subpenaed his communications with public officials in the executive branch.

Mr. President, I ask unanimous consent that copies of the subpenas be included at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MORGAN. The subpenas were issued in a case, pending in the eastern district of Pennsylvania, and the taking of depositions was scheduled for the very day the conference committee was to take up the issue in question. I might add that the attorney who cooperated with me in my legislative activity was not a party to that suit. But his client was, and the Japanese television manufacturers and American importers, on whose behalf the subpenas were issued, were parties. The case is an antitrust suit growing out of the dumping, and has no direct connection with the Customs Procedural Reform Act, save for a similar cast of characters.

I have informed the court that I intend to file an intervention in the matter of the subpenas. I am doing so, because such harassment is of concern to me and to every Member of this Senate. I am not doing it to hide anything. There is absolutely nothing in my files which would embarass me or the Senate or the attorney with whom I corresponded. The only people who might be embarrassed are those involved in television dumping or violation of the customs laws.

But two points need to be made loud and clear.

First, I have a privilege, as does every Member of this Senate, to investigate, coterminous with my legislative intent. Unless we are going to start issuing congressional subpenas every whip-stitch, we must be able to depend on the willingness of interested parties to supply information to us.

In the second place, every citizen has the absolute right under the first amendment to petition Members of the Senate for redress of grievances. And he ought to be able to exercise that right without the threat of having lobbyists on the other side of a question haul him into court.

I ask my colleagues in the Senate to consider the relationship between these two facts.

How can we obtain information voluntarily from those who have it, if giving that information might subject a citizen to harassment, including the subpenaing of his files wholesale? Who would want to cooperate if he knew he might have to defend himself in a court in a distant city; in this case in Philadelphia?

What attorney would want to risk his attorney-client relationship by having companies, in direct competition with his clients in the marketplace and in court, have access to his files? In this case, a cartel of Japanese firms might have a good look at inside information on one of the few remaining American manufacturers, if there is anything there. It might even be possible for secret information relating to the competitive strength of American industry to become known to foreign competitiors and governments, so close is their relationship in foreign countries, and especially in Japan. Yet, we would have no information showing the lobbying, and other activities between foreign companies and their attorneys, on the one hand, and the Government of Japan, on the other.

If subpenas of this kind become a successful tactic, then American citizens would be penalized for exercising their first amendment rights, or for cooperating with the Congress in its investigations.

We do not want the first amendment to become a risky proposition for our citizens. We do not want our ability to investigate and legislate infringed. But the use of American legal process, by foreign interests or any other interests, to undermine that process of communication, can only have a chilling effect, both on exercise of the first amendment, and on congressional investigations. The two are very closely related, and both must be preserved.

Mr. President, in closing let me say that after receiving these documents I made a statement on the floor of the Senate concerning this matter. The Washington Post did an article on it, and it was following that that the attorney was harassed by having his records subpenaed and subjecting him to a deposition in the courts on the very day the conference committee was meeting. Now he and his law firm are involved in extensive litigation in the city of Philadelphia simply because he complied with my request to give me information which led to the Curtis-Morgan amendment to the Customs Procedural Reform Act.

I think it is a serious matter, and I think it is one the public should know about and the Senate should take note of.

EXHIBIT 1

[In the U.S. District Court for the Eastern District of Pennsylvania, Civil Action No. 74-2451, M.D.L. 189]

ZENITH RADIO CORPORATION, PLAINTIFF, V. MATSUSHITA ELECTIC INDUSTRIAL CO., LTD., ET AL., DEFENDANTS

(In re Japanese electronic products antitrust litigation)

NOTICE OF DEPOSITION

To: Edwin P. Rome, Esquire, Blank, Rome, Klaus & Comisky, 1100 Four Penn Center Plaza, Philadelphia, Pa. 19103. Counsel for Plaintiff Zenith Radio Corporation.
All defense counsel

Please take notice that pursuant to the Federal Rules of Civil Procedure, defendant Motorola, Inc., will take the deposition of Bernard Nash, Esquire, Blum, Parker & Nash, 1015 18th Street, N.W., Suite 408, Washington, D.C. 20036 at the offices of Kirkland & Ellis, 1776 "K" Street, N.W., Washington, D.C. before a notary public or some other person authorized to administer oaths. The deposition will commence at 10:00 A.M. on Thursday, August 3, 1978, and will continue thereafter from day to day, or as required, until completed. You are invited to attend and to examine the witness.

A subpoena duces tecum will be served on the deponent, requiring him to produce the documents specified in the attached Schedule of Documents to Be Produced.

KIRKLAND & ELLIS,
By THOMAS COFFEY,

Dated: July 27, 1978.

(Standard Oil Building, 200 E. Randolph Avenue, Chicago, Illinois 60601 (312) 861-2000, Attorneys for Motorola, Inc.)

SCHEDULE OF DOCUMENTS TO BE PRODUCED

1. All documents in the possession, custody or control of Bernard Nash or the firm of Blum, Parker and Nash which relate in any way to remarks concerning Motorola, Inc. which were made by Senator Morgan on June 27, 1978, and which were subsequently published in the *Congressional Record* for June 27, 1978, 124 CONG. REC., p. 19159–19164 (daily ed. June 27, 1978) (remarks of Sen. Morgan).

2. All documents in the possession, custody or control of Bernard Nash or the firm of Blum, Parker and Nash referring or relating in any way to the identity of any person or persons who communicated to Senator Morgan or any member of his staff information pertaining to Motorola, Inc. which was subsequently published in the *Congressional Record* for June 27, 1978, 124 CONG. REC., p. 19159–19164 (daily ed. June 27, 1978) (remarks of Sen. Morgan).

3. All documents in the possession, custody or control of Bernard Nash or the firm of Blum, Parker and Nash pertaining to Motorola, Inc., which were communicated to any member or employee of the legislative or executive branch of government, including but not limited to the Antitrust Subcommittee of the Senate Judiciary Committee, Senernment, including but not limited to the Department of Justice, or which were communicated to any official or employee of any agency or activity of the United States government, including but not limited to the Securities Exchange Commission.

4. All documents in the possession, custody or control of Bernard Nash or the firm of Blum, Parker and Nash or documents pertaining to Motorola, Inc. which bear on the face of the document the legend "CONFIDENTIAL PER COURT ORDER."

5. All documents in the possession, custody or control of Bernard Nash or the firm of Blum, Parker and Nash which relate in any way to any communication, relating in any way to Motorola, Inc., between Bernard Nash or the firm of Blum, Parker and Nash and any member, employee or official of the legislative or executive branch of the United States government or any agency of the United States government or official or employee thereof since January, 1976.

6. All documents in the possession, custody or control of Bernard Nash or the firm of Blum, Parker and Nash pertaining to Motorola, Inc. which were obtained from Zenith Radio Corporation or any employee thereof, including but not limited to Philip Curtis or John Borst, or any member of the firm of Blank, Rome, Kalus and Comisky or any attorney associated with that firm, if those documents were designated confidential pursuant to Pretrial Order No. 35 in the case of Zenith Radio Corporation v. Matsushita, et al., Civil Action No. 74–2451.

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CERTIFICATE OF SERVICE

I, Patrick T. Ryan, Esquire, certify that on this date copies of the Notice of Deposition of Bernard Nash, Esquire, were today served on Edwin P. Rome, Esquire, 1100 Four Penn Center Plaza, Philadelphia, Pennsylvania 19103, counsel for plaintiff Zenith Radio Corporation, by hand delivery, and a copy mailed, first class mail, postage pre-paid, to all defense counsel.

Dated: July 27, 1978.

PATRICK T. RYAN.

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[Civil Subpoena, United States District Court for the District of Columbia]

ZENITH RADIO CORPORATION, PLAINTIFF, VS. MATSUSHITA ELECTRIC INDUSTRIAL CO., DEFENDANT.

In Re: Japanese Electronic Products Antitrust Litigation.

Civil Action No. 74–2451—In the United States District Court for the Eastern District of Pennsylvania.

To: Bernard Nash, Blum, Parker & Nash, 1015 18th Street NW., Suite 408, Washington, D.C. 20036.

You Are Hereby Commanded to appear in (the office of Kirkland & Ellis, 1776 K Street NW., Washington, D.C. 20006) to give testimony in the above-entitled cause on the 3rd day of August, 1978, at 10 o'clock a.m. (and bring with you) the documents listed on the attached Schedule of Documents to be Produced attached to Other Defendants' Notice of Deposition and do not depart without leave.

JAMES F. DAVEY,
*Clerk.*

By ROBERT L. LINE,
*Deputy Clerk.*

Date: July 28, 1978.

TIMOTHY S. HARDY,
*Attorney for Defendant.*

Kirkland & Ellis, 1776 K Street NW., Washington, D.C.

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[In the U.S. District Court for the Eastern District of Pennsylvania, M.D.L. 189, Civil Action No. 74–2451]

(In re: Japanese electronic products antitrust litigation)

ZENITH RADIO CORPORATION, PLAINTIFF, V. MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL., DEFENDANTS.

NOTICE OF TAKING DEPOSITION

To: Edwin P. Rome, Esquire, Blank, Rome, Klaus & Comisky, 1100 Four Penn Center Plaza, Philadelphia, Pennsylvania 19103, Counsel for Plaintiff Zenith Radio Corporation.

Peter J. Gartland, Esquire, Wender, Murase & White, 350 Park Avenue, New York, New York 10022, Counsel for Sharp Defendants.

E. Houston Harsha, Esquire, Kirkland & Ellis, Standard Oil Building, 200 E. Randolph Avenue, Chicago, Illinois 60601, Counsel for Motorola, Inc.

Please take notice that the undersigned defendants will take, in the above-captioned action, for use as authorized by the Federal Rules of Civil Procedure, the deposition upon oral examination of: Bernard Nash, Blum, Parker & Nash, 1015–18th Street, N.W., Washington, D.C., before a person duly authorized to administer oaths on August 3, 1978 at 10:00 A.M. and thereafter from day to day, for as long as as the taking of the deposition may take or until it is adjourned, at the offices of Kirkland & Ellis, 1776 K Street, N.W., Washington, D.C., at which time and place you are hereby given notice to appear and take such part in said examinations as you may be advised and shall be fit and proper.

The matters which examination of the subpoenaed person will include are set forth in the attached Schedule of Documents To Be Produced.

A subpoena duces tecum will be served on the deponent, requiring him to produce the documents listed on the attached Schedule of Documents To Be Produced.

Dated: New York, New York
July 27, 1978

MUDGE ROSE GUTHRIE & ALEXANDER,

By DONALD J. ZOELLER,
A Member of the Firm, 20 Broad Street, New York, New York 1005 (212) 422–6767.

DRINKER BIDDLE & REATH,

By PATRICK T. RYAN,
A Member of the Firm, 1100 Philadelphia National Bank Building, Philadelphia, Pennsylvania 19107 (215) 988-2700, Attorneys for Toshiba Defendants.

Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10022 (212) 757–7800 and Morgan, Lewis & Bockius, 2100 The Fidelity Building, 123 South Broad Street, Philadelphia, Pennsylvania 19107 (212) 491–9400, Attorneys for Matsushita Defendants.

Tanaka, Walders & Ritger, 1819 "H" Street, NW, Washington, D.C. 20006; Metzger, Shadyac & Schwarz, One Farragut Square South, Washington, D.C. 20006; and Pepper, Hamilton & Scheetz, 123 South Broad Street, Philadelphia, Pennsylvania 19109, Attorneys for Hitachi Defendants.

Whitman & Ransom, 522 Fifth Avenue, New York, New York 10026 and Pepper, Hamilton & Scheetz, 123 South Broad Street, Philadelphia, Pennsylvania 19109. Attorneys for Sanyo Defendants.

Reid & Priest, 40 Wall Street, New York, New York 10005 and Montgomery, McCracker, Walker & Rhoads, Three Parkway, Philadelphia, Pennsylvania 19102, Attorneys for Mitsubishi International Corporation.

Arnstein, Gluck, Weitzenfeld & Minow, 75th Floor, Sears Tower, Chicago, Illinois 60606 (312) 876–7100 and Robert F. Maxwell, Arnold J. Bennett, 555 East Lancaster Avenue, St. Davids, Pennsylvania 19087, Attorneys for Sears, Roebuck & Co.

Baker & McKenzie, Suite 700, Prudential Plaza, Chicago, Illinois (312) 565–0025; Duane, Morris & Hechscher, 1600 Land Title Building, Broad and Chestnut Streets, Philadelphia, Pennsylvania 19103 (215) 854–6300; and Crummy, Del Deo, Dolan & Purcell, Gateway 1, Newark, New Jersey 07102 (201) 622–2235, Attorneys for Mitsubishi Electric Corporation.

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SCHEDULE OF DOCUMENTS TO BE PRODUCED

A. DEFINITIONS

1. As used herein, the term "you" means you, any partner, associate or employee of the firm Blum, Parker & Nash, and any other person employed by you or subject to your control.

2. As used herein, the term "Zenith" means plaintiff Zenith Radio Corporation, including but not limited to its divisions, departments, subsidiaries, branches, its predecessors in interest, present or former officials, executives, officers, employees, agents, attorneys, and all other persons acting or purporting to act on behalf of Zenith Radio Corporation, its divisions, departments, subsidiaries, branches, predecessors in interest or joint ventures in which it is a party or participant.

3. As used herein, the term "documents" means all written or printed matter of any kind, and recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, notes, diaries, letters, telegraphs, minutes, agendas, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, written notations of conversations, bulletins, computer printouts, teletypes, telefax, invoices, worksheets, graphic or manual records or representations of any kind, including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, tape recordings, motion pictures and electronic mechanical or electric records or representations of any kind, including without limitations, tapes, cassettes, discs, and recordings.

4. As used herein, the term "persons" or "persons" includes not only natural persons, but also firms, partnerships, associations and corporations, subsidiaries, divisions, departments or other units thereof, joint ventures or syndicates.

5. As used herein, the term "consumer electronic products," means radios, phonographs, stereo and audio instruments, mono-

chrome television receivers, color television receivers, tape equipment, and components of each of the above, including but not limited to, picture tubes for monochrome and color television receivers. Use of this defined term does not indicate any endorsement of or agreement with any of the allegations, definitions, terms or language in the Complaints filed in the above captioned actions.

6. As used herein, the term "communication" refers to any contact, message, notice, report, statement or submission, whether written, oral or in any other form.

7. As used herein, the terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any specification.

8. As used herein, the term "trade association" means any formal or informal association, organization, council, committee or group, or any officer, director, employee, attorney, representative agent, committee, subcommittee or other subdivision thereof, the members or participants in which constitute, in whole or in part, manufacturers, sellers or distributors of consumer electronic products in the United States, including without limitation the Electronic Industries Association ("EIA"), the United States Chamber of Commerce, the Electronic Industry Committee for Fair International Trade ("EICFIT"), Fair International Trade and Employment ("PITE") and the Committee to Preserve American Color Television ("COMPACT").

9. As used herein, the term "labor union" means any association or group of workers, the members of which are employed by manufacturers, sellers or distributors of consumer electronic products, including without limitation the following:

(a) Industrial Union Department, AFL–CIO;

(b) Allied Industrial Workers of America, International Union;

(c) American Flint Glass Workers of America, North America;

(d) Communications Workers of America;

(e) Glass Bottle Blowers' Association of the United States & Canada;

(f) Independent Radionic Workers of America;

(g) International Association of Machinists;

(h) International Brotherhood of Electrical Workers;

(i) International Union of Electrical, Radio & Machine Workers;

(j) United Furniture Workers of America; and

(k) United Steelworkers of America.

10. As used herein, the term "United States governmental body" means any United States governmental agency, department, commission, legislative body or committee or subcommittee thereof, or employee, including but not limited to the Justice Department, the Treasury Department, the Customs Service, the Securities and Exchange Commission, the Federal Maritime Commission, the International Trade Commission, the Labor Department, any congressional committee or subcommittee and any congressman or his staff.

11. As used herein, the terms "refer or relate" and "concerning" include alluding to, responding to, connected with, commenting upon, in respect of, about, regarding, discussing, showing, disclosing, describing, explaining, mentioning, reflecting, analyzing, constituting, comprising, evidencing, pertaining to, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

B. PRIVILEGED DOCUMENTS AND COMMUNICATIONS

With respect to any document responsive to this subpoena which you may decline to produce by reason of any claim or privilege or immunity, a statement is to be provided setting forth, as to each such document:

(a) the name of the sender(s) of the document;

(b) the name of the author(s) of the document;

(c) the name(s) of person(s) to whom copies of the document were sent or furnished;

(d) the job title of every person named in (a), (b), and (c) above;

(e) the date of the document;

(f) the date on which the document was received or sent by you;

(g) a brief description of the nature and subject matter of the document; and

(h) the statute, rule or decision which is claimed to give rise to the privilege or immunity.

C. RELEVANT PERIOD

Each of the following specifications calls for documents prepared during, or which refer or relate to, the period January 1, 1963 to date.

D. DOCUMENT SPECIFICATIONS

1. All documents which refer or relate to any communication between you and any United States governmental body concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees.

2. All documents which refer or relate to any communication between Zenith and any United States governmental body concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees.

3. All documents which refer or relate to any communication between any trade association, labor union or any other person and any United States governmental body, concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees.

4. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which have been submitted by you to (i) any United States governmental body, or (ii) any other person, including but not limited to any person affiliated with any news media or trade publication.

5. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which have been submitted by Zenith to (i) any United States governmental body, or (ii) any other person, including but not limited to any person affiliated with any news media or trade publication.

6. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which have been submitted by any trade association, labor union or any other person to (i) any United States governmental body, or (ii) any other person, including but not limited to any person affiliated with any news media or trade publication.

7. All documents which refer or relate to any communication between you and Zenith concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees.

8. All documents which refer or relate to any communication between you and any trade association concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees.

9. All documents which refer or relate to any communication between you and any labor union concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees.

10. All documents which refer or relate to any communication between you and any other person, including but not limited to any person affiliated with any news media or trade publication, concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged conconspirator of defendants or the impact of such imports, trade practices or activities upon the United States manufacturers or assemblers of such products or their employees.

11. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged conconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which you have received from Zenith.

12. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which you have received from any trade association.

13. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which you have received from any labor union.

14. All documents concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or assemblers of such products or their employees, which you have received from any other person.

15. All documents which refer or relate to your activities as a lobbyist on behalf of Zenith and/or any other person concerning imports of consumer electronic products into the United States, the trade practices or other activities of any defendant in this litigation or of any alleged coconspirator of defendants or the impact of such imports, trade practices or activities upon United States manufacturers or asemblers of such products or their employees, including but not limited to all documents which refer or relate to your registration as a lobbyist under any applicable statute or regulation.

CERTIFICATE OF SERVICE

I, Patrick T. Ryan, Esquire, certify that on this date copies of the Notice of Taking Deposition of Bernard Nash were today served on Edwin P. Rome, Esquire, 1100 Four Penn Center Plaza, Philadelphia, Pennsylvania 19103, counsel for plaintiff Zenith Radio Corporation, by hand delivery and a copy mailed, first class mail, postage prepaid to:

Peter J. Gartland, Esquire, Wender, Murase & White, 350 Park Avenue, New York, New York 10022 and E. Huston Harsha, Esquire, Kirkland & Ellis, Standard Oil Building, 200 E. Randolph Avenue, Chicago, Illinois 60601.

PATRICK T. RYAN.

Dated: July 27, 1978.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

PRIVILEGE OF THE FLOOR

Mr. LONG. Mr. President, I ask unanimous consent that the same staff members of the Joint Committee on Taxation and the Finance Committee who had the privilege of the floor Wednesday be permitted to be on the floor when the other tax bills are considered today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent that Pamela Milton, of the Judiciary Committee, have the privilege of the floor during the consideration of the tax bills today.

Mr. CRANSTON. Mr. President, I make the same request for John Fleming, of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, I ask unanimous consent that all other staff members who had the privilege of the floor in connection with the tax bills earlier this week also have the privilege of the floor today.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CONSTRUCTIVE SALE PRICE FOR EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.

The Senate continued with the consideration of the bill (H.R. 1337).

Mr. LONG. Mr. President, the pending bill H.R. 1337, as reported by the Committee on Finance, is a combination of several small bills which have been passed by the House, and a committee amendment dealing with individual retirement accounts.

The first section of the bill provides that the use of the administratively developed "cost floor" rule is specifically prohibited as an alternative tax base for purposes of computing the excise tax on trucks, buses and other highway equipment sold by manufacturers at retail. Under a committee amendment to the House bill, this rule will apply beginning with the first calendar quarter which begins more than 30 days after enactment.

The second section of the bill deals with excise taxes on beer and wine. It corrects problems in interpreting present law so that an adult may brew beer or make wine in limited quantities for personal and family use without incurring beer or wine excise taxes or being subject to certain penalties.

The third section of the bill expands the farming exemption from fuel taxes to enable an aerial crop duster who uses fuel for farming purposes to claim the tax refund or credit. Under a committee amendment to the House-passed provision, the farmer must waive his right to the refund or credit in order for the crop duster to claim it.

Finally, the bill would allow tax-free treatment for any portion of a lump-sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan. Under present law an individual is required to deposit the entire proceeds of the lump-sum distribution in order to obtain tax-free rollover treatment. Under this provision, there is also a special make-up rule for individuals who previously attempted to make a rollover deposit but failed to transfer the required amount.

Mr. President, this is truly a small bill since all of its provisions taken together will result in a revenue loss of $3.5 million in fiscal year 1979 and thereafter $3 million per year. I urge the adoption of H.R. 1337.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. LONG. I yield to the Senator.

Mr. PROXMIRE. As I understand it, this bill really incorporates the four different provisions of three bills and one amendment.

Mr. LONG. Yes.

Mr. PROXMIRE. The first one, H.R. 2028, dealt with the home production of beer and wine. This simply permits the home production of beer and wine.

Mr. LONG. That is right, for one's own personal consumption.

Mr. PROXMIRE. So I take it the Milwaukee brewing industry does not have to worry about this.

Mr. LONG. No.

Mr. PROXMIRE. There is no objection from the brewers or wine makers?

Mr. LONG. There is no objection from the Treasury or anyone, as far as I know. No. Apparently Schlitz is not worried the least bit about the competition of a home brewery.

Mr. PROXMIRE. There is no effect on revenues?

Mr. LONG. The entire bill would have a revenue impact of less than $3.5 million annually.

Mr. PROXMIRE. What section of the bill would have that revenue? Is that the IRA amendment by Senator CURTIS?

Mr. LONG. The principal consequence of the retirement rollover amendment is that it has a great deal of justice and equity to recommend it.

Mr. CURTIS. Mr. President, will the Senator yield at that point?

Mr. PROXMIRE. I yield.

Mr. CURTIS. I do not believe that this would have any adverse revenue effect. What it does is it corrects an error. When Congress passed the Individual Retirement Act, Congress provided that workers who participated in a company pension plan or a private sharing plan, when that was terminated they could take their proceeds and roll them over into an individual retirement account. That is the law. They have the right. There is nothing in this bill that changes that. And there is not any loss of revenue.

This bill arose out of a case in Nebraska where a man who performed physical labor, worked his entire life, came to the end of his employment and he had an accumulation of lifetime savings of only about $22,000, as I recall. His company erroneously, because the IRA was just barely into law—I do not think all the regulations are written yet—erroneously advised him that there was an insurance policy that he might pay up out of these proceeds. He did so with a few hundred dollars, paid up that insurance. Then he went to his local bank and went through the process of putting this in an individual retirement plan.

Months later when he filed his tax return he learned for the first time that if he did not put every dollar of his accumulation into the individual retirement plan he was subject to a very severe penalty. Actually it amounted to between 15 and 18 percent of his lifetime savings.

As I say, the program was totally new. The bank and the trust company were not aware of this requirement. His employer was not. The insurance company apparently did not know what was going on.

It was not discovered until he filed his income tax return and was faced with a penalty of about 15 or 18 percent of his lifetime savings.

If saving him from such a penalty is a loss of revenue, it is a loss of revenue, but it is not. It is not. All we are asking is that this be corrected so that this man will not have an unjust and unconscionable penalty.

It calls for considerable imagination on my part when they figure any sizeable amount of loss of revenue here because the Government is not entitled to the revenue in the first place.

Mr. PROXMIRE. May I ask the Senator from Nebraska, the Government does say there is a loss of revenue. The Senator from Nebraska may be dead right that there is at least no just loss.

Mr. CURTIS. Because of an unjust penalty. It was the intent of Congress that if there were such a rollover it should be tax free. This man got caught on the technicality. That is grossly unjust.

Mr. PROXMIRE. Would the $3.5 million, if there is such an amount, accrue to one taxpayer or many?

Mr. CURTIS. No. There is only $22,000 involved and this is his total lifetime savings, and he is subject to this penalty of about 15 or 18 percent, which I would guess is a couple thousand dollars. I do not have the figures right now.

Mr. LONG. The retirement rollover provision has a negligible impact on the budget.

The amendment relating to beer and wine that would involve a revenue loss of less than $1.5 million a year.

Mr. PROXMIRE. That would be several thousand homebrewers.

Mr. LONG. At least.

Mr. PROXMIRE. Maybe tens of thousands.

Mr. LONG. It could be 100,000.

I have a dear friend, a relative, and I suppose without his consent I should not use his name, but my wife gave that dear person a set to go in the backyard, where he has a grape vine, and he takes the grapes, and they enjoy sitting there and crushing up the grapes and putting them aside, and after a while they have a little wine.

Some people find more enjoyment making the stuff than they do in consuming it.

So that type of thing is a great big pain in the neck for the Treasury to go around and check on it and it is a bother for the citizen.

I guess the Senator recalls, if he studied history, that one of the first revolts we had during the Civil War was the Whiskey Rebellion where some people back in the woods——

Mr. PROXMIRE. In Pennsylvania.

Mr. LONG [continuing]. In Pennsylvania were concerned about the Federal excise tax on liquor at that time.

But this just involves people who make some wine in their own homes.

Mr. PROXMIRE. Wine and beer, not whisky.

Mr. LONG. That is right, only wine and beer. Nothing really strong, Senator. Nothing to put hair on your chest, you might say.

Mr. CURTIS. Mr. President, will my chairman yield? I am interested in this colloquy. I am interested in the homebrew business, but I am fascinated at these estimates of loss of revenue. If it was not for this bill, they would spend 10 times this much trying to collect, and collect nothing. This saves the Treasury money, in my opinion.

Mr. PROXMIRE. The Senator said $1.5 million for H.R. 2028; a negligible amount for the Curtis amendment; then, dealing with cropdusting, was there a loss there?

Mr. LONG. Less than $1 million for cropdusting.

Mr. PROXMIRE. The remainder then on the Cranston amendment, which, as I understand it, is S. 3424, which concerns the paperwork of filing reports to the Federal Government for beer- and wine-making at home.

Mr. LONG. The Senator from California has not offered an amendment yet. I see he is ready to offer an amendment, and I assume that is what he had in mind. But I believe that would also have a negligible revenue impact. It probably would save us some money.

Mr. CRANSTON. It would save some money.

Mr. LONG. It would save money because it would cut down on needless paperwork.

UP AMENDMENT NO. 1809

(Purpose: To provide equal treatment in the regulation of the home production of beer and wine)

Mr. CRANSTON. May I offer the amendment now? I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. METZENBAUM). The clerk will report.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment numbered 1809.

Mr. CRANSTON. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, strike out section 2 and insert in lieu thereof the following:

(a) EXEMPTION FROM TAX ON WINE.—Section 5042(a)(2) of the Internal Revenue Code of 1954 (relating to production of wine for personal consumption) is amended to read as follows:

"(2) WINE FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary—

"(a) EXEMPTION.—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

"(b) LIMITATION.—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

"(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(ii) 100 gallons per calendar year if there is only 1 adult in such household.

"(C) ADULTS.—For purposes of this paragraph, the term 'adult' means an individual who has attained 18 years of age, or the maximum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater."

(b) EXEMPTION FROM TAX ON BEER.—

(1) IN GENERAL.—Section 5053 of such Code (relating to exemptions from excise tax on beer) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new section:

"(e) BEER FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

"(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(2) 100 gallons per calendar year if there is only 1 adult is such household.

For purposes of this subsection, the term 'adult' means an individual who has attained 18 years of age or the minimum age, if any, established by law applicable in the locality in which the household is situated for individuals to whom beer may be sold, whichever is greater."

(2) ILLEGALLY PRODUCED BEER.—

(A) Section 5051 of such Code (relating to imposition and rate of tax) is amended by adding at the end thereof the following new subsection:

"(c) ILLEGALLY PRODUCED BEER.—The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054 (a)(3) unless—

"(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(B) Section 5054(a)(3) of such Code (relating illegally produced beer) is amended to read as follows:

'(3) ILLEGALLY PRODUCED BEER.—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

"(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(B) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(3) DEFINITION OF BREWER.—Section 5092 of such Code (defining brewer) is amended to read as follows:

"SEC. 5092. DEFINITION OF BREWER.

"Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(a)) and every person who produces beer for sale shall be deemed to be a brewer.".

(4) EXEMPTION FROM CERTAIN PROVISIONS RELATING TO DISTILLING MATERIALS.—Section 5222(a)(2)(C) of such Code (relating to certain exemptions) is amended by striking out "; or" and inserting in liue thereof "or 5053(e); or".

(5) PENALTY FOR UNLAWFUL PRODUCTION OF BEER.—

(A) Section 5674 of such Code (relating to penalty for unlawful removal of beer) is amended to read as follows:

"SEC. 5674. PENALTY FOR UNLAWFUL PRODUCTION OR REMOVAL OF BEER.

"(a) UNLAWFUL PRODUCTION.—Any person who brews beer or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

"(b) UNLAWFUL REMOVAL.—Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.".

(B) The item relating to section 5674 in the table of sections for part III of subchapter J of chapter 51 of such Code is amended to read as follows:

"SEC. 5674. PENALTY FOR UNLAWFUL PRODUCTION OR REMOVAL OF BEER.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

Mr. CRANSTON. This amendment is very simple.

It establishes for homebrew beer the same legal treatment provided in H.R. 1337 for homemade wine.

First, brewers of home beer for personal consumption will not be required to register with the Bureau of Alcohol, Tobacco and Firearms.

Second, home beer brewers will be limited to 200 gallons annually as are home winemakers.

Third, the amendment removes the proposed 30-gallon-on-hand limitation presently provided in H.R. 1337.

Treasury has indicated that the registration requirement for winemakers, which has been in effect for many years, has been of little use to the Federal Government, and indeed, has proven burdensome to the public and it is costly, too,

because Government employees have been doing work that does not need to be done.

Concern has been expressed that removing the registration provision sought to be imposed on home beer brewers for the first time somehow will afford camoflage for illegal whiskey distilling operations.

According to BATF, this is the problem: Beer mash is technically "mash fit for distillation." But prosecutions for possessing a mash fit for distillation are rare. And, without strong corroborating evidence of a capability for distilling whiskey and an intent to do so, such prosecutions virtually cannot be sustained.

BATF, I might add, does not suspect home beer brewers of being illegal moonshiners.

Then what is the purpose of requiring otherwise law-abiding citizens to register with the Federal bureaucracy so they can make a few gallons of beer in their homes for their personal consumption?

As far as I can determine, BATF merely wants to hold on to some busy work for its clerks.

I think such white-collar leaf-raking is unfair to Government workers and gives Government a bad name.

To go ahead with legislation requiring home beer brewers to register with the Federal Government is a waste of everybody's time, energy and money. The Bureau has adopted a sensible position with respect to homemade wine. It should do the same for homebrew beer. My amendment assures that the agency will do so. I have just learned that Treasury has no objection to my amendment. I am most pleased at this development.

I urge the amendment's adoption.

Mr. PROXMIRE. Mr. President, will the Senator from California yield?

Mr. CRANSTON. Yes.

Mr. PROXMIRE. This amendment seems to be very meritorious, but I am disturbed about one thing. First, the Treasury, as I understand, supports the amendment?

Mr. CRANSTON. Yes, it just came around to supporting it now.

Mr. PROXMIRE. But, on the other hand, part of the Treasury which the Senator was talking about, that is, the Bureau of Alcohol, Tobacco and Firearms, do they still oppose the amendment? As I understood the Senator, he indicated they wanted to protect their busy work, and they opposed the amendment on the ground apparently that they would not be able to do it.

Mr. CRANSTON. The official Treasury position now is no opposition to the amendment.

Mr. PROXMIRE. But does the Senator have any information on how the Bureau of Alcohol, Tobacco and Firearms feels about this?

Mr. CRANSTON. They want to hang onto it because they have some work to do, and they would like to do it.

Mr. PROXMIRE. Do they have any argument, any reasoning, at all?

Mr. CRANSTON. They have never given a reasonable argument for it.

Mr. PROXMIRE. At any rate, what the Senator is saying is these reports are filed, they constitute, therefore, a burden on the people who produce the wine and beer.

Mr. CRANSTON. And a burden to the taxpayers.

Mr. PROXMIRE. The reports are never used, they are simply stored?

Mr. CRANSTON. Right.

Mr. PROXMIRE. With cost to the Federal Government, but they are not processed?

Mr. CRANSTON. Right.

Mr. PROXMIRE. Has there been any enforcement under this provision?

Mr. CRANSTON. No.

Mr. PROXMIRE. Has there been any investigation?

Mr. CRANSTON. No.

Mr. PROXMIRE. Has anybody ever gone to jail or been brought into court on it?

Mr. CRANSTON. No.

Mr. PROXMIRE. So the Senator's argument is it is of no use, a burden both on the private sector and the public sector?

Mr. CRANSTON. Yes. If ever there was a regulation and paperwork we can do without this is a classic example.

Mr. PROXMIRE. Does the Treasury agree there would be no revenue loss?

Mr. CRANSTON. No what?

Mr. PROXMIRE. No revenue loss.

Mr. CRANSTON. We do not know how there could be a revenue loss. This is going to be a gain to the taxpayer because there will be some people no longer needed to do some work.

Mr. PROXMIRE. The only kind of revenue loss you would have is that you have violations, I presume, so there will not be since you are not enforcing the law, and the revenue loss would be, if they produce it in the bathtub or wherever they produce it, that therefore they escape the very, very high excise taxes we have on wine and beer.

Mr. CRANSTON. I do not know any revenue we are getting from that source, so I do not know how we can lose it.

Mr. PROXMIRE. All right.

Mr. President, I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1810

(Purpose: To provide in certain instances, cash payments in lieu of food stamps to recipients of SSI benefits)

Mr. CRANSTON. Mr. President, I send to the desk one more amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself and Mr. HAYAKAWA, proposes an unprinted amendment numbered 1810.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add at the end thereof the following new section:

SEC. . (a) Section 8(d) of Public Law 93-233 is amended by adding at the end thereof the following new sentences: "For purposes of this subsection, if the State requests the Secretary to make the finding specified in the first sentence of this subsection and to make an additional cash payment under title XVI in lieu of food stamps, in the amount and the manner described below, to every individual in the State who does not have an eligible spouse and who receives a supplementary payment pursuant to an agreement under section 1616(a) of the Act (other than an individual who (i) receives such a supplementary payment at a level prescribed by the State by reason of his or her residence in an institution, or other living arrangement in which board and care are provided, or (ii) receives payments pursuant to section 212 of Public Law 93-66 at a level in excess of the level applicable to such individual as established by the State under such agreement), the Secretary shall make such payments if he finds that the conditions of paragraph (1) have been met (and for this purpose the conditions of paragraph (1) shall be considered to have been met to the extent that they involve amounts payable under the law referred to in paragraph (1)(B) notwithstanding the suspension in 1978 of the cost-of-living increase in State supplementary payments under such law) for months beginning with the first month in which, as determined by the Secretary, such additional cash payment can be made, and ending with the month before the first subsequent month for which the conditions of paragraph (1) are met without regard to this sentence (and the requirements of paragraph (2) shall also be considered to have been met, effective on the first day of such first subsequent month, for purposes of applying the first sentence of this subsection to that month and succeeding months). For purposes of the preceding sentence, the amount of an additional cash payment under title XVI in lieu of food stamps shall equal the cash value of the minimum allotment specified by section 8 (a) of the Food Stamp Act of 1977 for one-person households, and such additional cash payment shall be appropriately included in or with the check issued to such individual in payment of his supplementary security income benefit (or supplementary payment under such section 1616(a)).".

(b) No additional cash payment under title XVI of the Social Security Act may be made pursuant to the third sentence of section 8(d) of Public Law 93-233 (as added by subsection (a) of this section) for any month beginning before October 1, 1978, or ending after September 30, 1979.

Mr. CRANSTON. I want the RECORD to note that Senator HAYAKAWA has joined me in this amendment. It is not controversial, and it will take me just one moment to explain it.

Mr. President, this amendment addresses a problem which has recently arisen regarding the supplemental security income—SSI—program in California. This amendment is identical to H.R. 13814 which was introduced by Representative CORMAN in the House on August 9, and which was ordered favorably reported by the House Ways and Means Committee on August 16. I know

that the distinguished floor management (Mr. LONG) is well aware of the problem this amendment is designed to correct.

HEW has been fully advised as to the nature of this amendment and has no opposition.

Mr. President, briefly, this amendment would amend section 8(d) of Public Law 93–233 to provide that SSI recipients in California who would become eligible to receive food stamps in that State on September 1 would, instead, receive an amount in cash equivalent to the value of their food stamp entitlement. This amendment would be effective for 1 year only.

Mr. President, when the SSI program began in 1974, California included in its State supplementary cash payment an amount equal to the average bonus value of food stamps that SSI recipients in the State generally would have been eligible to receive. California was authorized to and did maintain "cash-out" status as long as the Federal Government was contributing to the cost of the State supplementary payment under the "hold-harmless" provisions of section 401 of Public Law 92–603.

In 1976, however, California would have lost this "cash-out" status under the provisions of Federal law then in effect because of increases in the Federal SSI benefit level. At that time, at the request of the State of California, Congress enacted legislation—Public Law 94–379—that allowed California to continue its "cash-out" status as long as it met two conditions. First, the State had to pass through to SSI recipients any cost-of-living increases provided in the Federal SSI benefits and, second, the State had to provide a yearly cost-of-living increase in the State supplementary SSI payment.

California has met these two conditions up to this time; however, effective September 1, 1978, the State will no longer meet the second condition because it has recently suspended the cost-of-living increase in its SSI supplementary benefits. Most single, aged, or disabled SSI recipients in California will become eligible on September 1 for $10 in food stamps.

The cost-benefit ratio of administering this program after conversion would be totally unacceptable, I think. The State estimates that approximately 42 percent of the eligible SSI recipients will participate in the food stamp program and, on an annual basis, that only $25 million would be paid in food stamps benefits, whereas total administrative costs are estimated to be about $75 million. In other words, the taxpayers will be expending $3 in administrative costs for every $1 in benefits which goes to recipients.

This amendment would provide that the Secretary of HEW—upon the request of the State—would make an additional monthly cash payment of $10—the minimum food stamp allotment for an eligible one person household—to eligible recipients. This additional payment would be included in or with the individual's SSI check. These SSI recipients would receive this cash payment in place of the food stamps they would otherwise be entitled to receive.

It is estimated that the total annual costs under this amendment—benefits plus administrative costs—would be approximately $60 million. This is $40 million less that the total estimated costs after conversion to a regular food stamp program.

Mr. President, while this amendment will affect only the State of California, each of us shares an interest in seeing that funds—Federal, State, or local—intended to help the needy are expended in the most cost-effective and efficient manner. This amendment is designed to serve that purpose.

Mr. President, this amendment is virtually identical to S. 3424, a bill I introduced on August 16. I ask unanimous consent that the full text of my remarks on August 16, explaining the background and purpose of this amendment be reprinted in the RECORD.

I urge adoption of the amendment.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

CALIFORNIA SSI/FOOD STAMP PROGRAM

Mr. CRANSTON. Mr. President, I am introducing today a measure dealing with a problem which has recently developed in California regarding the supplemental security income—SSI—program in that State. This bill is identical to one introduced last Wednesday in the House by my good friend from California, Mr. Corman, H.R. 13814, which was today ordered favorably reported by the House Ways and Means Committee.

BACKGROUND

When the SSI program began in 1974, California included in its State supplementary cash payment an amount equal to the bonus value of good stamps that SSI recipients in the State generally would have been eligible to receive. In other words, the State provided SSI recipients with an additional amount of cash generally equivalent to the average value of, and in place of, food stamps, and in this sense "cashed-out" food stamps for SSI recipients. Pursuant to section 401 of the law establishing the SSI program, Public Law 92–603, California was able to maintain this "cash-out" status as long as the Federal Government was contributing to the cost of the State supplementary payment under the "hold-harmless" provision of section 401.

In 1976, as a result of increases in the Federal SSI benefit level, California would have lost the "cash-out" status allowed under the provisions of Federal law then in effect. At that time, at the request of the State of California, Congress enacted legislation—Public Law 94–379—that allowed California to continue its "cash-out" status as long as it met two conditions: beginning June 1976, and for every month thereafter, the State had to first, pass through to SSI recipients any cost-of-living increases provided in the Federal SSI benefits and second, provide a yearly cost-of-living increase in the State supplementary payment. California has continued to meet these two conditions up to this time, and has, in effect, continued to "cash-out" food stamp benefits for SSI recipients.

Beginning in September 1978, however, Mr. President, California will cease to meet the second of these statutory conditions because the State suspended, as of September 1, 1978, the cost-of-living increase in its SSI supplementary payments. The State will thus lose its "cash-out" status and most noninstitutionalized, stride, aged or disabled SSI recipients will be eligible for the minimum stamp allotment of $10 per month. Couples and most single, blind SSI recipients will not qualify for food stamps because the level of their SSI payments exceed the income limits under the food stamp program. Institutionalized SSI recipients will not qualify for food stamps because they do not constitute an eligible household under the provisions of the food stamp law.

TEMPORARY MEASURE

At this time, Mr. President, California has reached an oral agreement with the Department of Agriculture under which, at least until December 1978, food stamps will be distributed to eligible SSI recipients under a demonstration project system that will greatly simplify food stamp eligibility determination and distribution procedures. The State estimates that during these 4 months approximately 90 percent of the noninstitutionalized, single, aged, and disabled individuals who would be entitled to $10 a month in food stamps will participate in the program. According to the State, the estimated annual cost under the demonstration project system is $51 million for food stamp benefits and $6 million for administration.

CONVERSION TO REGULAR SYSTEM; ADMINISTRATIVE COSTS OUTWEIGH BENEFITS

The State advises that, as of January 1, 1979, it will have to begin converting from the demonstration project to the regular food stamp eligibility determination and distribution procedures. SSI recipients will then have to make application for food stamps at the local welfare offices and pick up the stamps at designated locations. After conversion to the regular food stamp system, the State estimates that participation in the program will drop to 42 percent and, on an annual basis, that $25 million will be paid in food stamps benefits with administrative costs increased to approximately $75 million. In other words, the taxpayers will be expending $3 in administrative costs for every dollar in benefits that go to recipients. Of the total costs, the Federal Government will pay all the costs of the benefits and one-half of the administrative costs, with the State paying the other half.

PURPOSE OF LEGISLATION

The object of the measure I am introducing today is to avoid this patently wasteful result by amending section 8(d) of Public Law 93–233 to provide that SSI recipients in California who would be eligible for food stamps will receive an amount in cash equivalent to the value of their food stamp entitlement. Under this legislation, if requested by the State of California, the Secretary of Health, Education, and Welfare, would, during fiscal year 1979, make an additional monthly cash payment of $10—the minimum food stamp allotment for an eligible one person household—to eligible recipients. This additional payment would be included in or with the individual's SSI check. These SSI recipients would receive this cash payment during fiscal year 1979 in place of the food stamps they would otherwise be entitled to receive.

The amendment would allow California to resume "cash-out" status beginning with the first month in which the additional payments in lieu of food stamps provided under this bill are actually made by the Secretary of HEW. These additional payments would end at the end of fiscal year 1979 or sooner with the first month California comes back into compliance with the two conditions contained in Public Law 94–379. Thus, if California resumes including cost-of-living increases in its supplementary payments before the end of fiscal year 1979, including amounts necessary to reflect all increases in the cost of living which have occurred since June 1976, the special $10 payments would cease and the State could continue its "cash-out" status under the provisions of current law. The amendments also specifies that the requirements of paragraph (2) of section

8(d) will be considered to have been met when California does make the required cost-of-living increases. This provision makes clear that, when California does resume making annual cost-of-living increases in its State supplementary SSI payment, the State will be considered to have satisfied the requirement of paragraph (2) of section 8(d) of Public Law 94-379 that such increases have been paid for all months since June 1976.

COSTS OF PROPOSED LEGISLATION

It is estimated that the total annual costs under this proposed legislation—benefits plus administrative costs—will be approximately $60 million in fiscal year 1979, or about the same as the annualized cost of the food stamp demonstration project system scheduled to begin on September 1, 1978. The benefit costs under the proposed legislation will be somewhat higher, but the administrative costs should be less. This, however, will be $40 million less than the total estimated costs after conversion, as required by law, to the regular food stamp program after January 1, 1979.

Under the regular food stamp program, Mr. President, the State estimates that it will cost about $75 million to administer $25 million worth of food stamp benefits, and the total fiscal year 1979 cost to the Federal Government will exceed $60 million. Under this proposed legislation, approximately $60 million in benefits will be provided to eligible SSI recipients with negligible administrative costs since the additional payments will be made along with regular SSI checks. Twice as many individuals will receive benefits during fiscal year 1979 under this legislation at essentially the same cost to the Federal Government. Thus, this money will go into direct cash benefits, rather than administrative costs.

Mr. President, I have been informed that this legislation will affect only the State of California, but I think that everyone of us shares an interest in seeing that funds—Federal, State, or local—intended to help the needy are expended in the most cost-effective and efficient manner. This legislation is designed to serve that purpose.

Mr. LONG. Mr. President, I know of no objection to the amendment. The Senator has explained it to me and, as he has stated, the department has no objection to it.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, will the Senator yield for a question on that amendment? I just wonder, the Senator says this is an amendment that would enable SSI recipients in California who would become eligible to receive food stamps to receive an amount of cash equivalent to the value of their food stamp entitlement; is that right?

Mr. CRANSTON. They have to convert it to regular food stamps, and it is a saving, incidentally, of $40 million.

Mr. PROXMIRE. A saving?

Mr. CRANSTON. Yes, a savings of $40 million.

Mr. PROXMIRE. How can there be a saving if they are given cash, they are paid cash?

Mr. CRANSTON. Well, effective September 1, California would no longer meet the condition of cash-out requirements because it recently suspended the cost-of-living increase in SSI supplementary benefits. Most single, aged, or disabled SSI recipients in California will become eligible on September 1 for $10 in food stamps.



The cost-benefit ratio of administering this program at conversion would be totally unacceptable. I think it would be a very costly operation.

Mr. PROXMIRE. I see. So if we do not pass this amendment the beneficiaries would receive food stamps——

Mr. CRANSTON. Right.

Mr. PROXMIRE. At great cost to the Federal Government. Instead of those food stamps they would be given $10 in cash and that would be far less expensive to administer?

Mr. CRANSTON. It would be.

Mr. PROXMIRE. To the extent of $40 million?

Mr. CRANSTON. Yes, $40 million. The taxpayers would be paying if we did not adopt this amendment $3 in administrative costs for every $1 in benefits to go to the recipients. It would be an incredibly noncost-effective program.

Mr. PROXMIRE. I am a little puzzled by that, but I am not on the Committee on Finance, and I just do not know. But you have a situation here where they are supplied food stamps because they are unable to get adequate food.

Do we have any precedent for providing cash in substitution?

Mr. CRANSTON. California is currently providing cash.

Mr. CURTIS. As provided in the law.

Mr. PROXMIRE. I thank the Senator.

Mr. CURTIS. Mr. President, I have no objection to the amendment, but I want to be recognized just briefly before we vote on the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CURTIS. Mr. President, I wish to inform the Senate, particularly the distinguished Senator from Wisconsin, that I now have the file before me.

This man worked for his employer for 34 years. He had an accumulation of $23,660.88 coming to him. Before the check was drawn to put into the IRA account to provide for his retirement, the sum of $368.31 was deducted to pay for a small fully paid up life insurance policy. The law said it all had to go over there, but because of this error of paying for a life insurance policy of $368, he was subjected to a penalty tax of $3,815.13. It amounted to 16 percent of his lifetime savings.

Instead of this being a loss to the Treasury, what it is is stopping the Treasury from gaining something they should not gain, because there was no fraud involved. It was a new law; no one told him that if he permitted his employer to pay out $368 to pay up his life insurance, and he put the rest in the plan, he would be subject to a penalty.

So, rather than being a loss in revenue, it is just preventing the imposition of an unconscionable penalty. It was one of those things that were not anticipated when we passed the law on the individual retirement.

Then, in reference to the alleged loss of revenue from the gasoline tax for crop dusters, gasoline taxes are imposed to build roads. Gasoline taxes are imposed for highway purposes. We do not impose the gasoline tax for gasoline consumed elsewhere, whether it is to generate electricity, to plow a field, or what not. This exemption relates to that fuel burned by a small airplane that does not use the highways. It cannot be said that a loss of revenue is accruing to the taxpayers. It is merely correcting a situation, so that the Government would not receive something they are not entitled to receive, because we do not impose the tax on diesel fuel or gasoline where it is not used for highways.

UP AMENDMENT NO 1811

(Purpose: To permit certain State and local governments to distribute to charity amounts generated by the advance refunding of high-yield general obligation bonds before the publication of a Treasury Department decision prohibiting such distributions and to provide relief to those jurisdictions which have already accounted for such amounts)

Mr. EAGLETON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. EAGLETON) proposes an unprinted amendment numbered 1811.

Mr. EAGLETON. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new section:

SEC. . DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN GENERAL OBLIGATION BONDS.

(a) Notwithstanding any provision of the Internal Revenue Code of 1954 or any regulation or ruling promulgated thereunder to the contrary, interest or other amounts generated by the advance refunding, before September 24, 1976, of one or more issues of general obligation bonds issued by a State or political subdivision of a State (hereinafter referred to as the "refund profit"), held in a trust fund or escrow arrangement, or held by an underwriter or other person under an agreement (whether or not enforceable), which provides for the payment of the refund profit to one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1954 and exempt from taxation under section 501(a) of such Code, may be paid out in accordance with the provisions of such agreement as if the distribution of such amount were permitted under regulations promulgated by the Secretary of the Treasury under the Internal Revenue Code of 1954.

(b) In the case of a State or political subdivision of a State which has accounted to the United States for all or a portion of the refund profit directly, or by purchasing United States obligations which bear an interest rate substantially lower than the highest rate of interest borne by public debt securities of the United States generally available for purchase at the time such obligations were purchased, the Secretary of the

Treasury shall pay, out of any amounts in the Treasury not otherwise appropriated, an amount equal to that portion of the refund profit for which the State or political subdivision has accounted to the United States. Amounts paid to a State or a political subdivision of a State shall be distributed within 180 days after receipt in accordance with the provisions of subsection (a) in the same manner as if such amounts had been held in a trust or escrow arrangement under an agreement which provided for such distribution.

Mr. EAGLETON. Mr. President, I rise to discuss an amendment to the bill currently before the Senate, which would attempt to correct a problem created by the Internal Revenue Service's efforts to clarify regulations on refinancing of tax-exempt bond issues.

On September 24, 1976, the IRS issued a press release outlining some new "do's and don'ts" for municipal bond refundings. My colleagues and I certainly do not object to this legitimate exercise of IRS authority. However, we feel that IRS has erred in trying to apply their new interpretation of the law retroactively. In doing so, IRS is changing the rules in the middle of the ball game for the seven local governments which are affected by my bill. These other jurisdictions are located in Pennsylvania, Rhode Island, Kansas, Wisconsin, West Virginia, and Alabama.

These involve seven local governments, or creations of local governments. For instance, in Missouri it is Jackson County, Mo. In Alabama it is a school district in Mobile; and other local entities of government in these other States as well. Furthermore, IRS is taking millions of dollars out of the coffers of some very worthwhile charities.

In a municipal bond refunding, Mr. President, the issuer purchases U.S. Government obligations which are deposited in escrow until the initial bond issue is refunded. Under arbitrage restrictions enacted in 1969, the Government obligations must bear a limited yield rather than a market yield. Prior to the September 24, 1976, news release, issuers could purchase these obligations in either of two ways. One way was to buy them from a private party at a price greater than the market price thereby generating a "windfall" profit which was held in escrow. The other way was to buy special low-yielding obligations issued by the U.S. Treasury, thereby generating a "windfall" for the Federal Government.

Jackson County, Mo., was one local government which had chosen to go the first route. In the spring of 1976, Jackson County refinanced $65 million worth of general obligations bonds, and in the process picked up a windfall profit of about $4 million. In order to dispose of the profit in accordance with IRS rules, the county devised a plan to distribute the money to 200 local charitable and civic organizations.

That was the situation on September 24, 1976, when IRS threw a wrench into the works with its press release. The release indicated that such "windfall" profits no longer would be allowed. Furthermore, the IRS indicated that the new interpretation would be effective retroactively. The IRS since has proposed that "windfall" profits accumulated prior to the September 24 release should be allowed to be distributed only to the U.S. Treasury, or to the investment bankers involved in the refundings. It appears that the IRS intends to regard the bonds issued as arbitrage bonds, which will lose their tax-exempt status if the windfall is distributed to charity.

It should be noted, Mr. President, that this whole issue is a matter of IRS interpretation. There is no statute on the books which would prohibit charitable distribution of this type of profit, nor were there any regulations in effect to prohibit this at the time Jackson County and the six other local governments refunded their bonds. In fact, Congress in 1973 had an opportunity to enact legislation very similar to the current IRS policy, and Congress chose not to act on the issue.

I do not quarrel with the Internal Revenue Service's right and duty to interpret the regulations. I do quarrel with the manner in which these regulations are being arbitrarily applied to seven jurisdictions which already had completed their bond refundings, and had done so in good faith and in accordance with existing rules. I further find it somewhat ironic that while the IRS will not allow the profits to be given to tax-exempt charities, they seem perfectly content to allow the profits to be given to the investment bankers who consulted on the refundings.

Mr. President, I feel that my amendment would rectify this situation, with the effect of allowing only these seven local governments to proceed with the distribution of their windfall profits. However, some of my colleagues have expressed their concern that there has not been sufficient time for committee deliberation of this amendment. I will, therefore, defer to the judgment of my colleagues on the Finance Committee and I will not call up my amendment at this time, in the hope that the Finance Committee will be able to schedule a brief and modest hearing on this subject in the near future.

While I recognize the need for adequate committee deliberation, I also recognize the urgency of the problem faced by Jackson County and the other communities, and I hope to solve that problem as quickly as possible.

I might say to the Senator from Louisiana that I talked with the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), and he indicates that, subject to necessary scheduling constraints, he would try to work this matter in before his subcommittee sometime after Labor Day. I most deeply appreciate the interest he has shown in the matter, and I compliment Senator LONG, and say to him that I appreciate the help that his staff has been to me on this subject matter.

I will pursue the matter further at a later time.

Mr. LONG. Mr. President, I thank the distinguished Senator for withholding the matter at this point. We are going to legislate in this area in connection with the big tax bill. There have been witnesses before the committee testifying, not on this particular amendment, but in favor of permitting more industrial bonds to be issued, and testifying about the jobs they have created and the employment that has been made possible in areas of the Nation that very much need the jobs.

A good case has been made that something should be done in the area, so we will be considering amendments of that nature in connection with the bill. That would be the appropriate time for the Senator to offer his amendment.

Mr. EAGLETON. I thank my colleague from Louisiana. The matter he was talking about, industrial bonds, is an analogous hearing to what I am talking about, not identical. This is a bit separate and distinct. But the broad subject matter will be before the committee. I appreciate the attention of the Senator from Louisiana.

Therefore, Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. PROXMIRE. As I understand it, the bill in its present form as amended by Senator CRANSTON is approved throughout in every detail by the Treasury Department, is that correct?

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Yes.

Mr. PROXMIRE. And, in addition, the total lost revenue is $3.5 million?

Mr. LONG. That is correct.

Mr. HASKELL. Mr. President, I have a question regarding this bill's effect on the so-called cost-floor method of calculating the tax base. I understand that this cost-floor method was developed administratively by the IRS and is nowhere reflected in the Internal Revenue Code. Therefore, this bill specifically prohibits the use of the cost-floor rule. Am I correct?

Mr. LONG. That is correct. Congress has never enacted the cost-floor rule into law.

Mr. HASKELL. I understand that no inference is to be drawn as to the application of the cost-floor rule to controversies between the IRS and taxpayers concerning sales prior to the effective date of this bill. However, as the Senator has pointed out, the cost-floor rule has never been a part of the Internal Revenue Code. Therefore, I further understand that it would be incorrect for the IRS to contend in controversies relating to sales prior to the effective date of this bill that the cost-floor rule had ever been adopted by Congress.

Mr. LONG. That understanding is correct in all respects.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The committee amendment, as amended, was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 1337), as amended, was passed.

Mr. LONG. Mr. President, I move to

reconsider the vote by which the bill was passed.

Mr. CURTIS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

An Act to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, home production of beer and wine, refunds of the taxes on gasoline and special fuels to aerial applicators, and partial rollovers of lump sum distributions.

## REFUND OF EXCISE TAX ON ALCOHOLIC BEVERAGES DESTROYED BY VANDALISM OR MALICIOUS MISCHIEF

Mr. LONG. Mr. President, I move that the Senate proceed to the consideration of Calendar Order No. 1032.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 1920) to amend section 5064 of the Internal Revenue Code of 1954 to provide for refund of tax on distilled spirits, wines, rectified products, and beer lost or rendered unmarketable due to fire, flood, casualty, or other disaster, or to breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief while held for sale.

The PRESIDING OFFICER. The Senate will proceed to its consideration.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance with an amendment to strike all after the enacting clause and insert the following:

SECTION 1. REFUND OF TAX ON ALCOHOLIC BEVERAGE LOSSES RESULTING FROM DISASTER, VANDALISM, OR MALICIOUS MISCHIEF.

(a) IN GENERAL.—So much of section 5064 of the Internal Revenue Code of 1954 (relating to losses caused by disaster) as precedes subsection (c) is amended to read as follows:

"SEC. 5064. LOSSES RESULTING FROM DISASTER, VANDALISM, OR MALICIOUS MISCHIEF.

"(a) PAYMENTS.—The Secretary, under such regulations as he may prescribe, shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of—

"(1) fire, flood, casualty, or other disaster, or

"(2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief,

if such disaster or damage occurred in the United States and if such distilled spirits, wines, rectified products, or beer were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such distilled spirits, wines, rectified products, or beer for sale at the time of such disaster or other damage.

"(b) CLAIMS.—

"(1) PERIOD FOR MAKING CLAIM; PROOF.—No claim shall be allowed under this section unless—

"(A) filed within 6 months after the date on which such distilled spirits, wines, rectified products, or beer were lost, rendered unmarketable, or condemned by a duly authorized official, and

"(B) the claimant furnishes proof satisfactory to the Secretary that the claimant—

"(i) was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, or the distilled spirits, wines, rectified products, or beer covered by the claim; and

"(ii) is entitled to payment under this section.

"(2) MINIMUM CLAIM.—Except as provided in paragraph (3)(A), no claim of less than $250 shall be allowed under this section with respect to any disaster or other damage (as the case may be).

"(3) SPECIAL RULES FOR MAJOR DISASTERS.—If the President has determined under the Disaster Relief Act of 1974 that a 'major disaster' (as defined in such Act) has occurred in any part of the United States, and if the disaster referred to in subsection (a)(1) occurs in such part of the United States by reason of such major disaster, then—

"(A) paragraph (2) shall not apply, and

"(B) the filing period set forth in paragraph (1)(A) shall not expire before the day which is 6 months after the date on which the President makes the determination that such major disaster has occurred.

"(4) REGULATIONS.—Claims under this section shall be filed under such regulations as the Secretary shall prescribe."

(b) CLERICAL AMENDMENTS.—The table of sections for subpart E of part I of subchapter A of chapter 51 of such Code is amended by striking out the item relating to section 5064 and inserting in lieu thereof the following:

"Sec. 5064. Losses Resulting From Disaster, Vandalism, or Malicious Mischief."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters (or other damage) occurring on or after the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act

SEC. 2. EXCISE TAX EXEMPTION FOR CERTAIN TRAILERS DESIGNED TO BE USED WITH LIGHT-DUTY VEHICLES.

(a) IN GENERAL.—Section 4063(a) of the Internal Revenue Code of 1954 (relating to exemptions from motor vehicle excise taxes) is amended by adding at the end thereof the following new paragraph:

"(8) CERTAIN TRAILERS USED FOR FARMING OR FOR TRANSPORTING HORSES OR LIVESTOCK.—The tax imposed under section 4061(a) shall not apply in the case of any trailer or semitrailer, or any chassis or body for any trailer or semitrailer, which is—

"(A) suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less (as determined under regulations prescribed under section 4061(a)(2), and

"(B) designed to be used for farming purposes (determined in accordance with section 6420(c)) or for transporting horses or livestock.".

(b) FLOOR STOCKS REFUNDS.—

(1) IN GENERAL.—Where, before the day after the date of the enactment of this Act, any article made exempt from taxation by reason of the amendment made by subsection (a) has been sold by the manufacturer, producer, or importer and on such day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article, if—

(A) claim for such credit or refund is filed with the Secreary of the Treasury or his delegate before the first day of the tenth calendar month beginning after the day after the date of the enactment of this Act based upon a request submitted to the manufacturer, producer, or importer before the first day of the seventh calendar month beginning after the day after the date of the enactment of this Act by the dealer who held the article in respect of which the credit or refund is claimed; and

(B) on or before the first day of such tenth calendar month reimbursement has been made to the dealer by the manufacturer, producer, or importer an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OF REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061 of the Internal Revenue Code of 1954 shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

(c) DEFINITIONS.—For purposes of subsection (b)—

(1) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(2) An article shall be considered as "held by a dealer" if the title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to articles sold on or after the date of the enactment of this Act.

Mr. LONG. Mr. President, this bill, H.R. 1920, provides for repayment of the alcohol taxes and duties paid on distilled spirits, wines, rectified products, or beer held for sale if these products are lost or ruined by fire, flood, casualty, or other disaster, or by damage—not including theft—resulting from vandalism or malicious mischief.

Mr. President, alcohol taxes become due upon the making of the product. The cost of the product thereafter, as in the hands of the retailer, includes a larger portion representing prepaid taxes than does any other type of product. In some instances of distilled spirits, more than half the cost of the product may represent taxes. Nevertheless, present law permits these taxes to be refunded to the merchant holding these alcohol products for sale only if the cause of their loss is a "major disaster" which is so declared by the President of the United States.

This bill extends the relief for loss of alcoholic products held for sale, as I have described, to certain losses that are not described by the President as "major disasters."

In order to avoid undue administrative problems to the Internal Revenue Service, the bill requires that the tax refund claimed on account of any single disaster or damage event must be at least $250. In addition, a claim must be filed within 6 months after the loss. This should also discourage unfounded claims.

Also, the committee added to H.R. 1920 the substance of H.R. 2984 as passed by the House. This amendment would exempt certain farm trailers from the 10-percent excise tax imposed on trailers

and semitrailers. The exemption would apply to farm trailers suitable for use with a "light-duty" towing vehicle.

The provision relating to alcohol taxes would reduce budget receipts by about $500,000 annually and the provision relating to farm trailers would reduce budget receipts by less than $2 million annually.

Mr. President, I urge the adoption of this bill.

Mr. PROXMIRE. Mr. President, the bill would exempt from the 10-percent manufacturer's excise tax on trucks, truck trailers, and buses, those trailers or semitrailers which are suitable for use with a towing vehicle having a gross vehicle weight of 10,000 pounds or less and which are designed to be used for farming purposes or for transporting horses or livestock. Provision also is made for refund of the tax to dealers holding tax-paid trailers exempted by the bill which they hold for sale on the day after the date of enactment of the bill.

I am just talking about the first part of the bill. The first part of the bill I understand has no objection to it. I am talking about the truck and truck trailer part.

The Revenue Act of 1971—Public Law 92-178—exempted from the manufacturer's excise tax trucks with a gross vehicle weight of 10,000 pounds or less and trailers and semitrailers with a gross vehicle weight of 10,000 pounds or less if suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less. The proposed bill would remove the present 10,000 pound limit for the exemption of trailers and semitrailers provided they were designed to be used for farming purposes or for transporting horses and other animals.

Because the trailers proposed to be exempted would have a gross vehicle weight in excess of 10,000 pounds, the exemption would be accorded to trailers with a gross vehicle weight at which single unit trucks are taxable. The proposed exemption for trailers thus would constitute an obvious discrimination against single unit trucks in the 10,000 to 20,000 pound class. That is the first objection.

The bill also would create a dual standard for trailers over 10,000 pounds gross vehicle weight which are suitable for use with pickup trucks. Those designed for farming purposes or the hauling of animals would be exempt, while trailers of the same capacity designed for hauling general merchandise, or supplies and equipment for mechanics, would continue to be taxable.

The Treasury opposes H.R. 2984 because the bill would discriminate against single unit trucks and non-farm trailers and semitrailers of the same carrying capacity. It could also be expected that there would be problems in differentiating trailers and semitrailers "designed to be used for farming purposes" from similar vehicles designed for the carriage of general cargo.

The revenue loss is small but it is a revenue loss, a loss of $2 million a year.

I would suggest to the distinguished manager of the bill, if he would be willing to do it, that he drop the second section of the bill, that is, the section dealing with trailers that I just spoke about, I would have no objection to the first section. Otherwise, I would propose that we have a division and approve the first part and then I would want to discuss at some length the second part.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I am sure the Senator realizes that this is a House-passed bill that we are talking about. It is not a bill sponsored by one of the Senators.

We could consider it at some later date if some Senator wanted to move the bill in order to expedite consideration of the bill to which the amendment is attached. I think it would be well to drop the amendment.

UP AMENDMENT NO. 1812

Mr. LONG. Mr. President, I ask unanimous consent to strike everything on page 7, line 9 through page 10, line 8. We can perhaps consider this in connection with some other measures later on.

Mr. PROXMIRE. I thank the distinguished chairman very much. I appreciate it.

The PRESIDING OFFICER. Is the Senator offering that as an amendment?

Mr. LONG. Yes, Mr. President.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 1812.

Strike everything from page 7, line 9 through page 10, line 8.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. LONG. There is no need to change the title now, Mr. President, in view of the fact that the amendment has been deleted.

Mr. PROXMIRE. As I understand it, the bill in its present form would have the support of the Treasury Department.

Mr. LONG. There is no opposition to it. The Treasury is not opposed to it.

Mr. PROXMIRE. There is no opposition to it.

Mr. LONG. That is right.

Mr. PROXMIRE. Could the Senator give us an estimate of the Treasury loss with that section he deleted?

Mr. LONG. It is about $500,000 annually, a half-million dollars. And, of course, the Senator knows that a loss to the Treasury is a gain to the taxpayer in this situation.

The PRESIDING OFFICER. Are there further amendments? If there are no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended was agreed to.

The PRESIDING OFFICER. The question is on engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 1920) was passed.

Mr. LONG. I move to reconsider the vote by which the bill was passed.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

An Act to amend the Internal Revenue Code of 1954 with respect to the refund of tax on alcoholic beverages lost or rendered unmarketable due to disaster, vandalism, or malicious mischief, and to exempt from the excise tax imposed on trailers and trailer designed to be used with a light-duty vehicle for farming purposes or for transporting horses or livestock.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. LONG. I yield.

## TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. I ask unanimous consent that there now be a period for the transaction of routine morning business, that Senators may speak up to 20 minutes, and that the period last no longer than 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGE FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

At 3:43 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 554. A joint resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.

The enrolled joint resolution was subsequently signed by the Acting President pro tempore (Mr. BURDICK).

## ORDER FOR STAR PRINT OF REPORT NUMBER 95-1125

Mr. CANNON. Mr. President, I ask unanimous consent that a star print of Senate Report 95-1125, the Deep Seabed Mineral Resources Act, be authorized, in order to make technical corrections that were omitted when the original report was filed by the committees.

The PRESIDING OFFICER. Without objection, it is so ordered.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MUSKIE, from the Committee on Environment and Public Works, with an amendment and an amendment to the title:

S. 2083. A bill to establish a uniform and comprehensive legal regime governing liability and compensation for damages and cleanup costs caused by oil pollution, and for other purposes (together with additional views) (Rept. No. 95-1152).

By Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 3467. An original bill to designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station", and to designate the U.S. Department of Agriculture Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center" (Rept. No. 95–1153).

S. 3468. An original bill to amend the Agricultural Act of 1949 to ensure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities (Rept. No. 95–1154).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 538. A resolution authorizing the reprinting of the committee print entitled "Colonization of the West Bank Territories by Israel: (Rept. No. 95–1155).

S. Res. 548. An original resolution to pay a gratuity to Valerie E. Kait, Marguerite E. Gill, and George E. Gill.

By Mr. HUDDLESTON, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment:

S. 976. A bill to amend the Perishable Agricultural Commodities Act, 1930, relating to practices in commodities (Rept. No. 95–1156).

By Mr. BARTLETT, from the Select Committee on Indian Affairs, with an amendment:

S. 1081. A bill to amend the laws relating to the Osage Tribe in Oklahoma (Rept. No. 95–1157).

By Mr. DECONCINI (for Mr. ABOUREZK), from the Select Committee on Indian Affairs, with an amendment and an amendment to the title:

H.R. 11092. An act to increase the authorization of appropriations under the act of December 22, 1974 (88 Stat. 1712) (Rept. No. 95–1158).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, with an amendment:

S. 2981. A bill to amend the Department of Transportation Act as it relates to the local rail service assistance program, and for other purposes (Rept. No. 95–1159).

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment:

S. Res. 549. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to consideration of S. 2083. Referred to the Committee on the Budget.

By Mr. RIBICOFF (for Mr. SASSER), from the Committee on Governmental Affairs, without amendment:

H.R. 8112. An act to repeal chapter 27 of title 44, United States Code (Rept. No. 95–1160).

H.R. 12915. An act to amend section 2301 of title 44, relating to the National Archives Trust Fund Board (Rept. No. 95–1161).

By Mr. RIBICOFF (for Mr. SASSER), from the Committee on Governmental Affairs, with amendments and an amendment to the title:

S. 2376. A bill to authorize withholding from salaries disbursed by the Secretary of the Senate and the Architect of the Capitol for contributions to certain charitable organizations (Rept. No. 95–1162).

By Mr. EAGLETON, from the Committee on Governmental Affairs, with an amendment:

H.R. 7747. An act to amend title 23 of the District of Columbia Code with respect to the release or detention prior to trial of persons charged with certain violent or dangerous crimes, and for other purposes (Rept. No. 95–1163).

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment:

S.J. Res. 131. A joint resolution to change the name of Copan Dam and Lake in the States of Oklahoma and Kansas to Copan Dam and the Lake of the Delawares (Rept. No. 95–1164).

By Mr. RANDOLPH, from the Committee on Environment and Public Works, with amendments and an amendment to the title:

H.R. 12112. An act designating Gathright Lake on the Jackson River, Va., as Lake Moomaw (Rept. No. 95–1165).

By Mr. SPARKMAN, from the Committee on Foreign Relations, with an amendment and an amendment to the title:

S. Res. 469. A resolution concerning the inhuman acts of the Government of Cambodia against the people of Cambodia (Rept. No. 95–1166).

By Mr. STONE, from the Committee on Agriculture, Nutrition, and Forestry and the Committee on Environment and Public Works, jointly, with an amendment:

S. 3337. A bill to terminate, in the year 1979, further construction of the Cross-Florida Barge Canal project, to adjust the boundary of the Ocala National Forest, Fla., and for other purposes (Rept. No. 95–1167).

By Mr. STONE, from the Committee on Agriculture, Nutrition, and Forestry and the Committee on Commerce, Science, and Transportation, jointly, with an amendment:

S. 3408. A bill to provide for the development of aquaculture in the United States, and for other purposes (Rept. No. 95–1168).

By Mr. FORD (for Mr. HASKELL), from the Committee on Energy and Natural Resources, with an amendment:

S. 3189. A bill to further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201(a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits, and for other purposes (Rept. No. 95–1169).

By Mr. DECONCINI, from the Select Committee on Indian Affairs, with amendments;

S. 3002. A bill to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes (Rept. No. 95–1170).

By Mr. ROBERT C. BYRD (for Mr. SPARKMAN), from the Committee on Foreign Relations, with an amendment:

S. Res. 536. A resolution expressing the sense of the Senate with respect to whether certain international agreements should be submitted as treaties (Rept. No. 95–1171).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROBERT C. BYRD (for Mr. SPARKMAN) from the Committee on Foreign Relations, without reservation:

Ex. J, 95–2. Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean (Exec. Rept. No. 95–27).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. WALLOP:

S. 3463. A bill to amend section 1035(c) tax credit for production sharing contracts; of the Tax Reform Act of 1976 relating to the Committee on Finance.

By Mr. STONE:

S. 3464. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax liability for increases in social security taxes resulting from increases in social security tax rates, and the contribution and benefit base effective after December 31, 1978; to the Committee on Finance.

By Mr. DANFORTH:

S. 3465. A bill to amend the Internal Revenue Code of 1954 to treat as public charities certain institutions which operate libraries; to the Committee on Finance.

By Mr. NELSON (for himself, Mr. PERCY, and Mr. BELLMON):

S. 3466. A bill to amend the Internal Revenue Code of 1954 to change the period for the payment of taxes under section 4161(a) of such code; to the Committee on Finance.

By Mr. TALMADGE (from the Committee on Agriculture, Nutrition, and Forestry):

S. 3467. A bill to designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station", and to designate the U.S. Department of Agriculture Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center." Original bill reported and placed on the calendar.

S. 3468. A bill to amend the Agricultural Act of 1949 to insure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities. Original bill reported and placed on the calendar.

By Mr. MOYNIHAN:

S. 3469. A bill for the relief of the Manhattan Bowery Corporation, of New York, N.Y.; to the Committee on Finance.

By Mr. MOYNIHAN (for himself, Mr. CRANSTON, and Mr. LONG):

S. 3470. A bill to amend the Social Security Act to improve the operation of the aid to families with dependent children program and thereby provide fiscal relief for State and local welfare costs; to the Committee on Finance.

By Mr. TOWER (for himself, Mr. MORGAN, Mr. HAYAKAWA, Mr. STONE, Mr. HATCH, and Mr. LUGAR):

S. 3471. A bill to postpone the increase in the minimum wage and the adjustment to the tip credit under the Fair Labor Standards Act of 1938; to the Committee on Human Resources.

By Mr. HART (by request):

S. 3472. A bill to amend the Atomic Energy Act of 1954, as amended, to provide for the protection from unauthorized disclosure of safeguards information, and for other purposes; to the Committee on Environment and Public Works.

By Mr. TOWER (for himself and Mr. CRANSTON):

S. 3473. A bill to permit Federal savings and loan associations to raise additional capital through the issuance of mutual capital certificates, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HART:

S. 3474. A bill to amend the Clean Air Act to require vehicles sold at high altitudes to comply with emission standards; to the Committee on Environment and Public Works.

By Mr. DECONCINI (for himself and Mr. KENNEDY):

S. 3475. A bill to provide for the reform of class action litigation procedures; to the Committee on the Judiciary.

By Mr. MATSUNAGA:

S. 3476. A bill to amend the Internal Revenue Code of 1954 to provide the same treatment, with respect to determination of sources of income, for interest paid by foreign branches of domestic banks and interest paid by foreign branches of domestic savings and loan institutions; to the Committee on Finance.

By Mr. RANDOLPH:

S. 3477. A bill to amend the Internal Revenue Code of 1954 to insure that the deduction for contributions to a black lung benefit

trust be allowed for any such contributions which are made for the purpose of satisfying unfunded future liability, and for other purposes; to the Committee on Finance.

By Mr. PROXMIRE (by request):

S. 3478. A bill to amend the One Bank Holding Company Act of 1970; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CHURCH:

S. 3479. A bill to amend title XVIII of the Social Security Act to prevent the imposition, under part B thereof, of more than one deductible with respect to expenses incurred for the purchase or rental of any particular piece of durable medical equipment; to the Committee on Finance.

By Mr. McCLURE (for himself and Mr. WEICKER):

S. 3480. A bill to provide representation in the Senate for the District of Columbia as if it were a part of the State of Maryland; to the Committee on the Judiciary.

S. 3481. A bill to retrocede to the State of Maryland all lands within the District of Columbia except lands owned by the United States; to the Committee on Governmental Affairs.

S.J. Res. 156. A joint resolution to provide representation in the Congress for the District of Columbia; to the Committee on the Judiciary.

S.J. Res. 157. A joint resolution proposing an amendment to the Constitution to retrocede to the State of Maryland all lands within the District of Columbia except lands owned by the United States; to the Committee on the Judiciary.

By Mr. WEICKER (for himself and Mr. McCLURE):

S.J. Res. 158. A joint resolution proposing an amendment to the Constitution to provide for Statehood for the District of Columbia; and for other purposes; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STONE:

S. 3464. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax liability for increases in social security taxes resulting from increases in social security tax rates, and the contribution and benefit base effective after December 31, 1978; to the Committee on Finance.

### INCOME TAX CREDIT FOR SOCIAL SECURITY TAX INCREASES

● Mr. STONE. Mr. President, today I am introducing a bill which will provide much-needed tax relief to the American taxpayer. This bill would provide for a tax credit against Federal income tax liability of up to $200 for the amount of the upcoming increase in the social security tax for employees, employers, and the self-employed over what the taxpayer paid in 1978.

While the social security tax rate has increased by only 1.65 percentage points in the past 10 years, the taxable wage has increased by a whopping 227 percent in the same period. Under the 1977 amendments, effective January 1, 1979, the taxable wage base will rise to $47,100 by 1988, a 604 percent increase over the 20-year period 1969–88. By 1988, this wage base will include the entire salary of most of the work force.

I am limiting the time period of this credit to 3 years in the hope that Congress by then will be able to enact comprehensive legislation which will maintain the solvency of the social security program without placing an oppressive burden on the American wage earner as will be the case if the scheduled social security tax increases go into effect without modification.

Mr. President, in this time of spiraling inflation which eats away the hard-earned wages of the American worker, the scheduled social security tax increases must be ameliorated. My proposed tax credit, though not a final answer to the problem of social security financing, will insure against a further reduction of the American worker's spendable income. It will, at least, prevent most taxpayers from shouldering the additional social security tax increase scheduled to escalate on January 1, 1979.

As can be seen by the table, workers in the $10,000–$15,000 bracket will receive a credit for their entire social security tax increases over the next 3 years ($60 and $90 respectively in 1981). The worker in the $20,000-a-year bracket will be entitled to a tax credit for the entire amount of the scheduled increase in 1979 and 1980, and $200 of the $260 scheduled increase in 1981. Those in the higher level income brackets, $25,000 and up, will receive the maximum credit of $200 for each of the 3 years which will partially offset these increases in social security taxes.

Mr. President, there is no doubt about the fact that adequate social security funding is a necessity. The personal well-being of millions of our citizens depends on it. However, it is equally important that, in funding the social security program, we do not place an intolerable Federal tax burden on the American worker. While this proposal should not by any means be the extent of or only approach for tax relief adopted this year, it does address directly the problem of scheduled social security tax increases. I hope that the Senate Finance Committee will review this proposal carefully as it continues its consideration of a tax reduction bill this year.

Mr. President, I ask unanimous consent that the text of the bill, together with the table, be printed in the RECORD following my statement.

There being no objection, the bill and table were ordered to be printed in the RECORD, as follows:

S. 3464

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. ALLOWANCE OF CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of subchapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44B the following new section.

"SEC. 44C. POST–1978 INCREASES IN SOCIAL SECURITY TAX LIABILITY.

"(a) GENERAL RULE.—

'(1) EMPLOYEES AND SELF-EMPLOYED INDIVIDUALS.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the excess social security tax liability of the individual for the taxable year.

"(2) EMPLOYEES.—In the case of an employer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the excess social security employer tax liability of the taxpayer for the taxable year.

"(b) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the amount of tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(c) DEFINITIONS, SPECIAL RULES.—

(1) EXCESS SOCIAL SECURITY TAX LIABILITY.—For purposes of this section, the term 'excess social security tax liability' means the amount by which—

"(A) the liability of the individual for taxes imposed under sections 1401 and 3101 for the taxable year, exceeds

"(B) the amount of such liability which would be determined for the taxable year if—

"(i) the rates of the taxes imposed under section 1401 totaled 8.1 percent,

"(ii) the rates of the taxes imposed under section 3101 totaled 6.05 percent, and

"(iii) the contribution and benefit base determined under section 230 of the Social Security Act were $17,700

"(2) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT EMPLOYEES.—For purposes of this section, any tax imposed on an employee of any State or political subdivision thereof—

"(a) which is paid by the State to the Federal Government under an agreement under section 218 of the Social Security Act, and

"(B) which, under such agreement, is equivalent to the tax imposed by section 3101, shall be treated as a tax imposed by section 3101.

"(3) EXCESS SOCIAL SECURITY EMPLOYER TAX LIABILITY.—The term 'excess social security employer tax liability' means the amount by which—

"(A) the liability of the taxpayer under subchapter B of chapter 21 for the taxable year exceeds

"(B) the amount of such liability which would be determined for the taxable year if—

"(i) the rates of tax imposed under section 3111 totaled 6.05 percent, and

"(ii) the contribution and benefit base determined under section 230 of the Social Security Act were $17,700.

(c) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44C. Post-1978 increases in social security tax liability.".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall apply with respect to taxable years beginning after December 31, 1978, and before January 1, 1982.

INCREASE IN SOCIAL SECURITY TAX FROM 1968–78 (BROKEN DOWN BY INCOME BRACKETS)

| Income | Increase | Percent increase |
|---|---|---|
| $10,000 | $251.80 | 53.74 |
| 15,000 | 554.30 | 161.50 |
| 20,000+ | 727.65 | 212.00 |

INCREASE IN SOCIAL SECURITY TAX FROM 1978–81

| | | |
|---|---|---|
| $10,000 | $60.00 | 9.9 |
| 15,000 | 90.00 | 9.9 |
| 20,000 | 260.15 | 24.3 |
| 25,000 | 591.65 | 55.3 |
| 30,000+ | 904.20 | 84.4 |

AMOUNT OF TAX CREDIT GIVEN (BROKEN DOWN BY INCOME BRACKET AND YEAR)

| Income | 1979 | 1980 | 1981 |
|---|---|---|---|
| $10,000 | $8.00 | $8.00 | $60.00 |
| 15,000 | 12.00 | 12.00 | 90.00 |
| 20,000 | 155.15 | 155.15 | 200.00 |
| 25,000+ | 200.00 | 200.00 | 200.00 |

By Mr. DANFORTH:

S. 3465. A bill to amend the Internal Revenue Code of 1954 to treat as public charities certain institutions which operate libraries; to the Committee on Finance.

● Mr. DANFORTH. Mr. President, I am introducing a bill to provide that any tax-exempt institution that operates a bona fide library, as a permanent and principal part of its public services, that is organized by a special act of the United States of America, by any State or its predecessor government, by the District of Columbia, or by any possession of the United States, shall be treated as a public charity. Because the investment income from their endowments prevents them from obtaining "public status" under current law, many tax-exempt institutions which operate libraries as a part of their public services, including those created by legislative act, are classified as private operating foundations or as private foundations for Federal income tax purposes.

As a result, although these organizations are established and operate exclusively for educational purposes, they are subject to the complex private foundation rules, they must keep many detailed records, and they must pay a 4 percent excise tax based upon net investment income. It has been determined that certain of these institutions should be designated as "public charities" for Federal income tax purposes because of the benefits that the libraries of these institutions provide to the public. Private foundation rules are no more pertinent to them than to any other educational institution and effectively limit or inhibit organizations' use of their funds in the performance of tax-exempt activities. Furthermore, private foundation rules discourage grants of funds to such institutions by charitable foundations, and by private parties and corporations.

This bill would place these institutions in the same category as educational organizations described in section 170(b)(1)(A)(ii). To insure that only those institutions that operate libraries that are clearly organized to serve the public will benefit, this provision is limited to only those organizations that were organized by a special legislative act and that maintain permanent library facilities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3465

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) clause (ii) of section 170(b)(1)(A) of the Internal Revenue Code of 1954 (relating to charitable, etc., contributions and gifts) is amended by adding at the end thereof "or any institution which operates a library which was established by State or Federal law and which is operated as a permanent and principal part of the public services of such institution.".

(b) Paragraph (1) of section 170(b) of such Code is amended by adding at the end thereof the following new subparagraph:

"(F) Libraries established by State or Federal law.—For purposes of subparagraph (A)(ii), a library shall be treated as established by State or Federal law if such library was established as a library—

"(i) by a law of a State, a law of the United States, a law of a possession of the United States, or a law of the District of Columbia, or

"(ii) before 1743 in the geographic area now comprising the United States."

(c)(1) The amendments made by this section shall apply to contributions made on or after the date of enactment of this Act, and to taxable years beginning after such date.

(2) For purposes of sections 509(b) and 507 of such Code, an organization which for its first taxable year beginning after the date of enactment of this Act is described in the amendment made by subsection (a) shall be treated as not having been a private foundation at any time before the first day of such first taxable year.

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By Mr. TALMADGE (from the Committee on Agriculture, Nutrition, and Forestry):

S. 3467. A bill to designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station," and to designate the U.S. Department of Agriculture Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center". Original bill reported and placed on the calendar.

● Mr. BENTSEN. Mr. President, it is my privilege and my great pleasure to join as a cosponsor of S. 3647, a bill which would in part designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the W. R. "Bob" Poage Pecan Field Station.

Congressman W. R. "BOB" POAGE has given dedicated and outstanding service to the citizens of central Texas since 1925, as State representative, State senator, and as U.S. Congressman since 1936.

BOB POAGE has served with distinction on the House Agriculture Committee for the last 38 of his 42 years in Congress, serving as vice-chairman and chairman of the committee. His energy, talent and dedication to agriculture have earned him the title of "Mr. Agriculture" throughout his home State of Texas. He has been instrumental in shaping every major piece of agricultural legislation since the Roosevelt administration, and he has labored tirelessly for the "little man" in agriculture. BOB POAGE has been instrumental in passing legislation which has helped our family farmers to have electricity, telephones, rural water systems, flood control, soil conservation, adequate credit, and many other things which we consider basic necessities today.

Electricity and telephones are taken for granted by those who live in cities, but those who live in rural areas know that BOB POAGE has spent a lifetime working to defend the rights of those citizens who live on small farms and in rural communities to work and earn a decent and responsible living, and to enjoy the fruits of our modern technology which others take for granted.

Congressman BOB POAGE is just as much a unique part of central Texas as the stately and productive pecan trees which line its creeks and rivers. His retirement this year will leave a gap that those of us who have been privileged to serve as his colleagues know will not soon be filled.

It is only fitting that such a man as Congressman BOB POAGE should be honored by this body for his exemplary service to the citizens of central Texas and to the small farmers and ranchers who are the backbone of our most vital and viable industry—agriculture.

I urge the Senate to remember this unique dedication to agriculture and to the people of central Texas by designating the U.S. Department of Agriculture's Pecan Field Station in Brownwood, Tex., at the "W. R. 'BOB' POAGE Pecan Field Station".●

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By Mr. MOYNIHAN (for himself, Mr. CRANSTON, and Mr. LONG):

S. 3470. A bill to amend the Social Security Act to improve the operation of the aid to families with dependent children program and thereby provide fiscal relief for State and local welfare costs; to the Committee on Finance.

STATE AND LOCAL WELFARE REFORM AND FISCAL RELIEF ACT OF 1978

● Mr. MOYNIHAN. Mr. President, the bill that Senators CRANSTON, LONG and I are introducing today takes a significant step toward the constructive reform of the American welfare system. It would move us toward acknowledgment of the principle that welfare is a national responsibility and the National Government should bear the primary burden of paying for it. The States should have the ability to design and administer appropriate programs and should retain a limited financial involvement. But as promised in the 1976 platform of the Democratic Party "local governments should no longer be required to bear the burden of welfare costs."

This measure would provide substantial fiscal relief to hard-pressed State and, especially, local governments, with proper emphasis on those jurisdictions whose fiscal burdens result in large measure from conscientious efforts to serve their dependent families adequately.

But much more than fiscal relief is involved. This bill would allow significant improvement in welfare benefits in States where they are presently low. In every State, it would allow benefit levels to keep pace with the rising cost of living. This is particularly important to me, because in New York City the benefits "freeze" occasioned by the city's severe fiscal problems has resulted in a 28 percent decline in the purchasing power of an AFDC recipient's grant during the past 4 years.

I would ask persons concerned, as I have been, with the welfare of welfare recipients to consider that in New York State this has meant that for the first

time in history we have cut our provision for the poor. Inflation has cut payments—by more than one-quarter—just as surely as the most punitive administrative or legislative measures might have done. Stalemate on welfare reform has punished the poor.

This bill offers an opportunity to break that impasse and to renew the momentum of welfare reform. For let me be clear: This bill does not contain all that I would like to see done. But it does contain worthwhile changes in the present system that the Congress is capable of making this year. And there is no reason again to allow "the best to become the enemy of the good" in the field of welfare reform. Let us do what we can do this year. And let us return to do more next year, and the year after that.

A word on the "block grant" approach, which is a major structural change from the current system of "matching payments." A familiar goal of most welfare reform proposals of the past decade, indeed one may fairly say part of the conventional wisdom about welfare reform, has been establishment of a uniform national program. Yet recent research, demonstration projects and experiments have led to widespread doubt that enough is known about the causes and remedies of dependency to permit us to move confidently toward a uniform national program. Instead, our bill would change the nature of the incentive structure so as to give the strongest encouragement for reforming welfare to the level of government that has the primary administrative role.

We propose to increase the current Federal share of AFDC costs by amounts sufficient to replace local expenditures in most jurisdictions that still require them. Over time we will seek further increases sufficient to make the Federal share equivalent to at least 75 percent of each State's AFDC outlays in the base period (adjusted for cost-of-living increases), thus entirely eliminating the "local share" in every jurisdiction; in States with lower benefits during the base period, the Federal share will approach 100 percent, thus permitting State funds to be used for improved benefit levels.

The eventual Federal assumption of all county AFDC costs will have a significant effect on the fiscal stability of local governments in the United States and on their ability to reduce taxes, particularly the onerous property tax. In New York, for example, if local governments choose to pass this relief through to taxpayers, most county property taxes could, in time, be cut by 10 to 20 percent. As early as fiscal 1980 there could be reductions of 4 to 8 percent.

We also propose to change the nature of the Federal commitment to AFDC financing from an open-ended matching grant to a block grant, initially set at a significantly increased amount and thereafter fixed, save for annual "cost of living" increases and legislated additions aimed at achieving the 75 percent floor and eliminating the local share. As a result, the level of government subject to the main variation in welfare costs will be the States. If expenditures rise faster than the Federal block grant, States must absorb the costs.

Similarly, if expenditures are reduced as the result of better management or an effective plan for dealing with dependency, States will realize the savings. There can be no stronger incentive than to pay the price for one's actions and to reap the reward. Our bill would, for the first time, place this incentive at the heart of our welfare policy. Its underlying assumption is the American federalism offers a constructive solution to contemporary doubts about how to reform welfare.

For the genius of a Federal system is that it permits a variety of approaches to resolving common problems. Perhaps Connecticut or Missouri, Tennessee or Oklahoma will discover a new and effective way of dealing with dependency; so long as they conform with minimum Federal standards they should be encouraged to try. The financing formula contained in our bill gives them a powerful incentive to do so. Far from taking the steam out of welfare reform, our bill should lead to a profusion of innovative efforts as States come to realize that their own self-interest lies in an efficient, humane and sensible program of assistance.

Perhaps in time one or another of these State programs will seem so clearly desirable that the manifold obstacles to national legislation will dissolve. The logjam on welfare reform has persisted for a decade now; our bill offers a real chance for ending it and setting in motion a process that will produce true solutions to the problems of poverty and dependency.●

WELFARE LEGISLATION

● Mr. CRANSTON. Mr. President, I am introducing today, along with the chairman of the Senate Finance Committee, the Senator from Louisiana (Mr. LONG), and the chairman of the Finance Committee's Public Assistance Subcommittee, the Senator from New York (Mr. MOYNIHAN), a bill to provide fiscal relief to States and localities, and to begin movement toward the type of welfare reforms that are so urgently needed throughout the country. I thank Senator Moynihan, who for so long has been a leader in the effort to achieve welfare reform, and Senator LONG, who has likewise played such a vital role in this field, for their cooperation in this mutual effort.

MODIFIED PROPOSAL

Mr. President, nearly 2 months ago, when it became apparent that it was no longer possible to enact comprehensive welfare reform legislation during this Congress, Senators MOYNIHAN and LONG and I announced a joint effort to sponsor a measure to provide fiscal relief to the States along with certain measures to achieve some reforms in the welfare system, as well as strengthen existing tax credits to encourage the employment of welfare recipients in the private sector and provide tax benefits to low-income workers.

Mr. President, we originally envisioned a more extensive measure than that which is being introduced today. In order to get started with legislation that can be enacted this year, we are introducing a more limited bill, but one that provides much needed fiscal relief and movement toward the reform greatly needed. The measure being introduced today would provide for a block grant to States based upon their current aid to families with dependent children—AFDC—costs with an additional $1.5 billion dollars to be distributed annually among the States through a three-part formula. This formula would provide for distribution of $1.32 billion based upon a State's current AFDC costs and a revenue sharing formula. This formula was adopted by Congress last year in a more modest welfare relief measure.

COST OF LIVING

The legislation also would provide for a cost-of-living increase each year on the State's block grant. This cost of living would be passed on to the recipients unless the State made a specific finding that such a cost-of-living increase was not necessary for the State to provide adequate benefit payments to welfare recipients.

TIMING OF FISCAL RELIEF

Mr. President, this legislation provides for the payment of additional Federal financial assistance to the States and localities beginning in the first quarter after June 30, 1979. Thus approximately $400 million of the total additional funding will be made available to the States and localities during fiscal year 1979, with the remainder of the additional funding with cost-of-living adjustments provided in the succeeding quarters.

The first year total additional Federal financial assistance—formula distribution plus cost of living—will be approximately $1.5 billion.

BLOCK GRANT APPROACH

Mr. President, under the block grant approach, a State would be able to retain any savings it achieved through reduction of welfare costs and implementation of welfare reform measures. States will thus have an incentive to eliminate error, fraud or abuse as well as help welfare recipients get work.

Mr. President, this bill would provide that funds received by States under the block grant would be restricted to social welfare programs. In other words, any savings achieved in the welfare program must be expended on other social welfare programs, not general governmental matters.

Mr. President, I know that many people are concerned about the possible adverse consequences of a block grant approach. Our original proposal envisioned a higher annual level of additional Federal financial assistance than the amounts proposed in the legislation being introduced today. This amount, however, was reduced in light of the indications we have received that the House will simply not accept fiscal relief on the scale we originally outlined.

While the reduction in the amount of fiscal relief may diminish the attractiveness of the block grant approach, I think that this approach still offers opportunities and incentives for some welfare reform movement on the State and local level. I believe that it is still useful to have this block grant approach considered this year. I know that the sponsors of this legislation certainly welcome the constructive modifications and refine-

ments which may be offered by other Members of the Senate who share our concern and interest in finding solutions to our welfare problems.

EMPLOYMENT TAX CREDITS

Mr. President, in our original proposal, we indicated that this legislation would provide for substantial increases in the existing welfare recipient/employer tax credit and the earned income tax credit. The measure being introduced today does not contain those provisions, but we fully intend to move ahead with these measures in separate tax legislation before this session of Congress adjourns.

CONTINUED MOVEMENT TOWARD COMPREHENSIVE WELFARE REFORM

Mr. President, I have previously indicated my continued support for a comprehensive reform of our current welfare system. At the same time, I believe it is essential that we take immediate steps to provide some fiscal relief to State and local taxpayers who are struggling under the current costs of our welfare system, as we begin—in this Congress—our efforts to provide incentives for more comprehensive welfare reform.

I do not believe that we can continue to hold this fiscal relief hostage for more comprehensive reforms. Indeed, continuation of the existing financial pressures upon States and localities to pay the costs of welfare programs may well result in a fiscal backlash to the ultimate detriment of welfare recipients. There is a desperate need to change a welfare system that no one likes—neither the taxpayer who foots the bill, nor the administrators who run the welfare programs, nor the recipients who supposedly benefit from them. This legislation is a start in that direction.●

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By Mr. TOWER (for himself, Mr. MORGAN, Mr. HAYAKAWA, Mr. STONE, Mr. HATCH, and Mr. LUGAR):

S. 3471. A bill to postpone the increase in the minimum wage and the adjustment to the tip credit under the Fair Labor Standards Act of 1938; to the Committee on Human Resources.

INFLATION REDUCTION AND JOBS PROTECTION ACT

Mr. TOWER. Mr. President, less than a year ago, the Senate considered legislation which was subsequently enacted to amend the Fair Labor Standards Act. As a result of that law, the minimum wage rate of $2.30 was increased to $2.65 at the beginning of this year, and it will continue to rise to $2.90 in 1979, $3.10 in 1980, and $3.35 in 1981.

In addition, changes were made in the tip credit section of the law to reduce the amount of tip income which can be counted toward the minimum wage amount. These changes are scheduled to begin in January of 1979, when the tip credit will be reduced from 50 to 45 percent, and continue in 1980 with a further reduction to 40 percent.

During Senate debate on this bill, a number of us warned against this action, citing the bill's potential for increasing inflation and boosting unemployment. Unfortunately, our efforts did not prevail: And even more unfortunately, we find ourselves, less than 1 year into the scheduled rate increases, with the dubious honor of being able to say "I told you so."

Just look at the facts. We are quickly approaching double digit inflation in this country, and in fact by some economic calculations we are already there. The unemployment rate for youth, who are most immediately affected by changes in the minimum wage is 16.3 percent. And for young blacks, the jobless rate is a staggering 37 percent. The decline of the dollar in international markets has become a problem of major concern, and the threat this poses to financial markets and our economic well-being in general is creating an uneasy feeling among financial experts. If domestic inflationary problems continue unchecked, we can expect dire consequences in the world marketplace.

And if the statistics are not enough, listen to what the economic experts are saying. Men and women of all philosophical persuasions—from academia, the government, and the private sector—all cite the minimum wage as a tool of inflation, and many have advocated the sound judgment that we should slow down here: That we should postpone some of this action to give the economy a chance to revive.

For example, William Miller, Chairman of the Federal Reserve Board, said he "personally would welcome" a 2-year deferral of the minimum wage increase scheduled for January 1. Testifying before the House Budget Committee, Miller said:

> It seems appropriate to consider deferring the increase in the minimum wage that is scheduled for January 1, 1979, given its implications for costs and for youth employment opportunities. . . .

Others have echoed this thought. Arthur Okun, senior economist at the Brookings Institution and former Chairman of the Council of Economic Advisers under Lyndon Johnson, echoes this opinion. According to Okun:

> The country would be better off if we postponed both the minimum wage and the social security hikes. . . . It would be worth one-half a point on the Consumer Price Index and make the economy outlook for 1979 significantly better.

Mr. President, I could cite similar comments from a great many people here—Barry Bosworth of the Wage and Price Stability Council; Alice Rivlin, Director of the Congressional Budget Office; Secretary of the Treasury Michael Blumenthal; economist Milton Friedman; Joel Popkin of the National Bureau of Economic Research; economist Walter Williams from Temple University, and the list goes on and on.

In response to the realistic and widely held view that action should be taken, I am today introducing legislation to curb this agent of inflation in order to prevent even further weakening of our economic condition, at home and abroad. I am pleased to have as coauthors of my bill my distinguished colleague from North Carolina, Mr. MORGAN, from California, Mr. HAYAKAWA, from Florida, Mr. STONE, and from Utah, Mr. HATCH. I invite others to join us in this effort.

The provisions of our bill are simple and straightforward. We propose a 1-year moratorium on the scheduled minimum wage increases, as well as a 1-year postponement of the changes scheduled to take effect in the tip credit provisions.

I believe that Congress must take the initiative here and acknowledge the well-recognized fact that the size and the timing of last year's minimum wage increases, while undoubtedly a political plus among many sectors, was a serious economic mistake. And the brunt of this misguided policy will fall hardest on those very individuals whose earnings are most closely associated with the minimum wage level.

I am reminded here of an interesting commentary on this issue written by William Raspberry. The subjects of Mr. Raspberry's article are William and Willie May Clark, who run the Sparkle Car Wash right here in Washington. Commenting on the proposed wage increases, Mrs. Clark says:

> It would just about put us out of business . . . and not just us. A lot of blacks trying to make it in business would be hurt by this.

Today we are considering legislation here in the Senate to extend the Comprehensive Employment and Training Act, and I have been a supporter of CETA programs, particularly as they encourage private sector employment and job training. While I continue to support Federal efforts to provide meaningful employment assistance, I think we might be well advised to consider an interesting relationship between this CETA legislation, which I expect will pass today, and the minimum wage laws.

To the extent that these scheduled increases in the minimum wage will boost inflation, these inflated costs will be reflected in higher Federal spending. It is estimated the Government-sponsored jobs, such as those in this CETA bill, cost the taxpayers about $16,000 per job. Now here we are, passing one law which has already cost nearly $2.4 billion in terms of lost jobs just this year, and now we are about to pass another law costing over $8 billion in 1979, to create new jobs. Let us face it: There is a nice little racket going on here. On the one hand, Congress is throwing thousands of people out of work, only to turn right around and cite the resulting unemployment statistics as a basis for more Government make-work programs. Once again, the taxpayers are being taken for a ride.

Mr. President, it is time to put politics aside here and deal with the practicalities. Based on the cold, hard facts, and on the advice of a wide range of economic experts, I believe that the action we offer today constitutes a reasonable and effective approach to dealing with our economic problems.

Mr. President, I ask unanimous consent that our bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3471

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Inflation Reduction and Jobs Protection Act".

SEC. 2. (a) Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206

(a)(1)) is amended by striking out "1979" and inserting in lieu thereof "1980" and by striking out "1980" each time it appears in such section and inserting in lieu thereof "1981" in each case.

(b)(1) Section 3(b)(1) of the Fair Labor Standards Amendments of 1977 is amended by striking out "1979" and inserting in lieu thereof "1980".

(2) Section 3(b)(2) of the Fair Labor Standards Amendments of 1977 is amended by striking out "1980" and inserting in lieu thereof "1981".

(c) The amendments made by this section shall take effect on the date of enactment of this section or on December 1, 1978, whichever first occurs.

Mr. MORGAN. Mr. President, the bill which I am introducing today along with Senator TOWER is a very serious piece of legislation. It is by no means an attempt to destroy the minimum wage legislation hammered out by the Senate last October.

Last year I voted against the minimum wage law. Primarily I was concerned about the cost of the measure to the economy and about the absence of a youth differential from the bill. I will not raise those issues here. The Congress expressed its will and the measure is now law.

Today, my concern is that much of what was predicted to result from increasing the minimum wage rate has come to be.

Our inflation rate is simply running at too high a level. During the first quarter of this year, inflation was eating away at our income at a rate of 9 to 10 percent. Predictions from the White House are that we may see an annual figure of 7.2 percent and the Congressional Budget Office has projected even higher figures.

This year the minimum wage went up 15 percent. Next year and through 1981, it will go up at a rate of 9 percent annually. While an increase in the minimum wage rate does not account for all inflation, it has been asserted that as much as ½ percent of our inflation rate can be seen to flow directly from the minimum wage increase.

What we are urging the Senate to do is to put a 1-year moratorium on the increase in the minimum wage. We are asking for a delay of 1 year. We are not attempting to undo what the Congress has seen fit to do. Again, we are simply seeking a delay in the next increase so as to ease the inflationary pressure on the economy.

William Miller of the Federal Reserve Board, Mr. Blumenthal, the Secretary of the Treasury, Mr. Barry Bosworth, head of the President's Council on Wage and Price Stability and Arthur Okun of the Brookings Institution have all endorsed this approach.

I will not touch on the impact the minimum wage increase has had on general unemployment, minority unemployment or on our youth employment. I do want to restate that this bill simply attempts to delay the increase in the wage rate for 1 year. A move which may help the inflation rate, may increase the number of jobs and give more confidence to our people in their economy and Government. I believe this to be a sound move for our people and for our economy.

Mr. HAYAKAWA. Mr. President, I wish to join my colleague, Senator TOWER, in support of his efforts to delay the next increment of the minimum wage increase scheduled to go into effect this January. I have, in the past, opposed raising the minimum wage levels. I have gone so far as to introduce legislation that would have allowed young people to work for less than the minimum wage, allowing them to get good apprentice jobs.

Mr. President, in October of 1977, the Senate considered and passed legislation to raise the minimum wage level gradually over a period of several years. At that time, I opposed this measure, and spoke in defense of the people who would be harmed by a rise in the minimum wage levels. I said it then and I say it again now—the unemployed and the young are the people most harmed by a rise in the minimum wage. Raising the minimum wage does nothing to help them. If anything, raising the wage level prices them out of the job market. How many businesses that you can think of, aside from big, big businesses, can afford to pay a 17 year old $2.65 an hour to learn a job? Not many, I think. If I were a small businessman, I, too, would hesitate to pay someone with so little job experience that much money.

I have in the past made serious efforts to pass legislation to enable young people to work for less than the minimum wage. This way an employer can hire a young, inexperienced, but willing worker to learn a trade while getting paid. I firmly believe that this must be done if we are to begin solving the youth unemployment problem. I do not have to tell any of you how important it is for people to have a sense of personal worth and financial independence. Jobs providing pocket money are a necessary part of growing up. The money gives a young man or woman the freedom to go on dates, buy lunch instead of carting a brown bag to school, and buy their own clothes. These are all things that are important to young people growing up today in America. This extra money that is earned by oneself is special money—money that was worked hard for, and which proves to the young person, and to society, that the youth is self-sufficient.

Look at your own children—or at yourself. Do you remember the first dollar you earned? It seemed so special because it was something that you earned by yourself without anyone's help. Earning money teaches the value of money. It also gives a person an exhilarating feeling—one that tells you that you can take care of yourself—that you are able to make it in the real world.

Those who favor increases in the minimum wage genuinely believe that they are helping people at the poverty level. Those who oppose raising the minimum wage, including myself, want to help the poor also. However, large increases in the minimum can be counterproductive, because although higher minimums may raise wages for some workers, they can bring others total unemployment. Increases in the minimum wage, by increasing the price of low-productivity labor, reduce the demand for that labor. As a result the number of young, poor, and other low-productivity workers declines. The very people who are supposed to be helped are hurt in a terrible way. Four out of every five black teenagers cannot find work. Is it better to be out of a job at $2.65 an hour or to have one at a lower wage? If you ask anyone who wants to, but cannot find a job, they will tell you it is better to have a job at any wage than none at all.

One argument in favor of raising the minimum is that the current level is not high enough to ensure a good standard of living for workers. They argue that the current minimum leaves some workers at the poverty level. But they do not see that raising the minimum wage leaves the problem unsolved. Not having enough money is related to income, not the level of the minimum wage. People who lose their jobs as the result of a minimum wage increase—because employers cannot afford employees at a higher wage—suffer a decline in income, not an increase.

Raising the minimum wage affects all parts of society. It has been debated whether or not the minimum wage adds to inflation. This debate is active now because two advisers to President Carter, Federal Reserve Board Chairman G. William Miller and Treasury Secretary W. Michael Blumenthal have recently suggested that the next scheduled increment in the minimum wage be delayed. I agree with this, and believe that we should postpone this next increase for 1 year. How are employers to make up for this mandated rise in wages? They must either raise the price of goods to cover the cost of these higher wages, or they lower the quality of the goods so that they do not raise prices. Either way, the effects of a higher minimum wage are felt by all of us. The average consumer today squawks about the high cost of living—an increase in the minimum wage would only aggravate the situation.

I recall a phrase that many of us use quite frequently—the "American work ethic." Minimum wage laws, union demands and other factors have all but made this phrase meaningless. It used to mean hard, honest, fair work. No more. Our work ethic has become something altogether different. We have even taken away the incentive to look for jobs. Now those people we have kept from gaining work because of the minimum wage get jobs paid for by the taxpayer. I believe that most people who take public service jobs do so simply because they were priced out of others. We would not need all of these public service programs if we did all in our power to enable people to get jobs in the private sector.

Business and industry would prefer to decrease unemployment through the action of a free-market private sector rather than through Federal make-work programs. However, if Congress continues to increase the minimum wage, the unemployment problem will continue to grow. Business wants to grow and absorb the young and capable worker who wants a job; we cannot deny business the right to have a good worker at an affordable price, and we must not deny

those willing to work their freedom to do so.

I say let us listen to the wise advice of Reserve Board Chairman Miller and delay the next increment in the minimum wage. Our economy and the level of inflation need our help and good sense now. In the face of the declining U.S. dollar abroad, we must do everything we can to help ourselves and the country return to a sound economic base.

I ask my colleagues to join with me to support a postponement of the next minimum wage rise. Those who are skeptical, just take a look at the growing inflation and interest rates. We must do something now. This is not a time for the Government to add to inflation. Let us do what we can to control it; we have a choice—I ask for your support.

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By Mr. HART (by request):

S. 3472. A bill to amend the Atomic Energy Act of 1954, as amended, to provide for the protection from unauthorized disclosure of safeguards information, and for other purposes; to the Committee on Environment and Public Works.

NUCLEAR SAFEGUARDS INFORMATION PROTECTION ACT

● Mr. HART. Mr. President, by request, I am introducing legislation proposed by the Nuclear Regulatory Commission to provide for the protection from unauthorized disclosure of safeguards information. While I am not prepared to endorse the provisions in this legislation, the bill does address an important issue that warrants thorough consideration by the Congress.

In the months ahead the Senate Committee on Environment and Public Works Subcommittee on Nuclear Regulation will meet to address this issue. Though there will not be time for the subcommittee to complete its work before the end of the session, I fully anticipate that our work this fall will enable the committee to act early next year.

Mr. President, so that my colleagues and their staff might have the opportunity to review this proposal, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3472

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That Chapter 12 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof a new section 147 to read as follows:

SEC. 147. SAFEGUARDS INFORMATION.

a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of Title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of:

(1) safeguards information which identifies a licensee's or applicant's detailed—

(a) control and accounting procedures, security measures, including security plans, procedures and equipment, for the physical protection of special nuclear material in quantities determined by the Commission to be significant to the public health and safety or the common defense and security from the standpoint of theft, diversion or sabotage, by whomever possessed, whether in transit or at fixed sites;

(b) security measures, including security plans, procedures and equipment, for the physical protection of source material or by-product material in quantities determined by the Commission to be significant to the public health and safety or the common defense and security from the standpoint of theft, diversion or sabotage, by whomever possessed, whether in transit or at fixed sites; or

(c) security measures, including security plans, procedures and equipment, for the physical protection of, and the location of certain plant equipment vital to the safety of, production or utilization facilities involving nuclear materials covered by (a) and (b) in this paragraph; and

(2) studies, reports and analyses which are conducted by or on behalf of the Commission, its licensees, or applicants for Commission licenses and which concern the safeguarding of nuclear materials or facilities against theft, diversion or sabotage.

The Commission shall exercise the authority in this subsection so as to apply the minimum restrictions needed to achieve the objectives of protecting the health and safety of the public or the common defense and security, and upon a determination that the unauthorized disclosure of such information could have a significant adverse effect on the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of such material or such facility. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

SEC. 2. Section 181 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

GENERAL

"SEC. 181. The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: *Provided, however,* That in the case of agency proceedings or actions which involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information or such protected information were not involved.".

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By Mr. TOWER (for himself and Mr. CRANSTON):

S. 3473. A bill to permit Federal savings and loan associations to raise additional capital through the issuance of mutual capital certificates, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SAVINGS AND LOAN ASSOCIATIONS MUTUAL CAPITAL CERTIFICATE ACT

● Mr. TOWER. Mr. President, I am introducing legislation today, on behalf of Senator CRANSTON and myself, that will increase the availability of funds for housing. This legislation will allow savings and loan associations to increase their capital by issuing mutual capital certificates. This, in turn, will increase the lending capacity of savings and loan associations and permit them to make more home loans. The same bill was introduced in the House by Representative GARRY BROWN on June 12 of this year and by Banking Committee Chairman REUSS on August 12.

This legislation is needed to help savings and loan associations meet the increasing demand for housing. The savings and loan industry is the major source of funds for housing in this country. But, many savings and loan associations are finding it difficult to increase their capital, and the lack of sufficient capital has limited their ability to make mortgage loans.

Overall, the savings and loan industry has experienced a substantial decline in its capital position since the early 1950's, as shown in the accompanying table. Many savings and loans have experienced an even more dramatic decline in their capital position than the industry as a whole. The result has been a serious limitation on the ability of many savings and loan associations to finance homeownership.

The savings and loan industry is not the only industry that needs to increase capital. Many industries in our economy are experiencing a capital shortage and need to increase their capital if they are to continue growing and providing the opportunity for meaningful and productive employment. The availability of sufficient capital is important to our Nation's financial system if it is to continue to meet the increasing demand for credit. But, the lack of sufficient capital poses a special problem to the savings and loan industry. Most savings and loan associations are mutual institutions and cannot raise capital by issuing stock. The only way they can increase their capital is through retained earnings.

One approach to solving this problem has been to allow mutual savings and loans to convert to a stock form of ownership. Stock savings and loans can raise capital by issuing stock. However, the conversion of mutual savings and loans to stock savings and loans has been surrounded by a great deal of controversy, particularly in the case of mutual savings and loan associations converting to a stock form of institution at the Federal level. There are only about 750 stock savings and loan associations in existence in this country, accounting for roughly 16 percent of the total. Hopefully, more conversions will be allowed in the future.

An alternative approach is to allow savings and loan associations to issue mutual capital certificates as a substitute for equity capital. Funds raised through the issuance of these certificates will allow savings and loan associations to expand their lending capacity and provide more funds for housing.

The issuance of these certificates would be particularly helpful in solving a problem faced by many savings and loan associations whose deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC). Federally insured savings and loan associations are required by the FSLIC to hold reserves equal to 5 percent of their savings accounts. Many associations are operating

at or near that required ratio, and cannot seek new deposits to make mortgage loans. These reserves are required for the purpose of protecting against losses, and there is reluctance to reduce this ratio sufficiently to permit a more aggressive acquisition of savings accounts by these savings and loan associations.

Yet, new savings accounts are the life blood of an association and are needed if savings and loans are to meet the rising demand for financing homeownership. This problem would be alleviated through the issuance of mutual capital certificates. Funds obtained through issuance of these certificates could be used to meet the FSLIC's reserve requirements, thereby expanding the deposit-taking capacity of these savings and loan associations. The end result would be more funds for housing.

Savings and loan associations would issue these certificates under rules and regulations adopted by the Federal Home Loan Bank Board. They could be issued and sold directly to subscribers or through underwriters, and they would be subordinated to all savings accounts, savings certificates and debt obligations. In the case of liquidation, they would constitute a claim on an association's net worth only after the payment in full of all savings accounts, savings certificates, and other debt obligations. These certificates could be issued with either a variable or fixed rate of interest. In order to make these certificates attractive to investors, capital losses may be charged against these certificates only after all other reserve and net worth accounts have been exhausted. However, if an association does not maintain the reserve ratio required by the FSLIC, it may not pay interest on those certificates without the approval of the FSLIC.

This bill will not solve all of the problems facing the savings and loan industry or the Nation's housing market. It does not solve the problem which the savings and loan industry faces in losing funds whenever market interest rates rise. But, it would go a long way toward addressing the problem of insufficient capital faced by many savings and loan associations and it would help provide additional funds for housing.

I ask unanimous consent that the bill and table be printed in the RECORD.

There being no objection, the bill and table were ordered to be printed in the RECORD, as follows:

S. 3473

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Savings and Loan Associations Mutual Capital Certificate Act".

SEC. 2. Section 5(b) of the Homeowners' Loan Act of 1933 is amended by deleting paragraph (2) and substituting the following new provisions:

"(2) To such extent as the Board may authorize by regulation or advice in writing, an association may borrow, may give security, may be surety as defined by the Board and may issue such notes, bonds, debentures, mutual capital certificates, or other obligations, or other securities as the Board may so authorize.

"(3) In accordance with rules and regulations issued by the Board, mutual capital certificates may be issued and sold directly to subscribers or through underwriters, and said certificates shall constitute part of the general reserve and net worth of the association.

"(4) The Board in its rules and regulations authorizing the issuance and sale of mutual capital certificates shall provide that said certificates:

"(i) be subordinate to all savings accounts, savings certificates, and debt obligations,

"(ii) shall constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations,

"(iii) shall be entitled to the payment of interest prior to the allocation of income to reserve and net worth accounts, and

"(iv) may have a fixed or variable rate of interest.

"(5) The Board shall provide in its rules and regulations that in the event losses are charged to reserve or other net worth accounts such losses shall be charged against mutual capital certificates only after other reserve and net worth accounts have been exhausted.".

SEC. 3. Section 403(b) of the National Housing Act, as amended, 12 U.S.C. 1726(b), is hereby amended by adding at the end thereof the following paragraph:

"Mutual capital certificates and debentures, subordinate to the rights of holders of savings accounts, savings certificates, and the Corporation, shall be deemed to be reserves for the purposes of this subsection (b) in accordance with rules and regulations made by the Corporation. In the event losses are charged to reserve or other net worth accounts such losses shall be charged against mutual capital certificates and subordinated debentures only after other reserve and net worth accounts have been exhausted. In the event an insured institution fails to maintain the reserves required by this Act, no payment of interest on said certificates or said debentures shall be made except with the approval of the Corporation.".

*Ratio of net worth to savings deposits and assets at savings & loan associations, 1950–77*

| Year | Ratio of net worth to— Savings deposits | Total assets |
|---|---|---|
| 1950 | 9.15 | 7.58 |
| 1955 | 7.96 | 6.79 |
| 1960 | 8.02 | 6.97 |
| 1965 | 7.89 | 6.72 |
| 1966 | 8.29 | 7.05 |
| 1967 | 7.97 | 6.91 |
| 1968 | 8.12 | 6.99 |
| 1969 | 8.57 | 7.17 |
| 1970 | 8.47 | 7.04 |
| 1971 | 7.80 | 6.60 |
| 1972 | 7.37 | 6.27 |
| 1973 | 7.51 | 6.27 |
| 1974 | 7.59 | 6.24 |
| 1975 | 6.92 | 5.85 |
| 1976 | 6.55 | 5.61 |
| 1977 | 6.51 | 5.48 |

●

● Mr. CRANSTON. Mr. President, I join with Senator TOWER in introducing a bill to allow Federal savings and loan associations to increase their capital by issuing mutual capital certificates. Savings and loan associations along with other deposit institutions have, over the last decade, consistently experienced a decline in their ratio of permanent capital to total assets.

Savings and loan associations are required to hold reserves at or about 5 percent of their savings accounts. Retained earnings essentially are the only source of permanent capital for a mutual association. By law, when an institution cannot satisfy the 5-percent ratio requirement, it is prohibited from seeking new savings depositors and future growth is curtailed until the ratio requirements are met. Money for housing, because lack of sufficient capital is simultaneously restricted. In this instance, a regular corporation would sell stock to raise equity to support future growth. However, the only option a savings and loan association has when this situation occurs is to convert from a mutual to a stock institution, as savings and loans are not legally able to issue stock to raise capital as other corporations. The conversion from mutual form to a stock association is presently still a very controversial idea and restricted by the Congress for Federal savings and loan associations.

This bill will provide a new tool for those savings and loans that are experiencing rapid growth such as in my home State, California, in halting the deterioration in their capital ratios. It is by no means the answer to capital adequacy problems for depository institutions. I would hope that the FHLBB would immediately review the need for the 5-percent Federal insurance requirement for it is clearly evident that depository institutions will need larger sums of capital if they are to hold their own in the competitive battle with an increasing number of nontraditional, nondeposit, and unregulated institutions in a fast growing marketplace involving a host of new and expensive financial services.

The only true solution to the capital problem is larger retained earnings and greater profitability. This will be possible only when major financial reform occurs and savings and loans have all the tools needed to compete fully in the marketplace. This bill will provide some measure of relief while the Congress and the Federal Home Loan Bank Board continue to study the broader question of capital adequacy and financial reform for the savings and loan industry.●

By Mr. HART:

S. 3474. A bill to amend the Clean Air Act to require vehicles sold at high altitudes to comply with emission standards; to the Committee on Environment and Public Works.

AUTO EMISSION STANDARDS

● Mr. HART. Mr. President, I am today introducing a bill to amend the Clean Air Act to require automobiles which are sold in high altitude areas to meet the emission standards of the Act.

The original Clean Air Act simply required all cars to meet Federal standards on the amount of pollution they emit. In practice, however, the Environmental Protection Agency just checked the cars as they came off the production lines in Michigan. Because autos operate differently at different altitudes, the cars that EPA certified in Michigan did not meet the standards when they were shipped to high-altitude areas. The cars in Denver, for instance, emitted about 50 percent more pollution than allowed by the Federal standards.

To address this failure of high altitude cars to comply with the Federal standards, EPA in 1974 issued regulations requiring cars sold at high altitudes to be certified to meet the Federal standards at an elevation of 5,200 feet above sea level (the elevation of the high altitude testing facility). These regulations went into effect in model year 1977.

As part of the comprehensive amendments to the Clean Air Act, Congress last year overturned these regulations, in effect exempting high-altitude cars from the Federal pollution standards, until model year 1984. Beginning that year, each car will have to meet the Federal standards regardless of the elevation.

Mr. President, the Federal emission standards are designed to protect the health of our citizens. People living in high altitude areas have as much right to these health-protecting standards as everybody else in the country.

Therefore, I am introducing legislation to end the exemption of high altitude areas from the Federal emission standards of the Clean Air Act. I ask permission that the text of my bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3474

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 202(f) of the Clean Air Act is amended to read:

"(f) The Administrator shall issue regulations requiring new motor vehicles manufactured in model years 1980 through 1983, inclusive, for initial sale to ultimate purchasers by dealers located in any county with an average elevation of 4,000 feet or more above sea level to comply at an altitude of 5,200 feet above sea level with the emission standards established under this section. The regulations shall prohibit manufacturers from discriminating against dealers and ultimate purchasers in high altitude areas either by increasing the price of new motor vehicles provided to such dealers or by restricting the models available to such dealers because of the manufacturers' compliance with the regulations. A certificate of conformity may be issued under section 206 of this Act only for a model of motor vehicle or motor vehicle engine for which has been issued a certificate of conformity with the regulations under this subsection.".

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By Mr. DECONCINI (for himself and Mr. KENNEDY:)

S. 3475. A bill to provide for the reform of class action litigation procedures; to the Committee on the Judiciary.

REFORM OF CLASS ACTION LITIGATION PROCEDURES

● Mr. DECONCINI. Mr. President, on behalf of Senator KENNEDY and myself, I am introducing legislation to revise and reform the rules and procedures under which class actions are litigated in the Federal courts. Dissatisfaction with the current situation is widespread, and I believe the need for change is compelling. The proposal we are introducing, which was drafted in close consultation with the Department of Justice, contains some interesting and challenging departures from present practice. If implemented, it may go far toward rationalizing class action litigation. At the same time, I recognize that this is a subject matter of great complexity and great interest to many diverse groups. While this bill was prepared in consultation with a wide variety of interests, it is only a first step, not the last. Neither Senator KENNEDY nor I are wedded to its provisions. The Subcommittee on Improvements in Judicial Machinery plans extensive hearings on the measure beginning this fall and continuing into the 96th Congress. Those hearings will focus on the broader questions associated with class actions; The need for revision of the class action rule; the legitimate purposes which class action litigation should serve; the extent to which our society should devote judicial resources to class actions; and the actual and potential abuses of this instrument.

The bill which I am introducing repeals Federal rule 23(b)(3) and replaces it with two new procedures: First, a public action for redress of small monetary injuries (less than $300), and second, a class compensatory action for substantial monetary injuries (more than $300). In addition, the bill provides the courts with new tools to make cases under both procedures more manageable.

The statute created by this bill reflects the recognition that there are, in fact, two distinct types of class suits which are presently litigated under rule 23(b)(3). One type arises where the economic injury is small but widespread. In these cases, it is not economically feasible for the injured parties to initiate individual actions. Nevertheless, where there has been a violation of the law, the public has a strong interest in seeing that the wrongdoer does not profit from his illegal conduct. Thus, the primary purpose of bringing suit in these cases is to prevent unjust enrichment and to deter illegal conduct rather than to compensate the injured parties. In contrast, the second type of suit arises from situations where the economic injury is more substantial and it is assumed that the parties will have sufficient incentive to form a class and secure adequate and representative counsel to assert their claims. In these cases, compensation of the parties remains the primary focus of the litigation.

The public action created by this bill vests a single claim in the United States against a wrongdoer where, first, 200 persons have each sustained injury less than $300; second, the combined damages exceed $60,000, and third, the injuries arise out of the same transaction or occurrence and present a substantial common question of law or fact. The policy behind the public action is, as I mentioned earlier, the public interest in preventing unjust enrichment and deterring unlawful conduct.

The public action can be brought by the United States, or on its behalf, by one or more injured persons, thereby providing a role for private enforcement of the public interest. If an action is brought by a private person, he must promptly serve notice on the Attorney General and the local U.S. attorney and provide them with all evidence in his possession supporting the claim. The United States may then either assume control of the action, permit the action to be prosecuted by the private party, refer the action to a State attorney general, or recommend to the court that the public interest would not be served by allowing the action to continue as a public action. If the United States assumes control of and prevails in an action brought initially by a private party, the party is entitled to an incentive fee. The public action thus accommodates public and private interests.

The public action procedure also provides for a preliminary hearing, after strictly controlled discovery, within 4 months from the filing of the complaint. The court, at that time, decides if the prerequisites of the public action have been met and makes a preliminary assessment of the merits of the case. The preliminary hearing thus serves to protect all parties from open-ended discovery fishing expeditions and to screen out frivolous strike suits. It will also give the plaintiff a preliminary indication of his chances of prevailing before he invests substantial resources in pursuing the action. If a defendant is found liable, the judgment is calculated in an amount equal to either the total benefits realized by the defendant by this illegal conduct or the total damages caused by the defendant. This calculation can be made by any reasonable means.

Judgments in public actions will be transferred to the Administrative Office of the U.S. Courts where they will be deposited into a public recovery fund. The Administrative Office is charged with the responsibility of giving notice of the judgment, processing claims and distributing the fund. A claim must be greater than $15 and submitted within 1 year. The transfer of this responsibility from the courts to the Administrative Office serves to conserve judicial resources.

The compensatory action created by this bill is patterned on the present rule, but includes significant changes which are intended to increase the fairness of the procedure and to make it less expensive and time consuming. The compensatory action is to be used where 40 persons suffer injury exceeding $300 and the injuries arise out of the same transaction or occurrence and present a substantial common question of law or fact. The theory here is that persons injured in excess of $300 will have sufficient incentive to form a class and vindicate their claims.

As in the public action, the trial judge in a compensatory action must hold a preliminary hearing, after strictly controlled discovery, within 4 months of the filing of the complaint. At this hearing, the court decides whether the class requirements have been met, makes a preliminary assessment of the merits, and also decided the content and the means of giving notice to the class. Where notice and proof of individual damage will be difficult and time-consuming, the court is given discretion to try the issues of liability and damage separately. If the defendant is found liable, then the cost of notice will shift to him. This provision, like many others in the bill, allows the court to divide complex cases into more manageable steps.

Both the public action and the compensatory action would be subject to new management techniques which are intended to promote stronger judicial stewardship of these actions. For example, the bill provides for, first, the regulation of settlements; second, supervision by the circuit judicial councils of overdelayed district court rulings; and third, a precise method for computing an award of attorney fees based on hourly rates, but with provision for risk adjustments.

This bill is by no means perfect. However, it does address in an innovative manner the problems inherent in present practice. And, unless we begin to act, the basic credibility of our justice system and access to our Federal courts will be called into question. To arbitrarily close the doors of the courts on class action claims gives the appearance of condoning illegal conduct. As Vice President MONDALE has pointed out:

Nothing is more destructive to a sense of justice than the widespread belief that it is much more risky for an ordinary citizen to take five dollars from one person at the point of a gun than it is for a corporation to take five dollars each from a million customers at the point of a pen.

At the same time, however, we must protect honest and legitimate business interests from unwarranted attacks. The challenge is there, and I look forward to developing and further exploring the potential of the new concepts embodied in this legislation.

Mr. President, I ask unanimous consent that a commentary on the bill be printed in the RECORD.

There being no objection, the commentary was ordered to be printed in the RECORD, as follows:

PROPOSED REVISIONS IN FEDERAL CLASS DAMAGE PROCEDURES—BILL COMMENTARY

I. INTRODUCTION

*A. Need for legislation*

Few aspects of federal procedural law have given rise to as much critical comment and dissatisfaction as Rule 23(b)(3) of the Federal Rules of Civil Procedure, which governs the conduct of most class damage actions in the federal district courts. This memorandum describes a proposal developed in the Office for Improvements in the Administration of Justice of the Department of Justice. It has not yet been formally approved by the Department of Justice and it continues under study there. The proposal would repeal Rule 23(b)(3) through legislation, and replace it with two separate statutory procedures designed to improve access to justice. The proposal also attempts to lessen the severe problems of cost and management which have created thousands of pages of overly-complex, contradictory precedent.

Class damage actions may also be brought under Rules 23(b)(1), 23(b)(2), and 23.1. However, these actions have presented many fewer problems than those brought under Rule 23(b)(3) and they are unaffected by the proposed bill.

There is widespread support from both plaintiff and defendant perspectives for comprehensive revision of Rule 23(b)(3). In the 12 years since amendment of the Rule [1] several judicial decisions interpreting and applying its terms have done much to inhibit access to federal courts for class relief by requiring expensive individual notice to all reasonably identifiable class members [2] and by emphasizing the difficulties of management.[3] At the same time, defendants in class damage actions have claimed that the high costs of litigation and the accompanying risk of overwhelming financial liability have forced them into unwarranted settlements.[4] These problems and others have resulted in great dissatisfaction among practitioners,[5] including members of the public interest community.[6]

The business community has also taken strong exception to the operation of the present Rule. The Times Mirror Corporation through counsel has commended attempts "to reform present class [damage] action procedures which have clogged the courts, fostered strike suits and resulted in other abuses of the judicial system. * * *"[7] Also the class damage action's proliferation and cumbersomeness has been cited as one reason for rapidly escalating business legal expenses.[8]

President Carter has stressed his desire to "expand the opportunity for responsible class actions" and Vice President Mondale has said that the Administration "is committed to the principle that no American should suffer injustice because the price of justice is too high."[9] During his confirmation hearings, Attorney General Bell affirmed the Administration's commitment to work with the Congress in an effort to secure passage of fair legislation which would improve the management of class actions and reduce the costs of such litigation.[10] The need for a workable, collective judicial procedure is highlighted by the Vice President:

"[A]ccess to federal court is often the only way the [ordinary person] * * * can effectively challenge the massive power of a modern corporation or the far-reaching power of government itself. Closing the courthouse door leaves them no other place to go.

"Nothing is more destructive to a sense of justice than the widespread belief that it is much more risky for an ordinary citizen to take $5 from one person at the point of a gun than it is for a corporation to take $5 each from a million customers at the point of a pen."[11]

There is support for revision of class action procedures in the legislative branch. For example, Senator Edward M. Kennedy has recently pointed out:

[I]t is easy to sympathize with the courts' motivation for limiting class actions, but in a larger sense such [course] appears misguided. Although class actions are more complex and time consuming than the average civil case, they can also be a most efficient way of disposing of controversies. In one proceeding—however lengthy and time consuming it may be—a judge can adjudicate the rights of thousands of persons. The class action also makes the courts accessible to those who simply could not pursue their claims individually."[12]

Also a substantial portion of the federal judiciary believes that Rule 3(b)(3) procedures should be changed. In response to a recent inquiry by the Advisory Committee on Civil Rules, 50 percent of 145 district judges indicated that they favored prompt amendment of rule 23.[13] The same percentage found that the present rule "wastes judicial resources through cumbersome, expensive, time-consuming procedures."[14] Judge Henry J. Friendly, in his 1973 Carpentier Lecturers, expressed the view that the mass small claim action needed "urgent attention."[15] Not surprisingly, lack of effective management tools has led courts to take the serious step of limiting important substantive rights normally effectuated through the class damage action.[16]

Finally, several recent academic surveys and empirical studies have called for (1) more sensitivity to the interaction between class damage procedures and the substantive law [17]; (2) greater attention to management problems associated with the mass, small-claim action [18]; (3) closer settlement scrutiny; [19] and (4) reliance on the parens patriae concept to better effectuate policy in the small claim context.[20]

Given this clear need for comprehensive reform, revision of class damage procedures should be accomplished by direct legislative enactment rather than through the rule-making process. This view is based on the perception that such revision would have a significant impact on public policy. The deterrence of widespread injury is of substantial public interest, and Congress should devote extensive consideration to any proposal. Also, revision of class damage procedures would have significant economic ramifications, which raise serious questions as to whether such revision is appropriately within the scope of the rule-making authority granted by the Rules Enabling Act.[21]

In March 1978, the Judicial Conference of the United States adopted a resolution which "approve[d] in principle the revision of Rule 23(b)(3) . . . by direct legislative enactment, rather than by the rule-making authority."[22]

*B. Consultation process*

In June 1977, the Office for Improvements in the Administration of Justice mailed over 250 copies of a discussion memorandum to members of the bar familiar with the issues in class damage actions. The memorandum catalogued many Rule 23(b)(3) difficulties and suggested possible remedies. A cross-section of legal analysts, commentators, judges, and practicing attorneys of diverse views were invited to Washington by the Attorney General to review the memorandum and suggest alternative approaches. More than 30 smaller consultation sessions were also held with other interested parties. The information derived from these meetings was supplemented by the responses to a questionnaire on class actions circulated to 1,800 judges, practitioners, and law professors by the Supreme Court's Advisory Committee on Civil Rules.[23]

In December 1977, approximately 1,000 copies of a draft statute were widely circulated with an accompanying summary prepared especially for nonlawyers. The draft reached an even larger audience when it was published by the Bureau of National Affairs.[24] Nearly 2,000 pages of comment were received in response. The December draft was also the subject of numerous informal discussions with congressional staff, trade associations, public interest counsel, and academic commentators. Following extensive analysis of the comments, the December draft was substantially revised to produce this bill.

*C. Controlling premises*

The proposed statute is based on several major premises. First, there are basically two types of class suits now litigated under Rule 23(b)(3) and to a significant degree the problems encountered with them stem from a failure of the current procedure to distinguish them. The two types of suits are: (1) a class damage action brought where individual economic injury is small and where the primary purpose of the suit is to prevent unjust enrichment and deter illegal conduct rather than to compensate individuals for minor economic harm; and (2) a class action brought where individual economic injury is more substantial and the primary purpose of the suit is to compensate the injured individuals.

Recognizing that basic distinction, the proposed statute creates two separate procedures to replace Rule 23(b)(3): one is designed for the situation in which illegal conduct is alleged to have caused widespread harm to individuals in small amounts each (not exceeding $300) [25] and where it is not economically feasible for the injured to initiate individual actions; the other is designed to provide more effective, less cumbersome procedures for compensatory class actions (where individual injury

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exceeds $300).[26] In the first situation the proposed statute recognizes the interest of the United States[27] in preventing unjust enrichment and deterring illegal conduct by creating a public action which provides a close meshing of public and private interests[28] and encourages private detection[29] as well as responsible initiation of actions by the bar.[30]

Another major premise underlying the proposed statute is that some of the major problems encountered in class damage actions have stemmed from ineffective judicial management. The bill includes provisions designed to provide the courts with the necessary tools[31] to manage these actions more effectively. The bill could reduce much of the judicial work load created by (1) the unnecessary complexity of these actions; (2) the lack of congressional guidance on fundamental procedural question[32]; and (3) the absence of salutary management procedures. The bill breaks class damage actions into discrete, manageable phases.[33] It also contains a provision to expedite the filing of judicial rulings.[34]

The proposed statute has three major parts: Subchapter A deals with the public action for widespread injury in small amounts; Subchapter B contains procedures for a class compensatory action involving larger individual claims; and Subchapter C sets forth several management procedures pertinent to both types of actions. The last section of the bill establishes a uniform procedure for interlocutory appeals from orders denying or granting public or class compensatory action status.

II. PUBLIC ACTION FOR WIDESPREAD SMALL INJURY

Subchapter A creates a public action which may be brought in federal district courts by the United States directly or in the name of the United States by a person injured by unlawful conduct ("upon relation").[35] It also provides that the United States may take control of any action originally brought by a realtor, or inform the court that, in its view, the action is not in the public interest.[36] In order for a realtor, or the United States, to bring an action, at least 200 persons named or unnamed must each sustain injury not exceeding $300 as a consequence of a violation which otherwise would give rise to a civil private right of action for damages under any existing Act of Congress regulating commercial conduct.[37] The aggregate of all harm must be $60,000 or more. No new substantive rights of action are created. Most mass, small claim injuries will arise in the commercial context. Also, the commercial limitation on coverage minimizes the number of instances where a public action on behalf of the United States could be brought against the United States.[38]

The public action is intended to prevent unjust enrichment by divesting wrongdoers of fruits gained through a violation of federal law and to deter others from similar conduct. Compensation of the injured is a secondary purpose. Use of a collective procedure in this context has been widely advocated.[39]

*A. Need for public action procedure*

The public action provides a vehicle for a collective civil suit where the injured would not otherwise have the ability or incentive to sue. As Judge Weinstein has put it, "[w]hen the organization of a modern society such as ours affords the possibility of illegal behavior accompanied by widespread, diffuse consequences, some procedural means must exist to remedy—or at least deter—that conduct."[40]

The bill reflects the view that present procedures are ineffective where deterrence and prevention of unjust enrichment are the primary objectives. The bill substitutes, for the widespread small injury case, procedures designed to enable those objectives to be more effectively realized.

Sufficiently increased deterrence cannot be achieved solely by replacing the current compensatory procedure (in small claim context) with expanded enforcement initiated by federal or state agencies. Even if bureaucratic expansion to augment civil and criminal enforcement were feasible, privately initiated and publicly supervised civil enforcement is preferable. It tends to be more innovative and effective in disgorging ill-gotten gain.

1. Ineffectiveness of Current Procedure to Prevent Unjust Enrichment and to Deter Unlawful Conduct

The use of the Rule 23(b)(3) compensation-oriented procedures for actions brought to remedy pervasive small harm has posed major problems for plaintiffs, defendants and the courts.

First, current procedures do not place sufficient emphasis on the problems of detection in the small claim context. Because the injury is so small and so widely diffused throughout the economy, it may not be brought to the attention of private or public counsel. Yet sociologists, government officials and businessmen agree that illegal conduct is most efficiently deterred by the probability that the offense will be detected and some redress ensue.[41] The deterrent interest of the United States can be best advanced by modification of class damage procedures in a manner which increases the probability that the laws will be enforced whenever broken, even though the resulting injury to each consumer is small.

Second, deterrence also relies upon the expectation that, not only will there be detection, but rapid redress as well. Procedures are needed to assure swift judgments. The present notice requirement of Rule 23(c)(2) and certification prerequisites of Rule 23(b)(3) are designed for actions brought predominantly for compensatory, rather than deterrent purposes. The burden of these requirements can thwart entirely the maintenance of an action where the individual injury is small, even though the case may be meritorious and the harm widespread. The problem is magnified when cross-claims, counter-claims, and pendent claims further delay and obfuscate the core issues.

Third, even if detection occurs today, current procedures, employed in the small injury context can create pressures for settlement which undermine deterrence policy. Because these actions create potential large scale liability and legal costs, and because the existence of the lawsuit alone, even if frivolous, could unfairly damage a defendant's reputation, defendants may feel forced to settle early regardless of the merits.[42] There is insufficient incentive for injured persons to work closely with counsel and counsel tends to reap more from these actions than the client, because counsel often receives a percentage of a large aggregate recovery. The plaintiff attorney is likely to be the real party in interest, and may reach a settlement that does not fully effectuate deterrence policy. The settlement may reflect counsel's interests, rather than those of the absentee injured.[43] In sum, the current situation, which seems to defendants to encourage overdeterrence, tends ultimately to result in pervasive underdeterrence.

Fourth, present procedures do not necessarily prevent a wrong-doing defendant from retaining monetary benefits derived from the wrong-doing. It is unconscionable to permit a defendant who has profited from the violation of a federal statute to enjoy those illegally gotten gains.[44] The bill deals effectively with this problem by providing for the single public recovery calculated by the totality of such profits.

Fifth, present practice imposes significant and inappropriate administrative duties on the courts. It is apparent that the anticipation of potential difficulties in the computation and distribution of class recovery has created some judicial hostility toward small claim class actions, which impedes or eliminates deterrence oriented suits.[45]

Finally, noticeably lacking in current procedures is any provision for executive branch involvement to represent the United States' interest in deterrence and prevention of unjust enrichment.

Available data support the conclusion that, in light of the above, present public enforcement and compensation oriented procedures have not deterred large scale, small claim illegality. Consumer fraud, including illegal competition and deceptive practices, is estimated by the United States Chamber of Commerce to cause direct injury of $21 billion annually.[46] Conservative estimates also place the cost of price-fixing "and other antitrust violations" to American consumers at more than $150 billion a year.[47] Recently the Middle Atlantic Office of the Antitrust Division set up a toll-free hotline service, by which disgruntled consumers, retailers and employees could report suspected price-fixing violations. Twenty-five of sixty-seven calls led to initial investigations. Of these investigations, twelve have already been deemed to be sufficiently substantial to merit further examination and these probes are still in progress. All these Chamber, Congress, and the Antitrust Division data suggest that current private and public enforcement has not provided sufficient deterrence.

2. Limited Impact of Recent Federal Antitrust and Consumer Protection Legislation

Recent federal legislation such as the Magnuson-Moss Warranty—Federal Trade Commission Improvements Act[48] and the Truth-in-Lending Act[49] are designed to mesh with a compensation oriented procedure which, as has been shown, is ill-suited in the mass, small injury context.

The recent parens patriae innovations of the Hart-Scott-Rodino Antitrust Improvements Act of 1976[50] does augment federal resources with State aid of a limited sort. However, the coverage of this statute is not broad. It authorizes State attorneys general to represent natural persons residing in their states in suits for monetary damages suffered due to trade practices undertaken in violation of the Sherman Act.[51] These attorneys general may only sue under the Sherman Act.[52] The statute's benefits do not accrue to many current class action plaintiffs, *e.g.*, those seeking redress for violations of the securities, truth-in-lending and consumer protection laws. Furthermore, many antitrust violations which cause great damage to the public, such as violations of the Clayton[53] and Robinson-Patman Acts,[54] are similarly excluded from the coverage of the bill.

The parens patriae bill also authorizes State attorneys general to act only on behalf of "natural persons."[55] Thus, this procedure will be of no use to the small business victim of Sherman Act violation, although many businesses, such as distributors and retailers, are obviously damaged by price-fixing as much as the ultimate consumer.

Although the Hart-Scott-Rodino statute permits use of aggregation techniques to compute and distribute damages, the Act provides that these techniques may only be used in price-fixing cases.[56] The State attorney general will still face the considerable obstacle of proving small, individual damages in some of the actions brought under the legislation.[57]

Finally, the parens patriae bill is dependent upon the activization of a large bureaucracy. The injured consumer must trust in the State attorney general to bring suit. Because of the obvious restraints posed by the limited budgets of these State officials, some clearly meritorious suits will have to be foregone in the interests of sound fiscal

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policy. For all these reasons the public action is needed to expand the role of the State attorneys general beyond that permitted by the parens patriae statute and to mesh their efforts with private initiative.

In addition to the parens patriae legislation, the Antitrust Procedures and Penalty Act was passed in 1974. It could be argued that, at least in the antitrust area, the Act is a potent deterrent and there is no need for the public action. However, the provisions of this statute allowing fines are inadequate to deter illegal conduct where the potential profit is great. As Attorney General Chauncey Browning of West Virginia, President of the National Association of Attorneys General, has noted, corporate antitrust conspirators:

"may be fined $1,000,000 on an $18 million conspiracy. They may serve 10 or 30 days in jail on . . . a $100 million conspiracy [like] the tetracycline case. I suspect that those corporate conspirators would be happy to trade a $1,000 fine, or a million dollar fine, for a $100 million price-fixing profit. The other $99 million they can stick in their pocket." [58]

In the two-year period after the Act's passage, fines imposed against 294 entities amounted to nearly $7 million, an average of just over $23,000 each. Forty-one corporate defendants have been sentenced in felony cases to date with total fines of approximately $5.5 million, an average of $35,000.[59] These numbers should be compared to the estimated *annual* injury from consumer fraud and price fixing *alone* of $171 billion.

3. Reliance on Private Initiative Rather Than Bureaucracy

All the impediments to deterrent policy plus the insufficiency of recent federal statutes, make it highly unlikely that adequate deterrence or prevention of unjust enrichment are being achieved in the mass small injury context. However, it might be argued that, rather than replace maladroit compensatory procedures, enforcement bureaucracies should be expanded to pursue civil enforcement of the laws where prevention of unjust enrichment and deterrence are the primary goals. This argument, which has been made long and often, has not been accepted for two reasons: (1) the amount of bureaucratic expansion required by the federal or state governments necessary to achieve these goals effectively is unacceptable; and (2) enforcement by meshing private and agency initiative under proper procedures is more efficient and effective.

In contemplating the amount of agency expansion required for expanded bureaucratic enforcement, it should be noted that the current budgets of the Federal Trade Commission, the Securities and Exchange Commission, and the Department of Justice Antitrust Division collectively are approximately 1/1000 of the estimated consumer fraud and antitrust injury noted above; [60] and, of course, these budgets are not entirely enforcement oriented. Willard Mueller, former director of the FTC Bureau of Economics, argued as early as 1970 that antitrust enforcement funding levels are so insufficient that "antitrust policy has never been given a fair test." [61] Another commentator has characterized the Antitrust division's budget as "absurdly low" and suggested that proper enforcement would require a budget nearly four times larger.[62]

Although the public action does require expenditure of public resources because a privately initiated action must be assumed or supervised by the United States or by a State, the public action will not require enormous expansion of agency budgets because of its reliance on private initiative. In fact, implementation of the procedure may result in a substantial net gain to the Treasury,[63] a gain that can be used to better implement the public action and expand deterence.

Even if purely public civil enforcement were financially feasible, it still would not be desirable. As the Senate Judiciary Committee has recently noted in the context of antitrust enforcement "[m]any legal commentators . . . believe that private enforcement of the antitrust laws has been more innovative and effective than federal enforcement." [64]

Because of the possibility of the client achieving substantial recoveries [65] and counsel a significant, but fair fee,[66] private citizens are encouraged to undertake vigorous and innovative enforcement. Such enforcement is pursued by the injured, who are those most likely to detect violations. Augmentation of the client's incentive to report violations in the small claim context [67] harnesses a great enforcement potential while preserving public oversight to assure adequate deterrence and small claim compensation.

Thus, the public action procedure, described below, has been designed because (1) compensation oriented procedures have been ineffective in preventing unjust enrichment or in deterring illegal conduct in the small claim context; (2) recent federal legislation does not sufficiently achieve those goals; and (3) the meshing of private initiative and public enforcement is more desirable than the expanding of the federal bureaucracy to pursue those ends.

*B. Prerequisites*

The public action is not a "class action." Rather it is a procedure for litigating a single collective claim in the name of the United States.[68] At least 200 persons must be alleged to have been injured not exceeding $300 each; the combined total of all injuries must be at least $60,000, and the injuries must arise out of the same transaction or occurrence with the action containing at least one substantial question of law or fact common to all injured persons.[69] The factual basis for pleading these prerequisites must be shown with specificity in the complaint.[70]

The same "transaction or occurrence" and "common question" tests in the proposed statute are similar to those found elsewhere in the federal rules.[71] The only modification in the common question language is the requirement that the question be "substantial." [72] This emphasizes that a common question must be more than incidental or peripheral.

The proposed statute does not carry forward the requirement in Rule 23(b)(3) that the common issues "predominate" over all other issues. Courts which have attempted to articulate a practical test of predominance have failed.[73] Indeed, if applied literally predominance would prevent all Rule 23(b)(3) damage actions because, by their nature, these actions aways involve many different impact and damage issues, while at the same time displaying some issues capable of combined treatment.[74] A literal application of predominance could completely insulate violators from liability. As one court put it:

"On one hand, the defendants [contend] that individual proof of damages at trial would require so much time and create such complexities for the parties, the court and jury, that the action would be unmanageable. On the other hand, they [contend] that any other method of proving this issue at trial would substantially prejudice them and violate their rights to a jury trial and due process." [75]

Furthermore, literal predominance rewards costly legal research and discovery by the defense to unearth as many uncommon issues as possible and shifts the litigation focus from potentially important common violation issues.[76]

Because of these difficulties, the courts have discarded literal predominance and have used the test to determine pragmatically whether there is a significant common issue [77] and to force counsel to articulate their theories of recovery early in the lawsuit.[78] Both of these are useful endeavors and they are retained in the proposed statute by the same transaction and substantial common question formulas, as well as other provisions in the bill.

The proposed bill mandates, after a preliminary hearing and limited discovery, the entry of an early scope-of-action order including a description of the transaction and the substantial common question (or questions). This procedure is aided by the factual pleading-with-particularity requirement of section 3001(d). In the unlikely event, given several provisions in the bill,[79] that management of damage calculation may prove difficult, then separate trials, or even separate actions, can be had under section 3028(b). Skillful use of these techniques would assure that at least common issues can be tried together with resulting economies.

A number of requirements in Rule 23(b)(3) which have also proved troublesome and unproductive in compensatory class actions are eliminated or modified. For example:

The impracticability of joinder test contained in Rule 23(a) is replaced by the requirement of a specific minimum number of injured persons (200).

The requirement that the claim of the class representative be typical of the claims of the class is deleted because it has tended to be a duplicative standing test.[80]

Certification and prejudgment notice requirements are omitted and other means provided to assure that injured persons' interests are adequately represented as noted below.[81]

The method-superiority test, which has been given no form under existing law, is eliminated.[82]

Proof of individual damages as an element of liability is deleted and other means for establishing damages are provided.[83]

*C. Preliminary hearing*

The bill requires that a preliminary hearing be held within 120 days of the filing of the complaint.[84] In order for the action to continue thereafter the court must determine at or immediately following the hearing that all of the prerequisites are met and that there are "sufficiently serious questions going to the merits to make them fair grounds for litigation."

This early evaluation provides needed defendant protection from the costs of extensive and unnecessary discovery (and motion practice) in cases not presenting serious issues. It provides realtors and the United States with an early, tentative judicial determination on the merits so they are better able to assess the wisdom of pursuing the action. Also given the present potential for over-discovery and undue motion practice by both sides, the preliminary hearing requires the court to take firm control of the action at the first opportunity.[85]

The "serious-question" merits language forms a portion of a preliminary injunction test employed in the Second Circuit.[86] This test is considered not as demanding as the "reasonable likelihood of success" on the merits standard.[87] It is sufficient that " 'vast and intricate problems of fact and law [are involved] . . . which cannot be fairly resolved short of . . . a trial . . ." [88] The "serious-questions" test can be met with limited discovery.[89] The idea of a preliminary look at the worthiness of a lawsuit has wide support.[90]

In conformance with his regulations, at or prior to the preliminary hearing, the Attorney General of the United States may (a) assume the action; (b) decline to enter an appearance and allow the relator to conduct

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the action [91]; (c) refer the matter to a State attorney general who may assume or make a showing that the action is not in the public interest [92]; or (d) recommend that a public action be dismissed if it is not found to serve the public interest.[93] If there has been assumption, the relator attorney may continue to participate in the action at the attorney general's option.[94]

It is anticipated that where a statute covers a substantive area which is the concern of a federal agency with its own litigation authority, the Department of Justice, pursuant to the regulations provided for in section 3002 (b), will either cede control of the assumption and litigation decisions to that agency or seek their cooperation in making these decisions.

As the ability to make a public interest showing is vested in the federal and State attorneys general, the court cannot dismiss a public action as contrary to the "public interest" if such attorney general has not made a specific recommendation. However, such a recommendation requires a dismissal, unless the relator can convince the court that the action is in the public interest.

Prior to dismissal for failure to satisfy the public action prerequisites, the court must allow amendment of the complaint if the action would otherwise meet the prerequisites of the class compensatory action as set out in section 3011(a).[95]

If there is no dismissal at the preliminary hearing, the court must enter a conditional order describing the scope of possible injury, including a description of the transaction and the substantial question of law or fact common to all injured persons. This conditional order serves to define, early in the action, the parameters of the lawsuit for both the parties and for the court. It also provides the defendant with a tentative insight into the probable scope of liability and the breadth of potential res judicata. The court is also empowered to establish litigation timetables, including schedules for discovery, to govern the subsequent course of the action.[96]

*D. Discovery*

Both plaintiffs and defendants have the opportunity for limited discovery prior to the preliminary hearing, including ten depositions per side, interrogatories to identify documents and locate persons to be deposed, and document production.[97] The limits on numbers of depositions and the types of interrogatories permitted prior to the preliminary hearing can be modified upon leave of the court for good cause shown.

There is an explicit prohibition—both before and after the preliminary hearing—on discovery of unnamed injured persons without leave of court after a showing that there is a "substantial need of the materials" and that there is an inability "without undue hardship to obtain the substantial equivalent of the material by other means."[98] The latter exception, borrowed from precedent applicable to discovery of work product,[99] is designed to be a narrow one.

Under current law [100] there is an incentive for defendants to request discovery of absent class members to winnow-down the class, to exclude by means of discovery sanctions those who do not respond, and to circumvent the normal "opt-out" mechanisms of the class action.[101] Of course there is no class as such to reduce in the public action and individual proof of claim is not required before judgment.[102] However, there is still the danger that a litigant may use this discovery to harass or to delay.

*E. Adequacy of representation*

Prejudgment notice of any sort to injured persons is not required. While the public eliminates the expense of the notice and opt-out procedures now available under Rule 23(b)(3), it provides at the same time for a more effective means to assure that interests of injured persons are adequately represented.

An early requirement of notice delays the action and undermines swiftness of judgment and deterrent impact. Furthermore, when small, widely spread claims are at stake, notice does very little to protect the interests of absent class members. On the one hand, if notice is attempted, courts and counsel are lured into believing representation of those interests has been assured. On the other hand, the expense of notice creates a significant roadblock to advancing the interests of injured persons and indeed encourages those interests to be ignored in favor of an early settlement benefiting only the named class representatives and plaintiff counsel.[103] The public action represents a marked advance in representation of the interests of injured persons in small claim cases. For the first time, those suffering a small injury would in fact, rather than in theory, have a "day in court", with the United States as their legal representative.

Some of the several facets of the bill that would advance adequacy of representation are:

The United States may bring or assume control of these actions or maintain oversight of a settlement or withdrawal executed by a relator.

The court is required to make inquiry as to the legal competence of the relator's counsel, guided by statutory criteria,[104] when assumption has not occurred.

The relator attorney's compensation is regulated to avoid conflicts of interest between the attorney and the injured [105]; these conflicts may have caused the interests of injured persons to suffer in the past.[106]

An incentive fee of up to $10,000 is paid to a relator [107] who initiates an action that is ultimately successful, thus encouraging closer relator cooperation and supervision of the litigation.

While the public action eliminates the necessity of notice to injured persons prior to the preliminary hearing, it specifies that the claims of those whose injuries do not exceed $300 will be foreclosed by any final judgment on the merits.[108] If the final judgment results in a recovery by the United States, a public recovery fund is created. Persons injured will then be given notice and the right to receive compensation for their injuries from the United States.[109] Care has been taken to assure that the compensatory interests of the injured are adequately represented by the United States during the public action, in order that the foreclosure of claims is fair.

Recently there has been considerable scholarly discussion of whether judgment in a class action may, consistent with the due process clause of the Fifth Amendment, bind the members of a class absent some form of notification to them of the pending action. Every United States Court of Appeals which has considered the question has ruled that the due process clause does not require that notice be given to class members in all cases. An analysis of these opinions has been prepared by the Department of Justice Office of Legal Counsel which strongly supports the view that more effective means than notice of the pending action exist to achieve adequacy of representation and compensation.[110]

*F. Incentive fee*

Section 3005(a) provides a direct monetary incentive for injured persons to detect and report violations of federal law. A major purpose of Subchapter A is to make the incentive not run only to attorneys—now often the only beneficiaries of class settlements.[111] A modest increase is made in the incentive for injured persons, those best able to detect violations who otherwise stand to gain only a maximum of $300. An active, informed citizenry is the best means to assure that there is widespread compliance with the law without the creation of a massive new bureaucracy.[112]

Under present law persons with small injuries have little incentive to become a named plaintiff in a Rule 23(b)(3) damage action. Nor do they possess any significant incentive to control or contribute to the litigation on their behalf.[113] The plaintiff attorney who stands to win a large fee becomes something more than a representative of their interests: counsel must also represent himself, which presents an inherent conflict.[114]

Under section 3005(a) if the United States prevails in a public action brought by a relator, the defendant shall pay to the relator taxable costs, reasonable expenses (including attorney's fees where otherwise authorized by law), and an incentive fee equal to 20 percent of the first $25,000 of public recovery plus 10 percent of the next $50,000 of public recovery. The maximum incentive fee is $10,000 [115] and is not to be paid to the relator's attorney, either directly or indirectly.

*G. Calculation of public recovery*

Under section 3006 the United States or the relator may seek to recover a judgment for an amount equal to the value of the benefit or profit accruing to the defendant as a consequence of a violation of Federal law; or one or the other may seek the combined value of all damages found to have been inflicted on persons individually injured not in excess of $300 each. The court may provide injunctive relief if there has been a monetary judgment.

Both these standards advance the primary purposes of the public action—deterrence and prevention of unjust enrichment. The most expeditious mode of recovery calculation can be selected by the court.[116] In this selection the court may also wish to consult the dictates of the underlying substantive law.[117] If the damage test is selected by the court as the appropriate measure of recovery, "separate proof of individual damage shall not be required." [118] This does not foreclose court-regulated sampling of injured persons in order to measure the combined damages.

The recovery is owed to the United States, not to the injured persons upon whose claims it may be calculated. Such persons, however, will be entitled to compensation from the United States under section 3007 in any action in which the United States prevails. The amount of the United States' recovery would be increased by any multiple provided for in the underlying statute.[119]

As to the Constitutional issue whether the United States can retain damages unclaimed by the injured under section 3007(a), the Congress has recently addressed the matter and approved a similar procedure in the Hart-Scott-Rodino Act of 1976.[120]

*H. Claims administration*

Section 3007 removes the burden of administering the public recovery from the district court and places it in the Administrative Office of the United States Courts. That Office would administer the new Public Recovery Fund and supervise notice to injured persons following a judgment. Notice of the recovery can be made in any manner reasonably "likely to inform" persons eligible for compensation and shall be financed out of the fund.

Those who have injuries of $300 or under file claims with the fund, or receive without filing a claim a distribution based on business or other similar records if these records permit "reasonably accurate" claim calculation. When individual claim forms are required, it is anticipated that the forms will provide a simple and inexpensive means of payment. The Director must pay all claims thought valid within a reasonable time.[121] Claims under $15 will not be reimbursed

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because the cost of paying and administering claims of that size is likely to exceed the value of the claim.

The Director may pay claims exceeding $300 arising from the same transaction or occurrence from the judgment or settlement funds remaining after all smaller claims are paid. Those receiving such compensation must execute a release of any right to bring a civil action under any Act of Congress based on the same transaction.

*I. Involvement of State attorneys general*

Section 3002(b)(3) allows the Attorney General of the United States to refer a public action to a State attorney general, pursuant to regulations established by the Department of Justice. The State attorney general must be found to have the capacity to adequately represent the United States' interests and "a substantial number of persons alleged to be injured" must reside in the State.

State participation provides a decentralized means of regionally addressing injury covered by the public action. Only a relatively small percentage of "national" public actions will be assumed by the Attorney General of the United States.[122] "Regional" violations can best be handled by State attorneys general in the affected area. As Assistant Attorney General John Shenefield recently pointed out:

"[I]direct impact on the lives and pocketbooks and the citizens of local conspiracies in any particular State are probably as much of a problem as nationwide conspiracies. We frequently uncover violations involving a few communities and a few million dollars of commerce annnually. Such businesses as dairies, bakeries, building contractors, retail women's stores, and others have been subject to prosecutions for engaging in local conspiracies that may be small by national standards, but dig deeply into the pockets of local residents. . . .

"The unfortunate truth is that this kind of conduct is still far too prevalent in our society—and may be hardest of all for the federal government to prosecute when it occurs on a local basis, away from national scrutiny.

"[M]assive expansion [of enforcement] at the federal level [should not continue]. Where problems can be handled locally they should be." [123]

Under section 3030(d), nothing in Chapter 176 is to affect the right of a State attorney general to bring a Hart-Scott-Rodino parens patriae action, save application of the normal rules of estoppel.

*J. Impact of public action on U.S. resources*

Public actions assumed by the Attorney General of the United States will be conducted by officers of the Department of Justice, or litigated by the relator under close United States supervision. The Department of Justice commissioned a study by Arthur Young and Company, which is available on request, to determine the impact of this proposed statute on the Department's work load. Under the most plausible assumptions it projects that, when the full force of the bill is felt, approximately 22 cases would be assumed annually, requiring 46 attorneys and $3.1 in new resources. The United States may recoup much of this expense from recoveries unclaimed by the injured. In two recent cases alone, the amount of unclaimed damages totaled $6,678,426.[124]

III. CLASS COMPENSATORY ACTION

When individual injury is more substantial, private compensation becomes the paramount concern. Subchapter B establishes (1) prerequisites for the class compensatory procedure; (2) early judicial review of the action before major judicial and litigant resources are committed; and (3) better management of damage calculation.

*A. Prerequisites*

Under Subchapter B, the class compensatory action is available where federal statutes create any civil private right of action for damages. Its application to federal statutes is thus considerably broader than that of the public action.[125] The action is designed to be the exclusive collective damage remedy for violation of federal statute.[126] For a compensatory action to arise, at least 40 persons named or unnamed must suffer injury exceeding $300 or be alleged to be liable for damages exceeding $300. As in the public action,[127] each injury must: (1) arise out of the same transaction or occurrence, or series of transactions or occurrences; and (2) present a substantial question of law or fact common to the class. There must also be a representative party who, with counsel, adequately represents the class interests.[128]

As in the public action, the bill substitutes a class size requirement for the impracticability of joinder test of Rule 23(a) to avoid unnecessary litigation. Other unnecessary prerequisite complexity is also reduced substantially and the common transaction and adequacy of representation aspects of private initiated, collective relief are emphasized.[129]

*B. Preliminary hearing*

Section 3013 sets out a preliminary hearing procedure also similar to that in the public action.[130] After the same limited discovery the court must determine that the class representative has shown that the prerequisites have been met and that there are "sufficiently serious questions going to the merits to make them fair grounds for litigation." If an action does not fulfill the compensatory action prerequisites, but would otherwise meet the requirements of a public action, the plaintiff shall have leave to amend the complaint.[131]

Failure of an injured person to respond to discovery—prior to or following the preliminary hearing—may not be grounds for excluding him from the class.[132]

*C. Adequacy of representation*

If the action continues following the preliminary hearing, the court must direct notice "reasonably necessary to assure adequacy of representation" and "fairness" to all persons included in the class.[133] Since individual amounts in controversy are substantially greater in compensatory actions, individual notice may sometimes be justified despite its additional complexity and cost. The revised standard for notice supersedes the present language of Rule 23(c)(2).[134]

A person so apprised may be required either to opt out or into the action by notifying the court of his preference.[135] Before imposing an opt-out or opt-in requirement the court must determine the likelihood that the size or kind of individual interests held by such persons would make it "feasible for them to pursue their interests separately," and whether the persons are likely to have the business sophistication and resources to conduct their own litigation.[136] This determination is discretionary with the trial court in each case.

Only individuals with large stakes, in the neighborhood of $10,000, or unusual claims or defenses, should be required to opt-in. These persons should be accorded greater protection from inadequate representation than an opt-out procedure provides. The larger or more unique the interest the greater the impetus to pursue a separate, more adequate remedy and perhaps a different litigation course. Such persons are also more likely to consult counsel and to reach a more fully informed decision than those with smaller claims.

*D. Amount of class recovery*

Section 3014 takes a large step toward making present Rule 23(b)(3) compensatory actions triable and settles current-procedural disputes as to the management of damage calculation.[137] The amount of actual damages to each person may be "proven by any method permitted or required by law." Damages often cannot be proven expeditiously if the court finds that each class member's proof of damage must be made at trial [138] for reasons of statutory or constitutional policy. If this is so, the court is mandated to take three steps.

First, if it does not impair the Constitutional rights of any party,[139] the court shall try liability issues separately from actual damage issues. Second, if liability is found, the defendant is required to identify from his business records, or any other reasonably available source, persons likely to have been injured and the extent of their injury. Third, individual notice is to be sent to these persons. Additional notice shall be sent to those who are likely to have been injured, but have not been identified from the business records or similar sources.[140] All these steps are to be undertaken at defendant's expense.

IV. MANAGEMENT OF PUBLIC AND CLASS COMPENSATORY ACTIONS

*A. Management of concurrent actions*

Public and class compensatory actions are complementary procedures rather than mutually-exclusive choices, and not infrequently the overlapping statutory coverages of sections 3001(a) and 3011(a) will mean that both will be brought simultaneously.

Where overlapping or multiple claims are brought separately in different districts, and by separate relators or representative parties, section 3021 provides notwithstanding present law [141] for mandatory transfer to and consolidation in any district court of all public and class compensatory actions arising out of the same transaction or occurrence, to the extent "feasible." Unlike the temporary transfer procedures for pretrial now available in multidistrict litigation under section 1407 of title 28, transfer and consolidation under section 3021 is of the entire action and is permanent. Mandatory notice to the judicial panel on multidistrict litigation of the filing of public and class compensatory actions is required, as well as notice of a "civil action that the court believes could be consolidated with a public action or a class compensatory action."

Also, where public and class compensatory actions are not brought simultaneously a public action cannot be dismissed at the preliminary hearing for failure to meet the prerequisites of that action if it meets the prerequisites of the compensatory action unless the plaintiff has had leave to amend the complaint. This procedure also applies to the dismissal of a compensatory action.[142]

If simultaneous pursuit of a public and a class compensatory action is desirable, a person may seek alternative forms of relief under Rule 8(a), Fed. R. Civ. P., by initiating a public action as relator on behalf of the United States while simultaneously seeking class compensatory relief as a representative party. These alternative claims may be present in the original pleading, or may appear later by amendment, when injury estimates become better defined.[143] The preliminary discovery authorized by sections 3003 and 3012 provides a means to reconcile possibly discrepant injury claims between the actions. In its order describing the scope of each action following the preliminary hearing, the court may direct appropriate changes in the alignment of relators or representative parties to avoid inconsistent findings in the two actions.

After the preliminary hearing the court may prescribe schedules to govern discovery, and simultaneous or coordinated proceedings following that discovery. It may in its preliminary order describing the scope of

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each action provide for consolidated or coordinated trial of each. Although multiple and overlapping actions are required to be consolidated in a single district, there is no requirement that they be tried in a single proceeding.

Section 3028(b) authorizes the district court to order that either a public or class compensatory action be divided into two or more separate actions as may be required in the interest of case management, provided that each of the resulting action continues to meet the prerequisites of section 3001(a) or 3011(a).

A person who claims injury not exceeding $300 may not intervene in a public action, whether or not it overlaps a class compensatory action. That person's compensatory interests are preserved by the subsequent right of compensation from the United States in any action where the United States prevails and intervention would not, in any event, be likely in view of the relatively small size of such individual claims.

A person who claims injury exceeding $300 may either claim compensation under section 3007(f)—and waive further rights of federal action—or pursue any other remedy available.

Judgment on the merits in a public action is conclusive against the defendant against whom the judgment was entered; the United States, any person injured not exceeding $300; and any other person who has received or been denied payment under section 3007(f) regardless of the size of their claim. Otherwise, the judgment will not impair or impede the interests of persons with claims exceeding $300 who retain the right of individual or class compensatory relief. Consequently they will seldom be entitled to intervention of right in the public action. The court may, however, allow permissive intervention, based upon a common question of law or fact between such persons' compensatory claims and those of the United States in the public action.[144]

A judgment on the merits in a class compensatory action is conclusive against the defendant for whom or against whom the judgment was entered, and any injured person who remained in or entered the action pursuant to section 3013(e).

*B. Adequacy of representation*

The key to effective handling of complex actions is responsible counsel and judicial management. The adequacy of counsel's performance has not received sufficient attention under present law. Although federal courts have had to confront the question of adequacy of representation on a regular basis, the doctrine which has developed under Rule 23 "hardly extends beyond an often empty requirement that . . . attorneys be competent and an unfocused hostility to classes whose members are in disagreement or in different situations." [145] This inquiry normally focuses on subclassing and intervention to cure conflicts.[146] It does not necessarily examine the attorney's past class or complex litigation performance.

The primary focus of section 3022 is on counsel, rather than on the named parties, for counsel is the officer of the court and, as Professor Dam has pointed out, there is normally no real client supervision in a class action.[147]

In a public action by relation or in a class compensatory action, section 3022(a) requires that the court consider the training, experience, and past performance of counsel in past public or class compensatory actions or other complex litigation. This section should be read in conjunction with the public interest representations permitted attorneys general under sections 3002(b)(3)(c) and 3002(b)(4).

The court must also examine the extent to which the representative party in a class compensatory action has interests common to those of the class or any fundamental interests antagonistic to those of the class.

Initially the court is to make these adequacy of representation determinations on its own motion without the benefit of oral or written argument or motion by the parties.[148] Affidavits [149] requested by the court are to be filed. Thereafter, the court may request the parties to brief or argue particular issues. This approach gives absolute judicial control over an essential [150] policy evaluation. It also curbs harassing motion practice [151], and moots the question of whether denials of disqualification motions are appealable.[152]

*C. Aids to judicial management*

1. Litigation Timetables

Section 3024 requires the use of litigation timetables in both public and compensatory actions. Suggested timetables must be submitted by the parties within 10 days of the preliminary hearing determination. By this point the parties' sense of the time requirements of the action should be accurate. After considering the suggestions, the court shall promulgate a timetable within 30 days which may be amended thereafter.

2. Expediting Judicial Rulings

Section 3025 provides that the Judicial Council of each circuit shall prescribe guidelines pertinent to judicial rulings or opinions pending beyond a reasonable time. Under the proposed statute the clerk of the court shall within 10 days notify the Judicial Council of the appropriate circuit of any rulings or motions pending longer than Council guidelines. The circuit executive must inquire as to the causes for delay and report the response "promptly" to the Council. The Council is to expedite these filings using any resource available.

Unfortunately, little empirical data exist to define the extent by which class damage motions and opinions are delayed.[153] However, lawyers frequently noted during the consultation that it was not uncommon for the court to postpone rulings and orders in the hope that settlement would make the expenditure of judge time unnecessary. Judicial officers hostile to the class action will tend to delay class certification determinations.[154]

Expeditious rulings, especially during the pretrial period, are essential to the efficient and fair conduct of litigation. "Failure by the judge to so [rule], leads to disappointment, confusion, inordinate delay, and injustice." [155] The preliminary hearing determination is of particular importance in the proposed statute as is made clear by the Manual for Complex Litigation:

"[I]f the determination whether the action proceeds as a class action is delayed, serious injustices may result, and avoidable procedural difficulties of great magnitude may ensue . . . [For example,] [i]f discovery proceeds in the action while the class action request remains undetermined, and the court later determines that the action may be so maintained, the discovery may be unusable because of the absence of parties and absence of representation of the members of the class." [156]

*D. Settlement*

Section 3026 expands the present Rule 23 (e) settlement requirements as they apply to the compensatory or public actions.[157] It explicitly requires that, if settlement is reached prior to the entry of the preliminary hearing pretrial order, the court shall assure that the judgment entered after settlement describes both the common transaction or occurrence out of which the action arose and the scope of the action. It also requires that parties favoring settlement demonstrate the fairness of settlement.

Recent empirical studies demonstrate that present class settlements are often not adequately supervised by the court: "[a] factor in the poor level of success of plaintiff antitrust complaints . . . has been the willingness of plaintiff attorneys to enter, and courts to approve, settlements that benefit the attorneys rather more than the class or the public." [158] A recent study of security actions in the Northern Distrrict of Texas shows that many settlements result in no recorded judgment and may be used to leverage an attorney fee or recovery for class representatives alone. If there is a recorded judgment, the order often is uninformative.[159]

The plaintiff attorney can be too willing to accord the defendant a broad class definition (and broad *res judicata* protection) as an incentive for early settlement benefitting the named representative and the attorney. The court should assure that settlement proceedings do not unfairly prejudice the interests of absentee class members.[160]

Section 3026(a) does not require class certification prior to settlement in a compensatory action. However, it does recognize some of the valid objections to the practice of forming tentative settlement classes which may not represent all interests.[161]

Before any settlement is approved in a compensatory action, the court must first determine the likely scope of the action based on such settlement discovery as it may order or which the parties have undertaken. At the settlement hearing the court should encourage representation of diverse interests. It is not appropriate that the court merely present the settlement to the class and give them an opt-out or opt-in privilege alone.[162] Parties dissatisfied should be encouraged to participate in the settlement hearing. This procedure addresses the major concern of those opposed to tentative settlement classes,[163] without requiring prior formal certification.

Similar steps to assure fairness are to be taken in the public action settlements. Any public action settlement must have the approval of the United States.

*E. Attorney's fees*

Section 3027 provides a framework for calculating attorney's fees awarded in public and class compensatory actions. Under existing law, [164] calculation of attorney's fees has been the source of considerable litigation: [165]

"Given the frequency with which the courts are confronted with the task of fee setting and the impact it has upon the allocation of legal resources, one would expect a general consensus to have emerged on the manner in which reasonable attorneys' fees should be determined. On the contrary, there are nearly as many approaches as there are judges. The Supreme Court has never addressed the question, and many of the courts of appeals have left the matter substantially to the discretion of the district court. As a result, many lower courts have confronted the problem with little or no analysis; those courts that have been more analytical have adopted widely varying approaches. To a great extent, the outcome of these cases depended upon 'the throw of the dice'—from court to court and from case to case." [166]

Of particular concern is the possibly arbitrary use of such factors as "contingent nature of success" or "quality of attorney's work" to multiply awards based on hourly charges. " 'The widespread adoption of [the hours and risk factor award method] has not meant insurance against abuses of the class action.' " [167]

Under section 3027(a) attorney's fees awarded in a public or class compensatory action must be based solely upon the nonduplicative time found to have been "reasonably spent" on the action by the attorney.[168] The court must encourage attorneys to use less-expensive administrative personnel by allocating hours to them—instead of to attorneys—if this personnel could reasonably have performed the task.

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Subsection (b) directs the court to value the hours reasonably expended at an "hourly rate most commonly billed by the attorney for similar services at that time such services were provided." If counsel does not normally conduct hourly billing, the court shall examine the fair market value of the hours based on rates charged by others. Time of administrative personnel must be valued at market value, rather than at cost. A cost-based formula would encourage law firms to use attorneys rather than administrative personnel against the interests of efficient low-cost adjudication.[169]

Subsection 3027(c) authorizes the court to measure the amount of attorney's fees awarded by multiplying the hourly rate determined under subsection (b) by factors which reflect the varying risk of committing possibly uncompensated time at each stage of litigation.[170] The result is not to be further altered by any allowance for the perceived quality and ability of counsel, since these factors are reflected in the hourly billing rate itself.[171] The total compensation achieved shall not exceed a reasonable portion of the recovery.[172]

The premise underlying these risk multiples is that the degree of risk varies directly with the relative uncertainty of success at each major stage of the lawsuit. Section 3027 (c) sets out a range within which the court may apply a risk multiple to counsel's fee. Lower risk factors would be applied to a case which carried a high likelihood of success or in which counsel relied to a "substantial extent" on the products of prior litigation. Higher risk multiples would reward attorneys who brought more risky meritorious lawsuits or who had not relied on products of a prior proceeding. Also, in actions where there had been no substantial reliance on a prior litigation, section 3027(c) allows a higher risk factor range before the preliminary hearing because assessment of uncertainty is more difficult and risk higher due to lack of information.

Minimum and maximum risk multiples are specified to prevent arbitrary swings in risk factor application and to guard against creating "an uneasy tension between the attorneys' duty to press their clients interests vigorously . . . and the fear that . . . they may literally pay the price at the close of the lawsuit." [173] Or more generally, attorney ardor can be cooled if it is known that a particular district is hostile to class damage actions,[174] and manifests this hostility by employing abnormally low risk factors.

Subsection (e) "addresses an important current question" [175] by mandating that total compensation paid counsel for a litigation can be no greater than authorized by section 3027. In view of the generous risk multiples authorized, there is no justification for an attorney to receive a private percentage-of-recovery contingency compensation greater than the fee award to his client. There is even less justification for an attorney to receive such compensation in addition to the fee award, if, by arrangement, the fee award is passed to an attorney by the client.

*F. Miscellaneous provisions*

Section 3028 makes it clear that all the management options available to the courts under the Federal Rules of Civil Procedure apply in a public or class compensatory action. Because it is of special importance, the trial court is given the explicit authority to order separate trials of liability and damage issues to expedite the proceedings.

Section 3029 would assure that the $300 injury line between the public and class compensatory actions, as well as dollar amounts pertinent to the incentive fee, and to the payment of exceptionally small claims under the public action, will be adjusted periodically to reflect the economic realities of inflation and deflation.

Sections 3030(b) and 3030(e) harmonize the application of the proposed statute with specialized class damage provisions in other statutes, *e.g.*, the Magnuson-Moss-Warranty—Federal Trade Commishsion Improvement Act, 15 U.S.C. § 2310(d)(3)(c) and (b) and the Fair Labor Standards Act, 29 U.S.C. 216(b).[176]

Subsection 3030(c) assures that certain limitations on aggregate liability contained in recent enactments will be maintained in the public and class compensatory actions. Subsection (d) preserves the parens patriae actions authorized by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as they apply to public and class compensatory action procedures. However, special management provisions concerning preliminary hearings, calculation of damages in the compensatory actions, transfer and consolidation, effect of judgments, litigation timetables, expediting of judicial rulings, settlement, attorney's fee awards, and separate trial of issues in public and compensatory actions will apply to the extent not inconsistent with that Act.

Section 4 of the bill establishes a uniform federal procedure for the appeal of orders of the district courts which either permit or refuse to permit actions to go forward as public or class compensatory suits pursuant to sections 3004(c) and 3013(c). Either party may petition the circuit for leave to appeal within 20 days of the entry of the preliminary hearing order. In so doing the bill responds to the recent invitation by the Supreme Court [177] to seek special appeal procedures where it is likely that a denial of public or class compensatory action status will end litigation of possible meritorious underlying claims.[178] An order allowing an action to continue under section 3004(c) or 3013(c) significantly increases the defendant's litigation burden and adds substantially to the costs of litigation, the risks of potential classwide liability, and the pressures for an early settlement on terms favorable to the relator or class representative. Its impact on the class opponent is fully as heavy as a denial would be on the class, or the United States in a public action. In view of these major consequences, it is appropriate to allow either party an early appellate test of this limited, but important, issue under expedited and discretionary procedures.

FOOTNOTES

[1] For background on the 1966 amendments, *see* Advisory Committee on Civil Rules, Proposed Rules of Civil Procedure, 39 F.R.D. 95 (1965).

[2] *Eisen v Carlisle & Jacquelin*, 417 U.S. 156, 173–77 (1974).

[3] *See, e.g., Reiter v. Sonotone Corp.*, No. 77–1474 (8th Cir. June 19, 1978); *Windham v. American Brands, Inc.* 565 F.2d 59, 71–72 (4th Cir. 19), *cert. denied*, 46 U.S.L.W. 3643 (1978).

[4] Notes 5, 42–43 *infra* & accompanying text. *See also* Senate Judiciary Committee Minority Views, The Antitrust Enforcement Act of 1978, S. Rep. No. 95–934, Pt. 2 95th Cong. 2d Sess. (1978).

[5] *Responses to the Rule 23 Questionnaire of the Advisory Committee on Civil Rules, as reprinted in* 5 Class Action Rep. 10, 17 (1978) [hereinafter cited as *Rule 23 Questionnaire Responses*] (48 percent of legal practitioners found Rule 23 in need of amendment due to its wasteful character; 71 percent of 62 defense attorneys felt that present rule "encourages defendants to settle rather than defend on merits" because of size of potential recovery, with a plurality of 39 percent of attorneys representing neither plaintiffs nor defendants concurring with this view; 205 respondents from the entire profession, or 57% favored requiring more affirmative participation in the lawsuit by class members; 211 respondents from the entire profession, or 57%, found that "Rule 23" placed "the lawyer in the position of an entrepreneur.") *See also* Handler, *The Shift from Substantive to Procedural Innovations in Antitrust Suits*, 71 Colum. L. Rev. 1, 11 (1971) (defense viewpoint that new small claim machinery needed).

[6] Institute for Public Interest Representation (Geo. Univ. Law Ctr.), Comments on OIAJ Dec. Draft (1978); Letter from Ad Hoc Public Interest Committee on OIAJ Dec. Draft to OIAJ (Jan. 3, 1978) (signed on behalf of the Americans for Democratic Action, Consumer Federation of America, Council for Public Interest Law; National Consumers League, Public Citizens Congress Watch, Public Citizens Litigation Group).

[7] Letter from Durham J. Monsma, Staff Counsel, Times Mirror Corp. to OIAJ (Jan. 17, 1978). *But see* United States Chamber of Commerce, *Statement on OIAJ Dec. Proposal* 3 (1978) (no need for urgent change); Bristol-Myers Co., Merck & Co., and Pfizer, Inc., *Comments on Draft Statute Proposed by OIAJ* 1 (1978) (Rule 23(b)(3) "fine tuning" all that is required).

[8] *The Chilling Effect of Litigation, Business Week* 59, 62 (June 6, 1977); *The "Legal Explosion" Has Left Business Shell Shocked, Fortune* 65, 66 (April, 1973).

[9] President's Message to Congress, 13 Weekly Comp. of Pres. Doc. 497 (April 11, 1977); Address by Vice President Mondale to the Second Judicial Circuit Conference (Sept. 10, 1977). *See also* Address of President Jimmy Carter to Los Angeles Bar Ass'n (May 4, 1978).

[10] *Hearings on Confirmation of Griffin B. Bell, Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 103 (1977).

[11] Address by Vice President Mondale, note 9 *supra*.

[12] Address of Senator Edward M. Kennedy, National Center for State Courts (March 21, 1978).

[13] *Rule 23 Questionnaire Responses, supra*, note 5, at 3.

[14] *Id.* at 17. *See also* American Bar Ass'n., Report of Pound Conference Follow-up Task Force 30–31 (1976).

[15] H. Friendly, Federal Jurisdiction: A General View 18–20 (1973).

[16] *Illinois Brick Co. v. State of Ill.*, 431 U.S. 720 (1977); *Reiter v. Sonotone Corp.*, No. 77–1474 (8th Cir. June 19, 1978).

[17] *Developments in the Law of Class Actions*, 89 Harv. L. Rev. 1318, 1625–1630 (1976) (eight suggested revisions of Rule 23 as well as call for more analysis of impact on substantive law; *see* Proposed § 3006(a) & comment).

[18] Note, *To Right Mass Wrong: A Federal Consumer Class Action Act*, 13 Harv. J. Legis. 776 (1976); Note, *The Rule 23(b)(3) Class Action: An Empirical Study*, 62 Geo. L. J. 1123, 1166 (1974) [hereinafter cited as Senate Commerce Study] ("[T]he study [has] identified a group of cases in which management of notice and damage methods under present [Rule 23(b)(3)] became difficult or impossible. Those cases usually involve both very large classes and several individual claims-frequent characteristics of consumer class litigation."); Handler, *supra* note 5.

[19] [J.] Kennedy, *Securities Class and Derivative Actions in the United States District Court for the Northern District of Texas*, 14 Houston L. Rev. 769, 832 (1977) [hereinafter cited as *Securities Study*] (most actions settled; revision of settlement procedures needed).

[20] Duval, *The Class Action as an Antitrust Enforcement Device: The Chicago Experience (II)*, 1976 Am. Bar Foundation Res. J. 1273, 1353–58 (1976).

[21] 28 U.S.C. § 2072.

[22] Text in letter from Hon. Roszel C. Thomsen, Standing Committee Chairman, Committee on Rules of Practice and Procedure, to Standing Committee (March 14, 1978).

[23] Note 5 *supra*.

[24] [1977] Antitrust & Trade Reg. Rep. (BNA) A–19, F–1 (Dec. 8, 1977).

[25] §§ 3001–3007 (public action).

[26] §§ 3011–3014 (class compensatory action).

[27] §§ 3001(a) (the public action is brought by relation on behalf of United States); 3022 (adequacy of representation of United States' interests); 3026(b) (approval by United States of public action settlement).

[28] §§ 3002(b)(1) (United States assumption of actions brought on its behalf); 3002(b)(4) (discretionary "not in the public interest" statement by United States); 3005(a) (incentive fee to persons bringing action on behalf of United States); 3007(c) (compensation of injured persons in successful public actions); 3022 (adequacy of representation of United States); 3026(b) (United States approval of settlement). *See also* discussion *infra* at II.E. (United States representation of injured persons' interests).

[29] § 3005 (incentive fee for private relator).

[30] §§ 3001(d) (factual pleading with particularity); 3002(b)(4) (discretionary public interest recommendation by United States); 3022(a) (counsel's experience with complex litigation); 3026 (closer judicial scrutiny of settlement; 3027 (rationalization of compensation to provide generous, but not excessive, return to successful relator counsel).

[31] §§ 3004(a), 3013(a) (preliminary hearing determinations); 3006, 3014 (expeditious proof of recovery); 3007 (public action claims administration outside district court); 3021–22, 3024–25, 3027 (management provisions pertinent to transfer; adequacy of representation; timetables; expediting judicial rulings; settlement; codification of fee award standards).

[32] A qualitative analysis of the work load impact of various provisions in the bill has been prepared by the Office for Improvements in the Administration of Justice and is available on request. It is commissioning a quantitative analysis for the 96th Congress' consideration.

[33] §§ 3004(a), 3013(a) (preliminary hearings); 3014, 3028(b) (separate trial of issues).

[34] § 3025.

[35] For examples of similar actions by relation, *see generally* Cappelletti, *Vindicating the Public Interest Through the Courts: A Comparativist's Contribution*, 25 Buff. L. Rev. 643 (1976); Homburger, *Private Suits in the Public Interest in the United States of America*, 23 Buff. L. Rev. 343 (1973).

[36] §§ 3002(b)(1), 3002(b)(4).

[37] A list of illustrative federal statutes covered has been prepared by the Office for Improvements in the Administration of Justice and is available on request. Public actions cannot, however, be based upon statutes pertaining to hours, wages or other terms and conditions of employment, including discrimination in employment, *e.g.*, 29 U.S.C. § 206 (Fair Labor Standard Act); 42 U.S.C. § 2000e *et seq.* (Title VII); 29 U.S.C. § 206(d) (1970) as amended 29 U.S.C. § 213(a) (1976) (Equal Pay Act). These actions may continue as either compensatory actions, § 3011(a), or under unaffected Rules 23(b)(1) and 23(b)(2), Fed. R. Civ. P.

[38] Even under the bill's formulation, there could be rare instances where the United States is on both sides of the lawsuit. Section 3001(e) provides the court the tools to avoid any possible collusion.

[39] *See, e.g.*, Dam, *Class Actions: Efficiency, Compensation, Deterrence and Conflict of Interest*, 4 J. Legal Stud. 47 (1975); *Class Actions: A Symposium*, 12 San Diego L. Rev. 1 (1974); *Class Action Symposium*, 68 Nw.U.L. Rev. 991 (1974).

[40] *As quoted in* Report on the Antitrust Enforcement Act of 1978, S. Rep. No. 95–934, Pt. 1, 95th Cong., 2d Sess. 21 (1978).

[41] *See* K. Elzinga and W. Breit, *The Antitrust Penalties* 118 (1976).

[42] *Rule 23 Questionnaire Responses, supra* note 5, at 10; note 4 *supra*.

[43] *Eisen v. Carlisle & Jacquelin*, 391 F. 2d 555, 571 (2d Cir. 1968) (Lumbard, J. dissenting). S. Rep. No. 95–1397 Pt. 2, *supra* note 4 (remarks of Richard Posner) (incentive for plaintiff lawyer in consumer class action to settle for small judgment and large attorney fee; no incentive for class member to supervise attorney); *Securities Study, supra* note 19, at 830; DuVal, *supra* note 20, at 1357; Senate Commerce Study, *supra* note 18, at 1136–37.

[44] *See* Report on Hart-Scott-Rodino Antitrust Improvements Act of 1976, H. Rep. No. 94–449, Pt. 1, 16 (1976).

[45] *Windham, supra* note 3, at 70; *Philadelphia v. American Oil Co.*, 53 F.R.D. 45, 72–73 (D. N.J. 1971). *Harvard Developments, supra* note 17, at 1516.

[46] Chamber of Commerce of the United States, A Handbook on White-Collar Crime 6 (1974).

[47] *Fair and Effective Enforcement of the Antitrust Laws: Hearings on S. 1874 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 1 (1977) [hereinafter] cited as *Hearings on S. 1874*] (statement of Senator Kennedy).

[48] 15 U.S.C. §§ 2310(d)(3),(e). *See* § 3030(b).

[49] 15 U.S.C. § 1640(a)(2)(B). *See* § 3030(c).

[50] 15 U.S.C. § 15c.

[51] 15 U.S.C. § 15c(a)(1).

[52] *Id.*

[53] 15 U.S.C. § 12 *et seq.*

[54] 15 U.S.C. § 13.

[55] 15 U.S.C. § 15c(a)(1).

[56] 15 U.S.C. § 15d.

[57] *See* note 44 *supra* and accompanying text.

[58] *Hearings on S. 1874, supra* note 47, at 103.

[59] Remarks of Joe Sims, Deputy Assistant Attorney General, Antitrust Division, Before the American Bar Association Section of Antitrust Law (April 6, 1978).

[60] *See* text accompanying notes 46–47 *supra*.

[61] W. Mueller, *A Primer on Monopoly and Competition* 117 (1970).

[62] M. Green, *et al.*, *The Closed Enterprise System* 130 (1972).

[63] Note 124 *infra*.

[64] S. Rep. No. 95–1397 Pt. 1 *supra* note 40, at 19.

[65] In the case of the public action, an incentive fee. *See* discussion *infra* at II.F.

[66] *See* discussion *infra* at II.F., IV.E.

[67] Note 65 *supra*.

[68] Relevant portions of the bill defining the United States' control are §§ 3001(a) (public action on behalf of the United States); 3002(a) (service on United States of a copy of summons, complaint, and information relevant to prosecution of action); 3002(b) (United States or State assumption and public interest recommendation); 3002(c) (role of relator attorney if assumption or reference occurs); 3003(c) (notice of relator discovery served upon the Attorney General of the United States); 3005(a) (incentive fee, costs and expenses for relator); 3007 (public recovery fund administered by Administrative Office of the United States Courts); 3022 (representation of United States' interests by relator); 3026(b) (United States approval of public action settlement).

[69] § 3001(a).

[70] § 3001(d).

[71] *See, e.g.*, Fed. R. Civ. P. 13, 20 (counterclaims and cross-claims; joinder); 9 C. Wright and A. Miller, Federal Practice and Procedure §§ 1410, 1653 (1972) [hereinafter cited as Wright & Miller] (Rules 13, 20).

[72] *See* C. Wright, Law of Federal Court § 71 (1972) (Rule 20).

[73] *Harvard Developments, supra* note 17, at 1505–06; Landers, *Of Legalized Blackmail and Legalized Theft: Consumer Class Actions and the Substance-Procedure Dilemma*, 47 S. Cal. L. Rev. 842, 862 (1974).

[74] *Green* v. *Wolf Corp.*, 406 F. 2d 291 (2d Cir. 1968), *cert. denied sub nom. Troster, Singer & Co.* v. *Green*, 395 U.S. 977 (1969); *Harvard Developments, supra* note 17, at 1505–06; 7A Wright & Miller, *supra* note 71, § 1778 nn. 30–32 (1972).

[75] *In re Antibiotic Antitrust Actions*, 333 F. Supp. 278, 287 (S.D.N.Y. 1971).

[76] *Harvard Developments, supra* note 17, at 1506 n.262; Landers, *supra* note 73, at 862.

[77] *Harvard Developments, supra* note 76; Landers, *supra* note 73; 7A Wright & Miller, *supra* note 71.

[78] *Harvard Developments, supra* note 17, at 1455 n.6, 1506–07 & accompanying text. *Windham, supra* note 3, at 66–72.

[79] §§ 3001(b) (no treatment of cross-claims, counter-claims, or pendent jurisdictional claims); 3006(a) (possible election of most expeditious proof of recovery); and 3006(c) (no individual proof of claims in public action).

[80] *Harvard Developments, supra* note 17, at 1459–63.

[81] *See* discussion *infra* at II.E.

[82] *Harvard Developments, supra* note 17, at 1498 n.230.

[83] *See* discussion *infra* at II.G.

[84] Subject to the United States' right to petition for a postponement given an ongoing federal or State investigation. § 3004(a).

[85] *See* Patrick, *Initial Evaluation of a Class Action by Plaintiff's Counsel*, ALI–ABA Course of Study Materials: Class and Derivative Actions 3–4 (1978) [hereinafter cited as ALI–ABA Materials]; Blecher, *Is the Class Action Doing the Job?*, 55 F.R.D. 365, 370 (1972). *Rule 23 Questionnaire Responses, supra* note 5, at 32 (written responses). Text *infra* at IV.C.

[86] *Jacobson & Co., Inc. v. Armstrong Cash Co.*, 548 F.2d 438 (2d Cir. 1977); *Sonestal International Hotels Corp. v. Wellington Associates*, 483 F.2d 247, 250 (2d Cir. 1973) (Mansfield, J.); *Gulf and Western Industries, Inc. v. The Great Atlantic and Pacific Tea Co.*, 476 F.2d 687, 692 (2d Cir. 1973).

[87] It is enough that the claims raised contain issues ripe for litigation. *See Jacobson & Co., Inc., supra* note 86, at 442–43.

[88] *Columbia Pictures Industries, Inc. v. American Broadcasting Co.*, 501 F.2d 894, 897 (2d Cir. 1974).

[89] *Gulf and Western Industries, supra* note 86, at 693 n.6 (five depositions over two days).

[90] *Rule 23 Questionnaire Responses, supra* note 5, at 24 (63 percent of 375 lawyers responding favored amending Rule 23(b)(3) to require plaintiffs to show a "reasonable likelihood" of success on the merits; 79 percent of 24 circuit judges and 77 percent of 145 district court judges favored a merits hearing before certification); DuVal, *supra* note 20, at 1305; *Harvard Developments, supra* note 17, at 1418; Los Angeles Class Action Manual § 421.2; Senate Committee Study, supra note 18, at 1126; Committee on Class Actions of ABA Section of Corp., Banking and Bus. Law, *Recommendations Regarding Consumer Class Actions for Monetary Relief*, 29 Bus. Lawyer 957, 958 (1974).

[91] Subject to §§ 3002(a), 3003(c) 3026(b) (United States approval of withdrawal or settlement; notice of discovery served on United States).

[92] § 3002(b)(3). *See* discussion *infra* at II.I.

[93] §3002(b)(4).

*Cf.* National Conference of Commissioners on Uniform State Laws, Uniform Class Actions [Act] [Rule] § 9(a)(4) [hereinafter cited as UCCA] (State attorney general participation in adequacy of representation determination).

[94] § 3002(c).

[95] § 3004(c).

[96] § 3024(a).
[97] § 3003(a).
[98] § 3003(b). UCCA, *supra* note 93, § 10(a) (discovery of absentees only by leave of the court). For the same phrasing, *see* Rule 26 (b)(3) Fed. R. Civ. P., (trial preparation: materials).
[99] Wright & Miller, *supra* note 71, § 2025 nn.88–90 (emphasis on importance of materials to case); *id.* nn.72–73 (no discovery if for example information is obtainable by witness deposition).
[100] *Harvard Developments, supra* note 17, at 1147 n.275. For a less demanding test for absentee discovery, *see, e.g., Brennan* v. *Midwestern United Life Insurance Co.*, 450 F.2d 999 (7th Cir. 1971), *cert. denied*, 405 U.S. 921 (1972).
[101] Blecher, *Discovery of Absent Class Members . . .*, ALI-ABA Materials, *supra* note 85, at 59–60; Newberg On Class Actions, § 2820a [hereafter cited as Newberg].
[102] § 3006(c).
[103] Note 43 *supra*.
[104] § 3022(a); *see* discussion *infra* at IV.B.
[105] § 3027.
[106] *Securities Study, supra* note 19; DuVal, *supra* note 20; Senate Commerce Study, *supra* note 18. Note 43 *supra*.
[107] § 3005(a).
[108] § 2032(a)(3).
[109] § 3007.
[110] The opinion is available upon request. *See also Harvard Developments, supra* note 17, at 1628; Comment, *Importance of Being Adequate: Due Process Requirement of Class Actions Under Federal Rule*, 123 U. Pa. L. Rev. 1217 (1975); Dam, *Class Action Notice: Who Needs It?* 1974 Sup. Ct. Rev. 97, 112 (1974).
[111] Note 43 *supra*.
[112] *See* discussion *supra* at II.A.3.
[113] Some courts have even gone so far as to interpret this lack of substantial interest as a ground for disqualifying an injured person as a class representative. *See, e.g., Rollins v. Sears, Roebuck & Co.*, 71 F.R.D. 540 (E.D. La. (1976).
[114] *Id;* note 43 *supra*.
[115] *See also* § 3005(b) (division of incentive fee if separate action mandated).
[116] *See, e.g., Hearings on S. 1874, supra* note 47, at 47 (Statement of Harold E. Kohn): ("It is easier in my opinion to show [unjust enrichment] concentrated in the hands of conspirators than it is to [seek individual proof of injury].")
[117] *See Harvard Developments, supra* note 17, at 1523–36.
[118] §§ 3006(b)(2), 3006(c). *See* Manual for Complex Litigation § 1.43 (1978) [hereinafter cited as Manual.]

Judge Cohn in a careful opinion, *In re Sugar Industry Antitrust Litigation*, 73 F.R.D. 322, 350–55 (E.D. Pa. 1976), examined policies articulated in Rule 703, Fed. R. Evid., the Manual (§ 2.712), and the Constitution. He makes a forceful argument for more aggressive use of polling technique as a management device.

*See also Sanders v. Levy*, 556 F.2d 636 (2d Cir. 1977), *cert. granted on other grounds sub nom. Oppenheimer, Inc. v. Sanders*, 98 S. Ct. 391 (1977); *Partain v. First National Bank of Montgomery*, 59 F.R.D. 56, 59 (M.D. Ala. 1973) (Johnson, J); *Milberg v. Lawrence Cedarhurst Federal Savings and Loan Assn.*, 68 F.R.D. 49 (E.D. N.Y. 1975); Newberg, *supra* note 101, § 11556 nn.64–66.

The House Judiciary Committee has noted "[t]he Federal courts have repeatedly permitted classwide proof of injury and damage in class actions. . . ." The Committee catalogues at least thirteen cases where classwide proof of damages has been permitted. H. Rep. No. 95–1397, *supra* note 44, at 14, 52–53 (1978); Patrick, ALI–ABA Materials, *supra* note 85, at 238–39.
[119] § 3006(d). *See, e.g.*, 15 U.S.C. § 15 (antitrust treble damage recovery). *Compare* § 3007(d) (no application to amount of claim paid).
[120] 15 U.S.C. § 15e(2). *Compare* H. Rep. No. 94–499, note 44 *supra with* § 15(e)(2). *See also Harvard Developments, supra* note 17, at 1524–36 & cases cited therein.
[121] *Compare* § 3007(d) (different timing of payment if the action is settled) *with* § 3007 (e) (payment pro rata of settlement amounts; full payment of litigated judgment amounts using where necessary funds not depleted in prior actions).

In a great majority, if not all, instances the small claims against either fund will not exhaust it.

Note 124 *infra. See generally* National Ass'n of [State] Attorneys General, *Distribution of Antitrust Class Action Proceeds* (1977). Failure to prorate settlement claims would encourage understatement of settlement amounts during negotiations.

*See also* §§ 3007(c), 3007(g) (no payment of claims less than $15; or of claims which cannot be assessed with reasonable accuracy).
[122] *See* discussion *infra* at II.J.
[123] Statement of John M. Shenefield, Ass't. Attorney General, Antitrust Division, Before the Appropriations Committee of the Vermont House of Representatives (March 2, 1978).
[124] *Mazur* v. *Behrens*, 1974 Trade Cases, ¶75,213 (N.D. III. 1974) (class members claimed only $210,000 of the $1,750,000 awarded). *Colson* v. *Hilton Hotels, Inc.*, 59 F.R.D. 324 (N.D. III. 1972) (only $18,980 of a $5,157,406 settlement were disbursed to class members).
[125] *Compare* § 3001(a) *with* 3011(a). Note 37 *supra*.
[126] § 3011(b). Section 3011(b) does not affect any remedy otherwise available under State statute or other state law. These judgments are affected only by estoppel. § 3023.
[127] *See* discussion *supra* at II.B.
[128] *See* discussion *infra* at IV.B.
[129] *See* discussion *supra* at II.B.
[130] *See* discussion *supra* at II.C, D.
[131] § 3013(c).
[132] § 3012(b). Manual, *supra* note 118, § 1.45.
[133] § 3013(e). *See* UCAA, *supra* note 93, §§ 7(c)–(e), (f).
[134] "[B]est notice practicable under the circumstances, including individual notice, [shall be given] to all members who can be identified through reasonable effort."
[135] § 3013(e).
[136] Rule 1711(b), Pa. R. Civ. P. (court at its discretion may mandate opt-in if it finds "individual claims are substantial" and "potential members have sufficient resources, experience and sophistication in business affairs to conduct their own litigation.")
[137] *Compare, Windham, supra* note 3, at 71–72 *with Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 455 (3d Cir. 1977), *cert. denied*, 46 U.S.L.W. 3527 (1978).
[138] *See Windham, supra* note 3, at 70.
[139] *See* Office of Legal Counsel Memoranda, Appendix B; *Link v. Mercedes-Benz of N. Am., Inc.*, 550 F.2d 860 (3d Cir. 1977) (en banc) (Gibbons, J. dissenting), *cert. denied*, 431 U.S. 93 (1977).
[140] As to the Constitutionality of such cost shifting, the Department of Justice Office of Legal Counsel has prepared a memorandum, which is available on request. *Cf.* Note, *Allocation of Identification Costs in Class Actions*, 91 Harv. L. Rev. 703, 711 n.61 (1978) (notice cost shifting prior to liability determination).
[141] 28 U.S.C. § 1407(c), (g) (permissive notice and lack of application of consolidation to United States as complainant). The Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 15c *et seq.*, added subsection (h) to section 1407 permitting consolidation of parens patriae actions for all purposes.

*See also* Report on Clayton Act Amendments of 1978, H. R. 11942, 95th Cong., 2d Sess. § 4 (1978).
[142] §§ 3004(c), 3013(c).
[143] Fed. R. Civ. P. 4(h), 15(a)–(d).
[144] Fed. R. Civ. P. 24(a), 24(b).
[145] *Harvard Developments, supra* note 17, at 1471–72 (notes omitted).
[146] *Id.* at 1471–1498.
[147] Dam, *supra* note 39, at 59–60. *See also* [D]. Bell, *Serving Two Masters: Integration Ideals and Client Interest in School Desegregation Litigation*, 85 Yale L. J. 470, 508–09 n. 124 (1976).
[148] § 3022(a).
[149] Los Angeles Class Action Manual, *supra* note 90, § 1.1 (use of a declaration on adequacy of representation).
[150] Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281, 1284, 1298 (1976).
[151] *J. P. Foley & Co., Inc. v. Vanderbilt*, 523 F.2d 1357, 1360 (2d Cir. 1975) (Gurfein J. concurring) (use of disqualification motions as litigating tactic). Blecher, *supra* note 101, at 66, 68; Patrick, *supra* note 85, at 14; McLaughlin, *Appealability: . . . Disqualification of Counsel . . .*, ALI-ABA Materials, *supra* note 85, at 152.
[152] McLaughlin, *supra* note 151, at 145–158; Patrick, *supra* note 85, at 14.
[153] In fiscal 1977, 600 class and non-class civil actions, and 559 motions, were held "under advisement" for over 60 days. Of these, 356 cases and 362 motions were held over 60 days but not more than six months. There were 126 cases held for between six months and one year, and 115 motions. Finally, 118 cases and 82 motions were held for over a full year. Administrative Office of the United States Courts, Report of the Director of the Administrative Office 296 (1977).
[154] *Securities Study, supra* note 19, at 801.
[155] Manual, *supra* note 118, § 1.10.
[156] *Id.* § 1.40.
[157] "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Fed. R. Civ. P. 23(e).
[158] DuVal, *supra* note 20, at 1340. Note 43 *supra*.
[159] *Securities Study, supra* note 19, at 811–12, 828.
[160] UCAA, *supra* note 93, § 12(a) (mandatory approval by court of settlement after a hearing). Manual, *supra* note 118, § 1.46 (greater supervision of settlements needed). *See also* text accompanying notes 42–43 *supra*.
[161] Manual, *supra* note 118, § 1.46.
[162] *Id.*
[163] *Id.*
[164] For a listing of federal statutes authorizing fee awards *see* Newberg, *supra* note 101, § 7040. *See also id.* §§ 6905a *et seq.* (equitable fund doctrine).
[165] *See, e.g., Lindy Bros. Builders, Inc.* v. *American Radiator & Standard Sanitary Corp.*, 540 F. 2d 102 (3d Cir. 1976) (en banc) (*Lindy II*); *City of Detroit* v. *Grinnell Corp.*, 495 F. 2d 448 (2d Cir. 1974) (*Grinnell I*). Berger *infra* note 166, at 291–92.
[166] [S.] Berger, *Court Awarded Attorneys' Fees: What Is "Reasonable"?* 126 U. Pa. L. Rev. 281, 283–84 (1977).
[167] Manual, *supra* note 118, § 1.47.
[168] §§ 3027(a)(1) (duplicative and "churning" hours); 3027(e) (fee award under this section and private contingent agreement compensation not to exceed proper compensation calculated under this section).
[169] *Accord, Dorfman* v. *First Boston Corp.*, 70 F.R.D. 336, 373–74 (E.D. Pa. 1976) (Lord, C.J.); *In re Gypsum Cases*, 386 F. Supp. 959, 972 (N.D. Cal. 1974), *aff'd on other grounds*, 565 F.2d 1123 (9th Cir. 1977). *Contra, Grinnell I, supra* note 165, at 473.

[170] Such an approach is now applied in some cases. Note 165 *supra*.

[171] *Lindy II*, *supra* note 165, at 117.

[172] § 3027(e).

[173] Berger, *supra* note 166, at 293.

[174] *Cf. Securities Study*, *supra* note 154 (judicial officer tendency to put off essential class determination).

[175] Manual, *supra* note 118, § 1.47.

[176] These provisions remain in full force except where they require a minimum number of named parties.

[177] *Coopers & Lybrand* v. *Livesay*, 98 S. Ct. 2754, 2458–59 (1978).

[178] *Compare Blackie* v. *Barrack*, 524 F.2d 891 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976); *Ott* v. *Speedwriting Publishing Co.*, 518 F.2d 1143, 1148–49 (6th Cir. 1975) *with Shelter Realty Corp* v. *Allied Maint. Corp.*, No. 77–7545 (2d Circ., Apr. 6, 1978).●

Mr. KENNEDY. Mr. President, there is widespread agreement among lawyers and judges, consumers and business people, that better procedures are required to alleviate the critical problem which have been encountered in the litigation of class damage actions. This comprehensive bill, developed after a year of intensive inquiry by the Department of Justice, will begin the debate on revision of one of our most important procedural rules. The application of rule 23(b)(3) of the Federal Rules of Civil Procedure has profound implication for effective consumer and small-business redress in areas that have held my interest for a number of years—antitrust, civil rights, and consumer rights, to name a few.

The introduction of this bill is significant because it marks the beginning of a comprehensive congressional inquiry into how present damage procedures, all too often, fail to function. My mind is still open on specific details of the bill pending hearings, but I commend the Department of Justice for a useful beginning toward passage of legislation in the 96th Congress.

This bill recognizes that the "consumer" class action—the mass, small-claim action—needs to be analyzed separately from other class actions. Until we learn to manage the mass, small-claim class action, we will in all likelihood continue to see courts erode by narrow construction substantive rights simply because the courts perceive these lawsuits as burdensome and inconvenient. The present debate over the ability of indirect purchasers to sue under the antitrust laws is an excellent example of the unacceptable and pernicious side-effects that the failure to manage the consumer class action has had.

It is easy to sympathize with the courts' motivation for limiting class actions, but in a larger sense this course appears misguided. Although class actions are more complex and time consuming than the average civil case, they can also be a most efficient way of disposing of controversies. In one proceeding—however lengthy and time consuming it may be—a judge can adjudicate the rights of thousands of persons. The class action also makes the courts accessible to those who simply could not pursue their claims individually. A defendant who has the cunning to harm a large number of people, only a small amount each should not get off the hook because of the complexities of class action lawsuits.

To achieve effective management we must look to the present application of contradictory and overly complex legal doctrines to the class damage action—doctrines which are unrelated to the efficiency-of-adjudication rationale for this procedure. In fact, they create enormous litigation inefficiencies, to the advantage to the party with the most resources, not the best case. Because of the expensive motion and discovery practices created, the litigants become emeshed in a duel of dollars until one decides the costs are too great to continue the battle.

The overwhelming advantage present class procedures give to the deep-pocket litigant undermines the procedure's role in equalizing the power of the consumer and the small businessman to deal in our courts with large public and private institutions.

The sad fact is that today small companies and private citizens are Davids without slingshots, competing against corporate and governmental Goliaths in wars of attrition which have become increasingly difficult to win.

With delaying tactics, huge legal costs, and complex litigation, large companies can effectively force small adversaries to forego any effort to vindicate their rights in court. It may be as simple as outspending smaller opponents. As Warren Avis has wisely pointed out, "small may very well be better—but not in the courts. We have reached a point in this country where, in many instances, power has become more important than justice—not the matter of who is right, but of who has the most money, time, and the largest battery of lawyers to drag a case through the courts."

Rather than face extended delays and enormous costs, the small litigants are likely under present class damage procedures to hoist the white flag of unconditional surrender, or settle a claim for much less than they are otherwise entitled. We must find ways to reduce the burdens and delays associated with class litigation—which inevitably work the greatest hardship on promising individuals and small business. The introduction of this bill assures full consideration of these issues this Congress and next.

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By Mr. MATSUNAGA:

S. 3476. A bill to amend the Internal Revenue Code of 1954 to provide the same treatment, with respect to determination of sources of income, for interest paid by foreign branches of domestic banks and interest paid by foreign branches of domestic savings and loan institutions; to the Committee on Finance.

● Mr. MATSUNAGA. Mr. President, at the present time, interest on deposits, which qualify as "possession source investment income," in commercial banks in Puerto Rico is not subject to Federal tax. It recently has been determined that this exemption does not extend to similar deposits in savings and loan associations.

The disparate treatment of deposits in banks and deposits in savings and loan associations is contrary to the expressed will of Congress which is found in the Senate Committee report on Public Law 89–809—Foreign Investors Tax Act of 1966, report No. 1707, amending section 861 (a)(1) and (c) of the Internal Revenue Code.

Unfortunately, the language of the Code does not implement the congressional intent. Section 861(a)(1)(F) provides for foreign source status for "interest on deposits with a foreign branch of a domestic corporation or a domestic partnership, if such branch is engaged in the commercial banking business." Savings and loan associations are not considered to be in the commercial banking business for purposes of the Code.

The Office of Tax Legislative Counsel at the Department of Treasury has examined the problem and agrees that the anomally resulted from legislative oversight. It cannot be cured by Treasury regulation, but requires legislative action.

Today I am introducing a bill to correct this drafting oversight.●

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By Mr. PROXMIRE (by request):

S. 3478. A bill to amend the One Bank Holding Company Act of 1970; to the Committee on Banking, Housing, and Urban Affairs.

CARSON CITY SILVER DOLLARS

Mr. PROXMIRE. Mr. President, at the request of the administration I am introducing legislation to amend the Bank Holding Company Act Amendments of 1970. Section 205(a) of this legislation (P.L. 91–607) authorized the public sale of approximately 3 million rare silver dollars by the Administrator of General Services under procedures recommended by the now defunct Joint Commission on the Coinage. These coins represent the last of the U.S. Government's holdings of 90 percent silver dollars. For only 13 years the Carson City Mint in Nevada produced these silver dollars. In the early 1900's, the demands for silver to support our war efforts in World War I resulted in massive coin melts, and the stored Carson City Silver dollars were thought to have been melted to meet these demands. However, in 1964 when silver was no longer used in coinage or for the redemption of silver certificates, the General Accounting Office made an audit of the Treasury's silver dollars and discovered in a Treasury vault nearly 3 million coins, most of which were uncirculated silver dollars from the long-closed Carson City Mint.

Mr. President, while receipts to the Treasury from the sale of these coins total $55.3 million, it is the administration's opinion that the guidelines set down by the Joint Commission are no longer an effective method of marketing the remaining coin inventory of approximately 1 million coins. Accordingly, the proposed amendment to section 205(a) of the Bank Holding Company Act Amendments of 1970 would allow the Administrator of General Services to conduct future sales in a less cumbersome manner than the currently authorized procedure. If enacted, the legisla-

tion would bring an estimated $24 million into the U.S. Treasury, and our committee will be happy to hold hearings on it.

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By Mr. CHURCH:

S. 3479. A bill to amend title XVIII of the Social Security Act to prevent the imposition, under part B thereof, of more than one deductible with respect to expenses incurred for the purchase or rental of any particular piece of durable medical equipment; to the Committee on Finance.

ELIMINATE DOUBLE DEDUCTIBLE FOR DURABLE EQUIPMENT

● Mr. CHURCH. Mr. President, I introduce for appropriate reference a bill to correct an inequity in medicare relating to payment of a "double deductible" for the purchase of durable medical equipment.

My proposal would eliminate the possibility that a medicare beneficiary be required to meet the annual part B $60 deductible twice on the purchase of a single piece of medical equipment. Under existing law, this "double deductible" charge must be made when installment payments for the purchase or rental of equipment—such as a wheelchair—extend into more than one deductible period, or calendar year.

This inequity in existing law first came to my attention a few years ago when an Idaho resident purchased a wheelchair for cash payment in the middle of the year. She submitted a claim to medicare under part B, and it was her only claim for that year. She was notified that her deductible had been met for that year, then at $50. Under normal circumstances, she would then expect to receive reimbursement for 80 percent of the remaining "reasonable" charge for the wheelchair.

However, she did not begin receiving her installment payments from medicare until the next calendar year. She did not submit any additional part B claims the second year, and when she received a notification of an amount being applied to her second year deductible she realized that she was being charged a deductible twice on the same wheelchair.

The Department of Health, Education, and Welfare assures me that this requirement is not actually imposed on many beneficiaries, as the second year deductible is most often met through claims for other services. However, when no other claims are submitted—or claims in an insufficient amount to meet the full deductible—the additional amount would be subtracted from payments still due on the medical equipment claim previously submitted.

To my way of thinking, a medicare amount would be subtracted from pay- a deductible twice for one purchase of durable equipment.

The Department of Health, Education, and Welfare assures me that my proposal would result in only negligible additional costs to the medicare program. I am also assured that it need not impose a significant additional administrative or paperwork burden on the Medicare Bureau.

For these reasons, I urge approval of my bill.

Mr. President, I ask unanimous consent to have my bill printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3479

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the first sentence of section 1833(b) of the Social Security Act is amended by inserting "(subject to subsection (f)(5)" immediately after are determinable) shall".

(b) Section 1833(f) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) The deductible imposed by subsection (b) shall, insofar as such deductible relates to expenses incurred by an individual for the purchase of rental of any piece of durable medical equipment included under section 1861(s)(6), be deemed to have been met for any calendar year, if, for such calendar year and any preceding calendar years, there have been imposed, under subsection (b), reductions with respect to the purchase or rental of such piece of equipment, the aggregate of which equals $60. In determining, for purposes of the preceding sentence, the amount of the reduction under subsection (b) for any calendar year with respect to the purchase or rental of any such piece of equipment, there shall not be taken into account any expenses incurred with respect to such piece of equipment until account has first been taken of all other expenses to which the deductible imposed by subsection (b) is applicable.".

(c) The amendments made by subsections (a) and (b) shall be applicable in the case of durable medical equipment purchased or rented after December 31, 1978.

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By Mr. McCLURE (for himself and Mr. WEICKER):

S. 3480. A bill to provide representation in the Senate for the District of Columbia as if it were a part of the State of Maryland; to the Committee on the Judiciary.

S. 3481. A bill to retrocede to the State of Maryland all lands within the District of Columbia except lands owned by the United States; to the Committee on Governmental Affairs.

S.J. Res. 156. A joint resolution to provide representation in the Congress for the District of Columbia; to the Committee on the Judiciary.

S.J. Res. 157. A joint resolution proposing an amendment to the Constitution to retrocede to the State of Maryland all lands within the District of Columbia except lands owned by the United States; to the Committee on the Judiciary.

THE DISTRICT OF COLUMBIA

● Mr. McCLURE. Mr. President, I am pleased to join the Senator from Connecticut in introducing a bill that would grant statehood to the District of Columbia. In my opinion, this provides a fair solution to the issue of extending full rights of political participation to all citizens of the District, and at the same time avoids the insurmountable constitutional objections that mar other proposals, including the recently approved House Joint Resolution 554.

Granting statehood to the District would not only guarantee to District of Columbia residents voting representation in both Houses of Congress, under article I of the Constitution. They would also be able to participate in the process of ratification of proposed amendments to the Constitution, article V; they would be entitled to as many electors for President and Vice President as they have Senators and Representatives, article 2, section 1; they would be assured of territorial integrity and protection against absorption into other States, article I, section 3; and they would have complete legislative control over internal matters, free of congressional veto. All congressional authority over the District now provided in article I, section 8, clause 17 would be effectively turned over to the people of the District acting through their elected representatives in a State legislature.

This amendment would not only assure to District of Columbia residents equal citizenship rights with other Americans; it would grant to the District complete self-government according to the wishes of its own people, without Federal interference. It would free the Federal Government of the responsibility of providing special treatment for the District at a tremendous expense to other U.S. citizens. The people of the District would not only enjoy the rights and powers of statehood. They would also assume the full burdens and responsibilities of citizens of a State of the Union. No longer would District citizens be considered second-class Americans or be victims of "taxation without representation."

It is dangerous to argue for granting full voting rights to American citizens without also providing for commensurate voting responsibilities. The effort to establish in any group of people rights unassociated with responsibilities has been proven throughout history to be destructive of individual fiber and freedom, and it is certainly harmful to government as well.

Full representation is consistent with the principles of democracy upon which our Nation was founded. This would end the myth which is both dangerous and unfair that the District of Columbia should be guaranteed representation as though it were a State without being a State. The Federal principle is far too important to be sacrificed on the basis of political expediency.

I am pleased to cosponsor this legislation and in light of recent congressional approval of a proposed constitutional amendment providing for voting representation in both the House and the Senate, I hope for speedy consideration of this measure.

In addition to the statehood idea, I am also introducing two other proposals, both as proposed amendments to the Constitution or in the alternative, as legislative enactments.

The first, gives full voting rights to the citizens of Washington by retrocession of the residental sections of the city to Maryland. This, of course, is based on the historic precedent which occurred when the Virginia portion of the District was returned to that State.

The second proposal provides that the District of Columbia be treated as though it were part of Maryland for purposes of representation in the Senate.

These suggestions, unlike the resolution passed earlier this week, are consistent with the mandates of the Constitution. They preserve the Federal nature of our Republic. We are all familiar with the history of the Constitutional Convention and the great compromise by which the conflict between the large and small States was resolved.

Madison, in the Federalist Papers wrote of our system as a "compound republic" of "independent and sovereign States. . . . In this spirit it may be remarked that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States and an instrument for preserving that residuary sovereignty."

I quote from the Federalist Papers to show how fundamental to the American system is the idea that the Senate represents States. The proposals I am offering today can be achieved either through legislation or constitutional amendment, and I offer them in both forms. Each of these proposals is more consistent with the American political tradition than House Joint Resolution 554, and we should not tamper with the basic principals of our systems when our goals can be achieved within that system.

Mr. President, my argument is best summed up in the very name of our country. We are not the republic of America, nor the federation of various political entities of America, we are the United States of America.

Mr. President, I ask unanimous consent that the resolution and bills be printed in the RECORD following my statement.

There being no objection, the bills and joint resolutions were ordered to be printed in the RECORD, as follows:

S. 3480

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

For purposes of representation in the Senate, the District constituting the seat of the government of the United States shall be treated as though it were part of the State of Maryland.

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S. 3481

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. Upon acceptance by the State of Maryland, and except as provided in section 2, the lands comprising the District constituting the seat of the government of the United States on the day before the day on which this article is ratified are retroceded to the State of Maryland.

SEC. 2. Section 1 shall not apply to lands owned by the United States on the day before the day on which this article is ratified and such lands shall, on and after the day on which this article is ratified, comprise the District constituting the seat of the government of the United States.

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S.J. RES. 156

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)* That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. For purposes of representation in the Senate, the District constituting the seat of the government of the United States shall be treated as though it were part of the State of Maryland.

"SEC. 2. For purposes of representation in the House of Representatives, the District constituting the seat of the government of the United States shall be treated as though it were a state."

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S.J. RES. 157

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. Except as provided in section 2 the lands comprising the District constituting the seat of the government of the United States on the day before the day on which this article is ratified are retroceded to the State of Maryland.

SEC. 2 Section 1 shall not apply to lands owned by the United States on the day before the day on which this article is ratified and such lands shall on and after the day on which the article is ratified, comprise the District constituting the seat of the Government of the United States.

SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

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By Mr. WEICKER (for himself and Mr. MCCLURE):

S.J. Res. 158. A joint resolution proposing an amendment to the Constitution to provide for Statehood for the District of Columbia; and for other purposes; to the Committee on the Judiciary.

STATEHOOD FOR THE DISTRICT OF COLUMBIA

● Mr. WEICKER. Mr. President, I join with my distinguished colleague from Idaho, Senator MCCLURE, in introducing a constitutional amendment to provide for statehood for the District of Columbia.

Earlier this week, I voted in favor of House Joint Resolution 554, a constitutional amendment providing voting representation for the District of Columbia. At that time, I expressed concern that Congress was not facing the central issue in the debate over representation: Whether the District of Columbia should be a State.

What the Congress has done in voting representation without statehood is the politically expedient thing—not the right thing.

Congress must face up to the issue before us—granting full rights to the District of Columbia. It does not do this by carving out another exception to the Constitution and amending the Constitution each time it is politically expedient to grant piecemeal rights to District citizens. It would do this by granting statehood to the District, with all the benefits (including full representation) and burdens that come with statehood.

Mr. President, I urge my colleagues to address the issue of full rights for the District of Columbia by acting expeditiously to provide for statehood by this constitutional amendment.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 158

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled* (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The District constituting the seat of government of the United States is hereby admitted into the Union as a State of the United States on an equal footing with the other States in all respects, except that the Congress shall exercise exclusive legislation over all lands and property owned by the United States.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

"SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

"SEC. 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

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## ADDITIONAL COSPONSORS

S. 835

At the request of Mr. CHURCH, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of S. 835, a bill to provide a program of income tax counseling for elderly individuals.

S. 1967

At the request of Mr. ROBERT C. BYRD, the Senator from Utah (Mr. GARN) was added as a cosponsor of S. 1967, a bill to amend section 218 of the Social Security Act to require that States having agreements entered into thereunder will continue to make social security payments and reports on a calendar-quarter basis.

S. 2843

At the request of Mr. HELMS, the Senator from Utah (Mr. GARN) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 2843, a bill to provide for the issuance of gold medallions, and for other purposes.

S. 2920

At the request of Mr. THURMOND, the Senator from North Dakota (Mr. YOUNG), the Senator from Utah (Mr. GARN), the Senator from Nebraska (Mr. CURTIS), the Senator from Vermont (Mr. STAFFORD), the Senator from Kansas (Mr. DOLE), the Senator from Virginia (Mr. SCOTT), the Senator from Wyoming (Mr. WALLOP), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 2920, a bill to amend the Trade Act of 1974.

S. 3111

At the request of Mr. MOYNIHAN, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 3111, a bill to amend the Internal Revenue Code of

1954 to allow the charitable deduction to taxpayers whether or not they itemize their personal deductions.

S. 3414

At the request of Mr. WALLOP, the Senator from Alaska (Mr. STEVENS) and the Senator from New Mexico (Mr. SCHMITT) were added as cosponsors of S. 3414, a bill to amend the Internal Revenue Code of 1954 to provide that nonresident aliens are taxable on gain from the sale or exchange of farming property and underdeveloped real property at capital gains rates.

S. 3453

At the request of Mr. WALLOP, the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of S. 3453, a bill to limit imports of feeder and slaughter cattle and to authorize a trade agreement for that purpose.

S. 3467

At the request of Mr. TALMADGE, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 3467, a bill to designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station," and to designate the U.S. Department of Agriculture Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center."

AMENDMENT NO. 3241

At the request of Mr. FORD, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of amendment No. 3241 intended to be proposed to S. 3229, a bill to amend title 39 of the United States Code to improve the organizational structure of the U.S. Postal Service, to provide authorizations for funds to maintain the public service function of the U.S. Postal Service, to provide a reduced rate for certain individuals, and for other purposes.

AMENDMENT NO. 3419

At the request of Mr. TOWER, the Senator from Texas (Mr. BENTSEN) and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of amendment No. 3419 intended to be proposed to S. 3077, a bill to amend and extend the Export-Import Bank Act.

AMENDMENT NO. 3477

At the request of Mr. KENNEDY, the Senator from New York (Mr. JAVITS) was added as a cosponsor of amendment No. 3477 intended to be proposed to H.R. 5285, an act to amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips, sheets, and plates of certain plastics or rubber.

## SENATE RESOLUTION 548—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 548

*Resolved*, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Valerie E. Kalt and Marguerite E. Gill, daughters, and George E. Gill, son, of Helen Gill, an employee of the Senate at the time of her death, a sum to each equal to one third of seven months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

## SENATE RESOLUTION 549—ORIGINAL RESOLUTION REPORTED WAIVING THE CONGRESSIONAL BUDGET ACT

Mr. RANDOLPH, from the Committee on Environment and Public Works, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES 549

*Resolved*, that pursuant to Section 402(c) of the Congressional Budget Act of 1974, the provisions of Section 402(a) of such Act are waived with respect to considerations of S. 2083, a bill to establish a uniform and comprehensive legal regime governing liability and compensation for damages and clean up costs caused by the discharge of oil and hazardous substances, and for other purposes.

Such waiver is necessary to permit consideration of S. 2083. The position of the Administration on a key issue (the question of coverage of hazardous substances) was not available until June 1. Hearings were held on April 17 and 18 and May 24, 1978.

This legislation creates a self-funding mechanism which covers its own costs and does not require funding from the U.S. Treasury. A separate Fund is created, with payments to the Fund collected from oil received at terminals and refineries. This Fund is then available to pay for clean up costs and damages associated with spills. Clean up costs and damage claims are to be paid directly from the Fund. Administrative, research, and equipment costs are to be paid from the Fund, subject to such amounts as are provided in appropriations Acts. There are no requirements for funds to be appropriated from general revenues.

## AMENDMENTS SUBMITTED FOR PRINTING

### DEPARTMENTS OF LABOR-HEW APROPRIATIONS—H.R. 12929

AMENDMENTS NOS. 3540 THROUGH 3562

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted 23 amendments intended to be proposed by him to H.R. 12929, an act making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending September 30, 1979, and for other purposes.

### PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT—S. 3418

AMENDMENTS NOS. 3563 THROUGH 3576

(Ordered to be printed and referred to the Committee on Energy and Natural Resources.)

Mr. PACKWOOD submitted 14 amendments intended to be proposed by him to S. 3418, a bill to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes.

● Mr. PACKWOOD. Mr. President, today, I testified before the Senate Energy and Natural Resources Committee on the Pacific Northwest Electric Power Planning and Conservation Act (S. 3418), a bill dealing with the Bonneville Power Administration.

While the bill is of primary concern to the people of the Northwest, I feel the obligation to give the public and my colleagues in Congress full access to information on the bill as it proceeds through committee and the Senate.

For this purpose, I ask unanimous consent that my testimony be printed in the RECORD. And since my testimony urged the adoption of several amendments to S. 3418, I ask unanimous consent that the amendments I offered appear at the end of my remarks.

There being no objection, the statement and amendments were ordered to be printed in the RECORD, as follows:

TESTIMONY BY SENATOR PACKWOOD

INTRODUCTION

Mr. Chairman, Members of the Committee, I appear before you today to offer my complete support for the Pacific Northwest Electric Power Planning and Conservation Act (S. 3418).

I am a cosponsor of this measure. It may be the most beneficial legislation to Oregon consumers of this decade. Monthly electricity bills of the typical Oregon rate payer will be between 10 and 20 percent less than if this legislation is not enacted. For this reason alone I would support and work toward early passage of this bill, but it has many other benefits as well.

I see the emphasis on conservation and renewable sources of energy as a most encouraging development. The public, under this bill, would participate in energy decisions more than ever before in the Northwest.

AMENDMENTS

I do, however, ask the Committee members and staff to consider the adoption of sixteen amendments I have prepared. I will vote for the bill if none of my amendments are adopted and I will retract any amendments that might slow the bill's passage. On the other hand, I feel strongly that the changes I am recommending will improve the bill and without any delay. Several of the changes I am offering simply build on concepts already in the bill. Others, I think, will be noncontroversial but necessary nonetheless. I have attached to my testimony suggested language for each of the sixteen amendments proposed.

PASS THROUGH OF BENEFITS

The direct economic benefits of this bill should go to ultimate consumers. While I believe this is the clear intention of all persons involved in the drafting of this bill, I see no reason why we should not include actual language in its text to that effect. The Administrator of BPA should be required to insure, by contract or otherwise, that rates charged ultimate consumers reflect the wholesale rate benefits received by the utilities under this act.

PROTECT EXISTING ORGANIZATIONS

Second, five of my amendments are intended to protect existing institutions in the region.

The first would simply state in the findings that one purpose for the bill is to provide technical assistance to existing and emerging businesses already engaged in energy conservation and renewable resource development.

Frankly, I find that many individuals in these businesses and research organizations in Oregon are way ahead of BPA and Congress in recognizing the benefits of conservation and renewables. Forcing these people to jump through our Federal hoops could be a set back to them which we cannot afford. Also, these individuals have shown the initiative to demonstrate and develop small scale projects Federal agencies tend to ignore. These groups deserve encouragement and assistance. They should be consulted and cooperated with, not pushed around by us or BPA.

For these reasons, I suggest the Administrator be required to include in his 20 year plan those measures he deems appropriate to utilize and protect the region's small business community and research entities. In addition, BPA should develop the means of recognizing local communities which achieve relatively high amounts of energy conservation and conversion to renewable energy sources. Also, construction undertaken by BPA should proceed only after a determination that similar efforts by other groups will not be jeopardized. BPA should be required to maximize the use of local talent, materials and financial institutions wherever it is possible.

Finally, in order to protect existing institutions, the autonomy of state governments, and the public interest, I urge that the governors, the Bonneville Consumers Council and the Bonneville Utilities Council be required to approve, by majority vote, the 20 year plan established by the BPA Administrator before its implementation.

RATES FOR STATES AND LOCAL GOVERNMENTS

Next, I find it frustrating that the rates charged local governments served by private utilities remain extremely high under this plan. For example, the city of Portland would be required to pay rates equivalent to those charged industrial loads. Federal agencies, on the other hand, benefit greatly by this bill.

I urge the adoption of three amendments that would bring the rates charged municipalities and states down to the same level charged residential consumers. This rate would, of course, not be available to such governments for power resold to an ultimate consumer. Only electricity actually used by the municipality or state would qualify.

CONSERVATION AND RENEWABLE RESOURCES CLARIFICATION AND GRANT PROGRAM

Further, I recommend that the definition for "Conservation" should include investigations and studies to determine energy efficiency. I also recommend clarifying the definition for "Renewable resources." Does it, for example, include the direct application of solar collectors by ultimate consumers? Would BPA finance such projects? Conversion to natural gas heat will reduce electricity requirements. Does that mean it is renewable?

Probably the biggest departure from the bill I propose is a $10 million grant program to fund individuals and groups with demonstrated excellence in the energy field to develop creative conservation measures and renewable energy resources. Applicants, under my proposal, would be given preference if they could show (1) the project would have a beneficial economic impact on the ultimate energy consumer, (2) the project and its end result would make maximum use of the region's small businesses and existing labor force, (3) the project would not duplicate other efforts, (4) their willingness to match the grant with an equivalent amount from other sources, (5) a lack of additional funding from other sources, (6) they are requesting less than $30,000, and (7) they are based in the Pacific Northwest.

I am recommending this grant program because of the constant stream of excellent research projects which cross my desk from Oregon and which are not receiving cooperation or funding from the Department of Energy.

In addition, BPA has consistently been charged with ignoring small scale and exotic energy projects. This grant program would permit an investment by BPA in the widest possible search for these energy alternatives.

WATER CONSERVATION

Finally, I urge that the Administrator be required to project the use of the region's water resources as a part of his 20-year plan. Use of water for hydroelectricity precludes its use for several other uses, such as irrigation. We simply must know what BPA intends to use for the generation of energy so that other uses might be planned accordingly.

CONCLUSION

As I stated at the outset, I do not want to hold up passage of this bill. I intend to cooperate fully with you as Members of the Energy Committee and with the Committee staff.

I believe you have before you a very good bill. It could be better and I feel it could be better without jeopardizing its successful passage this year. I look forward to working with you. Thank you.

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BASIC THRUST OF PACKWOOD AMENDMENTS TO S. 3418

A. Amendment 16 would insure that wholesale rate benefits to the region's utilities would be passed along to the ultimate consumers of electricity.

B. Amendments 1, 6, 7, 8, 12 and 13 are intended to protect the efforts of existing institutions, small businesses and existing community labor forces.

C. Amendments 10, 11 and 15 would provide state and local governments electricity for their own use at the same rates as residential consumers, instead of those rates charged industrial loads.

D. Amendments 2 and 3 would clarify the definitions of conservation and renewable resources. Amendment 14 would set up a BPA grant program to investigate the feasibility and cost-effectiveness of creative conservation measures and renewable energy sources.

E. Amendment 9 would insure that the region is made aware of the projected use of water by hydroelectric dams.

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AMENDMENT NO. 3563

On page 2, insert the following between lines 15 and 16:

(d) The current interest of Pacific Northwest consumers and many existing and emerging businesses to conserve energy and use renewable sources of energy is not receiving enough federal technical assistance and encouragement.

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AMENDMENT NO. 3564

On page 14, insert the following between lines 22 and 23:

(g) The Administrator shall insure, by contract clause or otherwise, that rates charged the ultimate residential and local government consumers shall directly reflect the benefits received by any sale of power to a Pacific Northwest utility under this Act.

AMENDMENT NO. 3565

On page 12, line 21, insert "and State and local government" after "residential".

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AMENDMENT NO. 3566

On page 11, insert the following between lines 16 and 17:

(i) In order to assist in the determination of the feasibility and cost effectiveness of conservation measures for the purposes of resource acquisition under section 6(a) and waste heat, cogeneration or renewable resources acquisition under subsection (b), the Administrator with consultation with the region's governors, the Bonneville Consumers Council and the Bonneville Utilities Council, is authorized to establish and carry out a program of contracts with, or grants-in-aid to, groups, or, in appropriate cases, individuals with exceptional talent and expertise engaged in research and development of creative energy alternatives. Preference shall be given to—

(1) projects having greatest beneficial economic impact on the ultimate energy consumer;

(2) projects having as an end result the maximum use of a community's small businesses and labor force;

(3) projects minimizing duplication of research or demonstrations being carried on by other entities either Federal or non-Federal;

(4) applicants offering to match the grant with an equivalent amount from other sources;

(5) applicants demonstrating a lack of funding from other sources;

(6) applicants requesting not more than $30,000; and

(7) applicants from Pacific Northwest.

The contracts or grants-in-aid provided under this subsection shall be further regulated under such rules as the Administrator deems necessary and appropriate but shall, in no event, exceed a total annual outlay of $10,000,000.

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AMENDMENT NO. 3567

On page 10, strike lines 5 through 9 and substitute the following:

(e) To the extent conservation or acquisition of resources under this Act require direct arrangements with the ultimate consumers of electric power, the Administrator shall make maximum practicable use of existing local institutions able to supply credit, materials or expertise to such consumers.

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AMENDMENT NO. 3568

On page 10, strike line 4, and substitute the following: reliability: *Provided*, That, prior to taking any action pursuant to this section, the Administrator shall determine that his proposed actions will not jeopardize other, similar efforts being initiated by current institutions or utilities in the region.

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AMENDMENT NO. 3569

On page 7, line 11, insert "and State and local government" after "residential".

On page 7, line 15, insert "and State and local government" after "residential".

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AMENDMENT NO. 3570

On page 7, line 5, insert "and State and local governments for their own use, not for resale," after "agencies,".

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AMENDMENT NO. 3571

On page 6, line 16, insert the following new sentences after the period: Such program must also include those measures the Administrator deems appropriate to utilize and protect the region's small business community, especially those emerging businesses and other entities engaged in energy conservation and the use of renewable sources of energy. Such program must include the measures the Administrator intends to take in order to give added economic recognition for the greater achievement of conservation and conversion to renewable resources by certain local communities beyond that of other communities in the region.

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AMENDMENT NO. 3572

On page 6, line 12, insert "projections of monthly water use," after "forecast,".

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AMENDMENT NO. 3573

On page 6, line 10, insert the following new sentence after the period: Before such pro-

gram is implemented it must be approved by a single majority of (1) the regions' governors, (2) the Bonneville Consumers Council and (3) the Bonneville Utilities Council.

AMENDMENT No. 3574

On page 4, insert the following between lines 19 and 20:

(k) "Utility" means unless otherwise indicated, either a publicly owned or investor owned entity dedicated in whole or in part to providing electricity or other energy to ultimate consumers.

AMENDMENT No. 3575

On page 4, strike lines 7 through 11 and substitute the following:

(h) "Renewable resources" means a source of energy which recurs in the natural environment such that tapping its force does not diminish its future availability. Such resources include, solar, wind, hydro, geothermal, and biomass, which is used for electrical generation or which will reduce the electrical requirements of a consumer by direct application.

AMENDMENT No. 3576

On page 2, strike lines 20 through 22 and substitute the following:

(b) "Conservation" means any appropriate improvements in the power system or investment which increases the efficiency of energy production or use, including investigations and studies carried out to determine the feasibility and cost-effectiveness of various means to achieve efficiency of energy production or use.

## NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS—S. 2584

AMENDMENT NO. 3577

(Ordered to be printed and to lie on the table.)

Mr. HART (for himself, Mr. DOMENICI, Mr. STAFFORD, and Mr. RANDOLPH) submitted an amendment intended to be proposed by them, jointly, to S. 2594, a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with sec. 261 of the Atomic Energy Act of 1952, as amended, and sec. 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

● Mr. HART. Mr. President, over the past several months, the Environment and Public Works Subcommittee on Nuclear Regulation has been actively studying the nuclear waste problem confronting this country. The subcommittee has held 5 days of hearings devoted exclusively to the consideration of nuclear waste issues. In addition, the subcommittee has held a total of 8 days of hearings on NRC's fiscal year 1979 authorization and on nuclear licensing reform where nuclear waste issues were tangentially addressed. In all, the Committee has heard from over 20 witnesses who are deeply concerned with the nuclear waste issue.

Mr. President, it is on the basis of this record, that I intend to offer an amendment to S. 2584 which would address several important issues of nuclear waste management. This amendment which has the support of the Full Environment and Public Works Committee would add two new provisions to S. 2584. The first provision would expand the Nuclear Regulatory Commission's licensing and regulatory authority over the disposal of uranium mill tailings—an authority which the Commission does not now have. The second provision directs the Nuclear Regulatory Commission to study the relative costs and benefits of extending the Commission's licensing and regulatory authority over the storage and disposal of all nuclear wastes.

Both of these provisions can be fairly characterized as addressing nuclear waste management issues. While this amendment cannot provide this country with the total answer to our nuclear waste dilemma, it does address the immediate and serious problem of mill tailings disposal. Furthermore, it provides for the gathering of information necessary for Congress to answer legislative questions on nuclear waste disposal which will be considered next year.

Mr. President, so that my colleagues and their staff may have the full opportunity to review this amendment before it is considered by the Senate, I ask unanimous consent that the full text of the amendment and a section-by-section analysis be printed in the RECORD.

There being no objection, the amendment and analysis were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 3577

On page 15, after line 23, insert the following new sections:

SEC. 12. Section 11 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. The term 'byproduct material' means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) any radioactive material resulting from the processing of ores primarily for the extraction of source material.".

SEC. 13. Section 81 of the Atomic Energy Act of 1954, as amended, is amended by adding a new sentence at the end thereof as follows: "No license shall be required by the Commission for the transfer, receipt, acquisition, ownership, or possession of byproduct material as defined by section 11 e. (2) of this Act until three years from the date of enactment of this sentence.".

SEC. 14. Section 161 g. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following:

"The Department of Energy may accept donations of reclaimed land used for the disposal of byproduct material as defined in section 11 e. (2) of this Act. Land donated under this section shall not be subject to the provisions of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, nor to disposal under the Federal Property and Administrative Services Act of 1949, as amended. The President shall assign custody of such land to any agency authorized by law to manage land title to which is held by the United States.".

SEC. 15. Section 161 of the Atomic Energy Act of 1954, as amended, is further amended by adding at the end thereof a new subsection x. as follows:

"x. establish by rule, regulation, or order, in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure that funds will be made available by a licensee to permit the timely completion of all requirements established by the Commission for the decommissioning, decontamination, and reclamation and long term maintenance and monitoring where necessary of sites, structures, and equipment used in connection with the generation or disposal of byproduct material as defined in section 11 e. (2) of this Act.".

SEC. 16. Section 274 b. of the Atomic Energy Act of 1954, as amended, is amended by adding "as defined in section 11 e. (1) of this Act" after the words "byproduct materials" in paragraph (1); by adding a new paragraph (2) to read as follows: "(2) byproduct materials as defined in section 11 e. (2) of this Act."; and by renumbering existing paragraphs (2) and (3) accordingly.

SEC. 17. Section 274 d. (2) of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(2) the Commission finds that the State program is in accord with subsection o. of this section and is in all other respects compatible with the Commission's program for the regulation of the materials covered by the proposed agreement, and that the State program is adequate to protect the public health and safety with respect to such materials.".

SEC. 18. Section 274 e. of the Atomic Energy Act of 1954, as amended, is amended by adding a new paragraph (3) to read as follows:

"(3) Prior to the expiration of three years from the date of enactment of this paragraph, nothing in this Act shall preclude the exercise of State authority over byproduct material as defined by section 11 e. (2) of this Act. Except as otherwise permitted by Federal law, on or after three years from such date, a State may exercise authority for protection of the public health and safety from radiation hazards associated with such byproduct material only pursuant to an agreement or an amendment thereto entered into with the Commission in accordance with subsection b. of this section. Amendments to existing agreements to provide for the continuation of State authority over such byproduct material shall be subject to paragraphs (1) and (2) of this subsection and to subsection d. of this section.".

SEC. 19. Section 274 j. of the Atomic Energy Act of 1954, as amended, is amended by inserting after the words "with the State" the following: ", or that part of an agreement respecting any of the materials enumerated in subsection b. of this section,".

SEC. 20. Section 274 of the Atomic Energy Act of 1954, as amended, is further amended by adding at the end thereof the following new subsection:

"o. In the licensing and regulation of byproduct material as defined by section 11 e. (2) of this Act pursuant to an agreement entered into in accordance with subsection b. of this section, a State shall adopt and enforce substantive standards for the protection of the public health and safety from radiation hazards which are equivalent to, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements, standards, and criteria promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 84, 85 and 275 of this Act.".

SEC. 21. Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding a new section 83 to read as follows:

"SEC. 83. REMEDIAL ACTION, EXEMPTION AND ENFORCEMENT.

a. Persons otherwise subject to the requirement of a license by section 81 of this Act shall be exempt from such requirement with respect to the ownership and possession of byproduct material as defined in section 11 e. (2) of this Act which is covered by a remedial action program conducted or approved by the Department of Energy.

b. The Commission may require, by rule, regulation, or order, the Department of Energy or persons exempted by subsection a. of this section or section 81 of this Act from the requirement of a license for the ownership or possession of byproduct material as defined in section 11 e. (2) of this

Act to conduct monitoring, perform remedial work or comply with such other measures as the Commission deems necessary or desirable to protect health or minimize danger to life or property in connection with the disposal and storage of such byproduct material.

c. The Commission may make such studies and conduct such inspections as it may deem necessary or desirable to ensure compliance with rules, regulations, and orders issued pursuant to subsection b. of this section. Persons violating any such rule, regulation, or order, and persons refusing to permit inspections conducted pursuant to this subsection, shall be subject to a civil penalty in an amount equal to that provided by section 234 a. of this Act. Notification and enforcement of such penalty shall be in accordance with sections 234 b. and c. of this Act.".

SEC. 22. (a) Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof a new section 84 to read as follows:

"SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL—

The Commission shall ensure that the management of any byproduct material as defined in section 11 e. (2) of this Act is carried out in such a manner as—

(1) the Commission deems appropriate to protect the public health, safety, and environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material;

(2) conforms with the applicable standards and criteria promulgated by the Administrator of the Environmental Protection Agency under section 275 of this Act; and

(3) conforms to general requirements, established by the Commission, with the concurrence of the Administrator of the Environmental Protection Agency, which are at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material under the Solid Waste Disposal Act, as amended.".

(b) The table of contents for such chapter 8 is amended by inserting the following new item after the item relating to section 83:

"SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL.".

SEC. 23. (a) Chapter 19 of the Atomic Energy Act of 1954 as amended, is amended by inserting after section 274 the following new section:

"SEC. 275. HEALTH AND ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS.—

a. As soon as its practicable, but not later than eighteen months after the date of enactment of this section, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the Administrator) shall, by rule, promulgate standards and criteria of general application for the protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of byproduct material, as defined in section 11 e.(2) of this Act at sites where ores are processed primarily for their source material content, or at sites which are used for the disposal of such byproduct material.

b. Such generally applicable standards and criteria promulgated pursuant to this section for nonradiological hazards shall provide for the protection of human health and the environment as required by subtitle C of the Solid Waste Disposal Act, as amended: *Provided, however,* That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer or disposal of byproduct material, as defined in section 11 e.(2) of this Act.

c. The Administrator may periodically revise any standard or criterion promulgated pursuant to subsection a. of this section. Any such revision shall be applied upon license renewal to persons holding on the date of promulgation of such revision a license for byproduct material as defined in section 11 e.(2) of this Act issued by the Commission or by a State exercising authority pursuant to section 274 b.(2) of this Act: *Provided, however,* That in no event shall such a revision be applied later than five years from the date of promulgation thereof.

d. Implementation and enforcement of the standards and criteria promulgated pursuant to subsection a. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274 b. (2) of this Act shall implement and enforce such standards and criteria in accordance with subsection o. of such section.

e. Nothing in this Act applicable to byproduct material as defined in section 11 e. (2) of this Act shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended.".

(b) The table of contents for chapter 19 of the Atomic Energy Act of 1954, as amended, is amended by inserting the following new item after the item relating to section 274:

"Sec. 275. Health and environmental standards for uranium mill tailings."

SEC. 24. Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding a new section 85 to read as follows:

"SEC. 85 The Commission may require by rule, regulation, or order, in accordance with the requirements of section 181 of this Act, that byproduct material as defined by section 11 e.(2) of this Act be disposed of on land to which title has been transferred to the State or the United States at the time of termination of any license for the generation or possession of such material upon finding that such action is necessary or desirable to protect health or minimize danger to life or property in connection with the disposal of such byproduct material. Any such rule, regulation, or order shall specify standards for the transfer of title to such land to the State or the United States, including: (1) standards to assure the completion, prior to the transfer of title, of all requirements established by the Commission for the decommissioning, decontamination and reclamation of sites, structures and equipment on the land which are used in connection with the generation or disposal of byproduct material as defined in section 11 e.(2) of this Act; (2) standards to minimize the need for future remedial work; (3) standards to minimize the cost, including the cost to the State or the United States, for any long-term care; and (4) standards to permit the reservation of rights by the transfer to the future reprocessing of byproduct material, as defined in section 11 e. (2) of this Act, and to the future use of the surface or subsurface estate, consistent with any standards or requirements promulgated by the Commission which are applicable to the generation, possession of transfer of byproduct material, as defined in section 11 e. (2) of this Act. This section shall not be construed as authorizing or requiring the transfer of title to Indian land.".

SEC. 25. (a) The Commission, in cooperation with the Department of Energy, is authorized and directed to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority.

(b) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission in the conduct of the study. Such cooperation shall include providing any necessary access to existing facilities and sites and providing any information needed to conduct the study which the agency may have or be reasonably able to acquire.

(c) On or before March 1, 1979, the Commission shall submit a report to the Congress containing the results of the study. The report shall include:

(1) a complete listing and inventory of all radioactive waste storage and disposal activities now being conducted or planned by Federal agencies;

(2) an assessment of the benefits of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority;

(3) an evaluation of the relative potential risk to the public health and safety and the environment from such categories of existing and future Federal radioactive waste storage and disposal activities;

(4) an evaluation of the feasibility and cost of extending the Commission's licensing or regulatory authority to include such categories of existing and future Federal radioactive waste storage and disposal activities, including the technical and other data requirements for licensing or regulation and the likely characteristics of the Commission's licensing or regulatory program;

(5) an evaluation of the national security implications of extending the Commission's licensing or regulatory authority to include such categories of existing and future Federal radioactive waste storage and disposal activities; and

(6) the Commission's recommendations concerning the categories of existing and future Federal radioactive waste storage and disposal activities, if any, which should be made subject to the Commission's licensing or regulatory authority and the type of authority which the Commission should be granted.

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SECTION-BY-SECTION ANALYSIS COMMITTEE AMENDMENT TO S. 2584

Sec. 12. Section 12 adds a new class of byproduct material to the definition of byproduct material now contained in section 11 e. of the Atomic Energy Act of 1954. As presently defined, byproduct material does not include uranium mill tailings. These tailings are a waste product resulting from uranium milling. Under the expanded definition, mill tailings would become a licensable material because they contain radium, radon and other radioactive isotopes. The revised definition would in effect bring mill tailings within the licensing and regulatory framework of the Atomic Energy Act. The revised definition is not intended, however, to make mine wastes subject to NRC licensing or regulation.

Sec. 13. Section 13 amends section 81 of the Atomic Energy Act of 1954 to defer until three years from enactment the authority of the Nuclear Regulatory Commission to license this new class of byproduct material. During this transition period, standards and regulations would be developed and agreements with states conducting their own regulatory program would be amended to cover the new class of byproduct material.

Sec. 14. Section 14 adds to section 161 g. of the Atomic Energy Act of 1954 a provision to authorize the Department of Energy to accept donations of land used as mill tailings disposal areas. Donations would be without cost to the United States and would not be eligible for subsequent sale by the United States as surplus property. The President is directed to assign custody of donated land to any agency authorized to manage land owned by the United States. This provision does not require a licensee of the Nuclear Regulatory Commission to transfer a tailings disposal area to the United States, but rather empowers the Department of Energy to accept voluntary donations of such areas. Such a direct licensee has the option of retaining ownership under Federal licensing.

Sec. 15. Section 15 adds a new subsection x. to section 161 of the Atomic Energy Act of

1954 to provide the Commission with explicit authority to require licensees to provide financial arrangements to ensure the proper decommissioning, decontamination, reclamation and long-term maintenance and monitoring if necessary, of sites, structures, and equipment used in connection with activities or materials licensed under the Atomic Energy Act of 1954. This provision affords a clear legal basis for the dedication of funds prior to the termination of the milling license for any long-term maintenance and monitoring which may be required. Such authority now exists only under the more general language of section 161 b.

Sec. 16. Section 16 gives states entering into new agreements under section 274 b. of the Atomic Energy Act of 1954 the option of assuming, or declining to assume, licensing and regulatory authority over mill tailings.

Sec. 17. Section 17 amends section 274 d. of the Atomic Energy Act of 1954 to condition the acceptability of a new or amended agreement upon a state program that is at least equivalent to the Commission's program for substantive regulation of tailings disposal areas. The standard of compatibility remains in effect for all other aspects of an agreement state program.

Sec. 18. Section 18 adds a new paragraph to Section 274 e. of the Atomic Energy Act of 1954 to make clear that existing agreements with states under section 274 must be amended for states to assume licensing and regulatory authority over the new class of byproduct material after three years from enactment. In the interim, states may continue to exercise their police power to regulate mill tailings. If an agreement state fails to amend its agreement on or after three years from enactment the Commission will license and regulate the byproduct material in tailings disposal areas.

Sec. 19. Section 19 amends section 274 j. of the Atomic Energy Act of 1954, to empower the Commission, after notice and opportunity for hearing, to terminate or suspend the exercise of an argeement state's authority pertaining to any of the materials enumerated in section 274 b. which are eligible for state licensing and regulation, including mill tailings. Present law permits termination or suspension only of the entire agreement. The standard for such action would remain the adequacy of protection of the public health and safety.

Sec. 20. Section 20 adds new subsection o. to section 274 of the Atomic Energy Act of 1954. Subsection o. requires agreement states to incorporate in their licensing and regulation of mill tailings standards which are equivalent to, or more stringent than, requirements, standards, and criteria promulgated by the Commission and the Administrator of the Environmental Protection Agency in the degree of protection from radiation hazards afforded the public health and safety.

Sec. 21. Section 21 adds a new section 83 to the Atomic Energy Act of 1954 to provide an exemption from licensing for that portion of a mill tailings disposal site where the Department of Energy has conducted or approved a remedial action. Legislation to permit the Department of Energy to conduct a remedial action program for certain existing mill tailings is now pending before other committees of the Congress. This provision is intended to exempt from Commission licensing any mill tailings covered by a Department of Energy remedial program pursuant to that or similar legislation.

The Commission may, however, require persons so exempted, or the Department of Energy, to monitor such sites, perform remedial work, or take other measures to protect health or minimize danger to life or property. The Commission is authorized to inspect, as necessary, and persons found to be in violation of rules or orders may be subject to a civil penalty even though not licensed. These provisions also apply to persons in possession of mill tailings who have been exempted from licensing in the Commission's discretion under section 81 of the Atomic Energy Act.

Sec. 22. Section 22 adds a new section 84 to the Atomic Energy Act of 1954 which directs the Commission to ensure the protection of the public health, safety and the environment from radiological and nonradiological hazards associated with the processing, possession, and transfer of mill tailings by requiring conformity with both the applicable standards and criteria promulgated by the Administrator of the Environmental Protection Agency and the general requirements established by the Commission, with concurrence of the Administrator, which are at least comparable to requirements for similar hazardous material under the Solid Waste Disposal Act, as amended.

Sec. 23. Section 23 adds new section 275 to the Atomic Energy Act of 1954 to delineate the responsibilities of the Administrator of the Environmental Protection Agency in the regulation of mill tailings. The Administrator is given up to 18 months to promulgate general standards and criteria to protect the public health, safety, and the environment from the radiological and nonradiological hazards associated with the processing, possession, and transfer of mill tailings at sites where ores are processed for their uranium content and at sites used for mill tailings disposal. These standards and criteria are intended to prescribe general standards of performance rather than to impose specific management requirements, including particular techniques or technologies for meeting the general standards. These general standards are not intended to be site specific.

For radiological hazards, the section would preserve the authority of the Administrator under the Atomic Energy Act of 1954, as amended, to set generally applicable standards for mill tailings. Generally applicable standards and criteria promulgated for nonradiological hazards must provide for the protection of human health and the environment as required by subtitle C of the Solid Waste Disposal Act, as amended. In the promulgation of such standards and criteria for nonradiological hazards, it is expected that the Administrator will take into account the degree to which human health and the environment are already protected by requirements established by the Commission pursuant to section 84 of the Atomic Energy Act. Any revision of the standards and criteria respecting either type of hazard may be applied to current licenses only upon license renewal but in no event later than five years from the promulgation of the revision.

The section expressly precludes any requirement, either under this Act or the Solid Waste Disposal Act, as amended, for a permit issued by the Administrator for the processing, possession, transfer or disposal of uranium mill tailings, Licensing responsibilities under this Act for the processing, possession, transfer or disposal of uranium mill tailings are assigned to the Commission, and this provision is intended to eliminate any requirement for a duplicate permit by the Administrator for those activities.

Responsibility for implementation and enforcement of the standards and criteria is vested in the Commission in the conduct of its licensing activities. However, agreement states that have elected to license mill tailings would have to incorporate standards at least equivalent to these standards and criteria. Finally, no provision of the Atomic Energy Act of 1954 relating to the new class of byproduct material is intended to affect the authority of the Administrator of the Environmental Protection Agency under the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

Sec. 24. Section 24 adds a new section 85 to the Atomic Energy Act of 1954 to empower the Commission to require that mill tailings be disposed of on land which is transferred to State or Federal ownership on the termination of the original milling license for possession of source material. Any rule, regulation or order imposing such a requirement must be supported by a finding that it is necessary or desirable to protect health or minimize danger to life or property.

Such a requirement must include: (1) standards to ensure completion prior to the transfer of title of all Commission decommissioning, decontamination, and reclamation requirements; (2) standards to minimize the need for future remedial work; (3) standards to minimize the cost, including the cost to the State or to the United States, for any long term care; and (4) standards to permit the transferor to reserve surface or subsurface rights.

Sec. 25. Section 25 authorizes and directs the Commission, in cooperation with the Department of Energy to conduct a study and report to the Congress by March 1, 1979 on the following elements:

1. Complete listing and inventory of all radioactive waste storage and disposal activities now being conducted or now being planned by agencies of the Federal Government, including long and short-term storage and disposal activities, research and development activities, and decommissioned facilities, for high-level radioactive wastes, transuranic wastes, low-level wastes, and spent fuel.

2. An assessment of the benefits of extending Commission regulatory authority to such wastes, to the extent that they are not now covered, including an evaluation of the potential risk to the public health and the environment from the various categories of radioactive wastes now or planned to be in the custody of the Federal Government, together with a comparison of those risks.

3. An evaluation of the feasibility and cost of extending NRC licensing or regulatory authority to include such existing and future activities. This evaluation would cover such factors as the information and data needed by the Commission for licensing or regulation, the impact of licensing on project schedules, and the likely characteristics of a Commission licensing or regulatory program for the various categories of Federal waste storage and disposal activities.

4. An evaluation of the national security implications of extending Commission licensing or regulatory authority to cover the various categories of Federal waste storage and disposal activities.

5. Recommendations by the Commission, as to which categories of existing and future Federal nuclear waste storage and disposal activities should be made to subject to NRC authority. and the type of authority (licensing, safety review and concurrence, etc.) which the Commission should be given.●

## NOTICES OF HEARINGS

COMMITTEE ON HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, the Committee on Human Resources will hold a hearing on the nomination of Howard Jenkins, Jr., to be a member of the National Labor Relations Board on Thursday, September 7, 1978, at 9:30 a.m. in room 4232 of the Dirksen Senate Office Building.●

COMMITTEE ON GOVERNMENTAL AFFAIRS

● Mr. RIBICOFF. Mr. President, the Governmental Affairs Committee will hold 1 day of hearings on Thursday, September 7, 1978, on Reorganization Plan No. 4 of 1978, relating to the Em-

ployment Income Security Act of 1974. The hearing will commence at 9 a.m. in room 3302 of the Dirksen Senate Office Building. Testimony will be received from both administration and outside witnesses.●

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, for Mr. ABOUREZK, I wish to announce that the hearings scheduled by the Subcommittee on Administrative Practice and Procedure on the FBI Charter, for August 28 and 29, have been canceled.●

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. PROXMIRE. Mr. President, I wish to announce that the oversight hearings on the use of export controls and export credits for foreign policy purposes scheduled for Thursday, September 21 and Friday, September 22, will be held by the full Committee on Banking, Housing, and Urban Affairs, not the Subcommittee on International Finance as previously announced. The distinguished chairman of the subcommittee, Senator STEVENSON, and I have agreed to make this change because we feel strongly that the subject of the hearings is of such importance to the Nation that it should be addressed at the highest levels of government.

A general description of the hearings appeared in the RECORD on August 17 at pages 26712–26713. The hearings will begin at 10 a.m. each day in room 5302 of the Dirksen Senate Office Building. Persons interested in testifying or desiring additional information concerning the hearings should contact Robert W. Russell, counsel to the Subcommittee on International Finance at (202) 224–0819.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today to hold a markup session on S. 2053, legislation regarding the exploration of hard mineral resources of the deep sea bed.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate today to consider the nomination of John W. McGarry as a member of the Federal Election Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider S. 3418, the Pacific Northwest Electric Power Planning and Conservation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Merchant Marine and Tourism of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, September 6, to conduct a hearing on S. 2873, a bill to provide for the regulation of rates or charges by certain State-owned carriers in the foreign commerce of the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

### "LET THEM EAT CAKE": THE HUMPHREY-HAWKINS SOLUTION TO UNEMPLOYMENT

● Mr. GARN. Mr. President, the Humphrey-Hawkins approach to unemployment reminds me of the situation in France in the late 1780's. Rather than unemployment the great worry at that time was inflation of the price of bread. Bread had become nearly unaffordable by the people generally. Many were suffering. The problem, due in some part to a bad harvest, appeared intractable. The story is told, perhaps apocryphal, that Marie Antoinette, in response to the information that the people of Paris had no bread, proposed in solution, "Then let them eat cake."

Mr. President, unemployment is like the bread problems of France 200 years ago. The Humphrey-Hawkins bill re-echoes the words of Marie Antoinette. It is an excuse for inaction, a pushing away of the problem. The problem and suffering are real, the Humphrey-Hawkins "solution" vacuous. It sanctimoniously well-wishes that the problem be solved but proposes nothing that will effectively bring about its promised result. As in France then, Humphrey-Hawkins today would add the frustration of unfeeling and ineffective government to the suffering of the economically hardshipped.

Positive, meaningful steps must be taken to alleviate the problems of unemployment, rather than the rhetorical banalities puffing up all of the present versions of Humphrey-Hawkins. We all know that unemployment is bad, and full employment good. We do not need to pass a bill to tell us that. We might just as well pass a bill making crime illegal, and claim that it will solve the problems of law and order.

Humphrey-Hawkins has the Congress set economic goals—goals that no one would deny would be fine to realize—and then leaves it up to the President to figure out how to achieve them. Humphrey-Hawkins says, "Let them eat cake," and then leaves it up to the President to discover the recipe and bake it.

A major cause of unemployment today is the lack of sufficient capital formation in the United States. Yet no version of the Humphrey-Hawkins bill adequately addresses itself to this need. I have supported and will continue to support measures to facilitate investment and other forms of capital formation in the United States, which is essential for the creation of jobs and the improvement of the competitive position of U.S. industry vis-a-vis that of other nations. This will lead to the creation of new, meaningful jobs at home and reduce the flight of jobs abroad.

Mr. President, these and similar measures will lead to the alleviation of unemployment. These are specific, concrete measures addressed directly to the problem. They are not glamorous. Neither, however, are they empty rhetoric. I am firmly opposed to promising people cake when they need jobs.●

### RESIDENTIAL SOLAR AND CONSERVATION TAX CREDITS

● Mr. HART. Mr. President, during consideration of H.R. 112 on the floor of the Senate on Wednesday, I offered, with a number of my colleagues, an amendment which would extricate the residential solar and conservation tax credits from the more controversial provisions of the energy tax bill, which has not been acted upon by a Senate-House conference committee. In light of the lengthy debate on my amendment and on an amendment offered subsequently by the distinguished Senator from Alaska (Mr. GRAVEL), I feel it is important that I clarify my intentions in taking this initiative.

As chairman of the Subcommittee on Energy and Foundations of the Senate Finance Committee, Senator GRAVEL is to be commended for his work on H.R. 112, a bill to reduce the excise tax on the investment income of private foundations from 4 to 2 percent. Private foundations serve a vital role in American society by providing a broad range of essential services, from improved health care to greater educational opportunities.

After extensive hearings before Senator GRAVEL's subcommittee, it was determined that the 4 percent excise tax enacted by Congress in 1969 to cover the auditing costs of foundations was excessive and unduly hampered their ability to provide desirable public services. The Finance Committee acted prudently to reduce this excise tax from 4 to 2 percent, and I joined 50 of my colleagues in cosponsoring this amendment when it was brought to the floor of the Senate.

Because this bill had been strongly supported in both the Senate and the House of Representatives, as well as by the administration, it was my judgment and that of those Members of Congress who form the solar coalition that this would be the appropriate vehicle to insure expeditious consideration of our amendment by both Houses of the Congress.

I am deeply appreciative of Senator GRAVEL's commitment to support this amendment in conference. During deliberation on this amendment, the Senator from Alaska attempted to carry it one step further, to provide additional incentives for other new energy tech-

nologies and applications, such as the production of geothermal energy, gasohol, low-head hydro, cogeneration and investment tax credits for businesses which he also felt deserve expeditious action I either sponsored or actively supported many of the provisions included in the Gravel amendment when the original energy tax bill was considered on the Senate floor.

However, tentative agreement on these provisions had not been reached by in the Senate and House energy tax conference during their meetings last fall. This is an important distinction. In constructing the Hart amendment, it was our considered judgment that the inclusion of provisions which had not been at least tentatively agreed to in conference would create the same confused state of affairs which has prevented the tax conferees from reporting a bill for full Senate and House consideration. Consequently, provisions of the energy tax bill which were either controversial or had not been at least tentatively agreed to in the energy tax conference were intentionally excluded from my amendment.

It was this line of reasoning—and not disagreement with the substance of the Gravel amendment—which necessitated that I oppose its addition to my amendment during the debate on Wednesday. My motion to table the Gravel amendment merely reflected an attempt to focus Senate consideration on the solar and energy conservation tax credits alone. I know a large number of my colleagues shared this view and were not addressing the appropriateness of the Gravel amendment.

Mr. President, the Senator from Alaska (Mr. GRAVEL) has distinguished himself as an ardent and effective advocate of energy conservation and development of renewable energy technologies. Senator GRAVEL'S efforts to promote new sources of energy and conservation, exercised through his work on the Energy and Foundations Subcommittee and other actions, pre-dates the recent surge of congressional interest in this area. I believe he should be commended for his leadership in developing these sources of energy.●

## PANAMA CANAL: EVOLUTION OF A PLAN

● Mr. HELMS. Mr. President, although public discussions related to the vital subject of the Panama Canal during recent months have been extensive, relatively little has been published regarding its fundamental planning and the leaders involved.

The Isthmus of Panama is a narrow neck of land about 50 miles wide from deep water in the Atlantic to deep water in the Pacific. It is located in one of the heavier rainfall areas of the world and has one of the most treacherous geological formations with which engineers ever had to deal. A mountain range, paralleling the Pacific coastline about 10 miles away, forms the Continental Divide; a secondary divide is near the Atlantic coast.

There are two tropical rivers with their head waters near the Continental Divide: the Obispo-Chagres flowing into the Atlantic and the Rio Grande into the Pacific, with both of them subject to heavy flooding during wet seasons. The drainage area of the Chagres River valley is about 1,320 square miles; that for the Rio Grande is 37.4 square miles.

In 1879, Ferdinand de Lusseps, the hero of the Suez Canal, chaired a congress of 135 leaders in Paris to decide upon the crucial questions of site and type of canal to be constructed across the Central American Isthmus and let the full force of his tremendous prestige and genius to bring about a recommendation by that congress for a canal of the "sea level" design at Panama.

Long before this congress met one of its members had made a "brilliant engineering evaluation" of the topographical, geological, and hydrological problems involved. When he saw what was taking place he rose in strong protest saying that rather than have his name associated with what he knew would be a great disaster he voted no but added that there is a "practical plan" for constructing the Panama Canal:

> Build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed wfith a channel cut through the Continental divide, and connect the lakes with the oceans by locks. This is not only the best plan for engineering but also best for navigation. *U.S. Nav. Inst. Proc.*, March 1955, p. 264.)

The one who conceived this plan was the eminent French engineer, Adolph Godin de Lepinay, by so doing, won lasting fame as the precursor of the Panama Canal.

In 1905, after acquisition of the Canal Zone by the United States, President Theodore Roosevelt appointed the greatest railroad builder of our country as Chief Engineer of the Isthmian Canal Commission—John F. Stevens of West Gardiner, Maine.

Qualified by his long experience in undeveloped western mountainous areas of the United States and Canada, iron ore excavation in the Mesabi Range in Minnesota, and extensive study of Panama Canal history, Stevens was eminently to make valid decisions that assured ultimate success. Moreover, he was a determined fighter for causes he felt were right and not overawed by high authority.

Crossing the Isthmus on foot and interpreting the terrain in the light of both engineering and operational needs, he recognized the merits of the De Lepinay concept for the lake and lock type canal, gave full support to Dr. William C. Gorgas in matters of health and sanitation, convinced Secretary of War, W. H. Taft, President Roosevelt and the Congress of the soundness of the plan and, against strong opposition, brought about the great decision in 1906 for the high-level-lake and lock type—Miles P. DuVal, Jr., "And the Mountains Will Move," Stanford University Press, 1947, pages 206–21.

He acquired a major part of the plant for canal construction, created the organization required, brought the project to a point where success was a certainty with an estimated date of completion in January 1915, and resigned to seek other challenging assignments. His contributions during 1905–07 won him appointment by President Roosevelt as the first Chairman and Chief Engineer of the Isthmian Canal Commission and great fame as the basic architect of the Panama Canal.

Stevens was succeeded by Col. George W. Goethals, one of the ablest Army engineers of that time, under whose direction—1907–14—the project was completed under the Stevens plan and organization until it was ready for opening to traffic; and, as the first Governor of the Panama Canal—1914–16—he launched it into the era of operation. For all this Goethals won an outstanding reputation as the builder of the Panama Canal. Nevertheless, he always gave full credit to Stevens whose monument in Stevens Circle in Balboa bears this inscription: "The Canal is his monument." Goethals.

In 1943, as the result of extensive studies of the marine operational problems of the existing Panama Canal during both peace and war, before and after the suspension of construction on the 1939 third locks project, including an operational evaluation of the "sea-level" design, Commander Miles P. DuVal, Jr., then captain of the port, Balboa, in charge of marine operations in the Pacific sector of the canal, developed the Terminal Lake-Third Locks Plan for the future canal. Publicly presented by him on May 20, 1943, before a most knowledgeable gathering of Army, Navy, and Panama Canal officials, engineers and pilots, it caused an immediate sensation on the Isthmus, winning strong support among experienced canal engineers and navigators, including canal pilots—A.S.C.E. Proceedings, February 1947, pages 161–74 gives text of this address.

Because experience at the Atlantic end of the canal with a convenient summit level anchorage just south of the Gatun Locks demonstrated the flexible canal operations there, Commander DuVal recognized the location of the bottleneck Pedro Miguel Locks directly in the south end of Gaillard Cut as the major cause for serious operational problems in the Pacific sector and the necessity for having an "expansion chamber" for traffic in the summit level at the Pacific end to match the layout at Gatun on the Atlantic end and to enable uninterrupted navigation on that level.

Recognized as the "first comprehensive plan for fundamental improvement of the canal based on actual marine operating experience," responsible engineers felt that with the terminal lake concept established it would be possible to "plan further improvements with every assurance of success," attain the "best canal for the future," and that "all engineering considerations associated with the plan are favorable to it"—Principal Engineer E. Sydney Randolph,

Memorandum to the Governor, March 26, 1943.

The plan received the approval in principle by two experienced Governors of the Panama Canal for the major modernization of the existing canal: in 1944, by Gov. Glen E. Edgerton, who recommended it to the Secretary of War for comprehensive investigation; and in 1945, by Gov. J. C. Mehaffey in testimony before the House Committee on Merchant Marine and Fisheries.

From the foregoing summation, the key figures in the evolution of the plan for the future Panama Canal were:

Adolphe Godin de Lepinay who, in 1879 presented the fundamental plan for its construction.

John F. Stevens who, by bringing about the great decision of the President and the Congress for the high-level-lake and lock type, was its "basic architect."

George W. Goethals who, by completing the canal according to the Stevens Plan, won a place in history as the builder of the Panama Canal.

Miles P. DuVal, Jr., who as the result of experience during both peace and war, developed the Terminal Lake-Third Locks Plan—a work that in the opinion of experienced engineers will make its author the architect of the future Panama Canal.

In notable testimony illustrated with schematic operational and data diagrams on June 28, 1978, before the Subcommittee on the Panama Canal, House Committee on Merchant Marine and Fisheries, Captain DuVal strongly supported the major modernization of the existing Panama Canal along the lines provided in the Flood-Murphy-Snyder bill—H.R. 1587, 95th Congress—and opposed further studies of the sea level proposal.

Mr. President, to make the June 28, 1978, statement by Captain DuVal and the introduction of him by Chairman JOHN M. MURPHY of New York available to the Congress and the Nation at large, I ask unanimous consent for both to be printed in the RECORD.

The items follow:

INTRODUCTION OF CAPTAIN DUVAL, JUNE 28, 1978

Mr. MURPHY. The acquisition of the U.S. Canal Zone territory in 1904 and the construction of the Panama Canal, 1904–1914, form a highly important chapter in American history. Our witness today has had an extensive naval career, including service in the Canal Zone during the canal's most crucial period, 1941–1944, when he was in charge of marine operations in the Pacific half of the canal.

As the author of two authoritative books, (1) "Cadiz to Cathay: The Story of the Long Diplomatic Struggle for the Panama Canal"; and (2) "And the Mountains Will Move: The Story of the Building of the Panama Canal," as well as contributor to the Encyclopedia Britannica, and professional magazines on canal history and problems, he combines the qualifications of the experienced navigator, a peace and war canal operating official, and scholar.

As a former Secretary of the Navy Department Shore Station Development Board, it was only natural that he should have evolved, while in the Panama Canal organization, what proved to be the first comprehensive proposal for the future canal derived from marine experience known as the terminal lake-third locks plan. This proposal was submitted to higher authorities and finally to President Franklin D. Roosevelt, who expressed his approval of it as a post-war project.

Today is not the first time that our witness has appeared before this committee. On March 14, 1947, on invitation of Secretary of the Navy, James Forrestal, the entire committee visited the Navy Department and heard an extensive presentation by our witness. He will not speak as an engineer but solely as a former canal operating official and historian.

I now introduce Captain Miles P. Duval, Jr., who will describe certain features in the formulation of our Isthmian canal policy with special reference to the third locks project and the development during World War II of the terminal lake-third locks solution for the future Panama Canal.

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THE MARINE OPERATIONAL PROBLEMS, PANAMA CANAL, AND THEIR SOLUTION

(Statement by Capt. Miles P. Duval, Jr., U.S. Navy, retired)

Mr. Chairman, members of the Committee on Merchant Marine and Fisheries, and guests: At the outset, I dedicate my testimony today to the great American leaders who formulated our Isthmian Canal policies in the early 20th century and are thus mainly responsible for giving the world its maritime gateway to the Pacific.

The main purposes of this statement are to make four important points:

First, that the Panama Canal needs major modernization;

Second, that an attempt toward such improvement was started in 1939 but suspended in 1942;

Third, that there is a tested plan for major modernization on which $171,000,000 has been expended; and

Fourth, that this plan will provide the best operational canal practicable of achievement, including proposals for a canal of sea level design.

Because certain documents supply important information for the study of canal history and problems, I request that the following be appended to my statement:

(1) Roosevelt, President Theodore. Message to the Congress transmitting the report of the Board of Consulting Engineers for the Panama Canal, February 19, 1906.

(2) Duval, Miles P., Jr., "The Marine Operating Problems, Panama Canal, and the Solution." *Am. Soc. Civ. Engrs. Proceedings*, vol. 73 (Feb. 1947), pp 161–74.

(3) ———. "Isthmian Canal Policy—An Evaluation." *U.S. Nav. Inst. Proceedings*, vol. 81 (Mar. 1955), pp 263–75.

(4) ——— "The Interoceanic Canal—A Problem." *Explorers Journal*, XLII (Dec. 1964), pp 215–22.

(5) ———. "Panama Canal." *Encyclopaedia Britannica*, 1970, vol. 17, pp 205–13; quoted in *Congressional Record* (Feb. 10, 1971), pp 2453–2460.

(6) Randolph, E. Sydney. "An Engineer's Evaluation of Isthmian Canal Policy," *U.S. Nav. Inst. Proceedings*, vol. 82 (Apr. 1956), pp 395–99.

(7) ———. "Panama Canal—Proposed Improvement of Operating Conditions and Increasing Capacity," Memorandum for the Governor, March 26, 1943 (unpublished manuscript.)

As historically evolved, U.S. Isthmian policy has had two prime objectives: (1) the best canal site; and (2) the best type of canal.

The decision as to site was made by the Congress in 1902 following a dramatic struggle known as the "battle of the routes." The decision as to type was made in 1906 after another sharp contest known as the "battle of the levels." The three key leaders for the last were chief engineer John F. Stevens of the Isthmian Canal Commission, Secretary of War William H. Taft, and President Theodore Roosevelt.

The first major improvement for the Panama Canal after opening to traffic was the construction of the Madden dam and power project completed in 1935. That work increased the reserve water supply for maintaining channel depths in Gatun Lake during dry seasons, supplied additional power for canal operations and reduced the danger of floods from the Upper Chagres River. In addition to this project, canal engineers had long foreseen that the next step in canal improvement would be additional lock capacity and planned accordingly.

When World War II approached, the Congress, on administrative recommendations, authorized the construction of the 1939 third locks project at a cost not to exceed $277,000,000. An undisclosed objective in that project was "conversion" of the existing Panama Canal to "sea level," which had not been specifically authorized in the statute.

Hurriedly considered during those pre-world war II days of hectic activity without adequate consideration of the operational aspects of the problem at a time when there was fear of bombing attacks, this project provided for an additional set of larger locks a short distance away from the existing locks and joining them with existing channels by means of new bypass channels.

It is important to realize that this authorization was not enacted until after the ratification in 1939 of the 1936 Hull-Alfaro Treaty. That treaty provides for "expansion and new construction" for the existing canal (Cong. Record, July 24, 1939, p. 9834). The 1977 Panama Canal Treaty provides for construction of a sea level canal or a third lane of locks". (Cong. Record, Feb. 8, 1978, p. 2704.)

Construction on the third locks project, then hailed as the greatest single engineering work in the world, started in 1940 and was pushed vigorously until suspended in May 1942 because of more urgent war needs for ships, material and manpower. More than $76,000,000 was expended, largely on huge lock site excavations near Gatun and Miraflores, a roadbed for relocating the Panama railroad near Gatun, and a rail-vehicular bridge cross the Miraflores locks, all of which can be used in completing major modernization. Fortunately, no excavation was undertaken at Pedro Miguel.

As a direct consequence of the publication in 1940 of my first book, *Cadiz to Cathay*, I was ordered to the Canal Zone for duty on the eve of U.S. involvement in World War II. When arriving on the Isthmus in February 1941, the Canal Zone was the scene of tremendous activities in connection with the third locks project and vast preparations for defending the canal.

My assignment was as Captain of the Port of Balboa with supervision over marine operations in the Pacific sector of the canal. This area included the southern part of Gatun Lake, Gaillard Cut, the two sets of Pacific locks, Miraflores Lake, and the Pacific Sea level section to deep water, the most hazardous part of the Canal.

Soon after arrival two marine accidents in the canal followed by the suspension of construction on the third locks project led to the study of the problems of marine operations, of which I shall discuss seven crucial ones:

(1) The dangerous bottleneck at Pedro Miguel caused by placing the locks there squarely across the south end of Gaillard Cut thereby forcing southbound vessels to slow in the restricted cut channel and thus to lose rudder force under hazardous conditions.

(2) The double handling of vessels at the Pacific locks, with resulting inconvenience, increased numbers of accidents, and loss of time.

(3) The adverse effect of night fogs in Gaillard Cut on canal capacity and operation.

(4) The surges of 3' maximum amplitude in the Gaillard Cut water level caused by the operation of the locks at Pedro Miguel.

(5) The limited operating range of Gatun Lake water level from a high of 87' to a low of 82'.

(6) The navigation hazards of Gaillard Cut restricted channels, then of 300' minimum bottom width.

(7) The limited dimensions of the present locks, 1000' × 110' × 41'.

To secure the best canal for the transit of vessels, the only practical solution, as demonstrated by more than half a century of operations, is as follows:

(1) The physical removal of the bottleneck Pedro Miguel locks from their position in the south end of Gaillard Cut to enable vessels to leave the cut without stopping.

(2) The consolidation of all Pacific locks in new structures of continuous lifts south of Miraflores near Aguadulce as they are at Gatun.

(3&4) The elevation of the intermediate Miraflores Lake, 54' above mean sea level, to that of Gatun Lake to provide uninterrupted summit navigation from the Atlantic locks to the Pacific locks, create a summit level lake anchorage at the Pacific end of the canal in the Miraflores basin, mitigate the effect of fog on canal capacity and operations, eliminate lockage surges in Gaillard Cut, save transit time, and simplify canal operations.

(5) Raising the summit water level, now 87' maximum, to its optimum height of 92' (report of the governor of the Panama Canal under Public Law 280, 79th Congress, summarized in A.S.C.E. *Transactions*, Vol. 114 (1949), P. 619.)

(6) Continued enlargement of Gaillard Cut as demonstrated by experience to be needed. Widening the cut from 300' to 500' and correlated channel improvements were completed on August 15, 1970, at a cost of $95,000,000.

(7) Construction of one set of larger locks, 1200' × 140' × not less than 45'.

This action program, known as the terminal lake-third locks plan, can be accomplished under the "maintenance" factor in existing treaty proivsions. It would provide a two-way ship channel in the summit level from the Atlantic locks to the Pacific locks with adequate and logically arranged locks at each end of the canal.

Moreover, any major modernization plan that fails to provide for the elimination of the Pedro Miguel Locks is fatally deficient and should be summarily dismissed as being without sufficient merit to warrant any consideration except to refute it. In this connection, proposals for a surge basin, mooring stations, and certain other projects are not realistic solutions of the crucial marine operational problems but mere symptomatic treatments that can only serve to delay or confuse. Besides, the Terminal Lake-Third Locks solution is the proposal fully supported by Panama Canal pilots who have the responsibility for the navigation and movement of vessels in Canal Zone waters and thus know the navigational problems involved at first hand. When these problems are evaluated from all significant angles the Terminal Lake proposal provides the best solution at least cost and can be accomplished with every assurance of success.

A part of the Terminal Lake proposal was the widening of Gaillard Cut from 300' to 500', completed in 1970 at a cost of some $95,000,000. When added to the $76,000,000 previously expended on the Third Locks project, the total is over $171,000,000 already invested toward major Canal modernization.

Many have asked why the Terminal Lake concept was not developed previously. It was.

In 1908, it was proposed by Colonel William L. Sibert but not adopted because it would have caused a delay in opening the Canal. In 1906 it was recommended by William Gerig. Prior to Gerig, it was urged on the Congress as a desirable change in approved plans by Chief Engineer Stevens. Perhaps the inability to secure its adoption was the failure to have facts that could be derived only from actual Marine experience in operating the Canal.

The Terminal Lake solution is so obvious, simple and logical that many have wondered why it was not proposed at the start of the French effort. It was.

At the Paris Congress of 1879, called by Ferdinand De Lesseps to consider the issues of site and type, De Lesseps, relying upon his experience in constructing the Suez Canal, applied the full force of his genius and prestige to securing the approval by that body of 134 distinguished leaders for a canal at the Panama site of the sea level type.

When he saw what was taking place, one member rose in protest. His words, here summarized, were: Of all then present, he was the only one who had studied this subject. Rather than have his name associated with what he knew would be a great disaster, he voted no, but stated there is a "practical plan" for constructing the Panama Canal. "Build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed with a channel cut through the Continental Divide, and connect the lakes with the oceans by locks. This is not only the best plan for engineering but also best for navigation." (U.S. Nav. Inst. Proc., Mar. 1955, P. 264).

Essentially, this was the plan eventually adopted by the United States in 1906 through the leadership of John F. Stevens. The originating genius who conceived it was the eminent French engineer, Adolphe Godin De Lepinay, who, by so doing, won a lasting fame as the precursor of the Panama Canal.

The Terminal Lake proposal now before the Congress has been described by experienced engineers as the most fundamental proposal since the 1906 relocation of the Atlantic Locks and Dam from Bohio to Gatun. Its adoption will complete the De Lepinay-Stevens conceptions and, by providing a balanced lake waterway, will give the world the best canal for navigation practicable of achievement.

As to the "sea-level" canal proposal, this is not a new idea but an ancient one. Studied in 1905–06, it was opposed by Chief Engineer Stevens and President Theodore Roosevelt. Later, in 1924, former Governor of the Panama Canal Jay J. Morrow described it as a "hardy perennial" and that apparently there would always be "someone to argue for it, no matter how often the impossibility of realizing any such scheme within practicable limits of time and cost may be demonstrated." (Jay J. Morrow, personal letter to John F. Stevens, May 31, 1924.)

In 1929–31, it was examined by a U.S. Army Interoceanic Canal Board but opposed by Governor Harry Burgess who stated: "As the experience in operating the canal has proved that vessels of the largest size can transit a lock canal safely and expeditiously, there appears to be no necessity for converting it into a sea-level canal, so far as can now be foreseen." This reference was to the transits in 1928 of the *Lexington-Saratoga* class of aircraft carriers, the overall dimensions of which were 888' by 106'. The report failed to receive the support of the chief of engineers who merely recommended its publication. (Ho. Doc. No. 139, 72nd Congress.) The Congress took no action thereon but in 1939 authorized the construction of a third set of locks. (Ho. Doc. No. 210 and Pub. Law 391, 76th Congress.)

In 1942, because of the congestion in Balboa Harbor of vessels loaded with ammunition, canal authorities became concerned about a potential Halifax disaster, which was a factor leading to the enlargement of the harbor. Today, super tankers and liquified natural gas (LNG) vessels create grave dangers. The record of super tanker disasters, even in ocean spaces, (Nat. Geo., July 1978, pp. 102–24) and possible calamitous explosions of LNG vessels (Lib. Cong. LNG Safety, siting and policy concerns, 1978, pp. xi–xiii) raise serious questions as to the wisdom of permitting such vessels to navigate in restricted waters of populated areas, including any type of interoceanic canal.

In regard to the capacity of an isthmian canal to handle naval vessels, the modernized existing canal would be able to transit efficiently and expeditiously the entire U.S. Navy except 13 large aircraft carriers.

In 1943, as the result of experience in World War II, extensive studies of marine operations in the Panama Canal from 1914 through 1942, and an operational evaluation of the then projected "sea-level" plan, there was developed in the canal organization the well known terminal lake-third locks plan as offering the best solution for increased capacity and operational improvement of trans-isthmian transit facilities. This plan was submitted on February 25, 1943, to higher canal authority, publicly presented in Balboa, C.Z., on May 20, 1943, before the Panama section of the American Society of Civil Engineers, high army, navy and canal officials, and published by the society after World War II under the title of "the marine operating problems, Panama Canal, and the solution." (*A.S.C.E. Proceedings*, Feb. 1947, pp. 161–74.)

In 1944, after completing his preliminary studies of the plan on January 17, Governor Glen E. Edgerton recommended it to the Secretary of War (now Army) for comprehensive investigation but warned the secretary that it was possible that "advocates of a sea-level canal would oppose *unjustifiably* (emphasis supplied) any expensive change in present plans on the grounds that it would defer the time when the conversion of the existing canal to sea level might otherwise be authorized." (*Congressional Record*, June 21, 1956, pp. 10756–66 contains the full text of the Edgerton report preceded by a summary of its significant points.)

In 1945 after the advent of the atomic bomb, during testimony on November 15 before the Committee on Merchant Marine and Fisheries, Governor Joseph C. Mehaffey, in response to questions, approved the terminal lake-third locks plan in principle for completing the third locks but did not commit himself as to type of canal. (Executive hearings on H.R. 4480, 79th Congress, November 15, 1945, p. 9.)

In 1947, the voluminous report under public 280, 79th Congress, recommended only the sea level project in the canal zone with a much improved operational channel alignment for major canal construction (A.S.C.E. transactions, vol. 114 (1949), p. 608). That report failed to receive executive approval and President Truman transmitted it without comment or recommendation to the Congress, which did not act upon its major objective.

Also in 1947, the National Assembly of Panama, on December 22, amidst scenes of unexpected mob violence rejected the defense base treaty and the United States promptly evacuated all military bases in that country. Those events served as warnings against hasty action by the Congress and the 1945–47 sea-level drive lost its momentum.

In 1960, an independent engineering inquiry under the direction of the Committee

on Merchant Marine and Fisheries opposed the construction of a sea-level canal in the Canal Zone because of possible "slides of the first magnitude" with "serious danger of a long interruption of traffic." (HO. Rept. No. 1960, 86th Congress, p. 5.)

In 1970, the report under Public No. 88-609, 88th Congress, as amended, recommended construction of a "sea-level" canal located about 10 miles west of the existing canal.

In 1973, Panama Canal pilots strongly supported the terminal lake-third locks plan and opposed the "sea-level" proposal as "needlessly expensive, diplomatically hazardous, ecologically dangerous and less satisfactory operationally than the existing canal." (Congressional Record, Nov. 15, 1973, p. 37176, copy of pilots' supporting resolution attached.)

In 1974, Governor David S. Parker (1971-75), in a notable address on the canal problem, made this significant statement when comparing the "sea-level" proposal with the existing canal as improved: "Navigation through such a (modernized lock) canal would be relatively simple because it would make use of the existing Gatun Lake, avoiding the currents and initially narrow chanels of a sea level canal." (David S. Parker, "The Panama Canal" circa 1974.)

In regard to the comparative operational characteristics of the types of canal, it is self-evident that the unrestricted channels in the lakes of a modernized high-level-lock canal enable better navigation than the necessarily restricted and much longer narrow channels of any sea-level project wherever located. The advantages of unrestricted navigation in the lakes outweigh the minor hazards and time lost by passage through the locks. Furthermore, the terminal lake-third locks solution is not only the most economical plan but, as previously stated, can be accomplished with every assurance of operational success for it has been tested for more than 60 years at Gatun and found eminently satisfactory.

Thus, when the more significant aspects of the canal question are evaluated objectively, the solution is not a sea-level project but the major modernization of the existing canal by completing the suspended third locks project adapted to the principles of the terminal lake-third locks solution as set forth in the Flood-Murphy-Snyder bill (H.R. 1587, 95th Congress.)

This bill provides for the elimination of the bottleneck locks at Pedro Miguel, the consolidation of all Pacific locks in new structures just south of Miraflores at Aguadulce, raising the summit water level from 87 to 92 feet, the construction of one channel of larger locks, and the formation of a summit level terminal lake in the Pacific end of the canal to correspond with the layout at Gatun. (Vital speeches, September 1, 1977, p. 689.) As previously stated, a total of more than $171,000,000 has been expended toward such major modernization.

The foregoing record shows that the major increase of capacity and navigational improvement of the existing canal has been under intermittent consideration by the Congress since 1939. With the exception of the widening of Gaillard Cut all other improvements have been mere symptomatic treatments that do not solve the major marine problems.

In regard to proposals for a "sea-level" canal, there has been no stronger statement than the January 2, 1973, report of this committee that it is "irrelevant and should not be allowed to confuse (the question) of the canal's major needs, i.e., its increase of capacity and operational improvements." (HO. Rept. No. 92-1629, p. 36.) The meeting of these requirements as outlined in H.R. 1587 will provide the best conditions for the transit of vessels.

In view of all the above history, the availability of a tested plan for major modernization derived from actual experience in both peace and war that can be constructed with every assurance of success, and the expenditure of $26,600,000 on the last two "sea-level" studies ($4,600,000 for the 1947 report and $22,000,000 for the 1970 report), there is no valid reason for further studies of such type, which would be less satisfactory operationally than the existing canal. Far better use could be found for the funds required for such studies that would only serve to delay further the canal's long needed major increase of capacity and operational improvement.

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[From the CONGRESSIONAL RECORD, Nov. 15, 1973]

PANAMA CANAL PILOTS ASSOCIATION,
*Washington, D.C., October 25, 1973.*

Re Panama Canal—Third Locks-Terminal Lake Plan.

DEAR CONGRESSMAN: The Panama Canal Pilots Association strongly supports the Thurmond-Flood bills regarding major modernization of the Panama Canal.

We have given much thought and study to this matter. Furthermore, in our work of transiting vessels through the Canal we constantly observe the operations and are, of course, thoroughly familiar with the physical features of the Canal.

The original engineering and construction were magnificant. The engineers involved were very farseeing and the Canal has essentially met the needs of world shipping for over 60 years. However, time and progress are fast catching up with and will soon overwhelm the Panama Canal as now structured.

Attached hereto, is a copy of a Resolution which was passed unanimously at a very well attended General Meeting of our Association held on October 15, 1973.

We hope that you will be able to support the Thurmond-Flood bills.

Sincerely yours,

Capt. W. H. VANTINE,
*President.*

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PANAMA CANAL MAJOR MODERNIZATION—OCTOBER 15, 1973

Whereas, since 1914 the pilots of the Panama Canal have accumulated a vast knowledge concerning its marine operations through thousands of transits on all types of vessels; and

Whereas, during World War II extensive studies in the Canal organization of marine operations conclusively established the location of the bottleneck at Pedro Miguel Locks in the south end of Gaillard Cut as the fundamental operational error in constructing the Canal; and

Whereas, as a result of those World War II studies, there was developed in the Canal organization and approved by a committee of our most distinguished senior pilots what is now known as the Terminal Lake-Third Locks Plan; and

Whereas, this plan has been consistently recognized by various responsible independent navigation interests as providing the best operational canal practicable of achievement; and

Whereas, more than $171,000,000, has been expended toward the major modernization of the Canal, $76,357,405 on the suspended Third Locks Project and some $95,000,000 on the enlargement of Gaillard Cut; and

Whereas, the several items in the 1969 Improvement Program for the Panama Canal, though important, are non-basic in character and no solution for the Canal's major marine operational problems; and

Whereas, the Thurmond-Flood bills for the major modernization of the Canal now before the Congress will provide increased lock capacity for larger vessels, greater transit capacity, and eliminate the Pedro Miguel bottleneck locks; and

Whereas, the plan provided for in these bills would preserve the existing fresh water barrier between the oceans and thus continue to protect them from the biological hazards feared by respected scientists in any sea level undertaking; and

Whereas, responsible organizations and informed experts oppose the construction of any sea level canal as needlessly expensive, diplomatically hazardous, ecologically dangerous and less satisfactory operationally than the existing canal; now therefore, be it

Resolved, by the Panama Canal Pilots Association that it supports the Terminal Lake-Third Lock solution as provided in the Thurmond-Flood bills; and

Resolved, that the Panama Canal Pilots Association urges the Governor of the Canal Zone to use the full force of his office to support prompt enactment of the pending legislation for major canal modernization; and

Resolved, that the Panama Canal Pilots Association opposes the construction of a new canal of so-called sea level design; and

Resolved, that the Panama Canal Pilots Association directs that copies of this resolution be sent to the following:

President of the United States.
Vice President of the United States.
Secretary of State.
Secretary of Defense.
Secretary of the Army.
Secretary of the Navy.
All Members of the Congress.
Leading Marine Organizations and Periodicals.
American Society of Civil Engineers.
Society of American Military Engineers.
American Legion.
Veterans of Foreign Wars.

Capt. W. H. VANTINE,
*President, Panama Canal Pilots Association.*

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Mr. Chairman, two former members of the Congress who made significant contributions to increased understanding of elemental Canal issues were Representative Willis W. Bradley of California, a retired naval officer and ordnance expert and a member of the Committee on Merchant Marine and Fisheries; and Representative (later Senator) Thomas E. Martin of Iowa, a retired Army officer. Both of them were close students of interoceanic canal problems.

In a comprehensive discussion of the Panama Canal in 1948, which was soon after the advent of the atomic bomb, Representative Bradley summarized his views on crucial canal security as follows:

"As far as I can ascertain, the greatest authorities on modern weapons of war who have given this subject serious attention hold uniformly that any canal would be critically vulnerable to the atomic bomb regardless of type; that a sea-level canal would be in the same security class as a lake canal; that a sea-level canal could be closed for prolonged periods of time beyond any hope of speedy restoration; and that a sea-level canal cannot be considered secure in an atomic war. These same authorities also agree that the atomic bomb is irrelevant as a controlling factor in the planning of operational improvements for the Panama Canal." (*Cong. Record*, April 21, 1948, p. A2449).

Congressman Martin, on many occasions, expressed similiar views regarding canal security and cited the authorities upon which he based them.

Because the crucial parts of their conclusions of both of these two distinguished leaders are still applicable, some with even greater force, I request that the following list of their statements be included at this point in the hearing record:

Bradley, Honorable Willis W. "What of

the Panama Canal?" Address before the Cosmos Club of Washington, D.C., April 19, 1948. *Congressional Record* (80th Congress, 2nd Session), Vol. 94, Pt. 10 (April 21, 1948), p. A2449.

———. "The Whys of the Panama Canal." Address before the Engineers Club of Washington, D.C., February 24, 1949. *Congressional Record* (81st Congress, 1st Session), Vol. 95, Pt. 12 (Mar. 4, 1949), P. A1303.

Martin, Honorable Thomas E. "The Atomic Bomb and the Panama Canal." Extension of Remarks quoting an article by Major General C. F. Robinson in the *Military Engineer*, January-February 1949, *Congressional Record* (81st Con., 1st Session), Vol. 95, Pt. 12 (Feb. 13, 1949), p. A755.

———. "The Panama Canal and Nuclear Weapons." Extension of Remarks quoting an article by Lt. Colonel A. W. Betts in the *Military Engineer*, Mar.-Apr. 1949. *Congressional Record* (81st Cong., 1st Sess.), Vol. 95, Pt. 13 (Mar. 24, 1949), p. A1713.

———. "The Atomic Bomb and the Isthmian Canals." Extension of Remarks quoting an article by Lt. General Leslie R. Groves in *Cosmopolitan*, January 1949. *Congressional Record* (81st Cong., 1st Session), Vol. 95, Pt. 12 (January 13, 1949), p. A169.

———. "Panama Canal Security Against Atomic Attack." Extension of Remarks quoting an article by Lt. Commander H. B. Seim in the U.S.N.I. *Proceedings*, April 1949. *Congressional Record* (81st Congress, 1st Sess.). Vol. 95, Pt. 13 (May 2, 1949), p. A2639.

———. "Isthmian Canals and National Defense". Extension of Remarks quoting an article by Hanson W. Baldwin in *Atlantic Monthly*, July 1949. *Congressional Record* (81st Con., 1st Sess.), Vol. 95, Pt. 15 (July 14, 1949), p. A4627.

———. "A Balanced Military Policy for the United States". Extension of Remarks quoting an address by General Omar N. Bradley in the *Military Engineer*, Mar.-Apr. 1949. *Congressional Record* (81st Cong., 1st Sess.) Vol. 95, Pt. 15 (Aug. 18, 1949), p. A5402.

———. "Interoceanic Canals—The Atomic Bomb and National Defense". Extension of Remarks quoting an article by Commander Robert C. Wing in the U.S.N.I. *Proceedings*, Sept. 1949. *Congressional Record* (81st Cong., 1st Sess.) Vol. 95, Pt. 16 (Oct. 11, 1949), p. A6197.

———. "Isthmian Canals and Atomic Defense." Extension of Remarks quoting an article by Lt. Colonel Richard D. Wolfe in the *Military Engineer*, Nov.-Dec. 1949. *Congressional Record* (81st Cong., 2nd Sess.) Vol. 96, Pt. 14 (Mar. 7, 1950), p. A1725.

———. "Isthmian Canal and Atomic Bomb Defense Plans." Extension of Remarks quoting a statement by Dr. Vannevar Bush in the Associated Press, February 9, 1950. *Congressional Record* (81st Cong., 2nd Sess.), Vol. 96, Pt. 14 (Mar. 8, 1950), p. A1754.

———. "Interoceanic Canals-Modern Arms and National Defense." Extension of Remarks quoting a condensation of a book by Dr. Vannevar Bush in the *Readers Digest*, Feb. 1950. *Congressional Record* (81st Cong., 2nd Sess.), Vol. 96, Pt. 14 (Mar. 9, 1950), p. A1986.

———. "Apropos of Interoceanic Canals: Atomic Bomb and National Defense." Extension of Remarks quoting a statement by Dr. Vannevar Bush in the *Washington Daily News* of Dec. 18, 1950. *Congressional Record* (82nd Cong., 1st Sess.), Vol. 97, Pt. II (Jan. 22, 1951), p. A 283.

———. "Re Panama Canal: Modern Weapons and National Defense." Extension of Remarks quoting an article by Dr. Vannevar Bush in the *Readers Digest*, Jan. 1951. *Congressional Record* (82nd Cong., 1st Sess.), Vol. 97, Pt. II (Jan. 23, 1951), p. A 349.

———. "Army Chief of Staff Minimizes Threat to Panama Canal in Major War." Extension of Remarks quoting a statement of General J. Lawton Collins, Chief of Staff, in the May 13, 1953, issue of the *Star & Herald*, Panama, R.P., *Congressional Record* (83rd Cong., 1st Sess.), Vol. 99, Pt. 11 (June 11, 1953), p. A3408.

———. "Panama Canal: New Defense Role." Address before the U.S. Senate quoting a news story by Hanson W. Baldwin in the New York Times of April 28, 1957. *Congressional Record* (85th Cong., 1st Sess.), Vol. 103, Pt. 5 (May 1, 1957), p. 6200.

———. "Interoceanic Canals and the Hydrogen Bomb." Address in U.S. Senate quoting an article by William L. Laurence in the *American Weekly*, July 29, 1956. *Congressional Record* (85th Cong., 1st Sess.), Vol. 103, Pt. 5 (Apr. 29, 1957), pp. 6091–94.

———. "Panama Canal: New Defense Role." Statement in the U.S. Senate quoting an article by Hanson W. Baldwin in the *New York Times*, Apr. 28, 1957. *Congressional Record* (85th Cong., 1st Sess.), Vol. 103, Pt. 5 (May 1, 1957), p. 6200.

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## REBUILDING OUR NAVY

● Mr. HARRY F. BYRD, JR. Mr. President, the September issue of the Harvard Journal of Law and Public Policy will feature an article by former Secretary of the Navy, J. William Middendorf, entitled "We Must Rebuild Our Navy Now."

Secretary Middendorf was Secretary of the Navy from 1974 to 1977, and is now president of Financial General Bankshares. His interest in national security affairs has been long and serious. He is well qualified to comment on such matters.

The article is not a pleasant one, for it raises concerns that human nature often tries to ignore.

I have read the article, and it has left a firm impression. It reminds one of the late 1930's when many responsible people refused to read the warning signals of war.

Adolf Hitler had begun the remilitarization of Germany and had sent many signals of his intended aggression.

Many refused to accept those signals for what they were.

The result was a catastrophe—a catastrophe that cost millions of lives—a catastrophe that could have been prevented.

Secretary Middendorf's article points to many of the same kinds of warning signals that are in evidence today and urges the reader to take heed.

I urge my colleagues to read this article and ponder its relevance.

I ask that the article be printed in the RECORD.

The article follows:

WE MUST REBUILD OUR NAVY NOW

(By J. William Middendorf II)

Since retiring as Secretary of the Navy in 1977, I am, of course, no longer responsible for trying to see to it that the Navy gets its share of the defense budget. I do not own stock in the Navy. I am just another American citizen who feels that we should insist that we maintain a military posture strong enough to deter war, and to insure we would prevail if our vital interests and freedoms were threatened in an actual war situation. I believe that all wars have come about primarily from one side perceiving weakness in the other, and that true peace is maintained only from a perception of at least roughly equal strengths. For most of the post-war period, our position of strength was undisputed but in recent years there has been a very serious decline in our real or perceived strength relative to the one potential adversary who can threaten us, the Soviet Union. In fact, this relative decline has been rapid and we are approaching a period in which four or five years from now, we may find ourselves dealing from weakness in a number of areas. Should we end up in this position, we would be forced when threatened to back away one at a time from our vital interests around the world, and when finally pushed to the wall, we would then attempt something desperate which would be destabilizing in the extreme.

How much better to rebuild our strengths now during the precious moments of freedom we are still enjoying.

The warning signals are up all over. To confine it to my own area of expertise, consider some of the dramatic events that have been occurring for years on the world's oceans: just after the outbreak of hostilities during the Middle East War in 1973, the Soviet Navy massed 96 ships on station in the Mediterranean, nearly doubling the size of its normal fleet there; a force that included a powerful array of cruisers, frigates, destroyers, and escort ships, amphibious ships, fast, well-armed offshore patrol boats, intelligence collectors and approximately 25 submarines, some of the latter nuclear-powered. We were able to reinforce our Sixth Fleet to a strength of 66 units, including three carrier task forces. Along with a full complement of more or less conventional weaponry, Soviet combatants were armed with deadly anti-ship cruise missiles, a weapon not then—and not yet—in our own inventory. The Soviets closely shadowed our carrier forces. In turn we kept airpower over them, ready to shoot down on them in the extremely short interval between the telltale lighting off of their missiles and the time they are actually fired. The Soviets had no airpower in the area, but airfields were available in the Crimea and Egypt and Libya to their sizable force of land-based naval bombers. It was "High Noon" in the Mediterranean. When the Israelis trapped the Egyptian Third Army in the Sinai Desert and were threatening its destruction, the Kremlin delivered a tough ultimatum to Washington: call off the Israelis or we're going in—and indeed the Red Army was preparing to drop airborne troops in the Sinai. To underline the seriousness of the situation and perhaps to send the Russians a signal, the President placed our Armed Forces on alert (Def. Con III) one of the few times since World War II.

I vividly recall following from my office the great drama that took place that long night downstairs in the "tank" (the situation room in the basement of the Pentagon), and over at the White House as the members of our Joint Chiefs of Staff, the National Security Council and the President wrestled with their momentous decisions. I felt the tension on our great naval leaders as they debated our chances for victory (or even survival) in that far away duckpond against the greatest array of potentially hostile forces our Navy or any navy had ever faced. I am personally convinced that World War III, and thus the survival of mankind, hung in the balance that night. Our Navy, I am proud to say; was the only substantial force in being—and on the spot, as it so often is—that permitted us to negotiate from strength. The next morning as a result of negotiations, the Soviets began to withdraw their ships, and the crisis passed.

Perhaps it was just as well, but I noted how little press coverage was given to this, my candidate for the most significant event, or non-event, since World War II.

Many differ as to the outcome should trouble have come. Some believe that the Soviets would have decisively defeated us because they had us outgunned on the surface and in the subsurface, and could have added massive airpower at any time. Others dispute that, insisting that we would have had ample warning had the Soviets begun to move airpower, that we could have taken appropriate counter action, and that we would have in any case retained air superiority—which, along with our ability to jam the electronics systems that guide Soviet anti-ship cruise missiles and our superior anti-submarine warfare capability would have given us the edge. Fortunately, we didn't have to find out, for what is not debatable is that, regardless of who had prevailed, it would have been exceedingly costly for us in terms of men, ships and aircraft, and half of the carriers assigned to defend our entire East Coast would have been bottled up in the Mediterranean Sea.

But the important point is that the Soviets felt confident enough nearly five years ago to boldly move strong naval forces into a volatile situation in what for a generation had been regarded as an American lake and to issue Washington an ultimatum. The U.S.-Soviet naval face-off during the October 1973 War was full of ominous meaning for the future.

Equally ominous for the future were the Soviet's navy war games held in 1970 and again in 1975. These were "Okean (Ocean) 70" and "Okean 75". In these vast maneuvers, the Soviets set about evaluating for themselves, and, no doubt, to show us their newly developed threatening worldwide capabilities. On a signal, hundreds of air surface and underwater combatants were spread out over the world's oceans accompanied by merchant convoys, intelligence collectors, repair ships and oilers, and engaged in remarkably complex maneuvers. Advanced communications systems enabled missile-armed surface ships, submarines and aircraft rapidly to trade targeting information and team up in imaginatively conceived and well-coordinated simulated attacks on submarine and surface ship targets. Soviet naval air armadas simultaneously attacked "enemy" warships in both the Atlantic and Pacific. In Moscow, the Navy Commander-in-Chief maintained instantaneous communications with his major units all over the world, was kept advised in "real" (instant) time as to the status of his air, surface and undersea units and "the enemy's" posture, and was thus able to rate the performance of his individuad commanders. In the Atlantic, the exercise stretched from Norway's North Cape to the Azores under an umbrella of U.S.S.R.-based airpower. Forces in the Caribbean operated under Soviet air cover flying out of Cuba. Soviet Navy bombers based in the Guinea patrolled Africa's West Coast. Two missile-armed cruisers led anti-carrier operations between Sicily and Italy in the Mediterranean. Bombers based in Soviet Central Asia and near Berbera, Somalia, covered a strong Indian Ocean force. Four potent task groups worked in the Western Pacific. Extensive maneuvers were conducted in the Black Sea. Everywhere, the Soviets were "at war". It was mind-boggling, the greatest show of naval strength in world history!

More recently, the Soviets just last April 1977 suddenly flooded 89 attack (anti-shipping) submarines into the North Atlantic in a spine-chilling exercise of unprecedented scope that all but overwhelmed NATOs surveillance systems. NATO had to concentrate primarily on the U.S.S.R.'s strategic (long-range nuclear ballistic missile-carrying) submarines, keeping its most effective tracking systems—submarines—assigned to them, but at the same time mount an intensive tracking effort against the Soviet attack submarines with less effective systems: surface ships and aircraft. Not easy, especially since the Soviet attack fleet was accompanied by powerful surface and air forces. Imagine what such a Soviet submarine force could do in the event of real war! Nazi Germany, which began World War II with 57 submarines—perhaps only a quarter of them fully operational, and all of them primitive by today's standard—very nearly succeeded in severing our Atlantic supply lines, sinking some 14,-000,000 tons of shipping. Clearly, the lesson was not lost on the Soviets.

Secretary of Navy Claytor said recently: "Today the submarine poses the single most dangerous threat to our life lines at sea. Covert by design, a modern submarine contains the power to cripple these life lines quicker and mcre effectively than any other threat."

The events described above signal an alarming and accelerating shift in the balance of naval power The Soviet Navy's ability to perform its particular mission has been increasing; the U.S Navy's ability to perform its mission has been decreasing. Let's understand what those missions are or should be: The United States really is an island nation. Our industrial output, our way of life, is dependent on the unimpeded flow to us of essential raw materials and energy—46 of the 47 critical raw materials, including half of our oil, vital to American industry are wholly or partially imported. Some 99 percent of our overseas trade is carried by ship. That's one reason we have security treaties and agreements with 43 nations, 41 of them overseas. Such accords are in our own vital interest. I believe very strongly that essential to our survival as the island nation that we are is that we have a navy capable of posing a believable deterrent in case of a war and capable of keeping our sea lanes open.

The Soviets by contrast are relatively self-sufficient in energy and raw materials and can supply most of the Warsaw Pact allies with military and economic support over a contiguous land mass. The Soviet Union is the opposite of an island nation—a truly peaceful Soviet Government without expansionist motives would find little need for the highly expansive global-capable Navy it has built and is still building. It would be content with adequate coastal defense forces it maintained a decade and a half ago.

How does one explain the recent Soviet buildup? The masters of the Kremlin have always wanted to be masters of the world.

The Committee on The Present Danger describes Soviet Russia today "as a country in which a ruling elite and those whom it designates live comfortably, while the remaining two hundred fifty million citizens not only have few material advantages but are deprived of basic human liberties. This elite can enjoy its monopoly of advantages only so long as it is able to keep the deprived population under effective control—a significant relaxation of that control could spell the end of its favored status and advantages. The elite, however, is not guided merely by self-serving motives. The Soviet leadership asserts that it is the vanguard of a revolutionary society which has discovered the fundamental laws of history. The openly stated ultimate Soviet objective is the worldwide triumph of Communism. This triumph would give the Soviet elite ready access to the world's resources, both human and material; it would also do away with all external challenges to its privileged position by eliminating once and for all alternate political and social systems."

The Soviets became aware in the early 1960s that they could not influence world events without a blue water navy. Powerless to act in the 1956 British and French Naval expedition that invaded Suez, and again powerless in 1958 when the United States Navy moved strong forces into the Eastern Mediterranean to abort a communist takeover of Lebanon; finally the Cuban missile crisis was the last straw when an American Naval blockade combined with the threat of nuclear retaliation forced the Soviets to remove nuclear missiles they were installing in Cuba. That was the watershed, after which begin the U.S.S.R. arms buildup, the greatest in world history, and the naval component has not been shortchanged.

For openers, the U.S.S.R. now has the world's largest strategic submarine fleet, 60 having been launched in the last decade, 8 in 1976 alone, an extraordinary feat which bespeaks a well-organized industry humming with momentum, and they are continuing to add to that fleet. The new Delta-class submarine of which they already have 27 operational is capable of firing a missile from the U.S.R.R.'s relatively protected home waters to reach every significant target or city in the United States. Its 4200 mile range missiles exceed by 1700 miles the range of our most advanced submarine-based missile, the Poseidon. Our Trident I missile, not yet operational, will approximate the range of the Delta class missile when we can produce it.

The fact that their missiles can reach our home land from their own waters enormously complicates matters for our anti-submarine warfare (ASW) forces. In addition, the Soviets have 34 Yankee-class submarines with 1300 mile missiles and 30 older submarines capable of carrying 350 to 650 mile nuclear missiles. The latter probably are for theater use—i.e., for use within a specific battle area—to pose a presence and capability meant to neutralize our stronger allies. Last year, six of the diesel-powered boats were transferred from the Northern Fleet to the Baltic; it's the first time ballistic missile submarines have been stationed in the Baltic.

Thus, the Soviets have approximately 90 ballistic missile-firing submarines prowling the depths, and are still building. About 35 percent of all Soviet strategic missiles are now aboard submarines, and the percentage will rise as new boats keep coming out of the U.S.S.R.'s busy shipyards. The Soviets also currently have two new missiles in advanced stages of developemnt for their Delta and Yankee-class fleets which will have even longer ranges, greater accuracies and increased explosive power.

In contrast to this expanded Soviet submarine threat, our own Navy has a ballistic missile firing submarine fleet of 41 Polaris and Poseidon submarines, all relatively old. Our first Trident boat, which will be roughly the equivalent of the Soviet's Delta-class won't reach the water until almost 1980, by which time the Soviets will have nearly 30 Deltas at sea. The American plan is to keep adding Tridents at the rate of one or two a year until we have a total force of ten or more, and eventually each will carry 24 longer range Trident II missiles—when the latter is developed in the still distant future.

Meanwhile, the Soviets recently have been engaged in a massive civil defense effort that is designed to protect a significant portion of their war-making capability and civilian population in the event of a nuclear exchange. The fact that we lay virtually naked in this area opens us up more and more to nuclear blackmail, because we and they know in advance that our losses would vastly exceed theirs.

Nevertheless, I don't believe that the rapid buildup of the Soviet strategic submarine force means that a nuclear assault against us is imminent. We still could deliver a lot of destruction upon the U.S.S.R., and I doubt the Kremlin wants that. Rather, I am convinced that the entire Soviet nuclear building is intended as a deterrent, to neutralize the American nuclear arsenal and free the Kremlin to employ its conventional naval forces in support of an ambitious foreign

policy designed to subvert the world's raw materials and oil, with the obvious implications to the free world of those actions.

Which gets us to the Soviet Navy's mission: its architect and Commander-in-Chief, Fleet Admiral Sergei Gorshkov, insists that "the Soviet navy is the only armed force capable of supporting state interest on peacetime." To that end, Gorshkov has stated that the Kremlin will have a navy that is "second to none," that contributes importantly to the cancelling out of the American nuclear threat, that can help assure victory if deterrence fails, that can cut our vital supply lines to our sources of raw materials and energy, that can separate us from our allies, that can dominate the seas, and, finally, that can function worldwide as an effective instrument of state policy.

How close is Gorshkov to achieving his "second-to-none" navy? Not long ago, Admiral James L. Holloway, III, our recently retired former Chief of Naval Operations, who served brilliantly in that role, gave the Congress the following sober assessment: in the event of conflict involving the most vital American interests, we retain "a slim margin of superiority today." We could hold open the North Atlantic sea lanes to Europe, but would suffer heavy losses in the early stages. In the Eastern Mediterranean, our ability to operate would be "uncertain at best". In the Pacific, we could hold open the sea lanes to Hawaii and Alaska—but we "would have difficulty protecting our sea lanes of communication into the Western Pacific." Holloway made it clear that he was talking about today. The way the trends are going now, would the Chief of Naval Operations in the early 1980s be able to report any margin of superiority? What would be the result if he had to report major weaknesses relative to the Soviets while the Soviets were threatening, or were acquiring through one of their proxies such as the Cubans, raw materials vital to our own interests?

It takes up to five years to build a major warship, more for an aircraft carrier, so the profile of our Navy of 1981 and 1982 is already set, for better or for worse.

With our worldwide interests and commitments, we can't afford not to be superior at sea. That "slim margin" with which Admiral Holloway credits us now is represented by our 13 aircraft carriers. We normally have two operating in the Mediterranean two in the Atlantic, two in the Eastern Pacific, two to three in the Far West Pacific or for occasional deployments to the Indian Ocean, and up to four in overhaul or change of station situations. Considering our far-flung needs, that is not an over-abundance of seagoing airpower; when the Soviets started their naval buildup, we had 26 carriers deployed around the world. More than any other naval power, we ourselves demonstrated what an effective weapon system the carrier is. Two years ago, ironically, in one of naval history's most significant events, the Soviets deployed their first carrier, the *Kiev*. At 45,000 tons, she's designed to raise havoc with our submarine forces, but could also mount a fleet air defense, launch attacks on surface vessels and support an amphibious landing force (the Soviets also are increasing the size of their "infantry", or Marine Corps). The *Kiev* carries 35 V STOL (Vertical/Short Takeoff and Landing) aircraft and helicopters; two sonars for finding submarines; a nuclear-capable anti-submarine missile launcher; anti-submarine rockets and torpedoes; eight large surface-to-surface missile launchers; two twin 76mm guns; eight small caliber Gatling guns. She is also extensively equipped with communications gear and electronics systems for jamming enemy communications radars and weapons guidance systems.

Second and third *Kiev*-class carriers are under construction or nearing completion. In the 1980s, we probably will see larger carriers joining the Soviet fleet. Along with an expanding amphibious force, a large fleet of surface combatant ships, a large and growing merchant fleet and an improving ability to replenish while underway, Gorshkov's development of carrier forces indicates a determination to challenge the United States seriously for sea control and to project Soviet power into distant areas. Indeed, Gorshkov says he wants to be able to do everything from showing the flag to sending naval infantry ashore. His carriers do not yet give him the long-range striking powers ours provide; but he has 1250 land-based naval bombers. Some 30 of them are the new supersonic *Backfires*. These can range far into the Western Pacific, can cover the Atlantic approaches to Europe, the Persian Gulf, the northern reaches of the Indian Ocean, the Sea of Japan, much of Africa, and the entire Mediterranean—*Backfire* squadrons in the Crimea pose a terrible threat to our Sixth Fleet.

The Russians have tried to offset our superiority in aircraft carriers with an arsenal of deadly anti-surface ship cruise missiles, arming scores of their surface ships and submarines with them.

To counter the Soviet cruise missile, our Navy has developed the Aegis anti-missile defense, and we must move ahead with Aegis to ensure that in the event of conflict we are going to retain a navy and merchant fleet. A few platforms have been planned for the Aegis but we need many more. Even with work beginning immediately, it will be 1981–82 before the system can be built and deployed.

The trends have favored the Russians. In addition to their large and growing strategic submarine force, which now outnumbers by almost twice the size of ours, they also have the world's largest "attack" submarine fleet, used for anti-submarine and anti-shipping purposes, numbering 200 submarines, all are torpedo-armed, and nearly 70 are additionally armed with anti-surface ship cruise missiles. That force will improve—in capabilities if not numbers (which is also possible). The technology required to yield a new generation of nuclear-powered attack boats has been several years in development, and construction is expected to begin as quickly as the Soviets complete their strategic submarine force.

In contrast, we have a total of 77 torpedo-armed submarines.

But that's only the beginning. The Soviets have more than all kinds of surface combatants than we have, more cruisers, more destroyers and other escort types—they outnumber us by something as absurd as 850 to 15 in "small" (less than 1000-ton) attack boats. Although a carrier in the area not otherwise engaged could deal effectively with most such smaller vessels, there is nothing unimportant about them—they are fast, maneuverable, and hard to hit, and they pack a lethal wallop. During the 1967 Arab-Israeli War, a single missile from such a Soviet-supplied Egyptian boat sank the Israeli destroyer *Eilat*. During a 1971 conflict, missiles from a Soviet-supplied Indian boat sank one Pakistani destroyer, badly damaged another and are believed to have sunk several merchant ships. By the time of the 1973 Middle East War, the Soviets were confident enough to keep a small guided missile boat stationed close to our big carrier the *John F. Kennedy*. It gave us something else to think about!

In another vital area, amphibious ships used to carry tanks and landing forces into beach areas, they now have over 100 of these. We would need 48 of our force of 63 to embark a single marine division and its associated air wings. Even that would take some doing, since our amphibious ships are scattered all over the Atlantic and Pacific—we would be pressed to completely respond to a major strike order in less than two months' time. Our Marines, under the leadership of Medal of Honor winner General "Lou" Wilson, are the best in the world and they are, as always, ready for combat "at any time in any climate," but from an amphibious transport standpoint alone it can hardly be said that we, the nation, are battle-ready!

The list is endless. The Soviets have now built the largest naval mine warfare force. It has the world's largest fleet of intelligence collectors (so-called "spy ships"); 50 are spread across the world's oceans. Some are always on station near our Polaris-Poseidon submarine bases at Holy Loch, Scotland; Rota, Spain; and Guam; in the Pacific. Others monitor the ship traffic that passes through the world's strategic waterways, such as the Strait of Gibraltar. Others keep positions off the Southeastern United States, where they can keep watch on our submarine base at Charleston, S.C., and our Cape Canaveral, Florida, missile test center. Others are always close to all NATO and American naval exercises. They are, in effect, everywhere our Navy moves. (Some press reports still indicate that Soviet intelligence collectors are disguised as fishing trawlers. Not so. Some are of modified trawler design, but most are of relatively recent construction. All fly the Soviet naval ensign and there is no attempt any more to hide their capabilities or purpose.)

We have no such intelligence collection force. We once had a group of old, converted World War II cargo ships on the job. Then, after the North Koreans seized one, the U.S.S. *Pueblo*, and the Israelis shot up another, the U.S.S. *Liberty*, we opted out of the business.

All new Soviet ships are built for chemical, biological and radiological (CBR) warfare and are regularly put through highly sophisticated CBR exercises.

A key role for an expanded imperialistic nation like the Soviets is to show the flag in more and more places, hoping to influence events. They now cruise in the world's major seas. Every American maneuver that I have ever attended in the Mediterranean was accompanied by Soviet "tattle tales", usually a destroyer. Soviet task forces have circled one of our states, Hawaii. Another has entered the Gulf of Mexico. They now enjoy extensive port facilities along the vital oil routes from the Middle East, in the Mediterranean, the Caribbean, and on the West Coast of Africa. As their proxies, in the push for the raw materials of the world, the Cubans have expanded their activities in Angola, in the Horn of Africa, and in South Yemen, with Soviet naval units never far away. The proximity of the Cubans to oil rich Saudi Arabia upon which the West depends is of ominous importance.

To stay modern and at full strength at sea, the Soviets are engaged in a continuing intensive naval research and development program. They are concentrating on such fields as anti-submarine warfare, missile technology, satellite systems, surface effect ships,* and electronics. The fruits of their vigorous program are being realized in five major shipyards that produce submarines, six more that build major surface combatants and a number of others that are producing minor combatants and support ships. The major yards all have been expanded and modernized within the past five years. A steady progression of newer, larger, more versatile, more capable ships are being designed and built.

Admiral Holloway put it in the clearest terms in presenting the Navy's budget to Congress last year.

"The primary threat facing the United

*See *"Here Comes the 100-mile-an-hour Navy"*, The Reader's Digest, August 1977.

States and its allies comes from the Soviet Union. The Soviet Navy today has capabilities in all naval warfare areas and continues to grow in capability, especially in its ability to conduct multi-dimensional naval warfare in Okean (ocean) areas remote from the Soviet Union."

Despite a strong and growing Soviet presence on virtually all waters of the globe, despite the existence of a potential Achilles' heel in our dependence on foreign sources of liquid fuel, and despite the necessity to maintain two virtually independent navies—a strategic deterrent ballistic missile submarine force and the larger force of tactical ships, aircraft and submarines—there remains a very real demand, in Congress and elsewhere, to reduce expenditures on the Armed Forces. The result, insofar as the current U.S. Navy budget is concerned, seems to be an emphasis on Army-related expenditures to bolster the central front of NATO. Unfortunately, this justified emphasis comes at the expense of the Navy, which has equally crucial NATO roles.

Still these questions persist:

What are the roles in the international arena—especially the NATO arena—of a U.S. Navy force at peace?

Does the Navy today have sufficient resources to carry out these roles now and in the future?

The United States Navy has three main roles: strategic deterrence—carried out by the ballistic missile submarine force; projection of power in support of U.S. interests and allies; and maintaining the freedom of the traditional ocean routes of commerce, referred to today as the sea lanes of communication (SLOC). The latter two roles overlap to a great degree in wartime. Yet, there is an even more crucial international role of the U.S. Navy—more crucial because of its continuing importance in international commerce. This is, of course, U.S. support of and, hence, U.S. Navy involvement in, NATO. The U.S. as a country is historically and politically committed to a strong and effective Atlantic alliance. This fact has been reemphasized by the current United States government. Less obvious to the Administration's system analysts, however, has been the fact that the North Atlantic Treaty Organization is also very much a maritime affair. Allied naval strength is the cornerstone to integrity of the sea lanes between America and Europe and, hence, very much one of the principal tenets of NATO's strength. While the U.S. Navy cannot alone guarantee the security of NATO, it is the mainspring among an integrally functioning community of naval powers. Into this tenuous situation is interjected the suggestion, reportedly attributed to some U.S. Defense Department analysts, that in a NATO war U.S. aircraft and carriers and supporting ships should be withdrawn from the Mediterranean. Imagine what political mischief such a policy, if adopted and enunciated, would do to the southern flank of the alliance! Similarly, the thought reportedly put forward by U.S. Defense Department analysts that the Norwegian sea should be conceded to the Soviets in a NATO war is an example of the sheer lack of understanding of the uses of naval forces. In a NATO war, U.S. Naval forces should have as their mission, controlling the seas, not conceding them! They should be used to hit the Soviets where they would be the most effective—on the northern and southern flank.

Further, I, like many Americans, am concerned about a purported Defense Department plan to down grade the role of Navy-Marine forces in U.S. Global strategy. The need for supporting our allies around the world as widespread as Norway, Greece, Turkey, and Israel on the flanks of NATO, and Japan, and our raw material rich friends in the Middle East and Africa outweigh any cost savings that may come from the source of cutting.

With security of the North Atlantic traffic lanes so crucial to NATO's capability to reinforce and supply a sustained military effort on the continent, the readiness status of the U.S. Atlantic Fleet and the counterpart European navies remains critical.

Yet, the question remains: How will the forces of the U.S. Navy be used in a NATO war? This is of crucial importance to the alliance, and the early decisions of the present administration are not reassuring: the five-year shipbuilding plan to rebuild the Navy has been cut in half, F-14 procurement was to be closed down. No nuclear-powered cruiser was requested, and no aircraft carrier (conventionally powered or nuclear) was in the budget presented to Congress. On the latter issue, powerful forces in Congress have moved to restore a carrier to this year's budget but as of this writing, the situation is still in doubt.

These signals would seem to be urgent warnings to our European allies who understand the importance of maritime strength. The NATO defense ministers have created a maritime posture task force that is specifically charged with increasing the capability of allied navies to operate as a joint, collective fighting force. It is also apparent that the NATO defense ministers should address themselves—hurriedly, it seems—to the question of the role of that the U.S. Navy will play in a NATO conflict. NATO should also take a long hard look at their lifeline, looking beyond the Mediterranean to the Indian Ocean and not to conclude that their responsibilities end at the borders of their members.

Currently, our Navy has fewer ships than at any time since two years before Pearl Harbor. Some people discount the "numbers game" approach, insisting that it is capability that counts, not numbers. I can only answer that geography doesn't change, that the size of the world doesn't change, that one ship can be in only one place at one time and that our Navy does not have the numbers of ships and types of weaponry it must have to perform its numerous worldwide missions. We need both capability and numbers.

What to do? We simply must rebuild the Navy, just as we did before World War II (and that doesn't mean we are building for war, but to prevent war). Rebuilding does not mean refurbishing obsolete ships. The Navy can't perform its mission today with old World War II and Korean War vintage ships pulled out of mothballs—even if they still existed in any quantity, which they don't. It's sheer nonsense to think the old ships can accommodate the kind of weaponry and provide the capabilities we must have to cope with the naval challenge the Soviets are continuing to mount. Some of our older ships wouldn't last a quarter of an hour in the hostile environment of today's warfare technology. We need a modern, self-sufficient navy, one that can operate in distant areas without having to rely on bases in those areas—overseas bases help enormously, but enemies can seize them, and even allies may sometimes find it politically expedient to deny us their use (for example, most of our NATO allies denied us bases in our support of Israel during the 1973 Middle East War). So our naval forces must be self-contained, must carry their own airpower and Marine landing forces, must be able to defend themselves against any kind of attack, must be able to keep open the sea lanes to our raw materials sources and allies.

We must understand certain fundamentals of the age in which we are trying to survive: development time for new weapons systems is enormously lengthened today—from the time of preparation of the initial plans that must be presented for Congressional approval, it takes five years to get an Aegis anti-cruise missile system to sea, for example; eight years for a Trident system, the years for an aircraft carrier. At the same time, weapons technologies are accelerating to rapidly that time-to-obsolescence is short. Prior to World War II, a major weapon systems' lifespan ranged to 30–40 years. Following World War II, that time frame was reduced to about 20 years. Today, when we build certain new systems, we have to hope that the state of the art won't overtake them in ten years!

But if we are to survive in freedom we have no choice. The rebuilding of our Navy is mandatory, and if we can afford anything as a nation we certainly can, and must, still afford to defend ourselves. The will of the American people surely demands that we stay as a free people. Thinking Americans no longer believe that it's preordained that without a strong defense we can remain free. Our overall economic resources are still enormous and we can see to *all* our defense needs for no greater a percentage of our Gross National Product than we were investing *before* the Vietnam War—nothing even approaching the stupendous percent the Kremlin has been spending for years on its military posture.

There is not a moment to lose—in fact, so much time has been lost already that even if we start now we probably are in for a time of testing in the years directly ahead. Still, when presented with the facts, the American people throughout our history always have done what had to be done, and I am confident that we shall do so again.

I, like so many others, pray that future historians, looking back on this great two hundred and two year old experiment in freedom conceived so optimistically, will never be able to record its demise. May "The Great Nightfall" that has come to so many once-free nations unable to defend themselves, never come here.●

## THE FALLACY OF BONN

● Mr. JAVITS. Mr. President, Euromoney is a highly sophisticated monthly journal which focuses on the issues relating to and the problems facing the world capital markets. Quite often its tough editorial positions reflect the views of the world banking community on major financial and economic questions.

In the August 1978, issue, Euromoney's editors analyzed the results of the Bonn Economic Summit in an editorial entitled "The Fallacy of Bonn." Although I do not agree with all the points made in the editorial, I urge consideration of its main conclusion: that the Bonn Summit and the macroeconomic policies that the major industrialized countries will be pursuing do not get at the primary causes of inadequate world growth.

The Euromoney editors perceptibly point out that—

The failure of private investment is the cause of slow world growth.

The editors argue that the business sectors of the industrialized countries will not be able to take advantage of the excess demand that will be generated by the macroeconomic policies adopted at Bonn, because of their unwillingness in these precarious times to take the risk to invest to expand capacity. So instead, the editors write:

Much of the extra demand pumped into their economies leaks out on imports, causing trade balances to deteriorate and exchange rates to fall. Inflation gets worse.

The solution proposed by the editors is to transfer the excess savings from the trade surplus countries of Germany and Japan to investment in countries which now have comparative cost advantages through the encouragement of overseas investment.

The solution proposed by Euromoney parallels very closely my views in urging the President and his colleagues at the Bonn Summit to undertake a growth development fund for productive investment in the developing countries. In addition, we must follow policies in the United States that specifically encourage capital formation to produce jobs, not just generate extra overall demand to produce inflation. This is the heart of Danforth-Javits tax package, which focuses on capital formation as the way of dealing with inflation and encouraging productivity.

Mr. President, I commend the article to my colleagues and ask that it be printed in the RECORD.

The article follows:

THE FALLACY OF BONN

The Bonn summit was a fraud based on a fallacy that the world will live to regret it. The fraud was that Bonn purported to produce agreement between world leaders on a coherent and "comprehensive strategy" to pull the world out of stagnation. It was nothing of the sort. Seven national political leaders, several of whom face early elections, agreed to let each do his own thing for reasons of national and domestic political self-interest. Almost everything promised at Bonn would have been done anyway.

President Carter promised to cut oil imports and raise American oil prices to world levels by 1980, with or without Congressional approval. The US yawning trade deficit and the dollar's drop forced his hand, not his trip to Bonn. Chancellor Helmut Schmidt promised to cut taxes and increase public spending up to 1% of Germany's GNP. This was to bolster a sagging growth rate caused by the Deutschemark's climb. Prime Minister Fukuda of Japan promised reflation and to hold the volume of exports in fiscal 1978 to their 1977 level. He acted to prevent other countries starting a trade war. James Callaghan was perhaps the most honest. He promised nothing new and merely suggested that Britain's pre-election budget boost was in some way a pre-paid contribution to the international deal.

The fallacy at Bonn was that these national policies, when put together, amounted to a strategy to steer the world economy out of stagnation. They are more likely to increase world inflation in 1979, increase the risk of a new world slump in 1980, or add to pressures for trade protection everywhere.

The failure of private investment is the cause of slow world growth. In weak currency countries, investment is deterred by the fact and fear of inflation. Increased public sector deficits do more harm, through their monetary and inflationary consequences, than any good they may do by temporarily boosting demand. Businessmen will not borrow money, install new capacity, build up stocks, employ extra labour or raise production schedules to meet a bubble in demand, which they expect to burst. They had enough trouble with debts, overcapacity, and overmanning from the 1974–75 slump to risk being caught once again. So instead, much of the extra demand pumped into their economies leaks out on imports, causing trade balances to deteriorate and exchange rates to fall. Inflation gets worse. The US, Britain, France, Italy and Canada are close to the end of this road of fiscal reflation. That's why they look to others, Germany and Japan, to take up the running.

Sluggish investment in these countries is not caused by excessive inflation nor by inadequate domestic aggregate demand. It is structural, inevitable and desirable. German and Japanese industry is overblown, a legacy of a past age of cheap energy and undervalued currencies. In 1973, for instance, Japanese industrial production accounted for nearly 48.3% of Japan's GNP and 70% of its output was of investment goods or exports; Germany's was 52.1%, of which 60% was investment on export goods; in the US industrial production was 33.9% of GNP, of which 30% for the production of investment goods and exports. Investment in Germany and Japan will remain depressed until resources have been transferred out of industry and into services, distribution and agriculture. The mechanism causing depressed investment and a transfer of resources is the appreciation of the Deutschemark and yen which is squeezing industrial profits. The German and Japanese current account surpluses are the reflection of excess domestic savings geared to finance a level of investment no longer appropriate to today's international comparative costs.

Reflation in Japan, by tax cuts and public spending increases, cannot expand the 30% of Japanese industrial output serving the home consumer enough to offset the fall in demand for the 70% which was devoted to investment and now-to-be-frozen exports. That's why Japan can't get both 7% growth and a smaller trade surplus at the same time. The Japanese family will not buy two new cars a year instead of one. Nor does expenditure on schools create demand for computerized machine tools. The extra money pumped into the economy will either be saved, or will go on things like sewers, which cannot be imported and where the supply is inelastic until resources are transferred out of industry into their production. This process cannot be hurried. So Japanese reflation will either fail or lead to demand inflation.

The Japanese and German trade surpluses will only decline as excess savings over investment is reduced. This will only happen at the pace dictated by the transfer of resources out of industry. While this transfer occurs Japan and Germany will experience slow growth. The only way their surpluses can be rapidly and substantially reduced is through inflation causing a run out of monetary savings.

The Bonn strategy can be summed up as a policy to encourage demand inflation in stable-price, trade-surplus, strong-currency countries, because nobody has found a way to cut cost inflation in rising-price, trade-deficit, weak-currency countries. Savings in Germany and Japan must be cut, because investment in America, Britain, France, Italy and Canada cannot be expanded. If the strategy succeeds, the result will be accelerated world inflation leading to slump. If it fails, the German and Japanese surpluses will remain objectionably large and the result will be a slide into world protection.

What was needed at Bonn was a comprehensive strategy to reduce cost inflation in weak currency countries, coupled with measures to transfer excess saving from Germany and Japan to investment in countries which now have a comparative cost advantage. The only move in the right direction was Japan's promise to open its capital markets to foreign borrowers and to encourage overseas investment.●

## THE DELINKAGE OF SALT

● Mr. KENNEDY. Mr. President, in the current issue of Arms Control Today our friend and colleague, Senator CHURCH, has written an article entitled "SALT II, Linkage and National Security" which perceptively examines and accurately responds to the questions and arguments surrounding the continuing strategic arms limitation talks with the Soviet Union. In this article, Senator CHURCH, with his extensive expertise and experience in the field of foreign affairs, welcomes a new SALT agreement as "the only realistic alternative to a senseless nuclear arms race which neither side can win" and the "only practical way to achieve stability (and) enhance national security".

I join with Senator CHURCH in his strong support of a SALT II agreement, and in his opposition to linking the vital SALT negotiations with other issues between the United States and the U.S.S.R. A new SALT treaty is an essential element of our foreign policy which will strengthen, not compromise, our national security. It is too important to be held hostage to a fluctuating political climate.

Linkage, as the Senator from Idaho suggests, presumes not only that SALT II holds more benefits for one side than the other, but that either side can afford a renewed and even more costly deadly arms race. Neither presumption is correct or wise for the foreign and defense policies of the United States. As Senator CHURCH notes at the beginning of his article, the SALT process is now under attack at a time when we are on the verge of an agreement. I would hope that the clear and concise analysis presented in this article will help to stem these attacks and help convince the Senate and the American people of the pressing need for SALT II.

I ask that Senator CHURCH's article be printed in the RECORD.

The article follows:

[From the Arms Control Today. Aug./Sept. 1978]

SALT II, LINKAGE AND NATIONAL SECURITY

(By Senator FRANK CHURCH)

Since 1973, the United States and the Soviet Union have been endeavoring, slowly and haltingly, to achieve a new treaty limiting strategic offensive arms. Now, on the verge of agreement, the SALT process itself is under attack.

The strategic arms limitation effort has been caught up in the maelstrom of our stormy relationship with the Soviet Union. As a result, no one knows whether a new agreement will emerge in weeks, in months, or at all.

PROBLEM OF LINKAGE

Some of my Senate colleagues have suggested that the United States should unilaterally break off the SALT negotiations to protest the political trials of Soviet dissidents, Anatoly Scharansky and Aleksandr Ginzburg. The Carter Administration says it is opposed to using the SALT talks as a tool for pressuring the Kremlin on its internal human rights policies. However, the President, himself, may have opened the door to this kind of linkage, when he suggested that the successful conclusion of SALT II could be jeopardized by Soviet and Cuban activities in Africa. Once the concept of linkage between strategic arms negotiations and other extraneous political developments has been legitimized, it is inevitable that this same principle will be invoked by others to argue in favor of suspending the arms control talks for a myriad of other reasons. In the process, the hope of ever negotiating an

end to the nuclear arms race may fade altogether.

If we persist in tying SALT to Russian behavior in the Horn of Africa, in Central Africa, or even in Moscow, we are quite unlikely to find that perfect moment in the flow of events at which we can say, "At last, our persistent competitor, the Soviet Union, is comporting itself to our complete satisfaction. Now, we should discuss the conclusion of a SALT agreement."

And if we hold the Kremlin responsible for Castro's every move in Angola or Ethiopia, then what is to stop the Russians from arguing that SALT cannot proceed until our allies, the French and Belgians, pull out of Zaire or Chad? Once you espouse the theory or linkage, where do you break the chain?

Finally, the notion that SALT II can be held hostage for changes in Soviet behavior in other areas flies in the face of the fundamental precept that makes the arms limitation talks possible at all; that is, that an agreement to limit strategic arms equally serves the vital interests of both powers, and further, is mutually perceived to do so. The linkage theory presumes that an agreement is more in the interest of the Soviets than of the United States, and we can therefore "punish" the Kremlin by delaying conclusion of the talks. But if the SALT talks are more in the interest of the Soviet Union than our own country, why are we engaging in them?

I agree wholeheartedly with Secretary of State Vance that this issue must be treated differently from others:

"The imperatives to go to Geneva now are that we are dealing with negotiations that affect the national security of our nation and the security and well-being of the world in general.... It is a question which deals with the prospect of mutual annihilation...."

THE NEED FOR A STRATEGIC ARMS LIMITATION AGREEMENT

SALT is the only realistic alternative to a senseless nuclear arms race which neither side can win. We have already assembled a nuclear arsenal of such staggering proportions that the United States could destroy the Soviet Union several times over, even after enduring an attack upon itself. This ability to strike back devastatingly if attacked—an ability the Soviet Union also possesses—has brought the two sides to a state of mutual deterrence, and a suicidal holocaust has thus far been averted.

But we are on the verge of a new, even more dangerous stage of the arms race. The United States and the Soviet Union are developing new counterforce weapons which could enable each side to destroy the other's ICBM's. If these weapons are deployed, each nation's fear of a first strike will be dramatically increased. The psychology of the arms race is such that without a mutual agreement between the U.S. and the U.S.S.R. to limit these new weapons developments, the race will escalate—even though it is obvious that we would never reach a point through competition at which we would feel secure enough to stop. In fact, a new counterforce competition would make us feel less secure, because the stability of mutual deterrence would be weakened. In short, the only practical way to achieve stability, enhance our national security and, simply put, keep the lid on, is through strategic arms limitation agreements.

Secretary of Defense Harold Brown said in his presentation this year to the Senate Arms Services Committee:

"We want mutual deterrence to be so stable that it cannot be upset in a crisis. We want it to be so well designed that neither side will be tempted to try to upset it over the longer term. These are the two essential types of strategic stability that we seek."

There is no question in my mind that strategic arms limitation agreements are indispensible if we are ever to achieve this kind of strategic stability.

The value of arms limitation is much more obvious when we consider how indefatigably we and the Soviets have pursued the other path—only to secure a stalemate. We kicked off the nuclear weapons age in 1945 and outdistanced the Soviets throughout the 1950s. We maintained both a quantitative and qualitative lead in the 1960s, and we still hold a qualitative lead. But from the start, the Soviet catch-up has only been a matter of time.

In 1966, the Soviet Union had 244 Intercontinental Ballistic Missiles (ICBMs). We were then approaching our present total of 1,054 land-based ICBM's. The Russians had 29 Submarine-Launched Ballistic Missiles (SLBMs) and we had almost finished our program of 656 such missiles.

In the late 1960s, with forces more than adequate for deterrence, we decided to stick with our missile totals, at least for the near future. Meanwhile, the Soviet Union was coming from behind, and its land-based missile force exceeded ours by the end of the decade. Their submarine force grew larger than ours a few years ago.

But we were not idle while the Soviet Union was increasing its missile totals. In 1970, we began installing multiple independently targetable re-entry vehicles (MIRVs)—a technical name for strategic warheads—atop both our land-based Minuteman missiles and our submarine-based Poseidon missiles. (We also installed less sophisticated multiple warheads on our Polaris submarine missiles.) The Soviet Union did not start MIRVing its land-based missiles until 1975, and only recently acquired the ability to deploy MIRVs on submarine-based missiles. By comparison, every one of our submarine-based ballistic missiles boasts a multiple warhead.

As a result of our earlier start and better technology, we presently possess more than twice as many deliverable strategic nuclear warheads as the Soviet Union. Our analysts tell us that we will maintain a warhead lead for the foreseeable future.

Some discount this lead by pointing out that the Soviets have developed generally larger ICBMs and more of them—about 1,500 compared to our 1,054. They have also installed more submarine-launched ballistic missiles, although we have built more bombers. The total forces, as measured by the number of strategic delivery systems, compare at more than 2,500 for the Soviets to about 2,100 for us. But the numerical disparity is not in itself a cause for concern, since our current forces are capable of hitting twice as many targets as theirs, with a punch many times larger than the blasts which destroyed Nagasaki and Hiroshima.

A BETTER ALTERNATIVE

To understand why we should welcome the prospective new treaty now being negotiated, we should look at some of the contemplated controls and limitations. We should also consider both the added cost and uncertainty that would face us without a new treaty.

The basic element of a new SALT package will be a treaty to last until 1985, which will establish certain ceilings on overall strategic delivery systems, as well as sub-limits on missiles with MIRVs, upon heavy bombers carrying cruise missiles, and upon land-based MIRVed ICBMs. The second component will be a protocol applying temporary additional limitations until around the end of 1980. The third component will be a statement of principles and guidelines for SALT III.

The emerging three-part SALT agreement would hold many benefits for the national security interests of the United States:

—The maximum limit of 2,250 on strategic delivery systems will force the Soviet Union to dismantle about 300 of its missiles and/or bombers. This reduction is even more striking by comparison with what the Soviets might add without SALT. The Department of Defense projects more than 3,000 Soviet strategic weapons by 1985, without a treaty. If so, then we can correctly credit SALT II with removing the threat an additional 800 Soviet intercontinental bombers and/or ballistic missiles would pose. By contrast, the ceiling will not force us to make any reductions in the number of our strategic weapons. Indeed, if we choose to do so, we can add new weapons in sufficient number to equate our total force with that of the Russians.

—The ceiling of about 1,200 on missiles with MIRVs will constrain the United States only slightly. However, it will hold the Soviet side to a total hundreds below what we believe they would otherwise install.

—We benefit most immediately from the expected allowance above the MIRV ceiling of 120 heavy bombers equipped with air-launched cruise missiles (ALCMs), as we are well along with our cruise missile program.

—Since a far smaller proportion of our forces are on land, the Soviet side will be most affected by the limit of 820 on land-based ICBMs with MIRVs. Our intelligence believes that the Russians would deploy hundreds more land-based missiles with MIRVs by 1985 without a treaty.

—The treaty limitations may cause the Soviets to give greater emphasis to seabased forces at the expense of landbased forces, a move which will be inherently less threatening and more stabilizing.

—The mobile missile provisions in the protocol are decidely in our interest. A Soviet mobile missile now ready to be deployed, the SS–16, would be banned for the period of the protocol, while the development of our own mobile missile, the M–X, would not be constrained, should we decide to proceed with it.

—The cruise missile provisions in the protocol will allow us to proceed as quickly as we are able with cruise missile development and deployment. The Soviets will not derive similar benefits, since they have no comparable program.

Against this background, one might ask, what is in this package for the Soviet Union that does not increase the danger to us?

First, the land-based missile forces of the Soviet Union possess greater throw-weight in megatonnage than the comparable forces of the United States. This will compensate them for the threat posed by us of our far superior submarine missiles and our larger force of penetration bombers with ALCMs. Second, SALT II, by incorporating the principle of equal aggregates, will acknowledge the fact that the Soviet Union has become the relative equal of the United States in strategic nuclear arms. Third, the new agreement will save the Russians—as it will us—the heavy financial burden and the needless diversion of resources which would be entailed in an unrestrained continued competition.

To sum up, in no case will SALT II cause the United States to yield any advantage whatever to the Soviet Union in strategic nuclear arms. On the contrary, SALT II will leave the United States relatively better off, for the life of the treaty, than it would be if there were no treaty and each side continued to proceed through 1985 according to current plans.

Obviously, if there were no SALT II agreement, the United States would not sit still, militarily. If the Russians continued to expand their strategic force at the current rate, we could expect upward revisions in our own military budget.

Even if the Russians did not step up their own strategic program in the event of a SALT breakdown, the United States would have to spend an extra $20 billion, at the very least, between now and 1985, just to main-

tain the relative force strength that would be guaranteed by SALT II. This amount would cover the construction of 100 FB-111 bombers and modernization of existing ones, the deployment of additional sea-launched cruise missiles, the replacement of the remaining 450 Minuteman IIs, with MIRVed Minuteman IIIs, and the installation of more ICBMs.

If, in addition, we were to speed up development of the M-X mobile missile by two years and restart the B-1 bomber program, we would have to pile on another $24 billion over the next 10 years. The Senate Budget Committee staff has estimated that over 13 years, the incremental cost to the United States of building a maximum force reasonably envisioned in the absence of a SALT agreement could be $90 to $100 billion!

The willingness of the American people to bear whatever cost is necessary is not in doubt, nor is the ability of our military to keep pace with the Russians. The question is, why should we pour additional billions of dollars for defense into a federal budget already deep in deficit and further inflame inflationary pressures, when precisely the same measure of security can be achieved by concluding a sensible arms agreement with the U.S.S.R.?

(Senator Frank Church (D-Idaho) has played an active role in foreign affairs since coming to the Senate in 1957. In 1970 he authored the Cooper-Church Amendment cutting off funds for the war in Indo-China. He is the second-ranking Democrat on the Senate Foreign Relations Committee).●

## ERA

● Mr. GARN. Mr. President, one of the documents that will be often cited during the debate on extending the time for ratification of the equal rights amendment is "Hearings on House Joint Resolution 638 Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary," 95th Cong., 1st and 2d sess., Ser. No. 41 (1977 and 1978). The Senate has also held hearings and I hope that the Senate hearings will be published before debate in the Senate begins. It would be unfortunate if Senators could not avail themselves of the Senate hearing record during the Senate debate.

Of course, one of the first things that one will notice about the hearings is that there is a wide divergence of opinion regarding questions which are basic to the issue of extension and related matters. Constitutional authorities, other witnesses, and members of the committees disagreed about the meaning of the constitutional language itself, the framers' intentions, judicial interpretations, and congressional policy. Although opinions are broadly scattered about the constitutional field, one of the most thoughtful analyses was done by Prof. Charles L. Black, Jr., Sterling professor of law at the Yale Law School.

Professor Black is, of course, one of this country's most distinguished lawyers and we are fortunate to have the benefit of his wisdom on this matter. I will submit at the end of these brief remarks Professor Black's two short statements presented to the House committee. Professor Black's testimony begins on page 69 of the House hearings I think Professor Black may be wrong in one or two of his conclusions, but I find them thought provoking as will many of our colleagues, I am sure.

In addition to Professor Black's written remarks which will appear below, I wish to give a portion of his oral remarks on the subject of rescission (see, pages 72 and 73 of House hearings):

The simple thing about rescission is that it would make it possible for an amendment to go into effect with a majority of the States on record against it, if you don't allow rescission. You could have ratification by 37 States, rescission by 20 of them, ratification by one more, and an amendment going into effect which had been actually approved by only 18 States, in fact, rather than in the kind of constructive "contemplation of law" which comes about from what I call the "lobster-trap theory," where a State that enters the lobster trap is forever caught therein.

I can't believe that that is good constitutional law, and the 14th amendment precedent is so thin that it would break if a cat walked on it.

They knew in the House of Representatives the day that that proposal passed that Georgia had already ratified and that they were voting on a moot question. They had a telegram, as the Congressional Globe shows, which was correct, that on July 21, 1868, Georgia had ratified, and you had the 28 states whether or not Ohio and New Jersey rescissions were valid.

This was a totally moot question, as everybody know. And when Seward actually proclaimed the amendment, it was, of course, entirely so, and known to everybody.

If that is a precedent to rule the future and produce a mathematical absurdity of the kind that the no rescission rule would produce, then I really want to go into some other business than constitutional law. That is not my kind of constitutional law.

Mr. President, I ask that Professor Black's written remarks be printed in the RECORD. I believe our colleagues will find his views on rescission, two-thirds vote, Presidential signature, and other matters of great interest.

The remarks follow:

YALE LAW SCHOOL,
*New Haven, Conn., October 28, 1977.*

STATEMENT ON EXTENSION OF TIME FOR ACTION ON AMENDMENTS FOR THE STATES

(For House Judiciary Subcommittee, in connection with November 4 Hearing)

It is my view that, in the entire silence of the Constitution on the subject Congress has the power to extend time for the ratification of an amendment. I see no reason at all why the body which set the time in the first place should not have this power. There certainly is a limit on what could be looked on as a "reasonable time," but a few more years would probably not raise any serious question on this.

I have three other opinions directly connected with this:

1. If the original resolution combined the proposal of the amendment and the setting of the time, the integral package being then passed by 2/3 vote (and I understand this to have been true of the Equal Rights Amendment) then it seems to me plainly right that a 2/3 vote of each House of Congress should be required for an extension. It may easily happen, in any given case, that a vote for the original resolution is cast partly on the ground that, in the view of the caster of the vote, the time is suitably limited. If this is not possible then that must be because the limitation of time in the first instance was utterly meaningless—an impermissible assumption. It is impermissible to assume that this question of time never matters to anybody: if that were so, why put it in? It cannot therefore be assumed that the original would surely have passed by the requisite 2/3 majorities if the time had been longer. On a constitutional question of this kind one cannot afford to guess, as to a particular amendment, what might have happened; one must rather follow a procedure which would always be suitable and fair.

2. I firmly believe that a proposal extending time ought to be submitted to the President for his signature. Article I, Section 7, is unmistakeably clear on this point, and the case of *Hollingsworth* v. *Virginia*, 3 Dallas 378, which held that the vote on the substance of an amendment need not be submitted to the President, was decided in the teeth of the plain language of the Constitution, and was (to understate the position inadequately reasoned, as anyone who reads it can see. This holding has been accepted in practice since 1798, and I would not therefore want to disturb the case on its own facts. But it should not be extended one inch beyond those facts, since every such extension is a plain violation of the Constitution.

3. It seems to me that it would be entirely impermissible to extend the time for ratification without also extending the time for rescission. Extension of time, in my view, must be for action on the amendment, and not simply for one kind of action on the amendment. The concept of "contemporaneous consensus" is more and more stretched and violated as more and more time passes with States having actually changed their minds on the merits of an amendment proposal.

The extension of time for ratification but not for rescission would be so grotesque that I should think that one would not have to reach the constitutional question, but if the question is reached I am firmly of the opinion that lopsided extension would be unconstitutional and that an amendment adopted in that fashion would be invalidly adopted. The right to rescind, in my view, arises by operation of law, and cannot be taken away by Congress.

Respectfully,

CHARLES L. BLACK, JR.,
*Sterling Professor of Law, Yale University.*

YALE LAW SCHOOL,
*New Haven, Conn., November 1, 1977.*

SUPPLEMENTARY STATEMENT ON EXTENSION OF TIME FOR ACTION ON AMENDMENTS FOR THE STATES

I have only today seen a copy of the proposed extension bill, and have, in addition, only just now received certain information on the legislative history of ERA, relevant to one of the points in my statement dated October 28. Apologizing for the unavoidable fragmentation, I add the following points.

1. The language setting a time limit, both in the original and in the new bill, is the operative language providing for the actual going into effect of the amendment. This furnishes some purely technical support, though I doubt any is needed, for the requirement that two-thirds of each House consent to the presently proposed extension.

2. The legislative history seems to furnish support for the proposition that, as to this particular amendment, the time-limitation was seriously considered as a significant part of the "proposal" being voted on; this supports, again, the contention that extension should require a two-thirds vote in each House, since evidence of serious attention to the seven-year limit makes it quite plausible, in this very case, that some affirmative votes may have been influenced by the time-limit.

3. Until I saw the bill, I had not known that a seven-year extension was proposed; I had (perhaps without reason) thought that one had to do with a slight extension to meet possible state-legislative convenience. A doubling of the time, to fourteen years, seems

to me to raise serious constitutional questions, for I find it hard to apply the concept of "contemporaneous consensus" to such a period. It may be that a judicial court would hold this to be a "political question," in the sense of its being finally committed to Congress. But the anticipation of such a holding ought to increase, rather than to diminish, Congress' own sense of responsibility to the spirit as well as the letter of the Constitution. To call a question of this kind "political" is not to say, one fervently hopes, that anything goes.

In any case, a doubling of the period, to fourteen years, seems to me to make even more clearly visible the strength of the case for the validity of rescissions. How could it be right that States that had for, say, ten years been on record as being against an amendment be counted as being for it?

Very respectfully,

CHARLES L. BLACK, Jr.,
*Sterling Professor of Law, Yale University.*●

## MAJOR SAVINGS BY INDUSTRY

● Mr. KENNEDY. Mr. President, a year ago the Subcommittee on Energy of the Joint Economic Committee which I chair held hearings on industrial energy conservation which clearly identified the huge savings that can be made by industry.

Now the August 21 Time magazine points out the dramatic energy savings that have been achieved by corporations taking the initiative in the fight to save energy.

For example, Time points out that:

In the last five years Ma Bell's business has grown by 44 percent, but its energy usage has dropped 10 percent." . . . "Since 1973 Raytheon's business has grown 75 percent, to 2.8 billion, but its use of fuel oil, natural gas and electricity has been cut by about 25 percent."

Industry has focused on this important issue and made substantial savings where substantial waste existed before. The question is whether industry can keep up and maintain this pace. I have encouraged greater Government attention to this opportunity for reducing our oil imports and I urge the Department of Energy to increase its support for industrial conservation to continue progress made in the last 2 years.

Mr. President, I ask that "Reaching For Fuel-Saving Ideas" be printed in the RECORD.

The article follows:

REACHING FOR FUEL-SAVING IDEAS

The initials B.T.U. stand for British thermal unit, the basic measurement of heat in a given amount of energy. But to more and more business people, the letters are coming to mean something else—Better Tighten Up.

Much of the public continues to behave as if there were a constitutional mandate to expend energy; the nation will burn nearly 4 percent more oil this year than in 1977. But this trend is being countered in a notable way by some corporate consumers, who are discovering that saving fuel is just about the simplest way to cut costs and boost profits.

While conservation alone cannot solve the nation's energy problems, it is essential to any solution, and the experience of industry is dramatic evidence of just how much can be done. Ever since the 1973 oil embargo, companies have been not only determinedly turning off lights and turning down thermostats but also redesigning buildings, installing energy-saving devices on assembly lines and driving the conservation message home to employees. The economical use of power at the plant or office is bound to carry over to a heightened energy consciousness for workers at home. Last year, when the economy grew at a rate of nearly 5 percent, industrial use of energy increased only 1 percent.

The saving to business, which Department of Energy officials estimate to be nearly $3 billion since 1974, is the result of a variety of conservation ideas. While some companies have been experimenting with various alternative sources of energy, most of the immediate gains have come from simple conservation steps or the application of proven available technology. Some of the measures taken have been as sophisticated as the elaborate computer system that Burlington Industries, the big textile firm, has installed to regulate the use of electricity in 20 of its 99 plants. Others are as uncomplicated as the discovery by General Motors that it could save $1,576 a year in electricity bills merely by removing the fluorescent bulbs in its shop-floor vending machines. North Carolina's Sanford Brick and Tile Co. (350 employees) is taking advantage of the mountains of sawdust discarded by nearby furniture factories: it is combining the sawdust with either natural gas or diesel fuel to cut the cost of firing its baking kilns.

In a number of companies, energy consciousness has practically become a corporate religion. Three examples:

AT & T

In the past five years Ma Bell's business has grown by 44 percent, but its energy use has dropped 10 percent. Tiny electronic devices known as microprocessors, which are being installed to replace mechanical switching devices throughout the system, are proving to be considerable energy savers. To cut heating costs, the ceilings of office buildings are being fitted with special ducts that capture and then recycle the heat thrown off from electric typewriters, copying machines and even office workers (who radiate as much heat as 100-watt light bulbs). Though there are 7 percent more phone-company cars and trucks (total: 177,000) on the road than in 1973, gasoline consumption has been cut by 3 percent, in large part simply by teaching employees to use economical driving skills.

RAYTHEON CO.

Since 1973, the electronic company's business has grown 75 percent, to $2.8 billion annually, but its use of fuel oil, natural gas and electricity has been cut by about 25 percent. Automatic shutoff timers have been installed on everything from coffee makers to light switches in corridors. Any worker who wanders off leaving a piece of factory machinery running gets a large Day-Glo orange "energy conservation ticket" slapped on his equipment by company inspectors, who are constantly on the prowl for offenses.

TRW INC.

Sales of the diversified Cleveland-based maker of auto components, electronic and electrical equipment have nearly doubled since 1972, to $3.3 billion, but energy consumption has declined by 19 percent. Unnecessary machine runs have been eliminated; the number of ventilating fans cut by a quarter; and air conditioning is now reduced an hour before some plants close. Workers are rewarded financially for energy-saving ideas and division managers now have to make quarterly "energy use forecasts," just as they do for sales, profits and capital-spending projections. Says Vice President Pierce Angell: "Energy accounted for 4 percent of our company's production costs in 1972, but by 1985 it could be as high as 15 percent. That's a damned critical thing."

Industry's new energy stinginess is one of the few bright spots in the nation's struggle to adjust to a world of rising petroleum costs. Although oil imports were down 13 percent in the first half of 1978, that was only the temporary result of some special factors, including the start of the flow of Alaskan oil. Imports are expected to pick up rapidly during the rest of this year and reach new records in 1979, above last year's peak of 8.7 million bbl. a day. These projections have not been lost on the OPEC nations. Although they agreed to continue the cost of crude oil at its present $13 per bbl. when they last met in June, there have been signals from OPEC oil ministers that they may meet again as early as next month to jack up the price about 5 percent. To the present $42 billion cost of the U.S.'s annual oil imports, that would add $2 billion.●

## THE DOLLAR CRISIS

● Mr. THURMOND. Mr. President, I have watched with growing concern the rapidly deteriorating value of the dollar on the world's currency markets. The situation has become so critical in recent months that further delay toward major, positive and aggressive action to aid the dollar cannot be tolerated.

The administration and the Federal Reserve Board have made some efforts in recent weeks to bolster the sagging dollar, but these efforts have been extremely timid and thus largely ineffective. The stakes in this dollar crisis are extremely high—for both the American economy and the world economy.

Mr. President, I am sure that all of us are aware that this is a complex problem with no simple and easy solution. We know that, in addition to the actions needed in the foreign exchange markets, we need to tighten our belts sharply on inflation and to put much more stringent controls on our own Government spending.

We, as leaders in the world community, have faced difficult and complex problems before and handled them well. Certainly we can, and must, meet this current challenge that will allow us to continue our leadership position in the world's economic community.

An editorial titled, "The Sliding Dollar", in the Washington Post on August 21, 1978, provides an introspective statement concerning this critical problem.

Mr. President, I ask that the attached editorial from the Washington Post be printed in the RECORD for the benefit of my colleagues.

The editorial follows:

[From the Washington Post, Aug. 21, 1978]

THE SLIDING DOLLAR

The rise in interest rates Friday was the right opening move. In the past several weeks, the fall of the dollar's value on the world's currency markets has suddenly become much more dangerous. It was urgent that the Carter administration and the Federal Reserve Board respond. The Fed has increased its discount rate—the rate at which it lends to commercial banks—by half a percentage point. That's a necessary remedy, but it's not sufficient. What comes next?

Over the winter and spring, the administration's posture of benign neglect of the exchange rates was perfectly reasonable. Most of the movement was modest. The principal exception was the rise of the yen, resulting from Japan's huge and persistent trade surpluses. But since the beginning of July, things have changed sharply for the worse. Now the dollar is falling against most of the world's major currencies, the weak as well as

the strong. The reason for this ominous change is a spreading impression, among currency traders and bankers, that the U.S. government either can't or won't reduce the level of inflation here.

Exchange rates are swayed by people who have to gamble on the values of currencies months and years ahead. If they think that the dollar is going to depreciate faster than other kinds of money, they sell—and the prediction quickly tends to become self-fulfilling. When people sell dollars, the exchange rates fall. That increases inflation in two ways. Imports into the United States become more expensive and some of the domestic industries—steel, for example—happily raise their own prices as the competing foreign products get more expensive. At the same time, American goods become cheaper to foreign buyers who bid up prices for Americans. Inflation and exchange rates are not separate issues.

How do the financial markets make up their collective minds about American intentions? The last two months provide a good illustration. At the end of June, the Secretary of the Treasury, W. Michael Blumenthal, said at the National Press Club that the Federal Reserve Board's high interest rates were forcing the administration to lower its estimates for economic growth.

On the same day the Fed voted to raise the discount rate by a quarter of 1 percent. But it was a split vote, and the Fed's new chairman, G. William Miller, had dissented. Currency dealers concluded that the administration was putting pressure on the Fed not to interfere with growth, and it had won over Mr. Miller. In July, Mr. Miller seemed to confirm that assessment when he began saying that interest rates would peak soon, he hoped, and begin to decline before the end of the year.

Meanwhile, the administration's energy program was in endless trouble in Congress. Financial experts, here and abroad, took that as a clear indication that the United States would do nothing about its inordinate imports of oil. They are contributing, of course, to inflation and the weakness of the dollar.

In late July, the government published the usual statistics on the nation's economic performance in the previous three months. They showed an inflation rate over 10 percent a year. It meant that inflation was rising here, while falling in most other major economies. It also meant that the Carter administration had underestimated the speed with which prices were rising. The decline of the dollar began to accelerate.

Last week Mr. Carter summoned Mr. Blumenthal and Mr. Miller to discuss the dollar. The White House subsequently put out a statement to the effect that they would consider what to do. But, when you say that you will have to consider what to do, you inevitably leave the impression that you have no clear line of action in mind. The currency markets began to bounce around wildly. Then, on Friday, the Fed raised the discount rate again.

The conventional objection to higher interest rates is that they threaten to choke off business expansion and tip the country into a recession. But there is no simple choice between inflation and recession. Inflation at the present level will produce a recession—and, to judge from the 1974–75 experience, it can be a recession of great severity.

To bring down the inflation rate will require further increases in interest rates. It will require firm decisions to hold down oil imports. It will require a federal budget of great stringency. It is not a pleasant prospect. But if it seems to you excessively harsh, think for a minute about the alternative.●

## SALT

● Mr. HART. Mr. President, I would like to call the attention of my colleagues to an editorial which appeared in the Denver Post on Wednesday, August 16, entitled "The Importance of SALT." It makes a point with which I totally agree.

We must judge the final SALT II agreements, when they are submitted to the Senate, solely on the basis of national security criteria. It would be a tragic—and potentially dangerous—mistake to tie ratification of SALT II to Soviet compliance with our wishes on the range of issues from the treatment of Soviet political dissidents to the adventurism of its forces in Africa. These issues are obviously important and merit our continued concern. But they are peripheral to the central issue at stake in these talks—nuclear security.

Linkage of SALT and Soviet behavior in general implies that SALT is somehow a "favor" we grant the Russians. SALT is not a favor we grant anybody. It is in our own best interests to conclude an agreement that serves our national security objectives, and is comprehensively verifiable. For, in the words of the editorial—

> . . . both nations have a compelling interest in the success of these talks. A new and ruinously expensive arms race could move the world even closer to nuclear Armageddon at worst and bankruptcy at best.
>
> That's why the issue of SALT II needs to be contained within the field of national security—period.

Mr. President, I ask that the full text of the Denver Post editorial of August 16, entitled "The Importance of SALT," be printed in the RECORD.

The editorial follows:

THE IMPORTANCE OF SALT

As the November elections approach, it may be time to dust off the old diplomatic principle of "containment" and apply it to political rhetoric relating to U.S.-Soviet relations.

There is rising, and justified, anger in the United States at the behavior of the Russian government in matters both international and internal.

Responding to that, office-seekers are now demanding everything from U.S. withdrawal from the 1980 Olympics to breaking off the Strategic Arms Limitation Talks (SALT).

Well, whatever the merits of the Olympics in general and of Moscow in particular, world history will hardly turn over the issue of who wins the hammer throw in the shadow of the Krelim.

The upcoming SALT II treaty is quite another matter. It has been six years in the making and the final text is still both secret and incomplete.

Obviously, this is not the time, therefore, to praise or damn the negotiations upon which so much of our national future rests.

But it is appropriate to remind the politicians of just what they're calling for when they demand use of SALT as a pawn to influence Soviet policy in matters unrelated to national security.

Just suppose we try and the Soviets agree to release dissidents Anatoly Scharansky and Aleksandr Ginzburg. Do we then "reward" the Soviets by giving them another thousand nuclear-tipped rockets aimed at us?

Do we agree to scrap our cruise missiles if they increase Jewish emigration?

If they rein in the Cubans in Africa, can we safely drop the MX missile program?

Oviously, such folly would leave the American people defenseless against an ascendant Soviet military machine—and even those modest Soviet concessions would then doubtless be revoked.

The Soviets, of course, would be equally sure to reject proposals that would "punish" them in terms of strategic weapons inventory because of our displeasure at peripheral matters. Thus, the talks would be doomed to failure in Geneva or rejection in the Senate.

That would be tragic, for both nations have compelling interest in the success of these talks. A new and ruinously expensive arms race could move the world even closer to nuclear Armageddon at worst and bankruptcy at best.

That's why the issue of SALT II needs to be contained within the field of national security—period.

If from that vital perspective the final draft of the treaty is found wanting, then the Senate should reject it, come what may.

But to needlessly doom SALT II, in advance, for unrelated issues of whatever merit, would be a tragedy for mankind.●

## CAPPER-VOLSTEAD ACT

● Mr. BURDICK. Mr. President, recently Reuben L. Johnson, director of legislative services of the National Farmers Union, addressed the National Commission for the Review of Antitrust Laws and Procedures in Washington, D.C.

Mr. Johnson's remarks are very instructive as to the proposed review and appraisal being made of the Capper-Volstead Act. I request that Mr. Johnson's remarks be printed in the RECORD and I commend them to my colleagues attention as the views expressed are important and deserving of attention.

The statement follows:

STATEMENT OF REUBEN L. JOHNSON

In its 76-year history, the National Farmers Union has been actively involved in the propagation, extension, promotion, and occasionally, the defense of farmer cooperatives.

As is noted in the attached Exhibit I, "Genesis of the Capper-Volstead Act," our organization has been involved in the development of a basic cooperative statute from as early as 1906.

The Capper-Volstead Act, and succeeding cooperative statutes have been of distinct importance to American farmers, their industry and their communities. Farmers have used the institutions, which have become possible as a result of these cooperative statutes, to overcome to an extent, the weakness of their situations as individuals in the market place.

But, while the cooperative instrumentality has improved the situation of farmers, it has not enabled farmers to achieve a desired and deserved status of income equity and stability. As a matter of fact over the past 45 years, farm price and income stabilization measures of a substantial and comprehensive nature have become necessary.

Even the combined effect of farm programs and cooperative marketing has not raised farmers generally to a situation in which their prices and income afford them a condition of parity.

As a matter of record, farm prices and purchasing power last reached the 100% of parity level in the year 1952. As of June 30, 1978, farm prices were averaging 73% of parity, 27% less than the level needed for a return fair in terms of production and living costs.

It seems quite obvious that, from what can be observed in Exhibit II, farm prices and income are normally well below parity levels.

In the past year, farm prices on virtually all commodities have also been well below the full cost of production.

To make a further comparison, Exhibit III indicates the average return to farm equity and the ratio of profits to stockholders' equities for the years 1973 and 1977.

Even in the relatively favorable agricultural year of 1973, the farm return was below most other major enterprises.

For 1977, the return to farm equity was only 2.1%.

As regards this hearing, we have no objection to a review and appraisal being made of the Capper-Volstead Act.

Any fair and objective review of the law and the extent and impact of its use by farmers and their cooperatives will, we are confident, result in a positive finding that the Capper-Volstead Act has been and is in the public interest.

Members of the National Farmers Union, at their most recent annual convention (March 4–8, Salt Lake City, Utah) acted to "reaffirm our support of the Capper-Volstead Act" which allows agricultural producers to act together collectively to market their products.

Over the years, Farmers Union has felt that a more comprehensive and effective marketing and bargaining statute is needed.

At our March, 1978 convention, Farmers Union delegates mandated the creation of a special marketing research task force and this group has now begun the task of developing recommendations.

Our attitude therefore is that Capper-Volstead should be retained in its present form and that rather than consider amendments to change the nature and content of that law, the strategy should be to develop a comprehensive marketing and bargaining law.

In a somewhat parallel effort, Farmers Union and other major general farm organizations and the National Council of Farmer Cooperatives, have already reached a consensus on a bill to replace the Agricultural Fair Practices Act. That bill will be introduced early in the next Congress.

We are aware, of course, of the charges of monopoly, abuse and predatory pricing leveled against farmer cooperatives in 1975 Federal Trade Commission Staff Report on Agricultural Cooperatives and U.S. Department of Justice Report on Milk Marketing in 1976.

These accusations, largely based on a misunderstanding of the nature of cooperatives and agricultural marketing and ignorance of the facts or misinterpretation of them, have been time and time again, patiently, thoroughly and factually refuted—verse by verse, point by point.

We are not inclined to belabor the record with a comprehensive rebuttal of the mistaken judgments made by the FTC and the Department of Justice.

However, the unfounded allegations and biased statements continue to persist and some general observations are therefore in order.

There are recurring questions about when a cooperative is "too big."

One member of the 94th Congress proposed that a $5 million limit be placed upon the volume that any cooperative could handle. This limitation on size would not only have affected virtually all regional cooperatives in the nation, but some local associations as well.

Those who use the term "mega-cooperatives" to describe the larger farm cooperatives seem to be intimating that these institutions are a million times too big.

As a matter of legislative history, there is nothing in the Capper-Volstead Act or in Section 6 of the Clayton Act to suggest the desirability of a limit on the size of a cooperative entity.

What is important, in the opinion of Farmers Union, is not sheer size, but what one does with the size.

In Exhibit IV, we show a comparison of cooperative and other firm share of selected farm product marketings and input purchases for the year 1975.

In only one of these sectors, do the cooperatives have a dominant share—dairying at 77 percent. But this market share figure is misleading, because the 77 percent share represents the activities of 630 separate companies.

Likewise, the market share of cooperatives generally appears larger than it is because many of the major cooperatives are federations. Of the ten largest U.S. farm cooperatives, six are federations and in turn are owned by 3,700 local cooperatives. In fertilizer, the 30 percent market share is dispersed among 3,865 separate local associations.

Second, the fact that farm cooperatives handle the bulk of a particular commodity as it comes from the producers' hands does not mean that the cooperatives control a like proportion of that commodity through to the ultimate consumer. In dairy products, cooperatives handle 77 percent of the milk sold by farmers, but process only 28 percent of it. In grain and soybeans, cooperatives handle 40 percent of the grain sold by producers, but process only 16 percent of it and export only 8 percent of it.

Third, for most commodities, the current market share of cooperatives is little changed from earlier years. There are special reasons why the cooperative share has increased significantly for three types of products. The cooperative share of petroleum products sold to farmers has risen for the principal cause that some major oil companies withdrew from midwest markets early in the energy crisis, leaving the field by default to remaining dealers, for the most part the farm cooperatives. In the case of fertilizer, proprietary dealers chose, during a shortage situation in 1973 and 1974, to ship scarce supplies to lucrative export markets. The farm cooperatives resisted that temptation and kept their supplies for domestic customers, winning thereby a larger share of the market.

A significant comparison of the market shares of the four largest cooperatives and the four largest proprietary firms for the year 1975 is made in Exhibits V and VI.

As can be observed from Exhibit V, cooperative activity in these four sectors is small compared to that of the other firms.

Again, the cooperative share in the farm inputs is small compared to the four largest proprietary firms, as is indicated in Exhibit VI.

A 25-year comparison of the cooperative share in seven industries appears in Exhibit VII.

In three of the industries, the cooperative share is unchanged, or virtually so. These are feed, poultry and eggs and fruits and vegetables.

The cooperative share on grain and dairy products has advanced significantly in the 25 years. However, as noted earlier, these figures represent the cooperative share at the point of sale from the farmer's hands. But, the processing of both drops off sharply and the domestic retailing or export share becomes very small.

The cooperative share of petroleum and fertilizer markets has advanced in the past four years, as explained earlier, because of the abandonment of rural markets by some proprietary dealers following the energy crisis of 1973.

Finally, market shares of the cooperatives should not be assumed to be as susceptible of abuse as similar market shares of the for-profit firms. The key again, as with sheer size, is what is done with the market share. Not even where, in individual markets, a cooperative has a 100% market share, has abuse of that condition been demonstrated.

That the nation's farmers have not abused the privileges they have under the Capper-Volstead Act by extortionate pricing of their products can be conclusively determined by examining the levels of farm prices and income, generally and in specific commodities.

Authority exists under Section 2 of the Capper-Volstead Act for the Secretary of Agriculture to issue cease and desist orders when he determines that farmers have used the Capper-Volstead Act cooperatives to "unduly enhance" farm prices.

In the aforementioned FTC and Department of Justice studies, it has been charged that the monopoly dairy cooperatives have used their position to "rip-off" consumers to the extent of hundreds of millions a year.

"Why isn't someone charged with undue enhancement?" it is asked.

Amazement has been voiced that no Secretary of Agriculture has ever issued a cease and desist order on account of "undue enhancement." There should be no mystery about that. Over the years, investigations have been made on a number of occasions.

No evidence of "undue enhancement" was found because there was no undue enhancement.

Undue enhancement has never been specifically defined; however, there is nothing unclear about the concept.

Congress has often and repeatedly stated the goal of parity for American agriculture. It is the only legally constituted and defined yardstick for farm prices and income—the only officially recognized measurement of the fairness of farm prices.

Therefore, any action taken by producers to raise their prices and income to parity could in no way be construed as "undue enhancement."

Producers would have to act in concert through their cooperatives to raise their prices and income substantially above full parity levels before that enhancement could be construed as "undue."

A glance at Exhibit II shows that farm prices have been at full parity levels only for 11 years in the past 50. The highest parity average since Capper-Volstead was adopted in 1922 and the farm stabilization programs began in 1933 was the figure of 115% in 1947. Even this can scarcely be termed too high, but at any rate the price strength was attributable to market factors and the farm programs then in operation, and hardly attributable to Capper-Volstead machinations.

Even in the dairy sector, where the rip-off of consumers has been alleged, facts do not support a finding of undue enhancement.

One thing can be said for the dairy cooperatives and the dairy price support programs—there is somewhat less volatility in prices than in other major commodities. This is a definite plus.

The dairy statutes spell out a farm parity goal, as for other commodities, but USDA has authority to fix Class 1 prices at a higher level if costs justify such an action.

So, there is no possible finding that dairy prices have been unduly enhanced.

This has been corroborated in a thoroughgoing study made by a special Capper-Volstead task force in 1976. USDA made the "undue enhancement" investigation as a result of a petition filed by the National Consumers Congress.

The report found that there was no evidence that over-order prices obtained by the cooperatives in 1974–75 were too high for economic conditions. To the contrary, evidence indicated that the over-order prices were needed to compensate producers for a severe cost-price squeeze and to help them offset sharply rising feed prices.

Even with the higher prices, the investigation found that many farmers still had a "negative cash flow."

THE GENESIS OF THE CAPPER-VOLSTEAD ACT

In the late 1880's, the Nation's farmers were among the leading proponents of legislative proposals to control predatory actions of the trusts and assure fair competition. Some statutes were adopted in the states and most of these exempted farmers' associations or cooperatives from these laws.

When some of these state laws were set-aside by the courts and when the agricultural exemption was questioned, farmers supported adoption of the Sherman Anti-trust Act in 1890. But, because there was some fear that the Act might be turned against cooperatives, Senator Sherman accepted an amendment which declared:

*"Provided*, That this Act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with a view of lessening the number of hours of their labor or of increasing their wages; nor to any arrangements, agreements, associations, or combinations among persons engaged in horticulture or agriculture made with a view to enhancing the price of their own agricultural or horticultural products."

Subsequently, the agricultural exemption was considered to be unnecessary and it was dropped from the law in the final rewriting.

The earlier suspicions of farmers proved to be well founded in the 1890's and early 1900's when the Sherman Act was frequently used to challenge the development of large-scale cooperatives.

In 1906, the Farmers Educational and Coopertive Union of America (National Farmers Union) proposed adoption of a uniform law regarding the establishment of agricultural cooperative societies.

After several years of unsuccessful effort, the early farm organizations were able to obtain the inclusion of a rider in H.R. 28775, an appropriations bill, mandating "that no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain a fair and reasonable price for their products."

H.R. 28775 was vetoed by President Taft on March 4, 1913, his last day in office.

Charles S. Barrett, president of National Farmers Union, then proposed legislation to exempt farmers and labor unions from the Sherman Anti-Trust Act.

The result eventually was the inclusion in the Clayton Act of 1914 of Section 6 which provided:

"That the labor of a human being is not a commodity, or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural associations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organization, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

Because Section 6 did not apply to cooperatives which issued stock and since it did not satisfy his desire for a broader statute, Barrett continued his efforts and, beginning in 1915, channelled them through the National Board of Farm Organizations (NBFO) which he helped form and which he headed as president. National Farmers Union and the National Milk Producers Federation were the moving forces in NBFO.

Barrett appointed a committee, which he chaired, to draft a new cooperative statute, and when this was achieved persuaded Senator Capper of Kansas and Rep. Hersman of California to become the chief sponsors.

Hearings of the Capper-Hersman bill, which was based on amendments to the anti-trust laws, were held in October, 1919, before the House Agriculture committee.

The name of Rep. Volstead of Minnesota was substituted on the bill for that of Rep. Hersman, when the former, the chairman of the House Judiciary committee, refused to move the bill unless it bore his name.

The legislation was approved by both House and Senate in 1920, but a House-Senate conference committee failed to resolve differences.

In 1921, the legislation was rewritten as a basic statute on its own and eventually approved in Febreuary, 1922, and signed into law by President Harding on February 18th.

In the course of the debate, Rep. Volstead made the following statement:

"It is objected in some quarters that this repeals the Sherman Anti-Trust Act as to farmers. This is not true."

Senator Capper observed:

"The Cooperative marketing bill as it was offered in both the Senate and House seeks simply to make definite the law relating to cooperative associations of farmers and to establish a basis on which these organizations may legally be formed. Its purpose is to give the farmer the same right to bargain collectively that is already enjoyed by corporations."

Basically, Capper-Volstead was designed to assure that the individual farmer would not be subject to prosecution for having joined and participated in a cooperative unit.

The legislation did not, as was subsequently clearly determined in court suits, empower farmers to engage in unlawful conduct, by themselves or with third parties.

President Barrett visualized agriculture as needing something far beyond Capper-Volstead and in the subsequent four years spearheaded introduction and discussion of proposals, such as the Curtis-Aswell and Capper-Haugen bills, which assigned to farmer cooperatievs the principal role in farm marketing. These bills proved to be too far-reaching and failed to get substantial support in the Congress. However, the failure of these measures to get action and the veto of the McNary-Haugen bills probably helped establish the climate for passage of the Cooperative Marketing Act of 1926 and the Agricultural Marketing Act of 1929.

One more significant statute was added in 1937 with approval of the Agricultural Marketing Agreements Act which enabled cooperatives to seek to stabilize agricultural markets for milk and specialty crops through marketing agreements and orders.

Thus, the fundamental right of farmers to organize cooperative organizations and act jointly through them was established but without any authority to engage in discriminatory or predatory conduct.●

## LEGAL ASPECTS OF NORMALIZING RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

Mr. KENNEDY. Mr. President, there has been some confusion about the legal implications of establishing normal diplomatic relations with the People's Republic of China—an objective which I strongly believe can and should be achieved by this administration.

In an article in the July issue of the American Bar Association Journal, Prof. Jerome A. Cohen of Harvard Law School effectivelv dispels the confusion.

First, he makes clear that the issues of normalization and sovereignty over Taiwan are separate ones.

Second, he cogently indicates why the 1954 treaty to defend Taiwan will lapse when we normalize relations with Peking, although this does not at all prevent us from providing for the future security of the island.

Third, he explains why termination of the defense treaty does not require formal consent of the Senate or the Congress, although it is clear that the executive and legislative branches will want to consult before this comes to pass.

I commend this article to my colleagues as a clear and convincing exposition of the legal implications of normalizing our relations with China. While Professor Cohen appreciates the political importance of consultation between the Congress and the administration, he concludes that "there can be no constitutional obstacle to normalization and its consequence—formal termination of the defense treaty."

I request that this important and timely analysis be printed in the RECORD.

The article follows:

NORMALIZING RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

(By Jerome Alan Cohen)

More than six years ago the Shanghai Communique committeed the United States and the People's Republic of China to the establishment of formal diplomatic relations. In April President Carter expressed the hope that the long overdue normalization of relations will be achieved in a matter of months. In May Zbigniew Brzezinski, the administration's national security adviser, visited the People's Republic. Although only global issues were on his agenda, he probably probed Peking's attitude toward normalization.

Yet in Washington confusion exists concerning the legal implications of normalization. This inhibits the president from accurately assessing its international and domestic costs. Three misconceptions cloud analysis.

The first is that normalization will mean our acceptance of Peking's sovereignty over Taiwan. If so, we would have no legal basis for continuing to defend Taiwan. But a recognizing state need not confirm the territorial claims of the government it recognizes, and the P.R.C. has established diplomatic relations with many states that have failed to acknowledge its sovereignty over Taiwan.

Although the 1943 Cairo Declaration committed the United States to restore Taiwan to China after World War II, Washington has never formally approved the restoration. Between mid 1945 and mid-1950 we treated Taiwan as part of China but anticipated that the island's de facto status would be confirmed de jure by the forthcoming peace treaties. Once the Korean conflict occurred, however, Washington announced, "The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations." This implied the possibility of separating the island from China, and the peace treaties were artfully constructed to confirm Japan's renunciation of Taiwan without confirming China's title.

Yet at Shanghai in 1972 the United States declared that it "does not challenge" the claim of all Chinese on either side of the Taiwan Strait that Taiwan is a part of China. Although American officials argued that this language did not represent another shift in position, it did appear to eliminate the specter that Washington might permanently separate the island from China by failing to fulfill the Cairo Declaration's pledge. Never-

theless, the carefully chosen terminology did not formally confirm Taiwan's reincorporation into China. It simply renewed the hope that the pledge would be fulfilled at some future date.

Thus, if in the process of recognizing the P.R.C. as the government of China, Washington does nothing further to clarify Taiwan's status, it will not have undermined its legal basis for defending the island.

The second misconception is that normalization need not terminate the 1954 United States treaty to defend Taiwan. It has been argued that the treaty, made with the Republic of China, can survive recognition of the P.R.C. as the new government of China, since its terms are limited to territory controlled by the R.O.C. This would vastly complicate the normalization process.

Fortunately, the argument is wrong. The defense treaty was concluded with the R.O.C. as the government of the state of China. Once the United States meets Peking's first condition for normalization by formally acknowledging the P.R.C. rather than the R.O.C. as the government of that state, it will be for Peking, as well as Washington, to determine whether the treaty should be maintained. Whatever the consequence for the defense treaty might be if we were simply withdrawing recognition from Taipei, that is not the situation contemplated. By recognizing Peking, we will confer upon it the mantle of China for legal purposes, thereby enabling it to decide not to continue the treaty regardless of whether the treaty applies to only a specific area.

Termination of the treaty is the second of Peking's conditions for normalization. The P.R.C. has branded the treaty void since its negotiation. * * * an analogous example. The consent of the Senate is necessary for their appointment, but it is not required for their termination.

Thus, although the power of the president to terminate treaties is not entirely free from doubt, Louis Henkin, our leading commentator on foreign affairs and the Constitution, appears to be correct in concluding that neither the Senate nor the Congress is likely to be successful in asserting a plausible legal challenge to it, since it is the president who acts for the nation internationally. This does not mean, of course, that it would be politically wise for the president not to consult the Congress about his plans for normalization, only that there can be no constitutional obstacle to normalization and its consequence—formal termination of the defense treaty.●

## DR. GORI'S CRIME: TRUTH

● Mr. HUDDLESTON. Mr. President, last Monday I made a floor statement on the reaction of HEW Secretary Joseph Califano, Dr. Arthur Upton, head of the National Cancer Institute, and others to the research findings of Dr. Gio Batta Gori.

Dr. Gori is Deputy Director of Cancer Prevention for the National Cancer Institute. He recently reported that his research indicates that some of the new low tar and nicotine cigarettes can be smoked in moderate numbers with significantly less health hazard.

Secretary Califano, Dr. Upton and others launched a campaign of villification and slander in an effort to discredit Dr. Gori and his findings.

I said at the time that Dr. Gori's heresy was that he dared tell the truth in an environment that would not allow deviation from the party line—and that line is a prohibitionist attitude about tobacco that does not even allow consideration of research to produce a safer cigarette.

In yesterday's Washington Star syndicated columnist James J. Kilpatrick stated: "The gentleman committed truth. In the Washington Wonderland, this qualifies as a capital offense. Off with his head! The poor fellow is not long for this world."

Mr. Kilpatrick continues: "The denunciations heaped upon Dr. Gori have ugly, ominous overtones. Dissent from the official Califano-Nader line is not to be tolerated. The high priests of anti-smoking have staked out a monopoly on Truth. No competing ideas may apply."

Why, Mr. President, do Mr. Califano, Dr. Upton, and lie-minded people—who so loudly proclaim their commitment to the health of the American people—oppose research aimed at improving the health of millions of Americans who smoke?

Why are they afraid of the truth?

Why are they trying to fire or otherwise discipline a scientist who did nothing more than faithfully report the outcome of his research?

If the kind of attitude exhibited by Mr. Califano and Dr. Upton had prevailed down through the ages we would still be operating on the assumption that the Earth was flat.

This is not the first, nor will it be the last time that truth has been sacrificed in pursuit of some cause. Hopefully, however, it will not come to that if more people like Mr. Kilpatrick speak up and denounce the attitude that does not allow truth to be spoken unless it concurs with the party line or official Government policy.

I ask that Mr. Kilpatrick's column be printed in the RECORD.

The column follows:

DR. GORI'S CRIME: TRUTH

(By James J. Kilpatrick)

Let us heave a sigh for Gio Batta Gori. The gentleman committed truth. In the Washington Wonderland, this qualifies as a capital offense. Off with his head! The poor fellow is not long for this world.

Dr. Gori is deputy director of cancer prevention for the National Cancer Institute. Two weeks ago, he disclosed that he and his research associate, Dr. Cornelius Lynch, had completed a paper dealing with the phenomenal reductions that have been achieved in the tar and nicotine content of cigarettes.

"We can now begin to talk about 'tolerable' levels of smoking from an overall, public health standpoint," he said. He emphasized that he was not calling any cigarette safe. "The only cigarette that is safe is a cigarette that is unlit."

He surely was not endorsing cigarettes in any way. He was not talking in individual terms, but in average terms.

On the average, he explained, a smoker could now smoke 23 Carlton Menthols a day and suffer no more risk than he might have suffered with only two of the potent cigarettes of 1960. A smoker could smoke seven Decades, or five Kent Golden Lights, or three Merits a day on the same basis. Dr. Gori's point was that progress has in fact been made toward the production of less harmful cigarettes. He thought he was bringing us good news.

If there were any rationality left in this whole business of cigarettes and cancer, Dr. Gori's cheerful and sensible observations would have been received with equanimity and pleasure. But reason has fled the temples. The campaign against smoking has turned into a crusade, a jehad, a holy war. Zealotry is seldom pretty, and there was nothing pretty about the reaction to his statement.

Joseph A. Califano, Secretary of Health, Education and Welfare, was officially reported to be "upset." Unofficially, the word reaching the press was that Califano, a reformed smoker who metaphorically has become more Catholic than the pope, had blown his gussets.

Dr. Arthur Upton, head of the Cancer Institute, said Dr. Gori's "unfortunate" disclosures had "set back our cause." Dr. Sidney Wolfe, head of the Ralph Nader Health Research Group, favored the direct approach to heresy. Dr. Gori should be fired, said Dr. Wolfe, for "the most damaging statement that has been made about smoking in the past 10 years.

Let us get a few things straight. The cause is, or ought to be, Truth. Dr. Gori is no reckless, impulsive amateur in the field of cancer research. He is a highly respected scholar who two years ago won the Cancer Institute's superior service award. He has devoted 10 years to intensive research in the field of tobacco.

The paper he prepared in collaboration with Dr. Lynch is to appear in the Journal of the American Medical Association. The denunciations heaped upon Dr. Gori have ugly, ominous overtones. Dissent from the official Califano-Nader line is not to be tolerated. The high priests of anti-smoking have staked out a monopoly on Truth. No competing ideas may apply.

The reaction is both indefensible and contemptible. Surely scientists, no less than philosophers, should live by Milton's exhortation: Let Truth and Falsehood grapple! Whoever knew Truth put to the worst in a fair encounter? We do not yet know, finally and irreversibly, all the truths about tobacco and cancer. The best research is filled with puzzlements and contradictions.

Good scientists pursue Truth in the humble conviction that their pursuit may take 100 turns and may never capture its object. It is entirely conceivable that in some human beings, tobacco has a synergistic impact in combination with other substances thought to cause cancer.

We inquire about lung cancer victims: How many cigarettes did they smoke? Do we ask as assiduously: How much bacon did they eat? How much urban smog did they absorb? What kind of stressful people were they?

We never will have all the answers. But we will have many fewer right answers if the anti-smoking establishment persists in crucifying scientists whose findings fail to conform to the party line.●

## DROUGHT IN THE SAHEL

● Mr. KENNEDY. Mr. President, in recent years the Congress and the American people have responded generously and compassionately to humanitarian needs among the drought stricken men, women, and children of the Sahel region of West Africa. We all know the desperate plight of these people, and the important international effort which has been initiated over the past several years to assist them in coping with the drought, and developing their countries.

Recent reports from the field tell us what we should have known all along, that the critical problems the people of the Sahel face are not simply relief problems, but longer term developmental and rehabilitation problems.

Earlier this week, an editorial in the Washington Post served to remind us of this, by focusing on the critical and continuing needs of the Sahelian people, particularly now, during the recurrence of drought conditions in many areas.

In per capital income and infant mortality rate, the Sahelians suffer more than any other people in the world. The Arabic word "sahel" signifies the borderline between rain forest and desert. But when the rains fail, it becomes a tragic borderline between hunger and starvation for many, especially women and children.

The United States is a leading participant in not only providing necessary relief assistance, but also in collaborating with the international community in mounting a long-term effort to prevent the devastating consequences of future drought. This involves the irrigation of new lands, reforestation, dry land agricultural development, livestock production, and the provision of basic education and maternal/child health and population services.

The development assistance program in the Sahel represents a coordinated international effort to alleviate human suffering in an entire region of Africa. It is a rare example of donors collaborating to enhance efforts to meet human needs, and clearly deserves the strong and continuing support of the United States.

Mr. President, I ask that the text of the Washington Post editorial be printed in the RECORD.

The editorial follows:

[From the Washington Star, Aug. 21, 1978]

DROUGHT IN THE SAHEL

Part of the Sahel region of Africa is suffering drought and famine again. That is the band of eight sub-Saharan nations, from the Cape Verde Islands to Chad, which suffered a devastating six-year drought in the early 1970s. As many as 100,000 people and more than half the livestock of those basically agricultural countries perished from the resulting famine. This year's drought, though severe, has not had a catastrophic effect. That is because both the Sahelian nations and the international community have learned the costly lessons of the previous drought: Early warning and an efficient response to widespread food storages, plus a concerted regional and international-developmental effort can reduce the impact of recurring droughts.

The current drought and famine severely affects four Sahelian nations—the Cape Verde Islands, Gambia, Senegal and Mauritania. Those countries' appeals for emergency food supplies brought a quick international response. Led by the United States, other countries have shipped about 450,000 tons of food to the area. And, unlike the helter-skelter approach of five years ago, the food apparently is being distributed efficiently and equitably. Most important, the relief effort is part of a larger regional-development program sponsored by the Sahelian nations and a score of more advanced countries. Their aim is to reduce the region's vulnerability to droughts.

The goals of this unique international effort are as numerous as the needs of the Sahelian countries. They include: Increasing crop production in that generally arid region; building thousands of miles of roads and a communications system for the region, which is larger than Europe, but which has a population of only about 30 million people; and bringing modern educational and health services to a population that still lives largely as its ancestors did a century ago.

The host of African, Arabic, and Western nations that have pledged more than $1 billion annually to the Sahel development effort, in addition to various bilateral agreements, have done so for more than the obvious and laudable humanitarian reasons. They want to learn how to check "desertification"—the spread of desert land, which, in developing countries, is often caused by efforts to modernize rapidly. Because of where it is, the Sahel is especially vulnerable to the rapid growth of arid land. The widespread concern of developing and industrialized countries about this spurred the U.N.-sponsored conference on the subject held in Nairobi last year. The Sahel is the first area of the world where the various techniques discussed during that conference are to be put to the test. Thus, the Sahel has become, in effect, a laboratory for solutions to not only desertification, but a host of problems that affect developing nations—and, in one way or another, the developed nations too.●

## PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the notification I have just received:

DEFENSE SECURITY ASSISTANCE AGENCY,
*Washington, D.C., August 24, 1978.*

In reply refer to I-14228/77ct

Hon. JOHN J. SPARKMAN,
*Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78-53, concerning the Department of the Navy's proposed Letter of Offer to Iran for defense articles and services estimated to cost $38 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
*Acting Director.*

[Transmittal No. 78-53]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Iran.

(ii) Total Estimated Value):

[In millions]

| | |
|---|---|
| Major Defense Equipment* | $0 |
| Other | 38 |
| Total | 38 |

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: One year spare parts to support the AH-1J/TOW helicopter.

(iv) Military Department: Navy.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: August 24, 1978.●

## THE HIGH COST OF "MEDI-GAP"

● Mr. CHILES. Mr. President, the Senate Committee on Aging has long been concerned about unnecessary and sometimes unscrupulous drains on retirement income.

We on that committee emphatically believe that precious dollars needed to meet the necessities of life in the later years should be put to best possible effect.

Accordingly, we have looked into such issues as health care fraud—which often raises the costs that older persons must pay—questionable mail order land sales, and kickbacks in some prescription drug sales.

A recurring concern is high-pressure door-to-door salesmanship of "medi-gap" policies, often sold by scare arguments to older persons who are concerned about the very real inadequacies of medicare coverage.

Earlier, this year, I chaired two hearings for the Committee on Aging to check into reports about such operations. The testimony revealed shocking and intolerable situations in at least three States; the committee is continuing its investigation.

One already heartening sign is the positive response by Federal Trade Commissioner Elizabeth Hanford Dole, who said at our hearing that the FTC is seeking broad cooperative efforts to explore medi-gap issues more intensively. Health, Education, and Welfare Secretary Califano has since assured the Committee on Aging that he will assign HEW officials to work with the FTC. In addition, the National Association of Insurance Commissioners has assured the committee of its cooperation and interest.

One tangible result of the mounting concern about medi-gap is a new staff report issued by the Federal Trade Commission within recent days. I ask to have printed in the RECORD a Los Angeles Times article by Penny Girard, who gives a lucid summary of its major points, many of which are similar to those already expressed to the Committee on Aging.

In addition, I would like to request insertion of an article which was neatly juxtaposed to Ms. Girard's article. It dramatically documents the daily struggle that many retired couples and individuals are having with inflation's steady rise in essential items.

Faced with this grim situation, the last thing that older Americans need is to fall prey to the empty promises of the seller of worthless "medi-scare" policies, as several witnesses have called those policies sold by what is probably a minority of companies or salesmen.

Lastly, I ask consent to have printed a news release issued by Committee on Aging Chairman CHURCH, ranking minority member DOMENICI, and by me commenting on the FTC staff report.

The material follows:

[From the Los Angeles Times, Aug. 13, 1978]

AGED BUY UNNEEDED INSURANCE TO FILL MEDICARE GAP, STUDY SAYS

(By Penny Girard)

WASHINGTON.—A Federal Trade Commission report says that one-quarter of the elderly Americans who annually spend $1 billion for extra insurance to cover Medicare gaps actually buy unnecessary, costly and overlapping coverage.

The report, released here today, said a lack of consumer information, unscrupulous sales tactics by some firms and a lack of uniformity in policies had created considerable confusion among consumers and caused higher health costs for many elderly persons living on fixed incomes.

The government eventually may have to act to correct the situation, the commission staff said, "because its own Medicare program created the problem." Many of these policies evolved as a byproduct of the Medicare program.

"The lack of consumer information in the Medicare supplement market is so great that it is almost impossible to make rational purchase decisions. Very few people understand the complexities of Medicare and its gaps," the study said.

The staff planning paper was delivered Friday to the Senate Special Committee on Aging, which had held hearings this spring on the problem of "Medigap" insurance.

Health care coverage is a major expense and a constant concern for many citizens over age 65. Such persons spend an average of $1,300 on health care each year, three times what the rest of the adult population spends, one commission official said recently.

According to the commission's report, in 1976 Medicare covered only 38% of the health care costs for the elderly. Even with Medicare coverage, recipients are required to pay certain deductions and share other costs. Medicare does not cover such items as prescriptions, dental care, eye glasses, hearing aids, routine examinations and some nursing home care.

Because of rising medical costs and limited income, millions of elderly persons have purchased extra insurance, hoping to have complete health coverage. More than 50% have at least one additional policy, the commission said.

But lack of standardization among policies and poor consumer education mean that the aged often buy duplicate policies and some that fall short of their needs, as well as policies which mix services with indemnity plans.

Even with Medicare and private insurance, the study said, elderly individuals paid an average of more than $400 each for out-of-pocket health care expenses in 1976.

The FTC report reflects the testimony of Federal Trade Commissioner Elizabeth Dole, who told the Senate committee in June that "elderly persons who live on fixed incomes can ill afford to spend their money on worthless duplications."

"There is a need for coverage outside Medicare," a Senate committee staff member said. "Nobody is going to want to say that supplemental insurance is bad. It's just that a number of plans are aggressively sold that don't offer much return."

Th Federal Trade Commission report recommended conducting a study with the Department of Health, Education, and Welfare and the National Assn. of Insurance Commissioners to evaluate current state insurance laws.

Insurance generally is regulated by the states. Federal antitrust laws prevent the government from interferring and, in some cases from taking any action.

Some states, including California, already have begun setting standards for private insurance.

COST OF LIVING INCREASES 7 PERCENT FOR RETIRED COUPLES

(By Robert A. Rosenblatt)

WASHINGTON.—Rising medical costs played a major role in driving the cost of living up 7 percent for retired couples during 12 months of 1976 and 1977, the Labor Department reported Saturday.

A hypothetical intermediate-level budget for a retired urban couple required $7,198 during the year ended in autumn 1977, the department said in its annual survey.

That national-average budget figure compared with these figures for retired couples living in California: $7,403 in the Los Angeles-Long Beach area; $7,089 in San Diego; $6,727 in Bakersfield and $8,014 in San Francisco-Oakland.

The government study is based on a hypothetical husband over age 65 and retired, and his wife. "They are assumed to be self-supporting and living in an urban area; they are in reasonably good health and able to take care of themselves," said the Bureau of Labor Statistics, which released the study.

Inflation is getting worse for retired persons, the report makes clear. A cost of living increase of 4.5 percent in 1975–76 accelerated to 7 percent in 1976–77.

The biggest inflationary pressure on retired persons were medical care, which rose 10.1 percent in the intermediate level budget during the year, and housing, which climbed 7.9 percent. Food prices advanced 6.3 percent.

Monthly expenses for the hypothetical couple living on an intermediate budget included $169 for food, $52 for medical expenses, $30 for clothing and $54 for transportation. For renters, rent, heating and electricity bills average $131 a month. Homeowners had monthly expenses of $138, which paid for property taxes, heating and electricity. The study assumed that the retired homeowners had full ownership of their property, with no remaining mortgage payments.

The budgets "generally are lowest in nonmetropolitan areas and in the Southeastern cities and highest in Anchorage, Honolulu, Northeastern and Western cities," the study said.

The Bureau of Labor Statistics prepared three hypothetical annual budgets for lower, intermediate and higher standards of living.

The lower budget does not represent poverty nor does the upper one reflect affluence. Rather, they cover different ranges of spending. For example, the lower budget allots $12 a month for restaurant or cafeteria meals. The intermediate budget is $18 a month and the higher one allows $33 a month for meals away from home.

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FTC ISSUES STAFF REPORT ON MEDI-GAP INSURANCE

WASHINGTON, D.C., Augut 11, 1978.—"A new Federal Trade Commission staff report raises issues which point to the need for continuing Federal attention to Medicare supplemental health insurance sold to the elderly," said Senators Frank Church, Lawton Chiles, and Pete V. Domenici of the Senate Special Committee on Aging today.

The staff study on "Medi-Gap" insurance was promised to the Committee by Federal Trade Commissioner Elizabeth Hanford Dole when she testified before the Committee on June 29, 1978.

The hearings uncovered widespread instances of oversale and misrepresentation of benefits on health insurance policies sold to the elderly to supplement Medicare.

Chiles, who conducted the hearings, said: "The Federal Trade Commission staff report sheds additional light on the problems we found during our hearings. The report concludes that there is very little good information available to older consumers on any form of health insurance, whether it be Medicare or private policies. This was cited to the Committee by witness after witness as one of the major underlying causes of uniformed purchases and it creates a wide-open situation for abuse.

"The staff report also argues for a good hard look at the varying approaches States have taken to set standards for information disclosure and minimum policy benefits. Commission staff found virtually no standardization in Medicare supplemental insurance now, and the Committee has been concerned that this lack of standardization, as well as the very limited benefits offered in some policies, also contributes to duplications in coverage and unnecessary expenses.

"New questions are raised about the actual value of some types of policies commonly sold to older Americans and the report makes it clear that most policies specifically exclude protection for the very same areas not covered by Medicare."

Church, Committee Chairman, said the Committee is continuing its inquiry into Medicare supplemental insurance and that he expects the Committee to keep in touch with the Federal Trade Commission and the Department of Health, Education, and Welfare in a broad-based national evaluation of the approaches taken by States to regulate the sale of Medi-Gap insurance.

Domenici, the Committee's Ranking Minority Member, stressed "the need for reforms to protect the elderly from overlapping and inadequate 'medi-gap' coverage. Most of the reforms will have to be made at the State level and insurance companies will have to institute safeguards of their own."

The Federal Trade Commission staff report, titled "Private Health Insurance to Supplement Medicare," is available from the Federal Trade Commission's Office of Public Information.●

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## SENATOR LEAHY'S WHISTLE-BLOWER AMENDMENT

● Mr. KENNEDY. Mr. President, I rise to express my strong support for the amendment offered by the distinguished Senator from Vermont. In doing so I would also like to commend Senators RIBICOFF and PERCY, as well as the Governmental Affairs Committee as a whole, for their work on this important and timely legislation.

The whistle-blower provisions of this bill, if coupled with the Leahy amendment, will be just what the public and the Congress want—and what the bureaucracy needs—for this proposal is clearly in line with the message that we have been receiving from an angry public: We have had too much waste in Government; we have had too much ineptitude in Government; we have had too much inefficiency in Government; and we have even had too much corruption in Government. And we do not need new ranks of bureaucrats to clean up what others have messed up. We merely need to provide protection and incentives, for those presently in public service, to bring to light—and to rectify—lawlessness and waste in Government.

For whistle-blowing will be amply staffed by our existing army of the conscientious and dedicated Government employees—those who are committed enough, professional enough, and patriotic enough to "blow the whistle" on corruption, waste or illegality that they see around them. That is why I express

strong support for S. 2640 and its protection for Government employee whistle-blowers.

But insuring that the alarm is sounded, and insuring that the employee is indeed protected, is only the first step in the process. For the true purpose of whistleblowing is not the public recognition of the dedicated employee, but the correction of Government wrongdoing, the saving of taxpayer's money, and the prosecution of the corrupt.

Some provision must therefore be made to follow up on substantial allegations of waste or wrongdoing, while screening out frivolous or unfounded accusations. This is exactly what our amendment accomplishes.

If after a period of 15 days, under this proposal, the Special Counsel finds a substantial likelihood that an allegation is true, he can require that the head of the relevant agency conduct an investigation and submit a report on that investigation within 60 days. To insure that an agency does not attempt to whitewash an in-house scandal, the amendment explicitly spells out what that report must include, including substantiation of the charges, corrective measures, disciplinary actions, et cetera.

Any report not deemed adequate will be transmitted to the Congress and the President, thereby opening further incentives for correction of any wrongdoing.

In turn, the Special Counsel would act as a filtering process that would screen out frivolous or self-serving accusations by eliminating cases during the initial 15-day investigatory period. The amendment goes further to provide an opportunity for the agency to exonerate itself of baseless charges and to correct and eliminate any internal waste or corruption within its own house. The amendment thus allows the agency the opportunity of an internal investigation. Only if the agency refuses to undertake an investigation, or their investigation proves inadequate, does the glare of publicity come into play. Of course, throughout this process the identity of the whistleblower is kept confidential, unless the Social Counsel determines that he has acted in bad faith.

I have been a firm believer in the benefits of "whistleblowers" since I introduced the first whistle-blower legislation in 1971. I chaired hearings before the Subcommittee on Administrative Practice and Procedure where we heard dozens of witnesses recount stories of transfer, demotion, harassment, and retaliation in return for telling the public the truth. I am more than happy to see the fruits of these efforts today.

All but the most simplistic of sloganeers know that our Federal agencies are not "faceless bureaucracies," but that they are instead made up of individuals who are professional, honest, and hard working. We must maximize the contributions that conscientious public servants can have to good government and increased economy. We must provide our civil servants with an impartial "dissent channel" to which they can direct reports of corruption or waste. We must provide them with the protection that they deserve for speaking out. And we must make the most of their courage and honesty by providing a follow-through mechanism that will correct the wrongs that are disclosed. Let us achieve all of these worthy purposes, by supporting S. 2640, the civil service reform bill, and Senator LEAHY's amendment.●

## ALASKA LEGISLATION REFLECTS DIVERSITY OF CONCERNS

● Mr. HART. Mr. President, before this session of Congress ends the Senate will have an opportunity to act upon one of the most important and far-reaching land preservation measures in the history of our Nation. I refer to the Alaska National Interest Lands Conservation Act (S. 1500/amendment 2176). I have endorsed this fair and balanced bill, which incorporates the concerns of a diversity of interests: conservationists, Alaska's Natives, the State of Alaska, and the commercial development sector. While no group will be entirely satisfied with this bill, it is an excellent compromise that will allow Alaska's economy to develop in a healthy manner while also preserving that State's highest quality scenic and wildlife resources. The Federal lands in Alaska are owned by all the citizens of this Nation, and we all have a stake in insuring that this great wilderness frontier receives strong protection from Congress.

The Alaska National Interest Lands Conservation Act is a measure that has deservedly won widespread public support. As evidence of this, I call the attention of my colleagues to editorials endorsing this legislation which appeared in the Los Angeles Times, the Atlanta Journal, the Salt Lake City Tribune, the Lancaster Intelligencer Journal, and the Anchorage Daily News.

Mr. President, I request that these editorials be printed in the RECORD:

[From the Los Angeles Times, May 23, 1978]

A VOTE FOR MAGNIFICENCE

Last week's overwhelming House vote of 277 to 31 for the ambitious Alaska land-preservation bill was an encouraging sign of strong nationwide support for restraint in the exploitation of Alaska's magnificent assets.

We hope that this message is not lost on Alaska's two senators, Democrat Mike Gravel and Republican Ted Stevens, who have opposed stiff controls and pushed for more development. We hope that it is not lost on Senate Majority Leader Robert C. Byrd (D-W. Va.), who has been inclined to go along with the Alaskan senators on the mistaken supposition that the legislation affects only their state.

The bill's effect on every American would be substantial and enduring. Known as the Alaska National Interest Lands Conservation Act, the legislation would allocate 102 million federally controlled acres, roughly one-third of Alaska's huge area, as wilderness areas, new national parks and monuments, wildlife refuges and national forests. They would become the country's most massive physicial investment in its own future.

Neither the nation's nor the state's immediate economic interests would be short-changed. Fully 70% of Alaska's rock minerals would still be accessible to miners, and some 95% of the state's petroleum reserves would remain within drillers' reach. Hunting and fishing areas would be far greater than what is needed to satisfy current need.

The lands that would be set aside in the Alaska bill will always be there if some materials crisis or strategic need develops. They will be in the bank, and they will be growing in value.

Seeing this bill through the Senate may require a long fight. The goal is worth the fight. President Carter and Interior Secretary Cecil D. Andrus have recognized the importance of this legislation. Byrd now should recognize it, too.

[From the Atlanta Journal, May 23, 1978]

UNLOCKING ALASKA

The overwhelming House vote on Friday, 277–31, to set aside 102 million acres in Alaska for national parks and wildlife refuges was a strong expression of commitment to both conservation and development.

Both conservationists and developers agreed that balance is the key issue in the bitter dispute. And both have suggested that the balance is not on their side.

That being the case, legislators obviously went along with Rep. Morris Udall of Arizona, chief sponsor in the House, who argued that what emerged from his committee was a good, balanced bill.

Whether the Senate will go along with the House is open to question, especially with talk of a threatened filibuster headed by Alaska senators Make Gravel and Ted Stevens.

The bill, S 1500, is currently in the Senate Energy and National Resources Committee where the chairman, Sen. Henry Jackson of Washington, has promised to clear the bill for floor action next month.

But Senate Majority Leader Robert Byrd says he will not schedule it for floor action as long as the Alaska senators intend to filibuster.

Senator Byrd is obviously paying due respect to the two senators. But the large margin of approval in the House demands that the Senate majority leader not avoid responsibility as a leader with a national constituency.

What the House-passed bill would do, in fact, is unlock land and establish clear management rules, spelling out what land will be permanently set aside, and what will be open for development.

Under the present conditions, no one knows what the rules are. That does not benefit either side. If, at a later date, there is a serious development need to go into an area the law can always be changed.

The important matter now is to take the issue out of limbo and let all concerned know where they stand.

[From the Anchorage Daily News, March 16, 1978]

TIME TO COME TO d-2 TERMS

H.R. 39, the Udall d-2 lands bill, passed a landmark Wednesday when the U.S. House committee that has been molding it into shape for more than a year finally completed its work.

The results of the Interior Committee work have left both sides with victories, and the reports from Washington are confirming a suspicion we've had: the Udall bill in its present form is not the environmental monster it is sometimes made out to be.

When it was first introduced in January of 1977 by U.S. Rep. Morris Udall and a number of co-sponsors, H.R. 39 did indeed appear to be an extreme position. But it has moved toward a much more moderate stance.

It would have taken 144 million acres of Alaska—more than one-fourth of all the land in the state—and seemingly indiscriminately declared the land to be wilderness.

With a broad sweep, 114 million acres of the state would have been added to the national parks, refuges, and wild and scenic rivers systems.

Many Alaskans were naturally alarmed. With federal influence already heavily felt in the state, another layer of restrictions encompassing so much of the state's wild country would not be welcomed.

But Alaskans, like it or not, must come to terms with some hard facts:

First, all of the land concerned in the d-2 debate belongs to the federal government, and the federal government will decide what to do with it, one way or another.

Second, there is broad sentiment afoot that many of the wildlands in the country's last frontier are worth preserving in their natural state. The question in Washington is not whether a d-2 bill should be enacted, but what sort of restrictions should be placed on the federal land included in the bill.

Since the Udall bill was introduced, it has undergone major surgery, influenced by hundreds of people testifying at public hearings, by years of resource studies done by the State of Alaska and the federal-state Land Use Planning Commission for Alaska, and by the well-researched position taken by the Carter administration.

Boundaries for parks and refuges have been reworked to accommodate mining, hunting and fishing interests. Subsistence hunting and fishing provisions have been worked out by state, Native and federal representatives in Washington. In an unprecedented action, the State of Alaska has been specifically designated to manage subsistence hunting and fishing on public lands covered by the bill.

The bill would cut through red tape holding up the transfer of land to Alaska Natives and to the State of Alaska, as well. Initially, the Udall bill would have swallowed up some state selections, but now the attitude in Washington is different.

At least the basics of cooperative land planning for the private, state and federal landholders in Alaska are now in the bill, after repeated prompting by Gov. Jay S. Hammond and the Land Use Planning Commission.

The bill is down to 95 million acres of parks, refuges and wild and scenic rivers, and the instant wilderness classification would apply to some 73 million acres instead of 144 million acres.

Most significantly, the "instant" wilderness in Southeast Alaska, where the controversy over timber jobs versus conservationist values rages strongest, has been cut in half.

There are still significant problems with the Udall proposal. Most notably, the provisions for permitting mining on non-wilderness areas of refuges and preserves seem cumbersome, requiring extensive "findings" by the Interior secretary and approval of both houses of Congress. And while some concessions have been made to accommodate State of Alaska interests in land selections, there seems to be a persistent attitude that any land in the hands of the state will automatically be open to development, and lost for wilderness. A less cynical approach to the state's interests would be helpful.

But the bill has been much improved so far, and will undergo more revisions when it passes on to the House Merchant Marine and Fisheries Committee.

On balance, we believe the Udall bill is moving toward a position that can do much to assure the attractive qualities of life in Alaska will survive. It could go far toward preserving the subsistence lifestyle in rural Alaska. And it could leave America with a last frontier far longer than might have been the case.

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[From the Salt Lake Tribune, May 14, 1978]

BILL PROTECTS "CROWN JEWELS," WITHOUT TOSSING OUT "KEY"

When someone begins talking about land in Alaska they must deal in superlatives, there is so much of the stuff up there. The state's area totals some 375 million acres, the equivalent of a little bit more than 7 Utahs.

The House Interior Committee has reported out the Alaska Wilderness Bill that would place 95 million acres of the state into parks, preserves, wildlife refuges and forests. Of those acres the bill, HR 39, designates some 50 million acres as wilderness where mining would be prohibited. Additionally another 24 million acres in existing conservation units would be classified wilderness.

That would mean that nearly 20 percent of Alaska would be off limits to mining and timber harvesting. Or roughly the equivalent of about one and a half times the size of Utah.

But before anyone starts talking about "locking up" the state's mineral lands, they would be well advised to remember that 80 percent of Alaska would be eligible for mineral prospecting and development. Also, written into the Alaska Wilderness Bill are special provisions that permit oil and gas exploration in areas that would be denied to mineral exploitation.

As the committee's report says, "It (HR 39) will not 'lock up' the mineral and energy resources of this land, but will provide for their discovery and development in the national interest and subject to the control of Congress."

In drafting the legislation the committee members have been very deliberate in attempting to leave, whenever possible, potential oil and gas deposits and mineral veins outside the protected areas. About 70 percent of the hard rock mineral deposits in Alaska would be excluded, along with about 95 percent of the potential oil and gas deposits, according to the Interior Committee's report.

Also contained in the bill is a special mineral process which permits mineral and energy resource extraction within conservation areas if Congress determines there is a national need for these resources involved and if that need outweighs the potential adverse environmental impact of the development.

HR 39 is a carefully constructed mechanism for preserving what Secretary of the Interior Cecil Andrus has called the "crown jewels" of America's northernmost state—its spectacular scenic beauty—while assuring reasonably ready access to that land's equally precious mineral and energy resources.

The bill does this by making some 300 million Alaskan acres, an area equal to more than five and a half Utahs, still eligible for mineral leasing and other development. And even in that part of Alaska that might conceivably be "locked up," the House Interior Committee is not proposing to throw away the key.

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[From the Intelligencer Journal, June 6, 1977]

THE EMBATTLED WILDERNESS

In this part of the country we think of a wilderness in terms of a few acres of timber in which there are no roads. In the West a wilderness is considered in larger figures. But in Alaska, where roadless timbered regions appear to be infinite, the consideration is in millions of acres.

Without having seen it, it is impossible to envision a million acres of wilderness with mountains, glaciers, cold, pure streams, towering trees as far as the eye can see, the whole place inhabited by a marvelous variety of wildlife.

Conservationists, specifically The Wilderness Society, are in a battle in Alaska. On the one hand is the Kennecott Copper Co.

On the other hand are the embattled Wilderness people. Somewhere in between stand the U.S. Dept. of the Interior and the U.S. Forest Service. The wilderness advocates are watching warily to make sure the government does not give away the heritage of the entire nation.

Kennecott wishes to whittle to 15 million acres The Wilderness Society's program that encompasses 110 million acres of protected wilderness. The company wishes to exploit whatever it can grab of 95 million acres.

The Alaskan government is on the edge of the war. It halfway agrees with the conservationists, but covets the taxes development of this vast area would bring.

The question is a difficult one. To allow exploitation is to ultimately obtain ore, metals and timber that may be converted into consumer goods. But once the land is denuded, thousands of years are required for it to come back to the primeval state in which it presently exists.

Although 110 million acres of forest appears to be more than anyone will ever be able to employ for recreational purposes, we must line up with The Wilderness Society.

As has been proven over and over again, specifically in the case of the American Indian whose holdings spanned an entire continent, once greed is permitted the tiniest wedge there is no stopping it. It runs like fire through a wilderness.●

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## HOSPITAL COST CONTAINMENT

● Mr. NELSON. Mr. President, I would like to respond to allegations made by the American Hospital Association about an amendment to encourage hospital cost containment, which other Senators have joined me in offering to H.R. 5285, a medicare/medicaid reform bill. Hospital costs are a major inflationary item, rising at twice the rate of inflation for other items.

The amendment, very simply, says that hospitals should continue a voluntary effort to control costs, which they began early in 1977. The hospital industry itself has set a goal of reducing the rate of increase in hospital costs, on the national average, by 4 percentage points in 1979 through 1982 below the rate of increase in 1977. The American Hospital Association estimates that the 1977 rate of inflation was 15.6 percent. The amendment contains an additional factor: hospitals would not be required to reduce their rate of increase below a level that is 1½ times the rate of inflation for other items in the economy. Therefore, if the rate of general inflation—now about 7.2 percent, as measured by the GNP deflator, were to increase, the voluntary hospital cost containment goal would be adjusted upward to reflect 1½ times the general inflation rate.

If the voluntary effort failed to meet its goal by July 1, 1979 or thereafter, a system of cost containment would be triggered into effect, in which HEW would establish, on a hospital-by-hospital basis, maximum allowable increases. There would be no arbitrary "cap". States whose hospitals, on the aggregate, maintained rates of increase at or below either the voluntary or mandatory goals, would be exempt from any Federal program.

Hospital costs would be reduced by more than $30 billion over 5 years, if either the voluntary program succeeds, or the mandatory controls were triggered into effect.

I ask that, following my rebuttal, the AHA's assertions be printed in the RECORD, followed by a summary of the amendment and a table comparing cost savings of the Human Resources Committee bill (S. 1391), amendment No. 3478, and the Finance Committee bill (H.R. 5285).

The material follows:

REBUTTAL TO HOSPITAL INDUSTRY

On August 11, all Senators received a form letter over the signature of J. Alexander McMahon, President of the American Hospital Association (AHA), attaching a detailed list of criticisms about an amendment on hospital cost containment that I and other Senators introduced August 16 (Amendment number 3478 to H.R. 5285). Although the AHA letter purported to describe the amendment in detail, it was in fact written and distributed several days *before* the amendment was even completed and introduced in final form.

Perhaps partially as a result of its timing, the AHA letter contained numerous misconceptions and distortions concerning the amendment, and thus I feel it is necessary to take this opportunity to respond to several of its misleading assertions, as follows:

The AHA asserts that the Nelson amendment would "apply an arbitrary flat cap on hospital revenues". . . .

The truth is, the Nelson amendment is neither arbitrary nor a "flat cap". Rather, it builds upon the Talmadge bill (S. 1470 as it amends H.R. 5285) approach, which the hospitals support, and which compares the routine costs of hospitals only with other hospitals of similar size, type and location. Even if standby controls in the amendment trigger in, each hospital affected by those controls would have a different limit, based upon its own routine cost experience, and also upon the rate of inflation in the "market basket" of goods and services purchased by hospitals. As a result, efficient hospitals—those with lower routine costs—would be permitted a higher increase than inefficient hospitals—those with higher routine costs.

The AHA asserts that the Nelson amendment would "undermine the voluntary effort". . . .

The truth is, far from "undermining" that effort, the amendment probably presents the best opportunity for the voluntary effort to succeed. Unlike the original Administrative bill, the amendment recognizes and adopts the voluntary effort as its central element. There would be no mandatory controls if hospitals succeed—on either a national or statewide basis—in holding down their cost increases by 2 percentage points in 1978 and 4 percentage points in 1979 through 1982 below the rate of increase in 1977 (estimated by the American Hospital Association to have been 15.6%). This is the very goal set by the hospital industry itself, under the sponsorship of the American Hospital Association, the Federation of American Hospitals, and the American Medical Association.

Moreover, even as high as they already are, the voluntary goals could be adjusted upward under the amendment whenever the overall rate of inflation increases significantly. In other words, the voluntary goal need never be *less* than 1½ times the overall rate of inflation, as measured by the GNP. That seems as generous a legislative response as the hospitals have any reason to expect.

The AHA asserts the Nelson amendment would "establish a massive Federal bureaucracy for control". . . .

The truth is, while the current HEW bureaucracy is already "massive" by any standards, this program would actually add very little to current government personnel requirements. Indeed, for the most part, the day-to-day operations of the program would be in the hands of Medicare fiscal intermediaries—a group consisting of Blue Cross, Aetna and other carriers, not Federal employees. Such carriers would be expected to need just 276 additional employees on a nationwide basis to administer this program. And the total $11 million administration costs estimated for this program (of which over $5.5 million would go to intermediaries and nearly $2 million to a one-time cost of developing the hospital classification system) compared with the potential savings of $34 billion over 5 years may make it the single most cost effective regulatory effort in HEW history.

The AHA asserts that the Nelson amendment "disregards the needs and differences of individual hospitals" and "does not include any specific bases for exceptions" other than "the discretion of the Secretary" . . .

The truth is, this assertion fails to recognize a number of specific exceptions written into the amendment, including the outright exemption of hospitals with fewer than 4,000 admissions; of hospitals in which Health Maintenance Organizations account for more than 75% of the patients; and of psychiatric and tuberculosis hospitals. Although these exceptions account for more than half of all hospitals in the country, they account for less than 10% of total hospital costs. In addition, the amendment incorporates specific hospital-by-hospital exceptions (Sec. 2 of H.R. 5285), such as for underutilized hospitals if they are needed in underserved areas, or for hospitals with atypical case-mix, e.g., unusually elderly population. Nor does the AHA assertion account for the the extremely lenient State exceptions permitted, whereby even if the national voluntary effort fails, all hospitals in any State would be exempt either if the State meets the national voluntary goals or if the State has in effect a cost containment program of its own that meets or exceeds the national goal. Moreover, the amendment specifically exempts all new hospitals from the voluntary program, by defining "hospital" as a hospital which has had a Medicare agreement in effect in all calendar quarters since 1975; such hospitals are also exempt for at least two years from the standby, mandatory controls. Finally, giving the Secretary discretion to develop other exceptions, especially after the new Commission has analyzed the needs in this area, by no means indicates (as the AHA implies) that such authority would never be used.

The AHA asserts that the "wage pass through" in the Nelson amendment "could lead employees to expect wage increases which hospitals could not afford" . . .

The truth is, there is simply no such implication contained in the "wage pass-through" provisions of the amendment. In effect, these provisions remain absolutely neutral on the subject of potential wage increases—neither giving hospital workers a blank check to demand inflationary increases nor permitting hospitals to use the threat of controls to deny employees' legitimate requests. The amendment is neither pro-labor nor anti-labor—it simply leaves both parties in the same collective bargaining position they would be in in the absence of controls. The amendment does not include overtime wages or shift differentials in the pass through".

The AHA asserts that "the amendment grants additional, broad authority to the HEW Secretary (such as . . . imposition of the revenue 'cap' on hospitals even though the voluntary effort is successful" . . .

The truth is, mandatory controls could not be imposed unless the voluntary effort fails, on the national average.

The AHA asserts that it is improper to consider controls on "a single component of one industry in our economy" . . .

The truth is, this particular "single component" is significantly different from virtually every other "component" of the economy—in ways which basically require us to respond to them as a separate element. Hospitals account for far and away the largest and most inflationary component (over 40%) of health care costs, which themselves have been more than twice as inflation-prone as the rest of the economy. This sector is characterized by an almost complete absence of direct consumer responsibility for either the goods which are purchased or the price of those goods (91% of the bills are paid by someone other than the patient). Moreover, in no other industry not subject to tight regulatory controls does the government pay over 40% of the costs. Finally, it is simply not true that other isolated components of the economy are not also subject to serious scrutiny (and even controls)—many segments of the energy industry, freight and passenger transportation of all kinds, and telephone services and other utilities, spring immediately to mind.

The AHA asserts that the Nelson amendment (or any other controls) would force hospitals to "reduce or cut back needed health care services" . . .

The truth is, this assertion is perhaps the most misleading allegation in the whole AHA letter. Under the amendment, there would be no Federal controls at all if the hospital industry simply meets its own voluntary goals. I believe it is safe to assume that the AHA would not have set such goals—nor would the AMA have also endorsed them—if the "quality" of health care would suffer.

And finally, the AHA asserts that "most would agree" that standby controls such as in this amendment are "inherently inflationary", and would lead to "inflationary, anticipatory increases", and that the problem "already is being addressed through the voluntary efforts of the health care industry" . . .

The truth is, the most inflationary aspect of the amendment is that it never requires the "voluntary" effort to reduce hospital inflation more than 4 percentage points below the 1977 rate (15.6% according to AHA) in order to avoid mandatory Federal controls.

As for the notion that hospitals will artificially inflate their prices in anticipation of standby controls, I believe that the argument flies in the face of the very nature of the amendment. For it is only by *avoiding* unnecessary increases during the voluntary period that hospitals will guarantee that the standby controls will not trigger in. If some hospitals prove to be so irresponsible that they unnecessarily increase prices despite the threat of mandatory controls, however, limits under such controls would still be adjusted on a hospital-by-hospital basis in comparison with all other hospitals in the same category, meaning that some or all of any earlier unnecessary increases would simply not be factored into the limits. Moreover, under the stand-by controls, any hospital that exceeds the voluntary limit would have an additional penalty, which would be a reduction in their maximum allowable increase by 1 percentage point for every percentage point that the hospital had exceeded the voluntary goal. Finally, with regard to the assertion that the voluntary effort will be sufficient, one need only look at the claims made in 1974 by the hospital industry before economic stabilization controls were removed. At that time, the hospital industry asserted that it would keep the lid on costs without controls. However, as soon as controls were lifted, hospitals costs jumped to more than twice the rate of inflation in the rest of the economy. On March 20, 1974, for example, the same Alexander McMahon who signed the AHA letter mailed to Senators on August 11, told the Health Subcommitee of the (then) Labor and Public Welfare Committee that:

"We do not think the allegations that Dr. Dunlop has made about the health industry

are fair or supportive of the need for continuation of health controls, and that it (the termination of controls) will not lead, as he is suggesting, to huge mushrooming of prices and costs in the health industry."

"All responsible parts of the health industry, hospitals, doctors, and other providers of care, know that if we were to be irresponsible, as we will not be, we would bring down on your heads tremendous pressures for even more oppressive regulatory measures than we have suffered through under the economic stabilization program."

And in another hearing at that time before the Commitee on Banking, Housing, and Urban Affairs, Senator Johnston asked McMahon "What kind of bulge would you expect if we took controls off immediately?" McMahon replied:

"I have heard the answer to that given in various figures of the 2 to 3 percent area. I should think, because of the other controls that exist, it would be less than it would be in the rest of the economy, because the rest of the economy wouldn't be subject to these other constraints that come to bear on hospitals.

"Very clearly, being aware what has happened, what happened after Medicare and Medicaid enactment in 1965, the AHA, working through our system of State hospital associations, would be *doing everything that we could to bring to the attention of the hospitals the need to avoid certainly any unnecessary bulge* that would follow the elimination of controls." (Emphasis added.)

Despite the AHA's promises and predictions, total hospital costs rose by 17.6% in 1975, the first full year immediately following the lifting of controls. Only since the introduction of the Administration's cost containment bill early in 1977 has there been any downward trend at all in the rate of hospital inflation—which proves, directly contrary to the AHA's current assertion, that the only way any voluntary effort is going to work in this sector is if it is backed up by the threat of mandatory controls.

The overriding and incontrovertible fact, which the American Hospital Association does not address, is that the amendment guarantees that more than $30 billion in inflationary costs will be saved over five years—that this money which comes out of taxpayers' private and public pockets; and which impacts heavily on the overall rate of inflation and the ability of Federal, State and local governments to balance their budgets and reduce taxes.

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AMERICAN HOSPITAL ASSOCIATION'S COMMENTS ON THE NELSON AMENDMENT TO H.R. 5285

The Nelson amendment, which will be offered to the Talmadge bill reported by the Senate Finance Committee as H.R. 5285 on August 3, has many basic and serious defects. Its most fundamental problems for hospitals would be the following:

1. The amendment would authorize wage and price controls on a single segment of one industry. Experience has shown that such controls are inequitable and counterproductive.

2. Wage/price controls, on a standby basis, are inherently inflationary because they lead to protective, anticipatory increases. Thus, they would undermine and be destructive of the Voluntary Effort to contain health care costs.

The Voluntary Effort, which has brought together physicians, hospitals, consumers, insurers and others, is succeeding. The latest American Hospital Association Hospital Panel Survey data show that, for the first five months of 1978, the rate of increase of hospital expenditures decreased 3.3 percentage points when compared to the same period in 1977.

3. Federal operation of the control structure required by the Nelson amendment would result in a massive new bureaucracy. Although a "cap" is a simplistic response to a complex problem, the mechanism for its implementation would be extremely complicated and would require the development of elaborate and costly methods based upon data and indices that do not presently exist.

4. The amendment promises wage increases to nonsupervisory personnel, but the wage increase pass-through would not include important elements of hospital wages such as shift differentials, overtime, and other fringe benefits. Thus, this promise could lead employees to expect wage increases which hospitals could not afford.

5. The amendment would impose a flat "cap" on all hospitals, thus ignoring the legitimate differences among institutions and their needs. Further, such a "cap" would most severely penalize efficiently managed institutions.

6. The amendment does not include specific bases for exceptions, but rather would leave the development of any exceptions criteria to the discretion of the Secretary of HEW. It even fails to recognize the grounds for exceptions that are identified in the Talmadge bill.

7. The amendment grants additional, broad authorities to the HEW Secretary on the strength of which he could make sweeping decisions without statutory limitation or guidance. Some examples of such authority are:

Imposition of the revenue "cap" on hospitals even though the Voluntary Effort is successful;

Determination of whether to recognize state-administered cost control programs without any opportunity for state appeal of such decisions if they were negative; and

Determination of what adjustments, if any, would be made in the revenue "cap" as a result of changes in the number of hospital admissions.

Further, there are numerous and serious technical defects in the Nelson amendment, including the following:

Although the amendment appears to establish an upper limit of payments at 115 percent of the average per diem routine costs for hospitals in each classification group, it would not, in fact, do so. The amendment provides that the computation of the group averages would exclude from consideration *all* costs in the previous year in excess of 115 percent. Under this methodology, it has been estimated that over 30 percent of all hospitals could be paid below their actual costs. Further, in the Western region of the United States, almost two-thirds of the hospitals could be reimbursed below their costs.

The amendment would retroactively apply a revenue "cap" if the mandatory program was initiated after 1979.

The evaluation of the success of the Voluntary Effort would not take into account the impact of unanticipated changes in the general rate of inflation.

The amendment requires that 50 percent of any hospital incentive payments be made to employees regardless of the reasons for the hospital's lowered costs.

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SUMMARY OF NELSON AMENDMENT TO H.R. 5285

The proposed amendment is intended as a compromise between the mandatory, immediate Federal controls contained in the Human Resources Committee-reported bill, and the limited Medicare/Medicaid, routine cost, approach in H.R. 5285. Current estimates are that this amendment would save between $30 and $35 billion over the next five years, compared to $50 to $60 billion for the Administration/Human Resources bill and less than $500 million for the Talmadge bill approach. Basically, the amendment expands upon, rather than substitutes for, the Talmadge bill and consists of three major parts.

1. A New System for Reimbursing Hospitals. The amendment would not alter the general approach of the Talmadge bill for revising reimbursement for routine costs under Medicare/Medicaid. The new mechanism, to be effective July 1, 1979, would provide for incentive reimbursement—rewarding hospitals whose routine operating costs are below average, and penalizing hospitals whose routine operating costs are substantially above the average. Hospitals would be classified; and target rates for costs would be established for types of hospitals based on the "market-basket" cost of goods and services and on areawide wages. (See page 3, Report No. 95–1111 to accompany H.R. 5285.) Several minor modifications to Section 2 are included in the Nelson amendment that would result in increased cost savings (see items 5 through 8 in Section-by-Section Analysis, Congressional Record, p. 26422).

2. Recognition of Voluntary Effort. The amendment would statutorily recognize that the hospital industry itself may be able to bring overall hospital cost increases under control through voluntary efforts. The amendment adds a new subsection to Title XVIII of the Social Security Act, which sets out the voluntary goals as proposed by the industry. Those goals apply to hospitals in the national aggregate, rather than individually. They call for cost increases (other than those arising from increases in the average hourly wage rates for nonsupervisory employees) to be held to 2 percentage points less in 1978 and 4 percentage points less in 1979 through 1982 than the rate by which such expenses increased in 1977 (15.6%).* However, in order not to unfairly penalize hospitals for increases in inflation for which they aren't responsible, in no case would the goals need to be less than one and one-half times the increase in the GNP deflator.

A new Health Facilities Cost Commission created by the Talmadge bill would be expanded, and it would be charged with oversight of the voluntary effort, and with determining whether it has succeeded.

3. Mandatory Controls. If, in any year, the national voluntary effort fails to meet its announced goals, standby, mandatory controls would go into effect for the following year (except that if the voluntary effort fails for 1978, such controls would take effect July 1, 1979). Even if the national voluntary effort fails, however, hospitals would be exempt from controls in any State which, on the aggregate, meets the national goals, or which has in effect a State cost containment program at least as comprehensive and effective as the Federal program.

The standby controls would involve limitations applicable to all costs and all payors. They would limit the allowable rate of increase on a hospital-by-hospital basis to a percentage derived from: (1) the increase in routine costs allowable under the Talmadge bill; (2) the increase in general wages in the hospital's area; and (3) a "market basket" index of increases in the goods and services normally purchased by hospitals. No arbitrary or single "cap" would be imposed. Maximum allowable costs would vary by individual hospital. All hospitals with less than 4,000 annual admissions would be exempt from either voluntary or mandatory controls. (That represents slightly more than one-half of the nation's hospitals but affecting only about 12.4 percent of total hospital expenditures.)

Increases beyond the limits would not be paid by Medicare and Medicaid, for either ancillary or routine costs. With regard to private payors, any excess paid by such payors following the imposition of controls would be required to be held in escrow until returned to payors in the form of rate reductions.

The percentage limitation would be subject to adjustment to take into account excessive increases in the prior year, changes in the volume of admissions, and a manda-

*Estimate of 1977 hospital cost inflation

tory "pass-through" of increases in the wage rates of nonsupervisory employees. The wage "pass-through" would be at the option of States that had previously established cost containment programs and were exempted from any mandatory controls. It would be required of States that desired to start new cost containment programs and were exempt. The Secretary would be authorized to issue appropriate regulations to define terms, provide exceptions and guard against attempts to avoid the intent of the limits.

COMPARISON OF ESTIMATED SAVINGS UNDER VARIOUS HOSPITAL COST CONTAINMENT PLANS

| | | Estimated savings | | | | |
|---|---|---|---|---|---|---|
| | | | | Senator Nelson's amendment | | |
| | Hospital revenues under current law (billions) | Administration bill—If effective Jan. 1, 1979 (billions) | Senator Kennedy's bill.[1]—If effective Oct. 1, 1978 (billions) | Voluntary program (billions) | If voluntary program fails in 1979, standby program effective in 1980 (billions) | Sec. 2 of Senator Talmadge's bill (millions) |
| 1978 | $54.5 | | | −$0.4 | −$0.4 | |
| 1979 | 63.0 | −$2.2 | −$2.8 | −2.0 | −1.7 | |
| 1980 | 72.7 | −5.2 | −6.4 | −4.0 | −3.4 | −$6 |
| 1981 | 83.5 | −9.9 | −10.7 | −6.3 | −6.7 | −70 |
| 1982 | 95.2 | −15.9 | −16.5 | −8.4 | −9.5 | −122 |
| 1983 | 107.6 | −22.6 | −23.2 | −10.2 | −12.3 | −175 |
| Total | 476.5 | −55.8 | −59.6 | −31.3 | −34.0 | −373 |
| Total for medicare and Federal medicaid | 178.9 | −18.7 | −29.0 | −11.5 | −11.6 | −373 |

[1] Estimate of Senator Kennedy's bill done by the Congressional Budget Office, the estimate indicates a relatively higher savings under medicare and medicaid because the CBO projected higher current law growth rates for the Federal programs, resulting in greater savings upon application of the limit.●

## OPPORTUNITIES PRESENTED BY MEXICAN OIL

●Mr. KENNEDY. Mr. President, the lead editorial on the August 19th edition of "The New Republic" deserves special attention from Members of the Senate. The editorial comments on the probable existence in Mexico of enormous quantities of oil, perhaps as much as 150 to 200 billion barrels. It then discusses the question of whether administrator planners in fashioning the National Energy Plan in 1977, took this potential into account in telling us that the world might well run out of oil by 1985.

The editorial then going on to talk about the potential of Mexican oil breaking the "special hold" that the Saudis have on the United States and calls for the establishment of "something better than the small 'special relationship' that exists between the United States and Saudi Arabia—an 'extra special relationship' perhaps." I endorse this call for an effort to establish a policy which favors, if at all possible, Mexican oil over Saudi Arabian oil and makes possible a shift of our political and economical dependence upon one country at least to two or more when it comes to a resource so important as oil.

While not endorsing every part of the editorial, it contains a very clear statement of the problem and of the opportunities which await the United States as we seek to understand how to deal with the potential good that this oil resource can achieve for both the United States and Mexico. It concludes with the following thoughtful paragraph which I endorse:

There are obvious opportunities here for tradeoffs, but the negotiations will have to be conducted delicately and at a high level in both governments. President Carter should consider appointing an experienced and prestigious official to a special office for U.S.-Mexican relations. But, first the Administration should decide how it wants relations between the countries to proceed. One thing that U.S.-Mexican relations surely could use is a change in people's attitudes on both sides of the border. The United States cannot treat a rich Mexico with contempt. And Mexicans need no longer remain paranoid about the "colossus of the north." U.S. public attitudes toward Mexico are less likely to change, however, if the U.S. government persists in keeping Mexican oil wealth an official secret.

Mr. President, I ask that "The New Republic" editorial be printed in the RECORD.

The editorial follows:

[From the New Republic, Aug. 19, 1978]

OIL OF OLÉ

The U.S. government has been keeping a secret with enormous implications, but now it's out: Mexico apparently has petroleum reserves of 150 billion to 200 billion barrels, making it an oil power potentially greater than Saudi Arabia.

The CIA has known about Mexico's vast potential reserves since 1976, but two administrations have concealed this information from the American people and from Congress, apparently to avoid undermining energy policies premised on scarcity and foreign policies based on nuzzling the Arabs.

High officials in the departments of Energy, State and Treasury now confirm that Mexican potential reserves are huge, and some of them even admit the deception. But they claim that the Carter administration took Mexico's resources fully into account when fashioning its "moral equivalent of war" energy policy, which anticipates a world oil shortage by the mid-1980s or 1990.

Carter's foreign policy is designed to insure that Saudi Arabia will produce enough oil to overcome the shortages. But these high-level assurances are disputed by subordinate officials, who assert that Mexican reserves never were factored into Department of Energy computer studies of world oil supplies and prices until last month.

Apparently, the people who make policy in the Carter administration did "take account" of Mexican reserves—but quickly dismissed Mexico's potential production as being of minor importance to the world's energy outlook.

The administration seems to believe that Mexico and its state-owned oil company, PEMEX, lack the equipment, the technical ability and the political will to produce more than four or five million barrels of oil per day by 1985. Saudi Arabia, by comparison, is pumping 7.5 million barrels a day now and has the capacity to produce 11.5 million.

The administration is counting on the Saudis to increase their production capacity to at least 12 million or 14 million barrels a day. Some experts contend it will take 18 to 23 million barrels a day of Saudi oil to save the industrialized world from collapse in the mid-1980s or early 1990s.

We do not think that Mexico's reserves mean the administration can drop its conservationist energy policy or tell Saudi Arabia to go jump in the Persian Gulf. But there is evidence that Mexico's potential production in the next decade has been underrated. Conservation reserve-to-production ratios used in the oil industry suggest that Mexico might be able to produce 10 million barrels a day by 1985 or 1990.

Some Mexican government officials anticipate that production will indeed rise to these levels. If it does, Mexican petroleum could be an important factor in holding down world energy prices and in reducing the West's dependence on Saudi Arabia and other OPEC sources.

Right now there is an oil glut. If we play our cards right, there need never be a shortage. This means the special hold the Saudis have had over us can be broken. The United States should be doing what it can to encourage Mexican production. It has been doing so in some ways. But in other ways it has done just the opposite. The Department of Energy's veto of a major US-Mexican natural gas deal this year is a notable example.

The administration seems not to have thought very hard, at any very high level, about the opportunities that Mexican oil presents and about the implications for US-Mexican relations. Besides lowering oil prices and diversifying our sources of oil, development of Mexico's oil riches could help to alleviate the poverty in that country and reduce the flow of illegal immigration into the United States.

The opportunities, along with Mexico's proximity, suggest that Mexico and the US should develop something better than the "special relationship" that exists between the US and Saudi Arabia—an "extra-special relationship," perhaps.

There are plenty of problems in the way. The most serious is a climate of suspicion in Mexico fostered by years of US exploitation, discrimination and aggression. So far President Carter has not even ordered a "Presidential Review Memorandum" on US-Mexican relations, as he has done on other important foreign relations issues. We think the subject is worth at least that.

Critics of the Carter energy policy (including some within the government) contend that concealment of CIA data on Mexican reserves is part of some nefarious grand design. Some accuse the administration of being so obsessed with "neo-Malthusian" scarcity theories that it is driven to suppress evidence suggesting that the world really has abundant supplies of oil—not only in Mexico, but in Iraq (which also may possess reserves as big as the Saudis') and elsewhere in the third world.

Others charge that the administration is so intimidated by Saudi Arabia that it is afraid to explore rival energy possibilities. Still others see evidence of collusion with the major oil companies, which have no access to Mexico. The Mexican revolution nationalized oil production in 1938 and kicked foreign companies out. Still other critics say the administration is unwisely committed to a policy of higher, not lower, energy prices—possibly to encourage domestic production and bring on alternative sources like coal gas.

Without proof, we are not inclined to accept conspiracy theories, but it did nothing for our faith in the administration's credibility or its motives to be told by a high-ranking DOE official that CIA data on Mexican reserve were concealed from the public and the Congress because "these are areas where people can lose their lives." Getting energy data—even for the CIA—is not a high-risk occupation.

We sympathize up to a point with administration contentions that it would have been undiplomatic for the US government to publish figures on Mexican oil that would have been wildly different from the Mexican government's own figures, especially on a topic as uncertain as potential oil and gas reserves. Ever since it got caught making oil claims in the 1960s that didn't pan out, Mexico has been extremely cautious, even secretive, about its estimates. Even now, PEMEX's official statement of wealth includes "proved" reserves of 16 billion barrels (expected to be revised to 18 billion or 20 billion within a few months), plus "probable" reserves of 31 billion, for a total of only about 50 billion. By comparison the CIA puts Saudi Arabia's oil reserves—proved, probable and potential—at 150 billion barrels.

Officials at Treasury, DOE and State confirmed last week that the latest U.S. estimates of potential Mexican reserves are in the range of Saudi Arabia's proved reserves. One Treasury oil expert said it is commonly believed in the oil industry that Mexico's potential may run as high as 200 billion barrels, and some estimates go as high as 280 billion barrels.

A top official in DOE said he has seen upper-limit estimates for Mexico that run as high as 300 to 325 billion barrels, but that he considers estimates of 100 to 160 billion as reliable. He said that figures like these have appeared in secret government reports for at least two years. "There's no news in these numbers," he said. A former national security aide to President Ford confirmed that the CIA began reporting "enormous" Mexican reserves in 1975 or 1976.

The Mexican government has been speedily upgrading even its own cautious estimates. Before 1972, when PEMEX began exploring its Southeast oil fields, Mexico set its reserves at only 3.5 billion barrels. In the six years since then, the certified figures have risen by more than 360 percent. Alvaro Franco, an expert on PEMEX at the International Association of Drilling Contractors in Houston, says that all the Mexican figures are "extremely cautious and ultraconservative."

He explained that there are about 350 known oilbearing geological structures in two of Mexico's newly discovered petroleum areas in the Southeast. They are waiting to be drilled and tested. In the Bay of Campeche alone, there are 200 identified structures. Ten of these have been drilled and eight have turned out to be producers. He said the oil is being found in geologic pockets so thick that each one contains large quantities.

If the "tremendous success" the Mexicans have had in drilling since 1972 continues, he said, then the country has "way, way more" than the 100 billion to 120 billion barrels of petroleum that some Mexican officials privately acknowledge as their estimate of potential reserves.

Even if Mexico turned out to have only 60 billion barrels of oil, it could have a major impact on the world energy market. The oil industry considers it conservative to plan on producing one barrel of oil a year for every 20 barrels of estimated reserve. By that measure, Mexico could easily pump out eight million barrels a day—half a million more than Saudi Arabia produces right now. Mexico actually produces 1.3 million barrels a day, and is working to increase output to 2.2 million by 1980.

In spite of Mexico's potential, both the Ford and Carter administrations seem to have made deliberate decisions to discount Mexican oil in charting U.S. energy and foreign policy. Having made this decision, these planners seem to have decided to keep quiet about the Mexican reserves in order to avoid having the figures available to refute their judgment. Why did the energy planners decide to ignore Mexico?

A former Ford administration official said that the CIA information came in too late for the Republicans to do much with it. He said the policies of former Mexican president Luis Echeverria did not give much hope for expanded Mexican production or cooperation with the United States. President Carter has developed much warmer relations with Mexico's current president, José Lopez Portillo, who is regarded as a businesslike planner and administrator. But administration policymakers still seem convinced that Mexico can't or won't produce up to its potential.

The "Mexico can't" school prevails at high levels of DOE, where some officials believe that only a U.S.-style integrated oil company can move quickly to develop oil fields like those in Mexico. One DOE executive bluntly disparaged PEMEX's ability to manage the job. He spoke of the "Mexican theology of not allowing oil companies to meddle with the national patrimony." He said, "Given the limitations of PEMEX, to put it kindly . . . you're just not going to see the kind of dramatic impact that those reserves figures would indicate."

PEMEX does not have the managerial know-how, the "systems approach" and the new technology that the major companies have. The Chinese, this official said, are going about things more sensibly by inviting in Western companies as partners. The Mexicans, because of their stubborn hostility toward oil companies, probably will be able to produce no more than four or five million barrels a day by 1985. Needless to say, the major U.S. oil companies see things the same way.

Other U.S. officials belong to the "Mexico won't" school. They say there are powerful political pressures in Mexico to develop oil production slowly, even though 51 percent of Mexico's workers are unemployed at least some of the time and it takes 800,000 new jobs a year to keep the unemployment rate from rising.

The Mexican elite, which enjoys a share of national wealth as disproportionate as any in the world, is not interested in rapid, inflationary and socially dislocating growth. Leftists want to keep Mexico's oil riches in the ground, where they think it will increase in value over time. The leftists especially do not want Mexico to produce its oil to satisfy the appetite of the United States.

There is still another school in the administration, which holds that Mexico inevitably will produce up to its capacity—provided that the United States' actions do not create a Mexican political backlash. "It's like a fruit tree," said a State Department official. "If you don't shake it too hard or too fast, pretty soon you'll get nice fruit.

There is a natural symbiosis here. We are Mexico's natural market for oil. They are our natural supplier. If we play it cool, a nice relationship could develop naturally. But we could mess it up if we are too eager to tell them what to do."

Since it is obviously in the US national interest for Mexico to produce as much as possible, what should the United States do? We already are offering capital and such technical expertise as Mexican pride will permit it to accept. We also ought to avoid botches like last year's natural gas fiasco.

PEMEX and a group of American companies thought they had concluded a deal to build a pipeline across the Texas border and move Mexican natural gas into the US, only to have it aborted by the US Department of Energy. Administration officials acknowledge that domestic US considerations forced the action.

The American companies and PEMEX agreed on a price of $2.60 per thousand cubic feet, which is more than domestic US gas producers are paid and more than Canadian exporters get. If the deal had gone through, Congress certainly would have rejected President Carter's energy plan, which calls for US gas producers to get $1.90 per thousand cubic feet.

American officials claim that negotiations with Mexico will resume when—and if—Congress enacts an energy bill. But meanwhile, Mexico is offended and has decided to use its naural gas for domestic utilities, industries and even city buses.

If the United States wants more energy production from Mexico, there are things that Mexico wants from the United States. These include free immigration across the Rio Grande and lower trade barriers against Mexican agricultural commodities. There are obvious opportunities here for tradeoffs, but the negotiations will have to be conducted delicately and at a high level in both governments.

President Carter should consider appointing an experienced and prestigious official to a special office for US-Mexican relations. But, first the administration should decide how it wants relations between the countries to proceed. One thing that US-Mexican relations surely could use is a change in people's attitudes on both sides of the border.

The United States cannot treat a rich Mexico with contempt. And Mexicans need no longer remain paranoid about the "colossus of the north." US public attitudes toward Mexico are less likely to change, however, if the US government persists in keeping Mexican oil wealth an official secret.●

## "A NEIGHBORHOOD FAMILY IN MIAMI"

● Mr. CHILES. Mr. President, isolation, impaired mobility, growing health problems, distant and inadequate health services, lack of power and resources to improve substandard housing conditions, decreasing communications networks, loss of friends and family, decreasing opportunities for productive activities—and overall, financial resources too meager to make changes: These are just a few of the complicated and interacting problems which creep up on many older Americans until, one day, despair may begin to set in.

Without help, without resources, there is not much an older person can do.

And there are not many options available. In case of illness there is always the hospital or a nursing home. And there may also be a nursing home for those who cannot afford to live independently any more.

Some older Americans are a little luckier—there may be a special apartment available in a congregate housing program with assistance and services readily available. Or there may be a special day health center or multipurpose senior center close enough to serve as a contact point for friends and services.

It takes a concerted effort by many people and different services to make much of a difference. As a recent article appearing in Aging magazine puts it:

The phenomenal growth of the elderly population in the U.S., and particularly in Miami, Florida, has forced health professionals to face the reality that there will never be enough Federal dollars or professional personnel to effectively reach every elderly person requiring assistance.

I would like to share this article with my colleagues, because it also describes a unique solution in Miami.

A "neighborhood family" has been created in which elderly living close together have banded together to organize their own programs and provide assistance to each other. The "family" receives professional assistance and services from the Jackson Memorial Hospital and its community mental health service.

It is an example of a very direct attack on basic problems and it offers lessons for similar action elsewhere. I ask that the article from "Aging" magazine be printed in this RECORD.

The article follows:

THE NEIGHBORHOOD FAMILY

(By Hilda K. Ross and The Neighborhood Family)

The phenomenal growth of the elderly population in the U.S. and particularly in Miami, Fla., has forced health professionals to face the reality that there will never be enough Federal dollars or professional personnel to effectively reach every elderly person requiring assistance.

In 1974, the staff gerontologist of Jackson Memorial Hospital's Community Mental Health Service became interested in testing a new organization model—the Neighborhood Family. This would allow the elderly to identify their own personal and environmental problems, and then resolve them with a minimum of funds and professional staff. They believed that the elderly should act as both the planners and consumers, with the staff working as a liaison between The Neighborhood Family members and community agencies. Thus, the elderly would have a direct impact on the distribution of resources by letting agencies know what they, as a group, wanted for their community.

The program's objective was to educate a group of older people to be the primary agents in altering the negative social and environmental conditions in their community. Through the group learning process, other basic needs of the elderly would also be met: the need to be needed, to be part of a community group, and to be recognized as effective people.

The word "Neighborhood" was chosen in order to enlist individuals from an area which *they* defined geographically and psychologically as their neighborhood. The word "Family" was chosen because it implied a bond of similar values. It was felt that older people, most of whom have lost their relatives, would adopt a surrogate family and rely on it for reciprocal friendship and support.

The Neighborhood Family is staffed by the Community Mental Health Service (CMHS), but the Neighborhood Family itself is much more than the Jackson Memorial Hospital (JMH) Community Mental Health Clinic because it belongs to the people rather than to JMH. The Family developed within the JMH-CMHS framework, but the members choose to be autonomous.

The Northside Neighborhood Family Services was formed as a non-profit incorporated organization with its own Board of Directors drawn from the Neighborhood Family membership. The Board formulates the Family's policy and programs subject to approval by The Neighborhood Family membership. Staff advise and help the members to carry through on their decisions.

A WAREHOUSE BECOMES A CENTER

Selection of a site for The Neighborhood Family began with demographic surveys of neighborhoods in the inner-city areas of Miami and Dade County which had large concentrations of elderly persons. The most suitable site seemed to be a low-income trailer park development near a large shopping center. This area had the highest crime rate in Dade County, few services provided by agencies, limited recreational and educational facilities that were nearby, and minimal social interaction between the elderly beyond shopping. An informal survey also indicated a wide range of personal and environmental problems.

Since transportation was frequently mentioned as a problem, it was decided that a facility close to the target population was necessary. With no budget, the burden of housing rested on the community. The Northside Shopping Plaza had the most traffic. The management was approached, and within a month, a huge warehouse was offered with free rent and electricity. The Family cleaned, painted, and furnished it themselves.

One person carried out the initial contact with residents by knocking on each trailer door and explaining The Neighborhood Family concept of working together "as a Family confronting problems most older people seem to have." An interview was conducted to explore the needs of each individual and the community. By using this approach, a climate of positive expectation and individual involvement and commitment was created and continues to be a strategy for encouraging participation. In a period of 10 weeks, 27 elderly persons expressed an interest in the project and came to the first meeting.

Data from the Assessment of Needs survey were presented to the members at the first meeting in the facility.

The next six weeks involved learning the names, telephone numbers, and services provided by community agencies. Twice a week, some 25 other people met at the facility to plan for two panel discussion meetings involving various agency heads who would provide information on services available to The Neighborhood Family. Through this process, the elderly learned organizational skills as well as the selection and protocol techniques needed in contacting appropriate agencies.

It took 10 weeks from the first meeting for a group of elderly people to turn the warehouse into a Center, identify themselves and their purpose, plan and execute two large panel meetings, form an administrative body, and prepare a program for an Open House.

Although a staff was offered by the JMH-CMHS, the staff gerontologist chose to work alone at first. During the initial four months, no staff or agency personnel were there to impose preconceived notions of how to work with older people.

There were no agencies to extend services, no operating funds, and no administrative structure to contend with. It was important for the members to see themselves as the only participants who would transform the theoretical model into a functioning Family.

The Neighborhood Family continues to be understaffed. Aside from a full-time director, there are two part-time nurses, a full-time social worker, and secretary. Six hours of psychiatric time are available to The Neighborhood Family from the JMH-CMHS. The Family survives with the help of volunteers from the membership. Five volunteers each work 38 hours a week, and 20 volunteers work from 2 to 37 hours a week.

ALL RACES, ALL AGES BAND TOGETHER

Although the area defined as The Neighborhood was in the trailer parks area, we discovered at the end of the first year that only 70 percent lived in the trailer parks. Another 24 percent lived in small private homes in areas beyond the parks. Those 50–59 years of age represent 12 percent, while those 60–69 make up 31 percent of the membership. The 70–79 age group comprises 20 percent and the 80 and over group, 9 percent.

The youngest member is 28 years of age and the oldest is 93. Eighty-five percent are white Americans; 6 percent are Black. There are very few Spanish-speaking members. However, we are seeing an increase in the number of Black elderly women, both American Blacks and Bahamian, and in the number of Asians, particularly Filipinos.

Thirty-five percent of the members have lived in Miami for less than 10 years, but 54 percent have lived in the same neighborhood from 11 to 30 years. This large group represents the elderly who did not join the flight from the inner-city. The majority live alone, and 43 percent are married. Most of the members say they had "some high school," and 27 percent finished high school.

Originally 65 percent of the members had telephones; this dropped to 56 percent at the beginning of the second year and is still dropping. We are notified of telephone cutoffs each day. When The Neighborhood Family opened, 52 percent indicated that they had cars. This has dropped significantly as insurance rates have sky-rocketed in Dade County and as members can no longer afford to maintain a car.

A levelling off is occurring as more affluent residents choose to go elsewhere, leaving The Neighborhood Family to those "who really need it."

One of the major problems cited by the Family members is poor health. Sixty-eight percent indicate that health "prevents them from doing what they want to do." Sixty-six percent are under care for their medical problems. Eye problems, arthritis, heart trouble and hypertension are leading complaints. Reasons cited for not seeing a physician include: "It's not bothering me now," "finances," "can't find a suitable doctor," and "transportation."

In the first year, participants listed their major concerns in this order: health, money, and a desire for a better self-image. At the end of the second year they listed health, crime in the neighborhood, and finances.

DEALING WITH THE PROBLEMS

Residents who were helped with a problem usually became active in the Center and used it for social support as well. However, there were others who, for reasons of ill health or similar problems, could not come and yet supported the idea of working together "like a family." A network system was initiated in the trailer parks for these individuals. Its purpose was to keep a record of new people moving in, to communicate information quickly, to be in close contact with individuals needing services, and to

keep residents informed of center services and activities.

During the first year, weekly outdoor meetings were held on a member's patio in one of the four trailer parks. This laid the groundwork for dealing with larger environmental problems within the trailer park and provided a base for collective problem-solving. After a year the environmental problems were resolved, but residents continued to be in close contact with The Neighborhood Family. They were already in the habit of contacting The Neighborhood Family for help with everyday problems and crises, and for companionship and social activities.

This year, the network meetings have been reactivated in another trailer park which the entire Neighborhood Family membership, including policy and agency personnel, identified as one of the worst crime areas in the Neighborhood Family community. Their specific objective is to "Reclaim Your Neighborhood" and the project has the approval of the trailer park owner, manager, and many residents who were already Neighborhood Family members.

Elderly members are presently offering very young mothers help with child care. Their problem list for future action is long, including removal of a dope-peddling ring, drunkenness, noise, and finally, crime.

HEALTH SERVICES

The Neighborhood Family provides supportive and preventive community health care. With the aid of the nurses, social worker, and "the friendly Family place," crises in health care have been largely eliminated. The Well-Adult Health Program in The Neighborhood Family now includes screening, health interviews, lectures, blood pressure and weight checks, health counseling, home visits, and an exercise program.

Project members eagerly talk to the nurses and look forward to the health interview and blood pressure reading. However, only half of them comply with instructions or referrals. Some noncompliers voice the fear of a disability being discovered, believing that they will be rejected and forced into isolation if people knew they were not well. Some have had unsatisfactory experiences with clinic services. Others say they just want "to go it alone." In some instances, it took a year and many interviews to identify the salient problems. Eroding the resistance of noncompliers is a continuing effort.

The nurses make home visits and hospital calls. Their persistence after two years is finally paying off. Members have begun a regular exercise program at the center, and they urge others to "see the nurse," "to go to your doctor," or "take care of yourself." There are lines for blood pressure checks. Members accompany one another to a nearby primary health care facility. Healthy older members look out for the sick.

SOCIAL SERVICES AND COUNSELING

The Neighborhood Family provides direct and referral services involving personal economic and environmental assistance. These include food stamps, the Senior Companion Program, SSI, housing, counseling, and legal aid. Hot meals are served daily at the Neighborhood Family Center and to the nonambulatory at home.

Individual and group therapy are provided by Family members and professional staff, along with continuing evaluation by the psychiatrist and nurses.

Social activities include discussion groups on the development of mutually supportive activities. Thursday morning membership meetings, neighborhood improvement meetings, network systems meetings, bi-monthly trips, parties, and bingo sessions. Nothing is superimposed from above. Members continue to hold weekly meetings and to express their ideas and desires. The Board of Directors plans programs based on these ideas and members vote on the programs.

One idea which has been carried through to completion was the Italian Day, which was such a success that a Middle East Day was planned.

Public officials have also been brought in to address the Neighborhood Family group on concerns voiced in the Thursday membership meetings and on such issues as garbage fees, insurance rates, and crime. This has led to feelings of personal worth and effectiveness among the members.

The scheduling of events or programs reflects the interest and energy level of the members. The members, director, social worker, or nurses may contribute ideas for activities, but the development of a program is a mutual effort. The Family paces the "life" of an event whether it is an hour, a day, a week, or a month.

BUDGET

Based on the staff-service ratio of The Neighborhood Family, this community-based program offers a structure for serving large numbers of individuals at minimal costs. Direct care services, that is, medical, psychiatric, and social services, were given to 650 people from July 1975 to July 1976.

This number generated 2,500 encounters per month at a cost of $24 per member per year. This figure does not include 1,440 people who came into the Center for recreational, educational, and special events. Contributing to the low cost is the volunteer labor of 27 members and the rent-free, electricity-free facility.

SUMMARY

We have described what can be accomplished in a two-year period in a low-income neighborhood composed of residents with multiple physical, psychological, social, environmental, and economic problems. Quasi-familial bonds and community action have developed in an area of social decay, mutual suspicion, apathy, and hopelessness.

The Neighborhood Family differs in the most fundamental sense from other service providers because it is not under the aegis of an agency extending its services to its constituents. It is free to develop its own services.

The Neighborhood Family is a community-based and community-administered body which utilizes the services of professional personnel working as members of the Family, not apart from its "staff." The elderly participants are the decision-makers who function as peers with the professionals.

The Neighborhood Family can supplement programs in senior centers, in churches, and in community mental health centers. It warrants replication in rural areas, and with other ethnic groups.

In its third year, The Neighborhood Family model continues to prove the hypothesis that older people living in the community can work together as a Family to reduce stress from personal problems and environmental conditions.●

## CONTROVERSIAL NUCLEAR DEAL

● Mr. PELL. Mr. President, all Americans concerned about the dangers of nuclear proliferation should be encouraged by the reported termination of the arrangement under which France would provide a nuclear reprocessing plant to Pakistan.

While I can appreciate the frustration of Pakistan's leader, Gen. Mohammed Zia al Haq, in having this major program stopped by France, I hope that the leadership of Pakistan can understand how so many people believe that this decision was the right one for Pakistan and will be of major importance in efforts to control nuclear proliferation elsewhere. It would be very unfortunate if Pakistan were to react by maintaining a determination somehow to go ahead with a reprocessing plant through some other means. As testimony given to the Committee on Foreign Relations has made clear, a national nuclear fuel reprocessing plant simply does not make economic sense for Pakistan.

Much of the credit for this reported outcome should go to a former colleague, Senator Stuart Symington, who sponsored in 1976 an amendment to the Foreign Assistance Act of 1961. The Symington amendment required termination of all military and most economic assistance to any state delivering or receiving nuclear enrichment or reprocessing equipment, materials, or technology, unless multilateral auspices and international management were applied when available and a recipient country entered into a full-scope safeguards agreement with the International Atomic Energy Agency. As my fellow Members are aware, enrichment and reprocessing under national auspices under unsafeguarded conditions are key to the development of nuclear explosive devices.

The amendment was accepted by the Committee on Foreign Relations and the Senate. With the strong support of other Senators, including our late colleague, Senator Hubert H. Humphrey, the Senator from New York (Mr. JAVITS), and the Senator from Ohio, (Mr. GLENN), who argued strongly for the Symington amendment, the amendment was accepted in conference.

The Symington amendment was a key initial effort to control the spread of nuclear proliferation. Since then, the Congress has approved the Glenn amendment to the Foreign Assistance Act of 1961 which expands the scope of the Symington amendment. The Congress earlier this year passed the comprehensive Nuclear Non-Proliferation Act of 1978.

The countries most immediately concerned with the effects of the Symington amendment were Pakistan and Brazil. As chairman following Senator SYMINGTON of the Arms Control Subcommittee of the Senate Committee on Foreign Relations, I have made it a particular point to follow closely developments in Pakistan and Brazil. Clearly, at some point, the provisions of the Symington amendment would have been triggered and Pakistan would have faced a formal cutoff of U.S. military and economic assistance.

No one, of course, desired such a disruptive event in the relations between Pakistan and the United States. On the other hand, the threat of nuclear proliferation is so severe that it was clear that the Symington amendment would have to be enforced if the deal between France and Pakistan were not stopped.

Fortunately, the deal is off, according to General Zia, and it will be possible to resume normal aid relations with Pakistan.

Mr. President, I ask unanimous consent that the full text of the August 24 Washington Post article on this matter be paneled in the RECORD following my remarks.

The article follows:

[From the Washington Post, Aug. 24, 1978]

PAKISTAN SAYS FRANCE KILLING CONTROVERSIAL NUCLEAR DEAL

(By Milton R. Benjamin)

Pakistan announced yesterday that France has backed out of an agreement to provide it with a nuclear reprocessng plant that would produce plutonium suitable for use in manufacturing an atomic bomb.

The announcement, made by Pakistani ruler Gen. Mohammed Zia al Haq at a press conference in Rawalpindi, represents a major triumph for the Carter administration's nuclear nonproliferation policy.

The administration hoping for an additional piece of good news in the next couple of weeks in the form of a decision by South Africa to sign the nuclear nonproliferation treaty.

France's decision not to go through with the Pakistani deal is also expected to bring new pressure on West Germany, which has sold a pilot nuclear reprocessing facility to Brazil.

West Germany is now the only country still planning to go ahead with plans to provide a nuclear reprocessing facility to a Third World nation.

Officials in Bonn insist they have no intention of cancelling the Brazilian sale, but U.S. sources feel Germany may in the end decide to proceed "as slowly as possible" in providing the reprocessing equipment.

Gen. Zia, in announcing the French decision said, he had been informed that France was backing out of the agreement in a "very polite" letter from President Valery Giscard d'Estaing.

"In military terms, we would say that although it was full of sentiment, it was a lemon," Zia said.

In Paris, the government confirmed last night that Giscard had sent a letter to Zia concerning the deal but suggested that the French president had once again offered to amend the original deal to provide Pakistan with a nuclear co-processing plant.

Both types of plant take the spent fuel from nuclear power stations and produce fuel that can be used again. But while a reprocessing plant yields plutonium suitable for weapons, a co-processing facility would not separate the plutonium from the uranium. This mix could not be used in fashioning a nuclear bomb.

Pakistan, while insisting that it has no intention of developing a nuclear weapons capability, has adamantly rejected France's efforts to substitute the co-processing facility and has insisted that Paris honor the contract signed in 1976.

This insistence has led many observers to conclude that Pakistan's primary motivation is to gain the capability to join subcontinent rival India—which exploded an underground atomic device in 1974—as a nuclear power.

These suspicions are buttressed by the fact that few experts in nuclear energy accept Pakistan's arguments that it needs the facility to supply a network of nuclear power plants.

At present, Pakistan has only one atomic power plant in operation, and one other plant in the works. It seems unlikely to have the dozen or more required to make a reprocessing facility economically viable until at least the middle of the 21st century.

The French decision not to go through with the sale to Pakistan marks a final turnabout from the course undertaken by the government of former Prime Minister Jacques Chirac, which also had negotiated to sell a reprocessing facility to South Korea. U.S. pressure on the Korean government was a major factor in aborting that deal.

France and West Germany later announced that while they intended to honor their contracts with Pakistan and Brazil respectively, they would not sell additional reprocessing facilities to Third World nations.

French officials say that since Chirac's departure, France has taken a much more serious view of the nonproliferation implications of the spread of nuclear technology. Giscard has been trying to gracefully back out of the Pakistani deal for some time.

But the Carter administration, with its emphasis on nuclear nonproliferation, certainly deserves "considerable credit for the whole major change that has taken place in world sensitivity" to this issue, one U.S. expert outside the government noted yesterday.

The administration official who has led the nonproliferation effort, Deputy Undersecretary of State for Security Assistance Joseph Nye, took pains to emphasize yesterday that the reprocessing deal is "a matter between France and Pakistan."

But both the United States and Canada have brought pressure on Pakistan in an effort to persuade it to cancel the deal.

The Carter administration last October informally cut off all but food aid to Pakistan, and has not signed any new aid agreements with it since that time.

Canada, which built Pakistan's only operating power plant outside Karachi, also announced in late 1976 that it was ending its nuclear cooperation with Islamabad and would not supply uranium fuel for the facility. As a result, the plant has been operating at less than 70 percent of capacity.

Canadian officials hailed news of the French decision yesterday.

The Carter administration's hopes that South Africa will shortly agree to sign the nuclear nonproliferation treaty grow out of a visit to Pretoria by top U.S. nuclear negotiator Gerard Smith earlier this summer.

Smith, according to informed sources, outlined to the Pretoria government a proposed method for international inspection of uranium enrichment facilities that could be used in safeguarding South Africa's pilot enrichment plant at Valindaba.

South Africa has long expressed concern that subjecting the Valindaba plant to inspection would result in piracy of its secret uranium enrichment process.

The United States, in an effort to persuade Pretoria to sign the treaty, has been holding up a shipment of highly enriched fuel needed to operate a South African research reactor. South Africa also is seeking U.S. fuel for two nuclear power reactors scheduled to go into operation in the early 1980s.●

## THE RAFSHOON TORPEDO

● Mr. GARN. Mr. President, because the Congress has the constitutional authority and responsibility to restructure the priorities of the executive branch and to pass legislation as they see fit, President Carter has reacted with a temper tantrum in vetoing the defense authorization bill, primarily stemming from bad White House advice. Coming at a time when the Soviets are underway to be a Navy second to none, our President has cut back on our naval shipbuilding program while promising to have naval forces at sea to support important American goals and objectives.

The President's veto of the defense procurement bill follows extensive work by both the Senate and House Armed Services Committees and expanded testimony by both civilian and military experts. His allegation of irresponsibly voted money for a carrier that was supported at the expense of NATO is yet another distortion of the truth. In fact, this bill would have:

First, added to the number of tanks to be modernized for the Army;

Second, added funds for an infantry fighting vehicle;

Third, added funds for the Army tank gun program done in cooperation with the German Government; and

Fourth, added study funds for a theater mobile ballistic missile to counter the ominous Soviet SS–20.

There still remains the confusion of the President apparently not knowing the difference between the authorization bill, which sets programs, and the appropriation bill which expends money.

The Soviet Navy today outnumbers the U.S. Navy in ocean-going surface ships, nuclear and strategic missile submarines, as well as other vital categories of surface elements. In addition, the Soviets have recently completed their second aircraft carrier and a 20,000-ton nuclear-propelled battle cruiser. To complete this measure of threat, the Soviets are presently allocating more than half of their supersonic Backfire jet bombers to the Red navy.

It is difficult to ascertain all the reasons for our sad decline in naval sea power, but in the pursuit of a strong national defense, President Carter's recent salvo at the Navy based on superficial or specious facts points once again to consistent bad advice.

The Wall Street Journal of August 24, 1978, presents a thoughtful profile as to the reasons why the President vetoed the defense procurement authorization bill, and I ask that it be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Aug. 24, 1978]

THE RAFSHOON VETO

President Carter's veto of the defense procurement authorization is everywhere interpreted as part of a new "get tough" act, the practical incarnation of media adviser Gerald Rafshoon's efforts to massage the President's sagging poll ratings. The veto would have helped Mr. Carter's competency rating more if he had not clouded the issue in monumental confusion, including confusion about what the bill he vetoed actually contained.

To cut through the clouds, it's necessary to keep in mind two simple facts. First: while Mr. Carter objects to the congressional decision to spend $2 billion on a nuclear aircraft carrier, his administration has already announced plans to include a large oil-burning carrier in its next budget request. The whole issue is, merely, this year or next year, and conventional or nuclear? Second: There is a difference between authorization bills, which set programs, and appropriations bills, which spend money. Mr. Carter vetoed the defense procurement authorization. The Pentagon appropriations bill has not yet been completed by Congress.

This elemental parliamentary distinction was entirely overlooked in Mr. Carter's charge that Congress is building the carrier by "diverting funds away from far more important defense needs." Among the congressional items to which he objected, for example, was a supposed cut of $500 million in military operational funds. But operational funds are not dealt with in the defense procurement bill; if this was the President's problem, he vetoed the wrong bill.

Doing the President one better, Defense Secretary Brown complained that Congress had killed three anti-submarine ships. There is a dispute over the appropriations for these ships, with the House on one side and the

Serate on the other. But whatever the eventual appropriation, the ships were included in the defense procurement bill. Secretary Brown complains about Congress killing ships that were in fact in the bill his chief just vetoed.

Now, within the context of the procurement authorization, it's true that despite $1.9 billion for the aircraft carrier, the congressional total was close to the President's original request. About half of the funds came from rather ordinary changes: the Army reporting it could not spend money on its new XM-1 tank as fast as it originally thought; Congress's decision that it could both save money and improve the NATO tank force faster by upgrading more existing M60A1 tanks and producing fewer new M60A3 tanks than contemplated in the original administration request.

The other half of the carrier money came from funds originally requested for the Trident submarine program, but which cannot be spent in this year's bill because of delays. With the Trident program delayed, and with the administration poised to order up a new carrier next year, Congress is merely saying, let's use this idle money and get the carrier started now.

There remains the issue of what kind of carrier. In passing, it should be noted that in light of the latest studies it is far from clear that large carriers are especially vulnerable. They can sustain hits from Soviet cruise missiles that would atomize small carriers, which have their magazines above water line. Large ships also make sense in light of electronic battlefield management, which promises a defense capable of shooting down attacking missiles. But this debate is beside the immediate point, since the White House has requested no small carriers. Indeed, the bill Mr. Carter vetoed provided more research funding for small carriers than he requested.

It is also unclear that oil-powered carriers save money. They are cheaper to build, but more expensive to fuel. Over the lifetime of a ship, it is difficult to see much difference in total cost. Congress prefers the nuclear carrier because it has better performance, being unencumbered by a train of tankers to refuel it every few days. The administration prefers a conventional carrier, saving money on construction now but spending more on operations later. And over this difference the President is willing to veto the entire procurement bill, inviting further controversy and delay that may hinder the improvements on which he and Congress agree.

In order to escalate this minor quarrel to veto proportions, President Carter launched an attack on Congress that seriously distorts the record. Sen. Stennis rose on the floor to complain, in what is for him strong language, of the administration's "false facts." The Senator was too much of a gentleman to say it, but we will: This is not a case of the Congress being soft on national security, but of the President dallying with defense in pursuit of cosmetic politics. The defense procurement bill was vetoed not because of any large difference on substance, but because it was the first bill to come along after Mr. Rafshoon whispered in the President's ear that he could look "strong" by vetoing something.●

## EQUAL RIGHTS AMENDMENT

● Mr. MUSKIE. Mr. President, tomorrow is the 58th anniversary of the adoption of the 19th amendment to the Constitution, the women's suffrage amendment. The years which preceded adoption of that amendment saw the growth and development of a "women's movement," and the 19th amendment was their symbol of social equality.

Today, 58 years later, a strong new women's movement is fighting for another amendment to the Constitution, the equal rights amendment. That amendment has become a symbol of social equality for the women of today.

The amendment is the subject of great controversy in the States which have not yet ratified, and in some States which have. As a supporter of the equal rights amendment, I believe the case for it is clear, even obvious. I hope those States which have not ratified will do so quickly.

And most importantly, I hope that the women—and men—who have fought so hard and so persuasively for the equal rights amendment, first in Congress and for the past 7 years in the States, will resolve on tomorrow's anniversary to keep up the fight until it is won.

I am concerned that the question of the 7-year time limit suggested by the 92d Congress has obscured the debate over the equal rights amendment, diverted the energies of supporters and created a controversy which may well be empty of meaning.

The fate of the equal rights amendment still lies in the hands of those legislatures which have not yet approved it. I urge supporters of the amendment to redouble their efforts in the States, and concentrate on convincing three more legislatures of the need to ratify the amendment.

The Congress finds itself in a curious postion, which the framers of the Constitution either did not foresee, or thought so improbable that the question was never addressed.

We are debating deadlines as if amending the Constitution were some sort of sports event, with four quarters or three periods or nine innings. The development of a Constitution by the people is and must be a more dynamic and sensible process than that.

To make matters worse, the question of a deadline for ratification of the equal rights amendment has run up against a "deadline" the Congress itself has imposed for adjournment this fall. Perhaps it is the pace of modern society which makes these ad hoc days on the calendar seem like a solid brick wall blocking the road to ERA. A closer examination, I believe, will expose the deadline as a mirage.

The Constitution sets no such deadline or time limit in article V, which describes the method of amending the Constitution. The framers made no reference to time limits when debating the article. And the Congress set no time periods for ratification for nearly 130 years until 1917, when it proposed the 18th amendment.

Even then, a time period was proposed mainly in response to approval by the Ohio legislature of a long-forgotten amendment proposed 80 years earlier.

The Supreme Court has given only limited guidance on the question of deadlines. The Court's major pronouncements have been these:

That the ratification procedure ought to be "succeeding steps in a single endeavor," and "sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period * * *";

That the Congress may set time limits:

And that the question of a reasonable time for ratification is one which may be addressed "in the presence of certified ratifications by three-fourths of the States."

It seems to me the Supreme Court has felt that the question of amending the Constitution is closely intertwined with the political and social climate of any given period. While the passage of generations before adoption is probably not a reasonable time, some other period might well be reasonable. And it is the Congress which makes that decision.

The key question is not what the Congress does next month, or before next March. The key is getting the approval of the legislatures. Regardless of our decision on a time period this year or next, the Congress almost certainly will be confronted with the questions of timely ratification again, after three more legislatures ratify. Regardless of whether Congress acts now, it certainly could declare then that ratification had in fact occurred.

And anyone who might wonder whether the question of ERA is alive need only observe the events of tomorrow's anniversary. The fact of the controversy itself is persuasive evidence that ERA is a live issue ripe for action.

I hope the question is settled in favor of the equal rights amendment. Whether or not we act this year to extend the time period, the passage of days will not end the hopes of equal rights amendment supporters.

When the Senate is given an opportunity to extend or eliminate the time limit suggested 7 years ago, I will support that approach. I do not believe it is necessary. Nor is it likely to finally settle the question of what constitutes a reasonable time.●

## UNITED STATES RELATIONS WITH CHINA

● Mr. McGOVERN. Mr. President, the August 1978 issue of the American U.S. relations with China written by the distinguished Senator from Utah, my friend JAKE GARN, and by me. I ask that these views be printed in the RECORD.

The articles follow:

[From the American Legion Magazine, August 1978]

OPPOSING VIEWS ON A QUESTION OF INCREASING IMPORTANCE: SHOULD THE U.S. NORMALIZE RELATIONS WITH RED CHINA?

(By Senator George McGovern)

"YES"

In 1972, President Nixon signed the Shanghai Communique, committing the United States to normalizing relations with Peking (mainland China). Since then, Presidents Ford and Carter have endorsed this commitment. More than 100 nations—all of our major allies—recognize Peking. Polls show a majority of Americans favoring normalized relations. However, we remain the only major power with diplomatic links with Taiwan instead of Peking.

The establishment of diplomatic relations with Peking is vital to our national interests. Let us look at two examples.

China has sought our support in the U.S.—U.S.S.R.—People's Republic of China power triangle. Peking's shared objectives to restrain Moscow has added flexibility to our strategic capacities in Korea, Southeast Asia, the Middle East, Africa and Europe. Recognition of Peking will secure and expand our leverage. Failure to do so with responsible expediency can only lead to a renewal of mistrust and hostility.

Peking is already an important trading partner with many of our allies. Peking's economy is one of the world's largest. By the year 2000, its Gross Domestic Product is expected to equal well over $1,000 billion and its trading capacity will have quadrupled. There are mutual economic benefits in increased trade. For example, one-fourth of the human race lives in the PRC; 80 percent are involved in agricultural production at a level similar to ours in 1815. Consequently, China would like to buy U.S. machinery, grain and agricultural commodities. U.S. agricultural exportation is a multi-billion dollar industry, employing 1.2 million Americans. The trade potentials in agriculture, as in other spheres, are substantial. Until we normalize relations, we will continue to lose this world market.

The benefits of normalizing relations with Peking do not mitigate our commitment to Taiwan. The substance of our relationship will essentially remain—only the form will differ. We should make a unilateral statement opposing aggression against Taiwan, assure its access to self-defense supplies, and encourage Peking to indicate unilaterally it peaceful intent toward Taiwan. Additionally, we will continue to develop economic and other nondiplomatic relations with Taiwan following our recognition of Peking.

A realistic evaluation of Peking's objectives indicates its desire for peace with Taiwan. Peking lacks the military capability for a confrontation and doesn't want to jeopardize a Sino-American alliance. Peking needs grain, trade, technology and credits which are contingent upon a sound relationship with Japan, Western Europe and the United States. Finally, Peking desires that we change the form of our relationship—they accept our continued economic and other non-diplomatic relations with Taiwan.

Since 1972, each President and Secretary of State has affirmed that normalizing relations serves the interests of our nation, East Asia and the world. I concur with this conclusion and would support the proper legislation to insure it.

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"No"

(By Senator JAKE GARN)

The United States should not "normalize" relations with Communist China—if doing so would mean the abandonment of Taiwan. In view of our longstanding and mutually beneficial ties with Nationalist China, I think it is up to the "normalizers" to explain what advantages would flow to the U.S. by shifting our allegiances in that critical area of the world. I can see none.

For the foreseeable future, Communist China would not be a major trading partner. In its present state of underdevelopment, the mainland has no foreign reserves with which to buy our production. Any trade would have to be financed with loans from the U.S. Government. We would be buying our own goods with our tax money.

We would be forced to abrogate important treaties and understanding to the detriment of our credibility in the world. The People's Republic of China has just reiterated its intention eventually to establish control over Taiwan, and has repeatedly said that "normalization" must involve the abandonment of Taiwan. Were we to acquiesce, we would destroy the last shred of credibility we have in the Far East. The Communist influence in that part of the world would be irresistible.

It is true that Communist China can serve as a counterweight to a growing Soviet threat, and that is a positive advantage that should be exploited. However, there is no indication that "normal" relations are a prerequisite to increased competition between the Soviet Union and Communist China. There is already mistrust between the two nations, and that can most easily be exploited by a United States acting forthrightly and confidently.

In fact, there is some evidence that the Communist Chinese maintain respect for us to the extent that we do act positively. When we yield too quickly to every demand made to us by great power rivals, we reduce our own weight and status in the world. It is likely, in my opinion, that we command more respect from the Communist Chinese by pursuing our own interests in the Far East, including support for Taiwan, than we would by adbandoning a longtime ally. Communist China is interested in using us as a counterweight to the Soviet Union. Might her rulers not conclude, if we were to abandon Taiwan, that we are an untrustworthy ally? And might they not seek rapprochement with the Soviets?

I have no objection to the establishment of relations with Communist China, providing that can be done without breaking relations with Taiwan. In fact, I propose that we make that offer. If the Communist Chinese do not like it, that would be their problem. The actual establishment of relations with the two countries may involve some risks to Taiwan, but I am convinced that the problems can be worked out to mutual advantage.●

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## SEATTLE'S EXAMPLE TO THE COUNTRY

● Mr. KENNEDY. Mr. President, I call to the Senate's attention a recent article in Public Power magazine on how one of the Nation's leading cities has chosen energy conservation as the most environmentally and economically sound ways of supplying its future energy needs and ask that it be printed in the RECORD.

Three years ago Seattle's municipally owned electric utility, City Light, asked the city council for approval of a plan to buy additional power capacity from three proposed nuclear powerplants. Instead of rubberstamping the request, the council opened up one of the most interesting and instructive decisionmaking processes of any community, large or small. Over 14 months, 12,000 Seattle citizens participated in the decision about how the city would get additional power.

In the end the citizens chose conservation as Seattle's new power source. Although not traditionally thought of as a source of power, achieving energy efficiency can frequently result in more available energy and lower cost than any new supply source. Half of Seattle's growth up to 1990 will come from conservation.

If every electric utility followed the example of Seattle City Light, and each city and public utility commission followed the example of Seattle's City Council, we would be well on our way to reducing the need for increased oil imports, prohibitively expensive central powerplants, and unproven synthetic fuels. As Seattle has shown, allowing local residents to make decisions on what type of energy policy is best for them will be the cornerstone for any future national energy policy.

The article follows:

[From the Public Power, July/August 1978]

SEATTLE'S "ENERGY 1990": CONSERVATION AS GENERATION

(By Joan Whiley)

Seattle City Light's year-long study, "Energy 1990", has been termed one of the most comprehensive ever undertaken by an electric utility. Energy 1990 involved a programmatic review of load forecasts, generation alternatives, energy economics, environmental impact and conservation.

Three consulting firms worked on the project as well as City Light staff; a Citizens Advisory Committee labored for months prior to advising the Seattle City Council of its recommendations; the City Council undertook lengthy public hearings. Finally in July, 1976, the City Council selected conservation as the favored energy source through the year 1990 in lieu of participation in two projected nuclear plants.[1]

Specific conservation goals and programs were adopted by the Seattle City Council to offset average energy growth by 230 mw by 1990. The 230-mw goal means that Seattle must satisfy nearly half its normal growth by conservation. At the present time, the Seattle system has a current average load of about 900 mw and a peak load of just over 1,500 mw. The conservation target is to be achieved by reducing residential average load growth by 85 mw, and industrial and commercial average load growth by 145 mw.

Main emphasis of the energy 1990 decisions is on conservation as a resource. However, accurate load forecasting and development of contingency generation play key roles in the planning process.

For contingency generation, Seattle City Light is concentrating mainly on hydro which the Council specified as the preferred source. Evaluation of Copper Creek, a fourth dam proposed on the Skagit River, is being conducted at a high level of effort and assessment is being made of all feasible hydro sites throughout the state of Washington. Coal options are also under investigation.

City Light is currently working with a second generation econometric model to develop both short- and long-range forecasts. Econometric models present a distinct advantage in their sensitivity to independent factors or variables.

CONSERVATION GETS TOP PRIORITY

The conservation program, which has been given top priority by Seattle City Light Superintendent Gordon Vickery, involves virtually every discipline and organizational entity in the utility. Focal point is the Office of Conservation.

The program now consists of over 30 projects concentrating on residential energy savings; commercial/industrial conservation; education/community outreach; and conservation research, development and demonstration. An additional category covers a range of project activities from in-house conservation and participation on the municipal energy task force, to tracking energy conservation legislation, conservation grants, application and grants management.

In October of 1977, the Department of Energy awarded Seattle a grant of $375,651 for the first five years of a demonstration utility conservation program. The six proj-

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[1] Development of the "Energy 1990" study was described by Ms. Whiley in an earlier article in *Public Power*, Nov.–Dec. 1976, pages 20–22.

ects included in the program are: neighborhood workshops and residential audits; revision of electrical service requirements; bank financing of the insulation program; energy management information system; hourly load prediction system; and analysis of the legal authority of the city to require that energy consumption of a home be disclosed at time of sale. This grant was one of 10 awarded nationally for pilot conservation demonstration by utilities.

The severe drought of 1976 to 1977, which affected the entire Northwest, imposed an immediacy to the entire conservation program that had not been anticipated. As generating utility with a 90 percent hydro base, Seattle City Light was heavily impacted by the water shortage. From a self-generating capability of 70 percent, Seattle was reduced to 53 percent. The difference was made up by outside power purchases at costly thermal rates. The utility goal had been an accumulation of 17 mw per year through 1990. Due to the severe drought, a voluntary curtailment program was initiated for a 10 percent reduction in consumption.

The immediate need was to develop public awareness and a mood of public urgency. Numerous programs were promptly initiated for consumer information, energy audits, media advertising and development of an employees' speakers bureau.

ADS ATTRACT ATTENTION

City Light embarked on an aggressive program by radio, television and newspaper advertising. Themes were catchy, clever and funny. They got public attention.

Radio spots featured a husky-voiced woman describing the benefits of a shorter shower; a housewife greeting her weary husband with a martini and low lights to discuss—energy conservation. Television spot commercials were similarly designed to be humorous attention-getters. Newspaper advertising included photos of an energy hog, a power junkie, and infrared photos of a home dissipating thermal energy.

The City Energy Office, working in cooperation with the Conservation Office, initiated a program for reduced lighting on arterials and reduced energy use in municipal buildings. Public display materials were another necessity, with formal City Light exhibits appearing in Home Shows and street fairs.

The public awareness portion of City Light's conservation program was a turbulent and creative period. It involved interfacing with schools, community groups, industrial and commercial organizations, professional groups and citizen groups. It required a mixture of humor and an adventurous, creative management mood; it also took management vision since its success meant sharp, short-term revenue reductions.

By the end of 1977, the entire program yielded the remarkable savings of nearly half a billion kwh.

Since the drought ended in the fall of 1977, City Light has returned to the long-term conservation effort. Heavy promotion has been replaced by emphasis on customer contact, neighborhood-based projects and research and development.

Substantial savings will be achieved by adoption of amendments to the City's structure-related codes. Over 100 mw of load growth should be saved by the use of energy efficient building standards. Substantial progress has been made in this area, however, interaction of the many parties involved necessitates a slow and steady pace.

RESIDENTIAL AUDITS CONDUCTED

The residential audit program which was initiated early in 1977 involved the training of 80 employees to conduct energy surveys of customer homes in line with regular duties of inspection of high bill complaints and answering appliance service calls.

Later in the year, the audits were extended to include installation of a water heater insulation jacket at cost, lowering the water heater thermostat, selling 40-watt and 60-watt bulbs for 25 cents to replace specific higher wattage bulbs and giving away free shower head flow restrictors. This service, again greatly expanded by the Department of Energy grant, now includes an in-depth survey of each home.

Working in tandem with the audits is the concept of home energy workshops which is being researched through the Department of Energy grant. Focus on the home workshop is on neighborhood groups and on the strong localized structure of Seattle communities.

A neighborhood "host" home is volunteered and a City Light energy checker gives a walk-through audit of the home for the host and neighbors. Emphasis is on low-cost and easily accomplished conservation measures. "How-to" information and brochures are distributed. Goal of the workshops is to combine fun with instruction and engender a feeling of neighborhood togetherness in conservation projects. Workshops are held both days and evenings. Still in its initial stages, the project will be fully operational in the fall.

Also tying into neighborhoods is the thermograph project. During the winter of 1976–77, Seattle City Light contracted for an infrared flyover of its 131-square-mile service area. The thermograph photos have been made available to the public through displays, public libraries and fire stations, through the home workshops and through the community workshops where they have been the main drawing card.

Located in church and school auditoriums, 14 community workshops have been held thus far. Workshop attendance has been as high as 800, and as low as 30 persons, depending on the community structure. Emphasis is on hands-on materials, do-it-yourself projects and interpretation of individual thermographs by City Light staff.

SEMINARS HELD FOR BUSINESSES

Energy management seminars have played a key role in training commercial and industrial businesses in the application of basic management principles toward the development of their individual energy conservation programs.

To date, 14 seminars have been conducted by City Light staff to train 160 commercial and industrial customers. Success of the seminars spread and the Washington State Energy Office contracted with the utility to hold sessions for personnel of other utilities throughout the state.

To address the issue of outdoor decorative lighting, a Citizens Task Force was formed to develop recommendations. The downtown business community also contributed. Result was the drafting of a holiday lighting brochure which outlined some conservation-oriented guidelines and the creation of some innovative ideas for energy efficient ways to observe the festive season.

Employee awareness, one of the prime motivating factors of any program and essential to utility credibility, has not been overlooked. Quarterly briefing sessions to all employees by specially trained peers, plus a number of incentive and involvement projects have served to keep City Light personnel up to speed on conservation and energy issues.

As energy information center with hands-on materials, brochures, how-to material, advisory personnel and a bicycle generator to equate electricity with human energy use, is in full use in the customer lobby.

SENIOR CITIZENS AIDED

Possibly one of the more rewarding conservation programs has been that of providing low-income senior citizens with insulation. Through this program, senior citizens whose income was under a certain specified amount and who had electric heat received, free of charge, an inspection of their home and installation of insulation with necessary retrofit. A post-insulation inspection was also provided.

Insulation has been provided to over 380 home owners who have written letters of appreciation and gratitude for both the visit and audit by City Light personnel and the fact that their homes have been made far more livable.

To prove that conservation begins at home, City Light embarked on a comprehensive internal program to reduce its own energy consumption through reduced lighting levels, revision in lighting controls, replacement of incandescent lights with more efficient lighting sources, reduced building space, and refinements in system operation.

Conversion of the utility's main building to a heat pump system had dramatic results. The system demonstrated total energy consumption of two-thirds that of the original steam heat from a central downtown plant with cooling via a conventional chiller. Electricity consumption in the building was reduced by 76%. There was a 24.9% overall savings in electricity used in the facilities and distribution system.

Research and development also play a key role in the conservation program. Several studies are in progress. Project Weathervane was initiated in 1975 to determine the efficacy of sun and wind in providing electricity in Seattle.

Weathervane features flat plate collectors, a heat pump, and a six-kw wind powered generator, installed in a typical single-family residence. During nearly two years of operation, the solar heating system has supplied 47% of the energy required for space heating in the home during the winter, while wind power has supplied less than 10%.

A low cost solar collector heat pump demonstration project is under study at Seattle Fire Station No. 13 to supply energy for heating domestic water. This solar heating system has the potential to collect significant heat under rainy or cloudy conditions, with the heat pump refrigerant functioning as the solar panel working fluid. Less expensive and lighter than systems using flat plate collectors, its design eliminates all need for cover glass and insulation.

Recently Seattle City Light received a Department of Energy grant to proceed with a biomass project in conjunction with the University of Washington.

The utility is also in the business of awarding grants or contracts to communities. One R & R project involves neighborhoods in competing for grants or contracts for up to $5,000 for innovative and workable conservation projects. Eligible projects could be exhibits, do-it-yourself classes, inventions, or cooperative work projects. Main criteria are the involvement of 10 or more persons in the project and demonstrated benefit to a specific neighborhood.

As Seattle City Light's conservation program evolves, it will almost surely become more complex when it begins to affect more customers and more employees.

"We perceive our conservation program as an additional source of generation as much a part of our day-to-day operations as generation from our hydroelectric plants," said superintendent Gordon Vickery. "We must still find additional sources of generation by 1989, but for us in Seattle conservation has top priority." ●

## LEADERSHIP AND FOLLOWERSHIP: ARE WE TOO REPRESENTATIVE?

● Mr. MUSKIE. Mr. President, the current issue of Newsweek contains an article by Mr. Jerry Tucker, a professor

at Manchester College in Indiana. His article, "Up Against the White House Wall," contains some provocative thoughts for all 44½ dozen of us in the Congress, and for the country. As they read the article, I hope my colleagues will not be distracted by the chuckles and belly laughs they will find therein.

Mr. Tucker raises some fundamental questions about the nature of our society and the job of being a representative of a portion of it.

I say that not because I once tried to become President of the United States, or because I have in the past offered candy to a few of my friends' children. I say it because I believe a fundamental national debate over the uses of government has already begun.

Mr. President, I ask that the article by Mr. Jerry Tucker in the August 28, 1978, issue of Newsweek be printed in the RECORD.

The article follows:

[From Newsweek magazine, Aug. 28, 1978]

UP AGAINST THE WHITE HOUSE WALL

(By Jerry Tucker)

Only two things can permanently ruin a man's reputation. One is giving candy to someone else's children, and the other is becoming President of the United States.

For almost twenty years no American President has completed two full terms in the White House. We use up presidents like hot dogs at a bowl game and the reasons go deeper than Vietnam, Watergate or walking into doors. We *like* to see the top dog get sacked.

Ritual destruction of leaders is not new. In ancient Greece the first kings were sacrificial victims. They were fattened and fondled, but come spring it was deemed necessary to slit their throats to ensure a good harvest. Likewise, the Biblical prophet Hosea wrote: "They . . . devour their rulers; all their kings have fallen."

American mythology holds that anyone's son can become President. Yet, when we discover that the seat of power is occupied by an ordinary posterior, we feel cheated. It's not that we resent an equal exalted to power; rather, we need to feel superior to whichever poor hamster is running in circles around the Oval Office.

It was bad enough that Lyndon Johnson spoke with a drawl, but when he bared the Presidential belly and picked up a basset by the ears, he was finished. Gerald Ford stumbled a lot and forgot where he put Eastern Europe. The beauty of Richard Nixon was that he fully justified our desire to kick him around.

In Jimmy Carter's case we began by pretending shock at the lust in his born-again heart. Carter has been critized for defending human rights, having too many teeth and for committing statesmanship with Panama. If Jimmy could change water into wine, the pundits would complain about the vintage.

CUTTING UP

Freedom of speech is a highly competitive business. There is intense pressure in the media to create a daily sensation, even if it amounts to nothing more than an aide cutting up in a saloon. Reporters face a constant demand to fill up blank paper on days when little has happened. Deadlines lead even the best writers to cater to the public's taste for gossip and soft-core slander.

As individuals, members of the press are decent and conscientious people. As a group, the demands of professional success cause otherwise gentle journalists to swarm at the first scent of blood. With dreams of pulitzer prices dancing in their heads, the media fraternity justifies carnivorous copy in the name of "the public's right to know." Under these conditions, it is inevitable that every President will be pilloried in the Post.

Columnists feel helpless in the face of the social diseases of poverty, racism and militarism. After all, you can't pull down a slum with a slashing expose that landlords are putting ketchup on their cottage cheese. Social problems aren't good copy and it's easier to bang out a piece on a dead President's mistress. Surrounded by social cancer, columnists are more comfortable attacking the moral equivalent of warts.

The obsession with trivia reflects popular taste. Perhaps one person in a thousand could give a coherent summary of Federal urban policy, but nine out of ten would recognize the First Brother's mug on a six-pack. The press, politicians and public do not want to face tough issues. If we took social injustice seriously, we would have to accept responsibility for doing something about it.

HEROES ON THE HILL

The failures and excesses of the imperial Presidency gave Congress a golden opportunity to expand its potency at the expense of the executive. In twelve years we have moved from passive acquiescence in the Tonkin Gulf resolution to a ranking senator's complaint that the President is "interfering" in foreign policy. The heroes on the hill have inflated their egos without demonstrating an ability to exercise responsibility.

Congress is a body composed of 535 members, every one of whom is convinced he or she deserves a larger role in national affairs. Here are 44½ dozen people who think they are personally important just because they've in Congress. Consequently, collective Congressional accountability is as improbable as finding doctors who make house calls.

Legislators can make a splendid symbolic show on hard issues and avoid the consequences. When angry farmers drove their $30,000 tractors into Washington to demonstrate their poverty, Congress passed a self-contradictory farm bill knowing the President would have to veto it. If you can't take the heat, punt.

The Congressional approach is quite practical; it recognizes that presidents go away even if problems do not. While presidents flounder for lack of support, Congressional committees huddle with special-interest and agency heads to block significant change. Presidents are expendable; buraucratic empires and campaign contributors are not.

RESPECT FOR AUTHORITY

The Founding Politicians wisely created a system in which the government cannot function unless there is cooperation between Capitol Hill and the White House. The Constitution succeeds admirably in checking ambition with ambition. Our current problem, however, is not checking power but rather the absence of effective power. By sacrificing Presidential authority to the twin gods of ego and expediency, we are left with a form of pluralistic anarchy in which neither Congress nor President can command respect.

The disrepute of government has not been created by Jimmy or Jerry or even Dirty Dick. Contempt for authority extends beyond politics to every segment and level of society. Good leadership requires followership, but our ethic for the '70s is look out for No. 1 and grab all the gusto you can get.

A nation gets the government it deserves. Self-indulgence, scapegoating and disrespect for authority are perfect ingredients for political decline. We shouldn't need a Russian hermit to tell us that a people unwilling to subordinate personal gratification to common goals has become a mob. No civilization has been able to dispense with acceptance of legitimate authority.

Staying afloat as a nation requires respect for the Presidential office. I am naive enough to trust a President until he gives me reason not to. I am cynical enough to believe that no President can singlehandedly stop organized greed, whip inflation or cure the common cold. Presidents are really not very powerful, and that's why they need all the help they can get.

(NOTE.—Tucker is a political-science professor at Manchester College in Indiana.) ●

## ASTRONOMY RATES HIGH IN HAWAII

● Mr. MATSUNAGA. Mr. President, Hawaii is well known throughout the country as a beautiful place to visit in order to enjoy its lovely beaches, balmy weather, and unique way of life. Indeed, more and more visitors travel to Hawaii each year, making tourism the State's leading industry.

Not as well known is the fact that Hawaii also has become a major center for scientific research. The University of Hawaii, as the principal research center in the State, ranks consistently among the top U.S. universities in the receipt of Federal research grants, and, in one recent year, received more money from the National Aeronautics and Space Administration than any other university in the country.

Recently, the New York Times carried an article which described the development of what is called "one of the world's most important observation sites" atop Mount Mauna Kea. I would like to share the following article which appeared in the New York Times on August 1, 1978 with my colleagues, and therefore ask it be printed in the RECORD.

The article follows:

[From the New York Times, Aug. 1, 1978]

ISLAND IN HAWAII IS BECOMING A WORLD ASTRONOMY CENTER

(By Walter Sullivan)

MOUNT MAUNA KEA, HAWAII—Here, atop the most massive protuberance from the earth's surface—the highest island mountain—astronomers from four nations are developing one of the world's most important observation sites.

Its telescopes, some already in operation, will probe the farthest observable reaches of the universe, and, closer to home, study such targets, as the atmospheres of moons orbiting Jupiter and Saturn in ways previously beyond reach.

After tests at sites around the world, many astronomers have become convinced that conditions for observation are better here than anywhere else in the Northern Hemisphere.

The summit of this volcano, 13,796 feet above the surrounding sea, is so high that clouds rarely pass overhead. Even more impotant, the air above is extremely dry, making the site ideal for infrared observations—one of the fastest growing fields of astronomy.

KEYS TO MANY MYSTERIES

Infrared wavelengths—those beyond the red end of the spectrum—are strongly absorbed by water vapor, but their observation is the key to many astronomical mysteries. The infrared telescope being built here at a cost of $6 million provided by the National Aeronautics and Space Administration has a mirror 120 inches in diameter.

Its design is much like that of an ordinary optical telescope except that it must avoid exposure of the optics to any structural surfaces that might radiate heat—that is, energy at infrared wavelengths.

The site's disadvantages include winds that sometimes exceed 125 miles an hour and a location bristling with cinder cones left by past eruptions, suggesting the possibility of another. There has, however, been no volcanic activity on this mountain for thousands of years.

The atmosphere is so thin that the astronomers do not live here and some find it difficult to do profound thinking. They commute from a base station at 9,200 feet elevation, where they can do much of their homework.

PREPARATION FOR EARTHQUAKES

Finally there are occasional earthquakes, one of which has already done slight damage. The telescope mounts have been built with the possibility of temblors in mind.

The advantages, however, are overwhelming. The site's nearness to the Equator means that most of the southern and all of the northern sky, can be observed. Astronomers sometimes have rare conditions when clearness and stability of the atmosphere make it possible to observe features only one second of arc in angular width.

Such nights occur fairly often at the Kitt Peak National Observatory in Arizona, considered an excellent site and perhaps the most extensive observing facility in the world. Here, it has been estimated that they occur three times more frequently.

While remoteness of the site is a problem for some sponsoring institutions, notably in France, almost halfway around the world, it also means there are virtually no city lights to contend with.

NORMAL STREET LAMP GLOW

Even the most remote mainland American sites are near enough to a community with sodium vapor street lamps for their glow to be scattered back from overhead. Thus every spectrum recorded from the light of the most distant object shows an overwhelmingly strong sodium line.

Here the nearest large city is Hilo, but like other shoreline communities, it is usually covered by low-lying clouds.

Mauna Kea and its twin summit, Mauna Loa, crown the largest volcanic massif on earth, rising in a gentle slope more than 30,000 feet from the Pacific floor. While Mount Everest stands 29,141 feet higher above the distant sea, its height above the surrounding land is far less.

The summit of Mauna Kea is a cluster of barren humps of volcanic debris reminiscent of a lunar landscape, but sometimes in winter it is white with snow, providing the Hawaiians with the rare experience of skiing while their fellow islanders are swimming off the beaches far below. A two-stage rope tow is operated, as well as jeep service that shuttles skiers back to the top.

The crown jewels of the summit are three great telescopes all nearing completion. NASA's infrared telescope, when finished early next year, will be operated by the University of Hawaii as a national facility.

FRANCE-CANADA PROJECT

The chief interest of the space agency is to use the instrument in conjunction with spacecraft making observations of such targets as the moons of the outer planets to determine the temperatures and compositions of their atmospheres. Infrared observations are also opening new vistas on cosmology as well as the formation of stars and planets.

The primary optical telescope, in terms of expected performance, is one with a 144-inch mirror being built as a joint project of Canada, France and the University of Hawaii. It was budgeted in 1973 at $18 million, to be provided equally by France and Canada.

Each of those countries, when the telescope goes into operation some time next year, will be entitled to 42.5 percent of the observing time. The University of Hawai, in return for providing support facilities, will use the remaining 15 per cent.

The largest telescope on the summit is Britain's 150-inch reflector, to be used for both optical and infrared work. It is a "bargain basement" instrument without the precisely shaped mirror needed for distinguishing tiny features. The mirror reportedly became available after the manufacturer had made it as an experiment. It should be in operation before the end of this year.

The University of Hawaii has been operating an 88-inch reflector here since 1970.●

## GEORGE PHINNEY

● Mr. THURMOND. Mr. President, the dedicated chairman of the Laurens County, S.C., Development Board, Mr. George Phinney, recently retired after 20 years of distinctive service.

When Mr. Phinney became chairman of the development board, Laurens County had not had a new industry for 26 years. Under Phinney's guidance, however, the Laurens County Development Board was able to attract such diverse industries as the Torrington Co., Ascoe Felts, and Josten's.

Through his tenacity and hard work, Mr. Phinney has perfromed a great service to Laurens County. During his tenure as chairman of the development board, the industries Phinney was instrumental in locating in Laurens County have created between 3,000 and 4,000 new jobs and plant investment lies between $30 and $40 million.

Although he has retired from the development board, he continues to work hard for Laurens County. He will long be remembered for the service he has performed for his county and his State.

Mr. President, in order to share with my colleagues a recent editorial in the Laurens County Advertiser concerning Mr. Phinney's retirement, I ask that it be printed in the RECORD.

The editorial follows:

[From the Laurens (S.C.) County Advertiser, Aug. 25, 1978]

RECOGNITION DUE

When George Phinney took over as chairman of the Laurens County Development Board some 20 years ago, Laurens County had not had a new industry in 26 years.

He went to work on American Lava of Chattanooga, then a sudsidiary of 3M, to get them to build a plant in Laurens. Phinney and other business leaders contacted American Lava people over a period of two years, sometimes spending one day a month, sometimes three or four days a week.

"I'll believe it when I see it," some people said about the plant. After about two years when American Lava built a small plant and hired 65 people, those same folks said "It won't amount to anything."

Today the little plant with 65 employees has become two plants of the 3M Technical Ceramics Products Division and is one of the country's largest plants.

That broke the ice and soon the Gilliland Plant came. This was followed by the Clinton Bearings Plant of the Torrington Company, our largest industry. Then Ascoe Felts located in Clinton, the Benjamin F. Shaw Plant in Laurens, St. Joe Paper Company, then Josten's, and the latest industry is Hackney & Sons of the northwestern edge of the county. And of course there is Tavern Sportswear, and possibly others that we have missed.

During the last 20 years there have been between three and four thousand new jobs created, with plant investment of between $30 and $40 million dollars, and that's a conservative figure.

Phinney retired as chairman of the Laurens County Development Board July 1, and he says that "I don't know of anything I have enjoyed any more."

But just because he has retired as chairman doesn't mean that he isn't going to continue working to help the county. "Only today," he said, one day last week, "representatives of an industry that has been looking at Laurens for over two years were in my office, and the prospects are very bright for their bringing their industry, a completely diversified one, to Laurens.

"I believe Laurens County has as much to offer new industry as any part of the United States. And it has always been my philosophy of life that every human being should at least have the opportunity to secure a good job with good pay."

Although he has had help from others, Phinney has always been the leader in getting new industry. But it was taking too much of his time from his own business, Southern Research and Development Corporation, to which he plans to devote more of his time.

A lion's share of the credit for Laurens County's growth in the past 20 years is due Phinney and he is to be commended for his long service which was given at great sacrifice of money and time away from his family.●

## STATE OF THE ELDERLY—1978

● Mr. CLARK. Mr. President, this marks the fifth time in as many years that I have shared my thoughts with my colleagues on the state of the elderly. As one who represents a State with a significant older population—in fact, one in eight Iowans are 65 years or older—I have a special interest in their needs, in their problems, and in their aspirations.

The state of the elderly—particularly as compared to the situation I found 5 years ago—is much improved. In 1973, I cited statistics indicating—

That more than 3 million senior citizens lived in poverty;

That all too many older people could not afford to stay alive because they could not afford decent health care;

That hundreds of thousands of older Americans were ill housed, ill clothed, and ill fed; and

That the burden of inadequate transportation, high property taxes, and insufficient social services fell hardest on those least able to carry it.

This Nation has made substantial progress in this decade in confronting the acute problems of the aged.

Almost 1½ million fewer older Americans now have income below the official poverty level than in 1970. Much of the improvement can be attributed to such Federal programs as social security, supplemental security income, and food stamps. In 1970, the average monthly social security benefit for a retired couple was only $169. Today, that level has increased to $400, following enactment of legislation in 1972 that substantially boosted benefits and tied future benefit increases to changes in the cost of living.

The consolidation of State old-age assistance programs into the SSI program was another significant step in reducing poverty among older Americans—even though SSI benefits still fail to provide

poor elderly persons with sufficient income.

And the food stamp program recently was overhauled to make it more available to the low-income elderly. Just a few years ago, only 18 percent of elderly persons living in poverty took advantage of the food stamp program. This means that more than 2 million poor senior citizens, most of whom were automatically eligible for food stamps, either chose not to or were discouraged from participating in the program. However, the changes enacted last year, which eliminate the burdensome purchase requirement, should lead to a higher participation level among the elderly.

Many of the problems I cited in 1973—relating to health care, housing, nutrition, transportation, and social services—are being confronted on the local level through cooperative efforts by communities, States, and the Federal Government.

While Federal social services funding for the elderly through title XX of the Social Security Act has remained constant since 1972, the Federal role has expanded in recent years through the Older Americans Act.

Approximately $150 million in Federal dollars is now being channeled through nearly 560 area agencies on aging for the provision of social services and for area planning. The area agencies, of which there are 11 in Iowa, support a wide range of services, including the following: Information and referral, transportation, Outreach, home services (including homemaker and home health), escort, legal and other counseling, and residential repair and renovation.

One of the largest and most popular of all elderly programs is the nutrition program for the elderly. At the present time, about 10,000 nutrition sites scattered across the country are serving nearly 600,000 hot meals each day. In Iowa $3.6 million in Federal funds support 200 nutrition sites that serve 13,000 meals daily.

Other valuable programs for senior citizens are also authorized by the Older Americans Act, including senior centers, senior community service employment, and model projects.

The Older Americans Act gives local communities discretion in spending Federal aging dollars. This assures that the special problems of a given area are addressed. The act grants responsibility for coordination and planning not to bureaucrats in Washington, but to those persons in the States and localities who best know how to effectively implement older American programs.

With the fine tuning that Congress is continuing, the Older Americans Act will undoubtedly bring greater fulfillment to the lives of this Nation's 25 million elderly.

CHALLENGES AHEAD

I would like to take a few moments to discuss some general attitudinal and societal trends that relate to our treatment of senior citizens. Often in an atmosphere of crisis, we tend to overlook the "big picture," the overall status of older Americans today as compared to decades ago. We also fail to be attentive to future challenges and to make appropriate plans to meet those challenges.

For example, it was not too long ago that older citizens were institutionalized with little thought. We tended to classify every stress and strain encountered by our older relatives as "senility"—a phenomenon that we rarely attempted to deal with.

Our general attitude was that senior citizens are unable to continue as contributing members of our society, and, therefore, we treated them as charity cases.

Describing this condescending attitude in the past tense, in fact be overly optimistic. Undoubtedly there are many who continue to have the deep-seated view of the elderly as dependent citizens, and this cannot be changed overnight.

Special types of efforts on behalf of the elderly are necessary to make society more sensitive to the aging process. We must promote those programs that emphasize a humane approach toward the elderly—treating older persons as whole individuals.

We should be discussing the realities of life for the aged, not only in terms of their physiological changes, but also in terms of the psychological and social problems they must face. We should then discuss various creative strategies that can be employed to help our senior citizens as individuals and in groups. We should examine the available resources on the community level that can be utilized in pursuit of these objectives.

Over the past two decades, most of the financial resources and the legislative mandates for elderly programs have flowed from the Federal level. The list of programs entirely or primarily focused on the needs of the elderly grows with each passing year—medicare, supplemental security income, the elderly nutrition program, the Older Americans Act, the retired senior volunteer program, and the foster grandparent program are just a few examples.

Until recently, programs of this sort have been considered "motherhood and apple pie" issues for most Congressmen and Senators. Most voters want the very best for older Americans. In addition, older persons themselves are the most active participants in the political process, and have become a powerful force giving representatives further reason in support of programs for the elderly.

However, there has been a subtle change in this atmosphere, a change that results directly from two factors. First, our fragile economy appears to be unable to generate sufficient Federal revenues to begin massive new social programs or to expand existing ones. Instead of witnessing the creation of new domestic initiatives, we see instead consolidation of existing programs at constant funding levels. While funding for Federal elderly programs, especially those authorized by the Older Americans Act, has risen dramatically these past few years, continued increases may not be forthcoming.

Second, demographic trends for the coming decades translate into potential conflict between generations. By the end of the century—just 22 years from now—one in every eight Americans will be 65 years or older. What sort of life will these 32 million Americans lead, and will the nonelderly be able to continue their financial and moral support for programs that serve the elderly?

During the last 12 months, we saw two examples of the type of conflicts that could develop in the coming years. During the congressional debate over mandatory retirement, concerns were often raised that older workers would take jobs from younger heads of families. In fact, the issue that divided the House and Senate on mandatory retirement legislation was whether college professors, schoolteachers, and business executives should be forced to retire at age 65 in order to enhance job mobility for younger professionals.

Another topic that demonstrates in a clear way the intergenerational struggle is social security financing. For the first time since I have been in Washington, I have been receiving a considerable amount of letters questioning the value of the social security program—once the sacred cow of all Federal programs. Faced with the prospect of significant increases in payroll taxes in order to save the program from bankruptcy, our Nation's workers are growing more and more skeptical of the need for more generous social security benefits.

RECENT SUCCESSES AND CURRENT ISSUES

In other legislative issues, particularly those that are not exclusively focused on the elderly, we have seen some progress this year. As I have mentioned, the new amendments to the food stamp program should make it easier for low-income senior citizens to participate, because of the elimination of the purchase requirement. We hope this new legislation will be fully implemented this year, allowing those who had been deterred by the purchase price to enter the program.

Another successful effort was passage of the rural health clinic bill. In 1976, I brought the Senate Rural Development Subcommittee to Iowa to study rural health care in the State. During those public hearings, and in other similar hearings in the Midwest and in New England, we discovered that the medicare and medicaid programs discriminated against rural people. This was because the programs prohibit reimbursement for health services furnished by rural satellite clinics. The new rural health clinic legislation, which I authored with Senator LEAHY, reverses this inequitable policy and demonstrates a new Federal commitment to rural health.

Improving rural health care delivery will be of special value to the elderly who live in small towns or rural areas—and they represent 45 percent of the national elderly population. For example, nearly one-fifth of the 275,000 Iowans who live in rural areas classified by HEW as "medically underserved" are 65 years and over.

Our Nation is just now starting to realize that using local sources of health care, provided at a health center or within the home, is the most socially desirable and cost-efficient approach. Whenever we force the elderly to travel to a

larger city for medical treatment, and whenever we force them to be institutionalized for lack of an adequate alternative, we waste health dollars and increase the stress for senior citizens.

As a result, there can be little disagreement over the need to do much more in the area of home health care. Because of the restrictive nature of the medicare coverage, less than 1 percent of medicine funds is used for home health care. This is clearly undesirable, especially when HEW studies indicate that 1 in 7 acuate-care hospital patients and 1 in 4 nursing home patients could be appropriately cared for in their homes.

And as is the case for other types of health services, home health services are most lacking in rural areas—precisely where physical and financial obstacles to other forms of patient care make home health care services especially appropriate. Fifty-four percent of the Nation's counties have no certified home health agency, and these counties are predominately rural.

A few months ago, I discussed these and other problems facing the rural elderly, an article appearing in the National Council on the Aging's publication, Perspective on Aging. At that time, I proposed a modification of the Older Americans Act to make it more equitable for persons living in small towns and rural areas.

Specifically, I called for a change in the senior centers program that would encourage the development of centers in our smallest communities. Funding is now restricted to acquiring, altering, or renovating buildings so they can be suitable for providing a broad spectrum of services to older persons. In testimony before the Senate Aging Subcommittee, I suggested allowing funding for limited construction of senior centers when—as is often the case in small communities—no vacant facilities are available for conversion into senior centers.

I also urged Congress to make transportation services a higher priority in the Older Americans Act, to establish a meals on wheels program for the homebound elderly, and to make other social services more accessible to the rural elderly.

I ask that this article be printed in the RECORD at the conclusion of my remarks.

Congress is in the process of adopting these recommendations, as the conference committee will soon report out legislation to extend and improve the Older Americans Act. The House and Senate bills both would establish a meals on wheels program and permit limited construction of senior centers. In addition, the Senate bill would require States to assure that at least half of the social services funds be spent on three priorities alone—in-home services, improving access to services, and legal services.

When the Senate considered the reauthorization of the act in July of this year, I offered an amendment that would require special consideration of rural areas for the receipt of model projects. To this date, no model projects money has gone to rural area agencies. My amendment was adopted by the Senate, and will increase support for the elderly in rural areas.

In addition, the Senate adopted another of my amendments, which established the Senior Environmental Employment Corps. This program is especially important to me because it is based on a project that began in my home State of Iowa. In Iowa, a few years ago, senior citizens were hired by the State environmental agency to work in conservation, soil and well sampling, and other environmental projects. The Senior Environmental Employment Corps is based on the success of this Iowa project. I am pleased that the Senate has agreed with me that this program should be expanded for the benefit of senior citizens nationwide.

The Senate has also recognized that the special needs of rural Americans have been overlooked for too long. This oversight has particular effect on the elderly. Because of this, I cosponsored an amendment, which the Senate adopted, that will weigh the funding formulas under the act to the benefit of the rural elderly. Therefore, if the Senate version of the bill is adopted, rural people's access to services would be expanded.

In the Congress, the potential exists to immediately address the concerns of the elderly in a most direct way. Specifically, the reauthorization of the Older Americans Act and the revision of the food stamp program afford Members of Congress the opportunity to adequately serve the needs of this Nation's older Americans. I call on my colleagues and on the President to work as partners in this effort.

I am confident that during the 95th Congress we can continue our efforts to substantively improve the state of the elderly in this country. Through these efforts we must be attentive to the needs of the poor elderly as well as those with adequate resources; to those older Americans in rural areas as well as those in the metropolises. We must give attention to all of this Nation's elderly, for with them lies our history, and a forecast for our future.

The article follows:

TOO MUCH PROMISED, TOO LITTLE DONE

(By Dick Clark)

I congratulate the National Council on the Aging for its initiatives in the area of the rural elderly—to work toward establishment of a National Center on the Rural Aging and the decision to devote an entire issue of *Perspective on Aging* to this topic.

Despite the fact that four of every 10 older Americans live outside metropolitan areas, most Federal programs for the aged continue to neglect the rural elderly's needs. When one analyzes the impact of policies and programs in practically every area—health, transportation, housing, employment and income, to name a few—the clear impression emerges that older persons who live in small towns and rural areas are subject to discrimination.

Income maintenance programs, such as Supplemental Security Income (SSI), do not reach adequately into small towns.

Senior citizen housing—built with U.S. Department of Housing and Urban Development (HUD) Section 202 funds—is now concentrated in the nation's urban centers.

The Medicare program, until this year, discriminated against the rural elderly by refusing to reimburse services provided by rural health clinics in areas that lack physicians.

And the key to the delivery of all services for the elderly—transportation—needs to be greatly expanded, so that senior citizens in small towns have access to programs and services that other older Americans take for granted.

Medicare is a prime example of a Federal program that promises more to the rural elderly than it actually provides. While intended to provide all older Americans with financial access to medical services and hospital care, in reality older persons who live in cities receive about 40 percent more in Medicare benefits than do those residing in rural areas.

But financial resources do not guarantee services for small town residents. The lack of physicians and other health providers in rural communities often frustrates older persons in their attempts to use the Medicare benefits to which they're entitled.

Similarly, home health services are most lacking in rural areas, precisely where physical and financial obstacles to other forms of patient care make home health care services especially appropriate. The strict and complex Federal Medicare requirements make it difficult for home health agencies tc be estblished in rural America, with the result that more than half of the nation's counties—most of them rural—have no certified home health agency.

It appears that Congress and the Carter Administration are beginning to realize that Federal policies and practices, such as those in the area of health, contribute to the problems of the rural elderly rather than to help in alleviating them.

ADDED EMPHASIS URGED

In 1975, I sponsored a series of amendments to the Older Americans Act that would have required all senior citizen programs to place additional emphasis on the rural aged's needs. In the end, the amendments were converted into legislative authority for demonstration projects to improve the delivery of services and meet the special rural needs.

This initiative was continued through Senate Special Committee on Aging field hearings on "The Nation's Rural Elderly" in three midwestern states during the summer of 1976. Those fruitful hearings, and my subsequent involvement in rural health issues as chairman of the Senate Rural Development Subcommittee, have enriched my personal understanding of the rural aged's problems.

Congress took an important first step in the area of rural health in 1977 by enacting the Rural Health Clinic Act. Based on legislation that I sponsored with overwhelming congressional support, the new law permits payment under Medicare and Medicaid for the medical services furnished by physician assistants and nurse practitioners within rural health clinics.

Until enactment of the legislation, the Federal Government and most states forbade Medicare and Medicaid reimbursement when physicians did not directly supervise the care. It was a disastrous policy for the rural elderly because many live in towns where no physicians practice. An alternative that has gained public acceptance is the small health clinic staffed by non-physician health providers. I intend to sponsor additional legislation in the coming year to encourage the development of these clinics.

OLDER AMERICANS ACT REVIEW SEEN

In the coming months, Congress will again review the Older Americans Act, which authorizes a wide range of service programs for senior citizens. I believe the act should be further amended to make it more relevant

to those who are living in small towns and rural areas.

Title V of the act authorizes funds for multipurpose senior centers, and $40 million will be spent in the current Fiscal Year for that worthy program. However, existing policies hamper the development of senior centers in our smallest communities—those under 10,000 population.

Funding for senior centers is restricted to acquiring, altering or renovating buildings so they can be suitable for providing a broad spectrum of services to older persons. Regrettably, most small towns lack available vacant facilities that can be converted into senior centers. The few buildings that are vacant—usually school buildings and small hospitals—require a tremendous financial investment to be made suitable.

My intention is to urge Congress to permit the use of Federal Older Americans Act funds for limited construction of senior centers. State agencies on aging would develop criteria for construction funding, and area agencies on aging would make recommendations for possible sites.

Two other special needs of the rural elderly that should be addressed more adequately by the act are nutrition and transportation.

MEALS ON WHEELS CRUCIAL NEED

If we as a nation are sincere in our goal of increased independence for older Americans, we should be doing more to maintain them in their own homes through such programs as home-delivered meals. For rural citizens—often unable to travel to congregate meals sites—a meals on wheels approach is all the more necessary. While there is substantial agreement among policymakers on the need for a national program to promote home-delivered meals, we need to reach a concensus on the best way to administer such a program.

The Federal Government should be doing far more to expand public transportation services in rural areas. It is the key to increasing access to all services. My hope is that Congress will place greater priority within the Older Americans Act on small transportation bus systems for the elderly and handicapped.

I also intend to urge Congress to consider ways to modify the act's funding formula to take into account the extra expense of serving the rural elderly. Due to the lack of public transportation facilities in small communities and sparsely settled areas, the cost of delivering services to those localities has risen, a factor not now considered when the Federal Government funds agencies on aging and services programs for elderly persons.

Only the "tip of the iceberg" of what Congress has done in response to the rural elderly's needs and what yet requires congressional attention has been discussed.

I hope NCOA's National Center on the Rural Aging becomes a resource for information on the rural elderly and an advocate for the kinds of changes that are vitally needed.●

## CRIME AND THE FEDERAL GOVERNMENT

● Mr. THURMOND. Mr. President, the Criminal Laws Subcommittee, on which I serve as ranking minority member, has begun its oversight and reauthorization hearings on the Law Enforcement Assistance Administration. Recently, editorials appeared in the Boston Globe and the Wilmington News which offer throughtful and informed commentary on this program. I was especially impressed by the Globe's observaiton that it is easy enough to take potshots at LEAA, but that—

Crime by all accounts, is still one of the most two or three problems that Americans find most distressing. Yet, the Federal Government, which has involved itself heavily in almost every other aspect of public life at the local level, has made only a small contribution to crime fighting.

The Globe then observes that the Federal Government could reasonably do even more than the pending LEAA bill provides.

Mr. President, the subcommittee will continue its hearings in the coming months. Thoughtful commentary, such as those I will shortly submit, will be most helpful in constructively focusing our deliberations to the important issues involved in LEAA reauthorization.

Mr. President, I ask that the August 21, 1978, editorial from the Boston Globe and the July 17, 1978, editorial from the Wilmington News be printed in the RECORD.

The editorials follow:

[From the Boston Globe, Aug. 21, 1978]

LOCAL CRIME AND THE FEDS

Hearings have begun in Washington on a proposal to restructure and refinance the federal effort to aid local anti-crime fighting that is embodied in the Law Enforcement Assistance Administration. It's easy enough to take potshots at the LEAA's layers of bureaucracy and occasional approval of expenditures on wild military armaments. And it's always arguable whether the federal government ought to be involved in what is essentially a local-government activity. In fact, it is because of the ease with which those arguments can be made that the LEAA legislation now in Congress is modest. The approach is nonetheless worthy.

Most of the bureaucratic layering—the cross-sections of criminal justice planners and criminal justice plan analysts—is removed. Of the proposed $825 million annual expenditure, $450 million would be allocated as anti-crime revenue-sharing by a formula that weights population, crime rates, local anti-crime spending and the local tax effort to finance the expenditure.

Another $128 million would be distributed not by formula but would be used as matching money—50 federal cents for each $1 of local spending—to help with the costs of running special programs that a quasi-independent federal Institute for Criminal Justice believes are particularly promising. Special efforts to expedite the trials of career criminals and financial assistance to help secure witnesses in trials would be two examples.

The total outlay proposed amounts to less than a nickel of every dollar spent in the nation on fighting crime. Yet, the matching funds could prove a valuable carrot in encouraging localities to try innovative approaches to law enforcement.

The $450 million is simply designed to ease the financial burden of local anticrime efforts. While some may argue against such federal involvement, the really startling fact is that the federal government is so little involved.

Crime, by all accounts, is still one of the two or three problems that Americans find most distressing. Yet the federal government, which has involved itself heavily in almost every other aspect of public life at the local level, has made only a small contribution to crime fighting. With its revenue-raising capacity, it could reasonably do even more than the pending LEAA bill provides.

That it hasn't, probably reflects, more than anything else, a decade of polarization in Congress, fostered by President Nixon's "law and order" campaigns. That polarization is gradually ending. The LEAA bill sponsors range from Sen. Kennedy, its primary drafter, to Sen. Thurmond. Its passage would be an initial signal that the national government is now prepared to make a meaningful, if modest, response to crime as one of the most pressing of national problems.

[From the Wilmington (Del.) News, July 17, 1978]

NEW DIRECTIONS NEEDED

On the whole, President Carter's proposals to drastically overhaul the Law Enforcement Assistance Administration make a lot of sense. It certainly is a better solution to the problem-plagued agency than abolishment.

The decade-old federal agency has been fraught with lack of direction and any real sense of what it should be doing. The result, in the words of the president, is that LEAA has been "ineffective."

Perhaps the essence of the agency's problems lies in its attempt to be all things to all aspects of the criminal justice system. Because money to help state and local anti-crime efforts came through this agency, all those with any legitimate claim on such money were constantly battling each other for it.

Police departments wanted hardware (patrol cars, uniforms, weaponry), the courts wanted more clerks or pre-sentence investigators, the prosecutors and corrections systems had their demands.

As each group became more sophisticated in the writing of complex applications and in the art of courting the state coordinating body and federal bureaucrats, their slice of the pie got bigger.

A key to intelligent coordination in this scrambled eggs program was the state commission. In Delaware the commission, known variously as Delaware Agency to Reduce Crime, the Law Enforcement Planning Commission, the Governor's Commission on Criminal Justice, and now, the Delaware Criminal Justice Planning Commission, has had a spotty record.

Over the years there have been cries of "Too much money for administration" or "The police are getting all the money." At a meeting last summer a skillfully coordinated coalition managed to gain several changes in the commission staff's proposal, much to the chagrin of other commission members.

Yet, on balance, a federally supported effort to curb crime at local and state levels makes sense. LEAA money was largely responsible for improving the Delaware Superior Court's docketing procedures, establishing the computerized networks on criminal records and motor vehicle records used by the courts and police, and LEAA is now funding Atty. Gen. Richard R. Weir Jr.'s investigation of white collar crime.

What President Carter wants to do is streamline the agency and give it some direction. Major elements of his proposal are:

Ban the use of federal money for salary increases or construction projects and sharply reduce use of federal money for police hardware.

Eliminate the requirement that state and local applicants submit annual plans—and instead submit three-year plans.

Guarantee fixed allotments for cities over 100,000 and counties with populations of more than 250,000 because that's where most crime occurs.

These all make a lot of sense. If nothing else they would reduce the amount of needless, repetitious paperwork that applicants must go through year after year.

One part of the president's proposals establishing a research oriented National Institute of Justice within the Justice Department gives us some trouble. We agree with the American Bar Association that such a research unit should be clearly separate from the "action" part of anti-crime efforts. The ABA is promoting legislation that would make a National Institute of Justice a separate governmental body, not unlike the Na-

tional Science Foundation or the National Institutes of Health. Such an independent body would be relatively free of the kinds of political pressure that have marred the efforts of LEAA for years. So freed it could produce valid data on ways to improve court procedures, police and corrections operations without concern for stepping on toes.

The president's proposals were introduced in the Senate by Sen. Edward M. Kennedy, who is scheduled to head the Judiciary Committee next year. With that kind of backer the reorganization could be accomplished soon.●

## CONGRESS MUST ACT QUICKLY TO HALT NARCOTICS SMUGGLING

● Mr. PERCY. Mr. President, last week I was pleased to join my distinguished colleague from Iowa, Senator CULVER, and Senators CHAFEE, THURMOND, HATCH, RIBICOFF, NUNN, HATHAWAY, and BENTSEN in introducing S. 3437, the Drug Trafficking Control Act of 1978. Although we are rapidly approaching the end of this session of Congress, this is a piece of legislation that ought to receive the immediate attention of the Senate.

There has been a tremendous upsurge in the importation of narcotics into this country. The volume of this criminal enterprise is of staggering proportions. Hundreds of millions of dollars worth of illicit drugs enter this country each year promoting crime, violence, and human misery. From January through July of this year, the Coast Guard seized 101 vessels, arrested 494 persons and confiscated over $700 million in drugs. This is more than twice as much as the year before.

Just 2 weeks ago, the Senate Permanent Subcommittee on Investigations, on which I serve as the ranking minority member, heard testimony from underworld figure, Gary Bowdach, on this alarming situation. He testified about his role as a bodyguard and enforcer in the notorious Rick Cravero gang, a loosely alined group of 150 members which illegally imported millions of dollars of marihuana and cocaine into south Florida. He told us that the biggest risk for the drug trafficker "is getting into the country;" because of that, a kilo of cocaine purchased for $8,000 in Colombia, South America, immediately triples in price once it has made its way into Florida.

But the risk is not nearly as great as it should be. Mr. Bowdach also made it clear that in fighting this battle, law enforcement officials are outmanned and outsmarted.

The Cravero gang brought its drugs into Miami by ship. Bowdach described how the narcotics would be shipped on used Colombian freighters, or "mother ships," and transferred on the open sea, beyond the 12-mile territorial limit of the United States. The transfers would often take place at night, when the Cravero gang would send out high-speed boats to pick up the loads and bring them into a remote landing area.

Money was no problem for the Cravero operation. They would spend as much as $40,000 for each small high-speed craft. Then they would "soup up" an engine to further increase its speed, and equip the boat with sophisticated radio and electronic gear capable of picking up law enforcement communications. When Bowdach was asked how fast the law enforcement craft are able to go, he replied simply, "not as fast as ours."

We also heard testimony from two members of the Dade County Florida Department of Public Safety that, just a few years ago, a drug load worth $100,000 was considered a large shipment. Today, a load with a value of less than $500,000 is considered "peanuts." Indeed we are being confronted with a tidal wave of narcotics flowing into this country from the southeastern United States. In 1976, 60 percent of marihuana seizures took place along the Mexican border. That figure is now down to 7 percent; 89 percent of the marihuana seized this year was in the gulf and southeast Atlantic region. Florida is rapidly becoming the national clearinghouse for most of the marihuana and cocaine in this country. For example, according to DEA, more than half the marihuana coming into Chicago arrives via Miami.

Wherever big money is to be made, you can be sure that organized crime is lurking close by. Bowdach testified that organized crime is becoming increasingly involved in this nefarious enterprise. Bowdach was personally aware of the extensive narcotics dealings of Ralph Broccoli, a soldier in the Gambino crime family of New York. Bowdach put it this way:

> So everybody in organized crime shied away from the narcotic action. What had happened as a result of shying away from it, various other groups got into it. . . . But when they saw the money, the amount of money that was coming in that these people were making, that is when it decided to go full steam into it.

What is most outrageous is that our present laws encourage and aid these drug pirates. Much as Mr. Bowdach described, a large percentage of these illicit drugs enter this country from large "mother ships" which anchor outside the 12-mile territorial limit of the United States. From here, these ships unload these drugs onto smaller boats which can safely elude drug enforcement officials and carry their dangerous cargo to shore. Law enforcement officials estimate that at best they are only able to stop 10 percent of this tidal wave of drugs.

Under present law, U.S. enforcement agents can prosecute the crews of these large mother ships only if they have actual proof of the actual act of distribution from the mother ship to the smaller craft. With very limited resources, the chances of EDA or the Coast Guard catching the crews of the mother ships in the act of distribution on the high seas is much like the proverbial search for a needle in the haystack. This inadequacy in the law has greatly frustrated enforcement efforts. In fact, only 40 percent of the individuals arrested when mother ships are seized are even prosecuted. Most of these are foreign nationals who are deported, and, in effect, given a free ride back home. In a few days, they are right back in business.

The Drug Trafficking Control Act which has the full support of the DEA, Customs, and the Coast Guard, would put an end to this invitation to smugglers. Under the act, enforcement agents would be required to show only that the crew possessed the illegal drugs and intended to distribute them in the United States or had actual knowledge thereof. This would effectively plug a major hole in drug trafficking regulations and would make the occupation of the drug trafficker significantly more risky.

A second section of the Drug Trafficking Control Act would correct another loophole in current law that makes it difficult to prosecute drug traffickers attempting to "launder" their illegal proffits or buy more drugs by taking large amounts of money out of the country.

Under existing law, individuals coming into the country, or leaving it, must file a report whenever they transport monetary instruments in excess of $5,000. This is intended to allow the authorities to monitor such activity, with a view toward determining when it is connected to illicit smuggling or other illegal conduct. However, in a recent court case involving an individual who attempted to leave the country with $250,000 in unreported currency, a judge dismissed the case because the arrest took place prior to the time the individual actually left the United States. This is a Catch-22 situation for customs officials. It is only when the person is out of the country that you can prosecute him. But you cannot prosecute him because he is out of the country. Under the terms of this decision, it will be virtually impossible to bring prosecutions in the future.

This bill would amend the Currency and Foreign Transactions Reporting Act to require the reports to be filed prior to departure, and to stipulate that persons must file such reports prior to boarding outbound common carrier vessels or aircraft.

The bill would also clarify existing law with respect to searches for currency. It would permit warrantless searches by customs agents under exigent circumstances if they have probable cause to believe this law is being violated. This is consistent with prior Supreme Court interpretations of the fourth amendment.

Lastly, the act would require the master of any vessel arriving from a foreign port immediately to report the arrival of his vessel to the appropriate American officials. Present regulations allow vessels coming from foreign ports, other than Canada or Mexico, 24 hours in which to report. Drug traffickers often transfer their contraband cargo during this 24-hour grace period, and, thus, do their damage without fear of prosecution.

Mr. President, the problem we now face can be put very simply: Drug trafficking must be stopped. The White House estimates that drug abuse costs this country $18 to $27 billion a year. Law enforcement experts estimate that one-half of all robberies and property crimes are drug related. In this battle against crime, we must utilize every weapon at our disposal. Yet, this Nation is at a severe disadvantage. We cannot fight these drug traffickers with one hand tied behind our backs.

The tremendous fortunes that can be made from drug trafficking have attracted a literal horde of gangsters and criminals to its seamy cause. Against their sea and air armada, the Federal

Government has put into the fight very limited resources. In Georgia, for example, the Drug Enforcement Administration has but three agents to protect some 2,300 miles of coastline from drug traffickers. The regional customs office has only 10 planes at its disposal, and these are so frequently in need of repair, because of age, that there are many days when none of them can take off.

Current laws against drug trafficking are inadequate and unable to prevent this Nation from becoming the dumping ground for the world's drug traffickers. How can we succeed to stamping out such trafficking if the laws themselves make this goal impossible? Indeed, if these laws are not remedied, I fear the battle against drugs will be lost entirely.

The Drug Traffickers Control Act will make our criminal laws work for justice, not against it. It plugs loopholes in current law, aids enforcement efforts, and makes it clear to potential traffickers that the full force and effect of the law will be used against them.

We must not ignore the great damage and violence that has resulted from drug trafficking and drug use in this country. Mr. Bowdach told us of the greed and viciousness which were facts of life in the Cravero gang. He estimated that of the 150 members of the gang, about 40 were murdered or "made one-way trips out to sea and never returned." The ugliness that surrounds drug use is acted out again and again as illicit drugs are passed from their source to their ultimate destination across this country. Crime in Miami leads to crime in Chicago, New York, Detroit, Philadelphia, and elsewhere. The frightening cycle perpetuates itself.

But, with the aid of effective laws, we can stop the cycle before it begins. We can put a halt to the alarming use of drugs by the youth of this Nation. And, we can make the United States a safer and more decent place in which to live.

Mr. President, on August 22, the Juvenile Delinquency Subcommittee, chaired by Senator CULVER, held a hearing on this drug smuggling epidemic. I would like to print in the RECORD the testimony of Peter Bensinger, Administrator of DEA, G. R. Dickerson, Deputy Commissioner of the U.S. Customs Service, and Captain Robert H. Overton III, Chief Ocean Operations Revision of the U.S. Coast Guard. All three of these agencies have been dedicated troops in our fight to halt this invidious narcotics trade. They have had to go into battle with meager resources and contend with laws that put them at a severe disadvantage.

The heads of these agencies, Peter Bensinger, Robert Chasen, and Adm. John Hays deserve much praise for the joint efforts they are making. After a period of trouble and turmoil within its ranks, it is especially gratifying to witness the outstanding work of DEA under Peter Bensinger's able administration.

DEA statistics show that the purity level of retail heroin is now 4.9 percent, the lowest level since the early 1970's. Heroin deaths and injuries are down 60 percent from the time Bensinger began as administrator. This is a record to be proud of, and DEA agents in the field should be rightfully proud of the courageous work they are doing.

Mr. President, I also ask unanimous consent that S. 3437, the Drug Trafficking Control Act of 1978 be printed at the conclusion of my remarks.

The requested material follows:

STATEMENT OF PETER B. BENSINGER ON DRUG TRAFFICKING FROM SOUTH AMERICA

Chairman Culver, Gentlemen: It is a pleasure to appear here this morning before the Subcommittee to Investigate Juvenile Delinquency to discuss the Drug Enforcement Administration's role in the Federal effort to stem the flow of drugs from South and Central America to this country.

A serious situation facing the law enforcement community today is the recent surge of drug trafficking into the Southeast sector of the United States. Nearly all the cocaine distributed in the U.S. and a substantial amount of the marihuana originates from source countries in South America. An estimated 65 per cent of worldwide illicit cocaine is processed in Columbia. Columbia is also a major source of supply for marihuana.

In transporting the contraband from South America to the United States, the traffickers use various routes by private and commercial aircraft. Drug smuggling on commercial air carriers has been limited to quantities which can be carried by individuals on their person or in their luggage. Private aircraft take advantage of Florida's many natural landing strips and heavy legal air traffic. Some fly directly into the United States from South America; while others involve stopovers on any of the major Caribbean Islands or in the Central American countries for refueling or cargo drop-offs. To a lesser extent, the traffickers also traverse an overland route through Central America.

Because the Caribbean Sea and the Gulf of Mexico are natural paths for the traffickers, narcotics interdiction on the high seas plays an important part in the United States' enforcement program. There are four "established" maritime routes. They are through the Yucatan, Windward, and Mona Passages in the Caribbean and up the Pacific Coasts of the South and North American continents.

A variety of vessel types and methods of operation are employed by maritime smugglers. There appear to be several basic trafficking patterns:

The first involves smugglers who use relatively small vessels such as fishing and pleasure craft, which are privately owned and/or operated by the traffickers themselves.

The second category involves larger commercial vessels such as freighters and passenger liners. The contraband is carried onboard in addition to the regular cargo. As a rule, the management of these vessels are not involved in the smuggling activity.

A third type of smuggling operation involves a "mother ship" and several contact vessels. The typical "mother ship" is usually a vessel which, by size and registration, may be regarded as a commercial vessel, generally ranging from 100 to 300 feet in length. Usually the entire crew, captain and owners are involved. It appears, that the "mother ships" are principally owned and operated by traffickers located in source countries rather than in the United States. They are also generally manned entirely by foreign nationals. The entire ship is load with contraband. Those vessels then proceed to areas off the U.S. coasts, where they eventually transship their loads to smaller high-speed vessels, fishing boats, cabin cruisers and yachts. These smaller vessels quickly become assimilated with legitimate vessel traffic, making enforcement action difficult.

To meet this challenge presented to law enforcement by the maritime smugglers, a multi-faceted approach is required. Within DEA, we have implemented several measures that are designed to have an impact on the Southeastern area. Specifically, DEA has established two new Resident Offices and opened Airport Offices in two major cities in Florida. Furthermore, additional Special Agents have been assigned to Florida, as has an element of the DEA Airwing. Because the Bahamas are a significant transit point, we are establishing an office there pending approval from the Department of State. Manpower has been redistributed among the South American posts so that the majority are now stationed in drug source countries. DEA is also working with State and local enforcement agencies to improve the coordination and intelligence collection/exchange activities.

Interagency cooperation is essential if we are to realize any successes in immobilizing narcotics traffickers. A White House review team, with the participation of DEA, U.S. Customs, U.S. Coast Guard and the State Department, has been examining action initiatives that will have a lasting impact on drug trafficking in the Southeastern United States. Briefly, these measures are designed to disrupt the entire chain of drug smuggling from the source and transit countries through the distribution systems in our nation.

In addition to monitoring these programs, the White House review team will be seeking longer term solutions through legislative, juidical and diplomatic initiatives.

One such model for interagency joint efforts was Operation Stopgap, a 45-day program initiated by DEA to coordinate its efforts with those of the United States Customs Service, the United States Coast Guard and the Immigration and Naturalization Service. Stopgap's objective was to decrease the availability of marihuana in the United States by seizing multi-ton quantities and the vessels transporting the marihuana; by arresting and prosecuting entire crews abroad the vessels; thus ultimately disrupting the operations of large-scale Colombian marihuana smuggling operations. Intelligence on suspect aircraft and vessels, primarily "mother ships", was relayed thru the El Paso Intelligence Center (EPIC) to the U.S. Coast Guard for appropriate enforcement action.

The U.S. Coast Guard, in particular, is to be commended for their contributions to Operation Stopgap. In all, 900,000 pounds of marihuana were seized, as were 33 vessels (4 of which were sunk or scuttled), 6 aircraft, 18 land vehicles, 3 hydraulic presses and $15,000 in cash. Furthermore, approximately 220 persons were arrested and/or detained and deported. A similar program is going on in the North Atlantic/New England area and another is being developed for the Pacific/West Coast region.

For the present, we are monitoring several trends in maritime vessel smuggling. There has been a rapid expansion in both number of and sophistication of "mother ships" operations, especially between Colombia and the East Coast and Gulf Coast of the U.S. DEA expects that the growth in vessel traffic will continue. We anticipate the increased law enforcement pressure will displace the traffic to some extent, forcing it to the Colombian Pacific coast or causing the "mother ships" to divert eastward around the island chains in order to avoid the three passages where the U.S. Coast Guard has concentrated its efforts. Expanded use of aircraft for smuggling is anticipated.

We recognize that the conviction and incarceration of top-level traffickers does not necessarily disrupt trafficking organizations; the acquisition of vast capital permits regrouping and the incarcerated trafficker can continue to direct operations. Therefore, it is essential to attack the finances that are the back bone of organized drug traffickers.

Vast profits, generated by the sale of drugs, leave the United States. Valuable intelligence regarding drug trafficking organizations can be realized from monitoring the flow of currency and monetary instruments. Existing statutes provide us with one investigative tool.

One section of the Bank Secrecy Act requires every domestic financial institution to report to the Internal Revenue Service (Form 4789) the identity of persons involved in currency transactions exceeding $10,000. Since October 1977, a DEA/FBI Joint Task Force has been conducting just such an investigation into the utilization of U.S. financial institutions to facilitate payments for drug shipments and other financial aspects of drug trafficking. While this type of investigative endeavor is time consuming, it can be very effective. The financial evidence which is being developed will enable U.S. enforcement officials to attack the profits and operating funds of narcotics traffickers.

Unfortunately, there are gaps in the existing statutes which unintentionally aid the cause of the traffickers. Therefore, as I mentioned earlier, legislative initiatives will provide law enforcement with needed tools to cope with drug smuggler's tactics.

The Comprehensive Drug Abuse, Prevention and Control Act of 1970 replaced an earlier act (the Act of July 11, 1941, 55 Stat 584), but in the process inadvertently omitted the prohibition against possession of controlled substances on vessels engaged on a foreign voyage. The extant act prohibits possession of a controlled substance ". . . (only if it) was arriving in or departing from the U.S. or the Customs territory of the U.S."

Thus, there is a significant gap in the present law regarding the commission of substantive controlled substance offenses on *American owned or registered* vessels on the high seas.

Specifically, the United States Code (Section 959, Title 21) has extraterritorial application only if a controlled substance is manufactured or distributed outside of the United States with the intent of smuggling it into this country. This section does not, however, include possession with intent to smuggle as an extraterritorial offense.

Several cases have arisen at the United States District Court level in which ships registered in the United States, carrying large amounts of marihuana, were intercepted outside the territorial waters of the United States. The District Courts held that the Government lacked jurisdiction to prosecute the individuals on board for possession of marihuana even though the evidence showed the marihuana was possessed with the knowledge that it would be unlawfully imported into the United States.

Thus, a legislative proposal that would cure this defect would be strongly supported by the Drug Enforcement Administration.

The same statute to which I referred earlier, the Bank Secrecy Act, requires an individual to file a report (Form 4790) if he knowingly transports monetary instruments in excess of $5,000 in or out of the United States. The law, as written, is inadequate in that it does not provide for attempted or intended violations of existing reporting requirements. And, in fact, in March 1976, the United States District Court for the Southern District of Florida dismissed a criminal proceeding against a defendant who was discovered departing the United States with $250,000 of unreported currency. The Drug Enforcement Administration endorses legislation that would close this gap in existing law by requiring this report to be filed prior to departure from the United States.

At present, a search warrant is required in all instances in order to seize monetary instruments being taken from the United States in violation of the Bank Secrecy Act. In many cases, it is impossible to obtain a search warrant in time to search individuals thought to be in possession of monetary instruments or currency who have not reported them or have filed a false report. As such, DEA would also support a proposition that would strengthen the existing statute and allow U.S. Customs officials to search persons under exigent circumstances, as they do now in other searches.

There is another loophole in existing law which affords shelter for traffickers. The present law allows the master of any vessel carrying foreign merchandise 24 hours in which to report his arrival to U.S. Customs. The smaller boats that transport the drugs from the "mother ship" cannot be readily distinguished from the many legitimate private vessels of the Southeastern coastal area. Under this cover, there have been cases where vessels have arrived in the United States, unloaded their illicit cargo, and departed, all within 24 hours, thereby circumventing the intent of the law. A legislative proposal that would require immediate reporting of such a vessel's arrival would greatly assist the U.S. Customs Service and the Federal drug enforcement effort.

Legislative proposals, such as the ones presently under consideration by this Committee, would give to the Federal drug enforcement effort much needed support. Based on intelligence and interdiction data, we believe that drug smuggling on the high seas and smuggling by air is escalating.

Chairman Culver, on behalf of the Drug Enforcement Administration, I would like to thank you for initiatives with respect to this serious problem. I look forward to working with you and the Congress on this vital agenda directed to help disrupt the flow of illicit drugs from South America.

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STATEMENT OF G. R. DICKERSON

Mr. Chairman, and members of the Committee, I appreciate the opportunity to appear before you today to discuss the need for new legislation to tighten the laws relating to drug smuggling by vessels and the exportation of currency. I understand that your committee is considering introducing new legislation on these subjects. We welcome your interest and believe that now is the time to address the problems created by our present law.

We are presently facing a new wave of drug smuggling into the United States, particularly by vessels and aircraft in the Gulf and Southeastern Atlantic areas. Fortunately, present law is adequate with respect to smuggling by aircraft. However, we have encountered many problems with respect to smuggling by vessels which are magnified due to the scope of the problem.

What limited success we have realized is due primarily to the excellent cooperation which exists among DEA, the Coast Guard, and Customs. Last month, Coast Guard and Customs signed an agreement which solidifies our strong present working relationship. In fact, most of the seizures recorded by Customs are a direct result of this relationship.

Statistics indicate that over 3.5 million pounds of marihuana have been seized through July of this fiscal year compared to 1.2 million pounds during the same period last year. An additional measure of the size of the smuggling problem facing us in the Southeast border is the changing seizure rate as compared to other significant smuggling areas. As recently as 1976, Mexican border districts averaged 60% of the national total of marihuana seized. Today seizures of marihuana in the Gulf and Southeastern Atlantic, almost all multi-ton loads, now account for 87% of a much increased total.

Cocaine seizures have also increased. For the first half of this fiscal year, the amount of cocaine seized has nearly surpassed the amount that has been seized for the entire preceding fiscal year. The Miami region has accounted for approximately 60% of the total amount of cocaine seized, while making only 25% of the total seizures. These figures indicate that the bulk shipments of cocaine are also being smuggled into the United States along the Southeastern coastline. We believe that the cocaine, which is more easily hidden, is smuggled via commercial vessels, very often in banana boats originating out of a Turbo, Colombia, which land at our Southeastern ports.

Another measure of the problem of drug smuggling in this region is the number of vessels seized. Through July of this fiscal year, 190 vessels have been seized in this area out of a national total of 269, while for the entire preceding fiscal year only 122 vessels were seized in this area.

We believe that several factors account for the increasing use of vessels by the drug smuggler—the continuing Mexican eradication program has made Colombia marihuana more attractive, the use of large vessels provides a relatively cheap method of transporting vast quantities of the bulky marihuana, the extensive coastline offers easy, undetected access to the United States, and gaps and inadequacies in our present law make successful prosecutions difficult. Thus, smuggling by vessel has become the new modus operandi of the drug smuggler.

To take full advantage of all of these factors, smuggling by vessel is primarily achieved by the use of "motherships." By this method, freighters, sometimes 300 feet in length, are loaded with large quantities of marihuana—50 to 60 tons is common—in Colombia and then set their course for the United States. These motherships, most often under foreign registry, will remain on the high seas outside the 3 mile territorial or 12 mile Customs waters, thus effectively beyond the United States jurisdiction, where they rendezvous with smaller high-speed craft generally owned by or registered to United States citizens. It is these smaller craft which then transport the contraband into the thousands of bays and inlets which line our coast.

Consequently, it is evident that two types of vessels are involved: the large motherships often flying under foreign flag, and the smaller "runners" which ferry the marihuana to shore. We face different problems with respect to each.

Once a vessel laden with marihuana is seized, loopholes in our present law create prosecutorial problems which often result in the individuals gaining their freedom to once again make another smuggling attempt. Under present law, the smuggler has committed no substantive crime by possessing narcotics on the high seas, even though he is an American citizen or aboard a vessel of the United States. This is so despite our obligation under the Single Convention on Narcotic Drugs to suppress drug trafficking by our vessels and citizens. Additionally, under present law it is extremely difficult to prosecute foreign nationals engaged in smuggling efforts aimed at the United States so long as they remain on the high seas. Consequently, the high seas remain a smuggler's paradise.

More importantly, international law presents many of the same obstacles. Since most of the motherships found on the high seas are of foreign registry, except under limited circumstances, permission must be requested and received from the country in which the vessel is registered before any enforcement action can be taken, even when there is proof that the particular vessel has a load of contraband destined for the United States. While most nations have been cooperative, the time required to notify the country of registry and to receive the proper authorization has caused some problems. The time may vary from several hours to two days, depending upon the hour or day of the week when the request is made. During this time

delay, the suspect vessel may take evasive action or may have sufficient time to jettison its contraband cargo. However, once permission is received to take enforcement action, either the gaps in our own law create prosecutorial difficulties or the foreign government will be reluctant to prosecute their nationals because of what they believe to be evidentiary problems created by a seizure and arrest by United States officials.

The small "runners" take advantage of our vast coastline with its numerous harbors and inlets and can easily mingle with the thousands of legitimate craft which sail in these same waters. Present law provides twenty-four hours from the time of arrival that a report must be made to Customs of such arrival. As a result, it is extremely difficult for Customs to intercept the few smugglers from among the thousands of legitimate vessels.

To begin to solve all of these problems, we believe that legislation which would tighten the conspiracy, transshipment, and extra-territorial provisions of the present law must be addressed. Further, legislation which would clearly delineate which vessels are subject to the jurisdiction of the United States would greatly enhance our enforcement effort aimed at the mother vessels flying foreign flags.

With respect to smuggling by private pleasure vessels, we strongly believe that immediate reporting at designated places should be required. While we do not foresee the smuggler dutifully reporting immediately upon his arrival, nonetheless such a requirement would enable us to establish designated reporting stations for vessels just as we now require for vehicles and aircraft. Then, assuming that a great majority of the legitimate vessel traffic would comply with the immediate reporting requirement, it would become a far easier task to sort the legitimate traffic from the illicit traffic. Thus, we can exert our enforcement efforts more judiciously. We are pleased to learn that your Committee is considering legislation to require immediate reporting.

I would like to relate to the Committee a very recent seizure which illustrates the nature of the problem and the process we must go through.

On August 5, 1978, based on information supplied by DEA, a Customs patrol aircraft established a search pattern 40-miles from the Bahamas. While the Customs aircraft was attempting to locate a particular vessel for DEA and after flying for several hours, our aircraft sighted two maneuvering in small slow circles and lying heavy in the water approximately 38-miles north northeast of Walkers Cay in the Bahamas, some 360 miles east of Florida. The other, the "Rio Chico" was a 70' shrimper without its proper riggings. Since both vessels appeared quite suspicious, the air crew notified the Coast Guard.

The aircraft continued the surveillance, departed for refueling, returned and completed over seven hours of surveillance, four being on the suspect vessels. While the Coast Guard had been notified and the Cape Knox responded, stormy weather that appeared and loss of its radar required that all vectoring of the cutter to the suspect vessels be accomplished by the air crew.

The larger vessel, whose stern bore the name "Heidi", failed to display any flag but claimed to be registered in the Netherlands Antilles. A check with that country revealed that the claimed registry was false. We understand that other countries were also queried without any records being located. The Coast Guard then boarded the "Heidi" as a stateless vessel.

The boarding officers found the vessel fully loaded with marihuana. The vessel was taken into Jacksonville, where Customs officers have already unloaded 225,469 pounds (113 tons) of marihuana. I might add that it took 57 hours to incinerate the marihuana which will not be needed for trial.

The other vessel, the Rio Chico, was also boarded and discovered to have 44,000 pounds of marihuana which is believed to have been off-loaded from the Heidi. Two other vessels which were expected to rendezvous with the Heidi are believed to have broken-up in the stormy seas.

Fortunately, there will be a trial in this case. The 22 Colombians and 1 Chilean on board have been linked to a conspiracy developed by DEA involving several U.S. citizens—seven of whom have since been arrested pursuant to federal warrants.

I say fortunately there will be a trial, because very often there is no evidence to link the foreign crewmembers with any conspiracy to smuggle the marihuana. As a result, the foreign crewmembers are deported. Also, we were fortunate that the concerned agencies had sufficient prior information so that we could detect the mothership before all of its contraband cargo was offloaded to smaller "runner" vessels, such as the shrimper, Rio Chico. Additionally, the determination of foreign registry, or lack thereof, was made rela tively quickly.

While this particular seizure did proceed smoothly with expected successful prosecutions, it is illustrative of the types of problems we face.

In response to the noticeably growing smuggling problem by both vessels and aircraft, Customs has undertaken the following steps to improve our interdiction program. We have surveyed potential smuggling locations for additional resource needs. At this time, we are planning to establish a new patrol station at Fort Myers, and to increase the staff presently serving the stations at Key West and Port Everglades. In the future we expect to establish a patrol station at Fort Pierce. To insure a rapid deployment, a number of patrol officer positions will be transferred from other border stations. When the survey is completed and all resource requirements are identified, Customs will make every effort, within budget constraints, to meet these needs.

With respect to our efforts aimed at the problem of smuggling by aircraft, a significant improvement in our radar detection capability has recently come about as a result of a DOD agreement to use the newly operating AWACS radar system for detecting smuggler aircraft along the entire southern border. As reported in recent media accounts, AWACS radars operate from aircraft which fly along the border. Its radar can observe a larger area with a very high probability of detection.

At this time, we are staffing sufficient personnel to accompany the AWACS flights. Our personnel currently are in training to better operate with the Air Force. Customs personnel have already accompanied the AWACS aircraft on familiarization flights, and additional flights are scheduled for the future.

Several problems must still be overcome before the system can be truly operational. Of immediate concern is improved communication and logistics. Customs currently has one sensor-equipped high performance aircraft and is in the process of procuring another.

Customs has received approval from DOD for the loan of four Air Force T-39A aircraft. Since these aircraft are not equipped with radar, Customs is negotiating to modify and install appropriate radars. From this point, the first aircraft will be operationally available in 8 months and the remainder within 12 months.

Unfortunately, the actual smuggling of the contraband into the United States is just a piece of the puzzle. The glue to this puzzle is the vast amount of currency which is necessary to finance these transactions. The sale of narcotics and dangerous drugs in the United States produces vast sums of money, much of which leaves the United States, often to finance other smuggling attempts. By monitoring the flow of currency and monetary instruments, significant information about narcotics trafficking can be developed. While present law does require that report be filed with the Customs Service by persons transporting or causing to be transported monetary instruments in excess of $5,000 out of the United States, various courts have interpreted this law to mean that no violation can occur until the person has actually left the United States without filing the required report. Needless to say, effective enforcement of this reporting requirement has been significantly impaired.

To remedy this defect in the law, we believe that the Committee should consider legislation which would require that a report be filed prior to departure by any person who wishes to transport or have transported out of the United States any amount exceeding $5,000. The Secretary of the Treasury could then, by regulation, determine the time and manner in which such reports should be filed. For example, the regulation could provide that a person departing by aircraft or vessel would have to file the report prior to boarding the outbound carrier.

Currently, Section 235 of the Currency and Foreign Transaction Reporting Act (31 U.S.C. 1105) states that application may be made for a search warrant authorizing the search of any person, place, vehicle, or physical object when the Secretary has reason to believe that there will be a violation of certain reporting provisions of the Act. The implication is that if there is reason to believe, for example, that there will be an attempt to transport a substantial amount of currency out of the country without filing the required report, a search may be conducted only after a search warrant is obtained. Decisions of the U.S. Supreme Court, however, have made it clear that in certain "exigent circumstances" warrantless searches can be conducted where there is probable cause to believe that a law has been violated. We believe that the Committee should consider legislation which would remove any doubt as to the application of the "exigent circumstances" exception to currency reporting cases by authorizing warrantless searches to be made for violations of the Reporting Act where exigent circumstances can be shown. In many instances, this may prove critical. Frequently, circumstances leading to probable cause do not surface until just before the departure of an aircraft or boat, and subsequent enforcement action by the Federal Government is severely restricted.

Under such legislation, Customs would still have to show that probable cause as well as exigent circumstances existed at the time of any warrantless search.

While Customs continually is striving to develop new procedures and new working arrangements with other agencies which will result in a more effective interdiction effort, it is evident that there exist many problems which need solving. We appreciate the Committee's concern and interest, and we remain willing to work closely with you to solve these problems.

I will be happy at this time to answer any questions.

Thank you.

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STATEMENT OF CAPTAIN ROBERT H. OVERTON III

Mr. Chairman and members of the Committee:

I am Captain Robert H. Overton, Chief of the Coast Guard's Ocean Operations Divison, and Manager of the Enforcement of Laws and Treaties Program. I thank you for this opportunity to testify concerning the proposed bill, the "Drug Trafficking Control Act of 1978," and the Coast Guard's maritime

drug interdiction effort. With me here today are Cdr. John E. Streeper, USCG and Lcdr E. Alex Blanton, USCG who are members of my staff.

The Coast Guard supports the purposes of legislation along these lines. Such legislation would increase our ability to take law enforcement action against U.S. vessels, and persons aboard them who are engaged in illicit drug trafficking on the high seas. As written, the bill overcomes the current necessity for proving intent to import controlled substances into the United States, by making mere possession of these substances aboard U.S. vessels, a crime. Insofar as persons aboard U.S. vessels are concerned, it would close one significant loophole in our enforcement scheme.

We are still reviewing the Bill within the administration with a view towards possibly recommending amendments which we believe will make it a more effective vehicle for countering maritime drug smuggling.

Specific language to accomplish such changes will be provided to the Committee by separate correspondence after our review is completed.

The Coast Guard's drug interdiction effort is based upon continuing surface and aircraft patrols of known or suspected smuggling areas, and a vigorous boarding program. Our major cutters may be assigned to conduct surveillance of a geographic area, patrol a known smuggling route, blockade a passage or "choke point," or pursue a specific target identified by intelligence information. A helicopter is normally embarked on flight-deck-equipped cutters, to extend the range and detection capability of the cutter and to improve patrol efficiency. These patrols by our larger cutters are normally from three weeks to one month in duration. Cutters may be deployed between districts during these operations to permit expanded coverage of a "hot" area or to provide flexibility, should the trafficker shift their activity to avoid enforcement pressure.

Supplementing the patrol activity of our high and medium endurance cutters are our 82 and 95 foot patrol boats. These small cutters are used in a similar manner, however their habitability and endurance limits patrol length during independent operations to approximately one week. Multi-unit operations are conducted as a means to overcome this limitation. This concept consists of a high or medium endurance cutter acting as a refueling and reprovisioning "base" for one or more WPB class vessels in company, and has the advantages of providing expanded patrol area coverage in addition to extending the WPB's endurance.

A concept vital to our operations that should be clearly understood is that of "multi-mission" operations. It is this concept which allows us to accomplish our many duties simultaneously in an effective manner, with a minimum number of resources and personnel. Simply stated, many of our tasks are performed in a common environment—at sea. Attendant to these tasks are three elements: First, surveillance—to determine the activity in a given area of ocean; Second, detection—to discover violations of applicable U.S. laws, marine casualties, or pollution incidents; and third, apprehension or recovery—to arrest the law violator or rescue casualty victims. It is our contention that the factor necessary to accomplish these tasks, regardless of the label applied to the individual mission, is the continuing presence of a suitable maritime unit, capable of response in a given time. Thus, because of their capabilities to surveil, detect and apprehend any of our cutters and aircraft may respond to the demands of the drug interdiction effort at any time during their operations.

The Coast Guard's vessel boarding program is governed primarily by our jurisdictional limitations. In the case of United States vessels, we are authorized to board and search at any time, for the enforcement of U.S. law, regardless of the location of the U.S. vessel. This includes the high seas environment as well as the waters of our country. A significant problem we face in the boarding and seizing of U.S. vessels is the necessity to prove conspiracy to import should a large cargo of controlled substances be discovered aboard a U.S. vessel on the high seas.

Foreign vessels, on the other hand, are normally immune to boarding and search by Coast Guard units except in special circumstances. Such special circumstances include foreign vessels in U.S. waters, stateless or assimilated stateless vessels, and foreign vessels "constructively present" in U.S. waters by virtue of their acts.

Generally, foreign vessels operating within 12 miles of the United States are subject to our jurisdiction, and may be boarded and seized for violations of smuggling or customs laws with the concurrence of the Department of State. Similarly, a stateless vessel, that is, a vessel which is not registered in any country, or a vessel which can be assimilated to statelessness by its claiming of the protection of more than one country, can be boarded and seized with Department of State concurrence. Since such vessels are not entitled to the protection of any flag, any nation may exert jurisdiction over them for enforcement purposes on the high seas.

"Constructive presence," may also be used to obtain jurisdiction over a foreign vessel on the high seas, if three elements exist. First the foreign vessel must be "adjacent" to the waters of the United States. Second, it must be acting as part of a team with another vessel in an attempt to violate U.S. law. Third, the "teammate" must have engaged in a violation of U.S. law, within U.S. waters. Once these elements have been established, the foreign vessel may be boarded and seized as though it were actually within the waters of the United States. This concept has proven effective in combatting "mothership" operations, where foreign vessels with multi-ton loads of marijuana hover offshore to effect the transfer of illicit cargo to smaller "contact boats," which then introduce the contraband into the U.S.

Foreign vessels which do not fall within the preceeding exceptions and enjoy the legitimate protection of their flag state may not routinely be boarded or searched. The alternative used by the Coast Guard to pursue law enforcement action against suspect vessels in this category is to seek the permission of the flag state, through the State Department, to board and search the vessel. In the event contraband is found, we may, with the concurrence of the flag state, prosecute any violations of U.S. law discovered, or failing this, we may detain the vessel for further enforcement action by the flag state. The success of this approach varies with the flag state queried, and cooperation ranges from excellent to very poor. There are indications that some countries are becoming increasingly reluctant to grant this intrusion on their sovereignty, particularly if the laws of the nation involved do not contain appropriate provision for doing so.

As a practical matter, the impact of delays encountered while attempting to obtain flag state permission for boarding and seizure of a foreign vessel on the high seas leads to a significant reduction in enforcement capability. Generally, the unit seeking authorization to board is faced with maintaining overt surveillance of the suspect, often for several days, as negotiation continues. The object of the boarding invariably continues on course during this period, drawing the Coast Guard unit away from the patrol area. It is conceivable that during this evolution, other trafficking vessels may transit the patrol area and remain undetected. The Department of State and the Coast Guard are investigating the possibility of establishing pre-seizure agreements with foreign governments which may reduce the time required to obtain the appropriate authorizations.

In response to direction from the President and Congress to place increased emphasis on drug interdiction, the Coast Guard has focused on four positive actions:

First, we are continuing to expand our interdiction program through the increased use of our 82 ft and 95 ft patrol boats for dedicated law enforcement patrols. Approximately 54,800 hours of additional WPB patrol time will be expended for this purpose in FY 1979. Additionally, our Groups and Stations are using smaller utility boats to conduct more frequent surveillance of inshore areas. Our major cutters, augmented by the WPB's, continue to conduct frequent patrols of the Yucatan, Windward and Mona Passage "choke points," and we are directing more attention to the Northern Bahama area which has developed into a hotbed for illicit at-sea transfer of drugs.

Second, we are committed to improving the quality and quantity of Coast Guard law enforcement training, to promote increased professionalism among enforcement personnel. Judgmental weapons training, jurisdictional issues and limitations, search and arrest procedures, and boarding techniques are areas which require concentrated instruction.

Third, we are continuing our efforts in conjunction with the Customs Service, the Drug Enforcement Administration, and the Department of Defense, to improve and expand our intelligence capability. A Maritime Information Team with representation from the Coast Guard, the Customs Service, and the Drug Enforcement Administration has been formed to centrally collect and analyze post-seizure information. Through close cooperation with the Department of Defense, and in particular with the Navy, the number of at-sea intelligence collectors has recently been significantly increased. Naval units will furnish sighting data accumulated during their routine operations to the Coast Guard. This information may consist of specific reports concerning previously targeted suspect vessels, or data of a more general nature based on "profiles" of smuggling activity furnished by the Coast Guard. Information collected by Naval units reaches us through the Naval Ocean Surveillance Information Center, where a Coast Guard liaison officer is assigned. Efforts to further expand and refine this vital program within the limitations of the "Posse Comitatus" Act and the availability of DOD resources are continuing.

Finally, we are accumulating data from all available sources to better define the trafficking problem, evaluate our interdiction effectiveness and determine the appropriate level of law enforcement activity. This quantification must be obtained if we are to adequately justify expansion beyond the limits of existing resources. As we increase our participation in the overall federal effort to control the flow of illegal drugs, we are seeing improvements in several areas. The recent success of joint enforcement operations directed against specific trafficking operations, and the increasing number of seizures resulting from exchanges of information between agencies lead us to conclude that cooperation between federal entities involved in anti-drug activity is improving. Memoranda of understanding have been executed with the Drug Enforcement Administration and the Customs Service. This is particularly important and we will continue our attempts to foster

these productive relationships in any way possible.

Mr. Chairman, this concludes my formal statement. I will be happy to respond to any questions that you may have at this time.

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S. 3437

A bill to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to prevent the illicit importation of controlled substances into the United States and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Drug Trafficking Control Act of 1978".

TITLE I—POSSESSION OF A CONTROLLED SUBSTANCE ON THE HIGH SEAS

SEC. 101. Section 1009 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 959) is amended to read as follows:

"MANUFACTURE, DISTRIBUTION, OR POSSESSION FOR PURPOSES OF UNLAWFUL IMPORTATION

"SEC. 1009. It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II, or to manufacture, distribute, or possess a controlled substance in schedule I or II onboard a vessel subject to the jurisdiction of the United States as defined in section 1001—

(1) intending that such substance will be unlawfully imported into the United States; or

(2) knowing that such substance will be unlawfully imported into the United States.

This section is intended to reach acts of manufacture or distribution outside the territorial jurisdiction of the United States, and acts of manufacture, distribution, and possession on vessels on the high seas. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.".

SEC. 102. Section 1005 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 955) is amended by—

(a) striking the heading for the section and inserting in lieu thereof: "POSSESSION ONBOARD VESSELS, AIRCRAFT, AND OTHER VEHICLES";

(b) inserting "(a)" immediately after "SEC. 1005."; and

(c) adding at the end thereof the following new subsection:

"(b) It shall be unlawful for any person to bring or possess onboard any vessel or aircraft of the United States, or onboard any vehicle of a carrier of the United States, a controlled substance in schedule I or schedule II or a narcotic drug in schedule III or IV, unless such substance or drug is part of the cargo entered into in the manifest or part of the official supplies of the vessel, aircraft, or vehicle. This subsection is intended to reach acts of possession committed outside the United States or the customs territory of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.".

SEC. 103. Subsection (a) (3) of section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960(a)(3)) is amended to read as follows:

"(3) contrary to section 1009, manufactures distributes or possesses a controlled substance,".

SEC. 104. Subsection (a) of section 1001 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 951) is amended by adding at the end thereof the following:

"(3) The term 'high seas' means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea which is recognized by the United States and includes the Customs waters as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

"(4) The term 'vessel of the United States' means any vessel documented under the laws of the United States, or numbered as provided by the Federal Boat Safety Act of 1971, as amended, or owned in whole or in part by the United States, or any citizen of the United States, or any corporation created under the laws of the United States, or any State, territory, district, Commonwealth or possession thereof, unless such vessels has been granted nationality by a foreign nation in accordance with article 5 of the 1968 Convention on the High Seas.

"(5) The term 'vessel' includes every description of watercraft used or capable of being used as a means of transportation on the water.

"(6) The term 'vessel subject to the jurisdiction of the United States' includes (A) any vessel without nationality; (B) any vessel assimilated to a vessel without nationality in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas; (C) any hovering vessel or any vessel within the customs waters as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401); (D) any vessel on the high seas registered in a foreign nation when that nation authorizes the United States to assert jurisdiction over such vessel for the purposes of enforcing this Act; and (E) any vessel of the United States.".

SEC. 106. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by—

(a) striking out

"Sec. 1005. Possession on board vessels, etc., arriving in or departing from United States.

and inserting in lieu thereof

"Sec. 1005. Possession on board vessels, aircraft, and other vehicles.";

and

(b) striking out

"Sec. 1009. Manufacture or distribution for purposes of unlawful importation."

and inserting in lieu thereof

"Sec. 1009. Manufacture, distribution, or possession for purposes of unlawful importation.".

TITLE II—ILLEGAL EXPORT OF CASH

SEC. 201. Section 231(a) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1101) is amended to read as follows:

"(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee—

"(1) intends to transport, or have transported, monetary instruments from any place within the United States to or through any place outside the United States in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) prior to departing from the United States;

"(2) knowingly transports, or causes to be transported, monetary instruments from any place outside the United States to or through any place within the United States in an amount exceeding $5,000 on any one occasion shall file a report or reports prior to or at the time of arrival in accordance with subsection (b); or

"(3) receives monetary instruments at the termination of their transportation by common carrier to the United States from or through any place outside the United States in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b).".

SEC. 202. Section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended by redesignating subsection (b) as subsection (c) and by adding a new subsection (b) as follows:

"(b) When because of exigent circumstances a warrant cannot be obtained, any officer of Customs may search without a warrant any of the individuals or objects included in subsection (a) of this section if he has probable cause to believe that monetary instruments are in the process of transportation and with respect to which a report required under section 231 of this Act (31 U.S.C. 1101) has not been filed or contains material omissions or misstatements.".

TITLE III—PROMPT REPORTING OF VESSELS

SEC. 301. Section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), is amended to read as follows:

"The master of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, arriving at any port or place within the United States, shall immediately report the arrival of the vessel at the nearer customhouse or such other place as the Secretary of the Treasury may prescribe in regulations. The Secretary may by regulation prescribe the manner in which arrival shall be reported and may extend the time, not to exceed twenty-four hours after the arrival of the vessel, in which to report arrival.".

SEC. 302. Section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), is amended by substituting a comma for the word "or" wherever it appears between the words "entry" and "customhouse", and inserting after the word "customhouse" the phrase "or other places as the Secretary of the Teasury may prescribe in regulations.".●

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## POVERTY DECLINES FOR OLDER AMERICANS

● Mr. CHURCH. Mr. President, our Nation has made considerable progress in reducing poverty among older Americans during the past decade.

In 1967, almost 5.4 million persons 65 years or older fell below the poverty line. Ten years later the number of aged poor declined to 3.2 million.

The rate of poverty among the elderly has also been slashed substantially, from 29.5 percent in 1967 to 14.1 percent in 1977.

Social security increases, improvements in other retirement benefit programs, and the establishment of supplemental security income have helped to improve the economic well-being of older Americans.

A recent advance report from the Census Bureau provides new information about improved economic conditions for most elderly persons, although not all older Americans. Poverty, for example, declined by 136,000 from 1976 to 1977 for all persons 65 or older.

However, the Census report provides some disturbing information. Poverty among aged blacks actually increased by 57,000, from 644,000 in 1976 to 701,000 in 1977.

Moreover, the low-income thresholds represent a barebones existence: $2,895 a year for a single aged person and $3,637 on an annual basis for elderly couples.

As chairman of the Committee on Aging, my No. 1 goal is to work for the eventual elimination of poverty for all older Americans.

Our Nation can take pride in the con-

crete actions to improve the well-being of the aged in recent years. But, much more remains to be done.

The Senate Committee on Aging has launched a comprehensive hearing concerning "Retirement, Work, and Lifelong Learning." We plan to focus on many subjects, including the most efficient and effective means to enable older persons to live in dignity and self-respect.

Mr. President, I ask that three tables from the Census Bureau's advance report on "Money Income and Poverty Status of Families and Persons in the United States: 1977" be printed in the RECORD.

The tables follow:

TABLE 16.—PERSONS BELOW THE POVERTY LEVEL BY FAMILY STATUS, SEX OF HEAD, AND RACE, 1959–77

[Numbers in thousands; persons as of March of the following year; for meaning of symbols, see text]

| Year, race, and sex of head | Number below poverty level | | | | | | | Poverty rate | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | | In families | | | | | Total | | In families | | | | |
| | All persons | 65 yr and over | Total | Head | Related children under 18 | Other family members | Unrelated individuals | All persons | 65 yr and over | Total | Head | Related children under 18 | Other family members | Unrelated individuals |
| ALL PERSONS | | | | | | | | | | | | | | |
| All races: | | | | | | | | | | | | | | |
| 1977 | 24,720 | 3,177 | 19,505 | 5,311 | 10,028 | 4,165 | 5,216 | 11.6 | 14.1 | 10.2 | 9.3 | 16.0 | 5.9 | 22.6 |
| 1976 | 24,975 | 3,313 | 19,632 | 5,311 | 10,081 | 4,240 | 5,344 | 11.8 | 15.0 | 10.3 | 9.4 | 15.8 | 6.0 | 24.9 |
| 1975 | 25,877 | 3,317 | 20,789 | 5,450 | 10,882 | 4,457 | 5,088 | 12.3 | 15.3 | 10.9 | 9.7 | 16.8 | 6.4 | 25.1 |
| 1974 [1] | 23,370 | 3,085 | 18,817 | 4,922 | 9,967 | 3,928 | 4,553 | 11.2 | 14.6 | 9.9 | 8.8 | 15.1 | 5.7 | 24.1 |
| 1974 | 24,260 | 3,308 | 19,440 | 5,109 | 10,196 | 4,135 | 4,820 | 11.6 | 15.7 | 10.2 | 9.2 | 15.5 | 6.0 | 25.5 |
| 1973 | 22,973 | 3,354 | 18,299 | 4,828 | 9,453 | 4,018 | 4,674 | 11.1 | 16.3 | 9.7 | 8.8 | 14.2 | 5.9 | 25.6 |
| 1972 | 24,460 | 3,738 | 19,577 | 5,075 | 10,082 | 4,420 | 4,883 | 11.9 | 18.6 | 10.3 | 9.3 | 14.9 | 6.6 | 29.0 |
| 1971 | 25,559 | 4,273 | 20,405 | 5,303 | 10,344 | 4,757 | 5,154 | 12.5 | 21.6 | 10.8 | 10.0 | 15.1 | 7.2 | 31.6 |
| 1970 | 25,420 | 4,709 | 20,330 | 5,260 | 10,235 | 4,835 | 5,090 | 12.6 | 24.5 | 10.9 | 10.1 | 14.9 | 7.4 | 32.9 |
| 1969 | 24,147 | 4,787 | 19,175 | 5,008 | 9,501 | 4,667 | 4,972 | 12.1 | 25.3 | 10.4 | 9.7 | 13.8 | 7.2 | 34.0 |
| 1968 | 25,389 | 4,632 | 20,695 | 5,047 | 10,739 | 4,909 | 4,694 | 12.8 | 25.0 | 11.3 | 10.0 | 15.3 | 7.8 | 34.0 |
| 1967 | 27,769 | 5,388 | 22,771 | 5,667 | 11,427 | 5,677 | 4,998 | 14.2 | 29.5 | 12.5 | 11.4 | 16.3 | 9.1 | 38.1 |
| 1966 [1] | 28,510 | 5,114 | 23,809 | 5,784 | 12,146 | 5,879 | 4,701 | 14.7 | 28.5 | 13.1 | 11.8 | 17.4 | 9.5 | 38.3 |
| 1966 | 30,424 | NA | 25,614 | 6,200 | 12,876 | 6,538 | 4,810 | 15.7 | NA | 14.2 | 12.7 | 18.4 | 10.5 | 38.9 |
| 1965 | 33,185 | NA | 28,358 | 6,721 | 14,388 | 7,249 | 4,827 | 17.3 | NA | 15.8 | 13.9 | 20.7 | 11.8 | 39.8 |
| 1964 | 36,055 | NA | 30,912 | 7,160 | 15,736 | 8,016 | 5,143 | 19.0 | NA | 17.4 | 15.0 | 22.7 | 13.3 | 42.7 |
| 1963 | 36,436 | NA | 31,498 | 7,554 | 15,691 | 8,253 | 4,938 | 19.5 | NA | 17.9 | 15.9 | 22.8 | 13.8 | 44.2 |
| 1962 | 38,625 | NA | 33,623 | 8,077 | 16,630 | 8,916 | 5,002 | 21.0 | NA | 19.4 | 17.2 | 24.7 | 15.1 | 45.4 |
| 1961 | 39,628 | NA | 34,509 | 8,391 | 16,577 | 9,541 | 5,119 | 21.9 | NA | 20.3 | 18.1 | 25.2 | 16.5 | 45.9 |
| 1960 | 39,851 | NA | 34,925 | 8,243 | 17,288 | 9,394 | 4,926 | 22.2 | NA | 20.7 | 18.1 | 26.5 | 16.2 | 45.2 |
| 1959 | 39,490 | 5,481 | 34,562 | 8,320 | 17,208 | 9,034 | 4,928 | 22.4 | 35.2 | 20.8 | 18.5 | 26.9 | 15.9 | 46.1 |
| White: | | | | | | | | | | | | | | |
| 1977 | 16,416 | 2,426 | 12,364 | 3,540 | 5,943 | 2,882 | 4,051 | 8.9 | 11.9 | 7.5 | 7.0 | 11.4 | 4.6 | 20.4 |
| 1976 | 16,713 | 2,633 | 12,500 | 3,560 | 6,034 | 2,906 | 4,213 | 9.1 | 13.2 | 7.5 | 7.1 | 11.3 | 4.7 | 22.7 |
| 1975 | 17,770 | 2,634 | 13,799 | 3,838 | 6,748 | 3,213 | 3,972 | 9.7 | 13.4 | 8.3 | 7.7 | 12.5 | 5.2 | 22.7 |
| 1974 [1] | 15,736 | 2,460 | 12,181 | 3,352 | 6,079 | 2,750 | 3,555 | 8.6 | 12.8 | 7.3 | 6.8 | 11.0 | 4.5 | 21.8 |
| 1974 | 16,290 | 2,642 | 12,517 | 3,482 | 6,180 | 2,855 | 3,773 | 8.9 | 13.8 | 7.5 | 7.0 | 11.2 | 4.7 | 23.2 |
| 1973 | 15,142 | 2,698 | 11,412 | 3,219 | 5,462 | 2,731 | 3,730 | 8.4 | 14.4 | 6.9 | 6.6 | 9.7 | 4.5 | 23.7 |
| 1972 | 16,203 | 3,072 | 12,268 | 3,441 | 5,784 | 3,043 | 3,935 | 9.0 | 16.8 | 7.4 | 7.1 | 10.1 | 5.1 | 27.1 |
| 1971 | 17,780 | 3,605 | 13,566 | 3,751 | 6,341 | 3,474 | 4,214 | 9.9 | 19.9 | 8.2 | 7.9 | 10.9 | 5.8 | 29.6 |
| 1970 | 17,484 | 3,984 | 13,323 | 3,708 | 6,138 | 3,477 | 4,161 | 9.9 | 22.5 | 8.1 | 8.0 | 10.5 | 5.9 | 30.8 |
| 1969 | 16,659 | 4,052 | 12,623 | 3,575 | 5,667 | 3,381 | 4,036 | 9.5 | 23.3 | 7.8 | 7.7 | 9.7 | 5.8 | 32.1 |
| 1968 | 17,395 | 3,939 | 13,546 | 3,616 | 6,373 | 3,557 | 3,849 | 10.0 | 23.1 | 8.4 | 8.0 | 10.7 | 6.3 | 32.2 |
| 1967 | 18,983 | 4,646 | 14,851 | 4,056 | 6,729 | 4,066 | 4,132 | 11.0 | 27.7 | 9.2 | 9.0 | 11.3 | 7.2 | 36.5 |
| 1966 [1] | 19,290 | 4,357 | 15,430 | 4,106 | 7,204 | 4,120 | 3,860 | 11.3 | 26.4 | 9.7 | 9.3 | 12.1 | 7.4 | 36.1 |
| 1966 | 20,751 | NA | 16,732 | 4,481 | 7,649 | 4,602 | 4,019 | 12.2 | NA | 10.5 | 10.2 | 12.8 | 8.2 | 37.3 |
| 1965 | 22,496 | NA | 18,508 | 4,824 | 8,595 | 5,089 | 3,988 | 13.3 | NA | 11.7 | 11.1 | 14.4 | 9.2 | 38.1 |
| 1964 | 24,957 | NA | 20,716 | 5,258 | 9,573 | 5,885 | 4,241 | 14.9 | NA | 13.2 | 12.2 | 16.1 | 10.8 | 40.7 |
| 1963 | 25,238 | NA | 21,149 | 5,466 | 9,749 | 5,934 | 4,089 | 15.3 | NA | 13.6 | 12.8 | 16.5 | 11.0 | 42.0 |
| 1962 | 26,672 | NA | 22,613 | 5,887 | 10,382 | 6,344 | 4,059 | 16.4 | NA | 14.7 | 13.9 | 17.9 | 12.0 | 42.7 |
| 1961 | 27,890 | NA | 23,747 | 6,205 | 10,614 | 6,928 | 4,143 | 17.4 | NA | 15.8 | 14.8 | 18.7 | 13.3 | 43.2 |
| 1960 | 28,309 | NA | 24,262 | 6,115 | 11,229 | 6,918 | 4,047 | 17.8 | NA | 16.2 | 14.9 | 20.0 | 13.3 | 43.0 |
| 1959 | 28,484 | 4,744 | 24,443 | 6,185 | 11,386 | 6,872 | 4,041 | 18.1 | 33.1 | 16.5 | 15.2 | 20.6 | 13.3 | 44.1 |
| Black and other races: | | | | | | | | | | | | | | |
| 1977 | 8,304 | 751 | 7,141 | 1,771 | 4,085 | 1,283 | 1,165 | 29.0 | 34.9 | 28.1 | 26.5 | 38.8 | 15.7 | 35.9 |
| 1976 | 8,262 | 680 | 7,132 | 1,751 | 4,047 | 1,334 | 1,131 | 29.4 | 32.7 | 28.2 | 26.4 | 38.3 | 16.5 | 39.5 |
| 1975 | 8,107 | 683 | 6,990 | 1,612 | 4,134 | 1,244 | 1,116 | 29.3 | 34.0 | 28.0 | 25.3 | 38.9 | 15.6 | 40.9 |
| 1974 [1] | 7,634 | 625 | 6,636 | 1,570 | 3,888 | 1,179 | 999 | 28.3 | 32.5 | 27.2 | 25.1 | 37.1 | 15.5 | 38.0 |
| 1974 | 7,970 | 666 | 6,923 | 1,627 | 4,016 | 1,280 | 1,047 | 29.5 | 34.7 | 28.4 | 26.0 | 38.4 | 16.7 | 40.0 |
| 1973 | 7,831 | 656 | 6,887 | 1,609 | 3,991 | 1,287 | 944 | 29.6 | 35.5 | 28.8 | 26.2 | 38.3 | 17.4 | 37.8 |
| 1972 | 8,257 | 666 | 7,309 | 1,634 | 4,298 | 1,377 | 948 | 31.9 | 37.5 | 31.0 | 27.7 | 41.3 | 19.0 | 40.9 |
| 1971 | 7,780 | 668 | 6,839 | 1,552 | 4,003 | 1,283 | 941 | 30.9 | 38.4 | 29.7 | 27.4 | 38.7 | 18.2 | 44.9 |
| 1970 | 7,936 | 725 | 7,007 | 1,552 | 4,097 | 1,358 | 929 | 32.0 | 46.2 | 30.7 | 28.1 | 39.6 | 19.5 | 46.7 |
| 1969 | 7,488 | 735 | 6,552 | 1,433 | 3,834 | 1,286 | 936 | 31.0 | 48.1 | 29.6 | 26.9 | 37.7 | 19.4 | 45.5 |
| 1968 | 7,994 | 693 | 7,149 | 1,431 | 4,366 | 1,352 | 845 | 33.5 | 46.6 | 32.4 | 28.2 | 41.6 | 20.9 | 45.7 |
| 1967 | 8,786 | 742 | 7,920 | 1,611 | 4,698 | 1,611 | 866 | 37.2 | 51.0 | 36.3 | 32.1 | 44.9 | 25.3 | 48.2 |
| 1966 [1] | 9,220 | 757 | 8,379 | 1,678 | 4,942 | 1,759 | 841 | 39.8 | 53.4 | 38.9 | 33.9 | 48.2 | 27.7 | 53.1 |
| 1966 | 9,673 | NA | 8,882 | 1,719 | 5,227 | 1,936 | 791 | 41.7 | NA | 41.1 | 35.0 | 50.7 | 30.2 | 50.0 |
| 1965 | 10,689 | NA | 9,850 | 1,897 | 5,793 | 2,160 | 839 | 47.1 | NA | 46.8 | 39.7 | 57.3 | 35.3 | 50.7 |
| 1964 | 11,098 | NA | 10,196 | 1,902 | 6,163 | 2,131 | 902 | 49.6 | NA | 49.1 | 40.0 | 61.5 | 35.7 | 55.0 |
| 1963 | 11,198 | NA | 10,349 | 2,088 | 5,942 | 2,319 | 849 | 51.0 | NA | 50.5 | 43.7 | 60.9 | 38.9 | 58.3 |
| 1962 | 11,953 | NA | 11,010 | 2,190 | 6,248 | 2,572 | 943 | 55.8 | NA | 55.3 | 48.0 | 66.4 | 43.2 | 62.1 |
| 1961 | 11,738 | NA | 10,762 | 2,186 | 5,963 | 2,613 | 976 | 56.1 | NA | 55.6 | 49.0 | 65.7 | 44.8 | 62.7 |
| 1960 | 11,542 | NA | 10,663 | 2,128 | 6,059 | 2,476 | 879 | 55.9 | NA | 55.7 | 49.0 | 66.6 | 43.3 | 59.3 |
| 1959 | 11,006 | 737 | 10,119 | 2,135 | 5,822 | 2,162 | 887 | 56.2 | 60.8 | 56.0 | 50.4 | 66.7 | 42.5 | 57.4 |
| Black: | | | | | | | | | | | | | | |
| 1977 | 7,726 | 701 | 6,667 | 1,637 | 3,850 | 1,181 | 1,059 | 31.3 | 36.3 | 30.5 | 28.2 | 41.6 | 17.4 | 37.0 |
| 1976 | 7,595 | 644 | 6,576 | 1,617 | 3,758 | 1,201 | 1,019 | 31.1 | 34.8 | 30.1 | 27.9 | 40.4 | 17.8 | 39.8 |
| 1975 | 7,545 | 652 | 6,533 | 1,513 | 3,884 | 1,136 | 1,011 | 31.3 | 36.3 | 30.1 | 27.1 | 41.4 | 16.9 | 42.1 |
| 1974 [1] | 7,182 | 591 | 6,255 | 1,479 | 3,731 | 1,053 | 927 | 30.3 | 34.3 | 29.3 | 26.9 | 39.6 | 16.4 | 39.3 |
| 1974 | 7,467 | 626 | 6,506 | 1,530 | 3,819 | 1,157 | 961 | 31.4 | 36.4 | 30.3 | 27.8 | 40.7 | 17.6 | 41.0 |
| 1973 | 7,388 | 620 | 6,560 | 1,527 | 3,822 | 1,211 | 828 | 31.4 | 37.1 | 30.8 | 28.1 | 40.6 | 18.7 | 37.9 |
| 1972 | 7,710 | 640 | 6,841 | 1,529 | 4,025 | 1,287 | 870 | 33.3 | 39.9 | 32.4 | 29.0 | 42.7 | 20.0 | 42.9 |
| 1971 | 7,396 | 623 | 6,530 | 1,484 | 3,836 | 1,210 | 866 | 32.5 | 39.3 | 31.2 | 28.8 | 40.7 | 19.1 | 46.0 |
| 1970 | 7,548 | 683 | 6,683 | 1,481 | 2,922 | 1,279 | 865 | 33.5 | 48.0 | 32.2 | 29.5 | 41.5 | 20.5 | 48.3 |
| 1969 | 7,095 | 689 | 6,245 | 1,366 | 3,677 | 1,202 | 850 | 32.2 | 50.2 | 30.9 | 27.9 | 39.6 | 20.0 | 46.7 |
| 1968 | 7,616 | 655 | 6,839 | 1,366 | 4,188 | 1,285 | 777 | 34.7 | 47.7 | 33.7 | 29.4 | 43.1 | 21.7 | 46.3 |
| 1967 | 8,486 | 715 | 7,677 | 1,555 | 4,558 | 1,564 | 809 | 39.3 | 53.3 | 38.4 | 33.9 | 47.4 | 27.1 | 49.3 |
| 1966 [1] | 8,867 | 722 | 8,090 | 1,620 | 4,774 | 1,696 | 777 | 41.8 | 55.1 | 40.9 | 35.5 | 50.6 | 29.4 | 54.4 |
| 1959 | 9,927 | 711 | 9,112 | 1,860 | 5,022 | 2,230 | 815 | 55.1 | 62.5 | 54.9 | 48.1 | 65.5 | 44.1 | 57.0 |

[1] Based on revised methodology.

Note: For the year 1959, data for persons 65 yr and over and for blacks are based on 1-in-1,000 sample of the 1960 census. For the years 1969 to 1977, data are based on 1970 census population controls.

TABLE 19.—AGE, TYPE OF RESIDENCE, REGION, AND WORK EXPERIENCE—PERSONS BY POVERTY STATUS IN 1977, BY RACE AND SPANISH ORIGIN

[Numbers in thousands. Persons as of March 1978. For meaning of symbols, see text]

| | Total | | | White | | | Black | | | Spanish origin [1] | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Below poverty level | | | Below poverty level | | | Below poverty level | | | Below poverty level | |
| | Total | Number | Percent of total | Total | Number | Percent of total | Total | Number | Percent of total | Total | Number | Percent of total |
| **AGE** | | | | | | | | | | | | |
| **BOTH SEXES** | | | | | | | | | | | | |
| Total | 213,867 | 24,720 | 11.6 | 185,254 | 16,416 | 8.9 | 24,710 | 7,726 | 31.3 | 12,046 | 2,700 | 22.4 |
| Under 3 yrs | 9,197 | 1,693 | 18.4 | 7,610 | 989 | 13.0 | 1,424 | 666 | 46.8 | 948 | 268 | 28.3 |
| 3 to 5 yrs | 9,138 | 1,634 | 17.9 | 7,504 | 977 | 13.0 | 1,406 | 627 | 44.6 | 854 | 268 | 31.4 |
| 6 to 13 yrs | 28,270 | 4,529 | 16.0 | 23,538 | 2,743 | 11.7 | 4,138 | 1,671 | 40.4 | 2,183 | 596 | 27.3 |
| 14 and 15 yrs | 8,200 | 1,210 | 14.8 | 6,883 | 696 | 10.1 | 1,169 | 483 | 41.3 | 517 | 145 | 28.1 |
| 16 to 21 yrs | 24,614 | 3,136 | 12.7 | 20,922 | 1,986 | 9.5 | 3,236 | 1,080 | 33.4 | 1,494 | 333 | 22.3 |
| 22 to 44 yrs | 68,400 | 5,780 | 8.5 | 59,525 | 4,011 | 6.7 | 7,397 | 1,587 | 21.5 | 3,940 | 689 | 17.5 |
| 45 to 54 yrs | 23,071 | 1,672 | 7.2 | 20,425 | 1,199 | 5.9 | 2,273 | 441 | 19.4 | 1,012 | 179 | 17.7 |
| 55 to 59 yrs | 11,031 | 944 | 8.6 | 9,950 | 664 | 6.7 | 945 | 262 | 27.8 | 353 | 64 | 18.2 |
| 60 to 64 yrs | 9,478 | 946 | 10.0 | 8,580 | 726 | 8.5 | 791 | 208 | 26.3 | 226 | 44 | 19.6 |
| 65 yrs and over | 22,468 | 3,177 | 14.1 | 20,316 | 2,426 | 11.9 | 1,930 | 701 | 36.3 | 518 | 113 | 21.9 |
| Total, 5 to 17 years | 47,929 | 7,449 | 15.5 | 40,008 | 4,444 | 11.1 | 6,957 | 2,821 | 40.5 | 3,506 | 981 | 28.0 |
| Related children 5 to 17 years | 47,615 | 7,249 | 15.2 | 39,745 | 4,290 | 10.8 | 6,913 | 2,782 | 40.2 | 3,478 | 961 | 27.6 |
| **MALE** | | | | | | | | | | | | |
| Total, 16 years and over | 75,688 | 5,757 | 7.6 | 66,894 | 4,147 | 6.2 | 7,470 | 1,429 | 19.1 | 3,574 | 553 | 15.5 |
| 16 to 21 yrs | 12,171 | 1,341 | 11.0 | 10,409 | 849 | 8.2 | 1,528 | 453 | 29.6 | 715 | 146 | 20.5 |
| 22 to 44 yrs | 33,424 | 2,086 | 6.2 | 29,442 | 1,567 | 5.3 | 3,287 | 435 | 13.2 | 1,885 | 243 | 12.9 |
| 45 to 54 yrs | 11,154 | 666 | 6.0 | 9,933 | 514 | 5.2 | 1,058 | 140 | 13.3 | 468 | 71 | 15.1 |
| 55 to 59 yrs | 5,239 | 338 | 6.5 | 4,754 | 243 | 5.1 | 414 | 88 | 21.3 | 172 | 25 | 14.7 |
| 60 to 64 yrs | 4,530 | 364 | 8.0 | 4,107 | 288 | 7.0 | 365 | 70 | 19.3 | 101 | 12 | 11.9 |
| 65 yrs and over | 9,170 | 961 | 10.5 | 8,249 | 686 | 8.3 | 819 | 243 | 29.7 | 232 | 55 | 23.7 |
| Total, 5 to 17 years | 24,399 | 3,787 | 15.5 | 20,430 | 2,296 | 11.2 | 3,483 | 1,392 | 40.0 | 1,797 | 509 | 28.4 |
| Related children 5 to 17 years | 24,317 | 3,713 | 15.3 | 20,366 | 2,240 | 11.0 | 3,472 | 1,380 | 39.8 | 1,788 | 501 | 28.0 |
| **FEMALE** | | | | | | | | | | | | |
| Total, 16 years and over | 83,374 | 9,897 | 11.9 | 72,824 | 6,864 | 9.4 | 9,102 | 2,850 | 31.3 | 3,970 | 870 | 21.9 |
| 16 to 21 yrs | 12,443 | 1,794 | 14.4 | 10,513 | 1,137 | 10.8 | 1,708 | 627 | 36.7 | 780 | 187 | 23.9 |
| 22 to 44 yrs | 34,976 | 3,694 | 10.6 | 30,083 | 2,444 | 8.1 | 4,111 | 1,153 | 28.0 | 2,055 | 446 | 21.7 |
| 45 to 54 yrs | 11,917 | 1,005 | 8.4 | 10,492 | 685 | 6.5 | 1,215 | 300 | 24.7 | 544 | 108 | 19.9 |
| 55 to 59 yrs | 5,792 | 605 | 10.4 | 5,196 | 422 | 8.1 | 531 | 174 | 32.8 | 181 | 39 | 21.4 |
| 60 to 64 yrs | 4,948 | 582 | 11.8 | 4,473 | 438 | 9.8 | 426 | 138 | 32.4 | 125 | 32 | 25.8 |
| 65 yrs and over | 13,298 | 2,216 | 16.7 | 12,067 | 1,739 | 14.4 | 1,111 | 457 | 41.2 | 286 | 58 | 20.4 |
| Total, 5 to 17 years | 23,530 | 3,662 | 15.6 | 19,578 | 2,147 | 11.0 | 3,473 | 1,428 | 41.1 | 1,709 | 472 | 27.6 |
| Related children 5 to 17 years | 23,298 | 3,536 | 15.2 | 19,379 | 2,049 | 10.6 | 3,442 | 1,401 | 40.7 | 1,690 | 460 | 27.2 |
| **TYPE OF RESIDENCE** | | | | | | | | | | | | |
| Total | 213,867 | 24,720 | 11.6 | 185,254 | 16,416 | 8.9 | 24,710 | 7,726 | 31.3 | 12,046 | 2,700 | 22.4 |
| Nonfarm | 206,032 | 23,381 | 11.3 | 177,941 | 15,291 | 8.6 | 24,296 | 7,561 | 31.1 | 11,969 | 2,674 | 22.3 |
| Farm | 7,835 | 1,339 | 17.1 | 7,313 | 1,125 | 15.4 | 414 | 165 | 39.9 | 77 | 26 | 33.5 |
| Inside metropolitan areas | 142,791 | 14,859 | 10.4 | 121,409 | 9,265 | 7.6 | 18,483 | 5,289 | 28.6 | 10,165 | 2,255 | 22.2 |
| Inside central cities | 59,626 | 9,203 | 15.4 | 44,556 | 4,762 | 10.7 | 13,627 | 4,254 | 31.2 | 5,961 | 1,539 | 25.8 |
| In poverty areas | 11,340 | 4,132 | 36.4 | 4,733 | 1,312 | 27.7 | 6,435 | 2,755 | 42.8 | 1,906 | 710 | 37.2 |
| Outside central cities | 83,165 | 5,657 | 6.8 | 76,852 | 4,503 | 5.9 | 4,856 | 1,035 | 21.3 | 4,204 | 717 | 17.0 |
| In poverty areas | 4,531 | 972 | 21.5 | 3,284 | 511 | 15.6 | 1,180 | 448 | 38.0 | 729 | 201 | 27.5 |
| Outside metropolitan areas | 71,076 | 9,861 | 13.9 | 63,846 | 7,151 | 11.2 | 6,227 | 2,437 | 39.1 | 1,881 | 445 | 23.6 |
| In poverty areas | 24,449 | 5,236 | 21.4 | 19,562 | 3,115 | 15.9 | 4,381 | 1,904 | 43.5 | 938 | 303 | 32.3 |
| **REGION** | | | | | | | | | | | | |
| Total | 213,867 | 24,720 | 11.6 | 185,254 | 16,416 | 8.9 | 24,710 | 7,726 | 31.3 | 12,046 | 2,700 | 22.4 |
| Northeast | 48,823 | 4,956 | 10.2 | 43,991 | 3,725 | 8.5 | 4,364 | 1,183 | 27.1 | 2,336 | 814 | 34.8 |
| North central | 56,969 | 5,589 | 9.8 | 51,544 | 3,938 | 7.6 | 4,931 | 1,584 | 32.1 | 1,040 | 150 | 14.4 |
| South | 69,148 | 10,249 | 14.8 | 55,406 | 5,735 | 10.3 | 13,162 | 4,383 | 33.3 | 3,775 | 908 | 24.1 |
| West | 38,927 | 3,927 | 10.1 | 34,314 | 3,018 | 8.8 | 2,253 | 576 | 25.6 | 4,894 | 828 | 16.9 |
| **WORK EXPERIENCE IN 1977** | | | | | | | | | | | | |
| Total, 14 yrs and over | 167,262 | 16,864 | 10.1 | 146,601 | 11,707 | 8.0 | 17,741 | 4,762 | 26.8 | 8,060 | 1,568 | 19.5 |
| Worked last yr | 109,292 | 6,459 | 5.9 | 97,019 | 4,780 | 4.9 | 10,332 | 1,504 | 14.6 | 5,034 | 567 | 11.3 |
| 50 to 52 weeks | 66,958 | 2,063 | 3.1 | 59,775 | 1,590 | 2.7 | 6,066 | 428 | 7.1 | 2,840 | 151 | 5.3 |
| Full time | 58,869 | 1,458 | 2.5 | 52,496 | 1,151 | 2.2 | 5,380 | 275 | 5.1 | 2,572 | 113 | 4.4 |
| 49 weeks or less [2] | 42,334 | 4,395 | 10.4 | 37,244 | 3,190 | 8.6 | 4,266 | 1,075 | 25.2 | 2,193 | 416 | 19.0 |
| Duration of unemployment: | | | | | | | | | | | | |
| 1 to 4 weeks | 4,289 | 419 | 9.8 | 3,769 | 306 | 8.1 | 436 | 105 | 24.1 | 226 | 33 | 14.5 |
| 5 to 14 weeks | 5,769 | 537 | 9.3 | 5,022 | 394 | 7.8 | 636 | 125 | 19.7 | 350 | 62 | 17.7 |
| 15 to 26 weeks | 3,723 | 473 | 12.7 | 3,086 | 307 | 9.9 | 576 | 159 | 27.6 | 271 | 49 | 18.3 |
| 27 weeks or more | 2,695 | 552 | 20.5 | 2,107 | 368 | 17.5 | 517 | 163 | 31.5 | 185 | 57 | 30.5 |
| Did not work last year | 57,096 | 10,384 | 18.2 | 48,863 | 6,909 | 14.1 | 7,286 | 3,255 | 44.7 | 3,001 | 1,001 | 33.3 |
| Main reason did not work: | | | | | | | | | | | | |
| Ill or disabled | 7,472 | 2,299 | 30.8 | 5,832 | 1,483 | 25.4 | 1,573 | 788 | 50.1 | 329 | 138 | 41.8 |
| Keeping house | 24,818 | 3,788 | 15.3 | 22,550 | 2,808 | 12.5 | 1,883 | 913 | 48.5 | 1,378 | 442 | 32.1 |
| Going to school | 12,174 | 2,241 | 18.4 | 9,483 | 1,209 | 12.8 | 2,402 | 962 | 40.0 | 915 | 291 | 31.8 |
| Unable to find work | 1,385 | 553 | 39.9 | 859 | 274 | 31.9 | 492 | 269 | 54.8 | 98 | 49 | 50.0 |
| Retired | 9,925 | 1,131 | 11.4 | 9,116 | 893 | 9.8 | 697 | 214 | 30.7 | 198 | 41 | 20.6 |
| All other reasons | 1,322 | 371 | 28.1 | 1,024 | 242 | 23.6 | 240 | 109 | 45.4 | 83 | 41 | 49.0 |
| In armed forces | 874 | 22 | 2.5 | 719 | 18 | 2.5 | 123 | 3 | 2.7 | 26 | ..... | (B) |

[1] Persons of Spanish origin may be of any race.
[2] Includes "no weeks" unemployed, not shown separately.

TABLE 15.—WEIGHTED AVERAGE THRESHOLDS—POVERTY CUTOFFS IN 1977, BY SIZE OF FAMILY AND SEX OF HEAD, BY FARM-NONFARM RESIDENCE

| Size of family unit | Total | Nonfarm | | | Farm | | |
|---|---|---|---|---|---|---|---|
| | | Total | Male head | Female head | Total | Male head | Female head |
| 1 person (unrelated individual) | $3,067 | $3,075 | $3,214 | $2,969 | $2,588 | $2,672 | $2,498 |
| 14 to 64 years | 3,147 | 3,152 | 3,267 | 3,023 | 2,709 | 2,776 | 2,569 |
| 65 years and over | 2,895 | 2,906 | 2,936 | 2,898 | 2,475 | 2,495 | 2,563 |
| 2 persons | 3,928 | 3,951 | 3,961 | 3,907 | 3,318 | 3,325 | 3,176 |
| Head 14 to 64 years | 4,054 | 4,072 | 4,095 | 3,981 | 3,466 | 3,474 | 3,278 |
| Head 65 years and over | 3,637 | 3,666 | 3,670 | 3,646 | 3,128 | 3,131 | 3,079 |
| 3 persons | 4,806 | 4,833 | 4,860 | 4,708 | 4,093 | 4,110 | 3,893 |
| 4 persons | 6,157 | 6,191 | 6,195 | 6,162 | 5,273 | 5,274 | 5,213 |
| 5 persons | 7,279 | 7,320 | 7,329 | 7,238 | 6,247 | 6,247 | 6,237 |
| 6 persons | 8,208 | 8,261 | 8,268 | 8,197 | 7,026 | 7,026 | 7,040 |
| 7 persons or more | 10,137 | 10,216 | 10,249 | 9,995 | 8,708 | 8,706 | 8,738 |

## SENATOR CLAIBORNE PELL—CHAMPION OF THE ARTS AND EDUCATION

● Mr. KENNEDY. Mr. President, since his first election to the Senate in 1960, the distinguished senior Senator from Rhode Island, CLAIBORNE PELL, has been a true champion of the arts and education. His important role in making the National Endowments of the Arts and Humanities a reality, is well known to all of us; his commitment and support for preserving the artistic heritage of our Nation and promoting a distinctive and unique American culture assures him the grateful thanks of the American people. And his valuable work in the area of education—especially his tireless support of the community college—has helped make it possible for millions of Americans to earn a college diploma.

A recent article by Ernesto Cuneo in the Newport Daily News pays tribute to my friend Senator PELL and his notable achievements. I ask that the article be printed in the RECORD.

The article follows:

RHODE ISLAND SENATOR WON PLACE IN HISTORY FOR AID TO ART, EDUCATION

(By Ernest Cuneo)

When it comes to government spending, Sen. Claiborne Pell makes Scrooge himself look like a big time spender. Pell is a fierce, growling Cerberus, hostilely stationed at the treasury doors. Since Rhode Island, in its providence, has seen fit to send him back to the Senate three times, God, the calendar and seniority have elevated Pell to the chairmanship of the Rules Committee. This committee allots the moneys to the 17 major committees which run the Senate. The 17 Senate chairmen are among the most influential men in the world, let alone the Senate.

Prudent men walk wide of offending them. However, casting advice on how to win friends and influence people to the winds, Pell had the temerity to tell every last one of the chairmen that they were spending too much money, ruling that, except for cost-of-living allowances, the cashier's window was shut.

Amazingly enough, the powerhouse Senate chairman acctpted Pell's order. One reason, presumably, is that Pell's own committee was the first to feel Pell's ax. There was hope in some quarters that "Big Jim" Eastland, longtime chairman of the mighty Judiciary Committee, might lead a revolt. However, Eastland was among the first to go along with Pell, because Pell is also a Claiborne. South of the Mason-Dixon Line, a Claiborne rates with a Bankhead, a Breckinridge, a Madison, or a Byrd. A Claiborne was the governor of Louisiana; George Dallas, another ancestor, after whom the city of Dallas and Pell's daughter are named, was President James Polk's vice president.

And thereby hangs a tale of the creation of the National Endowments of the Arts and the Humanities. When Claiborne Pell was elected to the Senate 18 years ago, the cultural history of these United States was not impressive. Actually, with the fall of the European dynasties—the Hapsburgs, the Romanovs, the Savoys and even the Hohenzollerns—the tradition of the government as patron of the arts also fell. There seemed little hope that the U.S. government would ever assume such role.

Despite the huge effort of Northern liberals, the Southern conservative bloc was utterly opposed. However, when Pell introduced the bill, the Southern Senators, with arch-conservative Harry F. Byrd of Virginia as leader, voted as a bloc to support not Pell of Rhode Island, but his ancestors, the Claibornes of Virginia and Louisiana! President Lyndon B. Johnson handed Pell the first pen he used to establish the endowments at $5 million each. They are now nearly $150 million each, and have been all but matched by American free enterprise .

Ancient royalty has been exceeded by the American Republic. Pell's whole program is a dazzling success. As an example, Pell fought for and got the Air and Space Museum. The recordbreaking 10 millionth visitor passed through its gates this week.

Nevertheless, Pell's place in American history, for sheer sweep, will be for his education acts. That incredible record can be summed up in a paragraph: Thomas Jefferson and Benjamin Franklin founded the Universities of Virginia and Pennsylvania. Abraham Lincoln gave the common people a crack at a college education by establishing the first state universities. Claiborne Pell's great educational acts put up over 1,500 community colleges. Under the Pell Acts, American higher education doubled and redoubled, and has a 12-million attendance today. Again, LBJ gave the Rhode Island senator the first pen with which the bill creating the greatest educational system in recorded history became law.

That, of course, is the hilarious paradox of Pell. His work is monumental, but he, as chairman, is chintzy enough to tell the 16 Senate chairmen, "No, brothers, I can't spare a dime!"

It might well be assumed that with such a record, Pell is as flamboyant as a Huey Long. That's the paradox. He is so solid and so gray that he makes Calvin Coolidge appear as romantic as Buffalo Bill.●

## VETO OF DEFENSE AUTHORIZATION BILL

● Mr. TOWER. Mr. President, on August 17, the President, in a televised press conference, announced his veto of the fiscal year 1979 defense authorization bill. That bill, as passed by the Senate and the House was a carefully crafted piece of legislation. However, the President cast aside the legislative branch's judgment but did not offer any specific congressional action that he would have preferred. In fact, it has become apparent that the President's remarks were directed at the wrong bill.

It is generally understood that the President's veto was contrived to bolster his decline in public opinion polls and shore up his indecisive image. The President has chosen to ignore the collective judgment of individual Members of Congress who worked together to provide the very best for U.S. defense. In its place, President Carter would substitute some fleeting political advantage to aid his sagging image. In short, the President chose to play politics with America's military might at a time when we are seeing an ever-increasing challenge by the Soviets and can ill afford such chicanery.

The effect of the veto is to disrupt the orderly process. The net result could be that production workloads will have to be adjusted, training with new and much needed equipment will have to be put off and the modernization of defenses would be slowed.

In my State of Texas, the President's action could upset plans to modernize the Fort Hood tank assets of the 2d Division and place in jeopardy the delivery of Bell helicopter Cobra/TOW attack helicopters to units there. The veto could also cause a delay in beginning production of the two-place TA–7D attack aircraft, added to the bill by my amendment, for the Air National Guard.

The bill also contains the Roland, Patriot and Hawk air defense systems, the training for which is conducted at Fort Bliss.

The House will, of course, have to act first in voting to override the veto, and I hope that they will dc so. The President's action came at the wrong time, on the wrong bill, and for the wrong reasons.

Mr. President, a number of press accounts have reported the difficulties raised by the veto. I ask that four of these articles be printed in the RECORD.

The articles follow:

[From the Wall Street Journal, Aug. 24, 1978]

THE RAFSHOON VETO

President Carter's veto of the defense procurement authorization is everywhere interpreted as part of a new "get tough" act, the practical incarnation of media adviser Gerald

Rafshoon's efforts to massage the President's sagging poll ratings. The veto would have helped Mr. Carter's competency rating more if he had not clouded the issue in monumental confusion, including confusion about what the bill he vetoed actually contained.

To cut through the clouds, it's necessary to keep in mind two simple facts. First: while Mr. Carter objects to the congressional decision to spend $2 billion on a nuclear aircraft carrier, his administration has already announced plans to include a large oil-burning carrier in its next budget request. The whole issue is, merely, this year or next year, and conventional or nuclear? Second: There is a difference between authorization bills, which set programs, and appropriations bills, which spend money. Mr. Carter vetoed the defense procurement authorization. The Pentagon appropriations bill has not yet been completed by Congress.

This elemental parliamentary distinction was entirely overlooked in Mr. Carter's charge that Congress is building the carrier by "diverting funds away from far more important defense needs." Among the congressional items to which he objected, for example, was a supposed cut of $500 million in military operational funds. But operational funds are not dealt with in the defense procurement bill; if this was the President's problem, he vetoed the wrong bill.

Doing the President one better, Defense Secretary Brown complained that Congress had killed three antisubmarine ships. There is a dispute over the appropriations for these ships, with the House on one side and the Senate on the other. But whatever the eventual appropriation, the ships were included in the defense procurement bill. Secretary Brown complains about Congress killing ships that were in fact in the bill his chief just vetoed.

Now, within the context of the procurement authorization, it's true that despite $1.9 billion for the aircraft carrier, the congressional total was close to the President's original request. About half of the funds came from rather ordinary changes: the Army reporting it could not spend money on its new XM-1 tank as fast as it originally thought; Congress's decision that it could both save money and improve the NATO tank force faster by upgrading more existing M60A1 tanks and producing fewer new M60A3 tanks than contemplated in the original administration request.

The other half of the carrier money came from funds originally requested for the Trident submarine program, but which cannot be spent in this year's bill because of delays. With the Trident program delayed, and with the administration poised to order up a new carrier next year, Congress is merely saying, let's use this idle money and get the carrier started now.

There remains the issue of what kind of carrier. In passing, it should be noted that in light of the latest studies it is far from clear that large carriers are specially vulnerable. They can sustain hits from Soviet cruise missiles that would atomize small carriers, which have their magazines above water line. Large ships also make sense in light of electronic battlefield management, which promises a defense capable of shooting down attacking missiles. But this debate is beside the immediate point, since the White House has requested no small carriers. Indeed, the bill Mr. Carter vetoed provided more research funding for small carriers than he requested.

It is also unclear that oil-powered carriers save money. They are cheaper to build, but more expensive to fuel. Over the lifetime of a ship, it is difficult to see much difference in total cost. Congress prefers the nuclear carrier because it has better performance, being unencumbered by a train of tankers to refuel it every few days. The administration prefers a conventional carrier, saving money on construction now but spending more on operations later. And over this difference the President is willing to veto the entire procurement bill, inviting further controversy and delay that may hinder the improvements on which he and Congress agree.

In order to escalate this minor quarrel to veto proportions, President Carter launched an attack on Congress that seriously distorts the record. Sen. Stennis rose on the floor to complain, in what is for him strong language, of the administration's "false facts." The Senator was too much of a gentleman to say it, but we will: This is not a case of the Congress being soft on national security, but of the President dallying with defense in pursuit of cosmetic politics. The defense procurement bill was vetoed not because of any large difference on substance, but because it was the first bill to come along after Mr. Rafshoon whispered in the President's ear that he could look "strong" by vetoing something.

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[From the National Security, Aug. 19, 1978]

CARTER VETOES ARMS BILL, CITES CARRIER COST

(By Pat Towell)

President Carter: "This is not a question of money [but] of how that money is going to be spent."

In announcing his veto of the $36.9 billion fiscal 1979 weapons procurement bill, President Carter based his decision squarely on the impact of the costly nuclear-powered aircraft carrier added by Congress.

To pay for the $2 billion ship, Congress had cut "into the muscle of our military defense," Carter told a nationally televised press conference Aug. 17. "This is not a question of money. . . . It's a question of how that money is going to be spent."

Carter wanted more of it spent for projects directly related to the U.S. commitment to NATO and for maintaining the combat-readiness of forces already in the field, he said. But many of the congressional changes in the budget to which the president reportedly objected were not contained in the bill (H.R. 10929) he vetoed. H.R. 10929 set appropriations ceilings for weapons procurement, research projects and civil defense—about 35 percent of the annual defense budget.

By noon the day after Carter's announcement, neither the White House nor the Defense Department had a list of the specific congressional actions Carter disagreed with, but various sources indicated that he really had two other bills in mind:

The Senate version of the defense appropriations bill (H.R. 13635). The Defense Subcommittee reportedly had cut $200 million budgeted for Army ammunition, $437 million for operations and maintenance costs and $200 million for A-10 tank-hunting planes.

The final version of the military construction appropriations bill (H.R. 12927), which cut several hundred million dollars requested for NATO-related construction projects in Europe.

According to some sources, the president concluded that he had to show his determination not to fund the carrier so Congress—and especially the Senate Appropriations Committee, which still was marking up the defense bill—would redirect the funds to items on which Carter placed a higher priority.

House Democratic leaders quickly rallied to the president's position, but a lengthy battle is likely. Three times this year the House, which will consider the veto first, has voted in favor of the nuclear carrier by relatively large margins, most recently only 10 days before Carter acted.

On Aug. 7 the House rejected, 156-218, an amendment to the defense appropriations bill by Sidney R. Yates, D-Ill., that would have killed the carrier.

Lobbying Called Ineffective. Yates said administration lobbyists had worked on behalf of his amendment, and an aide to another member who also backed Yates insisted the administration had gone "full bore" on the amendment, at least "the best way they knew how." He added that this had not been done very effectively.

But an aide to another Pentagon critic charged that the administration effort had been feeble by comparison to its efforts in February to kill the B-1 bomber and its campaign early in August to save the foreign aid appropriations bill from crippling cuts. Carter's decision to take on Congress by vetoing the authorization bill, he said, was just "one more ploy in making him a decisive president."

CARRIER POLITICS

Carter complained that another big carrier would continue the trend toward a smaller number of very expensive Navy ships. But Gary Hart, D-Colo., a leading congressional proponent of moving the Navy toward a larger fleet consisting of cheaper ships, warned that a veto would set back that policy.

The final version of the authorization bill incorporated a very tenuous compromise that included the big carrier but also nearly $348 million to accelerate the Navy's development of vertical takeoff jets (V/STOLs) that could operate from ships appreciably smaller than the giant 1,000-foot-long carriers. (*Navy future, Weekly Report p. 1255*)

But several Senate committee votes on the V/STOL portions of the bill had been very close and, according to some sources, Sen. Hart nearly lost on all of them. Inclusion of the big carrier was essential to winning the support of many Senate committee members for the V/STOL acceleration and the concurrence of the House panel, which was even more skeptical of the new approach.

Hart urged the Senate to override the veto, arguing that Carter had ignored the bill's contribution to a new direction for the Navy.

DIFFERENCES BETWEEN VETOED BILL AND BUDGET REQUEST

| Programs | Carter request | | Final authorization | | Highlights |
|---|---|---|---|---|---|
| | Number | Amount (in millions) | Number | Amount (in millions) | |
| Aircraft carrier | | | 1 | $1,930.0 | Not counted: $1,575,000,000 nonnuclear carrier administration said it would accept. |
| Carrier planes | 53 | $1,557.4 | 81 | 1,988.8 | Faster production rates for F-14, F-18. |
| V/STOL development: | | | | | |
| Planes | | 158.0 | | 208.5 | Shift to modified Harriers by 1980's instead of new planes. Not counted: bill's cancellation of $113,000,000 of non-V/STOL planes for Marines. |
| Ships | | | | 140.0 | |

| Programs | Carter request: Number | Carter request: Amount (in millions) | Final authorization: Number | Final authorization: Amount (in millions) | Highlights |
|---|---|---|---|---|---|
| Trident missile submarine | 1 | 911.9 | | | |
| Surface effects ship | | | | 80.0 | |
| XM-1 tank | 110 | 585.1 | 110 | 493.3 | Funding readjustments requested by administration and Congress' increase of $27,500,000 to adapt German cannon. |
| M-60 tank (production) | 480 | 383.8 | 410 | 345.0 | Shift from purchase to modernization gives 90 more tanks for $4,800,000 less. |
| M-60 tank (modernization) | 220 | 98.4 | 380 | 132.4 | |
| Infantry fighting vehicle | | | | 39.0 | Shift to begin production of new type of troop carrier. |
| M-113 troop carrier | 910 | 74.2 | 550 | 44.5 | |
| Multiple antitank homing warheads | | 85.5 | | 50.5 | Funds shifted among eight research projects because of fear of duplication. |
| Medium-range ballistic missile | | 15.1 | | 22.0 | Pershing II missile shifted from Army to Air Force. |
| Air National Guard planes | | | 24 | 223.0 | Includes attack trainers and Hercules transports. |
| Strategic warplane research | | 210.0 | | 140.9 | Includes cuts of 50 percent in research on B-1 bomber ($50,500,000) and cruise missile carrier ($20,600,000). |
| Strategic attack warning | | 115.3 | | 131.3 | Increase of $25,000,000 for satellite protection. |

[In millions]

| | Increases above Carter's requests | Decreases from Carter's requests | Net change from request |
|---|---|---|---|
| Army: | | | |
| Procurement | $97.4 | $273.7 | −$176.3 |
| Research | 54.0 | 113.7 | −59.7 |
| Navy and Marines: | | | |
| Procurement | 2,941.2 | 1,122.6 | +1,818.6 |
| Research | 287.4 | 279.1 | +8.4 |
| Air Foce: | | | |
| Procurement | 253.0 | 138.2 | +114.8 |
| Research | 83.9 | 258.5 | −174.6 |
| Defense agencies: Research | 47.8 | 15.0 | +32.8 |
| Subtotal, procurement | (3,291.6) | (1,534.5) | (+1,757.1) |
| Subtotal, research | (473.1) | (666.3) | (−193.1) |
| Total | 3,764.7 | 2,200.8 | +1,564.0 |

### Changes Made by Congress

#### Army Weapons

Although the president maintained that Congress had cut $800 million from the Army weapons budget, the reductions made in the procurement bill totaled only $387.4 million. This was in part offset by additions to the Army budget of $151.4 million.

The cuts included $127.4 million for production overhead costs for the new XM-1 tank contract. But much of this reduction was approved by the administration and did not change the number of tanks authorized.

Other cuts included some management reshuffles prompted by congressional dissatisfaction with the Army's control of various programs. For instance, $15.1 million for programs connected with the Army's 400-mile-range Pershing ballistic missile was cut. Instead, Congress gave the Air Force $20 million to manage the Pershing program. The two Armed Services Committees had been concerned that the long-range missile program was being given too low a priority by the Army and decided that the Air Force was more likely to push it.

Another management-related reduction in Army weapons involved the new A3 model of the current M-60 tank that has more accurate gun-aiming equipment than the earlier M-60 models. Carter had requested $383.3 million to produce 480 new M-60s and $98.4 million to add the new equipment to 220 of the older models already in stock. The Armed Services Committees concluded that by buying fewer new models (410) and modernizing more of the old ones (380), the Army would get 90 more tanks for $4.8 million less.

#### Air Force Weapons

The net reduction made in Air Force programs in the authorization bill was only $59.8 million, a quarter of the $200 million reduction cited by Carter. But that figure was derived from cuts totaling $396.7 million and additions of $336.9 million.

There were no cuts in Air Force planes and cuts of only $36.7 million in three missile programs. But Carter may have been piqued by the addition of $223 million for 16 trainers and 8 transports for the Air National Guard. And $40 million was cut from a program that was central to Defense Secretary Brown's plan to greatly increase the number of reinforcements that could be flown from the United States to Europe in case of a war. Called CRAF, the program called for modifying civilian passenger jets so they could quickly be converted in an emergency to carry military cargo. Of $68.5 million requested, the bill approved only $7.5 million.

#### Readiness-Related Programs

Carter's reference to a $500 million congressional cut in programs related to combat-readiness is unclear since the types of programs he mentioned—ship overhauls, training and logistical support—are not contained in the bill he vetoed.

Overhauls. Major overhauls of ships, combat vehicles, airplanes and airplane engines do not require congressional authorization, but are an important element of the Operations and Maintenance account of the defense appropriations bill. Even if that was what Carter was referring to, his criticism was not relevant to House action on this year's bill (HR 13635). Of the $1.6 billion requested in the budget for major ship overhauls, the appropriations bill cut only $41 million. The House Appropriations Committee had argued that the shipyards could not absorb all the scheduled jobs. The bill added $182 million to the administrattion's request for Navy and Air Force overhauls of planes and aircraft engines. From the Army request of $975 million for major vehicle overhauls, the appropriations bill cut $8.4 million. (*Weekly Report pp. 2099, 2016*)

#### Training

Funds for training are not included in the authorization bill, nor are funds for any other personnel costs. But the bill does authorize manpower ceilings, and in that section Congress increased the number of Army and Navy personnel engaged in training by 3,950 above the number requested. The two Armed Services Committees rejected proposed cutbacks in the duration of recruit training for those services.

#### Logistical Support

The President did not explain what he meant by "logistical support," but according to news reports administration officials said he would like to see up to $500 million of the aircraft carrier funds used instead for spare parts for ships and planes. Spare parts for ships are not separately budgeted in the authorization bill, and the total budget request for airplane spares was only $1.8 billion, from which Congress made almost no changes.

#### Navy Programs

In addition to the congressionally imposed $1.93 billion for the nuclear carrier, the authorization bill increased Navy procurement funds by $428.4 million for carrier planes. Much of this increase was to increase the production of F-14 and F-18 fighters. The Armed Services Committees had complained that the slower rate at which the administration planned to buy the aircraft was inefficient and would increase the planes' cost per copy.

Partly offsetting the added cost of the carrier was a cut of $911.9 million for the eighth Trident missile-launching submarine. Both committees and the administration agreed that the construction of the ship could not begin in fiscal 1979 because of production delays at the General Dynamics shipyard where the ships are being built.

#### Carrier Costs

Opponents of the nuclear carrier had argued that the ship would, in effect, cost far more than its already hefty price tag of $2.2 billion (of which $268 million was appropriated in 1977). To derive the full benefits of nuclear power—essentially unlimited range at top speed—such a ship would need three nuclear-powered escorts, according to most Navy testimony. But the Navy already has a shortage of nuclear escort ships for the four nuclear carriers already built or being built, and such escort vessels now cost upwards of $1 billion each.

But pro-carrier members warned against placing too much hope in the savings resulting from the lower cost—$1.585 billion—predicted for the non-nuclear carrier requested by Carter. The smaller ship was only a gleam in an admiral's eye, they said. Design work was far from complete, and the history of recent Navy ship contracts almost invariably included large cost overruns by the time detailed designs finally were completed.

The nuclear ship, on the other hand, would be almost a carbon copy of the existing *Nimitz*-class carriers. The conference committee that wrote the final version of the vetoed bill had turned down a House proposal to modify the ship's design in order to better protect the ammunition magazines partly to reduce the potential for cost increases.

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[From the Washington Post, Aug. 25, 1978]

### Carter's Veto Politics

(By Rowland Evans and Robert Novak)

There is substantial evidence that in his daring veto of the defense bill, President

Carter was guided chiefly by a desire to re-establish his presidential authority rather than by fervent opposition to a costly, fifth nuclear aircraft carrier.

"The president was looking for a peg to hang his veto on," one usually pro-Carter Democrat on the House Armed Services committee told us. "The carrier was his best bet."

But asserting presidential mastery and muscling Congress to sustain his veto after Labor Day, Carter is following public-relations adviser Gerald Rafshoon's get-tough formula. But in getting tough, he has risked losing major defense items obtained as trade-offs for the carrier in the intricate congressional log-rolling process.

None of the president's military advisers, uniformed or civilian, recommended the veto. There was mirthless laughter in the Pentagon when Carter told his press conference that he had "not had a single adviser who told me that we ought to go ahead with the nuclear aircraft carrier."

By law, the president's "principal naval adviser" is the chief of naval operations. Both the present chief, Adm. Thomas B. Hayward, and Adm. James L. Holloway III, who was replaced by Hayward July 1, have been strong proponents of the nuclear carrier.

Apart from the president himself, the moving force behind the veto was White House political adviser Hamilton Jordan, along with Rafshoon—not Secretary of Defense Harold Brown.

That came out in Brown's private talks with congressional military specialists, sounding out sentiment before the veto. The defense secretary made clear he had not proposed such drastic action, but that Carter seemed determined on it.

Talking to one friendly congressman, Brown showed this was politics, not defense. He speculated whether the best way to defend the veto would be opposition to the nuclear carrier or opposition to cuts in research and development and in readiness funds. As it turned out, Carter used both arguments, emphasizing the carrier.

Politics showed itself when one congressman warned Rafshoon the veto might make the president look anti-defense. Rafshoon's answer revealed how clearly the political tactics had been developed: Don't worry; the president can deal with that in the veto message. Deal with it he did by calling Congress anti-defense.

Ignored by Rafshoon and Jordan was the effect of the veto on the delicate log-rolling needed to produce a defense bill. Although the veto probably will be sustained, writing a new defense bill will be no easy task.

A case in point is liberal Democratic Sen. Gary Hart of Colorado, an Armed Services Committee member highly skeptical of big nuclear carriers. Hart agreed in a trade-off with conservative Republican Sen. Jesse Helms of North Carolina to support the nuclear carriers in return for Helms' backing of a new generation of small carriers favored by Hart.

One day after the veto, Hart wrote all senators urging an override of the veto with this argument: "The Congress produced a carefully crafted, logical and progressive conceptual approach to the question of the future of the carrier. The veto destroys this achievement and puts us back on the treadmill of the carrier question—with no solution in sight."

Routine trade-offs, spun into a seamless web, are at the heart of the congressional defense-budget process. That explains why vetoing a major defense bill is so rare that it has not been tried in this century. In his dramatic effort to show himself a commander-in-chief who truly commands, the president ignored that record for the gamble of large political gain.

For now, however, the president is less concerned with putting the defense bill back together than with mobilizing public opinion behind his argument that he, not Congress, is the staunch fighter for national defense. That was the message Aug. 23 when 200 prominent businessmen were summoned to the White House for enlistment in the anti-carrier crusade led by Vice President Walter Mondale.

Results were mixed. One executive was puzzled that the White House expected him to accept Mondale's word on faith against that of Sen. John Stennis (D-Miss.), veteran chairman of the Senate Armed Services committee. "They're crazy if they think I'm going to tell Sen. Stennis he's wrong," the executive told us.

No such national campaign was started against the carrier until *after* the defense bill was sent to the Oval Office. That only reinforces suspicions about the president's veto motives.

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[From the Dallas Morning News, Aug. 23, 1978]

NO TIME FOR IMAGERY

(By Joe Dealey, Jr.)

If President Carter's veto last week of that $37 billion military weapons authorization bill was an attempt to enhance his public image by standing firm against a free-spending Congress, Gerald Rafshoon's tenure at the White House may rival that of Bert Lance's for brevity.

Carter invoked the presidential veto for the fifth time since taking office 20 months ago, ostensibly because the military weapons authorization bill included $2 billion for construction of a nuclear-powered aircraft carrier.

Sorry, Mr. President. That excuse, if you'll pardon the expression, won't float.

In the first place, the Navy didn't request funding for the additional aircraft carrier. The aircraft carrier was added by the appropriations committee for inclusion in the fiscal 1979 budget, a full year before the Navy was expected to seek such funds.

Carter's veto of the military weapons authorization bill was another ill-timed slap at the Congress. Regrettably, in this instance, the White House blow has fallen on a Navy Department that has image problems of its own.

Last week's presidential veto, which all but laid the blame for the military weapons authorization bill's failure to get a presidential signature on an aircraft carrier, was patently unfair to the Navy.

Last week, one unidentified Department of Defense official described the aircraft carrier as a "glamour" item included in the military weapons authorization bill at the expense of U.S. military readiness.

Chances are the official was a booster for the North Atlantic Treaty Organization, which accounts for his attitude. Had he been in the Navy, he would know just how vital the aircraft carrier is to the Navy.

The NATO ministers, who met in Washington earlier this year, were assured of continued U.S. support, both economically and militarily. Chances are that the bulk of the funds pared from the military weapons authorization bill were to have gone to North Atlantic alliance members.

Instead, the appropriations committee cut these items out, substituted an aircraft carrier the Navy itself didn't want, at least not yet, sent it to Congress for approval, which may, in part, account for NATO's supreme commander's, Gen. Alexander Haig, reluctance to discuss the President's veto.

"This is not a question of money," Carter told reporters at his press conference.

"The Congress reduced only slightly the amount of money I recommended. It's a question of how that money is going to be spent."

Agreed, Mr. President. The problem was that the aircraft carrier represented money destined for NATO, money Congress wanted to enhance U.S. military readiness.

By vetoing a military weapons authorization bill many members of Congress felt reflected the mood of the nation toward military spending—or lack thereof—the President hasn't exactly enhanced his public or congressional image.

Furthermore, by laying the bill's failure at the Navy's doorstep, Carter has served only to further undermine the entire military establishment's attitude toward him as commander in chief.

The Navy, in this instance, will shoulder the blame for the failing of this military weapons authorization bill, but what of the other uniformed services that must go without much-needed funding because the President chose this particular time, indeed this altogether critical military weapons authorization bill, to show how tough he was in the face of a free-spending Democratic Congress?

Secretary of the Navy Graham Claytor, a former Navy veteran like the President, is understandably concerned about the Navy's future role in the event of Soviet intervention on the high seas.

Like the President, Claytor doesn't believe another nuclear-powered aircraft carrier is needed. What is needed, according to Claytor, is for the Navy "to start building another carrier of some kind in the near future."

Critics charge that aircraft carriers are vulnerable. Certainly they are, but only as vulnerable as other surface-going vessels.

To be sure, aircraft carriers are a more desirable military target than, say, a guided missile cruiser, but an aircraft carrier carries a substantial part of its defenses along with it in the form of its aircraft.

Adding to the carrier's survivability are the incoropration of extensive damage control features, hardening if you will, in addition to electronic countermeasure technology to guard and defend against surface-to-surface attack.

In time, the Navy will be presenting a request to Congress to fund aircraft-carrying surface vessels. It's hoped that last week's presidential veto didn't scuttle the Navy's chances for getting an admittedly "glamorous" piece of equipment, but one that is sorely needed if the Navy is to remain militarily viable.●

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## A TRIBUTE TO G. JOSEPH MINETTI

● Mr. CANNON. Mr. President, I rise to pay tribute to G. Joseph Minetti who will retire next week as a member of the Civil Aeronautics Board. I want to emphasize that this is not a pro forma tribute. It is based upon my deep personal respect for an exceptionally dedicated and talented public servant.

When Joe Minetti retires, he will have been a Federal regulatory commissioner continuously for a total of 24 years and 3 days. This is longer, I believe, than any other commissioner before him. It is, however, not an endurance record which motivates this tribute, but a history of the highest quality public service. The "new" mood in Government for less regulation and more competition in regulated industries is old hat to Joe Minetti. For years he was the lone voice of dissent against the restrictive policies of an entrenched protective CAB. I am very disappointed that he will not be able to remain on the Board to participate in the development of a truly competitive air transportation system which he has advocated for so long.

Joe Minetti's aviation experience extends back over 30 years. In 1947, he was appointed a Commissioner of the Department of Marine and Aviation for the city of New York. From there he moved on to become the Commissioner of the Board of Transportation of New York City. Then in 1954, President Eisenhower nominated him to become a member of the Federal Maritime Board; 2 years later he was nominated to the Civil Aeronautics Board. It should go without saying that each time he was unanimously confirmed by the Senate. Joe won the firm support of each President under whom he served. In 1962, he was renominated by President Kennedy. In 1967, President Johnson renominated him. And once again in 1973, he was appointed for another term by President Nixon.

As if it were not enough that Joe Minetti has such a long and distinguished record, he is also one of the kindest and most dignified individuals I have ever known either inside or outside of the Government.●

## U.S. GRAIN EXPORTS AND THE SOVIET UNION

● Mr. DOLE. Mr. President, U.S. estimates of the Soviet 1978 grain crop continue to increase indicating the Russians may import less U.S. grain next year. This situation again raises the issue of the importance of the exports to U.S. farmers.

The Agriculture Department this month raised its estimate of the Russian grain crop to 220 million metric tons and said the figure could even surpass the record 224 million metric tons produced in 1976.

A big Soviet harvest raises the possibility the Russians will buy considerably less United States grain in the 12 months starting October 1 than the 15 million metric tons they are expected to buy in the current year. Before the latest crop estimate, some analysts had been forecasting the Soviets would take 8 to 10 million metric tons of U.S. grain in the next year.

Other analysts say any reduction from this figure would be moderate, despite an abundant Soviet crop, because Russian grain stocks are low and some of this year's harvest would be used to replenish them.

### CURRENT 5-YEAR AGREEMENT

A current 5-year agreement requires the Soviet Union to purchase 6 to 8 million metric tons of grain annually from the United States.

Under the agreement, the Russians so far this year have bought about 14 million metric tons of wheat and feed grains, valued at more than $1 billion. Most of the wheat sold to the Russians during the current 1977–78 crop year has been delivered, but a significant portion of the feed grains sold have not been shipped.

### AGRICULTURAL EXPORTS

Our agricultural exports of $24 billion in 1977 generated net earnings to the United States of almost $10.5 billion last year. This year, farm exports will contribute an estimated $12 billion to our balance of payments deficit. That record is unmatched in any other segment of our economy.

Agricultural exports are very valuable to the farmers of this Nation. Our farmers depend on exports to keep production high in the United States and also to keep market prices strong. Any reductions in the export market would mean a severe loss of farm income to U.S. farmers.

Everyone recognizes the importance of grain sales both to the U.S.S.R. and to our own economy and that we should continue to encourage the Soviets to satisfy their import needs with U.S. gains, soybeans and other agricultural products.

American grain exports to Russia bring us into close contact with the Russian grain harvest, the Russian economy and to some extent the Russian people. Many Americans have been upset over recent developments in the Soviet Union which they feel were violations of human rights and the Helsinki agreement.

### POLITICAL TRIALS

President Carter, in reprisal for the political trials in the Soviet Union, has decided to impose new controls on sales of American technology to Russia and to cancel the sale of a Sperry UNIVAC computer system to Tass, the Soviet news agency.

Some Members of Congress, myself included, have called for stronger measures. Some have suggested cancellation of the sale of a modern plant for producing oil well drilling bits.

Also, some officials say they had reports that Zbigniew Brzezinski, President Carter's national security adviser, was backing a proposal to use the administration's heaviest economic leverage against the Soviets—the 1975 grain agreement.

There are voices being heard on both sides of the issue as to whether food should be used as a weapon to express our displeasure over human rights violations and as a weapon to help force some compliance.

### GRAIN EXPORTS

Certainly the President must look at all the "options" including grain sales, but I do not believe grain exports to the Soviet Union should be embargoed unless there is an international situation severe enough to warrant a total embargo of all exports to and imports from the Soviet Union.

Only if all exports and imports of all economic goods, cultural and scientific exchanges, and any other transfer of goods or special knowledge between the two countries would be embargoed should grain and other agricultural products be included.

### FARMERS WILL SHARE SACRIFICES

Farmers across this country have always been willing to bear their fair share of any personal or economic sacrifices needed for necessary national strategies. They will always be willing to do so in the future.

Unfortunately, farmers have been singled out in the past to bear the burden of international policies while other American producers have not. A policy of this type is not fair or equitable. I shall continue to oppose such selective embargoes that hurt farmers and that use food as the only weapon in international strategies.

It is my view that there are other more effective ways that the United States can tell the Soviets that we deplore the continued mistreatment of Soviet citizens than by cutting or suspending grain exports through an embargo. Surely, the SALT talks and scientific exchanges are things the Soviets value highly. I have supported temporary "suspensions" in these areas.

### GRAIN EXPORT EMBARGO NOT EFFECTIVE

A grain export embargo by itself would not be effective. The most immediate beneficiaries of a restriction on U.S. grain sales would be Australia, Canada, and other large grain-producing countries who would increase their sale of grain to Russia.

The world grain market seems to be peculiarly unsuited to embargoes because less than one-eighth of the grain produced in the world is traded internationally as compared with more than half of all the oil produced. Grain-producing countries have not established a cartel similar to the major oil-experting countries.

Mr. President, in conclusion, I do not believe grain exports to the Soviet Union should be embargoed unless there is an international situation severe enough to warrant a total embargo of all exports to and of all imports from the Soviet Union. I shall continue to oppose any selective embargo that uses food as the only weapon in international strategies.●

## A NEW LOOK IN AGING

● Mr. CHURCH. Mr. President, at hearings by the Senate Committee on Aging this summer dealing with "Retirement Work, and Lifelong Learning," several expert witnesses challenged wastefulness of the talents and experience of older Americans.

It is not only a matter of mandatory retirement, an institution now undergoing exhaustive scrutiny and probably on the verge of total abolition.

It is also a matter of attitudes toward aging during the work career. What do industry and business and the service sector do to keep job skills from becoming obsolete? How flexible are personnel managers in providing new work opportunities as employee interests or work capabilities change? And how do we measure such capabilities at all, in the face of widespread negative attitudes toward aging?

Such questions will receive careful attention in continuing committee studies and hearings on retirement, employment, and lifelong education. We will also heed the writings of authors such as Dr. Harvey Wheeler, chairman of the Institute for Higher Studies in Santa Barbara, who in the current issue of the American Association of Retired Persons' Modern Maturity, discusses changes which are on the way along with the virtual end of mandatory retirement in this country.

I ask to have this article printed in the RECORD.

The article follows:

AGING—THE NEW LOOK: THE VIRTUAL END OF MANDATORY RETIREMENT PRESAGES RADICAL CHANGES IN AMERICA'S OLDER POPULATION

(By Harvey Wheeler)

Few things are changing as fast today as the look of aging in the United States.

New legal prohibitions against forced retirement at 65—or at any age in some cases—are opening up new floodgates of change.

But while we see what's happening, we can't predict the outcome. America's older population has become democratized by its sheer numbers. I call it "the rise of elderhood."

That democratization is the secret of much that is new and unpredictable about today's society. One reason it is unpredictable is that we don't know enough about elderhood. Most of the conventional maxims about the elderly have been created by people who were younger; society could ignore what it's really like to be old so long as elders were politically unimportant.

Old people are—or have been—invisible. That has made it easy to fasten onto them the stereotypes of decrepitude devised by others. And that is why any rigid policy of forced retirement at a fixed age rankles.

Large employers don't like flexible retirement policies because they require discrimination according to merit and productivity. That means traeting individuals on their own merits, which is what elders now demand. Such treatment is not as hard as employers claim.

For years, employers have been able to hire people over 65 on an annual contractual basis, and they have done so on selected bases. But under the umbrella of forced retirement, such discriminations permit deals highly advantageous to the corporation.

The corporate whiplash engenders poignant complaints about "being thrown on the bone pile." Suddenly, one is no longer an individual, but only an invisible member of an outcast class of elders.

What about some of the other stereotypes?

Younger people commonly think elders dwell heavily on the subject of death. Elders do think about death; everybody does. But it is different.

An elder calculates, idly, his remaining actuarial allotment, but there is also optimistic awareness of the staying power of people like Pablo Cassals, Bertrand Russell and Piccaso; everyone expects to receive similar exceptional increments. A person of 60 knows that insurance companies will gamble on only another 16 years but the consolation is that it could be another 30.

We all maintain a certain psychic continuity throughout our lives and inside each one of us there dwells much the same person that has been there since youth.

Psychologically, elders do not see themselves as aged so long as they are vigorous. They identify with people of similar vigor, not with people of a similar chronological age.

My good and indefatigable friend Ernest Bader at 85 picked me up at London's Heathrow Airport, carried my two heavy bags to his Rover, and then proceeded to exhaust me with a breakfast-to-midnight schedule for the next three days.

To elders, very few people die of "old age," but of something specific like cancer, or pneumonia, or an automobile accident, or a stroke. These accidents or diseases might conceivably have been prevented or cured. They could have happened to a person of any age.

We all suffer from progeria—too rapid aging—and the disease is progressive. But death is never really imminent or inevitable in a sense that is special to elders. It always was inevitable since one first became aware of it; it is merely a little more inevitable. So a sense of impending death is not something that haunts elders as a class.

Emotionally, we are all in the same boat and always have been.

The terrified whimper that his father's death evoked from Dylan Thomas—"Go not willingly, but kicking and screaming"—is a young man's protest. The elderly are more in tune with the great Spanish philosopher Miguel de Unamuno: Death is an absurdity, an insult, a kind of biological mistake which, although for the time being is an unavoidable fate, should never be considered a just one.

All this needs to be brought into the open now because, barring the accidents that can happen at any age, most people expect to become elderly one day and already, from sheer political clout, elders must be taken into consideration.

One of the things they plead—demand may be too strong as yet—is to be considered as persons.

One reason this plea now carries considerable force is that for the first time we are on the verge of being able to make such judgments through advances in social gerontology. That is why Robert Butler, director of the National Institute of Aging, favors a flexible retirement policy. And to administer it, he promises Congress that his institute will shortly have a battery of tests to make it possible for employers to abandon chronological age as a determinant of retirement policy.

Once these more accurate measures of health, well-being, and competency are available, policies based on chronological age alone might even be violations of the equal protection clause of the United States Constitution.

Alex Comfort, one of the world's leading gerontologists, writes that old age is a "trip" society lays on the old, telling them that at a given point, 65, widowhood, or some other arbitrary point, they are henceforth to become drab, spiritless, weak, sexless, hopeless, senile, childlike, dependent, useless, incompetent, and on and on, even though the day before they may have held the highest power and esteem among their peers.

This condition has never been the lot of the elderly rich. They have always had the option of retirement at birth, like Doris Duke, or lifelong functioning, like Nelson Rockefeller.

The democratization of longevity has outmoded the stages of adulthood with which all previous people have lived and this is the bedrock foundation on which future policies involving elderhood will have to rest.

The central issue can be stated briefly: The three stages of adulthood—socialization/training, work/parenting and retirement/leisure—no longer follow precise chronological age. Within Shakespeare's seven stages of man, episodic life-stages are appearing. Education, leisure, family-building and socialization are now occurring in repetitive sequences throughout adult life. Individuals may have several careers, several matriculations, more than one family, several sabbaticals and even several status situations, as their chronological time clocks run their courses.

Our policies relating to schools, the family, Social Security and mental health all require adjustment so as to jibe with the needs of our new, rotating life-stages that are beginning to acquire special new rites of passage of their own.

Retirement is merely one of the first of these traditional rites to undergo legislative revision.

Such stage adjustment problems will have to be worked out over a period of years and with flexible approaches. In general, careers should follow each other on the principle of progressing from routine to prudence. Lifelong education should coincide roughly with this progression: the early mastery of tool competencies, whether the tools are intellectual or craft, and provision after that for career interruptions to furnish advanced education. Each additional schooling component would be designed to match accumulating experience, growing competency and maturing wisdom, with provision for preparation to adopt alternative careers at each stage.

In general, every maturing person should be able to look forward to an ultimate role that utilizes the enlarged prudential capacities of elders. From the start, all educational stages should be thought of as stage-specific preparations for this ultimate goal; not merely as training for an immediate job.

It is often said that as people get older they fall into ruts. This may be merely another way of saying that they become experts. It can also be another way of saying that everybody requires periodic refresher courses, just as do physicians and accountants.

The positive side of this is that as people age they usually acquire a greater capacity for taking into account the likely long run implications and unanticipated side effects of contemplated tasks. This talent is really what we mean when we talk of the wisdom of elders.

Like all behavioral traits, this one too is learned by experience, but the optimum way to insure getting it is by supplementing the natural benefits of experience with a complementary educational program.

Our nation is now at the beginning of a period in which all age-related problems will become aggravated by the mere fact that the post-World War I baby boom is just now entering elderhood. After it dies out, these problems may mitigate until about 2010, when the even larger post-World War II baby boom will enter elderhood.

We must solve our present problems, not only for their own sake, but also in preparation for the more serious ones that are on their way. Of course, the situation may *not* lessen between now and 2010: If the cardiac-cancer-renal killers were to be eliminated, it is estimated that by 2000 the gross number of elders might be as much as 75 percent more than we have today. What are some of the potential developments?

The first concerns ageism as a form of class consciousness.

Class consciousness is in part a function of quantity plus density. Social gerontologists have been expecting elders to exhibit signs of class consciousness for several years. That time may be now. Age-oriented associations are growing rapidly.

As the average educational level of elders rises during the next few years, they will become not only more active politically, but also more liberal ideologically. This trend has aready started.

The polls of the 1960s and 1970s provided the basis for generalizations that are now being abandoned. We now discard theories that elders, by their nature, "disengage" from society and life, and grow more conservative with age. That may have been true of our bygone elders, but it is not true of people now becoming elders.

Specialists mistakenly assumed that the elders of all times would be like those who had matured during the 1920s. More recent value-free tests have shown all this to be false.

The aging process does not produce political conservatism; it merely tends to confirm what was believed all along. People who have always been conservative continue that way, and so do those who have always been liberal.

Elders can *appear* to become more and more conservative with age if the society itself is becoming more and more liberal, as has been the case until recent times. However, if our society as a whole should continue along a conservative trajectory for some years more, those now advancing to-

ward elderhood would naturally turn out to occupy roles in the vanguard of liberalism. Critics would doubtless call them "dated" but, in a society with nearly one-third of the voters over 65, who is dated and who isn't can be resolved by ballot rather than epithet.

The class dynamics of elderhood is another matter of great moment. The sociologist Irving Horowitz argued in the 1960s that youth then constituted a social class. Something similar may characterize the elders of the 1980s. Economically, elders tend to occupy a lower-middle-class status.

According to Dr. Butler of NIA, half of the families headed by an older person have incomes of little more than $8,000 per year, compared with over $15,000 for younger family heads. The median income of older persons living alone is about $3,500, compared with $6,500 for younger unrelated individuals. One-sixth of all elders live in households with incomes below the official poverty threshold.

Attitudes do not always correlate with incomes; England has its well-known class of Tory paupers. No social theorist has ever been able to figure out what it is that at special times in history ignites that spark of class consciousness that mobilizes a defined social stratum into a militant political force.

However, since the mid-16th century, the lower middle classes have been at the forefront of radical movements of both left and right. The social scientist Hans Speier concluded that after a drastic collapse, they tended to become reactionary, as in Nazi Germany. But his studies of other periods indicated that a lower middle class that had experienced a lifetime of gradual improvement, followed by a period of gradual decline, would tend to favor left-looking reformist policies.

At the present time, it is precisely the latter condition that characterizes elders as a class. If Speier is right, our rising elders will have some political surprises in store for America.

Consider the fact that technological obsolescence has an especially cruel impact on elders. The constant improvement of old technologies and the substitution of increasingly sophisticated computer-assisted machines (both office and factory) for more primitive equipment diminishes the value of all workers, but that of older workers most acutely. Seniority is of little help; old jobs are simply phased out.

This is a form of inflation that depreciates skills the way monetary inflation depreciates annuities. Ravaged by these dual inflationary forces, elders have nowhere else to turn but politics.

Very few of the foregoing issues have arisen because of today's economic problems. The plight of elders has been described in other terms in part to counter a common assumption: that age-related politics has surged into prominence because economic difficulties bear down heavily on the elderly.

It's true; they do. But as we have seen, inflation and the nation's business slowdown are by no means solely responsible for the rise of the elders. Those conditions merely amplify the force of a large number of recent age-related developments. Before the century is out, they will alter irrevocably the shape of our society.●

## THE FEDERAL PRISON SYSTEM

● Mr. HOLLINGS. Mr. President, the Appropriations Subcommittee on the Departments of State, Justice, Commerce, the Judiciary and related agencies has focused considerable attention on the Federal prison system. Over the last 2 years we have authorized additional capacity of 4,566 because of the 25-percent overcrowding that exists in the Federal correctional facilities. We have also turned down requests for new close security facilities that recent information indicates are not needed, in favor of additional minimum security facilities and camps.

This year we provided for two new minimum security facilities at former military installations in Texas and California. Thus, for basically the cost of a fence, we will put in place beds for 750 prisoners and avoid the land acquisition and construction costs of establishing new facilities. Just as importantly we have eased the impact on the communities faced with closure of military installations.

This year's budget also marks a significant departure in the number of prisoners serving their time in community treatment centers, that are commonly called "halfway houses." Two years ago the appropriation only provided for a daily average of 2,182 persons serving their time in the community; in fiscal 1979 we are budgeting for an average of 3,156. This is a 45-percent increase.

We are justifiably proud of these efforts to improve the welfare and program of the Federal prisoners. However, these advances have encountered unexplainable criticism from various groups who apparently believe that we should set the prisoners free. By some strange and convoluted reasoning these groups argue that stopping construction and overpopulating the present facilities even further, the judges will stop sending people to prisons. That is ridiculous.

While we support the alternatives to incarceration for those whose crimes and rehabilitation warrant less than a prison sentence, we certainly are mindful of the continuing need to imprison the terrorists, drug traffickers, murderers, rapists, and other perpetrators of violent crimes. As long as I have a say in these matters there will be a more balanced view than any head-in-the-sand ideas.

Mr. President, unfortunately, most of the mail has been from the antiprison crowd. Thus it was refreshing to receive a letter from Joseph S. Bair who is presently an inmate at the Chillicothe, Ohio, correctional institution. This is a State institution so Mr. Bair has no personal advantage in writing of his admiration of Norman Carlson, the director, and the program of the Bureau of Prisons. I fully share Mr. Bair's appreciation of the outstanding service of Mr. Carlson and his associates and ask that Mr. Bair's letter be printed in the RECORD so that my colleagues and other interested persons can also have the benefit of his inside views.

The letter follows:

CHILLICOTHE CORRECTIONAL INSTITUTE,
*Chillicothe, Ohio, August 8, 1978.*

Hon. ERNEST F. HOLLINGS,
*U.S. Senator, Senate Office Building, Washington, D.C.*

DEAR SENATOR HOLLINGS: This letter, I surmise, will almost certainly end up being quite unlike the overwhelming majority of those received by you, simply because it seeks no favor of any sort, neither does it set forth some complaint, grievance or grudge, real or imaginary.

Additionally, I feel equally certain that it will be among the relative few written to express sincere, very real thanks and enthusiastic support for the careful consideration you have given in a most difficult matter, as well as the determinations that you have made as to your stance regarding that matter.

My appreciative approval is in regard to your consideration of the needs of and proposals advanced of late by the Honorable Norman A. Carlson, Director of the United States Bureau of Prisons; and, your courageous support of the Director in all.

On the one hand it is crystal clear that you and others in the Congress have been subjected to considerable pressure, coming as it does from people of a variety of persuasions and for various reasons, to deny the Bureau necessary funds with which to operate, to build, to staff and to renovate the federal penal system which, like those of numerous states, has been plagued by a seemingly endless series of problems, judicial and otherwise. This pressure comes from very small organizations but ones that are extremely active, adamant, persistent and ultradetermined.

On the other hand, it is clear no less that Director Carlson has very real needs and that they are as persistent as they are valid; and, if the United States Bureau of Prisons is to continue to operate and continue to deal with the ever-changing, ever-mounting problems that arise, he must have that sort of help that only the Congress can provide.

I am very visibly impressed by the goals, objectives and determinations of this very competent, very dedicated, very sincere and totally concerned man. I have no doubt whatsoever that my view is shared by many in the nation's capitol; but, venture to say that this is relatively very rare, coming as it does from a man who is himself confined to prison!

I am now and long have been confined to serve consecutively-imposed federal and Ohio terms for interstate transportation of stolen property and felony-fraud respectively, having served the firstly-imposed sentence in Leavenworth Penitentiary and thereupon, was remitted directly here to undertake the consecutively-imposed state sentence. I have been under felony sentence, initially in the 80-year-old maximum security federal prison and thereupon in this, a 40-year-old medium-security state prison for well over seven calendar years to date. Of late, I have been accorded parole. Thus, and for the further reason that I am not in federal custody at all, it cannot be said that my support of Mr. Carlson is motivated by any attempt to curry favor with him or the Bureau.

In the time of my confinement, consisting as it does of well over 2,500 long days and over 60,000 long hours of penal servitude, I have had ample opportunity to view prisons, prisoners, prison-keepers. And, I have had considerable exposure in a variety of ways, to both those inside of prison and without who are involved with the so-called "prison-reform" movement and who purport to be concerned over what they delineate as "prisoners' rights".

In recent years, and for a variety of reasons, a clearly erroneous picture of the penal scenario has developed, grounded in equal parts upon myth, superstitution, emotion, rhetoric and frankly, bald-faced lies and self-serving statements purported to be facts but which in reality are no such thing.

Penal authorities have been attacked, vilified, cursed, pictured as incompetents, sadists and worse. The endlessly vicious attacks come from a minute handful of prisoners; and, from an equally tiny handful of free people. Some are cranks; others are violence-inclined radicals, revolutionaries, anarchists; others are simply grossly naive do-gooders who seemingly have a huge affinity for obscure minorities and somewhat masochistically view prisoners as some sort of victims or sort of overgrown wayward youths.

I have, during the time of my confinement, paid exceedingly close attention to the so-called "prisoners' rights" movement which includes a variety of people with an even wider variety of backgrounds and an admixture of organizations—some religious, others pseudo-religious, some centered upon mental health, and so forth. Many of these are officed, understandably, in Washington, D.C. and/or New York City; and, some have branch offices or sub-divisions of the parent organizations in the major states.

While at first blush these organizations seem concerned as to reform and betterment of penal conditions, in the final analysis they are absolutely no such a thing. I think primarily and at this moment of a decidedly peculiar group, the National Moratorium on Prison Construction with sort of vague Unitarian Church affiliation; and, the National Prison Project which is an adjunct of the American Civil Liberties Union. Both are found in Washington and both are ever-eager to leap into penal problems (and, if none are at hand, they are shown, on the record, to be more than happy to create some, much to the chagrin of penal authorities, prisoners themselves, and others, too).

The total lack of moral virtue and honesty clearly visible in these groups (and others, too, including those found in Ohio, Illinois, California, New York and elsewhere) is made unequivocally clear to all save the most myopic of persons. While they are busily complained about allegedly "unconstitutional" in-prison conditions (to them, the slightest defect is per se unconstitutional) and chief among those conditions endlessly railed against being overcrowdedness, at the self-same time they are very aggressively opposing construction of necessary new institutions, the revamping, remodelling and improvement of existing ones, and so forth. In the final analysis, it is obvious even to the average prisoner, that these organizations firstly do not represent the true and best interests of prisoners any more than they do those of prison-keepers or the general public. Secondly, knowing prisoners are very well aware that the stated goals and objectives of these groups are on one hand 100% unrealistic; while on the other hand, these groups and individuals frequently propose, affirmatively or negatively as case may be, things that even hardened felons regard as absurd, outrageous, dangerous and view with grave apprehension.

But last month, the National Moratorium on Prison Construction stated with typical (and, I respectfully submit, shocking and frightening) ignorance that in their view, no more than 3,000–6,000 of the 280,000-odd confined felony prisoners in America need be confined; that the remaining 97½–98½ percent can safely be released and should in fact be released one way or another! No factual basis for this is asserted; no reasons whatsoever accompany this statement, nor was there any cognizance whatsoever of the simple fact that be all that as it may, penal authorities state or federal have no power whatsoever to release any of these prisoners themselves, for such may be done only by sentencing judges or parole agencies! Accompanying this is the equally ridiculous statement to the effect that those in prison are "political prisoners" and are there because they are (a) poor; (b) minority members and/or (c) at odds with some unspecified part of the government, federal or state, executive, administrative, judicial, legislative, etc.

The patent absurdity of statements thusly (and thinking back of it) is exceeded only by the huge and terrible danger were such to have occur, and such statements reflect mental (and moral) myopia possessed by those who make them.

These groups are rallying support for what has become the strange focal point of their decidedly sick thinking. Opposing by every means conceivable any and all construction of new prisons, improvements and enlargements of existing ones, they have mounted a campaign in regard to the proposed Federal prison at Lake Placid, New York.

There, the careful, forward-looking and budget-minded Director has determined to take the excellent advantage of construction of a Winter Olympic headquarters which, for a minimal amount of money can be converted into a new, modern, excellently equipped and staffed penal institution of an ideal size. Further, the location of it means that it will be relatively close to an area which presently has no federal facility of any sort. Finally, it is located in an area which, while less than impoverished, is devoid of industry, short on employment and one that will itself benefit a hundred times more than it can conceivably suffer from location of a permanent penal facility there.

Literally every single, solitary prisoner among the 1,700 here and the 2,000-odd at Leavenworth that I have come in contact with; literally every single one of those that I correspond with, in New York, California, Illinois, Florida and in between regards the Director's plans thusly as innately wise, considerate, humane and knowing. Penal employees high and low regard this as a true stroke of genius and more. No single, solitary critical word have I read or heard from any prisoner or penal employee; and in truth, many is the envious remarks or written word that has come my way from inmates and employees who would be privileged in the first instance to be confined there; and in the second, to be employed there.

Despite a stated concern for rehabilitation, improved prison conditions and so forth, it is clear to those within prison (and hopefully, to those without as well) that such groups as the National Moratorium on Prison Construction, the National Prison Project, the National Lawyers Guild, various pseudo- or quasi-religious organizations with similar interests, are totally disinterested in true reform, meaningful rehabilitation, and primary concern with the public good.

To like effect, it is equally clear to those confined that those who are most concerned and most capable, too, are those whose profession penology is. Despite penal problems existing in various jurisdictions, prisoners themselves unhesitatingly join hands with concerned and responsible members of the three branches of Government and private citizens, too, who know the true facts of life and do not hesitate to state them, and together both approve and applaud such very keen, capable and concerned professionals in the penal field as Mr. Carlson in the Federal bailiwick, Ohio's own Rehabilitation & Correction Director, Honorable George F. Denton and others elsewhere who are well educated, formidably experienced, and who possess and endlessly show a superb sense of balance in relating to and dealing with prison-type problems.

I most respectfully submit to you, and only wish I could somehow make my thoughts (which I hasten to assure you, leastwise in this respect) are those of nearly all confined to prison) fully known to those in both houses of the United States Congress and those in the states' legislature in relation to the matters above. At the same time, I would implore those who may be inclined to think of these organizations as being ones that enjoy the approval and cooperation of those confined to prison to stop, think and thereupon realize that these are not appointed or endorsed spokesmen of those behind prison's proverbial bars, nor are their views, more times than not grounded upon and engrafted to alien and disturbing radical, semi-anarchistic, Marcusian, totalitarian views and philosophies, the views of those who they wrongly purport to represent and "protect".

In relatively short order I go forth from prison. This fact, plus the additional fact that I am not at all in Bureau of Prisons custody since remission from federal prison to here, a state prison, make clear that I have no interest whatsoever in speaking as I do. I have had the honor to speak, in the time of my confinement with numerous federal and state legislators, various executive and administrative officials, penologists, journalists; and, I have authored various articles myself and in collusion with other prisoners. I have had no qualms about stating truth and fact; and, most clearly, have suffered no consequence large or small for doing so. I only wish that at the time when problems, monetary and otherwise, commenced to develop in regard to the Bureau of Prisons, that I might have had the honor to speak a few words, lowly soul that I am, in support of the Bureau and its wise and knowing Director, Mr. Carlson and thereby, to make an unashamed showing of support by the very people who are affected by these matters.

I can but hope that you will feel free to utilize this humble letter in any and every manner conceivable in support of the Federal penal service, which is most clearly in excellent and capable hands, headed as it is by Mr. Carlson. In going forth from prison, I freely offer myself as a living witness, willing and able at any time to speak to such matters as these, and speak to them on the basis of that which the organizations above do not have at all: Several years of in-prison experience and endless observation.

Those in the various branches of government, those in the news media, too, have been shown a penal picture by a minute handful of ex-convicts and a variety of high-pressure "rights" organizations that is either totally false or monstrously distorted. From within prison I have attempted, in speaking with and corresponding with the high and the mighty; the meek and the low, to correct the numerous falsehoods, the gross distortions and to place in proper perspective the hugely exaggerated and magnified complaints of the insatiable few.

There are today confined to prison, federal and state, 280,000-odd out of perhaps 220,-000.000 people; and here in Ohio, but 13,000 of the 12,000.000 of this state's citizenry are confined felony prisoners. This minute minority consisting as it does of a small fraction of one percent of the populace, like many another minority, has no faith in, puts no trust in, and possesses no enthusiasm for the self-anointed "prisoners' rights" advocates who have commenced to tell us what our rights are, how we are purportedly being wronged and that these groups and individuals know what is necessary and best for us. There is a near-total lack of support for these organizations and individuals among the very people that they loudly claim to champion.

Rather, all knowing prisoners truly believe that penal authorities, with very rare few exceptions, well know what they are doing; and further, that many of the problems existing simply are not the fault at all of penal authorities.

In leaving prison directly, I propose to continue writing as I have for pubic consumption and speaking to like effect, and as has aways been the case, declining any and all reward, compensation, gratuity, as a matter of principle. I freely proffer my testimony and am pleased to submit to questioning, in person or in writing, in regard to imprisonment per se, the problems of penal administrators, budgetary and otherwise, in support of the United States Bureau of Prisons and its excellent administration; of the Ohio Department of Rehabilitation and Correction and its, too, as well as those of numerous other states.

I beg your indulgence, in closing, for this poorly-typed letter, sir, prepared as it is very late on a hot, humid summer's night and at the end of an exceedingly long day. I take the

liberty, with your further indulgence, of providing copies of this poor letter to Senator Biden, Representative Danielson, Representative Stark, Representative Tom Railsback of Illinois (with whom I have been honored to speak in prison heretofore, among many others); and, to those concerned and competent penal administrators in charge of the Federal and Ohio penal systems.

Very respectfully yours,

JOSEPH S. BAIR.●

## ADDRESS BY SENATOR CURTIS BEFORE HUMAN RIGHTS ORGANIZATION

● Mr. GRIFFIN. Mr. President, recently the distinguished senior Senator from Nebraska (Mr. CURTIS) visited Kalamazoo, Mich., to deliver an address before the National Committee for Human Rights and Fundamental Freedoms.

It was an excellent speech, which deserves the careful attention of many who were not privileged to be there. I ask that the text of his remarks be printed in the RECORD.

The remarks follow:

SPEECH OF SENATOR CARL T. CURTIS BEFORE THE NATIONAL COMMITTEE FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, KALAMAZOO, MICH., AUGUST 19, 1978

Mr. Chairman and Ladies and Gentlemen:

It is always a pleasure for Mrs. Curtis and me to visit the beautiful State of Michigan. We are delighted to be in the Congressional District of Congressman Garry Brown, who serves this area so well.

It has been my privilege to serve in the Senate for many years with Michigan's outstanding United States Senator, and my good friend, the Honorable Robert P. Griffin. He has a consistent record in favor of the defense of our country and those policies that protect the principles and freedoms that we hold dear. He is one of the stalwarts of the United States Senate.

I am delighted to be here today sharing with you my thoughts on human rights. It is a particular pleasure to discuss the subject with men and women like you who know the value of freedom, and who devote their time to fighting for fundamental rights for people living in slavery throughout the world.

Today there are millions of people throughout the world who enjoy none of the rights we consider basic. From the time they arise in the morning to the time they go to sleep, their lives are regimented by the State. They are told how and where to work and how to use their spare time; they are denied the free exercise of their religious beliefs, they are instructed on what political course to support, and how to bring up their children. Regardless how hard they work, their salary is established by the State and is almost certainly insufficient to meet their families' needs. Because of the effect of this on workers' morale, and consequently on production levels, the most common material goods are scarce, when available at all.

While there are many differences between the Democratic and Communist systems of government, there is one which I would like to mention as being particularly pertinent. The United States is based on the concept of human dignity, and from this flow the freedoms we enjoy. In practical Communism, man has no intrinsic dignity and therefore no claim to fundamental rights. From a moral point of view, it is a barbaric concept, and in regarding men as just so many soulless cogs in a machine, Communist governments give proof of being hopelessly and irredeemably barbaric. To the Soviet Union, Red China and their various satellites it is inconceivable that each and every man is intrinsically endowed with dignity, and that in all areas which do not infringe on the rights of others, he should have absolute jurisdiction over his actions. Of all the governments in the world, it is precisely these "people's democracies" that cannot accept that no man has an intrinsic right to impose his will on another, and that there is nothing which fundamentally places him above anyone else.

To contrast this with the freedom and material abundance we enjoy in the United States is sobering, and allows us to most vividly grasp the nightmarish element of a lifestyle which for millions is the only routine they have ever known. This contrast, moreover, should also be made to serve a useful purpose. It should make every one of us renew our commitment to help these millions obtain freedom. It is a commitment which cannot end until every political prisoner behind the Iron Curtain has been freed from the jails in which millions are now rotting to a slow death; until people can go to the church of their choice without fearing retaliation; until it is no longer necessary to circulate literature clandestinely simply because it is written in a language offensive to the ruling authorities; and until every person knows that his life is his own to plan, and not a tool for the State to impersonally dispose of.

To those of us vitally concerned about human rights, President Carter's verbal commitment to the issue from the beginning of his presidency has been heartening. And yet, many of us are growing increasingly disturbed at the apparent lack of action with which he has supported his words.

For example, it was good to hear the Administration defend Anatoly Scharansky in the course of his recent trial, and to see Vice President Mondale meeting personally with Mrs. Scharansky. Yet how much more meaningful it would have been if the United States had supported these symbolic acts with something more concrete. While the trial was in process, many felt that the SALT talks should have been halted, at least briefly, as a sign of U.S. disapproval. Despite American public opinion, however, Secretary of State Vance proceeded to meet with Soviet Foreign Minister Andrei Gromyko while the trial was taking place.

Similarly, Mr. Carter has used stirring words in describing the strong defense posture he supports for the United States. But when the words have been translated into action the picture to emerge has been very different. Let's look at some specifics.

In the development of nuclear weapons, there has been a pattern of unilateral concessions with several key weapon systems being either cancelled or delayed. The B–1 bomber was cancelled, for example; production of the neutron bomb has been deferred, perhaps indefinitely; there have been continuous delays in the production of the MX-missile, which we badly need to keep pace with the Soviet Union's sophisticated hardware. During the same period of time, by contrast, the Soviets have developed powerful sea and land based missiles and the Backfire bomber.

Having thus unilaterally undercut the U.S. bargaining position at the SALT talks, he has proceeded to accept an arms control accord which, if signed into a treaty some time in the future, will have dangerous implications for the whole free world. He also seeks approval for a Comprehensive Test Ban Treaty which, according to experts, will result in as much advantage for the Soviet Union as it will in disadvantage for the U.S.

Given this record, how can we expect the Soviet Union, Red China, or any other adversary to take seriously our commitment to defend our freedom, let alone the freedom of any threatened nation abroad? Unfortunately, still other items can be added to the list of steps President Carter has taken, or failed to take, which weaken the position of the free world further. He has proclaimed the need for a stronger Navy, yet he has drastically cut the Navy's shipbuilding plan, and vetoed the construction of a nuclear carrier which is needed to bolster the Navy's power projection capability. He has neglected the Reserve forces, which he promised to strengthen during the campaign. He is continuing his efforts to withdraw American troops from South Korea and Taiwan, increasing these countries' vulnerability to Soviet aggression.

Many of us are concerned, moreover, that the United States, while building a dismal record of improving its defense capability, is actively, if inadvertently, helping the Soviets build up theirs. There is growing alarm, which I share, about the sophisticated technology being sold to the U.S.S.R. by some sectors in our country. It has been in the President's hands to halt this, yet with the exception of the controversial TASS computer sale which the Administration cancelled, nothing has been done. Just recently, for example, the Administration gave its blessing to the sale of sophisticated oil drilling equipment to the Soviet Union. In wartime, needless to say, having an abundant energy supply is as crucial as any weapons system. Yet no thought was apparently given to the idea that this oil which the Soviets will drill with our aid may someday be used against us, or in the course of a campaign to subjugate another nation which now enjoys freedom.

As you can see from this brief rundown, Mr. Carter's verbal commitment to human rights has meant little when translated into concrete military action. The record of its implementation from a diplomatic point of view is just as much cause for concern.

Right now it is probably in our hands to determine if in the future Rhodesia will be a democracy, or if it is to become one large concentration camp, like Angola and Mozambique. On their own initiative the Rhodesians have formed a government which includes the most popular and respected Blacks in the country, and which, if supported, promises to bring prosperity and representative democracy to the country. Yet the U.S. is unwittingly destroying that promised stability through its insistence that Marxist factions be included in the government. These Communist groups, however, have made it clear that they want absolute control.

It is sad to see the manner in which U.S. foreign policy has changed over the years in this regard. Not too many years ago we stood for representative government, and opposed the advance of Communism as being inimical to the development of such representative government. Now in the name of democracy and human rights we are trying to force Communist participation on the unwilling citizens of Rhodesia. It is as if history had not taught us the lesson, and taught it to us repeatedly, that where there is communism there cannot be freedom.

I find something else disturbing in our human rights policy. Clearly, with regard to Communist countries, we have not backed our words with action of perceptible significance. At the same time, I see "human rights" being used as a club against other governments which are far milder than Communist regimes, but have nevertheless made themselves unpopular in some quarters.

In Asia we see it happening in connection with South Korea. There are many which describe its form of government in terms of nothing but the most absolute cruelty and oppression, and work ceaselessly for the U.S. to withdraw its support and material assistance to that nation. Of the brutal regime of North Korea, however, not a word is said.

Nowhere do we see this double-standard mentality as clearly as in our policy toward Latin America. Early in his presidency, Mr. Carter succeeded in alienating Brazil, Argentina and Uruguay. In all of these countries citizens are allowed to exercise a broad range of freedoms, and all have free enterprise systems which, unlike Communist systems, allow the individual to reach his maximum material and economic potential. Uruguay and Argentina, moreover, have both made clear their intention to restore a democratic form of government within a few years.

This policy stands in sharp contrast to the Administration's attitude toward Panama. That this country has a Marxist-oriented government seems to have disturbed no one in the Executive Branch, nor has the clear fact that this government is a dictatorship caused any concerns. Panama is rated by Freedom House as granting no more liberties to its citizens than Cuba, and from Panamanian exiles we know of many political prisoners and of untold cases of torture or harassment being applied to dissidents. Yet the question of sanctions never once entered into the government's deliberations. Instead, we rewarded Panama with our Canal, and with a promise of billions of dollars of aid.

Some might think that Cuba is the exception to this double standard, that in at least this one instance the Administration is applying pressure where it rightfully belongs. Unfortunately, that is not the case. True, President Carter has verbally denounced Castro and his African expansionism. But this means little when contrasted with the opening of liaison offices between Cuba and the United States for the first time in almost 20 years at the initiative of his own administration. During these last few weeks, in a period of ever-increasing Cuban involvement in African affairs, the U.S. Government further lifted its economic embargo on Cuba. How can this be said to be meaningful implementation of a human rights policy?

The "human rights" label is being used by some as a convenient weapon to attack yet other governments in Latin America. Recently the Senate voted to ban military aid to Nicaragua and Paraguay. This was a clear display of what many call "selective morality." Fourteen countries which rated lower than Nicaragua and Paraguay in the Freedom House "political rights" scale were voted *more* aid than that which had been requested for Nicaragua and Paraguay; similarly, five countries with the same rating were also voted more aid, without a voice being raised in dissent.

It is evident that the "human rights" tag can be a dangerous weapon, and I do not see that the Administration's emphasis on it has had any constructive results. Highly publicized accusations by Brezhnev nonewithstanding, our human rights policy has not intimidated the Soviet Union one iota. It has not led the Administration to propose a truly meaningful build-up of our defense capabilities, nor to staunchly oppose Communist build-up abroad. It has merely alienated and weakened a number of theretofore staunch allies in Latin America and elsewhere.

This situation will continue until our government adopts an equitable scale of values on which to gauge human freedoms and a policy of applying this scale in a consistent manner. Last year the Senate took a sound step in this direction in adopting certain objective standards. Unfortunately, the House failed to agree to the measure, and it was never signed into law. It remains, nevertheless, an encouraging start which all of us should build on.

The first principle embodied in the standards is the Jeffersonian principle of "consent of the governed" as the basis for a government's legitimacy. The second concept is the existence of a rule of law shielding the citizens against arbitrary government action or government by terror. Just as importantly, however, the standard includes a number of freedoms; not only freedom of speech and the press, but freedom of religion, the right to choose among educational systems and professional occupations, freedom of movement, freedom to obtain private property and to operate in the market freely, and the right to join private organizations of choice.

Were this standard to be adopted, some fairness would be introduced in our application of the U.S. human rights policy. Its inclusion of freedoms which do not relate to politics but which affect people's every day lives sharply brings out the difference between a Communist-style dictatorship and authoritarian governments which, while not being a democracy in the manner of our country, nevertheless allow citizens ample freedom in the matters most important to their everyday lives. This standard would indicate clearly which countries it is that our human rights guns should be aimed at. If we apply it, perhaps we will stop concentrating so much on the imperfections of anti-communist countries and remember that Communism is the real threat.

We have a long way to go in bringing freedom to the citizens of the captive nations the world over. For every Solzhenitsyn and Sakarov we are able to save from prison, there is a Scharansky and a Ginsburg whom we are not able to save, as well as thousands of others who are sent yearly to political prisons without it coming to the attention of the West. While we have succeeded in making the concept of human rights a national policy, it is evident that the implementation of the principle has been at best inept and at worst detrimental. Yet we cannot admit defeat in our struggle. The millions living in captive nations have only one hope that their situation will improve. We are that hope.

At the same time, I hope that the members of the National Committee for Human Rights and Fundamental Freedoms and other similar groups will not despair at the loneliness of their struggle. You have allies. I and many of my colleagues in Congress wholeheartedly share your concerns and aspirations, and have spent our public careers fighting for freedom. So let us together continue our fight. Let us try to obtain congressional approval for an equitable human rights standard; let us together try to bring some meaning to the administration's human rights policy. Together let us work to bring to the millions living in slavery the one right without which life has no meaning—the right to be free.

In our National Anthem, we sing about the land of the free and the home of the brave. We should never forget that, when we are no longer the home of the brave, we will not be the land of the free.●

## VETO OF DEFENSE AUTHORIZATION BILL

● Mr. HOLLINGS. Mr. President, the recent veto of the defense procurement authorization was the wrong veto of the wrong bill at the wrong time for all the wrong reasons. As I listened to the President outline his rationale in vetoing, I was immediately struck by the extent of misunderstanding, or distortion, of the record. No distinction was made between authorization and appropriation matters; items to which the Chief Executive objected were not even contained in this particular piece of legislation; and the Congress was indicted for lapse of national security when, in fact, it is this Congress which has worked to increase defense spending.

The defense budget is no place for cavalier handling of the facts. It is no place for an artificially contrived confrontation with the Congress. And I can only wonder what the reaction must be in the capitals of both our friends and our foes when they see a matter of such fundamental importance treated is so frivolous a way.

The matter was discussed in yesterday's edition of the Wall Street Journal. The Review and Outlook editorial summed up the situation cogently and accurately, and the Journal's analysis deserves our most serious attention. For that reason, I ask that it be printed in today's RECORD, and I commend this piece to the attention of my colleagues.

The editorial follows:

THE RAFSHOON VETO

President Carter's veto of the defense procurement authorization is everywhere interpreted as part of a new "get tough" act, the practical incarnation of media adviser Gerald Rafshoon's efforts to massage the President's sagging poll ratings. The veto would have helped Mr. Carter's competency rating more if he had not clouded the issue in monumental confusion, including confusion about what the bill he vetoed actually contained.

To cut through the clouds, it's necessary to keep in mind two simple facts. First: while Mr. Carter objects to the congressional decision to spend $2 billion on a nuclear aircraft carrier, his administration has already announced plans to include a large oil-burning carrier in its next budget request. The whole issue, is merely, this year or next year, and conventional or nuclear? Second: There is a difference between authorization bills, which set programs, and appropriations bills, which spend money. Mr. Carter vetoed the defense procurement authorization. The Pentagon appropriations bill has not yet been completed by Congress.

This elemental parliamentary distinction was entirely overlooked in Mr. Carter's charge that Congress is building the carrier by "diverting funds away from far more important defense needs." Among the congressional items to which he objected, for example, was a supposed cut of $500 million in military operational funds. But operational funds are not dealt with in the defense procurement bill; if this was the President's problem, he vetoed the wrong bill.

Doing the President one better, Defense Secretary Brown complained that Congress had killed three antisubmarine ships. There is a dispute over the appropriations for these ships, with the House on one side and the Senate on the other. But whatever the eventual appropriation, the ships were included in the defense procurement bill. Secretary Brown complains about Congress killing ships that were in fact in the bill his chief just vetoed.

Now, within the context of the procurement authorization, it's true that despite $1.9 billion for the aircraft carrier, the congressional total was close to the President's original request. About half of the funds came from rather ordinary changes: the Army reporting it could not spend money on its new XM–1 tank as fast as it originally thought; Congress's decision that it could both save money and improve the NATO tank force faster by upgrading more existing M60A1 tanks and producing fewer new M60A3 tanks than contemplated in the original administration request.

The other half of the carrier money came from funds originally requested for the Trident submarine program, but which cannot

be spent in this year's bill because of delays. With the Trident program delayed, and with the administration poised to order up a new carrier next year, Congress is merely saying, let's use this idle money and get the carrier started now.

There remains the issue of what kind of carrier. In passing, it should be noted that in light of the latest studies it is far from clear that large carriers are especially vulnerable. They can sustain hits from Soviet criuse missiles that would atomize small carriers, which have their magazines above water line. Large ships also make sense in light of electronic battlefield management, which promises a defense capable of shooting down missiles. But this debate is beside the immediate point, since the White House has requested no small carriers. Indeed, the bill Mr. Carter vetoed provided more research funding for small carriers than he requested.

It is also unclear that oil-powered carriers save money. They are cheaper to build, but more expensive to fuel. Over the lifetime of a ship, it is difficult to see much difference in total cost. Congress prefers the nuclear carrier because it has better performance, being unencumbered by a train of tankers to refuel it every few days. The administration prefers a conventional carrier, saving money on construction now but spending more on operations later. And over this difference the President is willing to veto the entire procurement bill, inviting further controversy and delay that may hinder the improvements on which he and Congress agree.

In order to escalate this minor quarrel to veto proportions, President Carter launched an attack on Congress that seriously distorts the record. Sen. Stennis rose on the floor to complain, in what is for him strong language, of the administration's "false facts." The Senator was too much of a gentleman to say it, but we will: This is not a case of the Congress being soft on national security, but of the President dallying with defense in pursuit of cosmetic politics. The defense procurement bill was vetoed not because of any large difference on substance, but because it was the first bill to come along after Mr. Rafshoon whispered in the Presidents' ear that he could look "strong" by vetoing something.●

## THE HOW AND WHY OF SENIOR CENTERS

● Mr. CHURCH. Mr. President, the Congress has recognized the growing significance of multipurpose senior centers within recent years. The gradually increasing support of title V of the Older Americans Act, primarily by providing some funding for converting or improving existing structures, is one sign of often enthusiastic congressional interest.

One reason for our enthusiasm is that great things occur in centers. People pull together for worthy purposes sometimes not related to aging, but instead to community improvement. There is usually a sense of concern about other center participants, and I personally know of any number of transformations which have occurred at Idaho centers where poeple who had been living fairly isolated existences have become deeply involved in new and exciting kinds of neighborliness.

The current issue of Aging, the official publication of the Administration on Aging, is devoted primarily to reports on center activities in several sites, including rural New York and downtown Baltimore.

An introductory article by Don Kent gives an across-the-board description of many such centers. It is informative and timely; I ask to have it printed in the RECORD.

The article follows:

THE HOW AND WHY OF SENIOR CENTERS

(By Donald Kent)

When Mrs. Hooper developed a sharp pain in her back last winter, the 77-year-old widow decided to see a doctor. Since she had no physician of her own, a young neighbor, who worked as a volunteer in the local senior center, suggested going there, where Mrs. Hooper could have a general health screening without an appointment and at no cost.

Mrs. Hooper had never been inside the center although she had gone past it on a bus several times. Since its completion a few years before, it had become a city landmark. The red brick and glass building, whose rugged tower dominated the local skyline, spanned most of a city block in a downtown area that was rapidly renovating.

The doctor who preformed the screening (diabetes, hypertension, cancer, and other tests, including a careful examination of the painful back) found nothing seriously wrong. Mrs. Hooper's lower back problem would probably improve in a few sessions with the center's physiotherapist and some moderate exercise, the physician said. When Mrs. Hooper felt somewhat better, the therapist helped her enroll in a special physical fitness course meeting three mornings a week.

Then one thing led to another. After morning exercises Mrs. Hooper looked into a needlework group. A staff "enabler" got her interested in embroidery again and she tried her hand at crewel, which was new to her. Then other women in the sewing group suggested staying for lunch at the center, a Title VII nutrition site. That not only solved Mrs. Hooper's noonday meal problem but kept her at the center for the main event in the afternoon program—the one o'clock concert, film, or lecture. That day the performer was a young Polish-American folk dance group. On succeeding days there would be a pianist, guitarist, wildlife films, and a discussion with several city councilmen. On Mondays, a live combo played and since there were never quite enough male partners to go around some of the women danced together.

Mrs. Hooper had grown less outgoing over the years and was never much of a dancer. She felt many of the center's programs were not for her, but she was reassured to see how much help she could find there if she needed it—a consumer counselor who might have solved her complaint against a television repair man last year; a dentist who did denture repairs or fillings almost immediately; an optometry service and podiatrist; a staff member who organized bus tours to parks, museums, and ball games; an insurance expert, legal counselor, representatives for the Food Stamp and social security programs, and—if she should ever need them—mental health services and special assistance for the deaf and blind.

Mrs. Hooper's life became more active than it had been for many years and her outlook was brighter. Her new perspective stimulated her long-dormant desire for organized study. Although she had never finished high school and had not entered a classroom for 60 years, she had always enjoyed reading and learning about the way her city and country had grown and evolved since her childhood, and she loved contacts with nature. The courses at the center were varied enough to fit with her life-long interests—local history, "ecology and you," a program called self-discovery through the humanities, weight control, poetry, several foreign languages, music appreciation, and a variety of creative skills courses such as painting, ceramics, and jewelry making.

In the course of a few months, the senior center experience became a strong new influence in Mrs. Hooper's life. She found there what Joyce Leanse, director of the National Institute of Senior Centers, says centers are uniquely qualified to give—"the help older people need in continuing their personal growth and maintaining a viable life style."

It happened to Mrs. Hopper at the Waxter Center for Senior Citizens in Baltimore, but for more than three decades older Americans have been finding the same type of stimulation at senior centers large and small across the country.

WHO USES SENIOR CENTERS AND WHY

Jean Fisher, director of the Philadelphia Center for Older People, one of America's first central-city, multi-service centers and a model for many of the centers developed during the past three decades, says, "I wish we could get anthropologists to write books about senior centers. We need people with Margaret Mead's social and community sensitivities to observe and understand the new communities being formed in the centers.

"Members are using the senior centers as their community. They come in when they know their friends will be there, to share conversation and meals. Then they call each other up at night on the phone. And when an emergency occurs, it's the friend from the center who is often the first to get to the home or hospital and provide the backup support, the undercurrent of communication, which others may get from family and neighbors. For many older people here their friends from the senior center have become family, neighbors, and community."

Such loyalty and support goes not only to each other but to the senior center itself, Mrs. Fisher says. Members raise funds to pay off the center's mortgage, chipping away in sums of $50 to $400 from sales, parties, and benefit activities.

Joyce Leanse has observed in her study of thousands of senior centers that "while data show that many older persons are attracted to a facility where services and activities are available, the fact of the facility itself and the opportunity it creates for bringing people together appear to be the most compelling."

Mrs. Leanse says, "Participants view the senior centers as a program of services and activities and also as a place to go, a place to gather for friendship and fellowship, or a place to sit, observe, and just be near other people."

In a broad survey in 1974, Mrs. Leanse found that more than 25 percent of those interviewed at centers attended daily but few had participated in any specific services or activities during the week or even the month in which they were interviewed.

Other studies have pointed out that this type of socializing is not for everyone. A typical comment is, "I just go to the center for bridge lessons. I don't need it for anything else. . . . I'm not ready for it yet." Others reject the idea of associating primarily with their age peers, saying, "It makes you feel old to associate with old people only."

Still other older people may be perfectly content to reduce their activities and fall into more and more sedentary habits.

These comments and findings were among many received in a Cleveland, Ohio survey a decade ago in connection with a comprehensive senior center there. The major deterrents to senior center membership were competing activities and interests, and feelings of ambivalence toward exclusive association with older people. The study by Dr. James E. Trela of the Cleveland Vocational Center

and Leo W. Simmons of Case-Western Reserve University noted that, "For those isolated from meaningful social opportunities and detached from supportive relations, age-graded social clubs may provide relief from a vortex of loneliness, while for those active in a variety of roles such groups may offer little attraction. The study concluded that the strongest incentive to membership in senior centers may lie in program offerings which manifestly meet the various needs of individual members.

A Stanford University study indicates that those attending Little House in Menlo Park, Calif., one of the earliest and most successful senior centers, are long-term extroverts. Many of the people who need socializing most won't go to senior centers.

Surveys by the Senior Centers Institute, however, tend to refute the Stanford findings. While users may include a somewhat higher proportion of relatively active older people than is to be found among nonusers, no evidence suggests that a large majority of users are outgoing joiners and doers. On the contrary, the NISC surveys suggest that at least a sizeable minority of users are not typically outgoing people.

More than five million older Americans from 60 to 95 years of age (about one-quarter are 75 or older), are members and participants in the country's more than 5,000 senior centers, according to the National Institute of Senior Centers.

More than half of the participants live alone compared with one-third of the general elderly population who live alone.

They come from all economic backgrounds. Among those who attended, 47 percent were blue collar workers, 16 percent, white collar workers, and 16 percent, professionals, according to the Institute.

In any given two-week period, about six percent of all older Americans attend a senior center, according to data collected for the Institute by Louis Harris & Associates, and about 18 percent have attended a senior center "recently." Another 18 percent would like to attend a center. The most frequent reason they do not is that no facility is available.

WHERE THE MONEY COMES FROM

Ever-greater sums of money, energy, and community commitment are going into senior centers today. Yearly budgets for operation, expansion, and construction of senior centers may amount to over $300 million.

Until the decade of the 60's local and State funds—private and public—provided for the bulk of building and operating expenses. Civic leaders and politicans love senior centers because they are visual proof of what a community is doing for its older citizens. Such leaders can point to the centers and count off the services they provide and the number of persons engaged.

With passage of the Older Americans Act of 1965, the Federal government began playing a constantly expanding role in funding center services and facilities.

In the 1977 fiscal year, Title V of the Older Americans Act provided $40 million for building, altering, or renovating facilities to serve as multi-purpose senior centers, while Title VII nutrition funds were the major financial source for meals served in senior centers. Many of the coordinated, comprehensive services provided by senior centers (transportation, outreach, home services, information and referral) are funded under Title III of the Older Americans Act, and Title IV continues to be a valuable source of funds for training center staff to assist older persons.

The most important change brought about by the Older Americans Act, however, may have been the efforts to channel other Federal funding sources to meet the programming and service needs of senior centers. Many senior centers now receive vital sources of funding from the Federal General Revenue Sharing program, block grants under the Community Development Act of 1974 and Title XX (Social Services) of the Social Security Act.

"These funds have become very important to us," says Jean Fisher of the Philadelphia Center, "but their mandates sometimes seriously inhibit us in running our centers.

"For example, it's terribly hard to tell a nice old person he or she can't carry away uneaten food in a doggie bag because of Federal restrictions applying to nutrition sites." Mrs. Fisher says. "It needlessly humiliates the people involved," no matter what the health-guided intent of the regulation is. The government should leave us freer, not inhibit us.

"I wish the Administration on Aging would send out questionnaires in which we could tell about the problems we run into with the mandates of the different Federal programs," she continues. "Nobody wants a heavyhanded Federal uniformity imposed in senior centers."

In Philadelphia and many other areas, United Way—which raises voluntary contributions in the community—has long been a major source of senior center funding. Other voluntary groups include the National Council of Jewish Women, church groups, Junior League, and service clubs. Foundations and trust funds also have made important grants to some centers.

City governments have also floated special bond issues for senior centers. Baltimore's $3.8 million bond issue for the Waxter Center is an example.

Many States recently provided funds for center operations and construction. Wisconsin has appropriated $2 million for facilities, staff, and programming, while Tennessee has provided $1 million for staffing and the operation of ongoing senior centers and established a goal of at least one multi-purpose senior center in each of its 95 counties. In Hawaii the legislature authorized $1.5 million for construction of senior centers, and the Hawaii State Senior Center in Honolulu receives more than $100,000 a year in State funds for a program which reaches 9,000 elderly Hawaiians.

In the 1978 fiscal year, West Virginia has allocated $350,000 in Revenue Sharing funds for construction, renovation, and acquisition of senior center facilities. The Governor's request for an additional $1.3 million of revenue sharing funds for the same purpose is now before the legislature.

During the 1977 fiscal year, New York State appropriated $1.7 million for senior center operations, and New Hampshire, Nevada, Florida, Massachusetts, and Pennsylvania are among many other States taking legislative action to fund and strengthen senior centers.

THREE DECADES OF PROGRESS

During more than three decades of existence, the concept of what senior centers can be and should do has evolved.

Until the first senior center was founded in New York City in 1943, the only special services directed to older people were homes for the aged and Old Age Assistance. What was to become the Hodson Community Center grew out of a clear need for a center where people could meet and associate on a neighborhood basis. Soon services for the elderly were introduced, especially those needed to maintain the elderly in the community. Over the years, this focus on multiple needs of older adults increased.

Two early West Coast centers which were the prototypes for many centers around the country, emphasized education and recreation more than was the case at New York's Hodson Center. The San Francisco Senior Center, created in 1947, developed out of the combined efforts of the United Community Fund, the American Woman's Volunteer Services, and the grassroots efforts of many older San Franciscans who recognized the need. The city's Parks and Recreation department granted use of a large building near Fisherman's Wharf for the group's activities. The clientele was as mixed and varied as the population of the city itself.

The Little House in Menlo Park, a primarily white-collar middle class community, has had from the start an exceptionally high degree of member participation in planning and carrying out its programs. Members not only planned their own programs but became actively involved in projects of benefit to the community.

With regard to counseling members. Little House saw itself as a referral agency—not equipped to provide certain services directly but ready to give complete advice on where to turn for aid.

In the late 1940's the Philadelphia Center for Older People also became a model of a centrally located citywide facility which tries to serve the total needs of older persons.

PATTERNS AND STRUCTURES

Since the decade of the 40's the grassroots development of senior centers has produced countless variations on several main themes:

The now-familiar multipurpose senior center with a broad spectrum of health, social, educational, and recreational activities and services in a central facility.

The network composed of a single center with multiple satellites or branches operating at the neighborhood level.

Multicenter systems, linking more or less equal facilities.

Centers linked with club programs throughout the community.

If organizational patterns and structures vary almost ad infinitum, the mix of services offered by the 5,000 or more senior centers is hardly more standard.

Slightly more than half of the centers responding to a 1974 survey by the National Institute of Senior Centers under an Administration on Aging grant rated themselves as "multi-purpose centers." In most cases, this means they provide three or more types of services, such as transportation, education, information and referral, counseling, medical help and others. One of the unexpected findings was that nearly half of the self-identified multi-purpose centers provide health services.

The publication last July of HEW's final regulations on grants for acquiring, altering, or renovating multi-purpose center facilities was broadly perceived as a sign of renewed and increased Federal interest in senior centers.

In order to assure that Title V monies go to multi-purpose center facilities which are integrated with the comprehensive and coordinated service systems under Titles III and VII of the Older Americans Act, the Administration on Aging gives priority to applications from State agencies on aging in awarding funds.

Title V defines the multi-purpose senior center as a community facility for the organization and provision of a broad spectrum of services for older persons, including health, social and educational services, and facilities for recreation activities. But it does not give a detailed description of distinguishing characteristics of a multi-purpose senior center.

HEW officials concerned with aging programs see the desirable and distinguishing characteristics in four main areas: group services and activities, individual services, the accessibility of center sites both geographically and in the sense of accommodating the handicapped and disabled, and relationships with other public and private agencies.

Group services, in this view, should include recreation for physical health and socialization, a variety of education opportunities, opportunities for sharing information,

mutual concern sessions which strengthen natural support mechanisms, congregate meals, and social events.

Individual services would normally include counseling and referral in such areas as housing, employment, and benefit entitlements; outreach programs and visiting homebound persons; health services which include screening, rehabilitation, maintenance, and restoration services aimed at maintaining independence; home-delivered meals; protective services including supportive and crisis services; and day care services which enable physically or emotionally impaired older persons to participate in the center.

Program access considerations focus on such aspects as the number of days in operation (at least five days and one evening a week seems to be an expected minimum), community visibility of the facility, adequate size and physical facilities relative to the needs of participants, and accessibility for the handicapped; appropriate assistance to the deaf, blind, and non-English speaking participants; and transportation and escort services for participants who need them.

In regard to their relationship with community services, multipurpose centers should provide opportunities for other public and private agencies in the community to deliver services in the center and become a part of its service program. There should be opportunities for participants to become involved in the decisionmaking process of the center and encouragement to take part in the local, State, and national democratic process.

WHOM SHOULD THEY SERVE

While most senior centers welcome increased Federal funding, not all are pleased with the accompanying mandates which tend to emphasize greater attention to the most frail and vulnerable elderly.

Some feel that since resources are limited, those most in need should be served first. Others, however, point out that if the 75 percent of older persons who are less vulnerable are neglected, centers will soon be used almost exclusively by those groups most urgently needing help, thus limiting the positive self-help aspects of facilities which can only operate when the physically or socially active elderly are mixed with the not-so-well and less socially aware older person.

"We want to include the frail but we do not want to lose the people who leaven the lump and give joie de vivre to everyone in the center," says one center director.

In efforts to help the thousands of diverse senior centers to see their own operations more clearly and carry them out more successfully, the National Institute of Senior Centers has been devising standards for evaluating centers. They may help senior center staffs evaluate their work periodically and determine such points as:

Is the program meeting the needs and interests of the participants?

Are resources (staff, funds, facilities) being used in the most efficient and effective manner?

Has the center reached its goals?

Are individual services and activities accomplishing their objectives?

What is the cost of a particular activity or service?

In what may be a significant new trend, some schools are being converted to senior centers.

In Nashville, Tennessee, the Knowles Senior Center is a converted elementary school. In Sheboygan, Wisconsin, the second floor of a high school shelters a senior center. In Hawaii, the Kaunoa School became the first senior center on Maui.

In Montgomery County, Maryland, part of an elementary school has been converted to a senior citizen day care center, with the remainder used for recreation department offices.

Each of the thousands of centers located across the country is unique and distinct, yet, as Leon Woolf, director of Baltimore's Waxter Center says, "The joy of them is that almost everything we do in this new building can be done in a store-front operation or almost any other site."

Jean Fisher, in Philadelphia, says, "We've accomplished so much in senior centers. Now we should look at their roots. See what they have in common. And see what new directions to take, wherever they're not getting down to living people."●

## HUMAN RIGHTS AND THE HELSINKI-BELGRADE EXPERIENCE

● Mr. GRIFFIN. Mr. President, I recently delivered a speech before the National Committee for Human Rights and Fundamental Freedoms in Kalamazoo, Mich. I ask that the text of these remarks be printed in the RECORD.

The speech follows:

REMARKS BY U.S. SENATOR ROBERT P. GRIFFIN

Chairman Strautkalns, distinguished guests and friends:

Flagrant violations of human rights in Soviet-dominated countries continue unabated despite the promises given in Helsinki and Belgrade. This is intolerable and we would betray our own heritage as Americans if we were to remain silent in the face of such oppression.

The basic question suggested by the topic of your conference is this: Has the Helsinki-Belgrade experience been a success—or a failure—from a human rights standpoint?

The answer, of course, depends largely upon what one expected to achieve through the European Security Conference mechanism.

Those who really expected "nothing," have not been disappointed.

At the other extreme, it appears that many people thought that once Moscow supposedly had "agreed" in Helsinki to respect human rights, some kind of a major transformation would somehow occur almost immediately in the Soviet Union. By the time Round Two in Belgrade came along, so the theory went, all of the outstanding problems would be resolved. Needless to say, these people, if they have paid attention, have been disappointed.

In all candor, my own expectations were quite limited.

If one really never trusted the Russian leaders to begin with, he would not have expected their agreement to the principles set forth in Basket Three at Helsinki to produce much in the way of concrete results.

After all, if it had been the practice of the Soviets in the past to honor their promises, the whole Helsinki experience would have been unnecessary. History is full of broken Soviet promises to respect human rights. For example:

Stalin's 1936 Constitution of the USSR supposedly "guaranteed" freedom of religious workship, freedom of speech, freedom of the press, freedom of assembly, and a wealth of other "rights." Of course, they never have been respected.

The 1945 Charter of the United Nations—which Moscow signed—contains numerous references to the U.N.'s purpose of "reaffirm(ing) faith in fundamental human rights," of respecting "the principle of equal rights and self-determination of peoples," and of "promoting and encouraging respect for human rights and for fundamental freedoms for all." These rights, too, were subscribed to—but then ignored—by the Kremlin.

In December 1948 the Soviets voted in the General Assembly to adopt the United Nations "Universal Declaration of Human Rights." This document guarantees the right to privacy, the right to own property, freedom of speech, assembly, religion and association. It even says that "(t)he will of the people shall be the basis of the authority of government." Again more rights debased by Moscow.

Thus, history indicates that most, if not all, of the human rights to which Moscow pledged itself three years ago in Helsinki were already allegedly "guaranteed" in other documents to which the Soviets had already officially subscribed. Therefore, it would have been naive in the extreme to assume that somehow this time was going to be significantly different—that Soviet liberalization was just around the corner.

Indeed, our reaction to Helsinki reflects, to a certain degree, a fundamental problem this country has had for more than three decades in dealing with the Soviets. Because we desperately want to see things change, too often we pretend to see change—where no change exists.

Tragically, it sometimes seems that the West did not learn much from Yalta.

Just as the realities subsequent to Yalta seemed to catch Roosevelt and Churchill by surprise, those who thought they saw a new Soviet Union in the early 1950's had a rude awakening with the October 1956 Soviet invasion of Hungary.

Tomorrow—August 20—will mark the tenth anniversary of an event that once again temporarily brought realism to Western perception of Soviet realities. I speak of the invasion of Czechoslovakia.

Not many years ago—when the term detente was in more respectable use—it was popular in some quarters to describe the Soviet Union as a "status quo power," uninterested in foreign adventurism.

Then came Africa—with billions of dollars in Soviet military aid and tens of thousands of Cuban mercenaries.

Today the Russians and their Cuban puppets are involved in no fewer than five wars in Africa—and yet our Ambassador to the United Nations assures us that things have never been better.

I don't suggest that it is hopeless even to try to affect Soviet policy. But my point is that we must be realistic.

Indeed, experience has demonstrated that, on occasion, we have had some limited success in bringing about desirable changes in Soviet policy.

In 1962, President John Kennedy's firm stand led to a withdrawal of Russian missiles from Cuba.

In 1972, President Nixon's use of increased force against North Vietnam resulted in Soviet pressure on Hanoi to conclude a peace agreement.

And Western pressure concerning Soviet human rights violations have produced some limited beneficial results.

Nevertheless, we would be naive in the extreme to assume that those limited successes signaled any basic change in Soviet goals or strategy.

In 1920, Lenin wrote that compromise is essential for the eventual success of Communism. Lenin told his supporters to fight only when what he called the "correlation of forces," was favorable; and until then to compromise and maneuver as necessary to weaken the enemy and to increase the forces of Communism.

In large measure, this strategy has worked for the Communists, and it is still being followed by Moscow. The result has been that whenever the Soviets have perceived that the United States has both superior military strength—and the will to use it if necessary—the Soviets have followed Lenin's advice and have backed down.

Khrushchev withdrew his missiles from Cuba in 1962 not because he changed his mind about their military utility. He withdrew because he became convinced that the United States had both the strength and

the will to make the costs of Soviet adventurism greater than the expected benefits.

Thus, common sense—as well as the lessons of history—tell me that the danger of war increases when the United States grows weak—or if the United States is ever perceived by a potential enemy as being weak.

Common sense—as well as the lessons of history—tell me that the prospects for peace are brighter when the United States is strong—strong not only in military power but strong also in terms of patriotism and the will to defend freedom, when necessary.

Unfortunately, the perception of the United States has been suffering under the leadership of the current Administration.

It is important to the United States and the free world that the Administration get its act together and that various spokesmen for the White House start reading from the same script—at least in foreign affairs.

National unity and resolve are difficult to achieve unless there first is unity within the Administration itself. Not only has there been inconsistency between statements made by White House spokesmen, but there has even been inconsistency between statements made by the President from day to day.

For example, on March 17 of this year President Carter delivered a hard-hitting speech in North Carolina about the need for a strong national defense.

But, just a few days later he turned around and ordered the Navy's shipbuilding program cut in half.

Then, following a vigorous propaganda campaign waged by the Soviet Union, he postponed production of the newly-developed neutron warhead (referred to by some as the "neutron bomb"), which, if deployed, could help significantly to offset the massive Soviet advantages in tanks and other conventional forces in Europe.

And these two announcements came after the President had already cancelled production of the B–1 bomber—a decision leaving the U.S. dependent upon World War II-vintage bomber planes, so old that some of our B–52 pilots are flying the same aircraft that their fathers flew two decades ago. This, while Moscow moves full-speed ahead with production of their supersonic BACKFIRE bomber and with development of a second strategic bomber that, according to intelligence reports, has characteristics strikingly similar to our B–1.

Problems resulting from conflicting signals from the President, himself, are further complicated by the varying positions taken by his senior advisers. For example, on the issue of Cuban adventurism in Africa, Secretary of State Vance, National Security Adviser Brzezinski and U.N. Ambassador Young all have taken different stands.

Despite such shortcomings in our own foreign policy, there have been a few positive signs as a consequence of the Helsinki-Belgrade experience.

In the Soviet Union, I understand that the cost of an exit visa has declined by half since Helsinki; and on the eve of Belgrade, Jewish emigration increased by more than 60 percent. Last year in the Ukraine, limited quantities of some 32 Western newspapers became available for the first time.

In Hungary, the last three years has brought a noticeable increase in religious freedom. Both evangelist Billy Graham and the President of the National Council of Catholic Bishops made week-long visits to Hungary.

In Poland, authorities last year announced a general amnesty for some 10,000 persons, and at the time of Belgrade began greater cooperation on family reunification cases presented by the U.S. Embassy.

In Bulgaria, prospects for family reunification also have improved and Western Literature—including newspapers and American novels—have become available.

In Czechoslovakia, there has been a noticeable improvement in emigration policy, and in June of last year the government proclaimed an amnesty for Czechs who fled during the Soviet invasion 10 years ago.

Finally, in Romania, two general amnesty orders last year brought the release of 30,000 prisoners; and emigration to the United States has increased 21 percent.

But another important benefit of the Helsinki-Belgrade process has been the opportunity it has provided for representatives of this country to raise the issues of human rights with the Soviet Union and Eastern European nations.

Last November, for example, my friend and colleague Senator Dole delivered a speech stressing the fact that the United States has never recognized the Soviet incorporation of Lithuania, Latvia and Estonia. And that must continue to be our policy.

At first the Russians tried to avoid the whole issue of human rights—arguing that raising such questions amounted to an interference in the internal affairs of another State, which is prohibited by the Final Act of Helsinki.

This reasoning was rejected. Soon, the Soviets tried to counterattack by charging "racism" and human rights violations by the U.S. and other Western countries. In so doing, however, they implicitly acknowledged, at least, that human rights are a legitimate and fundamental issue of East-West relations.

Even if the Helsinki-Belgrade process has accomplished nothing else, this recognition that human rights are an integral part of detente can be viewed as a significant achievement.

The Communists have heard the criticism, and it has had some effect.

But, of course, there is no basis or reason for a great deal of optimism. It's true that the 1975 Helsinki Conference led to the establishment of "Helsinki Watch" groups in Moscow and in other Soviet dominated areas—and that is good. But it is also true that more than 30 percent of the members of those groups are now in confinement, and others have been sent into foreign exile.

It is true that in some instances emigration figures increased immediately prior to the Belgrade conference. But it is also true that after Belgrade, people like Petkus, Rostropovich, Ginzburg and Scharansky have received harsh sentences for advocating respect for human rights.

This brings us to the real question: What should be our policy in seeking to promote an improvement in human rights policies behind the Iron Curtain:

I suggest that three elements are necessary for a successful policy in this regard:

First of all, our commitment to the cause of human rights must be a real commitment, and not be limited to the kind of selective moral outrage that has characterized so much of the rhetoric in recent months. For example, is criticism by this Administration of human rights practices in Rhodesia and South Africa to be judged when the Administration ignores serious human rights violations in the so-called "front line" African states of Tanzania, Mozambique and Angola? Similarly, it seems a bit strange to hear some spokesmen condemn violations in Chile, South Korea and the Philippines and then express only kind words for the Communist regimes in Cuba and Indochina. If our efforts on behalf of international human rights are to be productive, they must not be perceived simply as politically expedient posturing.

Second, we must project a policy of strength as well as consistency in our dealings with other Nations. This means we must have military and economic capabilities that are second to none, and we must make clear that we do have the will to use that strength if necessary.

The third requirement for a successful human rights policy vis a vis the Soviet Union must be the creative and consistent use of incentives. We need to reinforce responsible behavior and punish irresponsible behavior—the old "carrot-and-stick" approach. Earlier this month Ray Moseley—formerly European news editor for United Press International and one of the reporters who covered the 1975 Helsinki conference—wrote in the Chicago Tribune:

"If the West continues to make the Soviets pay a price for their unwillingness to abide by the rules of civilized conduct, then the Helsinki accords may be viewed in the Kremlin leadership for years to come as one of Leonid Brezhnev's greatest blunders."

I agree—and it is up to the United States to hold Mr. Brezhnev's feet to the fire whenever possible.

In two years the European Security Conference will convene again—in Madrid.

Madrid will provide yet another opportunity to call world attention to continuing Soviet violations of human rights.

But we must not wait until Madrid.

Although it's hardly likely to produce a radical transformation of the Soviet society, events of the recent past have shown that international protest—public and private—does have some effect.

And those of us gathered here tonight must rededicate ourselves to a continuing effort to expose human rights abuses. We must never for a moment let the world forget what is happening. * * * We must never let the Soviet authorities forget that the world is watching.

In concluding many of the speeches I deliver, particularly when I'm speaking before young people, I often express a thought that is not new—but it is a thought that can bear a good deal of repetition. It goes like this:

In the long course of history, freedom has died in various ways. Freedom has died on the battlefield—freedom has died because of ignorance and greed.

But let me suggest that the most ignominious death of all is when freedom dies in its sleep.

I commend you for your efforts to retrieve freedom where it has been lost. May you also be vigilant in making sure that the freedom we enjoy here in America does not die in its sleep.

Thank you.●

## NEW OPPORTUNITIES FOR OLDER AMERICANS

● Mr. CHURCH. Mr. President, the National Council of Senior Citizens recently issued an excellent report: Senior Aides—A Unique Federal Program: New Opportunities for Older Americans.

Celebrating the 10th anniversary of what began a decade ago in 1968 as a tiny senior community service employment program providing part-time work for about 200 unemployed persons 55 and over, the report pointed out that the

number earlier this year was more than 37,000.

This growth, said the report, in a preface written by NCSC Director William Hutton, demonstrates "the high employability of many older persons and the useful part-time work that they can perform to the benefit of their communities."

The NCSC, as one of the national contractors for such programs, reports that at the start of the year it had 7,012 AIDES on projects in 118 rural or metropolitan communities, that 18.1 percent of the participants are 70 years or older, and that minority groups account for 36 percent of the AIDES. A majority are women.

We in the Congress who have long supported the title IX program under which the AIDES are enlisted know about the national significance of the overall program.

But in our home States and sometimes in others, we find from firsthand visits that the morale and effectiveness of the participants has to be seen to be fully understood—and enjoyed.

The first article in the NCSC report, which invites us to "Meet Some Senior Aides: Interesting People in Useful Jobs," captures some of the excitement and enthusiasm to be found at all AIDES sites. I ask that it be printed in the RECORD.

The article follows:

MEET SOME SENIOR AIDES: INTERESTING PEOPLE IN USEFUL JOBS

Many older persons have a special quality that helps them relate to others, young and old, more easily than those less mature. That quality appears to be a blend of experience, philosophy, patience, tolerance, compassion and the ability to listen. Perhaps, it could be summed up as the wisdom of maturity.

This wisdom is what makes Senior Aides useful workers in serving the people of their communities. It was a phenomenon observed early in the Senior AIDES program after its inception in 1968. In 1969, the Senior AIDES' National Advisory Council conducted a public hearing at St. Louis, Mo. The Advisory Council chairman was the late Matthew DeMore, former secretary-treasurer of the International Association of Machinists and Aerospace Workers. Senior Aides from various projects in the area described their work and what it meant to them.

One elderly woman, a Senior Aide employed at a state mental institution, told of her job. She helped patients in many ways, listening to their problems, keeping in touch with relatives, taking them to the hospital when they need treatment, calming them down. She appeared to have a tremendous rapport with these fear-filled persons. Chairman DeMore was so fascinated that he asked her:

"What is it in your background that gives you so much ability to relate to those unhappy people?"

With an ironic smile, the Senior Aide replied:

"I was a barmaid in New York City for 20 years."

* * * * *

BLINDNESS NO HANDICAP

Mrs. Vesta Reeves, 79, of Lawrence County, finds her blindness no handicap in her job.

She works 20 hours a week making telephone calls to persons living alone and unable to leave the house. She is their main and sometimes only contact with the outside world, checking on their health, general welfare, listening to their problems and referring them to the appropriate person or agency for help.

Mrs. Reeves is employed as a Senior Aide under the outreach program operated by Wabash Valley Senior Citizens, Inc. When her blindness became acute several years ago, Mrs. Reeves worried that she wouldn't be able to keep her job so she memorized all the phone numbers. She says:

"If I didn't listen to other people's problems, I might feel sorry for myself."

As Americans grow older, their problems with local, state and Federal laws and regulations multiply. They run up against knotty questions involving Social Security, Medicare, Medicaid, income taxes, property tax regulations and a host of others. Some Senior Aides work to help elderly persons with these problems.

A PARALEGAL

Hector Monette, 68, of Lowell Mass., a retired electronics and textile worker, works as a paralegal Senior Aide with the Merrimack Valley Legal Services, an organization to help the needy. His work is typical of that performed by the three Senior Aide paralegals working in Merrimack Valley communities.

Monette helps low-income elderly persons who can't afford to pay for an attorney. Most of his cases relate to social security benefits, supplemental security income (SSI) for those with very low social security benefits, consumer problems, landlord-tenant disputes and wills.

When a case involves more complicated legal questions, he turns it over to an attorney with Merrimack Valley Legal Services. His efforts relieve the attorneys of less complicated but time-consuming matters that he has been trained to handle.

The Senior AIDES project director, Daniel Madio of Lawrence, Massachusetts, saw his potential for this sort of work, got him enrolled for paralegal training at North Shore Community College. Now Monette's desk is stacked high with folders on problems brought to him by elderly persons in need.

Monette says his interest in helping people grew out of his 30 years as an active member of the St. Vincent DePaul Society. When he retired, he started visiting young families in their homes and elderly persons in nursing homes telling them about local services which could help them with their particular problems. That in turn led to his new career as a paralegal Senior Aide.

Senior AIDES project directors like Mrs. Jimmye Batchelor at Copiah-Lincoln Junior College, Wesson, Miss., seek jobs to match the capabilities of those who apply for Senior Aide jobs. Here is an example:

HOW-TO-GET-HELP EXPERT

Senior Aide Ruth Bennett is now the how-to-get-help expert of the Pike Amite Library System in the McComb, Miss., area. She writes a weekly newspaper column, "Information Station," and short radio-TV announcements on help offered by the community's public and private service agencies. Her columns and announcements emphasize whom to call and where to go to get help for persons of all ages. Telephone numbers are emphasized.

Likewise, she has organized the library's information and referral service so that its up-to-date card file makes it possible for any staff member at library headquarters to answer calls for help accurately and intelligently.

Although she serves library patrons of all ages, her prime responsibility is for the elderly. Among the elderly she helps are those who use large-print books and talking-book machines with records or cassette tapes. She also maintains a mail service for the homebound and a home delivery service for books and equipment within the city limits.

RADIATION VICTIM

Employment as a Senior Aide has given a good many older, unemployed workers new confidence in themselves and their ability to make their way in life.

Take the case of James Hughes who won a job as a Senior Aide in the greenhouse at the Southwestern Sheltered Workshop in the Bryson City, N.C., area.

Hughes had been discouraged, despondent that he couldn't find work. He had been unemployed more than six months and he knew why employers shied away from him.

Several years before, he had worked on a job that involved handling radioactive material. A container was spilled and some of the material splashed on his face between his temple and his eye. The result is an ugly, one-inch hole on the side of his head that at first glance appears to be an open, festering sore.

On his job at the Sheltered Workshop's greenhouse, Hughes helps mentally handicapped persons learn about planting and caring for potted flowers and plants. For Hughes, the result has been new confidence in himself and release from the fear and despondency that hung over his life.

These Senior Aides whose work has been described here are but a tiny fraction of those employed on useful community service projects across the nation. Yet their skill in and dedication to community work that would not otherwise be performed is generally typical of the whole group of 7,012 Aides employed on 118 different projects. Therefore, it is useful to look at how these projects have been set up and understand the rules that govern the employment of Senior Aides to achieve the goals that Congress set for the program.●

## JOHN DENVER'S ALASKA

Mr. DURKIN. Mr. President, I would like to call to the attention of my colleagues a distinguished television documentary on Alaska which will be shown throughout the country on the ABC network on Sunday, September 3, 1978, from 7:00 to 9:00 p.m.

It is entitled, "John Denver's Alaska: The American Child."

Mr. Denver, a strong conservationist, made several trips to Alaska to film this program. With veteran guides as his companions, he invites the American viewer to explore with him isolated coastal and interior regions of this great State and experience, what is perhaps the most scenic wilderness and wildlife habitat left in the United States today.

Mr. Denver's experiences in Alaska are rich and varied and show graphically why I support legislation to protect these scenic lands and wildlife areas.

He and his companions take a raft journey down the sprightly rapids of the Alagnak River on the Alaska peninsula.

He confronts a huge polar bear on the polar ice cap and witnesses a family of brown bears feasting on summer salmon.

There is an arduous climb in the

Majestic Wrangell Mountains and participation in the centuries' old ritual of hunting for the bowhead whale.

The scenes remind us all that Alaska is wild, unspoiled and unsurpassed in scenic beauty. In Mr. Denver's words, it is "a precious land." a land whose protection gives us a final opportunity to show our children and grandchildren what all of America was once like.

Alaska is too important to have its future guided by narrow and parochial interests. That is why Congress must face its responsibility in the so-called D–2 issue and set aside Federal land for permanent protection as national parks and wildlife refuges and forest wilderness.

My hope is that my colleagues and Americans everywhere will have a chance to see this valuable program. I am certain it will convince them that the Alaska lands issue is a national issue and, with development interests waiting in the wings, one that is crucial to address right now.

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## EFFECT OF EMPLOYEE STOCK OWNERSHIP ON LABOR PRODUCTIVITY

Mr. LONG. Mr. President, the July 31 edition of the Washington Post contained an editorial which greatly alarmed me. The editorial, entitled "American Productivity," contrasted the increase in American productivity—the average output per hour of labor—over the past decade with that of the other major world powers. I ask unanimous consent to print a copy of that editorial in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

AMERICAN PRODUCTIVITY

Throughout most of the years since World War II, productivity in the American economy has risen briskly. As it went up, it carried with it people's earnings and standards of living. But the rise began to slacken about a decade ago, and for the past year and a half there has been hardly any rise at all. Of all the changes overtaking the American economy, the behavior of productivity is one of the most peculiar—and one of the most disquieting.

The immediate consequence of no productivity gains is that inflation will become harder than ever to control. But if the present pattern continues, it will also ignite uncomfortable political questions about dividing the pie in a country that has come to expect, and to count on, steady increases in both public and private wealth. Nobody really knows why productivity has stopped rising. All explanations are, to one degree or another, speculative. But the evidence suggests that it is no minor passing blip on the chart. The causes seem to lie deep in the changing structure of the national economy.

Productivity is simply the average output per hour of labor. The Labor Department computes it every three months, and it has just published the figures for the spring quarter of this year. They show that productivity was rising at the minuscule rate of 0.1 percent a year, after having fallen during the winter. Through the 1950s and most of the 1960s, it was going up at an impressive pace of nearly 3 percent a year. In the years after 1968, the trend dropped to half that rate. Since late 1976, it has been almost flat.

That departure is consistent with two other surprises. Inflation has been running considerably higher in recent months than most people expected, and unemployment has been considerably lower. Output over the past year has been raised by putting more people on payrolls, not by improving each person's capacity to produce.

It's a striking departure, and one explanation may well lie in the rather low rates at which business has been investing new capital. That, in turn, may be the result of low profits. Another possibility is the cost of the new environmental and safety rules, requiring industry to invest heavily in equipment to control air and water pollution.

Whatever the influences controlling productivity, they vary enormously from one country to another. In international competition, the United States is currently not doing well. The following brief paragraph compares the increases in productivity in manufacturing, for the decade 1967–77, among some of the major industrial powers:

United States, 27 percent; France, 72; West Germany, 70; Italy, 62; Japan, 107; Canada, 43; and Great Britain, 27.

There is a tendency in this country to regard Britain as the world's great example of industrial decline. But you will note that the rate of productivity gain in British factories over the past 10 years has been the same as in American factories.

Since no one is quite sure why the American rate has fallen, no one is in a position to offer a sure remedy. But these latest productivity figures may well strengthen the impulse in Congress to cut taxes on capital gains, in an effort to increase investment. Beyond that, it's also necessary to consider the possibility that some of this change may lie beyond the reach of government policy. A good many Americans' ideas about work, incomes and economic growth began to change around 1968. These new attitudes may now be showing up in the statistics on the nation's economic performance.

Mr. LONG. The editorial points out that there "is a tendency in this country to regard Britain as the world's great example of industrial decline." This, I think, is a fair assessment of the average American businessman's opinion.

However, the author then cites statistics which reflects that the productivity gain in the United States over the past 10 years is no better than that of Great Britain: a miserable 27 percent.

This statistic becomes even more alarming when compared to the productivity gains over the same period for Japan, 107 percent; France, 72 percent; and West Germany, 70 percent. Even Italy had an increase of 62 percent—almost 150 percent more than our own.

Clearly, we as a country are not increasing our productivity at a rate which makes us competitive with the other free-world economic powers.

As every Senator knows, one major consequence of declining or lagging productivity is inflation. That we are now in a period of spiraling inflation cannot be denied. What we need to do is find ways to increase each individual's productivity and thereby increase the volume of goods and services which are competing for the consumers' dollar. This is one of the important ways in which we can begin to break the cycle of too many dollars chasing too few goods and begin to place a lid on the inflation spiral which we have thus far been so helpless to stem.

Also, as productivity rises, so does the potential for corporate profits and, thus, the likelihood of expanded capital investment.

Last month, the Senate Committee on Finance held 2 days of hearings on employee stock ownership plans (ESOP's). During these hearings, we received testimony from such major corporations as Sears, Roebuck & Co., Potomac Electric Power Co., the Dow Chemical Co. and Lowe's Cos., Inc. These companies were unanimous in their opinions that providing employees with a stock ownership in their employers carries with it major benefits not only for the employer and its employees, but for the economy as a whole.

There was complete agreement that the unified interest between employer and employee which results from employee stock ownership has a definite impact on productivity. Since that time, I have received statements of support for the ESOP concept from such corporations as General Telephone & Electronics Corp., Gulf Oil Corp., Weyerhauser Corp., McDonald's Corp., and Celanese Corp.

I have long believed that employee stock ownership increases productivity, and I was delighted to have my opinions reinforced by the heads of these corporations.

At the same time, we received testimony from Ambassador Robert S. Strauss, Special Counselor on Inflation. Mr. Strauss indicated that he would look carefully at ESOP as a possible solution to the problem of declining productivity and increasing inflation since, as he pointed out, an employee always works harder when he has "a piece of the action." My longstanding commitment to giving employees "a piece of the action" is well known.

Finally, I also submit for insertion in the RECORD at the close of my remarks a copy of a recent Department of Labor report, entitled "Employee-Owned Companies: Is the Difference Measurable?"

This report suggests strongly that employee stock ownership results almost invariably in better attitudes toward the job and higher productivity and corporate profits. I am gratified that the administration is finally taking a look at the beneficial effects of employee stock ownership and I hope that the results of this investigation will answer the questions raised by the "doubting Thomases" about ESOP.

I hope that other Senators will join me and the heads of many of our major U.S. corporations in actively promoting the concepts of ESOP and broadened stock ownership as vehicles for resolving some of these major economic problems which currently plague our country.

On June 23, I introduced S. 3241, the "Expanded Employee Stock Ownership

Act of 1978"; Senators WENDELL ANDERSON, MIKE GRAVEL, and BILL ROTH are cosponsors of this bill. My purpose in introducing the bill is to reduce administrative problems for ESOP's and provide greater incentives for employers to adopt such programs and provide access to greater stock ownership for their employees.

This past Tuesday, August 15, Congressmen JOE WAGGONER and BILL FRENZEL introduced the same bill in the House (H.R. 13882). I am pleased that these Members of Congress are directing their attention toward broadening stock ownership. I would encourage all Senators and Congressmen to review the proposals we are making in these bills and work with us toward providing more Americans with a "piece of the action."

Mr. President, I ask unanimous consent that an article in the Monthly Labor Review of July, 1978, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EMPLOYEE-OWNED COMPANIES: IS THE DIFFERENCE MEASURABLE?

(By Michael Conte and Arnold S. Tannenbaum)

Employe ownership can be found throughout the history of the United States, although companies that are wholly owned by employees (including workers) have always been rare. One survey reported that 389 companies, in which a large proportion of the stock was directly owned by employees, were established in the United States between 1791 and 1940.[1] The number of companies with at least some degree of employee ownership was probably much larger, and there is evidence that this number has grown in recent years.[2]

Several aspects of performance in a variety of employee-owned companies are analyzed in this article.[3] The data employed include: the size and sales volume of employee-owned companies; the percent of employees who participate in the ownership plan; the percent of equity owned by nonmanagerial as well as managerial persons; and aspects of control of the company by employees. Also analyzed are the attitudes of managers toward the ownership plan and their judgment about the effect of the plan on productivity and profit. Actual profit data were available for a subset of companies, and the relationship between profit and other characteristics of these companies was studied.

Employee ownership can take two forms: direct, where employees own shares in the company as would ordinary shareholders in a joint-stock company; or "beneficial," where employees own shares through a trust, as illustrated by the Employee Stock Ownership Trust (ESOT).[4] The Employee Retirement and Income Security Act of 1975 stipulates that the holdings of an Ownership Trust must be invested "primarily" in the stock of its company—unlike the holdings of the usual profit-sharing trust, which may be diversified, or of a pension trust, which must be diversified.

Contributions to the Trust are governed by an Employee Stock Ownership Plan (ESOP). Depending on the plan, contributions may be made on the basis of a profit-sharing principle (whereby some fixed percentage of company profits is annually transferred to the Trust), a cost principle (whereby a fixed percentage of labor costs is annually transferred to the Trust), a fixed contribution principle (whereby a fixed dollar amount is transferred to the Trust), or by other methods determined entirely at the discretion of a single party or parties. The central requirements, however, are that the Ownership Trust invest "primarily" in employer securities and that disbursements from the Trust be made in employer securities. Dividends that may be declared are not usually distributed immediately to employees but, rather, are held in trust. Nonetheless, the financial well-being of the "beneficiaries" of stock in the Trust is tied to the success of the company.

FINDING WHO OWNS WHAT

A list of 148 companies in the United States and Canada, thought to have some degree of employee ownership, was compiled.[5] After conducting telephone interviews, usually with the financial officer, 98 of these companies actually were found to have some component of worker ownership; 68 firms had Stock Ownership Plans, and 30 had direct ownership. Their median size was approximately 350 employees; 17 percent had fewer than 100 employees and 25 percent had 1,000 or more. During the previous year, almost half of the companies had sales of at least $25 million.

As shown in table 1, employees in about three-quarters of the companies owned at least half of the equity; ownership of the entire equity by employees was more likely to occur in stock-plan than directly owned companies. This table refers to the percent of equity held by all employees, including managers. Table 2, on the other hand, refers to the percent of equity owned by the workers alone, which, of course, is less than that owned by all employees.

TABLE 1.—PERCENT OF TOTAL EQUITY OWNED BY EMPLOYEES, INCLUDING MANAGERS, IN 87 COMPANIES

| | Percent of companies | | |
|---|---|---|---|
| Equity owned by employees | Stock ownership plan (N=60) | Direct ownership (N=27) | All companies (N=87) |
| Less than 10 percent | 4 | 4 | 4 |
| Between 10 and 49.9 percent | 18 | 18 | 18 |
| Between 50 and 99.9 percent | 28 | 59 | 38 |
| 100 percent | 50 | 19 | 40 |

Note—Eleven companies did not provide sufficient percent of equity owned internally data to determine the percent of equity owned internally.

TABLE 2.—PERCENT OF TOTAL EQUITY OWNED BY WORKERS ONLY, IN 83 COMPANIES

| | Percent of companies | | |
|---|---|---|---|
| Equity owned by workers | Stock ownership plan (N=58) | Direct ownership (N=25) | All companies (N=83) |
| Less than 3 percent | 34 | 8 | 27 |
| Between 3 and 9.9 percent | 16 | 8 | 13 |
| Between 10 and 49.9 percent | 43 | 20 | 36 |
| Between 50 and 100 percent | 7 | 64 | 24 |

NOTE—Fifteen companies did not provide data relevant to the percent of equity owned by workers.

The measure of equity owned by workers in stock-plan companies was obtained by multiplying the percent of the company's equity owned by the Trust times the percent of the Trust's equity owned by the workers. Because of the way records are kept in most of the stock-plan companies, we found it necessary to rely on the distinction between salaried and other personnel as the basis for distinguishing rank-and-file workers from managers in these companies. Furthermore, although most of the directly owned companies could report the allocation of ownership between managerial and other personnel, only about half of the stock-plan companies could report the precise allocation of stock within the Ownership Trust. In these companies, 54 percent of the Ownership Trust stock, on average, is owned by nonsalaried employees. This average then, was used to define the amount of worker-owned stock within the Trust in each of the remaining cases.[6] As estimated, therefore, worker-owned equity in the remaining cases is directly proportional to (that is, 54 percent times) the percent of the company's equity in the Trust itself.

Employee owners in the Trust are entitled to dispose of their stock at market value once it has been distributed to them. Unlike employees in directly owned companies, however, owners in a Trust generally do not vote their stock. The following tabulation shows the percent of companies where voting rights and other employee control mechanisms are reported to be available:

| | (1) | (2) | (3) |
|---|---|---|---|
| Employee-owners have: | | | |
| Stock-voting rights | 27 | 97 | 50 |
| Representatives on Board of Directors | 36 | 77 | 49 |
| Union representation | 32 | 33 | 32 |
| Influence on important decisions other than through a union | 51 | 77 | 56 |

[1] Percent of stock-plan companies.
[2] Percent of directly owned companies.
[3] Percent of all companies.

In general, the data indicate substantial differences between stock-plan and directly owned companies in these measures of employee influence over company decisions. For example, only 36 percent of the respondents in companies with Stock Ownership Plans report that worker representatives sit on the board of directors; 77 percent of the companies with direct ownership report the presence of workers on the board. Similarly, 51 percent of the respondents in companies with ownership plans, compared to 77 percent in companies with direct ownership, indicate that employees influence "important" decisions in the company. In some of the companies, this influence reportedly extends to such decisions as whether or not to make major capital acquisitions. The two types of companies do not, however, appear to differ with respect to whether or not employees are unionized. Although not specifically measured, indications are that directly owned companies have significantly fewer unionized employees than do comparable ownership-plan companies.

EMPLOYEE OWNERSHIP AND PROFITABILITY

Profit data were supplied by 30 companies. The ratio of pretax profits to sales was used as a basis for gauging profitability. Each company's ratio was then divided by its industry's 1976 ratio.[7] This weighted ratio was the primary measure of a company's pretax profitability. For five companies, however, an additional adjustment was necessary. Because these companies are directly and wholly owned by employees, they distributed a part of their "profit" to employees in the form of wages. This allocation of funds has the effect of depressing the conventional profit statement, although it has the corresponding advantage of reducing taxes. These moneys, however, should be considered as part of the company's profit for purposes of comparison with other companies in our set.

Footnotes at end of article.

To calculate the amount of money diverted from profits to wages in the five companies, the average wage differential between the worker owners and nonowner workers was used.[8] This differential in each company was added to its formally stated profit figure, and this final value was used for computing the profitability of these five companies. Although this adjustment seems appropriate as a way of maintaining comparability among companies that employ different accounting procedures, the unadjusted profit statements also were compared. This unadjusted value is, most likely, overly conservative; but there may be some utility in examining both measures of profitability.

The average adjusted profit ratio for the 30 companies was 1.7; the unadjusted ratio was 1.5. In both cases, these values, which are greater than 1, indicate greater profitability among employee-owned companies than comparable sized companies in their respective industries. However, because the variance in profitability among the 30 companies is relatively large and the number of cases is small, statistical significance is not achieved. It is also possible that the "sample" of companies may be select with respect to profitability. The results are suggestive, however, that employee ownership, in one form or another, may be associated with the profitability of a company.[9]

TABLE 3.—REGRESSION COEFFICIENTS FOR THE PREDICTORS OF "ADJUSTED" AND "UNADJUSTED" PROFITABILITY

| Predictor | Adjusted | Unadjusted |
|---|---|---|
| ESOT (=0) vs. direct ownership (=1) | −.22 | −.34 |
| Percent employees participating in plan | −.30 | −.31 |
| Percent equity owned internally | −.31 | −.19 |
| Percent equity owned by workers | [1] 1.02 | .78 |
| Worker representativeness on board of directors | −.18 | −.18 |
| Employee stockholders vote | −.05 | −.24 |
| Multiplier | .72 | .47 |

[1] $p < .02$.

NOTE. The data necessary to calculate the adjusted profitability ratio are unavailable in five companies of the subset and 5 companies did not provide information concerning all of the predictors in this regression. The number of cases in the adjusted and unadjusted cells are therefore 20 and 25 respectively.

In table 3, the two indexes of profitability (adjusted and unadjusted) are predicted using several aspects of employee ownership in a regression analysis. The predictors include: (1) the form of employee ownership, whether direct or through a Trust (Ownership Trust is scored "0"; direct ownership is scored "1"); (2) the percent of employees who participate in the plan; (3) the percent of company equity owned by employees (by managers and workers); (4) the percent of company equity owned by the workers themselves; (5) whether employees have representatives on the board of directors; and (6) whether employee stockholders have voting rights.

These predictors jointly explain a substantial amount of the variance in "adjusted" profitability, but only one of the predictors, the amount of equity owned by the workers themselves, proves statistically significant (p less than .02); the more equity the workers own, the more profitable the company, other things being equal (beta = 1.02).[10]

The second variable of importance in this analysis, the amount of equity owned internally, has, if anything, a negative relationship with profitability (beta = −.31); but the statistical significance of this variable is marginal, at best—a coefficient of this size occurring about one out of four times by chance. Variation in "internal ownership" in this context is really variation in ownership by managerial personnel, because ownership by the workers themselves is controlled in the analysis. The possible implication, therefore, is that increases in the amount of equity owned by managers may have a negative effect if this increase is not accompanied by an increase in the equity owned by the workers. This result is not strong statistically, but it may be worth considering as a hypothesis.

The impact of the remaining variables can easily be attributed to chance, but it is interesting to see that they, too, imply, if anything, negative relationships in the regression. Direct ownership (rather than through a Trust), the percent of employees who participate in the plan, the existence of worker representatives on the board, and the existence of voting rights show a negative relationship (if anything) to profitability when the percent of equity owned by the workers themselves is controlled.

Prediction of the unadjusted profitability index is not as good as the prediction of the adjusted index, the multiple correlation being only 0.47, and none of the predictors meets the usual criterion of significance. The pattern of results, however, is similar to that for the analysis of the adjusted profitability index; the one predictor that approaches a marginal level of statistical significance is the percent of equity owned by the workers.

The negative signs associated with several of the variables in table 3 do not imply (or they would not imply, even if they were statistically significant) that these characteristics are associated with low profitability; they imply (or would imply) such a negative association only under the conditions of the regression analysis where, for example, the amount of equity owned by the workers is controlled statistically. In fact, because companies where workers hold a high percent of the equity are likely also to be directly owned, direct ownership, like the amount of workers ownership itself, is positively associated with profitability.

TABLE 4.—CORRELATIONS AMONG ASPECTS OF EMPLOYEE OWNERSHIP AND PROFITABILITY

| Characteristics | Profit (adjusted) (N=20) | Profit (unadjusted) (N=25) | Stock plan vs direct ownership (N=75) | Percent employees participating (N=75) | Percent of equity owned internally (N=75) | Percent of equity owned by workers (N=75) | Workers on board (N=75) |
|---|---|---|---|---|---|---|---|
| ESOT (=0) vs. Direct ownership (=1) | [1] 0.48 | 0.27 | | | | | |
| Percent employees participating | −.33 | −.29 | [1] −0.23 | | | | |
| Percent of equity owned internally | −.02 | −.06 | −.10 | [1] 0.25 | | | |
| Percent of equity owned by workers | [1].60 | .31 | [1].68 | .14 | [1] 0.34 | | |
| Workers on board | .24 | .08 | [1].36 | .08 | .04 | [1] 0.43 | |
| Employee stockholders vote | .30 | .18 | [1].68 | −.11 | −.11 | [1].47 | [1] 0.22 |

[1] $p < 0.05$.

Table 4 helps to illustrate these associations. This table shows the simple, zero-order correlation among the variables presented in the regression analysis. Correlations that are significant at the .05 level or better are indicated. We see in this table not only how the predictors may be associated with profitability, but also how the predictors relate to one another. For example, companies in which workers hold a high proportion of the equity tend to be directly owned (r=.68), to have worker representatives on the board (r=.36), and to provide voting rights to employee owners (r=.68). On the other hand, the correlation between the percent of equity owned by the workers and that owned internally (by workers and managers is not as high as one might expect, in view of the fact that internal ownership includes ownership by workers (r=.34). The proportion of equity owned by managers in many of these companies is relatively large and "internal ownership," therefore, reflects managerial ownership more than worker ownership.

Direct ownership in this table is signficantly and positively related to adjusted profitability (r=.48)—unlike the relationship indicated in the regression analysis—because direct ownership is associated with the percent of equity owned by workers, which appears from the regression analysis to be more closely associated with profitability. Voting rights is also associated with the percent of equity owned by workers and it, too, shows a positive relationship with adjusted profitability (unlike the relationship in the regression analysis), although the magnitude of the correlation does not meet the criterion of statistical significance, given the small number of cases.

The percent of employees who participate in the ownership plan, however, does not show the relationship to profitability that one might expect from the hypothesis that employee ownership has a positive effect on profitability (r=.33). The explanation may hinge on the association, or rather lack of association, between the percent of employees who participate and the percent of equity owned by workers (r=.14). Apparently, many companies that have relatively widespread employee ownership, in fact, involve only a small proportion of the companies' equity in such ownership. Many members, in other words, own very little.

SUBJECTIVELY SUPPORTED BY MANAGERS

In a previous study, substantial sentiment in favor of employee ownership was found among both managers and workers in a company that had recently adopted an ownership plan.[11] Employee ownership, they felt, contributed substantially to the satisfaction of all employees, to the motivation of workers, and, ultimately, to the productivity and profitability of the company. Records of the company also indicated that grievances and waste (in the form of expendable tools) declined and that productivity and profitability increased during the period immediately following the introduction of the plan (although profitability was higher during one period a number of years earlier).

In the present analysis, a management representative in each company was asked questions about the effect of employee own-

Footnotes at end of article.

ership on productivity and profit. "Do you think that employee ownership affects profits? Does it increase profits, decrease them, or have no effect?" Similar questions were asked concerning productivity. On average, the responses to these questions indicated substantial support for employee ownership. The analyses presented in the previous section, suggesting that employee-owned companies are associated with above average profitability within their respective industries, lend some credence to the claims of these managers. However, the managers who credited employee ownership for high levels of profit did not necessarily work for the more profitable companies.

Managers in companies that were substantially worker-owned were no more likely to ascribe positive effects to employee ownership than managers in less intensively worker-owned companies even though the proportion of equity owned by workers appears to be related to profitability. On the other hand, employee ownership is more likely to be reported to have positive effects on profit where such ownership is direct, rather than through a Trust; managers also respond more favorably where workers are not represented on the board.

Each manager respondent was asked whether employee ownership affected the attitudes of workers toward their job. The average response was 0.84 on a scale from 0 to 1, where "1" means that work attitudes are better and "0" that they are worse as a result of the ownership plan. Their response, therefore, implies that these managers, on average, perceive employee-ownership plans as having a substantially positive effect on the attitudes of employees. But, according to a regression analysis, this judgment by managers may be less positive where workers have representatives on the board of directors. In general, managers were more satisfied with the plan where ownership is direct rather than through a Trust and where the percent of employees who participate in the plan is relatively large. It seems reasonable that managers should think well of the plan where participation is widespread. On the other hand, we have seen that widespread ownership, per se, is not associated with profitability; such ownership may very well mean that many employees own only a very small fraction of the equity—and it is the amount of equity owned by workers that appears to be most often associated with profitability.

TAKING STOCK

Employee ownership in the United States has taken a number of forms, although examples where workers own a substantial part of a company's equity are rare. These data, although only preliminary, offer a glimpse of the possible impact of employee ownership on the economic performance of companies and employee attitudes. On the basis of this brief analysis, some tentative conclusions may be suggested: The industrial relations climate in employee-owned companies appears to be good, in the judgment of managerial respondents; managerial respondents in these companies see employee ownership as having a positive effect on productivity and profit; the employee-owned companies that have been studied appear to be profitable—perhaps more profitable than comparable, conventionally owned companies; the ownership variable most closely associated with profitability is the percent of equity owned by the workers themselves; although workers influence in the company, as judged by managers, is a function of worker-owned equity, managers' evaluation of the ownership plan is not affected in a positive way by either the amount of equity held by the workers or the amount of influence exercised by the workers; managers appear more favorably disposed toward plans with widespread participation among employees, even though this may involve only a small fraction of the company's equity.

These conclusions are tentative. The companies that provided profit data may be select, and the analyses are based on correlations that illustrate association among variables—they do not prove causation. The results, however, are sufficiently encouraging to justify a detailed, longitudinal study of a number of companies over a period of years. Such a study should include measures of the attitudes and motivations of all employees within the companies as well as measures of company performance. If employee ownership does have an effect on the economic performance of a company, as the data of this study tentatively suggest, the explanation may be found, at least partly, in the effect of ownership on the employees themselves.

FOOTNOTES

[1] Derek Jones, "The economics and industrial relations of producer cooperatives in the United States, 1790–1940," mimeo.

[2] "Employee Ownership," Survey Research Center, Institute for Social Research, University of Michigan, Sept. 23, 1977. Matthew J. Bonaccorso and others, "Survey of Employee Stock Ownership Plans," unpublished masters thesis, University of California, Los Angeles, Graduate School of Management, December 1977.

[3] The study reported here was done under a grant from the Economic Development Administration, U.S. Department of Commerce. The views expressed are those of the authors.

[4] Louis Kelso and Patricia Hetter, *Two Factor Theory: The Economics of Reality* (New York, Random House, 1968).

[5] The list was culled from articles in newspapers, magazines and professional journals, conversations with colleagues, and references given by persons in employee-owned companies whom we contacted.

[6] The definition of "worker" implicit in the stated procedure differs somewhat in the two types of companies. "Workers" may include foremen and salaried clerical workers in some directly owned companies, but not in stock-plan companies. Table 2, therefore, may overstate the difference in worker ownership between stock-plan and directly owned companies, although we do not believe that the definitional inconsistency accounts for the entire difference shown in the table.

[7] Robert Morris Associates, Annual Statement Studies (Philadelphia, Credit Division, 1976).

[8] These nonowner-workers performed essentially the same jobs as the worker owners and received the union wage rate.

[9] For studies in which performance of worker-owned plywood firms is compared to that of conventional firms, see Carl J. Bellas, *Industrial Democracy and the Worker-Owned Firm* (New York, Praeger Publishers, 1972); Katrina Berman, *Worker-Owned Plywood Companies: An Economic Analysis.* (Pullman, Wash., Washington State University Press, 1967); "Comparative productivity in worker-managed cooperative plywood plants and conventionally run plans," unpublished, 1976; Paul Bernstein, "Democratization or organization: theory, practice and further possibilities," Ph. D dissertation, Stanford University, 1972, See also Seymour Melman, "Managerial versus cooperative decision making in Israel," *Studies in Comparative International Development*, 1970–71, who compares the performance of kibbutz firms with conventional firms in Israel. For an analysis of companies that have substantial profit-sharing programs, some of which entail a degree of employee ownership, see Bert L. Metzger, *Profit Sharing in 38 Large Companies* (Evanston, Ill., Profit Sharing Foundation, 1975).

[10] "Beta" refers to a standardized regression coefficient.

[11] *An employee owned firm,* Survey Research Center, Institute for Social Research, The University of Michigan, Jan. 17, 1977. For a study of the reaction of both managers and workers in Israeli kibbutz, Yugoslav, American, Austrian, and Italian factories that differ in their system of ownership, see Arnold S. Tannenbaum and others, *Hierachy in Organizations* (San Francisco, Jossey-Bass, Inc., 1974). See also Ana Gutierrez Johnson and William Foote Whyte, "The Mon Dragon System of Worker Production Cooperatives," *Industrial and Labor Relations Review,* October 1977, pp. 18–30; and Richard J. Long. "The Effects of Employee Ownership on Organization, Employee Job Attitudes, and Organization Performance: A Tenative Framework and Empirical Findings," *Human Relations,* January 1978, pp. 29–48.

## TAX LIMITATION THROUGH INDEXATION

Mr. GRIFFIN. Mr. President, earlier today I presented a statement urging the Committee on Finance—as I urged the Subcommittee on Taxation and Debt Management 4 months ago—to report to the Senate not just a tax cut bill—but a tax reform bill that includes tax indexation.

Unless tax rates are adjusted automatically in the future to reflect future increases in the cost-of-living, the effect of any tax cut voted this year will be quickly eroded and made meaningless by inflation.

Last year, during consideration by the Senate of another tax bill, I offered a tax indexation amendment on the floor. Unfortunately, that amendment failed by a vote of 64-to-24. The very next day—April 29, 1977—I introduced the same language as a bill, S. 1431. In the future, under this bill there would be automatic annual adjustments of the personal income tax rate schedules, deductions, and exemptions to compensate for increases in the cost of living.

Since I introduced that bill last year, I am pleased to note that a number of similar bills have been introduced by other Senators, including S. 2738, which I have cosponsored with Senators DOLE and MCCLURE.

I remain steadfastly convinced that enactment of tax indexation is the single most valuable and important step that this Congress could take to give taxpayers genuine relief from the squeeze of raging inflation and ever higher taxes that economists now call "taxflation."

Tax indexation to cope with taxflation is no longer an esoteric economic concept. People all over the country understand it, and want it. I have learned that, firsthand, after traveling throughout the State of Michigan, where at every stop, people express their concern about inflation and taxation, and indicate their strong support for tax indexation.

That's true not just in Michigan. A Roper poll released last month—which surveyed nationwide attitudes toward taxation—showed that 60 percent of American taxpayers would prefer having income tax rates adjusted automati-

cally for inflation, rather than waiting for the periodic tax cuts granted by Congress.

Let me cite that figure again. Six out of every 10 taxpaying Americans want tax indexation—not just a tax cut—as the means for real relief from the scourge of taxflation.

We all know the symptoms of taxflation. Unbridled inflation forces wages to rise so that wage earners can keep up with the cost of living. But as his pay goes up, the worker finds that he is pushed up into higher and higher tax brackets—which mean that a higher percentage of his income is taken by the Government in taxes. Even though a pay raise means no actual gain in purchasing power—he has more dollars which are worth less—the worker is required under the present system to pay a higher rate of taxes. This is unconscionable.

To compound the problem, our progressive tax system takes a steadily increasing percentage of a taxpayer's earnings as the taxpayer gets moved into higher tax brackets. As the well-known advertisement says: "There's no living with inflation"—and I would add, there's no living with taxes!

Given this unhappy interplay between taxes and inflation, it is no wonder that workers today feel like the man trying to climb a ladder in a bog: for each rung the taxpayer climbs on the economic ladder, the ladder sinks a little deeper into the financial mire.

As in almost every arena of life, there's usually a winner and a loser. When it comes to taxflation, the real winner now—as you might have guessed—is the Federal Government. Because the taxpayer's loss is the Government's gain.

As Nobel prize-winning economist Milton Friedman computes it, when the cost-of-living goes up by 10 percent, the taxes flowing into the Federal Treasury go up—not 10 percent—but 16 percent. This worked out to a windfall profit on inflation for the Federal Government of about $6 billion last year.

Perhaps it should be no surprise that some of the big spenders here in Washington take a dim view of my proposal to index the tax rates. As the system operates now, taxes are increased, without a vote of Congress, just by promoting policies and programs that are inflationary.

What does all this mean to the individual wage earner? Let me provide a few illustrations.

Consider the plight of the wage earner with a wife and two children who in 1977 earned $15,000. Being conservative [or perhaps the word is "optimistic"] let us assume an inflation this year of 8 percent. To stay even with inflation, our wage earner this year will have to earn $1,200 dollars more—or $16,200. But, he really does not stay even. Because, while his income increases by 8 percent, his income taxes will go up about 19 percent. Pushed up into a higher tax bracket, he will have to pay a tax increase of $260, which will give the Government a hidden profit of $150. In other words, if the worker were allowed to pay the same tax rate on his increased pay his tax bill would be $150 less.

The situation gets worse each year if the tax rates are not indexed or adjusted. The following year—in 1979—if inflation continues at 8 percent, and the worker's wages manage to keep up, his taxes will increase by another 17 percent, and the Government's windfall will be about $305—for a whopping 2-year total of $455, taken almost by stealth.

The effects of taxflation become even harsher and more pronounced as the worker continues to climb up the income ladder. A family with a $30,000 yearly income in 1977 will have to earn $2,400 more in 1978—just to keep pace with an 8 percent inflation rate. However, at $32,400, the family's tax bill will rise by about $857. The Government's profit on that will be $423.

But income derived from wages is not the only area where taxpayers are hit by the impact of inflation. Let us look at another typical situation.

Take the case of a couple who bought a home back in 1952 for $25,000. Twenty-five years later, their children have grown up and have gone off on their own; the couple wants to sell their home for $60,000 and move into a small apartment. During the 25-year period, inflation has pushed the cost of living up 144 percent. In terms of purchasing power, the $25,000 that the couple paid in 1952 is worth or equal to about $61,000, today, 25 years later. So by selling the house for $60,000, the couple actually receives less than they paid for it.

But, under our current tax system, the Government decrees that the couple has realized a $35,000 capital "gain," and must pay tax on it. For the average taxpayer, that is a tax bill of about $7,000.

It is unconscionable that the Government imposes a tax in such a situation. The taxpayer has gained nothing at all—his dollars are just worth less.

I am very pleased to note that our colleagues in the House of Representatives have recognized this inequity in their version of the Revenue Act of 1978, which for the first time would index most capital assets (such as homes) to reflect increases in the cost of living.

This action on the part of the House is a very significant first step. But we should not stop with tax indexation of capital assets. As I have already pointed out, the effects of taxflation on wages is equally devastating. Congress should take the bull by the horns and should also index the tax brackets, the personal exemption and the standard deduction. This bold and justified step would operate to neutralize the tax impact of inflation.

Mr. President, the Finance Committee—soon to be joined by the full Senate—is in the process of determining the size and shape of this year's tax cut. I wholeheartedly support the idea of a tax cut. However, a tax cut is not the answer to taxflation.

Too often—and this year is a perfect example—tax cuts are determined by prevailing political winds, and they often do not make a taxpayer whole for past losses suffered through taxflation. And even if a tax cut appears adequate at the time, the benefits are quickly lost in the years following if the inflation spiral continues.

As I told the Finance Committee this morning, it is important that we restore integrity to our tax system and give American taxpayers reason to have confidence in it. Particularly in light of the citizen tax revolt that exploded in California and is sweeping the country today, this is the year to adopt effective tax limitation by enacting tax indexation.

A tax cut this year will not really provide a tax reduction for most workers; it will merely provide an adjustment of sorts for the inflation already suffered. However, if a tax cut were coupled this year with tax indexation for the future, then the next tax bill approved by Congress could be a real tax cut.

Tax indexation is an idea whose time has come. I urge the Senate to act accordingly.

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## IBM PRESIDENT OUTLINES VITAL BUSINESS EFFORT ON REGULATORY REFORM

Mr. PERCY. Mr. President, the Business Roundtable has been an important ally to the Congress in its quest to weed out unnecessary regulation and put the lid on excess Government intrusions into the affairs of American businesses. Frank Cary, chairman of the board of IBM, heads a task force on regulation for the Business Roundtable. He has written a comprehensive summary of the Roundtable's current efforts and plans concerning the area of business and regulation. His statement outlines:

A study commissioned by the Business Roundtable which will assess the real and specific economic impacts of Government regulation on a variety of businesses;

A plan to make regulatory agencies more completely administered;

An invitation for businesses to play a more active role in the regulatory process;

A mandate for "sunset" legislation assuring that regulatory laws and agencies do not outlive their usefulness; and

A bid to small businesses, labor, consumers, and every American to recognize the impact excess regulation has on their lives and well-being and the importance of supporting meaningful legislation in this area.

Mr. President, I ask that this thoughtful commentary by Mr. Cary be printed in the RECORD at this point.

There being no objection, the commentary was ordered to be printed in the RECORD, as follows:

BUSINESS AND REGULATION

(By Frank T. Cary)

The growth of government regulation concerns us all. But in recent days, with the increased concern over inflation, the need for action has taken on new urgency. Clearly, the cost of regulation has emerged as a significant force in the higher and higher prices we are paying for almost everything we buy.

What must be recognized at the outset is that most regulation stems from genuine concern about genuine grievances. So it

would be unrealistic to set out to eliminate it. What is needed is a hard look at all regulations to make sure that they are both necessary and cost effective.

Recently, we've seen some progress in this area. The Administration has, among other actions, issued an Executive Order which requires that many existing regulations be periodically reviewed, and that major proposed regulations be analyzed for their economic impact.

But we still have a long way to go, and there are several actions I believe that must be taken.

The first thing is to get the facts. Despite all the rhetoric we've heard over the years about the enormous costs of regulation, only a few people have ever tried to measure those costs in any systematic, comprehensive way. The plain fact is that no common methodology exists by which a specific company or industry can measure the economic impact of a regulation on its business.

To remedy this, an organization of corporate chief executive officers called The Business Roundtable has commissioned a study to produce such a methodology and measure costs. This effort began in February with a pilot test at General Electric. In June, data collection began in over forty participating companies in a wide variety of industries, including autos, steel, chemicals, pharmaceuticals, utilities and financial organizations. The study will measure the incremental costs of government regulations affecting capital, research and development, administrative, operating, and direct product costs.

When the project is completed the end of this year, the cost impact of regulation on specific firms in a variety of industries will have been measured for the first time, and specific regulatory problem areas will have been pinpointed on the basis of cross-industry analysis. The Roundtable then plans to make its study methodology available for public use.

A second thing we have to do is make sure all regulations are competently administered. The Business Roundtable has made recommendations that would: require the President to appoint only fully qualified people to regulatory agencies; have the President submit, with the nomination, a statement of those qualifications; and require commissions to have a balance of backgrounds represented, including business.

The Roundtable rejects the contention that regulatory agencies should consist of people with no expertise in the business they're regulating. It also favors conflict-of-interest legislation not only for businessmen, but for everybody—including environmentalists, journalists, and public interest lawyers—to prevent abuse of a public trust for personal profit.

Third, we in business have to take initiatives in the regulatory process to help make it work better. We must cooperate with members of the Congress to assure that new regulatory legislation is as workable as possible; we must cooperate with the regulatory agencies to produce fair and efficient rules; and we must give sound business advice to government agencies that do economic analyses of new regulations.

The President's new Executive Order, which requires advance publication of proposed regulations and economic analyses, invites this kind of business participation.

Next, we have to get behind legislation to assure that regulatory laws and agencies don't outlive their usefulness. As you know, the Congress has been considering "sunset" legislation which provides for periodic review and renewal of agency charters, and "sunrise" legislation which requires that any new regulatory law specify its goals and include a provision for periodic review against those goals. The thrust of such legislation we applaud. And we should do what we can to see that an effective bill becomes law in this session.

Finally, I believe we have to get ourselves some allies—lots of allies—and join with them in speaking out. The plain fact is that everyone (and not just big business) suffers from excessive regulation—from what Walter Lippmann once called "the sickness of an overgoverned society."

For small business, needless regulations can mean a bar to entry into the marketplace or, even worse, a necessity to circumvent the law to keep the business alive.

For labor, excessive regulation can mean plants and mines closed or never started, and job opportunities destroyed.

For consumers, too much regulation can mean higher prices and fewer goods from which to choose.

For universities it can mean new financial burdens to meet the costs of compliance with federal standards.

And for every American, regulation has an impact on the rate of productivity increase, which it has already cut significantly over the past decade. Regulation also has had a decisive impact on our rate of inflation, which it is raising by as much as a full percentage point every year.

We cannot eliminate all federal regulations.

But we can make sure they make sense, work effectively, and become part of the solutions, not part of the problem. To this end, we need new facts, new requirements for regulators, new initiatives in business-government cooperation, new regulatory review laws, and new alliances.

We have a big job ahead of us, and we all must work together to achieve any measure of success.

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## CHICAGO CITY COUNCIL URGES HALT TO SURPRISE MEDIA SEARCHES

Mr. PERCY. Mr. President, on May 31, the Supreme Court ruled in Zurcher against Stanford Daily that the police, armed with a warrant, could conduct surprise searches of newsrooms for evidence of a crime, even though no newsperson is suspected of any complicity in that crime. Since that decision, there has been grave concern expressed throughout the country about the potential power that this court decision places in the hands of the police. There is a growing fear that this decision may have a profoundly harmful impact on freedom of the press, and, indeed, on every citizen's right to privacy.

The idea of policemen rummaging around a newsroom—opening drawers, rifling files, searching through wastebaskets—is totally contrary to our fundamental belief in a free press. It is an image drawn from a police state.

A reporter's stock-in-trade is the ability to gather information, often from confidential sources. If we permit these police searches, such sources will soon dry up, and with them, the public's access to information independent of Government.

In response to the Supreme Court's ruling, the Chicago City Council Committee on Federal and State Legislation, under the distinguished chairmanship of Roman Pucinski, recently held hearings to examine the ominous implications of Zurcher. The committee received testimony from Clayton Kirkpatrick, editor of the Chicago Tribune, Paul Beavers, news director of WMAQ-TV, Don Reuben, attorney for both news operations, and Anthony Damato, professor at Northwestern Law School. The committee approved a resolution on freedom of the press which the City Council passed unanimously on July 7. The resolution strongly asserts that the Supreme Court's decision endangers the first amendment guaranty of freedom of the press. Furthermore, it urges Congress to pass legislation that would preserve freedom of the press, and to review present standards for search and seizure as they affect all citizens of the United States.

I congratulate Chairman Pucinski and his colleagues on their swift response to this very troubling decision by the Court.

Zurcher should not remain the law of the land. It is not only a blow to freedom of the press, but also a serious infringement of our right to privacy. Reporters are not the only ones threatened by this decision. This ruling unlocks the doors of innocent citizens' homes and offices for surprise searches for evidence. It renders almost meaningless the confidentiality promised by clergymen, doctors, psychiatrists, and lawyers. As Justice John Paul Stevens noted in his dissent in Zurcher:

> Just as the witnesses who participate in an investigation or a trial far outnumber the defendants, the persons who possess evidence that may help to identify an offender, or explain an aspect of a criminal transaction, far outnumber those who have custody of weapons or plunder. Countless law abiding citizens—doctors, lawyers, merchants, customers, bystanders—may have documents in their possession that relate to an ongoing criminal investigation. The consequences of subjecting this large category of persons to unannounced police searches are extremely serious. The ex patre warrant procedure enables the prosecutor to obtain access to privileged documents that could not be examined if advance notice gave the custodian an opportunity to object. The search for the documents described in a warrant may involve the inspection of files containing other private matter. The dramatic character of a sudden search may cause an entirely unjustified injury to the reputation of the person searched.

The Citizen's Privacy Protection Act, S. 3164, introduced on June 5, 1978, by Senators BIRCH BAYH, HOWARD METZENBAUM, and myself would put a halt to surprise searches of innocent people. It would require Federal, State, and local law enforcement officials to forego a search warrant and, instead, obtain a subpena for evidence of a crime when that evidence is in the hands of someone not suspected of the crime. The measure would still allow police to obtain a search warrant if there is probable cause to believe that the evidence would be destroyed, hidden, or removed. I urge my colleagues to act quickly on this legislation, and protect these fundamental rights.

Mr. President, I ask unanimous consent that the text of the Chicago City

Council's resolution on freedom of the press and the accompanying letter from Roman Pucinski, the chairman of the Council's Committee on Federal and State Legislation, be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JULY 12, 1978.

Hon. CHARLES H. PERCY,
*Dirksen Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PERCY: As Chairman of the Chicago City Council Committee on Federal and State Legislation I am enclosing for your information a copy of a resolution on "Freedom of the Press" unanimously passed by the City Council of the City of Chicago on July 7, 1978. This resolution memorializes the U.S. Congress ". . . to enact legislation which would protect newspapers and other media from governmental search where there is no reasonable basis for belief that the parties involved in the media have been guilty of any crime". This resolution further urges ". . . Congress to review present standards for search and seizure as they effect all citizens of the United States".

Sincerely,

ROMAN PUCINSKI,
*Chairman, Committee on Federal and State Legislation.*

RESOLUTION ON FREEDOM OF THE PRESS

Whereas the freedom of the press has been one of the tenets of American beliefs; and

Whereas newspapers and other media publicly disseminating information have historically been active and often essential in protecting our people from excess and improprieties whether by a private or governmental body; and

Whereas to preserve freedom of the press and to protect media investigation and analyses in our country it is essential that newspapers and other media publicly disseminating information be protected from governmental review of their files and records or governmental harrassment where there is no reasonable basis for belief that the parties involved in the media have been guilty of any crime; and

Whereas Congress has the obligation to uphold the principal of freedom of the press; and

Whereas the right of the various media to be protected in the confidential nature of their investigations has been endangered by a recent decision of the United States Supreme Court to the effect that the Constitutional guarantees of freedom of the press do not protect the media from governmental search and that a warrant for such search can be issued even though the party involved is not presumed guilty of or involved in any crime;

Now Therefore be it resolved that the City Council of the City of Chicago memoralize the Congress of the United States to enact legislation which would protect newspapers and other media from such governmental searches;

We further urge Congress to review present standards for search and seizure as they effect all citizens of the United States.

## WORKING MOTHER'S DAY

Mr. PERCY. Mr. President, many States across the Nation, including my own State of Illinois, will observe September 3, 1978 as Working Mother's Day. I would like to commend these States for the observation of a day in honor of these women who are making a dual contribution to our country.

As we all know, the number of women in the work force has increased dramatically in recent years. A substantial number of these women are the mothers of children under 18 years of age.

Since 1970, the total number of women in the civilian labor force has increased by almost 10 million, reaching 41 million in March of this year. Of this number, 16.1 million women are mothers of children younger than 18 or about 39 percent of all working women. It is important to note also that of all mothers 16 years of age or older with children under 18, more than half had joined the work force as of March.

Whether it is by choice or necessity that these women have joined the ranks of workers, their dual contribution to the growth of the economy and the strength of the American family deserves this special recognition.

Mr. President, I ask unanimous consent that the text of the proclamation signed by the governors of these States be printed in the RECORD.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

WORKING MOTHER'S DAY PROCLAMATION

Whereas, more than 15 million American women with children under the age of 18 are employed outside the home; and

Whereas, working mothers are making unique and substantial contributions both to the growth of the economy and the strength of the American family; and

Whereas, working mothers deserve special recognition for meeting their exceptional responsibilities in the home and in the world of commerce,

It is appropriate that particular attention be focused on the unique accomplishments of this segment of American society.

Now, therefore, September 3, 1978 is proclaimed as Working Mother's Day and families, individual citizens, labor and civic organizations, the media and business are urged to recognize and acknowledge the importance of the working mother and express public appreciation of her role in American society.

## PROCONSUMER INTERNATIONAL "OPEN SKIES" AIRLINE GUIDELINES ISSUED

Mr. PERCY. Mr. President, on August 22, 1978, the White House issued new policy guidelines for the conduct of international air transport negotiations. These bold, new guidelines can be expected to lead to lower air fares for consumers, improved direct international service to more U.S. cities, and more competitive opportunities for regularly scheduled and supplemental U.S. airlines wishing to serve international routes .

I am particularly interested in the provision which may lead to more of our cities being designated as gateway cities for international air service. For too many years, most international air travelers have been subjected to the inconveniences of having to travel to John F. Kennedy International Airport in New York City in order to reach Europe and the Middle East. This has been a particular hardship for the elderly and for families with young children who frequently must transfer between Kennedy and LaGuardia Airports after a long and tiring overseas flight.

In recent years, additional nonstop service to Europe has been approved from Atlanta, Miami, Dallas-Ft. Worth, Houston, New Orleans, and Tampa. Under this newly announced policy, hopefully, new nonstop service will be extended from Lambert International Airport in St. Louis to London and other international destinations. Approval of such service will be of direct benefit to my constituents in central and southern Illinois.

Additionally, Chicago has become increasingly identified as a major international gateway that merits additional service. For instance, Chicago was high on the list of new cities to be served by El Al-Israel Airlines under the recently signed bilateral agreement. And I am informed that United Airlines wishes to provide direct service from Chicago to Japan and mainland China.

In sum, I commend this administration for this policy. It has already been successfully carried forward in the recent landmark negotiations with the Government of Israel that will give El Al-Israel Airlines four new landing points in the United States at the lowest fares ever offered between the two countries.

I ask unanimous consent to have printed in the RECORD at this point a letter I wrote to Secretary of Transportation Brock Adams on July 20, 1978 in favor of the new policy, as well as a statement of support issued by President Carter, the policy statement itself, and an accompanying factsheet issued by the White House.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON
GOVERNMENTAL AFFAIRS,
*Washington, D.C., July 20, 1978.*

Hon. BROCK ADAMS,
*Secretary, Department of Transportation,*
*Washington, D.C.*

DEAR SECRETARY ADAMS: I am writing in support of implementation of the Department's proposed policy for the conduct of international air transportation negotiations involving the United States. It is a policy that is pro-consumer because it emphasizes competition and low fares. It is a policy which should also increase the frequency of international air transportation to many points across the United States, including Chicago and St. Louis which serves the central and southern portions of Illinois.

I am particularly pleased with the preamble to the policy which states that "Reliance on competitive market forces to the greatest extent possible in our international air transport agreements will allow the public to receive improved service at low costs that reflect economically efficient operations." This is precisely why I co-sponsored and actively supported the Air Transportation Regulatory Reform Act of 1978, which has now passed the Senate. This legislation emphasizes competitive market forces and gradually removes the control of government from domestic economic aviation policy matters. Although

the legislation does not deal with international aviation, the executive branch should implement many of the pro-competitive policies embodied in the bill in the area of international air transport.

I would like to comment on several of the proposed negotiating objectives contained in the policy, namely:

(i) Creation of new and greater opportunities for innovative and competitive pricing to respond to the varied service and price needs of different consumers.

Comment: Unquestionably, the encouragement of Freddie Laker-type Skytrain operations from cities other than New York and Los Angeles should be encouraged. I should note that Trans International Airlines (TIA) has applied for low-fare service from Chicago to Brussels on the one hand, and from Chicago to Hong Kong and Tokyo on the other. TIA proposes to charge low fares comparable to those of the Skytrain, but with advanced reservations and meals. This type of proposal should be promptly approved.

(ii) Liberalization of charter rules and elimination of restrictions on charter operations.

Comment: I enthusiastically support this concept.

(iii) Expansion of scheduled service through elimination of restrictions on capacity, frequency, and route and operating rights.

Comment: Airlines should be free to service any point on the globe from any city in the United States, without government interference, except on matters relating to safety. The position of the Israeli government, as enunciated in its recent bilateral air negotiations with the United States, should be applauded. We too need "open skies."

(iv) Elimination of discrimination and unfair competitive practices faced by U.S. airlines in international transportation.

Comment: Some of these restrictions are blatantly unfair and the U.S. government should move for their removal. It is difficult to understand why this government allows our flag carriers to be discriminated against and sometimes charged outrageously high user charges at the same time that we allow foreign carriers overflying our country to tap into our air traffic control facilities at no cost. Why should the American taxpayers continue to pick up the cost for providing free air traffic control services to foreign airlines that do not even land in this country and do not provide comparable assistance? This practice should come to an end.

(v) Flexibility to designate multiple U.S. airlines in international air markets.

Comment: Chicago is a good example of the lack of U.S. flag carrier service abroad. Pan Am does not even provide regularly scheduled service from Chicago; TWA provides one year-round daily 747 nonstop to London and a summertime-only nonstop to Paris; and Northwest Airlines provides a nonstop to Tokyo. There are many dormant routes not now being served by U.S. flag carriers out of Chicago and other cities. I would recommend that the new policy include a special international dormant route provision which would encourage airlines to apply for unused international route authority as part of an expedited approval proceeding. Domestic carriers that currently do not provide international service should be encouraged to pick up the nonstop routes to interior cities of Europe of those airlines which choose to concentrate their flights out of New York's Kennedy International Airport.

(vi) Encouragement of maximum traveler and shipper access to international markets by permitting service through more nonstop gateway cities and improving the integration of domestic and international airlines services.

*Comment:* On at least two occasions, Chicago has been denied international air service to Europe because of the insensitivity of U.S. Government officials to the economic and social needs for such service. For instance, in 1973, LOT the Polish Airlines, was denied access to Chicago from Warsaw and Sabena Belgian World Airlines was denied nonstop authority to Chicago from Brussels. It is difficult to understand who benefited from those decisions. These types of nonstop and direct service proposals, which would have the effect of increasing competition, should be approved in future air negotiations. With regard to St. Louis, which serves my constituents in central and southern Illinois, I have supported its designation as a "wild card" coterminal point from London as part of our current bilateral agreement with the United Kingdom. I would hope that, in the context of this new policy, U.S. and foreign flag carriers will be permitted to serve such points as St. Louis at service levels that conform to market demands. For instance, although daily nonstop service from St. Louis to many European cities may not be economically viable, weekly or semi-weekly service could prove to be economically feasible. Such service should be encouraged.

In sum, I support the framework and underlying principles of the Department's new international air transport negotiating policy and urge its prompt implementation. You are to be congratulated on your encouragement of this policy which, in the end, will better serve the nation, its economy, and the millions of air travelers who will directly benefit in terms of lower-priced, more-competitive air service abroad.

Sincerely,

CHARLES H. PERCY,
*U.S. Senator.*

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[The White House]

UNITED STATES POLICY FOR THE CONDUCT OF INTERNATIONAL AIR TRANSPORTATION NEGOTIATIONS

INTRODUCTION

United States international air transportation policy is designed to provide the greatest possible benefit to travelers and shippers. Our primary aim is furthering the maintenance and continued development of affordable, safe, convenient, efficient, and environmentally acceptable air services. Our policy for negotiating civil air transport agreements reflects our national goals in international air transportation. This policy provides a set of general objectives, designed particularly for major international air markets, on the basis of which United States negotiators can develop specific negotiating strategies.

Maximum consumer benefits can be best achieved through the preservation and extension of competition between airlines in a fair market place. Reliance on competitive market forces to the greatest extent possible in our international air transportation agreements will allow the public to receive improved service at low costs that reflect economically efficient operations. Competition and low prices are also fully compatible with a prosperous U.S. air transport industry and our national defense, foreign policy, international commerce and energy efficiency objectives.

Bilateral aviation agreements, like other international agreements, should serve the interests of both parties. Other countries have an interest in the economic prosperity of their airline industries, as we do in the prosperity of ours. The United States believes this interest is best served by a policy of expansion of competitive opportunity rather than restriction. By offering more services to the public, in a healthy and fair competitive environment, the international air transport industry can stimulate the growth in traffic which contributes both to profitable industry operations and to maximum public benefits.

GOALS OF U.S. INTERNATIONAL AIR TRANSPORTATION POLICY

The U.S. will work to achieve a system of international air transportation that places its principal reliance on actual and potential competition to determine the variety, quality and price of air service. An essential means for carrying out our international air transportation policy will be to allow greater competitive opportunities for U.S. and foreign airlines and to promote new low-cost transportation options for travelers and shippers. Especially in major international air transport markets, there can be substantial benefits for travelers, shippers, airlines and labor from increasing competitive opportunities and reducing protectionist restrictions. Increasing opportunities for U.S. flag transportation to and from the United States will contribute to the development of our foreign commerce, assure that more airlift resources are available for our defense needs, and promote and expand productivity and job opportunities in our international air transport industry.

TRANSLATING GOALS INTO NEGOTIATING OBJECTIVES

U.S. International Air Transportation Policy cannot be implemented unilaterally. Our objectives have to be achieved in the system of international agreements that form the basic framework for the international air transportation system.

Routes, prices, capacity, scheduled and charter rules and competition in the market place are interrelated, not isolated problems to be resolved independently. Thus, the following objectives will be presented in negotiations as an integrated U.S. position:

1. creation of new and greater opportunities for innovative and competitive pricing that will encourage and permit the use of new price and service options to meet the needs of different travelers and shippers,

2. liberalization of charter rules and elimination of restrictions on charter operations,

3. expansion of competitive opportunity and elimination of restrictions on capacity, frequency, and route and operating rights,

4. elimination of discrimination and unfair competitive practices faced by U.S. airlines in international transportation.

5. flexibility to designate multiple U.S. airlines in international air markets,

6. encouragement of maximum traveler and shipper access to international markets by authorizing more cities for non-stop or direct service, and by improving the integration of domestic and international airline services, and

7. flexibility to permit the development and facilitation of competitive air cargo services.

EXPLANATION OF OBJECTIVES:

1. Pricing. The U.S. will develop new bilateral procedures to encourage a more competitive system for establishing scheduled air fares and rates. Charter pricing must continue to be competitive. Fares, rates and prices should be determined by individual airlines based primarily on competitive considerations in the marketplace. Governmental regulation should not be more than the minimum necessary to prevent predatory or discriminatory practices, to protect consumers from the abuse of monopoly position, or to protect competitors from prices that are artifically low because of direct or indirect governmental subsidy or support. Reliance on

competition and encouragement of pricing based on commercial considerations in the marketplace provides the best means of assuring that the needs of consumers will be met and that prices will be as low as possible given the costs of providing efficient air service.

2. Charters. The introduction of charters acted as a major catalyst to the expansion of international air transportation in the 1960's. Charters are a competitive spur and exert downward pressure on the pricing of scheduled services. Charters generate new traffic and help stimulate expansion in all sectors of the industry. Restrictions which have been imposed on the volume, frequency and regularity of charter services as well as requirements for approval of individual charter flights have restrained the growth of traffic and tourism and do not serve the interests of either party to an aviation agreement. Strong efforts will be made to obtain liberal charter provisions in bilateral agreements.

3. Scheduled Services. We will seek to increase the freedom of airlines from capacity and frequency restrictions. We will also work to maintain or increase the route and operating rights of our airlines where such actions improve international route systems and offer the consumer more convenient and efficient air transportation.

4. Discrimination and Unfair Competitive Practices. U.S. airlines must have the flexibility to conduct operations and market their services in a manner consistent with a fair and equal opportunity to compete with the airlines of other nations. We will insist that U.S. airlines have the business, commercial and operational opportunities to compete fairly. The United States will seek to eliminate unfair or destructive competitive practices that prevent U.S. airlines from competing on a equal basis with the airlines of other nations. Charges for providing airway and airport properties and facilities should be related to the costs due to airline operations and should not discriminate against U.S. airlines. These objectives were recognized by the Congress in legislation enacted in 1975, and their attainment is required if consumers, airlines and employees are to obtain the benefits of an otherwise competitive international aviation system.

5. Multiple Airline Designations. The designation of new U.S. airlines in international markets that will support additional service is a way to create a more competitive environment and thus encourage improved service and competition pricing. Privately owned airlines have traditionally been the source of innovation and competition in international aviation, and it is therefore particularly important to preserve for the U.S. the right of multiple designation.

6. Maximum Access to International Markets. Increasing the number of gateway cities for non-stop or direct air service offers the potential for increasing the convenience of air transportation for passengers and shippers and improving routing and market opportunities for international airlines. In addition, enhancing the integration of U.S. airline domestic and international air services benefits both consumers and airlines.

7. *Cargo Services.* We will seek the opportunity for the full development of cargo services. Frequent demand for such services requires special equipment and routes. Cargo services should be permitted to develop freely as trade expands. Also important in the development of cargo services are improved facilitation, including customs clearance, integration of surface and air movements, and flexibility in ground support services.

NEGOTIATING PRINCIPLES

The guiding principle of United States aviation negotiating policy will be to trade competitive opportunities, rather than restrictions, with our negotiating partners. We will aggressively pursue our interests in expand air transportation and reduced prices rather than accept the self-defeating accommodation of protectionism. Our concessions in negotiations will be given in return for progress toward competitve objectives, and these concessions themselves will be of a liberalizing character.

Proposed bilateral agreements which do not meet our minimum competitive objectives will not be signed without prior Presidential approval.

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[The White House]

UNITED STATES INTERNATIONAL AVIATION POLICY FACT SHEET

The United States Policy for the Conduct of International Air Transportation Negotiations is a formal statement of the principles that guide our negotiations of bilateral air services agreements with foreign countries. Bilateral agreements between the United States and a foreign government set forth the rules that govern air transport services between the U.S. and that foreign country. The agreements specify the cities authorized for service, the procedures for regulating fares and prices, aviation security (anti-hijacking) commercial practices relating to aviation, and the type of airlines (scheduled/charter) that may provide service.

THE U.S. INTERNATIONAL AVIATION POLICY

The theme of our policy is to reduce government restrictions upon international aviation and rely on competitive market forces to the greatest extent possible. The international aviation policy states the following objectives:

Encouragement of price competition.

Elimination of restrictions on charter travel.

Elimination of restrictions on capacity, frequency, and route of operating rights.

Elimination of discrimination and unfair competitive practices faced by U.S. airlines.

Authorization of more cities for nonstop or direct service.

Development of competitive air cargo services.

RECENT NEGOTIATIONS

Principles embodied in this policy have already produced a number of significant competitive developments in international air travel, and are intended to produce additional benefits to travelers and shippers in bilateral negotiations to be held in the near future. Within the last year the U.S. has held negotiations with 26 countries to discuss more liberal bilateral agreements. Additional discussions are planned for the fall.

The agreement signed with Israel is the most recent example of a bilateral agreement that meets our policy objectives. The U.S.-Israeli agreement includes the following highlights:

Israel acquires two additional U.S. points immediately and two more on August 1, 1979. At this time, Israel has a route only to New York. Israel is free to select the four additional U.S. points that it will serve.

Either country may designate an unlimited number of airlines to operate scheduled and/or charter services.

Charter flights may be operated between any U.S. city and Israel without restriction on numbers. Charters will operate according to the charter rules of the country of origin of the traffic and do not require the prior approval of the other country. This provision will expand the availability of charter flights. Charter flights were not covered by the previous agreement with Israel, and for many years Israel banned charter flights completely. Only in the past two years has it accepted charters from the U.S. West Coast under restrictive conditions.

Price competition is encouraged. The U.S. and Israeli governments will intervene with airline pricing decisions only when air fares are predatory, discriminatory or an abuse of monopoly position. Beginning August 1, 1979, air fares may be disapproved only if both governments agree to such action.

Recent agreements with other countries which meet our international aviation policy objectives have already produced expanded travel opportunities and lower fares. Results of recent agreements include:

1. Fare Reductions:

Our policy of seeking international agreements which permit airlines to set prices freely in the competitive market place has already resulted in price reductions.

The table below sets out some of the fare reductions achieved in transatlantic markets.

| | Lowest available reserved seat fare [1] | | Percent reduction over 1977 fare | July 1978 standby fare | Percent reduction over 1977 fare |
|---|---|---|---|---|---|
| | July 1977 | July 1978 | | | |
| New York-Amsterdam | $477 | $340 | 29 | NA | ..... |
| New York-London | 440 | 299 | 32 | [2] $248 | 44 |
| Boston-Amsterdam | 472 | 290 | 39 | 279 | 41 |
| Dallas/Fort Worth-London | 631 | 392 | 38 | 349 | 45 |
| Los Angeles-London | 620 | 441 | 29 | 441 | 29 |

[1] Low standby fares were not available in the summer of 1977
[2] Laker fare; exact cost in U.S. dollars depends on exchange rate.

Major new agreements with Israel and Mexico are also expected to result in significantly reduced prices and expanded travel opportunities for consumers within the next year.

2. Expanded Air Service:

Recent agreements have increased authority for both U.S. and foreign airlines to provide more non-stop services from U.S. cities to foreign countries.

New services that have begun include:
Atlanta–London.
Dallas/Ft. Worth–London.
Houston–London.
Miami–Paris.
Miami–Amsterdam/Frankfurt.
Tampa–Amsterdam/Frankfurt.
Houston–Guadalajara.
Los Angeles/San Francisco–Guadalajara.
U.S. West Coast–Singapore.
Boston–Amsterdam.
Atlanta–Brussels.

Authorized new services include:
Los Angeles–Amsterdam.
Los Angeles–Auckland/Sidney.

Braniff and Delta have instituted new transatlantic services. Northwest has also been authorized for a new transatlantic service but the service has been delayed by a work stoppage. In addition existing international airlines including American, Pan American, Continental, TWA, National, Western, Hughes Air West, and Flying Tiger have received expanded international authority.

3. Expanded Charter Service:

In the past many countries have restricted charter services. These restrictions have prevented consumers both in the U.S. and overseas from enjoying the benefits of international travel. A number of foreign governments have agreed to reduce or eliminate restrictions on the availability of low cost charter trips. In some cases, such as Israel, low cost charters (which had been severely restricted) will be permitted to operate from all cities in the U.S. for the first time. The Administration has obtained agreement to reduce or eliminate restrictions on charters

with the following countries: United Kingdom, Netherlands, Poland, Romania, Israel, Belgium, Yugoslavia, Singapore Republic, Mexico, Paraguay, Liberia, Senegal.

4. Encouraging Competitive Practices:

In many cases foreign countries restrict the ability of U.S. airlines to compete for business. For example, some countries refuse to permit U.S. airlines to load and unload their own aircraft and check in their own passengers, preferring to leave these services to government monopolies. Also, some countries have refused to issue custom licenses or other needed licenses to U.S. airlines. The Administration is actively engaged in seeking to eliminate these restrictions.

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[The White House]

PRESIDENTIAL STATEMENT

Ever since I became President, I have been seeking to introduce the airline industry to the benefits of competition both at home and abroad.

Two events highlight that effort. I am today releasing a formal statement of international aviation policy for the United States. Recently, representatives of the U.S. and Israel signed a new air service agreement which reflects the spirit of that policy.

Our policy seeks to encourage vigorous competition, with the goals of permitting lower fares, better service to more cities, and fewer government restrictions on charter travel. Travelers of many countries have already benefited from recent agreements which reflect our competitive policy. I hope that our formal statement, by making our position clear, will ease the difficult process of negotiating additional air agreements with other countries.

The U.S.-Israeli agreement signed recently achieves these goals of reducing government restrictions. It will permit healthy competition among our airlines, and, by giving Israel authority to serve four additional U.S. cities, it will greatly expand Israel's opportunity to provide air service between our countries.

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## ENOUGH OF MR. YOUNG

Mr. HARRY F. BYRD, JR. Mr. President, John B. Oakes, the former senior editor of the New York Times and a widely known liberal journalist, has written in an article published in the August 3 edition of the Times that Ambassador Andrew Young is temperamentally unfit for his job.

Mr. Oakes complained that Ambassador Young continues to be treated by President Carter as "the indispensable man for the third world—as though no other American could be found who would pursue American foreign policy in support of black freedom, equality and independence in Africa without at the same time finding it occasionally necessary to derogate our own institutions, give propaganda ammunition to our enemies and enrage our friends."

It has a been a few weeks now since Ambassador Young has caused embarrassment to the United States. I suppose we should be grateful for that.

However, his most recent gaffe was of a most serious character. At a particularly sensitive point in the conduct of foreign policy, Mr. YOUNG made a public statement which was a great embarrassment to President Carter and damaging to the national interest.

Just as the President was putting pressure on the Soviet Union because of Russia's harsh treatment of dissidents, Andrew Young proclaimed to the world that the United States has "hundreds, perhaps even thousands, of political prisoners."

This assertion was not only wrong but dangerous.

In his article Mr. Oakes cites this incident as an example of Ambassador Young's "egocentric frame of reference," meaning that he was thinking only of his own role in the civil rights movement and not of the effect of his unjust and unwise words on the Soviet Union and his own country.

I agree with the analysis made by Mr. Oakes, and I ask unanimous consent that his article, "Enough of Mr. Young," be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 3, 1978]

ENOUGH OF MR. YOUNG

(By John B. Oakes)

Once again the United States Ambassador to the United Nations, Andrew Young, has played to the audience with an offhand, eye-catching statement embarrassing to his nominal boss, the President of the United States, and injurious to the conduct of a rational American foreign policy.

Once again there have had to be explanations, retractions, apologies or excuses to cover the self-indulgent comments of this disarming enfant terrible of the Carter Administration.

Once again Mr. Young has made the President and the country look ridiculous in the eyes of the world, confused our friends and handed a delicious piece of propaganda to our opponents.

His statement to a French newspaper the other day that "hundreds, perhaps even thousands, of . . . political prisoners" languish in American jails was made just at the moment when Mr. Carter was trying to place maximum heat on Moscow, in the name of human rights, during the dissidents' trials. It is a measure of Mr. Young's temperamental unfitness for the job he still holds that, when he gave that interview, he was obviously thinking not of its effect on the Russians or the Americans, or on the dissidents or human rights, but rather only of himself and of his own experience in the civil rights struggles of the past.

Such an egocentric frame of reference might be permissible if he were running for political office again; it is unacceptable when he speaks as a Cabinet-level representative of the United States Government.

When in the same interview he was asked about the recent massacres of men, women and children in several missionary outposts in Rhodesia, Ambassador Young—who is the principal American voice in the efforts to negotiate between the transitional Rhodesian Government of Ian D. Smith and the guerrillas—observed that "a planned operation of attacks against missions . . . can only have come from the Smith camp." Is it the considered American position that it is the Smith regime and not the guerrilla Patriotic Front that is responsible for these bestial murders; or was this merely another of the American Ambassador's frequent offhand remarks made in his official capacity but reflecting not facts or evidence but emotional commitment, of a piece with his freely thrown charges of racism against persons or peoples whom he dislikes or with whom he is in disagreement?

While it surely pleases the African supporters of the guerrillas, not to mention their Soviet backers, the extreme partisanship of Mr. Young could only erode whatever influence the United States has left as "honest broker" with the transition biracial Government in pursuing negotiations with the Patriotic Front.

At the same time, as Mr. Carter has repeatedly emphasized, Ambassador Young has unquestionably played a major part not only in reaching the recent agreement on Namibia but also in establishing better rapport with the third world in general and several of the black African states in particular. He has accomplished this feat at least in part by unilaterally adopting their policy line on such issues as use of Cuban troops in Angola and Ethiopia—already under attack even by numerous third-world countries, and clearly divergent from the stated policies of the United States Government, for which Mr. Young purportedly speaks. How deep and lasting will be the popularity thus gained for the United States in black Africa by such tactics is uncertain; what is certain is that it has been achieved at considerable and unnecessary cost to the image of the United States, further confusing an already confused foreign policy. Mr. Young's loose statements as United States Ambassador are a luxury that American policy, shaky as it is, cannot afford.

And yet, receiving at most a tap on the wrist for repeated verbal offenses that would have resulted in instant dismissal for anyone else, Mr. Young continues to be treated by President Carter as the Indispensable Man for the third world—as though no other American could be found who would pursue American policy in support of black freedom, equality and independence in Africa without at the same time finding it occasionally necessary to derogate our own institutions, give propaganda ammunition to our enemies and enrage our friends.

A recent New York Times/CBS Poll showed that the percentage of Americans who approve of "the way Jimmy Carter is handling his job as President" has dropped by 26 percentage points in little more than a year, to an unprecedented low (in June) of 38 percent. Perhaps Mr. Carter should consider whether one factor in this deplorable showing is his tendency to allow personal and political friendship, even in the most sensitive appointive posts, to take priority over the broader national interest.

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## SENATE ACCOMPLISHMENTS

Mr. ROBERT C. BYRD. Mr. President, this past week—the week of August 21—has been one of extraordinary accomplishment in the U.S. Senate.

On Tuesday, August 22, the Senate passed, 68 to 32, a joint resolution which proposes an amendment to the Constitution providing for voting representation in the House and Senate for residents of the District of Columbia. This vote was the culmination of decades of effort to enact such an amendment. Now the measure has been sent to the States for their concurrence or disapproval. It seems that at least three State legislatures are considering early action on the proposed amendment. Tuesday, August 22, was an historic day for the residents of the Federal city. If three-fourths of our State legislatures approve the adoption of the amendment, August 22 will become an important milestone in our country's constitutional history.

Action on a constitutional amendment is quite an important achievement any day of the week. But that is just the beginning of what the Senate accomplished in these few days. Yesterday, we passed a civil service reform bill—the

first major revision of the civil service system in 95 years. This measure was one of President Carter's top priorities. It is also a priority for millions of taxpayers who want to see Government streamlined and made more efficient. Enactment of civil service reform will have a far-reaching and beneficial impact on virtually every program administered by the Federal Government.

On Thursday the Senate completed action on, and sent to conference, the Education Amendments of 1978, extending for 5 years programs contained in the Elementary and Secondary Education Act of 1965 (ESEA). This legislation renews our commitment to provide educational opportunities to low-income and disadvantaged children who might otherwise receive inadequate schooling.

By clarifying objectives and simplifying requirements, the bill improves and strengthens existing programs. New initiatives have been added to address the nationwide problem of declining test scores. Title II, for example, will provide financial assistance to programs for teaching basic skills—reading, writing, and arithmetic. The bilingual education program is improved, making it more responsive to the special educational needs of children from the bilingual community.

Throughout the bill, regulations and guidelines are simplified to facilitate smoother implementation and operation of the programs by States and local education agencies.

In the area of employment, the Senate reauthorized existing job and job-training programs under the Comprehensive Employment and Training Act and established several new initiatives in the program. This legislation continues in fiscal year 1979 the current level of 725,000 public service jobs.

At a time when there is a pressing need to wind down inflation, the CETA legislation provides a way to reduce unemployment among the hard-to-employ without exacerbating inflationary pressures. It accomplishes this in part by calling for job-creation programs targeted to those who are generally excluded from the job-market because of a lack of training. The CETA program puts people to work—people who will pay taxes and contribute to our economic growth.

Today, the Senate sent to the House a major conference report to reform customs procedures. It will serve not only to modernize, but to simplify, customs procedures which affect our trade and commerce. Among the provisions of the bill which will be of interest to many Americans who travel abroad is an increase in the personal exemption for returning residents. It has long been recognized that more efficient management of customs and entry procedures is necessary and this measure will go far toward meeting this need.

In addition, the Senate completed action on a group of bills dealing with various tax issues. Two of these measures deal with unemployment compensation, including the eligibility period for extended unemployment compensation benefits and the reporting period for the National Commission on Unemployment Compensation.

We have also passed legislation affecting the treatment of private foundations and have adopted an amendment to provide for a tax credit for residential energy conservation.

In the area of energy, the Senate agreed to and sent to the President the conference report on the Outer Continental Shelf Lands Act—a bill which should spur development and production of offshore oil and natural gas. To achieve this, the measure includes two important policy provisions—improved bidding practices and a tighter system for resource assessment.

In other areas, the Senate passed and sent to conference a bill designed to improve the self-sufficiency of the District of Columbia pension fund. The proposed legislation also contains important provisions intended to prevent abuse of disability pensions—a situation which has resulted in an expensive and inadvertent drain on the pension fund.

The Senate passed and sent to the President the conference report on the military construction appropriations bill for fiscal year 1979—an appropriations bill which is almost 9 percent below the budget estimate. This is the third regular appropriations bill for fiscal year 1979 on which the Congress has completed all action.

Having agreed to the conference report on the second supplemental appropriations bill for fiscal year 1979, the Senate also sent this measure to the President.

Considerable progress has been made on the highway bill. Two major components of the final measure, dealing with safety and with the construction and maintenance of our Federal highway system, have been disposed of. The importance of our national highway system can hardly be overemphasized; it is crucial to the economic viability and growth of many regions of the country.

Mr. President, I have mentioned the major accomplishments of the week; I have not attempted to list each and every piece of legislation which the Senate has passed. Nor have I attempted to name each Senator who has made a special contribution in these areas—the list would be too long.

The Senate has come in early and worked late every day this week. Senators from both sides of the aisle have made major contributions to the important legislation on which we have acted. Committee and subcommittee chairmen, ranking minority members of committees and subcommittees, sponsors of amendments, participants in key debates—the entire Senate membership is responsible for the very constructive week which we have had.

I want to thank the distinguished minority leader, Mr. BAKER, and the minority whip, Mr. STEVENS, for their cooperation and assistance. On this side of the aisle, I especially want to thank the assistant majority leader, Mr. CRANSTON, for his invaluable help, and Mr. INOUYE, the Secretary of the Democratic Conference, and SPARKY MATSUNAGA, chief deputy whip, for their invaluable help.

## APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. PROXMIRE). The Chair, on behalf of the Vice President, pursuant to Public Law 95–45, appoints the following Senators to attend the 65th Interparliamentary Union Conference, to be held in Bonn, Germany, September 2–14, 1978: the Senator from Vermont (Mr. STAFFORD), Chairman, in lieu of the Senator from Alabama (Mr. SPARKMAN), resigned; and the Senator from Virginia (Mr. SCOTT).

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I yield the remainder of my time to the distinguished senior Senator from Wisconsin.

## REFERRAL OF BILL

Mr. PROXMIRE. Mr. President, I thank the Senator from Kentucky.

Very briefly, I send to the desk a bill and ask for its appropriate referral.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). The bill will be appropriately referred.

## THE CAMBODIAN MASSACRE: IT IS TIME TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, for hundreds of thousands of Cambodians, this speech comes too late. Hundreds of thousands, perhaps more than a million, of Cambodia's 7 million people have been killed.

And who has killed them, Mr. President? Is it some disease, some natural disaster, or perhaps a long and bloody war?

The startling, shocking, outrageous truth is that none of these is responsible. Not disease, not flood, not earthquake, not hostile enemy, none of these bears the blame for the decimation of the Cambodian people.

And who is the villain?

The Cambodian Government.

How can this be true? How can the government of so-called Democratic Kampuchea—how can that government undertake the massacre of its own people? To speak of this group of executioners as a government is a perversion of the word.

In fact, that is the final, incomprehensible outrage: the Cambodian people have been the victims of a genocide perpetrated in their own name.

It is too late to save these hundreds of thousands of Cambodians. Whatever the world may eventually do to halt the massacre, it is too late for perhaps a million people.

Mr. President, we cannot allow this to happen again. There is a simple step

we can take. It is the first step down a road of international cooperation to prevent these senseless crimes. It may not stop genocide from happening in every case, but it is one strong, international step to that end.

And what is that step, the step we can and must take?

Mr. President, we can ratify the Convention for the Prevention and Punishment of the Crime of Genocide. And I emphasize that word, "prevention." We must prevent Cambodia from happening again. Eighty-three nations have signed the treaty, but we have held out. And as long as we, the leader of the free world, continue to hold out, the power of the treaty is weakened.

Let us sign the Genocide Convention and take the first step toward the prevention of mass murder.

Mr. President, it is still not too late.

(Mr. MATSUNAGA assumed the chair.)

## A DIGNIFIED OLD AGE FOR AMERICANS

Mr. ROBERT C. BYRD. Mr. President, as the decade of the seventies draws to a close, as we look back just 2 years and remember our Nation's Bicentennial, let us remember that since our country's founding we have more than doubled the average lifespan of our people, and that, today, nearly 11 percent of our population are over 65 years of age. Some 23½ million of our citizens are over 65. They constitute a steadily growing proportion of our population.

These men and women have contributed mightily to the strength and prosperity of the country. It is appropriate that the Federal Government and the Nation establish the goal of a dignified and meaningful old age for our citizens. Yet this goal has not become a reality for many elderly citizens.

About one-half of the families headed by an older person have annual incomes which are much lower than those of families headed by an individual under 65. The median income of an older person living alone is only about one-half as much as that of an individual under 65 living alone. Some 3.3 million, or one-seventh of the elderly population, are reported to have incomes below the poverty level. This statistic, though distressing, does represent an improvement over 1970, when about one-quarter of the elderly were below the poverty level.

Many of our elderly become poor due to retirement. Retirement income simply does not balance out the loss of earnings from employment. The improvement in living standards which has been recorded since 1970 is largely explained, therefore, by increases in social security benefits. Social security is the economic backbone for the vast majority of older Americans; without these benefits, millions of people over 65 years of age would be forced into poverty, or onto the welfare roles. It has been estimated that, among the 34 million recipients of social security benefits (including old-age, survivors, and disability insurance), some 7 million beneficiaries are older Americans who otherwise would live in poverty.

Inflation hits very hard on older Americans because of their dependence on fixed incomes. Price inflation for certain commodities and services impacts much more severely on the elderly because of their spending patterns. Older Americans spend proportionately more of their income on food, housing, and health care than the population at large. Health costs are a particular problem. Between 1965 and 1976 the costs of health care in the United States more than tripled. Meanwhile, the health care costs for each person over 65 are about three and one-half times as much, per year, as per capita costs for those under 65. Older people represent about 11 percent of the total population, but account for 29 percent of total personal health care expenditures.

A more recent, but equally debilitating problem is the cost of energy. Rising energy costs have had a devastating impact on many older Americans. During 1976, depending on region, low-income elderly persons spent between 16 and 27 percent of their disposable income on energy for their homes. Rising energy bills place a particularly heavy burden on those elderly least able to bear it. Older Americans with annual incomes of less than $5,000 appear to spend a bigger chunk of their disposable income for household energy than those in more comfortable brackets.

Because energy prices, like health care costs, have been rising much faster than the Consumer Price Index, they are steadily outstanding social security cost-of-living increases.

Congress has taken cognizance of the energy needs of older Americans and provided, in several different pieces of legislation, some tools for addressing these needs. Thus the Community Services Administration, the Department of Housing and Urban Development, and the Farmers Home Administration are each authorized and directed to carry out weatherization programs for low-income elderly persons. With respect to health care costs, nearly 68 percent of these costs are paid for by public programs for the elderly.

Older Americans face other problems as well. Many of them would like to continue working past the age of 65, but face employment barriers. Statistics show that the middle-aged and older worker faces a greater risk of being unemployed for longer periods of time than do younger workers.

The 95th Congress acted to correct this problem and to assure that retirement is a choice rather than a forced state of inactivity. Passage of the Age Discrimination in Employment Act, now a public law, eliminated the upper-age limit of 65 for most Federal employees, and established protections against discrimination in employment for non-Federal older workers.

In the area of housing, reliable data is difficult to find, but it is generally acknowledged that a significant number of the elderly live in substandard housing. This is an issue which Congress has sought to address through various programs—in particular, through the section 8 subsidized housing program and through the section 202 direct loan program for renovation or construction, both of which are administered by the Department of HUD. Although some advances have been made in providing adequate housing to the elderly, the need for more housing still outstrips existing programs.

Another problem area for older Americans is transportation. According to the Bureau of Labor Statistics, transportation represents the third largest expenditure for older persons. Rising transportation costs make it ever more difficult for low-income older people to take advantage of mass transportation, or to own an automobile. Because many older people live in rural areas, distances become an even greater barrier to meaningful participation in the mainstream of society.

The growing congressional and national interest in mass transit systems that are free of architectural obstacles has resulted in some greater availability of these public services to the older person. Special transit services are now being developed and tested in more isolated, rural areas; it is hoped that these services will help to provide reasonably priced transportation to the elderly and disabled.

There are many other important services which the Federal Government—in many cases in conjunction with State and local governments and volunteer organizations—is helping to bring within reach of low-income elderly persons. Perhaps the most important of these functions is the provision of adequate food and nutrition to the elderly, particularly to those who are homebound. In addition, important support services are provided in many other areas, such as counseling and legal assistance.

Mr. President, Congress has acted on many pieces of legislation affecting the elderly. I would like to take this opportunity to have printed in the RECORD a list of those pieces of legislation passed by the 95th Congress to date which are designed to improve the lives and the living conditions of older Americans. This list cannot purport to exhaust every single legislative action of importance to the elderly; there are some instances of oversight hearings or investigations, or studies which do not result in legislation, but which do impact significantly on current practices, regulations, or the administration of a program. I do hope that the following list, which I request be included in the RECORD, will summarize the important measures enacted by the 95th Congress in this area.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

OLDER AMERICANS LEGISLATION—95TH CONGRESS

The Age Discrimination in Employment Act—now a public law—to protect against discrimination in employment of older workers.

The Supplemental Housing Authorization Act of 1977—now a public law—which included provisions affecting the Section 8 rent supplement program which should result in more housing units for low-income elderly.

Social Security Amendments of 1977—now a public law—which assured the financial

soundness of the Social Security Trust fund and made other improvements in the law.

Nutrition Program Amendments and Amendments to the Food Stamp Act—now public law—of importance to low-income elderly.

Legal Services Corporation Act Extension—now a public law—which assures priority services for the elderly.

Reduced Air Fare for the Elderly—now a public law—which authorizes reduced fares on a space-available basis.

Public Utility Rate Reform—has passed the Senate—provides that older persons receive the lowest possible rate for electricity.

Energy Tax Bill—has passed the Senate—provides for a refundable tax credit for older Americans for residential energy costs.

The Older Americans Act—has passed the Senate—contains the authorization for numerous programs affecting the elderly.

Housing and Community Development Amendments of 1978—has passed the Senate—includes several programs of importance to low-income elderly.

National Mass Transportation Assistance Act—has passed the Senate—provides that mass transit facilities and services be designed for effective use by the elderly and for increased attention to transportation needs of the elderly.

## AMERICAN JOURNALISTS AND THE SOVIET UNION

Mr. ROBERT C. BYRD. Mr. President, the Soviet Union has indicated that it does not intend to take further action against two United States journalists who had earlier been charged with slander.

I welcome the Soviet decision to halt the legal proceedings and hope this will bring an end to this travesty.

The Soviet Foreign Ministry gave the reporters a formal warning, but did not suspend their accreditation. The Foreign Ministry said it was acting in the interest of better relations with the United States.

The Soviet courts have dropped the case against the two journalists and ended the demand that the reporters retract their story on Soviet dissidents.

However, the reporters, Hal Piper of the Baltimore Sun and Craig Whitney of the New York Times, had previously been required to pay fines and court costs. The reporters refused to attend the court hearings on their case, in addition to refusing to retract their stories, which they maintained were balanced and accurate.

Mr. President, occurrences such as this campaign of harassment against these two U.S. correspondents can only undercut the prospects for any improvement in relations between the Soviet Union and the United States. I hope that the Soviets will recognize the damage that has been done by this incident and not allow it to be repeated.

I further hope that the treatment of Mr. Piper and Mr. Whitney will not have a chilling effect on U.S. reporters in the Soviet Union. This may have been intended as an act of intimidation. I am confident, however, that it will not deter American journalists from their efforts to report accurately and thoroughly on events in the Soviet Union.

Mr. President, on June 28, when charges had just been filed against Mr. Piper and Mr. Whitney, I introduced a resolution (S. Res. 503) condemning the action by the Soviet Government. Now, as then, I urge the Soviet Union to desist from further harassment and intimidation of journalists stationed in that country.

## AUTHORIZATION FOR THE VICE PRESIDENT, THE PRESIDENT PRO TEMPORE, AND THE ACTING PRESIDENT PRO TEMPORE TO TAKE CERTAIN ACTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Vice President of the United States, the President pro tempore, and the Acting President pro tempore may be authorized to sign all duly enrolled bills and duly enrolled authorizations during the recess of the Senate over until 10 o'clock on Wednesday, September 6, 1978.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES FROM THE PRESIDENT AND THE HOUSE OF REPRESENTATIVES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to receive messages from the President of the United States and from the House of Representatives during the recess of the Senate over until September 6, 1978, at 10 a.m., and that they be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AUTHORIZATION FOR COMMITTEES TO FILE REPORTS ON THURSDAY, AUGUST 31, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that committees may be authorized to file reports on Thursday, August 31, 1978, between the hours of 10 o'clock a.m. and 3 p.m. except for the reporting of S. 50, the Humphrey-Hawkins bill, on which there will be an objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RELEASE OF MATERIAL PERTAINING TO POSSIBLE CRIMINAL ACTIVITIES

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. JACKSON, I send to the desk a resolution dealing with the release of certain documents and ask for its immediate consideration. This has been cleared all the way around.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 550) to permit the withdrawal and release of certain documents, papers or other information pertaining to possible criminal activities.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

● Mr. JACKSON. Mr. President, I offer today a resolution to permit the withdrawal and release of documents, testimony and other information obtained by, and in the possession of, the permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

By letter of July 11, 1978, the U.S. Attorney's Office, northern district of Georgia, requested that the Subcommittee supply copies of transcripts of executive session testimony and other statements and materials received by subcommittee staff during the course of a subcommittee investigation into certain homicides in the U.S. Penitentiary at Atlanta, Ga., which activities were focused upon as part of an authorized inquiry into organized crime activities in south Florida and at the Atlanta Penitentiary. The U.S. Attorney's Office is pursuing possible criminal violations by certain inmates at the Penitentiary in connection with the murder of Vincent Papa in the institution.

Pursuant to rule XXX of the standing rules of the Senate, and the privileges of the Senate, such information, documentation, statements and testimony may not be released without a resolution of the Senate.

Accordingly, Mr. President, I offer the following resolution, approved by the Committee on Governmental Affairs, and ask that this resolution be adopted.●

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 550) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

To permit the withdrawal and release of certain documents, papers or other information pertaining to possible criminal activities.

Whereas, the United States Department of Justice, through the Office of the United States Attorney for the Northern District of Georgia, is carrying out an investigation of alleged criminal activities of certain individuals relating to the murder of Vincent Papa at the United States Penitentiary-Atlanta; and

Whereas, the Office of the United States Attorney for the Northern District of Georgia has formally requested by letter dated July 11, 1978, that the Subcommittee transmit to the United States Attorney for the Northern District of Georgia certain transcripts, statements and recordings of interviews with and statements by Gary Bowdach and others, as well as certain other pertinent documents in the possession of the Subcommittee; and

Whereas, certain of the requested information relevant to the inquiry of the United States Attorney was obtained by the Subcommittee in executive session testimony and certain of the information was obtained by Subcommittee staff in the course of their duties as employees of the Permanent Subcommittee on Investigations; and

Whereas, by the privileges of the Senate of the United States and by Rule XXX of the Standing Rules of the Senate, executive session testimony and information secured by staff employees of the Senate pursuant to their official duties may not be revealed without the consent of the Senate:

Therefore, be it

*Resolved*, That the Permanent Subcommittee on Investigations is authorized, in the discretion of and at the direction of its

Chairman, to provide the United States Attorney for the Northern District of Georgia, with all or portions of copies of executive session testimony transcripts, statements and recordings of interviews with and statements by Gary Bowdach and others and such other documents as shall be pertinent to alleged illegal activities of certain individuals currently under investigation by that office in connection with the murder of Vincent Papa.

SEC. 2 The Secretary of the Senate shall transmit a copy of this Resolution to the United States Attorney for the Northern District of Georgia.

## FEDERAL EMPLOYEE HEALTH BENEFITS AND COVERAGE UNIFORMITY

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2931.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the House agree to the amendments of the Senate numbered 1 and 2 to the bill (H.R. 2931) entitled "An Act to amend chapter 89 of title 5, United States Code to establish uniformity in Federal employee health benefits and coverage provided pursuant to contracts made under such chapter by preempting State or local laws pertaining to such benefits and coverage which are inconsistent with such contracts."

*Resolved,* That the House agree to the amendment of the Senate numbered 3 to the aforesaid bill with the following amendment:

In lieu of the matter inserted by the said amendment, insert:

"(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, if a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of health services for the care and treatment of any particular health condition, the carrier shall provide, pay, or reimburse up to the limits of its contract for any such health service properly provided by any person licensed under State law to provide such service if such service is provided to an individual covered by such contract who is a member of a medically underserved population (within the meaning of section 1302(7) of the Public Health Service Act (42 U.S.C. 300e–17)).

"(B) The provisions of subparagraph (A) shall not apply to contracts entered into providing prepayment plans described in section 8903(4) of this title.".

*Resolved,* That the House agree to the amendment of the Senate numbered 4 to the aforesaid bill with the following amendment:

Page 2, after line 7 of the Senate engrossed amendments, insert:

SEC. 3. The provisions of section 8902(m)(2) of title 5, United States Code, as added by the first section of this Act, shall apply to services provided under any contract entered into or renewed after December 31, 1979; except that such provisions shall not apply to services provided after December 31, 1984.

*Resolved,* That the House agree to the amendment of the Senate to the title of the bill with the following amendment:

In lieu of the matter proposed by the said amendment, insert: "An Act to amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State or local laws which are inconsistent with such contracts, and for other purposes."

● Mr. STEVENS. Mr. President, the passage of H.R. 2931 will help facilitate uniform health insurance coverage for the three million Government employees and annuitants and 6 million dependents protected by the Federal employees' health benefits (FEHB) program. By preempting State law as applied to such Federal employee health benefit contracts, it is projected that the bill will lower premiums and deflate ballooning health costs—without any substantial additional cost on State and Federal levels.

The goal of greater health benefit uniformity for Federal employees must not, however, blind us to the necessary maintenance of an authoritative equilibrium between Federal and State governments in matters of mutual interest. Historically, health care has been regulated by the States. In this age of the growing needs of the Federal employee and of the ever escalating cost of medical services, Federal intervention at creating uniformity in this area is necessary and logical. It is also logical to view the State as the optimum judge as to who is and who is not qualified to provide health care. The State, having more immediate access with its people, can evaluate more accurately than the distant Federal Government the needs of its constituents and the qualifications of persons necessary to fulfill these medical needs.

State control would make more qualified health practioners available to those who need help than would a general limit of coverage to FEHB approved medical doctors. This would allow Federal employees in search of medical help a greater choice of possible techniques to which to entrust their problems. In this way, not only tested and conservative methods will be available, but also experimental and perhaps innovative health techniques will be accessible to Federal employees under their health coverage.

The challenge before us is to find the compromise which will provide the uniformity necessary for the future functioning of Federal health coverage and yet retain for the States a flexibility and freedom necessary for providing more qualified medical care for whatever need that may arise. It is in this continuing search for a workable solution that I support the 5-year experiment, which holds that if a Federal insurance contract covers a certain health benefit, the insurance carrier must pay for any health practitioner who is licensed by a State to provide that benefit. This experiment will be restricted to medically underserved areas in the United States.

This is the crucial test for the States to retain their right to determine who is and who is not qualified to provide health care. The medically underserved areas should benefit noticeably from this experiment. Through the States' evaluation and licensing of more qualified medical personnel—rather than just medical doctors—more Federal employees will have access, under their Federal coverage, to the medical services which they require.

H.R. 2931 is an important step in the advancement of better services for Federal employees. In the establishment of a more balanced distribution of licensing authority by the States and the Federal Government, many more qualified medical practitioners will receive support for their work and Federal employees will have available to them more extensive and economical medical coverage. The next 5 years, if H.R. 2931 is enacted, will prove most fruitful in providing the information necessary for shaping an increasingly effective and efficient medical coverage system for future Federal employees.●

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

## SECOND CONGRESSIONAL BUDGET RESOLUTION, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed, without any time being charged, to the consideration of Senate Concurrent Resolution 104, Calendar Order No. 1045.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 104) revising the congressional budget for the United States Government for the fiscal year 1979.

The Senate proceeded to consider the resolution.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the built-in time agreement with respect to the second congressional budget resolution be modified as follows: That the time on any amendment be limited to 1 hour instead of 2 hours.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE SENATE HAS HAD A GOOD WEEK—EXPRESSIONS OF APPRECIATION

Mr. ROBERT C. BYRD. Mr. President, there is a beautiful land, it is often referred to as almost heaven. It is the State of West Virginia. It is the land of viridescent hills and iridescent sky. It is mountains, clear skies, pure water, clean air, and strong mountaineers who believe that mountaineers are always free.

I urge my friends in the Senate to retire to West Virginia for the recess, spend a day or so and recuperate, revive their energies, restore their clear vision, resuscitate their spirits, and come back on September 6 ready to do a lot of work and a good job and make every effort to adjourn sine die the middle of October and not to come back after election.

Incidentally, some of the best Bluegrass music played anywhere is played in West Virginia, and the good Lord willing, I expect to be over in West Virginia on Saturday, September 2. I am going to take all seven of my violins to a pleasant place there called Coolfont, that is C-o-o-l-f-o-n-t.

My wife, Lady Byrd, and the members of my staff, many members of my staff, are going over there. We are going to eat some of that good cooking prepared at Coolfont and I am going to play some of my good Bluegrass music on my violin.

I would love, just love, to see there on

that occasion Senator and Mrs. HANSEN. Senator HANSEN is from Wyoming. He is a good man, a man whose heart is as stout as the Irish oak and as pure as the lakes of Killarney. I wish he would come over there and be my guest on that evening and I would treat him to some Bluegrass music, the kind that is going to be on my album when it comes out next month, in September.

There are going to be 14 tunes on that album, may I say to my friend, and I will be playing some of those tunes over there.

But aside from that, let me say again that I do want to thank my colleagues on both sides of the aisle. I want to thank all of the officers of the Senate and the men who are at the desk, the reading clerks, the legislative clerks, the journal clerks, the Parliamentarians, the pages, the Doorkeepers, the Official Reporters, the members of my policy committee staff, the members of the Republican—do they have a policy committee over there?

Mr. HANSEN. Just barely.

Mr. ROBERT C. BYRD. All of them. Bill Hildenbrand, Howard Green, Tom Hart, Chuck Bangert, Joe Stewart and all of these people, Susan here, everybody who makes it possible for the Senate, the Sergeant at Arms—who is a puny man—a puny man with that lean—what was it Cassius and Brutus were saying? That fellow with the lean and hungry look. That is the Sergeant at Arms. The lean and hungry look. A great football player. One of the great all-American football players for Notre Dame, bless his heart.

Well, I thank them all. We have had a good week and we are going to continue to do great work.

This Congress has faced up to some tough issues. It has had the courage to face up to the hard ones, the rough issues, the mean issues. But I am just pleased with its record thus far and I want to thank all these I have named and any I may have overlooked inadvertently for the cooperation, the understanding and the patience that they have had and the support they have all given to make this a good session.

So, with that, Mr. President, if there be no further business to come before the Senate, I move——

The PRESIDING OFFICER. If the Senator from West Virginia will permit the Chair to intervene, the Chair could have sworn that the Senator from West Virginia, when he was speaking of the place that looked like heaven, that he was speaking of my State of Hawaii.

Mr. HANSEN. Mr. President, if the distinguished Senator, my very good friend from West Virginia, will yield, let me say that I thought he was getting ready to invite everyone to join the President in Jackson Hole, when he was describing the beautiful landscapes that he later identified as West Virginia. [Laughter.]

As he knows so well, I do greatly admire our distinguished majority leader. It has been my unique privilege and pleasure to hear him play his violin and to work with him on this floor, sometimes to oppose him—and I always come out second best—but more often to join him, which is a better way of winning, I find.

I should like nothing better, nor would Mrs. Hansen, than to be privileged to be with him and his wonderful family in West Virginia. We hope that before too long we may share that enjoyment.

Mr. ROBERT C. BYRD. I thank the Senator. I look forward to the time we can do that.

## ORDER OF BUSINESS

(The following proceedings occurred earlier:)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the discussion with respect to the natural gas conference report—the entire discussion by all Senators—appear in the RECORD just prior to the motion to recess.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE GAS PRICING CONFERENCE REPORT

Mr. LONG. Mr. President, I wish to address myself to the gas pricing conference report which will be before the Senate sometime soon. I was one of those Senators who voted for that bill, Mr. President, but I regret that I will not be able to vote for the conference report.

Mr. President, I will be compelled to join those Senators who have announced opposition to its passage. The bill is opposed by consumers for very good reasons. The bill is opposed by gas producers for very good reasons. The bill is opposed by labor and industry for very good reasons.

I would first like to make it abundantly clear that I am not opposed to the so-called natural gas compromise because of price. The new gas price called for in the conference report compares favorably with the prevailing unregulated intrastate market price and, therefore, is not an issue with me. My opposition is based on the nonprice elements of this proposal.

This bill will not adequately increase gas production. Furthermore, the regulatory costs and complexities are staggering—resulting in higher than necessary prices and less supply. This bill will escalate the cost of energy production and tie up producers and investors in a morass of endless paperwork, hearings, litigation, and bureaucratic redtape. For industry to comply with this act will create enough paperwork to plaster the entire United States from the Atlantic to the Pacific and from the Gulf of Mexico to the Canadian border.

No producer could survive in business unless he is permitted to pass along to the consumer the cost of complying with these burdensome regulatory requirements. This means the consumer would pay more and get less for his money. The only beneficiaries would be the armies of lawyers, accountants, court reporters. and Federal bureaucrats. Everyone else loses and must pay for this mind-boggling, make-work scheme.

Presently, the Department of Energy budget exceeds 10 billion in tax dollars. A considerable portion of that money is spent in regulating the oil and gas industry. If this bill is enacted, the additional Federal regulators, Government office personnel, and related costs needed to enforce this scheme will run this figure up even higher.

One should realize that for every tax dollar the Federal Government spends in regulating the industry, gas producers must spend a great deal more than that to comply. Obviously, these compliance costs must be passed on to the consumer in the price of the product. No one can continue to produce energy for long unless he is making a profit.

The end result is that the average American citizen is slashed from all sides. Too many of his hard-earned tax dollars will be spent on needless additional Federal regulation, and, at the same time, he will pay a higher price for energy as a consumer.

I am well aware of the months of tortuous negotiations by the House and Senate conferees on this bill. I never thought the conferees could take a House bill, favored by consumers, and a Senate bill favored by producers, and work out a fiasco opposed by both. But they have clearly succeeded in doing so.

It is strange, indeed, to see the entire free world turned toward capitalism and free enterprise in the effort to produce more energy while the United States is moving in the opposite direction—more regulation.

There are a few good provisions in the bill to permit intrastate pipelines to sell gas to interstate pipelines without subjecting the intrastate pipelines to needless regulations. There is another provision to permit gas to be moved within a State by interstate pipeline without subjecting it to Federal regulations. Those two provisions should be enacted. I will join with Senators from producing and consuming States in the effort to reject the many bad provisions in the bill and to substitute the two good provisions to which I have referred. If we are successful in doing that and no more, we will have served to eliminate the many billions of dollars of additional cost this bill would foist on the taxpayers of America.

Mr. President, I saw the old show, "Beverly Hillbillies" when it was current on television. The picture was shown of old Pa out in Arkansas firing his rifle by accident into the ground and oil gushed out. The family became rich and moved to Beverly Hills. Mr. President, under this bill, finding gas would be only the beginning of the Beverly Hillbillies' worries.

The needless impediment to production in this bill terrifies particularly every small producer. It is true that some of the major companies might be able to survive because they have a staff of lawyers and accountants. However, this bill would just add some to what they already have. But for a small independent producer, who does not have lawyers working for him, day in and day out, the bill creates an absolutely fantastic burden.

Mr. President, what do we have here? Consumers are opposing this bill for a very simple reason: It means they are going to pay more for gas, and a lot more.

You see the producers opposing the bill. You would think if the consumers are against it, the producers would be for it. It is just not the case. They look at all the nonprice regulation in this bill and say, "Spare us; just vote the bill down, defeat it. Do what you can, but do not let that bill become law."

Labor is against the bill. Labor is interested in the consumer. Business is against the bill. In the beginning, the large companies, represented by the American Petroleum Institute, were for the bill when it passed the Senate. There were a lot of things that were left to be desired, but on balance, they would have favored the bill. Now, for the most part, even some of the major companies are opposed to the bill.

One would ask, who is for the bill? Not even the environmentalists favor the bill, Mr. President. I should think there has never been a case where Members of Congress, working in the effort to serve the national interest, have so completely managed to alienate everybody as has been the case with this bill. I never thought I would find myself in agreement with the present occupant of the Chair (Mr. METZENBAUM) on a gas bill. But I am allied with him on this and might join him in a filibuster for the simple reason that we could do better than this with a simple substitute that is being suggested by Mr. METZENBAUM, Mr. KENNEDY, Mr. ABOUREZK, Mr. BAYH, as well as a number of Senators from producer States. Then we would say, as we have said twice already in the bill which passed both the House and the Senate, that gas could be purchased by the interstate pipelines from the intrastate pipelines when they find that they need additional gas. Such a provision is in the bill. That is a good provision. It ought to become law.

We will propose that the bill be recommitted with instructions to report that section.

We would also like to see a provision passed which is in the bill—I believe it is section 311(a)—that would say that gas inside a State can be moved solely within that State through an interstate pipeline without its becoming subject to Federal jurisdiction as interstate gas, under the so-called coming doctrine.

By doing that, Mr. President, every cubic foot of gas that can be sold and can be moved into interstate commerce, or intrastate commerce, as the case may be, can be made available to the consumers.

All of the problems of fantastic, mind-boggling regulation, the kind of liability that would scare anybody within an inch of his life, the sort of uncertainty that drives businessmen up the wall, would be avoided by simply passing those two provisions, and perhaps a few other things in the bill that make good sense and that everyone can readily agree upon.

The hopeless complexity, the unprecedented excess of bureaucratic regulation that is implicit in this bill, Mr. President, is such that we would do this Nation a great service to see that that bill, as represented in the conference report, does not become law.

Accordingly, Mr. President, I expect to lend my efforts to those who speak for both consumer States and producer States, speak for both the interests of labor and commerce in opposing the conference report and urging a constructive solution.

Mr. President, what I find to be one of the most impressive arguments to some Senators, when thoroughly analyzed, becomes one of the most ridiculous. That is the argument that we must pass a bad bill, even though it be a very bad bill, because it will strengthen the dolar, that somebody abroad will think America has done something about the energy question and, therefore, they will have more confidence in the dollar.

Mr. President, we might as well pass a blank sheet of paper and just write "energy bill" across the top of the sheet of paper and hope to fool somebody.

What good would it do us to pass a bad bill, a bill that is going to cause us to have less energy, not more energy, a bill that will hinder production, not increase production? What good will it do us to pass such a bill in the hope of fooling some foreigner?

Mr. President, those are sophisticated people. They are not a bunch of idiots over there in Japan, in Europe, and elsewhere. They will know from everyone they talk to in the industry that the bill does more harm than good.

Mr. HELMS. Will the Senator yield?

Mr. LONG. Yes.

Mr. HELMS. They are the last people who are going to be fooled.

Mr. LONG. Why, of course.

What good would it do us if we were successful in fooling a few Frenchmen or Germans for a few days to think we would pass something to help solve the energy problem when it makes it worse?

It would achieve absolutely nothing.

As the Senator from North Carolina so well points out, those are very smart, intelligent, perceptive people. They have allies and associates here in the United States who keep them well informed. Long before this debate on this bill was over, everyone would know that this thing is an absolute bureaucratic monstrosity that will impede the production of energy, not speed or hasten it. They would know that there is a much simpler and much easier way.

Mr. President, I hope that the President of the United States, the Vice President, and their advisers will reconsider their position. When they have a measure that is opposed by all those who started out on their side, or at least most of those, who can have any enthusiasm for the bill? I find no one who will say this is a very good bill, that it is something that will advance the Nation's interests.

About the only argument left is that we must do something. Does that mean we should pass a bad bill? I do not think so. It seems to me the answer to it is to say that, "Yes, we must do something," and pass the best bill we can.

Perhaps the administration should take credit for the fact that they have finally compelled the producers and consumers, and labor and management, to all get together. They all have united. The people on all sides are coming up with a constructive answer with which we can agree at this point.

It would be a far better approach, Mr. President, than to try to muscle through the conference report which will be presented to the Senate.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator from Ohio.

Mr. METZENBAUM. Mr. President, my distinguished colleague from Wyoming had joined with Senator ABOUREZK, Senator BARTLETT, and myself, in fashioning this legislative answer on the natural gas pricing measure. We are particularly pleased that the distinguished Member of the Senate, the Senator from Louisiana, has seen fit to join with us in moving toward a legislative alternative. He has stated it well when he describes that which has been offered to the Senate as being objectionable to consumers, consumer advocates, producers, labor organizations, environmentalists, business organizations.

What we have seen fashioned out of long drawn out conference committee deliberations, over a period of months, sometimes in secret session, was an effort to get a bill at any price.

If somebody wanted some particular problem resolved, it was agreed to. If somebody wanted another problem resolved, it was agreed to. By the time we got done, we really had that which could be considered a legislative monstrosity. It does not solve the problem.

It was originally talked about by the President as being a measure that would provide for mandatory allocations, so the President could go in one State and take it out into another State. That is no longer in it.

It was originally talked about, as the President addressed himself to the entire question, of not deregulating the price of natural gas, a position which my friend from Louisiana advocates. When we got all done, we did not come down either plus or minus on that question. We came out someplace in the middle, and nobody is quite certain what we did do, except we know the price will go up, if we can figure out what the legislation said.

When the bill left the Senate and the House, it provided for incremental pricing for industrial users with the idea that by doing that we would cause more industrial users to turn to other energy sources. But when the bill came back to the Senate, it did not have that in it. It provided for higher prices for household users, residential users, and more of the burden was placed upon them than was placed upon the industrial users.

When the bill came back to the Senate out of the conference committee, it provided a special kind of consideration, that incremental pricing would be applicable to those who are in the consumer States, as far as industrial users are concerned, to the extent that incremental pricing is applicable and within the limits of what I just stated previously concerning residential users, but not incremental pricing for industrial users in the producer States.

As a consequence, those of us who represent consumer States would have found that more of our industry would have seen fit to move toward the producer States and that would not have been in the best interests of this Nation and that was certainly not intended in the original draft of the legislation.

There is available a chart indicating the complexity of this legislation, and it looks like—I do not know what to describe it as, but it is so complex that nobody could conceivably understand what it said, even if they had a staff of 100 lawyers working for them.

So I say that today has been a high point in our movement toward the development of a legislative alternative with respect to the Natural Gas Price Act. Twenty-four Members of the Senate have now signed their "Dear Colleague" letter. Included with the distinguished Senator from Louisiana is the distinguished Senator who made the strong battle and provided leadership for the enactment of the bill that passed the Senate, the so-called Pearson-Bentsen measure, which became the majority view of the Senate when it left the Senate.

Mr. PROXMIRE. Will the Senator yield briefly?

Mr. METZENBAUM. I yield.

Mr. PROXMIRE. Mr. President, I congratulate the Senator from Ohio and the Senator from Louisiana on their statements. I agree with them wholeheartedly. I think this is an impossible bill. As we indicated the other day, at a time when inflation is the No. 1 issue in the country, it is highly inflationary.

At the same time, I would like to indicate one difference, perhaps—I do not know. The Senator from Ohio and the Senator from Louisiana are extremely skilled technicians. The Senator from Ohio and the Senator from South Dakota (Mr. ABOUREZK) showed their great ability in filibustering before. They know every aspect of filibustering. I hope that, under the circumstances, we will be able to vote up or down on the bill.

I say that as one who is against the bill. I recognize that we have a tremendous weapon in delaying a vote. This has been debated at great length. Everybody knows about it. We have been up the hill and down the hill, over and over, for months.

I realize that the conference report is somewhat complicated and would take quite a few days of discussion, but I hope we can get an up and down vote within 3 or 4 days of the time the conference report comes out. I think there is enough strength to defeat it. At any rate, I think it deserves a vote on the merits.

The only argument I know of for a prolonged discussion is an educational process, so that people will take a second look and understand it. In this case, I do not think we have that argument for a filibuster. But I hope we will consider the possibility of letting it come to a vote.

Mr. METZENBAUM. Mr. President, I am pleased to respond to my good friend from Wisconsin, who is one of the cosigners of the "Dear Colleague" letter.

He has contributed much in his remarks with reference to one argument that has been made about the bill, and that has to do with the subject of its impact on the dollar overseas. I am happy to say to the Senator from Wisconsin that, although I have not consulted with all the others who have been involved in putting together this legislative alternative, I believe it is our thought that at a very early point in the debate, we will offer our motion to recommit, with instructions along the line as indicated in the "Dear Colleague" letter; that there really is no reason to have extended debate with reference to that subject, because it is my view now—and I must say it frankly and openly—that I believe there is a majority in the Senate prepared to support that motion to recommit.

I hope that if and when we do it, and if we are successful, the House will see fit to join us promptly, and that the administration will accept that as the will of Congress so that we can go about our business and enact not only this legislative answer, but also enact the other three bills that have been held hostage and that have been agreed upon for the last 8 or 9 months. Then, we, indeed, would have a national energy plan that may not be everything everybody wants, but at least it will have been a major step forward in getting a program. It may not be everything that the President or Congress or any particular group feels is the right answer, but it will be an answer, and I think it will be a good answer. I believe we could conclude our work within a week, if the House will accommodate this, after we return from the recess.

Mr. HANSEN. Mr. President, I want to say two or three things.

First, I express my very high regard for the chairman of the Finance Committee, a person who has earned my admiration a long time ago and who I believe, without reservation, is one of the most skilled Senators it has been my privilege to know.

I join my colleagues in saying that I have no desire at all to prolong discussion. If there is anything we have heard much more about than we needed to have heard about, it has been this gas bill.

In order to try to accommodate everybody, it is fair to say that we have come up with a piece of legislation that has to be a monstrosity. In the words of the administrative officer, Sheila Hollis, it would be impossible to administer. I hear this from people throughout the industry.

As a matter of fact, if they think—as I am certain they do—that they have experienced tough years recently in trying to wade through the time consuming, expensive, compounding maze of regulation and redtape, "they ain't seen nothin' yet." If this bill were to become law, their difficulties, their frustrations, and their short nerve endings would be compounded 10 times.

What impresses me so much about our friend from Louisiana is simply this: He does not think—as too often his admirer from Wyoming is inclined to think—one step at a time. The Senator from Louisiana is looking down the road to see what can be done for this country to get a bill passed that will be helpful, that will be constructive, that will be in the interests of everybody. He charted the course, insofar as I know, that gave the impetus and made me open my eyes to what we should be doing.

We could get into a head-knocking confrontation that could wind up in a long filibuster and a lot of feelings hurt, and trouble on the Senate floor, and not have anything done with it. But RUSSELL LONG—God bless him—is always thinking about what is doable and what is possible and what serves the national interest.

In that respect, he demonstrated this several weeks ago in the utterances he made which encouraged me to look forward to what can be done to make the best of a very badly deteriorating situation.

So I join in applauding him, in seeing if we can pick up, out of the myriad of ideas in this bill, some things that are going to be helpful, that can be approved insofar as the Senate and the House are concerned, and that will be signed by the President.

We can turn this country around, and we will not have to fool anybody—any foreign country or any of our other friends. We will have done something that is positive, that will combat inflation, that will expand jobs, that will increase the energy supply in this country, which will reduce the outflow of dollars, which will stop the flow that now accounts too much for the deteriorating situation of the dollar. That will be a continuing forward thrust in accomplishing the purposes all of us seek to achieve for this country.

So I salute the senior Senator from Louisiana for his perceptiveness in understanding that more is necessary than simply to defeat a bad bill; but, rather, to get everyone pulling together, and I sense that is now the case. We are going to pull together.

I think that this bill, this concept, upon which all reasonable men can join, will move this country forward in a positive manner, with an energy policy that will deliver. It will achieve the goals—not all of them—but it will achieve many of the goals that each of us knows are desirable.

I have many feelings about leaving this great institution. When I leave here—and that will not be too many months away—I know it will be a source of considerable pride and pleasure to know that I have been privileged to participate with some great Americans. RUSSELL LONG is one of those persons. I thank him.

Mr. LONG. Mr. President, I thank my able friend from Wyoming for the kind things he has said.

The Senator from Wyoming has been a courageous, indefatigable fighter for the free enterprise system in this country, and has helped to make the American system work the way our forefathers intended it to work. We all will miss him tremendously when he leaves this body. Many of us on this side of the aisle join our colleagues on the other side of the aisle in deploring the fact that the Senator has decided to retire.

He has many good years ahead of him, but we appreciate all he has done for his Nation serving here.

I certainly deeply appreciate the kind words that he has said about me.

But, Mr. President, it is really the Senator from Wyoming as well as the Senator from Ohio and the Senator from Texas, and others, who have joined forces in helping to shape a compromise that the producers, consumers, business and laborers of American can support.

If we can get all those factions together behind something that will make it possible to transport to the consumer every cubic foot of gas that can be produced here in the United States, why should we not do that? Why would we want to do something that is universally opposed by the working people, the consumers, the producers, everybody?

Mr. President, I am one of those who has had the experience of some of the embarrassment of going back and having people picket me at a meeting, because I voted for the Panama Canal Treaty. I felt it was our duty to ratify that treaty, it was in the Nation's best interests. It served our national purpose. I thought the President was right. It took a lot of courage to recommend it, but I think we owed it to him to support him on that rather unpopular undertaking.

But why should we do this to pass a bill which will be horribly unpopular and supported by no one?

One would have thought when we got through with the heated very honestly fought battle here in the Senate that at least you would please some people on the producers side when you passed the bill. One might have thought when they got through with the fight over on the House side they would have pleased some consumers in the country.

But to bring us back a bill that does not please anyone, no one on the business side, no one on the labor side, no one on the consumer side, and a bill that will impose literally hundreds of millions of dollars of cost on taxpayers and consumers by needless bureaucracy and regulation?

Mr. President, maybe we must have more than two prices for gas, maybe we must have more than three prices of gas, but why do we have to have 31 different prices of gas? It is the same product. You cannot see it, you cannot feel it, you cannot smell it, but if you light a match to it it makes a flame.

But why do we need 31 different prices that have nothing to do with what someone is willing to pay for it, nothing to do with what the stuff is worth? There are 31 different prices having to do with where you found it, how deep you drilled, who you were near when you found it, matters all of which should be totally irrelevant. Thirty-one different prices—some of them just seem to me to be the mere whims and caprice of an individual.

There is no point in imposing all this on the people of this country. It is simple enough to take the meritorious provisions of this bill, and there are some very meritorious provisions in the bill, and pass those. One of the key provisions that passed both the Senate and the House of Representatives on other occasions, passed twice, and has been signed by the President twice is the idea that you could buy gas from the intrastate pipelines and put it in the interstate pipelines if you need it. If you take care of that and take care of the movement of gas within the States, then anyone who has some gas can sell it and will sell it. He will have an incentive to go ahead and produce more. While that will not solve all the problems, it will not create any additional problems which unfortunately would be the case with the so-called compromise that will be laid before us sometime soon.

I thank the distinguished Senator.

The PRESIDING OFFICER (Mr. PROXMIRE). The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, I was sitting here listening to what appeared to be the beginning of the debate on the natural gas conference report, even though it has not yet been called up for floor consideration.

It is not often, in fact it is very rarely, that I rise to disagree with the chairman of the Finance Committee and with one of the ranking minority members of the Finance Committee, the Senator from Wyoming, all at the same time. But as one who supports the Natural Gas Deregulation Conference Report, I would like to respond to the question of the Senator from Louisiana, "Why 31 different prices?" by asking him this question, "Is it not true that without the bill which will be placed before the Senate after the recess, there would be not 31 different prices, but 1,000 different prices?" It is the understanding of the Senator from Hawaii that every time an application is made for the sale of gas by a producer, under present regulations, he applies for and normally gets a price according to the peculiar circumstances of each case, which can differ in a thousand different ways.

So while we are not now debating the gas bill, and I hope we will have a lengthy debate on the measure which will be brought back by the Energy and Natural Resources Committee, I feel that we ought to regard more seriously something which the conferees have worked on for 5 months. As a member of that conference committee, I can appreciate the great effort which the conferees exerted to arrive at the compromise represented in the report. The Senator from Wyoming was also a member of the conference committee.

Mr. HANSEN. Mr. President, I was a member, but I was not invited to the 5 months of meetings.

Mr. MATSUNAGA. The meetings which the Senator refers to were not conference committee meetings. They were caucuses, and I myself was not invited to all of them.

Mr. HANSEN. If my good friend from Hawaii will yield, and I have nothing but the greatest respect for him, let me say that one of my good friends, and I count many of my good friends on the other side of the aisle, is Senator JACKSON. I greatly admire and respect him. I cannot help thinking that it was he, I believe, who is credited with having conceived of the idea of legislating in the sunshine. But for 5 long months, Mr. President, not much sunshine shone on the deliberations of that select group of Senate conferees and House conferees as they fashioned this bill.

Mr. MATSUNAGA. The Senator from Wyoming himself well knows that every time the Senate conferees agreed to do something, we went back to the House conferees; then there was some objection, and then when we thought we had the House conferees agreeing with us, something else came up. So we were working back and forth. If the Senator from Wyoming, along with the Senator from Ohio, who was here in the Chamber a little while ago, could have at that time made the contribution that they propose to contribute now by opposing the conference report, maybe we could have come up with something that they, too, would have accepted.

But I hope that all this will be thrashed out when the conference report is being finally considered here in this Chamber.

I do not intend to take any more time, but I just could not sit still without saying something, especially in the light of the great respect which I have for the chairman of the Finance Committee, a committee to which I belong, and my good friend from Wyoming with whom I serve not only on the Finance Committee but on the Energy and Natural Resources Committee.

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from Virginia does not want to get into the middle of a fight over the natural gas bill today. The Senator from Virginia has taken no position on it at this point.

I do want to associate myself, however, with the remarks made earlier by the distinguished senior Senator from Wyoming in regard to the chairman of the Committee on Finance. I thought the tribute paid to Senator LONG by the Senator from Wyoming (Mr. HANSEN) was a splendid tribute and a much deserved tribute. I think Senator LONG is an outstanding chairman of the Committee on Finance. He is one of the hardest-working Senators I know, and I might say he is frequently a much maligned Senator merely because he happens to be chairman of that committee.

Now, I read somewhere, either today or yesterday, in one of the papers—I read 15 or 20 newspapers a day, so I am not sure just where I read it—that Senator LONG was carrying around in his pocket a number of amendments to tax bills that might be on the floor today, one amendment, the paper said, dealing with the New England Patriots. I am not sure whether that is a hockey team, a basketball team, or a football team, but in any case, the only connection, insofar as I know, that Senator LONG had with that piece of legislation was that he happened to be chairman of the Committee on Finance.

The legislation was introduced sometime ago by the Senator from Indiana (Mr. BAYH), by the Senator from Rhode Island (Mr. PELL), by the Senator from

Rhode Island (Mr. CHAFEE), and by the Senator from Massachusetts (Mr. BROOKE).

It was referred to the Committee on Finance. It was then referred to the Subcommittee on Taxation. At that time it was placed in the RECORD that a hearing would be held on this bill and who the beneficiary would be.

A hearing was held before the Subcommittee on Taxation. Subsequently it came before the Committee on Finance in open session. It was duly considered there, and it was reported to the Senate.

The only connection Senator LONG had with the bill, so far as I know, and the only reason he happened to have an amendment to the bill, was because, as chairman of the Committee on Finance, it was the procedure that needed to be followed.

So I think it is important to realize that while the Committee on Finance has a tremendously able chairman, one of the ablest political minds I have ever known, and one of the ablest persons I have ever been associated with, and he can work a lot of magic both in the committee and on the floor of the Senate, still he is very frequently being maligned for matters with which he has no connection and for which he should not be blamed.

I do not say whether the particular bill we had, that was under consideration, was a good bill or a bad bill. Whether it was good or bad it was not Senator LONG's proposal.

I just want to say again that I want to associate myself with the remarks made by the Senator from Wyoming in tribute to the chairman of the Committee on Finance.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield at that point?

Mr. HARRY F. BYRD, JR. Yes.

Mr. ROBERT C. BYRD. I was not here when the tribute was made by the Senator from Wyoming, but whatever tribute was made I want to be in on it. Count me in on that combine. He is one of the most shrewd, most effective, most personable, most likable legislators in this Senate at this time or at any time in the history of the Senate, and I certainly have the utmost admiration for him and tremendous respect. On this one particular issue I guess we will not be able to agree, but certainly he is going to be my friend and I am going to be his regardless of the outcome. I thank the Senator.

Mr. HARRY F. BYRD, JR. What the Senator from West Virginia said about the skill and the ability and the shrewdness and the finesse of the Senator from Louisiana can be applied in equal measure to the distinguished Senator from West Virginia. [Laughter.] It is just very interesting that sitting side by side right here this afternoon are two of the shrewdest and ablest and finest political minds that I have been associated with in a long time.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. HARRY F. BYRD, JR. I yield to the Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, I had fully intended to add my expressions of admiration for the Senator from Louisiana, who chairs the committee on which I serve. I join with the Senator from Wyoming and the Senator from West Virginia and the Senator from Virginia in praise of our chairman of the Committee on Finance. In singing praise of the Senator from Louisiana, I would like to relate one incident which happened while I was still a student at Harvard Law School.

I came to Washington at the call of Joe Farrington, who was Hawaii's delegate to Congress at that time. He told me Senator LONG was opposed to Hawaiian statehood, and he would not listen to Delegate Farrington because he was a Republican. He said in effect, "Sparky, you come on down and I am sure RUSSELL LONG will listen to you, because he has plenty of Aloha for the members of the 100th Battalion and the 442d Combat Regimental Team." Delegate Farrington was referring to the old Nisei regimental combat team, which served so valiantly in World War II.

In response I left my law school studies and went to see one Senator RUSSELL LONG, opponent of statehood for Hawaii.

Initially, the receptionist said he was too busy. But when he learned that I was a veteran of the famous combat team he agreed to see me.

So I spent some time with the Senator from Louisiana, opponent of statehood for Hawaii.

I started by stating what statehood would mean to those of us who served in World War II, who sacrificed not only limbs but even lives. After listening to me for a while he said to me, "Well, young man"—he called me that, and I am older than he is [laughter]—he said, "Young man, you must remember that a U.S. Senator is primarily interested in two things: one, to be elected; two, to be reelected." [Laughter.]

Then he said, "So don't come to me. Go to my constituents, and if my constituents tell me that I should support Hawaiian statehood I will."

So I took his advice and sought out his staunchest supporters in his home State. Fortunately, one of his principal supporters was a very close friend of mine, George Leightner. I telephoned him and said, "George, we have got to get RUSSELL on our side." He said, "Well, I will tell you what you do, SPARKY. You get the Governor of Hawaii to invite RUSSELL to go to Hawaii, and you lay out the red carpet. I will go with RUSSELL to help you."

We did exactly that. We got Senator RUSSELL LONG to go to Hawaii. We greeted him at the airport with leis right up to his eyes, and you know, of course, that he came back to Washington as a champion of Hawaiian statehood. [Laughter.]

At that time, some of my colleagues may recall, Senator Richard Russell was majority leader. When he saw the picture of RUSSELL LONG with leis up to his eyes, he said, "Well, there goes RUSSELL LONG. We have lost him." [Laughter.]

I thought this might be an amusing sidelight in the interesting and exciting career of the Senator from Louisiana, appropriate to the occasion, during the waning hours of this evening. I thank the Senator from Virginia for yielding.

Mr. LONG. Mr. President, if the Senator will yield, let me assure him that I very much appreciate these kind remarks from my colleagues. I do not know what prompted it. I really do not know whether my friends have in mind another Hawaiian bill or just what it may be, but whatever it is, I suppose they have me where they want me, and I will have to go along with them. I do not precisely know what it is they have in mind, but I assure my dear friends that I very much appreciate the kind words.

The Senator from Hawaii is right when he said the trip to Hawaii made an impression on the Senator from Louisiana. Senator Russell from Georgia said when he saw that picture of the Senator from Louisiana with those leis piled up all the way to his nose, "He is gone, just forget about him; he is gone."

[Laughter.]

I thank the Senator.

## THE NATURAL GAS PRICING CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I have never lost faith in the strength and the ability of the U.S. Senate to meet the greatest challenge of the 95th Congress—confronting the energy problem.

I have never wavered in my confidence, though, at times, the natural gas pricing bill has had a heartbeat as faint as that of a hummingbird.

You have heard of the proverbial cat that has nine lives. This bill has had more lives than that proverbial cat. It has been pronounced dead, I guess, 100 times. I have seen tombstone after tombstone erected over this bill, and it is still living; it still has life in it. I am not willing to concede that the bill is dead, and I am not willing to concede that this Senate will not pass that legislation. I am not willing to give up, and I do not think the others who support the legislation are ready to give up, either.

The energy problem is an insidious enemy, and it has allies in deception. It is difficult to act on crisis legislation when no crisis is perceived. The humid days of August do not stimulate memories of bitter cold winters and gas shortages, rivers iced over, factories shut down, employees out of work, schools closed, and residential consumers without heat in their homes.

For three decades the issue of natural gas pricing, and its resolution, has eluded and confounded Congress and the Nation. To our allies abroad, this beachhead is the Normandy on our shore, and they expect us to meet this challenge.

If we cannot face this problem, in this case, the battle is the war, and we will have lost our initiative, our momentum, and some would say, our fortitude. This is the way it will be perceived by our friends, as well as by our enemies.

Rightly or wrongly, this energy legislation is the axis on which our image turns abroad. This was made explicit during conversations I had in Europe with Chancellor Schmitt, with Prime Minister Callaghan, and with the leaders

in Belgium. For Congress to adjourn sine die without a solution would be broadstroke evidence of our inability to meet a problem that affects every man, woman, and child in this Nation. To adjourn sine die without a solution would be—through inaction—to further emasculate the power of the dollar overseas.

Mr. President, under this conference report, consumers would be protected as more natural gas is made available through incentives for greater production. Gas shortages give rise to job layoffs, and this is definitely not in the interests of the working men and women of this country.

As for price, it is important to remember that the prices set forth in the conference report are only ceiling prices. Many energy economists doubt prices will reach the ceiling.

Since last year, average wellhead prices in the intrastate markets have been dropping. Greater supplies as a result of the report's various incentives would help to keep prices below the ceilings.

The incentives are designed to elicit greater supplies. As this occurs, the higher price would have a negligible effect on inflation. The conferees estimate that it would increase the overall inflation rate by less than one-half of 1 percent.

If greater domestic gas supplies help to reduce gas or oil imports, consumers also will benefit by a more favorable trade balance.

Under the conference report, consuming States would be better served; without the measure, however, interstate consumers would be worse off.

Everyone who represents interstate gas consumers should realize by now that consumers without adequate gas supplies are not well protected.

Interstate pipelines which lose industrial customers because of insufficient deliveries face a no-growth future. Loss of sales to big interstate industrial customers will push up prices to interstate residential customers. Moreover, the loss of gas sales to industrial customers probably will cause them to consume more oil, much of which would have to be imported.

Increased gas supplies is not the only protection afforded interstate consumers under the conference report. The incremental pricing policy which the conferees designed would protect residential consumers. Increases in the price of gas sold to residences would be borne primarily by low-priority industrial consumers.

Maintaining adequate supplies and cushioning the price impact on residential consumers is particularly important to the middle and lower income groups in the interstate market. If interstate gas supplies continue to decline, it will be most burdensome financially for the middle and lower income families to switch to another fuel, particularly for residences with gas-fired boilers and appliances. The loss of purchasing power to those who live on the margin would be significantly larger if supplies dwindle. Enactment of the natural gas conference report would work to prevent this.

Mr. President, those who oppose this legislation are honorable men, and no one would doubt their motives. But I believe that insight and vision dictate that we meet the energy challenge we accepted earlier in this Congress. Mr. President, we have been deliberating on this now for 14 months. And this is an issue that has been around the Congress for 30 years, and the American people expect Congress to deal with it.

If Congress rejects this legislation, then the American people are going to believe that Congress cannot come to grips, that Congress does not have the fortitude, it does not have the vision, it does not have the courage and the determination to deal with the foremost problem facing this country, and the image of Congress before the American people, which is already not too good, will be made even worse.

In addition, Mr. President, the image of this country before the world is not going to be good. The OPEC countries will realize that the American Congress is not willing to come to grips with this problem, and our NATO allies will believe that the American Congress is not willing or not able to deal with this small problem which, in my discussions with Chancellor Schmitt, Prime Minister Callahan, and other leaders in Europe, was the No. 1 problem on their minds.

I believe there are three questions, and if only one is answered in the affirmative by a majority of this body, we will have assured this Nation of an energy policy.

Will we in the U.S. Senate have the vision to look after the interests of our citizens not only for the moment, the hour, the day, but for tomorrow and the future?

Will we in the U.S. Senate be able to put aside regional differences in an unselfish desire to contribute to the national strength and security of our Nation?

And, will we have the tenacity to show the world that the United States will not shrink from facing a global problem, and from its global responsibility?

I believe we will.

Mr. President, in my judgment, to recommit this conference report is to kill it. To kill it. And I think we can make our choice as to whether we want a bill or whether we do not want anything. Those who favor deregulation will not have it if this measure dies. And those who believe that there should be deregulation in some period of time, as I do believe that there should be deregulation on a phased basis, will support this legislation.

Let us not be misled by the motion to recommit: that will kill this legislation. Mr. President, the word is going to go out to the American people that the Congress, after 30 years, is still unwilling to deal with the foremost problem facing this country. That the Congress, after 14 months of toil and sweat, is unable and unwilling to deal, I repeat, with the foremost problem facing this country.

Mr. President, I respect those who differ with me. I have the utmost respect and admiration for Senators who oppose this measure. I just feel that it is the duty of the Senate to take a stand now. We have spent months and months and months, and the year is running out. A decision has to be made. The clock is running out. And the American people expect me and they expect the Members of this Senate to deal with this problem and to resolve it.

Mr. President, I hope that the Senate will stand up to this question.

I heard the distinguished Senator from Wisconsin, who is presently presiding over the Senate, say not to filibuster this conference report. I think the Senator is to be congratulated on that attitude. It has been filibustered enough. There have been prefilibuster filibusters, there have been postfilibuster filibusters, there have been postcloture filibusters, there have been maxifilibusters. I tell you, my friends, it is time that we stopped filibustering and vote on this issue.

It is perfectly all right to spend some days in dealing with the conference report. That is reasonable. It is a lengthy conference report; it is a complex conference report. I expect the Senate to take days. But let us reach a decision. If the Senate is not going to deal with the problem, let it say so by voting down the conference report. Let us say yes or no. As for me, I will be found standing with those who support the conference report, and I will vote against the motion to recommit. I will vote against any motion to recommit because a motion to recommit is a motion to kill the bill, and to erect over it once and for a tombstone. That is what it means. Let no one be misled by any motion to recommit.

So, Mr. President, I trust that Senators, having discussed this, having gone up the hill, having gone down the hill, having gone through the misery, the travail, the sweat, and the labor of months of argument, passionate, emotional argument in many instances, Members will at least let the Senate have a vote up or down on the issue.

The PRESIDING OFFICER. The time for morning business has expired.

Mr. ROBERT C. BYRD. I ask unanimous consent that the period be extended for another 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kentucky.

Mr. FORD. Mr. President, I would like to be granted 5 minutes, if that is in order.

The PRESIDING OFFICER. The Senator may have 20 minutes.

Mr. FORD. I will take the 20 minutes and yield 5 minutes to the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, I have said enough at this time. This is such a very difficult issue. It cuts across regional lines, across parochial interests. It cuts across deep, deep, deep feeling.

Mr. President, if this conference report is killed, then we continue with what we have. We continue with no deregulation. There are those who say, "If we kill the bill, we will get a better one next year."

Do not bet on it. Do not bet on it.

Mr. President, I ask unanimous con-

sent that a document entitled "Points in Support of the Natural Gas Compromise" and a document entitled "Summary of the Major Provisions in the Natural Gas Conference Report" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

POINTS IN SUPPORT OF THE NATURAL GAS COMPROMISE

The world is watching to see if we can come to grips with our energy problem. In view of the President's pledge to foreign leaders, and the increasing concern over the dollar, we cannot afford to fail.

It will increase supplies of our premium fuel for the nation's consumers while providing price certainty and new markets for the nation's producers.

Substantial additional quantities of natural gas will flow into the interstate market at prices below that of displaced alternate fuels.

The bill will also make construction of the Alaska gas pipeline possible. Together with increased production in the lower 48 states, this could mean a 30 percent increase in interstate gas supplies by 1990.

This, in turn, could result in savings of well over 1 million barrels per day of imported oil by 1985, and $5 to $8 billion a year in our balance of payments.

The national gas market created by this bill will allow gas currently backed up in the intrastate market to flow into the interstate market—where it is sorely needed.

The bill provides critical new incentives and certainty for the nation's producers of natural gas.

It opens up the intrastate market to interstate demand.

It provides certain, incentive prices.

It removes burdensome FERC regulatory requirements on all new natural gas.

It removes the uncertainty associated with recent Supreme Court decisions and simplifies federal regulations.

Increased supplies of natural gas at prices below alternate foreign fuels will be available for both homeowners and industrial users.

Under the bill's incremental pricing provisions, the supply of gas throughout the nation will increase for residential and industrial users at prices well below the cost of any other substitute fuels.

In almost every region of the country, the industrial gas price in 1985 will still be well below the price of distillate—assuming world oil prices stay constant—and one-quarter the price of electricity.

Significantly, the price of natural gas to industrial users, including the incremental pricing provision in the compromise, will be lower under this bill than the price would be under the Senate-passed Pearson-Bentsen deregulation bill without incremental pricing.

There will also be expanding use of gas in industry, particularly the special process uses for which gas is best suited.

Under this bill, there will once again be enough gas at economical prices to resume home hook-ups.

Enactment of the Compromise will:

Create a national market for gas.

Greatly increase supplies for industry and homes.

Cost the consumers no more than existing law.

Substantially reduce oil imports.

Protect home consumers.

Provide substantial quantities of gas for new home hook-ups.

Failure of the Compromise will:

Back-up sorely needed gas production in the intrastate market.

Continue the trend of declining supplies in the interstate market.

Lead to the increasing use of higher priced foreign energy.

Continue to occupy the Congressional calendar with a debate on natural gas in the coming years.

Destroy the possibility for acting on a comprehensive energy program this year.

The Country needs our help in this important effort to pass the first natural gas bill in twenty years. The alternatives to passage are unacceptable from both a national and international perspective. Too much is at stake for this bill to fail.

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SUMMARY OF THE MAJOR PROVISIONS IN THE NATURAL GAS CONFERENCE REPORT

I. DURATION OF PRICE CONTROLS

Controls expire January 1, 1985 for:

(a) New natural gas, except new reservoirs in old leases offshore.

(b) Special incentive gas, except that legally required as of April 20, 1977 to be sold interstate commerce and gas from wells completed at a depth of less than 5,000 feet.

(c) Gas under intrastate contracts where the contract price is greater than $1.00 on December 31, 1984.

Controls expire June 30, 1987 for special incentive gas from wells completed at a depth less than 5,000 feet.

II. STANDBY PRICE CONTROLS

(a) The President or Congress (concurrent resolution with expedited procedures) could reimpose for 18 months at any time after June 30, 1985 and prior to June 30, 1987.

(b) Concurrent resolution of Congress could veto Presidential reimposition.

(c) Prices after reimposition would be on the same trend line previously applicable, except that for special development incentive wells, controls would be reimposed at a point mid-way between the original control trend line and the new gas trend line.

III. CEILING PRICE FOR NEW GAS

(a) $1.75 as of April 20, 1977 escalated at the implicit GNP deflator plus .2% annually plus 3.5% annually to April 20, 1981 and 4.0% annually thereafter.

(b) No vintaging.

IV. DEFINITION OF NEW GAS

(a) Onshore

(1) Gas from new wells (those spudded after February 19, 1977) completed 2½ miles from the surface location of any old well or 1,000 feet deeper than any old well. (Presumption that new well is drilled vertically unless a slant drilling permit was obtained.)

(2) Gas from newly discovered (after April 20, 1977) reservoirs.

(3) Gas from previously non-producing reservoirs ("withheld" gas and behind-the-pipe gas excluded.

(b) OCS

(1) Gas from any lease executed after April 20, 1977.

(2) Gas from a newly discovered reservoir (U.S.G.S. determines whether a reservoir is new).

(c) State agency determines new gas onshore. FERC review to be initiated within 45 days and decided within 120 days.

V. ONSHORE PRODUCTION WELLS (SPECIAL DEVELOPMENT INCENTIVE GAS)

(a) Ceiling Price is $1.75 plus inflation except that after January 1, 1985, the price for gas from wells completed at less than 5,000 feet depth shall be mid-way between the previous trend line and the new gas trend line.

(b) Wells must be outside an existing spacing unit and at least one spacing pattern away from old wells but within the 2½ miles. This is essentially a special incentive for the full development of old reservoirs.

VI. AND VII. OTHER GAS FROM NEW WELLS, GAS AND OLD GAS

(a) Ceiling price of $1.45 plus implicit GNP deflator plus 0.2 percent.

(b) All other old gas receives the contract price plus the GNP deflator plus 0.2 percent.

VIII. SEVERANCE TAXES

(a) Existing taxes are not included in the ceiling prices. Future increases in severance taxes are to be incrementally priced.

IX. ROLLOVER CONTRACTS

(a) Interstate

Contracts below $.54 can rise to that level plus GNP deflator plus 0.2 percent.

All others are contract price plus GNP deflator plus 0.2 percent.

(b) Intrastate

Below $1.00 at rollover, a ceiling price of $1.00.

Above $1.00 at rollover, new gas ceiling price.

State royalty gas and State-owned production, receive new gas ceiling price.

X. ALLOCATION AUTHORITY

Only in emergencies for maintaining residences and small commercial users after all emergency sales are used, authority is provided to allocate for coal convertable industries that burn gas.

XI. HIGH COST GAS

The following types would be deregulated at time of implementation of Incremental Pricing Rule 1:

(a) Devonian Shale
(b) Coal bed methane
(c) Geopressurized methane
(d) Gas from wells of 15,000 feet or deeper.

XIII. STRIPPER WELLS

(a) Ceiling price of $2.09 plus new gas escalation factors.

(b) Defined as gas from a well that produced less than 60 mcfd at the MER for three months.

XIV. INCREMENTAL PRICING

(a) Rule 1 (to be implemented by FERC within 12 months) would incrementally price industrial (not electric utility) boiler fuel for over 300 mcfd users up to the regional cost of distillate.

The incremental pricing account would consist of all amounts paid for gas above $1.48, except that for high cost gas it would be all amounts above the price of distillate landed in N.Y. harbor plus 30% (now about $3.40).

No Congressional review of Rule 1.

(b) Rule 2 (to be proposed within 18 months) would cover other industrial uses and be subject to one-house veto in Congress.

(c) Agricultural exemptions are provided.

Mr. MATSUNAGA. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. MATSUNAGA. I congratulate the distinguished majority leader for the statement he has just made. I fully agree with him, and hope that every Senator will take time to read his statement, as it will appear in the RECORD.

If I may be permitted to make a prediction based upon the 14 months that I have been in this body, and 14 years in the House, and I make this prediction in all sincerity, the Senator from West Virginia will be recorded in history as one of the greatest, if not the greatest, majority leader this august body has ever had.

Mr. ROBERT C. BYRD. Mr. President, I just cannot find the words to thank the

distinguished Senator from Hawaii for his overly charitable, overly generous, overly gracious remarks. I am deeply grateful.

Mr. President, there is one more thing I want to say about this legislation. It is said that it is a measure that nobody wants.

Mr. President, if someone will bring a conference report in here on which everyone agrees on everything I will resign my seat from the Senate that day and say, "Hallelujah" and let out a whoop and a holler, if they bring in a measure that everybody likes.

Nobody likes everything in this conference report. I do not like everything in it. It is the kind of an issue that is so thorny, so complex, so deeply emotional, so deeply divisive, that it is impossible to bring in a conference report that everybody likes.

There is not a Senator in here, I guess, who likes everything in this measure. But on this issue there is not going to be any conference report brought in that every Senator likes. Any solution to it is probably going to be one that is not completely satisfactory to everyone.

Mr. LEAHY. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield to my good friend from Vermont.

Mr. LEAHY. Mr. President, I shall try to be as brief as we Vermonters are reputed to be. I came back to the floor because I heard, over the speaker in our office, the comments the distinguished majority leader and others were making earlier.

As the majority leader knows, if the issue of the natural gas compromise were up today and I were constrained to vote right at this moment, I should have to vote against the conference committee report. But I agree completely with the distinguished majority leader that this matter should not be filibustered.

Proper debate, of course. A complex issue requires several days of debate. But, my God, we are fooling ourselves if we think that with the collective wisdom of 100 of us, we cannot handle the complexities of it within a few days. If we cannot, we do not deserve our salaries; we do not deserve to be here.

Debate it, vote it up or down. Do not play parliamentary tricks with motions to recommit solely for the sake of destroying the bill or killing it. If 51 Senators want to defeat the conference committee report, let them vote it up or down.

Mr. ROBERT C. BYRD. Right.

Mr. LEAHY. I agree with the majority leader in efforts to bring it up, have it debated properly and then vote on it. I, for one, will certainly do everything I can to help in that regard.

I shall spend a great deal of time studying it during the recess, do a great deal of reading on it. I expect to walk around the fields of my farm in Vermont and think about it and make up my mind how to vote.

I agree with the Senator from West Virginia that we ought to vote on it and not play games with the filibustering procedure.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Vermont (Mr. LEAHY). What he has just said is typical and characteristic of him. He will thoroughly study this matter; he will reach a considered judgment on it; and he is willing to show down, one way or the other.

That is what I am asking. I want the Senate to vote for the conference report, but I cannot control the will of the Senate. If it is the will of the Senate, 51 Senators, to reject it, I accept that verdict. But I want to see the Senate reach a verdict and let each Senator make up his own mind, reach his own judgment. I shall do what I can to support the conference report. I will support those who will do what they can to defeat it and I shall love them just as much afterward as before.

But let us have the vote. Let the majority prevail. If the conference report prevails, fine; I think that will be in the best interest of the country. If it is rejected, the Senate will have spoken.

I thank the Senator for his timely remarks.

(Conclusion of earlier proceedings.)

## RECESS UNTIL 10 A.M., WEDNESDAY, SEPTEMBER 6, 1978

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the provisions of the order previously entered, House Concurrent Resolution 696, as amended, that the Senate stand in recess until 10 a.m. on Wednesday, September 6, in this year of our Lord, 1978.

The motion was agreed to; and at 6 p.m. the Senate recessed until Wednesday, September 6, 1978, at 10 a.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate August 25, 1978:

### DEPARTMENT OF STATE

Mary S. Olmsted, of Tennessee, a Foreign Service officer of class 1, now Ambassador Extraordinary and the Plenipotentiary of the United States of America to Papua New Guinea, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Solomon Islands.

### INTERNATIONAL ATOMIC ENERGY AGENCY

The following-named persons to be the Representative and Alternate Representatives of the United States of America to the 22d session of the General Conference of the International Atomic Energy Agency:

Representative: Dale D. Myers, of Virginia.

Alternate Representatives: Gerard S. Smith of the District of Columbia and Roger Kirk, of the District of Columbia.

### DEPARTMENT OF JUSTICE

Tyree A. Richburg, of Alabama, to be U.S. marshal for the southern district of Alabama for the term of 4 years.

### DEPARTMENT OF THE INTERIOR

Roger A. Markle, of Utah, to be Director of the Bureau of Mines.

### DEPARTMENT OF ENERGY

Ruth C. Clusen, of Wisconsin, to be an Assistant Secretary of Energy (Environment).

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

The following-named persons to be Members of the Federal Mine Safety and Health Review Commission for the terms indicated:

For a term of 4 years: Marian Pearlman Nease, of Maryland.

For a term of 6 years: Frank F. Jestrab, of North Dakota A. E. Lawson, of Pennsylvania.

Richard V. Backley, of Virginia, to be a member of the Federal Mine Safety and Health Review Commission for a term of 4 years.

Jerome R. Waldie, of Maryland, to be a member of the Federal Mine Safety and Health Review Commission for the term of 2 years.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

### IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

*To be lieutenant general*

Maj. Gen. Howard MacLane, [redacted], U.S. Air Force.

### IN THE NAVY

Having been designated for commands and other duties determined to be within the contemplation of Title 10, United States Code, section 5231, Vice Adm. Harry D. Train II, U.S. Navy, for appointment to the grade of admiral while so serving.

Adm. Isaac C. Kidd, Jr., U.S. Navy (age 58), for appointment to the grade of admiral on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

### IN THE ARMY

Army nominations beginning Rudolph E. Abbott, to be lieutenant colonel, and ending Michael K. King, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 24, 1978.

Army nominations beginning Frederick T. Abt, to be colonel, and ending John D. Rosenberger, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 24, 1978.

### IN THE NAVY

Navy nominations beginning Keith E. Burtner, to be ensign, and ending Milton J. Hirshberg, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 24, 1978.

Navy nominations beginning Denis R. Boudreau, to be chief warrant officer (W-2), and ending Jerry W. Vance, to be chief warrant officer (W-2), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 24, 1978.

Navy nominations beginning Leon E. Ackart, to be captain and ending Thomas L. Dinges, to be ensign, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 28, 1978.

Navy nominations beginning William C. Absher, to be lieutenant (j.g.), and ending Edward P. Wyatt, to be lieutenant (j.g.), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 28, 1978.

Navy nominations beginning Paul A. Anderson, to be chief warrant officer, W-2, and ending Elmo G. Tucker, to be chief warrant officer, W-2, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 28, 1978.

# EXTENSIONS OF REMARKS

## THE PROBLEM OF DRUG ABUSE

### HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, August 17, 1978*

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for August 23, 1978 into the CONGRESSIONAL RECORD:

THE PROBLEM OF DRUG ABUSE

The headlines are frightening: Is the United States becoming a drug-ridden society? Drug use on the increase! Are drugs crippling our armed forces? Boom in illegal pills.

These headlines are supported by recent conversations I have had with community leaders and parents of young people in the Ninth District. Despite a lack of certain knowledge of the extent of drug abuse in their communities, these citizens are worried and frustrated. They are unsure how to deal with drug abuse. They want to do something, but they fear that hasty, unplanned measures could make the problem worse.

The widespread use of illicit drugs has spawned a new subculture in America, complete with its own vocabulary ("bennies," "roach," "crank," "co-pilots" and the like) and paraphernalia (spoons, pipes, needles, clips and assorted containers). The hard statistics on this subculture are disturbing. Some 43 million Americans have tried marijuana and 16 million smoke it regularly. Many Americans, especially those under 30 years of age, are beginning to accept the use of marijuana as a way of life. About 400,000 people are addicted to heroin, a deadly drug whose overdoses claimed 1,700 lives last year. About 1.8 million Americans pep themselves up with amphetamines or related stimulants. Some 1.1 million relieve their anxieties with powerful sedatives. Ten million Americans have tried cocaine, a new "glamor drug," and more than 1.6 million use it routinely. Over 1.4 million ease their moods with tranquilizers while another 1.1 million alter their minds with hallucinogens. A full six million young people use PCP, a dangerous unpredictable drug nicknamed "angel dust."

The problem of drug abuse is not confined to the young. Alongside the subculture of illicit drugs are the chronic users of alcohol and tobacco, substances which must be classified as drugs even though they are legal. Of course, the abuse of these drugs takes place in every age group and economic stratum. If the 93 million drinkers of alcohol and the 65 million smokers of tobacco are counted, more than 75% of all Americans are drug users. Perhaps the United States has already become the drug-dependent society announced in the headlines.

Beyond the people whose health is jeopardized by alcohol and tobacco, nearly a million others are treated for drug abuse each year. The annual cost is $500 million. Countless others suffer lesser effects of a "drug revolution" that is sweeping the American scene.

Although many users of illicit drugs pose no immediate threat to themselves or others, the line between drug use and drug abuse is not easy to draw. Anyone who uses drugs runs a risk. A visit to a typical hospital emergency room will almost always turn up an individual who mistakenly thought that some drug could be taken safely. Experts tell us that much workers absenteeism and many traffic mishaps result from drug use, but it is impossible to say exactly how much or how many. The harmful consequences of drug use for performance in school, social activities and family life are becoming more apparent every day, but authoritative information remains sketchy. My suspicion is that we have only seen the tip of the iceberg.

The federal government has responded to the problem of drug abuse by trying to reduce both supply of and demand for dangerous substances. To cut down supply, the federal government regulates the pharmaceutical industry and all others who handle drugs in the course of legitimate commerce or medical practice. It pursues those who operate outside legitimate channels. It aids state and local lawmen by providing technical assistance. The federal government also patrols our international borders and ports of entry to prevent smuggling. It helps to administer programs of crop substitution and eradication in foreign countries. It encourages foreign governments to step up their own drug enforcement efforts. All told, about $780 million will be spent on these activities in 1978, a nine-fold increase since 1969.

Reduction in demand for dangerous substances is a newer goal in the national strategy to curb drug abuse. During the past 15 years the federal government has instituted and expanded programs of treatment, rehabilitation, education and teacher training. Treatment and rehabilitation have received more attention to date, but many experts are arguing for improved education and teacher training. Their idea is to reach young people before drug abuse occurs. The cost of these programs will be $390 million this year, an eleven-fold increase since 1969.

The federal government is increasingly conscious of the role that it must play to crack down on drug abuse, but it cannot work alone. State and local officials, civic-minded citizens, parents and young people must also do their part. The problem of drug abuse is too important to ignore.

## A SOUND VETO

### HON. HAROLD E. FORD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Thursday, August 17, 1978*

Mr. FORD of Tennessee. Mr. Speaker, the President has caused a great deal of controversy with his veto of the bill H.R. 10929, the Department of Defense Authorization for 1979. I would like to share with you and my colleagues in the House of Representatives an editorial appearing in the recent editions of the Memphis Press-Scimitar which explains the issues involved very well. The editorial follows:

A SOUND VETO

President Carter, whose bent is to avoid fights with Congress, nevertheless was right to veto the weapons-buying bill because it funds a fifth $2 billion nuclear-powered aircraft carrier he and the Pentagon do not want.

The huge carrier, which Sen. William Proxmire has aptly dubbed "the dinosaur of the seas," was rammed into the bill by a potent lobby of nuclear seapower advocates, some naval officers and defense contractors.

At his news conference Thursday, Carter correctly explained that the $2 billion carrier with more billions needed for its planes and escort vessels would not enhance but weaken the national defense.

To pay for the glamorous supercarrier, its congressional backers diverted funds from less glamorous military necessities: ammunition, repair of ships and planes, equipment and training. All are vital to military readiness.

Carter spoke the plain truth when he said the Navy did not need a small number of very costly ships but a large number of less expensive vessels. In the nuclear age, when one weapon can take out one ship, naval strategy should go toward dispersal, meaning more ships but smaller ones.

Unfortunately the "carrier admirals"—the spiritual descendants of the battleship admirals who led the nation astray in the years before World War II—still have great clout along with their congressional and industry allies.

All three groups will try to thwart Carter and get their pet carrier back in the $36.9 billion defense authorization bill. This is one fight the president deserves to win.

## CONGRESSIONAL RECORD STATEMENT

### HON. JOHN J. CAVANAUGH

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, August 17, 1978*

● Mr. CAVANAUGH. Mr. Speaker, as part of my ongoing effort to be accountable to the people who I represent, I have compiled for publication in the CONGRESSIONAL RECORD my complete voting record for the 95th Congress, through May 31. A most difficult yet essential element of representative government is communicating to constituents the action we take in their behalf. I intend to list all the votes I cast as a Member of the House of Representatives so the voters of the Second Congressional District of Nebraska will be fully aware of the type of representation I am providing.

Quorum calls are excluded from the listing in an effort to save space. Otherwise, the list is complete for all of 1977 and the first 5 months of 1978. Subsequent votes will be included in a future edition of the RECORD. The listings include the rollcall number, a brief description of the bill, my vote, and whether the measure passed or failed. Voting abbreviations include NV for not voting; NVA for not voting, but indicated opposition to the measure; and NVF for not voting, but indicated support for the measure.

It is my sincere hope that this listing will be a handy resource for my constituents who seek to examine the votes I cast on their behalf in Congress.

The voting record follows:

1977 VOTING RECORD

(2) Election of the Speaker of the House. O'Neill, 290; Rhodes, 142. Cavanaugh voted O'Neill.

(3) To bar amendments to Rules of the House for 95th Congress. Yes. Passed.

(4) Rules of the House for 95th Congress. Yes. Passed.

(9) Authorize the President to establish a 90-day emergency natural gas program. Yes. Passed.

(10) Approve journal of Feb. 1 proceedings. Yes. Passed.

(11) Emergency Natural Gas Act; 90-day emergency allocation program; 180-day emergency purchase program; delete ceiling price on gas purchased from intrastate suppliers for interstate markets. Yes. Passed.

(12) To adopt rule on resolution to create a Select Committee on Assassinations. Yes. Passed.

(13) To eliminate language defining scope of investigation of Select Committee on Assassinations. NV. Failed.

(14) To reestablish until March 31, 1977, the Select Committee on Assassinations. Yes. Passed.

(15) To approve journal of Feb. 2 proceedings. Passed.

(16) Emergency appropriation ($6.4 million) for Department of Interior's Southwestern Power Administration. Yes. Passed.

(17) To approve fishing agreements between U.S. and Bulgaria, Romania, East Germany, Poland, the Soviet Union, and the Republic of China. Yes. Passed.

(18) To approve journal of Feb. 9 proceedings. Passed.

(19) To direct Committee on Standards of Official Conduct to conduct an inquiry to determine whether Members of the House, their immediate families or their associates have accepted anything of value from the South Korean government or its representatives. Yes. Passed.

(20) To raise ceiling on Small Business Administration loans and investments in FY 1977 from $6 billion to $8 billion. Yes. Passed.

(22) To adjourn from Feb. 12 to Feb. 21. No. Failed.

(23) Reduced air fares for the handicapped and the elderly. Yes. Passed.

(24) To authorize medal to Marian Anderson in recognition of her distinguished career. Yes. Passed.

(25) Budget Resolution: To adjust revenue and spending levels downward, assuming permanent tax cuts instead of expenditures for job programs. No. Failed.

(26) Budget Resolution: Set spending ceiling and revenue floor for FY 1977. (Spending, $419.1 billion; revenue, $348.8 billion). Yes. Passed.

(27) To adopt rule on public jobs bill (Local Public Works Capital Development and Investment Act of 1977). Yes. Passed.

(28) To require that 65 per cent of funds for public works projects go to states based on number of unemployed in the state, and that 35 per cent of funds be set aside for states with unemployment rates in excess of 6.5 per cent. No. Failed.

(29) To base public works funds allocation on number of unemployed in state in relation to national rate. Yes. Passed.

(30) To make $6 billion available for public works projects on which construction could begin within 90 days. No. Passed.

(31) To extend arrest and police authority of fish and wildlife enforcement officials. No. Failed.

(33) To approve fishing agreements between U.S. and Spain, Japan, South Korea, and European Economic Community. Yes. Passed.

(34) Depository Institutions Amendments of 1977 on interest rate regulations, federal credit unions, Federal Reserve Banks. Yes. Passed.

(36) To close debate on H. Res. 287, a new code of financial ethics for the House of Representatives. Yes. Passed.

(37) To remove provision of ethics bill abolishing unofficial office accounts and, instead, increase official expense allowance. No. Failed.

(38) To remove ethics code restriction on Members' outside income. No. Failed.

(39) Code of financial ethics, strengthening financial disclosure requirements, prohibit unofficial office accounts and lame duck travel, and restrict franking privilege and outside earned income. Yes. Passed.

(41) To provide $200 million authority for disaster relief activities made necessary by severe weather in eastern U.S. Yes. Passed.

(42) To restore $81.6 million to budget for long lead time funds for Nimitz-class nuclear aircraft carrier. No. Failed.

(43) To restore to budget $371 million for converting U.S.S. Long Beach nuclear cruiser to anti-aircraft cruiser. No. Failed.

(44) Conference report (House-Senate compromise) on Third Budget Resolution calling for spending ceiling of $417.4 billion, revenue floor of $347.7 billion. Yes. Passed.

(46) To consider (adopt rule) on Kennedy Center Act Amendments. Yes. Passed.

(47) To reduce funds for Kennedy Center repairs from $4.7 million to $3.3 million. Yes. Failed.

(48) Kennedy Center repairs. Yes. Passed.

(50) To reestablish committee to study need for sports legislation. No. Failed.

(51) To accept resignation of Rep. Henry B. Gonzalez as chairman of Select Committee on Assassinations. Yes. Passed.

(52) To close debate on Tax Reduction and Simplification Act. Yes. Passed.

(53) To phase out $50 rebates for persons earning more than $25,000 per year; to provide $50 payment to recipients of social security and veterans benefits. Yes. Passed.

(54) Tax Act: To provide flat standard deduction of $2,400 for single persons and $3,000 for married couples. Yes. Passed.

(55) To provide tax credit of 40 per cent on the first $4,200 of wages paid a new employee who represents actual increase in employer's payroll. No. Passed.

(56) Tax Act: To substitute permanent tax cut in seven lowest brackets for $50 tax rebates. No. Failed.

(57) Tax Act: Final passage providing $12.7 billion in tax cuts and payments in 1977, change standard deductions, etc. Yes. Passed.

(59) To end debate on resolution establishing Select Committee on Ethics. Yes. Passed.

(60) To establish Select Committee on Ethics to issue interpretive regulations for new code of financial ethics. Yes. Passed.

(61) To recommit Judiciary Committee funding and earmark $300,000 to investigate subversive activities. No. Failed.

(62) To consider Supplemental Housing Auth. Act. Yes. Passed.

(63) Supplemental Housing to increase Section 8 contract term from 20 to 30 years. Yes. Passed.

(64) Supplemental Housing: Equal number of men and women on the National Commission on Neighborhoods: Yes. Passed.

(65) Supplemental Housing: To eliminate provision creating Commission on Neighborhoods. No. Passed.

(66) Supplemental Housing: Additional authority of $378 million for Section 8; $19.6 million for public housing; $10 million for urban homesteading. Yes. Passed.

(67) To raise overall loan limit of Small Business Administration. Yes. Passed.

(68) To prohibit importation of chrome from any nation which violates the human rights provisions of U.N. charter. Yes. Failed.

(69) To delay for 30 days effective date of Rhodesian Chrome bill. No. Failed.

(70) To allow prohibition on importation of Rhodesian Chrome. Yes. Passed.

(72) To allow and evaluate 90-day test televising of House proceedings. Yes. Passed.

(73) To consider (adopt rule) on Economic Stimulus. Appropriations. NV. Passed.

(74) To reduce countercyclical aid from $632.5 million to $250 million. No. Failed.

(75) To prohibit public works funds for projects unless at least 10 per cent of those employed had lived in area 30 days and been unemployed for at least 30 days. No. Failed.

(76) Economic Stimulus Appropriations: $23.3 billion. Yes. Passed.

(77) To consider (adopt rule) on Supplemental Appropriations for FY 1977. No. Passed.

(78) Supplemental Appropriations: $200 million for emergency assistance to low-income families to help with fuel bills. Yes. Passed.

(79) Supplemental Appropriations: To bar use of funds for salaries and expenses in connection with military pardon program. No. Passed.

(80) Supplemental Appropriations: To delete International Development Association funds. No. Failed.

(81) Supplemental Appropriations: $27.92 billion for various departments and programs. Yes. Passed.

(82) To consider (adopt rule) on National Aeronautics and Space Administration (NASA) Authorization Act. Yes. Passed.

(83) To authorize $4.05 billion for NASA, FY 1978. NV. Passed.

(84) To authorize $275 million for expanding public library services (two years). Yes. Passed.

(85) Unemployment Extension: To bar amendments to the rule. No. Passed.

(86) To consider (adopt rule) on Emergency Unemployment Compensation Extension Act. No. Passed.

(87) To extend Federal Supplemental Benefits (Unemployment Act) and reduce by one-half maximum number of FSB weeks. Yes. Passed.

(89) To amend Vocational Education Technical Amendments to remove $25 million limit on federal funds for state administration and no limit on local administration of vocational educational programs. No. Passed.

(90) Resolution protesting the lack of freedom of emigration from the Soviet Union. Yes. Passed.

(92) To consider (adopt rule) on Common Situs Picketing. Yes. Passed.

(93) Common Situs: To limit right to picket a common site to employees of persons "primarily engaged in the construction industry on the site." No. Passed.

(94) Common Situs: To exempt employers using "fast-track" or phased method of construction. No. Failed.

(95) Common Situs: To exempt certain residential builders. No. Passed.

(96) Common Situs: To require strike be approved by a majority of all workers affected, including union and non-union. No. Failed.

(97) Common Situs: Sarasin Substitute. Yes. Passed.

(98) Common Situs: Final passage, to permit picketing of an entire construction site even if the dispute was with one employer on the site. No. Failed.

(99) To approve journal of March 23. Yes. Passed.

(100) To authorize $85 million for Federal Aviation Administration. Yes. Passed.

(101) To authorize $868 million for National Science Foundation. Yes. Passed.

(102) To authorize $89.7 million supplemental funds for State Department activities. Yes. Passed.

(104) To create Select Committee on Congressional Operations. Yes. Passed.

(106) To provide that governmental reorganization plans become effective only if

both House and Senate approve the plan. Yes. Failed.

(107) To renew for three years the President's authority to submit reorganization plans to Congress, to become effective within 60 days unless rejected by either house. Yes. Passed.

(109) To consider (adopt rule) bill to continue the Select Committee on Assassinations. Yes. Passed.

(110) To withdraw authority given Assassinations Committee to bring, defend, or intervene in lawsuits. Yes. Passed.

(111) To go into secret session to continue consideration of Assassinations Committee resolution. No. Failed.

(112) Final passage, to continue Select Committee on Assassinations. Yes. Passed.

(113) To approve section of H. Res. 393 authorizing additional funds for House leadership offices. Yes. Passed.

(114) To authorize additional funds and personnel for House majority and minority leadership offices. Yes. Passed.

(115) Strategic and Critical Materials Stockpiling Act Amendments. Yes. Passed.

(116) To extend for one year authorizations for national cancer program; heart, blood vessel, lung and blood program, etc. Yes. Passed.

(117) To increase authorization for home health services demonstration and training programs. Yes. Passed.

(118) To extend for one year authorizations for grants to states for material and child health and crippled children services, etc. Yes. Passed.

(119) To restore to VA authorization to provide medical services on a fee basis to certain veterans outside VA facilities. Yes. Passed.

(120) To authorize $30 million (two years) for VA grants to states to construct veterans homes and nursing homes. NV. Passed.

(121) To change effective date of sick pay exclusion to Jan. 1, 1977, for taxpayers who wish to claim old sick pay exclusion. Yes. Passed.

(122) To adopt conference report on extending Federal Supplemental Benefits Program through Mar. 31, 1978, and reduce number of FSB weeks from 26 to 13. Yes. Passed.

(123) To consider (adopt rule) on Debt Collection Practices Act. Yes. Passed.

(124) To amend Consumer Credit Protection Act to regulate debt collectors' activities, including a prohibition on harassing and intimidating consumers and making false or misleading representations. No. Passed.

(125) To authorize $20 million for earthquake disaster relief activities in Romania. Yes. Passed.

(126) To authorize grants to states to help local and state educational agencies provide career education programs in elementary and secondary schools. Yes. Passed.

(127) To protect petroleum franchises from cancellation. Yes. Passed.

(128) To consider (adopt rule) on Federal Water Pollution Control Act Amendments. No. Passed.

(129) To authorize $18.2 billion (three years) for municipal wastewater treatment works. Yes. Passed.

(130) To approve journal of April 5 proceedings. Yes. Passed.

(131) To consider (adopt rule) on Increased U.S. Participation in International Banking Agencies. Yes. Passed.

(132) To require U.S. opposition to international banking loans for production of palm oil, citrus and sugar. No. Passed.

(133) To provide withdrawal of U.S. funds from international banking agencies if the agencies provided financial aid to Cuba, Vietnam, Laos or Cambodia. No. Failed.

(134) To increase to $5.2 billion (four years) U.S. participation in several international development lending institutions. Yes. Passed.

(135) To permit tax deductible business use of residence for day care services. Yes. Passed.

(136) To approve journal of April 18 proceedings. Yes. Passed.

(137) To amend Federal Rules of Criminal Procedure, changing language relating to secrecy of grand jury proceedings, cases tried by juries of less than 12 persons, and cases tried without a jury. Yes. Passed.

(138) To authorize $288 million for research, development and demonstration projects of Environmental Protection Agency. Yes. Passed.

(139) To consider (adopt rule) on Export Administration Act Amendments. Yes. Passed.

(140) To extend Export Administration Act through FY 1979. Yes. Passed.

(142) To adopt conference report on FY 1977 supplemental appropriations of $29 billion. Yes. Passed.

(143) Supplemental appropriations: $12.5 million for Uniformed Services University of the Health Sciences (trains doctors for the armed services). No. Passed.

(144) Supplemental appropriations: $20 million to reimburse local governments for snow removal costs in emergency areas. Yes. Failed.

(145) To approve journal of April 21 proceedings. NV. Passed.

(146) Defense: To prohibit procurement of Airborne Warning and Control System aircraft. No. Failed.

(147) To allow Treasury Department to earn interest on its idle tax and loan accounts by investing in interest-bearing securities. Yes. Passed.

(148) Defense: To deactivate 17,000 troops stationed overseas and reduce total force by 50,000. Yes. Failed.

(149) Defense: To place all future enlistees under congressional retirement plan. Yes. Failed.

(150) Defense: To prohibit use of funds to advertise the review program for less-than-honorable discharges. No. Passed.

(151) Defense: To authorize $35.9 billion for military procurement, research and development; to set active duty troop level at 2,090,425. Yes. Passed.

(152) To consider (adopt rule) First FY 1978 Budget Resolution. Yes. Passed.

(153) Budget Resolution: To increase revenue target by $900 million (Third 1977 Budget Resolution), by assuming deletion of business tax credits contained in Tax Reduction Act of 1977. Yes. Failed.

(154) Budget Resolution: To reduce targets for budget authority and outlays by $7 million by assuming deletion of funds for recent pay raise for Members of Congress. (Cancel cost-of-living raise). Yes, Passed.

(155) To resolve into committee of the whole House to consider First Budget Resolution. Yes. Passed.

(156) Budget Resolution: To transfer $7.95 billion from defense spending to reduce the national debt. No. Failed.

(157) Budget Resolution: To increase target for budget authority for defense by $4.15 billion and target for defense outlays by $2.3 billion. No. Passed.

(158) Budget Reolution: To affirm previous vote to increase defense targets. No. Passed.

(159) Budget Resolution: To transfer $6.5 billion from military spending into spending for domestic programs. No. Failed.

(160) Budget Resolution: To increase budget authority by $249 million for Law Enforcement Assistance Administration. No. Passed.

(161) Budget Resolution: To increase budget authority and outlays by $500 million in veterans' benefits and services. Yes. Passed.

(162) Budget Resolution: to reduce authority and outlays in natural resources by $100 with the intention of striking funds for water projects. Yes. Failed.

(163) Budget Resolution: To reduce outlays by $23 billion; deficit by $18 billion; assume permanent 10 percent across-the-board tax cut for individuals. No. Failed.

(164) Budget Resolution: to reduce outlays target by $55 billion; increase revenue targets by $11 billion; install 10 percent tax cut. No. Failed.

(165) Budget Resolution: Final passage, to set new budget at $505.7 billion; outlays at 466.7 billion; revenues at $398.1 billion; deficit at $69.6 billion. No. Failed.

(166) To approve journal of April 27 proceedings. No. Passed.

(167) To approve conference report, $318 supplemental appropriation for Section 8 housing. Yes. Passed.

(168) Funding ($2.5 million) for Assassinations Committee. Yes. Passed.

(169) To consider (adopt rule) on strip mining bill. NV. Passed.

(170) To resolve into committee of the whole. NV. Passed.

(171) To ban strip mining in Western alluvial valleys. NV. Passed.

(172) To require $300 million from Outer Continental Shelf oil leasing be diverted to pay for abandoned strip mine reclamation. NV. Failed.

(173) Motion to recommit Surface Mining Control and Reclamation Act. NV. Failed.

(174) Passage of strip mining bill. NV. Passed.

(175) Appropriations for U.S. territories. NV. Passed.

(176) To authorize $31.1 million for San Luis reclamation project. NV. Passed.

(177) To authorize $1.6 billion for Energy Research and Development Administration. NV. Passed.

(178) Veterans Administration Medical Facilities Acquisition Act, requiring tighter congressional oversight. NV. Passed.

(179) To permit state legislators to deduct away-from-home expenses in connection with legislative duties in 1976–77. NV. Passed.

(180) To extend Defense Production Act for two years. NV. Passed.

(181) To provide $440,000 for expenses of Select Committee on Congressional Operations. NV. Passed.

(182) To extend Export-Import Bank authority to coincide with new fiscal year; require consideration of human rights in authorizing loans; congressional review of nuclear-related loans. Yes. Passed.

(183) To strike language from Public Works Employment Act which would require spending money previously allocated for water resources projects. No. Failed.

(184) Final passage, Public Works Employment Act (jobs bill). Yes. Passed.

(185) To consider (adopt rule) on U.S. Railway Association Authorization for FY 1978. Yes. Passed.

(186) To require feasibility reports on verifying arms control agreements. Yes. Passed.

(187) To authorize $14.6 million for Arms Control and Disarmament Agency. Yes. Passed.

(188) To authorize $13 million for administrative expenses of U.S. Railway Assn. Yes. Passed.

(189) To adopt rule on Foreign Relations Authorizations. Yes. Passed.

(190) To provide $20.1 billion budget authority for economic stimulus package. Yes. Passed.

(191) To reduce authorization for U.N. Ambassador's office. No. Failed.

(192) To reduce U.S. contribution to United Nations. No. Failed.

(193) To change language of Foreign Relations Authorization to require that any new Panama Canal treaty must "protect the vital

interests of the United States," instead of "prohibiting use of funds for negotiations to surrender or relinquish the Panama Canal." No. Passed.

(194) To prohibit use of foreign relations funds to negotiate any aid for Vietnam. Yes. Passed.

(195) $1.68 billion for foreign relations operations. State Department, etc. Yes. Passed.

(197) Budget Resolution: To increase defense spending targets by $8 billion in authorizations, $2 billion in outlays. No. Failed.

(198) Budget Resolution: To increase defense authorization by $2 billion, outlays by $1 billion. No. Failed.

(199) Budget Resolution: To increase defense authorizations by $1 billion, outlays by $1 billion. No. Failed.

(200) Budget Resolution: To reduce defense authorizations $1.15 billion and outlays target by $300 million. No. Failed.

(201) Budget Resolution: To increase authority and outlays for veterans' benefits by $175 million, with intention to provide new pension for World War I veterans. No. Passed.

(202) Budget Resolution: To increase defense spending targets $3 billion and outlays $2 billion; decrease budget authority and outlays targets for interest on national debt by $2.1 billion; and increase revenue target $3.3 billion. No. Failed.

(203) Budget Resolution: To reduce outlays by $24 billion and the deficit by $21 billion and give across-the-board 10% tax reduction for individuals. No. Failed.

(204) Budget Resolution: Final passage, setting spending limit at $464.5 billion. No. Passed.

(205) To consider (adopt rule) on Housing and Community Development Act Amendments. Yes. Passed.

(206) To establish Eleanor Roosevelt National Historical Site at Hyde Park, N.Y. Yes. Passed.

(207) To authorize $1.1 billion through 1982 for programs under Education of the Handicapped Act. Yes. Passed.

(208) To extend deadline for Civil Rights Commission report on age discrimination. Yes. Passed.

(209) Higher Education Technical Amendments. Yes. Passed.

(210) To authorize funds and continue appointment of counsel to represent the House and its Commerce Committee in court case, U.S. versus AT&T. Yes. Passed.

(211) To recommit resolution dismissing the election of Rep. Gammage. No. Failed.

(212) To dismiss the election contest against Rep. Mikva. Yes. Passed.

(213) To dismiss the election contest against Rep. Pursell. Yes. Paseed.

(214) To approve journal of May 9. Yes. Passed.

(215) To prohibit Alaskan pipeline oil from being exported for two years. No. Passed.

(216) To increase authorization and extend Tinicum National Environmental Center. Yes. Passed.

(217) To authorize U.S. contribution to International Commission for Conservation of Atlantic Tunas. Yes. Passed.

(218) To authorize $13.5 million for Commercial Fisheries Development Act for FY 1978–80. Yes. Passed.

(219) To strike dual formula for allocating Community Development Block Grants. No. Failed.

(220) To approve journal of May 10. Yes. Passed.

(221) To require 25% of Urban Development Grant funds go to communities under 50,000 population. No. Passed.

(222) To delete sanctions against communities which refuse to participate in flood insurance programs (Housing and Community Development Act). No. Passed.

(223) Final passage, reauthorizing for three years the Housing and Community Development block grants. Yes. Passed.

(224) To adopt rule (consider) International Development and Food Assistance Act. Yes. Passed.

(225) To reduce U.S. funds by $25.8 million to international development agencies. Passed

(226) To remove tobacco as an agricultural commodity eligible for export financing under P.L. 480 program. Yes. Passed.

(227) To prohibit aid to Vietnam and Cuba under P.L. 480 program. No. Passed.

(228) To authorize $1.68 billion for international development and international disaster assistance. Yes. Passed.

(229) To consider (adopt rule) on Intergovernmental Antirecession Assistance Act. Yes. Passed.

(230) To resolve into Committee of the Whole. Yes. Passed.

(231) To base countercyclical fund on state and local effort, instead of unemployment rates. Yes. Failed.

(232) To extend countercyclical aid program and revise formula. No. Passed.

(233) To authorize $560,000 for National Committee on Atmosphere and Oceans. Yes. Passed.

(234) To extend funding authority for Seal Beach National Wildlife Refuge. Yes. Passed.

(235) To increase authorization for Canal Zone Biological Area. No. Passed.

(236) To extend voluntary insurance program of Fisherman's Protective Act. No. Passed.

(237) To adopt conference report, Tax Reduction and Simplification Act, providing tax cuts in FY 1977, 1978 and 1979. Yes. Passed.

(238) To add Intergovernmental Antirecession Assistance Act to the tax bill. No. Passed.

(240) Final passage, to create a Young Adult Conservation Corps and other youth employment measures. Yes. Passed.

(241) To extend and fund Drug Enforcement Administration. Yes. Passed.

(242) To authorize $67 million for Securities and Exchange Commission. Yes. Passed.

(243) To authorize $10 million for water resources planning and management. Yes. Passed.

(244) To authorize $5.9 million for U.S. Water Resources Council. Yes. Passed.

(245) To authorize continued funding for 18 river basin projects. No. Passed.

(246) To authorize survey of Medicine Bow National Forest. Yes. Passed.

(247) To allow Secretary of Transportation to provide aviation insurance to cover losses from riots, civil disorders, hijackings and similar acts. Yes. Passed.

(248) To authorize "such sums as necessary" for the administration of federal disaster programs in fiscal year 1978. Yes. Passed.

(249) To authorize $2.5 million a year for administration of Deepwater Port Act. Yes. Passed.

(250) To authorize feasibility study of installing solar energy equipment in House of Representatives buildings. No. Passed.

(251) To authorize $225 million for fiscal year 1977 and "such sums as necessary" in 1978 to make loans and grants to drought-affected areas. Yes. Passed.

(252) To adopt conference report, First fiscal year 1978 Budget Resolution, including an outlays target of $460.95 billion. No. Passed.

(254) To consider (adopt rule) on National School Lunch and Child Nutrition Amendments. Yes. Passed.

(255) To limit number of children in each State who could participate in summer feeding program to 200% of children ages 5–17 in families with poverty-level incomes. No. Failed.

(256) To limit number in local summer feeding program to local number eligible to reduced-price meals in regular school programs. No. Failed.

(257) To give local school districts choice of cash or commodities for school lunch programs. No. Failed.

(258) Final passage, to extend the summer feeding program of School Lunch Act, revising provisions to control fraud and abuse. Yes. Passed.

(259) To consider (adopt rule) on International Security Assistance for FY 1978. Yes. Passed.

(260) To consider (adopt rule) on Federal Employees Political Activities Act. Yes. Passed.

(261) To assert federal employee's right to refrain from forming, joining, or participating in any organization or group which encourages political activity. Yes. Passed.

(262) To prohibit job referrals by Members of Congress, etc., for job applicants seeking employment with Civil Service. No. Failed.

(263) To limit debate on Federal Employees Political Activities Act. Yes. Failed.

(264) To prohibit federal employees from running for federal or full-time state or local offices. No. Failed.

(265) To prohibit intimidation or coercion of federal employees by an employee organization in regard to political activity. Present. Passed.

(266) To delete language from Political Activities bill relating to criminal penalties for extortion. Present. Failed.

(267) To rise from consideration of Political Activities Act. Yes. Passed.

(268) To extend Juvenile Justice and Delinquency Prevention Act for three years. Yes. Passed.

(270) To extend for three months the Privacy Protection Study Commission. NV. Passed.

(271) To increase by 6% the disability compensation to veterans and for dependency and indemnity compensation to their survivors. NV. Passed.

(272) To increase disability compensation for some veterans who have suffered loss of paired extremities. NV. Passed.

(273) To extend automobile assistance allowance to disabled veterans of World War I. NV. Passed.

(274) To authorize $10.54 million for U.S. Commission on Civil Rights for FY 1978. NV. Passed.

(275) To allow closed conference meetings on Military Procurement Authorizations for FY 1978. NV. Passed.

(276) To delete $700,000 for military education and training programs in Argentina and prohibit arms sales to that country. NV. Failed.

(277) To resolve into Committee of the Whole to consider International Security Assistance. Yes. Passed.

(278) To delete $100 million for Southern Africa Special Requirements Fund (International Security). No. Failed.

(279) To delete requirements for "majority ruled" for receiving funds from Southern Africa Special Requirements Fund. No. Passed.

(280) To reduce authorized ceiling for FY 1978 military sales by $102.8 million. Yes. Failed.

(281) To recommit International Security Assistance bill with instructions to permit the President to lift arms embargo against Turkey. No. Failed.

(282) International Security: To authorize $3.2 billion in U.S. grant military assistance, foreign military credit sales and guarantees, and security supporting assistance. No. Passed.

(283) To consider (adopt rule) on Clean Air Act Amendments. Yes. Passed.

(284) To resolve into Committee of the Whole to consider Clean Air Act Amendments. Yes. Passed.

(285) To permit governors to grant variances in clear air standards for stationary sources such as power plants. Yes. Failed.

(286) To permit governors, after public hearings, to grant variances so new or modified sources (industries and power plants) could exceed allowable limits for sulfur oxide and particles for 5 percent of days of the year. No. Passed.

(287) To postpone new compliance provisions for areas that have not attained health standards for clean air until 60 days after EPA's required one-year study of non-attainment policy. No. Failed.

(288) To resolve into Committee of the Whole to consider Clean Air Act Amendments. Yes. Passed.

(289) To modify auto emissions standards. Yes. Failed.

(290) To put off standards for auto hydrocarbon emissions until 1980 and allow higher emissions of carbon monoxide and nitrogen oxides. No. Passed.

(291) Final passage, Clean Air Act Amendments. No. Passed.

(292) Peace Corps Authorization (rule). Yes, Passed.

(293) Marine Mammal Protection, porpoise quota amendment. No. Passed.

(294) Marine Mammal, porpoise kill penalties. No. Failed.

(295) Marine Mammal Protection, final passage. Yes. Passed.

(296) Peace Corps Authorization, final passage. Yes. Passed.

(297) Rule on Department of Energy. Yes. Passed.

(298) To establish National Energy Board. No. Failed.

(299) To strike authority to regulate wellhead price of natural gas. No. Passed.

(300) To remove DOE oversight of individual leases. Yes. Failed.

(301) To allow congressional veto of DOE regulations. Yes. Passed.

(302) Resolved into Committee of the Whole. Yes. Passed.

(303) Prohibit DOT employees from taking jobs in private regulated industry. Yes. Failed.

(304) "Sunset" date of 1982 for DOE. Yes. Passed.

(305) Final passage, Department of Energy. Yes. Passed.

(306) To increase Federal Crop Insurance Corp. stock limit from $100 million to $150 million. No vote. Passed.

(307) To appraise soil and water conservation resources and develop long-range policy for orderly development. NV. Passed.

(308) To extend Federal Energy Agency through FY 1978 and give FEA authority to require power plants to convert to coal. No. Passed.

(309) To exempt Members of Congress from the taxes of states and localities other than those from which they were elected. No. Passed.

(311) To repeal language in Military Construction bill relating to Davis-Bacon Act on projects to which it would not otherwise apply. No. Failed.

(312) To authorize $3.5 billion for FY 1978 for military construction and family housing. Yes. Passed.

(313) To resolve into Committee of the Whole to consider Federal Employees Political Activities Act. Yes. Passed.

(314) To bar use of organization funds for political purposes, etc. No. Failed.

(315) To clarify language pertaining to use of dues. Yes. Passed.

(316) To eliminate all exceptions under which persons in restricted categories may participate in political campaigns. No. Failed.

(317) To define extortion as including coercion through use of authority and the use of fear or violence. No. Failed.

(318) To prohibit federal employees from soliciting campaign funds from fellow employees. No. Failed.

(319) Final passage, Federal Employees Political Activities Act of 1977. Yes. Passed.

(320) Conference report authorizing $4.7 million for Kennedy Center repairs. Passed.

(321) To provide $7.52 billion budget authority for Treasury Department, Postal Service, Executive Office of the President, and various independent agencies. Yes. Passed.

(322) To prohibit SST operations at New York unless SST met FAA noise standards for subsonic aircraft. No. Failed.

(323) To provide $5.9 billion budget authority for Department of Transportation and related agencies. Yes. Passed.

(324) To consider, adopt rule) on Victims of Crime Act. Yes. Passed.

(325) To consider (adopt rule) on Interior Appropriations for FY 1978. Yes. Passed.

(326) To increase funding for Energy Research and Development Administration. No. Failed.

(327) Final passage, to appropriate $9.5 billion for Department of the Interior and related agencies. Yes. Passed.

(328) To consider (adopt rule) on Legal Services Corp. Act Amendments. Yes. Passed.

(329) To prohibit legal service attorneys from engaging in political activity or running for public office. No. Failed.

(331) Conference report to extend Export Administration Act. Yes. Passed.

(332) To prohibit use of State Department funds for U.S. diplomatic personnel assigned to Cuba or the Swiss Embassy in Cuba. No. Failed.

(333) To resolve into Committee of the Whole to consider State-Justice-Commerce-Judiciary appropriations. Yes. Passed.

(334) To increase LEAA authorization from $600 million to $704.5 million. No. Failed.

(335) To appropriate $7.62 billion for State-Justice-Commerce-Judiciary, Yes. Passed.

(336) To authorize $900,000 for investigation of past and prospective changes in world economy. Yes. Passed.

(337) To make changes in Supplemental Security Income benefits, etc. Yes. Passed.

(338) Public Works: To delete funding for 16 water projects. Yes. Failed.

(339) Public Works: To provide $10.2 billion in budget authority for FY 1978. Yes. Passed.

(340) To consider (adopt rule) on HUD and related agencies appropriations. Yes. Passed.

(342) HUD: To require 75% of new low income housing units be for elderly and handicapped. NV. Failed.

(343) HUD: To strike provision preventing Comprehensive Planning Grant funds from going to cities of over 50,000. Yes. Failed.

(344) To prohibit use of VA funds to adjudicate claims or pay benefits to persons whose military discharges have been upgraded under President's Special Discharge Review program. No. Passed.

(345) HUD: To reduce total budget authority by 1% for nonentitlement programs. No. Failed.

(346) HUD: Final passage, $70.23 billion for HUD, NASA, Veterans Administration. Yes.

(347) To resolve into Committee of the Whole to consider Labor-HEW appropriations. NV. Passed.

(348) Labor-HEW: To reduce funding for OSHA. No. Failed.

(349) Labor-HEW: To reduce total appropriations by $563.5 million, affecting 11 health, education and elderly programs. No. Failed.

(350) Labor-HEW: To prohibit HEW from requiring the busing of students beyond the schools nearest their homes. No. Passed.

(351) To insist on human rights considerations in activities of International Banking Agencies. No. Failed.

(352) Labor-HEW: To prohibit use of federal funds to pay for abortions. No. Passed.

(353) To consider (adopt rule) on Agriculture Appropriations. Yes. Passed.

(354) Agriculture: To prohibit use of funds for subsidy payments to sugar processors. No. Failed.

(355) To direct House conferees to insist on "sunset" clause for Department of Energy. No. Passed.

(356) Agriculture: To reduce appropriation for food stamp program by $673 million. No. Failed.

(357) Agriculture: $12.7 new budget authority for agricultural, rural development, and domestic and international food programs. Yes. Passed.

(358) Military Construction: To consider (adopt rule). Yes. Passed.

(359) Military Construction: To provide new budget authority of $2.8 billion for military construction and family housing. Yes. Passed.

(360) To consider (adopt rule) on Foreign Assistance Appropriations. Yes. Passed.

(361) Foreign Assistance: To cut $31 million from the $120 million for the UN Development Program. No. Failed.

(362) Foreign Assistance: To delete $50 million for development of Sahel region of Africa. No. Failed.

(363) Foreign Assistance: To delete $100 million for the Southern African Special Requirement Fund. Yes. Failed.

(364) Foreign Assistance: To prohibit use of $700,000 earmarked for training military forces in Argentina. Yes. Passed.

(365) Foreign Assistance: To prohibit use of funds from being used directly or through multilateral lending institutions in Uganda, Cambodia, Laos or Vietnam. Yes. Passed.

(366) Foreign Assistance: To prohibit payment of repatriations to Vietnam. Yes. Passed.

(367) Foreign Assistance: To resolve into Committee of the Whole. Yes. Passed.

(369) To reduce U.S. contributions to the International Development Association by $477 million to $473 million. No. Failed.

(370) Foreign Assistance: Motion to limit debate. No. Failed.

(371) Foreign Assistance: To reinstate funds for military assistance for Nicaragua. No. Passed.

(372) Foreign Assistance: To oppose international loans to expand sugar production, palm oil, or citrus crops. No. Passed.

(373) Foreign Assistance: To prohibit use of funds for trade or assistance to Cuba. No. Passed.

(374) Foreign assistance: To reduce funds by 5 per cent. No. Passed.

(375) Foreign Assistance: Final passage, $7 billion for foreign aid, international lending institutions, and operations of State Department. No. Passed.

(376) Defense Appropriations: To consider (adopt rule). Yes. Passed.

(378) Defense: To delete $65 million for Lance missile. No. Failed.

(379) To resolve into Committee of Whole to consider Legal Services Corp. Act. Yes. Passed.

(380) Legal Services: To reduce authorization from $238.7 million to $175 million. No. Failed.

(381) Legal Services: To require Office of Management and Budget approve any budget request made by the corporation. Yes. Failed.

(382) Legal Services: To prohibit corporation-funded lawyers from becoming involved in school desegregation cases. Yes. Passed.

(383) Legal Services: To terminate funding for Legal Services Corp. on Sept. 30, 1979. No. Failed.

(384) Legal Services: To prohibit legal services attorneys from providing legal assistance in cases involving homosexual rights. No. Passed.

(385) Legal Services: Motion to recommit with instructions. No. Failed.

(386) Legal Services Corp.: To authorize $492 million for two years. Yes. Passed.

(387) To approve journal of June 27. Yes. Passed.

(388) To deny the Oct. 1, 1977, cost-of-living adjustments to persons, including Members of Congress, who received pay raises on March 1. Yes. Passed.

(389) Defense Appropriations: To delete $1.5 billion for the production of five B–1 bombers. No. Failed.

(390). To reduce production of A–10 attack aircraft from 144 to 96 planes. Yes. Failed.

(392) Legislative Appropriations: Adoption of the rule. No. Passed.

(393) Legislative: To rescind March 1 pay raise for Members of Congress, the Vice President, White House staff and other executive branch officials. No. Failed.

(394) Legislative: To provide salary expense funds for the Joint Committee on Defense Production. Yes. Failed.

(395) Legislative: To delete $55 million for extension of the west front of the Capitol building. No. Failed.

(396) Legislative Appropriations: Final passage, $928.8 million for operation of the legislative branch and related agencies and extension of the Capitol building. No. Passed.

(397) Defense Appropriations: To resolve into Committee of the Whole. Yes. Passed.

(398) Defense: To delete $26 million for development of a new engine for F–14 fighter. No. Failed.

(399) Defense: To delete provision to phase out civilian technicians employed by the National Guard. Yes. Passed.

(400) Defense: To prohibit use of funds to review the status of MIAs in Southeast Asia. Yes. Failed.

(401) Defense: To strike prohibition against military retirees receiving both retirement pay and salary for a federal job. No. Passed.

(402) Defense Appropriations: Final passage, $110.6 billion in new budget authority and transfers from other accounts. Yes. Passed.

(403) To designate week of Sept. 18 "National Lupus Week." Yes. Passed.

(404) To authorize memorial to 56 signers of the Declaration of Independence. Yes. Passed.

(405) To consider (adopt rule) Indian Claims Filing Extension. Yes. Passed.

(406) Veterans: To extend eligibility for specially adapted housing grants to veterans who have lost one upper and one lower extremity. Yes. Passed.

(407) Veterans: To provide 7 percent cost-of-living increase in VA benefits and other beneficial adjustments. Yes. Passed.

(408) To extend for two years the limit under which the Federal Government, as trustee for the Indians, may file suit for monetary damages. Passed.

(409) Defense: To adopt conference report, $36.1 billion for Military Procurement and Research and Development. Yes. Passed.

(410) To prohibit subsidies for shipment of grain to the Soviet Union in U.S. ships. No. Failed.

(411) To authorize $553.6 million for maritime programs, including subsidies for vessel construction and operation. Yes. Passed.

(412) To consider (adopt rule) National Consumer Cooperative Bank Act. No. Passed.

(413) Consumer Bank: To resolve into Committee of the Whole. No. Passed.

(414) Consumer Bank: Substitute to establish a two-year pilot. Yes. Failed.

(415) Consumer Bank: To terminate the Act on Dec. 31, 1982, transferring loans and contracts to another agency. No. Passed.

(416) Consumer Bank: To establish a National Consumer Cooperative Bank to make loans at market interest rates to consumer cooperatives. No. Passed.

(417) To establish a permanent Select Committee on Intelligence. Yes. Passed.

(418) To consider (adopt rule) Federal Mine Safety and Health Act. Yes. Passed.

(419) To resolve into Committee of the Whole to consider Mine Safety Act. Yes. Passed.

(420) Mine Safety: To keep Interior Secretary as administrator of the Act and retain safety enforcement in Interior, instead of Labor Department. No. Failed.

(421) Mine Safety: Substitute bill, transferring to Labor Department, etc. No. Failed.

(422) Mine Safety: To permit states to administer non-coal mine health and safety programs. No.

(423) Mine Safety: Final passage, transferring to Labor Department, combining coal and non-coal standards, setting mandatory dollar penalties for violations. Yes. Passed.

(424) To authorize $8.1 million for Federal Election Commission. Yes. Passed.

(425) To proclaim Thanksgiving week "National Family Week." Yes. Passed.

(426) To direct Department of Commerce to determine the paperwork burden of the 1974 agricultural census and take steps to reduce it by 40 percent. Yes. Passed.

(427) To increase salaries of director and deputy director of Office of Management and Budget. Yes. Passed.

(428) To approve additional supergrade positions for Administrative Office of the U.S. Courts. Yes. Failed.

(429) To authorize 100 additional hearing examiners (administrative law judges). Yes. Passed.

(430) To reduce time federal employee must serve to retain life and health insurance benefits during retirement. Yes. Passed.

(431) To adopt conference report, $6.2 billion in new budget authority for Department of Transportation. Yes. Passed.

(432) To adopt conference report, $7.7 billion in new budget authority for State-Justice-Commerce-Judiciary. Yes. Passed.

(433) Conference report, $69.5 billion in new budget authority for Department of Housing and Urban Development and independent agencies, including Veterans Administration. Yes. Passed.

(434) To strike from HUD appropriations $20.7 million for Jupiter Orbiter Probe. No. Failed.

(435) HUD: To insist on House language prohibiting use of VA funds to adjudicate claims or pay benefits to individuals receiving upgraded discharges under President's program. No. Passed.

(436) Conference report authorizing $4 billion for National Aeronautics and Space Administration. Yes. Passed.

(437) Conference report authorizing $3.7 billion for military construction and family housing. Yes. Passed.

(438) Conference report establishing a Young Adult Conservation Corps. Yes. Passed.

(439) To consider (adopt rule) Agricultural Act of 1977. Yes. Passed.

(440) To approve journal of July 19, 1977. Yes. Passed.

(441) Conference report to authorize funds (61.9 million) for water resources research and saline water conversion. Yes. Passed.

(442) Conference report, extending and authorizing $3.4 billion for federal health services, biomedical research, and health planning and resources development programs. Yes. Passed.

(444) Farm: To set the payment limitation for wheat, feed grains, rice and cotton at $20,000. Yes. Failed.

(445) Farm: To prohibit non-farm corporations from receiving payments on farm production. Yes. Failed.

(446) Defense: To allow closed meetings on Defense Appropriations when classified information is under consideration. Yes. Passed.

(447) Conference report authorizing $1.65 billion for international development and food assistance. Yes. Passed.

(448) Conference report, authorizing $3.2 billion for international security assistance and foreign military sales. Yes. Passed.

(449) Farm: To limit to $50,000 the annual payments sugar producers could receive under any farm program. No. Failed.

(450) To establish a federal-state program to regulate coal surface mining and require the reclamation of mined lands. Yes. Passed.

(451) To resolve into Committee of the Whole to consider Agricultural Act. Yes. Passed.

(452) Farm: Establish standards for the milk content of ice cream. Yes. Passed.

(453) Farm: To establish a mandatory grain reserve of up to 35 million tons. Yes. Failed.

(454) Conference report, $10.3 billion in public works and energy research appropriations. Yes. Passed.

(455) To consider (adopt rule) Black Lung Benefits Reform Act. Yes. Passed.

(456) Conference report, $990 million for activities of the Legislative Branch and related agencies. No. Passed.

(457) Conference report, to recede from disagreement with Senate amendment providing $225,000 for Joint Committee on Defense Production. Yes. Failed.

(458) Farm: To reduce peanut price supports from Agricultural Act level of $420 per ton. Yes. Failed.

(459) Farm: To provide that Title I of the P.L. 480 program give priority to financing food and fiber commodities, thus restoring tobacco to the program. No. Passed.

(460) Farm: Conference report appropriating $12.7 billion for agricultural, rural development, food stamp, domestic and international food programs. Yes. Passed,

(461) To resolve into Committee of the Whole to resume consideration of Agricultural Act. No. Passed.

(462) Farm: To bar use of food stamps to buy foods designated by Secretary of Agriculture as having negligible nutritional value, such as chewing gum, ice cubes, carbonated beverages, etc. No. Failed.

(463) Farm: To limit food stamp expenditures in 1978 to $5.6 billion. No. Failed.

(464) Farm: To set limit of food stamp program expenditures at $5.85 billion for FY 1978; $6.16 billion for FY 1979; $6.19 billion for FY 1980; and $6.24 billion for FY 1981. No. Passed.

(465) Farm: To exempt strikers from Kelly amendment (barring food stamps for strikers) if they had households with children under age 16. No. Failed.

(466) Farm: To exclude strikers' households from Kelly Amendment if they contained children under 16, or disabled or elderly dependents. Yes. Failed.

(467) Farm: To bar strikers from food stamp program unless the household was eligible before strike. No. Failed.

(468) Farm: To restore to the bill the purchase requirements provisions of the current food stamp program. No. Failed.

(469) Farm: to provide for government recovery of excess allocation of food stamps. Yes. Failed.

(470) Farm: To resolve into Committee of the Whole to consider Agricultural Act. Yes. Passed.

(472) Farm: To require USDA to implement any additional work/workfare projects which state agencies request. No. Failed.

(473) Farm: To eliminate purchase requirement and tighten eligibility standards for food stamps. Yes. Passed.

(475) Farm: To delete establishment of a wheat and wheat foods research and nutrition education program. No. Passed.

(475) Farm: To add sugar beets and sugar cane to list of commodities eligible for government price supports. Yes. Passed.

(476) Farm: To provide price supports of up to 13.5 cents a pound for sugar beets and sugar cane for 1977. Yes. Failed.

(477) Farm: Motion to recommit Agricultural Act with instructions to set payment limitation of $30,000 for wheat, feed grains, rice and sugar. No. Failed.

(478) Farm: Final passage, Agricultural Act extending major commodity programs for four years, etc. Yes. Passed.

(479) To approve journal of July 28. Yes. Passed.

(480) To adjourn from Aug. 5 to Sept 7. Yes. Passed.

(481) To establish two positions on Capitol Police Force. Yes. Passed.

(482) To extend several programs of HUD, including Farmers Home Administration rural housing program. Yes. Passed.

(483) To bar amendments and close debate on the rule on National Energy Act. Yes. Passed.

(484) To consider (adopt rule) National Energy Act, permitting one day of debate. Yes. Passed.

(485) To affirm vote on the rule, National Energy Act. Yes. Passed.

(486) To consider (adopt rule) Fair Labor Standards Amendments. Yes. Passed.

(487) To resolve into Committee of the Whole to consider National Energy Act. Yes. Passed.

(488) To adopt rule on conference report, Department of Energy Organization Act. Yes. Passed.

(489) Energy: Motion to recommit conference report. No. Failed.

(490) Energy: Conference report, to establish a cabinet-level Department of Energy. Yes. Passed.

(491) Energy: To reconcile differing versions of the utility weatherization program reported by the Commerce and Banking committees. Yes. Passed.

(492) Energy: To direct Department of Transportation to study the fuel savings potential of off-highway recreational vehicles and recommend efficiency standards. Yes. Passed.

(493) Energy: To direct DOT to study energy saving potential of increased bicycle use. No. Passed.

(494) Energy: To extend Davis-Bacon Act to construction work funded by grants for energy conservation in municipal buildings. Yes. Passed.

(495) Energy: To authorize $65 million in grants to state and local government for implementing energy-saving maintenance. No. Passed.

(496) Labor, HEW; Conference report, to appropriate $60.2 billion for Labor-HEW-Related Agencies. Yes. Passed.

(497) Labor-HEW: Amendment to conference report stating that none of the bill's funds shall be used to perfrom abortions except where the life of the mother would be endangered, etc. Yes. Passed.

(498) Energy: To resolve into Committee of the Whole. Yes. Passed.

(499) Energy: To remove price controls from new on-shore natural gas as of April 30, 1978. No. Failed.

(500) Energy: To delete provision extending federal antitrust jurisdiction to the siting of fossil fuel electric generating plants. No. Passed.

(501) Energy: To delete the van pooling program for federal employees. No. Passed.

(502) Energy: To resolve into Committee of the Whole. Yes. Passed.

(503) Energy: To impose additional 5-cent-a-gallon gasoline tax—half going for mass transportation, half for improving bridges, roads and highways. No. Failed.

(504) Energy: To increase gasoline tax by four cents a gallon in two stages. No. Failed.

(505) Energy: To permit oil and gas producers to recover part of their oil equalization taxes if they invested more than 25% of gross production in exploration and production. No. Failed.

(506) Energy: To transfer all revenue from crude oil equalization tax in 1978 to Social Security Trust Fund. No. Failed.

(507) To provide $302,499 for investigations and studies by the permanent Select Committee on Intelligence. Yes. Passed.

(508) Energy: To increase the earned income credit instead of providing rebates and tax credits for the crude oil equalization tax. No. Failed.

(509) Energy: To delete exemptions from the oil and gas users tax that were provided for new plants which are exempt from the coal conversion program. No. Passed.

(510) Energy: Anderson substitute for National Energy Act. No. Failed.

(511) Energy: To delete the federal van pooling program. No. Passed.

(512) Energy: To recommit National Energy Act with instructions to delete crude oil equalization tax. No. Failed.

(513) Energy: Final passage, National Energy Act, providing tax credits for converting boilers to coal and weatherizing homes. It also increased the price of natural gas, set a national policy for regulating electric utilities, required efficiency labeling of appliances and cars, and set a program for fuel conservation in federal facilities. Yes. Passed.

(516) To adopt conference report on defense appropriations ($109 billion in new budget authority). Yes. Passed.

(518) Amendment to conference report to delete $1.4 billion to build five B–1 bombers. Yes. Passed.

(520) Budget resolution: To reduce outlays ceiling by $52 billion and increase revenue floor by $8 billion to achieve a balanced budget. No. Failed.

(522) Budget: To reduce revenue floor by $175 million to provide tax credit for tuition of full-time college and vocational school students. Yes. Passed.

(523) Budget: To reduce budget authority ceiling by $109 million and outlays ceiling by $108 million to reduce U.S. food commodity support programs for South Korea. No. Failed.

(524) Budget: To lower budget ceiling $144 million and outlays ceiling $110 million to reduce U.S. military and economic aid to S. Korea. Yes. Failed.

(525) Budget: Adoption of the Second FY 1978 Budget Resolution setting outlay ceiling at $459.5 billion and a projected deficit of $61.6 billion. No. Passed.

(526) To consider (adopt rule) ERDA National Security Authorization for FY 1978. Yes. Passed.

(527) To consider (adopt rule) ERDA Civilian R&D Authorization for FY 1978. Yes. Passed.

(528) To consider (adopt rule) Federal Banking Agency Audit Act. Yes. Passed.

(529) To consider (adopt rule) Age Discrimination in Employment Act Amendment. Yes. Passed.

(530) To consider (adopt rule) Earthquake Hazards Reduction Act. Yes. Passed.

(531) To consider (adopt rule) National Climate Program Act. Yes. Passed.

(532) To authorize $210 million for national earthquake hazards reduction program. Yes. Passed.

(533) To establish a federal National Climate Program Office to develop a climate prediction program. Passed.

(535) To authorize $302 million for salaries and expenses of Nuclear Regulatory Commission. Yes. Passed.

(536) To designate 16 areas containing 1.2 million acres in western U.S. for inclusion in the National Wilderness Preservation System. Yes. Passed.

(537) To require VA to review any discharge upgraded under President's Special Discharge Review Program before extending benefits to the veteran. Passed.

(538) To increase educational assistance allowances for all veterans' educational programs by 6.6 per cent. Yes. Passed.

(539) To authorize special incentive pay for VA physicians and dentists. Yes. Passed.

(540) To repeal requirement that VA make random inspections of mobile homes purchased with VA loans. Yes. Passed.

(541) To increase liability of persons who cause oil spills and establish $200 million fund to pay for clean-up and damages caused by oil pollution. Yes. Passed.

(542) To authorize cost-of-living increases under the Retired Servicemen's Family Protection Plan. Yes. Passed.

(545) To adopt conference report on Second FY Budget Resolution setting an outlay ceiling of $458.3 billion and projecting a deficit of $61.3 billion. No. Passed.

(546) Minimum Wage: To delete indexing minimum wage to the average production worker's wage. No. Passed.

(547) Minimum Wage: To establish Minimum Wage Study Commission to study the effects of increases in minimum wage, the indexing procedure, youth subminimum wage, etc. Yes. Passed.

(548) Minimum Wage: To reinsert into bill the indexing provision. Yes. Failed.

(549) Minimum Wage: To retain 50% tip credit. No. Passed.

(550) Minimum Wage: To continue exemption for seasonal, recreational and theme parks. No. Passed.

(551) Minimum Wage: To allow employers to pay 85% of minimum wage to youths under 19 for first six months. No. Failed.

(552) Minimum Wage: To allow Secretary of Labor to waive minimum wage between June 1 and October 15 for children under age 12 in hand harvested agriculture, under certain protective conditions. Yes. Passed.

(553) Minimum Wage: To increase enterprise threshold and expand definition of small businesses to include all businesses. No. Failed.

(554) Minimum Wage: To increase enterprise coverage threshold to $500,000, but retain existing definition of small business. Yes. Passed.

(555) Minimum Wage: Final passage, increasing minimum wage to $2.65 in 1978; $2.85 in 1979, and $3.05 in 1980. Yes. Passed.

(557) To adopt conference report on Food and Agriculture Act, extending food stamp and Food for Peace Programs for four years, new payment limits for commodities, new target prices and loan levels, revising allotment, set-aside and disaster payments. Yes. Passed.

(558) Conference report, to increase U.S. participation in International Banking Agencies. Yes. Failed.

(559) To provide $323.5 million in federal payments and $1.4 billion from D.C. treasury for the District of Columbia government for FY 1978. Yes. Passed.

(561) To permit filing for black lung benefits with Labor Department for only one year after the bill took effect. No. Failed.

(562) To prohibit miners from collecting compensation on other disabilities while they are receiving total disability payments for black lung disease. No. Failed.

(563) To permit mine operators to question a black lung claim based solely on x-rays by the claimant's physician. No. Failed.

(564) Final passage, to establish an industry-financed Black Lung Disability Insurance Fund to pay all claims filed after June 30, 1973. Yes. Passed.

(565) To consider (adopt rule) Increasing the Temporary Debt Limit. Yes. Passed.

(566) To increase the debt limit to $775 billion from $700 billion. No. Failed.

(567) To approve journal of Sept. 19 proceedings. Yes. Passed.

(568) To increase district office space allowance from 1,500 to 2,500 square feet. NV. Passed.

(569) To cut ERDA funds for Clinch River Project from $150 million to $17 million to close out the project. Yes. Failed.

(570) To cut ERDA funds for Clinch River Project to $17 million and delay project for one year. NV. Failed.

(571) To consider (adopt rule) Medicare-Medicaid Antifraud and Abuse Amendments. Yes. Passed.

(572) To consider (adopt rule) Nuclear Antiproliferation Act. Yes. Passed.

(573) To consider (adopt rule) Federal Insecticide, Fungicide and Rodenticide Act. Yes. Passed.

(574) To resolve into Committee of the Whole House. Yes. Passed.

(575) To require private industry to pay part of construction costs of Clinch River Breeder Reactor demonstration project. Yes. Failed.

(576) To earmark $26 million to purchase four megawatts of solar photovoltaic equipment for the Federal Government and to provide $10 million to develop mass production techniques for photovoltaic equipment. Yes. Passed.

(577) To approve journal of Sept. 21 proceedings. Yes. Passed.

(579) To approve journal of Sept. 22 proceedings. NV. Passed.

(580) To authorize $6.6 billion for ERDA civilian research and development programs, including $150 million for Clinch River project. Yes. Passed.

(581) To amend Medicare and Medicaid to establish stricter penalties for fraud and abuse. Yes. Passed.

(582) To raise the mandatory retirement age for private workers to 70. Yes. Passed.

(583) To establish separate retirement funds for D.C. police, firefighters, teachers and judges, etc. Yes. Passed.

(584) To restate the charter of George Washington University. Yes. Passed.

(585) To appropriate estimated cost of water and sewer service provided by D.C. to Federal Government. Yes. Passed.

(586) To prohibit use of any loans in D.C. Borrowing Authority for acquisition of land or beginning construction of a convention center without prior congressional approval. No. Failed.

(587) To extend until October, 1979, the D.C. interim authority to borrow funds from the U.S. Treasury to finance capital improvements. No. Passed.

(588) D.C. Pretrial Detention Amendments: To include armed robbery as a crime for which defendants could be denied bail and be detained pending trial. Yes. Passed.

(589) To extend Child Abuse Prevention and Treatment Act and strengthen protective and treatment services. Yes. Passed.

(590) To express the sense of Congress that the Postal Service should not reduce the frequency of mail delivery service. Yes. Passed.

(592) Second on a motion to pass Black Hills Claim. Yes. Passed.

(594) To adjust Senate language on abortion (exemptions to the ban on federal funding of abortions in cases of rape, incest, where mother's life is endangered, and certified as "medically necessary"). No. Failed.

(595) To consider (adopt rule) Status of Indochina refugees. Yes. Passed.

(596) To increase the authorization for staff allowances of former presidents from $96,000 to $150,000 per year for 30 months following termination of funds under Presidential Transition Act. Failed.

(597) To allow Court of Claims to determine the merits of the Sioux claim that the U.S. took the Black Hills in violation of the Fifth amendment. Yes. Failed.

(598) To direct a five-year study of nine areas in Montana for possible inclusion in the National Wilderness Preservation System. Yes. Failed.

(599) To direct GAO audits of Internal Revenue Service and the Bureau of Alcohol, Tobacco and Firearms. Yes. Passed.

(601) To establish a 16-member Select Committee on Population to study causes and effects of changes in world population of U.S. options on global population policies. NV. Passed.

(602) To give Select Committee on Assassinations power to defend lawsuits and make certain applications to courts. Yes. passed.

(603) To consider (adopt rule) on Increasing Temporary Debt Limit. Yes. Passed.

(604) To increase the temporary debt limit to $700 billion. No. Passed.

(605) To establish safeguards against U.S. nuclear fuel exports being diverted and used in nuclear weapons or explosive devices. Yes. Passed.

(607) To resolve into Committee of the Whole to consider H.R. 6566. Yes. Passed.

(608) To prohibit use of any funds in Energy Research and Development Administration National Security Authorizations for production or deployment of neutron weapons. Yes. Failed.

(609) To authorize $2.67 billion for ERDA's national security nuclear energy programs. No. Passed.

(610) To approve recissions of $21.09 million in appropriations for foreign military credit sales and $75 million for Federal Buildings Fund. Yes. Passed.

(611) To resolve into Committee of the Whole to consider H.R. 7010, Victims of Crime Act. Yes. Passed.

(612) To compensate only victims of crime older than age 62. No. Failed.

(613) To approve journal of Sept. 29 proceedings. Yes. Passed.

(614) To reduce to 25 percent from 50 percent the amount the federal government would contribute to state programs for victims of crime. Yes. Passed.

(615) To require eligible states to insure that proceeds from articles, interviews or statements by an individual formally accused or convicted of a crime be put into an escrow fund for benefit of the victim or survivors if the accused is found guilty. No. Passed.

(616) Final passage, to provide federal assistance to state victim compensation programs and federal compensation to victims of violent crimes in federal enclaves to cover medical bills and lost wages. No. Passed.

(617) To increase staff allowance for former presidents from $96,000 a year to $150,000. Yes. Passed.

(619) To require president to present a plan for transferring the functions of Council on Wage and Price Stability to other federal agencies. No. Failed.

(620) To extend Council on Wage and Price Stability for two years. Yes. Passed.

(622) To adopt amended Senate bill increasing the temporary debt limit to $752 billion. No. Passed.

(623) To close debate and bar amendments to National Labor Reform Act. Yes. Passed.

(624) To consider (adopt rule) H.R. 8410, to National Labor Reform Act. Yes. Passed.

(625) Conference report, reauthorizing Community Block Grants, etc. Yes. Passed.

(626) To resolve into Committee of the Whole to consider Labor Reform Act. Yes. Passed.

(627) Labor reform: To delete provision which directed NLRB to promulgate regulations to insure that employees have equal opportunity to obtain information pertaining to unionization from organizers and employers. No. Failed.

(628) Labor reform: To insure employers the right to present their side of a unionization argument whenever and wherever union representatives present their views. Yes. Passed.

(629) Labor reform: To permit judicial review of NLRB's failure to implement or promulgate regulations within a reasonable period of time. Yes. Passed.

(630) Labor reform: To increase time limit for holding representational elections from 15 days to 28 days. No. Failed.

(631) Labor reform: To increase, under certain conditions, the time limit for representational elections from 15 days to 25 days. Yes. Passed.

(632) Labor reform: To strike provision permitting the Labor Secretary to prohibit government contracts for three years with companies or unions that willfully violate NLRB orders. No. Failed.

(633) Labor reform: To grant Labor Secretary authority to remove or reduce the period of time a company or union is barred from receiving federal contracts because of violations of NLRB orders. Yes. Passed.

(634) To approve journal of Oct. 5 proceedings. Yes (10–0–1). Passed, 364–16.

(635) To consider (adopt rule) Marine Protection, Research and Sanctuaries Authorization. Yes. Passed.

(636) To close debate, bar amendments to the rule on Navigation Development Act. Yes. Passed.

(637) Labor reform: To delete provision which would authorize NLRB to award employees compensation for lost pay due to an employer's refusal to bargain on the first contract. Yes. Failed.

(638) Labor reform: To recommit Labor Reform Act with instructions to change election set-aside provisions. No. Failed.

(639) Labor reform: Final passage, National Labor Reform Act, setting limits within which elections must be held, strengthening penalties for ignoring NLRB orders or violating labor laws, and authorizing NLRB to summarily affirm Administrative Law Judge decisions in unfair labor practice cases. Yes. Passed.

(641) To recommit conference report appropriating $6.8 billion for foreign economic and military assistance programs. Yes. Passed.

(642) To table request for a conference on Fair Labor Standards Act amendments. No. Failed.

(643) To consider (adopt rule) House Administrative Reorganization. Yes. Failed.

(644) To recede from the abortion language House had adopted in the conference report on Labor-HEW Appropriations. No. Passed.

(645) To add to Hyde amendment abortion language, which prohibited federal funding for abortions except when mother's life was endangered, a second exception for medical procedures necessary for prompt treatment of forced rape or incest. No. Passed.

(646) To authorize $561 million for research and development of cruise missile program and $151.6 million for F–14A aircraft and parts. Yes. Passed.

(648) To adopt conference report establishing stricter penalties for Medicare and Medicaid fraud. Yes. Passed.

(649) Amendments to strike from Federal Trade Commission Amendments the section authorizing class action suits. Yes. Passed.

(650) Motion to recommit FTC Amendments with instructions to provide for congressional review and veto of FTC regulations. No. Passed.

(651) To authorize $133 million for FTC and make certain changes in its enforcement of rules and orders. Yes. Passed.

(652) To authorize replacement of locks

and dam 26 on Mississippi River. Yes. Passed.

(653) To approve Senate compromise abortion language which dropped the "medically necessary" exception. Instead, would have prohibited federal funding of abortions except in cases where the mother's life is endangered, in cases of rape or incest, and in cases where "the mother or fetus would suffer serious health damage." No. Failed.

(654) To adopt conference report on Export-Import Bank Amendments Yes. Passed.

(655) Resolution to disapprove President Carter's proposal for reorganization of the Executive Office of the President. No. Failed.

(656) To authorize General Accounting Office to audit the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and non-monetary policy functions of the Federal Reserve System. Yes. Passed.

(657) To authorize $11.8 million for marine protection programs. Yes. Passed.

(659) To prohibit HEW from implementing, for 18 months, the FDA's proposed ban on saccharin. Yes. Passed.

(660) To revise law governing customs procedures and penalties for customs violations. Yes. Passed.

(661) To make numerous clarifying, conforming, clerical and technical changes to provisions of the Tax Reform Act of 1976. No. Passed.

(662) To exempt disaster payments for the 1977 wheat, feed grains, upland cotton and rice crops from the 1977 payment limitations ($20,000 per crop, $55,000 for rice). Yes. Passed.

(664) To provide for a five-year Agriculture Department study of nine areas in Montana for possible inclusion in the National Wilderness Preservation System. Yes. Passed.

(665) To appropriate $6.8 billion for foreign aid programs, international financial institutions, and State Department operations (conference report). Yes. Passed.

(666) To allow the president to waive the prohibition of direct aid to Mozambique and Angola under certain conditions. Yes. Failed.

(667) To strike from a House-passed bill restriction reducing aid to the Philippines. No. Failed.

(669) To consider (adopt rule) Energy Transportation Security Act. Yes. Passed.

(670) To define as "fair and reasonable rates" in Cargo Preference Bill as those no more than 50% higher than world market rates for carrying oil. No. Passed.

(671) Final passage, Cargo Preference Bill, which would require that U.S.-flag ships carry 9.5% of imported oil by 1982. No. Failed.

(672) To provide $9.1 million to build model intercultural centers at Georgetown and Tufts universities. No. Passed.

(673) To delete language which would prohibit spending appropriated funds for the Clinch River Breeder Reactor project unless authorization bill was enacted. No. Passed.

(674) To instruct conferees on Legal Services Corp. Act amendments to insist on prohibiting LSC-paid lawyers from handling cases on the desegregation of any elementary or secondary school or school system. Yes. Passed.

(676) Minimum wage: To adopt conference report to increase minimum wage in steps to $3.35 by 1981. Yes. Passed.

(677) To authorize $6.2 billion for civilian energy research and development programs. NV. Passed.

(678) To increase supplemental appropriations for Small Business Administration disaster loans by $675 million. Yes. Passed.

(679) To end debate on adding $1.4 billion for B-1 bomber in Supplemental Appropriations bill. No. Passed.

(680) Motion that the Committee rise from consideration of Supplemental Appropriations. Yes. Failed.

(681) To add $1.4 billion to supplemental appropriations for production of five B-1 bombers. No. Failed.

(682) Motion that the Committee rise from consideration of Supplemental Appropriations bill. Yes. Failed.

(684) To order a second to a motion to suspend the rules and pass H.R. 7442, Utility Pole Attachments. Yes. Passed.

(685) To permit expenditure of up to $30 million per year for three years to acquire more land for the Appalachian Trail. Yes. Passed.

(686) To make it a federal offense to use children under age 16 in the production of pornographic materials, with penalties up to 10 years in prison, a $10,000 fine, or both. Yes. Passed.

(687) To permit accredited law school libraries to serve as depositories of government publications. Yes. Passed.

(688) To extend the effective date of several provisions of the Tax Reform Act of 1976. Yes. Passed.

(689) To authorize acquiring suitable U.S. built mariner-class vessels in exchange for vessels in the National Defense Reserve Fleet that are scheduled for scrapping. Yes. Passed.

(690) To increase from 50% to 80% the federal contribution for operating expenses of commuter rail services that have been adversely affected by the Regional Rail Organization Act. Yes. Passed.

(691) To implement treaties with Mexico and Canada to permit transfer of convicted prisoners. Yes. Passed.

(692) To instruct House conferees to agree with Senate provisions that imposed criminal penalties for the transportation, sale, or distribution of pornographic material depicting children. Yes. Passed.

(693) To provide $7.2 billion supplemental budget authority for various departments and programs, including $4.5 billion for EPA construction grants, $1.4 billion for SBA disaster loans, and $80 million for Clinch River Breeder Reactor. Yes. Passed.

(694) To authorize $253.6 million for Environmental Protection Agency research and development programs. Yes. Passed.

(696) To consider (adopt rule) Social Security Financing Amendments. No. Passed.

(697) Social security: To delete provision requiring social security coverage of federal, state, and local government employees, etc. in 1982 and instead require a study recommending by Jan. 1980 a fair plan of universal coverage. Yes. Passed.

(698) Social security: To affirm the action taken on the previous vote. Yes. Passed.

(699) Social security: To raise social security payroll tax rates faster than the bill required in order to permit more gradual increases in the taxable wage base. No. Failed.

(700) Social security: To delete provision granting the Social Security System standby authority to borrow from the federal general revenues whenever trust fund reserves drop below 25% of annual outgo. No. Failed.

(701) Social Security: To eliminate the minimum benefit from the social security program. No. Failed.

(703) Social security: To resolve into Committee of the Whole House for consideration of H.R. 9346. Yes. Passed.

(704) Social Security: To phase out outside earnings ceiling (the maximum annual wage that a beneficiary age 65 to 72 may earn without losing any benefits) by 1982. No. Passed.

(705) Social Security: Motion to recommit with instructions to mandate social security coverage for federal employees. No. Failed.

(706) Social Security: Final passage, to raise social security payroll taxes by increasing the taxable wage base for employers and employees, beginning in 1978, and increasing employer and employee tax rates, beginning in 1981. Yes. Passed.

(707) To adopt conference report to transfer administration of coal and non-coal mining health and safety programs from Interior Department to the Labor Department. Yes. Passed.

(708) To adopt conference report, extending the Summer Food Program through FY 1982 and revising it in order to control fraud and abuse. Yes. Passed.

(709) To authorize the Speaker of the House to devise and implement a system for closed circuit broadcasting of House floor proceedings to offices and committees. Yes. Passed.

(710) To consider (adopt rule) Bankruptcy Law Revision. Yes. Passed.

(711) To resolve into Committee of the Whole House to consider Bankruptcy Law Revision. No. Passed.

(712) To delete provisions of Bankruptcy Law Revision which would establish an independent bankruptcy court system. No. Passed.

(713) Motion that the committee rise from consideration of Bankruptcy Law Revision. Passed.

(716) To make domestic raisins subject to the federal marketing order. Yes. Passed.

(717) To extend Regulation Q through Dec. 15, 1978, set guidelines of the Federal Reserve Board to follow in determining monetary policy, etc. Yes. Passed.

(718) To extend until April 30, 1978, Federal Reserve Bank authority to purchase U.S. obligations of up to $5 billion directly from the Treasury. Yes. Passed.

(719) To extend the Select Committee on Ethics until the end of the 95th Congress, or competition of its official business. Yes. Passed.

(720) To express the sense of the House that the Government of Korea should extend full and unlimited cooperation to the House investigation of whether Members of the House accepted anything of value from the Korean Government or its agents. Yes. Passed.

(721) To denounce acts by the Government of South Africa which suppress expression and violate individual human rights. Yes. Passed.

(722) To recommit conference report on Maritime Authorization with instructions to insist that anti-rebate provisions take effect immediately instead of eight months after enactment. Yes. Failed.

(723) To expedite EPA's registration and reregistration of pesticides. NV. Passed.

(725) To second motion to suspend rules and pass Congressional Salary Deferral. Yes. Failed.

(726) To uphold religious right to refrain from joining unions. Yes. Passed, 400-7.

(727) To increase the interest rates charged by Small Business Administration (SBA) from 3 percent to 5 percent on disaster loans between $40,000 and $250,000. Yes. Failed.

(728) To make employees of House Beauty Shop eligible for employee benefits. No. Passed.

(729) To express the sense of the House that the president should appoint a 15-member Commission on World Hunger. Yes. Passed.

(731) To permit the District of Columbia government to disburse the proceeds of revenue bonds to private colleges and universities in D.C. Yes. Passed.

(732) To adopt conference report authorizing $2.6 billion for ERDA's nuclear weapons program. No. Passed.

(734) To prohibit Overseas Private Investment Corp. from making any loans or guaranteeing or insuring any borrowings of the

National Finance Corp. of Panama without prior congressional approval. No. Failed.

(736) To require that at least 50% of all Overseas Private Investment Corp. insurance, reinsurance, guarantees and financing activities go to U.S. small business. No. Passed.

(738) To adopt rule on Labor-HEW Conference report. NV. Passed.

(739) To concur in Senate compromise abortion language. No. Failed.

(740) To consider (adopt rule) Continuing Appropriations for FY 1978. Yes. Passed.

(742) To approve journal of Nov. 3 proceedings. Yes. Passed.

(747) To authorize $325 million (5 years) to help state and local educational agencies provide career education programs in elementary and secondary schools. Yes. Passed.

(748) To resolve into Committee of the Whole House to consider H. Res. 827. Disapproving Reorganization Plan No. 2. Yes. Passed.

(749) To disapprove plan to consolidate U.S. Information Agency and Bureau of Educational and Cultural Affairs into a new International Communications Agency. No. Failed.

(751) To concur in Senate compromise abortion language. No. Failed.

(753) To close debate and prohibit amendments on a motion to recommit Supplemental Appropriations bill to conference. No. Failed.

(754) To recommit Supplemental Appropriations to conference with instructions to increase funding for Amtrak to $18 million. Yes. Passed.

(755) To affirm the vote on Amtrak appropriations. Yes. Passed.

(756) To order the previous question, thereby closing debate and barring amendments to a motion to instruct conferees on Social Security Financing Amendments. No. Passed.

(757) To instruct conferees to insist on phasing out the outside earning provisions of Social Security Financing Amendments by 1982. No. Failed.

(759) To provide an additional $10,000 in FY 1977 for foreign travel on official business relating to the investigation of Korean-American relations. Yes. Passed.

(761) To express sense of Congress that any national health planning guidelines should recognize and take into account the special problems of rural health care, to assure quality health care for rural residents. Yes. Passed.

(762) To consider (adopt rule) Continuing Appropriations for FY 1978. Yes. Passed.

(763) To further limit abortion language already voted on by requiring that rapes be forced, that incidents of rape or incest be reported promptly, for abortions to be federally funded. No. Failed.

(764) To concur to a Senate amendment to conference report, Supplemental Appropriations, to provide $200 million for the Community Services Administration's Crisis Intervention Program. Yes. Passed.

(765) To concur in a Senate amendment to rescind $462 million for production of two B-1 bombers. Yes. Failed.

(767) To adopt conference report on H.R. 9418, which repealed an existing requirement that medical schools had to reserve positions in their third year classes for ratios of Americans studying in medical schools abroad. Yes. Passed.

(768) To extend Legal Services Corporation for three years. Yes. Passed.

(769) To consider (adopt rule) Continuing Appropriations for FY 1978. Yes. Passed.

(770) To concur in Senate compromise language on abortion requiring that "rape and incest be reported promptly" to qualify as exception to prohibition of federal funds for abortion. No. Failed.

(771) To consider (adopt rule) ERDA Civilian Authorization for FY 1978. Yes. Passed.

(772) To adopt conference report, authorizing $64 million for operations of the Securities and Exchange Commission. Yes. Passed.

(773) To adopt conference report making it illegal for an SEC-registered corporation or other domestic concern to bribe a foreign official, etc. Yes. Passed.

(774) To consider (adopt rule) Continuing Appropriations for FY 1978. Yes. Passed.

(775) To amend compromise abortion language so the final version stipulated that exceptions permitted federally funded abortions only for cases where childbirth would cause a woman "severe and long-lasting" health damage "when so determined by two physicians," and for "medical procedures necessary for the victims of rape and incest, when such rape and incest have been reported promptly to a law enforcement agency or public health service." No. Passed.

(776) To approve the journal of Dec. 7 proceedings. NV. Passed.

(777) To adopt rule conference report on Clean Water Act. NV. Passed.

(778) To adopt conference report on Clean Water Act, authorizing $25.7 billion, including $24.5 billion for sewage treatment construction grants for FY 1978 through 1982. NV. Passed.

(780) To adopt rule on conference report, Social Security Financing Amendments. NVA. Passed.

(782) To adopt conference report, Social Security Financing Amendments. The bill raised social security payroll taxes by increasing the rates and taxable wage base for both employers and employees, beginning in 1979. It also stabilized the system's benefits structure, provided equal treatment for women, and increased the outside earnings ceiling in steps to $6,000 by 1982. NVA. Passed.

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1978 VOTING RECORD

(2) Amendment to clarify authority for warrantless search and seizure under Fish and Wildlife Improvement Act, specifying that federal officer must have reasonable grounds to believe offense has been committed. NV. Passed.

(3) Final passage, Fish and Wildlife Improvement Act, establishing a uniform policy of game law enforcement. NV. Passed.

(5) To authorize State Department to acquire a bust of Gen. George C. Marshall. Yes. Passed.

(6) To require Civil Service Commission to comply with state court orders or property settlements in connection with divorces or legal separations of civil service employees. Yes. Passed.

(7) To give civil service retirement credit to all federal employees of Japanese ancestry for time spent in World War II internment camps. Yes. Passed.

(8) To increase federal loan guarantee for fishing vessels from 75% to 87.5% of actual costs. Yes. Passed.

(10) To permit federal tax court judges to withdraw from tax court pension system any time before benefits begin to accrue. Yes. Passed.

(11) To authorize $6 million over three years for the Administrative Conference of the United States. Yes. Passed.

(12) To make it a federal offense to use children under age 16 for the production of pornographic materials, or to sell or distribute these materials. Yes. Passed.

(13) To consider (adopt rule) Outer Continental Shelf Lands Act Amendments. Yes. Passed.

(15) Breaux Substitute for Outer Continental Shelf Lands Act Amendments. No. Failed.

(16) Minority substitute for Outer Continental Shelf Lands Act Amendments. No. Failed.

(18) To authorize $1 million for the Office of Rail Public Counsel. Yes. Passed.

(19) To require ConRail to assume the bankrupt railroads' obligations to pay medical and life insurance premiums for 13 employees who retired before ConRail took over assets of the railroads. Yes. Passed.

(20) To allow supplemental or all-cargo air carriers to qualify for new air cargo certificates immediately, rather than wait one year. Yes. Passed.

(21) To delete Interior Department authority for core and test drilling under Outer Continental Shelf Lands Act. No. Passed.

(22) Continental Shelf: To eliminate lease cancellation compensation for investment of lessee if lease is canceled. No. Passed.

(23) Continental Shelf: To limit the use of new bidding systems, to at least 10% of newly leased areas, but not more than 30%. No. Failed.

(24) Continental Shelf: To require that new bidding system be use for at least 20%, but not more than 50%, of newly leased acreage. No. Passed.

(25) To resolve into Committee of the Whole House to consider Bankruptcy Law Revision. Yes. Passed.

(26) To strike provision of Bankruptcy Law Revision to establish an independent bankruptcy court and make bankruptcy judges federal lifetime judges. No. Failed.

(27) Continental Shelf: To give discretionary authority to Justice Department to review proposed OCS lease sales for possible antitrust implications. Yes. Passed.

(28) Continental Shelf: To strike provisions of the bill requiring random selection of tracts to be used under new bidding systems. Yes. Passed.

(29) To approve the journal of the last day's proceedings. Yes. Passed.

(30) Continental Shelf: To strike provisions establishing documentation, registry and manning requirements for vessels and rigs on the OCS. No. Failed.

(31) Continental Shelf: To require that all building and rebuilding of vessels, platforms and rigs for the OCS would have to be performed in the U.S. No. Failed.

(33) Continental Shelf: To stipulate that 20% of OCS revenues, up to $200 million per year, be shared with the coastal states most directly affected by offshore development. No. Passed.

(34) Continental Shelf: To exempt states which receive OCS revenue sharing funds from existing requirements that they have federally approved Coastal Zone Management Plans. No. Failed.

(35) Continental Shelf: Final passage, to provide specific statutory guidelines, standards and procedures for the development of Outer Continental Shelf oil, gas and other resources. Yes. Passed.

(36) To adjust Medicaid payment rates for Puerto Rico, Guam and the Virgin Islands to conform to those of the 50 States. Yes. Passed.

(37) To consider (adopt rule) on H.R. 8336, Chattahoochee River Recreation Area. Yes. Passed.

(39) Timber Sales: To direct the Secretary of Agriculture to require sealed bids on all sales of publicly owned timber. No. Failed.

(40) Timber Sales: To authorize the Secretary of Agriculture to select the bidding method which best insures fair competition, fair value to the government for timber, economic stability for timber-dependent communities, and prevention of collusive practices. Yes. Passed.

(42) To authorize 145 new federal judgeships. Yes. Passed.

(43) To consider (adopt rule) on H.R. 6805, Office of Consumer Representation. Yes. Passed.

(44) Glickman Substitute: To establish an Office of Consumer Counsel in each of the 23 departments and major agencies. No. Failed.

(46) To resolve into Committee of the Whole House to consider Office of Consumer Representation Act. Yes. Passed.

(47) Consumer: To extend to all agencies the requirement that the President be notified 30 days before the Office of Consumer Representation sought judicial review of an agency action. No. Failed.

(48) Consumer: To eliminate provision which exempted labor injunction suits, certain proceedings of the National Labor Relations Board, and activities of the Federal Mediation and Conciliation Service. No. Failed.

(49) Consumer Representation: To strike provision which exempted from the bill proceedings of the Department of Agriculture, Farmers Home Administration and Federal Crop Insurance Corp. No. Failed.

(50) Consumer Representation: Final passage, to create an independent, nonregulatory Office of Consumer Protection to represent the interests of consumers before federal agencies and the courts. No. Failed.

(52) To recommit with instructions Redwood National Park Amendments. No. Failed.

(53) To expand Redwood National Park in California by 48,000 acres. Yes. Passed.

(54) To adopt conference report on Endangered American Wilderness Act, designating 17 areas, including 1.3 million acres in the western U.S., for inclusion in the National Wilderness Preservation System. Yes. Passed.

(55) To resolve into Committee of the Whole House to consider H.R. 2664, Black Hill Claim. Yes. Passed.

(56) To instruct House conferees on Additional Federal Judgeships to insist on House provision regarding merit selection of federal district court judges. Yes. Passed.

(57) To resolve into Committee of the Whole House to consider Chattahoochee River Recreational Area. Yes. Passed.

(58) To require State of Georgia to take over ownership and operation of Chattahoochee River National Park in 1980. No. Failed.

(59) Final passage, to acquire up to 6,300 acres and develop and operate Chattahoochee River National Park. Yes. Passed.

(60) To limit number of commissioned officers in the military and establish uniform standards for appointment, promotion and retirement. Yes. Passed.

(62) To adopt conference report on black lung benefits. Yes. Passed.

(63) To create National Aquaculture Plan to facilitate development of commercial aquaculture in U.S. No. Passed.

(65) To authorize $250 million from Highway Trust Fund to states for repair of potholes and highway damage. Yes. Passed.

(66) To authorize the president to call separate White House conferences on the arts and the humanities. Yes. Passed.

(67) To extend Alcohol and Drug Abuse Education through FY 1983, and to authorize $67.6 million for five years for its programs. Yes. Passed.

(68) To authorize $5 million for the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota. Yes. Passed.

(71) To table a motion to recede and concur with a Senate amendment rescinding $462 million for production of two B–1 bombers. No. Failed.

(72) To concur in a Senate amendment to rescind $462 million for production of two B–1 bombers. Yes. Passed.

(73) To consider (adopt rule) IMF Supplementary Financing Facility. Yes. Passed.

(76) IMF: To specify that salary limits would apply only to the Supplementary Financing Facility and not to all IMF representatives. Yes. Passed.

(77) IMF: To authorize the U.S. to invest $1.8 billion in the Supplementary Financing Facility of the International Monetary Fund. Yes. Passed.

(78) Overseas Private Investment Corp. (OPIC): To prohibit OPIC loans or guarantees to the National Finance Corp. of Panama unless approved by the House of Representatives. No. Failed.

(79) OPIC: To prohibit OPIC from insuring or financing any project to establish or expand production of palm oil, sugar, or citrus crops for export. No. Passed.

(80) OPIC: Final passage, to extend OPIC through FY 1980. Yes. Passed.

(81) To consider (adopt rule) Grazing Fee Moratorium. Yes. Passed.

(82) To consider (adopt rule) Wichita Indian Tribal Lands. Yes. Passed.

(83) To place one-year moratorium on increases in public lands grazing fees. Yes. Passed.

(84) To accept Roncalio substitute to Wichita Indian Tribal Lands, defining affiliated bands, etc. NV. Passed.

(85) Final passage, to permit Wichita Indian Tribe to file its land claims against the United States with the Indian Claims Commission, etc. NV. Passed.

(87) To approve action of District of Columbia Council amending D.C. Home Rule Charter so D.C. voters can initiate laws and disapprove council acts by referendum. Yes. Passed.

(88) To approve D.C. Council action permitting D.C. voters to recall elected officials. Yes. Passed.

(90) To abolish diversity of citizenship as a basis for federal court jurisdiction. No. Passed.

(91) To authorize $290 million through FY 1981 and make substantive changes in Federal Trade Commission functions. No. Failed.

(92) To authorize funds ($3.18 million for three years) for American Folklife Center of Library of Congress. No. Passed.

(94) To consider (adopt rule) D.C. Representation in Congress. Yes. Passed.

(95) To resolve into Committee of the Whole House to consider D.C. Representation in Congress. Yes. Passed.

(96) To resolve into Committee of the Whole House to consider D.C. Representation in Congress (day after preceding vote). Yes. Passed.

(97) To propose a constitutional amendment to provide the District of Columbia with representation in Congress on the same basis as states. Yes. Passed.

(99) To approve the journal of the previous day's proceedings. Yes. Passed.

(100) To provide $400,000 for Veterans' Affairs Committee investigations and studies. Yes. Passed.

(101) To provide $275,000 for District of Columbia Committee investigations and studies. Yes. Passed.

(102) To provide $49,500 for Rules Committee investigations and studies. Yes. Passed.

(104) To approve journal of previous day's proceedings. Yes. Passed.

(105) To designate May 3, 1978, as Sun Day. Yes. Passed.

(107) To extend the authority of Commissioner of Education to waive certain requirements regarding the use of grants for 13 school districts allowing them to continue programs begun under ESEA Title I studies. Yes. Passed.

(108) To consider (adopt rule) on Increasing the Temporary Debt Limit. Yes. Passed.

(110) To strike provision requiring that subsequent debt ceilings be set in concurrent budget resolutions provided for in the Budget and Impoundment Control Act. Yes. Passed.

(111) To increase the temporary debt ceiling to $824 billion. No. Failed.

(112) To authorize Southwestern Power to purchase $13.1 million in electric power to fulfill its delivery contracts. Yes. Passed.

(113) To provide $2 million for Public Works and Transportation Committee studies and investigations. Yes. Passed.

(115) To dispense with further proceedings under the call of the House. Yes. Passed.

(116) To approve Journal of previous day's proceedings. Yes. Passed.

(117) To table a motion to reconsider the vote approving Journal of the previous day's proceedings. Yes. Passed.

(118) To close debate on adoption of the rule on Full Employment and Balanced Growth Act. Yes. Passed.

(119) To consider (adopt rule) Full Employment and Balanced Growth Act (Humphrey-Hawkins). Yes. Passed.

(120) To table a motion to reconsider vote adopting the rule on Humphrey-Hawkins. Yes. Passed.

(121) To resolve into Committee of the Whole House to consider Humphrey-Hawkins. Yes. Passed.

(123) To approve Journal of the previous day's proceedings. Yes. Passed.

(125) Humphrey-Hawkins: Anti-inflation substitute to require the President to include in the annual economic report specific price stability goals and policies and programs designed to achieve those goals. Yes. Passed.

(126) Humphrey-Hawkins: To add a specific goal of reducing inflation to 3% by 1983. No. Failed.

(127) Humphrey-Hawkins: To require President in the annual ecnomic report to measure all employment, and to count separately public service employees. No. Passed.

(128) Humphrey-Hawkins: To add to bill's economic goals a goal of 100% parity of income for farmers at the marketplace by 1983. Yes. Passed.

(129) Budget Recission: To approve recissions of $40.2 million in appropriations for the military assistance program; $10.1 million in borrowing authority for the Federal Home Loan Bank Board, and $5 million in appropriations for contributions to international peacekeeping efforts. Yes. Passed.

(131) To order a second on motion to suspend the rules and pass Rate of Interest on Individual Retirement Bonds, making their interest yield consistent with Series E savings bonds. Yes. Passed.

(132) To authorize Civil Service Commission to conduct three-year experiment in the use of compressed and flexible work schedules. No. Failed.

(133) To establish a uniform federal policy on part-time employment and to require federal agencies to establish part-time career employment programs. Yes. Passed.

(134) To provide Congress opportunity to review proposed changes in the level of nationwide postal services before they take effect. Yes. Passed.

(135) To recommit with instructions Judiciary Committee Funding. No. Failed.

(136) To recommit with instructions Select Assassinations Committee Funding. No. Failed.

(137) To provide $2.5 million for investigations and studies of the Select Assassinations Committee. Yes. Passed.

(139) To dispense with further proceedings under the call of the House. Yes. Passed.

(140) To read in full the Journal of the previous day's proceedings. No. Failed.

(141) To approve journal of the previous day's proceedings. Yes. Passed.

(142) To table a motion to reconsider the vote approving the journal of the previous day's proceedings. Yes. Passed.

(143) To suspend the rules and pass Absaroka-Beartooth Wilderness Act. Yes. Passed.

(144) To order second to motion to suspend the rules and pass Travel Expenses of Government Officials Paid by Private Foundations. Yes. Passed.

(145) To order a second to motion to suspend the rules and pass Home Production of Beer and Wine. Yes. Passed.

(146) To designate 904.500 acres of the Custer and Gallatin National Forests in Mon-

tana as the Absaroka-Beartooth Wilderness. Yes. Passed.

(147) To broaden the exception to prohibition against private foundation reimbursement of government officials' expenses, permitting reimbursement for foreign and domestic travel. Yes. Passed.

(148) To expand Redwoods National Park by 48,000 acres, etc. Yes. Passed.

(150) To approve journal of previous day's proceedings. Yes. Passed.

(151) To resolve into Committee of the Whole House to consider Full Employment and Balanced Growth Act (Humphrey-Hawkins). Yes. Passed.

(152) Humphrey-Hawkins: To add the specific economic goal of a balanced budget by 1983 and to mandate the president to pursue policies consistent with that goal. No. Failed.

(153) Humphrey-Hawkins: To declare one purpose of the Act to be the achievement of a balanced budget consistent with achievement of the unemployment goals. Yes. Passed.

(154) Humphrey-Hawkins: To end debate on Title I at a specified time. Yes. Passed.

(155) Humphrey-Hawkins: To add goal of a permanent reduction in individual federal income taxes by 10% a year for three years, accompanied by a 1% reduction in corporate taxes annually for three years and an increase in the corporate surtax exemption to $100,000. No. Failed.

(156) Humphrey-Hawkins: To resolve into Committee of the Whole House to consider the bill. Yes. Passed.

(157) Humphrey-Hawkins: To add to the bill's national priority programs the implementation of programs already established by law as national priorities, such as the removal of architectural barriers to the handicapped. Yes. Passed.

(158) Humphrey-Hawkins: To omit certain persons from the unemployment statistics used for purposes of the Act, such as those unemployed because of strikes; those unemployed for less than four weeks; those not seeking full-time employment; those who voluntarily left their last jobs; and those who have jobs but for their own convenience are waiting to start work. No. Failed.

(159) Humphrey-Hawkins: To strike the enacting clause and thus kill the bill. No. Failed.

(160) Humphrey-Hawkins: To require the President, in carrying out the Act, to consider the impact on the national economy of all provisions of the U.S. Code and Federal Code of Regulations. No. Failed.

(161) Humphrey-Hawkins: To strike requirement that Joint Economic Committee submit its own concurrent resolution to Congress. Yes. Passed.

(162) Humphrey-Hawkins: To terminate the Act on Sept. 30, 1983, unless extended by Congress. No. Failed.

(163) Humphrey-Hawkins: To accept Republican substitute prohibiting use of public service jobs to meet unemployment goal. No. Failed.

(164) Humphrey-Hawkins: Final passage, to set 1983 unemployment target of 4% of all workers 16 and older and 3% for adults age 20 or more; 1983 target of 100% parity in farm prices; reduce income taxes 10% a year for each of three years; reduce corporate taxes and increase corporate surtax exemption; to achieve a balanced budget consistent with goals of the act; to require the President to include in annual economic report specific price stability goals and policies and programs to achieve anti-inflation goals. Yes. Passed.

(166) To order a second on a motion to suspend the rules and pass Middle Income Student Assistance Act. No. Failed.

(167) To provide $375,000 for an investigation and study of Korean-American relations. Yes. Passed.

(168) To consider (adopt rule) Postal Service Act Amendments. Yes. Passed.

(170) To condemn the March 16 kidnapping of former Italian Premier Aldo Moro. Yes. Passed.

(171) To consider (adopt rule) Public Debt Limit Extension. Yes. Passed.

(172) To extend the existing temporary debt limit to $752 billion through July 31, 1978. No. Passed.

(174) To consider (adopt rule) Federal Election Campaign Act Amendments. Yes. Failed.

(175) To abolish compulsory retirement for most federal employees and raise the mandatory retirement age for non-federal workers from 65 to 70. Yes. Passed.

(176) To resolve into Committee of the Whole House to consider Postal Service Act Amendments. Yes. Passed.

(177) To appropriate $300 million in FY 1978 for the Federal Disaster Assistance Administration. Yes. Passed.

(178) To consider (adopt rule) Shipping Act Amendments of 1978. Yes. Passed.

(179) To resolve into Committee of the Whole House to consider Shipping Act Amendments of 1978. Yes. Passed.

(180) Final passage, Shipping Act Amendments, stiffening penalties for illegal rebates in the shipping industry. Yes. Passed.

(181) To disagree with Senate amendments to Raisin Marketing Order Act. The amendments added to House bill provisions which diverted 31 million acres of wheat, corn, soybeans and cotton; increased target prices and loan rates for wheat, corn, and upland cotton. Yes. Passed.

(182) Motion to table, and thus kill, a motion to instruct House conferees to support Senate amendments to Raisin Marketing Order Act. Yes. Passed.

(184) To establish Friendship Hill National Historical site, Pennsylvania. Yes. Passed.

(185) Resolution establishing Kosciusko Military Engineering sites. Yes. Passed.

(186) To establish Oregon National Historical Trail within National Trail System. Yes. Passed.

(187) To establish the Lowell National Historical Park in Massachusetts. Yes. Failed.

(189) To demand a second on a motion to suspend the rules and pass the White House Personnel Authorization. No. Passed.

(190) To pass under suspension of the rules, thus requiring a two-thirds vote, White House Personnel Authorization. Yes. Failed.

(191) To resolve into the Committee of the Whole House for consideration of Postal Service Act Amendments. Yes. Passed.

(192) An amendment to require the Postal Service to set parcel post rates at levels that would not discriminate against or undercut rates of private parcel delivery services. Yes. Failed.

(193) An amendment requiring the Postal Service to recover all direct and indirect costs of parcel post through parcel post rates. No. Passed.

(195) An amendment providing for congressional review of rate decisions made by the Postal Rate Commission. No. Failed.

(196) To resolve into the Committee of the Whole House for consideration of Postal Service Act Amendments. Yes. Passed.

(197) An amendment requiring the Postmaster General to submit a report to Congress each year on how the Postal Service spent its public service appropriation and how it planned to spend it in the coming year. No. Failed.

(198) Postal Service Act, final passage. Yes. Passed.

(199) International Banking Act, which established Federal regulation for foreign banking operations in the U.S. Yes. Passed.

(201) Authorizing funds for programs under the Marine Mammal Protection Act. Yes. Passed.

(202) A bill authorizing the Commerce Department to embargo wildlife products from foreign countries that do not cooperate on conservation of endangered species. Yes. Passed.

(203) A bill authorizing for conservation programs on military reservations. Yes. Passed.

(204) A bill to implement programs under the Fishery Conservation and Management Act. Yes. Passed.

(205) A bill authorizing $3 million per year for the Council on Environmental Quality through Fiscal Year 1981. Yes. Passed.

(206) A bill authorizing and approving changes in Small Business Administration programs. Yes. Passed.

(208) A bill allowing judicial settlement of Riverside County, California, land claims. Yes. Passed.

(209) A bill to restore federal recognition of certain Oklahoma Indian tribes. Yes. Passed.

(210) A bill authorizing $1 million for the Navajo-Hopi Relocation Commission. Yes. Passed.

(211) Creation of the Lowell, Massachusetts, National Historical Park. Yes. Passed.

(212) Adoption of the Conference Report on the Overseas Private Investment Corporation Amendments which extend authority until September 30, 1981. Yes. Passed.

(214) Adoption of Conference Report on Emergency Agricultural Act of 1978, setting flexible target prices and higher loan rates, and increasing borrowing authority of the Commodity Credit Corporation. Yes. Failed.

(215) Adoption of the rule on a bill to reduce the basic work week of Federal firefighters. Yes. Passed.

(216) A bill to reduce the regularly scheduled administrative work week of Federal firefighters from 72 to 56 hours. Yes. Passed.

(218) Adoption of the rule on the White House Personnel Authorization. Yes. Passed.

(219) An amendment to reduce the number of White House office employees authorized at levels GS 16 and above from 100 to 75. No. Failed.

(220) An amendment to require each President to submit a new authorization request for White House office staff and related expenses within one year of assuming office. No. Failed.

(221) An amendment to prohibit White House personnel from lobbying state legislatures on proposed amendments to the Constitution. No. Failed.

(222) White House personnel authorization allowing a total of 148 staff positions at or above GS 16 and requiring a report to Congress on the number of experts, consultants and detailees employed at the White House. Yes. Passed.

(223) A motion to exclude the public from Conference Committee meetings on the natural gas pricing provisions of the National Energy Act. No. Failed.

(224) A bill approving House nominations to the Merchant Marine Academy. Yes. Passed.

(225) Authorization of the National Sea Grant Program providing colleges and universities funds for research. Yes. Passed.

(226) Authorization of the National Advisory Committee on Oceans and Atmosphere. Yes. Passed.

(227) Authorization of $1.4 billion for daily operations and maintenance of the Coast Guard in Fiscal Year 1979. Yes. Passed.

(229) The establishment of an office of an Inspector General in 12 departments and agencies to audit and investigate programs and operations. NV. Passed.

(230) Authorization of $5 million for the Hubert H. Humphrey Institute of Public Affairs and $2.5 million for the Everett McKinley Dirksen Congressional Leadership Research Center. NV. Passed.

(231) A bill to direct the Department of the Interior to acquire from New Mexico 618

acres surrounding and including the Zuni Salt Lake to be held in trust for the Zuni Tribe. NV. Passed.

(232) An amendment to add $3.2 million to the $1 million authorized to study the feasibility of converting the Glomar Explorer into a deep sea drilling vessel. No. Failed.

(233) An amendment to cut $6 million from the National Science Foundation's $158 million budget for biological behavioral and social science research. No. Failed.

(234) A bill to authorize $934.4 million for NSF in Fiscal Year 1979. Yes. Passed.

(235) To adopt the rule on Public Disclosure of Lobbying Act. Yes. Passed.

(236) Public Disclosure of Lobbying: to broaden the exemption in the bill for communications to Members of Congress. No. Failed.

(237) Public Disclosure of Lobbying: to require registered organizations to report lobbying solicitations which were made or paid for by the organization or by an affiliate not required to be registered under the Act. Yes. Passed.

(239) To resolve itself into the Committee of the Whole House for further consideration of the Public Disclosure of Lobbying Act. Yes. Passed.

(240) To table a motion to reconsider the vote by which the House agreed to resolve itself into the Committee of the Whole House. Yes. Passed.

(241) Public Disclosure of Lobbying: to include Federal departments and agencies and the White House within the definition of the word "organization" to be covered by the bill. NV. Failed.

(242) Public Disclosure of Lobbying: to require each registered organization to disclose the names of organizations from which it received $3,000 or more in dues or contributions in a calendar year if it spent the money on lobbying and if it spent more than 1 percent of its total income on lobbying activities. Yes. Passed.

(243) Public Disclosure of Lobbying: to end all debate. Yes. Failed.

(244) To adopt the rule for consideration of National Aeronautics and Space Administration Authorization for Fiscal Year 1979. Yes. Passed.

(245) A substitute amendment to the Agricultural Credit Act which would have provided through December 1979 only small, short-term loans to farmers and ranchers to cover operating expenses or installment payments on existing debts. No. Failed.

(246) The Agricultural Credit Act authorizing $4 billion for 2-year economic emergency loan program for farmers and ranchers. Yes. Passed.

(247) To resolve into the Committee of the Whole House for consideration of National Aeronautics and Space Administration Authorization for Fiscal Year 1979. Yes. Passed.

(248) Authorization of $4.4 billion for NASA research and development programs. Yes. Passed.

(249) Peace Corps Authorization: Amendment to prohibit the use of funds for programs in the Central African Empire. Yes. Passed.

(250) Authorization of $96.1 million for the Peace Corps in Fiscal Year 1979. Yes. Passed.

(251) A resolution disapproving Reorganization Plan No. 1, which would consolidate certain Federal Equal Employment programs into the Equal Employment Opportunity Commission. No. Failed.

(252) A resolution denouncing the government of Cambodia for its disregard of basic human rights. Yes. Passed.

(253) Approval of the Journal of the proceedings of April 25. Yes. Passed.

(254) Authorization of $18.4 million for the operations of the Arms Control and Disarmament Agency. Yes. Passed.

(255) Public Disclosure of Lobbying: Amendment to direct the GAO to report on lobbying activities by all levels of government and by associations of state or local elected officials. No. Failed.

(256) Public Disclosure of Lobbying: Amendment to exempt communications which deal only with the existence or status of an issue, or which seek only to determine the subject of an issue. No. Passed.

(257) Public Disclosure of Lobbying: Passage of the bill repealing existing law and replacing it with a comprehensive statute covering registration and reporting by lobbying organizations. Yes. Passed.

(258) Motion to resolve into the Committee of the Whole House for consideration of the Environmental Protection Agency Authorization for Fiscal Year 1979. Yes. Passed.

(259) Authorization of $432.9 million for environmental research and development programs of the Environmental Protection Agency. Yes. Passed.

(260) Resolution providing $13 million in supplemental appropriations for adminstrative expenses of the U.S. Railway Association in Fiscal Year 1978. No. Passed.

(262) A bill to increase from $3 million to $6 million the authorization for development of the tuna and other fishery resources in the Central Western and South Pacific Ocean through Fiscal Year 1979.

(263) A bill to establish a Hubert H. Humphrey Fellowship in social and political thought at the Woodrow Wilson International Center for Scholars at the Smithsonian Institute. NV. Failed.

(264) A bill to extend the authority of the Federal Reserve Banks to purchase U.S. obligations of up to $5 billion directly from the Treasury until April 30, 1979. NV. Passed.

(265) Adoption of the rule for consideration of Civil Rights of Institutionalized Persons Act. NV. Passed.

(267) An amendment to eliminate the Attorney General's authority to initiate or intervene in civil actions on behalf of inmates of jails, prisons or correctional institutions in order to redress systematic deprivation of rights. NV. Passed.

(269) SBA Solar Energy Sources Loan Program, which authorizes the SBA to make direct loans of up to $30 million in loan guarantees of up to $45 million to businesses involved with solar energy renewable energy resources and conservation. Yes. Passed.

(270) A bill to provide the Ak-Chin Indian Tribe of Arizona with a stable water supply in exchange for which the tribe would waive all claims against the U.S. for its previous failures to supply water to meet the tribe's needs. Yes. Failed.

(271) Adoption of Senate Amendments to the Security Investor Protection Act. Yes. Passed.

(272) To cite Claude Powell, Jr., for contempt of Congress for not responding when the House Select Committee on Assassinations subpoenaed him to testify in the Martin Luther King, Jr., assassination investigation. Yes. Passed.

(273) Motion to resolve into the Committee of the Whole House for consideration of the First Budget Resolution for Fiscal Year 1979. Yes. Passed.

(274) First Budget Resolution: To set budget authority at $546.8 billion, outlays at $488.3 billion, revenues at $440.1 billion and a deficit at $48.2 billion. Yes. Failed.

(275) First Budget Resolution: To add $2.4 billion in budget authority to the defense function. No. Failed.

(276) First Budget Resolution: To transfer $4.8 billion in budget authority and $2.8 billion in outlays from defense to employment and economic development programs. No. Failed.

(277) First Budget Resolution: To reduce the revenue target by $3.2 billion to accommodate a $29.7 billion net tax cut rather than the $19.4 billion net tax cut assumed in the Resolution. No. Failed.

(278) First Budget Resolution: To add $1 billion in budget authority and $844 million in outlays for new entitlement authority for veterans programs. Yes. Passed.

(279) To increase authority by $435 million in outlays by $390 million to expand job training programs for youths and other Americans. No. Failed.

(280) First Budget Resolution: To reduce budget authority and outlays by $255 million so the federal salary increase could be rolled back from 6% to 5.5%. Yes. Failed.

(281) To approve the Journal of the proceedings of May 3. Yes. Passed.

(282) Adoption of the rule of the Conference Report on the Emergency Agriculture Act. Yes. Passed.

(283) Conference Report on the Emergency Agriculture Act, which authorized the Agriculture Department to increase target prices on wheat, feed grains and cotton crops. Also encouraged the use of gasohol, increased borrowing authority of the Commodity Credit Corporation and established a raise in marketing order program. Yes. Passed.

(284) First Budget Resolution: Substitute amendment to reduce the revenue target by $635 million to accommodate a tuition tax credit for college, elementary and secondary school costs. Yes. Passed.

(241) First Budget Resolution: Agreement to the amendment as altered by the previous amendment. Yes. Passed.

(287) Authorization of programs and projects for Guam, the Virgin Islands, Northern Mariana Islands, American Samoa, and trust territory of the Pacific Islands. No. Failed.

(288) A resolution expressing the sense of Congress that the President should instruct Secretary of State to request the Secretary General of the United Nations to work through existing UN agencies for a full accounting of American MIAs in Southeast Asia. Yes. Passed.

(289) Supplemental Appropriation providing $758 million for disaster relief activities of the SBA in Fiscal Year 1978. Yes. Passed.

(290) Motion to resolve itself into the Committee of the Whole House for consideration of the First Budget Resolution. NV. Passed.

(291) First Budget Resolution: To reduce budget authority and outlays by $3.15 billion for programs of the Department of Health, Education and Welfare. NV. Passed.

(292) First Budget Resolution: Adjustment of revenue and spending targets to reflect that Panama Canal tolls be funneled through the U.S. Treasury. NV. Passed.

(293) First Budget Resolution: To reduce the total budget authority target by $8 billion and the total outlays target by $7 billion to accommodate an across the board cut in all government programs. NV. Failed.

(294) First Budget Resolution: To reduce outlays by $195.4 million and budget authority by $178.2 million to accommodate reductions in funding for various regulatory agencies. NV. Failed.

(295) Motion to resolve itself into the Committee of the Whole House for consideration of the First Budget Resolution. Yes. Passed.

(296) First Budget Resolution: An amendment to reduce budget authority and outlays by $56 million to accommodate deletion of Food for Peace funds for South Korea. No. Failed.

(297) First Budget Resolution: Substitute amendment calling for a balanced budget with no new tax cuts. No. Failed.

(298) First Budget Resolution: An amendment to reduce the outlays target by $36.8 billion to $464.6 billion, and increasing the revenue target by $21.3 billion to $464.4 billion, thus achieving a balanced budget. No. Failed.

(299) First Budget Resolution: To reduce budget authority and outlays by $3.5 billion

for programs of the Department of Health, Education, and Welfare. No. Failed.

(300) First Budget Resolution: Final adoption, setting revenue targets for fiscal year 1979 by budget aggregates and by functional categories, as guidelines to congressional action prior to the start of Fiscal Year 1979. Set aggregate budget targets as follows: Budget authority at $569.5 billion, outlays at $500.9 billion, revenues at $433 billion, and the deficit at $57.9 billion. No. Passed.

(301) Approval of the Journal of the proceedings for May 10. Yes. Passed.

(302) A resolution denouncing the assassination of Aldo Moro. Yes. Passed.

(303) Amendment reducing the authorizations for the population planning in International Disaster Assistance Program and for the Economic Security Fund. No. Failed.

(304) Amendment prohibiting assistance to nations that did not make reasonable progress towards eliminating domestic impediments to agriculture production. NV. Failed.

(305) An amendment to limit U.S. aid to Panama to 25% of the revenues Panama received from the Canal. NV. Failed.

(307) Motion to resolve itself into the Committee of the Whole House for further consideration of the International Development and Food Assistance Act. NV. Passed.

(308) An amendment making tobacco and tobacco products ineligible for the Food for Peace Program. NV. Failed.

(309) Substitute amendment to prohibit direct aid to Vietnam, Cambodia, Uganda, and Cuba. NV. Failed.

(311) Passage of the International Maritime Satellite Organization authorization. Yes. Passed.

(312) An amendment to cut funding for most programs under the International Development and Food Assistance Act by 5%. No. Passed.

(313) International Development and Food Assistance Act: final passage authorizing $3.7 billion for Fiscal Year 1979 for international development and economic support assistance programs. Yes. Passed.

(314) Establishment of a Hubert H. Humphrey Fellowship at the Woodrow Wilson International Center to be awarded annually to a distinguished scholar, statesman or cultural figure. Yes. Passed.

(315) Authorization of $20.5 million for the National Fire Prevention and Control Administration and $5.1 million for the Fire Research Center in Fiscal Year 1979. Yes. Passed.

(316) Ordering a second on a motion to suspend the rules and pass Private Foundations' holdings in public utilities. Yes. Passed.

(317) Passage of the Comprehensive Older Americans Act Amendment. Yes. Passed.

(318) Passage of private foundations holdings and public utilities, which would have established specific conditions under which a private foundation and its donors together could hold up to 51% of the stock of a qualified public utility company. No. Failed.

(319) Approval of the Journal of proceedings for May 12, 1978. Yes. Passed.

(320) Comprehensive Rehabilitation Services Amendments of 1978, which authorizes funds for handicapped individuals, establishes a Community Service Employment Program for the handicapped under the Labor Department, and authorizes HEW to provide financial and technical assistance to organizations in order to remove barriers to handicapped. Yes. Passed.

(321) A motion to table a motion to concur in the Senate Amendment to the Conference Report on the District of Columbia Fiscal Year 1978 appropriations providing $27 million for capital outlays for a Washington. D.C. civic center. Yes. Failed.

(322) Motion to concur in the Senate Amendment to the Conference Report on the D.C. Fiscal Year 1978 appropriations which provides $27 million for capital outlays for a Washington Civic Center. No. Passed.

(323) Adoption of the rule for consideration of the Energy Department National Security Authorization for Fiscal Year 1979. Yes. Passed.

(324) Motion to resolve into the Committee of the Whole House for consideration of the Energy Department National Security Authorization for Fiscal Year 1979. Yes. Passed.

(325) Energy Department National Security Authorization: An amendment to prohibit the use of any funds for production or deployment of neutron weapons. Yes. Failed.

(326) Energy Department National Security Authorization: Final passage, which authorizes $2.9 billion for Energy Department research development and for production of nuclear weapons, production of strategic and critical materials and military applications of nuclear energy. Yes. Passed.

(327) First Budget Resolution: Adoption of the Conference Report, setting spending and revenue targets to serve as guidelines for congressional action in Fiscal Year 1979 budget. Targets are as follows: Budget authority at $568.9 billion, outlays at $498.8 billion, revenue at $447.9 billion, and the deficit at $50.9 billion. No. Passed.

(328) Adoption of the rule for consideration of Temporary Public Debt Limit Extension. Yes. Passed.

(329) To increase the debt limit by $97.1 billion to $849.1 billion, the level set in the Conference Report on the First Fiscal Year 1979 Budget Resolution. No. Failed.

(330) Adoption of the rule for consideration of the Alaska National Interest Lands Conservation Act. Yes. Passed.

(331) Resolution promoting observance in the Soviet Union of the Helsinki Amendment. Yes. Passed.

(335) Alaska Lands: An amendment to remove five million acres from the proposed additions to the nation's parks, refuges, and forests so the State of Alaska could select these lands. No. Failed.

(336) Alaska Lands: An amendment to reduce lands to be designated as wilderness from approximately 66 million to 33 million acres. No. Failed.

(337) Alaska Lands. Motion to resolve into the Committee of the Whole House for further consideration of the bill. NV. Passed.

(338) Alaska Lands: An amendment calling for a Department of Interior study of mineral deposits in Alaska. NV. Passed.

(339) Alaska Lands: A motion to recommit the bill to the Interior Committee for further consideration. NV. Failed.

(340) Alaska Lands: Final passage, which designates approximately 102 million acres of federal lands in Alaska as national park, national forest, wildlife refuge and wild and scenic rivers. NV. Passed.

(291) Resolution expressing the House's objection to the proposals of the Commissioner of Education to consolidate several education advisory councils. No. Passed.

(343) Cooperative Forestry Assistance Act. Yes. Passed.

(344) Forest and Range Land Renewable Resources Act. Yes. Passed.

# SENATE—*Wednesday, September 6, 1978*

*(Legislative day of Wednesday, August 16, 1978)*

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by KANEASTER HODGES, JR., a Senator from the State of Arkansas.

## PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray:

God of our fathers and our God, from age to age the same yet ever new, be to us now the pillar of a cloud by day and the pillar of a fire by night to guide this Nation from strength to strength in these uncertain and perilous times. Give wisdom and strength to the President and those with whom he confers for the peace of the world, to the end that all deliberations may be lifted into the higher order of Thy kingdom and that the land in which the Master walked may at last be a holy land to all men who dwell on this Earth as children of Thy creation.

We thank Thee for the persistent call to duty in this place where daily we pause to renew the oath of office and to reaffirm our vows to Thee. Order our lives according to the pattern of the Master, in whose holy name we lift our prayer. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., September 6, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. HODGES thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the standing order the majority leader, the Senator from West Virginia, is recognized.

## THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## NATURAL GAS POLICY ACT CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, the nations of the world will be watching with vital interest the developments in the U.S. Senate as we take up the Natural Gas Policy Act conference report in the coming days.

This is an issue that has defied resolution for four decades, going back to 1939, with enactment of a Natural Gas Act. It is an issue that has been around for 40 years. This Congress has now considered it for 16 long months.

Now, because we face an energy shortage, because the U.S. dollar is weak and growing weaker, because this Nation will be perceived as one that shrinks from its problems if we do not face this issue, I consider it "must" legislation.

In a letter sent August 31, 1978, to a number of Senators, I outlined my views, and my reasons for those views.

Mr. President, I ask unanimous consent that the contents of my letter to Senators be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD as follows:

DEAR COLLEAGUE: The Natural Gas Policy Act of 1978 has perhaps been the most divisive, emotional, and controversial issue that has faced the Senate (as we saw last fall) during the 95th Congress; yet, in many ways it is the most important legislation that has confronted the 95th Congress.

In the first place, it is an issue that has been before Congress, off and on, for almost 40 years. Presidents Truman and Eisenhower vetoed bills dealing with the subject. The Natural Gas Act of 1939 is the controlling law; yet, in the four decades that have since intervened, the gas industry and the energy market have greatly changed. The old law of the late 1930's does not meet the conditions and circumstances of the late 1970's—as witnessed during the energy crisis of the winter of 1977.

The Natural Gas Policy Act of 1978 has been before the 95th Congress now for 16 months. Senate and House conferees spent many months in hammering out a conference report. On an issue so surrounded with controversy and complexity, and so involving regional, parochial, and vested interests, it is impossible to devise a solution that is completely pleasing and agreeable, in every respect, to any single one of us. But the conference report is the best that was practicably possible under the circumstances.

To reject that conference report now would be to admit that the Senate is unable or unwilling to deal with a growing problem—a problem that simply will not go away. To reject the conference report would be an admission to the American people that the Senate cannot rise above regional differences to deal with a problem that is vital to the interest of the nation. To reject the conference report would be to see 16 months of onerous, hard work—literally thousands of man hours—go down the drain.

To reject the conference report would be to say to the OPEC countries, to our industrial and NATO allies, and to the world that the United States cannot discipline itself to deal with the energy problem at home, and, thus, is incapable of providing world leadership in dealing with a global problem. This bill is a symbol abroad of American self-discipline, fortitude, and determination to solve our energy needs.

To reject the conference report will have an adverse impact on the dollar abroad, on our international trade balance, on the fight against inflation, and on our ability to increase production of energy and meet consumer needs.

I respectfully urge support of the conference report. Any effort to recommit the conference report will effectively kill the bill. In the first place, the recommittal proposal which has been circulated would be ineffective as a solution to the problem, even if the House conferees would agree. Moreover, the Emergency Natural Gas Act of 1977 was enacted on the promise that national energy policy legislation would be subsequently proposed by the Administration. The Administration kept that promise in submitting its legislative proposal on April 20, 1977. The Senate made several changes in the Administration's legislation, but the Natural Gas Policy Act of 1978—albeit not perfect—is a linchpin of that policy. To reject it now would be to admit that the Senate cannot, or is willing to, adopt a national energy policy.

Finally, to recommit the conference report at this late hour in a Congress that will, hopefully, adjourn sine die before many more weeks, would be to deliver the coup de grace to the bill. If the Senate is going to kill the bill, it would be better to deliver the death stroke directly, and thus make it indubitably clear to the American people precisely what we have done, than to kill the bill by the indirect procedurally fatal approach of recommittal of the conference report.

I write this letter with the utmost respect for all Senators who may disagree with the position I have taken above, but I respectfully and urgently hope that you will support it.

Sincerely yours,

ROBERT C. BYRD,
*Majority Leader.*

## CAMP DAVID SUMMIT

Mr. ROBERT C. BYRD. Mr. President, an historic opportunity exists at the Camp David summit to take an important step along the path toward peace in the Middle East.

President Carter is to be commended for extending invitations to President Anwar Sadat of Egypt and Prime Minister Menachem Begin of Israel to join him at a face-to-face meeting.

The President's decision to take the initiative and bring both sides together may end a deadlock in the negotiations and provide the needed momentum to seek a solution to the Arab-Israeli conflict.

Bold action was needed to keep alive the best chance for Mideast peace in 30 years.

But, it would be unrealistic to believe that President Carter, with a single, swift swordstroke, can cut the Gordian knot of historical and political complexities in the Middle East.

Nonetheless, President Carter will try to help the two leaders to find mutually acceptable ground that satisfies Egypt's territorial concerns and Israel's security concerns.

I would hope that both sides will show flexibility and good will in narrowing their differences so that further negotiations can result in a fair and lasting peace.

This is not the time for ultimatums or rigid postures. This is a time for quiet talk, realistic expectations, and for compromise.

The isolated setting of Camp David provides an atmosphere for serious, open and uninterrupted discussions of these vital matters.

As a friend to both Israel and Egypt, the United States can play a full part in the talks, outlining areas of agreement and disagreement and suggesting fresh ways to break impasses.

The task before these leaders is momentous and it is not without risk. But, there is too much at stake to let peace negotiations collapse and to face the prospect of slipping into a major conflict in the area once again.

I hope that, when the final chapter is written in the Middle East peace process, the Camp David summit will receive more than a footnote. It is my hope that the summit will be noted as the turning point on the road to peace in the Middle East.

Mr. President, I have no further requirement of my time. I reserve the remainder of my time.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the standing order the acting minority leader, the Senator from Nebraska, is recognized.

## NATURAL GAS POLICY ACT CONFERENCE REPORT

Mr. CURTIS. Mr. President, it is not too late for the President to send an energy program to Congress that will serve our economy. This has not been done. We need a program of conservation, yes. That has received attention, whether it be urging people in making incentives for them to put on storm doors, or drive slower, or whatnot. That is important.

The administration's energy program does not have a word in it toward increasing production.

Less than 5 percent of the area of the United States has been explored for oil and natural gas. We have undeveloped resources offshore. Yet we are faced with a situation where we pay for imported oil $12 to $14 a barrel. Yet our domestic produced oil is under a price ceiling, much of it for as low as $5.

Is there any businessman in the land who thinks that price controls and regulations are the way to production?

We need an energy program that faces up to production. We need not only to produce more oil and natural gas, and it can be done, but we need to pursue all alternatives. A program of gasohol would add materially to our motor fuel. We can produce alcohol from products from the soil that can be renewed year after year. A 10-percent blend of such alcohol in gasoline causes motors to run better. It would extend the available motor fuel by 10 percent. Yet the administration has not turned a hand to support such efforts in Congress.

The administration's energy program has stalled for months and months because it is not a good program. It is not in the interest of the country.

At the present time there is pressure on businessmen and others to support the bill. "Got to have a bill. Got to have a bill."

It is not a good bill. It is based upon regulation and price controls with a promise down in the future that they are going to take regulation and price controls off, but if their thinking goes along the present line it will never be done.

While we need conservation and saving of energy, I remind the Senate that it is by using energy that jobs are provided.

Oh, we could save energy by closing every factory. We could save more energy by stilling every farm tractor. We could save energy by all riding a bicycle.

However, think how much the economy and the jobs of this country are tied around the automotive industry.

Mr. President, I hope that instead of pressure on this Senate to approve a so-called energy program that is half a program only, half a program—it deals with the conservation of energy alone, and does nothing to encourage production of energy—I hope that instead of pressure to enact such a failing formula we will have some cooperation and that there can be laid before this Congress an energy bill that will serve the country. But we are faced with power.

I hope it will not be ruthlessly used to fool the American people, make them think that our energy problems are being solved when we are perpetuating the current failure.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Does the majority leader wish to use any of his additional time?

Mr. ROBERT C. BYRD. Mr. President, while this Congress has been wrestling with the energy problem for 16 months, the problem has been around for almost 40 years. Only 4 months remain in this calendar year, and I do not think we can do anything about that.

A new Congress will convene on January 3 of next year. So it is either this bill or it is nothing. If Congress cannot resolve this problem in 16 months, if it rejects this conference report, the matter is dead, d-e-a-d, for the remainder of this Congress, and probably for a long time to come.

I know this conference report does not please everybody. It probably pleases no one in its entirety; but it is the product of 16 months of toil, sweat, and perseverance, and it is the best we can get.

There are those who are opposed to it, and I respect their viewpoints. I am not here to argue the pros and cons of it; but I am simply here to say that if we cannot resolve this matter after 16 months, I do not think we are going to resolve it in the remaining 16 weeks, give or take a few days, of this year. The American people expect an answer to the energy problem; they expect the Congress to produce an answer; the Congress has gone over the administration's package in considerable detail.

The administration proposal lacked a great deal when it came up here. I think it has been improved. While it is not a perfect solution, it is the handiwork of thousands of man-hours of grueling labor on the part of the conferees and all the Members of the House and Senate.

So, with no disrespect to anyone, let me simply repeat that it is this gas bill or it is nothing this year, and maybe for a long time to come. To those who are hoping for something better in the event this conference report is rejected, I would suggest that they not pin too much reliance on that hope.

Mr. METZENBAUM. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. Yes; I yield to the Senator from Ohio.

Mr. METZENBAUM. Let me say there is nobody on the floor of the Senate for whom I have greater respect both as to his ability, his integrity, and his knowledgeability than the distinguished majority leader, Senator BYRD.

In this instance, however, I wish to take issue because I believe we can indeed have an energy bill, including a natural gas bill, and we can have it by the end of next week, a bill which would include the enactment of the utility rate reform bill, which has been awaiting enactment for about 9 months and then held hostage until the natural gas bill is passed; the conservation measure, coal conservation measure, both of which have been held hostage by the efforts of the administration and the House leadership in order to get a natural gas bill.

Those of us who have now joined together for diverse reasons do not want to kill the natural gas bill; we have consistently said, and said in our Dear Colleague letter, that we want a natural gas bill when the natural gas bill would be a bare bones bill, giving the President emergency authority, giving the Federal Energy Regulatory Commission special authority, making it possible to move intrastate gas into interstate pipelines without it becoming subject to Federal regulation.

I believe all of this would be helpful. The fact is that the natural gas bill that has come out of the conference committee is truly a piece of legislation without a constituency.

I have not been in the Senate nearly as long as many other Members, and certainly not as long as the distinguished majority leader, but I would venture to say there has never been a piece of legislation as controversial as this one which has had as little public support as has this bill. This bill is now opposed by the Energy Action Committee; it is opposed by the Environmental Policy Center; it is opposed, on the one side, by the Consumer Federation of America and the American Conservative Union, by the Independent Petroleum Association of America, by the American Farm Bureau Federation, by the AFL–CIO, by the United Auto Workers——

The ACTING PRESIDENT pro tempore. The majority leader's time has expired.

Mr. METZENBAUM. Mr. President, I ask unanimous consent for 3 minutes more.

Mr. ROBERT C. BYRD. Mr. President, I object.

Would the distinguished acting Republican leader yield some time?

The ACTING PRESIDENT pro tempore. The minority leader has 3 minutes left.

Mr. GARN. I would be happy to yield 3 minutes to the distinguished Senator from Ohio.

The ACTING PRESIDENT pro tempore. The Senator from Ohio.

Mr. METZENBAUM. I thank the distinguished Senator from Utah.

This bill really does nothing. It will not produce substantially more natural gas. Even the best estimates indicate it would only be 3 to 4 percent more between now and 1985.

It will cost the American people between $29 billion and $41 billion in additional costs.

It will provide such a complex morass for the producers to wade through that even as distinguished an advocate of the producers as Senator RUSSELL LONG has indicated that he finds no fault with the pricing provisions—as I do, I might say—but he finds that the price is just too high to pay for the bill because it will require the producers to hire batteries of lawyers in order to defend their position.

It creates a situation where the residential users will be bearing the brunt of the additional costs in contradistinction to the industrial users as the bill left the House and Senate.

It will provide an unfair advantage for industrial users in the producers' States as against industrial users in the nonproducing States.

It is a bill that should not pass. We want a piece of legislation, we are prepared to support a piece of legislation, and we believe if the House and the administration will put their shoulders to the wheel, as those of us who are supporting this move to recommit with instructions to return with a bill that will provide the President with the necessary emergency powers, and the ability to use the emergency powers, we will have a bill by which we think the national interests will be served, as well as the interests of the world, and I think we will have a decent national energy plan.

I thank the distinguished majority and minority leaders.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business not to extend beyond 10 minutes, with statements limited therein to 2 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## NATIONAL GAS POLICY ACT CONFERENCE REPORT

Mr. ROBERT C. BYRD. Let us, if we are against this conference report, deliver the coup de grace right here. Vote it up or down—and let us witness its expiring agonies right here on this floor.

Let us, by so doing, frankly admit to the American people that Congress is either unable or unwilling to rise above regional, sectional, and parochial differences to deal with a matter that is of vital interest to the Nation. Let us not kill the conference report by recommitting it. Mr. President, it would be a cop-out to recommit it with instructions to report

it back. Everybody knows that will kill the bill. We have no assurance that the House would agree to those instructions.

Time is running out. We have spent all these months. Are we going to tell the American people that after 16 months of sweat, toil, and perseverance, the Senate is unable to reach a decision in the national interest that rises above sectional, parochial, and regional concerns? And are we going to admit to the world that the United States is unable and unwilling, through its Federal legislative body, to reach a decision on the energy problem, the most vital issue concerning this country today?

If we are going to kill the bill, let us kill it up or down directly. Let us administer the knife to the heart of it, and say to the American people, "We cannot come to grips with the problem of natural gas pricing; we have tried and we are unwilling or unable—take your choice—to do it." But let us not kill it by the parliamentary procedural move of recommitting it with instructions to report it back. That erects a tombstone over it just as final as killing it by voting it up or down. But at least the people then will know, if we kill it up or down, where the fault lies. They will know that the Senate just did not have the courage and the decisiveness to act on this question; and then we can just forget about it, because there will be no more time left in this Congress.

So, I say if we are going to kill it, let us make no bones about it, but say what we are doing. Admit to the American people that we are killing it, rather than attempting to do so by a procedural mechanism that leaves a good many people thinking we tried to do something and did not. That will not work.

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

## SECOND CONGRESSIONAL BUDGET RESOLUTION, 1979

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of Senate Concurrent Resolution 104, which the clerk will report.

The legislative clerk read as follows:

A concurrent resolution (Senate Concurrent Resolution 104) revising the congressional budget for the U.S. Government for the fiscal year 1979.

The ACTING PRESIDENT pro tempore. Under the law, the total time for debate on this resolution is limited to 15 hours, with a time limitation on each amendment, which is to come out of the overall total, of 1 hour, by unanimous consent to be controlled by the mover of such and the manager of the resolution.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I yield the time that is, under the law, allocated to the majority leader or his designee the Senator from Maine (Mr. MUSKIE), the chairman of the Committee on the Budget.

Mr. GARN. Mr. President, on the minority side, we yield the time to the Senator from Oklahoma (Mr. BELLMON).

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask that the time be charged against the overall time on the resolution.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BELLMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BELLMON. Mr. President, I ask unanimous consent that the following members of the Budget Committee staff be allowed to remain on the floor during the consideration of and all votes on Senate Concurrent Resolution 104: Robert Boyd, Charles McQuillen, William Stringer, Paul Carttar, Becky Davies, Carol Cox, Robert Fulton, Barry Kinsey, Joyce Purcell, and Gail Shelp.

Also, Jack Nutter, of Senator DOLE's staff; Jim Streeter, of Senator MCCLURE's staff; Charles Gentry, of Senator DOMENICI's staff; Jan Olson, of Senator HAYAKAWA's staff; Mike Kintner, of Senator HEINZ's staff, and Mike Shorr, of Senator JAVITS's staff.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the following members of the Budget Committee staff be allowed to remain on the floor during consideration of and all votes on Senate Concurrent Resolution 104: John McEvoy, Sid Brown, Karen Williams, Van Ooms, Dan Twomey, George Merrill, Rodger Schlickeisen, Ira Tannenbaum, Liz Tankersley, Jill Scheu, Bob Sneed.

Charles Flickner, Tony Carnevale, Rob Fersh, Gale Picker, Brenda Tremper, Tom Hogarty, Charles Riemenschneider, Don Campbell, Porter Wheeler, Barbera Levering, Anne Lockwood, Lewis Shuster, and Rick Brandon.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MUSKIE. I ask unanimous consent that Lynn Boyd, of Senator HODGES's, staff, be granted the privileges of the floor during the consideration of the concurrent resolution.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MUSKIE. As is the usual request, Mr. President, I ask unanimous consent to use small electronic calculators on the floor during the consideration of this concurrent resolution.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, today the Senate begins consideration of the second concurrent resolution on the budget for fiscal year 1979.

This resolution will bind all further congressional spending and tax decisions for 1979. A point of order will lie against bills which exceed this budget.

This is an anti-inflationary budget.

Its totals are significantly lower than those in either the first resolution or the President's budget.

Compared to the first resolution, it cuts projected Federal spending for 1979 by $9.3 billion. It reduces the projected deficit by $8.6 billion, nearly 17 percent.

At the same time, it contains room for tax reductions of up to $23.4 billion in the coming fiscal year.

This second budget resolution takes account of the two major changes which have occurred in the economy since the first budget resolution.

These major changes are lower unemployment and higher inflation than were foreseen when the first budget resolution was formulated.

Unemployment, forecast last spring to remain over 6.2 percent until the end of this year, has fallen below that rate, reaching 5.9 percent in August.

Inflation, forecast last spring to average 6.1 percent during the coming year, has increased to an annual rate of 9.9 percent.

So employment has improved more rapidly than could be anticipated last spring. But inflation has worsened.

These changes call for modifications in the budget we adopted last spring. They call for a more restrictive budget, designed to help reduce inflation without increasing unemployment.

This second budget resolution meets those requirements.

We intend it as a signal to our citizens and to the private economy that the Federal Government will lead the way toward reducing inflation without sacrificing jobs.

This second budget resolution reduces Federal outlays in 1979 by $9.3 billion compared to the first resolution, and by $11.5 billion compared to the President's January budget.

The resolution also reduces budget authority for 1979 by $11.1 billion compared to the first resolution, and by $11.4 billion compared to the President's January budget.

The level of budget authority enacted this year helps to determine the level of future Federal spending. So this 2 percent cut in budget authority will translate into a very real reduction in the future cost of Government.

### REVENUES

This second budget resolution reaffirms the tax cut recommended in the first resolution.

This recommendation to cut taxes by $23.4 billion reflects the committee's determination to provide substantial relief to taxpayers, without raising the risk of higher inflation.

These tax cuts are also needed to sustain economic growth in the coming year. They will help offset the loss of purchasing power which would otherwise occur as inflation drives wages into higher tax brackets.

These tax cuts will also offset the negative effects of the new social security taxes scheduled to take effect January 1, 1979.

### DEFICIT

The spending reductions contained in the budget resolution will substantially reduce the 1979 deficit.

The deficit projected in this resolution is $8.6 billion lower than the deficit projected in the first resolution.

It is more than $18 billion lower than the deficit projected in the President's January budget.

Much of this deficit reflects lower revenues from an economy still operating below capacity. The deficit also includes the cost of programs enacted to provide jobs and income support to our citizens during the recession. If unemployment stood at 5 percent today, for example, this deficit would be less than $15 billion, as a result of increased tax collections on higher wages and profits.

But, not Congress, nor the President, nor the public can take any comfort from the fact that after 3 years of economic recovery, the Federal deficit remains over $40 billion.

And the risk of adding to the recent resurgence of inflation will be substantially increased by excessive spending as the economy approaches its capacity.

The present economic situation forces us to resist enactment and enlargement of programs which do not fit within this reasonable and carefully constructed budget.

Such spending will add directly to the deficit and to the risk of further inflation.

THE SECOND RESOLUTION, THE ECONOMY, AND JOBS

Mr. President, this budget is designed to preserve the present economic expansion under the very difficult circumstances we confront.

The revenue and spending levels recommended in this resolution are designed to promote moderate economic growth without increasing inflationary pressures.

The general tax reduction proposed in this budget resolution will offset the negative economic effects of higher payroll taxes and the increased income tax burdens caused by inflation.

These tax cuts will also stimulate much needed business investment.

The spending proposed in this budget resolution will not increase the present level of Federal stimulus to the economy. In fact, such stimulus would fall slightly from current levels, because that is the prudent course in the present mature stage of our economic recovery.

This budget will support economic growth at an annual rate of 3½ to 4 percent in 1979. This expansion will create about 800,000 new jobs during 1979. It will preserve our gains against unemployment, without generating inflation-causing excess demand.

This growth will support a further decline in unemployment to about 5¾ percent during 1979.

The creation of jobs for American workers during the present economic recovery has been remarkable. From the worst days of the recession in 1975 to July 1978, 9.9 million new jobs were created.

During this 3-year period, the overall unemployment rate fell by more than a third—from 8.9 to 5.9 percent.

This jobs expansion would not have occurred without the support of the anti-recessionary congressional fiscal policy we have pursued.

This improvement, however, has not been uniform across demographic groups. For example, the unemployment rate for men 25 years of age and older, a "prime" segment of the labor force, fell from 8.5 to 3.3 percent. But among minority teenagers, unemployment was 36.9 percent in the second quarter of 1978, essentially unchanged from 3 years ago.

This severe unemployment which burdens many of our citizens, especially minority youth, has not been reduced by the general economic recovery which has benefited most of our citizens. Surely, these disadvantaged jobseekers would be worse off without continued economic expansion. But economic growth, by itself, cannot solve their problem.

To reduce this intolerable rate of unemployment among large segments of our population, so-called structural employment programs, effectively targeted to serve those most in need, must be designed and adequately funded.

INFLATION

But even as we act—and act we must—to deal with structural unemployment, we must recognize that inflation is the overriding problem we face today. The recent acceleration of inflation to an annual rate of nearly 10 percent threatens the morale and standard of living of every American.

This new inflationary surge results primarily from higher food prices, higher import prices, higher interest rates, and higher wage settlements.

It does not appear to be the result of either excess demand for goods and services or shortages of labor and capital.

Fiscal restraint by Government at all levels is vital to limit spending which could result in excess demand and further inflation in the economy.

AN ANTI-INFLATION BUDGET

The Budget Committee urges the adoption of this pared-down budget as a public symbol of our intention to reduce inflation and to reduce deficit spending.

For, if the Federal Government, representing all the people, does not clearly signal restraint, who else will?

This budget is intended as a clear signal that inflation control requires cooperation from all sectors and participants in the economy.

This budget will signal our citizens and the private economy that Congress is prepared to reduce Government growth as part of the fight against inflation, both this year and in the years ahead.

BALANCING THE BUDGET

The policies recommended in this second budget resolution are designed to achieve a balanced budget and full employment within the next 5 years.

Although the economic outlook now is less favorable than it was in the spring, the committee still believes that spending restraint during the next 5-year period will permit budget balance to be reached by 1983, with no greater than 4½ percent unemployment at that time.

At the same time, noninflationary tax reductions can be enacted and the size of Federal spending as a percentage of the gross national product can be reduced.

With spending restraint, outlays will fall to slightly less than 20 percent of GNP by 1983.

Attempts to balance the budget at an earlier date will be paid for by American workers through higher unemployment.

But, if we are ever to balance the budget, spending on most new programs must be financed through savings or reduction of spending levels in current programs which have lower social value.

As the report accompanying the first budget resolution made clear, presently identifiable new spending programs could add another $416 billion to the Federal budget within the next 5 years.

And that may be just the tip of the iceberg.

Congress cannot balance the budget if it continues to enact new programs without appropriate reduction and elimination of those programs which are inefficient, obsolete, or of lower priority.

A balanced budget will be imperiled by congressional actions which exceed the narrow margin available for future year tax and spending decisions.

The exact mix of future tax reductions and spending increases cannot and need not be determined now. Congress can and should make such determinations as the events of future years unfold. The budget process provides Congress with an appropriate and flexible mechanism for making those determinations annually.

Under any foreseeable circumstances, however, Congress will face substantial pressure in this and future years to increase deficit-deepening expenditures which will threaten the balanced budget this second resolution is designed to reach.

Such increases will also kindle higher inflation in future years, as increased Federal spending competes for resources with a stronger private economy.

THE 5-YEAR BUDGET

Mr. President, the second budget resolution continues the multiyear budgeting approach the Budget Committee installed in its first budget resolution last spring.

This system is unparalleled in the Federal Government. It allows Congress to set the coming year's budget with a clear set of goals and a reasonable estimate of costs for an entire 5-year period.

Deciding the budget in a 5-year context helps us to control the budget in those future years.

Through the congressional budget process, Congress develops its own fiscal policy, shapes Federal efforts to address major national needs, and controls the budget.

But none of these goals can be achieved if budgeting is pursued 1 year at a time.

Viewed in a 1-year context, three-fourths of the budget is "uncontrollable," unless existing laws are repealed and existing commitments are terminated.

In a 1-year time frame, future directions and costs of new programs are nearly impossible to determine. A single year's budget may, in fact, include many new commitments which will expand unforeseeably in the future.

Our new 5-year budgeting system will help us to meet the shortcomings of single-year budgets.

THE BUDGET BY FUNCTION

Now, Mr. President, let me describe more fully some priorities set by this second budget resolution.

FUNCTION 050: NATIONAL DEFENSE

Mr. President, the priority this second budget resolution assigns to defense reflects our continuing concern that we maintain an effective deterrent against war and the means to defeat an enemy who would risk war.

The spending ceilings for defense recommended in this resolution are based on the same three congressional perceptions underlying the first resolution.

First, Congress supports a level of defense spending adequate to maintain and modernize our strategic forces.

Second, Congress endorses an increase in our tactical arms strength to improve our capacity to participate in the defense of Western Europe.

Third, Congress believes the Federal Government should assume leadership against inflation by restraining the size of Federal pay increases through a 5.5-percent pay cap and substantial absorption within existing agency budgets of the costs of any pay increases.

The second budget resolution does reflect reductions from the first resolution of $1.7 billion in budget authority and $3.2 billion in outlays due to technical reestimates of program requirements and savings identified in the appropriations process.

FUNCTION 150: INTERNATIONAL AFFAIRS

The first budget resolution targets for international affairs were sufficient to fund two congressional objectives. These two objectives are the provision of adequate long-term capital flows for economic development in order to sustain world economic growth, and economic and military assistance for some of our allies and other friends abroad.

Much of this assistance will be used to purchase American goods and services.

The second budget resolution ceilings reaffirm these objectives. In particular, they reaffirm the expected full appropriation to cover the United States' participation in the International Monetary Fund's proposed Witteveen Facility.

They also reflect an upward reestimate of outlays which results from the recently announced acceleration of previously enacted economic support assistance for Israel.

FUNCTION 250: GENERAL SCIENCE, SPACE, AND TECHNOLOGY

For general science, space, and technology, both the first and second budget resolutions support current levels of activity as reflected in the Senate-passed appropriation bills.

For future years, the committee assumes less than a full allowance for inflation, requiring increased efficiency in order to maintain current program levels. In the civilian space program, for example, real reductions will be required over the next 5 years in some programs, if a fifth Space Shuttle orbiter is required.

FUNCTION 270: ENERGY

The second budget resolution continues the priority the first resolution gave to energy.

The first budget resolution reflected a high priority for energy funding. Significant increases over fiscal year 1978 were assumed for energy supply, energy conservation, and the strategic petroleum reserve.

The committee recommends continuation of significant Federal efforts to stimulate the supply of energy through support for new technologies.

For energy conservation, the recommended ceilings would allow for appropriations that have passed the Senate as well as funding for further initiatives expected under the National Energy Act.

The level of Federal support for energy conservation is projected to trend downward over the next 5 years as national conservation goals are achieved over that time period.

For emergency energy preparedness, the committee's recommendations would continue full support over the next 5 years for a 750-million-barrel strategic petroleum reserve. Both budget authority and outlays for fiscal year 1979 are reduced from the first budget resolution as a result of delays in achieving the planned fill rate, although these delays are expected to be made up over the next 5 years.

Other activities in this function are sustained at current policy levels in fiscal year 1979 and over the next 5 years.

FUNCTION 300: NATURAL RESOURCES AND ENVIRONMENT

For Natural Resources and Environment, both the first and second budget resolutions reflect increases over previous years' spending based on the importance the Congress attaches to the preservation and utilization of the Nation's natural resources and the improvement of the environment.

For water resources, the committee recommendations will support ongoing planning and construction activities as well as new starts approved in the appropriations process.

For conservation and land management, current programs are assumed to continue and there is some room for additional initiatives in fiscal year 1979. But no significant increases are assumed in future years.

For recreational resources, the committee recommendations will permit some real growth in fiscal year 1979, including an allowance for new initiatives such as urban parks. Over the next 5 years any real increases would have to come from greater efficiencies or reductions in existing programs.

For pollution control and abatement, the committee recommendation continues support at approximately constant real levels for fiscal year 1979 and future years.

The committee recommendation can accommodate a new oilspill pollution liability fund.

FUNCTION 350: AGRICULTURE

The committee recommendations for the second budget resolution reflect continued strong Federal support for the agricultural sector, but recognize the improvement in agricultural economic conditions that has occurred since the first budget resolution.

For farm income stabilization, the resolution allows for the first CCC borrowing authority increase in many years.

It limits the allowance for new initiatives to agricultural trade legislation that is now pending.

For the next 5 years, the resolution assumes continuation of these agricultural policies, with an additional allowance for international emergency wheat reserve acquisition in fiscal year 1980.

For agricultural research and services, the resolution reflects a lower allowance for new initiatives than contained in the first budget resolution, reflecting Senate appropriations action.

FUNCTION 370: COMMERCE AND HOUSING CREDIT

For commerce and housing credit, both the first and second budget resolutions provide the financial support necessary to insure an adequate supply of mortgage credit.

Funding for GNMA's mortgage purchase activities is assumed at the level of the President's request.

The Federal payment to the Postal Service is continued in accordance with existing law, which anticipates that the Postal Service will make steady progress toward financial self-sufficiency.

For Small Business Administration programs, this budget is designed to accommodate the recommendation of the President and the Senate Select Committee on Small Business that in the future more emphasis should be placed on the use of loan guarantees.

This second budget resolution does reflect reductions from the first resolution as a result of projected increases in loan sales by the Farmers Home Administration, and the expected transfer of Federal Financing Bank surpluses to the Treasury.

FUNCTION 400: TRANSPORTATION

Both the first and second budget resolutions reflect continued high levels of assistance for transportation activities.

For highways, the second resolution increases funding to allow for accelerated interstate construction and to permit a significant expansion in assistance for highway bridge repair and replacement as recommended by the Senate Environment and Public Works Committee.

This budget supports the current program levels of the Federal Railroad Administration. It accommodates additional investment in ConRail equal to the minimum needs estimate of $1.3 billion, including $600 million in fiscal year 1979.

This budget contemplates funding significantly in excess of the President's request in most categories of Federal activity, including mass transit construction, bus purchases, and operating subsidies.

An allowance is included for establishment of a new "second tier" mass transit operating subsidy program.

Mass transit spending totals in the second resolution have been adjusted downward since it no longer appears that prior-year contract authority will be replaced with appropriated budget authority this year.

In air transportation, both resolutions assume an allowance to support initial

funding for a new program of airport and aircraft noise reduction. For water and other transportation, both resolutions continue assistance at current program levels.

FUNCTION 450: COMMUNITY AND REGIONAL DEVELOPMENT

For community and regional development programs, the first budget resolution accommodated funding for several new initiatives in addition to current programs.

This second resolution differs significantly.

Budget authority has been reduced to reflect the committee's judgment that changed conditions since the first resolution warrant the removal of funding in fiscal year 1979 for National Development Bank grants, State incentive grants, Round 3 of local public works, and a major "soft public works" initiative.

Outlays are higher, primarily because of upward reestimates caused by unexpectedly high lending and slow disbursements in fiscal 1978 for SBA disaster loans.

Other activities in this function remain at the levels assumed in the first resolution.

FUNCTION 500: EDUCATION, TRAINING, EMPLOYMENT, AND SOCIAL SERVICES

For education, training, employment, and social services programs, the first budget resolution accommodated the President's proposal for increased funding under title I of the Elementary and Secondary Education Act, increased Federal funding for handicapped education, and an allowance for middle income tuition assistance.

The first resolution also assumed continuation of 725,000 public service jobs, with increased targeting of such jobs in the structurally unemployed. It also assumed funding for the President's private sector jobs initiative. An expansion of social services and child welfare services programs was also assumed.

The second budget resolution continues the policies of the first resolution except as follows:

No provision is made for a middle income tuition assistance program.

A reduction is assumed in funding for public service jobs for the cyclically unemployed in view of the anticipated continued improvement in the employment outlook. This reduction would reduce by 60,000 the average number of public service jobs funded in fiscal year 1979.

Only half the funding requested by the President for a private sector jobs initiative is assumed, due to likely slippage in establishing that program.

FUNCTION 550: HEALTH

For health programs, the first budget resolution provided for medicaid program expansions proposed by the President, the cost of which would be more than offset by savings in medicare and medicaid as a result of the hospital industry's voluntary cost containment efforts, and by savings in medicaid from the administration's quality control program.

The first resolution also assumed increases over current law for discretionary health services programs, and reductions below current law in funding for health professions education assistance.

The second budget resolution differs from the first resolution primarily due to downward CBO reestimates of the cost of both the medicare and medicaid programs.

FUNCTION 600: INCOME SECURITY

In the income security function, the second budget resolution adjusts the first budget resolution in three ways:

First, it makes room for increased costs associated with the Senate-passed child nutrition bill.

Second, it assumes a higher level of funds for an expanded earned income credit, while making no provision for fiscal relief to States to offset public assistance costs.

And third, it provides for a lower level of budget authority for housing programs consistent with Senate appropriations action.

FUNCTION 700: VETERANS BENEFITS AND SERVICES

For veterans programs, the second resolution basically continues the policies assumed in the first resolution.

The second budget resolution does provide for increased costs for veterans' pension and compensation legislation as passed by the Senate. These increases are partially offset by downward CBO reestimates of the current low cost of these programs.

Legislative initiatives assumed in the first budget resolution pertaining to veterans' readjustment benefits are no longer assumed. Lower funding for the VA medical system reflects Senate appropriations action.

FUNCTION 750: ADMINISTRATION OF JUSTICE

In the area of law enforcement, the first and second budget resolutions generally support current levels of program activity by the Department of Justice and other agencies to control organized crime, public corruption, drug trafficking, and illegal immigration, and to prevent racial and ethnic discrimination.

This budget also assumes continued aid to State and local governments through LEAA at about present activity levels, with a small allowance for a number of limited new program initiatives.

FUNCTION 800: GENERAL GOVERNMENT

For general government, the first budget resolution supported current levels of program activity for the legislative and executive branches, with partial allowance for inflation in future years.

The second budget resolution recommendations are the same as those in the first resolution, with the single exception that outlays have been reduced to reflect a CBO reestimate of activity under GSA's Federal buildings fund.

FUNCTION 850: GENERAL PURPOSE FISCAL ASSISTANCE

For general purpose fiscal assistance, the first budget resolution assumed continued funding of general revenue sharing at current levels, and continued assistance to distressed localities under a supplementary fiscal assistance program at levels requested in the President's urban initiative.

The second budget resolution recommendations are the same as the first resolution with regard to general revenue sharing.

In light of significant improvements in the national unemployment rate, supplementary fiscal assistance in the second resolution has been reduced to about $0.5 billion, one-half the amount assumed in the first resolution.

FUNCTION 900: INTEREST

In function 900, interest, both budget authority and outlays have increased by $1.1 billion since the first budget resolution, largely to reflect increased interest rates on the public debt.

FUNCTION 920: ALLOWANCES

Function 920, allowances, continues the anti-inflationary assumptions of the first resolution regarding the upcoming comparability pay increase for Federal employees.

As with the first budget resolution, this resolution assumes that these raises will be limited to 5.5 percent, and that employing agencies will be required to absorb 20 percent of the costs of the pay raise through savings in other activities.

Function 920 in this second resolution also includes an estimation of savings expected to result from the across-the-board cuts which Congress has adopted in several appropriations bills. We would have attributed these savings to the priority functions to which they belong if anyone could now predict where these across-the-board cuts will actually occur, but no one can.

Let me emphasize that in reflecting these assumed savings in its recommended ceilings, the Budget Committee does not intend any endorsement of meat ax reductions of this type as a responsible way to control Federal spending. The committee believes that congressional spending should reflect congressional priorities, and that Congress should make the hard choices among programs to be cut. To buck that responsibility "upstream" to the President is to revert to the kind of Government by Presidential impoundment which led to the creation of the budget process in the first place. The committee will seek to allocate these reductions to the appropriate functions in the conference with the House, in order to preserve the congressional control of the budget, the budget process is intended to provide.

FUNCTION 950: UNDISTRIBUTED OFFSETTING RECEIPTS

For function 950, undistributed offsetting receipts, the recommended ceilings are the same as the first budget resolution targets and reflect no policy changes.

1978—A YEAR OF TESTING

Mr. President, this second budget resolution comes before the Senate in a climate of support for the budget process which has significantly improved since last spring.

Our first budget resolution for 1979 was debated just a month after the Budget Act had been purposefully trampled upon during consideration of the so-called emergency agriculture bill.

This second resolution comes to the floor just a month after the Senate overwhelmingly upheld the Budget Act

against an attempt to suspend it during the tuition tax credit debate.

Last spring, we warned the Senate that on the record of excess and impulsive spending in the energy tax bill and the agriculture bills that Congress faced a clear resurgence of the free spending mentality.

Last spring I warned that—

> This year's budget resolution presents a critical test case of the Senate's willingness to accept budget reform as more than political propaganda.

I am pleased and proud to be able to report that, so far this year, the Senate has passed that test.

The budget process, which seemed to be clearly on the ropes last spring, has received a strong infusion of Senate support this summer.

Major landmarks in budget control have been set. Let me mention just a few.

In July, the Senate voted 67 to 0—in connection with the Witteveen bill—to assure full appropriations process review of future U.S. commitments to international financial organizations, such as the International Monetary Fund.

The Senate also voted 60 to 21 to eliminate housing assistance funding that was $5 billion in excess of the congressional budget resolution and the President's budget request.

And, in August, the Senate voted to provide much greater flexibility for the appropriations process to control funding under the Elementary and Secondary Education Act.

Prominent and important Senate precedents to control back door spending have been set by rulings from the Chair and sustained by Senate votes.

After a very bad beginning, it has been a good year.

The Senate has not only lived within the budget we adopted last spring, but also, through a prudent pruning of new programs and appropriations, actually allowed us to reduce it substantially in this resolution.

The appropriations process is completing its work nearly on schedule, despite two major filibusters which brought the legislative process to a standstill for more than 2 months.

The Budget Committee has pioneered mission and multiyear budgeting to make the budget more comprehensible and more controllable.

The Budget and Appropriations Committees have worked more closely than ever to limit Federal expenditures and to eliminate back door spending.

And the Senate has supported our efforts.

Credit for this success belongs to every Senator who has voted to support us this year.

Particular credit belongs to Senator WARREN MAGNUSON, chairman of the Appropriations Committee, whose tightfisted approach to Federal spending this year has shaved hundreds of millions of dollars off Federal spending and the deficit.

The majority leader has continued his constant support for the budget process and fiscal responsibility in both his budget votes and his meticulous observance of Budget Act procedures.

The constant cooperation of the leadership staff, exemplified in the efforts of our good friend Tom Hart, have made our budget work and that of the Senate much easier to conduct.

And what more can I say—that I have not previously said—about my friend and partner in this budget process, Senator HENRY BELLMON. He has been accurately described as the Vandenberg of the budget process.

His determination to make the budget process work and his courageous votes for fiscal responsibility should be a matter of great pride to the people of his State. They are a credit to him and to the Senate.

We are encouraged by the progress toward budget control so far this year.

But the year is not over.

Further tests remain—on the mass transit bill for example—before a final appraisal can be made.

The temptation to backslide into irresponsibility is always present.

But I am much more hopeful now—than I thought I could be last spring—that the budget process is really taking hold in this Congress.

And that when we adjourn in October, we can say, "well done."

Mr. President, I yield the floor to my good friend from Oklahoma.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. BELLMON. Mr. President, I thank my friend from Maine for yielding the floor and also for his very kind comments.

I am sure the Senate is now aware, as the country should be, of the remarkable job Chairman MUSKIE and the able staff, both on the majority and minority sides, have done in making the budget process work as well as it has. It has been a real pleasure to be associated with him in this endeavor.

There is a lot of comment now in the country about the so-called taxpayers' revolt and the emphasis that seems to be emerging on tighter fiscal controls on the way we use the tax money entrusted to the Congress. Senator MUSKIE has been in the vanguard of this effort for several years. He has been well out in front of those who now see that this is the popular position so far as taxpayers are concerned.

I congratulate him for the leadership he has given throughout these difficult years in getting the budget process in place and making it work as well as it has.

Mr. President, last May this body adopted spending and revenue targets for fiscal year 1979 that reflected economic circumstances and national priorities as we judged them to be. In the subsequent 4 months, however, several changes have occurred that have demanded adjustments in the budget, as it affects both next year and those following. The budget resolution before us includes the adjustments necessary to address the changes in the economy. The net result of the budget resolution, when adopted by Congress, will set us clearly on the road toward balancing the budget. It is possible that with the adoption of this resolution Congress will be making the goal of balancing the budget attainable a full year earlier than previously expected.

The country is in a more difficult economic period than previously believed. Employment has risen dramatically—an incredible 3.7 million new jobs have been created during the past year; however, inflation also has turned decidedly upward. In the present environment of declining unemployment and volatile inflation, the economy is particularly sensitive to the fiscal policies of the Federal Government. Ill-conceived, irresponsible actions could send us into an inflationary spiral leading the country into another recession. However, conscientious, pragmatic policies will allow us to perpetuate the present expansion, already the longest sustained peacetime recovery of this century. Clearly, this is not the occasion to rock the economic boat.

In light of national attitudes expressed in California and elsewhere, an appropriate economic policy must give particular attention to unanticipated acceleration of inflation. Recognizing full well that there are no simple solutions to a problem of such complexity, there are, nevertheless, significant steps that the Federal Government can and should take. Foremost among these is a reduction of the budget deficit from the unprecedented levels of the past several years, a move that would ease the current pressures on monetary authorities to raise interest rates and reduce excessive public demand for goods and services. While the first budget resolution recognized this problem and was a step in the right direction since its deficit was significantly lower than the President proposed in January, the second budget resolution as reported recommends an even smaller deficit for fiscal year 1979, one that is $8.6 billion below the figure adopted by Congress last May and a full $18.3 billion lower than the President proposed in his January budget.

The level of Federal spending for fiscal year 1979 recommended by the second budget resolution is $9.3 billion below the first resolution mark and some $10.7 billion below the level in the President's original budget. As our chairman has said, that indicates real progress.

In the development of the fiscal year 1979 budget, efforts have been made to balance concerns for inflation with the desire to promote economic stability. The economic drag effects of tax increases from inflation and mandated social security changes have been anticipated. The resolution prescribes new tax cuts of $15.2 billion, plus another $8.2 billion to extend expiring tax cuts. This tax relief should be sufficient tc offset the effects of inflation on personal income taxes and the $3.3 billion increase in social security taxes.

Regarding the question of national priorities, it has become very clear in the past few months that a large portion of the American public is angered by the very size of the Federal Government—the amount of one's paycheck taken in taxes, the increasing encroachment of the public sector on the private domain, the apparent waste and inefficiency. As a result, the levels of Federal taxes and

spending have become issues in their own right, completely apart from that of fiscal policy.

The distribution of these spending reductions also reflects greater awareness of and concern for what the American public is buying with its tax dollars. These cuts fall into three broad categories:

First, the resolution recommends program reductions which correspond to the current state of congressional action. For example, EPA construction grants have been cut by $250 million in budget authority and $800 million in outlays. In addition, spending levels for various energy programs were decreased by $1.5 billion in budget authority and $900 million in outlays. While the EPA cuts are designed to eliminate some planned program activities, the energy-related reductions are intended merely to keep in the U.S. Treasury money which the agencies could not effectively spend out in fiscal year 1979.

Second, the resolution recommends reductions to be accompanied by shifting the emphasis of some current programs, a shifting that responds in great part to the changing economic environment. Most noteworthy in this regard are CETA and the antirecessional fiscal assistance program.

In response to the changing nature of our country's unemployment problem, which has increased the importance of focusing more attention on those Americans who simply do not possess marketable job skills, the budget resolution recommends reorienting available resources to emphasize structural rather than cyclical unemployment. The resolution anticipates a start should be made in fiscal year 1979 on phasing down the countercyclical part of the CETA public service employment program, a move that would save some $500 million next year alone. Another $500 million savings will be achieved through greater targeting of the antirecessional fiscal assistance program so as to provide aid only to those State and local governments with the most severe fiscal distress.

Finally, the resolution recommends the termination of several new initiatives proposed by President Carter which the Congress has not yet considered or approved at this late date. A total of $2.2 billion in budget authority and $300 million in outlays will be saved by eliminating funding for the soft public works program, national development bank grants, phase three of the local public works program and State incentive grants.

I should emphasize at this point that these reductions are consistent with the administration's stated desire to work with Congress to limit the growth of Federal spending. This desire was stated by OMB Director James McIntyre when he testified before the Senate Budget Committee on July 25th that:

> The Administration is ready and willing to work with the Budget Committees, the Appropriations Committees, and others in the Congress to limit the growth in Federal Spending . . . and that . . . a target of total outlays in the neighborhood of $491–$492 billion for a cut of about $5 billion would be an appropriation objective.

The administration has called on Congress to cut spending by $5 billion.

However, it has not provided Congress with a list of specific areas for reduction. We have done our job in cutting $9.3 billion from the outlay total contained in the first budget resolution. I am somewhat dismayed, however, that there have been reports of White House lobbying to have money added back to fund administration initiatives. To include money in this resolution for the President's "soft" public works program, for example, would be inconsistent with Mr. McIntyre's testimony. If we are to achieve budget reductions, we must deny funding for new program initiatives which have not yet received congressional approval and cannot be adequately justified at this time.

Mr. President, the budget presented in this resolution should be adequate to guide the Congress as it confronts the problems of today. There are, however, two additional steps that the Congress should take—and can take within the confines of this budget—to insure that today's problems do not become those of tomorrow.

Since one of the primary causes of our current economic troubles has been deficient business investment, which has led to inadequate capital formation and productivity, I believe the Congress should consider a multi-year approach to tax cuts similar to that suggested by the Roth-Kemp proposal.

Mr. President, experience on the Budget Committee has indicated to me that budget discipline cannot be instilled a year at a time. Rather, we must view the budget each year as a single component in a multi-year spending and revenue plan. The Budget Committee in its report has offered 5-year budget numbers, and even though they are not binding, it is important that we place single year numbers in this longer-run perspective. The Roth-Kemp notion of a multi-year tax cut is in keeping with this concept of multi-year budgeting, and, as a result, would have several advantages.

Such a cut—announced now but phased in over a number of years—would have a more favorable effect on the economy than a series of cuts announced 1 year at a time. It would bolster consumer and producer confidence by insuring that aftertax income will be proportionally greater in the next several years than under current policy. It would boost lagging investment and reduce the risks of making long-term consumer commitments. In short, it would lend greater certainty to an economy now suffering from the lack of that very thing.

The second step Congress should take is to exercise disciplined spending restraint next year and in future years. We must carefully examine new spending proposals and determine how necessary they are likely to be, in light of the short and long run costs and effects. Indeed, only by resisting the temptation to enact additional costly programs can we finally reestablish the historic norms for the size and scope of the Federal Government and bring the budget into conformity with the wishes of the American people.

Again, I believe this resolution points us in the right direction. If we accept it and continue to exercise prudent judgment in the next few years, we can finally accomplish by 1982 the balanced budget that the country needs and desires.

Mr. President, again, I wish to pay tribute to the distinguished chairman of the Budget Committee. He has consistently worked to bring us to the point that we can now have a balanced budget in view. Without his leadership and without the budget process I am convinced that that objective would have been absolutely unattainable, and I hope to see the day before too long when we can bring to the Senate a budget resolution that is in balance with our income and I know that without the leadership of Senator MUSKIE and an able staff that will be impossiole.

So I am very proud to support this resolution because I believe it aims us in the right direction and if we continue on this course we will very quickly have the Nation's fiscal affairs in good order.

Mr. MUSKIE. Mr. President, I thank my good friend from Oklahoma for his statement and for his compliments.

I wish to add my compliments to the staff, both the majority and minority staff, and what we call the core staff of the Budget Committee. I think that they have supplied us with increasingly improving information and analysis which has simplified our work and improved our understanding of the options available to us as we seek to bring this enormous budget under control and in balance.

The whole Senate, if it were possible to conduct seminars extensive enough and long enough, would I am sure agree with Senator BELLMON and myself on the quality of the staff work and the enlightenment that that work can provide with respect to the operations of this Federal establishment, the momentum that drives it and the difficulty of bringing it under control.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BUMPERS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I yield to the majority leader such time as he may desire.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Maine (Mr. MUSKIE).

Mr. President, in its consideration of the second concurrent resolution on the budget for fiscal year 1979, Congress must do its part to help the Nation avoid the horns of the inflation-recession dilemma. Excessive spending or too large a tax cut would overheat the economy and further unleash inflationary pressures. Too restrictive a fiscal policy—that is, too little economic stimulus or too precipitous a decline in the deficit—at the very time that the economic recovery

has begun to slow may tip our economy back into recession.

The current economic forecast by the Congressional Budget Office reflects the consensus view that economic growth will continue to slow. Specifically, CBO projects that constant dollar gross national product (GNP) will increase by 3.5 percent to 4.5 percent during 1978 and by 2.7 percent to 4.2 percent during 1979. By comparison, real GNP increased by 4.9 percent in calendar year 1977.

The projected slowdown is largely accounted for by expectations of reduced spending on residential construction because of the tightening of credit markets; slower growth in consumer spending as the result of the rise in the level of personal debt; and reduced spending on plant and equipment by business. According to a recent forecast, real business fixed investment will grow at only about 4.5 percent in 1978, compared to 9.2 percent in 1977.

In such an economic situation, a large tax cut would seem to be the proper fiscal course—the argument being that such a cut would provide Americans with additional incentive to work and thereby increase productive capacity. The national income would rise and all would seemingly benefit.

This might be the case if slow growth were the only large economic problem we were facing. It is not. At the same time that growth has begun to slow, we are plagued by a high rate of inflation which appears most resistant to current policy.

The facts are these: American prices—the CPI—accelerated at a 10.4 percent annual rate over the first half of the current calendar year. In July, the rate of increase slowed to a 6.0 percent annual rate.

The forecast is for only slight moderation in the rise of prices during calendar year 1979. Unless there is increased private sector support for moderating inflation, we are likely to be caught in a situation similar to the one we are currently experiencing: Wages will be playing catch-up with prices and both will contribute to a continuation of high inflation.

In such a situation as this—with slowing growth and high inflation—a large tax cut would not be as salutary as its proponents believe it would be. One study suggests, for example, that under a much larger tax cut—known as Roth-Kemp—the deficit would soar to $100 billion by 1983. At the same time, the rate of inflation could be as much as 2 percentage points higher with such a cut by 1982.

These are among the reasons why I feel that in fiscal year 1979 there is a need for a moderate tax cut, such as has been assumed by the second concurrent budget resolution recommended by the Budget Committee. It would be sufficient to offset on an aggregate basis the bulk of the 1979 calendar year increases in tax burdens on individual incomes and social security taxes. The second resolution, like the first, assumes a $19.4 billion general reduction made effective January 1, 1979. The CBO estimates that it would reduce fiscal year 1979 revenues by some $14.0 billion.

Most important, it would allow for improved economic performance both in real growth and employment without unleashing inflationary pressures. In addition, unlike the large, multiyear tax cut known as Roth-Kemp, it would leave Congress with the flexibility it needs to set fiscal policy in later years in light of the economic situation.

At this point, let me emphasize that a moderate tax cut should not be read as a sign that we can slacken our efforts to further reduce unemployment, the overall rate of which was recorded at 5.9 percent in August. The clear need is to lower the level of joblessness, especially among youths and minority groups in our society—without exacerbating inflationary pressures. This can best be accomplished by specific job creation measures which are targeted to the groups experiencing high levels of joblessness. Such measures expand economic capacity without encouraging inflationary wage increases for regular workers.

Mr. President, I believe that the budgetary course set in the second resolution is the right one for our economy at this time. I have focused my remarks on the size of the tax reduction—on which the second resolution appears right on target. I might also have emphasized that the resolution recommended by the Budget Committee is on target in its call for the Senate to maintain its commitment to spending restraint. The outlays or spending total of $489.5 billion represents a 2-percent cut under the spending level in the first resolution. It represents a $11.5 billion reduction in the outlays level in the President's January budget.

The reduction in Federal spending together with a moderate tax cut will allow for a significant reduction in the level of the deficit—something that we all want to see. It should contribute to a moderation in inflationary expectations on the part of business and labor communities and, it is hoped, increased support by them for moderation in wage and price increases.

Again, I suggest that the spending and taxing recommendations of the committee are right on target, reflecting the sentiment of the Senate and the mood of the Nation. The American people want to see lower inflation and continued economic growth. The second resolution as reported by the Budget Committee will move us toward the realization of those goals.

Mr. President, the chairman of the Budget Committee, Mr. MUSKIE, and the ranking minority member, Mr. BELLMON, are to be commended for their contribution to formulating our Nation's budgetary policy. Their task is a most difficult one, but one which it is perilous to neglect. Their exemplary contribution is matched by their colleagues on the committee. They are all deserving of our commendation.

Mr. President, I yield the floor.

Mr. MUSKIE. Mr. President, I thank the majority leader for his thoughtful statement both with respect to the condition of the economy, as he views it, and the relevance of the budget resolution before us to those circumstances.

His statement is a further indication of his commitment and dedication to the budget process and the attempt to make Congress a full partner in the establishment and development of fiscal policy, and especially as it relates to the other instruments for Government influence on economic conditions.

In his presence I wish to express my gratitude to him for the support of myself, Senator BELLMON, the budget process, and the often frustrating, from the point of the leadership, procedures which could starve and delay action on the floor, but which, with the cooperation of his excellent Policy Committee staff headed by Tom Hart, I think has worked very smoothly to minimize delay without denigrating the procedures. I want to say "thank you," to him for that at this point.

Mr. ROBERT C. BYRD. I thank the able chairman of the Budget Committee.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Rhona Weaver of Senator BUMPERS' staff have the privilege of the floor during the consideration of this resolution, as well as Karen Mandan of Senator CRANSTON'S staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I would be remiss if I did not at this point express my appreciation to and extend my compliments to the Congressional Budget Office, headed by Alice Rivlin. The Congressional Budget Office has steadily improved in its capacity to serve the needs of the Budget Committees of the House and the Senate, as well as the Senate as a whole.

I am most grateful for the expertise, insights, information, and analyses which they have produced for us, and I would like to say "thank you" to them at this point for that service.

Mr. BELLMON. Mr. President, will the Senator yield?

Mr. MUSKIE. Yes, I yield.

Mr. BELLMON. Mr. President, I would simply like to join the chairman of the Budget Committee in paying tribute to the Congressional Budget Office. They have been an invaluable resource. We simply could not have made the budget process work as well as it has without their help and, as the chairman has said, they have become more and more proficient as the years have gone by, and they are now an absolutely invaluable resource for the Congress, and I am sure as time passes they will become even more so.

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I yield my colleague from Maine (Mr. HATHAWAY) such time as he may require.

Mr. HATHAWAY. I thank my distinguished colleague for yielding.

Mr. President, I just wanted to ask a few questions and make a comment in regard to the second budget resolution.

First, I am concerned about the size of the recommended tax reduction and the revenue estimates which underlie it. It is my understanding that the second budget resolution assumes, first, a reduction of $8.2 billion to accommodate extension through fiscal year 1979 of temporary income tax reductions; second, additional general income tax reductions to become effective on January 1, 1979, which would reduce revenue collections by $14 billion during the fiscal year; and, third, structural tax law changes which, together, would reduce fiscal year 1979 revenues by $1.2 billion.

Furthermore, the resolution provides that the $14.0 billion of general income tax reductions representing $19.4 billion of reductions on a full-year basis become effective on January 1, 1979, 3 months after the beginning of the fiscal year. The first resolution assumed a $19.4 billion annual reduction made effective January 1, 1979, which would reduce fiscal year 1979 revenues by $15.0 billion. I understand that the $1.0 billion smaller fiscal year 1979 revenue loss for the second resolution general reductions represents a CBO reestimate of the extent to which a full-year tax reduction is reflected in the tax collections for the first 9 months of the annual period.

The report on the second resolution states that:

The Committee assumed an expansion of $0.5 billion in refundable earned income credits payable to recipients in excess of their tax liabilities. The Committee believes that contemporaneous expansion of nonrefundable earned income credits which reduce recipients' income tax liabilities is to be accommodated as part of the tax reductions allowed for in the Second Budget Resolution.

Now, all of these tax changes are anticipated to result in total revenue collections of about $447 billion in fiscal year 1979, rising to $726 billion in fiscal year 1983.

There has been a great deal of speculation concerning revenue estimates after tax changes are made. I understand that generally, only the first tier affects, that is, without so-called "feedback" are taken into account in the initial revenue loss projections. Is this correct?

Mr. MUSKIE. My colleague has raised an important issue, Mr. President, with respect to the techniques employed in estimating the impact of tax legislation on Federal revenue collections. Some of the questions relate particularly to possible proposed changes in capital gains taxation.

I believe some clarification is necessary as to the methods currently used to calculate the revenue effects of tax legislation.

For all tax bills estimators calculate the extent to which revenue collections will change if the legislation had no other effects on the economy or on taxpayer behavior. Apparently, there is some belief that this type of so-called static estimate is the only type of estimate used in conjunction with tax legislation. That is the point which the Senator's question raises.

In fact, two different types of secondary effects or feedback effects are taken into account by estimators:

First, estimates of aggregate budget receipts made for budget resolutions take into account additional receipts resulting from the impact of the overall level of tax reductions assumed in those resolutions. These additional receipts are the feedback from the increased economic activity which results from providing taxpayers in the aggregate with increased after-tax income to spend. Estimates for specific, particular tax law changes do not include feedback effects for these general changes in overall economic activity. To include them would be to count their effects twice.

On the other hand, and now I sound like my good friend Senator HOLLINGS' typical economist, secondary or feedback effects that reflect specific behavioral changes have been taken into account by revenue estimators in recent years when there is some degree of consensus on the part of the experts as to what the behavioral effects of such changes are likely to be.

However, it often is extremely difficult for experts to agree on the likely secondary behavioral effects of the same tax law changes. In some cases, however, these assumptions are made. For example, when new tax expenditures are developed, assumptions are made as to the likely level of their usage, as, for example, the use of recently proposed tax credits for home heating insulation. So, occasionally, behavioral effects and secondary effects are taken into account, but even then only if a consensus among expert estimators is developed.

Mr. HATHAWAY. If the Senator will yield further, one specific area in which this debate has occurred is in the proposal to "rollback" capital gains taxes to the pre-1969 level.

In this context several econometric studies have been made of the possible effects of the change.

Chase Econometrics projected a net Treasury gain of $16.6 billion by 1985. Data Resources, Inc. projected a revenue gain of $33 billion for the period 1979–83. The Merrill Lynch study does not project a revenue effect. A slightly different version developed by Norman Ture projects a $1 billion Federal revenue gain in 1987.

Clearly the analysis is all over the ball park.

Mr. President, I ask unanimous consent that a summary of the results of these models on capital gains and a comparison of economic models be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF STUDIES ON CAPITAL GAINS TAX REDUCTION EFFECTS

A number of recent studies have been prepared in response to proposals to reduce the highest rate of tax applicable to capital gains. These studies generally have focused on the possible impact of such a change on the stock market, and have utilized a feedback, rather than a static, analysis, *i.e.*, they assume that certain responses will occur as a result of a change, and that these responses, in turn, will trigger additional reactions.

A simulation prepared by Chase Econometric Associates, Inc., projected that the provisions (to be effective January 1, 1980) would have the following effect (in constant dollars, and over currently estimated levels): (1) increase new jobs by 440,000 by 1985, (2) increase plant and equipment expenditures by 1 percent annually for the period 1980–1985; (3) increase the average annual GNP growth role by 0.2 percent for the period 1980–1985; (4) increase nonresidential construction by 2.5 percent annually for the period 1980–1985; and (5) increase Federal tax receipts by $0.7 billion in 1980, and by $15.6 billion in 1985. These projections were based on the assumption that the enactment of S. 3065's provisions would increase stock market prices by 40 percent by 1982, relative to the price level which otherwise might be anticipated. This assumed price rise was projected to increase stock market transactions, and thereby more than offset any anticipated Federal revenue loss attributable to a reduction in the capital gains tax rate through increased tax receipts generated by the greater volume of capital gains transactions.

(The Chase simulation projected that a reduction in the capital gains tax rate would stimulate economic activity through the following combination of assumptions: (1) a reduction in capital gains taxes raises stock prices; (2) increased stock prices lead to a greater rate of growth in capital spending; (3) increased stock prices lead to more equity financing, which reduces corporate debt/equity ratios, thereby decreasing interest rates; (4) increased investment creates higher employment, income, and output levels, and reduces inflationary pressures by increasing productivity and raising the maximum potential GNP; and (5) increased economic activity raises Federal revenues, reduces the budget deficit, and leads to lower inflation and interest rates.)

The Treasury Department has criticized the Chase simulation as being based on unrealistic economic assumptions. Treasury argues that neither the study's postulated 40-percent increase in stock prices by 1982, nor its assumed increase in taxpayer propensity to realize gains, can be supported. Moreover, it notes that the Chase study proceeded upon the incorrect assumption that the 1969 Act's increase in capital gains tax rates was effective for 1969, rather than beginning in 1970 (and becoming fully effective in 1972).

A study made by Data Resources, Inc. (DRI), based on assumptions supplied by the Securities Industry Association (SIA),[8] projected that the provisions (to be effective January 1, 1980) would have the following effect (in 1978 dollars, over baseline forecasts) for the period 1979–1983: (1) increase employment by more than 1.6 million manhours; (2) increase GNP by $98 billion; (3) increase personal consumption by $56 billion; (4) increase investment by $46 billion; (5) decrease Federal tax revenues by $0.8 billion in 1979 (assuming a 10-percent postponement of capital gains expected to be realized in 1979), and generate a Federal tax revenue increase of approximately $33 billion for the period; and (6) increase the rate of inflation of about 0.2 percentage points. The DRI study assumes that a change in the tax treatment of capital gains will increase the propensity to realize such gains by 10 percent, and that monetary policy accommodates the changes. (Under such an assumption, the money supply must expand to keep interest rates constant. If monetary policy does not accommodate the change, DRI's projections would shift downward.) It also assumes a 10-percent rise in the Standard and Poor's Index of stock prices, and a 5-percent decrease in corporate dividend-payout ratios.

The Treasury Department has criticized the DRI study as being based on unrealistic economic assumptions. It argues that neither the study's postulated 10-percent increase in the Standard and Poor's Index, nor its as-

sumed 10-percent increase in taxpayer propensity to realize capital gains can be supported. Moreover, Treasury notes apparent inconsistencies between the conclusions reached by the DRI model and those projected by the Chase simulation. In addition, it argues that there is no conclusive support for the proposition that reduced capital gains tax rates will cause overall tax revenues to rise.

While the Treasury criticisms have been repeated, it also has been noted that the projections of the DRI study are heavily dependent on monetary policy. For example, under an accommodating monetary policy assumption, the DRI model projected a net Federal tax revenue increase of approximately $33 billion for the period 1979–1983, but under a non-accommodating monetary policy assumption, the model projected a net Federal tax revenue increase of approximately $10.5 billion for the same period. Thus, it is argued that the model is highly dependent upon factors entirely outside the tax system.

A model used by Merrill Lynch Economics, Inc. projected that the enactment of provisions (to be effective in the third quarter of 1978) would have the following effect through 1980: (1) increase employment by 205,000; (2) increase the average growth of real GNP from 3.3 percent to 3.5 percent; (3) increase business investment for the period by $3.2 billion; and (4) decrease the Federal budget deficit by $2.3 billion in 1980. According to the study, these projections were based on assumptions made about factors which are either nonquantifiable or, at best, difficult to assess." The Merrill Lynch study assumes a stock price use of 4 to 6 percent in response to the capital gains tax change.

A model developed by Norman Ture, Inc. for the National Association of Manufacturers Tax Impact Project (TIP) projected that the enactment of provisions in early 1978 (to be effective January 1, 1980) would have the following effect (in constant 1977 dollars, and over present law), (1) increase full-time equivalent employment (over currently estimated levels) by 90,000 in 1978, and by 150,000 in 1987; (2) increase wages by $80 per year in 1978, and by $150 per year in 1987; (3) increase gross capital outlays by $8 billion in 1978, and by $13 billion in 1978; (4) increase consumption by $4 billion in 1978, and by $14 billion in 1987; and (5) decrease Federal tax revenues by $2 billion in 1980 (the first year for which the provisions would be effective), and by $3 billion in 1987. However, assuming an economic feedback, the TIP model projects a 1978 net Federal tax revenue gain of $3 billion, and a net 1987 Federal tax revenue gain of $1 billion.

The Ture study differs from the other three studies in several respects. It assumes no increase in stock prices in response to the capital gains tax cut on the grounds that sales of assets in response to reduced capital gains tax rates will tend to drive down stock prices while greater attractiveness of stocks to investors will tend to raise stock prices, leaving the net effect indeterminate. Rather, the beneficial economic effect of the capital gains tax cut in the Ture study is assumed to come from an increase in saving, which leads to more investment by businesses, greater productivity and higher wages.

The Treasury Department, on the other hand, estimates that adopting the changes proposed would reduce annual tax revenues by $2.2 billion at 1979 levels of income. This total would consist of the sum of $0.5 billion from removing the $50,000 ceiling on the application of the 25-percent alternative tax rate for long-term capital gains; $1.3 billion attributable to the elimination of long-term capital gains as a preference item subject to the minimum tax, and as an offset against the amount of personal service income eligible for the application of the maximum tax; $0.4 billion allocable to the reduction of the corporate capital gains tax rate from 30 percent to 25 percent and removing corporate capital gains as a preference item subject to the minimum tax.

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## A Comparison of Econometric Models

(By L. Douglas Lee)

### Introduction

In the process of decisionmaking, a policymaker sometimes will pose the following question: "If we adopt this particular policy, how will it affect the economy?" Analysts will often use an econometric model to answer this question. By changing the policy assumptions which are fed into the model, an analyst can explore the probable outcome of various policy options.

There are three large macroeconomic models of the U.S. economy which are commercially marketed and widely used by analysts in government and private industry. These models were developed by Chase Econometric Associates, Inc. (Chase), Data Resources, Inc. (DRI), and Wharton Econometric Forecasting Associates, Inc. (Wharton).

Each of these models is an attempt to describe the U.S. economy using a group of mathematical equations and statistical relationships. Not surprisingly, since there is disagreement among economists on the economic theory which underlies the models and disagreement among statisticians and econometricians on the best equations to capture the statistical relationships, the three models are quite different.

The following paper is divided into two sections. The first is a description of the model structures. It is an effort to translate the mathematical equations into words. It also points out the economic theory underlying the equations. The second part of the paper discusses some of the theoretical issues surrounding this particular approach to economic analysis. In recent years this approach has come under attack by some economists who argue that it is not justified on fundamental theoretical grounds.

### The Econometric Models

Since the commercially available models undergo constant revision and updating, careful attention must be paid to the specific version being used. The version of the DRI model discussed in this paper is designated 77y. It was reestimated and revised in 1977 and is described in the collection of papers, "The Data Resources Model, 1977 Edition" (mimeo) edited by Otto Eckstein. The Chase model discussed is the version in effect in December 1977. Most of the equations in the Chase model were estimated in 1976 or 1977. The discussion which follows is based on a listing of those equations. The Wharton Mark IV quarterly econometric model was constructed in 1974. While various sections have been updated and changed, the model has not undergone a complete revision since that time. The equations in the version used in this paper were estimated in 1974–77, and the discussion comes from a listing of these equations.

A few general comments are in order before plunging into the model structures. First, one should note that these general equilibrium models have grown increasingly large and complex in recent years. For example, the models designed in the 1940's and early 1950's by Lawrence Klein contained 12 equations. By contrast, today's DRI model contains some 800 equations. Similarly, the Wharton model uses 669 equations while the Chase model contains about 455 equations.

Second, these models are best used in combination with the judgment of an economist. Whether the model is used for forecasting or for policy analysis its results are always subject to modification by the analyst if they appear "unreasonable." [1] This means that different analysts may derive different results from the same model if they alter the model's output to conform to their own judgment. Several evaluations of the accuracy of these judgmental forecasts have been published.[2]

Third, the models described in this paper are all quarterly models which are typically used for analyzing 8–12 quater time period. Other models using annual data or focusing on long-term analysis are not considered. This distinction is not especially important for Chase and DRI because their long-term projections are produced by merely extending the quarterly model. For Wharton, however, the annual model is different both in structure and in the level of aggregation.

#### *Fiscal policy*

The fiscal policy variables in the DRI model correspond closely to the broad divisions used in the National Income and Product Accounts. Exogenous variables are government purchases (divided into military and nonmilitary), grants-in-aid to State and local governments, foreign transfers, wage accruals less disbursements,[3] and subsidies. Endogenous spending variables are transfers to persons and net interest. All receipt categories are determined endogenously and are broken into the following broad categories: Personal tax and non-tax payments, corporate tax accruals, indirect business taxes, and social insurance contributions.

A unique feature in the fiscal policy section of the DRI model is the option of specifying government purchases in either current dollar or constant dollar terms. When the analysis covers a longer time period, it is sometimes easier to estimate purchases in real terms.

The spending side of fiscal policy is much more disaggregated in the Chase model than in the DRI model. Although purchases are nominally endogenous (that is, determined within the model), the aggregate level is the summation of several exogenous components (that is, determined by some unspecified source outside the model): Purchases of durables, nondurables, services, structures, and Commodity Credit Corporation payments for surplus crops. Subsidies, wages, and grants-in-aid are also exogenous. Transfer payments are a summation of many individual components—veterans benefits, retirement and health benefits, foreign transfers, medical payments, aid to families with dependent children, business transfers, unemployment insurance—with all components, except unemployment insurance being exogenous. Interest payments are endogenous .While the Chase model provides a high degree of disaggregation of the spending components, the fundamental structure is quite similar to that of DRI.

The level of most receipt categories is determined endogenously in the Chase model. It contains these components: Personal tax

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[1] The only nonjudgmental model of which this author is aware is the model developed by Ray Fair. For a more complete discussion of it see Ray C. Fair, *A Short-Run Forecasting Model of the United States Economy* (Lexington: D.C. Heath & Co., 1971).

[2] See, for example, the following series of articles by Stephen K. McNees: "How Accurate Are Economic Forecasts," *New England Economic Review* (Boston: Federal Reserve Bank of Boston, November/December 1974); "An Evaluation of Economic Forecasts," *New England Economic Review* (Boston: Federal Reserve Bank of Boston, November/December 1975); "The Forecasting Performance in the Early 1970's," *New England Economic Review* (Boston: Federal Reserve Bank of Boston, July/August 1976); "An Evaluation of Economic Forecasts: Extension and Update," *New England Economic Review* (Boston: Federal Reserve Bank of Boston, September/October 1976).

[3] This is a time-balancing item assumed to be zero throughout each forecast period.

payments, corporate tax accruals, individual contributions for social insurance and employer contributions for social insurance. Federal indirect business taxes are exogenous.

Government spending in the Wharton model is handled in much the same manner as in the DRI model with roughly the same level of disaggregation. There are exogenous variables for defense and non-defense purchases, subsidies, wage accruals less disbursements, transfers other than unemployment compensation, and grants-in-aid. Unemployment compensation and net interest are determined by behavioral relations.

The tax side of the Wharton model contains a theoretically nice and unique feature. Personal income is divided into seven tax brackets with a separate equation used to generate the proportion of income taxed in each bracket. These proportions are then used, in addition to an income variable, in the Federal personal tax equation.

Although the Wharton model offers the possibility of changing personal income taxes in various tax categories, this option is very complicated to use. As a practical matter, policy analysts frequently do not have the detailed information necessary to fully use this feature of the model. Corporate, indirect business, and social insurance receipts are reach generated by a behavioral relationship.

*Monetary policy*

The monetary sector of the DRI model is an attempt to describe the many components of each financial market in terms of supplies and demands. There are equations to describe the behavior of households, businesses, financial institutions, State and local governments, and the Federal Government. The household and nonfinancial corporate sectors share a common structure with the demands for financial assets and liabilities and the stock of assets being modeled in sufficient detail to construct a complete balance sheet. From a policy perspective the major instruments are nonborrowed reserves, the Federal funds rate, deposite rate ceilings and legal reserve requirements. Money supply is determined endogenously. Interest rates are determined in each of the individual markets through a flow of funds approach. Inflation expectations are explicitly modeled and play a role in the determination of long-term rates.

Like the DRI model, the Chase model uses a flow-of-funds approach to the financial sector. It is, however, much more highly aggregated, using 20 behavioral equations as compared to 110 for DRI. The principal policy instrument is nonborrowed reserves less currency. While both models use a lag structure with past price levels to model expected inflation, these lag structures are quite different in both weight structure and the length of the lags.

The financial sector of the Wharton model most closely resembles the traditional Keynesian model. The major interest rate comes from a liquidity preference schedule, and currency demand depends on the level of transactions. Again the model is highly aggregated, containing 24 behavioral equations. Price expectations enter the utility and corporate bond rates through a distributed lag structure although short-term interest rates are the primary explanatory variables in the long-term rates. The Wharton model also contains another variable which some consider desirable—a proxy for wealth. Once again nonborrowed reserves are the primary policy instrument.

Interest rates are, of course, the major elements linking the IS and LM structures in the models. The DRI model contains the closest ties between the financial and real sectors since it tries to model the business and the household balance sheets, and the mortgage market. In the Wharton model the interest rate links are through the influence of user cost of capital on investment, and through the housing sector. The most important linking variable in the Chase model is an index of credit rationing which is a weighted average of the real money stock, real deposits in thrift institutions, and a loan to deposit ratio. It works largely through the housing sector but also affects other components of aggregate demand, notably the durable portions of consumption. The only direct effects of interest rates in the Chase model are in the equipment and nonresidential structures equations which depend partially upon the Aa bond yield.

Anyone familiar with the extreme or very unusual financial conditions which have often characterized the 1970's might question how these conditions have influenced the econometric models. More specifically, would a shifting money demand equation invalidate the results of this analysis? The answer is surely no. Model builders typically reestimate and, if necessary, respecify the equations frequently enough to capture and model any demand shifts. Second, as pointed out elsewhere, the analysis is valid only to the extent that the model accurately describes the economy. Only if the change in fiscal policy being simulated were so radical that it caused money demand to shift, would the analysis be affected. In this event, the interpretation of the econometric results would be heavily weighted by the analyst's judgment.

*Foreign sector*

The foreign sector in the three models ranges from very small to practically nonexistent. The underlying problem in this area is the asymmetry between information available relating to exports and that available for imports. Export prices are largely determined domestically while import prices are determined abroad. Conversely, import demand functions can use a variety of domestic variables while there are few variables available for use in an export demand function.

The DRI model has the most disaggregated foreign sector of the three models examined here, although it is still small. The sector as a whole impacts the domestic economy through the balance on goods and services which relates by definition to the underlying end-use categories. Real merchandise exports are divided into six end-use categories while imports are divided into seven categories. Fuel imports are exogenous. There is a single equation for service exports and another for service imports. Import prices are determined primarily by a composite index of the wholesale prices of our major trading partners; export prices are related to domestic wholesale prices.

The Chase foreign sector consists of two equations—one to estimate exports of nonagricultural goods excluding petroleum and one to estimate imports of nonagricultural goods excluding petroleum. Other variables relating to the foreign sector, including import prices, are exogenous. The implicit price deflator for exports is related to domestic prices and the import deflator.

The foreign sector in the Wharton model is similar to DRI's. Endogenous imports are divided into four categories of goods and three categories of services. Most equations include a final demand variable, a terms of trade variable spread over a lengthy period by a polynomial distributed lag, and a dock strike dummy. The export sector is divided into three groups of goods and three groups of services. Generally they are related to a world trade index, a relative price term, and a strike dummy. Fuel imports are exogenous. Again export prices are related to domestic variables while import prices are exogenous.

*Supply*

Turning to the supply side of the models, equations for production in 75 industries form the heart of the DRI system. Production is the key determinate of investment and employment. The model begins by using an input-output matrix to produce a generated output series. Standard regression techniques are employed in comparing actual and generated output to model the implicit coefficient changes. Additional information is used to alter the coefficients if the 1967-based information is judged atypical or if structural changes have substantially altered interindustry relationships.

Industry employment is derived from a straightforward production function of the form

$$Q = \alpha L^{\beta} e^{(time)}$$

where Q is output, L is labor input growing at the rate $\beta$, and $e^{(time)}$ represents a time trend. This formulation produces a desired level of employment which corresponds to the production levels calculated earlier. Equations translating desired employment to actual employment capture any recognition delay. Military employment is exogenous and spending is the proxy for production in the civilian government employment equations. Total employment is not derived by summing the various industry employment levels. Instead, it comes from the relationship between the unemployment rate and the civilian labor force. The unemployment rate is derived using an Okun's law relationship and the labor force depends on population and participation rates. Unlike the other models which derive total man-hours from a production function then convert them into employment, in the DRI model man-hours are an uncalculated residual.

Investment is estimated using a neoclassical capital stock adjustment equation. It generally takes the form

$$I = F(K^* - K_{t-1})$$

where $K^*$, the target capital stock, comes from a Cobb-Douglas production function. In other words, investment is determined by the difference between the desired capital stock and the observed capital stock in the previous time period. To a large extent, aggregate investment is determined prior to production while industry-specific investment is determined directly by the rate of production and other factors. Aggregate production influences aggregate investment through capacity utilization rates and, less directly, through its impact on prices, profits, and the general level of economic activity. Financial variables, shortfalls in expected sales, and capacity utilization play less important roles.

The Chase model focuses on the macroeconomic approach to production. While there is no input-output matrix automatically solving for industry level production, Chase does have a 200 equation input-output model which can be linked to the macro model to produce a joint forecast. The macro model does contain a few equations to independently estimate certain components of special interest (i.e., manufacturing, metals, autos, construction, etc.).

Employment in the Chase model is derived from the usual Cobb-Douglas production function of the form

$$Q = \alpha L^{\beta} K^{\gamma} e^{(time)}$$

The only difference between this production function and the one specified in the earlier description of the DRI model is the addition of a capital stock variable, K, growing at the rate $\gamma$.

Unlike the DRI model where productivity is estimated by a time trend, Chase has done some special analysis of the historical data and constructed a series which shows cyclical as well as secular movements. For forecasting purposes productivity is entered exogenously. Unemployment is a residual, calculated as the difference between labor force

and the level of employment estimated for six sectors.

Normally one might expect production variables to be influential in the investment equations—certainly they play a major role in the DRI model. Chase argues that since investment is used as an independent variable in the production equations, a high degree of spurious correlation prevents the use of production variables in the investment equations. Instead, the independent variables represent rental cost of capital, an index of credit rationing, new orders, and consumption. As a result of this specification, changes in corporate taxes have a very large impact on investment.

Aggregate supply in the Wharton model is the sum of output originating in 12 industries. The 12 equations are designed to respond to demand changes, although there is substantial variation among them. For example, current consumption of food and beverages is the dominant factor in determining output originating in agriculture, forestry, and fisheries, but output originating in manufacturing durables is determined by consumption, fixed investment, government purchases, inventory stock, exports and imports, the unemployment rate, and an auto strike dummy.

Employment estimates have often been a problem in the Wharton model. Basically each industry's production function is solved twice—once for man-hours and once for employment. The conversion from man-hours to employment seems to cause problems, and as a result these equations are frequently changed. Note that the Wharton model uses only real variables in the determination of employment demands—wages and prices are not considered. Unemployment—the difference between the civilian labor force and employment—is a residual.

The investment equations in the Wharton model are an outgrowth of the same neoclassical theory which underlies the DRI model. The common explanatory variables used in these equations are level of output, the ratio of final product price to user cost, and capital stock. Business fixed investment is generated separately for each of nine sectors. Tax rates and depreciation enter through the user cost of capital variable. Separate equations divide the totals into various subgroups such as equipment and structures.

*Income determination*

To this point, the discussion has focused on the fiscal and monetary aspects of the models and the IS–LM structure. Approaching these models through their method of income determination provides a different perspective and highlights some of their differences. One must remember that in these simultaneous models the income and product sides fully interact.

The income side of the national income accounts is divided as follows:

Gross National Product

Less: Capital consumption allowance.

Equals: Net national product.

Less: Indirect business taxes; Business transfer payment; Statistical discrepancy.

Equals: National income.

Less: Corporate profits and inventory valuation adjustment; Contributions for social insurance.

Plus: Government transfer payments to persons; Interest; Dividends; Business transfer payments.

Equals: Personal income.

Less: Personal taxes.

Equals: Disposable personal income.

The DRI model follows this table quite closely. GNP is an identity and personal income is derived as a residual. The large piece that comes from a behavioral equation is profits. Profits are modeled as a function of capacity utilization, final sales, the wholesale price index, and the ratio of compensation to output. The capital consumption allowance derivation follows the methodology used by the Bureau of Economic Analysis which depends upon the price deflator and the average life of business investment. The inventory valuation adjustment depends upon constant dollar inventories and the price level changes. Interest payments by consumers and the Government are simply a function of interest rates and the amount of debt. For corporations they are a function of interest rates and corporate credit outstanding. Dividends are largely a function of past dividends and after-tax profits. The important government-related variables are explained elsewhere.

Despite the fact that personal income is determined as a residual, some of its components are modeled explicitly. For example, wages and salaries are determined fundamentally by an equation for average hourly earnings. It depends heavily on the change in prices to adjust for inflation and contains the inverse of the unemployment rate as a measure of labor market tightness.

Tracing through the same table for the Chase model, one finds that the capital consumption allowance, rather than using the BEA methodology, is modeled as a function of several dummy variables and the implicit price deflator. The specification of the corporate profits equation is also quite different in detail but not necessarily different in theory. Chase models profits primarily as a function of investment, consumption expenditures, net exports, prices, change in unit labor costs, interest rates, and government purchases. The inventory valuation adjustment equation contains no real variables—only prices. Interest payments by consumers depend primarily upon changes in the 4–6 month commercial paper rate; government interest payments depend upon the Treasury bill rate and the government deficit. Dividends are a function of profits, capital consumption allowances and taxes. Personal income is an identity built of its various components. The wage equations depend heavily upon previous changes in the CPI and changes in the money supply, with the unemployment rate having little impact. Cyclical fluctuations are captured by including an industrial production index.

Turning to the Wharton model, one finds a sharp difference in wage determination. Here wage rates are determined by labor market tightness, lagged changes in the CPI and social insurance contributions. While this resembles the DRI specification, it is actually much closer to a pure Phillips curve relationship. Other components of the above table are determined along the lines dicussed for the other models with this major exception: The capital consumption allowance is entered exogenously and corporate profits are a residual.

*Prices*

The final broad component of the models which cannot be ignored is price determination. Experience in recent years has stimulated new work aimed at improving the very poor performance observed in the 1973–75 period.

The DRI model includes 15 behavioral equations for wholesale prices with the farm products index entered exogenously. There are equations for the deflators in 19 categories of final demand and 3 components of the CPI. In general, unit labor costs are the driving force behind price increases. Wage and material costs enter with a lag structure designed to represent the stage of processing. Other variables include vendor performance, capacity utilization, and special factors.

The price sector in the Chase models is more disaggregated, but it follows the same basic approach. The components of the WPI are determined as functions of unit labor costs, capacity utilization, and other special factors. The components of the WPI along with demand factors and unit labor costs determine components of the CPI. Components of both the WPI and CPI are used to determine sector deflators. As mentioned earlier, both import prices and farm product prices are exogenous.

The price sector of the Wharton model begins with sector prices needed to deflate the output originating in the various industries. These are basically markup equations over unit labor costs. The mining deflator (which includes energy costs) is exogeneous. Final demand prices are determined by 18 behavioral equations with the dependent variable expressed as the ratio of the price deflator to a weighted average of all sector prices. These weights are determined separately from an input-output matrix. Wholesale prices are built up by stage of processing

THEORETICAL ISSUES

Having examined the structure of the models, let us turn to some of the more controversial issues surrounding this method of analysis. The first concerns the theoretical basis for using large-scale macroeconometric models and some of the criticism raised by "rational expectations" theorists, particularly Robert E. Lucas. The second concerns the limitations inherent in this approach to economic analysis.

The three econometric models described in this paper were constructed primarily for economic forecasting purposes. However, since government policy variables are exogenous inputs to the models, using the model to analyze the impact of alternative policies is a natural extension.[1] This use of models has been criticized by Robert E. Lucas and others.[2]

Lucas' criticisms can be summarized in his own words:

I shall argue that the features which lead to success in short-term forecasting are unrelated to quantitative policy evaluation, that the major econometric models are [well] designed to perform the former task only, and the simulations using these models can, in principle, provide no useful information as to the actual consequences of alternative economic policies. These contentions will be based not on deviations between estimated and "true" structure prior to a policy change but on the deviations between the prior "true" structure and the "true" structure prevailing afterwards.[3]

To put it in more operational terms, Lucas is arguing that as policy changes, the parameters of the model equations will also change. Since econometric policy analysis, according to Lucas, assumes that these parameters are fixed, the simulation is bound to yield inaccurate, results.

Lucas' criticisms have been challenged on several grounds. First, Robert Gordon has argued, while—

The mechanical extrapolation of a model with fixed parameters cannot provide useful information on the effects of *all* policy changes, on the other hand the effects of *some* policy changes can be determined if parameter shifts are allowed and are either (*a*) estimated from the response of parameters to policy changes within the sample period or (*b*) are deduced from a priori theoretical consideration. * * * Thus, the practical importance of Lucas' critique varies for each specific case.[4]

Gordon is arguing that while Lucas' criticisms may be correct, the degree of such parameter shifts is sufficiently small that the analysis remains valid. It is quite possible that Lucas is theoretically correct yet the approch to policy analysis remains useful from an empirical perspective. The degree of parameter shift is important in determining its practical significance.

A second criticism of the Lucas-type model is that it assumes perfect wage and price

Footnotes at end of article.

flexibility and symmetrical behavior. As Gordon points out, in the real world "a firm has a single option in a boom, to attract more labor input by raising its wage offer, and two options in a recession, either to reduce the wage offer or to discharge employees." [5] If firms choose to lay off employees rather than lower wages, wages and therefore prices will be sticky downward. This situation is further aggravated by prices which are fixed by law (e.g., interest rate ceilings, regulated prices, minimum wages) and by timing inflexibilities introduced by contractual arrangements. In addition, the assumption that adjustments take place instantaneously is undoubtedly an exxageration since time is required for the labor force to move from one market to another. The validity of this criticism is currently being debated within the economics profession. There are some who argue that Lucas' flexibility and timing assumptions are unnecessary and that relaxing these assumptions does not alter the conclusions.

In addition to the specific criticisms Gordon makes, the basic assumption of rational expectations can be questioned. In general terms, rational behavior means incorporating all available information into the formation of expectations about the future and acting upon those expectations. It is quite possible that this assumption may not be a good guide to individuals' actual behavior. Voluntary overwithholding of personal income taxes in 1972 is an example of behavior that seems to be nonrational. If individuals do not behave rationally they may still behave predictably and past actions may provide a good guide for making such predictions.[6]

I would raise two additional points. First, the "black box" approach to policy analysis is an inappropriate description of how these econometric models are (or at least should be) used. Lucas has argued that the reasons econometric models are successful in forecasting is that their managers adjust them for systematic bias in the residuals, frequently reestimate them, and ignore extreme values. In other words the combination of an econometric projection and an economist's good judgment and additional knowledge can produce a good forecast. This same combination is necessary to produce a good policy analysis. Further, Lucas' argument that models produce good forecasts but bad policy analysis is inconsistent with the fact that the models are typically used to generate several forecasts based on alternative policy assumptions.

For the most general types of policy change and for examining the resultant aggregate multipliers, the econometric models should work fairly well. However, for example, to analyze the impact of a temporary personal income tax cut, it would be necessary to examine the income concepts used in the consumption equations to see whether they accurately reflect current knowledge about the impact of such changes. Similarly, to analyze the impact of a government expenditure program designed to create jobs by directly hiring people, one could not simply increase the exogenous level of government expenditures. Among other things, one would need to examine the micro literature to answer questions such as how much of the expenditure will be offset by reductions in spending by other levels of government?; how much is a net addition to total government expenditure?; how much will be absorbed in administrative costs and how much will show up in wages of new workers?; will the program cause workers to move out of the private sector and into the public sector?; how rapidly can the funds be spent?; etc.

To properly use an econometric model, the analyst must be willing to apply outside information to those areas where the structure of the model is inadequate for the particular purpose. As Eckstein has argued, the most difficult and time-consuming part of policy analysis is the preparation necessary to properly plan an econometric simulation.[7] He argues that "The model exercise turns out to be a harsh discipline for the policy analyst." [8] For this reason the combination of econometric simulations and the good judgment of a policy analyst can consistently produce better analysis than would be otherwise possible.

The second point is that econometric simulations are frequently used by policymakers to influence their decisions. This factor alone makes policy simulations important regardless of whether their results are in fact "true." If I look out in the morning and decide that it is going to rain, I will wear a raincoat and carry an umbrella. Whether it actually rains is unimportant—my belief has influenced my behavior. Similarly, when econometric policy analysis predicts that a certain consequence will result from a policy change, that prediction will influence the decision to change policy. Certainly econometric analysis is not the only factor influencing policy decisions, but judging from congressional use of econometric models, it has become increasingly important in recent years.[9]

It should also be noted that even if the rational expectations theorists are correct in their criticisms of the large scale macroeconomic models, the theory will only allow one to reject the conclusion that a policy change results in a change in the growth path of the economy. The theory cannot reject the conclusions that policy changes produced no significant change in economic growth.

Having accepted the proposition that econometric model simulations are a useful tool for policy analysis, one must always keep in mind the limitations of such analysis. The most important limitation has already been implied: in order for the simulation to accurately describe the impact of alternative policies, the models must accurately describe the economy. The availability of numerous models with different characteristics indicates a lack of agreement on the best description of the economy. Therefore, to be completely correct, one must realize that simulation results show how alternative policies would affect the model and, only to the extent that the model describes the economy, how they would affect the economy.

Another limitation on all analysis of this type deserves mention. When a dynamic economic system gives rise to oscillations, they will normally be damped. In attempting to explain why this is not always observed, Frisch showed that erratic shocks, or in this case the random errors associated with the model's equations, can become an independent source of cycles.[10] Nevertheless, one can observe that econometric models based on historical averages tend to produce cycles which are weaker than those actually experienced. This suggests that random errors are not a major source of cyclical fluctuation despite the theoretical possibility raised by Frisch's analysis.

FOOTNOTES

[1] For a discussion of the theory behind econometric model forecasting see Lawrence R. Klein, *An Essay on the Theory of Economic Prediction* (Chicago: Markham Publishing Co., 1968), and Herman O. Stekler, *Economic Forecasting* (New York: Praeger, 1970). For a discussion of current use of econometric models see Otto Eckstein, "In formation Processing and Econometric Model Forecasting," paper presented to the Ottawa meeting of the North American Econometric Society, June 25, 1977. (Mimeographed.)

[2] Robert E. Lucas, Jr., "Econometric Policy Evaluation: A Critique," in *The Phillips Curve and Labor Markets*, eds. Karl Brunner and Allan H. Meltzer, vol. 1 of the Carnegie-Rochester Conferences on Public Policy, a supplementary series to the *Journal of Monetary Economics*, 1976. Other papers by rational expectations theorists can be found in *A Prescription for Monetary Policy: Proceedings From a Seminar Series*, Federal Reserve Bank of Minneapolis, December 1976.

[3] Lucas, "Econometric Policy Evaluation: A Critique," p. 20.

[4] Robert J. Gordon, "Can Econometric Policy Evaluations Be Salvaged?—A Comment," in *The Phillips Curve and Labor Markets*, eds. Karl Brunner and Allan H. Meltzer, vol. 1 of the Carnegie-Rochester Conferences on Public Policy, a supplementary series to the *Journal of Monetary Economics*, 1976, pp. 47 and 49.

[5] Ibid., p. 56.

[6] Another discussion of some of these issues is found in Preston Miller, Clarence Nelson, and Thomas Supel, "The Rational Expectations Challenge to Policy Activism," in *A Prescription for Monetary Policy: Proceedings From a Seminar Series*, Federal Reserve Bank of Minneapolis, December 1976, pp. 51–64.

[7] Otto Eckstein (ed.), *Parameters and Policies in the U.S. Economy* (Amsterdam: North Holland Publishing Co., 1976).

[8] Ibid., p. 5.

[9] When the Joint Economic Committee began using the DRI model in 1973, it was the first congressional user. Today the JEC has access to Chase, Wharton, and DRI. Other congressional users of some or all of these models include the Congressional Budget Office, the House and Senate Budget Committees, the Joint Committee on Internal Revenue Taxation, the General Accounting Office, the Library of Congress, the House Information Systems Group, and the House Agriculture Committee.

[10] Ragnar Frisch, "Propagation Problems and Impulse Problems in Dynamic Economics," from *Economic Essays in Honor of Gustav Cassel*, 1933, reprinted in *Readings in Business Cycles*, selected by a committee of the American Economic Association (London: George Allen and Unwin, Ltd., 1966), pp. 155–185.

Mr. HATHAWAY. My question to the chairman is this: What provision is made for the feedback effect of capital gains in the second resolution?

Mr. MUSKIE. May I say to my colleague that the second resolution contains no specific assumption with respect to capital gains legislation. The resolution does assume $1.2 billion of reductions as an allowance for structural tax changes which could encompass capital gains reductions. However, this allowance of $1.2 billion does not assume any specific level of capital gains changes, nor does it assume any specific behavioral responses of capital gains tax reductions. At this time there is certainly no consensus as to the behavioral feedback effects of recently discussed capital gains tax law changes. I understand the Congressional Budget Office is preparing a study of the revenue effects of such changes, and that the report will be completed by the end of next week prior to Senate consideration of the forthcoming tax bill. Only after I have studied the CBO analysis, and after specific capital gains changes have been reported by the Finance Committee, will I be prepared to give the Senator my view as to the budgetary effects of these capital gains reductions.

In contrast to the still unclear behavioral effects of capital gains changes, the second budget resolution does include additional receipts resulting from the impact of the overall level of reductions

assumed in the resolution. These additional receipts from the increased general economic activity resulting from the tax reductions would be derived from either capital gains reductions or general rate reductions that would reduce tax collections directly in fiscal year 1979. Thus, the macroeconomic effects of possible capital gains reductions, as contrasted to the behavioral effects, already are taken into account in the second resolution.

Mr. HATHAWAY. If the Senator will yield further, I am extremely concerned that if we begin making second and third round assumptions about fiscal impact of tax changes then we might as well scrap the budget process.

If we say, "Well, whatever you assume, is the effect, is fine," then I believe we have lost control.

The present revenue estimating is imperfect and imprecise but it is at least consistent. We should not project results on assumed behavior change over time unless there is strong evidence of the results on a gross basis.

In his testimony before the Senate Finance Committee, 2 weeks ago, Secretary Blumenthal discussed feedback effects and revenue estimated. He stated:

Treasury policy to include multiplier effects when overall positions of fiscal policy are being established, as described earlier, is consistent with excluding multiplier effects when alternative programs are being considered that do not markedly alter the desired fiscal posture. The assumption is made that each separate tax proposal being considered is designed to be incorporated into a comprehensive package of proposals, with net tax reductions consistent with the overall fiscal policy. In this framework, it is clearly incorrect to include offsetting multiplier effects in revenue estimates for individual tax proposals. This is because the budget receipt estimates already include the feedback effect of the aggregate change in taxes. To again include feedback effects, as each component of an overall tax package is being considered, would be to double count induced revenue changes and misguide policymakers as to the size of the budget deficit or surplus.

I ask unanimous consent that his full remarks be printed in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

APPENDIX: FEEDBACK EFFECTS AND REVENUE ESTIMATION

The term "revenue feedback effect" refers to the fact that the actual change in revenues resulting from a tax revision will depend upon economic responses to that revision. There is general agreement that such feedback effects can be important. To understand more clearly the implications of feedback effects for revenue and receipts estimation, it is useful to separate economic responses into three types.

First, there are short-run responses to changes in spendable income that results from tax increases or reductions. A tax cut, for example, will raise the amounts of after-tax income available to households and to business firms. If there is sufficient additional capacity, higher after-tax incomes will lead to increased consumption and investment which in turn will generate higher incomes and higher revenues. A number of standard macro-economic forecasting models are usually employed to estimate the magnitude of these short-run income effects.

A second type of feedback effect deals with long-run factor-supply responses to tax changes. Taxes alter the after-tax returns for work effort and for saving and thus will influence the supply of labor and capital offered to the market. The size of the capital stock and labor force will in the long run determine economic capacity and, therefore, the income base potentially available for future revenues.

The third type of feedback effect is the behavioral response to price increases or decreases brought about by tax changes. As tax changes alter relative prices, households and business firms tend to shift patterns of consumption and investment away from those activities that have increases in price or cost toward those that have decreases. That is, taxpayers will move into activities which have been granted a tax benefit and away from activities which have lost such a benefit. The result influences the allocation or composition of economic activity and also the volume of Federal revenues.

Therefore, to estimate all potential revenue feedbacks requires determination of (1) the increase or reduction in spending due to changes in income, (2) the changes in economic capacity due to changes in the supply of labor and capital, and (3) the substitution of lower cost for higher cost activities. In general, estimating procedures currently used by the Treasury do incorporate such feedback effects. Budget receipts for each fiscal year include the impact of tax changes on aggregate demand. Longer-run receipt projections allow for the likelihood of tax-induced changes in the capacity of the economy. Furthermore, whenever it is reasonable to do so, the allocation effects of price changes resulting from tax revisions are incorporated into revenue estimates. Each of the three types of feedbacks is discussed in more detail below.

MACRO-ECONOMIC RESPONSES

According to the macro-economic models, tax law changes which reduce government revenues will, over time, increase demand, resulting in higher GNP, personal incomes and corporate profits and higher tax receipts. Consequently, estimates which do not take into account these short-run multiplier effects tend to overstate revenue losses resulting from proposals which reduce tax rates or narrow the tax base and overstate revenue increases resulting from proposals to raise taxes. Treasury estimates are alleged to suffer from this defect.

However, this criticism is based on a misunderstanding of the longstanding Treasury practice to provide two types of revenue estimates for proposed changes in tax law. The first type of estimate is made for the complete program of tax changes in the President's budget. Feedback effects on incomes and tax receipts resulting from short-run multiplier effects are always incorporated in these figures to show the actual impact of the President's program on the economy.

For example, Treasury estimates of total tax receipts during the 1963–1968 period incorporated such feedback effects. The stimulative effects of the Kennedy tax cut along with anticipated growth in the population, the labor force, prices and productivity were more than enough to fully offset the reduced revenues resulting directly from lower income tax rates. While total receipts were projected to rise over this period, it is generally agreed that the 1964 tax cut by itself, could not have induced an economic response sufficient to restore the initial revenue loss. The figures in Table 1 demonstrate that Treasury anticipated the feedback revenues. The estimating errors taken from the annual budget documents for that period ran about 4½ percent, far too close to the mark for estimates which did not accurately include short-run feedback effects.

In the context of the current tax debate, Table 2 illustrates the impact on receipts of short-run multiplier effects resulting from the President's proposed $20 billion tax reduction program. The Midsession Review of the 1979 Budget shows estimated unified budget receipts of $448.2 billion in 1979 and $507.3 billion in 1980. These figures include proposed tax reductions of $14.1 billion and $21.8 billion, respectively. However, in the absence of these proposed tax reductions, revenues are estimated to be $459.3 billion in 1979 and $521.1 billion in 1980. Thus, the net cost to the Treasury of the President's proposed program is $11.1 billion in 1979 and $13.8 billion in 1980. These net tax program figures include $3 billion and $8 billion of offsetting revenues attributed to short-run multiplier effects. These feedback revenues are included in the receipt totals but are not separately identified in the published Midsession Budget Review.

The estimation of multiplier effects requires making a number of critical assumptions, including actions the Federal Reserve may take to adjust the money supply and interest rates. These assumptions can influence the multiplier effects on the economy and the resulting revenue feedback. However, there are no plausible assumptions under which induced feedback effects from tax cuts will lead to an increase in tax receipts over what they otherwise would have been. In fact, none of the macro-economic models of the United States economy predict revenue feedback sufficient to offset the initial revenue loss.

The second kind of estimate made by Treasury involves the revenue change from specific proposals without feedback effects (except to the extent Treasury is able to estimate price effects as described below). This kind of estimate is also appropriate for the kind of policy questions which may arise. For example, great attention is focused on the distribution of tax changes among taxpayers at different income levels. For distributional analysis policymakers should look at the direct impact on taxpayers engaged in a particular activity, such as paying private school tuition, or on those receiving a particular source of income, such as capital gains.

In contrast to the tax side of the Budget, there is general agreement that feedback effects are not appropriate for the expenditure side of the budget. Congressional decisions concerning the expenditure side of the budget are also properly made on the basis of gross expenditures. We should not estimate, for example, that a dam, highway, harbor, or even aircraft carrier costs only 60 percent of its initial outlay on the argument that the Federal government recoups the rest in the form of higher revenues. A dollar of outlay costs a dollar in resources used up and a dollar of tax reduction releases a dollar for use in the private sector. The macro-economic feedback effects of both of these changes are important, but it is also important, to evaluate the initial impacts correctly.

Treasury policy to include multiplier effects when overall positions of fiscal policy are being established, as described earlier, is consistent with excluding multiplier effects when alternative programs are being considered that do not markedly alter the desired fiscal posture. The assumption is made that each separate tax proposal being considered is designed to be incorporated into a comprehensive package of proposals, with net tax reductions consistent with the overall fiscal policy. In this framework, it is clearly incorrect to include offsetting multiplier effects in the revenue estimates for individual tax proposals. This is because the budget receipt estimates already include the feedback effect of the aggregate change in taxes. To again include feedback effects, as each component of an overall tax package is being considered, would be to double the count induced revenue changes and misguide policy-

makers as to the size of the budget deficit or surplus.

CAPACITY RESPONSES

Much attention has recently been focused on the potential for increasing economic capacity by reducing rates of tax. Since income taxes necessarily reduce the reward from additional work effort or from adding to savings or investment, reductions in rates of income taxes—especially reductions of the highest marginal rates—would increase significantly the aggregate amount of work effort and capital supplied in the economy. This increased work effort and larger capital stock would provide increased capacity to produce income that is subject to tax, offsetting at least some of the initial revenue lost by tax reduction.

The fundamental logic of this argument is sound, but there are a number of practical considerations that recommend against regularly reporting separate estimates of these aggregate capacity, or "supply side", effects of tax changes. There are presently no economic models that fully incorporate supply effects and that have also developed a track record over a period of years. In fact neither the magnitude nor the timing of such effects is well known and there is consequently wide professional disagreement about their importance. For example, some advocates of the Roth-Kemp tax reductions claim that induced supply responses would be so large that general rate reductions would bring about higher revenues than would occur without them. Some of these advocates argue that the responses would be so rapid that revenue increases from induced supply would occur in the first year. Other analysts, including those who have developed the well-known econometric forecasting models, predict that in the first few years following a tax change, there will be no significant increases in economic capacity resulting from higher wages or increased returns to saving.

In the case of induced labor supply even the direction of change is at issue. Historically, there has been a tendency, as incomes have increased, for the average worker to work shorter hours and to retire at an earlier age. When taxes on labor income are reduced, the positive response to higher after-tax earnings will be offset, perhaps completely, by this tendency to take some of the increased potential earnings in the form of increased leisure.

The greatest weight of professional opinion is that increased capacity in response to reduced tax rates will take effect much more slowly than the demand effects induced by higher incomes. Any tendency for labor supply to respond to increases in after-tax wages will be translated into increased economic capacity only over a period of years. In part, this is because it takes time for households to adjust—to seek out a second job, to arrange for child care, to take more schooling, and the like. More important, however, is that it takes time for businesses to make the additional investment necessary to accommodate the increased labor supply.

Nevertheless, these long-run supply effects are very important since they will help to determine the underlying growth and composition of employment and output in the future. Significant supply side factors are not ignored in derving the long range receipts projections that are included in the budget. These projections show the path of Federal receipts through time that are consistent with attainable increases in capacity and aggregate demand.

The Treasury has been devoting substantial resources to understanding and estimating supply effects. We also closely monitor new research in this area. Analysis of the longer-run implications of tax policy will build upon new research findings as they become available.

*Price Effects*

Tax policy changes have consequences for economic behavior other than their aggregate demand effects and supply side responses. A further important effect of tax policy changes is that they alter the relative prices or costs of particular types of consumption and investment goods. As a consequence, households and firms respond by changing their consumption and investment patterns. Not all tax changes have significant price effects. Changes in exemptions, the standard deduction, and even across-the-board cuts in tax rates do not bring about significant changes in relative prices. However, when such relative price effects do occur and when there is broad agreement as to both the magnitude and the direction of these impacts, revenue estimates incorporate the behavioral responses to the relative price changes. There are numerous examples of such behavioral responses. They include:

TABLE 1.—COMPARISON OF ESTIMATED AND ACTUAL UNIFIED BUDGET RECEIPTS, FISCAL YEARS 1963-68

[In billions of dollars]

| | Fiscal year— | | | | | |
|---|---|---|---|---|---|---|
| | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 |
| 1963 budget (January 1962) | 113.5 | | | | | |
| 1964 budget (January 1963) | 105.4 | 109.3 | | | | |
| 1965 budget (January 1964) | [1] 106.6 | 111.3 | 115.9 | | | |
| 1966 budget (January 1965) | | [1] 112.7 | 114.6 | 119.8 | | |
| 1967 budget (January 1966) | | | [1] 116.8 | 124.7 | 141.4 | |
| 1968 budget (January 1967) | | | | [1] 130.9 | 150.3 | 158.6 |
| Actual receipts | 106.6 | 112.7 | 116.8 | 130.9 | 149.6 | 153.7 |
| Estimating errors: | | | | | | |
| Estimate made 18 mo prior to yearend minus actual receipts | +7.0 | −3.4 | −0.9 | −11.0 | −8.1 | +4.9 |
| Error as percent of actual receipts | +6.5 | −3.0 | −0.8 | −8.4 | −5.4 | +3.2 |

[1] Denotes actual level of unified budget receipts.

Note: Details may not add to totals due to rounding.

Source: Office of the Secretary of the Treasury, Office of Tax Analysis.

TABLE 2.—PROPOSED TAX REDUCTIONS INCLUDED IN THE ADMINISTRATION'S MIDSESSION BUDGET REVIEW

[In billions of dollars]

| | Fiscal year— | |
|---|---|---|
| | 1979 | 1980 |
| Unified budget receipts published in the Midsession Review | 448.2 | 507.3 |
| Receipt effects of the President's tax reduction and reform proposals: | | |
| Gross change in receipts | −14.1 | −21.8 |
| Offsetting induced receipts | 3.0 | 8.0 |
| Net change in receipts | −11.1 | −13.8 |
| Unified budget receipts in absence of the President's tax reduction and reform proposals | 459.3 | 521.1 |

Source: Office of the Secretary of the Treasury, Office of Tax Analysis.

The taxable bond option, where it is assumed that some fraction of municipal debt will be issued on a taxable basis as a result of the lower interest costs of issuing subsidized taxable debt compared to the prevailing rate on tax-exempts.

The automobile efficiency tax, where consumers are assumed to modify their pattern of automobile purchases in response to the increased prices of gas-inefficient vehicles.

Residential and business thermal efficiency and solar tax credits, where the reduction in prices of the subsidized activities are assumed to induce households and firms to install more insulation and to use lower cost sources of energy;

Any new program such as subsidies for exports (DISC) or for new retirement programs (IRA), where the revenue estimates depend upon the extent to which the new provision will be used;

Integration of corporate and personal taxes, where an increase in corporate dividends would be expected to accompany the reduction in the combined level of personal and corporate taxes on these dividends.

In all of these cases, there may be disagreement over the magnitude of the behavioral responses. Nevertheless, a good faith effort is made to incorporate behavioral responses into the revenue estimates where the behavioral responses will obviously occur and they are believed to be substantial. But we do not try to estimate feedback effects where the predominant responses are unpredictable or where there is no objective basis for making a judgment.

Two specific cases of tax induced price changes are currently of particular interest. They are the cuts of capital gains taxes and the reduction of top marginal tax rates. It has been alleged in both cases that the price effects of the tax change will induce a flood of new revenues to the Treasury, outweighing the initial revenue loss. In the case of capital gains cuts, the claim is made that the increased realizations will be so large as to yield an increase in tax receipts on capital gains. In the case of a reduction in the top marginal tax rates, the switch of investment from sheltered to unsheltered activities along with a vast increase in work effort are the alleged sources of the higher tax receipts.

Claims have been made that solid empirical analysis underlies both behavioral responses. But these claims are greatly overstated. The empirical work to date concerning the response of gains realizations to changes in capital gains tax rates has not distinguished between short-run transitional effects and long-term effects. Further, if the results are interpreted as estimates of permanent long-run effects, they imply such enormous reductions in the average holding periods of assets as to be totally at variance with the observed historical stability of these holding periods. Also, the estimates assume that every investor has an unlimited amount of unrealized accrued gains just waiting to be realized at lower tax rates, an assumption surely contrary to the facts. Moreover, it may be very difficult to separate statistically the effect of the marginal tax rates from the effect of high itemized deductions for medical expenses or casualty losses. Higher realizations of capital gains may be due to high itemized deductions rather than to low marginal rates themselves.

Attempts to adduce the likely responses of high income taxpayers to reductions in their marginal tax rates by examining historical data for the years before and after the 1964 tax cut also are seriously deficient. While it

may be true that at substantially lower marginal tax rates individuals would find tax shelters of much diminished economic advantage and would therefore tend to invest more in fully taxed assets, the likelihood and magnitude of such a response cannot be determined by merely looking at the income taxes paid by those in the upper income classes before and after the tax cuts of 1964. The upper income group did, in fact, pay more in taxes after their marginal rates were cut, but all income classes experienced tax cuts and all realized significant increases in incomes along with the general expansion of the economy in 1964–66. The share of before-tax income reported by the highest income classes was remarkably stable over the entire period from 1952 through 1972. In addition, it should be pointed out that most of the increased taxable income in these income groups was from higher realized capital gains. But the 1964 Revenue Act did not change the 25 percent alternative tax on capital gains. Thus while it may be desirable to reduce marginal tax rates to provide additional incentives to work and to save, there is little evidence for claiming large revenue gains to the Federal Treasury as a result of tax-induced price effects.

CONCLUSION

First, estimates of aggregate budget receipts do include the additional receipts resulting from the impact of tax changes on aggregate demand. However, estimates for particular tax changes, just like estimates for particular expenditure changes, do not include feedback effects. To do so when they are already in the aggregate estimates would be double counting.

Second, projections of long-run budgetary figures also accommodate the impacts of tax changes on economic capacity. As research sheds more light on the nature of these effects, it may be possible to incorporate them more formally into longer-run projections.

Third, Treasury does incorporate estimates of changes in specific types of investment or consumption induced by relative price changes whenever it appears the effects are important and it is possible to make reasonable estimates.

Mr. HATHAWAY. Mr. President, I am troubled by the idea that there is such a concept as a "free lunch." Of course, we know otherwise.

I hope that the Budget Committee and its excellent staff will review the Revenue Act of 1978 when reported by the Finance Committee in light of the mandate in section 311(b) of the Budget Act, and assure the Senate that the bill is in compliance with the second resolution or, if necessary, to challenge the assumptions and the revenue effects.

I say that as a member of the Finance Committee.

Mr. MUSKIE. I appreciate the Senator's concern and interest. He is, of course, correct, that under section 311 of the Budget Act, the Budget Committee has the responsibility to estimate the revenue effects of tax legislation to determine whether the legislation is consistent with the revenue floor in the concurrent budget resolution binding upon Congress. Thus, the views of the committee on the revenue effects of capital gains legislation and other provisions in the forthcoming tax bill could prove particularly important if, under some but not all, assumptions, the bill would be consistent with the second budget resolution revenue floor for fiscal year 1979.

I suspect that because of the interest in the issue the Senator has raised, and I know it has been discussed by the chairman of the Committee on Finance and others, we may well have that question raised at the time the Finance Committee bill comes before the Senate, and we shall try to be ready for it.

Mr. HATHAWAY. I thank the distinguished chairman for his answers to my questions and his assurance that such speculative revenue impacts will be challenged when the bill is brought to the floor.

Mr. MUSKIE. I thank my good friend.

UP AMENDMENT NO. 1813

(Purpose: To cut the level of total new budget authority $17.7 billion)

Mr. PROXMIRE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself, Mr. HATCH, Mr. HAYAKAWA, Mr. DECONCINI, Mr. BENTSEN, Mr. ROTH, Mr. STONE, Mr. HARRY F. BYRD, JR., and Mr. THURMOND, proposes an unprinted amendment numbered 1813.

On page 1, line 11, strike out "$557,700,000,000" and insert "$540,000,000,000".

Mr. PROXMIRE. Mr. President, my amendment to Senate Concurrent Resolution 104 would cut the budget authority requested by the President to $540 billion, or approximately 5 percent. The amendment would strike the Budget Committee figure for budget authority of $557.7 billion on page 1, line 11, and insert the figure of $540 billion. That obviously would not cut the budget resolution figure by 5 percent but by 3 percent.

Before I state the major reason I believe my amendment should be adopted, let me make a few preliminary observations.

No. 1, the Budget Committee has done an amazingly good job in cutting about 2 percent from both budget authority and budget outlays from the time of the first resolution. I commend them on that and I want to acknowledge their work.

Second, when one proposes a cut such as is proposed in this amendment, a cut of 5 percent below the President's original proposal and 3 percent below the Budget Committee's proposal in the second concurrent resolution, one is assailed from all sides and with contradictory arguments.

It is said first that one should not propose a general cut but should be specific.

That argument was made at the time of the first budget resolution, when I proposed an identical amendment.

It was on that basis that the managers of the bill, among others, opposed my amendment which, nonetheless, got 33 votes.

However, when the Senator from New Mexico (Mr. DOMENICI) came in with a specific amendment, the hornets descended on him to criticize his specific cuts. In fact, he got fewer votes than I did when he proposed a 1-percent specific, as opposed to a 1 percent general, cut which I proposed.

The answer to those arguments—which have almost nothing to do with the case and have nothing to do with whether or not we should cut the budget—is this:

The best way to cut a budget is to first set an overall limit, which I am doing in this amendment, and then require those proposing the details to keep within that overall limit. That is part of the budget process.

A second answer to these arguments is that we already have the means by which we can keep within the overall ceiling. The Appropriations Committee, and in fact any standing committee, has the authority under the Budget Act to propose rescissions. If we reduce the overall ceiling to $540 billion, or a measly 5-percent cut below the President's original proposal, the Appropriations Committee can go back to the job of making further appropriate cuts to keep within the second budget resolution.

In fact I can think of no more exemplary way to make the Budget Act function as it should than for us to set a $540 billion ceiling and for the appropriate committees and subcommittees to then carry that out by cutting back on appropriate items and making the tough, hard, even cruel choices which are required to be made.

So, far from being against the spirit of the Budget Act, such a procedure is the very essence of that act, namely, a general ceiling voted by the Senate, followed by appropriate particular action of the committees and subcommittees with jurisdiction over the particulars.

Let me make one further general point before getting to the reasons why we should limit budget authority to $540 billion.

When I proposed such a cut on the first budget resolution, it was said by some Senators, "All right, PROXMIRE, if you want to cut, we'll take it out of housing, the area over which you have jurisdiction." That argument may be made again, and I want to meet it head on.

First, as chairman of the Appropriations Subcommittee on HUD-Independent Agencies, I proposed cuts in my own bill. We ended up with an overall cut of 2.7 percent and a cut in housing of 2.07 percent.

Second, I am quite prepared to take a further cut, which would bring the total overall cut to 5 percent. I do not shrink from cutting the funds over which I have jurisdiction. I am willing to take a fair share of the cuts. I am not only willing, but I believe we should do so and I am fully prepared to do so.

Third, one reason Congress has been unable to cut in the past is that if any Senator has the temerity to propose a cut in a public works project or in a subsidy for a particular region of the country, attempts are made to intimidate him by threatening cuts in his projects or in his region's programs no matter how worthy or how economical they might be. That is why we overspend, because Senators soon learn that the best way to get along is to go along and that the "something in it for everybody policy" is easier to live with than rocking the boat.

So, I hope that such arguments will not be used at this time on this bill, because this Senator, at least, is willing

to practice what he preaches and to support a total cut of 5 percent from the areas over which he has jurisdiction.

Now let me turn to this issue of why this amendment should be passed.

INFLATION THE NO. 1 PROBLEM

The problem this country faces, the No. 1 problem—the No. 1 economic problem, the No. 1 domestic problem, the problem that has profound effect on our foreign policy, too—is inflation, roaring, endemic, rising inflation.

Things are not getting better. They are getting worse. Instead of a 5- to 6-percent inflation rate this year as originally predicted, it will be in the 8- to 9-percent range this year.

Interest rates are going up. This has had very little effect on slowing inflation.

The dollar is in deep trouble abroad. Why? Because of inflation here at home.

Wage demands are rising? Why? Because workers want to catch up and at least keep even with the cost of living.

Citizens are revolting against taxes and the high cost of Government. Why? Because of inflation which has cut their real incomes while pushing them into higher and higher tax brackets. At the local level, property taxes go up and up due to the inflated costs of land and buildings. But these increases in value are only paper increases until a home is sold. Meantime they result in higher and higher property taxes.

The inflation fever is here. The psychology must be broken.

The one feasible, possible, effective alternative we have is to cut the budget. That is the message the country has been waiting for. And that is the message we have not yet sent. There are very, very limited alternatives to stop the inflation. Wage and price controls are out.

I do not know of any Member of this body who would argue that we could pass wage and price controls this year, next year, or any time soon. Business does not want them.

Labor does not want them. Neither political party nor its members want them. They are not going to happen. And if they did they would be ineffective, as we found out in 1973.

Some have proposed tax incentives to both business and labor to hold down prices and wages.

I think that is a very promising approach and we have had hearings on it in the Banking, Housing, and Urban Affairs Committee. I hope they will be given consideration. But it is a last desperate choice, and would take a very, very long time to become effective. Even if the President decided today to propose it, it would be months before the details could be worked out and Congress worked its will.

The only real, immediate, effective way we have to combat inflation is to cut the budget and cut it now. That would send a message to the country that Congress means business. It is the one thing that just might turn the inflation around. In fact, it is now virtually our last and our only effective weapon. We had better use it and we had better come to grips with this problem.

The way it works is that if we cut the budget, it in turn cuts the deficit which, in turn reduces the pressure on borrowing and interest rates. Lower interest rates, in turn, can spur private investment and private spending and induce greater economic growth and a healthier economy without adding to or fueling the fires of inflation.

The amendment I propose, to limit budget authority to $540 billion, would certainly help. In fact, if anything, it may not be enough. It is a relatively modest proposal given the present state of affairs.

First, it is only a 5-percent decrease from the original budget proposed by the President and a 3-percent decrease under the Budget Committee's proposal.

In April when I first proposed a 5-percent cut it was argued it could not be done. When that was defeated I proposed a 1-percent cut, and that, too, was said to be impossible to do.

In the meantime, however, the Budget Committee itself has cut 2 percent or twice as much as my modest proposal in April which its leading members said could not be done.

Second, a $540 billion budget authority is still a $37.1 billion or 7.4 percent increase over last year's budget authority of $502.9 billion.

So it still would leave an increase, a 7-percent increase over last year, if we cut as I proposed to $540 billion.

What it means is that in real terms we are holding the line on the budget. We are giving the agencies and institutions which make up the Government of the United States enough extra money to provide for the increase in inflation—or $37.1 billion more than last year. That is not a wild, impossible, impractical, reactionary, conservative proposal. Rather than being too drastic, if anything, it is too modest.

Third, as one who has examined the budgets of at least 40 different agencies in this Government, from my position on the Appropriations Committee, I say there is no agency which could not cut its operating costs by 5 percent and improve its efficiency if it were determined to do so. We all know that. It could be done at the Defense Department, at the State Department, at the Treasury, at Commerce and HUD and at Labor, and Interior, and DOT, and HEW, and Justice, and Agriculture. And it can be done at NASA, and EPA, and the Veterans Administration without harming the muscle of the programs. Further, cutting spending would mean an automatic reduction in the cost of interest on the debt because the debt would both be smaller and interest rates should drop.

In every way it would have a salutary effect.

For all these reasons:

Because inflation is the No. 1 problem we face;

Because cutting the budget is the best, if not the only practical way we have to combat it;

Because a cut of 3 percent below the committee and 5 percent below the President's January budget is possible and do-able;

And because it would send the country a message that Congress finally means business and is acting to bring the country's No. 1 problem under control;

This amendment should be adopted.

(Mr. DECONCINI assumed the Chair.)

Mr. PROXMIRE. Mr. President, before I yield the floor, I want to take this opportunity to answer the very thoughtful and very effective arguments made by Senator MUSKIE. Senator MUSKIE, the manager of the bill, did a superb job last time in beating back all amendments. I hope he is not quite as successful this time. I hope to answer him by meeting some of the arguments he raised to this amendment when I offered it before.

I will give a list of his arguments and then answer each briefly. It will take me only a few minutes.

The manager of the bill said the Proxmire amendment goes to the heart and life of the budget process because it is ambiguous, arbitrary, and indiscriminate.

It was said it does not identify areas to be cut.

It abandons the budget process to balance priorities.

Budget authority does not all spend out at the same rate—housing funds are spent over 40 years while personnel funds are spent in 1 year. There will be little reduction in inflation or the budget if the cuts are applied to housing and tremendous cuts if applied to personnel.

Here is my answer. First. The budget resolution provides for five numbers and asks our approval of them—budget authority, outlays, revenues, the deficit, and the total debt.

This amendment says, "We don't agree with the budget authority figure. It should be lower. It should be $540 billion."

To do that is clearly a part of the budget process, within the budget process, and no more arbitrary than the President's figure for budget authority or the committee's figure for budget authority.

Second. What we are really being told is, "Don't change what the committee has done."

We are told, "Don't take part in the budget process." But proposing an amendment to the committee figure is in fact the very essence of the budget process.

Mr. President, the function of every committee, including the Budget Committee, is to advise the Senate, to serve as the Senate's adviser. The decision is made by the Senate as a whole on the Senate floor, and it should be made here.

We are not, by offering an amendment on the floor, imposing ourselves on the committee. This is where the decision should be made, where it should be discussed, where it should be debated and determined.

Too often, we just come in and whatever the committee proposes we accept. That is wrong. This is the time we should stand up and discuss it and debate it.

People coming to the Senate observe it in action and wonder why there is so little being done. We often say that the job is really done in committee. But I think any thoughtful Member of the

Senate realizes that the committee has one function, one principal function, and that is to advise the Senate, and the Senate makes the decision.

Third. This is the proper way to function. We should set the overall figure and then let the details be worked out both by the Budget Committee and the Appropriations Committees.

We have a process to carry that out. It is called rescission. Each standing committee has that right. If this amendment is passed then the Appropriations Committee goes back and cuts to keep within the overall figure.

The argument is made, the amendment does not tell us specifically where we should cut.

Mr. President, the answer to that is that the committee wants to have it both ways.

When members do that, the committee beats them back.

The McGovern amendment did that on the first budget resolution. It was overwhelmed, 77–14.

The Eagleton amendment was defeated 70–21.

The Byrd amendment was defeated.

The Domenici amendment was defeated. When I proposed a 1-percent general cut, it was argued it was too general. When Senator DOMENICI proposed a specific cut, it was argued that it was too specific.

Another argument against the amendment was that a cut in budget authority does not necessarily translate into a specific cut this year.

But the answer to that is that: First, it is true that some budget authority is for 40 years and some is for 1 year.

However, at least two-thirds of this year's budget authority is spent this year. Therefore, the problem is not that difficult.

Second, we need help both this year and next year and the year after that. We better start now.

Third, but a cut in budget authority keeps flexibility in the budget process by allowing the cuts to be made where they can have the most effect.

For that reason it is not indiscriminate or arbitrary as the chairman stated, but just the opposite. It allows us to work our will in an intelligent and orderly way by selecting those areas where the effects can be most helpful and least damaging.

Another argument against the amendment is that $535 billion of the $566.1 billion of budget authority proposed in the first budget resolution is required merely to carry out laws now on the books. Therefore, cutting to $540 billion allows for no new or expanded programs.

The answer to that is, What is so sacred about existing programs?

First, most of us are committed to what is called zero-based budgeting which says to reexamine every program now on the books each year to determine if it should be kept or cut. There is nothing sacred about programs. Why should we willy-nilly merely keep every program at last year's level plus enough for inflation?

Second, most programs are given more authority or more money is authorized for them than is spent. The Appropriations Committees do not have to fund every program and every item up to its full authorization.

Therefore, existing programs are not sacred and existing programs can be and should be cut.

Another argument is that achieving savings from changes in existing law is a long term business.

The answer is, first, that is no reason why we should not start now.

Some savings can come by cuts under the amounts authorized.

Some savings will or can come from changes in the law.

Some savings come from the effect of the budget itself on general economic conditions. (A 1 percent decline in the rate of inflation itself can bring a 1 percent cut in the cost of Government because Government pays higher prices for its services like everyone else.)

Another argument was that many of these programs are entitlements, uncontrollables, or in the form of contracts.

The answer is that some of the uncontrollables can be controlled or changed. For example:

First. Interest on the debt. If we cut the budget, reduce the deficit, and reduce interest rates, this will reduce the so-called uncontrollable item called interest on the debt.

Second. One uncontrollable or entitlement at HEW is medicare and medicaid. Yet we know there have been huge waste and even fraud involved in those programs. Here is an uncontrollable which can be cut.

Third. There are contracts which the Government must carry out, but most of them have an inflation factor which pays more as inflation rises. This can be changed and costs reduced if inflation is cut, as this amendment would tend to cut inflation.

Furthermore, some can be terminated, at a cost, but at a lesser cost than carrying them out. The SST is one example; the C–5A was another.

Also, GSA has contracts for Government goods and services and buildings, but we know there is a lack of competitive bidding, kickbacks, and fraud. It has been disclosed only in the last few weeks. Big savings can be made here.

Also, retirement pay is indexed.

So cuts can come here, if we can cut inflation. Therefore, the uncontrollables are not entirely uncontrollable.

Mr. President, a final argument is that the best way to cut and the easiest way to cut is to cutback those increases which are above existing law.

The answer is, "Good. Let the Budget Committee and the Appropriations Committee do it, if that is where cuts should be made. Let them carry through the budgetary process and cut."

However, not all new programs or increases are necessarily bad, just as all old programs are not sacred.

My proposal gives the proper committees the chance to cutback on increased programs or on existing programs and to make the choices and choose the priorities.

This amendment simply tells the Senate that we should have a $540 billion budget this year, a 7-and-a-fraction percent increase over last year, enough to allow for inflation, and no more, and that we should stay there.

It seems to me that this is a reasonable and logical proposal, and I hope the Senate will adopt it.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I would like to respond to the distinguished Senator from Wisconsin.

Mr. HATCH. I will be happy to wait. I was going to speak in favor of the Senator's amendment. I will be happy to wait until the distinguished Senator from Maine is through.

Mr. MUSKIE. I assure the Senator that I will not take too much time.

Mr. President, as I listened to the statement of my good friend from Wisconsin, I reached several conclusions that bear on the work of the Budget Committee: One, that we are not concerned about inflation; two, that we have not really tried to reduce spending; three, that we are opposed to further reductions where they can be identified.

I heard the same argument last spring. The distinguished Senator from Wisconsin has undertaken to capsulize my response of last spring in ways that I think do not accurately reflect what I said last spring. Therefore, I ask unanimous consent that my colloquy and my statement at that time, which appear on pages 11405–11408 of the RECORD for April 25, 1978, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. MUSKIE. I yield myself 10 minutes.

Mr. President, let me say at the outset that the amendment of the distinguished Senator from Wisconsin is consistent with his long record of concern about Government spending and the need for budgetary restraints and prudence, and I applaud the general thrust of his efforts over the years in this connection.

However, I must say with respect to his amendment that it goes to the very heart and the very life of the congressional budget process, because it is ambiguous, it is—and I say this is the most respectful way—arbitrary and indiscriminate. It's the kind of approach to budget cutting that we tried many times before the establishment of the congressional budget process. It never worked. It never succeeded, because it never identified the areas where real cuts were possible, and where cuts could be achieved without damaging essential and vital areas of governmental activity.

If we want to return to that form of budget cutting, and abandon the congressional budget process, that is all right with me. But after we have gone through the kind of trade-offs and balancing of judgments which the budget process requires, if we are then asked to subject ourselves to an across-the-board cut of this kind, we have wasted a lot of time on identifying priorities, balancing priorities, and undertaking to set them within a rational economic policy. The two approaches to budgeting just do not go together. We tried it the other way and it did not work; and frankly I am getting pessimistic about whether or not this budget process is going to work, because here, too, we are inclined to abandon the discipline when it serves our immediate interest.

But let me get down to this specific pro-

posal, Senator Proxmire's amendment proposing a 5 percent across-the-board cut in budget authority in fiscal year 1979. I repeat, a cut in budget authority.

He would cut budget authority by $26.1 billion, from $566.1 billion recommended by the Budget Committee to $540 billion.

He justifies all of this as a contribution to the fight against inflation and as a contribution to reducing the deficit.

Unfortunately, Mr. President, one cannot judge either of those contributions because one is not told where the cut in budget authority will come. Budget authority does not all spend out at the same rate. Budget authority for housing, for example, requires up to 40 years to spend out. As a matter of fact, in this present budget there is $25.5 billion in budget authority for housing assistance.

(Mr. MOYNIHAN assumed the chair.)

Mr. MUSKIE. If we were to apply the Senator's amendment to housing assistance, and there is nothing in the amendment to prevent us from doing so, we would eliminate the housing program from the budget. But how much of a contribution would that make to inflation? When one considers that the spendout from this program is spread over 40 years, it is very little. There would be almost no reduction in this year's deficit from such a budget authority cut. That $25.5 billion will not spend out in fiscal year 1979 to any measurable degree.

The budget does include outlays of $4.4 billion in housing assistance, but that is driven by budget authority which we provided in previous years.

So if we were to take the proposed $26.1 billion cut out of the housing assistance program, we would hardly make any contribution to reducing the deficit. We would make no contribution to reducing inflation. The size of the deficit which worries the business community and others in the country who are concerned about Government spending, would remain essentially unchanged.

If, on the other hand, one took the cut from budget authority that spends out in 1 year, where would we go?

Well, the Defense Department spends out a lot of budget authority in 1 year, much of it in the form of salaries. So if we wanted to make a maximum impact on the deficit and a maximum signal against inflation, we would cut the $26.1 billion from the defense function and mandate that it be taken out of salaries, which would probably mean that we would decimate the Armed Forces of the country.

That is the range we can consider, but the Senator does not tell us how he would distribute his cut in budget authority. It is for that reason that I call his amendment an arbitrary and undiscriminating approach to budgeting.

Mr. President, the budget process was designed to enable the Congress to make individual spending and revenue decisions in the context of the budget as a whole.

The discipline provided by the process forces Congress to make hard choices among competing national priorities after careful consideration of the issues which are involved and deliberate decisions on how our limited resources will be allocated.

Senator PROXMIRE's amendment proposes, in contrast to this, an anonymous cut of $26.1 billion in budget authority. He does not tell us which areas of the budget he would cut. He does not tell us which national priorities would be affected. He says only that—

"There is not a single agency of government which could not absorb a 5-percent decrease in its funds and actually increase the efficiency of its programs if it were determined to do so."

Well, attractive as that proposition is on its face, when one looks into the facts of individual functions and agencies and programs, one finds it to be debatable.

Rhetoric such as this was common in the Congress prior to the Budget Act. We established a congressional budget process because we found that such rhetoric did not provide effective budgetary control.

The Budget Committee recommends, Mr. President, a carefully crafted spending plan for fiscal year 1979. Of course, there is room for increases or decreases in that plan as the Senate wills. We have just acted on two proposals to cut defense spending and one proposal to increase spending in domestic programs, out of the savings in defense spending. Those are perfectly appropriate amendments. Whichever way the Senate acted upon them, the Budget Committee would live with the result.

But what would Senator PROXMIRE's amend ment do to that plan? It is not focused on specific functions or programs.

The Budget Committee recommended total budget authority for fiscal year 1979 of $566.1 billion. Where did we get that? The authorizing committees requested of us $603 billion in budget authority. We cut those requests, not by $26.1 billion, as proposed by the Senator, but by $36.9 billion. The Senator now says—

"That is not good enough. You ought to add another $26.1 billion in cuts to that $36.9 billion so that we would have a total of $63 billion in cuts."

Where would we get those cuts? From what programs should we get them?

Within the total of $556.1 billion that the Budget Committee recommended, $535 billion—mark the number, $535 billion—is required simply to carry out laws currently on the books. That $535 billion total provides for no new or expanded programs and for only those inflation adjustments that are mandated by law.

Senator PROXMIRE's amendment would cut total budget authority to $540 billion, which is just slightly more than the current law level.

Laws on the books should not be regarded as sacrosanct. Indeed, the Budget Committee recommendation assumes that some reductions through changes in current law can and should be made. But the simple fact is that achieving savings from changes in existing law is a longer term business, and the savings in the first year are small. This is especially true when we realize that within that $535 billion current law estimate there is some $300 billion for entitlement programs. An entitlement program means just that: States, local governments, or individuals are entitled to receive payments under current law.

In the short run, Mr. President, savings in these programs are especially difficult to achieve.

So the truth is that the bulk of Senator Proxmire's budget authority cut in fiscal year 1979 would have to come from those areas of the budget where the Budget Committee recommends carefully considered increases over current law. These increases recommended by the Budget Committee are, as I have said before, considerably less than the increases recommended to us by the other Senate committees.

Mr. CURTIS. Will the Senator yield for a brief question?

Mr. MUSKIE. Yes, for one, and then I would like to finish my statement.

Mr. CURTIS. Does the distinguished chairman agree that to do the job that many in the country feel should be done on the budget, we ought to change some laws?

Mr. MUSKIE. Well, I think there is a recognition that in order to make the kind of cuts some would wish, we would have to change the laws. There is no question about that. The Senator understands that perfectly, and especially in the entitlement area, which is $300 billion.

Incidentally, there is one entitlement program that one should never forget. That is interest on the public debt. The obligation to pay that goes back to legislation which was enacted in the middle of the last century. It amounts to $53 billion in the fiscal year 1979 budget.

That is uncontrollable. That is a contractual obligation.

Mr. CURTIS. It is a contract, yes.

Mr. MUSKIE. And of course, there are defense and nondefense contracts, and other commitments made in prior years totaling, possibly, as much as $80 billion a year which are uncontrollable unless the Government reneges on its promises. Then there are the entitlements. Those commitments plus the entitlement programs form the so-called uncontrollable portion of the budget.

Interest on the debt we cannot reduce by changing the law without breaching a contract, and we would not want to breach other contracts and commitments. So when we talk about reducing the budget by changing existing law, we are talking about changing entitlement programs or changing other programs prior to the time commitments are made.

Of course, if we want to reduce that spending, we have to change the law, the Senator from Nebraska is absolutely correct.

Mr. President, I have a table showing the major increases over current law recommended by the Committee on the Budget. I ask unanimous consent that this table be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MUSKIE. Let me discuss a few salient elements of that table. The Budget Committee recommends a total increase in budget authority of about $32 billion over current law. One-fourth of this increase, $8 billion, is in the area of national defense. Does Senator PROXMIRE mean to eliminate all or most of this increase, which would actually cause the defense budget to decline in real terms and cause us to renege on our NATO commitment?

Agriculture programs, Mr. President, account for $5 billion of the increase. Does Senator PROXMIRE mean to reduce or eliminate this support for America's farmers? I emphasize that this number is significantly below the agriculture bill that was recently passed by the Senate and defeated in the House. So when I say there is an increase, that is not the increase that was mandated by the Senate, and a substantial majority of the Senate, not too long ago.

Energy programs account for $2 billion of the increase. Would Senator PROXMIRE have us cut back on our efforts in this critical area?

Education, employment, and veterans programs together account for $4 billion of the increase in budget authority. Would Senator PROXMIRE recommend that these increases be eliminated?

International affairs programs account for $3 billion of the increase, much of it related to U.S. commitments to the multilateral banks. Does Senator PROXMIRE suggest that these commitments be scaled back or eliminated? I am asking these questions not to prejudge the answer. It is a perfectly legitimate objective for any Senator to propose, by appropriate amendment, the elimination of any of these increases. I identify them so that we may have an answer to them from the author of this amendment, who simply gives us the overall cut of $26 billion and ask us to find the places to cut.

Community and regional development programs account for $2 billion of the increase, much of it related to the President's new urban initiatives. Would Senator Proxmire have us send a signal to our distressed cities that the Federal Government is not interested in their plight?

So, Mr. President, I ask the Senator, in the spirit of an effective budget process, to tell us what programs of the budget he proposes to cut and what national priorities he wishes to affect. When we have the answer to that, we shall have a better answer to the question of how fast the outlays from the proposed cuts in budget authority would flow. When we know how fast the outlays would materialize, we can judge better what the economic impact of those outlay cuts would be in 1979, 1980, or future years.

In other words, as of this moment, the Senator's amendment does not tell us what programs to cut or how fast there would be a reduction in outlays, or when, if ever, the deficit would be affected or what the economic implications would be. We cannot have the answers to those questions until and unless he tells us what programs he would cut. We cannot have an effective debate, indeed, Mr. President, unless we know more clearly the effects of his proposal in these terms. The days are over when we can simply suggest anonymous cuts without spelling out their consequences.

I know my colleagues in the Senate will agree with me on the need to make spending choices after careful consideration of the issues that are involved. The congressional budget process is the instrument for making hard choices with respect to national priorities. Arbitrary spending cuts, as in this proposal, fall unevenly on different areas of the budget, deal capriciously with national priorities, and demonstrate once again the difficulty of attempting to affect the budget in a one-year time frame.

I urge the Senate to reject this amendment. I would like to close as I began, praising Senator Proxmire for his long-held commitment to budget restraint and budget prudence. I hope I have said nothing to denigrate his reputation in that respect. With respect to this amendment, I have tried to be as candid as I can be.

EXHIBIT 1

*Increases above current law proposed in S. Con. Res. 80 as reported*

[Dollars in billions]

| | Fiscal year 1979 budget authority |
|---|---|
| Current law estimate | 534.5 |
| National defense | +8.0 |
| International affairs | +3.1 |
| Energy | +2.2 |
| Agriculture | +5.1 |
| Transportation | +4.2 |
| Community and regional development | +2.2 |
| Education, training, employment, and social services | +2.5 |
| Veterans' benefits and services | +1.4 |
| All other | +2.9 |
| S. Con. Res. 80 as reported | 566.1 |

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Mr. PROXMIRE. Mr. President, I am going to yield to the distinguished Senator from Delaware in a moment. Before I do that though, I should like to reply briefly to the Senator from Maine.

I very much appreciate his viewpoint. As I have said before, I think he has done a remarkable job, he and Senator BELLMON, in the Budget Committee in holding down spending. They did make big cuts, as he pointed out, a cut of $37 billion, roughly, in what the authorizing committees requested.

The Senator from Maine argues that this amendment is ambiguous, arbitrary, and undiscriminating. I reply that there is no way, and I think the Senator knows it better than anybody in the Chamber, that a Senator can come in and duplicate the work of the Budget Committee. After all, I have a limited staff. I have two or three people who work on this kind of thing. They work on many, many other things, too. The best that an individual Senator can do, in reality, is to indicate on the basis of the most careful analysis he can give what the level of spending ought to be. To go into meticulous detail on each one of these programs to indicate where the cutback ought to be is something that really is asking too much. If we did it, I think we would be subject to tremendous criticism, because it would be irresponsible.

I am not in a position to hold hearings and to explore in great detail with the Office of Management and Budget and with the various agencies where the cuts could be made. We have some ideas where it is possible. But to do this in detail in this enormously complex budget would be doing far more than would be responsible.

Furthermore, Mr. President, I have great faith in the Budget Committee. I think if we tell them this—after all, this is the first budget resolution; there are three—they will have the opportunity to consider where a reduction should be made in order to comply with this $26 million cutback in obligational authority.

It will not be easy, there is no question about that. It will be difficult, extraordinarily difficult, very painful. There is no way we can make this kind of cut without great difficulty.

Mr. MUSKIE. Will the Senator yield?

Mr. PROXMIRE. Yes, indeed.

Mr. MUSKIE. I do not think it would be difficult at all if the Senator wanted to do it. With respect to spending mandated by current law, you know, you could not do it easily.

But if the Senator wanted to offer an amendment that reflected the table I put in the RECORD this afternoon, it would be very simple to draft the amendment.

National defense, reduce $8 billion; international affairs, $3.1; energy, $2.2; agriculture, $5.1; transportation, $4.2; community and regional development, $2.2; education, training, employment, and social services, $2.5; veterans' benefits and services, $1.4; all other, $2.9.

There is the easiest and quickest way to make the cuts the Senator proposes to, unless he wants it out of housing assistance.

Mr. PROXMIRE. As the Senator knows, there are many ways these cuts can be made and there is a long time to do it.

Mr. MUSKIE. The Senator likes to say that.

Mr. PROXMIRE. It is true.

Mr. MUSKIE. It is not true.

Mr. PROXMIRE. Of course, it is.

Mr. MUSKIE. It is not true and I have given the reasons. These are the only increases in this budget above current law. I want to make that clear.

Mr. PROXMIRE. May I make it clear to the Senator from Maine, there is nothing written in the wind that tells us we have to make the cuts only in areas that have been increased. We can make cuts in old programs.

Mr. MUSKIE. Will the Senator yield so I may make an observation?

Mr. PROXMIRE. I yield.

Mr. MUSKIE. I have been put in as chairman of the Budget Committee in order to acquire some knowledge about how Government money is spent, where it is spent, how fast it spends out. I am saying to the Senator that, when we are talking about this budget, $535 billion of it is mandated by current law.

I am not saying current law cannot be changed, but I am recognizing that it takes some time to change current law when your objective is to run against some of these constituencies built up here in the Senate in support of programs.

So the quickest way to achieve the kind of cut the Senator is talking about is to eliminate the increases over current law that the Budget Committee proposed, and I have given him the areas.

So if the Senator wants to bite the bullet, bite the bullet and make the cuts where they could be effectively made, that is the place.

Mr. PROXMIRE. Mr. President, the Senator from Maine is right. There is no question this is the quickest way to make the cut, but it is not the only way to make the cut.

Let me take the place that is the most difficult of all the issues and examples the Senator gave, that I think every Senator and everybody in the country, would immediately, instinctively say he is absolutely right on—interest on the debt.

He says that cannot be reduced. The fact is that this is something that can be reduced, not much, but it can be reduced some, and because it is so big, it is over $50 billion a year, or $56 billion a year, something of that kind, I think any reduction here is helpful.

How can this amendment possibly result in cutting interest on the debt? We do not have long-term contracts. These are not 20-year bonds. It turns over in about a year. We have a very short term Federal debt, very short term.

The result is that to the extent a cut of this kind results in reduced inflation, results in reduced interest rates, the interest on the debt is reduced.

Now, as I say, it is not a massive reduction, but it is a limited reduction that can be taken into account.

The same thing is true——

Mr. MUSKIE. Well now—

Mr. PROXMIRE. Let me finish on this point—on a number of contracts. A number of the contracts we have written have an inflation clause in them. Almost all do. Almost all our procurement contracts provide, to the extent there is inflation tied to some index, the Federal Government will have to pay more in 1979.

If this amendment results in a lesser rate of inflation, it means the expenditures required under those uncontrollable, apparently, contracts will, in fact, be reduced.

And, of course, Government salaries also are tied to an inflation index, as is the social security tied to the inflation index.

So I do not think it is quite true to say the only way we can make any cuts is to cut the increases that have been proposed.

Mr. MUSKIE. I do not believe that I said that.

I said that when we are talking about cutting what is mandated by current law, we have to change the law. Indexing is in current law and it is reflected in this budget resolution. If we want to propose eliminating indexing for social security benefits, we have to change the law.

Mr. PROXMIRE. I do not propose that.

Mr. MUSKIE. I am not saying the Senator proposed it. But he keeps talking about these other places and every time I come to a specific place, he says, "I am not talking about that." So that every time I come to a specific place, he says, "I am not talking about that." So that every time the Budget Committee mentions specific places, tries to to identify a specific place and identify the difficulties of cutting in a specified place, the Senator says, "Well, I don't mean that specific place, I meant some other places."

Well, what other places? Every specific place I suggest, "Oh, I don't mean that."

In the table I put in the RECORD, there are specific places, and all we have to do is reject the increases proposed by the Budget Committee. They have not yet been approved by the Congress, they are not a part of law.

So, here is the easiest target. But the Senator says, "I don't want the easiest target, there are some other places."

Then he talks about indexing and I remind him that it is part of current law. He says, "I don't mean that."

Mr. PROXMIRE. No; the Senator misunderstands.

Mr. MUSKIE. I would like to know what the Senator means.

Mr. PROXMIRE. I understand indexing is part of the law. I do not say we should change the index. But I say we will have a lesser rate of inflation, in my judgment, if this amendment passes. If we have a lesser rate of inflation, it means we have a reduction in the amount to be paid out under indexing, without changing the law at all.

Mr. MUSKIE. Let me ask this——

Mr. PROXMIRE. That we have to pay out of interest. It means we have a lesser rate we have to pay out in salary increases, because there is a moderation in inflation.

Mr. MUSKIE. Let me ask the Senator this, he has not told us what budget authority he proposes to cut.

I assume without asking that he does not mean to cut $25.5 billion in budget authority from housing assistance. That spends out over as much as 40 years. If we were to cut that, the contribution to the inflation fight would be virtually zero because we do nothing to save outlays in the short run. But if we cut budget authority that spends out in 1 year, like salaries in the defense function, then we could reduce the deficit by $26 billion and that might have an impact on inflation.

It might also trigger unemployment, but, in any case, there we would make a positive impact on inflation if we wanted to cut salaries in the defense function by $26 billion.

But until the Senator tells us where he is going to cut budget authority, we cannot possibly estimate the outlays or the economic effects.

Mr. PROXMIRE. My time is almost up.

Mr. MUSKIE. Well, charge the last 10 minutes to my time, I do not need it.

He may have an estimate in his mind, but we cannot estimate how much reduction in outlays that would mean, and in the national deficit, how much less borowing that would mean, and how much downward pressure on interest rates that would produce.

How will we provide answers like that when the Senator does not tell us where the budget authority is to be cut?

Mr. PROXMIRE. Mr. President, the gist of the argument by the Senator from Maine is that we cannot do it. It cannot be done.

I say it can be done. He says that we can do all right, but only if we eliminate all of the increases that the administration has proposed.

Mr. MUSKIE. Will the Senator yield?

Mr. PROXMIRE. Well, that is what I understood him to say.

Mr. MUSKIE. I have not mentioned cuts from the administration. I have told the Senator of cuts and increases included in this budget resolution, and when he interprets my remarks saying that cuts cannot be made, I say we cut $36.9 billion from recommendations by committees, including the committee of which the Senator from Wisconsin is chairman.

Mr. PROXMIRE. I said that.

Mr. MUSKIE. So do not interpret what I say as meaning it cannot be done. We have done it, but we have done it in a thoughtful, careful rational way, in which we try to give people the facts about what we have done and the implications of what we have done. We have not given the Senator a meat ax. We have given him specific facts.

Mr. PROXMIRE. Mr. President, do I have the floor?

The PRESIDING OFFICER. The Senator from Wisconsin has the floor.

Mr. PROXMIRE. Mr. President, I have indicated that we are making an amendment that would cut obligational authority. We have a right to make that amendment. The Senator from Maine, of course, has indicated that he disagrees with the amendment very strongly.

He has pointed out, and I have agreed with him, that he has made a cut of $36.9 billion, including a cut in what the Banking Committee recommended over my objection. I wanted the committee to recommend a reduction lower than what the President had called for. But the Budget Committee has indeed made those reductions.

It is my position that we can make a 5-percent cut in obligational authority and we can do so responsibly.

The Senator has raised the question as to where cuts of this kind could be made. One is in the nonmilitary personnel in the Pentagon. The Pentagon has almost a million employees. It is proposed that they cut that number by at least 50,000. That would be $500 million. That would be a cut that would have an effect on outlays almost completely, because the military personnel and the pay of nonmilitary personnel would be reflected about 97 percent in an outlay reduction.

Any cut in operation and maintenance would be about 86 percent, reflected in a reduction in outlays.

Procurement would be a much lesser reduction. The cut there, I am told, would result in about a 14-percent cut.

Mr. President, almost every element of the budget is subject to a variation in the percentage of reduction that you get in outlays if you cut obligational authority. We recognize that. We recognize that it would be very difficult, in our view, for us to put together a specific listing of areas we might reduce.

Furthermore, if we did that, I am sure there would be no way we could get reasonable consideration. I think it is perfectly proper—I know that other Senators may not think so, including the Senator from Maine—for a Senator to come on the floor and indicate that he would like to put a limit on obligational authority and make this kind of recommendation. That is what I propose, and that is all I propose.

I think the function of the Budget Committee, if this amendment is adopted, would be extraordinarily difficult; but I think they could do it, and do it in a responsible way.

Mr. MUSKIE. Mr. President, among other things, the Senator from Wisconsin has said that my argument was that it cannot be done. Well, let us look at that. It is not a question of whether or not reductions in spending can be achieved but how best to achieve them.

In that statement of last spring, I reminded the Senator from Wisconsin that authorizing committees had requested of us $603 billion in budget authority. We cut those requests not by the $26.1 billion then proposed by the Senator but by $36.9 billion.

In the second resolution, as I indicated in my statement earlier this morning, we cut budget authority by an additional $11.1 billion because of our concern with inflation, because the Appropriations Committee, in the actions it has taken up to this point this year, has made it possible for us, in conjunction with reestimates of spending provided by CBO, to reduce spending by that much.

To argue that I said last spring that this could not be done, in the face of the fact that subsequently the Budget Committee has cut $11.1 billion additional, is to distort my whole position in this matter.

The Budget Committee spent long days and hours combing the functions, combing the administration's midsession review, combing the Appropriations Committee bills that had been before the Senate, to identify every conceivable cut.

I simply will not yield to the Senator from Wisconsin in my concern to send the clear signal to the country that we intend to reduce Government spending to the maximum extent possible.

The Senator is a member of the Appropriations Committee. Earlier this morning, I praised the Appropriations Committee for holding appropriations below the target set in the first congressional resolution. Because the Appropriations Committee did that, it was possible for us, following on the heels of those actions, to reduce budget authority and outlays in the second resolution. My argument in the spring was that that is the way to do it. If the Appropriations Committee, which goes over these appropriations bills item by item, had found it possible to cut another 5 percent or 10 percent in the budget authority, I assume it would have done so.

I think Senator MAGNUSON, the chairman of the Appropriations Committee, has demonstrated his commitment to reduce spending over and over again in these appropriations bills. We have applauded him; we have supported him in every way we possibly could; and that is the way to do it.

As of this moment, the Senate already has enacted or passed $402 billion in budget authority, leaving yet to be reported in the Senate $156 billion. I take it that, unless we are going to go back and redo the bills we already have passed, what the Senator now proposes will have to come out of the $156 billion. What will it be? Where will we cut?

Let us look at some of the budget authority items in the budget: social security and other retirement, $107 billion; Federal employee retirement, $20 billion; unemployment compensation, $15 billion; medicare, $30 billion; net interest, $39 billion.

Those five items of budget authority total $211 billion. Are we going to cut those, or is this 5 percent cut or 3 percent cut to come out of the remainder? If it comes out of the remainder, what does that total, percentagewise? This is 40 percent of the total budget authority in the budget.

I have told the story many times about the restriction that uncontrollable items in the budget imposes upon efforts to reduce Government spending. Apparently, the Senator from Wisconsin dismisses that as an inconsequential argument. Let me put it in terms of outlays, if I may.

Total outlays recommended in the second budget resolution are $489.5 billion. Let me list some favorite items of various Senators: defense programs total $112.5 billion; net interest, $38.8 billion; social security, $104.5 billion; railroad retirement, $4.3 billion; Federal employee retirement, $12.0 billion; unemployment compensation, $10.4 billion; medicare, $28.1 billion; medicaid, $11.3 billion; veterans' programs, $20.4 billion; farm income stabilization, $6.0 billion.

The total of those items is $348.3 billion; remaining outlays in second budget resolution, $141.2 billion.

The luxury that these across-the-board budget cutters are able to indulge in on the Senate floor is that they do not

have to zero in, in committee, on those particular programs. They just say, "It is possible." Of course, it is possible to cut 3 percent, even though we already have cut $36 billion and then another $11 billion. Of course, it is possible to cut another 3 percent or 2 percent or 1 percent or 5 percent or 10 percent.

It is always possible. But the budget committees and appropriations committees in their deliberations must get down to the items, the programs, and that is when you begin to realize that there are program needs that cannot be further compromised or cut, or whose constituencies are such that there is no practical way to achieve further cuts, and so in the Chamber it is nice—and I used to enjoy that business of just across-the-board cuts in the Chamber—to vote for them and vote for them, and never have to face the wrath of the constituencies interested in specific programs.

I have listed some of the most popular programs. They total $348 billion.

Any Senator who tells me it would be a simple matter to reduce any of those by the amount that is proposed has not faced the problem of program reduction in the same way that the appropriations committees and budget committees have to face them.

To look at it in an even simpler analysis, defense and veterans programs total $132.9 billion, or 27 percent of the budget; contributory insurance and retirement, $159.3 billion, or 33 percent; debt interest $38.8 billion, or 8 percent. That is a total of 68 percent of the budget, leaving $158.5 billion, or 32 percent, for all other programs.

Are we going to focus on those for this cut? Here is a way to offer a cut. The Senator proposes a cut of $17 billion. Why not exempt defense and veterans programs? We are not going to get any cuts beyond those already included in the budget resolution in those areas, whether we take the case to the Appropriations Committee or to the Senate as a whole with specific amendments. Break up the amendment. Offer the same percentage cut in defense and veterans programs in one item. Let us test the Senate's opinion on that. Just break it out, a 3-percent cut in defense and veterans programs. Then break up the amendment into a second one, contributory insurance and retirement. Let the Senate vote on that separately. And then one on interest. Let us break that up and see how the Senate votes on it. And having disposed of that 68 percent of the budget, I would be willing to make a small wager as to what the result would be and then take the total $17 billion out of all other programs and see what the Senate's vote would be. I would be interested in that. That to me would be a more responsible way to approach this business of further reducing the budget below the second resolution than this across-the-board one where you do not have to face the constituency of the programs which have the strongest support.

All you need are four amendments instead of one. It would not take that much longer to vote on them. Then we would know whether the Senate as a whole wants a 3-percent cut in defense and veterans' programs, whether the Senate wants a 3-percent cut in contributory insurance and retirement, whether the Senate wants to renege on its contract to pay interest on the Federal debt by 3 percent. We would have those blockbusters out of the way.

Then the Senator offers his amendment to cut $17 billion from all other programs and see where that goes. That would be a meaningful test.

If the Senate supported the Senator's proposed cuts in those four different categories, then we would have a clear-cut message that could be implemented by the appropriations committees and by the budget committees.

I do not really think there is that much to be added to what I said on this subject last spring. I have put that in the RECORD.

There are only four of us Senators in the Chamber at the present time anyway. There is no point in repeating that argument. It is there, and it is there in the way that I propose it.

Mr. President, I yield the floor.

Mr. PROXMIRE. Mr. President, I wish to yield shortly to my good friend from Utah and good friend from California, but before I do that let me very briefly respond to the manager of the resolution.

The manager of the resolution started out by saying that I indicated that I thought the Budget Committee was not concerned about inflation. Of course they are concerned about inflation. I said they have done a magnificent job in cutting the budget by an additional $11 billion, and I acknowledge now that they did a fine job in reducing the requests of the various committees. I commend them on that and I know they are deeply concerned with inflation. I am sure they are very interested in having further reductions, also, but I get the distinct impression from the distinguished Senator from Maine that when anyone comes in and offers a general kind of amendment we are not responsible, we do not know what we are doing, and we have no basis on which to offer such an amendment.

Mr. President, as I say, it is up to the Senate to decide this, not a committee. The committees do not dictate to the Senate. The committees just advise the Senate. We make the decisions right here.

Mr. President, the distinguished Senator from Maine indicated one of the questions that bothers him is the Budget Committee was concerned with how best to achieve these cuts, and they found out how best to achieve the cuts and they made the cut on the basis of that, and he went on to say that if the Appropriations Committee had found it possible to cut another 3 percent or 5 percent, they would have done so.

I am sure they would have tried to do so. But if the Appropriations Committee and the Budget Committee were mandated by the Senate to cut an additional 3 percent, they would find a way to do it, and that is what I am suggesting here.

As I say, it is not easy. It is tough. It is difficult. We recognize that the advice they give to us is advice we should consider very, very carefully because these are extraordinarily able and thoughtful members and they labored hard with probably the toughest job that the Senate assigns to any committee.

But for us to come in and say that we want to cut further is not an act of effrontery. It is an act of simply saying that we feel that if we are going to confront inflation effectively, if we are going to hold this spending by the Federal Government down to what we think it should be held down to, to the increase in inflation, that is our decision and of course they would have to abide by it.

Mr. STONE. Mr. President, will the Senator yield for several questions?

Mr. PROXMIRE. Yes, I am happy to yield to my good friend from Florida.

Mr. STONE. Is it not the case that this resolution does not do any substantial damage to any particular governmental program?

Mr. PROXMIRE. That is certainly my understanding, and I would be surprised if Senators came in and offered substantial amendments to increase it. Perhaps they will. But I do not know of any program that is damaged by this resolution.

Mr. STONE. Is it not a fact that this approach retains the priority-setting authority to the Budget Committee and the Appropriations Committee?

Mr. PROXMIRE. That is precisely what this does.

Let me point out that the Senator from Maine indicated that we have already passed appropriations amounting to about two-thirds or more, maybe 80 percent. Now what the second budget resolution does is require the Appropriations Committee to propose revisions, and that is what I think we have to do. Otherwise, the second budget resolution would make no sense at all. We would have come in and just accepted it because we have done so much already. We have in an active way said whatever they have done is all right.

Obviously, that is not the case. We have a right to amend it, and I am exercising that right right now.

Mr. STONE. Is it not the case that the Budget Committee itself has made cuts between the first resolution and this resolution and are coming in with some substantial improvements in this resolution?

Mr. PROXMIRE. They have indeed. As a matter of fact, in the spring when the first budget resolution was up I offered an amendment to cut it 5 percent and then 1 percent. It was said that a 1-percent cut could not be made for various reasons or could not be made responsibly without very serious effect on various programs. The Budget Committee cut twice as much as that. They cut no $5 billion but $11 billion.

They did a much better job, and I suggested here on the floor I think they can do it again.

Mr. STONE. I agree.

Mr. HARRY F. BYRD, JR. I think the Senator from Wisconsin makes a very persuasive argument, if the Senator will yield.

Mr. PROXMIRE. I yield.

Mr. HARRY F. BYRD, JR. If the position is taken that the Senate cannot

make any changes in the second concurrent resolution because some appropriation bill has been passed, then what is the purpose of bringing to the Senate the second concurrent resolution?

Mr. PROXMIRE. We have in the law a system by which that can be done by the Appropriations Committee, by simply proposing a rescission which the Senate can act on.

As the Senator points out so well, if we are circumscribed from offering any reductions, any significant reductions, in the resolution, then we might just as well forget about having a budget resolution that does anything except ratify what the committee recommends to us.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from Wisconsin include me as a cosponsor?

Mr. PROXMIRE. Mr. President, I ask unanimous consent to add the Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the Senator from Texas (Mr. BENTSEN) as cosponsors of the amendment.

I yield to my good friend from Maine.

Mr. MUSKIE. I would be interested in having both Senators tell me when I ever took the position that the Senate cannot change the budget resolution. For 4 years I have been defending the Senate's right to work its will on budget resolutions. Now I have heard the Senator from Wisconsin and the Senator from Virginia putting words in my mouth I do not think I have ever uttered.

Mr. PROXMIRE. Let me answer my good friend from Maine. I do not think he recognizes how tremendously forceful he is and how effective he is when he gets up on the floor.

Mr. MUSKIE. What am I supposed to be?

Mr. PROXMIRE. That is exactly what he should be and what he is. I am praising the Senator. I am not criticizing him but praising him when he makes those statements with so much——

Mr. MUSKIE. It did not come out that way.

Mr. PROXMIRE. With so much force that he gives the Senate the understanding that if we amend this resolution, if we cut by 1 percent or 2 percent or in this case by 3 percent, that somehow we are imposing an act of irresponsible and arbitrary choice on the Budget Committee.

Mr. MUSKIE. In other words, if the suggestion you propose——

Mr. PROXMIRE. That you cannot do it.

Mr. MUSKIE [continuing]. Is arbitrary, I am not supposed to criticize it because I may intimidate you. Is that what the Senator is saying?

Mr. PROXMIRE. No. If the Senator says this is arbitrary, the Senator is wrong in describing this as arbitrary. There is nothing arbitrary about it. It is something that is specific and well within the budget process, and I just say the Senator is wrong, that is all.

Mr. MUSKIE. My job, first of all, as chairman of the Budget Committee is to see to it that the Budget Committee does the best possible job of squeezing every possible wasteful dollar or low-priority dollar out of the budget. That is my job.

Second, my job is to do my best to see that the highest possible priorities are served by the budget. We bring that product to the floor.

I have never been one to believe that committees had the ultimate wisdom, but I do happen to know what we did in the Budget Committee, what problems we ran into, how difficult it was, and I think I have the duty to report that, and I cannot help it if I have a loud voice.

Mr. PROXMIRE. I know.

Mr. MUSKIE. Or if I seem to be intimidating.

Mr. PROXMIRE. I am praising the Senator.

Mr. MUSKIE. Let me just say this——

Mr. PROXMIRE. Let me answer this. I have the floor. I only have a few minutes. My half hour is about up. Let me read what I said. I said that the Budget Committee has done an amazingly good job in cutting about 2 percent in both budget authority and budget outlays from the time of the first budget resolution. That is what I said.

Mr. MUSKIE. After that none of the rest of the Senator's statement sounded like praise. I am not expecting praise.

Mr. PROXMIRE. I think the Senator could have done a better job, and I am trying to impose it on him now.

Mr. MUSKIE. I am not expecting praise. What I am saying is if you really want to be helpful to the process, then I suggest that you break your amendment up into at least four, so that you can get real guidance.

Mr. PROXMIRE. The Senator knows the answer to that. That was tried before on the floor.

Mr. MUSKIE. The Senator is darned right. I know the real answer to that.

Mr. PROXMIRE. And it was overwhelmingly defeated.

Mr. MUSKIE. Exactly.

Mr. PROXMIRE. I think it is something perfectly proper and consistent for the Senate to do. We want a lower budget resolution. We want the Budget Committee to spend the time and expertise to tell us where that reduction can be made most responsibly and most effectively. If we want to hold down spending to $540 billion, I see nothing wrong with that as to what you should be doing.

Mr. MUSKIE. I know you see nothing wrong with it. I see everything wrong with it. When I challenge your premise and offer what I consider real guidance, you back off because it cannot be done that way, and you know it.

Mr. PROXMIRE. Mr. President, I think my time is about up. The Senator from Utah, I understand, has an amendment to my amendment which he will offer. Do I have to yield back time? I guess I do on my amendment for that to be in order.

The PRESIDING OFFICER. All time has to be yielded back.

Mr. HATCH. Mr. President, I wonder if I could ask the distinguished minority manager if he can give me 15 minutes on the bill?

Mr. BELLMON. The Senator is asking time on the bill?

Mr. HATCH. If he could, rather than to call up my amendment.

Mr. BELLMON. I see no objection.

Mr. HATCH. I would also ask unanimous consent that the same be accorded Senator HAYAKAWA immediately following my remarks.

Mr. BELLMON. That will be 15 minutes each or 15 minutes divided?

Mr. HATCH. Fifteen minutes each. I will certainly try to be shorter than that, but I think it might take that time.

Mr. BELLMON. I am glad to yield that time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I thank my friend and colleague from Oklahoma.

I rise in support of the distinguished Senator from Wisconsin's amendment, and I associate myself with much of what he said here today.

I notice that once again we have before the Senate a budget resolution with a large deficit and a small tax cut. The reason that spending is out of control is that the Congress does not give as much weight to defending the taxpayer's purse as it does to accommodating the pressure groups and building its spending constituencies. To be sure, few Federal spending programs are entirely without merit. However, the question is not whether the spending does somebody some good, but whether it justifies the higher taxes, added borrowing, or money creation to pay for it.

Apparently, the Budget Committee feels that it is acting responsibly by bringing to the Senate floor a $42 billion deficit in order to accommodate a 9.3-percent increase in Federal outlays over the current high level for fiscal year 1978. Simultaneously, the Budget Committee brings to the floor a tax cut of $15 billion that its own report admits is not a tax cut. I quote from the report:

> The tax reduction of the second budget resolution therefore does not increase fiscal stimulus but simply prevents the revenue side of the budget from becoming more restrictive in fiscal year 1979 than in fiscal year 1978.

I notice also that the budget authority for fiscal year 1979 is more than 11 percent larger than the current level. The Budget Committee has brought to the floor a resolution containing a growth rate in budget authority that is greater than the committee's projected rate of growth in nominal GNP. I would like to point out that the committee's own report states, and I quote: "Budget authority, not outlays, is the real indicator of the trend of Government cost." I see, then, from the committee's report that the real trend of Government cost is at a higher rate than the increase in the growth of the economy.

If we turn to the committee's numbers for the functional categories, we see some truly astounding increases. Between fiscal year 1978 and fiscal year 1979, General Government increases 21 percent in outlays and 14 percent in budget authority; education, training, employment, and social services has a 42-percent increase in budget authority; transportation has a 29-percent increase; agriculture has a 408-percent increase.

Outlays for energy increased 62 percent over last year. And international affairs has a 22-percent increase in outlays and a 31-percent increase in budget authority. Some of the sums represented by these percentage increases are also astounding. At a time when the administration vetoes a defense authorization bill on the grounds that this Nation cannot afford a $2 billion aircraft carrier, the Budget Committee is recommending to the Senate outlays of $41.6 billion and budget authority of $71.3 billion for international affairs for fiscal years 1979–83. I notice that one of the "national needs" addressed by this functional category is, and I quote from the report, "Efforts to improve the quality of life in the developing world." At a time when we are told that we cannot afford national defense or a tax cut, the Budget Committee is able to come up with $49 billion in budget authority and $31 billion in expenditures in its forward planned 5-year budget for foreign economic assistance and financial programs.

I believe we must give equal concern to improving the quality of life in our own country. As the committee's report points out, and I quote, "Neither Congress, the President, nor the public can take comfort from the fact that after 3 years of economic recovery, the Federal deficit remains over $40 billion." We have this deficit in spite of inflation, currently running at 10.4 percent according to the committee's report, which causes Federal tax revenues to increase 1½ times faster than the growth in the economy by pushing taxpayers into higher tax brackets and denying them increases in real income. This same inflation reduces the ability of our economy to grow in real terms because it cuts into capital formation by forcing American firms to pay taxes on costs of production. On this point I want to quote from the committee's report:

> Inflation distorts taxable corporate profits because corporations depreciate capital on the basis of historical rather than replacement costs for tax purposes. During inflationary periods depreciation based on historical costs understates economic depreciation, based on replacement costs, and therefore overstates profits and increases tax liability. Inflation artificially increased corporate profits by about $15 billion at annual rates in 1977 for this reason, resulting in corporate profits tax liability about $6 billion higher than in the absence of inflation.

What the committee report is telling us is that last year firms paid $6 billion in taxes on production costs. That is why rates of return are low and investment is low. With a growing labor force, low investment means low productivity growth, and that means a low growth in real incomes for Americans.

On July 20 Barry Bosworth, Director of the Council on Wage and Price Stability, said that productivity, which increased at a healthy 3 percent annual rate during the 1950's and 1960's, has fallen to about 1.5 percent, half of the former level, in recent years. And this year he said, productivity may not increase at all. He predicted that the productivity growth of the economy "would be awfully close to zero." Mr. Bosworth made it clear that if productivity is not growing, the real income of workers cannot grow either. Mr. Bosworth also pointed out that the lack of productivity growth combined with inflation makes a vicicus circle. Wage increases are eaten up by inflation, which leads to demands for more wage increases, which in the absence of productivity growth are again wiped out by inflation.

In the Budget Committee's report it is stated that the inflation has resulted from supply factors pushing up prices, and the committee report states that since "it accounts for only one-fifth of the gross national product, the Federal Government can neither generate nor eliminate inflation." That is the most fatuous statement I could imagine. The Government is responsible for the deficit and for the overtaxation of savings and investment. It is not possible to discourage investment and to print money to finance our overspending without causing inflation. I ask unanimous consent to have printed in the RECORD a table which vividly demonstrates the harm that the Budget Committee is doing by continually bringing large deficits to the floor in its resolutions. Since 1974 the average output growth rate has been only 3 percent, one-third lower than in the 1960's. Yet the trend growth rate of the money supply has increased 40 to 50 percent. With the money supply growing twice as fast as output, inflation is unavoidable. The resulting high rates of growth in nominal demand mean that a balance-of-payments deficit and a dollar crisis are also unavoidable.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE I.—MONEY SUPPLY AND OUTPUT GROWTH TRENDS

[In percent]

| Period | Output growth rate | Money supply growth rate | | | |
|---|---|---|---|---|---|
| | | $M_1$ | $M_2$ | $M_3$ | Monetary base |
| 1960–68 | 4.5 | 4.3 | 7.4 | 8.0 | 5.6 |
| 1974–78 | 3.0 | 6.3 | 9.5 | 11.4 | 8.3 |
| Change | −33.0 | +47.5 | +28.3 | +42.5 | +48.2 |

Source: Task Force on Economic Policy, House Republican Conference Research Committee.

Mr. HATCH. This is the kind of situation that it is easy to get into but hard to get out of. We go merrily along running up one huge deficit after another, building our spending constituencies, enlarging transfers and entitlements that create more and larger claims to income on the part of people who do nothing to produce income. All the while we are undermining the growth process that creates income. The difference between a dynamic economy and a static economy is found in the growth of capital relative to labor. The growth of capital requires savings. Yet, budget deficits are the antitheses of savings. That we have a $42 billion deficit after 3 years of economic recovery is a clear indication that this Congress has an inordinate appetite for spending. We cannot get away with the argument that we need this $42 billion deficit for the purpose of economic stimulus. If stimulus was all the Congress was after, this $42 billion deficit could represent a tax cut. But it does not. It represents primarily a spending increase.

Why should we be handing out $31 billion in foreign economic assistance when our budget deficits are forcing our corporations to pay taxes on costs? These budget deficits are at the expense of the living standards of American workers. Although some Members of the Congress may fancy that they are representatives of some kind of internationalism, they in fact are not. Nobody in this Congress is elected by the Third World. Everyone of us is elected by Americans. How is it then that we can justify $31 billion for citizens of other countries and nothing for the American taxpayer?

The best way we can benefit the international economy is to get our own house in order. The dollar is an international reserve currency. It is a medium of exchange for international transactions. Foreign interests hold about $600 billion in dollar claims in obligations of the U.S. Treasury and in Euro-dollars. Their willingness to hold dollars is not independent of the rate at which we produce new ones. This year the dollar has dropped about 20 percent in terms of gold, Swiss francs, West German marks, and Japanese yen. The international community is nervous about its dollar holdings.

At a time when foreigners are trying to reduce their dollar holdings, thus driving down the dollar's price in terms of gold and hard currencies, we should not risk making them more nervous by dumping even more dollars onto the $600 billion stock they already have. The deficit in our balance of trade is not independent of our Government budget deficit. When we try to consume more than we produce through budget deficits, the result is an increase in imports. We can expect this $42 billion deficit in this budget resolution to add about $25 billion to foreign holdings. That is an 8-percent increase at a time when the dollar is already slipping badly. The United States is no longer able to legislate domestic budget deficits with no thought to the consequences for the international monetary system. We must face the fact that flight from the dollar will be the result of our inability to curb our spending appetite.

Six hundred billion dollars in liquid dollar holdings abroad is quite a massive external dollar overhang. The potential exists for the rapid unloading of dollars on international currency markets in response to anticipated adverse trends in U.S. economic performance, balance-of-payments position, and the dollar's exchange value.

The administration claims that the problem with the dollar results from our oil imports, not from our domestic deficits. If the administration was right, Germany and Japan would be in even worse condition than we. The fact of the matter is that relative to the size of the economy, the United States has the lowest oil import dependence of any major industrial nation. I ask unanimous consent to have printed in the RECORD at this point a table which shows that U.S. oil imports account for only 24 percent of total

domestic energy consumption, compared to 50 percent for Germany, and nearly 70 percent for Japan.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE II.—RELATIVE OIL IMPORT BURDENS IN 1977 UNITED STATES, WEST GERMANY, AND JAPAN

[In percent]

| | United States | West Germany | Japan |
|---|---|---|---|
| Oil imports as a percent of domestic energy consumption | 24.3 | 49.9 | 69.9 |
| Oil import bill as a percent of GNP | 2.35 | 2.61 | 3.37 |

Source: Task Force on Economic Policy, House Republican Conference Research Committee.

Mr. HATCH. In addition, the drain on national income to finance these imports is far greater in the case of Germany and Japan. Japan's oil import bill relative to the size of its economy is one and one-half times larger than ours. Yet both Japan and Germany have appreciating currencies and balance-of-payments surpluses.

In trying to blame oil imports for the falling dollars, the administration also overlooks that OPEC oil prices were quadrupled in January 1974. The U.S. balance of payments did not shift into a deficit position until the third quarter of 1976, 2½ years later. Furthermore, the volume of U.S oil imports has remained constant since mid-1976, but our balance of payments and the exchange value of the dollar have continued to plummet.

I ask unanimous consent to have printed in the RECORD a table which shows the modest role that increased oil import costs have played in the U.S. balance-of-payments deterioration since mid-1976. During a 20-month period in which the U.S. payments position shifted from a manageable deficit to one of crisis proportions, the rise in oil import costs is responsible for only 17 percent of the increase in imports. The large domestic deficits during this 20-month period meant that we were consuming more than we were producing, the result being that 83 percent of our trade deficit resulted from an increase in nonoil imports.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE III.—ROLE OF OIL IMPORTS IN THE DETERIORATION OF THE U.S. PAYMENTS POSITION SINCE MID-1976

[All figures in billions of dollars at annualized rates]

| Period | Change in import levels | | | Shift in payments balance | |
|---|---|---|---|---|---|
| | Oil | Nonoil | Total | Merchandise | Current |
| 1976:3 | 36.4 | 90.8 | 127.2 | −11.3 | −4.2 |
| 1978:1 | 42.4 | 119.8 | 162.2 | −44.8 | −27.8 |
| Change | +6.0 | +29.0 | +35.0 | −33.5 | −23.6 |

Source: Task Force on Economic Policy, House Republican Conference Research Committee.

Mr. HATCH. The fall in the value of the dollar both at home and abroad and the rapid deterioration in our balance of payments all have their root cause in the large deficits in the Government's budget that the Budget Committee brings to the Senate floor time after time. These budget deficits are the source of our troubles. What we must do is to cut back on future spending by holding budget authority for fiscal year 1979 to $540 billion, as Senator PROXMIRE suggests, and we must hold spending or outlays to $475 billion, as Senator PROXMIRE suggests in the 1978 report of the Joint Economic Committee.

With spending under control, we must provide a real tax cut in order to increase rates of return. We must have higher rates of return in order to increase our capital stock and productivity and in order to attract foreign investment to help offset our trade deficit during the period it takes for the responsible and beneficial economic policies we need to have effect.

I ask unanimous consent to have printed in the RECORD an article by Alan Reynolds titled "Curbing the Federal Spending Spree."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CURBING THE FEDERAL SPENDING SPREE

(By Alan Reynolds)

There is a good deal of justified alarm about the size of the federal deficit, which now looms at $61.4 billion for fiscal 1979, counting off-budget items. Financing it by borrowing from the private sector will drain funds from housing and business investment; printing money will fuel inflation. At the same time, the nationwide clamor for tax relief must be heeded, since the effects of inflation in raising effective tax rates are depriving the private economy of the resources and incentives needed to sustain expansion. The harsh arithmetic suggests that the only effective way to cut both taxes and the deficit is to greatly and promptly reduce federal spending, which is otherwise due to climb by 23 percent in just two years.

Few federal spending programs, to be sure, are entirely without merit. But, in reducing planned expenditures, the question is not whether that spending does somebody some good, but whether it justifies the higher taxes or added borrowing needed to pay for it. Every program should be examined to see whether or not there are more effective ways of accomplishing its intended results, and whether or not those results might not be better accomplished by returning the responsibilities to lower levels of government, or to the voluntary private sector.

If five basic rules of budgetary restraint were applied to the Carter Administration's proposed budget for fiscal 1979, it would be possible to save far more money than most Washington politicians realize or care to admit. The charts on pages 80 and 81 list some $51.4 billion of spending programs that could be sharply curtailed or eliminated with little harm to basic services—and this by no means exhausts the budget-cutting possibilities. The five rules are:

1. Eliminate or reduce subsidies. There is no obvious reason for having taxpayers throughout the nation subsidize services that may not even be available in their own localities. For example, taxpayers in areas not even served by rail finance certain uneconomic passenger and freight services of Amtrak and Conrail through the huge subsidies those corporations receive. And there is ample evidence that using federal money to build hospitals has resulted in excess capacity that has raised hospital costs and fostered uneconomic practices. If a government subsidy is the only way to keep certain cultural activities from shutting down, it should come from state or local governments whose taxpayers actually benefit from them. Consumers pay for farm subsidies in both higher taxes and higher prices, and the higher prices hurt farm exports. There is considerable evidence (including a 1971 Brookings Institution study by Charles Schultze, now chairman of the Council of Economic Advisers) that the benefits accrue to the largest farms and tend to drive up the price of farmland.

2. Eliminate "temporary" programs that no longer serve their purpose. Programs instituted to deal with recession, or other temporary problems, should be terminated within a reasonable period of time. This rule would apply to such items as Emergency School Aid, which became available in 1972 to help finance school integration. There seems to be little justification at this late date for sending money to school districts that are still not in compliance with the Civil Rights Act of 1964. The 725,000 "public service jobs" financed under the Comprehensive Employment and Training Act (CETA) are another example of a permanent emergency measure that favors only a tiny portion of the unemployed. Originally due to expire this year, CETA will apparently be greatly enlarged instead. The temporary jobs are sometimes frivolous, sometimes a source of political patronage, and frequently offered to the least needy of the unemployed. Financing CETA jobs—through taxes, or printing money—tends to displace other public and private employment.

3. Eliminate unnecessary aid to state and local governments. On the general principle that the federal government should not be sending borrowed or printed money to state houses and city halls, the largest single area for potential budget trimming is the $85 billion Washington proposes to distribute in the 1979 budget. General revenue sharing, a major item totaling $6.9 billion, is now a misnomer because Uncle Sam obviously has no surplus revenue to share. Reducing this and other aid would permit a reduction in federal taxing and borrowing, thus making it easier for states and localities to do their own taxing and borrowing.

Among the questionable specific grants to state and local governments is the $4.7-billion aid package to help states and localities construct sewage-treatment facilities. Other grants for the same purpose are available from the departments of Commerce, Agriculture, and Housing and Urban Development. Why should local government compliance with federal water-pollution standards (unlike private compliance) be so generously funded at the federal level?

The matching-grant program for virtually anything that might be called a "social service" got completely out of hand until Congress put a $2.5-billion ceiling on such outlays. That limited abuses but presumably did not end them, nor did it give the program any clearer focus. Community service grants for "innovative" projects are equally vague.

The bills are still coming in for a few notoriously wasteful HUD programs that were wisely discontinued a few years ago. These include "Model Cities," and urban renewal. But the replacement for these programs—community planning and development grants to state and local governments—will devote $2.9 billion to equally nebulous purposes. Consolidating and renaming ineffective programs is not the way to save money.

Federal aid to urban mass transit has fostered some extremely costly and inefficient systems that typically benefit only a few relatively affluent suburbanites. The Bay Area Rapid Transit system in San Francisco and the Washington, D.C., Metro stand as monuments to the waste of such funds. Far more cost-effective solutions to transit prob-

lems include the use of exclusive bus lanes and the easing of local restrictions on taxis and jitneys.

4. Eliminate unnecessary educational programs. Many federal educational programs are just plain redundant or of questionable value. Social Security educational benefits are a good example. Widows receive cash payments to help support sons and daughters up to twenty-two years of age, provided they are enrolled in college; otherwise such payments cease when the children reach eighteen. This kind of educational support is no longer needed, since the government provides many other grants and loans to college students on a more evenhanded basis.

Aid to "impacted" areas, supposedly adversely affected by the presence of federal activities, is another superfluous program; it has long been misused to keep property taxes down in such affluent areas as the suburbs of Washington, D.C. The same is true of the portion of the school-lunch program that aids students who are not poor. We could also do without supplemental opportunity grants to college students, which duplicate basic opportunity grants with less control.

Many studies indicate that the Head Start program of preschool education does not provide lasting improvement in reading achievement. And there are strong reasons for phasing out grants to medical and dental students. Physicians and dentists should finance their own valuable credentials, and loans are available.

5. Eliminate other programs that are dubious in their purposes or effects. Food for Peace has dumped our farm surpluses on developing nations, thus discouraging them from improving their own agricultural productivity. The special supplemental food program is an unnecessary duplication of food stamps; the aid is unevenly available, and over a fifth of the cost is absorbed by administrative expenses. Most Peace Corps and VISTA programs are of questionable value, despite their new name, which is ACTION. The Legal Services Corporation has mainly fostered fanciful class-action crusades.

The agricultural conservation program (REAP) provides small subsidies for loosely defined purposes; the program has been abused (e.g., used to improve the gardens of rural estates) and duplicates others. The WIN program, which trains welfare mothers for jobs, has long been plagued with a very high dropout rate and few lasting placements. Programs such as those of the Economic Development Administration or New Communities Administration that aid development in certain areas must necessarily do so at the expense of other areas that bear the related tax burden. This is a divisive and improper abuse of the federal treasury that permeates many other varieties of federal "aid."

Suppose that only half of the spending in the five tables could be eliminated. The resulting $25.7-billion reduction in the deficit would still permit enough tax relief and easing of financial pressures to improve the economic outlook greatly. Still other savings are possible, however. Indeed, no federal program should be considered sacred or beyond examination.

One example of a program that seems, at first glance, beyond reproach by any humane American is federal spending on the disabled. The federal government alone plans to spend $35.6 billion on various disability benefits in fiscal 1979. Yet the soaring number of recipients of disability payments, and the shrinking percentage who ever recover, suggests that the definition of disability (including such conditions as chronic stiffness, back pain, and drug addiction) may have become too loose.

A promising area for budgetary pruning is the profusion of regulatory agencies and advisory commissions. The price-control activities alone of the $10.1-billion Federal Energy Department, for example, will cost at least $100 million to administer. Decontrolling domestic energy prices would make many other energy outlays unnecessary. The Occupational Safety and Health Administration costs $150 million, and there is no evidence that it has had any favorable effect on job safety or health. There are also numerous apparently superfluous commissions, including the National Center for Productivity and Quality of Working Life ($3 million), the National Institute of Education ($90 million), the Office of Technology Assessment ($10 million), the Advisory Council on Historical Preservation ($1 million), and the myriad regional-development commissions ($3 million).

Another way to save manpower and money is to eliminate duplication and overlap. Do we need an Environmental Protection Agency, a Council on Environmental Quality, and a Temporary Commission on Air Quality? Dumping the latter two could save $7 million. Do we need both a Voice of America and a Radio Liberty? Getting rid of the latter would save $79 million. Antitrust activities of the Federal Trade Commission duplicate those of the Justice Department. And the Council on Wage and Price Stability ($2 million) has apparently become just another agency to blame inflation on fate and private greed, and we already have the Council of Economic Advisers to do that.

The most remarkable thing about these lists of expendable spending is not their size, but the large areas of the budget left untouched. These include such favorite topics of popular ridicule as moviemaking, exotic social-science research projects, and the agencies' self-congratulatory magazines and other public-relations activities. Two enormous programs, making up 47 percent of the budget, emerge completely unscathed in this analysis. These are $119 billion in benefits for the aged and $118 billion for defense. Defense has been left out not because it is untouchable, but because it involves complex technical and strategic considerations that merit another whole article. The Carter defense budget already contains some sensible cuts that Congress has rejected in the past: for instance, reducing active military forces by 25,000, trimming the Naval Reserve, and contracting some housekeeping jobs out to private firms. Efforts to reduce the generosity of military pensions would also be in order, but, like equally necessary reforms of Social Security and civil-service pensions, would not save much money until the 1980's.

Any effort to slow down the increase in federal spending takes considerable political courage. Every dollar spent by the government is, after all, received by someone. Those who benefit from some spending program are easily organized into a political pressure group dedicated to continuing and expanding the program. On the other hand, those who pay the bills—the public at large—remain dispersed and relatively less informed about where their money is going and why.

Spending is out of control because politicians, mainly in Congress, no longer give equal weight to defending the public purse and to accommodating the pressure groups. The main hope of restoring balance—and in steeling the politicians' courage—rests in the the tax revolt now spreading across the country. It also rests in more scrutiny of the budget by independent observers, as has been attempted here.

*Cuttable subsidies*

Spending proposed in fiscal 1979 budget, in millions of dollars:

| | *Million* |
|---|---|
| Amtrak | $660 |
| ConRail | 424 |
| U.S. Postal Service | 1,764 |
| Maritime subsidies | 505 |
| Hospital construction | 739 |
| Airline subsidies | 69 |
| Public power marketing administrations | 163 |
| Farm price supports | 4,276 |
| National Foundation on Arts and Humanities | 238 |
| Grants to museums and public libraries | 65 |
| Total | 8,903 |
| *Interminable "temporary" programs* | |
| Emergency school aid | $305 |
| Comprehensive Employment and Training Act | 11,356 |
| Antirecession financial assistance | 1,050 |
| Local public-works program | 2,001 |
| Cuban-refugee assistance | 52 |
| Total | 14,764 |
| *Questionable grants to State and local governments* | |
| General revenue sharing | $6,852 |
| Sewage-treatment facilities | 4,660 |
| Social services | 2,842 |
| Community services | 558 |
| Community planning and development | 2,864 |
| Urban mass transit | 2,161 |
| Total | 19,937 |
| *Questionable education programs* | |
| Social security education benefits | $1,505 |
| Aid to federally impacted areas | 781 |
| School lunches for nonpoor students | 907 |
| Supplemental opportunity grants | 270 |
| Head Start | 680 |
| Grants to medical and dental students | 604 |
| Total | 4,747 |
| *Other low-priority programs* | |
| Food for peace (Public Law 480) | $1,069 |
| Special supplement food program | 526 |
| ACTION (formerly Peace Corps and VISTA) | 222 |
| Legal Services Corporation | 243 |
| Agricultural conservation program (REAP) | 182 |
| Work Incentive program (WIN) | 365 |
| New Communities Administration | 52 |
| Economic development assistance | 399 |
| Total | 3,058 |

The grand total is $51.4 billion.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. HATCH. I ask unanimous consent to proceed for 30 seconds to complete my statement.

Mr. BELLMON. Before I yield any more time to the Senator, I yield myself 5 minutes to ask the Senator a question.

Mr. HATCH. Very well. Let me just ask unanimous consent that the remainder of my speech be printed in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. The U.S. Congress can no longer conduct its domestic spending spree in total disregard of the effects it has on the international monetary system and the exchange value of the dollar. These effects are now too large to be ignored. The spending sprees have definitely weakened the dollar and with it the international monetary system. There is no room in international money markets for any more dollars. The large

depreciation in the dollar that we have already suffered is not going to help our exports, because our domestic prices are continuing to rise. Our trade deficit is not a result of a fall in our exports, but a rise in our imports caused by budget deficits.

Mr. BELLMON. Does the Senator believe that the defense function should be further curtailed?

Mr. HATCH. I disagree with that. I think there are areas in the budget that can be cut. However, I do believe that of the $9.3 billion in reductions in this budget resolution below the figures in the first budget resolution, one-third of that reduction, if I recall correctly, about $3.2 billion, was taken out of defense.

Mr. BELLMON. Does the Senator wish to cut defense further?

Mr. HATCH. I do not know, but I think——

Mr. BELLMON. We have to be specific.

Mr. HATCH. Let me be specific, then.

Mr. BELLMON. How large a cut?

Mr. HATCH. Could I answer the question?

Mr. BELLMON. I wish the Senator would. How large a cut in defense?

Mr. HATCH. I would put it this way: I think there are many areas we can cut as strongly as you have cut defense.

Mr. BELLMON. Let us talk about specifics. We are dealing with a budget resolution in dollars and cents. How large a cut is the Senator recommending in the defense function?

Mr. HATCH. I believe we can cut defense 1 percent.

Mr. BELLMON. That would be $1.2 billion.

Mr. HATCH. That is probably so. But I would want to go into that very specifically.

Mr. BELLMON. Let us get to some other functions.

Mr. HATCH. Let me answer the question.

Mr. BELLMON. The Senator has answered. He wants to cut 1 percent.

Mr. HATCH. No, I have not answered. Let me say what I mean by my answer. I do not mean that defense cuts should be such that we would demoralize our country, but I think that in any huge budgetary expenditure we can find areas not properly administered. I cited with particularity what happened last year when the Budget Committee said, "You cannot cut the budget one ounce," and then Joseph Califano comes out and says there are $7 billion in waste in HEW.

Mr. BELLMON. I want to ask the Senator a question. The $1.2 billion is after the Budget Committee has already recommended a cut of over $2 billion. In social security how large a cut would the Senator recommend?

Mr. HATCH. Let me——

Mr. BELLMON. Let us have some specifics. How large a cut in social security?

Mr. HATCH. I think it is up to the Budget Committee to make the cuts.

Mr. BELLMON. We understand that. We have done our work. How large a cut would the Senator recommend in social security?

Mr. HATCH. I think it is up to the Budget Committee.

Mr. BELLMON. I understand, but I want the Senator's opinion. How large a cut in social security?

Mr. HATCH. I made a suggestion. I have put an article into the RECORD today——

Mr. BELLMON. Let us have the dollars and cents.

Mr. HATCH. I am going to give them. The article is entitled "Curbing the Federal Spending Spree," by Alan Reynolds. He lists a variety of cuts that can be made.

Mr. BELLMON. How large a cut in social security?

Mr. HATCH. I would not cut it a dime.

Mr. BELLMON. How about interest on the Federal debt? How large a cut there?

Mr. HATCH. On the Federal debt?

Mr. BELLMON. The interest on the Federal debt.

Mr. HATCH. That is not going to go down unless we cut the Federal debt.

Mr. BELLMON. So that is zero. That means that of those functions that total $281.9 billion, the Senator has recommended a $1.2 billion cut in defense. This means we have to cut the rest of the budget by $16.5 billion, and there is only $275.8 billion from which to get those cuts. How about energy? There is one that is not an entitlement program. How large a cut would the Senator recommend in energy? The amount there is $8.9 billion. If we took a proportionate cut it would be about $600 million. Does that seem like a reasonable cut to the Senator?

Mr. HATCH. Let me just answer this way: With all due respect to my distinguished friend and colleague from Oklahoma, I will be happy to list the cutable items.

Mr. BELLMON. That is what I am asking.

Mr. HATCH. Then let me list them.

Mr. BELLMON. Let us go through them——

Mr. HATCH. Wait a minute. It is the Senator's job to cut and not mine.

Mr. BELLMON. We have done our job.

Mr. HATCH. No, the Senator has not. You have added 9.3 percent to the actual outlays. You have added to the budget; you have not cut it a dime. Maybe you have cut it from a 15- or 20-percent increase to a 10-percent increase but it is certainly not a cut over last year, so I do not think we should use the term cut. I will be happy to recommend a whole series of cuts if you would like.

Mr. BELLMON. Then let us do that. How much do you recommend in energy? What is the Senator's recommendation in energy?

Mr. HATCH. I would suggest that the Senator read what I have put into the RECORD. I think he can find the information within this article by Alan Reynolds, entitled "Curbing the Federal Spending Spree," in Fortune magazine. He suggests considerably more cuts than Senator PROXMIRE has, and I think we can find within those cuts, within that particular area, enough room to make room for Senator PROXMIRE's reduction.

Mr. BELLMON. I will read the gentleman's article in due time. How large a cut does the Senator recommend in——

Mr. HATCH. To start with HEW, I will recommend $7 billion.

Mr. BELLMON. I will ask the question. How much does the Senator recommend cutting from energy?

Mr. HATCH. I will not play that game. Here is——

Mr. BELLMON. I will not argue further with the Senator, Mr. President, if he does not care to answer the question. The point is that the Budget Committee has to deal with dollars and cents. We cannot deal with theories. We have the entitlement programs, for instance in Agriculture, which we cannot cut any further unless the law is changed.

Mr. HATCH. Can I respond to the Senator?

Mr. BELLMON. The same thing is true in medicare and medicaid, where the law requires that certain entitlements be met. We budgeted $51.9 billion on this. In order to meet the Senator's requirement, we would have to cut $3.3 billion from that.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BELLMON. I yield myself another 5 minutes. If the Senator would care to respond, for instance, in natural resources, the Senator is a westerner as I am, and represents a State where natural resource development is supported. If we took the 6.4-percent cut across the board for natural resources, that would mean a cut of almost $1 billion. Would the Senator recommend such a cut in that area?

Mr. HATCH. Well, I would say this: The Senator has a 9.3-percent increase in outlays and an 11.5-percent increase in budget authority. That is over last year. Are you telling me that you cannot cut that any further?

Mr. BELLMON. I am telling the Senator if we are going to cut we have to get specific, and I am asking for specifics.

Mr. HATCH. I am not on the Budget Committee. I am saying you added almost 10 percent to last year's actual outlays and 11.5 percent to authorizations.

Mr. BELLMON. How much shall we take from natural resources?

Mr. HATCH. That is up to the Natural Resources Committee, but I presume they will be able to find some areas where they can cut waste. I think Senator PROXMIRE made that quite clear.

Mr. BELLMON. Mr. President, we simply cannot go into this process all over again, after having done what we consider to be the very best possible job, and come up with the kind of money, about $17.7 billion, that this amendment would call for. I consider the amendment to be totally without merit, and I am certain when the votes are cast others will reflect that feeling.

Mr. HATCH. Will the Senator be kind enough to yield me an additional 5 minutes on the bill?

Mr. BELLMON. I have already yielded 15 minutes to the Senator from California, Mr. President.

Mr. HATCH. Will the Senator from California yield 5 minutes to me?

Mr. HAYAKAWA. I am happy to yield 3 minutes to the Senator from Utah.

Mr. HATCH. That will be plenty.

Mr. President, I ask unanimous con-

sent on this particular matter that I may have printed in the RECORD a Wall Street Journal editorial dated July 25, 1978. As I recall, we got into this kind of an approach last year, and I think this particular Wall Street Journal editorial brings out the fallacies that were brought up last year.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BORN AGAIN BUDGET BALANCERS

With pressure mounting in Congress for a tax cut, we are suddenly finding a lot of born again budget balancers.

Treasury Secretary Blumenthal, who earlier this year defended the $60 billion budget deficit, is now busy trying to whip up inflationary concerns about the Steiger amendment by asserting that it would "add $2 billion to the federal budget deficit." To add $60 billion for spending purposes is helpful to the economy, but to add $2 billion for a tax cut is inflationary.

Similarly in the Congress. The Second Budget Resolution for FY 1978 brought to the floor by Sens. Muskie and Bellmon contained a 12.2% increase in federal spending. The $64 billion deficit resulting from this large spending increase was defended as a necesssary stimulus to the economy. In the same breath the same Senators spoke in fiscally responsible tones against Sen. Roth's proposal to amend the budget to provide an $11.4 billion tax cut.

Although "every member of Congress desires relief for the American taxpayer," intoned Sen. Bellmon, "we are equally desirous of balancing the budget and bringing our deficit under control." Down to defeat went the Roth amendment. Sen. Hayakawa then offered an amendment to cut taxes and spending by $11.4 billion. Objections were made to his menu of spending cuts. Down the Hayakawa amendment. Sen. Hatch then offered an $11.4 billion tax cut to be paid for by holding the spending increase to 9.4%. This required only a 2½% cut in the proposed budget and surely, said Hatch as he pleaded for the taxpayer, "there is 2½% waste in every spending program." Not so, said Bellmon. Down the Hatch amendment.

(Shortly after, the Inspector General of HEW reported that HEW alone had "lost" $7 billion in waste, fraud and mismanagement—over 4% of its budget and 61% of the proposed tax cut.)

We get the uneasy feeling from all this that some people become fiscally responsible only when it is time to cut taxes. We wish we could believe that the big spenders, who are increasing government spending at a faster clip than the growth in GNP, have been born again. Such a mass conversion to the ranks of the fiscally sane by so many sinners at once would be nothing short of miraculous. Somehow, though, it doesn't ring true that big spenders are jumping on a fiscal responsibility bandwagon. The Republican efforts to make fiscal soundness a political issue have been unsuccessful for so long that a balanced budget is like a legend from the past. During a period of time corresponding to the median age of the population, Congress has produced $452.4 billion in deficits and $17.2 billion in surpluses. There can only be a few politicians in Washington who can remember the days of the balanced budget. The several generations who have been born into the deficit state must simply take them for granted. After all, they are nothing new.

So why are deficits suddenly alarming to big spenders? We believe the answer lies in the momentum of the Kemp-Roth-Steiger tax rate reductions. Just as conservatives pointed the deficit finger at the growth in spending programs, now that there is a different momentum the big spenders are pointing a deficit finger at the looming tax cuts. What is at issue is not the deficit itself but political power.

A tax cut would reduce the size of government relative to the private sector. It would be an inroad on the power that has been concentrated in Washington, and the prospect of a decline in political clout is not universally cherished. The political careers of many liberals depend on government action replacing private action. Besides, if the tax cut proponents are right and the economy booms, there would no longer be a sluggish economy as one excuse for expanding government.

We would not turn away the truly born again, but before we welcome big spenders to the ranks of the budget balancers we will wait to see if their new-found devotion to smaller deficits applies to restraining spending, or just to preventing tax cuts.

Mr. HATCH. Mr. President, let me say this: It is not my function as a nonmember of the Budget Committee to go down specific items and outline what should be cut.

Mr. BELLMON. Will the Senator yield?

Mr. HATCH. No; I will not yield at this time because I only have 2 minutes remaining. If the Senator wants to yield me some time, I will be happy to yield for any questions he wants to ask. Will the Senator yield 5 minutes?

Mr. BELLMON. I have yielded time to the Senator from California. When he is finished, I will be glad to yield.

Mr. HATCH. Let me finish my statement and I will be glad to answer questions on your time.

Mr. President, I do not think it is my job but the Budget Committee's job. When the Budget Committee comes in and says they have cut taxes when in fact they have increased spending outlays by 9.3 percent and authorizations by 11.5 percent, I do not consider that a tax cut. I think it is up to them to come up with the figures we should cut. Year after year after year we have these deficits. You cannot tell me there is not at least the waste in Government today that Senator PROXMIRE has suggested by his 3-percent cut. I thank the distinguished Senator from California for yielding to me.

Mr. HAYAKAWA. Mr. President, I would also like to speak in favor of the Proxmire amendment. If there is one lesson we should have learned from our constituents in the past few months, it is that they are tired of skyrocketing Government spending.

The committee made some attempt to reflect this attitude by the modest cuts they made from the spending levels in the first concurrent resolution. But they just scraped the surface.

The American people, through the passage of proposition 13 in my State and through tax limitation and spending limitation drives in other States, are telling us that they are ready for massive cuts in Government spending. And I was truly amazed, Mr. President, after all the past rhetoric we have heard about "tight budgets," at the ease and painlessness with which $11.2 billion in budget authority and $9.3 billion in outlays was cut from the levels set in the first concurrent resolution. I think we can cut a lot more before anyone feels any pain.

But, Mr. President, like my colleague from Utah (Mr. HATCH), I am also concerned with the effect the $42.3 billion deficit recommended in this second concurrent resolution will have on the international monetary situation.

(Mr. SPARKMAN assumed the chair).

Mr. HAYAKAWA. In the past, the choices have predominantly been between reducing the burden on our taxpayers versus satisfying the powerful spending constituencies. That is an importance choice, and I have not always been satisfied with our decisions. But we have now reached a much more serious point. We must now choose between satisfying the spending constituencies and the stability of the entire world monetary system. We spend billions of foreign economic assistance. But what will happen to the developing countries if the dollar and consequently the international monetary system collapses?

We are all aware of the recent collapse of the U.S. dollar in the foreign currency markets. Compared to other currencies, the dollar has fallen nearly 20 percent over the last year. This has pushed up prices of raw materials, traded goods of all types, goods in competition with traded goods, and through cost-of-living adjustments, the cost of labor throughout the economy. Much of the increase in the rate of inflation in the last 6 months can be traced to the falling dollar. These spill-over price effects are going to continue to worsen in the months ahead.

The rest of the increased inflation of recent months is due to the expansive rate of money creation of last year brought on by political pressure on the Federal Reserve Board to fund a record peacetime Federal deficit.

Here is the point, Mr. President: These budget deficits, including the one we are going to vote on today, contribute directly to this country's enormous trade deficit, inflation, and the falling dollar.

The United States, as a whole, is running a budget deficit. All of us, as a group—consumers, investors, and Government—are together spending more than the gross domestic product—our total production. And that excess spending creates a balance-of-payments deficit. In other words, we spend more than we earn.

It is not the fault of consumers. Consumers spend only part of their earnings. They save the rest. They save enough to provide $80 billion in investment money each year.

It is not the fault of business. Business saves through retained earnings, and borrows part, but not all, of the money the public saves. Business invests what it borrows to create more production and jobs. In fact, economists of all viewpoints have been disappointed that business could not do more investing in this economic recovery.

The fault lies with the Federal Government. Business and consumers have saved more than they spent and invested. We had a surplus of saving that the Government could borrow and add to taxes to finance Government spending. But the

deficits have been bigger than that. Far bigger. Last year the deficit ate up all of our excess saving and was still $30 billion more, roughly the size of our payments deficit.

When a Government runs a deficit larger than surplus saving, it pushes total national spending ahead of total national production and income. And that means a trade deficit. Only by bringing the Federal deficit under control can we reduce total U.S. demand to levels that match total U.S. income and production.

Last year's deficit was directly responsible for expropriating so much domestic production that it pushed America into a $30 billion trade deficit. To fund that deficit, the Federal Reserve was forced to print money. That lead to inflation.

Foreigners today hold about $600 billion in dollars and dollar bonds. In the same year in which inflation eroded the value of that $600 billion by 6 percent we pushed another $30 billion overseas. With this budget resolution, we will push another $30 billion overseas and erode the value of the more than $600 billion held abroad by 8 to 10 percent with even higher inflation.

As U.S. inflation increases, foreigners find dollars less and less desirable. Not only do they not want an additional $30 billion, they want to reduce their $600 billion present holdings. Thus the run on the dollar.

The magnitude of this problem is much greater than the trade deficit. We now have a full-fledged crisis of confidence. While dollars are flowing out of the United States in the trade deficit, foreigners are also attempting to withdraw capital. However, the accounts must add up to zero. We cannot spend more than we produce without borrowing from other countries. But they have had enough and are calling in even our previous credit. As it is becoming obvious that the United States has surrendered to inflation, the entire $600 billion in dollar assets held by foreigners is losing its value faster than ever, and they are trying to unload it.

Last year, the $30 billion that we added to this amount was absorbed almost entirely by the central banks of Europe and Japan. Their private citizens wanted no part of it. The rest of the capital outflow led to the devaluation of recent months. But instead of humbly accepting this temporary bailout and tightening our belts, we intend this year to continue our profligate ways and hope our friends will bail us out to the tune of another $30 billion. We are becoming the New York City of the world.

How can we handle this problem? Not through currency swaps. They are temporary and have to be repaid. Not through gold sales. We have $55 billion in gold against more than $600 billion in claims. Not with an energy bill that will not produce a drop more oil or gas for at least 5 years when new fields come on line.

The only way to restore confidence in our currency is to fight the deficit in our budget, the deficit in our payments, and the inflation that makes the dollar so unattractive. We can do this with one simple policy step. A vote for this amendment to curb spending and reduce budget deficits can address all of these problems at the same time.

Curbing the growth of spending will help bring the country's total spending into line with its earnings and output. It will fight the trade deficit.

Curbing spending reduces the Federal deficit. This will allow the Federal Reserve to create fewer dollars, while still allowing enough credit for business expansion. This will fight inflation and make the dollar worth holding onto.

A tax cut like the Roth/Kemp bill would also help the situation. By increasing the after-tax rate of return on investment and saving, U.S. investment will become more attractive, reducing the net capital outflow. It would also lead to a greater supply of savings. In fact, the additional saving would exceed any temporary increase in the deficit. The residual would be available to absorb some of the dollars foreigners are trying to shed.

Mr. President, the whole world is watching what we do here today. This is not a routine resolution. And the Proxmire amendment is not just a pro forma protest amendment offered without serious intent. It is in deadly earnest. A vote for this small measure of restraint will reassure our own people and people around the world that we care about the value of the dollar, and that we want economic stability here at home and in world markets. It is a concrete and effective step which gets at the heart of the dollar's problems. It is the only alternative to stopgap measures which the whole world knows to be nothing but a bluff and a device to avoid facing the problem.

Mr. President, I would like to make one final comment about the conventional economic wisdom. The conventional economic thinking of the last few decades is not working. And the American people know it. In California before the vote on proposition 13, all the "economic experts" predicted disaster. The gloomier their predictions, the stronger the support grew for the proposition. It was as if the people were thumbing their noses at the experts. And the people's wisdom is proving to be correct in California today. The real estate market is booming, companies are increasing their expansion plans, predictions for massive job losses are turning into predictions for massive job increases, the projected State surplus is much larger, and the State has found it can help out the localities and still give a $1 billion State income tax cut this year.

I am sure that the conventional thinking would advise against the Proxmire amendment. I say let us keep a good thing going and thumb our noses at the conventional thinking again.

Mr. President, even the administration's economic policymakers are admitting that they cannot understand or forecast the present economic situation. Says Lyle Gramley, a member of the Council of Economic Advisers:

> Our old rules of thumb no longer work, and we haven't been able to develop new ones.

What an admission. Treasury Secretary Blumenthal is quoted in the September 11 issue of Fortune magazine as saying:

> I really think the economics profession is close to bankruptcy in understanding the present situation—before or after the fact.

He admits it. He goes on to say that uncertainties have made the econometric models that policymakers depend on increasingly unreliable:

> I tell the President, when we come to him with predictions about how a certain tax cut will affect unemployment, to listen—then forget it. We can't predict with any certainty what will occur, for the models are as confused as we are about the tradeoffs.

As I have remarked in my minority views on this resolution, the advice of our own CBO has been widely criticized among economists.

Mr. President, it is about time that we throw off the faulty economic thinking of the past. We must accept a new economic wisdom—the economic wisdom of the American people that says we cannot indefinitely spend more than we earn. The day of reckoning has come. We must face up to reality and adopt the Proxmire amendment.

I thank the Chair.

Mr. HARRY F. BYRD, JR. addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Will the Senator from Oklahoma yield the Senator from Virginia 15 minutes on the bill?

Mr. BELLMON. Mr. President, I am happy to yield 15 minutes to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. I thank the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I support the pending amendment offered by Senator PROXMIRE, of which I am a cosponsor. It would reduce budget authority by $17 billion.

Senate Concurrent Resolution 104, setting forth the recommendations of the Senate Budget Committee for fiscal year 1979, calls for budget authority of $557.7 billion, outlays of $489.5 billion, revenues of $447.2 billion, with a deficit of $42.3 billion.

While I cannot agree that a deficit of $42.3 billion is appropriate for the coming year, I recognize that the Budget Committee has done a good job in reducing the budget authority by $11.2 billion and the proposed outlays by $9.3 billion below the first concurrent resolution. Furthermore, the committee's figures are substantially below the recommendations of the President.

I commend the committee for these improvements, but I must say that both the first concurrent resolution and the administration's request were much too high.

I must emphasize again, that the pending budget resolution still provides for huge spending increases.

I remain concerned about the size of the budget authority figure. The aggregate total of $557.7 billion is 11.5 percent higher than the level for 1978, the current year. This is more than double the

rate of increase in pay recommended for Federal workers by President Carter, which he called an example.

Interestingly, the President's own mid-session budget recommendations provide for $571.4 billion in budget authority, or 14.3 percent over 1978. They also call for outlays of $496.6 billion, or 10.8 percent over this year. So it seems that the "example" in the Federal Government is to be set only by Federal workers, and does not apply to spending programs.

The rate of increase in spending recommended by the administration is half again as high as its forecast of inflation.

Certainly the Budget Committee has taken a more responsible approach than the administration. But in my view, the 11.5-percent boost in budget authority which it recommends will result in ever-higher spending and more inflation, not just in the year ahead but farther down the road.

For some time, the Budget Committee has been inviting the attention of the Senate to its 5-year projections. Looking at the 5-year estimates in the report of the committee on the pending resolution, I think we can see quite clearly the path down which Senate Concurrent Resolution 104 would lead us.

In budget authority, the level of $500 billion for the current year would rise to $558 billion next year, for an increase of 11.5 percent. In each of the next 3 years, the year-over-year increase would be more than 8 percent.

In outlays, the 1979-over-1978 increase is 9.4 percent. It would be the same for 1980 over 1979, then would dip to 7.3 percent in 1981 and rise again to 8.3 percent in 1982.

In 1983, both budget authority and outlays would go up an additional 7.4 percent over 1982.

Mr. BELLMON. If the Senator will yield for a question, is the Senator using the chart that appears on page 29 of the report; page 29, table 3?

Mr. HARRY F. BYRD, JR. Well, in regard to budget authority.

Mr. BELLMON. And outlays?

Mr. HARRY F. BYRD, JR. And outlays, yes.

Mr. BELLMON. That is the chart the Senator is referring to?

Mr. HARRY F. BYRD, JR. That is the overall chart.

The result of this is that budget authority from 1978 to 1983 would increase by $268 billion, or more than 50 percent.

In outlays, the total would rise from $448 to $669 billion, or just short of 50 percent.

In other words, the course indicated by this resolution will make the Federal Government half again as expensive 5 years from now as it is today.

Nor is this increase entirely due to inflation, in the committee's projections. The average annual increase in the Consumer Price Index, under the committee's analysis, is just over 6 percent, while Government spending increases at an average annual rate of 8.4 percent.

Thus, instead of combating inflation, this budgetary policy would lead the way for it.

I understand all the limitations of the kind of forecasting involved in the committee's long-range projections. I have no intention of holding the committee to its forecasts.

It is the philosophy of these projections to which I want to address myself. In my view, these projections represent tired, outworn, and discredited economic ideas.

When it comes to cost-benefit analysis of Government spending, I think the people are far ahead of Congress.

While the people of California are voting to cut taxes, because they know they are not getting their money's worth for what they are paying, and while the movement to cut taxes and spending is gathering steam all over the country, officials in Washington are slumbering on in the belief that the same old tax-and-spend policies of the last four decades are still appropriate and popular.

In the field of Government finance, the people are far ahead of their representatives in Washington. It is time for Congress and the administration to catch up.

The second concurrent budget resolution calls for a deficit of $42.3 billion. Perhaps more significantly, the report on the resolution projects an even higher deficit—$44 billion—for the following year, fiscal year 1980, and another $30 billion of red ink in 1981.

Thus, the cumulative deficit for the next 3 years would be over $116 billion.

If these projections are correct—and I believe they are, if anything, overly optimistic—the national debt could easily approach a trillion dollars in 1981.

That year—1981—with its projected $30 billion deficit and its possible trillion-dollar Federal debt, was the year that candidate Jimmy Carter promised to balance the budget.

The committee tells us that if all goes well, with no serious recession, we can balance the budget by 1983.

To that I respond: If we pursue the course indicated in this resolution, and follow the same policies in the ensuing years, we shall have high inflation and after that, a very serious recession.

As Senator CHILES stated in his additional views to the committee report on the pending resolution:

> I find it unacceptable to run a deficit in 1980 that is greater than the deficit for 1979. In the fourth year of economic recovery, the deficit ought to be going down—not up. I find it unacceptable to show tax reduction or spending increases of $39 billion in 1982 with a deficit of $13 billion. The Committee expects just to slide down to a balanced budget by 1983 as economic conditions improve.

I do not think we will "slide" toward a balanced budget, or toward a sound economy. If we let matters slide, we shall slide toward disaster.

What we need to do is to stop sliding and start climbing toward fiscal responsibility.

Our hopes for a balanced budget and a strong economy must not be permitted to remain always "somewhere over the rainbow."

We can put our hopes on a sound basis now, if we put the Government's financial house in order.

I was interested to note that the Senator from California (Mr. HAYAKAWA), in his comments a few moments ago, said that the United States is fast becoming the New York City of the world.

For these reasons. I shall support the amendment offered by the distinguished Senator from Wisconsin (Mr. PROXMIRE), of which I am a cosponsor.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. HARRY F. BYRD, JR. I yield back the remainder of my time.

Mr. BELLMON. I yield myself 2 minutes.

Mr. President, the Senator from Utah is not in the Chamber, nor is the Senator from California, but I think an explanation is in order as to where the principal areas of growth are and some of the reasons of those large growths.

For example, in agriculture, as has been pointed out, there is a very large growth in budget authority. This large growth is provided in order to give the Commodity Credit Corporation the borrowing authority it needs to conduct properly the price support program of the farm bill. The experience is that every bit of this money, while it has to be loaned out to farmers on their commodities, ultimately will be returned to the Treasury. These are good, solid loans, made on commodities which farmers later will sell, and the money then will return to the Treasury.

So this is not, in effect, a Government expenditure. It simply is a way of operating a program to insure a stable farm economy.

In the education bill, the explanation for the 42-percent growth is that we started with an artificially low base. We had forward funded some of the programs in 1978, so that we had a very low base for that year, and now we are coming back to the more normal level of funding of fiscal 1979. So what looks like a very large growth in budget authority is, in effect, a very moderate growth of about 10 percent.

The health function, where there is a growth of 12 percent, is due to the fact that this is an entitlement program; and unless the law is changed, there is nothing the budget process can do about it. The same is so with respect to the 11-percent growth in the veterans function.

In the area of international affairs, the same practice was followed as was the case with transportation and agriculture. We put the entire function on budget, and $1.8 billion of it was provided to set up the one-time funding for the Witteveen Facility of the International Monetary Fund. There was a recommendation that this be left off budget, but the Budget Committee felt that it was more responsible to put it on budget, and that is why we show that growth.

The point of this explanation is that we feel that the Budget Committee has done the responsible thing by putting all the cards on the table. We could have had a much more attractive resolution if we followed the previous patterns and left some of the items off budget; but the committee is of the opinion—and I endorse it—that we are better off to put the whole Federal spending on budget,

so that we can see where the money is going and make adjustments accordingly.

Mr. President, I reserve the remainder of my time.

Mr. MUSKIE. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 15 minutes on the amendment.

Mr. MUSKIE. Mr. President, in responding to the distinguished Senator from Wisconsin earlier, I suggested that if it seemed to be the attitude around here that the Budget Committee should administer this across-the-board cut, even though the Budget Committee has done a satisfactory job in what it has dealt with up to this point, we should have some specifics.

I ask unanimous consent to have printed in the RECORD an amendment, which I am not going to offer, but which suggests to Senators where these cuts could be made, function by function. It is a straight 3-percent cut across the board.

Since the approach of this amendment is just that, across the board, without any specifics as to distribution, I think the first attempt the budget resolution should make to implement such a cut, if it is approved by the Senate, is reflected in this amendment.

Therefore, I ask unanimous consent that this proposed amendment be printed in the RECORD, so that members will understand what guidance we would take from such action by the Senate. It would represent a $4 billion cut in defense, and so on. I include it in the RECORD for such guidance as it may be to the Senate.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page , line , insert the following:

In lieu of the language proposed by the Senator from Wisconsin, insert the following:

"540,000,000,000.

The 17.7 billion dollar cut provided for in this amendment is to be made in the following categories and amounts:

| | | |
|---|---|---|
| 050: National defense | BA | 123.0 |
| 150: International affairs | BA | 123.0 |
| 250: General science, space, and technology | BA | 5.0 |
| 270: Energy | BA | 8.6 |
| 300: Natural resources and environment | BA | 13.2 |
| 350: Agriculture | BA | 11.8 |
| 370: Commerce and housing credit | BA | 5.3 |
| 400: Transportation | BA | 18.9 |
| 450: Community and regional development | BA | 8.6 |
| 500: Education, training, employment, and social services | BA | 30.6 |
| 550: Health | BA | 50.3 |
| 600: Income security | BA | 185.6 |
| 700: Veterans benefits and services | BA | 20.3 |
| 750: Administration of justice | BA | 4.2 |
| 800: General government | BA | 4.0 |
| 850: General purpose fiscal assistance | BA | 8.6 |
| 900: Interest | BA | 46.6 |
| 920: Allowances | BA | 0.5 |
| 950: Undistributed offsetting receipts | BA | −17.3 |
| Total | BA | 540.0 |

Mr. MUSKIE. The Senator from Utah referred to the fact that this year's budget authority outlay numbers in the resolution are higher than last year's. He expressed complete amazement that that should be the case.

I do not understand his amazement since he made the argument that the big problem was inflation. Inflation has its budgetary impacts. The $41.5 billion increase in outlays between 1978 and 1979 reflects the impact of inflation and of demographics.

Let me explain that briefly. If you were to eliminate the increase, I say to the Senator from Utah, the increase which the Senator criticized earlier today, this is where you would have to cut this budget resolution in outlays in order to eliminate the increase. It would be necessary to cut national defense by $8.5 billion, because that is the amount by which national defense in the 1979 fiscal budget is above that in the 1978 fiscal budget. You would have to cut retirement and disability insurance, which is primarily social security, by $11.2 billion, because it was by that amount that the 1979 budget with respect to those programs exceeds the 1978 budget. You would have to cut health care services, primarily medicare and medicaid, by $4.5 billion for the same reason. You would have to cut interest on the Federal debt by $4.7 billion for the same reason. You would have to cut veterans' programs by $3.4 billion for the same reason. You would have to cut veterans' programs by $1.5 billion for the same reason.

Mr. President, I ask unanimous consent that a table including all programs that would have to be cut in order to reduce outlays in 1979 to the same figure that was established in the 1978 budget be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

EXPLANATION OF $41.5 BILLION INCREASE IN OUTLAYS BETWEEN FISCAL YEAR 1978 AND FISCAL YEAR 1979

($ Billions)

| | Outlays |
|---|---|
| *Estimated fiscal year 1978 outlays* | 448.0 |
| National defense | +8.5 |
| Retirement and disability insurance (primarily social security) | +11.2 |
| Health care services (primarily medicare and medicaid) | +4.5 |
| Interest | +4.7 |
| Energy programs | +3.4 |
| Veterans programs | +1.5 |
| Public service jobs, youth employment, and other employment and training programs | +1.0 |
| Transportation programs | +2.1 |
| Education programs | +1.6 |
| Natural resources and environment programs | +0.9 |
| Farm income stabilization | −1.0 |
| All other programs, net | +3.1 |
| *Recommended fiscal year 1979 outlays* | 489.5 |

Mr. MUSKIE. So, if there is real objection to these increases, then an amendment proposing to reduce these programs by the amounts I have suggested would restore the outlay numbers to the level of the 1978 budget resolution. That amendment would ignore the impact of inflation on old people. It would ignore the impact of inflation on national defense. It would ignore the impact of inflation on interest as well as the contractual obligation that is involved. It would ignore the importance we have all attached to expanding and increasing energy programs.

But apparently all those reasons which to me are very obvious were not obvious to the Senator from Utah and he finds no justification for the fact that in the 1979 fiscal year budget outlays are $41.5 million more than they were in 1978. The table I put in the RECORD explains it. I suggest that if the Senator from Utah is truly concerned about it he might propose an amendment offering to strike $8.5 billion from national defense, $11.2 billion from retirement and disability insurance, and down through the list, and that would get outlays down to what they were in fiscal year 1978.

As a matter of fact, two-thirds of the increase is due to inflation and if we can find a way to eliminate inflation by simply passing a law, adopting an amendment, maybe we will have found a magic answer to the inflation that is plaguing all Americans. We simply eliminate it by an act of Congress which says inflation shall no longer exist subsequent to the passage of this legislation.

In light of the fact we have not been able to find an answer to inflation, we cannot help but reflect its impact on the Federal budget and on the programs to which I have referred, and the Budget Committee has recognized that fact. But if the rest of the Senate feels the Budget Committee has been unrealistic, unwise, or imprudent, in recognizing on a selective basis, and it has been a selective basis, the impact of inflation, why of course, that is the prerogative of the Senate.

But that is the explanation of the difference between outlays between the 2 fiscal years. It is also an explanation for the bulk of the difference in the budget authority figures for the 2 fiscal years. It is a difference that the Budget Committee was unable to ignore and did its best to minimize, but nevertheless, as is the case with every household budget in the country, inflation has had its impact and we see it in this budget resolution.

We express regret about that, but we just accepted the fact that to not recognize the impact of inflation on these programs would impose hardships that Congress would not wish to impose on senior citizens, on the Defense Department, on veterans programs, energy programs, health care programs, transportation programs, education programs, natural resources and environment programs, and so on.

If the Senator thinks we were wrong, then an appropriate amendment could very easily be drafted to strike those differences and to restore the outlay figure to what it was in fiscal year 1978. I could draft such an amendment myself if I believed in it, but I do not. But I am happy to pass that advice along to those who think that budget making is a simple proposition.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. MELCHER). The Senator has 3 minutes remaining.

Mr. MUSKIE. I reserve the remainder of my time, or I am ready to yield back my time.

● Mr. DECONCINI. Mr. President, I wish to associate myself with the remarks of my able and distinguished colleague from Wisconsin. His analysis of the issues posed by this budget resolution is dead on the mark. What we are deciding today as we vote on this resolution is the framework of national macroeconomic policy. The outcome will set the parameters within which the details of the Government's economic policy will be implemented. It, therefore, behooves us to take a very close look at what we are being asked to approve in the light of both the current state and major tendencies of our economic system.

The committee is to be commended for its obviously conscientious effort to find responsible ways to hold down increase in Federal spending. Yet, the aggregates recommended, while below both the first concurrent resolution and below those proposed by the President, nevertheless envision additional budget authority over current levels of almost $20 billion. Let us be clear on this point. The second concurrent budget would add almost $20 billion in new spending initiatives to existing policy. To be sure, proposed outlays would be $489.5 billion, almost $3 billion less than current services. However, outlay aggregates are to a large extent a function of spendout estimates. This apparent reduction is thus somewhat deceptive because it means that the additional budget authority included in this resolution will not be manifested until later fiscal years.

I do not believe, Mr. President, that the reductions suggested by my friends on the Budget Committee are sufficiently responsive to emerging economic realities. It is becoming more and more obvious with every passing week that the inflationary forces at work in our economic order, are much more serious and deeply embedded than many, including professional prognosticators, had supposed. Earlier this year, we were hearing reports of a real or underlying rate of around 6 percent. This was certainly no cause for complacency. But just this last week, the Federal Reserve announced the results of a new study which put the underlying rate at over 8 percent. Moreover, the so-called "necessities index"—food, medical care, et cetera—is already well into double digits. The destabilizing effects of inflationary pressures of this magnitude are too well known to bear repetition here. Suffice it to say that the decline of the dollar in world markets. The disappointingly sluggish performance of the capital sector in the current recovery, the relatively modest and declining rate of real economic growth, and the persistence of unacceptably high levels of unemployment can, I believe, all be traced to this perplexing and, apparently, intractable disequilibrium in the price system.

In short, Mr. President, objective economic conditions argue for tougher fiscal restraint than the resolution before us demands. The realities are, unpleasant as it may be to acknowledge them, that we simply cannot afford to sustain new programatic initiatives, unless we are willing to trim back existing programs to make room for them. This is the course I intend to pursue and I want to compliment my distinguished friend for proposing this amendment.●

Mr. PROXMIRE. Mr. President, I am ready to yield back my time.

I understand I have only 2 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. Let me simply say I do think this is a modest amendment. It does not go back to last year's authorization level. It goes $39 billion above last year. It is 7 percent above last year. It provides for the full amount of inflation on the assumption that inflation is about 7 percent. That is just about what it is.

So, as I say, this is an amendment which I think is modest and reasonable. It is not extreme, and it is an amendment which in view of the overwhelming importance of inflation and the fact that reducing Federal spending is the clearest kind of practical signal we could send the American people, I do hope that the Senate will approve the amendment.

Mr. President, I am ready to yield back the remainder of my time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I yield back the remainder of my time.

Mr. PROXMIRE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from North Carolina (Mr. MORGAN), the Senator from New York (Mr. MOYNIHAN), the Senator from Maryland (Mr. SARBANES), the Senator from Tennessee (Mr. SASSER), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I also announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN), the Senator from Colorado (Mr. HASKELL), and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. HANSEN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The result was announced—yeas 25, nays 44, as follows:

[Rollcall Vote No. 369 Leg.]

YEAS—25

| | | |
|---|---|---|
| Bentsen | Hatch | Roth |
| Byrd, Harry F., Jr. | Hayakawa | Schweiker |
| Danforth | Huddleston | Scott |
| DeConcini | Lugar | Stone |
| Ford | McGovern | Talmadge |
| Garn | Metzenbaum | Thurmond |
| Griffin | Nelson | Wallop |
| Hansen | Nunn | Zorinsky |
| | Proxmire | |

NAYS—44

| | | |
|---|---|---|
| Bartlett | Glenn | Melcher |
| Bayh | Goldwater | Muskie |
| Bellmon | Hart | Packwood |
| Bumpers | Hathaway | Pearson |
| Byrd, Robert C. | Heinz | Percy |
| Cannon | Hodges | Randolph |
| Case | Hollings | Ribicoff |
| Chiles | Inouye | Riegle |
| Clark | Jackson | Schmitt |
| Cranston | Javits | Sparkman |
| Culver | Leahy | Stennis |
| Dole | Long | Weicker |
| Domenici | Magnuson | Williams |
| Durkin | Mathias | Young |
| Eagleton | Matsunaga | |

NOT VOTING—31

| | | |
|---|---|---|
| Abourezk | Gravel | McClure |
| Allen | Haskell | McIntyre |
| Anderson | Hatfield, Mark O. | Morgan |
| Baker | Hatfield, Paul G. | Moynihan |
| Biden | Helms | Pell |
| Brooke | Humphrey | Sarbanes |
| Burdick | Johnston | Sasser |
| Chafee | Kennedy | Stafford |
| Church | Laxalt | Stevens |
| Curtis | | Stevenson |
| Eastland | | Tower |

So the amendment (UP No. 1813) was rejected.

Mr. ROTH. Mr. President, I would like to engage in a colloquy with the distinguished Senator from Oklahoma, who is the ranking member of the Budget Committee, if he would be willing to yield me time.

Mr. BELLMON. Mr. President, I am happy to yield to the distinguished Senator from Delaware. I yield 10 minutes.

Mr. CRANSTON. Will the Senator yield for a unanimous-consent request?

Mr. ROTH. I am happy to yield.

Mr. CRANSTON. I thank my friend for yielding.

I ask unanimous consent that Karen Mandan and Harold Gross may have privileges of the floor throughout all stages of consideration of the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Will the Senator yield for a unanimous-consent request?

Mr. ROTH. I yield.

Mr. MELCHER. I ask unanimous consent that Wayne Mehl, of my staff, be granted the privileges of the floor during the debate and votes on the pending matter.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

Mr. BELLMON. I ask unanimous consent that Lewis Shuster, of the Senate Budget Committee staff, be granted the same privileges.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. If the Senator will yield, I ask unanimous consent that John Brooks, of my staff, be granted the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. I ask unanimous consent that Rick Brandon of my staff, be granted the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Delaware has the floor.

Mr. MUSKIE. Will the Senator yield for a unanimous-consent request?

Mr. ROTH. I yield.

Mr. MUSKIE. I ask unanimous consent that Tom Dougherty of Senator GLENN's staff be granted the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, the second budget resolution reported by the Senate Budget Committee provides for a revenue reduction in fiscal 1979 of $23.4 billion. This figure assumes an $8.2 billion reduction to accommodate an extension of existing tax cuts, $14 billion in additional tax cuts and $1.2 billion in miscellaneous tax cuts.

I think it is important to emphasize that the revenue levels envisioned in the second budget resolution will not provide a tax cut for the American people. The $8.2 billion extension of the temporary tax cuts merely avoids an $8.2 billion tax increase. And the $15.2 billion in additional tax cuts will not offset the pending social security and inflation-induced tax increases.

I believe we need a tax cut which provides real tax relief to the American people and I intend to push for the adoption of the Roth-Kemp tax cut in the Finance Committee markup this week.

It is important for the Senate to realize that the Budget Committee revenue recommendation for fiscal 1979 does not preclude the consideration of Roth-Kemp. The $15.2 billion revenue recommendation is slightly smaller than the $17.4 billion first-year cost of Roth-Kemp, as estimated by the Congressional Budget Office. However, there is a wide difference of opinion among economists as to the amount of revenue reflows there will be as a result of across-the-board tax rate cuts. CBO predicts a relatively small reflow of approximately 20 percent in the first year of Roth-Kemp. Other economists such as Chase Econometrics, predict reflows of at least 40 percent in the first year. I believe the reflow from Roth-Kemp would be greater than estimated by CBO, so I do not believe the revenue figures in this second budget resolution preclude enactment of Roth-Kemp.

However, even if we are forced to rely on the CBO figures, the Senate can enact Roth-Kemp by phasing it in more slowly in fiscal 1979 and then more rapidly in fiscal year 1980 and 1981.

Substantial tax cuts are needed now to offset the massive new tax increases the American people are facing over the next 5 years.

According to the Joint Committee on Taxation, the social security and inflation-induced tax increases will amount to at least $283 billion over the next 5 years. Chase Econometrics has estimated these tax increases will total $346 billion over the same 5 years.

According to the Congressional Budget Office, the net revenue impact of Roth-Kemp would be $286 billion over the next 5 years. This is hardly a radical amount when compared to the massive new tax increases we face.

In fact, the 5-year revenue projections in the Budget Committee report provide conclusive proof that the tax reductions of the magnitude I am proposing are needed.

According to the Budget Committee report, significant fiscal policy changes—tax reductions or expenditure increases beyond those reflected in the committee's fiscal year 1979 decisions—will almost surely be required to maintain economic growth through fiscal year 1983.

The committee report also states that "a significant portion of the fiscal policy changes required in later years for continued growth should take the form of tax reductions," not Federal spending increases.

Under this budget resolution, the committee is recommending tax cuts of $14 billion in fiscal 1979, $22 billion in fiscal 1980, $25 billion in fiscal 1981, $29 billion in fiscal 1982, and $33 billion in fiscal 1983.

However, the committee report states that, in order to maintain moderate economic growth, additional tax cuts will be required. These new tax cuts projected by the Budget Committee are $8 billion in fiscal year 1980, $27 billion in fiscal 1981, $39 billion in fiscal 1982, and $54 billion in fiscal 1983.

These tax reductions which the Budget Committee report states are necessary to maintain moderate economic growth are of a comparable magnitude of the Roth-Kemp tax cuts. And according to the Budget Committee's projections, these tax cuts can be enacted and the Federal budget can be balanced by fiscal 1983.

Mr. President, I think that is sufficiently important to repeat: And according to the Budget Committee's projections, these tax cuts can be enacted and the Federal budget can be balanced by fiscal 1983.

Mr. President, I ask unanimous consent that a table comparing the Budget Committee's 5-year revenue projections with Roth-Kemp be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

5-YEAR REVENUE PROJECTIONS

[In billions of dollars]

| | Fiscal year— | | | | | |
|---|---|---|---|---|---|---|
| | 1979 | 1980 | 1981 | 1982 | 1983 | Total |
| Tax cuts in 2d budget resolution | 14.0 | 22 | 25 | 29 | 33 | 123 |
| Additional tax cuts required to maintain economic growth | | 8 | 27 | 39 | 54 | 128 |
| Total tax cuts | 14.0 | 30 | 52 | 68 | 87 | 151 |
| Roth-Kemp | 17.4 | 41 | 67 | 77 | 84 | 286 |

Mr. ROTH. Mr. President, Treasury Secretary Blumenthal has testified before the Finance Committee that additional tax cuts will be necessary in future years. I believe that we must program these tax cuts in advance so that spending programs can be tailored to the available revenues. This process would add the discipline needed to hold down Federal spending and at the same time provide needed tax relief to the American people.

Mr. President, at this time, I would like to ask my distinguished colleague from Oklahoma to clarify the revenue numbers contained in the budget resolution and whether or not these numbers preclude the Finance Committee from considering a multiyear tax cut such as the one embodied in Roth-Kemp?

Mr. BELLMON. Mr. President, I yield myself 10 minutes on the bill to respond to Senator ROTH.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BELLMON. Let me begin by

thanking the Senator from Delaware for his question and congratulating him for having sponsored a tax bill which I consider to be very timely and meritorious.

The committee report on the second budget resolution contemplates a total of $15.2 billion in new revenue reductions below the current law of which approximately $14 billion is foreseen as a general tax cut. This reduction is in addition to the $8.2 billion extension of the temporary tax provisions, as the Senator from Delaware has pointed out. The total revenue reduction below current law is thus $23.4 billion before reflows. Reflows from this reduction are estimated to be about $2.7 billion so the net tax reduction is $20.7 billion and the final revenue floor is $447.2 billion.

The Roth-Kemp Tax Reduction Act of 1978 as presently contemplated is a 10 percent rate reduction for the next 3 years. The gross revenue loss from that reduction for fiscal year 1979 is estimated by the Joint Tax Committee to be $21.1 billion with reflows of $3.7 billion. This is a net tax reduction of $17.4 billion. With provisions for extending the temporary provisions and with other miscellaneous tax provisions, the budget floor in the second budget resolution is thus about $6 billion too tight to permit the fiscal year 1979 first year of the Roth-Kemp proposal.

As I discussed in my additional views in the report and as I talked about this morning in my opening remarks, I feel that a multiyear tax reduction is the appropriate economic policy and that fiscal year 1979 is the appropriate time for its implementation.

I can list many reasons as to why I favor a multiyear approach to a tax cut, somewhat like the Roth-Kemp approach:

First, the economic recovery may be slowing. Recent economic data such as leading economic indicators, manufacturing orders, and balance of trade deficit support this prospect. While the Budget Committee projects a growth rate of real GNP of 4 percent in 1979 the consensus forecast is for a growth rate around $3.1 percent—not fast enough to reduce the unemployment rate below its present level.

In the absence of a multiyear tax cut, like Roth-Kemp, there are likely to be increasing pressures on the financial side of our economy which make the chances of significant economic weakness and rising unemployment much greater. If that economic weakness and rising unemployment occur next year, then the recent fiscal restraint which we have seen will likely dissolve and some form of new short-term spending stimulus will be adopted by Congress. If that occurs, we will reduce the probability of achieving a balanced budget in the immediate future.

Second, real after-tax income will fall due to inflation and other actions. Inflation rates of 6.7 percent for the next 3 years will cause real tax increases of $13 to $14 billion per year because of the progressivity of the individual income tax. Charles Schultze has indicated that the administration now believes the rate of inflation may be closer to 8 percent in 1979, in which case, the drain on incomes would be even greater.

Increases in social security contributions due to increases in the benefit base will amount to $9.8 billion in 1979 and increased payments due to tax rate increases will amount to $3 billion in 1979. The increased burden of corporate taxes due to the overstatement of corporate profits under historic cost depreciation methods will amount to about $4 billion. Economic growth and capital formation are further encumbered by new environmental and safety restrictions, minimum wage laws and other forms of regulation. Large tax cuts will be required to get the taxpayer back toward the average tax burden of the last two decades. The average personal income tax rate in 1964, for example, was 10.5 percent. That burden has risen to an estimated 11 percent in 1978, and will grow to about 15 percent by 1983 unless continuing tax relief is granted.

Third, a multiyear tax cut like Roth-Kemp would help capital formation and thus reduce future inflationary pressure. One of the major problems facing the economy is the lack of a level of capital formation which will provide for future capacity and expand job opportunities. A 3-year tax reduction would stimulate capital formation in the United States. Over the last 10 years, new capital formation in the United States has averaged 2.7 percent annually—the lowest of all industrialized countries. Even Great Britain added new capital at an average annual rate of 3.6 percent over the same period. It is obvious that a large and predictable tax reduction would increase the rate of return on capital.

Fourth, a 3-year tax cut announced now is more effective than three 1-year cuts announced a year at a time. Given the sluggish economy predicted for the next 2 or 3 years by most forecasters, greater economic benefits are derived by enacting a 3-year predictable tax reduction now rather than embarking on an uncertain policy of piecemeal year-by-year tax cutting. In fact, to enact a single-year tax cut in each of the next several years would require a larger overall tax cut than a one-time 3-year cut. Three-year tax cuts, as envisioned by Roth-Kemp, are predictable and consistent with the multiyear budgeting approach introduced by the Senate Budget Committee in its first budget resolution this spring.

Fifth, Roth-Kemp coupled with spending restraint does not have to be inflationary. If one maintains that the current policy level of expenditures shown in the 5-year projections during the budget markup will or should occur, that is, allowing a $200 billion growth in spending over the next 5 years, then and only then, is Roth-Kemp, in combination with that level of spending, inflationary. However, some econometric simulations which couple Roth-Kemp with spending cuts below current policy show that the inflationary effect would be minimal; that is, three-tenths of 1 percent by 1983 in a Chase Econometrics study.

Last, increased savings will help offset any increased deficit occasioned by Roth-Kemp. Because reduced tax rates increase the after tax reward to savings, some additional savings will be generated even in the short run. This will help finance the deficit and, depending upon the amount of induced savings—Chase estimates $69 billion by 1981—will reduce pressures on the monetary authorities to buy Federal debt and subsequently increase the money stock in an inflationary manner. Several studies have shown that an increased rate of return on capital will enlarge the pool of savings available for investment in productive, long-lived assets, and thus increase potential GNP.

A multiyear tax cut like the Roth-Kemp proposal would have us approach fiscal policy decisions in a different way. At present, there is a tendency to set expeditures levels first, and then to look at the possibility of reducing taxes only after those spending decisions have been made. A multiyear tax cut would reverse that procedure. We would start by deciding how much of our national income should be allocated to the government sector and then expenditure levels would be adjusted to conform to that revenue.

By establishing a program of substantial across-the-board tax rate reductions, phased in over several years, some have said that we would be establishing the prior claim of tax cuts over spending increases as a use of future revenues.

Mr. President, I understand that, tomorrow, the Finance Committee will begin markup of the 1978 tax bill. I would hope that they consider a multiyear approach such as that embodied in the Roth-Kemp proposal, for all the reasons I have mentioned. There are a variety of ways in which a multiyear tax bill could fit within the budget resolution floor and I would like to submit the following table as examples of methods by which the multiyear approach could be accommodated.

So, to answer the question that Senator ROTH has raised directly, there are ways in which a multiyear tax cut could fit within the budget resolution, probably not precisely the way Roth-Kemp is presently drawn. But I thank the Senator from Delaware for allowing me to clarify the revenue number contained in the second budget resolution and to express my support for the type of tax cut he and many others have supported for quite some time.

Mr. President, I ask unanimous consent that a table showing the way a phased in Roth-Kemp alternative could be fitted in the budget resolution be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

PHASED-IN ROTH-KEMP ALTERNATIVE I (7%, 7%, 7%, 7%)

| | 1979 | 1980 | 1981 | 1982 | 1983 | 5-yr total |
|---|---|---|---|---|---|---|
| Current policy revenue baseline | 467.9 | 530.7 | 596.1 | 669.2 | 741.8 | 3,005.7 |
| Minus | | | | | | |
| Extension of temporary provisions | 8.2 | 14.0 | 14.8 | 15.7 | 16.6 | 69.3 |
| | (7% reduction each of 1st 4 yr) | | | | | |
| Minus | | | | | | |
| Phased-in tax cut (gross) | 14.7 | 40.6 | 73.5 | 128.8 | 151.2 | 408.8 |
| Plus | | | | | | |
| Reflows | 2.6 | 11.9 | 26.8 | 57.3 | 73.9 | 172.5 |
| Minus | | | | | | |
| Allowance for additional tax reductions (including change in treatment of capital gains) | .4 | 1.0 | 4.2 | 4.4 | 5.0 | 15.0 |
| Equals | | | | | | |
| Revenue number for phased-in R-K Alternative I | 447.2 | 487.0 | 530.4 | 577.6 | 642.9 | 2,685.1 |

PHASED-IN ROTH-KEMP ALTERNATIVE II (7%, 10%, 13%)

| | 1979 | 1980 | 1981 | 1982 | 1983 | 5-yr total |
|---|---|---|---|---|---|---|
| Current policy revenue baseline | 467.9 | 530.7 | 596.1 | 669.2 | 741.8 | 3,005.7 |
| Minus | | | | | | |
| Extension of temporary provisions | 8.2 | 14.0 | 14.8 | 15.7 | 16.6 | 69.3 |
| | (7%, 10%, 13% respectively in each of 1st 3 yr) | | | | | |
| Phased-in tax cut (gross) | 14.7 | 49.3 | 105.9 | 138.3 | 164.9 | 473.1 |
| Plus | | | | | | |
| Reflows | 2.7 | 14.6 | 38.6 | 61.5 | 80.6 | 198.0 |
| Minus | | | | | | |
| Allowance for additional tax reductions (including change in treatment of capital gains) | .5 | 1.1 | 4.3 | 4.4 | 5.0 | 15.3 |
| Equals | | | | | | |
| Revenue number for phased-in R-K Alternative II | 447.2 | 480.9 | 509.7 | 572.3 | 635.9 | 2,646.0 |

UP AMENDMENT NO. 1814

(Purpose: To reduce the total new budget authority provided in the resolution by $16.4 billion, the total budget outlays provided in the resolution by $10.1 billion, the amount of the deficit in the budget provided in the resolution by $10.1 billion, and the level of the public debt and the amount by which the temporary statutory limit on such debt should be increased provided in the resolution by $10.1 billion)

Mr. ROTH. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Delaware (Mr. ROTH), for himself, Mr. HAYAKAWA, Mr. PROXMIRE, and Mr. THURMOND proposes an unprinted amendment No. 1814.

Mr. ROTH. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 1, line 4, strike all after the words "Budget Act of 1974," and insert in lieu thereof the following: "that for the fiscal year beginning on October 1, 1978—

(1) the recommended level of Federal revenues is $447,200,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is $23,400,000,000;

(2) the appropriate level of total new budget authority is $541,300,000,000;

(3) the appropriate level of total budget outlays is $479,400,000,000;

(4) the amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is $32,200,000,000; and

(5) the appropriate level of the public debt is $829,400,000,000, and the amount by which the temporary statutory limit on such debt should accordingly be increased is $31,400,000,000.

SEC. 2. Based on allocations of the appropriate level of total new budget authority and of total budget outlays as set forth in paragraphs (2) and (3) of the first section of this resolution, the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget act of 1974 that, for the fiscal year beginning on October 1, 1978, the appropriate level of new budget authority and the estimated budget outlays for each major functional category are as follows:

(1) National Defense (050): (A) New budget authority, $127,000,000,000; (B) Outlays, $112,500,000,000.

(2) International Affairs (150): (A) New budget authority, $10,300,000,000; (B) Outlays, $6,300,000,000.

(3) General Science, Space, and Technology (250): (A) New budget authority, $5,100,000,000; (B) Outlays, $5,000,000,000.

(4) Energy (27): (A) New budget authority, $8,900,000,000; (B) Outlays, $8,900,000,000.

(5) Natural Resources and Environment (300): (A) New budget authority, $13,600,000,000; (B) Outlays, $11,600,000,000.

(6) Agriculture (350): (A) New budget authority, $12,200,000,000; (B) Outlays, $7,200,000,000.

(7) Commerce and Housing Credit (370): (A) New budget authority, $5,500,000,000; (B) Outlays, $2,800,000,000.

(8) Transportation (400): (A) New budget authority, $16,200,000,000; (B) Outlays, $16,500,000,000.

(9) Community and Regional Development (450): (A) New Budget authority, $8,900,000,000; (B) Outlays, $9,600,000,000.

(10) Education, Training, Employment, and Social Services (500): (A) New budget authority, $23,800,000,000; (B) Outlays, $28,500,000,000.

(11) Health (550): (A) New budget authority, $49,600,000,000; (B) Outlays, $46,700,000,000.

(12) Income Security (600): (A) New budget authority, $191,500,000,000; (B) Outlays, $156,000,000,000.

(13) Veterans Benefits and Services (700): (A) New budget authority, $20,900,000,000; (B) Outlays, $20,400,000,000.

(14) Administration of Justice (750): (A) New budget authority, $4,100,000,000; (B) Outlays, $4,100,000,000.

(15) General Government (800): (A) New budget authority, $3,900,000,000; (B) Outlays, $3,500,000,000.

(16) General Purpose Fiscal Assistance (850): (A) New budegt authority, $8,800,000,000; (B) Outlays, $8,800,000,000.

(17) Interest (900): (A) New budget authority, $47,800,000,000; (B) Outlays, $47,800,000,000.

(18) Allowances (920): (A) New budget authority, $500,000,000; (B) Outlays, $500,000,000.

(19) Undistributed Offsetting Receipts (950): (A) New budget authority, $17,300,000,000; (B) Outlays, $17,300,000,000.

Mr. ROTH. Mr. President, I have carefully observed the congressional budget process since the enactment of the Congressional Budget and Impoundment Control Act of 1974. My analysis of the process has led me to the conclusion that we need to set limits not only on present spending levels but also on those expenditures which will occur in future years. I had originally decided to offer an amendment to this concurrent resolution which would have effectively set limits on Federal expenditures as a percent of GNP over the next 5 years. Due to questions regarding the germaneness of such an amendment however, I have decided against its introduction. I fully intend to offer, in the near future, an amendment to the Budget Act which will set limits on future spending with appropriate and carefully constructed safety valves which would allow emergency expenditures exceeding congressionally set limits.

In the absence of set budget limits for future expenditures, I am offering an amendment which will reduce fiscal year 1979 budget authority by a total of 3.2 percent and outlays by a total of 2.3 percent.

The amendment I offer today is not, from my prospective, a budget cut. It does, however, slow down the rate of growth in Government spending and it is a real reduction in the growth rate of the budget authority. There are no cuts in the current operating levels of any program. The budget authority provided by my amendment would be sufficient to continue existing programs adjusted for inflation. In contrast, the budget authority recommended in the concurrent resolution is $16.4 billion more than the

amount provided by my amendment, and is 11.3 percent greater than the spending authority granted in fiscal year 1978. Similarly, the committee recommendations contain $10.1 billion more in projected outlays than are contained in my proposal.

Rather than a budget cut, I look upon my amendment as a deficit cut. I believe the lowering of the Federal deficit is a necessity if we are to effectively deal with one of our greatest economic problem today—inflation. My amendment will mean the Federal Government can avoid borrowing an additional $10.1 billion which would be a clear signal to the American people of our commitment to squarely confront the problem of inflation. We simply cannot afford to continue to add deficit on top of deficit and expect our economic problems to be solved. Deficit spending over the last 5 fiscal years will amount to nearly $180 billion and our national debt has nearly doubled since 1970 to an astounding $798 billion. Interest payments on this debt alone are projected to amount to $54.5 billion in fiscal year 1979. And these are costs, I might add, that will be borne by future generations and by all of us in the years ahead.

Mr. President, the American people have made it clear that the burden of paying for the expenses of the Federal Government has become too great. Over 60 percent of them now identify inflation as our Nation's most serious economic problem and they overwhelmingly identify the Federal income tax as being the most burdensome of all the taxes levied in America, even more burdensome than local property taxes. Our Nation's Governors have called on the Federal Government to cut the rate of inflation and reduce the deficit and the leaders of many of our cities have joined them. In short, the American people have demanded that government spending and growth be substantially reduced and they have made it clear that inflation has become a serious problem in their lives.

I believe my amendment will help reduce the rate of inflation by curbing the growth rate of Federal spending and by reducing the size of the deficit. Further reductions in Government spending will occur in programs tied to the Consumer Price Index as the rate of inflation begins to moderate. Programs such as social security, Government retirement and pensions, and numerous Federal contracts and procurement projects will be less costly as inflationary pressures decelerate. The reduced deficit my amendment allows would not only help ease inflationary pressures, it would also lower the amount of credit the Federal Government seeks from private credit markets helping to ease the high interest rates hindering business expansion. Overall, my proposal would stimulate added beneficial side effects in addition to curbing the growth rate of Federal expenditures. And though it may be argued that there has already been a 17-percent cut in the deficit contained in the legislation, and I congratulate the members of the committee for that, I do not believe a deficit of over $42 billion is acceptable when we are in the fourth year of economic recovery, especially considering the fact that the deficit for 1980 is proposed to be even larger than this year's.

Mr. President, I realize the budget committee has reduced the total budget authority by $11 billion compared to the budget authority allowed in the first concurrent resolution. Yet, the total still represents an increase of over 11 percent from the 1978 budget authority granted by Congress. While this increase itself is startling, it pales in comparsion to the tremendous amounts of unused budget authority already existing in the various agencies and departments. According to a recent GAO study, approximately $235 billion of unobligated budget authority is scattered throughout the Federal Government, waiting to be spent at some future date. It is incredible to me that a $57 billion increase in budget authority is necessary in fiscal year 1979 when billions upon billions of dollars of unobligated authority is still available for expenditure from past years. If we are ever going to get a handle on Federal expenditures, over so-called uncontrollable items and over future inflationary spending, we must begin now by reducing budget authority significantly.

My amendment seeks to make such a reduction by cutting total budget authority by 2 percent from the bill's recommended level. Even with the reduction I am proposing, there is still an increase in total budget authority of over 8 percent, an amount which allows for the effects of inflation on Government programs and then some.

The proposal I am offering deals with the deficit problem by cutting outlays for fiscal year 1979 by 2.3 percent from the committee's recommendations. Even with this reduction, outlays will increase by 7 percent over the 1978 figure, an amount greater than the projected rate of inflation. Federal officials themselves say they cannot spend in 1 year the appropriated dollars we give away. Undoubtedly, there will be a shortfall this year as there has been in every year since 1969. According to a recent CBO report, shortfalls recently have averaged nearly $15 billion or 4 percent of projected outlays. It is clear that shortfalls such as these result not from more efficient Government spending practices, but rather from overoptimistic estimates and the upward bias in many agency estimates of requirements and outlays. It is evident to me that with consistently high estimations of outlays and the fraud and inefficiency occurring in many Federal programs, my amendment is appropriate and necessary.

Mr. President, my amendment does not merely cut the total levels of budget authority and outlays contained in the legislation. I have thoroughly analyzed the specific budget levels recommended in each of the functions. Reduced levels of budget authority and outlays are only proposed for those functions in which the committee's recommendations exceed the projected rate of inflation. I have exempted two functions from reductions because of their critical importance to our national security or economic stability.

In the case of agriculture, my amendment exempts that function from any reductions primarily because the outlays provided in the bill are a significant decrease from the fiscal year 1978 figures. I am also aware of the strong Senate support for the price support programs funded under this function and accept the Senate's will in this area.

Mr. President, we must deal with the problem of inflation by cutting back on Government spending. We must begin to gain control of future expenditures and start to deal with inflation on a long-term basis. The American people have shown that they are worried by the twin problems of inflation and Government growth and we must make strong efforts to control both. I believe my amendment is a solid beginning in the difficult struggle we face in both areas.

Mr. President, I will yield.

Mr. BELLMON. Mr. President, I yield myself 5 minutes on the amendment.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. BELLMON. Mr. President, to begin with, let me congratulate the Senator from Delaware for his diligence in attempting to bring Federal fiscal policy under control. It is an effort that needs to be made and I certainly commend him for the diligent way he has pursued this objection, even back to helping develop the resolution which set up the budget process.

Mr. President, while it probably will not give the Senate or the country much comfort, I would like to point out that back in 1970, the year the Senator from Delaware cited, the Federal revenues were $192.1 billion, and at that time our Federal debt was $369 billion. Our revenues, thus, were 52 percent of the debt. The revenues were $192 billion; the debt, $309 billion. I think the revenues were about 52 percent of the debt. In 1979, the year we have under consideration at the moment, our revenues are anticipated to be $447.2 billion and the debt is anticipated to go to $839.5 billion. The revenues then will be 53 percent of the debt. So we are just about in the same ratio of revenues to debt in this new budget as we were back in 1970.

Also, the Senator has called attention to the shortfall problem, and this is one which the members of the Budget Committee are greatly concerned about and which we have tried very hard to deal with, with some small degree of success.

I think it is important to know that until we can find the shortfalls and identify them, it is impossible to remove them. As the budget process has gone on, we have been more successful in finding where these spending shortfalls occur. This new budget resolution makes a greater effort than ever before to eliminate the excess funding, so that shortfalls should be reduced in fiscal year 1979. The budget process has made it possible to identify these shortfalls, and I think this is one of the major attributes of the process that Congress established.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing where the Roth cuts would be made and the size of those cuts.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

CUTS PROPOSED IN ROTH AMEDMENT

[In billions of dollars]

| | Budget resolution level | Roth level | Cut |
|---|---|---|---|
| I. Total cuts: | | | |
| Budget authority | 557.7 | 541.3 | −16.4 |
| Outlays | 489.5 | 479.4 | −10.1 |
| II. Cuts in specific functions: | | | |
| A. Large cuts: | | | |
| Function 150—International affairs: | | | |
| Budget authority | 12.6 | 10.3 | −2.3 |
| Outlays | 7.2 | 6.3 | −.9 |
| Function 400—Transportation: | | | |
| Budget authority | 19.5 | 16.2 | −3.3 |
| Outlays | 17.5 | 16.5 | −1.0 |
| Function 500—Education and jobs: | | | |
| Budget authority | 31.5 | 23.8 | −7.7 |
| Outlays | 30.2 | 28.5 | −1.7 |
| Function 550—Health: | | | |
| Budget authority | 51.9 | 49.6 | −2.3 |
| Outlays | 48.6 | 46.7 | −1.9 |
| Function 600—Income security: | | | |
| Budget authority | 191.5 | 191.5 | ---------- |
| Outlays | 159.6 | 156.0 | −3.6 |
| B. Small cuts: | | | |
| Function 250—General science: | | | |
| Budget authority | 5.2 | 5.1 | −.1 |
| Outlays | (1) | (1) | ---------- |
| Function 300—Natural resources and Environment: | | | |
| Budget authority | (1) | (1) | ---------- |
| Outlays | 11.7 | 11.6 | −.1 |
| Function 750—Justice: | | | |
| Budget authority | 4.3 | 4.1 | −.2 |
| Outlays | 4.2 | 4.1 | −.1 |
| Function 800—General government: | | | |
| Budget authority | 4.1 | 3.9 | −.2 |
| Outlays | 4.0 | 3.5 | −.5 |
| Function 900—Interest: | | | |
| Budget authority | 48.1 | 47.8 | −.3 |
| Outlays | 48.1 | 47.8 | −.3 |
| C. Functions with no cuts: | | | |
| 1. Function 050—National defense. | | | |
| 2. Function 270—Energy. | | | |
| 3. Function 350—Agriculture. | | | |
| 4. Function 370—Commerce and housing credit. | | | |
| 5. Function 450—Community and regional development. | | | |
| 6. Function 700—Veterans. | | | |
| 7. Function 850—Revenue sharing. | | | |
| 8. Function 920—Allowances. | | | |
| 9. Function 950—Undistributed offsetting receipts. | | | |

[1] No change.

Mr. BELLMON. Mr. President, the table shows that these cuts come primarily in function 500, which is education, in health, and in similar areas where the Budget Committee, in some cases, has attempted to do the thing the Senator from Delaware wants to do. But we have been forestalled, partially by the entitlement program and partially by the fact that, up to now, we simply have not had support for these kinds of cuts when you get down to specifics.

The Senator should know that both Senator MUSKIE and I have worked for similar cuts. But until there is more widespread support for these cuts, we have difficulty getting them put into place.

So, despite the fact that I agree with the objective of the Senator from Delaware, I feel that the Budget Committee already has done a thorough job of examining these programs and has made the cuts as deep as possible at this time. Therefore, I shall reluctantly vote against the Roth amendment.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I do not intend to extend the debate indefinitely. However, I wish to make a few observations.

First of all, I congratulate the Budget Committee and the distinguished Senator from Oklahoma and the chairman for what I consider some very real progress being made in our budgetary processes.

I was particularly pleased to see on page 136 of the concurrent resolution on the budget the fact that by 1983 it is the goal of the Budget Committee to have spending or outlays reach 19.9 percent of the GNP. I hope we can stay on that schedule. That was the reason I made some reference earlier to the fact that I intended at one time to offer an amendment, if it had been germane, to help move us along in this direction.

Mr. President, no cut is easy, and we recognize that. What I am trying to say on the Senate floor, and what I hope the Senate will do, is to recognize the extraordinarily difficult situation this country is in.

I know it is difficult to ask the various agencies to hold down the rate of growth sometimes, in view of the actions taken by Congress, but I point out that the same difficulty is faced by the average American farmer. With inflation moving in the direction of double digit—at least, according to some economists—American workers, families, and housewives are finding it extraordinarily difficult to make ends meet. They find no growth whatsoever in their income, as we find here in the Federal budget. Instead, they find that they are, in fact, faced with much less purchasing power, and in many cases they have to lead a reduced standard of living because of what we have done in Washington.

It is my point of view that we should take stringent steps and use restraint in holding down the spending, and I believe that my proposal is responsible. It would hold down, basically, the rate of growth of inflation. We have made no cuts where the departments already have realized that goal. We have made certain exceptions in those areas where there seems to be a critical need, including national defense and energy.

In the case of agriculture, even though I did not support some of these programs, we recognize that Congress has spoken in that area.

So I hope that the Senate will give the signal to the people back home that a very tough effort is being made to hold down the rate of growth in Federal spending.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. I yield myself 2 minutes.

Mr. President, I think my good friend, Senator BELLMON, has covered adequately the issues raised by Senator ROTH.

I simply make the point that the functions chosen by Senator ROTH, in large part, were very tough battlegrounds within the Budget Committee for getting outlays and budget authority down.

There are four major items on Senator ROTH's list, One is function 400, transportation, where he proposes cuts of $3.3 billion in budget authority and $1 billion in outlays, as I understand it.

I would like to point out that the House Public Works Committee has much higher figures than the Senate Committee on Environment and Public Works. We undertook to protect the Senate Committee on Environment and Public Works in its determination to conform to the budget, but we anticipate a very difficult and prolonged conference between the two committees before the issue is finally resolved, because the difference between the House and Senate figures is very great.

So, I think the numbers we included in the budget resolution, in terms of that conference and the problems it will face, are conservative and supportive of the Senate Committee on Environment and Public Works. We doubt that we could cut another $3.3 billion in budget authority from that function.

Mr. BELLMON. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. BELLMON. Mr. President, the function 400 total BA is $44.7 billion and the highway trust fund is $8.4 billion, which leaves $11.1 billion in that function. So if we undertook to cut by $3.3 billion, this would be a 33-percent cut in that one function, which I think the Senator would agree is unrealistically drastic.

Mr. MUSKIE. The Senator is correct.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MUSKIE. I yield myself 5 minutes, to relieve the time pressure a little.

With respect to function 500—the education, training, employment, and social services function—the Budget Committee had a long, drawn-out discussion and several votes on this function, centering largely around CETA, but also including education, the administration's program of tuition assistance, the refundable tax credits related to the tuition tax credit proposal, and so forth.

The numbers we finally agreed to again, were pretty rockbottom figures, in an attempt to accommodate the diver-

gent views within the Budget Committee on what the total numbers for the function should be.

In my view, a further reduction of $7.7 billion in budget authority in that function would be very difficult to do, depending upon whose order of priorities has to be implemented. It is difficult to accommodate those differences.

Function 550, the health function, is also cut significantly in the Roth proposal: $2.3 billion in budget authority and $1.9 billion in outlays; and we have problems there.

I will say this about the Roth amendment. He has undertaken to be specific with respect to the functions in which he would seek to reduce spending. But these are not going to be easy to reconcile, and I suspect that if we were to try to enforce the numbers reflected in the Roth amendment when the appropriations bills hit the floor we would probably lose some, if not all, of those battles.

I simply make those points of observation to the Senate and to my good friend, Senator ROTH, who is one of the authors of the Budget Act.

I think the Budget Committee, which is always faced with the problem of trying to reconcile divergent and even conflicting views on priorities, did a reasonably balanced job, even though we might individually quarrel with some of the priorities reflected in the final numbers. I simply make those observations.

I think it would be very difficult to get those numbers down much further, and I would not find myself unsympathetic to some of the proposals of Senator ROTH.

I make this final observation. We have undertaken constantly since we discovered the shortfall phenomena in budget work to get the budget resolutions to anticipate more carefully and more precisely possible shortfalls. We are beginning to get some handle on it and, of course, the second resolution reflects the identification of shortfalls in spending. For instance, I think the savings in the second resolution over the first resolution represented by shortfalls is about $5.1 billion.

I emphasize to Senator ROTH that the second resolutions set binding ceilings on spending. They are not a mandate to spend up to those ceilings. I think we are fortunate that Senator MAGNUSON has taken a hard line on appropriations bills and has taken pride in bills which fall below the targets established in the first resolution.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MUSKIE. I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. MUSKIE. I think we should be careful not to try to anticipate shortfalls to the point where we get our priorities distorted. In other words, we might well be able to save a major portion of the dollars the Senator's amendment addresses itself to but not necessarily in the places and in the priorities that he suggests.

We must keep in mind the fact that we are setting ceilings; we are not mandating spending up to those ceilings. The whole thrust, I think, of the budget appropriations process now is to spend below ceilings and targets, and I think that these amendments on the floor exert very useful pressure. But I think, given the different views about priorities within the committee and given the differences on priorities within the Senate as a whole, the resolution brought to the floor is pretty realistic. It represents a clear signal that we intend to exert budgetary restraints. I think that when the year is over, if the present mood in the country, the Senate, and Congress prevails we will find actual spending in 1979 will prove to be below the ceilings that are stated in the pending budget resolution.

I say that honoring Senator ROTH for his sense of budgetary restraint, but with the feeling that we should not cut any closer to the line at this point, given the fact that we are dealing with ceilings and not mandated spending.

Mr. ROTH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Chair advises that the Senator from Delaware has 15 minutes remaining.

Mr. ROTH. Mr. President, I yield 2 minutes to myself.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ROTH. Mr. President, one observation I wish to make to the distinguished chairman that has concerned me has not so much to do really with the budgetary process as with the fact that many people back home are confused about the difference between authorizations and appropriations or, in the case of a budget authority and budget outlays.

It seems to mislead many of our people back home, whether they are in education or other fields, that Congress is duplicatious or at least not consistent in what it is doing. It is hard for them in the case of education, for example, to understand why authorizations are much higher than what we appropriate.

One thing that I do think that in the future would be very helpful is if the Senate began to become more realistic in some of these areas so that we do not mislead our people back home into expecting more than they actually secure.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. ROTH. I am happy to yield.

Mr. MUSKIE. What the Senator says is valid comment. Outlays, of course, are not controllable except as we control budget authority. It is budget authority that is actual appropriations. But since budget authority does not all spend out at the same rate—it can vary from spend out in 1 year or spend out in 10 years or spend out in even more years than that, 40 years in the case of housing, for example—it is not possible to equate budget authority and outlays.

I think another factor or another difference between Federal budgets and other budgets that people do not focus on is that the Federal budget excludes capital expenditures. By definition capital expenditures spend out over time. If you had a straight operating budget at the Federal level as we do in our personal lives or in our private businesses, then I think the difference between budget authority and outlays would not be as great and people might have an easier time understanding them.

But the Senator's point is very valid. Earlier I put in the RECORD a table explaining the increase in outlays between fiscal 1978 and fiscal 1979. I now wish to put in a composite table which shows the difference in outlays between fiscal 1978 and fiscal 1979 and budget authority in 1978 and 1979, so that people can get an explanation of where the increases took place.

The increases, of course, are about two-thirds attributable to inflation and in some cases—the national defense, for example—there were real increases dictated by our current view of our national security needs. In other cases, as in social security, demographics produced increases, and I think that a breakdown as between programs may help people to understand why both budget authority and outlays for 1979 are larger than 1978.

Mr. President, I ask unanimous consent that the table be printed in the RECORD. I think it tends to be responsive to the observations that the Senator from Delaware has been making.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

EXPLANATION OF BUDGET INCREASE BETWEEN FISCAL YEAR 1978 AND FISCAL YEAR 1979

[In billions of dollars]

| | Budget authority | Outlays |
|---|---|---|
| Estimated fiscal year 1978 spending levels | 500.0 | 448.0 |
| National defense | +8.9 | +8.5 |
| Retirement and disability insurance (primarily social security) | +13.1 | +11.2 |
| Health care services (primarily medicare and medicaid) | +5.4 | +4.5 |
| Interest | +4.7 | +4.7 |
| Energy programs | +.8 | +3.4 |
| Veterans programs | +2.1 | +1.5 |
| Public service jobs, youth employment, and other employment and training programs | +6.6 | +1.0 |
| Transportation programs | +4.4 | +2.1 |
| Education programs | +1.7 | +1.6 |
| Natural resources and environment programs | +.5 | +.9 |
| Farm income stabilization | +11.0 | −1.0 |
| All other programs, net | −1.5 | +3.1 |
| Recommended fiscal year 1979 spending levels | 557.7 | 489.5 |

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ROTH. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ROTH. Mr. President, I express my appreciation for the comments of the chairman of the Budget Committee. I also say that I recognize the difficulties that that committee has in making accommodations between the priorities that different Members of this Senate feel very

strongly about. It is just my feeling that these are extraordinarily difficult times. They call for great restraint, and I hope that Congress will show that kind of restraint in an effort to once again get our economy moving upward.

I am ready to yield back the remainder of my time.

Mr. BELLMON. Mr. President, before the Senator yields back his time, will the Senator yield me 2 minutes?

Mr. MUSKIE. Yes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. BELLMON. Mr. President, I join in complimenting the distinguished Senator from Delaware for having the courage and also for having the insight to be specific in this amendment.

It certainly improves the quality of the debate and makes it possible for the Members to cast their votes on specifics rather than on the general principle of having an across-the-board cut in outlays and in budget authority.

Certainly this is the way we should approach the budget process, and I commend the Senator from Delaware for having taken this approach.

Mr. President, to go a little further in discussing some of the specifics in function 600, CBO's outlays estimates which the Budget Committee uses are consistently below those of the executive branch, which means we are using a more conservative approach than the executive branch uses on these programs.

The proposed $3.6 billion cut in outlays which Senator ROTH suggests would override the judgment of the technical experts at CBO in what these programs will actually cost.

Also, Mr. President, in the health function, function 550, a $2.3 billion cut in budget authority would provide for a 7 percent increase over fiscal year 1978; however, this is less than the health inflation costs, which have averaged about 12 percent over the 4 years. So this means that unless some action is taken to put on a cap or some other similar approach by the authorizing committees we would simply wind up underfunding this program and have to increase the budget later in the year through a possible third budget resolution. I have long been opposed to reopening the budget after Congress completes action each fall on the binding totals in the second budget resolution.

Also the $1.9 billion cut in outlays would provide for an increase of only about 6.8 percent over fiscal year 1978 in the same function. This is also less than the health inflation rate we have experienced in past years which, apparently, we are going to experience in fiscal year 1979.

These cuts recommended in Senator ROTH'S amendment would not allow for the necessary inflationary adjustments in these programs.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I would just point out that I recognize, No. 1, the effort to slow down the rate of growth is difficult in many cases. I would, however, point out that there have been a number of these areas, such as HEW, where there has been admitted fraud and waste.

One of my concerns in Government in contrast to the private sector is that there is never any real pressure to improve efficiency. In the case of the private sector when times are difficult, money is not coming in, they are forced to sometimes take very stiff corrective action. We here in Congress, sometimes for good reasons, increase Federal spending when there is a recession, so that we never really do ask the agencies to try to provide services for less. That, in a sense, is what I am trying to propose here.

I am ready to yield back the remainder of my time if the managers of the resolution are willing to yield back their time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? The Chair is advised that there is not a sufficient second.

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I would propose two perfecting changes. In function 500 the budget authority should be $29.5 billion, and we should change the total budget authority figure to $547 billion.

The PRESIDING OFFICER. Since the Senate has not yet acted on the Senator's amendment, the request for those changes is in order. Is there objection? The Chair hears none, and the modifications are made.

The amendment, as modified, is as follows:

Beginning on page 7, line 4, strike all after the words "Budget Act of 1974," and insert in lieu thereof the following: "that for the fiscal year beginning on October 1, 1978—

(1) the recommended level of Federal revenues is $447,200,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is 23,400,000,000;

(2) the appropriate level of total new budget authority is 547,000,000,000.

(3) the appropriate level of total budget outlays is $479,400,000,000;

(4) the amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is $32,200,000,000; and

(5) the appropriate level of the public debt is $829,400,000,000, and the amount by which the temporary statutory limit on such debt should accordingly be increased is $31,400,000,000.

SEC. 2. Based on allocations of the appropriate level of total new budget authority and of total budget outlays as set forth in paragraphs (2) and (3) of the first section of this resolution, the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974 that, for the fiscal year beginning on October 1, 1978, the appropriate level of new budget authority and the estimated budget outlays for each major functional category are as follows:

(1) National Defense (050): (A) New budget authority, $127,000,000,000; (B) Outlays, $112,500,000,000.

(2) International Affairs (150): (A) New budget authority, $10,300,000,000; (B) Outlays, $6,300,000,000.

(3) General Science, Space, and Technology (250): (A) New budget authority, $5,100,000,000; (B) Outlays, $5,000,000,000.

(4) Energy (270): (A) New budget authority, $8,900,000,000; (B) Outlays, $8,900,000,000.

(5) Natural Resources and Environment (300): (A) New budget authority, $13,600,000,000; (B) Outlays, $11,600,000,000.

(6) Agriculture (350): (A) New budget authority, $12,200,000,000; (B) Outlays, $7,200,000,000.

(7) Commerce and Housing Credit (370): (A) New budget authority, $5,500,000,000; (B) Outlays, $2,800,000,000.

(8) Transportation (400): (A) New budget authority, $16,200,000,000; (B) Outlays, $16,500,000,000.

(9) Community and Regional Development (450); (A) New Budget authority, $8,900,000,000; (B) Outlays, $9,600,000,000.

(10) Education, Training, Employment, and Social Services (500): (A) New budget authority, $29,500,000,000; (B) Outlays; $28,500,000,000.

(11) Health (550): (A) New budget authority, $49,600,000,000; (B) Outlays, $46,700,000,000.

(12) Income Security (600): (A) New budget authority, $191,500,000,000; (B) Outlays, $156,000,000,000.

(13) Veterans Benefits and Services (700): (A) New budget authority, $20,900,000,000; (B) Outlays, $20,400,000,000.

(14) Administration of Justice (750): (A) New budget authority, $4,100,000,000; (B) Outlays, $4,100,000,000.

(15) General Government (800): (A) New budget authority, $3,900,000,000; (B) Outlays, $3,500,000,000.

(16) General Purpose Fiscal Assistance (850): (A) New budget authority, $8,800,000,000; (B) Outlays, $8,800,000,000.

(17) Interest (900): (A) New budget authority, $47,800,000,000; (B) Outlays, $47,800,000,000.

(18) Allowances (920): (A) New budget authority, $500,000,000; (B) Outlays, $500,000,000.

(19) Undistributed Offsetting Receipts (950): (A) New budget authority, $17,300,000,000; (B) Outlays, $17,300,000,000.

Mr. ROTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BELLMON. Mr. President, if the Senator will yield, I ask unanimous consent that Mr. Ed Twilley of Senator THURMOND'S staff, and Mr. Mark Edelman of Senator DANFORTH'S staff have the privileges of the floor during the debate and votes on the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. I yield back the remainder of my time.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the yeas and nays having been ordered, the question is on agreeing to the amendment, as

modified, of the Senator from Delaware. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New York (Mr. MOYNIHAN), the Senator from Tennessee (Mr. SASSER), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I also announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would vote "nay."

Mr. CURTIS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

(Mr. SARBANES assumed the chair.)

The result was announced—yeas 35, nays 38, as follows:

[Rollcall Vote No. 370 Leg.]

YEAS—35

| | | |
|---|---|---|
| Allen | Garn | Packwood |
| Bartlett | Goldwater | Proxmire |
| Bentsen | Griffin | Roth |
| Biden | Hansen | Schmitt |
| Byrd, Harry F., Jr. | Hatch | Schweiker |
| Curtis | Hayakawa | Scott |
| Danforth | Huddleston | Stone |
| DeConcini | Lugar | Talmadge |
| Dole | Magnuson | Thurmond |
| Domenici | Morgan | Wallop |
| Ford | Nelson | Young |
| | Nunn | Zorinsky |

NAYS—38

| | | |
|---|---|---|
| Bayh | Hart | Metzenbaum |
| Bellmon | Hathaway | Muskie |
| Bumpers | Heinz | Pearson |
| Byrd, Robert C. | Hodges | Percy |
| Cannon | Hollings | Randolph |
| Case | Inouye | Ribicoff |
| Chiles | Jackson | Riegle |
| Clark | Javits | Sarbanes |
| Cranston | Leahy | Sparkman |
| Culver | Long | Stennis |
| Durkin | Mathias | Weicker |
| Eagleton | Matsunaga | Williams |
| Glenn | Melcher | |

NOT VOTING—27

| | | |
|---|---|---|
| Abourezk | Chafee | Hatfield, Mark O. |
| Anderson | Church | Hatfield, Paul G. |
| Baker | Eastland | Helms |
| Brooke | Gravel | |
| Burdick | Haskell | |
| Humphrey | McGovern | Sasser |
| Johnston | McIntyre | Stafford |
| Kennedy | Moynihan | Stevens |
| Laxalt | Stevenson | Tower |
| McClure | Pell | |

So the amendment (UP No. 1814, as modified) was rejected.

Mr. HARRY F. BYRD, JR., obtained the floor.

Mr. JAVITS. Will the Senator yield to me for 3 minutes for a colloquy without losing his right to the floor?

Mr. HARRY F. BYRD, JR. I yield.

Mr. JAVITS. I thank my colleague very much.

Mr. President, I want to address three questions to the managers of the bill. One relates to the CETA program and the other relates to the elementary and secondary education. The CETA issue involves the following: There is a certain amount of reduction—I believe $1.1 billion in budget authority and $1 billion in outlays—in the amount of the CETA program, as compared with the first budget resolution. I understand that some $500 million of this amount relates to a reduction in the countercyclical public service employment program. All that I want to nail down is whether or not the reduction is attributable to dissatisfaction with the way the program is operating, or is it attributable to the Budget Committee's appraisal as to the prospects for unemployment?

Mr. MUSKIE. May I say to the Senator it is the latter. What the suggested ceiling assumes is a $500 million reduction in funding for countercyclical public service jobs for an average reduction of 60,000 jobs in fiscal 1979, and an actual reduction in countercyclical jobs from 375,000 in the first quarter of fiscal 1979 to 255,000 jobs in the last quarter of that same year. This reduction was assumed in light of improved economic conditions, as we have experienced them. But may I say that while all CETA reauthorization proposals presume a phasedown in light of economic conditions, the Senate bill provides no specific phasedown mechanism, leaving appropriate reductions to the budget and appropriations process. So it is the second answer suggested by the Senator from New York.

Mr. JAVITS. I thank my colleague very much.

The other question related to education where there is in function 500 a very large global figure of over $30 billion. The question is whether or not the reduction in that figure had anything to do with the action which we are taking in the pending education legislation in respect of concentration grants. That is a new approach in the ESEAI program for disadvantaged children. It relates to the high concentration of poor children within a given area. My question is whether or not the calculations for function 500 include the full funding for concentration grants as requested by the President at the $400 million level for fiscal year 1979?

Mr. MUSKIE. We provide for full funding for the President's title I concentration grants.

Mr. JAVITS. I greatly appreciate that response.

Mr. President, in the last week before the Labor Day recess, the Senate passed H.R. 15, the Education Amendments of 1978. Both the House and Senate passed versions containing new provisions to focus ESEA I funds on high concentrations of disadvantaged children. It is very important that the pending budget resolution consider this new aspect of title I. The Human Resources Committee was unanimous in adopting this proposal, which was authored by the administration. During the Senate deliberation of the Education Amendments, Senator MAGNUSON requested the deletion of a trigger which would give a priority to concentration grants. Senator MUSKIE and Senator BELLMON, along with many other Budget Committee members, supported this amendment. The managers of the bill accepted the Magnuson amendment based on his statement at the time that he supports these programs, and that his objection was only to so-called mandatory funding requirements. I ask unanimous consent that this portion of the debate from August 23 be reprinted as it appeared in the CONGRESSIONAL RECORD.

There being no objection, the debate was ordered to be printed in the RECORD, as follows:

UP AMENDMENT NO. 1741

(Purpose: To strike out provisions relating to reservation of funds for section 116 relating to special incentive grants in States having compensatory education programs and section 117 relating to grants for local educational agencies in counties with especially high concentrations of children from low-income families)

The PRESIDING OFFICER (Mr. MOYNIHAN). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Washington (Mr. MAGNUSON) proposes an unprinted amendment numbered 1741, for himself and Mr. MUSKIE, Mr. PROXMIRE, Mr. HOLLINGS, Mr. CHILES, Mr. BURDICK, Mr. BELLMON, Mr. DOMENICI, Mr. YOUNG, Mr. STEVENS, Mr. SASSER, Mr. ABOUREZK, Mr. SCHMITT, Mr. JACKSON, Mr. MORGAN, Mr. DECONCINI, Mr. HANSEN, Mr. BARTLETT, Mr. HUDDLESTON, Mr. ZORINSKY, Mr. STENNIS, Mr. PAUL G. HATFIELD, Mr. MELCHER, Mr. BUMPERS, Mr. HODGES, Mr. BAYH, and Mrs. ALLEN.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 107, strike out lines 5 through 13.

On page 15, in the Table of Contents, strike out item "Sec. 194.".

Mr. MAGNUSON. Mr. President, I have a series of amendments I would like to call up at this time.

The first amendment would delete section 194 of the bill. Section 194 reserves the first $400 million appropriated for title I, education of the disadvantaged, for concentration grants, and requires that State compensatory education programs, once funded, must continue to be funded at least at the preceding year's level. It makes it mandatory, regardless of whether these programs are good or bad. I have no objection to these new program components. In fact, I support them. I have supported them in the Appropriations Committee over the past few years.

I do believe that the mandatory funding

requirements would create problems for the Appropriations Committee. If this section stays in the bill, it would mandate an additional appropriation of at least $400 million for title I in fiscal 1979.

I hope the amendment will be accepted by the managers of the bill.

Mr. JAVITS. Mr. President, I am going to accept the amendment offered by the Senator from Washington (Mr. MAGNUSON), but I do wish to make one thing clear.

First, Senator MAGNUSON has stated that he approves of the concept which went into the committee's amendment, and his action represents the desire of the Appropriations Committee's freedom of action, with which we cannot disagree.

I believe it is important that the Senate be fully apprised of the committee's thinking when inserting section 194. The new concentration grants were designed to repair a very difficult problem in the title I program. Oversight and testimony in the Human Resources Committee demonstrated that the greatest single difficulty with title I was the fact that high concentrations of children in rural areas and children in urban areas were not receiving sufficient funds to make the title I program work effectively. The concentration factor is an attempt to compensate for the severe difficulties of title I children in areas where they are literally "concentrated" in large number. It is a proposal of relatively modest cost to compensate for the fact that title I remains several billion dollars below its full authorization.

The Human Resources Committee has experienced a mixture of success and disappointment in the results of spending decisions by the Congress. Some programs have done quite well while other meritorious programs are significantly underfunded. We recognize the difficulties facing any committee in dealing with spending decisions, and I appreciate greatly the tremendous workload and difficulties which the Appropriations Committee faces each year. They do a remarkable job.

I point out that the administration has requested the concentration grants and the State incentive program and has requested in fiscal 1979 the very $400 million appropriation to fully fund the concentration grants which the bill contains. So we endeavored to insure that these moneys would be given high priority.

I understand that Senator MAGNUSON, the chairman of the Appropriations Committee, as well as several senior members of the Budget Committee, are strongly inclined to favor the full $400 million spending in fiscal year 1979, and make appropriate allowances in the next supplemental appropriation and in the second concurrent budget resolution. This achieves the desire of the Human Resources Committee expressed in section 194 of S. 1753, that the new concentration grants would receive favorable treatment. We believe that section 194 does not force any appropriations. Rather, it simply puts a priority on the concentration grants. This is not an appropriation forcing device, rather it is simply a statement of Human Resources Committee views as to the principal importance of beginning the concentration grants program in 1979.

Based on the assurances of support from Senator MAGNUSON and others, I am comfortable in accepting his amendment to strike 194 from this bill.

Mr. MAGNUSON. I appreciate that. They do have high priority in the Appropriations Committee.

Mr. JAVITS. A third matter I wish to raise concerns the adequacy of new budget authority to fund the employment and training programs enacted under the Youth Employment and Demonstration Projects Act (P.L. 95–93) last year. We in the Human Resources Committee contemplated an annual program level of $1.5 billion per year for these programs.

I have become deeply concerned by recent indications that YEDPA programs may be restrained from reaching and maintaining the $1.5 billion level. I refer particularly to the recent Labor Department field memorandum, No. 327–78, which directed prime sponsors to adjust program operations so as to expand only 73 percent of fiscal year 1978 dollar levels provided.

I wish to know from the distinguished managers of the bill whether the function 500 ceiling for budget authority contained in the resolution before us today is sufficient to permit outlays of $1.5 billion in fiscal year 1979 for the YEDPA programs? And, further, is $1.5 billion per year the program level the Budget Committee assumes for YEDPA?

Mr. BELLMON. We have maintained the policy of $1.5 billion per year available for youth programs.

The reduction of $100 million in BA and outlays is just an adjustment, because we had more carryover than had been projected at the time of the first resolution.

If the $1.5 billion is spent, prime sponsors will have to double activity levels over this year.

Mr. JAVITS I thank my colleague very much. I thank the Senator from Virginia very much for his courtesy.

UP AMENDMENT NO. 1815

(Purpose: To reduce budget authority by $2.4 billion)

Mr. HARRY F. BYRD, JR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Virginia (Mr. HARRY F. BYRD, JR.) proposes an unprinted amendment numbered 1815:

On page 1, line 11, strike "$557,700,000,000" and insert in lieu thereof "$555,300,000,000".

On page 2, line 23, strike "$12,600,000,000" and insert in lieu thereof $10,200,000,000".

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. HARRY F. BYRD, JR. Mr. President, I cosponsored with Senator PROXMIRE an amendment to Senate Concurrent Resolution 104 which would have reduced aggregate budget authority by $17.5 billion. I also supported the amendment offered by the Senator from Delaware (Mr. ROTH), which would have reduced aggregate budget authority by approximately $16 billion.

I had another amendment somewhat similar to that of the Senator from Wisconsin, although it was more specific, and somewhat similar to the amendment offered by the Senator from Delaware, although it was not as broad. Both of those amendments, one by Senator ROTH and one by Senator PROXMIRE, were voted down by the Senate.

This amendment deals with a single budget function; namely, function 150, international affairs.

First, let me say this: I realize, of course, it is the aggregate budget authority in the budget resolution that is the key figure, because it is binding, unlike the totals for the individual functions, and because it affects spending not only in the current year, but in years to come.

The proposed amendment, the one before the Senate now, would reduce the total budget authority by $2.4 billion in the current resolution and would, simultaneously, reduce function 150 by $2.4 billion.

I focused upon the international affairs function, because I think it is singularly inappropriate to approve the large increase in foreign assistance embodied in the Budget Committee's recommendation.

The committee proposes an increase of $3 billion in international affairs, from $9.6 billion in the current fiscal year to $12.6 billion for fiscal 1979.

Mr. President, this represents an increase of 31.2 percent.

This rate of increase is almost triple the rate of increase for the budget as a whole. It is more than five times the rate of increase in pay for Federal workers which President Carter is recommending; namely, 5.5 percent—and which he calls an example to the Nation. I submit that such an increase as 31.2 percent in spending for international affairs—foreign aid, if you will—cannot be justified.

My amendment now before the Senate would reduce budget authority for international affairs by $3.2 billion. There would still be an increase in that function, however, an increase of 6.2 percent over 1978. I feel it is way out of line to vote an almost one-third increase in the international affairs function at a time of huge deficits and high inflation. I hope that the Senate will adopt the proposed amendment.

Mr. HANSEN. Mr. President, will the Senator from Virginia yield?

Mr. HARRY F. BYRD, JR. I yield to the able Senator from Wyoming.

Mr. HANSEN. Mr. President, it seems to me that the Senator from Virginia has made a very responsible and reasonable proposal to the Senate. I think his comparisons that illustrate the percentage of budget increase in this year's budget in this specific area as compared with the overall budget, certainly call attention to the reasons for and the good sense in the proposal that the Senator from Virginia has offered. I hope very much that it might be adopted. I intend to support it.

Mr. HARRY F. BYRD, JR. I am very grateful to my friend from Wyoming for his comments.

I think another important aspect of this is that the unobligated economic aid, namely, funds appropriated to the President and unobligated at the end of this fiscal year, will equal $11.3 billion. That is, funds already appropriated. They are in the pipeline, unobligated funds. They

will equal $11.3 billion and the proposal before the Senate today is to add another $12.6 billion.

I reserve the remainder of my time.

Mr. MUSKIE. Mr. President, the Senator from Maine thinks this exercise is becoming a semiannual one between the distinguished Senator from Virginia and myself. First of all, let me address the percentage figures that the Senator has yielded. The increase in budget authority from 1978 to 1979 was $9.6 to $12.6 billion, which is $3 billion. Percentagewise, that is a large increase. Curiously, the bulk of that increase is related to a mandate of the Budget Act: To put proposed spending on budget where it can be controlled by the appropriations process.

The major part of that $3 billion increase is $1.8 billion for the Witteveen Facility to support countries having balance-of-payments problems related to costs of energy and energy imports. It is a facility which we agreed to create with other industrialized countries and with the OPEC countries. At the time, it was pretty widely hailed as a reasonable and wise reaction to the balance-of-payments problems generated for relatively small countries, particularly, who are in no position to fund the increases in energy costs. The struggle all year long has been between those in the administration who would prefer to have this facility off budget and thus outside the control of the appropriations process, rather than on budget and subject to the appropriations process; and those of us who are responsible for administering the budget process in Congress. We were determined that this Witteveen Facility would go on budget and, being on budget, it adds to the total by the amount that the Senator from Virginia finds unacceptable.

We cannot have it both ways: Enforce the budget process in accordance with its explicit terms and thus reveal the amount of money that is involved in the budget; or ignore the budget process and let the administration have its way by going off budget and creating another one of those problems that we have all come to find distasteful. If you take the $1.8 billion out of the three, that leaves $1.2 billion, which is roughly a 12-percent increase.

Mr. President, may I suggest the absence of a quorum?

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I am happy to yield to my good friend from Oklahoma.

Mr. BARTLETT. I thank my distinguished friend from Maine.

Mr. President, I ask unanimous consent that Mike Roush of my staff be granted privilege of the floor during voting and the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Will the Senator yield?

I hate to break the continuity of this, but I need to go to another place and I have three questions to ask, if I may.

Mr. MUSKIE. I am happy to yield. I am awaiting some further information. In any case, it will be a respite and I yield to the Senator.

Mr. BUMPERS. Fine.

In looking over the information, the summary of the second budget resolution I find on my desk, I see that the Budget Committee has in the second concurrent budget resolution projected now a deficit of $42.3 billion, or 30 percent less than the President's original estimate, which I believe was $60 billion.

Is that correct?

Mr. MUSKIE. That is correct.

Mr. BUMPERS. The committee has also taken into consideration, in arriving at the $42 billion deficit, a $23.4 billion tax cut?

Mr. MUSKIE. The Senator is correct. That includes continuation of the temporary tax cut, to continue each year now for 3 or 4 years, $8.2 billion.

Mr. BUMPERS. In addition, this is a $23-some billion cut in addition to the temporary tax cut?

Mr. MUSKIE. No. It includes the $8.2 billion.

Mr. BUMPERS. Very well. My question is, if we left the present temporary tax cut in effect and did nothing toward enacting the House bill, for example, that figure would be roughly $15 billion in savings.

Is that correct?

Mr. MUSKIE. Fourteen billion dollars plus $1.2 billion in structural tax changes that we anticipate.

Mr. BUMPERS. Right.

Mr. MUSKIE. For a total of $15.2 billion.

Mr. BUMPERS. So if we left everything status quo, and I realize there is some variation, because economic activity might be reduced or stimulated, one way or the other, but, just on the face of it, if we did not pass the tax proposal the House already passed and we did nothing except leave the present temporary tax cut in effect, we could trim another, roughly, $15 billion off the $42.3 billion.

Is that correct?

Mr. MUSKIE. It would be something below that. I will try to get the figure.

The net gain, may I say to the Senator, would be on the order of $11 to $12 billion.

Mr. BUMPERS. Is that because of the reduction in economic activity as a result of not enacting the tax cut?

Mr. MUSKIE. The Senator is correct.

Mr. BUMPERS. That is very good, because that answers the question.

Finally, I take it that the present resolution has not taken into consideration the possible sustaining of the President's cut of $1.9 billion for the aircrcaft carrier?

Mr. MUSKIE. The President vetoed the authorization bill. The aircraft carrier, as I understand it, is included in the Defense Subcommittee's markup of the defense appropriation bill, which has not yet been reported in the Senate. The subcommittee's recommendation does not violate either the targets set in the first budget resolution or the ceilings established in the second budget resolution. That, of course, raises some of the issues the President used as reasons for vetoing the authorization bill. In other words, the carrier was funded, or is proposed to be funded, by the Appropriations Committee.

Mr. BUMPERS. In the authorization?

Mr. MUSKIE. As a substitute for other defense expenditures in the appropriation request that the President thinks are more clearly related to our present defense requirements than the carrier.

The defense appropriations bill that the Appropriations Committee is considering will implement many of the items in the authorization bill. It will be within the budget, even though it includes funding for the nuclear carrier.

I want the Senator to understand that the full amount of budget authority for the carrier would be in this year's budget, but that first year outlays associated with the budget authority would be minimal.

Mr. BUMPERS. The budget authority was $1.9 billion. I suppose the appropriation will probably be $300 million to $400 million, I am not sure, in fiscal year 1979.

In any event, the Budget Committee has taken into consideration the authorization which, as the Senator says, did not violate the first concurrent resolution.

Mr. MUSKIE. The Senator is correct.

Mr. BUMPERS. I thank the Senator very much.

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, let me make these further observations with respect to the Byrd amendment.

In the first place, the second budget resolution as reported by the Budget Committee already has cut $200 million from the level of the first budget resolution.

The second point I would make is that the second budget resolution actually cuts $1 billion from the President's request for foreign economic assistance and financial programs.

Third, the amount in the resolution is, roughly, the amount already appropriated by the House of Representatives. It represents only a slight increase.

Further reductions in these programs would threaten to end effective U.S. participation in multilateral development banks which we have come to encourage

in recent years as a wise substitute for unilateral aid, whenever possible. These banks generate $3 from other donor countries for every $1 provided by the United States.

Now, with respect to the $3 billion increase to which the Byrd amendment addresses itself, let me give the Senate the details of that $3 billion.

One billion eight hundred million dollars is for the Witteveen Facility, which I have already explained, and the Senate has spoken on that explicitly with respect to approving on-budget rather than off-budget treatment of that facility.

Six hundred million dollars is for the foreign military sales trust fund, reflecting increased sales to Saudi Arabia, Iran, and other countries.

Four hundred million is both for partial funding of our arrearages in multilateral banks out of a total of $800 million in arrearages which we now owe, and for real growth in our bilateral aid programs. Two hundred million dollars is for inflation and pay raises.

Those are the details, Mr. President, of the amounts that the Byrd amendment would strike from this function. I think it would represent a serious blow to the Witteveen Facility and the concept of on-budget treatment.

The foreign military sales program has been of great importance to us in maintaining our presence and influence in the Middle East with countries such as Iran and Saudi Arabia.

The arrearages which we owe the multilateral banks have been the subject of extensive discussion in the past on this floor between the distinguished Senator from Virginia and myself, and I do not think that subject needs further amplification at this point.

The other two items are not as large, but they are equally important.

That is the sum and substance of it, Mr. President. There has been an effort, as I emphasized to the committee, to cut this function below the President's request, below the first concurrent resolution, and I think the Budget Committee was satisfied with the figures finally approved.

So I urge the rejection of the Byrd amendment.

Mr. HARRY F. BYRD, JR. I yield myself 5 minutes.

First, Mr. President, the Senator from West Virginia (Mr. RANDOLPH) has requested that his name be added as a cosponsor of the pending amendment, and I ask unanimous consent that that be done.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I think what the Senate needs to decide is whether it is wise to increase foreign aid spending by $3 billion. There are many Senators, of course, who think it is wise. The Senator from Virginia happens to disagree. I do not believe that it is reasonable at this time, when our Nation as a whole is being asked to respond affirmatively to measures designed to hold down inflation, that Congress should increase foreign aid spending by $3 billion. I point out that the total foreign aid spending under the concurrent resolution will be $12.6 billion.

In regard to the Witteveen Facility, that is a new program. It is not now in effect. It is an entirely new program. It has been neither off budget or on budget. It is an additional, new program costing $1.8 billion, and that is piled on top of all the other foreign aid programs.

Another point needs to be emphasized, Mr. President: There is in the pipeline now, available to the President, an unobligated balance of $11.3 billion for foreign economic aid. This concurrent resolution would provide for an additional $12.6 billion. The amendment now before the Senate would seek to reduce this substantial increase by $2.4 billion. I think it is reasonable and is something that the American people would feel is reasonable.

How are we ever going to get Government spending under control if in this year of 1978, this year of high inflation, we adopt a budget resolution in the Senate providing for a 31-percent increase in foreign aid?

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. I am delighted to yield to my colleague from Virginia.

Mr. SCOTT. Mr. President, I appreciate the Senator yielding, and I associate myself with the remarks my distinguished colleague from Virginia has made.

It is often said with respect to foreign aid that the recipients of Federal funds have no constituency. Oftentimes, we vote on matters in which the people we represent have a direct interest, but that is not true of foreign aid.

I have taken polls during the 12 years I have been in Congress to see how the people of Virginia felt with regard to foreign aid. I posed the question whether they felt that foreign economic aid should be eliminated or reduced. In each instance, 90 percent or more have indicated that they felt that the foreign aid either should be eliminated or reduced.

So I think the distinguished Senator is representing the will of the people of Virginia and, in my judgment, the will of the people of the entire Nation, with the amendment he has offered.

We know about proposition 13. People want to pay less taxes. How do you pay less taxes unless you reduce spending? If you are going to increase spending and not increase taxes, you are going to have a larger deficit, and you are going to have more inflation, and the money that the people have will be worth less.

So I commend the distinguished Senator, and I associate myself with his remarks. I mentioned to him a few minutes ago, privately, that it is only $2.4 billion and that perhaps it should be $4.8 billion. I do not know what the amount should be. But I feel that the people of the country want less foreign economic aid, and I believe that the distinguished Senator is on very solid ground in the amendment he offers. I hope it will be approved. Certainly, I will vote to support it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARRY F. BYRD, JR. I yield myself 5 additional minutes.

Mr. President, I thank my friend from Virginia.

I invite the attention of the Senate to page 75, "Special Analysis C," of the 1979 budget. It shows that as of September 30 of this year, the President will have available to him, for economic aid, funds appropriated but not obligated in the amount of $11.3 billion. Yet, this proposal is to add another $12.6 billion.

Mr. MUSKIE. Mr. President, first of all, let me make clear to my good friends from Virginia that they are no more aware than I am that there is no constituency, not any votes, in this country in the foreign aid function. That is largely because most people—I will speak of my State, and the Senators can speak of theirs—have no exposure to the human conditions or to the national security problems which influence our responsibilities as a world leader. Most people have no exposure to the circumstances of those foreign problems that we have or that the President has or that our representatives overseas have.

To most citizens, foreign aid means that we are just handing out to individuals in other countries, who do not appreciate it, gifts of dollars. That is a very common impression. Of course, there are no votes in it.

I recall that when I first campaigned for the Senate, campaigning extensively on the importance of the United States using its role as leader in the world to try to influence the affairs of mankind for the better, by using the resources available to us, I won a rather overwhelming victory. That is not to say that I sold foreign aid as such.

It is an easy whipping boy, an easy scapegoat, and I am fully aware that I do not gain a vote by standing here and opposing the amendment of the distinguished Senator from Virginia.

But since Senators keep making the point, I thought they should understand that I am in full agreement with them on the lack of popular support for foreign aid.

Second, the $11 billion to which Senator BYRD refers is mostly callable capital, in the form of guarantees, and the multilateral banks involved have never called for a single dollar of that money. It has never been expended. It is on the Treasury books, and it is not available to the President, by and large, for the purposes to which I have referred in my response to the amendment of Senator HARRY BYRD. It is not available for the Witteveen facility, not available for the foreign military sales trust fund, not available for the bilateral program, and not available for salary increases to meet the cost of inflation. The $11 billion is simply not available for those purposes.

It is mostly callable capital. It will remain as callable capital which has never been called by the banks.

We should at least understand the distinction between callable capital and the unobligated amounts Senator HARRY F. BYRD, Jr., is talking about.

To imply that the unobligated money could be used for these purposes is not an accurate statement of the facts.

Senators may be opposed to both the callable capital and these purposes. That is understandable. But to suggest that you can finance this $2.4 billion that the Harry F. Byrd, Jr., amendment would strike from the close to $11 billion in callable capital that now exists is simply not an accurate statement of the facts.

Another point about this budget function is that this is the first year that foreign military sales have been included in this function. Previously, they have been included in the defense function, and I never heard any amendments offered then to strike military sales, especially by those who have a special interest in the defense of our country, our national security interests, and our allies and partners overseas. Now that it is in the international affairs function, it becomes fair game as foreign aid.

They are sales. They are by and large cash sales, and they are included as budget authority, because the United States becomes obligated to the transfer of funds out of the Treasury.

Senator BYRD's amendment would, in effect, strike $600 million of foreign military sales included in the $3 billion.

(Mr. CHILES assumed the Chair.)

Mr. HARRY F. BYRD, JR. Mr. President, if the Senator will yield, the amendment does not strike $600 million. It would reduce the total of $12.6 billion by $2.4 billion.

Mr. MUSKIE. That is correct, but the Senator justifies his amendment removing most of a $3 billion increase over 1978 and that $3 billion increase includes $600 million in foreign military sales.

If the Senator proposed to cut something out of the $9.6 billion, it seems to me the Senator owes it to the Senate to tell us what he is going to cut in place of the $600 million in foreign military sales. I can only address myelf to the premise upon which his amendment is based.

I agree that there are no votes in foreign aid. I make two final points:

First, the Witteveen facility is not foreign aid. It is a new facility created by the industrialized countries and the OPEC countries to help the world adjust—the poor nations, the industrial nations, the intermediate nations—to the enormous balance-of-payments problems that were created by the quadrupling of energy prices and the flow of capital from the industrialized countries to the OPEC oil producing countries. That is a world problem. That is not an American problem. It is a world problem. And this country has similar problems. We are in a better position to deal with our domestic problems, but we find ourselves overwhelmed by them.

How about these poor countries that have no way of supporting their balance-of-payments deficits attributable to the higher cost of energy except with the help of the industrialized world and the countries whose increase in prices made the problem come into existence? The United States, as part of an enlightened program by the industrialized countries, was able to persuade the OPEC countries to come into the plan to create the Witteveen facility.

The facility simply helps these countries through their adjustment period. I do not call that a foreign aid program. I call that an international program designed to help the world international economic structure which, includes poor as well as rich nations, respond to the quadrupling of energy prices.

It seems to me that, as the world's most powerful Nation, we have some responsibility. Or are we to take the position: "Let every other country participate in this, but let us stand on the sidelines. Let us sit on the sidelines. We cannot afford it."?

I tell Senators that if this international energy problem, and the balance-of-payments deficits which it has created, is not part of our world responsibilities, then by what right do we take our balance-of-payments problems to the rest of the world? We go to the OPEC countries and we ask them to restrain their price increases, because if they do not, they will destabilize our country, destabilize the international economic situation, and create economic chaos. So we, the world's most powerful Nation, are dependent on the OPEC countries to help contain this balance-of-payments problem that has been created by the quadrupling of energy prices. But when we are asked to participate modestly in a facility designed to help poorer countries get the same kind of relief that we are asking for ourselves, do we say we cannot afford it?

The Senator from Virginia praised me this spring for putting the Witteveen Facility on budget. Now he criticizes the committee, because of its cost.

How many ways can you ask to have a proposition?

I yield to my good friend from Maryland.

Mr. SARBANES. Mr. President, I wish to underscore the limited nature of the American contribution to the Witteveen Facility in comparison with that to be made by other countries. The American contribution will account for approximately 17 percent of the facility. Saudi Arabia, for one, will exceed our contribution significantly and OPEC countries, taken together, are contributing about one-half of the resources for the Witteveen Facility. It is the first time that they have been drawn into the international balance-of-payments system to provide resources to help to meet the problem created by developments in the energy field, in this instance with request to the lesser developed countries.

This is an American investment that is a wise one especially when one compares the terms of the American role here with most other things we go into.

I am very frank to say to the Senator from Virginia I would expect to find him praising the Witteveen Facility in terms of marking a new departure in the limited American contribution and in the assumption of responsibility by the OPEC countries and by the other advanced industrialized nations in percentages that far exceed what has heretofore been the case.

In other words, we ought not lose the opportunitly of placing the Witteveen Facility on line, because it establishes a very important precedent in terms of the contribution which other countries, either the other advanced industrial countries or the OPEC countries, are expected to make to this problem in comparison with the U.S. contribution. It shifts us away from the heretofore prevailing assumption that the United States alone is going to carry these international burdens—burdens which more appropriately should be shared by other countries and will be in this instance by their underwriting the Witteveen Facility.

Mr. MUSKIE. I thank my friend from Maryland for putting that point in perspective.

I will close with a second and final point: Function 150, the total amount provided is 2.3 percent of the budget. It is six-tenths of 1 percent of gross national product. What does this very minor percentage of our resources represent? It represents this Witteveen Facility which has just been described by the distinguished Senator from Maryland as a sharing of responsibility, with other industrial countries and the oil-producing countries, for the balance-of-payments problem that has been created by the quadrupling of energy prices; second, it represents the sale of arms under the foreign military sales trust fund to countries like Iran, Saudi Arabia, Israel, and other countries with which we have entered into agreements for that purpose to help meet their defense needs.

We have concluded that such sales help these countries meet their defense needs and also meet our national security needs.

This small percentage represents our sharing responsibility in these development banks for providing economic assistance to countries which seek to achieve economic viability. If they succeed, of course, they serve our economic interests overseas as they become trading partners and consumers of American goods.

This 2.3 percent of the budget, six-tenths of 1 percent of GNP, represent our contribution to world leadership through our economic resources. Now, is that excessive? Is that beyond the call and the responsibility of our role in the world? Is that more than we can afford to try to influence events around the world in directions we think beneficent and consistent with our own national interest, or is it too much?

Well, because there is no constituency for it, because there are no votes for it, it is easy to say we cannot afford it and that in this one function alone we are going to balance the budget.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. I yield.

Mr. SCOTT. I appreciate the Senator's yielding to me.

You know when an amendment like this is offered, I believe we have to reflect back after World War II when we had the Marshall plan submitted, and we had to think about the happenings since that time in the field of foreign aid.

I remember H. R. Gross on the House side used to refer to this as the foreign giveaway program. Perhaps this was a misnomer to call it that, but the people of the country do not favor the way in which Congress has been providing assistance, broad-brush assistance, throughout the world.

When we talk about no constituency, I believe that we, as representatives of the people of the country, do need to reflect upon the desire of the people for less Government spending. There is no doubt in my mind at all that the people of the country want our budget reduced. They want less taxes. Every time they have an opportunity to express themselves directly on this, they indicate that they want less taxes. Whether it is at the local level, the State level, or the Federal level, the only way we can cut is to cut and to vote "no" on some of these giveaway programs.

Again I commend my colleague from Virginia in what he is attempting to do. He is attempting to do what the people of Virginia and the people of the country want done. To me we are here to carry out the will of the people of the country, and voting in favor of this amendment is what the people would have us do, in my own personal judgment.

I appreciate the Senator's yielding.

Mr. HARRY F. BYRD, JR. Mr. President, I thank the Senator from Virginia. I shall take only a minute or two and then I will be glad to yield back the remainder of my time.

I think the basic question to decide is whether the Senate feels it is justified in increasing foreign aid by $3 billion in the upcoming budget.

I frankly do not think so. If we need to go into a new program like the Witteveen Facility, and it has, as the Senator from Maryland pointed out, some advantages over some of the current programs, it is, however, a new program; but if we are going into that, then I say let us reduce some of the existing programs, and let the funds come from that source.

The facts are that this concurrent resolution provides for a $3 billion increase, or a 31 percent increase, in foreign aid spending. I contend that is too much of an increase. I feel that increase ought to be reduced, and this proposal would do that.

I realize there is a difference of viewpoints. The able Senator from Maine has made a strong statement in behalf of his way of thinking just as the able Senator from Maryland has, but in my judgment the Congress is not justified in adding $3 billion to the foreign aid program, which represents an increase of 31 percent.

Mr. MUSKIE. Mr. President, I thought as a little personal footnote I should indicate that when passage of the Witteveen Facility bill was before the Senate the Senator from Virginia is recorded as voting "Yea" and the Senator from Maine is recorded as not voting. [Laughter]

Mr. HARRY F. BYRD, JR. That was a part, the Witteveen Facility was a part, of another larger bill, if the Senator will recall, it was not voted in alone.

Mr. MUSKIE. I also think the Senator was voting to put the Witteveen Facility on budget where it would become a more tempting target.

Mr. HARRY F. BYRD, JR. I think it is very desirable, and I have in the past, and do now, commend the Senator from Maine and the Budget Committee for putting this new foreign aid spending program in the budget process rather than having it as an off-budget item. If we are going to have this new program, most certainly it should be incorporated in the budget, as the Senator from Maine has advocated and as the Budget Committee has proposed to the Senate. That is the way to handle it.

My contention is if we are going to go into this new program, then we should reduce the other programs accordingly, because I just think it is too large an increase for the American taxpayer to increase foreign aid spending by $3 billion, or 31 percent.

Mr. MUSKIE. At least we have found some area of agreement.

Mr. HARRY F. BYRD, JR. We have many areas of agreement.

Mr. CHILES. Mr. President. will the Senator from Maine yield just temporarily?

Mr. MUSKIE. I yield.

Mr. CHILES. How much money is in the bill for the Witteveen Facility?

Mr. MUSKIE. $1.8 billion.

Mr. CHILES. $1.8 billion. If we had not put the facility on record, the authority was there, was it not, to spend that $1.8 billion off record?

Mr. MUSKIE. Yes, the Senator is correct.

Mr. CHILES. So of the $3 billion increase we are talking about in this number, $1.8 billion of that could have been spent off budget, still would have been a spending, and it would just have been off record?

Mr. MUSKIE. That is correct.

Mr. CHILES. So we are really then talking about an increase of $1.2 billion?

Mr. MUSKIE. The Senator is correct. That was the point I was trying to make earlier.

Mr. CHILES. The other could have been done through the back door.

Mr. MUSKIE. The Senator is absolutely correct.

Mr. CHILES. I thank the Senator.

Mr. MUSKIE. I am ready to yield back my time.

Mr. HARRY F. BYRD, JR. I yield back my time.

Mr. MUSKIE. I yield back the time and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. HUDDLESTON). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is all time yielded back? Does the Senator from Virginia yield back his time?

Mr. MUSKIE. I think he has used his time. I yield back my time.

The PRESIDING OFFICER. All time being yielded back, the question is on agreeing to the amendment of the Senator from Virginia. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Tennessee (Mr. SASSER), and the Senator from Illinois (Mr. STEVENSON), are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I also announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL), would vote "nay."

Mr. CURTIS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER), are necessarily absent.

The result was announced—yeas 32, nays 44, as follows:

[Rollcall Vote No. 371 Leg.]

YEAS—32

| | | |
|---|---|---|
| Allen | Griffin | Randolph |
| Bartlett | Hansen | Roth |
| Byrd, Harry F., Jr. | Hatch | Schmitt |
| Curtis | Hayakawa | Scott |
| DeConcini | Huddleston | Stennis |
| Dole | Long | Stone |
| Domenici | Magnuson | Talmadge |
| Ford | Melcher | Thurmond |
| Garn | Morgan | Wallop |
| Goldwater | Nunn | Young |
| | Proxmire | Zorinsky |

NAYS—44

| | | |
|---|---|---|
| Bayh | Glenn | Metzenbaum |
| Bellmon | Gravel | Moynihan |
| Bentsen | Hart | Muskie |
| Biden | Hathaway | Nelson |
| Bumpers | Heinz | Packwood |
| Byrd, Robert C. | Hodges | Pearson |
| Cannon | Hollings | Percy |
| Case | Inouye | Ribicoff |
| Chiles | Jackson | Riegle |
| Clark | Javits | Sarbanes |
| Cranston | Leahy | Schweiker |
| Culver | Lugar | Sparkman |
| Danforth | Mathias | Weicker |
| Durkin | Matsunaga | Williams |
| Eagleton | McGovern | |

NOT VOTING—24

| | | |
|---|---|---|
| Abourezk | Hatfield, Mark O. | McClure |
| Anderson | Hatfield, Paul G. | McIntyre |
| Baker | Helms | Pell |
| Brooke | Humphrey | Sasser |
| Burdick | Johnston | Stafford |
| Chafee | Kennedy | Stevens |
| Church | Laxalt | Stevenson |
| Eastland | | Tower |
| Haskell | | |

So the amendment (UP No. 1815) was rejected.

The PRESIDING OFFICER. The resolution is open to further amendment.

UP AMENDMENT NO. 1816

Mr. CHILES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. CHILES) proposes an unprinted amendment numbered 1816.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.).

Without objection, it is so ordered.

The amendment is as follows:

Page 4, after line 26, add:

(A) In order to achieve a balanced budget at the soonest possible date, total budget outlays shall not exceed $531 billion for fiscal year 1980, $570 billion for fiscal year 1981 or $615 billion for fiscal year 1982. Total Federal revenues for those years shal not be less than $500 billion in fiscal year 1980, $559 billion in fiscal year 1981, and $615 billion in fiscal year 1982.

(B) Total outlays shall only exceed these amounts to the extent that revenues are increased; Federal revenues shall only be reduced to the extent that outlays are reduced for the corresponding period.

(C) Federal deficits larger than those implied by the foregoing limitations shall only be permissible for a fiscal year in which the annual average unemployment rate is estimated to exceed 6.0 percent. The unemployment rate estimate applicable for this section shall be the most recent Congressional Budget Office forecast for the fiscal year for which a Concurrent Resolution on the Budget is being considered.

Mr. MAGNUSON. Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Florida.

Mr. CHILES. Mr. President, I ask unanimous consent that Senator NUNN, of Georgia, be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I am offering this amendment to the concurrent budget resolution in order to produce a firm congressional commitment to balance the budget at the earliest possible date. The Budget Committee report sets out a path of spending and revenue projections based on the 1979 policies in this resolution, which would not produce a balanced budget until 1985.

My amendment would restrain spending and tax cuts in order to balance the budget by not later than 1982.

I would like to see us even move faster to a balanced budget, but the best economic advice that we can get seems to show that perhaps that may not be possible.

If we drastically cut spending or raise tax rates, the effect would be to increase unemployment, and that could drive up the cost of unemployment compensation and, therefore, reduce the number of taxpayers. The result would be a bigger deficit.

Mr. President, this is basically the line of economic reasoning that we have been following in incurring big deficits to bring the country out of a recession. However, that reasoning cannot be applied forever. We have recovered from the recession; unemployment has come down from over 9 percent to less than 6 percent. We should now be significantly reducing the size of the Federal deficit. That is what my amendment would do.

The Budget Committee report projects that the deficit of $42.3 billion that we reported for 1979 would increase to $44 billion in 1980 before declining to $30 billion in 1981 and $13 billion in 1982. It then projects that we would have a balance by 1983. I find these deficits unacceptable and I think they are unacceptable to the American people.

Mr. President, I ask unanimous consent that a table comparing my recommendations to the committee projections be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

CHILES PROPOSAL TO BALANCE THE BUDGET BY 1982 THROUGH RESTRAINING FEDERAL SPENDING AND TAX CUTS

[Dollars in billions]

| | Fiscal year— | | | | |
|---|---|---|---|---|---|
| | 1979 | 1980 | 1981 | 1982 | 1983 |
| Federal outlays: | | | | | |
| Current policy (1978 laws) | 494 | 542 | 584 | 633 | 679 |
| Committee recommendation | 490 | 536 | 575 | 623 | 669 |
| | (−4) | (−6) | (−9) | (−10) | (−10) |
| Chiles proposal | 488 | 531 | 570 | 615 | 659 |
| | (−6) | (−11) | (−14) | (−18) | (−20) |
| Federal deficit: | | | | | |
| Committee recommendation | −42 | −44 | −30 | −13 | +3 |
| Chiles proposal | −40 | −31 | −11 | 0 | 0 |
| Federal tax reduction (cumulative after 1979): | | | | | |
| Committee recommendation | (23) | 8 | 27 | 39 | 54 |
| Chiles proposal | (23) | ------- | 19 | 34 | 67 |
| Federal outlays as a percent of GNP: | | | | | |
| Committee recommendation | 21.7 | 21.5 | 20.9 | 20.5 | 19.9 |
| Chiles proposa | 21.5 | 21.4 | 20.7 | 20.2 | 19.5 |

Mr. CHILES. Mr. President, I have therefore proposed levels of spending and revenues that would bring the deficit down to $31 billion in 1980, which is $13 billion less than the committee report; to $11 billion in 1981, which is $19 billion less than the committee report; and then achieve a zero deficit in 1982, which would be $13 billion less than the committee figure. To achieve these lower deficits will require a responsible level of restraint by the Congress. It would not require a wholesale cutting of existing programs; rather, real growth over inflation would have to be held below 2 percent a year. Spending would have to be cut from current policy levels by $6 billion in 1979 and $18 billion in 1982.

In addition, we would have to defer some of the tax cuts projected by the committee. I happen to believe that the American people want tax relief, but I do not think they want it at the expense of deficit spending. I think they want tax relief by reducing spending rather than having the same high level of spending and running a deficit.

The plan that I am offering does not prevent tax relief. In fact, by 1983, I believe that the plan I offer would allow a $67 billion tax cut compared to $54 billion projected by the committee. The main reason that my plan would allow that bigger tax cut, is that it is based on a firm commitment to reduce spending and to start that reduction right away. That is the only way that we can responsibly cut taxes. I think we would also be cutting inflation right away because we were reducing spending.

Mr. President, the committee report projects an $8 billion tax cut in 1980, with a deficit that increases by $2 million over the deficit in 1979. That just does not make sense to me, that we are going to have an additional $8 billion tax cut, at the same time increasing the deficit $2 billion.

I can understand why we lack the confidence of the people in economic policy if they see us taking action like that.

My proposal would also produce a steady drop in Federal outlays from 21.5 percent of the gross national product in 1979 to 19.5 percent in 1983. That would take us well below the 20 percent of GNP that we reached just before the recession.

I think that would go a long way toward satisfying the popular demand for a smaller Federal Government. I think that is a real figure that the public can look at, not something that is done by mirrors. Some proposals would balance the budget by allowing inflation to make people's taxes go up, but not cut spending. Another kind of proposal that seems to be very popular, like the Roth-Kemp proposal, says that we are going to reduce taxes $30 billion a year over a period of time, but doing nothing about that deficit. If we can show people that the actual percentage of the GNP of this country that we are spending for the Federal sector is going down, then they are going to know that we are reducing the incursion of the Federal Government.

Mr. President, I am pleased that in reporting the second budget resolution that sets binding ceilings for fiscal year 1979, the Budget Committee has been able to reduce the ceiling for next year's level of Federal outlays by $9.3 billion; $4.2 billion of this represents real program reductions. The remainder of the reduction is due to lower estimates of spendout for current programs. But, more importantly, we have reduced the budget authority by $10.4 billion, which shows some real impact that our cuts will have over 3 or 4 years from now.

In committee, I proposed an additional reduction of $5 billion, to be followed by further reductions in future years, in order to bring us more rapidly to a balanced budget. Many of the recommendations accepted by the committee were items which I had suggested deleting in the first budget resolution. I am gratified to see that the committee is exercising greater restraint at this time.

As I was dissatisfied with the high level of spending after the committee's initial deliberations, I proposed a second round of additional cuts. The package I offered would have trimmed back 13 different functions of the budget to achieve sav-

ings of $3.6 billion in budget authority and cut $1.85 billion in 1979 outlays. We had a spirited discussion on each of these items. The committee accepted reductions of $900 million in budget authority and $500 million in outlays. These cuts required painful choices among competing demands for expenditures, but I think it is just this kind of painful choice that we have to make over the next 2 or 3 years if we are really going to keep spending within our means.

While the committee's reductions represent an important change from recent trends, and I am delighted to see that change, I believe that the committee could have done better and that we should have done better. Even the reduced outlay ceiling is a 9.2-percent growth over the 1978 level. That is 2.2-percent real growth after taking inflation into account. Since some of our current spending represents temporary costs due to the recession, the real growth is more like 3 percent.

The American people have made it clear that they want to see a reduction in Government spending, not growth. While not all of the reductions that I proposed were accepted, those that were will give us a good start. If we can make a further $5 million reduction next year, we could be on the path to a balanced budget by 1982.

The American people want tax relief, but not at the price of higher deficits. It would certainly be necessary to reduce taxes to offset the built-in increases due to inflation driving people into higher tax brackets. Tax reductions beyond such offsets should be only achieved, I think, by reducing spending. Once we have balanced people up to where inflation is not making them pay a higher tax, then I think we should not give a tax cut unless we can show we have reduced spending by that amount. There is no reason why we have to give all programs a full compensation for inflation every year.

I think that we could eliminate some unproductive or low-priority programs to pay for those new needs that are bound to come along and that we see coming along.

Mr. President, I have seen a new mood in Congress over last year. The public has shifted its primary concern from short-term stimulation of employment to the longer term economic stability and, mainly, to combating inflation. Congress is getting that message and cutting back on spending.

We have recovered from the recession down to 6-percent unemployment. That means we have just 1 percent to go before reaching the theoretical full-employment level. That 5 percent that would remain is so-called "frictional unemployment." It measures the fact that we have considerable turnover and attrition in the labor force. It takes people time to find jobs and they voluntarily quit jobs to move and look for better opportunities.

I do not believe we can close that final 1-percent gap by fine tuning with small across-the-board tax cuts.

To come that last step of the way, I think we need to do two things. First, we need to improve the confidence of businessmen and consumers that we really are doing something about inflation. The weakest point of our economic recovery has been business investment and the biggest obstacle to that investment is uncertainty. If businessmen are afraid we are going back to double-digit inflation, they will hold back on expanding production capacity and that is going to mean fewer jobs.

Businessmen simply do not believe we can control inflation while running larger and larger Federal deficits. That is why I am asking the Senate to commit itself to a 5-year schedule of restraint.

If we do this, I think we can show the business community and consumers what to expect, and then I think their confidence would cause additional economic growth.

The second thing we need to close that last 1 percent in unemployment is to target our effort to those persons who need help most. For that reason, I supported renewal of the Comprehensive Employment and Training Act with a major redirection toward the hardcore unemployed. Continued massive spending or general tax cuts is not going to produce jobs for this last 1 percent. It will only produce inflation.

Mr. President, Congress has been presented with several well-intentioned proposals to mandate a balanced budget under a constitutional amendment or tax surcharge. I have not supported those proposals because I do not believe there is any magic mechanical formula that can replace those hard choices necessary to reduce Federal spending.

Economic conditions vary from year to year and Congress should have the flexibility to examine the exact composition of proposals for spending and tax increases or decreases to determine their impact on the economy.

If a balanced budget is constitutionally required, many Members of Congress would find it easier to let inflation drive taxes up to meet spending levels than to cut spending.

During a recession, a Federal deficit, I think we all know, is unavoidable. When we are at high unemployment, a balanced budget is certainly obtainable, and it should be achieved. It is a matter of congressional will and public pressure. It cannot occur automatically. I think the amendment I am proposing today would commit us to a program of reducing growth of the Federal sector and achieving both a balanced budget and a lower rate of taxation.

Mr. President, therefore, I urge support of this amendment.

Mr. MAGNUSON. Will the Senator from Florida yield?

Mr. CHILES. I yield.

Mr. MAGNUSON. I think the Senator from Florida has made an excellent statement on long-term policies. I want to add that he is one of the distinguished members of the Appropriations Committee.

Even though this budget resolution passes, I think the Appropriations Committee will cut it even more. He has been a party with me to do that.

I think one of our problems is that we give everything to expenditures and we do not do too much about bringing more money into the Treasury. Receipts are what count. We could balance all the budgets if we had enough receipts.

So what we are trying to do is stimulate the economy to the point where the receipts become better, and they are becoming better. They are better this year than last year.

I do not know if the Senator will agree with me, that maybe, if we want to balance the budget, we just put in a simple resolution that we cannot spend any money that is not in the till.

Mr. CHILES. I would agree with the distinguished chairman of the Appropriations Committee——

Mr. MAGNUSON. And that is very simple. It is probably too simple to work. This is the problem.

But I think we are coming to that point. I hope the Finance Committee will heed this advice. Instead of talking so much about where the burden is going to be, I think we ought to spend a little more time getting more money into the till. When we do, then we will have a balanced budget. That is what causes the difference.

We keep books like nobody else. We would drive a CPA up the wall.

We will go down there now at midnight on September 30 and open the till. If there are some IOU's in there, that is the deficit. If there is some money in there, that is the surplus. Then we close the till and go back about our business. We do not consider loans, we do not consider anything else.

I suppose the SEC would put us in jail if we were a corporation, if we kept applying the rules of corporate financing.

What the Senator is saying is that if we cannot bring these things closer together, and that is, I know, not too long a range, a couple or 3 years, we can help the Appropriations Committee by voting for this amendment.

Mr. CHILES. I thank the distinguished chairman of the Appropriations Committee who is exerting his leadership in trying to bring a restraint into the appropriations process. I see him day after day in many areas trying to see that the Appropriations Committee does come in lower than the figures of the budget resolution. I think that is certainly commendable.

I think there was a time when we were in the recession where we knew we had unused plant capacity, where we knew we had high unemployment, and that we, therefore, could stimulate without adding to demand inflation at that time, because of that unused capacity. But now the economy has geared itself up, we realize how difficult it is to stop some programs we started then. Accelerated public works, soft public works, any of the programs we were trying to stimulate.

Mr. MAGNUSON. And CETA.

Mr. CHILES. And CETA.

Mr. MAGNUSON. And our job, I think, is to work CETA out of business, and that is what we will try to do.

Mr. CHILES. In the new bill we passed, while the authorization levels

are very high, as I know the chairman of the Appropriations Committee commented at the time it was passed, it does change the structure to allow now to try to go and help the structurally unemployed. I think it will be up to the Appropriations Committee in how it funds that new CETA authorization to see that we try to put the money, with restraint, where it will do some good, into the structurally unemployed, and not look on it as a broad revenue-sharing program of just giving some money back to counties and local government so they can take people off their payrolls and transfer them onto the Federal payroll, as we found was happening much of the time during CETA.

Mr. NUNN. Will the Senator yield for a brief comment?

Mr. CHILES. I yield.

Mr. NUNN. I commend the Senator from Florida for this very fine amendment which will move us in the right direction. I also commend the chairman of the Appropriations Committee for his excellent remarks. I certainly concur in those comments. I am proud to support this amendment and to be a cosponsor of it.

Mr. CHILES. I thank the distinguished Senator from Georgia, who was a member of the Budget Committee in its initial stages, and during that time was always trying to hold down spending in the Budget Committee. He has continued to do that on the floor of the Senate. He does great work in that regard in trying to see we get the most money in needed programs, especially in the armed services program where he works so diligently on those budgets, but he also works to see us avoid excess spending in programs where the need is not so great.

Mr. MOYNIHAN. Mr. President, will the Senator from Florida yield for a comment?

Mr. CHILES. I am glad to yield to the distinguished Senator from New York.

Mr. MOYNIHAN. Mr. President, I commend the Senator from Florida for what he has said. I look to the chairman of the committee and the ranking minority member for advice on how to vote, but I do appreciate the Senator's emphasis on considering the proportion of gross national product which the budget should comprise.

I suggest that perhaps what is most relevant is the fraction of GNP which is spent on the whole public sector, not just on the Federal Government. I think the Senator will find that it is hovering currently around 35 percent—a much higher proportion than we have heretofore supposed.

A great deal of the increase in State and local shares has been the result of the Federal mandate in sharing programs.

Back in 1946, an economist named Colin Clark wrote a book in which he put forth the proposition that any economy in which the public sector GNP went beyond 25 percent would have to live with uncontrollable inflation. This seemed such a remote possibility at the time that no one paid attention to Clark. I am not saying that he has proven or disproved his case, but we have gone well beyond 25 percent, and we are now in a condition of seemingly permanent inflation.

It seems to me that the expansive fiscal policies of the Federal Government are very usefully conceived in terms of what proportion of our total gross national product we are putting in the public sector. The idea of a limitation, or, if you will, a general average limit, is a practical idea, and I thank the Senator for bringing it to the floor, even though I would be for flexibility from one fiscal year to the next. In any event, I will be guided by our appointed watchdogs, the Senator from Maine and the Senator from Oklahoma.

Mr. CHILES. I thank the distinguished Senator from New York—I think. [Laughter.]

I do thank the Senator for his kind remarks. I think the point he raises, of the total spending, is very relevant and important; because that is really what affects the taxpayer ultimately, and that is what becomes the drag on the economy ultimately.

It happens that we can only influence a portion of that, and that is what my amendment is doing.

Many times we like to sit here and say that the growth over the last few years has been at the State and local level. What we have failed to say is that we stimulated that growth, because we set up those programs for the State, saying we will share the cost with them if the States match. Because we have failed to say that, right now about 25 percent of that State and local spending is directly coming from the Federal budget and I am sure we are influencing a great deal more of that because of the way we set up matching grant programs.

Mr. MAGNUSON. It is 26 percent.

Mr. CHILES. Those items add to it, too.

Because we cannot affect all those does not mean we should not try to do something in the area we can affect. That is why I think we need to take some kind of step.

Mr. STONE. Mr. President, will the Senator yield?

Mr. CHILES. I yield.

Mr. STONE. Mr. President, I commend my senior colleague from Florida on the careful work that has gone into this spending path and ceiling amendment.

Most people—certainly, most of our colleagues—repeatedly have felt and expressed the desire to get to a balanced budget. All of us are willing, I think, to vote for resolutions or constitutional amendments or statements or even bills that say that.

What the Senator is doing for us is mapping a practical way, in line with the Budget Committee's approach anyway, of a multiyear plan, but fine tuning that with some decisionmaking along the way as to how we get there.

I think that if the Senator's amendment is adopted—and I intend to vote for it—it will assist the overall, full Budget Committee in their necessary efforts to get the Senate and the entire Congress and the entire Federal Government to the point of a balanced budget in a reasonable period of time. I do not think there is a domestic issue of priority as high as that. I commend the Senator for his efforts in putting together such a practical and sound proposal.

Mr. CHILES. I thank my distinguished colleague from Florida. I have found at all times that he has tried to support and work toward those measures that would allow us to balance the budget and to reduce Federal spending.

Mr. BELLMON. Mr. President, will the Senator yield?

Mr. CHILES. I yield.

Mr. BELLMON. Mr. President, I compliment the distinguished Senator from Florida for the work he has done in this proposal.

I agree with the goal of balancing the budget as soon as possible. I believe, as does the distinguished Senator from Florida, that we can achieve a balanced budget, perhaps at an earlier date than the report would indicate. To do this, we certainly will need to reduce Federal spending as a percentage of GNP and reduce the rate of growth in spending each year over the next several years. I think that, as members of the Senate Budget Committee, we can assure this body that we will be working to do that.

As I mentioned in my opening statement this morning, I believe the only way we can get to a balanced budget is to exercise disciplined spending restraint next year and in future years. We must carefully examine new spending proposals and determine how necessary they are likely to be, in light of the short and long-run costs and effects. Indeed, only by resisting the temptation to enact additional costly programs can we finally reestablish the historic norms for the size and scope of the Federal Government and bring the budget into conformity with the wishes of the American people.

Although this resolution does not go as far as we would like, it does point us in that direction. I believe we should accept it and continue to exercise prudent judgment in the next year, so that we can accomplish a balanced budget at the earliest possible date.

Mr. President, there is a question of germaneness in this matter, since the resolution relates to the out years. Perhaps the chairman will discuss that. That question exists, even though on its merits it is a very fine suggestion.

Mr. CHILES. I thank the distinguished ranking minority member of the committee.

Mr. MAGNUSON. Mr. President, I do not have the figure, but I think 23 States already have passed resolutions calling for a constitutional convention to propose a balanced budget amendment to the U.S. Constitution, and the movement is spreading. This is what we do not want to happen, because we think we have some responsibility.

I ask unanimous consent to put in the RECORD at this point the number of States that have now acted upon and passed laws about the balancing of the Federal budget.

The PRESIDING OFFICER. Without objection, it is so ordered.

The list follows:

Oregon, Wyoming, Colorado, New Mexico, Arizona, Texas, Oklahoma, Kansas, Nebraska, North Dakota, Louisiana, Mississippi, Alabama, Georgia, South Carolina, Florida, Tennessee, Illinois, Indiana, Virginia, Maryland, Delaware, and Pennsylvania.

The PRESIDING OFFICER. All the time of the Senator from Florida has expired.

Mr. MUSKIE. Mr. President, I hesitate to put myself in the position of being critical of any proposal offered by the distinguished Senator from Florida. Really, what I have to say is not criticism but will result in my raising a point of order, which I will try to explain before I raise the point of order.

First, let me emphasize that I count the distinguished Senator from Florida (Mr. CHILES) as one of the most valuable members of the Budget Committee and have so valued him from the beginning of the budget process. He is one of the original members of the Budget Committee, along with the distinguished Senator from Georgia (Mr. NUNN). He is always constructive. He is ingenious; he is innovative; and, perhaps the most important quality of all, he is persistent in pursuing his ideas and the goal of a balanced budget.

So, I repeat, I am always hesitant to find myself in disagreement with him on a particular course of action.

Before I discuss the point of order, I would like to refer to the 5-year projections contained in the Senate Budget Committee report. It is upon those projections that Senator CHILES draws for analogies to support his proposal.

Let me make it clear that the 5-year projections in the Senate Budget Committee report are not forecasts at all, nor are they mandated spending totals.

They are simply an attempt to put in a 5-year context the consequences of the spending decisions we make with respect to fiscal year 1979. In making those projections, the Budget Committee does not say we should not have a balanced budget before 1983 at all. Every member of the committee would like to see a balanced budget in 1982, or 1981, or 1980, or even 1979.

But what we are able to achieve in that respect depends upon assumptions as to what the private sector of our economy will achieve and how it will perform over that 5-year period.

The assumption made in the 5-year projections contained in the Budget Committee report are moderate in their assumptions about the performance of the private sector over the next 5 years. They are moderate and yet, at the same time, if those moderate assumptions are realized, that realization would represent an unprecedented economic recovery.

We are now in the fourth year of economic recovery. If the recovery were to continue through 1983, it would represent a period of sustained economic recovery without precedent, and it is on that unprecedented assumption that we projected a balanced budget by 1983.

So, we think that that was a moderate kind of a projection, and we made it not to encourage deficits or to encourage spending, but to impose restraint upon spending.

It was our feeling that, if Members of Congress could see the consequences of today's spending decisions in a 5-year context and at the same time understand the prospect of new spending initiatives coming down the road, the effect may be restraint upon the inclination of Congresses and legislatures to spend.

So that is the reason we went into the 5-year projections.

What in effect Senator CHILES proposed is that we aim for a balanced budget 1 year earlier than 1983 by mandating now the ceilings on outlays and budget authority—I think it covered both outlays and budget authority—for each of the years covered by his amendment.

Mr. CHILES. Just the outlays.

Mr. MUSKIE. Just outlays.

Now, there are a couple of problems with that. As Senator CHILES knows as well, if not better than any of the rest of us, outlays are driven by budget authority. You cannot control deficits or spending by controlling outlays. Outlays are simply the result of appropriations in the form of budget authority. So if you mandate a certain level of outlays, that may or may not be a realistic reflection of the spending momentum that is underway to build weapons systems or to fund social security benefits, or whatever, across the whole range of the budget process.

(Mr. GLENN assumed the chair.)

Mr. MUSKIE. Second, if the underlying economic assumptions prove wrong, the mandated ceilings on outlays may prove to be very inflexible and unrealistic measures of the Federal Government's responsibilities or priorities in the economic circumstances in which we find ourselves.

I cannot help but remember that the Budget Committee was created in the fall of 1974 and within 6 months of that time we found ourselves plunged into a recession, the magnitude of which no one had anticipated or predicted at the time the budget committees were created. We were talking at the time we were created of a balanced budget in the fiscal year following. Instead we found ourselves with a deficit of $50 billion in less than 6 months.

In December 1974 the bottom fell out of the economy. So we found it impossible to predict the performance of the private sector for a 6-month period from the time that we were created.

Now it is proposed that we set mandatory ceilings for a period of years. I simply do not think that is a realistic thing for us to do, and if it were workable and achievable, there would be no need for the budget process. You simply write your ceilings into law 5 years in advance, 3 years in advance, and then live with them.

If the budget process does not exist to adjust Federal fiscal policy to the economic circumstances in which we find ourselves or which we try to predict with the best advice available to us, then it serves no purpose. We do not exist simply to set arbitrary ceilings or targets. We exist to adjust fiscal policy to the best of our ability to the economic circumstances and needs of the country, and these mandatory ceilings would simply deprive us of that flexibility because it would tell us in advance the maximum that we could spend.

It might have one other unfortunate consequence. It might actually encourage spending which would be excessive to our needs. Ceilings tend to be floors to a lot of people who vote on appropriations bills.

And if we have these and they are all going to be higher spending ceilings than in the current resolution, there is a temptation to spend up to those ceilings whether or not they are needed.

I raise these questions and suggest these problems not to denigrate Senator CHILES' objectives at all because in reality the objectives of the projections contained in the Budget Committee report and of Senator CHILES' amendment are the same.

We are both trying to find a more effective way to move the Federal budget toward balance, and we are seeking to do it by suggesting what the performance in the future should be.

So I do not criticize him at all. I simply have doubts as to the viability of mandated ceilings years in advance.

I will raise the point of order.

Mr. CHILES. Mr. President, will the Senator yield before he raises that point?

Mr. MUSKIE. I would be happy to yield to my good friend, if he will first let me describe the point of order. I will not raise it until the Senator is satisfied that there has been a sufficient dialog.

Mr. CHILES. All right.

Mr. MUSKIE. I would like to describe the point of order so that Senators will understand what it is. I have no desire to push aside the debate, and Senator CHILES should have a chance to respond or raise questions.

Section 305 of the Budget Act prohibits nongermane amendments to budget resolutions in order to prevent the resolutions from becoming vehicles for legislation within the jurisdiction of other committees and for matters not contained in the resolution.

The Chiles amendment provides spending ceilings and revenue floors for fiscal years 1980 to 1982, inclusive, fiscal years not addressed in Senate Concurrent Resolution 104, the second budget resolution to fiscal year 1979.

The amendment thus introduces new matter to the budget resolution as reported from the Budget Committee and is not germane within the meaning of section 305.

In addition, under section 306 of the Budget Act, this amendment would also be out of order, as it provides aggregate spending ceilings and revenue levels for fiscal years 1980 to 1982, matters within the jurisdiction of the Budget Committee.

Section 306 provides:

That no bill, resolution, or amendment thereto which deals with legislative matters within the jurisdiction of the Budget Committee should be considered by the Senate unless the bill or resolution has been reported from the Budget Committee with such subject matter.

Since the Chiles amendment introduces new matter which is within the jurisdiction of the Budget Committee, which was not reported from the Budget

Committee, it is out of order under section 306.

The proviso of section 301(6) that additional matters may be included does not apply here for two reasons: First. This proviso applies to the jurisdiction of the committee alone. Once reported, the resolution is limited to its contents. Second. Section 301(a) applies to the first resolution.

That is the basis of the point of order which I will raise when Senator CHILES is satisfied that there has been sufficient discussion.

I am willing to yield at this time or yield time to the Senator from Florida to further discuss the matter or to address myself to any questions he may wish to put.

Mr. CHILES. I thank the distinguished chairman. If he would yield to me——

Mr. MUSKIE. I yield such time to the Senator as he may need.

Mr. CHILES. I just wanted to make a couple of brief points and then make a comment on the point of order the Senator has indicated he intends to raise.

First, I will say that I think the distinguished chairman of the Budget Committee—and I compliment him for the long and arduous task that he works on in regard to the committee, and I know how dedicated he is to trying to get us on a path of fiscal restraint and toward a balanced budget—but I would like to comment on the point that he makes which, I think, is a valid point on binding the Congress, binding the Budget Committee, in future years and, perhaps, taking away the flexibility that we need.

I worried about this myself in thinking about an amendment like this. I tried to build some flexibility into my amendment which, I think, I have been able to do. Section (b) of that amendment states that "Total outlays shall only exceed those amounts to the extent that revenues are increased." So that allows the flexibility, if you can get some increased revenues, and we in the Budget Committee have often talked about this, and often to not much avail—that would be an opportunity. Second, in section (c), that Federal deficits larger than those allowed by the foregoing limitations should only be permissible for a fiscal year in which the annual average unemployment is estimated to exceed 6 percent.

So if you had a change in economic conditions, if the path of recovery turns around, that would be reflected in an unemployment rate above 6 percent, and we get those reliable estimates. So I am again trying to build flexibility in that way. In addition, we can point out that any Congress can, upon a drastic change of conditions, change this schedule of fiscal policy.

But it seems to the Senator from Florida that we need more than pass the simple resolutions. I am delighted to see those passed, but we had a heavy vote in this Chamber for a balanced budget by 1981.

But really that resolution is worth just about the paper it is written on, because it is only a sense of the Senate resolution. But if it is worth that much it would seem to me that we need to bind ourselves a little firmer than that, and to commit ourselves to a path of restraint.

I do not think what we have now in the committee report does that at all, that is, a provision that says this is what we think will happen if you go along with the 1979 budget. It is our best guess, it is our best estimate, of a projection going into play if you went along with this budget and if you went along with this course of action we lay out. So it lays out a path, but no one commits to that path. No one, by voting for this resolution, says "I commit myself to restraint."

The other thing that I see happening in the Budget Committee itself is we go in and because we are a committee pretty evenly balanced, representing the constituencies that come into this Chamber, I am willing to cut into one area but I want to make sure there is enough money for defense, for example. That happens to be something that I worry about. I do not worry as much about some of the other areas.

There are other people who worry more in the health field than they worry about defense. So what happens is before we get through, in order to make sure that we get my adequate figure on defense, we have to take my friend's adequate figure on health, and we come out with a figure that is more than either one of us went in there wanting to spend. But that is the process, and that is the process that really worked in here without the Budget Committee restraint to the extent that we found ourselves overspending every year, good times or bad.

So the purpose of the Budget Committee was to try to bring a restraint by coming in with a spending resolution and saying, "We are only going to spend so much, we are going to set a ceiling." But now we in the Budget Committee tried to come out with that resolution, which is debated on this floor, and every Senator has a chance to amend or agree, and we set that spending ceiling. But I find we need some kind of restraint on ourselves going into that Budget Committee because then if we had a restraint and saying that this year we have got $x$ number of dollars, how are we going to divide that within the priorities, I think we would match those priorities up to those dollars.

I think the level I am talking about as to spending is responsible as far as the total figure and that we can match the priorities within that. If we put enough restraint on ourselves to know that when we go in the room we have got to come out with a total resolution that stays within that figure, then I might not get exactly what I wanted for defense and he might not get exactly what he wanted for health. But I think the people would be better served because they would get something within the means of what we have, the dollars that are in the store, and that we would cut the cloth to fit the pattern.

That is the reason why I feel that a restraint like this is going to be necessary if we are ever going to balance the budget. We have to lay out some plan to the American people that shows our coming to a balance, even over a period of years, so that they might have some confidence in our processes.

Now if I might just discuss briefly the point of order. Section 301(a)(6) provides that the first concurrent budget resolution shall set forth, and I quote, "such other matters related to the budget as may be appropriate to carry out the purposes of the act."

It seems that a 5-year economic policy is certainly a purpose of the act. Section 301(a) states that the second budget resolution shall reaffirm or revise the first budget resolution.

So, therefore, the point I would make is if the 5-year totals are germane to the first resolution then they should be germane to the second resolution. I feel that they certainly would be germane to the first resolution and, therefore, should be in order to the second concurrent resolution.

Mr. MUSKIE. Mr. President, I do not think there is anything I can add to the point I have already tried to make with respect to the Chiles amendment. So if there is no further discussion I would raise the point of order as I have described it.

The PRESIDING OFFICER. Under the Budget Act, amendments to concurrent resolutions on the budget must be germane. Senate Concurrent Resolution 104 contains no matter dealing with a 5-year projection, or with other fiscal years. By attempting to deal with fiscal years not covered by this resolution, this amendment introduces new subject matter and, therefore, under the precedents the amendment is not germane. The point of order is well taken.

Mr. MUSKIE. May I make a few suggestions to my good friend from Florida? I will not take more than 1 or 2 minutes. I know the Senator from New York has a suggestion he wanted to discuss.

No. 1, I think the Senator from Florida has given the kind of thought and consideration to his proposal that deserves further consideration. The Senator knows how we struggled with and the doubts we had about our own projections as contained in the committee report. When we adopted those, we all felt, I think, that we were just beginning an evolutionary process that hopefully would produce something more specific, more disciplinary in its impact, and more influential in bringing Federal spending under control.

So I would urge the Senator to consider preparing legislation, maybe even an amendment to the Budget Act, and I would be happy to cooperate with the committee staff or in any other way that I can to try to develop his idea further, to the point where it might well serve as a useful instrument for budget policy.

Second, the Senator from New York, in his comments on the Senator's proposal, had some suggestions that I think are worth further study in connection with the proposal of the Senator from Florida. But I hope the Senator will not interpret my action today as throwing cold water on his idea. In fact, I would like to see him persist in trying to develop it and bring it to fuller fruition, and I will use the word maturity.

Mr. CHILES. I thank the distinguished chairman, and I will honor the kind compliment he gave me by saying that I will persist in it.

UP AMENDMENT NO 1817

(Purpose: To continue in the second congressional budget resolution for 1979 the allowance for fiscal relief for State and local welfare costs which was assumed in the first budget resolution)

Mr. MOYNIHAN. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 1817:

On page 1, line 11, strike out—

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 11, strike out "$557,700,000,000" and insert in lieu thereof "$558,100,000,000";

On page 2, line 2, strike out "$489,500,000,000" and insert in lieu thereof "$489,900,000,000";

On page 2, line 5, strike out "$42,300,000,000" and insert in lieu thereof "$42,700,000,000";

On page 2, line 7, strike out "$839,500,000,000" and insert in lieu therof "$839,900,000,000';

On page 2, line 9, strike out "$41,500,000,000" and insert in lieu thereof "$41,900,000,000";

On page 4, line 4, strike out "$191,500,000,000" and insert in lieu thereof "$191,900,000,000"; and

On page 4, line 5, strike out "$159,600,000,000" and insert in lieu thereof "$160,000,000,000".

Mr. MOYNIHAN. Mr. President, I rise today to offer an amendment to the second concurrent resolution on the budget to allow for the expenditure of $400 million for fiscal relief to assist States and localities with the cost of the Aid to Families with Dependent Children program. I seek to restore the funds which clearly were set aside for fiscal relief in the first concurrent budget resolution, and which the Finance Committee specifically endorsed in its recommendations to the Budget Committee on the second concurrent resolution.

The Senate Budget Committee chose to remove those funds, with the explicit instruction in its committee report that:

The Committee recommendation does not assume funding in FY 1979 for fiscal relief to States to offset public assistance costs.

This amendment, I hope, will correct what I regard as a serious omission.

I would make, at the outset, simply two points. The first is that the Senate has overwhelmingly indicated its basic support for interim fiscal relief. When we adopted the social security amendments last summer, we provided $384 million. This was agreed to in part by the House conferees; the other half was to be included in the legislation now before us. There was no dissenting vote on the floor of the Senate. The understanding was that we would have a series of annually increasing direct fiscal relief measures, leading up to that time when the President's welfare reform legislation would take effect—fiscal year 1981. The understanding was that we would pass a fiscal relief measure for fiscal years 1978, 1979, and 1980.

The second point I would like to make is that this does not represent an increasing expenditure in terms of the public sector of the GNP; this is the matter I touched upon in my colloquy with the distinguished Senator from Florida. These measures aim to provide tax relief, and, in many States, property tax relief of the kind which has been much in the news in recent months. The Senate Finance Committee first agreed to such a measure in November 1977, when it was understood that the situation with respect to the cost of welfare made it necessary. We have done so over and over again, and I will not burden the chairman and his colleague on the minority side with the details; they know the details.

What I would trouble them to hear, though, is my concern—and it is a concern that I know is theirs also, otherwise I would hesitate to raise it—that we should never have the impression that the Budget Committee, much less the staff of the Budget Committe, is imposing its own political choices and priorities upon the substantive committees of the Senate. This was a natural apprehension when the committee was established, and no one took greater pains to dispel any such concern than the distinguished chairman of the committee, the man who created it. Yet it is difficult for us not to sense in the persistence with which our concern here is singled out for rejection more than a penumbra of disapproval of a programmatical kind, rather than the macrobudgetary concerns of the committee itself.

So I would like to ask some questions of the chairman and his distinguished colleague, the Senator from Oklahoma.

It appears that the second budget resolution as it comes back from conference will provide some significant allowance for new legislation in the income security category, inasmuch as both the House resolution and the resolution recommended by the Senate Budget Committee included such an allowance.

Obviously, in recommending such an allowance, the Senate and House Committees have in mind certain program changes that it would accommodate. Nonetheless, I believe it is correct—and I would ask the chairman of the Budget Committee to confirm this—that the Budget process does not specify which programs should be accepted. That is a decision to be made in the course of subsequent action or subsequent legislation.

In other words, if the second budget resolution leaves room for a certain amount of additional spending in the income security category, the Finance Committee can, in full compliance with the letter and spirit of the budget process, recommend the use of that allowance for any income security program or programs over which it has jurisdiction. I would ask the chairman if that is not correct.

Mr. MUSKIE. The Senator's first question requires a somewhat lengthy reply, in order to have a complete record.

Mr. MOYNIHAN. It was a rather lengthy question. I am sorry for that.

Mr. MUSKIE. In order to put a complete record before the Senate, first let me read from the committee report. I am reading from page 99:

The Committee recommendation assumes savings from increased targeting of public service jobs on low-income people, from the standardization of the allowance provided to AFDC recipients for work-related expenses in determining their benefit levels, and from the liberalization of veterans pension benefits recently passed by the Senate. Additional funding is assumed for an expanded earned income tax credit, the refundable portion of which is included as spending in this function. The Committee recommendation does not assume funding in FY 1979 for fiscal relief to States to offset public assistance costs. The 5-year recommendations assume the costs of additional welfare reform initiatives in future years.

The exclusion of funds for fiscal relief was a rather specific decision. The reasons for the committee's decision to exclude funds for welfare fiscal relief were as follows:

One, the fiscal relief should be provided only in the context of overall welfare reform. The provision of additional funding to States should "buy" much needed reform of the welfare system.

Two, this type of block grant should be addressed during consideration of general revenue sharing legislation.

Three, the immediacy of States' need for fiscal, relief is open to question: a. States and localities already received a block grant to offset welfare costs of $187 million in fiscal year 1978; b. States are showing budget surpluses; c. the AFDC program has experienced a reduction in participation in recent years and benefit costs have risen by less than the rate of inflation; d. the second budget resolution provides considerable additional funding for welfare related programs: title XX, social services, $200 million; expansion of the earned income tax credit, $500 million.

Those are the reasons for the decision taken.

Let me add this comment: Funds for fiscal relief could be taken from the above two program increases as both these programs are in the jurisdiction of the Finance Committee. Otherwise, they could be provided only by achieving cost reductions in existing programs.

It should be stressed that under no condition can fiscal relief be provided in addition to the increases shown above unless substantial savings are made in existing programs within the Finance Committee's jurisdiction.

I think that answer covers it.

Mr. MOYNIHAN. I think that answers my question almost entirely. In the spirit of that, in a moment I will move to withdraw my amendment. But I would like to make a point because it is in the interest of the chairman that when this committee acts, the people watch it, because the tendency will be to insert value judgments about program priorities. That is inevitable. One has to pick and choose before things are added up, and there are myriad choices implicit in that process.

The notion that the committee said fiscal relief should be offered only in the context of overall welfare reform constitutes a statement of what overall welfare reform represents.

I could make a perfectly good argument that fiscal relief is the welfare reform we need. I would not do that, but I could make that argument.

Secondly, as a point of fact, it was precisely in the context of overall welfare reform that we sought and succeeded in persuading the President that there ought to be a series of gradually increasing increments of fiscal relief to get the State and local governments interested in a bill which otherwise would not have any effect until fiscal year 1981.

Our persuasions, our blandishments, were perhaps not altogether disingenuous because we did not succeed—the bill did not pass the House. Still, fiscal relief is an integral aspect of welfare reform and it may be the only one we will get in the immediate future.

Of course, we are always interested in views. We must look upon them as obiter dicta.

Mr. MUSKIE. Let me add two observations. One is I simply gave the Budget Committee's rationale and conclusion, realizing that the Budget Committee's rationale is not binding.

Mr. MOYNIHAN. Yes, I understand that.

To sum up, I will ask for the chairman's judgment. It is my understanding from the chairman's very generous response that the Finance Committee would be free within the letter and the spirit of the budget process to recommend that any allowance for new legislation in the income security area be used for one or the other, or some combination of earned income tax credits and fiscal relief, as long as we remain within the budgetary limits assigned us by the Budget Committee.

Mr. MUSKIE. That is correct.

The Senator, of course, understands how difficult it would be to fit all the pieces of that puzzle together, because I understand he himself is a cosponsor of a plan to expand the earned income credit effective in 1979 at a cost of $700 million, which would use up all of the additional cost items which are provided in function 600. But the Senator has demonstrated in his career in the Senate an ingenuity that should stand him in good stead as he contemplates this puzzle. I certainly would not want to chill his right to pursue his objective.

Mr. MOYNIHAN. I take that to be a form in which the chairman wishes me good luck. I accept that observation. The Senator, as time passes, understands less and less, but he does understand that welfare reform is a complicated matter.

Mr. MUSKIE. And the Senator from New York has demonstrated an expertise and an understanding in this field which I do not believe is surpassed by any other Member of this body. I respect his wisdom and insight which he provides us in this field. I certainly do not challenge the validity of his observations. Welfare reform generally, as I am sure he understands it, involves popular as well as unpopular revisions of the system. States like the aspects of welfare reform which provide fiscal relief. Some may not like other aspects of welfare reform.

Fiscal relief alone, without other changes, would give the States the sweet without the sour. That is really what the Budget Committee is concerned about.

Mr. MOYNIHAN. The chairman is exactly correct in that respect, and I think the Senator from Oklahoma probably shares that view with an even greater degree of concern.

Mr. BELLMON. If the Senator will yield, I would like to join my chairman in agreeing that the adoption of this resolution will not preclude the Senate from voting later to grant fiscal relief to State and local governments for part of their welfare costs. The Finance Committee could choose different priorities than those recommended by the Budget Committee. But I would like to make clear that I personally feel very strongly that, if a choice has to be made between fiscal relief and improvement of the earned income tax credit, I would prefer to see us do the latter. Expansion of the earned income tax credit has been proposed in a number of welfare reform bills introduced this year, including the one that I introduced along with several of my colleagues, S. 2777. I believe Senator MOYNIHAN has also endorsed expansion of the earned income tax credit.

In presenting its recommendations on the second budget resolution, the Budget Committee provided room for expansion of the earned income tax credit but did not make specific room for fiscal relief, and I hope that this choice of priorities will ultimately be upheld by the full Senate—in other words, I hope the Senate will agree with the position we took.

The Budget Committee did not endorse fiscal relief for these reasons: There is no real urgent need for fiscal relief since States and local governments are generally in better financial shape than the Federal Government; welfare rolls have been dropping as the economy has improved over recent months; costs are growing more slowly than in past years, and this reduces the pressures on State and local government budgets. But the main reason, I feel, is that while there are valid reasons for the Federal Government to fund a larger share of welfare costs, this should be resolved as part of constructive changes in welfare programs. Providing fiscal relief as a first step undermines the drive for real welfare reform. This is the point that Senator MUSKIE was just making.

I am in favor of fiscal relief, but I think, as has been said, that States ought to take a little bitter with the sweet. I am afraid if we give them the sweet first, that is all we shall get.

Mr. MOYNIHAN. I thank the Senator from Oklahoma. I assume he is speaking in his own right as a distinguished Member of this body and a former Governor of his great State, and not as a member of the Committee on the Budget per se.

Mr. BELLMON. If the Senator will allow me, I am not sure you can separate the two, but I was speaking in my own right as a Member of this body.

Mr. MOYNIHAN. I am new to this Chamber, but I am already jealous of the prerogatives of my committee and alarmed at the imperial ambitions of all other committees.

I thank the distinguished chairman and his distinguished colleague for this opportunity. I thank the Chair.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Do Senators yield back the time on the amendment?

Mr. MOYNIHAN. Mr. President, in the circumstances, I withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The amendment was withdrawn.

Mr. DOMENICI. Mr. President, I wonder if the Senator from Maine might yield 10 minutes on the bill to the Senator from New Mexico.

Mr. MUSKIE. Of course.

Mr. DOMENICI. I thank the distinguished chairman.

I want to acknowledge that there are several improvements in the second concurrent budget resolution when compared to the President's original budget request and the first concurrent budget resolution. I also want to commend our distinguished chairman, Senator MUSKIE, and our distinguished ranking minority member, Senator BELLMON, for their diligence and dedication to constant improvements in the budget process and its products.

Specifically, it is worthy of note, as several of our colleagues have done earlier today, that the second concurrent resolution reduces new budget authority by $11.4 billion below the President's budget request and $11.15 below the first concurrent resolution. Similarly, outlays are reduced in the resolution by $11.5 billion when compared to the budget request and $9.3 billion compared to the first resolution. As a result of these outlay reductions and the committee's recommendations on revenues, the deficit projected by this resolution is $18.2 billion less than contained in the President's budget request and $8.6 billion less than projected by the first concurrent budget resolution.

Regarding revenues, it is worthy of note that this resolution makes room for an additional tax cut of $15.2 billion, $1.2 billion of which is intended for a variety of smaller items, and $14 billion of which has been designated for a general tax cut, with an effective date of January 1, 1979. While I would have preferred an even larger reduction in the revenue floor to accommodate greater tax cuts, I am pleased that tax reductions of the kind and amount contemplated by the Roth-Kemp proposal can be accommodated, with slight modification, so that a permanent reduction of individual tax rates can be put in place. This is something the economy of the country so badly needs and I particularly commend my distinguished colleague, the ranking minority member of the Budget Committee, Senator HENRY BELLMON, for his excellent presentation of this issue in his "additional views" printed in the report accompanying this budget resolution.

This resolution is a significant improvement over the first resolution and

it does indicate that the congressional budget process can be effectively utilized to better control and limit Government spending and more effectively utilize the fiscal policy tools available to the Government. In addition it demonstrates that responsible, sensible action can be taken to reduce the tax burden on individuals and businesses while maintaining due regard for the annual deficit and the public debt.

Still, I feel that further improvements in the budget process are possible and should be pursued. Acting on that conviction, I introduced S. 3200 on June 13 of this year. That bill would have amended the Budget Act to limit total outlays provided in any budget resolution to 20 percent of the estimated GNP. To date, there has been no action on that bill.

Mr. President, I should like to have printed in the RECORD a letter of July 24, 1978, which I received from the Board of Governors of the Federal Reserve System, from William Miller, chairman.

This letter, I say to my friends from the Budget Committee and to the Senators on the floor, basically was addressing the question of whether or not, since he had been talking about inflation very, very strongly, in the last 8 or 10 weeks, he thought it might be a prudent approach to set a percent of GNP as a procedural and substantive part of the budget process in the U.S. Congress. Without going into too much detail, let me say that, generally, the letter concurs with that and suggests that it might be a very good mechanism. I ask unanimous consent, for further details as to his views, that the letter itself be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEDERAL RESERVE SYSTEM,
*Washington, D.C., July 24, 1978.*

Hon. PETE V. DOMENICI,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR DOMENICI: Thank you for your recent letter concerning the reduction of Federal spending as a share of GNP.

Many observers agree that a decline in the share of Federal spending over the next few years can assist in bringing about a much needed expansion of business capital accumulation. I am not aware, however, of an economic analysis that tries to specify precisely the level of Federal spending, relative to GNP, that would be optimal. Economists appear to have contributed only general ideas on this subject, by discussing why and how the share of the public sector has tended to change over time.

My own recommendation to reduce the percentage of GNP accounted for by Federal expenditures to 20 percent by 1982, represents a pragmatic, interim target. The proposed moderation of the Federal spending share is achievable, for example, if existing Federal spending programs were continued at current levels. This implies that new initiatives should be added only to the extent that savings can be made in other programs. Thus the President's FY 1979 budget projects a 20 percent Federal spending share in FY 1982, on the assumption of no additional spending initiatives beyond those listed in the 1979 budget.

Between the mid-50's and the mid-60's, when inflation rates were moderate, the Federal spending share ranged from 17 to 19½ percent. Since mid-1965 much higher levels have been reached, and lately the Federal share of total GNP has been over 22 percent. A return toward a more moderate Federal spending share would help to reduce the Federal deficit, thus relieving inflationary pressures. At the same time, the reduced budget demands on resources and credit would free resources and funds for capital investment and export development. This shift is needed to restore healthy productivity growth and to reduce the large deficits in our balance of trade.

I hope that these remarks are helpful. It was a pleasure to hear from you.

Sincerely,

BILL.

Mr. DOMENICI. Mr. President, let me say that there is a great deal of talk these days about inflation, about the excessive tax burdens that the American people are bearing, and about deficit spending. Those are all culminating, these days, in the very, very widespread and, I believe, appropriate discussions that the most significant problem in America today is inflation. I do commend our chairman (Mr. MUSKIE) and our ranking member (Mr. BELLMON) for their continuing concern throughout this process about the issue of inflation and what it does to the American people, whether they are on fixed income or producing men and women, or whether they are small businessmen. I commend them for their concern.

It appears to me that one thing is missing today when we speak about whether or not the House tax cut of $16 billion is correct, whether or not the Roth-Kemp approach is correct, or whether or not we need a capital gains change in our country. The thing that is missing is that we are not telling the American people how we intend to control the outlays, the annual expenditures of the Federal Government.

The budget process has obviously, for its short term of existence, been doing a rather good job of analyzing that and analyzing the economics of our country and trying desperately to bring that ever-expanding budget within control. I had intended today to offer an amendment that basically would—I intended to offer two. I shall discuss the first one quickly.

The first one would have asked the President of the United States to submit, next year and for the following 3 years, budgets to us as optional budgets that, in each year, would reduce the percentage of GNP that that budget represented until we got to 1982, when that budget would be no more than 20 percent of the GNP.

My second amendment, that I had intended to offer, was actually an amendment to the Budget Act which would set, as a part of our process, that next year and for the following 3 years, we would bring in an outlay budget annually that was, in each year, a diminishing percentage of the GNP from where it is now so that we got to 20 percent in 1982. That would have been part of the substantive law of our land. At that point, if we ever wanted to exceed that, it would require a two-third vote of each body to spend more annually than 20 percent of the gross national product.

We all know that if we do not do something like that, there is a move afoot in the country, coming right up from the grassroots, to impose these kinds of restrictions, by constitutional amendment or otherwise. I personally believe that 20 percent of GNP or thereabouts is an appropriate annual expenditure by the Federal Government, and that anything that exceeds that for any substantial period of time has such a debilitating effect on the basic economic growth and the basic system that produces growth that, sooner or later, we are going to arrive at this kind of conclusion. I thought that it would be best to do it now rather than to wait until later.

I clearly understand that both of these amendments, if offered to the second concurrent budget resolution, would have been subject to a point of order under the Budget Act itself, because, as a matter of fact, they are not contemplated as being part of the second concurrent resolution as the Budget Act is drawn.

I am correct, am I not, I ask the chairman and the ranking minority member, that had I submitted them, a point of order would have been raised against them?

Mr. MUSKIE. I believe so, Mr. President. I have not discussed it with the Parliamentarian, but I understand it has been discussed at the staff level and the same problem that arose with respect to the Chiles amendment would have plagued the Senator's amendment at this time.

Mr. DOMENICI. Mr. President, without offering these amendments as amendments, but merely as part of this discussion, I ask unanimous consent that the two amendments be printed in the RECORD as part of this dialog, without ever calling them up or submitting them as amendments.

There being no objection, the amendments were ordered to be printed in the RECORD, as follows:

On page 4, after line 26, add the following:

"SEC. 3. Notwithstanding any other provision of this Resolution, unless waived by a two-thirds vote in each House of Congress, the President is required to submit to Congress a budget for fiscal year 1980 in which outlays shall not exceed 21.5 percent of the gross national product of the United States as estimated for that fiscal year by the Office of Management and Budget; to submit to Congress a budget for fiscal year 1981 in which outlays shall not exceed 21 percent of the gross national product of the United States as estimated for that fiscal year by the Office of Management and Budget; to submit to Congress a budget for fiscal year 1982 and in every fiscal year thereafter a budget in which outlays shall not exceed 20 percent of the gross national product of the United States as estimated for that fiscal year by the Office of Management and Budget."

On page 4, after line 26, add the following:

"SEC. 3. Notwithstanding any other provision of this Resolution, unless waived by a two-thirds vote in each House of Congress, the level of total budget outlays in any Concurrent Resolution passed in accordance with this Act shall not in fiscal year 1979 exceed 22 percent of the gross national product of the United States as estimated for that fiscal year by the Congressional Budget Office; shall not in fiscal year 1980 exceed 21.5 percent of the gross national product of the United

States as estimated for that fiscal year by the Congressional Budget Office; shall not in fiscal year 1981 exceed 21 percent of the gross national product of the United States as estimated for that fiscal year by the Congressional Budget Office; and shall not in fiscal year 1982 or in any fiscal year thereafter exceed 20 percent of the gross national product of the United States as estimated for the fiscal year by the Congressional Budget Office."

Mr. DOMENICI. I ask our distinguished chairman of the committee (Mr. MUSKIE) and ranking representative (Mr. BELLMON) if, early next year, as part of hearings on the Budget Act itself—we are in a position, as I understand it, where the Budget Committee has jurisdiction to recommend changes to the Budget Act, and in this case, with this kind of amendment, we would have concurrent jurisdiction with the Committee on Governmental Affairs. Might I ask my two good friends from the Budget Committee whether they believe this approach deserves some hearing next year to see whether or not the Budget Committee would be amenable to recommending changes of this type to the Senate of the United States?

Mr. MUSKIE. I would, of course. The Senator may remember the hearings this winter on the first budget resolution. We were taking testimony from some of the distinguished economists of the country and I asked them whether or not there was a limit to which the government share—by that I meant all three levels of government—some limit above which the government's share of GNP ought not to rise if we were to maintain a viable private sector. At that time, I think the figure they used was 34 percent as a measure of the share of all levels of government in GNP. The Federal Government's share was about 22 percent at that time.

Mr. DOMENICI. Correct.

Mr. MUSKIE. They really had not—at least the witnesses we had that morning had not addressed themselves to that question. I think we ought to.

I think we ought to form some judgments about that.

With respect to the Federal Government's share, our present objective in our 5-year projections, as the Senator knows, is to get the Federal Government share of GNP below 20 percent. I think that is a valid projection and that we ought to seek to pursue it.

That will pose for this Congress and for future Congresses even more serious hard choices as to the role of the Federal Government with respect to some problems we can see lying ahead that we will be asked to do something about. The national health insurance is one of them, and there are others covered in that report.

So the Senator's amendments address themseves to some very valid questions, I am delighted that he has expressed his interest in those questions in this way on the floor of the Senate.

I assure him, if we can get enough members of the Budget Committee to share his concern and mine as to these questions, we will surely have hearings so that we may explore them.

What we will do with the results of those hearings or with the conclusions we may draw from those hearings is something we will have to consider later.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. MUSKIE. I yield the Senator another 5 minutes.

Mr. DOMENICI. I thank the Senator.

Mr. MUSKIE. But I would agree with him that we would need to think in terms of the role the people of this country would like the Federal Government to play in providing services, in influencing the state of the economy, in impacting upon their lives.

These are fundamental questions that are visible all across the political landscape from coast to coast and from border to border in this country.

We ought to address those questions in very specific terms: What would a limit to the Federal Government's role be, what an expansion of that role would mean, what the drain of the resources from the economy would mean in terms of the private sector.

These are all relevant questions that I do not think have been addressed adequately or comprehensively enough and, certainly, not sufficiently so that the average citizen in this country can focus on it and make a contribution to our thinking.

I think they are fundamental questions. I congratulate the Senator.

Mr. DOMENICI. I want to say to my good friend from Maine, as to the discussion we are having and the amendments that I was going to introduce and that I have instead made a part of the RECORD, I consider this to be a part of the maturing process of the Budget Act and budgeting.

As we well know, this, in and of itself, to come up with a first and second concurrent resolution, and the functions, and look at every one of them to see how much they are growing and going through all the torture we have been going through, and matching that up with macroeconomic policies has, indeed, been arduous.

I think after the few years we have been at it, for us to now be looking at this very fundamental issue, that is, can we have an enterprise system with private initiative, private investment, and its productivity which puts most of our people to work and does most of that which we want done in terms of growth and energizing in the country, have we arrived at a point in history when we must say that the Federal Government's share of it can be only a certain percent? I personally believe we have.

I am delighted the Senator has commented as he has and that that point is one we will consider very seriously next year and, specifically, in terms of whether or not we ought to make it part of the substantive budgetary process of this land.

I thank the Senator for his kind words.

Mr. MUSKIE. I thank my good friend from New Mexico.

Mr. BELLMON. Will the Senator yield 3 minutes?

Mr. MUSKIE. Yes, I yield.

Mr. BELLMON. Mr. President, I would like to respond briefly to the comments made by the distinguished Senator from New Mexico, who is one of the most valuable members of the Budget Committee and who probably works as hard at the budget process as any other Member.

In 1978, the budget sets out 22.2 percent of GNP as the spending goal. In 1979, we are down to 21.7 percent of the GNP, which is a slight move in the right direction.

When we look at the report of the Budget Committee, we project GNP at $3.444 billion by 1983 and outlays of $669 billion, which is 19.9 percent of GNP.

So we are moving, if we can follow our plan, in the right direction.

I note that about $54 billion of tax reduction or spending increase is required to meet the economic projections on which these out-year numbers were based. If all of that $54 billion margin went to spending, outlays would amount to 21.2 percent of GNP by 1983.

So we have to make a choice between tax cuts or more spending.

I am certainly in favor of holding down on the spending. We will have to hold the line on new spending programs to meet the 2-percent goal, as the out-year budget shows. But this challenge can be met.

Rather than to mandate the change, however, I fear that such a rule might actually encourage spending under certain circumstances. I am not certain that 20 percent, 19 percent, or even 15 percent is the appropriate percentage of GNP to pursue. I also fear that such a rule will unduly encourage off-budget financing and other ingenious budgetary schemes.

I think we have to build safeguards against this.

I have great sympathy for the intent of the Senator from New Mexico. I feel that, clearly, when we undertake to look at the Budget Act as it has been working, this is one matter that deserves top consideration.

I join our chairman in agreeing it should be examined in appropriate hearings. I would certainly like to work with the Senator from New Mexico to see that this idea gets full consideration.

Mr. DOMENICI. I thank my good friend from Oklahoma.

Mr. President, I ask for an additional moment. I just want to say to my good friend from Oklahoma, I wholeheartedly agree with the remarks he has made and with the projections and predictions he has discussed. I hope they become a reality without a limitation.

On the other hand, I think he would agree with me, there are many "ifs" in getting to the 19.5 percent of GNP that is hoped for as found on page 27 of our concurrent resolution and the report today.

I think we have a choice to make as to whether or not mandating it will make it easier for us to discipline ourselves and whether it is realistic in terms of economics in our country, or whether we are apt to get there by just having it as a goal. I hope it becomes a full debate.

I do not know whether 20 percent is right, or 19 percent is right. But I do

know it must continue to come down from where it is if we do want a vibrant private sector that can permit our country to grow enough to do all the things requested of the Budget Committee and the authorizing committees every year.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I know of only two requests to address the budget, one from the distinguished Senator from Maryland (Mr. MATHIAS), and I know Senator BYRD would like some time just before the vote.

I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I yield such time as he desires to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, the committee report on the second concurrent resolution on the budget for fiscal year 1979 is a comprehensive report, and I think it is a very good report. Many facts and figures and much information have been made available to the Senate through this report, and I believe that is very important.

On page 29 of the report is a very significant table. I will read one sentence from the committee report on page 29:

The table below presents the recommendations of the committee by mission and function for fiscal year 1979 and illustrates the impact of these decisions through fiscal year 1983.

I think it is very important that the Senate have that information, and I commend the committee for developing the facts which are being presented by this report.

This table on page 29 shows that the cost of Government will increase 50 percent during the next 5 years. For the current year, fiscal 1978, the budget authority is $500 billion. By fiscal year 1983, according to the report, budget authority will have increased to $767 billion.

Outlays for the current fiscal year—namely, fiscal year 1978—are $448 billion. By 1983, the outlays are projected to go to $669 billion.

So it is readily seen that the cost of Government during the 5-year period ending in 1983 will increase by 50 percent, according to the committee projections.

Mr. President, I ask unanimous consent to have this table on page 29 printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

*5-year spending totals*

[In billions of dollars]

| | Fiscal year | | | | | |
|---|---|---|---|---|---|---|
| | 1979 | 1980 | 1981 | 1982 | 1983 | Total 1979–83 |
| Budget authority | 557.7 | 607.0 | 660.4 | 715.1 | 767.9 | 3,308.3 |
| Outlays | 489.5 | 536.4 | 575.4 | 622.7 | 669.2 | 2,893.2 |

Mr. MUSKIE. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays at this time on the House concurrent resolution.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MUSKIE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PERCY. Mr. President, I am pleased to support the fiscal 1979 budget resolution, and I commend the Budget Committee for tapering the Federal budget to fit the changed economic circumstances we now find ourselves in.

At the time we passed the first budget resolution on April 26, the economy was in a far different position. Unemployment was dropping and fell to 6 percent that month, the lowest in 3½ years. Inflation, on the other hand, began to worsen after passage of the budget resolution and it is now possible we will finish out the year with double digit levels of inflation. George Meany, the president of the AFL-CIO, acknowledged in mid-May that inflation had replaced unemployment as the country's chief economic concern. Subsequent polls indicated that the majority of the American people share this concern.

The second resolution on the budget which we vote on today takes account of these changes. Federal spending has been reduced by $9.3 billion and the deficit by $8.6 billion, or 17 percent. What is more, the resolution cuts future Federal growth by $11.1 billion by triming budget authority—the real measure of Federal spending. This will certainly serve as a signal to Wall Street and our trading partners that we are sincere about reducing inflation and that the U.S. Senate is prepared to restrain the Federal budget to do so.

On the other side of the coin—revenues—the budget resolution permits the same size tax cut as the April resolution did. This is important because the economy is in great need of the invigorating tax cuts that will spur investment and give our middle income taxpayers a break. We all know that the tax code penalizes Americans whose wages keep up with inflation for it bucks them into higher tax brackets, thereby reducing their actual buying power. The Finance Committee is just now beginning its discussions of the 1978 tax bill and I will be working for investment incentives and individual tax cuts when that bill comes to the floor for consideration. Our budget resolution should leave room for these essential tax reductions.

Mr. President, I noted that several of my colleagues who serve on the Budget Committee have expressed concern that we could actually make the hard spending cuts that need to be made in the next several years. I agree with this sentiment and feel that there is no easy mechanism for our reconsideration of Federal programs and regulations. We need to pass a sunset law this year before we adjourn because it will give us the mechanism that will permit the timely consideration of Federal programs and the modification or elimination of those that are not functioning well.

I would also like to take this opportunity to urge my colleagues to support the legislation I have introduced to make our evaluation of Federal programs more frequent. Together with Representative WILLIAM STEIGER, who is the House sponsor, I have introduced the Government Accountability Act. Our bill requires the President to submit a biannual report to Congress on the management of all the programs administered by the executive branch. The President would rank Federal programs as to their effectiveness within each department, in effect issuing a "report card." This ranking would be based on the clarity of the program's statutory objectives, its design, and the quality of its management.

Our bill will also require the Director of the Office of Management and Budget—OMB—to identify programs that have seemingly contradictory aims or inconsistencies. Those programs that cannot measure up will bear the full weight of congressional scrutiny and may be modified or scrapped.

Mr. President, the Government Accountability Act would not directly affect the budget process, but, like the Budget Act, it would move the Federal Government toward a more manageable and responsive role. It is the type of Government the American people want and deserve. Just as the budget resolution we vote on today shows that Congress and the Federal Government can modify spending in light of new economic conditions, the biannual management report of the President will give us the tools to affect long-range changes in Federal spending.

Both Representative STEIGER and I are indebted to former Ambassador Laurence H. Silberman who first suggested this good idea.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the Washington Star on August 30, explaining more fully the concept behind our bill.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LET'S RANK GOVERNMENT EFFECTIVENESS

(By Michael Novak)

I wish Democrats had thought of this idea first: a shrewd technique to make big government accountable. "Rank the bastards!" might be its battle cry.

My colleague at the American Enterprise Institute, former Ambassador Laurence H. Silberman, spelled out the idea in the new Republican intellectual journal Commonsense (310 First St. N.E., Washington, D.C. 20003). Each year the president of the United States would be required to report to Congress on the rank of every program in each department of the executive branch according to its effectiveness. Then the Congress—and the people—would get an idea of the least effective programs in each department.

Every single program would be ranked. Each would be rated in comparison to other programs within its own department. Good programs would get due notice. So would poor ones. Silberman proposes three mandatory criteria for distinguishing them: (a) coherence of statutory objectives; (b) design of the program; (c) quality of management. The ranking system would give government programs something like the major-league baseball standing: a mandatory finish line with clear winners and losers each year.

The director of the Office of Management and Budget would be required to identify programs within the government that have contradictory aims (i.e., encouraging tobacco growers but discouraging smokers). The OMB director would be entitled to propose to Congress the elimination of ineffective programs. Good managers might welcome that opportunity.

Would this particular presidential report be buried from sight? Both journalists and the public would love it. Would budget-wise administrators place the most popular programs at the lowest ranking, to protect them? Lobbies for popular programs would almost certainly begin fighting for a high ranking months before the report was due.

Some ineffective but popular programs would always be at the bottom and some of the worst would be sure to be among them. Besides, the president would have to supply a rationale for each ranking. He would not want to appear to be naive.

Some administrators might try to hide poor programs within larger categories. But astute administrators would have an incentive to break programs down into smaller measurable units. In order to keep their empires as large as possible, some would sacrifice only smaller units at the bottom. Year by year, the worst of these could be pruned away.

Actually, Silberman notes, good managers of federal departments have been doing something like this for years. Faced with tighter budgets, they informally rank their programs when they allocate scarce resources. A new law would force them to make these rankings formal, analytically precise and public.

How can one compare apples and oranges? When you have a limited amount of money for fruit, you have to. A Government Accountability Act would force managers to compare real programs with real programs, on the basis of clear technical analysis. Over the years, evaluative techniques will become sharper. For the only way to diminish controversy will be to develop clear, objective, communicable criteria.

Recall that when students in college used to be ranked, each single one received a relative position. Nowadays, when students are not ranked, "grade inflation" occurs; the bottom half moves upward in an anonymous mass. In the old days, even if all passed, each knew where he stood. Ranking improves techniques of evaluation.

Most subcabinet officers today stay in one position less than two years. To make a name for themselves, some find an incentive to launch a "new" program. No one notices or rewards tough managerial skills (which usually provoke internal dissension).

Under a ranking system, new appointees would face the threat of seeing their program slip lower, compared to previous years, and some would hit bottom. Standards of excellence would change, as incentives changed.

In the private sector, competition helps. A ranking system will make the public sector competitive.

Leaders in the House and Senate have recently proposed a Government Accountability Act based on Ambassador Silberman's shrewd techniques. Democrats, who favor good government as well as big government, should favor this act for the best of populist reasons.

It restores a piece of invisible government to visibility. It will help presidents to get a handle on the monster they manage.

Mr. LONG. Mr. President, a little over a month ago, the chairman of the Senate Budget Committee wrote me a letter asking for the advice of the Finance Committee on those aspects of the second budget resolution which affect Finance Committee jurisdiction. After discussing this request with the committee, I appeared before the Budget Committee and also wrote a letter to Chairman MUSKIE. I am pleased to see that, in setting its recommended revenue levels in the second budget resolution, the Budget Committee has come quite close to meeting the recommendations of the Finance Committee. We had recommended maintaining the allowance in the first resolution for tax cuts totaling $24.7 billion in the upcoming fiscal year. The Budget Committee has recommended an allowance for tax cuts totaling $23.4 billion.

I am, however, concerned over the fact that a much smaller total has been allowed for in the House-passed version of the second budget resolution. The House resolution would permit total tax cuts of only $19.9 billion—nearly $5 billion less than was allowed for in the first budget resolution adopted less than 4 months ago. I believe that first resolution represents a commitment on the part of Congress to provide taxpayers a degree of relief which compensates at least for this year's inflation plus the increases which are necessary in social security taxes. That commitment can be accomplished within the revenue totals recommended by the Senate Budget Committee. I am concerned whether that commitment can be met if the conference on the second budget resolution provides for a smaller tax cut than the Senate Budget Committee has recommended.

The judgment of Congress as expressed in the first resolution was that revenues should be reduced $24.7 billion in legislation this year. The Senate Budget Committee now recommends a tax reduction of $23.4 billion. The much lower total included in the House version of the second budget resolution is based on the tax cuts provided in the House-passed tax bill. I am certain that the Senate will suggest ways of improving on the House bill. That bill is inadequate. For many taxpayers at virtually all income levels, it does not even offset the impact of 1 year's inflation and the increases which are taking place in social security taxes.

For these reasons, I believe the revenue loss recommended by the Senate Budget Committee's proposed second resolution is a minimal one. I strongly urge that the Senate conferees resist any further reduction in the recommended tax cuts.

● Mr. MAGNUSON. Mr. President, I submit for the RECORD an editorial entitled "Budget Balancing Made Easy," which was published in the Wall Street Journal of Friday, September 1, 1978.

The editorial follows:

BUDGET BALANCING MADE EASY

When you ask around Washington why Congress doesn't stop inflation by cutting federal spending, you are apt to hear a lot of defeatist talk abount "uncontrollable" items and the like.

This, of course, is utter nonsense. Every dollar of the $500 billion the federal govenment spends is controllable. Indeed, Congress is charged explicitly by the Constitution with controlling the budget. What people really mean when they say "uncontrollable" is what Congress has made promises to a lot of people and finds it politically inconvenient to withdraw them.

Hence, we have chronic high inflation, public confidence in Congress is at a dangerously low ebb, and there is a strong grassroots movement to take matters out of the hands of Congressmen. In 22 states, the legislatures have passed resolutions calling for a constitutional convention for the purpose of making a balanced federal budget a constitutional requirement. If 34 states so vote, the Constitution requires Congress to call such a convention.

We're not saying that such a historic event will happen, but if it should it would be a colossal vote of no confidence in the United States Congress. The people would be saying that they have finally decided that Congress can't be trusted with money.

To avoid such disgrace, we would urge Congress to adopt its own version of zero-based budgeting. Instead of asking where to cut spending, it should start asking what federal spending is of any value to the nation. It's surprising how simple the problem then becomes.

Of major federal activities, national defense and foreign policy seem to us to be the only truly essential ones. The private sector or state and local government could do others, in many cases far more economically. Indeed, before Washington became the great expansionary colossus it is today, most such activities—welfare, education, transportation, etc.—were so conducted, with generally favorable results.

For the sake of argument, however, we will add several other things the federal government can perhaps justify, even if it doesn't always do them well. Social Security in its simplest form, as an income transfer to the aged and before it became an uncontrollable grab bag, had merit. The federal government also has had good success in supporting broad research—in agriculture, medicine, nuclear development, space exploration and the like. It probably would be imprudent to tinker with that.

We would also not deny Washington the task of gathering national statistics. And a case can be made for a Federal Reserve System, although England fared quite nicely for centuries with a private central bank.

Beyond that, the marginal utility of Washington drops sharply. With a few exceptions,

such as food inspection and the air safety operations of the Federal Aviation Administration, we doubt that the public would notice the demise of most federal regulatory agencies, except through price declines and an abundance of lawyers looking for jobs. There would be a sharp and sudden tax saving from shutting down the Department of Agriculture and transferring any useful research they do to some department for general research that would also take in NASA, etc.

At the Department of Transportation, Amtrak and Conrail should be auctioned to the highest bidders, who would then retain only those parts that have genuine usefulness. There would be huge tax savings. Urban transit should be left up to the cities, where it belongs, forcing them to find efficient means of moving commuters. Similarly, public housing can be safely left to the cities and states, which are in a better position than Washington to measure true needs.

With the cuts we have in mind, we could imagine a federal budget somewhere close to half the size of the present budget. That would leave room for a sharp cut in taxes, some of which would make room for states to finance a loss of grants from Washington. There would also be room in that budget cut to reduce the federal debt, all of which would lower inflation and interest rates generally and certainly reverse the alarming rise in interest costs the federal government pays.

What we've sketched here will be regarded in Washington as an end-of-summer's dream ignorant of the political realities of the Potomac, where the combined lobbies of special interests protect all the domains we have so casually demolished. We would not deny it. Similarly, the possibility of that constitutional convention looks pretty remote too, at the moment. But strange things are happening. A few years ago, who would have dreamed that a curmudgeon named Howard Jarvis would turn the whole state of California on its ear? We're simply offering our advice early, in case it's needed in a hurry.●

● Mr. JAVITS. Mr. President, although the conferees have not yet convened on the education amendments, H.R. 15, both the House- and Senate-passed versions include concentration grants beginning in fiscal year 1979. The anticipated enactment of H.R. 15 within the next 2 months would mean that the first fiscal year 1979 supplemental appropriation could include the $400 million for concentration grants, as requested by the President. For this reason, it is important that this authority be included in the budget resolution.

I am grateful that the Budget Committee has decided to support this program.

Mr. President, in the same mission, No. 501, I am concerned that the amounts available for the regular ESEA I and impact aid programs are insufficient. I have examined the actions of the House and the Senate Appropriations Committee on H.R. 12929, the HEW—Labor Appropriations bill for fiscal year 1979. This bill deals with title I and impact aid in their present form, because it covers present law only and not the new provisions like concentration grants.

Let us look first at the title I regular program. The President requested $2,978.8 million; and the House passed level increases this amount by $100 million to $3,078.8 million. The Senate Appropriations Committee recommends only $2,889.8 million, a reduction of $189 million from the House level and $89 million from the President's request.

In impact aid, the President requested $811.4 million for the Public Law 874 program. This represents full funding for tier two. This request was to maintain the present program for fiscal year 1979, and was made in the hope that authorizing bill changes would be made effective in 1980 to reduce these levels. The House level is the same amount as the President's request. However, the Senate Appropriations Committee has recommended a reduction of $54.3 million from the impact aid program. After staff consultation with the Budget Committee, I am informed that function 500 includes a $100 million cut for impact aid, and allows only $711.4 million.

In summary, the elementary and secondary education mission includes a reduction of $189 million from the President's budget request; which is $289 million below the House passed appropriations bill and $54.3 million below the Senate Appropriations Committee recommendation.

Mr. President, I do not know what the action the Senate will take when it considers H.R. 12929. But I would be opposed to a budget resolution which reduces the President's request for education by almost $200 million without adequate discussion and justification. If previous experience is a guide, the final version of H.R. 12929 will be approximately midway between the House and Senate levels. In this case, mission 501 may be understated by over $100 million. As the budget resolution is stated in billions, even this huge amount is only calculated by a 0.1 difference. Therefore, I do not intend to offer an amendment to the budget resolution, because I believe that the overall size of function 500 and its many programs will allow flexibility to take care of this situation. The proposed function 500 ceiling of $31.5 billion budget authority and $30.2 billion outlays for fiscal year 1979 should provide room for the needs of elementary and secondary education.

Mr. President, my purpose in rising is to point out that these assumptions used by the Budget Committee may prove incorrect. The Budget Committee has chosen to base its calculations on the levels in the Senate Appropriations Committee recommended version of H.R. 12929. I have no quarrel with this procedure because some such assumption must be made in order to construct a budget resolution. And if these assumptions are not correct, we should not attribute any "budget busting" to elementary and secondary education. It is certain that the Senate strongly supports these programs. On August 24, the Senate voted 85 to 7 on final passage of the Education Amendments of 1978 which reauthorize them. I want my colleagues to be aware of the spending implications of the second budget resolution for these vital programs in support of elementary and secondary education.●

Mr. MUSKIE. Mr. President, so far as I know, there are no other amendments or requests for time.

I yield back the remainder of my time.

Mr. BELLMON. I yield back the remainder of my time.

Mr. MUSKIE. Mr. President, I ask that the Committee on the Budget be discharged from further consideration of House Concurrent Resolution 683 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution will be stated by title.

The second assistant legislative clerk read as follows:

A concurrent resolution (House Concurrent Resolution 683) revising the congressional budget for the U.S. Government for the fiscal year 1979.

Mr. MUSKIE. Mr. President, I ask unanimous consent to strike all after the resolving clause and insert in lieu thereof the language of Senate Concurrent Resolution 104, as reported.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is all time yielded back on House Concurrent Resolution 683?

Mr. MUSKIE. I yield back my time.

Mr. BELLMON. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota Mr. ANDERSON), the Senator from North Dakota (Mr. BURDICK), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Tennessee (Mr. SASSER), the Senator from Illinois (Mr. STEVENSON) and the Senator from Alabama (Mrs. ALLEN) are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I also announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. CURTIS. I announce that the Senator from Tennessee (Mr BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Vermont (Mr. STAFFORD),

the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The result was announced—yeas 56, nays 18, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—56

| | | |
|---|---|---|
| Bayh | Gravel | Morgan |
| Bellmon | Hart | Moynihan |
| Bentsen | Hathaway | Muskie |
| Biden | Heinz | Nelson |
| Bumpers | Hodges | Packwood |
| Byrd, Robert C. | Hollings | Percy |
| Cannon | Huddleston | Randolph |
| Case | Inouye | Ribicoff |
| Chiles | Jackson | Riegle |
| Church | Javits | Sarbanes |
| Clark | Leahy | Schmitt |
| Cranston | Long | Schweiker |
| Culver | Lugar | Sparkman |
| Dole | Magnuson | Stennis |
| Durkin | Mathias | Stone |
| Eagleton | Matsunaga | Weicker |
| Ford | McGovern | Williams |
| Glenn | Melcher | Young |
| Goldwater | Metzenbaum | |

NAYS—18

| | | |
|---|---|---|
| Bartlett | Garn | Scott |
| Byrd, Harry F., Jr. | Griffin | Talmadge |
| | Hatch | Thurmond |
| Curtis | Hayakawa | Wallop |
| Danforth | Nunn | Zorinsky |
| DeConcini | Proxmire | |
| Domenici | Roth | |

NOT VOTING—26

| | | |
|---|---|---|
| Abourezk | Hatfield, Mark O. | McIntyre |
| Allen | | Pearson |
| Anderson | Hatfield, Paul G. | Pell |
| Baker | | Sasser |
| Brooke | Helms | Stafford |
| Burdick | Humphrey | Stevens |
| Chafee | Johnston | Stevenson |
| Eastland | Kennedy | Tower |
| Hansen | Laxalt | |
| Haskell | McClure | |

So the concurrent resolution (H. Con. Res. 683), as amended, was agreed to.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BELLMON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Senate Concurrent Resolution 104 be indefinitely postponed.

The PRESIDING OFFICER (Mr. WILLIAMS). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with statements limited therein to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EXPULSION OF AMERICAN NEWSMAN DANIEL DROOZ FROM SOUTH AFRICA

Mr. ROTH. Mr. President, on August 31, the Government of South Africa ordered an American newsman, Daniel Drooz, out of South Africa. Mr. Drooz, a constituent of mine from Wilmington, had been reprinting as a special correspondent for the Chicago Sun-Times from Johannesburg for the past 2 years.

The South African action came despite appeals from the Delaware delegation, Department of State, and the Chicago Sun-Times for reconsideration. During the past several weeks, I have spoken and corresponded with the South African Ambassador and responsible State Department officials in an effort to allow Mr. Drooz to be permitted to remain in South Africa. The State Department interceded in Pretoria and with the South African Embassy here in Washington on Mr. Drooz' behalf.

I am deeply disappointed that the South African Government chose to ignore our warnings about the very harmful effects the expulsion order would have on United States-South African relations. The South African Government clearly does not understand the great importance the American people attach to the free flow of information.

Unlike the United States, South Africa does not have a strong tradition of freedom of the press. It was only very recently, I understand, that foreign newspaper correspondents were permitted to reside in South Africa, but the South African Government has attempted to maintain a tight leash on our correspondents by requiring very frequent renewal of work and residency permits, with the clear implication that renewal would not be forthcoming for those whose articles were disliked by the Government.

While a similar threat was made earlier this year against another American correspondent and Mr. Drooz was threatened with expulsion last year, Mr. Drooz' expulsion last week marks the first time in this decade that this sanction has actually been used against an American correspondent. As such, it represents a very important and dangerous precedent and should be vigorously protested.

I personally have little doubt that American correspondents in South Africa will continue to write the news as they see it, regardless of Government threats or harassment. Nevertheless, I believe we should make our displeasure abundantly clear to South Africa. Certainly, the expulsion of Mr. Drooz does nothing to enhance South Africa's image in the United States.

Mr. President, I ask unanimous consent that articles from the Wilmington Morning News and Chicago Sun-Times regarding Mr. Drooz be printed at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Wilmington Morning News, Aug. 31, 1978]

REPORTER, EX-DELAWAREAN, IS EXPELLED FROM S. AFRICA

The first American newsman to be expelled from South Africa since the early 1960s was expected to arrive today at his parents' home in Greenville.

Daniel B. Drooz, 33, son of Rabbi and Mrs. Herbert E. Drooz of Greenville, had been working as a special correspondent for the Chicago Sun-Times in Johannesburg until his expulsion this week.

The South African government told Sen. William V. Roth Jr., R-Del., that Drooz was being kicked out because the Argus Africa News Service had offered him a job and "this would deprive a South African of employment," Drooz wrote in his last dispatch.

Drooz, who charged the South African government with harassing him for more than a year, called the government's reasoning "semantic gibberish."

He said the job offer would not have deprived a South African of work because "their passports are not valid in most of black Africa."

Drooz's father, who is rabbi of Temple Beth Emeth, said yesterday, "I'm very proud of our son because he has been reporting the news as he saw it.

"He's coming home . . . with his wife, our stepgrandson and four dogs," he added.

He said that when his son was getting ready to be married in South Africa last summer, he had already received notice to leave the country. The expulsion order was delayed, however.

The elder Drooz also said Roth and Sen. Joseph R. Biden Jr., D-Del., had tried in vain to dissuade the South African government. "They were wonderful, Mr. Roth and Mr. Biden, but they could not do anything," he said.

The Sun-Times protested to South African officials that the expulsion "will be widely viewed as repressive action to reduce access to information about South Africa."

Daniel Drooz began his South African assignment in September 1976, first with the Chicago Daily News and then, after that paper folded, with the Sun-Times.

He is a graduate of P. S. du Pont High School, where he was one of the state's top orators in 1962. He went on to Antioch College and the University of Michigan, where he received a master's degree in journalism.

In 1977, as a correspondent for the Toronto Star, he won the National Newspaper Award of Canada for his coverage of the Israeli raid on Entebee, Uganda.

Drooz has reported extensively from Israel and covered wars in Israel and Cyprus. He was wounded by shell fragments in 1974 while covering the Turkish-Greek war in Cyprus for the London Daily Times.

[From the Chicago Sun-Times, Aug. 30, 1978]

S. AFRICA EXPELS REPORTER FOR SUN-TIMES

Daniel B. Drooz, special correspondent for The Sun-Times in South Africa, has been expelled from that country despite repeated protests by Sun-Times editors. Drooz left South Africa Wednesday.

The protests and requests for reconsideration of the expulsion order were made in recent weeks by Editor in Chief James Hoge and Editor Ralph Otwell.

But South African authorities have remained unyielding.

Otwell, in an Aug. 16 cable to South African Foreign Minister Roelof F. Botha in Pretoria, said:

"The Chicago Sun-Times urges prompt reconsideration of the nonrenewal of the work permit for its correspondent, Daniel Drooz. As we have conveyed earlier in messages to Ambassador (Donald B.) Sole and Minister of Information (Connie) Mulder, the notice to Mr. Drooz to leave South Africa by Sept. 1 will be widely viewed as repressive action to reduce access to information about South Africa. Further, we believe expulsion of Mr. Drooz is inimical to interests of your country and to relations with the U.S.A. Prompt action to reverse the ouster decision is essential to all."

Sun-Times editors also alerted the U.S.

State Department to the implications of the expulsion order.

In his last dispatch from Johannesburg, Drooz wrote that the reason given by the South African government for his expulsion—the first of an American correspondent since the early 1960s—was "a distortion of reality."

The writer said U.S. Sen. William V. Roth Jr. (R-Del.) was officially notified by the South African government that Drooz was being kicked out because the Argus Africa News Service of South Africa had offered him a job as a reporter traveling in black Africa and "that this would deprive a South African of employment."

As a result, the government said through Ambassador Sole, Drooz' work permit for The Sun-Times was not being renewed.

Drooz wrote that, in fact, no South African would have been deprived of a job if he had taken the position with Argus because no South African could have held the post. "Their passports are not valid in most of black Africa," the correspondent noted. Drooz quoted a South African attorney as calling the government's reasoning in the matter "semantic gibberish."

The newsman said further that his problems with official South Africa dated to a year ago, when he received an expulsion order from former Information Sec. Eschel Rhoodie, who had accused him of being a spy.

"He wouldn't say for whom," Drooz wrote. "But he said it, and one of his aides said it in front of several witnesses, including reporters for the Christian Science Monitor, the New York Times and the British Broadcasting Corp.

"When confronted with his remarks," the newsman continued, "Rhoodie, who subsequently was 'retired' for maladministration, wrote that it was all malicious lies."

That original expulsion order was withdrawn, but his problems with the South African government continued. Along with correspondents for Newsweek magazine and the West German news magazine Der Spiegel, Drooz was denied accreditation as a correspondent, "kept on three-month extensions of work permits for the next year and harassed every time they came up for renewal."

Drooz said he had reason to believe his mail and telephone were under official surveillance before the decision was made to throw him out of the country.

Drooz, 33, has reported from South Africa for The Sun-Times as a special correspondent since March and earlier served in the same capacity for The Chicago Daily News since September, 1976.

A seasoned foreign correspondent, he has reported extensively from Israel and has covered wars in both Israel and Cyprus. He was wounded by shell fragments in 1974 while covering the Cyprus action for the London Daily Times.

Drooz is a native of Wilmington, Del., the son of Reform Rabbi Herbert Drooz.

Reporter Drooz is a graduate of Antioch College, Yellow Springs, Ohio, and holds a master's degree in communications from the University of Michigan. His earlier journalistic background includes assignments with the Associated Press in New York and the Voice of America in Washington.

## NATIONAL HISPANIC HERITAGE WEEK

Mr. PERCY. Mr. President, President Carter has declared the week of September 10–16 as National Hispanic Heritage Week. Hearings will be conducted across the Nation by executive branch officials to hear the views of Hispanic people on problems faced within their communities.

I am very pleased that one of these hearings is scheduled to be held in Chicago on September 12 at the Latino Institute. I intend to review the testimony presented at this hearing and also to cooperate with the administration in every way possible to alleviate the serious problems of unemployment, housing, health, and discrimination, which currently confront the Hispanic community.

National Hispanic Heritage Week is an important step in beginning to understand and help the Hispanic community. I commend President Carter in this effort. However, as of today, he has yet to appoint a Hispanic Commissioner to the Equal Employment Opportunity Commission. I urge the President, as I have in the past, to fill this important position promptly. What better way to honor National Hispanic Heritage Week than to appoint a Hispanic Commissioner to the EEOC.

## MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of the Senate of August 25, 1978, the Secretary of the Senate, on August 28 and September 1, 1978, received messages from the President of the United States.

## EXECUTIVE MESSAGES REFERRED

Under authority of the order of the Senate of August 25, 1978, messages from the President of the United States submitting sundry nominations, received on August 28 and September 1, 1978, were referred to the appropriate committees.

(For nominations received on August 28 and September 1, 1978, see the end of Senate proceedings for today.)

## FEDERAL PAY COMPARABILITY ALTERNATIVE PLAN—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 213

Under authority of the order of the Senate of August 25, 1978, the Secretary of the Senate on August 31, 1978, received the following message from the President of the United States, which was referred to the Committee on Governmental Affairs:

*To the Congress of the United States:*

Under the Pay Comparability Act of 1970, an adjustment in Federal white collar pay will be required on October 1.

I have reviewed the report of my Pay Agent and the recommendations of the Advisory Committee on Federal Pay relative to a pay adjustment. Their findings indicate that an average 8.4 percent increase, at a cost of $4.5 billion, will be required to achieve comparability with the private sector.

I support comparability in pay between the Federal Government and the private sector. It is essential to ensure that the Federal Government continues to attract and retain qualified and dedicated employees. The Federal Government's civilian and military personnel have given the country loyal and competent service, and I would normally have no hesitancy in ordering a pay raise achieving comparability. However, pay comparability must be viewed in the light of the overall economic situation now facing our country. For that reason, my decision about pay comparability this year is especially difficult.

Today the greatest single threat to our national economic growth and the jobs and prosperity of our people is inflation. It persists because all of us—business and labor, farmers and consumers—are caught on a treadmill that none of us can stop alone. Each group desires to raise its income to meet rising costs; eventually we all lose the inflation battle together.

To curb the wage and price spiral, I proposed last spring that in each industry and sector of the economy, wage increases this year be held significantly below the average increases for the two preceding years. The Federal Government should set an example in this effort. A Federal white collar civilian and military increase of 5.5 percent would be consistent with this guideline.

The pay act gives me the authority to propose an alternate pay adjustment which I consider appropriate in the light of, "economic conditions affecting the general welfare." Therefore I am submitting to the Congress an alternative plan for a 5.5 percent pay increase. This will allow the Federal Government to set an example for labor and industry and lead the fight against inflation by example, and not just words alone.

Accordingly, I strongly urge the Congress to support the alternative recommendation which is attached.

JIMMY CARTER.

THE WHITE HOUSE, *August 31, 1978.*

## REPORT ON PROGRESS MADE TOWARD A NEGOTIATED SETTLEMENT ON CYPRUS—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 214

Under authority of the order of the Senate of August 25, 1978, the Secretary of the Senate on September 1, 1978, received the following message from the President of the United States, which was referred to the Committee on Foreign Relations:

*To the Congress of the United States:*

As required by Public Law 94–104, this report describes the progress that has been made towards a negotiated settlement on Cyprus in the past sixty days.

The last report described proposals submitted by the Turkish Cypriots on April 13, and noted several expressions of flexibility subsequently made by the Turkish side. In July there were further encouraging signs. Both the Government of Cyprus and the Turkish Cypriot leadership put forward fresh and promising proposals for the resettlement of the important commercial and resort city of Varosha (New Famagusta). Varosha has

been deserted and under Turkish control since the 1974 fighting. Significantly, both sides foresee that progress on this issue will lead to a resumption of the intercommunal negotiations.

We have urged the two Cypriot parties to give these proposals careful consideration, and plan to continue to encourage a satisfactory compromise on Varosha, one we hope will lead them to reconvene the intercommunal negotiations under the aegis of the Secretary General of the United Nations.

Both the Congress and the Administration feel that the United States 1) should continue to play an active role in seeking a just and lasting Cyprus settlement, and 2) should continue to support the efforts of Secretary General Waldheim. On August 14, the conference committee on the Security Assistance Bill approved the language to end the Turkish Arms Embargo. I consider this action appropriate and necessary to our continuing impartial and constructive role.

JIMMY CARTER.

THE WHITE HOUSE, *September 1, 1978.*

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## PRESIDENTIAL APPROVALS

A message from the President of the United States reported that on August 28, 1978, he had approved and signed the following acts:

S. 405. An act for the relief of Chong Cha Williams; and

S. 1335. An act for the relief of Shin Myong Yo Furdom, also known as Myong Yo Sin.

## MESSAGES FROM THE HOUSE

### ENROLLED BILLS SIGNED

At 1:01 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 9. An act to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes;

S. 1633. An act to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes;

S. 2543. An act to amend title 39 of the United States Code to provide better enforcement procedures for preventing fraudulent solicitations through the mails;

H.R. 185. An act to amend section 2632 of title 10, United States Code, to provide the Secretary of the department in which the Coast Guard is operating with the authority to transport Coast Guard employees to and from certain places of employment;

H.R. 2931. An act to amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State and local laws which are inconsistent with such contracts, and for other purposes;

H.R. 2952. An act for the relief of M/S. William E. Boone, U.S. Army, retired;

H.R. 3532. An act to amend chapter 639 of title 10, United States Code, to enable the Secretary of the Navy to change the name of a publication of the Naval Observatory providing data for navigators and astronomers;

H.R. 7161. An act to amend title 10, United States Code, to allow nationals, as well as citizens, of the United States to participate in the Junior Reserve Officers' Training Corps program;

H.R. 7162. An act for the relief of Stephanie Johnson;

H.R. 8342. An act to amend title 5, United States Code, to provide for the application of local withholding taxes to Federal employees who are residents of such locality;

H.R. 8397. An act to provide that a certain tract of land in Pinal County, Ariz., held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation;

H.R. 8471. An act to authorize the Governor of the State of Wyoming to exhibit the nameplate, ship's bell, and silver service of the U.S. Ship *Wyoming* without restriction as to the place of such exhibition;

H.R. 10878. An act to extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, and for other purposes;

H.R. 10899. An act to provide for Federal regulation of participation by foreign banks in domestic financial markets;

H.R. 12106. An act to amend the Independent Safety Board Act of 1974 to authorize additional appropriations;

H.R. 12240. An act to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, the Central Intelligence Agency retirement and disability system, and for other purposes;

H.R. 12602. An act to authorize certain construction at military installations for fiscal year 1979, and for other purposes;

H.R. 12927. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 13235. An act for the relief of James Thomas Lantz, Jr., David D. Bulkley, and Arthur J. Abshire;

H.R. 13467. An act making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes;

H.R. 13468. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1979, and for other purposes;

H.J. Res. 773. A joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning September 17, 1978, as "National Port Week"; and

H.J. Res. 1014. A joint resolution designating April 28 and 29 of 1979 as "Days of Remembrance of Victims of the Holocaust."

The enrolled bills and joint resolutions were subsequently signed by the Acting President pro tempore (Mr. HODGES).

At 5:28 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to H.R. 15, an act to extend and amend expiring elementary and secondary education programs, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. PERKINS, Mr. FORD of Michigan, Mr. ANDREWS of North Carolina, Mr. BLOUIN, Mr. SIMON, Mr. ZEFERETTI, Mr. MOTTL, Mr. MURPHY of PENNSYLVANIA, Mr. LE FANTE, Mr. WEISS, Mr. HEFTEL, Mr. CORRADA, Mr. KILDEE, Mr. MILLER of California, Mr. QUIE, Mr. BUCHANAN, Mr. GOODLING, Mr. PURSELL, Mr. ERLENBORN, and Mr. JEFFORDS were appointed managers of the conference on the part of the House.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 103. A concurrent resolution to correct the enrollment of H.R. 6669.

## ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 6, 1978, he presented to the President of the United States the following enrolled bills:

S. 9. An act to establish a policy for the management of oil and natural gas in the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes;

S. 1633. An act to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes; and

S. 2543. An act to amend title 39 of the United States Code to provide better enforcement procedures for preventing fraudulent solicitations through the mails.

## REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Under the authority of the order of Friday, August 25, 1978, the following reports of committees were submitted on August 31, 1978, during the recess of the Senate:

By Mr. LONG, from the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works, jointly, with amendments:

S. 2995. A bill to facilitate the implementation of section 703 of the Railroad Revitalization and Regulatory Reform Act of 1976, to provide for the conversion of a part of the National Visitor Center to railroad passenger service, and for other purposes (Rept. No. 95–1172).

By Mr. CULVER, from the Committee on Environment and Public Works, with amendments:

S. 691. A bill to provide for the preservation and enhancement of critical habitat for migratory waterfowl and other wetlands-dependent migratory birds of the Pacific flyway in the grasslands area of the San Jo-

aquin Valley, California (Rept. No. 95–1173); and

H.R. 8394. An act to provide for payments to local governments based upon the acreage of the National Wildlife Refuge System which is within their boundaries (together with additional views) (Rept. No. 95–1174).

By Mr. CULVER, from the Committee on Environment and Public Works, without amendment:

H.R. 2329. An act to improve the administration of fish and wildlife programs, and for other purposes (Rept. No. 95–1175).

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. RIBICOFF, from the Committee on Governmental Affairs, without amendment:

H.R. 13087. An act to authorize the issuance of substitute Treasury checks without undertakings of indemnity, except as the Secretary of the Treasury may require (Rept. No. 95–1176).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, without amendment:

S. Res. 551. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2995. Referred to the Committee on the Budget.

By Mr. NELSON, from the Committee on Human Resources and (for Mr. PROXMIRE) from the Committee on Banking, Housing, and Urban Affairs, each with an amendment:

S. 50. A bill to establish and translate into practical reality the right of all adult Americans able, willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to combine full employment, production, and purchasing power goals with proper attention to balanced growth and national priorities; to mandate such national economic policies and programs as are necessary to achieve full employment, production, and purchasing power; to restrain inflation; and to provide explicit machinery for the development and implementation of such economic policies and programs, and for other purposes (together with additional views) (Rept. No. 95–1177).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HUDDLESTON:

S. 3482. A bill to assure fair practices in agricultural bargaining; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATHAWAY:

S. 3483. A bill to amend the Fishery Conservation and Management Act of 1976 in order to assist and protect the domestic fishing industry; to the Committee on Commerce, Science, and Transportation.

By Mr. CRANSTON (for himself and Mr. HAYAKAWA):

S. 3484. A bill to provide for the conveyance of certain public lands in San Bernardino County, Calif., to the town of Red Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HUDDLESTON:

S. 3482. A bill to assure fair practices in agricultural bargaining; to the Committee on Agriculture, Nutrition, and Forestry.

### NATIONAL AGRICULTURAL BARGAINING ACT OF 1978

● Mr. HUDDLESTON. Mr. President, important changes have taken place in the food and fiber production, processing, and distribution industries in recent years There is little question that traditional methods are rapidly giving way to new technology.

Changes in market structure have accompanied changes in technology. Firms throughout the food and fiber industries are becoming fewer, larger, and more specialized and are requiring larger amounts of capital. The traditional terminal and auction markets are giving way to direct buying, vertical integration, forward contracts, and other coordinating arrangements.

Processors and retailers are more specific in their requirements for products regarding quantity, quality, and delivery terms, thus setting a trend toward tighter coordination of production and marketing activities similar to that of the more complex industrial operation.

Integration of production-market functions by processors has had a great impact on market structure. Individual farmers are at a competitive disadvantage in such an economic climate. Their position is continuing to weaken, as fewer and larger buyers negotiate for the farmers' products. Present trends indicate that large-scale marketing agencies will push integration further to even greater control over product supply, time and condition of delivery, and product quality and appearance.

To help cope with these changes, growers in various commodity areas have formed bargaining associations as one way of securing what is commonly referred to as bargaining power, muscle in the marketplace, or countervailing power. Many new bargaining groups have been formed, including groups which bargain for milk, fruits, vegetables, and other specialized commodities.

The ultimate success of these associations may depend on legislative clarification and sanction for their bargaining activities.

Mr. President, the National Agricultural Bargaining Act of 1978, which I am introducing today, establishes standards of fair practices that shall be observed by handlers and associations of producers in their dealings in agricultural products, provide standards for accreditation of coperative associations of producers of agricultural products for the purpose of bargaining, defines the mutual obligations of handlers and associations of producers to bargain with respect to the production, sale and marketing of agricultural products and provides for the enforcement of such obligations. Under this act, associations of farmers can petition the Secretary of Agriculture, who will be the program administrator, stipulating the conditions of the proposed bargaining unit. These items will include such things as the commodity and handlers involved in such other information that the Secretary may request.

This measure stipulates that the association requesting accreditation, first, must be owned and controlled by producers; second, must have contracts, which are binding under State laws, with its members empowering the association to sell or negotiate terms of sale for the products of its members; third, must represent a sufficient number of producers for a product to enable it to function as an effective agent for producers in bargaining with the designated handler; and fourth, must have negotiations with handlers as one of its principal functions.

Mr. President, this act does not require that either party must come to an agreement. It does prescribe the mutual obligation of a handler and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating in good faith with respect to the price, terms of sale, compensation for products produced under contract, or other provisions relating to the products that are marketed within the bargaining unit. This bill provides guidelines for mediation and arbitration services if requested by the accredited association or handler or if, in the Secretary's judgment, an impasse in bargaining has occurred. The measure repeals the Agriculture Fair Practices Act of 1967 and replaces the unfair practices described in the 1967 act with an expanded list of unfair practices for not only handlers, but also for the first time for accredited associations.

Many feel the need for this new authority is becoming more acute due to the continuing decline in the number of auction and central markets which have provided the source of price information and an alternative market outlet for many producers. More and more production is being sold directly to handlers under forward contracts. Organized marketing and bargaining provides an alternative to increased reliance on the Federal Treasury for farm income subsidy payments with minimal Government intervention.

It has been suggested that producers of all farm commodities would be more apt to invest capital and commit farm produce to existing or newly created bargaining associations if they had assurance that handlers would not be able to circumvent or sabotage the bargaining process. Passage and implementation of marketing and bargaining procedures will improve the capability of farmers to enhance their net farm income and standard of living.

Numerous associations already exist for specialty crops, and new ones would likely be formed by producers of other commodities sold under forward contracts, such as cattle and hogs. These associations will be able to improve farm prices and the conditions and terms of sale, which are now prescribed by handlers with individual producers or associations having little clout to counter or

reject the contract offered by the handler or processor.

Mr. President, the Nation's general farm organizations, in a statement issued April 14, 1978, announced they have united in support of the National Agricultural Bargaining Act of 1978. The list of organizations supporting this measure is impressive and includes the American Farm Bureau Federation, the National Council of Farmer Cooperatives, the National Farmers Union, and the National Grange. I urge my colleagues to join me in support of this measure.

Mr. President, I ask unanimous consent that S. 3482 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3482

*Be it enacted by the Senate and House of the United States of America in Congress assembled,* That this act may be cited as the "National Agricultural Bargaining Act of 1978".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. Agricultural products are produced in the United States by many individual farmers and ranchers throughout the Nation. Such products in fresh or processed form move in the channels of interstate and foreign commerce, or directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is of vital importance to their welfare, and to the general welfare. Because agricultural products are produced by numerous individual farmers, their ability to market and to bargain effectively for fair prices and terms of sale for their products is adversely affected unless they are free to join together in cooperative associations of producers as authorized by law. Interference with this right, or the failure of any handler of agricultural products to bargain in good faith with a cooperative association of producers as the representative and agent of such producers is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

Therefore, it is declared to be the policy of Congress and the purpose of this Act to establish standards of fair practices that shall be observed by handlers and associations of producers in their dealings in agricultural products, to provide standards for the accreditation of cooperative associations of producers of agricultural products for the purpose of bargaining, to define the mutual obligations of handlers and associations of producers to bargain with respect to the production, sale, and marketing of agricultural products, and to provide for the enforcement of such obligations.

DEFINITIONS

SEC. 3. When used in this act—

(a) "Associated association" means an association of producers accredited in accordance with section 6 of this Act.

(b) "Association" means any association of producers of agricultural products engaged in the marketing of such products, including marketing, selling, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141(a)), or in section 1 of the Act entitled "An Act to authorize association of agricultural producers" approved February 18, 1922 (42 Stat. 388, 7 U.S.C. 291).

(c) "Handler" means any person, other than an association, engaged in the business or practice of (1) acquiring agricultural products from producers or associations for processing or sale; (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations; (3) contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in clauses (1), (2), or (3) of this subsection.

(d) "Person" means one or more individuals, partnerships, corporations and associations.

(e) "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable, or nut grower, including a grower or farmer furnishing labor, production management, or facilities for the growing or raising of agricultural products.

(f) "Secretary" means the Secretary of Agriculture.

UNFAIR PRACTICES

SEC. 4. (a) It shall be unlawul for any handler to engage, or to permit an employee or agent to engage, in any of the following practices:

(1) To coerce a producer in the exercise of the producer's right to contract with, join, or maintain membership in, or to refrain from contracting with, joining, or maintaining membership in an association or to refuse to deal with a producer because of the exercise of the producer's right to contract with, join, or maintain membership in an association.

(2) To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition, or other handling of agricultural products because of the producer's membership in contract with an association.

(3) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(4) To offer to pay or loan money or anything of value, or to offer or give any other inducement or reward to a producer for refusing to join or to cease to maintain membership in an association.

(5) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(6) To refuse to bargain in good faith with an association accredited to represent producers, if the handler is designated pursuant to section 6 of this Act.

(7) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice that is in violation of this Act.

(b) It shall be unlawful for any association to engage or to permit an employee or agent to engage in any of the following practices:

(1) To refuse to bargain in good faith with a handler designated pursuant to section 6 of this Act.

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an association or a contract with a member of an association.

(3) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(4) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association.

(5) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice that is in violation of this Act.

BARGAINING IN GOOD FAITH

SEC. 5. (a) "Bargaining" is the performance of the mutual obligation of a handler and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating in good faith with respect to the price, terms of sale, compensation for products produced under contract, or other provisions relating to the products that are marketed by the members of such accredited association or by the association as their agent. Such obligation on the part of any handler shall extend only to accredited associations and the products with respect to which such associations are accredited to bargain. Such obligation does not require either party to agree to a proposal or to make a concession.

(b) If a handler purchases a product from producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, the handler shall offer the same terms to the accredited association. In comparing such terms, there shall be taken into consideration, in addition to the stipulated purchase price, any bonuses, premiums, transportation or loading allowances, reimbursement of expenses, or payment for special services of any character that may be paid by the handler, and any sums paid or agreed to be paid by the handler for any purpose other than payment of the purchase price.

ACCREDITATION OF ASSOCIATIONS OF PRODUCERS

SEC. 6. (a) An association seeking accreditation to bargain for producers of agricultural products shall submit to the Secretary a petition for accreditation. The petition shall (1) specify the agricultural product or products for the producers of which the association seeks accreditation to bargain; (2) designate the handlers, individually, by production or marketing area, or by some other appropriate classification, with whom the association shall be accredited to bargain; and (3) contain such other information and documentation as tae Secretary may require.

(b) The Secretary shall accredit such association if, based upon the evidence submitted by the association and obtained by the Secretary's own investigations, the Secretary finds:

(1) that under the charter documents or bylaws of the association, it is owned and controlled by producers;

(2) that the association has contracts with its members empowering the association to sell or to negotiate terms of sale of the products of its members that are binding under State law;

(3) that the association represents a sufficient number of producers or that its members produce a sufficient quantity of agricultural products to enable it to function as an effective agent for producers in bargaining with the designated handlers. In making this finding, the Secretary shall exclude any quantity of the agricultural products contracted by producers with producer owned and controlled processing cooperatives and any quantity of such products produced by handlers; and

(4) that the association has as one of its functions acting as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of their products.

(c) The Secretary shall give notice of such accreditation to all handlers so designated and to all other associations that have been accredited to bargain with respect to the product or products with any of the designated handlers.

(d) Each accredited association shall submit an annual report to the Secretary in such form and including such information as the Secretary may by regulation require

to enable him to determine whether the association continues to meet the standards for accreditation.

(e) If the Secretary believes that an accredited association has ceased to meet the standards for accreditation set forth in subsection (b) of this section, the Secretary shall notify the association of the basis for that belief and allow the association a reasonable period of time to respond to the allegations or to correct the deficiencies cited in the allegations. Thereafter, if the Secretary is not satisfied with the association's response to the allegations of if the agency fails to correct the deficiencies cited in the allegations, the Secretary shall notify the association and hold a hearing to consider the revocation of the association's accreditation. If, based upon the evidence submitted at the hearing, the Secretary finds that the association has ceased to maintain the standards for accreditation, he shall revoke the accreditation of such association.

(f) The Secretary may, upon his own motion or the petition of an accredited association or a designated handler, amend his order of accreditation with respect to the product or products specified therein. The Secretary shall give notice of any proposed amendment and the reasons therefor to all accredited associations and handlers that would be directly affected thereby and shall provide an opportunity for a public hearing. Thereafter, the Secretary may amend the order if he finds such amendment will be conducive to more effective bargaining and orderly marketing by the accredited association of the product or products of its members.

ASSIGNMENT OF ASSOCIATION DUES, FEES OR RETAINS

SEC. 7. If a producer of a farm product voluntarily executes, either as a clause in a sales contract or other instrument in writing, an assignment of dues or fees to, or the deduction of a sum to be retained by, an association authorized by contract to represent such producer, by which the handler is directed to deduct a sum from the amount to be paid for such product, or for the services of such producer under a growing contract, and on behalf of the producer to pay the same to such association as dues or fees or funds to be retained by the association, and causes notice of such assignment to be delivered to a handler, such handler shall deduct the amount authorized from the amount paid for any farm product being sold by any such producer or for any services under any growing contract. Upon payment to producers for such farm product or services, the handler shall pay said amount over to the association or its assignee.

MEDIATION AND ARBITRATION

SEC. 8. (a) The Secretary may provide mediation services if (1) requested either by an accredited association or by a designated handler engaged in bargaining with an accredited association and (2) in the Secretary's judgment an impasse in bargaining has occurred.

(b) The Secretary shall provide assistance in proposing and implementing arbitration agreements between accredited associations and designated handlers.

(c) The Secretary may establish a procedure for compulsory and binding arbitration if he finds that an impasse in bargaining exists and such impasse will result in a serious interruption in the flow of products to consumers or will cause substantial economic hardship to producers or handlers involved in the bargaining.

ADMINISTRATION

SEC. 9. (a)(1) Whenever it is charged that an accredited association or handler has violated or is violating section 4(a)(6) or 4(b)(1) of this Act, the Secretary shall issue and cause to be served upon the person charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(2) Whenever it is charged that an association or handler has violated or is violating any provision of this Act, other than section 4(a)(6) or 4(b)(1), the Secretary shall investigate such charges. If, upon such investigation, the Secretary has reasonable cause to believe that the person charged has violated such provision, he shall issue and cause to be served upon the person so charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(b) A person served a complaint under subsection (a) of this section shall have the right to file an answer to the original complaint and any amended complaint and to appear in person or otherwise and give testimony. The person who filed the charge that is the basis for a complaint issued under subsection (a) of this section shall also have the right to appear in person or otherwise and give testimony.

(c) If, upon preponderance of the evidence, the Secretary is of the opinion that the person complained of has violated any provision of this Act, the Secretary shall state the findings of fact in the case and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violation, and shall order such further affirmative action, including an award of damages to the person filing the charge, as the Secretary determines will effectuate the policies of this titie.

(d) The Secretary (1) may issue such rules, regulations, and orders as may be necessary to implement the provisions of this Act, and may cooperate with any department or agency of the Federal Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and (2) shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress. There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this subsection.

INDEPENDENT ENFORCEMENT AUTHORITY

SEC. 10. The Secretary may at any time institute an inquiry on the Secretary's own motion, in any case and as to any matter for which a charge is authorized to be made to or before the Secretary under section 9 of this Act. The Secretary shall have the same power and authority to proceed with any inquiry instituted under this section as the Secretary has for complaints filed under section 9 of this Act, including the power to make and enforce any order.

JUDICIAL REVIEW

SEC. 11. (a) Any person aggrieved by a final order of the Secretary issued under section 9 of this Act may obtain review of such order in the United States Court of Appeals for the District of Columbia Circuit by submitting to such court, within 30 days from the date of such order, a written petition praying that such order be modified or set aside.

(b) The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record, shall be conclusive.

(c) Orders of the Secretary with respect to which review could have been obtained under subsection (a) of this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(d) If no petition for review, as provided in paragraph (a) of this section, is filed within thirty days after service of the Secretary's order, the Secretary's findings of fact and order shall be conclusive in connection with any petition for enforcement that is filed by the Secretary after the expiration of such thirty-day period. In any such case, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the person named in the complaint.

(e) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

FEDERAL ENFORCEMENT

SEC. 12. (a) Whenever on the basis of any available information the Secretary finds that any person is in violation of section 4 of this Act or in violation of any order of the Secretary issued under this Act, the Secretary shall bring a civil action in accordance with subsection (b) of this section.

(b) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or transacts business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(c) Any person who violates section 4 of this Act or any order of the Secretary issued under sections 9 or 10 of this Act shall be subject to a civil penalty not to exceed $500 per day of each such violation.

(d) Any person who willfully violates section 4 of this Act, or any order of the Secretary under sections 9 or 10 of this title, shall be punished by a fine of not less than $500 nor more than $1,000 per day of each such violation or by imprisonment for not more than one year, or both.

CIVIL REMEDIES

SEC. 13. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf:

(1) against any person who is alleged to be in violation of section 4 of this Act or of any order issued by the Secretary under sections 9 or 10 of this Act; or

(2) against the Secretary when there is alleged a failure of the Secretary to perform any act or duty under this Act that is not discretionary with the Secretary.

The district courts of the United States shall have the jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such section or order (including the issuance of a permanent or temporary injunction or restraining order), or to order the Secretary to perform such act or duty as the case may be, and to assess any appropriate civil penalties under section 12 of this Act.

(b) No action may be commenced:

(1) Under paragraph (a)(1) of this section

(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Secretary and to the alleged violator, or

(B) if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance with such section or order, but in any such action any person may intervene as a matter of right.

(2) Under paragraph (a) (2) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

(c) Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate any provision of section 4 of this Act may bring an action in the appropriate district court of the United States without respect to the amount of the controversy, and shall recover damages therefor. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action arose.

(d) The district courts of the United States, in issuing any final order in any action brought under subsections (a) or (c) of this section, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate.

(e) The district courts of the United States shall have jurisdiction of proceedings instituted under this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law, except as provided in subsection (b) of this section.

INVESTIGATIVE POWERS OF SECRETARY

SEC. 14. (a) Whenever required to carry out the objectives of this Act, including the conduct of any investigations or hearings,

(1) the Secretary shall require any person to (i) establish and maintain such records, (ii) make such reports, and (iii) provide such other information as the Secretary may reasonably require; and

(2) the Secretary or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon or through any premises in which any records required to be maintained under paragraph (a) (1) of this section are located, and

(ii) may at reasonable times have access to and copy any records that any person is required to maintain or that relate to any matter under investigation or in question.

(b) Any records, reports or information obtained under this section shall be available to the public, except that upon a showing satisfactory to the Secretary that such records, reports or information, if made public, would divulge confidential business information, the Secretary shall consider such record, report or information or particular portion thereof confidential in accordance with section 1905 of title 18, United States Code, except that such record, report or information may be disclosed to other officers, employees or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(c) (1) In making inspections and investigations under this title, the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath.

(2) The Secretary, upon application of any party to a hearing held under sections 9 or 10 of this Act, shall forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in the possession or under the control of a person, such person may petition the Secretary to revoke such subpoena. The Secretary shall revoke such subpoena if in the Secretary's opinion the evidence whose production is required does not relate to any matter in question, or if such subpoena does not describe with sufficient particularity the evidence whose production is required.

(d) The Secretary, or any officer or employee designated by the Secretary for such purpose, shall be empowered to administer oaths, sign and issue subpoenas, examine witnesses, and receive evidence. Witnesses shall be paid the same fees and mileage allowance as are paid witnesses in the courts of the United States.

(e) In the case of any failure or refusal of any person to obey a subpoena or order of the Secretary under this section, any district court of the United States or the United States Courts of any territory or possession, within the jurisdiction of which such person is found or resides or transacts business, upon the application by the Secretary shall have jurisdiction to issue an order requiring such person to appear to produce evidence relating to the matter under investigation or in question. Any failure to obey such order of the Court may be punished by said court as a contempt thereof.

STATE AUTHORITY

SEC. 15. This Act shall not invalidate the provisions of any existing State legislation dealing with the same subjects of this Act, nor shall this Act prevent any State from enacting legislation similar to existing state legislation, except that such similar legislation may not permit any action that is prohibited under this Act.

REPEAL OF AGRICULTURAL FAIR PRACTICES ACT OF 1967

SEC. 16. The Agricultural Fair Practices Act of 1967 (P.L. 90–288, 7 U.S.C. 2301 *et seq.*) is hereby repealed on the effective Act of this Act; *Provided*, That such repeal shall not affect any act done or any right accruing or accrued, or any act or proceeding had or commenced in any civil cause, before such repeal.

EFFECTIVE DATE

SEC. 17. The provisions of this Act shall become effective October 1, 1978.●

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By Mr. HATHAWAY:

S. 3483. A bill to amend the Fishery Conservation and Management Act of 1976 in order to assist and protect the domestic fishing industry; to the Committee on Commerce, Science, and Transportation.

FISHERY CONSERVATION AMENDMENTS OF 1978

● Mr. HATHAWAY. Mr. President, in 1976 the 200-mile fishing limit promised the dawn of a new day for our domestic fishermen, the end to the unfair competition waged against them by subsidized foreign fleets. Nowhere was the 200-mile limit needed more than in the waters off New England, where two decades of foreign fishing on Georges Bank had decimated the fishery resource and prevented the growth of the New England fishing industry.

The 200-mile limit had been supported and fought for through several years. In 1972, while a Member of the House, I cosponsored a bill to extend the fishing limits out to the Outer Continental Shelf. International considerations held sway for many years, however, and many looked to the Law of the Seas Conference to resolve this issue. Only when it became obvious that the fishermen could not wait another year for settlement of the international issues and after several other countries had extended their own boundaries, did the United States act in the interests of its own fishermen.

Fought for by the fishermen, the 200-mile limit has, however, brought new problems. For with the limit has come fishery management, and the first experiences with Federal, State and regional government. In New England the years of overfishing, the revival of interest in fishing and the complications of the Canadian competition have made the management problems of the law particularly acute.

The problems in the New England groundfishery—cod, haddock, and yellowtail flounder—have been so intense that some fishermen have said they would prefer to see the 200-mile limit repealed.

I do not believe that is the answer. Foreign fishing has been reduced considerably, even on Georges Bank. New England fishermen, and Maine fishermen, have benefited from the law, as is obvious from the growing interest in entering the fisheries. The law, and its implementation by the Commerce Department, has, however, proven too frequently to be inflexible, and to fail to take into account the very real problems which management regimes based only on fishery conservation can pose for the fishermen.

For that reason, I am introducing legislation today to increase the act's flexibility, to strictly limit the use of outright fishing bans as a management tool, and to increase the authority of the regional fishery management councils over the management plans. In addition, these amendments make explicit the purpose of the law to promote the domestic fishing industry, and the need to draw upon many varied sources of data, including the years of experience of the fishermen, to determine the appropriate level of fishing for stocks which have been overfished.

In regard to the council's management role, when the law was passed, it was assumed that the regional councils would serve as both an intergovernmental and industry body which could coordinate the often conflicting priorities of these groups. The Commerce Department was to play only an oversight role insuring that certain national standards were met by the council's plans.

As it has worked out, the Department's oversight role has too often stifled the function of the councils in implementing management plans efficiently and reasonably. A oversight role should work after the fact, to make sure plans concur with the broader standards. The presumption should be that they do, until the Commerce Department finds otherwise.

My amendments, then, would make that presumption for the council's plans, and their amendments to plans, and limit the role of the Commerce Department to that of oversight. This approach is in accord with what I feel was the original intention of the act, and ultimately works to the benefit of both the Commerce Department, the regional councils, and the fishing industry.

Second, the bill makes one of the specific purposes of the act the development of the fishing industry, and promotion of the conversion of the industry from overutilized species to underutilized stock.

Finally, and most importantly, the bill limits the use of a total ban on fishing as a tool of last resort only, so that such a ban could be implemented only upon a finding by both the regional council and the Commerce Department that there is an imminent threat to a fishery resource without such a ban. A fishing ban will be a management tool of last resort only.

There have been three fishing bans in the New England groundfishery since last December. These bans have affected fishermen in the various States differently, and in most instances have affected the Gulf of Maine fishermen most severely. Maine has the smaller fleet, and the fish arrive in Maine waters later, by which time the quotas may have been reached. The bans have been inflexible; they do not permit sufficient incidental catch and fishermen end up throwing dead fish overboard. They serve neither the fishing industry nor fishery conservation.

This first year and a half has been fraught with crises for New England fishermen. The 200-mile limit has brought fishermen less foreign competition but new and equally foreign government forms and regulations. The law is still in its infancy but it is not too young for modification. I hope that the amendments I am introducing today will encourage Commerce to speed up its own processes and to be more flexible in its management approach.

Mr. President, at this time I ask unanimous consent that a section-by-section analysis of the "Fishery Conservation Amendments of 1978," my recent correspondence with the Commerce Department, and the text of the bill be printed in the RECORD.

There being no objection, the material and bill were ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

(A bill to amend the Fishery Conservation and Management Act of 1976 in order to assist and protect the domestic fishing industry)

Section 2. Amends the purposes and policy of the Act to ensure that the Act's implementation:

(1) Promotes the development of the domestic fishing industry.

(2) Takes into account the economic impact of management plans upon the fishing industry, and particularly upon fishermen.

(3) Uses scientific data from a variety of sources, including the fishermen, the industry, and state, local and academic sources.

(4) Considers the development of the domestic fishing industry in determining any permitted levels of foreign fishing.

Section 3. Amends the definition of "conservation and management" to ensure that the needs of commercial fishermen are taken into account and that adverse economic impacts are minimized to the extent possible.

Section 4. Amends the national standards to do the following:

(1) Include consideration of economic impact on the industry in management plans.

(2) Restrict the use of fishing bans as a management tool. A ban could be put into effect only if both the Regional council and the Commerce Department agreed that there was an imminent threat to a fishery resources without such a ban. It would be a "tool of last resort" only.

(3) Make the Regional council's management plans, and amendments to them, effective immediately upon adoption by the council. The Commerce Department's role would be limited to an after the fact oversight review of the plans for compliance with national standards.

(4) Require Commerce to coordinate its data gathering and fishery research with other state, local, academic or industry sponsored programs.

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WASHINGTON, D.C.,
*August 7, 1978.*

Hon. JUANITA M. KREPS,
*Secretary, Department of Commerce, Washington, D.C.*

DEAR JUANITA: The Department of Commerce has announced today the closing of the cod fishery in the Gulf of Maine to all vessel classes, supplementing the closing which went into effect this past weekend. That closing is to take place midnight, August 15, and as the NOAA press release puts it, is "for the rest of 1978".

I understand that you have now received a Memorandum from the New England Regional Fisheries Council on the goals and principles of the New England groundfishery management plan. In addition, they earlier proposed amendments to the groundfish FMP, all of which appear to be certain of the Commerce Department's approval.

One remaining question is that of restarting the year for purposes of determining when the quotas would be effective. If the year is retroactively started other than in January, then fishing can be resumed for this calendar year. Approval both of a new starting date for the quota, and what that date should be are crucial to permitting some continued groundfishing in the Gulf of Maine this year.

You are, I think, well aware of the confusion and hostility which these continued closings of the fishery have caused for Maine and New England fishermen. I hope that the Department will make every effort to approve the Council's recommended changes to the FMP, including the change in the year's starting date. Further, please expedite that decision as rapidly as possible in order to avoid the economic disruption and widescale non-compliance which is the likely result of this total closing.

I am sure that you agree that this type of enforcement mechanism, i.e. closing of fisheries, is unsatisfactory both from the point of view of the interest in fishery conservation, and from the economic viewpoint of New England fishermen. The Council's proposals have emphasized greater flexibility and have reflected the realities of New England fishermen's needs. Both of these are essential elements of any successful fishery management plan.

Please make every effort to expedite and approve the Council's amendments to the management plan.

With best wishes.

Sincerely,

WILLIAM D. HATHAWAY,
*U.S. Senator.*

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S. 3483

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Fishery Conservation Amendments of 1978".

SEC. 2. (a) Section 2(a)(6) of the Fishery Conservation and Management Act of 1976 is amended to read as follows:

"(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent irreversible overfishing, to rebuild overfished stocks, to promote the development of the domestic fishing industry and to realize the full potential of the Nation's fishery resources.".

(b) Section 2(b)(5) of such Act is amended by striking out "and" before "(B)" and by inserting before the semicolon at the end thereof the following: "and (C) which take into account the impact of such plans on the economic needs of the fishermen in the region affected by the plans".

(c) Section 2(e) of such Act is amended by striking out clauses (3) and (4) and inserting in lieu thereof the following:

"(3) to assure that the national fishery conservation and management program utilizes the best scientific information available, including input from State and local agencies and academic facilities, and from the fishing industry itself; involves, and is responsive to the needs of, interested and affected States, the fishing industry, and citizens, promotes efficiency; draws upon Federal, State, industry, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

"(4) to permit foreign fishing consistent with the provisions of this Act, including the need to develop the domestic fishing industry and to encourage the domestic industry to utilize species now underutilized; and".

SEC. 3. (a) Section 3(2) of the Fishery Conservation and Management Act of 1976 is amended by redesignating clauses (ii) and (iii) as (iii) and (iv), respectively, and by inserting before such clauses the following:

"(ii) the needs of commercial fishermen are taken into account and any adverse impacts on commercial fishing are minimized to the extent possible by any needed conservation or management measures;".

(b) Secton 3(18) of such Act is amended by striking out clauses (A) and (B) and inserting in lieu thereof the following:

"(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production, promotion of the domestic fishing industry, and recreational opportunities; and

"(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social or ecological factor, including the impact of any catch limitations on the affected domestic fishing industry and the need to minimize any adverse economic impacts on both a regional and State level in order to further the promotion of the domestic fishing industry.".

SEC. 4. (a) Section 301(a) of the Fishery Management and Conservation Act of 1976 is amended by inserting at the end thereof the following:

"(8) Conservation and management measures shall take into account their economic impact on the fishing industry in the region where they apply, and to the extent practicable, shall be implemented in such a way as to minimize any such adverse economic impact.

"(9) Conservation and management measures shall be implemented in such a manner as to permit the continued fishing for a species within the confines of the optimum yield, and a total closing of a species to fishing shall be permitted as an enforcement measure only upon a finding by the Secretary, with the concurrence of the appropriate regional council, that there is an imminent threat to a fishery resource without such prohibition on all fishing for that species.".

(b) Section 303(b)(2) of such Act is amended by inserting after "shall not be permitted," the following: "subject to the limitation in section 301(a)(9),".

SEC. 5. (a) Section 304 of the Fishery Management and Conservation Act of 1976 is amended by redesignating subsections (c) through (f) as subsections (d) through (e), respectively, and by inserting before such subsections the following:

"(c) Such plan, or any amendment to any

such plan, shall become effective immediately upon approval by such Council pending the Secretary's review for compliance with the national standards. The Secretary shall disapprove such plan in whole or in part only upon a finding that it is not in compliance with the national standards, and such plan or amendment shall be in effect until such finding is made.".

(b) Section 304(e) of such Act is amended by inserting after the period at the end thereof the following: "Further, the Secretary shall coordinate such program of fishery research with an relevant State, local, academic, or industry sponsored program, and to the extent practicable, within existing authorizations, shall support such other efforts.".●

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By Mr. CRANSTON (for himself and Mr. HAYAKAWA):

S. 3484. A bill to provide for the conveyance of certain public lands in San Bernardino County, Calif., to the town of Red Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

SALE OF PUBLIC LANDS TO RED MOUNTAIN, CALIF.

● Mr. CRANSTON. Mr. President, today I introduce for appropriate referral a bill to provide for the conveyance of approximately 160 acres of public lands to the residents of the unincorporated town of Red Mountain in San Bernardino County, Calif. This measure is identical to H.R. 11168 as reported by the House Interior and Insular Affairs Committee on July 26.

The small community of Red Mountain was founded in the early 1900's as a mining camp. About 200 residents, many of whom are elderly and retired on fixed incomes, live in homes on Bureau of Land Management land. In the late 1960's, a Red Mountain townsite committee completed the necessary paperwork to apply for a townsite designation for this unincorporated entity under the Federal Trustee Townsite Act. The committee arranged for a local judge to act as a trustee and file a townsite application with the Bureau of Land Management. However, the California Highway Commission was surveying for a proposed freeway in the area and asked the BLM to delay processing the application. Unbeknownst to the committee, the judge agreed to the BLM's request not to file the application.

It was not until 1973 that the residents learned that their application had not been submitted to the BLM. New documentation was prepared and another judge agreed to act as trustee. But, on filing, they learned that the Townsite Act had been repealed by the Federal Land Policy and Management Act of 1976.

Under the newly enacted Federal Land Policy and Management Act, the BLM must require the residents to pay the fair market value for the land on which their homes are located. Estimates place the value of an average Red Mountain lot at roughly $1,000. For many of these homeowners living on social security or limited savings, producing this sum would be an overwhelming financial burden. Under the circumstances, I believe the Federal Government has an obligation to assist these homeowners to acquire this quarter section of desert land.

Mr. President, the House Interior and Insular Affairs Committee has produced a bill which permits the Federal Government to convey this property to the residents of Red Mountain without setting a precedent that would upset the land conveyance procedures established by the FLMPA. The legislation also provides a just solution to this problem for both the Red Mountain residents who tried vainly for years to acquire title under the Townsite Act, and for the Federal Government, which does not need this acreage for recreation, rights-of-way, or other public purposes.

The bill approved by the House committee, which I am introducing, directs the Secretary of Interior to establish specifications for an association to be set up by the residents of Red Mountain. The association would designate a trustee to submit an application to the Bureau requesting conveyance of the land. The application would include a land survey, an accounting of improvements to the property, a list of homeowners, an indication of all unoccupied lots, a general land use plan for the proposed townsite, and any other information the Secretary may require.

Upon application approval, the Secretary will convey any vacant land to the trustee. Any proceeds from the disposal of vacant lots are to be transferred to county or town officials for public purposes within Red Mountain. Improved lots will be conveyed to the homeowners directly or to the trustee for reconveyance without cost to the owner except that all surveying, administrative, and recording costs will be borne by the association or the homeowners as the case may be. Finally, the conveyance will be made subject to valid existing rights, with the United States reserving all mineral rights.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3484

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

(a) That notwithstanding the provisions of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior (hereafter referred to as the "Secretary") within 90 days after the date of enactment of this Act, shall establish specifications for an association of the residents of Red Mountain, San Bernardino County, California hereafter referred to as the "association" which may through such trustee as they may designate, make application for the conveyance of such lands as are located within the area described in paragraph (b) of this section. Such application shall include, *inter alia*, a complete internal survey of the area; shall indicate the extent and character of any improvements on any lot and the name or names of the owners (hereinafter referred to as "owner") thereof; shall indicate all unoccupied lots and lands; and shall include a general land use plan for such area.

(b) The lands subject to conveyance pursuant to the provisions of this Act are described as follows:

T. 30 S., R. 41 E.,

SEC. 6; SW¼SE¼NE¼NE¼, SW¼NE¼NE¼, S½NW¼NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, NW¼NE¼SE¼NE¼, NW¼NW¼NE¼SE¼, E½NW¼SE¼, E½SW¼NW¼SE¼, E½SW¼SE¼, E½NW¼SW¼SE¼, E½SW¼SW¼SE¼.

SEC. 7; N½NE¼NW¼NE¼, N½NW¼NW¼NE¼, Mount Diablo Meridian, California.

SEC. 2. Within 120 days after receipt of such application from the association, the Secretary shall determine if it complies with the specifications established pursuant to section 1 of this Act. If he determines that additional information is required, he shall so notify the association, through such trustee as it may designate, in order to allow it to supplement or correct such application. The Secretary shall require the association to verify, under oath or otherwise, that the owner is, at the time of the enactment of this Act and was, on or before February 27, 1978, in fact, the true owner of improvements located within the area and the association shall certify such verifications to the Secretary as a supplement to its application.

SEC. 3. As soon as reasonably practicable, but not later than two years after receipt of an application, or corrected application, complying with the specifications which he established, the Secretary shall convey to the association or its trustee, as he deems appropriate, all unoccupied lots or lands and all lands presently used for public purposes, and shall convey to the owner verified pursuant to section 2 of this Act title to the lot (which shall comply as nearly as possible with the established boundaries of the area now occupied but shall not exceed one-half of an acre) upon which the improvement of such owner is located. The Secretary may in his discretion, convey title to all improved lots to the trustee for reconveyance to the appropriate owners in order to minimize administrative costs. Each such deed of conveyance by the Secretary or reconveyance by the trustee (i) shall convey the land without cost to the owner, except for payment of the respective administrative and recording costs which shall be paid by said association or owner as the case may be; (ii) shall be subject to any valid existing rights arising under the laws of the United States unless relinquished by the holder thereof; (iii) shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine and remove minerals under applicable laws and such regulations as the Secretary may prescribe; and (iv) shall contain such covenants, mutually enforceable between the landowners, as the Secretary has determined to be appropriate to assure compliance with the land use plan submitted pursuant to section 1 of this Act. In conveying title to any unoccupied lands to the association, or its trustee, the Secretary may impose such restrictions or reserve such interests as he deems reasonable and appropriate to assure compliance with the general land use plan and may permit the association or its trustee to reconvene any or all of such lands: *Provided*, That the proceeds derived from such conveyance shall be transferred to the appropriate county or town officials to be used for public purposes within the Town of Red Mountain.

SEC. 4. Unless an application for conveyance of the lands described in section 1 of this Act is received by the Secretary within 5 years after the date of enactment, the provisions of this Act shall expire and such application shall then be made only pursuant to the provisions of the Federal Land Policy and Management Act of 1976.●

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## ADDITIONAL COSPONSORS

S. 2128

At the request of Mr. INOUYE, the Senator from Idaho (Mr. CHURCH) was removed as a cosponsor of S. 2128, a bill to provide increased tax credits for the elderly.

S. 3049

At the request of Mr. CULVER, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 3049, a bill to amend the Internal Revenue Code of 1954 to provide for a deduction for certain amounts paid to a reserve for product liability losses and expenses.

S. 3248

At the request of Mr. MORGAN, the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of S. 3248, a bill to create a National Agricultural Cost of Production Board.

S. 3263

At the request of Mr. BENTSEN, the Senator from Louisiana (Mr. LONG), was added as a cosponsor of S. 3263, a bill to reduce duplicative and conflicting Federal, State, and local rules and regulations.

S. 3288

At the request of Mr. DOLE, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 3288, to amend the Internal Revenue Code to allow a retirement savings deduction for persons covered by certain pension plans.

S. 3404

At the request of Mr. BENTSEN, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 3404, a bill to provide rapid depreciation for certain expenditures required by mandatory OSHA health and safety standards.

S. 3419

At the request of Mr. CULVER, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 3419, a bill to amend the Internal Revenue Code of 1954 to exclude from gross income a portion of payments made under certain Federal and State cost-sharing programs the primary purpose of which is conservation of soil and water resources, environmental protection or restoration, forest enhancement, or the provision of wildlife habitat.

SENATE JOINT RESOLUTION 151

At the request of Mr. HEINZ, the Senator from Washington (Mr. JACKSON), the Senator from North Dakota (Mr. BURDICK), the Senator from Colorado (Mr. HART), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), the Senator from New York (Mr. MOYNIHAN), the Senator from Maine (Mr. HATHAWAY), the Senator from Wisconsin (Mr. NELSON), and the Senator from Delaware (Mr. ROTH) were added as cosponsors of Senate Joint Resolution 151, authorizing and requesting the President to designate November 11 through 17, 1978, as "Vietnam Veterans Week."

SENATE JOINT RESOLUTION 153

At the request of Mr. DECONCINI, on behalf of Mr. ANDERSON, the Senator from Maine (Mr. HATHAWAY), the Senator from Rhode Island (Mr. PELL), the Senator from Nevada (Mr. LAXALT), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Kentucky (Mr. FORD), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Arizona (Mr. DECONCINI) were added as cosponsors of Senate Joint Resolution 153, to authorize the President to proclaim the third week in June, 1979, as "National Veterans' Hospital Week."

SENATE CONCURRENT RESOLUTION 68

At the request of Mr. CURTIS, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of Senate Concurrent Resolution 68, expressing the sense of the Congress on the Baltic States question.

## SENATE RESOLUTION 551—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. CANNON, from the Committee on Commerce, Science, and Transportation, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 551

*Resolved,* That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 2995. Such waiver is necessary because the bill authorizes $60,000,000 for fiscal year 1979 and was reported after May 15, 1978. In addition, construction funds for an intercity bus terminal at Union Station are not available from any other source, to coincide with construction schedules that begin on January 1, 1979 on the visitor center and rail facility. The amendment to S. 2995, which in turn amends the Amtrak Improvement Act of 1974, provides for a $30,000,000 authorization in fiscal year 1979 for a model, intermodal demonstration facility, first contemplated 4 years ago when the Congress authorized the Secretary of Transportation to design, plan, and coordinate the construction of a model, intermodal transportation facility at Union Station.

When construction begins next year on the renovation of the main building, the transfer of rail facilities into the concourse, where bus ticketing and baggage facilities are to be found, and on the ramp and parking garage to the north of the main building. It is essential that work proceed simultaneously on the bus terminal facilities.

## SENATE RESOLUTION 552—SUBMISSION OF A RESOLUTION RELATING TO REDUCING FEDERAL EXPENDITURES

Mr. STONE submitted the following resolution, which was referred to the Committee on the Budget and the Committee on Governmental Affairs, provided that either committee is discharged after 30 days of continuous session following the report of the first committee, pursuant to order of August 4, 1977:

S. RES. 552

*Resolved,* That (a) in reporting any concurrent resolution on the budget under title III of the Congressional Budget Act of 1974 for the fiscal years ending September 30, 1980, September 30, 1981, and September 30, 1982, the Committee on the Budget of the Senate shall not include an appropriate level of total budget outlays or of new budget authority which is greater than the following percentages of the adjusted amount of the appropriate level of total budget outlays or total new budget authority, respectively, set forth in the final concurrent resolution on the budget for the fiscal year ending September 30, 1979:

(1) 98 percent, in the case of the fiscal year ending September 30, 1980,

(2) 98 percent, in the case of the fiscal year ending September 30, 1981, and

(3) 98 percent, in the case of the fiscal year ending September 30, 1982.

(b) For purposes of Subsection (a), the adjusted amount of the appropriate level of total budget outlays or total new budget authority set forth in the final concurrent resolution on the budget for the fiscal year ending September 30, 1979, is the amount set forth increased or decreased, as of any date, by the same percentage by which the Consumer Price Index (published by the Bureau of Labor Statistics) on such date has increased or decreased over the Consumer Price Index on September 30, 1979.

Mr. STONE. Mr. President, I rise to submit a resolution calling for the Senate Budget Committee to lead the way in the difficult task of reducing Federal expenditures.

Before submitting this resolution I want to commend the Budget Committee for reducing the budget authority for fiscal year 1979 by more than $11 billion and thereby reducing the projected Federal deficit. I appreciate how difficult it is to reduce the budget and I want to extend my congratulations to the committee for its work this year and especially to its able chairman, Senator MUSKIE and the ranking minority member, Senator BELLMON.

The committee's recommendations show continued progress toward a balanced budget by fiscal year 1983. My proposal would contribute to that goal specifically by directing the Senate Budget Committee to report to the Senate a budget resolution incorporating at least a 2-percent reduction each year in Federal spending outlays and authorization for the next 3 fiscal years, beginning in fiscal year 1980.

The resolution allows for an inflation adjustment in computing the actual amount of the reduction from year to year in order to allow for increases in the cost of delivering the same Government services. However, I believe that overall this measure will help bring down the rate of inflation.

The proposal is not an abandonment of our commitment to necessary social programs. Rather, I believe that it will put authorizing committees and Federal agencies on notice of Congress determination to "trim the fat." It, thereby, provides lead time over 3 years to make the appropriate administrative and budgetary adjustments.

The measure would demonstrate our commitment to continue moderate reductions in Federal spending until annual outlays no longer exceed annual revenues. This gradual reduction in budget authority, combined with a thorough examination of all programs, will enable Congress to work more realistically toward the goal of a balanced budget.

If this resolution is enacted, the Senate serves notice to all Federal agencies that we are sincere in our commitment to balance the budget. This will help prod agencies into taking a closer look

at their own budgets with an eye toward cutting unnecessary expenditures. In my own State of Florida, the Fort Lauderdale News prints a daily column entitled "Your Tax Dollars in Action." Its author, Duncin Mackenzie, regularly chronicles unnecessary grants and contracts, and let me assure you, he does not suffer from a lack of material. We all agree that waste exists and that we must work harder to reduce it. That entails making tough budgetary decisions.

Several weeks ago, I joined with a number of my colleagues in an effort to cut each 1979 appropriations bill by 2 percent across-the-board. I was encouraged by our initiatives because they forced us to take a hard look at Federal spending programs and reexamine priorities. But I feel we can do better, and this resolution demonstrates that desire. It is time to plan ahead, and this resolution does just that. It sets moderate 3-year goals, moving us beyond the year-to-year system now employed.

In a few days, the Senate will be considering a proposal submitted by President Carter to reduce the taxes of our overburdened citizens. The object of the modest tax reduction is to put more money into the hands of working people. However, if we provide tax relief without an accompanying reduction in Federal spending, the budget deficit will increase and the additional money in the taxpayer's pocket will be spent trying to keep up with inflation.

Mr. President, if we are to enact responsive and responsible legislation for the American people, then we should begin looking ahead and setting moderate goals. If we continue to lower Federal spending gradually, we can look forward to the day when our economy is free from the enormous Federal debt and inflation is under better control.

## AMENDMENTS SUBMITTED FOR PRINTING

### UNIFORM BANKRUPTCY LAW—S. 2266

AMENDMENT NO 3578

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT submitted an amendment intended to be proposed by him to S. 2266, a bill to establish a uniform law on the subject of bankruptcies.

### AGRICULTURAL EXPORT TRADE EXPANSION ACT OF 1978

AMENDMENTS NOS. 3579 AND 3580

(Ordered to be printed and to lie on the table.)

Mr. MORGAN submitted two amendments intended to be proposed by him to S. 3447, a bill to strengthen the economy of the United States through increased sales abroad of American agricultural products.

## NOTICES OF HEARINGS

COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Mississippi (Mr. EASTLAND), and for the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Thursday, September 14, 1978, at 9:30 a.m., in room 2228, Dirksen Senate Office Building, on the following nomination:

Bruce S. Jenkins, of Utah, to be U.S. district judge for the district of Utah, vice Willis W. Ritter, deceased.

Any persons desiring to offer testimony in regard to this nomination shall, not later than 24 hours prior to such hearing, file in writing with the committee a request to be heard and a statement of their proposed testimony.

This hearing will be before the full Judiciary Committee.

SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES

● Mr. JACKSON. Mr. President, the Subcommittee on Public Lands and Resources will hold a hearing on Friday, September 8, 1978, at 10 a.m. in room 3110 Dirksen Building to hear testimony on the following bills: S. 2489, S. 2254, S. 1634, S. 3445, S. 3245, S. 3175, H.R. 11168, H.R. 11451, H.R. 10029, H.R. 7588, H.R. 4243, H.R. 7971, H.R. 6997, H.R. 12772, H.R. 10160, and H.R. 3121.

Testimony will be presented by the Department of the Interior and the Department of Agriculture. Anyone having questions concerning the hearing should contract R. D. Folsom of the subcommittee staff at 224–0611. Those wishing to testify or to submit a written statement for the hearing record should write to the Public Lands and Resources Subcommittee, room 3106 Dirksen Senate Office Building, Washington, D.C. 20510.●

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

● Mr. ABOUREZK. Mr. President, I wish to announce that the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, will hold hearings on September 12, 13, and 20, 1978, concerning the legislative veto and regulatory reform, S. 2011. The hearings will begin each day at 9 a.m., in the Dirksen Building, room 2228.●

PUBLIC LANDS AND RESOURCES SUBCOMMITTEE

● Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Public Lands and Resources Subcommittee of the Energy and Natural Resources Committee.

The hearing is scheduled for September 8, 1978, beginning at 9 a.m., in room 3110 of the Dirksen Senate Office Building. Testimony is invited regarding S. 876, a bill to authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States.

For further information regarding the hearing, you may wish to contact Mr. Russell Brown of the subcommittee staff on extension 224–2366. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Public Lands and Resources Subcommittee, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.●

SELECT COMMITTEE ON SMALL BUSINESS

● Mr. NELSON. Mr. President, I wish to announce that the Select Committee on Small Business will continue its hearings on Capital Formation Problems of Small Business on September 21 and 28. The sessions will begin at 9:30 a.m., on each of these days in 424 Russell Senate Office Building.

At that time, we will address the effect of the securities regulations and laws on the ability of smaller and independent enterprises to raise capital. A witness list will be published as soon as it is completed.

The earlier hearings of February 8 and 10 in Washington, D.C., and May 15 at the American Stock Exchange in New York City, are now in print and may be obtained from the committee.

All those wishing to participate in the September hearings may contact the committee offices (202/224–5175).●

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

● Mr. CULVER. Mr. President, I wish to announce that the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary will hold a markup session on S. 1974, the Regulatory Flexibility Act, at 9:45 a.m., tomorrow, September 7, 1978, in room S–146 in the Capitol.●

## ADDITIONAL STATEMENTS

### THE SIGNIFICANCE OF SALT—AN ARTICLE BY SENATOR FULBRIGHT

● Mr. SPARKMAN. Mr. President, our former colleague, Bill Fulbright, has written an excellent article on the SALT negotiations which I wish to bring to the attention of the Senate and all persons interested in United States-Soviet relations.

His article, which appears in the current issue of the American Enterprise Institute Defense Review, is a thoughtful survey of the significance of the current SALT negotiations. He puts the effort to reach an arms limitation agreement in a broad perspective and examines with fresh insight some of the current issues troubling United States-Soviet relations.

He concludes by citing his view of the obligations to the world of the two superpowers:

> Because of their power, and the responsibility it confers, the superpowers do not have the freedom to quarrel that smaller and less potentially dangerous nations have, or that great powers themselves may have had in an age when weapons were less destructive. The superpowers are therefore under an obligation—to themselves, to the rest of the world, and to posterity—to resolve their differences insofar as they can, and to set aside those which they cannot resolve. As the greater threats to world peace, the United States and the Soviet Union also have the greatest responsibility for protecting it. That is the real meaning of détente: it is not, fundamentally, an option but a compelling obligation.

I commend this excellent article to my colleagues and ask that it be printed in the RECORD.

The article follows:

THE SIGNIFICANCE OF SALT

(By J. William Fulbright)

With the United States and the Soviet Union reported to be within reach of a second Strategic Arms Limitation treaty, there is increasing concern in this country over prospects for Senate approval of the accord. Soviet and Cuban activity in Africa, together with the recent trials of Soviet dissidents, has served to focus attention on the fundamental issue that, more perhaps than the technicalities of weapons systems, will determine the success or failure of SALT. That issue, still unresolved for Americans after more than thirty years of constant interaction, is the nature of the Soviet system and what is to be expected of Soviet power. How Americans view the Soviet Union and the motivations of its political leaders will have much to do with determining the chances for accommodation on outstanding issues, and for the identification of shared interests between the two countries. The problem of perception is, of course, a mutual one: how each superpower perceives the intentions of the other will largely determine the future of détente and peace in the world.

While there is today little disagreement in the United States over the fact that Soviet military power is approximately equivalent to our own, there is no consensus on the uses to which Soviet power is likely to be applied. The proposed SALT II agreement, if approved, will reaffirm the principle that has guided American and Soviet leaders since the SALT talks first convened in November 1969: that, in a world in which the superpowers possess over 13,000 strategic nuclear warheads aimed at each other, neither country can accept the risks of thermonuclear war in pursuit of ideological or geopolitical objectives.

SALT will not eliminate the competitive aspects of U.S.-Soviet relations nor all the risks that competition entails. Given disparate historical experiences, cultures, and world views, and the enormous destructive power in the hands of each country's political leadership, the danger to mankind's continued existence inherent in nuclear weapons cannot be expected to disappear merely because of SALT. The best we can hope for is a lessening of that danger and a dampening of the competition that has dominated the history of this planet for the last thirty-three years.

In recent months it has become increasingly clear that the main battleground for SALT, and for the contending attitudes toward the Soviet Union that will fuel the debate over the treaty's ratification, will be the Senate of the United States. Among the questions that senators will have to answer are: (1) whether it is in the interests of the United States to begin reducing the total number of strategic nuclear delivery vehicles it and the Soviet Union can deploy; and (2) whether the two countries should try to limit the competition in the qualitative aspects of nuclear arms that has characterized the arms race for the past decade. In order to answer these questions, the Senate might also wish to consider the broader potential benefits of ratification, including the extension of détente into areas now beyond its scope, as well as the adverse consequences of defeating SALT—for instance, a new, more costly, and destabilizing round in the arms race, together with a break in the admittedly uneven pattern of cooperation that the two countries have developed in recent years.

No one in the Senate, to my knowledge, wishes to continue the arms race and increase the risk of war. Those who will oppose SALT will do so not because they wish to perpetuate a senseless expansion of nuclear arsenals, but because of a deep-seated fear that the Soviet Union cannot be trusted to act in its own true self-interest. The opponents of détente and SALT still adhere to beliefs and attitudes derived from events of the cold war period, events that led them to believe that Kremlin leaders would sacrifice the achievements of the Russian Revolution and subsequent struggles in order to perpetuate, at almost any cost or risk, the ideology to which they adhere. For reasons to be developed below, I believe this fear, though genuine, to be based in large part on misperceptions.

Much of the discussion in committee hearings and on the floor of the Senate will center on esoteric technical details of the SALT II treaty and protocol and the contending theologies of nuclear strategists. Pertinent though these may be, the more fundamental and decisive question is that of our attitudes toward the Soviet Union, and of our ability to distinguish between those which are solidly rooted in facts and experience and those which are the product of myth and unwarranted fear. It is important to discern the historical bases of deeply held convictions, critically and analytically, with open minds, respect for ascertainable evidence, and a solid commitment to the broader national interest.

ATTITUDES TO THE SOVIET UNION

In foreign as in personal relations our inferences are shaped as much by how we look at a person or situation as by what we actually see. There are few foreign countries about which we do not have certain preconceptions as to their good or ill intensions, and these exert a powerful influence on our evaluation of their specific acts or policies. "What struck me most in the United States," Alexis de Tocqueville wrote in the 1830s, "was the difficulty experienced in getting an idea, once conceived, out of the head of the majority. . . . Neither writings nor speeches can have much success in that; only experience can do it, and that too must sometimes be repeated."[1] I do not know whether the tendency to stereotype is a distinctly American trait; perhaps I am attracted to that idea as a ready excuse for my own limited success in swaying majorities, over the years, through writings and speeches.

Be that as it may, there seems little doubt that our attitude toward the other superpower has been importantly influenced by preconceptions, mostly unfavorable, about its motives and ambitions. For a brief period during World War II, we came to view the Russians not only as stalwart allies but also as fellow crusaders for a world regime of peace through law. That image gave way quickly after the war—and by no means entirely without reason—to the previously held and more predominant view of the Soviet Union as an aspirant world conqueror, the agent of world revolution Lenin had proclaimed it to be. Stalin, whom Roosevelt had supposed he could charm into responsible world citizenship and whom Truman once characterized as "good old Joe," was recognized instead—and more realistically—as the "crafty giant" of Churchill's description, a despot of extraordinary cruelty and ambition. With much encouragement from the American leaders of the early postwar era, this image of Stalin was implanted in American minds as the true picture of the Soviet Union itself, and was then transferred, only somewhat diluted, to Stalin's successors—to the earthy and supple Khrushchev, and then to the prudent and conservative Brezhnev. Because of the tenacity of our preconceptions, the great changes that have taken place in the Soviet Union since Stalin's time have been less than fully recognized, and even when we seek to cooperate with the Russians, as in the current Strategic Arms Limitation Talks, we retain some of our ironclad suppositions—that we are for stability and they for disruption, that we are peacemakers and they troublemakers, that we, in short, are good people and they bad people.

What, indeed, are the Russians really like? Can we conceive that they share with us a common human nature despite differences of culture and political tradition? Is it possible that their motives, like our own, are often ambiguous and obscure, to themselves as well as to others? Are they really still the world revolutionaries they professed to be in Lenin's time? Is it true—or still true—as Dean Acheson told the Senate Foreign Relations Committee in 1947, that "you cannot sit down with them," that indeed "it is a mistake to believe that you can, at any time, sit down with the Russians and solve questions"?[2] Or is it possible that their revolutionary zeal has abated, that power and experience have made them cautious and even responsible? A historian of revolutions has written that "there is no eternal fanaticism or, at any rate, there has not yet been an eternal fanaticism."[3] Is it conceivable then that Chairman Khrushchev meant it when he spoke of "goulash communism," to signify his commitment to a better life for his people? Or that Mr. Brezhnev was telling the truth when he told members of Congress, during his visit to this country in June 1973, that in seeking trade and investment he came here to consolidate good things, not to quarrel?

COLD WAR OR DÉTENTE

After thirty years of almost constant interaction we have still not made up our minds what the Russians are really like. During these decades two schools of thought have competed for the allegiance of public and congressional opinion. The more prevalent—at least in Congress—has been the cold war school, which remains wedded to the belief that the Soviet Union is driven by ideological zealotry, that its internal practices are incorrigibly repressive except when outside pressure is applied, and that, despite tactical concessions from time to time, the Soviet Union can never be anything but an inveterate antagonist to the United States in world affairs. The other school of thought—the détente school—basing its observations on Soviet *behavior* rather than doctrine, contends that, at least since Stalin's time, Soviet foreign policy has been pragmatic rather than messianic, opportunistic but not predatory, and that on the basis of its actual performance the Soviet Union has shown itself to be a reliable collaborator with the United States in honoring the terms of existing arms control agreements, keeping the lid on regional conflicts, and paying its commercial debts. As to the Soviet Union's internal practices, the détente school holds that these are for the most part beyond the reach of foreign influence, but in any case more amenable to influence through improved relations than by pressure.

THE COLD WARRIORS

The cold war school achieved the upper hand in this protracted national debate soon after World War II. At that time, when the Soviet Union was imposing subservient Communist regimes in Eastern Europe and encouraging subversion in the recently liberated, war-wracked nations of Western Europe, Soviet policy and Communist doctrine largely coincided. The mistake made by American policy makers was in assuming that because doctrine and practice coincided

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Footnotes at end of article.

at a particular time in particular places, they must always coincide, which would mean that we would no longer need to examine Soviet actions in specific terms but could read them always as part of a grand design. Our policy makers' mistake after World War II was not in what they *did*—which was to respond strongly to Soviet provocations through aid to Greece and Turkey, the Marshall Plan, and the formation of the NATO alliance—but in their *interpretation* of these policies and the *explanations* of them given to the American people. Thus, instead of explaining our aid to Greece and Turkey in 1947 as a sound measure against a particular Soviet provocation, as Secretary of State Marshall proposed to do, President Truman encased it in the grandiose ideological terms of what came to be known as the Truman Doctrine. In his famous address on March 12, 1947, the President declared that at that moment in world history, "nearly every nation must choose between alternative ways of life," the one based on democratic institutions like our own, the other based on "terror and oppression." [4]

Couched in those terms, the choice would have seemed easy and obvious, but our postwar policy makers perceived the Soviet Union as possessing a diabolical magnetism for its prospective victims. During the heyday of McCarthyism in the late 1940s and early 1950s, the Russians were credited with an uncanny ability to subvert free societies, including our own, through the manipulation of gullible idealists. As the hysteria mounted, the category of gullible idealist was broadened to include—and besmirch—almost any public person who thought it possible, and worthwhile, to try to cooperate with the Soviet Union in specific areas of our relations. In 1950 State and Defense Department officials prepared a document, known as "NSC-68," which became a kind of full-fledged charter of American cold war policy. Fostered by Secretary of State Dean Acheson, the paper was prepared under the direction of the head of the State Department's Policy Planning Staff, Paul Nitze, who is now prominent in a group known as the "Committee on the Present Danger." "The Soviet Union," said NSC-68, "unlike previous aspirants to hegemony, is animated by a new fanatic faith, antithetical to our own, and seeks to impose its authority over the rest of the world." [5] Modified and altered in detail from time to time, this basic view of Soviet intentions dominated American foreign policy during the 1950s and had much to do with our subsequent involvement in the war in Vietnam, which was perceived not as a local civil war but as part of the Soviet, or Sino-Soviet, design for world domination.

DÉTENTE

The philosophy of the Truman Doctrine and NSC-68 exerts a profound influence over our policy to the present day, although it gave way to the détente school of thought at several crucial junctures over the years: under President Eisenhower, when hesitant efforts were made to reach an understanding with Chairman Khrushchev; under President Kennedy, when the nuclear test ban treaty was concluded; and, most significantly, under President Nixon and Secretary of State Kissinger. In 1972, which stands as the high point to date of Soviet-American détente, the ABM Treaty, restricting antiballistic missile sites, and the Interim Agreement, limiting strategic offensive arms, were concluded; a definitive agreement was reached on access to Berlin; and a seemingly propitious trade agreement was signed. In 1973 numerous other agreements were concluded, such as one on the prevention of nuclear war, and others for cooperation in oceanography, transportation, airline service between the two countries, expanded cultural exchange, and other areas. For three successive years President Nixon and General Secretary Brezhnev exchanged visits. On the eve of his last visit to Moscow, President Nixon, in a speech at Annapolis on June 5, 1974, recalled the agreements that had been reached and said that "upon these bridges we are erecting a series of tangible economic and cultural exchanges that will bind us more closely together." An enduring "structure of peace," said the President, "must be cemented by the shared goals of coexistence and the shared practice of accommodation." [6]

Mr. Nixon's vision, though promising, was premature. As on all previous occasions when the nation seemed to be on the track of steadily improving relations with the Soviet Union, the cold warriors rallied their considerable forces, and advocates of détente encountered once again the difficulty, noted by Tocqueville, of "getting an idea, once conceived, out of the head of the majority." Just as President Eisenhower's initiative was aborted by the U–2 affair in 1960 and President Kennedy's efforts were overwhelmed by the Vietnam War, the Nixon-Kissinger détente began to come unstuck when the administration's authority was undetermined and finally destroyed by Watergate. Under renewed cold war pressures since 1974, the two superpowers have failed to reach a new SALT agreement, while the strategic arms race proceeds unabated; the trade agreement has been denounced by the Soviet Union because of the Jackson amendment, connecting it with emigration; and the two countries find themselves at odds in Africa and the Middle East, and over human rights within the Soviet Union.

Overshadowed though it has been, and despite certain solid elements of accuracy in the cold war view of Soviet-American relations, the détente school of thought still provides a more accurate—and surely a more promising—perspective for the future development of Soviet-American relations. Evaluating Soviet intentions on the basis of performance rather than doctrine, and of realistic probability rather than the "worst-case" scenarios so beloved of our strategic planners, advocates of détente look to both the past and the future. In the past they see that, since the early postwar years when the Russians established their domination over Eastern Europe, the Soviet Union has not engaged directly in overt military aggression beyond the sphere of domination it had established, although it has competed with us—with more failure than success—in seeking to establish its influence with various client regimes in the Third World. All but the most unreconstructed cold warriors will recognize now that the Vietnam War was not part of a Soviet world design but was essentially a civil war in which the Soviet Union supported one faction while we, on an incomparably greater scale, supported the other. Still looking to the past, advocates of détente note that the Russians have shown a continuing interest in strategic arms limitations and in trade, and that when agreements have been reached they have honored them.

Looking to the future, advocates of détente do not foresee perfect harmony or an end to all competition between the superpowers. They see instead, as Daniel Yergin puts it in his fine book "Shattered Peace", a broad understanding encompassing "a somewhat more explicit agreement on the rules of competition; a certain number of cooperative projects, of which arms control, based on the purported acceptance of parity, is the most important; increasing communication and contacts on many levels; and a reduction in the state of permanent alarm on both sides." [7]

Whether such a broad understanding is feasible depends upon which school of thought—cold war or détente—is more accurate in its reading of the motives and aims of the Soviet leadership. I am, I believe, in authoritative company in my belief that the Soviet leaders, though far from idealistic and by no means willing to give up their competition with the United States in seeking influence throughout the world, are on the whole reliable partners in the most important single activity of world politics—the prevention of nuclear war. They are reliable for this purpose, as George Kennan has pointed out, because, far from being "monsters" who would run almost any risk and extract any sacrifice from their people to destroy us or gain world domination, they are in fact "quite ordinary men," shaped more by their experience and responsibility as leaders of a great country than by ideology. They are properly understood, Kennan suggests, as "highly conservative men, perhaps the most conservative ruling group to be found anywhere in the world, markedly advanced in age, approaching the end of their tenure, and given to everything else but rash adventure." Furthermore, Kennan suggests, the Soviet leaders "share the horror of major war that dominates most of the Soviet people," and "have no desire to experience another military conflagration and no intention to launch one." [8]

FUTURE DIRECTIVES

We stand at present, once again, at a crucial juncture in Soviet-American relations, and the auguries for the future are less than promising. The SALT talks have made progress, we are told, but there are still obstacles to be overcome, and domestic opposition to a new agreement is rising. We are at odds with the Russians over Africa, the Middle East, and human rights, and cold warriors at home are demanding that we punish the Russians for what they are doing in these areas by holding up a SALT agreement. The professionals call this approach "linkage"; an anonymous observer, noting our own vital interest in SALT, said it is more like shooting yourself in the foot.

President Carter himself has denied any intent to practice linkage. Indeed, when he inaugurated his human rights campaign in 1977 he expressed confidence that it would not interfere with an arms accord. Nonetheless, in a speech at Wake Forest University on March 17, 1978, the President warned—or threatened—the Russians with the erosion of popular support for cooperation "toward common social, scientific and economic goals" if they "fail to demonstrate restraint in missile programs and other force levels and in the projection of Soviet or proxy forces into other lands and continents." He also warned against the Soviet buildup of conventional arms and sea power and, in rather strident terms, declared that we must never allow the Soviet Union to be in a position to use its nuclear power to coerce or blackmail us or our friends. He warned, too, that a Soviet first strike, though a "remote" threat, would be "national suicide" for the Soviet Union. [9]

It seemed probable at the time that the President was directing his remarks less to the Russians than to our domestic cold warriors, especially the Senate "hawks" who might scuttle a SALT treaty. Unfortunately, there is no way of trying to appease Senator Jackson and his associates without antagonizing the Russians, and that is exactly what happened. The official Soviet press agency, Tass, responded immediately and sharply to

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Footnotes at end of article.

the Wake Forest speech, accusing President Carter of abandoning détente and resorting "to a course of threats and a buildup of tension." [10] The Russians, it seems, were reacting to the *tone* and *attitude* of President Carter's remarks. His references to Soviet coercion and blackmail and to the threat of a first strike, even though hypothetical, must convey to the Russians that these are what we think they have in mind; these are the motives and intentions we attribute to them.

Just as we have never been quite able to make up our minds about the Russians, they show uncertainty about our intentions. In an authoritative article in *Pravda* on March 28, 1978, the Soviet leadership described the Carter administration as torn between two schools of thought within the United States, one for "building up tension," the other for détente. Emphasizing the delay in reaching a SALT agreement, the article, written by Georgi A. Arbatov, adviser to the Politburo on American affairs, said that a time of "truly crucial decisions" was at hand, and the issue was not only whether there was to be a SALT agreement. "The question is actually about selecting the road for years to come." [11]

With a view—so it was announced—to clarifying the confusion over American policy toward the Soviet Union, President Carter made another speech on the subject at the United States Naval Academy in Annapolis on June 7, 1978. He reiterated his belief in the fundamental importance of a SALT agreement; pledged his administration's continuing efforts to achieve an agreement, noting that "the risks of nuclear war alone propel us in this direction"; and assured his listeners that the prospects for a SALT II agreement were good. He went on, however, to castigate the Soviet Union for its actions in Africa, its military buildup, and its violations of human rights. Then—in somewhat patronizing terms—the President took note of the shortcomings of the Soviet economy and Soviet agriculture and reminded the Russians that their standard of living was lower than those of some other countries.[12] Since these failings are well known to the Russians, it is not clear what purpose is advanced by trumpeting them, other than to provoke or give offense, or—as seems likely—to try to appease anti-Soviet sentiment in the Congress, an unpromising undertaking as likely to encourage as to dampen cold war attitudes.

The President's speech at Annapolis apparently failed to clarify American policy to the Russians. The Soviet news agency Tass found the President's remarks "strange, to say the least," while earlier *Pravda* had accused the Carter administration of "constant zigzags and inconsistency" and said it was difficult to tell "who in Washington expresses the true policy of the Administration." [13] The Russians, it would seem, were not alone in their confusion. The *New York Times* in an editorial declared the President's Annapolis speech "essentially conciliatory," while its front page news article, on the same day, carried the subhead, "Toughest Stand Yet." [14]

As we examine the outstanding issues between the two superpowers and attempt to resolve the ambivalance and contradictions of our policy, our decisions, I have no doubt, will be based only in part on the facts and merits of special problems, such as SALT, Africa and the Middle East, and human rights. Our decisions will be shaped at least as much—and I suspect more—by the attitudes that we and the Russians bring to our continuing interaction. If each side remains basically convinced that the true objective of the other is to dominate or destroy, there will be no worthwhile SALT agreement, because almost any weapons system is potentially aggressive; there will be no cooperation for peace in the Middle East or Africa, because any bid for influence can be read as part of a global design; there will be no increase in trade, because almost any commodity, even food, can contribute to a nation's war making capacity; and there will surely be no improvement in human rights, because relaxing controls, from the Soviet standpoint, would open the gates to Western subversion.

If, on the other hand, we approach outstanding problems with attitudes of cautious trust, with the desire to cooperate, and with some appreciation of the other party's fears and anxieties—with a measure, that is, of empathy—we might well find ourselves able to develop a different, positive kind of "linkage" in our relations with the Soviet Union. As currently practiced, linkage involves retaliation, or the threat of it, in one area for the failure of agreement in another. Its effect is to exacerbate disagreement—threatening SALT, for example, because we do not like what the Russians are doing in Africa. Were we instead to pursue a SALT agreement independently of other issues, and without excruciating bargaining over every last technical detail, we might then find ourselves in an improved position—on a new psychological plateau, so to speak—for enlisting Soviet cooperation for a settlement in the Middle East. And were we to do that, instead of trying to exclude the Russians from the Middle East, we might, conceivably, find them easier to deal with in regard to Ethiopia or Rhodesia. Should all this come to pass, and if we were also willing (as we promised back in 1972) to trade with the Soviet Union on nondiscriminatory terms, I would venture a guess—maybe even a prediction—that there would be some easing of restrictions on human rights within the Soviet Union.

### LINKAGES, POSITIVE AND NEGATIVE

The centerpiece of détente—if there is to be détente—is strategic arms control. Its importance, though obvious to ordinary people, sometimes seems to escape the experts, and therefore bears repeating: arms control is important because the leaders of the Soviet Union and the United States have the means at their disposal at any time to destroy each other's cities and much or most of each other's populations. It is theoretically possible to prevent war by maintaining a strategic balance in an uncontrolled arms race, and it is even possible, theoretically, to limit the arms race by voluntary, unilateral restraints on the development of superfluous weapons systems. Recent experience suggests, however, that to the arms experts there is no such thing as a superfluous weapons system, and all history—from antiquity to the world wars of the twentieth century—shows that peace cannot survive indefinitely on the basis of fear alone. It is an accepted principle of psychology that fear shapes behavior; our prophecies tend to be self-fulfilling, so that if we live in the constant expectation of war, we will probably, in due course, get it.

### CARTER AND SALT

The Carter administration has been ambivalent in its approach to SALT, as it has in its entire approach to détente. At times the President has seemed to share the view held by advocates of détente that the Russians are probably no more enthusiastic about being incinerated in a nuclear war than we are. In his address to the 32nd United Nations General Assembly in the fall of 1977, President Carter pointed to the "awesome and special responsibility" of the superpowers in an age in which standards of "victory" and "defeat" have become archaic.[15] More recently, as in the President's speeches at Wake Forest and at Annapolis, the Carter administration has been reinforcing cold war attitudes of fear and mistrust of Soviet intentions. The intent may well be to try to appease cold war pressures at home; the probable effect is to reinforce these pressures while puzzling and angering the Russians.

The status of the SALT talks is by no means clear. On the one side we are told that significant progress has been made and that the agreement is about 95 percent complete. A compromise seems to have been reached on the long-stalemated issue of the American cruise missiles, limiting their deployment, and it is also reported that the United States will be prepared to accept Soviet assurances that the so-called Backfire bomber—another controversial issue—will not be deployed in a manner enabling it to fly strategic missions against the United States. To the layman much of the argument over restrictions on nuclear overkill seems stupefyingly technical and, overall, irrelevant, since there is virtually no possibility that either side can make itself immune to shattering attack by either first or second strike.

The rewards of a SALT agreement are not in the realm of physical security, since that has already been lost irretrievably in this age of nuclear weapons and ballistic missiles—to us, to the Russians, to all peoples. The real rewards of SALT are twofold. First, arms control can save a great deal of money: a Senate Budget Committee report in the spring of 1978 warned senators that if SALT failed, additional defense spending over the next fifteen years could increase up to $100 billion—for cruise missiles, Trident submarines, and the fantastically expensive projected M–X missile, which could be deployed in a mobile mode.[16] The second, and greater, reward of a SALT agreement will be in its psychological effects: in its encouragement of a measure of mutual trust between the superpowers, and, as a precedent for cooperation on other issues, as a step toward the development of a habit of cooperation. This approach, which might be called positive linkage, may well be dismissed by experts and professional Kremlinologists as naive. I put it forth nonetheless because the approach commended by the self-styled, hard-nosed "realists" has been tried and found wanting. It has brought us only recurrent crisis and the dangerous and costly arms race; there is no "realism" in an approach that does not work. It would seem timely to try something new.

### HUMAN RIGHTS AND TRADE

One area in which only the truest of true believers would contest the need of a new approach is that of human rights and the related problem of trade. Here there is the distinct risk of a conflict of American ideals, of the possibility, as sociologist David Riesman has put it, "that the proclaimed goal of human rights may inadvertently risk the human prospects of survival itself." [17] Americans naturally and properly deplore the mistreatment of individuals in totalitarian societies, and the inclination is strong to apply pressure or sanctions—that is, linkage—against states that deny basic human rights to their own citizens. The trouble with our human rights campaign against the Soviet Union is surely not in its motivations but in its effects: it simply does not work. Just as the arms race has failed to win security, the human rights campaign has failed to win freedom for its intended beneficiaries On the contrary, it has provoked a hardening of the Soviet position against dissidents and, although it has not yet done so, may goad the Soviet leaders into a tougher stand on SALT and other issues, through a linkage policy of their own.

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Footnotes at end of article.

There is incontestable evidence of the futility and mischievousness of an aggressive human rights campaign in the fiasco of the Jackson-Vanik amendment. Jewish emigration from the Soviet Union was mounting steadily—from about 15,000 in 1971 to 30,000 in 1972 and a peak of 35,000 in 1973—until the debate on and adoption in 1974 of Senator Jackson's amendment making equal trade treatment contingent on the dropping of emigration controls. The Russians responded by dropping instead the Soviet-American trade agreement of 1972 and by sharply restricting Jewish emigration, which fell to 15,000 in 1975, the same in 1976, and then to its current rate of about 13,000 a year. By contrast, Chancellor Schmidt of West Germany, practicing a quiet, discreet diplomacy, obtained in 1976 the repatriation from the Soviet bloc of some 70,000 ethnic Germans.

Aside from its drastic effects upon Jewish emigration from the Soviet Union, the principal result of the Jackson-Vanik amendment, and the related Stevenson amendment that restricted Export-Import Bank credits to the Soviet Union, has been a boon to the trade of other countries. Except for some large agricultural shipments to the Soviet Union, Soviet-American trade has stagnated since 1974, while Soviet trade with Western Europe and Japan has expanded considerably. The potential market for American trade and investment in the Soviet Union remains very large. With their under-developed civilian economy, the Russians have need not only of agricultural commodities but also of high-technology products that the United States can provide, such as fertilizer plants, petroleum and natural gas facilities, power-generating plants, transport and distribution systems, and managerial know-how. To gain access to this potentially profitable market, which could provide jobs for American workers while reducing our huge foreign trade deficit, we would have to repeal the Jackson and Stevenson amendments, allowing the Russians equal trade status and access to Export-Import Bank credits on the same terms we grant to other trading partners. Whether we are willing to take these steps depends ultimately, as does our approach to SALT, on our basic attitude toward the other superpower: Is it to be regarded as a permanent antagonist resolved to do us in, or as another great power with which, through effort, we can hope to build reasonably normal relations?

One might have expected the fiasco of the Jackson amendment to have produced a measure of modesty, if not chagrin, among the Soviet-baiting cold warriors. Such, however, has not been the case. Although the President himself has backed away from the human rights sermons with which he infuriated the Russians during his first months in office, American representatives, led by Arthur Goldberg, wound up in March 1978 eight months of futile polemics and moralizing at the Belgrade conference on European security and cooperation, which was convened to review the Helsinki accords of 1975. Although our representatives lectured the Russians eloquently and at length on their transgressions in the field of human rights, not one of more than 100 proposals submitted to the conference was approved, and the final report made no reference to human rights because the Russians threatened to veto the report if human rights were mentioned. The only agreements reached at Belgrade were decisions to hold certain other meetings, including another review conference in 1980 in Madrid.

Following upon this triumph of human rights diplomacy, the administration and its congressional supporters seemed to shift their attention to the prospective Scharansky trial. Mr. Scharansky is a young Soviet dissident accused of working for the CIA, for whom President Carter, early in his term, spoke out publicly, denying any CIA connection. The result was to put the President's prestige on the line and to elevate an individual question of Soviet justice to the status of a cold war issue. In an interview broadcast over the Voice of America on April 3, 1978, the American ambassador to the Soviet Union, Malcolm Toon, bluntly invoked linkage, warning that the trial of Scharansky "will have a very negative effect on our relations and it will make it very difficult indeed for us to do the sorts of things which I think both of us feel are essential to peace and stability in the world." [18]

There is nothing to be said in defense or excuse for the sometimes brutal treatment of Soviet citizens by their leaders—including, for another example, the banishment in March 1978 of the distinguished musician Mstislav Rostropovich. Experience demonstrates, however, that it is usually futile and often destructive and dangerous to intervene in the internal affairs of other countries, especially a great power like the Soviet Union. As we discovered in Vietnam, outsiders are seldom wise enough, or powerful enough, to elevate the morality of a society not their own. The Russian people, moreover, have lived under dictatorship throughout their history, under the tsars and under the Communists, and it is not within the scope of our resources, moral or material, to lift that burden of oppression by external pressure.

The authors of the human rights campaign argue that there must be a "moral dimension" to our foreign policy, and in that they are absolutely correct. The question, however, is not whether or not there is to be morality in our policy but, as David Riesman observed, what choice we will make when ideals seem to conflict. My own strong conviction is that there is no more compelling moral purpose to be advanced through our foreign relations than the prevention of nuclear war, and this objective requires, above everything else, the development of a peaceful and reasonably cooperative relationship between the two nations that have it within their power virtually to shatter human life upon the earth. I also believe—and in this I am in the company of leading students of Soviet affairs, such as Secretary Vance's principal adviser on the Soviet Union, Marshall Shulman—that there is no ultimate conflict between the policy of détente and human rights. As Professor Shulman has noted, we cannot predict the evolution of the Soviet system, but "it seems reasonable to believe that easing of repression is more likely to result from evolutionary forces within the society under prolonged conditions of reduced international tension than from external demands for change and the siege mentality they would reinforce." [19]

The most promising route to greater freedom within the Soviet sphere, it would seem, is detente itself—the gradual lessening of tensions and pressures through the normalization of relations.

### THE THIRD WORLD

Looking further at the possibilities of positive linkage, it would seem worthwhile to examine the possibilities of Soviet-American cooperation in the Middle East and Africa, and to do so in such a way that progress in one region can be built upon for progress in the other. I am by no means certain that this can be done. The Russians may be unmovable in ideological commitment to the advancement of the "class struggle" in the Third World. In that event we are not without resources for resisting them if they threaten our interests or otherwise act in violation of the United Nations Charter, and we can do so without jeopardizing the strategic arms limitations that are of such great importance to both of us. There is also a possibility—an untested and, I rather suspect, a good one—that if we were to enlist, rather than resist, Soviet participation in the search for peace in the Middle East, we might find them in turn more amenable to our preferences with respect to Ethiopia, Rhodesia, or Angola.

Somewhat unexpectedly, in the fall of 1977, the Carter administration departed from the established American policy of excluding the Russians, so far as possible, from Middle East diplomacy. On October 1, 1977, the United States and the Soviet Union issued a joint statement in their capacity as cochairmen of the Geneva Peace Conference on the Middle East, in which they called for a comprehensive settlement based on Israeli withdrawal from occupied Arab territory, ensuring the "legitimate rights" of the Palestinian people, termination of the state of war and the establishment of normal relations between Israel and the Arabs, and international guarantees of the entire settlement in which the Soviet Union and the United States would participate.

One would have thought this declaration, in which the Soviet Union took a position consistent with that of the United States, would have been welcomed as promising both for peace in the Middle East and for superpower detente. Instead there arose a fearful hue and cry about "letting the Russians back into the Middle East." The *New York Times* proclaimed itself perplexed by this "tortured piece of prose." [20] The Jewish community was portrayed as "absolutely horrified," [21] and one overwrought columnist fulminated against the joint statement as an "infamous" design by President Carter for turning the West Bank into a "Soviet staging area" against Israel.[22]

Under this barrage of Zionist and anti-Soviet criticism, the administration beat a prudent but unfortunate retreat from the approach of the joint statement. Little if anything has been said since then about Soviet-American cooperation for peace in the Middle East, even though—and the point bears all possible emphasis—the Soviet position on an Arab-Israeli settlement is substantially similar to our own: they, like we, favor Israel withdrawal from most occupied territories; they, like we, support the survival and security of Israel—a position, indeed, held by the Soviet Union since the creation of Israel in 1948; and they, like we, now say that they are prepared to join in guaranteeing a settlement along these lines. Furthermore, the Russians exert an influence on Syria and on the Palestine Liberation Organization, an influence that could be used to advance the cause of an equitable overall settlement.

If the United States is reluctant to cooperate with the Soviet Union in the Middle East, where their basic position is compatible with our own, it would seem something less than astonishing that the Russians are not now hastening to do our bidding in Africa. In the wake of the successful Soviet-Cuban intervention in Ethiopia, which enabled that country to expel Somali invaders from its territory, and the alleged Cuban support of the Katangan exile raid into Zaire, the United States has important, legitimate concerns. Will the Russians now restrain their Cuban allies from further large-scale military involvement in Africa, or will they encourage them in "wars of national liberation"? Will the Russians now practice restraint in the difficult transition to majority rule in Southern Africa, or will they support and incite the militant Patriotic Front against a moderate settlement in Rhodesia? These are matters that might be brought to satisfactory, or at least tolerable, resolution in the context of a broader

Soviet-American détente—which is to say, we might be better able to influence the Russians on these issues if there were a habit of consultation between us, on all major issues and in other regions as well as Africa.

Of late we have been advising the Soviet Union that it cannot have a selective détente; it cannot intervene in Africa and still hope for a forthcoming American attitude on SALT. Some members of Congress have called for suspension of the SALT talks until the Russians terminate their "adventurism" in Africa, and Mr. Brzezinski, the President's national security adviser, is widely thought to be a proponent of one form or another of linkage of this kind. It is worth recalling in this respect that there never would have been a SALT I agreement if the Russians had insisted upon linkage; Mr. Brezhnev signed that agreement with President Nixon in Moscow in 1972 at a time when the United States was intensifying its bombing of North Vietnam and had just mined the North Vietnamese ports.

It is also worth noting that the Soviet role in Ethiopia thus far does not qualify as "aggression," in law or in fact. By contrast with Angola, where the Russians and Cubans intervened in a civil war in violation of the United Nations Charter, their intervention in Ethiopia, whatever its motivation was in support of an invaded nation, and was therefore consistent with the United Nations Charter. Were there a *habit* of détente between the superpowers—of cooperation, that is, on all major issues—it might have been possible for the United States, as a signatory to the United Nations Charter, to *endorse* the Soviet effort insofar as it consisted of support for a victim of aggression, and then to express our "confidence" that the Russians would not go beyond this commendable purpose.

CONCLUSIONS

Linkage, in short, is a two-way street, and is far more likely to work as a positive incentive than as a negative sanction. If the United States could send half a billion men to Vietnam, cut the Russians out of the Middle East, and subvert an elected Marxist government in Chile, while still expecting the Russians to cooperate on arms control, they may find it puzzling when we threaten to disrupt SALT because of their involvements in Africa. We would be on much stronger ground in calling on the Russians to practice general rather than selective détente if we would practice what we preach: by pursuing SALT on its own terms, by inviting rather than resisting Soviet cooperation in the Middle East, by permitting trade on nondiscriminatory terms, and by abstaining from futile meddling in the internal affairs of the Soviet Union.

Powerful though they are, the Soviet Union and the United States are under certain constraints that do not necessarily apply to other nations. They alone have the power—and with it the responsibility—to maintain a semblance of order in our turbulent world. Many other nations, large and small, have acquired the means to fight wars, trouble their neighbors, and disrupt their regions, if these are their inclinations. In this respect we live in an increasingly pluralistic world. But in another, perhaps more important, respect, the paramount role of the superpowers is increasing rather than decreasing. They alone have the power, through collaboration, to put limits on the world's turbulence, to prevent great conflicts and contain small ones, to curb the excesses of nationalism and ambition, including their own, and by so doing to make the world as safe as it can be made in the thermonuclear age. Because of their power, and the responsibility it confers, the superpowers do not have the freedom to quarrel that smaller and less potentially dangerous nations have, or that great powers themselves may have had in an age when weapons were less destructive. The superpowers are therefore under an obligation—to themselves, to the rest of the world, and to posterity—to resolve their differences insofar as they can, and to set aside those which they cannot resolve. As the greatest threats to world peace, the United States and the Soviet Union also have the greatest responsibility for protecting it. That is the real meaning of détente: it is not, fundamentally, an option but a compelling obligation.

Lasting peace must be built on two foundations, fear and affiliation. Modern weapons provide an adequate basis for fear, and that fear, which Churchill called the "balance of terror," is the principal basis of peace in the world today. By itself, however, it is insufficient, too slender a reed on which to base the future of the human race. We must try, therefore, by the means at our disposal—arms control and political cooperation, trade, and educational exchange—to build the second, often fragile, but ultimately more reliable, foundation of peace, which is the capacity of human beings for affiliation and cooperation. As Sigmund Freud wrote to Albert Einstein in 1932, "All that produces ties of sentiment between man and man must serve us as war's antidote." [23]

FOOTNOTES

[1] Alexis de Tocqueville, *Democracy in America*, J. P. Mayer and Max Lerner, eds. (New York: Harper and Row, 1966), vol. 2, part 3, chapter 21, p. 615.

[2] Quoted in Daniel Yergin, *Shattered Peace* (Boston: Houghton Mifflin, 1977), p. 296.

[3] Crane Brinton, *The Anatomy of Revolution* (New York: Vintage, 1965), p. 234.

[4] *Public Papers of the Presidents of the U.S.: Harry S. Truman, 1947* (Washington, D.C.: Government Printing Office, 1963), p. 178.

[5] "NSC-68," a Report to the National Security Council (Washington, D.C.: National Security Council, 1950), p. 4.

[6] *Public Papers of the Presidents of the U.S.; Richard Nixon, 1974* (Washington, D.C.: Government Printing Office, 1975), p. 472.

[7] Yergin, *Shattered Peace*, p. 409.

[8] Remarks at a Meeting of the Council on Foreign Relations," Washington, D.C., November 22, 1977.

[9] "Remarks of President Carter at Wake Forest University," Winston-Salem, North Carolina, March 17, 1978. Office of the White House Press Secretary.

[10] David K. Shipler, "Moscow Charges President Is Using Threat, Distortion," *New York Times*, March 1, 1978.

[11] Quoted by Murrey Marder in "Soviets Say Detente at Crossroads," *Washington Post*, March 29, 1978.

[12] "President's Speech on Soviet-American Relations at the United States Naval Academy," *New York Times*, June 8, 1978.

[13] Quoted by Craig R. Whitney in "Soviet Calls Attitude of Carter 'Strange,' Reaffirms Detente," *New York Times*, June 8, 1978,

[14] *New York Times*, June 8, 1978.

[15] "President Carter's Address to the United Nations General Assembly, October 4, 1977," in *New York Times*, October 5, 1977.

[16] "Study Warns of Arms Costs if U.S.-Soviet Pact Fails," *New York Times*, April 4, 1978.

[17] David Riesman, "The Danger of the Human Rights Campaign," in *Common Sense in U.S.-Soviet Relations* (Washington, D.C.: American Committee on East-West Accord, 1978), p. 49.

[18] Quoted by Peter Osnos in "Toon Warns Soviets on Scharansky," *Washington Post*, April 4, 1978.

[19] Marshall Shulman, "On Learning to Live with Authoritarian Regimes," *Foreign Affairs*,, vol. 55, no. 2 (January 1977), p. 334.

[20] "The Geneva Express (via Moscow)," *New York Times*, October 4, 1977.

[21] "Carter's Stance on Palestinians Turns Off Jewish Contributors," *Washington Post*, October 6, 1977.

[22] William Safire, "Selling Out Israel," *New York Times*, October 6, 1977.

[23] Quoted in U.S. Congress, Senate, Committee on Foreign Relations, "Psychological Aspects of International Relations," 89th Cong., 2nd sess., May 25, 1966, p. 7.●

## ILLEGAL ASPECTS OF NORMALIZING RELATIONS WITH RED CHINA

● Mr. GOLDWATER. Mr. President, it is well-known that one of the essential conditions demanded by Communist China for the establishment of diplomatic relations with the United States is termination of the Mutual Defense Treaty of 1954 with the Republic of China. Some proponents of switching embassies from Taipei to Peking argue the novel concept that the President has power to unilaterally break the defense treaty or to determine that it has lapsed upon recognition of Red China.

The leading spokesman for this unique theory is Prof. Jerome Cohen of Harvard Law School, who published his opinion in the July issue of the American Bar Association Journal.

Mr. President, I believe the proposition argued by Professor Cohen is a dangerous innovation in American constitutional law and practice.

I believe Professor Cohen has failed to recognize that there is not a single precedent in American history for the abrogation of a defense treaty by the unilateral action of the President.

Nor is there any example of the President ever having decided that a defense treaty would lapse following a change in diplomatic relations between governments.

To the contrary, it has become increasingly clear in international law that nonrecognition of a state or government does not by itself impede the latter's capacity to carry out bilateral treaties. Existing treaties with the unrecognized state or government remain in force, subject to the principle of reciprocity.

As Prof. Victor Li, professor of international legal studies at Stanford University, testified at hearings before the House Subcommittee on Asian and Pacific Affairs on September 21, 1977:

> International law does not require that prior treaties entered into with a once-recognized government, the terms of which are limited to the territory actually controlled by that government, must automatically lapse after that government loses de jure recognition while still exerting de facto control . . . Hence, the choice of what to do with the defense treaty is a political, more than legal matter.

Mr. President, the real question is a political one, not a legal technicality as Professor Cohen would have it. The question that must be asked is whether the President can act alone under our political system.

According to James Madison and Thomas Jefferson, the answer is in the negative.

Madison wrote that he saw "the same authority, precisely, being exercised in annuling as in making a treaty." As we all know, the treatymaking authority is the President acting together with the advice and consent of two-thirds of the Senate.

Jefferson, in his Manual of Rules of the Senate, wrote:

> Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded.

Madison and Jefferson are supported by the text of the Constitution, which specifies that a treaty is part of "the supreme Law of the Land." And, since the President is obligated by another provision of the Constitution to "take care that the laws be faithfully executed," it is clear the President is under a duty to carry out treaties, just the opposite of an authority to repeal them.

The history of the ratification of the Constitution contains persuasive evidence that the framers meant to make it difficult for the United States to terminate a treaty. Madison, Hamilton, and C. C. Pinckney, each of whom signed the Constitution, wrote that the unfaithful adherence to treaties by the new nation was one of the defects of the Articles of Confederation intended to be remedied by the Constitution. Similarly, James Wilson hoped that by remaining faithful to its treaties, the new government would gain the respect of other nations. These statements contradict Cohen's opinion that the framers meant for treaties to be easily broken by Presidential decision alone.

With all the emphasis the framers put on a balance of powers and accountability, it is difficult to conceive, as Cohen does, that the framers would have tossed these principles aside by vesting a totally unchecked power in the President to break the faith of the Nation as expressed in its treaty commitments.

Cohen's appeal to the President's removal power as a precedent for the termination of treaties is astounding. From the bare fact that high Government officers are appointed by the President with the advice and consent of the Senate, but can be removed by the President at his discretion, Cohen believes the President can terminate a treaty by his independent initiative.

In my opinion, the fact that advocates of extreme Presidential power must resort to such an absurd argument of this kind reveals the weakness of their concept. The status of the President vis-a-vis other sovereign nations cannot be equated to his relationship with subordinate officers of his own administration.

The power of removing officials who serve under his direction aids in the efficient exercise of the President's duty to execute the laws. But the treaty power is not, as Cohen implies, a tool for more effectively operating the mechanics of Government. A treaty pledges the solemn word of our people and is elevated to the same constitutional rank as a law. By breaking a formal compact with another nation, which he is bound to uphold as law, the President would not carry out the law, he would break it.

In his article, Professor Cohen also misconceives the significance of a provision in the defense treaty with Taiwan which allows withdrawal by either party following 1 year's notice. The term "party" does not mean "the President," but refers to the government of the state concerned. Thus, the provision requires a reference to the constitutional processes of the government ratifying the treaty to determine what authority in that government shall make the decision to give notice under the treaty. This brings us back to the fact that under the Constitution the decision to terminate a treaty is a joint one shared by the President and Senate or Congress.

Mr. President, it must be remembered that the defense treaty with Taiwan does not stand alone. Nearly every bilateral and multilateral treaty the United States has with other governments contains a provision similar to the duration article of the defense treaty. For example, NATO, the Test Ban Treaty, the Biological Weapons Convention, and the Outer Space Treaty, each contain provisions authorizing termination after 1 year's or less notice thereof.

If the language in the defense treaty with Taiwan were construed as allowing the President alone to provide notice of its termination, each of the above treaties would equally be hostage to his sole discretion. I am certain that this news would come as a great surprise to the Senate, which had advised and consented to those various international agreements without any such understanding or warning.

Mr. President, I conclude my remarks by issuing a word of caution to those persons who are advising the President to unilaterally concede to Red China's demand for the termination of our defense treaty with Taiwan. I would remind persons who are so advising the President that we in the Senate unanimously declared our sentiment that the Constitution requires "prior consultation between the Senate and the executive branch" on any proposed policy changes which may affect the continuation in force of the Mutual Defense Treaty of 1954. This statement by the Senate, which was contained in the Dole-Stone amendment to the International Security Assistance Act, was designed specifically to correct any misconception that the treaty would automatically lapse if the administration recognizes Peking. The vote on that amendment was 94 to 0.

If the President should, contrary to all precedent and in violation of the unanimous declaration by the Senate, attempt to terminate the defense treaty with Taiwan, it would subject the country to a severe constitutional crisis. Not only would the subject matter present a "case or controversy," to which the judicial power extends, but I am confident that Members of the Senate would have standing to come into the courts for a judicial determination of the constitutionality of the President's action.

Also, there are other remedies available to the Senate or Congress, including the possibility of impeachment proceedings. This is not a threat or prediction of what might happen, but it is something any President's adviser should be aware of before any action is taken which would put the President in a serious conflict with the legislative branch over an abuse of power issue.●

## PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the notifications I have just received.

The notifications follows:

WASHINGTON, D.C.,
*August 29, 1978.*

In reply refer to: I–7052/78ct.

Hon. JOHN J. SPARKMAN,
*Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78–96, concerning the Department of the Air Force's proposed Letter of Offer to Korea for other than major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $60 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, U.S.A., Defense Security Assistance Agency.*

[Transmittal No. 78–96]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Korea.
(ii) Total Estimated Value:
Major Defense Equipment,* $0.0 million.

Other, $60.0 million.
Total, $60.0 million.
(iii) Description of Articles or Services Offered:

Cooperative Logistics Supply Support Arrangement (CLSSA), requisition case (FMSO II) for follow-on spares and supplies for support of aircraft of U.S. origin (F–4, F–5, A–37, and C–123 aircraft).

(iv) Military Department: Air Force.
(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(vi) Date Report Delivered to Congress: August 30, 1978.●

## PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on August 30, 1978.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S–116 in the Capitol.

The notification follows:

WASHINGTON, D.C.,
*August 29, 1978.*

In reply refer to: I–8035/78.

Dr. HANS BINNENDIJK,
*Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, USA, Director, Defense Security Assistance Agency.*●

(By request of Mr. PEARSON for Mr. HELMS the following statement is printed in today's RECORD:)

### NATIONAL HOSIERY WEEK

● Mr. HELMS. Mr. President, small business is the backbone of America's economy and our free enterprise system. I can think of few industries in which small, family-owned businesses make up the greater part than the hosiery industry. I am proud of the thousands of dedicated people who have made this vital and growing industry, and I salute the hosiery industry during National Hosiery Week.

Mr. President, the eighth annual National Hosiery Week will be held September 10–16 of this year and I am delighted to have the opportunity to recognize and congratulate the National Association of Hosiery Manufacturers and its member companies for their outstanding contributions to American industry and the economy.

The hosiery industry of America produces $3.4 billion in retail sales, and as such is a vital part of our total economy.

The hosiery industry provides employment for nearly 75,000 people in 444 plants scattered all across the country. The average number of employees per plant is about 170. The hosiery industry provides jobs for many other individuals supplying raw materials, as well as for those who distribute and retail the many and varied hosiery products. In North Carolina alone, some 35,000 people are employed by the hosiery industry.

The majority of the hosiery industry is comprised of small, family-owned, independent companies, working hard to earn a profit while providing needed jobs and boosting the economies of a number of small towns and cities. There are 330 companies manufacturing hosiery. There are very few large corporations involved in its production.

Mr. President, I am proud to state that over 90 percent of the total hosiery production is concentrated in the South, with my own state of North Carolina accounting for over 55 percent of the total production in the United States.

National Hosiery Week has been designated as a week to educate the consumer about hosiery and hosiery production and to acquaint the public with the wide variety of hosiery products available to meet his or her needs.

Companies involved in the production of hosiery face the same challenges as do most other American industries—they need an adequate supply of energy, they need to be able to compete internationally, and they must be able to depend on a sound economy for their security.

Mr. President, I applaud the National Association of Hosiery Manufacturers, which sponsors National Hosiery Week. The hosiery industry is an important and viable industry which serves as an integral part of our economy. The week of September 10 through 16 should help remind us of the opportunities and contributions American enterprises provide and we should all join in the celebration of National Hosiery Week.●

## THE CLOSE UP PROGRAM

● Mr. BENTSEN. Mr. President, I rise today to bring your attention to the fine work that several extraordinary educators in my State are doing to encourage students to take a greater interest in their community and their local government.

These nine teachers and administrators have been participants in the national close up program. Through that program, which I have supported, they were able to see their students take a more active interest in government—an interest they wanted to see preserved upon their return to Texas.

In order to encourage continued interest in government at all levels, they formed a steering committee, planned and conducted a mammoth program which involved over 1,000 students and teachers from the Houston area in a close up look at local government and some of the key issues facing us in Texas.

In a day when studies show a declining interest in politics at all levels, I think these dedicated Texans deserve special recognition for the work they have done to stimulate our young people to "get involved."

I know, Mr. President, that you and my colleagues in the Senate will join me in paying a special tribute to cochairpersons Dr. Judy Morris and Mr. David Adams of the Greater Houston Close Up Steering Committee and their committee:

Mr. Jim Lyons, Mr. Bob Wells, Ms. Gayle Fallon, Mr. Erskine Morehead, Ms. Carolyn Jones, Ms. Linda Wise, and Mr. Dale Glover.●

## NATIONAL HEALTH INSURANCE

● Mr. CURTIS. Mr. President, I should like to call to the attention of the Members an excellent column appearing recently in the Omaha World-Herald which underscores, in clear and unequivocal terms, why national health insurance is neither desirable nor necessary in this country. The columnist in this instance, a resident of Bellevue, Nebr., points out that "apathy toward national health care insurance legislation will lead us into the most devastating financial fiasco in our Nation's history," and she proceeds to refute, point by point, the premises behind the President's 10 "principles" released in July. Mrs. Ruse's analysis of each is excellent, and I commend her column to the entire membership as to why national health insurance is not needed and is an idea whose time is past.

I request that the column be printed in its entirety in the RECORD.

The column follows:

[From the Omaha World-Herald, Aug. 16, 1978]

### NATIONAL INSURANCE FOR HEALTH NOT NEEDED

(By Margie L. Ruse)

(NOTE.—The author, who lives in Bellevue, Neb., writes: "My husband and I fall into the much-abused middle-income bracket. We have raised and helped to educate three boys. Secretarial positions in both the insurance field and the medical field have given me some insight into this issue, but primarily, I feel that 35 years of tax burden to support an unrealistic structure have made me acutely aware of the urgent need to halt its continuance.")

Apathy toward national health care insurance legislation will lead us into the most devastating financial fiasco in our nation's history. Proponents of this legislation are promising services already available through private enterprise and tax supported welfare programs. Under the guise of better health care at less cost, they are trying to buy votes and gain control of additional tax dollars. The advantages lie totally on the side of the politicians and the insurance companies and the proposals must not be allowed to prosper and come into being.

Let's examine President Carter's proposals, as outlined in the July 30 World-Herald:

1. The plan wishes to insure all Americans comprehensive health care coverage. We have that now! Most Americans have coverage through employee benefit plans or private

policies. The underprivileged are covered under various federally funded programs. The argument that these programs are inadequate simply is not true. Existing programs, prudently administered, would be more than adequate. It is unthinkable that we should be asked to subsidize another give-away program. Politicians have demonstrated time after time that they are totally incapable of successful administration of tax supported programs, and unable to avoid corruption in the welfare system. Remember the term "federally funded" means tax supported and that means you and I are already providing care for the underprivileged as well as for ourselves.

2. Quality health care should be given to all. We have that now! Government intervention will absolutely not improve the quality of care; quite the contrary. Physician's offices and medical facilities will be so overcrowded with free-loaders seeking unneeded attention that the medics will be forced to reduce patient care to a bare minimum. Some years ago a prominent Kansas City physician told me that if he was ever forced to start treating diseases instead of people he would stop practicing. I wonder if other qualified physicians might feel the same way.

3. Freedom to choose our health care services. We have that now! Medicare, Medicaid and Social Security disability claimants are choosing their doctors and medical facilities just the same as people insured through private enterprise. If inefficiency in the government agencies prohibits the use of preferred medical services, remove the abuse and waste and grant assistance only to those in need. There will, then, be enough care for everyone.

4. Eliminate unnecessary health care spending. That one is a laugh! The administration admits to gross waste and abuse in existing tax supported programs, and exhibits total inability to rectify this situation. We must demand responsible use of our tax dollars before we subsidize another proposal designed to gain control of a greater percentage of our income.

5. Additional private and public expenditures can be offset by greater efficiency. Another laugh! When did any government program operate with greater efficiency than private enterprise? It just doesn't happen. Private enterprise must provide the greatest service at the least cost, show a profit and meet competition in order to stay in business. Tax supported programs do not have to show a profit or meet competition.When misuse of government funds causes a program to falter, a tax increase puts it back in business. We, the taxpayers suffer the consequences and we are responsible if we continue to elect irresponsible officials. Politicians instituting tax supported give-aways have brought our country to a state of economic chaos and we have allowed it. If the United States is to return to economic stability, we must deny support to every politician whose philosophies advocate such give-aways. My friends, we are the majority and we have the vote.

6. The plan will be gradually phased in with no additional government expenditures until 1983. Then what? If the politicians can't fulfill their obligations, as historically has been the case, you and I will be stuck without recourse, with the dictates and costs of an insurance program over which we have no control. A very dangerous position.

7. The plan will be financed through government funding and contributions from both employers and employees. Remember, the "government" is you and I. That means we will pay two ways—through our tax dollars and through private contributions. We do that now! However now, at least, we have the prerogative of selecting our own insurance carrier, or changing to another if we choose. A government controlled program would rob us of that choice, but we would still have to pay.

8. Private insurance companies would play a significant role. Precisely. This is probably the most dangerous by-product of the whole proposal. The coverage would be "farmed out" proportionately to various insurance companies. This would provide an already too-powerful industry carte blanche to write into their declarations any provisions that would best serve them. True, the administration will feign a system of regulations under which they should operate, but the insurance industry is already too large and powerful to be effectively regulated or controlled. Again, we would be saddled with a program over which we had no control, either from the standpoint of cost or coverage. If the plan were devised solely for the purpose of providing better care at reduced costs, it would be a threat to the insurance industry and they'd be screaming bloody murder. Do you notice how strangely silent they are?

To a great extent, insurance rates are determined by the percentage of revenue that is paid out in claims. Can you envision what the rates will do when free-loaders and graft paralyze the government controlled insurance program?

9. Attract personnel to underserved areas. We have that now! Federally subsidized programs already exist to build, equip and staff medical facilities in underserved areas. If those areas are not now adequately served, one can only assume such programs are unsuccessful and should be discontinued, certainly not escalated. "Ambulatory and preventive" services would be a bonanza for the unscrupulous who need only one "iffy" category under which to operate.

10. Assure consumer representation. We have that now! Most assuredly it will be sacrificed under a national health care insurance program. What voice do we now have in the Social Security program? None. We are compelled to support it and compelled to participate, but we absolutely have no voice in its administration. Do we want the same kind of insurance program?

We do have another form of representation and that is our right to vote. Consider what irresponsible use of your tax dollars has already done to the economy and weigh very carefully the consequences of further political control.

Insurance is a consumer product just as much as the groceries. You would not want the politicians choosing your groceries. Surely a product as important to your well-being as health care insurance should not be entrusted to the free spending, vote-buying politicians. The more control we relinquish to any administration, the less control we retain for ourselves. Vote out any politician who backs this legislation.

Compare the cost of expressing your views to the increased tax burden you will sustain as the result of a national health care insurance program, then write immediately to your elected representatives. Your local library can provide any addresses you may need. We literally cannot afford to sit idly by and allow this program to become a reality. The time to stop it is now.●

## ERA EXTENSION

● Mr. GARN. Mr. President, House Joint Resolution 638, extending the time for the ratification of the equal rights amendment, may soon be before us. I think it is fair to say that rarely, if ever, has this body been faced with a single piece of paper that poses so many obvious and potential constitutional problems.

I say "piece of paper" advisedly, Mr. President, because that is what we will have before us. It is not a bill, for we will not send it to the President when we are through with it. It is not a treaty. It is not a part of the Constitution, and will never become a part of the Constitution, for we will not send it to the States for ratification. It purports to be an amendment to House Joint Resolution 208, but it cannot be that, because House Joint Resolution 208 is no longer before us.

In short, Mr. President, what we are being asked to pass is not anything at all.

This point has been made in some detail in the minority views of Congressman CHARLES WIGGINS, published in the House committee report. To quote him directly, what we are trying to do "cannot be done. If it could be done, it would not be wise to do it. If it were wise to do it, House Joint Resolution 638 is not the proper way to do it."

Mr. President, this is wisdom. I beg my colleagues to consider the constitutional chaos we will be inviting if we pass this resolution, and urge them to forgo the exercise. Irrespective of the merits of the ERA, we should proceed with restraint and fairness. While I oppose the ERA, I would make precisely the same arguments if the amendment under consideration were one of my own.

In the next week or two, I will be pointing out to my colleagues some of the legal and constitutional risks we will be running by pushing this extension resolution through the Congress. I sincerely hope that Senators will listen to these points, and join me in an effort to proceed fairly to all parties concerned.

To begin with, Mr. President, I ask that Congressman WIGGINS' minority views be printed in the RECORD.

The material follows:

MINORITY VIEWS OF MR. WIGGINS

It cannot be done. If it could be done, it would not be wise to do it. If it were wise to do it, House Joint Resolution 638 is not the proper way to do it. If House Joint Resolution 638 were the proper way to do it, it is nevertheless patently and intentionally discriminatory.

The Committee agonized over House Joint Resolution 638 for 1 entire day. Many questions were raised. Few were answered. Although House Joint Resolution 638 is hereby reported to the House, the majority of 19 Members who voted for it cannot know what it is. Needless to say, neither can the 15 Members who voted against it know what it is. Most of the proponents appear to believe that they have concocted a new form of legislation unprecedented in the history of the Republic and this House—a joint resolution that neither proposes a constitutional amendment by a two-thirds vote of both Houses nor needs a Presidential signature to take binding effect. However, as the Committee debates makes clear, not all the proponents believe that such a joint resolution can be passed. I encourage my colleagues to read the appendix following these views recounting the committee's unsuccessful struggle to find out what it is doing.

We don't know what we did. We won't say what we did. Why? Because we cannot do what we did.

FIRST

Congress does not have the power to amend conditions previously imposed on a proposed constitutional amendment.

As our Government was conceived, Congress has only those powers conferred on it by the Constitution. Article VI of that Constitution makes clear that there are only three ways by which Congress can create a legal obligation—treaties, laws, and constitutional amendments. True to our system of checks and balances, in none of these ways may Congress act alone. In all three of these ways, Congress must receive the concurrence of another institution of government. In making treaties, the Senate serves as a check on executive authority. In making laws, the executive serves as a check on the Congress. And in proposing constitutional amendments, the States serve as the check.

Heretofore, that was our constitutional system. But now the political exigencies and emotions of the day urge rejection of these checks and balances. Proponents do not like the States as a check, for 14 States—one more than constitutionally necessary—have voted rejection of the pending constitutional amendment. Thus they suggest an unprecedented power to create legal obligation in a manner nowhere found in the Constitution. They suggest that Congress by majority vote and without executive approval can change the conditions on which a prior Congress submitted a proposed constitutional amendment to the States. What an anomalous result it would be that our system requires a "law" to appropriate a penny but allows Congress—unchecked—to alter the amendment process during the pendency of a proposed constitutional amendment.

In view of the fact that Congress does not have the power to create new methods of legal obligation and in view of the fact that House Joint Resolution 638 is not an exercise of any recognized method, some proponents tried in vain to convince the Chairman of the Subcommittee managing the bill to adopt a traditional legislative rationale for House Joint Resolution 638 (see appendix). However, the chairman knew full well that such a rationale was unavailable here. The framers never intended that the President play a role in the amendment process. And in *Hollingsworth* v. *Virginia* (3 Dall. 378 (1798)), the Supreme Court confirmed that fact. To adopt a legislative rationale would require submission to the President; the power to veto would involve the executive in a most fundamental way, with a process intended to operate completely apart from executive intervention.

The Constitution, of course, was proposed by the States assembled "in convention" and ratified by the States through separate State conventions. In drafting article V, the framers built upon the above article VII model. Originally, it was agreed that the States in convention would propose amendments to the Constitution and that the States would ratify them either through their legislatures or by convention. However, the accurate skeptical insights of the framers led them to believe that if the States alone could propose amendments there might never be proposals to strengthen the national government. Thus, *after* the legislative process had been written into the Constitution, it was thought that Congress should have an equal role in proposing amendments. The check on Congress was, of course, the ratification process and not the executive veto. That is the lesson of *Hollingsworth*.

It would have been unusual for the framers to have envisioned article V (adoption of amendments) and article VII (adoption of the Constitution) as anything but parallel provisions, each treating with the fundamental law of the land. If one accepts that, it should be clear that the legislative process is quite separate and unrelated. It would not have been possible for Congress to alter the ground rules for ratification of the Constitution inasmuch as it was not yet in existence.

Suppose that the framers had attached a 7-year limitation in proposing the Constitution. Would an alteration of that condition have required a majority or two-thirds vote of the Congress? Would such a change have required Presidential signature? The reason why those questions do not make sense is that Congress had no such power at all. The reason why our committee could not make sense out of similar questions raised by House Joint Resolution 638 is the very same: Congress has no such power to alter the conditions attached to the pending proposal.

Proponents suggest that the power to extend the time for ratification is found in two Supreme Court cases, *Dillon* v. *Gloss* (256 U.S. 368 (1921)), and *Coleman* v. *Miller* (307 U.S. 433 (1939)). In *Dillon*, the Court held that Congress could condition a proposed constitutional amendment by fixing a reasonable time for ratification. Proponents suggest that it logically follows from *Dillon* that Congress can change the condition. Not at all. For in the facts before the Court in *Dillon*, Congress had placed the 7-year condition in the text of the proposed amendment. It is agreed by all that Congress does not have the power to alter any part of the text. Thus *Dillon* hardly supports the proposition that Congress can amend a condition previously imposed.

In *Coleman*, the Court divided on a 4-to-3-to-2 basis. Consequently, Dean Griswold suggests that it is a "case" and not a "decision." Nonetheless, *Coleman* is cited by proponents for the proposition that where Congress fails to place any time condition on an amendment, Congress may, when the constitutional number of States have apparently ratified, take a vote on whether a reasonable time has elapsed. Of course, Congress could do that. We can do it now. We can express our opinion on anything. But the important point in *Coleman* is the suggestion that the Court would not review the validity of such a Congressional decision. That aspect of *Coleman* is today very much in doubt since *Coleman* appears to be a departure from previous decisions of the Court and has not been followed by the Court in recent decisions, notably, *Baker* v. *Carr* (369 U.S. 186 (1962)); *Powell* v. *McCormick* (395 U.S. 486 (1969)); and *United States* v. *Nixon* (418 U.S. 683 (1974)).

What the proponents are suggesting in relying on Coleman is that the absence of judicial review creates the power for Congress to change the time condition. But in a system of law, that cannot be. As one proponent said in committee debate on another issue, the lack of judicial review means that we must exercise "greater care not greater license." We must obey the Constitution whether or not our actions will later be judged in court.

Article VI governs our actions whether or not there will be judicial review. Read in the light of article VI, neither Dillon nor Coleman support House Joint Resolution 638. Neither suggest a fourth way to create legal obligation. Dillon holds that Congress may condition a proposed constitutional amendment, and article VI does not suggest otherwise. Coleman suggests that Congress may render its judgment that the time condition by Dillon in every proposed amendment has, or has not, been fulfilled. But that is a vastly different exercise from that suggested by House Joint Resolution 638. House Joint Resolution 638 attempts to state a law—a new law—governing decision. If we assume for the sake of argument that Coleman is good law, the Court has merely said that Congress can render its interpretation of the Constitution whether a proposed amendment has been ratified in compliance with article V. And nothing in article VI prohibits Congress from stating its view.

In sum, nothing in Dillon or Coleman gives to Congress a fourth way to create legal obligation. Nothing in Dillon or Coleman suggests that Congress can change the 7-year condition previously imposed.

In order to see this more clearly, suppose that Congress had passed a statute proposing equal rights regardless of sex but conditioned the effectiveness of the statute with a proviso that such statute shall not take effect unless, within 7 years, 38 States pass resolutions of concurrence. If in 6½ years, 35 States have concurred, Congress could adopt a concurrent resolution, like that suggested by Coleman, expressing its opinion whether the conditions of the proviso have been met. But whether or not there is judicial review, can Congress "interpret" the facts and declare in a concurrent resolution that 38 States have in fact concurred or that only 4 years have passed and that there still remains 3 years? If Congress wished to change the effective date, it would—in a system of law—have to do more than merely render a judgment by concurrent resolution. It would have to write a new statute. It would have to begin again.

That is likewise true here. Unless Congress wishes to act lawlessly in the hope that no court will review, its only course—the only way permitted by article VI—is to begin anew by resubmitting a new constitutional amendment on whatever favorable conditions it believes appropriate.

If Dillon is correct that Congress may fix a 7-year condition, then Coleman is no authority that Congress may ignore that specific condition and even less authority that Congress may change that specific condition. The fact that Dillon allows Congress to fix a time limitation on ratification in packaging a proposal for submission to the States does not suggest that Congress can alter the package once it is submitted. The asserted power to amend follows neither from Dillon, as noted before, nor from congressional practice and precedents. Congress can, in practice, only amend measures of which it has possession. Once those measures leave our halls, change can occur only through a newly processed measure of equal weight. In view of Hollingsworth the only path open under article VI is to resubmit the text to the States on more favorable terms.

SECOND

If Congress had the power to extend, it would not be wise to exercise it. I offer two arguments to support this proposition. First, it is agreed by all that when Congress changed its practice of placing time limitations in the text to one of placing them in the proposing clause, the sole purpose was to unclutter the Constitution and not to create the possibility of extending the time. Proponents hasten to point out innumerable instances where the intention of Congress was one thing and the legal effect another.

That is true. The intention of Congress is often thwarted by the courts, by Presidents, and by bureaucrats. We are always busy with new measures—from legislation to overturn court decisions that have clearly ignored congressional intent to legislation to impose the legislative veto on regulations of one agency after another.

But let's wait a minute, here. The fact that congressional intent is so often ignored is not a cause for rejoicing, inside or outside our halls. Indeed, our many legislative responses indicate that a large majority of Members frown when congressional intent is ignored. The fact that we are thwarted so often should hardly be offered to us as a reason why we should ignore our own intention in placing the time limitation in the proposing clause. And that intention we all

know. It was to bind on the same basis as a condition in the text itself but not to clutter up the Constitution.

If Congress will not defend the intent of Congress, who will?

The second argument pertains to the facts of this particular ratification process. If Congress had the power to extend the time, I would think that Congress would want to exercise its power in an evenhanded, neutral manner to further the ends of the ratification process and not merely grant or refuse extensions on the basis of current opinion of the merits of the pending amendment.

On that basis, there is no "article V" need to extend the time. In the first year or so after submission of the amendment, 30 States ratified. Since that time five States have ratified while four have rescinded. More important, of the 15 States that have not ratified, 14 States have voted no. Under article V, it takes only 13 no votes to defeat an amendment on a rollcall of the 50 States. In only one State has the amendment been "bottled up" in committee. That State is Mississippi.

Therefore, it seems clear to me that the pending amendment has lost momentum. It has not gained in ratifications in recent months. And, in fact, it has been rejected in the requisite States necessary to defeat the amendment.

Moreover, the last 6 years have been a time of rapid change in women's rights. New rights have been created by Federal and State laws and new rights have been declared by the courts. Although proponents believe there is still more progress to be made, that is the question for the States under the ratification process. In view of the advances made legislatively and judicially in the last 6 years, early-ratifying States may have come to regret their decision yet feel bound by law. They may have then thought they had to go all the way and ratify in order to achieve the recent advances. That may explain why States appear to be increasingly reluctant to ratify.

This rapid change leads me to believe that a ratification in 1972 means something a lot of different—something a lot less radical—than a ratification in 1979 or 1982. Thus it would appear unfair to hold the ratifying States to their decision for any extended time. In view of the many recent changes in the area of women's rights, a 7-year period has proved to be a relatively long period of time. The extension of such a period causes me to doubt that a possible ratification in 1982 could be "contemporaneous" with those in 1972.

Nor are we faced here with a situation where those who have to decide want more time to decide. In fact, some States have urged defeat of House Joint Resolution 638 because they do not want any more time.

The amendment has been debated. The votes are in. It has been defeated. Any State that wanted to reconsider had plenty of time and still has time. In view of the rapid changes of the past 6 years, it is highly inappropriate on any objective standard to extend the time for 3 additional years.

Every amendment to the Constitution has been ratified within 4 years. In these modern times, a 7-year period would seem more than sufficient.

Finally, the Members should well understand the political strategy behind the drive for extension. The purpose is to lock in the 35 States that have ratified (while conveniently ignoring the four rescissions) so that proponents may focus their attention (and economic boycott) on the 15 nonratifying States. The reason why this approach is attractive to proponents and worth the risk of this unsettled course is the whispered fear that the amendment, if reintroduced today, might not receive the two-thirds vote of both Houses or receive the 35 ratifications it now claims.

In other words, the purpose of the extension is to "fool" article V by creating the false impression that there is a unity of the required number of States in favor of the proposed amendment. Consequently, even if we had the power to extend the time, it would be most unwise to do so.

THIRD

If Congress had the power and if it were wise to exercise the power, House Joint Resolution 638 is an improper exercise of that power. On its face, House Joint Resolution 638 appears to require only a simple majority for passage. It should require two-thirds of each House.

A reading of House Joint Resolution 638 indicates that it purports to amend House Joint Resolution 208 of the 92nd Congress. House Joint Resolution 208 passed both Houses by the required two-thirds majority and was submitted to the States.

It is well-established that amendments to a resolution proposing a constitutional amendment, when offered in the regular course of affairs before the House votes on adoption, require only a majority vote. Thereafter, the House votes on the resolution as amended. At that time, a two-thirds vote is required for passage. Thus every amendment to such a resolution must pass two hurdles—a majority vote and then a two-thirds vote.

It would appear that "parliamentary regularity," as Professor Weschler testified before the Subcommittee, would require that any amendment to the resolution occurring after the two-thirds vote in the House must itself receive a two-thirds vote for adoption. The reason is that any amendments made "after the fact" might unravel the two-thirds coalition required for passage.

Thus if the House passes a resolution proposing a constitutional amendment with no time limitation and if the Senate passes the same resolution but with one amendment imposing a seven-year limitation, House concurrence in the amendment requires a two-thirds majority. That, too, is very well established precedent. House Rules Manual, Section 192.

Now, I doubt that the House can amend the resolution at all once it has left the halls of Congress. But if it has the power, the requirement for a two-thirds vote would not appear to be diminished simply by the passage of 6 years.

If House Joint Resolution 638 would have required a two-thirds vote in the 92nd Congress once the House had passed House Joint Resolution 208, it would appear that as a matter of law the same two-thirds vote is required in the 95th Congress. The policy behind the rule is that one cannot guess why Members voted as they did. The Supreme Court raised this policy to a rule of law in *Powell* v. *McCormick* (395 U.S. 486 (1969)), in holding that it was impermissible to speculate why Members voted for a proposition. That policy is particularly appropriate here. For in the 92nd Congress, the chief sponsor of the proposed constitutional amendment testified at page 41 of the hearings on House Joint Resolution 208:

In an effort to gain united support for the amendment, however, three minor technical changes have been incorporated into House Joint Resolution 208. The time allowed to the states to ratify the amendment has been limited to an ample 7 years * * *.

In view of that statement it seems procedurally improper to speculate that the constitutionally required two-thirds majority would have been achieved regardless of the time limtation. The 7-year limitation was part of the package all wrapped into one sentence and passed by a two-thirds majority. If the coalition is to be renegotiated, it requires the same two-thirds majority as a matter of law and as a matter of policy.

Nevertheless, proponents argue that a simple majority would suffice. They allude to all types of simple-majority situations and find them analogous. But they never refer to what they are, in fact, doing, namely, amending House Joint Resolution 208.

Proponents read Coleman to authorize Congress to declare by concurrent resolution, in cases where no time limitation has been set, whether so long a time has passed that a contemporaneous consensus no longer exists. If Congress can make that decision by majority vote, proponents reason that Congress can in this instance likewise decide what is a reasonable time by majority vote.

But whatever discretion Congress may have in such a situation to declare whether too long a time has elapsed is completely eliminated where Congress has fixed a specific time as a condition of its proposal. If it were otherwise, time limitations would be meaningless and, in fact, proponents would not be suggesting the need for passage of House Joint Resolution 638. The claimed discretion being eliminated by the time limitation, the question then becomes how may Congress legally change the limitation. And that takes us back to the very beginning of these views; it cannot be done. If we wish to assume it can be done, we are still faced with the fact that the limitation is placed in a joint resolution requiring two-thirds vote for passage, and any subsequent amendments must themselves receive a similar approval, as previously explained.

Proponents argue that Congress did not have to adopt the time limitation in a resolution requiring two-thirds vote. They suggest that Congress could have proposed the text in one resolution by a two-thirds vote and could have in another resolution chosen the mode of ratification and fixed a time limitation by majority vote. Thus, they say, any vote on these issues above a simple majority was superfluous, and Congress may presently extend a time by majority vote.

Again this somewhat remote procedure is not all the situation before us. Powell prevents us from mentally refashioning House Joint Resolution 208 as two resolutions and then speculating whether they would have passed by their required votes. Thus even if this two-resolution approach were originally available, it would now be necessary that both resolutions be resubmitted to the House. We cannot speculate that the resolution containing the text would have passed without any time condition, particularly when the two-thirds coalition necessary for passage was admittedly formulated by the inclusion of a specific 7-year condition.

Whatever this novel theory, in whose support there is neither law nor precedent, tells us about some alternate method whereby Congress could assertedly pass a separate resolution choosing the mode of ratification and conditioning the two-thirds resolution's efficacy by imposing a time limitation, the fact that cannot be overlooked is that no such resolution was passed. It does not exist. Hence, it cannot be amended.

The validity of the theory itself is doubtful. I note that the Justice Department, on whose opinion proponents rely, repeatedly states in its testimony that the power to impose conditions on a proposal is a function of proposing the text, as opposed to choosing the mode of ratification. The reason may be common sense or it may be strategy. Cer-

tainly, the Department is well aware that article V expressly limits Congress to but one exercise of its power to establish the mode of ratification. That power having already once been exercised, one can see why proponents might wish to find some other power to impose time conditions.

Taken to its ultimate logic, the theory runs into a dead end. If Congress has the power to fix time conditions in a separate mode of ratification resolution, what happens when a national convention called pursuant to direction from two-thirds of the States itself proposes a new constitutional amendment, the text of which includes a provision to limit the time for ratification? Since the asserted theory would appear to make article V unworkable, its validity must be doubted.

In sum, the argument is both doubtful and inapplicable. What Congress did was to pass House Joint Resolution 208. That limits the time for ratification. If House Joint Resolution 208 can now be amended, it must be by a two-thirds vote.

FOURTH

House Joint Resolution 638 is patently and intentionally unfair. We all know that it is. Its purpose is to hold 35 State ratifications frozen while heat is applied to the other 15 States.

House Joint Resolution 638 is, in effect, a motion to reconsider the vote rejecting the pending constitutional amendment. If agreed to, however, it is intended that the rollcall on reconsideration be selective. Only the States that have voted no will be allowed to change their votes. States that have voted aye will not be allowed to change their votes. And that is grossly unfair. Even worse, that is exactly the purpose that the majority has in mind.

In committee, Mr. Railsback offered an amendment to permit the names of all the States to be called on reconsideration. The committee rejected his proposal by a vote of 21 to 13. The majority simply would not tolerate equal treatment. You see, if States were free to ratify or reject during the extension, the "right side" might not win. And the object here is not to be procedurally fair but to use whatever means are necessary so that the "right" might triumph over the forces that proponents deem "unfair".

For months we have been hearing that the debate on the pending amendment is far from over and that it is unfair to cut it off at 7 years. But "debate," I suggest, means discussion by both sides. It is useful as an aid to voting for or against. But House Joint Resolution 638 is not intended to permit a free choice to be made in any of 35 States. If proponents believe what they say, they should permit true debate to continue in all 50 States.

I recognize that the ratification process is not a game. But neither is the legislative process. And when reconsideration is agreed to in the legislative process, the entire roll is called and not merely those who voted the "wrong" way.

For the reasons stated above, House Joint Resolution 638 should be rejected. It is unconstitutional, unwise, unparliamentary, and unfair.

CHARLES E. WIGGINS.●

## SAVING THE DUNES

● Mr. BAYH. Mr. President, earlier this year, my colleague from Indiana, Senator LUGAR, and I introduced S. 2560, a bill to expand the Indiana Dunes National Lakeshore. The legislation would add three additional parcels of land to the National Lakeshore and is the final phase of a battle which has been waged for decades to preserve the beautiful and unique dunes along the southern tip of Lake Michigan.

Recently, editorials regarding the Dunes appeared in the Detroit Free Press and the Wichita Eagle. I think these editorials demonstrate the importance of the Dunes, not only to Hoosiers, but also to people throughout the Midwest. They also underline the urgency of congressional action on the expansion bill which is now pending before the Committee on Energy and Natural Resources. I hope my colleagues will take note of these editorials and support our efforts to protect our State's valuable and fragile resources.

Mr. President, I ask that the articles be printed in the RECORD.

The articles follows:

[From the Detroit Free Press, Aug. 13, 1978]

DUNES: IN INDIANA, TWO SMALL LAND PARCELS THREATEN A NATIONAL LAKESHORE

The Indiana dunes, some 12,000 acres of forested bluffs and wind-scoured beaches at the southern end of Lake Michigan, are a source of pleasure and recreation for the entire Midwest. Their preservation is as important to Michigan as to Indiana, especially as the drive to save our own shifting dunes and white beaches picks up momentum.

Within the boundaries of the Indiana National Lakeshore there currently lie 800 unprotected acres, where undesirable uses threaten to affect lands well within the park. The largest parcels are a 1½-mile strip along U.S.-12 and 650 acres within the community of Beverly Shores, where current zoning permits multi-family, high-rise, commercial and industrial development that would destroy wooded ravines and wetlands and affect adjacent national lakeshore areas. Another 90-acre greenbelt separating the park from an Indiana utility company could, if unprotected, become a dumping ground for fly ash, affecting the quality of water and vegetation in the park.

A National Park Service study reports that uncontrolled private uses in the 800 acres could impair visitors' access to the dunes and their enjoyment of the lakeshore. Accordingly, a bill now in the U.S. House and Senate national park subcommittees would absorb those areas into the lakeshore.

The parcels involved are relatively small, but they are important to the integrity of the lakeshore; dunes that took 15,000 years to form could be seriously eroded or damaged in a few years by wrongful use. The Indiana dunes are a regional resource, all the more precious for lying in the middle of a highly urbanized, industrialized area; the fight to preserve them deserves the support of Michigan residents and representatives, too.

[From the Wichita Eagle, Aug. 27. 1978]

PROTECTING A MIDWESTERN GEM

"It wouldn't be spring in Washington without a hearing on an Indiana Dunes bill" is the way some Capitol observers have put the 12-year-long struggle to preserve the best of what's left of the storm-pounded beaches and forested sand hills that ring the southern toe of Lake Michigan.

Rep. Keith Sebelius, R-Kan., and other midwestern members of Congress who realize the value of the Indiana Dunes to the entire region have fought hard to complete the job of protecting the dunes that Congress started in 1966.

That was the year that the Indiana Dunes National Lakeshore was established—a 5,818-acre paradise existing cheek-by-jowl with some of the heaviest industrial development in the entire country.

But it soon became evident that there were problems in paradise. Encroaching slag heaps from the area's steel mills, the dumping of poisonous wastes by utilities, and the leveling of pristine dunes for homesites made it imperative that Congress add 3,662 acres in 1976.

It also designated three key tracts for National Park Service study. Constituting less than 800 acres all told, the areas long had been considered vital to the completion and adequate protection of the Indiana Dunes.

The Park Service essentially agreed, and Congressman Sebelius and other friends of the Dunes went to work to secure passage this year of H.R. 11110 in the House and S. 2560 in the Senate.

Mr. Sebelius is confident the House Interior Committee, on which he serves, could report the bill out this session. But there has been no similar movement on the Senate side, and time quickly is running out.

We hope Kansas Sens. James B. Pearson and Bob Dole will help convince their Senate colleagues on the Energy and Natural Resources Committee to take action on the legislation so a bill may be enacted by the full Congress before adjournment.

Otherwise, there really will be another spring in Washington with more hearings on the Indiana Dunes. People in the Midwest—10 million of whom live within easy driving distance of the national lakeshore—deserve to have this gem of the National Park System completed, and preserved for all time.

Further delay cheats us all of a natural heritage that has hung on, barely, all these years, and needs our help now to survive.●

## PRODUCT LIABILITY INSURANCE

● Mr. HEINZ. Mr. President, recently I had the pleasure of meeting with a group of Pennsylvania businessmen and women to discuss an urgent problem. Their problem concerns product liability insurance.

Over the past few years, premium costs for this insurance have been skyrocketing, increasing as much as 400 to 500 percent in 1 year alone. These costs have placed an especially harsh burden on our small businesses who can least afford it. The result is that many firms have decided to forego product liability insurance entirely. This situation is serious, for the health and viability of our innovative small businesses, and for consumers.

Under present law, a manufacturer is ultimately liable for damages caused by defects in the goods he produces. Therefore, there is a risk associated with each product he manufacturers: that it is defective, that it will injure a consumer, and that the injured consumer will claim an indemnity from the manufacturer. The cost of that risk must therefore be borne by someone—who is ultimately the consumer.

Some manufacturers purchase product liability insurance to pass the risk off to a third party. The cost of that insurance is necessarily passed in turn along to all the consumers of the company's products. As the cost of that insurance increases, the prices paid by consumers also increase.

Some manufacturers, unable to obtain or afford such insurance, insure themselves. But rarely do these self-insurers have sufficient resources, after taxes, to set up reserves to pay for product liability claims. The result is that one suit can bankrupt a firm and the consumer is again left holding the bag. The injured party does not receive appropriate compensation which may be justly due him.

This is not idle speculation, Mr. President. Cases of such situations are well documented. The critical problem of product liability insurance is well illustrated in the following cases:

Hankison Corp., Canonsburg, Pa., manufacturers of refrigerated air dryers for 30 years, has felt the crunch of soaring insurance premiums. From 1974 to 1978, their insurance rates have increased 670 percent. Hankinson's record of claims, is one, in 1963, and it was settled for $3,000.

James Austin Co., an old firm established in 1889, manufactures bleach products and stated that in 1975 the premium on $500,000 worth of product liability insurance was in the neighborhood of $15.000. This doubled to $30,000 in 1976 and this figure again doubled in 1977 to $60,000. During those years, they also had a million dollar umbrella policy to support the liability coverage and this cost approximately $2,400 per year. This, effective April 1, 1977, was increased to $19,000 so that they have seen liability costs increase from $32,400 to $79,000 in the past year, and over the past 2 years, $94,000. The most their carrier ever paid out in total payments was less than $8,000 in any given year.

CBM Industries & Laurel Stone, Inc., in Oakmont, Pa., report their product liability premium in 1976 was $33,400 and in 1977, $79,400, an increase of $46,000 in a 12-month period. Their maximum annual settlement over the last 20 years was $6,800.

Something has to be done to alleviate this problem; and it must be done now. I believe S. 3049, the Product Liability Self-insurance Act of 1978 is a step in the right direction. Today, I have joined with my colleagues the distinguished Senators from Iowa (Mr. CULVER) and Wisconsin (Mr. NELSON) in cosponsoring this bill.

Under the tax code, a company is allowed to deduct the cost of product liability insurance as a business expense. But if a small manufacturer desires to self-insure, he must do so with after-tax dollars. I do not believe that businessman should be penalized just because he cannot obtain or afford the cost of insurance.

This bill will provide a mechanism whereby the small manufacturer can insure himself against the risk of a product liability claim at reasonable rates. It also provides the small manufacturer some relief from exposure to unjustified huge price increases in insurance. If he cannot afford the premium cost, he will have the option, under this bill, of self-insuring at no economic loss which presently would be imposed by our tax code.

But this is only part of the answer, Mr. President. It is only a safety valve. It is not the comprehensive solution this problem requires. When one looks behind the problems of product liability insurance for the root cause, one has to see the tremendous uncertainty inherent in our tort laws.

An insurance company bases its premium rates on the amount of risk it is accepting, the probability of paying claims, and the expected dollar outlay for each claim paid. If these factors are known with reasonable certainty, the insurance company can set a premium which provides sufficient funds to pay all expected claims and insure the company a fair profit. As the uncertainty surrounding these factors increases, however, the natural tendency of an insurance company is to increase its premiums as a hedge against paying the highest claims that may be expected.

Since the early 1960's, the body of case law that constitutes our tort laws has been significantly liberalized. From a manufacturers product liability based upon its negligence to provide a safe product, the law has moved to strict liability. That latter concept implies that a manufacturer is liable for any damages caused by any defect in its products regardless of fault. Some companies are predicting, even, that liability will eventually become absolute—that is, a company is liable for any injury regardless of any defect.

Absolute liability has the effect of unlimited liability. In the face of potential limitless claims, then, insurance companies protect themselves through exhorbitant premiums.

It is clear that some reform of the tort laws is needed if we want to solve the product liability insurance crisis. Reasonable limits to a manufacturers liability must be established if we want to insure that insurance companies are able to set reasonable premiums and that consumers injured by unsafe products have a reasonable prospect of being compensated.

There are a number of proposals for reforming the tort laws. Some have been introduced here and in the House of Representatives. Nineteen State legislatures have also taken on the incredibly complex task of changing the tort laws and have succeeded. I do not plan at this time to debate the merits of any of these proposals, however.

Tort law is not one law but 50. Each State has evolved its own brand of rights and remedies based on its own unique circumstances. If tort reform is to be accomplished, it should be within each State's legal context.

Too often in the last 50 years the Federal Government has taken upon itself the responsibility of solving all problems. But today I think we are finding out just what the limits of the Federal Government are. It cannot be all things to all people. Tort law has always been the prerogative of the States. If there is a problem with tort law, we shall look to the States to solve it, not the Federal Government.

I am not unsympathetic to the problem of product liability insurance. I believe it is real and that it is becoming ever more critical. I believe there are solutions and they should be explored. But I look to the States to do the job and have faith that the remaining 31 States will follow the lead of the 19 that have already enacted tort reform.●

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## THE NEW JERSEY PINE BARRENS

● Mr. WILLIAMS. Mr. President, a recent front-page article in the Wall Street Journal describes a vast area in New Jersey which is remarkable for its pristine quality and its proximity to the most urbanized corridor in the Nation. The New Jersey Pine Barrens contain thousands of acres of unbroken pine and oak forests, free-flowing streams, and rare wildlife and plant species. The unique ecology of the area is supported by an enoromus aquifer which lies just beneath the porous, sandy soil. Human activities, including cranberry and blueberry growing, forestry, and recreation, and a number of small communities, have not disturbed significantly the natural processes of life in the pines.

But this will not always be so. The sprawling residential and commercial development of the surrounding region has started to make inroads into the Pine Barrens. Unless steps are taken soon to plan and protect the area, its pure water, its thriving agriculture, its recreational value, and its serene way of life will be gone forever.

The State of New Jersey and some of the local governments are already involved in efforts to save the Pine Barrens. A year ago, the Governor appointed a Pinelands Review Committee to review State actions in the area and to recommend means of protecting it. The State Department of Environmental Protection has developed new water quality standards for the central Pine Barrens, which will help to control undesirable development there. At the local level, Burlington County has launched a program to buy conservation easements on farms and other open space lands.

Mr. President, these State and local actions reflect the deep interest which the people of New Jersey have in preserving the pinelands. The Federal Government should have a role in supporting and assisting these efforts. A number of Federal studies have recognized that the Pine Barrens are of national significance. In fact, the unique ecology of the area would qualify it for inclusion in the national park system. However, acquisition and management as a national park would be inappropriate for the pinelands. Not only would this be far too expensive, but it would also needlessly eliminate the towns, the farms, and the other diverse private activities that are an integral part of the life there.

We need to find a means for protecting this area which combines the resources and capabilities of the local,

State, and Federal governments and the private sector, and which utilizes the full range of land and water conservation techniques.

To this end, Senator CASE and I plan to propose a pinelands provision for inclusion in the Senate omnibus parks bill. Our proposal would designate approximately 1 million acres in New Jersey as the "Pinelands National Reserve." It would authorize up to $3 million for the Federal share of developing a plan for the pinelands, and $23 million for the acquisition of critical land that is threatened by adverse development. The Federal share of planning and acquisition would be 75 percent, with the State providing the other 25 percent.

The comprehensive plan for conserving the area would be drawn up by a joint Federal-State-local body, and would detail the application of various means of managing land and compensating landowners and local governments, such as fee acquisition, conservation easements, zoning, air and water quality standards, and payments in lieu of taxes. The plan would be submitted to the Secretary of Interior within 18 months, and after his approval, would be reviewed by Congress for a period of 90 days prior to implementation.

During the planning period, certain federally assisted new development in critical areas of the Pine Barrens would be subject to review by the Secretary and, once the plan was approved, all Federal actions would have to be consistent with it.

Mr. President, I am sure that many of my colleagues will be interested in this important but little-known national resource. I ask that the Wall Street Journal article, "Rustic Pine Barrens in Urban New Jersey Attracts Developers" be printed in the RECORD.

The article follows:

ENDANGERED EDEN—RUSTIC PINE BARRENS IN URBAN NEW JERSEY ATTRACTS DEVELOPERS

(By Daniel Machalaba)

WOODMANSIE, N.J.—William Wasowich doesn't like suburban living. He keeps his distance from it by living alone, the sole resident of this ghost town deep in a vast forest of pine trees. "When you're in the Pine Barrens, you could just as well be in the Amazon jungle," he says.

But the Pine Barrens happens to be in New Jersey, the nation's most urbanized and densely populated state. Besides being only 30 miles east of Philadelphia and 60 miles south of New York City, the area is directly in the path of future real estate development stemming from the oil exploration off the Jersey coast and the gambling craze in Atlantic City, less than an hour's drive away.

If developers have their way, large tracts of this nearly unbroken wilderness, about the size of Rhode Island, may be carved up for houses, retirement villages, trailer camps and gravel pits. "If someone doesn't stop them soon, the game will be up for these pines," Mr. Wasowich says.

CRANBERRIES AND BLUEBERRIES

Such a happening would be a disaster, environmentalists say. The sparsely settled forest extends for almost 1,500 square miles, with pine trees, cedar swamps, meandering streams, cranberry bogs, blueberry fields and a variety of rare plants and animals.

Underlying it all, beneath the sandy, acidic soil is a vast untapped reservoir of pure water, estimated to hold over 17 trillion gallons—an amount that would take New York City 34 years to consume. Yet the porous sands that make the Pine Barrens a water-holding area also make it highly vulnerable to pollution. "We're worried that a development, large or small, could screw things up for all time," says David Moore of the New Jersey Conservation Foundation, a private group.

Rescue efforts, currently afoot in Congress, the New Jersey legislature and the courts, are bringing into sharp focus the special problems of protecting endangered landscapes that, like the Pine Barrens, are too expensive and complex to be bought for a national park.

Several pending bills would provide federal funding for the purchase of Pine Barrens acreage. The wide-ranging omnibus parks bill, which has cleared the House and awaits action in the Senate, includes $25 million for Pine Barrens land purchases. But, says Margaret Maguire, a staff official of the Interior Department, "we can't afford to spend billions of dollars to buy all the Pine Barrens," which is classified by Interior as the "largest undeveloped stretch of land on the Eastern Seaboard."

Instead, the federal government is considering new land-preservation methods. The idea would be to use federal funds to buy only a small amount of an endangered landscape, while surrounding areas would remain privately owned though controlled by conservation easements, subsidies to Pine Barrens farmers and state-managed zoning laws. The Interior Department already has proposed a somewhat similar approach for the embattled Santa Monica Mountains near Los Angeles. If the plan takes hold, it someday may be applied to other endangered areas, including marshland near New Orleans and the Potomac River Valley near Washington, D.C.

Meanwhile, New Jersey is planning to spend $10 million to buy some Pine Barrens land and to set up a commission to manage the area's private land through tough zoning laws. Water-quality standards recently established by the state for the Pine Barrens have at least temporarily stopped some projects, including a 5,000-person retirement center proposed by Crestwood Village Inc.

MIXED RESPONSE

Conservationist efforts to seal off the Pine Barrens from development are meeting a mixed response from the inhabitants of the area—"pineys" they call themselves—many of whom earn their livelihoods largely by harvesting cranberries and blueberries or by picking pine cones and a highly absorbent moss that they sell to ornament makers and florists.

Not all of them are as resistant to new development as Mr. Wasowich in his remote one-man village. For instance, Albertus Pepper Jr., who owns 60 acres in Chatsworth, a hamlet of 300 persons that has sometimes been called the "capital of the pines," says, "I've babysat this place for 33 years, and if there's any money to be made, I'd like to have a share of it." To protect their rights, he says, the pineys are "going to lay some lawsuits on the state and the environmentalists."

Local political leaders also are concerned about the efforts to limit the area's development. "If the state gets its way, all we'll be able to do with our land is pay taxes on it," says Earle Hill, mayor of 107-square-mile Washington Township in the heart of the Pine Barrens. "What the state is doing is confiscating our land through regulation," he adds.

John Bowker, the mayor of Woodland Township, is bitterly resentful of environmentalists for opposing the Crestwood Village project, which he says would have cut local residents' property taxes in half.

Some locals regard the state schemes to control the Pine Barrens as a plot to seize the water for more populated sections of New Jersey, John Broomes, who owns the general store in Chatsworth, has sold dozens of lapel buttons with the words "No Piney Water for City Slickers."

Adding fuel to the fire is the sharp rise in local land prices. Floyd West, mayor of Bass River Township, figures that real estate values in even the most remote sections of the Pine Barrens have tripled in the last six years to around $750 an acre. Some more accessible land is selling as high as $4,000 and $5,000 an acre. This is still cheap, though, compared to the $20,000 to $30,000 an acre prices on land just west of the Pine Barrens, toward Philadelphia. An added attraction is the flatness of the Pine Barrens land, which makes it easy and cheap to build on. "We have big plans for the Pine Barrens," says Robert H. Williamson, executive vice president of the New Jersey Shore Builders Association.

Local realtor Herbert Lahn is buoyant over a projection he has heard that Atlantic City's casinos and offshore oil drilling will generate demand for 50,000 houses. There's also talk that oil pipelines will need to be built across the region to connect future offshore wells to refineries in Philadelphia.

What makes the Pine Barrens vulnerable to such pressure is that only one fifth of it lies in public hands. Most is owned by berry farmers or by big outside speculators, such as Canada's Olympia & York Developments Ltd. and New York-based Citibank, which holds 7,000 acres on behalf of 13 corporate pension funds.

A STATE OF CHAOS

The Pine Barrens wasn't always so highly regarded. During the Depression thousands of lots were given away as premiums for newspaper subscriptions or to purchasers of encyclopedias. Because of abandonment, fraud and sloppy record-keeping, land titles are in a state of chaos, and there are thousands of acres where "no one knows who owns anything," one local authority says.

Farmers dubbed the region the "Barrens" because its sandy, infertile soil was unfit for most crops. Others were repelled by its predominant foliage of pitch pines, which are scraggly and asymmetrical. Because the pine trees are highly flammable and the sands dry quickly, fire is a constant menace; some 250 forest fires occur every year. The fires may account for a 15,000-acre forest of full mature but shoulder-high dwarf trees in what is known as the Pine Barrens Plains. "We think fire has genetically altered these trees, but we still don't know for sure," says Jack McCormick, an environmental specialist.

The harsh conditions of fire, sandy soil and acidic water have blocked out many common plant species such as chestnuts, apple trees, sugar maples, sycamores, dogwood—and poison ivy. In fact, one botanist has estimated there are only 600 plant species here, barely a third the number to be found only a few miles farther inland.

What's left, though, is a great wealth of unusual plants—the rare curly grass fern, which scientists say is a remnant of primitive vegetation, sundews and pitcher plants, which trap and digest insects for nutrients

they can't get from the soil, to say nothing of more than two dozen varieties of orchids that grow wild.

HIKERS AND MOONSHINERS

From the top of the fire tower on Apple Pie Hill, pitch pine extends to the horizon in every direction, broken only by a distant cranberry bog and in one spot, dark green cedars whose steeple-like tops jut above the shorter pines. In parts of the area there are only a few roads and most of these are mere tracks in the sand; Floyd West, the Bass River mayor, keeps a shovel in his car to use when he gets stuck. Hikers have gotten lost for hours, and in the old days moonshiners used to set up stills here, says Alan Harris, a New Jersey forest ranger.

Over the years, ecologists have been able to fight off many threats to the central Pine Barrens. In the middle 1960s they helped shoot down a huge jetport proposed for the dwarf forest, and in the early 1970s they killed a developer's plans for a city of 80,000 people near the banks of the Wading River in Bass River Township. But they haven't been nearly as successful rallying public support against single-family-house building that is "nibbling away the Pine Barrens gradually," according to Annie Carter, naturalist at Batsto Village in Wharton State Forest.

Ecologists fear that the heavy doses of lime and fertilizer needed to grow grass for housing developments in the sandy soil could disturb the region's naturally acidic, sterile waters on which the present plant systems depend. However, J. Garfield DeMarco, a big berry farmer and chairman of the Burlington County Republican Party, points to the development that has already taken place on the fringes of the area and declares, "The argument that the Pine Barrens is so fragile doesn't hold water."

About 210,000 acres of the Pine Barrens already are in state forests and reservations, but conservationists, in challenging Mr. DeMarco's contention, make the point that most of the area's major streams—the Wading River, Bass River and Rancocas Creek—have their headwaters in threatened private land. For more complete ecological preservation, the state hopes to safeguard 130,000 acres of private land nearby through acquisitions or strict zoning laws.

Around this "wilderness zone" the state is proposing that another 400,000 acres of Pine Barrens land be placed in a "protection zone" that will be "much more sensitive to economic forces," according to Richard Biretsky, executive secretary of the New Jersey Pinelands Review Committee. Such a zone wouldn't allow helter-skelter development and would veto any project that failed to protect local ecology.

TROUBLE AT MEDFORD LAKES

The foes of development point to the experience of Medford Lakes, just west of the Pine Barrens as an example of what could happen. There, the pure water in a series of man-made lakes was transformed by slimy algae when sewage discharges changed the water quality.

As the controversy goes on, there have been changes in the day-to-day existence of the few thousand pineys who still inhabit the woods. (In the 500 square miles at the center of the Pine Barrens, population density is only 30 people per square mile, compared to New Jersey's statewide average of 1,000 per square mile.) "The pineys' days are numbered," says Allen Golin, president of Allyn Manufacturing Co., a Whiting, N.J., decorations maker that operates a gas kiln for heating open pine cones; the cones are then painted for Christmas wreaths.

"There are enough pine cones in the woods to keep us busy for a hundred years. But the pineys are trying to upgrade themselves" by seeking out less arduous, better paying jobs, Mr. Golin says. He has turned to importing pine cones because the number of local pickers has fallen to 40, compared to 150 a dozen years ago.

But if Mr. Golin's prediction comes true, Mr. Wasowich is likely to be one of the last holdouts. He is still perfectly content living by himself in the one-time sawmill town of Woodmansie and says the $4,000 a year he makes from picking cones and raking up moss is enough for his needs. He pays no rent to live in his abandoned six-room shack. And he doesn't mind the back-breaking labor of collecting the dripping wet sphagnum moss, which holds four times its weight in water and is thus in demand with florists who use it to keep plant roots moist.

Lately, however, 38-year-old Mr. Wasowich has started to notice unwelcome signs of change. Many of the sand roads he drives down to reach the swamps have been blocked off by developers. "If things keep going this way, the Pine Barrens is going to be a suburban place, and the people of the pines will be nothing," he says.●

## THE COMPASSION AND BRAVERY OF HOMER KEANU

● Mr. INOUYE. Mr. President, much has been said in this Chamber about the problem of crime in our communities. Statistics and charts are amassed to convey to us the urgency of this problem. But sometimes lost in these stark displays is the cost in emotional terms of crime to its victims and perpetrators, and the enormous risks we ask our officers of the law to take in their daily work.

I wish to bring to the attention of the Senate a recent article in the Honolulu Star-Bulletin which describes how, when police weaponry seemed helpless to avoid a tragic incident, a lone unarmed human being succeeded in bringing about a peaceful result to a tense and dangerous situation.

Not once, but twice, did a courageous Honolulu recreation worker named Homer Keanu succeed in disarming an emotionally distraught young man who seemed bent on harming himself and four relatives.

Mr. Keanu talked the young man into surrendering a knife, with which he threatened to slash himself. Several hours later, Mr. Keanu furnished bail money and took the man into his own home for food and shelter.

The next day, unfortunately, the young man took four of his relatives hostage and, armed with a rifle, threatened to shoot both them and surrounding police officers.

The police were helpless. Mr. Keanu was summoned by police and, ignoring rifle shots aimed above his head, walked unarmed into the house and talked to the gunman for 4 hours until he and Police Officer Bruce Ishimoto were able to take the rifle away.

These acts of outstanding compassion and bravery should be given proper recognition. I ask permission to have this article printed in the RECORD.

The article follows:

PREVENTING A BLOODBATH

(By Donald H. Moore)

(Moore is executive director of the Hawaii Council on Crime and Delinquency. On Aug. 17 the Council and the Dillingham Corp. presented a $500 check to Homer Keanu, the subject of this story:)

Almost weekly, somewhere in the United States an individual arms and barricades himself in a house, an office or a university tower and takes on a world which seems allied against him. Police arrive and frequently resolve the problem in the manner for which they alone are specially prepared—with firepower. Sometimes there seems to be no alternative.

Last year on Oahu's North Shore there was such an occurrence. But an alternative came from the community, and a bloodbath was averted. The community came, in this case, in the person of Homer L. Keanu.

Keanu, 32, is a resident of Hauula. For seven years he has worked with the youth of the area as an employee of the City Department of Parks and Recreation. Frequently he is to be found at the Waialua Recreation Center. At other times he is checking his kids' school attendance. Homer is quiet, but he is an imposing figure—a weightlifter whom tough youngsters can admire.

One day early last year, a young Haleiwa man, too burdened by finances and marriage, both beyond control, seized a knife with deadly intent. Powerful and the student of an arcane Filipino martial art specializing in knives, he held police at bay. An officer at the scene who knew that Keanu and the distraught man were acquainted asked Homer to come and help.

That he did. But, after helping police disarm the man, Homer asked officers not to handcuff him and offered instead to walk him to a police car himself. Homer figured the man was upset enough without that. Homer is a man from whom, once he has you, you do not escape. Police accepted this act of compassion.

That, however, was not all. Homer drove from Haleiwa to town and a few hours later laid down his own money to bail out the man, who, a short time earlier, would have cut him to ribbons. Returning to his own home, Homer offered him a meal and a shower before he had to go to work. As he left, he suggested that the man come by the recreation center for a talk.

The man did not. He got a rifle, went to the home of his in-laws and took four people hostage. His face was painted like that of a Cheyenne on the warpath. He would kill those inside. He would kill himself. He would charge the police and die in a hail of gunfire.

Mayhem was in the air, and the police who surrounded this sad place on the North Shore knew it. Recalling his effectiveness of the previous day, the police again summoned Homer Keanu.

When Homer arrived, the blue lights on the police cars were being used for target practice, and the policemen behind their cruisers were cursing the fortune which brought them duty on this shift. With faith in his God and the feeling that he could do no less, Homer Keanu walked past the police cars, up the path to an angry man and a fate that he could not control. Once, twice the gunman fired at him. Homer shuddered but walked on to where he stood.

There, with Honolulu Police Officer Bruce Ishimoto, Homer Keanu began to talk and, more importantly, to listen. The anguished man took the barrel of the rifle in his mouth and caressed the trigger. He threatened. And he poured out his pain for four tense hours. Then, as his guard dropped, Keanu and Ishimoto sprang and seized man and gun.

No one died in Haleiwa that day, although many might have. Charged with reckless endangering, the suspect was taken to the Halawa Correctional Facility and later the State Hospital, Kaneohe. He has been back in the community for some time now. They say

he has resolved the problems which overwhelmed him a year and a half ago or, at least, learned to accept them. Homer says he often sees the man playing tennis. They wave to each other.

Many things helped prevent that tragedy in Haleiwa. Police restraint was admirable.

Most remarkable, however, was the community's response to its own problems as embodied in Homer Keanu, who believes that he cannot leave the anger, frustration and failure of those around him to the impersonal ministrations of bureaucracy. For Homer, the power and responsibility of affiliation, of belonging, is as legitimate as the law.●

## PROPOSED ARMS SALE

Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the notification I have just received. A portion of the notification, which is classified information, has been deleted for publication, but is available to Senators in the office of the Foreign Relations Committee, room S–116 in the Capitol.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
*Washington, D.C., September 5, 1978.*

Hon. JOHN J. SPARKMAN,
*Chairman, Commitee on Foreign Relations, U.S. Senate,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding under separate cover, Transmittal No. 78–74, concerning the Department of the Navy's proposed Letter of Offer to Australia for major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, U.S.A.,*
*Director.*

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TRANSMITTAL NO. 78–74: NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Australia.

(ii) Total Estimated Value: Major Defense Equipment* [deleted]. Other [deleted]. Total [deleted].

(iii) Description of Articles or Services Offered: [Deleted].

(iv) Military Department: Navy.

(v) Sales Commission, Fee, etc., Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: September 5, 1978.

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*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

## S. 2128—TAX CREDITS FOR THE ELDERLY

● Mr. INOUYE. Mr. President, I ask that Senator CHURCH's name be removed as a cosponsor of S. 2128, the bill I introduced last year to provide increased tax credits for the elderly.

I understand that Senator CHURCH intended to cosponsor an amended version of the bill. Since the amendments were not incorporated in a separate bill but were added at my suggestion in the Senate Finance Committee, technical considerations make such cosponsorship impossible.

As chairman of the Senate Special Committee on Aging, Senator CHURCH has great familiarity with the problems my bill attempts to correct. While I regret we do not have the benefit of his formal cosponsorship, I am most pleased to know he does in fact support the bill as adopted in the Finance Committee. For more information about the bill and Senator CHURCH's position on it, I would refer my colleague's to his statement on page 26695 of the August 17, 1978, CONGRESSIONAL RECORD.●

## AUTHORIZATION TO FILE REPORT ON S. 50

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Human Resources may have until midnight tonight to file their report on S. 50.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs may have until midnight tonight to file a report on S. 50.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TIME-LIMITATION AGREEMENT—S. 3447

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 1061, S. 3447, the Foreign Export Agricultural Act, is called up and made the pending business, that there be a time agreement as follows: 1 hour to be equally divided between Mr. STONE and Mr. DOLE; 30 minutes on any amendment; 15 minutes on any debatable motion, appeal or point of order, if such is submitted to the Senate; and that the agreement be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

*Ordered,* That when the Senate proceeds to the consideration of S. 3447 to increase sales of American agricultural products debate on any amendment shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 15 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received.

*Ordered further,* That on the question of final passage of the said bill, debate shall be limited to 1 hour to be divided equally between the Senators from Florida (Mr. Stone) and Kansas (Mr. Dole): *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

## TIME—LIMITATION AGREEMENT—S. 1423

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as calendar order No. 957, S. 1423, the judicial tenure bill is called up and made the pending business before the Senate, that there be a time agreement on it as follows: 6 hours on the bill to be equally divided between Mr. DECONCINI and Mr. THURMOND; 1 hour on any amendment in the first degree; and 30 minutes on any amendment in the second degree, with 20 minutes on any debatable motion, appeal, or point of order if such is submitted to the Senate; and that the agreement be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

*Ordered,* That when the Senate proceeds to the consideration of S. 1423, to establish Council on Judicial Tenure, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill; debate on any amendment in the second degree shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: Provided further, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 6 hours equally divided between the Senators from Arizona (Mr. DECONCINI) and South Carolina (Mr. THURMOND) *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senators during the consideration of any amendment, debatable motion, appeal, or point of order.

## THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are six measures on the Consent Calendar which have been cleared all around. I ask unanimous consent that the Senate now proceed to the consideration of the following Calendar Orders: Calendar Orders Nos. 1050, 1051, 1077, 1078, 1087, and 1088.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PUEBLO OF ZIA LAND TRANSFER

The Senate proceeded to consider the bill (S. 2358) to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands, which had been reported from the Select Committee on Indian Affairs with an amendment.

On page 7, beginning with line 5, insert the following:

SEC. 9. (a) Notwithstanding any other provision of this Act, during the three years following enactment of this Act, the Secretary may, after giving the tribe 30 days written notice and after consulting with the tribe, enter on the lands described in the first section of this Act to identify, investigate, examine, and remove any paleontological resources from such lands: *Provided*, That no explorations, surveys or excavations shall be authorized within a 200-yard radius of the following shrines or religious sites:

(1) Eagle Peak, Eagle Rock, or Eagle Point (Tiam);

(2) Cherry Spring (Hu-nah-kah-kah-Warish);

(3) Grandma (Pah-Pah);

(4) Mudhead (Ku-Mah-Yah-Wish);

(5) Punaya; and

(6) White Points (Grash-Yeh-Tey-Sham).

Such resources so removed are the property of the United States and shall be administered under laws applicable to federally owned resources. Paleontological resources on such lands that are not removed from the lands pursuant to this section shall be managed in a manner that will permit the greatest possible public benefit, use and study of the resources, consistent with tribal law and practices.

(b) Any lands excavated pursuant to this section shall be reclaimed and restored to their original condition by the Secretary, as nearly as he determines may be practicable.

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all right, title, and interest of the United States in the following lands situated within Sandoval County in the State of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Zia:

NEW MEXICO PRINCIPAL MERIDIAN

Township 14 North, Range 1 East Section 3:
Lots 2, 3, 4,
Southwest quarter of northeast quarter,
West half of southeast quarter,
Southwest quarter,
Southeast quarter of southeast quarter,
South half of northwest quarter,
Township 15 North, Range 1 East.
Section 10: Lot 4,
Section 11: South half of south half,
Section 13:
Southeast quarter,
West half,
Section 14: All,
Section 15:
Lots, 1, 2, 3, 4,
Southwest quarter,
West half of southeast quarter,
Section 22: All,
Section 23:
West half of northeast quarter,
Northeast quarter of northeast quarter,
Southeast quarter,
West half.
Section 24: North half of north half,
Section 26: North half of northwest quarter,
Section 27: All,
Section 34:
Southwest quarter,
Northwest quarter,
Northeast quarter,

Containing 4,848.13 acres, more or less.

SEC. 2. The Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands declared to be held in trust by this Act.

SEC. 3. All of the right, title, and interest of the United States in all minerals, including gas and oil, underlying the lands hereby declared to be held in trust for the Pueblo of Zia, are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Zia.

SEC. 4. (a) Nothing in this Act shall deprive any person of any valid existing right of use, possession, contract right, interest, or title which that person may have in any of the trust lands within the purview of this Act, or of any existing right of access to public domain lands over and across such trust lands, as determined by the Secretary of the Interior. All existing mineral leases involved lands declared to be held in trust by this Act, including oil and gas leases, which may have been issued or approved pursuant to Federal law, prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law, all applications for mineral leases involving such lands, including oil and gas leases, pending on the date of enactment of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a) of this section, the property declared to be held in trust by this Act for the benefit and use of the Pueblo of Zia shall hereafter be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for the Indian tribe of such pueblo.

SEC. 5. All gross receipts (including, but not limited to, bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit, or lease which relates to the property declared to be in trust by this Act received subsequent to the enactment of this Act shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property declared to be held in trust for the benefit and use of the Pueblo of Zia pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

SEC. 7. (a) The Secretary may execute any title documents necessary to effect conveyance authorized by this Act.

(b) Title to all lands acquired under the provisions of this Act shall be taken in the name of the United States in trust for the Pueblo of Zia.

SEC. 8. The transfer and conveyance of title shall be subject to the following roadway right-of-way to be for the use and benefit of adjacent private landowners, the Bureau of Land Management, its permittees, lessees, successors, and assigns:

(1) Access road through Zia Allotment: A road right-of-way 50 feet wide over that portion in southeast quarter section 13, north half section 24, southeast quarter section 23, north half section 26, and north half section 27, all in township 15 north, range 1 east, New Mexico principal meridian.

Beginning at intersection of State Road 44, thence southwesterly 1,600 feet to a point of curve, thence westerly 2,100 feet to a point of curve, thence southerly 1,100 to a point of curve, thence southwesterly 2,400 feet to a point of curve, thence southerly 2,640 feet to a point of curve, thence southerly 8,500 feet to a point of curve near the west section line of section 27, road being 3.5 miles long (approx.). Distances to a curve are scaled distances (approx.) from U.S.G.S. quadrangle sheet, Sky Village northeast quadrangle, and San Ysidro quadrangle.

The description was compiled from U.S.G.S. quadrangle maps dated November 1960, and this is only a paper survey.

(2) Gypsum Mine access road: A road right-of-way 50 feet wide, over that portion in southeast quadrant of section 13, northeast quadrant section 24, westerly quadrant section 13, and northeast quadrant section 14, all in township 15 north, range 1 east, New Mexico principal meridian.

Beginning at the intersection of Gypsum mine access road and access road through lands known as Zia Allotment being 500 feet southwesterly from State Road 44, thence northwesterly 6,500 feet near the east line of section 14. Distances to the termination of road are scaled distances (approx.) from U.S.G.S. quadrangle sheet, San Ysidro quadrangle.

This description was compiled from U.S.G.S. quadrangle map dated November 1960, and this is only a paper survey.

SEC. 9. (a) Notwithstanding any other provision of this Act, during the three years following enactment of this Act, the Secretary may, after giving the tribe 30 days written notice and after consulting with the tribe, enter on the lands described in the first section of this Act to identify, investigate, examine, and remove any paleontological resources from such lands: *Provided*, That no explorations, surveys or excavations shall be authorized within a 200-yard radius of the following shrines or religious sites:

(1) Eagle Peak, Eagle Rock, or Eagle Point (Tiam);

(2) Cherry Spring (Hu-nah-kah-kah-Warish);

(3) Grandma (Pah-Pah);

(4) Mudhead (Ku-Mah-Yah-Wish);

(5) Punaya; and

(6) White Points (Grash-Yeh-Tey-Sham).

Such resources so removed are the property of the United States and shall be administered under laws applicable to federally owned resources. Paleontological resources on such lands that are not removed from the lands pursuant to this section shall be managed in a manner that will permit the greatest possible public benefit, use and study of the resources, consistent with tribal law and practices.

(b) Any lands excavated pursuant to this section shall be reclaimed and restored to their original condition by the Secretary, as nearly as he determines may be practicable.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1131), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE MEASURE

The purpose of S. 2358 is to restore to the pueblo of Zia approximately 4,848 acres of land, situated in Sandoval County, in the

State of New Mexico. These lands, referred to as the Zia community allotment, have belonged to the tribe since time immemorial and have been permitted to the tribe for the past 40 years by grazing permits. Enactment of this legislation would simplify the administration of the land for both the Bureau of Land Management and the Bureau of Indian Affairs as well as provide protection to the Zia within the acreage transferred into trust by this bill.

BACKGROUND

All of the land transferred into trust by this legislation has been occupied and used by the pueblo of Zia since time immemorial. The land was used exclusively by the pueblo for grazing purposes until 1936 when the Bureau of Land Management took over the land and fenced it in.

The estimated surface value of the land is $38 per acre for a total value of $184,000. There are no known mineral leases in the area. The pueblo of Zia plans to continue using the land for grazing and religious purposes.

LEGISLATIVE HISTORY

S. 2358 was introduced by Senators Domenici and Schmitt on December 15, 1977. A hearing was held on the proposed measure before the Senate Select Committee on Indian Affairs on April 26, 1978. Testimony was received from the Department of the Interior and several tribal witnesses, all of whom supported enactment of S. 2358.

A similar measure, H.R. 10240, was introduced by Congressman Lujan on December 6, 1977. A hearing was held before the House Interior Subcommittee on Indian Affairs and Public Lands on April 27, 1978. At that hearing, representatives from the Department of the Interior testified in favor of the bill.

## PUEBLO OF SANTA ANA LAND TRANSFER

The Senate proceeded to consider the bill (S. 2588) to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands, which had been reported from the Select Committee on Indian Affairs with amendments as follows:

On page 1, beginning with line 8, strike through and including page 8, line 11, and insert in lieu thereof the following:

NEW MEXICO PRINCIPAL MERIDIAN

Township 13 Noth, Range 3 East
Section 1:
Lots 1, 8, 9, 10, South half north half, South half,
Section 3:
Lots 9, 10, 11, 12,
South half north half.
South half,
Section 4:
Lots 9, 10, 11, 12,
South half north half,
South half,
Section 5: All of that portion lying east of the west boundary of the right-of-way of New Mexico Highway 44,
Section 9:
East half west half,
East half,
Section 10: All,
Section 11: All,
Section 12: All,
Section 13: All,
Section 14: All,
Section 15: North half northwest quarter, southeast quarter northwest quarter, northeast quarter southwest quarter northwest quarter, north half northwest quarter southwest quarter northwest quarter, southeast quarter northwest quarter southwest quarter northwest quarter, north half northwest quarter southeast quarter southwest quarter northwest quarter, northeast quarter southeast quarter southwest quarter northwest quarter, north half northeast quarter southwest quarter northwest quarter, southeast quarter southwest quarter northwest quarter, northeast quarter northwest quarter southeast quarter, north half northwest quarter northwest quarter southeast quarter, southeast quarter northwest quarter southeast quarter, north half southwest quarter northwest quarter southeast quarter, north half northeast quarter southwest quarter southeast quarter, north half southeast quarter southwest quarter southeast quarter, north half southeast quarter southeast quarter southeast quarter southeast quarter: excluding existing rights-of-way,

Section 23: Northeast quarter northwest quarter northwest quarter, northeast quarter northwest quarter northwest quarter northwest quarter, north half northwest quarter northwest quarter northwest quarter northwest quarter, north half northeast quarter southeast quarter northwest quarter northwest quarter, north half northeast quarter northwest quarter, southeast quarter northeast quarter northwest quarter, north half southwest quarter northeast quarter northwest quarter, southeast quarter southwest quarter northeast quarter northwest quarter, northeast quarter northeast quarter southwest quarter northwest quarter, north half northwest quarter southeast quarter southwest quarter northwest quarter, northeast quarter southeast quarter southwest quarter northwest quarter, north half northeast quarter southeast quarter southwest quarter northwest quarter, northeast quarter northeast quarter southeast quarter northwest quarter, north half northwest quarter northeast quarter southeast quarter northwest quarter, north half northeast quarter, southeast quarter northeast quarter, north half southwest quarter northeast quarter, north half southeast quarter southwest quarter northeast quarter, southeast quarter southeast quarter southwest quarter northeast quarter, north half northwest quarter southeast quarter southwest quarter northeast quarter, northeast quarter southeast quarter southwest quarter northeast quarter, north half northeast quarter southwest quarter southeast quarter southwest quarter northeast quarter, northeast quarter northeast quarter southeast quarter southwest quarter northeast quarter, north half northwest quarter northeast quarter southeast quarter southwest quarter northeast quarter, northeast quarter southeast quarter southeast quarter southwest quarter northeast quarter, north half northeast quarter southeast quarter southeast quarter southwest quarter northeast quarter; excluding Rec. PP CL 10/10/16 and existing rights-of-way,

Section 24: North half, southeast quarter, northeast quarter southwest quarter, north half northwest quarter southwest quarter, southeast quarter northwest quarter southwest quarter, north half southwest quarter northwest quarter southwest quarter, southeast quarter southwest quarter northwest quarter southwest quarter, north half southwest quarter northwest quarter southwest quarter, north half northeast quarter southwest quarter southwest quarter, north half southeast quarter northwest quarter southwest quarter southwest quarter, north half southeast quarter southwest quarter southwest quarter, southeast quarter southeast quarter southwest quarter southwest quarter, northeast quarter southwest quarter southeast quarter southwest quarter; excluding existing rights-of-way.

Section 25. North half northeast quarter northeast quarter northwest quarter, northeast quarter northeast quarter, northeast quarter northwest quarter northeast quarter, north half northwest quarter northwest quarter northeast quarter, southeast quarter northwest quarter northwest quarter northeast quarter, north half southwest quarter northwest quarter northwest quarter northeast quarter, north half northeast quarter southwest quarter northwest quarter northeast quarter, north half southwest quarter northwest quarter northwest quarter northeast quarter, north half northeast quarter southwest quarter northwest quarter northeast quarter, south-east quarter southeast quarter northwest quarter northeast quarter,

Township 13 North, Range 4 East
Section 3:
Lots 4, 5, 6,
West half northeast quarter,
Northwest quarter,
Section 4: All; including bed of Jemez River,
Section 5:
Lots 1, 2, 3, 4, 5
Northwest quarter northwest quarter,
South half northwest quarter,
South half,
and bed of Jemez River,
Section 6:
Lots 1, 2, 3, 4,
East half west half,
East half,
and bed of Jemez River,
Section 7: All,
Section 8:
Lots 3, 4, 5,
North half,
Southwest quarter,
Northwest quarter southeast quarter,
Section 9:
Lots 5, 6, 7, 8, and bed of Jemez River lying north of the
North boundary of the Angostura Grant,
Section 17:
Lots 10, 11, 12, 13,
Northwest quarter,
Section 18:
Lots 2, 3,
East half northwest quarter,
Northeast quarter,

Township 14 North, Range 3 East
Section 6: Bed of the Jemez River,

Township 14 North, Range 4 East
Section 17: All,
Section 18: East half east half,
Section 19: East half east half,
Section 20: All,
Section 21: West half,
Section 27: Southwest quarter southwest quarter,
Section 28:
Northwest quarter,
South half,
Section 29: All,
Section 30: East half east half,
Section 31:
East half northeast quarter,
Southwest quarter northeast quarter,
Northwest quarter northwest quarter,
South half northwest quarter,
South half,
and bed of Jemez River,
Section 33: All,
Section 34:
South half northeast quarter,
Northwest quarter,
South half,
Section 35:
Lot 9,
West half southwest quarter,
Containing 16,249.98 acres more or less.

(b)(1) The lands described in paragraph (2) of this subsection consisting of approximately 2,240.14 acres shall continue to be subject to Public Land Order 873, entitled "An Order Withdrawing Public Lands for Use of the Department of the Army in Con-

nection with the Jemez Canyon Dam and Reservoir Project", issued by the Secretary of the Interior on November 14, 1952, until such lands, or any portion thereof, are determined by the Secretary of the Army to be no longer needed for the purpose for which the lands were reserved under such order. The Secretary of the Army shall publish notice of any such determination in the Federal Register.

(2) The lands described in subsection (a) of this section which are subject to Public Land Order 873 are the following lands:

NEW MEXICO PRINCIPAL MERIDIAN

Township 13 North, Range 3 East

Section 1:
Lots 1, 8, 9, 10,
South half northeast quarter,
Southeast quarter northwest quarter,
Northeast quarter southwest quarter,
Section 5:
Lots 1, 2, 3, 4,
Northwest quarter northwest quarter,
Lots 1, 2, 3, Northeast quarter, East half northwest quarter, Northeast
South half northwest quarter,
Southwest quarter,
West half southeast quarter,
Lot 5, that part lying north of the east-west quarter section line,
Section 6:
Lots 1, 2, 3,
Northeast quarter,
East half northwest quarter,
Northeast quarter southwest quarter,
North half southeast quarter,
Southeast quarter southeast quarter,
Section 8:
Lots 3, 4, 5,
West half northeast quarter,
Northwest quarter,
North half southwest quarter,
Northwest quarter southeast quarter,
Section 17:
Lots 10 and 11,
Lot 12, that part lying east of the north-south quarter section line,

Township 14 North, Range 4 East

Section 31:
Southwest quarter northeast quarter,
Northwest quarter northwest quarter,
South half northwest quarter,
South half.

On page 18, beginning with line 9, strike through and including line 14, and insert in lieu thereof the following:

(b) Those persons holding grazing permits from the United States Bureau of Land Management in the grazing unit known as the Bernalillo Community Allotment (Number 551), Sandoval County, New Mexico as of the date of enactment of this Act are hereby granted the right to continue those grazing rights, subject to all otherwise applicable terms, conditions, rules and regulations of the Bureau of Land Management governing such grazing rights, for a period of not to exceed ten years. Such grazing rights shall be administered by the Bureau of Land Management in accordance with applicable rules and regulations governing such rights on the Federal public domain, and may be canceled by the Bureau of Land Management in accordance with its regulations for failure to meet the terms and conditions of the existing permits, or failure to abide by applicable rules and regulations. Grazing fees shall be payable by the permittees to the Bureau of Land Management at prevailing rates, which fees shall be remitted by said Bureau to the Pueblo of Santa Ana within 30 days of receipt. Such grazing rights shall be nontransferable, except that they may be relinquished at any time to the Pueblo of Santa Ana.

In the event of cancellation or relinquishment of said grazing rights as provided above, such rights shall not be renewed, nor shall any new permits be issued: *Provided, however,* That no grazing fees shall be payable by the said existing permittees for the first five years following enactment of this Act.

(c) Subject to subsections (a) and (b) of this section, any property held in trust under this Act for the Pueblo of Santa Ana shall be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for the Indian tribe of such pueblo.

On page 21, line 6, strike "exchange, or condemnation," and insert "or exchange,";

On page 22, beginning with line 1, insert the following:

SEC. 8. (a) Notwithstanding any other provision of this Act, during the three years following enactment of this Act, the Secretary may, after giving the tribe 30 days written notice and after consulting with the tribe, enter on the lands described in the first section of this Act to identify, investigate, examine, and remove any paleontological resources from such lands: *Provided,* That no explorations, surveys or excavations shall be authorized within a 200-yard radius of the following shrines or religious sites:

(1) Santiyaku 'Ke Kura (Santiago's Corral);
(2) Santiyaku Ka'me (Santiago's Home);
(3) Santiyaki 'Kaisru (Santiago's Field);
(4) 'Tsitsi Sruwii (Water Snake Head);
(5) Tuyuuna (Snake Head Shrine—Canjilon Hill);
(6) Shayeka Kauwatsesruma (Hunter Shrine)
(7) 'Kuyau 'Kapesru (Old Lady Sits Shrine);
(8) Huchaniitse (White House Shrine);
(9) Dya'dyu Tsinautani (Bobcat Point);
(10) 'Kasreri 'Kumiyeisruma (Clown Point);
(11) Chapiyu 'Ka'kuyanisru (Chapiyu's Trail);
(12) Shawiti'tsuyu (Parrot Point);
(13) Hane 'Kai (Sacred Clown Society Shrine); and
(14) Yusrkuma (Corn Cob Shrine).

Such resources so removed as the property of the United States and shall be administered under laws applicable to federally owned resources. Paleontological resources on such lands that are not removed from the lands pursuant to this section shall be managed in a manner that will permit the greatest possible public benefit, use and study of the resources, consistent with tribal law and practices.

(b) Any lands excavated pursuant to this section shall be reclaimed and restored to its original condition by the Secretary, as near as he determines may be practicable.

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all right, title, and interest of the United States in the following lands situated within Sandoval County in the State of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Santa Ana:

NEW MEXICO PRINCIPAL MERIDIAN

Township 13 North, Range 3 East

Section 1:
Lots 1, 8, 9, 10, South half north half, South half,
Section 3:
Lots 9, 10, 11, 12,
South half north half.
South half,
Section 4:
Lots 9, 10, 11, 12,
South half north half,
South half,
Section 5: All of that portion lying east of the west boundary of the right-of-way of New Mexico Highway 44,
Section 9:
East half west half,
East half,
Section 10: All,
Section 11: All,
Section 12: All,
Section 13: All,
Section 14: All,
Section 15: North half northwest quarter, southeast quarter northwest quarter, northeast quarter southwest quarter northwest quarter, north half northwest quarter southwest quarter northwest quarter, southeast quarter northwest quarter southwest quarter northwest quarter, north half northwest quarter southeast quarter southwest quarter northwest quarter, northeast quarter southeast quarter, southwest quarter northwest quarter, northeast quarter, north half northeast quarter northwest quarter northeast quarter southwest quarter, north half northeast quarter northeast quarter southwest quarter, north half southwest quarter northeast quarter northeast quarter southwest quarter, southeast quarter northeast quarter northeast quarter southwest quarter, northeast quarter southeast quarter, north half northwest quarter southeast quarter, southeast quarter northeast quarter southeast quarter, northeast quarter southwest quarter northwest quarter southeast quarter, north half northwest quarter southwest quarter northwest quarter southeast quarter, north half southeast quarter southwest quarter northwest quarter southeast quarter, northeast quarter northeast quarter southwest quarter southeast quarter, northeast quarter southeast quarter southeast quarter, north half northwest quarter southeast quarter southeast quarter, southeast quarter northwest quarter southeast quarter southeast quarter, north half southwest quarter northwest quarter southeast quarter southeast quarter, north half northeast quarter southwest quarter southeast quarter southeast quarter, north half southeast quarter southeast quarter, north half southeast quarter southeast quarter southeast quarter southeast quarter: excluding existing rights-of-way.

Section 23: Northeast quarter northwest quarter northwest quarter, northeast quarter northwest quarter northwest quarter northwest quarter, north half northwest quarter northwest quarter northwest quarter northwest quarter, north half northeast quarter southeast quarter northwest quarter northwest quarter, north half northeast quarter northwest quarter, southeast quarter northeast quarter northwest quarter, north half southwest quarter northeast quarter northwest quarter, southeast quarter southwest quarter northeast quarter northwest quarter, northeast quarter northeast quarter southeast quarter northwest quarter, north half northwest quarter northeast quarter southeast quarter northwest quarter, north half northeast quarter, southeast quarter northeast quarter, north half southwest quarter northeast quarter, north half southeast quarter southwest quarter northeast quarter, southeast quarter southeast quarter southwest quarter northeast quarter, north half southwest quarter southeast quarter southwest quarter northeast quarter, north half northeast quarter southwest quarter southwest quarter northeast quarter, northeast quarter northeast quarter southeast quarter, northeast quarter northwest quarter northeast quarter southeast quarter, north half northwest quarter northwest quarter northeast quarter southeast quarter, north half southeast quarter northwest quarter northeast quarter southeast quarter, north half northeast quarter southeast quarter northeast quarter southeast quarter; excluding Rec. PP CL 10/10/16 and existing rights-of-way,

Section 24: North half, southeast quarter, northeast quarter southwest quarter, north half northwest quarter southwest quarter,

southeast quarter northwest quarter southwest quarter, north half southwest quarter northwest quarter southwest quarter, southeast quarter southwest quarter northwest quarter southwest quarter, north half southwest quarter southwest quarter northwest quarter southwest quarter, north half northeast quarter southwest quarter southwest quarter, north half southeast quarter northeast quarter southwest quarter southwest quarter, north half southeast quarter southwest quarter, southeast quarter southeast quarter southwest quarter, northeast quarter southwest quarter southeast quarter southwest quarter; excluding existing rights-of-way,

Section 25: North half northeast quarter northeast quarter northeast quarter northwest quarter, northeast quarter northeast quarter, northeast quarter northwest quarter northeast quarter, north half northwest quarter northwest quarter northeast quarter, southeast quarter northwest quarter northwest quarter northeast quarter, north half southwest quarter northwest quarter northwest quarter northeast quarter north half northeast quarter southwest quarter northwest quarter northeast quarter, north half southwest quarter northwest quarter northeast quarter, southeast quarter southeast quarter northwest quarter northeast quarter,

Township 13 North, Range 4 East

Section 3:
Lots 4, 5, 6,
West half northeast quarter,
Northwest quarter,
Section 4: All; including bed of Jemez River,
Section 5:
Lots 1, 2, 3, 4, 5,
Northwest quarter northwest quarter,
South half northwest quarter,
South half,
and bed of Jemez River,
Section 6:
Lots 1, 2, 3, 4,
East half west half,
East half,
and bed of Jemez River,
Section 7: All,
Section 8:
Lots 3, 4, 5,
North half,
Southwest quarter,
Southwest quarter,
Northwest quarter southeast quarter,
Section 9:
Lots 5, 6, 7, 8, and bed of Jemez River lying north of the
North boundary of the Angostura Grant,
Section 17:
Lots 10, 11, 12, 13,
Northwest quarter,
Section 18:
Lots 2, 3,
East half northwest quarter,
Northeast quarter,

Township 14 North, Range 3 East

Section 6: Bed of the Jemez River,

Township 14 North, Range 4 East

Section 17: All,
Section 18: East half east half,
Section 19: East half east half,
Section 20: All,
Section 21: West half,
Section 27: Southwest quarter southwest quarter,
Section 28:
Northwest quarter,
South half,
Section 29: All,
Section 30: East half east half,
Section 31:
East half northeast quarter,
Southwest quarter northeast quarter,
Northwest quarter northwest quarter,
South half northwest quarter,
South half,
and bed of Jemez River,
Section 33: All,
Section 34:
South half northeast quarter,
Northwest quarter,
South half,
Section 35:
Lot 9,
West half southwest quarter,

Containing 16,249.98 acres more or less.

(b)(1) The lands described in paragraph (2) of this subsection consisting of approximately 2,240.14 acres shall continue to be subject to Public Land Order 873, entitled "An Order Withdrawing Public Lands for Use of the Department of the Army in Connection with the Jemez Canyon Dam and Reservoir Project", issued by the Secretary of the Interior on November 14, 1952, until such lands, or any portion thereof, are determined by the Secretary of the Army to be no longer needed for the purpose for which the lands were reserved under such order. The Secretary of the Army shall publish notice of any such determination in the Federal Register.

(2) The lands described in subsection (a) of this section which are subject to Public Land Order 873 are the following lands:

NEW MEXICO PRINCIPAL MERIDIAN

Township 13 North, Range 3 East

Section 1:
Lots 1, 8, 9, 10,
South half northeast quarter,
Southeast quarter northwest quarter,
Northeast quarter southwest quarter,
Section 5:
Lots 1, 2, 3, 4,
Northwest quarter northwest quarter,
Lots 1, 2, 3, Northeast quarter East half northwest quarter, Northeast,
South half northwest quarter,
Southwest quarter,
West half southeast quarter,
Lot 5, that part lying north of the east-west quarter section line,
Section 6:
Lots 1, 2, 3,
Northeast quarter,
East half northwest quarter,
Northeast quarter southwest quarter,
North half southeast quarter,
Southeast quarter southeast quarter,
Section 8:
Lots 3, 4, 5,
West half northeast quarter,
Northwest quarter,
North half southwest quarter,
Northwest quarter southeast quarter,
Section 17:
Lots 10 and 11,
Lot 12, that part lying east of the north-south quarter section line,

Township 14 North, Range 4 East

Section 31:
Southwest quarter northeast quarter,
Northwest quarter northwest quarter,
South half northwest quarter,
South half.

SEC. 2. The Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands declared to be held in trust by this Act.

SEC. 3. All of the right, title, and interest of the United States in all minerals, including gas and oil, underlying the lands hereby declared to be held in trust for the Pueblo of Santa Ana, are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Santa Ana.

SEC. 4. (a) Nothing in this Act shall deprive any person of any valid existing right of use, possession, contract right, interest, or title which that person may have in any of the trust lands within the purview of this Act, or of any existing right of access to public domain lands over and across such trust lands, as determined by the Secretary of the Interior. All existing mineral leases involving lands declared to be held in trust by this Act, including oil and gas leases, which may have been issued or approved pursuant to Federal law, prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law, all applications for mineral leases involving such lands, including oil and gas leases, pending on the date of enactment of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Those persons holding grazing permits from the United States Bureau of Land Management in the grazing unit known as the Bernalillo Community Allotment (Number 551), Sandoval County, New Mexico as of the date of enactment of this Act are hereby granted the right to continue those grazing rights, subject to all otherwise applicable terms, conditions, rules and regulations of the Bureau of Land Management governing such grazing rights, for a period of not to exceed ten years. Such grazing rights shall be administered by the Bureau of Land Management in accordance with applicable rules and regulations governing such rights on the federal public domain, and may be canceled by the Bureau of Land Management in accordance with its regulations for failure to meet the terms and conditions of the existing permits, or failure to abide by applicable rules and regulations. Grazing fees shall be payable by the permittees to the Bureau of Land Management at prevailing rates, which fees shall be remitted by said Bureau to the Pueblo of Santa Ana within 30 days of receipt. Such grazing rights shall be nontransferable, except that they may be relinquished at any time to the Pueblo of Santa Ana.

In the event of cancellation or relinquishment of said grazing rights as provided above, such rights shall not be renewed, nor shall any new permits be issued: Provided, however, That no grazing fees shall be payable by the said existing permittees for the first five years following enactment of this Act.

(c) Subject to subsections (a) and (b) of this section, any property held in trust under this Act for the Pueblo of Santa Ana shall be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for the Indian tribe of such pueblo.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property declared to be held in trust by this Act which were received by the United States subsequent to the acquisition by the United States of such property and prior to the date of the enactment of this Act (including State school lands referred to in section 7), from whatever source and for whatever purpose, shall, as of the date of enactment of this Act, be deposited to the credit of the Pueblo of Santa Ana and may be expended by such tribe for such beneficial programs as the tribal governing body may determine.

(b) All gross receipts (including, but not limited to, bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit, or lease referred to in section 4(a) of this Act, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property declared to be held in trust for the benefit and use of the Pueblo of Santa Ana pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled

to under the Social Security Act or any other Federal or federally assisted program.

SEC. 7. (a) For the purpose of improving the land tenure pattern and consolidating Santa Ana Pueblo lands, the Secretary of the Interior is authorized and directed to acquire, by purchase, or exchange, under such regulations as he may prescribe, all State school lands in township 13 north, range 3 east, sections 2 and 16; township 14 north, range 3 east, section 36; and township 14 north, range 4 east, section 32, State of New Mexico, containing 2004.05 acres, more or less; and interests therein, including improvements, mineral rights, and water rights. In exercising his authority to acquire such lands by exchange, the Secretary is authorized to utilize unappropriated public lands in the State of New Mexico. The properties so exchanged shall be of approximately equal value, and the Secretary may accept cash from or pay cash to the State of New Mexico in such an exchange in order to equalize the values of the properties exchanged.

(b) The Secretary may execute any title documents necessary to effect the exchanges authorized by this section.

(c) Title to all lands acquired under the provisions of this section shall be taken in the name of the United States in trust for Santa Ana Pueblo.

SEC. 8. (a) Notwithstanding any other provision of this Act, during the three years following enactment of this Act, the Secretary may, after giving the tribe 30 days written notice and after consulting with the tribe, enter on the lands described in the first section of this Act to identify, investigate, examine, and remove any paleontological resources from such lands: *Provided*, That no explorations, surveys or excavations shall be authorized within a 200-yard radius of the following shrines or religious sites:

(1) Santiyaku 'Ke Kura (Santiago's Corral);

(2) Santiyaku Ka'me (Santiago's Home);

(3) Santiyaki 'Kaisru (Santiago's Field);

(4) 'Tsitsi Sruwii (Water Snake Head);

(5) Tuyuuna (Snake Head Shrine—Canjilon Hill);

(6) Shayeka Kauwatsesruma (Hunter Shrine);

(7) 'Kuyau 'Kapesru (Old Lady Sits Shrine);

(8) Huchaniitse (White House Shrine);

(9) Dya'dyu Tsinautani (Bobcat Point);

(10) 'Kasreri 'Kumiyeisruma (Clown Point);

(11) Chapiyu 'Ka'kuyanisru (Chapiyu's Trail);

(12) Shawiti'tsuyu (Parrot Point);

(13) Hane 'Kai (Sacred Clown Society Shrine); and

(14) Yusrkuma (Corn Cob Shrine).

Such resources so removed are the property of the United States and shall be administered under laws applicable to federally owned resources. Paleontological resources on such lands that are not removed from the lands pursuant to this section shall be managed in a manner that will permit the greatest possible public benefit, use and study of the resources, consistent with tribal law and practices.

(b) Any lands excavated pursuant to this section shall be reclaimed and restored to its original condition by the Secretary, as near as he determines may be practicable.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1132), explaining the purpose of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE MEASURE

The purpose of S. 2588 is to restore to the pueblo of Santa Ana approximately 14,000 acres of public domain land; and also to authorize and direct the Secretary of the Interior to acquire through exchange or purchase an additional 2,000 acres of State-owned school lands for the tribe. These lands would be transferred into trust and held for the benefit of the pueblo.

The act would serve to connect and consolidate the two separated Santa Ana Reservations. It would also enhance the economic posture of the pueblo by providing additional grazing lands and allowing for development of the proposed Jemez Lake Park and Santa Ana recreation areas.

BACKGROUND AND NEED

The land affected by this legislation was occupied, controlled and used for subsistence, economic and religious purposes by the Pueblo of Santa Ana prior to the arrival of the Spanish in the 17th and 18th centuries. These aboriginal lands extended from the Rio Puerco River on the west, through the town of Bernalillo and across the Rio Grande River to the vicinity of Placitas, N. Mex.

This land was originally used for hunting and fishing and subsequently became grazing land for the tribe's livestock herds. The old Santa Ana Pueblo, Ta-Ma-Ya, is still maintained today as a small ceremonial village and used periodically for religious ceremonies.

The history of land control in the Santa Ana Pueblo area is checkered, with the tribe losing and regaining, claiming and reclaiming, selling and repurchasing portions of their aboriginal lands to the Spanish, Mexican, and American Governments, as well as local nonIndian residents.

In 1937, pursuant to the Taylor Grazing Act of 1934, a regional grazing committee asserted jurisdiction over the lands involved in this legislation under the assumption that they were public domain lands and subject to the act.

The Bureau of Indian Affairs chose to acquiesce in the designation of the lands as public domain, and, instead of asserting and defending the pueblo's aboriginal title, submitted an application to the committee on behalf of the tribe for a grazing permit. The application included all of the lands encompassed by this legislation, but was denied on the basis that "the land applied for is needed for qualified native applicants." These "qualified native applicants" were local non-Indian ranchers.

A subsequent application was accepted and granted the tribe permission to use approximately 6,500 acres for grazing, and this area became the Santa Ana grazing allotment. The balance of approximately 7,500 acres was permitted to local non-Indians and became the Bernalillo community allotment.

For approximately 25 years, an informal agreement between the pueblo and other permittees recognized the tribe's aboriginal grazing rights and the tribe used the lands jointly with other permittees.

In 1961, however, the Bureau of Land Management, citing an over-grazing problem, fenced in the Bernalillo community allotment and restricted its use to the local non-Indian permittees.

The current Santa Ana Pueblo consists of two physically separated reservations encompassing approximately 41,000 acres with a total population of approximately 625 people. Approximately one-half of this land (22,976 acres) was transferred to the pueblo in trust by the act of September 14, 1961, Public Law 87–231. This transfer was initiated by the Bureau of Land Management to reduce the burden of BLM administration in the complicated tribal land pattern that existed in the area after it had been determined that the area had been used exclusively by the pueblo for over 20 years. This legislation would close the existing physical gap between the reservations by transferring the area separating them into trust for the pueblo

The land to be transferred into trust by S. 2588 can be considered as three adjacent and related parcels; the Santa Ana grazing allotment area, the Jemez Lake Park Recreation Area, and the Bernalillo community allotment. A brief description of each parcel follows.

1. The Santa Ana grazing allotment area consists of 6,576.92 acres and has been exclusively and continuously used by the Santa Ana Pueblo for grazing purposes for at least 300 years. The area is an isolated, lava-capped plateau, accessible only from current pueblo land holdings. It will continue to be used primarily for grazing.

2. The Jemez Lake Park Recreation Area comprises 762.27 acres adjacent to the Jemez Canyon Dam. In 1931, the Army Corps of Engineers constructed the dam for flood control in the area. However, it has only been utilized twice in the past 25 years to contain Jemez River floodwaters.

The pueblo proposes to establish a permanent pool behind the dam, and develop the adjacent land into a major recreation area serving Metropolitan Albuquerque. The recreation area will include a visitor's center, marine, restaurant, plus picnicking and camping areas. The pueblo has also developed a plan to store water purchased by Albuquerque from the San Juan Chama diversion project which is now released into the Rio Grande River when not utilized. The city would obtain both water storage areas and recreational facilities

3. The Bernalillo community allotment, also designated as the Santa Ana recreation area, includes 6,729.93 acres in a rolling sandy area accessible by paved roads from the south and east. The land is presently used for grazing, but the tribe plans to develop the area by establishing cabin and lodge rental facilities, dude ranches and an all-terrain-vehicle use area. The pueblo will also be able to create a buffer zone between this recreation area and their ancient ceremonial village, Ta-Ma-Ya, which is currently being desecrated by dune-buggy enthusiasts and curious sightseers. Vehicle use will be limited to specific areas and access to Ta-Ma-Ya will also be easier to control and limit.

Contained within the parcels described above are some 2,000 acres of State school lands which are also to be acquired for the tribe through exchange or purchase from the State of New Mexico by the Secretary of the Interior. Also contained within the area described above is approximately 2,200 acres of land withdrawn subject to Public Land Order 873, entitled "An Order Withdrawing Public Lands for Use of the Department of the Army in connection with the Jemez Dam and Reservoir Project," issued by the Secretary of the Interior on November 14, 1952. The Secretary of the Interior is authorized by the legislation to revoke or terminate this withdrawal order after a determination by the Secretary of the Army that the lands are no longer needed for the purpose for which they were withdrawn.

Transfer of the lands described above into trust for the benefit of the Pueblo of Santa Ana will serve to bridge the gap between the physically separated reservations and also provide job opportunities and other economic advantages under proposed development plans.

LEGISLATIVE HISTORY

S. 2588 was introduced by Senators Domenici and Schmitt on February 24, 1978. A hearing was held on the proposed measure before the Senate Committee on Indian Affairs on April 26, 1978. Favorable testimony was received at that hearing from representatives of the Interior Department and the tribe.

A similar measure, H.R. 3924, was introduced by Congressman Lujan on February 23, 1977. A hearing was held before the House Interior Subcommittee on Indian Affairs and Public Lands on April 27, 1978. At that hearing, representatives from the Interior Department testified in favor of the bill.

On May 3, 1978, the House Interior Committee favorably reported H.R. 3924 out of committee in the form of a substitute bill.

## "COLONIZATION OF THE WEST BANK TERRITORIES BY ISRAEL"

The resolution (S. Res. 538) authorizing the reprinting of the committee print entitled "Colonization of the West Bank Territories by Israel," was considered and agreed to, as follows:

*Resolved,* That there be reprinted, with illustrations, for the use of the Committee on the Judiciary five hundred copies of its committee print of December 1977, entitled "Colonization of the West Bank Territories by Israel," a report to the committee by Senator James Abourezk.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1155), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Senate Resolution 538 would authorize the reprinting, with illustrations, for the use of the Committee on the Judiciary, of 500 copies of its committee print of December 1977, entitled "Colonization of the West Bank Territories by Israel," a report to the committee by Senator James Abourezk.

The printing-cost estimate, supplied by the Public Printer, is as follows:

*Printing cost estimate*

Back to press, 500 copies ..... $395.92

## VALERIE E. KAIT, MARGUERITE E. GILL, AND GEORGE E. GILL

The resolution (S. Res. 548) to pay a gratuity to Valerie E. Kait, Marguerite E. Gill, and George E. Gill was considered and agreed to, as follows:

*Resolved,* That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Valerie E. Kait and Marguerite E. Gill, daughters, and George E. Gill, son, of Helen Gill, an employee of the Senate at the time of her death, a sum to each equal to one-third of seven months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## COPAN DAM AND THE LAKE OF THE DELAWARES

The joint resolution (S.J. Res. 131) to change the name of Copan Dam and Lake in the States of Oklahoma and Kansas to Copan Dam and the Lake of the Delawares was considered, ordered to be engrossed for a third reading, read the third time, and passed as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Copan Dam and Lake on the Little Caney River in the States of Oklahoma and Kansas shall be known as the Copan Dam and the Lake of the Delawares in honor of the Delaware Indians. Any law, regulation, document, or record of the United States in which such project is referred to by any other name shall be held and considered to refer to such project by the name of Copan Dam and the Lake of the Delawares.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1164), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of Senate Joint Resolution 131, as reported, is to change the name of Copan Dam and Lake to Copan Dam and the Lake of the Delawares in honor of the Delaware Indians.

GENERAL STATEMENT

The Copan Lake project, under construction, is expected to be completed in 1980. The dam will be located on Little Caney River in Washington County, about 2 miles west of Copan and 9 miles north of Bartlesville, Okla. The lake will extend into Chautauqua County, Kans. The project will provide flood control, water supply, water quality control, recreation, and fish and wildlife enhancement.

For 103 years the main body of the Delaware Indian Tribe has resided in the geographic area in which the Copan project will be located. The Delaware Tribe came to Oklahoma under the 1866 treaty with the U.S. Government and 1867 treaty with the Cherokee Nation. Because of the many years the Delawares have resided upon the land surrounding the proposed Copan project, it is fitting and proper that the Copan Lake should bear their name.

## GATHRIGHT DAM AND LAKE MOOMAW

The Senate proceeded to consider the bill (H.R. 12112) designating Gathright Lake on the Jackson River, Va., as Lake Moomaw, which had been reported from the Committee on Environment and Public Works with amendment as follows:

On page 1, line 6, strike "Lake Moomaw" and insert "Gathright Dam and Lake Moomaw";

On page 2, line 2, strike "Lake Moomaw" and insert "Gathright Dam and Lake Moomaw".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read:

An act designating Gathright Lake on the Jackson River, Virginia, as Gathright Dam and Lake Moomaw.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1165), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 12112, as reported, is to name the Gathright Lake on the Jackson River, Va., Lake Moomaw for Mr. Benjamin C. Moomaw, Jr.

GENERAL STATEMENT

Gathright Lake project is presently being constructed. The dam will be located on the Jackson River, a tributary of the James River, about 19 miles upstream of the city of Covington, Va. The lake will be located in Allegheny and Bath Counties, Va. The project, when completed, will provide flood control, water quality control, and recreation.

Mr. Benjamin C. Moomaw, Jr., who died on March 12, 1978, at the age of 88, was instrumental in obtaining the construction of the Gathright Lake project. For some 30 years, he and other concerned citizens devoted time and effort to secure the authorization and construction of the project. Unfortunately "Mr. Ben," as he is known throughout the area, did not live to see the completion of the project. It is a fitting tribute that the lake created by the Gathright Dam be named for Ben Moomaw.

To also retain the original identification of the project, the committee believes that the project should now be known as the Gathright Dam and Lake Moomaw.

## THE UKRAINIAN GENOCIDE UNDERSCORES THE NEED FOR THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, between the years of 1931 and 1933, 5 million Ukrainian peasants perished, victims of the government of the U.S.S.R. under the leadership of Joseph Stalin. Five million people, annihilated by mass starvation, by deportation, and merciless political terror.

How could any government commit this grisly act? Why did the rest of the world sit by, turning their heads away from the slaughter? And why, Mr. President, why do we hear so little of this

atrocity, certainty one of the most horrendous in human history?

Mr. President, the Ukrainians are a courageous, freedom-loving people. When the Communist government sought to collectivize agriculture, stripping peasants of their land and livestock, their houses and tools, Ukrainians resisted. They sabotaged the collective farms, took back their possessions, and began to hold back grain from the government.

The response of the Communist party was swift and brutal. In his book, "Genocide of the Ukrainian People," Prof. Vasyl Plyushch wrote:

> The Central Committee of the Russian Communist Party ordered an acceleration of collectivization and its conclusion in one or two years' time. At the same time "the kulaks as a class" should be liquidated. Inasmuch as not only rich or well-to-do Ukrainian peasants were considered to be "kulaks," but all those who resisted collectivization, this was an order calling for the extermination of all Ukrainian peasants, that is, an order of conscious genocide.

The extermination of the Ukrainian peasantry was carried out with unrelenting savagery. The government confiscated all but a meager portion of the food produced by the Ukraine, and allocated most of the small quantity remaining to the cities. In this way, the Communist government created an artificial famine calculated to wipe out the rebellious peasants or starve them into submission. That policy succeeded, and with a vengence.

Millions died. Millions more were deported. And the Ukrainian resistance quickly collapsed.

And what was the response of the world to these actions?

Essentially, Mr. President, the nations of the world ignored the Ukrainian slaughter. To be fair. some charitable organizations did attempt to relieve the famine, but their efforts were rebuffed by the government. As Stalin later admitted to Winston Churchill, the "kulaks had to be dealt with."

Professor Plyushch puts the matter plainly:

> These were the years which covered with eternal shame not only those who arranged the famine and terror . . . but also the heads of governments of Western Europe, North America and the intellectual elite of the whole world, who viewed these horrors in silence.

While the Ukrainian people endured this agony, we remained silent. We must never, never remain silent again.

Mr. President, the United States has a chance to raise its voice, to join with a chorus of 83 nations that have declared genocide an international crime, one that must be punished. The Convention for the Prevention and Punishment of the Crime of Genocide is a noble document that deserves the ratification of the Senate. We cannot allow the events that occurred half a century ago in the Ukraine to repeat themselves. We cannot allow genocide.

## CETA AND FIGHTING THE WRONG FIGHT

Mr. PROXMIRE. Mr. President, on Friday, August 25 the Senate overwhelmingly passed the Comprehensive Employment and Training Act reauthorization bill. I was one of the few who voted against the final passage of this bill. Why did I vote as I did?

FINE ATTEMPT TO IMPROVE TROUBLED PROGRAMS

First of all, I would like to commend my colleague from Wisconsin, Senator NELSON, and the other members of the Human Resources Committee for their fine efforts to find remedies for the all too well-known problems of waste, abuse, and scandal within the numerous programs of CETA, particularly public service jobs.

Hopefully, the new provisions provided for in the Senate bill will result in a significant improvement in the operation of these troubled programs. However, it remains to be seen, if in fact, these legislative medicines will even make healthier, let alone cure the sick CETA patients.

ECONOMY STRONG AND EMPLOYMENT GROWING

Mr. President, it is clear to me that inflation and not unemployment is the number one economic problem facing our Nation. Unemployment has fallen sharply during the present strong economic recovery. Unemployment was running close to 9 percent during the second quarter of 1975. It is now less than 6 percent. Over the last year alone, total employment has grown by more than 3.5 million. The proportion of the population that is employed is close to an alltime high.

So, Mr. President, our economy is generating jobs at a prodigious rate and this has resulted in a brightening of the job picture for virtually every category of worker.

DOUBLE DIGIT INFLATION RETURNS

Now what of inflation? During the first half of this year, consumer prices were increasing at a double digit rate. And inflation is having a devastating effect on many of the economically weakest groups of Americans, the poor, the old, and the young. It is very clear to me that we will continue to lose the fight against inflation until the Congress moves quickly and decisively to hold down and even reduce Federal spending.

NEED TO PHASE DOWN COSTLY CETA PROGRAMS

Now the Congressional Budget Office says that the cost of this CETA bill could run as much as $46.3 billion over the life of the authorization. That is a rate of spending of over $11 billion per year. With unemployment dropping, we should be phasing down public service jobs and other CETA programs but there are no phase downs or job slot reductions in this bill. Rather than place a ceiling and a phase down mechanism in the bill, the committee continued to commit us to the sky is the limit approach to budgeting by authorizing "such sums as may be necessary". That phrase "such sums as may be necessary" is an open invitation for budget busting by the powerful lobbyists who favor these types of programs.

Mr. President, I believe our Nation must provide training and public service job opportunities to its citizens, but the Federal Government is spending six times more on CETA programs today than it was spending for them just 4 years ago. No wonder there are serious management problems with these programs. Clearly, we have moved too fast in this area.

With strong growth of the economy, the giant Federal deficit of almost $50 billion and double digit inflation back upon us, it is time to slow down and reverse the growth of CETA programs. Because the Comprehensive Employment and Training Act Amendments of 1978 did not do this, I felt compelled to vote against it.

## ORDER THAT HOUSE JOINT RESOLUTION 1088 BE HELD AT THE DESK

Mr. PROXMIRE. Mr. President, House Joint Resolution 1088, which is the New York City fiscal measure which we debated at some length, has passed the House of Representatives. It needs appropriation action, however, to make it effective. I have discussed this very briefly with Senator MAGNUSON, Senator MOYNIHAN, and other interested people, but unfortunately I have not had an opportunity to discuss it with the Senator from North Dakota (Mr. YOUNG), who is the ranking minority member of the Appropriations Committee.

I ask unanimous consent that when received that bill be held at the desk pending further disposition. If anyone objects to the request, it will go to the Appropriations Committee. It is, however, a matter that should be acted on promptly. It was debated at great length, as I say, in the authorization process. The authorization and appropriation measures are almost identical, and this request would simply permit us to determine whether or not any Senator would object to having it taken up directly. If so, as I say, it would go to the committee.

Mr. ROBERT C. BYRD. Will the Senator revise that request to provide that it be held at the desk for 24 hours pending further disposition?

Mr. PROXMIRE. Mr. President, I make that request; I ask unanimous consent that the bill be held at the desk for 24 hours pending other disposition in the meantime.

Mr. WALLOP. Mr. President, may I inquire, is it the Senator's intention, or should someone else notify Senator YOUNG?

Mr. PROXMIRE. Yes, it is my intention to notify Senator YOUNG and get his permission. In the event he objects, it would go to the Appropriations Committee. We will make sure that he has an opportunity to register an objection before we act on it.

Mr. WALLOP. Very well, I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on to-

morrow morning after the two leaders are recognized that there be a brief period for the transaction of routine morning business not to extend beyond 10 minutes, with statements limited therein to 2 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CONFERENCE REPORT ON NATURAL GAS BILL

Mr. ROBERT C. BYRD. Mr. President, it is anticipated that the conference report on natural gas may be called up tomorrow morning. It is hoped that an agreement can be entered into whereby a definite date and hour could be set for a vote on the motion to recommit the conference report.

It is also hoped that included in that agreement can be a provision that no tabling motion with respect to the conference report will be in order and that this will allow Senators then to debate the conference report beginning tomorrow and through such hour on next Wednesday as agreed upon for the vote on the motion to recommit.

It would also be hoped that it might be possible to operate on a double track at some point between now and next Wednesday if such an agreement is entered into, provided no Senator sought the floor to speak on the natural gas conference report.

So that is what is possibly in the offing tomorrow. It is not assured, but in talking with various principals on both sides of the aisle and on both sides of the issue there seems to be a willingness to enter into that kind of agreement. But the agreement will not be presented today. It will not be presented until in the morning at 10 o'clock.

## RECESS UNTIL 10 A.M. TOMORROW

Mr. PROXMIRE. Mr. President, I move, under the previous order, that the Senate stand in recess until 10 a.m. tomorrow.

The motion was agreed to; and 6:35 p.m. the Senate recessed until tomorrow, Thursday, September 7, 1978, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Senate August 28, 1978, under authority of the order of the Senate of August 25, 1978:

### FEDERAL RESERVE SYSTEM

Nancy Hays Teeters, of Indiana, to be a member of the board of governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1970, vice Arthur F. Burns, resigned.

### THE JUDICIARY

Bruce S. Jenkins, of Utah, to be U.S. district judge for the district of Utah, vice Willis W. Ritter, deceased.

Executive nomination received by the Senate September 1, 1978, under authority of the order of the Senate of August 25, 1978.

### SECURITIES INVESTOR PROTECTION CORPORATION

Adolph Philip Schuman, of California, to be a director of the Securities Investor Protection Corporation for a term expiring December 31, 1978, vice Jerome W. Van Gorkom, term expired.

Adolph Philip Schuman, of California, to be a director of the Securities Investor Protection Corporation for a term expiring December 31, 1981 (reappointment).

Executive nominations received by the Senate September 6, 1978:

### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the National Oceanic and Atmospheric Administration:

*To be lieutenant (junior grade)*

Joseph C. Talbott

*To be ensigns*

David S. Goldenberg
John W. Humphrey, Jr.
Fredric R. Plotkin
V. Dale Ross
Diane E. Strayer
William R. Bergmann
Michael Mallette
James M. Sherwood

### IN THE ARMY

The following Army National Guard of the United States officer for appointment in the Adjutant General's Corps, Reserve of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

*To be major general*

Brig. Gen. Edward Clarence Binder, [redacted]

The following-named Army Medical Department officer for temporary appointment in the Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3442 and 3447.

*To be brigadier general, Medical Corps*

Col. Andre John Ognibene, [redacted], Medical Corps, U.S. Army.

The following-named Army National Guard of the United States officer for appointment to the grade of brigadier general as a reserve commissioned officer of the Army and to the grade of brigadier general, Army of the United States, under the provision of title 10, United States Code, sections 593a, 3385, 3442, and 3447:

*To be brigadier general*

Col. Herbert R. Temple, Jr., [redacted].

Col. Junior Henry Burkhead, [redacted], for appointment to the grade of brigadier general in the Adjutant General's Corps, Army National Guard of the United States, under the provisions of title 10, United States Code, sections 593(a) and 3392.

### IN THE AIR FORCE

The following-named officers for promotion as a Reserve of the Air Force, under the appropriate provisions of chapter 35 and 837, title 10, United States Code:

#### LINE OF THE AIR FORCE

*Major to lieutenant colonel*

Abizaid, John G., [redacted].
Albers, Everett H., [redacted].
Alexander, Robert H., [redacted].
Allen, Harlan G., Jr., [redacted].
Anderson, Gerald R., [redacted].
Arant, Carl P., Jr., [redacted].
Armstrong, James E., [redacted].
Arnold, Kathryn S., [redacted].
Arthur, Guy B., III, [redacted].
Artman, Thomas G., [redacted].
Asseoguerra, Casimiro, [redacted].
Astafan, Nora A., [redacted].
Auger, Robert C., [redacted].
Backes, Clarence M., [redacted].
Bacon, William R., [redacted].
Baczynski, John L., [redacted].
Baker, Gerald C., [redacted].
Barber, Howard C., [redacted].
Barber, Lawrence E., [redacted].
Barner, Robert M., [redacted].
Barnett, Bobby G., [redacted].
Barr, Sammie, [redacted].
Barry, Joseph G., [redacted].
Bates, Larrie C., [redacted].
Bauwens, Joseph E., [redacted].
Beall, Thomas W., [redacted].
Beason, John P., [redacted].
Beavers, Roy K., [redacted].
Belk, Marvin L., [redacted].
Bell, Elvin C., [redacted].
Bell, James H., [redacted].
Bensch, Harold P., [redacted].
Beshara, Thomas M., [redacted].
Beucher, Terence E., [redacted].
Bishop, Pledger M., Jr., [redacted].
Bitzow, Roy L., [redacted].
Blackmon, Zeb, Jr., [redacted].
Boab, Patrick S., [redacted].
Boone, Nicholas D., [redacted].
Bortness, Leroy M., [redacted].
Boston, Leo S., [redacted].
Bovingdon, George G., [redacted].
Bowman, Hal K., [redacted].
Brackett, William R., Jr., [redacted].
Brainerd, Peter T., [redacted].
Branch, Edward A., [redacted].
Brandenburg, Lowell E., [redacted].
Brothers, Willis E., [redacted].
Brown, Alan R., [redacted].
Brown, Charles V., [redacted].
Bruggeman, Norbert A., [redacted].
Bucholz, Theodore C., [redacted].
Buoni, William G., [redacted].
Burch, George A., [redacted].
Burch, Ronald K., [redacted].
Burk, Bill E., [redacted].
Calland, Richard A., [redacted].
Campbell, Joe L., [redacted].
Cantrell, George F., [redacted].
Carlson, Lyle R., [redacted].
Carter, Walter C., Jr., [redacted].
Cary, Bryan S., [redacted].
Cates, Robert E., [redacted].
Chancellor, Mason T., [redacted].
Chatham, Charles C., [redacted].
Chavez, Jose R., [redacted].
Chiacchieri, Peter P., [redacted].
Chrisman, Albert E., [redacted].
Cisar, Thomas E., [redacted].
Clark, Kenneth W., II, [redacted].
Clark, Robert M., [redacted].
Clayton, Robert F., [redacted].
Coban, Donald C., [redacted].
Cobb, James B., [redacted].
Colaw, Larry W., [redacted].
Colbert, Robert M., [redacted].
Collier, John W., [redacted].
Collins, Frank A., [redacted].
Conner, Timothy J., [redacted].
Cornelio, Emelio M., [redacted].
Courtright, Leroy E., [redacted].
Cover, James D., [redacted].
Cramer, Francis D., [redacted].
Creech, Robert L., [redacted].
Cresto, Peter C., [redacted].
Crews, Wade H., Jr., [redacted].
Curd, John R., [redacted].
Cuthrell, Robert E., [redacted].
Dahlin, David R., [redacted].
Dalton, Thomas J., [redacted].
Damschen, Floyd H., Jr., [redacted].
Davidson, Ricky R., [redacted].
Davis, Esker K., [redacted].
Davison, Donald E., [redacted].
Day, Arthur M., Jr., [redacted].
Dean, Donald E., [redacted].
Debussy, Robert P., [redacted].
Delapp, Robert A., [redacted].
Delaurenti, John L., [redacted].
Delawter, Wayne E., [redacted].
Demody, James M., [redacted].
Deruytter, Dennis C., [redacted].
Desormeaux, Maurice F., [redacted].
Dicke, James L., [redacted].
Dishner, Jimmy G., [redacted].
Doherty, James B., [redacted].
Draut, Arthur W., Jr., [redacted].
Druck, Harry E., Jr., [redacted].
Duger, Donald H., [redacted].
Dunlevy, J. P., [redacted].
Dyer, Ralph L., [redacted].
Eagles, Sidney S., Jr., [redacted].
Easterling, Allen M., [redacted].
Eckard, Roy C., [redacted].
Edel, William F., Jr., [redacted].

Edmundson, Donald A., [redacted].
Edwards, William W., Jr., [redacted].
Eggerman, Donald R., [redacted].
Ellis, Russell G., [redacted].
Elmer, Robert G., [redacted].
Entriken, Joan B., [redacted].
Evans, Charles W., [redacted].
Fagen, Michael W., [redacted].
Fenner, Richard G., [redacted].
Fernandez, Ralph E., [redacted].
Feuerpfeil, Karl F., [redacted].
Files, Early L., [redacted].
Fisher, Earl M., [redacted].
Fisher, Reginald J., Jr., [redacted].
Fisher, Thomas M., [redacted].
Foley, James J., [redacted].
Franklin, Kenneth L., [redacted].
Frederick, Richard E., [redacted].
Freeman, Daniel H., [redacted].
Freeman, Donald H., [redacted].
Freisner, Albert L., [redacted].
Furlough, Jennings B., [redacted].
Galias, Donald T., [redacted].
Garlinger, Edward D., [redacted].
Gartrell, James W., Jr., [redacted].
Geistweidt, Daniel C. H., [redacted].
George, Richard E., [redacted].
Gifford, Stanley I., [redacted].
Gingold, Lawrence H., [redacted].
Goldey, Howard F., [redacted].
Gomez, Daniel, [redacted].
Gordon, Earl S., [redacted].
Gottlieb, Allen S., [redacted].
Graham, John R., [redacted].
Graham, William A., III, [redacted].
Graybash, Peter J., Jr., [redacted].
Grimaldi, Richard J., [redacted].
Groark, David H., [redacted].
Grosskortenhaus, Frederic J., [redacted].
Grotte, Roland M., [redacted].
Grover, William A., [redacted].
Gruno, Charles D., [redacted].
Guernsey, Richard D., [redacted].
Gullion, Edwin A., [redacted].
Gunn, Robert L., [redacted].
Hall, Harold R., [redacted].
Hansen, Arthur H., III, [redacted].
Harrington, Jack R., [redacted].
Harris, Robert W., [redacted].
Hart, William E., [redacted].
Hawke, Wesley J., [redacted].
Hayes, John L., [redacted].
Hayes, Kirk M., [redacted].
Henderson, Ray C., [redacted].
Hennig, William J., [redacted].
Herndon, William K., [redacted].
Herold, Bruce G., [redacted].
Hess, Ronald J., [redacted].
Hibsman, Dimitri E., [redacted].
Hickey, Owen W., [redacted].
Higgins, Bernard J., [redacted].
Hime, William F., [redacted].
Hintzke, Edward S., [redacted].
Hladek, Joseph S., Jr., [redacted].
Hoien Darryl A., [redacted].
Holt, Landon B., Jr., [redacted].
Hoop, Charles C., [redacted].
Houseworth, Donald E., [redacted].
Howell, Donald L., [redacted].
Hubbard, John S., Jr., [redacted].
Hughes Jimmy W., [redacted].
Huisjen, John H., [redacted].
Hunt, John E., [redacted].
Hutchins, Paul S., [redacted].
Hyland, Gerald W., [redacted].
Iovinelli, John C., [redacted].
Ivey, Walter L., [redacted].
James, Ronald E., [redacted].
Jamieson, Malcolm, [redacted].
Jennings, Walter G., [redacted].
Jerro, Ronald E., [redacted].
Johnson, George C., III, [redacted].
Johnson Harry G., [redacted].
Johnson, James H., [redacted].
Johnson, Michael M., [redacted].
Johnson, Peter M., [redacted].
Johnson, Robert Z., [redacted].
Johnson, William L., [redacted].
Jonas, Douglas L., [redacted].
Jones, David V., [redacted].
Jones, Marvin V., [redacted].
Jones, Orion A., [redacted].
Jones, Ross L., [redacted].
Kantor, Falk, [redacted].
Kasson, Bruce N., [redacted].
Kayser, Thomac C., [redacted].
Kearns, Joseph T., Jr., [redacted].
Kellenberg, Conrad L., [redacted].
Kelly, Thomas P., Jr., [redacted].
Kerbel, Waldemar K., [redacted].
Kershaw, Bryant K., [redacted].
King, Walter H., Jr., [redacted].
Kirkham, Fred C., [redacted].
Kleopfer, Duane L., [redacted].
Kline, Robert L., [redacted].
Klinkowitz, Richard P., [redacted].
Kobza, John S., [redacted].
Konishi, Robert N., [redacted].
Koporc, Edwin A., [redacted].
Krall, John T., [redacted].
Lafollette, Harvey W., [redacted].
Lakutis, Melvin R., [redacted].
Lambiris, Antonio, [redacted].
Lamphron, David L., [redacted].
Lanahan, Joseph W., [redacted].
Landguth, Charles B., [redacted].
Lathrop, Thomas C., [redacted].
Lawall, Gerald W., [redacted].
Leblanc, Joseph U., [redacted].
Lemanowicz, Thomas F., [redacted].
Lemp, John, Jr., [redacted].
Lewis, Robert V., [redacted].
Lewis, Roy C., Jr., [redacted].
Lifsey, James D., [redacted].
Lisella, Franklin J., [redacted].
Little, Glenn T., [redacted].
Lowe, James M., [redacted].
Ludford, Joseph F., [redacted].
Maker, Robert E., [redacted].
Mangum, Charles T., [redacted].
Manocchio, Nicholas A., Jr., [redacted].
Mara, Peter, [redacted].
Marlatt, Jeryl L., [redacted].
Matthews, William A., [redacted].
Max, Robert H., [redacted].
Maxwell, Frank M. III, [redacted].
Maypole, Donald E., [redacted].
McAleer, George R., Jr., [redacted].
McAuliffe, Jerome J., [redacted].
McCall Gladys G., [redacted].
McDaniel, Ray E., [redacted].
McFadden, William B., [redacted].
McGovern, Edwin C., [redacted].
McGuire, Thomas W., [redacted].
McKnew, Thomas I., [redacted].
Mecham, Glenn J., [redacted].
Melvin, James A. III, [redacted].
Mendenhall, Edward D., [redacted].
Meredith, Harvey L., [redacted].
Miles, Joan C., [redacted].
Miller, Neil F., [redacted].
Millhouse, Jerome R., [redacted].
Mitchell, Davis C., [redacted].
Montagano, Frank A., [redacted].
Moore, Walter G., [redacted].
Morrow, Homer E., [redacted].
Moss, Basil D., [redacted].
Moynihan, John B., [redacted].
Muldrew, Robert W., [redacted].
Munnelly, John C., [redacted].
Muscarello, Andrea A., [redacted].
Nail, John D., Jr., [redacted].
Nelson, Ronald E., [redacted].
Nichols, David C., [redacted].
Noland, Ronald G., [redacted].
Nute, Eugene W., [redacted].
Oakley, Harry D., [redacted].
O'Brien, Patrick J., [redacted].
O'Brien, Thomas L., [redacted].
O'Bryan, Victor J., [redacted].
Odegard, Harland D., [redacted].
Offield, James D., [redacted].
Olander, Clark D., [redacted].
Ormon, Gerald, [redacted].
Oschwald, Paul C., [redacted].
Perker, Robert L., [redacted].
Paxton, Jay V., [redacted].
Pemberton, Donald R., [redacted].
Penick, Thomas E., Jr., [redacted].
Perrey, Dorothy A., [redacted].
Perryman, Marvin L., Jr., [redacted].
Phillips, Bryce C., Jr., [redacted].
Phillips, Francis M., [redacted].
Phillips, Rex A., [redacted].
Pickens, William B., [redacted].
Pohlen, Michael J., [redacted].
Porter, Budd T., [redacted].
Porter, William H., [redacted].
Potter, Raymond F., Jr., [redacted].
Potter, Stuart G., Jr., [redacted].
Pounds, Dwight R., [redacted].
Proctor, Lois J., [redacted].
Raab, John O., [redacted].
Raboin, Edward J., [redacted].
Radeke, Ronald R., [redacted].
Ramsdale, Charles R., [redacted].
Rattenborg, William M., [redacted].
Ray, James A., [redacted].
Raymond, Lawrence A., Jr., [redacted].
Reardon, Joseph F., Jr., [redacted].
Reed, Gayle R., [redacted].
Reese, Theron H., [redacted].
Reilly, Johne, [redacted].
Renick, Larry L., [redacted].
Rindal, Robert J., [redacted].
Risley, Robert L., [redacted].
Roberts, Conway H., [redacted].
Roberts, Donald W., [redacted].
Robertson, Rufe L., Jr., [redacted].
Roddey, John G. R., [redacted].
Roeckel, Edward J., [redacted].
Roesch, Jerauld J., [redacted].
Rucker, Dean A., [redacted].
Salsbury, Robert E., Jr., [redacted].
Salter, John S., [redacted].
Sanborn, Gordon E., [redacted].
Sanchez, Alex A., [redacted].
Schlechte, Howard N., [redacted].
Schmarje, David P., [redacted].
Schmidt, Albert O., [redacted].
Schmidt, John W., [redacted].
Schneider, Joseph T., [redacted].
Schneider, Wayne K., [redacted].
Schrandt, John A., [redacted].
Schulz, Charles E., [redacted].
Schulz, John H., [redacted].
Schulze, Richard G., [redacted].
Scott, Craige I., [redacted].
Scott, Ronald L., [redacted].
Seilius, Edward J., [redacted].
Shane, William H., [redacted].
Sharp, Richard E., [redacted].
Shearin, Patrick V., [redacted].
Sidney, Gilbert E., [redacted].
Siegel, David H., [redacted].
Simcox, Ronald L., [redacted].
Sjoberg, Oscar F., Jr., [redacted].
Sloan, Ralph S., Jr., [redacted].
Smith, Richard A., [redacted].
Smith, Steven M., [redacted].
Smith, Thomas M., [redacted].
Smith, Wayne D., [redacted].
Snow, Malcolm J., [redacted].
Snyder, Warren D., [redacted].
Solwold, Donald B., [redacted].
Spillman, Harry L., [redacted].
Spinney, Frank D., [redacted].
Staight, Michael W., [redacted].
Stammer, Norman L., [redacted].
Stanton, Gloyd R., [redacted].
Starrett, Charles O., Jr., [redacted].
Stelter, Robert A., [redacted].
Stephens, Franklin L., [redacted].
Stephens, James C., [redacted].
Stewart, Harold E., [redacted].
Stewart, Robert A. J., [redacted].
Storey, James R., [redacted].
Stuart, Ned R., Jr., [redacted].
Suber, Walter, S., Jr., [redacted].
Super, Roy D., [redacted].
Swanson, Joel D., [redacted].
Sweeney, Robert D., [redacted].
Swofford, Frank W., [redacted].
Syverson, John O., [redacted].
Taft, Joe H., [redacted].
Taylor, Ronald W., [redacted].
Terrell, Linton E., Jr., [redacted].
Tewinkle, Wesley, [redacted].
Theiss, Alvin R., [redacted].
Thompson, John D., [redacted].
Thompson, Robert E., [redacted].
Thorndal, John L., [redacted].
Tibbits, Harwood J., Jr., [redacted].
Tiemann, Jerome J., Jr., [redacted].
Tollison, Banjamin H., [redacted].

Torres, Julio L., XXX-XX-XXXX.
Townsend, Carl F., XXX-XX-XXXX.
Turner, Howard C., XXX-XX-XXXX.
Turner, James P., XXX-XX-XXXX.
Tusing, Junior L., XXX-XX-XXXX.
Tyler, Ivan W., XXX-XX-XXXX.
Underwood, Thomas W., XXX-XX-XXXX.
Valeri, James, XXX-XX-XXXX.
Vanblois, John P., XXX-XX-XXXX.
Vannederveen, Gilles K., XXX-XX-XXXX.
Vanpelt, Richard W., XXX-XX-XXXX.
Vonbargen, Robert F., XXX-XX-XXXX.
Wagner, Frederick J., Jr., XXX-XX-XXXX.
Wahl, William A., XXX-XX-XXXX.
Walker, Kenneth W., XXX-XX-XXXX.
Ward, James C., XXX-XX-XXXX.
Warner, Robert L., XXX-XX-XXXX.
Wehn, George, Jr., XXX-XX-XXXX.
Weidkamp, Larry L., XXX-XX-XXXX.
Weidman, Charles H., Jr., XXX-XX-XXXX.
Weir, John F., Jr., XXX-XX-XXXX.
Weiss, Wayne A., XXX-XX-XXXX.
Welch, Ben J., Jr., XXX-XX-XXXX.
Welch, Gary R., XXX-XX-XXXX.
Wells, Ernest S., XXX-XX-XXXX.
Wessinger, Walter Y., XXX-XX-XXXX.
West, Raleigh L., XXX-XX-XXXX.
Westerberg, Richard H., XXX-XX-XXXX.
White, Jerry D., XXX-XX-XXXX.
Whitnell, Terry G., XXX-XX-XXXX.
Whitsett, Charles J., XXX-XX-XXXX.
Whittington, William, XXX-XX-XXXX.
Wiese, Carl W., XXX-XX-XXXX.
Wiester, Charles W., XXX-XX-XXXX.
Williams, Emil F., XXX-XX-XXXX.
Williams, Howard K., XXX-XX-XXXX.
Williams, Marshall L., XXX-XX-XXXX.
Williams, Nathaniel C., Jr., XXX-XX-XXXX.
Wingerter, James H., XXX-XX-XXXX.
Winner, Robert J., XXX-XX-XXXX.
Winsett, Byron B., Jr., XXX-XX-XXXX.
Witherspoon, Gayland B., XXX-XX-XXXX.
Wolaver, John H., XXX-XX-XXXX.
Wolk, Stuart R., XXX-XX-XXXX.
Wood, Richard J., XXX-XX-XXXX.
Woodfin, Scott D., XXX-XX-XXXX.
Woodrow, Samuel G., XXX-XX-XXXX.
Wooten, Franklin R., XXX-XX-XXXX.
Wycoff, Edgar B., III, XXX-XX-XXXX.
Wylie, Bruce A., XXX-XX-XXXX.
Yoakam, Donald E., XXX-XX-XXXX.
Young, James D., XXX-XX-XXXX.
Zigelhofer, George N., XXX-XX-XXXX.
Zordan, Aldo, XXX-XX-XXXX.

CHAPLAIN CORPS

Chancellor, Gerald R., XXX-XX-XXXX.
Gallagher, John G., XXX-XX-XXXX.
Harder, Jon G., XXX-XX-XXXX.
Henschel, Kenneth W., XXX-XX-XXXX.
Kollin, Gilbert, XXX-XX-XXXX.
Lewis, Leo T., XXX-XX-XXXX.
Lynn, Robert C., XXX-XX-XXXX.
McCarty, Harvey D., XXX-XX-XXXX.
McCosh, Earl C., XXX-XX-XXXX.
Rockenstein, James E., Jr., XXX-XX-XXXX.
Romano, Michael, XXX-XX-XXXX.
White Douglas B., XXX-XX-XXXX.
Williams, John H., XXX-XX-XXXX.
Yablonsky, Gabriel F., XXX-XX-XXXX.

DENTAL CORPS

Abbott, James H., XXX-XX-XXXX.
Bourquin, Neil J., XXX-XX-XXXX.
Byers, Samuel S., XXX-XX-XXXX.
Herd, Jacke T., XXX-XX-XXXX.
Larsen, Harold D., XXX-XX-XXXX.
Mehlhose, David G., XXX-XX-XXXX.
Parisi, Renaldo, XXX-XX-XXXX.
Pierce, Harold E., Jr., XXX-XX-XXXX.
Soldanels, Anton P., Jr., XXX-XX-XXXX.
Tarnowski, Edward A., Jr., XXX-XX-XXXX.
Urdock, Joseph, Jr., XXX-XX-XXXX.
Young, Robert L., XXX-XX-XXXX.

MEDICAL CORPS

Crates, Gordon C., XXX-XX-XXXX.
Dear, Steven R., XXX-XX-XXXX.
Delaney, John F., Jr., XXX-XX-XXXX.
Farkas, Mary E. L., XXX-XX-XXXX.
Forrester, James S., XXX-XX-XXXX.
Herrington, Alan G., XXX-XX-XXXX.
Horman, Elmer C., XXX-XX-XXXX.
Johnson, Warren E., XXX-XX-XXXX.
Jones, Warner E., XXX-XX-XXXX.
Kendall, Tommy E., XXX-XX-XXXX.
Kercher, Delores F., XXX-XX-XXXX.
Kershaw, Charles H., III, XXX-XX-XXXX.
Long, Paul D., XXX-XX-XXXX.
Onglingswan, William T., XXX-XX-XXXX.
Perezrodriguez, Felipe, XXX-XX-XXXX.
Peters, John W., XXX-XX-XXXX.
Pruett, George A., XXX-XX-XXXX.
Yonkers, Anthony J., XXX-XX-XXXX.
Young, Walter K. W., XXX-XX-XXXX.

NURSE CORPS

Alexander, Charles R., XXX-XX-XXXX.
Armstrong, Helen V., XXX-XX-XXXX.
Baker, Darline J., XXX-XX-XXXX.
Brom, Janice L., XXX-XX-XXXX.
Butz, Lois M., XXX-XX-XXXX.
Cheever, Zona M., XXX-XX-XXXX.
Conley, Shirley M., XXX-XX-XXXX.
Couslin, Ann P., XXX-XX-XXXX.
Culver, Clara J., XXX-XX-XXXX.
Dunn, Patricia M., XXX-XX-XXXX.
Dyches, Beverly R., XXX-XX-XXXX.
Friel, Lois A., XXX-XX-XXXX.
Garriga, Mary L., XXX-XX-XXXX.
Gorman, Bernice C., XXX-XX-XXXX.
Greenstreet, Helen E., XXX-XX-XXXX.
Guzik, Lois D., XXX-XX-XXXX.
Hartnett, Joan T., XXX-XX-XXXX.
Hewson, Judith A., XXX-XX-XXXX.
Howe, Doris R., XXX-XX-XXXX.
Howell, Janice I., XXX-XX-XXXX.
Jenkins, Jennie M., XXX-XX-XXXX.
Johnson, Bonnie J., XXX-XX-XXXX.
Macko, Ollie M., XXX-XX-XXXX.
Marcin, Mary B., XXX-XX-XXXX.
McBride, Mary L., XXX-XX-XXXX.
Meier, Joanne C., XXX-XX-XXXX.
Merrill, Marjorie C., XXX-XX-XXXX.
Miller, William J., XXX-XX-XXXX.
Moore, Katherine A., XXX-XX-XXXX.
Nowland, Betty J., XXX-XX-XXXX.
Pearson, Nanette, XXX-XX-XXXX.
Pratt, Dorothy O., XXX-XX-XXXX.
Punk, Helen I., XXX-XX-XXXX.
Ritter, Mary A., XXX-XX-XXXX.
Rizzo, Patricia A., XXX-XX-XXXX.
Rogers, Suzanna J., XXX-XX-XXXX.
Rupert, Colleen J., XXX-XX-XXXX.
Slaughter, Patricia L., XXX-XX-XXXX.
Smith, Sallie L., XXX-XX-XXXX.
Spencer, Rosalyn V., XXX-XX-XXXX.
Spooner, Norma J., XXX-XX-XXXX.
Spurlin, Anne R., XXX-XX-XXXX.
Swazo, Josefita, XXX-XX-XXXX.
Turner, Betty Jane, XXX-XX-XXXX.
Warner, Luella, XXX-XX-XXXX.
Waters, Wanda S., XXX-XX-XXXX.
Wert, Barbara J., XXX-XX-XXXX.
Wright, Joyce J., XXX-XX-XXXX.

MEDICAL SERVICE CORPS

Baatrup, Gunner D., XXX-XX-XXXX.
Dixon, Clarence C., XXX-XX-XXXX.
Haberle, Joe E., XXX-XX-XXXX.
Kittell, Charles J., XXX-XX-XXXX.
Kusumoto, Kenneth S., XXX-XX-XXXX.
Madigan, John E., XXX-XX-XXXX.
O'Connell, James J., XXX-XX-XXXX.
Vega, Nicio, Jr., XXX-XX-XXXX.
Whitaker, Robert R., XXX-XX-XXXX.

VETERINARY CORPS

Loken, Keith I., XXX-XX-XXXX.

BIOMEDICAL SCIENCE

Cook, Raymond L., XXX-XX-XXXX.
Poksay, Robert A., XXX-XX-XXXX.

IN THE AIR FORCE

The following Air National Guard of the United States officers for promotion in the Reserve of the Air Force under the provisions of section 593(a) title 10 of the United States Code, as amended:

LINE OF THE AIR FORCE

*To be lieutenant colonel*

Maj. James B. Alford, XXX-XX-XXXX.
Maj. Walter B. Bauer, XXX-XX-XXXX.
Maj. Ted L. Beam, XXX-XX-XXXX.
Maj. Rocco A. Belfiore, XXX-XX-XXXX.
Maj. Dennis W. Bloomer, XXX-XX-XXXX.
Maj. Robert P. Bones, XXX-XX-XXXX.
Maj. Cecil G. Brendle, XXX-XX-XXXX.
Maj. Lewis M. Caswell, XXX-XX-XXXX.
Maj. Robert G. Chrisjohn, XXX-XX-XXXX.
Maj. Paul G. Cohen, XXX-XX-XXXX.
Maj. John G. Colpitts, XXX-XX-XXXX.
Maj. Thomas J. Costello, XXX-XX-XXXX.
Maj. Joseph W. Douglass, XXX-XX-XXXX.
Maj. William A. Forkhamer, XXX-XX-XXXX.
Maj. John A. Harlow, XXX-XX-XXXX.
Maj. Stacey L. Hayward, XXX-XX-XXXX.
Maj. Thomas J. Holland, XXX-XX-XXXX.
Maj. James J. Hourin, XXX-XX-XXXX.
Maj. Jan P. Johnson, XXX-XX-XXXX.
Maj. Thomas D. Jones, XXX-XX-XXXX.
Maj. Neil D. Kennedy, XXX-XX-XXXX.
Maj. James P. Key, XXX-XX-XXXX.
Maj. Joseph L. Kottak, XXX-XX-XXXX.
Maj. Peter J. Macek, XXX-XX-XXXX.
Maj. Bernard G. Malone, XXX-XX-XXXX.
Maj. Richard W. Maslowski, XXX-XX-XXXX.
Maj. Martin H. O'Leary, XXX-XX-XXXX.
Maj. Paul A. Redmond, XXX-XX-XXXX.
Maj. Ernest A. Sandberg, XXX-XX-XXXX.
Maj. Thomas M. Spencer III, XXX-XX-XXXX.
Maj. Albert L. Stanton, XXX-XX-XXXX.
Maj. Stephen S. Stickney, XXX-XX-XXXX.
Maj. Edward E. Svetlik, Jr., XXX-XX-XXXX.
Maj. Gary R. Walston, XXX-XX-XXXX.
Maj. Neal F. Weber, XXX-XX-XXXX.
Maj. Donald J. Wise, XXX-XX-XXXX.

JUDGE ADVOCATE

Maj. Donald A. Campbell, XXX-XX-XXXX.
Maj. David W. Johnston, XXX-XX-XXXX.

CHAPLAIN

Maj. Ronald G. Mills, XXX-XX-XXXX.

PHYSICIAN

Maj. Frank C. Koranda, XXX-XX-XXXX.
Maj. Joseph H. Kwan, XXX-XX-XXXX.
Maj. James E. Laughlin, XXX-XX-XXXX.
Maj. George E. Stavros, XXX-XX-XXXX.

IN THE AIR FORCE

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, title 10, United States Code, as amended. All officers are subject to physical examination required by law:

LINE OF THE AIR FORCE

*Captain to major*

Aarni, John C., Jr., XXX-XX-XXXX.
Abbott, Frank D., Jr. XXX-XX-XXXX.
Abbott, Robert A., XXX-XX-XXXX.
Abbott, Wayne R., XXX-XX-XXXX.
Abela, Alexander A., XXX-XX-XXXX.
Abraham, Quentin D., XXX-XX-XXXX.
Abrams, Fredric L., XXX-XX-XXXX.
Abrams, Kenneth H., Jr., XXX-XX-XXXX.
Adams, Harold Q., Jr., XXX-XX-XXXX.
Adams, John W., XXX-XX-XXXX.
Adams, Louis J., XXX-XX-XXXX.
Adams, Robert A., XXX-XX-XXXX.
Adams, Thomas L., XXX-XX-XXXX.
Adams, Walton F., Jr., XXX-XX-XXXX.
Adamson, Daniel P., Jr., XXX-XX-XXXX.
Addison, John M., XXX-XX-XXXX.
Adkins, John B. XXX-XX-XXXX.
Adler, John W., XXX-XX-XXXX.
Adubato, Barry T., XXX-XX-XXXX.
Aitken, Douglas B., XXX-XX-XXXX.
Ajygin, Victor E., XXX-XX-XXXX.
Alau, Henry D. K., XXX-XX-XXXX.
Aldrian, Fredric L., XXX-XX-XXXX.
Alexander, Jon R., XXX-XX-...
Alexander, Joseph R., XXX-XX-XXXX.
Alexander, Thomas W., XXX-XX-XXXX.
Alison, Thomas M., XXX-XX-XXXX.
Allan, Douglas B., XXX-XX-XXXX.
Allen, Charles C., XXX-XX-XXXX.
Allen, David A., Jr., XXX-XX-XXXX.
Allen, Edward S., XXX-XX-XXXX.
Allen, James D., XXX-XX-XXXX.
Allen, Mervin B., XXX-XX-XXXX.
Allen, Robert E., XXX-...
Allyn, George S., Jr., XXX-XX-XXXX.
Almaguer, Mario, Jr., XXX-XX-XXXX.
Almquist, Tommy B., XXX-XX-XXXX.
Alsobrook, James E., Jr., XXX-XX-XXXX.

Alton, Stuart L., xxx-xx-xxxx.
Alverson, Don L., xxx-xx-xxxx.
Amdor, Stephen L., xxx-xx-xxxx.
Amodeo, James M., xxx-xx-xxxx.
Andersen, Richard D., xxx-xx-xxxx.
Anderson David S. J., xxx-xx-xxxx.
Anderson, Howard C., xxx-xx-xxxx.
Anderson, James C., xxx-xx-xxxx.
Anderson, Michael E., xxx-xx-xxxx.
Anderson, Robert M., xxx-xx-xxxx.
Andre, Jerome P., xxx-xx-xxxx.
Andrews, John W., III, xxx-xx-xxxx.
Andrlik, Jerry E., xxx-xx-xxxx.
Angell, John E., Jr., xxx-xx-xxxx.
Angstadt, Howard J., Jr., xxx-xx-xxxx.
Ankeney, Lawrence A., xxx-xx-xxxx.
Arceneaux, Ronald J., xxx-xx-xxxx.
Archey, Walter J., Jr., xxx-xx-xxxx.
Archibald, Harold A., xxx-xx-xxxx.
Areffi, Patrick A., xxx-xx-xxxx.
Armstrong, Edwin L., xxx-xx-xxxx.
Arnholt, Terry J., xxx-xx-xxxx.
Arrington, Donald R., xxx-xx-xxxx.
Arrison, John R., xxx-xx-xxxx.
Aschenbrenner, Gerald A., xxx-xx-xxxx.
Ash, Robert K., Jr., xxx-xx-xxxx.
Aston, Walter D., Jr., xxx-xx-xxxx.
Astor, Wally G., xxx-xx-xxxx.
Atkins, William D., Jr., xxx-xx-xxxx.
Atkinson, Lynn A., xxx-xx-xxxx.
Atwell, Donald C., xxx-xx-xxxx.
Atwood, Argyle P., Jr. xxx-xx-xxxx.
Aubey, James A., xxx-xx-xxxx.
Aulbach, Albert E., xxx-xx-xxxx.
Austin, Charles D., xxx-xx-xxxx.
Auton, Mary J., xxx-xx-xxxx.
Ayoub, Fred M. xxx-xx-xxxx.
Baarstad, Roger A., xxx-xx-xxxx.
Baasel, Richard W., xxx-xx-xxxx.
Babbitt Clayton M., Jr., xxx-xx-xxxx.
Babbitt, George T., Jr., xxx-xx-xxxx.
Badgett, William R., xxx-xx-xxxx.
Badgwell, Don H., xxx-xx-xxxx.
Bail, Philip G., Jr., xxx-xx-xxxx.
Bailey, John W., xxx-xx-xxxx.
Baker, Steven M., xxx-xx-xxxx.
Baldwin, David L., xxx-xx-xxxx.
Baldwin, Ronald L., xxx-xx-xxxx.
Ball, David C., xxx-xx-xxxx.
Ball, James A., xxx-xx-xxxx.
Bancale, Michael A., xxx-xx-xxxx.
Bandy, John L., xxx-xx-xxxx.
Bandy, John W., xxx-xx-xxxx.
Bangert, Robert W., Jr., xxx-xx-xxxx.
Banks. William M., Jr., xxx-xx-xxxx.
Barbara, Johnny L., xxx-xx-xxxx.
Barbeau. Jack W., xxx-xx-xxxx.
Barber, William D., xxx-xx-xxxx.
Barcus, Robert G., xxx-xx-xxxx.
Bardal Eugene A., xxx-xx-xxxx.
Barger, Edward L., xxx-xx-xxxx.
Barker, John K., xxx-xx-xxxx.
Barnes, Albert M., xxx-xx-xxxx.
Barnes, Burdette J., Jr., xxx-xx-xxxx.
Barnes, Peter A., xxx-xx-xxxx.
Barnett, Francis V., Jr., xxx-xx-xxxx.
Barr, Gene H., xxx-xx-xxxx.
Barrera, Arturo, xxx-xx-xxxx.
Barsaloux, Robert E., xxx-xx-xxxx.
Bartels, Richard L., xxx-xx-xxxx.
Bartholomew, Raymond J., xxx-xx-xxxx.
Barton, Charles D., xxx-xx-xxxx.
Barton, James B., xxx-xx-xxxx.
Barton, Richard, Jr., xxx-xx-xxxx.
Bash, James C., xxx-xx-xxxx.
Bass, Davy M., xxx-xx-xxxx.
Batt, William P., xxx-xx-xxxx.
Battista Robert B., xxx-xx-xxxx.
Bauer, George R., xxx-xx-xxxx.
Baumgardner, Kenneth, Jr., xxx-xx-xxxx.
Bean, John E., xxx-xx-xxxx.
Bean, Richard D., xxx-xx-xxxx.
Beard, Donaldson E., xxx-xx-xxxx.
Bearry, Tommy B. xxx-xx-xxxx.
Beasley John T., xxx-xx-xxxx.
Beavers, James L., III, xxx-xx-xxxx.
Beavers, William W., xxx-xx-xxxx.
Becherer, Paul O., xxx-xx-xxxx.
Beckcom, Edwin A., III, xxx-xx-xxxx.
Becker, Lynn H., xxx-xx-xxxx.
Beckstrand, Paul H., xxx-xx-xxxx.
Beeler, Larry L., xxx-xx-xxxx.
Beggs, Paul L., xxx-xx-xxxx.
Behl, John H., III, xxx-xx-xxxx.
Bell, Harvey B., xxx-xx-xxxx.
Bell, Jack D., xxx-xx-xxxx.
Bender, Thomas G., xxx-xx-xxxx.
Bender, William C., xxx-xx-xxxx.
Bennett, Carl E., xxx-xx-xxxx.
Benson, David E., xxx-xx-xxxx.
Benson, John D., xxx-xx-xxxx.
Berberek, Edward, Jr., xxx-xx-xxxx.
Bergeman, Gerald M., xxx-xx-xxxx.
Bergeson, Micheal B., xxx-xx-xxxx.
Bermudez, John M., xxx-xx-xxxx.
Bernardi, Richard A., xxx-xx-xxxx.
Berning, William V., xxx-xx-xxxx.
Berrier, David L., Jr., xxx-xx-xxxx.
Berry, Donald R., xxx-xx-xxxx.
Berry, Terry M., xxx-xx-xxxx.
Best, Donald L., xxx-xx-xxxx.
Betchel, Robert C., xxx-xx-xxxx.
Bettis, Jerry D., xxx-xx-xxxx.
Bettis, Jerry R., xxx-xx-xxxx.
Beu, Norman J., xxx-xx-xxxx.
Bexfield, James N., xxx-xx-xxxx.
Biehle, Arlen L., xxx-xx-xxxx.
Bilbrey, George R., xxx-xx-xxxx.
Billones, Louis R., xxx-xx-xxxx.
Binford, Eugene E., xxx-xx-xxxx.
Binkowski, Richard D., xxx-xx-xxxx.
Binzer, Kenneth J., xxx-xx-xxxx.
Bishop, Donald W., xxx-xx-xxxx.
Bivens, George W., xxx-xx-xxxx.
Bjorn, Larry N., xxx-xx-xxxx.
Black, Marion, Jr., xxx-xx-xxxx.
Black, William C., Jr., xxx-xx-xxxx.
Blackman, Barry A., xxx-xx-xxxx.
Blaha, John E., xxx-xx-xxxx.
Blair, Robert L., xxx-xx-xxxx.
Blankenship, James E., xxx-xx-xxxx.
Bleymaier, Joseph S., Jr., xxx-xx-xxxx.
Bliemel, Jeffrey J. xxx-xx-xxxx.
Blockhus, David E., xxx-xx-xxxx.
Bloom, Leonard O., xxx-xx-xxxx.
Bluford, Guion S., Jr., xxx-xx-xxxx.
Blum, David J., xxx-xx-xxxx.
Bodkin, Thomas B., xxx-xx-xxxx.
Bogard, Lonnie P., xxx-xx-xxxx.
Boggan, William J., xxx-xx-xxxx.
Bogue, Donald M., xxx-xx-xxxx.
Boles, James D., xxx-xx-xxxx.
Boli, Fred C., xxx-xx-xxxx.
Bolz, Larry F., xxx-xx-xxxx.
Bond, David A., xxx-xx-xxxx.
Bondaruk, Henry A., Jr., xxx-xx-xxxx.
Bongartz, Theodore R., xxx-xx-xxxx.
Bonham, Frank A., xxx-xx-xxxx.
Boniface, George B., Jr., xxx-xx-xxxx.
Bonnot, Mark M., xxx-xx-xxxx.
Boozer, Gordon L., xxx-xx-xxxx.
Borglet, Barry L., xxx-xx-xxxx.
Borries, Jerry L., xxx-xx-xxxx.
Boston, William E., III xxx-xx-xxxx.
Bottomley, James A., xxx-xx-xxxx.
Boudreaux, Lionel A., xxx-xx-xxxx.
Bouma, Eugene F., xxx-xx-xxxx.
Bounds, Michael S., xxx-xx-xxxx.
Bourque, George M., xxx-xx-xxxx.
Bower, Robert C., xxx-xx-xxxx.
Bowers, William T. M., xxx-xx-xxxx.
Bowse. John R., xxx-xx-xxxx.
Boyce, Joseph B., Jr., xxx-xx-xxxx.
Boyd, George V., III, xxx-xx-xxxx.
Boyde, Edward R., xxx-xx-xxxx.
Boylan, Joseph F., xxx-xx-xxxx.
Bozeman, Jerald D., xxx-xx-xxxx.
Bracci, Peter G., xxx-x...
Bradburn, William J., xxx-xx-xxxx.
Bradley, Roger C., xxx-xx-xxxx.
Bragaw. Paul H., xxx-xx-xxxx.
Bragg, James J., xxx-xx-xxxx.
Branch, Robert C., III, xxx-xx-xxxx.
Brands, David H., xxx-xx-xxxx.
Brannan, Jack F., III, xxx-xx-xxxx.
Brauer, Richard F., Jr., xxx-xx-xxxx.
Bream, Joseph R., xxx-xx-xxxx.
Brecht, Robert D., xxx-xx-xxxx.
Breedlove, Phillip G., xxx-xx-xxxx.
Bremer, John R., xxx-xx-xxxx.
Brennan, Martin J., Jr., xxx-xx-xxxx.
Brenneman, Richard C., xxx-xx-xxxx.
Brewer, Michael F., xxx-xx-xxxx.
Bridges, Roy D., Jr. xxx-xx-xxxx.
Brinker, Jack A., xxx-xx-xxxx.
Bristol, Charles E., xxx-xx-xxxx.
Bristow, Vincent L., xxx-xx-xxxx.
Britan, Joseph K., xxx-xx-xxxx.
Brittingham, James H., xxx-xx-xxxx.
Britton, Richard D., xxx-xx-xxxx.
Broers, Wesley H., xxx-xx-xxxx.
Brook, Gary W., xxx-xx-xxxx.
Brooks, Charles H., xxx-xx-xxxx.
Brooks, George W., Jr., xxx-xx-xxxx.
Brooks, John H., xxx-xx-xxxx.
Browder, Thomas M., Jr., xxx-xx-xxxx.
Brown, Daniel F., III, xxx-xx-xxxx.
Brown, Donald E., xxx-xx-xxxx.
Brown, Durward D., xxx-xx-xxxx.
Brown, Edward F., xxx-xx-xxxx.
Brown, Herbert D., xxx-xx-xxxx.
Brown, James H., xxx-xx-xxxx.
Brown, James S., xxx-xx-xxxx.
Brown, Kenneth N., Jr., xxx-xx-xxxx.
Brown, Marion L., Jr., xxx-xx-xxxx.
Brown, Nelson C., xxx-xx-xxxx.
Brown, Raymond G., xxx-xx-xxxx.
Brown, Richard D., xxx-xx-xxxx.
Brown, Robert H., xxx-xx-xxxx.
Brown, Wayne D., xxx-xx-xxxx.
Brown, Wayne G., xxx-xx-xxxx.
Brown, Wayne G., xxx-xx-xxxx.
Brown, Wilbur N., Jr., xxx-xx-xxxx.
Brown, William J., xxx-xx-xxxx.
Brown, William R., xxx-xx-xxxx.
Brumble, Michael R., xxx-xx-xxxx.
Brunson, Roy E., xxx-xx-xxxx.
Buchfinck, Lloyd L., Jr., xxx-xx-xxxx.
Buck, Donald L., xxx-xx-xxxx.
Buckellew, William R., xxx-xx-xxxx.
Bukauskas, Louis J., Jr., xxx-xx-xxxx.
Bulen, Douglas W., xxx-xx-xxxx.
Bump, David G., xxx-xx-xxxx.
Bunce, Charles N., xxx-xx-xxxx.
Burchfield, Daniel R., xxx-xx-xxxx.
Burchfield, Edward L., xxx-xx-xxxx.
Burk, Thomas T., xxx-xx-xxxx.
Burke, Donald L., xxx-xx-xxxx.
Burnett, Robert W., xxx-xx-xxxx.
Burnette, Joseph R., xxx-xx-xxxx.
Burns, Melvin W., xxx-xx-xxxx.
Burns, Nicholas J., xxx-xx-xxxx.
Burr, Hiram H., Jr., xxx-xx-xxxx.
Burrow, Jerry G., xxx-xx-xxxx.
Burrows, William E., xxx-xx-xxxx.
Busek, Joseph R., Jr., xxx-xx-xxxx.
Bussey, Robert M., Jr., xxx-xx-xxxx.
Butler, Norman D., xxx-xx-xxxx.
Buttross, David A., xxx-xx-xxxx.
Buzzell, Robert L., xxx-...
Cable, Hobart S., II, xxx-xx-xxxx.
Caffo, John A., xxx-xx-xxxx.
Cagle, Donald R., xxx-xx-xxxx.
Cahill, Lawrence J., Jr., xxx-xx-xxxx.
Calabrese, Louis, xxx-xx-xxxx.
Caldwell, James A., xxx-xx-xxxx.
Callens, Pierre A., xxx-xx-xxxx.
Camburn, Gilbert L., xxx-xx-xxxx.
Canavan, Gregory H., xxx-xx-xxxx.
Cantrell, Ronald L., xxx-xx-xxxx.
Cantwell, John L., xxx-xx-xxxx.
Capps, Thomas E., xxx-xx-xxxx.
Cardea, George C., xxx-xx-xxxx.
Cardwell, Thomas A., III, xxx-xx-xxxx.
Carl, Joseph W., xxx-xx-xxxx.
Carlburg, Richard E., xxx-xx-xxxx.
Carney, James F., Jr., xxx-xx-xxxx.
Carothers, Harry H., III, xxx-xx-xxxx.
Carpenter, Michael F., xxx-xx-xxxx.
Carpenter, Newton I., Jr., xxx-xx-xxxx.
Carriger, Henry N., xxx-xx-xxxx.
Carson, Douglas M., xxx-xx-xxxx.
Carter, Thomas W., xxx-xx-xxxx.
Casey, Jerome C., xxx-xx-xxxx.
Cashman, Patrick J., xxx-xx-xxxx.
Caskey, Billie R., xxx-xx-xxxx.
Caso, John, xxx-xx-xxxx.
Castell, Harold L., xxx-xx-xxxx.
Castro, Benjamin H., xxx-xx-xxxx.
Castruccio, James F., xxx-xx-xxxx.

Cates, Robert L., xxx-xx-xxxx.
Catherwood, Michael I., xxx-xx-xxxx.
Cathey, William H., xxx-xx-xxxx.
Cauley, Robert F., xxx-xx-xxxx.
Cavanaugh, Michael E., xxx-xx-xxxx.
Caviness, Jesse C., Jr., xxx-xx-xxxx.
Cecchini, Maurice J., xxx-xx-xxxx.
Ceffalo, George M., xxx-xx-xxxx.
Cejka, George J., xxx-xx-xxxx.
Cermele, Michael J., xxx-xx-xxxx.
Cesarotti, William L., xxx-xx-xxxx.
Chambers, John F., Jr., xxx-xx-xxxx.
Chaplin, Wallace H., Jr., xxx-xx-xxxx.
Chapman, Buddy W., xxx-xx-xxxx.
Chapman, Jerry D., xxx-xx-xxxx.
Chapman, John E., xxx-xx-xxxx.
Charlton, Hugh J., xxx-xx-xxxx.
Chatham, Charles W., xxx-xx-xxxx.
Chepolis, William M., xxx-xx-xxxx.
Cherney, Thomas J., xxx-xx-xxxx.
Cherry, Charles E., xxx-xx-xxxx.
Chinn, Alvin F., xxx-xx-xxxx.
Choate, James W., xxx-xx-xxxx.
Chojnacki, Raymond, xxx-xx-xxxx.
Choplin, Larry E., xxx-xx-xxxx.
Chorvat, Michael F., xxx-xx-xxxx.
Christian, James W., xxx-xx-xxxx.
Christman, Noel J., xxx-xx-xxxx.
Christy, Robert R., xxx-xx-xxxx.
Chronister, Richard D., Jr., xxx-xx-xxxx.
Chumbley, George W., xxx-xx-xxxx.
Cirino, Alan B., xxx-xx-xxxx.
Clair, William J., xxx-xx-xxxx.
Clamon, James A., xxx-xx-xxxx.
Clark, Albert P., Jr., xxx-xx-xxxx.
Clark, David D., xxx-xx-xxxx.
Clark, Howard A., xxx-xx-xxxx.
Clark, James C., xxx-xx-xxxx.
Clark James I., xxx-xx-xxxx.
Clark, John D., xxx-xx-xxxx.
Clark, Kenneth H., II, xxx-xx-xxxx.
Clark, Richard D., xxx-xx-xxxx.
Clark, Robert L., xxx-xx-xxxx.
Clark, Walter B., xxx-xx-xxxx.
Clark, Walter F., xxx-xx-xxxx.
Clark, William E., Jr., xxx-xx-xxxx.
Clarke, Sidney H., xxx-xx-xxxx.
Clawson, George D., xxx-xx-xxxx.
Claxon, Lynn R., xxx-xx-xxxx.
Cleland, Thomas E., Jr., xxx-xx-xxxx.
Clippinger, William C., Jr., xxx-xx-xxxx.
Cliver, Jeffrey G., xxx-xx-xxxx.
Clonch, Herbert L., xxx-xx-xxxx.
Cloninger, David R., xxx-xx-xxxx.
Clouse, Gary K., xxx-xx-xxxx.
Coakley, Wayne C., xxx-xx-xxxx.
Coan, Stuart W., xxx-xx-xxxx.
Cockerham, Warren E., xxx-xx-xxxx.
Codling, James G., xxx-xx-xxxx.
Codron, Barry J., xxx-xx-xxxx.
Cogburn, Thomas M., xxx-xx-xxxx.
Coghill, Albert B., xxx-xx-xxxx.
Coglitore, Sebastian F., xxx-xx-xxxx.
Cohen, Richard, xxx-xx-xxxx.
Colburn, Eugene J., III, xxx-xx-xxxx.
Cole, Alvin J., III, xxx-xx-xxxx.
Cole, Richard T., xxx-xx-xxxx.
Coleman, Charles B., III, xxx-xx-xxxx.
Coleman, William L., xxx-xx-xxxx.
Collins, Sumner R., xxx-xx-xxxx.
Collins, William E., xxx-xx-xxxx.
Combs, Ronald H., xxx-xx-xxxx.
Cone, Wallis D., Jr., xxx-xx-xxxx.
Coney, Joel T., xxx-xx-xxxx.
Conklin, David A., xxx-xx-xxxx.
Conklin, Donald A., xxx-xx-xxxx.
Conn, John C., Jr. xxx-xx-xxxx.
Conn, Richard D., xxx-xx-xxxx.
Connor, Michael A., xxx-xx-xxxx.
Conques, Duane L., xxx-xx-xxxx.
Contreras, Raymond T., xxx-xx-xxxx.
Cook, Gordon L., xxx-x...
Cookson, Gerard D., xxx-xx-xxxx.
Coombs, Dennis C., xxx-xx-xxxx.
Cooper, David R., xxx-xx-xxxx.
Cooper, Wallace E., Jr. xxx-xx-xxxx.
Cope, Robert S., xxx-xx-xxxx.
Corbett, James D. xxx-xx-xxxx.
Corbin, Wayne W., xxx-xx-xxxx.
Cordon, Shelby N., xxx-xx-xxxx.
Cork, Larry D., xxx-xx-xxxx.
Corley, William D., Jr., xxx-xx-xxxx.
Cortez, Robert, xxx-xx-xxxx.
Cosnowski, Walter J., Jr., xxx-xx-xxxx.
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Waggle, Arthur W., xxx-xx-xxxx.
Wagner, James C., xxx-xx-xxxx.
Wagner, Thomas M., xxx-xx-xxxx.
Wagoner, Richard R., xxx-xx-xxxx.
Walker, Duncan E., xxx-xx-xxxx.
Walker, Van Dyke A., xxx-xx-xxxx.
Wall, David K., xxx-xx-xxxx.
Wall, Steven E., xxx-xx-xxxx.
Wallace, Bruce A., xxx-xx-xxxx.
Wallace, James R., Jr., xxx-xx-xxxx.
Wallace, Ronald G., xxx-xx-xxxx.
Wallace, Stephen L., xxx-xx-xxxx.
Walling, Bruce C., xxx-xx-xxxx.
Wallrapp, Michael F., xxx-xx-xxxx.
Wally, William M., xxx-xx-xxxx.
Walsh, Richard N., xxx-xx-xxxx.
Walsh, Robert E., xxx-xx-xxxx.
Walter, Don B., xxx-xx-xxxx.
Walter, Louis P., xxx-xx-xxxx.
Walter, Warren E., xxx-xx-xxxx.
Walters, Brian L., xxx-xx-xxxx.
Walton, Robert L., xxx-xx-xxxx.
Walton, William H., xxx-xx-xxxx.
Wammer, David H., xxx-xx-xxxx.
Ward, George H., xxx-xx-xxxx.
Ward, James B., xxx-xx-xxxx.
Ward, John P., xxx-xx-xxxx.
Ward, Sam T., Jr., xxx-xx-xxxx.
Warden, John A., III, xxx-xx-xxxx.
Wardlaw, John W., Jr., xxx-xx-xxxx.
Ware, Gary R., xxx-xx-xxxx.
Warner, David A., xxx-xx-xxxx.
Warren, Joe B., Jr., xxx-xx-xxxx.
Washburn, Richard S., Jr., xxx-xx-xxxx.
Waters, Dudley F., xxx-xx-xxxx.
Waterstraat, Craig K., xxx-xx-xxxx.
Watkins, Robert H., xxx-xx-xxxx.
Watson, Ronald R., xxx-xx-xxxx.
Watt, George W. xxx-xx-xxxx.
Watts, Barry D. xxx-xx-xxxx.
Way, Dennis M., xxx-xx-xxxx.
Wayman, Ira L., xxx-xx-xxxx.
Wayne, Stephen A., xxx-xx-xxxx.
Wayne, William T., xxx-xx-xxxx.
Weathers, Morris E., xxx-xx-xxxx.
Weaver, Paul R., xxx-xx-xxxx.
Weaver, Robert D., xxx-xx-...
Webb, Michael S., xxx-xx-xxxx.
Webb, Thomas A., Jr., xxx-xx-xxxx.
Weber, Michael F., xxx-xx-xxxx.
Weddle, Dennis R., xxx-xx-xxxx.
Wege, Robert W., xxx-xx-xxxx.
Weida, William J., xxx-xx-xxxx.
Weinrich, Joseph A., xxx-xx-xxxx.
Weiss, Theodore J., xxx-xx-xxxx.
Weissensee, Alfred A., xxx-xx-xxxx.
Weitzel, Eilert R., II, xxx-xx-xxxx.
Welsh, Paul S., xxx-xx-xxxx.
Wenger, Robert K., xxx-xx-xxxx.
Wenninger, Michael E., xxx-xx-xxxx.
Weppner, Michael P. xxx-xx-xxxx.
West, Sherman E., xxx-xx-xxxx.
Westerman, Thomas J., xxx-xx-xxxx.
Weston, Dale E., xxx-xx-xxxx.
Weyrauch, Arthur H., xxx-xx-xxxx.
Whaylen, Donald G., xxx-xx-xxxx.
White, Anthony N., xxx-xx-xxxx.
White, David A., xxx-xx-xxxx.
White, David B., Jr., xxx-xx-xxxx.
White, Henry A., Jr., xxx-xx-xxxx.
White, James R., xxx-xx-xxxx.
White, John F., xxx-xx-xxxx.
White, Michael B., xxx-xx-xxxx.
White, Robert A. M., xxx-xx-xxxx.
White, Robert C., xxx-xx-xxxx.
White, Wayne A., xxx-xx-xxxx.
Whitehorn, Michael A., xxx-xx-xxxx.
Whiteman, William S., xxx-xx-xxxx.
Whitman, Philip E., xxx-xx-xxxx.
Whitted, Edward I., III, xxx-xx-xxxx.
Wick, James R., xxx-xx-xxxx.
Wiegand, David P., xxx-xx-xxxx.
Wiggins, Ellsworth E., xxx-xx-xxxx.

Wigness, Douglas A., xxx-xx-xxxx.
Wilcox, Jerry D., xxx-xx-xxxx.
Wilcoxon, James F., xxx-xx-xxxx.
Wilde, Robert R., xxx-xx-xxxx.
Wilder, Michael C., xxx-xx-xxxx.
Wilder, Ward R., xxx-xx-xxxx.
Wiles, John C., Jr., xxx-xx-xxxx.
Wiley, Harold G., xxx-xx-xxxx.
Wilk, Stanley A., xxx-xx-xxxx.
Wilke, Paul L., xxx-xx-xxxx.
Wilkowski, Jerome S., xxx-xx-xxxx.
Williams, Andrew, xxx-xx-xxxx.
Williams, Brooks M., xxx-xx-xxxx.
Williams, Charles E., xxx-xx-xxxx.
Williams, Charles H., xxx-xx-xxxx.
Williams, Frederick M., xxx-xx-xxxx.
Williams, Gilbert L., xxx-xx-xxxx.
Williams, John H., xxx-xx-xxxx.
Williams, Richard M., xxx-xx-xxxx.
Williams, Richard M., xxx-xx-xxxx.
Williams, Ronald W., xxx-xx-xxxx.
Williams, Tereld T., xxx-xx-xxxx.
Willis, Albert H., xxx-xx-xxxx.
Willmann, Robert L., xxx-xx-xxxx.
Willoughby, David J., xxx-xx-xxxx.
Willoughby, James S., xxx-xx-xxxx.
Wilson, Bennie J., III, xxx-xx-xxxx.
Wilson, Calvin J., xxx-xx-xxxx.
Wilson, Hal K., III, xxx-xx-xxxx.
Wilson, Theron C., Jr., xxx-xx-xxxx.
Wilson, Walter P., Jr., xxx-xx-xxxx.
Winchester, Robert O., xxx-xx-xxxx.
Winkelmann, James D., xxx-xx-xxxx.
Winsor, Richard J., xxx-xx-xxxx.
Winter, James W., xxx-xx-xxxx.
Winters, Henry, Jr., xxx-xx-xxxx.
Wisniewski, Martin N., xxx-xx-xxxx.
Witte, Jerome M., xxx-xx-xxxx.
Witty, Bruce A., xxx-xx-xxxx.
Wodarczyk, Ronald S., xxx-xx-xxxx.
Wodstrchill, Daniel L., xxx-xx-xxxx.
Wohlnick, Charles T., xxx-xx-xxxx.
Woidtke, Roger W., xxx-xx-xxxx.
Wolfe, George F., xxx-xx-xxxx.
Wolfe, Peter J., xxx-xx-xxxx.
Wong, Clyde M. H., xxx-xx-xxxx.
Wood, Dennis D., xxx-xx-xxxx.
Wood, James H., Sr., xxx-xx-xxxx.
Wood, Wendell B., xxx-xx-xxxx.
Wood, William C., Jr., xxx-xx-xxxx.
Woods, Lee M., xxx-xx-xxxx.
Woodward, William V., xxx-xx-xxxx.
Woodworth, Donald A., Jr., xxx-...
Woody, John W., xxx-xx-xxxx.
Wortham, George E., xxx-xx-xxxx.
Wright, David R., xxx-xx-xxxx.
Wright, James R., xxx-xx-xxxx.
Wright, Michael J., xxx-xx-xxxx.
Wyraz, Edward M., Jr., xxx-xx-xxxx.
Wyspianski, Stanley A., xxx-xx-xxxx.
Yabui, Alan E., xxx-xx-xx...
Yadouga, Joseph R., xxx-xx-xxxx.
Yahn, David R., xxx-...
Yatsko, Emil G., Jr., xxx-xx-xxxx.
Yaunches, George J., xxx-xx-...
Ybarra, Dennis B., xxx-xx-...
Yeager, Rodney A., xxx-xx-xxxx.
Yeaple, Stephen E., xxx-xx-xxxx.
Yochem, Daniel R., xxx-xx-xxxx.
Yonke, Gary L., xxx-xx-xxxx.
Yonker, Dale B., xxx-xx-xxxx.
York, Alan D., xxx-xx-...
York, James H., xxx-xx-xxxx.
Young, George O., III., xxx-xx-xxxx.
Young, Ronald E., xxx-xx-xxxx.
Yuhas, Joseph R., xxx-xx-...
Zabka, Edward H., xxx-xx-xxxx.
Zadareky, Joseph T., II, xxx-xx-xxxx.
Zaleski, Andrew A., II, xxx-xx-xxxx.
Zalocusky, Michael N., xxx-xx-xxxx.
Zartman, James L., xxx-xx-xx...
Zella, Kenneth B., xxx-xx-xxxx.
Zielinski, Stanley J., Jr., xxx-xx-xxxx.
Zisch, Waldemar C., xxx-xx-xxxx.
Zucker, Richard A., xxx-xx-xxxx.

CHAPLAIN CORPS

Bauer, Jack A., xxx-xx-xxxx.
Bilderback, Carl E., xxx-xx-xxxx.
Browne, Robert H., xxx-xx-...
Callier, Samuel H., xxx-xx-xxxx.
Carney, Robert E., xxx-xx-xxxx.
Carter, Wilton C., xxx-xx-xxxx.
Cathy, Richard J., xxx-xx-xxxx.
Clayton, Bennie H., xxx-xx-xxxx.
Engler, David E., xxx-xx-xxxx.
Farrugia, William C., xxx-xx-xxxx.
Golden, Joseph E., Jr., xxx-xx-xxxx.
Hockaday, Albert A. L., xxx-xx-xxxx.
Horton, Carl E., xxx-xx-xxxx.
Jensen, Harold M., xxx-xx-xxxx.
Kinney, James W., xxx-xx-xxxx.
Matthews, Joseph C., III, xxx-xx-xxxx.
McCulloh, Ralph E., xxx-xx-xxxx.
O'Rourke, Thomas J., xxx-xx-xxxx.
O'Toole, James P., xxx-xx-xxxx.
Predoehl, Theodore G., xxx-xx-xxxx.
Quandt, Walter H., xxx-xx-xxxx.
Ramsey, Kenneth C., xxx-xx-xxxx.
Reynolds, Marion S., Jr., xxx-xx-xxxx.
Ryan, Timothy K., xxx-xx-xxxx.
Sikes, William G., Jr., xxx-xx-xxxx.
Simmons, Harold W., xxx-xx-xxxx.
Sumpter, Ronald K., xxx-xx-xxxx.
Sweeney, Leo T., xxx-xx-xxxx.
Thomas, Arthur S., xxx-xx-xxxx.
Wawrzynski, Edward A., xxx-xx-xxxx.

DENTAL CORPS

Abrahamsen, Thomas C., xxx-xx-xxxx.
Albright, Bruce W., xxx-xx-xxxx.
Appeldoorn, Ronald E., xxx-xx-xxxx.
Bergman, Dennis W., xxx-xx-xxxx.
Biddle, Harold H., xxx-xx-xxxx.
Brennan, Mark E., xxx-xx-xxxx.
Buchanan, William E., Jr., xxx-xx-xxxx.
Buikema, Donald J., xxx-xx-xxxx.
Eshelman, Enos G., Jr., xxx-xx-xxxx.
Eyman, Russell G., xxx-xx-xxxx.
Finelli, Jerry L., xxx-xx-xxxx.
Finkbeiner, Richard L., xxx-xx-xxxx.
France, Richard A., xxx-xx-xxxx.
Goupil, Michael T., xxx-xx-xxxx.
Hallmon, William W., xxx-xx-xxxx.
Hebda, Thomas W., xxx-xx-xxxx.
Hickory, John E., Jr., xxx-xx-xxxx.
Killian, William F., xxx-xx-xxxx.
Kreig, Louis T., Jr., xxx-xx-xxxx.
Kuhar, James R., xxx-xx-xxxx.
Landers, Sam R., xxx-xx-xxxx.
Lauder, Keith F., xxx-xx-xxxx.
Lee, Spencer, Jr., xxx-xx-xxxx.
Leifeste, Ronald E., xxx-xx-xxxx.
Lubow, Richard M., xxx-xx-xxxx.
Maki, Karl A., xxx-xx-xxxx.
Nemcic, Steven D., xxx-xx-xxxx.
Read, Gill, xxx-xx-xxxx.
Regent, Howard S., xxx-xx-xxxx.
Robison, Stephen F., xxx-xx-xxxx.
Rudisill, John W., III, xxx-xx-xxxx.
Samuelson, John A., xxx-xx-xxxx.
Staab, Robert G., xxx-xx-xxxx.
Steegstra, David A., xxx-xx-xxxx.
Stevens, Fredric D., xxx-xx-xxxx.
Stewart, Edward A., xxx-xx-xxxx.
Thompson, Larry D., xxx-xx-xxxx.
Voss, James E., xxx-xx-xxxx.
Williams, Howard J., xxx-xx-xxxx.

JUDGE ADVOCATE

Allen, Shelby L., III, xxx-xx-xxxx.
Anderson, Tim G., xxx-xx-xxxx.
Brancato, John R., xxx-xx-xxxx.
Brock, Richard W., xxx-xx-xxxx.
Brunke, Loren D., xxx-xx-xxxx.
Concannon, Milburn K., Jr., xxx-xx-xxxx.
Debey A. B., xxx-xx-xxxx.
Denton, William J., xxx-xx-xxxx.
Edwards, Carl E., Jr., xxx-xx-xxxx.
Egeland, Andrew M., Jr., xxx-xx-xxxx.
Farr, Richard L., xxx-xx-xxxx.
Finley, Gordon B., Jr., xxx-xx-xxxx.
Frederick, Ronald A., xxx-xx-xxxx.
Hoppe, Allen B., xxx-...
Humphreys, Warren P., xxx-xx-xxxx.
Hurd, Elisha B., Jr., xxx-xx-xxxx.
Kuhn, Fredolin W., xxx-xx-xxxx.
Laedlein, Charles E., III, xxx-xx-xxxx.
Lahendro, Albert L., xxx-xx-xxxx.
Miller, James E., xxx-xx-xxxx.
Petherick, Michael J., xxx-xx-xxxx.
Puett, Jimmy D., xxx-xx-xxxx.
Schlechter, Alvin E., xxx-xx-xxxx.
Shea, Gerald C., xxx-xx-xxxx.
Shockley, Larry G., xxx-xx-xxxx.
Silliman, Scott L., xxx-xx-xxxx.
Stewart, Robert B., xxx-xx-xxxx.
Stouck, Vinson P., xxx-xx-xxxx.
Sweeney, Patrick C., xxx-xx-xxxx.
Waldrop, Olan G., Jr., xxx-xx-xxxx.
Whitney, Richard F., xxx-xx-xxxx.
Wolfe, Norman K., xxx-xx-xxxx.
Worley, William H., Jr., xxx-xx-xxxx.

MEDICAL CORPS

Archer, Stanley B., xxx-xx-xxxx.
Bates, Gaylon M., xxx-xx-xxxx.
Blumberg, Lawrence B., xxx-xx-xxxx.
Broadwell, Russell M., xxx-xx-xxxx.
Burner, William L., III., xxx-xx-xxxx.
Buscher, John R., xxx-xx-xxxx.
Delp, Glenn R., xxx-xx-xxxx.
Douglas, Glen A., xxx-xx-xxxx.
Douglas, William G., xxx-xx-xxxx.
Greene, Jerry W., xxx-xx-xxxx.
Heimburger, Steven L., xxx-xx-xxxx.
Henderson, Richard A., III, xxx-xx-xxxx.
Johnson, Thomas A., xxx-xx-xxxx.
Kane, Daniel D., xxx-xx-xxxx.
Knauf, Daniel G., xxx-xx-xxxx.
Learned, David K., xxx-xx-xxxx.
Maffet, Charles K., xxx-xx-xxxx.
McCullough, James A., xxx-xx-xxxx.
Moll, Jacob T., xxx-xx-xxxx.
Morrow, Robert L., Jr., xxx-xx-xxxx.
Perschau, Richard A., xxx-xx-xxxx.
Rettig, Kenneth R., xxx-xx-xxxx.
Richardson, Howard M., xxx-xx-xxxx.
Richmond, David R., xxx-xx-xxxx.
Risser, Christian F., xxx-xx-xxxx.
Rutland, Andrew, xxx-xx-xxxx.
Schuknecht, Lowell A., Jr., xxx-xx-xxxx.
Szpak, Michael W., xxx-xx-xxxx.
Toon, Lee, xxx-xx-xxxx.
Trent, William G., xxx-xx-xxxx.
Wardinsky, Terrance D., xxx-xx-xxxx.
Wolfe, William H., xxx-xx-xxxx.

NURSE CORPS

Andino, Maria I., xxx-xx-xxxx.
Berkheiser, Jean L., xxx-xx-xxxx.
Blouch, Sandra K., xxx-xx-xxxx.
Campbell, Gertrude M., xxx-xx-xxxx.
Carner, Antoinette, xxx-xx-xxxx.
Chabot, Michelle M. J., xxx-xx-xxxx.
Chamberlain, Jacqueline F., xxx-xx-xxxx.
Darrell, Chester A., Jr., xxx-xx-xxxx.
Davis, Barbara M., xxx-xx-xxxx.
Davis, Bettye H., xxx-xx-xxxx.
Degnan, Patricia A., xxx-xx-xxxx.
Dinsmore, Carole A., xxx-xx-xxxx.
Erickson, Georgia A., xxx-xx-xxxx.
Fletcher, Mary K., xxx-xx-xxxx.
Forsyth, Joan E., xxx-xx-xxxx.
Fournier, Deborah E., xxx-xx-xxxx.
Gentile, Margaret A., xxx-xx-xxxx.
Harrison, Connie E., xxx-xx-xxxx.
Hinze, Elizabeth A., xxx-xx-xxxx.
Hoskin, Diane J., xxx-xx-xxxx.
Hull, Kathleen V., xxx-xx-xxxx.
Jason, Marie E., xxx-xx-xxxx.
Kucinkas, Chris M., xxx-xx-xxxx.
Leffel, Mary S., xxx-xx-xxxx.
Lyons, Geraldine E., xxx-xx-xxxx.
Maroon, Hana J., xxx-xx-xxxx.
Matas, Irene M., xxx-xx-xxxx.
McCormack, Ethel M., xxx-xx-xxxx.
Nagy, Helen B., xxx-xx-xxxx.
Paup, Sonja M., xxx-xx-xxxx.
Piccone, Joseph S., xxx-xx-xxxx.
Porter, Patricia A., xxx-xx-xxxx.
Rogers, Bonnie P., xxx-xx-xxxx.
Rosenbery, Nancy J., xxx-xx-xxxx.
Schafer, Leah L., xxx-xx-xxxx.
Schenk, Jacquelyn P., xxx-xx-xxxx.
Swint, Kathleen A., xxx-xx-xxxx.
Trugillo, Lee E., Jr., xxx-xx-xxxx.
Turner, Sue E., xxx-xx-xxxx.
Yanno, Richard G., xxx-xx-xxxx.

MEDICAL SERVICE CORPS

Andrews, Edwin J., Jr., xxx-xx-xxxx.
Armstrong, Robert C., xxx-xx-xxxx.

Avants, Mervin T., Jr., [redacted].
Bateman, Val J., [redacted].
Bates, Thomas G., [redacted].
Beaty, John R., [redacted].
Blansett, Randy S., [redacted].
Boyd, Thomas O., [redacted].
Bristow, Charles L., [redacted].
Bruce, John M., Jr. [redacted].
Burke, Roger L., [redacted].
Ciminelli, Lawrence W., [redacted].
Cox, Jan G., [redacted].
Dick, William W., [redacted].
Dotson, Terrence J., [redacted].
Drummond, Robert D., [redacted].
Emigh, John L., [redacted].
Fincher, James C., Jr., [redacted].
Forister, Thomas C., [redacted].
Hamako, Herbert M., [redacted].
Hardy, Charles R., [redacted].
Jacobson, Philip E., Jr., [redacted].
Langenberg, Stephen L., [redacted].
Meives, Lawrence T., [redacted].
Meyer, Alvin F., III, [redacted].
Mitchell, Robert B., [redacted].
Nelson, Steven P., [redacted].
Nugent, Jerry., [redacted].
Poston, Thomas D., [redacted].
Proctor, Richard D., [redacted].
Renn, Benjamin C., [redacted].
Rodriguez, Albert D., [redacted].
Schumann, Thomas R., [redacted].
Smith, Collins E., Jr., [redacted].
Solesbee, Billy R., [redacted].
Squires, Darrell R., [redacted].
Templeton, David W., [redacted].
Weishaar, Gary L., [redacted].
Welbes, Earl J., [redacted].
Wylie, John V., [redacted].

VETERINARY CORPS

Adkins, Terry O., [redacted].
Bauer, John W., [redacted].
Dale, James E., [redacted].
Dean, Marvin L., [redacted].
Harwood, Baxter, [redacted].
Leftwich, Marion W., Jr., [redacted].
Little, Herbert E., [redacted].
Schaad, Lawrence E., [redacted].
Shafer, Richard L., [redacted].
Stokes, Mark H., [redacted].
Wansky, Michael A., [redacted].

BIOMEDICAL SCIENCES CORPS

Adams, Ernest D., Jr., [redacted].
Anderson, Gary D., [redacted].
Banner, Edwin C., III, [redacted].
Chambers, Mildred J., [redacted].
Clark, Mary F., [redacted].
Ellis, Sharon L., [redacted].
Garrett, Hershel A., [redacted].
Hagan, Jarrell R., [redacted].
Hammond, John M., [redacted].
Kaylin, Bernice M., [redacted].
Kilian, John P., [redacted].
Krimm, Bernard F., [redacted].
Maclean, Douglas M., [redacted].
Malloney, Ronald H., [redacted].
Marshall, Ann M., [redacted].
McLean, Jerry A., [redacted].
Mikeal, Judith M., [redacted].
Murray, Joseph D., [redacted].
Nelson, Dean D., [redacted].
Norton, Francis E., Jr., [redacted].
Novak, John E., [redacted].
Schumacher, Patricia, [redacted].
Swanson, John W., [redacted].
Thelen, Terry J., [redacted].
Turner, Ronald W., [redacted].

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with date of rank to be determined by the Secretary of the Air Force:

*To be captain*

Aitken, George G., [redacted].
Allen, Robert A., Jr., [redacted].
Arnold, Daniel E., [redacted].
Becker, Gary L., [redacted].
Boudreaux, Whitney J., Jr., [redacted].
Brass, Edward W., [redacted].
Burke, Robert W., [redacted].
Cochran, Curtis D., [redacted].
Cooke, Edwin B., [redacted].
Davis, Walter R., [redacted].
Etbauer, Wilbur J., [redacted].
Fraas, G. Richard, [redacted].
Giannoni, John M., [redacted].
Hackman, Jeffrey R., [redacted].
Hatfield, Samuel F., Jr., [redacted].
Hughes, Thomas R., [redacted].
Huner, David C., [redacted].
Johnson, Duane K., [redacted].
Johnson, Herbert W., [redacted].
Karbowsky, William F., [redacted].
Keys, James H., [redacted].
Kullberg, Kenneth N., [redacted].
Lind, Lauren A., [redacted].
Longren, Paul A., [redacted].
Marsh, Charles W., [redacted].
McDaniel, Harry R., [redacted].
McDaniel, Larry D., [redacted].
Meinke, George H., [redacted].
Naddra, George T., [redacted].
Neary, Michael J., [redacted].
Okawa, Earl K., [redacted].
Patton, William N., [redacted].
Price, David L., [redacted].
Randle, John P., [redacted].
Robinson, Roger D., [redacted].
Schuman, John W., Jr., [redacted].
Shaffer, William A., [redacted].
Shiroyama, Brian Y., [redacted].
Smith, Arthur B., [redacted].
Sniteman, Stephen B., [redacted].
Spicher, Charles R., [redacted].
Steiner, Axel, [redacted].
Stenger, James T., [redacted].
Stinnett, Melvin L., [redacted].
Sullivan, Thomas B., [redacted].
Sweeney, Robert N., [redacted].
Ulrich, Roger K., [redacted].
Welch, Paul T., [redacted].
Wiseman, Jerry A., [redacted].
Wood, Frederick W., II, [redacted].
Wright, Wayne H., [redacted].

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

JUDGE ADVOCATE

*To be captain*

Dekat, Kenneth A., [redacted].
Massey, Harmon O., Jr., [redacted].
Nolte, Donald A., [redacted].

NURSE CORPS

*To be captain*

Adams, Janet Sue, [redacted].
Armstrong, Frances P., [redacted].
Boyd, Terri J., [redacted].
Kunz, Charles A., [redacted].
Massey, Sarah J., [redacted].
McAndrew, Elizabeth A., [redacted].
Morey, Ann M., [redacted].
Stone, Jeanne N., [redacted].
Stubblefield, Virginia M., [redacted].
Wurster, Doris M., [redacted].

MEDICAL SERVICE CORPS

*To be captain*

Sorrells, John S., [redacted].
Young, Chester L., [redacted].

BIOMEDICAL SCIENCES CORPS

*To be captain*

Gold, Dennis N., [redacted].
Kobernus, Carroll A., [redacted].
Larison, James R., [redacted].
Majors, James S., [redacted].
Nelson, Robert C., [redacted].
Olfenbuttel, Robert F., [redacted].
Taylor, William L., [redacted].
Washeleski, Michael C., [redacted].
Wilson, James L., [redacted].

IN THE NAVY

The following-named ensigns of the U.S. Navy for temporary promotion to the grade of lieutenant (junior grade) in the line, pursuant to title 10, United States Code, sections 5784 and 5791, subject to qualification therefor as provided by law:

Blinka, Harold S.
Blomshield, Richard J.
Brinker, Jeffrey R.
Brothers, Michael H.
Brunell, Lee H.
Chimahusky, Edward V.
Dougherty, John R.
Dyson, Michael E.
Dziama, Frank R.
Feldman, Donald S.
Herring, Fred M.
Howze, Sidney S., Jr.
Klein, Mark J.
Laubenthal, Neil D.
Lenzen, Peter A.
Macina, Ronald M.
Munden, Paul M.
Pieringer, Paul A.
Pullins, Steven W.
Reiver, Jon A.
Reynolds, Charles M.
Scukanec, Daniel
Sherwood, Gary R.
Sutton, John E.
Talley, Douglas G.
Tearpock, Thomas V.
Telthorst, Paul J.
Woodley, Paul R.

IN THE NAVY

The following-named enlisted candidates to be appointed permanent ensigns in the Medical Service Corps, in the U.S. Navy, subject to the qualifications therefor as provided by law:

Patricia A. Daly.
Patricia R. Day.

The following-named enlisted candidates to be appointed ensigns in the Medical Service Corps, in the U.S. Navy, for temporary service, subject to the qualifications therefor as provided by law:

Ronald W. D'Heron
Danny J. Fahler
James S. Hogerson
Dann W. Nielsen
Robert E. Ritz
Craig R. Scott
Richard C. Setzer
Mark A. Walker

IN THE MARINE CORPS

The following-named officers of the Marine Corps Reserve for permanent appointment to the grade of colonel under the provisions of title 10, U.S. Code, section 5911:

Harry F. Barnes
Herbert F. Chabysek, Jr.
Nova E. Demoney, Jr.
Sheldon C. Downes
Anthony J. Dunleavy
Howard C. Gentile
Gordon E. Johnson, III
William N. Lofroos
Theodore L. Gey, Jr.
David P. Karcher
Robert W. Mackey
Daniel V. McLaughlin
Robert E. Neumann
Clemens M. Plattner
Leonard E. Porter
Thomas M. Reis
John P. Roos
Norman J. Smith
Warren D. Smith
Rodney L. Stone
Foster G. Ulrich, Jr.
Wilbur D. Wheaton

The following-named officers of the Marine Corps for permanent appointment to the grade of lieutenant colonel under the provisions of title 10, U.S. Code, section 5780:

Andrew B. Adams
Louis P. Andrews
Fred W. Anthes
Carl R. Ariola
Elie M. Asanovich
Henry W. Austin
Thomas R. Baisley
Joseph R. Balthis
Gordon D. Batcheller
Frank A. Bendrick
Alfred R. Bergstrom, Jr.
Thomas R. Betz
Wesley H. Birt
Richard P. Bland L.
Norman H. Bomkamp
John F. Borders
William T. Bosserman
Rodney W. Botelho
Gene W. Bowers
Wilburn R. Bowers
Howard J. Bowden
Martin L. Brandtner
Marx H. Branum
John P. Brickley
David B. Brown
Richard L. Brown
Robert T. Bruner
Martin C. Brush
Richard S. Burgess
George W. Burkley
Jerry M. Byrd
George R. Callison
John M. Campanelli
David A. Carter
Conwill R. Casey
David J. Cassady
Frank G. Castillo
Bernard J. Cauley
John P. Caynak
William F. Cerny
Francis X. Chambers, Jr.
James M. Chance
Jack A. Chapman
Robert G. Clapp
Roger L. Clawson
Vincent S. Coll
Raymond L. Collins, Jr.
Edward M. Condra, III
James, J. Coolican
Gary J. Cooper
David C. Corbett
Lyle P. Creadick
John C. Cregan

Lowell R. Cushman
Paul G. Davenport
James M. Davis
Howard L. Decastro
Roy E. Deforest
Gerald Dejong
John D. Dempsey
David V. Denton
Michael P. Downs
J. R. Duckworth
Stephen C. Durrant
Joseph J. Dzielski
Tod A. Eikenbery
Donald G. Eirich
Thomas L. Elser
Berlis F. Ennis
Harold A. Erwin
Walter M. Esser
John G. Fitzgerald
Jon T. Flint
Howard A. Franz
David M. Gallegos
Dayne G. Gardner
Theodore L. Gatchel
George E. Gaumont, Jr.
Gerald L. Gill
Floyd S. Giordani
Thomas E. Gnibus
Richard L. Goodlake
David B. Gregory
James R. Griffin
Ronald J. Gruenberg
John W. Guy
Lynn M. Haines
William A. Hall
Myron C. Harrington, Jr.
Phillip L. Harrington
Richard I. Harris
Terry E. Harris
Charles B. Hartzell
Edward M. Healey
Marlin L. Hefti
Thomas E. Hemingway
David G. Henderson
Nelson P. Hendricks
James B. Hicks, Jr.
Donnal E. Hiltbrunner
Kenneth D. Holland
Carl J. Horn
Melvin Horowitz
Charles T. Huckiebery
Gerald F. Huml
William F. Hurley
Wilton H. Hyde, Jr.
Leo R. Jamieson
Harry W. Jenkins, Jr.
Thomas F. Jessen
Gerald M. Johnson
Herbert C. Johnson
Kenneth D. Johnson
Richard F. Johnson
Robert B. Johnston
Raymond W. Kalm, Jr.
Richard S. Kaye
Edmund M. Keefe, Jr.
Alan B. Kehn
Glenn D. Kelly, Jr.
William M. Keys
Joe J. Kirkpatrick
Watt J. Kiser
Grover C. Knowles
William G. Kogerman
Robert C. Korman
Philip R. Kruse
Rene F. Larriva
Otto J. Lehrack, III
Robert Leiker
James W. Lent, Jr.
Martin J. Lenzini
Otto G. Linden
Robert E. Lorch
Thomas J. Lyman
Robert F. Machado
Frederick J. Mahady, Jr.
William D. Major
John S. Martin
James H. Marshall
John T. Marshall
James E. May, Jr.
William R. McAdams
William J. McCallum
James D. McGowan, Jr.
James P. McHenry
Charles L. Meadows
Richard H. Meydag
David C. Mills
Charles H. Mitchell, Jr.
Robert L. Mitchell
Gerry M. Mizer
Robert W. Molyneux, Jr.
Lawrence R. Moran
Harmon S. Morgan, Jr
Patrick J. Morga
Raymond R. Moore
John D. Morris
Michael P. Mulqueen
Barry J. Murphy
Donald J. Myers
Herbert T. Nance, Jr.
Ives W. Neely, Jr.
Bobby J. Newsom
Kenneth E. Noland
Robert J. O'Brien
Larry R. Ogle
William W. Ogle
John H. Olin, Jr.
James J. O'Meara
Raymond A. O'Neill
Robert R. O'Neill
Alan L. Orr
Joseph R. Paquette
Robert L. Patenaude
Rabun N. Patrick, Jr.
Alva E. Peet, Jr.
Joel N. Peterson
Lawrence E. Peterson
Joseph R. Phaneuf
Albert H. Phillips
Richard L. Phillips
Ronald E. Pfrimmer
Herbert E. Pierpan
Roger P. Pilcher
Joseph W. Pinson
Raymond G. Pinson
Kenneth W. Pipes
John Pipta
Raymond L. Pollard, Jr.
Reginald G. Ponsford, III
Raymond E. Porter
George S. Prescott
Russell C. Prouty
James E. Quill
Henry J. Radcliffe M.
John W. Raymond
John M. Reardon
John E. Regal
John P. Reilly
Owen B. Renfro
Edward O. Reusse, Jr.
James E. Rickmon
John D. Riley
Karl Rippelmeyer
Morris R. Roberts
William E. Russell
Lawrence R. Salmon
Herbert M. Sanchez
Donald E. Santo
Ronald W. Schmid
Adolfo P. Sgambelluri
Paul T. Shaffer
Louis E. Shaw
Charles H. Shelton
Kenneth E. Shelton
Troy T. Shirley
William D. Shuman
Jerry I. Simpson
John H. Slater
Robert W. Sloan
Frank M. Slovik
Paul J. Smith, Jr.
Robert W. Smith
Joseph A. Sole
Richard G. Sousa
John A. Speicher
Billy J. Speights
Louis M. Spevetz
Norbert J. Spitzer
Bayliss L. Spivey, Jr.
James L. Steele
Marion F. Stone
John H. Strasser
William C. Stroup
Francis X. Sullivan
Thomas C. Sullivan
Michael L. Sweeney
William T. Sweeney
Warren E. Sweetser, III
Andrew P. Taylor, Jr.
Jack L. Throckmorton
William F. Tremper
Robert C. Trumpfheller
Lonnie S. Underhill
Luke J. Urban
Igor R. Valentine
Rocco F. Valluzzi
Nat H. Vincent
William R. Warren
Michael F. Waters
James B. Way
John C. Weare
Ralph D. Webster
Richard D. Weede
William H. West, Jr.
William H. Westhoff
John L. Whaley
Roy Whitehead, Jr.
Howard M. Whitfield
Arnold G. Whittelsey
Robert W. Wiegand
James L. Williams
Duane A. Wills
Peter D. Winer
Thomas H. Wold
Randolph L. Wood, Jr.
David A. Wyrick
Rafael Zalles
Roger Zensen

The following-named officers of the Marine Corps Reserve for permanent appointment to the grade of lieutenant colonel under the provisions of title 10, U.S. Code, section 5911:

Olen S. Akers
David M. Alfredson
John P. Arms
David H. Askey
Richard F. Baker
Charles S. Barrett, III
Thomas W. Baxter
Victor E. Bianchini
James H. Bowman
James J. Brady
Paul P. Brutch
Arthur B. Burke, Jr.
John M. Burke
Richard J. Burke
Cole J. Buxton
Thomas J. Campbell
Harry G. Carpenter, Jr.
Robert F. Christie
Arthur L. Clark
James J. Cleary
William A. Coti
John D. Councilman
John F. Cronin
Leonard D. Culp
Harold R. Curtis
Robert C. Detweiler
Michael G. Dickerson
Ralph S. Dilullo
Richard D. Dowling
Lawrence L. Downey
Bobby G. Downing
Brooks C. Dyer
John S. Elekes
Donald R. Fariss
Frank E. Farmer
Darrell S. Fitts, Jr.
Paul B. Fraser, Jr.
Phillip C. Frey
Neil D. Frumkin
John J. Gannon
Michael R. Gardner
Winston W. Gardner, Jr.
James T. Golden, Jr.
David Hallett
John P. Halvorsen
George F. Hanker
George E. Harper
Albert C. Harvey, Jr.
James P. Heffernan
Enrique Hernandez
James H. Jeffries, III
Alvin W. Jennings
John E. Jordan
Gardner S. Kendrick
Frank P. Kolbe, Jr.
Donald G. Kravitz
Walter J. Lawson
Cecil P. Lewis
Donald T. Lund
Robert D. Mahoney
Michael W. Manzer
Leonard W. Martin
Ralph T. McLean
Andrew J. Mehalick
David L. Menzdorf
Lowry J. Miller
Ronald G. Miller
W. S. Miller
Phillip M. Mitchell
George E. Mosakowski
Frederick G. Muesegaes
Fred E. Nichols
Frank Ottinger, Jr.
Robert E. Peterson
Charles R. Petty
Clarence D. Powell
Ronald K. Price
James L. Riggs, Jr.
John F. Rivers
Charles S. Robb, II
Milton B. Rogers
Brian W. Rolfe
Gordon Rule
Charles W. Sampson
Albert J. Sattler, Jr.,
Gary S. Schroeder
Todd M. Sloan
John B. Snowden, III
Samuel A. Staples, III
Cecil I. Stell, Jr.
Gene P. Taylor
John F. Thompson
James R. Vogel
Terry P. Wallace
Scott J. Wilcott
Raymond E. Wilder
George C. Wilkinson, Jr.
Edd K. Wright

The following named officers of the Marine Corps for permanent appointment to the grade of captain under the provisions of title 10, U.S. Code, section 5780:

Frederick M. Abbott, Jr.
Richard D. Allen
Kenneth C. Allison, Jr.
James F. Amos
Charles L. Armstrong
Ronald J. Armstrong
Gerald D. Badinger
Calvin D. Baker, Jr.
Robert E. Ball
Richard W. Bates
Thomas W. Battaglia
Philip B. Baysden
Jonthan M. Beall
Peter R. Beavins
George G. Berg
Dan T. Bergstrom
Michael S. Bermensolo
Albert H. Bickmore
Jerome F. Bierly
Douglas M. Black
Robert R. Blackman, Jr.
Thomas E. Bouse
Charles E. Boyer, III
James G. Boyett
John Boyle, IV
Floyd D. Braaten
Clement W. Bradley
Brooks J. Breece
Andrew J. Broadstone, III
William F. Broderick
Clifton R. Brooks, Jr.
Thomas A. Browne
Paul V. Bruckner
Bruce E. Brunn
Johnny Bruntlett
Jeffrey D. Buchanan
Gerald Buckley
Thomas W. Bull, II
Thaddeus H. Burak, Jr.
Richard D. Burkett
George C. Caldwell, Jr.
Thomas J. Callan, Jr.
Kenneth D. Cameron
Martin D. Carpenter
James G. Casler
Barry L. Cassidy
Geary L. Chancey
Norman A. Chandler, II
Jimmy H. Church
Robert M. Churchill
Anthony J. Ciotti, Jr.
Jay M. Cluelow
James K. Cobb
James T. Conway
Leroy J. Cook
Bruce P. Couturier
Joseph R. Crockett, Jr.
Philip L. Croteau, Jr.
Eugene P. Cuccaro
John D. Curd, Jr.
Mark L. Danin
John B. Danuser
James W. Dartt
Charles E. Davis, Jr.
John W. Davis
Joseph J. Day
Marshall B. Deforrest, Jr.
William W. Dehart, Jr.
Glenn C. Demunck
Robert J. Depass
Kurt M. Dieterle
Alphonso B. Diggs, Jr.
Paul R. Dippolito
Will L. Dryer, Jr.
Christian F. Dubia, Jr.
Russell V. Dudley
Charles O. Duff, Jr.
Marc W. Durham
Richard G. Duvall
James B. Egan
Paul E. Ehlers
Robert P. Eichorn
John M. Elder
Arthur F. Elzy
Roger L. Emch
Richard A. Engel
William J. Esmann
Phillip F. Fargotstein
Jim Farlee, Jr.
Jon W. Farmer
Brian L. Faunce
Paul M. Felix
Donald A. Ferguson
Ord J. Fink, Jr.
Vincent L. Fischer, Jr.
John S. Flack
Jan P. Fladeboe
Gary W. Florence
Marshall B. Foore
Timothy J. Foreman
Robert A. Forrester
Ronald W. Forrester
Percy E. Foster, Jr.
Alan S. Frederick
Charles K. Freeman
Joseph B. Freeman
Peter R. Freeman
Richard B. French
Roland V. Funk
Edward A. Gabarra, Jr.
Timothy M. Gahan
John M. Galeski
Dennis O. Garcia
Lewis J. Gebhard
Vito F. Gentile
William J. Gibbons
Charles F. Glassmire
George G. Goodwin III
Phillip M. Gordon
Daniel G. Greathouse
Thomas K. Griffin
William C. Grubb, Jr.
Thomas C. Guerinot
Donald E. Guldin, Jr.
Rembert S. Gunter, Jr.
Earl W. Hacker
William M. Hale
Stephen D. Haley
John B. Hall
Robert J. Halliday
James C. Hardee
Martin D. Hargas
Richard L. Harmon
Roger F. Harris
Ki L. Harvey
Michael J. Havrilla
James M. Hawkins
Werner Hellmer, Jr.
David H. Henderson, Jr.
Leon F. Henley, Jr.
John P. Hertel
John P. Hickman
Richard V. Hildebrandt
Robert L. Hill
Kenneth W. Hillman, Jr.
John D. Holdstein
Louis S. Hollier, IV
William D. Hollister
James E. Hollopeter
Ben E. Hoover
Timothy L. Holt
Richard D. Hoyle
Thomas W. Hoysa
Philip E. Hughes
Gary H. Hughey
Timothy J. Ireland
Gordon R. Jackson
Joseph D. Jeffares
Sigurd L. Jensen, III
Edward L. Johnston
Brian T. Johnson
Robert L. Jones
Larry J. Jurica
Kenneth M. Jurjevich
Jerry W. Kahler
Terry R. Kane
Johnny R. Keckler
Gerard P. Kelly
Michael J. Kennedy
Michael M. Kephart
George H. Kerr
Robert J. Kimble, Jr.
John C. Kirk
Michael A. Kirkpatrick
Herbert W. Klein, Jr.
Clifford J. Kolson, II
Gregory C. Koons
Jeffrey C. Kotora
Raymond M. Kruse
Gregg C. Kubu
Mitchell A. Kudla
William P. Kyle
Paul A. Lambert
Harry J. Landau
Charles E. Landry, Jr.
John Langdon, II
Ronald L. Lard
Michael W. Leach
David J. Lee

Dean J. Legidakes
Joseph R. Lehman
Gregory G. Lemmer
Valentino L. Lendaro
James F. Leonard
Richard C. Lepley
Leonard W. Lewis
Terry N. Lewis
John J. Lienert
Herbert B. Long, II
Michael E. Lowe
John F. Lucas
Edmund A. Lucke
John K. Lynn
James W. MacMurray, Jr.
Don B. MacNamee
Thomas A. Manfredi
Esmond W. Marks
Terry L. Martin
Harold Mashburn Jr.
William L. Maxey
Thomas R. Maxfield
Robert P. McAleer
Jerry C. McAbee
Robert F. McCarthy
William W. McCombs
Boyd S. McCord
David S. McLean
Billy D. McMillin.
Robert Mell
Robert G. Mellon
Richard D. Metcalf
Charles D. Melson
Robert S. Melton
John J. Melville
Peter T. Meyer
Daniel R. Miller
Gene A. Milleson
Thomas P. Milne
Raymond B. Moffatt
Donald J. Monroe
Michael H. Monroe
James E. Moorehead
Bruce H. Moran
Terrence C. Morgan
John J. Moyer
Louis R. Moyzan
Richard S. Mullen
Robert S. Mutchler
John W. Muth III
William N. Myers
Neal M. Nadler
James H. Napier
Gregory S. Newbold
Paul S. Nickolaus
Ignatias J. Niemczyk
Gary O. Norris
Phillip D. Norton
William R. Norton III
Bernard J. Nownes
Raymond L. Nymeyer
Willard D. Oates
Ward C. Ogle
David M. Oleksy
Steven R. Oliver
Steven E. Olmstead
John C. Osborne
Paul R. Ottinger
John R. Page
Robert G. Page, Jr.
Michael D. Pannek
John T. Paparone
Charles A. Parlier, II
Clarence P. Patten, III
William W. Pattison, II
Terry L. Paul
Reuben B. Payne, III
Wiley H. Pearson
Frederick C. Peck
Ronald E. Pipkens
Paul D. Pitman
Carl O. Plath, Jr.
Richard A. Poggemeyer
Allan J. Polachowski
Raymond L. Polak
James J. Porter, Jr.
Gregory M. Potter
Ronald G. Powell
David A. Proffitt
Henry A. Pyzdrowski, Jr.
John R. Quattlebaum
Brett D. Rayman
John H. Reynolds
Harold P. Rhodes
Larry J. Richardson
Dwight G. Rickman
James W. Rinschler
Robert D. Roach
Edward J. Robeson, IV
Robert S. Robichaud
David P. Robinson
James R. Robinson, II
Frank Rocker, Jr.
Earl W. Rogers
Jeffrey A. Rogers
Richard D. Rollins
Paul F. Roques, Jr.
Winston E. Rorabaugh
James M. Rosen
Michael C. Rowse
Robert M. Rudolf
Roger A. Sager
David W. Sanasack
Edward J. Sandrick
Jeffrey E. Scheferman
David K. Schmidt
Warren, C. E. Schmitt
Glen H. Schneiter
Ronald R. Seaman
James, E. L. Seay
Robert M. Shea
Steven A. Shepherd
Charles R. Sherrill
Robert H. Sherwell
Philip G. Short
Thomas J. Short
Michael A. Siepert
Mark R. Sinclair
Ronnie E. Sirmans
Thomas J. Skubisz
Kenneth A. Sloan
James L. Smee
Jon W. Smythe
Craig E. Sooy
Robert E. Sonnenberg, Jr.
Stephen A. Spaulding
Donald R. Speacht, Jr.
Frederic M. Stankovich
Wayne A. Stanley
Denis K. Staver
David L. Steele
Jon O. Steiner
Thorys J. Stensrud
Thomas G. Stephen
Bruce M. Stevens
Ronald L. Stevens
David A. Stockwell
Kenneth E Stutely
Gerald L. Stutz
Tim J. Sukow
Alan P. Sullivan
Leonard M. Supko
David T. Swan
John R. Switzer
Aloysius Sypniewski
Theodore Z. Szymanski, Jr.
Michael T. Tallent
Gordon F. Taylor
Rex N. Taylor
Coulter D Tillett
David G. Titus
Aaron C. Toepfer
Richard W. Treanor
Robert F. Turbyfill
Craig J. Turner
Douglas D. Tyler
Richard B. Vanantwerp
Martin R. Vanderbrook
Guy M. Vanderlinden
David Vanesselstyn
Steven M. Walsh
Lawrence C. Walt
James G. Ware
Michael P. Wayne
William S. Weismann
Steven G. Western
Robert G. White
Robert A. Whitten
Hensley C. Williams
Leo V. Williams III
Michael E. Williams
Robert L. Williams, Jr.
James H. Williamson
Clarence E. Willie, Sr.
Douglas G. Wilson
Thomas E. Wilson
Stephen K. Wind
James M. Wire
Max D. Withrow
Thomas S. Wolfe
Gary J. Wright
Douglas D. Wyatt
Randall H. Young
Thomas H. Young
Charles E. Zinger
Anthony G. Zographos

The following-named officers of the Marine Corps for permanent appointment to the grade of first lieutenant under the provisions of title 10, U.S. Code. section 5788:

Alton L. Absher, Jr
Stephen P. Agrati
Dirk R. Ahle
Michael C. Albano
Patrick L. Alderson
Joseph A. Alexander, Jr.
Frederick C. Alke
Christopher D. Allemand
Stephen I. Allen
Frances C. Andersen
Robert M. Andrews
Stephen W. Andriko
Gregory J. Arabie
Christopher C. Arenas
Johnny E. Arline, Jr.
Charles W. Arnold
Michael C. Arola
Steve L. Ash
Henry Attanasio
Sidney E. Atwater
Dennis S. Augspurger
Cozy E. Bailey
William C. Baker, Jr.
Paul Balash III
Douglas D. Ballard
Philip M. Bambrick
Constance A. Barber
Thomas D. Barker
James F. Barnes
Richard K. Barnes
Charles R. Barnette
Robert L. Barry
Charles H. Beale, III
Doyle H. Beam
Donald F. Beck
Christopher L. Becker
Charles R. Bell
Gordon M. Bell, Jr.
Guy M. Belleman
Johnie W. Benefield
William A. Bennett, Jr.
William H. Bennett, Jr.
Larry W. Berquist
Betty A. Berling P.
Robert J. Biggs
Timothy P. Biggs
Mark A. Blahnik
John E. Blair
Edward W. Blankenship
Cleve R. Blouch
Ernest M. Boling, III
James A. Bollengier
Donald J. Borje
Timothy B. Born
Daniel J. Bourassa
Charles J. Bowser
Gaylen F. Brady
William J. Brechtell, Jr.
Francis P. Brennan
Emmitt D. Brewington
Randy W. Brickell
Steven P. Brierty
Randolph R. Bridgeman
Bruce E. Bronars
Eugene M. Brown
John D. Brown
John R. Brown
Rodney K. Brown
Stephen S. Brown
John C. Bruno, Jr.
Bruce A. Buckiewicz
Mark A. Buechler
Joe C. Burgin, III
James B. Burke
Ronald K. Burns
Paul J. Cahill
Richard W. Caldwell
Stewart D. Cameron
Andrew H. Campbell,
Raymond Cannata
Michael G. Capott
Frank J. Cappiello
William A. Card
Patrick L. Carey
James Carlsen
James C. Carnahan
Steven C. Carpenter
Robert T. Carrese
John K. Carroll, Jr.
Robert M. Carroll
Carlton W. Carter
Morrison G. Carter, Jr.
Herman W. Carver, Jr.
Daniel D. Casad
Mark W. Casey
Alan T. Cassidy
Benjamin L. Cassidy
Claude C. Castaing, Jr.
Anthony H. Catanach, Jr.
Thomas S. Ceci
Roy T. Centner
Robert W. Cerney
Lynn M. Champagne
Donald P. Chappell
Gregory J. Chartier
Leroy Chevis
Courtney D. Chinn
Michael G. Chlebik
George A. Clark, Jr.
James R. Clark, Jr.
Robert B. Clark
Robert A. Clarke
Steven R. Clarke
Billy J. Clarkson
Stephen W. Clayton
Donald A. Cleary
Francis B. Clements
Steele C. Coddington, Jr.
John T. Coggin
Barbara J. Cole
Eugene J. Cole
Jeffrey U. Cole
Ronald S. Coleman
Raymond S. Collins, Jr.
Mark E. Condra
William D. Conklin
Patrick D. Connally
Daniel A. Conway
Michael W. Cook
Susan L. Cook
William H. Cook, Jr.
Charles E. Cooke
Cleveland E. Cooper
Donald K. Cooper
Joseph F. Cramer
Ronald D. Crawford
James J. Cuff, Jr.
Marsha L. Culver
Richard L. Culver, Jr.
Larry E. Cumberland
Scott E. Cunningham
Brian E. Curdy
George L. Cutchall
David L. Darbyshire
Jennings M. Davenport Jr.
Richard W. Davenport
Frank W. Davey
Bryan M. Davis, Jr.
James W. Davis, Jr.
Jeremiah C. Day
Donald S. Debragga
David A. Debruyne
Frank C. Deen, Jr.
Richard J. Delacour
Thomas L. Dempsey
Russell E. Denman, III
Albert J. Diehl, III
Thomas M. DiGregorio
Wayne E. Dillingham
Darrel W. Dillon
George D. Diltz
Kenneth W. Dixon
William H. Dixon, Jr.
Robert K. Dobson, Jr.
Thomas E. Dolan
William J. Donahue
Brian C. Dorris
Bruce M. Doucette
James V. Doyle
Charles P. Dublin
Leslie F. Duer
William K. Duncan
Kenneth D. Dunn
Richard C. Dunn
Timothy A. Dusenbury
Daniel A. Driscoll, Jr.
Daniel M. Dykstra
Roger R. Earley
Arnoldo R. Easterly
Candace G. Eastman
George A. Eberhart, Jr.
Gary M. Eberling
Paul S. Edwards
Stephen B. Edwards
Ronald D. Eggleston
Daniel P. Ellis
John M. Ellsworth
John P. Elwell
Stephen F. Embler
Carl J. Ericson, Jr.
Jimmie E. Ervin
Jeffrey P. Estep
Rex A. Estilow
James E. Etter, Jr.
Willie M. Everett
Phillip A. Faigley
John H. Feily
Allie C. Felder III
George P. Fenton
Fletcher W. Ferguson, Jr.
Michael R. Ferlet
Robert R. Ferris
Robert M. Finer
George M. Finnerty
Donald K. Fisher
Richard D. Fitzgerald, Jr.
William R. Fletcher
James F. Flock
George J. Flynn, Jr.
Robert W. Foltyn
Barry M. Ford
James R. Forgy
William M. Forman
Mariellen Fortman
Walter H. Freed
Marc E. Freitas
Kenneth M. Fritts
Douglas A. Fullaway
Steven J. Gaffney
Dennis P. Gallaher
Robert D. Galloway
William M. Garrabrants
Donald M. Garrett
Richard S. Garretson
Walter E. Gaskin, Sr.
Bradley M. Gates
Cecil C. Gatlin, Jr.
William S. Gerichten II
Norman C. Gillette III
Mark D. Gilliland
David L. Gilmer
John J. Girt, Jr.
Robert J. Giuda W.
Thomas C. Glover
William E. Goldmon
Christ G. Gologanoff
Johnie Gombo
Daniel B. Gonda
Richard W. Goodale Jr.
Michael R. Gorbell
Kevin L. Gordon
Steven E. Graebner
Charles A. Gram
William W. Graves, Jr
Ronald G. Greene
Barney A. Grimes III
James T. Grimshaw
Leo J. Grogan
John J. Guevremont
Christopher J. Gunther
Paul R. Gustin, Jr.
Daniel K. Hagood
Gerald M. Hale
Mark K. Hall
Willard D. Hall, Jr.
Edward J. Hamilton
Thomas X. Hammes
Myron L. Hampton
Terry R. Harding
Michael P. Hardwick
Eugene P. Hardy
Mark S. Hardy
Nelson V. Hare
Gloria J. Harmon
William W. Harney
John S. Harrel
William M. Harris
Kevin P. Hart
George S. Hartley
Mark Hartzell
Charles W. Harvey III
Daniel P. Hayes
Jana S. Hayes
George J. Hayn, Jr.
Stanley M. Hebert
Charles W. Hehl
Dennis R. Heinle
Robert E. Heinz
William E. Heinzman, II
Dennis J. Hejlik
John D. Henderson
Doyle W. Hensley II
Patrick H. Herd
Steve H. Herrington
Gail M. Herstead
Kim O Hetler
Mark A. Hickey
Mary L. Hicks
James E. Hiett
James R. Hildreth
Howard E. Hill
Robert W. Hillery
John R. Hiner
Norman E. Hitchcock
Stanley E. Hitchcock
Chris D. Hobbs
Ernest Hodge
Carl W. Hoffman, Jr.
John P. Hogan
Carlos R. Hollifield
Richard D. Holmes
Francis G. Horne, Jr
James C. Hosmer, Jr.
William J. Howey
Robert J. Hubert
Carolyn A. Hudson
Daniel R. Hudson
David C. Hug
Jack L. Hughes
Michael K. Hughes
James A. Humenik
Bernard S. Hummel

Robert L. Humphrey
David W. Hurley
Clifford G. Hurst
Charles W Hutcherson, Jr.
Christopher J. Iaquinto
Michael D. Ince
Jonathan D. Inghram
Richard J. Ingold
Edward A. Isajewicz, Jr.
David T. Israel
Gilda A. Jackson
Michael D. Jacobs
David L. Jacobson
Mary V. Jacocks
Neal L. Jackman
Kenneth D. Jackson
Michael J. Jinnett
Floyd J. Johnson III
Mark K. Johnson
Richard T. Johnson
Thomas V. Johnson
Timothy A. Johnson
William D. Johnson
Peter L. Jones
Thomas G. Kane
Donald J. Kappel
Allen A. Katzberg
Christopher C. Kauffmann
James C. Keffer
Rodney O. Kelly
Stephen C. Kepher
Charles E. Kerr
Gregory S. King
James M. Kinnaman
Christian P. Klinefelter
Robert L. Knight, Jr.
Raymond M. Knox, Jr.
Glenn F. Koch
Larry D. Koenig
Mark R. Koenig
Richard W. Kokko
Paul J. Koper
Stephen Kozick III
James R. Kramer
Jeffrey N. Kramer
Michele D. Krause
Jean W. Kremer
David E. Krugler
Terry W. Krummel
Theodore A. Kuhlmeier
Linda S. Lakin
Bevill F. Lambert, Jr.
Victor D. Lance
Paul J. Landry
Richard K. Lane
Jimmy D. Langley
David G. Langness
Jack D. Lape, Jr.
Robert D. Larson
Granville D. Lasseter II
Thomas C. Latsko
Grant E. Lattin
Larry L. Laughlin
James M. Laverick
Dennis L. Lawrence
Henderson Lawson, Jr.
Thomas G. Leahy
Thomas H. Lee
Roderick W. Leitch
Scott E. Leitch
Charles A. LeMay
Gary C. Leupold
Garry W. Lewis
Frederick W. Ley
Richard J. Lies
Ritchie M. Lilly
Joel G. Lindemann
Scott A. Lindsey
Eric J. Linn
David G. Linnebur
Bruce L. Linscheid
Denis M. Lipka
Frank M. Lochocki
Henry C. Loeffler, Jr.
Arlene A. Lomax
Paul H. Lord
Michael J. Lores
James M. Lovely
Robert D. Luginbill
Gary A. Lundeen
Michael E. Lundy
Constantine W. Lynard
Steven J. Lynn
Adam F. MacAdam II
James V. MacCarone
Kenneth A. MacGowan III
Ronnie R. Madrid
Edward J. Maguire
Henry E. Maher
Ronald S. Makuta
Robert R. Maldonado
William H. Malone
Curtis W. Marsh
William T. Marsh
Samuel A. Marshall II
Bobbie J. Martin, Jr.
Steven D. Martin
William J. Martin
Nicholas V. Martino, Jr.
Shauna E. Masterpool
Walter Maximuck, Jr.
William J. McCann
Thomas G. McCarthy
Nathaniel T. McCleskey
Francis M. McComb
Joseph M. McDonnell
Richard F. McDonough
John T. McGaughey, Jr.
Charles H. McGohey
Thomas W. McGowan
Allan P. McGuinness
Luther B. McIntyre, Jr.
Douglas M. McKay
Patrick J. McKay
Paul S. McKee
Richard S. McKenzie
Albert W. McKeown, Jr.
Charles A. McLaurine
Joseph J. McMenamin
Paul P. McNamara
James M. McNeal
Thomas O. McQuerry
Timothy W. McReynolds
Mark S. McTague
Michael D. Meier
Paul G. Merchant, Jr.
William Merrell
John M. Metterle
Philip G. Meyer
Gary L. Miller
John H. Miller, Jr.
Richard C. Miller
William A. Miller
Mark A. Milligan
Anthony A. Minichini
Thomas E. Minor
John W. Mitchell, Jr.
Robert B. Monnie
Richard Monreal
Marvin Montez
Mark D. Montgomery
William J. Montgomery
Mark E. Mooney
Charles Moore
Jacques J. Moore, Jr.
Roger K. Moore
Donavan D. Moorman
John C. Mordue
Arthur G. Morrell
Charles W. Morris
Martin T. Morris
William L. Morris
Richard T. Morrow
Michael J. Motes
William T. Motley
Melinda S. Muerdler
Charles A. Mulligan
Brian T. Murphy
Gary E. Murphy
Richard J. Murphy
Cornelius W. Murray
John D. Murray
William R. Murray
Daniel J. Muthler
Karl B. Nebbia
Robert B. Neller
James D. Nelson
David H. Neundorfer
Mark A. Newbold
Thomas L. Newcomb
Elias A. Nesar
Ronald C. Nicholas
Thomas E. Nicoll
Eric P. Nielsen
Thomas J. Nielsen
Melvin P. Noack
Bruce H. Norton
Rex C. Nowlan
Lawton R. Nuss
Emmet A. O'Donnell
Fulton P. O'Donnell
Mark F. O'Connor
Thomas M. O'Leary
Courtenay L. Olney
Stanley A. Ordone
Pierre J. Ortiz, Jr.
Douglas P. Page
Steven M. Palmer
Rodney P. Panter
John S. Pate
Gregory A. Patterson
John T. Paul
Thomas A. Peabody
Mark R. Pease
Robert U. Peck
Darus G. Pelfrey
Eugene D. Pellecchia
Alan C. Pendleton
David N. Penman
Melvin L. Peoples
James J. Pettengill
Anthony F. Phelps
David A. Phillips
James A. Phillips
Maxie W. Phillips
Matthew H. Phillippe
Timothy L. Phillips
John P. Pickett II
Steven R. Pietrzak
Alan J. Pingree
Alexander Plechash
Gregory J. Plush
Mark L. Potocki
Dennis D. Poulos
Earl W. Powers
James S. Powers
Jessica L. Powers
Danny R. Praytor
Gary M. Price
Joseph E. Price
John R. Priddy
Steven L. Prout
Dale H. Pugh
Kenneth C. Rains
Timothy N. Ranville
Douglas C. Rape
Daniel E. Rapp
David P. Rann
Robert S. Rea
Robert M. Reed
Michael J. Regan
Robert S. Richardson
James S. Richter
James D. Riemer
Stephen C. Robb
Blake J. Robertson
Charles Robinson
James W. Robinson, Jr.
Richard L. Rodecker
Daniel W. Roepke
John S. Rogers III
James, T. Ronaghan, Jr.
Quentin R. Roos
Richard C. Roten
Christopher Rowan
John R. Ruckriegel
James L. Rucks
Kathleen Ryan
Thomas P. Ryan
Richard A. Rybolt
Glen R. Sachtleben
Peter J. Samsel
Kevin M. Sandkuhler
Michael E. Satran
Paul M. Sauer
Ross A. Schmidt
Alan K. Schuler
Karen H. Schultz
Chester W. Schwartz
Richard M. Scott
John F. Seal
William R. Seale
Reginald M. Sealey
Harvey F. Seegers, Jr.
William E. Seibel
Scott G. Seney
John W. Sergeant
Kenneth A. Sharer
Mark D. Sherry
Stephen D. Shigley
Robert J. Shipley
James L. Shirk
John A. Shookster
Francis R. Short
Richard J. Shows
Daniel L. Sickinger
Luciano S. Silva
David Simon
Gerald G. Skinner
John W. Slider
Todd H. Slingsby
Duane A. Smith
Ellett M. Smith
Floyd R. Smith, Jr.
Gail A. Smith
Robert F. Smith
William L. Smith
Wesley F. Snyder
Daniel G. Somers
John W. Sondermann
Robert L. Songer
Leland F. Sorrels, Jr.
Hubert E. Sowell, Jr.
Frederick L. Spaethe
George T. Sparkman, Jr.
Harry C. Spies
Samuel H. Spragins III
Gary D. Stack
Richard J. Stacy
Konrad E. Stapler
Ricky L. Starks
James M. Stata
Robert E. Steffensen
Bradley A. Stephan
Richard D. Stephens
Robert L. Stephens, Jr.
Michael H. Stevens
Robert A. Stevens
Craig P. Stevison
Jeb E. Stewart B.
Paul D. Stinnett
Scott C. Smith
Paul C. Stock
James R. Stoller
Robert W. Strahan
Jerrell N. Strawn
Clyde N. Sturgeon
Robert J. Sullivan
Ann M. Summerlin
Carroll B. Sumrall, III
Margaret A. Surratt
John D. Swain
John L. Sweeney, Jr.
John F. Sweet
James S. Swift
Terry M. Symens
William D. Talbot, Jr.
Lisa A. Talmage
John R. Taxeras
John M. Taylor
Charles J. Temple
Arlan D. Tenkley
Timmy J. Terrebonne
Bruce A. Thake
John D. Theeuwen, Jr.
Frederick L. Thielke
Duane D. Thiessen
James P. Thomas
John H. Thompson
Gary D. Thrash
Michael W. Thumm
Robert Tiberg
James A. Tipple
Michael A. Toepfer
Thomas J. Toft
Steven J. Tomisek
Alexander M. Torrance
Bohdan A. Toth
Rowan M. Torrey
Craig W. Towsey
George J. Trautman, III
William K. Tritchler
Michael J. Trout
Liandro P. Trujillo
Richard T. Tryon
John A. Turley
John H. Turner
John R. Turner
Stephen A. Turner
Bert B. Tussing
Douglas W. Ullmann
Elizabeth A. Updegrove
Steven L. Vandergeeten
Jeffrey B. Vandyke
Richard E. Vanmeter
George K. Vanness
Thomas G. Vaughn
Jonathan N. Vizina
James D. Vorderstrasse
Michael J. Vrabel
Joel M. Wade
John P. Wagemann
Lawrence E. Waggoner
Donald J. Wagner
Michael W. Wagner
David G. Walick
Andrew D. Walker
John J. Walsh, Jr.
John T. Walsh
Robert J. Walters
Stephen C. Wampler
John E. Wangsgard
Dayton F. Warfle
Edward J. Wargo
William Waters, Jr.
Frances S. Watkins
Paul H. Watson
Stephen P. Watson
Thomas R. Watson
Bruce L. Way
Ross L. Webster
Daniel A. Wehrle
Donald L. Weiss
Dean E. Wells
Robert M. Welter
Carl D. Westfall
William M. Wetherell
Kevin M. Wheeler
Bruce A. Whomsley
Walter J. Wierzbicki
Robert G. Wilcox
Christopher A. Wilk
Charles D. Wilkins
Array T. Williams
Michael T. Williams
Timothy L. Williams
Robert E. Wilson, Jr.
David E. Wirsig
Michael Wisloski, Jr.
Frederick B. Witesman II
Robert S. Wolfe
Larry J. Wolf
David B. Wood
Robert O. Work
Douglas T. Wray
James M. Wright
Charles S. Wuest
Gregory W. Wulf
John R. York
John K. Young
Julius L. Young, Jr.
Robert E. Younger
Michael J. Zak
Robert G. Zakula
Michael A. Zarate
Mark J. Zehfus
Mark E. Zeitvogel
Mark D. Ziobro

The following-named officers of the Marine Corps for temporary appointment to the grade of first lieutenant under the provisions of Title 10, U.S. Code, Section 5784:

Raymand Adamiec
James E. Adams
David R. Aday
Daniel Aguilar
Mark E. Alfers
Donald B. Allegro
John R. Allen
James C. Andrus
Lawrence W. Astyk
Richard A. Atkisson
Leroy Auston
Brian J. Bach
Frank A. Baleskie
Terry L. Barger
Steven F. Barilich
Dennis J. Barr
John A. Bass
Ralph G. Bass
Robert H. Bauman
Dan O. Bausch
Ronald D. Bean
Maynard P. Bearce
James C. Beck
James E. Beckle
Patrick J. Behnke
Paul L. Benedict
Richard D. Benjamin
Francis X. Bergmeister
John W. Berkley
Raymond L. Betros
Brent J. Beverly
Eddie Bickham
John C. Bickings
Mark W. Bircher
Leonard A. Blasiol
Raymond H. Blumel, Jr.
Patrick S. Bole
Kent R. Bolin
Steven C. Bott
Charlie C. Boyd, Jr.
Calvin C. Boykin III
Bruce F. Brady
Jan D. Brameyer, Jr.
Richard C. Branch
Thomas I. Branch
Edward A. Brandt
Steven P. Brierty
George S. Brock
Larry K. Brown, Jr.
Terrence D. Brown
William D. Brown
Jeffrey L. Budimier
Geoffrey J. Bulliung
Joseph F. Buranosky
Robert A. Burkes
Paul A. Burkholder
Baxter D. Burton
Steven Busch
James M. Bushee
Roy R. Byrd
Robert I. Campbell
William O. Campbell, III
Mario V. Carmo
Andrew J. Carrabus
David W. Case
Mark E. Casey
Michael W. Caslin
Aron K. Champion

Frankie D. Chappell
Daniel F. Chwalisz
Louis J. Cipriana, Jr.
Barry H. Clark
Bradley S. Clark
Steven E. Clark
Scott W. Clarke
Charles F. Clements
Charles F. Cliggett
Henry J. Coble
Harry L. Cole, Jr.
Thomas V. Colella
Gary C. Conary
William R. Conaway
Christopher J. Conlan
James T. Connacher
William L. Core
Jeffrey A. Cory
Robert L. Countryman
Leonard A. Courson
Robert J. Craig
Constant P. Craig
Ralph D. Craig
James M. Crites
Donald G. Croom
Clyde V. Crowsell, Jr.
Gary R. Cullop
Frederick H. Curlin, Jr.
Stuart D. Currier, III
John P. Curry
Robert F. D. Curtis
Roger T. Cuva
Dean L. Cuvelier
Michael N. Daily
Michael L. Dammer
Richard A. Daprato, Jr.
Robert G. David, Jr.
Thomas A. Davidson
James M. Davis
Lester B. Davis
Thomas M. Davis
Michael T. Daw
Frederick H. Dear
Richard A. Dechaineau
Robert L. Deen
Alvis W. Denning
James I. Dennis, III
Gordon B. Denny
Vincent G. Depierre
Bruce D. Devers
Ralph J. Diaz
Joe W. Dickerson, Jr.
Dennis J. Dilucente
Dale S. Dimitroff
Charles L. Dirienzo, Jr.
Stephen C. Dorsett
Doyle G. Douglas
Michael L. Drennan
David G. Driegert
Richard H. Dunnivan
Dale A. Dykhuizen
James D. Eastman
Richard J. Eisloeffel
Alfred W. Ellis III
Ronald L. Ellis
Stephen D. Ewers
Philip J. Exner
Guadalupe, Felan
Kerry K. Feldman
Kevin P. Fennell
Barry R. Fetzer
Donald K. Fisher
Douglas A. Fisher
Larry G. Flores
David S. Foster
Preston H. Foster
Roylance J. Frank, Jr.
William F. Fredericks
Lee W. Freund
Steve A. Fris
Edwin G. Fulkerson
Myles W. Furlong
Richard M. Galvez, Jr.
Alfred A. Gambone, Jr.
Leslie C. Garrison
Mark J. Gibson
Bruce A. Giron
Michael J. Glagola
Donald E. Goddard, Jr.
Timothy R. Golike
Joe D. Goodall
Kenneth B. Goodrow
Robert W. Gose
Eric J. Green
Edwin W. Groff
Kenneth R. Groover
Leon D. Guenzler
Ramon L. Guerrero
Charles M. Gurganus
Mark W. Haas
Michael D. Halloran
Larry K. Hamilton
Richard F. Hamme
Robert S. Hansel
Jack R. Harkins, Jr.
Edward A. Harper
William L. Harraman
Charles R. Harris
Timothy B. Harris
Willis J. Harris
Donald S. Hartman, Jr.
Michael S. Haskell
Stephen C. Hastings
Robert L. Haugland
Roy W. Heidicker
Raymond B. Held
John F. Hemleben
Mark L. Hendricks
Timothy J. Hesketh
James M. Higgins
Clayton F. Hill
Conrad C. Hilsdorf
Alden E. Hingle, Jr.
Jonathon J. Hirtle
Mitchell S. Hoffman
William M. Hoffman
Jay W. Hammer
Edward Hopkins
Donald C. House, Jr.
Donald G. Housman
Michael J. Hughes
Paul M. Hurt
Vince L. Huston
Phillip R. Hutcherson
Maurice B. Hutchinson
John A. Hutchison
Otis J. Jackson, Jr.
David L. Janowski
Richard C. Janssen
Luther B. Jenkins
David W. Jennings
Harold L. Jennings, Jr.
Edward A. Jeter
Bobby R. Johnson
Gary Johnson
Ross A. Johnson, Jr.
Terrie B. Johnson
William L. Johnson, III
Jere J. Johnston
Ritchie K. Jones
William I. Jones
David J. Kaessner
Thomas M. Kait
Steven A. Kapitan
Stephen R. Kappes
Donald M. Keithly
William F. Keller, Jr.
Ricki A. Kelish
Charles E. M. Kelly, Jr.
John F. Kelly
Michael T. Kelly
David T. Kerrick
Joseph D. Kinney
John J. Kirk, Jr.
David G. Knittig
Philip E. Knobel
Gary R. Kozlusky
John E. Kramer
Mark L. Krigbaum
John E. Kruse, Jr.
Robert F. Kuhlow
Philip B. Kumpis
John C. Ladd
Robert A. Lane, Jr
William R. Langford
Guy R. Langley
Randall W. Larsen
Richard L. Larson
Ivan W. Lassiter
Harrison C. Laut, II
Marc D. Lederman
Galo I. Leguellou
Scott M. Lehman
Marcus L. Lenderman
Frank J. Lengel
James E. Lindsey
William R. Linville, Jr.
Jerome C. Liscomb
Gary A. Littlejohn
Bert Londo, Jr.
Joseph N. Lott
Michael T. Lovejoy
James M. Lowe
Steven M. Lowery
Robert E. Lund
James R. MacDonald
David W. Maffett
Michael A. Malachowsky
John D. Mann
Jeffrey L. Marrin
Michael A. Marriott
Bobbie J. Martin, Jr.
Richard J. Matteson
Paul J. Matthews
David W. Mauldin
Robert T. McCarty
Charles B. McClain
Michael P. McCloskey
Gary M. McConnell
Harry F. McDole, Jr.
Chester H. McFarland
Charles H. McGohey
Joseph V. McIlhinney, Jr.
Keith D. McKain
Edgar L. McKinnie
Michael D. McMillan
Joseph V. Medina
William L. Meeks
Charles J. Mehalic
Kim Mehalko
Curtis D. Mertz
David C. Mickelson
David A. Miles, IV
John R. Miles
Blaise P. Miller
Edward L. Miller
Mark C. Miller
Michael B. Minnehan
John M. Misiewicz
Bruce E. Mitchell
Charles R. Mize, Jr.
Chester C. Moeller, II
Kenneth C. Mogray, Jr.
Leonard M. Mokan
Richard S. Moore
Gerald H. Moors
Richard D. Morgan
Michael T. Moriarty
Phillip A. Morris
Lloyd W. Moss
Way P. Moy
George E. Mueller, Jr.
Warren F. Muldrow
Curtis A. Munson
Robert J. Murawski, Jr.
Gene B. Murphy
Robert B. Murray
John D. Myers
Arthur L. Nalls, Jr.
Clayton F. Nans
Roderic S. Navarre
Robert B. Nelson
Kenneth E. Neu, Jr.
Jeffrey A. Neufeld
Phillip L. Newman
Edward A. Norman
David B. Norris
Robert A. Nuzum
John P. O'Connor
Lawren E. J. O'Donnell, Jr.
Allen E. Oliver
Michael C. O'Neal
Gordon C. O'Neill
Craig E. Opel
Roy F. Page
Robert H. Paine
Lawrence F. Palazzolo
Menelaos P. Palles
Robert D. Papak
Mark W. Papineau
Robert S. Paris
Robert R. Parker, Jr.
Randall D. Parman
Craig T. Patranc
Osland Paulding
Martin D. Peatross
Frank D. Pelli
Edward J. Perkins, III
Michael F. Perry
Ronald C. Perry
Charles A. Person
David L. Peterson
Michael R. Peterson
Bruce K. Petit
Walter E. Pfandl
Gary V. Phillips
John R. Philp
Lawrence J. Piano
Bruce G. Pike
Greg P. Pistochini
Frank B. Plumlee
Harold E. Poole
Roger R. Poole
Richard J. Poppe
Tony L. Porter
Dennis Cole Pratt
Charles R. Price
Randall R. Pritchett
Harold T. Pruessner, Jr.
Mario T. Rabusin
John G. Rader
William A. Radtke III
Lawrence J Reccoppa
George E. Rector, Jr.
Paul D. Defling
John E. Reiss
Louis F. Repucci, Jr.
Steven A. Reynolds
Paul J. Riding
John A. Roberts
Mastin M. Robeson
David J. Robinson
Lewis W. Rollins
Glenn C. Roundy
James M. Rueter
Brendan P. Ryan
Peter L. Rybacki
Jonathan T. Ryberg
Dan R. Sadberry
Berry E. Sage
David A. Salzman
Kevin G. Sandri
Michael W. Sarnes
John M. Scepurek
Duane R. Schattle
Federick A. Schenk
Nancy J. Schenk
Richard J. Schmitt
Charles Schmucker
Paul A. Schneider
Robert B. Schnepp
Michael H. Schoelwer
Mark A. Schon
Daniel C. Schultz
Benjamin L Scofield
James E. Scroggs
William T. Sears
Thomas M. Seifert
Thomas R. Serrin
Sylvan J. Sewell
Curtis J. Shaffer
Carl H. Sharperson, Jr.
Joseph L. Sheppard, Jr.
Karim Shihata
Patrick K. Shy
Thomas A. Sieg
Walter W. Simmons
Dan Simons
Thomas L. Simpson
Neil E. Sizemore
Marvin E. Sleppy
Ellett M. Smith
Gregory L. Smith
Jordan B. Smith, Jr.
Michael L. Smith
Robert W. Smith
Stephen K. Smith
Thomas M. Smith
Vincent L. Smith
Craig C. Snee
Robert E. Snyder
Paul F. Souza
Jack K. Sparks
Jake L. Sparks, II
John E. Sparks, Jr.
James L. Spears
Melvin G. Spiese
Louis P. Sposato, Jr.
Paul T. Stanley
Michael J. St. Clair
Randall L. Stegner
Mark A. Steinmann
Glenn D. Stoker
Dempsey Stowers
George E. Stratmann, Jr.
Richard K. Stutler
John R. Suter
William S. Sweeney
Cecil E. Swift
Bradford L. Tammaro
George J. Taylor
Jonathan M. Taylor
Robert C. Tekampe
David E. Ternes
Kenneth W. Terry
Victor J. Thombs
Dennis C. Thompson
Theodore R. Timmerman
Peter B. Todsen, II
Jeffrey J. Tomlin
Randall G. Torres
Charles E. Tower, Jr.
Lynn E. Trenda
Dennis F. Tretter
Danny K. Trout
Robert P. Troy, Jr.
Scot W. Tschirgi
Frederick L. Tuggle
Alan A. Turk
Bradley E. Turner
Robert L. Urban
Janice M. Vancamp
Jackson M. Vanderburg
James L. Vanfossan
Noe Vera
Jeffery D. Vick
Austin K. Vincent
William F. Vokoun
Blair R. Vorgang
Kenneth A. Waage
Lawrence G. Walker
Joseph A. Wallace
James H. Warren
Raymond F. Waters III
Dennis E. Watts
Dolph N. Watts
Paul W. Watson
Richard E. Weiss
Karl D. Wells
Michael D. Weltsch
James G. Westberg
George M. Wheeler
John D. Whitaker
Jonathan C. White
Steve E. White
Steven B. White
Timothy R. White
Daniel E. Whiteside
Michael W. Whitted
George K. Wilcutt
John E. Williams II
Kevin H. Winters
Benjamin G. Wyatt
Francis J. Wysocki
Thomas M. Yackley
Gary W. Yagiello
Stephen A. Yates
James M. Yeager
Stanley J. Yelito
Wade Yoffee
Raymond H. Young
Anthony Zezzo II

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W–4 under the provisions of title 10, U.S. Code, section 563:

Ronald Achten
David S. Aldrich
James L. Allingham
Robert E. Allinger, Jr.
Constantine G. Ambrose
Joseph N. Anderson
Russell P. Armstrong
James B. Ash
Welles D. Bacon
Wayne D. Bahr
Claude R. Baldwin, Jr.
Charles H. Barton, Jr.
Charles S. Bennett
Neal S. Bezoenik
Robert L. Blake
Gerald J. Bolick
Robert W. Bostwick
Frank E. Box
Donald B. Braun
Victor E. Browning, Jr.
Murray W. Bryant
Thomas R. Burnham
Allen F. Burton
William G. Byrne, Jr.
Billy R. Campbell
Donald L. Caroway
Francis J. Carr
Ray A. Casterline
John D. Cauble, Jr.
Robert J. Caulfield
Barbara J. Chovanec
Hershel G. Chronister
Owen D. Clark
Michael J. Clarke
Rayborn S. Clifton, Jr.
Jose T. Coccovaldez
James E. Collette
Jose N. Corderotorres, Jr.
Garnet E. Cope
William B. Corley, Jr.
James A. Cothron
William H. Cox
Hilton Craig, Jr.
Oscar E. Creech, Jr.
Douglas J. Danley
Jesse A. Dobson
Howard G. Dodd
Steven J. Draper
Samuel E. Driggers
Robert D. Embesi
Riley S. Ethington
Jack H. Evans
Michael D. Fazio
Harold D. Ferguson
Charles L. Ferko
Nelson R. Fincher
Joe M. Floyd
Ronald R. Fraizer
Donald L. Galvin
William C. George
Robert L. Goller
Ellwood D. Gordon
Pedro Gutierrez
Arnold S. Hageman
Gerald E. Hanscom
Donald L. Hanson
James E. Haskins
Joseph B. Hatfield
John D. Henry
Herbert O. Hicks, Jr.
William A. Higgs, Jr.
Paul R. Hoffman
Julius B. Hopkins
Bobby E. Humeston

Holland C. Hutchinson
Barton E. Immings
Lowell B. Jackson
Arthur L. Johnson
Ronald L. Jones
Harold A. Keith
Joseph E. Kelly
Michael B. Kennedy
Carl E. King
Thomas F. King, Jr.
Ray E. Kittilstved
Joseph Kochuba
Leroy A. Kramvik
George D. Krebs
Raymond L. Kunkle
William A. Kuykendall
Aurel E. Lafreniere
Donald A. Lane
Thomas L. Laws
Juan M. Lem
Babre Lewis
Jose Magallan
Paul L. Malone
John R. Marcucci
William T. Maroney II
Aove E. Mattox
Bryan M. McGill
James R. McRae, Jr.
William D. Meadors II
Louis Myers
Daniel E. Miller
Robert M. Miller
Earl F. Morris, Jr.
Thomas W. Morris
James Muschette, Jr.
Ronald C. Newman
William G. Nickels
Sam G. Ochoco
Jerry W. Odell
Joseph N. Parisi
Roger B. Peterson
Ronald J. Peterson
Jesse P. Pullin
Paul F. Quinn
Virgil G. Rhoads
Gordon A. Rice
Joseph F. Rizzo
Dorsey Robinson, Jr.
Charles R. Roden
Paul A. Rossano
James F. Ryan
Stephan C. Salamack
Dale F. Saunders
Peter B. Sawin
Eileen R. Scanlon
Frederick W. Schaffer
Walter R. Schuette
Thomas R. Sellers
Jimmie R. Shafer
Michael L. Shanklin
Edwin P. Simpson III
Theron Simpson, Jr.
Thomas L. Slaughter
Francis C. Slavin, Jr.
Herbert B. Stafford
Patrick L. Stevens
John F. Stewart
Robert L. Strawser
Richard C. Stricklin
Robert R. Stutler
Bobby G. Taylor
Gary G. Thomas
James M. Thomas
Terry N. Tracy
James A. Turner
Larry F. Vance
Robert L. Vincent
Ronald E. Webb
Willis D. White
Wayne D. Wildgrube
George E. Williams
Leroy Williams
Bruce M. Windsor, Jr.
Stanley G. Woinoski
James Y. Yantorn
Richard L. Yoerk

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W-3 under the provisions of title 10, U.S. Code, section 563:

Garland G. Aaron
Duff E. Alger
George R. Allen
Daniel L. Amoroso
Alfred M. Bancroft
Joseph F. Beard
Henry Bookhardt
Thomas J. Borowitz
Roger L. Bouffard
Joseph S. Boyd
Harold M. Brown, Jr.
Lemuel F. Brown
Joseph B. Burroughs, Jr.
David A. Carver
Virgil S. Cieplowski
George N. Class
Paul L. Cline
Michael L. Collier
Willie L. Combs
James R. Conner
Truman W. Crawford
Joseph H. Creech
Stephen H. Czaikoski
Ronald J. Czosnyka
Walter W. Damewood, Jr.
John W. Davenport
Mickey L. Deberry
Donald F. Deline
Donald L. Doggett
Donald D. Douglas
Stephen A. Epley
William C. Farley
Robert D. Farmer
Paul T. Filla
Robert W. Flanagan
Frederick J. Flihan
Michael W. Gaston
George V. Gaulin
Richard L. Geiger
Alfonso N. Giglia
David L. Goolden
Robert E. Grossnickle
Elias Gutierrez
Michael D. Hamm
Michael R. Hannappel
Peter Heelem
Tony A. Helms
Marvin W. Henry
Raymond F. Hopton
Mark C. Hunt
Martin L. Hunter
Douglas M. Hurst
Richard E. James
James E. Jewell
James I. Johnson
Martin B. Johnson
Charles L. Jones
Joseph M. Jones
Kenneth J. Jungwirth
Helmut J. Kalman
Alexander K. Kaonohi, Jr.
Linda A. Klepetka
Paul J. Klepper II
Chester E. Knight
Robert J. Leiston
Stuart A. Livensparger
Jerome E. Livingston
James R. Lloyd
Morgan J. Lofton
John E. Long
Paul E. Long, Jr.
Homero R. Lopez
Merle E. Mackie, Sr.
Joseph A. Masser
Gary L. McGrath
Francis W. McKinney
Bruce A. McMahon
Edwin D. Miller
Robert H. Moore
Robert E. Moorehead
Thomas W. Mosman
Daniel S. Mullins
Clarence E. Myers
Melvin P. Neu
John B. Noel
Daniel J. O'Connell
Bradley P. Patch
Ralph A. Pineda
Geronimo Polanco, Jr.
Howard W. Randler
Ralph J. Ricker
Lloyd A. Robinson
Marvin C. Rodney
Castell S. Rolle, Jr.
Charles R. Romero
Ronald P. Rook
Louis L. Rosanelli
John W. Rothwell, Jr.
David T. Rowe
Bob A. Rowinsky
Robert E. Sandlin, Jr.
Thomas H. Sanford
Javier Santacruz, Jr.
Donald L. Scanlon, Jr.
Fred J. Shane
William H. Shepard
Charles K. Sherry, Jr.
Gary G. Simmons
Charlie F. Smith
Lyle W. Smith
Paul Sofranac
Clinton D. Stannard
Thomas S. Sterling
Joseph E. Strickland
Steven E. Sunn
Doyle W. Tampleton
James C. Thomas
Wesley L. Thomas
Charles E. Thompson
Garvin O. Tootle
Felipe Torres
Wayne G. Twilliger
David Venegas
William D. Vickers
Francis R. Walker
James T. Walsh
Gerald L. White
Lawrence J. White, Jr.
William E. Whittaker, Jr.
Donald E. Wiggins
Leonard D. Wilson
John D. Winchester
John C. Wing
Jerrold A. Wohlfarth
W. L. Wolf
David R. Wood
Billie Young

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W-2 under the provisions of title 10, U.S. Code, section 563:

William D. Adkins
James M. Ainsworth
William J. Aldrich
Ronald H. Allbritton
Patrick S. Allen
Richard Amano
George W. Artis
Michael D. Ash
Johnnie E. Ashe
Everett R. Atwell
William S. Ayers
Anthony Azzaretto
Robert R. Back
Timmy A. Bahr
Wesley W. Bailey
James D. Baker
Richard J. Ballentine, Jr.
Robert A. Bath
Bobbie L. Best, Jr.
James R. Blakley
James M. Blaschak
Frederick S. Bobo
Burl D. Bolton
Anthony Bonaro
John W. Bowden III
Donald H. Bowen
James E. Brevell
John E. Brown
Michael G. Canterbury
Dandridge S. Carter
Michael D. Carter
Dennis Carver
Daniel D. Cary
Douglas L. Case
Robert Castro, Jr.
Arlene J. Chandler
John W. Chandler
Jose C. Chavez, Jr.
Donald G. Cifelli
Donald P. Cone
Joseph C. Cook, Jr.
Patrick L. Crabtree
Douglas B. Craig
Dwight D. Craig
Kevin R. Crooks
Daniel F. Crowl
Michael K. Cummings
Anthony R. Damiano, Jr.
Richard C. Daniels
Ronald J. Davidson
Edgar Davis
Gunnar F. Davis
Joseph R. Davis
Michael R. Davis
Rickey D. Davis
Joseph W. Deanes
Roger D. Denoncourt
David L. Dorssom
Rodney R. Downie
Gerald W. Earnest
Terry W. Earnest
Robert C. Edelbrock, Jr.
James R. Edwards
Ernie L. Ellis
James L. Ewadinger
Michael J. Farmer
Claudie Farrior, Jr.
Gordon R. Finklea
Gary D. Fraley
Clarence N. France
Edward D. Freeman
Douglas Frierson
Frederick G. Fryer
William J. Gaerttner
Daniel Gallo
Michael J. Ganey
Jan D. Garber
Jose T. Garcia
Robert M. Garner
Charles B. Garrette
Robert C. Georgeson
Dennis E. Giddings
Sam H. Gingles, Jr.
Mario A. Gomez
Frederick H. Grant
Kenneth R. Green
Melvin D. Green
William T. Greer
Rose Guido
Charles S. Guthrie, Jr.
George M. Haase
David W. Hambrick
Peter B. Hamilton, Jr.
David E. Hamm
William K. Hart
Boyette S. Hasty
James W. Hazelwood, Jr.
Richard E. Herbert
Michael P. Hester
Terry L. Heumann
Benjamin F. Hill, III
Shari L. Hodson
Leonard J. Houghtaling
James L. Hughes
Gary L. Hullopeter
Robert C. Jamieson
Mark A. Johnson
Michael D. Johnson
Robert W. Johnston
Paul J. Jolicoeur
Claud R. Jones
Wayne D. Jones
Paul M. Jungel
Kenneth E. Karlson
Ralph E. Karras
John J. Kassay, Jr.
David L. Kidwell
Stanley F. King, Jr.
Marvin Kiser
Franklin T. Knight
Bruce W. Knippel
Leon G. Kobe
William M. Kosar
Robert D. Kreps
Christian Kroener III
Robert M. Labrousse
Gilbert J. Ladrini, Jr.
Dawaine H. Lake
Michael A. Landenberger
James D. Langford
Herman C. Larkin
Frank R. Lawson
Walter S. Lawson
Paul F. Lease
Jimmy P. Ledbetter
Joung O. Lee
Charles H. Legeyt III
Richard G. Lemasters
John M. Leonardi
Kevin H. Lindgren
Stephen A. Loconto
Benjamin Lovato, Jr.
William D. Lowery
Brian R. Martin
Raymond I. Martin, Jr.
Nicholas E. Massal
Charles S. McConnell III
Patrick J. McGrath
William C. McKee
Gerald L. McNutt
Charles A. McWilliams
Dannie A. Miller
David K. Miller III
Joseph A. Miller
Stanley H. Miller
Steven C. Miller
Howard D. Midgley
Dwight W. Mitchell
Nathaniel Moon
Stephen J. Moore
David L. Moser
Ralph N. Moslener
Cleve L. Mullins
Richard L. Myers
Mark A. Nall
Frank A. Nesbitt
William W. Newton
James A. Nix
Charles P. O'Donnell
Roy F. Oehler III
Dennis K. Oermann
Benjamin P. Oseguera
Andy G. Owens
Jerry D. Parrish
James F. Parslow
Wayne I. Paulson
David T. Penn
Domingo Perez
Bruno F. Perry
Willie J. Peterson
Thomas J. Pfaffenberger
Johnny W. Phipps
Clarence G. Pierre, Jr.
Thomas I. Pitt
Winnis G. Preece
Michael A. Puhr
Mark C. Radeleff
Terry A. Rademann
Floyd A. Rauch, Jr.
Marcus T. Reed
Alec W. Reese
Michael T. Riley
Charles E. Ripley
Steven G. Ritacco
Michael L. Robinson
Robert R. Ross, Jr.
Joseph A. Rowan, Jr.
Frank L. Runa, Jr.
Edwin Santiago
Jerome F. Schelle
John T. Severson
Daniel P. Shea
James M. Sheffer
George S. Sherwood
Douglas G. Slock
Dennis G. Smarsty
Jerry W. Smith
Thomas F. Smith
William J. Smith
Karl P. Snipes
Robert A. Softekouw
Larry M. Starnes
Johnny J. Stiltner
Dale W. Stone
Charles W. Taff
Robert P. Tate
James V. Thames, Jr.
James F. Thompson
John M. Thornton
Russell R. Thurman
James D. Tomerlin
John L. Tucke
Michael P. Tucker
Charles L. Turbyfill
Alan G. Vanaken
Jerry M. Vickers
Timothy A. Walker
Jack L. Warford
William S. Watkins
Terrence M. Westerman
David J. Wherry
Wesley Wieckowski
Henry Willis
James R. Willmon
Joe L. Winbush
Jeffrey P. Woicik
Roger L. Woodruff
Richard F. Wyatt
Douglas F. Wyss
Charles W. Yates, Jr
Raymond P. Yinger, III
Allen F. Young
John R. Zimmerman

The following-named Naval Reserve Officer Training Corps graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, pursuant to title 10, U.S. Code, section 2107, subject to the qualifications therefor as provided by law:

David B. Garvey
Mark E. Geary
Gary M. Schroeder
Eva G. Spelter

## Executive nominations received by the Senate September 6, 1978:

### National Corporation for Housing Partnerships

The following-named persons to be members of the board of directors of the National Corporation for Housing Partnerships for the terms indicated:

Patricia K. Ritter, of Connecticut, for the term expiring October 27, 1980, vice Henry F. Trione, term expired.

Kennon V. Rothchild, of Minnesota, for the term expiring October 27, 1979, vice Raymond Alexander Harris, term expired.

Herman J. Russell, of Georgia, for the remainder of the term expiring October 27, 1978, vice Charles J. Urstadt, resigned.

Herman J. Russell, of Georgia, for the term expiring October 27, 1981 (reappointment).

IN THE NAVY

The following-named officers of the U.S. Navy for permanent promotion to the grade of rear admiral, pursuant to title 10, United States Code, section 5781.

MEDICAL CORPS

Almon C. Wilson
J. William Cox

SUPPLY CORPS

Shirley D. Frost
Gerald J. Thompson

CIVIL ENGINEER CORPS

William M. Zobel

DENTAL CORPS

John B. Holmes

# HOUSE OF REPRESENTATIVES—*Wednesday, September 6, 1978*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

*Thus saith the Lord God; in returning and rest shall you be saved; in quietness and in confidence shall be your strength.*—Isaiah 30: 15.

Almighty God, our Father, returning from a busy work period we turn to Thee praying that we may feel the touch of Thy spirit upon us as we begin the work of a busy month. As we labor day by day grant unto us wisdom for the decisions we have to make, courage to carry out our decisions for the benefit of our people, and good will to motivate us in our endeavors.

Guide our President and the leaders of Egypt and Israel as they seek to find a way to live together in peace, with justice and for good will. In so doing may they strengthen the causes of freedom and peace in our world.

We pray for Pope John Paul I. May he lead his followers and all people in the ways of truth and love. God bless him as he assumes his place of leadership in his church and in the hearts of all good people; for Thy glory and the benefit of the human race. Amen.

## CALL OF THE HOUSE

Mr. ASHBROOK. Mr. Speaker, under clause 1, rule I, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 724]

| | | |
|---|---|---|
| Abdnor | Diggs | Harrington |
| Alexander | Dodd | Harsha |
| Ambro | Dornan | Hillis |
| Ammerman | Drinan | Hollenbeck |
| Armstrong | Duncan, Oreg. | Huckaby |
| Beard, R.I. | Edgar | Hyde |
| Bellenson | Edwards, Okla. | Johnson, Colo. |
| Bevill | English | Jones, Tenn. |
| Boggs | Erlenborn | Kasten |
| Bonker | Evans, Ind. | Krueger |
| Breckinridge | Fary | Lagomarsino |
| Buchanan | Fithian | Lehman |
| Burke, Calif. | Flippo | Lent |
| Burke, Fla. | Flood | Lloyd, Tenn. |
| Burleson, Tex. | Flowers | McCormack |
| Burton, Phillip | Ford, Mich. | McDonald |
| Byron | Ford, Tenn. | McEwen |
| Chappell | Forsythe | McKinney |
| Chisholm | Fraser | Mann |
| Clawson, Del | Frey | Mikva |
| Cochran | Fuqua | Milford |
| Conyers | Garcia | Miller, Calif. |
| Cornwell | Gibbons | Myers, Gary |
| Coughlin | Goldwater | Nichols |
| Dent | Hall | O'Brien |
| Devine | Hansen | Oakar |
| Dickinson | Harkin | Pattison |
| Pettis | Sawyer | Thone |
| Poage | Scheuer | Traxler |
| Pressler | Shipley | Tsongas |
| Preyer | Sisk | Tucker |
| Quie | Skubitz | Udall |
| Quillen | Spellman | Wiggins |
| Rahall | Steiger | Wilson, Tex. |
| Richmond | Stokes | Wirth |
| Roberts | Stump | Wright |
| Rodino | Symms | Wydler |
| Rostenkowski | Taylor | Young, Alaska |
| Sarasin | Teague | Young, Tex. |

The SPEAKER. On this rollcall 315 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

## THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

## MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 15. An act to extend and amend expiring elementary and secondary education programs, and for other purposes;

H.R. 112. An act to amend the Internal Revenue Code of 1954 to reduce the excise tax on the investment income of private foundations from 4 percent to 2 percent;

H.R. 1337. An act to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors et cetera;

H.R. 1920. An act to amend section 5064 of the Internal Revenue Code of 1954 to provide for refund of tax on distilled spirits, wines, rectified products, and beer lost or rendered unmarketable due to fire, flood, casualty, or other disaster, or to breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief while held for sale;

H.R. 3702. An act to amend title 10, United States Code, to make certain changes in the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan as authorized by chapter 73 of that title, and for other purposes;

H.R. 4319. An act to amend subchapter III of chapter 83 of title 5, United States Code, to provide that employees who retire after 5 years of service, in certain instances, may be eligible to retain their life and health insurance benefits, and for other purposes;

H.R. 4320. An act to amend chapter 83 of title 5, United States Code, to discontinue civil service annuity payments for periods of employment as a justice or judge of the United States, and for other purposes;

H.R. 6536. An act to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits;

H.R. 7320. An act to revise miscellaneous timing requirements of the revenue laws, and for other purposes;

H.R. 7819. An act to complement the Vienna Convention on Diplomatic Relations;

H.R. 8811. An act to amend section 7447 of the Internal Revenue Code of 1954 with respect to the revocation of an election to receive retired pay as a judge of the Tax Court;

H.R. 9471. An act to amend title 5, United States Code, to provide that Japanese-Americans shall be allowed civil service retirement credit for time spent in World War II internment camps;

H.R. 10126. An act to amend title 5, United States Code, to establish a program to increase part-time career employment within the civil service;

H.R. 10161. An act for the relief of Eastern Telephone Supply & Manufacturing, Inc.;

H.R. 12232. An act to amend the Unemployment Compensation Amendments of 1976 with respect to the National Commission on Unemployment Compensation, and for other purposes; and

H.R. 12380. An act to amend the Federal-State Extended Unemployment Compensation Act of 1970 with respect to an individual's eligibility period for benefits under such Act.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8149) entitled "An act to provide customs procedural reform, and for other purposes."

The message also announced that the Vice President, pursuant to Public Law 95–45, appointed Mr. STAFFORD (chairman), in lieu of Mr. SPARKMAN, resigned; and Mr. SCOTT to attend, on the part of the Senate, the 65th Interparliamentary Union Conference to be held in Bonn, Germany, September 2 to 14, 1978.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 15) entitled "An act to extend and amend expiring elementary and secondary education programs, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PELL, Mr. RANDOLPH, Mr. KENNEDY, Mr. EAGLETON, Mr. WILLIAMS, Mr. STAFFORD, Mr. SCHWEIKER, Mr. HAYAKAWA, and Mr. JAVITS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and a concurrent resolution of the following titles, in

which the concurrence of the House is requested:

S. 408. An act to amend title 5, United States Code, to extend certain benefits to former employees of county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act, and for other purposes;

S. 1274. An act to provide the Attorney General of the United States with authority to contract with State and local authorities for the safekeeping, care, and subsistence of all Federal prisoners;

S. 2366. An act for the relief of Keum Sun Lee;

S. 2570. An act to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes;

S. 2640. An act to reform the civil service laws;

S. 3036. An act to amend the Coinage Act of 1965 to change the size, weight, and design of the one-dollar coin, and for other purposes;

S. 3184. An act to designate the Indian Health Facility in Ada, Okla., the "Carl Albert Indian Health Facility";

S. 3274. An act to designate the United States Department of Agriculture's Bee Research Laboratory in Tucson, Arizona, as the "Carl Hayden Bee Research Center";

S. 3336. An act to enable the Department of Justice and the Administrative Office of the United States Courts to provide services and special supervision to drug dependent Federal offenders in an efficient and effective manner;

S. 3373. An act to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Troops on Foreign Soil meetings, and for other purposes;

S. 3375. An act to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines;

S. 3446. An act to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Ben Abruzzo, Maxie Anderson, and Larry Newman; and

S. Con. Res. 105. Concurrent resolution authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry.

## COMMUNICATIONS FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communications from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
*August 18, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted on August 17, 1978, the Clerk has received this date the following messages from the Secretary of the Senate:

That the Senate agree to the amendments of the House of Representatives to the amendments of the Senate numbered 1, 5, 19, 20, and 33 to H.R. 13468; and

That the Senate agree to the Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 12602.

With kind regards, I am,
Sincerely,
EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*

WASHINGTON, D.C.
*August 21, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted on August 17, 1978, the Clerk has received this date the following message from the Secretary of the Senate:

That the Senate passed without amendment H.R. 8342, An Act to amend title 5, United States Code, to provide for the application of local withholding taxes to Federal employees who are residents of such locality.

With kind regards, I am,
Sincerely,
EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*
By W. RAYMOND COLLEY,
*Deputy Clerk.*

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WASHINGTON, D.C.,
*August 23, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted on August 17, 1978, the Clerk has received this date the following messages from the Secretary of the Senate:

That the Senate passed without amendment H.R. 185, Coast Guard employees and H.J. Res. 554, D.C. representation;

That the Senate agree to the Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the House of Representatives to the bill S. 9;

That the Senate agree to the Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 12240; and

That the Senate agree to the Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 12927.

With kind regards, I am,
Sincerely,
EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*

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*Washington, D.C.,*
*August 28, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted on August 17, 1978, the Clerk has received this date the following messages from the Secretary of the Senate:

That the Senate passed without amendment H.R. 2952, H.R. 3532, H.R. 7161. H.R. 7162, H.R. 8397, H.R. 8471, and H.R. 13235;

That the Senate passed without amendment H.J. Res. 773 and H.J. Res. 1014;

That the Senate agree to the amendments of the House of Representatives to the amendments of the Senate numbered 3 and 4, and that the Senate agree to the amendment of the House of Representatives to the amendment of the Senate to the title of the bill H.R. 2931;

That the Senate agree to the Report of the Committee of the Conference on the disagreeing votes of the two Houses on the amendment of the House of Representatives to the bill S. 1633; and

That the Senate agree to the Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 13467.

With kind regards, I am,
Sincerely,
EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
*August 18, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a sealed envelope from the White House, received in the Clerk's Office at 6:20 p.m. on Thursday, August 17, 1978, and said to contain "H.R. 10929, An Act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes," and a veto message thereon.

With kind regards, I am,
Sincerely,
EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*

## DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1979—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95-377)

The SPEAKER laid before the House the following veto message from the President of the United States:

*To the House of Representatives:*

I am returning without my approval H.R. 10929, the "Department of Defense Appropriation Authorization Act, 1979." I am doing so because I cannot, consistently with my constitutional responsibilities, sign into law a bill that in my view would weaken our national security in certain critical areas and wastes scarce defense dollars. The Congress' inclusion in this bill of a number of lower priority programs would force out of our defense budget certain central elements of our program, items needed now to modernize and bolster our military forces.

I believe that the defense of the United States needs to be strengthened. An adequate defense is the single most important concern I have as President. Accordingly, I submitted to the Congress in January of this year a budget request for the Department of Defense which would if enacted provide the defense we need. It requested $126.0 billion for the Department of Defense for Fiscal Year 1979. That amount was judged by me and by the Secretary of Defense to be adequate to provide for the military security of this country in Fiscal Year 1979, provided it was wisely spent.

The bill I am returning does not spend wisely. Instead, it actually would lead to less defense capability than I have requested. It does this by eliminating funds for high priority defense requirements and adding funds for purposes which do not meet our defense needs. Most notably, it would take nearly $2 billion from the total and set it aside

for purchase of a nuclear-powered aircraft carrier—a ship which in the end would cost at least $2.4 billion, plus additional billions for its aircraft and the additional ships needed to defend and escort it.

We need more immediate improvements in our defense forces. A new nuclear-powered aircraft carrier would not be commissioned until 1987.

To spend $2 billion in defense dollars in that way would ignore much more serious and immediate defense needs. Other programs have been cut, during the appropriation process as well, to stay within Congressional budget limits. The effect would thus be to take away funds urgently needed by the Army, Navy, Air Force and Marine Corps for high priority programs—and to use those funds to build the most expensive ship in history. The result would be to weaken our military security in several critical areas, particularly during the next two years, at a time when we should be strengthening it. Within the $126.0 billion allocated for defense, we cannot have both an adequately balanced defense program and the luxury of an unneeded nuclear-powered aircraft carrier.

In pushing a nuclear-powered aircraft carrier into a $126.0 billion defense budget, H.R. 10929 would result in reduction or elimination of these essential programs, and a consequent weakening of our defense posture:

—*Weapons and equipment for the Army.* I requested a $1 billion increase to strengthen our ground forces, particularly our NATO-oriented forces, by providing more helicopters, combat vehicles and ammunition for our front-line forces. Adding the nuclear-powered aircraft carrier means eliminating $800 million of that increase.

—*Weapons and equipment for the Air Force.* I requested more funds for airlift, electronic warfare equipment and electronically guided ordnance. Adding the nuclear-powered aircraft carrier means eliminating $200 million of this increase.

—*Readiness funds.* It makes no sense to have military forces if their equipment is not in condition to fight. I requested an increase of $1 billion for items which are not glamorous, but which provide the immediate fighting capability of our forces—funds (requiring appropriation but not prior authorization) for repairs of weapons, spare parts for vehicles and aircraft, ship overhauls, training of personnel, communications, and logistical suppport to move equipment to where it is needed. Adding the nuclear-powered aircraft carrier means eliminating half of that increase in fighting capability—some $500 million.

—*Research and development.* To sustain our position of excellence in a world of weapons increasingly dependent on technology, I requested a 3% real growth in defense research and development. Adding the nuclear-powered aircraft carrier leads to an actual reduction in research and development. The bill also shifts some R&D funds from high priority programs to less important ones.

Our Navy has for a decade been moving in the direction of larger and larger, more-and-more-costly ships, and fewer of them. As a consequence our fleet today is smaller than at any time since 1940. We need a fleet that includes more vessels that can perform our Navy's mission but that are not, as this one would be, so designed as to be prohibitively expensive to build. The Navy does not need a fifth nuclear-powered aircraft carrier. It can maintain a twelve-carrier fleet and maintain the fighting capability it needs from a conventionally powered carrier, which I shall request in my budget for next year, at a saving of $1 billion for that single ship. Without this kind of discipline and control of the cost of ships, our Navy will not long be able to carry out its missions.

For these reasons, I must withhold my approval from H.R. 10929. I adhere firmly to my request that the Congress provide $126.0 billion for defense in Fiscal Year 1979. But I ask that the Congress delete the authorization for the nuclear-powered aircraft carrier, and use that essential $2 billion of that $126.0 billion instead for as many of our programs as possible from the following critical areas:

*$1 billion for Army and Air Force equipment*—For helicopters, transport aircraft, combat vehicles, electronic equipment, ammunition and ordnance and other weapons and equipment.

*$500 million for improving readiness in all the armed services*—For a wide variety of items, ranging from repair of weapons to spare parts stockage to improved training and logistical support.

*Up to $500 million for research and development*—For programs proposed in my FY 79 budget but deleted by one or another Congressional action.

*Naval Ships*—It is crucial to maintain an appropriate overall annual level of ship construction. The Congress should return all of the general purpose ships requested in our budget.

These are the ways in which our defense dollars need to be spent. These are the ways in which they will add to our military security, by obtaining the greatest military capability for each dollar and by focusing the effort where more effort is needed.

In light of the continuing Soviet build-up, we must not reduce our own real defense capability, either by cutting the budget amount I have requested, or by substituting for high priority defense requirements programs which are less urgent or less effective.

If we do not spend our defense dollars wisely, we do not provide adequately for the security of our country. I know that the Congress and I share common goals. I ask the Congress to cooperate with me to help our armed forces use their funds in ways which produce the greatest fighting power, and to provide the men and women of our armed forces with the kinds of weapons, equipment and other items of support which they need to do their jobs.

JIMMY CARTER.

THE WHITE HOUSE, *August 17, 1978.*

The SPEAKER. The objections of the President will be spread at large upon the Journal, and the message and bill will be printed as a House document.

Pursuant to the order of the House of August 17, 1978, further proceedings on the veto message will be postponed until Thursday, September 7, 1978.

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
*August 21, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, U.S. House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a sealed envelope from the White House, received in the Clerk's Office at 12:52 p.m. on Monday, August 21, 1978, and said to contain a message from the President wherein he transmits the report on international transfers of technology required by section 24(c) of Public Law 95–92, the International Security Assistance Act of 1977.

With kind regards, I am,
Sincerely,

EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*
By W. RAYMOND COLLEY,
*Deputy Clerk.*

## REPORT ON INTERNATIONAL TRANSFERS OF TECHNOLOGY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on International Relations:

*To the Congress of the United States:*

I transmit herewith the report on international transfers of technology required by section 24(c) of Public Law 95–92, the International Security Assistance Act of 1977.

JIMMY CARTER,
THE WHITE HOUSE, *August 21, 1978.*

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
*August 31, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a sealed envelope from the White House, received in the Clerk's Office at 2:35 p.m. on Thursday, August 31, 1978, and said to contain a message from the President wherein he transmits a Federal Pay Comparability Alternative Plan.

With kind regards, I am,
Sincerely,

EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives*
By W. RAYMOND COLLEY,
*Deputy Clerk.*

## FEDERAL PAY COMPARABILITY ALTERNATIVE PLAN—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95–378)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Post Office and Civil Service and ordered to be printed:

*To the Congress of the United States:*

Under the Pay Comparability Act of 1970, an adjustment in Federal white collar pay will be required on October 1.

I have reviewed the report of my Pay Agent and the recommendations of the Advisory Committee on Federal Pay relative to a pay adjustment. Their findings indicate that an average 8.4 percent increase, at a cost of $4.5 billion, will be required to achieve comparability with the private sector.

I support comparability in pay between the Federal Government and the private sector. It is essential to ensure that the Federal Government continues to attract and retain qualified and dedicated employees. The Federal Government's civilian and military personnel have given the country loyal and competent service, and I would normally have no hesitancy in ordering a pay raise achieving comparability. However, pay comparability must be viewed in the light of the overall economic situation now facing our country. For that reason, my decision about pay comparability this year is especially difficult.

Today the greatest single threat to our national economic growth and the jobs and prosperity of our people is inflation. It persists because all of us—business and labor, farmers and consumers—are caught on a treadmill that none of us stop alone. Each group desires to raise its income to meet rising costs; eventually we all lose the inflation battle together.

To curb the wage and price spiral, I proposed last spring that in each industry and sector of the economy, wage increases this year be held significantly below the average increases for the two preceding years. The Federal Government should set an example in this effort. A Federal white collar civilian and military increase of 5.5 percent would be consistent with this guideline.

The pay act gives me the authority to propose an alternative pay adjustment which I consider appropriate in the light of, "economic conditions affecting the general welfare." Therefore I am submitting to the Congress an alternative plan for a 5.5 percent pay increase. This will allow the Federal Government to set an example for labor and industry and lead the fight against inflation by example, and not just words alone.

Accordingly, I strongly urge the Congress to support the alternative recommendation which is attached.

JIMMY CARTER.

THE WHITE HOUSE, *August 31, 1978.*

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
*September 1, 1978.*

Hon. THOMAS P. O'NEILL, Jr.,
*The Speaker, House of Representatives,*
*Washington, D.C.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a sealed envelope from the White House, received in the Clerk's Office at 3:20 p.m. on Friday, September 1, 1978, and said to contain a message from the President wherein he transmits a report on progress made towards a negotiated settlement on Cyprus.

With kind regards, I am,

Sincerely,

EDMUND L. HENSHAW, Jr.,
*Clerk, House of Representatives.*
By W. RAYMOND COLLEY,
*Deputy Clerk.*

## REPORT ON PROGRESS MADE TOWARD A NEGOTIATED SETTLEMENT ON CYPRUS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95–379)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on International Relations and ordered to be printed:

*To the Congress of the United States:*

As required by Public Law 94–104, this report describes the progress that has been made towards a negotiated settlement on Cyprus in the past sixty days.

The last report described proposals submitted by the Turkish Cypriots on April 13, and noted several expressions of flexibility subsequently made by the Turkish side. In July there were further encouraging signs. Both the Government of Cyprus and the Turkish Cypriot leadership put forward fresh and promising proposals for the resettlement of the important commercial and resort city of Varosha (New Famagusta). Varosha has been deserted and under Turkish control since the 1974 fighting. Significantly, both sides foresee that progress on this issue will lead to a resumption of the intercommunal negotiations.

We have urged the two Cypriot parties to give these proposals careful consideration, and plan to continue to encourage a satisfactory compromise on Varosha, one we hope will lead them to reconvene the intercommunal negotiations under the aegis of the Secretary General of the United Nations.

Both the Congress and the Administration feel that the United States 1) should continue to play an active role in seeking a just and lasting Cyprus settlement, and 2) should continue to support the efforts of Secretary General Waldheim. On August 14, the conference committee on the Security Assistance Bill approved the language to end the Turkish Arms Embargo. I consider this action appropriate and necessary to our continuing impartial and constructive role.

JIMMY CARTER.

THE WHITE HOUSE, *September 1, 1978.*

## ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to announce that pursuant to the authority granted him on Thursday, August 17, 1978, he did on Friday, August 25, 1978, sign the following enrolled joint resolution:

House Joint Resolution 554, joint resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.

## ARE YOU SAFE IN AN AUTOMOBILE?

(Mr. COLLINS of Texas asked and was given permission to address the House for 1 minute).

Mr. COLLINS of Texas. Mr. Speaker, the Oversight Committee of Commerce has just completed an extensive study on car safety. This survey concentrated specifically on Firestone 500 automobile tires.

The basis of the survey was that over the past 5 years 34 people were killed in cars that had Firestone 500 tires. It was not shown conclusively that the tires themselves were the cause of any of these accidents as high speed and improper tire care were also contributing factors. But automobile safety data bears out that during this same 5-year period, about 106,000 people were killed in auto accidents involving the use of alcohol.

Yet the NHTSA has never come up with any study to solve DWI. Why not concentrate on our major automobile safety concern—drunk drivers.

Instead of worrying about 106,000, they concentrate on 34 cases. About 15 years ago, steel radial tries were introduced into the market on a large scale.

Just like the Model T Ford they started slowly and developed research and improved tires. When steel radial tires first came out, I left them alone, as I wanted to wait until they were fully developed.

Steel radial tires have successfully established many proved achievements. Steel radials get twice the mileage of regular tires. They provide 15 percent smoother ride on the highway. Steel radials get 15 percent better traction for safety on wet, slippery roads. Steel radials get 10 percent better gas mileage.

Yet we held hearings where some witnesses claimed that Firestone 500 tires had blown out under pressure. As the facts came out many cars were going at excessive speeds with some over 80 miles per hour. Also the facts indicated that many had low tire pressure. Many times the tires had been on rough and hot roads.

If the tires get twice the mileage, ride

smoother, save gasoline and provide better traction on slippery roads, that is a good record. The few tires with blowouts seemed to have the serious problem of a DWI driver, high speed or low air pressure.

I think this new Firestone 721 is as good as any tire on the road. After the hearings I had my two cars fully equipped with the Firestone 721.

Let's get on with something important. Let's find out how to get the DWI's off of the highway.

## INTRODUCTION OF CLARIFYING LEGISLATION TO GIVE TAX CREDIT TO HOG FARMERS

(Mr. GRASSLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GRASSLEY. Mr. Speaker, in 1971, during consideration of the Revenue Act passed in that year, the Senate Finance Committee stated specifically that the investment credit was to be allowed for "a unitary system for raising hogs which includes automatic feed systems, special airflow units, slatted flooring, pens and partitions." The committee noted further,

> There is no other practical use for the structure and it can, therefore, be expected to be used only so long as the equipment it houses is used.

Despite this crystal clear language, the IRS continues to disallow the credit for such facilities. Despite a specific tax court decision pertaining to a similar type of facility for poultry, in which the position of the IRS was overruled, the IRS continues to frustrate the efforts of farmers in need of the investment credit. Just this morning, the Wall Street Journal printed a story noting how hog supplies simply cannot grow adequately, in part due to the substantial investments that must now be made in hog facilities.

I have been in touch with the IRS on this matter on several occasions and, though in a recent letter the agency indicated its intent to publish a revenue ruling dealing specifically with hog facilities, it appears that we in Congress must act to get the IRS to recognize Congress' original intent. Thus, I have today introduced legislation to specifically clarify that intent as expressed in the 1971 Senate report, and to provide retroactively the credit many farmers should have received since that year, for investments in hog facilities.

## THE DETERIORATING SITUATION IN NICARAGUA

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks, and include extraneous matter.)

Mr. RUDD. Mr. Speaker, the situation in Central America is deplorable and is gradually deteriorating. The deteriorating situation in Nicaragua has been caused by the arguments on the floor of this House to withdraw support from that nation's Government and by the deplorable, vacillating foreign policy of President Jimmy Carter's administration. President Carter bases his nonsupport of the friendly, duly elected Nicaraguan Government on violations of human rights. In contradiction, he apparently supports human rights violators—our enemies, such as Fidel Castro in Cuba.

The withdrawal of support for the Government of the country of Nicaragua portends the taking away of freedoms of a freely elected government and the establishment of a Marxist government in that country, creating another Communist disaster for our own country and for the Western Hemisphere, causing problems for us for generations to come.

Mr. Speaker, this is as predictable as what happened in Fidel Castro's bloody takeover in Cuba.

## THE CARTER ADMINISTRATION'S FOREIGN POLICY BUNGLING IN LATIN AMERICA

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, certain State Department officials are conducting a calculated campaign of deceit and propaganda against our allied anti-Communist friends throughout Latin America.

A column by Rowland Evans and Robert Novak in this morning's Washington Post details the outrageous misinformation and lies about Argentina that have been stated in testimony before Congress by Assistant Secretary of State Patricia Derian.

Similar propaganda and behind-the-scenes action by other U.S. officials, which have all the appearances of left-wing zealotry against anti-Communist governments, has been targeted against Nicaragua.

Under the banner of human rights, Assistant Secretary Derian and other Carter appointees in the State Department have mounted a concerted assault on Latin American military governments that, because of the ever-present Communist guerrilla revolutionary activity in these countries, must maintain stability and freedom by implementing certain restrictions that are not acceptable in our own country.

Either the administration's officials in the State Department are hopelessly naive and misinformed about the true situation in Latin America, or they are ideologically alined with the revolutionary elements that seek to overthrow the legitimate governments of our allies. This is a situation that cannot be tolerated, and such officials should be dismissed.

I would like to include the Evans and Novak column at this point in the RECORD, along with two well-informed reports from Nicaragua by Arizona Republic Latin Affairs editor Harold Milks, which show that our allies are relying on astute Members of Congress to help maintain our friendships and stability in this important region of our hemisphere:

[From the Washington Post, Sept. 6, 1978]

"UNDIPLOMATIC" INCIDENT

(By Rowland Evans and Robert Novak)

A thrice-repeated but unsubstantiated indictment of Argentina by Assistant Secretary of State Patricia Derian testifying publicly before Congress reveals the shattering impact on U.S. foreign policy of human-rights crusading.

Under questioning Aug. 9 by the House Inter-American affairs subcommittee, human-rights chief Derian responded with language seldom used by one friendly power to another, accusing the Argentine regime of killings, kidnappings and torture. So harsh was her language that the State Department tried to expunge it from the record. But apart from being undiplomatic, there is considerable doubt of accuracy.

The impact could prove tragic for U.S.-Argentine relations and perhaps for Argentina itself. Moderate and pro-U.S. elements within the Argentine junta have been weakened; deterioration of the U.S. position in the strategic southern corner of South America has been accelerated.

This cannot be dismissed as merely unfortunate ardor by an idealist unfamiliar with diplomacy. Deterioration of U.S. relations with Brazil, Chile and now Argentina too closely follows the scenario of Latin American specialists in the Carter administration who privately predicted the human-rights crusade would foster the left in the Western Hemisphere.

Concern that the human-rights tail is wagging the foreign-policy dog is spreading in both the administration and Congress. On Capitol Hill, growing attention is paid to the imminent loss of up to $1.4 billion in sales to Argentina—including $620 million in Export-Import Bank transactions.

So, when Derian testified Aug. 9, she was asked by subcommittee chairman Gus Yatron (D-Pa.) why her human-rights office recommended against the Export-Import Bank loans. Even Derian's own aides were taken aback by her answer.

"The reason for our advice was the continuing violation of basic human rights by Argentina. The systematic use of torture, summary execution of political dissidents, the disappearance and the imprisonment of thousands of individuals without charge, including mothers, churchmen, nuns, labor leaders, journalists, professors and members of human-rights organizations."

Moments later, Derian repeated her indictment, adding "kidnappings" and "unwarranted killings" this time. In her soft Mississippi accent, she read the litany a third time, concluding, "We see nothing to indicate that there is a genuine trend toward human rights."

Horrified officials in the State Department's Inter-American Bureau crossed out Derian's indictment in the transcript, but it was too late. Wood had gone to Argentina, where Pat Derian has become a household word. The U.S. ambassador in Buenos Aires was called in for a stiff protest; the Argentine ambassador in Washington was called home.

The tragedy is that Derian's outburst may well weaken the junta's relatively moderate elements headed by the president, Gen. Jorge Rafael Videla, and strengthen the extreme right. While President Carter's human rights admonitions probably have improved condi-

tions in Argentina, the point of diminishing returns has been reached.

Apart from undiplomatic ravages, was Derian telling the truth? Her office insists the Argentine junta has "executed 3,000 persons since seizing power in 1976 and at least another 5,000 persons are missing. But those figures come from private sources of dubious reliability. U.S. government bureaus with vastly more experience than Derian's say the figures cannot be verified and seem inflated.

Actually, the junta, in confronting bloody far-left revolt in 1976, used an iron fist to prevent a communist takeover. But many killings and kidnappings are traceable to rightist paramilitary groups not under government control and should not be counted as government "executions." Moreover, objective observers agree that Argentina's human-rights record has improved markedly in the past year.

Those nuances are disregarded by Derian's office. While unable to draw distinctions between moderates and extremists inside the junta, the human-rights crusaders claim that military rule in Argentina cannot last much longer and that the United States should disengage from the junta. Such a prospect is rejected by Latin American experts, whatever their ideology.

But behind the naivete, a pattern emerges. Before Carter took office, a prediction was made by Brady Tyson, now with the U.S. mission to the United Nations, that human rights would be used to support revolutionary forces in the hemisphere. An identical prediction was made privately last year by Robert Pastor of the National Security Council staff. Derian's undiplomatic incident could help fulfill those prophecies.

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[From the Arizona Republic, Sept. 4, 1978]

NICARAGUA CHIEF "FED UP" WITH CARTER, BUSINESS PARTNER SAYS

(By Harold K. Milks)

MANAGUA, NICARAGUA.—President Anastasio Somoza has had it "up to here"—his neck—with the Carter administration but still depends on his friends in the U.S. Congress to maintain friendly relations, a Somoza confidant and business partner said Sunday.

Raymond Molino, a survivor of the Bay of Pigs invasion in Cuba and a bitter anti-communist, described Somoza's unhappiness with what Molino called the continued unfair treatment the Nicaraguan strongman has received at the hands of the Carter government.

A pro-Somoza newspaper, Novadades, published an interview Sunday in which Somoza reportedly said the Carter government "is in the hands of leftists and communists and shares with Russia the direction of a worldwide campaign against Nicaragua in an effort to oust Somoza from the presidency."

The comments by Molino, an unofficial spokesman for Somoza who said he was speaking as director of the Nicaraguan American Development Council, came in an interview during a weekend lull in a campaign by the leftist Sandinista guerrillas to end by force the 40-year-old Somoza family rule of this Central American nation.

"The Carter government is never satisfied with what Somoza does," said Molino. "In the name of human rights it makes demands and when these demands are met new demands are forthcoming which end with requests that Somoza resign."

Molino said this was the first time Somoza has spoken out so bluntly against what Molino described as "the leftist influences in Washington which have been harassing Nicaragua's leader."

Relations between Managua and Washington have been strained for some months over accusations that Nicaragua lacks human rights and Somoza's responses that the Carter administration has given strong moral support to procommunist forces opposing him in Nicaragua.

There were no reports of new anti-Somoza violence as Molino spoke to newsmen in the Managua Intercontinental Hotel near the "bunker," Somoza's home and headquarters within a military strongpoint in the heart of Managua.

A nationwide work stoppage aimed at forcing Somoza's resignation continued with government and anti-government sources disputing its effectiveness. There were reports that gasoline supplies were growing short in some areas of the capital. Officials said Somoza likely would order the national guard—Nicaragua's only armed force—to intervene if necessary to assure fuel for both public transport and private use.

While Nicaraguan officials hailed as a Somoza victory Venezuela's failure this weekend to persuade the U.N. Security Council to take action against alleged human rights violations here, Molino detailed what he called a Venezualan and Panamanian plot to help the Sandinian rebels in their campaign.

"They have a plan to help the Sandinian front to seize and hold at least one Nicaraguan city by force of arms," he said, "Then the two would recognize the rebels as a new government and would give them military, financial and political assistance in their campaign to unseat Somoza.

"This is similar to the plan the United States had at the time of the ill-fated Bay of Pigs (invasion) against Castro Cuba, to seize a portion of the country and set up a rival government which could be recognized by nations opposed to communism."

Sources here said such a plan would not be successful as long as Nicaragua's 7,500-man national guard, well trained and well armed, remains loyal to Somoza.

Molino, who lives in Florida, denied a report that Somoza had flown to Miami Sunday. He said the president was "somewhere in Nicaragua."

Military experts have noted that the Sandinista rebels who have been fighting the Somoza family for decades recently had shifted from rural to urban assaults.

They said there were three main rebel commands: one in the south led by a Costa Rican named Plutarco Hernandez, whose father is a communist member of the Costa Rican National Assembly; one in the north headed by Victor Tirado Lopez, a Mexican leftist guerrilla; and underground urban rebels responsible for numerous bomb and gun attacks against the Somoza regime.

These sources said the Somoza armed forces have identified 36 Sandinista guerrillas trained by the Palestine Liberation Organization, 18 trained in Russia and at least 86 trained in Cuba "where they maintained continuous contacts."

Several Sandinista commanders are not Nicaraguan nationals, these sources said, and at least 25 percent of the leftist activists are women.

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[From the Arizona Republic, Sept. 5, 1978]

"SOMOZA OR COMMUNISM," NICARAGUA LEADER WARNS

(By Harold K. Milks)

MANAGUA, NICARAGUA.—President Anastasio Somoza said in an exclusive interview Monday that the only choice for Nicaragua "is either Somoza or communism."

Rejecting any possibility that a so-called national government could rule this strife-torn country successfully before his own term ended in 1981, he added:

"I will not resign and turn Nicaragua over to certain domination by the communists. I do offer my people a good government ending in 1981 with free elections and a stable economic future."

The Nicaraguan strong man, target of criticism from such widely varying areas as the White House in Washington, the Castro government of Cuba and both Panama and Venezuela whose liberal rulers want him out, said his opposition "is on the run and cannot win."

"If the leftists take over Nicaragua a similar fate is in store for the rest of Central America," he said.

In an hour-long interview in his heavily guarded office, Somoza said such a takeover "is not going to happen."

As he spoke, his national guard troops were engaged in a massive roundup of political and business leaders responsible for a national work stoppage aimed at his removal from office.

Troops were also searching for terrorists who have been throwing bombs and building barricades in Nicaraguan streets since the strike began 11 days ago.

Conservative (opposition) Party spokesmen said at least 600 Nicaraguans have been arrested since Saturday including at least 40 political and business leaders.

"These people arrested will be charged with attempting to overthrow the government by force," Somoza said.

Lists of those arrested in Managua included a vice president of the National Institute of Development, an organization of businessmen and industrialists largely opposed to Somoza.

The institute vice president was seized Monday while en route to a news conference for foreign newsmen.

Others were Adolfo Calero, manager of the Coca-Cola bottling franchise in Managua, and Dr. Pedro Queintanilla, secretary general of a political group splintered from the Somoza party.

Friends said Dr. Noel Rivas, president of the Nicaraguan Chamber of Commerce which joined other groups in calling for the work stoppage against Somoza escaped immediate arrest when guardsmen searched his home while he was absent.

Somoza said the arrests followed days of investigation and "determination to keep the peace at any price."

"We were patient and gave the people of Nicaragua time to see the kind of people who are trying to force me out of office. But if they push we are going to push back and this is the result," he said.

The president said he has the loyalty of the national guard, Nicaragua's only armed force, "down to the last officer and soldier."

"And when my term ends and we hold a national election they will be just as loyal to the man who wins," he said.

Under Nicaragua's constitution, a president cannot succeed himself.

He attempted to soften previous reports that he had called the Carter administration leftist and communist.

"I have nothing against President Carter," he said softly. "Indeed, I am grateful that he attempted to get the president of Venezuela to moderate his actions against Nicaragua," he said.

"Our relations with the U.S. government and with the embassy here are normal and workable. But there are certain people in Washington who were against me and who were cooperating with the communists and they have since joined his (Carter's) government and they continue to work against me," Somoza said.

He said he was not prepared to name the men "at this time."

"But I do want the administration and my friends in the United States to know that they continue to work for my removal," he said.

Other Nicaraguan sources said the attacks on Somoza from Washington began two days after the Carter inauguration and were keyed to Carter's human rights campaign.

A dispute continued Monday over the effectiveness of the national work stoppage in Nicaragua.

Both Somoza and Roberto Incer Barquero, president of the Nicaraguan national bank, said the strike was about the same as it was Saturday. They estimated that about 25 percent of the large businesses and factories were closed.

Opposition leaders placed the figure at near 80 percent.

Somoza, who spoke repeatedly on the telephone with his field commanders and twice with persons in the United States during the interview, indicated he was ready to use whatever force was necessary to end the nationwide strike, the second this year.

A statement issued by the National Institution for Development denied that Nicaragua must choose between Somoza or communism.

"There is a third, democratic alternative," the statement said. "This implies social, political and economic reforms oriented toward improved living conditions for the Nicaraguan people."

There appeared little or no room for negotiation between the Somoza stand and that of his opponents.

Somoza said that if he should step down today the pro-communist rebels could move in unopposed.

Somoza's police measures have not completely eliminated those who would continue the tensions of an armed rebellion.

## CONSTITUTIONAL AUTHORITY OF COMMANDER IN CHIEF ON DEFENSE QUESTIONED

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, aside from President Carter's apparent confusion between the defense authorization bill and the defense appropriation bill, and aside from the erroneous contentions embodied in his veto message, the White House should be reminded that our Constitution specifically vests primary responsibility for the nature and size of our national defense in the Congress—not in the President, either as Chief Executive or as Commander in Chief.

When Stuart Eizenstat, Assistant to the President, appeared on television last week the question arose as to why the President would go to the extreme of vetoing a national defense bill, particularly when the Pentagon had concurred in most of its provisions. He responded that the President is also Commander in Chief, implying that as such he has the right to say what kind of defense we should have.

The fact is the Commander in Chief has no such constitutional authority, expressed or implied. The fact is that clauses 12, 13, and 14 of section 8, article 1, of our Constitution stipulates that—

> The Congress shall have the power: To raise and support Armies * * *; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval forces.

The role of the Commander in Chief is solely to administer and utilize to the best possible security advantage whatever we as representatives of the people provide.

In other words, just as the Constitution vests primary responsibility for the conduct of foreign relations with the President, the Constitution vests primary responsibility for the kind of national defense we shall have in the Congress.

We can take pride in the fact that the Congress has not allowed politics to enter into our foreign policy considerations but regret the President has allowed political considerations to enter into his veto of our defense bill.

## CIVIL RIGHTS COMMISSION ACT OF 1978

Mr. EDWARDS of California. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 12432) to extend the Commission on Civil Rights for 5 years, to authorize appropriations for the Commission, to effect certain technical changes to comply with changes in the law, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentlemen from California (Mr. EDWARDS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 12432, with Mr. DE LA GARZA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Friday, July 28, 1978, the bill had been considered as having been read and open to amendment at any point.

Are there any further amendments to the bill at this time?

Mr. BUTLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, during the district work period, some rather disconcerting news was reported on page 1 of the Washington Star. The Star learned that several employees of the Civil Rights Commission were involved in an alleged scheme to falsify time and attendance reports over a 6- or 7-month period. These discrepancies in pay purportedly involved the Commission paying overtime to full-time employees for work which was never performed.

Mr. Chairman, what is troubling in this instance is that the Commission never mentioned these abuses to the Subcommittee on Civil and Constitutional Rights, which is charged with overseeing the work of the Commission.

It may occur to some that it is not necessarily appropriate for the Commission to report these incidences to the Congress. I do not agree. The Subcommittee on Civil and Constitutional Rights held 4 days of hearings on this legislation, which not only extends the life of the Commission but authorizes appropriations for the next 2 fiscal years. Both the Commission and OMB testified on the Commission's budget request during these hearings. When we are specifically examining an agency's budgetary needs, we should be informed of any such discrepancies. It is entirely appropriate for the oversight subcommittee to be aware of how the Commission manages its money when we are deciding how much it should have.

The Star also indicates that as many as 10 employees are under investigation. In an agency of less than 300 employees this is, in my opinion, a serious matter. If an agency as small as this one could permit violations of overtime practices for as long as a 6- or 7-month period, this certainly is a matter about which our subcommittee should have been informed.

I cannot help but wonder whether we have given the Commission so much money that it feels it does not have to keep accurate records of its payroll and overtime allowances. With its expanded jurisdiction now reaching into the domain of the aged and the handicapped, the Commission will have additional employees and more money to monitor.

The most distressing factor in this unhappy set of circumstances are the charges raised by some Civil Rights Commission employees accusing the Staff Director and Commissioners of "covering up" allegations of embezzlement until the extension of the Commission's existence was whisked through Congress.

It is the obligation of the Judiciary Committee to learn whether these allegations are true. I urge the subcommittee to determine the scope of the overtime and pay discrepancies and to learn why we were not informed during one of our many hearings on this bill.

Mr. Chairman, I am inserting in the RECORD at this point a chart detailing the amount of overtime hours worked by employees in various pay grades during the first 10 months of fiscal year 1978.

*Number of employees, grade, and total overtime*

3; GS–2; 42 hours.
4; GS–3; 121 hours.
9; GS–4; 313 hours.
32; GS–5; 798 hours.
26; GS–6; 1,445 hours.
27; GS–7; 1,069 hours.
3; GS–8; 77 hours.
18; GS–9; 526 hours.
1; GS–10; 83 hours.
14; GS–11; 270 hours.
14; GS–12; 159 hours.
4; GS–13; 118 hours.
1; GS–14; 12 hours.
1; GS–15; 8 hours.

Apparently, employees over grade GS-10 have the option of being paid for overtime work or receiving compensatory time on an hour-by-hour basis. It would be interesting to learn from the Commission how much compensatory time was allotted for those in grades 11 and above and how much of this was for actual time spent at work.

Mr. Chairman, I am also inserting in the RECORD the article which appeared in the August 22, 1978, edition of the Washington Star:

RIGHTS UNIT EMPLOYEES INVESTIGATED

(BY BAILEY MORRIS)

The Justice Department is investigating allegation of embezzlement of Government funds by U.S. Civil Rights Commission employees, according to sources.

The scheme allegedly involved six to ten employees who were notified several weeks

ago by the U.S. attorney's office here that they had been placed under investigation, the sources said.

The Civil Rights Commission case is similar to one involving allegations of the doctoring of time and attendance by U.S. Forest Service employees who allegedly embezzled up to $100,000 over a two-year period. That case is in the hands of the U.S. attorney in Alexandria.

According to the sources, the Civil Rights Commission case involves the falsification of time and attendance reports by employees who put in for overtime payment ranging from $700 a person to $5,000 a person over a seven-month period.

The discrepancies, first discovered during an internal commission investigation and later confirmed by the FBI were charted only for a six- or seven-month period, sources said.

Results of the internal investigation conducted last April "were kept very quiet," sources said, because the commission's reauthorization for another 10 years was and still is pending before Congress.

Rep. Gladys Spellman, D-Md., said yesterday she planned to ask "the appropriate congressional committee to conduct an investigation to see whether the practice (embezzling funds by falsifying records) is widespread among government agencies."

Joan Kelly, spokesperson for the Civil Rights Commission, confirmed that an internal investigation had occurred and said administrative action involving three employees is pending.

One employee has resigned and another "was terminated," Kelly said. Still another employee was suspended for two months and is now back on the job, she said.

The administrative action could result in "suspensions or firings," Kelly said, and will be completed when the acting staff director, Louis Nunez, returns from vacation.

Some Civil Rights Commission employees have accused Nunez and others in management of trying to cover up the allegations of embezzlement for political reasons, sources said.

They claim that Nunez, a Nixon administration appointee who converted to career Civil Service status at the end of the Ford administration, did not want the matter made public until after the commission's extension is passed by Congress.

But Kelly disputed this view, saying the matter was handled as expeditiously as possible by the commission, which conducted its own investigation and then called in the FBI.

When the irregularities were confirmed, she said, the "Justice Department was notified, the U.S. attorney was called in and that is where it is now."

Mr. EDWARDS of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the news article that the gentleman from Virginia describes is factually defective in several respects, as to the number of employees involved, the amount of overpayment, the period of review, and the number of employees.

The news report strongly suggests a coverup by Commission officials in that they failed to notify the Congressional Oversight Committees in an effort to protect their Commission authorization request. Immediately upon reading the article, I requested the Commission explain the situation. The facts of the case show that after a Commission review of discrepancies in overtime payment versus actual overtime hours, the Commission itself found wrongful and possible criminal action on the part of seven Commission employees resulting in overtime payment of approximately $11,000 over an 18-month period.

After its preliminary investigation, the Commission itself notified the Department of Justice, and both administrative and criminal investigations are still pending. Mr. Chairman, I suggest that the Star characterization of this matter as a "coverup" is grossly unfair and inaccurate. In the Commission's own words, and I quote the Commission's own words, they say:

It did not notify Senate and House Oversight Committees earlier since the nature of the overtime problem encompassed internal investigation, criminal investigations and employee disciplinary actions. In deference to the rights of employees, and for the protection of the criminal investigation, the Commission has moved cautiously but expeditiously to resolve the problem.

Mr. Chairman, I regret that the Commission did not notify this subcommittee earlier, but I am satisfied that the Commission officials acted in a straightforward, lawful, and proper manner.

Mr. BUTLER. Mr. Chairman, will the gentleman yield for just one question?

Mr. EDWARDS of California. Yes, I yield.

Mr. BUTLER. Mr. Chairman, the gentleman will agree that should a similar occurrence be determined to exist hereafter by the Commission, it would be its responsibility to inform and to advise the subcommittee and its staff promptly of any developments of this nature?

Mr. EDWARDS of California. I am not at all sure that "at all times" is the proper way to describe it. Appropriate action should be, certainly, that the subcommittees of the Senate and House should be appropriately advised, and the Commission should certainly not be required to report to us about everything that they might suspect, with all sorts of problems of due process. I think they have used good judgment in this matter. Certainly, they have turned the matter over to the Justice Department at the appropriate time, and although perhaps it would have been more convenient for us to have known about it in advance, I will repeat that I am certain that the Commission officials have acted in a straightforward and honest manner.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding. What concerns me is that our Judiciary Committee serves as an Oversight Committee. The fact that we get information of wrongdoing, of criminal investigation of perhaps overpayment or wrongful payment through a newspaper article and not directly from the Commission is really an affront to our committee.

Would the gentleman not agree that it would be highly preferable for the Commission to have come clean and been straightforward with us with respect to the allegations and the fact that an investigation was on going, rather than to have this information come to us through newspaper articles, and then having to get the facts, the straight facts, as the gentleman reports he is now revealing them, from the Commission?

Mr. EDWARDS of California. I am not at all certain that I would agree 100 percent with the gentleman. The subcommittee also has legislative and oversight jurisdiction over the Federal Bureau of Investigation.

When some of their employees have disciplinary problems and perhaps even have engaged in what might be described as "criminal activity," we do not expect the Director to rush to the subcommittee and to tell us in advance about what they suspect and what kind of investigations they are making. At the appropriate time then we certainly expect to be advised by the Federal Bureau of Investigation and indeed by any agency over which we have a certain amount of jurisdiction. But I do not think the problem is as simple as that.

The CHAIRMAN. The time of the gentleman from California (Mr. EDWARDS) has expired.

(On request of Mr. McCLORY, and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 2 additional minutes.)

Mr. McCLORY. Mr. Chairman, will the gentleman yield for a further question?

Mr. EDWARDS of California. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, then the only question in my mind is whether it is not preferable for the committee to get its information directly from the Commission rather than from a newspaper article?

Mr. EDWARDS of California. Yes, it would have been preferable. Yes.

Mr. McCLORY. I thank the gentleman.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I entirely agree that the protection of individuals would require that the agency not reveal to the committee the names of any who might have been suspected of wrongdoing. I think that would be outrageous unless the investigation is completed. But there is something that needs improvement in all our programs, whether CETA or any number of other programs. Perhaps, the FBI is a little different because of the necessity for secrecy, but it would help if all of the other agencies with which Congress has to deal would tell us whether the legislation needs correction or clarification or strengthening, so that we do not learn about wrongdoing from the newspapers.

I cannot tell you all that the newspapers are revealing to us in New Jersey about the CETA program. I have never heard anybody on this floor, and I do not know whether members of this Judiciary Committee, of which I am not a member, have known about what is going on. How can we draw up proper legislation, I ask my colleagues, unless we know where the possibilities for abuse lie, to say nothing of the actuality of abuse?

Mr. EDWARDS of California. I certainly agree with the gentlewoman that in all practical cases the oversight com-

mittees and subcommittees should be advised as to what is going on. However in this particular case, while it would have been better for us to have learned it directly, I want to reemphasize that after our examination or study of what the Commission on Civil Rights did, we feel that they acted appropriately.

Mrs. FENWICK. I am sure they did, if the gentleman says so.

The CHAIRMAN. The time of the gentleman from California (Mr. EDWARDS) has again expired.

(On request of Mrs. FENWICK, and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 30 additional seconds.)

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I wish we could send out to all agencies through the chairman and ranking members of the subcommittees a request that they advise us as to where the weaknesses in the legislation are, and where the possibilities of fraud and mismanagement might lie, so we do not have to learn about these scandals from some newspaper article.

Mr. EDWARDS of California. Yes, I appreciate what the gentlewoman has said.

AMENDMENT OFFERED BY MR. TREEN

Mr. TREEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TREEN: Page 3, strike out the quotation marks on line 5, and after line 5 insert the following:

"(f) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.".

Mr. TREEN. Mr. Chairman, I am proud to join my colleague TOM HAGEDORN in proposing this amendment.

Our amendment is not designed to hamper the work of the Civil Rights Commission. Our purpose is to focus the Commission's attention on the issues for which it was created—denials of equal protection because of race, color, religion, sex, or national origin. Our colleagues in the minority of the Judiciary Committee have pointed out that the Commission has not issued one report on discrimination based in religion and national origin since 1970. We would encourage the Commission to spend more of its resources in those areas and less on promoting the cause of abortion.

I first became interested in this subject when the Commission issued a report in April 1975, entitled "Constitutional Aspects of the Right to Limit Childbearing." I reviewed the statute establishing the Commission, because I could not believe that Congress had granted the Commission authority to issue reports on abortion. Antiabortion measures, such as the Hyde amendment, did not seem to constitute a denial of equal protection of the laws on the basis of race, color, religion, sex, or national origin. I asked GAO to review the Commission's authority to issue such a report.

The Comptroller General requested the Commission's justification of its actions. To quote GAO:

Since minority women are disproportionately represented among the poor, it is the Commission's judgment that the abortion issue directly affects the rights of minority women to equal protection. In its report to us on this matter the Commission states that there is a widely recognized connection between race, ethnicity, and poverty and that it was in this context that poverty was discussed in the Report.

The Comptroller goes on to cite an opinion of the Commission's General Counsel that—

There is a substantial issue whether the criminal abortion laws embody an unjustified, unequal burden on women.

Mr. Chairman, no one denies that, unfortunately, minorities are disproportionately represented among the poor. But that analysis surely does not authorize the Commission to appraise every law or policy of the United States or one of its States that may impact poor persons. There are those in the executive branch who contend that the tax bill now before Congress benefits middle and upper income taxpayers more than lower income taxpayers. Is it then the responsibility of the Civil Rights Commission to advise Congress that enacting H.R. 13511 would amount to discrimination against poor women, among whom racial and ethnic minority women are disproportionately represented?

The Civil Rights Commission surely does not have the mission of advising Congress that it must spend public funds on services of one sort or another for the poor, because not to do so denies "equal protection" to racial and ethnic minorities.

If we accept the reasoning that led the Commission to enter the field of Federal and State abortion policy, there is no limit to the scope of Commission activities. Let me cite the comments of the late David W. Louisell, professor of law at the University of California at Berkeley in a letter inserted in the RECORD by Congressman KINDNESS on the Hyde amendment controversy:

There are many instances where a person has a constitutional right to do something, but no right to have the public pay for it. For example, one has a constitutional right to possess pornography, but no right to have the public pay for it, or to have it put on public library shelves. One has a constitutional right to freely travel in interstate commerce, but no right to governmental air plane tickets. One has the constitutional right to send his or her child to private school, but no right to have the school supported from public funds . . . To attempt to make a constitutional equal protection argument . . . is preposterous.

We are not concerned with whether a Government policy is wise or not. We have congressional committees, and offices for policy development in most agencies, to consider the wisdom of our policies. The role of the Commission is to evaluate those policies in terms of the Constitution of the United States, particularly in light of the equal protection clauses of the 14th amendment which our courts have found applicable to both State and Federal Governments.

The Commission has raised equal protection questions about abortion in the past. It raised them most directly in a communication of July 18, 1977—sent without being requested—to the conferees on the Labor-HEW appropriations measure in 1977. Chairman Arthur Fleming told the conferees:

The prohibitions sought to be imposed by the House and the restrictions voted by the Senate are punitive and racially and economically discriminatory.

The 1975 report was previewed in correspondence between Chairman Fleming and Senator BAYH in 1975 in which Fleming said the Commission specifically urged the defeat of the Bartlett amendment, a variation on the Hyde amendment.

The 1975 report, "Constitutional Aspects of the Right to Limit Childbearing," sent to every Member of Congress, predicted "in all likelihood" restrictions on the use of public funds to pay for abortions would be declared unconstitutional by the Supreme Court and counseled Members that in passing such amendments they were only forcing the poor to undertake the legal expense of challenging patently unconstitutional laws. I do not doubt some of my colleagues voted against the Hyde amendment because of constitutional doubts made more compelling by the views of the Civil Rights Commission.

The Commission's analysis was erroneous. The U.S. Supreme Court in Maher against Roe found that the lower court had erred in holding that Connecticut's restrictions on use of public funds violated the Equal Protection Clause of the 14th amendment. To quote the court:

This case involves no discrimination against a suspect class. An indigent woman desiring an abortion does not come within the limited category of disadvantaged classes so recognized by our cases. Nor does the fact that the impact of the regulation falls upon those who cannot pay lead to a different conclusion. In a sense, every denial of welfare to an indigent creates a wealth classification as compared to nonindigents who are able to pay for the desired goods or services. But this Court has never held that financial need alone identified a suspect class for purposes of equal protection analysis . . . The District Court read our decisions in *Roe* v. *Wade*, supra, and the subsequent cases applying it as establishing a fundamental right to abortion and therefore concluded that nothing less than a compelling state interest would justify Connecticut's different treatment of abortion and childbirth. We think the District Court misconceived the nature and scope of the fundamental right recognized in Roe . . . were we to accept appellee's argument, an indigent parent could challenge the state policy of favoring public rather than private schools, or of preferring instruction in English rather than German, on grounds identical to those advanced here . . .

Finally, let me note that the Supreme Court decisions which were considered in the Commission's 1975 report were decided on due process grounds, not on grounds of "equal protection." In fact, the court in Doe against Bolton specifically stated that the equal protection ar-

gument advanced by plaintiffs "collapsed in all significant aspects" because of the court's other holdings.

I have a copy of the Commission's 1975 report "Constitutional Aspects of the Right to Limit Childbearing" if anyone would like to examine how responsible the Commission has been in appraising policies in this area in the past. I think that all of you will agree that it does not represent the best example of constitutional analysis available. Not only does it erroneously state that only two-thirds of the States are needed to ratify a constitutional amendment, but the report describes State laws requiring the consent of both parents before an abortion as violating the 13th amendment proscription of involuntary servitude. It finds that our colleague BILL WHITEHURST can have no "rational" purpose in proposing a States' rights abortion amendment to the Constitution except a desire to breed litigation. Why, the Commission even goes so far as to claim the Whitehurst amendment would authorize States to compel persons with a requisite number of children to undergo abortions in subsequent pregnancies.

This type of "appraisal" we do not need. It only serves to erode the credibility of the Civil Rights Commission on other subjects. I urge your support of the Hagedorn-Treen amendment.

Mr. HAGEDORN. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, the purpose of this amendment is to insure that the Commission does a better job in promoting legitimate civil rights objectives by making clear to it that it does not enjoy a roving commission to involve itself in whatever issue happens to momentarily attract its fancy.

In recent years, the Commission has made pronouncements, or issued weighty reports, on such issues as school busing, affirmative action, immigration, tuition tax credits, sterilization laws, insurance policies, and sex "stereotyping" on television. Although I personally question the propriety of the Commission asserting jurisdiction over much of this, I suppose that the creative and innovative legal counsels at the Commission can come up with some clever statutory justification.

I do not, however, read anything in the charter of the Commission which can justify its somewhat strident participation in the abortion controversy. This amendment would prohibit the Commission from further assertion of jurisdiction with respect to abortion.

In 1973, the General Counsel for the Commission, John H. Powell, Jr., expressed his opinion, in response to an inquiry from a Notre Dame law professor, that abortion was outside the ambit of Commission authority.

Shortly thereafter, with no change in statutory authority, and with no further direction from Congress or the appropriate committees, the Commission reversed this course. Its 1975 report on "The Constitutional Aspects of the Right to Limit Childbearing" concluded that virtually everything that Congress or the States wanted to do to limit the incidence of abortion, or the extent of public encouragement of abortion, was unconstitutional. The Commission even came to the remarkable conclusion that proposed amendments to the Constitution to limit abortions violated the 1st amendment of the Constitution.

The Commission managed to refute the antiabortion argument within the space of two sentences on page 74 of its analysis.

Since then, it has been active in lobbying Members of Congress in opposition to the Hyde amendment and similar measures. Its position can be summarized by its recommendations in its letter last year to conferees on the Labor-HEW appropriations bill:

> Congress should reject anti-abortion legislation and amendments and repeal those which have been enacted.

Mr. Chairman, I do not begrudge anyone their opinion on abortion. It is an issue that has heatedly separated this body on many occasions. But, whatever one's views on the substantive abortion issue, I think that most of us can agree that Federal agencies should not act on matters outside the purview of their legitimate authority. The issue of abortion, in itself, is a critical one—but, it is not a civil rights matter.

The Commission's statutory authority expressed in section 1975c(3) of the 1957 Civil Rights Act states that it shall appraise laws and policies of the Federal Government "in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin." Neither the Supreme Court decision in *Roe* v. *Wade* (410 U.S. 113), nor that in *Doe* v. *Bolton* (410 U.S. 179) was based upon a finding that State laws prohibiting abortion constituted denials of equal protection of the law.

In Doe against Bolton, the Court concluded that:

> The discrimination argument collapses in all significant aspects.

In both cases, State laws against abortion were struck down as violative of the due process clause of the 14th amendment which protected against State action what the Court referred to as the "right of privacy," including the "right" to terminate pregnancies.

Again in *Maher* v. *Roe* (432 U.S. 464), the Court held that abortion could not be justified on "equal protection" grounds finding that this provision did not require States participating in the medicaid program to pay nontherapeutic abortion expenses.

If both opponents of the Supreme Court decisions and the Supreme Court itself, as well apparently as a majority of this body, are in agreement that the abortion issue is not basically an "equal protection" issue, it seems rather presumptious of the Commission to act contrary to this. Whether the Commission likes it or not, their authority is limited. It has been limited by Congress to laws and policies which deny "equal protection of the laws of the Constitution."

To argue, as does the Commission that its involvement is on behalf of "equal protection of the poor" is quite simply to exceed its authority. It is, further, an argument on behalf of a Commission with few, if any, limits on its authority since there are few matters of economic policy that do not impact differently upon people based upon their wealth. In a sense, as noted by the Court in *Maher*, every denial of welfare benefits to an indigent creates a wealth classification as compared to nonindigents who are able to pay for such goods and services.

I strongly urge this body to pass this amendment so that the limited resources available to the Commission can be used in a manner in which they were intended.

[*Washington* v. *Davis* (426 U.S. 229): The disproportionate impact of a law, neutral on its face, does not warrant a conclusion of discrimination . . . A law is not unconstitutional solely because it has a racially disproportionate impact.]

Mr. EDWARDS of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this is a most troubling amendment, and I hope that it is soundly defeated by the committee. It has aspects of book burning about it. Here we established an agency to report to us and to report to the American people, and then we say that the agency cannot report to us. What are we afraid of? Have we not learned that restraints on free speech and on free inquiry are self-defeating?

The "Dear Colleague" letter of July 10 sent to us by the distinguished proponents of this amendment says that abortion is not a civil rights matter. I suggest that the authors of the amendment ask the distinguished gentlemen from Illinois (Mr. HYDE) the author of the Hyde amendment, who on April 5, 1976, in the CONGRESSIONAL RECORD at page 9414 states:

> The right to life is the most precious of all civil rights.

Or they should ask those who disagree with the gentleman from Illinois (Mr. HYDE) and who support free choice. They say that the right of privacy as enunciated by the Supreme Court protects women in their decision to choose an abortion. So both sides of this problem agree that the issue is one of civil rights.

The "Dear Colleague" letter also alleges that the General Counsel of the Commission stated that abortion is not within the scope of the Commission's authority. That statement is unsupportable. In 1971, yes, the General Counsel did say that there was no authority to examine "the effect of abortion on the rights of the unborn." This is still true. However, the "Dear Colleague" letter conveniently ignores the fact that in 1972 Congress expanded the Commission's jurisdiction to include discrimination on the basis of sex, and the General Counsel, Mr. Powell, concluded that this congressional action clearly gives the Commission authority to review abortion.

Mr. Chairman, the Commission has published over 250 reports since 1957. How many on abortion? One, and that was entitled, "The Constitutional Aspects of the Right To Limit Childbearing." Incidentally, this report does not advocate

abortions. There have also, between October 1977 and June 1978, been 112 congressional requests. How many have been requests on abortion? Only a few. The Commission by law must respond to congressional requests. One certainly cannot describe this as excessive.

Mr. Chairman, the Supreme Court has interpreted the Constitution in Roe against Wade and Doe against Bolton and has concluded that the law of the land is that the Constitution guarantees, with certain limitations, the woman's right to privacy in the decision as to whether or not to seek an abortion, and for Congress to rule with this amendment that we do not want to know more about this subject, that a publicly financed, factfinding agency may not study or report on this key issue seems to me to be timid, smacking of censorship, and totally not in keeping with a society whose very life depends on the free flow of information and ideas.

The Civil Rights Commission is an independent factfinding agency. It is bipartisan. It cannot be dominated by any political party. It has no enforcement power. Yes, from time to time it has suggested change. Sometimes we disagree with the suggestions that the Civil Rights Commission makes. It does not mean that we should indulge in congressional censorship. I certainly urge a no vote on the amendment.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I am happy to associate myself with the remarks of the chairman of the subcommittee. I concur fully with his judgment and his conclusions, and I hope the amendment is soundly defeated.

Mr. EDWARDS of California. I thank the gentleman from Massachusetts.

Mr. TREEN. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Louisiana.

Mr. TREEN. Mr. Chairman, with regard to the "Dear Colleague" letter the gentleman mentioned in which the gentleman from Minnesota (Mr. HAGEDORN) and I stated that abortion is not a civil rights matter, that sentence taken by itself is subject to the interpretation which the gentleman gave it.

The CHAIRMAN. The time of the gentleman from California (Mr. EDWARDS) has expired.

(On request of Mr. TREEN, and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 1 additional minute.)

Mr. TREEN. Mr. Chairman, will the gentleman yield further?

Mr. EDWARDS of California. I yield to the gentleman from Louisiana.

Mr. TREEN. Mr. Chairman, if I may proceed, in the context of our Dear Colleague letter, and as I tried to say in my remarks about my amendment, while abortion may be a civil rights issue, the Civil Rights Commission statute directs the Commission to study denials of equal protection of the laws under the Constitution. It does not grant jurisdiction over all so-called civil rights. There are a lot of rights, such as the right to counsel, the right to a speedy trial, and the right to travel from one State to another, but these certainly are not rights to which the Commission has been directed by the statute.

So we are not really saying that the abortion question is not a civil rights question in the broad sense of that term. But it is not an issue of discrimination based upon race, sex, or religion. Further, I reject the idea that an antiabortion provision amounts to discrimination based upon sex, although only women may have children. That would not be a gender-related discrimination. Such would apply to all persons who, of course, may have the capacity for childbearing.

Mr. BAUMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, when this bill was last debated on the floor on July 28, the gentleman from California (Mr. EDWARDS) and I engaged in a brief discussion of the amendment which was then pending, offered by the gentleman from Virginia (Mr. BUTLER) which would have outlawed lobbying by the Commission. That amendment was ultimately adopted.

At that time the gentleman from Maryland recalled to the gentleman from California (Mr. EDWARDS) the extreme and amazing coincidence last year when the Civil Rights Commission suddenly issued a report at the request of a Member of Congress—one of two such requests, I now learn from the remarks of the gentleman—asking for the opinion of this August Commission on the issue of abortion. The Commission report, which was lengthy and specific, citing the Constitution, the civil rights laws, and various other arguments, all in favor of abortion, appeared on the floor of this House, in the press, and in the media coincidental with a legislative battle on the so-called Hyde amendment at that time.

Since then the Commission report has been used repeatedly, as an argument in favor of Federal funding for abortions and indeed for abortion upon demand by the proponents of these odious views—at least many people hold them to be so.

It appears to me under the circumstances that the Civil Rights Commission has come down on the wrong side of the civil rights question. The right that we are concerned about is the right to life, a right of human beings that we thought was guaranteed even before the founding of this country. But the Commission has made itself an instrument of proabortion activities by its biased position on this issue, and by so doing it has placed itself as being against the most fundamental of all civil rights, the right to life.

Mr. Chairman, I think this amendment is perfectly in order, and the gentleman from Louisiana (Mr. TREEN) is certainly to be commended for offering it. I hope it is adopted.

● Mr. BUTLER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Minnesota (Mr. HAGEDORN) and the gentleman from Louisiana (Mr. TREEN).

Mr. Chairman, whatever one's view on the substantive questions concerning abortion in the United States today, this amendment deserves careful consideration.

The duties and responsibilities of this Commission are spelled out quite clearly in its legislative charter. The Commission is charged with appraising laws and policies of the Federal Government with respect to the denials of equal protection of the laws because of race, color, religion, sex, or national origin.

The Commission insists that this is an area over which it has jurisdiction to study. The gentleman from Louisiana questions this.

Regardless of your view of this, Congress undoubtedly has the authority to say where the Commission shall direct its inquiries. I agree with the gentleman from Louisiana that the question of the availability of abortion is one that the Commission should no longer pursue.

This is merely another area in which the Commission has attempted to expand its role unwisely. The Commission is much too busy trying to keep its work in the eye of the public and the media instead of providing the hard facts for the Congress and the executive branch.

As I have noted before during this debate, the Commission has not produced one report since 1970, concerning denials of equal protection of the laws based on religion or national origin. Yet the Commission found time to publish an elaborate and very costly report on abortion.

A concise statement by Congress concerning our desires on the Commission's activities in this area would send a message to the Commission that the Congress is serious when it asked the Commission to study the areas mentioned in its legislative charter.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana (Mr. TREEN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. M'CLOSKEY

Mr. McCLOSKEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCLOSKEY: Page 3, strike out line 10 and insert in lieu thereof the following: "year ending September 30, 1981. The President shall conduct an investigation of the Commission's overall performance, including the study of the Commission's effectiveness in accomplishing its functions and not later than 180 days before the Commission ceases to exist under subsection (d) make public and submit to each House of the Congress a report of the results of that investigation. The committees of the House and Senate having primary oversight responsibility with respect to the Commission shall, not later than 90 days before the Commission ceases to exist under subsection (d), each conduct an inquiry into the performance and effectiveness of the Commission and make public a report of that committee's findings, conclusions, and recommendations".

Mr. McCLOSKEY. Mr. Chairman, I offer this amendment to the Committee, which simply does two things. It extends the life of this Commission for 3 years instead of 5, and it requires that in the last 6 months of the Commission's statutory life that a study be made by the

President, as well as by the committees of jurisdiction of the House and the Senate, as to whether the Commission is doing the job which it is mandated.

Mr. Chairman, I would call to the Committee's attention that there are two fundamental concerns of the House in this connection. We have the very real desire that our civil rights laws be adequate and that they be enforced.

That the laws be adequate is the job of the Congress. We owe the duty to enact proper laws if existing laws are not adequate. And it is the job of the executive branch to enforce the civil rights laws that we enact. In that connection, we in the Congress exercise an oversight function on the executive branch to make sure that they are enforcing the laws, and, if they are not, that we see that they enforce the laws or that we change the laws to make them enforceable.

The sole question with this Commission is whether or not, in addition to the legislative function of the Congress and the executive branch's responsibility to enforce the laws, should there be an appropriate independent agency to monitor enforcement.

I would call the Committee's attention to the language of this statute as it appears in section 42 of the United States Code, title 42. It is called "Duties, Reports and Termination." And when we set up this Commission in 1957, it had a specified life. It was going to pass out of existence in 1960. We have extended this Commission time and time again, 2 years, 2 years. 5 years, and, by this legislation, we would propose to extend it for another 5 years.

Mr. Chairman, what are the duties of the Commission? To study, to report, and recommend. And since 1957, we have stated in the law that the Commission, when it came to an end, would issue a final report.

I would suggest to my colleagues who feel strongly about civil rights, as I do, that we strengthen the enforcement of the civil rights law if we direct this Commission to give us a final report in 3 years instead of in 5 years. We do no service to people who suffer under discrimination, whether it be on race or sex or age or the handicapped, as we have added to this law, by granting a 5-year deadline on a governmental agency to give us a final report.

Running all through this authorizing legislation is the fact that the Commission is asked to render reports and, ultimately, to render a final report. I submit that what we have done, instead, is to have created a Government agency which continues to exist, because as G. Northcote Parkinson, in his book, "Parkinson's Law," pointed out, once a governmental agency is created, it expands its own constituency, and its continuation becomes a matter of governmental inertia.

I think the message to this Congress and to every State legislature, from proposition 13, is the simple complaint of the people of the United States that it is time that legislative bodies look to the termination of government; that we look at agencies and commissions and departments that were created years ago to answer a purpose which in that time was important; that we look at agencies such as the Bureau of Reclamation, created over 80 years ago, the Corps of Engineers' dam building activities, the Law Enforcement Assistance Administration; that perhaps we ought to look at HUD. It may be time to abolish that agency as well. We are looking at the Federal Maritime Commission, wondering whether or not it has outlived its usefulness. This Congress took its first step in 22 years to abolish a Government agency a few months ago when we wiped out the Renegotiation Board.

The CHAIRMAN. The time of the gentleman from California (Mr. McCLOSKEY) has expired.

(By unanimous consent, Mr. McCLOSKEY was allowed to proceed for 1 additional minute.)

Mr. McCLOSKEY. Mr. Chairman, I think we should say to this Commission, which performs a function which admittedly should be the function of the executive and the legislative branches, that in 3 years we would like its final report, and that we say to the executive branch, "Let us try to terminate this agency by requiring its final recommendations to us in 3 years instead of in 5 years." If those recommendations are to strengthen the law or to strengthen the enforcement of the law, that we do it as an act of Congress and that we follow up on our legislative responsibilities.

The existence of this Commission in 1978 presupposes either that our laws are not adequate or that they are not being adequately enforced. The remedy for either problem is not necessarily the continued existence in perpetuity of a governmental agency that was set up originally for only a 2-year life, but which we have now extended to a 20-year life.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman for yielding.

Mr. Chairman, if the agency does terminate in 3 years and the final report is made, is it the gentleman's position then that the function presently performed by the Civil Rights Commission would also end and there be no Government agency handling civil rights, as far as determining whether or not they are being adequately enforced?

The CHAIRMAN. The time of the gentleman from California has again expired.

(At the request of Mr. VOLKMER and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. McCLOSKEY. That is correct. Studies, recommendations, and reports by an outside agency as to how the law is being enforced or whether the laws are adequate are properly functions of the Justice Department of the United States, and of the Congress. It seems to me that we postpone our responsibility in that respect by delegating it to an outside commission.

Mr. VOLKMER. Then, as far as determining whether or not the civil rights of individuals—and that is what we are talking about—are being protected and being enforced in this country, that would end also at the end of 3 years, is that correct?

Mr. McCLOSKEY. Not at all. We are a nation of laws and not of men, but I do not see the need for an additional agency to monitor the laws or the enforcement of the laws by the Government agencies charged with those responsibilities. What we are saying by extending this year after year after year is that we do not know yet whether our laws are adequate, and we do not believe they are properly enforced.

Mr. VOLKMER. I think the gentleman will find from the reports of the Commission and the testimony before us in the hearings that there are violations still prevalent throughout this country in housing and employment and in other areas.

Mr. McCLOSKEY. And if those violations are occuring, they should be enforced under the law, and we should mandate the appropriate agency to do so. Let me quote the gentleman's question from page 4 of the report:

"Whether the Commission's life should be extended." Yes.

"(a) Has its mandate to investigate and identify possible civil rights violations been achieved?" No.

Why give them 5 years? If they cannot do the job in 3 years, they should not do it at all. We should not put a fraud in the law that we mean to terminate an agency at some future time, and then not terminate it. By extending it, we indicate that they cannot do the job.

Mr. VOLKMER. Can we by law, then, change attitudes of individuals?

Mr. McCLOSKEY. I think enforcement of the law speedily encourages people who are violating it to stop violating it. That is the whole purpose. If one is discriminating based on race, then one ought to go to jail.

Mr. VOLKMER. We have had laws affecting housing, employment, for a good many years, have we not?

Mr. McCLOSKEY. We have, and if those laws are not adequate, it is our duty to change those laws, but we could create a governmental agency for many, many bona fide purposes. What I am questioning is that this committee in its interrogations did not ask the key question: Do civil rights problems today require the assistance of an unusual government organization to do that which the Congress and the executive branch should do?

"Has its mandate to investigate and identify possible civil rights violations been achieved?" No.

Has it been duplicated by other Federal agencies or departments? No. But, should it exist in perpetuity?

Mr. VOLKMER. Not necessarily in perpetuity, but for 5 years.

The CHAIRMAN. The time of the gentleman from California has expired.

(At the request of Mr. SEIBERLING and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 1 additional minute.)

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield for a question?

Mr. McCLOSKEY. I will be glad to yield to the gentleman from Ohio.

Mr. SEIBERLING. I have a little difficulty understanding what the difference is between 3 years and 5 years in the gentleman's thinking, yet it makes a difference, it seems to me, in terms of the ability of this Commission to really cover this field which, as we know, is a very much bigger field than we thought 22 years ago when this Commission was created. At that time, we were talking about a comparatively narrow range of discrimination, and since that time our consciousness has been raised.

We are now conscious that there is discrimination on the basis of sex, handicaps, Spanish language, et cetera—a whole range of discriminations that we were not consicous of, or most people were not. Why should we not give them an adequate amount of time?

Mr. McCLOSKEY. I might agree, but can the gentleman cite to me any task of Government today, whether it is development of an energy policy or development of a SALT posture or development of a civil rights posture, in which we would permit 5 years to carry out the intention of the law? The mandate of this Commission is clear. It is to study, to report, and to recommend. I know of no single task in Government in which that should not be accomplishable within 3 years.

Mr. EDWARDS of California. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this proposed amendment disturbs me greatly because it suggests a lack of knowledge and appreciation for the circumstances surrounding the creation of the Commission, its 21-year record and reputation for outstanding scholarly and objective work, and the authorization and oversight activities and responsibilities of the congressional committees and the President.

I can appreciate the need for "strong language" in a "Dear Colleague" to attract the reader's attention but at some point form must give way to substance.

Although the Commission's charter, the Civil Rights Act of 1957, and subsequent congressional action have designated it a temporary agency, we must look back to what was happening in 1957 at the time of its creation. To some, its temporary nature was justified by the hope that the American ideals embodied in the Constitution would be realized by all American citizens. But a realistic assessment of the legislative history surrounding its creation makes clear that regional animosities coupled with persons unwilling to begin the painful but necessary process of equitable change were far from enthusiastically supporting the Commission's establishment.

In retrospect, the Commission should have been established as a permanent agency to be subsequently terminated when the guarantee of equality of rights becomes truly available to all. Its temporary nature was and continues to be the necessary compromise for its creation by the 85th Congress and its continuation by the 95th Congress.

Both congressional oversight committees were mindful of this concern and asked each of the witnesses to address the issues of the length of the extension. Those most competent to respond to this point, representatives of civil rights and civil liberties organizations, unanimously agreed that the Commission's life should be extended for at least an additional 5 years.

In fact, each of the points raised by the gentleman from California have always been raised, addressed, and answered, most recently in our subcommittee and its report, when discussing Commission authorization and/or appropriations.

Let us again go back to the experts—leaders in the civil rights community—that is why we ask them to testify; is it not? They unanimously answered "no" to the allegation that the Commission's work is duplicative of other Federal agency studies.

I feel it is important to quote the statements of two of the witnesses on this issue—Clarence Mitchell, dean of the civil rights leaders and chairman of the Leadership Conference, representing 149 civil rights organizations; and Drew S. Days, Assistant Attorney General of the Civil Rights Division of the Department of Justice and speaking on behalf of the President:

Mr. Days stated in part:

> Commission reports have provided us with a clear concise statement of the problems confronting minorities and women in these areas and some helpful suggestions as to how the Justice Department, among other agencies, could perhaps make a meaningful contribution in dealing with these problems. . . . It is very difficult for any institution, even the most well-meaning and even with people at the head who have a very profound commitment to vindicating civil rights, to do that type of self-analysis and to be adequately critical of one's own performance, to make the types of changes that are necessary.
>
> And certainly, the Civil Rights Commission has not pulled many punches in this regard. They have criticized where criticism is due. And I think we have gained in the Justice Department from that attitude on the part of the Commission.

Mr. Mitchell provided the following cogent views:

> Some studies of the Commission may contain data that is similar to that buried in the archives of other Government agencies. But nowhere else can one find the comprehensive, correctly interpreted, constructively oriented materials that the Commission publishes. As a matter of fact, much of the information circulated by the Commission is dragged from reluctant Government agencies, who realize it could put them in an unfavorable light for not fulfilling their civil rights responsibilities.
>
> If in rare cases there is some duplication, perhaps it would be the wiser course to transfer the authority of the duplicating agency on that particular subject to the Commission.

It is true that the Commission's budget has grown since its inception in 1957. Inflation is but a partial explanation; more importantly, its responsibilities and areas of review have increased. Let me remind my colleague that his years in the Congress have been those very years where there have ben significant and meaningful changes in civil rights legislation, judicial decisions and executive action. Early Commission investigations and reports focused on blacks who were denied their right to vote—as a result of that early work the Congress enacted the Voting Rights Act of 1965. Today, the Commission looks to the problems confronting other racial and ethnic minorities, women, and in a recent special report, the aged.

These reports and recommendations have been and, I hope, will continue to be incorporated into legislative and executive action. The Commission has courageously identified our strengths and weaknesses as we meet the goal of equality of rights.

The allegation that the Commission has come "under increasing fire" for working "outside its congressionally mandated jurisdiction" is simply not supported by the facts. I ask my colleague to consider his understanding of human nature and the propensity of persons to characterize as ultra vires what is really a difference in point of view. Let me suggest that this is at the root of this allegation. Let the opponents come forth with facts and not unsubstantiated allegations.

I strongly disagree with the gentleman's statement that—

> Congressional oversight of the Commission has been limited to routine approval of additional money over and above the limit set by Congress itself 5 years ago.

Our most recent authorization and extension hearings delved deeply into the issues of usefulness of the Commission's work. The hearings in recent years have come to be internal and, on occasion, combative, as serious oversight hearings must be to be effective.

In addition we have had the Commission testify on their reports as well as on civil rights issues of concern to the subcommittee and to the Congress. We are well informed on past and present Commission activities at the national level and, perhaps more importantly, at the grassroots level in the several States. All of these hearings have occurred since the last extension in 1972.

Mr. Chairman, I strongly urge a no vote on this amendment. To leaders in the civil rights community and their constituencies such a provision must appear to be, at its best, a lack of understanding of the problems confronting millions of Americans who are older, nonwhite, poor, women, or handicapped and, at its worst, an effort to turn back the clock on the successes of the civil rights movement or any future civil rights legislation. We must all recognize that the promulgation of civil rights legislation is but the beginning—we are still awaiting the results of effective and lasting enforcement. And, the Commission is critical in the assessment of that enforcement effort.

Clarence Mitchell noted that perhaps at some future date he or other civil rights leaders can testify that the Sun should set on the Commission. He reminded us that he cannot make that

statement now because discrimination is still rampant, despite the significant progress that has been made in suppressing it since passage of the Civil Rights Act of 1957, when the Commission was first established:

It is simply unrealistic to believe that the effects of injustices that have occurred for over 300 years could be discovered and cured in two years, the original term of the Commission, or in the 21 years it has actually been in operation.

Many questions regarding the denial of rights to women, blacks, Chicanos, Puerto Ricans, Native Americans, other minorities, the poor, the aged, and the handicapped remain unanswered.

It is difficult for many of us here to appreciate the magnitude of these concerns but, let us not stifle this most important voice. We must recognize the need for the Commission until the rights guaranteed in the Constitution are rights available to all Americans.

Mr. McCLOSKEY. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from California (Mr. McCLOSKEY).

Mr. McCLOSKEY. Mr. Chairman, I hope it is not inferred from my offering this amendment that I am questioning the value of the Commission or the value of its services. I have a tremendous respect for its vice chairman, Stephen Horn, who I think has done a superb job.

The question here is should it exist permanently? The chairman has said there may have been reason to commit it to a permanent condition, but if so, we should create a permanent institution and not one under the guise of extending it for 2 years or 5 years, talking about a temporary commission when we really want a permanent one.

My suggestion is that if it is a temporary commission like the Commission on Pornography, the Commission on Marihuana and the Commission on Population, for example, that have all been given a limited time, as was this one apparently at the time when it was created, then we should do so. I certainly agree with the gentleman that until we passed the 1964 Civil Rights Act, and the 1965 Voting Rights Act, it would have been perfectly justified to extend it, but would it not be doing a better job in making its final report, under this statute, if we gave it a 3-year limitation and not a 5-year limitation, as the chairman has suggested?

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from California.

Mr. EDWARDS of California. Mr. Chairman, I thank the gentleman for the observations he has made and for yielding to me.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. EDWARDS of California, and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. EDWARDS of California. Mr. Chairman, if the gentleman will yield still further, let me say that I just wish the gentleman from California (Mr. McCLOSKEY) had picked out a better vehicle for his amendment, because if his amendment goes through, and I certainly hope it does not, it will be a signal to the civil rights leaders, in their communities to their constituencies, and, indeed, the disadvantaged people throughout America, that we have a complete lack of understanding of the problems confronting millions of Americans who are older, who are nonwhite, and who are women, and that it may be viewed as an effort to turn back the clock on the success of the civil rights movements, or for any future civil rights legislation.

Mr. BUTLER. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment offered by the gentleman from California (Mr. McCLOSKEY).

In fact, I am somewhat horrified that the gentleman from California (Mr. EDWARDS) has suggested that should we pass this amendment, it will be a signal to the poor, to the unemployed, to those who are disadvantaged and, indeed, perhaps to the whole world that we do not care. The fact is that all this amendment does is limit the extension to a 3-year period instead of 5 years, and adds a sunset provision.

Not only that, Mr. Chairman, but the Senate has already done so in its version of the legislation. Therefore, the Senate has already sent that signal out, because it adopted an amendment limiting the extension to 3 years.

That is all this amendment would do.

Mr. Chairman, there is considerable evidence to support both a reduction in the Commission's extension and the addition of the sound principle of sunset.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr BUTLER. I yield to the gentleman from California.

Mr. EDWARDS of California. Mr. Chairman, I thank the gentleman for yielding, but I am afraid the gentleman from Virginia (Mr. BUTLER) has misread the amendment. The amendment does more than simply reduce the time to 3 years, it requires the President to conduct an investigation as to the problem and invests the House and Senate with the primary oversight. All of this is already done but, even so, the amendment does require more than the gentleman suggests.

Mr. BUTLER. The gentleman is entirely correct. That is the sunset provision, but there is also a 3-year provision instead of a 5-year provision. That is the real crux of it, reducing the extension from 5 to 3 years and it does have a sunset provision.

The Commission, if the gentleman recalls, was able to operate for under $1 million a year for the first 7 years of its existence. During its first 14 years, the Commission produced several major studies on voting rights, school desegregation, equal employment opportunity, and other civil rights issues of major importance at a cost of no more than $4 million per year. As recently as 1975, the Commission performed its congressionally mandated tasks for less than $7 million. During the last 3 years, however, the agency has received funding increases of close to 30 percent a year.

I am afraid that if we do not invoke sunset and limit the life of this Commission and take a sound look at what it is doing, we will not review their programs again until we are asked for another extension 5 years hence. The last extension was for a 5-year period. The only reason we saw the Commission during the intervening years was because they had to come back to the Congress and request additional money over and above their authorization ceiling. Five years ago Congress set a limitation on the Commission's appropriation at $7 million per year, and last year we approved $10,480,000.

It appears that the oversight we performed has not gotten the Commission back on track.

Not only did we find that their costs were escalating at an exorbitant level, but their work was duplicative of work performed by other Federal agencies.

Moreover, testimony in the subcommittee proved that the Commission is totally ignoring its jurisdiction to study religious and national origin discrimination. Not one report on either subject has been issued since 1970.

The subcommittee also expressed concern that the Commission's projects and reports were clearly on the borderline if not outside congressionally mandated jurisdiction. The subcommittee found that such projects as studying forcible rape against women, domestic violence, and coerced sterilization were duplicative of work performed by other Federal agencies and peripheral to the Commission's functions.

The Subcommittee on Civil and Constitutional Rights must continue to oversee the work of this Commission, and the Congress should have the opportunity to decide whether or not this group should continue beyond fiscal year 1981.

While I do not relish the idea of having to review the work of the Commission during the next 3 years, it is a necessity and our duty.

I believe that governmental units should go out of business when they no longer do the job they were originally established to perform. Sunset provisions are a valuable legislative tool; agencies are forced to do their job the way Congress intended. Congress should decide whether this Commission should stay in business in 3—not 5—years, and we should look to see what they are doing in order to find out whether they are performing their functions properly. That is what sunset provisions are all about.

Mr. Chairman, I commend the gentleman from California (Mr. McCLOSKEY) for his very well-thought-out and carefully drafted amendment.

I support the McCloskey amendment and urge the membership to do likewise.

Mr. SEIBERLING. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I just want to make this comment: I strongly support the concept of "sunset" provisions. I think that is the only way we are going to get a periodic, indepth review of the necessity or justification for the continuance of all of these programs and agencies which we create. Obviously, many of them have fulfilled their original objectives. I do not think we can say, and I do not understand that the gentleman from California is saying, that this Commission has outlived its usefulness. He is saying that at the end of 3 years he thinks it can complete its job. I say, then, let us give it what the subcommittee, after full hearings, decided was needed, namely, 5 years.

I do not see that we are opposing the "sunset" principle here, but let us not start out with the Civil Rights Commission as the first place in which we enforce a truly limiting sunset provision.

Mr. McCLOSKEY. Mr. Chairman, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from California.

Mr. McCLOSKEY. Mr. Chairman, there really was no intent to single out the civil rights legislation. It just happened to come along.

The first step where we accomplished sunset, if the gentleman will remember, was the consumer bill, which was ultimately defeated. When we created the consumer agency, we agreed that it should terminate at the end of 5 years.

Just a few months ago, in fact, in a vote in July, we abolished the Renegotiation Board.

Mr. SEIBERLING. I voted against abolishing it.

Mr. McCLOSKEY. This is the next agency in line. There is certainly no intent to send a signal to the civil rights movement that we want to weaken it. Actually, if this Commission does its job in 3 years, hopefully, we will strengthen civil rights enforcement.

Mr. SEIBERLING. I think that the gentleman is trying to make a point here which is not a substantive point but a symbolic point, because whether it is 3 years or 5 years is not really a matter of great moment. I think what the gentleman is trying to do is to get us to send a message that we think perhaps the time for this Commission is at an end. I do not think that is so, and I do not think our committee's hearings support any such conclusion.

Mr. McCLOSKEY. If the gentleman will yield further, I want to say I agree with that last statement. It is not an attempt to say that the civil rights problem is at an end. It is an attempt to say if we are going to end it, let us have the recommendations of this committee, act on them in 3 years, instead of 5.

Mr. SEIBERLING. I think a strong case has been made out here for doing what we ought to be doing, and that is support the committee that has done the work and explored the subject in depth, instead of trying to rewrite this bill on the floor.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. McCLOSKEY).

The question was taken; and on a division (demanded by Mr. BUTLER) there were—ayes 14, noes 27.

So the amendment was rejected.

● Mr. GOLDWATER. Mr. Chairman, I intend to vote against the Civil Rights Commission Act of 1978, which is now before the House. I do so for three reasons, and only for these reasons.

First, the bill extends the jurisdiction of the Commission to the areas of age and physical disability. The Department of HEW currently has jurisdiction over these areas. There is no evidence that HEW is improperly or insufficiently executing its responsibilities. There is evidence that the Civil Rights Commission is already overburdened.

Second, I see in this bill the continuation of past congressional habits of expanding the Federal bureaucracy and spending more money in the process. Efficiency in Government must be one of our prime concerns and I do not see that concern reflected in this bill.

Third, the hearings held by the Judiciary Committee clearly reveal that the Civil Rights Commission is not carrying out all of its currently mandated responsibilities, particularly in the areas of discrimination based on religion and national origin.

While I understand the concern and motivation of the authors of this bill, I cannot support its administrative expansion and increased funding level when the current activities of the Commission are clearly indicated to be deficient. The taxpayer rightfully expects efficiency and effectiveness and deserves nothing less.●

● Mr. LEGGETT. Mr. Chairman, in 1957, the Truman Committee established an independent commission to insure that our Nation's civil rights policy served our society's needs. Since that time, the civil rights issue has mushroomed—more inequalities have emerged then have been resolved—and the focus of public attention, which it once singularly occupied, must now be shared with other major national issues. It is my view that now, more than ever, Congress needs the direction in civil rights that only this vital Commission can provide.

The Commission still offers an unbiased continuing appraisal of the status of civil rights, it oversees the usefulness of civil rights programs, and from its unique perspective, it can identify the inconsistencies and fill in the gaps of our civil rights policy. Although the executive agencies enforce our civil rights policy, the Commission, with its 51-State Advisory Committees insuring that programs and legislation are effective on the local level, coordinates the Nation's civil rights policy.

I urge my colleagues to vote in favor of the extension of the Civil Rights Commission. The termination of this one vital agency would mean that the agencies it oversees would not be monitored, would preclude the successful resolution of the emergent civil rights problems, and most seriously, would mean a sporadic treatment of one of this Nation's most chronic ills.

Much of the resources allocated to this Commission finance its role as the objective monitor of both the progress of civil rights agencies and the efficacy of civil rights legislation. What is, perhaps, its greatest contribution to this end is a series of evaluative studies called the Federal Civil Rights Enforcement Effort. In 190 reports to date, the Commission has provided both Congress and the executive branch with detailed information on the extent to which certain departments, for instance Health, Education, and Welfare, Housing and Urban Development, the Veterans' Administration, the Internal Revenue Service, perform their civil rights responsibilities in the areas of housing, education, employment, and revenue sharing.

Congress needs such an objective watchdog for information on the status of civil rights. We are in a sorry position when we must gather information from the various executive agencies who have a bureaucratic stake in making themselves look good. Because the Commission's value is determined, in part, by its success as the watchdog of civil rights reform, it has no interest in misrepresenting progress in the field of civil rights. As long as there are agencies to enforce civil rights policies, the Civil Rights Commission is needed to insure that the conscience of the Nation is accurately reflected in Government activity.

The Commission has a substantial indirect effect on policy information and its enforcement. Its influence in the policy making process is best reflected in the President's Reorganization Act of 1978 which embodies the Commission's recommendation to reform and strengthen the Equal Employment Opportunity Commission. As a result, the EEOC has become the leading agency in fair employment enforcement. The Civil Rights Commission's prominent role in civil rights legislation has also lead to the amendments to the Voting Rights Act, the Equal Opportunity Act, the Civil Rights Attorney's Fees Act, the nondiscriminatory provisions of the State and Local Fiscal Assistance Act, and the Mortgage Loan Disclosure Act. Unfortunately, legislation once passed, is never self-enforcing. The Commission, by virtue of the fact that it looks over the shoulder of such departments as Justice, Health, Education, and Welfare, Housing and Urban Development, plays an essential role in the enforcement of civil rights policies.

Congress relies on the Commission to identify the gaps in our civil rights policies and to determine the corrective measures needed to remedy discriminatory practices. The Commission's investigations of specific complaints of denial of the right to vote have resulted in Congress's extension of the Voting Rights Act of 1975. Their illuminating research in the area of non-English-speaking peoples has led to requirements of bilingual elections, the first definitive study on discrimination against Mexican-American children in the schools, and the expansion of numerous bilingual civil rights

programs. In response to its mandate to study the denial of equal protection of the laws in the administration of justice, the Commission has explored the area of civil rights violations among the administrators of justice which are most often in contact with our constituent—the local police departments.

The bill which is presently under consideration would authorize the Commission to investigate discrimination in a relatively untreated area—civil rights violations against the aged and the handicapped. If Congress expects to advance the cause of civil rights in the area of institutionalized persons, a proposal which we are also considering today, research on those people most often institutionalized, the aged and the handicapped, would be indispensable.

Congress, in view of both the recent and pending decisions in the civil rights area, needs the leadership of the Civil Rights Commission now more than ever. As the Bakke verdict, recently handed down by the Supreme Court, provides no definitive instruction on the enforcement of affirmative action programs, the Commission, through its network of State advisory committees, could provide Congress with the guidance to proceed to implement the decision by identifying those areas where discrimination exists and where the need for affirmative action is most pressing.

When the equal rights amendment is ratified, the Commission's function as a source of information to the public would help guarantee these significant advances in the eradication of sex discrimination will not be turned into unfortunate retreats. Through research and the collection of factual data, the Commission could help to insure that the ERA's broad language is translated into viable legislation.

When an executive agency or commission has accomplished all that it was created to do, when it has solved society's problems and has ceased to be useful, then I am quick to advocate that agency's termination. It is my regret, however, that the termination of the Civil Rights Commission would be premature. I wish that bureaucratic agencies were always responsible, that civil rights legislation was self-enforcing—but better yet, that the civil rights problems affecting this Nation cease to exist. It is my view that the work of the Civil Rights Commission is not yet finished. Unless Congress is prepared to assume the immense task of direct oversight of civil rights operations, to identify and fill the gaps of our civil rights policy, and is willing to proceed blindly in the implementation of nebulous civil rights decisions, I urge my colleagues to vote for the extension of the Civil Rights Commission.●

The CHAIRMAN. Are there further amendments? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DE LA GARZA, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 12432) to extend the Commission on Civil Rights for 5 years, to authorize appropriations for the Commission, to effect certain technical changes to comply with changes in the law, and for other purposes, pursuant to House Resolution 1235, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment?

Mr. BAUMAN. Mr. Speaker, I demand a separate vote on the Treen amendment.

The SPEAKER. Is a separate vote demanded on any other amendments? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 3, strike out the quotation marks on line 5, and after line 5 insert the following:

"(f) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.".

The SPEAKER. The question is on the amendment.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 234, nays 131, not voting 67, as follows:

[Roll No. 725]

YEAS—234

| | | |
|---|---|---|
| Akaka | Cederberg | Fish |
| Ambro | Clausen, | Fithian |
| Andrews, N.C. | Don H. | Florio |
| Andrews, | Cohen | Fountain |
| N. Dak. | Coleman | Gammage |
| Annunzio | Collins, Tex. | Gaydos |
| Applegate | Conable | Gephardt |
| Archer | Conte | Ginn |
| Ashbrook | Corcoran | Glickman |
| Aspin | Cornell | Goldwater |
| Badham | Cotter | Goodling |
| Bafalis | Coughlin | Gradison |
| Baldus | Crane | Grassley |
| Barnard | Cunningham | Gudger |
| Bauman | D'Amours | Guyer |
| Beard, R.I. | Daniel, Dan | Hagedorn |
| Beard, Tenn. | Daniel, R. W. | Hall |
| Benjamin | Davis | Hammer- |
| Bennett | de la Garza | schmidt |
| Biaggi | Delaney | Hanley |
| Blouin | Dent | Heckler |
| Boggs | Derwinski | Hefner |
| Boland | Devine | Heftel |
| Bonior | Dingell | Hightower |
| Bowen | Duncan, Tenn. | Hillis |
| Breaux | Early | Holland |
| Broomfield | Edwards, Ala. | Hollenbeck |
| Brown, Mich. | Edwards, Okla. | Holt |
| Brown, Ohio | Eilberg | Howard |
| Burgener | Emery | Hubbard |
| Burke, Mass. | English | Hughes |
| Burleson, Tex. | Erlenborn | Hyde |
| Burlison, Mo. | Ertel | Ichord |
| Butler | Evans, Del. | Ireland |
| Caputo | Evans, Ga. | Jacobs |
| Carney | Evans, Ind. | Jenkins |
| Carter | Fary | Jones, N.C. |
| Jones, Okla. | Murphy, Ill. | Skelton |
| Jones, Tenn. | Murphy, N.Y. | Skubitz |
| Kazen | Murphy, Pa. | Slack |
| Kelly | Murtha | Smith, Nebr. |
| Kemp | Myers, Gary | Snyder |
| Kildee | Myers, John | Spence |
| Kindness | Myers, Michael | St Germain |
| Lagomarsino | Natcher | Staggers |
| Latta | Neal | Stangeland |
| Le Fante | Nichols | Stanton |
| Leach | Nolan | Steed |
| Lederer | Nowak | Steiger |
| Lent | O'Brien | Stockman |
| Livingston | Oakar | Stratton |
| Long, La. | Oberstar | Taylor |
| Lott | Obey | Traxler |
| Lujan | Patten | Treen |
| Luken | Perkins | Trible |
| McCory | Pike | Ullman |
| McDade | Price | Vander Jagt |
| McDonald | Pursell | Vento |
| McEwen | Quayle | Volkmer |
| McHugh | Rahall | Waggonner |
| McKay | Railsback | Walker |
| Mahon | Regula | Walsh |
| Markey | Rhodes | Wampler |
| Marks | Rinaldo | Whalen |
| Marlenee | Risenhoover | White |
| Marriott | Roberts | Whitehurst |
| Martin | Robinson | Whitley |
| Mathis | Roe | Whitten |
| Mazzoli | Rooney | Wilson, Bob |
| Michel | Rousselot | Winn |
| Miller, Ohio | Rudd | Wolff |
| Minish | Runnels | Wright |
| Mitchell, N.Y. | Russo | Wylie |
| Moakley | Santini | Yatron |
| Mollohan | Satterfield | Young, Fla. |
| Montgomery | Sawyer | Young, Mo. |
| Moore | Schulze | Zablocki |
| Moorhead, | Sebelius | Zeferetti |
| Calif. | Shuster | |
| Mottl | Sikes | |

NAYS—131

| | | |
|---|---|---|
| Addabbo | Ford, Mich. | Moss |
| Anderson, | Ford, Tenn. | Nedzi |
| Calif. | Fowler | Nix |
| Anderson, Ill. | Frenzel | Ottinger |
| Ashley | Giaimo | Panetta |
| AuCoin | Gilman | Patterson |
| Baucus | Gonzalez | Pease |
| Bedell | Gore | Pepper |
| Bingham | Green | Pickle |
| Blanchard | Hamilton | Preyer |
| Bolling | Hannaford | Pritchard |
| Brademas | Harkin | Rangel |
| Breckinridge | Harris | Reuss |
| Brinkley | Hawkins | Rogers |
| Brodhead | Holtzman | Roncalio |
| Brooks | Horton | Rose |
| Brown, Calif. | Jeffords | Rosenthal |
| Burton, John | Jenrette | Roybal |
| Burton, Phillip | Johnson, Calif. | Ryan |
| Carr | Jordan | Sarasin |
| Cavanaugh | Kastenmeier | Scheuer |
| Chisholm | Keys | Schroeder |
| Clay | Kostmayer | Seiberling |
| Cleveland | Krebs | Sharp |
| Collins, Ill. | Leggett | Simon |
| Conyers | Levitas | Smith, Iowa |
| Corman | Lloyd, Calif. | Solarz |
| Danielson | Long, Md. | Stark |
| Dellums | Lundine | Steers |
| Derrick | McCloskey | Stokes |
| Dicks | McCormack | Studds |
| Diggs | McFall | Thompson |
| Dodd | McKinney | Thornton |
| Downey | Maguire | Tucker |
| Drinan | Mann | Udall |
| Eckhardt | Mattox | Van Deerlin |
| Edgar | Meeds | Vanik |
| Edwards, Calif. | Metcalfe | Walgren |
| Evans, Colo. | Meyner | Waxman |
| Fascell | Mikulski | Weaver |
| Fenwick | Mineta | Weiss |
| Findley | Mitchell, Md. | Wilson, C. H. |
| Fisher | Moffett | Wilson, Tex. |
| Foley | Moorhead, Pa. | Yates |

NOT VOTING—67

| | | |
|---|---|---|
| Abdnor | Chappell | Fraser |
| Alexander | Clawson, Del | Frey |
| Ammerman | Cochran | Fuqua |
| Armstrong | Cornwell | Garcia |
| Bellenson | Dickinson | Gibbons |
| Bevill | Dornan | Hansen |
| Bonker | Duncan, Oreg. | Harrington |
| Broyhill | Flippo | Harsha |
| Buchanan | Flood | Huckaby |
| Burke, Calif. | Flowers | Johnson, Colo. |
| Burke, Fla. | Flynt | Kasten |
| Byron | Forsythe | Krueger |

| | | |
|---|---|---|
| LaFalce | Quie | Teague |
| Lehman | Quillen | Thone |
| Lloyd, Tenn. | Richmond | Tsongas |
| Madigan | Rod.no | Watkins |
| Mikva | Rostenkowski | Wiggins |
| Milford | Ruppe | Wirth |
| Miller, Calif. | Shipley | Wydler |
| Pattison | Sisk | Young, Alaska |
| Pettis | Spellman | Young, Tex. |
| Poage | Stump | |
| Pressler | Symms | |

The Clerk announced the following pairs:

On this vote:

Mr. Cornwell for, with Mr. Krueger against.

Mr. Kasten for, with Mrs. Burke of California against.

Until further notice:

Mr. Chappell with Mr. Richmond.
Mrs. Lloyd of Tennessee with Mr. Abdnor.
Mr. Bevill with Mr. Cochran of Mississippi.
Mr. Garcia with Mr. Forsythe.
Mr. Fuqua with Mr. Johnson of Colorado.
Mr. Lehman with Mr. Mr. Quillen.
Mr. Mikva with Mr. Pressler.
Mr. Teague with Mr. Quie.
Mr. Rodino with Mr. Armstrong.
Mr. Rostenkowski with Mr. Madigan.
Mr. Shipley with Mr. Dickinson.
Mr. Wirth with Mr. Frey.
Mr. Alexander with Mr. Broyhill.
Mr. Ammerman with Mr. Dornan.
Mr. Beilenson with Mr. Ruppe.
Mr. Byron with Mr. Hansen.
Mr. Flippo with Mr. Buchanan.
Mr. Harrington with Mr. Harsha.
Mr. Bonker with Mr. Burke of Florida.
Mr. Flood with Mr. Del Clawson.
Mr. Duncan of Oregon with Mr. Fraser.
Mr. LaFalce with Mr. Gibbons.
Mr. Miller of California with Mr. Huckaby.
Mr. Pattison of New York with Mr. Milford.
Mrs. Spellman with Mrs. Pettis.
Mr. Stump with Mr. Sisk.
Mr. Watkins with Mr. Young of Alaska.
Mr. Thone with Mr. Wiggins.
Mr. Tsongas with Mr. Wydler.
Mr. Flowers with Mr. Flynt.

Messrs. LEDERER, NOLAN, and MAHON changed their vote from "nay" to "yea."

Mr. GORE changed his vote from "yea" to "nay."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3067) to extend the Commission on Civil Rights for 3 years, to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3067

An act to extend the Commission on Civil Rights for three years, to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Civil Rights Commission Act of 1978".

SEC. 2. (a) Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a)) is amended by striking out "section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808)." and inserting in lieu thereof the following: "section 5703 of title 5 of the United States Code.".

(b) Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b)) is amended by striking out "the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)" and inserting in lieu thereof the following: "subchapter I of chapter 57 of title 5 of the United States Code".

SEC. 3. (a) Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c) is amended—

(1) in each of subsections (a)(1) and (a)(2) by inserting "age, handicap," after "sex,";

(2) in each of subsections (a)(3) and (a)(4), by inserting ", age, handicap," after "sex";

(3) in subsection (a)(2) by inserting "discrimination or" before "a denial";

(4) in each of subsections (a)(3) and (a)(4), by inserting "discrimination or" before "denials";

(5) by redesignating paragraph (6) of subsection (a) as subsection (b);

(6) by redesignating subsections (b) and (c) as (c) and (d), respectively; and

(7) by adding at the end the following:

"(e) As used in this section, the term 'handicap' means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 76(6)).".

(b) Subsection (b) (which is redesignated as subsection (c) by this Act) of section 14 of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b)) is amended by striking out "fiscal year 1978" and inserting in lieu thereof "the fiscal year ending September 30, 1981".

SEC. 4. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a)) is amended by striking out "and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year".

SEC. 5. Section 105(c) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(c)) is amended by striking out "composed of citizens of that State and" and inserting in lieu thereof the following: "as it deems advisable but the Commission shall constitute at least one such advisory committee within each State. The Commission".

SEC. 6. Section 105(d) of the Civil Rights Act of 1957 (42 U.S.C. 1975(d)) is amended by striking out "sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (15 U.S.C. 99)" and inserting in lieu thereof the following: "sections 203, 205, 207, 208, and 209 of title 18 of the United States Code".

SEC. 7. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975e) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 106. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act during fiscal year 1979.".

MOTION OFFERED BY MR. EDWARDS OF CALIFORNIA

Mr. EDWARDS of California. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. EDWARDS of California moves to strike out all after the enacting clause of S. 3067, and to insert in lieu thereof the provisions of H.R. 12432, as passed by the House, as follows:

That this Act may be cited as the "Civil Rights Commission Act of 1978".

SEC. 2. (a) Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a)) is amended by striking out "section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808)." and inserting in lieu thereof the following: "section 5703 of title 5 of the United States Code.".

(b) Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b)) is amended by striking out "the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)" and inserting in lieu thereof the following: "subchapter I of chapter 57 of title 5 of the United States Code".

SEC. 3. (a) Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c) is amended—

(1) in each of subsections (a)(1) and (a)(2), by inserting "age, handicap," after "sex,";

(2) in each of subsections (a)(3) and (a)(4), by inserting ", age, handicap," after "sex";

(3) in subsection (a)(2) by inserting "discrimination or" before "a denial";

(4) in each of subsections (a)(3) and (a)(4), by inserting "discrimination or" before "denials";

(5) by redesignating paragraph (6) of subsection (a) as subsection (b);

(6) by redesignating subsections (b) and (c) as (c) and (d), respectively; and

(7) by adding at the end the following:

"(e) As used in this section, the term 'handicap' means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6)).

"(f) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.".

(b) Subsection (b) (which is redesignated as subsection (c) by this Act) of section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b)) is amended by striking out "fiscal year 1978" and inserting in lieu thereof "the fiscal year ending September 30, 1983".

SEC. 4. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a)) is amended by striking out "and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year".

SEC. 5. Section 105(c) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(c)) is amended—

(1) by striking out "may constitute such advisory committees within States" and inserting in lieu thereof the following: "shall constitute an advisory committee within each State"; and

(2) by striking out "and may consult" and inserting in lieu thereof the following: ". The Commission may consult".

SEC. 6. Section 105(d) of the Civil Rights Act of 1957 (42 U.S.C. 1975(d)) is amended by striking out "sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99)" and inserting in lieu thereof the following: "sections 203, 205, 207, 208, and 209 of title 18 of the United States Code".

SEC. 7. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975e) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 106. (a) There are authorized to be appropriated not to exceed $12,752,000 for the fiscal year ending September 30, 1979, and not to exceed $14,000,000 for the fiscal year end-

ing September 30, 1980, to carry out the provisions of this Act.

"(b) No sums made available to the Commission shall be used at any time, directly or indirectly, to undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except when the Commission is requested to give an opinion.".

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "An act to extend the Commission on Civil Rights for five years, to authorize appropriations for the Commission, to effect certain technical changes to comply with changes in the law, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 12432) was laid on the table.

## GENERAL LEAVE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

## NEW YORK CITY LOAN GUARANTEES

Mr. MAHON. Mr. Speaker, pursuant to the order of the House of Wednesday, August 2, 1978, I call up the joint resolution (H.J. Res. 1088) providing financial assistance for the city of New York, and ask for its consideration in the House as in the Committee of the Whole.

The Clerk read the title of the joint resolution.

GENERAL LEAVE

Mr. MAHON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in connection with consideration of House Joint Resolution 1088.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 1088

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is authorized to guarantee the payment of principal and interest on loans in accordance with the provisions of the New York City Loan Guarantee Act of 1978 in amounts not to exceed $1,650,000,000 in principal outstanding at any time, and there is hereby appropriated effective October 1, 1978, such amounts as may be necessary for payment of principal and interest on loans in default and guaranteed pursuant to the New York City Loan Guarantee Act of 1978, to remain available until September 30, 1998.

Mr. MAHON. Mr. Speaker, I move to strike the last word.

Mr. Speaker, House Joint Resolution 1088 provides for the actual loan guarantee authority for the city of New York and appropriations in the case of any eventual default as authorized and required by Public Law 95–339, of August 8, 1978.

Public Law 95–339 authorizes the Secretary of the Treasury to guarantee loans to the city of New York to such an extent, and in such amounts, as are provided in an appropriation act.

The Committee on Appropriations reported House Joint Resolution 1088 on August 1, 1978, promptly after the authorization had been approved. The resolution was handled in the committee by the HUD-Independent Agency Subcommittee, under the able chairmanship of the distinguished gentleman from Massachusetts (Mr. BOLAND)—and in a few moments I shall yield to the gentleman.

Mr. Speaker, I might say that there are differences of opinion among the Members as to what should be done about the Loan Guarantees Act of 1978 for the city of New York.

I myself voted against the authorization when it was before the House, feeling that New York City had not acted sufficiently to get its fiscal affairs in order. And further, Mr. Speaker, I continue to be dismayed over the manner in which New York City made a shambles of its fiscal affairs in the first place.

However, the House and Senate have spoken, and the President has now approved the authorizing legislation, and so the Federal Government is committed to provide loan guarantees for the city of New York in order to prevent bankruptcy and difficulty otherwise. In view of this I think the only responsible course at this time is to vote for the appropriation measure before the House.

It is true that we have a lot of loan guarantees. We have them in the Veterans' Administration, in the Housing and Urban Development legislation; and we have them in the Farmers Home Administration. In fact, the Federal Government has loan guarantees, as of fiscal year 1979, in the total sum of $360 billion, a rather shocking and impressive figure.

Mr. Speaker, what we have to do now to point out to the Speaker and to the which was passed, and that is to take the necessary steps in the appropriations process so as to make sure that the loan guarantee program for the city of New York is made effective.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Massachusetts, the distinguished chairman of the subcommittee.

Mr. BOLAND. Mr. Speaker, as the distinguished chairman of the full Committee on Appropriations has indicated, tion for the deterioration. Our response propriation authorized by the New York City Loan Guarantee Act of 1978. That bill passed the House on June 8 by 92 votes, 247 to 155. It passed the Senate on June 29 by a vote of 53 to 27. The House adopted the conference report on July 25 by a vote of 244 to 157, by 87 votes; and the Senate adopted the conference report on July 27 by a vote of 58 to 35. The President signed the act on August 8 of this year.

This joint resolution, Mr. Speaker, provides financial assistance for the city of New York. Section 111 of the authorization bill, the New York City Loan Guarantee Act of 1978, provides that the authority of the Secretary of the Treasury to guarantee loans for New York City shall be limited to such extent or amounts as provided in advance in appropriation acts. It also authorizes to be appropriated such sums as may be necessary to carry out the act.

We are doing those two things, Mr. Speaker, in this joint resolution. First, we are providing the authority for the Secretary of the Treasury to guarantee the payment of principal and interest on up to $1,650,000,000—the full amount authorized—in loans to city and State employee pension funds. Loans from these funds are the only loans which may be guaranteed under the act by the U.S. Government.

These loan guarantees may be made over the next 4 years, until June 30, 1982; but the loan duration may not exceed 15 years. The $1,650,000,000 in loan guarantees is available in four installments: $750,000,000 in city fiscal year 1979, $250,000,000 in 1980, $325,000,000 in 1981, and $325,000,000 in 1982.

The legislation provides that in 1979 not more than $500,000,000 of long-term guarantees and not more than $325,000,000 of short-term guarantees may be issued; but in no instance may the total exceed $750,000,000 for fiscal year 1979. The short-term proviso is for 1 year only, and those loans, Mr. Speaker, must be repaid by June 30, 1979. The guarantee authority is cumulative and repaid short-term authority is available for long-term guarantees.

Secondly, we are recommending an indefinite appropriation, to be available from October 1, 1978, to September 30, 1998, to cover possible defaults on loans guaranteed. We do not expect that New York City will default on the loans but the appropriation is made available in the event that happens.

Mr. Speaker, I have some reservations about Federal loan guarantees for municipal governments. But I am also firmly committed to providing financial assistance for New York City to avoid the possibility of bankruptcy. I hope that this assistance will not only enable New York City to avert bankruptcy, but also will give the city an entree to the credit markets. I believe we need to remind ourselves, however, that the solution to New York City's problems rests not with Washington, but with New York City.

When the authorization bill was before the House on June 7 the indication

was that unless further financial assistance was given to New York City by the beginning of July, insolvency and perhaps bankruptcy would soon follow. A loan of $565,000,000 from city pension funds and over $200,000,000 in unanticipated real estate taxes have put off that date. Representatives of the city of New York and the Department of the Treasury now state that final action on the appropriation measure is required by mid-September.

That, Mr. Speaker, in substance, is what is carried in this resolution, and I urge its adoption.

Mr. COUGHLIN. Mr. Speaker, to the extent I could hear the distinguished chairman of the committee, he stated the case, indeed, very well.

I think there are three very important facts that are involved here. First, this is a loan guarantee program, a loan guarantee program with a limitation, which will result in Federal outlays only in the event of a default on the bonds guaranteed.

Second, the legislative bill provides some very substantial safeguards for these guarantees. The Secretary of the Treasury can make the guarantees only if there is a reasonable prospect for repayment.

Finally, even if there were to be a default on one of these loans, the U.S. Government would have the recourse to withhold any payment from the Federal Government to the city or State which may be or may become due pursuant to any law, so that it is really a no-lose proposition, as far as the Federal Government is concerned, and I urge support of this resolution.

Mr. CHARLES H. WILSON of California. Mr. Speaker, will the gentleman yield?

Mr. COUGHLIN. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. . I thank the gentleman for yielding.

I wonder if the gentleman can respond. I was interested in the closing remarks of the gentleman from Massachusetts (Mr. BOLAND) where he says up to 1998 in the event of defaults. Does that mean there could be direct payments from the Treasury in the event of defaults on any of these loans?

Mr. COUGHLIN. That means that there is an appropriation of as much money as might be necessary for default, but the Federal Government would have recourse then against other payments that it makes to the city of New York to cover those defaults.

Mr. CHARLES H. WILSON of California. There are no other cities or States where the Government would have anything comparable to this?

Mr. COUGHLIN. There is nothing directly comparable to this loan guarantee program for the city of New York.

Mr. BAUMAN. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the gentleman from Massachusetts (Mr. BOLAND) referred to the previous acts of the House and the other body on the authorizing legislation, and the appropriation is now before us for still more aid to New York City. I assume that whenever either body of the Congress acts and the facts are subsequently changed in a substantial manner that the Members might want to know about that before they vote again. It may have escaped some of the membership's attention that there is a group called the Citizens' Budget Commission, made up of both civic and business leaders in New York City which has been in existence since 1932. The commission's purpose is to monitor New York City's finances and operations. That group reported a few weeks ago, after both Houses had acted, that the entire premise on which this package, the legislation and the appropriation, was presented to this Congress is not only faulty but, to use the commission's term, "full of gimmicks." They predicted that there is no way that the city of New York can live up to the commitments that the mayor and the other officials made to the Congress and on which basis some of you voted to pass this legislation. They predicted that this $1.65 billion on which we are now about to vote is only another installment payment in the sense that it will require possibly a half billion to a billion dollars more because of the recent labor settlement with the unions in New York City.

The commission also pointed out that the entire premise of this aid was riddled with unspecified city economies which will never take place and is based on Federal funds which are anticipated but in no way guaranteed to the tune of possibly $1.2 billion, creating an enormous gap between what we are appropriating today and what will eventually be needed. They went on to say that the only way the city will be able to avoid bankruptcy in a year or two, as some of us have predicted, is to come back for still more new guarantees and new loans.

Mr. Speaker, none of that may be of any interest to this House, but I think it is interesting to the taxpayers back home. Maybe some of the Members went on junkets recently and did not go back and talk to their people. But this is what the people of America are saying and here is the first chance for us to save some money for the people back home and at the same time force fiscal responsibility on the city of New York. I urge a "no" vote.

Mr. KELLY. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I would like to point out to the Speaker and to the Members of the House that an awful lot of what we do here in Congress does not make any sense. I think that is something we have gotten used to, but I would like to make the proposition that it does not really have to be this way.

One of the things that we are doing right now is trying to refurbish many of our cities that are dying. The reason these cities are dying is because they are being mismanaged and the business base and the private sector cannot survive there.

The congressional response is to build more buildings, rather than find a solution for the deterioration. Our response is to build more buildings so that there will be a target for civil insurrection.

The problem of New York hits right in the middle of this. What we need to do to help New York and what New York needs in the way of help is to quit spending so much money. They do not need to have new financing of the existing mismanagement. They already have too much financing of their mismanagement. What they need to do is to have a little good management and to quit spending so much money. We should not pass up an opportunity to help them get what they need.

That is one proposition. Another "proposition" is one called 13, and that is from the people in California.

Mr. Speaker, my really delightful remarks are so intermingled with the confusion here that I cannot tell which is the most confusing. Could the Speaker help me with getting some order in the Chamber?

The SPEAKER. The House will be in order.

Mr. KELLY. I thank the Speaker. That is infinitely better.

Back to this proposition 13, what the people in California clearly indicated for themselves and the rest of us was that they were tired of growing government. There was also indicated something that is tragic and dangerous, and that is that the people were not able to get the government they wanted from their duly elected officials. So the result was they had to go to volunteers like Jarvis because the people they elected through the constitutional process would not do what the people wanted.

Clearly, the people in New York are much more burdened with taxes than the people in California. The people in New York are not more tolerant of high taxes. What is going on in New York is that the subtlety of tax collection is more sophisticated in New York, because they are collecting their taxes through the withholding method, the same fine method we have established on the Federal level. They are also doing it with one of the highest sales taxes in the United States. Neither of which is as obvious as property taxes paid once or twice a year in a lump sum. As a matter of fact they even pay property taxes in quarterly installments in New York.

So, Mr. Speaker, what we need to do is to help the people of New York, because we are the elected officials of this country. We need to help them get the government that the people want. This nonsense about financing continuing mismanagement is going to bring the same kind of decay to the whole Nation that it has brought to New York and to many of our cities.

Mr. Speaker, it is entirely possible that we can go on for a few more years like we have been going.

Mr. Speaker, are we having a problem with the order in the House? Mr. Speaker, I make the point of order that the House is not in order.

The SPEAKER. The House will be in order.

Mr. KELLY. Mr. Speaker, if my colleagues would pay close attention, they might find that down in amongst all these verbal brambles I might say something intelligent. [Laughter.] Well, I am from Zephryhills, and that is a leg up.

But this is a serious matter when the people have to look elsewhere for the kind of government that they clearly want.

Mr. Speaker, New York is the prime example of everything that is bad in the mismanagement of this country, and we all know it. That is why they are bankrupt. New York is the richest city in America. They are bankrupt. The policies that have bankrupted them are the same policies we are using to bankrupt the United States.

So this is just an opportunity to give the people what they want as their elected officials. Let us not pass it up. Let us vote against more spending in New York.

Mr. Speaker, the following remarks appeared in a recent publication, and these remarks should be considered by my colleagues in Congress:

THE FLAWS IN NEW YORK'S RECOVERY PLAN

President Carter, surrounded by smiling politicians, sat in front of New York City's 19th-century city hall on Aug. 8 and signed the hard-won law providing federal loan guarantees to the city. A week later, Sidney Schwartz, the special state deputy comptroller who monitors the city's financial performance, charged that its current budget—which city officials say is in legal balance—actually contains a potential deficit of some $289 million.

Schwartz' audit, one of several recent reports questioning elements of the city's present and future budgets, comes as a rude reminder that the Big Apple's financial problems are not over. In the eyes of Felix G. Rohatyn, chairman of the Municipal Assistance Corp. of New York, the city has been wrestling with two problems: one of financing, which was relatively unpolitical and readily solvable; the other of budgetary control, which is highly political and may even defy solution. The federal legislation signed by Carter goes a long way toward ending the financial problem and the frequent cash crises that have bedeviled the city over the past three years. But Mayor Edward I. Koch has been understandably slow in trying to tackle the politically explosive problem of making cuts in the budget. Every cut angers some city constituency.

The new federal aid provides no new money. It provides loan guarantees that enable the city to put into effect its own four-year financial plan—a plan that aims at achieving a truly balanced budget by fiscal 1982, at reopening the credit markets to the city, and at starting on an essential, long-delayed program of capital improvements. To do this, city officials must hold down spending.

Donald D. Kummerfeld, executive director of the Emergency Financial Control Board (EFCB), the state agency that must oversee and approve city budgets, says flatly: "The struggle to reduce budget expenses is not over. There will be pain and outcries. But the city has no choice."

Spending cuts. Already doubts are being heard over whether city politicians are ready to start cutting. Says one official closely involved with city finances, "The mayor should be doing more now to cut spending." Adds another expert: "He is delaying essential cuts. He doesn't want to take any unpopular actions."

Eliminating jobs, of course, is especially unpopular, yet the four-year plan calls for a 10-percent reduction in the city's work force through attrition. But the way the mayor is doing this, says a recent EFCB report, "appears to be backloaded." Initially, he proposed to cut 4 percent in the current fiscal year, then 3 percent, 2 percent, and 1 percent. Instead, the new plan calls for a 1-percent cut this fiscal year, with 3 percent in each suceeding year. The EFCB report points out that this approach deprives the city of considerable savings. Postponing attrition, the report concludes, "not only compounds the problem for future years but raises serious questions about the achievability of the entire plan."

What stirs such early concern is the riskiness of the city's plan. Basically, it is a series of revenue and expense estimates for fiscal 1979 through fiscal 1982. These projections produce annual deficits rising to $702 million in the final year. To close these gaps, the plan specifies savings the city expects to make in its expenses and the new revenues it expects to receive, mainly from federal and state aid programs.

Reducing the work force is a major test of the city administration's willingness to carry out its plan. The current reversal of the attrition schedule strengthens the conviction that Mayor Koch is simply delaying these and other cuts in hopes that new federal help will spare him from taking painful actions.

FUTURE RISKS

The danger to the city, though, is that such tactics will impose the need for even heavier cuts later should other parts of the plan slip badly. Studies by the EFCB and Comptroller Schwartz, as well as by the private watchdog Citizens Budget Commission Inc (CBC), make plain that the plan is shot through with risky assumptions.

The EFBC questions, for example, the city's hopes for holding down spending on payments and supplies and for savings from "as yet unspecified" management improvements. Other items, such as rising hospital costs, could exceed projections. Most significant, though, are unplanned-for labor costs and too-heavy reliance on uncertain federal programs that, says one man, "may be just optimistic speculation."

In a stinging report, the CBC says that because the city sacrificed cost-saving and productivity requirements in cost-of-living agreements, the true costs of recent labor settlements could run to more than $1 billion. To finance some of these costs, it charges, the city has resorted to "gimmicks" and "one-shot revenues." Deputy Mayor Philip L. Toia says the report is filled with "mischief and naivete." But the EFBC adds that city projections do not "include any provisions for wage increases" that new agreements in mid-1980 may bring.

The EFBC report also says "the major revenue uncertainties" of the past three years of the plan center on federal and state help. The city counts heavily on countercyclical revenue-sharing, a program now stalled in Congress, and on Community Employment Training Assistance. In fiscal 1979, in fact, the total city work force will increase, rather than decrease as planned, because the city is adding more CETA-funded workers than it cuts from the city payrolls.

The city and its watchdogs arrive at different budget deficits depending on how they assess the risks. But variations in the numbers count for less today than the fact that all estimates are large, and few experts doubt that the city eventually will have to cut back harshly, even more than it is now planning. The issue, say the experts, is no longer how the city can raise money to do all it wants to do but how it can push down spending. Says Herbert J. Ranschburg, research director of the CBC, "The real issue is not financing the city, it's how to get the city back on an even keel so that it doesn't damage the private economy.

● Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I rise to support House Joint Resolution 1088. This appropriations legislation is necessary to enable the Secretary of the Treasury to begin implementation of the New York City Loan Guarantee Act of 1978, which we passed in this House in early June by a nearly 2 to 1 margin, and again 2 weeks ago, by a similar vote when we approved the conference report.

New York City is now in the second month of its fiscal 1979 year, the first year of its 4-year financial program to get back into the credit market. The Federal guarantees are an integral part of the 4-year financial plan. The city needs to borrow $4.5 billion over the next 4 years. This amount will enable New York, if it adheres to the program it has set for itself, to bring its budget into true balance and stand on its own financial feet by 1982. The $1.65 billion of Federally guaranteed borrowings from the city and State employee pension funds will provide an assured base on which the lenders for the ungaranteed portion of the $4.5 billion can depend.

The Appropriations Committee is wisely proposing granting the Secretary of the Treasury authority for the full amount of this guarantee authority. I support this proposal because it will represent the measure of assurance which those unguaranteed lenders need that, subject to the very specific conditions of the enabling legislation, the guarantee authority is in place.

Mr. Speaker, the conditions and other provisions of the enabling legislation will serve as the standards by which the Secretary may issue the guarantees. Before obtaining Federal guarantees New York City must, among other things, do the following:

Adopt and adhere to stringent budget-balancing requirements starting in this fiscal year, and running out through the entire period the guarantees are in effect;

Be under the supervision of an independent fiscal monitor for the entire period of the guarantees;

Set aside a reserve fund to cover possible defaults and begin to retire the guaranteed securities as soon as it is back in and credit markets;

Attempt to market its own notes and bonds beginning in 1980;

Suffer the withholding of city and State Federal transfer payments in the event of default; and

Secure commitments for the unguaranteed portion of its financial needs.

In addition, there are restraints on the authority of the Secretary of the Treasury to issue the guarantees. Annual amounts are specified in the act, and in 1980 and 1981, these could be vetoed by either House of Congress. The 1982 portion is subject to the city's having adopted a budget balanced in accordance with generally accepted accounting principles.

Mr. Speaker, the Congress has enacted a bill containing a set of requirements which will both help New York get back on its financial feet and provide the greatest protection for the Federal liability which will be involved. I urge my colleagues to vote for this appropriation measure so the New York City Loan Guarantee Act may be implemented. ●

Mr. MAHON. Mr. Speaker, I move the previous question on the joint resolution to final passage.

The previous question was ordered.

The SPEAKER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the joint resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 233, nays 132, not voting 67, as follows:

[Roll No. 726]

YEAS—233

| | | |
|---|---|---|
| Addabbo | Gaydos | Moakley |
| Akaka | Gephardt | Moffett |
| Ambro | Giaimo | Mollohan |
| Anderson, Calif. | Gilman | Moorhead, Pa. |
| | Glickman | Moss |
| Andrews, N.C. | Gonzalez | Murphy, Ill. |
| Annunzio | Gore | Murphy, N.Y. |
| Applegate | Green | Murtha |
| Ashley | Guyer | Myers, Michael |
| Aspin | Hamilton | Natcher |
| Baldus | Hanley | Neal |
| Barnard | Hannaford | Nedzi |
| Beard, R.I. | Harkin | Nix |
| Bedell | Harris | Nolan |
| Benjamin | Hawkins | Nowak |
| Biaggi | Heckler | O'Brien |
| Bingham | Hefner | Oakar |
| Blanchard | Heftel | Oberstar |
| Blouin | Hillis | Obey |
| Boggs | Holland | Ottinger |
| Boland | Hollenbeck | Panetta |
| Bolling | Holtzman | Patten |
| Bonior | Horton | Patterson |
| Brademas | Howard | Pease |
| Brodhead | Hubbard | Pepper |
| Brown, Calif. | Hughes | Perkins |
| Brown, Mich. | Hyde | Pike |
| Brown, Ohio | Jeffords | Preyer |
| Burke, Mass. | Jenrette | Pritchard |
| Burlison, Mo. | Johnson, Calif. | Pursell |
| Burton, John | Jones, N.C. | Rahall |
| Burton, Phillip | Jones, Tenn. | Rangel |
| Caputo | Jordan | Reuss |
| Carney | Kastenmeier | Rhodes |
| Carr | Kemp | Rinaldo |
| Cavanaugh | Keys | Risenhoover |
| Chisholm | Kildee | Roe |
| Clay | Kostmayer | Rogers |
| Collins, Ill. | Krebs | Roncalio |
| Conable | LaFalce | Rooney |
| Conte | Le Fante | Rose |
| Conyers | Lederer | Rosenthal |
| Corman | Leggett | Roybal |
| Cornell | Lent | Russo |
| Cotter | Lloyd, Calif. | Ryan |
| Coughlin | Long, La. | Santini |
| Danielson | Long, Md. | Sarasin |
| Delaney | Lundine | Scheuer |
| Dellums | McCloskey | Sharp |
| Dent | McDade | Sikes |
| Dicks | McEwen | Simon |
| Diggs | McFall | Skubitz |
| Dingell | McHugh | Slack |
| Dodd | McKay | Smith, Iowa |
| Downey | McKinney | Solarz |
| Drinan | Madigan | Spellman |
| Early | Maguire | St Germain |
| Eckhardt | Mahon | Staggers |
| Edgar | Mann | Stanton |
| Edwards, Calif. | Markey | Stark |
| Ertel | Marks | Steed |
| Evans, Colo. | Martin | Steers |
| Evans, Ga. | Mathis | Stokes |
| Fary | Mazzoli | Stratton |
| Fascell | Meeds | Studds |
| Fenwick | Metcalfe | Thompson |
| Fish | Meyner | Thornton |
| Fisher | Michel | Udall |
| Fithian | Mikulski | Ullman |
| Florio | Mineta | Van Deerlin |
| Foley | Minish | Vander Jagt |
| Ford, Mich. | Mitchell, Md. | Vanik |
| Ford, Tenn. | Mitchell, N.Y. | Vento |
| Volkmer | Weiss | Wright |
| Walgren | Whalen | Yates |
| Walsh | Whitten | Young, Mo. |
| Waxman | Wilson, Tex. | Zablocki |
| Weaver | Wolff | Zeferetti |

NAYS—132

| | | |
|---|---|---|
| Andrews, N. Dak. | Evans, Ind. | Mottl |
| | Findley | Murphy, Pa. |
| Archer | Flynt | Myers, Gary |
| Ashbrook | Fountain | Myers, John |
| AuCoin | Frenzel | Nichols |
| Badham | Gammage | Pickle |
| Bafalis | Ginn | Quayle |
| Bauman | Goldwater | Railsback |
| Beard, Tenn. | Goodling | Regula |
| Bennett | Gradison | Roberts |
| Bowen | Grassley | Robinson |
| Breaux | Gudger | Rousselot |
| Breckinridge | Hagedorn | Rudd |
| Brinkley | Hall | Runnels |
| Brooks | Hammer-schmidt | Satterfield |
| Broomfield | | Sawyer |
| Broyhill | Hightower | Schroeder |
| Burgener | Holt | Schulze |
| Burleson, Tex. | Ichord | Sebelius |
| Butler | Ireland | Shuster |
| Carter | Jacobs | Skelton |
| Cederberg | Jenkins | Smith, Nebr. |
| Clausen, Don H. | Jones, Okla. | Snyder |
| | Kazen | Spence |
| Cleveland | Kelly | Stangeland |
| Cohen | Kindness | Stockman |
| Coleman | Lagomarsino | Taylor |
| Collins, Tex. | Latta | Traxler |
| Corcoran | Leach | Treen |
| Crane | Levitas | Trible |
| Cunningham | Livingston | Tucker |
| D'Amours | Lloyd, Tenn. | Waggonner |
| Daniel, Dan | Lott | Walker |
| Daniel, R. W. | Lujan | Wampler |
| Davis | Luken | Watkins |
| de la Garza | McClory | White |
| Derrick | McCormack | Whitehurst |
| Derwinski | McDonald | Whitley |
| Devine | Marlenee | Wilson, Bob |
| Duncan, Tenn. | Marriott | Wilson, C. H. |
| Edwards, Ala. | Mattox | Winn |
| Edwards, Okla. | Miller, Ohio | Wylie |
| Emery | Montgomery | Yatron |
| English | Moore | Young, Fla. |
| Erlenborn | Moorhead, Calif. | |
| Evans, Del. | | |

NOT VOTING—67

| | | |
|---|---|---|
| Abdnor | Flowers | Price |
| Alexander | Forsythe | Quie |
| Ammerman | Fowler | Quillen |
| Anderson, Ill. | Fraser | Richmond |
| Armstrong | Frey | Rodino |
| Baucus | Fuqua | Rostenkowski |
| Beilenson | Garcia | Ruppe |
| Bevill | Gibbons | Seiberling |
| Bonker | Hansen | Shipley |
| Buchanan | Harrington | Sisk |
| Burke, Calif. | Harsha | Steiger |
| Burke, Fla. | Huckaby | Stump |
| Byron | Johnson, Colo. | Symms |
| Chappell | Kasten | Teague |
| Clawson, Del | Krueger | Thone |
| Cochran | Lehman | Tsongas |
| Cornwell | Mikva | Wiggins |
| Dickinson | Milford | Wirth |
| Dornan | Miller, Calif. | Wydler |
| Duncan, Oreg. | Pattison | Young, Alaska |
| Eilberg | Pettis | Young, Tex. |
| Flippo | Poage | |
| Flood | Pressler | |

The Clerk announced the following pairs:

On this vote:

Mr. Richmond for, with Mr. Krueger against.

Mr. Pattison of New York for, with Mr. Ammerman against.

Until further notice:

Mr. Garcia with Mr. Pressler.
Mr. Alexander with Mr. Wydler.
Mr. Harrington with Mr. Symms.
Mr. Shipley with Mr. Johnson of Colorado.
Mr. Rodino with Mr. Abdnor.
Mr. Price with Mr. Forsythe.
Mr. Baucus with Mr. Hansen.
Mr. Lehman with Mr. Thone.
Mr. Cornwell with Mr. Wiggins.
Mr. Chappell with Mr. Buchanan.
Mrs. Burke of California with Mrs. Pettis.
Mr. Bevill with Mr. Dornan.
Mr. Beilenson with Mr. Del Clawson.
Mr. Mikva with Mr. Kasten.
Mr. Fuqua with Mr. Milford.
Mr. Flood with Mr. Steiger.
Mr. Eilberg with Mr. Seiberling.
Mr. Byron with Mr. Ruppe.
Mr. Miller of California with Mr. Quillen.
Mr. Flippo with Mr. Harsha.
Mr. Bonker with Mr. Cochran of Mississippi.
Mr. Fowler with Mr. Burke of Florida.
Mr. Sisk with Mr. Armstrong.
Mr. Teague with Mr. Anderson of Illinois.
Mr. Wirth with Mr. Young of Alaska.
Mr. Tsongas with Mr. Dickinson.
Mr. Flowers with Mr. Fraser.
Mr. Duncan of Oregon with Mr. Stump.
Mr. Rostenkowski with Mr. Gibbons.

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## APPOINTMENT OF CONFEREES ON H.R. 15, EDUCATION AMENDMENTS OF 1978

Mr. PERKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 15, to extend and amend expiring elementary and secondary education programs, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Messrs. PERKINS, FORD of Michigan, ANDREWS of North Carolina, BLOUIN, SIMON, ZEFERETTI, MOTTL, MURPHY of Pennsylvania, LE FANTE, WEISS, HEFTEL, CORRADA, KILDEE, MILLER of California, QUIE, BUCHANAN, GOODLING, PURSELL, ERLENBORN, and JEFFORDS.

## CONFERENCE REPORT ON H.R. 12598, FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1979

Mr. FASCELL submitted the following conference report and statement on the bill (H.R. 12598) to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 95–1535)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12598) to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Year 1978".

## TITLE I—DEPARTMENT OF STATE

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

SEC. 101. (a) There are authorized to be appropriated for the Department of State for the fiscal year 1979 to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States, including trade negotiations, and other purposes authorized by law, the following amounts:

(1) For "Administration of Foreign Affairs", $849,118,000.

(2) For "International Organizations and Conferences", $412,826,000.

(3) For "International Commissions", $20,773,000.

(4) For "Migration and Refugee Assistance", $116,536,000.

(5) For increases in salary, pay, retirement, and other employee benefits authorized by law, and for other nondiscretionary costs, such amounts as may be necessary.

(b) Amounts appropriated under this section are authorized to remain available until expended.

(c) Funds authorized to be appropriated for the fiscal year 1979 by paragraphs (1) through (4) of subsection (a) may be appropriated for the fiscal year 1979 for a purpose for which appropriations are authorized by any other of those paragraphs, except that the total amount appropriated for a purpose described in any of those paragraphs may not exceed by more than 10 percent the amount specifically authorized for that purpose by subsection (a).

SUPPLEMENTAL AUTHORIZATION FOR FISCAL YEAR 1978 FOR INTERNATIONAL ORGANIZATIONS AND CONFERENCES

SEC. 102. Section 101(a)(2) of the Foreign Relations Authorization Act, Fiscal Year 1978, is amended by striking out "$389,412,000" and inserting in lieu thereof "$426,687,000".

UNITED NATIONS CONFERENCE ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT

SEC. 103. (a) The Congress finds that—

(1) science and technology are keys to eradicating hunger and poverty in developing countries;

(2) the ability of the developing countries to achieve self-sustaining growth has been hindered by the lack of an indigenous scientific and technological base;

(3) this scientific and technological base is vital to the emergence of developing countries as full and equal partners in the international system;

(4) expanded cooperation with respect to science and technology can significantly contribute to an improved North-South relationship; and

(5) the United Nations Conference on Science and Technology for Development offers a valuable forum for the analysis of problems of development that might be alleviated or solved with the aid of scientific and technical expertise.

(b) It is therefore the sense of the Congress that the United States should strongly support the purpose of the United Nations Conference on Science and Technology for Development and that the United States delegation to this conference should actively develop and offer proposals which would facilitate an expansion of mutually beneficial cooperation among developed and developing countries with respect to science and technology, including joint education and research and development programs.

(c) In addition to amounts otherwise available for such purpose, $945,000 of the amount authorized to be appropriated by section 101(a)(1) of this Act shall be available only for expenses incurred by the Department of State in connection with the United Nations Conference on Science and Technology for Development, including expenses for preparatory conferences and seminars held in the United States.

MEMORIAL STATUE OF GENERAL MARSHALL

SEC. 104. (a) The Secretary of State is authorized to acquire on behalf of the United States a memorial statue or bust of General George C. Marshall (hereafter in this section referred to as the "memorial") to be placed in an appropriate location within the Department of State.

(b)(1) To assist the Secretary of State in carrying out the provisions of subsection (a), there is established a Commission to be composed of seven members as follows:

(A) The Secretary, who shall be the chairman of the Commission.

(B) Two members appointed by the Secretary.

(C) Two members appointed by the chairman of the Committee on Foreign Relations of the Senate.

(D) Two members appointed by the chairman of the Committee on International Relations of the House of Representatives.

Members of the Commission shall serve without compensation.

(2) The Commission shall operate under the direction of the Secretary of State and, subject to final approval by the Secretary, shall select the sculptor for the memorial and select its size, style, design, and material.

(3) The Commission shall cease to exist upon completion of its functions under this section, as determined by the Secretary.

(c)(1) Of the funds authorized to be appropriated by section 101(a)(1) of this Act, not more than $10,000 may be used for payment of costs incurred in carrying out subsection (a) of this section.

(2) All other costs incurred in carrying out subsection (a) shall be paid by the Secretary of State with funds contributed to the United States for such purpose.

(d) The Secretary of State shall be responsible for maintenance and care of the memorial.

FOREIGN MISSION SOLAR ENERGY DEMONSTRATION

SEC. 105. (a) It is the purpose of this section to provide for the demonstration of solar energy and other renewable energy technologies in foreign countries through the use of such energy in buildings acquired under subsection (a) of the first section of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292(a)), in order that—

(1) countries in which such buildings are located may be given visible incentives to develop and use local solar energy or other renewable energy resources to reduce dependence upon petroleum and petroleum products;

(2) markets may be developed for American solar energy systems and components in order to stimulate investment in such systems and components and to reduce the costs of such systems and components to reasonable levels;

(3) in furtherance of the purpose of section 119 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151q), cooperation may be developed between the United States and other countries in an effort to develop solar energy or other renewable energy systems within a short period of time; and

(4) equipment which is vital to the operation of sensitive systems within United States missions abroad may be made more reliable and less dependent upon interruptible local energy supplies.

(b)(1) The Secretary of State shall implement projects for the application of solar energy or other forms of renewable energy in buildings acquired under subsection (a) of the first section of the Foreign Service Buildings Act, 1926.

(2) The Secretary of State shall select projects under paragraph (1) in consultation with the Secretary of Energy. Such projects shall apply available solar energy and other renewable energy technologies, including those for—

(A) the heating and cooling of buildings;

(B) solar thermal electric systems;

(C) solar photovoltaic conversion systems;

(D) wind energy systems; and

(E) systems for developing fuels from biomass.

The Secretary of Energy shall inform the Secretary of State of all such technologies which are feasible for such projects, taking into account the resources and environmental conditions of the countries in which such projects are to be implemented. Upon the request of the Secretary of State, the Secretary of Energy shall provide to the Secretary of State any technical information or other technical assistance which the Secretary of State considers necessary with respect to any such project. Any project selected under this section should be similar to projects which have been demonstrated by the Department of Energy (or any of its predecessor agencies) to be reliable, maintainable, and technically feasible.

(3) Any project selected under this section shall be adaptable to the local resources, climatic conditions, and economic circumstances of the country in which such project is implemented in order that such country will be more likely to implement similar projects.

(4) The Secretary of State shall insure that any project selected under this section is demonstrated to, and available for inspection by, officials and other citizens of the country in which such project is implemented.

(5) In selecting projects under this section, the Secretary of State shall give priority to projects to be implemented in developing countries.

(c) Whenever any building is constructed under the authority contained in the first section of the Foreign Service Buildings Act, 1926, the Secretary of State shall insure that the planning for such construction takes into account those renewable energy systems which are available in the country in which the building is to be constructed.

(d) In addition to amounts otherwise available for such purposes, $4,000,000 of the amount authorized to be appropriated by section 101(a)(1) of this Act shall be available only to carry out the purposes of this section.

ASSISTANCE FOR REFUGEE SETTLING IN ISRAEL

SEC. 106. Of the amount authorized to be appropriated by section 101(a)(4) of this Act, $25,000,000 shall be available only for assistance for the resettlement in Israel of refugees from the Union of Soviet Socialist Republics and from Communist countries in Eastern Europe.

ASSISTANCE FOR REFUGEES IN AFRICA

SEC. 107. In addition to amounts otherwise available for such purpose, $5,000,000 of the amount authorized to be appropriated by section 101(a)(4) of this Act shall be available only for assistance for refugees in Africa.

AID TO DESTITUTE AMERICANS ABROAD

SEC. 108. (a) Section 3(j) of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2670(j)), is amended by inserting "or destitute United States citizens abroad" immediately after "incarcerated abroad".

(b) The amendment made by this section shall take effect on October 1, 1978.

WORKING CAPITAL FUND

SEC. 109. (a) Section 13 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2684), is amended—

(1) by striking out "supply" in clause (2) in the first sentence;

(2) by striking out ", and" at the end of clause (2) in the first sentence and inserting in lieu thereof a semicolon;

(3) by inserting immediately before the period at the end of the first sentence "; and (4) medical and health care services";

(4) by striking out the third sentence; and

(5) by inserting "(a)" immediately after "SEC. 13." and by adding the following new subsection at the end of the section:

"(b) The current value of supplies returned to the working capital fund by a post, activity, or agency may be charged to the fund. The proceeds thereof shall, if otherwise authorized, be credited to current applicable appropriations and shall remain available for expenditures for the same purposes for which those appropriations are available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories.".

(b) The amendments made by this section shall take effect on October 1, 1978.

REPRESENTATION EXPENSES OF THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

SEC. 110. (a) Section 19 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2689), is amended by striking out "not to exceed $1,500 of the".

(b) The amendment made by this section shall take effect on October 1, 1978.

CONSOLIDATION OF ADMINISTRATIVE SERVICES

SEC. 111. (a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new section:

"SEC. 23. Whenever the head of any Federal agency performing any foreign affairs functions (including, but not limited to, the Department of State, the International Communication Agency, the Agency for International Development, and the Arms Control and Disarmament Agency) determines that administrative services performed in common by the Department of State and one or more other such agencies may be performed more advantageously and more economically on a consolidated basis, the Secretary of State and the heads of the other agencies concerned may, subject to the approval of the Director of the Office of Management and Budget, conclude an agreement which provides for the transfer to and consolidation within the Department or within one of the other agencies concerned of so much of the functions, personnel, property, records, and funds of the Department and of the other agencies concerned as may be necessary to enable the performance of those administrative services on a consolidated basis for the benefit of all agencies concerned. Agreements for consolidation of administrative services under this section shall provide for reimbursement or advances of funds from the agency receiving the service to the agency performing the service in amounts which will approximate the expense of providing administrative services for the serviced agency.".

(b) The amendment made by this section shall take effect on October 1, 1978.

POST EMPLOYEE SERVICES

SEC. 112. (a) Part C of title IX of the Foreign Service Act of 1946 (22 U.S.C. 1139) is amended—

(1) by striking out "Commissary Service" in the heading for that part and inserting in lieu thereof "Post Employee Services"; and

(2) by amending subsections (b) and (c) of section 921 to read as follows:

"(b) The Secretary, under such regulations as he may prescribe, may authorize and assist in the establishment, maintenance, and operation by officers and employees of the Service of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the United States for use by its diplomatic and consular missions. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292–300), and section 13 of the Act entitled 'An Act to provide certain basic authority for the Department of State', approved August 1, 1956 (22 U.S.C. 2684), may be utilized by the Secretary in providing such assistance. Services and facilities established under this subsection shall be made available, insofar as practicable, to officers and employees of other Government agencies and their dependents who are stationed abroad. Such services and facilities shall not be established in localities where another United States agency operates similar services or facilities unless the Secretary determines that such additional services or facilities are necessary.

"(c) Charges at any post abroad for a service or facility authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any Government agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.".

(b) The amendments made by this section shall take effect on October 1, 1978.

FURNISHING MEDICAL SERVICES ABROAD

SEC. 113. (a) Part E of title IX of the Foreign Service Act of 1946 is amended—

(1) in section 942 (22 U.S.C. 1157) by striking out "(a)" and by striking out subsection (b); and

(2) by adding at the end of that part the following new section:

"FURNISHING MEDICAL SERVICES ABROAD

"SEC. 945. The Secretary may establish medical treatment and health care facilities and provide for the services of physicians, nurses, or other medical or health care personnel at a post at which, in the opinion of the Secretary, sufficient personnel are employed to warrant such facilities or services.".

(b) The amendments made by this section shall take effect on October 1, 1978.

UNDER SECRETARY OF STATE FOR MANAGEMENT

SEC. 114. (a)(1) The first section of the Act entitled "An Act to strengthen and improve the organization and administration of the Department of State, and for other purposes", approved May 26, 1949 (22 U.S.C. 2652), is amended by striking out "a Deputy Under Secretary of State" and inserting in lieu thereof "an Under Secretary of State for Management".

(2) The individual holding the office of Deputy Under Secretary of State on the effective date of this section shall assume the duties of Under Secretary of State for Management and shall not be required to be reappointed by reason of the enactment of this section.

(b)(1) Paragraph (9) of section 5314 of title 5, United States Code, is amended by inserting "and Under Secretary of State for Management" immediately after "Programs".

(2) Paragraph (10) of section 5315 of such title is repealed.

(c) The amendments made by this section shall take effect on October 1, 1978.

ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL NARCOTICS MATTERS

SEC. 115. (a) There is established in the Department of State, in addition to the positions provided under the first section of the Act of May 26, 1949 (22 U.S.C. 2652), an Assistant Secretary of State for International Narcotics Matters, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be responsible for the overall coordination of the role of the Department of State in the international aspects of narcotics problems.

(b)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(122) Assistant Secretary for International Narcotics Matters, Department of State.".

(2) The amendment made by paragraph (1) of this subsection shall take effect on October 1, 1978.

DEFINITION OF CHIEF OF MISSION

SEC. 116. Paragraph (9) of section 121 of the Foreign Service Act of 1946 (22 U.S.C. 802(9)) is amended by striking out "or diplomatic agent" and inserting in lieu thereof "diplomatic agent, or the head of a United States office abroad which is designated by the Secretary as having a purpose diplomatic in nature".

RESPONSIBILITIES OF A CHIEF OF MISSION

SEC. 117. Section 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2680a), is amended—

(1) in paragraph (1) by striking out "Ambassador to" and inserting in lieu thereof "chief of mission (as defined in section 121 (9) of the Foreign Service Act of 1946) in";

(2) in paragraph (2) by striking out "Ambassador" and inserting in lieu thereof "chief of mission"; and

(3) in paragraph (3)—

(A) by striking out "Ambassador to" and inserting in lieu thereof "chief of mission in"; and

(B) by striking out "the Ambassador" and inserting in lieu thereof "the chief of mission".

DETAILING OF STATE DEPARTMENT PERSONNEL

SEC. 118. Section 11(a) of the Department of State Appropriations Authorization Act of 1973 (22 U.S.C. 2685(a)) is amended—

(1) by striking out "ninety days" and inserting in lieu thereof "one year"; and

(2) by adding at the end thereof the following new sentence: "Officers and employees of the Department of State who are detailed, assigned, or otherwise made available to another Executive agency for a period of not to exceed one year shall not be counted toward any personnel ceiling for the Department of State established by the Director of the Office of Management and Budget.".

EXCLUSION OF CERTAIN ALIENS FROM THE UNITED STATES

SEC. 119. Section 21 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2691), is amended by adding at the end thereof the following new sentence: "Nothing in this section may be construed as authorizing or requiring the admission to the United States of any alien who is excludible for reasons other than membership in or affiliation with a proscribed organization.".

PUBLICATION OF HISTORICAL DOCUMENTS BY THE DEPARTMENT OF STATE

SEC. 120. (a) The Congress finds that the Department of State publication "Foreign Relations of the United States" plays an important role in making the documentary record of United States foreign relations available to the Congress and the American public.

(b) The Secretary of State shall therefore insure that publication of the "Foreign Re-

lations of the United States" volumes is continued in such a manner as will maintain the high standard of comprehensive documentation already established by past volumes.

ASSISTANCE TO BEREAVED UNITED STATES FAMILIES

SEC. 121. (a) The Congress finds that the Department of State should, in the performance of its consular duties, render all reasonable administrative assistance to a United States citizen who is making necessary arrangements following the death of another United States citizen abroad.

(b) The Secretary of State shall—

(1) analyze alternative procedures by which the Department of State could, where necessary and appropriate, provide loans or other forms of assistance to facilitate such arrangements; and

(2) not later than January 20, 1979, transmit to the Speaker of the House of Represenatives and the chairman of the Committee on Foreign Relations of the Senate a report describing fully and completely such alternate procedures, including associated costs, and presenting his views and recommendations with respect to such procedures.

SEC. 122. (a) The Congress finds that—

(1) international political, economic, and other studies prepared systematically by analysts of the Department of State as needed background information for executive branch policymakers could be similarly valuable to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate in fulfilling their responsibilities; and

(2) a formal information-sharing arrangement between the Department of State and such congressional committees could therefore serve the national interest, provided that controls on dissemination are established which insure that neither the process of analysis nor necessary confidentiality is jeopardized.

(b) Not later than January 20, 1979, the Secretary of State shall transmit to the chairman of the Committee on International Relations of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate recommendations with respect to the establishment of such an information-sharing arrangement.

ASSISTING MINORITY ENTERPRISE

SEC. 123. (a) The Congress finds that the Inter-Agency Council for Minority Enterprise has been created to assist minority owned and operated businesses in establishing broader markets, including markets with respect to procurement by the United States Government.

(b) It is the sense of the Congress that the Secretary of State, in cooperation with such Council, should—

(1) broaden minority business participation in the provision of goods and services for the Department of State; and

(2) establish and expand export markets for minority businesses.

LIMITATION ON GEOGRAPHICAL TRAVEL RESTRICTIONS IN UNITED STATES PASSPORTS

SEC. 124. For the purpose of achieving greater United States compliance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (signed at Helsinki on August 1, 1975) and for the purpose of encouraging other countries which are signatories to the Final Act to comply with those provisions, the first section of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a), is amended by adding at the end thereof the following: "Unless authorized by law, a passport may not be designated as restricted for travel to or for use in any country other than a country with which the United States is at war, where armed hostilities are in progress, or where there is imminent danger to the public health or the physical safety of United States travellers.".

DIPLOMATIC AND OFFICIAL PASSPORTS

SEC. 125. It is the sense of the Congress that a diplomatic or official United States passport should be issued only to, and used only by, a person who holds a diplomatic or other official position in the United States Government or who is otherwise eligible for such a passport under conditions specifically authorized by law.

TRAVEL RESTRICTIONS ON FOREIGN CITIZENS

SEC. 126. (a) For the purpose of implementing general principles of the Final Act of the Conference on Security and Cooperation in Europe (signed at Helsinki on August 1, 1975) emphasizing the lowering of international barriers to the free movement of people and ideas and in accordance with provisions of the Vienna Convention on Diplomatic Relations establishing the legal principles of nondiscrimination and reciprocity, it shall be the general policy of the United States to impose restrictions on travel within the United States by citizens of another country only when the government of that country imposes restrictions on travel by United States citizens within that country.

(b) The Secretary of State shall

(1) insure that this policy is clearly conveyed to any foreign government imposing travel restrictions on United States citizens; and

(2) seek the elimination, on a mutual and reciprocal basis, of travel restrictions imposed by such government and by the Government of the United States on each other's citizens.

(c) Not later than January 20, 1979, and at intervals of one year thereafter for a period of three years, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report describing—

(1) domestic travel restrictions then being imposed by the United States Government on citizens of other countries and by foreign governments on United States citizens; and

(2) the progress of efforts undertaken pursuant to subsection

(b) to achieve the elimination of such restrictions.

(d) Subsection (a) may not be construed as limiting any restrictions on travel within the United States which are imposed by the United States Government, on a reciprocal basis, with respect to the officials of particular foreign governments.

## TITLE II—INTERNATIONAL COMMUNICATION AGENCY

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

SEC. 201. (a) There is authorized to be appropriated for the International Communication Agency for fiscal year 1979 to carry out international communication, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, and Reorganization Plan Numbered 2 of 1977, and other purposes authorized by law, $420,577,000, and such additional amounts as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law, and for other nondiscretionary cost.

(b) Amounts appropriated under this section are authorized to remain available until expended.

MISSION OF THE INTERNATIONAL COMMUNICATION AGENCY

SEC. 202. The mission of the International Communication Agency shall be to further the national interest by improving United States relations with other countries and peoples through the broadest possible sharing of ideas, information, and educational and cultural activities. In carrying out this mission, the International Communication Agency shall, among other activities—

(1) conduct Government-sponsored information, educational, and cultural activities designed—

(A) to provide other peoples with a better understanding of the policies, values, institutions, and culture of the United States; and

(B) within the statutory limits governing domestic activities of the Agency, to enhance understanding on the part of the Government and people of the United States of the history, culture, attitudes, perceptions, and aspirations of others;

(2) encourage private institutions in the United States to develop their own exchange activities, and provide assistance for those exchange activities which are in the broadest national interest;

(3) coordinate international informational, educational, or cultural activities conducted or planned by departments and agencies of the United States Government;

(4) assist in the development of a comprehensive national policy on international communications; and

(5) promote United States participation in international events relevant to the mission of the Agency.

EXPANDED EXCHANGE ACTIVITIES

SEC. 203. The President shall, by a process of gradual expansion during the four-year period beginning October 1, 1979, increase significantly the financial resources expended annually by the International Communication Agency for exchange-of-persons activities. The President shall prepare at an early date a general plan for the accomplishment of this goal and shall adjust that plan annually, as he finds appropriate, in consultation with the Congress.

TECHNICAL AND CLARIFYING AMENDMENTS ON PERSONNEL AND OTHER MATTERS

SEC. 204. (a) Section 104(e)(1) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(e)(1) is amended by striking out "President" and inserting in lieu thereof "Director of the International Communication Agency".

(b)(1) The Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the United States Information Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968, is amended in the first section, section 2, and section 12 (22 U.S.C. 1221, 1222, and 1232) by striking out "United States Information" and inserting in lieu thereof "International Communication".

(2) Section 4 of that Act (22 U.S.C. 1224) is amended to read as follows:

"AUTHORITY OF THE DIRECTOR

"SEC. 4. Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees of the Agency shall be under the direction and authority of the Director. Authority available to the Secretary of State with respect to Foreign Service officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees of the Department of State shall be available on the same basis to the Director with respect to Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees of the Agency, except as provided in section 11 of this Act.".

(3) Section 10 of that Act (22 U.S.C. 1230) is amended to read as follows:

"OTHER APPLICABLE PROVISIONS OF LAW

"SEC. 10. All provisions of the Foreign Service Act of 1946 or of any other law, which apply to Foreign Service officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees of the Department of State and which are not referred to in sections 6 through 9 of this Act, shall be applicable to Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees, as the case may be, of the Agency.".

(4) Section 11 of that Act (22 U.S.C. 1231) is amended to read as follows:

"COMMISSIONING AND ASSIGNMENT AS DIPLOMATIC AND CONSULAR OFFICERS

"SEC. 11. (a) The Secretary of State may, upon request of the Director, recommend to the President that Foreign Service information officers or Foreign Service Reserve officers of the Agency be commissioned as diplomatic or consular officers, or both, in accordance with section 512 or 524 of the Foreign Service Act of 1946.

"(b) The Secretary of State may, upon request of the Director, assign Foreign Service information officers or Foreign Service Reserve officers of the Agency, commissioned as diplomatic or consular officers, to serve under such commissions in accordance with sections 512 and 514 or section 524 of the Foreign Service Act of 1946.".

(5)(A) The title of the Act of August 20, 1968, is amended to read as follows: "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps.".

(B) Effective October 1, 1978, clause (xv) of paragraph (2) of section 5541 of title 5 of the United States Code, as added by section 412(a)(1)(C) of the Foreign Relations Authorization Act, Fiscal Year 1978, is amended by striking out "United States Information" and inserting in lieu thereof "International Communication".

(6) Paragraph (3) of section 522 of the Foreign Service Act of 1946 (22 U.S.C. 922(3)) is amended by striking out "United States Information" and inserting in lieu thereof "International Communication".

(7) Section 803(a)(4) of that Act (22 U.S.C. 1063(a)(4) is amended by striking "United States Information" and inserting in lieu thereof "International Communication".

(c) Title VIII of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1471–1475a) is amended by adding at the end thereof the following new section:

"SEAL OF THE INTERNATIONAL COMMUNICATION AGENCY

"SEC. 807. The seal of the International Communication Agency shall be the arms and crest of the United States, encircled by the words 'International Communication Agency'. Judicial notice shall be taken of the seal.".

FUNCTIONS RELATING TO THE NATIONAL GALLERY OF ART

SEC. 205. The Secretary of State may delegate to the Director of the International Communication Agency, with the consent of the Director, the functions vested in the Secretary by section 2(a) of the joint resolution entitled "Joint Resolution providing for the construction and maintenance of a National Gallery of Art", approved March 24, 1937 (20 U.S.C. 72(a)).

FUNCTIONS RELATING TO THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

SEC. 206. (a) Subsection (b) of section 3 of the Woodrow Wilson Memorial Act of 1968 (20 U.S.C. 80f(b)) is amended—

(1) in the text preceding paragraph (1) by striking out "fifteen" in inserting in lieu thereof "sixteen";

(2) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively; and

(3) by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) the Secretary of State;

"(2) the Director of the International Communication Agency;".

(b)(1) Subsection (c) of that section (20 U.S.C. 80f(c)) is amended by striking out "(7)" and inserting in lieu thereof "(8)".

(2) Subsection (d) of that section (20 U.S.C. 80f(d)) is amended by striking out "(8)" and inserting in lieu thereof "(9)".

DISTRIBUTION WITHIN THE UNITED STATES OF AN INTERNATIONAL COMMUNICATION AGENCY FILM ON ROY WILKINS

SEC. 207. Notwithstanding the second sentence of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461), the Director of the International Communication Agency shall, upon receipt of reimbursement for any expenses involved, make available to the Administrator of General Services, for deposit in the National Archives of the United States, a master copy of the film entitled "The Right to Dignity", and the Administrator shall make copies of such film available for purchase and public viewing in the United States.

## TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

SEC. 301. (a) Section 8(a) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)) is amended—

(1) in the text preceding paragraph (1) by striking out "1978" and inserting in lieu thereof "1979"; and

(2) in paragraph (1), as amended by section 302 of this Act, by striking out "$79,448,000" and "$8,500,000" and inserting in lieu thereof "$88,180,000" and "$5,000,000", respectively.

(b) The amendments made by subsection (a) of this section shall take effect on October 1, 1978.

SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1978

SEC. 302. Section 8(a)(1) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)(1)) is amended by striking out "$68,980,000" and "$5,000,000" and inserting in lieu thereof "$79,448,000" and "$8,500,000", respectively.

COMPOSITION OF BOARD

SEC. 303. Section 3(b) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2872(b)) is amended—

(1) in paragraph (1)—

(A) by amending the first sentence to read as follows: "The Board shall consist of seven members, two of whom shall be ex officio members."; and

(B) by striking out "of RFE/RL, Incorporated, shall be an ex officio member" in the last sentence and inserting in lieu thereof "and the chairman of the Board of Directors of RFE/RL, Incorporated, shall be ex officio members"; and

(2) by amending paragraph (4) to read as follows:

(4) TERM OF OFFICE OF EX OFFICIO MEMBERS.—An ex officio member of the Board shall serve on the Board during his or her term of service as chief operating executive or as chairman of the Board of Directors of RFE/RL, Incorporated, as the case may be.".

REPRESENTATIONAL EXPENSES

SEC. 304. (a) Section 4(a) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2873(a)) is amended—

(1) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(2) by inserting the following new paragraph (8) immediately after paragraph (7):

"(8) to make available for its own use or for the use of RFE/RL, Incorporated, for official reception and representational expenses not to exceed $65,000 of the funds made available to carry out this Act each fiscal year;".

(b) The amendment made by subsection (a)(2) of this section does not apply with respect to funds appropriated before the date of enactment of this Act.

DISCLOSURE OF CONTRIBUTIONS

SEC. 305. Section 5(c) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2874(c)) is amended by inserting "(including a contribution made to any corporation or other entity having a principal purpose of receiving private contributions on behalf of RFE/RL, Incorporated)" immediately after "a contribution to RFE/RL, Incorporated,".

TECHNICAL AMENDMENTS

SEC. 306. (a) Section 8(a)(1) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)(1)) is amended by striking out "Radio Free Europe and Radio Liberty" and inserting in lieu thereof "RFE/RL, Incorporated."

(b) Section 8(b) of such Act (22 U.S.C. 2877(b)) is amended by striking out "Radio Free Europe and Radio Liberty" and inserting in lieu thereof "RFE/RL, Incorporated".

USE OF BROADCASTING FACILITIES BY COMMUNIST COUNTRIES

SEC. 307. The Board for International Broadcasting Act of 1973 (22 U.S.C. 2871–2877) is amended by adding at the end thereof the following new section:

"USE OF BROADCASTING FACILITIES BY COMMUNIST COUNTRIES

"SEC. 9. No funds or other assistance may be provided by the Board under this Act to RFE/RL, Incorporated, if RFE/RL, Incorporated, permits any Communist country (within the meaning of section 620(f) of the Foreign Assistance Act of 1961) to use its broadcasting facilities unless that Communist country permits RFE/RL, Incorporated, to use that country's broadcasting facilities on a comparable basis.".

## TITLE IV—FOREIGN SERVICE AND OTHER PERSONNEL

EMPLOYMENT OF FAMILY MEMBERS OVERSEAS

SEC. 401. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the President shall—

(1) seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies; and

(2) direct that at any United States post abroad where a qualified family member is available to be hired, consideration shall be given, when continuity over a long term is not a significant consideration, to converting a vacant alien position to an American position for staffing by that family member.

(b)(1) The section heading of section 444 of the Foreign Service Act of 1946 (22 U.S.C. 889) is amended to read as follows: "LOCAL COMPENSATION PLANS".

(2) Subsection (a)(1) of such section is amended to read as follows:

"(a)(1) The Secretary shall, in accordance with such regulations as he may prescribe, establish compensation plans for alien employees of the Service and for United States citizens employed by the Department abroad who are family members of Government personnel serving in the same country. Such compensation plans shall be based upon prevailing wage rates and compensation practices for corresponding types of positions in the locality, to the extent consist-

ent with the public interest. Compensation plans established pursuant to this section may include provision for leave of absence with pay for alien employees in accordance with prevailing law and employment practices in the locality of employment, without regard to section 6310 of title 5, United States Code.".

(3) Subsection (b) of such section is amended by striking out "alien employee programs" and inserting in lieu thereof "employment programs for aliens, and for family members of Government personnel serving abroad,".

(4) Such section is further amended by adding at the end thereof the following new subsection:

"(d) The Secretary of State shall prescribe regulations authorizing the employment abroad, and providing for the compensation, of family members of Government personnel.".

(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report describing fully and completely the actions taken by the Department of State pursuant to this section and section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978.

SPECIAL ALLOWANCES

SEC. 402. (a) Title IV of the Foreign Service Act of 1946 (22 U.S.C. 861–890) is amended by adding at the end thereof the following new part:

"PART F—ADDITIONAL COMPENSATION

"SPECIAL ALLOWANCES

"SEC. 451. If he finds it to be in the best interests of the Service, the Secretary may, under such conditions as he may determine, pay special allowances, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.".

(b) The amendment made by this section shall take effect on October 1, 1978.

ASSIGNMENTS TO PUBLIC OR PRIVATE NONPROFIT ORGANIZATIONS

SEC. 403. (a) Section 576 of the Foreign Service Act of 1946 (22 U.S.C. 966) is amended—

(1) in the section heading by inserting "OR PRIVATE NONPROFIT" immediately after "PUBLIC";

(2) in subsection (a)(1)—

(A) by striking out "before their fifteenth year of service as such officers" and inserting in lieu thereof "after their seventh year of service (counting service as a Foreign Service officer and prior service as a Foreign Service Reserve officer)"; and

(B) by inserting "or private nonprofit" immediately after "or other public";

(3) at the end of subsection (a)(2) by inserting the following: "Reimbursement for an assignment to a Member or office of the Senate shall be made at the rate of one-half of the current salary of the Foreign Service officer (who shall continue to be paid his or her full salary by the Department of State).."; and

(4) by striking out subsection (f) and inserting in lieu thereof the following new subsection:

"(f) The Secretary may reimburse a Foreign Service officer for relocation expenses incident to household moves necessitated by an assignment under this section for which the officer is not entitled to be reimbursed under any other provision of law. For purposes of such reimbursement, regulations issued pursuant to section 572a(a)(3) of title 5, United States Code, shall apply to the same extent as if the officer were entitled to be reimbursed for travel and transportation expenses under section 5724(a) of that title.".

(b) Section 576(f) of the Foreign Service Act of 1946, as added by subsection (a)(4) of this section, shall take effect on October 1, 1978, but shall apply with respect to relocation expenses incurred after the date of enactment of this Act.

FACILITATING VOLUNTARY RETIREMENTS

SEC. 404. Part D of title VI of the Foreign Service Act of 1946 (22 U.S.C. 1001–1008) is amended by adding at the end thereof the following new section:

"FACILITATING VOLUNTARY RETIREMENTS

"SEC. 639. In order to facilitate their transition from the Service, the Secretary may provide professional career counseling, advice, and placement assistance, by contract or otherwise (subject to the availability of appropriations), to officers and employees of the Service, other than those separated for cause.".

ORIENTATION AND LANGUAGE TRAINING FOR FAMILY MEMBERS

SEC. 405 (a)(1) Title VII of the Foreign Service Act of 1946 (22 U.S.C. 1041–1047) is amended by adding at the end thereof the following new section:

"ORIENTATION AND LANGUAGE TRAINING FOR FAMILY MEMBERS

"SEC. 708. (a) To facilitate orientation and language training provided to members of families of officers and employees of the Government pursuant to section 701, the Secretary may make grants to family members attending language and orientation programs of study of the Institute. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance, and in no event may any such grant exceed $300 per month per individual. No individual may receive such a grant for more than six months in connection with any one assignment.

"(b) If a member of the family of an officer or employee of the Government who is assigned abroad is unable to participate in language training provided by the Department at the Institute or elsewhere, the Secretary may partially compensate that family member for language training, related to the assignment abroad, which is undertaken at a public or private institution.".

(2) The amendment made by paragraph (1) of this subsection shall take effect on October 1, 1978.

(b) Not later than January 1, 1980, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on the programs authorized by the amendment made by this section. The Secretary shall include in this report a recommendation with regard to whether those programs should remain in effect, be modified, or be terminated.

SPECIAL COMPUTATION OF ANNUITIES

SEC. 406. Notwithstanding the first sentence of section 821(a) of the Foreign Service Act of 1946 (22 U.S.C. 1076(a)), the annuity of any participant in the Foreign Service Retirement and Disability System whose salary was or is limited by the provisions of section 5308 of title 5, United States Code, and who retires during the period beginning October 1, 1978, and ending December 31, 1979, shall be equal to 2 per centum of his or her basic salary for the highest year of service for which contributions have been made to the Foreign Service Retirement and Disability Fund multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 851 and 853 of the Foreign Service Act of 1946 (22 U.S.C. 1091 and 1093).

REST AND RECUPERATION TRAVEL

SEC. 407. (a) Section 911(9) of the Foreign Service Act of 1946 (22 U.S.C. 1136(9)) is amended by inserting "or to the United States" immediately after "serving" the second place it appears.

(b) The amendment made by subsection (a) shall take effect on October 1, 1978.

REDUCING FAMILY SEPARATIONS DURING TEMPORARY ASSIGNMENTS

SEC. 408. (a) Section 911(10) of the Foreign Service Act of 1946 (22 U.S.C. 1136(10)) is amended by striking out "his" and inserting in lieu thereof "or from a".

(b) The amendment made by subsection (a) shall take effect on October 1, 1978.

PER DIEM AND SUBSISTENCE ALLOWANCES

SEC. 409. (a) Section 911 of the Foreign Service Act of 1946 (22 U.S.C. 1136) is amended—

(1) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and"; and

(2) by adding at the end thereof the following new paragraph:

"(12) without regard to rates provided under the authority of section 5702 of title 5, United States Code, the travel expenses of employees of the Department on protective security missions within the United States, its territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone, at not to exceed the cost of lodging plus $24 per day.".

(b) The amendments made by subsection (a) shall take effect on October 1, 1978.

COMPENSATION FOR JUNIOR FOREIGN SERVICE OFFICERS

SEC. 410. Section 412(b) of the Foreign Relations Authorization Act, Fiscal Year 1978, is repealed.

COMPENSATORY TIME OFF AT CERTAIN POSTS IN FOREIGN AREAS

SEC. 411. (a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5926. Compensatory time off at certain posts in foreign areas

"(a) Under regulations prescribed pursuant to this subchapter, and notwithstanding subchapter V of chapter 55 of this title or any other law, the head of an agency may, on request of an employee serving in a foreign area—

"(1) at an isolated post performing functions required to be maintained on a substantially continuous basis, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work; or

"(2) at a point in a locality that customarily observes irregular hours of work or where other special conditions are present, in order to cope with those special circumstances, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work for use during the pay period in which it is earned. Credit for compensatory time off earned under paragraph (2) shall not form the basis for any additional compensation.

"(b) Compensatory time earned under this section shall be for use only while the employee is assigned to the post where it is earned. Any such compensatory time not used at the time the employee is reassigned to another post shall be forfeited.".

(b) The section analysis for such chapter is amended by inserting the following new item immediately after the item relating to section 5925:

"5926. Compensatory time off at certain posts in foreign areas.".

TECHNICAL AMENDMENTS CORRECTING PRINTING ERRORS

SEC. 412. (a) Section 444(c)(1)(B) of the Foreign Service Act of 1946 (22 U.S.C. 889(c)(1)(B)) is amended by striking out "chap-

ter 8" and inserting in lieu thereof "chapter 81".

(b) Section 411(a) of the Foreign Relations Act, Fiscal Year 1978, is amended by striking out "section 824" and inserting in lieu thereof "section 821".

(c) The amendments made by this section shall be effective as of August 17, 1977.

REVIEW OF FOREIGN SERVICE PERSONNEL REQUIREMENTS AND COMPENSATION

SEC. 413. (a) The Congress finds that—

(1) since 1960, the United States has expanded its diplomatic representation abroad from approximately eighty countries to approximately one hundred and thirty countries;

(2) despite such expanded responsibilities, and despite a significantly increased consular workload in all countries in which the United States is represented, the total number of personnel of the Department of State has remained approximately the same; and

(3) although the responsibilities and necessary qualifications for individual Foreign Service positions continue to change, compensation for Foreign Service personnel continues to be linked to compensation for General Schedule employees at a level established years ago.

(b) It is therefore the sense of the Congress that the Secretary of State should conduct a thorough review of the personnel needs of the Foreign Service and of the suitability of the current compensation system.

(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report setting forth fully and completely—

(1) the results of such review; and

(2) such recommendations as the Secretary finds appropriate.

## TITLE V—SCIENCE, TECHNOLOGY, AND AMERICAN DIPLOMACY

FINDINGS

SEC. 501. The Congress finds that—

(1) the consequences of modern scientific and technological advances are of such major significance in United States foreign policy that understanding and appropriate knowledge of modern science and technology by officers and employees of the United States Government are essential in the conduct of modern diplomacy;

(2) many problems and opportunities for development in modern diplomacy lie in scientific and technological fields;

(3) in the formulation, implementation, and evaluation of the technological aspects of United States foreign policy, the United States Government should seek out and consult with both public and private industrial academic, and research institutions concerned with modern technology; and

(4) the effective use of science and technology in international relations for the mutual benefit of all countries requires the development and use of the skills and methods of long-range planning.

DECLARATION OF POLICY

SEC. 502. In order to maximize the benefits and to minimize the adverse consequences of science and technology in the conduct of foreign policy, the Congress declares the following to be the policy of the United States:

(1) Technological opportunities, impacts, changes, and threats should be anticipated and assessed, and appropriate measures should be implemented to influence such technological developments in ways beneficial to the United States and other countries.

(2) The mutually beneficial applications of technology in bilateral and multilateral agreements and activities the United States and foreign countries or international organizations should be recognized and supported as an important element of United States foreign policy.

(3) The United States Government should implement appropriate measures to insure that individuals are trained in the use of science and technology as an instrument in international relations and that officers and employees of the United States Government engaged in formal and informal exchanges of scientific and technical information, personnel, and hardware are knowledgeable in international affairs.

(4) In recognition of the environmental and technological factors that change relations among countries and in recognition of the growing interdependence between the domestic and foreign policies and programs of the United States, United States foreign policy should be continually reviewed by the executive and legislative branches of the Government to insure appropriate and timely application of science and technology to the conduct of United States foreign policy.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 503. (a) The President, in consultation with the Director of the Office of Science and Technology Policy and other officials whom the President considers appropriate, shall—

(1) notwithstanding any other provision of law, insure that the Secretary of State is informed and consulted before any agency of the United States Government takes any major action, primarily involving science or technology, with respect to any foreign government or international organization;

(2) identify and evaluate elements of major domestic science and technology programs and activities of the United States Government with significant international implications;

(3) identify and evaluate international scientific or technological developments with significant implications for domestic programs and activities of the United States Government; and

(4) assess and initiate appropriate international scientific and technological activities which are based upon domestic scientific and technological activities of the United States Government and which are beneficial to the United States and foreign countries.

(b) The President shall study and not later than January 31, 1980, and not later than January 31 of each year thereafter, shall transmit to the Congress a report containing recommendations with respect to—

(1) personnel requirements, and standards and training for service of officers and employees of the United States Government, with respect to assignments in any Federal agency which involve foreign relations and science or technology; and

(2) the continuation of existing bilateral and multilateral activities and agreements primarily involving science and technology, including (A) an analysis of the foreign policy implications and the scientific and technological benefits of such activities or agreements for the United States and other parties, (B) the adequacy of the funding for and administration of such activities and agreements, and (C) plans for future evaluation of such activities and agreements on a routine basis.

(c) Except as otherwise provided by law, nothing in this section shall be construed as requiring the public disclosure of sensitive information relating to intelligence sources or methods or to persons engaged in monitoring scientific or technological developments for intelligence purposes.

RESPONSIBILITIES OF THE SECRETARY OF STATE

SEC. 504. (a) In order to implement the policy set forth in section 502 of this title, the Secretary of State (hereafter in this section referred to as the "Secretary") shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries, international organizations, or commissions of which the United States and one or more foreign countries are members.

(b) The Secretary shall, to such extent or in such amounts as are provided in appropriation Acts, enter into long-term contracts, including contracts for the services of consultants, and shall make grants and take other appropriate measures in order to obtain studies, analyses, and recommendations from knowledgeable persons and organizations with respect to the application of science or technology to problems of foreign policy.

(c) The Secretary shall, to such extent or in such amounts as are provided in appropriation Acts, enter into short-term and long-term contracts, including contracts for the services of consultants, and shall make grants and take other appropriate measures in order to obtain assistance from knowledgeable persons and organizations in training officers and employees of the United States Government, at all levels of the Foreign Service and Civil Service—

(1) in the application of science and technology to problems of United States foreign policy and international relations generally; and

(2) in the skills of long-range planning and analysis with respect to the scientific and technological aspects of United States foreign policy.

(d) In obtaining assistance pursuant to subsection (c) in training personnel who are officers or employees of the Department of State, the Secretary may provide for detached service for graduate study at accredited colleges and universities.

(e) Not later than January 20, 1979, the Secretary shall transmit to the Committee on Appropriations and the Committee on International Relations of the House of Representatives, and to the Committee on Appropriations and the Committee on Foreign Relations of the Senate, a report on the implementation of the responsibilities of the Secretary under this title. Such report shall include the following information: an assessment of the personnel required in order to carry out such responsibilities; existing and planned programs for research and analysis to support long-range planning for the application of science and technology to foreign policy; existing and planned programs for training officers and employees of the United States Government pursuant to subsection (c) of this section; and existing and planned programs to enter into long-term contracts with academic and other organizations for assistance in training and in obtaining studies, analyses, and recommendations with respect to the application of science or technology to problems of foreign policy.

## TITLE VI—POLICY PROVISIONS

INTERNATIONAL COMMUNICATIONS POLICY

SEC. 601. (a) The Congress finds that—

(1) a series of multilateral meetings scheduled to convene in 1978 and 1979 (including the twentieth General Conference of the United Nations Educational, Scientific, and Cultural Organization; the Thirty-second United Nations General Assembly; the United Nations Conference on Science and Technology for Development; and the World Administrative Radio Conference of the International Telecommunications Union) will address a complex variety of international communications and information issues and will likely, through the promulgation of binding agreements relating to such issues, have a significant and lasting effect on the free flow of information and ideas among the countries of the world; and

(2) since the United States is the leading user of communications channels and information in the world, the United States Government should have a comprehensive policy regarding the various communications and

information issues that have entered international discussions and should establish an effective mechanism by which to develop and coordinate United States policy on such issues.

(b) Not later than January 20, 1979, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations and the chairman of the Committee on Commerce, Science, and Transportation of the Senate, a report describing fully and completely—

(1) procedures the President has established by which to develop and maintain a comprehensive United States policy regarding international communications and information issues; and

(2) goals and positions of the United States with regard to anticipated international meetings which will address communications and information issues.

The President shall transmit supplementary reports to the Congress as modifications, if any, occur in such goals and positions.

ACTION CONCERNING MARINE RESOURCES

SEC. 602. It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries—

(1) to join in international discussions with other such countries in order to adavnce general understanding of catacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

(2) to participate in an exchange of information with tne National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of—

(A) the impact of cetaceans on ecologically related human foodstuffs. and

(B) alternative methods of dealing with cetacean problems as they occur;

(3) to cooperate in establishnig an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

(4) to adopt comprehensive marine mammal protection legislation.

INTERNATIONAL JOURNALISTIC FREEDOM

SEC. 603. (a) The Congress finds that—

(1) news disseminations and the free flow of information across national boundaries are vital to international understanding and to healthy relations among countries; and

(2) recurring and reliable reports strongly indicate that in many countries foreign news correspondents are subject to governmental harassment and restriction, including the denial of access to legitimate news sources, the imposition of censorship, and detention, incarceration, and expulsion.

(b) It is therefore the sense of the Congress that the President should—

(1) advise the appropriate officials of any foreign government which subjects foreign news correspondents to harassment and restrictions that the United States considers such mistreatment a significant and potentially damaging factor in overall relations of the United States with such country; and

(2) raise in appropriate international forums the issue of the treatment of foreign news correspondents, with a view toward gaining multilateral support for the legitimate rights of such correspondents.

(c) Not later than January 2, 1979, the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report describing fully and completely actions taken pursuant to subsection (b).

INTERNATIONAL FOOD RESERVE

SEC. 604. (a) The Congress finds that—

(1) half a billion people suffer regularly from malnutrition or undernutrition;

(2) even very modest shortfalls in crop production can result in greatly increased human suffering, and undercut the benefits of bilateral and multilateral assistance programs, in poor developing countries with chronic food deficits;

(3) increasing variability in world food production and trade presents a serious threat not only to consumers but also to producers;

(4) the World Food Conference recognized the urgent need for an international undertaking to achieve a system of world food security based largely upon strategic food reserves;

(5) the Congress through legislation has repeatedly urged the President to negotiate with other nations to establish such a system of reserves;

(6) although the nations of the world have agreed to begin discussions on a system of grain reserves to regulate food availability, agreement on a global network of nationally held reserves still eludes the international community;

(7) while some progress has taken place in the United States in creating domestic farmer held reserves, the scale of such reserves does not insure adequate protection against fluctuations in world production and price; and

(8) the United States, as the world's leading producer of foodstuffs, remains in a unique position to provide the leadership necessary to make world food security a reality.

(b) It is therefore the sense of the Congress that the President should continue his efforts directed toward achievement of an agreement establishing an international network of nationally held grain reserves which provides for supply assurance to consumers and income security to producers.

SPANISH DEMOCRACY

SEC. 605. (a) The Congress finds that—

(1) the Senate, in rendering its advice and consent to ratification of the Treaty of Friendship and Cooperation between the United States and Spain (signed on January 24, 1976), declared its hope and intent that the Treaty would serve to support and foster Spain's progress toward free institutions;

(2) this declaration reflected the strong desire of the United States Government and the American people to see a restoration of democracy in Spain and an expansion of mutually beneficial relations between Spain and the democracies of America and Europe; and

(3) political developments in Spain during the past two years constitute a major step toward the construction of a stable and lasting Spanish democracy.

(b) The Congress finds further that—

(1) the masterpiece "Guernica", painted by Pablo Picasso, has for four decades been a powerful and poignant symbol of the horror of war;

(2) this treasured painting, while universal in its significance, holds special meaning for the people of Spain by its representation of the tragic civil war which destroyed Spanish democracy;

(3) Pablo Picasso, having painted "Guernica" for the Spanish Republican Government and concerned for Spain's future when that government fell, stipulated that the painting should remain in the custody of the Museum of Modern Art in New York until Spanish democracy had been restored; and

(4) the United States and Spain, in a Supplementary Agreement entered into with the Treaty of Friendship and Cooperation, have committed themselves to expand their cooperation in the fields of education and culture.

(c) It is therefore the sense of the Congress, anticipating the continuance of recent promising developments in Spanish political life, that "Guernica" should, at some point in the near future and through appropriate legal procedures, be transferred to the people and Government of a democratic Spain.

(d) It is further the sense of the Congress that the American people, having long benefited from this treasure and admiring Spain's achievement, would wish, as an expression of appreciation and congratulation upon the transfer of "Guernica" to Spain, to assist in the preparation of facilities for the permanent display of the painting, if such assistance is found to be appropriate by the elected leaders of Spain.

DISCRIMINATORY TRADE PRACTICES AFFECTING UNITED STATES FOREIGN RELATIONS

SEC. 606. (a) The Congress finds that those provisions of United States statutes which authorize or require suspension of or discrimination with respect to all trade between the United States and a particular foreign country and which affect, directly and significantly, the conduct of the United States foreign relations should be periodically reevaluated by the President and the Congress.

(b) Therefore, not later than January 20, 1979, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations and the chairmen of other appropriate committees of the Senate, a report which—

(1) identifies all statutory provisions which provide for such discriminatory trade practices;

(2) evaluates each such practice; and

(3) recommends, in the form of draft legislation, such amendments to those provisions as the President certifies would in his judgment advance United States foreign policy interests.

CONDUCT OF DIPLOMATIC RELATIONS

SEC. 607. The Congress finds that the conduct of diplomatic relations with a foreign government has as its principal purpose the discussion and negotiation with that government of outstanding issues and, like the recognition of a foreign government, does not in itself imply approval of that government or of the political-economic system it represents.

NUCLEAR-POWERED SATELLITES

SEC. 608. (a) The Congress finds that—

(1) no international regime governs the use of nuclear-powered satellites in space;

(2) the unregulated use of such technology poses the possibility of catastrophic damage to human life and the global environment; and

(3) this danger has been evidenced by mishaps encountered, despite certain precautions, by nuclear-powered satellites of both the United States and the Soviet Union.

(b) It is therefore the sense of the Congress that the United States should take the initiative immediately in seeking a multilateral agreement governing the use of nuclear-powered satellites in space.

(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on actions taken by the United States Government pursuant to subsection (b).

WORLD ALTERNATE ENERGY CONFERENCE

SEC. 609. (a) The Congress finds that—

(1) increasing global dependence on fossil fuels, particularly oil and natural gas, when existing supplies are rapidly being depleted, is costly to developed and developing countries both environmentally and economically;

(2) the uncontrolled spread of nuclear power carries serious dangers due to waste pollution and the possibility of accidents or material diversion;

(3) expanded development and use of alternate, nonconventional, or renewable sources of energy (including solar energy, wind, biomass waste materials, and alcohol fuels) could assist all countries in satisfying rising energy demands, while reducing environmental and economic risk;

(4) no international agency exists at present which assists countries in exchanging information and technical assistance concerning energy-related problems or which promotes the development and use of alternate energy sources; and

(5) an international agency performing these functions could be of benefit to all countries and could be particularly effective in assisting developing countries to become more self-sufficient and thereby to increase their standard of living.

(b) It is therefore the sense of the Congress that the United States should encourage the United Nations to convene a World Alternate Energy Conference in 1981 for the purpose of considering ways to meet the energy needs of the world through the development and use of alternate energy sources. Among proposals considered at such a conference should be the establishment, under United Nations auspices, of an International Alternate Energy Commission to encourage the worldwide use of alternate energy sources by assisting in the dissemination of information and by other appropriate means.

(c) Not later than January 20, 1980, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on actions taken pursuant to subsection (b).

ATROCITIES IN CAMBODIA AND UGANDA

SEC. 610. (a) The Congress finds that reliable reports of events in Cambodia and Uganda attest to the existence of governmental practices in those countries of such systematic and extensive brutality as to require special notice and continuing condemnation by outside observers.

(b) Recognizing the limited direct influence of the United States in Cambodia and Uganda, the Congress urges the President to move aggressively to support multilateral action by the United Nations and other international organizations, and to encourage bilateral action by countries having more extensive relations with Cambodia and Uganda, to bring an end to the brutal and inhumane practices of the government of those two countries.

(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report describing fully and completely actions taken pursuant to subsection (b).

(d) It is the sense of the Congress that the President should—

(1) prohibit the export of military, paramilitary, and police equipment to Uganda;

(2) direct that the visa application of any official or employee of the Government of Uganda seeking to enter the United States for the purpose of military, paramilitary, or police training, may be approved by a consular officer only after the appropriate official of the Department of State in Washington has reviewed the application and has determined that the Government of Uganda has demonstrated a proper respect for the rule of law and for internationally recognized human rights; and

(3) instruct the Permanent Representative of the United States to the United Nations to submit to the Security Council of the United Nations for its consideraion a resolution imposing a mandatory arms embargo on Uganda by all members of the United Nations.

EQUITABLE TREATMENT OF UNITED STATES CITIZENS LIVING ABROAD

SEC. 611. (a) The Congress finds that—

(1) United States citizens living abroad should be provided fair and equitable treatment by the United States Government with regard to taxation, citizenship of progency, veterans' benefits, voting rights, Social Security benefits, and other obligations, rights, and benefits; and

(2) such fair and equitable treatment would be facilitated by a periodic review of statutes and regulations affecting Americans living abroad.

(b) Not later than January 20, 1979, the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report which—

(1) identifies all United States statutes and regulations which discriminate against United States citizens living abroad;

(2) evaluates each such discriminatory practice; and

(3) recommends legislation and any other remedial action the President finds appropriate to eliminate unfair or inequitable treatment of Americans living abroad.

UNITED STATES-CANADIAN NEGOTIATIONS ON AIR QUALITY

SEC. 612. (a) The Congress finds that—

(1) the United States and Canada share a common environment along a 5,500 mile border;

(2) the United States and Canada are both becoming increasingly concerned about the effects of pollution, particularly that resulting from power generation facilities, since the facilities of each country affect the environment of the other;

(3) the United States and Canada have subscribed to international conventions; have joined in the environmental work of the United Nations, the Organization for Economic Cooperation and Development, and other international environmental forums; and have entered into and implemented effectively the provisions of the historic Boundary Waters Treaty of 1909; and

(4) the United States and Canada have a tradition of cooperative resolution of issues of mutual concern which is nowhere more evident than in the environmental area.

(b) It is the sense of the Congress that the President should make every effort to negotiate a cooperative agreement with the Government of Canada aimed at preserving the mutual airshed of the United States and Canada so as to protect and enhance air resources and insure the attainment and maintenance of air quality protective of public health and welfare.

(c) It is further the sense of the Congress that the President, through the Secretary of State working in concert with interested Federal agencies and the affected States, should take whatever diplomatic actions appear necessary to reduce or eliminate any undesirable impact upon the United States and Canada resulting from air pollution from any source.

CUBAN PRESENCE IN AFRICA

SEC. 613. (a) The Congress finds that—

(1) the President authorized the exchange of notes of May 30, 1977, between the Governments of the United States and Cuba which established an Interests Section for the United States in the Embassy of Switzerland in Havana and an Interests Section for Cuba in the Embassy of Czechoslovakia in Washington;

(2) the President has the authority under the Export Administration Act of 1969 to limit trade with Cuba being conducted by subsidiaries of American firms operating in third countries;

(3) the President has the power to sever all diplomatic and economic relations with Cuba; and

(4) there has been a sharp increase in the number of Cuban military personnel serving in Africa in the past year.

(b) It is therefore the sense of the Congress that the President should—

(1) undertake a comprehensive review of United States diplomatic and economic relations with Cuba; and

(2) not later than January 20, 1979, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report based on such review.

PALESTINIAN RIGHTS UNITS

SEC. 614. (a) The Congress, noting United Nations General Assembly Resolution 3376 (XXX) which established the Committee on the Exercise of the Inalienable Rights of the Palestinian People and noting United Nations General Assembly Resolutions 32/40/A and 32/40/B which continued the mandate of that Committee and requested that the Secretary General establish within the Secretariat of the United Nations a Special Unit on Palestinian Rights, declares that—

(1) the continuation of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and the creation of the Special Unit on Palestinian Rights are wasteful expenditures of limited United Nations resources at a time when the United Nations is experiencing severe financial difficulties and when the United Nations is under close scrutiny from contributing members;

(2) the work of the Committee on the Exercise of the Inalienable Rights of the Palestinian People does not contribute to the process of peacemaking underway at present in the Middle East; and

(3) the United States Ambassador to the United Nations should be instructed to continue to oppose extensions of the mandate of that Committee as well as extensions of the Special Unit on Palestinian Rights.

(b) It is the sense of the Congress that the President should direct the Permanent Representative of the United States to the United Nations to use all means at his disposal to obtain action by the General Assembly terminating the Committee on the Exercise of the Inalienable Rights of the Palestinian People and the Special Unit on Palestinian Rights.

## TITLE VII—MISCELLANEOUS PROVISIONS

ANNUAL REPORT OF THE GORGAS MEMORIAL INSTITUTE

SEC. 701. (a) Section 3 of the Act entitled "An Act to authorize a permanent annual appropriation for the maintenance and operation of the Gorgas Memorial Laboratory", approved May 7, 1928 (22 U.S.C. 278a), is amended in the first sentence—

(1) by striking out "annually, on the first Monday in December" and inserting in lieu thereof ", on April 1 of each year"; and

(2) by striking out "up to the first of November next preceding" and inserting in lieu thereof "during the fiscal year ending the preceding September 30".

(b) Title I of the Departments of State, Justice, and Commerce Appropriation Act, 1945, is amended in the first paragraph under the heading "INTERNATIONAL OBLIGATIONS" by striking out ": *Provided*," and all that follows through "each such session" (22 U.S.C. 278b).

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SEC. 702. (a) Section 7(a) of the Act entitled "An Act to establish a Commission on Security and Cooperation in Europe", approved June 3, 1976 (22 U.S.C. 3007(a)), is amended by striking out "$350,000" and inserting in lieu thereof "$550,000".

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

SEC. 703. (a) Section 6 of the Japan-United States Friendship Act (22 U.S.C. 2905) is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (10) the following new paragraph:

"(11) transmit its official mail as penalty mail in the same manner and upon the same conditions as an officer of the United States other than a Member of Congress is permitted to transmit official mail as penalty mail under section 3202 of title 39 of the United States Code.".

(b) The amendments made by this section shall take effect on October 1, 1978.

CONTRIBUTION TO THE INTERNATIONAL TIN COUNCIL

SEC. 704. Effective October 1, 1978, there is authorized to be appropriated to the President $60,000,000 for the purpose of acquiring tin metal to contribute to the buffer stock of the International Tin Council established under the Fifth International Tin Agreement.

PROHIBITION ON AID OR REPARATIONS TO VIETNAM

SEC. 705. (a) None of the funds authorized to be appropriated in this Act may be used for the purpose of reparations, aid, or any other form of payment to the Socialist Republic of Vietnam.

(b) The President shall continue to take all possible steps to obtain a final accounting of all Americans missing in action in Vietnam.

USE OF FOREIGN AIR CARRIERS

SEC. 706. Notwithstanding the limitations established by section 1117 of the Federal Aviation Act of 1958 (49 U.S.C. 1517), funds appropriated after the date of enactment of this Act to the Department of State, the International Communication Agency, the Agency for International Development (or any successor agency), and the Arms Control and Disarmament Agency may be used to pay for the transportation, between two places both of which are outside the United States, of officers and employees of those agencies, their dependents, and accompanying baggage, aboard air carriers which do not hold certificates under section 401 of that Act.

TRAVEL DOCUMENTATION OF ALIENS AND CITIZENS

SEC. 707. (a) Subsection (a) of section 215 of the Immigration and Nationality Act (8 U.S.C. 1185) is amended by striking out "When the United States" and all that follows through "be unlawful" and inserting in lieu thereof "Unless otherwise ordered by the President, it shall be unlawful".

(b) Subsection (b) of such section is amended to read as follows:

"(b) Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport.".

(c) Subsection (f) of such section is amended by striking out "proclamation," both places it appears.

(d) Such section is further amended by striking out ubsection (c) and redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

(e) The heading of such section is amended to read as follows: "TRAVEL DOCUMENTATION OF ALIENS AND CITIZENS".

(f) The item relating to section 215 in the table of contents of the Immigration and Nationality Act is amended to read as follows: "Sec. 215. Travel documentation of aliens and citizens.".

REPORTING AND COORDINATION OF INTERNATIONAL AGREEMENTS

SEC. 708. Section 112b of title 1, United Code, is amended—

(1) by inserting "(including the text of any oral international agreement, which agreement shall be reduced to writing)" immediately after "international agreement" in the first sentence;

(2) by inserting "(a)" immediately before the first sentence; and

(3) by adding at the end thereof the following new subsections:

"(b) Not later than March 1, 1979, and at yearly intervals thereafter, the President shall, under his own signature, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report with respect to each international agreement which, during the preceding year, was transmitted to the Congress after the expiration of the 60-day period referred to in the first sentence of subsection (a), describing fully and completely the reasons for the late transmittal.

"(c) Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement.

"(d) The Secretary of State shall determine for and within the executive branch whether an arrangement constitutes an international agreement within the meaning of this section.

"(e) The President shall, through the Secretary of State, promulgate such rules and regulations as may be necessary to carry out this section.".

PANAMA CANAL TREATIES

SEC. 709. None of the funds authorized to be appropriated by this Act may be used directly or indirectly to effect implementation of the Panama Canal Treaty or the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, each signed on September 7, 1977, unless authorized by the Constitution or by Act of Congress.

INTERPARLIAMENTARY UNION

SEC. 710. The first section of the Act entitled "An Act to authorize participation by the United States in the Interparliamentary Union", approved June 28, 1935 (22 U.S.C. 276), is amended by striking out "$45,000" in paragraph (2) and inserting in lieu thereof "$90,000".

COMMISSION ON HUNGER AND MALNUTRITION

SEC. 711. There are authorized to be appropriated $1,500,000 for the fiscal year 1979 and $1,500,000 for the fiscal year 1980 for a commission on global hunger and malnutrition to be created by Executive order by the President. This commission shall (1) assess the policies, organization, and structure of current Federal programs which have an impact on hunger and malnutrition; (2) coordinate, sponsor, and oversee such projects, studies, events, and other activities as the commission deems necessary or desirable, making maximum use of past and ongoing related efforts; (3) conduct such studies, inquiries, meetings, and hearings as the commission deems necessary; and (4) make recommendations to the President and the Congress on policies to increase the capacity of the United States to reduce hunger and malnutrition. Funds authorized to be appropriated by this section shall be expended under the direction of the chairman of the commission.

FOREIGN GIFTS AND DECORATIONS RECEIVED BY SENATORS AND SENATE EMPLOYEES

SEC. 712. (a) Section 7342(a)(6) of title 5, United States Code, is amended—

(1) by striking out "(e)" in subparagraph (A) and inserting in lieu thereof "(e)(1)"; and

(2) by inserting before the semicolon at the end of subparagraph (B) the following: ", except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate".

(b)(1) The last sentence of section 7342(c)(2) of such title is amended by striking out "subsection (e)" and inserting in lieu thereof "subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2)".

(2) The last sentence of section 7342(d) of such title is amended—

(A) by striking out "or" and inserting in lieu thereof ", for"; and

(B) by striking out "subsection (e)" and inserting in lieu thereof "subsection (e)(1), or for disposal in accordance with subsection (e)(2)".

(c) Section 7342(e) of such title is amended—

(1) by striking out "Gifts" and inserting in lieu thereof "(1) Except as provided in paragraph (2), gifts";

(2) by striking out "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)", respectively; and

(3) by adding at the end thereof the following new paragraph:

"(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.".

(d) In the event that the space and facilities available to the Secretary of the Senate for carrying out his responsibilities in storing and safeguarding property in his custody under section 7342 of title 5, United States Code, are insufficient for such purpose, he may, with the approval of the Committee on Rules and Administration of the Senate, lease such space and facilities as may be necessary for such purpose. Rental

payments under any such lease and expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the Secretary of the Senate.

And the Senate agree to the same.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
CHARLES C. DIGGS, Jr.,
LESTER L. WOLFF,
LEO J. RYAN,
HELEN S. MEYNER,
GEORGE E. DANIELSON,
WM. S. BROOMFIELD,
JOHN BUCHANAN,
J. HERBERT BURKE,
*Managers on the Part of the House.*

JOHN SPARKMAN,
CLIFFORD P. CASE,
GEORGE MCGOVERN,
JOE BIDEN,
CLAIBORNE PELL,
CHARLES H. PERCY,
HOWARD H. BAKER, Jr.,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12598) to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached in the committee of conference, and minor drafting and clarifying changes.

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

The conference substitute contains authorizations for fiscal year 1979 appropriations of $1,969,710,000 for the Department of State, the International Communication Agency, the Board for International Broadcasting, and other programs and activities. The amount authorized to be appropriated in the conference substitute is $27,030,000 less than the total Senate authorization, $29,974,000 more than the total House authorization, and $57,470,000 more than the executive branch request.

The amounts contained in the conference substitute compared to the amounts requested by the executive branch and recommended by the House and Senate follow:

EXECUTIVE BRANCH REQUEST, THE PROVISIONS OF THE HOUSE BILL, THE SENATE AMENDMENT, AND THE CONFERENCE SUBSTITUTE, WITH RESPECT TO THE AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

[In thousands of dollars]

| | Executive branch request | House bill | Senate amendment | Conference substitute |
|---|---|---|---|---|
| Department of State: | | | | |
| Administration of Foreign Affairs | 830,143 | 849,139 | 835,143 | [1] 849,118 |
| International Organizations and Conferences | 412,781 | 412,781 | [2] 450,261 | [3] 412,826 |
| International Commissions | 19,973 | 20,773 | 20,773 | 20,773 |
| Migration and Refugee Assistance | 90,836 | 91,336 | 116,536 | [4] 116,536 |
| Subtotal, Department of State | 1,353,733 | 1,374,029 | 1,422,713 | 1,339,253 |
| International Communication Agency | 413,327 | 417,327 | 423,577 | [5] 420,577 |
| Board for International Broadcasting | 85,180 | 88,180 | 88,180 | [6] 88,180 |
| Commission on Security and Cooperation in Europe | 0 | 200 | 0 | 200 |
| International Tin Agreement | 60,000 | 60,000 | 60,000 | 60,000 |
| Commission on Hunger and Malnutrition | 0 | 0 | 1,500 | 1,500 |
| Return of the "Guernica" to Spain | 0 | 0 | 500 | 0 |
| Total | 1,912,240 | 1,939,736 | 1,996,470 | 1,969,710 |

[1] In addition to the executive branch request for administration of foreign affairs, the conference substitute earmarks $945,000 for the U.N. Conference on Science and Technology for Development and provides $1,000,000 for the undocumented alien program, $30,000 for strengthening the legal staff of the Consular Affairs Bureau, $1,300,000 for increased language training, $6,300,000 for ncreased property acquisitions, $400,000 for regularizing the employment status of seasonal employees of the Passport Office, and $1,000,000 for increased costs of rest and recuperation for Foreign Service employees.

[2] The Senate amendment included an authorization of $37,275,000 for the payment of United States arrearages to the United Nations Educational and Cultural Organization (UNESCO). The same amount was included in the House bill as a supplemental fiscal year 1978 authorization as requested by the executive branch. The conference substitute is the same as the House provisions.

[3] In addition to the executive branch request for International Organizations and Conferences, the conference substitute authorizes an increase of $45,000 in the annual funding level for U.S. participation in the Interparliamentary Union.

[4] In addition to the original executive branch request for migration and refugee assistance, the conference substitute earmarks $25,000,000 for Soviet and Eastern European refugees resettling in Israel, $5,000,000 for refugees in Africa, and provides $30,000,000 assistance for Indochina refugees (pursuant to a subsequent executive branch request of $34,500,000 for Indochina refugees) and $200,000 for an increased U.S. contribution to the International Red Cross.

[5] In addition to the executive branch request for the International Communication Agency (ICA), the conference substitute provides $7,000,000 for increased exchange of persons activities and $250,000 for an increase in rest and recuperation costs for ICA employees serving at hardship posts abroad.

[6] In addition to the fiscal year 1979 authorization for the Board for International Broadcasting, the conference substitute also contains a fiscal year 1979 supplemental authorization of $10,468,000 for that agency pursuant to an executive branch request. Both the House bill and the Senate amendment contained the supplemental authorization.

SUPPLEMENTAL AUTHORIZATION FOR UNESCO

The House bill authorized the appropriation of $37,275,000 for fiscal year 1978 to pay U.S. arrearages to United Nations Educational, Scientific and Cultural Organization.

The Senate amendment increased the authorization in this bill for the "International Organizations and Conferences" account by $37,275,000 to pay these arrearages in fiscal year 1979.

The conference substitute is identical to the House provision.

STRENGTHENING VISA PROCESSING

The House bill earmarked $1.25 million to strengthen visa processing in connection with the President's undocumented alien program.

The Senate amendment did not contain a comparable provision.

The conference substitute contains no provision on this issue. The committee of conference, however, agreed to include, in the total amount authorized for the "Administration of Foreign Affairs" account, $1 million to be used to strengthen the Department of State's ability to carry out effectively its responsibilities for the issuance of visas.

CLARIFICATION OF INFORMATION REPORTING REQUIREMENT

The Senate amendment sought to clarify existing law which requires that "any Federal department, agency, or independent establishment shall furnish any information requested by either" the House International Relations Committee or the Senate Foreign Relations Committee "relating to any activity or responsibility" within the jurisdiction of these committees by adding, after "any information", the following: (notwithstanding the department, agency, or independent establishment of origin)." The amendment thus was intended to make clear that such requests cannot be refused simply because the information requested was originally derived from a different agency.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue. The committee of conference agreed that the amendment proposed by the Senate is unnecessary in view of the existing legal requirement that "any" information be furnished and that "any" information includes information derived from another agency. The committee of conference stresses that the so-called "third agency rule" may not, therefore, be used as an impediment to the timely furnishing of information requested by these congressional committees. The executive branch has assured the Congress that the rule will be used as intended and not as a tool to thwart intentionally congressional inquiry or otherwise delay such requests. Specifically, the committee of conference understands that, in the event any of the information requested from a particular department, agency or independent establishment was supplied by another such entity, the department, agency or independent establishment receiving the request shall (1) immediately inform the originating entity and request that entity's permission to release such information; and (2) immediately inform the requesting committee that the originating entity has been asked for permission to release such information to the requesting committee. If the originating entity denies permission to such department, agency or independent establishment, for the release of such items of information, the originating entity shall so inform the requesting committee, describing the items of information whose release has been denied.

The committee of conference intends that the procedure described above constitute the advice sought by Secretary of State Vance on August 2, 1978, regarding a means of resolving difficulties confronted by the foreign relations committees with respect to the "third agency rule."

U.N. CONFERENCE ON SCIENCE AND TECHNOLOGY

The House bill earmarked $945,000 for State Department expenses in conjunction with the U.N. Conference on Science and Technology for Development.

The Senate amendment contained findings on the importance of science and technology for development and expresed the sense of Congress that the United States should strongly support the purpose of the U.N. Conference and develop proposals for same. No funds were earmarked.

The conference substitute incorporates both the earmarking of $945,000 contained in the House provision and the findings and policy statement contained in the Senate amendment.

ASSISTANCE FOR REFUGEES IN AFRICA

The House bill earmarked $10 million of the amount authorized for the "Migration and Refugee Assistance" account for refugees in Africa.

The Senate amendment did not contain a comparable provision.

The conference substitute includes an earmarking for refugees in Africa, but reduces the amount to $5 million. In the total amount authorized to be appropriated for migration and refugee assistance, in addition to the executive branch request, the conference substitute includes $5 million for African refugees. The committee of conference agreed that emerging refugee problems in Africa may well require even more funds than are included in the total amount authorized by this bill. It is the expectation of the committee of conference that additional requirements for refugees in Africa or elsewhere during fiscal year 1979 will be funded under the authorization provided for appropriations to the U.S. Emergency Refugee and Migration Assistance Fund If requirements for appropriations for refugee purposes exceed existing authorizations for appropriations, the Congress would expect the executive branch to submit a request for supplemental authorization legislation.

DISADVANTAGED CHILDREN IN THAILAND

The Senate amendment contained an earmarking of $500,000 of the funds authorized for the "Migration and Refugee Assistance" account for children in Thailand born of American fathers and Asian mothers.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue. The committee of conference agreed on the need to provide assistance to disadvantaged children in Thailand and agreed that funds should be used for this purpose under the authority of the International Development and Food Assistance Act of 1978 (H.R. 12222).

CONSOLIDATION OF ADMINISTRATIVE SERVICES

The House bill provided authority for the consolidation of administrative services performed in common by the Department of State and other Federal agencies performing foreign affairs functions.

The Senate amendment did not contain a comparable provision.

The conference substitute is similar to the House provision with minor changes which were adopted in order to insure that each of the foreign affairs agencies would be on equal footing with the State Department with respect to consolidation of administrative services.

FOREIGN MISSION SOLAR ENERGY DEMONSTRATION

The House bill established a policy of using solar energy and other renewable energy technologies in buildings acquired under authority of the Foreign Service Buildings Act of 1926 and earmarked $4 million for this purpose. The House provision also required that the Secretary of State select the projects in consultation with the Secretary of Energy and otherwise called for involvement by the Department of Energy.

The Senate amendment was similar to the House provision, but contained no consultation requirement on the selection of projects and in general did not require as much involvement of the Department of Energy.

The conference substitute is the same as the House provision.

PALESTINIAN RIGHTS UNITS

The House bill expressed the sense of Congress that the U.N. Committee on the Exercise of the Inalienable Rights of the Palestinian People and the U.N. Special Unit on Palestinian Rights ought to be terminated and that the permanent U.S. representative to the United Nations should use all means at his disposal to obtain such termination.

The Senate amendment provided for a reduction in the 1979 U.S. contribution to the United Nations equal to the amount of our 1978 U.N. contribution which was used for these two units.

The conference substitute is the same as the House provision.

ASSISTANT SECRETARY OF STATE FOR NARCOTICS MATTERS

The House bill authorized an additional Assistant Secretary in the Department of State with the title of Assistant Secretary of State for International Narcotics Matters who would be responsible for the overall coordination of the role of the Department of State in the international aspects of narcotics problems.

The Senate amendment contained a similar provision, but provided that the Assistant Secretary was to be responsible to the Secretary of State for all matters pertaining to narcotics in the conduct of foreign policy and international narcotics control programs funded under section 482 of the Foreign Assistance Act of 1961 and was to assume the full duties and responsibilities currently carried out by the senior adviser to the Secretary of State for International Narcotics Control. In addition to establishing the position of Assistant Secretary for International Narcotics Matters, the Senate amendment required the Secretary of State to submit, within 6 months of enactment of this legislation, a comprehensive report on the Office of the Assistant Secretary for International Narcotics Matters, including its mandate and operations, the mandate and operations of its predecessor office, and proposals and recommendations to strengthen international narcotics control.

The conference substitute is the same as the House provision. The committee of conference, however, agreed that a report on the implementation of this provision would be useful. The Secretary of State is therefore requested to submit to the Committee on International Relations of the House of Representatives and to the Committee on Foreign Relations of the Senate, within 6 months of enactment of this legislation, a comprehensive report on the Office of the Assistant Secretary of State for International Narcotics Matters, containing the information specified in the Senate amendment.

WORLD ALTERNATE ENERGY CONFERENCE

The House bill expressed the sense of Congress that the United States ought to encourage the United Nations to hold a World Alternate Energy Conference in 1981, a main purpose of which should be consideration of the establishment of an international alternative energy organization.

The Senate amendment expressed a similar sense of Congress, but set the date for the conference as 1980, included five findings concerning world energy supplies and usages, provided that establishment of an International Alternate Energy Commission should be one of the proposals considered, and required a report by January 20, 1979, on actions taken by the United States to promote such a conference.

The conference substitute is the same as the Senate provision except that the target date for the conference was changed to 1981 and the date of the report required to be submitted to Congress was changed to January 20, 1980.

TRAVEL DOCUMENTATION OF ALIENS AND CITIZENS

The House bill made permanent the authority of the President to regulate the entry of aliens into the United States and to require American citizens to bear valid passports when entering or leaving the United States. This authority, which is now exercised on an "emergency" basis, would otherwise lapse in September 1978, pursuant to the National Emergencies Act enacted in 1976. The House bill also repealed the criminal penalties for violations of these travel controls.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

EXCLUSION OF CERTAIN ALIENS FROM THE UNITED STATES

The Senate amendment stated that the Secretary of State "shall" make a favorable recommendation for admission to the United States in any case where a prospective visitor is excludable only for reasons of organizational affiliation. Existing law says he "should" make such a recommendation. The Senate amendment also contained a provision emphasizing that other reasons for exclusion retain their force.

The House bill contained no comparable provision.

The conference substitute incorporates a provision emphasizing that reasons other than membership in a proscribed organization continue to be grounds for denying admission to the United States, but does not include the other change proposed by the Senate.

DIPLOMATIC AND OFFICIAL PASSPORTS

The Senate amendment expressed the sense of Congress that diplomatic or official passports should be issued only to, and used only by, persons holding U.S. Government diplomatic or other official positions or persons otherwise eligible for such passports under conditions specifically authorized under law. The Senate amendment further directed the Secretary of State to transmit to Congress, no later than January 20, 1979, proposed legislation specifying those categories of persons eligible for such passports and the Secretary's certification that U.S. passport procedures insure that such passport will not be used by persons whose eligibility is terminated.

The House bill did not contain a comparable provision.

The conference substitute expresses the sense of Congress that diplomatic or official passports should be issued only to, and used only by, persons holding U.S. Government diplomatic or other official positions or who are otherwise eligible for such passports under conditions specifically authorized under law.

TRAVEL RESTRICTIONS ON FOREIGN CITIZENS

The Senate amendment stated that, in accordance with the general principles of the Helsinki Final Act and the Vienna Convention on Diplomatic Relations, it shall be the general policy of the United States to impose restrictions on travel within the United States by foreign citizens only when their governments impose travel restrictions on U.S. citizens. The Senate amendment further required the Secretary of State to convey this policy to foreign governments imposing travel restrictions on U.S. citizens and to seek, on a reciprocal basis, the elimination of such restrictions. Finally, the Senate amendment directed the Secretary of State to transmit to Congress, not later than January 20, 1979, and annually thereafter for 3 years, a report describing existing travel restrictions imposed by the United States and foreign governments and the progress toward eliminating such restrictions.

The House bill did not contain a comparable provision.

LIMITATION ON GEOGRAPHICAL TRAVEL RESTRICTIONS

The Senate amendment prohibited restrictions on the use of U.S. passports for travel to any nation unless that nation is at war with the United States or armed hostilities are in progress.

The House bill did not contain a comparable provision.

The conference substitute is similar to the Senate provision except that it would add to the specified exceptions allowed in the Senate amendment nations where conditions threaten the public health or the physical safety of U.S. citizens.

USE OF FOREIGN AIR CARRIERS

The Senate amendment provided authority for U.S. foreign affairs agencies to use foreign air carriers for transportation of personnel and accompanying baggage between two points outside of the United States.

The House bill did not contain a comparable provision.

The conference substitute is similar to the Senate amendment except that it restricts the authority to use foreign air carriers to employees of the Department of State, the International Communication Agency, the Agency for International Development, and the Arms Control and Disarmament Agency, their dependents and accompanying baggage. In granting this authority, the committee of conference recognizes that existing law has created substantial hardships for U.S. Government personnel required to travel overseas to carry out their official duties and has frequently resulted in increased costs to the U.S. Government. The committee of conference, however, does not intend that this authority be implemented in a broad and sweeping manner. Therefore, it is fully expected that this authority will be implemented in a manner which will continue to encourage U.S. Government employees to use U.S. air carriers to the maximum practical extent. In establishing regulations to implement this new authority, the heads of affected agencies are expected to take into account both the continuing policy of Congress that U.S. airlines be used to the greatest practical extent and also any significant adverse economic impact which use of this authority may have on the revenues of any U.S. certificated air carrier. The heads of agencies affected by this provision are requested to provide to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, not later than 14 months after enactment of this legislation, a comprehensive report on implementation of this provision.

The conference substitute is similar to the Senate provision but makes clear that this provision is not intended to limit any restrictions on travel within the United States which are imposed by the United States Government, on a reciprocal basis, with respect to the officials of particular foreign governments.

INTERNATIONAL JOINT COMMISSION REPRESENTATION EXPENSES

The Senate amendment removed the current limitation of $1,500 on annual representation and official entertainment expenses by the American section of the International Joint Commission, United States and Canada.

The House bill did not contain a comparable provision.

The conference substiutte is the same as the Senate amendment.

IMPROVING FUNDING OF INTERNATIONAL JOINT COMMISSION

The Senate amendment earmarked $800,000 of the funds authorized to be appropriated to the Department of State each year for the purpose of providing for studies requested by the U.S. Government to be carried out by the International Joint Commission. It also required the Secretary of State to conduct a study of possible measures to improve the budgetary procedures of the United States with respect to support for the International Joint Commission. The results of the study were to be submitted to Congress by January 20, 1979.

The House bill did not contain a comparable provision although it did include $800,000 for a similar purpose in the funds authorized to be appropriated to the Department of State for fiscal year 1979 for the "International Commissions" account.

The conference substitute contains no provision on this issue. The committee of conference, however, did agree to the inclusion of an additional $800,000 in funds authorized to be appropriated to the Department of State for fiscal year 1979 for the "International Commissions" account in order to permit the International Joint Commission, United States and Canada, to strengthen its staff and to permit it to more promptly initiate studies requested by the two Governments as recommended by the General Accounting Office. The Secretary of State is requested, no later than January 20, 1979, to submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House a report on ways to improve budgetary procedures governing U.S. participation in the activities of the International Joint Commission. This report should take into account the recommendations of the General Accounting Office, contained in its report on "How the United States Can and Should Improve its Funding of International Joint Commission Activities," dated February 8, 1978.

MEMORIAL STATUE OF GEN. GEORGE C. MARSHALL

The Senate amendment contained a provision authorizing acquisition by the Department of State a memorial statue or bust of Gen. George C. Marshall to be placed within the Department of State.

The House bill did not contain a comparable provision. The House of Representatives, however, passed a bill, H.R. 9165, essentially the same as this provision on January 23, 1978.

The conference substitute is the same as the Senate provision.

HISTORICAL PUBLICATION OF THE STATE DEPARTMENT

The Senate amendment contained a provision to prevent a shift from letterpress to microfilm in the production of the State Department historical publication "Foreign Relations of the United States," by stipulating a minimum number of pages for these volumes (i.e., two-thirds of the number of pages in the volumes for 1947–49).

The House bill did not contain a comparable provision.

The conference substitute contains a congressional finding on the important role this publication plays in establishing the documentary record of U.S. foreign relations and directs the Secretary of State to insure that publication of volumes in the series is continued in a way which maintains the high standards of comprehensive documentation established by previous volumes. The State Department's "Foreign Relations" series is an immensely valuable research tool for understanding the history of American foreign policy, and the series should therefore continue to make available the comprehensive information which has made this publication useful to scholars and the public. To insure that the publication retains its utility and that the series is readily accessible to the public, the committee of conference expects the Department of State to consult fully with scholars in diplomacy and other fields, university and other libraries, and interested members of the public about the most appropriate method of publishing the series in the future. Before making any major changes either in the standards affecting what is included in volumes of the series or in the method of publication or distribution of the series, the Department of State is expected to consult formally with the House Committee on International Relations and the Senate Committee on Foreign Relations.

ASSISTING MINORITY ENTERPRISE

The Senate amendment directed the Secretary of State to cooperate with the Inter-Agency Council for Minority Enterprise to assist minority-owned and operated businesses to establish broader export markets and broaden minority business participation in State Department procurement.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision except that the wording was slightly modified in recognition of advances already made in this area by the Department of State.

INTERNATIONAL COMMUNICATION AGENCY (ICA) FILM

The Senate amendment allowed an exception to the general prohibition against the domestic dissemination of International Communication Agency materials, so as to allow American groups to purchase from the General Services Administration an ICA film on National Association for the Advancement of Colored People leader Roy Wilkins.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

TECHNICAL AMENDMENTS RELATING TO THE INTERNATIONAL COMMUNICATION AGENCY

*Per diem*

The House bill gave the Director of the International Communication Agency authority to prescribe per diem rates. (Under existing law the President has this authority.)

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

*Administrative services for Japan-United States Friendship Commission*

The House bill amended the Japan-United States Friendship Act to specify that the Japan-United States Friendship Commission may obtain such administrative support, services, and personnel as the Commission deems necessary and appropriate "from the Director of the International Communication Agency, on a reimbursable basis."

The Senate amendment did not contain a comparable provision.

The conference substitute contains no provision on this issue.

MISSION OF THE INTERNATIONAL COMMUNICATION AGENCY

The Senate amendment provided a statutory mandate for the International Communication Agency.

The House bill did not contain a comparable provision.

The conference substitute is identical to the Senate provision.

NAME CHANGE FOR THE INTERNATIONAL COMMUNICATION AGENCY

The Senate amendment provided for the name of the International Communication Agency (ICA) to be changed to the "United States Agency for Information and Cultural Exchange" by January 1, 1979.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

VOICE OF AMERICA (VOA) BROADCASTS

The Senate amendment stated the sense of the Senate that the provisions of section 503 of the Information and Educational Exchange Act of 1948 shall apply to all broadcasts of the Voice of America without regard to any policies of distorting the truth, including censorship, of governments of countries to which the Voice of America broadcasts. (Section 503 states that "VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.")

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

The committee of conference judged that, since the essence of the Senate provision is in existing law, the provision would have been redundant.

COMPOSITION OF THE BOARD FOR INTERNATIONAL BROADCASTING (BIB)

The House bill amended the Board for International Broadcasting Act of 1973 to make the Chairman of the Board of Directors of RFE/RL, Inc. (Radio Free Europe and Radio Liberty), instead of the chief operating officer of the radios, an ex-officio, nonvoting member of the Board.

The Senate amendment did not contain a comparable provision.

The conference substitute amends the Board for International Broadcasting Act of 1973 to make both the Chairman of the Board of Directors of RFE/RL, Inc., and the chief operating officer of the radios ex-officio, nonvoting members of the Board for International Broadcasting.

BIB REPRESENTATIONAL EXPENSES

The House bill amended the Board for International Broadcasting Act of 1973 to clarify the authority of the Board directly or for RFE/RL, Inc., to use appropriated funds for representational expenses, but limited the use of such funds for this purpose to $65,000 each fiscal year.

The Senate amendment did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

DISCLOSURE OF CONTRIBUTIONS TO BIB

The Senate amendment amended the Board for International Broadcasting Act of 1973 to make clear that the requirement of full and timely disclosure of contributions applies not only to contributions to RFE/RL, Inc., itself, but also to any fund or foundation expressly created to solicit or receive contributions on behalf of RFE/RL, Inc.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

DEFINITION OF CHIEF OF MISSION

The House bill contained a provision which expanded the definition of "Chief of Mission" to include the head of any U.S. office abroad which is diplomatic in nature, in order to clarify the authority of any individual heading a diplomatic post of the United States, whether or not that person is an Ambassador.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

EMPLOYMENT OF FAMILY MEMBERS OVERSEAS

The Senate amendment required the Secretary of State to establish compensation plans for family members of U.S. Government employees serving overseas and required a report on actions taken to increase opportunities for employment of family members overseas. In addition, the Senate amendment directed the Secretary of State to (1) seek to create bilateral and multilateral agreements which will facilitate the employment of family members of Foreign Service personnel in foreign countries and (2) give consideration to converting vacant alien positions to American positions for staffing by qualified family members when long-term continuity is not a significant consideration.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision except for technical amendments to make clear that the provision applies to family members of all U.S. Government personnel abroad. The committee of conference intends that this provision be applicable to family members of U.S. military personnel abroad as well as to family members of civilian employees.

ASSIGNMENTS TO PUBLIC OR PRIVATE NONPROFIT ORGANIZATIONS

The House bill provided for expansion of the so-called Pearson program which provides for assignments of Foreign Service officers to the Congress, State, and local government agencies, and other public organizations. The House provision permitted officers who have served at least 7 years (existing law allows assignment only of officers in their 10th to 15th year) to be assigned to duty with private nonprofit and public organizations (existing law does not allow assignment to private organizations).

The Senate amendment was similar to the House provision, but prohibited officers from being assigned under the Pearson program after their 22d year of service, and provided for a gradual increase over 5 years in the number of officers taking part in the program so that by fiscal year 1984 at least 50 officers would participate each year. The Senate amendment additionally provided that any reimbursement to the Department for assignments to a Member or office of the Congress was to be made at the rate of one-half the current salary of the Foreign Service officer.

The conference substitute is similar to the House provision with an amendment to require reimbursement of one-half the salary of Pearson program personnel assigned to the Senate. It is the intent of the Congress that the Secretary of State make every effort to increase the number of Foreign Service officers assigned under the Pearson program. Significant benefits accrue to the Department of State and the Congress or other recipient organizations from vigorous use of this program, with the result that the recipient organization receives the benefit of trained Foreign Service officers while the Department acquires Foreign Service officers with a greater understanding of the recipient organization. Therefore, as soon as practicable, the Secretary should strive for a minimum level of 50 officers taking part in the program.

CAREER COUNSELING

The House bill authorized career counseling for Foreign Service officers and employees "in order to facilitate their transition from the Foreign Service."

The Senate amendment was similar, but authorized such counseling "for the purpose of maintaining an appropriate distribution of officers and employees among the various ranks" during the periods when the Secretary judges it necessary to encourage voluntary retirements.

The conference substitute incorporates the House provision.

REST AND RECUPERATION TRAVEL

The Senate amendment contained a provision to permit employees of the foreign affairs agencies and their dependents who are eligible for "rest and recuperation" leave to elect to have their round-trip transportation paid to the United States, or to "other locations abroad" rather than just the latter, as is the case under present law.

The House bill did not contain a comparable provision.

The conference substitute retains the Senate provision with a modification in wording which makes clear that rest and recuperation leave will continue to be governed by regulations promulgated by the Secretary of State. It is the intent of the committee of conference to establish the option for Foreign Service officers and their dependents to return to the United States whenever eligibility for rest and recuperation leave is attained, pursuant to regulations promulgated by the Secretary. The Senate amendment provided, for the State Department and for the ICA, additional funds calculated to meet the extra costs attendant to providing this opportunity; and the committee of conference approved these amounts in the expectation that the regulations promulgated by the Secretary will provide for the "return-to-the-U.S. option" to be available except in unusual circumstances. The committee of conference emphasizes that air transport for such rest and recuperation should be procured, whenever possible, from U.S. carriers and at economy fares. In establishing the regulations to govern this provision, the Secretary should give appropriate consideration to the benefits to employee morale to be derived from this provision as well as to the budgetary impact the provision may have on other agency programs and activities.

RETIREMENT BENEFITS FOR BINATIONAL CENTER GRANTEES

The Senate amendment provided for participation in the Foreign Service retirement system by any person who served as a Binational Center grantee and who has 5 years of creditable service.

The House bill did not contain a comparable provision.

The conference substitute does not contain a provision on this issue. In deleting the Senate provision, the Congress is acting without prejudice regarding the possible merits of the claim by certain former grantees of Binational Centers that they are entitled to participation in a U.S. Government retirement program.

ORIENTATION AND LANGUAGE TRAINING FOR FAMILY MEMBERS

The House bill provided authority to the Secretary of State to make grants, not to exceed $300 per month per individual, to family members of Foreign Service officer and employees to offset expenses associated with attendance at language and orientation programs of the Foreign Service Institute (FSI). The House bill also required a report evaluating the grant program to be submitted to the Congress no later than January 1, 1980.

The Senate amendment provided for partial compensation for language training for

dependents of Foreign Service officers outside the FSI, specified no great amount, but required certification that the dependent is unable to participate in the departmental training program.

The conference substitute incorporates both the House and Senate provisions. In an effort to provide the best and most comprehensive orientation and language training for Foreign Service family members, the Congress intends to provide flexibility to the Department of State to provide this training both at the Foreign Service Institute and at locations outside FSI. The provisions, however, require that training may take place outside the Institute only when the family member is unable to participate in training at the Institute. The Secretary of State is also provided authority to make grants to individuals taking part in FSI or outside training to offset costs incurred in conjunction with this training. No grant may exceed the actual costs associated with attendance and a limitation of $300 per months for no more than 6 months is placed on the grant authority for FSI training. The committee of conference does not consider the $300-per-month grant authority to be a precedent for use elsewhere in Government. The justification for this authority is that it will make it possible for additional dependents (primarily spouses) to attend orientation and language training prior to departure for a foreign assignment. Lack of such training now leads to a number of broken assignments because of the failure of the family to adjust to the foreign culture. The $300-per-month grant is a small price to pay to reduce the number of such costly broken assignments. This provision is not to be interpreted as a limitation on the authority in section 701 of the Foreign Service Act of 1946.

SPECIAL COMPUTATION OF ANNUITIES

The House bill provided a special computation of retirement annuities for certain Foreign Service officers and other participants in the Foreign Service Retirement System who retire between October 1, 1978, and December 31, 1979, equal to 2 percent of the basic salary for the highest single year of service (rather than the highest 3 years of service as under existing law) multiplied by the number of years of service credit obtained.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

This provision applies only to the Foreign Service (indeed only to a relatively small number of Foreign Service employees) for a specific and limited period of months. It is included in this act because of the serious personnel surplus in senior Foreign Service ranks. It is not to be construed as a precedent for broadening other Government retirement inducement authorities now or in the future. Both the House International Relations Committee and the House Post Office and Civil Service Committee Chairmen have agreed that enacting this provision will not constitute a precedent for other U.S. Government personnel systems.

The civil service system has authority for both reduction-in-force and early retirement inducements to handle similar personnel problems. Temporary and specific retirement inducements are used in civil service-staffed agencies when such agencies face difficult personnel problems such as that now confronting the Foreign Service.

This section is necessitated by the separate personnel system of the Foreign Service which has neither reduction-in-force nor special retirement inducement authority. It would also assist in resolving the central current Foreign Service management problem which is caused by the lack of senior retirements as described in the committee reports on this authorization bill.

The committee of conference finds that this provision will save money and will result in some reduction in the number of senior Foreign Service employees as well as in the average grade of Foreign Service employees of officer rank. Both the House Committee on International Relations and the Senate Committee on Foreign Relations plan to follow the implementation of this provision to insure that these results are realized.

REDUCING FAMILY SEPARATIONS DURING TEMPORARY ASSIGNMENTS

The Senate amendment provided authority for the Secretary of State to pay travel expenses of family members of an officer or employee who is assigned to temporary duty. (Under existing law, these travel expenses may be paid only if the officer is assigned to temporary duty while en route to his post assignment.)

The House bill did not contain a comparable provision.

The conference substitute is similar to the Senate amendment with a change which restricts application of the provision to temporary duty ordered in connection with a change in assignment. This will insure that the provision applies only to temporary duty ordered in connection with transfers involving family travel, and does not include temporary duty where the employee simply travels to another city to perform the duty and then returns home.

SPECIAL ALLOWANCES

The House bill provided authority to the Secretary of State to pay compensation for extra duty required of certain Foreign Service officers.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision except for a technical amendment to make clear that any payments provided under authority of this provision are taxable as compensation under the Internal Revenue Code. The committee of conference agreed (*a*) that in appyling this new authority, the Secretary of State should insure that no officer working in the immediate office of a Principal Officer (i.e., persons paid at Executive Levels I, II, or III) of the Department of State, the International Communication Agency, and the Agency for International Development, would benefit from the special allowance; and (*b*) that the grades of the positions eligible for consideration for the special allowance should be limited to Foreign Service officers in classes 8 through 4.

REPORTING TO A CHIEF OF MISSION

The Senate amendment reaffirmed existing law, which requires all employees of the U.S. Government stationed abroad, regardless of agency, to keep the Chief of Mission fully informed as to their activities. The amendment did so by adding to existing law the phrase "notwithstanding any other provision of law."

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue. The committee of conference decided to delete the Senate provision in light of the administration's agreement that the "Authority of Ambassador" provision in existing law "means that disclosure of intelligence information to Ambassadors is authorized within the meaning of the National Security Act of 1947." The principal purpose of the Senate amendment was to make that clear.

DETAILING OF STATE DEPARTMENT PERSONNEL

The House bill extended from 90 days to 1 year the maximum period an officer or employee of the Department of State can be detailed to another executive agency without reimbursement to the Department. It also required that these detailed officers and employees not be counted toward any personnel ceiling imposed on the Department.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision. In approving this provision, the committee of conference wishes to make clear its intent that the number of employees detailed under this authority continue to be limited, that the personnel ceiling of the Department administratively imposed by the Office of Mangement and Budget not be reduced by reason of this provision, and that any nonreimbursable assignments under this authority not made pursuant to an exchange agreement with another executive agency and which exceed 90 days be reported to the Committees on Foreign Relations and International Relations.

PERSONNEL REQUIREMENTS AND COMPENSATION

The Senate amendment stated the finding of Congress that despite the steady expansion of U.S. diplomatic representation abroad, the total number of State Department personnel has not increased and although the responsibilities and necessary qualifications for Foreign Service positions continue to change, compensation for such personnel remains linked to that of the General Schedule employees. The Senate amendment further expressed the sense of Congress that the Secretary of State should conduct a review of the personnel and compensation needs of the Foreign Service and required that he report the results and recommendations of the review to Congress not later than January 20, 1979.

The House bill did not contain a comparable provision.

The conference substitute is identical to the Senate provision.

PREMIUM PAY

The House bill repealed section 412 of the Foreign Relations Authorization Act, Fiscal Year 1978, which would prohibit premium pay to all Foreign Service officers and Foreign Service information officers for overtime, night, holiday and Sunday work after September 30, 1978, but would grant Foreign Service officers in classes 5 through 8 a one-time $250 per year increase in salary.

The Senate amendment did not contain a comparable provision.

The conference substitute repeals the requirement that Foreign Service officers in classes 5 through 8 be paid an additional $250 per year in lieu of premium pay, but allows the prohibition of premium pay to take effect on October 1, 1978.

SCIENCE, TECHNOLOGY, AND AMERICAN DIPLOMACY

*Findings*

The House bill contained four findings of the Congress on the importance of science and technology to American foreign policy: the consequences of science and technology require appropriate knowledge and understanding of these fields in order to conduct effective diplomacy; many opportunities in diplomacy lie in scientific and technological fields; individuals and organizations concerned with technology should be consulted in the formulation, implementation, and evaluation of foreign policy; and effective application of science and technology to problems of international relations requires the development and use of long-range planning.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

*Declaration of policy and diplomacy*

The House bill enunciated a policy on the application of science and technology to foreign policy. Four elements of policy were stated: technological developments should be anticipated and assessed and ap-

propriate measures implemented to influence such developments in ways beneficial to the United States and other nations: the mutually beneficial applications of science and technology evidenced by U.S. participation in international agreements should be supported as important elements of U.S. foreign policy; employees and officers of the United States should be trained in the application of science and technology to foreign policy and in the international implications of scientific and technological developments; and U.S. foreign policy should be continually reviewed to insure appropriate and timely application of science and technology to foreign policy.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

*Responsibilities of the President*

The House bill required the President, through the Secretary of State, the Director of the Office of Science and Technology Policy, and other officials the President may designate, to implement the policy set forth above.

The Senate amendment did not contain a comparable provision.

The conference substitute incorporates the House provision with the following amendments:

The conference substitute deletes the requirement that the President carry out his responsibilities under this provision through the Secretary of State. While the committee of conference intends that the Secretary of State be a principal assistant to the President in implementing this section, it was agreed that the deleted requirement would unnecessarily impinge on the authority of the President to fulfill his responsibilities under this provision.

Further, the conference substitute deletes the word, "fully," which modified the phrase, "informed and consulted," in order to simplify interagency coordination and to eliminate confusion over interpretation of the provision.

The conference substitute also substitutes the phrase "take any major action primarily involving science and technology" for the phrase "take any initiative involving science and technology." This change clarifies the scope of the legislation by focusing the coordination and oversight activities of the Department of State on major international actions of the U.S. Government primarily involving science and technology, rather than on all international discussions and actions which may in some manner touch upon or involve science and technology. The committee of conference intends that intelligence collection activities be excluded from the scope of this provision.

Finally, the conference substitute adds the word "major" to modify the phrase "domestic science and technology programs" in order to make clear that the President should identify and evaluate the international implications of important, but not all, domestic science and technology programs and activities of the U.S. Government.

*Authority of the Secretary of State*

The House bill established the authority and responsibilities of the Secretary of State for implementing the policy enunciated above and for undertaking actions to improve the ability of the Department of State to apply science and technology to problems of diplomacy and international relations.

The Senate amendment did not contain a comparable provision.

The conference substitute retains the House provision but adds the word "major" to modify the phrase "science or science and technology agreements and activities." This amendment clarifies the role of the State Department in coordinating and overseeing international scientific and technological activities of the U.S. Government to insure consistency with overall foreign policy. It directs the attention of the State Department to those international agreements and activities of greatest importance. The amendment makes clear that the State Department need not coordinate and oversee all international scientific or technological activities undertaken to implement international agreements on which State was previously informed and consulted if such implementing activities are not deemed to be "major" activities.

*Earmarking of funds*

The House bill earmarked $4,071,000 of the total amount authorized to be appropriated by this legislation for administration of foreign affairs for the Department of State for the purpose of carrying out during fiscal year 1979 the responsibilities given the Department under the provisions described above.

The Senate amendment did not contain a comparable provision.

The conference substitute does not include an earmarking. The committee of conference expects the Department of State to expend at least $4 million of the sums authorized to be appropriated for the administration of foreign affairs for fiscal year 1979 on activities relating to the application of science and technology to American diplomacy in addition to the activities of the Department already programed in such areas as oceans, international environmental affairs, international scientific affairs, international energy matters, preparations for the United Nations Conference on Science and Technology for Development, and external research. The committee of conference intends that the $4 million be expended on the following new activities: The establishment of long-term research and training relationships with nongovernmental and academic institutions on the application of science and technology to international problems; the augmentation of programed external research; the augmentation of course offerings at the Foreign Service Institute; the development of a cadre of officers sensitive to the international implications of scientific and technological developments; the development of a government-wide management information system to facilitate executive branch coordination and oversight of international scientific and technological activities of the U.S. Government and State Department implementation of specific scientific and technological cooperation agreements where personnel, budgetary, and other resources of the Department permit.

GORGAS MEMORIAL INSTITUTE

The House bill contained a series of technical amendments which change the date for submission of the Institute's annual report to Congress from January to April.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The House bill provided an increase of $200,000 in the annual authorization of appropriations for the Commission on Security and Cooperation in Europe.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

PANAMA CANAL TREATIES

The House bill provided that none of the funds authorized in the bill shall be used directly or indirectly to effect implementation of the Panama Canal Treaties of 1978 without a specific act of Congress authorizing such implementation.

The Senate amendment did not contain a comparable provision.

The conference substitute provides that none of the funds authorized in the bill may be used directly or indirectly to effect implementation of the Panama Canal Treaties unless authorized by the Constitution or by act of Congress.

INTERPARLIAMENTARY UNION

The Senate amendment increased the annual authorization for expenses of U.S. participation in the Interparliamentary Union (IPU) from $45,000 to $100,000.

The House bill did not contain a comparable provision.

The conference substitute increases the authorization to $90,000. In order to improve the accounting of expenses, the committee of conference expects that henceforth, in the reports required by applicable U.S. statutes, the U.S. delegation to the IPU will provide a full detailed accounting of all expenses, including transportation costs borne by the Department of Defense, and that such information will be provided by and made available to both the House and Senate.

UNITED STATES-EUROPEAN COMMUNITY INTERPARLIAMENTARY GROUP

The Senate amendment established a statutory base for a "United States-European Community Interparliamentary Group." The language was similar to the statutes underlying the North Atlantic Assembly, the Interparliamentary Union, the Mexico-United States Interparliamentary Group and the Canada-United States Interparliamentary Group. An annual authorization of $50,000 was provided.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

EXPANDED EXCHANGE ACTIVITIES

The Senate amendment mandated a gradual increase, over 5 years, in the real resources devoted to exchange-of-persons activities conducted by the ICA. Specifically, the Senate amendment (1) recognized the importance of the exchange-of-persons program; (2) directed the President to prepare a 5-year plan for the achievement of a significant increase in exchange-of-persons activities; (3) provided that such plan would be submitted to Congress in January 1979 and then be adjusted annually by the President and the Congress; and (4) directed the President to include necessary funds for the plan in his annual budget submission to Congress.

The House bill did not contain a comparable provision.

The conference substitute provides that the President shall, through a gradual expansion during the 4-year period beginning October 1, 1979, significantly increase the financial resources annually expended by the ICA for exchange-of-persons activities. The conference substitute further provides that the President shall prepare a general plan for such expansion and shall adjust such plan annually if necessary in consultation with the Congress. This plan should be submitted to the House Committee on International Relations and the Senate Committee on Foreign Relations not later than January 20, 1979. In such submission, the committee of conference also requests that the President provide the two committees an analysis of the executive branch's past efforts in this area including an accounting of individual recipients for the past 10 years.

INTERNATIONAL COMMUNICATIONS POLICY

The Senate amendment stated the finding of Congress that (1) certain forthcoming international conferences will have a significant impact on the free flow of in-

formation and ideas among the nations of the world; and (2) although the United States is the leading user of communications channels and information, the U.S. Government does not have a comprehensive policy regarding international communications issues or an effective mechanism for developing and coordinating such a policy. It directed the President to transmit to the Congress by January 20, 1979, a report detailing the policymaking mechanism which has been developed for this purpose, and the goals and positions of the United States with regard to anticipated international meetings which will address communications and information issues. Supplemental reports were required if any modification of these goals or positions occur.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate amendment. Minor revisions in language were made in recognition of executive branch efforts to formulate a comprehensive international communications policy.

NEEDED ACTION CONCERNING MARINE RESOURCES

The Senate amendment stated the sense of Congress that the Secretary of State should convey to all nations having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of such marine mammals and should encourage such nations to (1) join in the international discussions on this subject at the June 1978 International Whaling Commission meeting; (2) participate in an exchange of information with the National Marine Fisheries Service of the U.S. Department of Commerce; (3) cooperate in establishing an international cetacean commission; and (4) adopt comprehensive marine mammal protection legislation.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

ACTION TO SUPPORT INTERNATIONAL JOURNALISTIC FREEDOM

The Senate amendment stated the finding of the Congress that news dissemination and the free flow of information across international boundaries are vital to good relations among nations and that there are strong indications that in many countries foreign journalists are subject to governmental harassment and restrictions. The Senate amendment also stated the sense of the Congress that the President should advise foreign governments engaging in such harassment and restrictions of journalists that the United States regards such actions as a significant and potentially damaging factor in U.S. relations with such country and that the President should raise the issue of the treatment of foreign journalists in appropriate international forums and directed the President to report to the Congress by January 20, 1979, on actions taken pursuant to this section. Further, the Senate amendment condemned the action taken by Soviet authorities in the detention of Craig Whitney of the New York Times and Harold Piper of the Baltimore Sun.

The House bill did not contain a comparable provision.

The conference substitute incorporates the Senate provision with the exception of the reference to the Soviet authorities' detention of certain specified journalists.

INTERNATIONAL FOOD RESERVE

The Senate amendment stated several findings of the Congress with respect to the world food situation and expressed the sense of Congress that the President should sustain a major initiative directed toward reaching an agreement to establish an international network of nationally held grain reserves and directed the President to report to the Congress not later than January 20, 1979, on actions taken toward achieving such a goal.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision with the exception of the requirement for a report to Congress.

CONSOLIDATION OF FOREIGN RELATIONS LAW

The Senate amendment stated the finding of Congress that the clarity of statutes governing the conduct of U.S. foreign relations could be improved through consolidation and directed the Secretary of State, the Directors of the International Communication Agency and the Arms Control and Disarmament Agency, and the Chairman of the Board for International Broadcasting to prepare draft legislation to consolidate such statutes for transmittal to the Congress not later than January 20, 1979.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

SYSTEMATIC INFORMATION-SHARING

The Senate amendment stated the finding of Congress that State Department international political, economic, and other studies could be valuable to the two foreign relations committees of the Congress and that a formal information-sharing arrangement between the State Department and the two committees could serve the national interest provided that controls are established to protect necessary confidentiality. The Senate amendment directed the Secretary of State to transmit to the Congress, not later than January 20, 1979, recommendations for establishing such an information-sharing arrangement.

The House bill did not contain a comparable provision.

The conference subsititute is the same as the Senate provision.

EQUITABLE TREATMENT OF U.S. CITIZENS LIVING ABROAD

The Senate amendment stated the finding of Congress that American citizens living abroad should be treated fairly and equitably by the U.S. Government with respect to taxation and other rights and benefits and that such treatment would be facilitated by a periodic review of laws and regulations affecting Americans living abroad. The Senate amendment directed the President to transmit to Congress, no later than January 20, 1979, a report which identifies and evaluates all laws and regulations which discriminate against Americans living abroad and recommended legislation to eliminate unfair and inequitable treatment.

The House bill did not contain a comparable provision.

The conference subsititute is the same as the Senate provision.

SPANISH DEMOCRACY

The Senate amendment set forth certain findings of Congress with respect to (*a*) Spain's progress toward the construction of a stable and lasting democracy, and (*b*) the symbolic importance of the Picasso painting "Guernica." The Senate amendment further expressed the sense of Congress that "Guernica" should be transferred to Spain and that "the American people, having long benefited from this treasure and admiring Spain's achievement today, would wish, as an expression of appreciation and congratulation, to contribute to the preparation of any special facilities as may be suitable for the painting's permanent display." The amendment authorized an appropriation of up to $500,000 for such a contribution if it were to be "found appropriate by the elected leaders of Spain."

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision except that the authorization of $500,000 is removed. While the committee of conference agreed to include language affirming the desirability of American assistance in the preparation of the painting's permanent display, if such assistance is found appropriate by the elected leaders of Spain, the authorization of an appropriation for this purpose was found to be premature and was therefore deleted without prejudice to future consideration.

ASSISTANCE TO BEREAVED U.S. FAMILIES

The Senate amendment stated the finding of Congress that the Department of State should render all reasonable administrative assistance to any U.S. citizen who is making arrangements following the death of another U.S. citizen abroad; directed the Secretary of State to examine alternative procedures by which the Department could, where needed and appropriate, provide loan assistance or other assistance to facilitate such arrangements; and required a report to the Congress not later than January 20, 1979, on such alternative procedures including associated costs.

The House bill did not contain a comparable provision; however, the report of the Committee on International Relations on this bill contained a statement requesting a State Department study on this problem to be completed and submitted to the Committee by December 1, 1978.

The conference substitute is the same as the Senate provision.

REVIEWING DISCRIMINATORY TRADE PRACTICES

The Senate amendment stated the finding of Congress that all U.S. statutes and regulations requiring discrimination with respect to all trade between the United States and any foreign country were enacted for reasons relating solely to the conduct of U.S. foreign policy and that such statutes and regulations should be periodically reevaluated by the President and the Congress. The Senate amendment directed the President to transmit to Congress not later than January 20, 1979, a report that (1) identifies all such statutes and regulations, (2) evaluates each, and (3) recommends amendments which would in his judgment advance U.S. foreign policy interests.

The House bill did not contain a comparable provision.

The conference substitute expresses the finding of Congress that:

"United States statutes which authorize or require suspension or discrimination with respect to all trade between the United States and a particular foreign country, and which affect, directly and significantly, the conduct of United States foreign relations, should be periodically reevaluated by the President and the Congress."

The conference substitute retains the reporting requirement contained in the Senate amendment, with a technical amendment making clear that all appropriate congressional committees are to receive a copy of such report.

NORMAL DIPLOMATIC RELATIONS

The Senate amendment stated the finding of Congress that a principal purpose of the conduct of diplomatic relations with a foreign government is the discussion and negotiation of outstanding issues and that such relations do not imply approval of such government. The Senate amendment further stated the finding of Congress that achievement of the President's goal of establishing normal diplomatic relations with all nations would serve long-term U.S. interests provided that such diplomatic relationships are conducted on a reciprocal basis and are consistent with existing U.S. commitments to other nations. Finally, the Senate amendment directed the Secretary of State to transmit to Congress, not later than January 20, 1979, a report identifying those countries with which

the United States does not maintain normal diplomatic relations and setting forth the reasons therefor.

The House bill did not contain a comparable provision.

The conference substitute retains only the finding with respect to the purpose and significance of diplomatic relations with a foreign government. The committee of conference requests that the Secretary of State transmit to the House Committee on International Relations and the Senate Committee on Foreign Relations, not later than January 20, 1979, a report identifying those countries with which the United States does not maintain normal diplomatic relations and setting forth the reasons therefor.

NUCLEAR-POWERED SATELLITES

The Senate amendment stated findings of Congress with respect to the dangers posed by the unregulated use of nuclear-powered satellites and expressed the sense of Congress that the United States should take the lead in seeking a multilateral agreement governing the use of such satellites. The Senate amendment further directed the Secretary of State to transmit to the Congress, not later than January 20, 1979, a report on efforts to reach such an agreement.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

ATROCITIES IN CAMBODIA AND UGANDA

The Senate amendment stated the finding of Congress that reliable reports attest to the existence of atrocities in Cambodia and Uganda which require special notice and condemnation. The Senate amendment further urged the President to support multilateral action and bilateral action by countries having extensive relations with the two countries to bring about a lessening of inhumane practices and directed the Secretary of State to transmit to Congress, not later than January 20, 1979, a report on actions taken to that end. The Senate amendment also stated that the President should (1) prohibit the export of military and related equipment to Uganda; (2) prohibit the issuance of a visa to any Ugandan official for the purpose of military, paramilitary, or police training in the United States unless the Department of State determines that Uganda has demonstrated proper respect for the rule of law and human rights; and (3) instruct the U.S. permanent representative at the United Nations to submit a resolution imposing a mandatory arms embargo on Uganda.

The House provision did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

REPORTING AND COORDINATION OF INTERNATIONAL AGREEMENTS

The Senate amendment amended the Case-Zablocki Act (1 U.S.C. 112b), by (1) requiring that oral international agreements be reduced to writing and submitted to Congress; (2) requiring a written report signed by the President with respect to all agreements transmitted after the 60-day period stipulated in the Case-Zablocki Act; (3) forbidding the signing or conclusion of any international agreement without the prior approval of the Secretary of State or the President; (4) stipulating that the Secretary of State shall determine, for the executive branch, whether an arrangement constitutes an international agreement within the meaning of the Case-Zablocki Act; and (5) requiring the President, through the Secretary of State, to promulgate such rules and regulations as may be necessary to carry out the provisions of the Case-Zablocki Act.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate amendment except that item (3) was modified to provide for "prior consultation with" rather than "prior approval of" the Secretary of State or the President; such consultation may encompass a class of agreements. As regards item No. 1, relating to the transmission of oral agreements, it is the understanding of the committee of conference that the current administrative practice is to reduce oral international agreements of consequence to writing; thus the amendment merely codifies existing procedure.

It is the understanding of the committee that intelligence liaison agreements between U.S. intelligence agencies and foreign governments are also subject to the oversight of the intelligence committees of the House and Senate. Therefore, those committees, in addition to the House Committee on International Relations and the Senate Committee on Foreign Relations, will continue to examine such agreements within the context of their respective jurisdictions.

TREATIES AND INTERNATIONAL AGREEMENTS

The Senate amendment expressed the sense of the Senate that the President should have prior consultations with the Senate Foreign Relations Committee as to whether particular agreements between the United States and other countries should be a treaty or an Executive agreement.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

FREEDOM OF COMMUNICATION

The Senate amendment stated that no directive may be issued which inhibits any State Department, International Communication Agency, Arms Control and Disarmament Agency, Board for International Broadcasting, or Agency for International Development employee from communicating with Members and employees of Congress.

The House bill did not contain a comparable provision.

The conference substitute deletes the Senate provision in view of the fact that a comparable provision is contained in existing law (5 U.S.C. 7102).

COMMISSION ON HUNGER AND MALNUTRITION

The Senate amendment authorized an appropriation of $1.5 million for each of the fiscal years 1979 and 1980 for a Commission on Global Hunger and Malnutrition which would (1) assess current Federal programs which have an impact on hunger and malnutrition; (2) sponsor and oversee relevant activities; and (3) make recommendations to the President and Congress on policies to increase the capacity of the United States to reduce hunger and malnutrition.

The House bill did not contain a comparable provision.

FOREIGN GIFTS AND DECORATIONS RECEIVED BY SENATORS AND SENATE EMPLOYEES

The Senate amendment amended the Foreign Gifts and Decorations Act (5 U.S.C. 7342) by setting forth certain procedures for the disposal of foreign gifts and decorations received by Senators and Senate employees.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision. A similar provision with respect to Members and employees of the House included in the Foreign Relations Authorization Act of 1977.

RHODESIA

The Senate amendment expressed the sense of the Congress with respect to U.S. policy toward Rhodesia.

The House bill did not contain a comparable provision.

The conference substitute deletes the Senate provision.

NEGOTIATIONS ON AIR QUALITY

The Senate amendment stated the finding of Congress with respect to certain environmental problems shared by the United States and Canada and stated the sense of Congress that the Secretary of State should try to negotiate a cooperative agreement with Canada to protect and preserve the two countries' mutual airshed and to enhance air quality. The Senate amendment further expressed the sense of Congress that the Secretary of State should, in concert with other interested Federal agencies and affected states, take appropriate diplomatic actions to reduce or eliminate air pollution from any source, which affects both countries. Finally, the Senate amendment expressed the sense of Congress that the United States should negotiate with Canada to develop an agreement on air quality standards to be regulated by the International Joint Commission, United States and Canada, and that the American section of the IJC monitor air quality along the border if it will facilitate negotiations. The Secretary of State was directed to report to Congress not later than January 20, 1979, on the status of such negotiations.

The House bill did not contain a comparable provision.

The conference substitute states the findings of Congress with respect to joint United States and Canadian concerns about protection of the environment and expresses the sense of Congress that the President should try to negotiate a cooperative agreement with Canada to protect and preserve air quality. The conference substitute also expresses the sense of Congress that the Secretary of State should, in concert with other Federal agencies, and affected States, take appropriate diplomatic actions to reduce or eliminate any undesirable impact upon both countries resulting from air pollution.

DIPLOMATIC RELATIONS WITH ANGOLA

The Senate amendment prohibited the use of funds under this legislation to establish diplomatic relations with Angola as long as Cuban military forces are there unless the President certifies that the establishment of diplomatic relations would serve U.S. national interests.

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

CUBAN PRESENCE IN AFRICA

The Senate amendment contained certain findings concerning Cuban involvement in Africa and U.S. relations with Cuba and expressed the sense of Congress that the President should sever existing diplomatic and economic relations with Cuba until Cuba removes its military forces from Africa.

The House bill did not contain a comparable provision.

The conference substitute states the finding of Congress that Cuban personnel serving in Africa have sharply increased in the past year and expresses the sense of Congress that the President should undertake a comprehensive review of U.S. diplomatic and economic relations with Cuba and transmit a report of such review to the Speaker of the House and the Senate Committee on Foreign Relations not later than January 20, 1979.

EFFECTIVE DATES

The House bill included in various provisions an effective date of October 1, 1978, in order to comply with House rules regarding appropriations of funds and with the requirements of the Congressional Budget Act.

The Senate amendment did not contain a comparable provision.

The conference substitute includes the October 1, 1978 effective dates.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
CHARLES C. DIGGS, Jr.,
LESTER L. WOLFF,
LEO J. RYAN,
HELEN S. MEYNER,
GEORGE E. DANIELSON,
WM. S. BROOMFIELD,
JOHN BUCHANAN,
J. HERBERT BURKE,
*Managers on the Part of the House.*

JOHN SPARKMAN,
CLIFFORD P. CASE,
GEORGE MCGOVERN,
JOE BIDEN,
CLAIBORNE PELL,
CHARLES H. PERCY,
HOWARD H. BAKER, Jr.,
*Managers on the Part of the Senate.*

## CONFERENCE REPORT ON H.R 6669, NATIONAL CLIMATE PROGRAM ACT

Mr. BROWN of California. Mr. Speaker, I call up the conference report on the bill (H.R. 6669) to establish a national climate program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 14, 1978.)

Mr. BROWN of California (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER. The gentleman from California (Mr. BROWN) will be recognized for 30 minutes, and the gentleman from Pennsylvania (Mr. WALKER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 6669, the National Climate Program Act. This bill would establish a comprehensive national climate program to enable the Nation to understand and respond to natural and man-induced climate processes and their implications. I want to explain very briefly the background, significance and provisions of this bill, and I think that will make it very clear as to why the House should quickly adopt this conference report.

After hearings in both this Congress and the previous one, the bill was ordered reported by the Committee on Science and Technology on May 6, 1977. The report accompanying the bill, House Report 95-266, gave extensive background on the need for the bill and fully explained our intentions, which have been maintained in this conference report. On September 9, 1977, the House passed the bill by a vote of 282 to 60.

After hearings in the Senate Committee on Commerce, Science and Transportation, the Senate passed their version of the bill on April 24, 1978, by a voice vote. The two bills were different in structure but very similar in their intent.

The administration, demonstrating its support for the bill and the program, has taken steps toward implementing the national climate program. They were able to do this effectively because the bills are so similar in intent. The joint explanatory statement of the managers accompanying the conference report explains in several places how the common intent of the two Houses is expressed in the compromise language which the conferees agreed upon.

Now let me discuss what benefits we expect from this legislation. Put very simply, I feel that by increasing our understanding of climate and how and why it changes we can make our society and our economy much more adaptable to changes in the weather. There have been a great many comments that as we become a more and more tightly integrated society, more and more of a mass society, that we are thereby losing our resiliency, our ability to adapt. This bill would certainly increase our national ability to adapt to changes in climate and climate-induced events.

For example, let me ask you to remember the ferocious winter of 1976–77, and the shortages of heating fuel that occurred when that cold wave gripped the Nation. We had plenty of heating fuel, but it was in the wrong place at the wrong time. This was most poignantly exemplified when barges loaded with desperately needed fuel oil were frozen in place on the Ohio River. It was very clear that if we had been able to anticipate such cold weather the barges could have gotten through the river long before it froze.

We expect similar benefits from the application of climatic knowledge and information to agriculture, fisheries, transportation and energy policy decisions, among other things. In this legislation, we have provided mechanisms to assure that the needed information will be developed and applied to pressing climate-related problems that we face. The bill does this by assuring the board involvement of many disciplines, groups and agencies in the program. For example, we expect the Department of Agriculture to be the principal agent in carrying out assessments of the impact of climate or climate change on our crops and crop yields. Very importantly, the bill also provides for the active participation of users of climate information in planning and directing the program. By users we do not mean merely other climatologists, but rather those people who need information to plan their activities—for example, people who are interested in the impact of climate on agriculture or people who need to know about anticipated weather in order to schedule construction projects. Thus, this bill does not provide for a program which would generate information in the hope that it might be used, but rather provides for users to make input to the program to assure that the information they need is in fact developed.

I want to mention that both the House bill and the conference report provide for a unique program planning process in which there will be broad participation by representatives from all involved areas and disciplines with major emphasis on participation by users of climate information.

The conference report also calls for international cooperation. For those less-developed nations that have marginal, subsistence economies, better climatic information would be extremely valuable. I want to point out that sharing an understanding of the causes of climate change and the ability to predict those changes could be a very inexpensive and very effective form of foreign aid. The reason for this is that in order to make useful predictions with regard to the climate in the United States, we need global information and global climate models because of the scale of climate phenomena. Thus, to a significant extent, the understanding, the information and the models developed for use in this country can also be applied to other nations.

At this point, I would like to say just a few words about several salient points which are more fully explained in the printed joint statement of the conferees accompanying the conference report.

The bill establishes a national climate program which is to be strongly multiagency in its operation. As implemented, the program will consist of the coordinated climate-related efforts of the various agencies.

In addition, the intergovernmental program described in section 6 of the bill must be an integral part of the national program. (That section refers to climate activities to be carried out by the States or groups of States and funded up to 50 percent by Federal grants under this act.) The intergovernmental program is especially important in that it will help bring the Federal involvement down to the local level and also provide a channel for information from local users back into the program. The bill provides that the Department of Commerce will be the principal entity responsible for administering the program.

Based on actions already taken by the administration, it appears that this will be done by a National Climate Program Office in the National Oceanic and Atmospheric Administration of the Department of Commerce. To successfully carry out the intent of this bill, the program office must act so as to stimulate cooperation and coordination between the vari-

ous Federal and intergovernmental climate activities.

The NOAA office cannot attempt in any way to operate as a "Climate Czar" because the various agencies and departments have perfectly legitimate missions which are impacted in one way or another by climate considerations. Some of these missions involve the development of climate information, while others involve the use of climate information. The purpose of this legislation is to bring together the various climate activities in a programmatic sense to make a stronger whole without organization change. To help accomplish this, the bill provides for: First, a unified budget request—to be prepared by the Office of Management and Budget and to include climate-related budgets from all the agencies; and second, a comprehensive 5-year plan covering all Federal climate activities to be prepared in consultation between all the pertinent agencies. Thus, the role of the program office must be to take actions to coordinate, strengthen, and supplement the various climate activities of the mission agencies. This should in no way result in any jurisdictional disputes between agencies or struggles over agency missions. There is no language anywhere in this bill that would take away from any agency any of its legitimate, traditional missions. Rather, the purpose and the intent is to encourage cooperation between the agencies in climate-related matters.

As a specific example, we do not expect the lead agency, the Department of Commerce, to control all program funding. For example, some program funds will continue to be sought directly by the mission agencies under their existing authorities. Of course, any such budgeted funds would be included in the unified budget of the climate program, and the activities should be included in the 5-year plan. Further, we expect that the Department of Commerce will conduct a planned passthrough program by which, as lead agency, it will support with passthrough funds, certain program activities in the appropriate mission agencies.

Mr. Speaker, I think you can see that we have put a great deal of thought and work into this bill and that it is addressing in a unique way a major national need. For this reason, and for all the reasons enumerated above, I urge adoption of this conference report.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. BROWN of California. I will be happy to yield to the gentleman from Pennsylvania whose participation and support has contributed greatly to the development of this legislation.

Mr. WALKER. Mr. Speaker, I have a question about section 5(e)(1) of the bill, which provides for an advisory committee. I support the idea that the Secretary should seek advice on the conduct of the program from outside the Federal Government, and that she should specifically look to users of climate data, information and services in securing this advice. However, Mr. Speaker, I do have a question about the permissive autnority for the Secretary to compensate members of the committee at the daily rate for GS–16 of the general schedule for each day in which they are engaged in the actual performance of their committee duties. I understand that this compensation would be in addition to the travel expenses and per diem in lieu of subsistence. I raise this question in part because similar language was stricken by amendment in the Science Committee and I want to insure that the intention of the House has not been lost on this point. I also raise this question because I believe in general that it is broadly significant to advisory committees throughout Government.

First, I note that the authority given the Secretary is permissive.

Mr. BROWN of California. That is correct. The Secretary is under no obligation to provide this compensation to members of the committee.

Mr. WALKER. Then I take it that this compensation is only to be paid in cases when a particular individual is not able to participate without such pay and when such an individual would stand to lose personal income by participating in committee activities.

In other words, if I understand you correctly, you feel that there are some individuals—or there might be some individuals—who would be only able to participate in this program and participate on the Advisory Committee if the Secretary could provide additional incentive in the form of payment to secure their participation?

Mr. BROWN of California. Yes; that is our intention.

We did consider the position of the House that compensation should not be paid at all. As you remember, the language that was stricken in the Science Committee would have called for mandatory payment of compensation by the Secretary. That would not have been right. However, because we are seeking broad involvement in this advisory committee, specifically the involvement of representatives of users of climate information, we thought that the Secretary should have the authority to make such payments in order to secure participation of people whose advice would make for a stronger program and who would suffer financial hardship in participation without pay.

Mr. WALKER. Mr. Speaker, we have established that the authority is strictly permissive, but I would like to inquire as to the frequency with which you anticipate it will be exercised?

Mr. BROWN of California. I anticipate that this authority will be used infrequently—only in rare and extraordinary circumstances.

I would expect that almost everyone whose advice would be sought on this advisory committee would be able to participate without this compensation. Most would find that their employer would be happy to pay their salary while they were participating on such an important committee. Indeed, some individuals might be willing to participate at their own expense just because of the honor of serving on such a committee. For this reason, I would expect that the authority would be used only in rare and extraordinary circumstances.

Further, I am prepared to send a letter to Secretary Kreps explaining the points that have been made and requesting that she keep us fully and currently informed on this matter. I would specifically request that she inform us whenever some individual declines to serve on the committee because he is not going to be paid for his services. I will include the letter in the RECORD.

Mr. WALKER. Thank you very much, Mr. Speaker.

Mr. BROWN of California. Mr. Speaker, I include the following material:

COMMITTEE ON SCIENCE AND TECHNOLOGY, HOUSE OF REPRESENTATIVES,

*Washington, D.C.*

Hon. JUANITA KREPS,
*Secretary, Department of Commerce, Washington, D.C.*

DEAR SECRETARY KREPS: As Chairman of the Subcommittee on the Environment and the Atmosphere I have been deeply involved in the evolution of the Climate Act, H.R. 6669, which has just been reported by a Committee of Conference. As one of the House Conferees on this legislation I want to ensure that there is no confusion as to the Congressional intent of Section 5(e)(1) of the Act.

Included in Section 5(e)(1) is permissive authority for the Secretary of Commerce to provide compensation at the daily rate for GS–16 of the General Schedule for members of the Advisory Committee for each day engaged in the actual performance of their duties. Similar language, which was mandatory in nature, was included in the first draft of this legislation and was removed by the Committee on Science and Technology at the time the Committee considered the bill. That position was later sustained when the bill was passed by the House of Representatives.

It is the intention of the House Conferees that this permissive authority is provided for use only in rare and extraordinary circumstances. We realize that there may be occasions in which the participation of particular individuals may be highly advantageous to achieving the goals of the Act and that these particular individuals would suffer financial hardship if they accepted appointment without compensation. However, we expect that such circumstances would be few and far between.

The Subcommittee on the Environment and the Atmosphere requests that you notify the Chairman and the Ranking Minority Member of any utilization of this permissive authority and the circumstances which justify such use. A number of Members of the Subcommittee have expressed the opinion that they believe that most citizens are willing to contribute their time and talent to national advisory committees and that they consider the public honor of being invited to participate sufficient to compensate them for their time. Therefore, we also request that you provide us with the particulars concerning any prospective member of this advisory committee who indicates that he is unwilling to accept appointment based solely on the lack of daily compensation.

For the Committee I want to express my deep appreciation for your cooperation.

Sincerely,

GEORGE E. BROWN, Jr.,
*Chairman, Subcommittee on the Environment and the Atmosphere.*

Mr. BROWN of California. Mr. Speaker, I have no further requests for time, and I yield back the remainder of my time.

The SPEAKER. The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

## PROVIDING FOR CORRECTION IN THE ENROLLMENT OF H.R. 6669, NATIONAL CLIMATE PROGRAM

Mr. BROWN of California. Mr. Speaker, I call up the Senate concurrent resolution (S. Con. Res. 103) to correct the enrollment of H.R. 6669 and ask unanimous consent for its immediate consideration.

The Clerk read the Senate concurrent resolution as follows:

S. CON. RES. 103

*Resolved by the Senate (the House of Representatives concurring)*, That in the enrollment of the bill (H.R. 6669), to establish a national climate program, and for other purposes, the Clerk of the House of Representatives shall make the following correction:

In section 5(b)(1), strike "(8)" and insert in lieu thereof "(9)".

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 13471, FINANCIAL INSTITUTIONS REGULATORY ACT OF 1978

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1536) on the resolution (H. Res. 1333) providing for consideration of the bill (H.R. 13471) to strengthen the supervisory authority of Federal agencies which regulate depository institutions, to prohibit interlocking management and director relationships between financial institutions, to amend the Federal Deposit Insurance Act, to restrict conflicts of interest involving officials of financial supervisory agencies, to control the sale of insured financial institutions, to regulate the use of correspondence accounts, to establish a Federal Bank Examination Council, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1266 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1266

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7308) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence and one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substiute recommended by the Permanent Select Committee on Intelligence now printed in the bill as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI are hereby waived. No amendment to said substitute shall be in order except germane amendments printed in the Congressional Record at least three legislative days before their consideration, pro forma amendments for the purpose of debate, and amendments recommended by the Permanent Select Committee on Intelligence. It shall be in order to consider en bloc amendments to said substitute printed in the Congressional Record of July 17 by Representative McClory of Illinois. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After passage of H.R. 7308, the Committee on the Judiciary shall be discharged from the further consideration of the bill S. 1566; and it shall then be in order in the House to move to strike out all after enacting clause of said Senate bill and insert in lieu thereof the text of H.R. 7308 as passed by the House.

The SPEAKER pro tempore (Mr. BROWN of California). The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), and pending that I yield myself such time as I may consume.

Mr. Speaker, those Members who listened to the reading of the rule will know that this rule provides for 3 hours of general debate, 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence and 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The committee amendment in the nature of a substitute will be read by titles for the purpose of amendment.

The only amendments to be allowed are committee amendments and those amendments which have been printed in the RECORD at least 3 days in advance of their offering. The so-called McClory amendments which appear in the July 17 RECORD may be considered en bloc. A motion to recommit, with or without instructions, is in order, and then the matter will be sent to conference with the Senate bill.

Mr. Speaker, I know there is controversy over the matter that will be brought up by this rule, but I do not have the feeling that there is opposition as such to the rule. Therefore, I reserve the balance of my time.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to point out to the House that this is a very, very important piece of legislation, because it deals with foreign intelligence matters, and the security of this Nation might at some time in the future be jeopardized by what we may or may not do here.

As a matter of fact, when the matter was before the Committee on Rules, I raised the question as to whether or not there was any provision in this legislation which would allow the President of the United States to authorize warrantless electronic surveillance during times of war, and I found out that there was not, and that the President would, the way this legislation is written, have to come back to the Congress to have an amendment drafted along those lines.

So thinking into the future, I have discussed the matter with the gentleman from Illinois (Mr. MCCLORY), who has had a considerable amount to do with this legislation and who is to be commended for his efforts, and we have drafted an amendment which I will propose, which would allow the President to authorize warrantless electronic surveillance for periods of up to 1 year during times of war or national emergency. Hopefully, when this matter is being debated under the 5-minute rule, we will see fit to give the President and the Nation this particular safeguard.

Mr. Speaker, this rule provides 3 hours of general debate for the consideration of H.R. 7308, the Foreign Intelligence Surveillance Act of 1978. The time will be equally divided between the Permanent Select Committee on Intelligence and the Committee on the Judiciary.

The rule makes in order an amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence. In order to preserve the normal amending process, the substitute is made in order as an original for the purpose of amendment.

Points of order are waived against the substitute for failure to comply with clause 5 of rule XXI, which prohibits appropriations on a legislative bill. The bill provides that funds appropriated for the Department of Justice may be used for the operation of the special court and the special court of appeals set up by this legislation. Technically this constitutes an appropriation on legislation, and therefore the waiver is required.

The rule does contain limitations on the offering of amendments. No amend-

ments will be in order except, first, germane amendments printed in the CONGRESSIONAL RECORD at least 3 legislative days before their consideration; second, committee amendments; and third, pro forma amendments for the purpose of debate.

The rule also makes it in order to consider en bloc amendments to be offered by the gentleman from Illinois (Mr. MCCLORY).

Finally in order to expedite a conference, after passage of the House-passed bill, it will be in order to insert the House-passed language in the Senate bill number.

Mr. MCCLORY. Mr. Speaker, will the gentleman yield to me?

Mr. LATTA. I am happy to yield to the gentleman from Illinois.

Mr. MCCLORY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise not in opposition to the rule, but only to explain that the rule does limit and does restrict the Members with regard to offering amendments to this extremely controversial and complex legislation. In other words, Members who have not drafted amendments and had them placed in the RECORD and printed for at least 3 days prior to this date are going to be excluded from offering amendments.

To that extent I think this is a very unfair rule. It is not an open rule. It is a rule subject to that kind of limitation and restriction. On this very complex legislation which was brought before the Committee on the Judiciary and the Permanent Select Committee on Intelligence, it seems to me that it is extremely unfair and unfortunate that we have this kind of a situation.

As a matter of fact, one of the reasons why the Committee on the Judiciary did not take up this subject was because members of the Committee on the Judiciary represented that we would not mark up the bill before the committee because we would have an opportunity when the bill came up on the floor of the House of Representatives to mark it up at that time. We heard that same kind of argument when we were in the Permanent Select Committee on Intelligence in the markup stage. The members said that this would all be done by action on the floor.

We are now in a situation where, if we have not already put our amendments in the RECORD and they have not been printed, we are not going to have an opportunity to offer amendments to this bill.

I think it is important for the Members at this stage to realize that the extent of this legislation is very far reaching. This legislation is unprecedented. It is unprecedented in our entire legislative and judicial history. There has never been an instance of a special court provided which would be able to pass upon the exercise of executive authority with regard to national security or foreign affairs matters.

As a matter of fact, it goes precisely against the constitutional authority which is reposed in the President. If this measure passes, the President will not hereafter be authorized to exercise his Executive authority with respect to securing national security intelligence information. And I am talking now about information. I am not talking about espionage, or anything else. I am talking just about intelligence information gathering. And the President would not be authorized to secure this information unless it is approved by the judge, a member of a special court that is established by this legislation.

This special court itself is unprecedented. The secret hearings are unprecedented. The secret record is unprecedented. This is all part of what is called a very carefully crafted piece of legislation. I think the word "crafted" may be a very apropos word, because it may be craftily put together. In fact, the Members will find that there is a tremendous input here, not only on the part of the Intelligence Committee, the Department of Justice, and others, but a very substantial input insofar as the American Civil Liberties Union is concerned, as far as other agencies are concerned, whose interests are not our national security, but whose interests are entirely something else.

So I think it is well for the Members to have in mind that there is a compromise made with regard to our national security intelligence-gathering capability in this legislation, a compromise made with the ACLU, a compromise made with Morton Halperin, a compromise made with those who are looking out not for the intelligence-gathering capability but who, in many instances, would like to have this capability eliminated entirely. There are a great many who feel that we should have no intelligence capability with regard to clandestine or secret or private investigations or activities. And with regard to those persons, why, of course, this would be entirely satisfactory. But insofar as providing support for our intelligence agencies, the Members will find that all of the former intelligence officers, the entire organization, is opposed to this legislation, and many others who are knowledgeable on the subject. It is legislation which has not been considered at the markup stage by the Committee on the Judiciary, has not come before the full Committee on the Judiciary, although it was assigned and referred to the Committee on the Judiciary, and it has not received the consideration with respect to constitutional issues that are concerned, legal issues that are concerned, or, in my opinion, many of the practical subjects that are concerned with regard to this legislation.

Let me say that the Intelligence Committee did accept one amendment. It accepted one substantial amendment. So in this respect, the measure is substantially different from the measure which was passed over in the Senate. It is not the same bill. When people say that they support the bill that was passed in the Senate by a wide margin, they are not talking about the same bill. This is a different bill. I think this bill should be considered on its own merits, and I think that each and every amendment offered should be considered—and there will be a great many amendments offered.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Massachusetts.

Mr. BOLAND. I thank the gentleman for yielding.

Mr. Speaker, I was wondering whether or not the gentleman from Illinois (Mr. MCCLORY), who has worked long and hard on this bill—as a matter of fact, I would even go so far as to say that this is "Bob McClory Day," because the gentleman has done a good job on the bill—I am wondering whether or not, if we presented the Senate bill, would the gentleman vote for the Senate bill, if we presented the bill here today.

Mr. MCCLORY. No. I would say the Senate bill is worse than the bill we have today. We have made a substantial improvement over the Senate bill. We have made many, many additional improvements. I think it is unfortunate, and it must be embarrassing to the other body that passed a bill 95 to 1 that this committee on both sides of the aisle rejected, in the sense that we adopted a substantial amendment in the committee which is now a part of the bill. And I commend the committee for that amendment.

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I rise in support of H.R. 7308, and particularly I rise to commend my distinguished colleague, the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER was responsible, in my judgment, for the way the distinguished House Committee on the Judiciary, and particularly his Subcommittee on Courts, Civil Liberties, and Administration of Justice, has handled this bill. I am a member of the House Intelligence Committee, as well as the Judiciary Committee, although not a member of Mr. KASTENMEIER's own subcommittee.

Mr. KASTENMEIER was kind enough, however, to allow me to sit in with his subcommittee during the hearings on H.R. 7308. Having sat with his subcommittee and having appeared before it as a witness, I can state with assurance that the 3 days of hearings which Mr. KASTENMEIER's committee held on H.R. 7308 were comprehensive and complete. The subcommittee heard a full range of views in the subject of foreign intelligence surveillance. Also, the subcommittee drew upon past-year hearings and on the extensive record compiled by the House Intelligence Committee.

While some members of the subcommittee had reservations about H.R. 7308, and I think no thoughtful person can have other than some reservations about certain provisions, the subcommittee decided, following careful study, that H.R. 7308 was worthy of being discussed, debated, and voted upon by the full House.

The subcommittee acted in recognition, also, of the little time remaining in this session of the Congress. Further delays awaiting full Judiciary Committee action have led to the demise of the bill.

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, the gentleman from Kentucky accurately states the situation, and I want to express my thanks to him for making that explanation. We were very pleased to have his testimony and have him sit with the subcommittee, along with our colleague from Illinois (Mr. McCLORY), who was also not only present and testified before my subcommittee, but was able to suggest witnesses for us as we deliberated this question.

Mr. Speaker, again I want to express my appreciation for the gentleman's statements.

Mr. MAZZOLI. Mr. Speaker, let me first say that I think the gentleman from Wisconsin, in his truly modest way, never gives himself full credit. It was a very difficult situation; it was a very difficult parliamentary situation; it was a very difficult tactical situation, and I thought the gentleman handled it with real aplomb and gave full and complete hearings to the matters, and I think he has produced a good bill.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I just want to acknowledge that there were some hearings, and the gentleman in the well and I did testify. However, I would also like to emphasize that there was no markup session by either the subcommittee or by the full committee; so that this was, in a way, window dressing. This was a concession to me, I guess, because I had requested hearings, but when the subcommittee moved to table and the motion to table succeeded, then in effect the subcommittee decided that the bill would remain in the Judiciary Committee without being considered by that committee.

So, it is not appropriate to bring this bill to the floor with any suggestion or representation that it has received full Judiciary Committee consideration, because it has received none insofar as the markup stage is concerned.

Mr. MAZZOLI. I would like to state to the gentleman, having sat with the subcommittee as I did, and having heard the gentleman himself as a witness, and having heard some of his witnesses testify to the defects as they perceived them in the bill, having listened to the debate and the colloquies that raged in that committee room for 3 days, I would have to say that the committee record which the gentleman has on the table is complete and contains information supporting the gentleman's position that certain changes should be made in the bill.

So, while there may not have been technically the kind of markup that a committee usually conducts where amendments are offered and argued, certain assertions were made during the committee hearing chaired by the gentleman from Wisconsin, which will be referred to by the gentleman from Illinois in support of his position that H.R. 7308 needs to be amended.

Mr. Speaker, the subcommittee's action—and I think this is important to note—the subcommittee that is headed by the gentleman from Wisconsin (Mr. KASTENMEIER), its action on H.R. 7308 in no way waives the Judiciary Committee's right of jurisdiction over foreign intelligence electronic surveillance or any other related subject matters, so, what is done today waives in no way or in no sense preempts the Judiciary Committee from taking action on this type of bill or any other kind of bill in the future.

And while the Judiciary Committee in this instance, Mr. Speaker, graciously agreed to let the full House work its will on this bill, the committee in the years ahead will play a vital and vigorous role in overseeing the provisions of H.R. 7308. I urge therefore that the House pass the bill, a measure to regulate foreign intelligence electronic surveillances, and again let me commend the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Illinois (Mr. MURPHY).

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Speaker, with regard to the rule today, the gentleman from Illinois, my colleague on the committee states that this is an unfair rule. Let me tell my colleagues that this rule was issued on July 12. The gentleman said there was not enough opportunity for amendments to be offered. Let me tell my colleagues there are over 50 pending amendments to this piece of legislation, so anybody who feels he has been short changed has not been reading the RECORD. My colleague, the gentleman from Illinois, has been lobbying almost every Member on both sides of the aisle with regard to this bill and his opposition to this bill. He has had two opportunities before the House Select Committee on Intelligence where he was given every chance to bring witnesses supporting his point of view. He cross-examined every head of every intelligence agency of the United States. He was given the same opportunity, and the same witnesses appeared, before the House Judiciary Committee.

I would like to read to my colleagues today a letter I received from Attorney General Griffin B. Bell:

OFFICE OF THE ATTORNEY GENERAL,
*Washington, D.C., September 6, 1978.*

Hon. MORGAN F. MURPHY,
*U.S. House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN MURPHY: The President today issued the enclosed statement in support of the passage of the Foreign Intelligence Surveillance Act (H.R. 7308). I join the President in his belief that this bipartisan effort of the Executive Branch and Congress will strengthen the capability of our intelligence agencies to deal with foreign espionage and international terrorism while also safeguarding the privacy rights of Americans.

The bill is scheduled for a vote in the House of Representatives this week. The Director of Central Intelligence, the Secretary of Defense, the Director of NSA and the Director of the FBI join me in strongly supporting this legislation.

Yours sincerely,

GRIFFIN B. BELL,
*Attorney General.*

Mr. Speaker, I would like also to read the President's message, issued today:

STATEMENT BY THE PRESIDENT

The House of Representatives is scheduled to vote this week on the Foreign Intelligence Surveillance Act, one of the most significant legislative initiatives involving our intelligence agencies in the last three decades.

This Act will establish the nation's first legislative controls over foreign intelligence surveillance conducted by the United States Government. Most importantly, those controls will be established so as to protect both the strength of our nation's intelligence agencies and the privacy rights of our citizens.

American citizens will be assured that the intelligence agencies so vital to protecting our security will be able to perform their tasks fully and effectively. The bill also assures intelligence officers who serve our country that their proper activities in this field will be authorized by statute.

By providing clear statutory standards, this legislation will help strengthen the ability of our intelligence agencies to deal with foreign espionage and international terrorism. The strong support of this legislation by every intelligence agency clearly reflects this fact.

The passage of this legislation is also a major step toward eliminating the potential for abuse of electronic surveillance by the Federal Government. Americans will now be afforded the safeguards of a judicial warrant procedure for any electronic surveillance which might affect their rights.

This legislation has been carefully developed over several years, by Executive and Congressional leaders of both parties. The kind of bipartisan cooperation needed to develop legislation in the intelligence area, which is so important to the defense of our nation, was demonstrated earlier this year by the overwhelming Senate vote, 95–1, passing the bill.

I urge the Members of the House to vote for passage of this legislation, so that we can promptly begin to implement this well-balanced, long-overdue initiative.

Mr. Speaker, I urge my colleagues to vote for the passage of this rule.

Mr. LATTA. Mr. Speaker, I yield 5 minutes to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Speaker, as a Member of this body who served for 20 years as a special agent for the Federal Bureau of Investigation, with many years in the area of foreign intelligence, I will tell you that this proposed legislation is fatally flawed.

It will have the effect of seriously weakening any effective intelligence-gathering capability by our Government.

Such effective intelligence-gathering is entirely dependent upon speed and confidentiality of sensitive sources. Both of these factors would be severely compromised by the warrant provisions, and the involvement of the judicial branch, in the area of authorizing electronic surveillance.

First, let me say that legislation just because it contains a warrant provision will not provide a special shield against prosecution for the loyal FBI agent or other Government official who is instructed to conduct electronic surveillance.

Any law which would guarantee immunity from criminal prosecution or

civil suit to a Government officer or employee conducting such surveillance authorized by the Attorney General would provide such a shield.

In fact, the warrant provision will destroy the FBI's ability to collect intelligence on the movement and plans of known terrorists in an emergency situaiton, as one major example of this bill's defects.

As a result of the Kearney case, and the current indictment of three other major FBI officials who were involved in the surveillance of people under authority of the Attorney General, in order to locate and apprehend fugitive members of the Weather Underground terrorist organization, a chilling effect has already been imposed upon the legitimate intelligence function of the FBI and other agencies.

The destructive nature of the Kearney case and what has followed will be severely compounded if a warrant requirement is imposed for foreign intelligence purposes that do not necessarily involve an American person in a crime.

Here we have a situation where the current administration has set a precedent that loyal FBI subordinates may be prosecuted and, if convicted, imprisoned for carrying out instructions of their superiors, authorized by the Attorney General and even the President himself, if those instructions are later considered to be wrong.

So what happens in an emergency situation under this bill, if the FBI is informed by border officials at the Canada-Vermont border that a suspected member of the German terrorist Baader-Meinhof Gang has just passed into the United States? Such a circumstance occurred just last month.

There is no firm evidence that the foreign citizen, who has a passport and a visa is a member of this terrorist group. But the possibility is strong, and some very valuable intelligence information could be gained by having this person followed and electronically surveilled at any stopping point, even including the home of some collaborator or contact within the United States along the way.

In this situation, time is of the essence. Even minutes lost could mean that a dangerous terrorist would be on the loose among our own people, and that valuable intelligence about that person's objectives or domestic contacts and sources of support would remain unknown to our Government.

Under this proposed legislation, what do our intelligence officials—what does the FBI do?

Right now, there is no question about what would be done. The Attorney General would be alerted. He could instruct the FBI to follow the individual and to conduct electronic and other surveillance at every possible point, in order to collect intelligence that is essential to the Government for the protection of our people.

If any criminal activity is indicated, a warrant would be sought for further authority to collect evidence by electronic surveillance and other means.

But under this bill, before any criminal activity is evidenced and an investigation for that purpose can be started, nothing could be done to collect vital intelligence information, maybe leading to prevention of harm to the public.

The warrant provision for foreign intelligence purposes is the reason that nothing would probably be done in the precious few minutes and hours at the outset, when the most valuable intelligence could be obtained.

Yes, there is a supposed 24-hour emergency grace period under this bill, where electronic surveillance can be conducted while a warrant is being sought for such surveillance.

But what FBI special agent will be willing to conduct this surveillance during the 24-hour period without a warrant, once a warrant is required, under the risk that the judge may not approve the warrant?

Under the Kearney precedent, the loyal FBI agent would be out on the end of the proverbial tree limb, after the judge has sawed it off.

The good information and good judgment of this FBI agent's superiors, and even the Attorney General himself, will not save the FBI subordinate from the specter of prosecution in such a case—and most certainly from the probability of civil suit if the parties involved become aware of what has happened, which they will under this bill.

And so this bill—despite its supposed 24-hour warrantless foreign intelligence electronic surveillance—will prevent the possibility that any FBI agent or other official can prudently, in his own best interests, conduct such surveillance and remain protected from later possible recriminations.

For the public, this means that hundreds, maybe thousands of situations such as the one involving alleged members of the terrorist Baader-Meinhof Gang coming into the United States to meet up with comrades in the United States will go by the boards in their initial stages, where the most valuable intelligence work against foreign threats must be done.

Let us make no mistake about the time that will be lost in such a situation. Under current procedures, top-level authority for electronic surveillance within the executive branch must already be obtained.

This includes authority from the Attorney General himself and maybe at the Presidential level as well, which can be obtained immediately.

Under this bill, in addition to these procedures, a Federal judge must give his approval. This will involve additional administrative preparation, time lost locating and appearing before the judge and in obtaining his decision. Here we are only talking about the problems confronting our intelligence community in an emergency situation. This does not even consider the serious mistake of involving the judicial branch in the executive's foreign intelligence-gathering function in the first place.

Mr. Speaker, under this bill a warrant would be required to conduct wiretaps to collect foreign intelligence in every instance. Even surveillance of the Soviet and other Communist government embassies would require a warrant.

It is inevitable that American citizens and resident aliens will call such embassies. Even with minimization procedures required by this bill, such surveillance to determine domestic contacts and supporters of Communist government goals and activities in the United States would require a warrant. And under the Freedom of Information Act and through other means, this information provided to the court to obtain necessary warrants would inevitably wind up in the hand of the wrong people.

Take the case of Orlando Letelier, who was Chile's Ambassador to the United States during the Marxist regime of Salvadore Allende. Letelier made contacts and friends among leftists in our own country—even in the Congress. Letelier was a close friend and comrade of Fidel Castro and his allies.

When the Allende regime ended, Letelier sought and obtained asylum in the United States and worked full time until his death in pro-Communist causes in our country.

Evidence obtained from his briefcase when he died showed that Letelier was receiving financial support from the Castro government through Allende's daughter, who was living in Cuba. This evidence also showed that Letelier used these funds to pay for his lobbying and intelligence-gathering activities in the United States. He developed extensive contacts with U.S. Government and congressional officials.

Under this bill, in order for our intelligence officials to follow up on such evidence, and to inform the President and other Government officials of the relationship and support between American citizens and hostile foreign governments, judicial warrants will be required.

Sensitive information such as that I have described involving Letelier and highly placed officials will then, by law, be required to be made part of the court record.

These records, either legally under the Freedom of Information Act, or through litigation, or as the result of leaks to the news media and other illegal methods, will inevitably be publicized and compromised through disclosure.

The only way to prevent disclosure of sensitive intelligence information is to severely restrict access to it. Under this bill, it will be required that such sensitive information and documentation be turned over to a special new court—maybe two courts—involving 17 judges, their clerks, reporters, bailiffs, and so forth. It is inevitable that our most sensitive, highly classified, and explosive intelligence information will be compromised and disclosed publicly under such an unreasonable arrangement.

If for no other reason than the highly important news value of such court files to our energetic, probing news media, who of necessity are always digging for the best story, this intelligence information will be perpetual game for leaking and publication.

We cannot afford to allow such a thing to happen. We cannot allow a law to be passed that will destroy the speed, the sureness, and the confidentiality of our intelligence-gathering capability

that is so essential to the President's responsibility as our Commander in Chief and top foreign policy officer.

I implore my colleagues to defeat H.R. 7308. If legislation is needed in this area, the McClory substitute is certainly the only prudent way to accomplish that objective.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. MURPHY of Illinois. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7308) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

The SPEAKER pro tempore (Mr. BROWN of California). The question is on the motion offered by the gentleman from Illinois (Mr. MURPHY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 7308, with Mr. YATES in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Illinois (Mr. MURPHY) will be recognized for 45 minutes, the gentleman from Illinois (Mr. MCCLORY) will be recognized for 45 minutes, the gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 45 minutes, and the gentleman from Virgina (Mr. BUTLER) will be recognized for 45 minutes.

The Chair now recognizes the gentleman from Illinois (Mr. MURPHY).

Mr. MURPHY of Illinois. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 7308, as reported by the permanent Select Committee on Intelligence, is the culmination of over 4 years of detailed inquiry by two administrations and six congressional committees into the unique area of foreign intelligence electronic surveillance. It has, with its predecessor from the Ford administration been the subject of hearings on seven different occasions over 3 years, and of five different markups and five committee reports.

This inquiry was conducted against the backdrop of both the abuses revealed by the Church and Pike committees and the recognition that an efficient intelligence collection capability is vital to the national interest.

Two basic conclusions have been reached:

First. Electronic surveillance is a necessary and proper means of collecting foreign intelligence information; and

Second. The rights of our citizens can best be protected by requiring a judicial warrant for such surveillance undertaken in the United States.

H.R. 7308 is based on these conclusions and will insure that both legitimate intelligence activities and the privacy interests of our people are furthered. H.R. 7308, as amended, would enact a new law entitled the "Foreign Intelligence Surveillance Act of 1978." The purpose of the bill is to provide a statutory procedure authorizing the use of electronic surveillance in the United States for foreign intelligence purposes. The procedures in the bill would be the exclusive means by which electronic surveillance, as defined, could be used for foreign intelligence purposes. The following techniques of electronic surveillance would fall within the bill's prescriptions:

First. The acquisition of a wire or radio communication sent to or from the United States by intentionally targeting a known U.S. person in the United States under circumstances in which the person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

Second. A wiretap in the United States to intercept a wire communication, such as a telephone or telegram communication;

Third. The acquisition of private radio transmissions where all of the communicants are located within the United States; or

Fourth. The use in the United States of any electronic, mechanical, or other surveillance device to acquire information other than from a wire communication or radio communication under circumstances in which the person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

H.R. 7308, as amended, creates a special court in Washington, D.C., composed of at least one judge designated by the Chief Justice from each of the judicial circuits and a special court of appeals composed of six judges designated by the Chief Justice from the Greater Washington, D.C., area.

The bill would require a prior judicial warrant for all electronic surveillance for foreign intelligence purposes with three limited exceptions. First, where certain types of electronic surveillance are targeted against certain types of foreign powers, under circumstances where it is extremely unlikely that a U.S. person's communication would be intercepted, no warrant is required. Instead, Attorney General approval is required. Parenthetically, I would note that this exception to the warrant requirement was suggested by my colleague from Illinois (Mr. MCCLORY). It was agreed to by the Intelligence Committee in a spirit of compromise. I and a majority of my colleagues on the committee made a good faith effort to obtain the support of the gentleman for the bill. Obviously, we have not succeeded.

Second, emergency surveillance without a warrant would be permitted in limited circumstances, but a warrant would have to be obtained within 24 hours of the initiation of the surveillance.

Third, surveillance solely for the purposes of testing equipment, training personnel, or "sweeps" to discover unlawful electronic surveillance are authorized without a warrant under rigorous controls to insure that no information concerning U.S. persons is improperly used, retained, or disseminated.

The bill would authorize the Attorney General to make applications to the special court for a court order approving the use of electronic surveillance. Approval of an application under the bill would require a finding by a judge that the target of the surveillance is either a "foreign power" or an "agent of a foreign power," terms defined in the bill, and that the facilities or places at which the surveillance is directed are being used or are about to be used by a foreign power or agent of a foreign power. Where official foreign powers are the target of a surveillance, the standards for obtaining a warrant are less strict than for other surveillances, and both the amount of information provided the judge and the findings he must make are reduced.

A "foreign power" may include a foreign government, a faction of a foreign government, a group engaged in international terrorism, a foreign-based political organization, or an entity directed and controlled by a foreign government or governments. An "agent of a foreign power" includes nonresident aliens who act in the United States as officers, members, or employees of foreign powers or who act on behalf of foreign powers which engage in clandestine intelligence activities in the United States contrary to the interests of this country. U.S. persons meet the "agent of a foreign power" criteria if they engage in certain activities on behalf of a foreign power which involve or may involve criminal acts.

The court would also be required to find that procedures proposed in the application adequately minimize the acquisition, retention, and dissemination of information concerning U.S. persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information.

Every application for an order must contain a certification or certifications made by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers with responsibilities for national security or defense who are appointed by the President with the advice and consent of the Senate. Those officials would be required to certify that any information sought by the surveillance relates to, and if concerning a U.S. person is necessary to, the national defense or the conduct of foreign affairs of the United States or the ability of the United States to protect against grave hostile acts or the terrorist, sabotage, or clandestine intelligence activities of a foreign power. The court would be required to review each certification for surveillance of a U.S. person and to determine that the certification is not clearly erroneous.

The court could approve electronic surveillance for foreign intelligence pur-

poses for a period of 90 days or, in the case of surveillance of a foreign government, faction, or entity openly controlled by a foreign government, for a period of up to 1 year. Any extension of the surveillance beyond that period would require a reapplication to the court and new findings as required for the original order.

H.R. 7308 requires annual reports to the Administrative Office of the U.S. Courts and to the Congress of statistics regarding applications and orders for electronic surveillance. The Attorney General is also required, on a semiannual basis, to inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully concerning all electronic surveillance under the bill; and nothing in the bill restricts the authority of those committees to obtain further information related to their congressional oversight responsibilities.

This, admittedly, is a short outline of a very complex and detailed piece of legislation. Its very complexity, however, is evidence of the attention the Intelligence Committee has given to the important national security and civil liberties issues involved.

As introduced, H.R. 7308 was fully supported by the administration and, to a lesser extent, supported by the intelligence community. The bill was opposed by civil liberties groups. The Intelligence Committee worked hard on the bill, involving in discussion both civil liberties groups and officials of the intelligence community. The result is a better bill from the perspectives of both civil libertarians and intelligence officials. It is a good bill, albeit a very complex and confusing one, because it assures that the abuses of the past cannot be repeated, while at the same time preserving, and in certain respects, improving, the necessary collection of foreign intelligence important to this Nation's security.

This is not to say that it is a bill about which reasonable men and women may not differ. Some believe on the basis of moral principle that electronic surveillance simply is wrong and can never be justified, except perhaps if it were essential to the continued existence of our country. Others believe, again on the basis of moral principle, that judges should never be involved in the approval process for foreign intelligence electronic surveillances. Obviously, the bill is not responsive to either of these positions.

Rather, the majority of the House Intelligence Committee was convinced on the one hand that the electronic surveillances which would be regulated by H.R. 7308 can be, and often are, important to the national security. On the other hand, the majority of the committee was equally convinced that these important surveillances could be conducted in a manner which would fully protect the legitimate privacy rights of Americans. The bill as reported by the committee, I believe, authorizes and facilitates those important surveillances, while protecting the rights of those involved, and prohibits those illegitimate surveillances which were the abuses of the past.

A red, white, and blue herring that has been raised is a so-called threat to the national security. No intelligence community witness before the House Intelligence Committee suggested that H.R. 7308, as introduced or as reported, threatened the national security. No intelligence community witness has expressed any reservation about the bill, as reported, impeding legitimate intelligence collection. No intelligence community witness suggested that the bill's procedures would threaten whatever speed is necessary for foreign intelligence surveillances. Only two witnesses expressed a reservation concerning risks of disclosure with respect to the bill as introduced. Those witnesses were Admiral Murphy of the Defense Department and Admiral Inman of NSA. Today, both Admirals Murphy and Inman support H.R. 7308, as reported, without reservation.

It is alleged that reams of classified material will be given to large numbers of judges and court personnel. This is nonsense. An application is made to one judge, not many, and the bill explicitly allows for executive branch personnel to serve as any necessary court support.

Another herring that is dragged across the trail is that judges are unequipped to make subtle political and operational decisions necessary in the foreign intelligence field. The bill recognizes this fact full well and does not allow judges to make such decisions. Much of the bill's complexity arises from the need to specify exactly what the judges' duties and powers are under the bill. Those duties and powers are of the same nature as currently exercised under the law regulating law enforcement surveillances; that is, applying facts to a statutory standard.

The vehicle that keeps judges from second-guessing the executive's political judgments is the certification which must accompany each application for a warrant. That certification must be signed by a high executive branch official with responsibility for intelligence or foreign affairs matters. It will contain statements by that official that the object and the purpose of the surveillance is to obtain a particular type of "foreign intelligence" as defined, that this foreign intelligence cannot be otherwise obtained and it will provide the basis for the official's belief that such information will result from the surveillance. Such a certification can only be questioned if these statements are clearly erroneous on their face.

The so-called criminal standard is also a herring to the extent that anyone suggests that it will impede legitimate intelligence collection. The presence of the criminal standard does not mean that the purpose of the surveillance is prosecution, or only to gather evidence of a crime, and there is certainly no limitation in the bill that would so restrict such surveillances. Nor was the so-called criminal standard adopted because of any belief that the Constitution required it. Rather, it was adopted as a matter of policy and principle, that this Government should not target electronic surveillance against individual Americans absent probable cause to believe that they at least may be involved in a violation of law. If this principle had any negative impact on the collection of necessary intelligence, a debate over this criminal standard might be called for, but the Director of the FBI has indicated in the strongest possible terms that the criminal standard in H.R. 7308, as reported, will not impede the FBI's intelligence collection by means of electronic surveillance.

Finally, it has been suggested that congressional oversight is a more proper check on the executive than a judicial warrant. But, it is clear to me at least that congressional committees are simply not equipped to conduct oversight of the day-to-day operation of electronic surveillance, and it is also clear to me that the executive will not provide us the information to do the job even if we were in a position to do it. Such uncertain, after-the-fact oversight is no substitute for prior approval of these surveillances.

The benefits of H.R. 7308, as reported, and its improvements over current practice both from national security and civil liberty viewpoints are substantial.

It is not a bill designed to punish the intelligence community.

It is not a bill that was hastily written in response to media pressure.

And, it is not a bill that will hamstring the intelligence agencies now or in the future.

Rather, it is a much needed piece of legislation that will remove the existing uncertainties as to what are proper intelligence activities while protecting the rights of our citizens.

It will enable the dedicated and patriotic men and women of our intelligence agencies to go about their important business secure in the knowledge that their endeavors are supported by the Congress and the people and that their actions will not subject them to public scorn and ridicule * * *.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I thank the gentleman for yielding, and I want to commend him, and particularly, the chairman of the full committee, the gentleman from Massachusetts (Mr. BOLAND), and the entire Intelligence Committee for the work they have done on H.R. 7308.

I know, from having grappled with this vexatious issue in my own committee, how difficult it is. One of the difficulties in the bill, perhaps not a major one, but nonetheless one I would like to ask the gentleman from Illinois about, is as follows:

I notice that the directive language contained in section 102(a)(3)(A) and in section 105(b)(2)(B) of H.R. 7308 provides that common carriers shall furnish information, facilities, or technical assistance necessary to accomplish the electronic surveillance, and here are the important words, "in such a manner as will protect its secrecy". That language is different from the directive language of title III of the Omnibus Crime Control Act of 1968 where common carriers

are required to provide information, facilities, and technical assistance "necessary to accomplish interception unobtrusively". My question is this, What is the difference between "in such a manner as will protect its secrecy" and "unobtrusively" in the two statutes? Is it the intent of the drafters of the language that the Government is authorized to request different or more information, facilities or technical assistance under H.R. 7308 than is authorized under title III and if such is intended, what is the nature of that additional or different cooperation which may be required?

Mr. MURPHY of Illinois. Let me say to the gentleman that he is correct in that a court order or an Attorney General's order obtained under this bill may direct an officer, employee, or agent of a communications common carrier to provide certain assistance to Government agents implementing those orders.

The nature and scope of such assistance is intended to be identical to that which is authorized by section 2518(4)(e) of chapter 119 of title 18 of United States Code, commonly referred to as title III of the Omnibus Crime Control Act of 1968, as amended. The reason that the language of H.R. 7308 in the sections to which the gentleman refers is different than the language of title III is because the drafters and the committee wished to make very clear that these electronic surveillances which seek to collect foreign intelligence information in this country are extremely sensitive in nature and must be protected from disclosure in the strictest possible fashion.

These electronic surveillances are different from wiretaps authorized by title III where the law requires that notice eventually be given to the subjects of those wiretaps. H.R. 7308 makes clear that no notice will be given the subjects of electronic surveillance as defined under the bill because of the important national security interests to be protected. Accordingly, the language of the statute reads "in such a manner as will protect its secrecy."

This does not seek to authorize in some indirect fashion a different kind of cooperation than is currently authorized to be requested under title III, but simply to create a statutory obligation to keep such surveillances as secure from disclosure as is humanly possible.

In other words, if an application is made to the special court and an order is issued approving the application, and the surveillance is then undertaken, the agents in the field go out to the common carrier and ask for their cooperation, and that common carrier, as it would have to under title III of the Omnibus Crime Control and Safe Streets Act, might, if asked, notify the subject of the surveillance that his wire is being tapped.

To protect the secrecy of these surveillances, we are not requiring that. The reason for that is simple. It is because if we went out and told a Russian spy that the FBI's Counterintelligence Division, which conducts these surveillances for our national security, was tapping his wire, I do not have to tell the gentleman what would happen. Whatever system that spy was using, he would adopt a different method or he would leave the country, leave the jurisdiction. That is the reason for it.

Mr. KASTENMEIER. I thank my colleague for his explanation.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding to me.

Mr. Chairman, I just want to say that I commend the gentleman for his administration of our subcommittee, and I do not have any complaints as far as the opportunity to present evidence there is concerned. The evidence presented by a former deputy attorney, Laurence Silberman, I thought was rather persuasive, and we had other testimony as well.

However, the gentleman states that Admiral Inman, who originally objected to the bill, now no longer has any objection. I understand that we have exempted his operation from the coverage of this legislation.

However, Admiral Murphy—no relation to the gentleman in the well—who testified, I think, in January of this year before our committee, said that there was a very high risk and very limited benefit for the rights of Americans were we to require a warrant with regard to the targeting of foreign agents and foreign powers.

What if anything did we do in this bill in order to get him to change his mind about this legislation?

Mr. MURPHY of Illinois. I think it was the gentleman's amendment, the amendment offered by the gentleman from Illinois (Mr. McCLORY), which satisfied both Admiral Inman and Admiral Murphy. As the gentleman will recall, there were members of the committee who objected to his amendment, but as chairman of the Subcommittee on Legislation I supported his amendment, as did Mr. BOLAND, chairman of the full committee, and other Democrats.

In a spirit of cooperation I thought we would be able to bring this bill to the floor, as the Senate did, in a bipartisan manner. The Senate passed it by a vote of 95 to 1. Senators on both sides of the political continuum, both political philosophies—I will not mention their names because we are not supposed to do that—but both spectrums were covered fully, and they passed this bill in an hour after years of debates and hearings.

I thought when the gentleman offered his amendment and we adopted it, then we would come to the floor to our colleagues with the same bipartisan effort.

Admiral Inman and Admiral Murphy both have written me, and say that not only do they support the legislation, but I am sure they would not have used the words "enthusiastically support it" if they had any qualms at all. Admiral Inman, as the gentleman knows, has called Members of Congress asking them to pass this legislation. He is the man in charge of probably the most sensitive of all the operations taking place today in the area of electronic surveillance.

Mr. McCLORY. If the gentleman will yield further, I can understand Admiral Inman's enthusiasm because we have eliminated, we have exempted, his operation from the scope of this legislation. But, I question that we have done anything with respect to Admiral Murphy. I do not think we have affected his operations in any way.

Mr. MURPHY of Illinois. We have exempted Admiral Inman in one specific operation that we are prohibited from talking about in public, and the gentleman is fully aware of it, but it is not his whole operation.

Every operation of the NSA which falls under the definition of electronic surveillance, as defined in the bill, is covered by the bill.

It was suggested to the committee in the testimony of representatives from the Department of Defense and from the National Security Agency that some very sensitive activities need not require a judicial warrant under the bill, because they would not involve the interception of communications of U.S. persons.

The committee considered this approach very carefully and eventually agreed to an amendment offered by the gentleman from Illinois (Mr. McCLORY) the effect of which was to exempt from the warrant requirement, but not from the other provisions of the bill, and certainly not from Attorney General approval, those operations which would by definition not involve U.S. persons.

Members will understand why I am reluctant to discuss the particulars of the very sensitive surveillances that are involved.

However, it certainly can be said that those operations which constitute electronic surveillance but which are handled under section 102(a) of the bill, that section which permits Attorney General authorization of these particular surveillances are of a segregable class about which it can be said with certainty that U.S. persons will not be intercepted.

The committee felt that adopting the amendment oflered by the gentleman from Illinois did no violence to the principles which underlie H.R. 7308.

It was felt that this legislation was introduced and has received the support that it has because it did not attempt to in any way dismember or destroy intelligence operations.

However, it does attempt, and I think does a very good job at it, to protect U.S. persons whenever they become inadvertently involved in electronic surveillances in this country that seek to collect foreign intelligence information.

Therefore, the different treatment provided under the bill for surveillances which do not involve U.S. persons is attuned to the fundamental principle of the legislation to protect innocent U.S. persons.

The committee found a happy marriage between security concerns and protection of U.S. persons and stands by its judgment in adopting that amendment.

This is not to say, however, that the NSA is in any way exempt from this bill.

NSA operations remain covered by its provisions, although different treatment may be given to different types of operations.

This, however, is fully consistent with the legitimate interests which have driven the drafting and consideration of this legislation in its present form.

Mr. McCLORY. If the gentleman will yield for this further comment, I do not want there to be any misunderstanding as far as the amendment I offered in the committee. The amendment I proposed to offer in the committee, would have been an amendment which would, if accepted, have provided an opportunity to bring this measure to the floor under an agreement. That amendment would have exempted from the warrant requirements all foreign powers and agents. I do not believe we should be required to have a judicial warrant to have electronic surveillance over foreign powers and agents.

Mr. MURPHY of Illinois. The gentleman is aware that if a U.S. citizen calls an embassy and requests information about some foreign event in the United States, that his conversation will not be used politically against him. The Church committee and the Pike committee uncovered clear evidence that past Executive practices have intercepted Americans' conversations with foreign embassies, which have been disclosed and used politically against these citizens.

Mr. McCLORY. If the gentleman will yield further, that is the purpose of the minimization procedure which I would offer.

Mr. MURPHY of Illinois. The minimization procedures would not have come into being had there been warrant procedures; and they would not have been abused as they have been in the past had there been a warrant procedure.

Mr. McCLORY. Mr. Chairman, I yield 7 minutes to the ranking minority member of the Intelligence Committee, the gentleman from California (Mr. BOB WILSON).

Mr. BOB WILSON. Mr. Chairman, the permanent Select Committee on Intelligence has the responsibility to carry out the mandate of the House expressed in House Resolution 658. This responsibility is particularly heavy at this time, as the committee brings to the House the first substantive policy bill to emerge from our examination of the intelligence community. This bill—the Foreign Intelligence Surveillance Act of 1978—will, in whatever form it takes, impact our intelligence organizations now and in the future with respect to their ability to further the national security interests of this country and its citizenry.

The work of this committee, and particularly the Subcommittee on Legislation, has been difficult. We are dealing in a complex matter, with very sensitive subjects. The issues have centered on the balance between our country's national security requirements, and the individual rights and liberties of our citizens. Our hearings, the testimony we have received, and the debates which have occurred in committee, have not provided clear, unequivocal guidelines upon which we could all agree. Throughout this long and difficult period, the committee chairman, the distinguished gentleman from Massachusetts (Mr. BOLAND) has guided our efforts to insure this most serious matter was not examined as a partisan issue, nor an issue between liberals and conservatives, but rather as an important matter of genuine, general concern. I would especially like to express my warmest appreciation for his even-handed and fair treatment of controversial areas and issues, and particularly for his very fair treatment and unfailing courtesy to those of us on the minority side.

The bill before the House today is important for, first, the subject matter is important, because the evidence has been overwhelming that electronic surveillance within the United States for foreign intelligence collection is vital to the national security interests of the United States, and to the continued freedom and well-being of our citizens.

This bill is important, because it will establish a precedent for other deliberations of this body as we undertake our responsibilities to oversee the intelligence and intelligence-related activities of the U.S. Government.

I am confident that responsible Americans understand the importance of obtaining foreign intelligence information, both abroad and at home, against those foreign powers whose interests and ambitions are inimical to our continued freedom. We are aware that the needs for accurate, timely foreign intelligence information have expanded rapidly in recent years, both in categories of information required, and in the sources of this information. A common thread that runs throughout foreign intelligence deals with communications. To control agents; to task these agents against targets within the United States; and to acquire the information gathered: All require communications networks. Thus, it is evident that electronic surveillance within the United States for foreign intelligence collection is as necessary today as it was when the practice was instituted during the Roosevelt administration. In fact, it has become indispensable to the viability of our intelligence organizations.

The first subject which I would like to address is the need for any legislation. Testimony to the Congress over the past several years has revealed several facts about domestic use of electronic surveillance for foreign intelligence collection. First, each administration since F.D.R. has determined that such surveillance was essential to the national security of the United States. Second, each administration from President Roosevelt through President Nixon handled the matter of domestic electronic surveillance in great secrecy. Third, in each administration, to varying degrees, rights of Americans were violated in the name of national security when no national security interest was evident. In other words, each administration engaged in electronic surveillance in the interest of national security; events and activities were handled in secret, few checks and balances existed, and some abuses occurred.

Starting with the Ford administration, and continuing through the current administration, domestic electronic surveillance for foreign intelligence collection has been conducted under the strict provisions of widely publicized Executive orders. For example, President Carter's Executive Order 12036 contains the following provisions for domestic electronic surveillance for foreign intelligence collection. First, these activities can only be undertaken as permitted by the Executive order, under procedures established by the agency head and approved by the Attorney General. Second, these procedures shall, first, protect constitutional rights and privacy; second, insure that information is gathered by the least intrusive means possible; and third, limit the use of information gathered to lawful Government purposes. Further, electronic surveillance shall not be conducted against a U.S. person without a judicial warrant, unless the President has authorized the type of activity involved, and unless the Attorney General has both approved the particular activity and determined there is probable cause to believe the U.S. person is an agent of a foreign power.

The net effect of Executive Order 12036, and its predecessor, Executive Order 11095, according to all evidence received in committee, has been a responsive intelligence collection program which has not impinged on the rights or liberties of U.S. persons. What then is the rationale for legislation? Much emphasis is placed on the fact that, even though intelligence operations have not been unduly constrained, and the rights of our citizens have been protected, Executive orders can be changed, and that future administrations might engage in domestic electronic surveillance in the name of national security to the detriment of the American people. I do not find this a compelling argument. First, I believe in the power of accountability. Executive Order 12036 clearly defines what is permitted, under what circumstances, and establishes a chain of accountability to officials elected by the people of the United States.

A second argument presented by some witnesses concerned the apparent uncertainty, and uneasiness of our Executive department officials, about the legality of these operations, particularly as courts hear more cases in which foreign intelligence electronic surveillance is involved. But this ignores the fact that the courts have ruled overwhelmingly that the President has the constitutional authority to authorize domestic electronic surveillance for national security purposes.

Nevertheless, I do believe that there is a need to pass legislation to regulate the use of electronic surveillance for foreign intelligence in the United States.

What type of legislation is required? The efforts of the permanent Select Committee on Intelligence have centered on one major area—the involvement of the judiciary. But, I believe an aspect other than involvement of the judiciary has not received sufficient attention. That aspect concerns the focus of our efforts. We should not be drafting legislation which hobbles the collection capabilities of our intelligence or-

ganizations. During the past 20 years, the world has grown smaller, the number of potential adversaries has increased, greater areas of the Earth are of vital concern to the United States. Our potential enemies are more active in this country. More sophisticated techniques are available to foreign agents and technology has greatly diminished time and distance factors. Further, the Nation is involved more frequently in crises, in various parts of the world, crises which develop and change rapidly. Therefore, as our needs for intelligence increase and become more urgent, opportunities to collect this vital information also increase. At this time, successful performance by our intelligence organizations becomes highly dependent on their ability to react positively and quickly to collection opportunities. At this time, our national security interests become paramount, and legislation must provide for an effective, efficient, legal way for our intelligence organizations to operate.

Therefore, the legislation which should be adopted by this distinguished body should be balanced, and have the following characteristics. It should:

First. Be supportive of our vital intelligence organizations, and conducive to enhancing our national security interests.

Second. Be flexible enough to provide responsiveness in times of crisis and war.

Third. Be protective of individual rights and liberties of U.S. persons.

Fourth. Provide for effective congressional oversight.

This legislation should not:

First. Restrict the legitimate functions and responsibilities of the intelligence services.

Second. Overreact to abuses which admittedly are not taking place now or to grant to foreign intelligence agents the rights enjoyed by the American people.

Third. And finally, should not transfer constitutional responsibilities for national security and foreign policy from the President and the Congress to the judiciary on matters so essential to our well-being.

I would hope then, following our consideration of H.R. 7308 and the amendments which will be offered, the resultant legislation will serve our national security interests well, protect the rights of U.S. citizens, and that this legislation will serve as an effective precedent for future legislation in providing our intelligence organizations a sound, legal basis for their continued contribution to our national security and the freedom of all our people.

Mr. McCLORY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the very generous remarks which have been made here regarding "McClory Day before the House of Representatives." However, I would like to say that, in my view, this is a day in which we want to consider very carefully the national security interests of our Nation, particularly the activities of our various intelligence agencies.

Mr. Chairman, I merely want to indicate my interest in this subject in behalf of what I believe are the best interests of our Nation in this area; and I have no personal or individual interest in this legislation other than to undertake to do what I think is in the best interests of our Nation.

Mr. Chairman, although I am controlling one-quarter of the time for general debate, as ranking member of the Committee on the Judiciary, I would like to switch hats for a moment to thank the chairman of the other committee on which I sit, and I might say that I am controlling the time for the Select Committee on Intelligence, and say that the distinguished gentleman from Massachusetts must be commended for both his outstanding ability and for his sincere interest in this and other legislation and in the other activities of our committee.

Also, as I said before, I want to commend the gentleman from Illinois (Mr. MURPHY), with whom I worked in this subcommittee. Both of these men have devoted a great deal of time to the consideration of this very complex issue or the number of issues which are encompassed in this legislation. While we have different opinions, I am sure we are all looking toward the same end in what we are doing here.

Mr. Chairman, in my view, what we should undertake to do is to repose responsibility and accountability in the executive branch of Government and not permit that responsibility or accountability to be transferred to the Judiciary.

H.R. 7308 would prevent our intelligence agencies, operating on the President's constitutional mandate to protect our national security, from taking timely and direct action to obtain vital foreign intelligence information. The bill would require the President, on the other hand, to abstain from securing this information or exercising his responsibility in this area until after he first secured a warrant from a newly established special court. It is true that there is a 24-hour leeway there, which is authorized in cases of emergency. However, what if during the 24-hour period the President should decide he wants to have this authority exercised, and at the end of that 24-hour period the court says, "No, you cannot exercise that authority!" Then what happens? It all of a sudden comes to a stop; and of course, the President has been doing something which the court says he never should have been authorized to do in the first place.

Mr. Chairman, this business of reposing all this authority in a special court is an extreme overreaction to the so-called Watergate period and to the abuses which occurred during a period of some 2, 3, or 4 years ago, and perhaps during a long period of time prior to that.

As a matter of fact, in recent years, the intelligence agencies have been operating under Executive order, an Executive order first issued by President Ford and subsequently an Executive order issued by President Carter. There is no evidence, no evidence whatsoever, in the testimony before the Committee on the Judiciary or before the Intelligence Committee which would indicate any violation of any individual rights or any abuses by any of the intelligence agencies during this period.

Therefore, what is it which we are trying to correct through this legislation? It is not abuses which are now occurring. I defy anyone to suggest that there are such abuses occurring now. What we are trying to correct apparently are some abuses which have occurred some time ago and which have been corrected by the Executive orders which are being complied with.

This whole area of foreign intelligence information securing and the entire field of foreign affairs is not appropriately vested in the judiciary in any sense.

Mr. Chairman, as Justice Jackson said in the Chicago Southern versus Waterman Steamship C. case—

> Issues involving the national security are delicate and complex and involve large elements of proficiency. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil.

Mr. Chairman, the persons referred to by Justice Jackson are the elected officials of the people, the President of the United States and the Members of Congress, that is, those of us in this Chamber and in the other body and down on Pennsylvania Avenue in the White House. The persons referred to by Justice Jackson are not members of the judicial branch of Government, who are not elected by the people.

Let us take, for instance, the question of the abuse of authority by the judiciary in this area. Who takes care of that kind of abuse? No one. There is no discipline, no discipline in this legislation or anywhere, with respect to the judiciary.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I want to commend the gentleman from Illinois (Mr. McCLORY) on that statement and I agree with him, perhaps for somewhat different reasons than those which the gentleman from Illinois has expressed.

I wonder if the gentleman would speculate on this. Assuming that this bill passes and becomes law and then we have reason to feel that some Federal judges are too lax in giving out the judicial warrant, does the gentleman feel that there is any way by which we as a legislative branch could even question these judges?

Mr. McCLORY. I do not know of any existing machinery by which we could take any disciplinary action against the court. I might say one of the reasons given for vesting this kind of authority in the judiciary is, that while we have had the warrant requirement with regard to so-called title III provisions of the omnibus crime bill, with regard to domestic security, and with regard to organized crime, and the charge is made, or the statement is made, well, the courts have given warrants in all except three cases. What that indicates to me is that maybe those who are in support of this special court feel that the court is going to be some kind of a patsy for the Executive who might in the abuse of

authority be able to fall back on the judicial imprimatur and say, "Well, I have abused my authority, but it is OK because the judge said it is OK."

Mr. DRINAN. If the gentleman would yield further, under the bill it is provided that Federal judges may hire people from the executive branch. People from the CIA, in other words, will present the case, and people who will even be law clerks, so to speak. Does the gentleman think under this bill they could resist any questioning by the Congress, saying that "We are actually court officers. After all, we are paid for by the executive branch"?

Does the gentleman think that is a further barrier to adequate oversight by the Congress of what the courts will do?

Mr. McCLORY. From the gentleman's statement, of course, it demonstrates that we are venturing forth in an entirely unexplored area. We are establishing for the first time in our history a body of secret law. Some people have referred to this kind of secret court proceeding as a star chamber proceeding. I would not want to characterize it in that way, but I would say it is unprecedented that the personnel in the court, if they are going to be part of the judiciary, are going to pose additional risks. If they are not part of the judiciary, then we are implanting in the judiciary another branch of Government in a sort of hybrid system that I say is unprecedented, and for which I say there is no constitutional authority.

Mr. DRINAN. I agree with the gentleman from Illinois. We are doing something totally unprecedented in the whole history of Anglo-Saxon jurisprudence.

Mr. McCLORY. I just want to say to conclude my remarks that I do not see the role that I or others who are objecting to this legislation have as engaging in any flag waving or being superpatriots here today. It seems to me that what we are doing is trying to respect the judgment of those who are the most experienced in this field. When I speak as I do, I speak in the interest of a statement which the chairman of the subcommittee, the gentleman from Wisconsin (Mr. KASTENMEIER) has received from a former Director of the CIA, William Colby, who says that this warrant requirement should not be extended to include foreign powers and foreign agents, but should be limited to American citizens, and I will be offering an amendment in that regard. I likewise am referring to the support for my position on this legislation which has been expressed by John S. Warner, former General Counsel, Central Intelligence Agency; John M. Maury, former Legislative Counsel, Central Intelligence Agency and former Assistant Secretary of Defense for Legislative Affairs; Lawrence R. Houston, former General Counsel, Central Intelligence Agency; Walter L. Pforzheimer, former Legislative Counsel, Central Intelligence Agency; Ray S. Cline—a well known individual—former Deputy Director of Intelligence, Central Intelligence Agency; and Daniel O. Graham—Gen. Daniel O. Graham, retired—former Director of the Defense Intelligence Agency. All of those persons have expressed themselves forcefully in opposition to this legislation and in support of the position I am advancing.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I ask my colleagues to join with me in opposition to H.R. 7308, Foreign Intelligence Surveillance Act of 1978, and in support of the McClory amendment.

On June 25 of this year, the New York Times carried a story entitled "CIA Refuses Foreign Bids For Anti-Terrorist Help." The article goes on to relate that out of fear of violating legal prohibitions against engaging in covert activities abroad, the CIA refused a request from the Italian Government for a psychiatrist trained in terrorist matters, and for sophisticated eavesdropping equipment to help deal with the Red Brigade's kidnaping of Aldo Moro. I submit that this timorous attitude has been generated by harsh and unrelenting domestic criticism of the Agency, which apparently is made without considering the effect such criticism has on the Agency's ability to function. Now it seems that the effectiveness of the CIA is severely impaired. And in this context, the result of this proposed legislation might well be to administer a coup de grace to the CIA.

It is difficult to think of a more inappropriate and misguided policy to adopt toward our Nation's intelligence agencies than that embodied in this bill, which would impose judicial processes and standards on the surveillance of the activities of foreign agents operating in this country. The measure of sound policy is that the principles which are choosen to govern action should be suited to the particular circumstances in question. A recent example of the inappropriate application of principles to circumstances, was the debate over Cuban involvement in the invasion of Zaire's Shaba Province. Critics of the administration's evidence of Cuban involvement were not persuaded because the administration's evidence was largely circumstantial. But is that not all one can reasonably expect given the difficulties of acquiring information about covert activities conducted in a faraway land? Did the critics believe we could have issued subpenas, and given the rebels court appointed counsel?

Thus we can see that the surveillance of foreign agents operating in this country, by its nature requires secrecy and speed of execution—characteristics of the executive branch of government. As Justice Robert Jackson wrote in the Court's decision in Chicago & Southern Air Lines, Inc. against Waterman Steamship Corp., the judiciary is not equipped to deal with matters concerning foreign intelligence:

> The President, both as Commander-in-Chief and as the nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confined by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither the aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

Furthermore, as Justice Jackson's opinion implies, not only is this legislation inappropriate and unwise, but that it may well be unconstitutional to involve the judicial branch in matters left by the Constitution to the executive and legislative branches.

Primarily as a result of the machinations of those minions of the Kremlin, the KGB, international politics largely resembles the state of nature described by Thomas Hobbes as the "war of all against all," in which life is "nasty, brutish, and short." Faced with such an inexorable and grim necessity, prudence dictates that we resort to whatever measures are necessary to insure our own existence. The means which would be shackled by H.R. 7308 are merely defensive in nature, and thus constitute the necessary, but by no means, sufficient conditions of national survival. Is it really necessary for this Nation to unilaterally disarm its intelligence agencies? What possible principle can justify the extension of the protections of the Bill of Rights to cover the KGB?

I urge the support of the McClory amendment.

Mr. McCLORY. Mr. Chairman, I agree with the statement of the gentleman from California (Mr. LAGOMARSINO).

Mr. Chairman, I might just add that if we do involve the judiciary in this area, what we are doing is involving all three branches of Government in national security and intelligence matters, because we already have the two committees of the House and the Senate exercising extensive oversight, plus the executive. And now to involve the judiciary means that we have all branches of Government in this one area.

I want to emphasize that opposition to this legislation is certainly not in any way a partisan effort. There is strong bipartisan opposition to this legislation, as many of the Members know who have received "Dear Colleague" letters. I think one was signed by 21 Democratic Members of the House and 16 Republican Members of the House. There are strong objections to this legislation on both sides of the aisles, and there are amendments that will be offered by Members on both sides of the aisle.

One gentleman who has raised objections and made very strong statements

in the printed report of the Committee on the Judiciary and who questions some of this legislation is the gentleman from Pennsylvania (Mr. ERTEL), and I now yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I thank the gentleman from Illinois (Mr. McCLORY) for yielding.

Mr. Chairman, I would like to direct a couple of questions to the gentleman.

In relation to the comments offered by the gentleman from Massachusetts (Mr. DRINAN), I note he asked: What do we do if they issue warrants lackadaisically or without purpose and easily? If warrants are issued, how do we know whether or not the courts are in fact issuing these warrants on a rather regular and routine basis without really examining them? How would we ever know that if this is a secret court.

Mr. Chairman, could the gentleman answer that question?

Mr. McCLORY. Mr. Chairman, the only way I could answer that is to say that we will continue to have our House and Senate Intelligence Committees operating, and we will continue to exercise oversight. But with respect to information that is supplied to the court, I question that we would be able to delve into the secret proceedings of the court. I think the court would have to control that, so in a way our Intelligence Committee would be further limited in oversight by whatever the court decided.

Mr. ERTEL. Mr. Chairman, would we in fact be able to go back and try to determine whether there was in fact justification based upon the written reports by the Executive to the judiciary?

Mr. McCLORY. I doubt that we could do that. However, the measure provides for the retention of records, and I assume this means the retention of records by the judge or by the court, for 10 years. That again suggests that there is very apt to be extensive litigation following the enactment of this legislation, if it ever gets enacted, because those records could be made available to a person who might suspect that he was the subject of an electronic surveillance.

As we know and as the Attorney General now knows, a judge who wants information can subject a person to all kinds of proceedings. I might say that the city of Chicago is now under a very serious attack because of an action by the ACLU to delve into the records of the intelligence activities carried on 10 years ago.

Mr. Chairman, if seems to me that getting this information into the courts' jurisdictions suggests all kinds of horrendous involvements.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield on that point?

Mr. McCLORY. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, the gentleman from Illinois (Mr. McCLORY) is on the Committee on the Judiciary in the House, and he is perfectly conversant with the Freedom of Information Act. If this were left exclusively with the executive, anyone could under the Freedom of Information Act petition for every file and every wiretapping conducted today. That is what is being done.

Furthermore, there have been suits brought against agents who conducted these surveillances, and we cannot get our counterintelligence agents to conduct surveillances today because they have no statutory protection as exists in this proposed bill.

Mr. McCLORY. I am certainly not opposed to any statutory language which would supplement the existing guidelines. As the gentleman knows, I have offered that kind of legislation, which would be as full and complete protection as would be these judicial procedures with all its faults.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. I thank the gentleman for yielding.

If in fact a warrant is issued for a person's communications, or there is an electronic bug placed in his home and no useful national security information comes out of it in any way, shape or form, and there is no threat to national security, is there any provision in this law, as it is being proposed, to advise that individual that he has been tapped, that he has been investigated, and there may have been an entry into his residence, even after they have determined there is absolutely unwarranted invasion of his privacy?

Mr. McCLORY. Mr. Chairman, I would answer the gentleman from Pennsylvania by saying no. I know the gentleman has an amendment that he proposes to offer along that line, and I guess I would consider that subject at that time.

Mr. KASTENMEIER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Illinois (Mr. MURPHY), and others, have discussed the provisions of this bill quite ably. I would, however, like to put the matter in some historical context, particularly insofar as the Committee on the Judiciary is concerned.

The Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice began studying the issue of national security wiretapping over 4 years ago, in April 1974, when we held hearings on several bills, including a proposal to require a court order prior to any interception of oral or wire communications in national security cases.

At that time, the Assistant Attorney General, Henry Petersen, speaking for the administration, stated to the subcommittee, "Let me be very brief. We oppose these bills. That is it." During the subsequent 2-year period, Mr. Petersen and his successors, as well as intervening attorneys general, consistently opposed the concept of legislation imposing judicial restraints on national security wiretapping.

However, in 1976, President Ford announced a change in policy. He indicated a willingness to work with Congress to develop a system of court supervision of national security wiretapping. In fact, in response to his invitation for congressional input, the gentleman from Illinois (Mr. RAILSBACK), a member of my subcommittee, and myself, wrote to the President offering our cooperation and included draft language for a bill on national security surveillance. Indeed, following consultation with Members of Congress, a draft bill was introduced in the House by the gentleman from New Jersey, Chairman PETER RODINO, as H.R. 12750, the Foreign Intelligence Surveillance Act of 1976.

An identical bill was introduced in the Senate. While these bills represented a distinct departure from the former administration's long opposition to any statutory controls on foreign intelligence wiretapping, they were considerably more limited in scope than bills which earlier had been considered by our subcommittee. A broad coalition of civil liberties groups, in fact, argued that the bill simply constituted a disguised method of legitimatizing the questionable practices which had in the past been represented by warrantless wiretapping. These groups, led by the American Civil Liberties Union, pointed out that the bill did not require a showing of criminal probable cause, did not permit judicial evaluation of the facts supporting a wiretap application, and failed to eliminate all exceptions to the warrant requirement.

While our subcommittee held 3 days of hearings on H.R. 12750 in the 94th Congress, it failed to move to markup on the measure for the reason that the Senate, with which the administration had collaborated originally in developing the legislation, failed to act.

With the convening of the 95th Congress, those of us who in the past had been involved with the issue, had an opportunity to reexamine the whole question of national security wiretapping with a fresh perspective, and after consultations with the administration and Members of Congress, legislation was introduced as H.R. 7308 in the House and S. 1566 in the Senate.

In the House, a new Permanent Select Committee on Intelligence was created for the sole purpose of focusing on the legislative and oversight responsibilities necessary to assure the effective and ethical operation of our Nation's intelligence system. That committee and its legislation subcommittee, under the leadership of the gentleman from Illinois (Mr. MURPHY), immediately began consideration of H.R. 7308 and related bills on the subject of foreign intelligence surveillance.

The Subcommittee on Legislation conducted eight hearings and markup sessions, followed by additional markup, of course, in the full Intelligence Committee. In discharging its newly assigned responsibilities, the permanent Subcommittee on Intelligence did not work within a vacuum. The select committee built upon the experience of three other legislative committees, including the Judiciary Committee, all spanning a period of three Congresses. Since the Senate

committees had already completed their consideration of the legislation prior to subcommittee markup in the House, the Select Committee on Intelligence was able to begin its deliberations with an already highly developed bill, and one which, as was reported, passed the Senate by an overwhelming bipartisan vote of 95 to 1.

Furthermore, two of the three members of the Legislative Subcommittee which drafted the bulk of H.R. 7308 as it is to be considered by the House today, also serve on the House Judiciary Committee. Therefore, the special expertise which the Judiciary Committee might have brought to the legislative process was clearly utilized in the processing of this legislation by the permanent Select Committee on Intelligence.

Following the favorable report on the bill by the Intelligence Committee, our Judiciary Subcommittee began separate consideration of the measure, conducting 3 days of hearings. We heard from a number of witnesses, including Attorney General Bell, former CIA Director William Colby, former Solicitor General Robert Bork, Senator EDWARD KENNEDY of the other body; our colleagues, the gentleman from Illinois (Mr. MCCLORY), the gentleman from Illinois (Mr. MURPHY), the gentleman from Kentucky (Mr. MAZZOLI), as well as Mr. Shattuck and Mr. Jerry Berman of the American Civil Liberties Union; Dr. Morton Halperin, representing both the ACLU and the National Security Study Center.

Upon conclusion of the hearings, the subcommittee met to discuss the best course of action to take with respect to the bill, and voted to table the bill. The purpose of the tabling motion was to permit the consideration of the legislation by the Rules Committee, in essence truly freeing up the bill for possible consideration even at this late date in September, 1978, by the Committee of the Whole on the House floor.

Given the fact that the committee had already spent three sessions of Congress considering similar legislation; the further fact that the Intelligence Committee product represented, I believe, a fragile but broadly based consensus of the intelligence agencies, two Presidential administrations, and the U.S. Senate, we concluded that we would do a great disservice to our colleagues if, by further delay, we prevented early consideration of an already well-defined bill by the House. To subject the measure to full Judiciary Committee markup would be, in a large sense, duplicative and would threaten to delay the opportunity we have today for its consideration.

Clearly, H.R. 7308 as reported by the House Committee on Intelligence is meritorious legislation, and I believe deserves passage without further amendment by the House. The bill is supported, as I have indicated, by a broad coalition of individuals, legislators, Government agencies, and public interest groups. Witnesses before our committee, from the Attorney General on one side to the ACLU on the other side, favored passage of the measure, although I should say that the American Civil Liberties Union does have traditional reservations about any measure that authorizes wiretapping. But, I think even they must realize that the failure to pass this bill would literally thrust us back into the Dark Ages when we were ruled in this field by the Executive in utter secrecy.

Indeed Dr. Morton Halperin, who himself was the subject of illegal foreign intelligence wiretaps for 18 months, testified in favor of the bill as reported by the Intelligence Committee and stated at that time in testimony that:

> Efforts to regulate the activities of the Executive branch and to require a warrant, seem to me to be imperative. In my view the standards in this bill would prevent most, if not all, of the abuses which have come to light.

Of course, Dr. Halperin was speaking for the civil liberties community.

However, the Nation's intelligence community also supports the legislation and endorses the procedures recommended in the bill by the Intelligence Committee. In a letter to me dated June 22 of this year, Adm. Stansfield Turner, Director of the Central Intelligence Agency wrote:

> I support the bill because I believe it strikes a fair balance between intelligence needs and privacy interests, both of which are vitally important. In my view the legislation will place the activities with which it deals on a solid and reliable legal footing and help to build public confidence in the national intelligence collection effort and in the agencies of the Government principally engaged in that effort . . . for these reasons I strongly urge that this legislation be enacted as soon as possible.

It has now been over 6 years since the Supreme Court in the famous Keith case cast a cloud over warrantless wiretapping procedures and in that landmark decision Mr. Justice Powell, writing for the Court, specifically invited the Congress:

> . . . to consider protective standards . . . which differ from those already prescribed for specified crimes in title III . . . Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of government for intelligence and the protected rights of our citizens.

Finally, after years of work by four congressional committees and two administrations, a bill has been developed which is supported by a unique historical consensus. I believe it is imperative that this consensus not be allowed to disintegrate. Therefore, I invite my colleagues not to vote against the bill. Any shift, I believe, in the delicate balance of interests represented in this measure would jeopardize its passage, and even if an amended bill were passed, its effective implementation would undoubtedly be resisted in the courts by dissatisfied individuals and interest groups.

Mr. Chairman, very few bills come to the floor of this House with the history of thoughtful and careful scrutiny and legislative drafting as is represented by this bill. I urge all Members to support it without amendment.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Chairman, I rise in support of this legislation, although I would have preferred that a provision had been added requiring an adversary procedure whenever application is made for a warrant. It seems clear to me that the judge would do a much better job were there a third party, someone in the nature of a public defender, whose duty it would be to represent the interests of the unknowing, absent person whose conversations were about to be listened to by the Government.

However, realistically such an amendment would have little chance of acceptance, and so I am prepared to vote for the bill as submitted.

As chairman of the Judiciary Subcommittee on Civil and Constitutional Rights I have had a duty to be uniquely aware of possible and actual encroachments of the privacy rights of American citizens. My subcommittee has reviewed the occasionally distressing history of the Federal Bureau of Investigation in this regard, and I have come to the firm conviction that all too often the Federal Government has been in the business of spying on the Nation's citizens and visitors with little or no legitimate purpose. As we are now seeing in Federal courts, these practices have apparently led to excesses that are criminal in extent. This documented history of abuse and a respect for the Constitution's sensitivity to privacy rights have led me to oppose all wiretapping as a law enforcement device and intelligence gathering tool. I am committed to a constant scrutiny of these techniques so that we may more accurately judge their effectiveness and legal justification. In the end, I suspect that the evidence will support my view that this inevitably intrusive surveillance technique is not necessary or wise.

However, I am well aware that neither the administration nor this Congress is prepared today to prohibit wiretapping for either law enforcement or intelligence gathering purposes. On the contrary, the bill which has been brought to the floor today has reached this point only after painstaking debate and compromise between the intelligence and civil liberties communities. Therefore, in a spirit of pragmatism and hope that we can make realistic, although modest, improvements in the state of the law, I support this legislation for the following reasons:

For the first time, the executive branch will be bound by statutory restrictions; no longer will a claim of inherent executive authority to conduct national security wiretapping be recognized. The rule of law will be brought to this practice.

For the first time, the law will require that a criminal standard for U.S. persons be met prior to approval of a national security wiretap on them.

For the first time, an objective third party, a Federal judge, will be required to review and approve applications for these taps, using explicit statutory standards.

For the first time, the law will require extensive minimization procedures for national security wiretaps, thus requiring that extraneous information which may be gathered incidental to a tap is destroyed.

For the first time Congressional oversight of national security wiretapping procedures will be provided by law. I can personally attest to the difficulty congressional committees and subcommittees have had in getting accurate, detailed information on the activities of the intelligence community. This requirement will be an important, substantative safeguard against the blatant abuses that have occurred in the past.

Lastly, this legislation will provide an important precedent for the crucial FBI charter legislation which my subcommittee and the Intelligence Committee will be considering next year. I consider the bill before us today to be part of an ongoing effort to return the rule of law and the resultant public respect to the Nation's intelligence community. I urge my colleagues to join me in supporting this bill.

Mr. EDWARDS of California. Mr. Chairman, I would like to ask several questions of the gentleman from Wisconsin, the distinguished chairman of the subcommittee.

Mr. Chairman, is it clear that this bill eliminates the "inherent power" of the President to electronically surveil U.S. citizens without a warrant?

Mr. KASTENMEIER. In answer to the question of my colleague, the gentleman from California (Mr. EDWARDS), I would say yes. It is very explicit in the language of the bill itself in that it repeals section 2511, subsection 3 of title 18, United States Code, which under present law constitutes that reservation.

Furthermore, the Attorney General was quite clear that he agreed with the committee report on such language. In testimony before my subcommittee, in response to this question: Does the President intend to act only pursuant to the authority granted by this legislation should it become law? the Attorney General answered, and I quote:

He made that pledge.

We agreed to take out the provision in the bill in the last Congress. The President was not waiving his inherent power to that effect. We took that out in the Senate. The President agreed to go only on the statute.

Mr. EDWARDS of California. I thank the chairman of the subcommittee.

Is it clear that this bill establishes a criminal probable cause standard for all electronic surveillance of American citizens and permanent resident aliens in the United States for foreign intelligence purposes?

Mr. KASTENMEIER. Mr. Chairman, in answer to the gentleman's question, I would say yes. Section 101(b)(2), which sets forth the definition of a foreign agent who is a U.S. person, specifically requires in addition to a showing that the individual knowingly engages in intelligence gathering on behalf of a foreign power, that he is also engaged in activities "which * * * involve or may involve a violation of the criminal statutes of the United States."

Mr. EDWARDS of California. Mr. Chairman, I thank the gentleman for his response.

Is it clear that this bill places an affirmative obligation on the attorney general to adopt procedures designed to minimize the incidental collection of information not relevant to foreign intelligence?

Mr. KASTENMEIER. Yes. Section 101(h) defining minimization procedures specifically requires the attorney general to adopt such procedures.

Mr. EDWARDS of California. Again I thank the gentleman.

My last question:

Is it clear that this bill gives the Committee on the Judiciary, as well as the Permanent Select Committee on Intelligence oversight responsibility for the conduct of electronic surveillance within the United States?

Mr. KASTENMEIER. I am pleased the gentleman asked that question.

The answer is: Yes. For the record and on behalf of the Committee on the Judiciary, let me state that the committee does and will maintain its responsibility for oversight of foreign intelligence surveillance activities and I will state personally that this is a responsibility that is taken quite seriously by the members of the committee. The Judiciary Committee has a unique expertise in this somewhat complicated legal area and we intend to continue to use that expertise, taking note of the fact that section 109 provides for a special requirement that there be a report to the Select Committee on Intelligence biannually, notwithstanding that the Committee on the Judiciary has that.

Mr. EDWARDS of California. I thank the gentleman.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would just like to make this comment with reference to the suggestion by the gentleman from California (Mr. EDWARDS) that he would prefer to have an adversary proceeding. That suggests that when we seek to gather intelligence by electronic means, primarily against a foreign agent or a foreign power, that somehow or other the foreign agent or the foreign power should be represented by counsel in court, and it would be a case or a proceeding such as you have in a contested proceeding. I just believe it is completely unthinkable that we would want to adopt that kind of system in this or any other legislation.

I have two questions with respect to the colloquy that just went on.

First, it is the gentleman's feeling that a constitutional power that is delegated or mandated to the President in the Constitution can be delegated to another branch of the Government, and that this inherent power of the President, which he has with respect to national security, can, somehow or other, by one President, be renounced and sent to another branch of the Government, such as is attempted in this case?

Mr. KASTENMEIER. In response to the inquiry of the gentleman from Illinois, first of all, let me comment and say, notwithstanding the fact that I share the idealistic views of my friend the gentleman from California (Mr. EDWARDS) that somehow the target ought to be represented in an adversary proceeding; that, obviously, the Intelligence Committee was not able to so formulate that. I know it was a matter of very considerable debate, and that does not appear in the bill.

I do not know that it would be possible to accommodate that desired end. We are not able, clearly, to do it in this bill. I think that is well understood.

On the second point the gentleman raised with regard to the President's inherent constitutional powers:

We cannot ever prevent a President from claiming an inherent constitutional authority to do something. Very often Congress has provided statutory endorsement for that type of enterprise. We have specifically declined to do that here, and we have the policy announcement that the President does not intend to exercise any inherent constitutional authority to wiretap beyond the contours or limitations of this bill.

Mr. McCLORY. If the gentleman will yield further, we could implement the constitutional authority by statute, but we could not abrogate the constitutional authority by statute.

May I just ask a question with regard to one other point, and that is the requirement for a criminal standard with regard to intelligence gathering where a United States person is involved. Is it not true that most intelligence gathering has nothing at all to do with the commission of a Federal crime; and if we are going to be limited in intelligence gathering to an allegation that a Federal crime has been committed—and I think the bill provides that a Federal crime is about to be committed or may be committed—are we not restricting about 95 percent of the intelligence gathering information which is unrelated to the commission of any Federal crime but is just information which we feel is important to our national security?

Mr. KASTENMEIER. I think it might have the effect of curtailing some rather arbitrary intelligence gathering exercises against individuals or I should say American citizens; but as the gentleman knows, many of the targets are not U.S. citizens, but are foreign powers, agencies of foreign powers, and others who are not so protected within this bill. Those, I would suggest to the gentleman, are likely to be the principal targets, and U.S. citizens would less likely be the targets by virtue of this standard.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I would like to state that that particular standard was the suggestion of the FBI, the Federal Bureau of Investigation. It was they whom we consulted when we drafted this provision, and they were positively satisfied with it.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I would like to ask the gentleman from Wisconsin (Mr. KASTENMEIER) a couple of questions. I know he is a distinguished lawyer and also a constitutional lawyer, but, under this bill, since we have a secret court, and there does not seem to be any provision here for transferring an opinion from one phase of that court to another, nor is there a written opinion required or it does not appear from this bill that there should be or will be, therefore, there is no stare decisis, so I ask the gentleman whether he would agree that they will just issue orders; there is no written opinion, no stare decisis, no case law developed within this court; is that correct?

Mr. KASTENMEIER. I am inclined to agree with the gentleman's observations.

Mr. ERTEL. Then I would ask the gentleman, and this is not, obviously, the Judiciary's report, but in a statement of need, under section 2 of the Intelligence Committee's report, one of the basic needs they outline is the need for consistent case law to be developed. How do we answer that need when, in fact, the legislation prevents the development of case law? There is no report, no decision; there is no stare decisis; but yet the report states that one of the needs of this legislation is to have consistency. This is a catch 22 situation, it seems.

Mr. KASTENMEIER. I cannot answer fully for the Committee on Intelligence. In that respect I assume that what is meant is rather than relying on printed decisions, which do not exist here, that the control of the consistency occurs, in fact, because we have a special court and a special court of appeals. Therefore, we do have an interrelationship between these bodies as far as trying to establish some uniformity with respect to decisionmaking as to warrant applications is concerned; and certainly this will, I think, very practically evolve. Also, the existence of a clear statute will eliminate much of the current legal debate.

Furthermore, the special court and the special court of appeals created by this legislation will have to arrive at their own rules and procedures in connection with many of the practices that they are going to have to follow which are not specifically provided for in the legislation and, indeed, I would suggest ought not to be provided.

Mr. ERTEL. If I may follow a bit further on that, if they are going to try to develop case law, and the exact thrust of this is not to develop case law, I think it is a Catch 22. But if I may make one other point, I would like to read a section on page 21 of the committee report and then I want to ask the gentleman a question, if I might.

> Finally, the decision as to the standards governing when and how foreign intelligence electronic surveillances should be conducted is and should be a political decision, in the best sense of the term, because it involves the weighing of important public policy concerns—civil liberties and the national security. Such a political decision is one properly made by the political branches of Government together, not adopted by one branch on its own and with no regard for the other.

It seems to me that is the exact antithesis of our form of government. We have three separate and distinct branches of Government. The judiciary is separate and distinct and should not be involved in the political decisions. Does that kind of statement, that kind of language, square with our constitutional form of government?

Mr. KASTENMEIER. If I may answer the gentleman, I think the term "political" as used by the committee in its report is not meant in that fashion. The context in which it is used refers to the sort of policy exercised by the courts that it traditionally has been, whether one uses the word "political" or anything else with respect to policy. I must honestly say that I think the bill does appropriately involve all three branches of our Government. This involvement recognizes that in fact we do face and have faced a crisis in confidence in our intelligence agencies. We do provide here a significant role for the Congress, both in the writing of this legislation and in the oversight which will follow. We are no longer relying on the secret operations of the executive branch in and of itself. We are not relying on them for policing themselves. This is where the committee and all the others who have recommended this legislation essentially differ from the gentleman from Illinois (Mr. MCCLORY) who conscientiously believes that the executive branch ought to itself police its own abuses. This bill suggests a wider sharing of responsibility for that. As I understand the subcommittee's language in broad context, it is appropriate for that purpose.

Mr. ERTEL. If the gentleman would yield further, is the gentleman assuring me this is constitutional, the way it is drafted, inasmuch as the court has the obligation under the bill to modify any order, by requiring the court to establish the minimization proceedings, does the court not wind up with the Executive negotiating with the Judiciary on the order? Do we want to do this? In the minimization proceedings which the court must consider and may change, does not the court get into a negotiating position with the Executive is without any adversary, and does not have a case or controversy under the Constitution? This is a negotiating proceeding. I suggest we should not do it in this manner. Are we not making the courts draft the guidelines how the surveillance is going to be conducted? Are they not then the experts in foreign policy? Does that not give the gentleman concern as to the implications for our judicial system.

Mr. KASTENMEIER. If I may respond further to my friend, that, may I say, reflects a general concern we have with the courts, in fact, and we feel they ought not be engaging in "negotiations."

I would not accept that word as describing the role of the courts in considering applications made. It seems to me the proper role of the court is to deny applications when they are inappropriate or when the procedures are inadequate, and then it is up to the executive branch to make a reapplication. This is the sort of thing that takes place all the time.

We had a bill here on the floor, as the gentleman knows, because he and I both worked on it—and that is H.R. 9400—where we have the Federal courts involved in issuing extensive orders to public institutions in America which have been guilty of abuses. That is a far greater involvement of the Federal judiciary in the affairs of our country than is proposed here. Such orders are more than negotiations, and the courts in those instances are actually said to be running institutions. I would not describe those acts as negotiations.

It is true that the courts will require standards, and the applications and procedures will have to meet those standards. Otherwise the special courts here will reject them. I would not consider that "negotiations." The gentleman may, of course, so construe it in that fashion if he wishes.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. MCCLORY. Mr. Chairman, the gentleman made reference to the fact that my perception of this operation is that the Executive should police his own abuses, and I want to emphasize or reemphasize my strong support of the House and Senate Intelligence Committees and their exercise of oversight.

I do feel that the Executive should have accountability, and I question that accountability will be as strict or as sure as it should be if we repose authority in the judiciary or in this special court to pass upon applications which provide very, very limited information, because it seems to me we will be eliminating a high percentage of accountability from the Executive by providing an excuse for abuses that otherwise the Executive would be held accountable for.

The gentleman made one other mention, and that was with respect to the retention, as I understood it, of a certain inherent constitutional power in the President regardless of the enactment of statutory authority for the judiciary to grant warrants with regard to foreign intelligence surveillance. I would like to call the gentleman's attention to the fact that on page 67 of the bill we are now considering, it is stated specifically that the procedures of title III of the 1968 act and of the Foreign Intelligence Surveillance Act of 1978, "shall be the exclusive means by which electronic surveillance, as defined in section 101 of such act, and the interception of domestic wire and oral communications may be conducted."

In other words, what the legislation provides is that the President is deprived of his inherent constitutional authority. Instead, that authority is reposed exclusively under this legislation in the judiciary with regard to the decisionmaking on whether or not electronic surveillance should or should not be undertaken.

Mr. KASTENMEIER. Mr. Chairman, the gentleman from Illinois (Mr. MCCLORY) is correct. In the first instance, I accept his characterization of his own plan.

I must say that congressional oversight alone, which has been exercised for many, many years, is not, I think, sufficient totally for the reestablishment of confidence in our intelligence gathering.

As a matter of fact, the question I asked the Attorney General was predicated on a quotation of the subcommittee's language, with which the President and the Attorney General agreed, and as far as any expression in law is concerned, this bill will be the sole repository of authority to conduct intelligence surveillance of this character.

Subsequently, some President may state that he has inherent constitutional authority to do otherwise, but that President will have to assert so, and that President will probably have to be tested in the highest courts as to whether he indeed did exercise an inherent constitutional power. The Congress will not by virtue of this statute have yielded that power to him, and that is what is involved here.

Mr. McCLORY. Mr. Chairman, will the gentleman yield further?

Mr. KASTENMEIER. Yes, I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, may I ask, would it not be preferable to put language like that in the bill by way of amendment? For instance, would it not be well to insert language in the bill stating that there would be an exemption from this judicial warrant requirement in case of war or something of that nature?

Mr. KASTENMEIER. In answer to the gentleman's question, I would say, absolutely not. That is the whole purpose of this. The purpose of this bill is to set up a procedure where all this country, its citizens, its intelligence community, and its President know what the rules of the game are.

And to do anything else I think would be a mistake. I support the subcommittee entirely in this connection.

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Mr. BUTLER. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. ASHBROOK), a member of the full committee.

Mr. ASHBROOK. Mr. Chairman, first, I would like to say that we have had several unique arguments here.

Page 101 of the report indicates that section 201(c) would repeal 18 United States Code, section 2511(3), which states that nothing in chapter 119 or section 605 of the Communications Act of 1934 shall limit the constitutional power of the President to gather necessary intelligence to protect the national security.

This report goes on to say that the Keith case held that the Congress was not really taking anything from or adding anything to the President's power, just "merely provided that it shall not be interpreted to limit or disturb such power as the President may have under the Constitution. In short, Congress simply left Presidential powers where it found them."

Judging from the last colloquy, there are a number of Members of this body who think that we can take that constitutional power of the President, the inherent power of the President, and alter or limit it by a statute. Clearly what we are doing, as was pointed out by my colleague, the gentleman from Illinois (Mr. McCLORY), is to delete the statement of the Congress in the 1968 Omnibus Crime Act, by language on page 67 which cleverly states that exclusive means for electronic surveillance shall be those that are in this particular statute. This effectively removes the language in section 2511(c).

I do not think we can take away the inherent power of the President. If President Carter wants to say, for his short time in office, that he is not going to use the powers, that is fine. But I do not think President Carter can limit what a future President does under the proper constitutional prerogatives of that future President. To try to end run this issue is, I think, not only bad policy, but may very well be unconstitutional.

Every Federal judicial circuit which has had cause to rule on the issue has held that the President has constitutional power to order warrantless electronic surveillance to gather foreign intelligence information. That is, the third, fifth, and ninth circuits. This was also recognized in the recent Humphrey-Truong spy case.

Before Judge Bell became Politician Bell, this is what he said, as a judge on the Fifth Circuit Court of Appeals:

> Because of the President's constitutional duty to act for the United States in the field of foreign relations, and his inherent power to protect national security in the context of foreign affairs . . . The President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence information. Restrictions upon the President's power which are appropriate in cases of domestic security become artificial in the context of the international sphere.

As I said, that was before Judge Bell became Politician Bell.

The second thing I would like to point out is that my friend and colleague, the gentleman from Wisconsin, indicated there was a unique coalition here. Well, I think it is a unique coalition. The only thing unique about it is the way you define "coalition." It reminds me of the columnist, Dorothy Thompson, who, some 30 years ago, referring to a lover of a great writer—I will not mention his name—and indicated that his emotions ran the alphabetical gambit from A to C. That is about the way this coalition runs. It is a coalition running the alphabetical spectrum from A to C. Mr. Halperin's group, and groups of that type, run the philosophical gambit from about A to C. Where are the other 23 letters of the alphabet? We have not heard anybody mention the American Legion, American Security Council, Veterans of Foreign Wars, broad-based groups which have millions of members. Oh, no. You take a little narrow group, which has worked together on this bill, and say that they represent a broad consensus. Unique maybe, a consensus, no.

Well, the thing that is unique is to call it a consensus, because they started out in the same place and ended up in the same place. So, there really was not any consensus. Nobody has talked about the former FBI agents. The Society of Former FBI Agents is opposed to the overreach of this legislation. The Association of Former Intelligence Officers—CIA—opposes this bill. The only people who are for this bill are the administration people who, as in most administrations, are under the iron heel of administration policy. They dutifully come forward and say, "Yes, we support this legislation."

No former director of the CIA supports it. None of the down in the ranks officers who have worked in the field—and I have talked to hundreds of them—support it. I know of not one FBI agent who supports it.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. BUTLER. Mr. Chairman, I yield 3 additional minutes to the gentleman from Ohio.

Mr. ASHBROOK. No former FBI agent supports it; no former CIA agent who had the responsibility out in the field, who came before our committee, who wrote or communicated to many of us, said, "I favor this legislation."

So, when we are talking about a unique coalition, a unique consensus, we are not really talking about that. We are talking about a unique definition of coalition and consensus because it is basically outside of this Congress—I do not point the finger at Members of this Congress—but my main complaint is that H.R. 7308 has largely been written by people outside this Congress, and largely by the anti-intelligence clique which is a part of this so-called unique consensus.

These are many amendments which should be offered. I will offer a number myself. I will support the amendments offered by my colleague, the hardworking and able gentleman from Illinois (Mr. McCLORY). I would hope that we could amend this bill so, that it would be something that would help rather than hinder the intelligence gathering operations of this country.

The bill before us today is the product of considerable work and effort by a large number of people in and out of government. These range from administration officials and former intelligence officers to spokesmen for anti-intelligence groups that wish to dismantle our intelligence gathering ability. The House Permanent Select Committee on Intelligence and its dedicated staff have taken all of the views into consideration in reporting out this bill.

The basic issue in H.R. 7308 is to what extent it limits intelligence gathering, and to what extent it authorizes it. My concern is that too much attention has been paid to those who would limit our intelligence gathering ability. While protecting the rights of Americans, we should not confer these rights on foreign agents. Even Vice President MONDALE when he was in the Senate, said:

> As far as I am concerned, foreign spies in this country should have no rights. Probably that is a little crudely put, but a KGB agent and so on—I shouldn't say it—I could care less how we proceed to get information from them or influence their behavior while they are in this country. What I am worried about is the application of these activities and their effect on American citizens. That is what I

am talking about. (Testimony before the Senate Intelligence Committee, June 29, 1976, p. 69.)

I have a number of concerns about this bill. One of the main issues is the introduction of the courts into the intelligence gathering process. There is clearly some security risk as a result of more people having access to the information, despite the support given to the bill by the leadership of the intelligence community. Some of those leaders, who support the bill, have indicated that they do so as part of the administration team or that they can "live with the bill." On the other hand, working level members of the intelligence community have major problems with H.R. 7308.

H.R. 13442 introduced by the gentleman from Illinois (Mr. McCLORY) would solve the problem of the courts. This is a major constitutional problem. Although the congressional proponents of the bill argue that it takes no position on whether the President has the inherent power to conduct national security wiretaps. Common Cause, an active supporter of H.R. 7308 argues that the bill—

Eliminates once and for all the doctrine that the Executive Branch has inherent power to conduct national security wiretaps. (Letter to all Members of Congress, August 7, 1978.)

There are other problems as well. For example, the bill would provide criminal penalties for FBI agents who violate the minimization procedures. Certainly, an administrative punishment would be sufficient. What a contradiction. The anti-intelligence extremists want to be able to jail FBI agents while those who collaborate with hostile foreign governments could not even be surveilled. We must make sure that this bill does not accommodate either of these desires. It should instead set standards for the intelligence gathering so vital to our national security.

This legislation has been referred to as a bellweather for future restrictions on the intelligence community. A bill proposed by the ACLU and other extremist groups such as the Committee for Public Justice and the Center for National Security Studies would require warrants for informants and undercover agents. The proposed bill is aptly titled "A Law to Control the FBI." A warrant for informants and undercover agents is the ridiculous but logical continuation of a requirement for a warrant to electronically surveil a foreign embassy or agent.

Let us take a real case, and see what this bill would do. On July 16, 1978, Kristina Berster, a member of the Baader-Meinhof terrorist gang, was apprehended trying to cross the U.S. border from Canada. She was in possession of a stolen and altered Iranian passport.

Investigation revealed that she had been in close association with three other people while in Canada. These people all claimed to be U.S. persons. They are now under indictment.

Under this bill, neither the individuals nor the groups could have been electronically surveilled even with a warrant. The Attorney General would have had to prove to a judge that each of these persons, "knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power." The group could have been targeted as "a faction of a foreign nation" only if it was "not substantially composed of United States persons"—something difficult if not impossible to prove.

The purpose of the surveillance would have been to determine if these people were involved with the Baader-Meinhof terrorist, Kristina Berster in planned terrorism in the United States. Under H.R. 7308 they could not have been electronically surveilled to obtain this information.

I have amendments to propose to this bill, and I will support amendments that will be introduced by some of our colleagues.

The House Permanent Select Committee on Intelligence has already amended this bill. A significant amendment which was passed by voice vote by the committee was one which I had proposed. This amendment added the word "member" to the definition of agent of a foreign power. Just as some "foreign powers" have employees, others such as terrorist groups or foreign based political organizations have members. Of course not every foreigner who falls under this definition would be surveilled, but it would be possible to do so if necessary.

It will be a difficult job, but this Congress should pass a bill that will authorize intelligence gathering against hostile foreign powers and terrorists, without violating the rights of the American people. That is the kind of bill that I could support. I ask my colleagues to join with me in amending H.R. 7308 so that it is consistent with the needs of this country and its people. The first duty of the Congress is to provide for the safety and security of the American people against their enemies, both foreign and domestic. A bill that does less than that does not deserve our support.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I would just like to indicate one organization which supports this bill, the American Bar Association. Will the gentleman concede that it is a broad-based organization?

Mr. ASHBROOK. It is at least broad.

Mr. MURPHY of Illinois. As a member of the Pike committee, I had before me at that time former members of the CIA. When we asked them why the abuses occurred they said, "We had nobody to go to. There was no statutory standard by which we could refuse an executive who was requesting and ordering us to engage in improper activities."

Mr. ASHBROOK. I agree with the gentleman 100 percent. I agree that they need a charter. I must observe that the charter should be enacted before we come along with this bill, but I doubt if my colleague, who is a very honest and very able colleague, could say that they supported the provisions in this bill.

Mr. MURPHY of Illinois. The gentleman was also present in our hearings when we discussed the FBI, and the Attorney General said that agents were hesitant to go into the field today and conduct needed intelligence surveillances because they were being sued all over the United States, including himself, the Attorney General. They needed some statutory protection in this matter, and this is what this bill gives them.

Mr. ASHBROOK. This bill gives them that and a lot more.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would say that certainly we should provide the FBI with statutory protection, but to create a new special court to divest the executive of responsibility and accountability in this area in order to protect FBI agents seems to me to be an overreaction. What we should do is provide further protection through legislation. We do provide it in the substitute bill I have offered, but not through this mechanism.

The CHAIRMAN. The time of the gentleman from Ohio has again expired.

Mr. BUTLER. Mr. Chairman, I yield 1 additional minute to the gentleman from Ohio.

Mr. McCLORY. I would like to point out that I saw this letter from the president of the American Bar Association. I do not know what kind of survey of the members of the American Bar Association was made. I will say that this bill before us now is substantially different from the bill that was over in the Senate. It is a far reach from the legislation just considered in the subcommittee headed by Mr. KASTENMEIER 2 or 3 years ago, at which time they considered mass coverage and all kinds of other subjects; so that it seems to me that that kind of a statement must be a statement which is not based on knowledge of what this legislation undertakes to do, or what it provides.

Mr. ASHBROOK. I thank my colleague, and I agree with him completely.

Mr. BUTLER. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I think the points which I would have made in my formal statement have been covered very well by the gentleman from Ohio (Mr. ASHBROOK) and the gentleman from Illinois (Mr. McCLORY), as well as the other Members who have spoken. So, at the risk of repeating myself or repeating what has been said, I will not return to those points except to say that I share the reservations about the constitutionality of what we are about to undertake.

But one thing that has not been touched on is a matter which I would like to mention, because it did come up in the Senate debate.

H.R. 7308 represents a bill that may well prove unconstitutional, while at the same time severely undermine and endanger the Nation's security. Moreover, the bill, in light of recent events, is un-

necessary and a prime example of congressional overkill.

My principal concern is that the bill raises serious constitutional questions, in that it may violate article II of the Constitution. H.R. 7308 denies the existence of any inherent authority on the part of the Executive to conduct warrantless electronic surveillance by vesting Federal courts with the jurisdiction to authorize—or to refuse to authorize, through a warrant procedure, foreign intelligence gathering activities. In Presidential power to conduct foreign intelligence surveillance arises under the President's article II powers as Commander in Chief of the Armed Forces of this country and as the officer primarily responsible for the conduct of our foreign affairs. This Executive power to conduct warrantless electronic surveillance for foreign intelligence purposes has been asserted by every President at least since Franklin D. Roosevelt.

The judicial warrant approach in the administration's bill is premised on the proposition that the fourth amendment to the Constitution presumptively requires a warrant for every search. The underlying reasoning for this assertion is the Supreme Court's holding in the Keith case, where it ruled that a warrant is required for electronic surveillance employed for domestic security purposes. However, the warrant requirement in the Keith case was limited to domestic security cases, as the Court made it clear that they were in no way addressing the issues involved in foreign intelligence electronic surveillance. By the same token, the circuit courts that have considered the issue of the inherent constitutional right of the President to authorize warrantless electronic surveillance have held that such power does exist.

Coupled with the judicial recognition of the inherent power of the President to authorize warrantless electronic surveillance, is the fact that there is no existing case authority for vesting the Federal courts with jurisdiction to authorize or refuse to authorize foreign intelligence gathering activities as proposed in H.R. 7308. The U.S. Supreme Court rejects such authority in *Chicago & Southern Air Lines Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948) holding:

. . . It would be intolerable that courts, without the relevant information should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

The constitutionally questionable provisions of HR. 7308 culminate for the express purpose of protecting the privacy of Americans against their own intelligence agencies. This bill comes at a time when the Soviet Union and other hostile foreign governments are enjoying increased opportunities for espionage in this country. During the Senate debate of S. 1566, Senator MOYNIHAN stated that—

I would not be surprised if upwards of one million American citizens were, at this moment, having their telephone calls listened to by the KGB, the committee of state security of the Soviet Union. They are overheard by receivers on the top of the Soviet Embassy here in Washington.

A new Soviet Embassy soon to be built on a hill in Washington will, for this purpose no doubt, be even better situated for the interception of the telephone calls of anyone on this floor, or in the gallery, or who will read this Record. . . .

Given this present state of events, I believe the proper focus of legislation should be in the direction of protecting the American people and our country from the espionage activities of foreign governments. Instead, we will be unduly restricting our foreign intelligence capabilities by this bill, and as a result, needlessly subjecting the American people to the increasing espionage activities of foreign intelligence agencies.

Closely alined with the fact that we should be legislating to protect the American people from foreign intelligence operations, is the fact that H.R. 7308 ignores the experience of the past few years under Executive orders issued by Presidents Ford and Carter.

The guidelines contained in the Executive orders have, according to all the evidence, rendered the gathering of foreign intelligence by U.S officials abuse-free. This given situation further illustrates that there is no need for H.R. 7308. Accordingly, I urge my colleagues to reject H.R. 7308.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Chairman, I would point out I think it is important that we have legislation which spells out in statutory form the very explicit and very appropriate guidelines that are contained in the Executive orders of former President Ford and now President Carter, and that this kind of control is extremely important and we should retain congressional oversight, as we do retain substantial congressional oversight in the Senate and House Intelligence Committees.

But by establishing a special court and involving the Judiciary is unique. As a matter of fact, it is unique in the world. There is no other nation in the world that imposes a restriction on the Executive such that there is here of transferring to the Judiciary the decision as to whether or not electronic surveillance should or should not take place.

So it seems to me what we are proposing to do here, we are doing not only to ourselves but also with respect to our surveillance of foreign agents and foreign powers in our country, something that no other country imposes on itself with respect to its own citizens or with respect to the electronic surveillance of others.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I thank my chairman, the gentleman from Illinois (Mr. MURPHY), for yielding me this time.

Mr. Chairman, first of all I would like to bring to the attention of the committee the fact that in this morning's paper, the Washington Post, there was, I think, a very appropriate and solid editorial in behalf of passage of the bill before this body, and I would like to read the last paragraph, because I think it succinctly states the case:

The proposed legislation—

Which, of course, is the legislation that is now before us, H.R. 7308—

would put a stop to abuses—

And that refers to abuses of electronic surveillance—

of that kind without hampering legitimate national security investigations. It would simply put an impartial arbitrator—in the person of a judge—between every citizen's privacy and the desire of the government to penetrate it. That would not be a new role for Federal judges; they serve constantly as buffers between the government and the individual. But it would provide a new kind of protection that events of the recent past have shown is sorely needed.

I think that is an important editorial.

Also, Mr. Chairman, I would like to mention that on June 29, the New York Times—which was still publishing then—had an editorial in behalf of H.R. 7308 which was, at that time, before the subcommittee chaired by the gentleman from Wisconsin (Mr. KASTENMEIER). In the Times editorial it was stated that this bill, notwithstanding its problems, was still an important bill which should pass. The case is succinctly stated in the final paragraph of that editorial:

The Foreign Intelligence Surveillance Act is a wise solution to a problem that for years looked politically impossible to solve. To lose it now would turn a potential model of legislation into a travesty of the legislative process.

Mr. Chairman, I would like to make one comment. It was discussed earlier in the debate between the gentleman from Illinois (Mr. McCLORY), the gentleman from Wisconsin (Mr. KASTENMEIER), and the gentleman from Pennsylvania (Mr. ERTEL) that the President does possess a unique power, an inherent power to conduct foreign intelligence wiretapping, and that there is no way that the Congress can limit this constitutional power.

I think that the gentleman from Wisconsin (Mr. KASTENMEIER) in his discussion with the gentleman from California (Mr. EDWARDS) described the reason why Congress can, indeed, circumscribe that power.

But I think that the Committee on Intelligence, in its report on page 18, and the pages which ensue, is also worth reading. It shows that no holding of the Supreme Court has confirmed that the President has this inherent power to wiretap. The Keith case just simply

passed on that point and left the final determination to another day and another court. And so, without a specific holding, I think this is certainly an opportune time to legislate on the issue of a President's inherent right to electronically surveil.

And as the gentleman from Wisconsin (Mr. KASTENMEIER) said, if there is a future President who orders a wiretap without a specific court order, that President would be walking in the face of what this Congress will have said is the proper mode of conduct. This certainly guarantees that there will be a challenge taken to the highest court in the land.

So, Mr. Chairman. I think it would serve the Members well to read pages 18, 19, and 20 of the Intelligence Committee's report. I think they are very instructive on this point.

Mr. Chairman, I would like to also mention something that I believe the gentleman from Pennsylvania (Mr. ERTEL) brought up.

Let me say first that the gentleman from Pennsylvania (Mr. ERTEL) has been a valuable member of the House Committee on the Judiciary, in his first term, and was also a contributing member in the subcommittee during its deliberations on this bill.

The gentleman from Pennsylvania (Mr. ERTEL) brought up the fact that the special courts would not be writing any decisions and, therefore, there would be nothing for this House nor for these two Intelligence Committees to be looking into to evaluate the actions of the warrant procedure.

But, if the gentleman would refer to pages 95 and 96 of the Intelligence Committee report, which discusses section 108 of the bill, the gentleman would be reasonably satisfied the Intelligence Committee, the committee chaired by my friend the gentleman from Massachusetts (Mr. BOLAND) has unequivocably stated its intention and, indeed, its determination, to play a very intimate role in the future unfolding actions of the special courts.

I would especially, as a matter of fact refer to page 95 of the committee report.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for yielding.

I think the second full paragraph on page 96, is important. It states:

As interpreted by the committee, the word "fully" means—

And that "fully" refers, of course, to full information—

that the committee must be given enough information to understand the activities of—

And then, with some words deleted—

of all electronic surveillances. To preserve the Intelligence Committee's right to seek further information, when necessary, section 108 makes clear that nothing in this title shall be deemed to limit the authority of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

Mr. Chairman, I would like to assure the gentleman from Pennsylvania (Mr. ERTEL) that if the gentleman from Kentucky remains on the Committee on Intelligence, I certainly would be determined to seek from these special courts the kind of full information which would give us a chance to develop exactly how they are functioning under the law.

Mr. ERTEL. Mr. Chairman, if the gentleman will recall the colloquy, there is no written opinion by a court; there are no opinions which are recorded for the next court to consider the next case. There is no stare decisis.

Does the gentleman suggest that there are going to be written opinions to provide for stare decisis?

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. FOWLER. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Georgia.

Mr. FOWLER. In response to the continued questions of the gentleman from Pennsylvania (Mr. ERTEL), under the special court provision of this legislation, section 103 on pages 41 and 42 of the bill, may I read specifically subsection (e), beginning on line 21, as follows:

Proceedings under this title shall be conducted as expeditiously as possible. If any application to the Special Court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the Special Court of Appeals.

And then subsection (f) says the following:

Decisions of the Special Court of Appeals shall be subject to review by the Supreme Court of the United States in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code, except that the Supreme Court may adopt special procedures with respect to security appropriate to the case.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, that provision only applies to a denial of an application. If there is a granting of the application, there is no written opinion stating why there is a granting of an order. There is no setting out of the standards which apply.

It only says, "I deny this because, one, I do not find that there is a sufficient evidence, period." That is it.

When an order is granted, the court says, "Here it is," and the reasoning and the standards are not set out.

The bill does not provide for that in any way, shape, or form.

Mr. MAZZOLI. I think the gentleman is going to find that the actual practice will be what the gentleman from Georgia (Mr. FOWLER) has suggested. The gentleman from Kentucky and the gentleman from Georgia, to the extent we remain on the Intelligence Committee, we will attempt to see that this special court does not become either a rubber stamp or an impediment.

Mr. ERTEL. Is the gentleman suggesting that he can demand from the court written opinions be provided to a legislative committee, thereby interfering with the Judiciary?

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I again say that I support H.R. 7308, the Foreign Intelligence Surveillance Act of 1978.

This uniquely important—and much needed—legislation was first proposed by President Gerald Ford and Attorney General Levi in 1975. It is supported with equal vigor by President Jimmy Carter and Attorney General Bell.

It has been the subject of lengthy hearings and careful study by several Senate and House committees, including two committees on which I am honored to serve—the House Intelligence and Judiciary Committees.

Drawing on this detailed record, the House Intelligence Committee, ably led by Chairman BOLAND and Chairman MURPHY, spent many hours subjecting each of the bill's provisions to searching scrutiny. Our committee heard from all interested parties.

This is as it should be. There are no issues of more basic importance to our country than those involving the national security and individual civil liberties.

The bill before you, then, is, in my opinion, a product of mature reflection and reasoned deliberation.

As reported by the Intelligence Committee, H.R. 7308—except in three narrowly defined circumstances, not likely to involve U.S. persons—would require a judicial warrant for all electronic surveillance conducted in the United States for foreign intelligence purposes.

Under H.R. 7308, surveillance could be undertaken only to collect foreign intelligence information and could be targeted only against foreign powers or agents of a foreign power. Both "foreign power" and "agent of a foreign power" are terms carefully defined in the bill.

A U.S. person—a term also carefully defined in H.R. 7308—can be considered an agent of a foreign power only if he engages in certain activities on behalf of a foreign power which involve or may involve criminal acts.

To further protect U.S. persons, the bill requires a judge to approve procedures to minimize the acquisition, retention, and dissemination of information about a U.S. person which is collected as incidental result of foreign intelligence surveillance.

H.R. 7308 establishes a national policy that a judicial warrant authorizing foreign intelligence electronic surveillance is the proper means to insure that the rights of all persons involved are protected while, at the same time, legitimate foreign intelligence activities are not impeded.

Over the years, foreign intelligence electronic surveillances have been conducted at the discretion of executive branch officials. As this House is all too aware, this arrangement has not prevented serious abuse from occurring.

It has been argued that all of these abuses, though unfortunate and indefensible, are now past history. It is further argued that the current guidelines imposed by former Attorney General Levi and refined by Attorney General Bell effectively preclude any recurrence of past abuses.

And so, this argument goes, there is no need to establish a procedure calling for issuance of a judicial warrant before a foreign intelligence electronic surveillance can take place.

The short answer here—in behalf of the warrant approach—is that administrations come, and administrations go. Guidelines are written and they are revoked. The Department of Justice may not always be led by men and women of character and integrity who are dedicated to the preservation of fourth amendment rights.

The American people—for good reason—have over the years been skeptical about the commitment of the executive branch of Government to honor their individual liberties and personal rights. By contrast, the people have demonstrated a strong faith in the ability and willingness of the judicial branch to protect these cherished rights.

The American people, in my judgment, will more readily support a national program or foreign intelligence electronic surveillance if they know that no surveillance can take place unless a neutral, detached magistrate has studied the case and found that the detailed statutory standards for a surveillance have been met.

H.R. 7308 does not protect non-U.S. persons and foreign agents from intelligence surveillances conducted in the United States. Nor does this warrant protection impede necessary intelligence gathering activities.

H.R. 7308 carefully distinguishes between surveillances. It requires that the judge make fewer specific findings and receive less information from those officials requesting the warrant in the former case than in the later cases.

Others of our colleagues, Mr. Chairman, have argued against the warrant requirement saying it would lead to a wholesale intrusion of the judiciary into the day-to-day operation of the intelligence agencies.

With all due respect, this is simply not the case.

As H.R. 7308 and the committee report accompanying it make abundantly clear, the judges of the special court established to hear applications for foreign intelligence electronic surveillance warrants will be engaged in a traditional judicial function: Examining a set of facts against a statutory framework and then deciding whether the law allows or disallows the action sought.

No special expertise in intelligence matters is expected or required of the special court. Furthermore, no lawful intelligence activities will be endangered by leaks under H.R. 7308.

Some of our colleagues, in opposing H.R. 7308, profess to favor a warrant requirement where a U.S. citizen is the subject of an electronic surveillance, but to oppose such a warrant where non-American citizens, diplomats, foreign embassies, and the like are targeted for a foreign intelligence surveillance.

Mr. Chairman, I suggest that these colleagues read the report of the Church committee. This report is replete with instances where U.S. Presidents—of both party affiliations—have used embassy surveillances as a pretext to acquire political and personal information about U.S. citizens.

The judicial warrant requirement established in H.R. 7308 insures that any future foreign embassy surveillance will be only for the purpose of obtaining foreign intelligence information necessary to the security of our Nation.

Furthermore, the judge, before issuing the warrant authorizing a surveillance, has to review and approve proposed minimization procedures. These are procedures designed to minimize the likelihood that conversations of U.S. persons will be intercepted. If they are intercepted, the minimization procedures assure that such information will be utilized for no other purpose than for its foreign intelligence mission.

Under H.R. 7308, individual intelligence agents will know to the letter what is required of them. They will know that what they do pursuant to a warrant is lawful. And, they will be protected in the future against criminal prosecutions and civil suits arising from the surveillance as long as they do not exceed their lawful authority.

Another objection raised against the warrant provision is that it poses harm to the national security.

The harm, it is argued, could result in two ways: Intelligence activities could be impeded because of redtape and court delays; and, the court procedures established under H.R. 7308 could result in unintentional disclosure of sensitive intelligence information.

The House Intelligence Committee subjected both of these concerns to lengthy and detailed inquiry.

The committee concluded on the basis of testimony of members of the intelligence community that H.R. 7308 will not impede or unduly complicate foreign intelligence gathering. There will be no excessive redtape.

As to the second situation—the danger of disclosure and leaks of sensitive information—most of the intelligence community's concerns have been received by the committee's decision to exempt from the warrant requirement two particular sensitive types of surveillance.

However, it cannot be denied that under H.R. 7308 a judge will be involved in the surveillance process where none is today. There is risk here, but is the risk manageable?

First, an application for a warrant to surveil is made to but one judge. At the time the application is made, a large number of executive branch personnel will necessarily already know the details of the proposed surveillance.

Information to but one additional person seems an acceptable risk in view of the protection the warrant process offers to the American people and to the intelligence field agent.

Second, judges are constantly exposed to sensitive and volatile information. They have not, as a class, abused the trust placed in them. I doubt they would show themselves unworthy to handle sensitive intelligence information.

Also, the bill directs the special court to adopt security procedures for handling the sensitive information provided to it under H.R. 7308. These procedures will be instituted in consultation with the Attorney General and the Director of Central Intelligence.

The bill also makes clear that such security procedures may include the use of executive branch personnel—already cleared to handle secret material—to perform clerical duties for the court. This would minimize the danger of leaks of sensitive material.

Also, it is contemplated that sensitive intelligence material will be stored for the court in facilities maintained by cleared executive branch personnel.

Furthermore, the Attorney General, the Director of Central Intelligence, the Director of the National Security Agency, and the Director of the Federal Bureau of Investigation have all actively participated in the drafting of H.R. 7308. They all urge that it be passed.

These officials—charged with the singularly important mission of protecting the security of the country—would not support H.R. 7308 if they felt its warrant procedure would jeopardize national security.

In summary, Mr. Chairman, H.R. 7308 is good legislation.

It protects the constitutional rights of American citizens and the legitimate rights of all individuals. It does not obstruct or impede necessary foreign intelligence collection activities.

It will enhance the effectiveness of the intelligence field agent, who, in most cases, under H.R. 7308, will have a court order to guide the agent's actions which today is not available.

And, it should restore the public's confidence in the intelligence community since no U.S. person can be subjected to foreign intelligence electronic surveillance unless a judge has previously found probable cause that the individual is involved—or may be involved—in a criminal activity.

Admittedly, H.R. 7308 is a compromise bill. Any legislation that can bring together two administrations of differing political philosophies, three congressional committees, the intelligence com-

munity and most of its critics must be the product of compromise and adjustment. Thus, not every provision will be supported with equal vigor by each interested party.

As my supplemental views to the committee report note, I voted against the amendment adopted by the committee which exempted certain intelligence activities from the judicial warrant process.

I remain convinced of the necessity and realism of an across-the-board warrant in foreign intelligence electronic surveillance.

But, I am equally convinced that H.R. 7308 should not be opposed because it is imperfect by my standard. It is still a bill which deserves the House's strong support.

In closing, Mr. Chairman, let me quote briefly two strong supporters of the judicial warrant procedure for authorizing foreign intelligence electronic surveillance.

Senator BIRCH BAYH, chairman of the Senate Intelligence Committee, said on the Senate floor when H.R. 7308's counterpart, S. 1566, was adopted by a vote of 95 to 1:

> The bill before the Senate today . . . is the first major intelligence reform measure to be considered by the Congress. It will bring an end to the practice of electronic surveillance by the executive branch without a court order in the United States. It establishes standards for issuing court orders that reconcile the interests of personal privacy and national security in a way that is fully consistent with the fundamental principles of the fourth amendment and due process of law.

Senator JAKE GARN was quoted on the same occasion:

> Some have wondered what a conservative Senator such as myself was doing co-sponsoring what they thought was a liberal bill. The answer is quite simple. This is not a liberal bill. It is neither a Democratic nor a Republican bill. The tasks of balancing cherished constitutional liberties with increasingly threatened national security needs is too important to be left to partisanship.

Mr. KASTENMEIER. Mr. Chairman, I yield such time as he may consume to the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO).

Mr. RODINO. Mr. Chairman, as the sponsor of H.R. 7308 I strongly urge its enactment. The bill was officially reported by the permanent Select Committee on Intelligence. And it reflects the thinking of a great many individuals other than the membership of that committee. It is important that we pass it now.

To begin with H.R. 7308 in its present form is largely a product of the previous administration. I originally introduced the bill during the 94th Congress following a request from the Ford administration to do so. Since that original introduction the legislation has been further scrutinized and refined. Not one change was made in either the Senate, which has already passed the bill by a vote of 95 to 1, or by the House Intelligence Committee without consultation and approval by the FBI, the CIA, and the NSA. Furthermore, the American Civil Liberties Union has endorsed the bill.

The measure is also supported by working agents in the field. I have received a letter of endorsement from the association of Federal investigators which attests to this fact. Perhaps one reason such divergent groups have united in strong common support of this bill is because its enactment is necessary to the continued security of our Nation. This legislation will remove the mist of uncertainty which envelops so much of our intelligence collection activity today and provide to intelligence professionals the guidelines they need to do their job properly. In addition, it will assure Americans generally that we in Congress have acted to assure that the resources of the Nation's intelligence agencies will be used ethically and in a manner which will not threaten their basic liberties. The bill was closely scrutinized by the Kastenmeier subcommittee. Given the sensitive and complex nature of the subject matter of H.R. 7308, I honestly believe that it would not be appropriate to amend it on the floor. When amendments are considered, I hope they will be resisted and the bill will be passed as reported.

Mr. McCLORY. Mr. Chairman, will the gentleman yield to me?

Mr. RODINO. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

As the ranking minority member on the gentleman's committee, I joined and applauded the gentleman when he communicated with the Speaker advising that it was inappropriate to bypass the Committee on the Judiciary with regard to important legislation. I notice that this bill of which the gentleman is the principal sponsor was referred to our committee, and yet it was never considered by our committee in formal session. With the very serious constitutional and legal questions that are involved, and the many implications that are involved, the court decisions upon which various provisions of the bill depend, it seems to me so entirely inconsistent with the gentleman's position upholding the prerogatives of our committee that he would not have wanted a markup session by our committee on this legislation, and does not want the bill to be amended now on the floor of the House.

Mr. RODINO. I would respond to the gentleman by reminding him that this legislation had been under study by the subcommittee, chaired by the gentleman from Wisconsin (Mr. KASTENMEIER) for a period of time, and that when the legislation was referred to the Committee on the Judiciary, we considered it because of the urgency of the matter, and we considered it important to get the bill to the floor because we felt that the matter had been studied very carefully. We consulted with the gentleman who is now on his feet speaking. There were hearings at the time, and by a vote of 4 to 3 the subcommittee decided to table any further requests for hearings or for any action that would prevent the expedition of the legislation. We decided by that vote to come to the floor with the work which had been the handiwork and fine work of the Intelligence Committee. I believe that this is what we have now.

Mr. McCLORY. If the gentleman will yield further, I do acknowledge that there were hearings, but there was no consideration given by the committee. It was not reviewed in a markup session.

Mr. RODINO. I believe the subcommittee vote speaks for itself—the subcommittee of the Judiciary Committee—by a vote of 4 to 3 to table any further action.

Mr. McCLORY. If the gentleman will yield further, those who supported the motion to table the bill expressed themselves in strong opposition to the bill, so the bill does rest in the committee right now.

Mr. RODINO. Mr. Chairman, I might say to the gentleman that had those Members decided that they wanted to review the matter any further, they would have voted otherwise.

We must remember that the Committee on the Judiciary does retain its oversight responsibility, and, therefore, we will be able to continue to do what is necessary in order to insure the best interests of our country. But I just wanted to point out that had those Members had any special concern, they would have voted otherwise.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield, let me ask, is there any provision in the bill that says the Committee on the Judiciary shall have oversight?

Mr. RODINO. Mr. Chairman, the Attorney General, when he appeared before the committee, stated expressly and succinctly that the responsibility for oversight would still be with the Committee on the Judiciary.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield further, the report does not include any provisions as to reporting to the Committee on the Judiciary.

Mr. RODINO. Mr. Chairman, I would also add that in view of the inherent jurisdiction of the Committee on the Judiciary, we are protected by the Rules of the House, and we will retain our oversight and legislative responsibility under rule X.

Mr. SANTINI. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Nevada.

Mr. SANTINI. Mr. Chairman, with reference to the gentleman's expressed concern about the disposition of the subcommittee, I think the gentleman's question is a valid one. It is a question I asked myself before making the decision on the subcommittee to support the position of the chairman, and if we had not done that at that time, I think the gentleman well appreciates that this legislation to all rational intents and purposes would be dead.

If the objective is to kill the legislation, we could then have protected its consideration in the full committee. The full committee consideration would have, I

think, by any reasonable assessment killed the bill. There simply is not the legislative time remaining in order to get this bill through the full Committee on the Judiciary and to the House floor for consideration.

Mr. Chairman, if the gentleman will yield further, at that juncture I made a particular point of phoning representatives of the FBI and asking them this question:

> We are now postured at this juncture of either killing the bill or, as an alternative, passing over full consideration by the Committee on the Judiciary and getting it to the House floor for consideration. What is your preference as a representative of the entity which is going to be most emphatically and dramatically impacted by the legislation?

The answer to my question was, emphatically, to "get that bill to the House floor as rapidly as you can. We need this bill as an investigative entity."

They are in a no man's land—excuse me, I should say, no person's land—and they do not know which way to turn or how to get there. The critical issues of national intelligence are being abandoned through the emasculation of inaction and the situation they are placed in.

The answer I got was this: "We have to have that legislation if we are to act and aggressively do the job that is assigned to us."

Mr. RODINO. Mr. Chairman, I want to thank the gentleman for his remarks. The gentleman serves on the committee, and I believe he has made a valuable contribution. He has stated the case clearly, and I think there is nothing more I can add.

Mr. Chairman, I yeld back the balance of my time.

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. KASTENMEIER) has expired.

Mr. McCLORY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I take this time merely for the purpose of making this statement: It was more than 6 weeks ago that this matter was before the Committee on the Judiciary of the House.

There was ample time for the Committee on the Judiciary to consider this legislation, to consider all these complex legal and constitutional questions, and to bring a measure to the floor which would not be in this kind of a confused state as we now find this legislation in.

As a matter of fact, it was represented to us that if the measure was brought to the floor, we would be able to amend it on the floor; yet the chairman of the full Committee on the Judiciary now states he wants this measure passed without amendment. So we are not only denying ourselves the opportunity in the Subcommittee of the Committee on the Judiciary and in the full committee of providing amendments to this legislation, but now we are denying ourselves the opportunity on the floor of the House to entertain amendments. It seems to me that is a tremendous disservice to our committee and to the Members of the House.

Mr. Chairman, I now yield 5 minutes to the gentleman from Massachusetts (Mr. DRINAN).

Mr. DRINAN. Mr. Chairman, I rise very diffidently and feeling very much alone in opposition to this bill. I share the misgivings just expressed by the gentleman from Illinois (Mr. McCLORY) that this is being pushed through without having thought the thing through. In fact, the pressure is almost unbelievable, because people think that we have to do something about the abuses.

But everybody here is very uneasy. Mr. Chairman, I have listened very carefully; everyone is suspicious that this is not the way to go about it. And I think that they suspect, as I know, that this is a capitulation to things that we really should not be doing.

The basic assumption, today is that wiretapping yields information indispensable to the protection of our national security.

I have served on the committee chaired by the gentleman from Wisconsin (Mr. KASTENMEIER) for 7 years and I have relentlessly asked people to give information that would prove that assumption. But that is the unproven assumption today.

This bill will legalize useless wiretapping. It will erode the fourth amendment. It will institutionalize the Nation's worst xenophobic prejudices. The CIA can now get a warrant if there is any probable cause of crime. But in view of the determination of the CIA and the FBI and the intelligence community to go on with their warrantless surveillances, somehow people have come to the conclusion that we will offer them an unorthodox warrant. It is called a "funny" warrant. It is not really a warrant. It is not a "case or controversy." It is an abuse of the Constitution. We pretend that this is going to bring control. The warrant that judges cannot refuse will not clean up surveillances that we cannot control.

H.R. 7308 does three bad things. It imposes duties on Federal courts totally at variance with anything that we know as a "case or controversy." This is an alteration of something very fundamental. Likewise, we will have something that is very foreign to our courts; namely, secret decisions.

Second, H.R. 7308 contains no requirement that Americans whose conversations are unavoidably recorded need be informed of that massive invasion of their privacy.

Third, H.R. 7308 violates the Vienna treaty, solemnly ratified by the Senate. That treaty guarantees that diplomatic offices are to be "inviolable."

Mr. Chairman, I will offer some amendments at the appropriate time, one on behalf of the telephone industry that does not want to have its agents or any Americans compelled to deal in the clandestine wiretapping that under the bill they will be required to do.

I will also propose a sunset provision of 5 years so that when we understand that what this frightening experiment on our civil liberties really will do, we will have the opportunity, in fact we will be required, to put into effect this sunset provision.

Even if those two amendments and other amendments are adopted, Mr. Chairman, I feel very strongly that this bill will be a self-inflicted wound and a capitulation to the imperious and unjustified demands of the CIA and the intelligence community.

H.R. 7308 has a number of serious defects and is far from the "model wiretap bill" as the New York Times asserted in its editorial of June 29. It permits surveillance of Americans, in certain circumstances, without a court order. It does not contain adequate safeguards to minimize the acquisition of the conversations of innocent people. It requires telephone company employees, custodians, landlords, and others to assist, against their wills, the CIA, the FBI, and other agencies which are engaging in electronic surveillance. And it gives no notice to persons who are overheard that their conversations have been recorded.

Since 1968, many observers have studied the matter of electronic surveillance very carefully. Among others, the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice has conducted numerous hearings over the past several years. Indeed this subcommittee has successively examined the predecessors to H.R. 7308, beginning in 1976 with the Ford administration bill. We received testimony which was quite critical of the various proposals which have been before us. While proponents sought to discount such adverse comment, they have failed, in my judgment, to carry the burden of persuading us that this bill is needed. When the rights of Americans under the Fourth Amendment are at stake, the Congress should not readily agree to invade them without evidence of the most compelling nature. The advocates of this bill have not adduced testimony anywhere near that level. Based on that hearing record, as well as my experience as a teacher of constitutional law, I would, if given the opportunity, seek to amend H.R. 7308 to effectuate fully the protections of the fourth amendment.

#### (1) THE NEED FOR H.R. 7308

It is critical that the House not assume as correct any of the premises which undergird this bill. Each of the assumptions must be examined thoroughly and without any preconceived notions about the need for employing electronic surveillance to gather so-called foreign intelligence information. In testimony before the Judiciary Subcommittee, the Ford administration provided very little hard evidence of the necessity for this measure. Official representations, both in public and executive sessions, amounted to little more than generalities couched in terms of protecting the Nation from foreign attack. That is not a sufficient basis upon which to authorize the broad

powers sought by the executive branch. The national experience and disclosures of the recent past show all too clearly that Presidents and Attorneys General have used national security as a pretext for snooping into the lawful activities of political opponents or persons perceived to pose a threat to their political security.

The House must weigh the value of and the need for intelligence information gathered from electronic surveillance against the intrusions into constitutionally protected rights, such as privacy, association, and speech. I continue to believe that any electronic surveillance, whether approved by a court or not, violates the Constitution because such interceptions of private conversations can never satisfy the particularity requirement of the fourth amendment. It should be recalled that, to obtain a warrant under the fourth amendment, the applicant must submit a sworn statement, "particularly describing the place to be searched, and the person and things to be seized." Invariably an application for a bug or a tap cannot be that specific; it cannot describe with particularity all the persons to be overheard and all the conversations to be recorded.

This is the real evil of electronic surveillance; it is indiscriminate. It brings within its scope conversations of the innocent as well as the allegedly guilty. It is this indiscriminate quality of electronic surveillance that is most to be feared. Even physical surveillance, which some find offensive, is a much more targeted intelligence gathering technique than electronic surveillance. At least physical observation is more or less restricted to the person who is the object of the Government's interest. Electronic surveillance does not have these inherent limitations. Minimization provisions, which attempt to reduce the unnecessary intrusions into privacy, are generally inadequate.

H.R. 7308 does not uniformly require a criminal standard of probable cause in order to obtain a surveillance authorization. That is its major deficiency, as many witnesses have testified. Indeed the Intelligence Committee frankly concedes that the purpose of the bill is to obtain intelligence information which is not of a criminal nature.

> Although there may be cases in which information acquired from a foreign intelligence surveillance will be used as evidence of a crime, there cases are expected to be relatively few in number, unlike chapter 119 interceptions [title III of the 1968 act], the very purpose of which is to obtain evidence of criminal activity. Committee Report at 60.

With that purpose clearly stated, it should come as no surprise that the fourth amendment probable cause standard is not applied to all cases under this bill. What should come as a surprise, though, is the major break with fourth amendment doctrine that H.R. 7308 would effect.

Indeed, in some respects, H.R. 7308, as reported by the Intelligence Committee, is less restrictive than the earlier bills. For example, the earlier version defined "agent of a foreign power" to include, among others:

> * * * any person who knowingly engages in clandestine intelligence activities for or on behalf of a foreign power, which activities involve or will involve a violation of the criminal statutes of the United States.

The bill, as amended by the Intelligence Committee, would insert the word "gathering" between "intelligence" and "activities," and would substitute the word "may" for "will." Insertion of the word "gathering" arguably narrows the scope of the section, but replacing "will" with "may" arguably broadens it.

There are, to be sure, other objections to H.R. 7308. The definitions of "foreign intelligence information" and "foreign power" are much too broad. For example, "foreign intelligence information" includes any "information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to . . . the conduct of the foreign affairs of the United States." Section 101e(2)(B). That definition has virtually no limits. There are many topics of conversation which every Secretary of State would determine "relates" or is "necessary" to the conduct of foreign policy.

The definition of "foreign power" is also overly broad. It includes, among others, foreign governments, factions of foreign governments, foreign political parties, and foreign military forces. This means that a conversation between an American citizen and an officer or employee of a foreign political party is potentially a subject for surveillance. The reach of that section is far too expansive. The definition, in fact, raises the question whether the bill could be used to engage in surveillance involving so-called third country disputes which spill over into the United States. As I read the bill, the Attorney General could obtain a court order to overhear conversations of persons belonging to "a faction of a foreign nation" even though the subject matter only marginally related to the direct interests of the United States. In short, the critical definitions are too broad to be meaningful restrictions on the Attorney General's authority, either with or without a warrant, to engage in electronic surveillance.

Furthermore H.R. 7308 does not appear to require any criminal standard for agents of foreign governments who are not U.S. citizens or resident aliens. The bill would impose a criminal standard in some circumstances, but it would not impose one across-the-board. Consequently my criticism of earlier bills that they authorized surveillance without probable cause relating to criminal activity is equally applicable to H.R. 7308.

It should be noted in passing that the distinction drawn in H.R. 7308 between citizens and resident aliens on the one hand, and all other persons within the United States on the other has little constitutional support of which I am aware. The protections of the fourth and fifth amendments, for example, extend to all persons, not merely citizens and resident aliens. See *Abel* v. *United States*, 362 U.S. 217 (1960). Many people in the United States are neither citizens, nor resident aliens, nor spies. Tourists, lecturers, business people, scholars, and many others regularly visit this country for purposes unrelated to clandestine activity. As I understand the bill they would not receive the special protection which the proposal appears to give to citizens and resident aliens ("United States persons"). The committee report makes that very clear with respect to the minimization provisions, for example. It states that "only information concerning a United States person need be minimized." *Id.* at 57. This double standard is constitutionally unacceptable and represents the xenophobia of a by-gone day. In testimony before the Judiciary Subcommittee on May 22, 1975, former Secretary of State Dean Rusk attempted to draw a distinction between diplomatic personnel, who are immune from criminal prosecution, and all other U.S. residents. Although I reject that distinction also, it does have some greater logic than the distinctions drawn in H.R. 7308 between citizens and resident aliens and all other persons in the United States.

H.R. 7308 does not limit the use of overhead conversations which are unrelated to the purpose of the surveillance. In fact the bill expressly permits the use of such acquired information in a criminal prosecution regardless of the remoteness of the crime from the surveillance. Section 101(h)(3) of the bill authorizes

> * * * procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law.

Thus evidence of crime, obtained accidentally through a foreign intelligence tap, may now be used to prosecute the hapless victim of the surveillance, even though she or he may not even have been the "target" of the surveillance.

When Government agents obtain incriminating evidence through electronic surveillance which is not intended for that purpose, and which may be totally unrelated to the alleged criminal activity, they should not be allowed to use it for prosecutorial purposes. Such "fruit of the forbidden tree" should not be available to prosecute the party for conduct which may not be even remotely connected to the object of the surveillance. This is especially true when it is considered that the criminal standard, where it does appear in these bills, is not uniformly required for obtaining a surveillance warrant in the first instance.

In this same vein, H.R. 7308 makes no provision for notifying innocent persons whose conversations have been recorded or overheard merely because, for example, they called the embassy of a foreign country for travel information. Any time these "foreign intelligence" taps result in the interception of conversation unrelated to the subject of the surveillance, the innocent victim should be notified, or the records destroyed, or both. The minimization provisions of H.R. 7308, as noted earlier, are not strong enough to insure the destruction of data or recordings which are worthless or unrelated to the purpose of the surveillance.

In this context, the bill should provide for a public advocate to protect the rights

of innocent parties. Since H.R. 7308 authorizes ex parte applications to a special court and permits ex parte extensions of existing bugs or taps, some mechanism is necessary to protect the rights of third parties who are unwittingly caught in the Government's dragnet surveillance. If such an office were established, I would have greater confidence that the privacy of persons within the United States would be more fully secured.

A provision for a public advocate takes on added importance when the "renewal" features of H.R. 7308 are examined. The Government may seek an unlimited number of 90-day extensions for any surveillance authorized under the bill. Thus the intrusion into the privacy of persons in the United States could go on for years, without anyone knowing about it. In addition the bill also authorizes the Attorney General to approve emergency surveillance when a court order cannot be obtained in the needed period of time. The Attorney General must then submit the normal application to the judge within 24 hours. If the judge denies the application, the bill gives the court the discretion to notify the innocent victims of the initial 24-hour surveillance, but the Government, again at an ex parte proceeding, may request that such notice be postponed for 90 days (the original Levi bill had a 30-day provision). Thereafter, once more through an ex parte proceeding, the court is prohibited from serving notice if the Government has made a further showing of "good cause." This exception makes a mockery of the limited notice rule in emergency surveillance situations, and further supports the need for a public advocate to be present at all these ex parte hearings.

H.R. 7308 has been criticized because it assigns duties to the judiciary which are not within the traditional definition of "judicial power." The argument proceeds from the settled doctrine that article III of the Constitution restricts the exercise of judicial authority to "cases or controversies." The Supreme Court has explained that limitation as being based, in part, on the need "to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). If the application for a warrant is conducted in secret and without the presence of any opposing party, as is the case under H.R. 7308, how can this constitute a "case or controversy" within the meaning of the Constitution?

Proponents of this legislation contend that the warrant procedure under this bill is no different than the warrant procedure under title III of the 1968 act. Thus, they reason, that since the 1968 act is constitutional, so is H.R. 7308. First, it should be observed that, to my knowledge, the warrant procedures of the 1968 act have never been challenged on the ground that they do not present a case or controversy within the judicial power of the United States. Second, the warrant procedures in the 1968 act are different in critical aspects from the procedures in H.R. 7308.

The warrant process under title III is viewed as ancillary to another proceeding, the investigation and prosecution of crime. If the information obtained through the surveillance leads to a prosecution, the defendant will have the opportunity to challenge, in an adversarial context, the legality of the tap or bug. If the information does not lead to a criminal prosecution, the person who is the subject of the surveillance is notified and given the opportunity to contest the validity of the surveillance in a civil suit. In either case, the initial application for a warrant may be viewed as a part of the case or controversy, either civil or criminal, which ordinarily follows the granting of the surveillance authorization. This is not the case under H.R. 7308.

First, as noted earlier, H.R. 7308 is not designed to procure information in connection with any criminal proceeding. As the committee report notes:

> Although there may be cases in which information acquired from a foreign intelligence surveillance will be used as evidence of a crime, these cases are expected to be relatively few in number . . . *Id.* at 60.

Thus the person whose conversations have been overheard will not have the opportunity to contest the lawfulness of the surveillance in any criminal proceeding.

Second, the bill does not provide any notification to such persons, as title III of the 1968 act does. Thus the victim of unlawful surveillance under the bill may never know of the illegality. Even a blind request by a suspecting individual under the Freedom of Information Act will not determine whether the requesting person has been the subject of a foreign intelligence surveillance. Both the FOIA and the Privacy Act contain exemptions for records ordered by the executive branch "to be kept secret in the interest of national defense or foreign policy." 5 U.S.C. 552(b)(1). The Privacy Act contains a general exemption for the records of the CIA. As I read this bill, there is no way for an American citizen or any other person who has been the subject of an unlawful surveillance to find out about the illegality. The only barrier standing between the victim of illegal wiretapping or bugging and a warrant is the special courts created by H.R. 7308. And there is no subsequent check on the behavior of the courts or the Executive under this bill. In the absence of the procedures, contained in title III of the 1968 act, which ordinarily lead to a case or controversy. I think the argument that this bill raises serious questions under article III is substantial.

Apart from the constitutional contentions against the warrant procedures contained in this bill, I do not understand why the judges assigned to these special courts would not take offense at the duties and limitations imposed upon them. They are not free to examine all the evidence presented by the Attorney General as they are in the ordinary warrant application process under title III. Certain critical determinations of the Executive are reviewable only on a "clearly erroneous" standard. See section 105(a)(5) of H.R. 7308. All the materials submitted for their examinations, as well as the proceeding itself, are wrapped in a great shroud of secrecy. It appears that even the court clerks, reporters, and other necessary support personnel will be executive branch employees with security clearances. Such procedures, I should have thought, would be a tremendous affront to the independence of the judiciary, which is a hallmark of our system of democratic government. I would hope that the judges would reject the commission imposed upon them under this bill, just as their brethren did in the first days of the Republic when Congress sought to foist upon the judiciary duties not within the "judicial power of the United States." See *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792).

It is said that the bill establishes legal standards for foreign intelligence surveillance which are better than current law. That is hardly persuasive, in part, for the same reason that we did not glorify Mussolini because he made the trains run on time. Improvement is fine, but at what price? When the myriad infirmities of H.R. 7308 are added together, what real advances have we made in protecting fourth amendment values? None, in my judgment. I fear the bill leaves us with a secret judicial proceeding conducted under the most secret circumstances to sanction current executive practices to engage in electronic surveillance to gather foreign intelligence information. Only the self-restraint of the special judges, who should be offended by this imposition of nonjudicial duties, stands between the potential victim and unbridled administrative discretion. And the victim will, under this bill, never know that she or he has been the subject of this extraordinary proceeding to authorize Government agents to overhear conversations or intercept nonverbal communications. And that, it is said, is better than current law.

The administration claims to support this bill with all its heart and soul, including those of the intelligence community. One has to question the sincerity of that commitment when current executive branch practices regarding surveilance are examined. If the Carter administration is four-square behind this bill, why has it not adopted each and every provision of it on an administrative basis? Surely it could have administratively adhered to the strictures of the bill without Congress enacting any legislation. That, at least, would have demonstrated the good faith of the executive branch's support for this bill. I suspect the administration has not done so simply because it thought Congress might begin at that point and impose greater restrictions. When one starts at such a low level of protection for privacy, which is the present state of executive branch practice, it is quite easy to make the case that H.R. 7308 is better than current law. But that hardly meets the argument that current practice is unauthorized and unconstitutional, and that the bill contains similar deficiencies. In urging Congress to enact this law, the administration really seeks to have us approve its dubious practices involving foreign intelligence surveillance.

H.R. 7308 does more to sanction current practice than it does to impose new and sufficient protections for all persons within the jurisdiction of the United States against unwarranted intrusions into privacy and doubtfully legal use of electronic surveillance.

Finally I should add that unsupported appeals to "national security" should not determine whether H.R. 7308 or any other bill becomes public law. Our national security is adequately safeguarded through the use of other, less intrusive methods of gathering foreign intelligence information. After all, our country did survive prior to President Roosevelt's authorization of limited electronic surveillance for national security purposes. It should be remembered too that the liberty of the people is at least as important as the marginal increment in intelligence information which we acquire through the inherently indiscriminate method of electronic surveillance. As the District Judge in the Pentagon Papers case cogently observed:

> The security of the Nation is not at the ramparts alone. Security also lies in the value of our free institutions. 328 F. Supp. at 331.

An integral part of our free institutions is the security of the people from unwarranted intrusions by Government agents in their privacy, intrusions which H.R. 7308 would unnecessarily authorize. I will oppose enactment of H.R. 7308 and the unprecedented, unwarranted violations of our most cherished rights which it sanctions.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman on the position he has taken. I do want to say, with regard to the intelligence activities that are taking place currently, they are in accordance with strict Presidential guidelines. We are not dealing in any no-man's land or no-person's land. If the suggestion of the gentleman is that intelligence activities or electronic surveillance are being withheld until we get this legislation through and from then on we are going to have open field day for unlimited electronic surveillance, I think it is a more horrendous experience that we are going through here today than if we had no legislation whatever. So I just think the arguments in support of this legislation just do not hold water at all.

Mr. DRINAN. Mr. Chairman, I agree with the gentleman.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I thank the gentleman for yielding.

Mr. Chairman, what bothers me, in the absence of some statute, is that I am not at all convinced that what happened back in the later years of the Nixon administration, when there were certain wiretaps executed that were warrantless would be corrected.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. DRINAN) has expired.

Mr. McCLORY. Mr. Chairman, I yield 1 additional minute to the gentleman from Massachusetts (Mr. DRINAN).

Mr. RAILSBACK. If the gentleman will yield further, what really bothers me is that I am afraid that I do not know of any court decision that would rule it mandatory that there be a warrant in case of a wiretap where even an American citizen is engaged in foreign intelligence gathering. I think the gentleman in the well will agree with me that that in itself is bad. There is a need, at least to an extent, to correct what happened not too long ago.

Mr. DRINAN. I agree with the gentleman that reform is necessary. But this is not the way to bring about reform.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, just to answer the gentleman's question, if he remembers, the Supreme Court in the Keith case clearly indicated that Congress could provide for warrant applications for intelligence purposes in domestic surveillance, and that is all we are doing here.

Mr. McCLORY. Mr. Chairman, if the gentleman would yield further, we are not involved here today in domestic surveillance. What the Court said in the KEITH case is that they were not passing on the subject of foreign intelligence surveillance, which is what we are considering in this legislation.

Mr. DRINAN. Mr. Chairman, I yield back the balance of my time.

Mr. McCLORY. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Chairman and members of the committee, I can understand why there is a great deal of controversy surrounding H.R. 7308, and I think it is very understandable. On this point I do want to make it very clear in pointing out that this is not this administration's particular initiative.

I remember when Attorney General Levi summoned us to the White House for a meeting with President Ford preparatory to introducing a bill that really was very similar to the legislation that we are considering. There are two major differences between the Ford-Levi bill and H.R. 7308. The Ford-Levi bill appeared to recognize the constitutionally inherent power of the President to authorize warrantless electronic surveillance under circumstances not contemplated by the bill.

A second difference between the two bills is that the standard for surveillance under H.R. 7308 utilizes kind of a quasi-criminal standard, while the Ford-Levi bill did not. But, a letter has been sent and received from the former president, Gerald Ford, that in effect endorsed H.R. 7308 in that it has the thrust of what the Ford administration endorsed.

In all likelihood, I will end up supporting the bill reported out by the Intelligence Committee, but at the same time I do want to voice my objection to the manner in which the bill was handled. Beginning in 1976 with the Ford administration bill, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of which I am a member, has successfully considered the predecessors to this particular bill. Most recently, on June 22, 1978, the subcommittee began a series of three hearings on the current bill.

It is clear that the subcommittee has carefully studied the issue of foreign intelligence surveillance. However, rather than utilizing their developed expertise, the subcommittee on June 29 voted by a margin of 4 to 3 to table H.R. 7308, and I happen to believe that that was a mistake. Inasmuch as that action was taken, I must disagree with the comments of the chairman of the full Committee on the Judiciary when he indicated that he thought there ought not to be any amendments considered on the floor of the House. I feel that way particularly because the subcommittee of the Judiciary Committee never marked up the bill, nor did we have a chance to introduce any amendments.

My feeling is that even though I may end up supporting this bill, even with some amendments, I think that the full House ought to have an opportunity to consider amendments that may be offered, and particularly those offered by members of the Judiciary Committee who have not had an opportunity in the committee this year to offer amendments.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I did not say—I think the record bears me out—that the House ought not to consider these amendments.

Mr. RAILSBACK. I was talking about the comments of the chairman of the full committee, Chairman RODINO. As I understood Chairman RODINO, his position was that no amendments should be considered.

Maybe he said no amendments should be adopted, but in any event inasmuch as we precluded Judiciary Committee action, I would hope that on the floor Judiciary would have the opportunity to amend the bill.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. RAILSBACK) has expired.

Mr. KASTENMEIER. Mr. Chairman, would the gentleman from Illinois (Mr. McCLORY) yield additional time, perhaps 1 minute to the gentleman from Illinois (Mr. RAILSBACK)?

Mr. McCLORY. I yield 1 additional minute to the gentleman from Illinois (Mr. RAILSBACK).

Mr. KASTENMEIER. I asked the gentleman to yield the further time, because the gentleman was with me I believe when we went to the Rules Committee, and of course we contemplated an open rule and we contemplated the

amendments being considered on the floor, and of course that is appropriate. I do not believe that I or the chairman of the full committee should be characterized as believing no amendments should be considered. We may believe that no amendments should be adopted, but certainly not that they should not be considered.

Mr. RAILSBACK. I understand what the chairman of the subcommittee was saying and I was not referring to the gentleman but rather to remarks I had heard earlier.

Let me express my hope that this does not become some kind of partisan issue. As has been pointed out, this at one time was a Republican initiative, although there have been some changes. But I hope all of us consider the bill on its merits and do not make it into any kind of partisan issue.

Mr. McCLORY. The gentleman does not want it to become a partisan issue.

Mr. RAILSBACK. Yes. I do not want it to become a partisan issue and I hope that we should consider it to be a bipartisan issue.

Mr. McCLORY. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. ERTEL).

Mr. ERTEL. Mr. Chairman, the basic concept of a civilized nation is the rule of law. This country is a civilized nation and we do believe in the rule of law.

The Judiciary Committee has honored that principle and has continued to work for the establishment of a viable court system in this Nation. It is obvious that the intelligence agencies have abused their privileges and their rights in accordance with the Constitution and they need to be corrected, but I do not believe that this bill as written will correct the abuses which we have seen in the intelligence community before.

What we are doing here is compromising what is basically the rule of law as established in this country for 200 years. We are compromising our Constitution. In this bill for the first time in the history of our Nation we are setting up a secret body of law which no person in this Nation will know about other than a very select few. Decisions will be made in secret and they will continue to be made in secret. There will be no exposure to the public, no way to review them. No one will know what has happened or how it took place.

In fact, in this bill we do not have substantive guidelines as to whether or not intelligence agencies can tap lines or enter houses or establish electronic bugs. All we have is a procedure, how they go to a secret court and get a warrant. We do not tell the court what basic standards they should apply. We say: "You make the decision based on the totality of circumstances," and we set out no guidelines when they shall issue the amount. We set out no standards whatsoever. But yet we are saying to the courts: "You issue an order allowing a tap or an intrusion into somebody's privacy," and we do not tell them what standards to apply.

In fact we say to the court: "You can modify an application." So what does a court have to do? The court at that point becomes the manager of our foreign intelligence operation because they have to know what our intelligence people are seeking, they have to look at it, they can consider it, and they can modify what they are doing through the minimization procedures. They become the managers of our foreign intelligence operations. They are not making judicial decisions.

I suggest to the Members that it is a compromise of our judiciary and our constitutional form of government. We have the obligation to set out the substantive guidelines—not the courts—and we have not done that.

Let us assume for the moment that one judge just issues all the orders that the intelligence community asks for and another may deny them. There are no set guidelines under which they perform. They do not write out why they grant a warrant. They do not set out any standards. They do not say why they allow them to be tapped.

What we have done, we have just established a procedure where we have sanctioned the activities of the intelligence community with a court order without any particular reason being given by the courts.

It seems to me we have compromised our judiciary, we have compromised our rule of law and in addition to that we have compromised the intelligence agency because we are setting up a special court, itself, in Washington, that is located in one spot. All of this information must be funneled through that court. If somebody wants to find out what our counterintelligence agency's efforts are, all they have to do is to penetrate that one court and they will then know our entire counterintelligence efforts in this country. If they can get one person inside that court then our entire counterintelligence efforts are compromised.

No one can be seriously content that to centralize all of our counterintelligence collecting information at one point is a sound policy—it is a bad policy.

It seems to me we would be better off in setting up statutory guidelines for an intelligence community when we allow intrusion into the affairs of American citizens, or anyone else, and that the executive can present it for oversight to our committee of the House instead of having the judiciary involved.

I thank the gentleman for yielding me this time.

Mr. McCLORY. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. SIKES).

Mr. SIKES. Mr. Chairman, in Congress, we speak often about too much government, about overlapping Federal agencies, about additional layers of bureaucracy, about redtape, regulations, and form filling. We say we are opposed to all of them and just about every day we pass new legislation that adds to each of these things we call objectionable.

I think that is exactly what will happen if H.R. 7308 is passed today. A surprising amount of pressure has been brought on Congress in support of this bill from the administration. I am puzzled by this situation. To me, the bill, beyond question, weakens America's intelligence gathering capabilities. It would dilute and slow down the process of using electronic means to gather, in the United States foreign intelligence information vital to our foreign policy and security interests. It would take away Presidential prerogative, based on sound constitutional principles, and establish a "special court." This special court would be made up of people of no particular training and background for deciding on foreign intelligence questions. Apparently, the judges would alternate in making decisions to authorize or refuse to authorize foreign intelligence electronic surveillance. We could have as many approaches and as many different viewpoints on propriety as there are judges.

Instead of this confusing approach, it would appear to me that abuses in the present system can be regulated by a set of strict guidelines mandating written authorization on the most senior members of the executive branch plus meaningful congressional oversight. Without question, there could be abuses through the operation of a special court just as readily, even more readily, than the abuses that are charged today.

This subject needs sensitive treatment, for we are dealing with important intelligence and counterintelligence activities which are vital to our foreign policy and security interests. The unprecedented injection of the courts is unnecessary and unwise, and it could very well unduly burden the legitimate activities of our intelligence agencies.

Under the guise of reform, this bill is an overreaction. In our zeal in today's world to overregulate, we would create a new agency and, in my opinion, the new procedure would further weaken intelligence gathering processes. They have already been seriously damaged by the drive to reveal every phase of intelligence operations in our country, to open all of our secrets to the press, and to make it more difficult for foreign nations to cooperate with the United States for fear that their own intelligence gathering operations would be compromised.

There is no other country which requires such judicial intervention before engaging in national security electronic surveillance. Our country does not need it.

In summary, as I understand the bill: It solves no known problems and corrects no known abuses; diminishes the effectiveness of intelligence; creates substantial new security hazards; does not establish new safeguards for the rights of Americans; injects the judiciary into foreign intelligence in a manner inconsistent with the Constitution as interpreted by the judiciary for over 100 years; establishes a special court which may be unconstitutional and requires a judicial warrant be based on a criminal standard when the purpose is to collect foreign intelligence.

Mr. McCLORY. Mr. Chairman, I yield 2 minutes to the gentleman from Massa-

chusetts (Mr. BOLAND), the chairman of the Permanent Select Committee on Intelligence.

Mr. MURPHY of Illinois. Mr. Chairman, I yield an additional 3 minutes to the gentleman from Massachusetts (Mr. BOLAND).

The CHAIRMAN. The gentleman from Massachusetts (Mr. BOLAND) is recognized for 5 minutes.

Mr. BOLAND. Mr. Chairman, first of all I want to offer my congratulations to the distinguished gentleman from Illinois (Mr. MURPHY), the chairman of the legislative subcommittee of the Permanent Select Committee on Intelligence, and to the gentleman from Kentucky (Mr. MAZZOLI), who is another member of that subcommittee. I also wish to offer my congratulations to the gentleman from Illinois (Mr. MCCLORY), who is the ranking Republican member on that subcommittee, and, in fact, to all of the Members on both sides of the aisle who are on the Intelligence Subcommittee for the work they have been putting in, not alone on this bill, but on so many, many other matters that have come to the attention of that subcommittee, the many, many hours of briefing, the many, many hours of information which has been given to this committee, the many, many hours that all of the Members, all 13 Members, have spent in the Committee on Intelligence to insure that the kind of oversight which the Congress demands in this day and age is being obtained by the Congress. I think that is so. Therefore, I am grateful to all of the Members who have served here on this committee.

I know that none of the members of this committee and assuredly, the chairman of the subcommittee did not assume the task of chairing this committee lightly. I know that the members who served with me did not assume this task for the purpose of diluting the ability of our intelligence community to gather the kind of intelligence necessary to protect this Nation in the very difficult world in which we live. It is a difficult world. If we had a real world in which we were all angels, I imagine one could say that this particular piece of legislation would not be necessary.

Others have talked about the history of the legislation. It has been before the Congress now for a couple of years. The bill itself was finally offered in the Senate and the House after a ceremony at the White House which I attended along with a lot of other members of committees on both sides of the Capitol.

Mr. Chairman, I must say that my friend, the gentleman from Illinois, is perhaps the most consistent and the most persistent opponent of this bill of which we are aware, and that is good. I think he has brought to the attention not alone of the Permanent Select Committee on Intelligence, but of the House generally some of the problems that he sees in the bill itself.

Mr. Chairman, we have had a rather healthy discussion within the committee, and the gentleman from Illinois has had some very healthy discussions within the Committee on the Judiciary with respect to the matters that are being talked about today.

I am grateful for the contribution that the distinguished gentleman from Nevada (Mr SANTINI) makes on what happened with respect to action within the Committee on the Judiciary itself. I think he is absolutely right. We never would have had this bill this year. It would have been death by delay; there is no doubt about it. The Senate has moved on this bill. The Senate passed it 95 to 1, and the only Member of the Senate to vote against it was the junior Senator from Virginia. So there is a broad consensus of support for the bill itself.

As my friend, the gentleman from Ohio (Mr. ASHBROOK) has indicated, I guess there is a broad consensus of opposition to it, too. He named some of the organizations that are opposed to it. He named an organization—I guess it is known as the Former Intelligence Officials. But, I think we have to look at that opposition to this bill vis-a-vis: Those who are now serving as our current intelligence officials, those who really have the burden today, those who really have the job today of insuring that the kind of intelligence we collect will serve the best interests of the United States. I think they are the people we have to depend upon—their judgment of what this bill does or does not do.

Let me call to the attention of the members of this committee that this bill is supported—again, it has been said many times and I will say it again; it deserves repetition—by the Department of Justice, by the Attorney General of the United States. It is supported by the Director of the Federal Bureau of Investigation, Judge William Webster. It is supported by the Director of the Central Intelligence Agency, Admiral Turner. It has the complete support of perhaps the one official who is most involved in the collection of foreign intelligence, and that is the Director of the National Security Agency, Adm. Bobby Inman. Those are all the people who are concerned with the collection of foreign intelligence, and they are the people who support this bill.

I know my friend, the gentleman from Massachusetts, my colleague, opposes the bill, but he opposes electronic surveillance in any respect. so I do not agree that we have a strange collection of bedfellows here. All I am saying is that people who oppose the bill oppose it for different philosophical reasons.

The gentleman from Illinois (Mr. MCCLORY) opposes the bill because he does not want the judiciary in on determining whether or not warrants ought to be issued in these particular cases where we establish special courts to do it—11 judges picked from the 11 judicial districts throughout the United States who will be sitting here in Washington, who will be appointed by the Chief Justice of the United States and also the 6 members of the appeals court.

The gentleman from Illinois (Mr. MCCLORY) makes the point that no other nation in the world—no other nation in the world—has a special court to consider this kind of a matter and this kind of a problem. May I just put an addendum to that by saying I do not know of any other nation in the world that has a bill of rights either. So we have the obligation here to protect not only the national security of the Nation itself; we have the obligation here of protecting the constitutional rights of the people who live within our borders, U.S. citizens and permanent resident aliens, and nobody could disagree with that.

Why is the bill here? It is here because it was supported by the Ford administration. President Ford supports this bill. It is supported by the Carter administration, supported by everyone who is connected with intelligence, at least on the part of Government officials who have anything to do with intelligence. All of the intelligence collectors who are now doing the job believe that the bill does not impact upon their ability and might very well insure the ability of those particular agencies to better collect intelligence because there will be offered to those who collect intelligence freedom from the fear that in collecting that intelligence where they do not have a warrant they will be subjected to lawsuits.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I will yield to the gentleman in a minute.

Mr. Chairman, I do not claim that this legislation satisfies every concern. I only claim that it is an exceedingly reasonable attempt to legitimize operations that have come under fire, to shield those who perform them, and to protect those who are innocently intercepted in the process. I believe that Senator JAKE GARN of Utah put it best when he spoke on the Senate floor on the day this bill's counterpart was passed in the Senate. If I may, I will quote his words.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has expired.

Mr. MCCLORY. Mr. Chairman, I yield 2 additional minutes to the gentleman from Massachusetts (Mr. BOLAND), and later I will ask him to yield to me.

Mr. BOLAND. Mr. Chairman, I will yield to the gentleman if he will just let me finish this first.

Here is what Senator GARN said:

> Some have wondered what a conservative Senator such as myself was doing cosponsoring what they thought was a liberal bill. The answer is quite simple. This is not a liberal bill, it is not a conservative bill, it is neither a Democratic nor a Republican bill.

And this, Mr. Chairman, I think, is the crux of his statement:

> The task of balancing cherished constitutional liberties with increasingly threatened national security needs is too important to be left to partisanship.

Mr. Chairman, I am glad at this time to yield to my friend, the gentleman from Illinois (Mr. MCCLORY), who has done such a magnificent job in opposing this bill. I am delighted to yield to him.

Mr. MCCLORY. Mr. Chairman, I thank the gentleman for yielding, and I appreciate the constitutional points he is making.

However, the fourth amendment, with regard to unreasonable searches and seizures, does not apply to foreign powers or foreign agents, and yet what the gentleman is suggesting in supporting this bill is that in regard to foreign agents and foreign powers, in order for us to engage in electronic eavesdropping in regard to those entities, we would require a judicial warrant.

It seems to me that what we are doing is we are providing something which is not constitutionally required and which is, I think, something that is constitutionally inimical to the citizens of the United States under our great Constitution and our great Bill of Rights.

Mr. BOLAND. Mr. Chairman, the gentleman is stating his opinion on the matter. That is not the opinion of a lot of others, including constitutional lawyers, in this Nation, but the gentleman has a right to state his opinion.

I might also state that when we were considering this bill in the markup—and it was not an easy task, as all the members of that subcommittee would agree—we did come to some agreement on what we ought to do with reference to changes that would be made in the Senate bill. The gentleman from Illinois (Mr. McCLORY) knows that he sat down with me and chatted with me, and one of the important amendments that we offered was one which would not require warrants to target foreign powers.

So, Mr. Chairman, this bill is in essence a better bill than the Senate bill, and I ask for its support by the members of this committee.

Mr. Chairman, much has been said about what this bill does and does not do. It is important to put this legislation in historical context.

President Ford first sponsored legislation which required a judicial warrant to perform foreign intelligence surveillances in 1976. His Attorney General, Edward Levi, worked closely with both House and Senate in drafting a bill which sought to balance national security concerns with protection for the civil liberties of Americans. Both the Senate Intelligence and Judiciary Committees favorably reported the Ford/Levi bill but the 94th Congress ended before it could be considered by the full Senate.

In the 95th Congress both committees again reported out the legislation and the Senate did act. It passed S. 1566, the companion bill to H.R. 7308, by a margin of 95 to 1. In the House, the Permanent Select Committee on Intelligence held 5 days of hearings of H.R. 7308. It went through an extended markup of the bill that included a briefing from Attorney General Bell, Admiral Turner, Director of Central Intelligence, Admiral Inman, Director of the National Security Agency, and Director Webster of the Federal Bureau of Investigation. Based on this briefing, the committee proceeded to final markup of H.R. 7308. The bill, as amended, is preferred by the administration over the Senate bill.

What does this bill do? Very simply, it authorizes the use of electronic surveillance in this country to collect foreign intelligence information. In all those cases where U.S. persons—that is, American citizens or permanent resident aliens—would be a communicant, a warrant is required. That approach is a simple and a straightforward one. It involves a basic policy choice—whether a judge or some executive branch official will authorize such surveillances. H.R. 7308 opts in favor of a disinterested third party using a process traditional to searches, and particularly intrusive electronic searches—that of a judicial warrant.

Nonetheless, the legislative package before us today is a complex one. The complexity results from trying to insure that the role judges play is limited to making findings of fact under statutory standards. Judges are insulated from foreign policy or political decisions. Further, the operation of the special court which will hear these warrant applications will be controlled under strict security procedures agreed upon by the Attorney General and the Director of Central Intelligence.

The bill's draftsmen, therefore, have gone to great lengths to provide a statutory basis for foreign intelligence electronic surveillance. Why is it necessary? There are two different and in some ways conflicting purposes that underlie H.R. 7308. The first grew out of the reports of the Church committee. The committee detailed the misuse of foreign intelligence surveillance in three areas. Between the period of 1967–1972, 1,200 Americans were targeted by NSA "watchlisting" activities. Regular biweekly reports, on the political opinions and activities of hundreds of prominent Americans—including Members of Congress—from FBI embassy wiretaps were provided to the President of the United States. Finally, dozens of FBI wiretaps were targeted at individual Americans, under the guise of national security, but for purely political or personal reasons. This record left a strong feeling in the country—and in this House—that legitimate foreign intelligence collection activities ought not to be prostituted like that again.

Since that time, as we all know, there has been an increased scrutiny of intelligence agencies and their activities. Civil suits and prosecutions have resulted. Agents are afraid—and rightly so in my view—to accept orders which they never would have questioned years ago. This hesitancy has reached the highest offices of this land and so today intelligence that perhaps should be collected is not. Even the Attorney General has been sued. Citizens are less willing to cooperate with their Government for the same reason.

All of these facts argue for legislation authorizing foreign intelligence surveillance. The committee agreed with the Carter administration—and the Ford administration—that a warrant ought to be required—because it would offer an impartial finder of fact, because it has been traditionally used in criminal electronic surveillance and the Government thus felt comfortable with it but principally because it was felt, that a judicial warrant would provide appropriate reassurance to Americans that their Government would not spy on them indiscriminately as it had in the past.

The choice of a judicial warrant has provoked the opposition of the gentleman from Illinois (Mr. McCLORY). He is opposed to any involvement of the judiciary in foreign intelligence collection. His numerous amendments will make that point in many ways. He is joined in his opposition by others who oppose electronic surveillance of any kind, for whatever purpose. This combination of strange bedfellows, who oppose the bill for entirely opposite reasons, points out the difficult task that the committee has faced in considering H.R. 7308. It has sought in every case that middle ground where the interests of the national security ran parallel with those of individual privacy.

I do not claim that this legislation satisfies every concern. I only claim that it is an exceedingly reasonable attempt to legitimize operations that have come under fire, shield those who perform them and protect those who are innocently intercepted in the process.

I believe Senator JAKE GARN of Utah put it best when he spoke on the Senate floor the day this bill's counterpart was passed by the Senate 95 to 1. Here are his words:

> Some have wondered what a conservative Senator such as myself was doing cosponsoring what they thought was a liberal bill. The answer is quite simple. This is not a liberal bill. It is not a conservative bill. It is neither a Democratic nor a Republican bill. The tasks of balancing cherished constitutional liberties with increasingly threatened national security needs is too important to be left to partisanship.

Senator BIRCH BAYH, chairman of the Senate Intelligence Committee, also chose some appropriate words. He quoted James Madison in the Federalist Papers thusly:

> If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which must be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Mr. Chairman, this legislation offers a reasonable, carefully considered approach to authorizing an essential intelligence gathering technique under conditions which help guarantee that it is properly used to gather foreign intelligence information and nothing else. I appeal to the commonsense of the members of this House to appreciate it for that and not any of the horrors that its opponents have conjured up for us.

Mr. McCLORY. Mr. Chairman, I yield 4 minutes to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Chairman, I asked for this time although I had already spoken because the name of the former President of the United States has been brought up. I could not help but wonder which "Gerald Ford" they

were referring to. I thought possibly somebody in that unique coalition got hold of his signature, because when I read that letter, I found it did not really square with what he had been saying before.

As a matter of fact, on Law Day at the University of South Carolina the President made this statement, and I think that anybody who knows much about it has to figure that when we make a speech, we come a lot closer to what we think than we do when somebody asks, "Will you send a letter supporting the bill?" and you say, "Yes." Here is what the former President of the United States said in a speech on March 17, 1978, when he was talking about this precise bill:

The current proposals to deal with national security wiretaps and other forms of electronic surveillance dealing with foreign threats is an excellent example.

There he is talking about judicial overkill.

The Carter Administration has asked the Congress to pass much of that responsibility to the courts. The conduct of foreign policy is not a judicial function. Moreover, after this responsibility is split, it will no longer be possible for the American people to hold the President, his political appointees, and any involved Members of Congress responsible for misdeeds in this area.

Mr. Chairman, I saw the letter that was referred to, and I know my colleague, the gentleman from Illinois, drafted a letter which I signed, to the President asking him in effect if he was somewhat taking leave of his senses. I just read what he originally said, and this is his original speech. Where the letter came from, I do not know.

We have also had Admiral Turner mentioned. I have been around a long time, and I know that Republican administrations sometimes put the heat on you, and I know that sometimes Democratic administrations put the heat on you. I know when someone under these pressures sends out signals. I believe Admiral Turner and Admiral Murphy both sent out signals to us.

Admiral Turner was saying he was for the bill, but let us listen to the signals he sent out. Here is what he said before our committee:

I have said before that there are certain risks associated with the statutory approaches in these two bills.

Those were the risks he was talking about and the signals he was sending.

The proliferation of sensitive information always involves risks—

And that is the point the gentleman from Pennsylvania was making—

and the statutory procedures will unquestionably lead to such a proliferation.

That was Signal 1 he was sending to us.

But on balance, I believe that the risks can be accepted.

That is another signal.

While compliance will be somewhat onerous—

That was a third signal he was sending—

I cannot say that any proper or necessary governmental purposes will be frustrated by these statutes or that vital intelligence having such value as to justify electronic surveillance as a method of collection will be lost.

He could not say the opposite so he put his positive statement in a negative stance. We all know what that illustrates.

That is about as much a signal as a person can send when he is under the restraint of a policy of his administration.

He told the Senate the same thing:

I cannot say to you flatly that there will not be such costs. It is possible, for example, that the bill's definitions of foreign intelligence information will prove to be too narrow—

There is a signal—

or will be too narrowly construed, to permit the acquisition of genuinely significant communications. It is likewise possible that justified warrant applications will be denied, or that the application papers will be mishandled and compromised. Those possibilities are difficult to measure, but they are risks. In the end, however, I think they are risks worth taking.

Mr. Chairman, let me point out again that is about as close to getting minimum support for a bill as you can get.

I am not being partisan. If Gerald Ford were in the White House and Mr. Levi were the Attorney General, we would be getting precisely the same kind of general talk.

They are sending signals that they really are not that much behind this legislation. Compromise, yes. Parts of the H.R. 7308 needed? Yes. The whole package? No.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. FOWLER).

Mr. FOWLER. Mr. Chairman, I rise today in strong support of H.R. 7308, the Foreign Intelligence Surveillance Act of 1978.

H.R. 7308 establishes statutory procedures to govern the use of electronic surveillance in the United States for foreign intelligence purposes. The bill contains specific and precise language detailing who may be monitored and under what circumstances, and sets forth long overdue procedures by which surveillances are to be authorized, approved and implemented.

This landmark legislation is the product of over 3 years of research, debate and refinement and has involved the criticism and cooperation of individuals representing a remarkable diversity of outlook and political philosophy, and including Presidents Ford and Carter, Attorneys General Levi and Bell, our intelligence agencies, and the American Civil Liberties Union.

This is as it should be, for the matters addressed by H.R. 7308 involve two of the most fundamental purposes of our Republic: to "provide for the common defense," and to "secure the blessings of liberty to ourselves and our posterity."

The fourth amendment to the Constitution clearly states that—

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated.

In his dissent in the 1928 Olmstead case, Justice Brandeis termed this provision "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." We now know that this precious right has been infringed upon for almost 50 years by 9 different administrations, through the practice of domestic national security surveillances. The courts and the Congress have over the past 10 years moved to correct these abuses. In 1967, the Supreme Court ruled in the Katz case that the Fourth Amendment did apply to electronic surveillance, although the Court did not extend this finding to national security cases. In 1968, the Congress passed the Omnibus Crime Control and Safe Streets Act, which included a requirement for judicial authorization of elecrtonic monitoring for criminal investigations. Then, in the Keith case of 1972 the Supreme Court found that a warrant is required in domestic security surveillance cases.

H.R. 7308 represents continuation of this effort to bring electronic spying under the rule of law by requiring a judicial warrant for all electronic surveillance conducted in the United States for foreign intelligence purposes, when aliens are likely to be involved. It will insure that the constitutional rights of American citizens will not be swept aside, and disregarded, in the name of national security.

However, in addition to protecting individual rights, this legislation is also aimed at clearing up the legal uncertainty and ambiguity that has hampered U.S. intelligence gathering over the past few years. The bill provides, for the first time, legislative authorization and regulation of foreign intelligence electronic surveillance conducted within the United States. Ideally such intrusions into the lives of individuals would never be necessary, but we live in an imperfect world and we need a strong intelligence gathering capability in order to protect our country and our society against forces that seek to destroy them. Therefore, it is extremely significant that the directors of all U.S. intelligence agencies have vigorously supported H.R. 7308.

Thus, the Foreign Intelligence Surveillance Act of 1978 is designed to strike a balance between individual rights and liberties on the one hand and legitimate national security needs on the other. This legislation is necessarily the product of compromise and few people will be completely satisfied with its provisions; but, I am firmly convinced that it is sound legislation and that it well serves our national interests.

The two key principles of the bill are that a prior judicial warrant is required for all foreign intelligence surveillance in the United States, with narrow exceptions, and that a criminal standard is required in the issuance of warrants directed against U.S. citizens or permanent resident aliens.

The warrant requirement is waived only in three cases. First, the President, through the Attorney General, may au-

thorize warrantless electronic surveillance when the surveillance is solely directed at—

(i) communications exclusively between or among foreign powers. . . ; or (ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power. . . .

Second, the Attorney General may authorize the emergency employment of electronic surveillance under certain circumstances, but must obtain a warrant within 24 hours after the surveillance has begun. Finally, no warrant is required when the surveillance is to be undertaken to test equipment, train personnel, or detect unlawful electronic surveillance. In this case, the agency performing the warrantless surveillance must adhere to stringent rules to insure that no information concerning U.S. citizens or permanent resident aliens is improperly disseminated, used, or retained.

These limited exceptions were meant to provide the broadest possible protection of civil liberties without unduly damaging the ability of our intelligence agencies to obtain information vital to our national defense. In commenting on H.R. 7308, Admiral Turner of the CIA states:

I cannot say that any proper or necessary governmental purposes will be frustrated by the bill or that vital intelligence information, having such value as to justify electronic surveillance as a method of collection, will be lost. For these reasons I strongly urge that this legislation be enacted as soon as possible.

The criminal standard for surveillance of U.S. persons is perhaps the most controversial, and most important, of the provisions of H.R. 7308. Without it, the bill's attempt to protect the constitutional rights of Americans is largely meaningless. As the committee report states:

A citizen in the United States should be able to know that his government cannot invade his privacy with the most intrusive techniques if he conducts himself lawfully.

Yet this provision was not drawn up in a vacuum divorced from the real world. Foreign spies, be they American nationals or not, employ sophisticated techniques to avoid discovery and, therefore, it would be most difficult to meet an ordinary criminal standard in this area.

To resolve this difficulty, H.R. 7308 establishes a lesser standard for criminal conduct than the customary "probable cause that a crime is being committed." In order to fall under this revised criminal standard, a U.S. citizen or permanent resident alien would have to knowingly engage in: first, clandestine intelligence-gathering activities which do or may violate U.S. law; second, other clandestine intelligence activities which do or will violate U.S. law; third, sabotage or international terrorism; or fourth, aiding and abetting, or conspiring, with any other person engaged in such activities.

H.R. 7308 also establishes the methods for authorizing, approving and implementing foreign intelligence surveillance.

In all cases, other than the limited exceptions noted earlier, the Attorney General must make applications to a special court for a court order approving the use of electronic surveillance. Each application must include: the identity of the Federal officer making the application; Presidential authorization and Attorney General approval of the application; the identity of the target of the surveillance; a statement by the applicant of the factual and circumstantial basis for the belief that the target is a foreign power or agent of a foreign power and that the location to be monitored is being used by a foreign power or agent of a foreign power; the proposed time period for the surveillance; information concerning previous surveillance applications that involve the same persons, facilities, or places; and certification by a high-level executive branch official that the purpose of the surveillance is to obtain foreign intelligence information and that this information cannot be obtained by normal investigative techniques. Also, the application must contain a statement of the proposed procedures for minimizing the acquisition, retention and dissemination of information concerning U.S. persons consistent with our country's need for foreign intelligence information. Lastly, additional information is required concerning surveillance techniques and the communications to be monitored, with the extent of the information required dependent on the type of target to be surveilled.

To review and approve these applications, H.R. 7308 creates a special court in Washington, D.C., made up of at least one judge from each of the Federal judicial circuits and a special court of appeals composed of six Federal judges from the Washington, D.C., area.

One of the primary criticisms of this legislation is directed at the involvement of the judiciary in the field of foreign intelligence. However, the judicial role established by H.R. 7308 is the same as is alrady the case in criminal and domestic security warrant procedures. In approving any kind of surveillance, the court does not make substantive judgments or policy decisions as to the propriety or need for that surveillance. What the court does do is to decide whether the facts contained in a warrant application meet the statutory criteria required for the particular type of surveillance.

Enactment of H.R. 7308 would establish congressional standards for foreign intelligence surveillance defining what targets may be surveilled, what information requirements justify a surveillance, and what controls must be applied to the information obtained. Specifically, under this bill a judge may only rule on—

Whether probable cause exists that the target is a foreign power or foreign agent, as defined in the bill, and that the location to be monitored is being used by a foreign power or foreign agent;

Whether the proposals for minimizing the retention or distribution of information satisfy the statutory standards; and

In the case of U.S. persons, whether the executive branch certification that the information sought is foreign intelligence information is "clearly erroneous" or not.

Thus, the judiciary will be operating within well-defined legislative limits under the provisions of H.R. 7308. However, if those limits prove to be inadequate, the Congress has the right, and the duty, to enact stronger and even more precise statutory standards.

Some observers have commented that the safeguards concerning foreign intelligence surveillance that have recently been established within the executive branch render this legislation unecessary. I would certainly acknowledge that these new procedures have substantially reduced the chances for abuse, but I would also point out that both the current administration and its predecessor have strongly endorsed legislative safeguards in this area. What is done by executive order can be undone by Executive order and we in the Congress have a responsibility, not only to ourselves as an institution but also to the people who sent us here, to fulfill our constitutional duty and to legislate national policy.

I urge the Members of this House to give H.R. 7308 a strong, and bipartisan, endorsement.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. ROSE).

Mr. ROSE. Mr. Chairman, from all of the debate that we have heard here today, it might appear to some that we are about to require the intelligence community to go to this special court for the gathering of all its intelligence. That simply is not so. There is a great body of electronic intelligence information that is gathered constanty that will not come anywhere close to this legislation. And while I sincerely appreciate the concerns that have been expressed by those who oppose this legislation, I believe that the very strong arguments that have been made here today in support of what those charged with the responsibility of gathering this intelligence say they must have far outweighs the fears that some may have that this procedure may be cumbersome.

Mr. Chairman, I urge my colleagues to look at the fact that this bill is not the bill that passed the Senate 95 to 1.

With the great help of many of us on the committee, Mr. MCCLORY—and I at his side—we passed this bill with an amendment exempting, as the Senate did not do, the activities of the National Security Agency. Congressman MCCLORY alluded to that in his opening remarks here today. I wish we could describe in this place what has been excluded by that action. We cannot. I urge my colleagues to vote for this important legislation.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from Nevada (Mr. SANTINI).

Mr. SANTINI. Mr. Chairman, I wish to speak briefly, since that is the inherent limitation of 120 seconds. I'll address the specific observations of the very able advocate from Ohio, Mr. ASHBROOK. He indicated that "signals" were being sent out. I can tell you that I have

been on the receiving end of some of those signals. The signal is, "SOS." The signal is, "Help." And the signal is coming from the Director of the FBI.

They need this bill. They need this help. That is the signal that ultimately I think anyone, on balance, would find persuasive in responding to the concerns that have been so well expressed by some of those in opposition to this legislation.

I will quote now from the written SOS that was sent to me from William H. Webster, Director of the FBI.

The letter follows:

WASHINGTON, D.C.,
*August 9, 1978.*

HON. JAMES SANTINI,
*House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN SANTINI: This will confirm your conversation yesterday with Inspector John B. Hotis, concerning my position on H.R. 7308, the Foreign Intelligence Surveillance Act.

I would like you to know that I support the bill as reported by the Permanent Select Committee on Intelligence. I so testified in closed session before that Committee having personally studied the bill in-depth. The Agents of this Bureau involved in foreign intelligence activities deserve and need this legislation in order that they can be assured that both Congress and the courts have sanctioned the legality and propriety of their actions. I believe this bill represents a careful and workable balance between the vital interests of protecting the national security and civil liberties.

For your further information, I have attached a copy of a fact sheet prepared by the Department of Justice which outlines the purposes and general provisions of the bill. Should you have any questions about the bill as it affects the FBI, I or a member of my staff would welcome the opportunity to discuss the matter further.

Sincerely yours,

WILLIAM H. WEBSTER,
*Director.*

Now, it is my hope that we in this body will not find ourselves caught up in the understandable preoccupation with the nuances and ignore the tremendous nuisance that is present, because of the existing impaired climate, of investigation for the FBI and the CIA.

I pursued this question personally with Inspector John B. Hotis on the phone. I asked the question that has been raised here, "Are you simply responding to internal administrative heat that is generated within the executive departments day in and day out?"

He said:

I am not. I am responding personally to a very critical national need that the FBI must respond to in this country, our national security.

He urged:

I hope Congressman Santini will support this bill. Again, he stated this is both my personal conviction and the official position of the FBI.

Mr. RUDD. Mr. Chairman, will the gentleman yield?

Mr. SANTINI. I am happy to yield to the gentleman from Arizona, who I know distinguished himself in employment in this very agency in former times.

Mr. RUDD. I thank my very distinguished barrister from Nevada for yielding me this time.

Let me ask him this, if I may: In this bill, is it really thrusting a responsibility on the courts again? Are we abdicating our responsibilities to allow the courts to judge whether or not we should issue a warrant to assure the security of our Nation? And if that is a possibility—and I think it is true—if it is a possibility, does this then act as a buffer for the President of the United States, the Attorney General of the United States, who can then point their fingers at the court if something goes wrong, because the court did not have all the facts or was not schooled in intelligence? Is it to give them the responsibility for having something go wrong where otherwise that responsibility should really rest with the President and the Attorney General of the United States?

The CHAIRMAN. The time of the gentleman from Nevada has expired.

Mr. McCLORY. Mr. Chairman, I yield 1 additional minute to the gentleman from Nevada.

Mr. SANTINI. The gentleman's question is a fair one. No one on this House floor at any time can answer that question unequivocally one way or the other. I would suggest that in this context I am willing to rest my hope and expectation and judgment in those who have the practical responsibility of implementing the national security needs of our Nation, the FBI, and CIA. They have the practical experience and the legislative duty to protect our Nation. In response to the gentleman's question, our investigation agencies need help. They are compelled to fulfill their duties in a confused and hazy legal environment. The Director of the FBI has turned to the Senate and the House with the plea, "Please help us," and I think this legislation is that help.

Mr. McCLORY. Mr. Chairman, I yield myself 3 minutes.

I take this time because some very significant statements have been made particularly by the gentleman from South Carolina, who made reference to the fact that this bill is substantially different from that which was passed over in the Senate, and yet we are making statements here today that this is a desirable bill because it passed overwhelmingly and with only one negative vote, and yet the bill was so bad we undertook to amend it by agreement on both sides of the aisle, and I laud the majority for their support of this very extremely significant amendment.

The question I ask myself is this: Why if this exemption is so important to one of the intelligence agencies, why is this exemption not important to the other intelligence agencies? I think that is a very difficult question to answer, particularly when we are targeting in on a foreign power or foreign agent, whether it is by the FBI or CIA or NSA, or any other of the intelligence agencies. It seems to me an important question to ask if we are desiring to secure the national security through intelligence information—and most of it is information. Then it seems to me that the other intelligence agencies should have the same exemption as the exemption we accorded to this one agency.

Let me say this: We have heard reference to the Post editorial this morning, and I think there is a great deal of misunderstanding about this. The Post editorial says this would enable 11 Federal judges to intervene before we begin any eavesdropping or wiretapping of American citizens in connection with national security. If that were the impact, if that were what this legislation were doing, I do not think I would be here opposing it.

What this legislation does is not to merely require a judicial warrant with respect to an American citizen. This bill requires a judicial warrant with respect to a foreign power, foreign entities, and foreign agents.

It seems to me if we want to provide for the protection of American citizens or U.S. persons—and that will be the subject of an amendment—then we will have the opportunity to protect U.S. persons against any electronic surveillance unless there is a warrant obtained.

But then I ask the question: Well, why do we need this new unprecedented special court arrangement? Do we need 11 judges gathered from all around the country in order to sit here in Washington, D.C., if we are only going to seek electronic surveillance intervention of a court with respect to U.S. persons?

It seems to me we should do the same as we do under title III and use the district court. There is nothing wrong with that. We do not need a special court. We can provide for protection of U.S. persons without the presence of this improvised court mechanism. Therefore, it seems to me the arguments made in support of this legislation just do not hold water insofar as U.S. persons or U.S. citizens are concerned.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. MINETA).

Mr. MINETA. Mr. Chairman, I rise to voice my full support for H.R. 7308, as reported by the House Permanent Select Committee on Intelligence, and to commend the chairman of the full committee, the chairman of the subcommittee, and my colleagues on the committee for their dedicated and statesmenlike work in crafting this importing legislation.

Though the legislative foundation for this bill was ably laid by the Subcommittee on Legislation, I and the other members of the full committee would have been remiss in our duty to the House and the country if we had not also subjected this bill to searching scrutiny.

In so doing, we conducted several days of markup over the period of a month. We heard from the heads of the intelligence agencies several times both in closed and open session. We were briefed by other interested parties.

As a result, we were able to perfect the already solid piece of legislation reported to us by the subcommittee.

The product of our efforts is now before us and it is deserving of our support.

Those officials charged with conducting our intelligence activities—Attorney General Bell, Admiral Turner, Admiral Murphy, Admiral Inman, Director Webster—say that the bill would help them conduct legitimate and necessary intelligence activities and poses no threat of harm to the national security. I take them at their word.

Of equal importance, the bill will protect the civil liberties of our citizens and prevent the recurrence of past abuses.

Before any American citizen or permanent resident alien can be subjected to electronic surveillance for national security reasons, a judge must find probable cause to believe that he is an agent of a foreign power engaged in clandestine intelligence activities, sabotage, or terrorism and that his activities are connected with a violation of the criminal statutes.

Before any information concerning an American citizen or permanent resident alien, derived from any foreign intelligence electronic surveillance, can be disseminated within or without the Government, or used for any purpose, such dissemination or use must be in conformity with procedures approved by a judge.

No longer will it be possible for 17 newsmen and Government employees to be wiretapped at the whim of executive officials.

No longer will the Executive be able to use an embassy surveillance as a pretext to collect political or personal information on Americans who communicate with an embassy.

And no longer will Americans find themselves on a hit list that insures that their international communications will be intercepted solely because they are engaging in antiwar activities.

Some may argue that, yes, these abuses did occur, and it is regrettable; but they are not occurring now, so, do we need any legislation?

To this, I would reply that the times and political climate will change again. That change may not come tomorrow, or next year, but it will come. It is to that time, 5, 10, 15 years from now, or whenever it might ever come, to which we must also address ourselves. There must be a check on the unbridled exercise of executive branch discretion—and the best check is a neutral and impartial magistrate applying congressionally enacted standards to executive requests for electronic surveillance orders.

The bill, of course, also addresses itself to the present time, and to the capability of the intelligence agencies to carry out their important functions.

At the present time, there is a considerable amount of needed intelligence not being collected.

It is not being collected because of the uncertainties of current law and the vagaries of the political climate. Intelligence officials and agents are constantly subjected to civil suits and held up to public scorn. What was legal one day is considered unconscionable the next. In such a climate, any sensible person would be chary of performing his duties aggressively.

Thus, it is time to settle that law relating to foreign intelligence electronic surveillance once and for all.

It is time to enact legislation that will state clearly what can be done and what cannot be done.

It is time to provide both our people and our intelligence agents with the protections a judicial warrant will afford them.

In conclusion, Mr. Chairman, I would say to my colleagues that the bill before the House today provides us with a unique opportunity to protect and further both our civil liberties and our national security.

The civil liberties groups support it. The administration supports it. The intelligence agencies enthusiastically support it. Such a consensus is rare in these times. This opportunity to enact good legislation should not be lost because of the unsupported claims of a few well-meaning individuals who seem to suggest that their knowledge and grasp of our intelligence collection activities exceed that of those intelligence community officials whose daily task it is to protect the security of our country.

I urge that H.R. 7308, as reported by the Select Committee on Intelligence, be passed.

Mr. McCLORY. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I have yielded myself this time because I want to respond to another charge that was made and that is that the FBI and the FBI agents need this legislation in order to protect themselves. Let me say we have pending before the Judiciary Committee the Federal Tort Claims Act Amendments which are intended to protect FBI agents and all intelligence agents, all intelligence officers, all law enforcement officers of the Federal Government, against actions that are brought against them where they are acting in good faith and within the scope of their authority. That is desirable legislation. As a matter of fact, that is inherent in the substitute bill that I have, as well, because it is true that we do need to translate the existing executive order guidelines into appropriate legislation.

Mr. Chairman, I would like to point out that when the Attorney General testified before our committee on January 10, 1978, he stated with respect to my substitute bill:

> I have nothing against Congressman McCLORY's bill. That would be an improvement over the present system. The question is do we want to bring the Judiciary in?

That is indeed the question, do we want to bring the Judiciary in, do we want to have the Judiciary act as interceptors between the authority that the executive has, in my view, the inherent power to exercise, and the exercise of that authority? Do we want to put that ultimate decisionmaking authority in the Judiciary and not in the executive where it has traditionally been?

I can assure the Members that the bill I am supporting, the substitute bill, would impose that responsibility on the executive. It would provide the kind of protection that we want, so that they can carry out these important intelligence activities.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCLORY. I yield myself 1 additional minute.

Mr. Chairman, I have yielded myself this additional time because I noticed that the gentleman from Virginia (Mr. ROBINSON) left the floor and did not have an opportunity to express himself in support of this legislation. However, I also want to point out that, as a member of the Committee on Intelligence, the gentleman from Virginia (Mr. ROBINSON) is in strong support of this legislation and, if present, he would be expressing himself, in his own way, in support of the measure and in opposition to the committee bill and in support of the substitute.

The CHAIRMAN. The time of the gentleman has again expired.

● Mr. WEISS. Mr. Chairman, for the benefit of our colleagues in their deliberations on H.R. 7308, the Foreign Intelligence Surveillance Act, I would like to share with them an article authored by our distinguished colleague, the gentleman from Massachusetts (Mr. DRINAN), which was printed in the September 1 Boston Globe.

The article follows:

[From the Boston Globe, Sept. 1, 1978]

WIRETAP BILL AN ATTACK ON FOREIGNERS

(By Robert F. Drinan)

On Thursday the US House of Representatives is expected to pass the Foreign Intelligence Surveillance Act (HR-7308). This bill will allow the CIA and the FBI to wiretap any agent of a foreign power with a warrant obtained from a federal judge on the contention that information from the wiretap would be helpful in formulating US foreign policy.

This measure, already passed by the Senate, is billed as a "reform" of the existing CIA practice of clandestinely wiretapping the Washington embassies of hostile nations. The introduction of the warrant requirement is deemed to be an improvement in a system of intelligence gathering alleged to be essential to national security.

The dismaying fact is, however, that the passage of HR-7308 will be a calamity. It will legalize largely useless wiretaps, erode the Fourth Amendment regulating the right of search and seizure and institutionalize the nation's worst xenophobic prejudices.

Proponents of the bill rely upon the unproven assumption that wiretapping yields information indispensable to the protection of our national security. No evidence has ever been offered to support this position in the extended hearings conducted over a period of three years by a House Judiciary subcommittee. When pressed for specifics, intelligence agents assert the sacredness of their secrets.

Confronted with this series of closed circles, those who want to control the appalling abuses of the intelligence agencies conclude that the agencies are determined to continue their surveillance and that therefore even an unorthodox warrant from a court offers some control of the frightening invasions of privacy which are now in place.

Even the American Civil Liberties Union, foe of all wiretapping before and after it was legalized for suspected criminals by Congress in 1968, has acquiesced in the specious and erroneous reasoning that somehow the establishment of secret court proceedings will control clandestine eavesdropping. And yet the grim fact is that the requirement of a meaningless judicial warrant for a wiretap will allow the CIA to deepen its refusal to

talk by transferring the responsibility to the courts. At the same time the courts will cite the Draconian penalties in HR–7308 for judges who mention anything about their secret dealings with intelligence agents in their chambers.

Most civil libertarians in the Congress have capitulated to the delusion that warrants that judges cannot refuse will clean up surveillances we cannot control, and ironically most of the opposition to the very bad idea of involving a small number of federal judges in the legalization of tapping foreigners' phones comes from members of Congerss who feel that the President, the National Security Council and the CIA have inherent constitutional power to maintain our national security and that this power should not be limited by judicial restrictions.

The clamor for "reform" of the intelligence agencies has reached such a point of hysteria that most people do not recognize that HR–7308:

Imposes duties on federal courts totally at variance with the "case or controversy" always hitherto required for judicial intervention.

Contains no requirement that Americans whose conversations are unavoidably or inadvertently recorded be informed of the invasion of their privacy.

Violates the Vienna Treaty ratified by the Senate in which this nation pledged that diplomatic missions in this country would be "inviolable."

I will offer amendments to HR–7308 on the House floor. One amendment will support the request of the telephone industry for the deletion of a provision compelling communications employees to participate in arranging a clandestine wiretap. Another will propose a sunset provision so that this frightening experiment on our innermost thoughts will terminate after five years. As a House-Senate conferee. I will seek other ways to improve this bill.

Even if these amendments and improvements prevail, HR–7308 will still be a perversion of the Fourth Amendment, a radical departure from any established norm in American jurisprudence and an abject sellout by Congress and the Administration to the imperious and unjustifiable demands of the CIA and the FBI.●

● Mr. SEIBERLING. Mr. Chairman, I support the Intelligence Committee's bill and I commend the chairman (Mr. BOLAND) for developing an excellent compromise bill which protects individual rights without jeopardizing our legitimate national security interests in any way.

Just 2 years ago, I had the honor of serving as a member of the National Wiretap Commission. Several other members of the Commission and I tried in vain to get the Commission to review national security wiretap practices and procedures. The Intelligence Committee has now conducted just such a review and its conclusions support the views expressed in the National Wiretap Commission report by Mr. KASTENMEIER, Senator ABOUREZK, and me, along with Commissioner Alan F. Westin, who is perhaps the Nation's leading expert in the right of privacy. We made the following statement, which explains my support for the Intelligence Committee's bill:

"Security is like liberty," Supreme Court Justice Robert H. Jackson once wrote, "in that many crimes are committed in its name."

"National Security" wiretapping is probably the most easily abused area of electronic surveillance. The public record is replete with abuses during the period 1968–1974. . . .

Warrantless electronic surveillance cannot be constitutionally justified by a mere assertion of the magic words "national security," a vague phrase subject to differing interpretations. . . .

The record developed by the House Judiciary Committee during the impeachment proceedings is filled with evidence of abuses involving "national security" wiretaps against newsmen, against past and present employees of the National Security Council and against employees of the White House without access to NSC information. . . .

We support a warrant procedure for all electronic surveillance, including security wiretaps. We are not ready to say absolutely that the specific procedures to be followed should be the same in national security cases as in criminal investigations. But we do feel very strongly that there must be some system of accountability, with proper checks and balances. As long as the President and his designees have absolute, unreviewable discretion in this area, there will remain an unreasonable likelihood of abuse. Such a claim of unbridled power is inconsistent with the Constitution and the public interest.

Finally, we believe that national security wiretaps may be necessary in certain circumstances. We believe that the concept of national security, however, has been so abused by recent presidents that the public has little confidence when a President claims an action—whether foreign or domestic—is based upon national security grounds. The best place to begin restoring public confidence, we believe, is in the area of electronic surveillance for national security purposes. Judicial security of national security wiretaps is, in our opinion, necessary from a constitutional standpoint and an appropriate way to restore public confidence in our governmental institutions.●

Mr. MURPHY of Illinois. Mr. Chairman, I have no additional requests for time.

The CHAIRMAN. Does the gentleman yield back the balance of his time?

Mr. MURPHY of Illinois. I do, Mr. Chairman.

The CHAIRMAN. Does the gentleman from Illinois (Mr. MCCLORY) yield back the balance of his time?

Mr. MCCLORY. Yes, Mr. Chairman, I have no further requests for time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the Clerk will now read, by title, the substitute committee amendment recommended by the Permanent Select Committee on Intelligence now printed in the bill as an original bill for the purpose of amendment; said substitute shall be read for amendment by titles instead of by sections. No amendment to said substitute shall be in order except germane amendments printed in the CONGRESSIONAL RECORD at least 3 legislative days before their consideration, pro forma amendments for the purpose of debate, and amendments recommended by the Permanent Select Committee on Intelligence. It shall be in order to consider en bloc amendments to said substitute printed in the CONGRESSIONAL RECORD of July 17 by Representative MCCLORY of Illinois.

The Clerk will read.

H.R. 7308

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1978".

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TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 101. As used in this title:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are or may be a vio-

lation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner that identifies any individual United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102(a), procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information may indicate a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) communications exclusively between or among foreign powers, as defined in section 101(a)(1), (2), or (3); or

(ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a)(1), (2), or (3); and

(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h); and

if the Attorney General shall report such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him.

(3) With respect to electronic surveillance authoriz d by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Special Court having jurisdiction under section 103, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the Special Court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

SPECIAL COURTS

SEC. 103. (a) There is established a Special Court of the United States with jurisdiction throughout the United States to carry out the judicial duties of this title. The Chief Justice of the United States shall publicly designate at least one judge from each of the judicial circuits, nominated by the chief judges of the respective circuits, who shall be members of the Special Court and one of whom the Chief Justice shall publicly designate as the chief judge. The Special Court shall sit continuously in the District of Columbia.

(b) There is established a Special Court of Appeals with jurisdiction to hear appeals from decisions of the Special Court and any other matter assigned to it by this title. The Chief Justice shall publicly designate six judges, one of whom shall be publicly designated as the chief judge, from among judges nominated by the chief judges of the district courts of the District of Columbia, the Eastern District of Virginia and the District of Maryland, and the United States Court of Appeals for the District of Columbia, any three of whom shall constitute a panel for purposes of carrying out its duties under this title.

(c) The judges of the Special Court and the Special Court of Appeals shall be designated for six-year terms, except that the Chief Justice shall stagger the terms of the members originally chosen. No judge may serve more than two full terms.

(d) The chief judges of the Special Court and the Special Court of Appeals shall, in consultation with the Attorney General and the Director of Central Intelligence, establish such document, physical, personnel, or communications security measures as are necessary to protect information submitted to or produced by the Special Court or Special Court of Appeals from unauthorized disclosure.

(e) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the Special Court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the Special Court of Appeals.

(f) Decisions of the Special Court of Appeals shall be subject to review by the Supreme Court of the United States in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code, except that the Supreme Court may adopt special procedures with respect to security appropriate to the case.

(g) The Chief Judges of the Special Court and the Special Court of Appeals may, in consultation with the Attorney General and Director of Central Intelligence and consistent with subsection (d)—

(1) designate such officers or employees of the Government, as may be necessary, to serve as employees of the Special Court and Special Court of Appeals; and

(2) promulgate such rules or administrative procedures as may be necessary to the efficient functioning of the Special Court and Special Court of Appeals.

Any funds necessary to the operation of the Special Court and the Special Court of Appeals may be drawn from appropriations for the Department of Justice. The Department of Justice shall provide such fiscal and administrative services as may be necessary for the Special Court and Special Court of Appeals.

APPLICATION FOR AN ORDER

SEC. 104. (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be affected;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a), but shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determination required by section 105.

ISSUANCE OF AN ORDER

SEC. 105. (a) Upon an application made pursuant to section 104, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applicants for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: Provided, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

(5) the application which has been filed contains all statements and certifications required by section 104 and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a)(7)(E) and any other information furnished under section 104(d).

(b) An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected;

(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith any and all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1), but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose,

or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a)(1), (2), or (3), for the period specified in the application or for one year, whichever is less.

Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in section 101(a)(4), (5), or (6), may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Notwithstanding any other provision of this title, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information may indicate a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Certifications made by the Attorney General pursuant to section 102(a) and applications made and orders granted under this title shall be retained in accordance with the security procedures established pursuant to section 103 for a period of at least ten years from the date of the application.

USE OF INFORMATION

SEC. 106. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to disclosed or used that the Government intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the Special Court to determine the lawfulness of the electronic surveillance. Unless all the judges of the Special Court are so disqualified, the motion may not be heard by a judge who granted or denied an order or extension involving the surveillance at issue. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the Special Court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the Special Court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the Special Court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the sur-

veillance and if disclosure would likely promote a more accurate determination of such legality, or if such disclosure would not harm the national security.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to any statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to surveillance pursuant to the authority of this title or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines that the moving party is an aggrieved person, if the Attorney General files with the Special Court of Appeals an affidavit under oath than an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court or other authority, the Special Court of Appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the application, order, and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the Special Court of Appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney portions of the application, order, or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the Special Court pursuant to subsection (f) or the Special Court of Appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the Special Court pursuant to subsection (f) or the Special Court of Appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting or denying motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the Special Court or Special Court of Appeals granting or denying disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except the Special Court of Appeals and the Supreme Court.

(j) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

(k) If an emergency employment of electronic surveillance is authorized under section 105(e) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application;

(2) the period of surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

REPORT OF ELECTRONIC SURVEILLANCE

SEC. 107. In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(b) the total number of such orders and extensions either granted, modified, or denied.

CONGRESSIONAL OVERSIGHT

SEC. 108. On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

PENALTIES

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) violates section 102(a)(2), 105(e), 105(f), 105(g), 106(a), 106(b), or 106(j) or any court order issued pursuant to this title, knowing his conduct violates such an order or this title.

(b) DEFENSE.—(1) It is a defense to a prosecution under subsection (a)(1) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(2) It is a defense to a prosecution under subsection (a) (2) that the defendant acted in a good faith belief that his actions did not violate any provision of this title or any court order issued pursuant to this title, under circumstances where that belief was reasonable.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 110. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or whose communication has been disseminated or used in violation of section 109 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AMENDMENTS OFFERED BY MR. MCCLORY

Mr. McCLORY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. MCCLORY:

Page 39, strike out line 1 and all that follows down through line 12 on page 41 and insert in lieu thereof the following:

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a) An application for a court order under this title is authorized if the President has, in writing, authorized the Attorney General to approve applications to the Special Court having jurisdiction under section 103. A judge to whom such an application is made may, notwithstanding any other law, grant an order in accordance with section 105 approving electronic surveillance of a United States person who is a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

(b)(1) If the target of electronic surveillance for the purpose of obtaining foreign intelligence information is not a United States person, such electronic surveillance may be authorized by the issuance of a surveillance certificate in accordance with subsection (c).

(2) Electronic surveillance authorized under this subsection may be authorized for the period necessary to achieve its purpose, except that—

(A) if the target of the surveillance is not a foreign power, the period of the surveillance may not exceed ninety days; and

(B) if the target of the surveillance is a foreign power, the period of the surveillance may not exceed one year.

(3) Electronic surveillance authorized under this subsection may be reauthorized in the same manner as an original authorization, but all statements required to be made under subsection (c) for the initial issuance of a surveillance certificate shall be based on new findings.

(4)(A) Upon the issuance of a surveillance certificate under this subsection, the Attorney General may direct a specified communication common carrier—

(i) to furnish any information, facility, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect the secrecy of such surveillance and will produce a minimum of interference with the services that such common carrier provides its customers; and

(ii) to maintain any records concerning such surveillance or the assistance furnished by such common carrier that such common carrier wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence.

(B) Any such direction by the Attorney General shall be in writing.

(C) The Government shall compensate any communication common carrier at the prevailing rate for assistance furnished by such common carrier pursuant to a direction of the Attorney General under this paragraph.

(c) A surveillance certificate issued under subsection (b)(1) shall be issued in writing and under oath by the Attorney General and an executive branch official or officials designated by the President from among those officials employed in the area of national security or national defense who were appointed by the President by and with the advice and consent of the Senate, and shall include—

(1) a statement—

(A) identifying or describing the target of the electronic surveillance, including a certification of whether or not the target is a foreign power or an agent of a foreign power; and

(B) certifying that each of the facilities or places at which the surveillance is directed is being used or may be used by a foreign power or an agent of a foreign power;

(2) a statement of the basis for the certification under paragraph (1)—

(A) that the target of the surveillance is a foreign power or an agent of a foreign power; and

(B) that each of the facilities or places at which the surveillance is directed is being or may be used by a foreign power or an agent of a foreign power;

(3) a statement of the proposed minimization procedures;

(4) a statement that the information sought is foreign intelligence information;

(5) a statement that the purpose of the surveillance is to obtain foreign intelligence information;

(6) if the target of the surveillance is not a foreign power, a statement of the basis for the certification under paragraph (4) that the information sought is foreign intelligence information;

(7) a statement of the period of time for which the surveillance is required to be maintained;

(8) a statement of the means by which the surveillance will be effected;

(9) if the nature of the intelligence gathering is such that the approval of electronic surveillance under subsecion (b) should not automatically terminate when the described type of information has first been obtained, a statement of the facts indicating that additional information of the same type will be obtained thereafter;

(10) a statement indicating whether or not an emergency authorization was made under section 105(e); and

(11) if more than one electronic, mechanical, or other surveillance device is to be involved with respect to such surveillance, a statement specifying the types of devices involved, their coverage, and the minimization procedures that will apply to information acquired by each type of device.

Page 47, strike out lines 4 through 14 and redesignate the succeeding subsections accordingly.

Page 48, line 24, strike out ", if the target is a United States person,".

Page 52, strike out lines 11 and 12 and insert in lieu thereof the following:

(2) the factual basis exists for the authorization of such electronic surveillance;

Page 52, beginning on line 14, strike out "if a judge" and all that follows through the period on line 20 and insert in lieu thereof the following: "if the otherwise applicable procedures of this title are followed as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. In addition, if the target of such electronic surveillance is a United States person, the Attorney General or his designee shall at the time of such authorization inform a judge designated pursuant to section 103 that the decision has been made to employ emergency electronic surveillance.".

Page 52, beginning on line 23, strike out "for the issuance of a judicial order".

Page 53, line 5, insert "or a surveillance insert in lieu thereof "an".

Page 52, line 24, insert "or surveillance

Page 53, line 5, strike out "such" and certificate" after "a judicial order".

Page 53, line 6, insert "or surveillance cercertificate is not issued" after "approval is denied".

Page 59, line 3, strike out "application, order," and insert in lieu thereof "application tificate" after "order".

and order or the surveillance certificate".

Page 59, line 18, strike out "applications or orders" and insert in lieu thereof "applications, orders, or surveillance certificates".

Page 60, line 8, strike out "application, order," and insert in lieu thereof "application and order or surveillance certificate".

Page 60, line 14, insert "surveillance certificate," after "order,".

Page 68, line 12, insert "or surveillance certificate" after "order".

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments, with specific reference to amendment No. 2, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. McCLORY. Mr. Chairman, this, it seems to me, is a very key amendment. Further, it should provide an opportunity for this chamber and for the committee to really get at the crux of this legislation.

My amendment would modify the virtual across-the-board warrant requirement, which is the measure which was passed in the Senate and which some Members do support. Assuming for the moment the need to protect the rights of U.S. persons, as indicated in my colloquy with the gentleman from Massachusetts (Mr. BOLAND), the chairman of the committee, I have serious concern over the provision of the bill which extends a judicial warrant requirement beyond situations where U.S. persons are targeted.

While the argument has been made that warrants are needed in all situations in which U.S. persons are targeted or might be incidentally intercepted, I believe that the provisions in the bill which strictly regulate the use of incidentally acquired information about U.S. persons adequately protect the privacy interests of U.S. persons. Furthermore, the balance struck by requiring a warrant only for U.S. persons better recognizes the role of the executive to protect our country from foreign aggression without undue entanglement involving another branch of Government, that is, the judiciary.

My belief is that the warrant requirement should not be extended to electronic surveillance directed at foreigners, and this is based on two alternative grounds:

First, the fourth amendment does not apply to foreigners.

Second, assuming for purposes of argument, that the fourth amendment does apply to foreigners, it is constitutionally reasonable to engage in electronic surveillance of foreigners without a judicial warrant or without judicial approval.

The fourth amendment to the U.S. Constitution provides—

The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated.

Therefore, in addressing the issue of warrantless surveillances of foreigners, one must resolve who "the people" are.

The concept of "the people" is used several times in the Constitution. It is used in the Preamble—"We, the people of the United States"—and in several parts of the Bill of Rights.

Long ago, the Supreme Court declared in the Civil Rights Cases that "The words 'people of the United States' and 'citizens' meant the same thing, both describing the political body who, according to our republican institutions, form the sovereign people and a constituent member of this sovereignty."

First, since the rights afforded by the Bill of Rights do not protect the States as States, as held in South Carolina against Katzenbach, such are surely not available to foreign nations as foreign nations.

This view is shared by the Department of Justice. While some of the lower courts appear to feel that the amendment applies to aliens as individuals, the Supreme Court has not only not repudiated its earlier statements, but it seems to have gone out of its way to avoid declaring the amendment applicable to aliens. Note that in United States against United States District Court, the Keith case, the terminal case in this area, the Supreme Court stated:

Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the government interest to be enforced and the nature of citizen rights deserving protection.

In those cases where the fourth amendment applies, its single consistent demand is that Government searches and seizures be reasonable. In some cases it will demand compliance with the warrant clause. However, in other cases the legality of a particular search or seizure can be established without reference to the warrant clause—the true test is reasonableness.

As Mr. Justice Black noted in Collidge against New Hampshire:

The fourth amendment does not require that every search be made pursuant to a warrant. It prohibits only "unreasonable search and seizures." The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by per se rules; each case must be decided on its own facts.

We know of many instances of border crossings, and even in some investigative cases, of concerns where we have administrative bodies handling them that there is no requirement to secure a warrant in order to search or seize. So it seems to me that with regard to collecting electronic surveillance, whether it is by radio or television or whatever other means, there should be no requirement to go to a court and secure a warrant. So in effect all that this amendment does, is to exclude from the warrant requirement electronic surveillance authority with respect to foreign agents

and foreign powers. If we wanted to authorize surveillance of a foreign embassy, a foreign trade mission, or a foreign agent, a foreign spy—whoever the foreign element happens to be in this country—it seems to me that for an intelligence agency to be required to go to a judicial body and to get a warrant before such an electronic surveillance could take place is so absurd as to not even require our serious consideration here today.

I am hopeful that we will have overwhelming and resounding support for this amendment.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendments.

Mr. Chairman, I strongly oppose the gentleman's amendments.

No administration or intelligence agency official has requested it, nor do any of them support it.

Its adoption would not only eliminate most of the protections afforded the privacy rights of our citizens, it would also deal a severe blow to one of the bill's primary purposes, which is to provide needed assurances to intelligence field agents. The Intelligence Committee has already cut back on the warrant requirement; to reduce it any further would be counterproductive.

The arguments raised against eliminating the warrant requirement altogether are equally compelling here. Neither myself, nor the Intelligence Committee, nor the Senate, nor the administration wishes to protect foreign spies, diplomats, governments, or what have you.

We all do wish to protect those whom are entitled to protection: Americans, permanent resident aliens, and intelligence agents trying to do their job.

The best way to insure their protection is with H.R. 7308's warrant process. They deserve the best protection.

Americans and permanent resident aliens are in constant contact with foreign businessmen, tourists, and athletes, and with foreign embassies, trade missions, corporations, and political organizations. The warrant requirement will insure that surveillance of the foreign person or entity is for the proper purpose of obtaining foreign intelligence information and not an attempt to acquire personal or political information about Americans.

The warrant requirement will also insure that information lawfully acquired about Americans will only be disseminated for foreign intelligence purposes. The warrant requirement will further insure that agents performing a surveillance will not be later held up to scorn and ridicule or worse and will be able to perform their duties effectively and aggressively. It should be noted that the plaintiffs in the current suit against the Attorney General and FBI personnel, arising out of the Truong/Humphrey case, are not those who were the targets of the surveillance; rather, they are American citizens whose communications were incidentally overheard pursuant to the targeting of Truong and Humphrey.

According to the intelligence agencies officials, all of these things can be done, all the protections and assurances provided, without endangering our security or impeding intelligence collection activity.

I, for one, agree with these officials. There is no reason whatsoever to doubt their judgment—or their word. They are concerned about today's intelligence collection, not last year's or that of 5 years ago.

They are concerned about the problems facing today's field agents, not with how easy things were 5 years ago.

They must also look to the future, and prepare for it with the insights today's vision provides, not with yesterday's slogans.

These officials, unlike some of those whose letters we have recently read, bear the present responsibility for protecting our security. Retirement does afford the opportunity to spout slogans and holler half-truths. But that opportunity has not come yet for those with today's responsibilities.

In short, those intelligence officials presently running our intelligence agencies support the warrant requirement of H.R. 7308.

They and I oppose the gentleman's amendment.

Mr. STRATTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the McClory amendment. It seems like a very good amendment to me.

The amendment simply says that we do not have to go through this elaborate court procedure if the target of the surveillance happens to be a foreigner or some foreign installation in the United States.

Some of us on our Armed Services Committee had the occasion to visit the Soviet Union at Eastertime. We were told there were bugs in the telephone and there were bugs in the ceiling lights. We were told to be very careful about what we said; but nobody told us that the Soviet KGB had to go to a court in order to get permission to listen in on the casual conversations of even visiting Members of the U.S. Congress.

So it would seem to me that this very simple amendment ought to be adopted.

In fact, I must say I find some of the debate on this bill, and in fact on the whole subject, suggestive of a kind of never never land. I have served for some 34 years as a Naval Reserve intelligence officer. I have long been concerned with intelligence. I think we all recognize the fact that intelligence is our first line of defense.

If one does not have the muscles to stand up against a bigger guy, he has got to have faster reflexes. He has got to make sure his eyes are good and that he can move quickly.

We have tried to maintain a minimum defense in this country in recent years, and so we are going to have to have the very best intelligence in the world. We should be aware of the fact that intelligence can do a number of important things.

We even had intelligence that the Japanese were going to be attacking us at the time of Pearl Harbor, although we messed up on that one. If it had not been for intelligence, we would not have won the battle of Midway. And the British would probably not have won the battle of Britain if it had not been for the ultra intelligence gained from listening in on what the enemy was saying. That intelligence saved the lives of a number of Britons, and indeed it saved the British Empire.

Some Members might have read the book "A Man Called Intrepid," which deals with intelligence activities in the United States prior to the outbreak of World War II and tells how President Roosevelt cooperated with the British Secret Service to protect our country, although he is reported to have said to the "Man Called Intrepid":

If the American people knew what I was doing, I probably would be impeached.

But he helped to beat back the Nazi threat.

These are the advantages of intelligence. When we are in a wartime situation, or even a cold war situation, we have to take some unusual measures to insure our survival.

The bill we have before us today, however, is based essentially on the concept that intelligence is something bad, and that the major concern of Congress should be to prevent all those evil things that intelligence entails from happening. We went through a period recently when we were completely preoccupied with the abuses of intelligence. But let us not forget the lessons of "A Man Called Intrepid," and of "Ultra Secret."

For us to be concentrating primarily on trying to put limitations on intelligence, instead of trying to make sure that we have the best and most effective intelligence service in the world is, I think, about as sensible as putting a governor on a firetruck. Of course, if the firetruck goes too fast, it could conceivably run into somebody and have an accident.

But the purpose of a firetruck, after all, is to get to a fire in a hurry, and you cannot have an effective firetruck and at the same time put a governor on it that prevents it from going over 25 miles an hour. Yet that is precisely what we are doing here in this legislation.

To include the judiciary in the very delicate questions involved in intelligence is going to damage our intelligence performance, is going to jeopardize it. That is why a very substantial number of retired intelligence agents have come out against this bill.

Oh, they would not have spoken out if they were on active duty, just as the admirals over in the Pentagon have been told not to come out in opposition to the recent veto of the defense authorization bill. The intelligence professionals who are now in the CIA, or elsewhere, know that they cannot speak out against this bill.

The CHAIRMAN. The time of the gentleman from New York (Mr. STRATTON) has expired.

(By unanimous consent, Mr. STRATTON was allowed to proceed for 2 additional minutes.)

Mr. STRATTON. But Mr. Chairman,

these intelligence professionals, active or retired, know perfectly well that to put limitations of this kind on intelligence operations and to be required to disclose everything to a court of law, is certainly going to damage intelligence production. Considering the competition we are up against, I certainly don't think we ought to be taking those risks with our intelligence.

Mr. KEMP. Mr. Chairman, will the gentleman yield?

Mr. STRATTON. I yield to the gentleman from New York.

Mr. KEMP. I thank the gentleman for yielding.

Mr. Chairman, I want to congratulate my friend for his statement, and certainly I agree with his conclusion. I do not consider the McClory amendment anything near extreme. I think it is a very sound and responsible amendment, and I certainly support it. While we are taking steps to protect Americans from domestic intelligence sources, it seems to me, as the gentleman I know is fully aware, while the Soviets are engaging in eavesdropping on American citizens, we ought to be equally concerned about protecting American privacy from Soviet eavesdropping.

Would my friend from New York not agree with that?

Mr. STRATTON. I would certainly agree with the gentleman. I think the McClory amendment is a very definite step in the right direction. I myself would not favor this whole idea of judicial review. I think it is contrary to the whole idea that intelligence is an executive responsibility. I do not see how the British could have won their war if they would have had to go through these procedures in World War II.

Mr. KEMP. If the gentleman will yield further, would the gentleman agree it is incumbent upon us to take steps to protect American citizens from Soviet eavesdropping?

Mr. STRATTON. I certainly do think it is incumbent upon us to do that.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the McClory amendment.

It is my privilege to serve on the Committee on the Judiciary and also my further privilege to serve on the Select Committee on Intelligence and on the subcommittee headed by the gentleman from Illinois (Mr. MURPHY), the chairman of the subcommittee which produced this piece of legislation. During its very laborious and, indeed, painstaking proceedings, our committee went over this bill with a fine-tooth comb. We discussed a number of amendments proposed in good faith by the gentleman from Illinois (Mr. MCCLORY), including this particular amendment.

I would ask my chairman, the gentleman from Illinois (Mr. MURPHY), to respond to this question.

Mr. Chairman, is it not the case that the Senate bill, which, if my memory is correct, was passed 95 to 1 by the Senate, contains a warrant procedure, a warrant requirement, covering the very kinds of cases that the gentleman from Illinois (Mr. MCCLORY) would seek to exempt?

Mr. MURPHY of Illinois. That is correct.

Mr. MAZZOLI. And is my statement correct, Mr. Chairman, that that bill passed the Senate 95 to 1?

Mr. MURPHY of Illinois. The gentleman is correct.

Mr. MAZZOLI. Would that vote indicate that the Senate, which is a very important deliberative body, was satisfied that the warrant requirement which the gentleman from Illinois (Mr. MCCLORY) seeks to exempt would not cause any danger to national security?

Mr. MURPHY of Illinois. That is correct. It covers every political philosophy in the Congress.

Mr. MAZZOLI. Let me ask the chairman this further question: Is it not true that if this exemption were to be ordered by the committee that this would mean that there would be situations where American citizens would be surveilled without protection of the warrant which currently is afforded American citizens under the present bill, H.R. 7308?

Mr. MURPHY of Illinois. That is right. Not only that, but the Pike and Church committees uncovered abuses which could still occur under the very exception Mr. MCCLORY is trying to make in this amendment. For instance, an American citizen talking to an embassy; a permanent resident alien talking to a foreigner within the domestic borders of this country could be surveilled without the protection of a warrant. That is why Mr. STRATTON's reference to those two books, "Ultrasecret" and "A Man Called Intrepid" has no application to this amendment whatsoever.

This bill is confined directly to U.S. borders. What happens overseas, NSA counterintelligence or the CIA, as Mr. ROSE aptly pointed out earlier, it is open season and anything can be done.

Mr. MAZZOLI. So we are dealing only with electronic surveillance.

Mr. MURPHY of Illinois. Foreign intelligence electronic surveillance within the borders of the United States.

Mr. MAZZOLI. I thank the gentleman. I think that is an important point to make.

Let me make this further point: If we go along with the McClory proposed exemption, this does in a sense remove the protection which we seek to afford to American citizens. The protection is the existence of a warrant before that person's conversations or activities can be surveilled. That would be removed if the gentleman's amendment prevails.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I was curious about the gentleman's comments that this passed the Senate by a vote of 95 to 1, and by the implementation that since the Senate passed it by 95 to 1, then obviously this House ought to follow the Senate's proposal.

Mr. MAZZOLI. I think the gentleman misunderstands me.

Mr. ERTEL. What did the Gulf of Tonkin resolution pass the Congress by?

Mr. MAZZOLI. My point in asking that question of the chairman of our committee was that when the Senate passed its wiretap bill by 95 to 1, and the Senate bill has across-the-board warrants for foreign intelligence surveillance the Senate must have felt that warrants pose no potential harm to the national security. The House is supposed to pass our own bill, but I am just saying that the other body clearly indicated that they had no qualms with warrants.

Mr. ERTEL. I suggest that the Senate has been wrong before, and by how many votes did the Gulf of Tonkin resolution pass? I would suggest that was wrong also.

Mr. MAZZOLI. I think the Gulf of Tonkin resolution is not apposite to what we are doing today.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. MCCLORY. Mr. Chairman, I would like to point out that the 95-to-1 vote in the Senate included the material we have already excluded from this bill.

The CHAIRMAN pro tempore (Mr. EVANS of Colorado). The time of the gentleman from Kentucky has expired.

(At the request of Mr. MCCLORY and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MCCLORY. If the gentleman will yield further, as the gentleman from North Carolina (Mr. ROSE) pointed out, we have excluded a substantial part of the intelligence-gathering activities under the amendment which both sides have agreed upon, but which was contained in the bill which the Senate passed by a 95-to-1 vote. In other words, we are rejecting what the Senate has done because we find it inconsistent with our best national security interests. Let me also point out that this amendment we are now discussing was before our subcommittee, and it lost on a 6-to-6 tie vote—the precise amendment I am offering now.

Mr. MAZZOLI. If I could reclaim my time momentarily, I think the gentleman is also aware that after the amendment was more fully explained—there was some early lack of complete appreciation of the significance of the gentleman's amendment—I think the vote was different.

Mr. MCCLORY. I think there may have been some other pressures applied, but I know that in the course of our hearings we had Mr. Morton Halperin in the room, and I said, "This amendment would only apply if we were targeting in on, for instance, the Soviet Embassy."

But then he said, "Yes, but what if I am telephoning the Soviet Embassy?"

I said, "I am very sorry about that, Mr. Halperin, but I would like to point out that we still, in this amendment, minimize prosecution so that if somebody makes an unrelated call to the Soviet Embassy, that is minimized even if we adopt the amendment."

Mr. MAZZOLI. I am not so sure as the

gentleman, because how would it be minimized? There is no minimization procedure.

Mr. McCLORY. Oh, yes. I would just say there are minimization procedures and they would be required and they would be imposed. As far as the "Man Called Intrepid" is concerned, the headquarters was right in the RCA Building in New York City, N.Y.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I would like to know how under the bill the warrant process works.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(On request of Mr. VOLKMER, and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Mr. Chairman, if the gentleman will yield further, how, under the warrant process, will my telephone call be protected to a foreign embassy that is being electronically surveiled?

Mr. MAZZOLI. That will be protected ab initio, because when the Chief Executive or the delegate of the Chief Executive, the Attorney General, goes to court to seek the warrant, in the first place he or she has to make a listing of exactly what information is to be gathered and what minimization procedure will be followed. This is all done before the tap is ever installed, before the warrant is ever issued.

Mr. VOLKMER. But wait a minute. My telephone call is going to be picked up. They will not shut it off as soon as I call. So how will it be protected?

Mr. MAZZOLI. If the court is satisfied that the kind of tap which is asked for would routinely pick up American citizen calls those conversations could be minimized away sufficiently.

Mr. VOLKMER. The gentleman is saying the court probably would not permit a wiretap by telephone on a foreign embassy? Is that what the gentleman is saying?

Mr. MAZZOLI. No.

Mr. VOLKMER. That is the case with any embassy.

Mr. MAZZOLI. I am not so sure, because when we have such an embassy as the Soviet Embassy which has trade missions and economic missions and education missions they would have all kinds of calls.

Mr. VOLKMER. Take South Yemen, for instance.

Mr. MAZZOLI. But it would all come to the judges ahead of time for their determination.

Mr. VOLKMER. Does it say the judges will take that into consideration? In what section?

Mr. MAZZOLI. I am not sure what section, but it has a full series.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. I will yield to the gentleman from Arizona in a moment if I may finish my point to the gentleman from Missouri.

There is a whole series of material and data which have to be submitted on the application for the warrant.

Mr. VOLKMER. But I do not find anything in there which would say if the electronic surveillance would pick up any number or amount or percentage of U.S. persons' conversations, that it should be denied. I do not find that in there.

Mr. MAZZOLI. No.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, the situation the gentleman refers to, if he calls an embassy and he asks when is their ballet or circus coming to town, and it has nothing to do with foreign intelligence, there are provisions in this bill that provide that telephone call, that this conversation will be struck.

Mr. VOLKMER. That is not in the gentleman's amendment, I believe. I believe the gentleman has the same minimization procedure.

Mr. MAZZOLI. Mr. Chairman, let me reclaim my time and I yield to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Chairman, I thank the gentleman for yielding, but I think the point we are trying to make is whether or not a U.S. citizen's rights would be infringed on, and I would like to put an example. Supposing a U.S. citizen does call the Soviet Embassy, or whatever embassy, and he has a legitimate request. No one wants to infringe on his rights and obviously this would be taken care of because the person would be identified and interviewed and if he said he wanted a visa, it would be dropped. But on the other hand, let us take a person who has been in deep cover for 15 years and he has not been activated and he has been wondering why he has not been contacted by the embassy espionage network, then the only way for him to go is to the principal, the Soviet Embassy to be activated.

The CHAIRMAN. The time of the gentleman has again expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 1 additional minute.)

Mr. RUDD. Mr. Chairman, if the gentleman will continue to yield, let me say that in that way there would be identification of a network of Soviet spying activities.

Mr. MAZZOLI. Let me try to answer the gentleman's question.

Mr. RUDD. This does not infringe on the rights of citizens, all it does is secure the Nation in a time of grave circumstances.

Mr. MAZZOLI. I would like to answer the gentleman in two ways. One is that I do not think that people who call up the Russian Embassy to ask about the Bolshoi ballet will be picked up for interviewing. Such a call would be routinely expunged from the record and would never be brought to anyone's attention.

Second, any bill Congress would pass is going to be imperfect. You cannot cover every hypothetical concern. Although I did not support the gentleman from Illinois' amendment, the committee accepted it in order to craft the best possible bill and the most passable bill. Anything like this is imperfect. But I do think, all things considered, we have written a very good bill which deserves the support of the committee.

Mr. ASHBROOK. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

Mr. Chairman, I want to quote from a very knowledgable expert in this field.

Admiral Murphy spoke very directly to this bill, and I will read specifically from his testimony. Like Admiral Turner, he said, "I am in favor of H.R. 7308," and then you start getting the "buts" and the "ifs." Here is the statement, which I am going to read:

> In the comments set out below, the department outlines a number of significant problems . . .

And I am going to read it:

> . . . with the bill not to indicate a lack of support, but to demonstrate to the committee that the compromise represented by H.R. 7308 has been reached at substantial risk to the department's intelligence operations.

I spoke a little bit earlier in the debate about witnesses sending me a telegram. That is about as great a telegram as you can get. He said in effect that there was a compromise reached by people outside of the Defense Department. He said in effect that the Defense Department is constrained to support H.R. 7308, but we think you ought to know that it has been reached at substantial risk to the Department's intelligence operations. That is what he is clearly saying.

Let me go on and quote his testimony to you:

> This overall approach has two distinct weaknesses. First, the extension of coverage beyond American citizens, corporations and associations adds substantially to the risks of compromise of important intelligence sources and methods without any concomitant benefit for Americans. It is important that Americans have the assurance that when intelligence agencies seek information through electronic surveillance of Americans, there will be a judgment made by someone outside the Intelligence Community as to the importance, relevance and necessity of that surveillance to foreign intelligence purposes. However, when the intellignece agencies seek information through electronic surveillance of foreigners who are agents of foreign intelligence services or foreign entities that are directed and controlled by foreign intelligence services, there is no benefit to Americans from requiring such a judgment from someone outside the Intelligence Community.

That is the key. He is distinguishing between Americans and foreign entities, foreign sources, something which the gentleman from Illinois (Mr. MCCLORY) is trying to do in his amendment.

He went on to say this, and this is all one quote:

In many cases, the means of communication used by these foreigners and foreign entities are totally devoted to their intelligence work against the United States and Americans would have no access to them in any case.

The primary reason for extending coverage beyond American citizens and corporations to reach these foreign intelligence agents and the totally foreign organizations to which they belong or which they use is an attempt to provide an alternative to the use of the President's inherent power under the Constitution to conduct electronic surveillance without a warrant. If the bill covered only Americans, the President could exercise his inherent power, as consistent with the bill, with respect to foreigners. But by covering foreigners as well, the bill creates an alternative with a high risk and a very limited benefit for the rights of Americans.

Extension of the bill to cover foreigners carries with it very substantial risks of compromise of important and highly productive intelligence sources and methods.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. ASHBROOK) has expired.

(By unanimous consent, Mr. ASHBROOK was allowed to proceed for 1 additional minute.)

Mr. ASHBROOK. Mr. Chairman, that is probably a statement from the most knowledgeable official working in the field, Adm. Daniel J. Murphy.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I would like to read to the gentleman an additional statement from the most knowledgeable admiral in the field. The statement to which the gentleman referred was given when the subcommittee was considering the bill. Since then, we amended it; we adopted the McClory amendment.

Here is the admiral's language after the adoption of the McClory amendment, from the "Most Knowledgeable Man in the Field," to use the gentleman's own words:

When I appeared before the Legislation Subcommittee of your Committee, I testified that the Department of Defense supported H.R. 7308, as introduced. I also expressed our reservations about particular provisions which, in my view, posed risks to security which were not outweighed by the potential benefits to civil liberties that might be provided by those provisions.

In the course of your Committee's consideration of H.R. 7308 changes were made not only to the provisions I mentioned in my testimony but also to others. These changes minimize risks to security and effect important improvements in the system under which the Department of Defense would be required to operate. I have reviewed the bill reported by your Committee and wholeheartedly support its passage. The bill would directly facilitate certain intelligence activities of the Department of Defense while at the same time protecting the privacy rights of United States citizens.

Sincerely,

DANIEL J. MURPHY,
*Admiral, USN (Ret.)*

Mr. ASHBROOK. Admiral Murphy, I would say to my colleague from Illinois, was opposing it on January 10.

Mr. MURPHY of Illinois. He was speaking, in the instance cited by the gentleman from Ohio, before we adopted the McClory amendment.

Mr. ASHBROOK. Before the wagon circled.

Mr. MURPHY of Illinois. Now it is before the wagons circled. However, before the gentleman said that the admiral was the most knowledgeable man in the field.

Mr. ASHBROOK. He is still the most knowledgeable, but the most knowledgeable man in the field is constrained by policy, and administration policy very clearly is involved in this bill. His original statement is very clearly in favor of the McClory amendment. The gentleman is right. Once the wagons circled, he took that stand. In his letter, he retracted nothing, of his January 10 statement. It still stands. The amendment we adopted in committee only went part way.

Mr. MURPHY of Illinois. We adopted the McClory amendment in committee, and this is Admiral Murphy's subsequent statement. In the gentleman's own words, he is the last word on this subject.

Mr. ASHBROOK. I still think he is the most knowledgeable man in the field.

Mr. MURPHY of Illinois. If the gentleman is going to talk about the full circle, include his final letter on it.

Mr. ASHBROOK. I think that is only fair. That is right. What the admiral is saying, however, is that only a part of that gap was closed. If he had his way, he would not have warrants for surveillance of foreigners in this country. He was not satisfied before, and I think his statement stands. This is what the admiral says, as I say, before the circle was formed on the wagons.

Mr. FISH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment, offered by the gentleman from Illinois (Mr. MCCLORY), to limit court issued warrants to U.S. persons.

I share the reservations expressed by my colleagues today with regard to H.R. 7308 and disagree with the administration's belief, in the words of the Attorney General, that H.R. 7308:

Will strengthen the capability of our intelligence agencies dealing with foreign espionage.

On the contrary, Mr. Chairman, I believe that this measure as written will dangerously impede the progress of our foreign intelligence activities.

In the deliberations of the Republican Policy Committee, it was determined that the intrusion of the judicial system in the intelligence community is totally inappropriate. This is particularly true with respect to foreign spies. The provision in H.R. 7308, calling for a special Federal court to exercise primary oversight of the use of electronic surveillance, is a radical departure from the constitutional and legal precedents which have governed our intelligence activities up to now. There is no evidence of case law empowering the Federal courts to authorize or reject foreign intelligence gathering activities as proposed by the committee bill. The security of sensitive material would be seriously threatened by this unprecedented move and the resultant unnecessary delay and, more importantly, the unnecessary disclosure of sensitive information are problems which need not plague our intelligence activities.

In my judgment, the President is mistaken when he states that H.R. 7308 will establish the Nation's first legislative controls over foreign intelligence surveillance. It will establish artificial and unprecedented judicial controls over politically sensitive decisions related to intelligence gathering.

The totality of this amendment which will be offered by the gentleman from Illinois is a responsible and effective approach to foreign surveillance reform. The amendments recognize and respect the constitutional authority of the executive branch in its responsibility to protect our nation from foreign aggression. It also recognizes the appropriate congressional role in oversight by providing for the inspection of records by the House and Senate Intelligence Committees.

Deterrents to abuse are an integral part of this amendment which calls for surveillance approval in writing from the Attorney General and executive branch officials where a non-U.S. person is the target of an investigation. The McClory amendments assure responsible action on the part of those empowered to authorize foreign intelligence electronic surveillance.

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support this important amendment.

I agree with our colleague from Illinois (Mr. MCCLORY) that intelligence-gathering involving only foreign citizens associated with a foreign government should not be tied to a judicial warrant requirement.

The minimization procedures involving U.S. persons are more than adequate to protect the privacy and the rights of our own people.

It makes absolutely no sense whatsoever for our intelligence personnel to be required to obtain judicial warrants to conduct electronic surveillance against foreigners visiting our country—when those persons might have known or suspected ties to Communist governments or terrorist organizations, and are possibly involved in clandestine activities about which the President must be fully informed on a highly classified basis.

I am sure that most Americans would consider it "unreasonable" to involve the courts in such a sensitive intelligence function with solely foreign policy importance to the President and the executive branch of Government.

I urge adoption of the amendment.

Mr. BOB WILSON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, let's face it, from its very inception H.R. 7308 was never intended to facilitate the legitimate activities of the intelligence community. In the words of one witness who testified in favor of the bill he summarized its purpose by saying:

> The basic intention underlying H.R. 7308 is to minimize, not encourage electronic surveillance.

The purpose for this Foreign Intelligence Surveillance Act was and is to protect the rights of U.S. persons against future abuses. It is only recently that the advocates have realined their priorities to now argue that the underlying purpose is to help the intelligence agencies by eliminating doubts about legality.

Mr. Chairman, the truth is we could all support H.R. 7308 if it had limited itself to providing protection for U.S. persons, those who had allegedly been abused by illegal wiretaps. But no—the bill has been broadened with onerous judicial procedures to provide extraordinary protection for foreigners, spies, embassies, trade missions, travelers, et cetera. Incidentally the kind of protection that our Government agencies and citizens do not enjoy when in foreign countries.

Mr. Chairman, there is absolutely no justifiable reason to extend the judicial warrant requirement beyond situations where U.S. persons are targeted. To quote from the official position of the Department of Defense submitted to the committee on this matter:

> The extension of coverage beyond American citizens, corporations and associations adds substantially to the risks of compromise of important intelligence sources and methods without any concomitant benefit for Americans.
>
> If the bill covered only Americans, the President could exercise his inherent power with respect to foreigners.

Accordingly, I ask your support of the gentleman's amendment.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the administration opposes this amendment. I know of no one in the intelligence-collecting agencies of the Government who favors the amendment. This amendment was considered in the committee, and it was defeated.

What this amendment would do would be to delete the warrant requirements for all targets except—except U.S. persons. It sounds great; does it not? Most of the abuses, or a great number of the abuses, which occurred some years ago—and there is no sense in rehashing those years and that period, as I am sure all of us are familiar with it—a number of those abuses occurred, because it was possible to survey embassies, foreign embassies without warrants, pick up the names of American citizens, pick up information on them when they were communicating with these foreign powers and foreign embassies.

History shows and the record proves that oftentimes the information which was collected under the guise of surveilling foreign powers, foreign embassies, and consulates was used against American citizens. That is the reason why we have an across-the-board warrant in this bill. That is one of the reasons why it has been asked for not alone by the Carter administration but by the Ford administration. That is the reason why it is contained in the Senate bill, and that is the reason why the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO) came in here under a lot of personal pressure to voice his opinion and his support of this bill.

That is the reason why they support this bill, to protect the constitutional rights of American citizens and so that the pretext of gathering information without warrants could not be used in the future.

I would think that those of us who recall history and who are familiar with what happened in the past ought to remember, and so, Mr. Chairman, on that basis I think this committee ought to reject the amendment offered by the gentleman from Illinois (Mr. MCCLORY).

The amendment has been gone over thoroughly by this committee. It has been studied by the subcommittee chaired by the distinguished and able gentleman from Wisconsin (Mr. KASTENMEIER), and it has been gone over carefully by many others, including those who are in the intelligence-collection business of our Government itself and who are interested in gathering the best intelligence to protect our national security and who are concerned with our national interests. They do not favor this amendment. Does that not say something to us? It says something to me.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. Of course, I will yield to the gentleman from Illinois.

Mr. MCCLORY. Mr. Chairman, I thank the gentleman for yielding.

I do not know of any abuses that have occurred with respect to U.S. ciitzens in the last couple of years. I think the references the gentleman makes are to Joseph Kraft and Mortimer Halpern, and those were not cases in which we were eavesdropping on foreign powers or foreign agents. They were indeed violations of existing guidelines at that time; they were abuses.

But we always hark back to the wiretaps in the cases of Joseph Kraft and Mortimer Halpern and one or two others that occurred more than 2 or 3 years ago but which are wholly unrelated to the subject of my amendment at this time.

Mr. BOLAND. Mr. Chairman, in response to my friend, the gentleman from Illinois (Mr. MCCLORY), let me say I am not aware of any abuses which occurres over the last couple of years. I think people have learned something from history.

But I am sure that gentleman is familiar with the abuses that have occurred, not over the last couple of years, but maybe over the last 10 or 12 years or so, all of which have been emphatically delineated by the Church committee and by the Pike committee, and all of those involved matters in this area. Certainly the gentleman is familiar with those abuses. A lot of those abuses came as a result of tapping or surveilling foreign embassies or consulates of foreign powers.

Mr. MCCLORY. Mr. Chairman, if the gentleman will yield further, it is possible that information might come with respect to intercepting communications from foreign powers which are exempted here.

Mr. BOLAND. That is what we are trying to do, I will say to the gentleman from Illinois (Mr. MCCLORY). The very fact is that when we are surveilling foreign powers or foreign embassies or foreign consulates or what-have-you, and some American citizens are involved and their names are brought out, they are caught in the trap, they are caught in the sweep of the surveillance, and they ought to be protected. This bill protects them.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has expired.

(On request of Mr. STRATTON, and by unanimous consent, Mr. BOLAND was allowed to proceed for 3 additional minutes.)

Mr. STRATTON. Mr. Chairman, if the gentleman will yield, the gentleman's own committee is providing oversight and I have no quarrel to make with the committee's performance in that connection.

But the gentleman said a moment ago that some of the active intelligence officers were in support of this bill. I recall having the opportunity at the gentleman's invitation to sit in on the meetings, and when we had the heads of these intelligence agencies up in the gentleman's secure quarters discussing this bill, frankly, the impression I got was not one of enthusiasm.

What they said, the situation we are in now is chaotic because anytime anybody goes out to try to nail some foreign agent he gets arrested and has to go to court for violating some law.

Mr. BOLAND. We do not need a better argument than you are making here for the warrant. The FBI wants this.

Mr. STRATTON. If the gentleman will yield further, certainly this situation is better than what they are faced with now. But I think we need the best possible intelligence, and I do not think we will get it under this kind of an arrangement.

Mr. BOLAND. What we are trying to do is correct the situation with which we are faced now. We are losing, I think, some important intelligence, because we do not have this kind of legislation. And all of the intelligence community leaders agree with that.

Mr. STRATTON. We are trying to prevent the evils of the past, but we are forgetting about the problems of the future.

Mr. BOLAND. Let us correct the evils

of the past, because they might very well be the evils of the future.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman for yielding.

Mr. Chairman, is the gentleman saying that, under the provisions of the bill, the conversation that an American citizen may have with a foreign national, whether it be a consul, embassy, or wherever, will not be recorded by whatever type of electronic device is being used, because there is a warrant being used, they are not going to be recorded, is that what the gentleman is saying?

Mr. BOLAND. Oh, yes, they are picked up and they will be recorded.

Mr. VOLKMER. They will be recorded, wherever that occurs.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. BOLAND was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Then the protection that we are talking about is not preventing the recording of them?

Mr. BOLAND. That is right.

Mr. VOLKMER. Or the hearing of them by some agent at a later time. We are talking about the use of them, the dissemination and the destruction of them.

Mr. BOLAND. That is right.

Mr. VOLKMER. The difference between the two the gentleman really objects to is the fact that the McClory amendment does not provide for that destruction or the nonuse thereafter, not the actual recording?

Mr. BOLAND. The gentleman had discussions with the gentleman from Kentucky.

Mr. VOLKMER. Yes. I agree with that. The difference is that that is exactly the minimization by the court. There is a difference. And that is basically the problem the gentleman sees with the McClory amendment; is that right?

Mr. BOLAND. That is right.

Mr. VOLKMER. The question then is that if the McClory amendment provided for a certification like he has, but a minimization procedure like the gentleman has, then the gentleman would have no objection to it; is that correct?

Mr. BOLAND. Oh, no. I object to the McClory amendment because, as I have indicated, he would delete the warrant requirement for all targets except U.S. persons. He would require a warrant which would surveil U.S. persons. He would eliminate a warrant requirement for the surveillance of aliens, foreign powers, foreign embassies, consulates, or what have you. But the real problem occurs when information concerning U.S. persons is picked up. If it is a sweeping surveillance of foreign powers, foreign agencies, that is where the information with respect to U.S. persons is picked up, and that is where the damage is done.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has again expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. BOLAND was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Is the gentleman saying, then, that warrants will not be permitted in areas where U.S. citizens' conversations are involved—because 50 percent of them will be by U.S. citizens or foreign nationals here as permanent resident aliens—is the gentleman now saying that those warrants will not be issued? That is what I got from the gentleman from Kentucky, if he were the judge. I am afraid a wiretap on the telephone where there are quite a few conversations, or, let us say, a bugging device, transmitting device, is put in the reception room in the embassy where they had a lot of traffic of U.S. citizens, if he were the judge the gentleman from Kentucky would say no warrant under this policy.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, what the gentleman from Kentucky was endeavoring to say, perhaps lamely, from the floor a moment ago, was the fact that if the judge, having received the warrant application, finds there is going to be a succession of American citizens' calls or surveillances which occur, in a sense, incidental to the issuance of the main warrant, then I think the judge would have to sit down and say, "Well, you are really actually targeting American citizens under the guise of targeting a third party, so you better come back and tell me why you do not target American citizens directly and tell me how you intend to minimize these surveillances and what information you are looking for."

I think there is an essential difference here as to the gentleman from Illinois' amendment. There, I believe any minimization to be at the sufferance of the Attorney General. Here, we are talking about court approval for minimization, which means that if the court does sense that if there is a ruse being perpetrated it can expose that ruse.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Illinois.

Mr. McCLORY. I think it should be pointed out that the minimization applies whether the McClory amendment is adopted or not. The minimization is established and is put in place by the executive. It does, under the warrant requirement, require approval by the judge. In other words, a judge is going to decide whether or not minimization procedures are adequate. If he decides they are not adequate, they could go back and maybe reprogram the whole system with regard to minimization. This seems to be an absurd position.

Mr. ERTEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I would like to make a couple of points for clarification, and perhaps Mr. McCLORY could clarify these for me.

As I understand the bill, if we are targeting foreign nationals such as a foreign embassy, a trade mission, or an agent of a foreign government, we must have a warrant which is not based on probable cause, but on some other slippery sort of concept where the court would authorize a wiretap or bug or electronic surveillance of that embassy or foreign mission. In that procedure we would have minimization so that if an American citizen were encountered as a participant in a phone conversation or in a room of a trade mission, it would be minimized as far as the extent of knowledge of his activities were concerned, and there would be a destruction order and it could not be used. Is that correct?

Mr. McCLORY. Exactly. If it is unrelated that would apply, whether they have a warrant or do not have a warrant.

Mr. ERTEL. Under the gentleman's amendment, as I understand it, his amendment says that instead of going to the court to get a warrant which is based on a concept we are not really sure of because the bill does not set it out, that the Attorney General will actually issue a surveillance certificate saying they can surveil that foreign trade mission or embassy, or a building a foreign government owns, and he will set out in that surveillance certificate minimization procedures. He will also destroy information from American citizens; is that correct?

Mr. McCLORY. Yes; the Attorney General is an executive officer who is required to be confirmed by the Senate.

Mr. ERTEL. The only question then is, practically everything is basically the same, except that you need a warrant when you are targeting foreign citizens under the committee bill?

Mr. McCLORY. Exactly.

Mr. ERTEL. What we are doing then is giving the foreign embassies, the foreign trade missions, the foreign citizens, rights under our Constitution which our citizens may not, and in fact in most countries in the world, do not enjoy in those countries.

Mr. McCLORY. The gentleman is precisely right. What we are doing under this legislation, unless my amendment is adopted, is requiring a judicial warrant to issue before we could engage in any kind of electronic surveillance. This could be by telephone, by radio, by microwave, or by telephone interception. We would require the executive department, specifically the Attorney General, to ask a judge to decide whether or not such electronic surveillance should take place.

Mr. ERTEL. Can the gentleman tell me anyplace in the world where there are American citizens receiving this kind of protection from the interception of their communications when they are in a foreign country?

Mr. McCLORY. There is no such comparable situation throughout the rest of the world. I might say that foreign powers in this country will not be subjected to this kind of restriction. We will have Americans subjected to surveillance by foreign agencies in this country, even though the Americans will not be enabled to engage in electronic surveillance of foreign agents of foreign powers without judicial approval.

We will be in a completely absurd situation unless we adopt the McClory amendment which would exclude foreign powers and foreign agents from this warrant requirement.

Mr. ERTEL. I ask one further question, if the gentleman will be good enough to respond. Under the procedure set out by the Executive order today, do we not have basically the same thing, rights with respect to the American citizens? We have to as provided in your amendment for foreign citizens have certification of the Attorney General to surveil American citizens do we not?

Mr. McCLORY. Yes; we do have that.

Mr. ERTEL. So what we are doing by this legislation is giving foreign nationals, if we do not adopt this amendment, the rights American citizens have today. We are really protecting foreign nationals, foreign people in the United States, contrary to the exclusion of rights the American people have in foreign countries?

Mr. McCLORY. We are according by statutes to the foreign nationals rights which they constitutionally do not have, and we are giving rights to foreign agents and foreign powers which are superior to the rights of U.S. persons.

Mr. ERTEL. In other words, what we are doing today is expanding the fourth amendment type protection of the American Constitution, as interpreted by the circuit courts, and extending it to protect foreign nationals.

Mr. McCLORY. Exactly.

Mr. ERTEL. I support the gentleman's amendment. I think it makes sense not to extend those protections to foreign citizens which may work to the detriment of the American people.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment and I move to strike the last word.

The CHAIRMAN. Without objection the gentleman from Illinois is recognized for 5 minutes.

There was no objection.

Mr. MURPHY of Illinois. I cannot, Mr. Chairman, let that statement go by, that the fourth amendment only applies to American citizens. The Justice Department and the Attorney General in a number of instances have stated that the fourth amendment applies to everybody within the borders of the United States.

Mr. BOLAND. If the gentleman will yield, in fact the Supreme Court has said that very thing, that the fourth amendment does apply to people in the United States, to foreign visitors, teachers, athletes, and everybody else.

Mr. ERTEL. Does it apply to foreign embassies in the United States?

Mr. MURPHY of Illinois. To every person within the borders of the United States.

Mr. ERTEL. The foreign embassies I do not believe are considered to be American property.

Mr. LIVINGSTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

Mr. Chairman, I only want to point out at this time that I am just appalled by this discussion and amazed that this matter is before the floor, such as it is.

I sincerely support the amendment offered by the gentleman from Illinois.

Being a lawyer, and a former prosecutor with about 6 years experience and having also worked as a defense attorney in several cases, I think one of the most important things that faces the future of this country is certainly our national security. What we have before us right now is a bill that would threaten that security.

We can talk about it all we want, but essentially we are saying the United States will play by the Queensberry rules when our opponents will have all the weapons available to them that they might want to throw at us. I think that flies in the face of all reason and commonsense, and I think this amendment would rectify that problem.

Mr. RHODES. Mr. Chairman, will the gentleman yield?

Mr. LIVINGSTON. I yield to the gentleman from Arizona.

Mr. RHODES. Mr. Chairman, I share the gentleman's amazement that this bill was even brought to the floor. I do not know any other nation in the world that has legislation like this to protect foreign nationals.

I might ask the gentleman from Illinois, if he will respond to the question: Is there any other nation in the world that has legislation whereby the foreign agents in that nation are protected by the laws of that nation?

Mr. McCLORY. Mr. Chairman, if the gentleman will yield, let me say there is a great deal of concern about the privacy and the protection of individuals. This is also a concern of a number of other nations, especially in Western Europe. Through our laws at the present time we have provided for the protection of the interests of privacy and provided for minimization of any incidental interception which applies with respect to U.S. persons. But there is no nation in the world which requires the Executive to go to a special court or anything resembling that in order to exercise what is an executive function. The gentleman is exactly right.

Mr. LIVINGSTON. Mr. Chairman, if I might recapture my time, might I ask the gentleman from Illinois: Is there anything in this amendment which would detract from the rights of a person under the Constitution of the United States, the fourth amendment, or any other amendment of the Constitution of the United States?

Mr. McCLORY. No. My amendment only applies to foreign agents or foreign powers. Even if that provision is retained in the bill, a warrant will be required when there is a desire to engage in electronic surveillance of a U.S. person.

Mr. LIVINGSTON. And certainly the exclusionary rule of evidence would apply to a U.S. citizen, would it not?

Mr. McCLORY. It would, yes.

Mr. ZABLOCKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of H.R. 7308, as reported by the Intelligence Committee.

H.R. 7308 as pointed out by the chairman is a complex piece of legislation carefully designed to deal with an ever more complex problem. The members of the Intelligence Committee and the Judiciary Committee and all those who had a hand in its drafting deserve our commendation and thanks. The bill as reported deals with perhaps the most important task facing this Congress—how to reconcile the often competing interests of civil liberties and national security.

Mr. Chairman, H.R. 7308 is a bill that accomplishes both objectives. Furthermore it is a bill that legitimizes much needed but often maligned intelligence collection activities while being responsive to the privacy interests of the American people. I have come to this conclusion, although at one time, as our colleague, the gentleman from Illinois (Mr. McCLORY), I had some reservations about the legislation.

Mr. Chairman, H.R. 7308 is also a bill that has drawn the support of the White House, the Justice Department, and the U.S. intelligence agencies, the American Bar Association, Common Cause, the American Civil Liberties Union, the New York Times, the Washington Post, and the Chicago Tribune.

If nothing else, this broad-based support from such divergent groups demonstrates the deliberate care taken in drafting this legislation.

Because such care was taken, we now have before us a bill that in my opinion strikes precisely the right balance in furthering both privacy interests and security interests.

Though it is the proper balance, it is a delicate balance, and any tampering with it could result in the collapse of the whole structure. The bill's opponents should know this. They also know that as we rush toward adjournment, the time of the House is precious. We are thus faced with approximately 50 proposed amendments to a bill that has already been subjected to several years of detailed study by the Congress.

No more than a handful of these amendments contain any substance, and even these few, if passed, would impair the balance—without contributing to the national security.

I would implore the committee to keep this fact in mind when debating and amending this bill. Let us not throw away this chance to pass good legislation. Let us not tell American people that this

House cannot resolve the crucial issues facing it.

This is not a partisan bill. It is a good bill that will strengthen our intelligence collection capabilities. It is worthy of our support and I urge my colleagues to reject crippling amendments and vote aye on H.R. 7308.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman from Wisconsin (Mr. ZABLOCKI) for yielding to me. I appreciate the statement the gentleman has made. I might say that the precise amendment that I am offering now is an amendment for which the gentleman voted favorably in the committee. I just wondered what has transpired to change the gentleman's mind so that he now finds himself in opposition to the amendment?

Mr. ZABLOCKI. Yes, I voted for the gentleman's amendment. I am sure the gentleman will agree with me that consistency is the hobgoblin of little minds. It is not necessarily a virtue to stand fast and hold to a position and not to be pliant and change one's views or one's mind. After further study and consideration of the effect of the gentleman's amendment I changed my mind.

Mr. BOLAND. Mr. Chairman, if the gentleman will yield, before we put this particular amendment to bed I would just like to remind the members of the committee who are here that the warrant requirement for foreign embassies, or for trade missions, consulates or for whatever, that requirement which is in this bill—and I hope the members of the committee do not lose sight of this fact—is for the protection of American citizens too. I repeat, it is for the protection of American citizens.

Someone here asked whether there is any other country on the face of the globe that makes this sort of requirement? Probably not. Is there any other country on the face of the globe that has a Bill of Rights? England does not have one. They do not even have a Constitution, and a lot of the other countries do not.

I think we ought to keep our minds on the fact that the legislation requires a warrant for embassies and foreign powers where there is a likelihood that Americans will be involved, because they ought to have the protection that a warrant offers. So I hope we keep our eye on the ball.

That is precisely the reason that this bill requires a warrant for foreign embassies or trade missions or foreign powers where the likelihood of an American citizen's interests being involved is not present.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Illinois (Mr. McCLORY).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ASHBROOK. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 176, not voting 78, as follows:

[Roll No. 727]

AYES—178

| | | |
|---|---|---|
| Alexander | Fuqua | Mottl |
| Ambro | Gephardt | Murphy, Pa. |
| Anderson, Ill. | Gilman | Myers, Gary |
| Andrews, N.C. | Glickman | Myers, John |
| Andrews, N. Dak. | Goldwater | Nedzi |
| | Goodling | O'Brien |
| Applegate | Gradison | Poage |
| Archer | Grassley | Pritchard |
| Ashbrook | Gudger | Quayle |
| Badham | Guyer | Rahall |
| Bafalis | Hagedorn | Regula |
| Bauman | Hammer-schmidt | Rhodes |
| Beard, Tenn. | | Risenhoover |
| Bennett | Heckler | Robinson |
| Blanchard | Heftel | Rousselot |
| Bowen | Hightower | Rudd |
| Breaux | Hillis | Runnels |
| Brinkley | Holt | Ruppe |
| Broomfield | Horton | Sarasin |
| Brown, Mich. | Hubbard | Satterfield |
| Brown, Ohio | Ichord | Sawyer |
| Broyhill | Jenkins | Schulze |
| Buchanan | Jenrette | Sebelius |
| Burgener | Jones, N.C. | Shuster |
| Burleson, Tex. | Jones, Tenn. | Sikes |
| Butler | Kazen | Skelton |
| Carter | Kelly | Slack |
| Cederberg | Kemp | Smith, Nebr. |
| Clausen, Don H. | Kindness | Snyder |
| | Lagomarsino | Spence |
| Cleveland | Latta | Staggers |
| Cohen | Leach | Stangeland |
| Coleman | Lent | Stanton |
| Collins, Tex. | Livingston | Steed |
| Conable | Lloyd, Calif. | Stockman |
| Conte | Lloyd, Tenn. | Stratton |
| Corcoran | Lott | Taylor |
| Coughlin | Lujan | Thornton |
| Crane | Luken | Treen |
| Cunningham | McClory | Trible |
| D'Amours | McCormack | Vander Jagt |
| Daniel, Dan | McDade | Volkmer |
| Daniel, R. W. | McDonald | Waggonner |
| Davis | McEwen | Walgren |
| de la Garza | McKay | Walker |
| Derwinski | McKinney | Walsh |
| Devine | Madigan | Wampler |
| Dingell | Mann | Watkins |
| Duncan, Tenn. | Marlenee | White |
| Edwards, Ala. | Marriott | Whitehurst |
| Edwards, Okla. | Martin | Whitley |
| Emery | Mathis | Whitten |
| English | Michel | Wilson, Bob |
| Ertel | Milford | Wilson, Tex. |
| Evans, Del. | Miller, Ohio | Winn |
| Evans, Ga. | Mitchell, N.Y. | Wolff |
| Evans, Ind. | Mollohan | Wylie |
| Fish | Montgomery | Yatron |
| Flynt | Moore | Young, Fla. |
| Fountain | Moorhead, Calif. | Young, Mo. |
| Frenzel | | |

NOES—176

| | | |
|---|---|---|
| Addabbo | Brodhead | Early |
| Akaka | Brooks | Eckhardt |
| Anderson, Calif. | Brown, Calif. | Edgar |
| | Burlison, Mo. | Edwards, Calif. |
| Annunzio | Burton, John | Eilberg |
| Aspin | Burton, Phillip | Fary |
| AuCoin | Carney | Fenwick |
| Baldus | Carr | Findley |
| Barnard | Cavanaugh | Fisher |
| Baucus | Collins, Ill. | Fithian |
| Beard, R.I. | Conyers | Florio |
| Bedell | Corman | Foley |
| Benjamin | Cornell | Ford, Tenn. |
| Biaggi | Cotter | Fowler |
| Bingham | Danielson | Gammage |
| Blouin | Delaney | Gaydos |
| Boggs | Dellums | Giaimo |
| Boland | Dent | Ginn |
| Bolling | Derrick | Gonzalez |
| Bonior | Dicks | Gore |
| Bonker | Dodd | Green |
| Brademas | Downey | Hall |
| Breckinridge | Drinan | Hamilton |
| Hanley | Metcalfe | Roe |
| Hannaford | Meyner | Rogers |
| Harkin | Mikulski | Roncalio |
| Harris | Mineta | Rose |
| Hefner | Minish | Rosenthal |
| Holland | Mitchell, Md. | Roybal |
| Hollenbeck | Moakley | Russo |
| Holtzman | Moffett | Ryan |
| Howard | Moorhead, Pa. | Santini |
| Hughes | Murphy, Ill. | Scheuer |
| Jacobs | Murtha | Schroeder |
| Johnson, Calif. | Myers, Michael | Seiberling |
| Jones, Okla. | Natcher | Sharp |
| Jordan | Neal | Simon |
| Kastenmeier | Nix | Solarz |
| Keys | Nolan | Spellman |
| Kildee | Nowak | St Germain |
| Kostmayer | Oakar | Stark |
| Krebs | Oberstar | Steers |
| LaFalce | Obey | Stokes |
| Le Fante | Ottinger | Studds |
| Lederer | Panetta | Thompson |
| Levitas | Patten | Traxler |
| Long, La. | Patterson | Tucker |
| Long, Md. | Pease | Udall |
| Lundine | Perkins | Van Deerlin |
| McCloskey | Pickle | Vanik |
| McFall | Pike | Vento |
| McHugh | Preyer | Waxman |
| Maguire | Price | Weaver |
| Mahon | Pursell | Weiss |
| Markey | Railsback | Whalen |
| Marks | Rangel | Wright |
| Mattox | Reuss | Yates |
| Mazzoli | Rinaldo | Zablocki |
| Meeds | Rodino | Zeferetti |

NOT VOTING—78

| | | |
|---|---|---|
| Abdnor | Flowers | Pepper |
| Ammerman | Ford, Mich. | Pettis |
| Armstrong | Forsythe | Pressler |
| Ashley | Fraser | Quie |
| Beilenson | Frey | Quillen |
| Bevill | Garcia | Richmond |
| Burke, Calif. | Gibbons | Roberts |
| Burke, Fla. | Hansen | Rooney |
| Burke, Mass. | Harrington | Rostenkowski |
| Byron | Harsha | Shipley |
| Caputo | Hawkins | Sisk |
| Chappell | Huckaby | Skubitz |
| Chisholm | Hyde | Smith, Iowa |
| Clawson, Del | Ireland | Steiger |
| Clay | Jeffords | Stump |
| Cochran | Johnson, Colo. | Symms |
| Cornwell | Kasten | Teague |
| Dickinson | Krueger | Thone |
| Diggs | Leggett | Tsongas |
| Dornan | Lehman | Ullman |
| Duncan, Oreg. | Mikva | Wiggins |
| Erlenborn | Miller, Calif. | Wilson, C. H. |
| Evans, Colo. | Moss | Wirth |
| Fascell | Murphy, N.Y. | Wydler |
| Flippo | Nichols | Young, Alaska |
| Flood | Pattison | Young, Tex. |

Messrs. BREAUX, DINGELL, and BRINKLEY changed their vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MURPHY OF ILLINOIS

Mr. MURPHY of Illinois. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MURPHY of Illinois: On page 38, after line 24 add the following:

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

Mr. MURPHY of Illinois. Mr. Chairman, this is essentially a technical amendment intended to correct an omission in the language of the committee reported bill.

The bill contains several references to "state", but the term was nowhere defined therein. A definition is necessary

since the District of Columbia, Puerto Rico, and territories and possessions are not usually encompassed by the word "State".

It is my understanding that the gentleman from Illinois (Mr. McCLORY) does not oppose this amendment.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to my colleague from Illinois.

Mr. McCLORY. Mr. Chairman, we have examined the amendment. It is a technical amendment, as the gentleman states, and there is no objection to the amendment.

Mr. MURPHY of Illinois. I appreciate the gentleman's remarks.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MURPHY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCLORY: Page 32, strike out lines 4 through 25 and insert in lieu thereof the following:

(2) any person who—

(A) knowingly engages in clandestine intelligence activities for or. on behalf of a foreign power under circumstances which indicate such activities are or may be contrary to the foreign policy or security interests of the United States;

(B) knowingly engages in sabotage or international terrorism, or activities in preparation therefor, for or on behalf of a foreign power; or

(C) conspires with or knowingly aids or abets any person to engage in any activity described in subparagraph (A) or (B).

Mr. McCLORY. Mr. Chairman, what this amendment does is to eliminate the criminal standard with respect to intelligence-gathering activities, and to substitute language which provides that where a person is engaged in clandestine intelligence activities, whether he is a U.S. person or not, under circumstances which would indicate that his activities would be contrary to the foreign policy or security interests of the United States, that nevertheless he can be subjected to electronic surveillance.

This amendment, is important not only because it strikes from the bill wording which could negatively impact on our intelligence agencies' abilities to gather foreign intelligence information, but also because it would modify the tone of the bill so that it would be in keeping with its purpose—that is not to enforce Federal criminal statutes, but rather to regulate the use of electronic surveillance to gather foreign intelligence information.

Just as with the warrant procedure, the need for a criminal standard is nowhere to be found in the Constitution when the Government seeks to gather foreign intelligence information. The Supreme Court has recognized as recently as this past term in a case involving OSHA searches—Marshall against Barlows, Inc.—that the fourth amendment's probable cause provision does not require that all warrants be based on a finding of probable criminal activity.

Therefore, if a warrant is not required for this type of electronic surveillance—as the proponents of H.R. 7308 apparently admit—and if, as the Supreme Court has recognized—and as Attorney General Bell has testified—a warrant without a criminal standard can comport with the fourth amendment, then including in this bill a warrant requirement with a criminal standard is simply piling one overprotection and unnecessary requirement on top of another.

One very puzzling aspect of the genesis of the criminal standard in this bill is that when the other body was considering this bill's companion—S. 1566—in its Judiciary Committee Attorney General Bell testified that he opposed the criminal standard and posited six hypothetical situations in which it was the position of the Justice Department that a criminal standard would preclude the otherwise legitimate use of foreign intelligence electronic surveillance.

Judge Bell also testified against the criminal standard before the other body's Intelligence Committee:

When a United States person furtively, clandestinely collects or transmits information or material to a foreign intelligence service pursuant to the direction of a foreign intelligence service and where the circumstances surrounding this activity indicate that the transmission of the material or information would be harmful to our security or that the failure of the government to be able to monitor such activity would be harmful to the security of the United States, then I believe that whether or not that activity is today a violation of our criminal statutes, the Government has a duty to monitor that activity to safeguard the security and welfare of the Nation. There is a certain danger in extending the criminal law, the purpose of which is to prosecute, convict and normally incarcerate the perpetrator, merely to satisfy the priniciple that electronic surveillance should not be undertaken absent a criminal violation.

Apparently the Justice Department now supports a criminal standard though I am unaware of any public statement made by the Department that its past statements were in error.

If a criminal standard was unwise then because it precluded under certain circumstances the legitimate use of foreign intelligence electronic surveillance, then it seems to me that it is still unwise.

Now, it is clear to those who understand intelligence activities and capabilities that most intelligence relates not to criminal activities, but solely to the subject of gathering information which may be useful to our Nation. This kind of information may relate to the condition of the crop year or the harvest in some foreign country. It may relate to the development of some kind of a foreign aircraft or a new type of arms.

It does not necessarily relate to any criminal activity. Consequently, all that this amendment does is to eliminate the criminal standard with respect to electronic surveillance. It seems to me this is essential for the conduct of our intelligence activities, and that this is an amendment that should be adopted by the committee.

I know that the subject of a criminal standard is one that is sought by some of the civil liberties groups. They feel that no intelligence activity should be carried on unless a crime has been committed or is about to be committed. If we defer all intelligence gathering until somebody is about ready to commit a crime, we are going to be left without information which we need for our own national protection. It seems to me this is a vital amendment, which will make this a much better bill.

I might say the amendment we have already adopted enables this legislation to coincide with the recommendations of the former Director of the CIA, Bill Colby, and many others who have given attention to this subject. The fact that we will not require a warrant with regard to the targeting of foreign embassies and foreign powers is an intelligent decision for this body to make, and it would likewise be intelligent for us to decide not to require a criminal standard in order to gather intelligence information which might be useful to our own protection.

Mr. MANN. Mr. Chairman, I rise in opposition to the gentleman's amendment. The so-called criminal standard contained in H.R. 7308 represents a reasonable and proper solution to a complex problem, a problem which at one time seemed insoluble.

As introduced both in the Senate and the House, this legislation would have authorized a judge to approve the wiretapping of American citizens and permanent resident aliens even though no connection whatsoever with possible criminal activity had been demonstrated. This provision was adamantly opposed, and rightly so, by those who either felt that it was unconstitutional or felt as a matter of principle that there should be a higher standard for searching American citizens and permanent resident aliens.

On the other hand, both Attorney General Levi and Attorney General Bell, as well as many Members of Congress, were just as adamant, and again rightly so, in their belief that a rigid criminal standard would prevent the FBI from conducting much of the investigatory work which is so essential in counterintelligence activity.

This issue came to a head just as the House and Senate Intelligence Committees were preparing to begin markup on this legislation. After several weeks and many hours of discussion among the Attorney General, the FBI, the House and Senate Intelligence and Judiciary Committees, and civil liberties groups, consensus agreement was reached, one that in my judgment strikes that elusive and delicate balance between protecting individual liberties and giving our intelligence agencies the tools they need to protect our country. That agreement is reflected in the committee reported language. It is language which is accept-

able to civil liberties groups and which is preferred by the FBI.

The provision contains two sections. The first section deals with U.S. persons who are engaged in "clandestine intelligence gathering activities," meaning espionage. As the Intelligence Committee report notes:

Probably the most critical term in this provision is "clandestine intelligence gathering activities." It is anticipated that most clandestine intelligence gathering activities will constitute a violation of the various Federal criminal laws aimed at espionage either directly or by failure to register. . . . The term "clandestine intelligence gathering activities" is intended to have the same meaning as the word espionage in normal parlance, rather than as a legal term denoting a particular criminal offense. The term also includes those activities directly supportive of espionage such as maintaining a "safehouse," servicing "letter drops," running an "accommodation address," laundering funds, recruiting new agents, infiltrating or exfiltrating agents under cover, creating false documents for an agent's "cover," or utilizing a radio to receive or transmit instructions or information by "burst transmission."

To authorize the wiretapping of U.S. persons suspected of engaging in such activity, the judge must find probable cause to believe that the activity "may involve" a criminal violation. This is a great deal less than the probable cause required to obtain a law enforcement search warrant. There is no requirement that the person be actively engaged in the commission of a crime, or even that he is about to be so engaged.

What type of criminal might be encompassed in this standard?

This is what led Senator GARN to note the following during Senate floor debate on S. 1566, and I quote:

Mr. President, many of us have been concerned that the adoption of a criminal standard would make it impossible for the FBI to get a court order for surveillance of people obviously engaged in traditional spying activity. For example the FBI might observe someone making "drops," and then known Soviet intelligence agents coming along and picking up what was dropped. This is traditional spying tradecraft, but the FBI cannot determine what information is being secretly transmitted to the intelligence agents. That is the kind of case where a judge might not find probable cause that a specific crime is about to be, or will be, committed. However, the standard requiring probable cause that the activity may involve a crime would allow surveillance in such cases. Therefore, I support the new standard because it provides enough flexibility to deal with the real problem faced in counterintelligence investigations. I agree with my colleagues that the standard is intended to deal with what we traditionally call spying activities.

This point is further elaborated in the language of the report of the House Intelligence Committee, and again, I quote:

This "may involve" standard replaces the previous noncriminal standard which appeared in H.R. 7308, as introduced. Both the former provision, and the "may involve" standard, address the same problem. The committee has concluded that it is necessary in order to permit the Government to investigate adequately in cases such as those where Federal agents have witnessed "meets" or "drops" between a hostile foreign intelligence officer and a citizen who might have access to highly classified or similarly sensitive information; information is being passed, but the Federal agents have been unable to determine precisely what information is being transmitted. Such a lack of knowledge would of course disable the Government from establishing that a crime was involved or what specific crime was being committed. Nevertheless, the Committee believes that the circumstances might be such as to indicate that the activity may involve a crime. The crime involved might be one of several violations depending, for example, upon the nature of the information being gathered.

In addition to the espionage and the foreign agent registration laws, other criminal laws whose possible connection to the U.S. person's activities would justify a wiretap under the "may" standard are the interstate transportation of stolen property statute and the Export Administration Act. Thus, those engaged in collecting industrial or technological information which, if disclosed to a foreign power, might present a threat to the national security, could be wiretapped.

The second section of the "criminal standard" deals with U.S. persons engaged in "other clandestine intelligence activities," that is, activity other than those connected with spying or espionage. As has been pointed out, these other activities are meant to include covert actions, propaganda, lobbying, and other actions designed to influence events in this country. As was noted by former Director Colby in his testimony before the Judiciary Committee, this is a gray area where it is sometimes difficult to distingush between legitimate activity protected by the first amendment and unprotected intelligence operators. For this reason, the standard here is higher, and the judge must find probable cause that the actions of the U.S. person "involve or are about to involve" a criminal violation.

Obviously, this standard would be more difficult to meet. However, the FBI has repeatedly stated that it has no objection to this provision. The Bureau is almost totally concerned with intelligence gathering and the lower standard of "may involve" is thus applicable to the area of greatest need for counterespionage coverage.

In summary, I believe that the criminal standard as reported by the Intelligence Committee, as does the whole bill, fully protects both our civil liberties and our national security, and I oppose any attempt to change it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MCCLORY).

The amendment was rejected.

AMENDMENT OFFERED BY MR. DRINAN

Mr. DRINAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DRINAN: Page 40, strike out lines 9 through 23 and insert in lieu thereof the following:

(3) (A) The Attorney General may not require any communication common carrier to provide the Government with any information, facilities, or technical assistance with respect to any electronic surveillance authorized under this subsection.

(B) Any communication common carrier voluntarily providing any such information, facilities, or technical assistance—

(i) shall maintain any records concerning the surveillance or any such assistance which such common carrier wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence; and

(ii) shall be compensated for providing such information, facilities, or technical assistance by the Government at the prevailing rate.

Page 50, strike out lines 3 through 21 and insert in lieu thereof the following:

(B) that any communication common carrier, supplier of communications facilities or devices, landlord, custodian, or other person voluntarily providing to the Government any information, facilities, technical assistance, or access to premises with respect to the electronic surveillance shall maintain any records concerning the surveillance or any such assistance which such person wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence; and

(C) that any such communication common carrier, supplier of communications facilities or devices, landlord, custodian, or other person voluntarily providing to the Government any information, facilities, technical assistance, or access to premises with respect to the electronic surveillance shall be compensated therefor by the Government at the prevailing rate.

Page 55, after line 22, insert the following new subsection:

(h) An order under this section authorizing electronic surveillance may not require any communication common carrier, supplier of communications facilities or devices, landlord, custodian, or other person to provide the Government with any information, facilities, technical assistance, or access to premises to accomplish the authorized surveillance.

Mr. DRINAN. Mr. Chairman, this amendment removes those provisions of H.R. 7308 which grant to the Government the unprecedented authority to compel private citizens and corporations to provide unlimited assistance to intelligence agencies in all electronic surveillance related to foreign intelligence.

This amendment is commonly referred to as a "conscience clause," as it will permit any individual or corporation to follow its conscience and refuse to provide assistance to the Government in its surveillance activities. While every citizen owes some degree of loyalty to the U.S. Government, it is inconceivable that this loyalty extends so far as to embrace all matters related to electronic surveillance. The Government may spy if it must, but it does not have the right to force private citizens to help.

The Bell Telephone System strongly objects to this open-ended Government authority to force private individuals and corporations to provide assistance in surveillance activities. The Bell System has stated:

Certain language in the pending Senate and House bills could be interpreted to require greater telephone company involve-

ment such as: the placing of all cross connections; the furnishing of monitoring equipment; the use of telephone company identification cards to gain access to customer premises; or even the use of telephone company personnel. We feel that such a direct role in electronic surveillance is in drastic conflict with our responsibility for safeguarding the privacy of our customers.

As presently worded, section 102 of H.R. 7308 gives the intelligence agencies a blank check with which they can elicit any kind of assistance they desire from private citizens. This is in contrast with the kind of authority which the Government possesses in its domestic electronic surveillance. There, the Government can require the provision of information as to cables and terminals and, when requested by the Government, a private line channel from the terminal serving the telephone line under investigation to a terminal serving the listening post used by law enforcement personnel. The same standard applies to foreign intelligence surveillance, based upon authorizations by the Attorney General.

Section 102 would give the intelligence agencies the power to compel telephone company personnel, private security officers, or others to actually install, connect, and operate the electronic listening devices. The Bell Telephone Co. clearly does not wish to become an active partner with the intelligence agencies. Their objections to the language of section 102 of H.R. 7308 cannot be discounted.

In a more general sense, there is serious doubt as to the need for the broad authority to compel assistance from private citizens which H.R. 7308 provides to the Government. An individual or corporation which objects on moral or other grounds to a request by the Government for aid in the establishment or operation of a wiretap should, if at all possible, be able to refuse. In most instances, the Government could find another individual to provide the needed assistance. The only exception which comes to mind is the telephone company, which has already demonstrated its willingness to help in the provision of access to cables and terminals. Removal of the compulsory nature of section 102 would not seriously jeopardize the ability of the Government to conduct surveillance, but it would remove a potentially dangerous capability to force citizens to aid in wiretapping.

Mr. Chairman, we are all familiar with the very strong feeling by the American people that Government has become too large and too intrusive into their lives. If we are really serious about limiting unnecessary intrusions by the Federal Government, we will adopt this amendment and remove the very objectionable and intrusive power which H.R. 7308 grants the intelligence agencies.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, it is no secret the gentleman who offers this amendment considers electronic surveillance of any kind to be "dirty business." He has said this on many occasions. His position is well known. He now offers what he calls a conscience clause to this legislation.

In effect, he has put the decision as to whether or not foreign intelligence information will be collected not with the President, not with the judge, but with private telephone companies or landlords or other people who have been ordered to cooperate with the Government. It should be self-evident that if common carriers or other persons cannot be compelled to help the Government in conducting lawful foreign intelligence surveillances, such needed intelligence will not be collected in this country. That result is not in the interest of the Government nor of the individuals which this amendment purports to protect nor of the protection of civil liberties.

Taking the last point first, the Government cannot be assured of the cooperation of common carriers and others under this amendment. The result will be many more inadvertent interceptions as agents search for the right wire. That is exactly what the gentleman seeks to avoid, among other things.

Mr. Chairman, the telephone company and others have not asked for this amendment. They are willing to cooperate with the Government on the basis of a statutory warrant. The bill gives them immunity if they cooperate under the terms of a court order or Attorney General's order. If, however, they are given the opportunity to determine whether they will cooperate or not, can it be said that they retain their immunity since they cooperate, if at all, under their own volition? Further, this amendment removes any directive language from an order under the bill. Yet, the immunity clause is tied to the order. It just does not make sense.

Mr. Chairman, this amendment also eliminates the requirement that surveillances under this bill be accomplished in such a manner as to protect their secrecy. I am sure that there is no doubt in the minds of Members that these surveillances involve very sensitive national security matters which must be safeguarded from compromise. Eliminating this language puts in doubt whether or not they will remain secret and must be opposed.

Mr. Chairman, the effect of this amendment is not to significantly improve any rights or privileges for U.S. citizens. On the contrary, what it really does is make it possible that inadvertent surveillances of U.S. persons will occur and that important foreign intelligence information will not be collected. That combination is a very objectionable one, and on those grounds, I urge its defeat.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

I would just like to commend the gentleman on his statement. I think he made a series of very important points in opposition to the gentleman's proposal. I think one of the most important is the immunity which is granted to these individuals, the landlords, and the telephone people. It might be well for the gentleman to emphasize to the House that these people, if they follow the instructions in the warrant, Mr. Chairman, are exempt from any liability; am I correct?

Mr. MURPHY of Illinois. If they perform their duties in good faith pursuant to the warrant, they are protected under the bill.

Mr. MAZZOLI. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The question was taken; and on a division (demanded by Mr. DRINAN) there were—ayes 6, noes 35.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer my amendment No. 4 which appeared in the RECORD on August 2, 1978.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 33, line 3, insert "or property" after "life".

Mr. ASHBROOK. Mr. Chairman, my amendment would expand the definition of "international terrorism" by describing it in terms of "acts dangerous to human life and property." The definition, as presently written, only refers to acts "dangerous to human life."

Terrorism is a violent act against noncombatants for a political purpose. However, it does not have to be against a person. Terrorism can also involve violent acts directed toward property. For instance, if a terrorist group threatened to blow up the Washington Monument unless certain actions were taken by the U.S. Government, this activity should be considered under the definition as "terrorism." In addition, the group that bombs an empty building today, could bomb an inhabited one tomorrow. The intelligence agencies should not be prevented from electronic surveillance because no one has been killed yet.

Mr. MURPHY of Illinois. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the committee has examined this amendment. We have been in consultation with members of the Committee on the Judiciary and members of the Permanent Select Committee on Intelligence, and we neither support nor oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment entitled "amendment No. 1," which also appeared in the August 2, 1978, CONGRESSIONAL RECORD.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 31, line 17, strike out "or".

Page 32, after line 3, insert the following new subparagraph:

"(C) There is a reason to believe has information which relates to the foreign policy or security interests of the United States; or".

Mr. ASHBROOK. Mr. Chairman, the purpose of this amendment is to enable our intelligence services to gather information from foreigners who may have information that relates to the foreign policy or security interests of the United States.

There is no expectation by most foreigners that their electronic communications are secure in their own countries, let alone this one. Positive intelligence gathering is a common practice all over the world. There is no reason that our country should be denied this valuable tool.

I am not suggesting in any of my amendments that the intelligence agencies must target everyone who falls into a particular category. Only that they have the opportunity where necessary. I want to make sure that we do not lose vital intelligence because the person holding it falls through the cracks in this legislation. Under this bill those activities not specifically permitted are forbidden. Therefore, the authorization should be broad enough to cover any eventual need for intelligence purposes.

Mr. MAZZOLI. Mr. Chairman, I rise in opposition to the amendment.

H.R. 7308 contains two standards authorizing surveillance of agents of foreign powers who are not U.S. persons, neither of which requires a nexus with criminal activity.

Section 101(b)(1)(A)—page 31, lines 16 and 17—defines an agent of a foreign power as any non-U.S. person who acts in the United States as an officer, member, or employee of a foreign power. All the court does is determine if the person is in this status.

Section 101(b)(1)(B)—page 31, lines 18 to 25; page 32, lines 1 to 3—authorizes surveillance of a foreign visitor if the country for which the visitor acts engages in clandestine intelligence activity in the United States, and the foreign visitor is in a class that in the past has engaged in intelligence activities in the United States, or other circumstantial or direct evidence can show that the foreign visitor may engage in such activities in the United States. No specific showing has to be made about the activities of the particular foreign visitor to be surveilled. Thus, for example, a Soviet seaman entering one of the many U.S. ports open to him could be surveilled upon no other showing than that he is a Soviet seaman.

The gentleman's amendment would go further and allow surveillance by electronic means of any foreigner visiting the United States upon no other showing than someone's "reasonable belief" that the visitor has information relating to the foreign policy of the United States.

This is no standard at all. What, in today's world, does not relate to the foreign policy of the United States? Does not every conversation a Member of Congress has with a prominent foreign visitor relate to the foreign policy of the United States?

I oppose the gentleman's amendment.

In the first place, the existing executive branch guidelines, authored by Attorney General Levi, do not permit such indiscriminate surveillance of foreign visitors. The FBI does not now engage in such indiscriminate surveillances, has not for a long time, and does not now wish to do so. It has not asked for this amendment. In fact, the existing language was inserted at the insistence of the Bureau.

Second, such surveillances are largely nonproductive and not worth the expense and manpower involved. Any useful information that the nongovernment related foreign visitor may possess can better be obtained by means other than electronic surveillance conducted in the United States.

Third, there is the basic policy issue of whether the United States wishes to announce to all nations that any of their citizens visiting our shores, for whatever purpose, will be subjected to indiscriminate electronic surveillance. To answer that the Russians do it is to beg the questions, and it suggests our willingness to suspend those attributes of our democracy that in fact distinguish us from the Russians.

Fourth, to lower the bill's standards to authorize a surveillance of any foreign visitor "reasonably believed" to possess information relating to the national security or foreign relations of the United States is to suggest no standard at all, and would undermine a basic purpose of the legislation—to establish objective legislative standards to guide the actions of both executive officials and judges.

The amendment is not necessary.

It runs counter to bill's purpose to help restore integrity to actions of intelligence agencies.

Finally, as was the case in the Senate, the existing provision was written in direct response to FBI testimony.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I thank the gentleman for yielding, and I asked the gentleman to yield so that I could ask him a question, actually, because, tracking the Ashbrook amendment with the recently adopted McClory amendment, the recently adopted McClory amendment takes non-U.S. persons out of foreign protection, throws them in this category, in any event, and I suspect that this is a totally meaningless, useless addition to the language of the bill.

Mr. MAZZOLI. Mr. Chairman, I think that is an interesting point which the gentleman brings up. I think it makes a further case. To sum up my time, Mr. Chairman, we have tried—and the gentleman from Ohio was there—to draft a bill which would leave the judges in the special court in a position where they had severe and understandable and focused guidelines to which they could refer in determining the status of an individual, foreign power, U.S. person, visitor, what have you. I think the gentleman would expand that to sort of a subjective situation rather than the objective situation which we attempted to draft in our bill. We place the judge in the position of trying to crawl inside his head to find out what he is in America for, and I think it makes it much more difficult for the judge on the special court to do his job.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I thank the gentleman for yielding because I particularly wanted to respond to what my very learned colleague, the gentleman from Wisconsin (Mr. KASTENMEIER), has stated. There is only one problem with his argument.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, I yield further to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Chairman, there are two tracks to the bill, one relating to warrants and one relating to purposes for which there could be surveillance.

The McClory amendment changed the portion which related to warrants, but you still have standing those individuals or entities who can be surveilled, and that is why I am adding this. So it certainly is not meaningless. Without this amendment, as I read the bill, you would not be entitled to surveil them because they do not come under the area where you are authorized. That is the thing that bothers me most about this legislation. Anything which is not specifically authorized is prohibited. My amendment would authorize the surveillance of foreign nationals where the intelligence-gathering agency has reason to believe that they have information which relates to our security interests or which relate to espionage.

Mr. MAZZOLI. Mr. Chairman, without predetermining what the gentleman from Wisconsin might say in rebuttal, I would say that the amendment of the gentleman from Ohio might be understandable to him, and I am sure it could, if he were on the special court or in charge of these, be quite easy to apply subjectively.

But, it does seem to me that there is some very broad language in this amendment which is subjective and which require value judgments on the part of the individual who would be in charge of the warrant process or the surveillance. I think that is all we endeavored to avoid. I think we attempted to avoid that in the way we drew the bill, so that there would be very few opportunities to have subjective judgments, but there would be a referral to the guidelines.

Mr. ASHBROOK. What my colleague has said is absolutely correct. I think the only problem, looking at it from the intelligence gathering operations viewpoint, is that we cannot possibly put them in a position of having to know what they are going to get before they

get it. Intelligence quite often is something that comes about piece by piece, and I do not think we can require that they absolutely know.

Mr. McCLORY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I think one of the most significant statements that has been made and one of the most important efforts which has been undertaken, at least as expressed by the majority of the committee, is that this a carefully crafted and a very carefully worked out piece of legislation. It seems to me the amendment offered now by the gentleman from Ohio really fills an obvious defect, an omission in the bill which on careful consideration should be included at this time.

This was brought out very forcefully to the subcommittee chaired by the gentleman from Wisconsin (Mr. KASTENMEIER) when the former Director of the CIA, Mr. Colby, appeared before the committee. He pointed out, as the gentleman from Ohio has pointed out, that if this is to be the legislation authorizing electronic surveillance of foreign agents and foreign powers, as the bill is now amended, then of course we should include these individuals, these officers, and these other persons who otherwise are excluded from the legislation. Mr. Colby stated in his testimony before the Judiciary Committee, as follows:

> The principal responsibility of our intelligence services is to learn and understand the political, strategic, economic, and sociological forces, factions and dynamics in the world around us . . . large numbers of citizens of such nations visit the United States and have information of this type in their minds. To the extent that these secrets are not available openly, I believe it only wise and prudent to endeavor to obtain such information from them clandestinely here in America rather than going abroad to search for it.

It is important to note that a change in the definition of "agent of a foreign power" to allow positive intelligence gathering does not mean that every friendly foreign tourist or businessman would be subject to electronic surveillance in the United States. Information about free and open countries can be collected through perfectly normal means of inquiry, through publications and otherwise, but it is only when these nations engage in secreting their information that we have to indulge in electronic surveillance.

So, that is why it is extremely important to our intelligence agencies that the definition of foreign agents be enlarged, as the amendment offered by the gentleman from Ohio would do, so that this legislation may truly assist our intelligence agencies.

It is certainly not going to adversely affect any interest whatever of any American citizen or any U.S. person. It is only directed at foreign agents, and it seems to me to limit the definition to the extent that we might be limited from engaging in legitimate electronic surveillance, especially with regard to important information we should have. I would hope that the amendment would be accepted by the majority.

Mr. Chairman, a serious flaw exists in the definition of "agent of a foreign power" in that officers and employees of a foreign power not so acting in the United States are excluded from the definition. In the Intelligence Committee's report on the definition, it is clearly spelled out that this omission is deliberate, as noted on page 34:

> The definition excludes persons who serve as officers or employees or are members of a foreign power in their home country but do not act in that capacity in the United States * * * It is not intended to encompass such foreign visitors as professors, lecturers, exchange students, performers or athletes * * * The term "member" means an active knowing member of the group or organization which is a foreign power. It does not include mere sympathizers, fellow travelers, or persons may have merely attended meetings of the group or organization.

This exclusion precludes executive officials from collecting valuable positive foreign intelligence in the United States from foreign scientists, professors and businessmen, and so forth. There is no evidence that any other foreign country so limits its intelligence capabilities, and, in fact, we do not so limit out capabilities abroad.

Former CIA Director, William Colby, in testimony before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, pointed out that intelligence has the important function of collecting positive information through the fortuitous presence here of foreigners. As Mr. Colby stated:

> The principal responsibility of our intelligence services is to learn and understand the political, strategic, economic, and sociological forces, factions and dynamics in the world around us * * * large numbers of citizens of such nations visit the United States and have information of this type in their minds. To the extent that these secrets are not available openly, I believe it only wise and prudent to endeavor to obtain such information from them clandestinely here in America rather than going abroad to search for it.

It is important to note that a change in the definition of "agent of a foreign power" to allow positive intelligence gathering does not mean that every friendly foreign tourist or businessman would be subject to electronic surveillance in the United States. Information about free and open countries can be collected through perfectly normal inquiry and assembly of publications, involving no clandestine effort whatsoever. Thus electronic surveillance would only be needed with respect to countries in which such material is held in secret.

It is clear that the exclusion of officers and employees from the definition of "agent of a foreign power" does nothing to protect the rights of American citizens, while it does, in fact, severely handcuff the Nation's foreign intelligence gathering capabilities. I, therefore, urge my colleagues to support the amendment that would allow positive intelligence gathering by the United States.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I appreciate the gentleman yielding, and I appreciate the sincere efforts he has been making over these past few months at trying to write a bill, but would the gentleman not agree virtually any foreign visitor to the United States from any foreign land whatever would under the terms of the gentleman's amendment be subject to surveillance?

Mr. McCLORY. I would say only to the specific extent the definition is enlarged. It seems to me we do want to include those individuals and engage in surveillance of them. It expands the definition and enlarges the scope for the intelligence agencies, as former Director Colby called to our attention we should do.

Mr. MAZZOLI. If the gentleman will yield further, with all due regard to Director Colby, that is his profession, and I would think any intelligence officer would want to include anybody in the universe that he could.

Mr. McCLORY. Let me point out that Mr. Colby is not in support of my substitute bill. He would support the amendment that the House has adopted but he would support this as well.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the existing Attorney General's guidelines do not permit the indiscriminate surveillance of foreign visitors that would be authorized by the Ashbrook amendment. A 1976 Justice Department memorandum states that the current policy of the Attorney General is to authorize warrantless electronic surveillance only when it is shown the subjects are the active conscious agents of foreign powers. This was the policy of former Attorney General Levi and it is the policy of the present Attorney General Bell.

I oppose the amendment.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I am sure my colleague did not mean to say the amendment would allow indiscriminate surveillance. It is only when there is reason to believe, and those administering the laws believe, and our intelligence agencies believe. I certainly hope the gentleman would not think it would allow indiscriminate surveillance.

Mr. MURPHY of Illinois. We are afraid that this is a door we would be opening, and the FBI does not want this. We specifically brought this up to them. I think the gentleman was there. They do not want this amendment.

Mr. ASHBROOK. Mr. Webster indicated he does not want this amendment?

Mr. MURPHY of Illinois. Definitely, on a number of occasions in discussing it with us in the committee and subcommittee.

Mr. ASHBROOK. I thank my colleague.

As I say, I hope the gentleman does not believe this would permit indiscriminate surveillance.

Mr. McCLORY. Mr. Chairman, I do not believe this amendment was offered in the committee. This was offered in the subcommittee during the testimony of former Director Colby when he pointed out a defect in the bill, and that is why the amendment was put together and why it is being offered. That is my understanding.

Mr. BOLAND. Mr. Chairman, if the gentleman will yield, would the gentleman from Ohio and the gentleman from Illinois agree that the existing provision which is now in this bill was written in direct response to the testimony of the Federal Bureau of Investigation?

Mr. McCLORY. Mr. Chairman, I do not know who wrote the provision. I know we had a lot of input as far as the language is concerned.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. ERTEL

Mr. ERTEL. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendment offered by Mr. ERTEL:

Page 41, line 2, strike out "the Special Court having jurisdiction under section 103" and insert in lieu thereof "a United States district court".

Page 41, line 8, strike out "Special Court" and insert in lieu thereof "court".

Page 41, strike out line 13 and all that follows down through line 2 on page 44 and insert in lieu thereof the following:

JURISDICTION

SEC. 103. (a) The United States district courts shall have jurisdiction to receive applications for court orders under this title and to issue orders under section 105 of this title.

(b) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the United States district court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the United States court of appeals.

Page 52, line 14, strike out "a judge designated pursuant to section 103" and insert in lieu thereof "a judge having jurisdiction under section 103".

Page 55, beginning on line 19, strike out "shall be retained" and all that follows down through line 22 and insert in lieu thereof "shall be retained for a period of at least ten years from the date of the application and shall be stored at the direction of the Attorney General under security procedures approved by the Director of Central Intelligence.".

Page 58, line 16, strike out "Special Court" and insert in lieu thereof "court".

Page 58, beginning on line 17, strike out "Unless all the judges of the Special Court are so disqualified, the" and insert in lieu thereof "The".

Page 58, line 23, strike out "Special Court" and insert in lieu thereof "court".

Page 58, line 25, strike out "Special Court" and insert in lieu thereof "court".

Page 59, line 7, strike out "Special Court" and insert in lieu thereof "court".

Page 59, line 24, strike out "Special Court of Appeals" and insert in lieu thereof "United States court of appeals".

Page 60, line 11, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Page 60, line 17, strike out "Special Court" and insert in lieu thereof "court".

Page 60, line 18, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Page 60, line 24, strike out "Special Court" and insert in lieu thereof "court".

Page 60, line 25, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Page 61, beginning on line 7, strike out "Special Court or Special Court of Appeals" and insert in lieu thereof "district court or court of appeals".

Page 61, line 11, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Mr. ERTEL. Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. ERTEL. Mr. Chairman, I ask unanimous consent that I present this second amendment inasmuch as it crosses jurisdictional lines. On page 5 of the typed amendment it goes into title III as well, in one section.

The CHAIRMAN. Is the gentleman asking that the amendments be considered en bloc?

Mr. ERTEL. That is correct, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The Clerk will report the remaining amendment.

The Clerk read as follows:

Amendment offered by Mr. ERTEL: Page 68, beginning on line 14, strike out "the designation of the chief judges pursuant to section 103 of this Act" and insert in lieu thereof "such date of enactment".

Mr. ERTEL (during the reading). Mr. Chairman, I ask unanimous consent that the remaining amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. ERTEL asked and was given permission to revise and extend his remarks.)

Mr. ERTEL. Mr. Chairman, I would like to explain so the Members will understand what has happened and that is that the first four pages of the amendment, as offered, go to title I, and page 5 of the typed amendment, inasmuch as the operational date of the bill depends on the establishment of the court, it would strike the section relating to that and make it effective upon enactment. That is why I made the unanimous consent request. So that there are really two different provisions, one is title I, one is title III.

The amendment basically is to strike from the bill the provision providing for the special courts under the bill. We will be establishing a special court to sit in the District of Columbia. Each chief judge of each circuit will designate a person who will sit here on the special court and will be here on a rotating basis and will decide on applications for surveillance or wiretapping warrants. Inasmuch as the amendment offered by the gentleman from Illinois (Mr. McCLORY) has been agreed to, which eliminates the need for the warrants for foreign nationals and foreign embassies and foreign trade missions, there is no reason to have this special court sit.

As I understand it, within the past few years there have only been two wiretaps on American citizens. So, for the few events, we are creating a special court to sit here in the District of Columbia, having a judge here at all times who may be designated from California, Oregon, or some other place, requiring this 11-man court to be impaneled at all time requiring a separate court of appeals, and then for having separate appeals to the Supreme Court. It is to have a special court for this limited purpose.

But, that is not my major objection to this special court, my major objection to this special court, assuming it were used, on a regular basis, then this special court concentrates in one point all of our counterintelligence activities as far as the collection of information concerning what is happening and what has happened in the past, thus all warrants would have to pass through this court. If this particular court were penetrated by any other intelligence operation in the world they would have complete knowledge of our entire counterintelligence operations.

So, Mr. Chairman, it would seem to me that one of the fundamentals of intelligence collection is not to concentrate this information but to disperse it so that the other counterintelligence people do not know where to concentrate their own efforts. Under this bill the information would be all concentrated in this court, and anyone who penetrated it would know all of our intelligence operations.

What my amendment would do is say, look, we have a court system, let us use it. You go to the district judge, he puts it under seal. He handles it secretly and the appeals lie with the circuit court of appeals in that district, going right on up the line.

I am not particularly wild about this warrant procedure that has been set up in the bill, but if we are going to have it, then it seems to me we should disperse it across the Nation.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I commend the insight of the gentleman, now that the McClory amendment has been agreed to there will be very little for this court to do. But now it is not needed, under the changed procedure, we do not need these courts, as the gentleman from Pennsylvania pointed out, for foreign intelligence or foreign powers, so, how many Americans are going to be subject to the CIA and the FBI only for intelligence reasons? I would add an additional reason for abolishing the courts is because they will have very little to do for the courts under the bill as it has been amended.

Mr. ERTEL. I agree with the gentleman and thank him for his comments.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendments.

Mr. Chairman, the special court is better than using existing district courts for reasons of both security and civil liberties.

By restricting the number of judges who are exposed to this material, it reduces risks. By centralizing the court in Washington, it enables cleared executive personnel to be present to assist the court in clerical functions, and it enables one secure repository for records, rather than using the insecure facilities of ordinary district courts and clerks around the country. It also insures that where speed is of the essence, a judge is immediately available, rather than perhaps 3,000 miles away.

From a civil liberties point of view, the court minimizes the ability of the executive to go judge shopping. Also, because these judges—who are existing Federal judges, not new ones—will have some experience with these applications, they are not as likely to be bowled over by the executive waving the banner of national security in a questionable case as a judge who has never dealt with such an application before.

Furthermore, there is ample precedent for such a special court. The temporary Emergency Court of Appeals was set up in 1970 by the Economic Stabilization Act to hear appeals from wage and price decisions. It is still in existence, hearing appeals from certain Department of Energy decisions.

Mr. Chairman, this special court is composed of Federal judges designated by the Chief Justice.

Finally, as the committee report notes, the establishment of a special court was said to be necessary by the General Counsel of the Administrative Office of the U.S. Courts for jurisdictional reasons.

Mr. Chairman, the FBI, the CIA, the National Security Council, and the Administrative Office of the U.S. Courts are the ones who requested the special court. The idea was to minimize any leaks that may occur if an official from the executive department had to travel to any outlying districts in the United States, in which case we would have the question of personnel not being cleared for security reasons. We would have the question of filing of papers in a clerk's office where there was no security for the papers or for the application for the order.

The bill would provide one court here in Washington where we could set up secure files in a safe and where only certain personnel could have access to those files. We would have one judge at one time sitting in Washington on an emergency basis.

Mr. Chairman, it has been suggested that with the adoption of the McClory amendment, we will not have much business here in Washington for this special court. This may be the case, but we will have a judge at all times.

For instance, if the FBI's Counterintelligence Department gets information from the NSA or the CIA that a Russian spy is meeting in some spot in the United States, under the bill they are allowed to install a surveillance for 24 hours. However, after that 24 hours, they have to apply to the special court if it involves an American citizen.

All we are providing for with this special court in Washington is the accessibility to that Federal judge to cleared personnel to assist him in handling the application and any secret, sensitive material that is presented to the court.

By dispersing this setup throughout the land, the very thing which the gentleman from Illinois (Mr. McCLORY), the gentleman from New York (Mr. STRATTON), and others have argued here today about security risks in bringing these matters before judges who are unsophisticated in intelligence affairs will be doubled or amplified tenfold.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. MURHPY of Illinois. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, may I ask the gentleman this question: Is it not true that under the existing law, the Official Secrets Act of 1968, I believe, we, in fact, do issue warrants in domestic criminal cases which remain secret and undisclosed except when required under that particular statute?

Mr. MURPHY of Illinois. That is correct.

Mr. ERTEL. Does the gentleman know of any compromise of that system which existed in the United States since the enactment of that law?

Mr. MURPHY of Illinois. No, but it was the FBI, the CIA, the National Security Council, and officials in the FBI who requested this setup. They had security concerns about these matters.

Mr. ERTEL. Does the gentleman know of any specifically?

Mr. MURPHY of Illinois. I know of none specifically. I am just quoting their testimony to us.

Mr. ERTEL. In fact, do they not go to the judge and meet with him and get the order? And is it not a fact that one of the doctrines of intelligence gathering is to try and disperse your information; do not keep your eggs all in one basket so that you do not lose everything if you get that one basket penetrated?

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MAZZOLI, and by unanimous consent, Mr. MURPHY of Illinois was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

I would just like to make a point. I was listening to the discussion of the gentleman from Pennsylvania (Mr. ERTEL) in which he was saying that apparently the court processes work very well in domestic warrant procedures, and on the other hand he says let us get rid of the courts because they will not work in the other case. In one case he is saying we have great confidence: there have been no leaks and no problems in dispersing it. On the other hand, he says get rid of the courts. I think the gentleman cannot have it both ways.

It seems to me we are saying that if the gentleman from Illinois and I on our side carry the day, we are saying that the court procedure is a great guarantee, the best one we could think of to guarantee the rights of the American citizens and at the same time not put any unnecessary impediment into the path of intelligence-gatherers. That is all we are saying.

Mr. MURPHY of Illinois. There is no question that security and protection for the intelligence community is the reason that this provision is in the bill.

Mr. ERTEL. Mr. Chairman, will the gentleman yield, since my name was mentioned?

Mr. MURPHY of Illinois. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. I thank the gentleman for yielding.

I would like to clarify, since the gentleman stated my position, quite frankly we do have a security risk if all of our information is in one court. Why? Because they attempt to penetrate that court. If it is spread over the entire Nation, our security risk is less because they do not know where to go. That is the problem they would have.

Secondly, you know, we have got pretty good security in all our district courts because we have not had a compromise, but if we concentrate it and give them the target—and that would be this court here in Washington, D.C.—then they will concentrate on trying to penetrate it. So I think to put it back into the district courts is an excellent point.

Secondly, with all the district court judges, is the gentleman trying to say that we cannot find a secure district court judge in these United States? I think we can.

Mr. MURPHY of Illinois. I am not trying to say that at all. I appreciate and respect the gentleman's viewpoint, but I respectfully disagree.

Mr. KASTENMEIER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment. I do so mindful that both the gentleman from Pennsylvania (Mr. ERTEL) and the gentleman from Massachusetts (Mr. DRINAN) are esteemed members of my Subcommittee on Courts, Civil Liberties, and the Administration of Justice. I believe that the Select Committee on Intelligence has worked out a necessary formula for the court structure to handle these applications, and I am aware of the fact that they have come to learn that one of their witnesses, Carl Imlay, General Counsel of the Administrative Office of the U.S. Courts, stated that constitutional problems existed with respect to granting nationwide jurisdiction to individual judges. Drawing on the example of the temporary Emergency Court of Appeals, it is suggested that a special court be created and vested with the jurisdiction in Federal judges assigned to it, and that is what they have done.

It also should be pointed out that in the Keith case it is not just contemplated by the committee itself. The Supreme

Court said that a warrant in intelligence cases need not be based on the same type of standards and procedures required for law enforcement. In doing so the Court stated the request for prior court authorization could in sensitive cases be made to any member of a specially designated court. That is what has been provided here. But the question of forum shopping, finding a secure U.S. District court judge throughout the United States of 4 or 500—and after the judgeship bill there will be far more than 500 of them—may be possible, but if we are concerned about the people affected by this, such forum shopping would be the last thing on the Earth that we would want done in terms of the Government.

On the other hand, the Government has an interest in a secure court. This court can be provided in the District of Columbia. Just as the White House itself and the CIA are secure presumably, so this court will be made secure.

I think the formula provided by the bill is a reasonable one and should be supported. This is one of the particular ways in which the House committee bill is much better than that of the Senate.

Mr. ECKHARDT. Mr. Chairman, I move to strike the last word, and I rise in support of the amendments.

Mr. Chairman, I am not persuaded that we need a special court because our existing courts are not adequate to make the decisions here involved. I think that one of the bulwarks of our system in this country rests on tradition of judicial process, and I think that the reason that tradition of judicial process works is because cases are brought before judges experienced in trying all types of cases.

I understand that a special court would be nominated in each of the circuits, and that the ultimate selection then would be by the Chief Justice of the Supreme Court. I see no reason why the Government could not find at least one secure and dependable judge within a district of the United States. If need be, one could be appointed in each of those circuits for the purpose, but to appoint a new court, a group of persons who may try one case within a period of a year or two and then try no more, men who are not experienced in the general judicial process, it seems to me, would be a dangerous process.

I do not like special courts. Special courts throughout history have been courts which are amenable to tyranny. The thing that protects our Nation from tyranny, it seems to me, is the custom, the practice, and the experience of judges to operate within due process of law. A special court appointed for a special purpose is simply not as dependable in enforcing that kind of process as are judges who are sitting for general purposes.

Mr. KASTENMEIER. Mr. Chairman, would the gentleman yield on that point?

Mr. ECKHARDT. Surely, I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Chairman, I wish to make this point, because I think there is a misapprehension as to what the bill provides.

These judges to be appointed for the special court are indeed district judges of general jurisdiction who are temporarily assigned for this purpose. They are rotated, and when they are rotated, they go back to their circuits. But they are not special for this purpose in any permanent sense. They are temporary, and they are assigned to the special courts ordinarily through general competence.

Mr. ECKHARDT. Mr. Chairman, may I reply and ask this: How long do they serve once they have been appointed, and how frequently do they rotate?

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, my understanding is that they could serve for only 6 years, and they could only serve two terms. They could serve no more than two terms.

Mr. ECKHARDT. Mr. Chairman, after 12 years, that makes a man pretty much a person of a special court.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, the gentleman's argument is very sound, and the gentleman's argument is entirely consistent with the constitutional structure under which our courts are established.

The gentleman from Wisconsin (Mr. KASTENMEIER) has a misapprehension of what this bill provides, because originally there was provision for the appointment of special judges, and the administrator of the Federal court system advised the committee that we could not have special judges. Consequently, they changed the concept from a special judge to a special court, with this kind of unprecedented type of procedure for appointing these 11 judges from the 11 circuits through the operation of the judicial conferences in these cases which, as I understand it, have no authority whatever to designate any special members of a special court.

I do not know whether this is a title I or a title III court. Nobody could explain. It is provided in legislation which is related to the whole subject of national security, and it seems to me that this is the other part of the bill which should be eliminated because, as I might state further, since it was testified earlier in the year that there were no Americans who were subject to electronic surveillance, and later the Attorney General did notify our committee that one American had been subjected to electronic surveillance.

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(On request of Mr. McCLORY and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. McCLORY. But certainly this case, or any case, for that matter, involving a U.S. person, can be adequately and competently taken care of, just as title III cases for warrants for domestic surveillance are taken care of at the present time by the district courts.

Mr. ECKHARDT. Do I understand, in order to clarify the terms of the bill and some of the questions that were asked me, that the selection may be a total of 6 years, during which time the judges engage in this activity alone?

Mr. McCLORY. That is correct.

Mr. KASTENMEIER. Mr. Chairman, if the gentleman will yield, that is not the understanding as I have been informed. You have 11 judges, one selected from each circuit, and one of them at a time serves in the District of Columbia on these cases. There are not that many cases. And that judge may serve temporarily for a period of 2 months, 4 months, and he is rotated out and another judge comes in. So when we are talking about a special court we should understand what is contemplated in terms of service of a judge. This is a judge of general jurisdiction, a U.S. district judge from each of the 11 circuits.

Mr. ECKHARDT. For how long a period of time is he assigned to a court? That is what I am trying to get at.

Mr. KASTENMEIER. He is assigned for a period of 6 years, but during that 6-year period he will sit in Washington by himself for a short period of time, perhaps 2 months, 4 months, and then be rotated off, and one of the other 10 colleagues would serve.

Mr. ECKHARDT. But he will be the exclusive judge for this purpose?

Mr. KASTENMEIER. That is correct; for that period of time.

Mr. ECKHARDT. During the period of 6 or 12 years. I still think that is unnecessary.

Mr. McCLORY. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment.

Mr. Chairman, this strikes me as being a very important amendment for the Committee to adopt, because if there is a part of the bill which, it seems to me, is not only unprecedented but undesirable, it is this section which provides for the establishment of the special court.

As I indicated, there was an attempt, first of all, to assign special judges and, presumably, it was thought that if we had some special judge somehow or other they could be relied upon to provide approval for electronic surveillance such as the intelligence agencies might request. But then when the committee was informed that there was no authority for special judges in the Federal court system, this concept of a special court arose. There have been a number of variations of this provision proposed.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I am happy to concur in the gentleman's judgment. I voted against the McClory amendment, but I think the gentleman from Illinois (Mr. McCLORY) is right on target now. This would be a total alteration of the structure of the Federal courts. I think it would be a misuse.

Mr. Chairman, I concur in the statement made by the gentleman from Texas (Mr. ECKHARDT).

Mr. BOB WILSON. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from California.

Mr. BOB WILSON. Mr. Chairman, did I really hear correctly the colloquy a few minutes ago in which it was stated that a special court would be set up here in the District of Columbia and judges would be brought here in rotation every month or two?

I suppose they would have to be brought every month or two because they would go stir crazy because they have had nothing to do. They have only had one case in the last year or 2 years to even consider, so this is a ridiculous situation. I am fully in support of the amendment.

Mr. McCLORY. No one has any idea how long or how short a time they would sit here.

Mr. BOB WILSON. Or how expensive it would be.

Mr. McCLORY. This is a completely new concept. There is nothing constitutionally which authorizes a special court. As the gentleman from Texas (Mr. ECKHARDT) pointed out, we should be wary of special courts which have special prerogatives. It seems to me that when we designate by the Constitution a district judge, we empower that district judge to hear and entertain all types of cases, and to say that the rest of the judiciary cannot hear applications for warrants to engage in electronic surveillance of U.S. persons—except these special judges who may be considered patsies for some executive, it would seem to me to be a miscarriage of justice.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I wish to read the language in section 103, which is the only language in the bill having to do with this question of special judges and their tenure:

> There is established a Special Court of the United States with jurisdiction throughout the United States to carry out the judicial duties of this title. The Chief Justice of the United States shall publicly designate at least one judge from each of the judicial circuits, nominated by the chief judges of the respective circuits, who shall be members of the Special Court and one of whom the Chief Justice shall publicly designate as the chief judge. The Special Court shall sit continuously in the District of Columbia.

Now, there is nothing in that language that says that these judges will continue with their duties elsewhere. I recognize that there is some language to that effect in the committee report, but it seems to me that we are setting afoot at least the possibility of a court which deals in only this subject matter. I think that is extremely dangerous.

Mr. McCLORY. The gentleman is correct. Let me say that if an application for electronic surveillance was made to a court in some other area of the country, because it was desired there, nevertheless it would be necessary to come to Washington, D.C., in order to have that application acted upon.

Mr. BOB WILSON. Mr. Chairman, if the gentleman will yield further, does the gentleman know whether any testimony was submitted from the administrator of the courts as to the costs of this special court? How many personnel would be there to justify the court?

Mr. McCLORY. It would be entirely speculation on that. Nobody knows how long or when such a special court might sit. That would depend entirely upon how many applications for warrants were provided for. Apparently, if the bill is only going to apply to U.S. persons, there are going to be virtually none.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendments.

The CHAIRMAN. The gentleman has already spoken.

Mr. MURPHY of Illinois. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Illinois (Mr. MURPHY) will be recognized for 5 minutes.

There was no objection.

Mr. MURPHY of Illinois. Mr. Chairman, I refer the gentleman from Texas to the language of the bill itself. It says that the court will sit continuously, not the judge. I think that is an important distinction. The court will be in existence; the judges are rotated.

That was the testimony before the committee, that they envision the judges sitting about a month or 2 months, and we asked what kind of court this would be. Would this require more than one? The response was that in the last year or two there have only been two cases, so I think this is a lot to do about nothing. The court will sit continuously; there will be rotating judges, the remaining judges will be hearing cases continuously back in their districts.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. My recollection is a little dim, but it seems to me that at some point in our hearings we propounded these questions to our witnesses, who suggested that the judges should come to the District of Columbia to sit on the special court, which meets continuously, and could also hear other cases. They are competent for the jurisdiction, and they could be asked to sit in on the District of Columbia Appellate Court.

Mr. MURPHY of Illinois. The gentleman is correct.

Mr. MAZZOLI. That means—and it might answer the charge raised by the gentleman from California (Mr. BOB WILSON)—the cost will be minimal, because these jurists will be doing other work in addition to this.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania (Mr. ERTEL).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 74, noes 33.

RECORDED VOTE

Mr. MAZZOLI. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered .

The vote was taken by electronic device, and there were—ayes 224, noes 103, not voting 105, as follows:

[Roll No. 728]

AYES—224

| | | |
|---|---|---|
| Akaka | Gaydos | Myers, Gary |
| Ambro | Gilman | Myers, John |
| Anderson, Calif. | Goldwater | Natcher |
| | Gonzalez | Neal |
| Andrews, N. Dak. | Goodling | Nedzi |
| | Gore | Nowak |
| Applegate | Gradison | Oakar |
| Archer | Grassley | Oberstar |
| Ashbrook | Gudger | Ottinger |
| AuCoin | Guyer | Panetta |
| Badham | Hagedorn | Pease |
| Bafalis | Hall | Perkins |
| Baucus | Hammer-schmidt | Pickle |
| Bauman | | Poage |
| Beard, R.I. | Hanley | Preyer |
| Bedell | Hannaford | Pritchard |
| Benjamin | Heftel | Pursell |
| Bennett | Hillis | Rahall |
| Bevill | Holland | Regula |
| Bonker | Hollenbeck | Rinaldo |
| Breaux | Holt | Risenhoover |
| Brown, Mich. | Holtzman | Roberts |
| Brown, Ohio | Horton | Robinson |
| Broyhill | Hubbard | Roe |
| Buchanan | Ichord | Rousselot |
| Burgener | Jacobs | Roybal |
| Butler | Jenrette | Rudd |
| Carney | Johnson, Calif. | Runnels |
| Carter | Jones, N.C. | Ruppe |
| Cavanaugh | Jones, Okla. | Sarasin |
| Cederberg | Jones, Tenn. | Satterfield |
| Chappell | Jordan | Sawyer |
| Clausen, Don H. | Kazen | Schroeder |
| | Kelly | Schulze |
| Cleveland | Kildee | Sebelius |
| Cohen | Kostmayer | Seiberling |
| Coleman | Krebs | Shuster |
| Collins, Ill. | Lagomarsino | Simon |
| Collins, Tex. | Latta | Skelton |
| Conable | Le Fante | Smith, Nebr. |
| Conyers | Leach | Snyder |
| Corcoran | Lederer | Spence |
| Coughlin | Lent | St Germain |
| Crane | Livingston | Staggers |
| Cunningham | Lloyd, Tenn. | Stangeland |
| D'Amours | Lott | Steed |
| Daniel, Dan | Lujan | Stratton |
| Daniel, R. W. | Luken | Taylor |
| Davis | McClory | Thornton |
| de la Garza | McCormack | Treen |
| Delaney | McDonald | Trible |
| Dent | McEwen | Udall |
| Devine | McFall | Vander Jagt |
| Dicks | McHugh | Vento |
| Dingell | McKay | Waggonner |
| Drinan | McKinney | Walgren |
| Duncan, Tenn. | Madigan | Walker |
| Eckhardt | Maguire | Walsh |
| Edgar | Mahon | Wampler |
| Edwards, Ala. | Marlenee | Watkins |
| Edwards, Okla. | Marriott | Weaver |
| Emery | Martin | Weiss |
| English | Mathis | White |
| Ertel | Michel | Whitehurst |
| Evans, Del. | Mikulski | Whitley |
| Evans, Ga. | Milford | Whitten |
| Evans, Ind. | Miller, Ohio | Wilson, Bob |
| Findley | Minish | Wilson, Tex. |
| Flippo | Mitchell, N.Y. | Winn |
| Flood | Mollohan | Wolff |
| Flynt | Montgomery | Wylie |
| Foley | Moore | Yatron |
| Ford, Tenn. | Moorhead, Calif. | Young, Fla. |
| Fountain | | Young, Mo. |
| Frenzel | Mottl | Zeferetti |
| Fuqua | Murphy, Pa. | |
| Gammage | Murtha | |

NOES—103

| | | |
|---|---|---|
| Addabbo | Clay | Fowler |
| Alexander | Conte | Gephardt |
| Annunzio | Corman | Giaimo |
| Aspin | Cornell | Ginn |
| Baldus | Cotter | Glickman |
| Biaggi | Danielson | Green |
| Bingham | Dellums | Hamilton |
| Blanchard | Derrick | Harkin |
| Blouin | Derwinski | Harris |
| Boland | Dodd | Heckler |
| Bolling | Downey | Howard |
| Bonior | Early | Hughes |
| Brademas | Edwards, Calif. | Jenkins |
| Breckinridge | Eilberg | Kastenmeier |
| Brinkley | Fascell | Keys |
| Brodhead | Fenwick | LaFalce |
| Brown, Calif. | Fisher | Leggett |
| Burlison, Mo. | Fithian | Levitas |
| Burton, John | Florio | Lloyd, Calif. |
| Carr | Ford, Mich. | Long, La. |

| | | |
|---|---|---|
| Long, Md. | Patten | Spellman |
| Lundine | Patterson | Steers |
| McDade | Pike | Stokes |
| Mann | Price | Studds |
| Markey | Rangel | Thompson |
| Marks | Reuss | Tucker |
| Mattox | Rodino | Vanik |
| Mazzoli | Roncalio | Volkmer |
| Metcalfe | Rose | Waxman |
| Mineta | Rosenthal | Whalen |
| Moorhead, Pa. | Russo | Wright |
| Murphy, Ill. | Santini | Yates |
| Myers, Michael | Scheuer | Zablocki |
| Nolan | Sharp | |
| Obey | Solarz | |

NOT VOTING—105

| | | |
|---|---|---|
| Abdnor | Frey | Pressler |
| Ammerman | Garcia | Quayle |
| Anderson, Ill. | Gibbons | Quie |
| Andrews, N.C. | Hansen | Quillen |
| Armstrong | Harrington | Railsback |
| Ashley | Harsha | Rhodes |
| Barnard | Hawkins | Richmond |
| Beard, Tenn. | Hefner | Rogers |
| Beilenson | Hightower | Rooney |
| Boggs | Huckaby | Rostenkowski |
| Bowen | Hyde | Ryan |
| Brooks | Ireland | Shipley |
| Broomfield | Jeffords | Sikes |
| Burke, Calif. | Johnson, Colo. | Sisk |
| Burke, Fla. | Kasten | Skubitz |
| Burke, Mass. | Kemp | Slack |
| Burleson, Tex. | Kindness | Smith, Iowa |
| Burton, Phillip | Krueger | Stanton |
| Byron | Lehman | Stark |
| Caputo | McCloskey | Steiger |
| Chisholm | Meeds | Stockman |
| Clawson, Del | Meyner | Stump |
| Cochran | Mikva | Symms |
| Cornwell | Miller, Calif. | Teague |
| Dickinson | Mitchell, Md. | Thone |
| Diggs | Moakley | Traxler |
| Dornan | Moffett | Tsongas |
| Duncan, Oreg. | Moss | Ullman |
| Erlenborn | Murphy, N.Y. | Van Deerlin |
| Evans, Colo. | Nichols | Wiggins |
| Fary | Nix | Wilson, C. H. |
| Fish | O'Brien | Wirth |
| Flowers | Pattison | Wydler |
| Forsythe | Pepper | Young, Alaska |
| Fraser | Pettis | Young, Tex. |

Mr. OTTINGER and Mr. WOLFF changed their vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

Mr. MURPHY of Illinois. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. WRIGHT) having assumed the chair, Mr. YATES, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7308) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information, had come to no resolution thereon.

## GENERAL LEAVE

Mr. MURPHY of Illinois. Mr. Speaker, I ask unanimous consent that all Members may be permitted to revise and extend their remarks, and include extraneous matter, on H.R. 7308, the bill just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

## PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO HAVE UNTIL MIDNIGHT, MONDAY, SEPTEMBER 11, 1978, TO FILE REPORT, ALONG WITH ANY SEPARATE OR MINORITY VIEWS, ON H.R. 13750, SUGAR STABILIZATION ACT OF 1978

Mr. VANIK. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight, Monday, September 11, 1978, to file a report, along with any separate or minority views, on the bill (H.R. 13750) to implement the International Sugar Agreement between the United States and foreign countries; to protect the welfare of consumers of sugar and those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## SALT PACT ILLUSTRATES NEED FOR BRICKER AMENDMENT

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute.)

Mr. ASHBROOK. Mr. Speaker, the upcoming debate on the SALT agreement once again illustrates the need for swift enactment of the Bricker amendment. This important amendment which I am sponsoring would put constitutional safeguards on the use of executive agreements in conducting foreign policy.

As you may have read, the Carter administration is considering the possibility of submitting the SALT accord as an executive agreement requiring only a simple majority vote in Congress. This would get around the two-thirds vote needed for passage of a treaty. The goal, of course, would be to avoid a difficult battle for ratification such as occurred during the recent Panama Canal debate.

That the Carter administration would even consider this tactic is incredible. It is a thinly disguised attempt to evade the normal treatymaking process.

Call it what you will, the SALT agreement should require a two-thirds vote for ratification. It is too important an issue to be handled in a cavalier manner by President Carter.

We should call a halt to this game of words. Congress must not abdicate its responsibility on a matter as crucial as the security of our Nation.

The Bricker amendment which I have introduced for the past several Congresses would erect a safeguard for this type of problem. An executive agreement would be handled like a treaty. The name, whether the President calls it a treaty or an executive agreement, would not change the necessity of receiving a two-thirds vote.

The Bricker amendment would prevent unnecessary delegation of power by Congress to the President. It would help restore a proper congressional role in foreign affairs. It is time that this important amendment was added to our Constitution.

## THE LAST CLEAR CHANCE TO AVOID A COMMUNIST TAKEOVER IN RHODESIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. SIKES) is recognized for 30 minutes.

● Mr. SIKES. Mr. Speaker, the free world is confronted with its last clear chance to avert a bloodbath and a Communist takeover in Rhodesia. I am convinced of this following recent talks in that country with officials of several ministries and the U.S. Government.

Only the United States and Britain in the Western World now seem concerned. This interest still is directed more to bringing guerrilla leaders into the coalition than to helping the coalition establish an impressive record. Confidence in the government has deteriorated and it now appears necessary to bring one or both of the so-called patriotic front movements into the government to prevent a civil war which experts say could not be won by government forces.

Obviously it is important that we devote stronger efforts to shoring up the coalition while negotiations continue with guerrilla leaders. Nothing would have been more painful than recognition and an exchange of ambassadors. Apparently this is not being considered.

The entire situation is much too reminiscent of the Vietnam experience which Americans sadly remember.

The guerrilla leaders Mugabe, based in Mozambique, and Nkomo, in Zambia, have conducted terrorist raids in Rhodesia for many months. Now they are training larger forces for invasion when the time is ripe. Both are heavily supplied with Russian weapons. Cuban advisers and Russian experts have been identified as aiding them. At one time the Chinese were involved. This is no longer certain.

The guerrillas now have infiltrated most of Rhodesia and out of fear many local residents are quietly supporting them.

Rhodesian troops are effective but they cannot be everywhere at once and terrorist raids are becoming more effective, killing, and burning. At present the coalition government is not reaching the black populace, who want more evidence of change to black control. The people are becoming more and more resigned to a take-over by Nkomo or Mugabe supporters. Rhodesian officials feel strongly that British and United States are to blame for their country's problems. Some of them still hold the view that they can win despite today's gloomy prospects and delay a take-over by the foreign based blacks.

Nkomo and Mugabe are gaining converts rapidly. Support is falling away from the coalition. The government says it is through fear of reprisal—others say it is because of lack of action by Rhodesian Government following the establishment of a coalition. Probably both are contributing factors.

There is the possibility the civil war will find the forces of Nkomo and Mu-

gabe pitted against each other as well as against the Rhodesian Government forces. Such a development would leave the country almost totally destroyed and the white population killed or driven out.

The black nations which fear the spread of Communism are reluctant to speak out against the establishment of another black government, regardless of its leanings.

An election to establish a new government has been promised in December but there has been talk of postponement. To postpone the election would add fuel to the cause of Nkomo and Mugabe. Delay in writing a new constitution and submitting it to a vote will have a similar effect.

Unless there is an early move to meet black aspirations there will be an explosion which quickly can be destructive to an industrious and progressive country. Many of the whites are reluctant to accept the inevitability of change and are unwilling to share power.

The irony of the situation is that neither Nkomo nor Mugabe would offer the one man, one vote ideal of the West, which the West has been seeking to bring about in Rhodesia. Neither has indicated he would provide a true majority government.

In summary, Rhodesia is harassed from within by increasing terrorist attacks, threatened by civil war, and pressured by economic sanctions by the United States and other nations. We helped to create the situation and the Russians are taking advantage of it.

We should portray the Russian involvement in its true colors as another attempt to seize territory and control the lives of people. There is no excuse for U.S. ineptitude in dealing with Communist aggression. It has been demonstrated in Rhodesia. Time is running out for our interests. Only an immediate and vigorous and more meaningful effort will prevent Communist control there.●

## THE MOOD OF THE 20TH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, I am always gratified to return to my district during a recess of the Congress to discuss the concerns of my constituents. During the past 2 weeks I have had the opportunity to talk with the people of the 20th Congressional District in California about their priorities for Congress in these closing weeks of our term.

We have been given a tall order, Mr. Speaker. For some time there have been rumors that mail will not be delivered because of a threatened strike by postal workers. With a recently released Gallup poll showing decided disapproval of strikes by public service employees, Congress cannot stand idly by with such action by labor hanging over our heads.

A Harris poll which was also taken during the recess indicates that 3 out of 4 Americans believe that prices are rising faster now than a year ago. When this poll was taken in 1977, less than half of those questioned were of the opinion that the cost of goods and services at the marketplace were higher than in the previous year. With all the talk of pay raises for the American worker, it is interesting to note that better than 2 out of 3 union members would be willing to lower their pay hikes if there were some assurance that government was keeping the spiraling cost of living under control. But inflation simply wipes out any increase in the size of the worker's paycheck.

With the results of these polls in mind, and after talking with the residents of my district, I certainly plan to do my best as a Member of the House to make certain that every bill we consider is consistent with a sound fiscal policy. Already, 22 States have passed resolutions calling for a constitutional convention to mandate a balanced Federal budget as a constitutional requirement. As a Wall Street Journal editorial put it so eloquently last Friday, what these States are saying essentially, is that "Congress cannot be trusted with money." I take no sense of pride in this attitude toward the Congress. The only way we can shake this reputation is demonstrate our commitment to a sensible plan for Government spending.

Then too, there is the issue of ethics in Government. I thought our experience with Watergate a few years ago was an example of how not to behave in public office. But the recent disclosures of widespread corruption in the General Services Administration are infuriating the taxpayers in my district, and making many wonder when all of this will stop. I even saw one report just the other day of a worker who managed to get unemployment compensation by using his dog's name. For the Government to be unable to detect these illegal activities in its own house is a crime in itself.

It is no wonder that a Los Angeles Times poll conducted while I was in my district, revealed that at least as many people who voted for proposition 13 last June, are favorably impressed with its results. By the same token, nearly 70 percent of the people feel that their elected officials are not "making an honest effort" to carry out the provisions of the initiative.

So there is much to do as we prepare for adjournment. The mood of the 20th Congressional District in California reflects the impatience of its citizens. I think, Mr. Speaker, their mood is the mood of the Nation.●

## SELLING EFT SERVICES, NOT ACRONYMS

Th SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, what do Ginny the Green Machine, the Wizard of Ease, Homefolk's Honey, Goldie your Golden Teller, Girl Friday, and 24-hour Jill have in common?

These names all represent efforts by the banking industry to humanize the rapidly growing system of electronic fund transfers (EFT's)—the so-called "cashless, checkless society of the future."

The realities of this future society have fallen far short of the banking industry's original predictions. For banking by computer to be profitable to the industry necessitates a wide-scale acceptance of the systems. But, consumers remain wary of electronic banking and despite the conveniences, many consumers prefer to stick with a system they understand and trust, such as banking by check.

So, massive advertising campaigns have been launched and millions of dollars have been spent in an attempt to gain consumer trust. But, the industry is discovering that catchy names can only go so far in assuring consumers that their life savings are safe in electronic banking.

And, now, the banking industry is realizing that one of the most effective advertisements for EFT's is exactly what they have fought tooth and nail against for the past year—comprehensive legislation that guarantees proper consumer safeguards in EFT transactions.

This switch in policy is clearly seen in a recent editorial in the American Banker. The editorial admits the need for legislation in order to win over consumers to the systems. And ironically, the editorial appeared on August 11, the very day the House passed H.R. 13007, the Electronic Fund Transfer Act, by a overwhelming 314–2 margin.

The editorial goes as far as admitting that Wisconsin bankers are satisfied with an even stricter State law than the Federal legislation which passed the House last month. Wisconsin is the only State which allows reversibility in EFT transactions, and all reports are that the law is working for consumers and bankers alike.

The right to reversibility allows a consumer to stop payment on a EFT transaction within 3 days. This is a basic and accepted right of banking by check in purchasing goods and services. It protects a consumer who purchased faulty merchandise by allowing him the right to stop payment.

But, in committee markup, the lobbying against this section was tremendous. Tremendous enough to convince a majority of the Banking Committee members to delete the section of H.R. 13007 which allowed consumers the right of reversibility.

However, I am proud of the bill we reported and that passed the House. Despite the lack of a reversibility section, the bill protects consumers in other vital areas—such as limiting consumer liability to $50 and prohibiting the issuance of unsolicited, validated cards. But, without question, a percentage of consumers, however small, will not accept electronic banking because of a lack of a reversibility right.

The Electronic Fund Transfer Act still faces a tough battle in the Senate. Several amendments which substantially weaken the act have already been offered. These amendments could only further discourage consumers from trusting a system that lacks essential rights and protections.

Mr. Speaker, I submit the American Banker editorial in its entirety for the RECORD.

SELLING EFT SERVICES, NOT ACRONYMS

In the beginning of EFT, and that goes back only a handful of years, the task of winning consumer acceptance of electronic banking seemed almost impossible. Bankers uncautiously made it sound like they were selling acronyms instead of convenience, systems instead of services. The more visionary thinkers in the industry were talking in terms of a "cashless" or "checkless" society, and it rapidly became clear that the public was uneasy about losing its proven payment mechanism.

Consumer advocates, patterned in the image of Ralph Nader, reveled in the financial industry's openness to criticism. They saw banks trying to wrest financial power from the individual, to invade personal privacy, and to force consumers to use EFT or face second-class citizenship.

To their credit, most consumerists have come around to more responsible and thoughtful positions. Their attitudes on EFT now more accurately reflect public opinion: they are sometimes right, sometimes wrong, but always to be reckoned with. After all, the future of a more convenient and efficient payment system is uncertain as long as the population is wary.

Ever conscious of public opinion, some members of Congress were eager to legislate consumer protection regulations to govern EFT systems. The House and Senate versions of EFT bills which have made the most progress since the National Commission on EFT completed its work last winter attempt to define the rights, responsibilities and protections of consumers, financial institutions and third parties in an electronic transaction.

The consumer orientation of the original versions of the bills sponsored by Rep. Frank Annunzio, D., Ill., and Sen. Donald W. Riegle Jr., D., Mich., was unmistakable. But they helped create a series of additions to the banking lexicon which are now firmly ensconced with the acronyms that helped arouse consumer wrath in the first place.

The new terms include liability limitation, descriptive statements, error resolution, unsolicited debit cards, and reversibility. They are slightly more descriptive than three-letter acronyms like ATM or RSU, but one senses that to the uninitiated, they would be just as meaningless.

As an example, look at reversibility. It is simple enough to understand. It replaces the concept of stop payment which is a guaranteed right when a paper check is used for purchasing goods or services. In an EFT system where funds are transferred instantaneously, stop payment is impossible.

Both the Riegle and Annunzio bills contained reversibility provisions. Major banking industry lobbyists opposed them and prevailed after a fair amount of muscle-flexing. The American Bankers National Retail Merchants Association found themselves in rare agreement on this issue, and consumer advocates have not been satisfied by the outcome.

It is, in fact, academic what consumer advocates think. The more relevant question is, will the American consumer utilize EFT if he or she feels that rights existing in the older-generation payment system are being eliminated? Wisconsin bankers, the only ones in the country who have had to contend with a reversibility requirement, believe the answer is no.

Following enactment of the Wisconsin EFT law in 1976, state regulators wrote additions to the administrative code which embodied the wishes of one of the most activist consumer populations in the nation. The bankers and consumer advocates compromised on reversibility: transactions of $50 or more, effected electronically, can be reversed by the bank upon written notice from the consumer within three business days of the transaction. This is similar to what the original Riegle bill called for.

All parties are said to be satisfied. The $50 threshhold was adopted to emulate the current system, since irreversible cash is the usual means of payment for lesser amounts. Bankers and consumers clashed on the time limit and reached agreement on three days. Consumers wanted more.

J. Frederick Ruf, president of Wisconsin's TYME network to which more than 200 financial institutions belong, credits the consumer group participation with forestalling the public criticism faced elsewhere. "If a system is to succeed, it must satisfy the customers," he has said in support of reversibility, which places him at odds with the ABA.

Furthermore, Mr. Ruf says, after more than two million TYME system transactions in two years, there has not been a documented request for a reversed transaction. Inevitably, disputes arise, but they are being resolved between merchant and consumer without a bank interceding.

Lack of reversibility requests in Wisconsin is powerful testimony to the public acceptance of EFT. If major financial trade groups soften their line, as have consumerists, the dreams of visionaries may become reality.●

## AGING COMMITTEE RESOLUTIONS ADOPTED ON MENTAL HEALTH, GOVERNMENT REORGANIZATION AND MANDATORY RETIREMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. PEPPER) is recognized for 10 minutes.

● Mr. PEPPER. Mr. Speaker, I am pleased to present to my colleagues the background and text of three important resolutions overwhelmingly adopted by the House Select Committee on Aging, which I have the privilege to chair. These resolutions relate to the mental health care of the aging, the reorganization of Federal programs affecting the elderly, and an amicus curiae brief on a mandatory retirement case in the U.S. Supreme Court.

The resolutions' background statements and the resolutions themselves follow:

SELECT COMMITTEE ON AGING RESOLUTION ON PRESIDENTIAL REORGANIZATION OF FEDERAL PROGRAMS FOR THE ELDERLY

(Approved 24–2 Aug. 28, 1978)

BACKGROUND

The need for Reorganization of federal programs for the elderly has long been a concern of the Select Committee on Aging. Even before its first formal hearing on the subject in April 1977, the Committee and its staff had assisted the Carter transition team in setting out options for dealing with the confusing fragmented nature of federal efforts to assist older Americans.

In July 1977 a number of Committee members touched on the need for dealing with this problem during their meeting at the White House with President Carter. In September, the Chairman compiled a number of possible recommendations that grew out of the hearings and informal inquiries and transmitted them to the President's Reorganization Project (PRP). In January 1978, a bipartisan group of Committee staff members met with PRP officials and discussed these and other options.

The President's Reorganization Project task force working on services for the elderly is circulating a "working paper" describing options it may recommend to the President in early 1979. Initial review of the document indicates a very limited range of options is being considered.

If meaningful improvements are to be made anytime soon, it is imperative that a much broader attack on the problem of fragmentation in federal programs serving the elderly at least be among the options considered by the President.

RESOLUTION

Be it resolved, That the Select Committee on Aging—believes that the problem of fragmentation and lack of coordination among federal programs serving the elderly continues to be a serious one, and that a full range of options should be considered by the President in deciding what organizational, regulatory or statutory changes he recommends to Congress.

Be it further resolved, That the Committee—urges favorable consideration of a measure, such as the draft accompanying this resolution, expressing the sense of the House on this timely and important topic.

H. RES. —

Whereas, older persons are eligible to participate in hundreds of programs funded by federal, state and local governments and private organizations; and

Whereas, these programs conflict in eligibility criteria, administrative requirements and geographical coverage, and are not well coordinated with each other; and

Whereas older persons often find it impossible to come to grips with this bewildering maze of programs; and

Whereas the House Select Committee on Aging and other Congressional committees have recommended that the federal government take strong, positive steps to reorganize federal programs serving the elderly along more rational lines; and

Whereas the President's Reorganization Project, within the Office of Management and Budget, will be making recommendations to the President on how to restructure federal efforts to serve our older citizens; and

Whereas official comments on the general need for better coordination from the Office of Management and Budget and the Department of Health, Education, and Welfare call into question how well those agencies perceive the need for timely, meaningful restructuring of programs to serve the elderly;

Now, therefore, be it resolved by the House of Representatives that the Office of Management and Budget is urged to recommend changes in statutes, regulations and program structure commensurate with the sweeping need for reorganization among federal programs serving the elderly documented by the House Select Committee on Aging and other arms of Congress; and

Be it further resolved—that such recommendations address at least the following options or problem areas:

(1) swift development of common application and referral form to be available for use by all major programs serving the elderly;

(2) restructuring of those now fragmented programs providing home health or other in-home services to older Americans, perhaps as part of a system of community-based long-term care centers offering a wide range of services;

(3) transfer of aging-related programs to the Administration on Aging;

(4) personal approval by the President of all inter-agency agreements designed to promote better coordination among such programs; and

(5) designation of a high-level official in the Departments of Transportation, Labor, and Housing and Urban Development, with specific responsibility to assure the needs of the elderly in their respective agencies are

considered, and to foster better inter-agency coordination.

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SELECT COMMITTEE ON AGING RESOLUTION ON MENTAL HEALTH CARE

(Approved 20–6 August 28, 1978)

BACKGROUND

Older Americans are among those in greatest need of treatment for mental illness. Although constituting only 11% of the total population, persons over 65 account for 25% of all suicides. Some 15–25% of older people have significant mental health problems, yet they make up less than 2% of those cared for in private psychiatric settings, and less than 2% of those seen in public outpatient clinics. Anywhere from 20–30% of older people labeled "senile" have specific conditions that can be diagnosed, treated and often reversed.

Current Medicare law severely restricts mental health coverage. The program offers only $250 annually for outpatient care costs, requires 50–50 copayments, and limits psychiatric hospital coverage to only 190 days in a person's lifetime. Moreover, clinical psychologists cannot deliver care unless a medical doctor has first prescribed it, a requirement that adds measurably to the cost of the service.

Congressman Pepper has introduced legislation, H.R. 13460, which addresses these shortcomings. It would (1) equalize mental health coverage under Medicare with that for physical illness, (2) permit direct reimbursement for clinical psychologists where they are licensed by their state, and (3) help states develop and enforce standards governing the discharge of mental patients and the adequacy of living conditions of SSI recipients in nursing and boarding homes.

Federal policy may also be contributing to widespread "dumping" of elderly mental hospital patients into community settings, so that states can shift the cost burden of supporting these persons to the federally funded Supplemental Security Income (SSI) program. A survey by the Select Committee on Aging revealed a 62% reduction in mental hospital patients from 1969 to 1977. The President's Commission on Mental Health, chaired by First Lady Rosalynn Carter, noted this situation and concluded, "Nowhere are the deficiencies of the Medicare program more apparent than in the area of financing mental health care."

RESOLUTION

Be it resolved, That in view of the results of the Select Committee on Aging's hearings and survey on the subject, and the findings of the President's Commission on Mental Health chaired by the First Lady, the Committee expresses its strong support for legislation such as H.R. 13460 to establish parity between physical and mental health services under Medicare, and to counter any incentives in current law to discharge older patients prematurely from state hospitals.

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SELECT COMMITTEE ON AGING RESOLUTION ON AMICUS CURIAE BRIEF IN SUPREME COURT ON MANDATORY RETIREMENT

(Approved 20–5 August 28, 1978)

BACKGROUND

As part of the Age Discrimination in Employment Act (ADEA) Amendments of 1978, Congress repealed the mandatory retirement age of 70 for most federal employees.

Partly in order to avoid referral to other committees and the attendant delay, managers and sponsors of the bill agreed to accept an amendment which allowed statutes setting various mandatory retirement ages for other groups of federal employees, including the mandatory retirement age of 60 for most Foreign Service Officers, to remain intact. Another factor in the decision not to contest deletion of the Foreign Service Officers age was the recognition that a three-judge panel of the U.S. District Court in the District of Columbia had unanimously declared the retirement age an unconstitutional denial of equal protection under the Fifth Amendment. The case was *Bradley vs. Vance.*

Acting on the request of the State Department, the Solicitor General appealed the decision, the Supreme Court noted probable jurisdiction, and the case (now *Vance vs. Bradley*) has been set for argument in the upcoming fall term of the Court.

Among other arguments in the Government's brief to the Supreme Court is the contention that Congress, in enacting the 1978 ADEA amendments, reaffirmed the intent to keep the mandatory retirement age for Foreign Service Officers at 60 years.

Attorneys for the plaintiffs—ten employees of the Foreign Service, the U.S. Information Agency and the Agency for International Development—have asked Chairman Pepper to file a brief as *amicus curiae*, or friend of the court, to address this and other arguments arising in the case from his unique perspective.

The only costs attributable to such effort would be $300–500 for printing of the briefs; payable out of the contingent fund of the House after approval by the Committee on House Administration.

RESOLUTION

Be it resolved, That the Select Committee on Aging—authorizes and directs the Chairman to take appropriate steps to file an *amicus curiae* brief in behalf of the appellants in the case of *Vance vs. Bradley*, for himself and such other Members of Congress as desire to join in the brief.●

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## "CLEVER SCHEME" TO PAY FOR QUIETER PLANES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. COTTER) is recognized for 10 minutes.

● Mr. COTTER. Mr. Speaker, last spring, when the House Ways and Means Committee approved legislation for an airport trust fund, I stated my opposition to the bill in the committee report. At the time, I expressed a fear that such a fund could start a dangerous precedent of big businesses dipping into Federal dollars to meet regulatory requirements.

Mr. Hobart Rowen, a renowned columnist for the Washington Post, recently wrote the following article on the airport trust fund bill, detailing the opposition arguments. I would like to bring this excellent column to the attention of my colleagues so that they will keep it in mind when the bill comes up for final passage.

"CLEVER SCHEME" TO PAY FOR QUIETER PLANES

(By Hobart Rowen)

If the airlines have their way, every time you buy a ticket for a flight in this country 25 percent of the taxes you pay would go directly to them to buy $3.3 billion worth of new aircraft and equipment. And every time you go abroad, $10 would go from your pocket to the airlines' treasuries—it wouldn't even go first to Uncle Sam—to finance their new equipment.

This rip-off is part of a clever scheme concocted by the airlines to have the public pay for the less noisy planes they are supposed to acquire. It is a lovely make-work project for the aircraft manufacturers. And among the more interesting aspects is that airline fares could be reduced by the amount of this bonanza to the industry if administration officials and congressional leaders have the guts to oppose the scheme.

Wage-price watchdog Barry Bosworth wrote a private internal memorandum to the Office of Management and Budget on Sept. 18, 1977, exposing the plan. But he has not been allowed to go public with it. The details of the proposed "Treasury raid" were first publicized by Rep. Gene Snyder (R-Ky.).

Here's what has happened: The airlines now collect, to pay for air-safety measures, an 8 percent tax on domestic tickets, 5 percent on domestic air freight, and a fixed $3 fee on each foreign departure.

Those monies go into a trust fund financing airport safety measures, including the salaries of personnel and the detection equipment used in the pre-boarding routines. But the money collected is said to be more than needed, suggesting that the 8 percent tax ought to be lowered to about 6 percent and the other charges accordingly. Wouldn't a 25 percent reduction in airline taxes be a nice anti-inflationary gesture?

But no. The airlines, required by a 1976 Federal Aviation Administration regulation to use less noisy aircraft after 1984, saw an opportunity to make the public pick up the check. Instead of lowering the tax bill by about $3.3 billion, the airlines' lobby has had two measures (H.R. 8729 and H.R. 11986) introduced in Congress.

They would divert 2 points of the 8 percent passenger tax (25 percent) and 2 points of the 5 percent freight charge (that's 40 percent) into a kitty to finance new planes. The $3 departure tax would be upped to $10, with all of it going to the airlines. And a brand-new 5 percent surcharge would be placed on international cargo—all going to the carriers.

So far, these measures appear to be moving with little opposition through the House Public Works and Ways and Means committees.

In 1976, the FAA estimated that the airlines could modify their planes to conform to anti-noise requirements for a total cost of $950 million. "Retro-fitting" a Boeing 727 by installing sound-absorbent material costs only about $225,000. A new plane can run to $12 million.

But if the airlines can squeeze $3.3 billion out of an unsuspecting public, they will have acquired all new equipment, by putting up barely over half or the total cost, estimated at $7 billion. You and I will pay for the rest.

If the airlines get away with this bad precedent, then the public should expect to be the victim—through taxes—of the cost of meeting any environmental standard.

But the devious nature of this particular proposal is extraordinary. The tax is sneaky, because it is already on the books for another purpose. Without publicity, the "raid" would have taken place, and no one would be the wiser.

This gift to the airlines ought to be vigorously contested by the Carter administration. Instead, it is keeping quiet, in the hopes that it will get some congressional votes as a trade-off for an airline regulation reform bill.

Privately, Carter aides hope to get the House bills weakened in the Senate. But if the White House really wants to control inflation, and be convincing in denials that it has muzzled Bosworth (whose jawboning has offended George Meany), it can do so easily. It can unleash Bosworth and others for an active role in whipping an inexcusable handout to the airline industry at the taxpayers' expense.●

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## PANAMA CANAL: BISHOPS TRY TO COOL PANAMANIAN MARXISTS

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Pennsylvania (Mr. FLOOD) is recognized for 5 minutes.

● Mr. FLOOD. Mr. Speaker, on February 24, 1975, the administrative board of the National Conference of Catholic Bishops, with the best intentions, issued a press release urging the giving of full control over the U.S.-owned Canal Zone and Panama Canal to the Republic of Panama as a "matter of elemental justice."

That release was not overlooked by competent students of Isthmian Canal policy questions. One of them, Maj. Gen. Thomas A. Lane, a distinguished Catholic layman who had had Army engineering experience in the Canal Zone, analyzed the statement and in a thoughtful article, published in the highly respected Catholic paper, the Wanderer, disclosed some of its fallacies. I quoted his article in an address to the House of Representatives (CONGRESSIONAL RECORD, April 22, 1975, p. 11303).

It was, therefore, gratifying to learn recently that the bishops of Panama, headed by Archbishop Marcos G. McGrath, issued a pastoral letter on "The Situation of the Country" exposing the realities of the problem facing Panama. This letter was described at length in the July 30, 1978, issue of the San Diego, Calif., Union in a Hemispheric Report by William Giandoni of the Copley News Service.

Because the indicated report is quite revealing and should help correct some current misinformation, I quote it as part of my remarks and urge that it be read by all Members of the Congress:

HEMISPHERE REPORT—BISHOPS TRY TO COOL PANAMANIAN MARXISTS

(By William Giandoni)

Marxists are trying to take control of Gen. Omar Torrijos' dictatorship in Panama.

But prominent Panamanians, friends and foes alike of Torrijos, are girding for action to keep Panama and the strategic Panama Canal from falling into enemy hands.

The lates, and certainly the most respected, voices to be raised against the Marxist threat in the isthmian republic are those of Panama's nine Catholic bishops, headed by Archbishop Marcos G. McGrath of Panama City.

In a pastoral letter on "The Situation of the Country," the Catholic prelates objected to "the fact that certain Marxist cadres pretend to set themselves up as political spokesmen not only of the government but of the whole nation as well, imposing their opinions with all the authoritarian force they can muster."

The bishops went on to say that in some government offices jobs and opportunities "are handed out almost exclusively to those of one and the same ideological line."

The bishops did not name names or cite specific instances of the Marxist infiltration of the dictatorship. But, nevertheless, their protest had considerable impact in Panama and, presumably, will have elsewhere. The pastoral letter was not only read at all masses on Sunday, July 9, but was airmailed to other countries.

All of the bishops, from Archbishop McGrath, who is a native of Panama, on down, had appeared to support the Torrijos regime, particularly during the negotiations with the United States on a new canal treaty.

To some extent, it was the vocal backing of men of their caliber that calmed fears in Panama and abroad that Torrijos might turn out to be a hidden communist, as did Cuban dictator Fidel Castro, or that he might not be strong enough to hold his Marxist advisers in check. Now, it appears, they have come around to that point of view.

The situation that the bishops mentioned should not constitute any immediate threat to the Panama Canal. The presence of an estimated 15,000 U.S. troops within the 10-mile wide, 50-mile long Canal Zone should be enough to guarantee the security of the inter-oceanic waterway.

The bishops' warning against Marxist infiltration of the government brought a denial of sorts from Torrijos.

"I do not like that pastoral letter, the views of five (sic) respectable bishops before whom I bow my head with a respectful religious attitude, their attitude of insinuating that this nation is taking the course of communism," Torrijos said in a speech that was broadcast throughout the country.

"All we have been doing has been precisely so that the nation will not fall into or be involved in foreign schemes, in foreign-oriented or enslaving schemes," Torrijos said.

The bishops' criticism of the situation in Panama was not limited just to the signs of Marxist infiltration.

They complained of the great needs of the Panamanian people, "of the lack of jobs, of housing, of the basic guarantees of life." They voiced their concern over "the slight participation of the people, especially the poorest, in the efforts and decisions that affect their own development." They protested the recent violence in the university and elsewhere.

But the "serious defects in the current political structure" in Panama were what led the bishops to their protest against Marxist activities.

The first defect was "the lack of a clear and proper separation among the three branches of the government." That was a reference to the fact that the current Panamanian constitution grants Gen. Torrijos, as chief of government, virtually dictatorial powers.

Then the bishops "noted a lack of efficiency in public administration because of the duplication of functions, personalism and improvisation."

Next came "the lack of controls over the budgeting, investment and handling of public funds."

Finally, "the lack of representation in the system for election of (local) representatives" to the National Assembly was mentioned. The pastoral letter noted that "a recent study, based on official electoral statistics, reveals the possibility that five percent of the electoral population of the country could determine the election of the future president of the republic," under the current arrangement.

In truth, nothing the bishops said had not been said before, although probably it was expressed in more inflammatory language.

Since Torrijos relaxed restrictions on press, radio and television last year, since he authorized the return of political exiles, and since the opposition political parties regained the voices they lost in 1968 when the National Guard ousted President Arnulfo Arias, highly partisan critics of the Torrijos regime have been saying much the same.

However, as such charges were voiced by professional politicians who had been displaced by the military and who presumably were willing to go to extremes to get back into power, many Panamanians tended not to take them seriously.

That is not the case with Archbishop McGrath and Bishops Jose Carrizo, Carlos Lewis, Jesus Serano, Daniel Nunez, Jose Agustin Ganuza, Jose Dimas Cedeno, Martin Legarra and Marcos Zuluaga, all of whom signed the pastoral letter.

They are not suspected of having political ambitions.

Theirs are voices most Panamanians hear and heed.●

## PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. WHITE) is recognized for 5 minutes.

● Mr. WHITE. Mr. Speaker, I missed rollcall No. 723 on August 17 as I had to leave Washington to attend to official business in the 16th Congressional District of Texas. Had I been present for the vote on passage of the bill to authorize appropriations for the U.S. Railway Association for fiscal year 1979 (H.R. 10898), I would have voted "nay." ●

## CONGRESSIONAL MISSION TO VIETNAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. BINGHAM) is recognized for 10 minutes.

● Mr. BINGHAM. Mr. Speaker, the congressional study mission that traveled to Vietnam during the recent congressional recess under the leadership of our distinguished colleague from Mississippi (Mr. MONTGOMERY) has performed a great service to the Congress, to the American people, and particularly to American MIA families, and I rise today to commend that group for its very productive effort.

Not only, Mr. Speaker, did the study mission obtain from Vietnamese officials the remains of another 11 Americans who died in Vietnam, it also continued a constructive dialog with Vietnamese officials that will hopefully one day result in concrete improvement in our relations with that country and further healing of the wounds on both sides of the tragic war we fought there.

Several members of the study mission, Mr. Speaker, have commented to the press that the Vietnamese are now ready to establish diplomatic relations with the United States. It would seem, from these statements and other sources, that the Vietnamese are now prepared to drop their demands for war reparations from the United States as a precondition to diplomatic relations.

As chairman of the House subcommittee with legislative jurisdiction over U.S. economic embargoes, including the current embargo of Vietnam, I look forward to reviewing in detail the study mission's report. Administration officials have reconfirmed to me very recently that President Carter's earlier policy statements with respect to Vietnam still stand—that the only precondition from the U.S. point of view to a lifting of our embargo is the establishment of diplomatic relations, and that the embargo will be lifted simultaneously with the opening of such relations.

Technically, Mr. Speaker, the embargo

of Vietnam could expire on September 14, 1978, unless the President determines that it is in the national interest to continue it. I presume he will make that determination. While I have long been in favor of terminating the embargo, I can understand why the President might want to extend it now, at least for the time being. The administration's linkage between diplomatic relations and a lifting of the embargo is certainly not unreasonable. Even assuming that both sides are now ready for diplomatic relations, it will take some negotiating to work out the details of those relations, particularly in view of the hostility that has so long separated us. Negotiation of the details of diplomatic relations cannot possible be accomplished before September 14, so I think it is only realistic to expect the embargo to be continued for a while longer.

I sincerely hope, however, that the administration will take the initiative very soon to resume talks with the Vietnamese to reach agreement on diplomatic relations and a lifting of the embargo. The Congress is clearly on record against any agreement for reparations or financial aid to Vietnam at this time. But that negative view does not necessarily extend to diplomatic relations and basic commercial trade relations with Vietnam. The apparent removal of reparations and aid from the list of Vietnamese preconditions would seem to remove the last obstacle to such progress and the main basis for congressional opposition.

Obviously, Mr. Speaker, improved U.S. relations with Vietnam has implications for other nations, particularly the Soviet Union, the People's Republic of China, and Japan. I believe we should consult with each of those governments before reestablishing diplomatic relations and permitting commercial trade.

Between now and the time when further negotiations might produce agreement on diplomatic relations, I believe it is important that we avoid provocative actions toward Vietnam that might make it difficult for that government to carry through with its apparent decision to seek improved relations with us. On the contrary, in view of the actions the Vietnamese have taken, particularly in returning the remains of MIA's and demonstrating their willingness to search for those still missing, it would be most appropriate for us to reciprocate. In particular, I think it would be appropriate for the State and Treasury Departments to increase the volume of exceptions to the embargo and allow certain transactions to go forward on a case-by-case basis. There are, for example, transactions that were frozen by the embargo involving goods that the previous Government of Vietnam had already purchased from American companies before the embargo went into effect. These goods, in some cases, had already been shipped from the United States before the embargo, but could not be delivered and have had to be stored at great expense since. I believe it would be most appropriate immediately to allow those transactions to be completed as reasonable exceptions to the embargo.

Again, Mr. Speaker, I commend the distinguished gentleman from Mississippi (Mr. MONTGOMERY) and all the Members of his congressional party on the constructive contribution to our foreign policy they have made, and I urge all Members of the House to study their recommendations seriously and sympathetically.●

## MILITARY AND FEDERAL PAY CAP UNFAIR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. HARRIS) is recognized for 5 minutes.

Mr. HARRIS. Mr. Speaker, today I am introducing into the House a resolution to disapprove President Carter's recommended 5.5 percent cap on military and Federal pay.

In seeking to impose an arbitrary pay cap on military and Federal employees below levels his own advisers have proposed, the President is placing an unfair burden on one segment of the work force, and circumventing the intent of Public Law 92–210, the Federal Pay Comparability Act of 1970. By adopting my resolution of disapproval, Congress can make the Pay Act work as it was intended, reaffirm its earlier vote this session against the pay cap in the budget resolution, live up to America's contract with her fighting men and women and public service employees, and avoid even bigger outlays for military and Federal pay next year.

### ARBITRARY WAGE CONTROLS ON MILITARY AND FEDERAL PERSONNEL

A pay cap is an arbitrary wage control on one segment of our economy—America's 2 million men and women in the armed service and 1.5 million Federal civil servants, their spouses, and dependents. The administration argues that by artificially capping military and civil service pay, we can set an example for private industry. This argument is unacceptable. In the last year, private sector workers have far outpaced military and civil service workers in wage settlements and pay increases. The Bureau of Labor Statistics "Employment Cost Index" figures for last year indicate that pay increases for all private, nonfarm workers has risen 7.8 percent. Professional and technical workers' salaries in the private sector rose 6.6 percent; sales workers' pay went up 11.8 percent; and industrial and manufacturing employees got an additional 7.8-percent increase.

To say that holding military and Federal pay at 5.5 percent will serve as an example is fallacious. Singling out one group of employees is unfair.

### TAKING POLITICS OUT OF FEDERAL PAY: AND MAKING THE PAY ACT WORK

Under the Comparability Pay Act of 1970, Congress moved to take Federal and military pay increases out of the annual political squabbles between Congress and the President over Federal pay. Pay increases under this act are not cost-of-living increases. They are "catch-up-with-industry" adjustments in Federal salaries, designed to keep military and civil service personnel comparable with workers in private industry.

Each year, the Bureau of Labor Statistics surveys private industry rates of pay for positions comparable to Federal Government positions. The President receives a comparability recommendation from the Civil Service Commission and OMB after consultation with public employee groups. This provision is designed to get these salaries they have coming to them, and to enable the military and civil service to recruit and retain high quality employees.

Mr. Speaker, we have a comparability system established so that these employees can catch up with private industry. We have only an opportunity to accept the counsel of the President's advisers on Federal pay who recommended an 8.4-percent increase, or to substitute his arbitrary pay cap of 5.5 percent.

Now, if the President wants to change the way comparability pay is computed, let him come forward with a plan to alter it. It is unfair, in the meantime, to deny comparability to those who have been promised it.

### REAFFIRMING HOUSE VOTE: AND AVOIDING BIGGER INCREASES IN 1980

When this resolution of disapproval comes up for a vote in the House later this month, we will have an opportunity to reaffirm the position the House took earlier this year in defeating an effort to impose the cap in the first concurrent budget resolution. The House rejected a 5.5-percent pay cap on rollcall No. 280, May 3, 1978, by a vote of 172 to 210.

A pay cap is deceptive since the comparability pay system is a "catch-up" system, an arbitrary 5.5-percent cap at this point will cause an even bigger adjustment next year, with an additional 2.9 percent added to the amount otherwise needed at that time. We are not fooling anybody by delaying comparability pay adjustments—nobody, that is, except the military and Federal employees who have been promised comparability.

## STATEMENT OF SENATOR STENNIS REGARDING PRESIDENT'S VETO OF DOD AUTHORIZATION BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi (Mr. MONTGOMERY) is recognized for 5 minutes.

● Mr. MONTGOMERY. Mr. Speaker, I wish to call to the attention of my colleagues the following statement made today by Senator JOHN C. STENNIS, of Mississippi, regarding the President's veto of the Department of Defense authorization bill on which the House will vote tomorrow:

Senator JOHN C. STENNIS (D-Miss.) today strongly supported efforts by Members of the House of Representatives to override President Carter's veto of the Department of Defense authorization bill. "The crucial vote is in the House since the House must act first

on overriding this veto. If the House votes to override, it will provide an opportunity, as well as momentum for getting a similar vote to override the veto in the Senate," STENNIS said.

"This veto was of the wrong bill, at the wrong time, and under the wrong circumstances. It seems apparent that the veto was based on false facts as they relate to the Defense budget and our military strength," STENNIS commented.

"If this veto is not overridden, a major initiative on building a Navy for the future might be lost," STENNIS said. The bill that was vetoed included a carefully constructed package developed and agreed to by the House and Senate which laid the groundwork for a future fleet of smaller, less costly and lighter aircraft carriers equipped with vertical takeoff aircraft. It also included development funds for several new types of smaller, less costly ships and submarines.

"The Navy cannot have a fleet of smaller, less costly ships in the future if development is not begun now. This bill makes a strong start on that development. Therefore, it goes further than any legislation proposed or enacted to insure a strong naval fleet of this type for the future. Should this veto be sustained this forward move for light carriers, new V/STOL aircraft and other new types of Navy ships would be impaired and possibly stopped," STENNIS said.●

## SENATE ACTION ON VETERANS PREFERENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ROBERTS) is recognized for 5 minutes.

● Mr. ROBERTS. Mr. Speaker, on Thursday, August 24, the Senate passed S. 2640, the civil service reform bill. It should be noted that the other body not only rejected the administration's proposed plan to terminate veterans' preference for millions of Vietnam veterans, it adopted several amendments offered by the distinguished chairman of the Senate Committee on Veterans' Affairs, the Honorable ALAN CRANSTON, that would substantially strengthen the preference for disabled veterans.

It is important to note the action by the other body since the House will be considering the civil service reform legislation tomorrow.

I would urge my colleagues to read the debate in the CONGRESSIONAL RECORD in reference to the Senate action on the veterans' preference issue. Rather than terminate the preference for millions of Vietnam veterans before having an opportunity to use the benefit, the Senate has confirmed our commitment to Vietnam veterans by keeping the 5-point preference as a lifetime benefit. This is consistent with the Hanley amendment. I hope my colleagues will support the Hanley amendment when it is offered tomorrow. In adopting Mr. HANLEY's amendment, the House will stand with the Senate in rejecting the administration's plan to limit the preference for those who served in Vietnam.

Everyone is aware that the American Legion, AMVETS, the Disabled American Veterans, the Veterans of Foreign Wars and other veterans organizations support the Hanley amendment; however, some administration officials have suggested that the National Association of Concerned Veterans, whose membership is composed mostly of Vietnam veterans, supports the administration's proposal. This organization does not support the proposed change in the current law. So there will be no mistake about this organization's views on this issue, there follows a copy of a letter recently sent to the Honorable JAMES HANLEY explaining the position of the organization:

AUGUST 15, 1978.

Hon. JAMES HANLEY,
*Cannon House Office Building,*
*Washington, D.C.*

DEAR CONGRESSMAN HANLEY: On behalf of the National Association of Concerned Veterans, I request that you make the position of the NACV clear to the members of Congress concerning the "Schroeder Amendment" to the Civil Service Reform Legislation pertaining to Veterans' preference in civil service.

Initially, I should restate the NACV's position that it does not support the veterans' preference provisions of the administration's proposed legislation, and is in fact, vehemently opposed to that portion of the legislation. The reasons for our opposition are outlined in our testimony to the Senate Committee on Governmental Affairs and to the House Committee on the Post Office and Civil Service. The NACV is also opposed to the veterans' preference provisions contained in the "Schroeder Amendment." The specific provisions that we object to are the fifteen year delimiting date and reduction-in-force (RIF) provisions.

The NACV accepts and supports the administration's argument that Vietnam veterans have not had significant access to federal employment. Furthermore, we believe that some preliminary support (albeit inconclusive) exists for the contention that the current veterans' preference law tends to inhibit Vietnam Veterans' access to federal employment. We must conclude, however, that the fifteen year delimiting date provided by the "Schroeder Amendment" will adversely and discriminatorily affect Vietnam veterans. It, in fact, totally contradicts the above-stated administrative arguments which have been used to support it.

Consider the case of a Vietnam veteran discharged in 1968. Accepting the administration's argument that current veterans' preference provisions deny effective access for Vietnam veterans to federal employment, under the "Schroeder Amendment" a Vietnam veteran discharged in 1968 will not have effective veterans' preference until 1980 and will lose it in 1983. This veteran will have a three year delimiting date as opposed to a Vietnam veteran discharged in 1980 who will have a fifteen year delimiting date. Considerably worse off is the Vietnam veteran discharged in 1965 who will have no effective veterans' preference at all.

The RIF provisions of the "Schroeder Amendment" also appear to be an unjust disadvantage to Vietnam veterans. The administration acknowledged "the many difficult and unfair adjustments" endured by Vietnam veterans have suffered prolonged periods of unemployment through no fault of their own. Because of this, we believe Vietnam veterans should receive more protection in RIF's than is offered by the "Schroeder Amendment." We believe that this protection should be in the form of additional years to Vietnam veterans' seniority for RIF purposes.

Additionally, the NACV notes that the administration's rhetoric conspicuously avoids any sort of affirmative action plan for Vietnam veterans. While we acknowledge that the administration supports the Senate's proposal to extend the VRA to nearly all Vietnam veterans until 1981, we must also note the past failure of this program. We attribute this failure to a lack of commitment from this administration and its two predecessors. Without such an affirmative action plan to support one of the alleged purposes of this legislation (greater access to federal employment for Vietnam veterans), we regard the alleged purpose to be a sham. It appears to be another instance of people within the government using Vietnam veterans to achieve their own desired ends.

Mr. Hanley, the NACV is not opposed to government reform. Neither is it entirely satisfied nor entirely dissatisfied with the Veterans' Preference Act of 1944. Moreover, we point out that much of the information that the administration is using to support its case was provided in our previously alluded to testimony. What the NACV does object to is legislation which harms Vietnam veterans, as is the case with the "Schroeder Amendment" and the original Civil Service Reform Legislation proposed by the administration. Perhaps even more importantly, as citizens, we object to any legislation which undermines its alleged purpose and which is supported by only the most piecemeal and conclusory evidence.

Thank you for your attention and cooperation in this matter.

Sincerely yours,

OTTO LUKERT,
*Vice President,*
*The National Association of Concerned Veterans.*●

## PRIVACY OF MEDICAL RECORDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. PREYER) is recognized for 5 minutes.

● Mr. PREYER. Mr. Speaker, I am today introducing the Privacy of Medical Records Act, a bill to protect the privacy of personally identifiable medical records maintained by medical care facilities. The bill incorporates many of the features of the medical records legislation recommended by the Privacy Protection Study Commission, as well as some of the ideas of the Department of Health, Education and Welfare. The Department testified on this subject last May before the Subcommittee on Government Information and Individual Rights, which I chair.

I think this bill strikes a fair balance among the competing interests involved. But let me stress that my proposal is not meant to be the final word. Rather, it is intended to be a starting point for discussion.

Under my proposal, medical care facilities such as hospitals, skilled nursing facilities, and intermediate care facilities would be subject to restrictions on the use and disclosure of medical records. Compliance with those restrictions would be a requirement of participation in medicare and medicaid. Federal medical care facilities would be covered by the bill, but would be exempted from conflicting provisions of the Privacy Act of 1974. Private physicians would not be affected.

A patient at a facility covered by the

bill would be guaranteed the right to see and copy all of the medical records containing information about himself or herself. In addition, the individual could request correction of erroneous information contained in those files. However, if access to the information would likely cause harm to the patient, then another person could be designated by the patient to examine the records on his or her behalf.

Restrictions on the disclosure of this sensitive personal data are the most significant part of the bill, of course. The measure provides that medical information concerning an individual can only be released to others when the individual has given written consent, or when the individual has received advance notification by the institution of anticipated disclosure to categories of users specified in the bill.

The individual's authorization to disclose must be obtained in writing. It must be dated, signed, and specific as to the nature of the medical data to be released and the recipient of that data.

Where advance notification rather than specific consent is relied on as the authority for release, the individual must have been informed in writing of the kinds of disclosures contemplated. In general, these disclosures can only be made to the extent necessary to accomplish the purpose for which the disclosure is made, and can only be made for the following purposes: First, use by facility employees with a "need to know" for the performance of their duties; second, consultation with health professionals about the treatment of the patient; third, compelling circumstances affecting the health or safety of any person; fourth, biomedical, epidemiological, or health services research projects, if the projects are sufficiently important to justify the disclosure, and an institutional review board has made such a determination; fifth, Government audit and evaluation; sixth, non-Government audit and evaluation; seventh, public health reporting required by law; eighth, law enforcement, if the disclosure is required by statute; ninth, information concerning the patient's admission and health status; and tenth, when required under administrative or judicial subpena.

Obtaining medical records under false pretenses is made a crime punishable by fine or imprisonment. A person aggrieved by a violation of any part of the bill is authorized to bring a civil suit for damages for injunctive relief.

Again, this bill does not represent my final position on medical record confidentiality issues. There are many different ways to deal with the issues, and I have an open mind about the structure, content, and need for Federal legislation. By introducing this bill, I hope to advance the discussion about medical record confidentiality beyond consideration of general principles and to begin debate about specific details of actual legislation.

While I had hoped that the administration would have offered a proposal of its own by now, I am confident that this legislation will serve as a talking point for future discussions on the subject. I invite all of those with an interest in this important matter to examine the bill I have introduced and to bring your comments to the attention of the Government Information and Individual Rights Subcommittee.●

## SYRACUSE PLANT OF GENERAL MOTORS WINS AWARD FOR QUALITY WORKMANSHIP

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD.)

● Mr. HANLEY. Mr. Speaker, it is with great pride that I rise today to bring to the attention of my colleagues the outstanding efforts of a group of workers in my home community of Syracuse, N.Y.

For the second year in a row, the Fisher Body Syracuse plant has won top honors in its division's annual competition for quality workmanship. It is my understanding that this achievement is without precedent.

Several years ago, General Motors established a numerical scoring system to determine the quality of its products The objective of that system was to rate products for customer satisfaction. Auditors select components at random in the plants, and gage them for everything from appearance to engineering specifications. The Syracuse team out performed all others this year as well as last.

On August 31, Paul D. Pender, Fisher Body Division general manager and a General Motors vice president, presented a 3-foot silver and walnut trophy to the plant's 1,500 hourly and salaried employees, family members, friends and Fisher Body General Office personnel attended the ceremonies held outside the plant under cover of a tent set up especially for the presentation.

The Syracuse plant is GM's largest plastic injection molding operation. The plant's payroll last year amounted to over $29 million.

I know that my colleagues join me in extending our heartiest congratulations to the men and women of the Fisher Body Syracuse plant for their dedication and hard work. Certainly, the example they have set should be the goal for all American industry.●

## CHAIRMAN PRICE'S LETTER TO THE PRESIDENT ON THE VETO OF THE DEFENSE BILL

(Mr. WHITE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. WHITE. Mr. Speaker, I am inserting in the RECORD a letter from Chairman MELVIN PRICE of the Armed Services Committee to the President concerning the President's veto of the fiscal year 1979 defense authorization bill.

This letter articulates the serious concerns which the President's veto of this bill has raised regarding the Congress role in defense policymaking.

I urge all Members who have not read this letter to take this opportunity to do so.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., August 31, 1978.*

THE PRESIDENT,
*The White House,*
*Washington, D.C.*

MY DEAR MR. PRESIDENT: I have considered long and carefully your veto message to the Congress on H.R. 10929, the Department of Defense Appropriation Authorization Act for fiscal year 1979. I must tell you that I am disturbed by the substance and the tone of that message, and I am compelled also to express my deep concern about the impression of uncertain leadership in national defense that this veto and related decisions may unintentionally project.

Your message repeatedly makes reference to dollar figures of programs which are, in fact, not in the bill that you vetoed. For example, the message refers to an $800 million reduction in weapons and equipment for the Army and a $200 million reduction in weapons and equipment for the Air Force. The authorization bill that you vetoed, H.R. 10929, makes reductions of only $188.7 million in weapons and equipment for the Army and actually provides an addition of $80.2 million for the Air Force.

It has been assumed by some people, therefore, that the intent of your message is to indicate that corresponding reductions have to be made in the Defense appropriation bill to provide for the funding of the *Nimitz*-class nuclear aircraft carrier (CVN) that was authorized in H.R. 10929. Such, however, still fails to explain statistics used in your message. For example, your message refers to "up to $500 million for research and development—for programs proposed in my FY 1979 budget but deleted by one or another congressional action." The authorization bill sent to you, H.R. 10929, reduced research and development (R&D) only $209.5 million. This is a reduction of only 1.7 percent from the amount you requested and the authorization remaining, $12.3 billion, is an 8 percent increase over the amount provided last year.

The explanation of your statement would seem to be that the reference to "one or another Congressional action" includes appropriation action as well. However, the only appropriation action completed at the time of your veto message was the House passage of the Defense appropriation bill. An examination shows that total R&D reduction from the authorization and appropriation process as of the date of your message is less than $400 million. We have no explanation of your reference to a $500 million reduction.

Similarly, your statement makes reference to elimination of $500 million in readiness funds. Most of the readiness items to which you refer—such as repair of weapons, ship overhauls, communications and logistics support—are provided for in operation and maintenance funds which are not subject to annual authorization. At the same time, however, your message fails to acknowledge specific actions taken by Congress in H.R. 10929 in personnel authorizations to improve the readiness of our forces, including increases to provide more training time, additional civilian manpower for aircraft maintenance activities, and steps to improve the readiness of the Ready Reserve forces.

I understand that you are opposed to a nuclear aircraft carrier, but here again the position and the statistics of the Administration are confusing.

The veto message states your opposition to a nuclear aircraft carrier and that, therefore, 2 billion could have been saved by following your Administration's recommendations.

I would remind you, however, that subsequent to the submission of your budget, but prior to House floor consideration of H.R. 10929, I received a letter from the Secretary of the Navy supporting the inclusion of a conventional aircraft carrier (CVV) costing $1.575 million in this year's authorization. The difference between the Administration position and the committee position at that point, therefore, was not $2 billion, but rather the difference between a CVN and a CVV.

Can we not assume that the Secretary of the Navy speaks for your Administration on matters affecting the Navy?

Your veto message makes no mention of the Secretary's letter, but indicates that a conventionally-powered carrier would be requested in the budget next year "at a saving of $1 billion for that single ship."

The authorization bill provides $1.930 billion for a *Nimitz*-class CVN.

The cost of the CVN includes approximately 13 years of nuclear fuel. The $1.575 million estimate for the CVV is a current estimate for a ship which has not yet been designed. The estimate is surely conservative at this point. The estimate does not include the cost of 13 years of fuel.

On a one-to-one comparison, therefore, I don't know how your Administration can state that building one CVV instead of one CVN would save $1 billion.

If only one more large carrier, is to be built, the cost comparison, I believe, would be very close. The operational advantages of the CVN over the CVV are well-known and acknowledged on both sides, and I believe Members of Congress can make their own comparison and determine whether the nuclear capability is worthwhile at a slight additional cost.

Let me call to your attention that Senator Hart of Colorado, a Democrat and one of the most vigorous spokesmen in Congress for going to smaller carriers has vigorously supported H.R. 10929 as a vehicle for moving to a small carrier strategy in the future, has stated that the single CVN would cost only $355 million more than the CVV even if the latter "does not experience large cost overruns common with a new ship design," and has asked his colleagues to override your veto.

Statements repeatedly emanate from your Administration that three large conventional carriers could be built for the price of two nuclear carriers. If indeed that statement is correct, it is only pertinent if we are planning to build there or more large carriers. However, the fact is we are planning to build only one.

All of the witnesses for your Administration, including the most vigorous proponents of going to smaller carriers in the future, concurred that we should have 12 large carriers deployed. All of your Defense Department witnesses made clear that to have 12 carriers deployed, 13 are required since one carrier is always in the shipyard undergoing overhaul.

The question, therefore, is if we are building one more large carrier, should it be nuclear or conventional?

On each occasion this year when the House of Representatives was faced with the question of whether or not to build a nuclear carrier, a substantial majority supported the CVN. Equally substantial support has been voiced in the Senate. To veto a bill after this expression of Congressional intent suggests an unwillingness to accept the Congressional role in the defense decision-making process.

I am disturbed also, Mr. President, because even if the dollar amounts referred to in your message could be verified, the allegation that reductions made by the Congress mean simply a cut in combat capability, evidences a failure to understand the dynamics of the authorization and appropriation process.

Subsequent to the submission of the budget, reductions are made with the concurrence of, or even at the request of the Department of Defense because of program cancellations, program delays, or contract modifications which were not anticipated at the time the budget was drawn. In H.R. 10929, in the area of procurement alone, more than $1 billion can be identified which was eliminated for these reasons. In other words, the funds could not responsibly be obligated now even if authorized and appropriated.

Examples are the Navy Trident submarine, where a $911.9 million reduction was made because of a program delay; the Mark 46 torpedo, where a reduction of $28.7 million was made because the Navy informed us of a cost-saving in the program; and the Army XM–1 tank program, where the Army informed us that $127.4 million originally requested was not needed as a result of contract modifications.

So the implication throughout the message that funding a $2 billion carrier necessarily means $2 billion cut in needed programs elsewhere is simply not correct.

Your message further states that reductions were made "to stay within Congressional budget limits." This statement fails to recognize the simple fact that Congress has not completed action on the Second Budget Resolution. Therefore, the final "Congressional budget limits" on national defense have not yet been established.

I can only conclude, Mr. President, that you have been ill-advised on the process of Congressional authorization and appropriation.

I am concerned that your message may lead to other statements by Administration officials which are incorrect. In a speech to the American Legion Convention on August 22, the Secretary of Defense stated, "spending money on spare parts, unit training, and field exercises may not grab the headlines. But . . . this is the right way at the right time to neutralize the Soviet buildup. That is what the President had in mind, as I said earlier, when he sent the Defense authorization bill back to the Congress last week. . . ." H.R. 10929 did not make any significant reductions in the authorization requested for initial spare parts, it provided more manpower authorization than requested in order to increase the amount of training, and it did not address any requests for funds for field exercises. The latter are provided through operation and maintenance appropriations not subject to annual authorization. Certainly, such misleading public statements should be avoided.

In the time since your veto message was received, no further explanation has been submitted by the Administration and, in fact, the military departments indicate they have been directed not to respond to Congressional inquiries on the message.

I must ask you, therefore, Mr. President, to direct your advisors to submit an explanation of the basis for the estimates used in your veto message, together with a list of specific additions and deletions opposed by your Administration.

I state to you categorically that none of the additions or deletions made in H.R. 10929 by my committee were inspired by a desire to find funding for a nuclear aircraft carrier. Each of the programs in the bill was considered independently on its merits. The assumption that reductions were sought in advance to provide funding for the nuclear carrier fails to appreciate the months and months of hearings and analyses by Congressional committees.

Indeed, Mr. President, perhaps my principal concern with your message is the tone with which the actions of the Congress are addressed. Nowhere do I find any recognition that the Congress is capable of making an independent contribution to the weapon development process. Implicit throughout your message is the charge that Members of Congress, in order to support a particular weapon system, knowingly voted for a bill that weakens our national defense.

This charge is most grievous to me.

I have served in public office for more than 40 years and in all of more than 32 years in the House of Representatives I have had special responsibilities in the areas of national defense and nuclear energy policy. In these areas I have worked with every President since Harry Truman. At no time have I supported any particular system or any special interest at the price of our overall national defense. I have always worked to strengthen our national defense and I think H.R. 10929 would do that. While the Congress made a number of changes in the bill, both additions and deletions, they are not inconsistent with the number of changes we have made annually in such legislation.

I have the utmost respect for the present Secretary of Defense as I have had for most of his predecessors, but I have failed to observe any conclusive evidence of infallibility in the Department of Defense.

The burden of your message is that Congress does not have a place in defense policymaking except insofar as it is prepared to "rubber stamp" recommendations of the Executive Branch. I reject that philosophy.

I believe the Congress deserves to be treated as a partner in defense decisionmaking, not as a poor relation.

Finally, Mr. President, I must express to you my deep concern about the picture we are presenting to the world of our willingness to provide necessary leadership. I am concerned about what appears to be a propensity to forgo those military capabilities that we do well.

You may recall that I wrote to you a year ago expressing my concern about the impact on national defense capability of a series of decisions which include the cancellation of the B–1, the cancellation of the short range attack missile (SRAM), the termination of production of the Minuteman III missile, and the slowdown of development funding for the MX missile system. At that time, I expressed the hope that the Congress could work with the Administration to provide necessary defense systems. Since that time, we have had the cancellation of production of the enhanced radiation weapon, the indecision in response to the demonstrated need to protect the vulnerability of our land-based ICBMs, the proposed withdrawal of forces from Korea, and now the veto of a Defense authorization bill and a determined effort to stop another large aircraft carrier.

I am deeply concerned as to the cumulative effect of all of these actions on our defense capability and equally concerned as to their effect on the perception of potential adversaries as to our willingness to meet our national security commitments.

For all of the above reasons, Mr. President, I must reluctantly tell you that I cannot accept the reasoning in your veto message and on September 7 I shall ask the House of Representatives to vote to override your veto of H.R. 10929.

Respectfully yours,

MELVIN PRICE,
*Chairman, Committee on Armed Services.*●



## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LEHMAN (at the request of Mr. WRIGHT), for September 6 through 14, on account of official business.

Mr. YOUNG of Alaska (at the request of Mr. RHODES), for September 6, 7, and 8, on account of official business.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. SIKES, for 30 minutes, today; and for 30 minutes September 7, 1978; and for 30 minutes, on September 13, 1978, to revise and extend his remarks and to include extraneous matter.

(The following Members (at the request of Mr. GREEN) to revise and extend their remarks and include extraneous material:)

Mr. GOLDWATER, for 5 minutes, today.

(The following Members (at the request of Mr. WATKINS) to revise and extend their remarks and to include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. PEPPER, for 10 minutes, today.
Mr. COTTER, for 10 minutes, today.
Mr. FLOOD, for 5 minutes, today.
Mr. TEAGUE, for 5 minutes, today.
Mr. WHITE, for 5 minutes, today.
Mr. BINGHAM, for 10 minutes, today.
Mr. HARRIS, for 5 minutes, today.
Mr. MONTGOMERY, for 5 minutes, today.
Mr. ROBERTS, for 5 minutes, today.
Mr. PREYER, for 5 minutes, today.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. BUTLER, to include extraneous material during consideration of H.R. 12432 in the Committee of the Whole today.

Mr. BUTLER, to extend his remarks preceding the vote on the Treen amendment to H.R. 12432 in the Committee of the Whole today.

(The following Members (at the request of Mr. GREEN) and to include extraneous material:)

Mr. FINDLEY in three instances.
Mr. JOHN T. MYERS.
Mr. BOB WILSON in two instances.
Mr. COLLINS of Texas in three instances.
Mr. RUDD.
Mr. FRENZEL in three instances.
Mr. MOORHEAD of California.
Mr. MCCLOSKEY.
Mrs. HOLT.
Mr. LEACH.
Mr. DERWINSKI in two instances.
Mr. GILMAN.
Mr. GRASSLEY.
Mr. STEERS in two instances.
Mr. WHITEHURST.

(The following Members (at the request of Mr. WATKINS) and to include extraneous matter:)

Mr. PICKLE in 10 instances.
Mr. BYRON in 10 instances.
Mr. ROSENTHAL in 10 instances.
Mr. SISK in two instances.
Mrs. LLOYD of Tennessee in five instances.
Mr. ANNUNZIO in six instances.
Mr. ANDERSON of California in three instances.
Mr. GONZALEZ in three instances.
Mr. BROWN of California in 10 instances.
Mr. HAMILTON in 10 instances.
Mr. LAFALCE in two instances.
Mr. UDALL in two instances.
Mr. EDWARDS of California.
Mr. PEPPER.
Mr. HOLLAND in five instances.
Mr. EILBERG in 10 instances.
Mr. SIMON in three instances.
Mr. MITCHELL of Maryland.
Mr. APPLEGATE.
Mr. MCDONALD in five instances.
Mr. MILLER of California.
Mr. VANIK in two instances.
Mr. BONIOR.
Mr. PHILLIP BURTON.
Mr. AMBRO.
Mr. BENNETT.
Mr. JACOBS.
Mr. JOHNSON of California.
Mr. MAHON.
Mr. ROGERS in five instances.
Mr. BLANCHARD.
Mr. EDGAR.

## SENATE BILLS AND CONCURRENT RESOLUTION REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 408. An act to amend title 5, United States Code, to extend certain benefits to former employees of county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act, and for other purposes; to the Committee on Post Office and Civil Service;

S. 1274. An act to provide the Attorney General of the United States with authority to contract with State and local authorities for the safekeeping, care, and subsistence of all Federal prisoners; to the Committee on the Judiciary;

S. 2366. An act for the relief of Keum Sun Lee; to the Committee on the Judiciary;

S. 3036. An act to amend the Coinage Act of 1965 to change the size, weight, and design of the one-dollar coin, and for other purposes; to the Committee on Banking, Finance and Urban Affairs;

S. 3184. An act to designate the Indian Health Facility in Ada, Okla., the "Carl Albert Indian Health Facility"; to the Committee on Interior and Insular Affairs;

S. 3274. An act to designate the U.S. Department of Agriculture's Bee Research Laboratory in Tucson, Ariz., as the "Carl Hayden Bee Research Center"; to the Committee on Agriculture;

S. 3336. An act to enable the Department of Justice and the Administrative Office of the U.S. Courts to provide services and special supervision to drug dependent Federal offenders in an efficient and effective manner; to the Committee on the Judiciary;

S. 3373. An act to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Troops on Foreign Soil meetings, and for other purposes; to the Committee on Armed Services;

S. 3375. An act to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial idstrict dividing lines; to the Committee on the Judiciary;

S. 3446. An act to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Ben Abruzzo, Maxie Anderson, and Larry Newman; to the Committee on Banking, Finance and Urban Affairs; and

S. Con. Res. 105. Concurrent resolution authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry; to the Committee on House Administration.

## SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 9. An act to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes;

S. 1633. An act to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes; and

S. 2543. An act to amend title 39 of the United States Code to provide better enforcement procedures for preventing fraudulent solicitations through the mails.

## ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 185. An act to amend section 2632 of title 10, United States Code, to provide the Secretary of the department in which the Coast Guard is operating with the authority to transport Coast Guard employees to and from certain places of employment;

H.R. 2931. An act to amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State or local laws which are inconsistent with such contracts, and for other purposes;

H.R. 2952. An act for the relief of M/Sgt. William E. Boone, U.S. Army, retired;

H.R. 3532. An act to amend chapter 639 of title 10, United States Code, to enable the Secretary of the Navy to change the name of a publication of the Naval Observatory providing data for navigators and astronomers;

H.R. 7161. An act to amend title 10, United States Code, to allow nationals, as well as citizens, of the United States to participate in the Junior Reserve Officers' Training Corps program;

H.R. 7162. An act for the relief of Staphanie Johnson;

H.R. 8342. An act to amend title 5, United States Code, to provide for the application of local withholding taxes to Federal employees who are residents of such locality;

H.R. 8397. An act to provide that a certain tract of land in Pinal County, Ariz., held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation;

H.R. 8471. An act to authorize the Governor of the State of Wyoming to exhibit the nameplate, ship's bell, and silver service of the U.S.S. *Wyoming* without restriction as to the place of such exhibition;

H.R. 10878. An act to extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, and for other purposes;

H.R. 10899. An act to provide for Federal regulation of participation by foreign banks in domestic financial markets;

H.R. 12106. An act to amend the Independent Safety Board Act of 1974 to authorize additional appropriations;

H.R. 12240. An act to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes;

H.R. 12602. An act to authorize certain construction at military installations for fiscal year 1979, and for other purposes;

H.R. 12927. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 13235. An act for the relief of James Thomas Lantz, Jr., David D. Bulkley, and Arthur J. Abshire;

H.R. 13467. An act making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes;

H.R. 13468. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1979, and for other purposes;

H.J. Res. 554. Joint resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress;

H.J. Res. 773. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning September 17, 1978, as "National Port Week"; and

H.J. Res. 1014. Joint resolution designating April 28 and 29 of 1979 as "Days of Remembrance of Victims of the Holocaust."

## BILLS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on August 17, 1978, present to the President, for his approval, a bill of the House of the following title:

H.R. 11579. To designate the Veterans' Administration center located at 1901 South First Street, Temple, Tex., as the "Olin E. Teague Veterans' Center"; and for other purposes.

## ADJOURNMENT

Mr. WATKINS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 25 minutes p.m.), the House adjourned until tomorrow, Thursday, September 7, 1978, at 10 o'clock a.m.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4844. A letter from the Assistant Secretary of Defense (Comptroller), transmitting a report on the value of property, supplies, and commodities provided by the Berlin Magistrate, and under the German Offset Agreement for the quarter ended June 30, 1978, pursuant to section 819 of Public Law 95-111; to the Committee on Appropriations.

4845. A letter from the Commander, Naval Sea Systems Command, Department of the Navy, transmitting a report that a claim against the United States exceeding $5 million by the Boland Marine and Manufacturing Co., Inc., New Orleans, La., has been thoroughly examined and evaluated by officials of the Department of Defense responsible for determining such claims, and has been found to be valid, pursuant to section 747 of Public Law 94-419; to the Committee on Appropriations.

4846. A letter from the Chairman, Federal Election Commission, transmitting the Commission's fiscal year 1980 appropriation request, pursuant to section 310(d)(1) of the Federal Election Campaign Act, as amended; to the Committee on Appropriations.

4847. A letter from the Acting Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to remove the statutory restrictions on the strength and distribution in grade of officers designated for limited duty on the active lists of the Navy and the Marine Corps; to the Committee on Armed Services.

4848. A letter from the Acting Secretary of the Navy, transmitting a draft of a proposed joint resolution authorizing the Secretary of the Navy to receive for instruction at the U.S. Naval Academy 10 citizens and sub'ects of the Kingdom of Saudi Arabia; to the Committtee on Armed Services.

4849. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of various construction projects proposed to be undertaken by the Air National Guard, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

4850. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing); transmitting notice of the location, nature, and estimated cost of a construction project proposed to be undertaken by the Naval and Marine Corps Reserve, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

4851. A letter from the Acting Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain military equipment to Iran (transmittal No. 78-53), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

4852. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of military equipment to Australia (transmittal No. 78-74), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

4853. A letter from the Acting Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain military equipment to Iran (transmittal No. 78-91), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

4854. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of defense equipment to Korea (transmittal No. 78-96), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

4855. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting a copy of Presidential Determination No. 78-17, finding that it is in the national interest of the United States for the Export-Import Bank to facilitate the extension of credit to Hungary, pursuant to section 2(b)(2) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

4856. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report on loan, guarantee and insurance transactions supported by Eximbank during July 1978 to Communist countries; to the Committee on Banking, Finance and Urban Affairs.

4857. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-259, to order the closing of Eye Street, NW. between 23d and 24th Streets, NW. (S.O. 75-34), pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

4858. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-260, to amend the Condominium Act of 1976, District of Columbia Law 1-89, pursuant to section 602 (c) of Public Law 93-198; to the Committee on the District of Columbia.

4859. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-261, to order the closing of a public alley and the dedication of certain other land for public alley purposes, pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

4860. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-262, to order the closing of part of an east-west public alley and the dedication of certain other land for public alley purposes, pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

4861. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-263, to create employment opportunities for blind and other severely handicapped individuals by assuring a market for products and services provided by them, and for other purposes, pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

4862. A letter from the District of Columbia Auditor, transmitting copies of various reports recently released by his office, pursuant to section 455 of Public Law 93-198; to the Committee on the District of Columbia.

4863. A letter from the Chairman, National Advisory Council on Adult Education, transmitting the Council's annual report for fiscal year 1978, pursuant to section 311(d) of the Adult Education Act, as amended; to the Committee on Education and Labor.

4864. A letter from the Chairman, National Council on Educational Research, National Institute of Education, Department of Health, Education, and Welfare, transmitting the fourth annual report of the Council, pursuant to section 405(c)(3) of the General Education Provisions Act, as amended (86 Stat. 330); to the Committee on Education and Labor.

4865. A letter from the General Counsel of the Department of Housing and Urban Development, transmitting a revision to the Department's 1977 annual report on activities under the Freedom of Information Act, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

4866. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting notice of proposed changes in the Department's system of records, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4867. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting notice of a proposed new records system for the Department of the Army, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4868. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting notice of a proposed new records system for the Air Force, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4869. A letter from the Assistant Attorney General for Administration, transmitting notice of proposed changes in the Department's

system of records, pursuant to 5 U.S.C. 552a (o); to the Committee on Government Operations.

4870. A letter from the Deputy Assistant Secretary of the Interior for Policy, Budget and Administration, transmitting notice of a proposed change in an existing records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4871. A letter from the Assistant Secretary of Housing and Urban Development for Administration, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4872. A letter from the Assistant Secretary of Transportation for Administration, transmitting notice of a proposed change in an existing Coast Guard records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4873. A letter from the Deputy Secretary of Energy, transmitting notice of a proposed new records system for the Department, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4874. A letter from the Assistant to the Deputy Administrator, National Aeronautics and Space Administration, transmitting notice of proposed changes in the Department's system of records, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4875. A letter from the Chairman and the General Counsel, National Labor Relations Board, transmitting notice of proposed changes in the Board's system of records, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4876. A letter from the Administrator of Veterans' Affairs, transmitting notice of a new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4877. A letter from the Comptroller General of the United States, transmitting the annual report on progress and results of the continuing program to improve the usefulness of fiscal, budgetary, and program-related information to Congress (PAD–78–78, August 29, 1978, pursuant to section 202(e) of the Legislative Reorganization Act of 1970, as amended; to the Committee on Government Operations.

4878. A letter from the Comptroller General of the United States, transmitting a list of reports issued or released by the General Accounting Office during July 1978, pursuant to section 234 of the Legislative Reorganization Act of 1970; to the Committee on Government Operations.

4879. A letter from the Secretary of the Interior and the Secretary of Agriculture, transmitting the 12th and 13th annual reports on the status of the National Wilderness Preservation System, covering calendar years 1975 and 1976, pursuant to section 7 of the Wilderness Act; to the Committee on Interior and Insular Affairs.

4880. A letter from the Acting Secretary of the Interior, transmitting a report on the organization of leasing operations of the Federal Government, pursuant to section 658 of Public Law 95–91; to the Committee on Interior and Insular Affairs.

4881. A letter from the Acting Secretary of the Interior, transmitting notice of the proposed refund of $15,000 in rental payments to the Mesa Petroleum Co., pursuant to section X 10(b) of the Outer Continental Shelf Lands Act; to the Committee on Interior and Insular Affairs.

4882. A letter from the Vice Chairman, Indian Claims Commission, transmitting the Commission's final determination in docket No. 59, *Saginaw Chippewa Indian Tribe of Michigan, et al.*, plaintiffs v. *The United States of America*, defendant, docket No. 29–E, *Hannahville Indian Community, et al.*, plaintiffs, v. *Potawatomi Indians of Indiana and Michigan, Inc., Prairie Band of Pottawatomie Indians, et al., Citizen Band Potawatomi Indians of Oklahoma, et al.*, intervenors, v. *The United States of America*, defendant, and docket No. 133–B, *The Ottawa Tribe and Guy Jennison, et al., as representatives of the Ottawa Tribe*, plaintiffs, v. *The United States of America*, pursuant to section 21 of the Indian Claims Commission Act; to the Committee on Interior and Insular Affairs.

4883. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a quarterly report on the programing and obligation of International Narcotics Control funds as of June 30, 1978, pursuant to section 481(b)(1) of the Foreign Assistance Act of 1961, as amended (87 Stat. 719); to the Committee on International Relations.

4884. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting notice of the intention of the Department of State to consent to a request by the Government of Belgium for permission to transfer U.S.-origin military equipment to the Government of Australia, pursuant to section 3(a) of the Arms Export Control Act, as amended; to the Committee on International Relations.

4885. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting a copy of Presidential Determination No. 78–16, and the justification therefor, finding that the financing under the Arms Export Control Act of the sale to Tunisia of certain sophisticated weapons is important to the national security of the United States, pursuant to section 4 of the act; to the Committee on International Relations.

4886. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by U.S. Chief of Protocol-designate Edith J. Dobelle, and by members of her family, pursuant to section 6 of Public Law 93–126; to the Committee on International Relations.

4887. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting reports on political contributions made by William H. Luers and Marilyn P. Johnson, Ambassadors-designate to Venezuela and Togo, respectively, and by members of their families, pursuant to section 6 of Public Law 93–126; to the Committee on International Relations.

4888. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of licenses for the export of major defense equipment sold commercially to the Republic of China (MC–13–78), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on International Relations.

4889. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of licenses for the export of major defense equipment sold commercially to the Philippines (MC–34–78), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on International Relations.

4890. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of licenses for the export of major defense equipment sold commercially to Argentina (MC–35–78), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on International Relations.

4891. A letter from the Under Secretary of State for Security Assistance, Science and Technology, transmitting the annual report for fiscal year 1977 on exports of arms, ammunition and implements of war, pursuant to section 657(a) of the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

4892. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 Caribbean Regional program, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended (88 Stat. 1801); to the Committee on International Relations.

4893. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 program in Chile, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended (88 Stat. 1801); to the Committee on International Relations.

4894. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 program in Guyana, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended (88 Stat. 1801); to the Committee on International Relations.

4895. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 program in Kenya, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended (88 Stat. 1801); to the Committee on International Relations.

4896. A letter from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b; to the Committee on International Relations.

4897. A letter from the Acting Assistant Legal Adviser for Treaty Affairs, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b; to the Committee on International Relations.

4898. A letter from the Assistant Secretary of the Treasury for Legislative Affairs, transmitting project performance audit reports prepared by the International Bank for Reconstruction and Development, pursuant to section 301(e)(3) of the Foreign Assistance Act of 1961, as amended (87 Stat. 718); to the Committee on International Relations.

4899. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to Iran (transmittal No. 78–53), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4900. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to Australia (transmittal No. 78–74), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4901. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense articles to Iran (transmittal No. 78–91), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4902. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense articles to Saudi Arabia (transmittal No. 78–94), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4903. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer

to sell certain defense equipment to Korea (transmittal No. 78–96), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4904. A letter from the Secretary of Health, Education, and Welfare, transmitting a report on the status of health professions personnel in the United States, pursuant to section 708(d) of the Public Health Service Act, as amended; to the Committee on Interstate and Foreign Commerce.

4905. A letter from the Secretary of Health, Education, and Welfare, transmitting a report on State compliance with medicaid utilization control requirements, covering the quarter ended December 31, 1977, pursuant to section 1903(g)(6) of the Social Security Act, as amended (91 Stat. 1205); to the Committee on Interstate and Foreign Commerce.

4906. A letter from the General Counsel, Department of Energy, transmitting notice of various meetings relating to the International Energy Program to be held September 12, 13, and 14, in London, England; to the Committee on Interstate and Foreign Commerce.

4907. A letter from the Chairman, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, transmitting the Commission's report and recommendations on institutional review boards, pursuant to section 204(d) of Public Law 93–348; to the Committee on Interstate and Foreign Commerce

4908. A letter from the Assistant Secretary of Energy for Policy and Evaluation, transmitting notice of a delay in preparation of the annual report on the economic impact of energy actions required by section 18(d) of the Federal Energy Administration Act, as amended (90 Stat. 1130); to the Committee on Interstate and Foreign Commerce.

4909. A letter from the Acting Chairman, Interstate Commerce Commission, transmitting amendments to certain route statistics in an appendix to the Commission's previously submitted annual report on Amtrak (Executive Communication No. 3590); to the Committee on Interstate and Foreign Commerce.

4910. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth perference classification, pursuant to section 204(d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

4911. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in the cases of certain aliens found admissible to the United States, pursuant to section 212(a)(28)(I)(ii) of the Immigration and Nationality Act; to the Committee on the Judiciary.

4912. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders suspending deportation under the authority of section 244(a)(1) of the Immigration and Nationality Act, together with a list of the persons involved, pursuant to section 244(c) of the act; to the Committee on the Judiciary.

4913. A letter from the Administrator, U.S. Environmental Protection Agency, transmitting the first in a series of quarterly reports on the Agency's efforts at regulatory reform; to the Committee on the Judiciary.

4914. A letter from the Deputy Comptroller General of the United States, transmitting a report and recommendation concerning claims for relief from liability to the United States of 17 employees of the Long Beach Naval Shipyard, Calif., pursuant to the act of April 10, 1928 (45 Stat. 413, 31 U.S.C. 236); to the Committee on the Judiciary.

4915. A letter from the Administrator of General Services, transmitting the 1977 status report on public buildings projects authorized for construction, alteration and lease in accordance with the Public Buildings Act of 1959, pursuant to section 11(a) of the act; to the Committee on Public Works and Transportation.

4916. A letter from the Secretary of Energy, transmitting performance standards for the first electric and hybrid vehicles to be purchased or leased under the Electric and Hybrid Vehicle Research, Development, and Demonstration Project, pursuant to section 7(b)(4) of Public Law 94–413, as amended (92 Stat. 91); to the Committee on Science and Technology.

4917. A letter from the Under Secretary of Energy, transmitting a preliminary report on the study of options available to the Federal Government to provide for the adequate growth of the solar photovoltaics industry, pursuant to section 208(a)(2) of Public Law 95–238; to the Committee on Science and Technology.

4918. A letter from the Administrator, U.S. Small Business Administration, transmitting the administration's views on the House and Senate versions of H.R. 11445, a bill to amend the Small Business Act and the Small Business Investment Act of 1958; to the Committee on Small Business.

4919. A letter from the Acting Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend title II of the Social Security Act to make the monthly retirement test available in limited circumstances in the case of certain beneficiaries, to amend the technical requirements for entitlement to medicare, and for other purposes; to the Committee on Ways and Means.

4920. A letter from the Chairman, Agricultural Technical Advisory Committee for Trade Negotiations on Dairy, transmitting the committee's report on the Agreement on Trade Matters Between the United States of America and the United Mexican States, signed December 2, 1977, pursuant to section 135(e)(1) of the Trade Act of 1974; to the Committee on Ways and Means.

4921. A letter from the Acting Comptroller General of the United States, transmitting a report on the Air Force's GBU–15 short and long range air-to-ground glide weapons program (PSAD–78–49, August 24, 1978); jointly, to the Committees on Government Operations and Armed Services.

4922. A letter from the Comptroller General of the United States, transmitting a report on Defense Department pricing policies and practices in certain foreign military sales (FGMSD–78–51, August 25, 1978); jointly, to the Committees on Government Operations, Armed Services, and International Relations.

4923. A letter from the Comptroller General of the United States, transmitting a report on the Army's ballistic missile defense program and related aspects of strategic offensive weapons (PSAD–78–109, September 1, 1978); jointly, to the Committees on Government Operations and Armed Services.

4924. A letter from the Comptroller General of the United States, transmitting a report on the problems and outlook of small private liberal arts colleges (HRD–78–91, August 25, 1978); jointly, to the Committees on Government Operations and Education and Labor.

4925. A letter from the Comptroller General of the United States, transmitting a report on U.S. economic assistance for Israel (ID–78–31, August 18, 1978); jointly, to the Committees on Government Operations and International Relations.

4926. A letter from the Comptroller General of the United States, transmitting a report on the impact of U.S.-based multinational corporations on the conduct of our foreign relations (PAD–78–58, August 23, 1978); jointly, to the Committees on Government Operations and International Relations.

4927. A letter from the Comptroller General of the United States, transmitting a report on the geographic distribution of physicians and needed improvements in Federal programs designed to improve availability of physician services in underserved areas (HRD–77–135, August 22, 1978); jointly, to the Committees on Government Operations, Interstate and Foreign Commerce, and Ways and Means.

4928. A letter from the Comptroller General of the United States, transmitting a report on reducing the Federal law enforcement role in bank robberies (GGD–78–87, August 18, 1978); jointly, to the Committees on Government Operations and the Judiciary.

4929. A letter from the Comptroller General of the United States, transmitting a report on the Government's efforts to regulate post-Federal employment and what can be done to improve executive branch administration of existing post-Federal employment laws and regulations (FPCD–78–38, August 28, 1978); jointly, to the Committees on Govenment Operations, the Judiciary, and Post Office and Civil Service.

4930. A letter from the Comptroller General of the United States, transmitting a report on improvements needed in collection, accounting, and cash management of import duties and taxes (FGMSD–78–50, August 21, 1978); jointly, to the Committees on Government Operations and Ways and Means.

4931. A letter from the Comptroller General of the United States, transmitting a report on the replacement of missing supplemental security income checks (HRD–78–28, August 22, 1978); jointly, to the Committees on Government Operations and Ways and Means.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows

[*Pursuant to the order of the House on Aug. 16, 1978, the following reports were filed on Aug. 18, 1978*]

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. H.R. 13372. A bill to increase the price of migratory-bird hunting and conservation stamps and to suspend the hunting of migratory birds in any State in which there has been a failure to approve an acquisition of wetlands; with amendment (Rept. No. 95–1518). Referred to the Committee of the Whole House on the State of the Union.

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. H.R. 13745. A bill to authorize appropriations to carry out conservation programs on military reservations and public lands during fiscal years 1979, 1980, and 1981 (Rept. No. 95–1519). Referred to the Committee of the Whole House on the State of the Union.

[*Pursuant to the order of the House on Aug. 17, 1978, the following reports were filed on Aug. 21, 1978*]

Mr. BROOKS: Committee on Government Operations. Report on Justice Department internal investigation policies. (Rept. No. 95–1520). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on search warrants and the effects of the Stanford Daily decision (Rept. No. 95–1521). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. S. 1265. An act to amend chapter

21 of title 44, United States Code, to include new provisions relating to the acceptance and use of records transferred to the custody of the Administrator of General Services (Rept. No. 95–1522). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. House Resolution 1242. Resolution to disapprove Reorganization Plan No. 3 transmitted by the President on June 19, 1978 (Rept. No. 95–1523). Referred to the Committee of the Whole House on the State of the Union.

[*Pursuant to the order of the House on Aug. 15, 1978, the following reports were filed on Aug. 25, 1978*]

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries H.R. 11861. A bill to establish a Navy-Maritime Advisory Board; with amendment (Rept. No. 95–1524). Referred to the Committee of the Whole House on the State of the Union.

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. H.R. 12959. A bill to amend the definition of the term "qualified vessel" under a Capital Construction Fund; with amendment (Rept. No. 95–1525). Referred to the Committee of the Whole House on the State of the Union.

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. H.R. 12603. A bill to amend the Great Lakes Pilotage Act of 1960 in order to relieve the restrictive qualification standards for U.S. registered pilots on the Great Lakes; with amendment (Rept. No. 95–1526). Referred to the Committee of the Whole House on the State of the Union.

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. H.R. 13392. A bill to amend the Anadromous Fish Conservation Act to include fish in Lake Champlain that ascend streams to spawn; with amendment (Rept. No. 95–1527). Referred to the Committee of the Whole House on the State of the Union.

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. H.R. 11658. A bill to amend title XI of the Merchant Marine Act, 1936, to permit the guarantee of obligations for financing Great Lakes vessels in an amount not exceeding 87½ percent of the actual or depreciated actual cost of each vessel; with amendment (Rept. No. 95–1528). Referred to the Committee of the Whole House on the State of the Union.

[*Pursuant to the order of the House on Aug. 17, 1978, the following reports were filed Aug. 25, 1978*]

Mr. BROOKS: Committee on Government Operations. H.R. 13767. A bill to amend the Federal Property and Administrative Services Act of 1949 to permit the recovery of replacement cost of motor vehicles and other related equipment and supplies; (Rept. No. 95–1529). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. H.R. 13688. A bill to authorize the permanent establishment of a system of Federal Information Centers; with amendment (Rept. No. 95–1530). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. H.R. 13778. A bill to establish a Department of Education, and for other purposes; with amendment (Rept. No. 95–1531). Referred to the Committee of the Whole House on the State of the Union.

[*Pursuant to the order of the House on Aug. 17, 1978, the following report was filed on Aug. 30, 1978*]

Mr. ULLMAN: Committee on Ways and Means. H.R. 11545. A bill to modify the method of determining quantitative limitations on the importation of certain articles of meat and meat products, to apply quantitative limitations on the importation of certain additional articles of meat, meat products, and livestock, and for other purposes; with amendment (Rept. No. 95–1532). Referred to the Committee of the Whole House on the State of the Union.

*Aug. 17, 1978, the following reports were* [*Pursuant to the order of the House on filed on Aug. 31, 1978*]

Mr. ULLMAN: Committee on Ways and Means. H.R. 13097. A bill to amend certain provisions of title XVIII of the Social Security Act as they relate to the medicare program established by part A of such title; with amendment (Rept. No. 95–1533). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 13817. A bill to amend the Social Security Act with respect to the health programs authorized under it and for other purposes; with amendment (Rept. No. 95–1534). Referred to the Committee of the Whole House on the State of the Union.

[*Submitted Sept. 6, 1978*]

Mr. FASCELL: Committee of conference. Conference report on H.R. 12598 (Rept. No. 95–1535). Ordered to be printed.

Mr. BOLLING: Committee on Rules. House Resolution 1333. Resolution providing for the consideration of H.R. 13471. A bill to strengthen the supervisory authority of Federal agencies which regulate depository institutions, to prohibit interlocking management and director relationships between financial institutions, to amend the Federal Deposit Insurance Act, to restrict conflicts of interest involving officials of financial supervisory agencies, to control the sale of insured financial institutions, to regulate the use of correspondent accounts, to establish a Federal Bank Examination Council, and for other purposes. (Rept. No. 95–1536). Referred to the House Calendar.

Mr. ULLMAN: Committee on Ways and Means. H.R. 6877. A bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of small business investment companies electing to be taxed as regulated investment companies; with amendment (Rept. No. 95–1537). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 9192. A bill to amend the Internal Revenue Code of 1954 to include the banks for cooperatives among the other financial institutions subject to the provisions of subsection 582(c)(1) and section 595(a) of such code; with amendment (Rept. No. 95–1538). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 10653. A bill to amend the Internal Revenue Code of 1954 with respect to the redemption of United States Railway Association certificates of value issued to railroads in reorganization; with amendment (Rept. No. 95–1539). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 12200. A bill to amend section 422 of the Internal Revenue Code of 1954; with amendment (Rept. No. 95–1540). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 12606. A bill to provide that annuity contracts purchased by the Uniformed Services University of the Health Sciences shall be entitled to the benefits of section 403(b) of the Internal Revenue Code of 1954. (Rept. No. 95–1541). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 9333. A bill to authorize the Secretary of the Interior to construct hydroelectric powerplants and various existing water projects, and for other purposes; with amendment (Rept. No. 95–1542). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 13069. A bill to prohibit discrimination in rates charged by the Southwestern Power Administration; with amendment (Rept. No. 95–1543). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 1829. An act to provide for the establishment of the Jean Lafitte National Historical Park and Preserve in the State of Louisiana, and for other purposes; with amendment (Rept. No. 95–1544). Referred to the Committee of the Whole House on the State of the Union.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BLANCHARD (for himself, Mr. CONTE, Mr. FITHIAN, Mr. GRADISON, Mr. BAUCUS, Mr. BONIOR, Mr. GLICKMAN, Mr. HUBBARD, Mr. LLOYD of California, Mr. OBERSTAR, Mr. PATTERSON of California, Mr. RAHALL, Mr. RUSSO, Mr. VENTO, and Mr. WIRTH):

H.R. 13975. A bill to require authorization of new budget authority for Government programs every 10 years, and for other purposes; jointly, to the Committees on Rules and Government Operations.

By Mr. CORMAN (for himself and Mr. FISHER):

H.R. 13976. A bill to amend the Internal Revenue Code of 1954 to allow certain individuals whose employers make contributions to pension plans a deduction for their contributions to certain individual retirement savings plans; to the Committee on Ways and Means.

By Mr. COTTER:

H.R. 13977. A bill to amend section 216 of the Internal Revenue Code; to the Committee on Ways and Means.

By Mr. DUNCAN of Tennessee:

H.R. 13978. A bill to amend the Internal Revenue Code of 1954 to make certain changes in the rules used in determining whether corporations are members of a controlled group; to the Committee on Ways and Means.

By Mr. EILBERG:

H.R. 13979. A bill to amend the Internal Revenue Code of 1954 to allow individuals a credit against income tax for qualified fire detector expenses; to the Committee on Ways and Means.

By Mrs. FENWICK (for herself, Mr. BONIOR, Mr. BUTLER, Mrs. COLLINS of Illinois, Mr. DOWNEY, Mr. DUNCAN of Oregon, Mr. EDGAR, Mr. EDWARDS of California, Mr. EILBERG, Mr. FARY, Mr. FORSYTHE, Mr. GARCIA, Mr. GUYER, Ms. HOLTZMAN, Mr. HUGHES, Mrs. LLOYD of Tennessee, Mr. MCKAY, Mr. MITCHELL of Maryland, Mr. MURPHY of Illinois, Mr. OTTINGER, Mr. PATTERSON of California, Mr. PRESSLER, Mr. PREYER, Mr. RODINO, and Mr. ROE):

H.R. 13980. A bill to increase alternatives to institutionalization for senior citizens; jointly, to the Committees on Interstate and Foreign Commerce, and Ways and Means.

By Mrs. FENWICK (for herself, Mr. CORCORAN of Illinois, Mr. DANIELSON, Mr. EVANS of Delaware, Mr. GRASSLEY, Mr. MINISH, Mr. SAWYER, Mrs. SCHROEDER, Mrs. SPELLMAN, Mr. STEERS, Mr. TSONGAS, Mr. VENTO, Mr. ZABLOCKI, and Mr. GREEN):

H.R. 13981. A bill to increase alternatives to institutionalization for senior citizens;

jointly, to the Committees on Interstate and Foreign Commerce and Ways and Means.

By Mr. GRASSLEY:

H.R. 13982. A bill to amend the Internal Revenue Code of 1954 to clarify the eligibility for the investment tax credit of structures used for housing, raising, or feeding hogs; to the Committee on Ways and Means.

By Mr. LUKEN:

H.R. 13983. A bill to amend title XX of the Social Security Act to insure the equitable distribution of services among political subdivisions within each State; to the Committee on Ways and Means.

By Mr. MATHIS (for himself and Mr. WAMPLER):

H.R. 13984. A bill to prohibit the Secretary of Agriculture from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until a satisfactory substitute preservative is commercially available; to the Committee on Agriculture.

H.R. 13985. A bill to prohibit the Secretary of Agriculture and the Secretary of Health, Education, and Welfare from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until the development of a satisfactory alternative food preservative; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. PEPPER:

H.R. 13986. A bill to amend title XVIII of the Social Security Act to reduce certain deductibles and coinsurance under the medicare program and to fund such reductions from general revenues; jointly, to the Committees on Ways and Means and Interstate and Foreign Commerce.

By Mr. PERKINS:

H.R. 13987. A bill to amend the Internal Revenue Code of 1954 to insure that the deduction for contributions to a black lung benefit trust be allowed for any such contributions which are made for the purpose of satisfying unfunded future liability, and for other purposes; to the Committee on Ways and Means.

By Mr. PRICE (for himself and Mr. BOB WILSON) (by request):

H.R. 13988. A bill to amend sections 3031(d) and 8031(d) of title 10, United States Code, to limit their application to general officers assigned or detailed to duty in the executive part of the Department of the Army and the Department of the Air Force, and for other purposes; to the Committee on Armed Services.

By Mr. DE LA GARZA:

H.R. 13989. A bill to amend section 1445(b) of the Food and Agriculture Act of 1977 to modify the formula for distribution of funds authorized thereunder for agricultural research; to the Committee on Agriculture.

By Mr. HILLIS:

H.R. 13990. A bill to amend the Trade Act of 1974; to the Committee on Ways and Means.

By Mr. JOHNSON of California:

H.R. 13991. A bill to provide for the United States to hold in trust for the Susanville Indian Rancheria of Lassen County, Calif., approximately 120 acres of land; to the Committee on Interior and Insular Affairs.

By Mr. KEMP:

H.R. 13992. A bill to amend the Internal Revenue Code of 1954 to allow alimony to be used in determining the limit on the deduction for retirement savings; to the Committee on Ways and Means.

By Mr. LEDERER:

H.R. 13993. A bill to amend the Federal-State Extended Unemployment Compensation Act of 1970 to provide for the use of unemployment rates in the determination of extended benefit periods; to the Committee on Ways and Means.

By Mr. PREYER:

H.R. 13994. A bill to amend title XI of the Social Security Act and section 522a of title 5, United States Code, to protect the privacy of medical records maintained by medical care facilities, and for other purposes; jointly, to the Committees on Government Operations, Interstate and Foreign Commerce, and Ways and Means.

By Mr. ST GERMAIN:

H.R. 13995. A bill to amend title 10, United States Code, to change the method of computing retired pay of certain enlisted members of the Army, Navy, Air Force, or Marine Corps; to the Committee on Armed Services.

By Mr. BRINKLEY:

H.J. Res. 1129. Joint resolution designating the square dance as the national folk dance of the United States of America; to the Committee on Post Office and Civil Service.

By Mr. SIKES:

H.J. Res. 1130. Joint resolution raising the price support levels for milk, wheat, corn, soybeans, and cotton to 90 percent of the respective parity prices therefor, and for other purposes; to the Committee on Agriculture.

By Mr. GIAIMO:

H. Res. 1334. Resolution expressing the sense of the House that the Reverend Sun Myung Moon appear before the Subcommittee on International Organizations investigating Korean-American relations; to the Committee on International Relations.

By Mr. GLICKMAN:

H. Res. 1335. Resolution to amend the Rules of the House of Representatives; to the Committee on Rules.

By Mr. HARRIS (for himself, Mrs. SPELLMAN, Mr. WON PAT, and Mr. OTTINGER):

H. Res. 1336. Resolution disapproving the Federal pay comparability alternative plan proposed by the President; to the Committee on Post Office and Civil Service.

By Mr. TEAGUE:

H. Res. 1337. Resolution expressing the sense of the House of Representatives with respect to actions which should be taken by Members of the House upon being charged with certain crimes, and for other purposes; to the Committee on Standards of Official Conduct.

By Mr. BROOKS:

H. Res. 1338. Resolution providing for the printing of the report entitled "Freedom of Information Requests for Business Data and Reverse-FOIA Lawsuits"; to the Committee on House Administration.

By Mr. CAVANAUGH:

H. Res. 1339. Resolution relating to distribution of Federal funds to State and local governments for cooperative projects; to the Committee on Government Operations.

## MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

467. By the SPEAKER: Memorial of the Legislature of the State of California, relative to agricultural commodities; to the Committee on Ways and Means.

468. Also, memorial of the Assembly of the State of California, relative to aircraft noise reduction through a strong national policy and national funding source; jointly, to the Committees on Public Works and Transportation and Ways and Means.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DELLUMS:

H.R. 13996. A bill for the relief of Paul Sakwa; to the Committee on the Judiciary.

By Mr. FOUNTAIN:

H.R. 13997. A bill for the relief of Rosario M. Stancil; to the Committee on the Judiciary.

By Mr. KRUEGER (by request):

H.R. 13998. A bill for the relief of Col. Neal R. Walker; to the Committee on the Judiciary.

By Mr. STANTON:

H.R. 13999. A bill for the relief on Helga M. Mathena; to the Committee on the Judiciary.

By Mr. BOB WILSON:

H.R. 14000. A bill for the relief of Welita F. Sebastian; to the Committee on the Judiciary.

H.R. 14001. A bill for the relief of Maria Estela Sims; to the Committee on the Judiciary.

## PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

530. By the SPEAKER: Petition of the city council, Dallas, Tex., relative to its opposition to a proposed LEAA grant to the Bois d'Arc Patriots; to the Committee on the Judiciary.

531. Also, petition of the city council, Kansas City, Mo., relative to public transit facilities for the handicapped; to the Committee on Public Works and Transportation.

532. Also, petition of the city council, Burbank, Calif., relative to providing assistance to airport and aircraft operators in complying with Federal noise requirements; to the Committee on Public Works and Transportation.

533. Also, petition of Pheidas Paraskevaides, president, Pancyprian Committee of Refugees, Cyprus, relative to the return of Cypriot refugees to their homes; to the Committee on International Relations.

534. Also, petition of the National Water Supply Improvement Association, Fountain Valley, Calif., relative to the Federal desalination program; jointly, to the Committees on Interior and Insular Affairs and Appropriations.

535. Also, petition of the Michigan Aeronautics Commission, Detroit, Mich., relative to maximizing the use of the Airport and Airways Trust Fund to eliminate the backlog in airport development; jointly, to the Committee on Public Works and Transportation and Ways and Means.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7308

By Mr. GONZALEZ:

—Amend section 107 to read as follows:

REPORT OF ELECTRONIC SURVEILLANCE

SEC. 107. (a) In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(2) the total number of such orders and extensions either granted, modified, or denied.

(b) And in April of each year the Attorney General shall transmit a report to the appropriate Member of Congress or Congressional Committee on any information gathered regarding any foreign government's attempt to influence Congress, suborn individual Members or to threaten a Member.

H.R. 7308

By Mr. RUDD:

—Page 62, after line 15, insert the following new section and redesignate succeeding sections:

PROTECTION FOR SURVEILLANCE OFFICERS

SEC. 107. Notwithstanding any other provision of this act, no law enforcement, investigative, or intelligence officer or other person engaged in the course of his official duties in conducting electronic surveillance authorized by the Attorney General, or in the use or disclosure of information derived from such surveillance, shall be presecuted or otherwise held liable for such action under criminal or civil law: *Provided*, That such person acted in a good faith belief that his actions did not violate any provision of this title, under circumstances where that belief was reasonable.

(Amendment offered to the amendment in the nature of a substitute.)

—After section 103, insert the following new section and redesignate succeeding sections:

PROTECTION FOR SURVEILLANCE OFFICERS

SEC. 104. Notwithstanding any other provision of this act, no law enforcement, investigative, or intelligence officer or other person engaged in the course of his official duties in conducting electronic surveillance authorized by the Attorney General, or in the use or disclosure of information derived from such surveillance, shall be prosecuted or otherwise held liable for such action under criminal or civil law: *Provided*, That such person acted in a good faith belief that his actions did not violate any provision of this title, under circumstances where that belief was reasonable.

—(Amendment offered to the amendment in the nature of a substitute.) After section 106, insert the following new section and redesignate succeeding sections:

PROTECTION FOR SURVEILLANCE OFFICERS

SEC. 107. Notwithstanding any other provision of this act, no law enforcement, investigative, or intelligence officer or other person engaged in the course of his official duties in conducting electronic surveillance authorized by the Attorney General, or in the use or disclosure of information derived from such surveillance, shall be prosecuted or otherwise held liable for such action under criminal or civil law: *Provided*, That such person acted in a good faith belief that his actions did not violate any provision of this title, under circumstances where that belief was reasonable.

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H.R. 11280

By Mr. CLAY:

—On page 138, after line 5, insert a new section as follows:

"(C) on the basis of sex, as prohibited by the Equal Pay Act of 1963, 29 U.S.C. 206(d);".

And redesignate the subsequent section accordingly.

—On page 142, after line 14, add a new section as follows:

"(3) under the Equal Pay Act of 1963 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;", and renumber the subsequent sections accordingly.

—Page 144, line 20, after "Senate." insert the following: "The term of office of the Director shall be 4 years and shall be coterminous with the term of office of the President.".

—Page 152, line 20, strike out the period and insert in lieu thereof the following: ", and in addition the authority to hear appeals with respect to examination ratings.".

—Page 166, after subsection (d), insert the following:

CATEGORY RATING SYSTEM

SEC. 203. (a) Section 3304 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(e)(1) Subject to the provisions of this title (other than section 318(a)), in cases in which the qualifications of applicants are being determined without the use of written examinations, the Office may provide that individuals shall be evaluated in accordance with a category rating system established by the Office which divides the qualified applicants into three or more categories. The appointing or nominating authority may select any individual within the highest category, or, if at least three candidates have not received such a rating, any individual in the next highest category or categories if necessary to provide the appointing or nominating authority with at least three applicants from which to choose.

"(2) For the purpose of applying section 3318(b) of this title in cases to which paragraph (1) of this subsection applies, an individual shall not be considered to be passed over unless a selection is made from a category which is lower than the category for which that individual qualified.

Page 166, line 16, strike out "203," and insert in lieu thereof "204.".

Page 174, line 9, strike out "204." and insert in lieu thereof "205.".

Page 182, line 16, strike out "205." and insert in lieu thereof 206.".

Conform the table of contents accordingly.

—Page 168, beginning on line 17, strike out "appraisals of job performance of employees;" and insert in lieu thereof "appraisals of the total job performance of each employee in the agency".

Page 169, line 8, insert "total" before "job performance".

—Page 169, after line 3, insert the following: Under any performance appraisal system developed under this section, the agency may establish or modify any performance standard provided for under subsection (b) of this section to the extent necessary to meet the particular needs of the agency.

—Page 175, strike out line 11 and all that follows down through line 21 and insert in lieu thereof the following:

"(b) An employee against whom an action is proposed to be taken is entitled to—

"(1) written notice of the proposed action which shall state the specific reasons for the action and which shall be provided a reasonable period in advance of the opportunity for hearing;

"(2) a hearing;

"(3) be represented by an attorney or other representative; and

"(4) a written decision after the hearing (or opportunity therefor) which states the specific reasons for such decision and which is provided at least 90 days before such action takes effect.

Page 175, strike out line 22 and all that follows down through line 24.

Page 176, line 1, strike out "(d)" and insert in lieu thereof "(c)".

Page 179, strike out line 12 and all that follows down through line 2 on page 180 and insert in lieu thereof the following:

"(b) An employee against whom an action is proposed to be taken is entitled to—

"(1) written notice of the proposed action which shall state the specific reasons for the action and which shall be provided a reasonable period in advance of the opportunity for hearing;

"(2) a hearing;

"(3) be represented by an attorney or other representative; and

"(4) a written decision after the hearing (or opportunity therefor) which states the specific reasons for such decision and which is provided at least 90 days before such action takes effect.

Page 180, line 6, strike out "(d)" and insert follows down through line 5.

Page 180, line 6, strike out "(d)" and insert in lieu thereof "(c)".

Page 180, line 9, strike out "(e)" and insert in lieu thereof "(d)".

Page 184, line 3, strike out "(3)".

Page 184, line 6, strike out "(A) or party to the appeal or the Director of the Office of Personnel Management petitions" and insert in lieu thereof "(1) a party to the appeal petitions".

Page 184, line 9, strike out "(B)" and insert "(2)" in lieu thereof.

Page 184, strike out paragraph (2), beginning on line 18 and ending on line 23.

—On page 185, line 7, insert the following after "(42 U.S.C. 2000e-16),": "the Equal Pay Act of 1963 (29 U.S.C. 206(d)),".

—On page 187, strike lines 7 through 13, and insert the following in lieu thereof:

" "(b) A petition to review a final order or decision of the Board shall be filed in the Court of Claims or a United States district court as provided in chapters 91 and 85, respectively, of title 28 except that cases of discrimination shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c), under section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216 and 217), as applicable. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.".

—On page 187, line 17, insert after the word "followed" the following: ", except that in a case of discrimination brought under 42 U.S.C. 2000e-16(c), 29 U.S.C. 633a(c), or 29 U.S.C. 216 and 217, the proceeding shall be de novo.".

—Page 209, after line 13, insert the following:

CATEGORY RATING SYSTEM

SEC. 313. (a) Section 3304 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(e)(1) Subject to the provisions of this title (other than section 3318(a)), in cases in which the qualifications of applicants are being determined without the use of written examinations, the Office may provide that individuals shall be evaluated in accordance with a category rating system established by the Office which divides the qualified applicants into three or more categories. The appointing or nominating authority may select any individual within the highest category, or, if at least three candidates have not received such a rating, any individual in the next highest category or categories if necessary to provide the appointing or nominating authority with at least three applicants from which to choose.

"(2) For the purpose of applying section 3318(b) of this title in cases to which paragraph (1) of this subsection applies, an individual shall not be considered to be passed over unless a selection is made from a category which is lower than the category for which that individual qualified.

—Page 209, line 14, strike out "313." and insert in lieu thereof "314.".

Conform the table of contents accordingly.

—Page 265, line 12, after "(C)" insert the following "except as provided in paragraph (5) of this subsection.".

—Page 266, after line 9, insert the following:

"(5) Any employee who is denied a pay increase under this subsection is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.".

—Page 361, after line 19, insert the following:

TITLE IX—POLITICAL ACTIVITIES

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES

SEC. 901. (a) Subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"Subchapter III—Political Activities

"§ 7321. Political participation

"It is the policy of the Congress that employees should be encouraged to fully exercise, freely and without fear of penalty or reprisal, and to the extent not expressly prohibited by law—

"(1) their rights to participate or to refrain from participating in the political processes of our Nation, and

"(2) their rights to form, join, or assist, or to refrain from forming, joining, or assisting, any organization, political party, committee, association, or other group which advocates or encourages political activities, and that employees should be protected in the exercise of these rights.

"§ 7322. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means any individual, other than the President and the Vice President, employed or holding office in—

"(A) an Executive agency;

"(B) a position within the competitive service, or within the Senior Executive Service as a career appointee (as defined in section 3132(a)(4) of this title), which is not in an-entity referred to in subparagraphs (A) through (B);

but does not include a member of the uniformed services;

"(2) 'candidate' means any individual who seeks nomination for election, or election, to any elective office, whether or not such individual is elected, and, for the purpose of this paragraph, an individual shall be considered to seek nomination for election, or election, to an elective office, if such individual has—

"(A) taken the action required to qualify for nomination for election, or election; or

"(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

"(3) 'political contribution'—

"(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

"(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any political purpose;

"(C) includes the payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to such candidate or political party or affiliated organization without charge for any political purpose; and

"(D) includes the provision of personal services for any political purpose;

"(4) 'superior' means an employee who exercises supervision of, or control or administrative direction over, another employee;

"(5) 'elective office' means any elective public office and any elective office of any political party or affiliated organization;

"(6) 'State' means each of the several States and the District of Columbia;

"(7) 'person' means any individual, corporation, trust, association, any State, local, or foreign government, any territory or possession of the United States, or any agency or instrumentality of any of the foregoing; and

"(8) 'restricted position' means any position with respect to which there is in effect a determination by the Office of Personnel Management, by regulation, that—

"(A) the duties and responsibilities of such position require such employee—

"(i) as a substantial part of his official activities, to engage in foreign intelligence activities relating to national security;

"(ii) in the normal course of carrying out such duties and responsibilities—

"(I) to make decisions binding on employees with respect to whom he is a superior with regard to who shall be the subject of any action which is to be taken by any such employee in connection with the enforcement of any civil or criminal law (including any inspection or audit under any such law);

"(II) to actually carry out any such action; or

"(III) to make a final determination with respect to any such action; or

"(iii) in the normal course of carrying out such duties and responsibilities—

"(I) to make binding decisions on who shall be awarded contracts which are for the procurement of goods or services for the Government and which have substantial monetary value, or who shall be awarded licenses, grants, subsidies, or other benefits, which involve funds or other interests having a substantial monetary value; or

"(II) to supervise individuals engaged in the awarding, administering, or monitoring of such contracts, licenses, grants, subsidies, or benefits; and

"(B) the restrictions on political activity imposed on such employee in such position are justified in order to insure the integrity of the Government or the public's confidence in the integrity of the Government.

"§ 7323. Use of official influence or official information; prohibition

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purposes of—

"(1) interfering with or affecting the result of any election; or

"(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

"(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

"(B) any person to give or withhold any political contribution; or

"(C) any person to engage, or not to engage, in any form of political activity whether or not such activity is prohibited by law.

"(b) An employee may not directly or indirectly use or attempt to use, or permit the use of, any official information obtained through or in connection with his employment for any political purpose, unless such official information is available to the general public.

"(c) For the purpose of subsection (a) of this section, 'use of official authority or influence' includes—

"(1) promising to confer or conferring any benefit (such as any compensation, grant, contract, license, or ruling) or effecting or threatening to effect any reprisal (such as deprivation of any compensation, grant, contract, license, or ruling); or

"(2) taking, directing others to take, recommending, processing, or approving any personnel action (as defined in section 2302(a)(2)(A) of this title).

"§ 7324. Solicitation; prohibition

"(a) An employee may not—

"(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(3) knowingly give or hand over a political contribution to a superior of such employee; or

"(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

"(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

"(B) in any room or building occupied in the discharge of official duties by—

"(i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

"(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

"(b) In addition to the prohibitions of subsection (a) of this section, an employee holding a restricted position may not solicit, accept, or receive a political contribution from, or give a political contribution to, any individual who is an employee, a Member of Congress (or a candidate for such office), or a member of a uniformed service, or any agent of any such individual. The preceding sentence shall not be construed to prohibit an employee from giving a political contribution to a political committee.

"(c)(1) In addition to the prohibitions of subsection (a) of this section, an employee may not solicit, accept, or receive a political contribution from, or give a political contrbution to, any person who—

"(A) has, or is seeking to obtain, contractual or other business or financial relations with the agency in which the employee is employed;

"(B) conducts operations or activities which are regulated by such agency; or

"(C) has interests which may be substantially affected by the performance or nonperformance of such employee's official duties.

"(2) The Office of Personnel Management shall prescribe regulations which exempt an employee from the application of paragraph (1) of this subsection with respect to any political contribution to or from an individual who has a family or personal relationship with the employee if the employee complies with such requirements as the Office shall so prescribe which relate to the disqualification of such employee from engaging in any official activity involving such individual.

"(3) The Office of Personnel Management shall prescribe regulations which exempt the application of paragraph (1) of this subsection with respect to any political contribution from a person in situations in which the facts and circumstances indicate there would not be any adverse effect on the integrity of the Government or the public's confidence in the integrity of the Government.

"§7325. Political activities on duty, etc.; prohibition

"(a) An employee may not engage in political activity—

"(1) while such employee is on duty;

"(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

"(3) while wearing a uniform or official insignia identifying the office or position of such employee.

"(b) The provisions of subsection (a) of this section shall not apply to—

"(1) an employee—

"(A) paid from the appropriation for the White House Office;

"(B) paid from funds to enable the Vice President to provide assistance to the President; or

"(C) on special assignment to the White House Office;

"(2) the Mayor of the District of Columbia, the Chairman or a member of the Council of the District of Columbia; or

"(3) any activity of an employee which is not otherwise prohibited by or under law and which is part of such individual's official duties.

"(c) Nothing in this section shall be construed to authorize an employee designated in subsection (b) of this section to engage in political activity otherwise prohibited by or under law.

"(d)(1) In addition to the prohibitions of subsection (a) of this section, an employee holding a restricted position may not take an active part in political management or political campaigns unless such part—

"(A) is in connection with—

"(i) an election and preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

"(ii) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States; or

"(B) is permitted by regulations prescribed by the Office of Personnel Management and involves the municipality or political subdivision in which such employee resides, when—

"(i) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia or is a municipality in which a majority of voters are employed by the Government of the United States; and

"(ii) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees to permit political participation.

"(2) For the purpose of this subsection, 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by the determinations of the Civil Service Commission under the rules prescribed by the President.

"§ 7326. Candidates for elective office; leave, notification by employees

"(a) An employee shall promptly notify the agency in which he is employed upon becoming a candidate for elective office and upon the termination of such candidacy.

"(b) An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.

"(c) Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy. Such leave shall be in addition to leave without pay to which such employee may be entitled under subsection (b) of this section.

"(d) The foregoing provisions of this section shall not apply in the case of an individual who is an employee by reason of holding an elective public office.

"§ 7327. Penalties

"(a) An employee who is found by the Merit Systems Protection Board under section 1207 of this title to have violated any provision of—

"(1) section 7323 of this title shall, upon a final order of the Board, be suspended without pay from such employee's position for a period of not less than 30 days, or shall be removed in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title);

"(2) section 7324 or 7325 of this title shall, upon a final order of the Board, be—

"(A) removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

"(B) suspended without pay from such employee's position for such period as the Board may prescribe; or

"(C) disciplined in such other manner as the Board shall deem appropriate.

"(b) The Merit Systems Protection Board shall notify the Special Counsel, the employee, and the employing agency of any penalty imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

"§ 7328. Regulations

"(a) The Office of Personnel Management and the Merit Systems Protection Board shall prescribe rules and regulations to carry out their respective responsibilities under this subchapter.

"(b) The regulations referred to in section 7322(8) of this title shall be prescribed not later than 90 days after the effective date of such section. Thereafter any revision of such regulations shall be prescribed not later than March 1 of the calendar year in which such revision is to take effect. Any employee holding any position with respect to which any such regulation is prescribed may institute an action for judicial review of such regulation by filing a petition in the United States Court of Appeals for the District of Columbia Circuit, or in the United States court of appeals for the judicial circuit in which such employee resides or is employed, except that no such action may be instituted more than 30 days after the effective date of such regulation.".

(b)(1) Section 3302(2) of title 5, United States Code, is amended by striking out "7321, and 7322" and inserting "and" before "7203" (as added in section 703(d)(2) of this Act).

(2) Section 1308(a) of title 5, United States Code, is amended—

(A) by inserting "and" at the end of paragraph (2);

(B) by striking out paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3).

(3) The second sentence of section 8332(k)(1) of title 5, United States Code, is amended by striking out "second" and inserting "last" in lieu thereof.

(4) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"Subchapter III—Political Activities

"7321. Political participation.
"7322. Definitions.
"7323. Use of official influence or official information; prohibition.
"7324. Solicitation; prohibition.
"7325. Political activities on duty, etc.; prohibition.
"7326. Candidates for elective office; leave, notification by employees.
"7327. Penalties.
"7328. Regulations.".

(c) Sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, are each amended by adding at the end thereof the following new sentence: "This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.".

(d) Section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d) is amended by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity" and by inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities, as enforced under sections 1206 and 1207 of such title.".

(e) Sections 103(a)(4)(D) and 203(a)(4)(D) of the District of Columbia Public Education Act are each amended by striking out "sections 7324 through 7327 of title 5" and inserting in lieu thereof "section 7325 of title 5".

(f) Sections 8332(k)(1), 8706(e), and 8906(e)(2) of title 5, United States Code, are each amended by inserting immediately after "who enters on" the following: "leave without pay granted under section 7326(b) of this title, or who enters on".

EFFECTIVE DATE

SEC. 902. (a) The amendments made by this title shall take effect 120 days after the date of the enactment of this Act, except that the authority to prescribe regulations granted under section 7328 of title 5, United States Code (as added by section 901 of this title), shall take effect on the date of the enactment of this Act.

(b) Any repeal or amendment made by this title of any provision of law shall not release or extinguish any penalty, forfeiture, or liability incurred under such provision, and such provision shall be treated as remaining in force for the purpose of sustaining any proper proceeding or action for the enforcement of such penalty, forfeiture, or liability.

(c) No provision of this title shall affect any proceedings with respect to which the charges were filed on or before the effective date of the amendments made by this title. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this title had not been enacted.

(d) If—

(1) subchapter III of chapter 73 of title 5, United States Code, applied to any category of individuals employed by any Federal agency or instrumentality immediately before the effective date of the amendments made by this title; and

(2) such subchapter, as amended by this title, does not apply to such category of individuals;

then such subchapter, as in effect immediately before the effective date of the amendments made by this title, shall continue to apply to such category of individuals, notwithstanding section 901(a) or any other provision of law.

STUDY CONCERNING POLITICAL PARTICIPATION BY FEDERAL EMPLOYEES

SEC. 903. The Office of Personnel Management shall study and review the effects of the amendments made by this title on—

(1) the level of participation by Federal employees in activities relating to Federal, State, and local elections;

(2) the merit system particularly the hiring, termination, or advancement of Federal employees; and

(3) matters generally affecting and contributing to the improper use of official influence or official information by Federal employees as prohibited under subchapter III of chapter 73 of title 5, United States Code (as amended by this title).

The Office shall report to the Congress not later that March 31, 1980, and March 31, 1982, the results of such study and review any findings therefrom together with such legislative or administrative recommendations as the Office considers appropriate.

Conform the table of contents accordingly.

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H.R. 11280

By Mr. ERLENBORN:

—Page 288, strike line 12 and all that follows thereafter through line 12 on page 348.

—Page 292, line 18, strike the words "in while or in part" and line 19, strike the words "and pay dues".

—Page 293, strike the "or" on line 6, insert an "or" after "agency;" on line 7, and after line 7 insert the following new subparagraph (D):

"(D) an organization which assists, or participates in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

—Page 293, line 8, strike the words "dues, fees, and assessments" and substitute therefore "periodic dues and initiation fees uniformly required."

—On page 298, after line 20, amend section 7103 by adding a new subsection (c) as follows:

"(c) Employees of the Federal Election Commission engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal office.".

—Page 298, after line 20, amend section 7103 by adding a new subsection (c) as follows:

"(c) Employees engaged in administering a labor-management relations law who are otherwise authorized by this chapter to be represented by a labor organization shall not be represented by a labor organization which also represents other employees covered by such law or which is affiliated directly or indirectly with an organization which represents such employees."

—Page 300, line 7, insert before the period the following: "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.".

—Page 301, line 25, strike "(1)"; page 302, insert "(1)" for "(A)" on line 1, "(2)" for "(B)" on line 3, "(3)" for "(C)" on line 5, and "(4)" for "(D)" on line 7; strike all of line 9 through line 13; and strike "or administrative law judge" on line 15.

On page 324, line 24, insert before the second period "and filed with the Authority"; on page 325, strike the parenthesis and all within on lines 3 to 5; on page 325 lines 9 to 11, strike "individual or individual conducting the hearing shall state in writing their" and substitute therefore: "Authority shall state in writing its"; and on page 326, strike lines 8 through 14, and substitute therefore: "(7) If the Authority determines that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in any such unfair labor practice, the Authority shall state in writing its findings of fact and shall issue an order discussing the complaint."

—Page 304, strike "(1)" on line 20; Page 305 strike "Except as provided under subsection (e) of this section," on lines 14 and 15, and change "if" to "If" on line 15, and strike "subject to paragraph (2) of this subsection," on lines 17 and 18, and strike all on line 24, page 305, through line 22 on page 306.

—Page 305, line 14, strike all after the period through the comma on line 15; change "if" to "If"on line 15; and page 308, strike all of subsection "(e)" from line 3 through line 23 and redesignate the subsequent subsections accordingly.

—Page 312, strike line 19 and all thereafter through line 3 on page 314.

—Page 317, strike all of line 1 through line 18.

—On page 317, strike subsection "(C)", line 1 through line 18.

—Page 320, line 2, insert after "slowdown," the following:

"or to picket an agency in a labor-management dispute,".

—On page 320, after line 5, insert the following new subsection (c) and redesignate the subsequent subsections accordingly:

"(c) The expression of any personal views, argument, opinion or the making of any statement shall not (1) constitute or be evidence of an unfair labor practice under any of the provisions of this chapter or (2) constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any provisions of this chapter, if such expression contains no threats of reprisal or force or promise of benefit.".

H.R. 11280

By Mr. FISHER:

—Page 142, line 24, insert "(a)" before "If".

Page 143, after line 6, insert the following new subsection:

"(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. Such report shall include a description of—

"(1) significant actions taken by the Board to carry out its functions under this title; and

"(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

—Page 152, insert after line 17 the following:

"(d)(1) At any time after the effective date of any rule or regulation issued by the Office of Personnel Management in carrying out its functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face—

"(i) require any employee to violate section 2302(b) of this title; or

"(ii) is contrary to any merit system principle; or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision—

"(i) has required any employee to violate section 2302(b) of this title; or

"(ii) has been contrary to any merit system principle.

"(3)(A) The Director of the Office of Personnel Management, and any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(B) Any review conducted by the Board pursuant to this paragraph shall be limited to determining—

"(i) the validity on its face of the provision under review; and

"(ii) whether the provision under review has been validly implemented.

"(C) The Board shall require any agency—

"(i) to cease compliance with any provision of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been so invalidly implemented by the agency.

Page 152, line 18, strike out "(d)" and insert in lieu thereof "(e)".

—Page 221, line 25, insert "the preceding sections of" after "purpose of".

Page 221, insert after line 25 the following:

"§ 3137. Annual report by the General Accounting Office

"The General Accounting Office shall submit to each House of the Congress on or before March 1 of each year a report on the Senior Executive Service which shall contain, based on audits and reviews which shall be conducted by the Office during the year covered by the report, an assessment of—

"(1) the extent to which the laws, rules, and regulations governing employment in the Senior Executive Service have been complied with; and

"(2) the effectiveness and soundness of management by senior executives.

Page 220, line 12, insert "by the Office of Personnel Management" after "report".

Page 222, in the matter following line 15, strike out the items relating to sections 3135 and 3136 and insert in lieu thereof the following:

"3135. Biennial report by the Office of Personnel Management.
"3136. Regulations.
"3137. Annual report by the General Accounting Office.".

—Page 225, strike out line 15 and all that follows down through line 24 and insert in lieu thereof the following:

"(c)(1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate, the members of which shall be appointed on the basis of their knowledge of public management and other appropriate occupational fields. It is the function of the boards to certify the managerial qualifications of candidates for entry as career appointees into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management. Of the members of each board—

"(A) one-half shall be appointed from among career appointees; and

"(B) the other one-half shall be appointed from outside the civil service, not more than half of whom shall be adherents of the same political party.

—Page 237, line 23, strike out "If the Office of Personnel Management" and insert in lieu thereof the following: "The Office of Personnel Management shall review each performance appraisal system established under subsection (a) of this section promptly after it is established and from time to time thereafter and determine whether the performance appraisal system meets the requirements of this subchapter. If the Office".

—Page 238, after line 3, insert the following new subsection:

"(c) The Comptroller General shall, from time to time, review performance appraisal systems established under this section to determine the extent to which such systems meet the requirements of this subchapter, and shall periodically report its findings to the Office of Personnel Management and to the Congress.

—Page 270, beginning on line 1, strike out "January 1, 1982, a report on the operation" and insert in lieu thereof the following: "January 1, 1986, and biennially thereafter, a report on the operation during the preceeding 2 fiscal years".

—Page 272, strike out lines 19 through 24 and insert in lieu thereof the following:

EFFECTIVE DATE; EXPERIMENTAL APPLICATION

SEC. 503. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981.

(b)(1) Not later than 60 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall prescribe regulations providing for an initial, experimental application of the amendments made by this title, which shall begin on the first day of the first applicable pay period which begins on or after October 1, 1981. Such regulations shall provide that the merit pay system and the cash

award program will apply with respect to positions only in 3 Executive departments designated by the Director.

(2) Within 30 days after the end of each of the first two fiscal years to which such amendments apply, the Director shall prepare and transmit to each House of the Congress a report on the merit pay system and the cash award program, including an evaluation of their effectiveness and the manner in which they are administered. The second such report shall include proposed regulations which would provide for adjustments which would be appropriate in the event such system or such program does not continue by reason of paragraph (3).

(3) The provisions of the regulations under paragraph (1) providing for an initial, limited experimental application with respect to the merit pay system and the cash award program shall cease to have effect and the amendments made by this title relating to such system and such program shall have full effect (without regard to the limitations under paragraph (1)) beginning on the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to the Congress under paragraph (2), unless the Congress before such day adopts a concurrent resolution which states that the Congress does not favor the continuance of such system and such program. If such a resolution is adopted with respect to such system and such program before such date, then the provisions of such regulations and such amendments relating to such system and such program shall cease to have effect on such 90th day (or, if later, 30 days after the date of the adoption of such resolution).

(4) For purposes of paragraph (3), the continuity of a session of Congress shall be considered to be broken only by an adjournment of the Congress sine die, and the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period under such paragraph.

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H.R. 11280

By Mr. GILMAN:

—Page 145, line 13, strike out "Director." and insert in lieu thereof "Director, a majority of whom shall have served in the competitive service before appointment as Associate Directors.".

—Page 145, line 18, insert ", subject to section 1104(a) of this title," after "or".

Page 147, line 5, strike out "service." and insert in lieu thereof "service:".

Page 147, after line 5, insert the following: "except that the Director may not delegate open competitive examination authority with respect to positions whose requirements are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles."

—Page 146, line 18, strike out "(a) Notwithstanding" and insert in lieu thereof "(a)(1) Subject to subsection (b)(3) of this section and notwithstanding".

Page 147, insert after line 14 the following:

"(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to ensure compliance with the civil service laws and regulations.

—Page 152, insert after line 17 the following:

"(d) The Board shall conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.

Page 152, line 18, strike out "(d)" and insert in lieu thereof "(e)".

—Page 195, insert after line 9 the following:

(g) Section 3318(b) of title 5, United States Code, is amended by striking out ", on request, is entitled to a copy of" and inserting in lieu thereof "is entitled to receive, on or before the 15th day after the day on which he is passed over, a copy of".

Page 195, line 10, strike out "(g)" and insert in lieu thereof "(h)".

Page 196, line 11, strike out "(j)" and insert in lieu thereof "(i)".

Page 196, line 18, strike out "(k)" and insert in lieu thereof "(j)".

Page 196, line 24, strike out "(l)" and insert in lieu thereof "(k)".

—Page 212, beginning on line 14, strike out "free of improper political interference" and insert in lieu thereof "which ensures career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices".

Page 212, line 21, strike out "and".

Page 212, line 23, strike out "executives." and insert in lieu there "executives; and".

Page 212, insert after line 23 the following:

"(12) provide for a professional management system which is guided by the public interest and free from improper political interference.

—Page 212, line 21, strike out "and".

Page 212, line 23, strike out "executives." and insert in lieu thereof "executives; and".

Page 212, insert after line 23 the following:

"(12) ensure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by noncareer appointees, political appointments to such positions are minimized to the maximum extent possible.".

—Page 215, strike out lines 4 through 11 and insert in lieu thereof the following:

"(8) 'career reserved position' means a Senior Executive Service position which is designated under subsection (b) of this section as a position to which a career appointee may be appointed;

"(9) 'general position' means any Senior Executive Service position which is not a career reserved position.

Page 215, beginning on line 15, strike out "career reserved positions." and all that follows down through "Government." beginning on line 19, and insert in lieu thereof "Senior Executive Service positions to which career appointees may be appointed.".

Page 215, line 21, strike out "career reserved" and insert in lieu thereof "such".

Page 215, line 24, insert after "appointee." the following: "Any other Senior Executive Service position may be filled only by a noncareer appointee, limited term appointee, or limited emergency appointee.".

Page 219, line 4, strike out "noncareer appointments" and insert in lieu thereof "general positions".

Page 219, beginning on line 6, strike out "employment of noncareer appointees" and insert in lieu thereof "general positions".

Page 219, beginning on line 11, strike out "authority to employ a specific number of noncareer appointees" and insert in lieu thereof "a specific number of general positions".

Page 219, strike out lines 13 through 18 and insert in lieu thereof the following:

"(b) The number of general positions in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency for such positions, except that the total number of general position in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

Page 219, strike out "Senior Executive Service" on line 19 and all that follows down through "appointees" on line 20 and insert in lieu thereof "general positions".

Page 222, in the matter following line 15, strike out "noncareer appointments" in the item relating to section 3134 and insert in lieu thereof "general positions".

Page 223, line 9, insert "'career reserved position'," before "and 'general position'".

Page 227, beginning on line 4, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, beginning on line 7, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, line 12, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 227, line 18, stike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 254, line 25, strike out "title)." and insert in lieu thereof "title), and such position shall be considered a career reserved position.".

Page 256, line 7, strike out "position." and insert in lieu thereof "position, and such position shall be considered a career reserved position.".

Page 256, line 19, strike out "appointment;" and insert in lieu thereof "appointment, and such position shall be considered a general position.".

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Assistant Secretary for Personnel Administration of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Assistant Secretary for Manpower of the Department of Defense which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

—Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and

the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Assistant Secretary for Management and Budget of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a succesor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert: after "section," the following: "and except as provided in paragraph (5) of this subsection,".

—Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Assistant Secretary, for Health of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a succesor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

—Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Department of the Air Force which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

—Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Department of the Navy which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the National Institutes of Health of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive services;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Food and Drug Administration of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Inspector General of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of the Assistant Secretary Comptroller of the Department of Defense which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(1) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Alcohol, Drug Abuse, and Mental Health Administration of the Department of Health, Education and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive services;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph 5 of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Department of the Army which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection.".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Office of Assistant Secretary for Program Analysis and Evaluation of the Department of Defense which is filled by an

employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Defense Audit Service of the Department of Defense which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Defense Logistics Agency of the Department of Defense which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Health Care Financing Administration of the Department of Health, Education, and Welfare which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Defense Investigative Service of the Department of Defense which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 215, line 13, insert after "section," the following: "and except as provided in paragraph (5) of this subsection,".

Page 216, insert after line 8 the following:

"(5) In order to insure impartiality in, and the public's confidence in the impartiality of, the Federal Government, any position—

"(A) in the Defense Advanced Research Projects Agency of the Department of Defense which is filled by an employee in the competitive service on August 1, 1978; or

"(B) in a successor unit of the unit described in subparagraph (A) of this paragraph the primary responsibilities of which—

"(i) are similar to a position described in subparagraph (A) of this paragraph; or

"(ii) were, before the creation of the successor unit, performed by an employee in the competitive service;

which is designated a Senior Executive Service position shall be designated a career reserved position.

—Page 218, line 15, insert after "agency." the following: "The total number of Senior Executive Service positions authorized under this subsection for all agencies in any fiscal year shall not exceed 9,500.".

—Page 227, line 3, insert "(1)" after "(a)".

Page 227, line 4, strike out "(1)" and insert in lieu thereof "(A)" and insert ", subject to paragraph (2) of this subsection," after "may".

Page 227, line 7, strike out "(2)" and insert in lieu thereof "(B)".

Page 227, after line 10, insert the following:

"(2) A career appointee may be reassigned to any Senior Executive Service position of less responsibility under paragraph (1)(A) of this subsection only—

"(A) for such cause as will promote the efficiency of the service; and

"(B) after 15 days' advance written notice to such appointee, containing a complete statement of all the reasons for such reassignment.".

Any career appointee who is reassigned in violation of this paragraph may appeal such reassignment to the Merit Systems Protection Board.

—Page 228, strike out lines 10 through 12 and insert in lieu thereof the following:

"(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

"(A) within 120 days after an appointment of the head of such agency; or

"(B) within 120 days after the appointment in such agency of such career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to reassign such career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to any reassignment under section 4314(b)(3) of this title.

Page 232, line 12, strike out "A career appointee" and insert in lieu thereof "Except as provided in subsection (b) of this section, a career appointee".

Page 232, after line 19, insert the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of such agency; or

"(B) within 120 days after the appointment in such agency of such career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove such career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to any removal under section 4314(b)(3) of this title.

Page 232, line 20, strike out "(b)" and insert in lieu thereof "(c)".

—Page 228, insert after the line 16 the following:

"(e) Except in cases where a reassignment is the result of an action initiated under section 4313(b)(3) of this title, a career appointee may be reassigned under subsection (a)(1) only if—

"(1) he consents to the reassignment; and

"(2) the reassignment is part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection to not consent to such a reassignment.

—Page 232, insert after line 19 the following:

Any career appointee removed under paragraph (2) of this subsection shall be entitled to appeal such removal to the Merit System Protection Board under section 7701 of this title.

—Page 237, insert after line 22 the following:

"(c) The Comptroller General of the United States shall review each performance appraisal system established under this section to determine if it meets the requirements of this subchapter and is consistent with the merit system principles established under chapter 23 of this title. The Comptroller General shall report the results of each such review to the Office of Personnel Management to assist the Office in carrying out its responsibilities under subsection (d) of this section.

Page 237, line 23, strike out "(c)" and insert in lieu thereof "(d)".

Page 237, beginning on line 25, strike out "or regulations under this subchapter," and insert in lieu theerof ", regulations under this subchapter, or the merit system principles established under chapter 23 of this title,".

—Page 245, after line 15, insert the following:

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only—

"(1) for such cause as will promote the efficiency of the service; and

"(2) after 15 days' advance written notice to such appointee, containing a complete statement of all the reasons for such reduction.

Any career appointee whose rate of pay is reduced in violation of this subsection may appeal such reduction to the Merit Systems Protection Board.

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H.R. 11280

By Mr. HARRIS:

—Page 382, after line 9, insert the following new section:

BASIC WORKWEEK OF FIREFIGHTERS

SEC. 1101. (a) Chapter 61 of title 5, United States Code, relating to hours of work, is amended by inserting after section 6101 the following new section:

"§ 6102. Basic workweek of firefighters

"(a) The regularly scheduled administrative workweek of each firefighter shall be an average of 56 hours per week, computed on the basis of a period of 21 consecutive days. The duration and frequency of work-shifts occurring within such period shall be determined under regulations prescribed by the Office of Personnel Management.

"(b) For the purpose of this section, 'firefighter' means an employee in an Executive agency, the duties of whose position are primarily to perform or to supervise work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Such term does not include any employee who has a regularly scheduled administrative workweek of 40 hours which is established under section 6101(a)(2)(A) of this title."

(b)(1) Section 5545 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) Each firefighter with a regularly scheduled administrative workweek established under section 6102(a) of this title shall be entitled, in lieu of premium pay provided by other provisions of this subchapter (other than premium pay provided in paragraph (2) of this subsection), to premium pay equal to 25 percent of so much of his annual rate of basic pay as does not exceed the minimum rate of basic pay for GS–10.

"(2) Hours of work officially ordered or approved in excess of the regularly scheduled administrative workweek established under section 6102(a) of this title are overtime work and shall be paid for in accordance with the rates specified in section 5542 of this title.

"(3) For the purpose of this subsection, 'firefighter' has the meaning set forth in section 6102(b) of this title.".

(2) Section 5545(c)(1) of title 5, United States Code, is amended by inserting ", unless subject to subsection (e) of this section," after "shall receive".

(3) Section 5547 of title 5, United States Code, is amended by striking out "sections 5542, 5545(a)–(c), and 5546 (a), (b)" and inserting in lieu thereof "sections 5542, 5545 (a)–(c) and (e), and 5546 (a) and (b)".

(4) Sections 5595(c), 8114(e), 8331(3)(C), and 8704(c) of title 5, United States Code, are each amended by striking out "section 5545 (c)(1)" and inserting in lieu thereof "section 5545(c)(1) and (c)(1)".

(c) The analysis of chapter 61 of title 5, United States Code, is amended by inserting after the item relating to section 6101 the following new item:

"6102. Basic workweek of firefighters.".

(d) The amendments made by this section shall take effect at the beginning of the first applicable pay period which begins at least 60 days after the date of the enactment of this Act.

Redesignate the following sections (and references thereto) accordingly.

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H.R. 11280

By Mr. MITCHELL of Maryland:

—Page 292, line 22, insert after "organization" the following: "(other than an exclusive representative as defined in paragraph (16)(B) of this section)".

—Page 315, line 7, strike out "any appeal action" and all that follows down through "chapter." on line 8 and insert in lieu thereof the following: "any grievance procedure or appeal action.".

—Page 332, strike out line 14 and all that follows down through line 7 on page 333 and insert in lieu thereof the following:

"(d) The processing of any grievance of any employee under the procedure negotiated under this chapter shall not preclude the employee from pursuing any right provided to him by or under any other provision of law.

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H.R. 11280

By Mr. RUDD:

—Page 291, line 21, strike the word "or" immediately after the semicolon; page 292, line 2, insert the word "or" immediately after the semicolon, and after line 2 insert the following new paragraph:

"(v) any person who participates in a strike in violation of 5 U.S.C. 7311;".

Page 293, line 6, strike the word "or" immediately after the semicolon; page 293, line 7, insert the word "or" immediately after the semicolon, and after line 7 insert the following new paragraph:

"(D) an organization which assists or participates in a strike against the Government of the United States or any Agency thereof, or which imposes a duty or obligation on any person or other organization to conduct, assist, or participate in such a strike;".

Page 320, strike lines 1 through 3 inclusive, and insert in lieu thereof the following:

"(7) to condone any strike, work stoppage, slowdown by failing to take action to prevent or stop such activity;".

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H.R. 11280

By Mr. STEERS:

—Page 144 strike out line 16 and all that follows down through line 19 on page 145 and insert in lieu thereof the following:

"§ 1102. Appointment of members of the Office of Personnel Management

"The Office of Personnel Management is composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate, not more than two of whom may be adherents of the same political party. No Commissioner of the Office of Personnel Management may hold another office or position in the Government of the United States.

"§ 1103. Term of office; filling vacancies; removal; quorum

"(a) The term of office of each Commissioner of the Office of Personnel Management is four years.

"(b) Any Commissioner appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term.

"(c) Any Commissioner appointed for a four-year term may be re-appointed to any following term.

"(d) Any Commissioner may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(e) Except as otherwise provided in this title, the Office of Personnel Management shall act upon majority vote of those members present, and any two members present shall constitute a quorum for the transaction of business of the Board.

"§ 1104. Chairman; Vice Chairman

"(a) The President shall from time to time designate one of the Commissioners of the Office of Personnel Management as the Chairman of the Office of Personnel Management. The Chairman is the chief executive and administrative officer of the Office of Personnel Management.

"(b) The President shall from time to time designate one of the members of the Office of Personnel Management as Vice Chairman of the Office of Personnel Management. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1105. Functions of the Office.

"The following functions are vested in the Commissioners of the Office of Personnel Management, and shall be performed by the Commissioners, or by such employees of the Office of the Commissioners designate:"

Page 146, lines 23, 24, and 25; page 147, line 25; and page 148, line 1 strike out "Director" and insert in lieu thereof "Commissioner".

Redesignate the following provision (and references thereto) accordingly.

—Page 148 strike out lines 12 through 24 and insert in lieu thereof the following:

(b)(1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (5).".

Page 165 strike out line 24 and all that follows down through line 12 on page 166 and insert the following:

(C)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Systems Protection Board."

(3)(A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

Page 300, line 6, strike out "Senate" and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule,".

Page 347, strike out lines 5 through 8 and insert in lieu thereof the following:

(e) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(147) Members, Federal Labor Relations Authority (2).".

—Page 200, line 13, after "308." insert "(a)".

Page 200, after line 20, insert the following new subsection:

(b)(1) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) The annuity of an employee retiring under this subchapter with less than 20 years, but at least 5 years of service as a law enforcement officer or firefighter, or any combination thereof, is computed under subsection (a) of this section, except that the annuity of such employee is computed with

respect to the service of such employee as a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½ percent of his average pay by the years of that service.".

(2) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

—Page 200, line 13, after "308." insert "(a)".

Page 200, after line 20, insert the following new subsection:

(b)(1) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) The annuity of an employee retiring under this subchapter with less than 20 years, but at least 5 years of service as a law enforcement officer or firefighter, or any combination thereof, is computed under subsection (a) of this section, except that the annuity of such employee is computed with respect to the service of such employee as a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½ percent of his average pay by the years of that service.".

(2) Section 8339(h) of such title is amended by striking out "section 8336(d)" and inserting "section 8336(d)(1).".

(3) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

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H.R. 11280

By Mr. TRIBLE:

—Page 209, line 14, insert "(a)" before "The amendments".

Page 209, insert after line 20 the following new subsection:

(b) In the case of any individual who, immediately before the date of the enactment of this Act, was a preference eligible (as defined in section 2108(3) of title 5, United States Code) employed in the civil service (as defined in section 2101(1) of title 5, United States Code)—

(1) the amendments made in section 305 of this Act shall not apply; and

(2) such individual shall be subject to the same requirements and restrictions as are provided in the provisions so amended (as in effect immediately before the date of the enactment of this Act) in the same manner and to the same extent as if this title had not been enacted;

except that references in such provisions (as in effect immediately before the date of the enactment of this Act) to the Civil Service Commission shall be construed to be references to the Office of Personnel Management.

—Page 390, insert after line 18 the following:

PREVAILING RATE EMPLOYEES; NIGHT DIFFERENTIAL

SEC. 1107. (a) Section 5334 of title 5, United States Code, is amended by adding at the end thereof the following:

"(g) A prevailing rate employee, as defined in section 5342(a)(2) of this title, who together with his position is brought within the purview of this subchapter and chapter 51 of this title at any time on or after January 1, 1966, and who within one year before, but not at the time of, such personnel action was receiving night differential on a regular night shift tour worked on a rotational basis or at regularly scheduled intervals or on an irregular basis shall be entitled to inclusion at the time of such personnel action of such night differential as a part of his basic pay, as a result of conversion to the General Schedule, to the same extent as if he was receiving such night differential on a regularly scheduled night shift at the time of such conversion.".

(b) The amendment made by this section shall apply with respect to pay periods beginning before, on, or after the effective date of this section. Any sums to which an individual is entitled under this section for pay periods ending before the effective date of this section and which have not been paid to such individual shall be paid to such individual in a lump sum.

Revise the table of contents accordingly.

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H.R. 11280

By Mr. UDALL:

—Strike out title VII (beginning on line 12 of page 288 and ending on line 12 of page 348) and insert in lieu thereof the following:

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F—Labor-Management and Employee Relations

"Chapter 71—LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"7101. Findings and purpose.
"7102. Employees' rights.
"7103. Definitions; application.
"7104. Federal Labor Relations Authority.
"7105. Powers and duties of the Authority.
"7106. Management rights.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"Sec.
"7111. Exclusive recognition of labor organizations.
"7112. Determination of appropriate units for labor organization representation.
"7113. National consultation rights.
"7114. Representation rights and duties.
"7115. Allotments to representatives.
"7116. Unfair labor practices.
"7117. Duty to bargain in good faith; compelling need; duty to consult.
"7118. Prevention of unfair labor practices.
"7119. Negotiation impasses; Federal Service Impasses Panel.
"7120. Standards of conduct for labor organizations.

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

"Sec.
"7121. Grievance procedures.
"7122. Exceptions to arbitral awards.
"7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.
"7131. Reporting requirements for standards of conduct.
"7132. Official time.
"7133. Subpenas.
"7134. Compilation and publication of data.
"7135. Regulations.
"7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilities and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in such capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities,

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter, and

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official; or

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority; or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only

incidentally related to conditions of employment;

"(B) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; or

"(C) an organization sponsored by an agency;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to confer, consult, and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission;

"(B) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(C) relating to the classification of any position; or

"(D) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election, or

"(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

"(1) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or security work, and

"(2) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than two of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, of malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed by the President.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter,

"(C) intervene before the Authority in proceedings brought under section 7118 of this title, and

"(D) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the authority

"(a) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever per-

sons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions.

"(e)(1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(g) In order to carry out its functions under this chapter, the Authority may—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title.

"(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7188(a)(6)(C) or 5596(b)(1)(B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

"(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

"§ 7206. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws—

"(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

"(C) with respect to filling positions, to make selections for appointments from—

"(i) among properly ranked and certified candidates for promotion; or

"(ii) any other appropriate source; and

"(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

"(b)(1) If a petition is filed with the Authority—

"(A) by any person alleging—

"(i) in the case of an appropriate unit for which there is no exclusive representative that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(ii) in the case of an appropriate unit for which there is an exclusive representative that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(B) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. Except as provided under subsection (e) of this section, if the Authority finds on the record of the hearing that a question of representation exists, the Authority shall conduct an election on the question by secret ballot and shall subject to paragraph (2) of this subsection certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(2)(A) If, after the 60-day period beginning on the date on which the petition is filed pursuant to paragraph (1) of this subsection, unresolved issues exist concerning—

"(i) the appropriateness of the unit in accordance with section 7112 of this title;

"(ii) the eligibility of one or more employees to vote in the proposed election; or

"(iii) other matters determined by the Authority to be relevant to the election;

the authority shall direct an election by secret ballot in the unit specified in the petition and announce the results thereof.

"(B) After conducting an election under subparagraph (A) of this paragraph, the Authority shall expedite the resolution of any disputed issues described in subparagraph (A) of this paragraph. If the Authority determines that matters raised by the disputed issues did not affect the outcome of the election, the Authority shall certify the results of the election. If the Authority determines that the matters affected the outcome of the election, it shall conduct a new election by secret ballot in accordance with such requirements as are appropriate on the basis of its determination, and shall certify the results thereof.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization. In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) The Authority may, on the petition of a labor organization, certify the labor organization as an exclusive representative—

"(1) if, after investigation, the Authority determines that the conditions for a free and untrammeled election under this section cannot be established because the agency involved has engaged in or is engaging in an unfair labor practice described in section 7116(a) of this title; or

"(2) if, after investigation, the Authority determines that—

"(A) the labor organization represents a majority of employees in an appropriate unit;

"(B) the majority status was achieved without the benefit of any unfair labor practice described in section 7116 of this title;

"(C) no other person has filed a petition for recognition under subsection (b) of this section or a request for intervention under subsection (c) of this section; and

"(D) no other question of representation exists in the appropriate unit.

"(f) Any labor organization described in section 7103(a)(16)(B)(ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(g) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(h) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this sec-

tion, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

"(A) the collective bargaining agreement has been in effect for more than 3 years, or

"(B) the petition for exclusive recognition is filed not more than 120 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

"(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

"(i) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

"§ 7112. Determination of appropriate units for labor organization representation

"(a)(1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

"(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

"(1) except as provided under section 7136(a)(2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counter-intelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which repesents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"(e) In the case of the reorganization of one or more units for which, before reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

"§ 7113. National consultation rights

"(a)(1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee shall be informed of that employee's right under paragraph (3)(B) of this subsection to be represented by an exclusive representative.

"(3) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or

"(B) any investigatory interview of an employee in the unit by a representative of the agency if—

"(i) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

"(ii) the employee requests such representation. Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any conditions of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this

subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a lobar organization and an agency with respect to an appropriate uniti shall be null and void upon the certification of an exclusive representative of the unit.

"§ 7116. Unfair labor practices.

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult, confer, or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law, or

"(2) any grievance procedure negotiated pursuant to section 7121 of this title;

may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

"§ 7117. Duty to bargain in good faith; compelling needs; duty to consent

"(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of this subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b)(11) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 15th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"§ 7118. Prevention of unfair labor practices

"(a)(1) If an agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

"(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(C) requiring an award of reasonable attorney fees;

"(D) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(E) including any combination of the actions described in subparagraphs (A) through (D) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(7) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

"§ 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

"(c)(1) The Federal Service Impasse Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

"(3) Of the original members of the Panel 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

"§ 7120. Standards of conduct for labor organizations.

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings;

"(2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and

"(3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organi-

zation, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to its members.

"(b) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official or a supervisor, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefore in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) an examination, certification, or appointment; or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration. If upon review the Authority finds that the award is deficient because—

"(1) it is contrary to any law, rule, or regulation;

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consist with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

§ 7132. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section—

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative

involved agree to be reasonable, necessary, and in the public interest.

"§ 7133. Subpenas

"(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"§ 7134. Compilation and publication of data

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

"§ 7135. Regulations

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

"§ 7136. Continuation of existing laws, recognitions, agreements, and procedures

"(a) Nothing contained in this chapter shall preclude—

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.".

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code, is amended to read as follows:

"(b) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction or all or a part of the pay, allowances, or differentials of the employee—

"(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

"(A) an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee normally would have earned or received during the period if the personnel action had not occurred, plus 5 percent, less any amounts earned by the employee through other employment during that period; and

"(B) reasonable attorney fees and reasonable costs and expenses of litigation related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7105(h) of this title; and

"(2) for all purposes, is deemed to have performed service for the agency during that period, except that—

"(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lumpsum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title. "For the purpose of this subsection, 'grievance' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practice' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

"Chapter 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

"Sec.
"7201. Antidiscrimination policy; minority recruitment program.
"7202. Marital status.
"7203. Handicapping condition.
"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"7211. Employees' right to petition Congress.";

and

(3) by adding at the end thereof the following new subchapter:

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"§ 7211. Employees' right to petition Congress

"The right of employees, individual or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.".

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies ..... 7101".

and inserting in lieu thereof

"Subpart F—Labor-Management and Employee Relations

"71. Labor-Management Relations ..... 7101
"72. Antidiscrimination; Right to Petition Congress ..... 7201".

(c)(1) Section 2105(c)(1) of title 5, United States Code, is amended by striking out "and 7154" and inserting in lieu thereof "and 7204".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 39, United States Code, is amended by striking out "chapters 71 (employee policies)" and inserting in lieu thereof the following: "chapters 72 (antidiscrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority.".

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

"(145) Members, Federal Labor Relations Authority (2), and its General Counsel.".

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(b) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d)(1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(2) No provision of chapter 71 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

# EXTENSIONS OF REMARKS

## THE TAX CUT

### HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for August 30, 1978, into the CONGRESSIONAL RECORD:

THE TAX CUT

The multibillion dollar tax cut bill now halfway through Congress is remarkable in two respects: it shows an unmistakable new emphasis and it rejects an attractive but unsound tax reduction of massive proportions.

The congressional mood on taxes has changed markedly since the talk of tax reform in the 1976 election campaign. The shift has been away from widespread tax reforms and toward tax breaks for middle-income wage earners. The change in the bill just passed by the House is a reaction to the protest of middle-income taxpayers who have felt the pinch of inflation. It reflects the perception—which most of us share—that middle-income families are overtaxed. The new emphasis is expected to be sharpened by the Senate.

Since Congress has enacted five tax cuts in the past ten years, a reduction in taxes is nothing new. But the provisions of the House-passed bill are significant. They include:

RELIEF FOR THE MIDDLE- AND UPPER-INCOME TAXPAYER

The major departure from tradition in the bill is a tax cut that would go primarily to persons in the $15,000 to $50,000 bracket rather than to those earning less than $15,000. Tax cuts since the mid-1960s have been slanted in favor of lower-income taxpayers at the expense of those better off.

BREAKS FOR BUSINESS

Corporate taxes would be trimmed by $3.8 billion, with reduced corporate tax rates, graduated rates for small businessmen and a liberalization and extension of the investment tax credit.

HELP FOR INVESTORS

Taxes on profits from the sale of stock and other property would be lowered, with the maximum rate falling from 49 percent to 35 percent.

AID TO HOMEOWNERS

Homeowners would be freed on a once-in-a-lifetime basis from the capital gains tax on profits up to $100,000 from the sale of a home.

INDEXATION

Taxpayers would be insulated from one type of taxation on capital gains—that produced by inflation. Inflationary increases would be automatically counterbalanced by a reduction in the tax at the annual rate of inflation.

The House also defeated a much larger tax cut proposal (Kemp-Roth) that would have slashed income taxes by 30 percent over the next three years. Kemp-Roth would begin with a tax cut of $30 billion in 1979 and would build to a $120-billion reduction in 1981. Its proponents argue that the huge tax cut would generate an economic boom of such scale that in a few years the government would recoop all the revenues that were lost, and then some. They believe that the huge tax cut would increase the incentive to work, save and invest, thereby resulting in greater economic growth, lower prices, more jobs and higher government revenues. Supporters of Kemp-Roth claim that the tax cuts could be made without increasing the federal deficit and without any drop in spending.

The House voted down Kemp-Roth, believing it would overheat the economy and lead to catastrophic deficits and runaway inflation. It is almost certain that Kemp-Roth supporters have overestimated the benefits of the proposal and seriously underestimated its inflationary potential. The "free lunch" rationale of Kemp-Roth just does not hold up under scrutiny and has been rejected by economists of all persuasions. Without offsetting reductions in government spending—which Kemp-Roth does not provide—such tax reductions would bring on enormous deficits, estimated to be $90 billion in 1980. There might be a formidable surge in spending that would lead to either a dangerous acceleration of inflation or a crippling credit crunch. Economists agree that a tax cut would increase total demand and national income and would thus partly compensate for the initial revenue loss. But to make up for the effect of the lower tax rates called for by Kemp-Roth, total income in the country would have to rise by some four or five times the original amount of the cut. The evidence is simply overwhelming that no cut in taxes could generate a rise in spending and income of that size.

Kemp-Roth advocates point to the 1964 Kennedy tax cut as historical proof of their claims. After that tax cut unemployment dropped and the gross national product rose. However, the Kennedy tax cut and the economic activity during that period differ greatly from Kemp-Roth and the current economic situation. First, the Kennedy cut was nowhere near the magnitude of the Kemp-Roth cut. Second, the inflation rate was running at slightly less than 2 percent per year in 1964 and there was no great concern, as there is now, about the inflationary impact of a large tax cut. Third, the federal deficit has grown immensely since 1964, posing a whole set of complex problems. Finally, the claim that the Kennedy measure was solely responsible for the economic recovery and the increase in revenues in the 1960s is plainly false. In 1964 the economy was already on the upswing because of the effects of the Vietnam War.

Nothing I have said about the dangers of a massive tax cut in 1979–1980 applies to a moderate tax cut of $15 billion to $20 billion. Since joblessness is still high and the economy is still operating well below its potential—and with payroll tax boosts and inflation adding to the taxpayer's burden—it is desirable to enact a tax cut to neutralize these factors and to supply some stimulus for an economy that would otherwise slow down.●

## PERSONAL EXPLANATION

### HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BONIOR. Mr. Speaker, on August 12, the House of Representatives considered the Dornan amendment to the defense appropriations bill. In the RECORD of that date, I was listed as paired against the amendment (rollcall No. 644). Due to an error which I have already pointed out to the pairing clerk, I should have been listed as voting for the amendment. I would like the following statement placed in the next available RECORD:

"Mr. Speaker, on August 12, the House considered the Dornan amendment to the defense appropriations bill. That amendment prohibited the use of Department of Defense funds for elective abortions except where the life of the mother was endangered. In the RECORD of that date, I was incorrectly paired against the amendment. I would have voted in favor of the Dornan amendment.

"I believe that it is Government's primary responsibility to protect the lives of its people. I believe that it is inconsistent with that principle to have Government, through the expenditure of public dollars, sanction the taking of life. For these reasons, I oppose the expenditure of public funds for elective abortions except in those cases where the life of the mother is endangered."

## CONGRESSIONAL CONDUCT

### HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. TEAGUE. Mr. Speaker, I have today introduced a resolution which would address a most serious problem that relates to the perception of this body in the public mind.

The resolution would express the sense of the House that any Member of the House who is the chairman of a permanent, select, special or joint committee of the Congress or any subcommittee thereof should refrain from exercising the function of that office when he has been indicted for an offense for which he could be sentenced to 2 or more years imprisonment. The resolution would not affect voting rights in either the committee or the House. That subject is already provided for in clause 10 of House rule XLIII, in the event a conviction follows from such indictment.

The resolution would also provide machinery for temporary restoration of suspended chairmanships if the Committee on Standards of Official Conduct, on which I serve, determined that such restoration is warranted.

Mr. Speaker, I am aware some constitutional purists will oppose this resolution but I am persuaded that being only a sense of the House expression, it is constitutionally sound.

I am also aware that some will oppose it on the grounds that it offends the innocent-until-proven-guilty doctrine. But, Mr. Speaker, it is a fact that the Federal criminal justice system in this country is so filled with prior safeguards for the accused that of the indictments which fi-

nally evolve an overwhelming number ends in convictions.

With these odds do we dare to be in fact, as well as appear to be, indifferent to such situations? No one argues with the proposition that committee chairmen have a disproportionate impact on the legislative functions of this body. I know, I have chaired two permanent and one select committees and numerous subcommittees in the House.

The problem is simply one of the balancing of interests. On the one hand shall we have the most important functions of this body managed by men under a cloud, with all the wear and tear on the fabric of public confidence such a situation brings about, or on the other hand shall we express ourselves that we too are concerned about this and feel that it is far better to let others not under any cloud perform these functions until the matter is finally resolved?●

## TERAMANA AMERICAN LEGION POST OHIO BASEBALL CHAMPIONS

### HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. APPLEGATE. Mr. Speaker, with the close of summer comes the end to many summer activities. I wish to take this opportunity to bring to the attention of my colleagues in the House of Representatives an event of which we in Ohio and its 18th Congressional District are extremely proud.

As we all know, summertime baseball has long been a tradition in America. But, perhaps the most skillful leagues at the amateur level are the American Legion league teams that play across this land. It is a highly competitive league and one that possesses much talent. I am privileged to announce today that the Ohio State champion for 1978 is the Teramana American Legion Post 33 of Steubenville, Ohio. They have proven beyond a shadow of a doubt that they are the champions that they have been proclaimed.

Following their State championship title in Athens, Ohio, the team went to the Great Lakes Regional Tournament, where they missed advancing to the American Legion World Series by only two runs of the final game, certainly not a performance to be ashamed of in any way.

Throughout this past and all previous seasons, Post 33 has displayed the meaning of teamwork. All team members and personnel have had a hand in achieving the State championship. Members of the 1978 playing team include: Terry Romey; Jimmy Joe DeFrank; Mark Chetock; Tim Cutri; Larry Whetstone; Bill Mason; John Maltese; Dave Morelli; Vince Lamatrice; Mike Montgomery; Tim Werkin; Paul Simpson; Ron Sismondo, named pitcher of the year; Lance Coulter, named player of the year; Mike Judy and Ken Peterson. Carmen Barbetta is the team statistician and Johnny Binkiewicz is the batboy.

While these young men have provided the talent on the playing field, they have been directed by an outstanding coaching staff. The staff includes: Jake Hollowood; Chuck Watt; Red Coulter and head coach Ang Vaccaro, who has taken teams to the State finals 27 times.

The entire State of Ohio should be proud of this team for carrying the State banner so far and so well. And on behalf of the 18th Congressional District, in particular, I extend my sincerest congratulations on a job well done.●

## MARIHUANA

### HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. COLLINS of Texas. Mr. Speaker, we have all heard the liberal cliche about drug use being among a category of "victim-less crimes." Marihuana, particularly, inspires its devotees to the use of this hackneyed cliche because its effects upon the health of the user have, until only very recently, been among the least studied of all dangerous drugs. Beginning with the building bombers on our college campuses during the 1960's and continuing today with the advocates of legalization, both in and out of the Carter White House, marihuana has become the "drug of choice" of chic liberals.

Tragically, their choice may be influencing millions of younger Americans to pursue a form of slow suicide. That appears to be the major conclusion of a new report issued by the Education and Research Institute (ERI) of Washington, D.C. This important new report summarizes all available study evidence regarding the effect of marihuana upon the human body and provides some disturbing conclusions about marihuana usage which should be of concern to every American.

Marihuana usage has reached epidemic proportions, particularly among young people. Reliable authorities estimate that some 53 percent of all Americans between the ages of 18 and 25 have at least tried marihuana. The Federal Drug Abuse Council estimates that 15 million young Americans are now steady marihuana users. The effects of this drug upon these young Americans are only now beginning to be quantified scientifically.

The first study included in the ERI report is that of Gabriel Nahas of Columbia University. Dr. Nahas' study indicates that marihuana's active chemical ingredient, delta-9-tetrahydrocannabinal (THC), accumulates in the fatty tissue of the body, including the brain, and is not eliminated with normal rapidity. The substance settles in the liver, brain, bone marrow, and adrenal glands. Due to the body's natural tolerance functions, users find it necessary to increase continually their dosages to achieve the desired euphoric levels.

Citing a study done at the University of California by Prof. Hardin Jones, professor of medical physics, Dr. Nahas contends that since THC accumulates in the fatty tissues of the body, the long term effect of the body's natural adjustment to the chemical's presence is more severe than that associated with alcohol.

The effects of marihuana usage on the brain are also documented in the ERI report. Among the effects upon the mental activities of the brain indicated by studies included in the ERI report are impairment of the memory, an inability to think sequentially, and slurring of words and sentence structures.

More disturbing, however, is the evidence included in the ERI report that marihuana usage of no more than 1 to 3 years can lead to pathological forms of thought, followed, in the case of the continued heavy user, by the development of paranoia.

To mask these effects, one study included in the ERI report noted, many regular users, particularly those in classroom situations, resort to phrase memorization and rambling, disjointed speech. This evidence must be especially frightening to parents whose children seem incapable of speaking without resort to that worn-out rhetorical duo, "like * * * you know."

Damage to the brain from marihuana does not appear to end with the mental processes. Actual measurable physical damage is also documented in the ERI report. Five different studies cited in the report indicate conclusions similar to those of Dr. A. M. G. Campbell of the Royal University Hospital in Bristol, England:

> You can see under the acute effects of marihuana-smoke changes in many sites (of the brain). The amygdala, septal and hippocampus show the most pronounced changes and these are brain areas where activity has been correlated with various specific emotional states. The septal region is the site for pleasure—stimulating it activates pleasure feelings. When its activity is impaired, as it is in schizophrenia, you have a lack of pleasure and a reduction of awareness toward a sleepy, dreamy state.

All the studies conclude that this type of physical damage is irreversible.

Parents whose youngsters seem to be chronically ill may also find the ERI report disturbing because among the effects of marihuana usage it documents is a marked decrease in the user's ability to combat the germs of diseases. Experiments by Dr. Nahas revealed a 40-percent reduction in the body's ability to manufacture white blood cells which attack foreign germs. This particular segment of the Nahas work dealt with light users, averaging but three or four joints a week. It would seem that even the briefest exposure to marihuana can result in harm to the user.

Finally, the ERI report summarizes studies which indicate that continued use of marihuana can lead to sexual impotence among male users. This effect seems to be the result of the accumulation of THC in the testicles and sexual glands which produce sexual differentiation. Yet another study in this particular area indicated that sperm counts among moderate users—at least four joints per week—dropped 44 percent. The sperm count reduction observed in these studies appeared to be proportionate to mari-

huana amounts consumed. Among heavy users, the counts plummeted to almost zero.

Once the reproductive system has been damaged by marihuana use the incidence of birth defects related to the drug must inevitably increase. According to the Staab-Lynch study cited in the ERI report, kidney deformation, runting, and even death were observed at uncommonly high levels among lightly exposed laboratory mice.

Millions of American youth today use or experiment with marihuana. How many of these youths will be permanently harmed because they believed those adults among us today who preach the gospel of legalization, decriminalization or justification of marihuana as a "victim-less" drug? I believe the American public, and particularly the young people suffering, probably unaware, the damage of this drug, deserve to know the truth. For this reason, I commend this fine study by ERI to the attention of this Congress.●

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## BUFFALO: A SUNNY BUSINESS CLIMATE

### HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. LaFALCE. Mr. Speaker, Buffalo, N.Y., has been the butt of many jokes, largely because of the monumental blizzard of 1977. Added to that unfortunate event was the widespread perception, even among western New Yorkers, of the Buffalo area as one of inevitable economic decline.

This negative and often self-defeating attitude obscured the underlying reality. Buffalo, having undergone a period of economic stagnation similar to that of many old Northern cities, is now experiencing a cultural, educational, and economic renaissance. Mike McKeating who is the financial editor of the Buffalo News has done an excellent job of setting the record straight in an article entitled "In Buffalo the Joke's on Johnny," which was published by the mid-America Outlook in its summer 1978 issue.

The article follows:

IN BUFFALO THE JOKE'S ON JOHNNY

(By Mike McKeating)

If your view of Buffalo has been polarized by Johnny Carson's jokes about the "Blizzard of '77", then consider this cold fact: In an average year, say local air transportation authorities, the Greater Buffalo International Airport is closed fewer hours from snow than LaGuardia, Kennedy or O'Hare.

Johnny Carson doesn't tell you that. And there are some other things Johnny Carson doesn't tell you that might be a surprise if you haven't visited the Queen City of the Great Lakes lately.

Despite a decline in manufacturing jobs, total employment in the Buffalo metropolitan areas has increased by 14,000 in the past decade due to an employment surge in the service and trade sectors.

The Buffalo metropolitan area is a center of higher education with 11 colleges and three universities. One, the State University of New York at Buffalo, is currently building a new campus in suburban Amherst at a cost of $500 to $650 million which is currently the largest university construction project in the world.

Buffalo is a banking center. Although only the 28th largest city in the U.S., it is headquarters for the nation's 13th largest commercial bank, Marine Midland with deposits of over $10 billion; the eighth largest savings bank, Buffalo Savings Bank with $2 billion in deposits, and the 16th largest savings bank Erie Savings with $1.6 billion in deposits.

The Buffalo Philharmonic Orchestra, conducted by the precocious Michael Tilson Thomas, ranks among the finest and has appeared in major cities across the nation.

The Albright-Knox Art Gallery, home to millions of dollars in art treasure, has a worldwide reputation.

Buffalo remains the largest flour milling center in the world, producing 1.2 million tons of flour a year—or 50 percent more than Kansas City and three times as much as Minneapolis, the nation's other large flour milling centers.

And, finally, those suits with the Johnny Carson label are made in Buffalo at the M. Wile Co., a subsidiary of Hart, Schaffner & Marx.

These are just a few of the facts that comprise the other side of the Buffalo story. But actually, the Buffalo story is more like a prism—with many sides. And like a prism, it reflects light differently, depending on the angle from which you view it.

The Buffalo saga is one of early prominence as an industrial and cultural center, subsequent decline and now a renaissance.

Due to its strategic location as the Eastern terminus of Great Lakes shipping and as the entrance to the Erie Canal, Buffalo quickly became a transportation hub and one of America's earliest industrial centers. By the late 19th and early 20th centuries, it was an important center for the manufacture of steel, other primary metals, machinery, foundry and forge products, and later, autos and aircraft.

Buffalo peaked early, both in population and as an industrial and transportation center. In 1940, Buffalo's population of 575,904 ranked 14th among U.S. cities. By 1960 the population had fallen to 532,759 and the rank to 20th, and in 1970 it had 432,768 people and ranked 28th.

The apparent population decline is misleading, however. The municipal boundaries were fixed in the 19th century, and the city became hemmed in by suburban townships. Under the New York State Constitution, suburban annexation is extremely difficult. Furthermore, in New York there's no such thing as unincorporated land. Every square inch of the state is already incorporated into either a city, township or village.

Therefore, the option of annexing more land, an option followed after World War II by Columbus, Jacksonville, Nashville, Denver, and many other cities, was not open to Buffalo.

The fact is the population of the Buffalo metropolitan area has remained relatively constant—at about 1.5 million—since 1940. There has simply been a large exodus of population from the city itself to its suburbs.

The industrial picture, however, is different. Following World War II, the Buffalo area began to lose industries. There were several reasons.

Buffalo was a city of old industries. Many were proprietary companies, founded in the 19th century by men who were inventors or entrepreneurs. As these companies passed into the hands of the second and third generations, often the heirs either lacked the talent or the desire to run them. Also, estate tax considerations encouraged sale, and one after another of the old-line Buffalo companies were sold to outside companies.

As years went by, these Buffalo plants became obsolete. The new owners lacked personal commitment to the city and to revitalizing their plant. Eventually, the Buffalo plant became the highest cost plant in a multi-plant operation, and was closed or moved.

With the opening of the St. Lawrence Seaway, Buffalo lost its position as the Eastern terminus of the Great Lakes. Ships sailing the Great Lakes could now make a left turn at Pt. Colborne, Ontario, about 30 miles west of Buffalo, and go through the Welland Canal and out the St. Lawrence to the Atlantic.

They no longer needed to stop in Buffalo and transfer their cargos to trains, and this, coupled with the rise of the trucking industry after the war, diminished Buffalo's importance as a railroad center as well.

The net result: Between 1958 and 1974, the Buffalo metropolitan area lost 218 manufacturing plants and 30,974 manufacturing jobs.

The biggest losses have come in the areas of primary metals, which lost 14,000 jobs in the past decade, transportation equipment, which declined 5,000, and chemicals and allied products, which declined by 6,000 jobs.

Probably the biggest single reduction has been suffered by Bethlehem Steel's Lackawanna plant. Although it has some ultra-modern components, in general it is one of the oldest and most obsolete in the Bethlehem system. It peaked at an employment of nearly 20,000 in the boom year of 1967, but has since undergone several downgradings and reductions in capacity, and now employs only 8,500.

That is the Buffalo story viewed through the prism from one angle. But viewed from another angle, simultaneous to the decline in the heavy industry sector, a rebirth was taking place in other areas, including downtown redevelopment, higher education and high-technology industry.

The redevelopment of downtown was initially spurred by the banks in the mid 1960's.

The Manufacturer's and Trader's Trust Company, the nation's 79th largest commercial bank, led off by building a new 20-story headquarters building.

Erie Savings Bank followed with a new 26-story headquarters tower and office building atop a block-long shopping mall across the street.

Finally, Marine Midland, the patriarch of Buffalo's banks, built a 40-story world headquarters building atop a U-shaped 3-story plaza.

The Buffalo Evening News, deposed from its 90-year-old building by the Marine Midland complex, built an ultra-modern 5-story building two blocks away.

Then the government sector became active. Erie County built a new 16-story office building to house county offices, and the Niagara Frontier Transportation Authority erected a 10-story office building attached to a new bus terminal in the heart of downtown.

Erie County and the City of Buffalo teamed to use county bonds and city funds to build a $20 million convention center downtown.

San Francisco architect and developer Clement Chen will begin construction soon on a $17-million, 500-room hotel on Buffalo's waterfront, and has an option to build another hotel on land across the street from the convention center.

The theater district is another example of successful downtown revitalization. Located at the northern end of downtown, it boasts several stately old movie theaters and the Studio Arena Theater, a successful Buffalo professional theater which has hosted world premiers of plays by Edward Albee and others.

The Studio Arena was looking for larger quarters, and a $940,000 grant from the federal Economic Development Administration made possible the purchase and renovation of the Palace Burlesque across the street. At the same time, a non-profit group received a $693,000 EDA grant to renovate the Shea's

Buffalo, an historic legitimate theater seating over 3,000.

But the real jewel of downtown redevelopment will be the $425 million rapid transit system. Federal grants have been approved, and construction will begin this year.

The rapid transit system will be 6.4 miles long initially, and will connect downtown with the State University of New York's Main Street Campus. Plans call for later extensions to the university's new Amherst Campus, and to other northern suburbs. The system will be a subway through the downtown area, then will surface in the theater district and run at grade through most of the rest of the route to the campus.

The State University of New York at Buffalo is a major economic force in the community. Surprising to many, it ranks among the top employers with 7,500 people and an annual payroll of $78 million.

It was the private University of Buffalo until it joined the State University system in 1964, but is still commonly referred to as UB. It is now spread over two campuses.

The Main Street Campus on the northern edge of the city was founded by former President Millard Fillmore in 1848. It now houses the graduate school and the medical school. The new Amherst Campus consists of ultramodern college complexes surrounding beautifully landscaped lakes, and houses the undergraduate school and the law school.

In addition to the $78 million payroll, the university spends $13 million a year on materials and supplies, and university officials say the 25,000 students spend $41 million a year in the Buffalo community.

UB also spends $2.4 million a year on off-campus leases, and brings into the community $22 million a year in research grants.

While employment has been decreasing in old-line, heavy industries, Buffalo has seen a significant growth in high-technology industries primarily because of the presence of three institutions: UB, Cornell Aeronautical Laboratories (now Calspan Corporation), and Bell Aerosystems. Many fast-growing high-technology companies have been formed by engineers and scientists who got their start at these three institutions. Some examples:

Sierra Research Corporation was founded in 1957 by several engineers from Bell Aerosystems and a handful of employees, some of whom loaned their salaries back to the company to help it grow.

Sierra, which makes sophisticated navigational and radar equipment for aircraft and a line of inventory-control computers for industry, now has 550 employees, a payroll of $7 million and annual sales of $17 million.

Astronics Corporation, founded in 1970 by an ex-Calspan engineer, makes electroluminescent panels with applications as diverse as aircraft panels, subway tunnels and photo darkrooms. It now has 185 employees and sales of $7 million.

Comptek Research, another spinoff of Calspan engineers, designs radar systems for the Navy and also makes a line of word-processing computers for law offices. This fast-growing firm now has 250 employees, about 90 of them added in the past year.

Mennen-Greatbatch Electronics was founded in 1962 by Wilson Greatbatch, a Calspan engineer and the inventor of the heart pacemaker, and Herbert Mennen, a Sierra Research officer. It makes sophisticated medical monitoring equipment for hospitals. It has 450 employees and $14.5 million in annual sales.

These companies and others like them are the vanguard of an industrial renaissance that is underway in Buffalo. And if Buffalo has traded heavy metals industries for high-technology industries it has made a good bargain, for high-technology industries are clean, pollution-free industries with high capitalization, high average salaries and a highly-skilled work force.●

## RECOMBINANT DNA—RUNAWAY RESEARCH

### HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. EDWARDS of California. Mr. Speaker, in our atomic age of potential destruction of humanity, the subject of genetic manipulation and species change is not to be taken lightly. The prospect of curing the human race of birth defects and environmentally caused diseases is a tempting thought. With our current and increasing technological know-how, the possible eradication of impure social elements brings shades of "Dr. Strangelove" close to home. These are results that could evolve from improperly regulated recombinant DNA research.

H.R. 11192 is designed to extend the containment requirements set by the National Institutes of Health (NIH) to all private and public recombinant DNA research institutions. Though this bill appears to be progressive, it is actually a poor alternative to conscientious supervision of this blatantly dangerous field. DNA technology has such enormous potential for ecological disruption that all research, in these initial stages at least, must proceed slowly and carefully under the auspices of public control. Although the bill's primary intent is to efficiently regulate recombinant DNA research, it seriously fails to propose this.

A basic discrepancy is that the bill extends the NIH guidelines for regulation, when this body is also in charge of funding biomedical and DNA research. This inherent inconsistency needs to be resolved and H.R. 11192 does not do it adequately. It gives the Secretary of HEW broad discretion in the regulation process rather than giving more power to the public sector. This is a direct departure from recent congressional efforts to involve the people in our Nation's decision-making.

Another provision in H.R. 11192 which concerns me, is its deviance from recent environmental health legislation. It states that recombinant DNA research cannot be regulated by States or localities unless it is "necessary to protect health or the environment." This restriction is yet another instance of special interests determining the course of scientific research through self-regulation. The people whom these decisions affect do not have a say in what is happening to their lives. This issue is not so complicated that it must elude the public arena.

The biohazard committees set up by H.R. 11192 to protect communities from scientific mistakes, also would not be responsive to public needs. At present, membership on such committees is decided by the research institution itself, and this bill makes no mention of any new makeup, selection processes, or the like. This deficiency is not adequately addressed.

It is essential that recombinant DNA research be subject to public scrutiny. As it stands now, it is not. A proper balance between rapid scientific advancement and thorough consideration of social consequences can and should be attained. H.R. 11192 fails to combine these two issues into a truly responsive piece of legislation. Public input must be given a freer hand in determining the future technological directions this country is taking. Our survival depends on it.●

## VETERANS' PREFERENCE

### HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. UDALL. Mr. Speaker, during the next few days the House will be considering H.R. 11280, the Civil Service Reform Act. An important provision in this legislation is the proposal to modify existing veterans' preference laws.

The following editorial from the Washington Post is an excellent statement on behalf of Vietnam and disabled veterans, who need this legislation in order to receive a fair deal in the Federal labor market.

[From the Washington Post, Aug. 11, 1978]

GIVING VIETNAM VETERANS A BREAK

We return today to a familiar complaint of ours: the injustices still being done to veterans who served in the era of the Vietnam War. We have in mind injustice deriving from, among other things, the lack of job opportunities, the stigma of service in a profoundly controversial conflict, the inadequacy of education benefits, the once-over-lightly approach to the upgrading of "bad-paper discharges"—and, above all, the shameful incapacity of so many members of Congress to stand up to pressures from powerful, old-line veterans organizations heavily weighted in their membership and their priorities to the veterans of earlier wars. We will spare you today a discussion of what may or may not account for the tendency of so many people, in general—and so many public officials, in particular—to turn away from this unfinished business of the Vietnam War. The point is simply that the tendency is there, and it is nicely illustrated by the trouble the Carter administration is having in Congress with a relatively modest provision in its program for civil-service reform that attempts to narrow and refine the present system for awarding sweeping and repeated government job preference to veterans.

The idea, quite simply, is to concentrate job preference on those who need it the most: the 7 million Vietnam-era veterans with no disability, and the 2.2 million disabled veterans of all wars.

Now, it is true this reform would reduce the job preference available to older, able-bodied veterans of, let us say, World War II or the Korean War. It would also severely limit the preference awarded retired veterans who made the armed services their career. Those are the veterans who make up the bulk of the membership of the American Legion, the Veterans of Foreign Wars and the other mainstays of the veterans lobby.

But they are also the veterans who need job preference the least—who have already in many cases used their preference more than once, sometimes to shift from one government job to another. For most of them, the original purpose of job preference—to ease their readjustment to civilian life—has long since been achieved. Some limit on their continued preferential treatment, what is more, would provide more job opportunities

not only for those who served in Vietnam but also for a host of non-veterans—women, for example, and minorities—who are also supposed to be entitled to go to the head of the line.

This is, in short, a civil-service reform long overdue. And yet a modified version of the administration proposal was knocked out of the administration's civil service reform bill by a narrow vote of the Senate Governmental Affairs Committee. Its chances of revival on the Senate floor are uncertain, at best, which leaves its fate largely up to what happens in the House. The House Post Office and Civil Service Committee approved the modified administration proposal, and the administration has accepted a refinement sponsored by Rep. David E. Bonior (D-Mich.) that would give veterans who actually served in the Vietnam theater more time to use their preferences. The Bonior amendment is likely to come up for a vote on the House floor today, and it ought to be approved. Also up for a vote, probably today, is an amendment by Rep. James M. Hanley (D-N.Y.) that would substantially undo all the contemplated improvements in veterans preferences and retain most of the injustices of the present law. We need scarcely add that this latest effort to walk away from the unfinished business of Vietnam should be resoundingly rejected.●

## THE KOREAN INVESTIGATION

### HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for September 6, 1978, into the CONGRESSIONAL RECORD:

THE KOREAN INVESTIGATION

The public is confused and skeptical about various aspects of the Korean investigation.

For one-and-a-half years the House Committee on Standards of Official Conduct has been investigating alleged South Korean influence-buying on Capitol Hill. From the beginning, the investigation was clouded with doubt that Congress would aggressively and thoroughly investigate charges of wrongdoing by its own members.

Thus far much has been uncovered about the South Korean activities, but much remains to be investigated by the House Committee.

Under the direction of former Watergate prosecutor Leon Jaworski, the Committee's staff gathered mountains of information about the alleged South Korean activities. These facts were presented to the House Committee in October, 1977. The report proved that some sort of influence-buying scheme had existed.

The next phase of the investigation proved to be more difficult, for it involved trying to get sworn testimony from foreign nationals who were not in the United States, and not subject to U.S. law.

After much pressure was put on the South Korean government by the President and Congress to obtain testimony from Mr. Tongsun Park, supposedly an independent South Korean businessman, Park testified before the Committee. He testified that he gave almost a million dollars to present or former members of Congress as campaign contributions. Although he claimed he had no connection with the South Korean government, the established facts strongly suggest he was an agent of that government.

Several specific actions have resulted from that phase of the Korean investigation. Four sitting members of Congress have been charged by the Committee with unethical conduct and notified of possible disciplinary action. Evidence relating to possible criminal activity by others has been sent over to the Justice Department. One former Congressman has pleaded guilty to accepting more than $200,000 from Park. Another former Congressman is under indictment and a third is facing possible charges.

There is evidence that other members of Congress may have taken some money from South Korean agents, but the reliability of the evidence is doubtful. Even if they are guilty of wrongdoing, there is no way of pursuing them without the testimony of Mr. Kim Dong Jo, the former South Korean Ambassador to Washington. There is every reason to believe that Kim Dong Jo had some money to spread around Congress to influence legislation concerning South Korea. Until very recently, the South Korean government had refused all requests for his testimony. Mr. Jaworski left the staff because he felt that this refusal ended any chance to complete the investigation.

Congress made numerous attempts to persuade the Korean government to allow Kim to testify, including a House vote to deny nearly $56 million of aid to Korea and offers to have House members go to Korea to encourage his testimony. On August 3, the Korean government gave assurance that Kim would supply new, concrete evidence to Congress.

So the investigation has taken on new life. As we begin the final phase of our investigation, several thoughts come to mind.

Although charges have been made that the Congress is determined to keep the scandal from being fully revealed, I have seen no evidence to support that charge. Indeed, my experience is just the opposite. Throughout the investigation, the Committee has had the full support of the Speaker of the House and the leadership of both political parties. Not once has a member of Congress come to me and suggested that the investigation be deferred or delayed.

Most certainly, the Congress must take every reasonable step to avoid the charge of a coverup. It will not be easy to do because of the unfortunate charges that 115 or more Congressmen were involved—statements that really had no basis in fact.

I believe a full public Committee report is a critical ingredient to a credible investigation. All the testimony, depositions and other information gathered by the Committee should be made public, and, if at all possible, done so in advance of the November elections. The Committee should also make recommendations to curtail such activities in the future.

One beneficial result of the Korean investigation has already occurred. Congressmen are more careful now about our involvement in any kind of conduct that would be misconstrued, and we are paying more attention to our own codes of conduct.●

## PERSONAL EXPLANATION

### HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. McDONALD. Mr. Speaker, due to my absence on August 16 and August 17, I missed certain votes. I requested to be paired on each vote missed, but did not receive a live pair on each vote. Therefore, I would like to explain how I would have voted if I had been present.

*Rollcall No. 707, "yes."
*Rollcall No. 708, "yes."
Rollcall No. 709, "yes."
*Rollcall No. 710, "yes."
*Rollcall No. 711, "yes."
*Rollcall No. 712, "yes."
*Rollcall No. 713, "No."
*Rollcall No. 715, "No."
Rollcall No. 716, "no."
*Rollcall No. 717, "no."
Rollcall No. 718, "yes."
Rollcall No. 719, "no."
Rollcall No. 720, "no."
Rollcall No. 721, "yes."
Rollcall No. 722, "no."
Rollcall No. 723, "no."●

## MARRIAGE TAX

### HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. PICKLE. Mr. Speaker, a problem in our present tax code that has not yet been corrected is the so-called marriage tax, the result that now occurs, where both spouses are working, where they actually pay a higher tax after marriage than they would if they were each filing as a single person. This problem is a particularly difficult one, because as long as we have a progressive tax system, if we try to correct it, it results in injustice to another class of taxpayers. Jane Bryant Quinn has written an excellent article in Newsweek, August 28, 1978, that explains the dilemma. I recommended the article to my colleagues, and it is submitted:

THE "MARRIAGE PENALTY"

(By Jane Bryant Quinn)

Missing from the tax-cut bill now moving through Congress is a solution to the "marriage penalty," that anomaly of the tax law that hits most working couples with higher income taxes after marriage than before. President Carter, in the early days of his Administration, promised to address this problem in his tax-reform package. But today, Treasury spokesmen will say only that they think the tax on marriage is unfair, and something should be done.

Exactly *what*, however, they'd rather not imagine. The marriage penalty is a curiosity of the tax code that defies easy reform. Anything that ends it would create new forms of discrimination against other classes of taxpayers.

An equitable tax system, Harvey S. Rosen of Princeton University observes, is generally expected to meet three tests: (1) the tax should be progressive, taxing a person's first dollar of income at a lower rate than the extra dollars he piles on top; (2) your tax burden shouldn't be changed by marital status; (3) other things being equal, families with the same incomes should pay the same tax. Any two of these goals can be achieved at the same time, Rosen says, but not all three. As long as we accept progressivity, we have to choose either point 2 or point 3, but not both.

CLASH OF PRINCIPLES

This calls for an example. First take point 2, that marital status shouldn't make any difference to your tax. Under this principle, each person's income would be taxed in-

* Live pair.

dividually, and at the same rate. A person with a $20,000 taxable income would owe the same amount, whether married or single. But look at what this does to family income: a $20,000, single-earner family is in a higher tax bracket than a family where the man makes $15,000 and the wife $5,000. The latter, in turn, pays more than the family where each makes $10,000. That's three different $20,000 families, each paying a different tax. A clear violation of point 3.

Now let's explore point 3, that all families with the same income should pay the same level of tax. Couples with taxable incomes of $20,000 owe the same amount, regardless of who earns what; similarily, single-person households with $20,000 would pay at the same rate as marrieds (although they would normally have fewer exemptions). This contradicts point 2. Working couples would pay less if they stayed single.

Prior to the Tax Reform Act of 1969 there was no marriage penalty. When a working couple married and filed a joint return, their combined tax was generally the same before and after marriage. Point 2 triumphant, but point 3 up the creek. A single person paid up to 41 per cent more than a married person with the same income.

This tremendous inequity was eased by Congress in 1969. The tax advantage of joint filing was reduced, so that the extra tax paid by singles wouldn't rise more than 20 per cent above the married amount. The change in rates created a marriage penalty for working couples—not intentionally, but as an arithmetical by-product of a progressive-tax system.

SPREADING THE GRIEF

The present law is actually fairer than the old one, despite the marriage penalty, because it spreads the grief around. In the old days, only singles paid an excess tax. Today, singles still pay at a higher rate than marrieds, but the differential isn't as high. Working couples pay a marriage penalty. Only traditional, single-earner families (or families where one earner makes very little) come out relatively ahead.

C. Lowell Harriss, consultant to the Tax Foundation, says that much of the problem could be solved by widening tax brackets. The same inequities would persist, but fewer people would be affected by them.

Rep. Millicent Fenwick, a New Jersey Republican, would let a married couple file either jointly or singly, whichever gave them the lower tax (England went this route in 1972). But this re-creates the singles penalty in all its former glory. Would it help if the Fenwick proposal were extended to singles, allowing them to file at the lower, married-couple rate? It would not. The upshot would be yet another marriage penalty.

Me, I'd leave the relative tax rates alone but add a deduction for working couples, because their expenses are higher than those of one-earner families. For politicians, it's a no-win situation. Whatever they do, they're going to make somebody sore.●

## INTERNATIONAL PRO-AM BIKE RACE

### HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. HUGHES. Mr. Speaker, I am proud to announce that the Third International Pro-Am Bike Race will be held in Wildwood, N.J., on September 23–24, 1978.

This particular race is recognized as one of the major events in international bike racing. The quality of competitors is outstanding, and many of these men and women racers have traveled all the way from Europe to participate in this event.

Several people have worked exceedingly hard to make this competition a very special one by their leadership, support, and enthusiasm. Catherine Cramer of Ventnor, N.J., the president and organizer of the International Pro-Am Bike Race, along with the mayor of Wildwood, Guy Muziani, and Charles Thomas, the president of the Wildwood Chamber of Commerce, have, by their hard work and diligent support of an idea made this competition an example of the success that results from the private and public sectors working together.

I feel that this exciting sporting event will establish New Jersey as one of the world's cycling capitals. The actual competition will be held on the Wildwood Boardwalk, part of which was built with lumber used for President Carter's inaugural platform and bleachers.

I urge my colleagues to take advantage of this opportunity to attend this unique international sporting event.●

## LEAGUE OF WOMEN VOTERS AND JAPAN: WHO IS IN WHOSE HIP-POCKET?

### HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. McDONALD. Mr. Speaker, frequently staff members of the League of Women Voters appear before Congressional committees attesting to their self-assumed right to speak for the consumers of this country.

The League of Women Voters insists, and rightfully, that no one is more concerned about the cost of living than the housewife. I doubt, Lowever, if the staff of the League of Women Voters have very much knowledge of the problems of the average housewife of the Seventh District of Georgia.

I am now thinking of the wives of the textile workers and the machinists whose jobs are each day threatened by imports and others in public service whose livelihoods have been adversely affected by imports.

At these hearings of our congressional committees, the leadership of the League of Women Voters always insists that we must keep our markets open to the very imports of textiles, clothing, and machinist products which are endangering the livelihood of my constituents and eroding my district's industrial and economic base. Fundamentally, I believe in free trade, but most of what is going on in the world today is neither free nor fair trade.

Within the last few days I have been presented with evidence gleaned from the files of the U.S. Justice Department that leads me to believe that the leaders of the League of Women Voters may not be speaking objectively in behalf of the consumers of America. Instead, it appears they may be speaking in behalf of the interests of Japan, whose largesse they have been enjoying for some time. For so long the League of Women Voters has portrayed itself as an objective nonpartisan voter information organization. However, the evidence I am presenting here today appears to belie that theme.

The evidence of which I am speaking are the following entries filed with the Department of Justice pursuant to the Foreign Agents Registration Act of 1938:

REFERENCE A

Supplemental Statement of the U.S.-Japan Trade Council, an agency of the government of Japan, for the six-month period ending December 31, 1969

(1) Item 15(a) page two: "Occasionally, League of Women Voters, contribution, $1,000.

*Question:* Had the League of Women Voters rendered any prior service to the Government of Japan to prompt an agency of that government to contribute $1,000 and if so, what was that service?

REFERENCE B

Registration Statement made by the Japan Trade Promotion Office, an agency of the government of Japan, in compliance with a court order issued by the U.S. District Court of the District of Columbia in September, 1976, to truthfully disclose their activities in the United States. The following items under "Statement on Project Expenses for the United States-Japan Trade Council

(1) January 1 to March 31, 1972:

(a) "Women's Project, $7,500.

*Question:* Was this "Womens Project an anti-Buy America campaign? Did any of these funds go to the League of Women Voters or any of its members? If so, did they register as agents of the government of Japan?

(b) "League of Women Voters, $450.

*Question:* Was this in payment for services rendered?

(2) April 1 to June 30, 1972: (a) "Goodwill tours, $2,150.

*Question:* Who were the recipients of these "goodwill tours?"

(3) April 1 to June 30, 1972: (a) "Goodwill tours, $17,150.

*Question:* Who were the recipients of these "good will tours?

(4) July 1, to September 30, 1972: (a) "Goodwill tours, $5,000.

*Question:* Who were the recipients of these "goodwill tours"?

(5) January 1 to March 31, 1973: (a) "Charles von Loewenfeldt—Symposia and goodwill, $15,000.

*Question:* Who were the recipients of this "goodwill"?

(b) "State Buy American, $8,194.60.

*Question:* For what purpose and how were these funds spent?

(6) January 1 to March 31, 1973: (a) "Symposia and goodwill tours, $7,625.

*Question:* Who were the recipients of these goodwill tours?

(b) "State Buy American Activities, $6,000.

*Question:* For what purpose and how were these funds spent?

REFERENCE C

Supplemental Statement of the U.S. Japan Trade Council, an agency of the Japanese government, for the six-month period ending June 30, 1971, filed in September 1976 in response to a court order issued by the U.S. District Court of the District by the U.S. District Court of the District

(1) "On March 2 the Council wrote the

President of the League of Women Voters in Connecticut congratulating her on the League's testimony in opposition to Buy American legislation in the Connecticut legislature."

*Question:* Did any agency of the Japanese government provide any information that was used by this spokeswoman during the testimony, and did she or the League receive any gifts of payment prior to or after this testimony?

REFERENCE D

Supplemental Statement of the U.S. Japan Trade Council, an agency of the Japanese Government, for the period ending June 30, 1972, filed in September 1976 in response to a court order issued by the U.S. District Court of the District of Columbia

(1) "Similar arrangements were made by Charles von Loewenfeldt for a fact-finding trip to Japan which the League of Women Voters was making under arrangements that the League had made with the government of Japan."

*Question:* What are the names of these members of the League who made this trip to Japan? Have any of these women used their influence in any way to direct the course of legislation in this country or attempt to do so?

REFERENCE E

U.S. Japan Trade Council Report of January 1–June 30, 1978 filed with the Department of Justice, page 15

(1) Arranged appointments for Rep. Jones and House Ways and Means staffers Loren Cox and John Meager in connection with their trip to Japan.

Arranged appointments for Mr. R. Ryan, Jr., Executive Seminar, State Dept. with Sony, Sanyo and Matsushita's offices in the U.S. Helped plan League of Women Voters trips to Japan with B. Perkins of their International Affairs Dept.

(a) *Question*: Have any of these staffers used their influence in any way to direct the course of tariff or trade legislation or attempted to do so?

REFERENCE F

Supplemental Statement filed by Charles von Lowenfeldt Inc., an agent for the Japanese government, on January 5, 1978

(1) The item under "Advice to the Consulate"

"a. Registrant, at the request of the Consulate, submitted suggestions of several community leaders to be considered to be invited to visit Japan as guests of the Japanese government."

(a) *Question*: Were any of these "community leaders" members of the League of Women Voters?"

REFERENCE G

Supplemental Statement filed by the U.S.-Japan Trade Council, an agency of the government of Japan, for the period ending December 31, 1972, filed in September, 1976 in compliance with a court order issued by the U.S. District Court of the District Court of the District of Columbia

(1) Charles von Loewenfeldt, a registered agent of the Government of Japan, gave "Advice to the Japanese Government" on September 15 and the League of Women Voters Project to Combat Protectionism."

(a) *Question*: Was this project in any way financed by the Japanese government or any of its agencies? How much money did the League or its staff receive?

I am so concerned about what this evidence implies that I have today written the U.S. Department of Justice the following letter:

DEAR MR. ATTORNEY GENERAL: The enclosed evidence gleaned from your Department's registry of foreign agents leads me to believe that certain staff members of the League of Women Voters have engaged in lobbying and other activities in behalf of the government of Japan, for which they, or the League, have been receiving payments in cash or in kind. That as such, they are required to file with your Department a statement as to their activities in behalf of the government of Japan.

I am further wondering if the members of the staff of the League of Women Voters who accepted trips to Japan and other gifts from the Japanese government should not declare these trips as income if these trips should be determined to be "shallowly disguised vacations."

I would like to ask that you investigate this matter and obtain from the Japanese officials and others involved a complete explanation of the entries with reference to the questions posed, as contained in my enclosures.

Your cooperation in this matter will be greatly appreciated.

Sincerely,

/s/ LARRY P. MCDONALD.●

## CZECHOSLOVAKIAN EXILES PETITION UNITED NATIONS

### HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BIAGGI. Mr. Speaker, last month marked the 10th anniversary of the repressive invasion of Czechoslovakia by Soviet troops on August 21, 1968. The spark of freedom and democracy nurtured by the freely elected leaders of that small country was swiftly snuffed out and replaced with the iron hand of authoritarian rule.

Those of Czechoslovakian nationality living outside the homeland are seeking to focus international attention on the plight of the oppressed people of their country. Jan Papanek, formerly Ambassador of Czechoslovakia and Permanent Delegate to the United Nations under the Dubcek government, submitted a Petition '78 to the Secretary-General of the United Nations Kurt Waldheim. Mr. Papanek submitted the petition as president of the American Fund for Czechoslovak Refugees on behalf of more than 6,000 signators and 17 organizations with memberships totaling more than 250,000.

The appeal to the United Nations asks only that the human rights of the people of Czechoslovakia be guaranteed by its own laws and international obligations freely assumed and that the oppressive puppet government now in control of the country with the assistance of Soviet troops be removed. For the edification of my colleagues, I include the full text at this point in the CONGRESSIONAL RECORD:

PETITION '78

The year 1978 has an extraordinary significance for the nations of Czechoslovakia. It marks several important milestones in its most recent history:

60 years ago—in 1918, Czechoslovakia became an independent country, based upon democratic and humanistic ideas of T. G. Masaryk.

30 years ago—in 1948, three years after the end of World War II and the Nazi occupation, the democratic parliamentary order in the country was again destroyed, its peaceful and democratic evolution interrupted to be replaced gradually by Stalinism which sapped the national will, spirit and resources for many years.

10 years ago—in 1968, the armed forces of the Soviet bloc invaded the country to halt the process of regeneration of its national culture, the humanization and democratization of its public life which resulted in a massive violation of fundamental civil and political rights . . .

Remembering these three anniversaries—we the petitioners.

(1) Demand the withdrawal of Soviet troops from Czechoslovakia and restoration of independence, sovereignty and rights of the people of Czechoslovakia to self-determination as according to Articles I, II, III, IV and VII of the Helsinki Final Act of 1975,

(2) Support the Charter '77 in demanding from the Government of the Czechoslovak Socialist Republic to implement the civil and political rights as defined in the said Helsinki Accord, as well as, in Law 120/75 Sb., adopted by the Federal Parliament of the Czechoslovak Socialist Republic on November 11, 1975,

(3) Call upon the Government of the Czechoslovak Socialist Republic to desist from persecuting the Chartists and other citizens who merely demand that the government observes the Czechoslovak Laws and international agreements on civil and political rights it has signed,

(4) Call upon the Government of the Czechoslovak Socialist Republic to remove or reform all laws which either violate or limit the enjoyment of civil and political rights as defined in the Helsinki Final Act,

(5) Call upon the Human Rights Committee of the United Nations to hold the Government of the Czechoslovak Socialist Republic accountable for periodical reports on the measures undertaken to implement the International Covenant on Civil and Political Rights in the country,

(6) Call upon all signatory countries of the Helsinki Final Act to hold the Government of the Czechoslovak Socialist Republic acountable for the full implementation of the Accord and of all related international agreements which the Helsinki Final Act invokes. . .

Dated this 1st Day of January, 1978, New York.

The document Petition '78 has been signed originally by the following individuals:

Jan Babinec. Antonin Bartos, Marie Bartos, Jiri Blaha, Josef Bursik, Jana Bursik, Jiri Corn, Ota Coufalik, Marie Coufalik, Antonin Cech, Stepanka Cech, Jan Dohnalek, Anna Dohnalek, Libuse Drobilkova, Anna Faltus, Miroslav Fic, Richard Fries, Milan Frybort, Eva Hladik, Ota Hora, Lida Hora, Karel Kalenda, Eliska Kalenda, Ota Kobylka, Gita Kobylka, Vladimir Krajina, Marie Krajina, Jiri Krupicka, Ada Krupicka, Vladimir Krivanek, Horty Krivanek, Jan Kuncir, Josef Kucera, Zdenka Kucera, Milos Kunta, Miloslav Malecek, Anna Malecek, Jaroslav Maliska, Rozina Nehasil, Frantisek Novy, Zdenek Otruba, Hana Otruba, Jan Papanek, Betka Papanek, Jozka Pejskar, Anna Pejskar, Zdenek Prazak, Evelyn Prazak, Olga Radimsky, Ota Rambousek, Zdenka Rambousek, Antonin Roubik, Viera Roubik, Lumir Salivar, Milan Schiller, Josef Schneider, Emil Sklenar, Zdenek Slavik, Drahomira Slavik, Antonin Strnad, Josef Skvorecky, Zdenka Skvorecky, Eduard Vondracek, Vera Vondracek, Antonin Votruba, Vlasta Votruba, Jaromir Zastera.

Petition '78 has been sponsored and approved by the following organizations:

Alliance of Czechoslovak Democratic Associations in Australia and New Zealand.

Associations of Czechoslovak Legionnaires.

Association of Free Czechoslovaks—Queensland.

Association of Free Czechoslovak Sportsmen.
Ceske Slovo—Newspaper of the Czechoslovak Exiles.
Council of Free Czechoslovakia.
Czechoslovak Advisory Committee in West Europe.
Czechoslovak Christian Democracy in Exile.
Czechoslovak National Association of Canada.
Czechoslovak National Council of America.
Czechoslovak Orel in Exile.
Czechoslovak Sokol Abroad.
F.C.I. News Agency Ltd.
Naarden Committee—Czechoslovakia.
National Council of Women of Free Czechoslovakia.
The Czechoslovak National Socialist Party in Exile.
The Swedish Socialdemocratic Youth.
With the membership of over 250,000 all over the world.

We, Ota Rambousek and Mike M. Kunta of New York City duly declare that we have received 6,438 signatures, from various individuals and organizations sponsoring and approving Petition '78. August 18, 1978.

I, Jose Cabanas of New York City duly declare, that I know the above named individuals, and that I have seen and recounted the signatures received by them sponsoring and approving Petition '78. August 18, 1978.

On this 18th day of August, 1978, before me personally came Jose Cabanas, Ota Rambousek and Mike M. Kunta to me known to be the individuals described in, who, being by me duly sworn, duly acknowledged they executed the foregoing instrument. August 18, 1978.

ANGEL R. RODRIGUEZ,
*Notary Public, State of New York.*●

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## REGENERATION

## HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. FRENZEL. Mr. Speaker, the following article on regeneration appeared first in the Saturday Review and then was reprinted in the Washington Post.

It was called to my attention by a remarkable Washington-based organization, Paraplegia Cure Research, with which I have worked closely since its founding in 1976. Paraplegia Cure Research's sole mission is to liberate paraplegics from their wheelchairs through central nervous regeneration. As this article points out, research in regeneration has exciting possibilities not only for curing sufferers of central nervous system disorders, but also for eventual regrowth of limbs.

Mr. Speaker, research in regeneration and the efforts of Paraplegia Cure Research deserve the fullest support of the Congress and the public. The eventual payoff in terms of alleviating human suffering is tremendous—both in the United States and through the world.

The article follows:

GROWING NEW LIMBS—SCIENCE'S SEARCH FOR A WAY TO RESTORE LOST ARMS AND LEGS

(By Susan Schiefelbein)

Physicians may one day treat patients who have shattered limbs, crippled joints and injured spines in a way that man never before dared to dream of: regrowing the damaged part—whole, perfect and undiseased.

For centuries, man has watched in wonder as the salamander regenerated its severed limbs, never imaging that complicated human parts could grow back in such a way. The halt and the lame could be made whole, it seemed, only by the healing waters of Bethesda or the touch of a god incarnate. But in recent years, scientists have grown back a frog's leg from elbow to toes and a rat's leg from shoulder to the top half of the elbow, with cartilage and bone, muscle, nerves and veins, all in awesome anatomical precision.

One of the pioneers in the field, Dr. Robert Becker, chief of orthopedic surgery at the Veterans Administration Hospital in Syracuse, N.Y., has already applied the newly found healing mechanism to broken human bones, successfully knitting fractures that previously had failed to heal even after extensive surgical procedures. He and his colleagues have now reached the point where they can confidently predict that a regeneration of human parts can and will be achieved, possibly in the next few decades.

A brave new world? Not a bit. The magic of regeneration has been with us all along, hidden in the wondrous complexity of every organism's bodyworks. These scientists are not performing miracles; they are witnessing them.

Their challenge, then, has been not so much to recreate a limb as to discover how some animals do so naturally. The chronicle of their quest reads like a detective story; for clue by clue, Becker and his colleagues have been unraveling a medical mystery that began with creation.

The tale begins with a few known biological principles about regeneration that were to serve as the departure point for their search. The way regenerative healing works has been observed, if not explained, for hundreds of years; the process still seems so magical that even the most clinical of researchers must shake his head in amazement as he watches the microscopic metamorphosis unfold.

The body of every animal, from the flatworm on up the evolutionary scale, possesses primitive, undifferentiated cells that could best be described as being like raw clay. When a creature which can regenerate loses a limb, these cells migrate to the injury, forming a mass called a blastema. Some of the mature, specialized cells at the site of the injury dedifferentiate, reverting to primitive form, and add further to the blastema. The blastema then respecializes, transforming itself into whatever types of cells are needed to replace the missing part—bone cells, cartilage cells and so forth. Somehow, the blastema absorbs information about what to produce along the way, so that at the appropriate moment, it creates an elbow joint or a tibia or a fibula, a left leg or a right one.

TWO IMPORTANT CLUES

The first formal paper on regeneration was written by the great Italian physiologist Luigi Spallanzani and appeared in 1768. Spallanzani's experiments uncovered the first two important clues: The younger the animal, the greater its capacity for regeneration; and the lower an animal is on the evolutionary scale, the greater its capacity for regeneration.

This latter finding was especially interesting, for it provided a clue in itself. The lower orders that regenerate are biologically just as complicated as man; their parts are just as difficult to replace. The main difference is—and this was later to become a significant clue—that animals in the lower orders have comparatively more nerves in their extremities.

A third clue was buried in the writings of the late 1700s. Every time a creature is injured, an electrical charge is generated at the site of the injury. This phenomenon is called the current of injury, and it is proportionate to the severity of the wound.

It was not until some 180 years later that scientists again began to delve into the mystery of regeneration. In 1945, the biologist Meryl Rose (a retired professor of anatomy at Tulane University College of Medicine who is currently affiliated with Woods Hole Marine Biological Laboratories) amputated the forelegs of some frogs below the elbows. Thinking he could perhaps promote growth by preventing the injuries from scarring over, he bathed the stumps of the frogs' limbs in a strong salt solution.

The result was startling. About half of each amputated limb regenerated, developing new bone and muscle and the some cases even showing the beginnings of digital growth. Thus Rose became the first to prove that an animal which cannot regenerate naturally can be made to do so artificially.

The next year, a Russian named Vladimirovic Polezhaev amputated frogs' legs in a similar fashion and then irritated the stumps by repeatedly jabbing them with needles. The result? Astonishingly, he regenerated about the same amount of growth that Rose had with the salt solution. It was possible that the salt not only had prevented scarring but, like the needle punctures, had actually exacerbated the injuries and thereby simulated growth. Now there was another clue: Regeneration may somehow be connected to the severity of injury.

In the early 1950s, Marcus Singer, now a professor of anatomy at Case Western Reserve University in Cleveland, became the next to uncover important evidence. He transferred nerves from a frog's healthy hind legs to the stump of its foreleg; his frog also regenerated about the same amount of growth that Rose's had. Singer's contribution to the collection of clues is an almost mathematical formulation: The nerve tissue required for regeneration must constitute at least 30 percent of the total tissue at the site of the injury.

Then, in 1958, a Russian named A. V. Zhirmunskii discovered that the current of injury is proportionate not just to the severity of the injury but also to the amount of nerve tissue in the area.

Becker's turn at medical detection also came in 1958. He assembled his evidence as a good detective would assemble his suspects: Injury is related to regeneration; nerve tissue is related to regeneration, and both injury and nerve tissue are related to the current of injury. Could the current of injury, Becker reasoned, thus be related to regeneration?

He measured the current of injury in a salamander's regenerating leg and in a frog's scarring stump. Sure enough, his findings seemed to support his hunch. On the day the legs were amputated, both creatures generated the same current of injury—a positive voltage. But there the similarity ended: As the frog's stump scarred over, the current of injury in its leg declined to zero, but the current of injury in the salamander's leg switched from a positive to a negative polarity and only then began to decline, reaching zero when regeneration was complete.

Becker had definitely discovered a connection between the current of injury and regeneration. In a sense, however, his discovery complicated rather than clarified the mystery. The way the current of injury worked in those limbs was simply not concurrent with the way nerves are supposed to produce electricity.

Nerve fibers have traditionaly been thought to respond to stimulation in only one way: Sodium penetrates into the nerve cell and potassium leaks out, creating a chemical reaction that generates a charge called an action potential. Whatever the stimulus—a gentle touch or an injury—the

action potential is exactly the same. Moreover, each nerve fiber can create only one of these potentials at a time. Becker compares the system to that of a digital computer, which transmits single impulses in rapid succession.

Herein lay Becker's problem: How could the action potential—a constant—account for the switch from positive to negative polarity that he had seen in the salamander's current of injury? How could the action potential account for the fact that the current of injury lasted many days after the stimulated nerve cells should have either died or repaired themselves and ceased their impulses? How could the action potential, which responds in the same way to every stimulus, account for the fact that creatures feel intensities of pain?

Becker guessed that in addition to its digital-computer impulses, the central nervous system can carry steady currents and potentials—in the way an analog computer can. He further theorized that the body's analog computer system has an input signal—could it be pain?—that triggers an output signal which switches on the healing function.

To verify his theory, Becker measured the electrical potentials of different points on the skin of humans and other animals. He found an electrical field that roughly parallels the nervous system. A disturbance in that field, such as an injury, might stimulate cells to begin repairs.

Becker's theory ran counter even to basic textbook explanations of the nervous system, and medical men let him know it. "That cells are capable of sensing and responding to levels of electrical current is hardly universally accepted," he wrote in one medical journal. But he stuck to his convictions; and today, more than a decade later, doctors are coming to accept his hypothesis. "They no longer march out of my lectures," he says. "The response has changed from complete rejection through amused disbelief to—at present—almost enthusiastic acceptance."

BONE REGENERATION

And no wonder. The experiments that Becker based on his unorthodox vision of the nervous system produced remarkable results. First, in 1964, Becker began to examine the spontaneous regeneration of human bone. Given the fact that bone is not well innervated, the theories about electrical stimulation would not apply—unless bone could generate its own electricity. Becker knew that bone accommodates automatically to mechanical stress. When he measured the currents around a stressed bone, he discovered that it generated a positive charge on the stretched side (which dissolved some bone) and a negative charge on the other side (which built up bone and provided the necessary added support). Then Becker administered a negative charge to a mouse's broken leg bone to see if he could artificially stimulate bone growth. He did.

In 1964, Steven Smith, then a student of Meryl Rose and now an associate professor on the department of anatomy at the University of Kentucky, studied Becker's findings and got the idea of implanting a simple electrode right into the muscle tissue of the stump of a frog's leg. He soldered together a piece of platinum wire, which has a positive charge, and a piece of silver wire, which has a negative charge, and embedded the metal into the animal tissue—with the negative end at the stump—thus improvising a crude battery. It worked. He regenerated about as much growth as the Rose, Polezhaev and Singer experiments had the decade before.

Breakthrough followed breakthrough. Becker examined his healing frog bones under a microscope and saw that the blastema around the regenerating bone was coming from a blood clot that had formed there. (A frog's red blood cells are prime candidates for blastema, for, unlike the red blood cells of mammals, they have nuclei and thus can easily divide and dedifferentiate.)

His next step? He had a student expose frog blood to various levels of electrical current in order to find out exactly how much of a charge is needed to turn blood cells into blastema. Days passed, then months. The student administered smaller and smaller currents to the blood (high ones either did nothing or began to cook the cells), but he saw no evidence of change. Finally, the week before the student was supposed to quit and return to his classes, he found that blood cells revert to blastema at a few billionths of an ampere.

In 1973, armed with the knowledge of how much current produces a blastema, Becker decided to brave the step from regenerating amphibians to regenerating mammals. He amputated a rat's foreleg below the shoulder and implanted the platinum-silver electrode device at the stump. Again, success—this time, the most exciting ever. The animal regenerated nerves and tissue and even formed the humerus, the upper-arm bone, complete with the rounded end that fits into the elbow joint. Other parts of the elbow joint began to take shape, including cartilage and two bony structures that Becker surmised were the forerunners of the radious and ulna bones of the lower leg. Everything about the new growth was precisely as it had been in the original limb. And all this growth took place in just three days.

But then the growth ended; for the electrode remained in the shoulder tissue, while the end of the stump, where regeneration was taking place, had grown beyond the reach of its vital current.

The rat's growth, though incomplete, was nevertheless significant, particularly in one respect: The fact that the rat, whose red blood cells have no nuclei, could form a blastema—probably from bone marrow—indicated that in all probability humans could do so as well.

About this time in London, two newborn infants lost their fingers, and the fingers regenerated naturally. The explanation, in Becker's view, probably lies with Spallanzani's early finding that the younger the creature, the better its ability to regenerate. But what was most significant about the babies' growth was that it indicated that the human body contains within it the capacity for regeneration.

Later in 1973, Smith devised an electrode that would travel with the regenerating stump. Again he amputated a frog's leg below the elbow: With the new device, the frog's entire leg grew back.

The year 1973 marked a third triumph as well: Becker began using his findings about the body's electricity in experiments on human bone. A patient of his who had fractured his ankle two years earlier suffered from a mild diabetic condition that was interfering with the bone's ability to regenerate. The ankle had failed to mend despite two corrective operations; and the bone on both sides of the break had deteriorated.

Under normal circumstances, Becker would have had to amputate the leg. Instead, he implanted an electrode into the fracture and administered the same current that he found had divided the frog's red blood cells. He waited three months, the time an ankle fracture would normally take to heal, and the fracture regenerated. A sample of the new bone showed it to be normal in every respect.

CLUE IN THE NERVES

The next year, during the course of routine experiments, Becker stumbled on another clue that finally shed considerable light on his nervous system theory. With the intention of impeding growth, he and his staff broke the tibia in a rat's leg and then cut the nerve that led to the broken limb, assuming that without a nerve supply the rat's bone would heal poorly, if at all. But the fracture healed well; the only drawback was that it took twice the normal time. Perhaps the severed end of the nerve needed time to degenerate, they thought. So they cut the nerve six days before breaking the bone. To their astonishment, the bone healed in the normal amount of time, as if the nerve had never been cut at all.

What was going on? They opened up the leg, only to discover that the nerve fiber had not healed. What had healed was the nerve's sheath of Schwann cells—one of a dozen types of cells that make up the "perineural group"—traditionally thought to serve no purpose other than the insulation of the nerve fiber. The perineural cells in the brain were known to carry a steady current—for what reason, no one knew. It now seemed apparent that Schwann cells also carry a steady current. This was proof enough for Becker that the analog computer system he had theorized was indeed contained in the perineural cells—cells that sheathe the entire central nervous system.

The perineural discovery is by no means the end of the tale. Experiments must still be conducted to determine if electrical regeneration is entirely safe. Could applications of electricity to the peripheral nervous system, for example, induce some sort of behavioral disorder? Or damage our cognitive powers? Every human body contains dormant cancer cells. Could an implanted electrode shock them into fatal multiplication?

Nevertheless, much of the mystery has been solved. Only the last chapter—the most exciting one— has yet to be written. It may well describe the modern world as a Shangri-La where damaged human parts are simply cut off and grown back properly. Our future may lie not with the bionic man but with the natural man.

The replacement of arthritic hip joints with Teflon parts, for example, is now a costly and not altogether satisfactory operation. The Teflon wears out. If the device is implanted in a young person, it may have to be replaced some four or five times in the course of his life. And with each hip operation, there is the risk of infection, which can be a deadly prospect. The alternative—growing a natural hip—would be safer and cheaper.

We may some day regenerate a damaged heart. Becker has discovered that salamanders replace some 50 percent of their cardiac muscles by regeneration. And Polezhaev has cut away the scar tissue on the hearts of dogs which had suffered severe heart attacks; all of the hearts regenerated and less than 5 percent of the dogs died. We may even replace parts defective at birth, given that damaged genes do not garble the instructions given to the blastema.

Becker himself is hesitant to herald regeneration as an immediate cure for amputees. The replacement of several parts, he says, is still pretty far off. Why not aim for more immediate uses that would be beneficial to greater numbers of people? Severing the spinal cord does not regenerate. Becker, however, thinks that since salamanders regenerate their spinal cords, man's spinal cord could perhaps be electrically stimulated to do the same thing. It would take only a year to see whether electrical stimulation works without complications in a paraplegic dog or monkey. And if such stimulation works safely in them, it could be safely applied to humans.

UNANSWERED QUESTIONS

The outstanding disappointment of the entire regeneration tale is that no one is conducting that experiment with paraplegic animals. Why? Money. Becker's own $100,000 grant from the Veterans Administration just covers staff salaries. Experiments are costly; keeping paraplegic animals in particular is frightfully expensive.

Still, it must not be forgotten that the financial problem—serious though it is—is the only laggard in regeneration's exhilarating face toward the future. It is the promise

of regeneration—not the problems—on which we must focus attention. Hundreds of questions wait to be answered.

Animals that regenerate don't get cancer. If a tumor is implanted in a lizard's body, which does not regenerate, it grows to fatal proportions. But if it is implanted in the tail, which does regenerate, the tumor disappears. If we learn how to turn on regeneration (controlled growth), can we learn to turn off cancer (uncontrolled growth)?

Hormones play an important role in regeneration. A chopped-up adrenal gland when implanted in a frog will generate some growth. Moreover, if the adrenal gland is removed from a lizard, the creature will lose its ability to regenerate its tail. If the hormone prolactin is then injected, the lizard will regain its regenerative potential. It has also been hypothesized that hormones secreted during stress can cause cancer. Prolactin is secreted during stress. Is there a connection? Do carcinogens impose a stress on the body, which then triggers a hormonal release that oversensitizes the body to its own electrical forces, thus sparking wild division of cells?

If a negative charge builds up bone and a positive charge dissolves bone, could positive charges have an effect on malignancies?

If pain is the input signal needed by the brain to trigger healing, does anethesia—the muffling of the pain signal—impede healing?

When power lines are stretched across the sea, the amplifiers are put in at regular points to boost the current along. The body's electrical system may run the same way, equipped with special spots along the analog nervous system that boost the signals as they are carried to or from the brain. Becker has found that half of the traditional acupuncture points correspond to the spots in the nervous system that seem to be amplifiers of electricity. Could acupuncture simply involve the insertion of a metal needle into one of the amplifiers, short-circuiting the pain signal so that it never reaches the brain?

Does the body's sensitivity to electricity explain why reversals in the earth's magnetic field are related to the extinction of certain animals?

When one electrical field is imposed on another, the currents are altered. When one human being approaches another, do their biological electric systems overlap? Is this a scientific explanation for the "psychic" mystery of ESP?

The characteristics of the analog nervous system are such that it should be influenced by external electrical fields. Becker has already found experimental evidence that would indicate that electrical fields such as those produced by power transmission lines produce stress in animals—with consequent physical effects that are shocking indeed to the layman. What is the relation between this unseen electrical pollution and human stress?

The possibilities seem infinite. Each is like a silver key. Which one will open the door to a new world? ●

## WHAT IS THE ENERGY PROBLEM?

### HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. COLLINS of Texas. Mr. Speaker, today, most people complain about energy but very few people understand the cause of the shortage. Just what is the energy problem?

My wife suggested I read an interesting report she received in The Key Reporter which is the news bulletin of Phi Beta Kappa. This paper had a long story on energy by Dr. Charles J. Hitch who is president of Resources for the Future. It was a comprehensive four-page report but I want to quote some of of its key sections about the energy problem.

ENERGY IN OUR FUTURE

(By Charles J. Hitch)

Public opinion polls consistently reveal that about half of the American people do not know that this country imports any oil from abroad, when in fact our imports constitute close to fifty percent of our current petroleum consumption.

Energy is a problem of national security and foreign policy, stemming from our dependence on foreign sources of oil.

In 1973–74 this combination resulted in an oil embargo, long lines at gas pumps, a fourfold price rise, inflation, recession, and prolonged economic disruption. We are even more vulnerable now for our oil imports are higher and the proportion of total imports that come from the Middle East is also higher.

Oil is a comparatively recent part of human society—its major use really has been confined to this century—but we have structured our whole society around it.

Over the long run, the domestic economic problem centers on making a smooth transition from fossil fuels to renewable or inexhaustible sources.

Energy is a balance of payments problem. Last year this nation's bill for imported oil came to $45 billion, a sum about fifty percent greater than our entire trade deficit. We are the world's number one agricultural exporter, but it now takes two years' worth of agricultural exports to pay for one year of imported oil. The shaky value of the dollar abroad is directly related to our astronomical oil bill and the transfers of wealth it represents. And the situation will get worse: projections for the mid-1980's are for the $45 billion tab to double or more.

Our main reliance must be placed on prices and markets. The market is now giving decidedly the wrong signals. They say that energy as a whole is cheaper than it really is, and that certain sources of energy are relatively cheaper than their alternatives, when that isn't true either. The result is that we are subsidizing imported oil, penalizing domestic production, and discouraging both conservation and fuel switching by industrial and final consumers.

Let us take several examples of what I mean by "wrong signals" in the case of natural gas which is kept at artificially low prices in the interstate market by federal regulation: Most gas furnaces are very inefficient, but since wasting gas doesn't waste much money, there is little incentive to improve efficiency.

There is resistance to expensive shipments of gas and liquefied natural gas from Mexico and Alaska but these are overpriced only when compared to controlled prices of domestic natural gas. They are cheap when compared with imported oil. Similarly, so-called unconventional sources of gas, such as the geopressurized brines in the Gulf of Mexico, are neglected because they are much more expensive than controlled-price conventional sources. Finally, it is nearly impossible for solar water and space heating to compete with gas. This is particularly unfortunate because it reverses the priorities: gas, with its cheap, efficient storage, is the perfect backup for solar. Controlled prices have similar effects in the case of oil.

In general, we can say that pricing a unit of energy below the cost of providing another unit is the chief obstacle to substantial conservation and to the development of new, benign sources such as solar. It is ironic that we impose price controls on the one product—energy—which we most want to conserve and to develop new sources for.

Because of price controls, the market is confusing both producers and consumers, and we are compelled to cope with the problem by all sorts of devices which aren't working well, such as exhortation and detailed regulation.

Further, when compared with prices of two decades ago, 1956, gasoline is up only 4 percent, fuel oil up 31 percent, gas service up 5 percent, and electricity down 37 percent.

This reliance on prices and taxes is an historic turnaround, for the nearly instinctive response heretofore has been to create a complete set of regulations, along with a new bureaucracy to try to enforce them. This approach hase been as ineffective as it has been ubiquitous.●

## SAVING THE ENVIRONMENT IS NOT INFLATIONARY

### HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BROWN of California. Mr. Speaker, as we attempt to discover the various causes for our unacceptable rate of inflation, we are bound to reach some wrong conclusions. An excellent example of this is the assertion by some economists that environmental regulations are a major cause of inflation. It is easy to see how a superficial analysis could lead to this conclusion, but it is discouraging to see the acceptance of this assertion by responsible individuals.

Our economic indicators measure money flows. They do not measure nonmonetary values. They do not generally measure second-order effects, and seldom have any relationship to the quality of life, in contrast to their ability to measure the dollar costs of goods and services. Despite these well known limitations economic indicators are frequently misused to imply that they measure qualities that they do not.

It hardly needs to be noted that environmental regulations that improve the health of individuals or at least prevent the deterioration of health have economic benefits. The GNP might be adversely affected if health care costs decreased, but the economic benefit to the individual, not to mention the noneconomic benefits, are indisputable. Similarly, laws that improve the quality of air and water have real economic benefits to property values, recreational values, agricultural production, and health. The point of all this is that our economic indicators are not devised to measure the general welfare, which our Constitution calls on us to promote.

Even in conventional terms, environmental regulations do not cause a significant amount of inflation. This fact has been well documented by those who have examined inflation in our society.

Mr. Speaker, at this time I insert excerpts from a recent speech on this subject by Gus Speth, a member of the President's Council on Environmental

Quality which appeared in the August 18 issue of the Christian Science Monitor.

The article follows:

SAVING THE ENVIRONMENT IS NOT INFLATIONARY

(By Gus Speth)

Five years ago, when the OPEC nations suddenly hiked the price of crude oil, the U.S. began looking for ways to resolve the energy crisis. As any well-informed observer might have predicted, environmental regulations immediately came in for a close look—and schemes were quickly hatched to speed the development of new energy sources by revising or outflanking laws.

Then, as unemployment inched upward, environmental regulations were attacked again—this time, as a barrier to creating jobs. Critics of environmental regulation did, indeed, have some numbers on their side: according to the Environmental Protection Agency's analyses, the costs of pollution control by 1976 had forced the closing of plants employing about 20,000 people. But the defenders of such regulation came back with another set of numbers that deserved attention: air and water pollution control investments forced by local, state, and federal regulation had also *created* more than 600,000 jobs—roughly 30 new jobs for every one they had destroyed.

Today environmental, including health and safety, regulations—having weathered, at least temporarily, the energy crisis arguments and the unemployment arguments—are being criticized on a new ground: as contributing substantially to inflation.

How much do our present environmental protection laws cost us?

To date, only one really comprehensive analysis of the inflationary impact of pollution control regulations has been done. It was performed by Chase Econometrics at the behest of the Council on Environmental Quality. Thus there might be a certain suspicion here of the contractor coming up with answers that the client liked. But Chase Econometrics has its own reputation to protect; more to the point, the Chase findings have been published, widely disseminated, and they have never been refuted.

Chase's study indicates that, for the period 1970–1983, federal pollution-control requirements would cause an average annual increase in the Consumer Price Index (CPI) of between 0.3 percent and 0.4 percent with the 1978 figure estimated at 0.5 percent. This is in line with figures from the Council on Wage and Price Stability. COWPS estimates that the inflationary impact of all federal regulatory efforts adds seven-tenths of one percent to the CPI.

The first point to note is that, even by standard economic measures, any conceivable modification of federal environmental and health regulations would produce no significant reduction in the overall CPI. If the inflationary impact of these requirements could be reduced by 20 percent—a substantial relaxation—the CPI's increase would be restrained 0.1 percent: the net effect of even draconian measures could be the difference between a 10 percent and a 10.1 percent increase in the CPI. Further, even if we were to order modifications in our federal environmental and health regulations tomorrow morning, the economic effects would not be noticeable for some years . . . and we do not know what the inflationary pressures will be at that time.

Moreover, we must recognize that the CPI, like the GNP, is a very limited measuring stick. It gauges inflation by measuring the price increases of a typical market basket of goods. Expenditures to improve the environment can and do greatly increase consumer welfare—I have in mind improvements in public health, reduced property damage, increased agricultural and resource yields, and enhanced recreation and enjoyment of leisure time—but these benefits to consumers are poorly reflected in the CPI. Moreover, while it is true that enhancing environmental quality leads to price increases for some goods, it is quite likely that consumers will change their consumption patterns, switching away from the goods whose relative prices have increased. To the extent that such substitution takes place, the CPI will overstate the effect of these price changes since it is computed on the presumption that the "typical" market basket remains the same.

For both these reasons, the CPI is not a satisfactory measure of the inflationary impacts of federal environmental regulations: a measured increase in the CPI does not mean that such requirements, on balance, cause inflation. Inflation is best understood as an increase in price without a corresponding increase in value. It follows that as long as the full benefits of environmental regulations exceed the full costs—and I believe that this is clearly the case today—these regulations cannot be considered truly inflationary. The Council of Economic Advisers made a similar point in its 1978 economic report to the President when it noted that insofar as federal regulatory efforts "result in improvements in public well-being, we may simply have taken part of our productivity gains in forms that are not measured in GNP."

Occasionally some unusual incident brings the limits of our economic measures to our attention. In 1952, London experienced a five-day episode of extreme air pollution. Annual pollution damages to health and property resulting from that incident were estimated at $700 million—and there is, of course, no method for quantifying the value of a human life in terms that make sense to anyone but an insurance company.

We have had plenty of analogous incidents more recently, ranging from the Kepone disaster in Hopewell, Virginia, to the destruction of the Amoco Cadiz off the coast of Brittany. Such dramatic events help us gauge the costs of environmental disaster or weak regulation. Perhaps even more important, they suggest the unmeasured but nonetheless real benefits of property drawn and properly enforced environmental statutes that prevent damage. Our economics counts up the money we have spent; it is not beginning to take account of the money that we did not have to spend to repair the consequences of our carelessness.

I believe that we must make every effort to ensure that environmental and health regulations are not unnecessarily expensive and are set after due consideration of economic impacts—and I want to stress that this is required by almost all federal environmental laws and is an integral part of the program of the Environmental Protection Agency and other agencies—but we must look elsewhere than environmental regulations for the underlying sources of inflation and the appropriate targets for our anti-inflation efforts.

## MILLIONS OF DOLLARS FOR HANOI

### HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BOB WILSON. Mr. Speaker, I would like to share with my colleagues the following article from the Air Force Times of August 4, 1978:

MILLIONS OF DOLLARS FOR HANOI

(By Ira C. Eaker )

The World Bank and associated agencies have promised $90 million to Hanoi, $60 million as a 50-year, no-interest loan, $30 million as a three-percent interest, 25-year loan. Ostensibly this is provided to repair war-damaged Vietnam rice production, now 15 percent short of need.

Red sympathizers in this country pointed out that the Marshall Plan helped Germany and Japan to recover with mutual benefit to their conquerors.

There are some obvious errors in this slanted sophistry:

Hanoi did not lose the Vietnam War; we did, because of Hanoi's callous repudiation of the Paris Peace Treaty.

The Marshall Plan did not aid Germany and Japan until each had installed democratic, non-tyrannical governments allied with the free world.

It was the vast, forced urbanization program, post-war, which decreased rice production. Millions of people were thrown out of the cities to starve. Other millions were thrown into concentration camps for "reeducation." It was this convulsion that drastically reduced the food supply.

The volume of human suffering and tragedy which has occurred in Southeast Asia as a result of the Red tyranny exceeds that caused by either Hitler or Stalin, as a percentage of population. Hitler's holocaust accounted for some six million dead out of a half-billion conquered peoples. Stalin killed 10 million farmers who opposed his collectivization program, out of 180 milion people.

The World Bank gets 98 percent of its funds from the free-world nations. Why should communist-dominated nations get most of its gifts or loans? Are there no needy, worthy recipients in the free world? What about the brave "boat people," the 150,000 refugees who have fled from the hell of Red-controlled Vietnam, Laos and Cambodia? This $90 million could be of great help to the 150,000 escapees now living in poverty in refugee camps in Thailand and elsewhere.

This unconscionable gift to Hanoi could not have come at a more inappropriate time. It makes a mockery of President Carter's campaign for human rights, when the most flagrant violators of human rights in this century are thus rewarded for their tyranny.

There are other astounding international implications. It rewards a Soviet ally; it helps Russia to achieve world domination. For example, the vast naval base at Cam Ranh Bay, which we built, is now available to the Russian fleet, greatly aiding its threat to free-world oil routes, including those to the Philippines and Japan.

It also trumps our "China card." At the very time Red China is withdrawing its support from the Vietnamese tyrants, the World Bank rushes in with aid.

The tragic consequences of this error are redoubled since the World Bank head is an American. I can already hear the worldwide Red propaganda machine grinding into gear for endless repetition of the condemnation, "The U.S. now admits its war crimes in Vietnam."

Two excellent articles, by eminent authorities on Southeast Asia appearing in the 1978 summer issue of *Strategic Review*, completely confirm the fallacy of these World Bank gifts and loans.

It is irrational to take money earned from the free enterprise system and use it to aid the always-faltering economies in communist countries.

The Carter administration and Congress must stop this outrage.

*The writer, an air power pioneer, is a retired three-star AF officer.*●

## DISPLACED HOMEMAKERS: A COMPREHENSIVE APPROACH

**HON. JOHN J. LaFALCE**
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. LaFALCE. Mr. Speaker, the problems faced by that segment of our society known as displaced homemakers are receiving necessary and warranted attention. As important as the role of the Federal Government is in providing funds for pilot projects for displaced homemaker job placement and counseling centers, the equal importance of community involvement cannot be overlooked.

In the Buffalo, N.Y., area, we are fortunate to have displaced homemaker centers providing excellent programs for widows and separated or divorced spouses in need of counseling for entry into the job force. In addition to these centers, we have active community involvement on behalf of widows, whose emotional adjustment is sometimes greater than, or at least equal to, the financial adjustment following the loss of their husbands.

I would like to share with my colleagues a program initiated by Dr. and Mrs. Andre Toth who organized, through Sisters Hospital in Buffalo, N.Y., free group counseling sessions for widows. I believe this kind of community program, which helps widows realize that their feelings of identity loss, fear, frustration, guilt, and loneliness are shared by others, is an excellent example of the comprehensive approach which must accompany career planning for displaced homemakers. A summary of the Toth's program follows:

ABSTRACT

It describes a group therapy approach designed to help the widow deal less painfully with her situation. This is done by focusing on questions relevant to this population, by individual catharsis and by reinforcement of behaviors which would otherwise be thought as "abnormal". It also tries to find some common denominators so that others may use the information and start similar groups.

### GROUP WORK WITH WIDOWS

#### STATISTICS

In 1976, of the 12.6 million widowed individuals in this country, 10.7 million were widows. Further: "the chances that the marriage of today's typical bride of 20 and groom of 23 will eventually be broken by the death of the husband are 70 in 100." Lastly, "one out of every eight women 14 years or older is widowed." Even the cold and detached aseptic quality of numbers cannot hide the pretty grim reality that there must be a whole lot of lonely women out there.

#### PLANNING

It was partially in response to these numbers that in March of this year, we began thinking about, and planning for a group therapy program for widows. As another group program we had been running for three and one half years for post myocardial infarction patients and their spouses, it was also to be sponsored and housed by our employer, Sisters of Charity Hospital of Buffalo, New York. In some ways, both of these programs have been an attempt to fulfill roles that go beyond those traditionally associated with hospitals.

In any event, even though we had experience running groups of different types, we had none with widows; a search of the literature found a relative abundance of books written by widows for widows, but nowhere could we locate a formally organized group therapy program for this particular population.

As we continued reading, we found that the death of one's husband provided such a strong common denominator that our initial question concerning the composition of the group was indirectly answered and we felt that we could try to mix women of different socio-economic background and ages without jeopardizing the quality of the therapeutic experience; it turned out that we were right.

We decided that we would conduct six sessions, and that we would limit the group size to a maximum of 12. We selected a number of issues we had learned to be significant to widows, but we also left plenty of time for the clients to express individual concerns. Should this require a couple of additional sessions, we would add them, but we did not want to keep meeting indefinitely as we did not care to foster dependence and repetitiveness.

To find our widows, we went through our medical records and located a number of women whose husbands had died in our hospital. We selected women who had been widowed for no less than six months and no more than fourteen. These, we realized, were in some ways arbitrary decisions, for if it is true that the first three or four months, identified as the shock stage (4), will not allow the individual to be therapeutically receptive, it is also true that it is a highly individualized process that hinges on a long list of variables. We tentatively excluded individuals at the other end of this period because we felt that probably, the most difficult time would be in the eight to ten months following the inital shock, and since we would only have one group of ten to twelve individuals at the time, we wanted to reach those whom we felt needed it most.

We also tried not to include women whose present status did seem to indicate psychological problems that went beyond grief and whose presence in the group, we felt, may be distracting or disruptive of the group process. In so doing, we realize that these individuals too should get help, but we could not provide it. As it turned out, some of the individuals that were not included were already receiving active phychiatric support.

#### PURPOSE

Our program would allow individual widows to share with each other, in a protected environment, the meaning of the widowhood experience. We, as therapists, would provide this environment, prop up emotional casualties and prevent the development of pathology. Our hope was that the catharsis and the sense of group identity would help our clients develop insight that would help them to deal more effectively with their situation.

#### CATHARSIS AND IDENTITY

The first session found us with twelve women who had never seen each other before and whose only link was their widowhood. After a brief introduction to the program and a statement concerning confidentiality, we asked that each widow narrate the events that lead to the death of the spouse: length and type of illness, location of death, memories of the last days or weeks, or in lengthy illnesses, months, the funeral, the first few days following it, and anything they felt signicant to the event. This was perhaps the most dramatic portion of any session: as every widow narrated her story, interrupted by her tears at recollecting those very painful moments, those listening nodded their heads each time they heard facts and feelings they themselves could identify with. As this process of identification began, some of the pain lessened. As one of these widows told us later: "After listening to each lady tell her sad story, it suddenly became clear that I wasn't alone anymore. I really found a place I belonged. I am a widow and so are all the other ladies."

At the end of our first session, something rather significant happened: where we had one and one half hours earlier 12 total strangers, we now had a group. So strong was the bond of widowhood that their behavior was that of old friends who had gotten together after a long separation. The occasion was obviously not a happy one, but the feeling that the group exuded, somehow, lacked the earlier depressing pall; we would characterize the atmosphere as one of nervous exuberance—nervous, yes, but nonetheless exuberant.

#### DEPRESSION: SLEEPLESSNESS, ACHES, AND PAINS

Following the first few weeks after the death of the spouse, most of our clients began experiencing all kinds of somatic complaints. Sleeplessness was regularly experienced by all group members. Headaches, backaches, and a general feeling of malaise were also experienced by most participants, even by those who had had no such problems prior to their husband's death. There was no change that group attendance produced in terms of these various aches and pains, however few members reported on our second session, that on the night following the group, they had had the first good sleep in weeks. Obviously, we do not know if there was a connection, but we were nonetheless pleased. At the end of the sixth session, several members were sleeping better, but not regularly so. Others still experienced troublesome insomnia. One of the women whose insomnia continued, however, stated to the group that, "Now when I can't sleep, I know other women who are going through the same thing and somehow it helps."

Another symptom of depression everyone in the group felt to varying degrees was a general feeling of aimlessness, a felt difficulty in making decisions, an inability to get going, especially in the morning. As in many other grief caused situations, we let the group express these thoughts, we then threw the question back at them, but the responses were of an intellectual nature and we were at an impasse. Since that first group, we have learnt that there are no formulas to deal with this type of situational depression, but that the understanding on the part of the client that what she is experiencing is a part of a normal and healthy grieving process helps her to deal with it somewhat better.

#### THE SOCIAL CONTEXT: FRIENDS AND RELATIVES

Realizing the supporting role that friends and relatives can play, we asked the group to share their experiences in this area; what we heard was another proof that no matter how much we, in the field, think that death and dying have become overly popularized and have saturated the field of human services, we have apparently reached a very small minority: the fact of the matter is that most people feel uncomfortable with the subject of death and act clumsily at best, in these supportive roles.

It was the consensus of the group that there seemed to be a conspiracy of silence among many of their friends and relatives. In social situations, the name of the deceased was carefully avoided, as was any reference to anything, however remotely connected with him. In the words of one of the widows: "It was as if he had never existed. I kept on bringing his name up and they kept on changing the subject. I felt a tremendous resentment against them all, even though I realized that it was because they wanted to spare my feelings."

One of the sources of strength for the wid-

ow is the realization that her husband has not been forgotten by all those who loved him while he was living. Hearing people reminisce about positive experiences they may have had with him, humorous episodes, anything good linked with him, will provide the widow with temporary, but nonetheless, significant coping ability.

Additionally, we found another example of people's discomfort with death. This manifests itself in wishfully expecting the widow to exhibit a stiff upper lip attitude, not caring to witness any display of emotions, and generally handling the whole situation with as many platitudes as available at the time. This Hallmark Greetings mentality is one additional piece of evidence in the case of lack of understanding vs comforting the bereaved. "People were asking me, how are you, and you know darn well that the only answer they wanted to hear was "fine", commented one widow. Another said, "Everyone was telling me how great I was doing and how fine I looked. All I wanted to tell them was, 'What do you want me to do, crawl and writhe on the floor? Paint my face black?' "

IDENTITY

"When I walk alone into a room full of people, I feel terribly uncomfortable." "When confronted, even with the simplest situation, I have a very hard time." "Ever since he died, I have had these overwhelming attacks of insecurity. Where do you think they are coming from?"

These, and other similar comments, have reinforced for us, at a very practical level, the cultural notion that thinking of women as spouses, mothers, and perhaps lastly, as individuals will accentuate the trauma of widowhood. Having been known for 20–30 years as "John's wife", it should not come as a surprise that on his death, she should have tremendous identity problems. "Now that my husband is gone, who am I?", one of our clients cried very pointedly.

When one's children grow up and leave the household, a similar identity question emerges, especially for the woman whose primary concept of the self was derived from motherhood. The difference of course, is that growing up is a gradual and timely process; the death of one's spouse, is not.

We handled this topic by finding its intellectual explanation, and by first encouraging each participant to gradually begin the rediscovery of the self as unique individuals, slowly disassociating themselves from labels that had become painful.

We realized that the search for identity is a task so complex that it cannot be handled in such a cursory fashion, however, we felt that implanting the intellectual awareness was at least a necessary, if not sufficient condition for change.

GUILT

Although not always at a conscious level, guilt seems to be a feeling that many widows have; when it is not conscious, it may bring havoc to the resolution of grief. The obvious advantage that group interaction creates, is that those who are able to verbalize it, may allow others to bring this vague, uneasy feeling to a level of consciousness where it can be dealt with intellectually at first, and hopefully, emotionally later on.

For the widow, guilt seems to originate, in many instances, from the sorrow at not having been able to do more to prevent the death. "Had I just taken him to one more doctor, had we tried some different drugs" was an often voiced regret. There also is a tendency to remember episodes where the widow, either rightfully so or not, perceives her behavior as unacceptable, as during arguments for instance, and wishes she could take her words back. Even when unable to pinpoint the specific origins of these feelings of guilt, it was obvious that they existed nonetheless and were based on feelings of failure; that his death was a direct reflection on her inability to care for him adequately, that somehow, had she been a better person, this would not have happened. Positive feedback was a natural way to handle these situations in our group and it was provided by both the other clients, and by us. It is our impression that these feedbacks provided the beginning of insight that would, in most instances, lead to a healthy resolution of this problem.

ANGER

Anger, as it pertains to the widow, is a rather puzzling response, and it too will cause the widow to feel guilty.

One of the new behaviors is that of the widow talking to the deceased. This will take many forms: it may simply be an exclamation at the widow's inability to find a missing document, it may be when she experiences car troubles of the type that he used to fix, it may be during a particularly painful moment of loneliness, when she may say: "Oh John, why did you leave me?" First of all, one of the immediate results of the widows' ability to share these one way conversations was that, where as before they were beginning to experience doubts about their sanity they now knew that others did the same thing and that it was perfectly acceptable and normal behavior; this and the wearing of his favorite robe, sweater, or the keeping of a particularly significant item.

Secondly, and just as significant, we began to explore the feelings connected with some of the things the widows were saying.

"I remember getting badly stuck in a snowbank at the end of my driveway and saying, "Where are you John now that I need you," and yes, there was some anger in me; a few seconds later I felt so terrible for feeling this way. How could I possibly feel angry with him, as obviously, he didn't die by choice."

As we explored similar episodes, we found that one of the commonly shared feelings was that of abandonment. Intellectually, they all knew that their husbands did not choose to die. Emotionally, they felt abandoned; their anger was perhaps abstractly directed against circumstances; on a more concrete level, with all of its frightening implications, it was directed towards those who had done the abandoning.

Although, not all members of our groups identified with all this, those who did, received some therapeutic benefits when they realized that what they were feeling was a normal stage in the grieving process and that they were not experiencing it alone.

We are now at the point where we have finished six sessions each, with three groups of widows. A follow up will take place at three, six, and twelve month intervals. Many of the participants confirmed to us what we had already suspected: that the experience had been a worth while one.

In the words of one of the group members: "The group did so much for me; to be able to talk it all out, all the sorrow, guilt, abandonment, and hurt from friends. There was so much inside of me that I couldn't express to relatives or friends, but with the group, I could say it all." ●

## THE NEW POPE AND THE PRESIDENT

### HON. JEROME A. AMBRO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. AMBRO. Mr. Speaker, his brother said: "Don't be misled, behind that charming smile, he is like a diamond—brilliant, strong. What more can one ask of a leader?" And so, not only 700 million Catholics, but the world rejoiced at the selection of a new Pope.

Some knew of his deeds, but no one really knew the man. As a parish pastor, he sold his church's gold to help the poor. He voted for the pill as a birth control device, but silently accepted Paul VI's rejection of it. His father was a migrant bricklayer. He himself was outgoing and learned, but not a world traveler. The media enthusiastically delivered these tidbits providing the hint of a vignette, yet no clear picture emerged.

But this man—now a direct descendant of Peter—imbued with the inner strength of Jesus Christ—assumes the burdens of an office that are staggering; and the world rejoices even over one hardly any mortal really knows.

It may be that this very limited knowledge of the man raises so many expectations. Surely, mystery can be magic for it can turn out many ways. Consider Pope John, an unknown cardinal who ascended Peter's throne. No Pope in the memory of living man did so much to transform the church, while projecting the image of a jovial and benign grandfather—a pious Santa Claus. Did not Albino Cardinal Luciani unabashedly take as one of his papal names that of his universally loved predecessor? That, in itself, we are assured by all and sundry, has great symbolic meaning.

This planet's masses for a brief moment are riding on the high tide of hopeful euphoria. Just as they were when John Kennedy became the 35th President of the United States, and just as they were on January 20, 1977, when a little known former Governor with an enchanting smile became the Chief Executive of this great Nation.

John XXIII proved to be mortal; John Fitzgerald Kennedy was the victim of a mindless atrocious act. They both died in the same year.

Jimmy Carter is still with us. Many are still mystified by this President who, as with the new Pontiff, inherited problems that the less courageous and less compassionate of his predecessors refused to address.

John Paul I comes to his pontificate at a time when his church is in a period of transition and questioning. The two, Pope and President, will eventually meet as did John F. Kennedy and John XXIII. The two will recognize in each other deep similarities in their even deeper disparities. And maybe they will come to know that fate placed them in tandem to do the deeds that others would not dare for surely they know, as does the world, that God works in mysterious ways.●

## NCSL SUPPORT FOR CIVIL SERVICE REFORM ACT

### HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. UDALL. Mr. Speaker, I would like to share with my colleagues a letter of support from the National Conference of State Legislatures for the Civil Service

Reform Act. The letter expresses the belief of the conference that the Civil Service Reform Act will substantially improve the effectiveness of the Federal departments and agencies and thereby improve Federal-State relationships. The letter follows:

NATIONAL CONFERENCE
OF STATE LEGISLATURES,
*Washington, D.C., August 11, 1978.*

Hon. MORRIS UDALL,
*Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The National Conference of State Legislatures wishes to express its full support for HR 11280, the Civil Service Reform Act, as reported by the House Committee on Post Office and Civil Service. Our association of legislatures is deeply committed to making government employees at all levels more responsive to the citizens and more efficient in carrying out their public duties. HR 11280 incorporates many of the goals established by state legislatures in their civil service reform laws and would also serve as a model for effective personnel management at the state and local levels of government.

We believe that the Civil Service Reform Act will substantially improve the effectiveness of the federal departments and agencies, thereby improving federal-state relationships which depend upon responsive and experienced civil servants. Toward this end, we would support an amendment to HR 11280 which would expand the Senior Executive Service to make it a government-wide improvement immediately rather than an isolated pilot project.

We would appreciate it, Congressman Udall, if you would please convey our support to the full House during the floor debate on HR 11280. Legislatures at every level of government in our federal system have a fundamental and continuing responsibility to review and improve our personnel management systems to insure an effective and efficient government for the benefit of our common constituents. Concurrently, we legislators must be sensitive to the reasonable expectations of our partners in governance, the professional civil servants. Our organization, representing all 50 State Legislatures, believes that your Committee bill satisfies these demands and merits the support of your House colleagues.

Sincerely,

STANLEY STEINGUT,
*Chairman,*
*NCSL State-Federal Assembly.*●

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## FOREIGN INTELLIGENCE SURVEILLANCE ACT WOULD DAMAGE U.S. INTELLIGENCE EFFORTS

### HON. ELDON RUDD

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. RUDD. Mr. Speaker, the House will today start consideration of H.R. 7308, the Foreign Intelligence Surveillance Act, which I can say with assurance after a full career as a special agent for the Federal Bureau of Investigation would severely damage and weaken our Nation's security.

Serious flaws in the bill, as reported to the full House by the Permanent Select Committee on Intelligence, would be remedied by a substitute bill to be offered by our colleague, ROBERT MCCLORY, of Illinois. I strongly urge adoption of this substitute.

Other good amendments to improve H.R. 7308 will be offered by Congressman JOHN ASHBROOK and others, for which I also urge support by all our colleagues. Without them, the bill should be defeated.

A good article spelling out the flaws and weaknesses of the Foreign Intelligence Surveillance Act was published in the current issue of Human Events, a weekly Washington newspaper.

I would like to include that article at this point in the RECORD:

[From Human Events, Sept. 9, 1978]

CARTER-BACKED BILL WOULD DAMAGE INTELLIGENCE EFFORTS

The Carter Administration is helping to push through the Congress another measure to weaken this nation's security. Called the Foreign Intelligence Surveillance Act of 1978 and also heavily championed by Sen. Edward Kennedy (D.-Mass.), it has overwhelmingly passed the Senate and this week may be taken up by the House.

In essence, the bill (which, ironically, has the support of the new FBI director and the American Civil Liberties Union) would require a judicial warrant before our intelligence agencies could use electronic surveillance to gather foreign intelligence information in this country. Currently, the executive branch has the power to use wiretaps and bugs to obtain foreign intelligence without having to seek prior approval from the judiciary.

Despite some prestigious backing, the bill, as Rep. Robert McClory (R.-Ill.), a key member of the House intelligence panel, has noted, is seriously flawed. For the first time, a single judge will have the authority to block surveillance of foreign spies and potential saboteurs. Moreover, the Judiciary has neither the expertise nor the background to determine when surveillance is needed.

As Federal Judge Albert V. Bryan said in the recent opinion in the Humphrey/Truong espionage case: "It is not at all certain that a judicial officer, even an extremely well-informed one, would be in a position to evaluate the threat posed by certain actions undertaken on behalf of or in collaboration with a foreign state. . . . The Court is persuaded that an initial warrant requirement [for foreign intelligence electronic surveillance] would frustrate the President's ability to conduct foreign affairs in a manner that best protects the security of our government."

Aside from giving a special panel of 17 judges the power to "frustrate" the President's current ability to employ electronic surveillance against foreign enemies, the measure would also jeopardize our most sensitive secrets by greatly expanding the number of people who would be privy to them.

As McClory points out, the bill requires that a steady stream of highly sensitive written information flow to at least 17 judges, their clerks, reporters and bailiffs, none of whom is trained in the proper security procedures needed to protect this material. Clearly, the more people who become familiar with these intelligence activities, the greater the risk of disclosure.

As the Director of Central Intelligence Adm. Stansfield Turner has said: "Minimizing the number of people who have access to this information is a basic security principle."

Judges would not only receive briefings as to why a tap should be placed, but, should they issue a warrant for such surveillance, they would then be allowed to gain access to all the information obtained by the intelligence agency to see that it was not misused or improperly received. Thus the courts, as a repository for top secret information, would themselves become key—and highly vulnerable—targets for espionage.

Yet the judicial warrant requirement is only a small part of what's wrong with this legislation. The wording of this measure is so restrictive that the U.S. Government would be severely hamstrung in its ability to engage in electronic surveillance for the most reasonable of purposes. For instance:

Even if a domestic terrorist group is suspected of acting in concert with a foreign power (or a foreign organization), that domestic group could not be tapped if the government couldn't prove to a judge's satisfaction that the group was receiving both substantial "direction and control" from a foreign power.

If a domestic terrorist group is largely subsidized by a foreign power, this group could still not be surveilled unless the government could show that the money went to the group's illegal—rather than legal—activities.

If it is known that someone is setting up a large, anti-American propaganda compaign in behalf of a foreign power, the U.S. government could still not tap that person unless it could be shown that the campaign was "about to" go into effect, and that when it did it would unquestionably violate the law.

An American citizen engaged in espionage for a foreign country could not be placed under surveillance if the judge believed that the information sought was not "necessary" to U.S. security or foreign policy interests.

Under this bill, U.S. intelligence agents in this country would not be able to use electronic surveillance to target the head of a non-government sponsored foreign trade mission; an intimate of a foreign leader who does not serve in an "official" capacity for his government or a junior minister of a foreign nation who is visiting friends in this country.

In testifying against this bill, the Association of Former Intelligence Officers (AFIO), whose members include such prominent figures as ex-CIA director William Colby and the ex-chief of the Defense Intelligence Agency, Gen. Daniel O. Graham, pointed out that there are hundreds of thousands of foreigners in the United States at any given time, and to limit intelligence collection efforts only to employes of foreign powers and to those who may engage in clandestine activities is far too restrictive.

"Why," ask AFIO, "should our policy-makers be denied valuable positive foreign intelligence by barring collection from a visiting scientist, businessman or any other foreigner in the United States known to possess information of value to the United States? We know of no other country that so limits its intelligence capabilities. . ."

Indeed, even though U.S. intelligence officials, because of clear Administration pressures to approve, okayed the proposed restrictions, it is equally clear that they recognize the risks involved. Adm. Turner, for example, asknowledged there would be "risks" and said it was possible that the definitions will prove "too narrow . . . to permit the acquisition of genuinely significant communications. It is likewise possible that justified warrant applications will be denied or that application papers will be mishandled and compromised." The proliferation of information, he also stated, always involves risks, and the "statutory procedures will unquestionably lead to such a proliferation." Compliance, he added, will also "be somewhat onerous." Nevertheless, Turner says he now wants to share the surveillance power with the "courts."

This legislation is zipping through the Congress because of supposed abuses of foreign intelligence surveillance by the executive in days gone by, but just what those abuses were is not quite clear. Furthermore,

even the supposed abuses have been corrected in that warrantless electronic surveillance in the field of foreign intelligence can only be implemented pursuant to very strict procedures—some would say too strict—laid down by the attorney general.

In short, the legislation is not only not needed, but will dangerously hamper our efforts to gather critical information. Nevertheless, unless Rep. McClory and Rep. John Ashbrook (R.-Ohio), who are expected to lead the fight against the legislation's most injurious provisions, receive strong support from their colleagues, another blow will have been struck at our government's rapidly declining capacity to collect information vital to American security.●

## HOG BOOK NO "PIG IN A POKE"

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. FINDLEY. Mr. Speaker, today I want to bring to your attention a recent publication that has tickled my fancy entitled "The Hog Book," written by William Hedgepeth and published by Doubleday.

For years I have worn a "Hogs are Beautiful" pin—sometimes even on the floor of the House. I speak with special pride today, because my hometown, Pittsfield, Ill., has earned the title, "Hog Capital of the World" and proclaims that honor with a marker in the town square. Pittsfield is the county seat of Pike County, which has the prestigious and enviable record of producing over 100 million pounds of pork annually. Most of that good ham is shipped nationwide, and occasionaly one even comes to Washington. Which brings me back to Mr. Hedgepeth's delightful book that should be recognized from now on as the "Webster's of Hog Insight"—what it does not tell you about hogs is not worth knowing, or is not funny.

Mr. Hedgepeth delves into such areas as the ancestry of the swine world, how to tell a hog from various other four-footed creatures of the Earth, how hogs broke into show business, and even some of his favorite selections of hog poetry to wit:

You can't put a hog in a zoo—
There's no telling what he will do.
He may get loud
And charge at the crowd
Or just lie there not looking at you.

As Mr. Hedgepeth says:

The attainable possibilities for developing hogs of pleasure are virtually infinite. It is just a matter of breaking through the public's resistance to unfamiliar concepts; yet the fact remains of the hog's emerging potential for greater freedom and fresh manifestations of soul. The barriers exist only in the minds of men. But improbable enterprises are often sustained by faith. And there is ample reason for faith in the creature, for it has long been realized that "the hog may be on to something."

A chapter on Hoglore, placing the porcine creature in its rightful place in Greek mythology, is perhaps the most enthralling of all. Hedgepeth relates various cultural ties with the hog and reminds us that a consistently recurring figure in the earliest myths of ancient folk is that of an Earth-Mother goddess who is associated with the soil, planting, fertility, and with human sacrifice, and who—more often than not—is represented in porcine form.

The importance of hogs to American politics is not overlooked, either Harry S. Truman, while on a campaign trip around the country, once stepped into a hog lot and declared, "No man should be allowed to be President who does not understand hogs, or has not been around a manure pile." Hedgepeth would no doubt heartily agree. The "Hog Book" seems to point out the inevitable fact, we are becoming pig-aware people.

For the most, of course, the hog is still admired in the form of refrigerated meat or in the shape of a football on lazy Sunday afternoons, rather than a bona fide animal come into its own. However, the fact remains, the hog is an animal of unique beauty. It has made a tremendous contribution to man for more than 9,000 years and William Hedgepeth is right on target with his perception of a country united with hogs. Hedgepeth suggests we embark on a series of consciousness-raising activities in the name of the hog and get people tapping into the hog current. From here the possibilities are endless. Noteworthy citizens could hold gala hog expositions, there could be multimedia displays, pig exhibit halls, and Broadway plays based on the lively hoofer.

I am proud to mention that in my hometown of Pittsfield one such awareness session, "Pig Day," is already an annual event. The happy occasion was on July 7–8 this year, and included such hog-honoring events as choosing the Pig Day Queen and Little Miss Piglet (chosen by the length of her pigtails), a huge sidewalk sale, roast pork sandwiches, games, and just plain fun for the hundreds of pig-enthusiasts who attend yearly.

The hog has been a misunderstood creature of circumstance for too long. I congratulate Mr. Hedgepeth and the "Hog Book" for joining the evergrowing ranks of pig lovers everywhere. The future can only hold more glorious tributes for this porcine animal as the world catches up on 9,000 years of delayed thanks to swinedom. And, as Mr. Hedgepeth speculates, perhaps someday there will be the formation of hog clubs around the country—not the existing breed associations but urban organizations whose members devote themselves to the pure esthetics of fine swine, pig poetry reading, and fine cuisine. I would proudly join, as even now I think of myself as a "pork scout" at heart.●

## A SOUND INVESTMENT

### HON. JOHN T. MYERS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. JOHN T. MYERS. Mr. Speaker, the recording industry is a major employer in my district with several thousand jobs directly related to the production and marketing of sound recordings. We are proud to have Columbia House in Terre Haute and know how important the recording industry is to our area.

Over the years, I have read and heard much about the pleasures of listening to sound recordings. The following article, which appeared in the New York Times, should be read by all who enjoy recordings.

As author Hans Fantel puts it:

High-quality music reproduction in the home has advantages no concert hall can match. . . .

Besides, the disk never has an off night. It is never indisposed, or simply bored. The moment of inspiration can be recaptured. It no longer perishes with its own sound.

The article follows:

[From the New York Times, July 20, 1978]

SOUND—PHONOGRAPH CONVEYS MORE THAN ONE HEARS IN THE CONCERT HALL

(By Hans Fantel)

On a buggy but otherwise balmy evening in the Berkshires last week, we were listening to some Haydn on the porch, looking out on the darkening hills. Music and landscape conjoined and gave rise to a feeling of surpassing serenity, such as probably would not have been induced by the same performance in a concert hall. Afterward, my wife remarked that we were the first generation in the millennial history of music for whom such an experience was possible. For, thanks to electronics, music has become independent of time and space.

To hear music at the time and place of our choice seems to have been an ancient desire. Princes and potentates (to use the ringing phrase of the Founding Fathers) would take their private musicians to their chambers or on trips. King Saul, according to reliable sources, had a young harpist named David. Goldberg, for whom Bach wrote his famous variations, would lull his Saxon master's insomniac nights. And the mostly scandalous annals of the Congress of Vienna took awestruck note of the fact that Talleyrand traveled with his own pianist to play for him wherever he went.

But such privilege belonged to the few, and their enjoyment of the music may have been colored by the fact that the artists were their servants. Besides, the repertory was necessarily limited to what could be performed under portable conditions, while we enjoy the effortless electronic transport of entire orchestras into our homes or even our automobiles.

Our conversation naturally ambled toward musical settings—concert hall contrasted to living room, and the astounding fact that in this electronic age most music is no longer heard in the presence of the performer.

Today's sound equipment, as the ads relentlessly tell you, aims to give the listener the virtual equivalent of a concert. I think the ads, for all their flamboyance, understate the case. The fact is that, due to sophisticated multichannel recording techniques, the phonograph today conveys more of the music than you are likely to hear from the average seat in the concert hall.

Still, no amount of technical finesse can replace the actual concert. The physical presence of the artists adds an extra dimension that still eludes even the best phonograph—the rapport between the performers and the audience. In this respect, a concert is a unique experience, as personal as a handshake. And even at its best, reproduced music cannot convey the excitement and the festive mood of a gala occasion.

Conversely, high-quality music reproduction in the home has advantages no con-

cert hall can match. By delivering music directly into the living room, electronics opens up a wholly new range of musical experience. It forms a direct bridge between the music and the listener. No matter where or when the music was played, modern sound equipment always puts it in the present, always on the spot. No concert organization in the world could match the range of repertory or the impressive roster of artists we command with the flick of a switch.

Besides, the disk never has an off night. It is never indisposed, or simply bored. The moment of inspiration can be recaptured. It no longer perishes with its own sound.

Finally, there's the matter of your own mood. After a frantic rush to get ready, a hectic drive to the concert hall and a desperate search for parking space; you may strive in vain for the frame of mind that lets you abandon yourself fully to the music. And concert hall seats, invariably designed for very proper people who like to sit up straight in the presence of the muse, aren't much help when it comes to relaxing. As one critic observed apropos Wagner, "The mind will absorb no more than the seat of the pants will endure."

By contrast, you can attend your home concerts comfortably recumbent, with no neighbors to rattle their programs, dive for pralines or snap their handbags. And with the help of a snifter of brandy you may find yourself far more responsive to the music than in the formally restrained atmosphere of the concert hall.

And, of course, you can always revise the program. If you don't quite feel up to the sublimities of the B-minor Mass, you can unceremoniously switch to a casual Mozart Cassation or maybe some Scott Joplin. You're your own impresario, in complete control of the musical proceedings. You pick the program, the time, and the artist—an inestimable advantage over the concert hall, where you have to take your music as, and with whom, it comes. In effect, a sound system is like a permanent house party with the world's best musicians as your guests. Paradoxically, their physical absence may be an added boon—a contribution to the kind of privacy that opens the doors of imagination.

That evening last week with Haydn in the Berkshires, I remembered briefly how I first became aware of the phonograph's uncanny ability to transcend time, place, and circumstance. It was long ago in Africa, where I had gone as a very young man to get away from the Gestapo. In the parlor of a dingy Tunisian "pension," I discovered a wind-up Victrola with a few records of Schubert songs and a couple of arias from "Aida." Even the wheery sound of that ramshackle machine had the power to banish the war for a life-sustaining moment and take me back to the home I had left. In doing so, that old phonograph transformed a dark time and somehow kindled hope for the future.●

## AMENDMENTS TO CIVIL SERVICE REFORM ACT

### HON. PARREN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. MITCHELL of Maryland. Mr. Speaker, I have introduced into the RECORD three proposed amendments on H.R. 11280.

Mr. Speaker, the first amendment which I have introduced to H.R. 11280, the Civil Service Reform Act, establishes that employees should not waive statutory rights by pursuing negotiated procedure rights.

I have submitted this particular amendment because I believe that the intent of the Congress in defining "conditions of employment" in section 7103(A)(14) is unclear.

Since we have all studied the bill, or at least I suppose I can safely presume so, we know that section 7103(A)(14), page 315, defines "conditions of employment" as meaning personnel policies, practices, and other matters whether established by rule, regulation, or otherwise; however, policies, practices, and matters relating to discrimination, prohibited political activities, and policies specifically provided for by Federal statute are excluded from the concept of conditions of employment.

It is obvious that this definition is intended to exclude certain matters from the negotiated provisions. However, inasmuch as precedent under the National Labor Relations Act will be important in determining how chapter VII will be interpreted, it is submitted that providing exceptions to the definition of "conditions of employment" simply leaves a gaping hole in the intent of Congress.

It is generally recognized that there are three types of bargaining subjects; namely, mandatory subjects, prohibited or illegal subjects, and permissive subjects. By defining "conditions of employment" to eliminate racial discrimination, political activities, and matters specifically provided for by Federal statute, Congress has not prohibited a labor organization and an agency from bargaining concerning such subjects. In other words, they would be permissive subjects and thus it would not be unlawful for an agency and a labor organization to negotiate with respect to a clause pertaining to them.

With the negotiation, an issue would arise concerning whether or not employees must follow the negotiated grievance procedure in resolving their complaints regarding this clause, or whether they would be free to use the statutory procedures. I am not so concerned that the employees would have rights in both areas. That is quite clear. However, it is not clear that they would have remedies in both areas. While it is suggested that at least in the area of title VII discrimination, employees have remedies in both areas, with respect to political activities and matters specifically provided for in Federal statute, dual remedies are not so guaranteed.

My amendment is specifically designed to hopefully prevent the possibility that the courts will misinterpret the intent of the Congress in this matter. It should be clearly stated that employees will have the right to pursue remedies other than remedies provided in the negotiated procedure in any instance where there is an overlap between the negotiated procedures and those provided by Federal statute. Further, it should be provided that employees will have the right to pursue their statutory remedy and their negotiated procedures remedy in all cases. To impose exceptions would be to defeat the purpose of the intent.

There may be a question that such an amendment as the one which I have proposed would result in duplication. To that, let me respond by saying that such duplication is not uncommon where dual rights are provided by Congress. For example, in many cases, employees who claim racial discrimination must pursue their administrative remedies through a hearing, and these same employees get a full blown trial in court if they lose at the agency level.

In this vital matter, it is of the utmost importance that we in Congress make our intent very clear. We must undoubtedly show that in all cases, the employee will have a right to utilize both the statutory and negotiated procedures.

Mr. Speaker, my second amendment to H.R. 11280, the Civil Service Reform Act, is a genuine reflection of my belief that the right of an employee to select a representative of his own choosing should be protected in all respects.

If we refer to section 7114(A)(2) of the bill, dealing with representation rights and duties, we will note that the following appears:

> The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

This section is indicative of the fact that in view of the proposed expanded scope of bargaining, an exclusive representative would be able to negotiate with respect to virtually every aspect of the employee's working conditions mandatory negotiated procedures required to be followed in resolving claims of violation, thus placing the employee in a position where his total rights as a Federal employee would be contingent upon the good faith with which the exclusive representative handled his claim. It is my fear that this would place many employees, particularly minority group employees, in a position where the exclusive representative would control their fate.

As you all probably know, in January 1977, I sponsored H.R. 2722, a bill relating to collective bargaining representation of postal employees. If I may, I would like to briefly touch on a few of my findings while working with this legislation.

The experience with what happened in the Postal Service raises serious doubts as to whether or not minorities are being protected by the predominately white exclusive representative where all procedures must be handled through the negotiated grievance procedure. Thus, prior to the Postal Reorganization Act minorities composed approximately 19 percent of the working force in the post office. In a recent survey, it was cited that this number has dwindled to 16 percent with a special note that this statistic is based upon an expanded definition of minorities which includes many individuals who are not black. Let me further state that in addition, in the mailhandlers craft of the Postal Service the minorities have lost in excess of 8,000

jobs since the enactment of the Postal Reorganization Act.

It is quite clear that this pattern of systematically removing minorities from gainful employment in the Postal Service came about when the so-called craft unions were given the power by the courts pursuant to language provided by Congress, to be the "exclusive union" of postal employees. Consequently, it is sad but true that the interests of the blacks and minorities in the Postal Service simply has not been protected by the so-called craft unions.

It is my concern that this very same thing could easily occur in the Federal service unless there is adequate language to protect the right of the employee to select a representative who will protect his interest and not allow the agency to further the cause of "institutional racism."

As originally envisioned by President Kennedy the Federal employee occupied a position substantially different from that of the private sector employee. Thus, President Kennedy gave to Federal employees the right to be represented in every respect of his or her employment relationship, even under negotiated procedures, by a representative of his own choosing so that the Federal employee when adversely acted upon by an agency would not be able to claim that he did not have the representation that was best for him or her as opposed to the best for the Federal service or best for a particular organization.

I believe that my amendment which on page 332, would strike out line 14 and all that follows down through line 7 on page 333, and insert "(d) The processing of any grievance of any employee under a procedure negotiated under this chapter shall not preclude the employee from pursuing any right provided to him by or under any other provision of law," would be appropriate to protect employees against weak, corrupt, ineffective, biased, or otherwise unsatisfactory representation.

Mr. Speaker, the third amendment I have introduced to H.R. 11280, the Civil Service Reform Act, will I hope lend greater clarity to the meaning of a "labor organization" as it is defined in section 7101(4)(A) of the bill. Of course I realize that we are going to have organizations that do not fit into this definition. These types are very clearly cited in that section of the bill which I seek to amend. However, although I do not believe that the definition of a "labor organization" in H.R. 11280 is intended to exclude "exclusive representatives," this cautious step certainly cannot hurt.

My amendment, which simply inserts on page 292, line 22, after "organization," the following: "(other than an exclusive representative as defined in paragraph (16)(B) of this section)," is strictly a technical one to assure that none of our Nation's 86 labor organizations holding exclusive recognitions will be adversely affected by the definition of a "labor organization" as has been cited in H.R. 11280.

It is imperative that the language in section 7103(4)(A) be amended in order to eliminate any question that may be raised with concern for whether or not the large number of labor organizations which are smaller than the giants are organizations "limited to special interest objectives." By amending this language we can remove all doubts that organizations such as the National Alliance of Postal and Federal Workers which were founded out of the discriminatory practices of several white controlled unions would not be regarded as organizations "limited to special interest objectives" merely because they are gravely concerned with the fight against racial and other discrimination.

With regard to the connotation of a "special interest objective," let me just briefly add that because of the absence of a clear definition in this area, the enactment of the Civil Service Reform Act, would leave the courts and the Federal Labor Relations Authority with the task of determining which organization is and which is not a chapter VII labor organization. Thus, it is entirely possible that by simply indicating that an establishment is a "special interest" organization, the Federal Labor Relations Authority could eliminate the structure.

Let me reiterate that I do not believe that the intent of the Civil Service Reform Act's definition of a "labor organization" is to exclude exclusive representatives. However, I do believe that at this point, it is feasible to be cautious in this area so that by no means of interpretation can these structures be placed outside the realms of labor organization status.●

## SHORTSIGHTED VIETNAM POLICY SHOULD CHANGE

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. SIMON. Mr. Speaker, our policy toward Vietnam is a shortsighted one.

Other nations now recognize that Vietnam is trying to build a course of international political independence and economic independence, and so other countries are establishing ties, both diplomatic and economic, with Vietnam.

I learned recently that Japan is providing assistance to Vietnam. For fiscal year 1978, Japan has provided 10 billion yen of credit, which will be used for commodity aid.

They gave the Vietnamese the following list of items from which they could choose their commodity assistance:

(A) Equipments and General Merchandise (5,500 million yen)

1—1.400 million yen: Electric fittings; magnetic wire; electric cable and electric spare parts (including materials for manufacturing of electric fans).

2—700 million yen: Fine chemicals (for hides and leathers), electric bulbs; welding rods; printing ink; phosphoric acid.

3—460 million yen: Dye-stuffs.

4—1,300 million yen: Paper of different varieties; packing paper board; printing paper, and cigarette paper.

5—30 million yen: PVC for artificial leather.

6—920 million yen: Metal of various kinds; steel strips, steel wires, non-ferrous-metal, etc.

7—650 million yen: Woolen acrylic yarns, satin.

8—40 million yen: Diamond powder.

(B) Machinery and Parts (2,500 million yen)

Motor for water pumps—230 million yen; electric motors—200 million yen; ball bearings—230 million yen; tools (sawing blades, milling nipper, precision tools)—460 million yen; tyres and tubes, spare parts for trucks HB3-120—115 million yen; machines and spare parts for soda, electric power, freezing, fiber-cement, paper, spinning, thermos bottle, gourment, power plant—1,265 million yen.

Mr. Speaker, what Japan is doing in the process is, first of all, helping Vietnam, but they are doing much more than that.

They are establishing ties of friendship with Vietnam that help to nurture political and enormous independence on the part of the Vietnamese.

In addition, the items which they are providing will provide jobs for people in Japan.

And, third, and by no means insignificant, the Vietnamese become accustomed to using the Japanese products and, presumably, will buy the Japanese products as their economy improves.

I am aware that our colleague, Congressman SONNY MONTGOMERY, has lead a delegation to Vietnam and Laos, and I hope that delegation will keep in mind the Japanese example.●

## CONTINUING CRISIS IN FOSTER CARE

### HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. MILLER of California. Mr. Speaker, in a front page story today, the Wall Street Journal calls attention to the continuing crisis in foster care and adoption in the United States today. The facts and figures recited by the Journal in this very fine story are all too familiar to the Congress: Thousands of children kept in inappropriate foster placements for years, at great cost to taxpayers; inadequate reviews and placement procedures; insufficient attention to preventive and reunification services; funding priorities favoring long-term placement over permanency for these children.

The story does not mention that the House has recognized these serious problems, and has addressed them in comprehensive legislation passed last year. H.R. 7200, in the House version, includes many of the recommendations proposed by foster care and child welfare experts in the Journal's story. In fact, many of these same experts testified before House and Senate committees in 1975, 1976, and 1977, and were active in the preparation of the legislation which has become H.R. 7200. These proposals, which have the widespread support of nearly every child welfare organization in the country, of many States and local program officials, of the Carter administration, and many others knowledgeable in the field, would not only better protect the

rights and interests of natural and foster parents, and the children, but would substantially reduce costs by emphasizing cost effectiveness, accountability, and prevention.

The House, in passing H.R. 7200 by an overwhelming margin in June 1977, spoke out for reform of the foster care program. The legislation, unfortunately and unnecessarily, has been stalled in the Senate Finance Committee where it has not only been weakened, but also burdened down with wholly irrelevant welfare amendments. In the year since this measure could have been enacted, and should have been enacted, tens of thousands of children have unnecessarily entered, or remained within, the foster care system. The cost to those children, and to the taxpayers who pay for unnecessary and inappropriate care, will continue to grow so long as we delay implementing needed, broadly supported change.

The House has spoken, and the experts are in support of the child welfare provisions of H.R. 7200. The Journal's story forces us again to confront this issue, to turn to the Senate and ask, when will the Senate, too, indicate its concern for these children and their families, and pass the child welfare provisions of H.R. 7200?

The story follows:

NOBODY'S KIDS—FOSTER-CARE SYSTEM IS ACCUSED BY CRITICS OF HARMING CHILDREN

(By Jonathan Kwitny)

Seven-year-old Bobby lives in foster care.

He was born in San Francisco, the fourth child of a woman with a decade-long record of arrests for prostitution and heroin possession (Bobby himself became addicted in the womb). He went immediately into foster care.

In 1975, some foster parents sought to adopt him. Bobby liked the idea, and so did the social worker who had his case. But a judge refused to free him from his biological mother (the father was long gone). After two years of investigations and hearings, the mother moved to Los Angeles. So the judge ended Bobby's adoption hearings in San Francisco and sent him to a Los Angeles judge, who ordered him to live with his biological mother (she had kidnapped two of her other children from their foster home, and so they also lived with her). Two weeks later, she was arrested again, and Bobby and his siblings, now under Los Angeles jurisdiction, went on to new homes and new social workers there.

CASE CALLED TYPICAL

Bobby's current social worker says he is typical of the cases she handles. Indeed, he seems typical of the nearly 200,000 American children believed to be in long-term foster care (nobody keeps an accurate count). Under the current system, these children spend their formative years bouncing from one foster home to another, deprived of roots, unsure of the future, calloused in outlook and, authorities say, much more likely than the average youth to wind up an unemployed adult living off welfare and crime.

Yet, according to numerous adoption workers, there doesn't seem to be any shortage of families eager to adopt most of these children. Critics say many children are kept in foster care only by outmoded laws and by the self-preservation instincts of a social-service industry that would shrink drastically if foster children were put into permanent homes.

Stories like Bobby's have sparked a growing movement to encourage adoption and to put the foster-care industry under federal regulation. Critics already have the Carter administration's ear and think they can win over Congress next year. Peter Forsyth, a leading critic, says, "My guess is we spend in this (foster-care) system about $2 billion a year, of which $1 billion could be eliminated. And the kids would be much better off."

MANY STUDIES

Mr. Forsyth, a former chief of the Michigan Department of Social Services, moved to New York in 1973 to head a foster care project being started by the Edna McConnell Clark Foundation. Many of his complaints about foster care are echoed in a 1975 congressional report, a 1977 General Accounting Office report and a 1977 audit of New York City's foster care agencies by the city's comptroller, Harrison Goldin, as well as by social service workers across the country. The Clark Foundation also financed creation of the National Commission for Children in Need of Parents which has been holding hearings for the past 10 months and is expected to recommend federal regulation in a report this month.

Defenders of the foster-care system term much of the criticism unfair and express doubts that adoption really is a panacea, although even they concede that some changes in the relevant laws might be desirable.

What opened the door for reformers was the revolutionary impact of legalized abortion on the once-booming adoption market, because of a shortage of healthy, young, adoptable children, hundreds of thousands of qualified childless couples are being turned away by adoption agencies. Demand has jumped even for older, problem and handicapped children, who previously had nearly always been consigned to foster care. Yet most of these children haven't benefitted from the strong demand. Critics of the system pin much of the blame on two kinds of laws, which are fairly consistent from state to state with certain exceptions.

One set of laws tends to preserve the rights of biological parents to prevent adoption of their children by other people, even when the children have been removed from home because of beatings and other abuse and even when parents haven't tried to see their children for years. So the children stay as Bobby did, in foster care.

AID CUT OFF

The other laws tend to cut off government financial aid for foster children as soon as they are adopted, or shortly afterwards. Thus foster parents lose their expense allowance—perhaps $200 a month—if they adopt the children and give them permanent homes, as many want to do. And because the children typically need expensive medical, educational or counseling help that the government will pay for only in foster care, adoption often is simply impossible.

The cutoff in support funds after adoption also creates a conflict of interest for professionals in the field. More than half of the nearly $2 billion a year paid by taxpayers to support foster children goes for salaries of social workers and their bureaucracies, authorities say; by encouraging adoptions, social-service agencies would be putting themselves out of business—a threat that they naturally resist even though they are nonprofit.

That, at least, was the gist of the Harrison Goldin study of 35,000 foster children in New York City. The study found that they had been in foster care an average of 6.7 years and that only one in seven was either returned home or adopted in 1976, the year of the study. The report found that the agencies had failed to plan a future for nearly a third of the children and that most other children weren't benefiting from supposed plans for their return home or adoption. The report concluded: "The discrepancy between the number of children who the agencies say should be adopted and those actually adopted last year is so enormous that it leads one to question the agencies' seriousness of purpose."

The privately run agencies attacked in the Goldin study are represented by the Council of Voluntary Child Care Agencies (COVCCA—pronounced "Kafka"). Its members—many with religious affiliations—get more than 90 percent of their income from per diem foster-care stipends from governmental bodies. COVCCA contends that the Goldin report is "full of holes," that the "emphasis on adoption" is "relatively recent" and that the desirability of adoption is "still open to some doubt."

Similarly dubious about adoption is the National Association of Homes for Children, an organization of 400 agencies housing 30,000 children in group foster homes. A leader of the association says that he can't estimate how heavily his members depend on government funds, but that he is sure the children are where they belong.

Even COVCCA and the National Association of Homes for Children say they support the major specific suggestions being made for change in the laws relating to foster care and adoption. But their arguments come out with a different emphasis. Says Joseph B. Gavrin, executive director of COVCCA, for example, "In general, we're in favor of measures to make it easier to terminate parental rights. We also want to make sure that kids aren't snatched from their natural parents until they (the parents) have had a chance to rehabilitate themselves. We want to make sure that when parents place a child into foster care, they aren't ceding all rights to get that child back again."

Mr. Gavrin says he agrees with suggestions that a judge should tell biological parents at the outset of a child-care case exactly what they will have to do to prevent termination of rights, and should give them a date for compliance. But Mr. Gavrin emphasizes that the conditions and the date shouldn't be "unrealistic."

"I HAD A TOUGH MOTHER"

Says a spokesman for the National Association of Homes for Children, defending institutional care, "I don't know how your childhood was, but I had a tough mother and I've paid for it over the years. I don't think family life is always best."

Nevertheless, Mr. Goldin says another audit, to be released this month, will show that nearly half of the foster children confined to institutional care in New York—largely with COVCCA members—could be put in private homes and would be better off there. And the most extensive indictment of the foster-care industry across the country is expected this month as the result of the study by the National Commission for Children in Need of Parents.

In thousands of pages of testimony before the commission, the foster-care system is depicted as rife with inefficiency, waste and downright cruelty. State officials have confessed that they don't even know how many foster children are under their supervision, or the children's ages. Interagency squabbles have kept qualified couples from adopting handicapped children in other cities. Turnover among caseworkers has run so high—100 percent a year in some places—that real supervision is impossible.

SUPPORT FOR CHANGE

Although the social-work industry is severely criticized by the commission staff, some of the strongest support for change comes from within the industry itself. Many social workers are truly dedicated people. Unlike coworkers who have become so frustrated by the conditions that they do little more than go through the motions, the dedicated ones still toil in the slums and

the courts trying to help children, often despite staggering caseloads.

Occasionally, they contend with real horror stories. In Chicago, for example, judges continued to send six-year-old Johnny Lindquist back to his biological parents despite repeated evidence that they beat him. Then, in 1972, the parents killed him. Both went to jail, but continued to claim parental rights to their other four children until last year, when Mrs. Lindquist, out on parole, finally agreed after heavy newspaper publicity to free the children for adoption (as had her husband shortly before).

While such extreme cases get heavy publicity, the sad stories such as Bobby's are perhaps more important because apparently they occur day after day without any publicity at all. They are routine, not unusual. Social workers and agency chiefs interviewed in various parts of the country complain of an almost-identical list of problems.

SOME CASES CITED

One such critic is John F. Boyne, director of Spaulding for Children in Orange, N.J. (one of five Spaulding centers operating independently in different states and specializing in adoption for children with serious emotional or physical handicaps). Mr. Boyne tells of a mentally retarded, heart-damaged infant girl in Saratoga County, N.Y., for whom he found a qualified adoptive family in New Jersey. He offers copies of correspondence in which the Saratoga County Department of Social Services refused to give up the child because, the department said, it would lose federal supplements paid on behalf of the infant and also because the department didn't want to pay Spaulding's $750 placement fee.

The department suggested that the infant be sent to the family as a foster child so that Saratoga County could continue to get the federal money, of which $7 a day would be sent to New Jersey for expenses. Mr. Boyne, a believer in adoption, declined. The infant remained in foster care in New York, and the New Jersey family later adopted another retarded child. Mr. Boyne says that only the blatant candor of the Saratoga County department's letter distinguishes this case from many others.

Joseph Gemmiti, Saratoga County Commissioner of Social Services, whose name is typed at the bottom of the letter to Spaulding, says he won't comment unless he is told the child's name. He agrees, however, that Mr. Boyne can't ethically disclose it. So there isn't any comment.

New York State law at least theoretically provides for continued subsidies to children adopted in, say, New Jersey. But many states refuse to pay medical and other expenses for children who leave, or do so only after much foot-dragging. Mr. Boyne says that he twice found adoptive homes for the same retarded boy from Washington County, Md., but that both arrangements were scotched by the county's refusal to pay Spaulding's $750 fee (which the agency says it needs in order to survive). Richard Bateman, Maryland's Director of Social Services, says that this might have happened a year ago, but that under a new state law such payments and other subsidies now are permitted and that a deserving adoption wouldn't be prevented again.

DUNNED BY HOSPITALS

In another case, Kenneth and Beth Larson of Succasunna, N.J., have adopted three children with spina bifida, a severe birth defect. They say that Massachusetts, from which two of the children came, balked at paying the heavy medical bills (one child has had 17 operations) as it had promised. So the thanks that the Larsons got for giving the children a home was harassment from hospitals. "They were trying to take our house away," Mrs. Larson says. She adds that the office of New Jersey Sen. Harrison Williams, after contacting the office of Massachusetts Sen. Edward Kennedy, eventually persuaded Massachusetts to accept responsibility, although nearly $20,000 of bills still haven't been paid.

Social workers complain that it's useless even to try to bring in children from many states, particularly if the youngster is severely handicapped and adoption would saddle a family with staggering medical bills. Some states discontinue benefits after adoption even within the state, although the taxpayers pay the medical expenses anyway, plus much more, if the child stays in foster care.

Some states' rules have peculiar—and regrettable—effects. California, for example, puts a five-year limit on benefits; as a result, children often can't be adopted until age 13 (five years later, at 18, the children would lose foster-care benefits anyway, and at the age of majority can apply for state assistance regardless of their adoptive parents' income). Mr. Boyne comments, "No way is a kid with cystic fibrosis going to get cured in five years."

The courts also are a major source of complaint. Social workers say that many judges, inexperienced in child problems, are unpredictable at best. One of Chicago's two adoption courts has been presided over by six different judges in two years; two were reassigned to other duties after Chicago Tribune editorials blasted them for returning children to unfit parents. "Judges don't want the assignment," says Carol Amadio, attorney for the Illinois Department of Child and Family Services. "You make decisions where children end up dying a lot of the time."

In Los Angeles, Janet Ter Veen, the social worker assigned this year to supervise Bobby, gripes that although state law allows a child to be freed for adoption if his biological parents have either abused or neglected him, judges usually won't act unless there is both abuse and neglect. She explains that charges of abuse usually are plea-bargained away when the child is first taken from home. To avoid a lengthy court fight and to get the child out of an unsafe home quickly, the state agrees to drop charges of abuse, which can bring criminal penalties; in exchange, the parents agree to put the child in foster care on grounds of mere neglect. Years later, when another social worker brings the child up for adoption, the record doesn't contain evidence of abuse, and so the judge refuses to free the child from his biological parents.

Moreover, many courts don't consider a child legally abandoned even if his parents haven't tried to see him in years, adds Marilyn Wright, an attorney for the Los Angeles Department of Adoptions. A social worker—who may have scores of cases—must find the parents (often living in different cities), notify them where and when they can see the child and provide them with transportation and even such services as job help or drug rehabilitation. Only if the parents still don't want to see the child has "abandonment" taken place.

Judge John Mendoza of Las Vegas, vice president of the National Council of Juvenile and Family Court Judges, acknowledges "some partial validity" to social workers' complaints that judges are more interested in parents' rights than in children's. But he and other judges prefer to blame the lackadaisical attitudes of social-work agencies.

SOME RECOMMENDATIONS

Judge Mendoza, whose council recently reviewed foster-care case files in 23 courts, recommends a federal law requiring agencies getting federal foster-care funds to make plans for each child's removal, if possible, from foster care. He also wants frequent judicial reviews of such plans to be required.

In a similar stand, the staff of the National Commission for Children in Need of Parents, urges mandatory reviews, by a court or other outside authority, of every agency's plans for every child every 60 days.

Other recommendations currently being studied by commission members include a full federal takeover of the system or a federal law withholding money from states whose own laws don't meet certain guidelines; clear standards for terminating parental rights; defining adoption as a service to children, not parents, so that the child's medical bills would be paid for regardless of the adopting parents' income; federal funds to pay for services, such as day care, that might prevent children from being removed from homes disrupted by hospitalization or other problems; federal or state licensing of tax-aided foster-care agencies, plus standards for social workers' qualifications, maximum caseloads, etc.; and a national exchange to register children needing homes and to facilitate placement.●

## WHERE ARE THE CARRIERS?

### HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BENNETT. Mr. Speaker, in the latest issue of Horizons, is an article based on conversations with the naval expert Norman Polmar. The title of the article is taken from the conclusion of the article:

It's no wonder that whenever trouble flares up around the world, one of the first responses by our leaders in the White House, State Department, Pentagon and Congress: "Where are the carriers?"

I insert entire article at this point in the RECORD.

WHERE ARE THE CARRIERS?

(NOTE.—In their 56-year history, U.S. aircraft carriers have been active in more than 50 wars and lesser crises. Among the more memorable: the Korean conflict, early 1950s; Lebanon uprisings in 1958 and 1976; Cuban missile crisis, 1962; Dominican Republic civil war, 1965; Southeast Asian combat and evacuations, 1960s and 1970s; Jordan uprising, 1970; India-Pakistan war, 1971; Arab-Israeli war, 1973; and the Mayaguez "rescue," 1975. Clearly, when the United States wants to shake its fist, carrier aviation provides the muscle—ready for any degree of response.)

If you were to fly over Truk lagoon in an Air Micronesia airliner today, you would see a scattering of masts poking mournfully from the sparkling waters—tombstones for some 30 ships silenced three decades ago by U.S. aircraft carriers. These are the visible remains of thousands of tons of naval and merchant shipping sunk or disabled at the Pacific atoll, largely by Hellcats and Avengers from the fast carriers *Bunker Hill, Enterprise, Essex, Intrepid,* and *Yorktown.*

The striking power and extreme mobility of American aircraft carrier task groups revolutionized naval warfare. The carriers could destroy the enemy's fleets and his air power, preventing interference with our amphibious assaults. And they highlighted a basic flaw in Japan's island chain of "unsinkable carriers": the islands, like Truk, couldn't be moved to safety. But the aircraft carrier, truly a floating island, was able to elude its attackers while moving to and from the scene of action.

CARRIER IS MORE SURVIVABLE THAN LAND BASE

Despite the advent of advanced weapons, the aircraft carrier is more survivable than any land base. One big reason, Norman Polmar says, is that the ship cannot be pre-

targeted. An aerial or satellite photo of a land base, even if several months old, permits pinpointing of the target—firmly anchored in concrete—right down to the nearest foot. In contrast, the carrier could probably move more than 15 miles in any direction during an ICBM's time of flight. Although the enemy might know the ship's position precisely at a given time, the carrier could be anywhere within a 25,000-square-mile circle just three hours later.

FLEET'S BEST DEFENSE AGAINST CRUISE MISSILES

Today the carrier is the fleet's best defense against cruise missiles because its aircraft can attack most launching platforms—ships, aircraft, or submarines—before they are within missile-firing range. And, with proper warning, carrier-based Grumman F–14 fighters can shoot down some anti-ship missiles in flight with their long-range Phoenix missiles.

In fact, carriers proved highly survivable against guided missiles in World War II. More than 2,300 kamikaze attacks were made against U.S. ships, with carriers the principal targets. Although these suicide aircraft were controlled by the most sophisticated guidance system known—the human brain—they failed to sink a single fast carrier. Kamikazes did damage several American fast carriers, some rather severely. However, those were "thin-skinned" ships when compared to their British contemporaries which had armored flight decks, as do modern carriers. When, on several occasions, British flattops were hit by kamikazes, they were usually back in full operation as soon as the debris could be pushed off the flight deck.

No U.S. carriers designed in World War II or later have been sunk, despite their active role in many of more than 50 wars and lesser crises. Land bases have not fared as well. For example, all the jet-capable air bases in South Korea were overrun by enemy ground forces, not once but twice. In South Vietnam, more than 400 planes were destroyed on the ground and some 3,000 more damaged by enemy attacks. Also, not one of the dozens of major air bases that were built in the past 28 years on the Asian mainland remains available to U.S. forces today.

Similarly, most of the U.S. air bases that once ringed the Mediterranean—in Morocco, Greece, France, and Spain—are effectively gone. We spent some $10 billion to build or lease bases in France, Libya, and Morocco. But they've all been "repossessed," something that has never happened to any of our aircraft carriers.

CARRIER IS TOUGHEST SHIP TO SINK

Today's large carrier, with armored flight deck, improved torpedo protection, and internal damage-limiting features, is the toughest ship in the world to sink. When nine large bombs with the explosive force of a half-dozen Soviet cruise missiles accidentally detonated on the flight deck of the nuclear-powered Enterprise, the ship was judged to be capable of resuming air operations within one hour of the accident, had the need arisen.

And, despite its size, a fast, large-deck carrier is not easy to track. An enemy planner who knows where the ship is today cannot automatically order her attacked tomorrow because his shadowing forces may lose contact or the carrier may move out of range of his land- or sea-based attack forces.

It's not that hard for even the world's largest warship, the nuclear-powered *Nimitz*, to "get lost." The ship can sail off at night in a silent EMCON (electronic emission control) mode, with a Grumman Hawkeye early-warning radar plane overhead to provide undetectable eyes, ears, and communications functions. Even a ship's infrared signature can be suppressed. Decoy merchant ships fitted with radar reflectors could also spoof enemy trackers, and it could take until daylight the next day for the enemy to figure out exactly who is where.

LARGE-DECK CARRIERS ARE BEST PROTECTED

The carrier's escorts—surface ships and submarines—also have warning and attack capabilities to defend the carrier. Of course, the principal defensive weapons of the carrier are her high-performance fighters and attack aircraft. The latter, augmented by ASW planes and helicopters, are equipped to destroy hostile surface ships and submarines before they can attack the carrier. But vulnerability must be a secondary consideration in evaluating aircraft carriers. As Admiral Elmo Zumwalt stated in 1971, when he was Chief of Naval Operations:

"We do not buy ships because they are invulnerable, but because they are useful despite their vulnerability, and then we work hard to minimize the vulnerability . . . The *Nimitz* class carriers . . . will be the best protected and least vulnerable carriers ever designed."

The only way the U.S. can maintain forward deployment in the world is to station large aircraft carriers and their air wings on the vast oceans that cover more than 70% of our planet. Today, two such carrier task groups are deployed in the Mediterranean (the Sixth Fleet), two in the Western Pacific (the Seventh Fleet), with one more normally operating out of Hawaii (the Third Fleet), and one along the Atlantic Coast and in the Gulf of Mexico (the Second Fleet).

To maintain four carriers forward in peacetime requires eight others in local operations, training, overhaul, and modernization. This seemingly inefficient two-back-for-one-forward deployment schedule is based mainly on the current personnel situation. In today's all-volunteer environment, the Navy must compete in the United States for skilled personnel to man its ships. Trained sailors are always in short supply. Even when not deployed, a flattop is often at sea for trials, training, and actual operations.

Generally, a carrier sailor spends half or more of his time at sea. In periods of international crisis or conflict, the percentage of carrier force forward-deployed climbs dramatically. During the Vietnam War, for example, well over half the total number of carriers were maintained in the combat zone, a ratio of about one-for-one.

The Navy now has 13 carriers in commission: eight post-World-War-II *Forrestal* types, the nuclear-powered *Enterprise*, the two nuclear *Nimitz*-class ships, and the wartime-built *Midway*. The 13th—the wartime-built *Coral Sea*—is a non-deploying ship, soon to be used only for pilot and reserve training. Another *Nimitz*-class ship—the *Vinson*—is scheduled to be completed in the early 1980s. Thus, in theory, the Navy will sail into the next decade with 12 modern carriers.

However, the oldest of the *Forrestal*-class carriers were commissioned in the mid-1950s. These ships must undergo an extensive modernization, known as Service Life Extensive Program (SLEP), to gain a service life of some 40–45 years. While one carrier is in the yard for SLEP, she must have a replacement in order to keep the force at 12 operational carriers. The *Midway* will permit operation of the 12th deployable carrier as well as the training ship into the 1980s.

But the *Midway* (completed in 1945 and modernized in the late '60s) and *Coral Sea* (1947) simply will not last beyond the mid-1980s. Then, in order to have 12 deployable flattops while "SLEPing" one *Forrestal* at a time, another "large-deck" carrier must be built.

BETTER TO BUY ONE CVN THAN ONE CVV

The Navy and Department of Defense are considering two large-deck designs, a 60,000-ton, oil-fired CVV and another 95,000-ton, improved nuclear-propelled *Nimitz* CVN. "I am convinced," says Polmar, "that Congress will fund only one more large-deck carrier in the next 5 to 10 years. In that case, I would rather have one more *Nimitz*-class CVN than just one CVV. The nuclear-powered carrier has a number of operational advantages over the CVV, including, of course, virtually unlimited high-speed endurance.

"If I were guaranteed two more CVVs," he adds, "then I would start considering that option. If guaranteed three or more CVVs, I'd jump at it."

Current cost estimates are $2.3 billion for the next *Nimitz* CVN and up to $1.75 billion for the first CVV. Some analysts immediately cite the comparative life-cycle fuel costs of the two ships to further demonstrate that the nuclear carrier is a better option; however, says Polmar, considering the additional costs for the CVN and certain other factors, it makes more sense to compare the ship construction costs. Put more simply, the additional $550 million for a CVN provides a much greater combat capability because it carries nearly double the number of aircraft on a CVV, plus twice the ammunition and almost three times the aircraft fuel storage, and twice as many catapults, elevators, and propellers.

It's important to note, also, that the higher CVN cost includes the initial set of two reactor cores which will provide at least 13 years of operation. This is the equivalent of some 11 million barrels of fuel oil which would cost about $360 million to buy, store, and deliver at *today's* prices.

NEED MORE THAN 12 CARRIERS

Actually in Polmar's view, the debate over holding to a 12-carrier force makes little sense, budgetary arguments notwithstanding. We actually need more than 12 large-deck carriers to meet our worldwide roles and commitments. The crucial need is for more air power—on land and sea—to offset the disparity between U.S. strength and that of our potential adversaries.

The trends have been made clear . . . and they are most disturbing. Polmar lists them as follows:

Decline of the U.S. Navy from more than 5,700 ships at the end of World War II, to just over 800 active ships before Vietnam, to less than 460 today.

The increasing capabilities and operations of the Soviet Navy.

The arming of several Third-World nations with modern aircraft and cruise missiles.

The demise of British carrier aviation.*

Increased Western reliance on African and Middle Eastern resources.

All of these developments point to the need for an increase in U.S. tactical air power for use at sea worldwide. And, some of this can *only* come about through an increase in carriers.

V/STOL technology, once it matures, will surely provide a way of increasing the amount of air power we can deploy at sea. But it does not rule out the need for the conventional type of aircraft carrier. The latter will still be the most efficient way of concentrating air power—whether it be vertical or conventional takeoff and landing.

V/STOL CARRIERS NO SUBSTITUTE FOR LARGE-DECKS

Within the next few years, Polmar figures, advanced fixed-wing V/STOL aircraft (as distinct from helicopters) should prove themselves suited to shipboard use. There already has been, he notes, a significant degree of success with use of the Marine Corps AV–8A Harrier jet at sea. Even further advanced V/STOLs will offer the extremely important opportunity of putting more fixed-wing aircraft to sea—on aircraft carriers and, possibly, on cruisers, destroyers, and amphibious vessels as well.

Such new V/STOL planes will permit us to

*The last remaining conventional British carrier, HMS Ark Royal, is scheduled for decommissioning within a year. Then the Royal Navy will retain only a limited carrier capability with helicopters and V/STOL aircraft at sea.

build considerably smaller carriers of a new class, the V/STOL Support Ship (VSS), which should weigh-in at about 25,000 tons. The VSS carrier would be deployed not as a substitute for, but rather in addition to, our 12 or 13 large-deck carriers. And there is every reason to predict, says Polmar, that V/STOL aircraft will eventually share space on the large-decks with F–14s, A–6Es, and other carrier-based aircraft, especially in antisubmarine warfare (ASW) and airborne early warning (AEW) roles.

The VSS would, in Polmar's view, embark perhaps a dozen V/STOL aircraft plus a similar number of helicopters. The V-planes would perform limited strike, reconnaissance, air intercept, and other tactical missions in areas where we might not, for economic reasons, be able to deploy a large-deck carrier or where the potential threat was limited.

Thus, the VSS would bring fixed-wing air power to bear in areas and situations that do not warrant use of the more extensive and powerful capabilities of the large-deck carrier air wing. In particular, the smaller carrier would conduct anti-submarine warfare operations in mid-ocean areas where the size of the larger carrier and its fighter/attack aircraft would be superfluous. In addition to ASW, the VSS would use fixed-wing V/STOL aircraft and helicopters for AEW, radar jamming of missile attacks against convoys, interception of enemy reconnaissance planes, and mine counter-measures.

The same V/STOL aircraft would also be operated in smaller numbers from cruisers and possibly destroyers, for reconnaissance, over-the-horizon targeting for ship-launched cruise missiles, and even for long-range ASW against contacts located with the ship's long-range passive sonar arrays (TACTASS). Of course, the Type "A" V/STOL concepts being studied by the U.S. Navy for ASW and AEW would also be available in a troop-carrying variant for amphibious assault, either from specialized amphibious ships or, on an emergency basis, from the VSS.

CARRIER AIRCRAFT FIGURE IN FUTURE USE OF THE SEAS

Inevitably, Polmar asserts, the future of the large-deck carrier—and all other possible variants for that matter—figures preeminently in the future of the U.S. Navy, despite the debate and controversy that currently obscure it. Based on his grasp of naval history and close analyses of probable future conflict scenarios, Polmar feels it is safe to conclude that manned carrier-based aircraft will remain a dominant factor in the future use of the seas by the United States.

Land-based aircraft such as the Navy's P–3 Orion long-range patrol plane and even "navalized" B-52 bombers could doubtlessly undertake many naval missions. However, for the foreseeable future, such high-performance aircraft as the F–14 Tomcat fighter, A–6E Intruder all-weather/night attack plane, and other specialized types, embarked on forward-deployed carriers, will be vital to the United States, if this nation is to continue to derive political, economic, and military benefits from use of the seas.

While noting that sea-based air can play a particularly valuable role in Third World areas, Polmar tends to downplay the need for carrier-based action in possible NATO-Warsaw Pact conflicts. Of all potential tinderbox areas in the world, he feels the Central European front is the least likely to flare up first. The fact that the U.S. and its NATO allies have faced Soviet-led forces for so long—armed, trained, in place, and psyched-up for any of dozens of well-rehearsed eventualities—diminishes, in his view, the chances of actual conflict.

"Were the Soviets to move against NATO," says Polmar, "I believe it would be more likely to be against the northern or southern flanks. Here, again, the U.S. aircraft carriers in the eastern Mediterranean could be exceedingly valuable in view of the limited availability and relative vulnerability of the relatively few land bases for air responses to protect NATO's flanks."

CARRIER AIR COVERS MIDDLE EAST OIL

The carriers in the eastern Mediterranean or in the northwest Indian Ocean also represent the only effective U.S. tactical airpower in the Middle East—the region that supplies vital oil resources to the West. And, notes Polmar, most of the region is within range of long-range *Backfire* bombers based in the Soviet homeland which are closer to the vital oil routes than any existing air bases in the U.S. or possible ones in the NATO countries. "Aggravating the threat to our interests in the Middle East," he adds, "is the possibility that the Soviets may strengthen their own tactical air capabilities in the region by sending their *Kiev*-class V/STOL carriers into the Indian Ocean."

Reflecting the lesson of the impermanency of U.S. bases in foreign countries, airfields have become somewhat questionable alternatives for U.S. leaders to consider when evaluating our military or political options in the Middle East or many other troubled areas. The October 1973 "Yom Kippur War" showed how precarious even the NATO bases were in support of U.S. national interests.

CARRIERS WERE READY OFF LEBANON

Then, too, there was the recent crisis in Lebanon. Our cariers were first on the scene to cover the evacuation of U.S. nationals and conducted tactical air patrols off the Lebanese coast for 52 days before being relieved by Air Force units. On a typical day during that crisis, the *Nimitz* carrier task force was in position south of Crete ready to back up the *America* task force which, in turn, was deployed south of Cyprus in position to support the U.S. Marine Corps amphibious ready group on station 25 miles off Lebanon. At the same time, a further option was provided by the F–14s and A–6Es of another carrier task force operating in the Indian Ocean within three hours' flying time of the crisis area.

"The point I want to get across here," declares Polmar, "is that the flexibility and striking power of those three carrier task forces were many times greater than the U.S. land-based tactical air power available in that part of the world . . . or any other forces for that matter.

"It's no wonder that whenever trouble flares up around the world, one of the first responses by our leaders in the White House, State Department, Pentagon, and Congress is: "Where are the carriers?" "●

## STARTING TO FARM ISN'T IMPOSSIBLE

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. FINDLEY. Mr. Speaker, Keith Wilkey, farm editor of Quincy Herald-Whig, Quincy, Ill., is one of those agricultural journalists who not only covers the day-to-day news but who has a keen feeling for perspective, putting the past into focus with the present, which goes meaningfully beyond a simple nostalgic approach.

This is evidenced by the following column, "Starting To Farm Isn't Impossible," which appeared in the August 22 issue of the Herald-Whig. We commend it to your reading and to those in your constituencies who may have that same hopeful yearning to become farmers.

STARTING TO FARM ISN'T IMPOSSIBLE

(By Keith Wilkey)

The farmer who had been sitting in the porch swing rose to greet the young man who had walked up the front walk. "Hi, Jim. Come on up and sit down a while; take the weight off your feet."

The two men made small talk for a while. The farmer was in his mid-sixties, while Jim was approaching his 27th birthday. Presently Jim's tone took a different note.

"Mr. Johnston," he said. "I would like to get started farming, but I can't see any way. Everyone tells me that it is virtually impossible for a young man to start farming today, and I'm beginning to believe it."

The older man didn't answer right away; he seemed to be gathering words and thoughts. "Son," he said slowly, "there are some things that are impossible all right. Starting in farming is certainly one of them . . . for some. But not for everyone."

Jim started to speak, but Mr. Johnson continued; "I don't want to bore you Jim, but listen a minute. My grandfather came to this country during the German immigration of the 1850's. When he got off the ship he had less than $10 in his pockets; didn't know a soul and couldn't speak a word of English. When he died he had owned this 240-acre farm for 30 years. So be careful what you call impossible."

The young man answered, "Yes, but costs weren't so high in those days. You didn't have to have all this expensive machinery and land could be bought for a low figure. It was easier to do in those days."

Again the elderly man paused. "Remember, son, he didn't get started immediately. His first job was being a handy man around a wagon factory. But he wanted to be a farmer and become a land owner.

"He worked as a farm hand for nine years; that's a long time to work virtually as a common day laborer—nine years. Finally he could rent a small patch and he farmed that for the next six years. That was 15 years and he still hadn't made what we could call much of a start today."

"Fifteen years!" ejaculated the young man "If I'd do that today I would be 42 years old before I could buy a farm . . . practically an old man!"

The wisdom and tolerance that come with years restrained the farmer's answer. "Son, today it is really easier, and you know it isn't going to come over night. You have a pretty good job in town, don't you?" The young man said he did. "What time do you get off in the afternoon . . . 4 o'clock?"

"3:30."

"That 2:30 God's time. You could just about get in a good half day. I'll tell you what I'll do . . . I'll help you and we will see if we can't find some farmer about ready to retire, or a man who wants to give full-time to a city job. Then we'll try and find a little patch where you can raise some hogs. You can buy a tractor for $400 or $500 and comparable machinery. You are mechanically-minded, and can keep it running.

"When you've made a start, you can get an operating loan (OL) from Farmers Home Administration. When the situation is right, you can apply for an FmHA farm ownership loan. But you can't do all this in a few weeks. And it will take hard work, discouragement, disappointment and perseverance.

"Not everyone has these qualities, plus good judgment. But you do. You'll make it."

A silence fell between the two men. Then the old man spoke again;

"You see, son, you have it easier than grandpa did."●

TRIAL OF ALI BHUTTO

## HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. McCLOSKEY. Mr. Speaker, judicial proceedings against heads-of-state and former heads-of-state are occurring with increasing regularity.

The case of former Pakistani Prime Minister Zulfikar A. Bhutto has been recently described in an article in The Nation by former Attorney General Ramsey Clark, following a visit to Pakistan.

The impeachment proceedings against former President Richard M. Nixon furnish a standard of comparison, as do the proceedings against India's former Prime Minister Indira Ghandi.

In the continuing battle to prove to our young people that the systems of justice of the Western World merit our continued resistance to communism and a continued adherence to Anglo-Saxon standards of fairness, I am hopeful that the Pakistani Supreme Court will shortly bend over backwards to remove all sense of political influence or vengeance from their nation's judicial procedures in Mr. Bhutto's case.

I am attaching Ramsey Clark's observations on the subject for the review of our colleagues:

THE TRIAL OF ALI BHUTTO AND THE FUTURE OF PAKISTAN

(By Ramsey Clark)

(NOTE.—Ramsey Clark, Attorney General of the United States from 1967 to 1969, recently returned from Pakistan where he went as a private citizen to observe the legal proceedings in the case involving the former President, Zulfikar Ali Bhutto, now under sentence of death for murder. He was present for the opening arguments in Pakistan's Supreme Court in Bhutto's appeal and while he was there he met with General Zia ul-Haq, leader of the coup that ousted Bhutto in 1977, with Law Minister A. K. Brohi and with other government officials. He also conferred with lawyers, judges, labor leaders, politicians and students and met with the U.S. Ambassador and his senior political adviser.)

Rarely has a criminal proceeding held such potential to alter history as does the trial of Zulfikar Ali Bhutto. Its impact can reach beyond the fate of a man and the unity of a nation to affect fundamentally economic, political and military power worldwide. The Supreme Court of Pakistan is now considering an appeal from his conviction for murder and the sentence of death. Its decision is expected in the very near future. Executions are carried out immediately following final judgment in Pakistan.

The idea of Pakistan, nurtured by a poet, Allama Iqbal, and consummated by a statesman, Mohammed Ali Jinnah, was fragile from conception. To bind a political union of widely differing, proud and often warring people by a single tie, the religion of Islam, was a unique experiment. The dream of Pan Islam fitted neatly with desires of the Islamic populations of British India to be independent of the majority Hindu population when "freedom came at midnight" to the subcontinent of Asia. The result was a new nation of East and West Pakistan divided by 1,000 miles of land mass.

The West contained four distinct regions with diverse and sometimes hostile populations: the dominant Punjab, the North West Frontier Province, the Sind and Baluchistan. The traumatic separation from India in 1947 split both Punjab in the west and Bengal in the east between India and Pakistan, resulting in waves of migrating millions and recurring massacres. Pakistan, cantaining the poorest areas of the former colony, was cut off from markets, industry and the continuity of government administration, all primarily located in India.

Movements for political separation were powerful forces throughout the new nation from its birth. A bloody civil war began in East Pakistan in March 1971. Four months after the India-USSR treaty of August 1971, Indian invaded East Pakistan and in two weeks crushed West Pakistan forces, ending the war. East Pakistan seceded and became Bangladesh. It contained the majority of the population of the former nation and an even greater majority of its poverty and problems. Henry Kissinger's "tilt" to Pakistan at that time probably deterred India from invading and partitioning the West.

Separatist movements were not limited to tensions between East and West. Within the West there were, among others, a Baluchistan Liberation Movement sometimes based in Iraq and a Pakhtoonistan movement involving both Baluchistan and the North West Frontier—giving rise to the possibility of a new nation in the event of the breakup of Pakistan, a nation that would include Afghanistan and most of Pakistan west of the Indus, excluding the Sind and Punjab, forming a corridor hundreds of miles wide from the Soviet Union to the Arabian Sea. The movements have involved guerrilla warfare countered by martial law and military casualties that may exceed those of the war in the East.

Bhutto came from a wealthy land-owning family in the very poor Sind. Graduated from the University of California at Berkeley and with a law degree from Oxford, he was Minister of Commerce for Pakistan at 30 and Foreign Minister when 33. He resigned as Foreign Minister in protest against military government policies in 1966, having established good relations for his country with China. He was imprisoned briefly in 1968 by President Ayub Khan for criticizing the government.

Founding the grass-roots Pakistan Peoples Party, Bhutto became the dominant political figure in the West by 1970. After the war in which East Pakistan was lost, he became President in 1972 (the first civilian chief of state in more than twenty years) and then in 1973, the first elected Prime Minister. Presenting himself as a democrat, a Socialist, a Populist and reformer, he initiated programs for land reform, economic development, social services, family planning, a strong Pakistan Peoples Party, internal security, Moslem leadership and international prominence based on nonalignment.

It is conceded by friend and foe alike that Bhutto is keenly intelligent, popular and charismatic. On the international scene he was called on to mediate in Cyprus, Korea and elsewhere. He assisted in preliminary contacts that led to President Nixon's visit to China. He negotiated difficult prisoner exchanges with India and Bangladesh, restored relations with Bangladesh, and eased tensions with India.

The United States expressed its strong disapproval of his role in calling for a Third World Summit, fearing concerted action by poor countries. President Carter urged Bhutto to abandon plans for a nuclear reprocessing plant France agreed to build in Pakistan. (India has had the bomb since 1974.)

Within the nation, he helped bring about the adoption of a new written Constitution in 1973 which some saw as a foundation for democratic government protecting human rights and securing economic justice. Economic policies stimulated growth despite difficult international problems including rising energy costs. Agriculture, health, education and housing were major concerns for his government and some progress was made.

But his years in power were in most ways the worst of times. He assumed office in the aftermaths of a humiliating military defeat, the severing of the nation, loss of most of its population to Bangladesh and the psychological and physical impairment of the dominant power in the society—the Army. Floods (including those of 1973 which were called the worst natural disaster in the area's history), earthquakes and other calamities befell the people during those years.

And above all there was the random violence, gun-running, guerrilla skirmishing, constant tension and high risk of revolution or invasion caused by political, tribal, cultural and international ambitions for power and dominance in surviving Pakistan and its very different parts. The Shah of Iran strongly supported Bhutto's efforts to contain the separatist movements. The Shah has no interest in seeing another state arise capable of dominating the strategic Persian Gulf, particularly a Baluch state that could lay claim to the loyalty of Iran's own sizable Baluch population. (Within Iran live one-third of the Baluch people.) World powers, principally the United States, the USSR and China are also keenly interested in Pakistan.

Growing instability was addressed with tough military and police measures. While parliamentary government endured, there were political arrests and detentions numbering in the thousands, martial law for whole cities and provinces at times, and a growing Federal Security Force not greatly concerned for life and liberty. Amnesty International, among others, protested human rights violations in a well-documented 1976 report.

The first six months of 1977 ware difficult. Bhutto's popular appeal seemed to slip badly with the turbulence and the harsh government reaction to it. He called elections which were held in March and the surprisingly strong showing of his party brought immediate outcries of vote fraud by other parties. Hundreds of protests and demonstrations, including some by women and children, led to violence and deaths and brief periods of martial law in major cities. Conditions were reminiscent of Chile before the golpe in 1973. Though most observers concede Bhutto candidates actually received a clear majority, probably 60 percent of the votes, a settlement among the parties that might have restored relative calm had not been reached by July, and new elections were planned for October.

On July 5, 1977 there was a bloodless military coup. General Zia ul-Haq, who had attended advanced command courses in the United States and the United Kingdom between 1972 and 1975, assumed government power as Chief Martial Law Administrator. The stated purpose was to stop the "drift toward political chaos." But drastic police measures were taken which created doubt as to General Zia's purpose. Severe penalties were immediately promulgated by fiat. Martial Law Order 12 provided for preventive detention and it was used liberally. Martial Law Regulation 11 of July 5 declared simply: "No one shall, either directly or indirectly, participate in any political activity. Maximum punishment 5 years Rigorous Imprisonment, fine and/and or whipping not exceeding 10 stripes." Martial Law Regulation 13 provided the same punishment for any form of communication critical of the Armed Forces or "calculated to create alarm or despondency amongst the public."

Public executions and floggings were authorized and carried out. The amputation of a hand was made legal punishment. General Zia says, "it is the humiliative rather than the punitive aspect of flogging which is important." He tells one that the death penalty and life imprisonment were not deterrents to criminal conduct but the threat

of flogging was. His new Law Minister A. K. Brohi says floggings are necessary to control the people and asks what do you do with a "mad dog." He defends stoning women to death for adultery and is the principal government spokesman justifying these cruel, inhuman and degrading puunishments as being ordained by the law of Islam.

Bhutto was arrested on the night of the coup and held for several weeks. Most of the high officials in his administration have been confined. Leaders of the Pakistan Peoples Party were also arrested. Many are still in prison, joined this year by leaders of other parties. Bhutto, released to campaign for the October elections, was greeted by enormous crowds. In early September he was arrested and charged with ordering the murder of a minor political figure in November 1974. General Zia publicly spoke of documentary evidence establishing Bhutto's guilt. Released on *habeas corpus* by a court, he was promptly rearrested under both military and civil process and has been detained virtually incommunicado since September 17, 1977.

While he was originally to be tried by a military court, it was decided he should be tried before five members of the High Court in Lahore. The two justices who had granted his writ of *habeas corpus* were excluded. The presiding judge was acting Chief Justice by appointment of General Zia; he was also an old enemy who had heard Bhutto's case when he was arrested in 1968. He should have been disqualified.

The murder charge, if believed, takes the case out of politics. Officials in the Zia government assure you this is a routine murder case. (Ferdinand Marcos of the Philippines, a master at authoritarian deceit, has used an ordinary murder charge to convict and condemn Benigno Aquino, a major political opponent, to death.)

This murder charge, while the most serious that can be made, was not taken seriously at first. The allegations themselves are so inherently improbable. The murder rate in Pakistan is high enough to make Houston seem peaceful. This assault was said to have been an attempt to kill a man named Ahmad Raza Kasuri, a dissident in the Pakistan Peoples Party. On June 3, 1974 Bhutto had become irritated with Mr. Kasuri on the floor of Parliament and expressed his feelings sharply, but not threateningly. This incident is the prosecution's case for a motive. Others had spoken far more sharply. Even threateningly, including Kasuri himself who said of another group, "Time had come for their being killed."

Kasuri's father was apparently killed by automatic gunfire which hit a moving car occupied, according to the evidence by Kasuri, his father, mother and an aunt, near Lahore shortly after midnight on November 12, 1974. Kasuri, who had no way of knowing who fired or ordered the shooting, immediately blamed Bhutto and used the charge politically. In 1972 he had claimed nine attempts had been made on his life for which he had blamed another politician. He claimed three attempts were made on his life in 1974. An investigation of the death of Kasuri's father was closed in 1975 without charges being brought. From 1975 through June 1977 Kasuri sought through intermediaries to establish friendly relations with Bhutto, obtained a meeting with the Prime Minister and returned to the party.

Shortly after the coup, two members of the Federal Security Force were arrested, questioned and confessed to the shooting. Masood Mahmud, Director General of the FSF, was taken into protective custody on July 5, 1977, and on August 14 wrote General Zia making "a clean breast of the misdeeds of the Federal Security Force under the orders of Bhutto." He later confessed to ordering the assault on instructions from Bhutto. His testimony is the only evidence directly linking the Prime Minister to the murder. It is more than suspect. He says Bhutto threatened him and made him personally responsible for "taking care" of Kasuri, commanding him to instruct a subordinate, Mian Muhammed Abbas, to "produce the dead body of Ahmad Raza Kasuri or his body bandaged all over." The body was never produced, of course. Abbas confessed, and then retracted, then on July 10, 1978 his lawyer again filed a confession before the Supreme Court.

The trial was not fair. The acting Chief Justice's conduct would make Judge Julius Hoffman in the Chicago 7 trial a model of decorum. He publicly commented on Bhutto's "guilt" outside the courtroom before conviction. His prejudice is spread through his 145-page decision. Even there he could not restrain himself from characterizing Bhutto, who did not present a defense, as a "compulsive liar," "unruly," "hurling threats as well as insults on us."

As one illustration, before the defense abandoned the case, Bhutto's lawyers had cross-examined Masood Mahmud, the prosecutions second witness. He was asked whether he had caused police to hold a Mrs. Ibrat while "rats were let loose in her *shalwar* and its ends tied." The purpose obviously was to examine the credibility and character of the witness. The acting Chief Justice, in referring to this cross-examination, wrote: "It appears that these questions were put to prove that P.W. 2 (Mahmud) was well-qualified from the point of view of the principal accused (Bhutto) to be appointed as Director General of the Federal Security Force."

The evidence presented against Bhutto, even if believed, would not support a verdict of guilt. The prosecution case was based entirely on several witnesses who were detained until they confessed, who changed and expanded their confessions and testimony with each reiteration, who contradicted themselves and each other, who, except for Masood Mahmud, were relating what others said, whose testimony led to four different theories of what happened, who were contradicted by ballistics and other physical evidence and who were absolutely uncorroborated by an eyewitness, direct evidence, or physical evidence. There were records showing that one of the FSF officers who allegedly fired the shots was in Karachi at the time, but no defense evidence was presented on this. Each of these witnesses had an urgent motive to inculpate the Prime Minister, each alleged that he resisted and protested but was forced by threat and command to participate in the shooting. That Kasuri remained alive in spite of the alleged fury of the Prime Minister did not seem to affect belief that his murder was ordered. Kasuri himself was shown to be a highly erratic, untruthful and opportunistic politician of no standing who sought favor from Bhutto until his overthrow.

Critical stages of the trial were conducted in camera. Comments and rulings by the court and conflicts between counsel and the court caused Bhutto to discharge his attorneys and boycott the trial before the prosecution completed its case. The remaining prosecution witnesses were not cross-examined, no defense case was presented and Mr. Bhutto was unrepresented during the concluding, critical phases of the trial.

All five defendants—Bhutto, the two FSF officers who allegedly fired the shots and their two superiors who were charged with participating in carrying out the order allegedly communicated by Masood Mahmud—were sentenced to hang, Mahmud, who alone testified that Bhutto ordered the acts, was pardoned. Efforts of the other four defendants to involve Bhutto and justify their conduct did not save them, at least not yet.

The decision of the High Court is full of errors of fact and law. Its characterizations of evidence show its bias. There was no objective effort to determine fact.

The case is now on appeal in the Supreme Court of Pakistan at Rawalpindi. There from Saturday through Wednesday each week, the nine justices engage in a meticulous review of the trial record. They are impressive men, learned in the law and skillful in their examination of the trial transcript, counsel and each other. The Chief Justice Anwar ul-Haq questions most frequently, but all participate in a lively manner.

The Court has maintained some judicial power. In an important decision in Bhutto's wife Nusrat's application for a writ of *habeas corpus*, the Court boldly declared that precedents suspending judicial power under similar circumstances through the law or necessity were in error. But no writ was issued and Mrs. Bhutto remains incommunicado in custody, though not charged with any crime.

The Supreme Court of Pakistan is not in an easy position. The Chief Justice was selected by General Zia who had removed his predecessor. Four of his associates were appointed by General Zia. Everyone is looking for political motivation. Each justice has the rule of law in Pakistan, his professional reputation, his personal future, perhaps his own freedom and life before him in this case. The decision will be historic. It is due within weeks now.

We shall see whether the world sits quietly by and watches if Ali Bhutto is executed. Just 51 years old, he moved impressively on the international stage for nearly two decades. Many viewed him as a "scholar statesman," a phrase used by Kasuri in 1976. Political vengeance can be dressed up as a pure criminal trial. Such a method defames former leaders and dissipates support for them. It is not a happy or humane precedent. Even a commutation of the death sentence by the Supreme Court or by General Zia will only diminish the personal tragedy and perhaps temper political significance of this method of destroying democratic institutions.

For Pakistan and Islam, the execution of Bhutto would have devastating effects. If an election were held today, most concede that Bhutto would win overwhelmingly He is the one leader with broadly based popular support in Pakistan His prosecution and his mistreatment in prison, where no foreign observer has been permitted to see him or examine conditions of his confinement, have created new and greater public sympathy for him. Even some soldiers have openly expressed their view that the charges were fabricated

Martial law does not sit easy on the people. Public lashings of members of the press (more than eighty have been arrested) and of many poor people has caused a bad reaction, so that General Zia was quick to observe in mid-July that there had been no lashings for four months. Still, even government-controlled daily papers report sentences of imprisonment and lashing by military courts presided over by a major or a colonel. The Law Minister, who believes in the law of the lash and says both Islam and the people demand it, doesn't seem to hear even supporters of General Zia say that the floggings, executions and threatened amputations are causing greater unrest and alienation. Both at home and abroad the Draconian punishments have greatly damaged the nation and its religion.

The execution of Bhutto would be extremely destabilizing. Rioting, even civil war, is a possibility. The military is not of a single mind. Eighty percent of the soldiers are from Punjab, which creates hostility in Sind, Baluchistan and the North West Frontier. A foreign power with a suitcase full of money might easily establish another General.

Poor Pakistan with its staggering human problems, hunger, violence, illiteracy, illness, population growth, underdeveloped economy, fragile confederation of dissimilar and warring people needs help. A haunting part of the planet running from the Arabian Sea coast to Nanga Parbat in the Himalayas, most of its more than 70 million people live in staggering want.

But foreign interest in Pakistan may prove its greatest problem and peril. It is the wrong country, in the wrong place, at the wrong time. And it will not be left alone.

Afghanistan it is tempting because it contains many people of common tribe and culture in the Frontier and Baluchistan. It also offers access to the sea, the chance to realize a greater Afghanistan and a vast increase in power. To Iran it presents a threat on a long border with a large common population of Baluchs and the threat of encirclement by hostile forces from the Arabian Sea to the Turkish border, along with the possibility of strategic domination by the USSR of the Persian Gulf, the Arabian Sea, the Middle East. To India the prospect of the disintegration of Pakistan offers the chance to consolidate Punjab, to return to British India's borders geographically, along with the elimination of an enemy, control over a wide buffer to the Soviet Union. These are historical and regional concerns.

To China, the Soviet Union and the United States, Pakistan is of the greatest strategic importance. From the days of the wars with the Ottoman Empire, Czarist Russia sought warm-water ports. Pakistan has hundreds of coastal miles on the Arabian Sea, dominating, with Oman, the entrance to the Persian Gulf. Control of Pakistan would directly increase Soviet power over Middle East oil, magnify its influence with India, give it access to the Indian Ocean and to East Africa and greatly contribute to the encirclement of China. With the new, stronger Soviet influence in Afghanistan, destablization in Pakistan holds enormous meaning.

China, with a common border and open highway from Sinkiang to Karachi, may see Pakistan as a key to containing Soviet influence and holding a protected position throughout the subcontinent and Southeast Asia. With Pakistan controlled by the Soviets, China would be cut off on the west, and India, Burma and Thailand would be more vulnerable to influence by the USSR.

The United States may see in the balance the Middle East and its vast oil reserves, along with greatly altered influence in southern Asia and eastern Africa. People in Pakistan speak of CIA activity in establishing Zia. They name names. It is believable to many. After all, is not Iran—"we helped restore the Shah to his throne," William Colby says—the CIA's proudest achievement?

Whatever the cause, the United States is again in the position of supporting a military dictatorship, harsher in its public pronouncements than any, even claiming religious authority for its harsh rule.

General Zia may have greater difficulty maintaining himself in power than Marcos or General Pinochet or Park or the neighboring Shah. He is unknown. He is inexperienced. He has not been judged effective by international observers. He presides over historic dissension and contemporary turbulence. He rules by the threat of the lash with absolute authority. He postpones elections.

And he may execute Ali Bhutto.

The role of the United States should be clear by now. We cannot live other nations' lives for them. We can only live by our own principles and believe that right may make might.

We should stand for life and implore with all our moral suasion a commutation of the death sentence. We should stand for justice and urge freedom, or—if the facts warrant prosecution, which I have not seen—a new and fair trial for Ali Bhutto. We should stand for democracy and urge popular elections in Pakistan at the earliest date by which all parties and candidates can be fairly presented and voting honestly monitored. We should urge an immediate end to martial law and cruel, inhuman and degrading punishments. We should stand for humanity and send massive economic aid, assuring delivery to those in greatest need—offering food, independence in food production, health care, education, an expanding, independent economy, decent housing and human digity for all the people of Pakistan. It is to these issues that our imagination, energy and foreign policy should be addressed.●

## AN OBSERVATION ON CAPITOL DEVELOPMENT PLANS

**HON. GEORGE E. BROWN, JR.**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BROWN of California. Mr. Speaker, the recent attention paid to future plans by the Architect of the Capitol for the U.S. Congress has given each of us cause to ponder the future of this immediate area.

A similar controversy to that in Washington existed in California's capitol area when Jerry Brown became Governor. A recent column by Neal Peirce accurately describes the innovative steps the California State architect, Sim Van der Ryn, took to humanize Sacramento's plans.

I commend this article to all my colleagues:

[From the Los Angeles Times, Sept. 3, 1978]

SACRAMENTO BUILDS, WASHINGTON EMBELLISHES

(By Neal R. Peirce)

SACRAMENTO.—The truly frightening plans of the architect of the U.S. Capitol to construct as many as 16 grandiose new marble mausoleums, otherwise known as Senate and House office buildings, find a refreshing counterpoint in California's capital city.

The Washington plans—so far just alternative proposals—are massive aggrandizing, and likely to cost several billion dollars. Sacramento is looking instead to low-rise, energy-efficient, human-scale buildings, interspersed with housing, restaurants and shops in what its designers hope will be a 24-hour-a-day living environment.

The total cost of Sacramento's proposed six buildings is expected to be $80 million to $100 million, most or all of it recouped by terminating expensive leases for government offices in privately owned buildings around Sacramento. California is building at a cost of $60 a square foot; the heavily marbled Hart Senate Office Building, now under construction in Washington, is costing $101 a square foot, a figure critics say could rise to $185. (The future of the Hart Building is currently in some doubt because the House recently voted to deny $54.8 million to cover its cost overruns.)

The full scope of the federal architect's edifice ambitions was recently brought to light by the National Journal's Richard Cohen. He pierced through the obfuscatory jargon of an official report to reveal building plans that would consume most of the placid grassland between the existing Senate office buildings and Union Station, send a new group of House office buildings sprawling to the south of the Capitol complex and devour part of the Capitol Hill Historic District. That area of charming townhouses was described in Capitol Architect George White's report as "an unacceptable neighbor to new House office buildings." He said the townhouses "should be rehabilitated"—a phrase reminiscent of the military's approach to troublesome villages during the Vietnam war.

The architect even would force the U.S. Supreme Court to evacuate Capitol Hill entirely, though he generously noted the Court "probably should be in Washington." The present Court building, it was proposed could become an adjunct of Congress or the Library of Congress. The plan also expansively proposes adding close to 8,000 new congressional parking spaces—presumably free, like the existing 7,676 Capitol Hill spaces, even though public downtown parking costs $3 to $4 daily.

Until the 1960s, the Senate and House made do with a total of three office buildings. Now there are five, with the sixth under construction—all necesary, architect White claims, because of national population growth. Sen. John H. Chafee (R-R.I.), a chief critic of Capitol Hill's "Mussolini-style" new structures, calls White's claim hogwash. Chafee notes that the congressional staff has expanded 300% in 20 years (latest total: 18,370), while total U.S. population has grown only 25%.

California state payrolls, like those on Capitol Hill, grew topsy-turvy in the '60s and '70s. But even before Proposition 13, the state had done an about-face on its capital plan. In the early '60s, the state bought and razed structures in 50 square blocks south of the Capitol. Gov. Jerry Brown told me the plan amounted "to kicking out all the people, putting up huge, tall government buildings, creating a bureaucratic monoculture"—even though the proposal emerged from the administration of Gov. Edmund G. (Pat) Brown, his father.

Then came Ronald Regan, with his free-enterprise bias. He decided to lease needed new office space, rather than build and so cleared acres became a desert of parking lots.

Jerry Brown, taking office in 1975, moved to create an entirely new capital area plan by appointing a broadly representative advisory committee of government officials, businessmen and neighborhood spokesmen. And he picked a highly unconventional state architect, Sim Van der Ryn, a UC Berkeley professor, counterculture ecologist and founder of the communal Farralones Institute.

Van der Ryn says the new plan is intended to be "sensibly scaled to people, to include a lively diversity of uses, and to work with the environment" of the Sacramento Valley by using lower buildings, and courtyards, trees and narrow spaces to create shade. In between the government structures will be 2,400 units of new housing, as well as restaurants and shops, built and operated by the private sector under long-term leases.

One major street will become a pedestrian mall; use of private autos will be discouraged and reliance on mass transit and bicycles encouraged. The few remaining old structures will be rehabilitated and recycled and efforts will be made to retain housing for low-income people along with newer units for the more affluent. The entire complex will be within 10 minutes' walking time of the Capitol, now undergoing repair to make it earthquake-proof.

The energy-saving theme is illustrated by the first new office building, a climate-sensitive four-story structure to be completed by spring of 1980. Designed by Van der Ryn and a team of young architects and ecologists, it will have an exposed concrete structure acting as a thermal mass, hidden bedrock and a spacious central atrium topped by skylights—all especially designed to store, exchange and distribute heat in winter and cool air in summer. To ward off the summer sun (temperatures here often reach 100 degrees), the plan includes automatically controlled canvas

sunshades along the exterior walls. Backup air conditioning and heating units should rarely be needed. Van der Ryn claims that the $17 million building—compared to standard structures of the same size—will use 40% less energy and thus save $28 million over 50 years.

The contrast to the new congressional office buildings, energy gluttons all, could scarcely be more striking.

For a second building, Van der Ryn's office sponsored a competition for energy-efficient designs. He received a startling 41 submissions, many of them highly imaginative—seeming proof of growing interest among architects in active and passive solar systems. The winning design wasn't done by some small, ecology-minded firm, but rather by Benham Blair and Associates, one of the country's largest architectural-engineering conglomerates. It involves two buildings. One will be buried under a landscaped park providing thermal "earth insulation." Thirteen small apartment houses, to be built by a private developer, will dot the same park. The second building will be above ground, hidden behind a giant solar "slab" set at a 45-degree angle.

The sensitive, imaginative impulses of the Sacramento plan may spread in the coming years—expressions of a new ethos in the design of civic buildings and their relation to their physical and human environments. "To the extent our capital plan succeeds," says Gov. Brown, "we will send out a message . . . that urban living makes sense." Architect of the U.S. Capitol: Please note.●

## REPRESENTATIVE CONYERS NOTES ARMS CONTROL NEEDS

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. SIMON. Mr. Speaker, a few weeks ago, our colleague from Michigan, Congressman JOHN CONYERS, sent around a letter to some of us, and I am taking the liberty of placing a portion of that in the RECORD.

JOHN CONYERS has testified several times before the Budget Committee on the warped priorities that we as a nation have and of the calamity that awaits us if there is not a shift in priorities.

I believe my colleagues will be interested in reading his letter:

HOUSE OF REPRESENTATIVES,
*Washington, D.C., July 27, 1978.*

I want to share with you and other concerned colleagues a few thoughts about the Special United Nations Session on Disarmament that concluded a month ago in New York.

Chuck Whalen's weekly newsletters on the Session were extremely helpful in furthering understanding of the issues. Paul Simon's excellent analysis of the conference's results provided an important outline of the problems and obstacles that stand in the way of significant break-throughs in halting the arms race. We were well-represented at this first international disarmament conference in 46 years, and Chuck is to be commended for his leadership.

It is difficult, however, not to be left with the sinking feeling that the nations and citizens of the world are headed for catastrophe unless far greater attention is brought to the issue of the arms race and far greater will is summoned to take the actions necessary to reverse it.

A few benchmarks indicate the sweeping changes in the military and technological structure of the world that ought to compel us to deal more urgently and fundamentally with arms control and disarmament.

The United States and the Soviet Union possess more than 50,000 strategic and tactical nuclear weapons twice the number that existed only 8 years ago;

7 nations already possess nuclear weapons; 20 or so will have the capability in another decade;

Third World Nations now spend more than $70 billion annually on weapons, a 700 percent increase in 20 years;

More than 18 tons of plutonium now exist as the byproduct of nuclear processes (a speck of which is lethal), and an estimated 450 tons will exist by 1990, which we know of no way to dispose of;

The nations of the world currently spend $400 billion annually on armaments, double the amount of only 8 years ago, and equivalent to the annual income of an estimated 1.8 billion people in the 36 poorest countries.

Two ongoing developments further aggravate, if such is possible, these worldwide trends. One reflects the technological imperative that the distinguished social philosopher Erich Fromm has pointed out numerous times has made man captive to the powerful machines he has built. Newspapers are filled daily with fascinating, almost worshipful, accounts of the new weapons being planned and developed, among them the laser and particle beam weapons that can direct explosive energy at the speed of light to any object on earth, including missiles on the ground and in the air.

The second development involves the attempt on the past of military planners and other officials to win acceptance of the remarkable notion that the new miniaturized nuclear and neutron weapons are the only things that stand in the way of all-out, global nuclear war. Is there any doubt that the contrary is the case, namely, that each new round of weaponry is far more lethal, costly, and destabilizing than the last? Yet we permit ourselves to entertain this notion that our salvation and that of the world rests with the stepped-up and uninterrupted development of every manner of nuclear weapon. With the announcement a few weeks ago that there now exists the capability to convert conventional battlefield weapons into nuclear ones, we have not only crossed the threshold to nuclear way but of equal importance trivialized it to the point that it is ever more likely to be countenanced and implemented.

What explains the incredible discrepancy between the knowledge we now possess of the arms race and the failure of our understanding of its enormous costs and ruinous consequences? In the few days I had the opportunity to spend at the Disarmament Session, it was painfully clear that the discussion taking place within the U.N. chambers was substantially lost on the rest of the world. The meaning of the arms race and nuclear proliferation has not sunk into public consciousness. To be sure, these matters are not easy ones to comprehend, let alone deal with. They involve unthinkable thoughts about a level and scale of devastation for which mankind has no precedends. The glaring inattention of the mass media further contributes to the current state of ignorance and the sense of helplessness.

The effort to educate the public and its leaders, needless to say, cannot slacken. Ways have to be found to communicate effectively to the public the meaning of armaments and nuclear war. Permit me to make a few proposals for further action. Would not a presidential commission or select congressional committee devoted to the examination of the arms race and the monitoring of its costs generate much-needed attention? Would not a regular MCPL seminar series that brings Members together with leaders from other nations as well as students of disarmament be a useful addition to forums that already exist? We have already witnessed the international concern and, hopefully, we can find ways to internationalize our discussions.●

## THE 85TH ANNIVERSARY OF FRIENDSHIP BAPTIST CHURCH, PASADENA, CALIF.

### HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. MOORHEAD of California. Mr. Speaker, I would like to take this opportunity to commend the Friendship Baptist Church of Pasadena, Calif., on its 85th anniversary.

While it is clear that in the chronicles of history's major events, occasions such as this are seldom given the attention they deserve, it is equally true that the collective impact of church groups like the Friendship Baptist Church play a fundamental and vital role in shaping the direction of our country and our society by influencing our thoughts and behavior patterns.

In this manner then, it is also clear that the shape and definition of history is influenced. This impact, I believe, becomes even more pronounced in the case of the Friendship Baptist Church when one considers the graciousness and longevity of its own history.

The Friendship Baptist Church survived its formative years. It grew from infancy into a group possessing venerability and the wisdom of maturity. It is appropriate here to give a brief accounting of that growth.

The church was founded on September 2, 1893, in a hall at 12 Kansas Street, which later became known as Green Street. The founding fathers were the Reverends C. H. Anderson and J. M. Fowler. The church's first congregation was a small but determined nine.

Shortly thereafter, under the direction of the Reverend J. H. Kelly, the Friendship Baptist Church purchased land on South Vernon Street for the grand price of $400, on which they constructed a building for $850.

In 1925, the congregation, growing rapidly, moved to its new grounds at Dayton and DeLacey Avenues. The cost of the new complex was $125,000. It is a credit to the deacons of the church, who guided the organization through this expansion period with care and flair, that the Friendship Baptist Church has been designated a historical landmark by the city of Pasadena.

With sincerity, I offer my congratulations to the leaders and members of the church on this very special birthday. I am especially grateful to the pastor, the Reverend S. W. Lewis, for his faith, for his stewardship to his parishioners, and for his outstanding service to this community.

Mr. Speaker, I salute the Friendship Baptist Church for providing 85 years of spiritual guidance and fellowship to its congregation, for giving 85 years of

service to the community of Pasadena, and, most of all, for providing 85 years of loving labor and devotion to God.●

## CONSUMER PRODUCT SAFETY COMMISSION

### HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. COLLINS of Texas. Mr. Speaker, I have long been concerned over the excessive costs, both direct and indirect, that the Consumer Product Safety Commission presents annually to each and every American. Over the past few months, I have undertaken an extensive study of this situation, and have found some very startling figures—and reached some very important conclusions.

In annual appropriations for the Commission alone, the CPSC has cost the American taxpayer over $200 million over the past 5 years. In addition to this, the Department of Justice has spent over $650,000 in litigating suits which have arisen out of CPSC-promulgated regulations.

These direct costs, however, are truly minimal when compared with the billions of dollars spent each year by the American consumer in increased costs of goods and services subject to CPSC regulations. Take, for instance, the example of one small firm, the Columbia Match Co. of Cleveland, Ohio. Columbia Match is a small company with only 60 employees. Yet the cost to this small, private firm of complying with recently-promulgated CPSC regulations is estimated at $98,000.

The purpose of the matchbook regulations? It was CPSC's idea to get all striking plates on matchbooks moved from the front of the matchbook cover to the back. The agency thus unilaterally ruled that all matchbook manufacturers would have to redesign their entire system of production in order to achieve this change. Unfortunately, the agency did not see fit to consider the massive cost of the changeover to the match industry, hundreds of thousands of dollars which, of course, was paid out in increased prices by the very consumers the CPSC is supposed to be protecting.

A cross-section of CPSC-incurred costs more of the same. Other match companies report similar costs—$73,000 to D. D. Bean of New Hampshire and an incredible $190,000 to the Ohio Match Co. In the bicycle industry, America's largest bicycle manufacturer, the Schwinn Co., reports that they have spent $728,200 in complying with CPSC standards. The Bicycle Manufacturers' Association of America estimates that CPSC alone adds 10 percent to the price of every bicycle sold in the United States today.

In the miniature Christmas-tree light industry, the National Ornament and Electric Light (NOEL) Association assessed costs to the industry over the 2-year period before any changes were made in compliance with newly promulgated CPSC standards at $122,000. In this case, the CPSC used as its basis for new regulations 20 indepth investigations of Christmas-tree light accidents. Of the 20, only 2 of the light sets had been purchased within a year of the incident in question. No age, condition, use or abuse information is contained in any of these reports. Once again, the CPSC acted blindly and unilaterally to regulate an entire industry—at incredible cost the consumer—without any serious study or knowledge of the situation at hand.

The Stanford Research Institute estimates that proposed regulation of the lawnmower industry by CPSC would increase the average price of a lawnmower by up to 35 percent, depending upon the model in question. The institute's study also notes that such regulation, had it been instituted in the 1976 model year, would have cost the American consumer $470 milion in price increases.

A frightening example of the cost of overregulation by the CPSC can be found in the case of Marlin Toy Products, Inc., a small toy firm in Horicon, Wis. This single firm spent a staggering $1,126, 801 in order to comply with CPSC regulations. In addition, the president of Marlin Toy informed my staff that two FBI agents spent a week at his plant investigating the company's "Flutter Ball" and "Birdie Ball" toys.

In the crib manufacture industry, Childcraft Co. reports that the price of their least expensive crib has increased by approximately 46 percent due to CPSC regulations. As the head of one firm told me in a letter, "The most ridiculous aspect of the problem is the mattress flammability standard—the whole thing is based on a lighted cigarette igniting the mattress—I am sure you will agree that very few infants smoke in bed."

These few examples give one pause to reflect upon and reassess the role of the CPSC, to compare the benefits provided in light of the sobering costs incurred. The creation of the Commission was predicated on the theory that the American people are not intelligent enough to distinguish between a product that presents a severe danger and one that is safe. Thus, the whole idea of the agency from the start was to place further limits on our freedom of choice, and to put into practice the notion that a bureaucratic elite knows better than we how to run our own lives.

Mr. Speaker, the House will soon be asked to extend authorization for CPSC appropriations in the amount of $55 million, $60 million, and $65 million for fiscal years 1979, 1980, and 1981, respectively. The average of these figures represents a quantum leap of 50 percent in the cost of maintaining this harmful agency. Will this increase in appropriations mean that the American people will be treated to a 50-percent increase in regulation—and the billions of dollars in price increases and hundreds of thousands of lost jobs that will most assuredly follows?

I urge my colleagues, Mr. Speaker, to take a hard look at what the CPSC is really costing the consumers of our Nation. If we really want to whip inflation, cut the cost of Government, keep our relatively low unemployment rate, and increase the amount of economic freedom to be had in this country; commencing an in-depth reappraisal of the activities of the Consumer Product and Safety Commission is a perfect place to start.●

## GAO REPORTS ON COST OF SUGAR PRODUCTION AND PROFITS

### HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. VANIK. Mr. Speaker, attached is a letter from the GAO in response to my questions concerning the cost of production of sugar and profits in the sugar industry in recent years.

The letter points out that—

The diversity of (cost of production) estimates raises questions as to what is the cost of production in any area;

Some sugar producers have "rebuffed" efforts by the U.S. Department of Agriculture to determine costs of production;

Many studies and reports on the cost of production of sugar indicate costs below the 16¢ price objective level set in the sugar bill reported by the House Agriculture Committee; and

While many producers complain now of losses from the production of sugar, they fail to mention the extraordinary windfall profits which occurred throughout the industry in 1974 and 1975.

The GAO data shows that sugar production involves the risk of high and low price cycles. We are now in a low price cycle—a period of lean years. What the industry does not tell us is that just 3 years ago, they were making incredibly fat windfall profits. According to the GAO, the profits of the Hawaii producers amounted to $428 million in 1974 alone. The profits of the whole industry, according to the U.S. International Trade Commission, were over $1.5 billion in 1974.

The consumer was given no relief during those sweet days for the producers; now, that production has temporarily turned sour, the taxpayer and consumer are being asked to be sugar daddy for the industry.

The GAO data provides important new information against the Church/de la Garza sugar bills and in support of the bill proposed by the Ways and Means Committee.

The letter follows:

COMPTROLLER GENERAL
OF THE UNITED STATES,
*Washington, D.C., September 1, 1978.*

Hon. CHARLES A. VANIK,
*Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives.*

DEAR MR. VANIK: This is in response to your letter of August 29, 1978, requesting information on sugar production costs for any domestic sugar producing areas. In the course of our work, we have obtained information from a variety of sources including the U.S. Department of Agriculture (USDA), published sources, and data provided by firms and industry groups.

The cost of producing sugar in Hawaii is estimated at 13.16 cents per pound, raw value, in 1978 based on industry data. This

may be an understatement of cost, however, due to the absence of imputed land values; inadequate depreciation and other factors. Adding an estimate for imputed land costs and for capital investment not covered by depreciation would yield an estimated production cost of 14.3 cents per pound, raw value.

Industry data on production costs in Florida and Louisiana were not available to us. USDA officials told us they had approached Florida and Louisiana producers several years ago about doing a cost study and were rebuffed. We did identify university studies on production costs in each state. A University of Florida researcher, D. L. Brooke, estimates production costs of 15.79 cents per pound, raw value, in Florida for 1977 on a net cash rent for land basis and 16.54 cents on a current market value of land basis. These figures contrast sharply with USDA's estimate of 1977 Florida production costs of 14.202 cents per pound, raw value. A Louisiana State University researcher, Joe R. Campbell, estimates a break-even cost of 14.8 cents per pound, raw value, in Louisiana in 1977. Dr. Campbell has advised us that the Louisiana cost estimate is based on a 500 acre operation, which would maximize use of a mechanical harvester, and would represent the production cost of a reasonably efficient farm. USDA data indicate that only about 14 percent of Louisiana sugarcane farms are 500 acres or more but that they produce about 65 percent of the State's sugar. The Louisiana State figure of 14.8 cents contrasts sharply with USDA's estimate of 1977 Louisiana production costs of 17.913 cents per pound, raw value.

We are aware of no 1978 estimates for Florida and Louisiana other than those made by USDA, which are contained on pages 30–31 of your Subcommittee print on sugar dated August 14, 1978. It is important to note that all the figures are estimates. The University of Florida, Louisiana State University, and USDA estimates are based on projections of data developed in earlier studies, with a variety of base years. USDA notes on page 14 of the August 14 Subcommittee print that differences in cost concepts, computational methodology, and yield assumptions for sugar and other crops are frequent sources of differences in cost estimates. The diversity of estimates raises questions as to what is the cost of production in any area.

USDA has recently conducted a study of the cost of growing sugarbeets. They advised us that they do not have recent data on the cost of processing sugarbeets. Based on the USDA study, industry supplied data and our computations based on these data, we estimate the cost of producing refined sugar from sugarbeets to be 17.81 cents per pound in 1977/78. This does not include marketing costs estimated by USDA to be about 2.5 cents. These data are based on actual 1977 production costs obtained from sugarbeet processors and USDA estimates of 1978 sugarbeet growing costs. Since sugarbeets are processed directly into refined sugar in the United States, there is no raw sugar stage. There is no accepted method to estimate the equivalent cost of raw beet sugar.

Subsequent to the receipt of your letter, your office requested information on profitability in any of the sugar producing areas. We have very limited data in this regard.

A spokesman for most of the beet sugar companies recently testified on their serious financial problem before the House Committee on Agriculture. The spokesman stated:

* * * each and every one of the nation's beet sugar processing firms for whom I speak is in serious financial straits—indeed jeopardy * * *".

The spokesman pointed out that one company had lost $6.1 million on revenue of $152.9 million during its most recent fiscal year and a cooperative failed by $14 million to meet its contractual obligations with its grower-owners for the 1976 crop. In a case we identified, a recently established cooperative with a relatively new plant has been unable to pay interest on its debt for 2 years, while another processor told us his company has reported financial losses for the last 4 quarters.

In 1974 and 1975, the Hawaiian sugar industry realized sizable profits when prices were at historically high levels. Since then prices have fallen markedly. The 1977 crop would have resulted in losses except for Federal direct support payments.

We have developed estimates on the returns over cost of the Hawaiian sugar industry based on industry supplied cost data and USDA reported data on the value of production. We have also added government payments.

HAWAIIAN SUGAR INDUSTRY RETURNS OVER (UNDER) COST

[In millions of dollars]

| Year | Net cost of raw sugar production | Value of production | Returns over (under) cost | Government payments | Returns over (under) cost after Government payments |
|---|---|---|---|---|---|
| 1972 | $172.3 | $176.6 | $4.3 | $9.7 | $14.0 |
| 1973 | 170.5 | 203.8 | 33.3 | 9.5 | 42.8 |
| 1974 | 239.4 | 659.2 | 419.8 | 8.6 | 428.4 |
| 1975 | 271.2 | 354.6 | 83.4 | 0 | 83.4 |
| 1976 | 263.6 | 245.5 | (18.1) | 0 | (18.1) |
| 1977 | 259.5 | 219.1 | (40.4) | 48.7 | 8.3 |

The U.S. International Trade Commission (ITC), in its March 1977 report to the President stated that:

"All segments of the sugar industry—growing, milling, processing and refining—enjoyed a dramatic increase in net sales during 1972–74. Net sales for most segments of the industry declined, however, in 1975—a period of declining sugar prices. With the exception of proprietary cane sugar refining, the sugar industry also enjoyed an increase in profits for proprietary firms and an increase in payments to members of cooperatives during 1972–74. Profits and payments like net sales, declined in 1975 for most segments of the industry."

The report went on to state that:

"The period 1972–75 was, overall, an era of prosperity for growers, grower-millers, and nongrower-millers of sugar cane situated in Florida, Louisiana, Texas, and Hawaii. The year 1974 was exceptionally prosperous. The forecast for the sugar cane industry for the 1976/77 crop year, however, appears bleak. It appears that declining sugar prices, coupled with increasing farming and milling costs, will turn numerous farm and mill operations into marginal or unprofitable operations."

Appendix I is Table 19 from the ITC report, which contains data on profits supplied to the ITC by various elements of the sugar industry for the accounting years 1972–76.

We trust that this information satisfies your request.

Sincerely yours,

ELMER B. STAATS,
*Comptroller General of the United States.*

APPENDIX I

TABLE 19.—SUGAR: NET PROFIT OR (LOSS) BEFORE INCOME TAXES OR NET PROCEEDS PAID OR PAYABLE TO COOPERATIVE MEMBERS FOR U.S. GROWERS, PROCESSORS, MILLERS AND REFINERS ON THEIR SUGAR OPERATIONS, ACCOUNTING YEARS 1972–76

[In thousands of dollars]

| Item | 1972 | 1973 | 1974 | 1975 | To Sept. 30 [1]— 1975 | To Sept. 30 [1]— 1976 |
|---|---|---|---|---|---|---|
| Sugar beet growers and beet sugar processors: | | | | | | |
| 27 growers (total farm) | (2) | (2) | (2) | (2) | (2) | (2) |
| 10 processors | 45,534 | 108,229 | 395,402 | 234,419 | [3] 111,117 | [3] 37,987 |
| Total | 45,534 | 108,229 | 395,402 | 234,419 | 111,117 | 37,987 |
| Sugarcane growers: | | | | | | |
| 19 Florida growers | | | | | | |
| 23 Louisiana growers | | | | | | |
| 14 Hawaiian growers | | | | | | |
| Total | 7,342 | 20,533 | 72,996 | 75,945 | (4) | (4) |

| Item | 1972 | 1973 | 1974 | 1975 | To Sept. 30 [1]— 1975 | To Sept. 30 [1]— 1976 |
|---|---|---|---|---|---|---|
| Sugarcane millers: | | | | | | |
| 6 Florida millers | | | | | | |
| 26 Louisiana millers | | | | | | |
| 1 Texas miller | | | | | | |
| 14 Hawaiian millers | | | | | | |
| Total | 55,187 | 121,613 | 641,553 | 357,405 | 40,887 | 16,267 |
| Cane sugar refiners: | | | | | | |
| 8 refiners | | | | | | |
| 1 Florida cooperative refiner | | | | | | |
| California & Hawaiian Sugar Co | | | | | | |
| Total | 169,757 | 202,535 | 438,851 | 367,150 | 225,943 | 193,977 |
| Grand total | 277,820 | 452,910 | 1,548,802 | 1,034,919 | 377,947 | 248,231 |

[1] The interim 1975 and 1976 accounting periods for each of the reporting concerns range from 1 mo to 12 mo and end no later than Sept. 30.
[2] Data are insignificant of the total for all U.S. sugar beet growers.
[3] Data are for 7 processors.
[4] Not available.
[5] The 14 Hawaiian growers are also millers. Their sugarcane is transferred to their mill at cost.
[6] Commenced operation on Dec. 8, 1973.
[7] Data are for 6 refiners.

Source: Compiled from data submitted to the U.S. International Trade Commission by U.S. growers, processors, millers, and refiners.

## ANOTHER LOOK AT GUN CONTROL


### HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES


*Wednesday, September 6, 1978*

● Mr. GRASSLEY. Mr. Speaker, there are approximately 5 weeks remaining before the Congress of the United States adjourns for the year. It is obvious that neither the House of Representatives nor the Senate will take up Federal gun control legislation prior to adjournment. Nonetheless, I would like to share with my colleagues an article which was published in the August 27, 1978, Washington Post. The writer's discussion and analysis of this most controversial issue warrant review by my colleagues and other devotees of the CONGRESSIONAL RECORD.

The article follows:

BANNING GUNS DOESN'T WORK

(By Don B. Kates Jr.)

Despite almost 100 years of often bitter debate, federal policy and the policies of 44 states continue to allow handguns to any sane adult who has not been convicted of a felony. Over the past 20 years, as some of our progressive citizens have embraced the notion that handgun confiscation would reduce violent crime, the idea of closely restricting handgun possession to police and those with police permits has been stereotyped as "liberal." Yet when the notion of sharply restricting pistol ownership first gained popularity, in the late 19th century, it was under distinctly conservative auspices.

In 1902, South Carolina banned all pistol purchases, the first and only state ever to do so. (This was nine years before New York began requiring what was then an easily acquired police permit.) Tennessee had already enacted the first ban on "Saturday night specials," disarming blacks and the laboring poor while leaving weapons for the Ku Klux Klan and company goons.

In 1906, Mississippi enacted the first mandatory registration law for all firearms. In short order, permit requirements were enacted in North Carolina, Missouri, Michigan and Hawaii.

In 1922, a national campaign of conservative business interests for handgun confiscation was endorsed by the (then) arch-conservative American Bar Association.

Liberals at that time were not necessarily opposed in principle to a ban on handguns, but they considered such a move irrelevant and distracting from a more important issue—the prohibition of alcohol. To Jane Addams, William Jennings Bryan and Eleanor Roosevelt (herself a pistol carrier), liquor was the cause of violent crime. (Before dismissing this out of hand, remember that homicide studies uniformly find liquor a more prevalent factor than handguns in killings.)

Besides, liberals were not likely to support the argument advanced by conservatives for gun confiscation: that certain racial and immigrant groups were so congenitally criminal (and/or politically dangerous) that they could not be trusted with arms. But when liberalism finally embraced handgun confiscation, it was by applying this conservative viewpoint to the entire populace. Now it is all Americans (not just Italians, Jews or blacks) who must be considered so innately violent and unstable that they cannot be trusted with arms. For, we are told, it is not robbers or burglars who commit most murders, but average citizens killing relatives or friends.

It is certainly true that only a little more than 30 percent of murders are committed by robbers, rapists or burglars, while 45 percent are committed among relatives or between lovers. (The rest are a miscellany of contract killings, drug wars and "circumstances unknown.") But it is highly misleading to conclude from this that the murderer is, in any sense, an average gun owner.

For the most part, murderers are disturbed, aberrant individuals with long records of criminal violence that often include several felony convictions. In terms of endangering his fellow citizen, the irresponsible drinker is far more representative of all drinkers than is the irresponsible handgunner of all handgunners. It is not my intention to defend the character of the average American handgun owner against, say, that of the average Swiss whose government not only allows, but requires, him to keep a machine gun at home. Rather, it is to show how unrealistic it is to think that we could radically decrease homicide by radically reducing the number of civilian firearms.

Study after study has shown that even if the average gun owner complied with a ban, the one handgun owner out of 3,000 who murders (much less the one in 500 who steals) is not going to give up his guns. Nor would taking guns away from the murderer make much difference in murder rates, since a sociopath with a long history of murderous assault is not too squeamish to kill with a butcher knife, ice pick, razor or bottle. As for the extraordinary murderers—assassins, terrorists, hit men—proponents of gun bans themselves concede that the law cannot disarm such people any more than it can disarm professional robbers.

THE CASE OF BRITAIN

The repeated appearance of these facts in studies of violent crime has eroded liberal and intellectual support for banning handguns. There is a growing consensus among even the most liberal students of criminal law and criminology that handgun confiscation is just another plausible theory that doesn't work when tried. An article written in 1968 by Mark K. Benenson, longtime American chairman of Amnesty International, concludes that the arguments for gun bans are based upon selective misleading statistics, simple-minded non sequiturs and basic misconceptions about the nature of murder as well as of other violent crimes.

A 1971 study at England's Cambridge University confounds one of the most widely believed non sequiturs: "Banning handguns must work, because England does and look at its crime rate!" (It is difficult to see how those who believe this can resist the equally simple-minded pro-gun argument that gun possession deters crime: "Everybody ought to have a machine gun in his house because the Swiss and the Israelis do, and look how low their crime rates are!")

The Cambridge report concludes that social and cultural factors (not gun control) account for Britain's low violence rates. It points out that "the use of firearms in crime was very much less" before 1920 when Britain had "no controls of any sort." Corroborating this is the comment of a former head of Scotland Yard that in the mid-1950s there were enough illegal handguns to supply any British criminal who wanted one. But, he continued, the social milieu was such that if a criminal killed anyone, particularly a policemen, his own confederates would turn him in.

When this violence-dampening social milieu began to dissipate between 1960 and 1975, the British homicide rate doubled (as did the American rate), while British robbery rates accelerated even faster than those in America. As the report notes, the vaunted handgun ban proved completely ineffective against rising violence in Britain, although the government frantically intensified enforcement and extended controls to long guns as well.

Thus, the Cambridge study—the only in-depth study done of English gun laws—recommends "abolishing or substantially reducing controls" because their administration involves an immense, unproductive expense and diverts police resources from programs that might reduce violent crime.

The latest American study of gun controls was conducted with federal funding at the University of Wisconsin. Advanced computerized techniques allowed a comprehensive analysis of the effect of every form of state handgun restriction, including complete prohibition, on violence in America. Published in 1975, it concludes that "gun-control laws have no individuals or collective effect in reducing the rate of violent crime."

Many previous studies reaching the same conclusion had been discounted by proponents of a federal ban, who argued that existing state bans cannot be effective because handguns are illegally imported from free-sale states. The Wisconsin study compared rates of handgun ownership with rates of violence in various localities, but it could find no correlation. If areas where handgun ownership rates are high have no higher per capita rates of homicide and other violence than areas where such rates are low, the utility of laws designed to lower the rates of handgun ownership seems dubious.

Again, the problem is not the "proliferation of handguns" among the law-abiding citizenry, it is the existence of a tiny fraction of irresponsible and criminal owners whom the law cannot possibly disarm of these or other weapons.

Far from refuting the Wisconsin study, the sheer unenforceability of handgun bans is the main reason why most experts regard them as not worth thinking about. Even in Britain, a country that, before handguns were banned, had less than 1 percent of the per capita handgun ownership we have in the United States, the Cambridge study reports that "50 years of very strict controls has left a vast pool of illegal weapons."

It should be emphasized that liberal defectors from gun confiscation are no more urging people to arm themselves than are those who oppose banning pot or liquor necessarily urging people to indulge in them. They are only saying that national handgun confiscation would bring the federal government into a confrontation with millions of responsible citizens in order to enforce a program that would have no effect upon violence, except the negative one of diverting resources that otherwise might be utilized to some effective purpose. While many criminologists have doubts about the wisdom of citizens trying to defend themselves with handguns, the lack of evidence to justify confiscation requires that this remain a matter of individual choice rather than government fiat.

Nor can advocates of gun bans duck the evidence adverse to their position by posing such questions as: Why should people have handguns; what good do they do; why shouldn't we ban them? In a free country, the burden is not upon the people to show why they should have freedom of choice. It is upon those who wish to restrict that freedom to show good reason for doing so. And when the freedom is as deeply valued by as many as is handgun ownership, the evidence for infringing upon it must be very strong indeed.

OTHER COSTS IGNORED

If the likely benefits of handgun confiscation have been greatly exaggerated, the financial and constitutional costs have been largely ignored. Consider the various costs of any attempt to enforce confiscation upon a citizenry that believes (whether rightly or not) that they urgently need handguns for

self-defense and that the right to keep them is constitutionally guaranteed. Most confiscationists have never gotten beyond the idea that banning handguns will make them magically disappear somehow.

Because they loathe handguns and consider them useless, the prohibitionists assume that those who disagree will readily turn in their guns once a national confiscation law is passed. But the leaders of the national handgun prohibition movement have become more realistic. They recognize that defiance will, if anything, exceed the defiance of Prohibition and marijuana laws. After all, not even those who viewed drinking or pot smoking as a blow against tyranny thought, as many gun owners do, that violating the law is necessary to the protection of themselves and their families.

Moreover, fear of detection is a lot more likely to keep citizens from constant purchases of liquor or pot than from a single purchase of a handgun, which, properly maintained, will last years.

To counter the expected defiance, the leaders of the national confiscation drive propose that handgun ownership be punished by a nonsuspendable mandatory year in prison. The mandatory feature is necessary, for otherwise prosecutors would not prosecute, and judges would not punish, gun ownership with sufficient severity.

The judge of a special Chicago court trying only gun violations recently explained why he generally levied only small fines: The overwhelming majority of the "criminals" who come before him are respectable, decent citizens who illegally carry guns because the police can't protect them and they have no other way of protecting themselves. He does not even impose probation because this would prevent the defendants, whose guns have been confiscated, from buying new ones, which, the judge believes, they need to live and work where they do.

These views are shared by judges and prosecutors nationwide; studies find that gun-carrying charges are among the most sympathetically dealt with of all felonies. To understand why, consider a typical case which would have come before this Chicago court if the district attorney had not dropped charges. An intruder raped a woman and threw her out of a 15th-floor window. Police arrived too late to arrest him, so they got the victim's roommate for carrying the gun with which she scared him off when he attacked her.

Maybe it is not a good idea for this woman to keep a handgun for self-defense. But do we really want to send her to federal prison for doing so? And is a mandatory year in prison reasonable or just for an ordinary citizen who has done nothing more hurtful than keeping a gun to defend herself—when the minimum mandatory sentence for murder is only seven years and most murderers serve little more?

Moreover, the kind of nationwide resistance movement that a federal handgun ban would provoke could not be broken by imprisoning a few impecunious women in Chicago. Only by severely punishing a large number of respectable citizens of every race and social class would resisters eventually be made to fear the law more than the prospect of living without handguns in a violent society.

At a very conservative estimate, at least half of our present handgun owners would be expected to defy a federal ban. To imprison just 1 percent of these 25 million people would require several times as many cells as the entire federal prison system now has. The combined federal, state, and local jail systems could barely manage. Of course, so massive an enforcement campaign would also require doubling expenditure for police, prosecutors, courts and all the other sectors of criminal justice administration.

The Wisconsin study closes with the pertinent query: "Are we willing to make sociological and economic investments of such a tremendous nature in a social experiment for which there is no empirical support?"

CAN IT BE JUSTIFIED?

The argument against a federal handgun ban is much like the argument against marijuana bans. It is by no means clear that marijuana is the harmless substance that its proponents claim. But it would take evidence far stronger than we now have to justify the enormous financial, human, institutional and constitutional costs of continuing to ferret out, try and imprison even a small percentage of the otherwise law-abiding citizens who insist on having pot.

Sophisticated analysis of the criminalization decision takes into account not only the harms alleged to result from public possession of things like pot or guns, but the capacity of the criminal law to reduce those harms and the costs of trying to do so. Unfortunately most of the gun-control debate never gets beyond the abstract merits of guns—a subject on which those who view them with undifferentiated loathing are no more rational than those who love them.

The position of all too many gun-banning liberals is indistinguishable from Archie Bunker's views on legalizing pot and homosexuality: "I don't like it and I don't like those who do—so it ought to be illegal."

The emotionalism with which many liberals (and conservatives as well) react against the handgun reflects not its reality but its symbolism to people who are largely ignorant of that reality. A 1975 national survey found a direct correlation between support for more stringent controls and the inability to answer simple questions about present federal gun laws. In other words, the less the respondent knew about the subject, the more likely he was to support national confiscation.

Liberals advocate severely punishing those who will defy confiscation only because the liberal image of a gun owner is a criminal or right-wing fanatic rather than a poor woman in Chicago defending herself against a rapist or a murderer.

Contrary to this stereotype, most "gun nuts" are peaceful hobbyists whose violence is exclusively of the Walter Mitty type. Gun owners' views are all too often expressed in right-wing terms (which does nothing for the rationality of the debate) because 20 years of liberal vilification has given them nowhere else to look for support. If only liberals knew it, handgun ownership is disproportionately high among the underprivileged for whom liberals traditionally have had most sympathy. As the most recent (1975) national demographic survey reports: "The top subgroups who own a gun only for self-defense include blacks (almost half own one for this reason alone), lowest income group, senior citizens."

The average liberal has no understanding of why people have guns because he has no idea what it is like to live in a ghetto where police have given up on crime control. Minority and disadvantaged citizens are not about to give up their families' protection because middle-class white liberals living and working in high-security buildings and/or well-policed suburbs tell them it's safer that way.

A final cost of national gun confiscation would be the vast accretion of enforcement powers to the police at the expense of individual liberty. The Police Foundation, which ardently endorses confiscation, recently suggested that federal agencies and local police look to how drug laws are enforced as a model of how to enforce firearms laws. Coincidentally, the chief topic of conversation at the 1977 national conference of supporters of federal confiscation was enforcement through house searches of everyone who sales records indicate may ever have owned a handgun.

In fact, indiscriminate search, complemented by electronic surveillance and vast armies of snoopers and informers, is how handgun restrictions are enforced in countries like Holland and Jamaica, and in states like Missouri and Michigan.

Even in England, as the Cambridge report notes, each new Firearms Act has been accompanied by new, unheard-of powers of search and arrest for the police.

These, then, are the costs of banning handguns: Even attempting an effective ban would involve enormous expenditures (roughly equal to the present cost of enforcing all our other criminal laws combined) to ferret out and jail hundreds of thousands of decent, responsible citizens who believe that they vitally need handguns to protect their families.

If this does not terrorize the rest of the responsible handgun owners into compliance, the effort will have to be expanded until millions are jailed and the annual gun-banning budget closely seconds defense spending. And all of this could be accomplished only by abandoning many restraints our Constitution places upon police activity.

What would we have to show for all this in terms of crime reduction? Terrorists, hit men and other hardened criminals who are not deterred by the penalties for murder, robbery, rape, burglary, etc. are not about to be terrified by the penalties for gun ownership—nor is the more ordinary murderer, the disturbed, aberrant individual who kills out of rage rather than cupidity.

What we should have learned from our experience of Prohibition, and England's with gun banning, is that violence can be radically reduced only through long-term fundamental change in the institutions and mores that produce so many violent people in our society.

It is much easier to use as scapegoats a commonly vilified group (drinkers or gun owners) and convince ourselves that legislation against them is an easy short-term answer. But violence will never be contained or reduced until we give up the gimmicky programs, the scapegoating, the hypocritical hand-wringing, and frankly ask ourselves whether we are willing to make the painful, disturbing, far-reaching institutional and cultural changes that are necessary.●

## THE 200TH MEETING OF THE NATIONAL SCIENCE BOARD

### HON. GEORGE H. MAHON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. MAHON. Mr. Speaker, I think it appropriate to take note of the 200th meeting of the National Science Board, the policymaking body of the National Science Foundation, which was held on last August 18.

The chairman and vice chairman are elected by the Board from among its members for 2-year terms. The present chairman is Dr. Norman Hackerman, president, Rice University. The vice chairman is my close friend, Dr. Grover E. Murray, university professor and former president of Texas Tech University Complex. Lubbock, Tex., in the congressional district which I represent.

The National Science Board plays a very vital role in the well-being of our Nation and I want to salute it as it continues its important work.●

## CONFERENCE REPORT ON H.R. 6669 NATIONAL CLIMATE PROGRAM ACT

### HON. ROBERT S. WALKER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. WALKER. Mr. Speaker, the conference committee on H.R. 6669, the National Climate Program Act, has completed its work and reported this bill back to the House of Representatives for final passage.

As a member of the conference committee and as a resident of an agricultural area, I am well aware of the importance of predictable climate patterns to our economy. We hope that this bill will allow us to develop the knowledge and ability to predict long term climate trends.

This bill was the subject of hearings before the Committee on Science and Technology early in the 1st session of the 95th Congress, and was reported by that committee on May 6, 1977. Almost a year ago today, September 9, 1977, the House overwhelmingly passed the bill by a vote of 282–60.

Following hearings in the Senate Committee on Commerce, Science, and Transportation, the Senate passed a differing version of the bill on April 24, 1978. The two bills were substantially different in form, but closely allied in intent.

Mr. Speaker, I do not want to duplicate the remarks of my distinguished chairman, Mr. BROWN of California, but I would like to emphasize the fact that we have high hopes for the national climate program. One of the most persuasive arguments for this type of program was brought out in our hearings. We all remember the problems of last winter and the shortages of heating fuels in the Northeast portion of our Nation.

Testimony before our subcommittee indicated that it is scientifically possible to predict such long term climate trends as particularly harsh winters, and that with such a prediction it would have been possible to have stockpiled exceptionally large fuel supplies in the Northeast in advance. Such an action would have substantially reduced the adverse effects of the winter of 1977–78.

In my own section of the country such long term climate predictions might easily lead to substantial changes in the planting schedule of farmers in answer to anticipated climate abnormalities.

One point which I would like to stress is that the Congress has designed the national climate program to be user oriented. We expect that the product of this program will be targeted where it is most needed, the farmer, the contractor, and all those other Americans who are dependent on climate in their livelihoods.

While we have established the Department of Commerce as the lead Federal agency for this program, there is no intention to centralize all Federal activities relating to climate within the Department of Commerce. It is the intent of the Congress that the various mission agencies shall continue existing programs, but that budgeting and planning be comprehensive. We have no intention to reinvent the wheel, we just want to make sure that there are not a number of wheels spinning uselessly.

Mr. Speaker, now that the gentleman from California has assured me that there is no confusion over the permissive authority the bill contains for payments to members of the advisory committee, I urge my colleagues to join me in voting to adopt this conference report.●

## MORE AMERICAN FLIERS THAT THE U.S.S.R. HAS NOT ACCOUNTED FOR

### HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. McDONALD. Mr. Speaker, there have been many incidents since World War II, in which U.S.S.R. planes have made unprovoked attacks on American planes. What finally happened to the pilots and crews of these planes has been a matter of dispute in many cases. In most instances, however, none of the Americans have returned to tell the tale. The passengers in the South Korean plane were very fortunate recently, in that the world knew what had happened. Some recently declassified State Department messages have shed some new light on an incident that took place over the sea of Japan in 1953. In this incident there were survivors and information was received that Soviet ships picked up additional survivors. The Soviets denied that such ever happened. However, for some years now there have been stories circulating that the Soviets have a special camp in the Far East near Vladivostok where foreigners, Americans included, are held. These messages raise the possibility that some of these men may still be alive. The text of the messages follows:

Department has now received confirmation that US RB–50 aircraft was shot down by one or more Soviet Migs over Sea of Japan on July 29. Soviet vessels were sighted in immediate area of incident where survivors were also seen on life rafts. It appears almost certain that Soviets now have in custody some survivors. US vessel has rescued co-pilot of plane who was found approximately 40 miles off Soviet coast south of Mys Povortny, which is southeast of Vladivostok.

You are requested seek immediate appointment with Vyshinski or other available Foreign Ministry official and to convey to him following:

First, that you have been instructed by your government to protest in strongest terms against shooting down by Soviet aircraft on July 29 of a US Air Force RB–50 plane which was on a routine navigational training mission over Sea of Japan;

Second, that co-pilot of plane, who was rescued by US vessel approximately 40 miles off Soviet coast south of Mys Povortny, has confirmed that his plane with crew of 17 was attacked by one or more Soviet Mig–15 aircraft which brought about crash of plane through shooting its engines and setting aircraft afire;

Third, that information has also been received that other survivors have been picked up by Soviet vessels in vicinity of crash;

Fourth, that you have also been instructed by your Government to request immediate report from Soviet authorities RE condition of these survivors and what arrangements are being made for their early repatriation.

Please report outcome your demarche urgently. Department withholding publicity pending receipt your report.

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From: Moscow
To: Secretary of State

I have been instructed by my government to protest in the strongest terms against the shooting down by Soviet aircraft on July 29, of a United States Air Force RB–50 airplane which was on a routine navigational training mission over the Sea of Japan.

The co-pilot of the American airplane, who was rescued by a United States vessel approximately 40 miles off the Soviet coast south of Cape Povorotny, has confirmed that his plane with a crew of 17 was attacked by one or more Soviet MIG–15 aircraft which brought about the crash of the American plane by shooting into its engines and setting the plane afire.

Information has also been received that other survivors have been picked up by Soviet vessels in the vicinity of the crash. My government has instructed me to request an immediate report from the Soviet authorities regarding the condition of these survivors and what arrangements are being made for their early repatriation.

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BOHLEN.

From: Moscow
To: Secretary of State

Molotov received me in his old office at Kremlin and I took up with him question of survivors of B–50 along lines set forth in DEPTEL 74. Molotov did not attempt to argue any other aspect of B–50 incident but listened carefully to my outline of the additional information in possession of US Government which led us to believe that there were survivors other than co-pilot and then inquired whether Embassy had not yet received that second Soviet note on the plane which dealt with this question. (When I said no, he said it was on the way. He repeated the statement that Soviet Government had no information whatsoever concerning plane or any member of its crew and that according to verified information plane was last seen headed out to sea.

I told Molotov we understood that such was the preliminary report received by Soviet Government but that I was making a serious request from U.S. Government that in circumstances a further investigation in light information I had given him was justified. I repeatedly requested him to have further investigation made. With equal persistence Molotov maintained his position that a thorough investigation had been made and that there was no basis for conducting a further search. He repeated each time that had Soviet Government had any information concerning that plane or (repeat or) survivors it would "of course" have immediately communicated this to U.S. Government.

I outlined at some length possibility that some of these survivors were picked up by Soviet trawler or perhaps had been able to swim to shore and that therefore a further investigation in simple interests of humanity was justified. Molotov refused to commit himself to any such investigation but in the end said that "if any further information should be received by Soviet Government it would of course be transmitted to U.S. Government".

I don't however take this to mean any implied commitment on his part since it was in

reply to a question from me as to possibility further information being received by Soviet Government from local authorities.

At one point Molotov made a reference to the "surprise" of Soviet Government when in regard to another plane incident, the IL–12, U.S. Government stated it was shot down in Korea whereas Soviet Government found wreckage of plane, bodies of passengers and crew in Chinese territory at point indicated Soviet note. He added that they had photographs of the wreckage. He however did not pursue the subject when I told him that that was another subject and that I was only dealing with possibility of survivors of B–50.

I left with Molotov memorandum setting forth information I had given him orally with request for further investigation. I did this primarily to see if he was willing to accept document which he did without objection.

Throughout interview Molotov struck me as being very much on defensive in this matter and refrained from any disagreeable or provocative comments concerning this incident which he once described as "an encounter". At one point in discussion he quoted Russian proverb re unreliability of "eye-witnesses" which may reveal Soviet concern over evidence of rescued co-pilot.

In view of position he took consistently that complete and thorough investigation had already been made and there were no grounds for further search, it is not probable we will receive any satisfaction from Soviet Government on survivors. However, on outside chance intervention of Molotov might somehow produce results on this question, I believe we might, if possible, withhold publicity on fact of this personal call and confine publicity to formal exchange of notes. Press correspondents here are not aware of fact of my visit and unless Soviets break it there is no reason why it cannot be held secret from this end. If because of public interest in this matter it is necessary to release fact of visit, would appreciate guidance from Department as to how it is to be handled.

Will cable note referred to by Molotov as soon as received.

BOHLEN.●

## TAWES AWARD FOR A CLEAN ENVIRONMENT

### HON. MARJORIE S. HOLT

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mrs. HOLT. Mr. Speaker, the congressional district I represent is one in which environmental concerns are of extreme importance. The Chesapeake Bay and the network of rivers and streams are critical to the quality of life enjoyed by our people.

We have many private organizations that devote much time, energy, and money to environmental interests, and we should never cease to applaud and encourage their efforts. Environmental protection should be a concern of every citizen.

However, we sometimes fail to note the superb work being done by Maryland public agencies and public employees for the protection of our marine environment. Fortunately, this oversight has been remedied by the creation of the annual "Tawes Award for a Clean Environment" for government workers who make unique or substantial contributions to the health of the State's marine environment.

The first awards were recently presented by former Gov. J. Millard Tawes, who was the first secretary of the Maryland Department of Natural Resources before he entered retirement several years ago. Sponsoring the awards program are the Department and private organizations such as the Maryland Petroleum Association and the Maryland Oil Jobbers Council.

The top award was presented to Robert F. Connor, of Baltimore, an employee of the Maryland Port Administration. The runner-up awards were presented to:

Paul G. Bingham, Jr., of Arnold, Department of Natural Resources;

William S. Burgess, of Annapolis, Department of Natural Resources;

Thomas A. Cooksey, of the Prince Georges County Bureau of Fire Prevention;

George L. Herlth, Jr., of Queenstown, Department of Natural Resources;

Richard D. Klein, of Forest Hill, Department of Natural Resources, and

John J. Smiechowski, of Crownsville, Department of Natural Resources.●

## INSULIN PRODUCTION THROUGH RECOMBINANT DNA RESEARCH

### HON. PAUL G. ROGERS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. ROGERS. Mr. Speaker, I was informed today by Eli Lily & Co. an Indianapolis, Ind., based pharmaceutical manufacturer, that a team of scientists from Genentech, Inc., and City of Hope National Medical Center in California has successfully produced human insulin from bacteria in a laboratory experiment. Lilly, a pioneer in the development of the first commercial insulin following its discovery in the 1920's by two University of Toronto scientists, has entered into an agreement with Genentech to begin long-range development aimed at the eventual commercial production of human insulin. Although this research achievement is extremely significant, there still needs to be extensive development of technology, long-term studies in animals and humans, and regulatory approval before this insulin will be commercially available.

At present, insulin is produced by extracting the hormone from the pancreas glands of cattle and swine. Genentech's process reportedly involves the insertion of synthetic genes into a microorganism called E. coli, which is then grown in a fermentation process. The foundation for this work was laid by the early studies of researchers in the field of recombinant DNA at the University of California–San Francisco. Insulin production by this process is believed to have a chemical structure identical to human insulin. This achievement represents an important potential potential clinical application of recombinant DNA research.

I was delighted to learn of this particular scientific achievement. The potential medical benefit to those millions of Americans and countless other diabetics around the world is great indeed. While it will be several years before this research breakthrough can be translated into a marketable product, the critical first step has been taken. This achievement is just one further example of the pioneering research typical of American science and industry. I know my colleagues join me in saluting all those responsible for this milestone scientific and humanitarian accomplishment.●

## NEED TO GALVANIZE ARMS CONTROL SUPPORT

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. SIMON. Mr. Speaker, Dr. Homer A. Jack, the Secretary-General of the World Conference on Religion and Peace, delivered a sermon recently at the Community Church of New York on the U.N. Special Session on Disarmament.

Among other questions, he touches on the need for creating the political will in the United States to move ahead on arms control and the difficulties of structuring and galvanizing that will.

I hope my colleagues will take the time to read his observations.

INSIDE THE U.N. SPECIAL SESSION ON DISARMAMENT: SURVIVING BEYOND 1984

(By Homer A. Jack)

The world has witnessed, and the U.N. has just finished—yesterday morning at 2:30 a.m—what U.N. Secretary-General Kurt Waldheim early predicted would be the "largest, most representative gathering ever convened to consider the question of disarmament." The Special Session was also one of the largest, best-kept secrets. The chances are that many of you never heard of this event, so vital to your future, occurring during the past six weeks in our New York backyard, here at U.N. Headquarters along the East River.

As a non-governmental observer from the World Conference on Religion and Peace and as Chairman of the Non-Governmental Organization Committee on Disarmament, I had the privilege of participating in this Special Session. In the sermon this morning I will take you inside this world event which so much will affect your future, and mine, as well as the lives and future of your children and grandchildren. The U.N. session affirmed: "Removing the threat of a world war—a nuclear war—is the most acute and urgent task of the present day. Mankind is confronted with a choice: we must halt the arms race and proceed to disarmament or face annihilation."

I will begin by discussing why the U.N. convened a Special Session devoted to disarmament. Then I will describe the Special Session itself. I will also evaluate the success of the Special Session for our very future. Finally, I must discuss the posture of the U.S. Government toward the Special Session and what this posture means for us who are, I hope, concerned American citizens. This will not be a sermon devoted solely to religion, theology, philosophy, psychology, science, or politics, yet disarmament is a universal subject encompassing these and other disciplines. You who are not part of this morning's con-

gregation here in Community Church can easily flick the dial from WQXR, but your very existence to the year 1979 or 1984 or even 2000 is vitally involved. We human beings have the choice to deny unpleasant possibilities, but we as responsible citizens also have the opportunity to try to turn unpleasant possibilities into creative probabilities. We are not captives of fate—even in the nuclear arms race.

WHY AND HOW?

In 1969 the U.N. General Assembly decided to call the decade of the 1970s the Disarmament Decade in an effort to prod the world community toward "effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament." Several very limited disarmament agreements were reached in the late 1960s and early 1970s, but "effective" nuclear measures continued to elude the grasp of the world community.

In 1971 the Soviet Union urged that a World Disarmament Conference be convened, and a majority of nations agreed. However, 1971 was the year that Peking took a seat in the U.N. China bitterly fought this Soviet proposal, as did the U.S. less strongly. As a result the proposal to convene a World Disarmament Conference was deferred annually, since it was agreed that there could be no conference without the active participation of all five nuclear weapons States.

Not willing to accept easily the escalating nuclear arms race, the Non-Aligned States at the U.N.—some 84 which are not military allies of either the U.S. or the U.S.S.R.—devised the clever scheme of convening a Special Session of the U.N. General Assembly devoted to disarmament instead of a World Disarmament Conference. Since both China and the U.S. are members of the General Assembly, they would attend a Special Session. The Non-Aligned initiative resulted in December 1976 in the adoption by consensus of a resolution of the General Assembly convening a Special Session in mid-1978.

The purposes of the Special Session became multiple: to curb the arms race, to bring France and China into the disarmament dialogue and negotiations, to make the world more aware of the arms race and the need for disarmament, to exert sustained pressure on the super-powers for drastic nuclear disarmament, to break the blockade in disarmament negotiations, and to make the U.N. more central in disarmament affairs and thus give the Non-Aligned and other non-nuclear States a greater role in disarmament affairs.

Early in 1977 a group of 54 nations was appointed to the Preparatory Committee for the Special Session. It met here in New York during five sessions over 18 months. The Preparatory Committee carefully considered the political parameters of this world event, producing about 2,000 pages of documents. The Special Session on disarmament in 1978 was to be the capstone of other U.N. conferences on global issues during the 1970s, beginning with the Environment Conference at Stockholm in 1972 and including world meetings on population, food, women's rights, habitat, and the new international economic order.

MAY 23–JULY 1

The Special Session began on 23 May under the presidency of a distinguished Yugoslav diplomat, Lazar Mojsov, who was also president of the 32nd regular session of the U.N. General Assembly last autumn and two additional special sessions on financing the U.N. force in Lebanon and on Namibia earlier in 1978. The first three weeks of the Session were devoted to what is called the general debate. A total of 126 nations spoke on disarmament issues before the plenary. Heads of State or Government from such nations as the U.K., France, Germany, and India assessed the international situation, tried to pinpoint reasons for past disarmament failures, and made specific and often new disarmament proposals. The general debate was followed by speakers from 25 Non-Governmental Organizations and six research institutes. This was a breakthrough in the U.N. system, at least in the field of disarmament. In the end, Einstein, Schweitzer, and Gandhi did not appear—despite the reading earlier in this church service—although several Nobel Peace Laureates did attend, including Philip Noel Baker of London and Sean MacBride of Dublin.

Beginning on June first, the Ad Hoc Committee of the Special Session began to complete what is called the final document. This was initially drafted during two sessions of the Preparatory Committee beginning in January. It was presented to the Special Session with what were called a "forest of square brackets"—meaning words or sentences proposed but not accepted because of political reservations—in the form of brackets—from one or more countries. The task of the Ad Hoc Committee was to produce a meaningful final document free of brackets and with consensus—no objections. Any one country, however large or small, could in effect exert a veto on any word, phrase, sentence, or paragraph.

The art of bracketmanship—taking out brackets, not putting them in—was supervised by the Chairman of the Ad Hoc Committee, Ambassador Carlos Ortiz de Rozas of Argentina. He was aided substantially by another Latin American diplomat, Ambassador Alfonso Garcia Robles of Mexico. Meeting in working groups, drafting committees, contact groups, and other circles, at the end often 20 hours a day, the Committee accomplished a miracle and submitted a document without brackets in the early morning hours last Tuesday—after the plenary allowed the Session to close up to 48 hours late.

The final document in 129 paragraphs contains a short preamble and four major sections: introduction, declaration on disarmament, program of action on disarmament, and machinery. The preamble contains several clauses. The first expresses alarm "by the threat to the very survival of mankind posed by the existence of nuclear weapons and the continuing arms race." A second clause expressed the conviction that "disarmament and arms limitation, particularly in the nuclear field, are essential for the prevention of the danger of nuclear war." This is not the subjective rhetoric of some itinerant peacenik, but the considered, unanimous judgment of the entire world community of nations.

The first major section of the final document is the declaration on disarmament. This contains a review and appraisal of the present situation. There is much rhetoric, but also much common sense, which is not necessarily conventional wisdom in the pentagons in Washington or Moscow. For example, there is the phrase: "enduring international peace and security cannot be built on the accumulation of weaponry by military alliances nor be sustained by a precarious balance of deterrence of doctrines of strategic superiority." Again, this was unanimously supported.

A second sub-section of the declaration discusses goals and priorities. Highest priority is given to "effective measures of nuclear disarmament and the prevention of nuclear war." A third and final sub-section of the declaration consists of a list of fundamental principles for disarmament negotiations. Many are too technical to repeat here. A new principle suggests "unilateral measures of arms limitation or reduction."

The heart of the final document is a long program of action. This repeats the long-time goal of the world community for general and complete disarmament. It then gives four categories of priorities in disarmament negotiations: nuclear weapons, other weapons of mass destruction, conventional weapons including those with indiscriminate effects, and reductions of armed forces. Again, the detailed paragraphs and items are too long, and complex, to repeat here. It is, however, a comprehensive catalogue of disarmament. Some more controversial items—such as the Soviet insistence on the abolition of the neutron bomb—were omitted. The effort of the Non-Aligned, and especially India, to stop nuclear weapons testing, pending the completion of a comprehensive test-ban treaty, was only faintly reflected in this consensus affirmation: "various views were expressed by non-nuclear-weapon States that, pending the conclusion of this (comprehensive test-ban) treaty, the world community would be encouraged if all the nuclear-weapon States refrained from testing nuclear weapons. In this connection, some nuclear-weapon States expressed different views." We understand that these "different views" included the Soviet Union and France. However, the U.S. in the closing hours of the session told why it was opposed to a moratorium on testing and China is known also to be opposed to the elimination at this time of nuclear testing. This demonstrates the complexity of inserting even the smallest specific disarmament step into the program of action.

The final section of the final document deals with machinery for disarmament deliberations, meaning the involvement of all nations, and disarmament negotiations, the latter implying a smaller but representative group of nations actually making treaties. The Special Session revived the U.N. Disarmament Commission, as a new deliberative body composed of all Member States of the U.N. The Session also created a new negotiating forum, the Committee on Disarmament. This will be the successor to the Committee of the Conference on Disarmament (CCD) which has been meeting at Geneva since 1962 The new body, to meet no later than January, will contain up to 40 Member States, including seats available for all five nuclear powers.

SUCCESS?

Was the Special Session a success? One could list many positive aspects of this world event. The Special Session was a success simply because it was held. It was indeed the fulfillment of the prediction of the Secretary-General as "the largest, most representative gathering ever convened to consider the question of disarmament." The Special Session produced a unanimous document—and for 149 Member States to produce anything by consensus is in itself a successful political feat. The document contained an excellent declaration on disarmament, not a lowest common denominator full of ambiguities. The document also contained an adequate—if not excellent—program of action, which can be a guide for world disarmament action for at least the next decade. The Special Session established a new disarmament negotiating forum, the Committee on Disarmament at Geneva, in which France will inevitably take a seat no later than January and which will be ready for China, any time the latter wishes to participate. The Special Session established new or firmer linkages between disarmament and other global issues, each with its own governmental and public constituencies: development, environment, and international security. The Special Session enhanced the formal role of NGOs in disarmament affairs. The Special Session produced a bundle of new disarmament proposals, most of which were too new for immediate acceptance but will be carefully examined in the immediate period ahead. The Special Session demonstrated the continued utility and indeed indispensability of the U.N. system. The Special Session authorized several new studies on disarmament which could

lead to action. The Special Session agreed to convene a Second Special Session on disarmament, probably in 1981.

There were two further achievements, less obvious, but more far-reaching in their potential. The Special Session put the U.N. more central in disarmament affairs. One result of this was to question, if not yet to eliminate, the monopoly—the Chinese call it hegemony—of the U.S. and the U.S.S.R. in disarmament affairs. Also the Special Session more than any recent international event, underlined the absolute necessity for stronger national disarmament movements and an international disarmament movement.

With this string of more than a dozen successes, were there any disappointments? The deepest is that, despite the Special Session, the quantitative and qualitative nuclear arms race continues unabated, and the several arms races involving conventional weapons also continue. Thus the threshold of hypocrisy was great: high rhetoric, modest performance. Nobody predicted that a disarmament treaty would be negotiated or even initialed at the Special Session. But many observers, including myself, 18 months ago thought that the Special Session would somehow lessen the arms race. This was not to occur. Indeed, few changes were perceived, or registered, in the basic disarmament positions of all 149 Member States of the U.N., although some new ratifications of treaties were announced.

No treaty banning underground nuclear tests (CTB) or limiting strategic arms (SALT II) was announced by the superpowers, despite rather bright hopes of six months ago. Little sustained pressure was engendered during the Session on the superpowers by the non-nuclear States for immediate and drastic cuts in their strategic nuclear stockpiles. Indeed, because of the method of consensus, the program of action contained no pressure on the super-powers, such as contained in some recent U.N. disarmament resolutions—where voting was allowed—demanding, for example, a moratorium of nuclear testing. Little evidence was demonstrated that the Third World wants to lessen its conventional arms; it is content to point a finger, perhaps justifiably, at the so-called Second and First worlds to lessen their nuclear stockpiles. No new disarmament caucus or bloc was established at the U.N. during the First Special Session as the Group of 77 on economic issues was formed during the First U.N. Conference on Trade and Development (UNCTAD). The Special Session produced no sustained interest of much of the world's media; despite the presence of 20 Heads of State or Government, the event hardly remained in the headlines. Only war or violence catch the sustained attention of even the most responsible of the media. Nobody got hurt or killed at the Special Session; it was a media non-event, yet the Special Session tried to head off the extinction of the totality of mankind.

The final determination of the success or failure of the Special Session is difficult and complex as the subject of disarmament is difficult and complex. One political litmus test is to compare the original purposes of the Special Session with the results. The Special Session did not curb the arms race, as some of us expected. The Special Session did not exert sustained pressure on the super-powers for drastic nuclear disarmament. The Special Session did not break the blockade in disarmament negotiations. However, it did bring France and China into disarmament affairs. The Special Session did make the world more aware of both the arms race and the need for disarmament. It did make the U.N. more central in disarmament affairs and is giving the non-nuclear States a greater role in this field.

Was the Special Session a success, a failure, or what? The Special Session was neither a huge success nor a dismal failure. The Special Session is a beginning, the start of a long process. The Special Session represents hopes deferred in the U.N. system, while the arms race accelerates in the world outside.

Those who worked hard on the Special Session feel now that it was a success; they were haunted with the possibility of failure. Those on the outside who looked to the Special Session to save the world from the scourge of nuclear war, they must still be hounded with possible failure.

THE U.S. DIMENSION

Let us, finally, turn to the relation of the Special Session to the U.S. Government. We U.S. citizens watching the Special Session were saddened by the clumsy performance of the Carter Administration. Of the major military powers, only the U.S. and China made no policy proposals during the 18 months of the Preparatory Committee. The Administration ineptly tried to prepare American opinion for the Special Session. A proposal for a Citizens' Advisory Committee, endorsed by Hubert Humphrey on his deathbed, never was approved. The President in a surprise move did not deliver the U.S. speech in the general debate, but managed in the same period to speak both to the NATO Summit and the U.S. Naval Academy. Few U.S. initiatives were proposed during the six-week session at the very time that the U.S. was escalating its over-reactions to the Soviet and Cuban presence in Africa. About the only wise action taken by the Administration was to put together a broad, able, versatile delegation to the Special Session, including not only such lawmakers as Senator George McGovern and Congressman Paul Simon, but public members, such as Paul Newman, Marjorie Benton, Harold Willens, Josephine Pomerance, Katherine Camp, and George Kistiakowsky.

The disenchanted American observer could easily blame the Carter Administration, the Pentagon, or the military-industrial-labor-science complex for this inadequate U.S. stance—one sadly but carefully observed by the Non-Aligned States. The major blame for U.S. action and inaction probably rests on the shoulders of us American citizens. There is no active American constituency for disarmament today. President Carter's actions accurately reflect this tragic truth, although he has done little if anything to alter this situation, except to place his hopes on a whirlwind SALT II ratification campaign at the appropriate political moment.

One of the most important lessons of the Special Session for some of us who were privileged to observe the historic event is to begin to help build an American disarmament movement as part of a world disarmament movement.

No American movement can easily be constructed. The U.S. so far appears to have been favored by God and history and thus appropriate movements have descended upon the American people when the time was ripe and the problem serious. However, we cannot automatically expect to be so favored again, especially on this international issue. We must try, however, to look backwards and examine at least three successful U.S. social movements in our time: the stopping of atmospheric nuclear tests in the early 1960s, the civil rights movement later in the 1960s, and that against the Vietnam War. We remember organizational cooperation and some chaos, charismatic leadership and petty jealousy, legislative action and grass-roots organizing, high-level negotiations and street action. We recall an implicit specialization of organizational functions. We recollect a pluralism of strategy, if not tight coordination, and—above all—efforts to reach "new publics."

While the civil rights and even the Vietnam War movements were basically domestic, all three had an international dimension. Especially with disarmament, there must be an effective international disarmament movement. One does not exist today which has balance and no ideological domination.

The U.N. Special Session on disarmament was a fragile beginning, a respite. There are lessons from the Special Session for each one of us. The arms race, deterrence, the $120 billion Pentagon budget—these can only end in war, sooner than later. War might come by calculation or miscalculation, by accident or terrorism in 1979, by George Orwell's magic year of 1984, certainly by the end of our century. We can only prevent war by significant disarmament. Yet resistance to curbing the arms race is multiple, formidable.

We Americans, especially attentive Americans who have tried to participate in social movements in the recent past, must begin to gear into an incipient American disarmament movement. We must begin where we are—church, synagogue, temple, labor union, PTA, League of Women Voters. We must insist on talking about the Pentagon budget, about a new Proposition 14 devoted to limiting federal taxes for the Pentagon, about economic conversion of war industries, about the largely artificial threats of Cuba or the Soviet Union or any other power to our American security. We must insist the stockpiles of weapons, outside Washington or Moscow or Peking—these are the threats to our security as human beings. We must show that the decay of our cities—all cities everywhere—is a result of the use of scarce funds for weapons, not for buildings or roads. We must show that inflation in our society is the result of the waste of resources—as is unemployment. We must take disarmament from the diplomats to the people—and then place it in the hands of the diplomats again, but with new political will. That is the lesson of the U.N. Special Section to some of us Americans.●

## SOVIET DISSIDENT IZRAIL ZALMANSON FREED

### HON. ROBERT W. EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. EDGAR. Mr. Speaker, yesterday I was very much heartened by the news that Izrail Zalmanson, an imprisoned Soviet dissident and my "adopted prisoner of conscience," has been released by the Soviet Government and allowed to join his sister in Israel. This week, Mr. Zalmanson will be visiting the Philadelphia area under the auspices of the Jewish Community Relations Council of Philadelphia.

I am sure that all of the Members of the Congress join me in welcoming Mr. Zalmanson to the United States. And I especially want to commend the Jewish Community Relations Council for its tireless devotion to the cause of human freedom and its attention to the plight of Soviet Jewry.

The nations of the world voluntarily have agreed to the human rights provisions of the United Nations Charter and have signed the Universal Declaration of Human Rights. In addition, many of the nations of Europe—including the Soviet Union—are a party to the Helsinki accords and thereby have pledged to maintain freedom of emigration. During the

past few years it has become increasingly apparent to the American people that the Soviet Government is not adhering to the spirit of these international documents. This has resulted in understandable scepticism about our entering into new agreements with the Soviet Government. What good is an agreement that is not lived up to?

Let us hope that the release of Izrail Zalmanson is a good sign. By adhering to the spirit of the human rights declarations it signed, the Soviet Government will pave the way for new agreements with the United States on issues of the highest mutual interest. Global problems like hunger and arms proliferation demand the joint attention of the world's two greatest powers, but in meeting these problems the United States must never lose sight of the human element of our foreign policy, and we must never compromise on the fundamental issue of human dignity.●

## TRIBUTE TO MICHAEL J. "MIKE" ROYER

### HON. HAROLD T. JOHNSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. JOHNSON of California. Mr. Speaker, the city of Roseville and all of northern California lost one of its finest citizens last month when Michael J. "Mike" Royer passed away. During his lifetime, he gave fully and freely of his time and energies for the betterment of his community and its individual citizens. He was always full of exuberance and good will. He worked hard and diligently not only on his business enterprises, but also on his many community projects.

Mike belonged to several citizens and fraternal organizations and helped to guide them in their efforts to be of service to the community. Much of what has been accomplished in Roseville in recent years has been assisted by the efforts of Mike Royer.

As a native of his community, Mike knew it well. He was not born to fame, but through diligence and personality soon became well known. The love which he shared with his friends and fellow citizens was returned many times over. His recognition as a leader of the community came through unselfish devotion and tireless efforts toward improving life in Roseville. He was at his peak when he was tragically stricken.

Mr. Speaker, we shall miss Mike Royer in Roseville. We want his wife Kay to know that the words and deeds of Mike will long serve as an outstanding example to us all. He will not soon be forgotten.

So that my colleagues in the House can get a better understanding of how highly respected Mike was in his community, I am pleased to place in the RECORD at this point a very fine editorial from our hometown paper, the Roseville Press-Tribune:

COMMUNITY CONCERN ROYER TRADEMARK

Michael J. "Mike" Royer Jr. was a man of integrity, responsibility and concern for his community.

A native of Roseville, he had moved to Grass Valley in 1939 and returned to Roseville in 1953 to enter business and later pursue his elaborate banking career, which included the presidency of Citizens Bank for nearly six years.

During his life and business career he also found time to dedicate himself to people and his community.

During his 14 years on the Roseville Hospital board of directors he helped the medical facility expand to its present 222 beds.

He served six years on the Roseville Planning Commission to help formulate the future growth of the city.

"Mike" was an original member of the city's off-street parking commission which helped establish Roseville's current policies on parking requirements for new construction.

He helped the business community expand through his membership eight years on the Roseville Area Chamber of Commerce board of directors.

He participated in community functions as a past president and member of the Roseville (Host) Lions Club, the Elks, Masonic Temple and Shrine Club.

"Mike" loved the people of his city, and they loved him. He will always be remembered that way by those who knew him.●

## DANGER OF "RECREATIONAL" DRUGS

### HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. WHITEHURST. Mr. Speaker, recently I received a letter from one of my constituents, a former student of mine at Old Dominion University. With his permission, I am taking this opportunity of sharing his comments with my colleagues; I think that the concerns which he has expressed are shared by many people.

604 BALFOUR COURT,
*Virginia Beach, Va., July 31, 1978.*

Hon. G. WILLIAM WHITEHURST,
*281 Independence Boulevard,*
*Virginia Beach, Va.*

With all of the problems that we are faced with in this great Nation, why is it that we have to put up with the horrible examples that are being set in our Nation's Capital?

How are we to trust the decisions being made by our leaders when many of them come from minds that are unnaturally distorted by so called "recreational drugs?"

How long are we expected to stand for the ever increasing effect of taxation when we find that our tax dollars are going to pay the salaries of coke sniffers and pot heads?

How are we to expect our children to obey laws that they may not agree with when the examples of our leaders nullify any of the examples that we try to set?

I ask these questions of myself and I know the answers. . . . I cannot. I ask these questions of you and would like to hear your answers. I have watched this situation grow like a cancer in our neighborhoods, in our schools, and now in our government and can no longer stand by silently saying "to each his own."

I can identify with the pressures that are involved with high level jobs, but I cannot buy the use of drugs, legal or illegal, as a means of coping. Nature has provided too many ways to find relief from these pressures. They are there, they are easy to find, and they are mostly for free. Drugs are a cop-out. If our leaders cannot cope with the pressures then they do not belong where they are.

If I am in the majority in the way I feel then I hope that others will express themselves and that we can work together to reverse this trend. If I am in the minority, then I am afraid.

E. RICK BOWLER, III.●

## THE MIRACLE OF REGENERATION

### HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. JACOBS. Mr. Speaker, the following article speaks for itself.

THE MIRACLE OF REGENERATION: CAN HUMAN LIMBS GROW BACK?

(By Susan Schiefelbein)

Physicians may one day treat patients who have shattered limbs, crippled joints, and injured spines in a way that man never before dared to dream of: regrowing the damaged part—whole, perfect, and undiseased.

For centuries, man has watched in wonder as the salamander regenerated its severed limbs, never imagining that complicated human parts could grow back in such a way. The halt and the lame could be made whole, it seemed, only by the healing waters of Bethesda or the touch of a god incarnate. But in recent years, scientists have grown back a frog's leg from elbow to toes and a rat's leg from shoulder to the top half of the elbow—with cartilage and bone, muscle, nerves, and veins, all in awesome anatomical precision. One of the pioneers in the field, Dr. Robert Becker—chief of orthopedic surgery at the Veterans Administration Hospital in Syracuse, New York—has already applied the newly found healing mechanism to broken human bones, successfully knitting fractures that previously had failed to heal even after extensive surgical procedures. He and his colleagues have now reached the point where they can confidently predict that regeneration of human parts can and will be achieved, possibly in the next few decades.

A brave new world? Not a bit. The magic of regeneration has been with us all along, hidden in the wondrous complexity of every organism's bodyworks. These scientists are not performing miracles; they are witnessing them.

Their challenge, then, has been not so much to re-create a limb as to discover how some animals do so naturally. The chronicle of their quest reads like a detective story; for clue by clue, Becker and his colleagues have been unraveling a medical mystery that began with creation.

The tale begins with a few known biological principles about regeneration that were to serve as the departure point for their search. The way regenerative healing works has been observed, if not explained, for hundreds of years; the process still seems so magical that even the most clinical of researchers must shake his head in amazement as he watches the microscopic metamorphosis unfold. The body of every animal, from the flatworm on up the evolutionary scale, possesses primitive, undifferentiated cells that could best be described as being like raw clay. When a creature that can regenerate loses a limb,

these cells migrate to the injury, forming a mass called a blastema. Some of the mature, specialized cells at the site of the injury dedifferentiate, reverting to primitive form, and add further to the blastema. The blastema then respecialize, transforming itself into whatever types of cells are needed to replace the missing part—bone cells, cartilage cells, and so forth. Somehow, the blastema absorbs information about what to produce along the way, so that at the appropriate moment, it creates an elbow joint or a tibia or a fibula, a left leg or a right one.

The first formal paper on regeneration was written by the great Italian physiologist Luigi Spallanzani and appeared in 1768. Spallanzani's experiments uncovered the first two important clues: The younger the animal, the greater its capacity for regeneration; and the lower an animal is on the evolutionary scale, the greater its capacity for regeneration. This latter finding was especially interesting, for it provided a clue in itself. The lower orders that regenerate are biologically just as complicated as man; their parts are just as difficult to replace. The main difference is—and this was later to become a significant clue—that animals in the lower orders have comparatively more nerves in their extremities.

A third clue was buried in the writings of the late 1700s: Every time a creature is injured, an electrical charge is generated at the site of the injury. This phenomenon is called the current of injury, and it is proportionate to the severity of the wound.

It was not until some 180 years later that scientists again began to delve into the mystery of regeneration. In 1945, the biologist Meryl Rose (a retired professor of anatomy at Tulane University College of Medicine who is currently affiliated with Woods Hole Marine Biological Laboratories) amputated the forelegs of some frogs below the elbows. Thinking he could perhaps promote growth by preventing the injuries from scarring over, he bathed the stumps of the frogs' limbs in a strong salt solution. The result was startling: About half of each amputated limb regenerated, developing new bone and muscle and in some cases even showing the beginnings of digital growth. Thus Rose became the first to prove that an animal which cannot regenerate naturally can be made to do so artificially.

The next year, a Russian named Vladimirovic Polezhaev amputated frogs' legs in a similar fashion and then irritated the stumps by repeatedly jabbing them with needles. The result? Astonishingly, he regenerated about the same amount of growth that Rose had with the salt solution. It was possible that the salt not only had prevented scarring but, like the needle punctures, had actually exacerbated the injuries and thereby stimulated growth. Now there was another clue: Regeneration may somehow be connected to the severity of injury.

In the early Fifties, Marcus Singer, presently a professor of anatomy at Case Western Reserve University, in Cleveland, became the next to uncover important evidence. He transferred nerves from a frog's healthy hind legs to the stump of its foreleg; his frog also regenerated about the same amount of growth that Rose's had. Singer's contribution to the collection of clues is an almost mathematical formulation: The nerve tissue required for regeneration must constitute at least 30 percent of the total tissue at the site of the injury.

Then in 1958, a Russian named A. V. Zhirmunskii discovered that the current of injury is proportionate not just to the severity of the injury but also to the amount of nerve tissue in the area.

Becker's turn at medical detection also came in 1958. He assembled his evidence as a good detective would assemble his suspects: Injury is related to regeneration; nerve tissue is related to regeneration; and both injury and nerve tissue are related to the current of injury. Could the current of injury, Becker reasoned, thus be related to regeneration?

He measured the current of injury in a salamander's regenerating leg and in a frog's scarring stump. Sure enough, his findings seemed to support his hunch. On the day the legs were amputated, both creatures generated the same current of injury—a positive voltage. But there the similarity ended: As the frog's stump scarred over, the current of injury in its leg declined to zero; but the current of injury in the salamander's leg switched from a positive to a negative polarity and only then began to decline, reaching zero when regeneration was complete.

Becker had definitely discovered a connection between the current of injury and regeneration. In a sense, however, his discovery complicated rather than clarified the mystery. The way the current of injury worked in those limbs was simply not concurrent with the way nerves are supposed to produce electricity.

Nerve fibers have traditionally been thought to respond to stimulation in only one way: Sodium penetrates into the nerve cell and potassium leaks out, creating a chemical reaction that generates a charge called an action potential. Whatever the stimulus—a gentle touch or an injury—the action potential is exactly the same. Moreover, each nerve fiber can create only one of these potentials at a time. Becker compares the system to that of a digital computer, which transmits single impulses in rapid succession.

Herein lay Becker's problem: How could the action potential—a constant—account for the switch from positive to negative polarity that he had seen in the salamander's current of injury? How could the action potential account for the fact that the current of injury lasted many days after the stimulated nerve cells should have either died or repaired themselves and ceased their impulses? How could the action potential, which responds in the same way to every stimulus, account for the fact that creatures feel intensities of pain?

Becker guessed that in addition to its digital-computer impulses, the central nervous system can carry steady currents and potentials—in the way an analogue computer can. He further theorized that the body's analogue computer system has an input signal—could it be pain?—that triggers an output signal which switches on the healing function.

To verify his theory, Becker measured the electrical potentials of different points on the skin of humans and other animals. He found an electrical field that roughly parallels the nervous system. A disturbance in that field—such as an injury—might stimulate cells to begin repairs.

Becker's theory ran counter even to basic textbook explanations of the nervous system, and medical men let him know it. "That cells are capable of sensing and responding to levels of electrical current is hardly universally accepted," he wrote in one medical journal. But he stuck to his convictions; and today, more than a decade later, doctors are coming to accept his hypothesis. "They no longer march out of my lectures," he says. "The response has changed from complete rejection through amused disbelief to—at present—almost enthusiastic acceptance."

And no wonder. The experiments that Becker based on his unorthodox vision of the nervous system produced remarkable results. First, in 1964, Becker began to examine the spontaneous regeneration of human bone. Given the fact that bone is not well innervated, the theories about electrical stimulation would not apply—unless bone could generate its own electricity. Becker knew that bone accommodates automatically to mechanical stress. When he measured the currents around a stressed bone, he discovered that it generated a positive change on the stretched side (which dissolved some bone) and a negative charge on the other side (which built up bone and provided the necessary added support). Then Becker administered a negative charge to a mouse's broken leg bone to see if he could artificially stimulate bone growth. He did.

In 1964, Steven Smith, then a student of Meryl Rose and now an associate professor in the department of anatomy at the University of Kentucky, studied Becker's findings and got the idea of implanting a simple electrode right into the muscle tissue of the stump of a frog's leg. He soldered together a piece of platinum wire, which has a positive charge, and a piece of silver wire, which has a negative charge, and embedded the metal into the animal tissue—with the negative end at the stump—thus improvising a crude battery. It worked. He regenerated about as much growth as the Rose, Polezhaev, and Singer experiments had the decade before.

Breakthrough followed breakthrough. Becker examined his healing frog bones under a microscope and saw that the blastema around the regenerating bone was coming from a blood clot that had formed there. (A frog's red blood cells are prime candidates for blastema, for—unlike the red blood cells of mammals—they have nuclei and thus can easily divide and redifferentiate.) His next step? He had a student expose frog blood to various levels of electrical current in order to find out exactly how much of a charge is needed to turn blood cells into blastema. Days passed, then months. The student administered smaller and smaller currents to the blood (high ones either did nothing or began to cook the cells), but he saw no evidence of change. Finally, the week before the student was supposed to quit and return to his classes, he found that blood cells revert to blastema at a few billionths of an ampere.

In 1973, armed with the knowledge of how much current produces a blastema, Becker decided to brave the step from regenerating amphibians to regenerating mammals. He amputated a rat's foreleg below the shoulder and implanted the platinum-silver electrode device at the stump. Again, success—this time, the most exciting ever. The animal regenerated nerves and tissue and even formed the humerus, the upper-arm bone, complete with the rounded end that fits into the elbow joint. Other parts of the elbow joint began to take shape, including cartilage and two bony structures that Becker surmised were the forerunners of the radius and ulna bones of the lower leg. Everything about the new growth was precisely as it had been in the original limb. And all this growth took place in just three days.

But then the growth ended; for the electrode remained implanted in the shoulder tissue, while the end of the stump, where regeneration was taking place, had grown beyond the reach of its vital current.

The rat's growth, though incomplete, was nevertheless significant, particularly in one respect. The fact that the rat, whose red blood cells have no nuclei, could form a blastema—probably from bone marrow—indicated that in all probability humans could do so as well.

About this time, in London, two newborn infants lost their fingers, and the fingers regenerated naturally. The explanation, in Becker's view, probably lies with Spallanzani's early finding that the younger the creature, the better its ability to regenerate. But what was most significant about the babies' growth was that it indicated that the human body contains within it the capacity for regeneration.

Later in 1973, Smith devised an electrode that would travel with the regenerating

stump. Again he amputated a frog's leg below the elbow. With the new device, the frog's entire leg grew back.

The year 1973 marked a third triumph as well: Becker began using his findings about the body's electricity in experiments on human bone. A patient of his who had fractured his ankle two years earlier suffered from a mild diabetic condition that was interfering with the bone's ability to regenerate. The ankle had failed to mend despite two corrective operations; and the bone on both sides of the break had deteriorated. Under normal circumstances, Becker would have had to amputate the leg. Instead, he implanted an electrode into the fracture and administered the same current that he found had divided the frog's red blood cells. He waited three months, the time an ankle fracture would normally take to heal, and the fracture regenerated. A sample of the new bone showed it to be normal in every respect.

The next year, during the course of routine experiments, Becker stumbled on another clue that finally shed considerable light on his nervous system theory. With the intention of impeding growth, he and his staff broke the tibia in a rat's leg and then cut the nerve that led to the broken limb, assuming that without a nerve supply the rat's bone would heal poorly, if at all. But the fracture healed well; the only drawback was that it took twice the normal time. Perhaps the severed end of the nerve needed time to degenerate, they thought. So they cut the nerve six days before breaking the bone. To their astonishment, the bone healed in the normal amount of time, as if the nerve had never been cut at all.

What was going on? They opened up the leg, only to discover that the nerve fiber had not healed. What *had* healed was the nerve's sheath of Schwann cells—one of a dozen types of cells that make up the "perineural group"—traditionally thought to serve no purpose other than the insulation of the nerve fiber. The perineural cells in the brain were known to carry a steady current—for what reason, no one knew. It now seemed apparent that Schwann cells also carry a steady current. This was proof enough for Becker that the analogue computer system he had theorized was indeed contained in the perineural cells—cells that sheathe the entire central nervous system.

The perineural discovery is by no means the end of the tale. Experiments must still be conducted to determine if electrical regeneration is entirely safe. Could applications of electricity to the peripheral nervous system, for example, induce some sort of behavioral disorder? Or damage our cognitive powers? Every human body contains dormant cancer cells. Could an implanted electrode shock them into fatal multiplication?

Nevertheless, much of the mystery has been solved. Only the last chapter—the most exciting one—has yet to be written. It may well describe the modern world as a Shangri-La where damaged human parts are simply cut off and grown back properly. Our future may lie not with the bionic man but with the natural man.

The replacement of arthritic hip joints with Teflon parts, for example, is now a costly and not altogether satisfactory operation. The Teflon wears out. If the device is implanted in a young person, it may have to be replaced some four or five times in the course of his life. And with each hip operation, there is the risk of infection, which can be a deadly prospect. The alternative—growing a natural hip—would be safer and cheaper.

We may also someday regenerate a damaged heart. Becker has discovered that salamanders replace some 50 percent of their cardiac muscles by regeneration. And Polezhaev has cut away the scar tissue on the hearts of dogs that had suffered severe heart attacks; all of the hearts regenerated and less than 5 percent of the dogs died. We may even replace parts defective at birth, given that damaged genes do not garble the instructions given to the blastema.

Becker himself is hesitant to herald regeneration as an immediate cure for amputees. The replacement of severed parts, he says, is still pretty far off. Why not aim for more immediate uses that would be beneficial to greater numbers of people? Severing the spinal cord in man produces paraplegia because man's spinal cord does not regenerate. Becker, however, thinks that since salamanders regenerate their spinal cords, man's spinal cord could perhaps be electrically stimulated to do the same thing. It would take only a year to see whether electrical stimulation works without complications in a paraplegic dog or monkey. And if such stimulation works safely on them, it could be safely applied to humans.

The outstanding disappointment of the entire regeneration tale is that no one is conducting that experiment with paraplegic animals. Why? Money. Becker's own $100,000 grant, from the Veterans Administration, just covers staff salaries. Experiments are costly; keeping paraplegic animals in particular is frightfully expensive.

Still, it must not be forgotten that the financial problem—serious though it is—is the only laggard in regeneration's exhilarating race toward the future. It is the promise of regeneration—not the problems—on which we must focus attention. Hundreds of questions wait to be answered.

Animals that regenerate don't get cancer. If a tumor is implanted in a lizard's body, which does not regenerate, it grows to fatal proportions. But if it is implanted in the tail, which does regenerate, the tumor disappears. If we learn how to turn on regeneration (controlled growth), can we learn to turn off cancer (uncontrolled growth)?

Hormones play an important role in regeneration. A chopped-up adrenal gland when implanted in a frog will generate some growth. Moreover, if the adrenal gland is removed from a lizard, the creature will lose its ability to regenerate its tail. If the hormone prolactin is then injected, the lizard will regain its regenerative potential. It has also been hypothesized that hormones secreted during stress can cause cancer. Prolactin is secreted during stress. Is there a connection? Do carcinogens impose a stress on the body, which then triggers a hormonal release that oversensitizes the body to its own electrical forces, thus sparking wild division of cells?

If a negative charge builds up bone and a positive charge dissolves bone, could positive charges have an effect on malignancies?

If pain is the input signal needed by the brain to trigger healing, does anesthesia—the muffling of the pain signal—impede healing?

When power lines are stretched across the sea, amplifiers are put in at regular points to boost the current along. The body's electric system may run the same way, equipped with special spots along the analogue nervous system that boost the signals as they are carried to or from the brain. Becker has found that half of the traditional acupuncture points correspond to the spots in the nervous system that seem to be amplifiers of electricity. Could acupuncture simply involve the insertion of a metal needle into one of the amplifiers, short-circuiting the pain signal so that it never reaches the brain?

Does the body's sensitivity to electricity explain why reversals in the earth's magnetic field are related to the extinction of certain animals?

When one electrical field is imposed on another, the currents are altered. When one human being approaches another, do their biological electric systems overlap? Is this a scientific explanation for the "psychic" mystery of ESP?

The characteristics of the analogue nervous system are such that it should be influenced by external electrical fields. Becker has already found experimental evidence that would indicate that electrical fields such as those produced by power transmission lines produce stress in animals—with consequent physical effects that are shocking indeed to the layman. What is the relation between this unseen electrical pollution and human stress?

The possibilities seem infinite. Each is like a silver key. Which one will open the door to a new world? ●

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## CIVIL SERVICE REFORM ACT

### HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. STEERS. Mr. Speaker, for the benefit of my colleagues, I am inserting amendments, and accompanying explanations, to the civil service reform bill expected to be considered by the House of Representatives tomorrow.

**Expansion of Office of Personnel Management to Three Members**

AMENDMENT TO H.R. 11280 OFFERED BY MR. STEERS

Page 144 strike out line 16 and all that follows down through line 19 on page 145 and insert in lieu thereof the following:

"§ 1102. Appointment of members of the Office of Personnel Management

"The Office of Personnel Management is composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate, not more than two of whom may be adherents of the same political party. No Commissioner of the Office of Personnel Management may hold another office or position in the Government of the United States."

"§ 1103. Term of office; filling vacancies; removal; quorum

"(a) The term of office of each Commissioner of the Office of Personnel Management is four years.

"(b) Any Commissioner appointed to fill a vacancy occurring before the end of a term of office of his predecessors serves for the remainder of that term.

"(c) Any Commissioner appointed for a four-year term may be re-appointed to any following term.

"(d) Any Commissioner may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(e) Except as otherwise provided in this title, the Office of Personnel Management shall act upon majority vote of those members present, and any two members present shall constitute a quorum for the transaction of business of the Board.

"§ 1104. Chairman; Vice Chairman

"(a) The President shall from time to time designate one of the Commissioners of the Office of Personnel Management as the Chairman of the Office of Personnel Management. The Chairman is the chief executive and administrative officer of the Office of Personnel Management.

"(b) The President shall from time to time designate one of the members of the Office of Personnel Management as Vice Chairman of the Office of Personnel Management. During the absence or disability of the

Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1105. Functions of the office.

"The following functions are vested in the Commissioners of the Office of Personnel Management, and shall be performed by the Commissioners, or by such employees of the Office as the Commissioners designate:"

Page 146, lines 23, 24, and 25; page 147, line 25; and page 148, line 1 strike out "Director" and insert in lieu thereof "Commissioner".

Redesignate the following provision (and references thereto) accordingly.

EXPLANATION

While I believe the Civil Service should be reformed I have serious reservations about whether this measure, H.R. 11280, is the appropriate vehicle.

I am most concerned about the concentration of personnel authority in the hands of one individual, the Director of the Office of Personnel Management. In my opinion this would politicize the Federal service and destroy the merit system which has served the American people well for nearly 100 years.

Placing governmentwide personnel authority in one Director takes the decisionmaking process out of the public's eye. The Director would merely have to make a proposal affecting governmentwide personnel systems to himself, debate it by himself, and make a unilateral decision whether to implement the proposal. Thus, there is no check on arbitrary and capricious actions by a Director.

My amendment would preserve the impartial administration of the Civil Service system. While it would not alter the split of the Civil Service Commission's responsibilities between the Office of Personnel Management and Merit System Protection Board, it would vest the powers of the Office of Personnel Management in three Commissioners. By so doing, it will provide for checks and balances against misuse of authority.

As a Commission, the decisionmaking process will be opened to the public and all decisions would require a majority vote. Moreover, it is a bipartisan Commission, therefore, it will act as a check against an incumbent President using the authority of the Office of Personnel Management for personal political reasons.

While no system is "fail safe," as the Watergate era demonstrated, I believe the public would be better served by an open system which decentralizes authority instead of the system proposed in this bill.

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[Computation of Certain Annuities]

AMENDMENTS TO H.R. 11280 AS REPORTED

OFFERED BY MR. STEERS

Page 200, line 73 after "308." insert "(a)".

Page 200, after line 20, insert the following new subsection:

(b)(1) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) The annuity of an employee retiring under this subchapter with less than 20 years, but at least 5 years of service as a law enforcement officer or firefighter, or any combination thereof, is computed under subsection (a) of this section, except that the annuity of such employee is computed with respect to the service of such employee as a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½ percent of his average pay by the years of that service."

(2) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

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[Computation of Certain Annuities]

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OFFERED BY MR. STEERS

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(2) Section 8339(h) of such title is amended by striking out "section 8336(d)" and inserting "section 8336(d)(1).".

(3) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

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[Pay Rates]

Amendment: H.R. 11280

OFFERED BY MR. STEERS

Page 148 strike out lines 12 through 24 and insert in lieu thereof the following:

(b)(1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (5).".

Page 165 strike out line 24 and all that follows down through line 12 on Page 166 and insert the following:

(C)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Systems Protection Board."

(3)(A) Paragraph (17) of section 5314 of such title is hereby repealed.

EXPLANATION

The purpose of this amendment is to provide Federal Law enforcement and firefighting personnel with less than 20 years service, but at least five, a special 2½ percent retirement computation formula in recognition of the special hazardous duty service in which they perform. Current Law (P.L. 93-530) already extends this credit to those with 20 or more years of service, but failed to provide similar credit to those who serve less than 20 years.

This amendment would correct this inequity by extending the special, hazardous duty retirement rate to all Federal law enforcement and firefighting personnel who retire with between 5 and 20 years of service. A similar amendment has been accepted by the Senate.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

Page 300, line 6, strike out "Senate" and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule,".

Page 347, strike out lines 5 through 8 and insert in lieu thereof the following:

(e) Section 5316 of title 5, United States Code, is amended by adding at the end thereof of the following new paragraph:

"(147) Members, Federal Labor Relations Authority (2).".

EXPLANATION

The purpose of this amendment is to lower the level of compensation of officers and members of the Office of Personnel Management, Merit System Protection Board and the Federal Labor Relations Authority.

Both H.R. 11280 and Reorganization Plan Number 2 call for the creation of a number of new top-level appointed positions in the civil service system; increasing the number of top level management positions in the system from 3 to 11. Of these positions, the lowest salary level—for those of the five Associate Directors of the MSPB, Vice Chairman of the MSPB, Member of the MSPB, and Special Counsel of the MSPB—is fixed at the rate of compensation of Executive level IV, or $50,000 each. In addition, the Director of the OPM is compensated at the rate of Executive level II, $57,500; both the OPM Deputy Director and the Special Counsel of the MSPB are compensated at Executive level III are, $52,500. These positions will add $417,500 to the salary outlays for top level appointees.

In addition, the creation of the Federal Labor Relations Authority, will add three new highly paid positions: The Chairman, at Executive level II, $52,500 and two Members, at Executive level IV, $50,000.

In light of the President's recent proposal to put a cap on Federal pay, it is appropriate that we follow his suit and reduce the levels of compensation for these new positions.●

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## NOISY AIRCRAFT BILL: THE OPPOSITION GROWS NOISIER

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## HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. VANIK. Mr. Speaker, as the implications of the Airport and Aircraft Noise Reduction Act become clear to everyone, the opposition to title III, the so-called Noisy Aircraft Revenue and Credit Act, has grown noisier and more outspoken. In an editorial, entitled "Airline Sound and Fury," the New York Times on August 9 lambasted the noisy aircraft provisions as meaningless and setting a dangerous precedent for other "messy" industries. The editorial follows:

AIRLINE SOUND AND FURY

A few months ago it appeared that the quid pro quo for airline deregulation legislation would be Fedeal money to help the airlines meet new aircraft noise standards. Only by supporting noise control subsidies could the Administration muster the votes in the House to open air routes to new competitors and allow carriers to set their own fares. Congressional ardor for noise control funds has, how-

ever, cooled somewhat with reports of fat airline profits, and the deregulation effort is now apparently strong enough to stand on its own.

That is welcome. Airline deregulation is a fine first step towards reducing the inflationary role of government in private markets. The connection between deregulation and noise control has always been political, not logical. It is now up to the House to look hard at the dubious case for noise control subsidies. The subsidy program now contemplated would have very little impact on the airlines' ability to finance quiet aircraft. But it would set an unfortunate precedent for other industries to look first to the Federal Government for cash to clean up pollution.

The key provision of the House plan would divert a quarter of the revenues from the current 8 percent domestic ticket tax now going to the airport construction trust fund and use it to pay for quieter aircraft engines. No additional tax would be needed to make up the revenue loss to the trust fund; it now runs a substantial surplus. The airlines say they must have the Federal money because their bill for the new equipment will be enormous in coming years, and their ability to raise private capital will be limited by their large existing debts and poor profit record.

Some critics of the proposals dispute the industry's claims, citing its fine profits in recent months. But there is really no need to decide here who is right, since the program is unlikely to change airline financing for better or worse. Industry opinion notwithstanding, the competitive market in which the airlines operate would prevent them from using the subsidy to increase total revenues. It might temporarily increase revenues. But competition among the carriers—competition informally encouraged by the Government, and soon to be required by law—should insure that passengers get the tax money back. Any excess profits will be returned in the form of somewhat lower fares than could otherwise be expected.

The subsidy, then, is no subsidy at all: The effect would be virtually the same if the ticket tax were simply reduced from 8 percent to 6 percent and competition continued to determine ticket prices. That, ironically, is just what alternative legislation proposed by Congressman Charles Vanik—and bitterly opposed by the airlines—would do.

Since it wouldn't really change anything, cynics argue that Congress might as well make the airlines happy by approving the bill. But this route has its dangers. The program generates the appearance, if not the reality, of a Government bailout for one industry's special environmental program. And, as such, it could pave the way psychologically for special pleadings by other industries. The aircraft noise subsidy program is, in itself, neither good nor bad: It is meaningless. Competition among the carriers should nullify its economic impact. But that is certainly not sufficient reason to commit the Federal Government symbolically to a policy of cleaning up other peoples' messes.

I hope that my colleagues take these arguments into account when the closed rule for title III comes to the floor early next week. I ask you to vote against the previous question on the closed rule so that an open rule may be considered. This would allow amendments that would reduce the airline passenger tax and prevent the airlines from getting an investment tax credit on the Treasury giveaway.

We cannot afford to let a closed rule open the doors of the Treasury so that the airlines can airlift $3 billion from the Federal airport and airway trust fund.●

## HOPE TO A DIVIDED LEBANON

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. DERWINSKI. Mr. Speaker, I am pleased to direct the attention of the Members to the question and answer interview in this afternoon's Washington Star, featuring the Honorable Charles Malik, one of the world's most respected statesmen. Dr. Malik, former foreign minister of Lebanon who became the first Arab President of the United Nations General Assembly, expresses his concern with the fate of Lebanon's fragmentation and the threat to its Christian community.

In view of the overwhelming adoption by the House of my amendment to suspend aid to Syria for the fiscal year 1979, and the interest in a similar amendment pending in the other body, I insert the Q. & A., column so that the Members might appreciate the grave problems that beset Lebanon:

EX-LEBANESE AIDE DESCRIBES HOPES FOR HIS DIVIDED LAND

Question: What is the problem in Lebanon that has seen the country's central authority virtually evaporate in the last two years?

Malik: The problem of Lebanon is the breakdown of practically all its institutions: governmental, military, civil, economic, educational and judicial. Lebanon has been undergoing a tremendous upheaval for three years as a result of many internal and external factors. The question, therefore, that faces the Lebanese people today is how to reconstitute themselves in such a manner as to have a stable, strong, effective government and at the same time how to preserve their human rights and fundamental freedoms which they deeply cherish.

Q: How do you explain the fragmentation of the Christian community itself, the feuds within the Christian community and the feuds between the Christian community and the Palestinians?

A. Lebanon is a mosaic of diverse communities and cultures and interests. In a mosaic like this, when the central quality weakens, the difference among the components in the mosaic would naturally become more accentuated, with the result that hitherto hidden or covered up rivalries and competitions and differing ambitions would come to the surface and make themselves more felt. And that is more or less what's happened in Lebanon in recent years. The feuds among the Christians are all internal and a result of rivalries among themselves as to leadership and position in the country. I do not think you'd find any difference among all the feuding Christian factions of Lebanon about whether they would want Lebanon to lose its independence or its freedom or to become enslaved or to become assimilated into any other kind of society than its own proper society.

Q. How have external factors affected the situation?

A: External factors have accentuated the situation: the presence of massive armed Palestinians in the country; the interests of many Middle Eastern countries in Lebanon itself, either to settle old accounts or accounts among themselves on Lebanese soil, and the pouring in of lots of money to help certain elements in the country fight other elements in the country.

Q: Are people like Pierre Gemayel (a leader of the Christian community) looking for an integrated Lebanon? Or are they looking for a feudatory of their own without interference from any external authority, including Lebanese?

A: Your question is clearly a loaded question. The direct answer to it is that the people to whom you refer and by whom you call by certain derogatory names are very honest people. They will accept nothing short of a unified Lebanon. They are not looking for what you call feudatory interests. They are looking only for the interests of the Lebanese people as a whole. They do not accept any diminution in the fundamental freedoms and rights and open character of Lebanese society. It's for the preservation of these fundamental values in Lebanon that they are fighting and for nothing else.

Q: How do you view the work of the Syrian peacekeeping forces so far in Lebanon? Do you think they have helped or hurt the situation?

A: They did a very good job at the beginning. They stopped the carnage of the Lebanese people and especially the Lebanese Christians who were very fond of them and they fraternized with them. Also some of the people, some of the leaders to whom you referred did go to Damascus and see President (Hafez) Assad several times and they always came back and told us they found him a very honorable, understanding, well-intentioned leader who wants only good for Lebanon and who will not tolerate any injustice inflicted upon the Lebanese people. I heard that from these leaders many times and I fully believe them.

Q: Has the situation with Syria changed recently?

A: Something happened about eight or nine months ago which appears to have changed the policy of Syria. I cannot attribute that change to a change in the mind of President Assad because I do not know. Last month the Syrian forces which are the overwhelming majority of the Arab peacekeeping forces, shelled, bombed and virtually destroyed the three or four most important Christian suburbs of Beirut. You hear at times pretexts given for that strange change such as they were provoked into it, they were shot at by others. No conceivable pretext can justify that wholesale bombing, shelling and firing and burning and many incidents of looting. About 300,000 peaceful Christian civilians had to flee to the mountains and live as refugees in their own country.

Q: Let's turn to the Israeli policy on Lebanon, which was characterized by reprisal raids recently, then an invasion and then withdrawal. They maintain a strong position and strong ties to the Christian community in Lebanon. What do you make of Israeli policy as it affects Lebanon, a united Lebanon?

A: So far as I know there have been no Israeli raids except on Palestinian camps. And again as far as I know these raids almost always occur as reprisals for attacks publicly done by Palestinian elements. They did invade a considerable part of south Lebanon. And as far as I know they have withdrawn now completely from that part and United Nations forces, by decision of the Security Council, were sent to the south to replace the Israelis.

Q: Isn't it true that what has taken the place of the Israelis in the south are the armed Christian groups who will not permit a UN peacekeeping force from entering the south?

A: I was not present at the United Nations debate nor did I take any part in behind-the-scenes negotiations. But I read in the papers and heard on the radio that one of the conditions Israel insisted on was that the UN would not allow the Palestinians to go back to the south of Lebanon. I also hear that the United Nations forces have not been able to prevent Palestinians from going into the south of Lebanon. I have some figures that literally thousands of them have gone back and are now going back

with the knowledge of some United Nations forces and are receiving lots of arms.

Q: Obviously the problem in Lebanon inflicts the most pain on the Lebanese people with the chaos and the collapse of society and the danger to life itself. But it's not a problem only for Lebanon, because a weak and divided Lebanon invites foreign involvement and that in turn can lead to a war which can draw in the great powers. In view of that, what do you think should be done by the great powers or by anybody in the area now?

A: My view is that we should first of all have very clear in our minds what kind of values may be destroyed if the problem of Lebanon is allowed to take its own course without proper help, sympathetic help, from outside. First, the free and open and liberal and pluralist society of Lebanon could be destroyed. And this free and plural society is practically the only society of its kind in the whole earth. The second value that is likely to be destroyed is the only remaining free, secure and deeply rooted Christian community, and even more than that, a community whose traditions go back uninterrupted for 2,000 years. This would endanger our being overwhelmed and becoming extinct or at least being reduced to a second-class community. These two fundamental values are the values which are at stake in the agony of Lebanon today.

Q: What do you think specifically a concert of states can do?

A: I think there are very urgent things, intermediate things and long-range things. The most urgent thing is for the international community—including the United States—to use its good offices to make sure that the present lull, the present cease-fire holds for good. The second thing is an honorable withdrawal of the Syrian forces from the Christian area. Third, something must be done to facilitate the return of the 300,000 Christian refugees and make sure their homes are still livable and they can still live a decent life in them. Fourth, some consideration on all kinds of levels should be given to how long the Syrian army could stay in Lebanon. When consideration is given to that aspect of the situation then, of course, arises the problem of what alternative you ought to have to replace the Syrian peacekeeping force if the Lebanese army in the meantime has not been strengthened to take care of the security of the country by itself. I'm not prepared at all to say there's no solution. On the contrary, one may make a number of suggestions about how it may be solved, provided there is initial renewal to solve the problem.

Q: What about the presence of the Palestinians on Lebanese soil?

A: The question of 50,000 or 60,000 heavily armed Palestinians is priority five or six. It is inconceivable that there's going to be peace in Lebanon of any tolerable kind with the presence on Lebanese soil of about 100,000 armed forces, Syrian and Palestinian. That problem has to be faced and we cannot simply put it aside and say that all will go well by sheer good will and rhetoric. Nor will all go well by force, namely by intimidation and all this destruction of the basic freedoms of the Lebanese which they cherish more than life itself.

Q: What other problems need to be solved?

A: You have economic reconstruction. You have communal political reconstruction, you have psychological problems to be faced to heal the rifts between the diverse segments of the population. You have the problem of Lebanon's relations with its neighbors, the Syrians, whom we do not want to be an enemy at all, and with the rest of the Arab world. You have the problem also of the relations of Lebanon with the rest of the world.●

## SOVIET INVASION OF CZECHOSLOVAKIA

### HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, August 17, 1978*

● Mr. PICKLE. Mr. Speaker, the question of freedom is unsolved in many aspects. Man deserves the freedom to live in a free society. Man's material well being is sick without spiritual well being.

No people in our world's history have a greater claim to love of freedom than the Czechs. For in this land, the dynamic forces of free thought, intellectual attainment, and economic development have long flourished. This is so because the Czechs have, as a people, honored freedom and human dignity.

The only fault with the Czechs and Slovaks is they are far too few in number, and occupy a space of our globe too small to command great power.

And since this relatively small number of people lies in the path of one or another great superpower, the superpowers seem to have no qualm about stepping on Czechoslovakia's territory.

This is certainly the case with the infamous Soviet invasion of Czechoslovakia in 1968.

On the 10th anniversary of this tragic turn of events, it is worthwhile to note this Soviet action illustrates the horrors of communism.

Marxism, as practiced by the Soviet Union, at least, means no free speech and no free thoughts. Because it is the nature of Czechs to speak and think freely, Soviet Marxism had to send tanks and soldiers to stamp out, not guns or weapons, but free expression and reform.

We should not forget this.

Mr. Speaker, in my congressional district there are many, many Czechs. They are not refugees from the 1968 horror, or the 1948 horror, nor the 1939 horror, but the uprisings of 1848.

Seeking political freedoms, these 19th century immigrants came into Texas to carve a new life while maintaining their love of freedom. This they have done, and I know that I speak with them in condemning the Soviet "Day of Shame" of 1968.

The Czechs of my district—honorable, hard-working, respected citizens—have a great love for the "old country" of Moravia and Bohemia. They are pained to observe that the present Czechslovakia is under the dominance of the Soviets by armed pressure and force. Today, they still carry on the customs of the old country. They do not want to make matters worse on the present citizens of Czechoslovakia, but they yearn for a return of democracy to their previous country. During all these years, they are quietly and painfully regretful that there is little freedom in the old country. All this was brought on by the invasion of the Soviets. I am convinced there is a deep-rooted resentment over this invasion. Someday it will erupt again. Someday the old democracy will come again. And the sooner the better.●

## AIRPORT NOISE AND YOUR HEALTH

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. ANDERSON of California. Mr. Speaker, in recent years, numerous studies have demonstrated the harmful effects of constant exposure to aircraft noise. Investigations in Los Angeles, Japan, and England have linked constant exposure to jet noise to a rise in nervous breakdowns and birth defects.

While in my home district during our just completed recess, the results of a new University of California study were released. It reveals alarming evidence that links exposure to aircraft noise to higher death rates. Prof. William Meecham, the director of the study, compared mortality statistics for two areas similar in population, ethnic makeup and economic levels. The results indicated a death rate 19 percent higher in airport neighborhoods. Professor Meecham stated that the statistical odds against such differences occurring by sheer accident are 1,000 to 1.

As we near consideration of legislation which addresses the growing problem of aircraft noise, the Airport and Aircraft Noise Reduction Act, it seems most appropriate to share with you a recent Los Angeles Times news article which contains the details of Professor Meecham's study:

[From the Los Angeles Times, Aug. 25, 1978]

STUDY LINKS AIRPORT NOISE, INCREASE IN DEATH RATES—MORTALITY FIGURES UP 19 PERCENT FOR THOSE LIVING BENEATH LANDING PATTERNS AT L.A. AIRPORT

(By Richard C. Paddock)

A UCLA study of two communities near Los Angeles International Airport revealed a link between the constant noise of jet aircraft and higher death rates, it was disclosed Thursday.

The study, conducted by William Meecham, a professor of engineering specializing in aeroacoustics, showed that the death rate in neighborhoods directly beneath the landing pattern of jet aircraft and within three miles of the airport was 19 percent higher than among residents six miles from the airport.

"The evidence seems to clearly indicate a substantial increase in mortality rates for areas nearest the airport," Meecham said in a preliminary report on his investigation.

"It lends added weight to the results of earlier studies in Los Angeles, England and Japan linking constant exposure to jet noise to a rise in nervous breakdowns and birth defects," he said.

Another UCLA study released last February showed that children born to parents living under the airport landing pattern are much more likely to suffer birth defects such as harelips, cleft palates, anencephaly (missing brain) and spina bifida (spinal chord defect).

That study showed that in a test area next to Los Angeles International Airport—the same test area of Meecham's study—the rate of abnormal births was 61 percent higher among blacks, and 37 percent higher among whites, than in the rest of Los Angeles County from 1970 to 1972.

F. Nowell Jones, a UCLA psychology professor, and Judy Tauscher of UCLA's school of public health, who conducted that study,

speculated that the cause of the higher birth defect rate was stress suffered by pregnant women repeatedly exposed to the noise of jet aircraft. Another study conducted in 1974 showed that noise can produce stress by causing disturbances in sleep patterns.

According to Meecham's two-year study, residents living in 1971 and 1972 within three miles of the Los Angeles airport suffered more deaths due to stroke, heart-disease and cirrhosis of the liver than residents of an area six miles from the airport.

Meecham will present a full report to local citizens groups, aviation industry experts and public officials at a September UCLA extension conference open to the public.

For the study, Meecham and graduate student Neil Shaw compared mortality statistics for two areas similar in population, ethnic makeup and economic levels.

In the area closest to the airport, a section of Lennox and Englewood bounded by Aviation Blvd., Arbor Vitae St., Vermont Ave., and Imperial Highway, the sound level was measured at 90 decibels and higher.

About six miles from the airport, in the Carson-Gardena area bounded by Crenshaw Blvd., Rosecrans Ave., Central Ave., Victoria St., 190th St. and the San Diego Freeway, the noise level ranged from 45 to 50 decibels.

Since decibels are measured on a logarithmic scale, noise of 90 decibels is 10,000 times greater than 50 decibels.

Prolonged exposure to noise of 90 decibels already is considered by experts to be hazardous to mental and physical health, according to Meecham's report.

In the area nearer the airport, the researchers found that 890 residents died during the two-year period compared to 670 in the more distant area. Adjusting for some differences in population, Meecham said, the death rate is 9 percent higher in the area directly under the jet landing pattern.

"By standard statistical measures, the odds against such differences occurring by sheer accident are 1,000 to 1," Meecham said.

Deaths from cirrhosis of the liver—generally linked to alcoholism—were 140 percent greater, in the noisier neighborhood than in the quieter one.

Deaths from stroke and heart disease were 39 percent greater in the area closer to the airport, Meecham said.

On Sept. 21 and 22, Mecham will conduct a conference at UCLA entitled "Aircraft Noise and the Community." Officials from the Federal Aviation Administration, the California Office of Noise Abatement and the Environmental Protection Agency will participate along with representatives from the aviation industry and citizens groups from Santa Monica, Brentwood, and Pacific Palisades.

"Previous conferences have been largely directed toward government agencies and industry experts," Meecham said "This program attempts to bring citizens groups and individuals into the discussion."●

## U.S. NEWS & WORLD REPORT OPPOSES CARTER CIVIL SERVICE PROPOSALS

### HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. STEERS. Mr. Speaker, for the benefit of Members of the House of Representatives, I am providing a copy of an editorial in the August 28, 1978, edition of U.S. News & World Report. The points made by the editorial writer are indeed cogent as we consider H.R. 11280, the bill that would ostensibly "reform" the civil service system. Mr. Marvin Stone, the writer in question, urges that Congress send the President's task force back to the drawing board. I quite agree.

The article follows:

A GOOD TRY—NOT GOOD ENOUGH
(By Marvin Stone)

President Carter's plan to reform the civil service has generated widespread confusion. Administration arguments for the proposal have provided neither clarity nor reassurance.

Expressed the simplest way, the plan is to bring the bureaucracy under tighter rein by splitting the Civil Service Commission into two agencies, one for hiring and one for employee protection; to set up a corps of 9,200 super-executives, and to make it easier to fire people.

The splitting of the Commission is already in law, since Congress did not veto it. The rest requires approval, and it now is on its way through the House and Senate. This vehicle carries hazardous cargo.

Drumming up some support has been easy, because the images of the greedy bureaucrat and the lazy clerk are well estabilshed in the public mind. These slackers, be they few or many, have got to shape up or ship out. But does this mean we should accept a remedy that would cost the security of honest and industrious workers and open the way to a politically dominated service? The American people have a right to a civil service that can do its work undisturbed by political campaigns or partisan manipulation.

No one alleges that Jimmy Carter lusts after power. But his reforms would enable any future political dictator to reach down through the levels and take the whole organization captive. Members of the Senior Executive Service would work close to the administration. In turn 72,500 intermediate managers, the GS–13s, 14s and 15s, bereft of automatic raises, would depend largely on SES review for their rewards. And the lower grades, finding appeal more difficult than at present, would have to please the middle managers in whatever shades of political control the managers transmit.

Safeguards are prescribed, indeed. If a lower-echelon employe believed he had been fired through a "prohibited practice," he could take his plea to the Merit Systems Protection Board (appointed by the President), where the handling of his case would be determined to an extent by the special counsel (appointed by the President). There he would have trouble proving, for instance, that a charge of being obstructive or unproductive or hard to work with resulted from a rejection of political pressure. He could appeal further to one or another federal court, where the cost might well be prohibitive.

Members of the House Civil Service Committee moved the burden of proof in appeals from the employe back to the management—an improvement, but not enough to overcome the deficiencies of the proposed system. They knocked out the administration's bid to hire from among the first seven applicants instead of the first three as now, a proposed shift that would have oddly belied the drive for efficiency—but would have made it easier to take care of a politically preferable job seeker.

As for the amendment in the House to weaken the Hatch Act, that's poison.

Finally, the committee adopted Representative Gladys Spellman's amendment to confine the Senior Executive Service to a two-year tryout. Two years might indicate whether the system would work administratively, but could not begin to test creeping corruption.

We agree that civil service must be reformed. As pointed out by Representative Quayle of Indiana, the federal bureaucracy has grown to consume 22 percent of the gross national product. Its numbers have ballooned by 462 percent in the last 48 years, while the population has increased only 71 percent. Anyone who has worked close to this monstrous bureaucracy has seen individuals who loaf the day out, or whole units with nothing to do.

There has got to be a way to stop the outrageous waste, but the current plan is not the answer. It is risky beyond repair. Congress should send the President's task force back to the drawing board.●

## THE LAW OF THE SEA CONFERENCE AND DEEP SEABED MINING LEGISLATION

### HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. GILMAN. Mr. Speaker, as a congressional adviser to the U.S. Delegation to the Law of the Sea Conference, I recently attended the Conference's current resumed seventh session in New York at the United Nations.

This resumed session commenced on August 21, 1978 and is scheduled to conclude on September 15, 1978. During this period the delegations from 150 nations are endeavoring to secure an equitable and comprehensive sea law treaty.

While progress on key issues had been made when the Conference convened in Geneva this past spring, several major topics continue to prove contentious. One such issue is deep seabed mining: the management and recovery of resources found on the sea floor and subsoil thereof, and the coordination of such activities undertaken by an international organization and individual states.

During the current session in New York, on August 28, 1978, both Ambassador Satya N. Nandan of Fiji, chairman of the group of 77, a group of 119 developing countries at the conference, and Ambassador Elliot Richardson, head of the U.S. delegation to the Conference, discussed deep seabed mining within the context of unilateral legislation pertaining to this activity being considered by individual States. The House, on July 26, 1978, passed such legislation, H.R. 3350, while the Senate has not as yet acted on this bill.

So that my colleagues may benefit from the observations of Ambassador Nandan and Ambassador Richardson on the relationship between such legislation and the Conference's efforts to conclude an agreement on seabed mining, I insert the remarks of both Ambassador Nandan and Ambassador Richardson at this point in the RECORD:

STATEMENT BY AMBASSADOR SATYA N. NANDAN

Mr. President, as the Chairman of the Group of 77, a group of 119 developing countries at this Conference, I would like to refer to a matter which though apparently extraneous to the Conference must be of grave concern for all who wish to see this Conference successfully concluded. The matter I wish to refer to is the move for unilateral

legislation relating to the exploitation of the resources of the deep seabed, being enacted or contemplated in several industrialized countries.

Such a move, coming at a time when this Conference has virtually concluded 90 percent of its difficult and intricate work for a global treaty affecting the ocean space as a whole, must be of concern to all who seek to regulate the future relations in the oceans in an orderly and peaceful manner through a universally agreed treaty. Those involved in these negotiations must know that this Conference has been making a steady progress towards a comprehensive treaty which will deal with a broad spectrum of international law of the sea from territorial jurisdiction of States to deep seabed mining beyond national jurisdiction. A task of such magnitude which involves a multitude of national interests and often conflicting national and international interests cannot be negotiated overnight. Nor can the negotiations for a multilateral treaty encompassing such a vast area of international law be compared with the relatively simpler processes of national legislations. If our progress appears to be slow it is to ensure that our agreements are universally respected and durable.

It is in this perspective that I wish to express here the view of the Group of 77 on the question of unilateral legislations affecting the resources in the area of seabed beyond national jurisdiction.

The Group considers such legislation as being contrary to the Declaration of Principles contained in General Assembly Resolution 2749 (XXV) and the declaration for a moratorium on seabed exploration and exploitation contained in General Assembly Resolution 2574 D (XXIV).

In the Declaration of Principles, the international community has solemnly proclaimed the deep seabed area as well as its resources as the Common Heritage of Mankind and as such it is not subject to appropriation or claim or exercise of sovereignty or sovereign rights. It has further declared that—

"All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international regime to be established."

The Moratorium Resolution is categorical in its declaration that pending the establishment of the international regime, States are bound to refrain from all activites of exploitation of the resources of the deep seabed and no claim to any part of it or its resources shall be recognized.

It is the position of the Group of 77 that such unilateral legislation relating to the resources beyond national jurisdiction have no validity in international law and activities conducted thereunder cannot be purported to acquire any legal status.

It is incomprehensible that at a time when the Conference is at an advanced stage in negotiating an internationally agreed regime for the exploration and exploitation of the resources of the deep seabed, States engaged in those negotiations should contemplate unilateral actions which would threaten to jeopardize the pursuit of the negotiations and indeed the successful conclusion of the Conference itself. These States must be aware of the consequences of their actions.

Mr. President, there can be no substitute to a universally agreed treaty for a rational and equitable development of the resources of the deep seabed area in the interest of the world community as a whole. Any other solution is not only selfish but short-sighted and may lead to irreparable consequences.

All of us have more important interests at stake at this Conference than only the manganese nodules and we should be careful not to jeopardize the overall agreement through hasty and short-sighted actions.

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STATEMENT BY AMBASSADOR ELLIOT L. RICHARDSON

Mr. President:

I have listened with respect to the views expressed by the distinguished representative of Fiji on behalf of the Group of 77, and I do not wish to precipitate a lengthy debate on the subject of the deep seabed mining legislation. However, in my view and in the view of the other countries whose enterprises are now in the process of developing the means of recovering hard minerals from the deep seabed, the concept of the common heritage of mankind, which we supported in 1970 and to which we still subscribe, has never meant that these resources must remain unexploited in the absence of an internationally agreed seabeds regime. I would have thought this point would have been made clear by our concurrent opposition to the moratorium resolution, which was not adopted by consensus.

In our view, states and their nationals have the legal right to use the mineral resources of the deep seabed beyond national jurisdiction. This is a freedom of the high seas which has not been abridged either by any treaty or by customary international law. Although we are all engaged in the process of developing a treaty, this process has proved long and difficult, and its successful conclusion is not yet at hand.

I understand why the Group of 77 would prefer that we agree to defer any mining until an agreed treaty can be concluded, but I trust the Group will also understand why we cannot responsibly do that in face of the world's long-range need for the minerals and the more immediate need to proceed with the research and development that will in turn lead to the beginning of commercial mining. Far from jeopardizing the Conference, seabed mining legislation should facilitate the early conclusion of a generally acceptable Law of the Sea Treaty by dispelling any impression that the governments of the countries preparing to engage in such mining can be induced to acquiesce in an otherwise unacceptable treaty because that is the only way to obtain the minerals.

Mr. President, so far as the US is concerned, the goal of my Government remains the earliest possible conclusion of a generally acceptable Law of the Sea Treaty, and I believe the legislation now before the Congress to be entirely compatible with the principles on which the eventual treaty will be founded:

It recognizes that the resources of the seabed are the common heritage of mankind.

It requires that revenues be set aside for developing countries.

It requires stringent standards for the protection of the marine environment.

It does not assert any right of sovereignty or sovereign rights over seabed mine-sites.

It will be superseded whenever a law of the sea treaty takes effect with regard to the United States.

It does not declare or imply any intention that American seabed mining companies should remain outside the jurisdiction of an International Seabed Authority under such a treaty.

Finally, Mr. President, under the legislation that has just emerged from the Senate Committee on Foreign Relations, no permits for commercial recovery of hard mineral resources could in any case be issued for several years. This will allow ample time for our negotiations to conclude, thus assuring that seabed resources will be developed only under the international regime we are striving to achieve.

Thank you, Mr. President.●

## THE DESTRUCTION OF THE MLAWA JEWISH COMMUNITY

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## HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. BLANCHARD. Mr. Speaker, as we all know, World War II was one of the most saddening periods of history for Jewish people around the world. The cruel atrocities committed upon the Jewish people will always remain an unforgettable part of history.

The Jewish people have endured this holocaust and have emerged still a strong and vibrant people. However, there remain many who may not be fully aware of what was actually taking place in countless Jewish villages across Germany and in other nations during World War II.

One such village was a small town called Mlawa. The injustices which took place in this Jewish community are a painful reminder of what was taking place in other Jewish communities across Europe. Mr. Allen A. Warsen, from Oak Park, Mich., is the founder and honorary president of the Jewish Historical Society of Michigan. He is also a book reviewer for the Detroit Jewish News and has reviewed a great deal of holocaust literature. He has translated and published a booklet entitled "The Destruction of the Mlawa Jewish Community," which describes the atrocities that the innocent citizens of Mlawa suffered through during World War II. Mr. Warsen has sent me a copy of this booklet, and I would like to share this account with my colleagues:

THE DESTRUCTION OF THE MLAWA JEWISH COMMUNITY

The town of Mlawa is situated at the former border of Prussia. There, where two cultures came together, generations of Jews were raised.

The enterprising Jews, whose commercial activities reached as far as Konigsberg, and whose life and existence resembled a ship on the great waterways of the world, at home, laid the foundations of Torah learning, and immersed themselves in the practice of Jewish traditions.

Even the ordinary Mlawa Jews, who all week long were busy earning a living, could not be surpassed in their devotion to Queen Sabbath and in the observance of Jewish religious precepts.

As I write these lines, a picture-album titled "The Build-up of the East," published in Munich in 1941, lies before me. In the section on Jews there are a few pictures of Jewish-Polish types. Surprisingly, these are photographs of Mlawa Jews: fathers and grandfathers whose eyes reflect great Jewish hearts.

In the printed text of the album, the perverted Germans promised "to take care of the Polish Jews," but failed to mention that they already "had taken care of them."

It is generally believed that in Mlawa, the Germans carried out the first "Aussiedlung" (evacuation) of Polish Jews. They committed this crime even before Treblinka and Maidanek were created.

Why? For what sins did the Mlawa Jews deserve to be banished from their homes? Was it because they brought enlightenment and knowledge wherever they came? Or was it for the moral force exerted by Joseph Opatoshu, Mlawa's great Jew? Or was it because the Jews developed in Mlawa a worldly

culture at a time the peasants there were still backward and primitive?

The Mlawa Jewish community belonged to the most cultured Jewish communities in Poland. Though small, it produced generations of intellectuals and creative men who strengthened culturally Jewish communities throughout the world.

It is noteworthy that Mlawa produced two great authors: Joseph Opatoshu and Yakir Warshawski. [It was also the birthplace of the world renowned Socialist Victor Alter, martyred with Henryk Ehrlich by the Russian terroristic Bolsheviks.]

This outstanding Jewish community the monstrous Germans destroyed shortly after their invasion of Mlawa.

On December 5th, 1940, the Germans with the assistance of Polish hooligans forcefully ejected from their homes three thousand three hundred Jews and drove them to Dzialdowo, a town near Mlawa.

In Dzialdowo, in a prepared concentration camp, the monsters tested on the kidnapped Jews techniques of torture and degradation that they later applied to all Polish Jews. They built bonfires to try the most efficient method of burning Jews. To accelerate their inhuman experiments, the monsters with whips and sticks rushed their victims into the burning flames and sadistically watched them roast.

While the burning of Jews was still in progress, other monsters murdered their victims by running them over with trucks.

In that manner the aged rabbi of the Mlawa Jewish community met his death. Before the sadists murdered him, they forced him to put on his "tallith" (prayer shawl) and "tepphillin" (phylacteries) and pray for Hitler's health. Afterwards, the criminals crushed him with a truck.

From Dzialdowo officers of the "superior race" came to the camp to display their superior bestial instincts. It is simply impossible to express in human language the refined tortures the sadists inflicted on their victims.

Incomprehensible and indescribable were the sufferings the women endured. They were forced naked with their breasts to roll in human feces. This was not an invention of primitive men, but of high ranking degenerate officers, junkers, and "noblemen of swinish Teutonic blood."

The same perverts forced Jewish girls to perform Lesbian acts and married men to rape married women.

The Walpurga Night lasted without interruption twenty four hours.

As a result of the tormenting experiences, eleven individuals lost their minds. Their madness satisfied the animal urges of the degenerate tormenters.

At night, the mentally ill were subdued by the Nazi prisoners. But one sick person freed himself and ran out of the camp. He was killed by an Arian truck.

Some of the most distressing scenes took place during mealtime. No one was allowed to have a plate or sardine container. The "food" was poured either into the lap of a garment or a shoe. The recipient was forced to run with the food to his assigned place. Otherwise, the savages forced him to spill his portion.

The Dzialdowo inferno lasted eleven days. From there the Nazi victims were transported in freight cars to the so called "Jewish reservation" in Mezritch (Miedzyrzec).

There hell began anew.

Israel Goldstein, a Jew from Ripin, hardened by the brutal treatment he had received, the deportations and experiences in Treblinka, had difficulty relating the horrors to which the Nazi victims were subjected while they were leaving the freight cars and marching to the synagog in Mezritch. The synagog, it should be pointed out, served as the "Jewish reservation."

Shortly after their arrival in Mezritch, a typhus epidemic broke out in the synagog, that claimed tens of victims daily. At night the lice-covered corpses were removed in sacks to prevent the epidemic from spreading. For the same reason, food was delivered to the victims of Nazi oppression through the synagog windows. However, the Black Death permeated through the synagog walls, and the curses and laments of the sick and doomed could be heard far and wide.

Yet, between death and hopelessness, someone composed a primitive song portraying the sufferings and humiliations of the Mlawa Jews.

Where did that man get the strength to create those rhymes and melody? Even God would not know! Since he, too, had abandoned the Mlawa Jews.

The song, Israel Goldstein informed me, became the hymn of suffering and hope of the tortured and sick. It rapidly reached the Mezritch ghetto where young and old sang it hundreds of times.

It is astonishing that in their darkest hours Mlawa Jews, including the sick, refused to despair. In the midst of their most horrifying and humiliating experiences, they did not lose hope that someday a new world would arise and "The time will come We will again be free."

(These are the concluding lines of the song.)

The Mlawa Jews who did not die in the "Jewish reservation" perished together with those of Mezritch in Treblinka. Also the Jews who remained in Mlawa as slave laborers either were exterminated there, or were gassed in the ovens of Chelmno and Oswiecim.

"I imagined," said Israel Goldstein, "if I returned to Mlawa, I'd find there an historic marker memorializing the slaughtered Jewish community. Hadn't the Jews lived there for generations? Hadn't they created there and made Mlawa into a town? Furthermore, hadn't the Poles inherited all Jewish possessions?

To my great sorrow, I encountered there a great tragedy. A shameful act was perpetrated by local Polish hooligans."

Remarkably, the handful of Mlawa Jewish Holocaust survivors returned to Mlawa to erect a monument in memory of the destroyed Jewish community. First, they exhumed the remains of the fallen martyrs. Then, they placed the remains in a common brotherly grave. Lastly, they erected on the grave a tombstone commemorating the destroyed community.

The gravestone remained intact a few weeks. Then one night a gang of murderous Poles crushed it to pieces.

"As I was holding fragments of the crushed gravestone in my hands," related Goldstein, "I felt as if I was holding broken bones of the Treblinka martyrs."

This hideous crime marked the end of the illustrous history of the Jewish Community of Mlawa. ●



## ROLLBACK MEDICARE DEDUCTIBLES AND COINSURANCE PAYMENTS

### HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. PEPPER. Mr. Speaker, there is a story that is told about a man who owned just one pair of boots. He could not afford to buy a pair of boots very often, but owning a pair of boots gave him what he needed. It saved him the embarassment of being seen in public without a pair of boots. When he walked to town, he put on the boots only after he reached the city limits. You see saving wear on those boots meant that he could keep up appearances, and keeping up appearances meant more to him than the protection of his feet.

In this country there are many older people on fixed meager incomes who understand very well why the man who owned just one pair of boots did not put them on until he could be seen in public. They are living their lives as though a denial of poverty were woven into the very fabric of their being. We are told that about 16 percent of those age 65 or over only have income below the threshold of poverty. Yet it is doubtful that half of those at or below the threshold of poverty either admit or feel that they are poor.

Much of what I say is more than just speculation. It is confirmed by what I have heard in hours and hours of testimony as chairman of the Committee on Aging. One of our witnesses, Daphne Krause of the Minneapolis Age & Opportunity Center, in telling us how older people skimp on medical services to keep up appearances, said:

As we do grow older, and if our health deteriorates, and we find that our limited income and resources cannot cover the costs above medicare for medical care we need, we delay getting medical help until our situation is serious, then we painfully draw on our precious savings, knowing they are irreplaceable. Under our "medi-supportive" concept (at the Minneapolis Age & Opportunity Center), which I will explain, we are serving over 8,000 people. We had become aware that many of our clients were not receiving needed medical care. The consequences were sickening, as you will hear. Many ended up in nursing homes too soon or died needlessly. Seniors will go without every time, rather than run up bills they can't pay.

The Abbott nurses and MAO counselors were screening 100 patients a day, having to make the agonizing choice between the sick and the sick, as to who would see a doctor. One client walked in with a handkerchief over a cancerous hole in the cheek; another with an aneurysm as big as a grapefruit. Another had a heart attack 5 days before and decided not to get help until they heard about us.

Ms. Krause is not talking about a time before the coming of medicare. The people she is talking about had medicare. They just could not afford medicare deductibles and coinsurance. As the cost of hospital services soar, the medicare hospital deductible has gone up too. In fact the formula under which the hospital deductible is raised each year is directly related to increases in the inpatient hospital per diem rate. Everyone knows that the rise in medical costs outpace most other consumer items. This means that the rise in the hospital deductible has been more than proportionate to the increase in wages and consumer items.

After being admitted to a hospital, a medicare insured must now pay $144 during the initial stages of hospitalization before medicare takes over. Medicare then pays the reasonable costs of hospitalization through the 60th day. After the 60th day, and up to the 91st day, the medicare insured is required to pay $36 of the cost incurred for each day of hospitalization. After the 90th the medicare insured may elect to draw upon the 60 day lifetime reserve. If this election is made, the medicare insured

must pay $72 of the cost of each day of hospitalization after the 90th day.

Under Part B of medicare—(Supplementary Medical Insurance Benefits)—which covers outpatient services, the insured must pay out of pocket the first $60 of medical items and services, after the $60 deductible has been satisfied, the insured is entitled to reimbursement for 80 percent of the reasonable charges for necessary medical services.

For those of us who are employed, and drawing good wages, these medicare deductibles and coinsurance payments would not be an obstacle to medical treatment. Consider, however, the circumstances of most medicare insureds. Other than their social security retirement benefits, they do not have much income, and for them these deductibles and coinsurance payments all too often mean doing without groceries in order to receive medical treatment.

To bring medicare deductibles and coinsurance payments within the reach of senior citizens again, I introduced a bill today which will, if enacted, lower to $20 the current hospital deductible of $144, rollback to $5 per day the hospitalization coinsurance payment of $36 per day that applies between the 61st and 90th days, and to $10 the daily hospitalization coinsurance payment of $72 per day that applies to the 60 day lifetime reserve.

Rather than taking the additional cost of the proposed amendments from payroll taxes, the bill proposes to pay the cost of lower deductibles and coinsurance payments from general revenues. This method of financing the amendments would avoid any increase in social security payroll taxes which have already been criticized for being too high and too regressive. Financing a part of the medical insurance trust funds from general revenues is not without precedent. About half of the cost of the supplementary medical insurance program is now paid from general revenues.

This country should be willing to commit itself to removing all impediments to providing medical necessities for those age 65 and over. Whenever I think of the testimony of witnesses who came before the Select Committee On Aging, and told us about older people who in quiet desperation were allowing life to slip away because medicare deductibles and coinsurance payments are too high, I know that a rollback in medicare deductibles and coinsurance payments can wait no longer.●

## HONORING ELIZABETH AGNES PIGOTT

### HON. PHILLIP BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 6, 1978*

● Mr. PHILLIP BURTON. Mr. Speaker, on Friday, September 22, 1978, the American Irish Alliance of San Francisco will honor one of the truly good and generous women of San Francisco, Mrs. Elizabeth Agnes Pigott. Elizabeth Pigott's life of "good works" has earned for her a special place in the hearts of all who know her and have shared the warmth of her friendship.

Born Elizabeth Agnes O'Hara in Domahaire County Leitrum, Ireland, she immigrated to the United States in 1912. She spent 6 years in Rochester, N.Y., before settling in San Francisco in 1918.

It was in San Francisco that same year that she met and married Patrick James Pigott at St. Peter's Church. They lived at 23d and Kansas Streets in the, then predominantly Irish, Potrero district. In 1933, the Pigotts moved to 2865 Harrison Street, closer to St. Peter's Church where they were very active. The balance of the 57 years of married life which they shared was spent at Harrison Street until Patrick Pigott's death in 1975.

Elizabeth Pigott is a woman who is concerned for others and that concern prompted her to action. Upon her arrival in San Francisco, Elizabeth Pigott joined the Father Yorke Division of the Ancient Order of Hibernians and the Connaught Ladies Auxiliary. With these beginnings, she has developed a reputation of charitable work and espousal of worthy causes which has made her preeminent in San Francisco's American Irish community.

Her name and her Harrison Street address have become household words in St. Peter's Parish and in the Irish community. The basement of her home served as a meeting place for young Irish men and women new to this city. Many of today's San Francisco Irish families had their start with the meetings of these young people at dances held there. For the Harrison Street basement was the scene of many dances and fundraising activities which sponsored the work of Irish priests and nuns working in the foreign missions or which helped local families who were down on their luck or who had sickness in the family. The Harrison Street basement was a little bit of Ireland transplanted to the San Francisco Mission district and from it Elizabeth Pigott ministered to the needs of those about her.

The San Francisco Irish community can claim with great pride that Elizabeth Pigott is their "first lady." For indeed, she is a great and good lady. She is a tireless worker who radiated, by her cheerfulness and happy disposition, the jov of helping and being concerned for others.

The basement on Harrison Street is now quiet but it has been said by leaders in the Irish community that it was the forerunner of the United Irish Cultural Center where she will be honored.

Elizabeth Pigott is one of those rare good people who has enriched the lives of all with whom she had come in contact. I share these thoughts with my colleagues in the House to honor her, knowing full well that her greatest honor and satisfaction comes from knowing that she has lived the Biblical injunction to "feed the hungry, clothe the naked, visit the sick, and comfort the afflicted." ●

## SENATE COMMITTEE MEETINGS

Title IV of the Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committees scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 7, 1978, may be found in Daily Digest of today's RECORD.

### MEETINGS SCHEDULED

#### SEPTEMBER 8

9:00 a.m.
Energy and Natural Resources
Public Lands and Resources Subcommittee
To hold hearings on S. 876, to provide relief to the residents in the Vermejo Conservancy District, New Mexico, and on miscellaneous land conveyance bills.
3110 Dirksen Building

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 2970, proposed Truck Safety Act.
235 Russell Building

10:00 a.m.
Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Joint Economic
Priorities and Economy in Government Subcommittee
To hold hearings on the economic and budgetary effects of the proposed shipbuilding claims settlements on shipbuilding and Navy procurement.
5302 Dirksen Building

Special on Aging
To resume oversight hearings on the implementation of P.L. 95-256, to increase from 65 to 70 years of age limit for retirement under the Age Discrimination in Employment Act.
5110 Dirksen Building

#### SEPTEMBER 11

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the nomination of Nancy Hays Teeters, of Indiana, to be a Member of the Board of Governors of the Federal Reserve System.
5302 Dirksen Building

Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

#### SEPTEMBER 12

9:00 a.m.
Judiciary
Administrative Practice and Procedures Subcommittee
To hold hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

9:30 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

10:00 a.m.
Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Foreign Relations
To hold a business meeting on pending calendar business.
4221 Dirksen Building

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To hold hearings on S. 3284, to establish a minimum price preference for domestic goods, and to insure that the Federal Government does not purchase unfairly traded goods.
3302 Dirksen Building

11:00 a.m.
Veterans' Affairs
To hold hearings to receive legislative recommendations for FY 79 from representatives of the American Legion.
318 Russell Building

5:00 p.m.
Finance
Public Assistance Subcommittee
To hold hearings on S. 3470, proposed State and Local Welfare Reform and Fiscal Relief Act.
2221 Dirksen Building

SEPTEMBER 13

9:00 a.m.
Judiciary
Administrative Practice and Procedures Subcommittee
To continue hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

9:30 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

10:00 a.m.
Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Government Affairs
Permanent Investigations Subcommittee
To resume hearings with regard to the widespread nature of arson-for-profit, including evidence of the role of organized crime.
3302 Dirksen Building

SEPTEMBER 14

10:00 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 1699, proposed Diesel Fuel and Gasoline Conservation Act.
235 Russell Building

Energy and Natural Resources
To hold hearings on S. 3283, proposed State Energy Management and Planning Act.
3110 Dirksen Building

Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Governmental Affairs
Permanent Investigations Subcommittee
To continue hearings with regard to the widespread nature of arson-for-profit, including evidence of the role of organized crime.
3302 Dirksen Building

Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter and its overall policy.
2228 Dirksen Building

1:30 p.m.
Conferees
On H.R. 7577, extending through FY 1981 certain programs administered under the Economic Opportunity Act.
357 Russell Building

SEPTEMBER 15

10:00 a.m.
Finance
To continue mark up of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

SEPTEMBER 18

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume hearings to examine alleged abuses in the GSA's contracting and procurement divisions.
3302 Dirksen Building

SEPTEMBER 19

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
6226 Dirksen Building

9:30 a.m.
Human Resources
Labor Subcommittee
To hold hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To mark up proposed legislation to provide for the maintenance of reserves for certain financial institutions, to require the imposition of charges for certain services by Federal Reserve banks, and to authorize the payment of interest on reserves held in Federal Reserve banks.
5302 Dirksen Building

Energy and Natural Resources
Energy Research and Development Subcommittee
To hold hearings on S. 3392, to accelerate the use of solar energy as a source of electricity.
3110 Dirksen Building

SEPTEMBER 20

9:00 a.m.
Judiciary
Administrative Practice and Procedures Subcommittee
To resume hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

9:30 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Human Resources
Labor Subcommittee
To continue hearings on S 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue mark up of proposed legislation to provide for the maintenance of reserves for certain financial institutions, to require the impostion of charges for certain services by Federal Reserve banks, and to authorize the payment of interest on reserves held in Federal Reserve banks.
5302 Dirksen Building

SEPTEMBER 21

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

9:30 a.m.
Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

SEPTEMBER 22

9:30 a.m.
Human Resources
Labor Subcommittee
To resume hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

SEPTEMBER 26

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on problems of small business defense contractors.
5302 Dirksen Building

Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to receive testimony on nuclear reactor safety systems from NRC Chairman Hendrie.
4200 Dirksen Buildilng

Finance
Public Assistance Subcommittee
To hold hearings on H.R. 10848 and H.R. 12972, to modify the disability aspects of the Supplemental Security Income program.
2221 Dirksen Building

SEPTEMBER 27

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on financing of future energy needs.
5302 Dirksen Building

SEPTEMBER 28

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on financing of future energy needs.
5302 Dirksen Building

OCTOBER 3

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 4

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 5

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To hold oversight hearings on international housing programs.
5302 Dirksen Building

OCTOBER 6

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To continue oversight hearings on international housing programs.
5302 Dirksen Building

# SENATE—*Thursday, September 7, 1978*

*(Legislative day of Wednesday, August 16, 1978)*

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. PATRICK J. LEAHY, a Senator from the State of Vermont.

## PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Lord, our God, grant us clean hands and pure hearts to stand unblemished in Thy holy presence. Divest us of all that is mean and ugly and destructive. Invest us with that which is beautiful and good and true.

"Reclothe us in our rightful mind,
In purer lives Thy service find,
In deeper reverence, praise."

May we welcome this new day as a great adventure, with our spirit mastered by Thy spirit, that we may serve this Nation in a manner which sets forward Thy kingdom on Earth. Bless this Nation with wisdom and justice that it may be a blessing to the world.

We pray in the Great Redeemer's name. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., September 7, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PATRICK J. LEAHY, a Senator from the State of Vermont, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. LEAHY thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

## THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I be recognized following the expiration of time for the two leaders, and again following the expiration of routine morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JACKSON. Will the Senator yield for a unanimous-consent request?

Mr. ROBERT C. BYRD. I yield.

## PRIVILEGE OF THE FLOOR—CONFERENCE REPORT ON H.R. 5289

Mr. JACKSON. Mr. President, I ask unanimous consent that the following members of our committee staff be granted the privileges of the floor in connection with the natural gas conference report on H.R. 5289; June Diamond, Dan Dreyfus, Mary Flanagan, Grenville Garside, Mike Harvey, and Betsy Moler.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, may I add to that list the names of Bethany Weidner, Alvin Duskin, Kevin Murray, Mimi Mager, Irene Emsellem, and Glenn Feldman.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair, in his capacity as a Senator from the State of Vermont, will add the name of Sue Brannigan to be granted the privileges of the floor.

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished acting minority leader.

Mr. HANSEN. Mr. President, I ask unanimous consent that there be added to the list of persons proposed by the distinguished Senator from Washington (Mr. JACKSON) the names of Danny Boggs, Fred Craft, Carol Sacchi, and Nolan McKean.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Has the Senator finished?

Mr. METZENBAUM. Will the Senator yield for another unanimous-consent request?

Mr. ROBERT C. BYRD. I yield.

Mr. METZENBAUM. Mr. President, I wish to add the additional names of Dan Grady, Barry Diernfeld, Rick Wilson, Rick Sloan, and Roy Meyers, that they be granted the privileges of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I also ask unanimous consent that Howard Shuman of my staff be granted the privileges of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I understand the Senator from Wisconsin would like to have some time.

Mr. PROXMIRE. I would like to have 3 minutes.

Mr. ROBERT C. BYRD. I yield such time as the Senator may require from my time.

## CAMBODIA: A CONTINUING REMINDER OF THE NEED FOR THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it seems that every day we are confronted by new reports from Cambodia, each more shocking than the last. The Cambodian Government has attempted to cut that country off from the world, to keep under wraps their systematic decimation of the Cambodian people and their past.

But word has leaked out. And what has leaked out is, as I said before, utterly shocking.

In a report submitted 2 weeks ago by our Government to the United Nations, interviews with 22 refugees who fled from Cambodia into Thailand tell a gruesome tale. With a frightening lack of respect for life, the soldiers of the Khmer Rouge now resort to the death penalty at the slightest provocation. The most trivial offenses can cost a person their life. The refugees cited lateness to work as the most common offense warranting capital punishment. Complaints over food, work, or other conditions are also liable to this extreme measure.

Mr. President, what can we do? The U.S. Government has been forthright in bringing these atrocities to the attention of the world, but this has so far had little effect on conditions within Cambodia. Senator MCGOVERN has raised the question as to whether or not an international military force be formed to put an end to the disregard of human rights in Cambodia.

Mr. President, the situation in Cambodia must be remedied. The world must find the means to put an end to this bloodshed.

The situation in Cambodia, which can properly be called genocide, should remind the Senate of another matter that ought to be set right. The United Nations took action three decades ago to define and outlaw genocide. The treaty the U.N. proposed has awaited Senate ratification since 1949. In the meantime, 83 other nations have signed the treaty, including almost all of our allies.

The Genocide Convention will not stop genocide in Cambodia. Cambodia is not a party to the convention. But in the same way that the Geneva Conventions for the Treatment of Prisoners of War have improved the treatment of captured soldiers, the Genocide Convention can act as a deterrent to the sort of inhumanity we witness in Cambodia today.

However, for the Genocide Convention to have any effect, it must have the support of many nations, particularly the major powers. So long as the United States holds back its full support, the treaty has little chance of actually deterring genocide.

We must not wait for another massacre on the scale of Cambodia's before acting. Lets act now, to prevent and punish the crime of genocide.

## WOMEN IN COMBAT: PRO AND CON

Mr. PROXMIRE. Mr. President, in the pro-con forum of the September 1978 American Legion Magazine, Maj. Gen. John K. Singlaub and I debate the question, "Should women be used in military combat?"

On the "pro" side I argue that all soldiers should be assigned to duty based on ability, not gender. Women should serve wherever they are needed, according to their capabilities, just as men are assigned according to need and ability. And many women are capable of fulfilling combat duty, as experience and numerous Defense Department studies have shown.

General Singlaub, with his long experience in the service, feels that many women are incapable of carrying out the physical duties associated with combat and that men tend to be protective of women in dangerous situations, thus weakening combat effectiveness.

Mr. President, I ask unanimous consent that the "pro" and the "con" positions be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SHOULD WOMEN BE USED IN MILITARY COMBAT?

"YES"—BY SENATOR WILLIAM PROXMIRE

The two objections most often heard to using women in combat are 1) concern for the women's safety and 2) doubts that women can carry out combat duties.

Concern for women's safety, while well-intentioned, is misplaced. Women today are inner city police officers, skydivers, race car drivers and firefighters. If a qualified woman wants to volunteer for dangerous duty, she should be free to do so. It's her decision to make, not the government's, which makes far too many of our decisions for us. The establishment of the all-volunteer force makes military service today a matter of choice, and women are waiting in line to serve.

No one wants to send women into combat, but as one woman testified before my subcommittee, "I find it doubtful that mothers or fathers weep more for their daughters than for their sons."

Certain types of combat duty require a level of strength which many women may not possess, and those women should be deployed elsewhere, just like weak men. But if some women are strong enough and qualified in every other way, there is no reason to exclude them.

Women who now serve in combat-support positions have been trained in defensive combat techniques, for their units could well come under enemy attack. Offensive combat is but one step further. The Army now gives the same seven-week basic training to men and women, including grenade throwing and use of a variety of arms.

The performance of women in past wars proves that women can make a tremendous contribution to our war effort. Women's Air Force Service pilots have trained male pilots in strafing, bombing, tracking and anti-aircraft fire, and during WW II a Russian all-woman fighter unit shot down 38 German aircraft.

Interestingly, the General Accounting Office reports that women lose about one-half as much time from duty as men—including time taken for pregnancy.

The discrimination against women by our armed services is an affront to the American sense of fair play and the ideal of equal opportunity, which our government professes to follow. Until recently women were excluded from such "combat" jobs as missile launch crews in the Midwestern United States.

Combat duty is the traditional route upward in all military services, but women now in the service cannot follow that route. Limiting the woman's role is also unfair to the men, who must shoulder all unpleasant duty including very long stretches at sea. Moreover, it is only fair that women be called upon to defend the freedoms they enjoy as U.S. citizens.

We must spare no effort to maintain a strong, lean, efficient and well prepared fighting force. By closing many combat or combat-related positions to women, however, the armed services are weakening our defense effort by refusing to let qualified personnel serve where they are needed.

No less than the Commander of the Marine Training Base at Parris Island, SC has declared that, "there is no reason the female can't fight just like the male." I agree.

"NO"—BY MAJ. GEN. JOHN K. SINGLAUB, USA (RET.)

The primary mission of the United States Army is to preserve the peace by being instantly ready to engage in combat operations any place in the world. The ability to fight and win battles is too important to the security of this nation to permit the Army to be used as an instrument for sociological experimentation. Until such time as there is some evidence that women can withstand the extreme physical, mental and psychological stresses of battle, it is foolhardy, if not dangerous, to run the risk of reducing the combat capability of our Army by including women in units whose primary mission is to engage in actual combat operations.

This does not mean that there is no place for women in the Army. There are many jobs in the Army that can be performed better by women. The nation can ill afford to ignore or under-utilize the great reservoir of brainpower and skills represented in the women of our nation. There are, however, several important reasons why these highly motivated and patriotic female members of the Army should continue to be excluded from combat units.

First of all, the battlefield is a very physical place. The infantryman, cannoneer and tanker are routinely called upon during battle crises to demonstrate great feats of upper body strength to preserve lives and equipment. The tasks of digging for shelter, moving ammunition and changing tank tracks are shared by all members of the unit, including the clerks, cooks and mechanics. All require the muscle structure and exertion normally associated with a defensive tackle on the Denver Broncos' football team. Most physiologists agree that for the foreseeable future far more men than women will be capable of meeting the physical demands of these situations. With women in combat units, the male soldiers would be required to carry an increased share of these critical physical requirements, thereby limiting the units' responsiveness to crisis situations.

In my experience, women in combat have an adverse impact on the male soldiers in the area. Men tend to be protective of women.

During the tree-trimming crisis in Korea in August 1976, many good soldiers were so concerned about their soldier wives or girlfriends or their subordinate women that they left their duty stations to see to their welfare or evacuation to the rear areas. In fact, most of the women soldiers expressed the desire, if not the expectation, to be removed from the potential battle areas.

Another factor which suggests we should not permit our women soldiers to be used in combat is the image that this would project in the minds of our potential enemies.

At one time Russia and Israel used women in combat roles in their military forces, but both have now made it a matter of national policy that women will not be used in combat again. God forbid that we must go to war to learn the same lesson.

Mr. PROXMIRE. Mr. President, I thank the distinguished majority leader for so graciously yielding to me.

Mr. ROBERT C. BYRD. Mr. President, I reserve the remainder of my time.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the acting minority leader, the Senator from Wyoming, is recognized.

Mr. HANSEN. Mr. President, I do not believe I have any requests at this time. I thank the Chair.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia is recognized.

## NATURAL GAS POLICY ACT CONFERENCE REPORT

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I have asked for recognition at this time in order to propound a request of the Senate. It would be for the purpose of allowing debate to go forward on the natural gas conference report without any danger of a surprise motion to table that conference report being made, catching Senators on both sides of the aisle, Senators on both sides of the question, out of town. It would be for their protection.

It would also provide for a vote to occur up or down, with no tabling motion in order, on the proposed recommittal motion. I would suggest that the vote occur, say, next Wednesday, at a given hour.

This would alert every Senator on both sides of the aisle, every Senator on both sides of the question, as to the hour and the date when such vote would occur. It will be a critical vote and I am sure every Senator would like to be here and to be recorded. It would give ample time, in the meantime, to debate the issue. All Senators would be on notice. There would be no surprise motion to table. All Senators would be on notice as to the hour and the date for the vote on the motion to recommit.

Of course, I would like to have the agreement specify that if the recommittal motion were to fail, we would immediately vote up or down on the conference report, or vote after another day or so of debate on the conference report. I have discussed that with my colleagues and I have found that that would be objected to.

But there was some indication on the part of some Senators last evening that

they would be willing to enter into an agreement to go as far as providing that there be no surprise tabling motions on the conference report, providing that there be a vote up or down on the motion to recommit next Wednesday at a given hour. There may be someone here who would object to that.

Mr. METZENBAUM. Will the majority leader yield for a question?

Mr. ROBERT C. BYRD. Certainly. I have not propounded the request, but that lays the groundwork for the request I shall make.

Mr. METZENBAUM. Does the majority leader also intend to include in his request that there be an opportunity for a tabling motion with respect to the motion to recommit? Does that count in the discussion of the majority leader?

Mr. ROBERT C. BYRD. I would prefer to leave open the right of Senators to move to table. But I would be willing—it is perfectly agreeable to me to waive that right by unanimous consent of the Senate so that Senators would be guaranteed an up or down vote on the motion to recommit if, in turn, they would guarantee that there be no surprise votes on moves to table the conference report when many Senators might be out of town.

Mr. METZENBAUM. As I indicated to the distinguished majority leader last evening, I personally have no problems with that particular approach, but as I also indicated this morning, I find that there are others who do have a strong interest in this legislation which has been evidenced over a period of many years—far longer than I have been here, for that matter—and who do have a different point of view than I do. They certainly can address themselves to that subject.

Mr. ROBERT C. BYRD. Certainly.

Mr. President, I make the request and Senators may reserve the right to object.

Mr. ABOUREZK. Reserving the right to object.

Mr. HANSEN. Mr. President, will the distinguished majority leader repeat the request?

Mr. ROBERT C. BYRD. Yes.

Mr. President, I ask unanimous consent that when Mr. JACKSON calls up the conference report, a vote occur on a recommittal motion which will be made by Mr. METZENBAUM and others, such vote to occur, up or down, on the motion to recommit next Wednesday at 4 o'clock p.m.; that in the meantime, no motion to table the conference report or recommit the conference report be in order; and that the time between the calling up of the conference report and the vote at 4 o'clock on next Wednesday on the motion to recommit be equally divided between Mr. JACKSON and Mr. HANSEN.

Mr. ABOUREZK. Reserving the right to object.

Mr. THURMOND. Mr. President, reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota is recognized.

Mr. ABOUREZK. Mr. President, I am not desirous, nor am I in a position to agree to any unanimous-consent agreement with respect to time or time of voting on the natural gas conference report. I say to the distinguished majority leader that we are prepared, if they want to bring the conference report up now, we are happy to debate it. I think it is a very serious, very complicated matter that will require a thorough analysis by the Senate. There have been all kinds of backroom lobbying, we know that, on both sides. But there has been very little light shed on this issue. We were somewhat prevented from doing so during the conference meeting itself, from debating this issue or inquiring into it to find out the impact upon the public of this bill.

I think we are entitled to do that here, on the Senate floor, as I promised during the few times I was able to be recognized to speak on the issue during the conference meetings that I was invited to.

So, while we do not necessarily want to prevent a vote—incidentally, I might say that I spoke to the distinguished chairman of the Committee on Finance (Mr. LONG) this morning by telephone. He said that I was authorized to speak for him in making this particular objection, for the same reasons; and that if we bring it up, we might vote this afternoon, we might vote tomorrow. The vote might come quicker than the leader had anticipated. Therefore, I do not want to set a time agreement or agree to a time agreement on my own.

I, therefore, object to the request.

Mr. ROBERT C. BYRD. Mr. President, before the Senator objects, let me modify the request to provide for a vote, the vote on the recommittal motion up or down on next Wednesday, to be at 3 o'clock p.m. rather than 4 o'clock p.m.

Mr. ABOUREZK. I have the same objection.

Mr. METZENBAUM. Mr. President, I would have to object to that.

The ACTING PRESIDENT pro tempore. Objection is heard from the Senator from South Dakota.

Mr. METZENBAUM. The time is what I would object to. It would have to be later in the afternoon. Certain Senators have an election on Tuesday and would have difficulty getting back.

Mr. ROBERT C. BYRD. The Senator has a good point. The objection has been made, in any event.

Mr. President, I suggest that we now have a period for the transaction of routine morning business.

## ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business of not to exceed 10 minutes, with statements therein limited to 2 minutes each. Under the order entered this morning, the majority leader, the Senator from West Virginia, is recognized.

Mr. ROBERT C. BYRD. Mr. President, I yield my 2 minutes to the Senator from Wisconsin.

(The remarks of Mr. PROXMIRE at this point in connection with the introduction of a bill are printed later in today's RECORD.)

## CONCLUSION OF ROUTINE BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If there be none, morning business is closed.

## UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, may I have the attention of the distinguished Senator from South Dakota?

Mr. ABOUREZK. Yes, Mr. President.

Mr. ROBERT C. BYRD. I wish to make one further proposal which would allow us to proceed with debate on the conference report. It would be simply this: That no motion to table the conference report or to recommit it be in order prior to next Wednesday at 4 o'clock p.m.

Mr. ABOUREZK. Yes; Mr. President. to object, Mr. President, it is virtually the same request that the leader made before, slightly modified. For the same reasons, I should have to enter an objection, so I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

## ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I be recognized following the call of the quorum. The reason I do that is that I think I am going to call up something else, and I want to see what else there is that managers are ready to call up.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## NATURAL GAS POLICY ACT CONFERENCE REPORT

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I am about to propound another unanimous-consent request.

Mr. President, I would like to see the Senate proceed with debating the conference report on natural gas. It would

certainly not be my plan to offer any cloture motion—if this agreement were to go into effect, it would not be my plan to offer any cloture motion at least until 4 or 5 days of debate have occurred.

It is merely to protect Senators against surprise motions to table the conference report that I make the request. They do not have to be protected against a recommittal motion, because that is a debatable motion.

There are Senators on both sides of the question who need to be protected. There are Senators on both sides of the aisle who need to be protected against a surprise, sudden motion to table the conference report, which is not debatable.

Therefore, in the interest of debating the conference report pro and con, educating Senators and the people as to what is in the conference report, what is involved in the issue, and so on, today and tomorrow, Monday and Tuesday, I ask unanimous consent that, if the conference report is called up, no motion to table the conference report be in order until after a motion to recommit the conference report has been voted on, up or down. This request, as all Senators will note, protects against a sudden tabling motion. And I include the request that this protection run until 6 p.m. next Wednesday.

Mr. ABOUREZK. Reserving the right to object, Mr. President, for the same reasons that I discussed earlier with the distinguished leader, I am very reluctant to give up any rights we have on the natural gas conference report. In my view, agreeing not to offer or not to allow a motion to table a conference report—this conference report, in particular—I think is the yielding of a substantial right on my part, which I do not wish to do at this time.

I will elaborate a little further. Those of us who are opposed to the natural gas conference report do not really have the ability to do the backroom arm twisting that the President and his people have done and are able to do. We find it essential to be able to debate this conference report out in the open, on the record, here in the Senate, and to preserve our rights. I, for one, cannot give up my rights.

For example, Senator LONG asked me to object to any agreements, on his behalf, this morning. He does not want to give up any of his rights. We are not trying to prevent a vote from taking place on the conference report. We are happy just to go along with the rules of the Senate, if we can, and do whatever is necessary. But we do not want to give up the right to make any motions we might be able to make on the conference report.

So, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ROBERT C. BYRD. May I say, respectfully, to the distinguished Senator that my proposal would allow for debate, number one. That is why I would like very much for the Senate to accede to the request. It would allow for debate. The only right the Senators would be giving up would be the right to move to table the conference report without due notice to other Senators.

However, in giving up that right, I also would be giving up the right, as other Senators would, to move to table the motion to recommit, when made. So there is a balancing out of the waiving of rights.

Furthermore, there is an election next Tuesday, and a good many Senators on both sides of the aisle are involved in those elections. It was for the purpose of delaying any untoward happening until late Wednesday that we had the election in mind, so that Senators who need to be here to cast a vote would not be out of town.

I hope the Senator will think about it during the day. If he and those who are working with him in his cause could agree on a time and date and a way to protect against a sudden tabling motion, I would be very glad to hear from them, because I would like to have debate today and Friday of this week on this measure.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. METZENBAUM. Mr. President, there is probably nobody in the Senate with whom I have worked more closely than my distinguished friend from South Dakota. I am not in total agreement in this matter. That does not mean we are not in total agreement——

Mr. ROBERT C. BYRD. Before the Senator from South Dakota leaves, I would like to change the time to Thursday, at 2 p.m.

Mr. ABOUREZK. I object, for the same reasons.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. METZENBAUM. My feeling is—and I said this to the leader yesterday—that I was prepared to debate this matter as of today, bring it to a vote on Tuesday. As a matter of fact, I think I called and made that proposal. Later in the day, I indicated that it was necessary to check with some others who do have a strong interest in this legislation—the distinguished ranking member of the minority on the Energy Committee, my good friend from South Dakota, the chairman of the Finance Committee, and others.

I think the concern that has been expressed with reference to those who are back home campaigning and who cannot be present to vote, in the event there is a motion to table, is a valid concern. So I have indicated to the majority leader that I would be prepared to agree to the unanimous-consent request relative to making no motion to table until at least the motion to recommit has been disposed of, it being implied in the majority leader's request that the specific motion to recommit, about which he is speaking, is the one that the Senator from Wyoming, the Senator from South Dakota, the Senator from Oklahoma, and I intend to offer.

I say to the majority leader that I hope that this matter still can be brought up and debated.

I have indicated to my good friend from South Dakota my own views. I think he properly is speaking for the chairman of the Finance Committee, who has concern about this matter.

I suggest that we at least spend time, not immediately, but provide a period in order that further discussion might be had on the subject. I support this effort to move the matter forward. I think we have the votes, and I think we ought to go.

Mr. ROBERT C. BYRD. I thank the Senator. He has been most cooperative and considerate.

So, for the time being, and hoping that some agreement might yet be reached during the day, I ask unanimous consent that the Senate proceed to the consideration of——

Mr. BARTLETT. Mr. President, will the Senator yield for a very short comment?

Mr. ROBERT C. BYRD. I yield.

Mr. BARTLETT. I thank the distinguished Senator from West Virginia. My comment will be very brief.

I hope we can proceed to the consideration of the conference report. In my opinion, there will be the need for considerable time for debate, because there are at least three points of view to be expressed, and there probably are variations of those by individual Senators.

I think that in order to have a meaningful debate, in which all facets of the different points of view may be clearly outlined, it will take considerable time.

So I hope that the distinguished majority leader will find it possible to bring up this matter as soon as possible, and I and other Senators will be happy to work with him to bring that about.

Mr. ROBERT C. BYRD. I thank the distinguished Senator. I appreciate his sentiments.

I perhaps should state at this time that only 5 weeks remain after this week until Saturday, October 14, the date on which we hope to see Congress achieve a sine die adjournment. I, for one, do not want to return after the election, but it may be necessary, if we do not complete our work. So every day now counts, and the calendar is running, and I hope we all will keep that in mind, because we have to settle this issue, up or down.

We have spent 16 months in this Congress already on this matter, and Senators ought to have made up their minds at this time; or, after a reasonable period for debate, they will have made up their minds one way or the other.

I think we should vote on the matter, up or down, and let it be the will of the Senate, and then go on to other matters. Nothing is going to be served by overly prolonging this debate and a final decision on the conference report.

We still have the defense appropriation bill. We have the HEW appropriation bill. We have the foreign assistance appropriation bill. We have the tax cut bill. We have several expiring authorization measures.

With only 5 weeks to go after this week, Senators can see what we are up against, if we are to entertain even a reasonably fair hope of completing our work by October 14, so that we will not have to come back after the election. My experience has been that post-election sessions are not very productive. Tempers are frayed, and we tie ourselves in knots. We get into wrangles among ourselves and with the other body and create a bad impression back home—or at least worsen the impression that may be created if we do not act in a reasonable period of time on this energy measure.

So, for one, let me enter a plea and a prayer to the good Lord that somehow we will be able to work out this thing and get out of here on October 14 and a plea and a prayer to my colleagues that they give consideration to this also.

I know, Mr. President, that once the election comes there is not a Senator in here who is going to want to come back, not one.

The ACTING PRESIDENT pro tempore. The Chair concurs.

Mr. ROBERT C. BYRD. As of today, September 7, not too many Senators have really drawn target on that sure date that is coming, but when the time comes and we get down to the end of the road—I know in the meantime we do not want to come in on Saturdays and do not want to stay late, we want to get out on October 14 no later than for the election—they are not going to want to come back to the Senate until next year.

They are all going to want to stay away. So if we want to stay away then, now is the time to think about it.

Remember the fable about the grasshopper. The grasshopper spent all of the summer singing his tune, but then came the winter and he had not laid in any harvest for the winter.

The time is coming. The time is coming when after the election Senators will say: "I wish I didn't have to pack my bags and go back to Washington. I just wish we didn't have to go back."

All right. Let us think about that.

## JUDICIAL TENURE ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 957, S. 1423.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1423) to establish a Council on Judicial Tenure in the judicial branch of the Government, to establish a procedure in addition to impeachment for the retirement of disabled Justices and judges of the United States, and the removal of Justices and judges whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment in the nature of a substitute.

The ACTING PRESIDENT pro tempore. Under the previous order debate is limited to 6 hours equally divided between the Senator from Arizona (Mr. DECONCINI) and the Senator from South Carolina (Mr. THURMOND).

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I express the hope that we will be able to cut this time down. I do not think it will take anything like the time that is set forth in the agreement. But until the managers, who have not been alerted to the sudden calling up of the bill, can get to the Chamber, I suggest the absence of a quorum and ask unanimous consent that the time be equally charged against both sides on the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## UNIFORM BANKRUPTCY LAW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar order No. 1026.

The ACTING PRESIDENT pro tempore. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2266) to establish a uniform law on the subject of bankruptcies.

There being no objection, the Senate proceeded to consider the bill to establish a uniform law on the subject of bankruptcies, which had been reported by the Committee on the Judiciary with an amendment in the nature of a substitute, and from the Committee on Finance with amendments to the substitute language.

The ACTING PRESIDENT pro tempore. The time on the bill is limited to 1 hour divided between the Senator from Arizona (Mr. DECONCINI) and the Senator from Wyoming (Mr. WALLOP).

Who yields time?

Mr. BAYH. Mr. President, I ask unanimous consent that Nels Ackerson, Marcia Atcheson, Kevin Faley, and Louise Milone of the staff of the Subcommittee on the Constitution, and Mike Klipper and Joe diGenova of Senator MATHIAS' staff be permitted access to the floor during the debates and voting on the Judicial Tenure Act and the Bankruptcy Act.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HATCH. Mr. President, I thank the Senator. I ask unanimous consent that Mike Hunter and Tom Perry of my staff be granted the privileges of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 15 minutes with statements limited therein to 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Who yields time?

Mr. HATCH. I yield myself such time as I may need, and I ask unanimous consent that the time not be charged against the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me?

Mr. HATCH. I am delighted to yield.

Mr. ROBERT C. BYRD. Mr. President, the Pastore rule requires that Senators speak only on the subject matter before the Senate for the first 3 hours after the pending business is laid down or the unfinished business is laid down. I thank the Senator for yielding, and I ask unanimous consent that his statement not show an interruption in the RECORD, but I ask the Chair not to entertain any requests while I am off the floor that Senators speak on other matters than the matter before the Senate until we can get the managers of this bill seated, so that they can do whatever they like.

The ACTING PRESIDENT pro tempore. The Chair appreciates the comment of the majority leader and will pass on the word to succeeding Presiding Officers.

Mr. HATCH. I just wanted to put these two speeches in the RECORD. I should have asked to waive the Pastore rule.

Mr. ROBERT C. BYRD. The Senator had not asked to waive the rule?

Mr. HATCH. I did not ask to waive the rule.

Mr. ROBERT C. BYRD. The Senator asked that the time not be charged against this measure, and I object to that.

Mr. HATCH. I understand.

Mr. ROBERT C. BYRD. Pardon me for interrupting; I wanted to protect the Senators who are managing this bill, because with that kind of request, a Senator could get the floor and go all day long—all day long—unless someone made a point of order based on the Pastore rule. And once the first 3 hours have gone, that kind of point of order cannot be made.

So I want to protect all Senators. I am

not concerned about the Senator from Utah ever doing something he is not allowed to do under the rules.

Mr. HATCH. I appreciate the distinguished majority leader's comment. Of course, I am going to put these two matters into the RECORD so we will have them there.

I ask unanimous consent that, with regard to my speech on Martin Anderson on welfare reform, it be printed in the RECORD following the bankruptcy bill we are considering today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## MARTIN ANDERSON ON WELFARE REFORM

Mr. HATCH. Mr. President, welfare has been a major concern of the people of this country for many years now. It has been declared a mess and reformed on more than one occasion. Yet many believe we have not achieved the goal of significantly reducing the number of poor people in the United States. Should we seek still another reform before we better understand the problem?

Martin Anderson, senior fellow at the Hoover Institution and author of a book entitled "Welfare," provides much insight into the welfare problems which we face. Indeed, his book provides invaluable information without which we can only expect to make further mistakes.

Anderson reveals many misconceptions upon which welfare reforms are advocated. The first and most basic misconception is the belief that the welfare system has failed to reduce the number of poor in this country. We think it has failed because we are misled by statistics gathered by the Bureau of the Census. But, if the total amount of income given to the poor is considered, it is enough to raise every officially poor family 30 percent above its poverty line. How then is it that the Bureau of the Census tells us that between 1974 and 1975 the increase in the number of poor was the largest since 1959? The only rational explanation of the situation is that the Bureau of the Census has grossly overstated the number of poor.

Martin Anderson reveals some facts which account for this overstatement. First to be questioned is the validity of the information gathered. People may not remember exactly how much their total income was for the past year. Some people may deliberately lie about their earnings, and there is no check on what people themselves report. The major bias, however, is not caused by the incomes reported, but by the incomes not reported. The incomes not taken into account are those services such as food stamps, medicaid, and housing. Thus, a substantial amount of money expended each year to relieve the poor is not counted as income for the poor.

Many experts have known about these statistical biases for years, but the people in Government, who create the welfare programs, do not take them into account. As the benefits of the welfare programs expand and as income thresholds for participants in the programs rise, more people are pulled into the programs. Yet the noncash benefits of the programs are not counted as income to the "poor." It would appear that the way the bureaucrats have it set up, the programs will continue to grow—a prospect that some politicians find appealing. After all, welfare dependencies are politically dependent.

The Congressional Budget Office's study on the amount of poverty in the United States in 1977 found 6.4 percent of the population poor while the Census Bureau reported 12 percent for the same year using the same poverty line. This wide discrepancy is explained by the fact that the Congressional Budget Office allowed for the under-reporting of income while the Census Bureau did not. The gap in estimates becomes even more understandable when one realizes that the $40 billion spent in noncash benefits for the poor were not counted as income in the Census Bureau's report, but were in the Congressional Budget Office's study.

Anderson directs our attention to an even more startling report on the amount of poverty by Morton Paglin, professor of economics and urban studies at Portland State University, in October of 1977. Paglin improved the measures of poverty by allocating benefits according to household size. According to these estimates only 3 percent of Americans were poor in 1975.

Although the amount of poverty as reported by the Census Bureau has remained nearly constant, thus denying the effectiveness of welfare programs, the reports done by the Congressional Budget Office and Morton Paglin show that the level of poverty has declined to very low levels, thus revealing the fact that the welfare programs have successfully raised the poor above the poverty line.

Now that two separate studies have been concluded with more reliable results contrary to those of the Census Bureau, why do the policymakers continue to create more welfare reforms which entail even more spending? Why do we continue to appropriate more money? The Census Bureau, in a manner typical of bureaucratic vanity and self-preservation, ignores the results of the Congressional Budget Office's study. In effect, more and more of the taxpayers' dollars are being given to the nonpoor, because the Census Bureau will not admit its mistakes.

Thus, a situation has evolved whereby billions of dollars—more money than World War II cost us—have been poured into welfare aid since 1964, until there are virtually no poor in this country. Some of the people who are, in the best of studies, counted as poverty stricken are, as Anderson says "in no sense poor." People may be unsure of their incomes or purposefully understating them. They may be living off undeclared assets or possess private incomes, but, considering the vast amount of money—$300 billion to be exact—that has been poured into welfare since 1964, it seems impossible that there could be many poor left in the United States.

These $300 billion were not given merely in the form of cash, they were divided between 90-odd social welfare programs. Most people qualify for two, if not more, of these programs. These $300 billion cannot be compared to earned income, because these $300 billion were tax free.

This is more than waste of money—it exposes a terrible misconception concerning the number of poor in our country, and this misconception has caused the lawmakers of this country to create programs which retard the progress of the poor. Because the policymakers have accepted the Census Bureau's inaccurate figures, they have created more and more programs which further reduce the incentive to work for lower income workers.

After reading Martin Anderson's book one becomes aware that people who prefer unemployment are not so much lazy as they are economically astute. The problem is the welfare trap, which the Government has created, that prevents people from earning a living significantly better than welfare provides.

Anderson points out that the effective tax rates on low earned incomes are very high. I think we would all agree that people work primarily for job satisfaction and for money. If a person does not gain satisfaction from his job, then he is apparently working mainly for the money. If his income is only slightly over the poverty level, he can practically maintain the same level by not working.

His incentive to work is based primarily on his need for income. If employment is his only source of income, then he will work. In our system, however, employment is not the only source of income. There are many others of which welfare is the largest for the least wealthy members of our society. A person cannot work and still enjoy the benefits of welfare. As soon as his income rises above the poverty level then his medicaid and food-stamp benefits are severely cut, if not removed altogether. He cannot significantly increase his income by working. Martin Anderson points out some examples found in a December 22, 1972, press release by the Joint Economic Committee's Subcommittee on Fiscal Policy.

> In New Jersey an unemployed man with a wife and two children receiving public assistance and food stamps would add only $100 to this net monthly income if he took a full time job paying $500 a month. In addition, he would lose eligibility for medicaid, which pays an average of $52 a month for medical bills of an AFDC family in New Jersey.

A person is unlikely to give up his leisure and work a 40-hour week at an unsatisfying job for only a $48 increase in net monthly income. Thus, the incentive to work has not only been destroyed, it has been reversed and an incentive not to work has been created. There is also a strong incentive to under-report income.

The people are caught in a trap created by the Government. The more income

they earn, the more probable that the Government will learn about this income. The more earned income the Government learns about the more it taxes and takes away benefits. The more it discourages work, the poorer the people become. The poorer the people become, the more they need welfare. The more they need welfare the more the Government gives them. It is all perfectly clear up until this point. Now comes the twist: The more the Government gives them the less the number of poor decreases. The Government has created a poverty wall which has entrapped the poorest members of our Nation into what Anderson terms "a new caste: The dependent Americans."

With this thought Anderson reveals that the Government is destroying more than the Nation's economy through its programs. It is destroying a basic American value—work. This destruction is apparent in the amount of money that is repeatedly poured into welfare and the growing welfare dependencies. Democracy is undermined if people are dependent on the Government for their incomes.

President Carter's plan to clean up our welfare system would increase the group of dependent Americans to nearly a third of the entire population. Why should the number of people on welfare, and the cost of welfare, increase so drastically when there are virtually no poor left in this country? Is our Government seeking to make a major part of the population dependent on Government handouts? Whether that is the Government's intention or not, that is exactly what Carter's plan would do if it were ever implemented.

When President Carter first assumed office he laid down 12 goals for this welfare program. One of these goals was that the cost would not increase. Then Secretary of HEW, Joseph A. Califano and Secretary of Labor, Ray Marshall sent him a memorandum telling him that without an increase in cost many of those receiving welfare benefits would be hurt. They wrote:

> The states are our natural allies in welfare reform—most members of congress would still prefer not to deal with the subject at all—and there is virtually no relief in this proposal for governors and mayors. In addition there will be problems in cutting benefits for the aged, the disabled, and the blind, and there will be disputes over our ability to put a significant number of the 3.4 million mothers on welfare to work.

In quoting from this memorandum, Martin Anderson reveals the real reason our welfare system is a mess. Secretary of Labor Marshall and Secretary of HEW Califano ignore the fact that some people now on welfare should not receive aid. Their true concern seems to rest with the plan's popularity with politicians, not its economic and social impact on our country.

There are so many myths surrounding our welfare program that the average American has no way of knowing what policy is good policy. They are under the false impression that reform is necessarily good. They do, however, know what they feel the results should be. The vast majority of Americans feel that the poor should be given aid, but they also believe that spending should be cut. Spending could be cut if those who are not really poor were removed from the welfare rolls, and if there was not such a strong disincentive to work one's way out of welfare dependency.

President Carter promised prompt welfare reform during his campaign. Upon entering office he realized how difficult it was going to be to fulfill his promise, but he managed to unveil his program for better jobs and income on August 6, 1977. Anderson, who was an adviser to both Presidents Nixon and Ford, maintains that Carter's plan was created by essentially the same nucleus of people who were responsible for Nixon's family assistance plan and the income supplementation plan presented to Ford.

The welfare bureaucrats' plans have followed the same vein since Nixon's family assistance plan. They have proposed to turn welfare into a guaranteed income program which would affect many more people and thus cost more money. Welfare dependencies are also political dependencies, and trading votes for handouts undermines democracy. These facts, however, are hidden behind the veneer of reform.

The CBO found that 22 million more Americans would be affected by Carter's program than are now. And these 22 million Americans are people whose incomes do not fall below the poverty line. Some 11.6 million of them are earning $10,000 to $25,000 incomes. These facts form a case in point. The Government is busy extending its welfare dependencies into the middle class.

President Carter's program cannot be introduced next year without changes. However, these changes will be made by the same people who have repeatedly created welfare programs for the nonpoor. Thus, the basic structure of this welfare reform, with all its flaws, would remain the same. Carter's welfare program would reduce the incentive to work for middle income earners and trap them also in economic and social immobility. What we need to do is to destroy the welfare trap. HEW is devoting a large part of our national budget to preventing people from working. Must we spend still more to prevent more people from working?

Instead, we should accurately estimate the number of poor and reject the statistics that the Census Bureau offers us, if they continue to disregard the biases in their estimates. We should eliminate the inefficiencies in the welfare system by tightening its programs, not expanding them.

When experts like Martin Anderson show us the facts, we should demonstrate that it is not politically impossible to recognize and rectify the real problems in our welfare system.

## THE VIETNAMESE COMMUNITY CENTER

Mr. HATCH. Mr. President, a little more than 3 years ago, millions of Americans' hearts were touched by the plight of thousands of South Vietnamese refugees who were determined to start a new life in the United States after their homeland had fallen under the control of the Communists. Right here in the metropolitan Washington area, one of the most worthwhile attempts to help our South Vietnamese friends keep in touch with their culture and traditions needs our help if it is going to survive, and that is why I am mentioning it today.

What I am referring to, Mr. President, is the Vietnamese Community Center which was opened last December on the first floor of the Page Elementary School in Arlington, Va. This center is a place where the approximately 15,000 Vietnamese in the Washington area can gather together and conserve their heritage by speaking the language, listening to the music, viewing the artwork, and preparing the food of their native country. The center, the first of its kind in the Washington area, also plans to develop a wide range of services designed to make the refugees' transition to life in the United States easier, ranging from free tax form preparation to translation services to help them in their search for employment.

The Vietnam Refugee Fund, Inc., a nonprofit, tax-exempt organization which receives its funds through donations and fundraising drives, was able to rent the building in which the center operates from the county school board, but its lease expires at the end of this June. According to Mr, Nguyen Ngoc Bich, the president of the Vietnam Refugee Fund, Inc., unless the Fund can obtain adequate private funding, the center may not be able to continue operating.

Mr. President, this center is clearly a fine example of what free individuals working together privately can accomplish. I hope that those who wish to help it continue its efforts will contact Mr. Bich of the Vietnam Refugee Fund, Inc. The address is:

Mr. Nguyen Ngoc Bich
6103 Amherst Avenue
Springfield, Va. 22150

I ask unanimous consent to have printed in the RECORD an article entitled "Center Focuses On Preservation of Vietnamese Culture," written by Seth W. Moskowitz, and published in the Washington Post of Thursday, December 29, 1977.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

### CENTER FOCUSES ON PRESERVATION OF VIETNAMESE CULTURE

(By Seth W. Moskowitz)

In an effort to preserve their cultural heritage in their new land, members of the Vietnamese community have opened a Vietnamese Community Center at the Page Elementary School in Arlington. It is the first such center in the Washington area.

The event last week drew close to 100 participants, most of them Vietnamese refugees who came to see exhibits by Vietnamese artists, listen to Vietnamese music and eat the food of their home country.

"Everybody hoped to have a Vietnamese Center," said Pham Ngoc Luy, the captain of the last ship to leave Saigon with 4,000 refugees aboard shortly after the city fell to the North Vietnamese.

"I think it's a good start. You have prob-

lems with the language; (it's) hard to find jobs. We expect to have a center for all where you can meet each other, you can help each other, and you can keep up the Vietnamese culture.

"This is a place not only where the Vietnamese language will be spoken and understood," Luy said, but also where the "beautiful traditions of the family, society and friendship . . . which have been formed for many thousand years" will be respected and kept alive.

A pamphlet was distributed, outlining some services the center hopes to provide:

A lending library of Vietnamese books and magazines to augment the reading room already in operation.

Spring recreation programs, featuring tennis, volleyball and basketball.

Translation services to help Vietnamese in job searches and other needs.

Free tax form preparation.

A Vietnamese food shop, provided there are no licensing problems.

Classes, exhibits, and social functions.

Nguyen Ngoc Bich, president of the Vietnam Refugee Fund, Inc., estimated that there are approximately 15,000 (about 10 per cent of the U.S. total) Vietnamese in the Washington metropolitan area. Most of these are refugees who arrived in the United States in the spring of 1975, when Saigon fell.

An estimated 7,000–8,000 Vietnamese are Northern Virginia residents, with the largest concentration living in Arlington.

Until now, the only gathering places for the Vietnamese in Northern Virginia have been the churches where they have been segregated by religion, said the Venerable Thich Giac Duc, president of the Buddhist Congregational Church of America.

He estimates that the area's Vietnamese population is 40 per cent Buddhist, 40 per cent Catholic, and 20 per cent Protestant.

"At last we can have a place to get together. Every religion can be together here," Duc said.

"I have no worries about the economic problems of the Vietnamese refugees," said 71-year-old Truong Cam Khai. "I am worried about the cultural problem.

"This center will be useful in two ways," said Khai, a former professor who left Vietnam in 1968. "It will provide an opportunity to teach the young about Vietnamese tradition and moral values, and it will be a place where the Vietnamese will have social activities among themselves. . . . Here there is nothing to divide the Vietnamese among themselves."

The center is allowed the use of the entire first floor of the school at 1501 N. Lincoln St. On this floor there are 15 classrooms, an auditorium, a cafeteria with a large kitchen, a library and some office space.

The Vietnam Refugee Fund is leasing the building from the county school board for $2,000 a month, money which the non-profit, tax-exempt organization receives through donations and fund-raising drives. The lease expires at the end of June, 1978.

Although the Vietnam Refugee Fund Inc. offered substantially less rent than the school board has asked, the fund was the only bidder who found the short term lease acceptable, Bich said.

When the lease expires, Bich said he doesn't know what will happen and doubts that the Refugee Fund will be able to retain use of the building. A school spokesmen said that the board plans to review the use of the building in March or April and will decide then how it will be used in the future.

Dr. Harold Chu, a professor of Japanese language and literature at Georgetown University, presented the center wtih a plaque from the Arlington Trinity Teacher Corps which says "with our heartfelt support and good wishes." Near the bottom of the plaque it says *chuc mung may man*, Vietnamese for *good luck*.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold that?

Mr. HATCH. Certainly.

Mr. ROBERT C. BYRD. I owe the Senator an apology, the Chair an apology, and all Senators an apology. I thought morning business had been closed. I had forgotten renewing morning business, and of course everything I said was without reason, rhyme, or substance, because we were in morning business. So I take it all back, every word of it.

Mr. HATCH. Mr. President, I know the Senator from West Virginia does a beautiful job of conducting the proceedings on this floor, and I have great respect for him. I fully understand, and apologize to the Senator. Let me state that I have not the slightest concern that he will ever have to worry about anything I do on this floor.

Mr. ROBERT C. BYRD. The Senator's apology is appreciated, but unnecessary.

The ACTING PRESIDENT pro tempore. The Chair appreciates the comment of the majority leader. The Chair was beginning to wonder whether it had been mistaken on the rule itself, and appreciates the clarification.

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is now closed.

## UNIFORM BANKRUPTCY LAW

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate now resumes the consideration of S. 2266. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, the Senator from Wyoming (Mr. WALLOP) is present. I understand he will be managing the bill on his side of the aisle.

I am quite sure it will be agreeable with Mr. DECONCINI if Mr. WALLOP wishes to proceed with his statement. The Senator might consider asking unanimous consent that his statement follow that of Mr. DECONCINI, inasmuch as Mr. DECONCINI is manager of the bill. If he will do that, I am sure there will be no problem, and the Senate could be making some progress.

Mr. WALLOP. Mr. President, in the interest of time, I will be happy to do that, and I so request. I ask unanimous consent that the statement I am about to make, follow, in the RECORD, the opening statement and remarks of the Senator from Arizona (Mr. DECONCINI).

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I ask unanimous consent that the following members of the Judiciary Committee staff have the privilege of the floor throughout the discussion of both S. 1423 and S. 2266 and any votes thereon: Eric Holtman, Sally Rogers, Richard Velde, Pat Hoff; and that Harry Dixon and Robert Feidler have floor privileges during consideration of the bankruptcy bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I make a similar request for Nathan R. Zahn of the committee staff and Roy Myers of my staff, for both these two bills.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WALLOP. Also, Mr. President, I make the same request for Mr. Tom Carter and Mr. Meredith Preston of Senator HAYAKAWA's staff.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally charged against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. PRESIDING OFFICER (Mr. SPARKMAN). Without objection, it is so ordered.

Mr. DECONCINI. I ask unanimous consent that Robert Feidler, Romano Romani, and Harry Dixon of the committee staff be granted the privilege of the floor during debate and votes on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, in 1970, Congress created the Commission on the Bankruptcy Laws of the United States to study and recommend changes in bankruptcy laws. The Commission became operational in June 1971 and filed its final report with Congress on July 30, 1973. Its report was in two parts. Part I contained the Commission's findings and recommendations.

Part II contained a draft of a bill to implement those recommendations. Senator QUENTIN BURDICK, chairman of the Subcommittee on Improvements in Judicial Machinery and a member of the Commission, and Senator Marlow Cook, a member of the Commission, introduced that bill in the 93d Congress as S. 4026. No action was taken on the bill during the 93d Congress.

In the 94th Congress, the Commission bill was again introduced by Senator BURDICK as S. 236. Senator BURDICK also introduced an alternative to the Commission bill that had been drafted by representatives of the National Conference of Bankruptcy Judges. The judge's bill, S. 235, differed in several major aspects from the Commission bill.

Hearings on both bills commenced in late February of 1975 and continued through November of 1975. All interested parties were invited to give testimony on the bills. The Subcommittee on Improvements in Judicial Machinery heard from several hundred interested parties and had nearly 80 witnesses personally testify over 24 days of hearings. The hearings covered all aspects of bankruptcy law. Testimony was heard on the structure of the new bankruptcy courts, the relationships of other laws to bankruptcies, tax aspects, consumer bankruptcies, business reorganizations, railroad reorganizations, and the effect and

interaction of the securities laws in bankruptcy cases.

Throughout the remainder of 1975 and all of 1976, the subcommittee continued to gather information and to begin work on a draft bill; however, no bill was reported to the full Judiciary Committee during the 94th Congress. Introduced in the House at this time were parallel bills to S. 235 and S. 236 entitled H.R. 31 and 32, and during the 94th Congress, the House also held extensive hearings on the bankruptcy reform bills. The House culminated its actions with the introduction early in the 95th Congress of H.R. 6, which was amended and reintroduced as H.R. 8200. That bill was passed by the House on February 1, 1978.

S. 2266, an analogous bill to H.R. 8200, was introduced by myself and Senator WALLOP on November 1, 1977. The Subcommittee on Improvements in Judicial Machinery conducted further hearings in late November and early December, receiving testimony from nearly 60 witnesses and again receiving several hundred written statements and comments with regard to the bill. Subcommittee amendments as a result of the hearings, statements, and comments were made to the bill over the next 5 months and these efforts culminated in the reporting by the subcommittee, on May 17, 1978, of a bill in the nature of a substitute. The report of the vote of the subcommittee was 3 in favor, none opposed, and 1 not voting.

The major purpose of this bill is the modernization of the bankruptcy laws. The substantive law of bankruptcy and the current bankruptcy system were designed in 1898, and underwent the last significant overhaul in 1938, nearly 40 years ago. Since that time, there have been vast changes in the law of debtor-creditor relations, including the widespread adoption of the Uniform Commercial Code in the early 1960's and the vast spread of consumer credit. There has been a steady growth in the number of bankruptcies, both consumer and the more complicated business reorganization cases, over the last 20 years, and this steady growth has led to great stresses and strains in the bankruptcy system. The bankruptcy referee has gradually taken over the prime responsibility for the operation of the system from the Federal district judges.

The hearings before the Subcommittee on Improvements in Judicial Machinery confirmed that revision was necessary, and the bill is the attempt to upgrade and modernize our bankruptcy courts and also the law which they must apply in the bankruptcy area.

S. 2266 was reported unanimously from the Committee on the Judiciary on July 12. Following that, the bill was sent on a sequential referral to the Committee on Finance where the tax amendments to the bill were also unanimously ordered to be reported on August 8. I believe the bill pending before the Senate reflects an evenhanded approach to bankruptcy reform and I remain hopeful that a satisfactory compromise can be arrived at on those issues where we differ from the House.

Mr. President, I take this opportunity to thank Senator WALLOP, the ranking member of the Judicial Improvements Subcommittee, for his participation and the assistance of his staff in the consideration of this bill. Without the bipartisan support this measure has received, and the lengthy and time exhausting work of the other members of the subcommittee, Senator ROBERT BYRD and Senator JOSEPH BIDEN, this measure would not be before us today.

In conclusion, I want to make clear that I share Senator WALLOP's concern about the final resolution of the railroad collective bargaining issue in S. 2266, but I am hopeful that, next year, hearings before Senator WILLIAMS' Human Resources Committee will provide a full airing of the matter and lead to reasoned legislation if such a need is shown. I shall direct the staff of the Judicial Improvements Subcommittee to continue to monitor developments in the area and to assist whenever appropriate.

Mr. WALLOP. Mr. President, I want to take this opportunity to recognize the great efforts that Senator DECONCINI and the staff of the Judicial Improvements Subcommittee have made in bringing this bill, S. 2266 to this point in its enactment. I personally appreciate the graciousness Senator DECONCINI has accorded me in presenting my views and those of the other minority Senators. This bill is the culmination of several years of hard work and extensive hearings. There has been widespread agreement of the need for bankruptcy reform but many different approaches have been suggested. It has been the task of the subcommittee to sift through these suggestions and weigh the merits of each. The bill as reported is the result of this long process. I think the bill has become finely turned by these efforts and that its enactment will provide broad based reforms that will more fairly allow debtors and creditors to meet and solve the problems of financial distress.

I am most pleased with the basic concept of this bill in regard to the structure of the new bankruptcy courts. The courts will be conducted by bankruptcy judges, not referees. The jurisdiction of the courts will be broad and pervasive. No longer will needless litigation in several courts be required to determine all the matters involved in a bankruptcy case. The distinction between plenary and summary jurisdiction will be abolished. The new judges will have 12-year terms, twice that of the present referees and will be functionally independent of the Federal district courts. The economy of initial appeals to the district courts will be preserved. The creation of these independent adjunct bankruptcy courts will be at a fraction of the cost of the alternative solution of new article III courts as recently passed by the House in the analogous bill, H.R. 8200.

The present system of private trustees will be retained with some added safeguards to upgrade the quality of trustees and insure that favoritism in appointment is prevented.

Many procedures will be streamlined for the administration of the bankruptcy cases. Cumbersome requirements such as the need for a so-called "act of bankruptcy" for an involuntary case will be deleted.

The current law allowing States to determine the property exemptions that debtors will have for their fresh start after bankrupcy will be retained. The provisions for priority payments of certain kinds of unsecured claims over general unsecured claims will be revised. The priority for wages will be modernized to reflect current wage and benefit agreements.

In liquidation cases the court will continue to preside at the first meeting of creditors. Special provisions will be made for the liquidation of stockbrokerage firms and the bankruptcy of commodity future brokers.

Among the most dramatic changes from current law are the new provisions for corporate reorganizations. Current chapters X, XI, and XII will be combined into a single chapter 11. In most instances the debtor will be able to remain in control and direction of the business during the reorganization period. In the average case, appointment of a trustee will only occur after a finding by the court of necessity. In the very large public company case where there is great public interest and the creditors, stockholders and interested parties may be located throughout the country, a trustee will automatically be appointed to supervise the proceedings. He will be able to retain the current management if he desires but will not be required to do so. A recent example, the Equity Funding case, has demonstrated the wisdom and benefit that the disinterested trustee can bring to these sorts of cases.

The problems of the recent Pine Gate case which has given lenders pause in making real estate loans will be solved by the addition of specific guidelines as to the manner in which real estate loans can be dealt with in reorganization cases and when and how lenders will be able to foreclose properties that are part of the debtor's estate.

The effective date of the bill will be October 1, 1979, and its provisions will apply only to cases commenced after that date.

These comments should not be construed to mean that I agree with all the provisions of the bill. I think on balance it should be passed, but I would like to mention two of my concerns. The Judiciary Committee did not accept the subcommittee's provision on reaffirmations, which would have permitted reaffirmations but allowed for a 30-day cooling off period for rescission. Reaffirmations will be prohibited under this bill. I think that is a mistake.

Similarly, a provision in the railroad reorganization subchapter that would have allowed the trustee to reject the work rules portion of a collective bargaining agreement was dropped by the Judiciary Committee. I understand that Senator WILLIAMS is committed to hold-

ing hearings on this question. I hope that the hearing process is not the end of the matter and that further action by the Human Resources Committee and the Senate will follow. The testimony that was heard by the subcommittee on this subject made it clear that antiquated work rules can often frustrate the reorganization process. This is a disservice to employees, the company, and the public alike.

Mr. President, I have been privileged to have had this opportunity to participate in the consideration of this bill and I now urge its passage.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the amendments in the nature of a substitute and the amendments reported from the Committee on Finance be adopted and treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT 1818

(Purpose: To make technical and conforming changes to certain tax-related provisions)

Mr. DECONCINI. Mr. President, on behalf of the distinguished chairman of the Committee on Finance, I send to the desk a series of technical and typographical corrections to the bill.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI, for Senator LONG) proposes unprinted amendment numbered 1818.

Mr. DECONCINI. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 315, line 19, insert the following immediately before the semicolon: ", including any suspensions of such period occurring on or after the date of the filing of the petition".

On page 315, line 25, insert a comma immediately after "law".

On page 336, line 4, strike out "118" and insert in lieu thereof "18".

On page 345, line 3, insert a comma immediately after "events".

On page 345, line 17, insert a comma immediately after "or".

On page 346, line 11, strike out "interests" and insert in lieu thereof "interest".

On page 351, line 9, strike out "an".

On page 353, line 14, strike out "permitted" and insert in lieu thereof "not restricted".

On page 353, line 14, strike out "tax".

On page 356, strike out lines 5 through 12, and insert in lieu thereof the following:

"(h) Notwithstanding any other provision of this section, the trustee may prosecute an appeal or review of an adjudication by a judicial or administrative".

On page 374, strike out line 7, and insert in lieu thereof the following: "(g), or 502 (h) of this title may be filed".

On page 375, strike out lines 8 and 9, and insert in lieu thereof the following:

"(b) Except as provided in subsections (f), (g), or (h) of this section, if such objection to a claim is".

On page 377, line 15, strike out "and" and insert in lieu thereof "or".

On page 377, strike out line 16, and insert in lieu thereof the following: "thereof was not sent to the trustee, on or before the last date for".

On page 386, line 16, insert a comma immediately after "to".

On page 387, line 7, strike out "a".

On page 387, strike out lines 21 through 25.

On page 388, strike out line 1.

On page 388, strike out line 2, and insert in lieu thereof the following:

"(3) When a determination by".

On page 391, line 13, insert a comma immediately after "or".

On page 391, line 14, insert a comma immediately after "remain".

On page 391, line 20, strike out "the".

On page 391, line 24, strike out "for a prompt audit of such liability".

On page 392, line 24, strike out "such" and insert in lieu thereof "the".

On page 392, line 24, strike out "under".

On page 393, line 1, strike out "paragraph (1)".

On page 397, line 9, strike out "adjustable" and insert in lieu thereof "adjusted".

On page 399, line 2, strike out "taxes" and insert in lieu thereof "tax".

On page 399, line 2, strike out the second comma and insert in lieu thereof a semicolon.

On page 399, line 8, insert immediately before "(iii)" an opening black bracket.

On page 399, line 12, insert a closing black bracket immediately after the semicolon.

On page 399, line 22, strike out "were" and insert in lieu thereof "was".

On page 399, line 25, strike out "taxes" and insert in lieu thereof "tax".

On page 403, line 16, insert "or his delegate" immediately after "Treasury".

On page 403, line 24, strike out "fine, penalty, or addition to tax" and insert in lieu thereof "penalty".

On page 406, line 24, strike out the beginning quotation marks.

On page 407, strike out lines 10 through 24.

On page 408, strike out lines 1 through 6.

On page 409, line 24, strike out "(5)" and insert in lieu thereof "(6)".

On page 410, line 1, insert "or" immediately after the semicolon.

On page 414, line 17, insert "any tax" immediately before the period.

On page 455, line 22, insert "expenses and" immediately before "claims".

On page 456, line 19, strike out "in".

On page 456, line 20, strike out "the same manner as" and insert in lieu thereof "by reference to".

On page 457, line 12, strike out "specified in" the first time it appears.

On page 457, line 12, insert a comma immediately after "order".

On page 539, line 12, insert an opening black bracket immediately before "(d)".

On page 539, line 15, insert a closing black bracket immediately after the period.

On page 543, line 24, strike out "was" and insert in lieu thereof "is".

On page 544, line 4, strike out "taxes" and insert in lieu thereof "tax is".

On page 544, line 19, strike out "[(4)(5)" and insert in lieu thereof "[(4)](5)".

On page 551, line 4, strike out "] (c)".

On page 551, line 14, strike out "] (d)".

On page 551, line 21, insert a closing black bracket immediately after the period.

On page 572, line 14, insert an opening black bracket immediately before "claims".

On page 572, line 15, insert a closing black bracket immediately after "and" and insert the following: "claims which are nondischargeable under section 523 of this title; and".

On page 574, line 4, insert immediately after the period the following new sentence: "Notwithstanding the preceding sentence, a governmental unit to which any tax is owing may accept provisions of the plan providing for payment of the tax over a period longer than four years.".

On page 577, between lines 6 and 7, insert the following:

"(d) Any tax liability provided for in the plan may be assessed against the debtor by the governmental unit, but any such assessment, if not previously made under otherwise applicable law, may not be made until after the plan is confirmed and may be made only within the limits of law otherwise applicable.".

On page 577, line 15, strike out "[or]" and insert in lieu thereof "or".

On page 577, line 17, strike out "; or" and insert in lieu thereof a period.

On page 577, strike out line 18.

On page 580, line 18, insert an opening black bracket immediately before "§ 1331.".

On page 580, strike out line 26.

On page 581, strike out lines 1 through 11.

On page 629, strike out lines 5 through 13 and insert in lieu thereof the following:

SEC. 318. (a) Subsection (b)(2) of section 47 of the Internal Revenue Code of 1954 (relating to certain dispositions, etc., of section 38 property) is amended by striking out "section 381(a)" and inserting in lieu thereof "section 371, 374, or 381(a)".

On page 629, beginning on line 14, strike out "Section 47(d) of the Internal Revenue Code of 1954 (as added by this Act) shall apply" and insert in lieu thereof "Paragraph (2) of section 47(b) of the Internal Revenue Code of 1954, as amended by this Act, shall apply".

On page 629, line 19, strike out "Section 47(d)" and insert in lieu therof "Paragraph (2) of section 47(b)".

On page 629, line 20, strike out "added" and insert in lieu thereof "amended".

On page 630, line 3, insert the following immediately after the dash: "For purposes of any tax to which subsection (a) applies—".

On page 630, line 6, insert "a" immediately after "to".

On page 633, strike out lines 3 through 8, and insert in lieu thereof the following:

(2) by amending subsection (b) to read as follows:

"(b) Claim Filed Despite Pendency of Tax Court Proceedings.—In the case of a tax imposed by subtitle A or B or chapter 41, 42, 43, or 44, claims for the deficiency in interest, additional amounts, and additions to the tax may be presented for adjudication to the court before which a receivership proceeding or a case under title II, United States Code, is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Tax Court; but no petition for any such redetermination shall be filed with the Tax Court after the appointment of the receiver.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1819

Mr. DECONCINI. Mr. President, I send an amendment to the desk, offered by Senator KENNEDY, and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI) for Mr. KENNEDY, proposes an unprinted amendment numbered 1819.

Mr. DECONCINI. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 312, line 12, strike the "." (period) and add the following: "except as otherwise provided in Section 766(b) and 770.".

On page 481, immediately following line 10, insert the following:

(15) "forward contract" means a contract requiring the seller to sell and the buyer to purchase a specified quantity of a commodity on a specified date or within a specified time in the future, which contract is effected otherwise than on a contract market or board of trade but which requires delivery of a commodity (or by-product or essentially similar commodity) which is traded on a contract market;

(16) "forward contract merchant" means a person who in the regular course of business purchases and sells forward contracts and who is a member or an affiliate of a member of a clearing organization;

On page 481, line 11, strike "(15)" and insert in lieu thereof "(17)".

On page 481, line 17, strike "(16)" and insert in lieu thereof "(18)".

On page 481, line 20, strike "(17)" and insert in lieu thereof "(19)".

On page 482, line 1, strike "(18)" and insert in lieu thereof "(20)".

On page 482, line 6; strike "(19)" and insert in lie uthereof "(21)".

On page 485, line 17, after "made by," insert "or to."

On page 485, line 18, after "organization," insert "or by or to a forward contract merchant,"

On page 490, line 3, after "broker" insert "or forward contract merchant".

On page 490, line 5, after "contract" insert "or forward contract,".

On page 490, line 6, after "contract" insert "or forward contract,".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WALLOP. Mr. President, reserving the right to object, I shall not object, but I want to express certain minor reservations about his amendment by Senator KENNEDY. I do not think it does violence to the bill. It came as a little bit of a surprise to me this morning. I have checked it out, but I do want to express certain reservations about it as it moves slightly from the posture that the minority had wanted with regard to commodity brokers in general.

I do not object.

The amendment was agreed to.

UP AMENDMENT NO. 1820

Mr. DECONCINI. Mr. President, I send an amendment to the desk that is meant to correct an ambiguity in the committee report.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI) proposes an unprinted amendment numbered 1820.

Mr. DECONCINI. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 365, delete line 25 through line 3 on page 366 and insert in lieu thereof:

(4) Notwithstanding anything to the contrary contained in this section, the trustee may neither:

A. assume an executory contract to make a loan or deliver equipment to or issue a security of the debtor; nor,

B. prior to assuming an unexpired lease, require a lessor to provide services or supplies incidental to that lease agreement until such time as the trustee has assumed the unexpired lease, or in the alternative, provides the lessor in writing, with adequate assurances that the lessor will be compensated pursuant to the terms of the lease, for any services and supplies provided thereunder, during the transition period.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The amendment was agreed to.

Mr. DECONCINI. Mr. President, if there are no further amendments, I ask for third reading of the bill.

Mr. WALLOP. Mr. President, Senator BARTLETT has been sent for. He has an amendment and is on his way over. Therefore, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided. I think it will not be very long.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. WALLOP. How much time does the Senator want?

Mr. THURMOND. About 2 minutes.

Mr. WALLOP. Mr. President, I yield 2 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the pending legislation, the Bankruptcy Reform Act of 1978. The major purpose of this bill is to reform and modernize the bankruptcy laws of this country.

The substantive bankruptcy law was first created in 1898 and underwent a major overhaul in 1938. Since that time there have been a number of changes in debtor-creditor relations, but the Congress has not acted to make these changes in the bankruptcy laws. S. 2266 seeks to update and reform this important area of law.

In 1970, Congress created the Commission on the Bankruptcy Laws of the United States to study and recommend changes in the bankruptcy laws. The Commission's final report, filed with the Congress on July 30, 1973, is the basis for the pending bill. The legislation has been subjected to extensive hearings in both the 94th and 95th Congress. Numerous witnesses testified on all aspects of the bankruptcy law, including the structure of the new bankruptcy courts, consumer bankruptcies, business reorganizations, railroad reorganizations, and the effect of the bankruptcy laws on the securities laws.

Mr. President, I would like to summarize the major provisions of this legislation. First, chapter 1 contains the general provisions which includes definitions, rules of construction and the basic procedural ground rules for the operation of the bankruptcy system.

Chapter 3 deals with voluntary bankruptcies where cases are commenced by the filing of a petition in the office of a bankruptcy judge. An involuntary case may be filed by three or more creditors having claims aggregating, at least, $5,000 or more. If there are fewer than 12 creditors, 1 creditor holding a claim of at least $5,000 may file.

The test for determining insolvency under this chapter is whether a debtor is generally unable to pay, or has failed to pay a major portion of his debts as such debts become due, or within 90 days before the filing of a petition a custodian has been appointed for the debtor's property. The inability or failure to pay debts is a change from current law which requires "balance sheet" insolvency.

The filing of a petition under this title automatically stays the enforcement of any act against the debtor to recover any claim owed by the debtor. The automatic stay seriously affects the rights of all the debtor's creditors, therefore, a number of limitations have been placed upon the continuance of the stay. The rights of creditors are protected where replacement liens or real property is involved. Moreover, the debtor may use cash collateral during a reorganization, but only after a hearing and finding by the court.

The rights of a trustee in bankruptcy are also protected and a trustee may reject executory contracts and unexpired leases which is now provided for in current law. The rights of a trustee to assume or reject executory contracts does not, however, include the right to assume a loan commitment.

Mr. President, chapter 5 provides procedures for all of the property of the debtor to be included in the bankruptcy proceeding. This also allows the trustee to more easily recover property that may have been transferred by the debtor. In addition, there is a new section requiring secured creditors to file claims, allowing an early evaluation to determine the secured and insecured portion of the claim.

The bill retains current law in the area of exempt property that a debtor may retain after bankruptcy for a fresh start. Thus, the bill takes the approach of current law which adopts the exemption law of the State in which the debtor is located. This method of providing for a fresh start for a debtor is, in my opinion, much better than the approach taken by the House which allows a debtor to choose between State law or Federal exemptions. Unfortunately, this method can lead to the retention of substantial amounts of property, resulting in instant affluence in the face of a bankruptcy proceeding. The fairer way is to allow a fresh start, but on a limited basis.

Mr. President, the bill also retains current law with regard to certain debts, such as those obtained under false pre-

tenses or actual fraud, to be excepted from discharge. In addition, in the area of preferences, the preference section is changed from current law to add a presumption that during the 90 days preceding bankruptcy the debtor will be presumed to have been insolvent. The preference period is reduced from 4 months to 90 days.

Mr. President, one major reform of this bill is the establishment of a new bankruptcy court as an adjunct of the U.S. District Court.

Each circuit court of appeals will appoint bankruptcy judges for its circuit. Compensation will be at the annual rate of $48,500, an income level believed by the committee to be commensurate with the duties of the office.

Qualifications for bankruptcy judges include bar membership in good standing for at least 5 years at the time of appointment and competence as determined by the judicial council of the circuit. Additional qualification standards may be prescribed by the Judicial Conference of the United States.

The appointment of bankruptcy judges by the district court as contributed significantly, first, to a real and apparent dependency on the part of the bankruptcy court and its judges upon the district courts which appoint and review the decisions of bankruptcy judges, and second, to the image of the bankruptcy court as the stepchild of the district court. This bill is designed to eliminate both the real and apparent dependency and subservience of the bankruptcy court, in part by vesting the power to appoint bankruptcy judges in the circuit courts of appeals, rather than in the district courts. The change is further warranted by the need to do away with the unseemly appellate practice whereby the district judge or judges who appoint the bankruptcy judge often rule on appeals from the orders of their own appointees.

There will be a 12-year term of office for bankruptcy judges appointed under new 28 United States Code, section 152. The present 6-year term is insufficient to attract the caliber of individual needed to perform the highly demanding and important functions of the office of bankruptcy judge. By doubling the term of office for future bankruptcy judges it is anticipated that a major goal of this reform legislation, the establishment of a functionally independent bankruptcy court, can be further advanced.

A bankruptcy judge whose term expires is permitted to continue to serve until a successor is appointed and qualifies.

The bill provides grounds upon which and prescribes the procedures by which the removal of a bankruptcy judge may be accomplished. In competence, misconduct, neglect of duty and disability, as determined by the judicial council of the circuit, are the sole grounds for removal. The bankruptcy judge is entitled to be heard on the charges against him.

The Senate bill, Mr. President, does not provide for the elevation of bankruptcy referees to the level of article III judges. I agree with that position, because I believe that the upgrading of bankruptcy referees is unwarranted since there are numerous protections, as well as increased retirement benefits for bankruptcy judges. The reforms of this bill more than compensate for the arguments that may be made to make bankruptcy referees article III judges.

Finally, Mr. President, this bill represents an immense amount of work by the members of the Subcommittee on Improvements in Judicial Machinery and the staff of that subcommittee. I especially want to commend Senator DECONCINI, the chairman of the subcommittee and Senator WALLOP, the ranking minority member. They did a fine job.

This legislation constitutes a monumental reform that is long overdue. The growth of consumer laws and the increased recognition by courts of the rights of consumers has underscored the need for a revision and modernization of our bankruptcy laws.

S. 2266 represents a careful redrafting of the bankruptcy laws of this country. It recognizes the relationship between State laws on bankruptcy on the one hand, and the need for a certain amount of uniformity at the Federal level on the other. The approach taken by this bill is, in my opinion, far superior to the version now being considered by the House.

Mr. President, as the ranking minority member of the Senate Judiciary Committee, I strongly support this legislation and urge its adoption.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. Mr. President, is the Senator from Oklahoma ready to proceed with his amendment?

Mr. BARTLETT. I am ready to bring up the amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

UP AMENDMENT NO. 1821

(Purpose: To allow a bankrupt to rescind any revival or reaffirmation within 30 days of such action)

Mr. BARTLETT. Mr. President, I introduced an amendment yesterday and I have a slight modification which I send to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BARTLETT) for himself, Mr. THURMOND and Mr. HATCH, proposes an unprinted amendment numbered 1821:

On page 421, strike out lines 4–18 and insert in lieu thereof the following:

(b) A debt extinguished by discharge in a case under this title may be revived or reaffirmed by written instrument or be all or part of any bargain creating a new debt except, however, the debtor may rescind his revival or reaffirmation by written notice to all concerned creditors within 30 days of such revival or reaffirmation. Any judgment, whenever obtained, that a debtor is personally liable to pay a debt extinguished by discharge, and not revived or reaffirmed in accordance with this section, is null and void.

On page 421, line 19, strike "(d)" and insert in lieu thereof "(c)".

Mr. BARTLETT. Mr. President, my amendment to S. 2266 reinstates language in the bill that would enable voluntary reaffirmation or revival of debts subject to a rescission right of 30 days. It is identical to language in the bill as reported by the Subcommittee on Judicial Machinery on May 17, 1978, which was amended out of the bill by the full committee.

Although I believe the Judiciary Committee's effort was well intended, the effect of its amendment is to deprive consumers of a right they have always had, that is, of renewing a debt discharged in bankruptcy.

Without this right consumers will be denied the opportunity to protect a cosigner such as wife, a relative, or other family member from liability; or to protect collateral such as an automobile from repossession; or to honor a moral obligation. Even more importantly, the ban on reaffirmation in the committee bill can jeopardize a consumer's ability to save his home from foreclosure.

Rather than adopt an absolute ban on all reaffirmations, as S. 2266 purposes, my amendment provides a compromise adopted by the subcommittee which held hearings and studied the measure.

It is a simple, direct, approach which will protect the legitimate interests of consumers and creditors alike. It would allow, but not require, reaffirmation; it would permit a debtor 30 days to change his mind.

If abuse is a problem it can be limited without adopting an arbitrary prohibition on all reaffirmations. I submit the remedy proposed in S. 2266 exceeds any alleged abuse.

As a practical matter, thousands upon thousands of bankrupts reaffirm or revive debts with creditors each year for amounts totalling many millions of dollars. They do so voluntarily because they know it is to their advantage. I believe consumers should be able to retain that right. I also believe creditors should be able to recoup some of their losses. What is wrong with reaffirmation if it is voluntary?

Under my proposal, the debtor would have 30 days to reconsider his decision and cancel any reaffirmation. With this provision in the bill, any possible coercion or abuse by creditors is effectively avoided.

My amendment would afford the bankrupt more protection than current law and more real protection than the absolute ban now contained in S. 2266.

The record clearly shows that a major percentage of consumer bankruptcies are caused by a single, overwhelming debt such as a medical bill. Debtors may seek relief from such crushing medical expenses but wish to honor other obligations and retain their credit worthiness with those whom they have dealt with in the past—and with whom they wish to deal in the future. The committee bill

denies consumers the right to voluntarily and selectively reaffirm. It denies consumers the right to dispose of their future income as they see fit. There is no justification for this interference. It smacks of paternalism.

Additionally, I am concerned that the action of the Judiciary Committee prohibiting reaffirmations will create severe hardship for consumers in three distinct areas where it may be a benefit for them to renew their obligations. They may not do so because of the prohibitions of section 524 (b) and (c). These two subsections, read together with section 722, would permit property-related reaffirmations only in the event a bankrupt desires to redeem exempt tangible personal property subject to a nonpurchase money security interest. The power to reaffirm a debt only in this narrowly defined circumstance leaves the bankrupt helpless to protect other property which may be of substantial value, such as the following:

First. The bankrupt's home: The bankrupt will be unable to save his residence from foreclosure by the mortgagee. Since the bankrupt cannot revive his debt—section 524(b) makes any such effort "void"—the creditor must look to his security for payment through foreclosure. The bankrupt will not only lose his home, but in most cases any equity he might otherwise have protected through a homestead exemption. Likewise, the bankrupt's right to redeem—available under most State laws—would be lost for lack of power to execute a new obligation.

Second. Non-exempt personal property: Automobile and durable consumer goods of many kinds are usually acquired on credit, the seller retaining a purchase-money security interest in the auto or goods until payment in full is made. Under present law a bankrupt may often keep possession of such property by reaffirming his obligation with the seller. Under section 524 (b) and (c) and section 722 he would be powerless to reaffirm and the creditor would be obliged to repossess.

Third. All intangible property: The bankrupt may have pledged as security intangibles such as a credit union share, a certificate of deposit, stocks or bonds, contract rights or assignment of debt, life insurance policies et cetera. Again, pursuant to the strictures of section 524 (b) and (c) and section 722, he would be unable to prevent liquidation of such properties through an agreement to revive his discharged obligation.

The fresh start concept of the act will actually be thwarted in many cases by the ban on reaffirmations, resulting in substantial harm to consumers. The more flexible consumer-protective limitations on reaffirmation originally proposed and adopted by the subcommittee and now contained in my amendment will cure this disastrous defect in the bill.

I strongly urge the adoption of my amendment.

Mr. President, I reserve the remainder of my time.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. BARTLETT. I yield.

Mr. THURMOND. Mr. President, I commend the able Senator from Oklahoma. He and I are members of the Armed Services Committee, and he has done a fine job there. On all his committees, he has done a splendid job. We are proud of him, and I am glad to join him in this amendment. It is a sound amendment and should be adopted.

Mr. BARTLETT. I thank the distinguished Senator from South Carolina.

Mr. WALLOP. Mr. President, will the Senator yield?

Mr. BARTLETT. I yield.

Mr. WALLOP. Mr. President, I find myself in agreement, as I was during my opening remarks, with the posture the Senator has taken.

I ask those who are against this, what is wrong with offering a debtor flexibility as to a particular property or a particular debt?

It seems to me that it is inherently American to offer somebody a protected route to dignity. The 30-day cooling-off period, the opportunity for rescission, provides that protection and yet allows the debtor the option to restore personal confidence and dignity by reaffirmation if he chooses. I support the Senator.

Mr. BARTLETT. I thank the distinguished Senator from Wyoming.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. DECONCINI. Mr. President, Senator KENNEDY, the sponsor of the reaffirmation section as reported in the bill from the Judiciary Committee, is unavoidably absent today, but I would like to take this opportunity to defend and lend my support to the Kennedy proviso on reaffirmations.

Under the current Bankruptcy Act, the effect of a discharge has generally been governed by State law. Under most State laws, a discharge is an affirmative defense to any action on the debt discharged. It does not forbid collection of the debt, nor does it erase the debt. The moral obligation to repay the debt remains, and is valid consideration for a new promise to repay. Thus, unsuspecting debtors are led into binding reaffirmations, and the beneficial effects of a bankruptcy discharge are undone. The advantages sophisticated and experienced creditors have our unsophisticated debtors in this area were lessened by the 1970 amendments to the Bankruptcy Act, but some still remain. The unequal bargaining position of debtors and creditors, and the creditors' superior experience in bankruptcy matters still lead to reaffirmations too frequently. To the extent that reaffirmations are enforceable, the fresh start goal of the bankruptcy laws is impaired.

The bill makes void any agreement that contains a reaffirmation of a discharged debt, and prohibits a creditor from entering into such an agreement. The consumer finance industry strongly opposes the provision. It has argued that debtors frequently voluntarily repay debts, and that debtors should not be prohibited from repaying discharged debts, out of a sense of moral obligation or for other reasons. "Voluntary", however, is somewhat euphematic, and often has led to court action to enforce "voluntary" repayments. The bill recognizes the truly voluntary situation and permits legitimately voluntary repayments, but denies creditors court process to enforce a reaffirmation, other than under a nondischargeability or redemption agreement. H.R. 8200 guarantees that debtors may repay a portion or all of a discharged debt in a voluntary situation, without any fear of reaffirming the whole of the debt and being subject to the same court process that resort to the bankruptcy laws was designed to prevent.

This provision is a significant factor in making bankruptcy relief an effective remedy. It insures that a debtor will not come out of bankruptcy in the same situation as when he went in. It contributes to the debtor's fresh start. The provision prevents creditor experience in handling bankrupt debtors from overwhelming inexperienced debtors that are in a severely disadvantaged bargaining position after bankruptcy.

It was on vote of 10 to 2 that the Judiciary Committee accepted Senator KENNEDY's amendment, and I hope it will be sustained today.

Mr. BARTLETT. Mr. President, at stake here is the human dignity of an individual who does have large debts, does want to put them in order by taking advantage of the bankruptcy laws which have been available to a person in this situation for a long time. This is nothing new at all to a businessman, to a person who has some kind of financial activity and loses his job and has unusually large expenses, or whatever it may be. But he also wants to shout, loud and clear, that he wishes to reaffirm certain of these debts.

I think it is very important for an individual to have this right. I believe it is the most paramount and overriding issue involved with this amendment—that he must have the opportunity to say, if he wishes to say, that he wants to reaffirm certain of these debts. Then, if there is coercion, harassment, or some kind of pressure brought upon this individual, he has 30 days, a quiet period, in which he can think over his reaffirmation, and he can rescind it or alter it.

This provides the protection that the distinguished Senator from Arizona was talking about and that the distinguished Senator from Massachusetts (Mr. KENNEDY), who is absent, had in mind.

But this amendment is a compromise and it definitely provides protection for the individual from any kind of abuse or coercion. I think that it affords him the opportunity, if he wants, to say: "Yes, I reaffirm these debts." To deny an individual his right or deny him possibly the advantage of bankruptcy, which in many cases is the only way a person can go and work his way out and work his way up, I think is virtually almost a criminal act.

So I hope my colleagues will join with those of us who are sponsoring this in order to give every individual the op-

portunity to stand up and say, if he wants: "Yes, here is a debt or here are debts that I reaffirm."

I am happy to yield to the Senator from Utah.

Mr. HATCH. I thank the distinguished Senator from Oklahoma and I compliment him on his amendment here today.

As I have conferred with my constituents about S. 2266 I have heard a loud clamor about the reaffirmation provision that is presently in the bill. After carefully analyzing the portion of the bill relating to this issue as reported by the Judiciary Committee, I feel that the amendment offered by the Senator from Oklahoma is certainly justified.

I support the amendment, and I am pleased to join my colleagues as a cosponsor.

I am concerned that we in the Judiciary Committee perhaps acted a little hastily in changing the provisions of section 524 that have been proposed by the subcommittee after it held hearings and carefully drafted language based upon its findings. If seems only proper that we not eliminate the long accepted concept of reaffirmation.

I have no doubt in my mind that there has been minimal abuse of reaffirmation by over-zealous creditors. However, I do not think it appropriate to meet that problem by a ban of reaffirmation as we have in the bill now before us.

The amendment we are now considering restores the language suggested by the subcommittee and properly protects the right of reaffirmation as a means for the consumer to restore his credibility in a situation where he has found bankruptcy to be a necessary step.

I might add, as an attorney who represented many people who have had difficulties and have had problems with bankruptcy, I think many of these people would be deprived of a tremendous opportunity to be able to resolve some of the inner conflicts and emotional conflicts which occur when they go into bankruptcy if they do not have a right of reaffirmation.

So I urge my colleagues to join us in supporting this amendment of my good friend and colleague from Oklahoma.

Mr. BARTLETT. I thank my distinguished friend, the Senator from Utah. I appreciate his remarks and the remarks of the Senator from South Carolina (Mr. THURMOND), and the Senator also who offered this amendment in committee and supports it very strongly and has been very helpful to me, the Senator from Wyoming (Mr. WALLOP).

I am prepared to yield back the remainder of my time or if the Senator from Wyoming wishes additional time I yield.

Mr. WALLOP. Mr. President, the Senator from Wyoming has a unanimous-consent request.

Mr. President, I ask unanimous consent that Miss Beverly Charles, of Senator JAVITS' staff, and Ralph Oman, of Senator MATHIAS' staff, be accorded the privilege of the floor throughout the debate and votes on S. 2266 and S. 1423.

The PRESIDING OFFICER. Without objection, it is so ordered.



Mr. DECONCINI. Mr. President, I ask unanimous consent that Mr. Michael Altier be accorded the privilege of the floor on both these bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I make a similar unanimous consent request that Tom Wasinger, of my staff, be accorded the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I am prepared to yield back the remainder of my time.

Mr. DECONCINI. Mr. President, I am going to ask for a rollcall vote. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not at the present time a sufficient second.

Mr. BARTLETT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I yield such time as I have remaining to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I extend my congratulations to our distinguished colleagues, the able floor managers of this major and much-needed modernization of our bankruptcy laws, for their fine work.

I particularly compliment them on their understanding and fair approach to the complex subject contained in subchapter IV of chapter 7 which deals with commodity broker liquidations. The field of statutory commodity law is really quite new—the Commodity Futures Trading Commission was established only 4 years ago—and the law in this area is continually unfolding with new twists and wrinkles.

Our colleagues have taken this quite new area of commodities law and successfully interlaced it with the protections of this major bankruptcy revision. I believe that the thoughtful approach to the law contained in the Senate version of this bill should prevail on the conference—it is an approach that looks more fairly at the nature of commodity transactions while fully and equitably contemplating the problems of the bankrupt. It is my hope that our Senate colleagues will press for this superior version of this section of the bill in conference.

FORWARD CONTRACTING

The proposed amendments to the Bankruptcy Act contained in subchapter IV of chapter 7 of S. 2266 are concerned with commodity firms which are regulated by the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act. The amendments do not deal with forward contract merchant firms, which at present are not regulated by the CFTC but which provide much of the backbone and underpinning to organized futures trading in the United States. Note, however, that section 20 of S. 2391, the CFTC reauthorization bill, would authorize the CFTC to monitor the forward contract markets.

Forward contract merchants are commercial trading firms which offer to commercial customers the ability to buy or sell commodities in the physicals market on a forward basis. For example, a precious metals merchant will sell, on a forward basis, silver to a photographic film manufacturer who requires actual delivery of a specified commodity on a future date; the film manufacturer would buy the metal from the forward contract merchant rather than use the facilities of a futures market to effect the forward purchase since the manufacturer requires a specified grade of the metal and requires delivery on a specified date and at a specified place. While futures contracts are quite effective for hedging market risks, they are not necessarily suitable for obtaining required delivery of a specified graded commodity.

In order for a forward contract merchant to provide a regular and efficient forward market, the forward contract merchant must make extensive use of the futures markets. In other words, when the precious metals merchant sells silver on a forward basis to the film manufacturer, the merchant invariably makes an offsetting purchase of the metal for delivery to the merchant at or about the same time.

Usually this offsetting purchase is made through the facilities of a futures exchange. The forward contract merchant does not take the market risk of the commodity which he sells forward; the merchant, however, is able to offer nonstandardized delivery of a nonstandardized product (which is required for industrial or commercial purposes) because the merchant firm can hedge its market risk by use of a standardized futures contract on a futures exchange. Such a hedged position is not speculative but in fact has a stabilizing force on the public markets.

Just as the commodity broker pays margin to the clearing organization to secure the broker's position, the customer of a forward contract merchant may pay margin to the merchant to secure its (the customer's) obligations. In effect, the margin money received from the forward contract merchant's customer is passed through to the clearinghouse as margin on the forward contract merchant's hedged positions in the futures market. Under the committee print of S. 2266 dated May 17, 1978, the payment of margin by the broker to the clearing organization is free from attack but the payment of margin in the physicals market by the film manufacturer is not necessarily protected and leaves a dangerous gap in the protection provided the clearing organization.

If, in the event of the bankruptcy of a sizable customer of a forward contract merchant, margin payments made to the forward contract merchant were required to be returned (or an order obtained restricting use of funds equal to such

margin payments), but the forward contract merchant was unable to retrieve the margin it paid to the clearing organization, the funds so returned must come from the forward contract merchant's own capital. By suffering a significant reduction or restriction of capital, the forward contract merchant would not be able to meet margin calls on its various futures positions on the exchange. This would result in the precipitous liquidation of substantial positions on the exchange. On this point, it is important to note that in many instances a forward contract merchant will hold a substantial position of the outstanding contracts on a futures market. The liquidation of those positions may drastically affect market price to the detriment of everyone else in the market.

Also, just as commodity brokers contract for the right to liquidate futures positions in the event of bankruptcy, forward contracts frequently contain such liquidation rights. Under the committee print contractual rights to liquidate futures positions cannot be stayed; similar protection should also be afforded the forward contract merchants, because the forward contract is inextricably linked with the futures market. Where the positons are sizable, the pressure on the forward contract merchant would jeopardize his entire position with the futures exchanges requiring immediate liquidation of massive futures positions.

In order to protect the clearing organization, it is suggested that forward contract merchants be treated in a fashion similar to commodity brokers with respect to section 766(b) (margin payments) and section 770 (contractual rights to liquidate contracts). Failure to extend those protections would mean that one side of a forward contract merchant's business would be protected (future business) but that the other side (the physical or cash business which, ironically, is the reason and justification for most futures trading) would be exposed. In the end, however, the futures side would be jeopardized by the merchant's capital drain in the event of a major customer failure.

The changes in the Bankruptcy Act suggested in this memorandum are compelled by logic as well as by economic realities. Forward contract merchants are an integral part of the commodities business; generally speaking, the physicals positions of a forward contract merchant are reflected by offsetting positions in the futures market.

The intricate connections between forward contract firms and the clearing organizations are such that a failure of a forward contract merchant could have serious repercussions to clearing organizations and the commodities community. The presently proposed revisions to the Bankruptcy Act should be modified to provide the additional protection suggested here.

The changes proposed are quite limited. They would apply only to forward contract merchants which are themselves clearing members or affiliates of clearing members, and "forward contracts" would be limited to commodities which are traded on future exchanges. These conditions are necessary to limit the proposal to those instances where bankruptcy or liquidation could affect the public futures market. The following textual suggestions are offered:

The following definitions should be added to Section 761:

Commodity forward contract means a contract requiring the seller to sell and the buyer to purchase a specified quantity of a commodity on a specified date or within a specified time in the future, which contract is effected otherwise than on a contract market or board of trade, but which requires delivery of a commodity (or by-product or essentially similar commodity) which is traded on a contract market.

Forward contract merchant means a person who in the regular course of business purchases and sells commodity forward contracts and who is a member or an affiliate of a member of a clearing organization.

Section 770. Contractual Rights to Liquidate or Transfer.—

Nothing in this title or state law shall operate to prevent, stay, or otherwise prohibit a commodity broker or a forward contract merchant from exercising a contractual right to liquidate or transfer a commodity contract or forward contract, or to cause the liquidation or transfer of a commodity contract or forward contract, nor shall any court issue any order preventing, staying, or otherwise prohibiting the exercise of such a contractual right. As used in this section, the term contractual right includes, but is not limited to, a right set forth in a rule, regulation, or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof.

Section 766. Nonvoidable transfers.—

(b) margin payments made by or to a commodity broker, other than clearing organization, or by or to a forward contract merchant, unless (1) the payment was made on or within one year before the date of the filing of the petition; (2) the payor made the payment with actual intent to hinder, delay, or defraud any entity to which such payor was or became indebted on or after the date that such payment occurred; (3) the transferee knowingly participated in the payor's scheme to defraud; and (4) the recovery is from the transferee or a subsequent transferee who had actual knowledge at the time of that subsequent transfer of the payor's scheme to defraud.

Section 766(b) of S. 2266 should be amended to provide that customer margin payments made to a commodity broker will not be considered voidable preferences in a bankruptcy proceeding in the absence of fraud by a bankrupt customer and collusion on the part of his transferee broker.

S. 2266, as passed by the Senate Judiciary Committee, provides that margin payments made by a commodity broker (absent participation in a fraud) (section 766(b)) or by or to a clearing organization (section 766(c)) are free from attack as voidable transfers. However, no corresponding protection is provided with respect to margin payments to a commodity broker from the broker's customer. It is submitted that this omission may result in jeopardizing the overall protections sought to be provided in S. 2266 toward preserving the integrity of futures markets, their public participants, and the clearinghouse mechanism. In addition, it would indirectly undermine the commodiy broker regulatory pattern envisioned by the CFTC in its recently promulgated minimum financial requirements.

These problems can best be demonstrated by reviewing the structure and internal mechanisms of the futures markets which provide the orderly, uninterrupted flow of funds through the markets and operate effectively to protect their financial integrity.

A clearing organization deals only with its clearing members and is not in privity with the broker's customers; it looks only to its clearing members for margin. As a practical matter, however, when a margin call is made by the clearing organization to a clearing member, the broker will request its customer (which could be the actual trader or another commodity broker with an omnibus account) to post additional margins. This margin money flows from the ultimate customer, through the broker to the clearinghouse and finally, through another broker to the customer on the other side. This is an unbroken sequence of events which occurs daily on America's futures markets. The brokers involved have no beneficial interest in these moneys. Indeed, the Commodity Exchange Act and regulations of the CFTC require that if at any time the broker has collected more margin money than he is in turn obligated to pay to the clearing organization, this money must be segregated and kept separate from his own funds.

If the broker is unable to retrieve margin paid by it to the clearing organization but is required to return margin funds paid to it by its customers, the funds so returned must come from the broker's own capital. By suffering a reduction of capital, the broker may not be able to meet its other customer obligations to the clearing organization, thereby potentially precipitating liquidation of all the futures positions carried by the broker. As noted earlier, in the ordinary course of its business, the broker acts as a conduit of funds with respect to margin due on customers' positions. However, it must be understood that it often happens that the clearing member must advance funds to the clearing organization prior to its receipt of corresponding margin from its customers; this is one of the reasons why clearing organizations require a substantial net worth for membership. If the broker's capital was to become unavailable because of a customer failure, the broker's position at the clearing organization would be completely exposed and the clearing organization protected against the failure of the broker.

Moreover, over the past 2 years the CFTC has been revising its minimum financial requirements for brokerage firms so as to provide additional protection to the firms' customers. Those proposed rules are carefully drawn to take into account current customer futures positions, deficit customer accounts, outstanding debt of the brokerage firm, and other such factors to assure that the broker is financially sound and that customer positions are safe. However, those proposed rules do not and cannot take into account the possibility that previous

margin payments by a bankrupt customer might have to be returned by the broker as voidable transfers.

If this were to happen and the broker's capital depleted, the CFTC's carefully developed financial requirements would be for nought and the firms' customers would be subjected to the very hazards the CFTC was trying to avoid. (We have enclosed for your information a copy of the CFTC's proposed financial regulations for brokerage firms.)

Finally, there is little justification for permitting margin funds transferred by a commodity broker to its customer on profitable positions (as required by law) to be free from attack, but not funds paid by a customer to a broker. It is submitted that the entire chain of margin payments must be protected from attack as a voidable transfer.

In order to accomplish the suggestion made herein, the words "or to" should be added to section 766(b) as follows:

(b) Margin payments made by or to a commodity broker....

TECHNICAL CONFORMING AMENDMENT TO SECTION 103(d) OF S. 2266

A technical conforming amendment should be made to § 103(d) of S. 2266, as passed by the Senate Judiciary Committee, adding the phrase "except as specifically provided in section 766(b) and section 770 therein" to the end of that section immediately before the period. This change is necessary to conform section 103(d) to subchapter IV of title VII of the bill which relates to "Commodity Broker Liquidation, Transactions With Commodity Brokers, and Related Commodity Matters."

Mr. President, I ask unanimous consent that the Federal Register, April 10, 1978, entitled "Commodity Futures Trading Commission—Minimum Financial Requirements," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMODITY FUTURES TRADING COMMISSION—MINIMUM FINANCIAL REQUIREMENTS

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 1]

MINIMUM FINANCIAL REQUIREMENTS

Proposed Adoption and Monitoring

Agency: Commodity Futures Trading Commission.

Action: Proposed rulemaking.

Summary: The proposed rules would amend the minimum financial and related reporting requirements imposed upon futures commission merchants (FCM's) and would change the computational formula used to determine whether a futures commission merchant meets the minimum financial requirements; establish an early warning system designed principally to give notice of a futures commission merchant's financial deterioration; and require all self-regulatory organizations under the jurisdiction of the Commodity Futures Trading Commission to adopt minimum financial and reporting requirements with respect to their member futures commission merchants. The rules would permit the responsibility for monitoring and auditing any FCM which is a member of more than one self-regulatory organization to be delegated to a single self-regulatory organization. The proposed regulations are intended to accomplish the Commission's goal of industry self-regulation while ensuring adequate customer protection and the integrity of the futures market system, increasing regulatory efficiency, facilitating the reduction of the undue burden of multiple financial monitoring, auditing, and reporting imposed upon FCM's which are members of more than one self-regulatory organization, and facilitating the development of a registered futures association under Section 17 of the Commodity Exchange Act, as amended.

Dates: Comments on the proposed rule should be submitted by June 1, 1978.

Address: Send comments to Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 Attention: Secretariat.

For further information contact:

John L. Manley, Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-5218.

Supplemental information: The Commission proposed in four parts substantial revisions to its financial regulatory structure now applicable to FCM's and self-regulatory organizations. On October 6, 1976, the Commission proposed extensive revisions in the financial reporting requirements imposed upon FCM's under Commission regulations. 41 FR 45706 (October 15, 1976). On May 17, 1977, the Commission proposed substantial amendments to the minimum financial standards to which FCM's are subject under its regulation 1.17. 42 FR 27166 (May 26, 1977). On June 14, 1977, the Commission proposed an improved early warning system based upon the proposed amendments to its regulation 1.17. 42 FR 31740 (June 22, 1977). On July 27, 1977, the Commission proposed a regulation which would require each self-regulatory organization to adopt minimum financial and related reporting requirements with respect to its member FCM's and would permit the responsibility for monitoring and auditing the financial status of any FCM which is a member of more than one self-regulatory organization to be delegated to a single self-regulatory organization. 42 FR 39036 (August 1, 1977). In October, 1977, the Commission held public hearings on these proposals.[1]

In view of the extent and complexity of these proposed rules and in order to afford maximum opportunity for public comment with respect thereto the Commission is hereby republishing them, as amended, and inviting public comment for an additional sixty days.

THE NEED FOR CHANGE

The Commission's responsibility to protect the integrity of the marketplace and the funds of customers who use that marketplace necessarily encompasses a duty to monitor developments in the commodities futures industry to determine whether the Commission's current regulatory approach is adequate in light of recent and anticipated changes in the industry. The Commission believes that the rapid and substantial increase in the number of registrants, the volume of commodity business that such registrants are doing, and the increased volatility of the futures markets in recent years have combined to produce a situation in which the Commission must shift its regulatory approach from direct regulation, relying primarily on direct auditing, to oversight regulation. In order to establish a structure under which oversight regulation may function effectively, the Commission determined that substantial revisions were necessary in its current regulations. The Commision further believes that to maximize the effectiveness of independent public accountants in this regulatory structure it is necessary to establish uniform computational criteria to determine the FCM's compliance with the Commission's minimum financial regulations.

In reaching the conclusions that this shift in regulatory approach is necessary, the Commission carefully considered a number of recommendations, including the recommendations of the Commission's staff. The Report of the Comptroller General of the United States to Congress on Improvements Needed in Regulation of Commodity Futures Trading (the "GAO Report")[2] recommended that the exchanges be delegated the primary responsibility for audits of FCM's and that the Commission "require FCM's to engage independent public accountants to make the required audits and to furnish reports on the results of these audits to the appropriate exchanges and to the Commission."[3]

Similarly, the Commission's Advisory Committee on Commodity Futures Trading Professionals[4] recommended that the Commission "require that the year end financial statements submitted by FCM's be certified by independent public accountants."[5] In addition, the Commission's Advisory Committee on Definition and Regulation of Market Instruments[6] recommended that any financial reports required of persons dealing in commodity option transactions and leverage transactions in gold or silver be certified annually by an independent public accountant.[7]

The Commission believes that substantial revisions in the minimum financial regulations are necessary for reasons in addition to the need to change to an oversight role in the financial regulation of FCM's. At present the Commission, the Chicago Board of Trade (CBOT) and the Chicago Mercantile Exchange (CME) all have different requirements with respect to financial regulations and related reporting requirements of FCM's, and many FCM's are subject to more than one set of such requirements. In addition, over 50 FCM's, representing approximately fifty percent of all commodity customer business in the futures industry, are also registered with the Securities and Exchange Commission (SEC) as securities broker-dealers and are, therefore, subject to the minimum financial rules of that agency. As a result, many of these FCM's/broker-dealers are subject to as many as three different sets of financial regulations and corresponding audits to enforce these regulations. The Commission believes that these duplicative financial and related reporting requirements impose unnecessary burdens upon FCM's; therefore, it has proposed and is today republishing for comment, revised minimum financial regulations that would establish uniform computational criteria for use in the commodities futures industry.

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[1] In the matter of: Proposed Minimum Financial and Related Reporting Requirements, October 5, and 6, 1977.

[2] Report of the Comptroller General of the United States to Congress on Improvements Needed in Regulation of Commodity Futures Trading (June 24, 1975).

[3] Id., at 46.

[4] 40 FR 50558 (October 30, 1975).

[5] Report of Commodity Futures Trading Commission Advisory Committee on Commodity Futures Trading Professionals (August 5, 1976).

[6] 40 FR 50557 (October 30, 1975).

[7] Report of the Advisory Committee on the Definition and Regulation of Market Instruments to the Commodity Futures Trading Commission: Recommended Policies on Commodity Option Transactions (July 6, 1976); Report of Advisory Committee on Definition and Regulation of Market Instruments to the Commodity Futures Trading Commission: Recommended Policies on Futures, Forward and Leverage Contracts and Transactions (July 16, 1976).

Another reason for revising the financial regulations is that the Commission's minimum capital rule, which is a part of these regulations, has substantial deficiencies which must be corrected. A major deficiency in the current minimum capital rule is that the computational criteria permits FCM's to finance their operations almost exclusively with non-subordinated, long-term debt; thus, an FCM may actually be insolvent and still satisfy the Commission's present rule. Other deficiencies in the current capital rule include the safety factors on open futures contracts, the definition of propietary account, and the length of time unsecured deficits are allowed to be outstanding and still be included as current assets. The safety factors for high-dollar value, low volatility, open futures contracts provided in current regulation 1.17, are disproportionately high in terms of the risks involved in trading in such contracts when compared to the safety factors on more volatile, low-dollar value contracts. The definition of the term "proprietary" as it is used in the current minimum financial regulations results in unrealistic additional charges to capital of FCM's in relationship to the actual risk involved to these FCM's. Unsecured deficits may be outstanding up to thirty days and still be included as part of the firm's assets in calculating its capital position.

Finally, the Commission's present rules were not intended to, and do not, provide financial regulations with respect to domestic exchange-traded commodity options. It should be noted, however, that all references in the proposed financial regulations to Part 32 of the Commission's regulations (17 CFR Part 32) concerning commodity options relate to the proposed regulations contained in the October 17, 1977 Federal Register release (42 FR 55538) and those regulations have not been adopted. Therefore, it may be appropriate, in the event the Commission adopts the proposed financial regulations prior to taking action with respect to the proposed options regulations, to delay final action with respect to those financial regulations relating to such options until such time as the proposed options regulations are adopted.

MAJOR DIFFERENCES BETWEEN THE PRESENT PROPOSAL AND PRIOR PROPOSALS

*Safety factors.* The safety factor computations currently provided in regulations 1.17 (d) and (e) with respect to open commodity futures contracts are based upon the dollar values of such contracts. Therefore, as previously mentioned, the safety factors for high dollar-value, low volatility, open futures contracts are disproportionately high in terms of the risk involved in the trading of such contracts when compared to the safety factors on highly volatile, low dollar-value contracts. In order to relate the safety factors on a particular contract to the risk involved in trading in that contract, the Commission requested comment upon a proposal to adopt a new safety factor computation based upon the volatility rather than the dollar-value of each contract.[8] Specifically, the safety factor would have been based on a percentage of the standard fluctuation of the price of that contract.

While the commentators in general agreed that amendment of the Commission's regulations respecting the safety factor computation was a desirable step, there was strong opposition to the concept of a computation based upon the standard fluctuation concept because of its complexity and because it would be based upon historical data which could only indicate what safety factors might have been appropriate in the past. Many of these commentators believe the contract markets are in the best position to assess current market risks, and favor a safety factor computation based upon contract market margin requirements. The Commission believes that these arguments have merit and further believes that such margin requirements provide flexible indicia of the volatility of the futures contracts, as well as all other market conditions concerning such contracts. Therefore, the Commission is revising its earlier proposal and is proposing to compute the safety factors for customer positions based upon the amount by which any account is undermargined after a specific number of days are allowed for collection. The safety factor for proprietary positions will be a multiple of the margin requirement.

*Self-regulatory organization membership.* Several commentators criticized the proposals for not recognizing the advantages from the standpoint of regulation, surveillance and customer protection that accrue from an FCM's membership in a self-regulatory organization. Commentators cited such benefits as: (i) the frequency of audits of their member FCM's that self-regulatory organizations conduct or that they will be required to conduct in enforcing the proposed minimum financial regulations; (ii) the daily monitoring of clearing members' positions; (iii) audits of FCM's to determine compliance with margin requirements; and (iv) the speed and flexibility of a self-regulatory organization compared to a federal regulatory agency. The Commission also appreciates that members of self-regulatory organizations, in addition to the cost of their memberships, incur certain expenses in the form of membership fees or dues which, at least in part, are used to pay the costs of auditing, monitoring and other regulatory and surveillance programs of such organizations. Finally, the Commission recognizes that, historically, the losses of customers trading in futures contracts regulated under the Act, as a direct result of member firm failures have been minimal and this has been in past due to the willingness of other member firms to absorb such losses when the failing firm is a member of the same contract market. The Commission believes that these considerations in the context of a properly functioning self-regulatory organization provide a reasonable basis for distinguishing among categories of participants in the futures markets. Accordingly, the revised proposal would (i) establish higher minimum financial requirements and safety factors for non-contract market members than for members and (ii) recognize guarantee deposits and clearing corporation stock as assets in computing net capital.

In adopting any Commission rule or regulation, the Commission is required, pursuant to Section 15 of the Act,[9] to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies and purposes of the Act. Accordingly, the Commission specifically requests comments as to the possible competitive impacts of making or not making the distinction described above among categories of participants in the futures markets.

*Customer-proprietary definitions.* The proposed amendments to the financial regulations would not have amended the current definitions of "proprietary account" as defined in § 1.3(y) or "customer" as defined in § 1.3(k). Many commentators felt that the Commission's definition of "proprietary account" is overly broad for application to the minimum financial regulations and that within this context it should be narrowed to include only the firm, subsidiaries, affiliates and certain partner accounts. The Commission has carefully considered these comments and has determined to retain its current definition of "customer", while at the same time narrowing the definition of "proprietary" as it is used in the minimum financial regulations to include only the firm and general partner's account.[10] All those accounts which are neither "customer" nor "proprietary" including the accounts of parents, affiliates, stockholders, officers, limited partners, and employees currently included in the definition of "proprietary" (section 1.3(y)) would be considered "non-customer", and with one exception non-customers would be treated the same as customers in the minimum financial regulations. The one exception would be that less time would be allowed for these non-customers to meet margin calls before a firm must take a capital charge for an undermargined position.

*Minimum requirements.* The Commission's current regulations require adjusted working capital of $10,000.[11] The prior proposal would have required adjusted net capital of $25,000. Many commentators suggested that the minimum level should be much higher than that of the proposal (some as high as $250,000), and a few of the commentators suggested that the minimum should be lower than the proposed level of $25,000. The Commission has carefully considered each of these comments and has concluded that even though comprehensive computational criteria are provided in the minimum financial regulations, there are many unforeseen risks which cannot be measured properly in a capital rule. Therefore, the Commission proposes to increase the minimum adjusted net capital level required of an FCM to $50,000 for a member of a designated self-regulatory organization and $150,000 for an FCM which is not a member of a designated self-regulatory organization.

A discussion of certain of the comments received by the Commission in response to its four proposals and a section-by-section explanation of certain of the Commission's revisions to its proposal regulations is set forth below.

FINANCIAL REPORTING REQUIREMENTS

Two commentators stated that there is no reason to believe that an audit which accompanies an application for registration as an FCM can be completed within any shorter period than the time required to complete an annual examination; therefore, the commentators suggested that the time within which the certified financial statements that must accompany an application for registration should be consistent with the time allowed for the preparation of annual certified statements required to be filed by registrants, i.e., within sixty days of filing.[12] Another commentator recommended that when filing an FCM application, businesses which are already established be required to provide certified financial statements that are not more than 12 months old and more up-to-date unaudited financial statements. The Commission has taken these comments into consideration and amended proposed regulation 1.10(a)(2) to require an applicant for FCM registration to file with the application either (i) financial statements certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; or (ii) unaudited financial statements as of a date not more than 45

[8] Proposed regulation 1.17(c)(5)(xi), 42 FR 27175 (May 26, 1977).

[9] 7 U.S.C. 19 (Supp. V, 1975).

[10] The changes in the definition of proprietary apply only as the term is used in regulation 1.17. The segregation and recordkeeping regulations of the Commission will remain unchanged as a result of this proposal.

[11] 17 CFR 1.17.

[12] The Commission initially provided a 45-day period. Proposed Rule 1.10, 41 FR 45711 (October 15, 1976).

days prior to the date on which such report is filed and financial statements certified by an independent public accountant as of the date not more than one year prior to the date on which such report is filed.

The Commission's October 15, 1976, proposal would have required that Form 1–FR be filed on a quarterly basis. Currently such reports are required to be filed semi-annually by the Commission. A number of commentators expressed the view there was no general need for quarterly rather than semi-annual reports, citing the increased costs to FCM's of more frequent reporting. The Commission believes that it must have timely information to monitor effectively the financial responsibility of FCM's, whose business is affected by rapid fluctuations in the futures markets. Moreover, the information which would be required in the new Form 1–FR is essentially that which would ordinarily be prepared in the normal course of business to facilitate management of the firm. The Commission understands that much of this information is being prepared monthly by most firms, although perhaps in a less formal manner than that required on the Form 1–FR. The Commission notes in this regard that over 50 FCM's are registered as broker-dealers with the Securities and Exchange Commission and are accordingly required to file quarterly reports with that agency. In addition, the Chicago Mercantile Exchange requires quarterly financial reports from most of its members, and the CME members together with the broker-dealers, comprise approximately 40 percent of the FCM community which are already filing quarterly financial statements. Thus, while the Commission recognizes that quarterly reporting requirement may increase costs for some FCM's the Commission does not believe it should significantly increase the costs to the industry as a whole. Also, the more frequent reporting will facilitate the Commission's shift from direct regulation through FCM audits to indirect regulation through a review of reports submitted by the FCM's and their independent public accountants. The possible increase in costs for some FCM's, appears to be justified in light of the advantages from a regulatory standpoint of more frequent reporting.

However, the Commission is concerned with the possible impact of quarterly reporting on small FCM's and those FCM's whose brokerage business is incidental to their other business operations. The Commission specifically requests comments on the quarterly reporting concept, including supporting data on increased costs to FCM's and any rationale for distinguishing among FCM's on this matter.

Eleven commentators argued that the thirty day time period allowed for filing quarterly reports was too short, with eight of these commentators specifically suggesting changing the quarterly filing time to forty-five days. Seventeen commentators expressed the view that the proposed sixty day time limit in which to file certified annual reports was too short. In light of these comments and the fact that more frequent financial reporting will be required, the Commission is proposing to revise regulation 1.10 (b) by extending the time period for quarterly and annual certified reports to forty-five days and ninety days, respectively.

One commentator suggested that if a registrant is a member of more than one self-regulatory organization and the proposed designation system is implemented an FCM's financial statements should be furnished only to the self-regulatory organization which is designated to monitor the financial condition of the FCM. The commentator further contends that distribution of these statements to all self-regulatory organizations of which the FCM was a member would give rise to unnecessary expense to be borne by the FCM. The Commission agrees with this comment and has changed the proposed regulations to require that the financial statements be submitted only to the designated self-regulatory organization, if any, and the Commission.

Under the current requirements, each Form 1–FR must contain a Statement of Financial Condition, a Statement of Capital Computation of the Minimum Capital Requirements Pursuant to Regulation 1.17, and a Schedule of Segregation Requirements and Funds on Deposit in Segregation. To these, the Commission proposed to add in the October 15, 1976 proposal, Statements of (i) Income (Loss), (ii) Changes in Financial Position (comparative Statements of Income (Loss), and Changes in Financial Positions for the corresponding period of the prior year), (iii) Changes in Ownership Equity, and (iv) Changes in Liabilities Subordinated to the Claims of General Creditors. Many commentators questioned the need for comparative financial statements and argued that the preparation and filing of such statements would entail needless costs to the FCM's. The Commission believes these comments have merit and has, therefore, eliminated the proposed requirement respecting comparative financial statements.

Other commentators asked the Commission to reconsider requiring most or all of the additional statements, especially in the quarterly reports, citing the additional expense and burdens to FCM's. The Commission has carefully considered these comments but believes, nonetheless, that the income statement provides information that is essential to enable the self-regulatory organizations and the Commission to evaluate the financial status of an FCM. Therefore, the Commission is retaining, subject to further comment, its proposal to require quarterly submission of an income statement to the Commission and Self-regulatory organizations. The Commission believes the Statements of Changes in Financial Condition, Changes in Ownership Equity, and Changes in Liabilities Subordinated to the Claims of General Creditors also provide important information but, based upon further consideration and in light of the comments received, has amended its previous proposal that these statements be required on a quarterly basis and is instead proposing to require that these statements be presented only in the annual certified statements submitted to the Commission and the self-regulatory organizations.

One commentator suggested that the oath or affirmation that is required of a corporation in accordance with section 1.10(d)(4) be only required to be signed by the chief executive officer or the chief financial officer, instead of both as was proposed. The Commission has detremined that one signature is adequate.

Section 1.10(f) as previously proposed, stated "An application for extension of time will be deemed denied unless the Commission, within ten days after receipt of the application, notifies the applicant or registrant of the grant of an extension." Eighteen commentators indicated that the Commission should notify the applicant or registrant in writing whether the extension request has been granted or denied. One commentator stated "since the FCM is taking good faith steps to comply with the rules, it is incumbent upon the Commission to respond, whether affirmatively or negatively sometime prior to the required filing date". The Commission has changed proposed regulation 1.10(f) in response to these comments by requiring that the application for extension of time be received by the Commission fifteen days before the filing deadline for the report. The Commission will respond to an application within 10 days after it is received. Proposed regulation 1.16(f) deals with extensions of time for filing audited reports, and it contains language similar to proposed regulation 1.10(f). Since the comments respecting proposed regulation 1.10 (f) would be equally applicable to § 1.16(f), it also has been amended to incorporate the changes made in § 1.10(f).

Several commentators argued that the Commission should give confidential treatment to Form 1–FR. The Commission believes, however, that proposed regulation 1.10 (g) is consistent with § 145.5(d)(1)(i) of the Commission regulations and the implementation of the Freedom of Information Act. Therefore, the Commission has not proposed that this paragraph be changed.

The previous proposals would have required that the annual certified Statement of Financial Condition, the Computation of Minimum Capital Requirements Pursuant to Section 1.17 and the opinion of the independent public accountant with appropriate footnote disclosures be sent to all of the registrant's customers with open contracts and credit balances. The Commission received approximately 20 comment letters which strongly opposed the sending of any financial information to customers. These commentators emphasized the right of FCM's to privacy. In view of the comments, the Commission now proposes to eliminate these requirements from its proposed financial regulations.

MAINTENANCE OF MINIMUM FINANCIAL REQUIREMENTS BY FCM'S

Several commentators felt that proposed regulation 1.12 would require continuous determination of adjusted net capital. These commentators believe that the early warning system should be triggered only when an FCM knows or should know that the trigger level is reached. The Commission never intended to require continuous determination of adjusted net capital; accordingly, the proposed regulation has been amended to make this clear.

One commentator questioned the requirement of paragraph (e) of proposed regulation 1.12, that "Reports to the Commission by a contract market of an FCM's failure to file a notice pursuant to § 1.12 should result solely from a contract market's normal surveillance." This commentator stated, "No additional burdens should be placed on the contract market by virtue of this new regulation." The Commission did not intend that this regulation impose additional burdens, and contract markets will be required to report only when they know or should have known of a violation of the early warning system.

QUALIFICATIONS AND REPORTS OF ACCOUNTANTS

Proposed regulation 1.16(b)(1) establishes the qualifications which accountants must meet to practice before the Commission. The Commission will recognize only certified public accountants who are duly registered and in good standing under the laws of their place of residence or principal office; and licensed public accountants who were duly licensed on or before December 31, 1970, and in good standing under the laws of their place of residence or principal office. The Commission received two comments on this paragraph. Both pointed out that the proposed regulations are in conformity with the position of the Comptroller General of the United States,[13] and one commentator commended the Commission on its forthright stand on the issue. The other commentator, however, objected to the Commission's adopting the Comptroller General's restriction as to which non-certified public accountants may be considered qualified for the purposes of practicing before the Commission. In view of the Comptroller General's stance, the Commission does not propose to amend its qualification standards.

Proposed regulation 1.16(b)(3) concerns

[13] Report of the Comptroller General of the United States to Congress on Improvements Needed in Regulation of Commodity Futures Trading (June 24, 1975).

the independence standards which accountants must meet to practice before the Commission. One group of commentators in a combined letter stated their belief that it would be inappropriate for the exchanges to be required to oversee the independence of accountants, and stated that the rule requiring independence of accountants in the securities industry is enforced directly by the Securities and Exchange Commission. The Commission wishes to make it clear, in response to this comment, that its regulations will govern the independence of accountants in connection with the audits of FCM's and does not intend to delegate this responsibility to the self-regulatory organizations.

Several commentators recommended that independent auditors should be required to issue supplemental reports describing material weaknesses in internal controls found to have existed since the date of their previous examination instead of including such a report as part of the independent accountant's report on the financial statements. Based on these comments, the Commission is proposing a new section 1.16(c)(5) which would require an independent accountant to issue a separate report on material inadequacies. The Commission is eliminating the requirement that the independent accountant state in his report on the financial statements whether a review was made of the procedures followed for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations. Several commentators felt that the language in proposed regulation 1.16(d) concerning material inadequacies was too broad and requested that it be narrowed. The Commission has responded to these comments by adding language to § 1.16(d)(2)(iv) limiting violations of the Commission's segregation, recordkeeping, or financial reporting regulations required to be reported to those that could reasonably be expected to result in the conditions prescribed in paragraphs (d)(2)(i), (ii) and (iii) of proposed regulation 1.16.

Regulation 1.16(e) as originally proposed would have required that an auditor who determines, in the course of an audit, that any material inadequacies exist in the internal controls of the FCM, must call such inadequacies to the attention of the FCM who must then inform the Commission and the designated self-regulatory organization of the inadequacies within twenty-four hours. Several commentators feared that twenty-four hours would not be long enough for compliance with this reqirement, and suggested that three business days would be more realistic. Proposed regulation 1.16(e) has been amended to allow three business days for notification.

MINIMUM FINANCIAL REQUIREMENTS

*General.* Several commentators suggested that broker-dealers who are already regulated by the SEC and who are also registered as FCM's should be exempt from the Commission's proposed minimum financial requirements. The Commission does not believe that it can grant such an exemption consistent with its responsibilities under the Commodity Exchange Act (the "Act"). By exempting this category of FCM's from its financial requirements the Commission believes that effective regulatory surveillance for financial responsibility would be precluded. In addition, should the Commission after granting such an exemption suspect that a firm is violating the SEC's requirements, it would be placed in the position of having to rely completely on that Agency to take the necessary action to insure that the firm was brought into compliance with its obligations under the Act, inasmuch as the Commission lacks the authority to enforce SEC regulations. The Commission believes that this situation could foster incongruous results which would be intolerable in light of its own obligations under the Act. As was indicated in the FEDERAL REGISTER notice which accompanied the proposed amendments to section 1.17[14] the Commission's staff and representatives of the SEC have initiated cooperative efforts in connection with their respective financial regulations. In part as a result of such efforts, the Commission is, for example, proposing several amendments to its regulations, including the incorporation by reference of the SEC's safety factors or "haircuts" on securities. In addition, the Commission recommends that the SEC amend its regulations to incorporate by reference the Commission's safety factors on futures. If this step is taken, it will provide the requisite uniformity to permit those FCM's which are also registered with the SEC as securities broker-dealers to comply with the Commission's financial reporting requirements by simply filing copies of the SEC's FOCUS Report[15] with the self-regulatory organizations and the Commission.

Two commentators stated they favored the utilization of a working capital concept rather than a net capital concept for the minimum financial regulations. In determining compliance with the minimum financial regulations a working capital concept would not take long term debt into consideration. The Commission believes, as it has stated previously,[16] that the working capital concept which allows an FCM to finance its business solely through the use of non-subordinated, long-term debt is a major shortcoming of the current financial regulations. The Commission believes that a futures commission merchant must have a permanent capital base for its operations. Any minimum financial regulation which permits an FCM to finance its operations as described above and thus actually be "insolvent" and still comply with those requirements is seriously deficient.

The Commission is aware of the concerns expressed within the industry that the subtraction of long-term debt from current assets in computing adjusted net capital would needlessly exclude a certain class of firms from registration as FCM's, to the detriment of the commodities futures industry. Such firms would be those whose primary business is other than the brokerage business and whose FCM business is merely incidental to their primary business activities. These firms typically make extensive use of long-term debt to finance their primary business activities, and many of their assets acquired through the use of long-term debt would not fall within the definition of "current assets" under proposed regulation 1.17. Therefore, such asset could not offset long-term debt in evaluating the financial status of such firms and this would make it impossible for them to comply with the Commission's proposed minimum financial requirements. The Commission does not believe these concerns are valid because proposed regulation 1.17 would permit an FCM to reduce its long-term liabilities in evaluating its financial status to the extent of the net book value of the plant, property and equipment which is used in the ordinary course of any trade or business for a reportable segment of the firm's business, other than in the commodity futures, commodity option, securities and securities option segments.

Two contract markets commented that it is important for a firm which is experiencing financial difficulties to be able to get any infusion of additional funds without restricting these additional funds to subordinating debt or equity capital. The Commission believes these comments have merit and is therefore adding language to proposed regulation 1.17 which would allow self-regulatory organizations and the Commission at their discretion, to temporarily suspend the subordination requirements of paragraph (h) of proposed regulation 1.17, and permit the substitution of long term debt for subordinated debt for up to 30 days. The temporary suspension of the requirements of proposed regulation 1.17(h) under proposed regulation 1.17(h)(4) may be granted with respect to a particular FCM only once during any twelve month period.[17]

Regulation 1.17(a)(4) as proposed required a registrant to comply with § 1.17 at all times and to be able to demonstrate such compliance to the satisfaction of the Commission and/or any self-regulatory organization of which the registrant is a member. A registrant which did not meet these requirements would immediately have to cease doing business (except trading for liquidating purposes only) as a futures commission merchant until such time as the registrant could demonstrate such compliance. Many commentators questioned the use of the phrase "at all times"; stating that this language would be impossible to comply with and requested clarification.

In part as a result of these comments, proposed paragraph 1.17(a)(4) has been revised and divided into two paragraphs, 1.17(a)(3) and 1.17(a)(4). Proposed regulation 1.17(a)(3) provides that no person applying for registration as a futures commission merchant shall be so registered unless such person affirmatively demonstrates to the satisfaction of the Commission that it complies with the financial requirements of this section 1.17. The paragraph further requires that each registrant be in compliance with proposed regulation 1.17 at all times and to be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization at all times.

Proposed regulation 1.17(a)(4) requires a registrant which cannot demonstrate compliance with requirements of section 1.17 immediately to transfer all customer accounts and cease doing business (except transactions for liquidation purposes). However, if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to get into compliance, the Commission or the designated self-regulatory organization may allow the registrant up to 10 days in which to do so without having to transfer accounts and cease doing business. This paragraph is intended to provide a specific procedure in the event a registrant fails to comply with the requirement of proposed paragraph (a)(4), and is not intended to limit or preclude action by the Commission or the designated self-regulatory organization for violations of any of the provisions of section 1.17. Thus, for example, the Commission or the designated self-regulatory organization might deem it appropriate to take action against a registrant which has not been in compliance with the requirements of section 1.17 regardless of the fact that such registrant gets into compliance within 10 business days.

One commentator stated that the reference in the proposed regulations to Secu-

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[14] 42 FR 27168 (May 26, 1977).

[15] Financial and Operational Combined Uniform Single Report Under the Securities Exchange Act of 1934.

[16] 42 FR 27167 (May 26, 1977).

[17] Paragraph (h) of proposed regulation 1.17 defines, in detail, satisfactory subordination agreements. The definition is the same as that employed by the SEC except for those FCM's electing to comply with the minimum capital requirements of proposed regulation 1.17(g), (for such FCM's certain specific provisions have been added which relate directly to the requirements to which they are subject) and the proposed amendment described above.

rities Exchange Act Rule 15c3–1 [18] (The SEC's "net capital rule") is inappropriate, because it would require an FCM, as a result of its securities transactions which do not necessitate registration with the SEC and which may, in fact, be inconsequential transactions vis-a-vis the FCM's total business, to be fully aware of every provision of the SEC's net capital rule. The Commission believes that its reference to the SEC's rule is necessary, because with respect to those matters which are peculiar to the securities industry the Commission should rely on the expertise of the SEC. Therefore, if the SEC's rule is relied upon without being incorporated by reference, each amendment of that rule would necessitate a corresponding amendment of the Commission's regulations and this would be an unnecessary duplication of effort. Moreover, FCM's which are not also registrants of the Securities and Exchange Commission will only have to be familiar with only those provisions of the SEC's net capital rule (*eg*, "haircut" regulation for securities) which apply to such FCM's.

*Current assets.* Regulation 1.17(c)(2(i) as prososed would have excluded from current assets any unsecured commodity futures or option accounts containing a ledger balance and open trades, the combination of which liquidate to a deficit or containing a debit ledger balance. However, the proposed regulation would have permitted such deficits or debit ledger balances which are the subject of calls for margin or other required deposits which are oustanding five business days or less to be included in current assets. Several commentators felt that the financial regulation should allow customers more time to respond to margin calls. Other commentators suggested that no unsecured deficits or customer ledger balances should be included in current assets. These commentators argued that the existence of unsecured deficits or debit ledger balances of customers constituted unwarranted risks to the firm. The Commission agrees with this latter argument and is, therefore, proposing to allow deficits or debit ledger balances only to the extent that they are subject of current calls for margins or other required deposits which are outstanding one business day or less.

Commentators had two major concerns with the Commission's proposed treatment of unsecured trade accounts receivable: (i) the proposed regulation was so narrow that it would eliminate all receivables which are not related to the sale or trading of commodities or commodities futures; and (ii) the time allowed for collection of such receivables were too short. In part in response to these comments, the Commission has amended proposed regulation 1.17(c)(2)(ii)(A) to characterize as current assets receivables resulting from the marketing of all inventories commonly associated with the business activities of the FCM and has extended the time (to seventy-five days from the date they arise) allowed for such receivables to be outstanding and still be included in current assets.

The proposed regulation concerning insurance claims which are allowed as current assets in computing an FCM's capital, received criticism from commentators who are engaged in other business activities besides the brokerage business. These commentators felt that the regulation would not permit a commodity firm to take into account its insurance claims such as a claim based upon losses related to the destruction of a grain elevator. The Commission is therefore proposing regulation 1.17(c)(2)(ii)(E) to provide that insurance claims which arise from a reportable segment of the FCM's business activities, other than the brokerage business, and which are not more than seventy-five days old from the date they are recorded as a receivable may be included in current assets.

Proposed § 1.17 would have excluded unrealized commissions from current assets and a number of commentators suggested that such commissions receivable are legitimate current assets. The Commission agrees; therefore, it has deleted the specific exclusion of unrealized commissions from current assets and proposes to allow the firms to include unrealized commissions as current assets to the extent that the account in respect of which such commissions are earned its properly margined.

Several commentators expressed concern that inventory items such as seeds, fertilizers, fuels and other farm supply products would be excluded as current assets under the proposed regulations. To make it clear that this was not the Commission's intention, a paragraph has been added to the proposed regulation which specifically allows inventories held for resale which are commonly associated with the business activity of the FCM to be included in current assets.

The disallowance of Board of Trade Clearing Corporation stock as an asset was criticized, since this stock can be used as margin. Commentators suggested that the disallowance of the Clearing Corporation's stock and other guarantee deposits at clearing corporations would put clearing members at a severe disadvantage vis-a-vis all other participants in the futures markets. In light of these comments and the Commission's decision to recognize the benefits of contract market membership, language has been added to the proposed regulation which specifically allows as current assets guarantee deposits with, and stock of, clearing organizations to the extent of their margin value.

*Secured transactions.* The previous proposal would not have amended the definitions of "secured" from the current regulations. One commentator pointed out that the Commission's definition of this term might have potentially devastating effect if applied to securities broker-dealers, because certain items which would not be considered secured under the definition could not be included in current assets. The commentator cited such items as securities which broker-dealers are failing to deliver; securities borrowed in order to effectuate delivery; and customer's bona fide cash positions containing open, unpaid purchases which have decreased in value. Paragraph (b)(1) of proposed regulation 1.17 states "where an asset or liability which is defined in Securities Exchange Act Rule 15c3–1 (17 CFR 240.15c3–1), the inclusion or exclusion of all or part of such assets or liabilities for the computation of adjusted net capital and aggregate indebtedness shall be in accordance with Securities and Exchange Commission rules, unless specifically stated otherwise in § 1.17". The intent of this provision is to treat transactions which relate solely to the securities industry the same under Commission regulations as such transactions would be treated under the SEC's rules. Since the examples described by the commentator relate to transactions which arise solely in the securities industry these items would not be excluded from current assets in computing net capital.

Another commentator questioned the applicability of the "secured" definition in view of the book entry system for U.S. Treasury bills. This comment led the Commission to amend its initial proposal (which required that the collateral which is used to secure the transaction be in the possession *and* control of the FCM) to require that the collateral be in the possession or control of the FCM. Control for the purposes of this section would include U.S. Treasury bills on a book entry system and other securities pledged to secure a loan which are in the possession of the party making such a loan.

*Liabilities.* The regulation as previously proposed would have excluded from liabilities in computing net capital, liabilities classified as long-term in accordance with generally accepted accounting principles to the extent of the net book value of plant, property, and equipment which is used in the processing, manufacture, storage or shipment of commodities, their products and by-products in a reportable segment of the applicant's or registrant's overall business activities, other than in the brokerage business. Several commentators suggested that the proposed language be broadened to allow long-term debt to be excluded from liabilities in computing net capital to the extent of the net book value of plant, property, and equipment which is used in any trade or business which is a reportable segment of the FCM's overall business activities other than the brokerage business. The Commission believes that this comment has merit and has amended its proposal accordingly.

*Safety factors:* Several commentators pointed out that the proposed five percent deduction on unsecured trade accounts receivable does not take into account any reserves established for uncollectable receivables. In view of this comment and the fact that the Commission is proposing to allow such receivables to be included as current assets for no longer than seventy-five days from the date that they arise, the Commission has decided to eliminate the five percent charge on these receivables.

Proposed regulation 1.17(c)(5)(ii) has been renumbered as paragraph (c)(5)(i), and the proposed ten percent charge on advances has, in view of the position taken by many commentators that a 10% "haircut" on such advances is inordinately high, been reduced to 5%.

Many commentators criticized the Commission's proposed capital charges on inventories, fixed price contracts, and forward contracts as being inordinately large in relation to the risks assumed. Two commentators suggested that the charges on these positions be based on the net "at risk" cash position. These commentators suggested that the Commission require all cash positions to be marked to their market value and require the safety factor to be based upon the net "at risk" position. The Commission believes that these comments have merit and is accordingly proposing to base the capital charges on all inventory, fixed price commitments and forward contracts upon the net position of the FCM. In addition, the Commission has changed the percentage charges which are applicable to these positions to conform with this new approach.

One commentator suggested that regulation 1.17(c)(5)(v) would permit non-broker-dealer/FCM's to use reduced capital charges applicable to security positions. Security positions of broker-dealers who elect to calculate their adjusted net capital pursuant to SEC Rule 15c3–1(f) are subject to reduced charges under that rule. However, the provisions of that rule have the effect of increasing certain deposit requirements for those broker-dealers. The commentator suggested that non-broker-dealers/FCM's are not subject to the increased deposit requirements and accordingly should not be permitted to take advantage of the reduced capital charges provided in the SEC's regulations. The proposed regulations would permit only securities brokers and dealers to utilize the reduced charges.

As previously discussed in this FEDERAL REGISTER release, the Commission is amending its proposal with respect to safety factors on commodity futures accounts and grantor commodity option accounts. The proposed safety factors, as revised, would be for customer and non-customer positions, based upon the amount by which any account is under-margined (after a specific number of days which would be allowed for collection) and for proprietary positions based upon a

[18] 17 CFR 240.15c3–1.

multiple of the contract market margin requirements. The proposed regulations require a capital charge for undermargined customer commodity futures accounts and grantor commodity options accounts to the extent of the total amount of cash required in each such account to meet the maintenance margin requirements of the board of trade on which the contract that is the subject of the margin requirement is traded, after application of calls for margin, or other required deposits, which are outstanding five business days or less until December 31, 1979, four business days or less until December 31, 1980, and three business days or less thereafter. For under-margined, non-customer and omnibus commodity futures and grantor commodity option accounts, the safety factor would be the amount of cash required in each such account to meet the maintenance margin requirements of the applicable board of trade on which the contract that is the subject of the margin is traded after application of calls for margin or other required deposits which are outstanding two business days or less.

The safety factors on open futures contracts and grantor commodity options held in proprietary accounts carried by the FCM which are not covered (as defined in regulation 1.17(j)) by a position held by the FCM or which are not the result of a "changer trade," shall be: (i) for the positions cleared by a clearing member of an exchange, the margin requirement of the clearing organization; (ii) for an FCM which is a member of any contract market or domestic commodity option exchange 150% of the greater of the maintenance margin requirement of the applicable board of trade or clearing organization; and (iii) for those FCM's who are not members of any contract market or domestic commodity option exchange 200% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization whichever is greater.

Except for the charges respecting undermargined accounts described above, the Commission has deleted from the proposed financial regulations, the safety factors on customer open futures contracts and grantor commodity options.

The proposed regulations require an FCM who is the "taker" of a commodity option to charge the premium to expense and who is the "grantor" of a commodity option to recognize the premium as income in computing adjusted net capital. In addition, there would be a safety factor on commodity options carried long by the FCM which would be the same safety factor required if the FCM were a grantor of a commodity option, but the charge would not exceed the value attributed to such option by the FCM in computing its current assets.

*Aggregated Indebtedness.* Several commentators criticized the proposed definitions of "aggregate indebtedness" in the proposed regulations, because under its terms an FCM which obtains a loan secured by documents which are eligible for delivery to finance delivery of spot commodities would have been required to include that loan in its aggregate indebtedness if such loan were obtained on behalf of a customer. These commentators stated that when a customer's position is fully hedged, it is virtually certain that the receivable from the customer will be collected, and that the risks assumed by the FCM in these situations are so small that the regulation should not be drafted to require that the loans in respect of such positions be included in aggregate indebtedness. The Commission believes these comments have merit and is proposing regulation 1.17 (c)(6)(ii) which excludes from aggregate indebtedness, indebtedness arising in connection with advances to non-proprietary accounts when such indebtedness is adequately collateralized by spot commodities eligible for delivery on a contract market and when such spot commodities are fully hedged.

One commentator stated that the exclusions from aggregate indebtedness should not be limited to the credit balances in the accounts of general partners but should include all equities in accounts of general partners. It was not the intention of the Commission to limit the exclusion to cash credit balances, and the Commission has, therefore changed the wording of the proposed regulations to make this clear.

*Withdrawal of equity capital.* Proposed regulation 1.17(e) prohibits certain withdrawals of equity capital, advances, or loans to certain associated persons if, after giving effect to such withdrawals, advances, or loans and to certain debt payments payable during the following six months, adjusted net capital of the FCM would fall below certain minimum requirements. This provision would apply regardless of whether the FCM is currently obligated to permit such withdrawals, advances, or loans. One commentator stated that an exemption from such commitments to take account of current contractual obligations should be incorporated into the regulation, because he believed that if the proposed regulation were adopted, it would affect the ability of FCM's to meet current contractual obligations. The commentator further stated that if the withdrawals, advances, or loans cause an FCM's adjusted net capital to fall below the minimum required levels, all the other provisions in the rule, including the early warning system under proposed regulation 1.12, will remain applicable. The Commission does not believe such situations as the commentator describes will result from the new regulations, but to assure that these and other situations are dealt with effectively, the Commission has added specific language to paragraph (e) of proposed regulation 1.17 which states the Commission may grant relief from this paragraph if the Commission deems such relief to be in the public interest or for the protection of nonproprietary accounts.

*Alternative capital requirement.* The Commission proposed an alternative to its minimum financial requirement. Specifically the alternative requires a futures commission merchant to maintain adjusted net capital equal to or in excess of the greater of $150,000 ($50,000 for a member of a designated self-regulatory organization) or 4 percent of the funds required to be segregated pursuant to the Act and the regulations thereunder plus, for FCM's which are also securities brokers or dealers, 4 percent of aggregate debit items computed in accordance with the formula for determination of reserve requirements contained in the SEC's Rule 15c-3a (17 CFR 240.15c3-3a).[19]

Several FCM/broker-dealers objected to the proposed addition to their net capital requirements. The Commission believes the SEC's alternative capital requirement does not provide adequate protection for commodity customers of FCM/broker-dealers, especially those whose commodities business is large compared to their securities business. Therefore, the Commission has decided not to change the requirements set forth above. The Commission believes that this proposed alternative requirement would provide adequate protection for the commodity customers of an FCM because of its inter-relationship with the FCM's segregation requirements. Several other commentators agreed with the Commission's proposed approach.

[19] Rule 15c3-3a currently provides that a broker-dealer which has elected to operate pursuant to that agency's alternative minimum net capital requirement must maintain adjusted net capital equal to or in excess of $100,000 or 4 percent of aggregate debit items computed in accordance with the formula for determination of reserve requirements for brokers and dealers (Exhibit A to SEC Rule 15c3-3a, 17 CFR 240.15c3-3a).

COVER

The Commission amended § 1.3(z) of its regulations effective October 1, 1977. (42 FR 72748). The amendment generally broadened the scope of the definition of bona fide hedging transactions or positions to include current commercial risk-shifting practices in the markets regulated by the Commission. The intended effect of the amendment is to increase commercial utilization of the futures markets for the purposes of hedging by allowing additional exemptions from the Commission's limits on positions and daily trading, and by recognizing a broader range of risk-shifting uses of those markets.

On August 19, 1977, the Commission proposed an amendment to § 1.17 pertaining to minimum financial requirements.[20] This amendment would have changed § 1.17, which currently refers to the definition of bona fide hedging, so that it would include only those provisions of the revised bona fide hedging definition which are substantially the same as those in the previous definition.[21] The purpose and effect of the proposed amendment was to correct an unintentional change in the minimum financial requirements which was brought about by the adoption of the new definition of bona fide hedging.

The proposed amendment to § 1.17 was to become effective on October 1, 1977, simultaneously with the revision of the bona fide hedging definition. In proposing the amendment to § 1.17, the Commission stated that it was necessary that the effective dates of the two amendments coincide in order to avoid "ambiguity or uncertainty in the method by which futures commission merchants are to continue to comply with § 1.17 * * *." However, as a result of the comments which the Commission received and of its own review of the interrelationship between minimum financial requirements and the definition of bona fide hedging, the Commission determined not to adopt the proposed amendment to § 1.17, pending further consideration of the related issues.

The Commission now believes it necessary to develop a separate hedging definition which will be termed "cover", to govern the treatment of risk-shifting devices under the Commission's minimum financial requirements.

The Commission's minimum financial requirements are for the protection of commodity futures and commodity option customer funds and the integrity of the marketplace, and it follows that a central consideration with respect to the appropriate treatment of a proprietary transaction or position is whether the transaction or position operates immediately and continuously to shift risks incidental to commercial operations. Therefore, the Commission believes that conceptually, the definition of cover should not substantially differ from that of bona fide hedging. However, in reexamining the interrelationship between the minimum financial requirements and the bona fide hedging definition, the Commission has identified several difficulties which necessarily would have resulted from a reference to the bona fide hedging definition in the minimum financial requirements, and which the Commission believes are resolved by the development of an alternative concept.

First, the bona fide hedging definition is primarily intended to exempt certain futures transactions from the Commission's speculative limits As a result, the definition is limited in application to "transactions or positions in a contract for future delivery on [a] contract market," and it principally deals with the classification of those transactions or positions in markets where the Commission has speculative limits. Thus, risk-shifting devices not involving such lim-

[20] 42 FR 42767 (August 24, 1977).

[21] *Id.*

its may be excluded from the definition regardless of their characteristics relative to the minimum financial requirements.

Second, the definition of bona fide hedging is not designed to, and does not, take into account the risk of capital impairment which a particular transaction or position might entail. For example, transactions which are risk-shifting in character may be considered bona fide hedging even though they are entered into for the purposes of offsetting fluctuations in the value of assets which are not owned and identified at the time of entering the transactions. In such cases, adverse market movements may seriously jeopardize capital during the interval between the execution of the risk-shifting transactions and the acquisition of the asset they are to hedge. Inasmuch as the purpose of minimum financial requirements is the protection of commodity futures and commodity option customers, such risks cannot be ignored in determining the treatment that a particular transaction should receive for the purposes of the minimum financial requirements.

Finally, the bona fide hedging definition includes many provisions which relate to the maintenance of orderly markets and which should have no effect on the treatment of a transaction of position under the minimum financial requirements.

Accordingly, the Commission believes that the definition of "cover" should take into account transactions or positions whose purpose and effect are the immediate and continuous shifting of risks incidental to commercial operations and which do not entail a significant risk of capital impairment, regardless of whether the transactions involve the purchase or sale of a futures contract.

Therefore, the Commission is proposing a definition of "cover" which: (i) Includes all contracts for future delivery and commodity options, (ii) excludes anticipatory hedging; and (iii) eliminates the provisions of the bona fide hedging definition which relate solely to the maintenance of orderly markets. In addition, the Commission will consider whether transactions and positions other than those enumerated in paragraph (j)(2) of proposed regulation 1.17 are within its definition of cover, upon specific request. These transactions or positions must at a minimum meet the general definition contained in paragraph (j)(1) of proposed regulation 1.17.

MONTHLY COMPUTATIONS OF ADJUSTED NET CAPITAL

As previously proposed, regulation 1.18 required formal computations of adjusted net capital as of the close of business each month. Such computations would have been required to be completed within ten business days. Sixteen commentators questioned the need for monthly computations and the majority of these writers and another twelve commentators objected to the ten day time frame within which the computation would be required to be completed. Since the Commission believes it is imperative that an early warning system be established in the commodities futures industry and it further believes that the monthly computations provide the basis for the early warning system proposed in §1.12, the Commission does not propose to amend the monthly requirement. The Commission, in response to the comments, proposes to extend to thirty days the time within which the computation would be required to be completed.

THE REQUIREMENT OF SELF-REGULATORY OVERSIGHT

Regulation 1.52 requires that all self-regulatory organizations adopt minimum financial requirements with uniform computational criteria and permits the delegation of responsibility for monitoring the financial status of FCM's to a single self-regulatory organization. Two commentators questioned the Commission's legal authority to compel self-regulatory organizations to adopt minimum financial and related reporting requirements for FCM's. However, the Commission believes its authority is clear, pursuant to sections 4c, 4f, 4g, 5a, 8a, and 17 of the Act[22] to require self-regulatory organizations to adopt specific minimum financial regulations and further believes that this requirement is in keeping with the self-regulatory concept which is plainly envisioned by the Act.

One contract market stated that additional time would be needed for the industry and the exchanges to hire and train the necessary personnel to insure compliance with the new financial regulations. This commentator stated that it would be extremely difficult, if not impossible, on short notice to hire and train the necessary personnel. Another commentator felt strongly the exchanges should not be required to adopt and enforce any financial requirements until the feasibility and legal status of the National Futures Association is determined or until a new joint compliance program can be implemented for the exchanges. The Commission believes sufficient notice has been given to the self-regulatory organizations to hire, and train adequate personnel to cope with these new regulations. In the October 15, 1976 FEDERAL REGISTER release announcing the proposed revisions of financial reporting requirements for FCM's the Commission stated that:

"[I]t is Commission policy to encourage contract market self-regulation. In this regard, the Commission anticipates requiring all contract markets to adopt and to enforce uniform minimum financial and related reporting requirements. Such requirements will be subject to the same active oversight regulation as the other rule enforcement programs of the contract markets. However, because of the common interest of the contract markets in the financial integrity of their member FCM's and because of the uniform applicability of the minimum financial and related reporting requirements envisioned by the Commission, it may be advantageous for contract markets to engage in a joint enforcement or audit program to monitor compliance with such uniform minimum financial and related reporting requirements. Such a joint program or an alternative program through a National Futures Association, as provided for in Title III of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. 21, could meet the anticipated Commission requirements. 41 FR 45706."

This language was repeated in the FEDERAL REGISTER release which proposed regulation 1.52 42 FR 39036. The Commission stated further in that FEDERAL REGISTER release that "it is the responsibility of the contract markets, as quasi-public institutions, to insure the financial integrity of their member FCM's thereby insuring the integrity of the marketplace itself, as well as protecting the funds of customers who use that marketplace. This belief is in keeping with the self-regulatory responsibility of the commodity futures industry envisioned by the Commodity Exchange Act, as amended 7 U.S.C. 1–22 (Supp. V. 1975)." The Commission therefore, believes that the industry has been given ample notice of its intention to adopt the proposed financial regulations and that the self-regulatory organizations' auditing programs should be fully implemented no later than December 25, 1978.

The previously proposed regulations permitted the self-regulatory organizations to develop their own plans for the delegation of oversight responsibilities for FCM's which are members of more than one self-regulatory organization to a single contract market or other self-regulatory organization. The Commission believes that this approach will reduce the costs to the self-regulatory organizations and avoid unnecessary burdens upon FCM's and that these factors provide significant incentive for the self-regulatory organizations to reach an agreement on plans for delegation of oversight responsibility. Some commentators believe that it is essential to eliminate the undue burden of multiple self-regulatory organizations monitoring of the same FCM and believe the only way to guarantee such elimination is for the Commission to make the required delegation in the event that the self-regulatory organizations do not do so within a specified time period. In view of this comment and the comments of the previous paragraphs, the Commission is amending proposed regulation 1.52 by adding paragraph (k) which would give the Commission authority, after a reasonable amount of time has elapsed, to make such a delegation if the self-regulatory organizations do not.

In consideration of the foregoing, the Commission hereby proposes to amend 17 CFR Part 1 as follows:

1. By amending § 1.3 to include new paragraphs (ee) and (ff) to read as follows:

§ 1.3 Definitions.

* * * * *

(ee) "Self-regulatory organization." This term means a contract market (as defined in § 1.3(h)), a domestic commodity option exchange (as defined in § 32.1), or a registered futures association under section 17 of the Act.

(ff) "Designated self-regulatory organization." This term means a self-regulatory organization of which a futures commission merchant is a member or, if the futures commission merchant is a member of more than one-self-regulatory organization and such futures commission merchant is the subject of an approved plan under § 1.52, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such futures commission merchant for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such futures commission merchant.

2. By revising § 1.10 to read as follows:

§ 1.10 Application for registration and financial reports of Futures Commission Merchants.

(a) *Application for registration.* (1) Application for registration as a futures commission merchant shall be filed on Form 7–R in accordance with the instructions contained therein. The initial application for registration shall be accompanied by a Form 8–R executed and filed by each sole proprietor and by each natural person who is a general partner, officer, director, or branch office manager of the applicant, or performs similar functions, or is any other controlling person of the applicant; except that an accompanying Form 8–R need not be filed by any individual who is registered as a floor broker or an associated person or has applied for registration as a floor broker or an associated person and such application has not been withdrawn or denied. Any natural person (other than a floor broker or associated person) who subsequently becomes a general partner, officer, director or branch office manager of the registrant or performs similar functions, or becomes any other controlling person of the registrant, shall promptly execute and file a Form 8–R. Each Form 8–R shall be filed in accordance with the instructions contained therein. Individuals who were previously required to submit biographical information on Form 94 or who have filed a Form 8–R as required by this section shall file a current Form 8–R, upon request by the Commission.

[22] 7 U.S.C. 6c, 6f, 6g, 7a, 12a and 21.

(2) Except as provided in paragraph (a)(3) of this section, each person who files an application for registration as a futures commission merchant, and who is not so registered at the time of filing, must, concurrently with the filing of such application file either: (i) A Form 1–FR certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or, (ii) a Form 1–FR as of a date not more than 45 days prior to the date in which such report is filed and a Form 1–FR certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed. Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(3) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant. Each such person who files an application for registration as a futures commission merchant who is not so registered at the time of such filing must file a Form 1–FR as of the first month-end following the date on which his registration is approved. Such report must be filed with the Commission and the designated self-regulatory organization, if any, not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1) Except as provided in paragraph (b)(3) of this section, each person registered as a futures commission merchant must file a Form 1–FR for each fiscal quarter of each fiscal year unless the registrant elects pursuant to paragraph (e)(2) of this section to file a Form 1–FR for each calendar quarter of each calendar year. Each Form 1–FR must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 1–FR which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each registrant's fiscal year. This paragraph (b)(1) will be applicable to all fiscal quarters beginning after (the effective date of this section) but in no event more than 90 days after (such effective date).

(2) The Form 1–FR filed pursuant to paragraph (b)(1) of this section as of the close of the registrant's fiscal year must be certified by an independent public acountant in accordance with § 1.16. A registrant who has elected to file its Forms 1–FR for each calendar quarter of each calendar year pursuant to paragraph (e)(2) of this section, must nonetheless file a Form 1–FR as of the close of such registrant's fiscal year.

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section shall not apply to any person registered as a futures commission merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions and approved after (the effective date of these regulations) by the Commission pursuant to section 4f(2) of the Act: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(4) Upon receiving written notice from any representative of the Commission or any self-regulatory organization of which it is a member, an applicant or registrant must, monthly or at such times as specified, furnish the Commission and the self-regulatory organization, if any, requesting such information with a Form 1–FR and/or such other financial information as requested by the representative of the Commission or the self-regulatory organization. Each such Form 1–FR or such other information must be furnished within the time period specified in the written notice.

(c) *Where to file reports.* The reports provided for in this § 1.10 will be considered filed when received by the regional office of the Commission where the applicant or registrant has its principal place of business and by the designated self-regulatory organization, if any; *Provided, however,* That information required of an applicant or registrant pursuant to paragraph (b)(4) of this section need be furnished only to the Commission and the self-regulatory organization requesting such information.

(d) *Contents of financial reports.* (1) Each Form 1–FR filed pursuant to this § 1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain: (i) a Statement of Financial Condition as of the date for which the report is made; (ii) a Statement of Income (Loss) for the period between the date of the most recent Statement of Financial Condition filed with the Commission (or the beginning of the fiscal quarter immediately following the effective date of this rule) but in no event more than 90 days after (such effective date) and the date for which the report is made; (iii) a Statement of the Computation of the Minimum Capital Requirements Pursuant to § 1.17 and a Schedule of Segregation Requirements and Funds on Deposit in Segregation, as of the date for which the report is made; and (iv) in addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each Form 1–FR filed pursuant to this § 1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain: (i) a State of Financial Condition as of the date for which the report is made; (ii) Statements of Income (Loss), Changes in Financial Position, Changes in Ownership Equity, and Changes in Liabilities Subordinated to Claims of General Creditors, for the period between the date of the most recent certified Statement of Financial Condition filed with the Commission (or the beginning of the fiscal quarter immediately following (the effective date of this rule) but in no event more than 90 days after (such effective date) and the date for which the report is made, *Provided,* That for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the Statement of Financial Condition; (iii) a Statement of the Computation of the Minimum Capital Requirements Pursuant to § 1.17 and a Schedule of Segregation Requirements and Funds on Deposit in Segregation, as of the date for which the report is made; (iv) appropriate footnote disclosures; and (v) in addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

(3) The statements required by paragraphs (d)(2)(i) and (d)(2)(ii) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraph (b)(2) of this section or accompanying the application for registration pursuant to paragraph (a)(2) of this section, rather than in the format specifically prescribed by these regulations: *Provided,* The Statement of Financial Condition is presented in a format as consistent as possible with the Form 1–FR and a reconciliation is provided reconciling such Statement of Financial Condition to the Statement of the Computation of the Minimum Capital Requirements Pursuant to § 1.17. Such reconciliation must be certified by an independent public accountant in accordance with § 1.16.

(4) Attached to each form 1–FR filed pursuant to this § 1.0 must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer.

(e) *Election of fiscal year* (1) Any applicant or registrant wishing to establish a fiscal year other than the calendar year may do so by notifying the Commission and the designated self-regulatory organization, if any, of its election of such fiscal year in writing concurrently with the filing of the Form 1–FR pursuant to paragraph (a)(2) of this section or within 90 days of (the effective date of this section), but in no event may such fiscal year end more than one year from the date of the Form 1–FR filed pursuant to paragraph (a)(2) of this section or more than one year from (the effective date of this regulation). An applicant or registrant which does not so notify the Commission and the designated self-regulatory organization, if any, will be deemed to have elected the calendar year as its fiscal year. A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the principal office of the Commission in Washington, D.C., and written notice of such change is given to the designated self-regulatory organization, if any.

(2) Any applicant or registrant may elect to file its Form 1–FR for each calendar quarter in lieu of each fiscal quarter by notifying the Commission and the designated self-regulatory organization, if any, of its election, in writing, concurrently with the filing of the Form 1–FR pursuant to paragraph (a)(2) of this section or within 90 days after (the effective date of this section). Any registrant wishing to change such election or to make such election other than concurrently with the filing of the Form 1–FR pursuant to paragraph (a)(2) of this section or within 90 days of (the effective date of this section) may do so only if such change or election is approved by the Commission upon written application to the principal office of the Commission in Washington, D.C., and written notice of such change is given to the designated self-regulatory organization, if any.

(f) *Extension of time form filing reports.* In the event any applicant or registrant finds that it cannot file its report for any period within the time specified in paragraphs (b)(1), or (b)(4) of this section or paragraph (b) of § 1.12 without substantial undue hardship, it may file with the principal office of the Commission in Washington, D.C., an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial statements were to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the Commission fifteen days before the time specified in paragraphs (b)(1), or (b)(4) of this section or paragraph (b) of § 1.12 for filing the report. Notice of such application must be given to the designated self-regulatory organization, if any, concurrently with the filing of such application with the Commission. An application for extension of time will be responded to by the Commission, within ten days after receipt of the application. (See § 116(f) for exten-

sion of the time for filing certified financial statements.)

(g) *Confidentiality of reports.* All of the Forms 1-FR filed pursuant to this section will be public; provided, however, that if the Statement of Financial Condition, the Computation of the Minimum Capital Requirements Pursuant to § 1.17, and the Schedule of Segregation Requirements and Funds on Deposit in Segregation are bound separately from the other financial statements, footnotes disclosures and schedules of Form 1-FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be deemed privileged or confidential. All information on such other statements and schedules will, however, be available for official use by any official or employee of the United States or any state, by any self-regulatory organization of which the person filing such report is a member, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition. The independent accountant's opinion filed pursuant to this § 1.10 will be deemed public information.

3. By adopting a new § 1.12 to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants.

(a) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 1.17 or by the capital rule of any self-regulatory organization to which such person is subject, if any, must:

(1) Give telegraphic notice as set forth in paragraph (f) of this section that such applicant's or registrant's adjusted net capital is less than is required by section 1.17 or by such other capital rule, identifying the applicable capital rule. This notice must be given within 24 hours after such applicant or registrant knows or should have known that its adjusted net capital is less than required by any of the aforesaid rules to which such applicant or registrant is subject; and

(2) Within 24 hours after giving such notice file a Statement of Financial Condition, a Statement of the Computation of the Minimum Capital Requirements Pursuant to § 1.17 (computed in accordance with the applicable capital rules), and a Schedule of Segregation Requirements and Funds on Deposit in Segregation, all as of the date such violation occurs.

(b) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than (i) the greater of 120 percent of the appropriate minimum dollar amount required by § 1.17 or 8⅓ percent of aggregate indebtedness or (ii) if the applicant or registrant is operating pursuant to § 1.17(g), the greater of 120 percent of the appropriate minimum dollar amount required by § 1.17(g) or 6% of the funds required to be segregated pursuant to section 4(d)(2) of the Act and these regulations, plus, for securities brokers or dealers, 6 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements (§ 240.15c3-3a of this title); such applicant or registrant must file written notice to that effect as set forth in paragraph (f) of this section within five (5) business days of such event. Such applicant or registrant must also file a Form 1-FR or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, give telegraphic notice of such fact, specifying the books and records which have not been made or which are not current, and within 5 business days after giving such notice file a written report stating what steps have been made and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2) of these regulations, of the existence of any material inadequacy, as specified in §1.16 (d)(2) of these regulations, such applicant or registrant must give telegraphic notice of such material inadequacy within three business days, and within five business days after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by this §1.12, such self-regulatory organization must immediately report such failure as provided in paragraph (f) of this section.

(f) Every notice and written report required to be given or filed by this section must be filed with the regional office of the Commission for the region in which the applicant or registrant has its principal place of business, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant or registrant is a securities broker or dealer. In addition, every notice required to be given by this section must also be filed with the principal office of the Commission in Washington, D.C. Each Statement of Financial Condition, each Statement of the Computation of the Minimal Capital Requirements Pursuant to §1.17, and each Schedule of Segregation Requirements and Funds on Deposit in Segregation required by this section must be filed in accordance with the provisions of § 1.10(d) of these regulations, unless otherwise indicated.

4. By adding a new § 1.16 as follows:

§ 1.16 Qualifications and reports of accountants.

(a) *Definitions.*—(1) *Accountant's report.* The term "accountant's report," when used in regard to financial statements, means a document in which an independent licensed or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole or an assertion to the fact that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefore must be stated.

(2) *Audit or Examination.* The terms "audit" and "examination," when used in regard to financial statements, mean an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purposes of expressing an opinion thereon.

(3) *Certified.* The term "certified," when used in regard to financial statements, means audited and reported upon with an opinion expressed by an independent certified public accountant or independent licensed public accountant.

(b) *Qualifications of accounts.* (1) The Commission will recognize any person as a certified public accountant who is duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will recognize any person as a licensed public accountant who was duly licensed on or before December 31, 1970, and is in good standing as such under the laws of the place of his residence or principal office.

(2) The Commission will not recognize any certified public accountant or licensed public accountant as independent who is not in fact independent. For example, an accountant will not be considered independent with respect to any applicant or registrant or any parent, subsidiary, or other affiliate of such applicant or registrant (i) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he or his firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest, or (ii) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will be deemed independent with respect to an applicant or registrant and its affiliates if a former employee or officer of such applicant or registrant or any such affiliate is employed by the firm and such individual has completely disassociated himself from the applicant or registrant and its affiliates and does not participate in auditing financial statements of the applicant or registrant or its affiliates covering any period of his employment by the applicant or registrant of its affiliates. An accountant will not be considered independent if he or his firm or a member thereof performs manual or automated bookkeeping services or assumes responsibility for maintenance of the accounting records, including accounting classification decisions, of such applicant or registrant or any of its affiliates. For the purposes of this section 1.16(b), the term "member" means all partners in the firm and all professional employees participating in the audit or located in the office of the firm participating in a significant portion of the audit.

(3) In determining whether an accountant may in fact not be independent with respect to a particular applicant or registrant, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that applicant or registrant or any affiliate thereof, and will not confine itself to the relationship existing in connection with the filing of reports with the Commission.

(c) *Accountant's reports.*—(1) *Technical requirements.* The accountant's report (i) must be dated, (ii) must be signed manually, (iii) must indicate the city and state where issued and (iv) must identify without detailed enumeration the financial statements covered by the report.

(2) *Representations as to the audit.* The accountant's report (i) must state whether the audit was made in accordance with generally accepted auditing standards, and (ii) must designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted and the reasons for their omission. However, nothing in this paragraph (c)(2) shall be construed to imply authority for the omission of any procedure which independent accounts would ordinar-

ily employ in the course of an audit made for the purposes of expressing the opinion required by paragraph (c)(3) of this section.

(3) *Opinion to be expressed.* The accountant's report must state clearly: (i) the opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein and (ii) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have material effect on the financial statements.

(4) *Exceptions.* Any matters to which the accountant takes exception must be clearly identified, the exceptions thereto specifically and clearly stated, and to the extent practicable, the effect of each such exception on related financial statements given.

(5) *Accountant's report on material inadequacies.* A registrant must file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. An applicant must file concurrently with the audit report a supplemental report by the accountant describing any material inadequacies found to exist as of the date of the Form 1–FR being filed. The supplemental report must indicate any corrective action taken or proposed by the applicant or registrant in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report must so state.

(d) *Audit objectives.* (1) The audit must be made in accordance with generally accepted auditing standards and must include a review of the accounting system, the internal accounting control, and the procedures for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations thereunder, including appropriate tests thereof, since the prior examination date. The audit must include all procedures necessary under the circumstances to enable the independent licensed or certified public accountant to express an opinion on the financial statements and schedules. The scope of the audit and review of the accounting system, the internal controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (i) the accounting system, (ii) the internal accounting controls, and (iii) the procedures for safeguarding customer and firm assets (including the segregation requirements of section 4d(2) of the Act and these regulations) will be discovered. Additionally, as specified objectives the audit must include reviews of the practices and procedures followed by the registrant in making (i) periodic computations of the minimum financial requirements pursuant to section 1.17 and (ii) daily computations of the segregation requirements of section 4d (2) of the Act and these regulations.

(2) A material inadequacy in the accounting system, the internal accounting controls, the procedures for safeguarding customer and firm assets, and the practices and procedures referred to in paragraph (d)(1) of this section which is to be reported in accordance with paragraph (e)(2) of this section includes any conditions which contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to:

(i) Inhibit an applicant or registrant from promptly completing transactions or promptly discharging his responsibilities to customers or other creditors;

(ii) Result in material financial loss;

(iii) Result in material misstatement of the applicant's or registrant's financial statements; or

(iv) Result in violations of the Commission's segregation, recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraphs (d)(2)(i),(ii), or (iii) of this section.

(e) *Extent and timing of audit procedures.* (1) The extent and timing of audit procedures are matters for the independent public accountant to determine on the basis of his review and evaluation of existing internal controls and other audit procedures performed in accordance with generally accepted auditing standards and the audit objectives set forth in paragraph (d) of this section. In determining the extent of testing, consideration must be given to the materiality of an area and to the possible effect on the financial statements and schedules of a material misstatement in a related account.

(2) If during the course of an audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, in the internal accounting control, in the procedures for safeguarding customer or firm assets, or as otherwise defined in paragraph (d) of this section, he must call it to the attention of the applicant or registrant, who has the responsibility to inform the Commission and the designated self-regulatory organization, if any, of such inadequacies in accordance with paragraph (d) of § 1.12. The applicant or registrant must also furnish the accountant with a copy of said notice to the Commission within three business days. If the accountant fails to receive such notice from the applicant or registrant within three business days, or if he disagrees with the statements contained in the notice of the applicant or registrant, the accountant must inform the Commission and the designated self-regulatory organization, if any, by reporting the material inadequacy within three business days thereafter. Such report from the accountant must, if the applicant or registrant failed to file a notice, describe the material inadequacies found to exist. If the applicant or registrant filed a notice, the accountant must file a report detailing the aspects, if any, of the applicant's or registrant's notice with which the accountant does not agree.

(f) *Extension of time for filing audited reports.* (1) In the event any applicant or registrant finds that it cannot file its certified financial statements for any year within the time specified in section 1.10 without substantial undue hardship, it may file with the principal office of the Commission in Washington, D.C., an application for extension of time to a specified date and not more than 90 days after the date as of which the certified financial statements were to have organization, if any. The application must be sent to the designated self-regulatory organization, if any. The application must be made by the applicant or registrant and must: (i) state the reasons for the requested extension; (ii) indicate that the inability to make a timely filing is due to circumstances beyond the control of the applicant or registrant, if such is the case, and describe briefly the nature of such circumstances; (iii) be accompanied by the latest available formal computation of his adjusted net capital and minimum financial requirements computed in accordance with section 1.17; (iv) be accompanied by the latest available computation of required segregation and by a computation of the amount of money, securities, and property segregated on behalf of customers as of the date of the latest available computation; (v) contain an agreement to file the report on or before the date specified by the applicant or registrant in the application; (vi) be received by the principal office of the Commission in Washington, D.C., and by the designated self-regulatory organization, if any, fifteen days prior to the date on which the report is due; and (vii) be accompanied by a letter from the independent public accountant answering the following questions:

A. What specifically are the reasons for the extension request?

B. On the basis of that part of your audit to date, do you have any indication that may cause you to consider commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?

C. Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in section 1.17 or the segregation requirements of section 4d(2) of the Act and these regulations, or has any significant financial or recordkeeping problems?

(2) An application for extension of time will be responded to by the Commission within ten days of the receipt of the application.

(3) On the written request of any designated self-regulatory organization, or an applicant or registrant, or on its own motion, the Commission may grant an extension of time or an exemption from any of the certified financial reporting requirements of this chapter either unconditionally or on specified terms and conditions.

(g) *Replacement of accountant.* (1) In the event (i) the independent public accountant who was previously engaged as the principal accountant to audit an applicant's or registrant's financial statements resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the applicant's or registrant's principal accountant, (ii) another independent accountant is engaged as principal accountant, or (iii) an independent accountant on whom the principal accountant expresses reliance in his report regarding a subsidiary resigns (or formally indicates he declines to stand for re-election after completion of the current audit) or is dismissed or another independent public accountant is engaged to audit that subsidiary, the applicant or registrant shall file written notice of such occurrence with the Commission at its principal office in Washington, D.C., and with the designated self-regulatory organization, if any, not more than 15 days after such occurrence.

(2) Such notice must state (i) the date of such resignation (or declination to stand for re-election, dismissal or engagement) and (ii) whether, in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statements disclosure, auditing scope or procedures, or compliance with the applicable rules of the Commission, which, if not resolved to the satisfaction of the former accountant, would have caused him to make reference in connection with his report to the subject matter of the disagreements (if so, describe such disagreements). The disagreements required to be reported in this paragraph (g)(2) include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this paragraph (g)(2) are those which occur at the decision making level, i.e., between personnel of the registrant responsible for presentation of its financial statement and personnel of the accounting

firm responsible for rendering its report. The notice must also state whether the accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles (if so, describe the nature of each such adverse opinion, disclaimer of opinion, or qualification). The applicant or registrant must also request the former accountant to furnish the applicant or registrant with a letter addressed to the Commission stating whether he agrees with the statements contained in the notice of the applicant or registrant and, if not, stating the respects in which he does not agree. Each copy of the notice and accountant's letter must be manually signed by the sole proprietor or a general partner or a duly authorized corporate officer of the applicant or registrant, as appropriate, and by the accountant.

(3) If (i) within the 24 months prior to the date of the most recent audited financial statement, a notice has been filed pursuant to paragraph (g)(1) of this section reporting a change of accountants, (ii) included in such filing there is a reported disagreement on any matters of accounting principles or practices, financial statements disclosure, auditing scope, or noncompliance with the applicable rules of the Commission, (iii) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved a reported disagreement, and (iv) such transactions or events are material and were accounted for or disclosed in a manner different from that which the former accountant apparently would have concluded was required, the existence and nature of the disagreements and also the effect on the financial statements must be stated in a written notice to the Commission at its principal office in Washington, D.C., and the designated self-regulatory organization, if any, if the method which the former accountant apparently would have concluded was required had been followed. These disclosures need not be made if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued. The notice required by this paragraph (g)(3) must be filed by the applicant or registrant concurrently with the financial statements to which it pertains.

5. By amending § 1.17 to read as follows:

§ 1.17 Minimum financial requirements—futures commission merchants.

(a)(1) Except as provided in paragraph (a)(2) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of (i) the greater of $150,000 ($50,000 for a member of a designated self-regulatory organization) or 6⅔ percent of aggregate indebtedness, or, (ii) in the case of a registrant electing to operate pursuant to paragraph (g) of this section, the greater of $150,000 ($50,000 for a member of a designated self-regulatory organization) or 4 percent of the funds required to be segregated pursuant to the Act and these regulations plus, for Securities Brokers and Dealers, 4 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a).

(2) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its by-laws, rules, regulations or resolutions approved by the Commission pursuant to section 4f(2) of the Act after (the effective date of this regulation).

(3) No person applying for registration as a futures commission merchant shall be so registered unless such person affirmatively demonstrates to the satisfaction of the Commission that it complies with the financial requirements of this section 1.17. Each registrant must be in compliance with this section 1.17 at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization.

(4) A registrant who is not in compliance with this section 1.17 or unable to demonstrate compliance with this section 1.17 as required by paragraph (a)(3) above, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the registrant is able to demonstrate such compliance. *Provided, however,* That the registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization. *Provided, further,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to get into compliance, the Commission or the designated self-regulatory organization may allow such registrant up to a maximum of 10 business days in which to do so without having to transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

(b) For the purposes of this section: (1) Where the applicant or registrant has an asset or liability which is defined in Securities and Exchange Commission rule § 240.-15c3-1 of this title, the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital and aggregate indebtedness shall be in accordance with § 240.15c3-1 of this title, unless specifically stated otherwise in this section.

(2) "Customer" means customer (as defined in § 1.3(k)) and option customer (as defined in § 32.1(d)).

(3) "Proprietary account" means a commodity futures or options account carried on the books of the applicant or registrant for the applicant or registrant itself, or for general partners.

(4) "Non-customer account" means a commodity futures or option account carried on the books of the applicant or registrant which is not included in the definition of customer (as defined in § 1.17(b)(2)) or proprietary account (as defined in § 1.17 (b)(3)).

(5) "Commodity option", "options customer", "premium", "striking price", "domestic commodity option exchange", and "domestic option customer funds" have the same meaning as in part 32 of these regulations.

(c) Definitions: For the purposes of this section:

(1) "Net capital" means the amount by which current assets exceed liabilities. In determining "net capital";

(i) Unrealized profits shall be added and unrealized losses shall be added and unrealized losses shall be deducted in the accounts of the applicant or registrant, including unrealized profits and losses on fixed price commitments and forward contracts;

(ii) All long and all short positions in listed security options shall be marked to their market value and all long and all short securities and commodities positions shall be marked to their market value;

(iii) The value attributed to any nontransferable commodity option shall be the difference between the option's striking price and the market value for the actual commodity or futures contract which is the subject of the option. In the case of a call commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is less than the striking price of the option, it shall be given no value. In the case of a put commodity option, if the market value for the actual commodity or futures contract, which is the subject of the option is more than the striking price of the option, it shall be given no value; and

(iv) The value attributed to any unlisted security option shall be the difference between the option's exercise value or striking value and the market value of the underlying security. In the case of an unlisted call, if the market value of the underlying security is less than the exercise value or striking value of such call, it shall be given no value; and, in the case of an unlisted put, if the market value of the underlying security is more than the exercise value or striking value of the unlisted put, it shall be given no value.

(2) The term "current assets" means cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold during the next 12 months. "Current assets" shall:

(i) Exclude any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only, provided however, deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts, which are the subject of calls for margin or other required deposits which are outstanding one business day or less, may be included in current assets;

(ii) Exclude all unsecured receivables, advances and loans except for:

(A) Receivables resulting from the marketing of inventories commonly associated with the business activities of the applicant or registrant and advances on fixed price purchase commitments; Provided, such receivables or advances are outstanding no longer than seventy-five (75) days from the date that they arise;

(B) Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits), mutual fund concessions receivable and management fees receivable from registered investment companies and commodity pools, provided such receivables are outstanding no longer than thirty (30) days from the date they arise; and dividends receivable outstanding no longer than thirty (30) days from the payable date;

(C) Receivables from "clearing organizations," option clearing organizations, foreign clearing organizations, and securities clearing organizations;

(D) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (c)(2)(i) of this section;

(E) Insurance claims which arise from a reportable segment of the applicant's or registrant's overall business activities, as defined in generally accepted accounting principles, other than in the commodity futures, commodity option, security, and security option segments of the applicant's or registrant's business activities which are not outstanding more than seventy-five (75) days after the date they are recorded as a receivable.

(F) All other insurance claims not subject to paragraph (c)(2)(ii)(E) of this section, which are not older than seven (7) business days from the date the loss giving rise to the claim is discovered; insurance claims which are not older than twenty (20) business days from the date the loss giving

rise to the claim is discovered and which are covered by an opinion of outside counsel that the claim is valid and is covered by insurance policies presently in effect; insurance claims which are older than twenty (20) business days from the date the loss giving rise to the claim is discovered and which are covered by an opinion of outside counsel that the claim is valid and is covered by insurance policies presently in effect and which have been acknowledged in writing by the insurance carrier as due and payable, provided such claims are not outstanding longer than twenty (20) business days from the date they are so acknowledged by the carrier;

(iii) Exclude all prepaid expenses and deferred charges;

(iv) Exclude all inventories except for:

(A) Readily marketable spot commodities; or spot commodities which "adequately collateralize" indebtedness under pargaraph (c)(7) of this section;

(B) Securities which are considered "readily marketable" (as defined in 17 CFR 240.15c3-1(c)(11)) or which "adequately collateralize" indebtedness under paragraph (c)(7) of this section;

(C) Work in process and finished goods at market value which result from the processing of commodities;

(D) Raw materials at market value which will be combined with spot commodities to produce a finished processed commodity; and

(E) Inventories held for resale commonly associated with the business activities of the applicant or registrant;

(v) Include fixed assets and assets which otherwise would be considered non-current to the extent of any indebtedness excluded in accordance with paragraph (c)(6)(v) of this section, provided such liabilities are not excluded from liabilities in the computation of net capital under paragraph (c)(4)(v) of this section;

(vi) Exclude all assets doubtful of collection or realization less any reserves established therefore;

(vii) Include, in the case of future income tax benefits arising as a result of unrealized losses, the amount of such benefits not exceeding the amount of income tax liabilities accrued on the books and records of the applicant or registrant, but only to the extent such benefits could have been applied to reduce accrued tax liabilities on the date of the capital computation, had the related unrealized losses been realized on that date;

(viii) Include guarantee deposits with and to the extent of margin value, stock in clearing organizations;

(ix) Exclude exchange memberships.

(3) A loan or advance or any other form of receivable shall not be considered "secured" for the purposes of paragraph (c)(2) of this section unless the following conditions exist:

(i) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash equal to or in excess of that part of the receivable which is shown in the applicant's or registrant's records as secured; and

(ii) (A) The readily marketable collateral is in the possession or control of the applicant or registrant; or

(B) The applicant or registrant has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the state in which the readily marketable collateral is located.

(4) The term "liabilities" means the total money liabilities of an applicant or registrant arising in connection with any transaction whatsoever, including economic obligations of an applicant or registrant that are recognized and measured in conformity with generally accepted accounting principles. "Liabilities" also include certain deferred credits that are no obligations but that are recognized and measured in conformity with generally accepted accounting principles. For the purposes of computing "net capital", the term "liabilities":

(i) Excludes liabilities of an applicant or registrant which are subordinated to the claims of all general creditors of the applicant or registrant pursuant to a satisfactory subordination agreement, as defined in paragraph (h) of this section;

(ii) Excludes the amount of money, securities, and property due to commodity futures or option customers which is held in segregated accounts in compliance with the requirements of the Act and these regulations: *Provided, however,* That such exclusion may be taken only if such money, securities, and property held in segregated accounts have been excluded from current assets in computing net capital;

(iii) Includes, in the case of an applicant or registrant who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a futures commission merchant over assets not used in the business;

(iv) Excludes the lesser of any deferred income tax liability related to the items in (A), (B), and (C) below, or the sum of (A), (B), and (C) below:

(A) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(5) or paragraph (g) of this section, the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

(B) Any deferred tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section;

(C) Any deferred tax liability related to unrealized appreciation in value of any asset(s) which has been otherwise excluded from current assets in accordance with the provisions of this section; and

(v) Excludes liabilities which would be classified as long term in accordance with generally accepted accounting principles to the extent of the net book value of plant, property, and equipment which is used in the ordinary course of any trade or business of the applicant or registrant which is a reportable segment of the applicant's or registrant's overall business activities, as defined in generally accepted accounting principles, other than in the commodity futures, commodity option, security, and security option segments of the applicant's or registrant's business activities; *Provided:* That, such plant, property, and equipment is not included in current assets pursuant to paragraph (c)(2)(v) of this section, and *Provided further:* That, the exclusion provided for in this paragraph (c)(4)(v) does not apply when computing aggregate indebtedness pursuant to paragraph (c)(6) of this section.

(5) The term "adjusted net capital" means net capital less:

(i) The amount by which any advances paid by the applicant or registrant on cash commodity contracts and used in computing net capital exceeds 95 percent of the market value of the commodities covered by such contracts;

(ii) In the case of all inventory, fixed price commitments and forward contracts the applicable percentage of the net position specified below:

(A) Inventory which is covered by commodity futures or options—5 percent of the market value.

(B) Inventory which is not covered—20 percent of the market value.

(C) Fixed price commitments (open purchases and sales) and forward contracts which are covered by commodity futures or options.—10 percent of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by commodity futures or options—20 percent of the market value.

(iii) (Reserved).

(iv) (Reserved).

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of securities in segregation pursuant to section 4d(2) of the Act and these regulations which were not deposited by customers, the percentages specified in 17 CFR 240.15c3-1(c)(2)(vi) ("Securities Haircuts") and 100 percent of the value of "Non-Marketable Securities" as specified in 17 CFR 240.15c3-1(c)(2)(vii), or where appropriate, for Securities Brokers or Dealers the pecentages specified in 17 CFR 240.15c3-1(f);

(vi) In the case of securities options used by the applicant or registrant in computing net capital, the deductions specified in 17 CFR 240.15c3-1 Appendix A, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such Appendix;

(vii) In the case of an applicant or registrant who has open contractual commitments, as hereinafter defined, the deductions specified in 17 CFR 240.15c3-1(c)(2)(viii);

(viii) For undermargined customer commodity futures and grantor commodity option accounts, the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions after application of calls for margin, or other required deposits which are outstanding five business days or less until December 31, 1979, four business days or less until December 31, 1980, and three business days or less thereafter. If there are no such maintenance margin requirements or clearing organization margin requirements on such accounts, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding five days or less until December 31, 1979, four days or less until December 31, 1980, and three days or less thereafter to restore original margin when the initial margin has been depleted by 50 percent or more. Provided, to the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) if this section such amount shall not also be deducted under this paragraph (c)(5)(viii);

(ix) For undermargined non-customer and omnibus commodity futures and grantor commodity option accounts, the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements clearing organization margin requirements applicable to such positions after application of calls for margin, or other required deposits which are outstanding two business days or less. If there are not such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding two days or less to restore original margin when the initial margin has been deleted by 50 percent or more. Provided, to the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) if this section such amount shall not also be deducted under this paragraph (c)(5)(ix);

(x) In the case of open futures contracts and grantor commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a "changer trade" made in accordance with the rules of a contract market the safety factor shall be:

(A) For an applicant or registrant which is a clearing member of a contract market or domestic commodity option exchange for the positions cleared by such member on such contract market or domestic commodity option exchange, the applicable margin requirement of the applicable clearing organization;

(B) For an applicant or registrant which is a member of a contract market or domestic commodity option exchange 150 percent of the applicable maintenance margin requirement of the applicable board of trade or clearing organization whichever is greater;

(C) For all other applicants or registrants, 200 percent of the applicable maintenance margin requirement of the applicable board of trade or clearing organization whichever is greater, or

(D) For open contracts and commodity options for which there is no applicable maintenance margin requirements, 200 percent of the applicable initial margin requirement.

Provided, the equity in any such proprietary account shall reduce the deduction required by this paragraph (c)(5)(x) if such equity is not otherwise includable in adjusted net capital;

(xi) In the case of an applicant or registrant which is a taker of a commodity option, the safety factor shall be the amount of any commodity option premium which has been used to increase adjusted net capital and in the case of an applicant or registrant which is a grantor of a commodity option, the safety factor may be reduced by the amount of any commodity option premium which has not been previously recognized as income; and

(xii) In the case of a commodity option which is carried long by the applicant or registrant as a taker of a commodity option which has value and such value is used to increase adjusted net capital, the same safety factor as if the applicant or registrant were the grantor of such option in accordance with paragraph (c)(5)(x) of this section, but in no event shall the safety factor be greater than the value attributed to such option.

(xiii) Five percent of all unsecured receivables includable under paragraph (c)(2)(ii)(D) of this section used by the applicant or registrant in computing "net capital" and which are not receivable from (A) a registered futures commission merchant, or (B) a broker or dealer which is registered as such with the Securities and Exchange Commission.

(xiv) For Securities Brokers and Dealers, all other deductions specified in § 240.15c3–1.

(6) The term "aggregate indebtedness" means "liabilities" as defined in paragraph (c)(4) of this section excluding:

(i) Indebtedness adequately collateralized by spot commodities which are carried long by the applicant or registrant and indebtedness adequately collateralized by securities which are carried long by the applicant or registrant and which have not been sold, or by securities which collateralize a secured demand note pursuant to paragraph (h) of this section;

(ii) Indebtedness arising in connection with an advance to a non-proprietary account when such indebtedness is adequately collateralized by spot commodities eligible for delivery on a contract market and when such spot commodities are fully hedged;

(iii) Advances received by the applicant or registrant against bills of lading issued in connection with the shipment of commodities sold by the applicant or registrant;

(iv) Equity balances in the accounts of general partners;

(v) Long-term debt adequately collateralized by assets acquired for use in the ordinary course of the trade or business of an applicant or registrant but no other long-term debt adequately collateralized by assets of the applicant or registrant shall be excluded unless the sole recourse of the creditor for nonpayment of such liability is to such asset;

(vi) Liabilities which are effectively subordinated to the claims of creditors (but which are not subject to a satisfactory subordination agreement as defined in paragraph (h) of this section) by other than customers of the applicant or registrant prior to such subordination, and such subordinations by customers as may be approved by the applicable designated self-regulatory organization or if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission; and

(vii) Deferred tax liabilities, not already excluded in paragraph (c)(4)(iv) of the section.

(7) "Liabilities" are "adequately collateralized" when, pursuant to a legally enforceably written instrument, such liabilities are secured by identified assets that are otherwise unencumbered and the market value of which exceed the amount of such liabilities.

(8) The term "contractual commitments" shall include underwriting, when issued, when distributed and delayed delivery contracts; the writing or endorsement of security puts and calls and combinations thereof; and commitments in foreign currencies; but shall not include uncleared regular way purchases and sales of securities. As series of contracts of purchase or sale of the same security, conditioned, if at all, only upon issuance, may be treated as an individual commitment.

(d) No applicant or registrant shall permit the total of outstanding principal amounts of its satisfactory subordination agreements (other than such agreements which qualify under this paragraph (d) as equity capital) to exceed 70 percent of its debt-equity total, as hereinafter defined, for a period in excess of 90 days or for such longer period which the Commission may, upon application of the applicant or registrant, grant in the public interest or for the protection of investors. In the case of a corporation, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss and other capital accounts. In the case of a partnership, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of partners (exclusive of such partners' commodity and securities accounts) subject to the provisions of paragraph (e) of this section, and unrealized profit and loss. In the case of a sole proprietorship, the debt-equity total shall include the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of the sole proprietorship and unrealized profit and loss. Provided, however, that a satisfactory subordination agreement entered into by a partner or stockholder which has an initial term of at least three years and has a remaining term of not less than 12 months shall be considered equity for the purposes of this paragraph (d) if; (1) it does not have any of the provisions for accelerated maturity provided for by paragraphs (h)(2)(ix)(A), (h)(2)(x)(A), or (h)(2)(x)(B) of this section, and is maintained as capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section, or (2) the partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in paragraph (h) of this section shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section.

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (excluding amounts in the commodities and securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(v) of this section which are scheduled to occur within six months following such withdrawal, advance or loan, either adjusted net capital or any of the consolidated entities would be less than 10 percent of aggregate indebtedness or its adjusted net capital would fall to equal 120 per centum of the appropriate minimum dollar amount required or would be less than 7 percent of the amount required to be segregated pursuant to the Act and these regulations plus for Securities Brokers or Dealers, 7 percent of the aggregate debit items computed pursuant to 17 CFR 240.15c3–3, or in the case of any applicant or registrant included within such consolidation, if the total outstanding principal amounts of satisfactory subordination agreements of the applicant or registrant (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70 percent of the debt-equity total as defined in paragraph (d). Provided, that this provision shall not preclude an applicant or registrant from making required tax payments or preclude the payment to partners of reasonable compensation. The Commission may, upon application of the applicant or registrant, grant relief from this paragraph (e) if the Commission deems it to be in the public interest or for the protection of non-proprietary accounts.

(f)(1) Every applicant or registrant, in computing its net capital and aggregate indebtedness pursuant to this section must, subject to the provisions of paragraph (f)(2) and (f)(4) of this section, consolidate in a single computation assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses, or assumes directly or indirectly the obligations or indirectly the obligations or liabilities. The assets and liabilities or a subsidiary of affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the applicant or registrant may also be so consolidated if an opinion of counsel is obtained as provided for in paragraph (f)(2) of this section.

(2)(i) If the consolidation, provided for in paragraph (f)(1) of this section, of any such subsidiary or affiliate results in the increase of the applicant's or registrant's adjusted net capital and/or increases the applicant's or registrant's percentage of adjusted net capital to aggregate indebtedness or increases the applicant's or registrant's adjusted net capital and/or decreases the minimum adjusted net capital requirement called for by paragraph (g)(1) of this section and an opinion of counsel called for in paragraph (f)(2)(ii) of this section has not been obtained, such benefits shall not be recognized in the applicant's or registrant's computation required by this section.

(ii) Except as provided for in paragraph

(f)(2)(i) of this section, consolidation shall be permitted with respect to any subsidiaries or affiliates which are majority owned and controlled by the applicant or registrant and for which the applicant or registrant can demonstrate to the satisfaction of the Commission, and the designated self-regulatory organization, if any, by an opinion of counsel that the net asset values, or the portion thereof related to the parent's ownership interest in the subsidiary of affiliate, may be caused by the applicant or registrant or an appointed trustee to be distributed to the applicant or registrant within 30 calendar days. Such opinion must also set forth the actions necessary to cause such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholders, employees, litigants, and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission or the designated self-regulatory organization by rule or interpretation may require. Such opinion must be current and periodically renewed in connection with the applicant's or registrant's annual audit pursuant to section 1.10 upon any material change in circumstances.

(3) In preparing a consolidated computation of adjusted net capital and/or aggregate indebtedness pursuant to this section, the following minimum and non-exclusive requirements shall be observed:

(i) Consolidated adjusted net capital shall be reduced by the estimated amount of any tax reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(ii) Liabilities of a consolidated subsidiary or affiliate which are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement shall be deducted from consolidated adjusted net capital unless such subordination extends also the claims of present or future creditors of the parent applicant or registrant and all consolidated subsidiaries.

(iii) Subordinated liabilities of a consolidated subsidiary or affiliate which are consolidated in accordance with paragraph (f)(3)(ii) of this section may not be prepaid, repaid, or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provisions of paragraph (h) of this section.

(iv) Each applicant or registrant included within the consolidation shall at all times be in compliance with the adjusted net capital requirement to which it is subject.

(4) No applicant or registrant shall guarantee, endorse, or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of adjusted net capital and/or aggregate indebtedness pursuant to this section except as provided in paragraph (f)(2)(i) of this section.

(g) A registrant may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(6) of this section. *Provided*, That in order to qualify to operate under this paragraph (g), such registrant must at all times maintain adjusted net capital equal to the greater of $150,000 ($50,000 for a member of a designated self-regulatory organization) or 4 percent of the funds required to be segregated by the Act and these regulations plus for Securities Brokers or Dealers, 4 percent of the aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a) and shall notify the designated self-regulatory organization, if any, and the Regional Office of the Commission in which the registrant has its principal place of business, in writing of its election to operate under this provision. Once a registrant has determined to operate pursuant to the provisions of this paragraph (g), he must continue to do so unless a change in such election is approved upon application to the Commission.

(1) A broker or dealer electing to operate pursuant to this paragraph (g) shall be subject to 17 CFR 240.15c3-1(f) in lieu of paragraph (c)(5)(v) of this section.

(2) A broker or dealer who is registered as such with the Securities and Exchange Commission and who is exempt from the provisions of 17 CFR 240.15c3-3 pursuant to paragraph (k)(1) or (k)(2)(i) of that section may not elect to use the alternative contained in this paragraph (g).

(h) The term satisfactory subordination agreement (hereinafter "subordination agreement") means an agreement which contains the minimum and non-exclusive requirements hereinafter set forth.

(1) Certain definitions for purposes of this section: (i) A subordination agreement may be either a subordinated loan agreement or a secured demand note agreement.

(ii) The term "subordinated loan agreement" means the agreement or agreements evidencing or governing a subordinated borrowing of cash.

(iii) The term "collateral value" of any securities pledged to secure a secured demand note means the market value of such securities after giving effect to the percentage deductions specified in paragraph (c) of this section.

(iv) The term "payment obligation" means the obligation of an applicant or registrant in respect to any subordination agreement: (A) to repay cash loaned to the applicant or registrant pursuant to a subordinated loan agreement; or (B) to return a secured demand note contributed to the applicant or registrant or to reduce the unpaid principal amount thereof and to return cash or securities pledged as collateral to secure the secured demand note; and (C) "payment" shall mean the performance by an applicant or registrant of a payment obligation.

(v)(A) The term "secured demand note agreement" means an agreement (including the related secured demand note) evidencing or governing the contribution of a secured demand note to an applicant or registrant and the pledge of securities and/or cash with the applicant or registrant as collateral to secure payment of such secured demand note. The secured demand note agreement may provide that neither the lender, his heirs, executors, administrators, or assigns shall be personally liable on such note nad that in the event of default the applicant or registrant shall look for payment of such note solely to the collateral then pledged to secure the same.

(B) The secured demand note shall be a promissory note executed by the lender and shall be payable on the demand of the applicant or registrant to which it is contributed; *Provided, however*, That the making of such demand may be conditioned upon the occurrence of any of certain events which are acceptable to the designated self-regulatory organization and the Commission.

(C) If such note is not paid upon presentment and demand as provided for therein, the applicant or registrant shall have the right to liquidate all or any part of the securities then pledged as collateral to secure payment of the same and to apply the net proceeds of such liquidation, together with any cash then included in the collateral, in payment of such note. Subject to the prior rights of the applicant or registrant as pledgee, the lender, as defined herein, may retain ownership of the collateral and have the benefit of any increases and bear the risks of any decreases in the value of the collateral and may retain the right to vote securities contained within the collateral and any right to income therefrom or distributions thereon, except the applicant or registrant shall have the right to receive and hold as pledgee all dividends payable in securities and all partial and complete liquidating dividends.

(D) Subject to the prior rights of the applicant or registrant as pledgee, the lender may have the right to direct the sale of any securities included in the collateral, to direct the purchase of securities with any cash included therein, to withdraw excess collateral or to substitute cash or other securities as collateral *Provided*, That the net proceeds of any such sale and the cash so substituted and the securities so purchased or substituted are held by the applicant or registrant as pledgee, and are included within the collateral to secure payment of the secured demand note, and *Provided further*, That no such transaction shall be permitted if, after giving effect thereto, the sum of the amount of any cash, plus the collateral value of the securities, then pledged as collateral to secure the secured demand note would be less than the unpaid principal amount of the secured demand note.

(E) Upon payment by the lender, as distinguished from a reduction by the lender which is provided for in paragraph (h)(2)(vi)(C) of this section or reduction by the applicant or registrant as provided for in paragraph (h)(2)(vii) of this section, of all or any part of the unpaid principal amount of the secured demand note, the applicant or registrant shall issue to the lender a subordinated loan agreement in the amount of such payment (or in the case of an applicant or registrant that is a partnership, credit a capital account of the lender), or issue preferred or common stock of the applicant or registrant in the amount of such payment, or any combination of the foregoing, as provided for in the secured demand note agreement.

(F) The term "lender" means the person who lends cash to an applicant or registrant pursuant to a subordinated loan agreement and the person who contributes a secured demand note to an applicant or registrant pursuant to a secured demand note agreement.

(2) Minimum requirements for subordination agreements: (i) Subject to paragraph (h)(1) of this section, a subordination agreement shall mean a written agreement between the applicant or registrant and the lender, which: (A) has a minimum term of one year, except for temporary subordination agreements provided for in paragraph (h)(3)(v) of this section, and

(B) Is a valid and binding obligation enforceable in accordance with its terms (subject as to enforcement to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws) against the applicant or registrant and the lender and their respective heirs, executors, administrators, successors and assigns.

(ii) *Specific amount.* All subordination agreements shall be for a specific dollar amount which shall not be reduced for the duration of the agreement except by installments as specifically provided for therein and except as otherwise provided in this paragraph (h)(2) of this section.

(iii) *Effective subordination.* The subordination agreement shall effectively subordinate any right of the lender to receive any payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the applicant or registrant arising out of any matter occurring prior to the date on which the related payment obligation matures, except for claims which are the subject of subordination agreements which rank on the same priority as or junior to the

claim of the lender under such subordination agreements.

(iv) *Proceeds of subordinated loan agreements.* The subordinated loan agreement shall provide that the cash proceeds thereof shall be used and dealt with by the applicant or registrant as part of its capital and shall be subject to the risks of the business.

(v) *Certain rights of the borrower.* The subordination agreement shall provide that the applicant or registrant shall have the right to: (A) Deposit any cash proceeds of a subordinated loan agreement and any cash pledged as collateral to secure a secured demand note in an account or accounts in its own name in any bank or trust company;

(B) Pledge, repledge, hypothecate and rehypothecate, any or all of the securities pledged as collateral to secure a secured demand note, without notice, separately or in common with other securities or property for the purpose of securing any indebtdeness of the applicant or registrant; and

(C) Lend to itself or others any or all of the securities and cash pledged as collateral to secure a secured demand note.

(vi) *Collateral for secured demand notes.* Only cash and securities which are fully paid for and which may be publicly offered or sold without registration under the Securities Act of 1933, and the offer, sale and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note. The secured demand note agreement shall provide that if at any time the sum of the amount of any cash, plus the collateral value of any securities, then pledged as collateral to secure the secured demand note is less than the unpaid principal amount of the secured demand note, the applicant or registrant must immediately transmit written notice to that effect to the lender, the designated self-regulatory organization, if applicable, and the Commission. The secured demand note agreement shall also require that following such transmittal:

(A) The lender, prior to noon of the business day next succeeding the transmittal of such notice, may pledge as collateral additional cash or securities sufficient, after giving effect to such pledge, to bring the sum of the amount of any cash plus the collateral value of any securities, then pledged as collateral to secure the secured demand note, up to an amount not less than the unpaid principal amount of the secured demand note; and

(B) Unless additional cash or securities are pledged by the lender as provided in (A) above, the applicant or registrant at noon on the business day next succeeding the transmittal of notice to the lender must commence sale, for the account of the lender, of such of the securities then pledged as collateral to secure the secured demand note and apply so much of the net proceeds thereof, together with such of the cash then pledged as collateral to secure the secured demand note as may be necessary to eliminate the unpaid principal amount of the secured demand note: *Provided, however,* That the unpaid principal amount of the secured demand note need not be reduced below the sum of the amount of any remaining cash, plus the collateral value of the remaining securities, then pledged as collateral to secure the secured demand note. The applicant or registrant may not purchase for its own account any securities subject to such a sale; and

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by (B) above, the lender with the prior written consent of the applicant or registrant and the designated self-regulatory organization or if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission, may reduce the unpaid principal amount of the secured demand note, *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than 10 percent of aggregate indebtedness or in the case of an applicant or registrant operating pursuant to paragraph (g) of this section, adjusted net capital would not be less than 7 percent of the funds required to be segregated pursuant to the Act and these regulations plus for Securities Brokers or Dealers, 7 percent of the aggregate debit items computed in accordance with 17 CFR 240.15c3-3a. *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No designated self-regulatory organization shall consent to reduction of the principal amount of a secured demand note if, after giving effect to such reduction, adjusted net capital would be less than 120 percent of the appropriate minimum dollar amount required by this section.

(vii) *Permissive prepayments.* An applicant or registrant at its option but not at the option of the lender, may, if the subordination agreeemnt so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective; *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of subparagraph (h)(3)(v) of this section. No prepayment shall be made, if, after giving effect thereto (and to all payments of payment obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, either the adjusted net capital of the applicant or registrant is less than 10 percent of its aggregate indebtedness or in the case of an applicant or registrant operating pursuant to paragraph (g) of this section, its adjusted net capital is less than 7 percent of the funds required to be segregated pursuant to the Act and these regulations plus for Securities Brokers or Dealers, 7 percent of the aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or its adjusted net capital is less than 120% of the appropriate minimum dollar amount required by this section. Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation) either the adjusted net capital of the applicant or registrant would be less than 8⅓ percent of aggregate indebtedness or in the case of an applicant or registrant operating pursuant to paragraph (g) of this section, adjusted net capital would be less than 6 percent of the funds required to be segregated pursuant to the Act and these regulations plus for Securities Brokers or Dealers, 6 percent of the aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or its adjusted net capital would be less than 120 percent of the minimum dollar amount required by this section; *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) of this section for a period of not less than six months the applicant or registrant shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

(B) Whenever a subordination agreement provides that an applicant or registrant shall commence a rapid and orderly liquidation, as permitted in paragraph (h)(2)(viii)(A), the date on which the liquidation commences shall be the maturity date for each subordination agreement of the applicant or registrant then outstanding, but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

(ix) *Accelerated maturity.* Obligation to repay to remain subordinate:

(A) Subject to the provisions of paragraph (h)(2)(viii) of this section, a subordination agreement may provide that the lender may, upon prior written notice to the applicant or registrant and the designated self-regulatory organization or if applicant or registrant is not a member of a designated self-regulatory organization, then the Commission, given not earlier than six months after the effective date of such subordination agreement, accelerate the date on which the payment obligation of the borrower, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after giving of such notice, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this paragraph (h)(2) or this section.

(B) Notwithstanding the provisions of paragraph (h)(2)(viii) of this section, the payment obligation of the applicant or registrant with respect to a subordination agreement, together with accrued interest and compensation, shall mature in the event of any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other marshalling of the assets and liabilities of the applicant or registrant but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of paragraph (h)(2) of this section.

(x) *Accelerated maturity of subordination agreements on event of default and event of acceleration.* Obligation to repay to remain subordinate:

(A) A subordination agreement may provide that the lender may upon prior written notice to the applicant or registrant and the designated self-regulatory organization or if the applicant or registrant is not a member of a designated self-regulatory organization, the Commission, of the occurrence of any event of acceleration (as hereinafter defined) given no sooner than six months after the effective date of such subordination agreement, accelerate the date on which the payment obligation of the applicant or registrant, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by the applicant or registrant and

the designated self-regulatory organization, or if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission. Any subordination agreement containing such events of acceleration may also provide, that if upon such accelerated maturity date the payment obligation of the applicant or registrant is suspended as required by paragraph (h)(2)(viii) of this section and liquidation of the applicant or registrant has not commenced on or prior to such accelerated maturity date then notwithstanding paragraph (h)(2)(viii) of this section the payment obligation of the applicant or registrant with respect to such subordination agreement shall mature on the day immediately following such accelerated maturity date and in any such event the payment obligations of the applicant or registrant with respect to all other subordination agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of paragraph (h)(2) of this section. Events of acceleration which may be included in a subordination agreement complying with this paragraph (h)(2)(x) of this section shall be limited to:

(1) Failure to pay interest or any installment of principal on a subordination agreement as scheduled;

(2) Failure to pay when due other money obligations of a specified material amount;

(3) Discovery that any material, specified representation or warranty of the applicant or registrant which is included in the subordination agreement and on which the subordination agreement was based or continued was inaccurate in a material respect at the time made; (4) Any specified and clearly measurable event which is included in the subordination agreement and which the lender and the applicant or registrant agree, (a) is a significant indication that the financial position of the applicant or registrant has changed materially and adversely from agreed upon specified norms; or (b) could materially and adversely affect the ability of the applicant or registrant to conduct its business as conducted on the date the subordination agreement was made; or (c) is a significant change in the senior management of the applicant or registrant or in the general business conducted by the applicant or registrant from that which obtained on the date the subordination agreement became effective;

(5) Any continued failure to perform agreed convenants included in the subordination agreement relating to the conduct of the business of the applicant or registrant or relating to the maintenance and reporting of its financial position; and

(B) Notwithstanding the provisions of paragraph (h)(2)(viii) of this section, a subordination agreement may provide that, if liquidation of the business of the applicant or registrant had not already commenced, the payment obligation of the applicant or registrant shall mature, together with accrued interest or compensation, upon the occurrence of an event of default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the applicant or registrant has not already commenced, the rapid and orderly liquidation of the business of the applicant or registrant shall then commence upon the happening of an event of default. Any subordination agreement which so provides for maturity of the payment obligation upon the occurrence of an event of default shall also provide that the date on which such event of default occurs shall, if liquidation of the applicant or registrant has not already commenced, be the date on which the payment obligation of the applicant or registrant with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of paragraph (h)(2) of this section. Events of default which may be included in a subordination agreement shall be limited to:

(1) The making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the applicant or registrant are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the applicant or registrant to obtain the dismissal of such application within 30 days;

(2) Failure to meet the minimum capital requirements of the designated self-regulatory organization, or of the Commission, throughout a period of 15 consecutive business days, commencing on the day the borrower first determines and notifies the designated self-regulatory organization, if any, of which he is a member and the Commission; or any self-regulatory organization or the Commission first determines and notifies the applicant or registrant of such fact;

(3) The Commission shall revoke the registration of the applicant or registrant;

(4) The self-regulatory organization shall suspend (and not reinstate within 10 days) or revoke the applicant or registrant's status as a member thereof;

(5) Any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the applicant or registrant. A subordination agreement which contains any of the provisions permitted by this subparagraph (2)(x) shall not contain the provision otherwise permitted by paragraph (h)(2)(ix)(A) of this section.

(3) *Miscellaneous provisions.*—(i) *Prohibited cancellation.* The subordination agreement shall not be subject to cancellation by either party; no payment shall be made with respect thereto and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of paragraph (h) of this section.

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the designated self-regulatory organization and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, either the aggregate indebtedness of the applicant or its adjusted net capital or its adjusted net capital would be less than 120 percent of the minimum dollar amount required by § 1.17 or in the case of an applicant or registrant who is operating pursuant to paragraph (g) of § 1.17, its adjusted net capital would be less than 6 percent of the funds required to be segregated pursuant to the Act and these regulations plus for Securities Brokers or Dealers, 6 percent of the aggregate debit items computed in accordance with 17 CFR 240.15c3–3a.

(iii) *Certain legends.* If all the provisions of a satisfactory subordination agreement do not appear in a single instrument then the debenture of other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordination agreement which shall be adequately referred to and incorporated by reference.

(iv) *Legal title to securities.* All securities pledged as collateral to secure a secured demand note must be in bearer form, or registered in the name of the applicant or registrant or the name of its nominee or custodian.

(v) *Temporary subordinations.* For the purpose of enabling an applicant or registrant to participate as an underwriter of securities or other extraordinary activities in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date of the subordination agreement became effective. *Provided*, That this temporary relief shall not apply to any applicant or registrant if either the adjusted net capital of the applicant or registrant is less than 10 percent of its aggregate indebtedness or in the case of an applicant or registrant operating pursuant to paragraph (g) of this section, adjusted net capital is less than 7 percent of the funds required to be segregated pursuant to the Act and these regulations plus for Securities Brokers or Dealers, 7 percent of the aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or its adjusted capital is less than 120 percent of the appropriate minimum dollar amount required by this section, or the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

(iv) *Filing.* Two copies of any proposed subordination agreement (including nonconforming subordination agreements) shall be filed with the Commission at least ten days prior to the proposed execution date of the agreement or at such other time as the Commision for good cause shall accept such filing. Copies of the proposed agrement shall be filed with the designated self-regulatory organization, if any, of which the applicant or registrant is a member in such quantities and at such time as the designated self-regulatory organization may require. The applicant or registrant shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the applicant or registrant and whether the applicant or registrant carried funds or securities for the lender at or about the time the proposed agreement was so filed. All agreements shall be examined at the Commission and the designated self-regulatory organization with whom such agreements are required to be filed prior to their becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the Commission has found the agreement acceptable and such agreement has become effective in the form found acceptable.

(vii) *Subordination agreements in effect prior to adoption*—Any subordination agreement which has been entered into prior to (date of adoption) and which has been deemed to be satisfactorily subordinated pursuant to this section heretofore in effect or the adjusted net capital rules of a self-regulatory organization shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. Provided, that no renewal of an agreement which provides for automatic or optional renewal by the applicant or registrant or lender shall be deemed to be a satisfactory subordination agreement unless such renewed agreement meets the requirements of this section, within six months of (the effective date of this section). *Provided further*, That all subordination agreements must meet the requirements of this rule within five years of (date of adoption).

(4) A designated self-regulatory organiza-

tion and the Commision may allow debt with a maturity date of one year or more to be treated as meeting the provisions of this paragraph (h) provided:

(i) Such exemption shall only be given when the registrant's adjusted net capital is less than the minimum required by this § 1.17 or by the capital rule of the designated self-regulatory organization to which such registrant is subject;

(ii) Such exemption shall be for a period of thirty days or such lesser period as the designated self-regulatory organization and the Commission may determine;

(iii) Such exemption shall not be allowed more than once in any twelve month period; and

(iv) At all times during such exemption the registrant shall make a good faith effort to comply with the provisions of this § 1.17 or the capital rule of the designated self-regulatory organization to which such registrant is subject exclusive of any benefits derived from this paragraph (h)(4).

(i) [Reserved]

(j) For the purposes of this section "cover" is defined as follows:

(1) *General definition.* Cover shall mean transactions or positions in a contract for future delivery on a board of trade or a commodity option where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising.

(ii) The potential change in the value of liabilities which a person owes or anticipates incurring, or

(iii) The potential change in the value of services which a person provides, purchases or anticipates providing or purchasing. Notwithstanding the foregoing, no transactions or positions shall be classsified as cover for the purposes of this section unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in accordance with sound commercial practices and unless the provisions of paragraphs (j)(2) and (3) of this section have been satisfied.

(2) *Enumerated Cover Transactions.* The definition of covered transactions and positions in paragraph (j)(1) of this section includes, but is not limited to, the following specific transactions and positions:

(i) Ownership or fixed-price purchase of any commodity which does not exceed in quantity the sales of the same commodity for future delivery on a board of trade or the purchase of a put commodity option of the same commodity for which the market value for the actual commodity or futures contract which is the subject of the option is less than the striking price of the option.

(ii) Fixed-price sale of any commodity which does not exceed in quantity the purchase of the same commodity for future delivery on a board of trade or the purchase of a call commodity option of the same commodity for which the market value for the actual commodity or futures contract which is the subject of such option is more than the striking price of the option; and

(iii) Ownership or fixed price contracts of a commodity described in paragraphs (j)(2)(i) and (j)(2)(ii) of this section may also be covered other than by the same quantity of the same cash commodity, provided that the fluctuations in value of the position for future delivery or commodity option are substantially related to the fluctuations in value of the actual cash position.

(3) *Non-Enumerated cases.* Upon specific request, the Commission may recognize transactions and positions other than those enumerated in paragraph (j)(2) of this section as cover in amounts and under the terms and conditions as it may specify. Any applicant or registrant who wishes to avail himself of the provisions of this paragraph (j)(3) must apply to the Commission in writing at its principal office in Washington, D.C. giving full details of the transaction including detailed information which will demonstrate that the transaction is economically appropriate to the reduction of risk exposure attendant to the conduct and management of a commercial enterprise.

6. By revising § 1.18 (b) and (c) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation.

* * * * *

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31, formal computations of his adjusted net capital and of its minimum financial requirements pursuant to § 1.17 as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the Commission or designated self-regulatory organization, if any, within 30 days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed or the first month end after (the effective date of this section).

(c) [Revoked]

7. By adding a new § 1.52, reading as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt minimum financial and related reporting requirements for all its member futures commission merchants by December 25, 1978. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 of this part, and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c) of this part.

(b) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any futures commission merchant which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the financial reports necessitated by such minimum financial and related reporting requirements.

Such a plan may also delegate the responsibility of examining the books and records kept by such future commission merchant relating to its business of dealing in: (A) Commodity futures and cash commodities, insofar as such business relates to its dealing on contract markets, as required by § 1.51(a)(3); or (B) commodity options and physical commodities, insofar as such business relates to its dealing on domestic commodity option exchanges, as required by § 32.5(g)(4).

(c) Any plan filed under this § 1.52 may contain provisions for the allocation of expenses reasonably incurred by the designated self-regulatory organization among the self-regulatory organizations participating in such a plan.

(d) A plan's designated self-regulatory organization must report to that plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor, audit or examine has been delegated to such designated self-regulatory organization under this § 1.52.

(e) The self-regulatory organizations may, among themselves, establish programs to provide access to any necessary financial or related information.

(f) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part thereof: Is necessary or appropriate to serve the public interest; is for the protection and in the interest of customers; reduces multiple monitoring and auditing for compliance with the minimum financial rules of the self-regulatory organizations submitting the plan for any futures commission merchant which is a member of more than one self-regulatory organization; reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant which is a member of more than one self-regulatory organization; fosters cooperation and coordination among the contract markets; and does not hinder the development of a registered futures association under section 17 of the Act.

(g)(1) Upon the approval of a plan or part thereof under § 1.52(f), a self-regulatory organization which is included in such a plan shall be considered to have met its affirmative action responsibilities under § 1.51 to the extent that such responsibilities have been delegated to a designated self-regulatory organization.

(2) After the Commission has approved a plan or part thereof under § 1.52(f), a self-regulatory organization relieved of responsibility must notify each of its members which is subject to such a plan: (A) Of the limited nature of its responsibility for such a member's compliance with its minimum financial and related reporting requirements; and (B) of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

(h) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan or part thereof established under this § 1.52, if such plan or part thereof ceases to adequately effectuate the purposes of section 4f(2) of the act or of this § 1.52.

(i)(1) If a futures commission merchant holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such futures commission merchant must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C.

(2) Whenever a futures commission merchant holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C., send a copy of that notification to such futures commission merchant, and notify such futures commission merchant of its responsibilities under paragraph (i)(1) of this section.

(j) Nothing in this § 1.52 shall preclude the Commission from examining any futures commission merchant for compliance with the minimum financial and related reporting requirements to which such futures commission merchant is subject.

(k) In the event a plan is not filed and/or approved for each futures commission merchant which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those futures commission merchants which are not the subject of an approved plan (under para-

graph (f) of this section) delegating to a designated self-regulatory organization the responsibilities described in paragraph (b) of this section.

(7 U.S.C. 6c, 6f, 6g, 7a, 12a and 17.)

* * * * *

Issued in Washington, D.C., on April 5, 1978, by the Commission.

WILLIAM T. BAGLEY,
*Chairman,*
*Commodity Futures Trading Commission.*

[FR Doc 78-9400 Filed 4-7-78; 8:45 am]

Mr. DECONCINI. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from Massachusetts (Mr. KENNEDY).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR EDWARD M. KENNEDY ON THE AMENDMENT TO THE BANKRUPTCY BILL TO ALLOW REAFFIRMATION OF LAWFULLY DISCHARGED DEBTS

The over-600 page bill on each of our desks today is the result of years of efforts to modernize, reform, and make uniform our federal bankruptcy laws. The Senator from New Mexico (Mr. DeConnini) and the Senator from Wyoming (Mr. Wallop) are to be commended for the tremendous amount of time and energy they have put into this undertaking.

The result is an important and impressive piece of legislation. In addition to its attention to the procedures and institutions upon which a fair and effective bankruptcy system must be founded, this bill also attempts to make bankruptcy a more effective remedy for the consumer debtor. The basic principle embodied in the bill is that once a person has gone through bankruptcy, he or she should be given a truly fresh start. But, Mr. President, that is precisely the principle most offended by the amendment to section 524 to allow general reaffirmation of discharged debts.

The efforts by lending firms to reinstate their power to have new life breathed into discharged debts are, to me, unconscionable. The arguments for this amendment are simply devoid of merit. The practice of seeking reaffirmation permits unscrupulous and powerful lenders to force persons to reaffirm lawfully discharged debts through job pressure, deceit, and the temptation of an offer of further credit. It should be of no importance to careful, ethical businesses.

The primary justification for allowing bankruptcy discharges of debt is the fresh start it provides to persons who have become so burdened with debt that they are unable to function energetically and effectively in society. Reaffirmations are totally at war with this objective.

Some lenders have argued that reaffirmations are needed to make it easier for bankrupts to get further credit. The weakness of this position should be obvious. In the first place, permitting finance companies to condition the extension of further credit on the reaffirmation of a debt invites an outrageous evasion of state usury laws. In many instances, the lender will actually obtain what comes to interest in excess of 100% when both the costs of reaffirming the legally discharged debt plus the legal interest rate are considered. Do we really want to encourage individuals who have just put the public and other creditors to the expense of bankruptcy proceeding to assume that sort of obligation?

Secondly, I do not think we should encourage people who have just been through bankruptcy to begin immediately seeking credit with finance companies. We must assume that the inability to resist or to manage debt obligations was the cause of the initial bankruptcy in a large number of cases.

Finally, establishing new credit on the basis of a reaffirmation to one lender obviously puts the discharged bankrupt in a far worse position to assume and satisfy obligations to other businesses.

Generally, creditors work with each other and the debtor by deferring collection attempts and settling claims for less than their full value to help the debtor avoid bankruptcy. The creditors do this, of course, in their own interest because they want to avoid losing their entire claim in bankruptcy. Obviously, however, a firm which has hopes of recovering money through manipulation of reaffirmations has a far less incentive to assist and cooperate with the other creditors. We can safely assume that such lenders are more likely to pursue their individual claim aggressively without regard to whether that effort will eventually cause a declaration of bankruptcy.

Despite absurd claims to the contrary by some lenders, S. 2266, as now amended, would not deny debtors the right to satisfy their conscience by paying off discharged debts. There is nothing in the bill to prohibit a debtor from voluntarily making payments if he chooses or feels a moral obligation to do so.

In my view this issue is non-ideological and non-partisan. It arises only because of the efforts of a small group of creditors to maintain a legal sanction of their efforts to evade the intent of the bankruptcy laws.

I thus strongly oppose any attempt to delete my amendment to section 524.

Mr. BARTLETT. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. BARTLETT. Mr. President, will the distinguished Senator from Maryland advise whether he needs additional time?

Mr. MATHIAS. I thank the Senator very much and I appreciate it, but I do not need additional time.

Mr. DECONCINI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DECONCINI. Mr. President, I yield back the remainder of my time on the amendment.

Mr. BARTLETT. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Oklahoma.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

(Mr. METZENBAUM assumed the chair.)

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mr. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I also announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. CURTIS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Jersey (Mr. CASE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 51, nays 20, as follows:

[Rollcall Vote No. 373 Leg.]

YEAS—51

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| Bartlett | Hansen | Riegle |
| Bellmon | Hatch | Roth |
| Bumpers | Hayakawa | Sarbanes |
| Byrd, Harry F., Jr. | Heinz | Sasser |
| | Hollings | Schmitt |
| Byrd, Robert C. | Huddleston | Schweiker |
| Cannon | Inouye | Scott |
| Chiles | Jackson | Sparkman |
| Church | Leahy | Stennis |
| Curtis | Lugar | Stone |
| DeConcini | Magnuson | Talmadge |
| Dole | Mathias | Thurmond |
| Ford | Matsunaga | Wallop |
| Garn | Melcher | Weicker |
| Glenn | Morgan | Young |
| Goldwater | Moynihan | Zorinsky |
| Gravel | Nunn | |
| Griffin | Packwood | |

NAYS—20

| | | |
|---|---|---|
| Bayh | Eagleton | Metzenbaum |
| Bentsen | Hart | Muskie |
| Clark | Hathaway | Nelson |
| Cranston | Hodges | Proxmire |
| Culver | Javits | Ribicoff |
| Danforth | Long | Williams |
| Durkin | McGovern | |

NOT VOTING—29

| | | |
|---|---|---|
| Abourezk | Haskell | McIntyre |
| Allen | Hatfield, Mark O. | Pearson |
| Anderson | | Pell |
| Baker | Hatfield, Paul G. | Percy |
| Biden | | Randolph |
| Brooke | Helms | Stafford |
| Burdick | Humphrey | Stevens |
| Case | Johnston | Stevenson |
| Chafee | Kennedy | Tower |
| Domenici | Laxalt | |
| Eastland | McClure | |

So the amendment (UP No. 1821) was agreed to.

Mr. BARTLETT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HANSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

● Mr. LONG. Mr. President, S. 2266 pro-

vides the first overall revision of the bankruptcy laws since 1938, in light of major changes in debtor-creditor relations during this period. The bill was reported by the Finance Committee on August 10, 1978.

S. 2266 was referred to the Finance Committee for its consideration and recommendations concerning several tax-related sections of the bill. These provisions deal with such subjects as defining the tax claims against the debtor's estate which are entitled to priority and nondischargeability, determining the tax liabilities of a debtor in bankruptcy, and clarifying the jurisdiction of different courts to rule on tax issues. The bill reported by the Finance Committee includes the results of its consideration of these matters, as well as additional technical and conforming amendments.

S. 2266 does not contain amendments to the Internal Revenue Code dealing with substantive tax issues arising in bankruptcy. A separate bill is now pending in the House, H.R. 9973, containing amendments designed to conform the tax rules to the bankruptcy changes we are considering today. H.R. 9973 was introduced on November 3, 1977, by members of the House Judiciary Committee and was referred to the Committee on Ways and Means, which held a hearing on the bill on February 22, 1978. We anticipate that Congress will act on these substantive tax issues early next year. Since the general effective date for S. 2266 is October 1, 1979, we have sufficient time to make the necessary code amendments so that all the new rules will become effective at the same time.

Mr. President, the Departments of the Treasury and of Justice have no objections to S. 2266, as amended by the Finance Committee. I urge its passage.●

Mr. STENNIS. Mr. President, will the Senator from Arizona, for an emergency matter, yield me 5 minutes?

Mr. DECONCINI. Mr. President, I am more than happy to yield 5 minutes to the Senator from Mississippi.

## S. 3486—DEPARTMENT OF DEFENSE AUTHORIZATIONS, 1979

Mr. STENNIS. Mr. President, I appreciate the Senator's yielding to me. This is on an extraneous matter. Mr. President, may I have the attention of the Chair?

The PRESIDING OFFICER. The Senate will be in order.

Mr. STENNIS. Mr. President, if I may announce to the Senate, the House of Representatives has just voted on the veto of the military authorization bill which, as Senators know, is the basis for the appropriation bill for the Department of Defense. By a vote of 191 for overriding to 206 against overriding, the veto was sustained. This means that this is the end for that bill; it is null and void, and a new start must be made.

I ask unanimous consent, Mr. President, at this time and out of order, to introduce a bill authorizing the military program for fiscal year 1979. The bill as now drafted will be the bill that has just been vetoed, with the nuclear carrier taken out. I will have a short statement here of explanation. Do I have the unanimous consent to introduce the bill out of order?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STENNIS. I thank the Chair.

Mr. President, in view of what has happened, we must now move forward with providing for the common defense. The new fiscal year begins October 1, only 3 full weeks away. We must not delay this authorization bill or the subsequent defense appropriation bill, and thereby force reliance on a continuing resolution for an extended period. That will certainly not benefit the country or any group in it.

I strongly favor the idea of simply taking the nuclear carrier out of the previously agreed to conference report and passing a new bill without further change. Of course, our committee will call on the administration and give them a chance to make recommendations, but I trust that they will limit their requests to actual emergency matters. I will confer, of course, with the members of the full committee. We simply should not hold up authorization and appropriation bills for fiscal year 1979 any longer. Therefore, this is the reason that I have introduced in the Senate today a new fiscal year 1979 defense authorization bill, which, as I have said, is simply the conference report as vetoed, less the nuclear carrier.

Mr. President, it has been generally agreed that the bill that was passed was a balanced bill, that it contained necessary items, largely, and few, if any, unnecessary items. I have no resentment, but we must get to work and pass a bill. The appropriations bill is just suspended in midair, neither fish nor fowl, so far as the authorizations are concerned.

I appreciate this unanimous consent being granted. We can move right along on this bill.

I see the majority leader is here, and I will be glad to yield to him.

Mr. ROBERT C. BYRD. Mr. President, I wish to express my appreciation to the Senator from Mississippi, the chairman of the Armed Services Committee, for the approach he is taking in this matter. He strongly supported the nuclear carrier, and in view of the fact that that seems to have been the main bone of contention that created the veto, and in view of the fact that the House has sustained the veto, I think the distinguished chairman is being very realistic in a number of ways.

First of all, he is introducing a bill promptly. That bill leaves out the carrier, which was the problem. Also, he is suggesting, as I understand it, that we move quickly to act on the bill, not go into all the background, going from the bottom up, starting all over again. I am glad that he takes that viewpoint, because if the Senate is to complete its work and not come back after the election, I would say that mid-October is about the best we can do. That only leaves 5 weeks after this week. That does not give time to go back and thresh out all of the things which have already been very meticulously looked at by the chairman and his committee, and keeping in mind that an appropriations bill does come behind this authorization bill. So we do have to act with deliberate speed here.

The chairman is taking this approach. I commend him for it, and I support him in it.

Mr. STENNIS. I thank the leadership.

I have limited time. I see the Senator from Colorado seeking recognition. I yield 1 minute.

Mr. DECONCINI. I yield 2 minutes to the Senator from Colorado.

Mr. HART. Mr. President, I also commend the chairman for his action and underscore the words of the majority leader. Unfortunately, the Senate does not have the final authority in this matter and must agree with the House on any bill which we pass. The House has already served notice on us in the Senate and in the White House that it may work a good deal of havoc on the bill that we are talking about here. The bill that the President vetoed had a very carefully constructed compromise which addressed and solved the carrier problem once and for all. By vetoing this bill I am afraid the President has committed all of us to a very, very difficult situation. As admirable as the chairman's efforts might be, they may not be met with favor in the House.

I intend to approach our colleagues on the Armed Services Committee with a proposed compromise which I believe will be acceptable to the administration and the House of Representatives. I hope our colleagues in the Senate will pay some attention to this compromise which attempts to accommodate everybody's point of view, although it will not be ideal, probably, to any of the parties.

I am afraid the chairman's efforts will meet with some very difficult times in the House of Representatives.

Mr. STENNIS. I thank the Senator. We have to work out our matters here the best we can. We always meet with the House in the right frame of mind, I believe, and are able to get adjustments to bring back a bill.

Time is of the essence here. I believe we must recognize our goal and our mission. We will have differences, of course, which we hope we can straighten out.

I am disappointed that the President's veto of the Department of Defense fiscal year 1979 authorization bill was not overridden, because I believe it was a sound and balanced bill. The bill contains many new initiatives for each of the military services. All of the items in this bill were gone over carefully for months by the Congress, as well as the executive branch, and all of the items except for the nuclear carrier represent a broad agreement and consensus as to the many, many aspects of our defense program which are contained in this bill.

We must now move forward with providing for the common defense. The new fiscal year begins October 1—only 3 full weeks away. We must not delay this authorization bill or the subsequent defense appropriations bill and thereby force reliance on a continuing resolution for an

extended period. That will not benefit the country or any group in it.

I strongly favor the idea of simply taking the nuclear carrier out of the previously agreed to conference report and passing a new bill without further change. I will, of course, call on the administration and give them a chance to make recommendations, but I trust they will limit their request to actual, urgent emergency matters. I shall confer, of course, with all the members of the full committee. We simply should not hold up the authorization and appropriation bills for fiscal year 1979 any longer.

Therefore, I am introducing in the Senate today a new fiscal year 1979 defense authorization bill which is simply the conference report as passed by the House and Senate with the nuclear carrier taken out. I believe the real choice we have is to follow this simple approach rather than attempt to rewrite this entire, massive bill which may take months, delay the appropriation bill further, and require extensive reliance on unsatisfactory continuing resolutions.

## BANKRUPTCY REFORM ACT OF 1978

The Senate continued with the consideration of the bill.

Mr. DECONCINI. Mr. President, I know of no further amendments.

Mr. WALLOP. Mr. President, I know of no further amendments on the minority side.

Mr. DECONCINI. Mr. President, I ask for a third reading.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 8200 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 8200) to establish a uniform law on the subject of bankruptcies.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. DECONCINI. Mr. President, I ask that all after the enacting clause of H.R. 8200 be stricken and that the text of S. 2266, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 8200), as amended, was passed.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WALLOP. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make clerical and technical corrections in the engrossment of the Senate amendments to H.R. 8200.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Senate insist upon its amendments and request a conference with the House and that the appointment of conferees be deferred at the pleasure of the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DECONCINI. Mr. President, I would like to take a moment to thank the staff of the Senate subcommittee, Romano Romani and Bob Feidler, for their export work and reaffirm my thanks and appreciation to my colleague (Mr. WALLOP) and Harry Dixon of his staff. I would also like to thank Senator LONG and the Committee on Finance for their expeditious handling of the sequential referral of S. 2266. My thanks also to the staff of the Joint Tax Committee, particularly Dick Bacon and Jim Billinger, for their advice on tax aspects of the bill.

Mr. WALLOP. Mr. President, I would also like to add my thanks and admiration particularly to Romano Romani and Bob Feidler, of Senator DECONCINI'S staff; to Harry Dixon, whose work as a consultant to the minority was invaluable to everybody in constructing this bill and, of course, to Pat Hoff, of my own staff, whose help has been most rewarding.

I thank the distinguished Senator from Arizona for all of the courtesies extended to me.

Mr. DECONCINI. Mr. President, I ask unanimous consent that S. 2266 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## JUDICIAL TENURE ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order 957, which was called up earlier this morning but which was set aside.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1423) to establish a Council on Judicial Tenure in the judicial branch of the Government, to establish a procedure in addition to impeachment for the retirement of disabled Justices and judges of the United States, and the removal of Justices and judges whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, I yield myself the necessary time.

Mr. President, it is with great pleasure that I initiate discussion of S. 1423, as amended, the proposed Judicial Tenure Act. The bill was introduced on April 29, 1977, by my distinguished colleague from Georgia (Senator SAM NUNN). However, legislation of this type is not new to the Senate. Similar bills were introduced in the 90th and 91st Congresses by Senator Joseph Tydings. Senator NUNN renewed these efforts in the 93rd and 94th Congresses. Since 1965, the Subcommittee on Improvements in Judiciary Machinery has heard from 50 witnesses in approximately 20 days of extensive hearings. Seldom has any proposal received such lengthy and focused attention.

The past decade of struggle for this much-needed improvement in our judicial system culminated this year, as the Senate Judiciary Committee reported S. 1423 with virtually no dissent. I believe time has molded this legislation into a procedure for monitoring the Federal judiciary which is both more practical than existing impeachment powers, and fully supported by the Constitution.

Mr. President, I want to take this opportunity to thank Senators ABOUREZK, KENNEDY, THURMOND, AND WALLOP for their participation and the assistance of their staff in the consideration of this bill. Without the bi-partisan support this measure has received, this proposal would not be before us today.

This bill is demanded by a public who is increasingly skeptical of our political institutions. All branches of Government must account for their actions, but it is especially critical that our Nation's courts be beyond any doubt. Although most Americans have a high regard for the overall integrity of the Federal judiciary, the publicity surrounding the activities of a few U.S. judges has provided ample opportunity for such doubt to arise. We owe constituents an accessible means of protesting judicial conduct that is inconsistent with the behavior required by the Constitution. Conversely, we owe Federal judges an alternative to the stigma attached to impeachment proceedings, in those cases where aberrant behavior is the innocent product of a poor mental or physical condition.

Historically, Congress has been reluctant to use the drastic measure of impeachment. Only eight Federal judges and one Supreme Court Justice have been impeached by the House of Representatives. Of those, only four judges were convicted by the Senate and removed from office. The last conviction took place in 1936. One reason for this reluctance is the fact that impeachment is a complex, slow, and cumbersome process that absorbs an incredible amount of time in both Houses of Congress. For example, Senate impeachment trials have continued for as long as 6 weeks. The average trial lasts 16 days. For many years, lawmakers have been unable to divert their time and attention from legislative work that grows with each session, and the impeachment process has fallen into disuse. Because it is not used, impeachment has ceased to be

a real deterrent to misconduct on the bench.

These developments come at a time when the total number of Federal judges is increasing rapidly. Present law authorizes 525 active judges and justices. However, a significant number of judges have taken senior status while continuing to serve in a judicial capacity. Thus, approximately 660 judges now serve in the judicial system. In addition, there is pending legislation in this Congress to create 152 additional circuit and district judges. The Federal Judicial Center predicts a need for 1,000 district judges and 250 circuit judges by 1990. Clearly, we face a judicial body that will soon be twice its present size. The impeachment process is inadequate now; future reliance upon it as the only viable procedure for inquiry into alleged misconduct is unrealistic.

Under the proposal, any person could file a complaint alleging judicial misconduct or a permanent mental or physical disability. The filed complaint, if not found to be frivolous, would be transmitted to a committee in each circuit or each of the special national courts. Upon completion of its preliminary investigation, the committee will prepare a recommendation to a newly created Commission which is known as the Judicial Conduct and Disability Commission. Depending on the nature of the recommendations, the Commission will either dismiss the case, or, upon its investigation, file a report with a newly created Court on Judicial Conduct and Disability.

The Court on Judicial Conduct and Disability will hold a hearing which conforms to specified due process requirements and either order the removal, censure, involuntary retirement, or dismissal of the case. Due to the uniqueness of the Supreme Court, the Court on Judicial Conduct and Disability can either prepare a report to the House of Representatives recommending that the Justice be impeached or censured or dismiss the case. I believe these proposed procedures will allow a growing judicial branch to better cope with increasing demands of the future.

Nonetheless, questions have arisen regarding the constitutionality of this legislation. Most of the doubts have arisen from the view that impeachment is the only method of investigating and remedying judicial conduct that is expressly authorized under the Constitution. The argument is based on a very literal reading of the Constitution and claims support from the Federalist Papers, as well as the well-established principle of the independence of the judiciary. In analyzing the constitutional arguments, both for and against the bill, however, I have come to the conclusion that the language of the Constitution ultimately lends support to this proposal. The need for the Judicial Tenure Act is reflected in the framer's sanction that Federal judges "shall hold their offices during good behavior." This is the only explicit reference to any standard of conduct expected of Federal judges. I believe the words "good behavior" were not intended to mean simply the absence of impeachable conduct. The "good behavior" requirement describes a condition which must prevail if a judge is to retain his office. Unless a truly viable mechanism exists for removing judges who have not committed an impeachable offense, but have, nevertheless, substantially departed from good behavior, a significant gap exists between the impeachment power as presently exercised and the constitutional prescription for judicial conduct. I believe the framers knew what they wanted and said it. This legislation is in full accord with that view.

In order to insure that we not only implement the apparent wishes of the framers, but also do not impinge upon judicial independence or any other constitutional imperative, such as separation of powers, the Judicial Tenure Act provides that the Federal judiciary itself will be responsible for examining and acting upon filed complaints. Of course, impeachment should remain as an available alternative. However, a reasonable reading of the Constitution does not lead to the conclusion that impeachment is the only means of removing a Federal judge. We should not require that a judge commit "high crimes or misdemeanors" before he or she will be subject to a removal procedure. A Federal judge occupies too important a position of public trust to allow "bad behavior" to go unnoticed. In my view, "high crimes and misdemeanors" represent one special category of "bad behavior." The "good behavior" standard is the criterion by which judges must finally be evaluated.

The doctrine of separation of powers implies the plenary power of each branch of Government to implement its own functions. Only where the Constitution specifically provides otherwise is there an exception to the general principle. Inherent in this doctrine is the power of each branch to remove unfit members of that branch. I recognize that the opponents of this view suggest that if the framers had wished to give each branch power over its members, they would have said so.

The theme of judicial independence really comes in two forms. One is the matter of judicial independence from interference from the other two branches. The other, however, is a broader question, and seems to be the one raised by most laymen, including a recent New York Times editorial.

Independence in the traditional sense is a corporate concept that involves the judiciary as a branch and its relations with the other branches. Prof. Raoul Berger has noted that:

> All remarks in the several conventions that bear on judicial independence, as far as I could find, referred to freedom from legislative and executive encroachments. No one suggested that judges must be immune from traditional judicial conduct.

I might add that Professor Berger supports the legislation and finds nothing in it antithetical to any provision of the Constitution.

Our legislation clearly preserves judicial independence in this traditional sense. Because the mechanism we have created lies entirely within the judicial branch itself, there is no reasonable way to argue that it weakens the corporate independence of the judiciary vis-a-vis the legislative or executive branches.

In all fairness, however, I believe that our critics are more concerned with a far broader question—that is, the independence of an individual judge from any pressure whatsoever, be it from his or her peers or anyone else. They argue that judicial independence can only be preserved by condoning all sorts of activities that may bring the bench into disrepute, and tell us that this license and ultimate irresponsibility is the price we must pay to maintain independence. This is a viewpoint that I heartily reject as inconsistent not only with the Constitution, but with the prevailing values of our society.

The only way in which this argument can be made against the Judicial Tenure Act is to assert that the independence of individual judges will be threatened by other judges. In our bill, judges sit in judgment of other judges in much the same way as they do in the appeals process. Of course, in a proceeding under our act, the final outcome can be removal from office, not merely reversal. However, such a decision can only be reached if it is demonstrated by "clear and convincing" evidence that a judge committed a major breach of "good behavior." Ultimately, any action taken against a judge by our Court on Judicial Conduct and Disability is reviewable by the Supreme Court. Throughout the procedure, the greatest care is taken to insure that, even under the "worst case" scenario, there is no chance for abuse. We provide in the act, for example, that "complaints relating to the merits of any decision or procedural ruling of a judge are outside the jurisdiction of the Commission."

Logically, the only fears that these critics could have is that brother judges might wish to influence one of their number who espouses views contrary to their own. How this might be accomplished in the context of the bill is unclear. First, complaints are lodged by individual citizens. Second, they undergo a careful screening process to insure that they fall within the scope of the legislation. A decision must be made to pursue the matter before the Court on Judicial Conduct and Disability by the Commission set up for that purpose and composed of judges representing the eleven circuits and three national courts.

The Court on Judicial Conduct and Disability, also composed of judges, can remove a judge if the complaint is deemed valid in a proceeding where the accused judge is represented by counsel. We were particularly sensitive at every juncture to create a bill that would be above criticism. For example, we specifically did not give the judicial council of each circuit a broader role because of the possibility that we might be criticized for allowing judges who work reasonably closely with one another to adjudicate each other's behavior.

all respects enhance the Federal Judicial Tenure Act, and I believe it will in all respects enhance the Federal judiciary and make a positive contribution

to the quality of American justice. I am convinced that there is a need for this legislation, and that it is long, long overdue. I have examined all the possible constitutional arguments and am totally convinced—as are the judicial conference, the ABA, the Justice Department, the American Judicature Society, and many individual judges and lawyers throughout the country—that this legislation is totally within the letter and spirit of the Constitution.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield myself such time as I may require.

Mr. President, the bill which we consider today—establishing a procedure in addition to impeachment for involuntary retirement, removal, and censure of members of the Federal judiciary—is a most important one. Since the founding of our country and the drafting of its Constitution, the impeachment process has been the sole means utilized to remove those judges whose conduct was deemed to be inconsistent with constitutional requirements. Several scholars, writing in the first 50 years after ratification of the Constitution, expressed their belief that impeachment was the only method for removal of Federal judges. Many commentators today are of that same opinion.

The continued use of impeachment as a sole means of removing Federal judges, however, presents greater practical difficulties today than in 1789. Impeachment is a cumbersome, time-consuming process. The removal of even a single district court judge could conceivably tie up both Houses of Congress for a significant period of time. Attorney General Bell, in his testimony before the Subcommittee on Improvements in Judicial Machinery on September 14, 1977, stated that:

> Not every judge who perhaps should be impeached can be impeached . . . Congress does not have that much time.

As a result of its cumbersome nature, impeachment does not act as a real deterrent to misconduct on the bench. These time considerations will loom still larger in future years as the legislative load of Congress increases and the number of Federal judges also climbs upward.

Historically, impeachment has been an infrequently utilized process. Eight judges have been impeached and tried, with the resulting convictions of four—the last conviction occurring in 1936. The potential need for legislation such as S. 1423 is demonstrated by the problems and controversy surrounding Judges Chandler and Ritter and the attempted impeachment of Justice Douglas.

Public confidence in the Federal judiciary would be enhanced by a disciplinary system such as that created by S. 1423 which provides standards for evaluating judicial performance and procedures for enforcing them. S. 1423 also provides for public participation in the disciplinary process by allowing anyone to file a complaint with the Commission. This provides a simple mechanism for citizens to express their grievances concerning Federal judges and justices. Any complaints which relate to the merits of a decision or procedural ruling of a judge or justice are, however, beyond the scope of this legislation.

Also beyond the scope of S. 1423 are complaints concerning a condition or any conduct of a judge which is not connected with his office or which does not prejudice the administration of justice by bringing the judicial office into disrepute. S. 1423 provides for a small permanent Commission staff to receive and initially screen all complaints. The experience of the States with similar systems indicates that a large majority of complaints will probably be dismissed at this point in the process. Therefore, members of the Federal judiciary will not be inundated by complaints which pertain to the merits of their decisions and thus are outside the scope of S. 1423.

The vast majority of States, including my own State of South Carolina, have established similar disciplinary systems. New York did so in 1947. The California system, which has served as a model for many other States, was established in 1960. The overwhelming support of such legislation by the States indicates both the practical need for it and, in view of the length of time that some systems have been in operation, the feasibility of it.

The constitutionality of removing Federal judges by means other than impeachment is the most important issue raised by this legislation. Article II, section 4, provides that the President, Vice President, and all "civil officers" shall be removed from office "on Impeachment For, and Conviction of Treason, Bribery, or Other High Crimes or Misdemeanors." Opponents argue that, by virtue of the maxim "expressio cerius exclusion alterius," the Constitution prohibits any other means of removal. The language of article II, section 4, has not, however, been interpreted as exclusive in other contexts.

The first Congress determined that the President had the power to remove "civil officers" within the executive branch. The impracticality of dealing with the misconduct of any of hundreds of civil officers by the impeachment procedure could not be ignored. Also, the Supreme Court held in 1897 that the President could remove a U.S. attorney despite the impeachment clause of article II. If impeachment is not the exclusive means for removing certain civil officers, it would seem illogical to maintain that it is the exclusive means for removing Federal judges. Finally, if the framers had intended impeachment to be the exclusive means, they could easily have so provided.

Perhaps the crux of the argument supporting the constitutionality of S. 1423 is that the language of impeachment is contained in the executive article. Article III, the judicial article, includes no language regarding impeachment or any other means of removal for that matter. It simply provides that "Judges, both of Supreme and Inferior Courts, shall hold their offices during good Behavior." The grounds for impeachment set forth in article II and the good behavior standard prescribed by article III are apparently two distinct standards. At common law, impeachment was a criminal proceeding conducted in Parliament on charges of "treason, high crimes and misdemeanors."

Moreover, this language was regarded as having a technical limited meaning encompassing only very serious offenses. "Good behavior" also had a particular meaning of common law. This type of tenure in office is commonly associated with the Act of Settlement (1700) which granted judges tenure for so long as they conducted themselves well. Thus, "good behavior" was regarded as the broader of the two standards—encompassing a wider range of misbehavior than that included within the terms "Treason, Bribery, and Other High Crimes and Misdemeanors."

Furthermore, removal of officers having "good behavior" tenure was accomplished by a judicial, rather than by a legislative proceeding. The common law writ of scire facias was used to initiate a civil proceeding for the forfeiture of the office in which termination was declared by the judiciary.

Arguably, when the framers utilized a term of art such as "good behavior" without indicating that they were using it in a novel fashion, they assumed that similar procedures to those at common law would be used to remove those judges who violated the "good behavior" standard. The present legislation provides for a means of removal analogous to the common law system for removing violators of the good behavior standard in that S. 1423 establishes a disciplinary system within the judicial branch itself. I believe that S. 1423, in providing a procedure to judicial enforcement of the good behavior standard, is a proper exercise of the "necessary and proper" clause (article I, section 8) of the Constitution.

Mr. President, S. 1423 would afford a fair, efficient alternative to the more cumbersome process of impeachment. This legislation has been endorsed by the Judicial Conference of the United States, the American Bar Association, the Department of Justice, the American Judicature Society, the National Association of Attorneys General, Attorney General Griffin Bell, and other legal scholars and Federal jurists.

I would like to thank Senator DECONCINI, chairman of the Subcommittee on Improvements in Judicial Machinery, and his staff for the fine work which they have done on this legislation. I would also like to offer my appreciation to Senator WALLOP, ranking minority member of the subcommittee, for the commendable job he has done in managing this legislation for the minority. Finally, I ask that my distinguished colleagues support this needed legislation of which I am a cosponsor.

Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Who yields time?

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Who is in charge of the time on this side of the issue?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I do not know how much time the Senator from Maryland has.

Mr. MATHIAS. I do not have any time.

Mr. DECONCINI. The Senator has no time.

I yield whatever time the Senator wants.

Mr. BAYH. That is fine.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. I ask for clarification. What is the time allocation?

The PRESIDING OFFICER. Six hours on the bill, and 1 hour on amendments in the first degree.

Mr. BAYH. I accept the gracious offer of my distinguished friend from Arizona.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. NUNN. Will the Senator yield at some point? I would like to make a statement.

Mr. BAYH. I yield to the Senator from Georgia. I did not see he was prepared.

Mr. NUNN. It is not necessary now. The Senator can go right ahead.

Mr. BAYH. I would just as soon wait. I have a couple more notes to make.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, first of all, I want to thank the chairman of the Subcommittee on Improvements in Judicial Machinery (Mr. DECONCINI) for his yeomanlike efforts in refining this legislation, which I introduced several years ago, and guiding it through the Judiciary Committee.

I also want to commend Senator WALLOP for his great help and assistance as the ranking minority member, as well as Senator THURMOND, who is the ranking minority member of the full committee.

Without the work of Senator DECONCINI, Senator WALLOP, and Senator THURMOND, and also the able assistant of Senator DECONCINI, Mr. Mike Altier, we would not be debating this bill today.

Mr. President, I am extremely pleased that the Senate is today considering what I believe is a very significant judicial reform—the Judicial Tenure Act. At the outset, I would like to take this opportunity to thank the chairman of the Subcommittee on Improvements in Judicial Machinery, Senator DECONCINI, for his yeomanlike efforts in refining this legislation and in guiding it through the Judiciary Committee. Without the work of Senator DECONCINI and his able assistant, Mike Altier, we would not be debating this bill today.

The concept embodied in this bill is not a new one. Serious congressional hearings have been conducted on the subject since the 1930's and a principle similar to that contained in S. 1423 has been before the Senate for over 10 years. While the Judicial Tenure Act does not represent an entirely new concept, it does represent a concept whose time has come.

S. 1423 would establish a procedure, within the Federal judiciary, to investigate allegations that a Federal judge is not conforming to the constitutional standard of good behavior or that a judge is suffering from a permanent mental or physical disability that seriously interferes with the performance of his official duties. This legislation, which has become known as the Judicial Tenure Act, provides for the removal, censure or involuntary retirement of a Federal judge in the event that allegations of that kind prove to be meritorious. I introduced the Judicial Tenure Act in the 93d Congress as S. 4153 and in the 94th Congress as S. 1110 and the legislation which we are discussing today, with a few constructive alterations, is substantially the same as those bills.

Many lessons should be learned from the recent experiences of the Watergate era. We were reminded that power can intoxicate its holders, and be abused by the highest governmental officials in this Nation. We all must recognize the unfortunate fact that public confidence in Government has been eroded over the past few years for many reasons, and it will continue to decline unless affirmative steps are taken, in each branch of Government, to stimulate renewed trust in public officials and institutions.

The daily news reports are replete with accounts of the new disclosure requirements being imposed on Presidential appointees and of the implementation of Members of Congress. It is imperative that all governmental officials act to restore and maintain the public trust. I believe very strongly that in no branch of government is the public confidence and respect more vital than in the Federal judiciary.

It would be exceedingly shortsighted to focus reform efforts on insuring that members of the executive and legislative branches of our Federal Government conform to legal, moral and ethical standards of the highest order and, at the same time, to ignore the conduct and capabilities of members of the branch of Government which possesses the authority to interpret, delay, and discontinue the actions of the other two. As now Attorney General Griffin Bell stated during hearings on S. 1110,

> We are living in a time when our public institutions are under examination and the courts are not exempt. A citizen should be afforded a clear method for complaining against the courts.

Our appointed Federal judges enjoy a high degree of independence; they are not required to answer periodically to the electorate, as are the President and Members of Congress. Although the need for a substantial degree of judicial independence is clear, experience has vividly demonstrated that no one person, or group of people, can be assumed perfect and therefore left completely unchecked. Despite the overall competence and integrity of members of the Federal judiciary, an occasional judge does misbehave or become physically or mentally disabled and yet continues to exercise the authority of his office. This problem has motivated my study of the subject of judicial tenure and discipline and my introduction of this legislation.

Historically, the sole procedure which has been employed to remove a Federal judge who has misbehaved (or is disabled), for one reason or another, has been the impeachment power which is housed in articles I and II of the Constitution. A few selected statutory provisions, which generally provide administrative authority with regard to the operation of the Federal judiciary, have also been suggested as potential sources of additional disciplinary authority.

When America's Founding Fathers, in addition to requiring impeachment for the President and Vice President, provided for the impeachment of "civil officers," a term which has been interpreted to include Federal judges, they envisioned a nation comprised of 13 States with a Federal judiciary and a Congress of commensurate size and responsibility. During the course of the recently completed second session of the 94th Congress, in excess of 870 measures were passed by the U.S. Congress and 700 rollcall votes were cast in the Senate. It is unreasonable, to say the least, to assume that the House and Senate could or should lay aside all legislative business for weeks or months in order to impeach and try an obscure, yet misbehaving judge. Present law authorizes 525 Federal judges with an additional 168 retired or senior judges, a number infinitely larger than originally authorized. As you well know, Mr. President, a substantial increase in this authorization will be enacted in the near future.

The analogy of impeachment to a heavy piece of artillery, which was made by Lord Bryce, is eminently appropriate. The impeachment procedure is cumbersome and ponderous and is only practical in the most serious and flagrant cases of abuse. As a result, indiscretions which should be addressed are regularly ignored. Commonsense requires that a balance be struck between the necessity for institution of impeachment proceedings and the resultant interruption in the important legislative process. There must be a logical relationship between the importance and power of the respondent and the time required by the House to impeach and the Senate to conduct the trial.

History has borne out Thomas Jefferson's characterization of impeachment as an "impractical thing" and a "mere scarecrow." Over the course of our 200 years as a nation, only 54 judges and 1 Justice have been officially investigated. Of these only eight judges and one Justice have been successfully impeached by the House, resulting in the conviction and removal of a mere four judges in two centuries. The last impeachment and conviction occurred in 1936. While I am among the first to appreciate the overall quality of the Federal bench, it seems unreasonable to assert that only four Federal judges in our history have misbehaved or been disabled. On the contrary, the record is filled with substantial allegations levied against judges who continued to serve on the Federal bench.

The facts clearly demonstrate that impeachment has not been utilized to insure compliance with the constitutional standard of "good behavior" imposed on the Federal judiciary by article III. Moreover, except in the most flagrant

and publicized cases, it is questionable whether impeachment is an appropriate means through which to decide the merits of such serious allegations. Examination of the fifth amendment and its due process safeguards raises some interesting questions regarding the propriety, if not the constitutional sufficiency, of a trial where, as former Congressman Hatton Sumners described the scene, "at one time only three Senators (jurors) were present and for 3 weeks we presented evidence to what was practically an empty Chamber."

A point of view which is too often ignored is that of the accused judge. There is no question that society's rights must be protected, but is impeachment, with its attendant public humiliation and loss of pension, a proper remedy to address the problem of a senile or disabled judge who has served well but fails to recognize that the time to step down has arrived?

I believe that a thorough analysis of the impeachment procedure leads one to the inevitable conclusion that, in practical as well as legal terms, impeachment has not insured and cannot effectively insure judicial compliance with the constitutional "good behavior" standard. Woodrow Wilson stated this premise most succinctly as follows:

> Judging by our past experiences, impeachment may be said to be little more than an empty menace.

The fact that repeated efforts have been made by scholars, jurists, and legislators to develop a reasonable alternative to impeachment can be viewed as substantial evidence, in and of itself, that a need for improved judicial accountability has existed throughout our history. The dissatisfaction of Congress with the efficacy of impeachment has been evidenced by legislative efforts originating as early as 1791 when the first constitutional amendment on the subject was proposed. Nine more such amendments were offered between 1807 and 1812 as a result of the impeachment of Justice Chase, and several bills were introduced in the period 1936 to 1950 following the Ritter impeachment. A few statutory provisions have been enacted which have been credited with possessing varying amounts of disciplinary authority.

In particular, these statutory enactments involve the creation of the Judicial Conference of the United States in 1922 and the Administrative Office Act of 1939. Various responsibilities and duties were assigned to several entities by these statutes and the exact amount of disciplinary authority which is available under these laws has been the subject of considerable debate. It is clear that the judicial councils of each circuit, the Administrative Office of the Courts, and the Judicial Conference have been authorized to deal with the administrative details of the Federal court system.

The question remains, however, whether or not any of the statutory language authorizes the disciplining or removal, in fact or in effect, of a judge subject to the jurisdiction of the council or other entity. The courts have avoided directly addressing the question and the only consensus on the issue is that, at the least, whatever disciplinary authority may exist needs legislative clarification.

The logical and unavoidable conclusion at this point is that congressional inaction on the subject of judicial tenure and discipline has resulted in one of the three branches of our Federal Government being virtually unaccountable to anyone, even itself.

As I mentioned earlier, during the early 1800's several constitutional amendments on the subject of judicial discipline and tenure were proposed. It is in the years subsequent to the last impeachment in 1936, however, that this subject has been most clearly and carefully scrutinized.

In the late 1930's two bills were introduced in Congress on the matter of providing an alternative disciplinary and removal procedure. S. 4527, introduced by Senator William McAdoo, proposed the establishment of a special court composed of Federal judges which would have jurisdiction over all Federal judiciary misbehavior cases, except those involving Justices of the Supreme Court. The prosecutorial role was filled by the Department of Justice and the decision could be appealed to the Supreme Court. H.R. 2271 was introduced by the chairman of the House Judiciary Committee, Hatton Summers, and provided that the House of Representatives, by way of resolution addressed to the Chief Justice of the United States, could initiate a hearing into the behavior of an accused district judge. Prosecution was to be conducted by Representatives from the House and appeal to the Supreme Court was provided. Both bills restricted the remedy to removal.

Serious legislative efforts in this regard were somewhat dormant from this period until former Senator Joseph Tydings, of Maryland, introduced the Judicial Reform Act in 1969. S. 1506 represented a novel approach to the subject because its procedures were totally confined within the Federal judiciary. A Commission on Judicial Disabilities and Tenure, composed of five Federal judges, was to act as a factfinding body with regard to any allegations of misbehavior. The Commission had the authority to dismiss a spurious complaint, or, in the event the evidence so warranted, to recommend removal of the accused judge to the Judicial Conference of the United States where a trial-like procedure would be conducted. A removal order from the Judicial Conference could be appealed to the Supreme Court.

The Judicial Tenure Act which I first introduced as S. 4153 in October of 1974 and reintroduced as S. 1110 in March 1975, and as S. 1423 in April 1977, although varying substantially in substance, is patterned in principle after the Judicial Reform Act.

In the spring of 1976, hearings were conducted on the Judicial Tenure Act before the Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery. Hearings were again conducted in September of 1977. Several changes have been made in the legislation since its original introduction in order to reflect the constructive suggestions made by witnesses in these hearings, as well as to insure its constitutionality.

The purpose of the Judicial Tenure Act is to provide a mechanism within the judicial branch itself to enforce the "good behavior" standard which is imposed on the Federal judiciary by article III, section I, of the Constitution. A procedure to investigate allegations that Federal judges have failed to exercise "good behavior," or charges that a judge is suffering from permanent physical or mental disability that seriously interferes with the performance of his duties is proposed to be established within the Federal judiciary. Each portion of this proposal has been subjected to scrutiny since the 1930's and language has been incorporated to perfect deficiency was identified. I believe that the Judicial Tenure Act represents comprehensive and reasoned approach which, if enacted, would address many of the insufficiencies in judicial discipline which I have described.

I have examined this issue in some depth and I am convinced along with numerous bona fide constitutional scholars and prominent individuals in the legal community, that the approach adopted by this legislation is entirely consistent with the U.S. Constitution. It is important to keep in mind that the Judicial Tenure Act is proposed as a means in addition to, not in place of impeachment.

Constitutional questions have been continuously raised by those who oppose creation of a procedure which would allow meaningful implementation of the "good behavior" standard. My intention is certainly not to cut off constructive discourse on the subject; however, the time has come to recognize the practicalities of this issue and to examine it in a broad perspective with reason and logic. Opponents rely upon the assertion that impeachment is the solitary means of removal permissible under the Constitution. I believe that it is productive to examine exactly what the Constitution says on this issue—and what it does not say.

The Constitution does say in article I, that the Houses of Congress shall have the sole powers of impeachment and trial of all civil officers. It does not say, however, that Congress shall have the sole power of removal of these officers. As a matter of fact, it was determined early in our Nation's history, that lesser executive branch officials could be removed by order of the President. The Supreme Court ruled in 1897 that the President had the authority to remove a U.S. attorney despite the fact that the impeachment clause provides for the removal of civil officers. How can it reasonably be argued that impeachment is exclusive with regard to some "civil officers," such as judges, and not exclusive with regard to others? Moreover, if the framers had intended impeachment to be the sole method of removal, it would have been a simple matter to employ specific language to that effect.

It is interesting to note that the extreme remedy of impeachment is pro-

vided for in article I, the legislative article, and article II, the executive article. No mention of this procedure is made in article III, the judicial article. In view of the fact that the debate by the framers on the subject of impeachment focused almost totally on the President and that the term "civil officers" was included almost as an afterthought, one could easily assume that the framers intended to further address the subject of tenure of Federal judges in the appropriate place, article III.

Our Federal system of government is predicated upon the doctrine of separation of powers. The interrelating system of checks and balances was devised by a group of men concerned by abuses produced through the dominance of one branch of government, the English monarchy, over the remaining two branches. They took great care to provide elaborate safeguards to insure against history repeating itself in the American Government by formalizing the separation of powers doctrine. I believe that impeachment of Federal judges was authorized, not as an exclusive means of disciplining the judiciary, but rather as one of the limited checks by one branch of government on another. Impeachment was not intended to preclude the judiciary from disciplining itself; rather it was intended as a carefully circumscribed exception to the doctrine of separation of powers to be used in extreme cases of abuse or as a safeguard against judicial branch inaction.

If we accept the principle that impeachment of Federal judges is a limited authority granted to the legislative branch as part of the system of checks and balances it seems logical that the framers must have contemplated a disciplinary mechanism that would be available for less than extreme cases of abuse and in the normal course of maintaining the integrity and efficiency of the judiciary branch. This mechanism was contemplated and it was logically placed in article III of the Constitution.

Prof. Raoul Berger, the noted constitutional scholar, who testified on behalf of this legislation during the 94th Congress, has compiled a detailed analysis of the history and precedent on which the "good behavior" clause is based. In his testimony before the Subcommittee on Improvements in Judicial Machinery, Professor Berger documented the technical legal distinction between impeachment and "good behavior" tenure.

His analysis generates the unavoidable conclusion that the grounds for impeachment and the "good behavior" requirement are two distinct standards of conduct and that "good behavior" is a much more stringent standard than a prohibition against bribery, treason or other high crimes and misdemeanors. (That is, not all forms of bad behavior constitute impeachable offenses.) Professor Berger pointed out that impeachment, at common law, was a criminal proceeding brought by the House of Commons in the House of Lords on charges of "treason, bribery, high crimes and misdemeanors." Berger further documented the fact that the terms "high crimes and misdemeanors" had a limited technical meaning which referred serious offenses and did not encompass all forms of misbehavior.

As the House Judiciary Committee wrote in their report on the grounds for impeachment, during the Nixon impeachment deliberations:

> High crimes and misdemeanors has traditionally been considered a term of art . . . The Supreme Court has held that such terms must be construed, not according to modern usage, but according to what the Framers meant when they adopted them.

Although the framers departed from the English model in separating the impeachment proceeding from a criminal proceeding, they intentionally retained the limited technical grounds of "high crimes and misdemeanors." Furthermore, there is no indication that the framers intended the impeachment provisions to be a complete recitation of the causes justifying removal from office.

In contrast to impeachment, removal for breach of "good behavior" was a judicial, not legislative, proceeding. Good behavior tenure was originated in the Act of Settlement in 1700 in an effort to isolate the judiciary from the arbitrary whims of the monarch. Professor Berger points out that the words "good behavior" in all commissions and grants, public and private, imparted an office or estate for the life of the grantee terminable only by his death or breach of good behavior.

This termination was declared by the judiciary in a civil proceeding for forfeiture of the office which was initiated by a writ of scire facias. Its sole objective was to remove the existing officer with no penalties or disqualifications involved. When the framers employed "good behavior," a common law term of ascertainable meaning, with no indication that it was being used in a novel fashion, they must have assumed the inclusion of similar procedures for its implementation. Such an assumption is supported by Madison's explanation to the Virginia Ratification Convention that "where a technical word was used all the incidents belonging to it necessarily attended."

A "gap" between the two standards, "good behavior" and the grounds for impeachment, must therefore exist. To assume otherwise would be to claim that the grounds for impeachment and "good behavior" tenure are the same and thereby render the "good behavior" clause meaningless. The longstanding constitutional principle that no clause in the Constitution is intended to be without effect will not permit this result. Therefore an alternative method to impeachment to accomplish the removal of Federal judges must have been contemplated by the framers to provide for the removal for misbehavior of disability less serious than an impeachable offense but in derogation of the "good behavior" standard. The substance of what constitutes "misbehavior" may be open to interpretation but it is completely clear that procedurally, "good behavior" was a term involving the judicial process.

In light of the evidence, it certainly cannot be logically maintained that the Framers would have rejected a process of judicial removal other than impeachment. It seems apparent that the term "good behavior" was employed with the eminently logical intention of providing a disciplinary means, within the judiciary branch itself, in addition to the power authorized to the legislative branch through impeachment. Simple logic indicates that if an office is conferred during "good behavior" it is relinquished upon bad behavior and some means of enforcing that end must be available.

Some commentators assert that the enactment of legislation of the nature of the Judicial Tenure Act would dramatically dilute the independence of our Federal judiciary. Arguments of this kind are superficial and misleading. Judicial independence, a principle which we all agree is a precondition to an effective system of justice, has historically referred, not to the independence of judges from one another but rather to the independence of the judiciary as an institution from other branches of government.

The intention of the framers was to avoid the experiences of the British which saw the judiciary totally dominated by the King. Professor Berger noted that,

> All the remarks in the several conventions that bear on judicial independence, so far as I could find, referred to freedom from legislative and executive encroachments. No one suggested that judges must be immune from traditional judicial control.

The assertion that a disciplinary mechanism, totally restricted within the judiciary, infringes on judicial independence simply does not make sense.

The time has come to recognize the practicalities of the issue and to examine it in a broad perspective with reason and commonsense. It is clear that impeachment, in practical terms, is not an effective disciplinary mechanism. It is clear that the existing statutory authority is ambiguous and insufficient in this regard. It is clear that substantial authority exists indicating that the procedure proposed by the Judicial Tenure Act is constitutional. No less jurists than Justice Rehnquist, Justice Burger, and Justice Blackum have expressed the opinion that the principle represented by the Judicial Tenure Act is constitutional. Attorney General Bell has stated, with regard to the Judicial Act:

> I am not troubled over the constitutionality of the proposed legislation.

The Judicial Tenure Act has been endorsed, in total or in principle, by the Judicial Conference of the United States, the American Bar Association, the American Judicature Society, and the American Association of Attorneys General. It is clear that Congress possesses the authority to enact legislation in this regard. This authority was described in detail by Professor Berger as follows:

> Since the judicial power to declare a forfeiture on breach of a condition subsequent existed at the adoption of the Constitution, and since a dispute whether the condition was breached constitute a "case or contro-

versy," it falls within the judicial power. Consequently, legislation that would set up a special court within the judiciary branch to adjudicate disputes whether a judge breached the "good behavior" condition would merely entail a grant of fresh subject matter jurisdiction . . . such a grant would constitute action to supplement the "judicial power" under the "necessary and proper" clause or under the power of Congress to regulate the jurisdiction of the interior courts.

Professor Berger's testimony I think is the outstanding constitutional analysis of this particular measure going back in history, and I ask unanimous consent that Professor Bergers' testimony dated February 26, 1976, before the Subcommittee on Improvements in Judicial Machinery of the Judiciary Committee be printed in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

STATEMENT OF RAOUL BERGER BEFORE THE SENATE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

I thank you for your invitation to express my views on the Nunn Bill, S. 1110. In 1970, I studied the problem of removal of judges by judges in depth and published the results in the Yale Law Journal. It was that study that excited my interest in the questions presented by impeachment.*

You are to be congratulated for taking up a problem that has perennially troubled the Congress. Hatton Sumners, veteran chairman of the House Judiciary Committee, who participated in two impeachments, commented some 40 years ago that the House was reluctant to take the time of the Senate to try a "crooked judge" because it would distract the Senate from "all the other great business of a great nation and make them sit there for days and days." Back in 1936, Senator William McAdoo stated after the impeachment of Judge Halsted Ritter that the difficulties of impeachment made it a "practical certainty that in a large majority of cases misconduct will never be visited with impeachment," "a standing invitation for judges to abuse their authority with impunity." Few students would disagree. The procedure formulated in the Nunn Bill would relieve Congress of this burden; it would not encroach on the powers of the judiciary but would assist it in performing its own housecleaning.

I

At the outset we need to clarify a number of doctrinal matters and to disabuse ourselves of the notion, voiced by no less a personage than then Congressman Gerald Ford, that the impeachment process can be employed to remove an officer for breach of "good behavior." Impeachment and removal for breach of "good behavior" have altogether different roots; both are common law terms which had an established meaning. It has often been held that when the Framers employed common law terms like habeas corpus, bribery, they adopted the English meaning and practices associated therewith.

At common law impeachment was a criminal proceeding brought by the House of Commons before the House of Lords on charges of "treason, bribery, or other high crimes and misdemeanors" which could result in removal from office and very severe penalties. Impeachment must be regarded as a breach in the separation of powers; it enables the Senate by a two-thirds vote after a formal trial to remove an offending officer. The sole power of Congress to remove a civil officer, it needs to be emphasized, is by impeachment for "treason, bribery, and other high crimes and misdemeanors."

This is underscored by the denial of the power to remove on an Address of both Houses to the President, a power exercised by Parliament and the king, embodied in a number of state constitutions, but deliberately withheld by the federal Constitution. Although the Framers departed from the English model in separating the removal proceeding from a criminal proceeding, they intentionally retained the "limited, technical" meaning of "high crimes and misdemeanors" at common law and although removal for "maladministration" was made a ground for impeachment by some state constitutions, that ground was rejected by the Framers.

Consequently I would differ from Congressman Gerald Ford's view that "high crimes and misdemeanors" means whatever the House and Senate choose them to mean. That view was not followed, I rejoice to say, by the House Judiciary Committee in the impeachment investigation of President Richard Nixon. It would have been a sorry spectacle to throw him to the wolves.

I have stressed these facts to underline that impeachment for "high crimes and misdemeanors" has a limited compass which does not comprehend all misbehavior.

In contrast to impeachment, removal for breach of "good behavior" was not a legislative, but a judicial, proceeding. "Good behavior" tenure, to use familiar legal terms, was an estate on condition subsequent which was forfeited on nonperformance of the condition. It was terminated by a breach of "good behavior," and the termination was declared in a civil proceeding for forfeiture of the office. Its sole object was to remove the misbehaving officer; there were no penalties, no disqualification to hold office in the future.

The Framers patterned the "good behavior" tenure of judges on the then English practice; it was proposed in the Convention at the very outset and was embodied in Article III, Section 1, the Judiciary Article. The provision for impeachment, on the other hand, was placed in the Executive Article, Article III, Section 1, for the simple reason that virtually all of the discussion of impeachment was centered on the President.

Only at the last minute were the words "all civil officers" added, without any discussion whatever of the removal of judges of the inferior courts. One commentator has suggested, therefore, that there may be some question whether the Executive Article was intended to apply to them.

"Good behavior" had its own criteria which may roughly be stated as the faithful and diligent conduct of an office; it might be breached by abuse of office, neglect of duty, nonattendance and the like. You may ask, does not neglect of duty likewise constitute an impeachable offense?

But the nonattendance instanced by Coke as a breach of "good behavior" is far removed from impeachable neglect such as that of an admiral to safeguard the seas or of a Commissioner of the Navy adequately to prepare against a Dutch invasion. "High crimes and misdemeanors" and breach of "good behavior" are like two intersecting circles; there is an enclave where they are coterminous. But while all "high crimes and misdemeanors" might constitute a breach of "good behavior," not all breaches of "good behavior" amount to "high crimes and misdemeanors," as is underscored by the Framers' rejection of "maladministration" as a ground for impeachment.

Congress therefore might be content to leave removal of judges to the judiciary in any case and keep its own impeachment power in reserve in the event that the judiciary failed to remove a serious offender. This was precisely the role envisioned by the First Congress when it recognized the President's power to remove subordinates and stated that if he failed to remove a derelict officer, Congress had the supplementary power to do so.

For Article II, Section 3 does not make impeachment mandatory; it leaves it in the discretion of Congress.

When an office held "during good behavior" is terminated by the officer's misbehavior, there must be an "incident" power "to carry the law into execution," Lord Mansfield held many years ago, if "good behavior" is not to be an impotent formula. English law provided a proceeding to forfeit the office by a writ of scire facias.

Because almost all judicial appointments prior to the Act of Settlement in 1700 were held at the pleasure of the king, there were no cases of removal of judges by scire facias. But the remedy was known, and in two cases prominent, Sir John Walter and John Archer, who had been given "good behavior" tenure, resisted removal by the king except after a trial on scire facias. Chief Justice Holt, Lord Chancellor Erskine, and Sir William Holdsworth recognized the applicability of scire facias to removal of a judge.

Indeed it is captious ribbon-matching to demand a precise case of forfeiture of judicial office when scire facias was available for fortfeiture of office held "during good behavior." The law proceeds by analogy; if scire facias lies for removal of an officer, it may also be employed for removal of a judge.

At worst, no more is involved than extension of a known remedy to judges in order to effectuate the Framers' design that judicial tensure terminate on misbehavior. When they employed the terms "during good behavior" they knew that the tenure terminated on misbehavior and was subject to forfeiture. All that is required is to spell out the mechanics for the forfeiture.

Observe that I do not rely on the Congressional power of impeachment, which is limited, but on the "necessary and proper" clause to provide a remedy for effectuation of the Framers' intention. Congress may and has fashioned new remedies, if scire facias for judges may be regarded as new. Enabling legislation may also be regarded as an additional grant to the courts of subject matter jurisdiction—forfeitures of judicial office, if it be assumed that the existing forfeiture jurisdiction is inadequate.

May I remind you that the existence of an exact precedent is not the test of "Judicial power"; all that is required is a "case or controversy," and that is satisfied when a charge of misbehavior is controverted. Mark too that all that is sought by the Nunn Bill is to supplement existing "Judicial power" as Congress has so often done in the past.

II

The arguments against removal by the Judiciary are three; (1) impeachment was made the exclusive removal process; (2) judges were given absolute independence; and (3) "good behavior" tenure affords judges special insulation.

(1) By Article I, Section 2, the House is given "the sole power of impeachment," and by Article I, Section 3, the Senate is granted "the sole power to try all impeachments." This means that no other body can bring or try impeachments; it does not purport to bar other methods or removal by the other branches. It is argued, however, under the maxim expressio unius exclusio alterius that the provision for impeachment bars all other methods of removal.

That is not an inexorable rule; it is employed where other evidence is lacking to ascertain the intention of the draftsmen, not to thwart it. First, the maxim would in part nullify the provision limiting tenure to "during good behavior," for as I have indicated, impeachment for "high crimes and

*My statement is drawn from that study, published in revised form in chapters 4 and 5 of my Book, "Impeachment: The Constitutional Problems."

misdemeanors" reaches only the more serious forms of misbehavior.

Forfeiture of office for misbehavior was an incident of the tenure, and Hamilton refused to regard the maxim as conclusive where it would curtail an existing power. Second, the First Congress, immediately on the heels of the Federal Convention, recognized that the President had an independent power to remove "civil officers" in the Executive branch, testimony that it did not deem the impeachment provision to be exclusive.

Third, Hamilton made an exception for insanity, for which no "formal or express provision was made." Fourth, the Act of 1970 provided for disqualification from office after a criminal trial and conviction of a judge for bribery. Since the impeachment provision contains an express disqualification phrase, this again testifies that the First Congress, the pre-eminent interpreter of the Constitution, did not deem the impeachment provisions to be exclusive.

In the words of Chief Justice Marshall, the implication of expressio unius may serve where it "promotes, not where it defeats the intention." It needs more than a maxim to overthrow the intention to terminate judicial tenure on breach of "good behavior."

(2) A second argument, first advanced by Justices Black and Douglas, is that judges enjoy "absolute" independence. Constitutional history affords no warrant for the claim. "The independence of each power," said James Wilson, "consists in this," it "should be free from the remotest influence" of each of the other two powers. But further than this, the independency of each power ought not to extend. In other words, the judiciary was to be free from encroachments by the legislative and executive branches, no more.

Judges of inferior courts had been subject to attachment by King's Bench for misconduct and oppression, and there is no evidence that this attribute of judicial power was to be curtailed. Jefferson wrote in 1816 that judges were removable "by their own body."

The very fact that judicial tenure was conditioned on good behavior alone indicates that it was not to be "absolute," i.e. unlimited. To my mind the Black-Douglas repugnance to judicial removal is passing strange. The recent Nixon proceedings once more demonstrated how hard it is to banish partisanship from impeachment proceedings. Political passions are far more likely to animate Congress than a court.

With all due respect, I would rather be tried by men trained to sit in judgment, by a court rather than by Congress. Are we to entrust to a court the trial of a man's life and lose confidence when it is a judge's right to remain in office that is to be tried?

(3) It is also argued that the "during good behavior" phrase affords judges special protection except by impeachment. As we have seen, that provision antedated the impeachment provision, which revolved almost entirely around the President. While "good behavior" was designed to protect judicial tenure, that tenure was expressly conditioned on "good behavior."

In employing the term the Framers were aware that the tenure was terminated by breach of "good behavior." They exhibited no intention of continuing a misbehaving judge in office. To insulate him from misbehavior would in part abort the "good behavior" provision. There is no evidence that the Framers meant to insulate a misbehaving judge from removal if he was not reachable by impeachment.

A canon of construction requires that if possible every portion of the Constitution must be given effect. To confine removal to impeachment is to deny effect to the words "during good behavior," for it did not require those words to authorize removal for "high crimes and misdemeanors," to which impeachment alone extends. "Good behavior," I submit, must be regarded not only as a shield for the protection of a judge but as a sword in the hands of his fellow-judges if he violates its demands.

A word about the criteria of good behavior employed in Section 372(b) of the bill (p. 14). Removal for mental or physical disability seems to me well within the requirement of the common law.

An officer who is disabled physically or mentally cannot "diligently conduct" his office. Hamilton, you recall, stated that insanity was an essential ground of disqualification, and to my mind senility or physical incapacity stand on the same ground. "Habitual intemperance" likewise interferes with the "diligent conduct" of an office, and in my opinion it also constitutes a breach of "good behavior." The first federal impeachment, that of Judge Pickering, was for insanity and habitual drunkenness; removal for "misbehavior" is more readily justified.

The caution with which you have approached the definition of lapses from "good behavior" is commendable. As a common law term embodied in the Constitution, "good behavior" is jurisdictional, that is, the power to remove is for such misbehavior as was regarded as a ground at common law. To profit from experience, I would suggest adding removal for corrupt or criminal conduct in office and for abuse of judicial power. It may be that there are also other grounds, for example demonstrated incompetence or ignorance, but these can wait on further experience with the suggested removal process.

In sum, it is open to Congress, and I consider it highly desirable, to enact legislation under its "necessary and proper" power which would give effect to the common law attributes of "good behavior" and confirm and facilitate judicial removal of judges for "misbehavior." At worst, the constitutionality of removal by judges may be open to question, but the last word on such doubts is for the Supreme Court. I would remind you of what Jefferson stated:

"It is not for those who are only to act in a preliminary form to let their own doubts preclude the judgment of the court of ultimate decision."

Enactment of the Nunn Bill will open the door to the Court's examination and determination of the issue.

Mr. NUNN. Mr. President, we could consume days discussing esoteric constitutional theories relating to this bill. It is clear that a substantial degree of expert opinion supports the conclusion that the bill is in fact constitutional. To delay this necessary reform simply to facilitate further academic debate is not only an inappropriate assumption of the responsibility of the judiciary but it is also a disservice to those who would like to see our system of justice improved. Therefore, I am hopeful that my colleague will support passage of S. 1423.

I might say in closing, Mr. President, I know there are those who do not favor this legislation. I know they have come to their conclusions after a great deal of thought and lengthy deliberations. I certainly respect their opinion.

I particularly want to express my appreciation to the Senator from Indiana for his cooperation in seeing that this measure was brought before the Senate. He has not agreed with me on all the principles I have stated here today, but he has cooperated in every way to see that the measure could be brought before the Senate this year. He has in no way held up the legislation, and I am grateful to the Senator from Indiana for his usual courtesies which I certainly appreciate in this case.

Mr. President, I again thank Senator DECONCINI, Senator WALLOP, and Senator THURMOND for their splendid cooperation in moving this bill through the Judiciary Committee as rapidly as possible.

I also thank Senator MATHIAS, from Maryland, for his cooperation and courtesy in allowing this bill to be brought to the full consideration of the Senate today.

Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. (Mr. FORD). The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, I ask the Senator from South Carolina to yield—I understand he has the time in opposition—such time as the Senator from Indiana may need in discussing this particular measure.

Mr. THURMOND. How much time does the Senator want?

Mr. BAYH. Frankly I do not know. I think this is a very serious matter, and I wish not to be proscribed.

Mr. THURMOND. Mr. President, I yield 1 hour to the Senator and will yield additional time if he needs additional time after that.

Mr. BAYH. I think that 1 hour will be adequate.

The PRESIDING OFFICER. Did the Senator say 1 hour?

Mr. THURMOND. One hour. If he needs additional time, we will try to accommodate him.

The PRESIDING OFFICER. The Senator from Indiana has 1 hour and is recognized for 1 hour.

Mr. BAYH. Mr. President, I appreciate the thoughtful remarks of our distinguished colleague, my friend from Georgia. I appreciate the position that he has espoused, and I understand the intensity and sincerity of his position on this issue.

It is not a new position. It is a matter of concern which he has expressed over a long period of time, and I salute him for his perseverance.

Also, I direct myself to the statement that has been given to us by our distinguished colleague, the floor manager of this bill, the subcommittee chairman, our friend and colleague from Arizona, Mr. DECONCINI, who chairs the subcommittee which considered this bill.

I have the greatest affection for him as a fellow member of the Judiciary Committee, and it is a difficult position to be in to be on the opposite side of an issue that he has studied thoroughly and that I have studied thoroughly but reached different conclusions.

I also appreciate the remarks that were made by the Senator from South Carolina, our distinguished ranking minority member of the Judiciary Committee.

But, Mr. President, I concur in what my colleagues have previously said about the problem which exists relative to some judges who are not performing as we would have them perform. I am deeply distressed that the remedy we choose is one which has a great possibility for mischief.

At the time this measure was before

the Judiciary Committee the Senator from Indiana was the only one who expressed opposition. The distinguished Senator from Maryland (Mr. MATHIAS), who was absent on official business at that time, also was equally concerned, and both of us found ourselves in a rather uncomfortable position where we are sort of like voices in the wilderness on this issue.

But it is an important issue and, for that reason, I have asked time to consider it at length so that some of the nuances involved which were not immediately apparent upon casual study of this might be more apparent as the Senate prepares to consider it.

In my judgment, there are two reasons for opposing this legislation: First, there can be little doubt that it exceeds the constitutional authority of both the Congress and the judiciary; and, second, it establishes procedures and sanctions which threaten the independence and character of the Federal judiciary.

I think we are all concerned about the independence of the Federal judiciary. The concern has been expressed by those who propose this as a solution to the problem. But I would like to point out in the strongest terms that I think we have not given enough attention to this matter of maintaining that sacred building block of our freedoms, the independence of the Federal judiciary. We must have judges who have the courage to stand up and say, "This is what the Constitution provides." They cannot be run out of office by a majority of the Congress, they cannot be run out of office by a majority of the judiciary, nor can they be removed by a plebiscite. They can stand until they are subject to the impeachment process, and it is that kind of independence that I want to maintain.

I take a little different view of the severity of this problem than do those who are supporting this legislation. I have no disagreement with the motivation behind this bill. We are all convinced that we need a wise, conscientious, and responsible judiciary. We concur in the necessity of having the ability to remove judges who have seriously betrayed both their oaths to uphold the Constitution and the laws of the United States and their duty to assure the administration of justice with which they are entrusted.

I also concur with the majority in viewing the growth of the Federal judiciary as a mixed blessing, a blessing which I hope we are soon able to realize because we need the additional judges. But it is a mixed blessing in that it provides citizens with means to address their grievances with some degree of dispatch but, at the same time, worries us by its very size and numbers. No longer is the Federal judiciary the select handful of jurists which existed at the beginning of our life as a Nation. By sheer commonsense and the laws of chance we are wary that there will be more bad apples in the lot.

However, I am concerned that with S. 1423, we are moving precipitately toward undefined goals without a clear and consistent view of the grounds which would be sufficient to remove Federal judges.

What judges are we willing to go to such radical means to get rid of? The slothful, the criminal, the unpopular? This bill gives no clear standard of acceptable or unacceptable behavior. Rather I fear with this bill we are creating new machinery of dubious constitutionality to achieve what might well be accomplished by less drastic means well within constitutional grounds: Better, more thorough, selection methods; strengthened interjudicial circuit discipline, and refined preimpeachment procedures by which impeachment could become an effective mechanism when deemed to be necessary.

In short, it seems to me there are other more effective, easily constitutional, means to deal with the very real problem which, I think, most of us here today recognize as existing.

The majority take the position that since the constitutionality of S. 1423 is a question which can ultimately only be decided by the Supreme Court, Congress should not hesitate to pass a law and let the Court make its decisions. Let us take a look at that, if I may say to my colleagues. Certainly the Congress has passed legislation knowing it posed serious constitutional issues. The Voting Rights Act is as good an example as any I can think of, and I supported that enthusiastically as landmark legislation.

However, there is a great difference between legislation which is arguably unconstitutional and that which is very probably unconstitutional. A proposed law which poses serious constitutional issues demands the most careful scrutiny by the legislative branch. If it is very probably unconstitutional it should not be passed. Certainly the constitutional problems with S. 1423 are sufficiently serious to warrant closer examination of the policy questions which are raised.

Without trying to prejudge in advance what the Supreme Court might be prepared to do, I find the arguments for the constitutionality of S. 1423 to be very troubling. We are relatively late in the session, and we do not know whether our brothers and sisters in the House are going to act on this, and I hope they do not. But if, indeed, this matter is brought back again to the Senate, I would hope that because of the serious questions raised that we could give it more thorough consideration.

Without being unnecessarily critical, the only evidence of any study of this at the hearing stage that I can find is contained in the hearing manual which I now have in my hand on the Judicial Tenure Act. It is a relatively short hearing as hearings go.

A year earlier there was a hearing of about a similar volume as far as testimony is concerned. I also have here, I suggest to my colleagues who might care to note, that our former colleague from North Carolina, Senator Ervin, held much more extensive hearings in opposition to this particular proposal back in 1970, and that we really have not had the kind of comprehensive attention to this problem which, I hope, we would give to it in the future.

I do not want to be overly critical because at first blush this matter would appear to be a relatively simple one. Now that certain rather complicated and rather complex questions have been raised and now that we have finally gotten a report from the judicial branch of this Government, which was not contained at the time the measure was considered in the Judiciary Committee, I think we can take into consideration their opinion.

I would also like to point out that subsequent to the hearings on which testimony was taken—I would like to point out there was nobody at the hearings who was opposed to this particular legislation—but even after that there were significant changes made in the content of the bill toward which there has been no hearing directed at all. So, hopefully in the future, we can have a chance, as busy as we all are, to get a broader mix of opinion on this measure before we proceed further.

Let me look at the relevant constitutional issues very briefly and try to summarize them.

Article II of the Constitution expressly provides that all civil officers shall be removed from office by impeachment. Article I states that the Congress shall have the sole power of impeachment. The proponents of this legislation argue that another means of removal exists within the Constitution in the "good behavior" clause of article III, section 1, and they maintain that for 190 years this alternative removal mechanism has been available whenever the Constitution wanted to employ it, but it simply has not been used.

The majority brush over the fact that throughout the country's history the idea that good behavior—the "good behavior" clause, as being intended to provide a way to get rid of Federal judges was not proposed. Even contemporaries of the framers, who felt strongly that it was a mistake to confine removal of judges to the impeachment process, never suggested that article III provided such an alternative. Historical precedents, case law, statutory construction, all sustained the traditional view that the Constitution provided only one means for removing a judge, and that is the impeachment process.

The standards for impeachment under article II, as we all know, are treason, bribery, or other high crimes and misdemeanors.

The proponents of S. 1423 grant that Congress has the exclusive power of removal for commission of the serious misconduct which is impeachable. They contend that a judge whose behavior falls in the gap between "good behavior" and "high crimes and other misdemeanors" is subject to removal by other judges through machinery set up within the judicial branch itself. In other words, a higher standard of conduct is imposed on judges than other civil officers. A different way of removal is provided for judges than for other officials.

I am prepared to deal with the rather significant distinction between the removal of a district attorney, which has been referred to two or three times here, and the removal of a judge, which is the difference in executive branch appoint-

ment. It has been made clear that the district attorney really serves at the pleasure of the President, whether it is Marston or somebody else. Historically, I do not know of any district attorneys who have been given life tenure, which seems to make a rather clear distinction between a district attorney's removal and this proposal for removal of a Federal judge.

To sustain this argument, it seems necessary that three assumptions withstand scrutiny: First, that the Constitution allows the creation of an alternative removal mechanism.

Is impeachment the only mechanism, or does the Constitution provide for an alternative mechanism? The second necessary assumption is that the "good behavior" clause requires a higher standard of conduct in the judiciary than would be imposed by impeachment; and third, that S. 1423's removal standards—"conduct which is or has been inconsistent with the good behavior required by article III"—does not impinge on the exclusive congressional power of removal by impeachment.

Let us look further at what we are talking about here. The proposition that article III's good behavior clause provided an alternate means of removal of judges was first offered in a law review article by Burke Shartel in 1930, and has recently been argued by Prof. Raoul Berger in his work on impeachment.

I ask my colleagues to look back through history, and find out where the seed of this idea was first planted. Has there been an overwhelming landslide proportion of judicial precedents and writings in support of this proposition? I respectfully suggest that there has not. The embryo was planted in 1930, and more recently has been argued by Prof. Raoul Berger in his work on impeachment.

On the other hand, the overwhelming authority in the United States has been consistent, that impeachment was the sole means of removal of Federal judges because of the language of articles I and II that the House and Senate are granted the "sole power" to impeach and convict office holders. Any argument to the contrary must meet the heavy burden created by this express constitutional provision. The majority places its argument primarily on the slender shoulders of the precedent in English common law of the obscure writ of scire facias, an argument derived from Berger and Shartel.

In other words, where did this whole business of a different standard, the good behavior standard, originally come from?

If you look back at where it all started, we are told it started back in the English common law, which was taken by our Founding Fathers and considered when they wrote the Constitution and talked about holding office for good behavior, and that is why judges are subject to a different standard than anybody else.

The Founding Fathers, the proponents say, must have intended an alternative means of removal of judges within the judicial branch itself since scire facias proceedings were available at common law.

Let us look at this, I suggest to my colleagues. The proposition has been closely analyzed by many constitutional authorities and found to be wanting. I invite any of my colleagues who care to look into the matter to look at the "Report on the Removal of Federal Judges Other Than by Impeachment," the work done by the New York City Bar Association, to see how slender if not totally absent a thread this proposition provides to support such a contention.

The theory of scire facias, as the majority report explains, was that a grant of office imparted an office or estate for the life of the grantee terminable by his death or a breach of good behavior.

That is where it all came from. That is what Mr. Berger maintains the common law thrust was. You got the grant of authority for life, or subject to breach of good behavior.

The judiciary was empowered to issue a writ of scire facias to initiate a civil proceeding for the termination or forfeiture of the office. The object of the writ was to remove the officer without penalty. A close examination of the writ does not sustain the conclusion drawn by those who present this proposed legislation to us.

First of all, most authorities cite a lack of historical evidence that the framers of the Constitution even had knowledge of the generally discarded writ of scire facias, which had admittedly never been used to remove a judge. Scire facias was never included in any Revolutionary State constitution, nor was it considered at the Constitutional Convention.

There was no mention at all to give anyone even the scintilla of an idea that our Founding Fathers considered the "good behavior" of scire facias, as it was used in the context of our Constitution.

It is admitted by all the scholars that there is no record of the writ having ever been used to attack a letter patent—granting "good behavior tenure"—in a colonial court.

In other words, this good behavior remedy was not used by our Founding Fathers in any of their colonial courts.

Further, the positions subject to removal by the writ were only of minor court officials, not full-fledged judges. Officials so removed included such obscure officers as filazers, remembrances of the Exchequer, cord recorders, postmen, and auditors.

Now, some of you may ask, what in the world were those offices? That is the same question I asked, and it is almost impossible to find out what some of them were and what they did, because they were so obscure. Yet that was the caliber of office to which this writ was directed, on which this ground for removal, the breach of good behavior, was based.

Further, if we look at the precedents for this, no judge was ever removed by scire facias in England, even though the writ technically survived until 1947. It was not applied in England. The writ was not abolished in America until 1938. By the majority's interpretation, any Federal judge could have removed another judge up until that time under the theory of scire facias simply by concluding that his brother or sister judge in effect breached a condition of his appointment by engaging in something that was not "good behavior." Not one judge has been so removed. Moreover, it is interesting to speculate what would have happened if a Federal judge had ever tried to employ this particular remedy of writ of removal on another Federal judge.

The undocumented precedent of scire facias is far too slender a reed to support such a radical change of practice that could effectively destroy the constitutionally mandated life tenure of Federal judges and give other judges broad new removal powers.

Other evidence argues against the constitutionality of any other means than impeachment for removal of judges.

I would like to call the attention of my colleagues to this, because it seems to me to be very persuasive that the only way to remove a judge is through impeachment. Early drafts of the Constitution gave impeachment powers to the Supreme Court; after long debate, it was decided that the best and most impartial tribunal would be the Senate, not members of the judicial branch.

Is there any better signal of what our Founding Fathers meant on how judges should be removed, when one of the early documents said, "Let the judges remove themselves," and the final document said, "No, we trust that to the Congress, not to the judiciary?"

Further, there is overwhelming evidence that the framers themselves considered impeachment the sole means of removal. If you look and see what Hamilton said in Federalist No. 79, he expressly said so. Jefferson held that opinion. Marshall, Story, and Kent concurred. The eminent constitutional scholar of this day and age, who has been a tremendous help to our subcommittee, Prof. Philip Kurland, has cited as emphatically as he can, "It is pellucidly clear that the intention of the framers was to make impeachment the sole means of removal."

Proponents argue that other branches of government under the Constitution have alternate means of early removal besides impeachment inherent within their own branch.

And it is true, they do, but I suggest with all respect to my distinguished colleagues that distinctions can clearly be drawn between those rights of removal and the way judges are to be treated under the Constitution.

An exception is expressly provided within the Constitution for the legislative branch, article I, section 5. The Supreme Court decided that the President can remove certain Federal officials performing executive duties within the executive branch for the reason that he appointed them. The same obviously cannot be said for the judiciary. The Court further held in Humphrey's case that the President is restricted in removing such officials as Commissioners of the FTC because this responsibility is a quasi-legis-

lative, quasi-judicial role requiring independence from other officials or departments of government in order to function properly.

If the Court has said that about the unconstitutionality of a removal of an FTC Commissioner, who is a quasi-legislative, quasi-judicial officer, what is the Court apt to say about the removal of a judge, where there can be no question of his judicial nature. Let me say this reasoning would hold in respect to the independence of the judge subject to the censure of the judiciary, as well as of the legislature.

It is also worth drawing an analogy to the 25th amendment, which was drafted to continue the consistency of our constitutional pattern. The 25th amendment provides that a President can only be removed for inability to perform his duties upon the judgment of the Congress, not the determination of his own Cabinet. Disagreement between a judge and his fellow judges over his judicial inabilities should likewise be resolved by the House and the Senate through impeachment and not by giving certain judges power over the removal of other judges. The Constitution is clear that judges are protected from members of their own branch as well as the legislative and executive branches.

As the principal author of the 25th amendment, I remember very well the debate on this particular point, when we were debating it right here on the Senate floor. We wanted to be very careful that you could not provide an end run to constitutional protections, that you could not make it possible for a handful of cabinet officials to railroad a President. or make it possible for a majority of Congress to remove a President for inability. The only way you could get rid of him by impeachment was by a two-thirds majority.

I invite my colleagues to look at the basis for that judgment back to the Andrew Johnson impeachment trial. Is there any doubt that had there been a lesser standard for disability for impeachment, Andrew Johnson would have been removed from office on the grounds of inability.

Mr. NUNN. Will the Senator from Indiana yield on that point?

Mr. BAYH. Yes.

Mr. NUNN. I understand what the Senator is saying, but the President has never been subjected to a good behavior clause. It seems to me that that point has nothing to do with the theory on which this bill is based, because there is a good behavior clause in the U.S. Constitution as pertaining to judges. If that good behavior clause is to have any meaning, then it has to be something different from the impeachment clause. The Andrew Johnson case had nothing to do with good behavior.

Mr. BAYH. That is right. I was only using that as an example of the danger if we lower the standard or the test which must be met before we remove an officer. I tried to emphasize the importance of maintaining impeachment as the only way of doing that either for a President or a judge.

The Senator from Georgia raises a good point which I intend to address in just a moment.

In other words, I think it is very legitimate that he and the Senator from South Carolina and the Senator from Arizona think good behavior has a purpose for being in the Constitution. I concur. But I would invite a close examination to what appears to be a logical explanation on the part of the Senator from Indiana, which reaches a different conclusion than that which others have reached.

Since it is conceded by proponents of this legislation that Congress has the sole and exclusive power of removal for the commission of impeachable offenses in order for S. 1423 to be constitutional, it is necessary that it prove that the good behavior clause provides a higher standard of conduct, a different standard of conduct, a different way of treating judges than that required by impeachment.

I frankly do not believe that that proposition can be sustained.

Proponents assert the language of article III of the Constitution, which says that judges shall hold their offices during good behavior, was intended by the writers to establish the fact that judges who did not conform to good behavior should not be able to continue to hold office.

I think that is the proposition on which the Senator from Georgia very strongly argues his case.

These assertions, I suggest with all respect, again go back to the opinions of Professors Shartel and Berger.

You certainly cannot find any case law, you cannot find any precedent in history, to sustain that proposition as being a basis for this decision being made by our constitutional fathers. On the contrary, the great weight of historical research done by other constitutional experts argues that tenure during good behavior was intended to differentiate from tenure at the King's pleasure. It was rebellion against tenure during the King's pleasure which had led to the law in England in 1701.

Mr. President, I think this is a critical question. It was one raised by the Senator from Georgia. It is one that the Senator from Arizona and others have used as a basis for their sincere belief that the Constitution, by saying a judge shall serve for good behavior, in essence meant to establish a different standard of conduct by the use of that term than was used in the impeachment clause, so that thus you could use a different means for removing judges than impeachment.

The only way we can really come to grips with what is meant in that Constitution, it seems to me, is to look at what was happening at that time. What were our Founding Fathers angry about? Why did they bleed and die? Why did they overthrow the King?

When we look at one of the major reasons, it was that the King could, indeed, appoint judges at his pleasure. As I pointed out, one of the major reasons for the Revolution was to remove the right of the King to appoint judges at his pleasure. That led to the Act of Settlement in England in 1701 and it was the monarch's arbitrary power over their judges which led the colonists to include it in their list of grievances against the King in the Declaration of Independence.

I invite attention to what our Founding Fathers said in the Declaration of Independence. I quote, talking about the King, grievances against the King:

> He has made judges dependent on his own will alone, for the tenure of their offices, and the amount and payment of their salaries.

So, when Thomas Jefferson put together that great document, this was one of the grievances, the fact that the King controlled the judges. In other words, to the Founding Fathers, a good behavior grant of tenure meant that the executive was restricted in its powers of removal, not that it was a separate standard of conduct.

In other words, the choice available to our Founding Fathers at the time was the ability to serve as long as a judge was on good behavior as interpreted under the impeachment clause. That was one option which they chose. The other option was the one which they fought a Revolutionary War to get rid of. That was the right of the King to appoint judges and remove them at his pleasure.

Further, although, in our history, we have never definitively established a standard for impeachment, it is generally agreed that it is not so high as an indictable offense and, indeed, many scholars maintain that under 18th century common law, "misdemeanors" was syonymous with "misbehavior." Certainly, our record of impeachments would hold that interpretation.

In other words, are we creating a different standard to get at judges who are not performing than is already there under the use of the term "misdemeanors" in the impeachment clause of the Constitution?

If you look at the records of impeachment of judges that we have actually had, look at the facts again, you find that this is not true. I ask the Senators to look at the impeachment proceedings, back in 1804, of Judge John Pickering. He was impeached and convicted on several charges, including drunkenness and blasphemy. It sounds to me like that is misbehavior.

Judge George English was impeached and subsequently resigned on counts including conduct bringing the administration of justice into contempt and disgrace. I do not know how to define that other than misbehavior.

In 1936, the Congress convicted Judge Halsted Ritter on misbehavior. In other words, these acts which constitute misbehavior have been part and parcel of the proceedings that have traditionally been used in this body to remove judges that are not serving faithfully.

Mr. NUNN. Will the Senator yield on that for a minute?

Mr. BAYH. I am glad to yield.

Mr. NUNN. I am listening very intently to the Senator's argument. I believe he is making a very good historical presentation of his point of view, though I do not agree with him. I am a little puzzled, because the Dear Colleague letter sent out by the Senator from Indiana

and the Senator from Maryland, basically, seems to contradict the argument the Senator was just making about historically, good behavior having been interpreted along with impeachable offense to include things like drunkenness and so forth.

In this dear colleague letter it states:

S. 1423 would provide for a system whereby Congress would be creating a relatively easy mechanism by which it might rid itself of judges who have been guilty of "bad behavior" falling below the level of impeachable behavior. For the serious misconduct arising to the strictest standards of high crimes and misdemeanors, that is, indictable offenses, the cumbersome mechanism of impeachment remains.

The Senator is citing example after example of where the impeachment process went beyond indictable offenses and included things like drunkenness. In this letter, it is very strongly indicated that the Senator is of the view that only indictable offenses come under the impeachment clause.

I know this is a very hazy area. Historically, the position has been taken by Congress that the impeachment clause takes in a broad concept of other offenses, rather than just indictable offenses.

Mr. BAYH. The point I have been trying to make here from a policy standpoint, as well as a constitutional standpoint, and I am concerned about both, is that the legislation establishes, under the good behavior clause a remedy that is not existing under the impeachment clause. That is, are we really creating a different kind of remedy? When we look at how impeachments have been governed and what standards have been used to impeach judges, we see very clearly that standards which fall, and specifically, in the Ritter case, are charged in the impeachment indictment as lack of good behavior or misbehavior, those are part and parcel of the impeachment proceedings under the impeachment clause of the Constitution.

Mr. NUNN. Then this sentence would not be correct:

For the serious misconduct arising to the strictest standards of high crimes and misdemeanors, that is, indictable offenses, the cumbersome mechanism of impeachment remains.

Mr. BAYH, No, that is true. The sentence does not say only serious crimes are subject to impeachment.

The sentence says that for serious crimes, one must go the route of impeachment.

Mr. NUNN. That is the point I would like to get to. I should like the Senator from Arizona to correct me if I am in any way wrong. As the author of this bill and having followed it for a long time, it has been my strong view and remains my strong view that good behavior basically encompasses more than high crimes and misdemeanors; but it also encompasses high crimes and misdemeanors. In other words, a high crime or misdemeanor is bad behavior. There are things that are not high crimes and misdemeanors that are bad behavior, but all high crimes and misdemeanors, in the opinion of the Senator from Georgia, would be violations of good behavior standards and, therefore, would be bad behavior.



If the Senator from Arizona disagrees with me, I would like him to say so. It would be my interpretation of this good behavior clause and the legislation we are passing here that this judicial commission and the judicial court would have the authority to remove or to discipline, including censure, a judge who was found by them to have breached the good behavior clause, yes; but, also, a judge would be deemed to have breached the good behavior clause if he had committed an impeachable offense. So good behavior includes all of the above, so to speak.

Mr. BAYH. The Senator worries me—I cannot disagree with what he is saying about what we are doing here, but his interpretation worries me when he says an impeachable offense. You can still use this bill to remove a judge for what he considers to be an impeachable offense.

Mr. NUNN. That is exactly right.

Mr. BAYH. In other words, the whole business of requiring two-thirds of the U.S. Senate in the impeachment process, to have any impact at all on judges, is null and void. The logical sequence of that——

Mr. NUNN. It is a supplement. It could be used. Congress could still impeach a judge.

Mr. BAYH. But why should Congress impeach a judge when it is so much easier to do it by a majority of judges?

Mr. NUNN. The Senator has just made the argument for this bill. It has been a long time since Congress even found it necessary to involve itself in this process. I believe the last time was 1936. How would the Senator from Indiana have us deal with senile judges today? How would the Senator from Indiana have us deal with judges who have a drinking problem today? How would the Senator from Indiana have us deal with judges that are mentally incompetent when that condition does not breach the high crimes and misdemeanors standard?

Mr. BAYH. I suggest to the Senator that if he looks carefully at what has happened here, in the Pickering case, the question of insanity was raised as a defense.

All these things are not new. I pointed out, we removed a judge who was drunken. Another because he swore.

Well, maybe it is a bad thing for a judge to drink and swear, I will not argue that, but we have impeached judges that way. That is the way we have removed them. We have removed them for behavior by impeachment.

Mr. NUNN. I am not disagreeing——

Mr. BAYH. I will answer the question. I have not, and it is a good question, because we do have a problem when we have a judge not performing up to standards.

There have been occasions, not frequent, but occasions when we have judges, who, with the passage of time find their capacity is diminished, and how do we deal with that?

I suggest that the Judicial Conference has a mechanism of dealing with that now that is far short of this measure, which I feel flaunts the Constitution.

If I were to suggest, if it is necessary, after we have had more thorough study of this it is necessary, perhaps it is, to find a way to make the impeachment process more meaningful as far as judges are concerned, then it would seem to me we ought to have this particular panel which has every right, and the judicial conference, of course, has the authority, to police the dispensation of justice and to watch what is happening.

They usually do a pretty good job. It is certainly within the constitutional fabric that we could give them authority to make this kind of determination, that Judge Brown or Judge Jones is not performing his duty, and recommend to the Congress that he or she be impeached.

We could put in there that this would automatically come to the attention of and automatically be a subject of business for the Senate and the House Judiciary Committee, so we would really force Congress to get off the dime and deal with it that way, which I think could be handled under the Constitution.

Mr. NUNN. I just say to my friend from Indiana, as I said in my opening statement, these are close questions. People of great constitutional background do disagree on these subjects.

I do not know that we can resolve these issues today and I am not trying to convince my colleague from Indiana today. But I do think one or the other of the Senator's arguments has to be dropped, because they are inconsistent.

On the one hand, the Senator says we do not need a good behavior enforcement mechanism like we propose here today, because good behavior, basically, has been interpreted in past cases by the Congress as being about the same thing as an impeachable offense, and Pickering was cited in that regard. That is one of the Senator's arguments.

I will not get off on that, because the Senator is probably historically correct on that. But, on the other hand, the letter by the Senator from Indiana and the Senator from Maryland basically says:

We would also like to point out a clearly anamolous result which would flow from the enactment of S. 1423 and which we believe argues strongly against its enactment. S. 1423 would provide for a system whereby Congress would be creating a relatively easy mechanism by which it might rid itself of judges who have been guilty of "bad behavior" falling below the level of impeachable behavior. For the serious misconduct arising to the strictest standards of high crimes and misdemeanors, that is, indictable offenses, the cumbersome mechanism of impeachment remains. Ironically, S. 1423 would create a system for relatively easy removal of judges for failing to behave properly, but removal of criminals from the bench would be much harder.

All I say to the Senator from Indiana is that one of the two arguments has got to be, from an intellectual point of view, dropped because if the Senator is correct on his historical interpretation of impeachment as it has been applied by Congress, this means the Senator believes historically that impeachment is broad enough to encompass bad behavior.

Mr. BAYH. Yes.

Mr. NUNN. But, on the other hand, if that is true, the second point made here that we are creating a mechanism which would be twofold, one purpose would be

to address high crimes committed by a judge, through impeachment; the other standard, good behavior, would be much easier to enforce by new mechanism proposed in S. 1423. I am saying one or the other of those arguments is wrong, because it is inconsistent.

I do not know whether the Senator follows what I am saying.

Mr. BAYH. I follow what my friend from Georgia says. I would be the last to say I have not on occasion been inconsistent.

I hope I can explain to him that, although he may not agree with my logic, and I do not want to speak for my friend from Maryland, but I assume he concurs in what we are trying to do here, we are really arguing two points.

The first question, as he mentioned a moment ago, on the basis of policy and constitutionality, I think we have to look at both of those. Either we are providing a new remedy under good behavior, or, one, there is no reason to do it; or two, it is going to be unconstitutional because it is already there in that clause.

I would like to point out, historically in this body we have impeached judges for that, that fell in the good behavior category. That is argument one.

Mr. NUNN. I understand that argument. I think historically there is justification for that argument.

Mr. BAYH. Now, let me get back to the purpose for that paragraph in the letter, the alleged anomaly we are referring to.

Generally, in our system of jurisprudence, and there is something, I think, about the gut feeling of equity we have as citizens of this country, that if we look at the equity of the situation it ought to be easier to remove a judge if the crime were serious and not so easy if the crime was not obvious or was not serious, and by this bill, we reverse this.

If this bill is enacted, the Senator is saying, if a person commits just petty larceny, it is going to be relatively easy to get rid of that person. But if it is a serious crime that ought to be obvious and apparent to everyone and the culprit removed quickly and easily, we cannot do that. We have to go the long, tortuous route, to use the Senator's words, and I think the accurate reflection of history, the tortuous route of impeachment.

The Senator may be on a different ground than the majority of the Judiciary Committee. I do not want to put words in their mouths. But, as the Senator from Georgia reflected a while ago, this particular vehicle, this law, if it is enacted, could be used, really, for all sorts of indictments.

Mr. NUNN. Good behavior, under this bill would authorize the removal or censure of people not only for bad behavior, but also for impeachable offenses. This would be an alternative.

I would like to have the Senator from Arizona and the Senator from South Carolina comment on that. That is my very clear interpretation of this bill.

Mr. BAYH. There is one paragraph here, if one reads the majority report on page 7, we point out the emphasis there.

I yield to my friend from Arizona to respond to that question.

Mr. DECONCINI. The Senator is correct.

The good behavior standard would include impeachable offenses, and the court could make determinations regarding impeachable offenses.

Mr. BAYH. I should like to read this paragraph from the majority report. It says:

> A "gap" between the two standards "good behavior" and the grounds for impeachment must therefore exist. To assume otherwise would be to claim that the grounds for impeachment and "good behavior" tenure are the same and thereby render the "good behavior" clauses meaningless. The long-standing constitutional principle that no clause in the Constitution is intended to be without effect will not permit this result. Therefore, an alternative method of impeachment to accomplish the removal of Federal judges must have been contemplated by the framers to provide for the removal for misbehavior or disability that was in violation of the "good behavior" standard but was less serious than an impeachable offense.

Are we changing the rules here?

Mr. DECONCINI. Obviously, an impeachable offense falls within article I, section 3, and article II, section 4 of the Constitution. But good behavior is a broader standard. It specifically is referred to in article III, section 1. This legislation fills the gap between the standards of impeachable offense and good behavior.

Mr. BAYH. I was under the impression, according to the report and everything we discussed in the committee, that this was designed to fill a gap, a gap which the Senator from Arizona feels does not exist and the Senator from Georgia feels does not exist.

Mr. NUNN. I think there is a gap. I believe the Senator from Indiana is not interpreting correctly what I am trying to say.

Let me quote succinctly Professor Berger's testimony in this matter:

> "High crimes and misdemeanors" and breach of "good behavior" are like two intersecting circles; there is an enclave where they are coterminous. But while all "high crimes and misdemeanors" might constitute a breach of "good behavior," not all breaches of "good behavior" amount to "high crimes and misdemeanors" * * *

The Senator from Indiana has been arguing that "high crimes and misdemeanors" historically has been interpreted as encompassing also all the elements of bad behavior. The Senator from Georgia has not disagreed with that historical interpretation because there are inconsistencies in this.

The House Judiciary Committee, though, in setting impeachable offenses so far as the President was concerned, did not interpret it that broadly. They drew a narrow interpretation which would be almost an indictable offense. So there are different precedents here.

What I am saying is that this legislation, as I interpret it, would give this Commission the authority to enforce the good behavior standard; and high crimes and misdemeanors, in all the cases I can think of, would constitute bad behavior. There may be some cases in which misdemeanors would not. It depends on how you define the word "misdemeanor"—whether it is a high misdemeanor or a parking ticket or something of that nature.

The reverse is not true, in my opinion—that is, all good behavior breaches are not high crimes and misdemeanors.

What I am saying to the Senator from Indiana is that when he interprets this paragraph, where the Senator says we are setting up two sets of standards, one for impeachable offenses, which is very difficult, the impeachment route, and the other is good behavior, which this Commission would deal with, the Senator is incorrect in that interpretation of this legislation. The power given to the Commission is much broader than that. If they found an impeachable offense, they could determine that is bad behavior, and they would be entitled to take the remedies prescribed in this legislation.

That may mean the Senator is more opposed to it than originally, so I am not trying to influence the Senator. All I am saying is that paragraph 2 of the Senator's letter is not a correct interpretation of this bill, and I believe that everybody who is connected with this bill on the pro side would agree that that is a misinterpretation of the bill.

Mr. BAYH. The Senator was only relying on the report of the majority, which is the best document I have seen supporting the reasoning behind this legislation.

Unless we are prepared here, as a body, to accept the constitutional premise that by statute, by mere law, you can negate the provisions of the Constitution so far as the impeachment clause is concerned, I do not know how in the world any of us can believe that by passing a statute under the good behavior clause, to remove a judge by good behavior, we also can include indictable offenses under the impeachment clause. If that is not clearly unconstitutional, I do not know what is.

Mr. NUNN. Does the Senator mean that he believes that an indictable offense is not bad weather? Is that what the Senator is trying to argue? Is he saying that if a judge commits murder and could be indicted for that murder, that does not constitute bad behavior?

Mr. BAYH. That certainly is bad behavior.

Mr. NUNN. That is what we are saying. We are in agreement. That is an impeachable offense. It is also bad behavior.

Mr. BAYH. Yes. But if you are to say it is an impeachable offense and you are going to let it be decided by a handful of judges, you are making a mockery of the impeachment proceedings of the Constitution of the United States, which says that you cannot remove officials that way.

Mr. NUNN. The Senator from Indiana is saying that he interprets this legislation as basically giving the judges and this Commission only the right to deal with matters that are nonimpeachable offenses.

Mr. BAYH. That is right.

Mr. NUNN. The Senator is totally incorrect in his interpretation of this legislation. We are on totally different

wavelengths about this legislation, because that is not the correct interpretation of it.

The House Judiciary Committee studied impeachment for months. Every impeachment proceeding has resulted in difficulty in defining what a "misdemeanor" is.

If the Senator from Indiana has interpreted this legislation that narrowly, that it deals only with things that are not necessarily impeachable offenses, then I say that the interpretation of the Senator from Georgia and the interpretation of the Senator from Indiana are different.

Mr. DECONCINI. This legislation is authorizing the judiciary to implement the good behavior clause, while still maintaining the separation of powers. The Constitution does not prohibit this. The bill fills the gap that the Senator refers to on page 7, the gap the Senator from Georgia has attempted to explain.

I will not try to convince the Senator from Indiana to withdraw his opposition to this. I understand his philosophical and his constitutional approach. His arguments are well thought out. But I believe the good behavior clause can be implemented, and that is what the majority of the Judiciary Committee believed when it reported this bill.

Mr. NUNN. There are two points here, and we should try to separate them.

One is the question of the severity of the offense, whether it is a breach of good behavior or an impeachable offense or it is in that gray area between.

The other question the Senator from Arizona has pointed out—the question of who removes. As I read the Constitution of the United States and the history of it, the question of who removes a judge was much more important to the framers of the Constitution than the precise offense for which the judge could be removed.

I think the argument of the Senator from Indiana has dealt mainly with the substance of the particular offense, but the framers of the Constitution were dealing mainly with the question of who could remove a judge by setting forth limited ways a judge could be removed by the executive branch and the legislative branch. They basically are saying in this impeachable offense category that a great deal of care must be taken in separating the three branches of Government.

So we are dealing with two questions here. One is the substance of the offense, whether it is a good behavior breach or whether it is an impeachable offense—high crimes and misdemeanors. That is one question.

The other question is, what branch of Government can do the removing? Of course, both those questions are important, but the question of who can do the removing is really the basis of this legislation.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. BAYH. May I have another 30 minutes?

Mr. THURMOND. I yield 30 minutes to the Senator.

Mr. BAYH. I apologize for taking so long. I think this is the kind of debate that is very enlightening. It probes our innermost thinking.

Mr. MATHIAS. Mr. President, will the Senator yield at this point, so that I can ask a question of the manager of the bill?

Mr. BAYH. I yield.

Mr. MATHIAS. It seems to me sort of ridiculous that we bring a bill to the floor and have this kind of disagreement about how it works. I am wondering how many witnesses were called in opposition to the bill and whether this point was explored by any of the witnesses in opposition.

Mr. DECONCINI. I do not have a breakdown of how many witnesses appeared in opposition to this proposal. Fifty witnesses were called during the history of this legislation, and there were 20 days of hearings.

Mr. MATHIAS. This year?

Mr. DECONCINI. This year we held 1 day of hearings.

Mr. MATHIAS. Were there any witnesses in opposition?

Mr. DECONCINI. None appeared, but several were invited. They were district judges.

Mr. MATHIAS. How about our former colleague, Sam Ervin, for example, who was so immersed in this subject? Was he invited?

Mr. DECONCINI. No; I believe he was tied up with the ERA. He had testified in prior hearings and his testimony has been recited and considered.

Mr. MATHIAS. I think the record has to be deficient if there was not a single witness in opposition who was called.

Mr. NUNN. Frankly, I say to the Senator from Maryland, the number of people in opposition has gone down substantially over a period of time. We have the Judicial Conference of the United States endorsing this general concept. We have the American Bar Association. We have the Department of Justice, and we have the American Judicature Society. I say the number of opponents is diminishing. There are people who continue to argue the constitutional grounds. There is no doubt about that.

Mr. MATHIAS. Dr. Kurland, I do not think has changed his views. He is available. He has been a consultant to the Judiciary Committee, as for one example.

Mr. NUNN. Of course, this legislation has been around for a long number of years, and there is a whole record replete with people who are opposed to the legislation. No one is contending there are not people who think this legislation is not constitutional.

The main point I am making to the Senator from Indiana is that the Framers of the Constitution of the United States were concerned about the separation of powers. That was the main concern.

This bill addresses that concern. There is nothing in here that expands the power of the legislative branch or the executive branch to remove a judge. It is a question of the judicial branch being able to implement the good behavior standard.

I think certainly the separation of powers question is the essence of the constitutional premise on which this is based.

Mr. BAYH. If I just might point out for the record, I think we should say that the Judicial Conference's endorsement of this was with reservations about the constitutionality of it, and the report was sent forward from the Judiciary Committee before the study of the position of the Federal judges of the country was before us. I do not fault the subcommittee chairman for that because they were late. We just received it 2 weeks ago. But we find 76 percent of the Federal judges expressing extreme concerns about this, and I want to put some of their concerns in the RECORD because one might say, "Well, you would expect the Federal judges not to want to have someone investigated."

Frankly I feel that if we look at some of the reasoning contained in this letter we will see it is based on a much stronger constitutional and policy question than one of self-preservation.

Mr. NUNN. As I understand it, the reservation on the constitutionality of this legislation as expressed by the Judicial Conference was on the point of including the Supreme Court. As the original legislation was presented it would have included the Supreme Court. As the legislation has evolved from the Judiciary Committee it basically leaves the question of removal of Supreme Court Justices up to Congress after a recommendation pursuant to the process. The Judicial Conference basically endorsed the concept of this legislation.

Mr. DECONCINI. Mr. President, will the Senator from Indiana yield for a moment?

Mr. BAYH. I yield.

Mr. DECONCINI. Senator BAYH states in his analysis that 74 Federal judges responded to the Judicial Conference questionnaire. That is slightly over 10 percent of the total number of Federal judges, including senior status judges. I do not think this number is a significant basis for a decision on the Judicial Conference after they met and approved the resolution.

Mr. BAYH. I respectfully say to my friend from Arizona they were given less than a month to respond.

Mr. DECONCINI. Are Federal judges so busy they cannot respond to a question as simple as that presented here?

Mr. BAYH. I suggest if the Senator will look at a matter of some 20 days to respond to something like this that is hardly time. If he is going to talk about the time being a reason, should he not consider the fact that three-fourths of them did respond who were against it? Then it seems to me the Senator has to look at the time given to them to respond.

Mr. DECONCINI. If there were an overwhelming amount of opposition among the Federal judges I think far greater than 10 percent or 11 percent of them would have responded to the questionnaire.

Mr. BAYH. It is going to be interesting to see what not only the Federal judges but constitutional scholars have to say after they have a chance to look

at this dialog here which, it seems to me, makes a shambles of the impeachment clause as far as judges are concerned.

Mr. NUNN. I might say to the Senator from Indiana on that point everyone who read this bill would have to come to the conclusion that under the good behavior standard basically an impeachable offense is bad behavior. I do not think anyone would conclude otherwise, and the Senator agrees with that also. The Senator has just said that he interprets an impeachable offense as being bad behavior. If that is the interpretation and this bill is giving the judiciary itself the power to enforce the good behavior standard, no one could have come to the conclusion that good behavior as defined in this bill did not include impeachable offenses.

Mr. BAYH. The Senator does consider, I assume, the impeachment clause of the Constitution does apply to judges as well as other branches of the Government, does it not?

Mr. NUNN. The impeachment clause of the Constitution, the Senator is correct, does. It has been interpreted to apply as well to other branches. But the Senator himself has made an argument that is so inconsistent that I cannot reconcile it. The Senator is saying in answer to my question that he believes a judge who commits an impeachable offense has also committed bad behavior or breached the good behavior standard and yet the Senator is also saying he is surprised by the fact this legislation, which has been set forth for years does not include impeachable offenses. People will be surprised to find that conclusion in the record.

Mr. BAYH. I will suggest that anyone who reads this document right here, that came out of the committee and went across the country saying what it does will see that it says that it is to fill a gap.

Mr. NUNN. It is to fill a gap, a huge gap.

Mr. BAYH. So we have a clear distinction here, if you have a judge out here who accepts bribes for deciding on a case or does something that is very clearly a major felony, for example, murders the foreman of a jury in righteous indignation when the jury brings in the wrong decision, something that may sound ridiculous but something that is obvious, it seems to me, to be a major crime, is the Senator suggesting that that should be handled under the impeachment clause or could it be handled by this?

Mr. NUNN. It could be handled——

Mr. DECONCINI. Mr. President, if the Senator will yield. That could be handled by the impeachment clause. If it were not handled by the impeachment clause, it could be handled by this procedure.

Mr. BAYH. I understand where the Senator is on this. But it seems to me that does great damage to what our Founding Fathers really meant.

I have tried to show—and I am not suggesting that any of my immediate friends here involved in this debate are going to be persuaded by this—is if you look at what is said in the Declaration of Independence, if you look at one of the major reasons we revolted against the King, it was to change the way judges were to be appointed and to do away with the at-the-pleasure-of-the-King method of appointing them and instead to exchange that for a good behavior appointment. That is a matter of style in the Constitution and as to the removal process, the only place you deal with removal any place, with exception made for the legislative branch, is in the impeachment clause which applies to everyone.

So it seems to me that good behavior did not, with all respect to my friends, suggest that this go out here and implement another way of doing it, but this was to point out that the King could no longer appoint a judge at his pleasure but rather it should be under the "good behavior" clause, leaving aside the impeachment clause.

Mr. NUNN. May I say to the Senator——

Mr. BAYH. Let me just add one other point, if I might.

Mr. NUNN. All right.

Mr. BAYH. I do not know how much additional proof we need for what our Founding Fathers meant. We can, of course, change that by amending the Constitution. We tried to do a little of that, and my friend from Georgia knows that is not too easy. But we can change that. But if we look at what our Founding Fathers meant one of the first drafts of the Constitution was to give judges the right to remove judges.

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. BAYH. Yes.

Mr. DECONCINI. There is nothing in the Constitution that specifically says one branch of the Government cannot discipline itself within its own branch. This is what this legislation proposes as a means of implementing the "good behavior" clause, leaving aside the impeachment clause for the moment.

Mr. BAYH. I think we have to look at what "good behavior" means. The Senator is making an Empire State Building out of two words. What does "good behavior" really mean? What did it mean when the Founding Fathers put it in there? Did they really mean to give leeway under the terminology of "good behavior" to judges to remove judges? The Senator from Arizona says that is what they meant. But when they were deciding that matter in the Constitutional Convention, and when the issue was put plainly before them and a draft of the Constitution gave judges the right to remove judges, the Founding Fathers considered it, and said they did not want any part of it, and included impeachment in the hands of the Congress of the United States, not in the hands of the judges.

Mr. DECONCINI. Nevertheless, the framers did not include a prohibition of such a disciplinary mechanism in the Constitution.

Mr. BAYH. Why should they?

Mr. DECONCINI. If it was their intention that the judicial branch should not be able to exercise some measure of self-discipline, I would think they would have said so. They did not.

Mr. BAYH. Does it specifically say in the Constitution what the President should not do as far as disciplining members of the executive branch is concerned?

Mr. NUNN. The Senator has a great point there, too. The King and the President could remove members of the executive branch. That does not violate the separation of powers.

Mr. BAYH. Because he appointed them. Judges are not appointed by judges.

Mr. NUNN. The Senator just made that as a statement. The Constitution does not say anything about that. The Constitution does not say anything about that, but we all know that the President can remove someone in the executive branch without that person being impeached. That is the same thing we are trying to accomplish here for the judicial branch of Government.

I might say the term "good behavior" goes back to the common law which was used in connection with judges forfeiting their office on a condition subsequent, forfeiting their office by not comporting with good behavior, and being removable, by not maintaining good behavior, by the judiciary itself.

I might say to the Senator there is nothing in this legislation that would give the executive branch of this Government, that being the President, the right to do anything it cannot do today.

Mr. BAYH. As I said earlier, and I will not repeat that language, if the Senator is going to base the use of "good behavior" in this legislation on that common law precedent, then I would like to have a list of judges who were removed from office under the common law on that basis, because I have not been able to find any. I have not been able to find a single judge removed on that basis.

Mr. NUNN. This would have to go back to the English common law.

Mr. BAYH. That is right. In English common law the "good behavior" writ, scire facias writ, was directed at the lower echelon, recorders, bailiffs, and this kind of thing.

Mr. NUNN. I say to the Senator from Indiana perhaps there were not any judges because the King was doing all the removing. The judiciary itself had very little time to do the removing because the King was doing the removing, and that is why the Founding Fathers did not want the President of the United States and the executive branch to be able to remove judges.

Mr. BAYH. It seems to me if the Senator is going to use a common law writ to support language in the Constitution, as we interpret it here in 1978, he ought to at least be able to give me an example of a judge or two who were removed back during the common law or during that period of time in which much of the law in the United States was common law.

I mean if you look at all of the colonial courts, if you look at all of the judicial decisions and the judges, then you cannot find any of them removed on this antequated writ. I just cannot. I have looked, and I hope the Senator will look, and maybe he will find one.

Mr. NUNN. What is the Senator's point? Let us assume there were none removed. So what? The writ was there.

It was a right. It was a legal procedure. It was known to the framers of the Constitution of the United States, and it was embodied in the words "good behavior". So the question of whether the power was ever used or not is not relevant to the question of whether or not it was there. It is not relevant to the question of whether the framers of the Constitution of the United States had that in mind when they put the words "good behavior" in.

If you follow the Senator from Indiana's argument to its logical conclusion, the Senator from Indiana is saying that the framers had nothing in mind when they put that in.

Mr. BAYH. That is not what the Senator from Indiana said. I said in the context of the Constitution, what Jefferson and what early scholars and early judges said, "good behavior" was meant to be an appointment for life not subject to removal at the pleasure of the King, which was the way things were done before the Declaration of Independence. That is what "good behavior" means.

Mr. NUNN. Why was it put in there if the appointment was for life?

If you are appointed for life, provided you have good behavior, then what happens if you have bad behavior under that argument?

Mr. BAYH. Then you are impeached under the same impeachment clause which is considered elsewhere. If the Founding Fathers meant to give judges the right to do something absent good behavior, why did they not put it in there at the time they were defining the rights under the judicial system of the United States?

Mr. NUNN. Normal constitutional interpretation is that words in the Constitution do have meaning, and the Senator is saying that the words "good behavior" are completely superfluous because they have no meaning in addition to the impeachment clause.

Mr. BAYH. I will say to my friend that is a couple or three times where although we may disagree, that is not what the Senator is saying. I am saying it did have meaning and it was not used to try to distinguish between the way the King was doing it, appointing judges at his pleasure, and the way the colonists wanted it done on good behavior, life tenure subject only to the impeachment powers which were very carefully enunciated. I mean, that was a very critical matter considered by our Founding Fathers, because they were tired of people being cut, hung, and dried by the King. If you dared to incur the displeasure of the King, you ended up with your head on a chopping block someplace.

Mr. NUNN. The Senator is not saying this legislation will do that.

Mr. BAYH. Not quite. No, I am not saying that.

Mr. NUNN. The Senator is not thinking of a case where the executive branch can do anything under this legislation that they cannot do now?

Mr. BAYH. The Senator is again getting back to why our Founding Fathers used "good behavior." All I can say to my friend from Georgia is look at what was happening at the time. The King was appointing, the King was removing. I mean the King had arbitrary power, so that is why they used the words "good behavior." They distinguished between that, and went to great care in enunciating with great particularity how you removed officers, not only judges but Congressmen and Senators and the President himself, because they were sensitive of the fact that the arbitrary power of the King underlay all the grievances that led to the Revolution, and it is unbelievable to me that being as sensitive as they were about that unlimited, unfettered power of the King, that they would not have included any removal power for judges that they considered to be applicable only to judges. They put this all in the Constitution under the impeachment clause.

Mr. NUNN. Why did they put "good behavior" in the judicial article if it was a limitation on the executive branch?

Mr. BAYH. Well, as I said before, to distinguish the good behavior, life tenure appointment from the appointment at the pleasure of the King.

Mr. NUNN. You do not have to put "good behavior" in the Constitution in order to give life tenure. "Good behavior" is a limitation on life tenure. "Good behavior" is not a reinforcement of life tenure, it is a limitation on life tenure.

Mr. BAYH. It would have been totally inconsistent within the confines of the Constitution to say in one article you had life tenure, you could not be out of there until you died, and in another article you could be impeached. "Good behavior" were words of art to imply you could serve for life as long as you had good behavior, the cessation of which was to be determined under the impeachment clause.

Mr. NUNN. Why did they not say "serve for life unless removed under the provisions of article II?"

Mr. BAYH. I guess they were——

Mr. NUNN. That would have been so much clearer.

Mr. BAYH. I guess they were expecting us——

Mr. NUNN. To give us something to debate.

Mr. BAYH (continuing). To have a clearer view of what they were doing than you and I are now able to have.

Let me ask my friend from Georgia is he at all concerned or is his logic troubled at all if we are trying to—you and I really could not put our hands on a Bible and say for sure we know what our Founding Fathers meant——

Mr. NUNN. I agree with the Senator.

Mr. BAYH. We are trying to find out what they meant, so we try to look at certain actions they undertook. One of the things which has been very persuasive to me in determining what the Founding Fathers really meant by "good behavior" and what they really meant as far as how judges should be removed is to see how they looked at the words of the Constitution or the various drafts presented to them. One of the early drafts permitted judges to be removed by judges.

It said it right out there in so many words. They struck that. They struck it out, so that the only language applicable to removing judges or impeaching officials is contained in the impeachment clause, where they give Congress the right.

Mr. NUNN. Of course, Thomas Jefferson wrote in 1816 that judges were removable by their own body. And of course Thomas Jefferson had a lot to do with the Constitution.

But if the Senator will yield, I think we can argue a long time about what the Founding Fathers meant by good behavior, and I am not going to convince the Senator from Indiana, and he is not going to convince me, today anyway. I think only the Supreme Court of the United States can make this final determination.

The problem is that we have no practical way of dealing with judges who may be senile, who may be drunkards. We have no way of dealing with those kinds of people on the bench. We well may look at the matter, from our lofty position up here, and say, "Why should the Congress of the United States take up its time with some obscure judge in Georgia or Indiana or California?"

But to the people who have to deal with him, that judge is more powerful in certain matters than even the President of the United States. We are talking about leaving people in office for a lifetime virtually untouched by Congress. The Senator from Indiana, I know, would agree that we are not going to take the time of the U.S. Senate and the House of Representatives to impeach a judge for being drunk on the bench. We have 200 years of precedent, and about 40 years in the last four decades, where there have been many instances of abuse of judicial power by people who were either drunkards, senile, or for other reasons disqualified, and the Congress of the United States has not done one single thing. The question really is whether we are going to deal with this issue or be caught up in a constitutional argument that none of us can solve.

Only the Supreme Court of the United States can tell us, in the final analysis, what good behavior means. Only the Supreme Court of the United States can tell us, in the final analysis, what the Founding Fathers may have meant. I may not agree with their conclusion and the Senator from Indiana may not agree with it, but they are the ones who are going to have to tell us.

In the meantime, do we stand around another 40 years and do absolutely nothing about a very grave abuse of the constitutional processes of our country? There is no remedy; there is no practical remedy for a judge who is not capable of being on the bench. Who is going to sit in judgment on a judge who is 83 years old, or 78 years old, and senile? Are we going to drag him up here and impeach him before the House of Representatives, and try him in the U.S. Senate? Everybody knows we are not going to do that. It has not been done in 40 years, and it will not be done in the next 40 years. Every day that goes by, it is less likely that we will employ the impeachment clause of the U.S. Constitution regarding judges.

I respect and appreciate the views of

the Senator from Indiana, and I will say to the Senator it is a close question. I cannot say to my colleagues that I am absolutely certain that this is a constitutional bill. I cannot say that truthfully, and I do not believe the Senator from Indiana can say he is absolutely convinced that it is unconstitutional.

As I say, I appreciate the Senator's views. I know of no one in the Senate in recent years who has studied the Constitution more thoroughly than the Senator from Indiana.

But the question is, are we going on and on and on with the abuse of power that can vitally affect the lives of the people of this country?

I think the vast majority of Federal judges are absolutely honest and above reproach, and of sound mind. Most of them are sober, and have views which reflect favorably on the Federal Government. But when you get a Federal judge, appointed for a lifetime, who has a mental problem or a physical disability that prevents him from performing his duties, and he is appointed for a lifetime, and the Congress of the United States can do nothing about it, it is a terrible disillusionment for the people of this country.

I do not think the Senate of the United States is today going to decide the constitutionality of this issue. What we will decide is whether the Senate of the United States is going on record as at least trying to seek a solution to a problem which has existed for many years, but is getting worse and worse.

I thank my colleague from Indiana for his statement and his time.

Mr. BAYH. Mr. President, I appreciate the courtesy and the real dedication of the Senator from Georgia in trying to resolve this problem. As I said earlier, it is a real problem. It is real, I guess, more in its isolation, because, as the Senator points out, there are not many judges who do not have exemplary standards of conduct. You may disagree with how they decide an issue, just as we disagree with other Members of this body. Most of them are doing their job, so the number of people involved is not very great.

But in that particular instance, inasmuch as that Federal judge is indeed the king, the man who has life and death power over others at a particular moment, it is important for us to deal with it.

The question for us to decide is, is this the way? We would like for it to be the way, but does the Constitution permit us to do it this way?

I do not like to be out here on the frontier like the Lone Ranger, a lonesome voice. Many are concerned about this issue, but there are not very many of us who have tried to alert the Senate to the possible constitutional question and the possible policy question.

I would just like to ask my friend from Georgia—I do not know what is going to happen to this legislation. I would doubt, the timing being what it is, that it is going to pass, which would mean that if it does not, and I know the Senator hopes it does, having tenaciously pursued it, but if it does not, then we have a chance to reflect and see if there is not another way that perhaps is on stronger constitutional grounds and does not involve some of the real policy concerns that really trouble the Senator from Indiana.

It has been said, and indeed rightly so, by my friend from Georgia, the Senator from Arizona, and the Senator from South Carolina, that impeachment is a time-consuming process. It is a troublesome process, and it is one that the Senate is not going to involve itself in over something so minuscule or obscure as the removal of a Federal court judge who ought to be removed. We all agree, whether for bad behavior or lack of good behavior, or for high crimes and misdemeanors, that this is a serious step, an important step, to be taken if the circumstances merit it, but not a step to be taken lightly.

I know, from listening to my colleagues from Arizona and Georgia discuss this matter, that they do not anticipate this as a step to be taken lightly. I think we concur on that point.

I would much prefer, and I will say in more detail why I am concerned from a policy standpoint in just a moment, but the Senator asked what alternatives I propose, and I have one, to which I am not wedded, but which I feel would emphasize the importance of dealing more expeditiously with this question.

We cannot say that the impeachment process has not been used on Federal judges, because it has. It has not been used frequently. Perhaps it should not be used frequently. We have just had an example, with all respect to the spirit of the gentleman in question, that illustrated there should have been a way to see that the people of that given part of our country were given better service by the Federal judiciary.

I think the best approach to the matter is to consider beefing up the enforcement powers of the Judicial Council, and giving them some marching orders that "under these circumstances you shall act."

I have no objection—I am not wedded to it, but I have no objection—to the composition of this panel, either that kind of a structured panel or another kind of panel, being given marching orders. The law would mandate that given certain circumstances, they would hold hearings, they would see that the judge is given due process, and then they would recommend to the Congress of the United States that certain action be taken, and then we would mandate that we in Congress got off the seats of our pants and did something about it.

We would mandate that this matter go immediately to the Judiciary Committees of the House and the Senate, and within $x$ number of days they were to hold hearings and have a report forthcoming.

Mr. NUNN. Will the Senator yield?

Mr. BAYH. Yes.

Mr. NUNN. I would say that would be much better than what we have today. But on the same case that the Senator just mentioned, and I will not go into details on that, there was not a single member of the House Judiciary Committee who had not been alerted at all to what was going on in that part of the country, who was not acquainted with those facts. There was no need to have a commission go out and find facts and lay them on the table. There was no fact-finding need there. It was a question of inability to act.

We know the House Judiciary Committee, for instance, would be tied up as soon as they take up the criminal procedure code for literally months and months and months. They were tied up for a period of time during the Nixon impeachment question for months and months and months.

Even if a commission reported that there was a judge who had a chronic problem, drinking or some other problem, and laid the report right on the doorstep of the House Judiciary Committee and put it there for days afterwards, I do not think anybody will contend that the House Judiciary Committee would interrupt the criminal procedure code or any other issue of great urgency to the whole country, and take up this impeachment.

I do not believe anybody would contend that the Senate this year, with the Panama Canal debate, the labor reform debate, the forthcoming natural gas debate, the debate on the forthcoming tax package would interrupt the procedures which affect not only this country but the world and have a trial of a judge from some State deemed by the House of Representatives or by a judicial panel as being unfit for the bench.

It is just not in the world of reality. It is not going to happen. In the case of the Supreme Court, I think that would be a little different. I believe the committee has come to an approach here which is not only judicious but also has a lot of commonsense. I like it better than the approach I originally drafted. I think the Congress would deal with a Supreme Court judge in those cases, but I do not think it will ever happen with a district judge.

What I am saying is that, though I can understand the Senator's constitutional approach, the Senator's remedy would virtually leave us where we are today. We might be moving 1 inch or 1 foot, but we would not be moving a yard.

Mr. BAYH. Let me say to my friend from Georgia it is rather clear that some members of the House Judiciary Committee were aware of the problem which existed out West. Perhaps some of us in this body were aware of it. It is also clear that members of the Judicial Conference were more painfully aware than we were. But there was no procedure which mandated that certain action be taken.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. Will the Senator yield additional time?

Mr. THURMOND. I yield 2 additional minutes.

Mr. BAYH. I am sorry to have taken so long. I do want to hear from my fellow colleagues on this.

The PRESIDING OFFICER. How much time has been extended to the Senator?

Mr. THURMOND. How much time remains on each side?

Mr. NUNN. If it will help, I will pledge not to interrupt the Senator any longer. I have taken a lot of his time.

The PRESIDING OFFICER. The Senator from Arizona has 149 minutes remaining and the Senator from South Carolina has 76 minutes remaining.

Mr. THURMOND. The distinguished Senator from Maryland needs 1 hour so I cannot yield too much more to the distinguished Senator from Indiana. Can he finish in 10 minutes?

Mr. BAYH. Much of the time of the Senator from Indiana has been involved in——

Mr. DECONCINI. If the Senator will yield, I will yield 30 minutes.

Mr. BAYH. I hope not to take another 30 minutes. I did not mean to take the last 30 minutes.

Mr. NUNN. I promise not to interrupt the Senator further.

Mr. BAYH. No, I believe this is all in the interruption category. We are both trying to pursue the same goal, though we are following different vehicles. We have similar concerns but we feel they apply a little differently.

This is a serious matter. Although the matter is not as expeditiously taken care of under the proposal I have just made on an informal basis with my friend from Georgia as would be the case under the proposal which he is pursuing, I think it could be handled that way. This is not the first time we have put time limits on Congress to act and time limits on the President to act. If this matter is serious enough that we are going to remove a sitting Federal judge, it seems to me it is serious enough to say, "You are going to make this decision yes or no." Let me not deal further on that alternative because there might be a better one. Let me deal just quickly, in summing up, with the concerns that I have about this particular proposal from a policy standpoint.

I recognize that it is not necessarily a popular position to get oneself on the side of defending a recalcitrant Federal judge, someone who may not only be drunk, unfaithful, and disorderly, but may have voted on the wrong side of a whole slew of very sensitive, emotional issues. He may be a very unpopular character.

I want to say that I hope nobody on either side of this issue looks at good behavior as it is used in the Constitution and interprets that with a little asterisk down at the bottom of the page that this also means "unpopular"; that if you are on the wrong side of the busing question or the wrong side of an abortion question or the wrong side of a prayer in school question, the wrong side of carrying a sign against the U.S. Senate question or the President of the United States question, "You are not up to the standard of good behavior so we are just going to sort of get rid of you and put a judge in there who will decide these cases the way they ought to be decided." That is what concerns the Senator from Indiana.

We are told that for the Congress to go through the impeachment process is time consuming. It is. We are told that Congress is not going to inconvenience itself, that it is too busy to worry about the future of an obscure Federal judge or, more importantly, the judicial district which is the jurisdiction of that Federal judge and the hundreds of thousands, the millions, of people who must look to that Federal judge for justice.

That may be true, I say to my colleagues. Maybe we are too busy. Maybe that is too insignificant a role for Congress to undertake. But if it is, it is an indictment of the Congress of the United States. If we are not willing to examine the way a judge is conducting his business once he is in office, then we ought to forfeit our right to advise and consent to affirm the appointment of that judge in the first place.

Congress is not too busy for an obscure Federal judge nomination to come before it, and there have been times when obscure Federal judges have been turned down because Congress has been indignant and has felt that those judges did not meet the standard they should meet under the Constitution.

Congress exercised its authority under the Constitution to advise and consent under Article II, where we are all very much aware of the authority, the responsibility, we have. The good behavior clause, the distinction between that and the appointment at the will of the King, all of this was designed by our Founding Fathers to give the representatives of the people in the Congress of the United States a voice in determining who Federal judges are and who they should not be; how they are appointed, when they are appointed, and when they are removed.

The people's representatives were involved in this very important decision of who was going to hold the life-and-death powers of the people of this country under the Federal judiciary.

Is this too obscure an issue? I invite my colleagues to go down through some of the issues that "we" have spent time on. We are worried about poppy seeds right now; the disposition of poppy seeds is on the calendar of this Congress. I sat here and voted on chicken feathers. The list is long of things that only involve a handful of people in this country, yet Congress takes time to consider. If we can consider those matters, it seems to me we should not be too busy to discuss and decide and dispose of the matter of a Federal judge who is not doing his job right.

I remind my colleagues, and I doubt if there are really very many of us who need more than a very quick reminder and I do not want to be presumptuous in doing so, that at this stage of a legislative session, when we are trying to explain to our wives or our constituents why we are not going to be able to join them at dinner at night because we are going to be working on the floor of the Senate, and we know we have so much work here that we do not know whether we are going to take care of it all, it is awfully easy to equate things under a yardstick of efficiency; what is the quickest way to get something done? That is only a normal tendency, but I suggest that to apply that yardstick to the Constitution of the United States is a very dangerous rule. The very democracy that was structured under that Constitution has in it a number of protections that go to protect individual citizens and to create a very inefficient way of doing things. One of the prices of individual liberty is some inconvenience and some inefficiency. If you want to see an efficient government, you ought to see how it is being done in Nicaragua right now.

They dispense justice pretty quickly down there and they get it done just like that. I do not think we want justice dispensed that way in this country.

I am not suggesting that the passage of this legislation is going to do that at all. I am suggesting that when the time comes that the Congress of the United States can look for a way to circumvent its responsibility of testing judges, of advising and consenting to their appointment and in having a voice in their removal, when the time comes that, for the sake of convenience, we bring in some time and motion study fellow to say how we are going to judge what our constitutional responsibilities are, it is going to be a dark day for our country in a broad variety of ways.

As I said a moment ago, it is not necessarily a popular position to espouse, to be standing here, taking the time of my colleagues, risking the wrath of people in my constituency and elsewhere who may not be concerned about the independence of the Federal judiciary, who may be angry at a judge because he has ruled one way or the other. But I want to suggest to you that to our Founding Fathers, and you can look at the history from the standpoint of the Revolution until this time, it is abundantly clear why it was important to guarantee the independence of the judicial system of this country.

I want a Federal judge who feels he has the capacity to stand up and say "no" on an issue and not worry about how his fellow judges are going to look on him.

I do not want a panel of judges, who may be concerned that one of their own is a source of some embarrassment—maybe he drinks too much; maybe he stays out too late; maybe, God forbid, he wears a beard, and thus has evidenced instability—and that he ought to be taken off the Federal court.

Maybe he decided on the wrong side of the issues that confront judges day in and day out. Maybe his judgment of the Constitution is different from that of a majority of his peers. I say, in concluding, the test of a good judge is not that he is a judge who can win a popularity contest. We purposely do not want judges to be elected, because they have to make some tough decisions and the Constitution of the United States, the Bill of Rights of this country, should not be subjected to a majority vote. It should not be subjected to a majority vote of Congress; that takes two-thirds to change it. It should not be subjected to a majority vote of the people; and it certainly should not be subjected to a majority vote of a panel of judges, none of whom is responsible to a constituency

that can remove them by popular vote themselves.

Mr. President, at this point I would like to place my entire dissenting views to the Judiciary Committee report on S. 1423 into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ADDITIONAL VIEWS OF SENATOR BIRCH BAYH ON S. 1423, AS AMENDED, THE JUDICIAL TENURE BILL

Although I appreciate the considerations which have led the majority of the members of the Judiciary Committee to approve S. 1423, I cannot agree with their decision. Because this bill is in my opinion one of the most drastic and far-reaching pieces of legislation on which the committee will exercise its judgment, I feel it is important to express my concerns.

There are two reasons for my dissent on this legislation: first there can be very little doubt that it exceeds the constitutional authority of both the Congress and the Judiciary; and second, it establishes procedures and sanctions which threaten the independence and character of the federal judiciary.

I have no disagreement with the motivation behind this bill. We are all convinced of the need for a wise, conscientious and responsible judiciary. We concur in the necessity of having the ability to remove judges who have seriously betrayed both their oaths to uphold the constitution and laws of the United States and their duty to assure the administration of justice with which they are entrusted.

I also concur with the majority in viewing the growth of the federal judiciary as a mixed blessing, in that it provides citizens with the means to address their grievances with some degree of dispatch, but at the same time worries us by its very size and numbers. No longer is the federal bench the select handful of jurists which existed at the beginning of our life as a nation. By sheer common sense and the laws of chance we are wary that there will be more bad apples in the lot. However, I am concerned that with S. 1423 we are moving precipitously toward undefined goals, without a clear and consistent view of the grounds which should be sufficient to remove federal judges. What judges are we really willing to go to such radical means to be rid of? The slothful, the criminal, the unpopular? This bill gives no clear standard of acceptable or unacceptable behavior. Further, I fear that with this bill we are crating new machinery, of dubious constitutionality, to achieve what might well be accomplished by less drastic means well within constitutional bounds: better, more thorough selection methods, strengthened inter-judicial circuit discipline, and refined pre-impeachment procedures by which impeachment could become an effective mechanism when deemed to be necessary.

S. 1423 IS UNCONSTITUTIONAL

The majority report takes the position that since the constitutionality of S. 1423 is a question which can ultimately only be decided by the Supreme Court, Congress should not hesitate to pass the law and let the Court make its decision. Certainly, the Congress has passed legislation knowing that it posed serious constitutional issues. The Voting Rights Act is as good an example as any. However, there is a great difference between legislation which is arguably unconstitutional and that which is very probably unconstitutional. A proposed law which poses serious constitutional issues demands the most careful scrutiny by the legislative branch. If it is very probably unconstitutional, it should not be passed. Certainly the constitutional problems with S. 1423 are sufficiently serious to warrant close examination of the policy questions which are raised. With no prescience of what a decision by the Supreme Court might be, I find the arguments for the constitutionality of S. 1423 to be very troubling.

THE GOOD BEHAVIOR CLAUSE IS NOT A CONSTITUTIONAL BASIS FOR THE REMOVAL OF FEDERAL JUDGES

To summarize the relevant constitutional issues briefly, Article II of the Constitution expressly provides that all civil officers shall be removed from office by impeachment; Article I states that the Congress shall have the sole power of impeachment. The majority believes, however, that another means of removal exists within the Constitution in the good behavior clause of Article III, § 1, and maintains that for 190 years this alternate removal mechanism has been available whenever the Congress wanted to employ it, but has simply never been used. The majority brushes over the fact that throughout the country's history, the idea that the "good behavior" clause was intended to provide a way to get rid of federal judges was not proposed. Even contemporaries of the Framers who felt strongly that it was a mistake to confine removal of judges to the impeachment process never suggested that article III provided such an alternative. Historical precedent, caselaw, and statutory construction all sustain the traditional view that the Constitution provides only one means for removing a judge, the impeachment process.

The standard for impeachment under article II is treason, bribery, or other high crimes and misdemeanors. The proponents of S. 1423 grant that Congress has the exclusive power of removal for commission of the serious misconduct which is impeachable. They contend that a judge whose behavior falls in the gap between "good behavior" and "high crimes and other misdemeanors" is subject to removal by other judges through machinery set up within the judicial branch itself. In other words, a higher standard of conduct is imposed on judges than other civil officers.

To sustain this argument, it seems necessary that three assumptions withstand scrutiny: first, that the Constitution allows the creation of an alternative removal mechanism; second, that the "good behavior" clause requires a higher standard of conduct in the judiciary than would be imposed by impeachment; and third, that S. 1423's removal standards ("conduct which is or has been inconsistent with the good behavior required by article III") does not impinge on the exclusive congressional power of removal by impeachment.

IMPEACHMENT IS THE SOLE MEANS OF REMOVAL OF JUDGES

The proposition that Article III's good behavior clause provided an alternate means of removal of judges was first offered in a law review article by Burke Shartel in 1930, and has recently been argued by Professor Raoul Berger in his work on impeachment. Authority in the United States has been consistent, however, that impeachment was the sole means of removal of federal judges because of the language of Articles I and II that the House and Senate are granted the "sole power" to impeach and convict office holders. Any argument to the contrary must meet the heavy burden created by this express constitutional provision. The majority places its argument primarily on the slender shoulders of the precedent in English common law of the obscure writ of *scire facias*, an argument derived from Berger and Shartel.

The Founding Fathers, the proponents say, must have intended an alternative means of removal of judges within the judicial branch itself since *scire facias* proceedings were available at common law. This proposition has been closely analyzed by many constitutional authorities and found to be wanting. Their work is summarized in "The Report on The Removal of Federal Judges Other Than By Impeachment by the New York Bar Association."

The theory of *scire facias*, as the majority report explains, was that a grant of office imparted an office or estate for the life of the grantee terminable by his death or a breach of good behavior. The judiciary was empowered to issue a writ of *scire facias* to initiate a civil proceeding for the termination or forfeiture of the office. The object of the writ was to remove the officer without penalty. A close examination of the writ does not sustain the conclusion drawn by the majority.

First of all, most authorities cite a lack of historical evidence that the framers of the Constitution even had knowledge of the generally discarded write of *scire facias*, which had admittedly never been used to remove a judge. *Scire facias* was never included in any Revolutionary state constitution, nor was it considered at the Constitutional Convention.

It is admitted by all the scholars that there is no record of the writ having ever been used to attack a letter patent (granting "good behavior tenure") in a Colonial court. Further, the positions subject to removal by the writ were only of minor court officials, not fullfledged judges. Officials so removed included such obscure officers as filazers, remembrancers of the Exchequer, cord recorders, postmen and auditors. No judge was ever removed by *scire facias* in England, even though the writ technically survived until 1947. The writ was not abolished in America until 1938. By the majority's interpretation, any federal judge could have removed another judge up until that time under the theory of *scire facias* simply by concluding that his brother or sister judge in effect breached a condition of his appointment by engaging in something that was not "good behavior." Not one judge has been so removed. Moreover, it is interesting to speculate what would have happened if a federal judge had ever tried to employ *scire facias* on another.

The undocumented precedent of *scire facias* is far too slender a reed to support such a radical change of practice that could effectively destroy the constitutionally mandated life tenure of federal judges and give other judges broad new removal powers.

Other evidence argues against the constitutionality of any other means than impeachment for removal of judges. Early drafts of the Constitution gave impeachement powers to the Supreme Court; after long debate, it was decided that the best and most impartial tribunal would be the Senate, not members of the judicial branch. Further, there is overwhelming evidence that the Framers themselves considered impeachment the sole means of removal. Hamilton, in the Federalist No. 79 expressly said so. Jefferson also held that opinion. Justices Marshall, Story and Kent concurred. As the eminent constitutional student, Phillip Kurland, has said, it is "pellucidly clear . . . that the intention of the Framers was to make impeachment the sole means of removal."

The majority argues that other branches of government under the Constitution have alternate means of removal besides impeachment inherent within their own branch. Distinctions can clearly be drawn, however. An exception is expressly provided within the Constitution for the legislative branch (Art. 1, § 5). The Supreme Court decided that the President can remove certain federal officers performing executive duties within the executive branch for the reason that he appointed them. *Myers* v. *U.S.*, 272 U.S. 52 (1926). The same obviously cannot be said for the judiciary. The Court further held in *Humphrey's Executor* v. *U.S.*, 295 U.S. 602 (1935) that the President is restricted in re-

moving such an official as a commissioner of the FTC because his is a quasi-legislative, quasi-judicial role requiring independence from other officials or departments of government in order to function properly. The same might well be said in respect to the independence of a judge subject to the censure of the judiciary, as well as of the legislature.

It is also worth drawing an analogy to the 25th Amendment, which was drafted to continue the consistency of our constitutional pattern. The 25th Amendment provides that a President may only be removed for inability to perform his duties upon the judgment of the Congress and not the determination of his own cabinet. A disagreement between a judge and his fellow judges over his judicial inabilities should likewise be resolved by the House and Senate, i.e. impeachment, and not by giving certain judges powers over the removal of their peers.

The Constitution is clear that judges are protected from members of their own branch, as well as the legislative and executive.

THE GOOD BEHAVIOR CLAUSE DOES NOT IMPOSE A HIGHER STANDARD OF CONDUCT

Since it is conceded by the majority that Congress has the sole and exclusive power of removal for the commission of impeachable offenses, in order for S. 1423 to be constitutional, it is necessary that it prove that the "good behavior" clause provides a higher standard of conduct for judges than that required by impeachment. I do not believe this proof can be sustained.

The majority asserts that the language of Art. III of the Constitution which says that "the judges . . . shall hold their offices during good behavior" was intended by the writers to establish that judges who did not conform to good behavior should not be able to continue to hold office. These assertions again rest squarely on the scholarly opinions of Shartel and Berger. The great weight of historical research done by other constitutional experts, however, argues that tenure during good behavior was intended to differentiate from tenure "at the King's pleasure." It was rebellion against tenure "during the King's pleasure" which had led to the Act of Settlement in England in 1701, and it was the monarchy's arbitrary power over their judges which led the Colonists to include in their list of grievance against the King in the Declaration of Independence, "He has made Judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries." In other words, to the Founding Fathers, a good behavior grant of tenure meant that the executive was restricted in its powers of removal, not that it was a separate standard of conduct.

Further, although in our history we have never definitely established the standard for impeachment, it is generally agreed that it is not so high as an indictable offense, and indeed many scholars maintain that under 18th Century common law, "misdemeanors" was synonomous with "misbehavior." Certainly our record of impeachments would uphold that interpretation. In 1804, Judge John Pickering was impeached and convicted on several charges, including drunkenness and blasphemy. Judge George English was impeached, and subsequently resigned, on counts including conduct bringing the administration of justice into "contempt and disgrace." In 1936, the Senate convicted Judge Halsted Ritter on a count of misbehavior.

If a judge can be impeached for misbehavior then the good behavior clause creates no separate or higher standard of conduct. Where, then, is the constitutionality of S. 1423?

The majority also contends that the good behavior clause would allow removal for disability. Its authority is in Mr. Berger's analysis that involuntary absence from office caused by mental or physical illness was historically grounds for forfeiture of a good behavior office if not for impeachment. Other scholars, including Shartel himself, have taken issue with this interpretation, however, and argued that a good behavior tenure office was not forfeited by disability. It is clear that at the time of the Constitutional Convention it was thought that good behavior tenure excluded removal for disability. For example, a critic of Art. III, Sec. 1 complained in The Antifederalist Papers, "there is no authority that can remove them from office for any errors or want of capacity." Perhaps as strong a proof as any that insanity, for instance, was not regarded as a cause for removal is in the fact that in the first impeachment proceeding (Judge Pickering in 1804) insanity was raised as a defense by the judge's defenders. No one thought to prosecute for insanity.

It is important to remind the majority in conclusion, however, that many of the problems of judicial disability are already addressed by statute without provision for removal, and therefore no questionable unconstitutional removal mechanism for disability is necessary. 28 U.S.C. 372(b) allows the Judicial Conference to certify to the President that a judge is unable to discharge his duties because of a permanent disability, and the President may then appoint another judge to take over his duties.

THE REMOVAL STANDARDS OF S. 1423 ARE AN INFRINGEMENT ON THE CONGRESSIONAL POWER OF REMOVAL

If S. 1423 is not intended by its supporters to provide a removal mechanism which will operate for the same misconduct as will the impeachment process, serious questions arise about its removal standards, even if we assume, wrongly I believe, that a gap exists between good behavior and impeachable offenses. In other words, if the bill is to be constitutional, the majority must be able to show that the standards for removal by the judicial branch in S. 1423 do not infringe on the congressional power of removal by impeachment.

The general standard of the bill, "conduct which is or has been inconsistent with the good behavior required by Art. III" is at best vague. The further guidelines for bad behavior in Sect. 388 of the bill are based on terms which state supreme courts have employed in cases involving state judges. As observed above "habitual intemperance" and "conduct prejudicial to the administration of justice" are grounds which have already been applied for impeachment and conviction. What lower standard could reasonably be applied to define the bounds to good behavior as something less than an impeachable offense?

In a disturbing provision, Section 385(c)(6) of S. 1423 authorizes removal of judges convicted of a felony, or a crime involving moral turpitude. This is in clear conflict with and infringes on the standard for impeachment, "high crimes and misdemeanors", since by definition criminal behavior is the subject of the impeachment process. The opinion of Berger himself seems to contribute to confusion along this line. In 1976 he testified on S. 1110, the predecessor to this bill, that the purpose of the legislation is to catch "little crooks". It appears then that at least some of the standards embodied in S. 1423 are overinclusive.

If we were willing to concede however, that a gap does exist between good behavior and impeachable behavior to which the provisions of S. 1423 might validly apply, an ironic incongruity is the final result. With S. 1423 Congress would be creating a relatively easy mechanism by which it might rid itself of judges who have been guilty of "bad behavior" falling below the level of impeachable behavior. For the serious misconduct arising to the strictest standards of high crimes and misdemeanors, that is, indictable offenses, the cumbersome mechanism of impeachment remains. So S. 1423 would create a system for relatively easy removal of judges for failing to behave properly, but removal of criminals from the bench would be much harder.

S. 1423 AND SUPREME COURT JUSTICES

S. 1423 was amended in subcommittee in response to objections raised by the Judicial Conference and others to allow for different proceedings in the case of a Supreme Court Justice. It now provides for a recommendation for impeachment to be made to the House following a trial by the judicial court. As a final constitutional question, I would ask if this recommendation would not amount to an advisory opinion from an article III court, proscribed since *Hayburn's* Case 2 U.S. (2 Dall.) 409, 410 n. (a) (1792).

POLICY CONCERNS DO NOT JUSTIFY THIS LEGISLATION

The question which continues to trouble me after study of S. 1423 is what judges we want to be able to get rid of by this legislation and for what reasons. Since as has been argued in the preceding sections, there is small reason to believe that S. 1423 offers any new ground on which removal may be based, the question might well be, Do we simply want new ease of removal, and not necessarily removal for different kinds of misconduct? Or is it rather, that because of our frequent disaffection with unpopular opinions by the judiciary we want to be provided with new justifications for their removal? If any case, as in any major change in the way in which our constitutional system has functioned, the burden rests on the proponents of S. 1423 to prove that the relative ease of removal offered by this bill is worth the possible threat to judicial independence, independence, I have tried to argue, which the Constitution has provided should be protected from invasion by more powerful members of the judicial branch as well as by the legislative and executive branches. I would therefore hope that the Senate would fully address these issues of policy before it decides to approve or disapprove S. 1423.

First of all, the Senate must be convinced that there exists a problem among the Federal judiciary which demands a radical, new situation. Although I initially assumed such was the case, I have heard little of such proof in the Judiciary Committee. I am aware that some 36 States now have disciplinary commissions but the analogies between the State courts and the Federal bench are not strong. Interestingly, 26 of these commissions were established by constitutional amendments, presumably because mere legislation, such as S. 1423, was believed to be unconstitutional. Furthermore, the record on the bill discloses very little evaluation of these State policing systems, and in fact they have not been immune from criticism.

I cannot help but be aware of the dissatisfaction with which some judges, as authors of unpopular opinions, are held by our constituents, but the merits of opinions and judicial procedures are not, of course, intended to be legitimate subjects for complaint under this legislation. The press now and again presents a case against Federal judges, but what strikes me from these accounts is, first, that they are rare and isolated, and second, that in most instances the problems have been taken care of without the apparent need for legislation of this kind. Are the current means of handling the problems which will inevitably arise from time to time sufficient, or could they be strengthened at different points to make them adequate without establishing this radical, new system?

At the present time, the chief judge han-

dles most of the troublesome incidents as they arise in his district on an informal basis. The judicial council of the circuit has authority under 28 U.S.C. 332 to "make all necessary orders for the effective and expeditious administration of the business of the courts within its circuits." In addition, the Judicial Conference is empowered under 28 U.S.C. 372(b) to certify to the President the disability of any judge to fulfill his duties. And finally, there is the impeachment process. Improvement of these methods of control, along with greater care and investigation at the appointment of Federal judges might be sufficient solutions to the problems which exist.

It is not irrelevant at this point to take a look at the record on impeachment. The process may not have been as ineffective a means of discipline as it has been accused of being. Only four judges have been impeached and convicted but 55 have been charged on the floor of the House, an average of one every 3 or 4 years. Thirty-three have been charged with treason, bribery, or other high crimes and misdemeanors. Twenty-two have resigned rather than face Senate trial and public exposure. In all, one judge has left the Federal judiciary under pressure from impeachment approximately every 7 years.

Circuit Court Judge Clifford Wallace has proposed alternative legislation which would create greater disciplinary powers within the judicial circuits, with a final report from the Judicial Conference transmitted to the House in a case of serious misconduct. This proposal is among several seeking to improve the present system which I would hope could be the subject of hearings before the Senate decides on more drastic solutions provided by S. 1423. Certainly, also, the Congress should face its responsibilities under the Constitution and study methods by which impeachment will continue to be workable in the modern world.

The second question which the Senate should ask itself before it approves legislation such as S. 1423, is whether such a solution will create its own problems. There is, first of all, the obvious question which is presented upon the creation and vesting of power in any new bureaucracy: Will it abuse its power?

The striking thing about the structure of the bureaucracy created by S. 1423 is that its new and awesome power to remove fellow judges can be closely concentrated. The layers of the new bureaucracy are to be manned potentially by a small, tightly knit group. The 12-man Commission will represent only a few States. It will report its findings to the seven-member court, all of whom are to be chosen from the membership of the Judicial Conference by the presiding officer. He himself is selected from within the Conference. The Commission, through its Director (also chosen by the Judicial Conference) will initially screen complaints, a crucial step in the procedure, since an unscreened complaint is then sent back to the circuit of origin where investigation will be opened against the complained of judge. A hired staff which does not winnow out frivolous or ill-conceived complaints at this stage will be performing serious harm against the judge who has wrongly been accused of misbehavior. The Commission will conduct its own, in-depth investigation after receiving the report of the circuit committee and if it in turn recommends trial by the court, the Commission will become the prosecutor. Obviously, there is a danger of a close-knit overzealous bureaucracy seeking to justify its own existence by finding transgressions in all manner of judicial action, perhaps even in the nature of decisions and opinions.

By far the greatest damage which could result from an alternate removal mechanism of judges judging judges would be the chilling effect it could have on the individuals on the bench. Philip Kurland has remarked that disciplinary systems in the States operate as "polite blackmail" by other judges and the bar.

I shudder to think how early the Federal courts might have been deprived of the services of Judge Learned Hand under such a discipline system as California's, for politeness to counsel and a willingness to tolerate fools gladly were not among his virtues, and it is only such virtues as regular attendance at the courthouse that the policing system seem capable of evoking from timid judges.

Justices Black and Douglas protested surveillance by other judges in the strongest terms in their well-known dissent to the *Chandler* case *Chandler* v. *Judicial Council*, 398 U.S. 74 (1970). *Chandler* did not go to the merits of the constitutional question of whether judges sitting on the judicial council were empowered to suspend the individual activities of a fellow judge. It did, however, serve to give a modern day forum to Black and Douglas to reiterate the fears of loss of independence voiced by leading jurists dating back to Chief Justice Marshall. A survey taken by Senator Sam Ervin in 1970 illustrated this fear sharply when fewer than 1 percent of the Federal judges supported the concept of the Tydings bill, predecessor to S. 1423. A like survey ordered by the Judicial Conference in March of this year has not yet been completed, but I believe the Senate should watch for its results carefully to evaluate the views of those who could judge and be judged.

In a very real way, removal within the judicial branch could have a profound effect on the Federal bench. The caliber of the men and women attracted to the judiciary might well change if they knew that while in the performance of their duties they could be subject to a barrage of public complaints and to open public scrutiny. The confidentiality provisions of S. 1423 to the contrary, the recent case, *Landmark Communications, Inc.* v. *Virginia* 46 U.S.L.W. 4389 (May 1, 1978) holds that the first amendment does not allow criminal punishment of the press for divulging or publishing information of confidential proceedings. At the farthest extreme, we would all suffer if subtle pressures from fellow judges or the bar were brought to bear on those whose judicial opinions on Federal statutory or constitutional issues were "unpopular." The leadership taken by the courts on matters of individual rights are too important to run any risks of being jeopardized in the name of responsiveness to public opinion.

The final question to be answered about S. 1423 is what is "bad behavior"? The majority of the Judiciary Committee tells us it is not crimes or even serious misconduct, for these must be handled by impeachment (although as noted above section 385 of S. 1423 provides that removal may be automatic upon final conviction). It has nothing to do with the merits of a decision nor with procedures at trial. The guidelines of section 388 say it is willful misconduct, willful failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice. These are broad, vague terms at best. If the misconduct is not serious enough to be impeachable, does it merely rise to the level of triviality?

Examples furnished us in the majority report leave me with a certain amount of skepticism. Is it for vulgar horseplay and obscene conversations with clerks (*Geiler* v. *Commission on Judicial Qualifications*, 515 P. 2d, (California 1973) that we are erecting this elaborate mechanism? Surely there is a less drastic method of controlling such situations. It is cases like this which make Kurland's assessment of Learned Hand's vulnerability under such a system seem very possible. Such examples also make us realize how easily censure and even removal of judges who consistently write unpopular opinions could be accomplished. Raoul Berger in his 1976 testimony expressed his opinion that judges could be removed for "ignorance." Finally, we are again stuck with the irony of being able to remove a judge guilty of obscene conversations with relative ease, but being able to get rid of a judge who has committed murder or treason or accepted bribes only through impeachment.

I firmly believe that it is the responsibility of the Congress to help insure that we have an effective and responsible Federal judiciary. In that wise, it is the duty of the Senate to play its role in the selection process well, especially since the number of judges will increase rapidly. It is the duty of both Houses to see that the impeachment and trial process work. Certainly much can be done in that area. Congress should be taking a look at other means by which the disciplinary process could be strengthened. S. 1423, however, appears to create a solution worse than the problem. Of dubious constitutionality, the implications of its policy are far reaching and dangerous. There has been only 1 day of hearings on S. 1423, and none since the bill was amended extensively in subcommittee. Our Federal judiciary deserves more from the Senate than precipitous action on this important matter. So in fact does the general public.

As Philip Kurland has reminded us:

"The provisions securing the independence of the judiciary were not created for the benefit of the judges, but for the benefit of the judged. It is not in the keeping of the judges to surrender this independence under pressure or voluntarily to give it away. Judicial independence is held in trust for the people. * * *"

(Mr. MOYNIHAN assumed the chair.)

Mr. HATCH. Will the Senator yield for a question?

Mr. BAYH. Yes.

Mr. HATCH. I am sorry to interrupt the Senator's very eloquent statement.

Mr. BAYH. If the Senator will give me just one other sentence or two, I shall be glad to yield.

Mr. HATCH. I am delighted to.

Mr. BAYH. I do not want what I have said to be misinterpreted. As the Senator from Georgia (Mr. NUNN) very honestly and accurately pointed out, most judges are not in need of this particular kind of sanction. Most of them are good judges. We are talking about isolated instances. But I suggest that our Constitution is as strong and provides as much protection for one individual citizen or one judge, as far as the rights guaranteed in that Constitution, as it does for the multitude. That is one of the real and really important distinctions of our form of Government compared to most others on the face of this earth. The individual and individual rights, whether it is an individual citizen or an individual judge, must be held sacrosanct under our Constitution, or our whole system changes. My concern, in closing, is about the creation of this panel, and to let a majority of this panel assume the responsibility which I feel very strongly was given to the Senate of the United States and the Congress of the United States, where our Founding Fathers said it is serious enough to require a two-thirds majority for impeachment. Instead, we are taking it away under this bill and we are permitting impeachment of judges by a majority vote of a panel of judges.

I do not believe judges are immune from the normal frailties that afflict all human beings from time to time, and I

am concerned that circumstances of the moment, some distant moment, whether it is because of a judge's personal habits or a judge's philosophical position on an issue, might be considered as a source of embarrassment to a majority of that panel of judges and they would use the vehicle which we are now considering to remove a judge—not because he is failing to perform his constitutional function under the Constitution of this country, but because he does not meet the standard they believe is important.

I am glad to yield to the Senator from Utah. I unfortunately had the floor for a limited amount of time.

(Mr. HODGES assumed the chair.)

Mr. DE CONCINI. Mr. President, I ask the Senator from Utah to yield 2 minutes to the Senator from Georgia for other business.

Mr. HATCH. Certainly.

Mr. TALMADGE. I thank my distinguished friend.

Mr. President, I am very pleased to rise in support of S. 1423, the Judicial Tenure Act, of which I am a cosponsor.

This is a measure to which my distinguished colleague (Senator NUNN) has devoted many long and hard hours of research and legislative effort in order to bring it before the Senate for consideration.

In this day of widespread public cries for accountability of all public officials in the executive, judicial, and legislative branches, the Congress has attempted to respond fully to the comments and criticisms concerning the executive and legislative branches. Until today, however, it has not addressed problems in the judicial branch.

S. 1423 provides an apparatus by which the judicial branch of the Federal Government can keep its own house in order in the form of a Judicial Conduct and Disability Committee. S. 1423 establishes procedures, in addition to the existing cumbersome process of impeachment, for the retirement of disabled justices or judges of the United States. It also provides for the removal of justices or judges whose conduct is or has been inconsistent with the good behavior requirement of the U.S. Constitution.

Impeachment has not insured, and cannot insure, compliance with the constitutional good behavior requirements with the size of today's Federal judiciary and the multiplicity and complexity of issues that are adjudicated. It is simply impossible in today's world for Congress to fulfill this role alone. Specifically, an additional mechanism is necessary because of the increases in the total number of Federal judges mandated by the judicial business of the Nation. Specifically, an additional mechanism is necessary because of the litigation trend which has given rise to predictions that there will be a need for over 1,000 district judges and over 250 circuit judges by the year 1990.

Also, specifically, an additional mechanism is necessary because of the rapidly increasing workload of Congress which has, as a practical matter, created an atmosphere in which consideration of any single issue for an extended length of time on the floor can threaten the passage of other vital legislation that is essential to the very lifeblood of the Federal Government. An impeachment must, therefore, compete with pressing national legislative priorities for the time of the House of Representatives and the Senate. To those of us who so strongly desire a sound judicial branch free from criticisms of failures of competence and integrity, this is simply not acceptable.

If I had my way, we would have much less Federal Government, Federal laws, Federal rules, Federal regulations, and, therefore, resulting Federal litigation. However, even this would not return us to the early days of our Nation where the impeachment process was sufficient to keep the judicial branch of our Government in proper working order.

Mr. President, I hope that the Senate will move to expeditiously act on S. 1423, and I once again commend Senator NUNN for his able efforts in this regard.

Mr. President, I yield the floor and I thank my distinguished colleague from Arizona for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI addressed the Chair.

Mr. THURMOND. Mr. President, I yield 1 hour to the distinguished Senator from Maryland.

Mr. DECONCINI. Mr. President, I have the floor, I believe.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. DECONCINI. Mr. President, I had agreed to yield 15 minutes to the Senator from Utah.

Mr. MATHIAS. I have been waiting.

Mr. HATCH. I will make my remarks very short to accommodate the Senator.

Mr. MATHIAS. I have been here since 12 o'clock.

Mr. HATCH. I have been here since 10 o'clock on all these bills, so I will make my remarks short.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona yields 15 minutes to the Senator from Utah.

The Senator from Utah has the floor.

Mr. HATCH. Mr. President, in deference to the distinguished Senator from Maryland, I will try to cut my remarks down, but I have been on the floor since 10 o'clock this morning, although on and off the floor, waiting to speak on some of these issues.

Mr. President, let me say I enjoyed the remarks of the distinguished Senator from Indiana and his eloquence on this subject. I think he has raised a number of important issues which deserve great consideration.

Mr. President, as a trial lawyer who has, literally, been involved in thousands of cases in front of Federal and State courts, I rise in support of the efforts of Senators NUNN, DECONCINI, THURMOND, and others. I support this judicial tenure bill. I think it is long overdue. It is something that this country needs and I believe it will be constitutionally upheld in spite of the objections raised by not only the distinguished Senator from Indiana, but also by my friend from Maryland. I think this bill is an intelligent approach to judicial tenure.

In spite of all that the distinguished Senator from Indiana has said, I do believe that many illustrations he has brought up, in fact, most of them, will not suffer from the applicability of the provisions of this bill.

The bill is designed to provide a means to remove those unwarranted restraints that appear in the law presently; so that we can, literally, handle some of the problems that exist in the judiciary today.

As a trial lawyer who has tried innumerable jury trials, all kinds of nonjury trials, in almost all courts in at least two States, I have found a lot of abuses in the judiciary that nobody does anything about.

I tried a number of cases in one of the courts most criticized by Judiciary Committees in both the House and the Senate, and I must say there were some redeeming qualities in our late chief judge in Utah. I liked him personally and considered him a friend. He always treated me with courtesy in his courtroom. Nevertheless, I saw and observed many things which should have been corrected and which were allowed to exist because there is nothing available in the present law that would have prevented or corrected those kind of abuses.

In my legal practice, I have seen certain Federal judges controlled or influenced by large corporations. I have seen control of certain Federal judges by large law firms and I have seen it on more than one occasion. I have also seen Federal judges who were controlled by special interests.

I have seen Federal judges become arbitrary, capricious, exhibit all kinds of partiality, and I have seen an abuse of the legislative processes by what has been referred to as "Government by judiciary."

I have seen judicial intemperateness and I have seen judges continually intervening in the trial of cases, even when there were competent trial lawyers trying the cases, because the judges took sides early in the trials instead of being impartial as judges should be.

I have seen repeated abuses of the trial process. I have seen judges who did not put the time in on the bench, who would not work hard, who, literally, would not do the things they should.

I have seen judges drunk on the bench, Federal judges, if you will, appointed for lifetime tenure, judges who should know better and, who should be examples, impeccable examples to the people of this country.

It is not any wonder to me that we have problems, even with all the good Federal judges on the bench, and I can say from experience that the vast majority of them are fine people, exceptional judges, and a credit to the Federal bar. But there are some who should never have been appointed to begin with, who have been a disgrace to the bench and continue to be a disgrace even today. There are those who literally ought to be thrown right off the bench because they are breaching every code of conduct that should be imposed on judges in our society.

I should say this, sometimes our selection of judges in this country deserves a little more consideration. I have been led to believe that of the judicial appointments since this administration has taken over, only one has been Republican—I have to admit the Republican Party is the minority party, but I do think more than one Republican is qualified in all the judges appointed by this adminstration.

The President of our country has repeatedly indicated he believes in judicial merit selection. Only the best should be on the bench in the United States.

As I have sat on the Judiciary Committee, I have seen some of the best who have been nominated and appointed, but I have seen some who probably should not have been appointed.

They cannot tell me that, in these United States, we cannot find better, more qualified people to sit on the Federal bench and work in the Federal Judiciary than some of the people we appoint right here in Washington.

I am aware of a matter in which a judge took the fifth amendment, a Federal judge took the fifth amendment himself, and continued to serve on the bench until he retired from the bench in what appeared to be political dealing.

I saw a case where some people actually went out and, as they always did, cut down Christmas trees on Federal land, which they have done for 30 years, and they were sentenced to 5 and 10 years imprisonment by a Federal judge for "theft" of a few dollars worth of Christmas trees.

I have seen cases where judges who knew better deliberately wrote opinions they hoped, it seemed to me that they hoped, would be reversed on appeal because they knew their opinions were wrong. I think those judges were influenced, or at least there is good evidence they were influenced, by special interest forces and special interests themselves.

The point I am making is that, in spite of the fact that the vast majority of our Federal judges are competent, decent, honorable, ethical people of integrity, there are those occasions when you have powerful Federal judges, appointed for life, who literally abuse their office, and nothing can be done about it because the remedy basically has been confined to impeachment.

I think this bill may be criticized by some because, under its provisions, we are relying on judges to judge other judges, and people never are going to believe that other judges are going to come down fairly against their peers. But I believe they will.

I have been shocked by the criticisms I have heard about certain judges in this country who have abused their offices, who have abused the attorneys, who have abused the parties, who have abused the citizens and the States in which they have sat, and who certainly have not lived up to the mandates of the Federal Government in taking the positions to begin with. These people literally should have to face responsibility for items listed in the report of the committee: willful misconduct in office, willful and persistent failure to perform duties of the office—you can go right down the line—habitual intemperance, and other conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Their fellow judges may be a lot tougher on abuses of that nature than perhaps any of us in Congress would be.

I think the Senator from Georgia and others who are sponsoring this legislation are doing the country a great service, because if there is anything for which we should have respect, it is the judiciary of this country.

I have to admit that I have seen attorneys deprecate the Federal judiciary; I have seen the public deprecate them; I have seen the individual parties deprecate them; I have seen other leaders deprecate them. In all honesty, even though some of those deprecations were absolutely right, nothing could be done about it.

I do not believe that the Constitution forecloses getting rid of judges who have consistently acted improperly on the bench. I cannot conceive of any particular commission or committee throwing judges off the bench for innocent mistakes that could be made by any judge sitting on the bench.

However, we are talking about a lifetime tenure job the minute you put a Federal judge in; it seems to me you have made him a millionaire because, for the rest of his life, if he stays there 10 years, he has his full salary on that bench and can stay there as long as he wishes, basically, under present law, with impunity, and be just as vicious and violent as he wants to be. Again, fortunately, the vast majority of our Federal judges are not of this type.

This bill has merit. I support it. I support an upgrading of our judicial system. I support merit selection where judicial selection is taken out of politics. Unfortunately, I do not think we have any aspect of that today in our society.

I commend those who are managing the bill and those who have worked hard to have the Judicial Tenure Act come up and be considered by the Senate.

I also pay tribute to Senator BAYH and Senator MATHIAS, because I know their sincerity and the arguments they are making and have made. I disagree with those arguments. I believe that these officious problems that exist in the Federal judiciary have to be stopped. We have to solve them, and we have to do something to upgrade our judiciary so that it is, without question, the greatest system of justice in the world today. This legislation, I believe, will help us do that, without being abusive to judges who sit on the bench.

I share some of the concerns Senator BAYH has raised. I commend him for raising them. But, in balance, I cannot conceive of any panel of judges, any commission, deciding against a judge unless there is ample evidence that that decision should be made against him.

Mr. President, I thank the distinguished Senator from Arizona for this time, and I again thank the distinguished Senator from Maryland for his patience.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 1 hour to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized for not to exceed 1 hour.

Mr. MATHIAS. Mr. President, I express my thanks to the distinguished Senator from South Carolina for making this time available for me. It seems a lot of time after so much discussion, but this is a very important subject and one that deserves careful scrutiny. It is that kind of thoughtful consideration which the Senator from South Carolina and the Senator from Arizona give to this subject. I think this scrutiny indicates the importance they attach to it and indicates why they are willing to make arrangements for the kind of thorough review of this whole topic which it really deserves and demands.

I think we were all helped in our understanding of the bill by the participation in this debate of the author of the bill, the Senator from Georgia (Mr. NUNN). I believe we will have a better understanding of what are trying to do and what we should do—and perhaps, more important, what we should not do—because this whole debate really weighs the question of whether judicial control is worth the sacrifice of judicial independence.

As we weigh that question, we have to do it against the background of the very serious challenges that are before the courts today. We have to recognize that these are challenges which affect not only the Federal courts but also the State courts. We have to appreciate the enormous volume of judicial business which is generated not only by our population of more than 200 million Americans but also by an affluent society. Our populace finds more reasons to go to court, brings more causes of action than ever before, has higher degrees of civic awareness which have tended to be litigious at times, and is beset by social problems which we urge people to take it to the courts instead of to the streets.

All this has put pressure on the court system, and all this is involved in bringing this bill and this issue to the Senate today.

However, I believe this: The changes in the system of the administration of justice have to be approached with very great care. Tampering with judges is as dangerous as tampering with the courts themselves. I do not have to enlarge upon these apparent and obvious dangers.

However, when we look at a bill such as this, which provides for a rather radical remedy, we should reflect that, notwithstanding the unhappy experiences of the Senator from Utah, by and large, over the years, such unhappy experiences in the Federal courts are very rare. The Federal judiciary in almost every State is an ornament—an ornament to the bar, to the bench, and to our system of constitutional government.

Mr. HATCH. Mr. President, will the Senator yield for one comment on that? I do not mean to interrupt the Senator.

Mr. MATHIAS. I yield.

Mr. HATCH. I did not want to give

the wrong impression. My experience in the Federal bar and in cases before the Federal courts has been pleasant, for the most part, and extremely satisfying. But I have seen these isolated judges' actions which have been oft repeated, as I have mentioned, and those are only some I have heard of.

Again, I reiterate that I think—as does the distinguished Senator from Maryland—that the vast majority of the members of the Federal bench are extremely competent and dignified and decent men and good judges. My experience typically has been a very good experience.

The reason I asked for the Senator's kindness in interrupting is because if I indicated otherwise I certainly would not want the record to read that way. But in the many case experiences that I have had there have been more than a few unsatisfactory situations.

Mr. MATHIAS. I thank the Senator from Utah. I think he makes the point which is important. As he says, I think I use his word, which was "isolated" cases.

Mr. HATCH. That is right.

Mr. MATHIAS. The very fact that the cases are rare and the fact that they are isolated is the reason that they get a lot of attention.

But what I think we have to remind ourselves here today is that we do not want to be misled by the attention which some unique situations get to the point that we are saying to the American people that the whole system is archaic or outmoded or of very little further use.

I think that is the danger in allowing this to get out of the proper perspective.

The basic reason that I cannot support this bill is because of the radical and violent change that it would work on the architecture of the Constitution. Perhaps it is that I am just too conservative, and not only too conservative, too much of a strict constructionist of the Constitution. I think we are dealing here with a principle, and, Mr. President, it is a principle worth preserving. It is not a new principle. It is an ancient principle. It is a principle which goes back into the history of mankind long before the Constitution of the United States was written, long before Columbus arrived in America.

Herodotus, the Greek historian, writing the history of ancient Persia, tells us in that history:

> The royal judges are men chosen from among Persians, *who continue in office until they die*, or are convicted of some injustice. They determine causes between the Persians, and are the interpreters of the ancient constitutions and all questions referred to them.

So this principle of judicial independence is not 200 years old, but we have here the positive record that it is more than 2,000 years old.

And the founders of this country were wonderful men. They were citizens of the world. They were scholars. They read carefully the history of the classical world and they knew about Herodotus. They knew that in establishing the independence of Federal judges they were not creating any new experiment in government. They were in fact embodying the wisdom of the ages in the Constitution of the United States. They gleaned from the experience of other peoples the lessons to be learned from history; and they wrote those lessons into the organic law of this country. In this bill we today are tempted to tamper with that organic law.

The framers of the Constitution dealt at great length with this subject. They came back to it again and again and again during the Constitutional Convention.

On Monday, August 27, 1787, they came to it when Mr. Dickinson moved an amendment to article XI, section 2. After the words "good behavior" he would add the words "provided that they may be removed by the executive on the application by the Senate and House of Representatives."

Mr. Gerry, known to history for being the author of gerrymander, perhaps more notably than this particular occasion, seconded the motion. "Gouverneur Morris thought it a contradiction in terms during good behavior, and yet being removable without a trial. Besides it was fundamentally wrong to subject judges to so arbitrary an authority."

I am skipping down in the journal for that day:

> Mr. Randolph opposed the motion as weakening too much the independence of the judges. Mr. Dickinson was not apprehensive that the Legislature composed of different branches constructed on such different principles would improperly unite for the purpose of displacing a judge.
>
> On the question for agreeing to Mr. Dickinson's motion it was negative. Connecticut, aye, and all the other States present, no.

That was the vote. No. Every State except Connecticut.

What they were trying to do there was to provide for the embodiment of the ancient principle of the independence of the judiciary in the new Constitution.

The Senator from Georgia in his colloquy with the Senator from Indiana made the point that it was hard to impeach Federal judges, that it had not been done for 40 years. I agree with that. It is hard to impeach anyone under the procedures which we follow in this country and which have been imported or inherited almost directly from the British Constitution. But it ought to be hard to impeach a Federal judge. It ought to be very hard to impeach a Federal judge. And that is the way the Founders intended it; and that is the way they wrote it, and that is the way it is.

It does not mean that it cannot be done. But it is hard because they intended it to be hard, and it ought to stay hard.

There are a lot of things that citizens could do. People who do not feel that a judge is acting right can exercise their constitutional right to petition the House of Representatives for a bill of impeachment at any time. Any citizen, any group of citizens, any bar association, can do that any time.

But the impeachment process is and ought to be hard.

The Senator from Georgia raised the question of the views of Thomas Jefferson on this subject. Of course, Jefferson was serving in another capacity during the Constitutional Convention. He was on the other side of the Atlantic as our representative in France. But he has left us some evidence of his views about judges, one of which was quoted in a letter to Senator DECONCINI from Judge James L. Oakes, a judge in the U.S. Court of Appeals for the Second Circuit.

In that he quoted a letter from Thomas Jefferson, whom Judge Oakes characterized as no lover of the judicial branch, a letter from Thomas Jefferson to James Madison in which Jefferson said:

> In the arguments in favor of a declaration of rights you omit one which has great weight with me, the legal check which it puts into the hands of the judiciary. This is a body, which if rendered independent, and kept strictly to their own department merits great confidence for their learning and integrity.

Now, as Judge Oakes points out in his letter, the stress that Jefferson puts on the word "independent" is pertinent and important to our discussion here today.

I must say that I was taken by surprise by the colloquy between the Senator from Arizona and the Senator from Georgia on their interpretation of this bill as being a bill which was so comprehensive that it would really eliminate the necessity for further impeachment procedures in the Congress.

I had depended on that language on page 7 of the report in which it says, and I quote:

> Therefore, an alternative method of impeachment to accomplish the removal of Federal judges must have been contemplated by the framers to provide for the removal for misbehavior or disability that was in violation of the "good behavior" standard but was less serious than an impeachable offense. The substance of what constitutes "misbehavior" may be open to interpretation; but it is completely clear that procedurally, "good behavior" was a term involving the judicial process.

But we have made a considerable amount of legislative history here today. I am not sure what use it will be put to in the future; but I think that courts or other bodies that may have to interpret this bill at some time are going to find a good deal of difficulty with this particular portion of the bill.

I feel, however, if there is to be judicial interpretation of the legislative history we are making here, that we ought to refer to the report on the removal of Federal judges other than by impeachment which was rendered by the Committee on Federal Legislation of the Association of the Bar of the city of New York on April 1, 1977. In that report the city bar said this:

> We also do not believe that any gap exists between the "good behavior" and "impeachment" clauses. The grant of good behavior tenure is, in our view, simply a grant of life tenure subject to removal by impeachment. The impeachment process allows removal for misconduct which is criminal, and some which is not explicitly criminal, but stops short of the all-inclusive basis for removal suggested by the vague phrase "bad behavior." We believe a constitutional convention which rejected impeachment for mal-

administration because the term was unclear and overly broad, would not have provided for removal under so ill-defined a standard as failure to maintain good behavior.

We do not believe that framers, interested in defining and circumscribing power, would place such unlimited power in the hands of any group, even the judiciary.

I think that that certainly ought to be part of the legislative history of this particular provision.

George Mason, that great member of the Constitutional Convention from Virginia, suggested the addition of "maladministration," and his fellow Virginian, James Madison, objected "that so vague a term will be equivalent to a tenure during pleasure of the Senate." It was at that point that George Mason withdrew the word "maladministration" in favor of the phrase "other high crimes and misdeameanors," a phrase which was familiar to colonial lawyers and lawyers of the early Republic because that was a phrase carried on the title page of the reports of State crimes with which they were all familiar.

I think we do have some responsibility to deal with both the constitutionality of this bill and with the policy involved in it. I must take issue with my good friend from Georgia when he said that only the Supreme Court can interpret the Constitution, only the Supreme Court can decide the constitutionality of a bill.

I just have to say that I think we have a responsibility which we cannot avoid. We can be wrong, we can be in error, just as I think the Court is sometimes in error, but we have taken an oath to discharge the duties of Senators in accordance with the Constitution. I do not believe we can undertake to perform those duties without undertaking the responsibility to come to some conclusion as to whether what we are doing is constitutional and to interpret the Constitution in light of legislation that we are passing.

As Chief Justice Burger has reminded us:

In the performance of assigned constitutional duties, each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others. *United States* v. *Nixon*, 418 US 683.704 (1974).

I think that states very succinctly that we have the duty to make a judgment on this bill, and I have to come down on the point that the bill is not constitutional.

I think we can only encourage the denigration of that respect that we should have of the courts by saying, in effect, "Well, we don't know about the constitutionality of this, so let us just pass it and let the courts decide on it."

That is one of the reasons why the courts are in trouble these days. There are a lot of legislative acts that have been passed with that kind of disregard for the legal sculpting that ought to be done by legislators. If the laws were more carefully drawn, there perhaps would not have to be quite as much burden on the courts as there is.

In coming to my own conclusion that this bill is unconstitutional I feel fortified by the kinds of judgments that have been placed on the record by distinguished legal scholars and the judges around the country. I am happy to cite as an example one of the letters that was written to Mr. William James Weller of the Administrative Office of Courts on this subject by Judge Alexander Harvey of the U.S. District Court for the District of Maryland. Judge Harvey is one of the distinguished jurists not only in Maryland but in the entire country.

He says:

In my opinion, S. 1423 has serious constitutional defects and, in any event, is inadvisable legislation. I am therefore strongly opposed to the passage of this bill.

First, I do not believe that the proposed statute is constitutional. I do not think that a federal judge can, under he United States Constitution, be removed from office and his salary and retirement benefits terminated except through the impeachment process. Merely because such a process is unwieldy and time consuming does not mean that the Constitution can be interpreted in a manner not intended by its framers.

Mr. President, I ask unanimous consent that Judge Harvey's letter be printed in the RECORD in its entirety at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MATHIAS. But there is also, of course, a question of policy here, as well as a question of constitutionality, and that question of policy is addressed in a similar letter written to Mr. Weller by Judge J. Joseph Smith. In that letter, Judge Smith said:

We can survive the abrasiveness of a Judge Chandler or a Judge Willis Ritter. We could not survive the loss of independent minds which would result from outside monitoring—including monitoring by other judges applying discipline to their fellows.

And that, of course, gets us to this very difficult question of policy.

Mr. President, I ask unanimous consent that Judge Smith's letter also appear in the RECORD in its entirety at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. MATHIAS. I asked earlier whether we had invited our former colleague Senator Ervin to testify, because I have such vivid recollections of his forceful leadership and his eloquent expression of views when the subject of judicial tenure has been before the Judiciary Committee in past years. I regret that he was not here this year to speak again, but even though he has not been here in person, his words are here, and they are available to us. I think they are worthy of being repeated in this debate.

Sam Ervin said:

The separation of powers concept, as understood by the Founding Fathers, assumed the existence of a judicial system free from outside influence of whatever kind and from whatever source, and further assumed that each individual judge would be free from coercion, even from his own brethren.

Maybe those of us who have not been judges do not understand the full import of that phrase: "Free from coercion even from his own brethren." But judges understand that. Hugo Black, the distinguished Senator from Alabama who went to the Supreme Court for a long period of service, said in the case of *Chandler* v. *Judicial Council*, 398 U.S. 74 (1970):

The wise authors of our Constitution provided for judicial independence because they were familiar with history; they knew that judges of the past—good, patriotic judges—had occasionally lost not only their offices but had also sometimes lost their freedom and their heads because of the actions and decrees of other judges. They were determined that no such things should happen here. But it appears that the language they used and the protections they thought they had created are not sufficient to protect our judges from the contrived intricacies used by the judges of the Tenth Circuit and this Court to uphold what has happened to Judge Chandler in this case.

So Justice Black understood what judges could do to each other, and so did Justice Douglas. Justice Douglas, in the same case, said:

It is time that an end be put to these efforts of federal judges to ride herd on other federal judges. This is a form of "hazing" having no place under the Constitution. Federal judges are entitled, like other people, to the full freedom of the First Amendment. If they break a law, they can be prosecuted. If they become corrupt or sit in cases in which they have a personal or family stake, they can be impeached by Congress. But I search the Constitution in vain for any power of surveillance that other federal judges have over those aberrations. Some of the idiosyncrasies may be displeasing to those who walk in more measured, conservative steps. But those idiosyncrasies can be of no possible constitutional concern to other federal judges.

It is time we put an end to the monstrous practices that seem about to overtake us, by vacating the orders of the Judicial Council that brand Judge Chandler as unfit to sit in oncoming cases. Only Congress can take action, unless the Constitution is amended to allow judges to censor, police, or impeach their fellow judges.

That, Mr. President, I think sums up very succinctly what needs to be said both on the question of constitutionality and on the question of policy.

One of the great judges of this century was Justice Frankfurter. He offered a thought which is perhaps useful at this time, when we are finding new powers and new authority within the Constitution to deal with Federal judges; powers that were rejected by the Constitutional Convention itself; powers which have been considered from time to time and always considered to be lacking.

So this new discovery of power to deal with the removal of judges is, I think, akin to new powers that Justice Frankfurter referred to in a totally different context, in which he said:

The history of archeology is replete with the unearthing of riches buried for centuries. Our legal history does not, however, offer a single acheological discovery of new, revolutionary meaning in reading an old judiciary enactment. The presumption is powerful that such a far-reaching, dislocating construction as petitioner would now have us find in the act of 1875 was not uncovered by judges, lawyers or scholars for 75 years because it is not there.

I think that is really the case we are dealing with today. The reason why people have not found, with all of the legal archeological work that has gone on over the years, a way to get rid of unpopular judges, is because it is not there. And there have been plenty of unpopular

judges, and there has been great popular heat against some good judges.

I do not think we can find one today; and with all due respect to my good friend from Arizona and my good friend from Georgia, I do not think we can find these new powers within the four corners of this bill.

EXHIBIT 1

U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND,
*Baltimore, Md., April 5, 1978.*

Re The Judicial Tenure Act—S. 1423, 95th Congress.

MR. WILLIAM JAMES WELLER,
*Legislative Liaison Officer, Administrative Office of the U.S. Courts, Washington, D.C.*

DEAR MR. WELLER: Receipt is acknowledged of your memorandum of March 15, 1978, with enclosures. As requested by the Judicial Conference, I am setting forth herein my views concerning S. 1423.

In my opinion, S. 1423 has serious constitutional defects and, in any event, is inadvisable legislation. I am therefore strongly opposed to the passage of this bill.

First, I do not believe that the proposed statute is constitutional. I do not think that a federal judge can, under the United States Constitution, be removed from office and his salary and retirement benefits terminated except through the impeachment process. Merely because such a process is unwieldy and time consuming does not mean that the Constitution can be interpreted in a manner not intended by its framers.

But besides these constitutional infirmities, I believe that this legislation is wrong for policy reasons and would have a serious inhibiting effect on decision making by federal judges. One of the keystones of our federal judicial system is the absolute and unfettered independence of each member of the judiciary. Unlike judges appointed or elected in many states, a federal judge, appointed for life, is beholden to no one. He is therefore absolutely free to decide each case before him on the basis of the facts and the applicable law. His decision need not be affected by the fear of personal consequences or by the desire to please some governmental commission.

I think it makes little difference whether such a commission exists within the executive or the judicial branch of government. A federal judge under present law need not be concerned with the views or predilections of other federal judges. Of course, if he errs in a ruling, appeal procedures are available to correct the error. The superstructure of a Judicial Conduct and Disability Commission with power to look over a judge's shoulder at all times can only result in having a serious inhibiting effect on every federal judge in his decision making.

Finally, I do not believe that the few instances in recent years of a lack of "good behavior" or of inability to perform judicial functions justify the procedures mandated by the statute. The problem instances in recent years have been very few. However, the unfortunate inhibiting effects on all judges will be substantial and certainly not commensurate with the perceived harm.

If further comment concerning my views in this regard are desired, please let me know.

Sincerely yours,

ALEXANDER HARVEY, II,
*U.S. District Judge.*

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EXHIBIT 2

HARTFORD, CONN., *April 20, 1978.*

HON. IRVING R. KAUFMAN,
*Chief Judge,*
*U.S. Court of Appeals, U.S. Courthouse, New York, N.Y.*

DEAR IRVING: I agree with the tenor of Judge Brieant's letter of April 6, 1978. Impeachment is a cumbersome process. I can recall the time, effort and heavy weight of responsibility on members of the House in determining to present to the Senate articles of impeachment of a sitting judge. As a result minor and some not so minor faults of judges go uncorrected. Where actual corruption exists, impeachment can be and has been used. But no lesser machinery has been devised, or could be, that would place anyone in a position to monitor the day-to-day work of the judges without creating a danger to the judges' necessary independence of thought and action. Pride and peer pressure, as Judge Brieant points out, have kept the system functioning well, with relatively few problems. We can survive the abrasiveness of a Judge Chandler or a Judge Willis Ritter. We could not survive the loss of independent minds which would result from outside monitoring—including monitoring by other judges applying discipline to their fellows.

Our best judges are least swayed by passing changes in public moods, notably in times of crisis. To be sure, some of the best have not gladly suffered incompetence of counsel before them and may have reacted too strongly on occasion. They would be targets of any "disciplinary" system.

"Discipline" for such matters can too easily mask opposition to substantive rulings. That minor faults may be ignored is a small price to pay for the preservation of the fundamental integrity of the judiciary. In my view any "disciplinary" body poses too great a danger of use actually to control the decision making of the judges.

The architects of our system chose independence over control and rightly made removal no easy matter.

The title of S. 1423 is enough to condemn it. "Judicial Tenure" is a constitutional, not legislative, subject.

Sincerely,

J. JOSEPH SMITH.

Mr. BAYH. Will the Senator yield?

Mr. MATHIAS. I am happy to yield to the Senator.

Mr. BAYH. Mr. President, I want to express my deep appreciation to my friend and colleague, my coworker in the vineyards on previous constitutional matters, for his succinct and interesting dissertation. I particularly concur in the way in which he stresses the critical constitutional question, which it seems to me is the fundamental question we have to resolve the best we can, and having resolved that one way or the other to go on to the second point which he also emphasized, the policy question.

I concur with him. I think this legislation fails on both grounds. I do not see how in the world we can take the phrase "good behavior" which was clearly in the context as used by our Founding Fathers to be "good behavior, appointment for life," on one side, and appointment at the pleasure of the King on the other side, and use that as a reason to totally subvert the impeachment clause.

I would like to point out to my good friend from Maryland, if he will indulge me, matters that I did not have at my fingertips when the Senator from Georgia and I were discussing this earlier, a matter which the Senator from Maryland is very clear about.

As will be recalled, the Senator from Indiana asked the Senator from Georgia why the Founding Fathers did not give some more instructions to us other than just the use of the words good behavior as a suggestion that further implementing legislation was to be expected.

I would suggest to my good friend from Maryland that when we look at the specific degrees of particularity that are contained in the Constitution as far as how you remove House Members, as the Senator will recall in section 5, in article I, it goes into some detail about how the House shall govern itself. It sets its own rules.

Mr. MATHIAS. The Senator is exactly right. The Constitution provides that Congressmen can remove Congressmen, Representatives are removed by Representatives, Senators are removed by Senators, but it does not say that judges are removed by judges. That is a very significant difference.

Mr. BAYH. The only place it talks about removal being applicable to judges is in the impeachment clause. I concur with the sense of my good friend that this legislation does not pass muster on the constitutional merits, and it does not pass muster on policy merits.

If we can think for a moment in terms of Judge Frankfurter, instead of using the term bad judge, to use the term unpopular judge, that being a better phraseology in today's terminology, can the Senator imagine the kind of pressure that can be put on the panel of judges who wanted to maintain the dignity and the acceptance of the judicial branch as they bore in on some judge because of his position on some of the sensitive issues of abortion, of prayer, of busing, some of these things that cause all of us nightmares? I want a judge to feel he or she can stand up and say to any other judge that he is right until proven wrong by the Supreme Court of the United States, or until two-thirds of this body convicts him according to the impeachment clause of the Constitution.

I thank my friend. I am glad to be with him on this point.

Mr. MATHIAS. I thank the Senator from Indiana not only for this intervention but also for carrying so much of the burden of this side of the debate throughout the day. He has demonstrated his wonderful knowledge of the Constitution.

I might say to him, because he remembers sitting for many hours over a period of many years in the Judiciary Committee with Sam Ervin, that perhaps a good place for me to pause is to quote again Senator Ervin, who tried to sum up in the same eloquent way as the Senator from Indiana has just done not only the constitutional questions, the technical questions, but the human questions.

He used these words to do it. He said:

The Founding Fathers knew that the form of Government they established would not create a judiciary composed of judicial angels who could do no wrong. They knew the activities of a few judges might handicap the operation of the system. But at the same time, they realized that individual liberty is best protected by an independent judiciary composed of judges who were subject to the Constitution alone. They had learned the lesson of history, and attempted to build safeguards into our system which would prevent its repetition. We must not

reject their wisdom and destroy our own freedoms by regarding the Constitution they drafted as a piece of ancient parchment which can be folded and rearranged to suit the whims of individual men.

That expresses, I think very beautifully, that whole range of history which stretches into great art from Herodotus through the millennium down through the Constitutional Convention and to this very debate today.

I would hope that the Senate would read the lessons of history, would learn from the lessons of history, and would avoid a repetition of the problems that history tells us about. In order to do that, I think we have to reject this bill.

Mr. President, may I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. MATHIAS. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, how much time does the Senator from New Mexico want?

Mr. SCHMITT. I would like 5 minutes on the bill.

Mr. DECONCINI. I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico may proceed for 5 minutes.

Mr. SCHMITT. Mr. President, on a variety of other occasions since entering the Senate, and I am sure on a variety of other occasions in the future, I have opposed what probably on many occasions will be called unnecessary tampering with the Constitution. I think whenever possible we should not tamper with the Constitution. I am afraid that S. 1423, the Judicial Tenure Act which is under consideration at this time, is an example of such unnecessary tampering.

On its face, with some particularly glaring cases having been in the public view recently, this bill may appear reasonable. It would establish within our judicial branch of Government a system for investigating and resolving allegations regarding the conditions or conduct of members of our heretofore independent Federal judiciary, conditions or conduct which may be inconsistent with the good behavior requirement of article III, section 1 of the Constitution of the United States.

That article and section reads as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Article II, section 4, however, of that same Constitution, sets the standards for removal of the President, Vice President, and all civil officers of the United States, that is, officers such as those in the judiciary. For purposes of the Constitution, Federal judges are civil officers. That section, article II, section 4, reads as follows:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

Mr. President, what this bill would do is to remove from the legislative branch, the Congress, the sole constitutional right to remove Federal judges from office. Furthermore, it would lessen the standards for removal as they apply to our Federal judges. Instead of treason, bribery or other high crimes and misdemeanors, our Federal judges could under this bill, be removed from office for "lack of good behavior," whatever that means, or may be deemed to mean with changing times. They could be removed not by the elected Congress but by a small group of men not responsible to the Congress or to the people, for the most part.

Mr. President, this bill represents a most dangerous threat to our independent Federal judiciary, the judicious interpretation of our Federal laws, and our freedoms in general. Unnecessary tampering with the Constitution almost invariably will, in one way or another, affect at least the future freedom of our citizens. One of the reasons why our country has prospered is, in large measure, due to the structure, the designated structure and independence of the Federal judiciary. Because we have judges who are not afraid to render unpopular decisions if they are required, because we have judges who are protected from the temporary furor of those same unpopular decisions, there is, I believe, no better or fairer judicial system in the world today or, in fact, in history, at least a system that oversees the judicial problems of a country of the size and complexity of the United States of America.

The proponents of this measure claim that the actions of a few bad judges require this change that the experience of 190 years is inadequate. They claim that the fact that in our country's history, only eight judges and one Justice have been impeached and only four of those convicted makes this legislation necessary, because it shows how difficult it is to remove bad judges. Well, I look at the same record but interpret it differently. It should not be easy to remove Federal judges from their office. And the fact that it has been deemed necessary to try only nine times in 190 years is some indication of how well the system has worked.

Our Founding Fathers, the drafters of our Constitution, wisely made it very difficult to remove such judges. They had the foresight to realize that an independent Federal judiciary was absolutely essential if the rights of the citizenry were to be fully protected, not only in the present, but in the future. S. 1423 would dangerously erode the protection designed by our Founding Fathers. I am afraid.

To those Senators who are undecided on this issue, I commend for reading the excellent additional views of Senators BAYH and Senator MATHIAS. In those views, our distinguished colleagues clearly rebut the arguments of the proponents of this legislation.

If we want to avoid the situation of Federal judges not conforming to the requirements of "good behavior"—again, whatever that term is supposed to mean—then let us take more care in whom we place on the Federal bench. In my home State of New Mexico, I am happy to say, my senior colleague (Mr. DOMENICI), the New Mexico Bar, and I have established a New Mexico Federal Judicial Selection Commission to make recommendations as to those who should sit on the Federal bench, and for those recommendations to be made solely on merit. This process has already been activated for the appointment of one Federal judge and for the appointment of a Federal attorney. Hopefully, by using the highest standards for selection to the Federal bench, later problems with Federal judges can be avoided, but if not, there are other ways to address these problems. If the offense is that which is outlined in article II, section 4 of the Constitution, then impeachment is the proper step to be taken.

If a Federal judge's alleged offenses did not fall within the scope of article II, section 4, but rather was a failure to maintain the standards of good behavior, if they can be judged as standards, then there are measures which can be taken and have been taken by a higher judicial authority. For example, no cases would be assigned to that particular judge.

History has shown that our independent often courageous Federal judiciary, designed by our ever-seemingly-wise Founding Fathers who knew the dangers of the passions of the moment, has been the greatest bulwark for our freedoms. Passage of this bill would be a monumental blow against that independent branch of Government.

Finally, Mr. President, I shall again, as I am sure has been done before, quote Plato, who in the Republic wrote:

> Mankind censures injustice, fearing they may be victims of it and not because they shrink from committing it—

"It" being injustice.

This bill should be defeated and I commend my colleague from Indiana and my colleague from Maryland for their stalwart defense of the judiciary.

Mr. BAYH. Mr. President will the Senator yield for just a moment?

Mr. SCHMITT. I should be happy to yield, but I am afraid my time has expired.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAYH. I want to thank the Senator for presenting a very fine statement.

Mr. THURMOND. Mr. President, I yield 5 minutes to the Senator from New York.

(Mr. NUNN assumed the chair.)

Mr. JAVITS. Mr. President, I have been a lawyer all my life, in addition to other careers, and I am deeply disquieted by this bill, though I admire the ingenuity and the craftsmanship which Senator NUNN has put into it. I should like to consider whether this is the best way. I realize there is a problem.

There is a problem, and it has been very adequately described, of whether impeachment and trial by the Senate are

simply not too difficult a course to deal with judges who may be inadequate to the task for very profound reasons. But the Federal judiciary has been such a bulwark of justice and selflessness, as far as anybody can be selfless, as a group in this country for 200 years, that I am very reluctant to see judges judged by judges. Senator NUNN has crafted a plan which is essentially the State plan. Many States have this kind of procedure. The Federal courts have been a unique body precisely because of life tenure and I think, on the whole, we have paid very little for this remarkable precaution.

I am deeply moved, because I, perhaps, had some of the most important times in my own career in the Senate, by the experience of Judge Johnson, of Alabama, who, because he believed in enforcing the Constitution, might easily have been removed by panels of judges from his own region, still suffering under what was then called the social order of that particular region.

When we consider one such case as compared with others where judges might have been drunk or irritated or otherwise irresponsible and the modern ability to strip them of their functions and of their cases as a way of dealing with that kind of situation, I am very deeply disturbed, still, by the fact that, in the Federal courts, we would establish a system by which judges could be removed by other judges.

I thought of, because it did not have a constitutional problem, the possibility of giving the right to Congress, by concurrent action of both bodies, to sustain or overturn a determination of removal by this council. That may be a way. I do not say it is or it is not, but it would require deliberation and consideration.

I deeply believe that the present occupant of the chair has been responsible for a historic breakthrough in trying to think this through and prescribe a remedy. I am not prepared to endorse that remedy here and now, because I believe it is so portentous for the history of our country. I understand there is not a bill in the House; there may not be. So this may go nowhere right now.

I wish that it were possible for all of us, paying due tribute to the Senator from Georgia, to hold it over until next year and to again consider it.

I emphasize my respect and admiration for the professional craftmanship which went into this bill, but at this time, because I have to vote yea or nay, I do not feel that I can support it.

But I am deeply interested. I may be able to support this or a variant next year. But I feel we all ought to deliberate on it very critically and seriously and that a good deal more exploration needs to be made, not inordinate in time, but that we should, and I have no doubt we will, come to a decision on this particular matter in the year 1979.

I hope very much we will have that span of time in which to do it, do it intelligently and do it responsibly.

I thank my colleague for the time.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Will the Senator yield me just 1 minute?

Mr. THURMOND. I yield 1 minute.

Mr. BAYH. I want to say to my distinguished colleague from New York, who has had long legislative experience and a wealth of legal experience before coming to this body, that I think his contribution to this discussion is very rewarding.

I think we share common concerns with our distinguished colleague from Georgia that there is a problem that needs to be resolved, but that there is a better vehicle to be utilized, rather than this one which flies in the face of the Constitution on the one hand, and the good policy of independent judiciary on the other.

I just wanted to express my appreciation to my friend and colleague from New York.

Mr. JAVITS. I thank my colleague.

Mr. THURMOND. Mr. President, I yield 2 minutes to the distinguished Senator from Wyoming.

Mr. WALLOP. Mr. President, I rise in support of S. 1423, the Judicial Tenure Act. This legislation is designed to build public confidence in our Federal courts by establishing a new procedure for involuntarily retiring, censuring or removing Federal judges from the bench for conduct which falls short of the good behavior standard set forth in article III, section 1 of the Constitution.

In recent years, there has been tremendous demand for accountability of all public officials in the executive, legislative, and judicial branches of government. The American public deserves honest and scrupulous service from its elected and nonelected public officials, including its judges. This legislation is intended to provide greater accountability within the Federal judiciary. S. 1423 accomplishes this by establishing an alternative to the time-consuming and impractical impeachment procedure provided for in the Constitution for the removal of Federal judges for conduct inconsistent with article III's good behavior standard.

Over the history of this country, impeachment has proved to be an ineffective mechanism for disciplining or removing Federal judges whose conduct casts a cloud on the judiciary. Only eight Federal judges and one justice have been impeached and of that number, only four judges where convicted and removed from office. The last impeachment and conviction of a Federal judge occurred in 1936. It is apparent, then, that while the impeachment procedure is available for removing unsuitable Federal judges whose conduct does not conform to the good behavior standard of the Constitution, it has not provided an effective vehicle for disciplining members of the Federal judiciary. As a result, public confidence in the Federal courts has suffered.

Mr. President, S. 1423 provides a needed alternative to this cumbersome and infrequently used impeachment process. It establishes within the judicial branch a method for investigating and resolving complaints against Federal judges who are alleged to have acted inconsistently with the good behavior standard of article III, section 1, which reads as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. *The judges, both in the supreme and inferior courts, shall hold their Offices during good behavior*, and shall, at stated times, receive for their Services, a Compensation, which shall not be diminished during their continuance in office. (Italics added.)

It is significant that S. 1423 envisions a disciplinary system for Federal judges which rests within the judicial branch of Government. The circuit committees, the Judicial Conduct and Disability Commission and the Court of Judicial Conduct and Disability established by this legislation consist of Federal judges who render decisions on the merits of the complaints filed with them. By placing the responsibility for disciplining, by involuntary retirement, censure or removal, those Federal judges whose conduct is inconsistent with the good behavior standard within the judicial branch, S. 1423 protects the independence and integrity fundamental and essential to the functioning of our Federal courts. This also preserves the separation of powers concept fundamental to our Constitution. To further insulate the members of the Federal judiciary from political, personal or philosophical assaults, S. 1423 provides for the dismissal of complaints which relate "to the merits of any decision or procedural ruling of a judge, and complaints relating to the condition or conduct of a judge which is not connected with his judicial office or which does not prejudice the administration of justice by bringing the judicial office into disrepute" (section 383).

Mr. President, the time is ripe to enact implementing legislation for the good behavior clause in article III of the Constitution. It is in keeping with efforts of this Congress to improve the Federal judiciary and its service to the public. Congress is on the verge of adding 152 new Federal judgeships to the judiciary. The Improvements in Judiciary Machinery Subcommittee and the Judiciary Committee have devoted their energies and attentions to providing more meaningful and greater access for this country's citizens to the Federal courts. S. 1423 will establish for the first time a disciplinary system within the judicial branch which will enhance the reputation, integrity and thereby, the effectiveness of our Federal courts. It would be ironic indeed if we achieve greater access to the courts only to find incompetency in the bench.

It would be shortsighted not to briefly discuss the principal objection argued by opponents to S. 1423, that is, that impeachment is the sole and exclusive constitutional means for removing Federal judges from the bench. It is the opinion of this Senator and of the Judiciary Committee which considered this legislation that S. 1423 will withstand constitutional challenge. While article I, section 2 of the Constitution provides that "the House of Representatives shall have the sole Power of Impeachment," it does not expressly bar other methods of disciplining or removing Federal judges. The committee report explores the constitutional and legal bases for

this legislation which I would incorporate by reference into my statement. I am persuaded by the arguments in support of the constitutionality of S. 1423 advanced by the distinguished constitutional law expert from Harvard Law School, Raoul Berger, whose views are referred to in both the hearing record and report on S. 1423. Having considered arguments to the contrary, I am persuaded that S. 1423 will pass constitutional muster and survive even the most rigid scrutiny of the Supreme Court.

It is noteworthy that support for the legislation comes from groups who have a strong interest in preserving the independence and strength of the judiciary and who are well versed in constitutional law. These organizations include the Judicial Conference of the United States, the American Judicature Society, the American Bar Association as well as the Department of Justice. In addition, the very distinguished jurists, Chief Justice Burger, Mr. Justice Rehnquist, and Mr. Justice Blackmun, have in extrajudicial statements indicated that they did not see a threat to judicial independence in predecessor measures to S. 1423.

Mr. President, before closing, I would commend my colleague and chairman of the Improvements in Judiciary Machinery Subcommittee, Mr. DECONCINI, for his efforts in bringing this important legislation before the Senate. Compliments are also in order for the diligence of the subcommittee staff in producing the excellent piece of legislation before us now.

Mr. President, I have heard the arguments on both sides and I remain convinced that this is a needed change to promote publice confidence in the judiciary. I endorse S. 1423 and encourage my colleagues to do the same.

I thank the Chair.

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. SCOTT. Mr. President, I appreciate the Senator yielding.

I believe that this proposal before us, the effort to provide tenure for our Federal judges, is a very fine thing. I feel that we should, that every official elected and appointed should from time to time have to account for his stewardship.

We in the Senate are elected for periods of 6 years and Members of the House of Representatives for 2 years.

So far as I know, all public officials from time to time have to account for their stewardship. Yet we find in the Constitution in article III the judicial power is vested in the Supreme Court and such inferior courts as the Congress may from time to time ordain and establish, and it provides that the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.

During good behavior, I believe, is the fly in the ointment insofar as this bill is concerned.

In my judgment, the bill is contrary to the Constitution. I think it is an act of futility for us to pass this measure, because I believe the only way that we can remove a Federal judge is through the impeachment process, and that is provided for. The House of Representatives impeaches, the Senate tries anyone that has been impeached by the House and has the power to remove that person from office. I feel that when we attempt to short circuit the regular procedure as is provided in the Constitution that we are attempting an unconstitutional act.

I know in some of our State courts we do have similar procedures, but in the State courts the judges hold their offices for terms.

In my own State of Virginia, a trial judge is elected by the General Assembly for a period of 8 years. A judge of our State Supreme Court is elected by the General Assembly for a period of 12 years. We have a procedure somewhat akin to what is provided for in this bill, but it is a different situation.

During good behavior, that is lifetime tenure unless removed by the Senate after the House has impeached.

I have offered a measure that would provide for tenure whereby we would amend the Constitution to provide that for the reconsideration of a judge every 10 years he could be renominated, the Senate would have the opportunity to reconfirm. To me, this is the proper procedure to follow and not the procedure that is provided in this bill. A good effort being made, but going at it in the wrong manner.

I hope this bill will be defeated, because I do not believe the Senate should pass an unconstitutional act, knowing it to be contrary to the Constitution, or having a reasonable doubt as to its constitutionality, and passing that burden on to the Supreme Court.

Did my colleague from Maryland want me to yield?

Mr. MATHIAS. I just wanted to have a moment to thank the Senator for his participation here and to say that I agree with him absolutely on both points he made, that if the change is to be made, the Senator from Virginia is exactly right, it has to be made through the amending process.

Mr. SCOTT. We had this matter up during the 94th Congress. The distinguished occupant of the chair, the junior Senator from Georgia, appeared before the subcommittee. We had others that appeared before the subcommittee. No action was taken by our subcommittee at that time and for the primary reason that we were of the opinion that this proposal was contrary to the Constitution.

Now it has been changed in that it has added the Justices of the Supreme Court, but the Justices of the Supreme Court would be handled in a different manner.

It would be recommended to the House that impeachment proceedings be brought against a Justice of the Supreme Court if he did not behave in the proper manner, if he were found to be guilty of wrong behavior, and perhaps that phase of it might be constitutional, where a recommendation would be made and the House and the Senate would act in a constitutional manner. But the bill, in my judgment, is contrary to the Constitution.

Does the Senator from Florida desire to speak?

Mr. CHILES. I desire to speak a moment on the bill, if I may.

Mr. SCOTT. The Senator from South Carolina yielded 5 minutes, and if time remains, I yield it to the Senator from Florida.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. THURMOND. Does the Senator wish to speak for or against the bill?

Mr. CHILES. For the bill.

Mr. THURMOND. The Senator from Arizona has time.

Mr. DECONCINI. I yield 5 minutes to the Senator from Florida.

Mr. CHILES. Mr. President, I welcome the opportunity to say a word for this bill.

If there is any concern by the distinguished Senator from Virginia, I say to him that I worked for this bill, and I consider it to be constitutional. I want to relieve any concern he might have.

All of us are constitutional experts, by virtue of being in the Senate. I suppose that is one of the things that go with us. I just want to say that I hereby pronounce it constitutionally sound, and I think it will stand the stamp of time in that regard.

We have a provision such as this, and we have a constitutional provision that virtually follows the U.S. Constitution in regard to the way we are set up to provide for impeachment.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. CHILES. I yield.

Mr. MATHIAS. I think the Senator is exactly right in saying that we have a duty to make that constitutional decision. I believe he has made the decision all wrong, but he has accepted the responsibility that we have to make that decision.

Mr. CHILES. I am delighted to accept it. I accept it for the distinguished Senator from Maryland, too, if he would like me to.

Mr. MATHIAS. The only problem is that the Senator from Florida has only 1-percent shot.

Mr. CHILES. Constitutional tests have been made on this in Florida. We have a constitution that is very similar. We copied the U.S. Constitution in setting up our provisions for the judiciary.

We found that we were in a situation in which we had impeachment processes, and I happened to sit in on the impeachment of a judge. The trial lasted days in the House. The House voted for impeachment. It went to the Senate, where the trial lasted for a period of weeks—2 or 3 weeks at least.

At that time, there were not sufficient votes, because I think it required a two-thirds vote of the Senate, and a tremendous expense was incurred. I am sure that made many people feel there is no reason to try to bring a judge up on charges. The legislature cannot afford it, the people cannot afford it, nothing is going to happen, and there is not going to be discipline.

That went on for a period of time, until we changed our procedure, and we provided that we could discipline judges, and that has worked very satisfactorily in our State.

I believe this is something we should try to do. The court certainly will rule on the question, if the matter is brought before it, and it will have occasion to instruct us as to its final ruling, as it does on every act we pass.

The committee has had a chance to look at this. It comes before us from the committee. A lot of work has gone into this. It seems to me that this is a pressing problem that we have in the country today.

We see the feelings of the people with regard to their respect for the courts, knowing that there is no way that we in the Senate can act properly in our role to try to serve with respect to impeachment, and knowing there are many times when we should not be impeaching but simply discipline a judge, to see that we are going to be able to have the proper judiciary.

I support this bill, and I commend the distinguished Senator from Georgia, who has been working long and hard to pass it. He has had support in this matter from many distinguished members of the judiciary who know this has to be done. They are outstanding leaders of the bar who know that we have long needed this kind of legislation. I support the bill.

Mr. BAYH. Mr. President will the Senator from South Carolina yield me a minute, so that I may ask a question of the distinguished Senator from Florida?

Mr. THURMOND. I yield 1 minute to the Senator.

Mr. BAYH. I appreciate the concern of the Senator from Florida and his sharing the Florida experience.

In dealing with this problem, did Florida amend the State constitution?

Mr. CHILES. I think we did it two ways. We had a procedure that was set up statutorily. We later changed it and had a judicial article changed, too.

Mr. BAYH. I bring this up, because 16 States do have this kind of mechanism, all of which felt that this was important enough that they should amend their constitution. It is a concern some of us have here, that we are getting into an area, when we go this route, of violating the Constitution.

I salute the Senator from Florida for recognizing the problem, although I do not agree with the remedy.

Mr. SCOTT. Mr. President, will the distinguished Senator from South Carolina yield me 30 seconds on the bill?

Mr. THURMOND. I yield a half minute to the Senator.

Mr. SCOTT. Mr. President, I have looked for authority with respect to this bill, and the only time the Supreme Court has addressed itself to this question, it was done by Mr. Justice Black and Mr. Justice Douglas. These were opinions in the case of Chandler against Judicial Council.

They were dissenting opinions, but they were not dissenting as to the fact that Federal judges, under our system, can be removed only through the impeachment process.

When we know that a bill is unconstitutional or have reason to believe it is, I believe we have a responsibility, as Senators, not to pass legislation, if we have reason to believe it is contrary to the Constitution.

I thank the Senator for yielding.

Mr. THURMOND. Mr. President, I yield myself 5 minutes.

Mr. BAYH. Mr. President, may I ask the Senator from South Carolina to give us a breakdown of the time remaining?

Mr. THURMOND. Will the Chair announce the time situation?

The PRESIDING OFFICER. The Senator from South Carolina has 19 minutes. The Senator from Arizona has 98 minutes.

Mr. DECONCINI. I yield the Senator whatever time he wishes.

Mr. THURMOND. Mr. President, although I am in control of time for those opposed to the bill and the distinguished Senator from Arizona is in control of time for those in favor of the bill, he is yielding me such time as I may require to speak in favor of the bill.

Mr. President, I already have spoken on this bill, and I shall say only a few words more. I agree with the distinguished Senator from Virginia that a Member of this body should support only legislation which he feels is constitutional.

In fact, when I came to the Senate, I resolved that I would ask myself three questions when I voted on a piece of legislation:

First, is it constitutional?

Second, is it wise?

And, third, can we afford it?

So I heartily agree with the able Senator from Virginia that no Senator should vote for this bill unless he feels it is constitutional.

I presume no one knows for sure that this bill is constitutional. There is no decision of the Supreme Court on this question. There is no precedent for us to go by. But I want to say this:

There is nothing in the Constitution that I know that would prohibit Congress from passing this legislation.

Article II, section 4, of the Constitution reads this way:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Mr. President, that says that if the President or the Vice President or civil officer is guilty of those things, on impeachment and conviction of those things, he shall be removed. He has to be removed if he is found guilty. But it does not say that this is the only way that they can be removed and it does not say that this is exclusive. Because it does not say exclusive, it seems to me Congress will have the right to pass this legislation.

Under this bill, also, judges may be better off than if they are impeached and tried because under this bill there is other action that can be taken. There can be involuntary retirement for a judge unable to discharge his duties efficiently because of permanent mental or physical disability, or a judge can be removed or censured for conduct inconsistent with the good behavior standard in article III. So this gives flexibility to the court that would act on this matter to determine whether a judge should be tried for impeachment or whether he should be tried for lesser conduct of misbehavior and maybe censure him or give him lesser punishment.

Mr. President, I realize, as has been stated, that Senators here on both sides are thoroughly conscientious and there is ground to take on either side that the bill is constitutional or unconstitutional, but those are merely opinions. There is nothing definite and no one can get up and say that this bill is unconstitutional or even say that it is constitutional. We can merely express an opinion.

I think it is constitutional; therefore, I support it. I think it has advantages. I think we need this flexibility. I think it will be a procedure where a judge will be considered by his peers and that might be better than to be considered by the House of Representatives and the Senate with a long drawnout trial. It seems to me that this will promote better administration of justice than just relying on impeachment alone. That being the case, I am supporting the bill and I hope it will pass.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MAGNUSON. Mr. President, I ask the Senator from South Carolina—the Senator from Arizona is not here—how does this bill affect senior judges? We have a system now with Federal judges when they reach the age of 70 they technically retire but they still come in and try cases. Does it affect them just the same as the full-time judges?

Mr. THURMOND. Mr. President, in reply, I will say they will not be affected on that.

Mr. MAGNUSON. No; I hope not. They are merely called in to help a crowded calendar.

Mr. THURMOND. That is right.

Mr. President, this merely provides in the case of misbehavior what would be done.

Mr. MAGNUSON. All right. I just wanted to know that.

Mr. BAYH. Mr. President, will the Senator yield me 4 or 5 minutes, please?

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Indiana.

Mr. BAYH. I might not want to use it all.

I only wish to say to my friend from Washington that under normal circumstances the response that he received would be accurate, but in the event that a majority of the judges on this panel thought that when you got beyond age 70 you were no longer competent performing the duties of a judge, they could drag you off of there the same as otherwise would be the case.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. BAYH. I am glad to yield.

Mr. MAGNUSON. What happens is that the presiding judge in, say, the

western district of any area, calls upon these people to come in and help him with a case.

Mr. DECONCINI. That is right.

Mr. MAGNUSON. So his peers have acted upon him in a sense if they think he is capable of trying the case.

Mr. DECONCINI. That is right.

Mr. MAGNUSON. They do that when they assign the case to him. Is that not correct?

Mr. DECONCINI. That is right.

Mr. BAYH. That is accurate. But if a majority of the panel disagreed with the judge who was asking for help, in my judgment they would have every opportunity to exercise the same removal power.

Mr. DECONCINI. If the Senator will yield, that is correct, but that would be a frivolous complaint. It has to be something of substance. A complaint would have to be filed. The fact he is 72 years old would not be enough and would be considered frivolous and dismissed.

Mr. BAYH. Of course, the complaint would not be based on the fact he was 72 years old or 66 years old, or whatever it was, but because he was unable to operate. It is the same kind of situation we have when we are trying to deal with a fellow who was sitting there and just was not working. Something has gone haywire and he was not functioning properly.

I cannot see how you can say you are going to give this panel an opportunity to remove the full-time judge without at the same time saying they are going to have the power to deny a part-time judge of having the opportunity to serve.

Mr. DECONCINI. The Senator has interpreted it incorrectly. You have to file some reason for the removal with your complaint. The Commission then sends it back to the local districts to be reviewed, and they are going to make some determination. They cannot dismiss that. They then forward it back with their recommendation. They can recommend that it is a frivolous complaint; that is only done because they do not think he is popular or they think he is too old.

Mr. BAYH. The Senator from Indiana has not stated the case well, and I apologize.

Let us take whatever the criteria is that the Senator from Arizona feels is sufficient to let this panel remove a judge, whether it is, drunkenness, adultery, blasphemy, playing golf, and going fishing instead of sitting and hearing cases, whatever it might be for which you are going to be removed. Let us accept that that case is going to qualify and the majority is going to vote to remove that judge. Suppose you can make the same case, with all of the same ingredients, about a part-time judge who is asked to serve. Is it not fair to suggest that the power to remove a full-time judge and prohibit him from serving is also there as far as removing a part-time judge?

Mr. DECONCINI. Yes; that is correct. But if the Senator is trying to leave the impression that it would be subject to abuse in the fact that it would be filed because a certain case was designated to a senior status judge, I do not think that is realistic.

Mr. BAYH. The Senator did not say that.

Mr. DECONCINI. What objection does the Senator have?

Mr. BAYH. The Senator suggested that he cannot categorically state, as my friend from Arizona said, this would not apply to part-time judges who are asked to serve. That is not what the Senator meant but is what the Senator said.

The fact is the same criteria would apply to part-time judges as are applied to full-time judges. If the majority of the judicial panel said, "You are not qualified to serve," out you go in either case.

Mr. DECONCINI. But the Senator from Indiana said the panel could take them off because they were senior panel judges.

Mr. MAGNUSON. He does not ask to serve particularly; he merely says he is available for service, and the presiding judge—they have meetings—and he picks up Judge A who says "Here is a big case and the calendar is full," and he is willing to take on the case, and that is what happens. He does not ask to be put on.

Mr. BAYH. I do not know who has time, but I would like to pursue this for just a bit.

The PRESIDING OFFICER. Does the Senator yield time?

Mr. DECONCINI. Yes.

Mr. BAYH. This is really the kind of thing that worries the Senator from Indiana. If you have a clear-cut case of negligence, malfeasance or misfeasance and the judge is not qualified to serve, then I am not worried about what the panel is going to do. They are going to make the right decision.

I am concerned about the marginal question of whether he is qualified or is not qualified, and then in that instance the fact that the fellow is older might have the kind of an impact on the mind of those judges sitting there who want to see the judicial system turned over and old people purged and young people brought in. That is the kind of thing that could enter their minds, and that is the kind of thing that really concerns me about this legislation.

Mr. DECONCINI. But the Senator is using "qualified" as the standard. The standard is good behavior. That is the difference as to whether he qualifies. If he did not qualify he should not be on there in the first place. He should be there on good behavior.

Let us take the Senator's situation that he cited where someone files a complaint that is questionable, and the court decides to hear it. The judge at that time is able to have counsel and is entitled to full due process to present his side of the story in opposition to the complaint. Every protection is there.

Then after that it is subject to Supreme Court review. I do not know what more protection you can grant except, as the Senator suggested earlier eloquently, not to have this.

Mr. MAGNUSON. What bothers me a little is the question of is he qualified or not qualified for the particular case they ask him to come in on or is he not qualified to handle any case.

Mr. DECONCINI. That would not be subject to this bill at all.

Mr. MAGNUSON. What about a lawyer on one side or the other, the calendar is full, the regular judges are just rolling, so here is a retired judge—they call them senior judges—who says he would be willing to hear the case. Can a lawyer file a complaint against him on the basis that he is not qualified because of age? Could that happen?

Mr. DECONCINI. If a lawyer files a complaint based on that set of circumstances it would be dismissed because it would be considered frivolous. It is outside the jurisdiction of the Commission.

Mr. MAGNUSON. The judges would not ask him unless they thought he was qualified, I would assume——

Mr. DECONCINI. That is right.

Mr. MAGNUSON (continuing)—To handle this particular case, I am talking about the senior judge.

Mr. DECONCINI. Mr. President, I ask for the yeas and nays.

Mr. BAYH. Mr. President, will the Senator yield to permit me to ask him a question? In discussing this with the Senator from New York and the Senator from Maryland we do not want to be put in a position where by opposing the bill, opposing the efforts that the Senator from Georgia and the Senator from Arizona have embarked upon, that we give the impression that we do not recognize that there is a problem.

What I would like to do at the proper time and, frankly, you probably will beat us—I do not know where the votes are on this—but I would like to have this matter recommitted to the committee for further study without instructions. But I think that is what we want to do, not to say we are against this effort but we think this matter needs more thorough discussion, and I say that right now.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Is the proper time to make that request when all time is yielded back?

The PRESIDING OFFICER. The Senator can make that request now with a time limit of 20 minutes under the present order.

Mr. BAYH. Let me make that request. I move, Mr. President, that the bill be recommitted to the Judiciary Committee for further consideration. I will ask for the yeas and nays and will say, unless someone else desires to do this, that I do not want to prolong it unnecessarily, so, it would seem to me, there would be no need to have a roll-call on passage on this, but to just have one vote on the measure.

Mr. THURMOND. Mr. President, if the Senator has made the motion, I move to table the motion.

The PRESIDING OFFICER. There are 20 minutes on this particular motion. Until that time is yielded back, the motion to table would not be in order. There are 20 minutes.

Mr. THURMOND. Is the Senator ready to yield back the time?

Mr. BAYH. I think we have heard all that we possibly can.

Mr. SCOTT. Mr. President, will the Senator yield briefly? As I understand it, we did not have a rollcall vote on reporting this bill. In fact, I do not even remember when we passed it out from the Committee on the Judiciary. I do not doubt for a moment that we did this, but apparently it was without a rollcall vote, and on a matter of this importance certainly the Committee on the Judiciary should have a rollcall vote, so I support the motion the distinguished Senator from Indiana proposes that it be recommitted to the Commitee on the Judiciary.

Mr. BAYH. I appreciate the remarks of the Senator from Virginia.

Mr. THURMOND. Mr. President, from what I understand, both sides are ready to yield back the time. There will be a motion by the distinguished Senator from Indiana to recommit the bill, and at that time I will move to table that motion.

The PRESIDING OFFICER (Mr. TALMADGE). The motion to recommit has already been made. The question is on yielding back the 20 minutes.

Mr. BAYH. I would just like to make a 1-minute observation.

The thrust of this motion is very much in line with what we have been trying to say. There is a problem on occasion with judges who are not qualified to serve and that this matter should be handled in a way in which the Judicial Conference is given additional power, they make strong recommendations, and we can legislate, the Congress being required to act upon receiving certain kinds of recommendations.

We do not take away the right of Congress to impeach judges and give it to a panel of judges, this kind of unheard of authority. That is what we are trying to do. I would hope we could put it back in committee and come up with a solution to the problem.

Mr. NUNN. Mr. President, will the Senator yield on his 10 minutes just for a brief comment? I have no objection to proceed to a motion to table a motion to recommit, and certainly if that motion fails, of going ahead with a motion to recommit. I hope that will be defeated. But I would hope after years and years of debate on this particular issue, considering the importance of the issue, we ought to have a rollcall vote if the motion to recommit is defeated.

I would like to have a rollcall vote on passage of this legislation. If the sense of the Senate is such that we have a majority or very close vote on this, it is obvious it probably is not going to get very far in the House, but I think we ought to know this. This has been worked on for some 35 or 40 years, and some will say 100 years, and I think we ought to find out the sentiments of the Senate about whether we are going to do anything about some of the abuses that have taken place and continue to take place on the Federal bench.

Mr. THURMOND. Mr. President, if we are ready to yield back our time——

Mr. ROBERT C. BYRD. Mr. President, I hope the Senators will not yield back their time so that we can get the word out that there is going to be a vote, if the Senators can avoid yielding back their time for the present.

Mr. NUNN. Mr. President, will the Senator yield?

Does anyone object to going ahead if the motion to recommit does not prevail, of going ahead with a final vote on this bill? Does the Senator from Indiana have any objection to moving on to a vote if his motion fails?

Mr. BAYH. I think my friend from Georgia very thoughtfully mentioned in his remarks that the Senator from Indiana has tried in every way to cooperate with everyone who is for this legislation.

Mr. NUNN. And I commend him for it.

Mr. BAYH. I just felt compelled to point out we are on some very dangerous constitutional policy grounds, and I feel what we are really after is to recommit this bill and get a better solution; not to take a position that makes it look as if we do not recognize the problem.

Mr. NUNN. I understand the Senator from Indiana's position and I commend him for making a very erudite statement here on the floor. I do not happen to agree with his conclusions, but I do know there are two sides to the question. It is not an easy question. It is a close question, as I said earlier. I do not believe anybody can stand here and guarantee that the bill is constitutional. On the other hand, I do not think anyone can guarantee it is not constitutional, and I am persuaded that it is. But I would like to get a rollcall vote if the motion to recommit is not agreed to by the Senate, and I think the majority leader might want to notify Senators, if there is no disagreement on this, that we would have the likelihood of two rollcall votes, after which this bill will be concluded one way or the other.

Mr. ROBERT C. BYRD. I wonder if we can get consent that if the motion to table—am I to assume that there will be a motion to table the motion to recommit—if the motion to table the motion to recommit fails that the vote then occur immediately on the motion to recommit, and if it fails, that the vote occur immediately on the passage of the bill. Could we get that agreement?

Mr. NUNN. I certainly have no objection.

Mr. ROBERT C. BYRD. All right; then I modify my request as follows: Mr. President, I ask unanimous consent that if the motion to table fails, I take it the motion to recommit will occur immediately, because time will have expired, and if the motion to recommit fails, there will be 10 minutes for debate before final passage, that it be divided equally between Mr. DECONCINI and Mr. THURMOND, and that a vote then occur on passage.

The PRESIDING OFFICER. The committee substitute would have to be acted on first.

Mr. ROBERT C. BYRD. Yes; I ask unanimous consent that after the 10 minutes of debate, the committee substitute be acted upon without further debate or motion, and that upon the adoption of the committee substitute, a vote then occur upon the bill.

Mr. NUNN. Mr. President, does the majority leader's request include a request that if the motion to table the motion to recommit is agreed to by the Senate, we would go to final passage of the bill? Is that the request?

Mr. ROBERT C. BYRD. If the motion to table the motion to recommit——

Mr. NUNN. Passes.

Mr. ROBERT C. BYRD. Carries, then would Senators not want 10 minutes for debate?

Mr. NUNN. I think we have debated it pretty thoroughly. I think we could go on to final passage.

Mr. ROBERT C. BYRD. Then, in that event, there would be no further debate; but if the motion to table the motion to recommit fails, and the motion to recommit fails, would Senators then want 10 minutes of debate before the vote on passage?

Mr. BAYH. May I say to the majority leader I think we have discussed this up one side and down the other, but giving us 10 minutes, I think, gives us a safety valve, and it is not necessary to take the 10 minutes.

Mr. ROBERT C. BYRD. I agree with that, that Senators have 10 minutes which they may yield back.

Mr. NUNN. Mr. President, before concluding the debate, I would like again to commend the Senator from Indiana and the Senator from Maryland. I know they have strong views on this subject. I just want to say if the motion to recommit of the Senator from Indiana passes, I pledge my support in looking for another solution. I believe this is the best solution we can come up with, but I think the Senator from Indiana has shown a very constructive attitude, and if his motion is agreed to, I pledge my support in a search for another solution.

Mr. BAYH. Would the Senator from Georgia like to have another minute or two to proceed in that same vein?

Mr. NUNN. No, because I really do not want anyone to believe that I think the Senate would buy the Senator from Indiana's argument.

Mr. MAGNUSON. Let's go. Let's vote.

Mr. MATHIAS. Mr. President, if the Senator from Indiana will yield for a moment, I believe the pledge the Senator from Georgia has made to devote his astute mind and his erudite legal talents to this matter will make the passage of the motion to recommit virtually certain.

Mr. NUNN. Unfortunately there have not been enough Senators here to hear that argument and be persuaded.

Mr. MAGNUSON. Vote!

Mr. ROBERT C. BYRD. Mr. President, I would hope we could have just a very few more minutes before voting.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, I ask unanimous consent to proceed for 2 minutes on the motion.

The PRESIDING OFFICER. The Chair did not understand the Senator's request.

Mr. DECONCINI. Two minutes on the motion to recommit.

Mr. BAYH. The Senator has 10 minutes on the motion.

Mr. DECONCINI. All right; I yield myself, from the 10 minutes on the motion, such time as I may require.

Mr. President, I think we have had a good day of discussion, and we have gone over the matter with a fine-toothed comb.

I would like to remind the Senator from Indiana, the Senator from Maryland, the Senator from New Mexico, and the Senator from Georgia that a great deal of time and effort has been put into this proposal. It is not a piece of legislation that just came zipping out of the Judiciary Committee this year. It has had a history of constant hearings, with some 50 witnesses. It has been going on since 1968, in the 90th Congress.

Such outstanding Senators as Senators Tydings, EAGLETON, Goodell, HATFIELD of Oregon, MAGNUSON, MONDALE, MUSKIE, SCOTT, STEVENS, and Yarborough have served as cosponsors of this legislation, the Judicial Reform Act. The 92d Congress took it up, the 93d Congress took it up, the 94th, and the 95th. Thanks to the distinguished Senator from Georgia we were able to again bring this matter to the Judiciary Committee and thus hold hearings this year.

The constitutional question that we have hashed over very thoroughly today, I think, is one no one can be sure of, and that is the risk of being a legislator: You are passing on laws and passing judgment, and we all have to make the judgments for ourselves.

But it is interesting to note, as has been called to the attention of this body, that some very fine groups intimately involved in the law and in constitutional matters, such as the American Bar Association, the American Judicature Society, the Department of Justice, and the American Association of Attorneys General have all endorsed this measure, along with many scholars of constitutional law. This measure has wide support in the Senate, and I think it merits passage.

I am not standing here to say this is going to satisfy all of the problems of misbehaving judges, but it certainly will provide the American people, for the first time, some hope that judges are as responsible as anyone else is. The idea that we cannot alter the Constitution under article III, section 1, in interpreting the good behavior clause, does not make good sense to me. Article I, section 8, the necessary and proper clause, certainly gives the legislative branch, the House and the Senate, the right to do what we are doing today, and I sincerely hope that the Senate will join in supporting Senator THURMOND's motion to lay on the table the motion to recommit.

Mr. ROBERT C. BYRD. Mr. President, before Senators yield back their time, will they yield me some time?

Mr. THURMOND. Mr. President, I yield back the time on this side.

The PRESIDING OFFICER. Who yields time to the Senator from West Virginia?

Mr. DECONCINI. I yield to the Senator from West Virginia.

## THE NATURAL GAS CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, both Mr. ABOUREZK and Mr. METZENBAUM are here, and both Mr. BARTLETT and Mr. HANSEN are here——

Mr. METZENBAUM. If the Senator will yield, I do believe Senator LONG——

Mr. ROBERT C. BYRD. We tried to reach him and could not find him. But I believe there are Senators here to represent Senator LONG's point of view.

We have attempted, during the afternoon, to reach an agreement which would permit the Senate to proceed with debate on the conference report on natural gas tomorrow, the rest of the day today and tomorrow, and Monday and Tuesday and Wednesday, and which would protect all Senators who are away from town in the meantime from any surprise motion to table the conference report. Such a motion would, of course, be nondebatable, and there would be no way to protect Senators who are out of town. There are Senators on both sides of the aisle and Senators on both sides of the question who need to be protected.

Those of us who support the conference report are willing to enter into an agreement to protect Senators against a motion to table the conference report. We are willing to enter into an agreement to vote up or down on a motion to recommit the conference report, and set a date and an hour next week at which time that vote would occur. We are also willing to agree to set a date and an hour as to when the vote would occur up or down on the conference report itself.

The matter has been debated pro and con in the Senate now for 16 months. It has been debated in conference during that 16 months, certainly for 8 or 10 months. It is a lengthy report, and certainly is worthy of a reasonable amount of time and consideration. So I am not pressing for a vote on the conference report tomorrow or the next day or next Monday or Tuesday or Wednesday.

I would like for the Senate to begin debating the conference report, however, with an equal division of time, so that neither side will take all the time, and with the built-in protection for those Senators who are not in town against a surprise motion to table the conference report, which would be nondebatable.

I do not believe we have been able to be successful. Some of the participants on both sides of the question are willing to enter into such an agreement, but I think I ought to make one final effort to see if such an agreement could be reached.

While I say I would prefer an agreement that would see the Senate complete action on the conference up or down at a given date and hour, I am not asking for that now because I know that would be futile.

Therefore, in the interest of getting the measure up for debate, having equal time on both sides of the question, and to fully protect Senators on both sides of the question, on both sides of the aisle, who are out of town against a surprise nondebatable motion to table, I make the following request:

I ask unanimous consent that if the conference report is called up today or tomorrow, no tabling motion, no motion to table the conference report, will be in order prior to a vote up or down on a recommittal motion, neither of which votes will be in order before next Wednesday at 6 p.m.

The PRESIDING OFFICER (Mr. NUNN). Is there objection?

Mr. ABOUREZK. Reserving the right to object——

Mr. ROBERT C. BYRD. And that the time in the meantime be equally divided between Mr. JACKSON and Mr. HANSEN.

Mr. ABOUREZK. Mr. President, I want to yield to the Senator from Vermont but I want to ask a question of the leader before I do yield.

The prefatory remarks that the leader made to his unanimous-consent request indicated somehow that he philosophically or technically or procedurally could not call up the conference report without this agreement. I just want to ask the leader, is there anybody here preventing the chairman of the Energy Committee or the leader from calling up the conference report? We are all for it. That is what I am trying to say. He can call it up any time he wants to and we are ready to go. I have planned the last year of my life around that conference report and I am waiting.

Mr. ROBERT C. BYRD. Mr. President, I have the floor. I do not lose the floor while making my unanimous-consent request. I will answer the question.

Those of us who support the conference report are ready to enter into an agreement to vote on a motion to recommit at a certain date, on a certain hour. That is for the protection of Senators who are out of town. We want to protect Senators who are out of town against any surprise motion to lay on the table this conference report, a motion which is not debatable.

The answer to the Senator's question is no, there is nothing to prevent the Senator from Washington from calling up the conference report right now except—except—the desire of the majority leader to protect Senators on both sides of the aisle. I want to protect him. I want to protect Senators on both sides of the question, and my colleagues on want to protect Senators on both sides of the aisle. Most of them want to afford the same protection against a surprise motion to table this conference report. That is all that is keeping the Senator from Washington——

Mr. ABOUREZK. Mr. President, I was recognized.

Mr. ROBERT C. BYRD. No, the Senator from West Virginia——

The PRESIDING OFFICER. The majority leader asked for unanimous consent and the Chair asked if there were any objections.

SEVERAL SENATORS. Reserving the right to object.

Mr. ROBERT C. BYRD. Mr. President, in making the request——

Mr. ABOUREZK. Who has the floor, Mr. President?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. A Senator does not lose the floor when he makes a unanimous-consent request, but other Senators can reserve the right to object. I would like to yield for a moment to the Senator from Vermont (Mr. LEAHY).

Mr. LEAHY. I thank the majority leader. I will be very brief. I reserve the right to object, though I will not object. I can truthfully say, Mr. President, that I am one of what I think is a fairly significant number of Senators who really have not made up their minds on this matter. Of course, a filibuster could occur, obviously. I might say, if I was leaning any way, I would be leaning against the conference report, but I will make up my mind based on what I hear in debate on the floor of the Senate, not from the lobbyists or anybody else. Quite frankly, I would hope that an agreement can be worked out on specific times and that during that time we can have full, significant debate on both sides of the issue for the benefit of those of us who have not been able to make up our minds, and for those of us who would like to be able to make up our minds in the way the Senate is designed. That is through debate.

I would really hope that nobody would object to a unanimous-consent request that would allow specific times set out for specific debate where we can plan our schedules, knowing when we can come in and hear the pros and cons of this matter.

Mr. ROBERT C. BYRD. Mr. President, that is the whole point I am making. That would give all Senators a date and an hour on which they could expect to be here, to know that the votes would occur on this very critical issue on which I am sure all Senators feel they want to be recorded.

Mr. JACKSON. Reserving the right to object——

Mr. ABOUREZK. Mr. President, may I be recognized?

Mr. JACKSON. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia has the floor. The Senator has a pending unanimous-consent request.

Is there objection?

Mr. ABOUREZK. Mr. President, reserving the right to object.

Mr. BARTLETT. Mr. President, reserving the right to object.

Mr. ROBERT C. BYRD. May I yield to the Senator from Washington?

Mr. BARTLETT. I will reserve the right to object, but I think some of us would also like to participate in this discussion, and I am one of those.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may have the floor for 10 minutes while Senators may reserve the right to object. Mr. BARTLETT, Mr. HANSEN, Mr. ABOUREZK, and Mr. METZENBAUM may have the 10 minutes equally divided, 2 minutes each.

The PRESIDING OFFICER. Is there objection to that unanimous-consent request? Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, the first thing I would like to address to the distinguished majority leader is this: We have no intention of surprising anybody with any motion to table or motion to recommit. What we are willing to do is that if we do decide to make a motion to table or a motion to recommit, we will give adequate notice for that, although we do not want to agree to a time agreement.

Now, if, as the majority leader has said, he is interested in protecting the rights of absent Senators, and I am not here to try to tell the leader how to do his business of scheduling the Senate, I might just offer a suggestion: Call up the bill after you have given notice. Do not call it up today and make us sit here for 5 days after everybody leaves town and goes and campaigns knowing there will not be a vote until next week, with HOWARD METZENBAUM and I sitting here talking to each other about the natural gas conference report, trying to convince SCOOP JACKSON.

Mr. ROBERT C. BYRD. Is the Senator willing to agree that no motion to table the conference report will be made?

Mr. ABOUREZK. No; I cannot do that, as I stated this morning. It has the very same effect of running everybody out of town so they can campaign. They will know they are safe. When we debate the natural gas bill we believe it is of such significance that we ought to have a shot at getting Senators on the floor. We know they are not going to come over, all of them. We know that even if they are in town they are not going to come over. But if they are out of town, we do not even have a shot at them and I do not think that is fair, Mr. President. I think it is unfair to us.

We do not have the ability, Mr. President, to go down here and offer nuclear aircraft carriers or deep water ports in the Missouri River in South Dakota or nuclear breeder reactors or judgeships, or whatever else they have been promising at the White House. We have to depend upon debate in the open light of day in the Senate Chamber. That is the only thing we have.

We have to be able to do that. We have to have a shot at getting Senators over here to listen to what this natural gas bill is all about.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. ABOUREZK. HOWARD wants to yield me 1 minute.

Mr. METZENBAUM. I yield 1 minute.

Mr. ABOUREZK. This natural gas conference report, Mr. President, was fashioned in secret. We never had a chance to debate this conference report in the conference committee. There are many of us who are members of the committee who did not get invited to the meetings. They were held in secret, barred from the press, from the public, from many Senators who were, in fact, members of the conference committee. I do not think it is too much to ask that we have a chance for full participation of the Senate in debating this natural gas conference report.

I thank the Senator for yielding.

Mr. BARTLETT. Mr. President, I want to comment on the remarks made by the distinguished Senator from Vermont. He and I had a conversation privately, similar to this. I should like to say to him that I know he is very serious and sincere about participating and asking questions and listening to the debate that would take place. But I think he is the exception. I think that there will be some interested in the debate, but the debate is actually taking place right now, outside of this Chamber, with people explaining the conference report, others explaining the motion to recommit with instructions and what that does.

I should like to see us enter into a debate on the floor, but I do agree that if we enter into a restriction, then we are not going to have any audience outside of this Chamber, or in it, to talk to and explain our position and our side. I agree with him that there are many undecided voters. There are many people who are very confused, and I think rightfully so, because I think this is an extremely confusing bill.

A number of people have read it recently and they are very confused; they do not understand it. I think it is very important that we have a chance to explain our side and, certainly, the administration and Senator JACKSON, my chairman, will have an equal or even a better chance to explain their side, which is also important. We are both doing this at the present time and I think this will continue until the decision is made to bring the bill up. Then I guess that whichever side, at some time, decides it has the votes, will act. Right now, my own opinion is that neither side does.

I think we need to move as quickly as we can to have the bill brought up without any restrictions on the debate.

Mr. JACKSON. Mr. President, this is not just another bill. Without a doubt, I think it is the most important piece of domestic legislation that has been brought up in this Congress. As the majority leader has mentioned, the bill has been before the House and Senate for over a year. A lot of hard work has gone into it, day and night.

I think, Mr. President, that the distinguished Senator from Vermont (Mr. LEAHY) summed it up very well, that he would like to know when critical votes are going to occur. I can only say, Mr. President, that the decent thing to do, in the closing hours of this Congress, is to let our colleagues know when a critical vote—not just another vote—is going to occur. That, to me, is a test of decency.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. JACKSON. Yes, I yield.

Mr. ROBERT C. BYRD. There are 29 of them absent today. If a motion to table that conference report were to be made right now, 29 of our colleagues would be caught short.

Mr. JACKSON. I just want to point out that a motion to table could occur at any moment under those circumstances and how would this body look, with 29 absentees, voting on a critical matter such as the key part of the President's energy program?

I hope that the suggestion made by the distinguished Senator from Vermont, who is uncommitted and, he has indicated, may be leaning against the conference report—his recommendation makes a lot of sense, because it is the right thing to do in light of all the circumstances. I hope, Mr. President, that we can have a vote in which all Mem-

bers of the Senate will be able to vote on this, the most important domestic piece of legislation we have in this Congress.

Mr. HANSEN. Mr. President, let us recall what the history is. I hold few people in higher esteem than my good friend, the Senator from Washington (Mr. JACKSON), but if I recall correctly, it was he who spoke about legislation in the sunshine. Speaking as a member of the old Interior Committee and, more recently, the Energy and Natural Resources Committee, we held legislation in the sunshine. We held hearings, we held markups, we did not have any secret sessions.

Then what happened last spring? It is all well and good to say that 29 or 27 Senators are not here. The fact is that a very select, handpicked group sat down together for several months. I was not there; the Senator from Ohio was not there; the Senator from Oklahoma was not there; the Senator from Connecticut was not there, nor was the Senator from Nevada. I could go on and on.

We do not know what is in this bill and most Senators, I say categorically, do not know what is in this bill. After it had been seemingly brought into agreement and the thing fell apart here a few weeks ago, there were changes made on 119 pages; 119 pages were changed. I did not know what was being changed, nor did any other Member of the Senate, other than those who were participants in the secret session. That is exactly what we are talking about.

I have been around here not as long as many, but more than some, and I am aware of this fact: If you want to insure that very few people will be here to understand this bill as, indeed, we should understand it, let us agree to this unanimous-consent request and there will not be many people around until next Wednesday.

On the other hand, and this is precisely the crux of the matter, I think, the reason—and I can understand why my good friend, the majority leader, the Senator from West Virginia (Mr. ROBERT C. BYRD) and the Senator from Washington, do not want to bring up the bill now. It is not so much that we may come up with a surprise motion to table.

I guess my time is up.

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senator have 30 seconds. I want to hear what he is going to say about the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HANSEN. The concern is that no one knows exactly how this vote may come out. But obviously, the leadership does not have sufficient confidence to run the risk of bringing it up now. We are not going to surprise them by saying, "We'll table in the next 15 minutes." We shall give them adequate notice. But they are on notice that, under the rules of the Senate, that motion is in order and it is not debatable.

Mr. ROBERT C. BYRD. That is right.

Mr. HANSEN. I say there is nothing wrong with that, and if you want to assure that there is an understanding by all Members of the Senate, proceed under those rules, because everyone then is on notice that that motion is in order.

If we want to have them all, let us bring it up Monday. That is fine with me. But let us not go through the charade of trying to lay it down now and letting people scatter to the four winds and not return until Wednesday. I want the Senator from Vermont and every other Senator to know what is in that bill. I am persuaded that if they know what is in this bill, this compromise will not fly.

Mr. ROBERT C. BYRD. I ask unanimous consent now that I may have 1 minute to respond to the Senator, who mentioned my name.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, the Senator just might be surprised. He could be surprised.

Mr. HANSEN. I have been many times.

Mr. ROBERT C. BYRD. He has been many times, and undoubtedly he could be again.

Do not bank, just do not bet on the reason that the Senator has just stated as being the reason why the majority leader does not want to call up this measure right now. The majority leader has contacted, I daresay, more Senators, face to face, person to person, on this one issue than anybody else in the administration, outside the administration, in this Senate, or outside the Senate. I have the talley sheets here. I only take a man's word on this issue when I hear him say it with his own lips.

So it is not that I am afraid to call it up now, not that I am afraid to call it up now. We can beat you on a tabling motion today. We can beat you on a tabling motion. I would be willing to call it up right now, move to table myself and vote against the tabling motion, and show you we can beat you.

Mr. HANSEN. We are all ready.

Mr. ROBERT C. BYRD. We can beat you. But I do not want to catch Members on your side of the aisle, who are running for elections, out of town with that kind of surprise, low-blow motion.

But do not say that we are afraid we do not have the votes to beat a tabling motion. We can beat a tabling motion today. But I want a time that all Senators may know that they can come and vote on a motion to recommit, which I understand will be proposed. I think it is only fair to them and fair to the Senators who are here to know when that critical vote is going to take place.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Ohio has 1 minute.

Mr. METZENBAUM. Mr. President, I ask unanimous consent to have 3 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I agree with the majority leader that a motion to table, I think, could be defeated at the moment. I am prepared to say to the majority leader that I would support that motion today or at any other day because I do not want to defeat the Natural Gas Pricing Act and that is what we are talking about. We are talking about an alternative. We are talking about a bill. We are not talking about defeating the bill, and the issue has been totally confused.

I do not want to kill a bill and neither do many of these other persons who have stood with us on the motion to commit. But I have said to the majority leader Tuesday and on Wednesday, I was prepared personally to bring up the bill and with a time limit because I feel confident of our position, and if we cannot prevail, so be it.

But I have been persuaded by the logic of the position and the arguments that have been made, I have been persuaded by the fact that if the Senator says we are going to vote next Thursday, or next Wednesday, or next Tuesday, nobody is going to be on the floor. Everybody is going to run for home, and, if I did not have to protect the floor, I would be one of those running for home, as well.

I think the bill ought to be brought up because I do not think there is any chance this conference committee report can be tabled.

I say that because I am prepared to work the floor and try to urge people not to vote for a motion to table the conference committee report, and I do not think anybody is going to offer a motion to table the conference committee report. I think my friend from Wyoming would probably be in the same position. Nobody wants to kill the bill.

Mr. HANSEN. Will the Senator yield 15 minutes?

Mr. METZENBAUM. 15 seconds.

Mr. HANSEN. I mean 15 seconds.

He and I are cosponsors of a Dear Colleague letter which says precisely what we want to do. We are not going to try to table this bill. My good friend from West Virginia knows that.

Mr. ROBERT C. BYRD. I do not know it. I do not know it. If the Senators are willing to say they are not going to do that, let us enter into the unanimous consent agreement.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Ohio's 3 minutes have expired.

Mr. METZENBAUM. One second more.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ABOUREZK. I ask unanimous consent for 1 minute.

Mr. JACKSON. 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. I cannot say what other people will do, but what I will encourage them to do, and I will work against a motion to table, I can say I, personally, will not offer a motion to table. But as far as the unanimous consent, there are others in this body who have a view as well and, as we know, it takes unanimity.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. METZENBAUM. I certainly will.

Mr. ROBERT C. BYRD. I can assure the Senator, if talk lapses, we can put some other bills into the gaps and there will be votes to keep Senators in town.

Mr. METZENBAUM. I say to the Sen-

ator that I truly do not believe anybody will offer a motion to table. I do not believe that.

Mr. ROBERT C. BYRD. I think the Senator is very sincere in saying that, but I think we have to guarantee to our absent colleagues that a surprise motion will not be made.

Mr. ABOUREZK. Mr. President, I ask unanimous consent for 2 minutes on this issue.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, I think it is important, I think the Senator from Ohio brought up a very important point. I do not know that anybody in the coalition that is opposing the natural gas bill wants to do away with emergency allocation, and that happens to be in the substitute that we intend to offer when this thing does come up for debate.

I think the real issue of this is, do we want to debate at a time when we can have people's attention, at least those willing to come over to the floor to listen to the debate. That is the issue.

The attempt on the part of the chairman of the Energy Committee and the majority leader to paint this as coming within our control is an attempt that is not valid, Mr. President. What it amounts to is this, the control——

Mr. ROBERT C. BYRD. Will the Senator agree to my request, then?

Mr. ABOUREZK. Pardon me.

The control of the conference papers are within the control of the chairman of the Energy Committee (Mr. JACKSON). He can call up the conference report at any time he wants to.

We have told him that we are here now to protect against losing our rights under a unanimous-consent request.

He can bring that conference report up now and we are willing to go into debate with him and the majority leader when he discusses this matter, and, apparently, for some reason, do not want to call it up, and it goes beyond that. It goes beyond that then not wanting to call it up. They want to lay it off on us as though we had control. We do not have any control. We are here just waiting at their mercy.

We asked Senator JACKSON for the papers and said we would call it up. He said, "You can't have them. I've got them in my pocket," or wherever he keeps them. I think they are too bulky for his pocket. But he has got them and he will not give them up and we are willing to go anytime he wants to offer the report.

Mr. JACKSON. A big dark secret. It is part of that secret meeting we had.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent I may proceed for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. SCOTT. Mr. President, reserving the right to object, and I shall not object, this is going on and on. I have told my staff I would be back over there to sign my mail. There should come a time when this terminates.

Mr. ROBERT C. BYRD. I agree, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, let me simply say, the Senator from South Dakota has said that the majority leader and the manager of the conference report have it all under their control. That is not quite correct.

Any single Senator who wishes to move to table the moment we bring it up has it under his control to bring about an immediate vote.

Mr. ABOUREZK. The Senator said he can beat us.

Mr. ROBERT C. BYRD. But who wants to do this with 29 Senators out of town?

Mr. ABOUREZK. I do not want that.

Mr. ROBERT C. BYRD. And they will pick the time to move to table.

Mr. ABOUREZK. That is better than the Senator picking the time.

Mr. ROBERT C. BYRD. All right.

Mr. President, I ask the Chair to put my request.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. I object.

Mr. HANSEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I make one further request, I ask unanimous consent the conference report may be called up with no tabling motion of the conference report to be in order today or tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. Reserving the right to object, the Senator is talking about the natural gas conference report?

Mr. ROBERT C. BYRD. I agree.

Mr. ABOUREZK. And the Senator is trying to limit our rights to offer any kind of tabling motion, or something else, at any time?

Mr. ROBERT C. BYRD. Today or tomorrow. No tabling motion today or tomorrow.

Mr. ABOUREZK. Mr. President, regretfully, I once again have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEAHY. Will the Senator withhold that, reserving the right to object?

Mr. ABOUREZK. I will reserve my right.

Mr. LEAHY. As I understand that, Mr. President, all that means is that today and tomorrow there would be no motion to table and everything is fair game Monday, Tuesday, Wednesday, Thursday, or Friday?

Mr. ROBERT C. BYRD. Right, exactly.

Mr. LEAHY. Unless a unanimous-consent request is entered into.

I ask my good friend from South Dakota how that really differs, with the exception of a few hours remaining today and whatever time we are in tomorrow, how that differs from simply bringing up the conference committee report anyway and going forward? It involves only a few hours today, whatever hours we are in tomorrow, and then it is fair game from Monday on.

Mr. ABOUREZK. I ask the Senator from Vermont, if that request were agreed to, how many Senators does he think would stay in town between now and Monday, when it might be fair game?

Mr. LEAHY. If it is any help, I will stay here until late tomorrow afternoon, then I will go to Vermont.

Mr. ABOUREZK. Aside from the Senator from Vermont.

Mr. LEAHY. I do not know. Perhaps no more——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. Reserving the right to object to the unanimous-consent request, perhaps——

The PRESIDING OFFICER. There is no more time remaining.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Vermont may have 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. BARTLETT. Mr. President, reserving the right to object, I would like to hear the question the Senator is stating.

Mr. LEAHY. I ask for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Perhaps not very many, but probably no more than if it were brought up anyway.

Mr. ABOUREZK. Mr. President, I object to the request.

The PRESIDING OFFICER. Objection is heard.

## JUDICIAL TENURE ACT

The Senate continued with the consideration of the bill.

Mr. ROBERT C. BYRD. Vote.

The PRESIDING OFFICER. The question recurs on the motion to recommit S. 1423.

Mr. LEAHY. Mr. President, I ask unanimous consent that Susan Brannigan, of my office, have the privilege of the floor throughout the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent——

The PRESIDING OFFICER. The Chair has not recognized any Senator yet.

We are now on the pending business, which is the recommittal of S. 1423, and the vote is to occur.

Mr. DECONCINI. I move to table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to recommit. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire

(Mr. McINTYRE), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I also announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

Mr. CURTIS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. McCLURE), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The result was announced—yeas 43, nays 33, as follows:

[Rollcall Vote No. 374 Leg.]

YEAS—43

| | | |
|---|---|---|
| Bartlett | Glenn | Packwood |
| Bentsen | Goldwater | Ribicoff |
| Biden | Gravel | Riegle |
| Bumpers | Hansen | Roth |
| Burdick | Hatch | Sasser |
| Byrd, Harry F., Jr. | Hayakawa | Schweiker |
| | Hodges | Sparkman |
| Byrd, Robert C. | Huddleston | Stennis |
| Cannon | Jackson | Stone |
| Chiles | Leahy | Talmadge |
| Clark | Long | Thurmond |
| Culver | Magnuson | Wallop |
| Danforth | Morgan | Young |
| DeConcini | Nelson | Zorinsky |
| Garn | Nunn | |

NAYS—33

| | | |
|---|---|---|
| Abourezk | Hart | Metzenbaum |
| Bayh | Hathaway | Moynihan |
| Bellmon | Heinz | Muskie |
| Case | Hollings | Pearson |
| Chafee | Inouye | Proxmire |
| Church | Javits | Randolph |
| Cranston | Lugar | Sarbanes |
| Curtis | Mathias | Schmitt |
| Eagleton | Matsunaga | Scott |
| Ford | McGovern | Weicker |
| Griffin | Meicher | Williams |

NOT VOTING—24

| | | |
|---|---|---|
| Allen | Hatfield, Mark O. | McClure |
| Anderson | | McIntyre |
| Baker | Hatfield, Paul G. | Pell |
| Brooke | | Percy |
| Dole | Helms | Stafford |
| Domenici | Humphrey | Stevens |
| Durkin | Johnston | Stevenson |
| Eastland | Kennedy | Tower |
| Haskell | Laxalt | |

So the motion to table the motion to recommit was agreed to.

The PRESIDING OFFICER. There will now be 10 minutes debate on the bill.

Mr. DeCONCINI. Mr. President, I understood that the unanimous-consent agreement only asked for debate if the motion to table did not carry. Am I correct?

The PRESIDING OFFICER. No. There will be a period now for 10 minutes of debate unless Senators yield the time back.

Mr. DeCONCINI. I am ready to yield back.

The PRESIDING OFFICER. Time is yielded back.

Mr. DeCONCINI. Time is yielded back.

The PRESIDING OFFICER. The question then occurs on agreeing to the committee amendment in the nature of a substitute.

Mr. DeCONCINI. That is right.

Mr. President, I ask unanimous consent that the amendment in the nature of a substitute reported by the Committee on the Judiciary be adopted and the bill as thus amended be considered original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is open to further amendment.

UP AMENDMENT NO. 1822

Mr. DeCONCINI. Mr. President, I send to the desk an amendment composed of technical corrections to the bill and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DeCONCINI) proposes unprinted amendment No. 1822.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

TECHNICAL AMENDMENTS TO S. 1423

1. On page 18, the 8th unmarked line, immediately after the word "Conference" insert the words, "of the United States".

2. On page 49, line 21, strike "January 1, 1979" and insert in lieu thereof "October 1, 1979".

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The amendment was agreed to.

Mr. CRANSTON subsequently said: Mr. President, I was opposed to S. 1423, and was seeking recognition, though I did not make any great effort to obtain recognition, before the vote. However, I ask unanimous consent that a statement of mine on that bill appear in the RECORD before the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, I oppose S. 1423, the Judicial Tenure Act, because I believe it to be unwise legislation which would invite subtle and direct pressures against the independent Federal judiciary, perhaps under circumstances which we cannot foresee today.

We must keep in mind that a Federal judge often sits alone, in the midst of a hostile community, upholding the Constitution and laws of the United States against angry local sentiments. That judge could be subject to strong pressures brought to bear through the mechanisms provided in S. 1423. The committee report merely hints at "letters from constituents, disgruntled litigants, and from attorneys containing various allegations concerning Federal judges" which could be referred to a "body that has the means and ability to investigate well-founded complaints."

It is fair to imagine what could happen. At the very least Federal judges who render unpopular local decisions will be harassed with a deluge of "complaints" and the possibility of some sort of investigation into his or her continued fitness to sit on the bench.

I do not think that the Founding Fathers' concept of an independent Federal judiciary serving on good behavior included a review of every complaint about some unpopular Federal judge. A reading of Federalist Paper No. 78 suggests instead that the authors of the Constitution believed that Federal judges should be insulated from local sentiments running contrary to their decisions and actions.

I recognize that my own State of California has used effectively machinery similar to that in S. 1423. But what is right for the individual States is not necessarily right for the Federal Government. The Founding Fathers recognized that the States differed among themselves on methods of appointment of judges and term of office. They accepted these vital differences and our Constitution accommodates them.

The guiding principles which ought to settle this matter for the Senate are provided for us by Hamilton in the 78th Federalist Paper. There he writes:

Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments. . . . The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all reservations of particular rights or privileges would amount to nothing.

Hamilton said further that judges are to serve on good behavior. Enforcement of the standard of good behavior is provided by the Constitution in the impeachment power of Congress. There, in Hamilton's view, is where the matter should rest.

S. 1423 joins the legislative branch with the proposed Council on Judicial Tenure in the Judicial Branch in direct ways. The Council itself will be staffed by civil servants who will be beholden to Congress for appropriations, pay increases, benefits, amenities, and operating budget.

There already are numerous involvements of the judiciary with the legislative and executive without adding a new entanglement which more directly than any of the others threatens the independence of the Federal judiciary so essential to the protection of the Constitution.

In summary, S. 1423 changes fundamentally the original Constitution intent to establish an independent Federal judiciary serving on good behavior. If Congress arguably has the power to enact the Judicial Tenure Act, to do so, in my opinion would permanently and seriously alter the balance of Constitu-

tional powers among the three branches of Government.

There are adequate ways of dealing with the legitimate concerns of S. 1423. And if time must be the final cure to specific problems I do not think that is too high a price to pay for preserving the independence of the Federal judiciary.

On these grounds I recommend rejection of S. 1423.

Mr. DECONCINI. Mr. President, there are no further amendments. I ask for third reading and passage of the bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for third reading and was read the third time.

Mr. DECONCINI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnoesta (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Illinois (Mr. STEVENSON), are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I also announce that the Senator from Rhode Island (Mr. PELL) is absent because of illness.

Mr. CURTIS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from North Carolina (Mr. HELMS) would each vote "yea."

The result was announced—yeas 43, nays 32, as follows:

[Rollcall Vote No. 375 Leg.]

YEAS—43

| | | |
|---|---|---|
| Bartlett | Garn | Packwood |
| Bentsen | Glenn | Ribicoff |
| Biden | Goldwater | Riegle |
| Bumpers | Gravel | Roth |
| Burdick | Hansen | Sasser |
| Byrd, Harry F., Jr. | Hatch | Schweiker |
| Byrd, Robert C. | Hayakawa | Sparkman |
| Cannon | Jackson | Stennis |
| Chiles | Leahy | Stone |
| Clark | Long | Talmadge |
| Culver | Magnuson | Thurmond |
| Curtis | Metzenbaum | Wallop |
| Danforth | Morgan | Young |
| DeConcini | Nelson | Zorinsky |
| | Nunn | |

NAYS—32

| | | |
|---|---|---|
| Abourezk | Hathaway | Moynihan |
| Bayh | Heinz | Muskie |
| Bellmon | Hodges | Pearson |
| Case | Hollings | Proxmire |
| Chafee | Huddleston | Randolph |
| Church | Inouye | Sarbanes |
| Cranston | Lugar | Schmitt |
| Eagleton | Mathias | Scott |
| Ford | Matsunaga | Weicker |
| Griffin | McGovern | Williams |
| Hart | Meicher | |

NOT VOTING—25

| | | |
|---|---|---|
| Allen | Hatfield, Paul G. | Percy |
| Anderson | Helms | Stafford |
| Baker | Humphrey | Stevens |
| Brooke | Javits | Stevenson |
| Dole | Johnston | Tower |
| Domenici | Kennedy | |
| Durkin | Laxalt | |
| Eastland | McClure | |
| Haskell | McIntyre | |
| Hatfield, Mark O. | Pell | |

So the bill (S. 1423) was passed.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTION OF VOTE—S. 1423

(On September 11, 1978, the following proceeding occurred. The foregoing rollcall vote has been corrected to reflect the order of the Senate.)

Mr. MCGOVERN. Mr. President, on September 7, on final passage of the Judicial Tenure Act, S. 1423, I was recorded as not voting. I was here and cast a "nay" vote. Indeed, my vote was so recorded by the unofficial recorder, Mr. Patrick Hynes, but was missed by the official recording the vote.

I ask unanimous consent, under those circumstances, that my vote be recorded as I voted. I pointed out that this change will not affect the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, this matter was brought to my attention this afternoon. While it is an extraordinary thing to change a roll call vote, I thing it also would be extraordinary not to accept the representations just made by the Senator from South Dakota. Since it does not change the result, since he was kind enough to bring it to our attention before making the request, and since he was in the Chamber and did vote, we have no objection to the RECORD being changed in accordance with the request made by the distinguished Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCGOVERN. Mr. President, I thank the distinguished minority leader.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 1423, as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, I again wish to thank Senator THURMOND, the ranking Republican member of the Judiciary Committee, Senator EASTLAND, the chairman of the committee, the staff, particularly Mike Altier and Romano Romani, and the ranking Republican member, Mr. WALLOP, and the members of his staff, who gave a great deal of time and effort.

Needless to say, Senator NUNN, the author of this bill, deserves a great deal of credit for the fact that we have had an opportunity to pass it today.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. DECONCINI. I yield to the Senator from South Carolina.

The PRESIDING OFFICER. The Senate will be in order. The Chair is now ruling that, without objection, the title amendment is agreed to.

The title amendment is as follows:

A bill to establish a procedure in addition to impeachment for the retirement of disabled members of the Judiciary of the United States and the removal of those whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution, and for other purposes.

Mr. NUNN. Mr. President, I simply want to thank again the Senator from South Carolina (Mr. THURMOND), the Senator from Arizona (Mr. DECONCINI), and the able staffs for all the work they have done. I would add the Senator from Wyoming (Mr. WALLOP), and Gordon Griffin, my able legislative assistant, who has worked on this measure long and hard for about 4 years. I think he has done a tremendous job.

The PRESIDING OFFICER. Who seeks recognition?

Mr. THURMOND. The Senator from Arizona yielded to me.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to commend the able and distinguished Senator from Arizona for the great amount of work he has done on this bill. I think it is a fine accomplishment, and I think it will be a great asset to the administration of justice.

I also commend the able Senator from Georgia for sponsoring this measure as its chief sponsor. I feel that his work on this bill has been most valuable.

Mr. NUNN and Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia. Does the Senator

from Georgia yield to the majority leader?

Mr. ROBERT C. BYRD. Mr. President, there is nothing before the Senate, is there?

The PRESIDING OFFICER. There is no business before the Senate.

Mr. ROBERT C. BYRD. So any Senator could speak.

The PRESIDING OFFICER. The Senator is correct.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. I merely seek recognition to ask unanimous consent that there now be a period for the transaction of routine morning business of not to exceed 30 minutes, with Senators permitted to make statements therein up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGES FROM THE HOUSE

At 11:24 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the bill (S. 3067) to extend the Commission on Civil Rights for 3 years, to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes, with amendments in which it requests the concurrence of the Senate.

The message also announced that the House has passed House Joint Resolution 1088, providing financial assistance for the city of New York, in which it requests the concurrence of the Senate.

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At 2:57 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to H.R. 6699, an act to establish a national climate program, and for other purposes.

The message also announced that the House, having proceeded to reconsider H.R. 10929, an act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes, returned by the President of the United States with his objections, was not passed.

### ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 6669. An act to establish a comprehensive and coordinated national climate policy and program, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. LEAHY).

## COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–4241. A communication from the Acting Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excses of $25 million; to the Committee on Armed Services.

EC–4242. A confidential communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Australia for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–4243. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Korea for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–4244. A communication from the Acting Assistant Secretary for Congressional Relations, Department of State, reporting, pursuant to law, that the President has determined that it is in the national interest for the Export-Import Bank of the United States to support transactions involving the purchase or lease of products or services by, for use in, or for sale or lease to, the Hungarian People's Republic; to the Committee on Banking, Housing, and Urban Affairs.

EC–4245. A communication from the President and Chairman, Export-Import Bank of the United States, reporting, pursuant to law, on loan, guarantee and insurance transactions supported by Eximbank during July 1978 to Communist Countries (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended); to the Committee on Banking, Housing, and Urban Affairs.

EC–4246. A communication from the Acting Secretary, Interstate Commerce Commission, reporting, pursuant to law, that the Commission is unable to render a final decision in Docket No. 36810, Rail-Water Rates, Sea-Land Service, January 1978, within the initially-specified seven-month period; to the Committee on Commerce, Science, and Transportation.

EC–4247. A communication from the Acting Secretary, Interstate Commerce Commission, reporting, pursuant to law, that the Commission is unable to render a final decision in Docket No. 36810, Rail-Water Rates, Sea-Land Service, January 1978, within the initially-specified seven-month period; to the Committee on Commerce, Science, and Transportation.

EC–4248. A communication from the Acting Chairman, Interstate Commerce Commission, transmitting, for the information of the Senate, an updated copy of Appendix M, "Operating Results by Route," of the ICC's March 15, 1978, Amtrak Report; to the Committee on Commerce, Science, and Transportation.

EC–4249. A communication from the Acting Secretary of the Interior, reporting, pursuant to law, that the Mesa Petroleum Company has submitted an application to the Department for repayment of one year's rental totalling $15,000 for lease OCS–G 2291, South Marsh Island Block 171, offshore Louisiana; to the Committee on Energy and Natural Resources.

EC–4250. A communication from the Assistant Secretary for Policy and Evaluation, Department of Energy, reporting, pursuant to law, of a delay in submission of the annual report on the Economic Impact of Energy Actions; to the Committee on Energy and Natural Resources.

EC–4251. A communication from the Under Secretary, Department of Energy, transmitting, pursuant to law, a report on Photovoltaic Incentives Options, August 1978; to the Committee on Energy and Natural Resources.

EC–4252. A communication from the Secretary of the Interior and the Secretary of Agriculture, transmitting, at the request of the President, the Twelfth and Thirteenth Annual Reports on the status of the National Wilderness Preservation System; to the Committee on Energy and Natural Resources.

EC–4253. A communication from the Secretary of Transportation, reporting, for the information of the Senate, on the recent determination by the Department of the Interior that there are technical and program constraints on the use of funds from the Abandoned Mine Reclamation Fund for projects to improve roads that serve active coal mines; to the Committee on Energy and Natural Resources.

EC–4254. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, the 1977 Status Report of the GSA covering public buildings projects authorized for construction, alteration and lease in accordance with the Public Buildings Act of 1959; to the Committee on Environment and Public Works.

EC–4255. A communication from the Assistant Administrator for legislative Affairs, Agency for International Development, Department of State, transmitting, pursuant to law, justification of an increase in the funding level of the proposed FY 1978 program in Chile; to the Committee on Foreign Relations.

EC–4256. A communication from the Chairman, Board of Directors, Washington Metropolitan Area Transit Authority, transmitting, pursuant to law, a long-range financial plan to cover funding of all remaining segments of the full Metro system, to provide for federal/state/local cooperative action to service principal and interest on Metro revenue bonds, and to establish more equitable and politically realistic means for paying annual Metrobus/Metrorail operating subsidies; to the Committee on Governmental Affairs.

EC–4257. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "What Rules Should Apply to Post-Federal Employment and How Should They Be Enforced?" August 28, 1978; to the Committee on Governmental Affairs.

EC–4258. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Progress in Improving Program and Budget Information for Congressional Use," August 29, 1978; to the Committee on Governmental Affairs.

EC–4259. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Department of Defense Continues to Improperly Subsidize Foreign Military Sales," August 25, 1978; to the Committee on Governmental Affairs.

EC–4260. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Problems and Outlook of Small Private Liberal Arts Colleges," August 25, 1978; to the Committee on Governmental Affairs.

EC–4261. A communication from the District of Columbia Auditor, transmitting, pursuant to law, (1) a report entitled "The City Should Consider Whether an Exemption From Deed Recordation Tax Which Benefits Developers Should Be Restricted"; (2) a letter to Council Chairman Sterling Tucker re Job Corps Centers at Junior Village and Maple Glen; (3) a letter report to Mayor and Council re Elimination of GS–2 Positions

from Workforce; (4) a letter to Councilmember Marion Barry re various aspects of the District's Supplemental Food Program; (5) a report entitled "Preference of Police Officers for Police District Assignment and Stationhouse Duty Has Created a Racially and Sexually Imbalanced Work Force"; (6) a letter to Councilmember David Clarke re assumptions used by the Department of Finance and Revenue in estimating revenue loss; (7) a report entitled "Management of Contracts for Services to Public Housing Projects"; (8) a letter report to Mayor and Council re reprogramming of funds at budget category level; (9) a letter report to Mayor and Council re safety and health inspections of food vendors; and (10) a letter to Councilmember David Clarke re overtime records of the Metropolitan Police Department; to the Committee on Governmental Affairs.

EC–4262. A communication from the Acting Secretary of the Interior, transmitting, pursuant to law, a report on the organization of leasing operations of the Federal Government; to the Committee on Governmental Affairs.

EC–4263. A communication from the Assistant Secretary for Administration, Department of Transportation, transmitting, pursuant to law, a modification to an existing system of records; to the Committee on Governmental Affairs.

EC–4264. A communication from the Administrator, Veterans Administration, transmitting, pursuant to law, a report on the new system for the VA Fee Basis Medical and Pharmacy Program; to the Committee on Governmental Affairs.

EC–4265. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would amend the Condominium Act of 1976, D.C. Law 1–89 (Act 2–260); to the Committee on Governmental Affairs.

EC–4266. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would order the closing of a public alley and the dedication of certain other land for public alley purposes (Act 20261); to the Committee on Governmental Affairs.

EC–4267. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would order the closing of part of an east-west public alley and the dedication of certain other land for public alley purposes (Act 2–262); to the Committee on Governmental Affairs.

EC–4268. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would create employment opportunities for blind and other severely handicapped individuals by assuring a market for products and services provided by them, and for other purposes (Act 2–263); to the Committee on Governmental Affairs.

EC–4269. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would order the closing of Eye Street, N.W., between 23rd and 24th Streets, N.W. (S.O. 75–34) (Act 2–259); to the Committee on Governmental Affairs.

EC–4270. A secret communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the major issues of the Army's ballistic missile defense program and related aspects of strategic offensive weapons; to the Committee on Governmental Affairs.

EC–4271. A communication from the Chairman and General Counsel, National Labor Relations Board, transmitting, pursuant to law, the Board's report for a proposed new system of records; to the Committee on Governmental Affairs.

EC–4272. A communication from the Deputy Secretary, Department of Energy, transmitting, pursuant to law, a report for a proposed new system of records; to the Committee on Governmental Affairs.

EC–4273. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report for a proposed new system of records; to the Committee on Governmental Affairs.

EC–4274. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report for a proposed new system of records; to the Committee on Governmental Affairs.

EC–4275. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the first annual report of the Director of the National Institute of Arthritis, Metabolism, and Digestive Diseases on arthritis activities under the Arthritis Plan; to the Committee on Human Resources.

EC–4276. A communication from the Chairman, National Institute of Education, Department of Health, Education, and Welfare, transmitting, pursuant to law, the fourth annual report of the National Council on Educational Research, Reflections and Recommendations; to the Committee on Human Resources.

EC–4277. A communication from the Chairman, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, transmitting, pursuant to law, a report entitled "Report and Recommendations: Institutional Review Boards"; to the Committee on Human Resources.

EC–4278. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders in cases of certain aliens who have been found admissible to the United States under the Immigration and Nationality Act; to the Committee on the Judiciary.

EC–4279. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, 431 reports covering the period July 31 through August 14, 1978, concerning visa petitions which the Service has approved according the beneficiaries of such petitions third and sixth preference classification under the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

EC–4280. A communication from the Deputy Comptroller General of the United States, transmitting, pursuant to law, a report and recommendation concerning the claims for relief from liability to the United States of 17 employees of the Long Beach Naval Shipyard, Department of the Navy, Long Beach, California, whose names appear in the report; to the Committee on the Judiciary.

EC–4281. A communication from the Certified Public Accountants, Future Farmers of America, transmitting, pursuant to law, a financial report as of June 30, 1978 and 1977, and the related statements of income and retained income and changes in financial positions; to the Committee on the Judiciary.

EC–4282. A communication from the Chairman, Federal Election Commission, transmitting the Commission's fiscal year 1980 appropriation request; to the Committee on Rules and Administration.

## PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–780. A resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

"HOUSE RESOLUTION No. 66

"Whereas, Aircraft noise is a major problem affecting the present viability and future growth of this country's air transportation system; and

"Whereas, Over 6 million Americans and 900,000 acres of land are impacted by aircraft noise; and

"Whereas, Airport proprietors have expended over $200 million to acquire noise impacted land around airports; and

"Whereas, Potential noise liability suits may measure in the billions of dollars; and

"Whereas, Future airport development and expansion face long delays; and

"Whereas, Aircraft noise is present in every state in the Union which makes this a national rather than a local problem; and

"Whereas, A strong national policy and national funding source are necessary; and

"Whereas, The United States House of Representatives has before it for floor action the week of August 7 HR 8729 and the United States Senate Finance Committee is holding S 3279 pending a vote by the house on HR 8729; and

"Whereas, Title I of the bills is aimed at making compatible those lands adjacent to airports; and

"Whereas, Title II increases airport grant levels of the Airport and Airways Development Act of 1970; and

"Whereas, Title III of HR 11986 and S 3279 provide the funding to re-engine and replace noisy aircraft; now, therefore, be it

*"Resolved by the Assembly of the State of California,* That the Congress of the United States is hereby requested to favorably act on HR 8729, HR 11986, and S 3279; and be it further.

*"Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to each Senator and Representative from California in the Congress of the United States."

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POM–781. A concurrent resolution adopted by the legislature of the State of Iowa; to the Committee on Commerce, Science, and Transportation:

"HOUSE CONCURRENT RESOLUTION 112

"Whereas, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road) provides rail transportation service to many Iowa counties and directly serves many Iowa communities and population centers; and

"Whereas, the Milwaukee Road rail system is an essential portion of Iowa's grain and industrial transportation system; and

"Whereas, this rail transportation system is essential to Iowa's ability to participate in the international grain and industrial market; and

"Whereas, sales of Iowa grain and industrial exports help to substantially reduce the United States' deficit balance of payments; and

"Whereas, many of Iowa's farms and industries are directly dependent on the Milwaukee Road and will incur substantial financial hardship if the Milwaukee Road ceases or suspends operation; and

"Whereas, there are over 13,000 employees on the Milwaukee Road whose employment will be adversely affected even to the point of furlough or termination, if the Milwaukee Road were to cease or suspend operation; and

"Whereas, the existing and anticipated long range energy shortage requires that energy efficient means of hauling bulk goods for long distances be preserved and protected; and

"Whereas, the calculated shortage of boxcars and jumbo hopper cars the week of

February 6, 1978, was 3,000 in Iowa and 7,000 in the Midwest; and

"Whereas, the Milwaukee Road's financial problems have been grievously aggravated by the intolerable delays of the Interstate Commerce Commission in dealing with merger requests of the Milwaukee Railroad and other railroad companies; and

"Whereas, the delays by the Federal Railroad Administration in processing and approving loan and grant applications have further weakened the Milwaukee Road; and

"Whereas, federal aid and regulatory responsiveness is essential for the Milwaukee Road to continue to provide transportation services and employment and pay property and corporate taxes in Iowa and elsewhere; Now therefore,

"Be it resolved by the House of Representatives, the Senate concurring, That the President of the United States, the Secretary of Transportation and the Federal Railroad Administration act quickly in providing the necessary loans and grants to the Milwaukee Road; and

"Be it further resolved, That the President of the United States, the Secretary of Transportation, the Interstate Commerce Commission, the Federal Railroad Administration and Congress consider and act on a permanent solution to the midwest rail crisis; and

"Be it further resolved, That copies of this Resolution shall be transmitted to the President of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Secretary of Transportation, the administrator of the Federal Railroad Administration, and the Iowa Representatives and Senators in Congress.

"We, Dale M. Cochran, Speaker of the House and Arthur A. Neu, President of the Senate, and David L. Wray, Chief Clerk of the House and Kevin P. Light, Secretary of the Senate hereby certify that the above and foregoing Resolution was adopted by the House of Representatives and the Senate of the Sixty-seventh General Assembly, Second Regular Session."

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POM–782. A resolution adopted by the National Water Supply Improvement Association, relating to reauthorization of the Federal Desalination program; to the Committee on Environment and Public Works.

POM–783. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance;

"ASSEMBLY JOINT RESOLUTION No. 92

"Whereas, California's unique environment and its enterprising farmers have combined for a total agricultural production in excess of nine billion dollars; and

"Whereas, California produces over 200 agricultural commodities and is unique among the states in the diversity of its agricultural production; and

"Whereas, Exports of California's agricultural products generate over 80,000 jobs and provide a favorable balance of trade surplus; and

"Whereas, Agriculture is California's number one industry, and there is a worldwide demand for the agricultural products produced in California; and

"Whereas, Despite the demand for these commodities, some nations unfairly penalize California agricultural exports through illegal quotas, discriminatory duties and other nontariff barriers; and

"Whereas, The removal of these trade barriers would permit the expansion of California's agricultural exports resulting in expanded job opportunities and in improvement in the nation's balance of payments; and

"Whereas, Negotiators from the Office of the Special Trade Representative, the International Trade Commission, and the Department of Agriculture are presently involved in negotiations aimed at reducing these illegal trade barriers; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes both the Congress and the President of the United States to vigorously negotiate the reduction of unfair barriers to free trade which currently exist and, thereby, expand the international commerce in agricultural products, including the agricultural commodities produced in California; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

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## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ABOUREZK, from the Select Committee on Indian Affairs, with amendments:

S. 2502. A bill to authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country (Rept. No. 95–1178).

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 2852. An act to amend the Internal Revenue Code of 1954 to provide that refunds of the taxes on gasoline and special fuels shall be made to aerial applicators in certain cases (Rept. No. 95–1179).

By Mr. LONG, from the Committee on Finance, without amendment:

S. Res. 553. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 2852. Referred to the Committee on the Budget.

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## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. PROXMIRE:

S. 3485. A bill to amend the Federal Reserve Act to provide for maintenance of reserves in order to facilitate the implementation of monetary policy, to promote competitive equality among depository institutions, to require the imposition of service charges for services by Federal Reserve banks, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. STENNIS:

S. 3486. A bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes; to the Committee on Armed Services.

By Mr. BELLMON (for himself and Mr BARTLETT):

S. 3487. A bill to change the name of Clayton Lake in the State of Oklahoma to Sardis Lake; to the Committee on Environment and Public Works.

By Mr. CASE:

S. 3488. A bill for the relief of Yaroslav L. Tiajoloff; to the Committee on the Judiciary.

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## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 3485. A bill to amend the Federal Reserve Act to provide for maintenance of reserves in order to facilitate the implementation of monetary policy, to promote competitive equality among depository institutions, to require the imposition of service charges for services by Federal Reserve banks, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

MONETARY POLICY IMPROVEMENT ACT OF 1978

Mr. PROXMIRE. Mr. President, I am today introducing the Monetary Policy Improvement Act of 1978. The legislation is designed to deal with the problems associated with the erosion of membership in the Federal Reserve System. The objectives of the bill are to:

First, strengthen the ability of the Federal Reserve Board to conduct monetary policy;

Second, promote greater competitive equality between financial institutions;

Third, enhance the safety and soundness of the banking system;

Fourth, improve the efficiency of the Federal Reserve payments system; and

Fifth, minimize any loss in Treasury revenues.

I am introducing this bill primarily for discussion purposes and in an effort to provide the Senate Banking Committee with a lower cost alternative to the various membership proposals that have been advanced. These include the original Fed proposal, S. 3304, which I introduced by request, S. 3461 introduced by Senator BROOKE, and H.R. 13847 introduced by Congressman REUSS together with the changes to that bill recommended by the Federal Reserve Board and by the staff of the House Banking Committee.

The House Banking Committee is meeting on September 7 to begin discussing the Fed membership issue and the Senate Banking Committee has scheduled a corresponding mark-up on September 19 and 20. While I am reasonably flexible on the details of any membership proposal, I am concerned about the cost to the Treasury. Accordingly, if the Congress does act on the Fed membership issue, I do believe the cost to the Treasury, and ultimately the American taxpayer should be held to a minimum. The legislation I am introducing would result in an annual net, after-tax revenue loss to the Treasury of only $41 million. This is about what the Treasury will lose anyway, without legislation if Federal Reserve membership continues to decline at current rates.

SUMMARY OF MAIN FEATURES

The principal features of the bill are as follows:

First. Universal reserve requirements: All federally insured depository institutions with deposits above a specified amount would be required to maintain reserves against those deposits in accord-

ance with the reserve ratios prescribed by law. The Federal Reserve Board is authorized to vary those ratios within a limited range for monetary policy reasons.

Federally insured commercial banks would be required to maintain reserves against their combined demand and savings deposits in excess of $40 million and against their time deposits in excess of $40 million. A savings deposit is defined as a deposit with a maturity of 30 days or less and a time deposit is defined as one with a maturity of more than 30 days.

All other federally insured depository institutions or members of the Federal Home Loan Bank System including mutual savings banks, savings and loan associations, and credit unions would be required to maintain reserves against their transaction accounts in excess of $40 million. A transaction account is defined to include a demand deposit, a NOW account, a share draft account, or other account from which payments may be made to third parties.

Second. Simplified reserve requirements: Under the present hodge podge system, the Federal Reserve Board has prescribed 12 separate reserve ratios depending upon the type of deposit, its maturity, and the size of the bank. The proposed legislation would substantially simplify this complex structure by prescribing just three reserve ratios for all commercial banks subject to reserve requirements:

(i) 9 percent against demand and savings deposits;

(ii) 4 percent against shorter term time deposits with initial maturities of less than 180 days; and

(iii) 1 percent against longer term time deposits with initial maturities of 180 days or more.

Other depository institutions subject to reserve requirements would be required to maintain a 9-percent reserve against their transaction balances.

Third. Reporting requirements: The Federal Reserve Board is authorized to require periodic financial reports from all depository institutions in order to perform its monetary policy responsibilities. Institutions not subject to reserve requirements can provide these reports to their respective supervisory agencies.

Fourth. Access to discount window and other Fed services: All depository institutions required to maintain reserves and who are not members of the Federal Reserve System would be automatically entitled to all of the privileges of membership including access to the discount window. In addition, all nonmember banks who, because of their size are not subject to reserve requirements, would be given access to the discount window upon a certification of solvency from the FDIC.

Fifth. Pricing of Fed services: The Federal Reserve Board is required to publish a schedule of fees for its services to commercial banks by July 1, 1979, and to begin charging for these services by July 1, 1980. All depository institutions would be able to purchase these services on the same terms and conditions as member banks. The fees would take into account an allowance for taxes and the cost of capital.

EFFECT OF THE PROPOSAL

First. Effect on financial institutions: The system of universal reserve requirements together with the $40 million exemptions as proposed in the legislation would halt the decline in the percentage of bank deposits subject to reserve requirements, while at the same time relieving most banks from the burden of maintaining reserves. The bill would subject only 1,723 banks to reserve requirements compared to a present total of 5,664. Moreover, because the bill authorizes banks to count their vault cash against their reserve requirements, only 1,117 banks would have to keep reserves at a Federal Reserve bank. This includes 762 banks that are presently members of the Federal Reserve System and 355 nonmember banks. Some of these nonmember banks covered by reserve requirements would be covered anyway by the International Banking Act recently passed by the Congress.

Of the 5,664 current member banks, 4,523 would be relieved by reserve requirements entirely; 379 would be able to meet all of their reserve requirements with their present amount of vault cash; 706 would have their present reserve requirements reduced; and 56 would have their present reserve requirements increased. The bill provides that any increase in reserve requirements would be phased in gradually over 4 years for any member bank facing higher reserve requirements and for any nonmember bank subject to reserve requirements.

The bill also would apply reserve requirements to nonbank depository institutions offering transaction accounts that are equivalent to demand deposits. However, because of the $40 million exclusion, and because many thrift institutions still lack the legal authority to offer transaction accounts, and because of the ability to satisfy reserve requirements with vault cash, less than 10 nonbank institutions would actually be required to maintain reserves with the Fed, according to estimates supplied by the Federal Reserve staff. Thus, the application of reserve requirements to all depository institutions offering checking-type accounts would have virtually no financial impact on the thrift industry; but it would foreclose a potential source of erosion in monetary control if, in the future, Congress and the States were to provide thrift institutions with additional powers to offer checking or similar type accounts. It also insures a greater degree of competitive equality between bank and thrift institutions in competing for the public's checking account business.

Second. Effect on monetary policy: The legislation would strengthen in a number of ways the ability of the Federal Reserve Board to perform its monetary policy responsibilities.

First, the bill would halt the decline in the portion of total bank deposits subject to reserve requirements. The erosion in the Federal Reserve's membership has reduced the percentage of total deposits at banks subject to reserve requirements from approximately 84 percent in 1961 to less than 73 percent today. Unless action is taken to halt this decline, a further erosion in Fed membership could begin to weaken the ability of the Federal Reserve to control the Nation's money supply. The system of universal reserve requirements proposed in the bill together with the $40 million exclusions would cover 71.6 percent of total bank deposits. Thus, the Fed's ability to control the monetary aggregates would be stabilized.

Second, the simplified structure of reserve requirements proposed in the bill would make it far easier for the Fed to predict and control future changes in the money supply. Under the present system, if a consumer transfers funds from his checking account to his savings account at his bank, the bank's reserve requirement against those funds could decline from 16¼ to 3 percent. These freed-up reserves could produce a multiple expansion in the money supply unless offset by the Federal Reserve. Similar complications arise when funds are transferred from a checking account into a NOW account or from a checking account in a large member bank to a checking account in a medium or similar sized member bank. In theory, the Fed can predict these transfers and take them into account when formulating monetary policy. However, innovations in funds transfer technology have made it far easier for consumers and businesses to shift funds between their accounts, thus complicating the Fed's monetary projections.

Many of these problems would be alleviated under the proposed legislation. The bill would apply the same reserve requirement against demand deposits, savings accounts, and NOW accounts. Thus, deposit shifts between these types of accounts would have no monetary significance. Also, the uniform 9 percent reserve requirement against demand deposits would reduce the complications arising from shifts in demand deposits between different size banks which, under the present system, have reserve requirements ranging from 7 to 16¼ percent.

Monetary policy would be further strengthened by authorizing the Fed to require timely financial reports from non-member financial institutions. The lack of timely data from these institutions has, in the past, caused the Fed to make monetary policy judgments on the basis of incomplete and inadequate information. In order to minimize reporting burdens, the bill further provides that these reports may be provided through an institution's regular supervisory agency.

Finally, monetary policy would be strengthened and the safety and soundness of the banking system would be enhanced by permitting all banks to meet their liquidity needs through the Federal Reserve's discount window. Under the current system, a sizable portion of the banking industry is excluded from the discount window except under severe emergency conditions. This exclusion can dilute the aggressiveness of the Federal Reserve Board in pursuing a restrictive monetary policy. There are times when the Board may hesitate to impose the degree of restraint called for by economic conditions in order to avoid the

potential liquidity strains that could be visited upon non-member banks. Guaranteeing all nonmember banks access to the discount window will allow the Board a great degree of freedom in conducting monetary policy.

Third. Effect on competitive equality: On balance, the legislation would provide more competitive equality between different classes of financial institutions. Our present system creates numerous imbalances in the competition for deposits, since reserve requirements are not applied uniformly. A 1 percentage point reserve requirement raises the effective cost of funds by as much as 10 basis points. This extra cost can place member banks at a substantial disadvantage compared to nonmember banks and thrift institutions.

Under the proposed bill, the system of universal reserve requirements will place member and nonmember banks on a more equal footing. All banks would be subject to the same reserve requirements regardless of membership status.

The bill also helps to equalize competition between commercial banks and thrift institutions in the market for certificates of deposits (CD's). Under the present system, a member bank is required to maintain a reserve of 6 percent against its short term CD's in excess of $5 million with initial maturities of less than 180 days. Under the proposed bill, this reserve requirement would be reduced to 4 percent. The bill further helps to restore competitive parity in the longer term CD market where, under the present system, member banks are required to maintain a reserve of 2½ percent against CD's in excess of $5 million that are between 179 days and 4 years in maturity. This would be reduced to 1 percent under the proposed bill.

The bill would also provide further competitive equality between banks by guaranteeing that all nonmember banks shall have access to the discount window. This access would be automatic in the case of the 355 nonmember banks required to keep reserves at the Federal Reserve. However, the remaining 8,374 nonmember banks would also be given ready access to the discount window upon a certification of solvency from the FDIC. Under current Federal Reserve Board interpretations of the Federal Reserve Act, nonmember banks cannot be given access to the discount window except under severe emergency conditions.

Access to the Fed's discount window can enhance the long-term viability of our smaller, locally controlled banks. By providing them with an alternative source of credit for liquidity needs, it also reduces their dependence on their larger correspondent banks. This in turn should strengthen the ability of smaller banks to compete more equally with their big city rivals.

Finally, the bill promotes competitive equality by requiring that all depository institutions be able to purchase Federal Reserve services on the same terms and conditions that apply to member banks. This will insure that the Federal Reserve pricing proposals do not discriminate against nonmember institutions.

On the negative side, the bill would raise the reserve requirement on savings deposits from 3 to 9 percent, thus affecting the ability of the larger banks to compete for these deposits with thrift institutions and with smaller banks. However, it should be noted that these requirements apply only to 1,117 banks. For 4,902 smaller member banks, the present 3 percent reserve requirement against savings deposits would be eliminated, thereby strengthening the ability of these banks to compete more equally with thrift institutions.

Fifth. Effect on Treasury revenues: This legislation would affect the revenues of the Federal Reserve banks and ultimately the Treasury in a number of ways:

First, the revised reserve requirements together with the $40 million exemptions would cost the Treasury $682 million in pre-tax revenues.

Second, the application of reserve requirements to the larger, nonmember banks will result in a $140 million revenue increase to the Treasury before taxes.

Third, the mandate to begin charging for Federal Reserve services would produce an additional $451 million in pre-tax revenues to the Treasury. This assumes the Federal Reserve's estimate of the cost of these services—$410 million—would be increased by 10 percent to reflect the cost of capital and taxes that would be incurred by a private firm providing similar services.

The combined effect of these changes would result in a pre-tax revenue loss of $91 million. However, these net losses in revenue to the Treasury would also constitute a corresponding net gain in income to the banking system or its customers. This additional income would be subject to taxation. Assuming a marginal tax rate of 55 percent, the net after tax revenue loss to the Treasury would be approximately $41 million.

While $41 million a year is a substantial amount, it is far less than the cost of other Fed membership proposals that have been advanced. Moreover, according to estimates by the Federal Reserve, the Treasury will lose about this much revenue anyway if the decline in Fed membership continues at the same rate that has occurred over the last several years. Finally, the reserve loss must be evaluated in terms of the corresponding benefits. It is clearly worth something to strengthen the ability of the Federal Reserve to conduct monetary policy. Also, the efficiency of the banking and payments system will be enhanced through pricing of Fed services and through the greater degree of competitive equality that will result from the legislation. These benefits will accrue to the public generally in the form of lower prices for banking services.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the analysis ordered to be printed in the RECORD, is as follows:

MONETARY POLICY IMPROVEMENTS ACT OF 1978

SECTION-BY-SECTION ANALYSIS

Section 1. Title. This section indicates that the title of the Act is the "Monetary Policy Improvements Act of 1978."

Section 2. Definitions. This section defines "depository institution" as any insured bank, mutual savings bank, savings bank, insured credit union, and savings and loan association. It also indicates that for the purposes of collection of checks, drafts, or maturing notes and bills by Federal Reserve Banks any association which consists of depository institutions will itself be considered a depository institution.

This section also defines "transaction account" as a deposit or account on which the holder of the account is allowed to make withdrawals by any type of negotiable or transferable instrument for the purpose of making payments to third persons. Transaction accounts include demand deposits, negotiable order of withdrawal (NOW) accounts, and share draft accounts.

Section 3. Transaction Accounts. This section indicates that the Federal Reserve Board, in consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration, may determine on account or deposit to be a transaction account where such accounts may be used to make payment or transfer funds to a third person.

Section 4. Reporting requirements. In this section the Federal Reserve Board is authorized to collect reports from any depository institution of the institution's liabilities and assets as may be necessary or desirable to enable the Board to discharge its responsibility to conduct monetary policy. In cases where the depository institution is subject to reserve requirements set by the Board, such reports would be made directly to the Federal Reserve. For all other depository institutions the reports would be made to the appropriate Federal regulatory agency, or to a state officer or agency, and through such agency to the Board. This section indicates that the Board shall endeavor to avoid unnecessary reporting burdens. Different reporting requirements may be made in different classes of depository institutions.

Section 5. Reserve requirements. This section indicates the basic framework for reserve requirements against deposits held by depository institutions. Reserve requirements would be set by the Federal Reserve Board and would be applicable to deposits held by insured banks and to transaction accounts at other depository institutions. Reserve requirements would apply to the total of demand and savings deposits in excess of $40,000,000 and to time deposits in excess of $40,000,000 at insured banks. Banks may apply the $40,000,000 exemption for time deposits against such deposits with initial maturities of 179 days or less first and other time deposits second. For nonbank depository institutions reserves would apply to transaction accounts which in the aggregate exceed $40,000,000.

Reserve requirements would be uniform for all institutions regardless of size. The initial reserve requirement and the range within which the Federal Reserve Bank may set the reserve requirement by regulation (solely for the purpose of implementing monetary policy) are as follows: (1) total of net demand deposits and savings deposits at banks and transaction accounts at other depository institutions, 9 percent within a range of 8 to 10 percent; (2) time deposits with initial maturities of 179 days or less, 4 percent within a range of 2 to 6 percent; and (3) time deposits with initial maturities of 180 days or more, 1 percent within a range of ½ of 1 percent to 2 percent.

This section also provides that in extraordinary circumstances the Federal Reserve Board may impose reserve requirements outside the limits prescribed for a period not exceeding 30 days, which may be extended for an additional 30 days. Exercise of this authority requires the Board to promptly transmit to Congress the reasons for its use of this authority.

For banks subject to reserve requirements, the Board is also permitted to impose re-

serve requirements against net balances owed by domestic offices of banks in the United States to their related foreign offices and to nonrelated foreign banks and against their borrowings based on loans to United States residents made by overseas offices of banks with offices in the United States and assets held by foreign offices of banks in the United States acquired from their domestic banks, if such action is necessary to the implemention of monetary policy.

Reserve requirements for any depository institution not a member bank on August 30, 1978 would be phased in over a period of four years. During the first year required reserves would be reduced by 75 percent, during the second year by 50 percent, and during the third year by 25 percent.

For any member bank which would have its reserve requirements increased by this legislation, the additional reserve requirement would be phased in over a four year period in a similar manner.

This section also indicates that in the case of affiliated banks and affiliated nonbank depository institutions, the total deposit liabilities exempted from reserve requirements shall not exceed in the aggregate the product resulting from multiplying the number of institutions in such affiliated group on August 1, 1978 by $40,000,000 for each such exemption. For each such exemption, no more than $40,000,000 shall be exempted at any individual bank or nonbank depository institution.

The new reserve requirement structure in this section would result in a reduction in reserve requirements for many member banks and for the banking system as a whole. In order to provide for an orderly transition period, the Board may implement the new reserve requirements on a gradual basis over a period of 24 months.

Any depository institution maintaining reserves as required by the Federal Reserve Board would be entitled to all the privileges of membership in the Federal Reserve System, except the holding of stock in, or voting for any director of, a Federal Reserve Bank.

Nonmember banks not maintaining reserves would be entitled to access the Federal Reserve discount window. The Federal Reserve Board may as a condition of access require certification of solvency of such bank from the Federal Deposit Insurance Corporation.

Section 6. Form of reserves. Reserves held to meet the reserve requirement set by the Board may be in the form of (1) balances in a Federal Reserve bank at which the depository institution is a member or at which it maintains an account; (2) balances maintained by a nonmember depository institution in a bank that maintains required reserve balances at a Federal Reserve bank, in a Federal Home Loan Bank, or in a central liquidity facility that may be established for credit unions, provided that such funds are then passed-through to a Federal Reserve bank; or (3) in the form of vault cash. The proportion of vault cash that may be counted to satisfy reserve requirements must be identical for all depository institutions. Balances received by a bank from another depository institution that are used to satisfy reserve requirements on such depository institution would not be subject to reserve requirements imposed on the receiving bank or to assessment imposed on such bank pursuant to the Federal Deposit Insurance Act.

Section 7. Pricing of services. This section requires the Federal Reserve Board to price services provided by the Federal Reserve System at a market cost and to provide access to such services to all depository institutions on the same terms and conditions. Such services are currently provided by banks without charge. The Board would be required to publish for comment a set of pricing principles and a proposed schedule of fees for Federal Reserve services by July 1, 1979, and to institute pricing of its services by July 1, 1980.

The pricing principles would be required to take into account the taxes that would be paid and the capital costs that would be incurred if privately owned organizations provided similar services. Due regard would be given to competitive factors and to the provision of an adequate level of services nationwide.

Section 8. Committee on money substitutes. This section would require that the Federal Reserve Board establish a committee to examine questions related to the imposition of reserve requirements against bank and nonbank liabilities that are substitutes for demand deposits. The Committee would be composed of five members to be appointed by the Broad and the individuals would have broad backgrounds on monetary affairs, economic policy, or finance. The appointees could not be United States Government employees, or employees, officers, or directors of a Federal Reserve bank.

The committee would conduct a thorough study and investigation of (1) the need for legal reserve requirements against short-term liabilities such as nonbank "federal funds", security repurchase agreements, Eurodollars, security dealer repurchase agreements, liquid asset mutual funds, cash management services, and travelers checks; (2) the appropriate level of reserve requirements against each type of money substitute; and (3) the need for the Federal Reserve Board to have flexibility to change such reserve requirements.

The committee would be required to include in its report to the Board recommendations for administrative actions and legislation.

Section 9. Authority of State bank supervisors. This section indicates that nothing in this Act or in amendments made by this Act shall be construed as derogation of the authority of any state bank supervisor over any institution it supervises by state law.

Section 10. Effective date. The new reserve requirements included in Section 5 and 6 shall take effect on the first day of the sixth calendar month after enactment. All other sections take effect on the date of enactment.

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By Mr. STENNIS:

S. 3486. A bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes; to the Committee on Armed Services.

(The remarks of Mr. STENNIS when he introduced the bill appear elsewhere in today's proceedings.)

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By Mr. BELLMON (for himself and Mr. BARTLETT):

S. 3487. A bill to change the name of Clayton Lake in the State of Oklahoma to Sardis Lake; to the Committee on Environment and Public Works.

● Mr. BELLMON. Mr. President, I am introducing a bill today for myself and my colleague, Senator BARTLETT to correct a situation that occurred inadvertently due to the Flood Control Act of 1962. This act provided for a new reservoir to be constructed in Pushmataha County, Oklahoma.

This reservoir, presently under construction, was named Clayton Lake in the legislation. Less than ten miles from the site of the new lake is an existing Clayton Lake. Many Oklahomans have contacted my office pointing out the confusion that would result from two lakes of the same name in the same county.

The bill, which I am introducing today, will rename the lake, Sardis Lake, after the town of Sardis which will be partially inundated by the new reservoir. The name Sardis was chosen by the resident of Pushmataha County during a public meeting.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3487

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the lake known as Clayton Lake, which is being constructed as part of the project for the Clayton and Tuskahoma Reservoirs, Kiamichi River, Oklahoma, authorized in the Flood Control Act of 1962, shall hereafter be known as Sardis Lake, and any law, regulation, document, or record of the United States in which such lake is designated or referred to shall be held to refer to such lake under and by the name Sardis Lake.●

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## ADDITIONAL COSPONSORS

S. 3248

At the request of Mr. MORGAN, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 3248, to create a National Agricultural Cost of Production Board.

S. 3280

At the request of Mr. BAYH, the Senator from South Dakota (Mr. ABOUREZK) was added as a cosponsor of S. 3280, to establish a National Institute of Justice.

S. 3320

At the request of Mr. HATHAWAY, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 3320, a bill to provide tax breaks for investments in stock of small businesses.

S. 3425

At the request of Mr. HATHAWAY, the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 3425, the Community Mental Health Assistance Act of 1978.

S. 3447

At the request of Mr. STONE, the Senator from North Carolina (Mr. MORGAN), and the Senator from Iowa (Mr. CLARK) were added as cosponsors of S. 3447, the Agricultural Export Trade Expansion Act of 1978.

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## SENATE RESOLUTION 553—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. LONG, from the Committee on Finance, reported the following original

resolution, which was referred to the Committee on the Budget:

S. RES. 553

*Resolved*, That (a) pursuant to section 402 (c) of the Congressional Budget Act of 1974, section 402(a) of such Act shall not apply with respect to the consideration in the Senate of the bill (H.R. 2852) to amend the Internal Revenue Code of 1954 to provide that refunds of the taxes on gasoline and special fuels shall be made to aerial applicators in certain cases; and

(b) That waiver of this section is necessary in order to enable the Senate to consider legislation which will extend and modify the program of antirecession fiscal assistance established by the Public Works Employment Act of 1976; and further

(c) That it was infeasible to complete action on this legislation within the usual time limits prescribed by this section because of the uncertain legislative status of the program in the House and because this program is so particularly related to economic conditions as to make it highly desirable to delay action beyond the usual deadline in order to obtain as accurate a view of present economic trends as possible.

## NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. HEINZ. Mr. President, the Subcommittee on Federal Spending Practices and Open Government is announcing a hearing on S. 3284, the Free and Fair Trade in Procurement Act of 1978, to be held Tuesday, September 12, at 10:00 a.m., in 3302 Dirksen Office Building.

Any inquiries regarding the hearing should be directed to Mr. Joseph Robinson, subcommittee professional staff (224–6740.)●

SUBCOMMITTEE ON LABOR

● Mr. WILLIAMS. Mr. President, the Subcommittee on Labor will have hearings on the Administration and Enforcement of the Occupational Safety and Health Act of 1970 on Tuesday, Wednesday, and Thursday, October 3, 4, and 5, 1978. The hearings will be held in room 4232 of the Dirksen Building, and will commence, on each day, at 9:30 a.m.

Those wishing additional information, or wishing to testify at these hearings should contact Mike Goldberg of the committee staff, at room G–237 of the Dirksen Senate Office Building, Washington, D.C. 20510, telephone (202) 224–3674.●

COMMITTEE ON VETERANS' AFFAIRS

● Mr. CRANSTON. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Veterans' Affairs will conduct a hearing to receive the legislative recommendations for fiscal year 1979 from the national commander of the American Legion, John M. "Jack" Carey, on Tuesday, September 12, 11 a.m., in room 318 of the Russell Building.●

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to hold an oversight hearing on motor carrier safety.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

### THE LOBBYING CAMPAIGN ON HOSPITAL COST CONTAINMENT LEGISLATION

● Mr. CURTIS. Mr. President, the National Conference on State Legislatures apparently has undertaken a massive lobbying campaign on behalf of the amendment introduced by my colleague on the Committee on Finance, the Senator from Wisconsin (Mr. NELSON). On August 17, they wrote all of the chairmen and members of the respective State legislative health committees, urging that they contact their senatorial delegation in support of the Nelson amendment to H.R. 5285, the hospital cost containment legislation recently reported by the committee.

State Senator Richard A. Snyder, a distinguished member of the Pennsylvania State Senate and ranking minority member of the Public Health and Welfare Committee, does not at all share NCSL's enthusiasm for the Nelson amendment. I request that his response, forwarded to Senator HEINZ, be printed in its entirety in the RECORD.

The material follows:

SENATE OF PENNSYLVANIA,
*August 22, 1978.*

Hon. H. JOHN HEINZ, III
*U.S. Senate, Dirksen Building, Washington, D.C.*

DEAR SENATOR HEINZ: This is response to the Honorable Irving Stolberg's communication of August 17 requesting my views on legislation which is presently before the Congress. Representative Stolberg is Chairman of NCSL's Committee on Human Resources.

I regret that I cannot support the Nelson amendment to HR 5285. Interestingly, such an effort in Pennsylvania's medical assistance program was declared unconstitutional several weeks ago.

While the hospital increases exceed inflation figures in other areas of our economy, it is encouraging to note that the Voluntary Effort program by the nation's hospitals has succeeded in lowering the rate of inflation in the past year. It would seem only fair to permit the hospitals to monitor their own industry for at least another few years, offering incentives for more efficient management rather than the threat of government control.

Government does not belong in the private hospital business as suggested by the Nelson amendment. We already have too much government control, and perhaps it is time for government to examine the proliferation of inspections and paper work with which hospitals must comply rather than to take a broad step that will only lead to additional government intervention.

I do share the concern of Congress for the high rate of inflation in medical charges by hospitals. I also must express my concern for the high costs of public assistance and other government programs. If Congress is truly attuned to reducing overall costs of medical charges, it is time to review eligibility criteria and waste and fraud in these areas. Penalizing those who provide needed care to the indigent will not correct the problem.

Cordially,

RICHARD A. SNYDER.●

### CURRENT U.S. POPULATION

● Mr. PACKWOOD. Mr. President, I wish to report that, according to U.S. Census Bureau approximations, the total population of the United States as of September 1, 1978 is 219,294,521. In spite of widely publicized reductions in our fertility levels, this represents an increase of 1,677,708 since September 1 of last year. It also represents an increase of 183,637 since August 1, 1978, that is, in just the last month.

Over the past year, therefore, we have added more than enough people to fill the city of Houston, Texas. In the last month, we have added more than enough people to fill the city of Syracuse, N.Y.●

### DEEP SEABED MINING AND THE LAW OF THE SEA CONFERENCE

● Mr. JACKSON. Mr. President, the Senate will soon be considering S. 2053, the Deep Seabed Mineral Resources Act. Similar legislation has already been passed by the House of Representatives (H.R. 3350).

This legislation has a significant relationship to the current negotiations in the Third United Nations Law of the Sea Conference. I have been concerned about the potential impact of any Law of the Sea Treaty on the ability of American industry to recover minerals from the deep ocean floor.

On August 7, I put into the RECORD (page 24670) a copy of a letter to Ambassador Richardson from Senator HANSEN and me expressing our concerns about the current version of the treaty. I have just received an encouraging response from Ambassador Richardson which, I believe, will be of interest to all Senators. I ask that Ambassador Richardson's response together with the letter which Senator HANSEN and I sent him be printed in the RECORD.

The letters follow:

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
*Washington, D.C., August 2, 1978.*

Hon. ELLIOT RICHARDSON,
*Ambassador at Large, Department of State, Washington, D.C.*

DEAR MR. AMBASSADOR: S. 2053, the Deep Seabed Mineral Resources Act, has been ordered reported by the Senate Energy and Natural Resources Committee and is now pending before the Senate Commerce, Science, and Transportation Committee. The House of Representatives recently passed a similar bill. Since it is likely the Senate will consider this legislation sometime this summer, we have been keenly interested in the progress of negotiations in the Third United Nations Law of the Sea Conference, particularly those in Committee. One bearing on formulation of a new legal regime for the deep seabed.

We fully appreciate the complexity of your assignment. Defining the national interest relating to UNCLOS negotiations is in itself an extraordinarily difficult exercise, quite apart from the problems inherent in carrying forward discussions with over 150 delegations each with its own constellation of national

interests in maritime law. We can understand the need to balance and weigh these many considerations in arriving at the United States position on any given issue. The U.S. delegation under your leadership has achieved impressive gains in some areas. For these achievements you are to be congratulated.

However, the trend in Committee One negotiations appears less than promising. Last September you testified before Congress that there were a number of key features of the Informal Comprehensive Negotiating Text (ICNT) produced at the Sixth UNCLOS Session which were "fundamentally unacceptable" to the United States and you itemized those unacceptable provisions. Unfortunately, the Seventh UNCLOS Session held at Geneva appears to have yielded little progress in satisfactorily modifying these unacceptable provisions of the ICNT. Spokesmen for the U.S. ocean mining industry have voiced serious doubts about the ability to proceed to commercial recovery of manganese nodules under terms and conditions of the ICNT. After the Geneva Session, a joint statement representing the views of Belgian, British, Canadian, Dutch, French, German, Japanese and United States ocean mining companies said that "the draft treaty texts resulting from the Seventh Session did not significantly improve the previous draft treaty proposal (ICNT) which was considered to be 'fundamentally unacceptable'—in some cases the new texts were worse."

As we understand it, the ICNT would (among other things) impose what amounts to the mandatory transfer of technology from private firms who have invested many millions of dollars in development, to a competing international seabed authority; would unduly limit the production of minerals with no comparable restraint upon production by the authority; would severely restrict the number of available mine sites for U.S. ocean mining firms; would allow no meaningful review of authority decisions denying contracts to U.S. ocean mining firms; and would establish a 20-year termination process which would inhibit entry by new U.S. firms into ocean mining activity.

We are deeply concerned that our legitimate seabed mining rights are being traded away in the treaty negotiations. We understand you have stated in more than one forum that (in effect) the United Nations Moratorium Resolution of 1969 (G.A. Res. 2574D XXIX) declaring the resources of the deep seabed to be the Common Heritage of Mankind and off-limits to exploitation has all but nullified the traditional high seas freedoms under which U.S. ocean mining firms have always assumed their right in international law to engage in the commercial recovery of manganese nodules. To illustrate this point, you are said to have compared the current United States position in Committee One with a hypothetical multinational corporation dickering with the Government of Indonesia for off-shore drilling rights. It seems to us in so doing you are implicitly acknowledging ownership and control of the deep seabed by an international community dominated by a Third World majority which is unfriendly to U.S. ocean mining rights and interests.

The implications of this position are most disquieting. There are several reasons for our uneasiness. First, the United States has never, either formally or informally, recognized the U.N. Moratorium Resolution as carrying the force and effect of international law. In fact, in May, 1970, the President said "I do not believe it either necessary or desirable to try to halt exploration and exploitation of the seabed beyond a depth of 200 meters during the (treaty) negotiating process." U.S. negotiators have consistently adopted this attitude ever since that time.

Second, deep seabed mining legislation now moving through Congress (as well as similar bills introduced in prior Congresses) strongly asserts the right of U.S. ocean mining firms to proceed to commercial development under existing high seas freedoms, pending completion of UNCLOS negotiations and ratification of a law of the sea treaty by the Senate.

Third, until such time as the term Common Heritage of Mankind has been given legal definition by a treaty ratified by the United States Senate, its legal application to U.S. citizens is inevitably subject to conflicting and ambiguous interpretation. Fourth, in our view the moratorium on seabed mining contained in the U.N. Resolution of 1969 cannot prevent seabed development unless control of the seabed has been acquired by an international seabed authority under terms of a duly ratified law of the sea treaty. Fifth, we detect an inconsistency between the United States delegation's forthright—and so far successful—defense of high seas freedoms of navigation for vessels in the Exclusive Economic Zone and your apparent relinquishment of high seas freedoms for ocean mining activities.

Sixth, we can see no evidence of a United States negotiating "bottom line" in Committee One: what you cited as being fundamentally unacceptable to the United States in the ICNT before the Geneva Session would now appear to be acceptable through changes in the text which lack substance. Nor are we aware of any straight-forward response to the point-by-point criticisms of the U.S. negotiating position which have been submitted by the ocean mining industry and other more neutral observers.

Last October, when you appeared before the combined hearing of the Senate Energy and Commerce Committees to report on the unacceptable terms of the ICNT, you accurately set forth what is essentially our own view of the position the United States should adopt in Committee One negotiations. We believe the statements you made then is worth repeating:

"What is involved here is the establishing of a regime for half the Earth's surface. While today's technology points only to manganese nodules, there is no telling what lies ahead in the future. We simply cannot agree to a regime which would unnecessarily inhibit, and perhaps even prevent, deep seabed development. To do so would make a mockery of the Common Heritage of Mankind and reduce to a pitiful trickle the benefits that could otherwise accrue—not only to the entrepreneurs who will risk their capital, but also to mankind as a whole, in particular the developing countries."

In light of this statement, and in light of our considered opinion that high seas freedoms for U.S. ocean industries are not impaired by United Nations actions short of a duly ratified law of the sea treaty, we would respectfully suggest a reassessment of the direction and tenor of the United States negotiating posture. Moreover, we would suggest a careful examination of whether or not the United States Senate is prepared to ratify a law of the sea treaty containing terms and conditions such as those in the ICNT which would inhibit and prevent deep seabed development by U.S. firms. We are inclined to believe the Senate would not ratify such a treaty.

Would it be possible to provide the Senate, prior to the reconvening of the Law of the Sea Conference in New York, with a report on the "bottomline" United States negotiating position in Committee One? This could be done either in the form of a letter or, if you prefer, through your appearance before a hearing of the Senate Committee on Energy and Natural Resources.

We look forward to your response.

Very truly yours,

HENRY M. JACKSON,
*Chairman.*
CLIFFORD P. HANSEN,
*Ranking Minority Member.*

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AMBASSADOR AT LARGE,
*Washington, D.C., August 28, 1978.*

Hon. HENRY M. JACKSON,
*U.S. Senate*

DEAR MR. CHAIRMAN: Thank you for your letter of August 2. As you may know, I have only recently returned from a trip to Latin America. I regret that my absence from Washington prevented an earlier response to your letter.

Your letter raises several very important issues. I would begin by examining three assumptions upon which your arguments appear to be based. The first of these is that the "trend in Committee I negotiations appears less than promising." Certainly, no one could safely predict a quick and satisfactory resolution of Committee I issues, but if we are patient, the trend is in our direction.

The session in Geneva this past spring may have marked a turning point in the Conference. The posturing and rhetorical excess that had marked previous sessions was absent in Geneva. It was replaced by a genuine willingness upon the part of all delegations to seek a workable compromise embodied in a "parallel system of access" to seabed resources.

This is not to say that the substance of the negotiations improved at the same pace as the atmosphere, for the issues dealt with were among the most difficult. Though there was some improvement in texts at Geneva, we are still far from agreement that fairly accommodates the interests of the U.S. and other industrialized countries.

This brings me to the second assumption: that the ICNT seabed texts are regarded by the U.S. delegation as acceptable or nearly acceptable. This assumption has underlain much of the criticism directed toward the delegation since the end of the Geneva session. Putting it bluntly, it is a "red herring."

I share many of the criticisms that have been directed toward the ICNT by the industry and other observers, and have so stated publicly on many occasions. Enclosed is a copy of a statement made last week by my deputy, Ambassador Aldrich, in Negotiating Group I to ensure that there can be no misunderstanding of our position in the Conference.

Clearly, an acceptable seabed text will have to contain significant improvements over the ICNT. We are engaged in what could well be a long process of seeking these improvements. Our objective is to negotiate a text that provides assured access to seabed resources for state-sponsored miners.

The means we have chosen to achieve that objective is to create a parallel system that is and is perceived to be viable on both sides—the "private" (state-sponsored) side and the "Enterprise" side.

Several elements must be combined into a package to form a viable parallel system. These include a structure and voting system of the governing institutions which protect the important economic interests at stake, financial arrangements which place reasonable burdens on private miners, and procedures for obtaining contracts that provide reasonable assurance of access.

In addition, ways must be found to provide reasonable assurance that the Enterprise will be able to get into business promptly. This part of the package includes financing the Enterprise and providing it as-

surance that it can purchase the necessary technology during the start-up period.

Because we are negotiating a package, it is not possible to define a single "bottom-line" position in terms of each separate element. If we could, it would make our task far easier. It is necessary, rather, to assess the package in its entirety to determine whether it satisfies our basic requirement of assured access. Following the close of the Seventh Session, we shall examine the seabed package as it then stands with a view to formulating Administration policy for subsequent negotiations.

The third assumption is to me the most troubling. It is the idea that we have fallen back from the position that seabed mining is a freedom of the high seas. We continue to hold this position just as firmly as ever. I have pointed out that others disagree with our view. I have described their arguments.

But my description of their positions and analysis of the possible consequences of a legal and political conflict over this issue should not be mistaken for adoption on my part of those arguments nor for a lack of willingness on the part of the Administration to face up to the consequences of such a conflict. Also enclosed is a copy of a statement I made on August 28 in the General Committee of the Conference defending the legality and the wisdom of our legislation on seabed mining.

I am also disturbed by the implication that we have not taken into account the views and suggestions of the industry and other observers. Our relationship has been one of constant cooperation and interchange of ideas. Industry representatives have been most helpful to us in preparing for the current negotiations in New York where we continue to consult closely with them.

You asked that I consider ". . . whether or not the U.S. Senate is prepared to ratify a Law of the Sea Treaty containing terms and conditions such as those in the ICNT . . ." Such an examination would be necessary only if I were willing to recommend to the President that he submit such a treaty to the Senate. I am not so willing. When and if a treaty is submitted to the Senate, I intend that it be a treaty that protects U.S. interests in seabed mining.

I have explained above why it is impossible to provide the Energy and Natural Resources Committee a "bottom-line" seabeds negotiating position. I would be more than happy, however, to meet with the Committee following the conclusion of the current session to explain in greater detail our positions on various issues and to provide you my assessment on future prospects.

With best regards,

Sincerely,

ELLIOT L. RICHARDSON.

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STATEMENT MADE IN NG–1 BY THE REPRESENTATIVE OF THE UNITED STATES

AUGUST 24, 1978

MR. CHAIRMAN: I want to support your proposal that we not go back over the texts produced in Geneva, but move ahead to work on other elements of the system of exploitation, in particular, Annex II. I think the most important thing is that the texts produced in Geneva have moved us closer to consensus and will form the basis for further negotiations.

Even more significant than the production of these new texts is the fact that the negotiation proceeded in a heartening atmosphere of cooperation. Virtually all delegations have accepted a common challenge—how to make the parallel system of exploitation workable, and our efforts have been directed to this common task.

I would not, however, want to leave the impression that our future work will be easy. Far from it; many seemingly intractable issues lie ahead. The texts produced in Geneva reveal our failures as well as our accomplishments. My delegation's belief that we should now proceed to other issues should not be misunderstood as implying our satisfaction with or acceptance of the Geneva texts. These texts need significant further improvements, both in detail (which I would not wish to discuss here) and with respect to major issues. Ambassador Richardson has asked that I make clear our concerns with respect to these issues.

Among the major defects of these texts is the review clause, which remains unsatisfactory, although it is clearly an improvement over the comparable provisions in the ICNT. The minerals from the seabeds will be more needed by the world's economy in the next century than they are now; clearly we could not be expected to agree that our access to them might be denied at that time. The common heritage of mankind is not something that can be hidden away and hoarded. On the contrary, it must be available for use by all states as needed.

Similarly, some of the provisions on transfer of technology continue to cause us deep concern. While they use an acceptable standard, fair and reasonable commercial terms and conditions, we were disturbed to find that our willingness to contemplate the imposition upon contractors of extraordinary and unprecedented obligations in order to assure the Enterprise that it will be able to acquire the technology it needs has encountered further demands that these obligations continue indefinitely, long beyond the time they are needed, and that the same obligations be undertaken for the benefit of developing countries which may want to engage in seabed mining on their own.

These provisions are not needed to make the parallel system of exploitation workable, and pressure for them would imperil acceptance of obligations designed to put the Enterprise in business. Moreover, I think it is generally recognized that the texts produced in Geneva need improvement with respect to arbitration, the award of damages, and the availability of other sanctions to avoid any implication that contracts can be annulled as a result of inevitable disagreements over the terms on which technology will be sold.

The production control contained in Article 150 bis is clearly an improvement over that contained in the ICNT. Like all compromises, it confronts both producers and consumers with painful decisions. My government has not yet decided whether it is acceptable, and we can understand that others may also wish to examine it in the context of a fully developed parallel system of exploitation.

Article 150 bis needs to be revised to make clear that the Authority can become a party to any commodity agreement only if all major producers and consumers of the commodity in question also become parties. This is necessary to protect the interests of both producers and consumers. We should not overlook the fact that many other elements of the system of exploitation require much further work, clarification and improvement before my government, or, I would expect, the governments of most states represented here would be in a position to pass judgment on the acceptability of the system as a whole. This will be one of our principal tasks at this renewed session.

Also, we shall have to ensure that the Enterprise is a responsible competitor—that it bears substantially the same burdens as state and private companies. This consideration impels me to suggest that we begin our work this year with the question of whether part or all of Annex II applies to the Enterprise. It is impossible to deal intelligibly with the question of the selection of applicants without including the whole question of the approval of plans of work for the Enterprise as well as for state and private contractors.

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STATEMENT BY AMBASSADOR ELLIOT L. RICHARDSON ON NATIONAL SEABED MINING LEGISLATION AT THE GENERAL COMMITTEE OF THE LAW OF THE SEA CONFERENCE

AUGUST 28, 1978

Mr. PRESIDENT, I have listened with respect to the views expressed by the distinguished representative of Fiji on behalf of the Group of 77, and I do not wish to precipitate a lengthy debate on the subject of the deep seabed mining legislation. However, in my view and in the view of the other countries whose enterprises are now in the process of developing the means of recovering hard minerals from the deep seabed, the concept of the common heritage of mankind, which we supported in 1970 and to which we still subscribe, has never meant that these resources must remain unexploited in the absence of an internationally agreed seabeds regime. I would have thought this point would have been made clear by our concurrent opposition to the moratorium resolution, which was not adopted by consensus.

In our view, states and their nationals have the legal right to use the mineral resources of the deep seabed beyond national jurisdiction. This is a freedom of the high seas which has not been abridged either by any treaty or by customary international law. Although we are all engaged in the process of developing a treaty, this process has proved long and difficult, and its successful conclusion is not yet at hand.

I understand why the Group of 77 would prefer that we agree to defer any mining until an agreed treaty can be concluded, but I trust the Group will also understand why we cannot responsibly do that in face of the world's long-range need for the minerals and the more immediate need to proceed with the research and development that will in turn lead to the beginning of commercial mining. Far from jeopardizing the Conference, seabed mining legislation should facilitate the early conclusion of a generally acceptable Law of the Sea Treaty by dispelling any impression that the governments of the countries preparing to engage in such mining can be induced to acquiesce in an otherwise unacceptable treaty because that is the only way to obtain the minerals.

Mr. President, so far as the US is concerned, the goal of my Government remains the earliest possible conclusion of a generally acceptable Law of the Sea Treaty, and I believe the legislation now before the Congress to be entirely compatible with the principles on which the eventual treaty will be founded;

It recognizes that the resources of the seabed are the common heritage of mankind.

It requires that revenues be set aside for developing countries.

It requires stringent standards for the protection of the marine environment.

It does not assert any right of sovereignty or sovereign rights over seabed mine-sites.

It will be superseded whenever a law of the sea treaty takes effect with regard to the United States.

It does not declare or imply any intention that American seabed mining companies should remain outside the jurisdiction of an International Seabed Authority under such a treaty.

Finally, Mr. President, under the legislation that has just emerged from the Senate Committee on Foreign Relations, no permits for commercial recovery of hard mineral resources could in any case be issued for several years. This will allow ample time for our negotiations to conclude, thus assuring that seabed resources will be developed only under the international regime we are striving to achieve.

Thank you, Mr. President●

## SHIRLEY CUSICK CROWNED WINNER OF MISS INDIANA WHEELCHAIR PAGEANT

● Mr. LUGAR. Mr. President, in July of this year Shirley Cusick of Terre Haute, Ind., was crowned as the winner of the 2d Annual Miss Indiana Wheelchair Pageant. Her life is one of triumph over the odds and victory over a handicap which might have defeated individuals of lesser determination and commitment. I draw her story to the attention of my colleagues as an example of the tenacity of the human spirit and as a source of inspiration to us all.

Shirley Cusick enjoyed an active childhood and loved the outdoors. She played softball, baseball, basketball, and participated in water sports of all kinds. Throughout her high school years and the first few years of her marriage, she was a member of countless organizations, often serving as the chairman or officer of a committee. Her secure childhood and early adult life were temporarily shattered on August 10, 1968, when an automobile accident left her totally paralyzed. In time and with extensive rehabilitation, Shirley regained the use of her body but learned that she would have to use a wheelchair for the remainder of her life.

Accustomed to an active life, the adjustment to a wheelchair could not have been an easy one for Shirley Cusick. As the mother of two small children, she knew that the accident which forced her into a wheelchair could not retire her from a demanding schedule. She set about to pick up the pieces of her life and decided to enter college. Six years later, Shirley is a college graduate who fully operates her own home and cares for her children. She has worked as a Girl Scout leader, a volunteer in the physical therapy department, and as a member of various groups formed to increase the public's awareness of the special needs of handicapped persons.

Shirley Cusick is continually tackling a new challenge and is presently learning to drive a van. She intends to continue her education and her work on behalf of the handicapped. For Shirley Cusick the future is a promising one filled with unlimited opportunities for service. I salute her courage and willingness to share her life so abundantly with her family, friends, and community.●

## THE INVESTIGATION OF GENERAL SERVICES ADMINISTRATION

● Mr. CHILES. Mr. President, as you know, last March I directed the Federal Spending Practices Subcommittee to begin an investigation into the substantial scandals which, 6 months later, appear to be engulfing the General Services Administration (GSA). While investigative hearings have been held in June, and will continue on September 18, one matter has become so pressing as to require immediate action and public knowledge that the problem exists.

Accordingly, I want to advise the Senate that I have contacted Mr. Ben Civiletti, head of the Criminal Division of the Department of Justice, and Mr. Vincent Alto, Acting Inspector General of GSA, and requested them to meet with me early next week.

The topic of our discussion is painfully familiar to them, and to many persons in the law enforcement community who are involved in the current GSA investigations.

Once again, it appears, the internecine warfare between competing bureaucracies has begun. As public interest in the GSA scandals rises, the race for glory becomes more intense.

Unfortunately, this race is working to the detriment of the investigation itself. My investigators report that several rapidly progressing and very promising investigations have become bogged down in a three sided name calling contest among Federal Bureau of Investigations agents, GSA investigators, and Justice Department personnel.

Out on the street, various charges of ineptitude and incompetence are traded among the investigatory staffs involved. Too much time is still being spent arguing about who dropped the ball back in 1975 when Mr. Bob Lowry first went to the authorities.

As a consequence, I regret to report that we will probably hear at our September 18 hearing that the reforms promised at the June hearings have not happened yet. The indictments would not be in, and the crooks will not have been fired. Some perhaps, but not in anywhere near the numbers necessary to overcome the waves of criminal activity GSA has suffered for years.

I realize that Mr. Civiletti and Mr. Alto have met several times on their own initiatives in an attempt to solve this problem. But, while I compliment them for their foresight, it is now plainly evident that the word has not trickled down to their squabbling subordinates.

Consequently, I propose to extract an operating protocol from these gentlemen and then hold them to it. If the squabbling and time wasting continues, then I shall be forced to consider making public the names and ranks and specifics of each instance we are aware of where Federal officers have spent more time fighting among themselves than conducting criminal investigations. I would, of course, only do this as a last resort. But I think this constitutes fair warning to the obstructionists that the Congress is not going to stand aside and accept the possibility that the GSA investigations are going to go down the drain again.●

## COLUMBUS, IND.

● Mr. BAYH. Mr. President, the September issue of National Geographic magazine contains an article on Columbus, Ind., which I would like to share with my colleagues. I have long recognized the outstanding qualities of Columbus and am pleased that a magazine such as the National Geographic has focused national attention on this extraordinary city.

A combination of talented people, generous businesses, and remarkable architecture make Columbus a unique community. The article aptly captures the spirit, history, and lifestyle of Columbus and reinforces my pride and honor in representing such a fine community.

I request that the article be printed in the RECORD.

The article follows:

A MOST UNCOMMON TOWN: COLUMBUS, IND.

As civic decoration, it's not your typical cannon on the courthouse lawn—"Chaos I" (left), a clanking tangle made of old Indiana machinery by Swiss sculptor Jean Tinguely. But it's in Columbus, and that's not your typical midwestern county seat, either.

This day schoolchildren have come to The Commons, an enclosed public space designed by architect Cesar Pelli, to draw their impressions of the kinetic sculpture. People on their way to the adjoining shopping mall stop to look and to listen. Some regard the sculpture with heads cocked in puzzlement. Some scowl while others smile. Few ignore it.

At one end of The Commons older men gather in small groups to solve the world's problems and bemoan the price of fertillizer. Maybe some parts from their old combines, threshers, and augers—serious machines for serious work—have become, well, *art*. That's a good one.

In a way Columbus is like that, a town without any apologies for hard work, solid and industrious, yet one alive to and filled with art, especially contemporary architecture of national significance.

Roughly 40,000 people yearly come to look around this town of 32,000. Some just wander about on their own. Many go to the Visitors Center for guidance. So it's commonplace for a bus loaded with architecture students on tour to stop at The Commons. Children there won't pay them any mind, busy as they are exploring the universe of their fancies in a Playtank (right) while their parents run errands.

For townspeople the forty-plus buildings designed by modern masters of architecture do not make a spectator sport. They are places to learn in, pray in, read, in have fun in, work in, bank in, have the daily life of the community written and printed in. Small town in scale, they fit in like slightly eccentric neighbors, adding variety, provoking debate, and stimulating a taste for the unconventional.

Turning on at the City Power House, the Senior Citizens Kitchen Band, with Clara Wilds on her kazoosahose-funnelphone, practices in the former utility plant renovated for senior activities. The band goes "everywhere we're asked," getting raves at the State Fair and such requests as the one from a man in the convalescent home who asked for "a good old Methodist hymn—'Barney Google.'"

Over at City Hall, there's a brief break from the necessary but mundane concerns of streets, utilities, and budgets. Mayor Max Andress (facing page), former schoolteacher and football coach, beams as he concludes a wedding ceremony for a couple who had come down from Indianapolis because they like the lively spirit of building and rebuilding in Columbus.

Morning lights the rectangular planes of the First Christian Church (below), built in 1942 to Eliel Saarinen's design as the town's pioneer modern building.

Now that towns and small cities across the United States are enjoying a renaissance, Columbus stands among them as something of a Florence, with its Medici of the corporate variety.

Responsibility to the town was well established as a policy of the Cummins Engine

Company when J. Irwin Miller (above, with his wife, Xenia) became its chief executive. Founder Clessie Cummins was the chauffeur to a local banker, W. G. Irwin, and persuaded him to finance improvements to the diesel engine. But the profits, Irwin insisted, were not to be the sole purpose of the venture. They were also the means to provide jobs and personal and moral growth for the community. The jobs now total about 11,000 locally. The firm's philanthropy continues.

Most visible during Miller's tenure was a program that began with the schools. Cummins would pay the design fees if the school board picked from a given list of top architects. That was all; otherwise, the schools had complete control. Since 1957, 11 schools and several other public buildings have been so designed.

Setting its own example, Cummins built a new plant (right) into the landscape, with parking tucked away on top, and an outside view for all 2,000 employees.

From A to Z, the schools designed under the architects fee-paid program have, over 20 years, mirrored changing trends in educational philosophy. The most recent, Fodrea Community School, nestles into a neighborhood of modest, well-kept houses. Planned with the active participation of students, parents, and teachers, it features learning centers that occupy open, flexible space, where team teaching may be used to best advantage. As plans develop and funds permit, the school should become a center for the activities of all ages.

Sometimes the town gets its back up a bit. The building committee for the new library decided it wanted to choose its architect directly. So it went out and hired the renowned I. M. Pei on its own. It then turned around and asked Cummins for a building gift—and got $800,000.

A sampler of Columbus architecture might begin anywhere and run a gamut of public, private, and commercial structures done by such prominent architects as Harry Weese, John M. Johansen, Eero Saarinen, and Skidmore, Owings & Merrill. A spacious glass arcade connects two downtown bank buildings. The bell tower of the First Baptist Church crowns a house of worship whose aura is both post-modern and pre-Gothic. Eero Saarinen thought his North Christian Church might be the work that would most commend him to St. Peter.

Others are less reverent, calling Saarinen's church the "olican" and grumbling about company-town charity. Hoosier disdain for paternalism goes back a long way. In 1821 Gen. John Tipton gave 30 acres to found a town named Tiptona in his honor. The town promptly changed the name to Columbus. The general left in a huff and never came back.

Clowning around on the Fourth of July, children mug it up as some 40,000 Cummins employees and families converge on their own recreation complex, the 345-acre Ceraland, which offers everything from camping to concerts.

All on "The Family," a granite schoolyard sculpture by Harris Barron, join in on a chopper launch.

Art for its own sake enjoys widespread support and participation. When the Hartford Ballet came to town, it not only gave performances but also offered workshops in dance. Corporate and private sources help finance the arts, but their vitality depends on volunteers. That is what all the musicians in the Columbus Symphony Orchestra are. As commercial and cultural center for a seven-county area, Columbus has it both ways: enough people, talent, and enthusiasm to support city amenities, yet preserve a smaller town atmosphere.

For six generations the same family has watched sunsets go down beside the original farmhouse as additions to it went up. With a thousand acres in wheat, soybeans, corn, and tobacco, Ray and Lou Marr expect to see "at least one more generation in farming." Lou is active in historic preservation, and here enthusiasm is widely shared by others as concerned for the best of the old as for the best of the new.

At Zaharako's turn-of-the-century ice-cream parlor downtown, a satisfied customer thinks the cut glass, onyx, and polished brass are OK, but the cherry phosphates—wow!

Retired from big crops, a farmer and his wife expertly tend their small, intown yard and garden.

Little details can make life more livable. Add some paint and imagination, and a handball court becomes a poster. Multiply the details, large and small, all over town, and life becomes that much more pleasant. Made a part of corporate philosophy by such large local concerns as Cummins, Arvin Industries, and Cosco, Inc., the amenities become strong points in recruiting executive talent that might more naturally head for the big cities.

"We're really mountain and ocean people." That's how Dianne and Ron Hoge felt six years ago when they came to town with a two-year commitment to midwestern life. In their cedar and glass home designed by architect Scott Mitchell, they admit to having "been won over by Columbus," where in day-to-day living they learned to enjoy an improved quality of life away from the "urban hassle."

With the nation's growth now shifting to more rural areas, Columbus can only hope that hassle doesn't end up moving to town.●

## U.S. PIONEERS IN INSULIN RESEARCH ACHIEVE BREAKTHROUGH FOR DIABETICS

● Mr. SCHWEIKER. Mr. President, yesterday afternoon a team of researchers in California announced an extremely significant breakthrough in medical research. In the laboratory, they have succeeded in producing human insulin using new recombinant DNA techniques.

As reported by the group of scientists at the City of Hope National Medical Center and at Genentech, Inc., the process used involves the insertion of a synthetic gene into a bacterium known as E. coli. The gene can "order" the bacterium to produce insulin. The bacteria, complete with the new gene, are then grown in a fermentation process. As the bacteria reproduce, the offspring also contain the synthetic gene. In other words, the scientists are able to restructure the genetic material, or DNA, of the E. coli to incorporate an insulin-producing trait, which can then be triggered by the scientists.

The implications of this research breakthrough are enormous. There are over 1 million diabetics in the United States alone who must depend on daily insulin injections, and the number is steadily increasing as the prevalance of diabetes rises. The insulin now used is extracted from the pancreas glands of cattle and swine, so it is obvious there are definite limits to the total supply. A recent report from the National Diabetes Advisory Board indicates that some day, the demand for insulin in this country could exceed the amount available from beef and pork glands, although no shortage can be predicted for at least the next two decades. The possibility that bacteria can be used to produce insulin at the bidding of scientists could help alleviate any supply problem far into the future, guaranteeing diabetics in the United States and throughout the world that the life-sustaining insulin they need will always be available. They will no longer be dependent on the vagaries of beef and pork production. The price of insulin may also come down, as insulin manufacturers will no longer have to depend on costly extraction from animal glands.

The production of human insulin holds out other important benefits. Although the insulin we have today is undoubtedly life-giving, insulin produced in animal pancreas glands is not a perfect match for human insulin. Many diabetics, perhaps as many as 10 percent at one time or another develop an allergic reaction to the animal insulin they are now using. Obviously, this presents a very serious medical problem. If diabetics are able to receive insulin, produced by bacteria but identical to that produced in the human body, these allergic reactions may significantly decrease.

Yesterday's news also pointed out the importance of cooperation between the scientific community and American industry. Simultaneously with the scientists' announcement of this exciting breakthrough in insulin research, the U.S. largest manufacturer of insulin, Eli Lilly and Co., announced an agreement with the researchers to begin long-range development aimed at eventual commercial production. According to Lilly's research officials, much more work needs to be done before we can know for certain that mass commercial production of human insulin using this technique is feasible, and it is still too early to predict when animal and human testing can begin. American industry is excited about the potential application of the scientists' discovery and is eager to pursue it.

The foundation for the achievement reported yesterday lies in the groundbreaking work of other U.S. scientists in developing recombinant DNA technology, many of whom have been supported by our National Institutes of Health. The first success of experimenters in producing human insulin represents an application that grew out of years of painstaking basic research into the understanding of the workings of DNA; we are now beginning to see how this research can be of important practical benefit. The end result may help millions of people throughout the world who suffer from diabetes. I know my colleagues join with me in congratulating all those responsible for this breakthrough, which stands as a clear reminder of the pioneering greatness of American science and industry.●

## CETA REAUTHORIZATION

● Mr. BAYH. Mr. President, as the senior Senator from the State of Indiana, a State that overwhelmingly supports the reauthorization of the Comprehensive Employment and Training Act (CETA), I voted in favor of this legislation.

It is my strong feeling that a comprehensive job and jobs training program such as CETA is necessary if we are going to effectively fight unemployment

among our youth and disadvantaged citizens. The plight of our country's unemployed has always been one of my major concerns. Over the years I have struggled with this problem. Therefore, it is pleasing to me to know that so many of my colleagues, as is reflected in the vote, also share my concern.

But it is important that we not stop now in our constant battle with unemployment. We must turn our attention to the Humphrey-Hawkins legislation as another tool in our efforts to reduce unemployment. With the reauthorization of CETA and with the eventual passage of Humphrey-Hawkins, the Senate can stand proud in its accomplishments on behalf of our unemployed.

Specifically, I feel that the Senate version of the CETA reauthorization legislation reflects the President's and Congress intent to eradicate the abuses the program suffered during its first 5 years. Such provisions in title I as the limits on the length of time an individual can be enrolled in a CETA program and the maximum wage provision should cut back on the amount of substitution practiced by local prime sponsors. The establishment of an office of compliance and investigation should serve as an effective mechanism by which to combat fraud and abuse.

The title II provision limiting expenditures for public service employment wages to not more than 50 percent of the title II allotment will assure that at least half those funds be used for manpower services like on-the-job training, manpower training projects, work experience and other support services needed to enable people to obtain unsubsidized employment.

I am pleased to note that the Senate version of this legislation has retained the President's request for 725,000 title VI job slots. As you know the House cut 125,000 jobs from the title VI provision. Such cuts can only hurt the overall intent of this legislation, which is to reduce the unemployment ranks. The reason given for the House action was that antirecession jobs are not necessary in an improving economy.

However, it seems to me that the improvement in the economy may be as a result of such public service jobs. To cut back while unemployment still exceeds 6 percent is comparable to cutting off medication before the patient is well simply because he shows signs of improvement. Even though we all must be conscious of the need to cut back on unnecessary programs, we cannot afford to do so to the detriment of those most in need of such assistance.

Another key component of the legislation is the private sector initiative program. This program is designed to encourage prime sponsors to work more closely with local private employers, organized labor, community based organizations, and educational agencies and to experiment with a variety of approaches which ultimately will place disadvantaged persons in private employment. It is my understanding that Indianapolis has already established a Private Industry Council, consisting of a wide range of businessmen, local prime sponsors, and key citizen organizations for the purpose of coordinating the private sector initiative program. I will watch with great interest the progress of this program in the largest city in my home State. Hopefully in the future such councils can be established throughout the State of Indiana. For it is ultimately within the private sector that the problem of unemployment will be solved.

And finally, I am pleased to see the provision under the CETA bill for displaced homemakers. I have indicated over the years, my strong concern for the plight of those women, who through no fault of their own, find themselves without any economic assistance. In the last two Congresses, I have introduced legislation which would provide employment opportunities, training and counseling services to homemakers who are considered displaced from their family support through death of a spouse, divorce, or other loss of family income. The provisions of this bill are the first step in our country's dedicated effort to protect American homemakers, who often times find themselves in extremely vulnerable positions.

So again let me reiterate my firm support for the CETA reauthorization and further urge that this Congress continue to push legislation designed to eradicate poverty and unemployment in this the richest and greatest Nation in the world.●

## PROVIDING FOR SOCIAL SECURITY

● Mr. HAYAKAWA. Mr. President, although the Social Security Amendments of 1977 did several things to alleviate ever-increasing troubles, the social security system remains significantly underfinanced.

Under the new law, the tax rate and the wage base have been increased and will continue to be for several years. However, if we are to pay all of the benefits we promise, these levels will have to be increased again and again. The rising cost of social security, along with various other retirement systems, is becoming an unbearable burden on today's working population. This burden is bound to grow heavier.

Yesterday's Wall Street Journal carried an interesting article on this subject, written by A. Haeworth Robertson, chief actuary of the Social Security Administration from 1975–1978. Mr. Robertson states that we need to change our views on old age and retirement. He speaks of training persons for second, third, and even fourth careers, an idea I agree with profoundly.

I think Mr. Robertson presents some excellent ideas and I wish to share them with my colleagues. I ask that this article, entitled "Providing for Social Security," be printed in the RECORD.

The article follows:

PROVIDING FOR SOCIAL SECURITY

(By A. Haeworth Robertson)

The Social Security Amendments of 1977 made important revisions in the Social Security program. These amendments are generally considered to be the most significant social security legislation since 1972, and possibly since 1950.

Under the old law future generations of workers would have received progressively higher levels of retirement benefits, relative to their preretirement earnings, than today's generation receives. The amendments revised the method of determining benefits so this would no longer be true. In fact, benefits will be about 5 percent to 10 percent less generous for the majority of future recipients than for today's recipients. There will be an even greater reduction in the case of death and disability benefits payable with respect to relatively young insured persons. Of course, these changes reduced the future cost of the program.

The amendments provided for extraordinary increases in the maximum amount of earnings used for computing benefits and assessing taxes during the period 1979–81. Thus, in 1981 and later approximately 91 percent of the total payroll of persons in covered employment will be subjected to tax and recognized in determining benefits (compared with 85 percent at present). This change increased the income more than it increased the benefit payments.

INCREASES ALL AROUND

The amendments increased the tax rates themselves as well as the earnings which are taxable. The tax rate for both employes and employers under the Old-Age Survivors, Disability, and Hospital Insurance programs combined is 6.05 percent in 1978. The new law provides for a gradual increase in this tax rate, beginning in 1979, to an ultimate level of 7.65 percent in 1990 and later. Tax rates for the self-employed are scheduled to increase from 8.10 percent in 1978 to 10.75 percent in 1990 and later.

But even after all these changes, the Social Security program is still significantly underfinanced. To pay for the benefits which have been promised, taxes paid by the employe and the employer must continue increasing beyond the level of 7.65 percent in 1990. The tax rate must increase to approximately 8 percent by the year 2000 and 12 percent by the year 2025. The ultimate tax rate for the self-employed must become about 16 percent.

These future tax rates are based on the "intermediate" assumptions utilized by the trustees of the Social Security program. Actual future tax rates will be different from these estimates but it seems more likely that they will be higher than the estimates than that they will be lower.

The Social Security program, however, is only one component of the myriad of employe benefit systems which have grown up over the years in an attempt to satisfy the needs generated by an individual's illness, disability, old age or death. There are numerous other employe fringe benefit and income maintenance programs: worker's compensation, unemployment insurance, private retirement systems, group life and medical insurance plans, sickness benefit plans, among others.

The steadily growing cost of these systems may well be developing into an unsustainable burden. If this is true, the only conclusion is that the problem itself must be changed. Some way must be found to reverse the present trend whereby the inactive population is growing at a faster rate than the active working population. It seems highly unlikely that the active working population, already chafing under the yoke of today's burden, will be able and willing to assume the heavier burden projected for tomorrow.

In seeking ways to change the dimensions of the problem, the nation's concept of work, education, leisure and retirement should be reviewed carefully. It should be presumed that an individual will engage in gainful employment suitable to his physical and mental condition until an age well beyond age 60 or 65, perhaps even until the end of his life.

Such a trend may be a natural development as health and life expectancy improve

and as the growth in the work force slows because of the low fertility rates now being experienced and expected to continue in the future. Still, significant changes will be required in existing social and economic arrangements.

The nation must take appropriate action to provide an environment in which the capabilities of each individual can be utilized effectively, an environment which fosters meaningful activity, not empty idleness. Both the incentive and the opportunity should exist to enable every individual to work and produce throughout his lifetime in a series of endeavers compatible with his changing physical and mental abilities. Governmental policies should be directed toward these goals and not toward the removal from the active work force of able-bodied persons who must then be supported by the remaining active workers.

Jobs must be structured so they are more meaningful and satisfying to the individual. Persons must undergo training and retraining to enable them to have not just second careers, but third and fourth careers. In some instances jobs must be designed to fit the capabilities of the human resources available. For older persons as well as disabled persons, less strenuous jobs and part-time employment must be made available.

Significant advances will be required in our ability to match persons with jobs. Sometimes this can be achieved with one employer, but in some cases it will involve many different employers and may require geographical relocation as well.

These changes must begin to take place during the next 10 years, and they must be well under way by the turn of the century when the children of the post-World War II baby boom begin to reach their 40s and 50s. Bringing about these changes will be a slow process which will require the cooperation of many institutions, not just Social Security.

The first step in this process of change was the recent action by Congress prohibiting an employer from imposing mandatory retirement at an age lower than age 70 (with certain exceptions). This action was coincidental and was just another step in the direction of eliminating job discrimination altogether. Nevertheless it fits in well with the eventual need for a more complete utilization of the nation's human resources. As time goes by and health of the elderly improves, further increases in the mandatory retirement age may be advisable.

But the Social Security program effectively dictates the retirement policy of the nation and, since the program itself fosters a policy of relatively early retirement, Social Security must be revised. The mere existence of the Social Security program in its present form sets a standard and thus creates an expectation, which then fosters a presumption of entitlement, for retirement in a person's early to mid-sixties, regardless of the condition of his health and his ability to continue as a productive and useful member of society. The Social Security program thus creates some of the needs it purportedly exists to serve.

JUST 28 YEARS FROM NOW

To some observers, major changes in the Social Security program are out of the question because of the size and scope of the program and because it is so firmly established. On the other had, 53 percent of the present population consists of those born after World War II, persons who are now under age 33. These young persons will begin reaching their 60s just 28 years from now in the year 2006.

It is today that a general framework should be constructed regarding the retirement of this generation—the type and level of benefits to be provided, the source of benefits and the approximate age at which benefits will commence. In making these choices the nation must not be influenced unduly by decisions made in the past by and for different generations of people living under different circumstances.

It will not be easy for the nation to move in the direction of full utilization of its human resources and thus bring under control the rising cost of supporting the inactive population. The alternative, however, will be even more difficult: continued high unemployment and underemployment, an ever increasing pool of idle "disabled persons" and "aged persons," and a total cost to society which will become destructive.●

## VETO OF DEFENSE AUTHORIZATION BILL

● Mr. BAYH. Mr. President, I am pleased that the House of Representatives has sustained President Carter's veto of the Department of Defense Authorization bill for fiscal year 1979. After a review of the issue involved, I believe that the President has acted correctly and that our national defense will be strengthened if we forego construction of a fifth nuclear-powered aircraft carrier and redistribute those funds to the more unglamorous but essential programs aimed at improving the readiness of our forces in being. Those programs involve funding more armored combat vehicles, cargo helicopters, surface-to-air missiles for field army air defense and additional tanks for our front line forces in NATO. They include more money for operations, maintenance, and logistics purposes to make sure supplies are available to our troops when they need it. They will support a real increase in our excellent research and development efforts in all phases of defense policy in order that we retain our qualitative edge over the Soviet Union which is in our supreme national interest. By rejecting authorization of a $2.4 billion nuclear-powered aircraft carrier, we will also free up funds in the appropriation process so we can purchase more of the right kinds of combat aircraft to help deter a Soviet armored challenge in Europe and immediately bolster our national security across the board without "busting" the budget.

Like the B–1 strategic bomber program which was cancelled before it, the fifth nuclear-powered carrier (CVN–71) would have been an impressive addition to our Nation's military arsenal. Anyone who has ever stood overlooking the flight deck of a large aircraft carrier cannot help but be impressed by the sheer size a vessel over 1,000 feet long, weighing more than 80,000 tons and equipped with the most sophisticated weaponry known. Nor should the importance of the carrier task force in a dangerous and unpredictable world be discounted. Its ability to control the seas by projecting power shore to secure, or exert control over critical terrain (such as Norway's North Cape or the Dardanelles) remains crucial to our security. In addition, there is perhaps no more visible and compelling symbol of American power and purpose than the sight of a task force steaming off the coast of a world trouble spot. Another nuclear-powered carrier would, however, be an expensive symbol which could impair our efforts to control the sea lanes.

Despite the important "traditional" missions of the carrier task force, the advent of the Soviet antiship cruise missile threat has forced some naval planners to rethink just how effective such a force could be operating close to the Soviet Union or on the open sea if the Soviet Union chose to challenge our fleet. This situation has been recognized by John Collins who is the senior specialist in national defense at the Library of Congress. In his analysis of American and Soviet Military Trends Since the Cuban Missile Crisis, he points out that:

U.S. sea control tactics traditionally try to destroy enemy weapons before they endanger our ships. Surprise first strikes by Soviet cruise missiles, launched at close range, could make this approach obsolete. . . . Successful defense likely will depend on SAM's and interceptor aircraft systems in combination with ECM, strategy, tactics and doctrine. An appropriate package is not yet available.

The absence of such a package concerns me greatly. For this and other reasons I supported additional funding for work to put the Navy on course in developing antisubmarine warfare platforms and the kinds of aircraft and helicopters to go on them to defeat the Soviet submarine launched cruise missile threat. I believe more resources would be available for this task if we did not fund another nuclear-powered carrier.

In addition to the diversion of resources from this vital task and subsequent delay of such an antiship cruise missile defense package, the $2.4 billion for construction of the CVN–71 could adversely affect the other services as well. This is so because the true cost of another nuclear-powered carrier is $40 billion not $2.4 billion or the $1.9 billion suggested by the Armed Services Committee; $40 billion is the total estimated cost of the carrier plus escort ships (17), complement of aircraft (88) and operations and maintenance expenses of the world's most expensive ship for its 30 year life cycle. And even if we do procure the CVN–71, she will not be ready to sail until 1987. In the meantime, $40 billion could purchase the following for the Army, Navy, and Air Force:

ARMY

1. 3 Armored Divisions with new equipment.
2. 5,000 infantry fighting vehicles.
3. 2,300 new Main Battle Tanks—XM–1's.
4. 1,000 Black Hawk Helicopters.
5. 550 Advanced Attack Helicopters.

NAVY

1. At least one Trident Ballistic Missile Submarine with full complement of 24 missiles.
2. Naval Battle Group less Aircraft Carrier but with underway replenishment.
3. 12 Guided Missile Frigates.
4. 6 nuclear attack submarines.
5. 3 Spruance Class destroyers.

AIR FORCE

1. 130 F–15 "Eagle" Interceptors.
2. 350 F–16 fighter-bombers.
3. 480 A–10 anti-tank close support aircraft.
4. Enough Air Launched Cruise Missiles to equip 105 B–52's (7 squadrons).

Mr. President, perhaps the money saved by not purchasing another carrier task force could buy even more hard-

ware. The items listed above serve to illustrate just what a defense commitment of $40 billion can mean. I think even the most stalwart supporter of another nuclear-powered carrier task force would agree that the defense items listed above provide us with a better overall balance for our defense forces than the commitment of those same dollars to construct a CVN–71 and all that must go with it.

When viewed in this light, the CVN–71 program appears to be a sea-going B–1. Both programs were glamorous and exciting. The potency of each was truly impressive. Yet each can only be seen as a luxury when matched against the military realities of the times and the availability of more cost-effective alternatives.

As such, I am persuaded that another nuclear-powered aircraft carrier can only impair our national defense. Unfortunately, the Congress did not suitably grasp this aspect of the issue and defeated attempts to take the CVN–71 out of the fiscal year 1979 defense program. The President has wisely used his constitutional prerogative of the veto at the proper time to assure that our resources for defense are spent wisely and in a manner which will guarantee our security now and in the future.●

## OSHA

● Mr. WILLIAMS. Mr. President, the Occupational Safety and Health Act of 1970 represented the promise by this Government to millions upon millions of American working men and women, a promise that the greatest industrial nation in the history of the world could maintain productivity while assuring workers a safe and healthful working environment.

That law has been in effect for more than 6 years and while the initial administrative and enforcement efforts of the Occupational Safety and Health Administration left much to be desired, during the past 20 months, under the stewardship of Secretary of Labor Marshall and Assistant Secretary for Occupational Safety and Health Bingham, great improvements have been made. Under their leadership, OSHA has vastly reduced burdensome recordkeeping, it has reduced the amounts of penalties assessed for violations, and has redirected its regulatory and enforcement thrust so that the vast bulk of its efforts are now directed toward the most serious workplace hazards.

Despite this progress, the OSHA program has generated more than its share of controversy. Employers, both large and small, see OSHA as a bureaucratic monster, which interferes with the operation of business enterprises. And, we in the Congress have reacted by imposing restrictions on the enforcement of many parts of the program. With increasing, and distressing frequency, the Congress is being called upon to make major and substantive changes in the Occupational Safety and Health program, without the benefit of hearings or a full appreciation of the nature of the problem and the effects of the offered solutions.

It is therefore my intention to conduct oversight hearings on the Occupational Safety and Health program on October 3, 4, and 5, 1978. In my mind, a number of factors warrant such oversight.

First, it is necessary for the Congress to measure the progress made by Secretary of Labor Marshall and Assistant Secretary Bingham in streamlining the enforcement of the act.

Second, there have been several significant court decisions bearing on the OSHA program, including the Supreme Court's decision in Barlow's against Marshall, the effects of which must be clearly understood in terms of the overall statutory program.

Third, the interagency task force on workplace safety will have issued its first report on the overall OSHA program, and the work of this group deserves careful congressional scrutiny.

Finally, it is the responsibility of the Human Resources Committee to investigate the allegations by small and sometimes even large businesses, that the OSHA program constitutes a harassment of business far out of proportion to the benefits which it ultimately provides to workers, and to understand how we can best protect workers in a manner which least interferes with the operation of American business.

These hearings are intended to examine and evaluate the broad range of OSHA programs.

They must be held now, so that if the need for legislative reform is demonstrated, the Committee on Human Resources will be able to propose legislative solutions early in the 96th Congress.

Piecemeal limitations of the OSHA program in the long run serve neither workers nor small business. If, in fact, the charges currently being levied against the OSHA program are justified, comprehensive permanent legislative solutions are in order. These solutions can only be brought about after careful review and appropriate consideration by the Committee on Human Resources. These hearings are the first step in determining our future actions.

America's workers and the American public deserve the best, the most efficient and the most effective program to control workplace hazards. At the same time, the legitimate businessman must not be overburdened with costly bureaucratic overregulation which serves no useful purpose.

These hearings are to be the first step in insuring that both of these objectives are accomplished in a just and equitable manner.●

## ACHIEVEMENTS OF PRESIDENT CARTER

● Mr. BAYH. Mr. President, last weekend I attended a meeting of the Indiana Democratic Editors Association and was privileged to hear my colleague in the House of Representatives, the Honorable LEE HAMILTON, give a speech on the accomplishments and high quality of the first 20 months of the Carter administration.

It has become fashionable for many to criticize the President and his administration, and, as a result, President Carter's great successes have been overlooked far too often. I think LEE HAMILTON accurately brought to our attention the many achievements of Presdient Carter on a variety of issues facing this country today.

I commend him for his speech and ask that it be printed in the RECORD.

The speech by Mr. HAMILTON follows:

SPEECH OF LEE HAMILTON

I have the high privilege this evening to speak for eight Democratic members of the United States House of Representatives from Indiana: Adam Benjamin, Floyd Fithian, John Brademas, Dave Evans, Dave Cornwell, Phil Sharp, Andy Jacobs, and myself.

At the risk of being immodest, may I say to you what the Speaker of the House has said to me on several occasions: the Indiana House Democratic delegation stands second to none in the United States Congress for the quality and effectiveness of its representation.

My colleagues from Indiana asked me to convey their warm wishes to each of you. They also asked me to convey several comments to you.

First, we are grateful to you, as the leaders of the Democratic party in Indiana, for making it possible for us to serve in the Congress. We know that without you we would not have that opportunity.

Second, we are proud to endorse and run with Rex Carpenter, Pat Byrd, John Ruby and Billy McCullough and we pledge our best efforts to elect each of them and the entire state and county Democratic ticket.

Third, it is time, in our judgment, to speak up for the Carter Administration.

President Carter's polls may be down, but they were down for Harry Truman, too. Recent history tells us that no matter what an American President does, his popularity declines. It is one thing to be down in polls that measure the President against someone's standard of excellence, but quote another to run against a real live Republican.

When measured against the like of Richard Nixon and Jerry Ford, Jimmy Carter stands tall. Besides, nothing is more dangerous for a President than to live in the tempermental atmosphere of the public opinion polls. He has only one duty, only one safe course, and that is to try to be right and to do and say what he believes to be right.

Mr. Carter, more than any other President, has been measured against expectations. There is no doubt that he raised high hopes and great expectations during his campaign. Neither he nor we need apologize for that.

Mr. Carter expressed his dream with the fervor of an evangelist. He built the hope of a fresh, new administration that would be clean, honest, efficient and capable of producing change. He talked about economic stability, balanced budgets, and an end to political favoritism. He talked about fair tax laws, cutting down the bureaucracy, and a new era of fairness and competence.

We Democrats have to acknowledge that all these things have not been accomplished. There has not been a great leap forward from the day Mr. Carter became President. We are a long way from achieving all of these things. But it is a plain fact that if these goals had not been expressed, people today would have relatively little to criticize.

It is always better to aim higher than you hit.

We may not have rung in a millenium. We may not have hit all of our targets. But one thing is quite clear: Mr. Carter's Administration is by no means as clearly disastrous as the years of Nixon and Ford.

Criticisms of President Carter as ineffective come with ill-grace from our Republican friends. It was they who gave us 9 percent unemployment, double-digit inflation,

the largest and deepest recession in the post-war period, and government by veto—to say nothing of Richard Nixon, Bob Haldeman, John Erhlichman, and John Mitchell. The President inherited a sticky and messy economic and political situation with a lot of economic damage done. It takes time to turn that around.

It is still true, as Will Rogers observed, that the only way to keep the Republican party respectable is to keep it out of office.

We all believe in the two-party system and we believe in a Republican party that is strong, vigorous, alert—and small.

I believe Jimmy Carter will be a two-term President. He stands low in the polls principally because he has had the fortitude to tackle the tough issues, like energy, the Panama Canal, Social Security and Civil Service Reform, in his first months in office.

Let's take a closer look at the Carter record.

In foreign affairs he has had major victories with

The passage of the Panama Canal Treaties;

The vote to lift the Turkish Arms Embargo; and

The vote to approve the Middle East Arm Sales.

He has won for the United States new acceptance and new respect in Africa. He has strengthened NATO's combined forces in Europe. He has brought human rights to the consciousness of every world leader. He continues to work to keep the Middle East at peace. Our prayers go out to him in these days as he prepares for the historic and unprecedented Camp David Summit meeting.

And most important of all: This country is at peace today.

On the domestic side, the accomplishments are also impressive.

Foremost is the substantial drop in unemployment. It stood at 8 percent when Mr. Carter took office. It has dropped in 18 months by almost 2 percentage points. His administration has seen a net total of 6.1 million jobs added to the economy, and that is a record.

Business recovery has continued for 4 years, the longest peacetime recovery since World War II.

When President Carter took office, the social security system faced bankruptcy. He submitted proposals to the Congress. Congress approved them and the system is now fiscally sound until after the year 2000.

The budget deficit has been reduced from about $60 billion dollars a year in fiscal year 1977 to somewhere in the $40 billion range or below for fiscal 1979—and it will drop further in 1980.

A comprehensive effort is now underway to reorganize the government:

A new Department of Energy has been created;

The Executive Office of the President has been streamlined;

Consolidations have occurred in other areas;

A major civil service reform proposal is pending before the Congress, and

A new tone, civil and compassionate, has come into government.

Already his Administration has seen: Dramatic decreases in airline fares; a reduction of "perks and frills" at the White House; the termination of nearly 500 advisory commissions; tougher financial disclosure requirements for the executive branch; and record numbers of blacks, hispanics, and women in government service.

The President has made the American Presidency an open one. He is more accessible to the press and public than any other modern President.

I think this President is a good man. I do not know anyone who has occupied the Office of President who has tried harder and with more ability than Jimmy Carter.

He does not have an ego problem. He admits mistakes. He does not have a mean streak in him. I am impressed by a man trying to do his absolute best—trying to do what he thinks is right.

If I have a criticism, it is that he should let up on those 18 hour days in Washington and get into the country to see the people more. He should come to Indiana.

So, my friends, the President is presiding over the country during a period of remarkable stability. He may not have worked heroic changes, but times are pretty good.

It is time for you and me to stand up and be counted for Jimmy Carter and for the Democratic Party.●

## A RESPONSE ON THE BHUTTO TRIAL

● Mr. McGOVERN. Mr. President, on August 21, I inserted in the RECORD an article by former Attorney General Ramsey Clark containing his osbervations on the trial of former Prime Minister Bhutto of Pakistan.

The Embassy of Pakistan, through Press Counsellor Khalid Ali, has submitted a response to the Nation magazine in which that article appeared.

To permit my colleagues to examine both sides of this issue, I request that the response be printed in the RECORD.

The letter follows:

AUGUST 31, 1978.

THE EDITOR,
*The Nation,*
*New York, N.Y.*

DEAR SIR: The article by Mr. Ramsey Clark, in your issue of August 19, is full of erroneous statements calculated to cast aspersions on the judicial process in Pakistan, prejudge a case which is before the Supreme Court and interfere in the internal affairs of Pakistan.

The peaceful takeover on July 5, in contrast to brutal violence and killings of overthrown personalities in other countries, and the rejection of a quick summary trial of those involved in the murder case shows that the Government is not interested in the elimination of personalities but the dispensation of justice. The murder conviction of Mr. Benigno Aquino in the Philippines, to which Mr. Clark referred bears no comparison to the present case. Mr. Aquino was tried by a military court while Mr. Bhutto is being tried under the normal law in the civil courts.

The question is: Should political leaders accused of murder not be tried under the law of the land? If no man is above law, if life has a sanctity, who else but the courts of that country can make the final determination of the guilt or innocence of the accused.

The appeal in this criminal case is being heard in an open court and by judges who were serving in the Supreme Court or the High Courts under the regime headed by Mr. Bhutto. It is not a trial under martial law or even a specially constituted tribunal. The accused have been given full facilities of legal defense and Mr. Bhutto's lawyers presented the case for 57 days which was fully reported in the press. The Supreme Court accepted Mr. Bhutto's plea for the presentation of the in-camera statements recorded in the lower court. These statements now form part of the record of the Supreme Court and were reported in extenso in the media. Even Mr. Bhutto's lawyer has acknowledged the fairness of the proceedings and has thanked the Supreme Court for "its exceptional kindness, consideration and a very patient hearing." Mr. Ramsey Clark also acknowledges that "the nine judges engage in a meticulous review of the record. They are impressive men, learned in the law and skillful in their examination of the trial transcript."

Yet, instead of letting these "impressive and learned men" decide the case, Mr. Ramsey Clark has arrogated to himself the role of defence, prosecution and judge. Mr. Clark has said that the Chief Justice of Lahore High Court, which sentenced the accused to death was "an old enemy who had heard Bhutto's case when he was arrested in 1968." He should therefore have been disqualified. The fact is that in 1968 the High Court, of which this judge was a member, came to the rescue of Mr. Bhutto and his associates. In December 1968, the Court ordered the release of one of Mr. Bhutto's associates, Mr. Khar. Sensing the trend of the Court, the then Government released Mr. Bhutto. This evoked expressions of satisfaction from the Court of which the now Chief Justice of Lahore High Court was a member. In any case the Supreme Court which is seized of this and many other points and whose members have been extolled by international jurists, can be expected to make a fair and honest determination of this as well as other aspects of the case. The Supreme Court is fully competent to uphold, set aside or to commute the sentence awarded by the High Court.

The doomsday scenario drawn up by Mr Ramsey Clark is a futile exercise in speculation. There is peace in the country. The Government of Pakistan has announced that election would be held by October 1979 and power would be transferred to civilian hands. The future of States or indeed of democracy does not depend upon the fate of single individuals. The judicial process and rule of law cannot imperil the future of States.

Yours sincerely,

KHALID ALI,
*Press Counsellor.*●

## SENATE SEATS FOR WASHINGTON, D.C.?

Mr. SCOTT. Mr. President, I have before me a copy of an editorial published in the September 11 U.S. News & World Report, entitled "Senate Seats for Washington, D.C.?" It is a very timely article. It suggests that the States, in their ratification process, take their time and consider very carefully the proposal for full voting rights for the District of Columbia.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SENATE SEATS FOR WASHHINGTON, D.C.?

(By Marvin Stone)

"No taxation without representation." That was a stirring battle cry in the American Revolution. Now it is being used again—this time as an argument for giving the District of Columbia voting representation in Congress.

States are being asked to ratify a constitutional amendment that would let residents of the nation's capital elect two U.S. senators and at least one, perhaps two, members of the House of Representatives.

On its face, that seems only fair. The District, which is actually the city of Washington, has a population of nearly 700,000. Seven states with smaller populations have the same kind of voice in Congress that Washington wants.

The issue is not a simple one, however. And because backers of the amendment have seven years to procure the required approval of three fourths of the state legislatures—38 in all—the individual states should take time to give it cautious study.

Admittedly, politicians face problems in voting on this amendment. D.C.'s population is 75 percent black. In local and presidential elections, it has voted overwhelmingly Democratic and liberal. Its selections for Congress

would almost surely be black, liberal Democrats. So anyone opposing the D.C. amendment risks being accused of racism and Republican partisanship. Those who support it can count on winning votes among blacks.

Issues raised by the amendment, however, are too important to be decided by such considerations. Some of the arguments deserve critical examination.

Take that cry of "taxation without representation." In Senate debate on the amendment, it was pointed out that the District gets back from the federal government $1 for every 29 cents it pays in federal taxes. "That is not taxation without representation," argued one senator.

D.C. is not entirely unrepresented in Congress. It has a delegate in the House of Representatives. Though he can't vote on the floor, he can in committees. And he can argue for his constituents on the floor.

Washingtonians are not the only American citizens who have no direct representation in Congress. Puerto Rico, with more than 3 million U.S. citizens, has the same nonvoting representation. So do the territories of Guam, American Samoa and the Virgin Islands. Will they be next to demand votes in Congress?

The question boils down to this: Should a single city be given the same kind of representation in Congress as an entire state?

Washington has an area of only 67 square miles, and lacks many of the attributes of even a thinly populated state. Without farms, mines, forests, small towns or much industry, its interests are narrow. Almost half its people make their living off the government—federal or local. As one senator said: "What we are doing here is giving the federal bureaucracy itself voting representation in Congress."

That obviously is not what the authors of the Constitution intended. They set up the District of Columbia as a separate, nonpolitical enclave, belonging to citizens of all the states, and immune to local pressures. Would giving it votes in Congress inevitably lead to the kinds of pressures that the framers of the Constitution wanted to avoid?

It was frequently predicted, in Senate debate, that the D.C. amendment will fail to win ratification by the states. Its passage by Congress, sending it on its way to the states for further action, was described by some lawmakers as a "political charade" to woo black votes back home.

That's probably an unfair characterization. Undeniably, there are appealing arguments for giving D.C. residents a voting voice in Congress. But there are also good reasons why states should weigh both sides carefully before voting on such a fundamental change in Washington's constitutional role.

## ORDER THAT S. 2640 BE PRINTED AS PASSED

Mr. RIBICOFF. Mr. President, I ask unanimous consent that S. 2640, the Civil Service Reform Act of 1978, be printed as passed by the Senate and that 300 additional copies be printed for use by the Committee on Governmental Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGE OF THE FLOOR

Mr. CRANSTON. I ask unanimous consent that Hal Gross and Karen Manden may have the privilege of the floor throughout the consideration of the natural gas conference report when it comes before the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

## SUSTAINING THE VETO OF THE MILITARY PROCUREMENT BILL A SETBACK TO OUR NATIONAL DEFENSE POSTURE

Mr. THURMOND. Mr. President, the national defense posture of this Nation in real terms and in the eyes of our friends and enemies abroad suffered a severe setback today when the veto by President Carter of the military procurement bill was upheld in the House.

President Carter's veto action was not one of strength but one of weakness. His position on defense matters is so out of tune with the people of this Nation and the Congress itself that he has resorted to the veto, an action needing only one-third support in either House to be sustained.

Besides killing the B–1 program and delaying the mobile missile development, he has cut Navy shipbuilding by one-half for the next 5 years and today axed a badly needed nuclear aircraft carrier for the Navy. This action will not only weaken us in real terms, but will confuse our allies and encourage our enemies.

Mr. President, I shall continue to fight for ships for our Navy, including an aircraft carrier. When the military bill once again comes before our committee it should be strengthened, not weakened. This veto makes absolutely no sense. It was apparently the work of President Carter's advisers who oppose naval superiority on the grounds it is inimical to the United States-Soviet strategic balance.

Mr. President, in my judgment today was a watershed in the internal efforts to beat down our defense programs under the whip of the veto. Although this Congress is one of the President's own party by a sizable margin, his weak and misguided defense policies have to depend on the veto to be sustained. By sustaining this veto, those who favor parity with the Soviets have been handed a new weapon which they will continue to use in order to whip the Congress into line. This is a sad day in this Nation's national defense history.

## THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following calendar orders, all of which have been cleared on the minority side: Calendar Orders Nos. 1063, 1067, and 1075.

The PRESIDING OFFICER (Mr. BAYH). Without objection, it is so ordered.

## AIR FORCE GRADE EXTENSION AND EXTENSIONS OF CERTAIN OTHER CURRENT MILITARY PERSONNEL PRACTICES

The PRESIDING OFFICER. The first bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3454) to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1823

(Purpose: To change an incorrect section reference and to make other technical changes)

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. NUNN and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) on behalf of Mr. NUNN, proposes an unprinted amendment numbered 1823.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 3, strike out "provision" and insert in lieu thereof "provisions".

On page 2, line 5, strike out "5705 (c)" and insert in lieu thereof "5707 (c)".

On page 3, line 25, insert "incurred in line of duty" before "during the period".

On page 6, line 22, strike out "5787d." and insert in lieu thereof "5787d".

On page 7, strike out lines 5, 6, and 7 and insert in lieu thereof the following:

"(1) A board to recommend brigadier generals for promotion to the grade of major general, consisting of nine officers serving in the grade of major general or above.".

On page 7, line 11, insert "(a)" after "Sec. 11.".

On page 7, line 15, strike out "promotions" and insert in lieu thereof "promotion".

On page 7, after line 23, add the following:

(b) The table of sections at the beginning of chapter 545 of such title is amended by striking out the item relating to section 5787c and inserting in lieu thereof:

"5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3454

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), is amended by striking out "through September 30, 1978" and inserting in lieu thereof "through September 30, 1979".

SEC. 2. (a) For the period beginning on September 15, 1978, and ending on September 30, 1979, the President is authorized to suspend application of the following provisions of title 10, United States Code:

(1) Section 5707(c).

(2) Section 5751 (a), (b), and (e).

(3) Section 5770.

(b) No suspension invoked by the Presi-

dent under authority of subsection (a) shall be effective after September 30, 1979.

SEC. 3. Effective only for the period beginning September 15, 1978, and ending September 30, 1979—

(1) Section 1201(3) of title 10, United States Code, is amended as follows:

(A) striking out the word "or" at the end of subclause (B)(ii);

(B) striking out the period at the end of subclause (B)(iii) and inserting in lieu thereof a semicolon and the word "or"; and

(C) adding at the end of subclause (B) a new item as follows.

"(iv) the disability was incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1979, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect.".

(2) Section 1203(4)(A) of such title is amended by—

(A) striking out the word "or" at the end of item (i);

(B) striking out the semicolon at the end of item (ii) and inserting in lieu thereof a comma and the following: "or (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1979, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect;".

(3) Section 1203(4)(C) of such title is amended by striking out "the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency" and inserting in lieu thereof "(i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1979, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect".

SEC. 4. (a) Chapter 545 of title 10, United States Code, is amended by inserting after section 5787c a new section as follows:

"§ 5787d. Navy lieutenants: temporray promotion.

"(a) Line officers not restricted in the performance of duty in the grade of lieutenant, possessing skills in a critical shortage and serving in lieutenant commander billets requiring such skills, may be temporarily promoted to lieutenant commander under such regulations as the Secretary of the Navy may prescribe. Temporary appointment under this section shall be made by the President alone.

"(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotions or appointments, or abridge their rights or benefits.

"(c) Temporary promotions under this section may be made only upon the recommendation of a board of officers convened for that purpose. In addition to recommending officers for promotion, a board so convened shall make the report required by section 6384 of this title.

"(d) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date made, and the member so appointed is entitled to the pay and allowances of the grade to which promoted from that date.

"(e) Temporary appointments under this section will terminate upon an officer's detachment from a qualifying billet so designated by the Secretary of the Navy. When an officer, whose name is on a promotion list as a result of selection to lieutenant commander other than under this section, is detached, an appointment will be issued to include the interim period between the subject officer's detachment from the qualifying billet and the date of promotion as a result of selection board action.

"(f) When his temporary appointment under this section is terminated or expires, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment.

"(g) No appointments may be made under this section after September 30, 1979.".

(b) The table of sections at the beginning of chapter 545 of such title is amended by inserting

"5787d. Navy lieutenants; temporary promotion."

below

"5787c. Navy and Marine Corps, warrant officers: temporary promotion.".

SEC. 5. Section 5504(d) of title 10, United States Code, is amended by inserting "or 5787d" after "5787".

SEC. 6. (a) Section 5786(c) of title 10, United States Code, is amended by inserting "or 5787d" after "5787".

(b) Section 5791(a) of such title is amended by inserting "and 5787d" after "5787".

SEC. 7. Section 6325(b) of title 10, United States Code, is amended by inserting "or 5787d" after "5787".

SEC. 8. (a) Section 6384(a) of title 10, United States Code, is amended by inserting "and each board of officers convened under section 5787d" after "under chapter 543".

(b) Section 6385 of such title is amended by striking out "or 5787" and inserting in lieu thereof "5787, or 5787d".

(c) The catchline of such section is amended by striking out "and 5787" and inserting in lieu thereof "5787, or 5787d".

(d) The table of sections at the beginning of chapter 573 of such title is amended by striking out "and 5787" in the item relating to section 6385 and inserting in lieu thereof "5787, or 5787d".

SEC. 9. Section 905(h) of title 37, United States Code, is amended by inserting "or 5787d" after "5787".

SEC. 10. (a) Section 5703(a)(1) of title 10, United States Code, is amended to read as follows:

"(1) A board to recommend brigadier generals for promotion to the grade of major general, consisting of nine officers serving in the grade of major general or above.".

(b) The amendment made by subsection (a) shall be effective only for the period beginning on September 15, 1978, and ending on September 30, 1979.

SEC. 11. (a) Section 5787c of title 10, United States Code, is amended to read as follows:

"§ 5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion.

"(a) Warrant officers may be temporarily promoted to higher warrant officer grades under such regulations as the Secretary of the Navy may prescribe.

"(b)(1) Officers designated for limited duty may be temporarily promoted to a higher grade under such regulations as the Secretary may prescribe.

"(2) No promotion may be made under this subsection after September 30, 1979.".

(b) The table of sections at the beginning of chapter 545 of such title is amended by striking out the item relating to section 5787c and inserting in lieu thereof:

"5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion.".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GOLDWATER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1144), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

FORM OF COMMITTEE ACTION

The administration has submitted several legislative proposals related to the extension of authorized grades for the Air Force and relating to several current personnel practices that would lapse under the provisions of the National Emergencies Act of 1976 (Public Law 94–412). Many of these personnel procedures and many other provisions not involving these procedures are included in another bill, H.R. 5503, on which hearings were held but on which action has not been completed. These circumstances made it desirable to report an original bill.

COMMITTEE BILL

The bill provides for the following:

1. Extending the authorizaiton of an increase for 1 year in the number of Air Force colonels and lieutenant colonels provided under 10 U.S.C. 8202(a). This would be effected by extending for 1 year, Public Law 93–397, which expires on September 30, 1978.

2. Authority for the President to suspend the application of certain provisions in law through September 30, 1979, when he determines that the needs of the Armed Forces so require. The application of these provisions is now suspended. Suspending these provisions of law for another year would maintain current personnel practices for the military in these areas.

3. Extending authority for 1 year to allow spot promotions of certain Navy lieutenants, below the zone promotion for Navy limited duty officers, and to allow temporary Marine Corps major generals to sit on Major General Selection Boards.

AIR FORCE GRADE EXTENSION

The bill would provide authority for 1 more year for the number of Air Force colonels and lieutenant colonels currently authorized by Public Law 93–397 which expires on September 30, 1978. Public Law 93–397 authorizes an increase in the number of colonels and lieutenant colonels serving on active duty in the Air Force above the permanent authorization of 10 U.S.C. 8202. The number of authorized colonels and lieutenant colonels is based on the total officer strength of the Air Force.

The temporary extension of this authority should allow the Air Force to adequately man its officer force and to maintain predictable promotion patterns for commissioned officers pending enactment of permanent legislation. Failure to enact legislation extending this authority would mean that the number of officers allowed to serve in the field grades would be based upon the table established in permanent law by the Officer Grade Limitation Act (OGLA) of 1954, substantially below current strengths.

The extension of the authority will permit the Air Force to promote officers for the next year to the grade of major, lieutenant colonel, and colonel at about the same career points and with approximately the same percentage of promotion opportunity as has been the case in the recent past and as is comparable to the Army and Navy.

BACKGROUND ON THE AIR FORCE FIELD GRADE OFFICER PROBLEM

The original Officer Grade Limitation Act (OGLA), which placed limits on the number of field grade officers in the Armed Services, was passed in 1954. At that time, the

Air Force was a comparatively younger branch of the Armed Services and thus needed fewer grade authorizations to provide adequate career progression. Aware of this fact, Congress provided substantially fewer field grades for the Air Force than for the Army and Navy, but it also realized that the Air Force would need to seek relief in the form of additional authorizations as the force matured. The Congress has provided this additional authorization on eight previous occasions. The most recent authority was provided by Public Law 93-367 which expires September 30, 1978.

THE PROPOSED DEFENSE OFFICER PERSONNEL MANAGEMENT SYSTEM

The Defense Officer Personnel Management System (DOPMS) proposed by the Department of Defense, is far-reaching, complicated legislation to provide permanent and more uniform promotion systems among the Services and new field grade authorization tables. It would include new grade authorization tables for the Air Force, and thus obviate the need for temporary grade relief legislation. While the DOD proposal would overhaul or eliminate more than 300 sections of current law, it would not make a major shift from the present officer management system.

The Subcommitee on Manpower and Personnel has studied the DOPMS proposal in detail but has not completed action on the proposal. The Committee therefore finds it prudent to act on the needed Air Force grade relief extension pending action on the broader DOPMS proposal.

NATIONAL EMERGENCIES ACT RELATED PERSONNEL ITEMS

The National Emergencies Act of 1976 terminates the current reliance by the executive branch on national emergency power to suspend provisions of law. The effect of this act is to revoke, effective September 15, 1978, suspensions of provision in law which depend upon the declaration of a national emergency for the suspension. There are several military personnel items that are affected. Most, but not all of these, would have been repealed or changed under the proposed Defense Officer Personnel Management Act. For these items the committee bill will have the effect of allowing the military to maintain current practices by providing new authority for the President to suspend through September 30, 1979 the application of appropriate provisions of law when he determines the needs of the Armed Forces so require. The committee intends to review each of these items again in detail when the proposed Defense Officer Personnel Management Act is considered.

REQUIREMENT FOR SEA OR FOREIGN SERVICE FOR REGULAR OFFICERS OF THE NAVY

Prior to 1917, the promotion of Navy officers was solely a function of seniority. In the Naval Appropriations Act for fiscal year 1917, the 64th Congress provided for promotion through a selection process. The sea service requirement was included to insure that officers performed at sea prior to promotion.

In 1964, Executive Orders 11151 suspended section 5770. The National Emergencies Act (Public Law 94-412) will, in effect, vacate the suspension as of September 15, 1978.

The 1964 suspension was necessitated by developing technology which resulted in the skill requirements for Naval officers being considerably different than they were in 1917. The increased complexity of weapons, engineering and management systems required that unrestricted line officers receive concentrated scientific training in discrete technological areas. This training, in many cases, precluded the opportunity for sea duty for extended periods. The Navy believes that this rationale for the suspension remains valid and will continue to obtain for the foreseeable future.

The committee bill would authorize the President to suspend section 570 of title 10, United States Code, relating to the requirement of sea or foreign service to certain officers of the Regular Navy when he determines the needs of the Armed Forces so required.

LIMITS ON BELOW THE ZONE SELECTION AUTHORIZATION FOR REGULAR OFFICERS

Current law authorizes below the zone selection for promotion for most Navy and Marine Corps officers on active duty. Permanent regular officers who may receive accelerated selection are limited to 5 percent of the total number that a selection board is authorized to select. By way of comparison the Army and the Air Force do not have a legal restraint on the number of below the zone selections.

In order to provide for accelerated promotion of exceptional officers who have demonstrated that they can progress rapidly to positions of greater responsibility, Executive Order 11554 in 1970 suspended the operation of the provisions of section 5707(c) of title 10, United States Code. Pursuant to the authority provided by the Executive Order, increased below zone selections have been selectively utilized and have never exceeded 15 percent. The suspension of section 5707(c) will expire September 30, 1978. An extension will be precluded by the effect of the National Emergencies Act. The 5 percent limited on below zone selection for permanent regular officers would then be reinstated.

The committee bill would provide authority to the President to suspend Section 5707(c) of title 10, United States Code, which now limits below the zone selection of permanent regular officers to 5% of total number of officers authorized to be recommended for promotion, when he determines that the needs of the Armed Forces so require.

SERVICE IN GRADE ELIGIBILITY REQUIREMENTS FOR CONSIDERATION BY SELECTION BOARDS FOR PROMOTION OF ACTIVE DUTY NAVY MALE LINE OFFICERS AND TO ACTIVE DUTY MARINE CORPS OFFICERS

Initial time in grade eligibility requirements were established by the Officer Personnel Act (OPA) of 1947. Sections 5751 (a) and (b) of title 10, United States Code, provide that an active duty male officer of the line of the Navy, or of the Marine Corps is eligible for consideration for promotion to the next higher grade by a selection board that is convened in the fiscal year in which he completes the specified number of years of service in the grade in which he is serving.

In the years since passage of OPA, continued adherence to the above minimum time in grade eligibility requirements became increasingly difficult. Since 1947, promotion flow points for certain grades, have been accelerated to meet vacancy requirements. As a result, in these cases, increasingly younger officers have been made eligible for consideration. The time in grade laws were originally designed to operate in a stable strength environment with normal promotion flow occurring at specified points during a 30-year career. During the period 1954 through 1967, various portions of sections 5751 (a) and (b) were suspended by Executive orders.

Vacation of the President's suspension of sections 5751 (a) and (b), effective September 15, 1978, would mean a return to the 1947 time in grade eligibility requirements which, in certain cases, could severely limit the number of officers eligible for selection to fill vacancies in higher grades.

The committee bill would provide authority for the President to suspend sections 5751(a) and 5751(b) relating to service and grade eligibility requirements for consideration of selection boards for promotion of certain Navy and Marine Corps officers when he determines that the needs of the Armed Forces so requires.

PHYSICAL DISABILITY RETIREMENTS

Since December 16, 1950, when President Harry S. Truman proclaimed the existence of a state of national emergency (Proclamation 2914), any member of the Armed Forces who is unfit for service because of physical disability incurred while on active duty for more than 30 days who is disabled in line of duty while entitled to basic pay has been entitled to retirement or separation (depending on the extent of disability) with pay. The National Emergencies Act terminates the authority in law possessed as a result of a declaration of national emergency. As a result a member with less than 8 years' service would be entitled to retirement or separation under existing criteria only if the disability were the proximate result of performing active duty; if it were not, he would be entitled only to separation pay and then only if the disability exceeded 30 percent under Veterans' Administration standards.

Those who would be affected by this change are the junior members of the Armed Forces without extensive service for pay purposes.

The committee bill would add a provision to 10 U.S.C. 1201 and 1203 allowing the President to continue current practice through September 30, 1979, if he determines that the needs of the Armed Forces so require.

SPECIFIC AUTHORIZATIONS FOR PROMOTION PROCEDURES

In some cases current promotion procedures in the Navy and Marine Corps rely upon specific authority given to the President in time of war or national emergency. The committee bill would allow these practices to continue through September 30, 1979 by providing new authorization not related to a declaration of war or national emergency. The committee will review each of these provisions as part of its consideration of the proposed Defense Officer Personnel Management Act.

TEMPORARY PROMOTION OF NAVY LIEUTENANTS

The committee bill provides authority for unrestricted line officers in grade of lieutenant possessing skills in a critical shortage and serving in lieutenant commander billets, to be temporarily promoted to lieutenant commander for the period through September 30, 1979. This authority is referred to as spot promotion authority.

The spot promotion authority currently in effect is authorized by 10 U.S.C. 5787 and is applicable only in time of war or during a national emergency declared by the President. Current spot promotion authority will terminate in September 1978, due to the effects of the National Emergency Act.

The Secretary of the Navy is currently using his authority under 10 U.S.C. 5787 to spot promote line officers in the grade of lieutenant possessing skills in a critical shortage and serving in lieutenant commander billets as engineer officers, engineering department principal assistants, material officers in afloat units and other staff engineering billets which directly support fleet engineering readiness. Fleet engineering readiness is impeded by the shortage of middle grade officers with skills in this area.

Under the current provisions prescribed by the Secretary of the Navy, there are about 386 spot promotion qualifying billets. Due to the shortage of available middle grade qualified engineers, significant numbers of lieutenants are being assigned to fill these designated lieutenant commander engineering billets. In the nuclear submarine community, there are currently only 91 qualified lieutenant commanders available to fill 189 engineering department head billets. This shortfall is further evidenced by the fact that 104 of 166 nuclear submarine Engineer Officer billets are currently being filled by spot promoted lieutenant commanders. The surface warfare community is faced with a similar situation. Only about 75 lieutenant

commanders with prior engineering experience are available to fill 130 engineering department head billets.

SELECTION BOARDS TO RECOMMEND BRIGADIER GENERALS FOR PROMOTION AND FOR CONTINUATION ON THE ACTIVE LIST IN THE MARINE CORPS

The National Emergencies Act will terminate the Secretary's authority pursuant to 10 U.S.C. section 5448(a) to prescribe a number of permanent major generals and brigadier generals in excess of 36 on the active list. Currently, the Marine Corps has a total of 66 general officers on the active list, all in the permanent grades of major general and brigadier general, 33 in each grade. The National Emergencies Act will not affect the total number of general officers (66) that may be on active duty in the Marine Corps, nor their distribution in temporary grades; however, it will reduce to 36 the number who may hold permanent appointments.

The need for a change in law is related to the legal requirements of promotion board membership. Section 5703(a)(1), title 10, U.S.C. specifies that at least once each year the Secretary of the Navy will convene a selection board to recommend brigadier generals for promotion and for continuation on the active list. The section further specifies that the board will consist of nine officers holding permanent appointments in the grade of major general or above. In addition, section 5703(e) specifies that no officer may be a member of two successive boards for the consideration of officers for promotion to the same grade.

When the National Emergencies Act becomes effective September 15, 1978, the number of permanent major generals will be limited to 18, and the Marine Corps could not meet the requirements of section 5703, of title 10, United States Code without every permanent major general on active duty serving on a major general selection board every other year.

The committee bill provides authorization through September 30, 1979 for permanent and temporary major generals to sit on selection boards convened to select brigadier generals to the grade of major general.

PROMOTION OF LIMITED DUTY OFFICERS

Present law does not specifically provide for below zone selection for limited duty officers. The limited duty officer program is unique to the Navy and Marine Corps and provides an avenue for technically oriented enlisted members to obtain officer appointments and participate as a separate group in the promotion process through the grade of commander in the Navy and lieutenant colonel in the Marine Corps. These officers are assigned to duty in their respective specialties and enable the Navy Department to meet the requirements for specialized technical management at a higher level than provided by warrant officers. The authority contained in section 5787 of title 10, United States Code has been used to provide for limited duty officer below zone selections in concert with those provided other officers. This authority will terminate September 14, 1978 under the National Emergencies Act.

The committee bill would allow the President to suspend through September 30, 1979 the operation of section 5751(e) of title 10, which prevents normal below zone selection of limited duty officers. The bill also amends 5787(c) to provide for temporary promotion of limited duty officers for the period through September 30, 1979 similar to the present authority for warrant officer temporary promotions. This provision is necessary to prevent grade revision for limited duty officers who have been previously selected and promoted under section 5787 of title 10.

## INTERNATIONAL PETROLEUM EXPOSITION

The joint resolution (S.J. Res. 154) authorizing the President to invite the States of the Union and foreign nations to participate in the International Petroleum Exposition to be held at Tulsa, Okla., from September 10, 1979, through September 13, 1979, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States is authorized and requested to invite by proclamation, or in such other manner as he may deem proper, the States of the Union and foreign nations to participate in the International Petroleum Exposition to be held at Tulsa, Oklahoma, from September 10, 1979, through September 13, 1979 for the purpose of exhibiting machinery, equipment, supplies, and other products used in the production and marketing of oil and gas, and bringing together buyers and sellers for the promotion of foreign and domestic trade and commerce in such products.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1145), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE RESOLUTION

The joint resolution calls for the President to invite, by proclamation or in any other appropriate manner, foreign nations and the individual States of the United States of America to participate in the 1979 International Petroleum Exposition to be held in Tulsa, Okla.

BACKGROUND

The International Petroleum Exposition is sponsored by a nonprofit organization composed of major oil companies, petroleum and gas trade associations, and trade publications. For over 50 years it has periodically held trade fairs to exhibit products used in the production and marketing of oil and gas, and to bring together buyers and sellers of such supplies. Its purpose is to stimulate both the domestic and international sale of these products.

In 1975, the Congress acted favorably on a similar joint resolution which requested the President to extend invitations to the 1976 trade fair in Tulsa. Over 37,000 participants representing every State of the Union and 63 foreign nations attended that exposition. Inasmuch as the 1979 International Petroleum Exposition will feature enhanced recovery techniques, the organizers anticipate even larger attendance. Furthermore, as the United States is the largest producer of oil and gas drilling, transporting, refining and distribution materials, and the furthest ahead in petroleum technology, the organizers believe the fair will stimulate exports, thereby promoting the domestic economy and improving the Nation's balance of payments.

## W. R. "BOB" POAGE PECAN FIELD STATION AND THE ROMAN L. HRUSKA MEAT ANIMAL RESEARCH CENTER

The Senate proceeded to consider the bill (S. 3467) to designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station," and to designate the U.S. Department of Agriculture Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center."

Mr. HATCH. Mr. President, I ask unanimous consent that a statement by Senator TOWER be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR TOWER

The Congress of the United States has few more appropriate occasions to honor its members than at those times when official names for public buildings are under consideration. Memorials to the great men who have served in the Congress, who have won the hard-earned respect and admiration of their colleagues and their constituents seems a small price to pay for the service they have given.

A bill we are considering today would provide permanent public tribute to one most deserving of the honor. I speak of my colleague and good friend from Texas' eleventh congressional district, Bob Poage. He is co-dean of the House, having served Texans in his district since the 75th congress, and the unquestioned "dean of good sense" in that fine body. He has been a voice of reason and studied eloquence in the legislative process for lo these many years. As a member of the House Committee on Agriculture since the beginning of the 77th Congress, and its chairman from 1967–74, in addition to other leadership roles, Bob Poage has helped shape every piece of agricultural legislation for nearly 4 decades. Such a record indeed speaks of a dedicated public official . . . one worthy of the public's lasting recognition.

S. 3467 would designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Texas, the "W. R. Poage Pecan Field Station." It is a tribute richly deserved. Bob Poage will be retiring at the end of this Congress. We could provide no more fitting recognition for such dedicated public service than to ascribe Bob Poage's name to this USDA facility. I urge my colleagues to join me in passing this measure.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3467

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

W. R. "BOB" POAGE PECAN FIELD STATION

SEC. 1. The United States Department of Agriculture Pecan Field Station in Brownwood, Texas, is designated as the "W. R. 'Bob' Poage Pecan Field Station". Any reference to such pecan field station in any law, regulation, map, or other record of the United States shall be held and considered to be a reference to the W. R. "Bob" Poage Pecan Field Station.

ROMAN L. HRUSKA MEAT ANIMAL RESEARCH CENTER

SEC. 2. The United States Department of Agriculture Meat Animal Research Center lo-

cated near Clay Center, Nebraska, is designated as the "Roman L. Hruska Meat Animal Research Center". Any reference to such meat animal research center in any law, regulation, or other record of the United States shall be held and considered to be a reference to the Roman L. Hruska Meat Animal Research Center.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1153), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SHORT EXPLANATION

The bill would authorize the naming of Federal facilities in honor of Congressman W. R. "Bob" Poage of Texas, and former Senator Roman L. Hruska of Nebraska, for their outstanding contributions to American agriculture.

BACKGROUND AND NEED

I.

The Pecan Field Station in Brownwood, Tex., would be renamed the W. R. "Bob" Page Pecan Field Station in honor of Congressman Poage. Mr. Poage has served in the House of Representatives since 1937.

In 1941, Mr. Poage was appointed to the House Committee on Agriculture, whereupon he left all other committees to serve solely on Agriculture. He was the committee's vice chairman from the 82d through the 89th Congresses and during the 94th and 95th Congresses. He served as chairman of the Agriculture Committee during the 90th through 93d Congresses.

Mr. Poage's reputation as an expert on virtually all aspects of agriculture is well established. Of great importance to Mr. Poage was the establishment of the Department of Agriculture Pecan Field Station near Brownwood, Tex. Although raising pecans is considered by some to be merely an avocation, in many areas of the country it is a large commercial business with significant impact on local populations. Mr. Poage is aware of the importance of this industry and was instrumental in the establishment of the field station, although it was not in his district at the time it was created. Through the years, he has been an avid supporter of the field station and as a result of his efforts, the station has had a significant impact on the industry and has been of particular benefit to the many small pecan farmers who use this as a cash crop.

The research station occupies 160 acres of land near Brownwood, Tex., and employs 12 persons. The station was established for the purpose of conducting breeding and culture studies on pecans with emphasis on the development of new varieties, the development of superior root stocks, studies of high density planting, and method of controlling pecan insects. The field station is also in the process of establishing a pecan germplasm repository. This will involve the collection and preservation of superior native and wild pecan seedlings that will be made available to pecan breeders for the development of superior future varieties.

II.

Roman L. Hruska began his service in the House of Representatives in 1953. After serving one term, he was elected to fill the vacancy caused by the death of Senator Hugh Butler. Born and raised in rural Nebraska, Roman Hruska kept his respect for, and belief in, American agriculture when he came to the Congress. He filled out the remainder of the unexpired term to which he was first elected to the Senate, and on his reelection in 1958, he began his first full term as a member of the Senate Committee on Appropriations.

In 1959, he began his service as ranking member of the Subcommittee on Agricultural Appropriations, and served on it continuously until his retirement from Congress in 1976. In that position, Roman Hruska represented the interests and concerns of agriculture and rural America. It was from this vantage point that he was to play the single most important role in the development and establishment of the U.S. Meat Animal Research Center.

While serving on the Senate Appropriations Subcommittee for Agriculture, Roman Hruska was quick to realize the problems and shortcomings of the Department of Agriculture in the field of livestock research and production improvements. Senator Hruska sponsored and supported efforts by the Department of Agriculture to centralize its research activities in livestock. His encouragement and interest in working with the Agricultural Research Service to establish a claim on Federal lands near Clay Center were instrumental in securing approval by the Secretary of Agriculture for the location of the facility in Nebraska. His dedication to the need for livestock research was rewarded, in 1964, by the passage of legislation to establish the Meat Animal Research Center in Nebraska.

The first appropriations for acquisition of lands and initial construction of the Center were provided is fiscal year 1966. Today, it occupies 35,000 acres of land in central Nebraska. It is now serving as the central location for Government research, development, and study of increased efficiency in livestock production, quality, and feeding; in disease control in livestock; and in virtually all other areas of concern in the production of livestock.

Animal scientists and veterinarians working at and through the Meat Animal Research Center study and test ways to develop superior strains of livestock; to control diseases and parasites affecting these animals; and to improve feeding and management practices that provide efficient production while avoiding or minimizing pollution due to animal wastes. Because of the longstanding efforts of Senator Hruska for the establishment of the U.S. Meat Animal Research Center, it is appropriate that the Congress rename this facility the Roman L. Hruska Meat Animal Research Center.

III.

The Nation has profited greatly from Congressman Poage's and Senator Hruska's dedication to agriculture. To name the pecan field station and the animal research center after these men would be an appropriate way to show appreciation for their tireless efforts. The committee members, as well as other Members of Congress, realize the outstanding contributions made by Congressman Poage and Senator Hruska to agriculture.

The committee is aware of the U.S. Department of Agriculture's general policy of not singling out individuals for recognition in view of the contributions others have made to a research facility. However, the accomplishments of men like Congressman Poage and Senator Hruska should not go unnoticed. Worthy individuals should be recognized for their services to agriculture and the Nation, and to have Federal facilities bear the names of such individuals is an acknowledgement of their contributions. This bill gives the Federal Government and its people an opportunity to honor these men.

## INTERNATIONAL INVESTMENT SURVEY AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2928.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 292) entitled "An Act to amend the International Investment Survey Act of 1976, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That section 9 of the International Investment Survey Act of 1976 (90 Stat. 2059) is amended to read as follows:

"SEC. 9. To carry out this Act, there is authorized to be appropriated $4,000,000 for the fiscal year ending September 30, 1979.".

SEC. 2. Section 4(d) of the International Investment Survey Act of 1976 is amended by striking out "his findings and conclusions" and all that follows through the end of the subsection and inserting in lieu thereof the following: "to the Congress an interim report of his findings and conclusions not later than two years after the date of enactment of this Act and a final report of such findings and conclusions not later than three years after such date of enactment.".

SEC. 3. Section 8(b) of the International Investment Survey Act of 1976 is amended—

(1) by striking out "It shall be the responsibility of the Council on International Economic Policy to" and inserting in lieu thereof "The President shall"; and

(2) by striking out "Council's" and inserting in lieu thereof "President's".

SEC. 4. The amendment made by the first section of this Act shall take effect on October 1, 1978.

Amend the title so as to read: "An Act to authorize appropriations for the fiscal year 1979 under the International Investment Survey Act of 1976, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate agree to the amendments en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to en bloc.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendments were agreed to en bloc.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ORDER FOR CONSIDERATION OF S. 3447 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the two leaders or their designees have been recognized under the standing order, the Senate proceed to the consideration of Calendar Order No. 1061,

S. 3447, a bill to strengthen the economy of the United States through increased sales abroad of American agricultural products.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. May I ask if that has been cleared with the minority?

Mr. HATCH. It has not been cleared yet. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MATSUNAGA). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized on tomorrow, the Senate proceed to the consideration of Calendar Order No. 1061, S. 3447, a bill to strengthen the economy of the United States through increased sales abroad of American agricultural products.

The PRESIDING OFFICER. Without objection, it is so ordered.

### ORDER FOR RECESS FROM TOMORROW UNTIL 11 A.M. MONDAY, SEPTEMBER 11, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, since the Senate will not be in session on Saturday, it stand in recess until the hour of 11 o'clock a.m. on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank the Senator for yielding.

### ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

### RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered that the Senate stand in recess until 9:30 a.m. tomorrow.

The motion was agreed to; and at 6:16 p.m. the Senate recessed until Friday, September 8, 1978, at 9:30 a.m.

# HOUSE OF REPRESENTATIVES—*Thursday, September 7, 1978*

The House met at 10 a.m.

The Reverend James E. Casey, St. Michael's Roman Catholic Church, Brandywine, Md., offered the following prayer:

Almighty God, we thank You for the gift of a new day. Help us to use this day for Your honor and glory. Make our thoughts, words, and actions pleasing to you. Give all Members the grace to act wisely as they use the gift of leadership for the common good. Holy Scripture states You are interested in justice, mercy, and compassion more than You are in holocausts and sacrifices, may these virtues be exercised in all deliberations of this body. You remind us that "unless the Lord builds the house they labor in vain who build it." Remove all vanity and grant grace as Members strive diligently to carry out the legislative responsibilities placed upon them. Oh, God grant these blessings so that "treasure may be stored in heaven where thief does not steal and moth does not destroy." We ask in the name of Jesus Christ our Lord. Amen.

### CALL OF THE HOUSE

Mr. BAUMAN. Mr. Speaker, under rule I, clause 1, of the rules of the House, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 729]

| | | |
|---|---|---|
| Abdnor | Bingham | Conable |
| Ammerman | Bolling | Conyers |
| Anderson, Ill. | Brodhead | Crane |
| Andrews, N.C. | Brown, Calif. | Davis |
| Archer | Buchanan | Delaney |
| Armstrong | Burke, Calif. | Dellums |
| Ashley | Burke, Fla. | Diggs |
| Beard, R.I. | Byron | Dingell |
| Beard, Tenn. | Chisholm | Dodd |
| Bellenson | Clawson, Del | Downey |
| Drinan | Krueger | Risenhoover |
| Duncan, Oreg. | Leggett | Roe |
| Edwards, Okla. | Lehman | Rosenthal |
| English | Lundine | Santini |
| Erlenborn | McCloskey | Sarasin |
| Fary | McDonald | Scheuer |
| Forsythe | McFall | Seiberling |
| Fraser | McKinney | Shipley |
| Frey | Martin | Sisk |
| Garcia | Meeds | Symms |
| Gaydos | Metcalfe | Teague |
| Gibbons | Mikva | Thone |
| Goldwater | Milford | Thornton |
| Hansen | Miller, Calif. | Tsongas |
| Harris | Murphy, N.Y. | Tucker |
| Harsha | O'Brien | Udall |
| Hawkins | Pepper | Vander Jagt |
| Heckler | Pettis | Waxman |
| Heftel | Pike | Wiggins |
| Huckaby | Pressler | Wilson, Bob |
| Ireland | Preyer | Wilson, Tex. |
| Johnson, Colo. | Quie | Young, Alaska |
| Kasten | Quillen | Young, Tex. |
| Kemp | Richmond | |

The SPEAKER. On this rollcall 331 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

### MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a concurrent resolution of the House of the following title:

H. Con. Res. 683. Concurrent resolution revising the congressional budget for the U.S. Government for the fiscal year 1979.

### REV. JAMES E. CASEY

(Mr. STAGGERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STAGGERS. Mr. Speaker, I rise this morning to say a few words about our visiting chaplain, the Reverend James E. Casey.

Jim Casey's life is a modern-day Horatio Alger story. He is now pastor of St. Michael's Church at Brandywine, Md., but he was born and raised in my hometown of Keyser, W. Va. During the time of the depression, after he graduated from high school, his father died. Jim Casey had to start to work in order to help support the family. During World War II, he joined the Navy, and the Navy put him to work as an inspector at the Glenn L. Martin Airplane Co. As an aircraft inspector, he rose to one of the high positions with the Martin Co. While working in Baltimore, Jim attended Johns Hopkins University and earned a degree. Continuing his service with the Navy, Jim applied for, was accepted, and attended law school at night.

After receiving his law degree, Father Casey was requested to serve at the Pentagon, with the National Security Agency, in a high-level position. During his assignment with that agency, Jim Casey realized that "fame and fortune" were not his ultimate goals in life. He felt the highest calling one could have and the best job he might be able to do would be to serve his God through serving his fellow man. Jim realized in order to do this he would have to begin again—and he did just that. He accepted that great call; attended a seminary in Boston, and after 4 years was ordained as a full-fledged priest of the Gospel.

Mr. Speaker, today the Reverend James Casey is with us to deliver our morning invocation. I am very proud to have known him throughout the years and doubly proud because I had the privilege of marrying his younger sister.

## DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1979—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95-377)

The SPEAKER. The unfinished business is the further consideration of the veto message of the President on the bill H.R. 10929, to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes.

The question is: Will the House on reconsideration pass the bill, the objections of the President to the contrary notwithstanding?

The gentleman from Illinois (Mr. PRICE) is recognized for 1 hour.

Mr. PRICE. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, I shall try to say that which I have to say as succinctly as possible.

Following my remarks I shall yield to the ranking minority member of the Committee on Armed Services, Mr. WILSON, for his statement. Then I shall yield to Members on both sides to the extent time is available. Under the rules there is a limited amount of time, and a number of Members wish to speak. Therefore, I can only yield a brief allotment of time to each speaker; and in fairness to all, I shall have to oppose the yielding of any additional time to any one Member.

I wish to be fair to those who seek time to speak in support of the veto. But in that regard I shall have to yield first to members of the committee: Mr. DELLUMS, Mrs. SCHROEDER, Mr. CARR, and others who seek recognition.

Mr. Speaker, it is with great reluctance that I oppose the President and find it necessary to ask the House to pass a bill over the President's objections. My reasons for doing this are spelled out in my letter to the President, which has been made available to all Members of the House.

As I stated in that letter to the President, my principal concern is with the failure of the administration to recognize the place of Congress as a partner in determining defense policy.

Nowhere does the veto message recognize any worthwhile contribution by the Congress to a strong defense. Nowhere does the veto message recognize any of the positive additions in H.R. 10929. Nor does it acknowledge that Congress identified over $1.5 billion of unneeded funds in the President's original request. These are programs where the funds could not be spent in fiscal year 1979 if authorized and appropriated because of program changes or contract modifications.



The veto message uses cost figures which are sometimes questionable, sometimes demonstrably incorrect, and are almost always confusing.

On the aircraft carrier, the administration position has vacillated between support of a conventional carrier this year, opposition to any carrier, and support of a conventional carrier next year.

The administration loosely makes statements that a conventional carrier can be built for $1 billion less than a nuclear carrier. The administration is publicly stating a cost estimate for the conventional carrier although it does not have a design or even a single blueprint for such a carrier. Yet somehow the cost estimate stated by the Pentagon for the conventional carrier in the last 2 weeks is $95 million less than what was stated to the committee several months ago.

Such statements cast grave doubt upon the credibility of administration spokesmen and the amount of substantive review accorded the bill by the White House.

I think it hurts the administration's credibility to have the Pentagon publicists writing letters to newspapers charging the Congress with billion-dollar mistakes.

I think the President is mistaken about the aircraft carrier.

If only one more large carrier is to be built, the nuclear carrier is clearly preferable.

If only one more large carrier is to be built, the cost of a custom-made conventional carrier would be close to that of the present nuclear carrier.

I think the President was ill-advised about the bill. H.R. 10929 does improve our defense capability.

I think it is wrong to say that the congressional action hurt NATO. No one has been able to point out where the bill would weaken NATO.

Between the House and Senate there were $280 million in reductions of certain development items related to NATO that were reclaimed by the Secretary of Defense. The conference restored all but $50 million of those items.

It is wrong to say the bill cut needed equipment for the Army and Air Force. When pressed for specific cases, the administration cited a $30 million cut in obsolete armored personnel carriers for war reserve stocks as one of its highest priorities for restoration.

The veto message is wrong in saying that this bill hurts military readiness.

Have you read any statement by the Joint Chiefs of Staff supporting this veto? Has anybody heard from the Secretary of the Navy on this veto?

No.

We are hearing mostly from young civilian staffers and publicists who became experts in the legislative process yesterday.

It will be said now by administration apologists that the only issue is the aircraft carriers. Now they want to limit consideration to the carrier. I suspect the President's advisers are experiencing a bit of procedural sorrow because of the confusing advice and incorrect information they gave to the President. So they want to narrow the discussion to the aircraft carrier.

But the veto message does not say that. That is not the message that was beamed to millions of Americans on their TV screens or that is being served up at Pentagon press briefings.

The message that the public saw and heard was that Congress cannot do anything right on defense; that Congress took steps to weaken defense.

The message the American people received was that Congress voted to hurt readiness, to hurt NATO, and to cripple our R. & D. program.

I say to you that Congress did not do that.

I state emphatically that at no time during committee hearings or conference did we discuss deliberately cutting programs to make money available for an aircraft carrier.

This bill will not in any way result in a reduction in combat capability. This bill does not cut muscle out of our national defense.

If we sustain this veto can we create a better bill? I do not believe that we can. I do not think we would produce as good a bill in the next few weeks as we produced in H.R. 10929 after months and months of hard work.

If you vote to sustain the veto, you will be telling the American people that they can believe the message they heard from their TV's. You will be telling them that Congress was ready to cut the muscle of defense; that Congress cannot be trusted as a partner in determining defense policy.

Finally, I would like it understood that what we are considering here is the proper course of action on a particular bill, and Congress place in the defense policy process.

I do not believe a vote to override would cause any permanent difficulties for the President or weaken him in his dealings in other areas. Many Presidents have had vetos overridden but have gone on to be effective Presidents and to get reelected.

But I do think a vote to override the veto will be a message to the world that the United States is not prepared to let its defense capabilities be reduced and that our potential adversaries cannot afford the misconception of doubting our willingness to meet our national security commitments.

I have served in public office for more than 40 years, and in this House for more than 32 years. Through all of my years in this House it has been my lot to have special responsibilities regarding national security. I have always worked to strengthen our national security, and I have worked in this area with every President since Harry Truman. It is not pleasant for me to have to oppose a President now.

If this veto is overidden, as I hope it will be, I will greet the result not with any sense of joy, but only with the belief that we in the House have performed our duty.

Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. BOB WILSON).

Mr. BOB WILSON. Mr. Speaker, I thank the distinguished chairman for sharing time on this very important measure.

I yield 3 minutes to the gentleman from Virginia (Mr. WHITEHURST).

Mr. WHITEHURST. Mr. Speaker, I would like to begin this morning by recalling to this House the words of Winston Churchill uttered in the House of Commons over 40 years ago. In this moment of high drama he said:

> Listen—listen carefully. I think I hear something. Don't you hear it? It is the sound of marching men, the tramp of 2 million Germans and 1 million Italians crunching the gravel of parade grounds, splashing through rain-soaked fields.

Mr. Speaker, in this House this morning, we could paraphrase that and say:

> Listen carefully. Do you hear the sound of bosun's whistles, nautical commands, in a language that until recent times has never been heard of on the seven seas?

What is really at stake here is whether or not we are going to succeed in projecting American naval power abroad.

Yes, the heart of this veto, the heart of this veto, I say, is the *Nimitz*-class carrier that this House voted to include in this Defense budget. Some of us have said, "Well, it is too much money."

For the price of this ship, for the price of this vessel, you cannot acquire three modern destroyers. You cannot acquire four modern attack submarines; so the point is that if you think you are going to get some cheap ships by knocking out this money, then you are just being led down the primrose path. Nothing so projects American power in the world as this warship. There is no platform that has the firepower on it as this carrier does.

This administration has pledged this House first 30 ships a year, then 15. We gave them everything they wanted in this budget and we added this ship. I think that the American people who want us to remain strong will endorse the earlier action of this House in preserving this vessel in the budget and will endorse it this morning in overriding this veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. CARR).

Mr. CARR. Mr. Speaker, what we have here today is what seems to be a semiannual event in the Congress. It is the semiannual armed services "death dance."

The Committee on Armed Services, continuing out of step with the Congress of the United States, has once again managed to slip by the Congress a nuclear carrier which this House, has voted against on two occasions in this Congress.

It is true that the record is unclear. It is true that on other occasions the House has voted for the carrier, but I contend to my colleagues that this House has never taken the firm, unequivocal kind of position on a nuclear carrier that the proponents of override and the advocates on the Committee on Armed Services Committee are proposing to us today.

This is not a constitutional crisis. The vocates of override will tell us that the President is slapping the Congress in the face, that the Congress no longer has any role in military policy. Nothing could be further from the truth. The Congress is a constitutional partner in the formulation of military policy, but what the advocates of the override fail to tell us is that there is another portion of the Constitution which says that the President of the United States is a partner in the legislative process, and he cast his vote, through the veto, "no," because of the nuclear carrier. We simply are not the rubber stamp of the administration, but the administration is not the rubber stamp of the Congress.

So here we are today, and the issue is the nuclear carrier, not constitutional confrontation. Administrations, beginning with President Ford and his Secretaries of Defense and continuing to the administration today and the Secretary of Defense, have all been opposed to the nuclear carrier.

Also there is the issue of carrier vulnerability.

Mr. Speaker, I hear the veto opponents claiming you cannot count the $200 million vulnerability reduction cost against the large carrier, because the conference turned that down. That is OK if that is the kind of carrier you want, although the Secretary of the Navy says if he has to take a CVN he would rather have the survivable one. But then I also hear the veto opponents claiming the CVV is more vulnerable than the CVN.

You cannot have it both ways. The Navy vulnerability study shows that in almost every case the CVV is much less vulnerable than the unimproved CVN. Under a typical threat wherein the CVV has a 10 or 20 percent chance of being taken out of action, the unimproved CVN has an 80 or 90 percent chance, and I have all the vulnerability curves here for anyone to look at. So you are proposing to spend more money for a more vulnerable ship.

Do not make the mistake of regarding this carrier as the only one in our future fleet. We are going to have four large nuclear carriers no matter what we do in this bill. Never in history has there been a requirement for an aircraft carrier to exercise its unique capability to steam for thousands of miles and then engage in battle without resupply. We have never needed a carrier to do this in the past, and I am willing to bet we never will in the future. But if the occasion does arise, we will have four carriers which can fill this bill. You do not need to have every ship capable of every mission, particularly when the mission is both the most expensive and the most improbable imaginable.

Mr. BOB WILSON. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. BEARD).

Mr. BEARD of Tennessee. Mr. Speaker, I rise in support of overriding this veto.

I must say that it comes somewhat as a surprise to me, as I think to the rest of the Members of this body, that we have received the President's veto on this particular part of the defense authorization bill. The President had many opportunities to let this body and also the Senate know that he would veto this particular piece of legislation if the nuclear carrier were included.

I must say I was extremely offended when one of his Deputy Secretaries appeared on television in my district saying that Congress acted irresponsibly by putting $1.9 billion into this budget for a nuclear carrier when it should have been used to strengthen our forces in NATO and other areas of importance. What the administration fails to say to the American people, though, is that they plan on spending $1.7 billion for a conventional carrier, even after a 1-year study which concluded the nuclear carrier was much more cost effective and twice as strategically valuable as the oil powered, conventional carrier.

If there is any question at all about the administration's intention to replace this nuclear carrier with a conventional carrier—and I have not heard any of the proponents of sustaining the veto mention this—I would like to refer to a memo from the Chief of Naval Operations, Admiral Hayward, who states that we have got to have a replacement for the *Midway* carrier immediately, and that the replacement must be at least as capable as the ship replaced. Then he goes on in his interdepartmental memo as follows:

> The President remains committed to a replacement carrier in the fiscal year 1980 budget. I see little likelihood that there will be any wavering on this issue, and the Secretary of Defense has reiterated the President's commitment to a fiscal year 1980 carrier in the wake of the veto action.

What they say is that we need the $1.9 billion for NATO and for strengthening forces in other critical areas, but they do not tell the American people that the administration has committed to spend $1.7 billion for a conventional carrier. And that estimate is unstable as far as the price goes, because the conventional carrier is not even on the drawing board.

It would be past 1980 before they could even start construction of a conventional carrier. We do not know when we could even start construction. The fact of the matter is that the *Midway* is 40 years old. We need a carrier to replace it immediately, and we have the plans and the design for the nuclear carrier.

I think it is irresponsible for us to sit back and say, "Let us study it; let us continue on and develop new plans."

Mr. Speaker, I think the President and this administration have been extremely misrepresentative of the facts in trying to say that the Congress acted in an irresponsible way by taking $1.9 billion and spending it on a carrier versus spending it on other needed items when the President plans to support, and also has assured the Chief of Naval Operations that he will support, the building of a $1.7 billion conventional carrier. This administration has once again committed the ultimate in hypocrisy.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. BENNETT).

Mr. BENNETT. Mr. Speaker, this carrier is needed. The President, and everybody, agrees that we must have 12 carriers and that there will be a need to replace one of them before the year 2000 because one carrier—the *Midway*—will soon be too old to use safely. The question is: What is the best kind of carrier to get?

The gentleman from Michigan said there was some vacillation on the part of Congress. Actually, there is very little vacillation on the part of Congress. Last year there was a dispute and a deferral. That was resolved by a law which provided for a Navy study to see what kind of carrier we should build. The study came in this year from the Navy and said that the nuclear carrier was the most cost effective, the most combat effective, would save the most lives, and would be the best for the dollar that we could put in for our national defense.

The kind of carrier is really at issue. The President has said that there should be another carrier to replace the *Midway*. Everybody agrees there should be this one replacement carrier. All of the defense studies show that this replacement carrier should be a nuclear carrier. The studies of the National Security Council, the studies of the Joint Chiefs of Staff, the view of the Chairman of Naval Operations, Admiral Holloway, all give top priority to the nuclear carrier. If we are going to have a carrier, it ought to be the nuclear carrier.

There was a recent speech at Annapolis by the Secretary General of NATO saying that one of the things that worried him most in NATO was the vacillation and weakness about just such issues as this. He mentioned the nuclear carrier specifically. I had a hard time getting a copy of that speech, but I finally did, and it certainly justifies the belief that NATO is very much concerned about having adequate carriers on the flanks of NATO.

The President in his speech said we need more flexibility and that Congress should return the ships requested in the budget. We did not cut a single ship. We gave him every ship he asked for and indeed added the nuclear carrier. He obtained more flexibility, not less, by the bill we passed. I urge that the President's veto be overridden.

Mr. BOB WILSON. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. HILLIS).

Mr. HILLIS. Mr. Speaker, unfortunately, in the heat of the debate, the time perhaps is not apt to discuss the issue here; but certainly I think that my colleagues who have preceded me in the well on both sides of the aisle have made a very strong case for the need for this carrier. I would say what we are voting on here today is whether America is going to maintain and still remain a first-class naval power in the world in the future. The building of ships—and I am not a technical expert on these matters—as I understand it, is not something you turn on and turn off on short notice. This is a very important decision we are making here, and we are not voting for this year's budget, for this year's Navy; we are voting for the size of the Navy up to the year 2000 and whether it is going to be comprised of 12 effective carriers or not. For that reason I think this vote is something that should not be taken lightly. It is something that cannot be reversed and easily put off until the next year or the year after. I can tell the Members that if it is put off, it is going to cost more. If we are going to remain a first-class naval power, in light of the growing naval strength of the U.S.S.R., we are going to be spending this money some day. The question is how much are we going to spend. Are we going to face up to reality today, when the shipyards are intact, when the workers are there? Or are we going to buy some of the never-never land and say that we will do this some day and we will put it all back together when we need it? And when we do that, if we can do it, it will cost a great deal more than if we do it now.

I want to analyze for the Members for just a second some statements which I found unfortunate in the President's veto message. He gave the idea to the American public, certainly, that we are not doing enough for NATO. I think this is misinformation, and I do not use that word lightly because I think those who advise the President know better. Certainly the truth is that one of the facts is that we cut back eight helicopters, which eliminated $45 million for these helicopters.

The truth is we did cut back these helicopters, but they had been requested for the Korean forces and they had nothing to do with NATO. The only thing that was done was that better models would be purchased at a later time. The bill did cut $170 million from the XM–1 program. This was requested by the Department of the Army, due solely to renegotiations with primary and subcontractors. That was not needed right now because of these negotiations.

The fact of the matter is that the committee, after holding hearings, added other types of combat vehicles to be used by our NATO forces, and they were included in the bill even when they were not requested, and were turned down.

In summary, Mr. Speaker, the President's veto statement was highly inaccurate. The committee worked long and hard on this bill and certainly considered each separate procurement item on its own merits. There were no trade offs. Therefore this veto should be overridden.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DELLUMS).

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent to reserve my time.

The SPEAKER. Does the gentleman from California (Mr. DELLUMS) realize that it is at the discretion of the chairman of the committee?

Mr. DELLUMS. That is why I made the request.

Mr. PRICE. Mr. Speaker, I think it would be a little difficult to operate under that basis, of reserving time during a limitation.

Mr. DELLUMS. Mr. Speaker, I withdraw my request, and I will accept the time.

The SPEAKER. The gentleman from California (Mr. DELLUMS) is recognized for 2 minutes.

Mr. DELLUMS. Mr. Speaker, Members of the House, 2 minutes is not adequate time to discuss this matter. One hour is not adequate time to discuss this matter. The gentleman from California has spoken many times against this nuclear aircraft carrier. All of us know that it is a sitting duck, a $2 billion turkey.

The President exercised his wisdom and judgment and has vetoed this bill in an appropriate fashion. It is simply my hope that a majority of the House will sustain the veto. I take it that some Members are proposed to overriding a veto and support the position of the President. It is my hope that this group is sufficient to do so. All of the statements that have been made by the President are not statements that I subscribe to. Some of them I think are unfortunate in certain areas, even to me.

This committee has tried diligently in some areas to make cutbacks, but I cannot go along with a $2 billion turkey in the atmosphere of saving the people's money. Why do we not save $2 billion? I do not see why this is going to add anything to our arsenal or beat back communism or face up to the world. It seems to me that we ought to be redirecting the money into the real problems of the American people rather than having another carrier floating around the high seas to maintain the so-called political presence of the United States.

Mr. BOB WILSON. Mr. Speaker, I yield 3 minutes to the gentleman from Alabama (Mr. EDWARDS).

Mr. EDWARDS of Alabama. Mr. Speaker, I rise in support of the veto, and I urge my colleagues to sustain the veto. We have debated this issue at some length on a number of occasions. Putting my position very briefly, I think there are better places to spend $2.5 to $3 billion of the taxpayers' money.

We talk about this carrier as if it is the only carrier we have got. We have got four nuclear carriers by the time the last one comes off the ways. We will have 8 nonnuclear carriers, and we will have 12 out there on the high seas. I think that in view of that, we need to be building other ships and we need to be putting more money into readiness.

What we have done basically, in round numbers, is to take some $1.2 or $1.3 billion out of the Army and Air Force and put $1.2 or $1.3 billion in the Navy budget so that we can find the money for this carrier. I think that is the wrong way to go.

I know why the committee is so frustrated and why the Congress is so frustrated, and I share that frustration because the truth is that we have not had any direction whatsoever from the White House. We are only talking about 15 ships

this year when we ought to be talking about 30. If this veto is sustained, I hope the committee goes back and puts some other ships in the bill that we can use. I do not think we can best use our money by building this one ship. In that connection I would like to submit for the RECORD various combinations of ships that can be built for the price of one nuclear carrier:

Combinations of Ships Which Could Be Bought for $2.5 Billion:

(1) 1 CGN–42 cruiser (Aegis).
1 SSN–688 submarine.
4 FFG–7s frigates.
(2) 1 FFG–7 frigate.
1 DDG–2 destroyer conversion.
1 DDG–47 destroyer (Aegis).
1 aircraft carrier slep (service life program).
1 DD–963 destroyer.
1 SSN–688 submarine.
(3) 1 DDG–47 destroyer (Aegis).
1 DD–963 destroyer.
7 FFG–7 frigates.
(4) 4 FFG–7 frigates.
1 DDG–47 destroyer (Aegis).
1 DD–963 destroyer.
1 SSN–688 submarine.
(5) 13 FFG–7 frigates.
(6) 3 DDG–47 destroyers (Aegis).
(7) 8 DD–963 destroyers.

This carrier question has been equated with the President's decision on the B–1 bomber and equated with the President's decision on the neutron weapons. I think the President was dead wrong on the B–1 and the President has been dead wrong on the neutron weapons, but we need the B–1 because the old B–52 is about to fall apart. We need the neutron weapons because we do not have any in our arsenal like that, and it is a good weapons system that will do a good job.

But, we have got 12 carriers—we have got 12 carriers, 4 of which are nuclear, and this world is not going to rise or fall today or next year on whether we provide one more carrier at this time. Let us take that $2.5 or $3 billion and let us put it into good military hardware that will get our readiness up and get more ships in the oceans of the world. If we do that, we will have a better military posture as we face the Russians or anybody else in this world.

Mr. Speaker, the question today is not whether we will have a nuclear carrier or a conventional carrier. The question is whether we need another carrier in view of our many other defense needs. We are told that next year, if this veto is sustained, the President will include a conventional carrier in his budget. In truth we do not know much about that smaller carrier. Certainly I want to know much more about that carrier before I will commit to support it.

Mr. Speaker, for these reasons I will vote to sustain the President's veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. MAHON).

Mr. MAHON. Mr. Speaker, I am pleased to follow the distinguished gentleman from Alabama, who is my minority counterpart on the Subcommittee on Defense Appropriations, and I agree with the philosophy which he has expressed.

The carrier is really the issue before the House. There are a lot of collateral matters, but it is just the matter of the carrier that we are concerned with principally. The question is: Shall we in 7 or 8 years have another nuclear carrier? It will take that much time in which to construct the carrier. I would say that this is not a life or death decision at this time.

I would say something else: That this issue is not something that is novel or recently raised. In the full Appropriations Committee we had a vote on eliminating the carrier from the Defense Appropriation bill, and the vote to eliminate it was 26 to 26. So this is a question on which there is a division of opinion in the Appropriation Committee and in the Congress.

It has been said that the President vetoed the wrong bill. I am glad to see some attention given to authorization bills and that attention should be extended to all areas of Government spending. We cannot realistically hope to hold the line on spending, move toward a balanced budget, and combat inflation if we are not constantly aware of the dynamics of the entire authorization and appropriations process. The authorization bills represent the starting point in the legislative process and are often the genesis of spending momentum.

The real issue here is the carrier and this is the bill in which to address the matter.

Mr. Speaker, we can have only one President at a time. I have not always agreed with Presidents but I have never wanted to tear them down. Democrats and Republicans do not wish to destroy the effectiveness of the President of the United States while he sits in the shadow of the Summit Conference on the Middle East. We are spending more than $2 billion a year in the Middle East, $1.5 billion goes to Israel. I would hate to see this House repudiate the President and bring him to his knees at a time when he needs all of his strength if he is to make a maximum contribution to the cause of settling the issues in the Middle East.

So it seems to me that is is a day when we should support the President rather than destroy further the influence which he should wield as the President of this Nation.

Further, I would hope that we would not take steps to generate additional inflation which is causing so much hardship and disharmony in the Nation and in the world. We need to resist the impulse to spend the taxpayers' money on nonessential programs.

I would hope that we would recognize that building this carrier and finishing it up in about 7 or 8 years from now is not vitally related to our national security. If war comes with the Soviet Union, whether we have 12 or 13 carriers will not make the difference. The carrier will not be that important in a war with the Soviet Union. In a conflict which does not involve the Soviet Union, we already have a sufficient number of carriers.

I rise in support of the President's veto and urge the House to sustain the veto.

Mr. BOB WILSON. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. TRIBLE).

Mr. TRIBLE. Mr. Speaker, I rise in support of the motion to override the President's veto of the Defense Authorization Act of 1979. President Carter has intruded into defense planning in an unpredictable and arbitrary way and threatens to destroy a very carefully crafted bill which satisfies the immediate defense requirements of the United States.

This veto is a reminiscent of the President's decision to terminate the B–1 bomber, defer the development of the neutron bomb, withdraw troops from South Korea, transfer control of the Panama Canal, and reduce naval shipbuilding by 50 percent over the next 5 years. Aside from the very strong national security arguments that can be advanced against each of these decisions, I am concerned that the pattern of these decisions has convinced the world that the United States is retreating from its worldwide commitments. That impression invites only Soviet initiatives and causes instability and turmoil in the world.

This morning, I would suggest that it is necessary to keep in mind one simple fact. While President Carter objects to the congressional decision to spend $2 billion on a nuclear aircraft carrier, his administration has already announced plans to include a nonnuclear carrier in its next budget request. The whole issue is, merely, this year or next year, and conventional or nuclear?

Everyone agrees that the nuclear carrier is a more capable fighting ship and is more survivable than the nonnuclear carrier. Also, the nuclear carrier is more cost effective. A $2 billion new nuclear carrier takes about one sixty-third of the defense budget. It would be built to the proven pattern of three sister ships. The smaller oil-burning carrier which the President promises would not be. Inflation and cost overruns would make it as costly to procure as the nuclear carrier, taking no account of the significant oil costs that must be added to propel this ship.

It is important that we procure a carrier in fiscal year 1979. If we delay the procurement of this ship we will risk losing the skilled manpower and shipyard capacity necessary to build a carrier and this will only dramatically increase the cost of any carrier built in the future.

Moreover the procurement of the carrier in fiscal year 1980—as suggested by President Carter—will force a jump of more than 20 percent ($7.2 billion) in the fiscal year 1980 budget for weapons procurement and research and development.

Construction delays in the Trident program and flexibility in expanding production of new weapon systems have made it possible for the Congress to authorize the construction of a new carrier this year without adversely affecting other programs or adding substantially

to defense spending. However, the circumstances will be different next year. Procurement cannot be delayed further for F–16's for NATO, new missile and weapons systems to modernize the Air Force and Army, and—with the elimination of the construction backlog—an additional $1.2 billion Trident submarine.

I seriously doubt whether our economy could absorb a $7.2 billion boost in weapons spending without significantly increasing the rate of inflation. Yet, that is exactly what we will be doing if we defer buying an aircraft carrier until next year. Alternatively, failure to override the veto will force cuts next year in domestic programs and delays in buying other weapons systems such as the MX missile. I hope you will agree with me: We cannot have guns and butter next year if we do not buy a carrier this year.

For these reasons and for the many other reasons advanced by my colleagues here today, I urge the House to override the President's veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. LLOYD).

Mr. LLOYD of California. Mr. Speaker, I rise to support the veto override, which comes, as I am sure, as no surprise to most of the Members here. But I would like to say that, as bad as it may be, clearly I am the person who has had the most experience as far as those of you who are on this floor with respect to carrier aviation and carrier operations. Which does not mean to tell you that I am a paragon of carrier knowledge or that I am the only knowledgeable speaker because that is simply not so. There are a lot of good men who have worked on carriers, and who are certainly better prepared and have a better understanding of a carrier's capabilities than I was, but the fact remains that we are not dealing with the issue of just a carrier, we are dealing with an issue of national defense. It is not my fault that the President chose this time to veto this bill when he faces the problem of a summit meeting and when he faces an energy problem. I did not mandate that timetable, he did. Now, if he cannot handle it, that is his problem, and I would add that I am for him, I support the President, but I think he is dead wrong and for the wrong reason with regard to this issue. The issue is our national defense. If you are going to cut here, where are you going to stop? We have gotten rid of the B–1, we have gotten rid of the neutron bomb, we have gotten rid of this and that, and each time we want to do it next year, and next year, and next year. I want you to know something, Members, and that is that next year is here, now. The time to talk about national defense is now. I am saying that on the basis of my background and experience as a person who has operated on and with carriers. A nuclear carrier is the right kind of carrier and the right time to do it is now. Now is the time.

Therefore, Mr. Speaker, I think we should go forward and override this veto.

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman yield?

Mr. LLOYD of California. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Speaker, I wish to associate myself with the remarks of the gentleman in the well, Mr. LLOYD. I know of his personal knowledge and experience with our naval aircraft carrier system. At this time I wish to call to the attention of my colleagues a well-written article from today's Wall Street Journal. It calls attention to the "trick mirror maneuver" used by the White House in vetoing H.R. 10929.

ADMIRAL RAFSHOON

"It's not just talk, Congress cut muscle for another layer of fat." So Gerald Rafshoon, Atlanta adman and student of the defense budget, instructs John Stennis, Melvin Price and other greenhorns who don't understand President Carter's veto of the defense procurement bill.

Admiral Rafshoon's military career has been the most meteoric since Gilbert and Sullivan's Ruler of the Queen's Navie, and he should be duly rewarded with the Order of the Cardigan and the title Lord Get Tough for helping to engineer a supposedly image-enhancing veto. But as Congress votes on the move to override, something is shaping up beyond cosmetic politics. If the veto is sustained, it will be largely through the votes of Congress's scrap-the-Pentagon bloc.

Critics of the veto in Congress include not only Armed Services Chairmen Stennis and Price, but Sen. Gary Hart, the chief apostle of a more-but-smaller-ships navy. Some who oppose nuclear carriers don't think the veto was procedurally wise, since it will reignite congressional debate on the bill's compromises and slow all military improvements. The President can count on the support of partisan loyalists like Speaker O'Neill, on votes for sale for dams or breeder reactors, and on the bloc that thinks slowing military improvements is a good thing. But among Congressmen sensitive to the merits of the issue, the administration has lost the debate.

This is scarcely surprising, considering the quality of the argument the administration has been advancing. We have already remarked on how in announcing the bill the President assailed Congress by confusing authorization bills and appropriation bills. He also remraked, "I have not had a single adviser who told me that we ought to go ahead with the nuclear aircraft carrier." We wonder if the President ever met his just-retired Chief of Naval Operations, James Holloway, who publicly testified in favor of another Nimitz-class boat last April.

Then there is the administration's persistent claim that the nuclear carrier would cost $1 billion more than the oil-powered version it wants. Some $268 million has already been spent buying the nuclear components for a new ship, and Congress figures it could finish the job for another $1,930 million. The oil-powered ship is estimated at $1,575 million. The nuclear ship comes with a 13-year fuel supply, worth $330 million in oil at current prices. Treating sunk costs as sunk, and adjusting for fuel included in one purchase price but not the other, the vastly more capable nuclear ship costs only $25 million more.

How this becomes $1 billion was explained in a letter last week from Thomas B. Ross, Assistant Secretary of Defense for Public Affairs (and, in a former incarnation, co-author of "The Invisible Government," one of the first sensationalist assaults on the CIA): The nuclear components will be stored in case one of the present nuclear carriers breaks down, so add the sunk costs back into the nuclear purchase price. Forget fuel costs, because there are also the operating costs. Add in $200 million to put certain equipment contemplated for the conventional ship on the nuclear one as well. When you have done all this, $268 million plus $330 million plus $200 million plus the original $25 million, you get $823 million. Cose enough for government work, call it $1 billion.

Now, there have been detailed life-cycle cost studies of the two carriers, most conveniently summarized in Admiral Rickover's April testimony. Including all operating costs and aircraft, the nuclear option costs 1.38 times as much as the conventional one over their respective lifetimes but the nuclear ship provides 1.45 times as many aircraft. Per plane, nuclear is 5 percent cheaper. And the nuclear ship is faster, freer of a logistical tail, more able to defend itself, and more able to sustain combat damage.

All of these calculations, further, are likely to be dwarfed by a simple industrial fact. Plans, facilities and construction crews are primed to build a follow-on Nimitz-class boat as soon as the one now under construction is launched. The design of the oil-powered option is not even complete; in the end its estimated $1,575 million cost is altogether likely to work its way above the $1,930 million for the nuclear version.

The administration's contentions are simply unsustainable on the merits, which explains why it chose the essentially unprecedented route of vetoing the whole defense procurement bill. It could have asked for a simple recision without upsetting the rest of the bill, a course it took last year. But to get a recision it needs a majority in both houses, while it can sustain a veto with a third in either. And a third is an easy target because, despite much healing of the Vietnam trauma, there are still a significant number of Congressmen prepared to vote against anything military.

In pursuit of Mr. Rafshoon's "tough" image, the administration is striking an alliance with the antimilitary faction in Congress. Meanwhile, it charges that Sen. Stennis and the rest are soft on defense. By now it should be clear that the electorate wants not cosmetics but a stronger defense, and Congressmen who lend themselves to the administration's trick-mirror maneuver should be called to account in November.

The article of course, speaks for itself. Mr. Speaker, I shall vote to overide the veto.

Mr. BOB WILSON. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, I rise in opposition to the Presidential veto of H.R. 10929, the Defense Department authorization bill for fiscal year 1979 and urge my colleagues to support the construction of the nuclear carrier. It is economical, it is cost effective when we compare the cost of construction and add the fuel cost, the two carriers are virtually equal.

Among the important authorizations contained in this measure is approximately $2 billion targeted for a *Nimitz*-class nuclear aircraft carrier (CVN). The President's veto would cancel this much-needed carrier.

It is a veto which undercuts the strength of our Nation's defense preparedness and is not, as the President would have us believe, a cost-effective

measure which would save defense dollars.

After carefully reviewing the arguments both for and against the proposed nuclear carrier, I can only conclude that the overwhelming weight of the evidence supports—in the name of both a strong Navy and cost-effectiveness—construction of this nuclear carrier.

While the administration has launched an attack on the nuclear carrier as too costly and unnecessary, it still supports construction of a conventional carrier (CVV) claiming the economy and effectiveness of such a move as opposed to building a nuclear-powered vessel.

The President's claims, however, do not stand up to close and careful scrutiny. The initial comparison of construction costs, $2 billion for the nuclear carrier and $1.575 billion for a conventional carrier, scratches only the surface of a cost analysis of both ships. The costs of the CVN include sums for approximately 13 years of nuclear fuel. The price tag for the CVV does not include fuel costs; however, estimates for 13 years worth of fuel would add approximately another $330 million to the cost of the conventional ship.

Moreover, the administration supported vessel has not yet been designed. By the time such design is complete and submitted, and the Newport News shipyards, where such ships are built, shifts gears for such construction, delays and prohibitive cost overruns will be unavoidable. On the other hand, as the Wall Street Journal points out in an August 28, 1978, article, Newport News is currently completing the *Vinson*, a nuclear carrier such as the one in the measure before us, and thus, construction of the nuclear vessel would not meet those construction delays awaiting the Carter-supported conventional carrier.

Furthermore, although the administration first proposed inclusion of the conventional carrier in the current—fiscal year 1979—it then revealed its support for inclusion of such a carrier in next year's—fiscal year 1980—budget. Yet, with no official proposal and thus no design available, inflation would certainly increase the original estimate of $1,575 billion by the time construction got underway.

Beyond these important cost considerations' the CVN is far superior to the CVV in terms of hitting power and dependibility. Compared with the 95 planes the larger vessel can hold—(including our newer and larger fighter planes)—the conventional vessel could accomodate only 64 aircraft. The larger carrier is less vulnerable to foul weather, with operation in the North Atlantic, for example, being forced to shut down only about 12 percent of the time, as opposed to about 21 percent of the time for the CVV. The larger carrier would not need the frequent fuel replenishments required by a conventional ship. The CVN also is capable of carrying up to three times the stocks of aircraft fuel and muni'ions its conventional counterpart can handle.

Writing in the August 27th, 1978, Washington Post, Pulitzer Prize winning columnist, George F. Will stated:

Exhaustive studies demonstrate that large carriers are more survivable than the small carriers the administration favors.

Moreover, Will asserts that the utility of carriers was underscored when the United States lost all Korean bases in the first 5 days of that war.

There is a clear need for carriers to help maintain adequate force levels in the Southern Pacific, especially if the administration succeeds in reducing U.S. ground strengths in South Korea, and to buttress NATO strength levels in the Mediterranean area so that both friend and foe clearly recognize the U.S. commitment to necessary defense obligations.

The President has also stated that by providing $2 billion for the nuclear carrier, Congress has cut needed muscle in other areas of the defense budget. Unfortunately such statements are inaccurate. Claiming the bill contains an $800 million reduction in weapons and equipment for the Army and a $200 million cut in weapons and equipment for the Air Force is clearly at odds with the facts that this legislation cuts only $188.7 million in such funds for the Army—over $127.4 million being saved in the Army XM–1 tank program; the Army having informed Congress that this sum was not necessary as a result of contract modifications—and actually increased Air Force funds in this area by $80.2 million.

Mr. Speaker, for these reasons I believe that the President has unjustifiably vetoed an important and well-balanced, defense budget. Accordingly, I urge my colleagues to support the vote to override this veto.

Mr. BOB WILSON. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. MITCHELL).

Mr. MITCHELL of New York. Mr. Speaker, I rise in support of the motion to override the veto.

Mr. Speaker, the Congress, our Nation and the nations of the world are confused by the Carter defense policy. The rhetoric is not consistent with the deed. During a period of détente the President talks tough to the Russians as if we were in a cold war situation. He said, "We will not allow any other nation to gain military superiority over us." He said this after scuttling the B–1 bomber, the M–X missile, the Minuteman III production line and announcing a troop withdrawal from South Korea.

Next the President states we will have a Navy second to none as he cuts back the shipbuilding program severely—from 30 ships to 15 ships. But the greatest confusion to date arose when the President apparently vetoed the wrong bill. It is as though his advisers did not know the difference between an authorization and an appropriation.

For example if we were debating H.R. 4 on the floor and someone pointed out that a different bill, say H.R. 13, was scheduled on the calendar, a point of order would be revised. The debaters would be laughed off the floor. I am not sufficiently aware of legislative history to know how many Presidents have vetoed the wrong bills, or precisely what our rules provide for such a situation. Suffice it to say we are debating a veto message that has little to do with the bill before us. Armed Services Chairman PRICE has specified 8 or 10 substantive differences between the veto message and the authorization bill.

Let me address those of you who are concerned about the size of defense budget or carriers.

At the very least this technnical difficulty should provide a sound reason for voting to override regardless of one's position on defense generally or carriers specifically.

Due to the constraints of time I will allude to the specifics of the veto override and the carrier debate at the close of my remarks.

Mr. Carter's strongest objection was levied at the congressional decision to spend $2 billion on a nuclear carrier while his administration has already announced plans to include a large oil burning carrier in the next budget request. It has not been established that an oil-powered carrier would save money. Supposedly it would be cheaper to build.

But this is questionable because the CVV has not even been designed. No one knows what it will cost. With the CVV we are buying a pig in a poke. It also would be more expensive to fuel over the long haul—if fossil fuel is available.

In the long run it would appear the overall costs would be similar. But with the extra punch of the CVN, its earlier availability and its additional survivability, it is clearly a bigger bang for the buck.

If we are to have one more carrier, and the Congress and the President agree we should, let us minimize one aspect of the confusion by opting for the best, rather than second best.

The President has stated that Congress cut $800 million in Army weapons and equipment when the actual figure is $188.7 million. He stated that the Congress cut $200 million in Air Force weapons and equipment when the facts are that the Congress increased this program by $80.2 million. He went on to say the Congress cut $500 million in readiness when in actuality the defense authorization package does not address O. & M. readiness at all. This item is a provision of the defense appropriations bill. President Carter said the Congress made heavy cuts in R. & D. The actual reduction was $209.5 million or a 1.7-percent cut from the President's request. Finally, Mr. Carter said that Congress weakened the Navy by funding fewer ships that are more costly. The facts are that the President had 15 ships at $4.7 billion in his budget. With CVV, which the President intends to request in the next budget, he has 16 ships at $6.3 billion. In the authorization measure, Congress has 16 ships at $6.2 billion.

I urge my colleagues to vote to override the President's veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I rise in support of the President's veto. I think my position on the procurement of another nuclear aircraft carrier is well known and I do not want to belabor the point I believe the President's veto was justified.

Spending another $2 plus billion on a fifth nuclear carrier is a gross misuse of our defense dollars. Proponents of another nuclear carrier have unfortunately argued for it strictly in terms of its individual capabilities. What we should be examining is how such a carrier fits into our force structure and what our carrier requirements should be. A fifth nuclear carrier would add only incrementally to our existing capabilities. Nuclear power has its advantages but they are highly situation specific. Admiral Zumwalt, a former chief of naval operations, has clearly pointed this out in a letter he has sent to Members of Congress. He says:

> The direct and hidden costs of CVN's provided significant benefits in naval capability in the case of the first nuclear carrier. Worthwhile but decreasing benefits were achieved with each subsequent investment in the second, third, and fourth nuclear carriers.
>
> With two nuclear carriers soon to be available to provide their incremental advantages in mobility and versatility in each ocean, the benefit, at the margin, for the fifth nuclear carrier in the 1979 authorization would clearly not be worth the money that could be saved provided that the money is invested, in the 1979 authorizaton process, to achieve optimum naval capability.

Clearly there are higher priorities within the Navy and the other services. At the end of the last fiscal year, for instance, the Navy still had 42 ships backlogged for overhaul to bring their material readiness up to par. As to aircraft readiness Admiral Holloway testified this year in his posture statement that.

> Fleet aircraft material readiness underwent a steady decline from fiscal year 1972 through fiscal year 1976, reaching an all-time low during the later fiscal year.

Although the Admiral noted that in fiscal years 1977 and 1978 this trend was reversed, "the fiscal year 1979 aircraft material readiness will decrease with the annual average being equivalent to that achieved in fiscal year 1977." These are the types of unglamorous activities that suffer the burden of wasteful expenditures elsewhere in the budget.

There is also increasing evidence that the missions of the carrier can be performed less expensively and more effectively by substitutes such as land-based air. Our goal shoud be to provide the greatest capability for the least cost, but we have lost sight of that goal.

I support the President on his action and I urge the House to do likewise.

Mr. ADDABBO. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from New York.

Mr. ADDABBO. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, we are talking or seem to be talking about a carrier that will be built and in service in the next year. The carrier we are speaking about cannot be started for another 2 years. The only shipyard which can build the carrier is presently way behind delivery date in building the EVN 70.

Mr. Speaker, the President has said that in the next budget he will be bringing up the question of a carrier. At that time we can wage a fight on whether it should be a conventional or a nuclear carrier.

What we are going to do today if we do not sustain the President's veto is to give the Navy $2 billion to put in their bank since they cannot spend it now. What the President is saying is, "Let us talk about it in next year's budget. Give me that $2 billion now to reinforce our forces where that reinforcement is needed today. Let us spend the tax dollars, the defense dollars, on today's defenses, not on 1990's. We can make that decision next year, but the decision must now be made to buy the weapons we need now, to spend those defense dollars now. They are needed now by our NATO forces in Europe. They need them now, not 10 years from now."

That money should not be given to the Navy to be put into the bank and held for when they can spend it in the year 1980 and beyond. So that is the question today. This carrier cannot be built, cannot be started for another 2 years, so we must, if we really want to work on our defenses and build our defenses, give the Department of Defense the dollars they can spend today for our defenses today. I support the President's veto and ask my colleagues to support the veto.

The SPEAKER. The time of the gentleman has expired.

Mr. BOB WILSON. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. ROBERT W. DANIEL, JR.).

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I think that what I may term a couple of red herrings ought to be laid to rest here. I have got to take issue with the remarks of the gentleman from New York (Mr. ADDABBO) that it would be 2 years before construction work would begin on this carrier. According to Ralph Cousins, who is the president of the Newport News Shipbuilding Co., such work could begin immediately. The beginning of construction on a ship is not the keel laying, but it is a beginning of preliminary work without which beginning Mr. Cousins has said the capability of the shipyard to build this ship eventually would be diminished anyway.

A second point: We have been told that the President exercised wisdom in vetoing this bill, so there would be no carrier at all that would be built. That is not so. The choice is between a capable carrier and a less capable carrier. In fact, in a letter from the Secretary of the Navy, of which I have a copy, in May of this year the Secretary informed us that the administration was willing to support the carrier in an earlier fiscal year than the one being considered. The choice is between a less capable ship, the CVV, which Admiral Moorer, former Chief of Naval Operations, has described as incapable and a ship roughly of the same cost which would be truly capable of doing the job.

There is something I would point out. When you reduce the size of a carrier, you must reduce its air wing, but it requires the same number of fighters to defend a carrier of any size. So what you reduce is the muscle, the attack component of the wing.

We hear about the $2 billion cost, which would be about the same for the less capable CVV. If we look back into history and see what preceding carriers cost, we see that this is about the same in terms of gross national product percentage, about the same in relationship to the cost of an escorting destroyer. Such margin as we enjoy over the Soviet Union at sea exists now because of carriers. We need this ship. Without carriers, in the words of Admiral Moorer, the U.S. surface Navy would be little more than a high-mix Coast Guard. We must support this ship to preserve this edge we have, and I urge the overriding of the President's veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. SIKES).

Mr. SIKES. Mr. Speaker, let us look beyond today. This vote may be the final important action in the gradual surrender of America's leadership of the free world. We need a new carrier and I doubt there will be another opportunity. If the House votes today against the carrier, a weapon that is essential if we are to continue to carry out America's global commitments to peace, we will, in essence, continue to relinquish the power required for those commitments. We know the Communists are ahead of us in military power. We know they are moving steadily to increase that superiority in every area. We know they are out maneuvering us and expanding world communism to new areas and new nations.

We are retreating in Africa, in Asia, in the Far East. Our influence is shaky in the Western Hemisphere. Other than through NATO in Europe, only in the Middle East are we aggressively seeking a stable balance, but even there, the Communist influence is felt in as many nations as ours.

Military power is essential if we are to continue to exercise any effective measure of world leadership.

Now let us take a careful look at the things America has done in recent months in the development of weapons to help regain equivalency, not superiority, equivalency in military power.

Canceled the development of the B–1 bomber.

Slowed the development of the cruise missile.

Shelved research and development on the neutron bomb.

Delayed production of the MX mobile missile.

And we have continued to cut our military and civilian forces in the Department of Defense.

If we do not build this carrier, it is doubtful there will ever be another. We will continue to slide down a continuing road of retrenchment and the world will look more and more to leadership somewhere else.

Last year the Congress was persuaded to drop a carrier which had been approved and for which funds were being expended. We were told—"Drop the big carrier. Next year, the administration will ask for two smaller carriers with a new type of aircraft." We were also told there would be 30 new combat or support ships. That was last year. When the budget reached us, we found no new carriers, no design for a new aircraft, and only 15 combat and support ships. Now we hear that next year, next year, we will have a request for one small carrier. If that request comes, it will be a completely new design, it will probably cost as much as the big nuclear carrier, and its lifetime operating cost will be a great deal more. That is not a very good record to stand on.

The Congress has approved the authorization of a new nuclear carrier to insure a measure of modernization in a carrier fleet which is getting old. The House has voted to fund it. The Senate was prepared to do likewise. Now the procurement bill has been vetoed with a message which admits some half billion dollars in additional procurement in other areas is needed. Of course additional procurement is needed and should be provided. That is no excuse for killing the carrier. Killing the carrier may also help to kill America's hope for a non-Communist world in the years ahead.

Mr. BOB WILSON. Mr. Speaker, I yield 2 minutes to the distinguished minority leader, the gentleman from Arizona (Mr. RHODES).

Mr. RHODES. Mr. Speaker, this veto should be overridden. It is an action which, in my opinion, unless we override it, will leave our Armed Forces less strong than they should be in a very serious time in our history.

I recognize the logic of those Members of the House, and in the Armed Services, who are counting ships. I know that there are many who feel that our Navy is slipping behind because it does not have as many ships as it should. On the other side of the coin are those of us who feel that the quality of the ships of the Navy is more important than the quantity of ships in the Navy.

I have been convinced that we should go with a nuclear fleet ever since the days when I served on the Defense Subcommittee of the Appropriations Committee. I went out in the Mediterranean on the U.S.S. *America*, which is a very fine conventional carrier. I was there when she had to refuel. I could not help but feel, during those hours in which that huge ship was being refueled, and was cruising at a very slow speed, that she would have been a sitting duck for any potential aggressor. I said then that I was more convinced than ever that we needed to go to nuclear carriers and a nuclear fleet. I am still of that conviction.

I think we should also understand that if we make a decision not to build this new ship, we are making a decision to build a nonnuclear carrier, a conventional carrier. We do not have a carrier as big as this is going to be, able to launch the F–14. We have nothing on the drawing boards and we would have to start from scratch to design such a ship; so we will be losing time and losing money.

I hope that the people of the country on November 7 will elect a Congress that will stop inflation. I do not know whether that will happen or not, but nevertheless, it is necessary we go ahead with this nuclear carrier and override the veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Mr. Speaker, this vote is really not a vote on the nuclear carrier. We have been through the nuclear carrier issue many times, as the gentleman from Michigan (Mr. CARR) has said, and almost every time it has come up the House has strongly supported it. What we are voting on today is the veto of the entire defense authorization bill. This is a bill that passed the House by 319 to 67, if I recall.

Do we support that bill that came from Congress or do we want to throw away the work of 8 months and go back and write another bill?

This is also today a question of whether Congress is going to make an important decision like this on inaccurate information. I have never seen a more inaccurate document than the veto message the President sent up to Congress. Even the Washington Post this morning talks about the "funny figures" which President Carter used.

The issue this morning is simply this: A direct challenge to the integrity of the Congress.

If the President did not like the carrier, the proper method would have been a rescission. He could have sent up a rescission next year. That is the way it should have been done. That is the way, in fact, the Defense Department recommended that he do it. But he knew a rescission would lose and he wanted a direct confrontation with the Congress anyway.

Before we vote, we ought to recognize that if this veto is not overridden, we probably will not have a defense appropriation bill, a defense appropriation act, at the beginning of fiscal 1979, on October 1.

That is just about 3 weeks away, and if this committee and this House have to go back and go over this entire bill again and then go back into another session with the Senate, with all the compromises we made, I think we are going to have to operate under a continuing resolution and then come back after the election to write a final bill. That means that in the meantime there will be no new starts and no increases in pay in any defense installations that any of you may have, and no incentives for the Reserves or the National Guard.

Mr. BOB WILSON. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. SPENCE).

Mr. SPENCE. Mr. Speaker, it seems to me that the Presidential veto has very neatly side-stepped what the real needs are for maintaining a strong defense, and particularly a strong and capable naval force.

The one ship which provides the edge of superiority over the growing Soviet naval force is the carrier. I suspect that there must be rejoicing in Moscow over the prospect that the Congress may sustain the veto and eliminate the carrier, or provide for a less capable ship sometime in the future.

The President and the Secretary of Defense have consistently reiterated the theme that they wish to reverse the trend toward a Navy of "fewer and fewer, more-and-more expensive ships." I agree that we need to reverse the trend toward fewer and fewer ships, but the point needs to be made that all ships are expensive. A price tag cannot be put on the Nation's defense and security. If the weapons systems do their assigned missions, then peace is maintained and we get what we paid for.

The Congress certainly has not overlooked the fact that the Navy is at its lowest level of ships in recent history. We have clearly demonstrated our concern and voiced our strong belief that a meaningful and steady growth pattern must emerge to increase the number of ships in the Navy. The authorization bill this year provides for the beginning of new initiatives in naval shipbuilding. But a Navy has to be built with some purpose in mind, not just building ships by the numbers for the sake of numbers.

The carriers are the nucleus of the fleet. It was with that fundamental thought in mind that the Armed Services Committees opted not to wait until next year and lose another year to inflation, but to start to build the replacement carrier for *Midway* as soon as possible. With the funding for the carrier settled, it becomes more plausible to think in terms of smaller and a greater number of purposefully selected ships for next year, and into the future. The carrier takes a long time to build. Smaller ships can be built much faster, so the urgency to get them off the drawing boards and into the shipyard is not as great as that of a large ship.

In his veto message the President said of naval ships:

> It is crucial to maintain an appropriate overall annual level of ship construction. The Congress should return all of the general purpose ships requested in our budget.

The President is not being candid with us or the American people in this statement. We did not take away any general purpose ships in the authorization bill. In fact we added ships. With all due respect to his high office, the President's statement does not make sense. In "down home talk" that the President understands, "the words don't match the deeds."

Let me ask what the administration is doing to establish "an appropriate level of ship construction." I will tell you in a nutshell. It cut Navy shipbuilding in fiscal year 1979 from around 30 to 15 ships. Then the administration sent us a 5-year plan which showed a nogrowth pattern of 14 to 15 ships per year.

That pattern certainly does not conform to the promises for a trend toward a larger Navy. Rather, the pattern to which the Congress has been subjected over the past 2 years from this administration has been one of promising, promising and reneging.

At this point I want to conclude with some general observations over the frustrations we on the Armed Services Committee have faced over the years on the carrier issue.

Opponents of aircraft carriers in general keep calling for more studies; more studies to search for alternative systems. We have studied this issue to death. Every study I know of in the past 10 years has concluded that the carrier is the foundation of our naval arsenal. There is no need for more studies.

Some people who oppose inclusion of the carrier in the fiscal year 1979 defense authorization bill, who parrot administration rhetoric for more navy ships, are the same individuals who year after year consistently vote against more ships, and in fact the entire defense bill.

The majority in the Congress has been on the right track this year in the fiscal year 1979 defense authorization bill. There is no legitimate reason for us to change the growth pattern we have established for a promise from the administration of what is to come.

The veto must be overridden.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. ASPIN).

Mr. ASPIN. Mr. Speaker, let me make a couple of comments in response to the points made by the gentleman from New York (Mr. STRATTON).

What we are really seeing here is the latest skirmish in the battle for the soul of the Navy. I am, for one, happy that President Carter is assuming some leadership on this issue and showing us what direction he wants to go. We have been fooling around with this issue for many years, whether we should go to smaller ships or whether we should go to larger ships, and I am glad the President is deciding to move out in the direction he is taking. The people who control the next couple of defense budgets are going to say which direction the U.S. Navy is going.

If this means we are going to have to go back and redo this defense budget, I think it is well worth the cost, because it is time we had some consistency as to the direction the U.S. Navy should go. Too often in recent years we have had these deadlocks between Congress and the administration about which direction we are going.

The gentleman from New York (Mr. STRATTON) is talking about further deadlocks and saying that if we support the veto we are not going to have a defense bill. If that is the case, that would be extremely irresponsible. We can take out this nuclear carrier and substitute other things very quickly. We can do that quickly enough to have a defense bill within a month if we want to do it.

But if we want a deadlock, if we want to get stubborn when the veto is sustained, and we want to deadlock the whole thing, we can do that, too. That, I think, would be very shortsighted, and that really would hurt the defense of this country.

It is time that we come together behind a single direction for the U.S. Navy. Some of us would like to go to nuclear carriers and larger ships; others would like to go to smaller ships and more numerous ships. I think the direction we go is less important than the fact that we finally decide on a direction.

If the President has finally decided on the direction he would like to go, I would urge the Congress to get behind him, and let us all move in that direction together. At least if we move in that direction together, we can have a stronger Navy, and stop this continuing deadlock and this continual business of carriers being put in and carriers being taken out, which is what we have had in the past.

Mr. BOB WILSON. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. DICKINSON. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Alabama.

Mr. DICKINSON. I thank the gentleman for yielding.

Mr. Speaker, I want to rise and say that I do oppose the veto. I do support the committee position.

Mr. Speaker, I rise in support of the motion of the distinguished chairman of the House Armed Services Committee, the gentleman from Illinois (Mr. PRICE), to override the President's veto of H.R. 10929.

Many of us who carry responsibilities for our national security view the President's veto of this bill with alarm. Why is this veto so alarming? There are several reasons.

First, no President has vetoed a defense authorization bill in recent times. Such an action sends the wrong signal to both our friends and enemies. Our friends may think we have lost our resolve—and we could gradually find ourselves isolated. Our enemies could read it the same way—as a growing weakness—and they could become more aggressive and test us and our friends as they are already doing in Africa. The President's action does not represent the consensus of our people. That consensus was expressed through the Congress which passed the defense bill by a large majority.

Secondly, the word around Washington is that this is only the first "get tough with Congress" veto that the President will exercise. Apparently, his advisers have concluded that he is presently the image of a weak leader and they feel a few vetos will be good public relations. The tragedy is that they so casually selected for the first "public relations veto," a measure that is so important to the security of our country.

This action is only another hint of apparent White House willingness to take chances with our security and follows other noteworthy Presidential decisions such as, pardoning the deserters and draft dodgers, withdrawal of U.S. troops from South Korea, allowing the Vietnamese Communists in the United Nations, giveaway of the Panama Canal, and cancellation of the B–1 bomber and other vital weapon systems.

And finally, it was a bad veto because the President wants to kill construction of a fifth nuclear aircraft carrier. This would be the only such carrier to be built during the remainder of this century and it would be used to replace a World War II carrier which is becoming obsolete.

The President has agreed and has indicated he will eventually request one more large deck carrier to maintain a fleet of 12 active duty carriers. The President has also said that this will be the last large deck carrier we will build during the 20th century. If this indeed is the case—that is, we need one and only one more large deck carrier—then there are a number of factors that favor a CVN over a CVV.

First. A CVN is clearly more operationally capable than a CVV. On this issue there is no disagreement.

Second. We have never constructed, or for that matter have we yet to design a CVV, whereas our shipyards are set up to build a fourth and final CVN. No retooling or new training of shipyard personnel is required.

Third. A CVV will be a one of a kind ship with all of the problems, both construction and operational, that entails. After the inevitable cost overruns, inflation, and oil price increases have taken their toll on this one of a kind ship, it will surely cost more than one CVN.

The President claims that as a result of Congress adding the carrier to this year's budget, many high priority programs were deferred to accommodate it. To the extent that this is true, the problem will surely be exacerbated in next year's budget if the President requests a CVV. The Army's procurement bow wave problem is worsening year by year. The Navy will continue to require large sums of money if the fleet is to be rebuilt and the Air Force will likewise require increased research, development and procurement funds if our strategic deterrent forces are to be modernized.

In my view, if the President's veto of this year's authorization bill is sustained, it is highly doubtful that Congress will shift the carrier funds to other parts of the budget. In fact, it is entirely conceivable that this Congress will report a new bill that is identical in every way to the present bill minus funds for the carrier. To whatever degree the carrier has impacted funds for other programs in this year's budget, it will surely have a similar, if not a more drastic, effect on next year's budget. It would seem to me that a successful veto of this bill simply inflicts a "double whammy" on defense.

I believe it is important for our Nation's long-term security that we override this veto.

Mr. FRENZEL. Mr. Speaker, the President's veto of H.R. 10929, the defense authorization bill remains incomprehensible only so long as we assume he vetoed the right bill. It is pretty clear from reading the veto message and other administration statements that the President should have vetoed the defense appropriation bill. For the first time in my memory most of the arguments marshaled in support of a veto do not apply to the vetoed bill.

With Congress not having completed action on the defense appropriations bill, the President apparently chose to put the

authorizing legislation on the chopping block instead.

It is also important to appreciate what this veto does not seek to do. This is not an attempt to reduce Federal spending. Any funds that would be freed up by deletion of the $1.93 billion nuclear carrier will be applied to other defense programs.

Furthermore, the veto does not mean the President opposes procurement of another large carrier. Earlier this year the Secretary of the Navy indicated the administration favored inclusion of a conventional aircraft carrier (CVV) costing an estimated $1.6 billion in this year's authorization bill. When Congress opted instead to build another nuclear carrier (CVN), the President reassessed his position and decided we should defer authorizing another carrier until next year. Both Congress and the President want to build one more large carrier. The dispute centers on when to authorize construction and the type of propulsion.

The President further muddled the issue by charging that Congress crippled several high priority defense programs to make room in this year's budget for the nuclear carrier. The distinguished chairmen of both the House and Senate Armed Services Committees have carefully research these charges and shown them to be either false or misleading. This is not to suggest that Congress simply rubberstamped the administration's request. As is usually the case, adjustments were made at the margins of some programs. It is difficult to understand why these sorts of routine adjustments should have precipitated the first veto of a defense bill in over a century.

There is room for honest disagreement as to the cost differential between a *Nimitz*-class nuclear carrier and the proposed one-of-a-kind conventional oil-burning carrier. The administration claims the CVV can be built for $1 billion less than the CVN. Others including the shipyards themselves argue the conventional carrier could end up costing more than the nuclear carrier, given the potential for cost overruns on a new design ship. There is no disagreement that the nuclear carrier is a far more capable fighting ship.

If it comes down to a choice between a proven nuclear carrier and a less effective, more vulnerable nonnuclear carrier that has yet to be designed, my clear preference would be to go with the more capable weapons system.

When the Defense authorization bill was considered earlier this year I opposed funding for either carrier in the light of our acute economic situation. Now, however, a vote to sustain this clumsy veto will more than likely lock us into building the costly but vastly inferior oil-burning carrier which the President wants. Given these options, the President's veto should be overridden.

Many observers have suggested that the President cast his veto at least partly out of a desire to look "decisive." Whether that is true or not, it is a fact that the veto message and the Secretary of Defense's statement do not make sense.

It is also a fact that the veto, if sustained, is likely to cost us more and give us less defense. A continuing resolution is a poor way to start the year, and the Armed Services Committee is sure to come up with a costlier bill.

A bitter alternaive is to override the veto.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. WHITE).

Mr. WHITE. Mr. Speaker, it is readily apparent that the advisers who recommended to the President that he veto H.R. 10929 did not understand the difference between the authorization and appropriation processes in Congress. The veto message actually referred to the wrong bill. The message claimed that Congress had cut $800 million in Army weapons and equipment, but the authorization bill only cut $189 million. It claimed that Congress had cut $200 million in Air Force weapons and equipment, but the bill actually added $80 million. It claimed that Congress had weakened the Navy by authorizing fewer ships, but the bill actually authorized more. It claimed that Congress had heavily cut research and development but the bill had reduced R. & D. by only 1.7 percent. The message also claimed that Congress had cut $500 million in readiness. Readiness is not even addressed by the authorization bill.

One further example is the President's assertion that training of personnel was damaged by H.R. 10929. The facts are as follows:

I requested an increase of $1 billion for items which are not glamorous, but which provide the immediate fighting capability of our forces—funds (requiring appropriation but not prior authorization) for repairs of weapons, spare parts for vehicles and aircraft, ship overhauls, *training of personnel*, communications, and logistical support to move equipment to where it is needed. Adding the nuclear-powered aircraft carrier means eliminating half of that increase in fighting capability—some $500 million. (The President's veto message.)

*President's Budget*

Reduced training manpower from FY 1978 level

Army

minus 6,800 military personnel
minus 1,300 civilians

Navy

minus 10,500 military personnel
minus 800 civilians

*Congress/H.R. 10929*

Added to President's request for training activities

Army

plus 2,100 military personnel

Navy

plus 1,850 military personnel

ACTIONS IN PERSONNEL AREA NOT MENTIONED BY THE PRESIDENT RELATED TO READINESS IN WHICH CONGRESS AND THE PRESIDENT DIFFERED

*President's Budget*

Reserves

Reduced Naval Reserve from FY 1978 level
minus 35,600

*Congress/H.R. 10929*

Restored proposed reduction
plus 35,600

(Recruiting incentives)

(50,000 short of authorized and 130,000 short of peacetime manning goal)

*President's Budget*

Asked for $0.5 million to continue current test of reenlistment bonus

*Congress/H.R. 10929*

Authorized $25 million to assist enlistment and reenlistment

Shortages in the Individual Ready Reserve (−320,000)

*President's Budget*

IRR shortages

No action

Civilians

Reduced aircraft maintenance facility manning
−1,100 in Naval Air Rework facility manning
−400 in Air Force aircraft maintenance facilities

Training loads

*Congress/H.R. 10929*

IRR shortages

Included provision to halt transfers from IRR manpower pool to standby reserve. Will add 50,000 to IRR manpower pool when fully in effect

Civilians

Added
+1,100
+400
to improve operational readiness rates for aircraft

Training loads

Increased President's request for the Army by 424 (324 for more One Station Unit Training and 100 for physicians' assistants training)

Congress did not reduce the President's request in the area of manpower at all, except for a reduction of 2,000 civilian personnel out of the total of 1 million. This reduction is specifically directed at white collar civilian employees in the Washington, D.C. area. It will be difficult for the case to be made that this reduction will impact on efficiency, let alone readiness.

It appears that the reason for the veto was the inclusion of the nuclear-powered aircraft carrier. One wonders if the nuclear-powered aircraft carrier is the reason or is this one item in an overall plan to drastically alter the defense posture of the country. Strategic air power has been adversely affected by the elimination of the B–1 bomber and failure to pursue the MX missile. Land power has been adversely affected by failure to pursue the enhanced radiation weapon. Now seapower is being adversely affected by this attempt to restrict the successful deployment at sea of tactical aviation, a capability in which our Navy enjoys its only advantage over the Soviets, and at a time when our seapower may be called upon to defend sea lanes at greater distances from home than ever before.

Let us examine one more time the carrier issue which the presidential advisers, whoever they may be, are so opposed to.

The large carrier can operate in heavy seas; a small carrier cannot. The large carrier can carry more aircraft, more ordnance, more fuel, is faster, has greater range, can operate its aircraft more efficiently, is safer in flight operations, and is more survivable. The addition of nuclear rather than conventional power improves these advantages markedly and pays for itself. The cost of nuclear fuel is included in ship construction costs and latest information indicates that nuclear fuel will last significantly longer than 13 years—close to 20 years.

The issue is not whether or not a carrier is needed. We have already agreed that it is needed. Nuclear power is not the issue. We have already agreed that nuclear is needed. I have here a hand-

written memorandum from the Secretary of the Navy to Mr. Frank Sullivan, Staff Director of the Senate Armed Services Committee indicating that as late as July 13, 1978, the Secretary and Deputy Secretary of Defense were in agreement that the House authorization of $2.129 billion for a CVN including survivability features should be supported.

There are no design plans for a smaller ship. Cost estimates have been based on multiple smaller carriers but none are included in long range ship construction plans. The administration speaks to inclusion of some kind of carrier in the fiscal year 1980 proposal—delaying any ship by another year and increasing costs regardless of which design is selected.

Commonsense dictates that if we are to build only one carrier and if the costs are essentially the same—we should build the most effective ship which can be built. We should build the nuclear powered aircraft carrier.

The authorization bill presented to the President represents months of complex study and review by the Congress and is considered to be a balanced effort to begin to redress deficiencies in our national defense posture.

Anything less than this effort would be inimical to the safety and best interests of the United States. As the Congress is responsible under article I of the Constitution for the raising, provisioning for, and maintenance of our Armed Forces, I strongly recommend that we move to override this veto.

Mr. BOB WILSON. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, my text for today is taken from the Wall Street Journal of this morning, which has a very good editorial which I hope some of the Members have read. It is entitled "Admiral Rafshoon." It says, in the first paragraph:

"It's not just talk, Congress cut muscle for another layer of fat." So Gerald Rafshoon, Atlanta adman and student of the defense budget, instructs John Stennis, Melvin Price and other greenhorns who don't understand Presidet Carter's veto of the defense pocurement bill.

Admiral Rafshoon's military career has been the most meteoric since Gilbert and Sullivan's Ruler of the Queen's Navie, and he should be duly rewarded with the Order of the Cardigan and the title Lord Get Tough for helping to engineer a supposedly image-enhancing veto.

In the last paragraph of the article it says:

In pursuit of Mr. Rafshoon's "tough" image, the administration is striking an alliance with the antimilitary faction in Congress. Meanwhile, it charges that Sen. Stennis and the rest are soft on defense. By now it should be clear that the electorate wants not cosmetics but a stronger defense, and Congressmen who lend themselves to the administration's trick-mirror maneuver should be called to account in November.

Mr. BADHAM. Mr. Speaker, will the gentleman yield?

Mr. BOB WILSON. I yield to the gentleman from California.

Mr. BADHAM. Mr. Speaker, I rise in strong support of this action to override the ill-conceived Presidential veto of the military procurement authorization bill.

The situation is really not very complicated, and I will not dwell on the issues already covered: Namely whether the President vetoed the right bill or not, whether or not the Armed Services Committee, of which I am a member, deleted other items to make room for a carrier—which it did not—whether or not the President reneged on his promise of 30 ships and 2 carriers—he did renege because this year he asked for 15 ships and no carriers—or whether or not we need another carrier—the President and the Congress have already agreed that we do. Rather I will deal with the sole issue of cost which seems to be the President's bottom line.

First of all, to put it in proper perspective, CVV started out a few years ago as a textbook weekend exercise in economic studies at the Pentagon when the economic duty section was asked to come up with rough description of an aircraft carrier that would cost in the neighborhood of $1.2 billion. I stress that this was not to be based on design for a carrier and a carrier mission, but strictly based on what kind of carrier you can build for $1.2 billion. The economic team started with America's most modern carrier, the *Nimitz* class, and then removed costly items one by one until the cost was down to the desired level. I stress that this had nothing to do with mission, vulnerability, fightability, survivability, or anything else remotely related to a real ship. Catapults were removed; elevators were removed; clear vertical space on the hangar deck was removed; the nuclear powerplant was removed. When all was said and done, the result was a gutted *Nimitz* class carrier that cost $1.2 billion in then year dollars. Clearly as a class of carrier such an animal would be less costly. Now, however, we are faced with the President's proposal to build one.

The slippage has now caused with inflation the $1.2 billion economic exercise to become a $1.5 billion CVV. Since, however, there are no plans, no test models, and no design work even commenced for their economic exercise, we must assume that if planning, design, and drawing were commenced on October 1 of this year, it would be approximately four years before the keel could be laid. Now I do not suppose it is going to be any great secret to the Members of this House that 4 years from now the inflation factor will have probably added about 35 percent to the $1.5 billion economic exercise. Despite the fact that the President and Dr. Brown tell us that if commenced in fiscal year 1980 a CVV could be operating before a CVN could be operating if started today, we must face the real facts, and that is you still have to add 3 more years slippage for planning and design.

A *Nimitz*-class carrier today if the keel were laid would cost $2 billion, so the bottom line is for the same amount of money and a slight time delay, we could have a CVV that is less sustainable, less fightable, more vulnerable, and smaller than the CVN.

In addition, the projected economic exercise (CVV) assumed the building of more than one—possibly five or six carriers—to reduce the unit costs. The President and the Secretary of Defense, however, have said we need only one more carrier. How can we therefore justify the design, testing, and planning of only one new carrier which by virtue of the fact of its "oneness" will be a custom-made ship?

Throwing all other arguments aside, such as fuel cycle, fuel replenishment vessels, number of aircraft carried; the simple fact remains: If we need another carrier—and we do—all fiscal, military, time, and energy logic dictates that it be nuclear.

Mr. BOB WILSON. I thank the gentleman.

Mr. Speaker, let me just say something about image making. For 26 years I have hidden the fact that I am also an image maker. I am an advertising man. I hope I have successfully created a better image than what I am, but I do know something about image making. The image maker who has been hired by the President is trying to do one of two things. Either he is trying to make him into something that he is not, or else he is trying to hide what he is, one of the two. That is what you hire an image maker for, and that is why the taxpayers are paying $50,000 per year for Admiral Rafshoon's work.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Virginia (Mr. DAN DANIEL).

Mr. DAN DANIEL. Mr. Speaker, I rise in opposition to the President's veto of the 1979 Defense Authorization Act.

Many of my colleagues will discuss the role of Congress in establishing defense policy, and the need to authorize a nuclear carrier. I will limit my remarks to clarifying one point—that is, the legislation sent to the President does not adversely impact our NATO commitments.

Whatever the outcome today, there is a message which must be clearly conveyed to the American people, our allies and our adversaries. The message is that the House Armed Services Committee, does not trade off major defense mission areas, either intentionally or inadvertently.

Let there be no misunderstanding, neither the committee nor the Congress intended to fund the nuclear carrier at the expense of our NATO needs or any other defense requirements. Every defense program action, whether it was an approval, reduction or termination, was based on the testimony of Defense witnesses or the best supporting data that is available.

Setting aside questions of how the 1979 defense budget which includes a nuclear carrier was structured, I want to highlight a consideration for the 1980 budget that must be seriously deliberated before we cast our votes.

Both the Congress and the President have declared their commitment to an active 12-carrier fleet. In order to provide such a fleet, another large-deck carrier must be built.

The Congress believes that carrier should be funded this year and the President believes it should be funded next year. The President's proposal will have a heavy impact on our Army, since next year the Army procurement requirements will balloon in order to fund needed mod-

ernization programs in the wake of the expenditures made for the Vietnam war. The Army's planned procurement increase for next year is approximately 30 percent. Therefore, to include an aircraft carrier in next year's budget request will obviously affect our Army modernization programs. If I am to believe the testimony we have received, then, this will hinder improvement of our NATO capabilities.

We need the Army programs and the Navy programs when considering NATO readiness and can afford both. On many occasions we have been asked to identify that part of the defense budget which is NATO related. The answer is the entire defense budget is related to NATO, for it is our total military capability which deters aggression and it must be measured in an overall context. In fact, we must look at not only our coventional capability, but also our strategic capability. Therefore, the total defense budget must be considered in order to determine if there is an adverse impact on NATO.

I have supported the Armed Services Committee's actions on the defense budget, those actions taken by the House of Representatives and those taken by the conference committee on the Defense Authorization Act because I firmly believe that the act sent to the President provides authorization for necessary defense appropriations with correctly ordered priorities. This is a properly structured Defense Authorization Act and provides for our defense requirements including NATO.

It is for these reasons, and others that have been mentioned, that I will vote to override the veto and urge my fellow Members to do likewise.

Mr. BOB WILSON. Mr. Speaker, I yield the balance of my time to the gentleman from New York (Mr. KEMP).

Mr. KEMP. Mr. Speaker, we are living according to the well-known Yugoslav writer Milovan Djilas, in one of the most crucial moments in history since World War II. Djilas, according to Richard Whalen, in his outstanding book, "Taking Sides," is one of the best informed sources available to the West on the workings of the Soviet mind. A Communist revolutionary before World War II and a frequent wartime emissary to Stalin, he became Vice President of Yugoslavia under Marshal Tito.

The Soviet invasion of Czechoslovakia in August 1968, Djilas wrote the following year, was not the end of a policy, but the beginning of a new Soviet policy, a policy of aggression, not only by economic and political subversion, but by raw, naked military force. Djilas, who personally knows many members of the Soviet ruling elite, offers this urgent advice to the West:

> The West must rid itself of any lingering illusion that the present Soviet leaders are sophisticated men who eventually will come to their senses.

He says, "If peace is to be preserved in the world, the world must insure that it possesses overwhelming military superiority."

He says that the margin must be so great that "even the Soviet bureaucracy can understand it."

Mr. Speaker, the American people do not want any doubt in the world as to who is superior, militarily speaking. Mr. Speaker, the first line of defense of this Nation is our credibility and that of our President. I share the belief of our friend from California (Mr. LLOYD) that we pray for peace and wish the President well at Camp David but certainly, the military superiority of the United States is in doubt and the credibility of our defense in question.

The purpose of defense spending and of a nuclear carrier is not just to replace the *Midway* but to help defend peace. There is no debate in this Chamber as to whether or not we are going to have a carrier, or another carrier. The only question is whether it is going to be nuclear or conventional, this year or next year. The purpose of this nuclear carrier is to help prevent war and preserve the peace of the world and I would suggest that in the western Pacific, Mediterranean, and Indian Oceans carriers have had a tremendous record of extending U.S. power in such a way as to help minimize war. All studies show the CVN–71 to be the most cost effective and most combat effective vis-a-vis conventional carriers. To stop the production of the B–1 bomber, limit the range of cruise missile, stop the enhanced radiation warhead, cut the shipbuilding program and the MX program and now this is to threaten the credibility and the defense of the West.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. Mr. Speaker, I rise in support of the President's veto, and urge the Members of this body to sustain the veto. I think the essential thing to consider here is that each year we have a limited number of dollars for defense purposes. This year, we have approximately $127 billion, and it behooves us to make certain that those scarce moneys are put into the areas that will give us the greatest defense.

It is not clear whether a new additional nuclear carrier will give us the greater defense. It is clear, however, that we have other immediate military needs. We have immediate needs for readiness programs, for ammunition programs and for materiel for our Army and for our Air Force.

These needs should not be deferred. This $2 billion can very well be expended in these areas, and I suggest that is what the President is trying to do. In later years, we will have time to decide on the carrier and to make a decision as to whether the new carrier should be nuclear powered or conventional. We do not have to decide that issue in the 1979 fiscal year budget.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Speaker, I have given careful consideration to the President's veto message of August 17 on H.R. 10929, and I am appalled by the misinformation that this message conveys to the Congress and the American public. In the entire message, there is only one sentence with which I agree and that is the President's assessment, and I quote, "I believe that the defense of the United States needs to be strengthened."

I would like to join those of you here today who recognize that key administration officials, after 21 months in office, still fail to recognize the difference between an authorization bill and an appropriations bill, and have advised the President—perhaps ill-advised is a better term—to veto the wrong bill. To complicate the situation, he vetoed the wrong bill on the basis of incorrect information. Even the Washington Post, which advocates the lightweight carrier, agreed in this morning's edition that the figures provided to the President in support of the veto went the way of a "meringue in a blast furnance."

Mr. Speaker, I want to set the record straight here today. As chairman of the Research and Development Subcommittee, I, along with 12 other Members of this Congress, held some 40 hearings in reviewing the administration's research and development program proposal. To the best of my recollection, the subcommittee never once discussed the issue of an aircraft carrier. We made 150 program changes—additions and deletions, by carefully examining each program in the President's budget request, and deciding on the basis of the merit of each program, whether or not it would contribute to our national security.

I want to state categorically that we did not displace any program because of the requirement to find money to develop an aircraft carrier, be it nuclear or conventionally powered, with a large or small deck. To cite a few examples, the administration requested $105 million for continued development of the B–1 bomber. May I remind each and every one of you here that the administration and this Congress have already decided against the production of this aircraft. As a result, we reduced this program request by $50 million, $20 million of which the administration fully concurs with. The resulting $55 million authorization will enable the Department of Defense to complete some valuable electronic countermeasure experiments with the fourth B–1 aircraft. So on this particular program, we save the taxpayers $50 million.

A second example is the light airborne multipurpose system, frequently called the LAMPS submarine-hunting helicopter. It was obvious to me and my colleagues that after reviewing this program there was some $400 million in fat. The program was poorly managed and was literally running amuck. My subcommittee and the Armed Services Committee has taken action on this program that will result in a direct saving to the American taxpayers of $400 million. In the September 6 edition of the Wall Street Journal, Assistant Navy Secretary David Mann was quoted as saying—

> The early phase of the program just wasn't well run, and we admit it. . . . As a result, the program schedule slipped by about fifteen months and costs rose. We wear our hair short in public on this.

Mr. Speaker, I resent the allegations

that the Armed Services Committees of the House and Senate, and in fact this entire Congress, have weakened our national defense by the passage of H.R. 10929. I wish to point out that the administration offered no objection to nearly $100 million of reductions in research and development. This concurrence makes it difficult at best to convince me that we cut muscle, and not just plain, ordinary, down-home fat.

I am greatly concerned about the defensive capability of this Nation when the nuclear carrier will come into being. Why am I concerned? Why am I worried? It is because our defensive efforts for the past several years have been characterized by "Start! Stop! and Delay!" "Start! Stop! and Delay!" We start on the B–1 bomber and stop. We start on the M–X system and enhanced radiation device and delay. If we fail to override this veto a majority of the Congress will have started a nuclear carrier and have stopped again.

I urge you to override this veto and give this country the kind of defense that is really needed to not only defend ourselves, but to convince our allies of our firm commitment to preserve world freedom.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Missouri (Mr. BURLISON).

Mr. BURLISON of Missouri. Mr. Speaker, I rise in support of the President's veto. The principal point I would like to emphasize deals with the increased costs of a nuclear carrier task force over that of a conventionally powered task force. The gentlemen who have preceded me here in the well have established the fact that, clearly, there is about a $1 billion difference between the procurement of the CVN 71 and a conventionally powered CVV. There does not seem to be much argument about that.

But most arguments have overlooked the fact that we also need nuclear escorts to go with each of the nuclear carriers to make up a nuclear task force. Nuclear propulsion is expensive, not only for the CVN under discussion, but in the procurement of nuclear-powered escorts that are critical to attaining full effectiveness in operating the CVN. Without these nuclear escorts the CVN is held back by operating limitations of the conventionally powered ships.

There have been differences of opinion as to the number of escorts needed for the all-nuclear-powered carrier task force. But one point is clear; a minimum of two and possibly four nuclear powered cruisers are needed depending on the composition of the individual escort force.

The following escort requirements for each of the four all-nuclear-powered carrier task forces have been variously described:

Case 1. Two nuclear-powered Aegis-equipped cruisers per task force group; for a force level of eight Aegis-equipped CGN's.

Case 2. Three nuclear-powered cruisers (one Aegis equipped) per task group; for a force level of 12 CGN's (including 4 Aegis equipped CGN's).

Case 3. Four nuclear-powered cruisers—one Aegis equipped—per task group; for a force level of 16 CGN's (including 4 Aegis equipped CGN's).

The estimated cost per nuclear Aegis escort is $1.5 to $2 billion per copy while the cost of each DDG 47 conventionally powered Aegis destroyer is about $760 million. The difference in buying conventional escorts vs. nuclear escorts for this one ship is well about $2 billion.

So the issue really comes down to whether we have a carrier force of four nuclear and eight conventional carriers or whether it is five nuclear and seven conventional. As it now stands we do not have enough nuclear escorts for the four nuclear carriers already funded and the Congress has not funded a new nuclear escort since 1974. With the commissioning of the U.S.S. *Arkansas* (CGN–41) in 1980 the Navy will have nine operational nuclear-powered cruisers. The chief of naval operations has testified that an all-nuclear-powered aircraft carrier task group should have three nuclear-power guided-missile cruiser (CGN) escorts, one of which would be Aegis-equipped. On this basis, the navy needs 12 CGN's just to meet current requirements. If Congress funds this CVN that requirement increases to 15 CGN's. The estimated cost of 6 nuclear-powered escorts to fulfill this shortfall is roughly $6 billion.

So, what we are talking about here is the overall costs of procuring nuclear powered carrier task forces versus conventionally powered carrier task forces. If we override the President and approve the CVN 71 we are committing ourselves to an additional expense of $1 billion for the CVN itself and at least another $1 billion in nuclear escort costs. (and this allows for the procurement of the necessary conventional escorts for the new conventional carrier). If we vote to sustain the veto we are taking a big step toward being able to provide more ships for the Navy at a time when its most pressing problem is numbers. It is clear to me that the only way to provide ships in the numbers needed is to get away from nuclear powered surface ships.

I urge my colleagues to support the President on this crucial issue.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Speaker, like all Americans I deplore the rising cost of defense whether we measure it in today's or yesterday's dollar values and state it as a percentage of the GNP or the Federal budget—and I regret the necessity to keep this Nation armed to the teeth. But I think a strong defense is just that, a necessity.

We are debating today what I consider to be the third devastating blow to our defense posture. Airpower has been altered by canceling the B–1 bomber and delaying the MX missile. Landpower was adversely affected by deciding not to develop the neutron bomb. Seapower is now altered by vetoing the nuclear-powered carrier.

All of this is occurring at a time when I see no lessening of the need to provide a stabilizing influence in many situations throughout the world. The nuclear carrier is one of the least vulnerable and most effective ways to do this.

I cannot support any defense policy which will result in a second-rate Navy for the United States. In my view, if we are going to have a carrier—and that does not seem to be the question here—we ought to have the best one available in terms of cost and capability.

Mr. SPEAKER. Members, from the confusion generated by the debate on this issue, it is no wonder that the American people are divided on defense.

The administration has implied, and Members have said, that the building of this carrier means a $2 billion cut for needed programs elsewhere. The distinguished chairman of the Armed Services Committee and other members have demonstrated that this is simply not so.

As a Member, not serving on the Armed Services Committee, I have tried to judge this issue on the basis of the facts as I perceive them.

There is no persuasive argument that an oil-burning carrier is significantly cheaper than a nuclear-powered carrier (CVN) if we consider R. & D. for the carrier and increasing fuel oil costs.

There is conclusive evidence that the inferiority of the conventional carrier's fighting capability would make the saving dubious.

A nuclear carrier would carry 50 percent more aircraft, almost three times the aviation fuel, and twice the aircraft munitions and double the accessories and would carry heavier armor. And it will steam faster for 13 years without refueling.

It has greater capability to defend itself and to project a U.S. presence in remote corners of the globe without the necessity for uncertain fuel supplies or foreign land-base support.

I think we cannot continue to weaken our defense posture and decrease the flexibility of our military response without dire consequences to ourselves and our allies. Accordingly, I support the effort to override the President's veto.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. CHAPPELL).

Mr. CHAPPELL. Mr. Speaker, undoubtedly the Soviets want a "no" vote today on this defense authorization bill. They want a "no" vote, because they know perhaps better than we that sea power today is dependent upon air power, and air power is dependent upon the carriers to project it. The only way to get that air power to where it is needed is through the use of the aircraft carrier. That is the reason they are going toward the development and use of the aircraft carrier rather than away from it. The Soviets want a "no" vote, because they know, perhaps better than we that our failure to replace our retiring carriers reduces our carrier air power by one-

thirteenth. They know how vital it is today to us when we cannot get land bases across the world to do the job we have to do. They want a "no" vote, because they know perhaps better than we that we must fight ships with airplanes, not with ships. You fight ships with airplanes.

If we want to retain that power, we will have to override this veto, the objections of the President to the contrary notwithstanding.

Mr. Speaker, the editorial page of this morning's edition of the Washington Post carried a statement by former Chief of Naval Operations, retired Adm. Elmo R. Zumwalt, in which the admiral seemingly applauds the President's decision to delete a fifth nuclear carrier from the fiscal year 1979 budget. Zumwalt comments that "the direct cost of the nuclear carrier is much greater than the fossil-fueled carrier * * *" and goes further, to say that the better choice would have been a fossil-fueled CVV.

Undoubtedly, most of us read the admiral's statement before coming to the House Chamber this morning to vote on the subject of the President's recent veto.

However, I would like to emphasize what I consider to be the most important point about Admiral Zumwalt's position, Mr. Speaker. Even in the article in this morning's Post, the former CNO indicates the crucial need for a carrier in the fiscal year 1979 budget. Certainly, this represents a difference of opinion between Zumwalt and the President.

There is, moreover, another side of the story—as told by the same person. In January of this year, the Center for Strategic and International Studies, at Washington's Georgetown University, published a study entitled "Aircraft Carriers: The Real Choices." The author was John Lehman. Contributing the foreword was former CNO, Adm. Elmo R. Zumwalt. As with the other admirals who have held the Navy's top job, Zumwalt acknowledges the vital need for an effective carrier fleet, and recalls that when he was CNO, he fought hard for 12 to 16 large carriers.

As most of us know, the admiral is a small-carrier advocate, but his professional experience comes to the fore in recognizing the need to defer no longer on our carrier building program.

In fact. Zumwalt emphasized exactly that need in discusions last week with the author of "The Real Choices" study. Specifically, he told John Lehman that if the fiscal year 1979 budget failed to include funding for some kind of carrier, Congress would be best advised to override the President's veto.

Mr. Speaker. the comments written by Admiral Zumwalt in January are, in my belief, the more relevant, and I submit his foreword for the RECORD. I call the attention of my colleagues specifically to the admiral's last paragraph:

Through national indecision we have drifted without a settled building policy for carriers. Their numbers have dwindled to 12 and no new carriers, large or small, has been authorized since 1971. Further indecision cannot fail to bring serious damage.

I hope that we in the Chamber will today help bring an end to that indecision—and proceed with the previously authorized construction of the nuclear carrier we so desperately need.

The article follows:

FOREWORD

In each of the four major international crises that took place during my watch as Chief of Naval Operations—Jordan, September 1970; Indo-Pakistan, December 1971; Mining of Haiphong, May 1972; and the Yom Kippur War, October 1973—carrier aviation was the primary military tool available to the President for the management of the crisis.

Successful crisis management requires the capability to deploy armed strength in timely and sufficient measure in areas of the world where American interests are involved. The objective of such deployments, in concert with diplomatic and other measures, is to influence favorably the actions of one or more states or groups. Such deployment may be coercive, to compel a nation that threatens our interest, or inducive, to encourage, reinforce, or protect an ally under external or internal threat. For a very large area of the world, carrier aviation is easily the most effective means for deploying armed strength, and in many areas, the only means available to a President.

In addition to this role of protecting Western interests and influence and countering the intrusion of hostile interests, carrier aviation must serve also the requirements of deterring full-scale war with the Soviet Union. Here again carrier aviation provides a capability available from no other means of armed force. In the NATO area, it is carrier task groups that provide the essential security of the Scandinavian flank in the North and the Italian-Greek-Turkish flank in the South. In such a war, carrier aviation must also provide the security for the vital energy sources in the Middle East and Persian Gulf, and simultaneously in the Pacific ensure that Japan survives as our ally and the PRC remains hostile to the Soviets.

These two broad requirements for carrier aviation—peacetime presence/crisis management, and deterrence of full-scale war with the Soviet Union—do not necessarily demand the same configuration, numbers or size of our carrier force. That force, of necessity, must be a compromise between the two missions. On my watch I argued for a high-low mix of 12–16 large carriers and more numerous small "sea-control" carriers. Others have advocated different sizes, different numbers, and different aircraft.

John Lehman is uniquely suited to examine this issue with a rare combination of academic credentials, service in the highest levels of national security decision-making, and operational flying experience. In this small book he has reduced the carrier issue to its essential elements. Why do we need them, how many, how big, how vulnerable, and what kind of aircraft. It is an excellent handbook for a serious examination of this issue.

Through national indecision we have drifted without a settled building policy for carriers. Their numbers have dwindled to 12 and no new carrier, large or small, has been authorized since 1971. Further indecision cannot fail to bring serious damage.—Adm. E. R. Zumwalt, Jr. (ret.)

● Mr. WON PAT. Mr. Speaker, as a member of the Armed Services Committee, I strongly urge my colleagues to vote to override the Presidential veto of H.R. 10929, the fiscal year 1979 defense authorization bill.

There is much room for honest disagreement in the calculations and implications of the funding for various portions of this bill. I will leave it to others to debate the validity of these figures.

However, there is one aspect which is not ambiguous to me, and that is the fallacy of the principal reason presented for this veto: that the United States should not construct another large nuclear-powered aircraft carrier.

What is very clear is that a strong Navy is a vital requirement for the defense of our Nation and that our naval force is being allowed to dissipate. Each year more ships are deactivated and long-range plans for replacements are reduced.

The present thrust of the administration is to strengthen our European defense posture. This is certainly vitally important. However, in doing so it is incumbent upon us to make certain, imbalances in our overall force structure do not develop. Unfortunately, this is also happening, to the detriment of our naval forces.

Our national defense commitments are worldwide. Meeting these farflung needs requires a large and capable Navy. We are not meeting this important requirement and present trends would make this bad situation much worse in the near future.

Immediate corrective action is necessary but has not been forthcoming from the administration. The responsibility for correcting this serious deficiency has fallen on Congress and the bill vetoed by the President provides some of the means of doing so. More particularly, the aircraft carrier objected to by the President is one important program which we in the Congress determined should be built to strengthen our Navy.

Personally, I have some reservations about building expensive giant nuclear carriers. They would be vulnerable to nuclear attack. On the other hand, carriers of any size, and all land bases, would also be vulnerable in the event of nuclear war.

As imperfect as a nuclear carrier might be, it is the best system immediately available to meet defense needs which cannot be deferred. The United States no longer has land bases in most of the world. Our only access is by sea and the best naval system is the aircraft carrier. The most capable carrier is the one proposed by Congress.

Defense Department officials have allowed an unacceptable deficiency to develop and do not propose corrective actions. It has fallen to Congress to do this.

These same administration officials object to another nuclear carrier, but do not propose a viable alternative. The best option presented to date is a smaller oil-fueled carrier, as yet undesigned, on which to base aircraft of a type not yet developed, to be constructed at some indefinite future date.

Our naval needs are now and this bill, carefully crafted after many months of intensive study and consideration in Congress, provides the best available means of providing for these needs.

Our defense responsibilities throughout most of the world can not be met by

nebulous concepts which have not even reached the drawing boards.

There are widespread concerns that a preoccupation with improving European land forces are resulting in a further emasculation of our naval forces. I share this fear, and the conviction of most of our colleagues and many military experts that it should not be allowed to happen.

Administration officials contend this is not the case, but the evidence is otherwise. While proposing increased dependence on oil-fueled carriers, plans to construct the large tanker ships that would be necessary have also been deleted from shipbuilding programs.

I would also point out that the very high costs of constructing, operating and protecting these tankers for many years should also be calculated in comparing the relative costs of the two carrier concepts but generally are not. It has been mentioned that this floating fuel lifeline could be provided by civilian ships but the fact is our merchant marine does not have this capability either.

As a resident and congressional representative of Guam, far in the Western Pacific, I am very conscious of the concerns of officials in allied countries of the Far East about U.S. defense intentions. There is correct recognition that a strong capable U.S. Navy is necessary to protect our interests and theirs in the Pacific and Indian oceans and for meeting requirements short of nuclear war in that huge area of the world between Hawaii and Africa. They, and I, not with dismay and fear, the gradual, but continual, diminution of our naval capabilities.

We must not allow a preoccupation with one aspect of our global defense posture cause neglect and imbalance in another equally vital area. The oceans and seas around Europe comprise but a small part of the world. We can not allow our national defense posture to consider only these limited areas.

Further deterioration of our Navy must be halted, and immediately. Instead it must be strengthened, and as quickly as possible. With its imperfections, the nuclear aircraft carrier is the best available means of doing this.

Mr. Speaker, I urge our colleagues to recognize this fact today and vote to override this veto of the fiscal year 1979 defense authorization bill. To not do so would allow continuation of the aimless drift of our defense program, increased imbalances in our global defense posture and serious dangers to our Nation.●

● Mr. LEGGETT. Mr. Speaker, this debate on the future of a nuclear powered aircraft carrier touches some of the most sensitive issues the 95th Congress has to deal with—national defense and Federal spending. I believe we have a rare opportunity to be on the right side of both questions with a single vote—to sustain the President's veto of the ill-advised action to build a nuclear-powered carrier and reduce Federal obligations by $2 billion or more.

The carrier question has been debated up, down and sideways in the press, in committees, in telephone calls, and in the blizzard of dear colleague letters you all have received this week. The bottom line issue comes down to this: If you believe that there is no limit to the amount of money we should spend on armaments, vote to override the veto; if you believe that there is a limit to what we can spend on guns, ships and planes and that the money must be squeezed for every bit of value it has, the nuclear powered carrier is not the best option and the veto should be sustained.

Simply put, a conventionally powered carrier could serve virtually all of the reasonable purposes we have in mind for a carrier just as well as a nuclear-powered one will with fewer personnel, fewer planes, less necessity for resupply, and at substantially lower costs. I would point out that with the heavily documented difficulties the Armed Forces are having retaining trained personnel, and naval officers qualified in nuclear propulsion constitute one of the major problem areas, it is not reasonable to increase our manpower requirements unnecessarily.

I should also point out that for the Navy to buy this ship now is analagous to the two-car family whose cars both require overhauls but who, instead, choose to buy a new Mercedes-Benz. They really cannot afford the new car, and the old cars have been neglected so long that they barely run. Many of our Navy ships are frankly in similar condition to those old cars. It is true that we are on track to fixing our sadly neglected fleet, but it is going to take time and money—money which would be soaked up by this seagoing behemoth.

Many knowledgeable people, both in and out of Congress, have constructive ideas about what the Navy should be doing about new hardware—surface effect ships, VSTOL aircraft, antisubmarine warfare advances, and the like. All these ideas have one common denominator; they all cost a basketload of money. To concentrate so many of our resources in one area leaves many other fields uncovered and, in fact, increase our vulnerability in key areas we ought to be defending. This is just not good policy.

As chairman of the Task Force on National Security and International Affairs of the Budget Committee, I have participated not only in a detailed review of our defense posture, but also in the Budget Committee's deliberations on the economic well-being of our country—itself a major security concern. I and many of my colleagues believe that we just do not have $2 billion to spend on the marginal increase in military might that a new nuclear-powered carrier represents. In fact, a fully equipped nuclear-powered carrier task group could cost up to $11 billion in the long range—a staggering sum by any standard.

No carrier, conventional or nuclear-powered, is going to survive in a major nuclear war for very long. To think otherwise is to ignore the realities of advances in weaponry in 1978. If you doubt this at all, I would simply invite your attention to what has happened to tank warfare in the last 10 years. The same principles which developed one-shot, one-kill weapons for bridges and tanks have, for all practical purposes, doomed the carrier in a major conflict as surely as the carrier, in its turn, doomed the dreadnought battleships of a previous era.

At the time we passed the second concurrent budget resolution I said in my additional views:

> The budget process has been helpful to all of us in understanding our dilemma, but has yet to be very effective in helping us to solve our problems. This is going to have to change, but the motor for change will have to be the will of the Congress.

This is one of the hard choices I had in mind at that time. Does the Congress have the will, even with the President's help, to separate scare rhetoric from statements of the country's true needs and resist the kind of needless spending that this ship represents? I hope so.

None of what I have said is a particularly new or startling revelation. It is all on the record for anyone who chooses to make a serious study of the question. The final link in the chain is to decide, in light of what we know, whether to spend the tremendous amounts of money involved in this question to acquire something we can get for much less; and in that light, a decision to build a nuclear-powered carrier is not supportable with the facts at hand. It is true that emotional arguments and jingoistic judgments could be substituted for rational analysis, and such an expenditure would then be defensible. I do not believe that we should make decisions on those bases. The President has reached a proper conclusion and has acted with the courage of his convictions; it is time for the House to act with equal courage and conviction to sustain the veto.●

● Mr. SEIBERLING. Mr. Speaker, I strongly oppose this motion to override the President's veto.

The American people, I believe, are pleased by the restoration of the constitutional balance on foreign policy issues which has been established in the last several years. They do not want Congress to sit meekly by, deferring without hesitation to Presidential discretion in foreign policy and defense issues. The era of the imperial Presidency is gone, and with it the passive congressional role which enabled the imperial Presidency to lead us into Vietnam and into disaster.

The President's veto is not an attempt to restore the old days. Just as Congress has the right to make changes in the President's budget, so too does the President reserve the right to veto those changes. The issue here is substantive, not constitutional. The substantive issue is whether a nuclear aircraft carrier should be procured in this fiscal year.

The nuclear carrier was not requested by the President and was not planned for by the Navy in its shipbuilding and conversion program for fiscal year 1979. This veto can be sustained—and the carrier removed—without any adverse impact on our national security. But if the veto is overridden, it will cost us dearly in wasted funds, outmoded strategy and less capable military forces.

There is a growing consensus that the future Navy should have larger numbers of small ships rather than smaller numbers of large ships. But the exact shape and missions of this new type of Navy force structure are still being worked out.

Only last year we voted to delete the nuclear carrier in order to give administration planners an opportunity to develop their plan. I see nothing in the international situation which now should cause us to substitute haste for prudence. The 12 carriers we have now are enough to meet any foreseeable contingency.

There is a real likelihood of huge cost overruns with this ship. The previous three *Nimitz*-class carriers have averaged 42 percent cost overrun of their final cost compared to their estimated cost when first budgeted. The *Nimitz* had a cost overrun of 56 percent. The *Eisenhower* had an overrun of 42 percent. The *Vinson*, now being constructed, is at a 37-percent overrun by current estimates. This means a probable cost closer to $3 billion than the present estimate of $2 billion. And all were or will be delivered late. So when we get down to the practicalities of actual ship construction, there have been real problems. Waste in Government should not be tolerated. It should not be tolerated at the welfare office, and it should not be tolerated at the shipyard either.

There are also strategic considerations. As the widespread support for moving toward a Navy of numerous smaller ships rather than fewer large ships has to do with the development of new, precision-guided defense munitions, such as anti-ship cruise missiles, which make the carrier more vulnerable now than several years ago. There is also the development of new missions for the Navy, such as sea control, which require a naval presence over larger areas of the ocean than in previous planning.

In the past, one mission of carriers was to engage in strategic nuclear retaliation against the Soviet Union. However, intercontinental ballistic missiles and intercontinental bombers have rendered this mission obsolete. The same holds for projecting conventional power against the Soviet Union. The Soviet coastline is heavily defended, and the carrier would have to deploy a great deal of its weaponry just to protect itself, leaving a relatively small amount of military force available against Soviet targets. This no longer makes sense, in view of various available alternatives, such as land-based aircraft.

For example, there is the possibility of using land-based air to perform the sea control mission in the North Atlantic. Land-based air, complementing a number of smaller, light ships, could perform this mission without the need of any supercarrier, either nuclear or conventional. There is the possibility of homeporting an additional carrier in Subic Bay or in Japan, which would allow the Navy to maintain its current forward deployment of four carriers, but at a lower overall carrier level.

In the past decade, the carrier's major role has been to project conventional power against Third World countries, such as Vietnam and the Dominican Republic in 1965. As we move away from this type of intervention, we should also reexamine whether we can safely reduce the force structure which grew up around interventionist goals. For example, we could safely reduce our military presence in the Pacific both because our post-Vietnam commitments are fewer and because our relationship with the People's Republic of China no longer requires a "containment" policy in Asia.

Another consideration is the $4.5 billion price tag for the nuclear-powered escorts to accompany the carrier. These escorts cost as much as $1.5 billion each, and three are needed for each nuclear carrier. If the nuclear carrier does not have these nuclear escorts, then much of its alleged superiority is wasted. Escorts for a conventional carrier cost roughly half as much—$760 million for the AEGIS destroyer (DDG–47). Since there is already a shortfall of three nuclear escorts for the already-funded four nuclear carriers in the force, it is not good military policy to rush ahead with another nuclear carrier.

Finally, the nuclear carrier could well be obsolete before it is launched, because of the promising development of vertical short-takeoff and landing (the V/STOL), as well as other technologies which are expected to make it possible to use smaller carriers, if they are needed.

These are the considerations which lead me to support the President's veto on the substantive issue of the carrier.●

● Mr. GOLDWATER. Mr. Speaker, I rise to announce my intention to vote for an override of the President's veto of the Defense Department authorization bill. I am going to follow the recommendation of the House Armed Services Committee, and keep the congressionally mandated bill intact.

I have studied this matter carefully, Mr. Speaker, trying to concur with the President on his objections that proceeding with plans for a nuclear-powered aircraft carrier would "eliminate funds for high priority defense requirements," as he points out in his veto message. In giving the President every benefit of the doubt that his reasoning is sound, I remain unconvinced that a new *Nimitz* carrier is not in the best interest of our national security. My good friend and respected colleague, CHARLES BENNETT of Florida has informed us that the Navy, in accord with the Joint Chiefs of Staff, have given this project top priority for our military operations on the high seas.

The President's alternative proposal that a conventionally powered carrier be constructed instead, disregards the need for a technologically sound addition to our carrier fleet. The nuclear carrier is the most cost effective we could possibly build. It is capable for combat, and safe for its personnel.

There is something else connected with this veto which distresses me. It deals with the clumsy way in which he handled this veto. It deals with the entire defense policy of this administration. It deals with the political motivation of President Carter on a highly sensitive public matter.

All of us are familiar with the misrepresentations and inaccuracies in the President's veto message. It shows the ineptness of the President and his staff in coming to this Congress, exercising the power of veto, and presenting himself in a most unprofessional manner, unbefitting of a President of the United States.

For a number of years we have been carrying out negotiations with the Soviet Union on strategic arms limitation. We have yet to reach a final resolution in these talks, but all the while we have seen this White House compromise our bargaining position by refusing to support the B–1 bomber, backing down on deployment of the neutron bomb, and now this veto of the Navy carrier.

What incenses most about this veto, however, are the political overtones associated with it. We are all aware of the plummeting popularity of this President in the public opinion polls, the widespread criticism of him, because he "is not getting tough." So a special adviser has been brought in to redress the President's image, to get him to take the bull by the horns, wrestle him to the ground, and come out of a good fight flexing his muscles. Mr. Speaker, we are dealing with a weapons system involving billions of dollars for the defense of our country. It is clear to me that the President's action is not only undesirable for our Nation's interest, but does not speak well for the motives and tactics of this administration. I am voting to override this veto, and believe the House will use its good judgment, and prevail in its intention to enact this legislation into law.●

● Mr. BRINKLEY. Mr. Speaker, for the record, it would seem to me that the interest of the country could have been served better by accepting the President's veto in committee. Instead of a head-on clash or confrontation over an issue perceived to be that of an aircraft carrier, we could have at our Armed Services Committee meeting yesterday, made one simple change toward working together with the administration and which would have been an invitation to the administration to take one simple step in working with us. Precedent for this procedure may be found in President Johnson's veto of the military construction bill in 1965 during the 89th Congress, action thereon, and Chairman Rivers' immediate presentation of an alternative bill.

In a new authorization bill, we could have deleted the nuclear carrier and provided for an oil carrier that is less than what we wanted and earlier than the President had wanted, since his wishes are for that authorization to be provided in fiscal year 1980.

That approach would provide for the wisdom and strength from coequal branches of Government flowing to each other as contemplated by the Founding Fathers.

Because I believe in that partnership approach, which is within the boundary of conviction and within the boundary of strong national defense goals, my vote in the Armed Services Committee yesterday was against bringing the veto up for an override attempt today.●

● Mr. WIRTH. Mr. Speaker, I think that the Members of the House should be very exact in their understanding of what this debate is about. We are not discussing the merits of spending either more or less money on defense. The President has not vetoed the defense appropriations bill. He vetoed instead the authorization bill—the bill which determines how these defense funds will be

allocated. By now this should be clear to all of us. The White House and Congress agree on what should be spent. The difference lies in the nature of that spending, and Mr. Speaker, that is a very significant difference indeed.

What then is the President's objection to the allocation arrived at by the Armed Services Committees? The answer is fairly simple: The President contends that the $2 billion allocation for another nuclear-powered aircraft carrier weakens the overall defense capabilities of NATO. Furthermore he claims that the development and construction of this mammoth vessel will directly disadvantage us in one of the most crucial defense areas—research.

And that is exactly what happened. The Armed Service Committees slashed our spending on research and development of new weapons in order to build this carrier. Let me point out that while $200 million buys very little in the way of an aircraft carrier, it buys a great deal of research. Our advantage over the Soviet Union lies in the fact that we have more advanced and sophisticated weapons. That advantage will not remain in effect long if we continue to shortchange the research budget so we can make room for these massive projects.

The President is quite correct in objecting to this threat to our future defense. At present, work is being carried out on a number of highly advanced weapons. These employ sophisticated electronic techniques which we have, but which the Soviets do not. The development of these weapons can go a long way toward redressing the balance of power in Europe. These weapons cannot be delayed just so we can have another nuclear aircraft carrier.

Another area that must be examined is that of the overall position of the Navy in our total defense strategy. At present over 40 percent of our defense spending goes to the Navy. This, despite the fact that in terms of both total tonnage and number of major combatants our Navy is far larger than that of the U.S.S.R. On the other hand, our overall ground and air forces are inferior. Furthermore, the aggregate naval forces of the NATO allies far exceeds the Soviet forces outside Asia.

However, the fact still remains that the West is outnumbered in the other defense areas. Compared to the Warsaw Pact countries we are down by a half in numbers of tanks and heavy artillery. To me this suggests that we should begin to redress the imbalance; to catch up where we are behind; to make sure that we do not put all the eggs in one basket.

Let us take another look at what this aircraft carrier would have done to the allocations:

Army helicopter procurement funds would be cut by 5 percent, even though antitank helicopters are seen as a key to meeting the Soviet armored advantage.

Missile funds for the Army are also cut by 5 percent.

Tracked combat vehicle purchases were reduced by $120 million.

Even Air Force missile funds were slashed by $50 million.

We should also note that these cuts were to occur in a budget $1.5 billion higher than the President originally requested. If this extra money is to be spent there are much better places for it to go.

Here again the President's alternatives show a great deal of merit. In restoring the cuts which armed services made, we would see an increase in the size of our European ammunition depots. As a point of reference, the 1973 Mideast war showed that these depots were too small to sustain a modern conventional war. We would also build shelters for our airfields in order to protect ourselves from a disabling attack. All these plans stand to strengthen our defense position far more than the addition of a new aircraft carrier.

The Armed Services Committee would have us believe that the Navy needs a small number of very large ships. The argument is, I think, very shaky. What we need is a larger number of medium-sized vessels. At present, most of the offensive capability of the Navy is concentrated on the carrier fleet. The other ships cannot attack enemy positions. If the flight deck of a carrier is destroyed by an enemy missile, launched from a surface boat or submarine, then the American task force might as well head for port.

This clearly illustrates that we need to spread our offensive capability around. Eventually the Harpoon missile will be deployed in other surface ships. However, the Navy consigns that to a late eventuality, and it is certainly a low priority when compared to the construction of other carriers.

Priorities clearly must be reversed. For the price of one carrier and its aircraft, we can build 40 missile frigates, equip them with radar controlled guns, antiship, antisubmarine, and antiaircraft missiles. These would be a far better buy, enabling us to deploy our ships in a much wider range at any given moment. It would also provide more flexibility in enabling us to respond to emergency situations with something smaller than a carrier fleet.

Times have changed for the aircraft carrier. Times changed for the battleship between the two World Wars. Because of increasingly sophisticated missiles which can be launched by relatively small, inexpensive ships, the carrier has become more vulnerable. The need for it has also decreased. During WW II land-based aircraft could not patrol the entire Atlantic against submarines. Since then aircraft ranges have increased, and carriers are no longer needed to fill in the "black hole."

By sustaining the President's veto, and moving farther away from our dependency on the carrier we do a number of vital things. We counter any possible Soviet threats, we reduce the vulnerability of the Navy's offensive power, and we help to redress other military imbalances. Good reasons all. The President's veto should stand, and we should have a better authorization bill.●

● Mr. KEMP. Mr. Speaker, I wish to make several remarks in closing.

President Carter has chosen, for the first time since 1843, to veto a defense bill. The President did not veto the bill because of "breaking the budget"—the bill provided for expenditure below that which the President had requested for fiscal year 1979.

The ostensible grounds for the veto was the fact that the Congress included $1.9 billion for a fifth nuclear powered aircraft carrier, the CVN–71 in opposition to the President's expressed wish to fund only a single nonnuclear powered aircraft carrier, the CVV. But it should be remembered that the White House advised the chairman of the Committee on Appropriations during its debate over the defense appropriation bill that it was willing to accept the CVV in the fiscal year 1979 bill, a proposition which, if all other Presidential spending recommendations had been accepted, would have broken the budget

However, as the debate over the details of the proposed new carrier versus the CVN–71 versus the nonnuclear carrier were spelled out on the floor, it became clear that money was not the issue. The administration acknowledges that the cost of the CVV is estimated now to be $1.5 billion—up from $900 million a year ago. The administration further acknowledges that the cost of 13 years of fuel for the CVV—fuel that is included in the capital cost of the CVN—is $300 million, and the cost of storing and delivering that oil to the fleet is an additional $350 million. This calculation, does not include the additional escort vessels required to protect the fleet oilers which would have to deliver the oil to the carrier beyond the modest level required to deliver ammunition and aviation fuel. Thus, it will cost at least $2.15 billion to buy an aircraft carrier, the CVV, which has only two-thirds the number of aircraft of the CVN and hence less ability to protect its carrier task force; would be unable to launch its aircraft twice as often in heavy seas as the CVN, and can carry far less in the way of munitions and aviation fuel reducing the length of time it can operate without replenishment.

The President has suggested that he was opposed to the large carrier because he wanted to buy a greater number of smaller surface ships. We now know this argument to be false now that the President has submitted his shipbuilding plan to the Congress. The Carter administration proposes to cut the Nation's shipbuilding program in half from that proposed by President Ford—from 30 to 15 ships. Deprived of the air protection afforded by the carrier, it is unlikely that any of the new ships will be able to operate in a hostile environment.

Thus, from the evidence the President has provided to the Congress, we can say with confidence that cost was not a factor in the veto of the defense bill, the effectiveness of the nuclear carrier was not an issue since it is both cheaper and more effective than the nonnuclear

carrier, and we know that the President is not proposing to build a greater number of smaller ships in place of the carrier.

One must look beyond the narrow issue of the carrier controversy to perceive what this administration is doing to the American defense posture. To do so, it is useful to review some recent history.

First. Upon taking office, President Carter slashed a total of $32 billion off the 5-year defense program proposed by President Ford and approved by the Congress with the fiscal year 1977 defense budget.

Second. President Carter's proposed fiscal year 1978 defense budget was $8 billion below that proposed by President Ford.

Third. Despite advice to the contrary from our allies, the Department of Energy, the Secretary of Defense, and the Joint Chiefs of Staff, the President deferred indefinitely—a euphemism for "killed" the neutron warhead for the Lance missile.

Fourth. The President blocked the initiation of full-scale development of the MX advanced ICBM in fiscal year 1978, fiscal year 1979, and preliminary budget documents indicate he will do so in fiscal year 1980 as well. This is done despite the manifest threat to land-based U.S. ICBMs which will emerge in the mid-1980s. The earliest the MX could be produced according to Carter spokesman is fiscal year 1987.

Fifth. Despite advice from every responsible element of the national defense bureaucracy, the President has proposed a total ban on nuclear tests despite the fact that the terms of the President's proposal would allow the Soviet Union to continue to conduct nuclear tests without fear of detection, while the United States could not test its nuclear weapons.

Sixth. The President stopped production of the B–1 bomber without so much as a single suggestion to the Soviets that they should restrain in any way, any of their most threatening new strategic systems.

Seventh. President Carter has reversed the SALT policy of the previous administration of insisting on an agreement where Soviet compliance with the terms of an agreement could be verified; the Carter administration is now willing to advance unverifiable proposals at SALT in an effort to win early agreement.

This frightening litany is 2 years of work by Carter administration officials. What emerges from a review of the efforts of the Carter administration is nothing less than a systematic effort of unilateral restraints that will, I think, reduce the ability of the United States to defend itself in the future. To be sure, the Carter administration takes a much more relaxed view of the Soviet military threat than does the Congress, but the administration has never made a presentation of why it does not share the view of either the Congress or the previous administration of the character of the Soviet military threat our forces are supposed to address. Instead, the President has chosen to cut America's defense capability.

The whole of the President's cuts in America's defense capability is, in this instance, greater than the sum of its parts. By simultaneously making cuts in all areas of the American defense posture—strategic and conventional, nuclear and nonnuclear forces, naval forces, and advanced research, coupled with an "Alice-in-Wonderland" arms control posture, the President reveals himself as one who is decoupled from the stark reality of our age, Soviet military power.

The President's veto of the defense authorization bill has crystallized the posture of this administration; it is opposed to maintaining the resolute defense posture earlier Presidents of both political parties have defended, because the group of academic arms control enthusiasts have captured both the President's imagination and the decisionmaking apparatus of the executive branch of Government. It is no accident that no President has vetoed a defense bill for more than a century; it is the first time in modern memory that the individual charged with the constitutional responsibility for initiative in national security matters has been so grossly derilict in his responsibility to the security of the current and future generation of Americans.

The veto of the defense authorization bill provides the Congress with an opportunity to revitalize the American defense posture. Issues held at abeyance in fiscal year 1979 can now be reopened. Programs deferred in the fiscal year 1979 budget can now be reopened. In short, it is now up to the Congress to step in where the President has defaulted on his constitutional responsibilities, and provide for a defense posture that will address the military threat we face. The cumulative effect of the President's defense policy since he assumed office provides the basis for a reconsideration of earlier Presidential decisions in which the Congress has acquiesced.

First, America's strategic nuclear posture demands early attention to mitigate the damage inflicted upon it by several unwise administration decisions. There is no longer any reason to believe that the President has in mind some new "mix" of forces different in significant ways from our current posture to offset the growth in Soviet strategic nuclear power. The President's policy is to stop the development of most major new strategic nuclear programs in the forlorn hope that the Soviets will respond with an unprecedented gesture of altruism, and disarm themselves. The dangerous statistics of the Soviet buildup since January, 1977 dismiss any residual hope of Soviet altruism in strategic arms. Therefore, the United States should take steps to restore a climate of "equal security" with the Soviets which makes arms control negotiations and strategic stability possible.

Full scale development on the MX ICBM should begin at the earliest possible date.

The possibility of an expedient interim system which could be deployed quickly during the period when the MX is being developed, if the IOC—initial operating capability—of MX cannot be advanced of FL 85 or earlier.

Development—and subsequent deployment—of the most capable heavy-payload ICBM we can develop should be included; a common MX/D–5 will not provide sufficient payload and performance characteristics to meet U.S. land-based ICBM requirements against the most plausible Soviet threat in the late 1980's.

Initial low rate B–1 bomber production should be initiated in fiscal year 1979 in conjunction with accelerated development of the cruise missile. In retrospect, Congress erred in acquiescing in the termination of the B–1 production line because the President's SALT posture severely limits the usefulness of cruise missiles without a modern penetrating aircraft and the slowpace of ICBM and SLBM modernization requires the expeditious deployment of the B–1.

Moreover, the cost overruns, delays, and technical risk that has become apparent in a posture which places sole reliance on the cruise missile is simply too much of a gamble.

REOPENING THE ISSUE OF THE ADEQUACY OF THE ADMINISTRATION'S SHIPBUILDING PROGRAM

Second, no less than our strategic nuclear posture, when the Congress considers the defense authorization bill again, it will be appropriate to reopen the issue of the adequacy of the administration's request for naval shipbuilding. When the Defense subcommittee of the Committee on Appropriations took testimony from the Navy, the administration's decision on the drastic cuts in naval shipbuilding were not known. Now that the President has decided to cut new naval shipbuilding in half, this recommendation should be reviewed in detail, and in my view, rejected.

Funds to execute the shipbuilding program which the Congress reviewed in connection with the fiscal year 1977 Defense budget and 5-year defense program should be provided.

The present capability of the U.S. Navy to project American power to the western Pacific, Persian/Arabian Gulf, and eastern Mediterranean are unduly constrained by the limited number of long-endurance aircraft carriers.

In the administration's presentation of its fiscal year 1978 and fiscal year 1979 defense budget requests, it suggested that large-deck aircraft carriers were obsolete, and could be replaced in the 1980's with small vertical/short takeoff and landing (V/STOL) aircraft. This assertion has subsequently been shown to be a sham; high performance V/STOL development has been pushed off into the early years of the next century, a point recognized by the administration when they cut funds in fiscal year 1979 for the development of V/STOL aircraft. Therefore, funds should be provided for the long-leadtime components of a sixth large-deck nuclear-powered aircraft carrier if the Congress should be required to review the fiscal year 1979 authorization bill again. Only with sufficient naval offensive power—provided only by tactical aircraft—can the United States be sure of being able to

stand athwart the Soviet Navy in a future conflict in the Middle East and elsewhere in the world now beyond the reach of American power due to understrength naval forces.

The administration made a host of recommendations for reductions in research and development programs which cut deeply into the ability of the United States to respond to future threats. The Congress accepted many of these recommendations in the expectation that the President would be willing to deploy sufficient forces to meet current threats. Since the President is not disposed to support the deployment of any of the major strategic and naval modernization programs, save the Trident program—even here, he has not yet requested funds for the D–5 missile to be deployed on the Trident II submarine, the Congress must provide for the kind of long term military security the American people insist upon.

In short, the President's veto of the Department of Defense authorization bill has provided an opportunity for a review of the adequacy of the U.S. defense posture to meet our defense requirements. If the President's budget requests were adequate when they were formulated in late 1977—and I do not believe they were—they are certainly inadequate today in light of the new evidence on the character of the Soviet threat.

If the veto is sustained, then I urge the Committee on Armed Services to initiate a brief series of hearings on the character of the Soviet threat, and the adequacy of U.S. strategic and general purpose forces to meet that threat. A new bill could then be reported to the Congress which would provide for a level of budgetary support to our defense objectives that will meet the security needs of this Nation and its allies.●

The SPEAKER. The gentleman from Illinois (Mr. PRICE) has 1 minute remaining.

Mr. PRICE. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, let me repeat as I said in my opening statement, I do not believe that a vote to override would cause any permanent difficulties for the President or would weaken him in his dealings in other areas. Many Presidents have had vetoes overridden but have gone on to be effective Presidents, great Presidents, and have gone on to be reelected. But, Mr. Speaker, I do think a vote to override the veto will be a message to the world that the United States is not prepared to let its defense capabilities be reduced and that our potential adversaries cannot afford the misconception of doubting our willingness to meet our national security commitments.

Therefore, Mr. Speaker, I ask for a vote to override the veto.

The SPEAKER. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER. The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 191, nays 206, not voting 35, as follows:

[Roll No. 730]

YEAS—191

| | | |
|---|---|---|
| Alexander | Gammage | Murtha |
| Ambro | Gliman | Myers, Gary |
| Andrews, N. Dak. | Ginn | Myers, John |
| Archer | Glickman | Nichols |
| Armstrong | Goldwater | O'Brien |
| Ashbrook | Gonzalez | Oakar |
| Badham | Goodling | Pepper |
| Bafalis | Gore | Pike |
| Barnard | Gradison | Poage |
| Bauman | Grassley | Price |
| Beard, Tenn. | Gudger | Pursell |
| Bennett | Guyer | Quayle |
| Bevill | Hagedorn | Railsback |
| Boggs | Hall | Regula |
| Bowen | Hammer-schmidt | Rhodes |
| Breaux | Hanley | Rinaldo |
| Breckinridge | Hannaford | Risenhoover |
| Broomfield | Harsha | Roberts |
| Brown, Mich. | Hightower | Robinson |
| Brown, Ohio | Hillis | Rousselot |
| Broyhill | Holt | Rudd |
| Buchanan | Horton | Runnels |
| Burgener | Hyde | Santini |
| Burleson, Tex. | Ichord | Sarasin |
| Butler | Ireland | Satterfield |
| Byron | Jeffords | Sawyer |
| Caputo | Johnson, Calif. | Schulze |
| Carter | Johnson, Colo. | Sebelius |
| Cederberg | Jones, N.C. | Shuster |
| Chappell | Jones, Okla. | Sikes |
| Clausen, Don H. | Jones, Tenn. | Skelton |
| Cleveland | Kazen | Slack |
| Cochran | Kelly | Smith, Iowa |
| Coleman | Kemp | Smith, Nebr. |
| Collins, Tex. | Kindness | Snyder |
| Corcoran | Lagomarsino | Spence |
| Coughlin | Latta | Staggers |
| Crane | Lent | Stangeland |
| Cunningham | Livingston | Stanton |
| Daniel, Dan | Lloyd, Calif. | Steed |
| Daniel, R. W. | Lloyd, Tenn. | Stratton |
| Davis | Long, La. | Stump |
| de la Garza | Long, Md. | Taylor |
| Dent | Lott | Treen |
| Derrick | Lujan | Trible |
| Derwinski | Luken | Vander Jagt |
| Devine | McClory | Waggonner |
| Dickinson | McCormack | Walker |
| Dicks | McDade | Walsh |
| Dornan | McDonald | Wampler |
| Downey | Marlenee | Watkins |
| Duncan, Tenn. | Marriott | White |
| Edwards, Okla. | Martin | Whitehurst |
| Emery | Mathis | Whitley |
| English | Michel | Whitten |
| Evans, Del. | Miller, Ohio | Wilson, Bob |
| Evans, Ind. | Mitchell, N.Y. | Wilson, C. H. |
| Findley | Mollohan | Wilson, Tex. |
| Fish | Montgomery | Winn |
| Flynt | Moore | Wolff |
| Fountain | Moorhead, Calif. | Wydler |
| Frenzel | Motti | Yatron |
| Fuqua | | Young, Fla. |
| | | Zablocki |
| | | Zeferetti |

NAYS—206

| | | |
|---|---|---|
| Addabbo | Brown, Calif. | Eckhardt |
| Akaka | Burke, Mass. | Edgar |
| Anderson, Calif. | Burlison, Mo. | Edwards, Ala. |
| Anderson, Ill. | Burton, John | Edwards, Calif. |
| Andrews, N.C. | Burton, Phillip | Eilberg |
| Annunzio | Carney | Ertel |
| Applegate | Carr | Evans, Colo. |
| Ashley | Cavanaugh | Evans, Ga. |
| Aspin | Chisholm | Fascell |
| AuCoin | Clay | Fenwick |
| Baldus | Cohen | Fisher |
| Baucus | Collins, Ill. | Fithian |
| Beard, R.I. | Conable | Flippo |
| Bedell | Conte | Flood |
| Benjamin | Conyers | Florio |
| Biaggi | Corman | Flowers |
| Bingham | Cornell | Foley |
| Blanchard | Cornwell | Ford, Mich. |
| Blouin | Cotter | Ford, Tenn. |
| Boland | D'Amours | Forsythe |
| Bolling | Danielson | Fowler |
| Bonior | Delaney | Garcia |
| Bonker | Dellums | Gaydos |
| Brademas | Diggs | Gephardt |
| Brinkley | Dingell | Giaimo |
| Brodhead | Dodd | Green |
| Brooks | Drinan | Hamilton |
| | Early | Harkin |
| Harrington | Meyner | Rosenthal |
| Heftel | Mikulski | Rostenkowski |
| Holland | Milford | Roybal |
| Harris | Mineta | Ruppe |
| Hefner | Minish | Russo |
| Hollenbeck | Mitchell, Md. | Ryan |
| Holtzman | Moakley | Scheuer |
| Howard | Moffett | Schroeder |
| Hubbard | Moorhead, Pa. | Seiberling |
| Hughes | Moss | Sharp |
| Jacobs | Murphy, Ill. | Simon |
| Jenkins | Murphy, Pa. | Skubitz |
| Jenrette | Myers, Michael | Solarz |
| Jordan | Natcher | Spellman |
| Kastenmeier | Neal | St Germain |
| Keys | Nedzi | Stark |
| Kildee | Nix | Steers |
| Kostmayer | Nolan | Steiger |
| Krebs | Nowak | Stockman |
| LaFalce | Oberstar | Stokes |
| Le Fante | Obey | Studds |
| Leach | Ottinger | Thompson |
| Lederer | Panetta | Thornton |
| Leggett | Patten | Traxler |
| Levitas | Patterson | Tucker |
| Lundine | Pattison | Udall |
| McCloskey | Pease | Ullman |
| McEwen | Perkins | Van Deerlin |
| McFall | Pickle | Vanik |
| McHugh | Preyer | Vento |
| McKay | Pritchard | Volkmer |
| McKinney | Rahall | Walgren |
| Madigan | Rangel | Waxman |
| Maguire | Reuss | Weaver |
| Mahon | Richmond | Weiss |
| Markey | Rodino | Whalen |
| Marks | Roe | Wirth |
| Mattox | Rogers | Wright |
| Mazzoli | Roncalio | Wylie |
| Meeds | Rooney | Yates |
| Metcalfe | Rose | Young, Mo. |

NOT VOTING—35

| | | |
|---|---|---|
| Abdnor | Hansen | Quie |
| Ammerman | Hawkins | Quillen |
| Bellenson | Heckler | Shipley |
| Burke, Calif. | Huckaby | Sisk |
| Burke, Fla. | Kasten | Symms |
| Clawson, Del | Krueger | Teague |
| Duncan, Oreg. | Lehman | Thone |
| Erlenborn | Mikva | Tsongas |
| Fary | Miller, Calif. | Wiggins |
| Fraser | Murphy, N.Y. | Young, Alaska |
| Frey | Pettis | Young, Tex. |
| Gibbons | Pressler | |

The Clerk announced the following pairs:

On this vote:

Mr. Fary and Mr. Teague for, with Mr. Ammerman against.

Mr. Krueger and Mr. Shipley for, with Mr. Mikva against.

Mr. Abdnor and Mr. Kasten for, with Mrs. Burke of California against.

Mrs. Pettis and Mr. Young of Alaska for, with Mr. Bellenson against.

Mr. Hansen and Mr. Thone for, with Mr. Lehman against.

Mr. Symms and Mr. Frey for, with Mr. Tsongas against.

Mr. Quillen and Mr. Burke of Florida for, with Mr. Hawkins against.

Mr. Huckaby and Mr. Del Clawson for, with Mr. Erlenborn against.

Until further notice:

Mrs. Heckler with Mr. Miller of California.
Mr. Quie with Mr. Sisk.
Mr. Murphy of New York with Mr. Wiggins.
Mr. Fraser with Mr. Gibbons.
Mr. Duncan of Oregon with Mr. Pressler.

Mr. PATTERSON of California changed his vote from "yea" to "nay."

Mr. COUGHLIN changed his vote from "nay" to "yea."

So, two-thirds not having voted in favor thereof, the veto of the President was sustained, and the bill was rejected.

The result of the vote was announced as above recorded.

The SPEAKER. The message and the bill, together with the accompanying papers, are referred to the Committee on Armed Services.

The Clerk will notify the Senate of the action of the House.

GENERAL LEAVE

Mr. PRICE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just voted on.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 12930, TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION ACT, 1979

Mr. STEED. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12930) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1979, and for other purposes, with Senate amendments therefor, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

MOTION OFFERED BY MR. BROWN OF OHIO

Mr. BROWN of Ohio. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROWN of Ohio moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill, H.R. 12930, the "Treasury, Postal Service, and General Government Appropriations, 1979," be instructed to agree to the amendment of the Senate numbered 7.

The SPEAKER. Under the rules, the gentleman from Ohio (Mr. BROWN) is recognized for one hour.

For what purpose does the gentleman from Ohio (Mr. VANIK) rise?

Mr. VANIK. Mr. Speaker, I desire to be heard in oppostion to the motion.

The SPEAKER. The Chair will state that the time is under the control of the gentleman from Ohio (Mr. BROWN).

The gentleman from Ohio (Mr. BROWN) is recognized for one hour.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have offered this motion because of the continuing threat by the administration to impose oil import fees. A prohibition to such an import fee has already been approved by the Senate on a vote of 39 to 49 on a motion to table in the form of an amendment offered by Senator ROBERT DOLE of Kansas to the Senate's version of the Treasury, Postal Service, and general government appropriations bill.

Unfortunately, no similar prohibition was in the House version of that legislation when it passed our body because the threat of the administration to impose import fees did not at that time appear to exist. Thus, the only way the House can assure that the President does not unilaterally exercise the authority he has under section 232 of the Trade Expansion Act of 1962 to impose import fees on oil is to instruct its conferees on this issue.

Mr. Speaker, as the Members know, I found the President's original energy proposal totally unsatisfactory, because his proposal failed to adequately encourage domestic energy production to replace and force out of our domestic use expensive foreign oil.

While the President proposes the so-called crude oil equalization tax to encourage domestic conservation by bringing prices to consumers of domestically produced and federally price-controlled energy up to world price levels, I have supported gradual removal of all Federal price controls on energy so that the same price increase to consumers that encourages conservation will also encourage more domestically produced energy.

In light of proposition 13, COET (the crude oil equalization tax) is politically dead and will not be adopted by the energy conference. Somehow, the administration does not understand this and believes that it can coerce the conferees into adopting COET by the threat of imposing the $5 import fee if COET is not adopted.

This persistent threat that the administration may undertake an even more illogical tax approach to punish American consumers into conservation is, I think, incredible. I do not think such action should be taken, and in no case should it be taken without Congress having a chance to vote on it.

The imposition of a $5 import fee on crude oil would be nothing short of disastrous and it would have almost no effect on decreasing our import levels.

Using the Department of Energy's own models, it is estimated that a $5 import fee would decrease oil imports by only 200,000 to 300,000 barrels of oil per day. And, unlike decontrol, which would provide incentives to produce additional domestic oil, no additional domestic oil will be produced as a result of import fees.

Several studies have indicated that the import fee will cost U.S. consumers $3 billion per year, or 0.3 percent in inflation increase for every $1 of import fees. And if we look at the $5 import fee per barrel proposed, that would amount to $15 billion.

This $15 billion would result in the same economic impact as the social security tax which this Congress passed last December. My motion to instruct conferees gives the House a chance to vote against such a new tax.

In addition, the Congressional Budget Office says "imposition of a crude oil import fee would have no more than a minor effect on the U.S. balance of payments."

CBO also estimates that unemployment would rise by as much as 400,000 jobs if the $5 import fee were imposed.

Perhaps, more significantly, if the administration imposes a $5 import fee on oil, it will be a clear signal to the OPEC cartel that the American economy is willing and able to bear the additional costs of imported oil. Try to put yourself in the position of an OPEC oil minister who sees the U.S. Government asking its consumers to pay $5 a barrel more than he is getting for his OPEC oil. Logically, the OPEC countries will ask: "Why should the U.S. Treasury be getting an extra $12 to $15 billion a year, when the money could go to our own treasuries?"

Do we really want to show OPEC that the American system is capable of getting along with a price hike of $5 more per barrel that would go to our Treasury but not to encourage the production of oil?

Finally, imposition of such fees would have a severe regional economic impact on the Northeastern United States, where in effect there are no energy alternatives to the importation of oil. The result will be that they will experience the most severe impact, although the impact will be spread across the rest of the country as well because of the entitlements program that spreads the cost of higher priced imported oil throughout the country.

Therefore, Mr. Speaker, I urge you and the rest of my colleagues to support this motion to instruct the conferees to accept the Dole amendment to prohibit the import fees. It is an important vote for the consumers of the United States, and I think an important vote on our future as a society.

Mr. LATTA. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to my colleague from Ohio for the purpose of debate only.

Mr. LATTA. Mr. Speaker, I want to congratulate the gentleman for bringing this to the attention of the House, and for his motion to instruct these conferees.

In terms of gallonage cost to the average motorists, how much are we talking about?

Mr. BROWN of Ohio. The $5 per barrel import fee probably equates to about 5 cents per gallon of gasoline, so that in effect what we are doing is putting a tax on the workingman to drive to work every day by imposing this $5 a barrel import fee if the President chooses to do that, and he said he would if we do not pass COET.

Mr. LATTA. I think this is most important, that the American people know what this Congress is about to do, or not do, because they do not relate to a $5 increase in the cost of a barrel of oil but they do relate to a 5-cent increase in their gasoline at the pump. I do not think many Members of this Congress want to go home just before election and say that they voted against the gentleman's motion to instruct the conferees to save the 5 cents on a gallon of gasoline.

Mr. BROWN of Ohio. Let me just say to the gentleman that in addition it would have the impact of the same total cost to the workingman as the social security tax increase that the Congress passed last December. Many of us who did not vote for that social security tax

increase now find that we are sustained by Secretary of the Treasury Blumenthal and Mr. Miller of the Federal Reserve, with the suggestion that that tax ought to be repealed. To add another $15 billion onto the taxpayer, it seems to me, makes a little bit of a mockery of what we did not very long ago in this body by reducing taxes.

Mr. RHODES. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Arizona.

Mr. RHODES. Mr. Speaker, I congratulate the gentleman from Ohio on his initiative in offering this motion, and I hope the motion will be adopted. It seems to me that what the gentleman from Ohio is doing is trying to keep the administration from compounding the error which the administration made in submitting the energy proposal to begin with.

The crownpiece, the centerpiece of the energy proposal was COET, and the Congress of the United States has not seen fit—and it will not see fit—to enact COET. So, it seems to me that what the gentleman from Ohio is doing is quite proper, in that he is telling the administration that they must not impose under another law a tax which the Congress will not allow them to impose under the energy plan.

I think the effects of the two taxes would be quite similar. Each one of them would signal to the OPEC countries the fact that—although it is not a fact, but it would indicate the fact that the economy of the United States could get along with a higher price of imported oil. Of course, if we were to have a higher price of imported oil it would be inflationary. If there was to be a tax which would be imposed on imported oil, it would be inflationary. It would increase the cost of living to everybody, and actually it would be exactly the wrong thing to do at this particular time.

Mr. Speaker, I hope the gentleman's motion is agreed to.

Mr. MOORE. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Louisiana (Mr. MOORE).

Mr. MOORE. Mr. Speaker, I too would like to praise the gentleman from Ohio for offering this motion. I rise in very strong support of it.

It seems to me when we consider the anticipated action of putting an import fee on imported oil, we have to ask the question: Why is this being done? It is coming at a time when we already have rising inflation, and obviously when we artificially raise the price of something and we get no more of it for that price, we are bringing on inflation. As has just been pointed out by the distinguished minority leader, we are probably going to be facing an OPEC increase in price because of the decrease in the value of the dollar and because we get an increase in price this time of every year anyway. We are going to be inflicting a Government-imposed increase in price on a basic commodity which everybody in this country uses and we will be forcing that on the people for no particular benefit.

So we ask the question: Why would the administration do this? They do it in the name of conservation. Their whole energy policy is based on no growth, no more energy, no more expansion of the economy, but conserving what we have even if it hurts the workingman, even if it hurts the retired people, and even if it means there will be no more new jobs. Do not use any more energy. That is a no growth, shortsighted energy policy.

What the President is saying is: "I am going to raise the price of oil by imposing import fees until it hurts people to use it." The fallacy of that is that the people have to use it. They will have to drive to work and they will have to heat their homes.

The inconsistency is that not only would we get no more increased conservation for this increased price, but the people of this country would get nothing more for their money except one more increase in taxes at a time when we ought to be getting the economy rolling and putting more money into the pockets of our people by cutting taxes.

Even if we just decontrol, as the gentleman from Ohio (Mr. BROWN) pointed out on this House floor, even if we decontrol our price of gas and oil, there would be an increase in cost but for that increase the people would get more oil, more jobs and more of an economic stimulus.

So the question is do we want to choose the route of hurting the people and putting more money in the tax coffers or do we want to solve the energy crisis?

So when we ask the question, why is the administration doing this, we have the answer that the administration is wrong, and only this motion to instruct the conferees on this amendment would prevent this wrong solution.

Mr. BROWN of Ohio. Mr. Speaker, I yield to the gentleman from New York (Mr. KEMP), who is well known for his efforts in this field.

Mr. KEMP. Mr. Speaker, I appreciate the gentleman yielding.

I also support the Dole amendment, and I believe, as the gentleman from Ohio has pointed out and as my friend, the gentleman from Louisiana has, that this effort to impose here a crude oil equalization tax or import fee is nothing but an attempt by the administration to hold down consumption at the expense of production, which is what the gentleman pointed out earlier.

What we ought to be doing is encouraging production of new energy, encouraging economic growth. The equalization tax and the import quotas are anticonsumer and antigrowth and predicated upon the idea that there is a fixed or finite supply of energy in our country and that what we ought to be doing is slowing down the use of it and ultimately rationing as a result of the policies such as this, and that it is basically Malthusian, to the extent that our population has outgrown the resources, so the only thing is to hold down the use of those resources rather than to encourage production of new resources, of alternate resources, as well as to stimulate production.

I appreciate what the gentleman has done. I will strongly support the amendment.

I also agree with his analogy between this approach and that used by the administration and some of our friends to try to help social security by raising taxes on payrolls. The idea that we can help employment by raising taxes on employment is absolutely fallacious and counterproductive, and the idea that we can encourage new sources of energy by raising taxes is not only counterrational but also counterproductive. I am sure the House will support the motion to instruct the conferees.

Mr. BROWN of Ohio. Mr. Speaker, I yield to the gentleman from Ohio (Mr. VANIK), for the purpose of debate only.

Mr. VANIK. Mr. Speaker, I want to thank my colleague, the gentleman from Ohio (Mr. BROWN) for yielding although I wish to rise in opposition to this motion which has been made by our distingushed colleague, the gentleman from Ohio (Mr. BROWN).

I want to point out, Mr. Speaker, that this issue is something that should be debated in the Committee on Ways and Means where we could have an orderly discussion as to where this action can take us.

To take this quick, preemptory action on the floor right now treads on the likelihood of disaster. This issue is something that should have been debated thoroughly in the energy bill but it certainly should not be done quickly and rashly on the floor of this House.

Do you know what could happen today if we would adopt this motion? The dollar could go through its most serious plunge in all of the recent months.

The President went to Bonn, Germany, in order to preserve world confidence in the dollar. He had to promise we were going to do something about energy. He had to suggest that the American people intend to do something about our escalating consumption of energy. It was because of his statements in Bonn that the dollar continues today to be on probation. The dollar is on probation with all of our trading partners in the world.

If you want to eliminate the dollar today as the trading currency for the purchase of oil, then this action will do it.

This is a very dangerous thing to be considering in this Chamber on a short debate in which all of the time is controlled by those who are offering the motion. I want to thank my colleague, the gentleman from Ohio (Mr. BROWN) for giving me the opportunity to oppose it. But I say to you that the dollar is in terrible peril. It is humiliated in the world markets today. It is losing its value, and if this action is taken today, it would indicate that the President has no power to deal with the oil import issue. I think we are heading for serious trouble indeed.

I want to point out one other thing. The President has not exercised this power. He said he would, or that he might, but there are other things he can do with this power. For example, with the powers he has under this section

of the law, he can pick and choose among those countries from whom we purchase oil. I would hope that, in his good judgment, he would decide that the oil purchases should be made from those OPEC, oil producing countries which have favorable trade balances with the United States. We should buy oil from those countries who buy from us.

Today we are losing fiscal credibility as a nation. We are suffering a depleting credibility of the dollar as a currency because we are paying $50 billion for foreign oil. The countries from whom we buy this oil are making their purchases in other countries, in third countries. This is a most serious and solemn action.

I would urge my colleagues to study the effect of the proposal of the gentleman from Ohio (Mr. BROWN) with deep care. It is indeed something that should be pondered over. After proper deliberation, we might come to this decision. But let us do it in an orderly process by having this debate take place in the Committee on Ways and Means. Let the evidence be presented as to what the effect their action will have on the American people and on the American dollar. If we rashly adopt the proposal that is made by my distinguished colleague, the gentleman from Ohio (Mr. BROWN), we are exposing our Nation to a dangerous risk. I certainly hope the motion is defeated.

Mr. BROWN of Ohio. Mr. Speaker, may I say to the gentleman from Ohio (Mr. VANIK), my friend and colleague, who takes the position that this should be done in the Committee on Ways and Means at this juncture, that if I really thought it would be done before the end of this Congress, I might be more sympathetic to his viewpoint. But this is the only vehicle we have for doing this. This is done for only 1 year because it is done for only as long as the appropriation calls for, so it lasts for fiscal year 1979.

Let me make one further point, if I may. The very day that the President returned from Bonn, the leadership took off this floor the bill to which the gentleman from Texas (Mr. WRIGHT) was going to offer an amendment to allow the price of deep stripper oil to go up, to try to accomplish in a domestic production way what the President of the United States said he was going to do when he was in Bonn.

In other words, he would let the price of domestic oil start edging up so it would get up there by 1980. The Congress will have the opportunity in May of 1979 to say to the administration that we will not extend the EPCA legislation which keeps the price level lid on old oil. That will accomplish what the President wants to do by 1980, and I will support him in that effort. However, for now, I do not think it is desirable to do it by a tax method because if we do it through the tax method, it does not do anything to encourage domestic production, and we do not force out any foreign oil. What we do is add to the cost without producing one more drop of oil.

Mr. JOHN T. MYERS. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Indiana.

Mr. JOHN T. MYERS. Mr. Speaker, I thank the gentleman for yielding.

In the event the gentleman's motion does fail today and the President should impose these taxes, what could we expect the consumers' oil bills, heating bills, and gasoline bills would be? How much would they go up?

Mr. BROWN of Ohio. Mr. Speaker, I say to the gentleman from Indiana that the Congressional Budget Office estimates that the average home heating bill in Boston—I do not happen to have the figure for Indiana——

Mr. JOHN T. MYERS. It would be similar for Boston, I assume.

Mr. BROWN of Ohio. The average home heating bill in Boston would increase from $122 to $231 per year.

Mr. JOHN T. MYERS. Per year?

Mr. BROWN of Ohio. Per year, on the basis of a $5 a barrel import fee increase. That is a pretty impressive increase.

Mr. JOHN T. MYERS. That is heating bills only?

Mr. BROWN of Ohio. That is the heating bill. It is not the gasoline bill. It is just heating the home.

Mr. JOHN T. MYERS. I congratulate the gentleman from Ohio for his motion to help prevent an unnecessary increase to utility, oil, and heating bills for the poor people of this country.

Mr. BROWN of Ohio. Just let me suggest one other bit of information. I used the conservative figure in my former remarks of three-tenths of 1 percent inflation for each dollar. That comes out to a 1½-percent increase in inflation if this tax is imposed by the President. That is what we are trying to prevent. That is the CBO estimate. The Congressional Research Service estimates that it would be 2.6 percent, if we impose the $5 import fee per barrel, of additional inflation.

Mr. JOHN T. MYERS. Mr. Speaker, I thank the gentleman for his figures. I hope everyone will vote for the motion.

Mr. BROWN of Ohio. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. STOCKMAN), for purposes of debate only.

Mr. STOCKMAN. Mr. Speaker, the gentleman has brought up a very important point.

It seems to me that we spent the entire summer in a big battle in the House and Senate over the east coast entitlements, which are a measure of relief that east coast petroleum users are seeking.

It seems to me that if this import fee is adopted, it will force the situation to the point where that entire entitlement they are getting now in the proposed increase will be entirely wiped out, and the effort made over the last couple of months by those who represent east coast constituencies will be completely nullified. The reason for it is simply that there is so much spare capacity in the Caribbean and in western European refineries today that we are getting foreign products into this country for the same price as that at which the products are being produced by our domestic refiners, as a result of which the oil cost is $2 or $3 a barrel lower. If we raise the price on our domestic refiners by $5 for the oil they import, we are going to create a situation in which our domestic refiners cannot compete, or else we will have to impose a fee on other products as well as a crude oil import fee. That fee would have to be about $2 a barrel to keep everything even and not to give an advantage to foreign refineries.

If we do that, the $2 a barrel wipes out everything which those Members from the east coast have been trying to achieve over the last year by way of entitlement improvement for their residual and other products.

I might also say that I listened to the gentleman from Ohio very carefully. He was talking about the dollar and how it is essential for the dollar to take this action.

It seems to me that one of the worst pieces of mythology we have going today is that our crude oil imports are causing the dollar to decline and that there is a primary source of the monetary difficulty and the balance-of-payments difficulty we have. That cannot be true. If oil imports, per se, had a direct effect on the balance of payments and on the exchange value of the dollar, then we should be in clover today because the U.S. economy is less dependent on imported oil and has less of an imported oil burden than any other major industrial economy in the Western world.

It is less of a burden on our economy. We import 24 percent of our energy. West Germany imports 50 percent of their energy. Japan imports 70 percent of their energy. Our import bill only amounts to 2.3 percent of our GNP. In Japan it is almost four percent almost twice as large a burden on their economy. That is where their balance of payments is today.

The oil import is not the basic cause of our dollar problem. The basic cause is that our inflation rate is going up and theirs is going down, and the international currency markets are merely reflecting that by discounting the value of the dollar. If we want to rescue the dollar, and I share that goal wholeheartedly with the gentleman from Ohio, then let us get our domestic inflation rate under control, bring it back into line with what they have in Japan and West Germany. Then I think we could do something about the dollar. But if we impose an import fee, we are going to exacerbate our inflation problem and are going to make our dollar problem worse.

Mr. VANIK. Mr. Speaker, will the gentleman yield for just a moment?

Mr. BROWN of Ohio. I yield to the gentleman from Ohio.

Mr. VANIK. I thank the gentleman for yielding.

I would like to say in response to that that I have not heard a careful response to the effect of this action on the dollar. Suppose we have to buy the oil with Swiss francs? Suppose we have to buy the oil with Japanese yen or German marks? Suppose another currency is selected? That is immediately going to increase the cost of oil imported into the United States by 8 to 10 percent.

I want to point out to the gentleman from Michigan (Mr. STOCKMAN) that our trade deficit does indeed result from our

oil import purchases. I want to refer to the gentleman a statement I placed in the CONGRESSIONAL RECORD on July 17 of this year, a complete report of the trade imbalance which indicates that imported oil is the culprit. In manufacturing goods, for example, we have a balance with many nations. We buy a great deal—but we sell almost as much. It is the $50 billion purchase of foreign oil which has taken the dollar down, and if this legislation is enacted, it will be a warning to all of our trading partners and to the OPEC nations that the President does not have the power to deal with the crumbling dollar. If we want to let the dollar plummet to hell, this is the way to do it.

Mr. GREEN. Mr. Speaker, will the gentleman yield?

Mr. STOCKMAN. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. If I could yield to the other gentlemen who have been waiting, then I will come back to the gentleman from Michigan (Mr. STOCKMAN). I yield to the gentleman from New York for purposes of debate only.

Mr. GREEN. I would like to ask the gentleman in the well a question. It appeared to me that, at the time of the OPEC oil price increases in 1973, those price increases were felt with the greatest severity in the northeastern section of the country because of the fact that the Northeast is much more dependent on imported oil from the OPEC countries than are other parts of the Nation. If we have an increase on the scale of $5 a barrel on imported oil imposed by the President, is it not reasonable to expect that that increase, too, although it is going to hurt the country as a whole, is going to fall with particular severity on the Northeast just as did the oil price increase in 1973?

Mr. BROWN of Ohio. The gentleman from New York is perceptive as he always is. That is exactly correct. It will fall on the Northeast to the greatest extent possible. But as he has noted, because of the entitlements burden, it will be spread also all over the rest of the country, but not quite as severely. So I have to say that maybe my 5-cent figure for gasoline is appropriate somewhere about the Pennsylvania-Ohio border. Maybe it is a little less—4 cents a gallon out in Indiana or Illinois, but it may be up as high as 6 cents or 7 cents in New England.

Mr. GREEN. I thank the gentleman. It seems to me very clear that the Northeast should not be held hostage by the President in his vain effort to get the wellhead tax approved. I, therefore, intend to support the motion of the gentleman in the well.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Massachusetts for purposes of debate only.

Mr. CONTE. Mr. Speaker, I want to take this opportunity to commend the gentleman in the well (Mr. BROWN of Ohio). I join with him in supporting his motion now before the House, a motion aimed at prohibiting the President from imposing oil import fees on oil. It is needed to insure that this administration does not take a step which would cause widespread harm throughout the country, and particularly in the Northeast.

By adopting this motion, the House would be instructing its conferees on the Treasury and Post Office appropriations bill, H.R. 12930, to follow the Senate passed Dole amendment. Under the provisions of the Dole amendment, the President is precluded from using appropriations included in this bill for the purpose of implementing oil import fees.

Mr. Speaker, the President has not yet stated that he will be imposing oil tariffs on the country. Yet top officials in the administration have sounded warnings that an import fee might be thrust on the American public if certain portions of the President's energy program are not passed by the Congress. Energy Secretary James Schlesinger has made this threat, as has Treasury Secretary Michael Blumenthal.

These administration officials may be well intentioned in declaring that the President would resort to oil import fees if necessary, but I say that these threats approach blackmail for those of us who come from oil dependent regions. For oil import fees would not be evenly applied throughout the country. Rather, they would strike most harshly at those consumers who are unfortunate enough to live in areas where oil is the dominant energy source.

In this country oil comprises 47 percent of our energy needs. But in my own region, New England, we are 80 percent dependent on oil. Of that amount, we import 79 percent of our petroleum supplies, leaving New England 63 percent dependent on imported oil. This is a staggering figure, especially when one considers that the country as a whole imports only 18 percent of its petroleum supplies.

These figures show why New England would be so unfairly discriminated against if the President resorted to an oil tariff. By imposing a fee of $3 to $5 on each barrel of imported oil, the cost to consumers in the Northeast would be astronomical. As a matter of fact, in a study prepared by the New England Economic Research Office in April of this year, it was conservatively figured that such a tariff would cost New England more than $2.6 billion over a 5-year period.

The Economic Research Office based its figures on asumptions widely made in the administration, that if an import fee were imposed, it would amount to $1.50 in the first year, $3 in the second year, and $5 during the third year and thereafter. Even with the benefit of the entitlements program to spread the cost of the fee over all barrels of domestic oil consumption, New England would suffer the burden of $188 million in fees the first year, $417 million in the second, and $667 million in the third year.

Mr. Speaker, I submit that the whole notion of oil import fees must be rejected as arbitrary and inequitable. I agree with the President that our country's energy situation is serious and demands action. But actions that are taken must balance the costs so that one region of the country is not sacrificed in the process.

For these reasons, I strongly support the motion offered by the gentleman from Ohio. He has correctly seen the economic devastation which could be caused through the President's imposition of an oil tariff, and along with the Senator from Kansas, has taken a leadership role in opposing the tariff. I congratulate him for this effort, and I urge my colleagues to support the gentleman's motion.

Mr. BROWN of Ohio. Mr. Speaker, I appreciate that, particularly from a member of the Committee on Appropriations and I would like to say to the gentleman from Massachusetts that it is through the courtesy of the gentleman from Ohio (Mr. MILLER) and friends of the gentleman on that committee, the ranking member of the Subcommittee on Postal Service of the Committee on Appropriations, that I had this opportunity to make this instruction effort today.

I appreciate the support of those members on the Committee on Appropriations who share my views.

Mr. CONTE. Mr. Speaker, if the gentleman will yield further, I also commend the gentleman from Ohio (Mr. MILLER) for giving us this opportunity.

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I am happy to yield for purposes of debate to the distinguished majority leader.

Mr. WRIGHT. Mr. Speaker, the gentleman from Ohio (Mr. BROWN) made reference earlier to an effort which he and I both support to try to encourage more production from the deep stripper wells in this country. He and I both want to maximize the life expectancy of those wells as one means of increasing our domestic supply. I think that is a very valid goal to pursue; but I believe the gentleman errs when he feels that in order to achieve that goal we must tie the President's hands and remove from him the last resort that current trade law permits him in the event that the Congress should fail to act to provide the energy supplies necessary for this country.

I believe there is a fundamental mistake in the apprehension of the gentleman from Massachusetts (Mr. CONTE) who refers to imposition of import fees as a Presidential proposal. The President has not said that he intends to do this. He has indicated very clearly that he hopes not to have to do it; that he does not want to do it. None of us want to see import fees established. That is not the question. The question is whether we strip from the President of the United States the one remaining recourse that he would have to deal with this critical international problem in the event the Congress of the United States should fail to act.

I was appalled when the gentleman from Michigan earlier suggested that it was not really a very big problem that

we are importing all this oil. He seems to feel that it has little to do with the real problems of this country.

Not a big problem? Let us just stop and realize from the standpoint of the growth of imports and our shameful reliance on foreign sources over only the past 4 or 5 years. We shall see clearly how big a problem it truly is. In 1973 when the Arab oil embargo should have shocked us out of our lethargy and into action, this country imported $7 billion worth of foreign petroleum. We thought that was pretty bad, $7 billion. Four years later, last year in 1977, we imported $45 billion worth of foreign petroleum, more than six times the dollar drain. This year the figure is expected to exceed $50 billion. The financial hemorrhaging has multiplied sevenfold in the 5 short years!

Now, when we stack that $45 billion import figure of last year up against the $26 billion deficit in our balance of payments, does it not become crystal clear that had it not been for our increasing reliance on foreign oil, we would have had a very healthy trade surplus and the value of the dollar would have continued to rise and not fall on world markets?

The gentleman from Michigan suggested further that really what we need to do is to get inflation under control. Get inflation under control when he blanches not at the fact that we are importing $50 billion worth of oil this year from foreign sources? How can the gentleman say those two in the same breath?

Obviously, one of the principal causes for the inflation and the decline in the value of the dollar abroad, brought about by our import of foreign oil, is the high cost of foreign petroleum. One of the principal causes for the domestic inflation is the cost of all those things whose production is affected by the cost of that expensive foreign oil. And when the dollar declines in value on world markets, it makes us pay more dollars for everything we import. That, too, increases the cost of living for every American.

Surely, the gentleman realizes that the Dole amendment—and it is a nongermane amendment by House standards—when offered on the floor of the Senate, was clearly offered in an effort to embarrass the President and to weaken his leadership. That is the one thing we cannot afford to do at this critical point in world history.

In the last year I have not met a single visiting leader from any foreign country who did not, among the first three questions that arose—and usually it was the first question—ask this question: "What are you going to do about energy?"

If this Congress fails to produce a comprehensive energy bill this year and also strips the President of his only recourse, we shall be saying to the world that we lack the self-discipline, we lack the will, and we lack the ability to come to grips with this, our most central economic problem. I think that question lurks hauntingly in the minds of many people throughout this world today.

Shall we say to them today that we do not have any confidence in our President? Shall we say to them by our action today that we want to weaken the President? Shall we say to the world: No, we have not produced an energy bill, although we have labored over it for 2 full years, and we will not let the President retain even the minimal authority he possesses under present law to cope with the level of imports?

If we do this, then we shall be saying to the world that we simply do not care, that we are content to keep coasting along, fat, dumb, and happy, until we spend ourselves poor on foreign oil and waste it and run out of it, and then we shall just depend upon Divine Providence to protect us.

Mr. Speaker, I do not think that is what we want to say. I do not think that is the message we want to give to the world, and I hope my colleagues will by all means vote against this pernicious motion.

Mr. BROWN of Ohio. Mr. Speaker, the gentleman from Texas (Mr. WRIGHT) has been very eloquent, and I admire his eloquence. I must say, however, that he is somewhat inaccurate in part of what he has had to say, and I refer to the statement that this is the only choice the President has had.

The President has had the authority under the EPCA legislation to raise the price of domestic oil if he wishes, which would encourage the production of oil in the United States as the producers reinvest the additional money received in the exploration and development of new wells.

Under the controls that were put on by this Congress a few years ago, our production of oil in the United States has gone steadily downward. The President can take other steps, as I am sure the gentleman from Texas (Mr. WRIGHT) knows, if he would, and the Secretary of Energy could take other steps if he would. They have from time to time promised that they would be happy to support such a price increase if the industry would support COET taxes.

I do not think it is up to the President to make that decision. That decision has to be made in the Congress, and I for one will not support taxes as a means of trying to solve our energy problem or as a means of conservation or production of oil.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. STEED. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I will yield to the gentleman from Ohio (Mr. SEIBERLING) briefly, and then I will yield to the distingiushed chairman of the subcommittee, the gentleman from Oklahoma (Mr. STEED), under whose leadership this bill was brought to the floor.

Mr. SEIBERLING. Mr. Speaker, I distinctly recall that when President Ford imposed an oil import tariff, I did not hear any great outcry from the minority side of the aisle. So I just wondered what has changed that has caused the gentleman from Ohio (Mr. BROWN) and his associates to become such strong opponents of such a tax. Is it because there is a different occupant of the White House? Is it because the oil companies prefer an end to controls on domestic oil prices, which will swell their profits, instead of a tariff, which will only help reduce the Federal deficit?

Mr. BROWN of Ohio. Mr. Speaker, I will be glad to try to explain to the gentleman what has changed, if I may.

First, President Ford put a $1-a-barrel tax on, and he put it on immediately or soon after—in fact it followed quite closely—the OPEC nations price increases, so it was unlikely that it would encourage price increases.

In addition, the previous vote on import fees occurred in February 1975, less than a year after the Arab oil embargo ended. The worldwide petroleum and economic picture was different at that time than it is today. In 1975 the United States was in a recession, and the oil supply picture was tenuous at best. Now the United States does not have the same recessionary problem, and there is a glut of oil supply on the world market.

Mr. STEED. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the chairman of the subcommittee.

Mr. STEED. Mr. Speaker, one of the reasons I asked for recognition as chairman of the subcommittee is, of course, because we are always faced with charges by legislative committees that we invade their province. This Senate amendment is, of course, an out-and-out invasion of the prerogatives of the Committee on Ways and Means, and for that reason I oppose this motion to instruct the House conferees to adopt the Senate action.

In addition, let me say that I also know that it is dangerous to instruct us now and to tie our hands to some extent when we go to weigh the issues with the other body, because we have several other very difficult Senate amendments to deal with in this bill. I would like to go to conference as freely as I can to represent the House.

I would like to say also—and I think I can speak for our subcommittee—that the fact that the House does not instruct us today does not mean that the Dole amendment will not have its full day in court in the conference that we will have with the other body.

At this point, Mr. Speaker, in order to keep the administration's position clear on this issue, I am inserting the following letter which was delivered to me today from the Secretary of the Treasury, Mr. Blumenthal, which reiterates the statements already made by the majority leader, and spells out the administration's position clearly on this issue:

THE SECRETARY OF THE TREASURY,
*Washington, D.C., September 7, 1978.*

Hon. TOM STEED,
*Chairman, Subcommittee on Treasury, Postal Service, General Government, House Committee on Appropriations, Washington, D.C.*

DEAR MR. CHAIRMAN: The Senate by floor action has added to the Appropriations Bill for the Treasury Department and other agencies (H.R. 12930) an amendment (the so-called "Dole Amendment") purporting to withdraw funding under these appropriations to carry out a program adjusting imports of petroleum or petroleum products under the Trade Expansion Act of 1962.

We are writing to express the strong opposition of the Administration to this amendment.

The Trade Expansion Act authorizes the President to adjust imports that threaten to

impair the national security. The Congress has recognized in legislation for many years that the country needs this capacity for prompt action in the event such a threat arises.

The Senate amendment would remove the capacity for prompt action with respect to petroleum imports. This would be a dangerous step, creating international doubts about our willingness and ability to act swiftly when our security interests are challenged.

Our allies and adversaries alike are well aware that we now import almost one half of our petroleum needs. In the 1973 oil embargo, it became clear that access to those supplies can be manipulated in an attempt to influence our foreign policy. More recently, our oil import bill has contributed to large trade deficits that have impaired the stability of the international monetary and trading systems and of the U.S. leadership role in world economic affairs.

Proponents of the Senate amendment say that they oppose Presidential adjustment of oil imports at the present time. But that is not the issue. At the Economic Summit in Bonn, the President made clear that he himself has not yet made any decision about the advisability of adjusting oil imports. And no such decision would ever be made without thorough consultations with the Congress and the most sober assessment of the national security considerations. The real issue raised by the Senate amendment is whether now to preclude the nation from taking prompt action under the standards of the Trade Expansion Act to adjust oil imports, regardless of national security threats that may arise. Constraining the nation's options in this fashion would expose our economy, our military posture, and our foreign policy to a new and unnecessary risk.

Simple prudence counsels that the nation retain the capacity for swift action to meet national security risks that may develop.

The Senate amendment is misguided in its aims and contrary to the national interest. We strongly urge you to make every effort to delete the amendment in Conference.

Sincerely,

W. MICHAEL BLUMENTHAL.

Mr. MAHON. Mr. Speaker, will the gentleman yield

Mr. BROWN of Ohio. Mr. Speaker, I yield for the purpose of debate only to the gentleman from Texas (Mr. MAHON), the distinguished chairman of the Committee on Appropriations.

Mr. MAHON. Mr. Speaker, I want to associate myself with the remarks of the gentleman from Oklahoma (Mr. STEED). In addition, I want to say to my friend, the gentleman from Ohio (Mr. BROWN), who has devoted a great deal of energy and time to these issues involving petroleum, that I think it would be ill-advised for the Committee on Appropriations to be instructed at this stage.

This is an issue that involves us all. We are all concerned about it. But, if this legislation is to be considered, it should be considered in the appropriate committee, which would be the Committee on Ways and Means.

In the interest of orderly procedure, I have risen to request that Members seriously consider not instructing the Committee on Appropriations on this very important matter.

Mr. STEIGER. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield for the purpose of debate to the gentleman from Wisconsin.

Mr. STEIGER. I appreciate very much my colleague's yielding to me.

Mr. Speaker, I find myself, I must admit, somewhat lonely on this side of the aisle in opposing the motion offered by my friend, the gentleman from Ohio (Mr. BROWN).

I listened with interest to the distinguished majority leader, and I must admit that he doggone near convinced me that I ought to favor the motion to instruct the conferees. But I will set that aside and simply ask that my colleagues on both sides of the aisle think somewhat more carefully than I think we might at this point be doing about the implications of this vote.

It does go beyond this Chamber. It does go beyond the politics that are obviously a part of both those who oppose and those who favor. And, yes, I admit I have never voted to instruct conferees, and I do not intend today to vote to instruct conferees, because I do not think it is the appropriate thing to do in a legislative body.

But may I suggest to my distinguished friend, the gentleman from Texas, the majority leader, and those on this side, that our problem is not quite so simple as that which was outlined. It is not just a problem of economic policy of the President of the United States, which is wrong and which creates the kind of uncertainty and the kind of problems with which he is faced in the decline of the dollar, and it is not, as my friend, the gentleman from Texas, the majority leader, indicated, a matter of simply importing oil. It does seem to me that we are faced at this point in our history and at this time in our country with something that overrides any of those issues, including economics and oil, and that is psychology in conference.

I would simply say to my friend in the well that to adopt this motion today to instruct the conferees to take the Dole amendment undermines further the ability of the President of the United States, despite my difference with him, despite my opposition to crude oil taxes, and despite my opposition to the economic policies of the administration, and imposing an import fee, it would not be the right time and the right place to take this action. I think we would make a serious mistake, both politically and economically, to do so; and I urge my colleagues to vote down the motion to instruct.

Mr. MOFFETT. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Connecticut.

Mr. MOFFETT. I thank the gentleman for yielding.

Mr. Speaker, the gentleman from Ohio (Mr. BROWN) and I have had the pleasure of working, over the last few months, in opposition to the natural gas compromise which the President is so vigorously supporting. I think it is fair to say that we believe it would be an administrative nightmare, it is not going to produce new gas, and it would be inflationary.

The gentleman has taken during that period of time the attitude very clearly that we ought to do something. He has favored the passage of conservation legislation, the utility rate reform, coal conversion, and so forth, which is a very positive attitude. If the gentleman from Ohio and I, and others, have our way, our image in this Congress and in this country will not be one of doing nothing on energy when we go home in October, but it will be one of taking the first step and rejecting what we think is a bad natural gas plan. But it certainly would not be an attitude of a do-nothing Congress and a do-nothing Government and doing nothing for this country.

By contrast, the motion of the gentleman, I think, is damaging, in that it can give the image that we are really bound on a do-nothing course.

While I know that the gentleman has no intention of trying to embarrass the President of the United States, the result will certainly be to embarrass the President and to embarrass all of us, I think, and the country in terms of worldwide perception. I think there is a choice here between leaving the door open for import fees—and in my region that is not too popular, as the gentleman from Massachusetts has indicated—but at least taxes go back to the taxpayers. At least they go to the Treasury.

The other choice will come along about next March, when the price controls on oil expire. Then, the President will have the option of having those controls go off. I would much prefer to leave the door open to an import tax, because I believe that this President would administer it fairly. He has shown that much sensitivity toward the Northeast thus far.

I would rather go in that direction than lean toward decontrol, which would really bring devastation in economic terms in the Northeastern part of the country.

So, with all due respect, I oppose the motion.

Mr. BROWN of Ohio. Mr. Speaker, let me say to my friend and colleague from Connecticut that I appreciate his kind remarks about our position not being a do-nothing position. Indeed, that is correct in my case and in his, I am sure. There are certain things we would like to see done, but one consistent position I have had in this area of energy and in several other areas is that I am not in favor of new and additional taxes.

I want to re-emphasize that if this motion fails, we permit the President an option he has under present law to impose taxes which—and I must say that I have some confusion because I am clearly of the impression that the President has suggested that failing COET taxes, and I think there is no chance for COET taxes during this Congress—will be $15 billion more on top of the social security tax increases of last year. That is just more than I am willing to see imposed on the citizens of our country, and the consumers.

Mr. DON H. CLAUSEN. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from California (Mr. DON H. CLAUSEN) for the purpose of debate only.

Mr. DON H. CLAUSEN. Mr. Speaker, I want to commend the gentleman in the

well, Mr. BROWN of Ohio, for taking this means of putting in perspective the import of foreign oil issue.

To add to what you have said, I submit that we, the United States are totally lacking in a coherent and coordinated import-export policy relating to oil.

To further explain, I want to bring to the attention of my colleagues a brief overview of the recent hearings conducted in San Francisco, Calif., by the Interior Subcommittee on Investigations chaired by our colleague from New Mexico (Mr. RUNNELS).

The purpose of the hearings was to gather data on the surplus of oil on the west coast coming from Alaska. There is a glut of oil from our own State of Alaska. The preliminary findings reveal a potential yield capacity of 2,000,000 barrels a day that could be delivered to the lower 48 States as initially intended when Congress enacted the Trans-Alaska Pipeline System Act.

While 60 percent of the oil transshipped through the Panama Canal is coming from Alaska, it is costing the American consumer an additional $2 per barrel.

The hearings revealed further that we are seriously lacking in the development of an adequate west-to-east pipeline system.

So in describing the Alaskan oil surplus problem, I suggest it is more of a transportation deficit. We have a totally inadequate distribution network which in my view, drastically curtails our mobilization capability.

Additionally, the refining capacity in California and the west coast is incapable of handling the Alaskan "sour" crude because it is unusually high in sulfur content. Out of the total capacity of 2.9 million barrels a day, only 700,000 barrels a day can be refined.

In order to handle this type of crude, the refineries would have to be retrofitted at a cost of some $50 million per refinery, plus the leadtime required.

The most efficient and readily available west-to-east pipeline distribution system is the SOHIO project from Long Beach, Calif., to Midland, Tex., where the advanced technology refining capacity now exists and could accommodate this Alaskan type crude. However, it will take 2 years to modify this existing line to handle the oil.

Meanwhile, there has been a considerable amount of discussion within the administration, indicating a possible export of Alaskan oil through an exchange arrangement with Japan. which runs counter to the mandate of Congress.

I felt it incumbent on me, as the ranking minority member of the Interior Subcommittee, to relate this information to the Members during the course of this discussion, in the hope it will add to our overall oil import-export perspective.

To add more comprehensive information to this debate, I would like to read the full text of my opening statement made at the San Francisco hearings:

Mr. Chairman, I have a statement I would like to present to the subcommittee:

Someone once said that the time to fix the roof is when the sun shines. Well, the time for the United States to build a system to better transport our domesic crude oil is now. I might add at the moment that the sky has a few stormclouds—that being the oil glut on the West Coast of California.

We're here today and tomorrow to disperse these clouds. We're here to review the available transportation alternatives to disperse the Alaskan crude on the West Coast. As I have said before, this is a temporary problem, although a serious one. It is one part of a greater concern, the proper distribution and use of the Alaskan crude, one of our most valuable national resources. Through these hearings we hope to gain the persepective and information to resolve the temporary oil glut on the West Coast. And if we do our job well, we can go a long way toward correcting the larger problem, the more effective use of Alaskan crude throughout the entire country.

The term "oil glut" is in many ways a misnomer. As I view it, it is essentially a transportation deficit. As of now, the Alaskan crude isn't getting to the parts of the country that actually need it, and can use it. Instead of moving large quantities of oil from Valdez directly to the Gulf Coast and the Eastern refineries capable of handling the high sulfur content oil, it has been accumulating off California. And our California refineries have a limitation on the capacity for accommodating that oil. The ultimate solution to this temporary oil glut is an improved transportation system.

The problem is temporary since an integral part of an improved transportation system is anticipated within three to four years. I am referring to the Sohio pipeline project from Long Beach in Southern California, to Midland, Texas, where the refining capacity exists to accommodate this kind of oil. Once operational it can transport up to some 500,000 barrels a day, of this Alaskan crude to the Central United States. The pipeline will effectively relieve the West Coast of its locally unrefinable oil, and supply the rest of the country with needed energy. In this way we have fulfilled our duty under the Trans-Alaska Pipeline Act enacted by the Congress to equitably supply all the lower 48 states with Alaskan oil.

Negotiations for the Sohio project are progressing, and one of the factors delaying construction has been the concern of many Californians over the environment impact of the proposed terminal in Long Beach. I was a part of the Congressional delegation from California that was involved in the Clean Air Act amending process that permitted California to have higher than the national standards because of the uniqueness of the existing meteorological conditions in the Long Beach area and the entire Los Angeles Basin. In recent days we've read of the agreements that have been reached between the Sohio and the Southern California Edison companies on pollution tradeoffs, and hopefully we'll hear more today from the State of California with regard to the progress of the Air Resources Board and evaluation of that progress, and ultimately the voters in the Long Beach Area. It's my understanding they have a referendum in November that would have to approve of this agreement.

However, until the Sohio pipeline is sending oil eastward we must devise an interim distribution system. To do this we need to know the answers to a variety of issues. Only then can we pursue any one solution. Foremost in our minds throughout this inquiry should be, what are the best available means of transporting Alaskan oil to all of the regions of the country? After all, there is no doubt that we can use every drop of the 1.2 million barrels a day that is currently available from Alaskan oil, and ultimately the full capacity of the two million barrels a day. The basic question is how can we most economically distribute the crude for refining?

A recently advanced proposed solution to the so-called oil glut is an exchange of our Alaskan crude with the lower sulfur, that is, so-called sweet crude obtained from the Japanese from their Mideast and Indonesian sources. The theory is that our high sulfur or sour crude be swapped with Japan for the sweet crude our California refineries can absorb productively. On the surface, this would seem to rectify the immediate problem of too much unrefinable oil off the coast of California.

We're here in San Francisco to study this alternative. I have some honest doubts about whether it is a thorough response to the problem. I'm not sure we can do it without paying the piper. If we dance to the export tune, will the American consumer have to pay the piper in windfall profits? If we dance to the export tune, will the American maritime industry have to pay the piper in lost jobs, as well as idle ships? If we dance to the export tune, will the American taxpayer have to pay the piper in deficits of the Canal Company, as our new Panama Canal Treaties would require?

I'm keeping an open mind on this proposal, trusting these hearings will furnish the information base for the considered decision. As of now, there remain a number of uncertainties about this suggestion which need to be cleared up. For example, the advocates suggest that an exchange can result in a transportation savings of 54 cents a barrel or more. How is this calculated? If there will be a transportation savings, will it accrue to the benefit of the oil companies, or will it be passed on back through to the consumers?

Are these suggested transportation savings actually the result of shipping on foreign vessels? All of the oil being shipped now travels on American vessels because the Jones Act requires it. But this protection does not extend to the international shipments. The transport of Alaskan crude is crucial to the American maritime industry. It is the largest single employment area for the United States flag vessels. Thousands of jobs and millions invested in new vessels, are potentially at stake.

The Maritime Administration has studied the availability of American tankers and has concluded that we have the capacity to ship Alaskan oil on American bottoms. We may find that exporting Alaskan crude is the best over-all solution, but we should be aware of all the ramifications before we decide on a particular course.

While we examine this proposed major change in the use of Alaskan oil, we must also study alternatives to maximize our current transportation system. At the present time we ship some of the Alaskan oil through the Panama Canal to the Gulf and East Coast refineries. Perhaps one method of resolving the oil glut in California would be to increase shipments through the Canal. We need to know how economic a solution this might be, and what its impact would be on the consumers of America.

I am aware that the tolls and other fees collected on the oil tankers are a significant, some say even an essential source of revene for the Canal Company. And Alaskan crude is 60 percent of all of the oil shipped through the Panama Canal. What will happen to the Canal Company's solvency, buttresed by tanker revenue at this time, if we export our oil, and withdraw these shipments? The Canal Company will most probably suffer multimillion dollar deficits. Most importantly, under the recently ratified treaties, the American taxpayer will have to make up these losses.

My main point is that the temporary oil glut in California isn't the only variable involved. We ought to approach a solution to this temporary problem without jeopardizing the larger question of the equitable distribu-

tion of Alaskan oil throughout our nation. It may be that the American people would prefer we use the Alaskan supply here, if we can economically do so. We must remind ourselves of the basic fact, that the Congress, in 1973, when they passed the Trans-Alaska Pipeline System Act, gave full assurance to all of the American people that Alaskan oil would be available to them to address our domestic energy requirements.

As we examine the possible export of Alaskan crude, I hope we keep these greater concerns in mind. An effective national energy distribution system, including pipelines and tankers, is a vital part of our overall energy programs, the security of our nation, as well as the economic well-being of the entire United States.

The more completely we design our distribution system, the more efficient our use of energy. And that, in turn, is one avenue to energy independence, an urgent national need.

Mr. MOORE. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Louisiana (Mr. MOORE) for the purpose of debate only.

Mr. MOORE. Mr. Speaker, I appreciate the gentleman again yielding to me. I have listened to the remarks by those in opposition to the gentleman's motion. I disagree, obviously, and I take some offsense at some of those remarks.

First, let me say that if it were true that the defeat of this motion and the imposition of these fees would make a stronger America, stop us from using foreign oil, and would make the President a world leader, then I would agree with them.

But that is not the case. We know this fee is not going to do all those things. What this fee is simply going to do and it is a consumer issue and the consumer ought to be listening, is cost them $15 billion for no more oil, it is going to cause inflation of 1.5 percent for no more oil, and it is not because they are fat, dumb, and happy—which I take offense to—as the majority leader called the American people a moment ago.

When one has to drive to work, he is not fat, dumb, and happy. When one has to heat his home in the cold Northeast Corridor, he is not fat, dumb, and happy.

If the American people happen to be misled about the oil prices, it is this administration and the Congresses in the past that have misled them by keeping oil and natural gas artificially depressed at an artificial price instead of letting it go to the world price to provide more oil and gas to meet their needs.

So I say this motion needs to be passed in order to bring home to the American people that we cannot pass off this 1.5-percent inflation, $15 billion item saying that it will save energy.

Those things were caused by the very people and the prior administrations that say we should not do this, that it will hamstring us and prevent conservation. That is untrue. This is not going to produce one more barrel of oil. The Department of Energy is telling us we are saving quite a bit now so existing conservation is working.

We will save quite a bit more in the future as the prices get higher and the consumers get convinced that they have to save and that we do have an energy problem. But when we impose another tax on them, this is a cruel hoax as it will hurt them without any benefit.

Mr. OTTINGER. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, like my friend, the gentleman from Connecticut, I side with the gentleman from Ohio on the energy bill, and I am privileged to serve with both of them on the Energy and Power Subcommittee. When it comes to being concerned about the provisions of the Energy Act, I agree that it would be costly and contribute to inflation.

I am opposed to the motion offered by the gentleman from Ohio because it unduly ties the President's hands, even though I am leery about import fees. But the gentleman from Louisiana and the gentleman from Ohio are strong advocates of decontrol. They are willing to impose on the American people an oil price increase that would cost at least a hundred billion dollars a year and the proceeds would go to the oil companies rather than to the taxpayers.

The President has discussed a tax which would be refunded to the people. I would much rather see a tax than see money taken from the public in increased oil prices and go to the oil companies; they will walk away with the money and I do not believe they will give us any more production for that either.

So I would not like to see the President's hands tied. I think we have a terrible problem with respect to imported oil, and indeed, I think this is the No. 1 problem we face, underlying the sinking value of the dollar, over huge trade and balance of payments deficit, and our inflation. In addition, our dependence on imported oil poses a grave national security risk. Under these circumstances, discretion to address our import problem by imposing import fees should be left to the President. If he chooses to impose some kind of fee, I am sure he would have an entitlements program and, although it would be difficult to administer, he could take action to spread the burdens of such a tax equitably around the country; but I would rather see quotas imposed and allocations as a fairer means of dealing with our dependence on oil imports. However, I would not want to see this instrument deprived to the President. I would not want to see us limited to the avenue the gentleman from Louisiana and the gentleman from Ohio advocate, of just handing huge windfalls to the oil companies.

Mr. BROWN of Ohio. But the difference is very simple. The President proposes to tax the consumer $15 billion, 5 cents a gallon on gasoline or 2.6-percent inflation rate, take that money for the Federal Government and do with it what he will. But the distinction is that if we let the free market work—and I realize that is anathema to some Members of the Congress—then the money in the marketplace goes back into the economy and we have an increase of supply of the commodity, and an increase in jobs, and the increase in supply tends to pull the price down. But that does not happen with taxes. With taxes we multiply the price impact.

An example of this is what has happened already in the intrastate gas, where during the time of the shortage the price of natural gas in the free market intrastate system surged, but after the shortage and now the price of the free market gas is lower than the price of gas controlled by the Federal Government. To me that demonstrates one thing and one thing only, and that is that the market works better and quicker than all these bureaucrats we have in Washington and even better and quicker than the U.S. Congress.

Mr. OTTINGER. If the gentleman would yield further, the President as he discussed this is talking about using an import fee as he proposed for the COET tax, refunding the proceeds to the taxpayer. The idea is to make the price of oil higher to people so they would conserve it, but return the taxes to the people so as not to have depressing effect on the economy as we would have with deregulation.

Mr. BROWN of Ohio. Mr. Speaker, I must say I am a little confused about what the President wants to do because I just heard the majority leader, the gentleman from Texas (Mr. WRIGHT) say that he did not hear the President say that, and I am inclined to think that may not be totally the case. I think the President may have changed his mind. You know, he does that occasionally in the energy area, so I do not know what the President's position actually is, but I know that he said something about placing a $5-a-barrel import fee if we do not pass the COET tax.

Mr. WIRTH. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Colorado.

Mr. WIRTH. Mr. Speaker, let me just say that I, unhappily, oppose the gentleman's motion for the reasons that were most eloquently presented by the gentleman from Wisconsin (Mr. STEIGER). But I would like, if I might, ask a question of the gentleman relating to this issue.

It seems to me the issue we are looking at is again the problem we face of conservation and production together. So that the question that you raise through your motion also raises for the Congress a very interesting potential for legislation in the next session of the Congress on the pricing of oil, and the necessity of raising the price. It seems to me we do have the opportunity here to, in the Congress, focus on something akin to a COET tax, crude oil equalization tax, to get the price of oil up to the level of the OPEC prices and help get rid of the regulatory program but, at the same time, provide within that formula an incentive for production.

I would hope that in the next Congress we might be able to resolve this

dilemma through a piece of legislation that might accomplish both the purposes that the gentleman seeks in terms of the pricing structure and incentive.

Is that something the gentleman could see coming down the line whether or not this motion is adopted?

Mr. BROWN of Ohio. Mr. Speaker, in response to the inquiry of the gentleman from Colorado (Mr. WIRTH) let me say that in this area I take one step at a time. The first step I am interested in is that I am trying to avoid the imposition of import fees at this point.

Now, Mr. Speaker, I must take the last couple of minutes to summarize my position on this matter, and I urge my colleagues to vote for the motion to instruct the conferees.

This is a very important matter. If a $5 import fee per barrel were imposed, this would result in a $15 billion tax increase on the consumers.

According to the CBO estimates this $5 import fee would increase the average home heating bill in Boston from $122 per year to $231 per year.

The CBO estimates that an additional 400,000 jobs would be lost.

The impact on inflation would be, according to the CBO, a rise by 1.5 percent, and, according to the Congressional Research Service, a rise by 2.6 percent.

Further, the DOE estimates that at most imports would be reduced something in excess of 300,000 barrels a day.

The cost of the average gallon of gas across the country would be 5 cents a gallon greater. I do not think the President unilaterally ought to be able to do that in the oil area. I do not think my constituents or the consumers of the country want him to do it.

I would assume that if you wish for the President to do this, then you will vote against my motion to instruct the conferees. If you do not want him to do it, you will send the message to the President very clearly and emphatically that you do not believe that he should be permitted to raise our taxes by $15 billion and that we ought not to sock the consumers with higher home heating bills and gasoline bills as the average consumer tries to get along with the other inflation costs that he has to face.

● Mr. BROYHILL. Mr. Speaker, H.R. 11567 contains authorizations of appropriations for the Securities and Exchange Commission for fiscal years 1979 and 1980 in the amount of $69 and $79 million, respectively. The House-passed version of this legislation contained authorization of appropriations through fiscal year 1981 at slightly higher figures than were included in the Senate-passed bill. However, I am positive that the SEC can easily live within these slightly lower figures.

I supported a 3-year authorization for the Commission so that it could plan its long-range programs with more certainty. However, I am confident that the 2-year authorization agreed to by the Senate will give the Commission the flexibility that it needs to develop its programs for the next 2 fiscal years.

Although the authorization levels in this bill are not as high as we originally passed, they do represent an increase over past years. An increase in the authorization level for the Commission, I believe is justified. Over the last two Congresses, we have significantly increased the responsibilities of the Securities and Exchange Commission. For example, in the 94th Congress, we passed extensive revisions to the securities laws. In the present Congress, we passed the Foreign Corrupt Practices Act which greatly increases the Commission's role in prosecuting improper conduct by American companies operating abroad. Because of these and other new enforcement and regulatory duties, I do believe that it is appropriate to authorize the Commission the amounts specified in the bill before us today.

The Senate-passed bill also contains a provision not found in the House-passed version which, I believe, is worthy of adoption by this body. The Senate bill would amend section 3(b) of the Securities Act of 1933 to increase from $1.5 to $2 million the amount of securities which may be offered before that offering is required to be registered with the SEC. In recent years much concern has developed regarding the inability of smaller companies to raise the capital vitally needed for operations and growth. One of the reasons small concerns have been negatively impacted recently is because this statutory ceiling found in this 1933 Securities Act is at a level which is too low to provide the needed capital without going through the expenses inherent in a larger offering. Consequently, small concerns are today turning to foreign sources of capital, selling out to public corporations, or, even worse, not growing at all. Because of this artificially low ceiling, there has been a dramatic drop off in the use of this limited offering exemption. For example, according to the SEC, in 1973 there were 817 filings under this exemption raising $298.6 million. However, for 1977—first 11 months—there were only 215 filings raising only $71.1 million.

Although the limited offering ceiling was recently raised to $1.5 million, knowledgeable individuals in the industry do not feel that this is sufficient. A task force, chaired by former SEC Chairman William Casey, recently recommended raising the ceiling to $3 million. This is the recommended minimum which is supported by small business concerns as well as securities brokers. The reason for the higher ceiling is to accommodate increased costs of public offerings and to provide underwriters compensation commensurate with their own risks.

Raising this limited offer exemption ceiling is a noncontroversial issue and is supported by the Securities and Exchange Commission. It is a move which will be in the best interest of the business and financial communities, public investors, and the U.S. economy as a whole. Consequently, I urge that this portion of H.R. 11567 also be approved by this body.●

● Mr. ECKHARDT. Mr. Speaker, H.R. 11567 was originally passed by the House on April 4 under suspension of the rules. It provided a 3-year authorization for the Securities and Exchange Commission beginning fiscal 1979 of $70, $80, and $91 million, respectively. The bill before us today as amended by the Senate provides for a 2- rather than a 3-year authorization and decreases by $1 million—or approximately 1½ percent—the authorization amounts. These changes are acceptable to the Securities and Exchange Commission. I am persuaded that the changes are not sufficiently substantive as to create any difficulties in the functioning of the agency.

The Senate has added an additional provision, which amends section 3(b) of the Securities Act of 1933, to permit the Commission to exempt public offering not exceeding $2.5 million from the registration provisions of the act. The present level for the exemption is $1.5 million. This provision is designed to provide a vehicle for the Commission to alleviate substantially the costs and other burdens upon small companies in their attempts to raise capital. During the first session of this Congress, there was considerable testimony before Chairman LAFALCE'S Subcommittee on Capital, Investment, and Business Opportunities of the Committee on Small Business than an increase in the section 3(b) ceiling to even a higher figure was an important adjunct to certain changes in our tax structure, some of which have already been passed by the House, to provide small businesses access to equity and venture capital. In addition, this measure is supported by the Commission.

My colleague from California, Mr. Moss, has expressed strenuously his concern that raising the section 3(b) exemption to $2.5 million would eliminate many of the important public investor protections which full registration provides. Although I have the greatest respect for that distinguished gentleman and his advocacy of investor protection, I do not agree that this amendment places those protections in jeopardy. The amendment to section 3(b) merely permits the Commission, when appropriate, and with such safeguards as may be necessary in the public interest, to relieve small issuers of the burden and expense of filing a full registration statement. The amendment does not mandate that the Commission issue an exemption for the full $2.5 million. Indeed, I have been advised that earlier today the Commission considered and approved a lesser figure of $1.5 million. But an increased ceiling would provide the Commission with desirable flexibility to adjust the exemption to inflation and other economic considerations. Given the traditional concern of the Commission for the protection of the public investors, Congress may feel comfortable that in establishing conditions for an exemption under section 3(b), the Commission will give appropriate observance to investor protection. However, in deference to those concerns expressed by the gentleman from California, I am proposing an amendment to the Senate amendment establishing a $2 million ceiling, thereby splitting the difference between the existing figure and that proposed by the Senate.●

● Mr. STAGGERS. Mr. Speaker, H.R.

11567 as passed by the House authorized appropriations for the Securities and Exchange Commission in the amounts of $70, $80, and $91 million for fiscal years 1979, 1980, and 1981 respectively. As amended by the Senate, the bill authorizes appropriations for the Commission in the amounts of $69 and $79 million for fiscal years 1979 and 1980 respectively. Additionally, the bill now amends section 3(b) of the Securities Act of 1933 to increase the maximum aggregate amount of securities which can be issued pursuant to the exemption provided by that section to $2.5 million. This provision would enable small businesses to raise and attract investment capital at reasonable cost without undue paperwork.

The amendment just offered would change this maximum aggregate amount to $2 million. Earlier this session the Congress adopted a $1.5 million ceiling for this exemption in Public Law 95–283. The $2 million figure represents a compromise.

This ceiling should provide the SEC with sufficient flexibility to use its discretionary authority to adjust the level of the small business exemption based upon experience with inflation and the actual costs of raising capital.●

The SPEAKER pro tempore (Mr. BOLLING). All time has expired.

Without objection, the previous question is ordered on the motion.

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. BROWN).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. BROWN of Ohio. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 194, nays 201, not voting 37, as follows:

[Roll No. 731]

YEAS—194

| | | |
|---|---|---|
| Addabbo | Cleveland | Flynt |
| Ambro | Cohen | Forsythe |
| Anderson, Ill. | Coleman | Frenzel |
| Andrews, N. Dak. | Collins, Tex. | Fuqua |
| Applegate | Conte | Gammage |
| Archer | Corcoran | Gilman |
| Armstrong | Cotter | Goldwater |
| Ashbrook | Coughlin | Gonzalez |
| Badham | Crane | Goodling |
| Bafalis | Cunningham | Grassley |
| Bauman | D'Amours | Green |
| Beard, R.I. | Daniel, Dan | Guyer |
| Beard, Tenn. | Daniel, R. W. | Hagedorn |
| Benjamin | de la Garza | Hall |
| Biaggi | Derwinski | Hammer-schmidt |
| Bowen | Devine | Hanley |
| Breaux | Dickinson | Harris |
| Broomfield | Dornan | Harsha |
| Brown, Mich. | Drinan | Heckler |
| Brown, Ohio | Duncan, Tenn. | Hightower |
| Broyhill | Early | Hillis |
| Buchanan | Eckhardt | Hollenbeck |
| Burgener | Edwards, Ala. | Holt |
| Burke, Mass. | Edwards, Okla. | Holtzman |
| Burleson, Tex. | Eilberg | Horton |
| Butler | Emery | Hyde |
| Caputo | English | Ichord |
| Carter | Ertel | Jacobs |
| Cederberg | Evans, Del. | Jeffords |
| Chappell | Evans, Ind. | Johnson, Colo. |
| Chisholm | Fenwick | Jones, Tenn. |
| Clausen, Don H. | Findley | Kazen |
| | Fish | Kelly |
| | Flowers | |
| Kemp | Moore | Schulze |
| Keys | Moorhead, Calif. | Sebelius |
| Kindness | Moss | Shuster |
| Kostmayer | Motti | Skubitz |
| LaFalce | Myers, Gary | Smith, Nebr. |
| Lagomarsino | Myers, John | Snyder |
| Latta | Myers, Michael | Spence |
| Leach | Neal | Staggers |
| Lent | Nichols | Stangeland |
| Livingston | O'Brien | Stanton |
| Lloyd, Tenn. | Poage | Stockman |
| Lott | Pritchard | Studds |
| Lujan | Pursell | Stump |
| McClory | Quayle | Taylor |
| McCormack | Railsback | Treen |
| McDade | Regula | Tribie |
| McDonald | Rhodes | Tsongas |
| McEwen | Rinaldo | Vander Jagt |
| McHugh | Risenhoover | Walker |
| McKinney | Roberts | Walsh |
| Madigan | Robinson | Wampler |
| Maguire | Roe | Watkins |
| Markey | Rose | White |
| Marks | Rousselot | Whitehurst |
| Marlenee | Rudd | Wilson, Bob |
| Marriott | Runnels | Winn |
| Martin | Ruppe | Wolff |
| Michel | Santini | Wydler |
| Miller, Ohio | Sarasin | Wylie |
| Minish | Satterfield | Yatron |
| Mitchell, N.Y. | Sawyer | Young, Fla. |
| Montgomery | | Zeferetti |

NAYS—201

| | | |
|---|---|---|
| Akaka | Gephardt | Panetta |
| Alexander | Giaimo | Patten |
| Anderson, Calif. | Ginn | Patterson |
| | Glickman | Pattison |
| Andrews, N.C. | Gore | Pease |
| Annunzio | Gradison | Pepper |
| Ashley | Gudger | Perkins |
| Aspin | Hamilton | Pickle |
| Baldus | Hannaford | Pike |
| Barnard | Harkin | Preyer |
| Baucus | Harrington | Price |
| Bedell | Hefner | Rahall |
| Bennett | Heftel | Rangel |
| Bevill | Holland | Reuss |
| Bingham | Howard | Richmond |
| Blanchard | Hubbard | Rodino |
| Blouin | Hughes | Rogers |
| Boggs | Ireland | Roncalio |
| Boland | Jenkins | Rooney |
| Bolling | Jenrette | Rosenthal |
| Bonior | Johnson, Calif. | Rostenkowski |
| Bonker | Jones, N.C. | Roybal |
| Brademas | Jones, Okla. | Russo |
| Breckinridge | Jordan | Ryan |
| Brinkley | Kastenmeier | Scheuer |
| Brodhead | Kildee | Schroeder |
| Brooks | Krebs | Selberling |
| Brown, Calif. | Le Fante | Sharp |
| Burlison, Mo. | Lederer | Sikes |
| Burton, John | Leggett | Simon |
| Burton, Phillip | Levitas | Skelton |
| Byron | Lloyd, Calif. | Slack |
| Carney | Long, La. | Smith, Iowa |
| Carr | Long, Md. | Solarz |
| Cavanaugh | Luken | Spellman |
| Clay | Lundine | St Germain |
| Collins, Ill. | McCloskey | Stark |
| Conable | McFall | Steed |
| Conyers | McKay | Steers |
| Corman | Mahon | Steiger |
| Cornell | Mann | Stokes |
| Cornwell | Mathis | Stratton |
| Danielson | Mattox | Thompson |
| Davis | Mazzoli | Thornton |
| Delaney | Meeds | Traxler |
| Dellums | Metcalfe | Tucker |
| Dent | Meyner | Udall |
| Derrick | Mikulski | Ullman |
| Dicks | Milford | Van Deerlin |
| Diggs | Mineta | Vanik |
| Dingell | Mitchell, Md. | Vento |
| Dodd | Moakley | Volkmer |
| Downey | Moffett | Waggonner |
| Edgar | Mollohan | Walgren |
| Edwards, Calif. | Moorhead, Pa. | Weaver |
| Evans, Colo. | Murphy, Ill. | Weiss |
| Fascell | Murphy, N.Y. | Whalen |
| Fisher | Murphy, Pa. | Whitley |
| Fithian | Murtha | Whitten |
| Flippo | Natcher | Wilson, C. H. |
| Flood | Nedzi | Wilson, Tex. |
| Foley | Nix | Wirth |
| Ford, Mich. | Nolan | Wright |
| Ford, Tenn. | Nowak | Yates |
| Fountain | Oakar | Young, Mo. |
| Fowler | Oberstar | Zablocki |
| Garcia | Obey | |
| Gaydos | Ottinger | |

NOT VOTING—37

| | | |
|---|---|---|
| Abdnor | Fraser | Quie |
| Ammerman | Frey | Quillen |
| AuCoin | Gibbons | Shipley |
| Bellenson | Hansen | Sisk |
| Burke, Calif. | Hawkins | Symms |
| Burke, Fla. | Huckaby | Teague |
| Clawson, Del | Kasten | Thone |
| Cochran | Krueger | Waxman |
| Duncan, Oreg. | Lehman | Wiggins |
| Erlenborn | Mikva | Young, Alaska |
| Evans, Ga. | Miller, Calif. | Young, Tex. |
| Fary | Pettis | |
| Florio | Pressler | |

The Clerk announced the following pairs:

Mr. Fary with Mr. Abdnor.
Mr. Florio with Mrs. Pettis.
Mr. Ammerman with Mr. Young of Alaska.
Mr. AuCoin with Mr. Wiggins.
Mr. Hawkins with Mr. Kasten.
Mr. Shipley with Mr. Hansen.
Mr. Teague with Mr. Frey.
Mr. Gibbons with Mr. Cochran of Mississippi.
Mrs. Burke of California with Mr. Erlenborn.
Mr. Bellenson with Mr. Del Clawson.
Mr. Duncan of Oregon with Mr. Burke of Florida.
Mr. Huckaby with Mr. Quie.
Mr. Sisk with Mr. Symms.
Mr. Waxman with Mr. Quillen.
Mr. Miller of California with Mr. Thone.
Mr. Mikva with Mr. Pressler.
Mr. Lehman with Mr. Krueger.
Mr. Evans of Georgia with Mr. Fraser.

Messrs. ECKHARDT, APPLEGATE, MINISH, and WOLFF changed their vote from "nay" to "yea."

Messrs. BOLAND, BAUCUS, and JOHN L. BURTON changed their vote from "yea" to "nay."

So the motion was rejected.

The result of the vote was announced as above recorded.

APPOINTMENT OF CONFEREES ON H.R. 12930

The SPEAKER pro tempore (Mr. SIMON). Without objection, the Chair appoints the following conferees: Messrs. STEED, ADDABBO, ROYBAL, PATTEN, BOLAND, SLACK, MAHON, MILLER of Ohio, MCEWEN, and CEDERBERG.

There was no objection.

## CONFERENCE REPORT ON H.R. 12222, INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1978

Mr. ZABLOCKI submitted the following conference report and statement on the bill (H.R. 12222) to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that Act and the Agricultural Trade Development and Assistance Act of 1954, to improve the coordination and administration of United States development-related policies and programs, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 95–1545)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12222) to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that Act and the Agricultural Trade Development and Assistance Act of 1954, to

improve the coordination and administration of United States development-related policies and programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "International Development and Food Assistance Act of 1978".

TITLE I—DEVELOPMENT ASSISTANCE

DEVELOPMENT ASSISTANCE POLICY

SEC. 101. Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended by striking out section 102 and inserting in lieu thereof the following new sections:

"SEC. 101. GENERAL POLICY.—(a) The Congress finds that fundamental political, economic, and technological changes have resulted in the interdependence of nations. The Congress declares that the individual liberties, economic prosperity, and security of the people of the United States are best sustained and enhanced in a community of nations which respect individual civil and economic rights and freedoms and which work together to use wisely the world's limited resources in an open and equitable international economic system. Furthermore, the Congress reaffirms the traditional humanitarian ideals of the American people and renews its commitment to assist people in developing countries to eliminate hunger, poverty, illness, and ignorance.

"Therefore, the Congress declares that a principal objective of the foreign policy of the United States is the encouragement and sustained support of the people of developing countries in their efforts to acquire the knowledge and resources essential to development and to build the economic, political, and social institutions which will improve the quality of their lives.

"United States development cooperation policy should emphasize four principal goals:

"(1) the alleviation of the worst physical manifestations of poverty among the world's poor majority;

"(2) the promotion of conditions enabling developing countries to achieve self-sustaining economic growth with equitable distribution of benefits;

"(3) the encouragement of development processes in which individual civil and economic rights are respected and enhanced; and

"(4) the integration of the developing countries into an open and equitable international economic system.

"The Congress declares that pursuit of these goals requires that development concerns be fully reflected in United States foreign policy and that United States development resources be effectively and efficiently utilized.

"(b) Under the policy guidance of the Secretary of State, the agency primarily responsible for administering this part should have the responsibility for coordinating all United States development-related activities.

"SEC. 102. DEVELOPMENT ASSISTANCE POLICY.—(a) The Congress finds that the efforts of developing countries to build and maintain the social and economic institutions necessary to achieve self-sustaining growth and to provide opportunities to improve the quality of life for their people depend primarily upon successfully marshalling their own economic and human resources. The Congress recognizes that the magnitude of these efforts exceeds the resources of developing countries and therefore accepts that there will be a long-term need for wealthy countries to contribute additional resources for development purposes. The United States should take the lead in concert with other nations to mobilize such resources from public and private sources.

"Provision of development resources must be adapted to the needs and capabilities of specific developing countries. United States assistance to countries with low per capita incomes which have limited access to private external resources should primarily be provided on concessional terms. Assistance to other developing countries should generally consist of programs which facilitate their access to private capital markets, investment, and technical skills, whether directly through guarantee or reimbursable programs by the United States Government or indirectly through callable capital provided to the international financial institutions.

"Bilateral assistance and United States participation in multilateral institutions shall emphasize programs in support of countries which pursue development strategies designed to meet basic human needs and achieve self-sustaining growth with equity.

"The Congress declares that the principal purpose of United States bilateral development assistance is to help the poor majority of people in developing countries to participate in a process of equitable growth through productive work and to influence decisions that shape their lives, with the goal of increasing their incomes and their access to public services which will enable them to satisfy their basic needs and lead lives of decency, dignity, and hope. Activities shall be emphasized that effectively involve the poor in development by expanding their access to the economy through services and institutions at the local level, increasing their participation in the making of decisions that affect their lives, increasing labor-intensive production and the use of appropriate technology, expanding productive investment and services out from major cities to small towns and rural areas, and otherwise providing opportunities for the poor to improve their lives through their own efforts. Participation of the United States in multilateral institutions shall also place appropriate emphasis on these principles.

"(b) Assistance under this chapter should be used not only for the purpose of transferring financial resources to developing countries, but also to help countries solve development problems in accordance with a strategy that aims to insure wide participation of the poor in the benefits of development on a sustained basis. Moreover, assistance shall be provided in a prompt and effective manner, using appropriate United States institutions for carrying out this strategy. In order to achieve these objectives and the broad objectives set forth in section 101 and in subsection (a) of this section, bilateral development assistance authorized by this Act shall be carried out in accordance with the following principles:

"(1) Development is primarily the responsibility of the people of the developing countries themselves. Assistance from the United States shall be used in support of, rather than substitution for, the self-help efforts that are essential to successful development programs and shall be concentrated in those countries that take positive steps to help themselves. Maximum effort shall be made, in the administration of this part, to stimulate the involvement of the people in the development process through the encouragement of democratic participation in private and local governmental activities and institution building appropriate to the requirements of the recipient countries.

"(2) Development planning must be the responsibility of each sovereign country. United States assistance should be administered in a collaborative style to support the development goals chosen by each country receiving assistance.

"(3) United States bilateral development assistance should give high priority to undertakings submitted by host governments which directly improve the lives of the poorest of their people and their capacity to participate in the development of their countries, while also helping such governments enhance their planning, technical, and administrative capabilities needed to insure the success of such undertakings.

"(4) Development assistance provided under this chapter shall be concentrated in countries which will make the most effective use of such assistance to help satisfy basic human needs of poor people through equitable growth, especially in those countries having the greatest need for outside assistance. In order to make possible consistent and informed judgments in this respect, the President shall assess the commitment and progress of countries in moving toward the objectives and purposes of this chapter by utilizing criteria, including but not limited to the following:

"(A) increase in agricultural productivity per unit of land through small-farm, labor-intensive agriculture;

"(B) reduction of infant mortality;

"(C) control of population growth;

"(D) promotion of greater equality of income distribution, including measures such as more progressive taxation and more equitable returns to small farmers;

"(E) reduction of rates of unemployment and underemployment; and

"(F) increase in literacy.

"(5) United States development assistance should focus on critical problems in those functional sectors which affect the lives of the majority of the people in the developing countries; food production and nutrition; rural development and generation of gainful employment; population planning and health; evironment and natural resources; and education, development administration, and human resource development.

"(6) United States assistance shall encourage and promote the participation of women in the national economies of developing countries and the improvement of women's status as an important means of promoting the total development effort.

"(7) United States bilateral assistance shall recognize that the prosperity of developing countries and effective development efforts require the adoption of an overall strategy that promotes efficient utilization of energy and, therefore, consideration shall be given to the full implications of such assistance on the price, availability, and consumption of energy in recipient countries.

"(8) United States cooperation in development should be carried out to the maximum extent possible through the private sector, including those institutions which already have ties in the developing areas, such as educational institutions, cooperatives, credit unions, free labor unions, and private and voluntary agencies.

"(9) To the maximum extent practicable, United States private investment should be encouraged in economic and social development programs to which the United States lends support.

"(10) Assistance shall be planned and utilized to encourage regional cooperation by developing countries in the solution of common problems and the development of shared resources.

"(11) Assistance efforts of the United States shall be planned and furnished to the maximum extent practicable in coordination and cooperation with assistance efforts of other countries, including the planning and implementation of programs and projects on a multilateral and multidonor basis.

"(12) United States bilateral development assistance should be concentrated on projects

which do not involve large-scale capital transfers. However, to the extent that such assistance does involve large-scale capital transfers, it should be furnished in association with contributions from other countries working together in a multilateral framework.

"(c) The Congress, recognizing the desirability of overcoming the worst aspects of absolute poverty by the end of this century by, among other measures, substantially lowering infant mortality and birth rates, and increasing life expectancy, food production, literacy, and employment, encourages the President to explore with other countries, through all appropriate channels, the feasibility of a worldwide cooperative effort to overcome the worst aspects of absolute poverty and to assure self-reliant growth in the developing countries by the year 2000.".

DEVELOPMENT ASSISTANCE AUTHORITIES

SEC. 102. (a) Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following:

"SEC. 122. GENERAL AUTHORITIES.—(a) In order to carry out the purposes of this chapter, the President is authorized to furnish assistance, on such terms and conditions as he may determine, to countries and areas through programs of grant and loan assistance, bilaterally or through regional, multilateral, or private entities.".

(b)(1) Part I of such Act is further amended—

(A) by striking out "less developed friendly" in the first sentence in subsection (b) of section 201;

(B) by striking out everything after the first sentence in subsection (b) of section 201 through "herein) be loaned" in subsection (d) of such section and inserting in lieu thereof the following: "The President shall determine the interest payable on any loan. In making loans under this chapter, the President shall consider the economic circumstances of the borrower and other relevant factors, including the capacity of the recipient country to repay the loan at a reasonable rate of interest, except that loans may not be made"; and

(C) by inserting subsection (b) of section 201, as amended by subparagraphs (A) and (B) of this paragraph, immediately after section 122(a), as added by subsection (a) of this section.

(2)(A) Section 301(a) of such Act is amended by striking out "201(d)" and inserting in lieu thereof "122(b)".

(B) Section 103(b) of the Agricultural Trade Development and Assistance Act of 1954 is amended by striking out "201" and inserting in lieu thereof "122".

(C) Section 106(a) of the Agricultural Trade Development and Assistance Act of 1954 is amended in the second sentence by striking out "201" and inserting in lieu thereof "122(b)".

(c)(1) Section 122 of the Foreign Assistance Act of 1961, as added by subsection (a) of this section and as amended by subsection (b)(1) of this section, is amended by adding at the end thereof the following new subsections:

"(c) Dollar receipts paid during any fiscal year from loans made under this part or from loans made under predecessor foreign assistance legislation shall be deposited in the Treasury as miscellaneous receipts.

"(d) Not to exceed $10,000,000 of the funds made available each fiscal year for the purposes of this chapter may be used for assistance, on such terms and conditions as the President may determine, to research and educational institutions in the United States for the purpose of strengthening their capacity to develop and carry out programs concerned with the economic and social development of developing countries.".

(2) Section 299(a) of such Act is amended by striking "110(b), 211(a), and 211(d)" and inserting in lieu thereof "110(b) and 122(d)".

(d) Part I of such Act is further amended—

(1) in section 204—

(A) by striking out "SEC. 204. DEVELOPMENT LOAN COMMITTEE.—" and inserting in lieu thereof "(e)"; and

(B) by striking out "titled" and inserting in lieu thereof "chapter"; and

(2) by inserting such section, as so redesignated and amended, at the end of section 122, as added and amended by subsections (a) through (c) of this section.

(e) Chapter 1 of part I of such Act, as amended by subsections (a) through (d) of this section, is further amended by adding at the end thereof the following new section:

"SEC. 123. PRIVATE AND VOLUNTARY ORGANIZATIONS AND COOPERATIVES IN OVERSEAS DEVELOPMENT.—(a) The Congress finds that the participation of rural and urban poor people in their countries' development can be assisted and accelerated in an effective manner through an increase in activities planned and carried out by private and voluntary organizations and cooperatives. Such organizations and cooperatives, embodying the American spirit of self-help and assistance to others to improve their lives and incomes, constitute an important means of mobilizing private American financial and human resources to benefit poor people in developing countries. The Congress declares that it is in the interest of the United States that such organizations and cooperatives expand their overseas development efforts without compromising their private and independent nature. The Congress further declares that the financial resources of such organizations and cooperatives should be supplemented by the contribution of public funds for the purpose of undertaking development activities in accordance with the principles set forth in section 102. The Congress urges the Administrator of the agency primarily responsible for administering this part, in implementing programs authorized under this part, to draw on the resource of private and voluntary organizations and cooperatives to plan and carry out development activities.

"(b) In order to further the efficient use of United States voluntary contributions for development, relief, and rehabilitation of friendly peoples, the President is authorized to use funds made available for the purposes of this chapter to pay transportation charges on shipments by the American National Red Cross and by United States voluntary agencies registered with the Advisory Committee on Voluntary Foreign Aid.

"(c) Reimbursement under this section may be provided for transportation charges on shipments from United States ports, or in the case of excess or surplus property supplied by the United States from foreign ports, to ports of entry abroad or to points of entry abroad in cases (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specified country are unavailable, or (4) where a substantial savings in costs or time can be effected by the utilization of points of entry other than ports.

"(d) Where practicable, the President shall make arrangements with the receiving country for free entry of such shipments and for the making available by the country of local currencies for the purpose of defraying the transportation costs of such shipments from the port or point of entry of the receiving country to the designated shipping point of the consignee.".

(f) Section 115 of such Act is repealed.

(g)(1) Chapter 2 of part I of such Act, as amended by this section, is further amended—

(A) by repealing title I (except sections 206 and 209), title II (except sections 214 and 219), title VI, title VII, and title VIII;

(B) by amending the chapter heading to read as follows: "CHAPTER 2—OTHER PROGRAMS";

(C) by inserting the following new title heading immediately before section 206: "TITLE I—MULTILATERAL AND REGIONAL DEVELOPMENT PROGRAMS"; and

(D) by inserting the following new title heading immediately before section 214: "TITLE II—AMERICAN SCHOOLS AND HOSPITALS ABROAD; PROTOTYPE DESALTING PLANT".

(2)(A) Section 281 of such Act is amended by inserting "and chapter 1" immediately after "this chapter" each of the four places it appears.

(B) Section 601(b)(5) of such Act is amended by striking out "201" and inserting in lieu thereof "122".

(C) Section 608(a) of such Act is amended by striking out "section 212" and inserting in lieu thereof "chapter 1 of part I".

(D) Section 611(a) of such Act is amended by striking out "titles I, II, and VI of chapter 2 and chapter 4 of part I" and inserting in lieu thereof "chapter 1 of part I, title II of chapter 2 of part I, or chapter 4 of part II".

(E) Section 611(e) of such Act is amended by striking out "titles I, II, or VI of chapter 2 or chapter 4 of part I of this Act" and inserting in lieu thereof "chapter 1 of part I, title II of chapter 2 of part I, or chapter 4 of part II".

(F) Section 620(d) of such Act is amended by striking out "under section 201" and inserting in lieu thereof "on a loan basis under chapter 1 of part II".

(G) Section 636(h) of such Act is amended by striking out "titles II, V, and VI (except development loans)" and inserting in lieu thereof "chapter 1 (except development loans) and title II".

(H) Section 636(c) of such Act is amended by striking out "(other than title I of chapter 2 of part I)" both places it appears.

(I) Section 636 (d) and (e) of such Act are each amended by striking out "(other than title I of chapter 2 of part I)".

(J) Section 636(f) of such Act is amended—

(i) by striking out "section 212" and inserting in lieu thereof "chapter 1 of part I"; and

(ii) by striking out "title I of chapter 2" and inserting in lieu thereof "chapter 1".

(K)(i) Section 108 of such Act is repealed.

(ii) Section 109 of such Act is amended by striking out "Notwithstanding section 108 of this Act whenever" and inserting in lieu thereof "Whenever".

AGRICULTURE, RURAL DEVELOPMENT, AND NUTRITION

SEC. 103. (a) Section 103 of the Foreign Assistance Act of 1961 is amended to read as follows:

"SEC. 103. AGRICULTURE, RURAL DEVELOPMENT, AND NUTRITION.—(a)(1) In recognition of the fact that the great majority of the people of developing countries live in rural areas and are dependent on agriculture and agricultural-related pursuits for their livelihood, the President is authorized to furnish assistance, on such terms and conditions as he may determine, for agriculture, rural development, and nutrition—

"(A) to alleviate starvation, hunger, and malnutrition;

"(B) to expand significantly the provision of basic services to rural poor people to enhance their capacity for self-help; and

"(C) to help create productive farm and off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural poor people to the economic and social development of their countries.

"(2) There is authorized to be appropriated to the President for purposes of this section, in addition to funds otherwise available for such purposes, $665,231,000 for the fiscal year 1979. Amounts appropriated un-

der this section are authorized to remain available until expended.

"(b)(1) Assistance provided under this section shall be used primarily for activities which are specifically designed to increase the productivity and income of the rural poor, through such means as creation and strengthening of local institutions linked to the regional and national levels; organization of a system of financial institutions which provide both savings and credit services to the poor; stimulation of small, labor-intensive enterprises in rural towns; improvement of marketing facilities and systems; expansion of rural infrastructure and utilities such as farm-to-market roads, water management systems, land improvement, energy, and storage facilities; establishment of more equitable and more secure land tenure arrangements; and creation and strengthening of systems to provide other services and supplies needed by farmers, such as extension, research, training, fertilizer, water, forestry, soil conservation, and improved seed, in ways which assure access to them by small farmers.

"(2) In circumstances where development of major infrastructure is necessary to achieve the objectives set forth in this section, assistance for that purpose should be furnished under this chapter in association with significant contributions from other countries working together in a multilateral framework. Infrastructure projects so assisted should be complemented by other measures to ensure that the benefits of the infrastructure reach the poor.

"(c) The Congress finds that the greatest potential for significantly expanding availability of food for people in rural areas and augmenting world food production at relatively low cost lies in increasing the productivity of small farmers who constitute a majority of the agricultural producers in developing countries. Increasing the emphasis on rural development and expanded food production in the poorest nations of the developing world is a matter of social justice and a principal element contributing to broadly based economic growth, as well as an important factor in alleviating inflation in the industrialized countries. In the allocation of funds under this section, special attention shall be given to increasing agricultural production in countries which have been designated as 'least developed' by the United Nations General Assembly.

"(d) Assistance provided under this section shall also be used in coordination with programs carried out under section 104 to help improve nutrition of the people of developing countries through encouragement of increased production of crops with greater nutritional value; improvement of planning, research, and education with respect to nutrition, particularly with reference to improvement and expanded use of indigenously produced foodstuffs; and the undertaking of pilot or demonstration programs explicitly addressing the problem of malnutrition of poor and vulnerable people. In particular, the President is encouraged—

"(1) to devise and carry out in partnership with developing countries a strategy for programs of nutrition and health improvement for mothers and children, including breast feeding; and

"(2) to provide technical, financial, and material support to individuals or groups at the local level for such programs.

"(e) Local currency proceeds from sales of commodities provided under the Agricultural Trade Development and Assistance Act of 1954 which are owned by foreign governments shall be used whenever practicable to carry out the provisions of this section.".

(b) Section 644 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following:

"(o) 'Agriculture' includes aquaculture and fisheries.

"(p) 'Farmers' includes fishermen and other persons employed in cultivating and harvesting food resources from salt and fresh waters.".

(c) Sections 117 and 296 (f) and (g) of such Act are repealed.

(d) Section 103A of such Act is amended by inserting "environmental," immediately after "social," in clause (2) of the first sentence.

POPULATION AND HEALTH

SEC. 104. (a) Section 104 of the Foreign Assistance Act of 1961 is amended to read as follows:

"SEC. 104. POPULATION AND HEALTH.—(a) FINDINGS.—The Congress recognizes that poor health conditions and uncontrolled population growth can vitiate otherwise successful development efforts.

"Large families in developing countries are the result of complex social and economic factors which change relatively slowly among the poor majority least affected by economic progress, as well as the result of a lack of effective birth control. Therefore, effective family planning depends upon economic and social change as well as the delivery of services and is often a matter of political and religious sensitivity. While every country has the right to determine its own policies with respect to population growth, voluntary population planning programs can make a substantial contribution to economic development, higher living standards, and improved health and nutrition.

"Good health conditions are a principal element in improved quality of life and contribute to the individual's capacity to participate in the development process, while poor health and debilitating disease can limit productivity.

"(b) ASSISTANCE FOR POPULATION PLANNING.—In order to increase the opportunities and motivation for family planning and to reduce the rate of population growth, the President is authorized to furnish assistance, on such terms and conditions as he may determine, for voluntary population planning. In addition to the provision of family planning information and services and the conduct of directly relevant demographic research, population planning programs shall emphasize motivation for small families.

"(c) ASSISTANCE FOR HEALTH AND DISEASE PREVENTION.—In order to contribute to improvements in the health of the greatest number of poor people in developing countries, the President is authorized to furnish assistance, on such terms and conditions as he may determine, for health programs. Assistance under this subsection shall be used primarily for basic integrated health services, safe water and sanitation, disease prevention and control and related health planning and research. This assistance shall emphasize self-sustaining community-based health programs by means such as training of heatlh auxiliary and other appropriate personnel, support for the establishment and evaluation of projects that can be replicated on a broader scale, measures to improve management of health programs, and other services and supplies to support health and disease prevention programs.

"(d) INTEGRATION OF ASSISTANCE PROGRAMS.—(1) Assistance under this chapter shall be administered so as to give particular attention to the interrelationship between (A) population growth and (B) development and overall improvement in living standards in developing countries, and to the impact of all programs, projects, and activities on population growth. All appropriate activities proposed for financing under this chapter shall be designed to build motivation for smaller families through modification of economic and social conditions supportive of the desire for large families, in programs such as education in and out of school, nutrition, disease control, maternal and child health services, improvements in the status and employment of women, agricultural production, rural development, and assistance to the urban poor. Population planning programs shall be coordinated with other programs aimed at reducing the infant mortality rate, providing better nutrition for pregnant women and infants, and raising the standard of living of the poor.

"(2) Since the problems of malnutrition, disease, and rapid population growth are closely related, planning for assistance to be provided under sections (b) and (c) of this section and under section 103 shall be coordinated to the maximum extent practicable.

"(3) Assistance provided under this section shall emphasize low-cost integrated delivery systems for health, nutrition, and family planning for the poorest people, with particular attention to the needs of mothers and young children, using paramedical and auxiliary medical personnel, clinics and health posts, commercial distribution systems, and other modes of community outreach.

"(e) RESEARCH AND ANALYSIS.—(1) Health and population research and analysis carried out under this Act shall—

"(A) be undertaken to the maximum extent practicable in developing countries by developing country personnel, linked as appropriate with private and governmental biomedical research facilities within the United States;

"(B) take account of the special needs of the poor people of developing countries in the determination of research priorities; and

"(C) make extensive use of field testing to adapt basic research to local conditions.

"(2) The President is authorized to study the complex factors affecting population growth in developing countries and to identify factors which might motivate people to plan family size or to space their children.

"(f) PROHIBITION ON USE OF FUNDS FOR ABORTIONS AND INVOLUNTARY STERILIZATIONS.—(1) None of the funds made available to carry out this part may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

"(2) None of the funds made available to carry out this part may be used to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President, in addition to funds otherwise available for such purposes—

"(1) $224,745,000 for the fiscal year 1979 to carry out subsection (b) of this section; and

"(2) $148,494,000 for the fiscal year 1979 to carry out subsection (c) of this section. Funds appropriated under this subsection are authorized to remain available until expended.".

(b) Section 114 and title X of chapter 2 of part I of such Act are repealed.

EDUCATION AND HUMAN RESOURCES DEVELOPMENT

SEC. 105. Section 105(a) of the Foreign Assistance Act of 1961 is amended in the second sentence by striking out "$101,800,000 for the fiscal year 1977 and $84,900,000 for the fiscal year 1978, which amounts are" and inserting in lieu thereof "$109,036,000 for the fiscal year 1979, which amount is".

TECHNICAL ASSISTANCE, ENERGY, RESEARCH, RECONSTRUCTION, AND SELECTED DEVELOPMENT PROBLEMS

SEC. 106. Section 106(b) of the Foreign Assistance Act of 1961 is amended in the first sentence by striking out "$104,500,000 for the fiscal year 1977 and $105,000,000 for the fiscal year 1978, which amounts are" and

inserting in lieu thereof $126,244,000 for the fiscal year 1979, which amount is".

APPROPRIATE TECHNOLOGY

SEC. 107. Section 107 of the Foreign Assistance Act of 1961 is amended to read as follows:

"SEC. 107. APPROPRIATE TECHNOLOGY.—(a) In carrying out activities under this chapter, the President shall place special emphasis on the use of relatively smaller, cost-saving, labor-using technologies that are generally most appropriate for the small farms, small businesses, and small incomes of the poor.

"(b) Funds made available to carry out this chapter should be used to the extent practicable for activities in the field of appropriate technology, including support of an expanded and coordinated private effort to promote the development and dissemination of appropriate technology in developing countries.".

WOMEN IN DEVELOPMENT

SEC. 108. Section 113 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(d)(1) Up to $10,000,000 of the funds made available each fiscal year under this chapter shall be used, in addition to funds otherwise available for such purposes, for assistance on such terms and conditions as the President may determine to encourage and promote the participation and integration of women as equal partners in the development process in the developing countries. These funds shall be used primarily to support activities which will increase the economic productivity and income earning capacity of women.

"(2) Nothing in this section shall be construed to authorize the establishment of a separate development assistance program for women.".

HUMAN RIGHTS ACTIVITIES

SEC. 109. Section 116(e) of the Foreign Assistance Act of 1961 is amended in the first sentence—

(1) by striking out "Of" and inserting in lieu thereof "The President is authorized and encouraged to use not less than $1,500,000 of"; and

(2) by striking out "1978, not less than $750,000 may be used only" and inserting in lieu thereof "1979".

ENVIRONMENT AND NATURAL RESOURCES

SEC. 110. Section 118 of the Foreign Assistance Act of 1961 is amended—

(1) by inserting "(a)" immediately after the section caption; and

(2) by adding at the end thereof the following new subsections:

"(b) In carrying out programs under this chapter, the President shall take into consideration the environmental consequences of development actions.

"(c) In furtherance of the purposes of this section, the President shall carry out studies to identify the major environment and natural resource problems, and the institutional capabilities to solve those problems, which exist in developing countries. The results of these studies shall be reported to the Congress by March 1, 1979.".

RENEWABLE AND UNCONVENTIONAL ENERGY TECHNOLOGIES

SEC. 111. Section 119 of the Foreign Assistance Act of 1961 is amended to read as follows:

"SEC. 119. RENEWABLE AND UNCONVENTIONAL ENERGY TECHNOLOGIES.—(a) The President is authorized to furnish assistance under this chapter for cooperative programs with developing countries in energy production and conservation, with particular emphasis on programs in research and development, and use of small-scale, decentralized, renewable energy sources for rural areas carried out as integral parts of rural development efforts in accordance with section 103 of this Act. Such programs shall also be directed toward the earliest practicable development and use of energy technologies which are environmentally acceptable, require minimum capital investment, are most acceptable to and affordable by the people using them, are simple and inexpensive to use and maintain, and are transferable from one region of the world to another.

"(b) The agency primarily responsible for administering this part shall coordinate with the Department of Energy, to the maximum extent possible, the planning and implementation of energy programs authorized under this chapter, including section 107, and shall consult with the Department of Energy on such planning and implementation.".

RELATIVELY LEAST DEVELOPED COUNTRIES

SEC. 112. (a)(1) Chapter 1 of part I of the Foreign Assistance Act of 1961, as amended by section 102 of this Act, is further amended by inserting the following new section 124 immediately after section 123:

"SEC. 124. RELATIVELY LEAST DEVELOPED COUNTRIES.—(a) Relatively least developed countries (as determined on the basis of criteria comparable to those used for the United Nations General Assembly list of 'least developed countries') are characterized by extreme poverty, very limited infrastructure, and limited administrative capacity to implement basic human needs growth strategies. In such countries special measures may be necessary to insure the full effectiveness of assistance furnished under this part.

"(b) For the purpose of promoting economic growth in these countries, the President is authorized and encouraged to make assistance under this chapter available on a grant basis to the maximum extent that is consistent with the attainment of United States development objectives.

"(c)(1) The Congress recognizes that the relatively least developed countries have virtually no access to private international capital markets. Insofar as possible, prior assistance terms should be consistent with present grant assistance terms for relatively least developed countries. Therefore, notwithstanding section 620(r) of this Act and section 321 of the International Development and Food Assistance Act of 1975 but subject to paragraph (2) of this subsection, the President on a case-by-case basis, taking into account the needs of the country for financial resources and the commitment of the country to the development objectives set forth in sections 101 and 102—

"(A) may permit a relatively least developed country to place amounts, which would otherwise be paid to the United States as payments on principal or interest on liability incurred by that country under this part (or any predecessor legislation) into local currency accounts (in equivalent amounts of local currencies as determined by the official exchange rate for United States dollars) for use by the relatively least developed country, with the concurrence of the Administrator of the agency primarily responsible for administering this part, for activities which are consistent with section 102; and

"(B) may waive interest payments on liability incurred by a relatively least developed country under this part (or any predecessor legislation) if the President determines that that country would be unable to use for development purposes the equivalent amounts of local currencies which could be made available under subparagraph (A).

"(2) The aggregate amount of interest and principal paid into local currency accounts under this subsection in any fiscal year may not exceed the amount approved for such purpose in an Act appropriating funds to carry out this chapter for that fiscal year, which amount may not exceed the amount authorized to be so approved by the annual authorizing legislation for development assistance programs.

"(3) In exercising the authority granted by this subsection, the President should act in concert with other creditor countries.

"(d) The President may on a case-by-case basis waive the requirement of section 110(a) for financial or 'in kind' contributions in the case of programs, projects, or activities in relatively least developed countries.

"(e) Section 110(b) shall not apply with respect to grants to relatively least developed countries.".

(2) The authority granted by section 124 (c) of the Foreign Assistance Act of 1961 shall not become effective until October 1, 1979.

(b)(1) Section 110(a) of such Act is amended by striking out "and except that" and all that follows through the end of the sentence and inserting in lieu thereof a period.

(2) Section 110(b) of such Act is amended by striking out "Except" and all that follows through "no" and inserting in lieu thereof "No".

PROJECT AND PROGRAM EVALUATION

SEC. 113. Chapter 1 of part I of the Foreign Assistance Act, as amended by sections 102 and 112 of this Act, is further amended by inserting the following new section 125 immediately after section 124:

"SEC. 125. PROJECT AND PROGRAM EVALUATION.—(a) The Administrator of the agency primarily responsible for administering this part is directed to improve the assessment and evaluation of the programs and projects carried out by that agency under this chapter. The Administrator shall consult with the appropriate committees of the Congress in establishing standards for such evaluations.

"(b) The President shall report on actions taken by the international financial institutions and the United Nations Development Program to improve the evaluation of projects and programs conducted by those institutions. The report required by this subsection shall be submitted as a part of the report required by section 634.".

AMERICAN SCHOOLS AND HOSPITALS ABROAD

SEC. 114. Section 214 of the Foreign Assistance Act of 1961 is amended—

(1) in subsection (c) by striking out "for the fiscal year 1977, $25,000,000, and for the fiscal year 1978, $25,000,000, which amounts are" and inserting in lieu thereof "$25,000,000 for the fiscal year 1979, which amount is"; and

(2) by striking out subsection (d) and (e) and by redesignating subsection (f) as subsection (d).

HOUSING AND OTHER CREDIT GUARANTY PROGRAMS

SEC. 115. (a) Sections 221 and 222 of the Foreign Assistance Act of 1961 are amended to read as follows:

"SEC. 221. HOUSING GUARANTEES.—The Congress recognizes that shelter requirements are among the most fundamental of human needs. Shelter for most people in the developing countries consists largely of domestic materials assembled by local labor. While recognizing that most financing for such housing must come from domestic resources, the Congress finds that carefully designed programs involving United States capital and expertise can increase the availability of domestic financing for improved housing and related services for low-income people by demonstrating to local entrepreneurs and institutions that providing low-cost housing can be financially viable. The Congress reaffirms, therefore, that the United States should continue to assist developing countries in marshalling resources for low-cost housing. Particular attention should be given to programs which will support pilot projects for low-cost shelter or which will have a maximum demonstration impact on local institutions and national

policy. The Congress declares that the long run goal of all such programs should be to develop domestic construction capabilities and to stimulate local credit institutions to make available domestic capital and other management and technological resources required for effective low-cost shelter programs and policies.

"SEC. 222. AUTHORIZATION.—(a) To carry out the policy of section 221, the President is authorized to issue guaranties to eligible investors (as defined in section 238(c)) assuring against losses incurred in connection with loans made for projects meeting the criteria set forth in section 221. The total principal amount of guaranties issued under this title or heretofore issued under prior housing guaranty authorities, which are outstanding at any one time, shall not exceed $1,180,000,000. The authority of this section shall continue until September 30, 1980. The President may issue regulations from time to time with regard to the terms and conditions upon which such guaranties shall be issued and the eligibility of lenders.

"(b) Activities carried out under this section shall emphasize—

"(1) projects which provide improved home sites to poor families on which to build shelter, and related services;

"(2) projects comprised of expandable core shelter units on serviced sites;

"(3) slum upgrading projects designed to conserve and improve existing shelter;

"(4) shelter projects for low income people designed for demonstration or institution building purposes; and

"(5) community facilities and services in support of projects authorized under this section to improve the shelter occupied by the poor.

"(c) In issuing guaranties under this section with respect to projects in a country which require the use or conservation of energy, the President shall give consideration to the use of solar energy technologies, where such technologies are economically and technically feasible. Technologies which may be used include solar hot water systems, solar heating and cooling, passive solar heating, biomass conversion, photovoltaic and wind applications, and community-scale solar thermal applications.".

(b) Section 222A(h) of such Act is amended by striking out "September 30, 1978" and inserting in lieu thereof "September 30, 1979".

(c) Section 223(a) of such Act is amended by striking out "221, 222," and inserting in lieu thereof "222".

(d) Section 223(b) of such Act is amended in the first sentence—

(1) by striking out "221 or" the first place it appears;

(2) by striking out "221 and section 222 and of" and inserting in lieu thereof "222 and administering housing guaranties heretofore authorized under this title and under";

(3) by striking out "section 221 or" the second place it appears; and

(4) by inserting "this title or" immediately after "heretofore pursuant to".

(e) Section 223(c) of such Act is amended by striking out "section 221 or" and by inserting "under this title or" immediately after "heretofore".

(f) Section 223(d) of such Act is amended—

(1) by striking out "221, 222, 222A," and inserting in lieu thereof "222 or 222A"; and

(2) by inserting "under this title or" immediately after "heretofore".

(g) Section 223(f) of such Act is amended in the first sentence by striking out "section 221 or".

(h) Section 223(g) of such Act is amended by inserting "heretofore under this title or" immediately after "outstanding".

(i) Section 223(i) of such Act is repealed.

(j) Section 223(j) of such Act is amended by striking out "sections 221 and" in the first sentence and inserting in lieu thereof "section".

(k) Section 620(l) of such Act is amended by striking out "221(b)(1)" both places it appears and inserting in lieu thereof "234(a)(1)".

ASSISTANCE FOR CERTAIN DISADVANTAGED CHILDREN IN ASIA

SEC. 116. Chapter 2 of part I of the Foreign Assistance Act of 1961 is amended by striking out the title heading for title V and inserting in lieu thereof the following:

"TITLE V—DISADVANTAGED CHILDREN IN ASIA

"SEC. 241. ASSISTANCE TO CERTAIN DISADVANTAGED CHILDREN IN ASIA.—(a) The Congress recognizes the humanitarian needs of disadvantaged children in Asian countries where there has been or continues to be a heavy presence of United States military and related personnel in recent years. Moreover, the Congress finds that inadequate provision has been made for the care and welfare of such disadvantaged children, particularly those fathered by United States citizens.

"(b) Accordingly, the President is authorized to expend up to $2,000,000 of funds made available under chapter 1 of this part, in addition to funds otherwise available for such purposes, to help meet the needs of these disadvantaged children in Asia by assisting in the expansion and improvement of orphanages, hostels, day care centers, school feeding programs, and health, education, and welfare programs. Assistance provided under this section shall be furnished under the auspices of and by international organizations or private voluntary agencies operating within, and in cooperation with, the countries of Asia where these disadvantaged children reside.".

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 117. (a) Section 302(a)(1) of the Foreign Assistance Act of 1961 is amended in the first sentence by striking out "for the fiscal year 1977, $219,900,000 and for the fiscal year 1978, $252,000,000" and inserting in lieu thereof "$285,450,000 for the fiscal year 1979 of which not to exceed $300,000 shall be available for contribution to the United Nations Trust Fund on South Africa".

(b)(1) Section 302(a)(1) of such Act is further amended—

(A) by striking out "$42,500,000" in the third sentence and inserting in lieu thereof "$52,000,000"; and

(B) by inserting immediately after the third sentence the following: "Of the funds authorized to be appropriated under this subsection for the fiscal year 1979, not to exceed $52,000,000 shall be available for voluntary contributions to the United Nations Relief and Works Agency for Palestine Refugees, except that not more than $42,500,000 of this amount may be obligated unless the President certifies to the Congress that any contributions above this level have been matched by equivalent contributions by members of the Organization of Petroleum Exporting Countries.".

(2) Not later than January 31, 1979, the Secretary of State shall provide the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives with a full and detailed report on the progress made by the Commissioner-General of the United Nations Relief and Works Agency to improve the ration distribution system so that food to Palestine refugees can be more equitably distributed on the basis of need, rather than entitlement.

(c) Section 302(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) None of the funds made available under this subsection for the fiscal year 1979 may be used for the United Nations Institute for Namibia unless the President determines that such funds will not be used to support the military or paramilitary activities of the Southwest African Peoples Organization.".

(d) Section 301 of such Act is amended by adding at the end thereof the following new subsection:

"(g) It is the sense of the Congress that the President should instruct the appropriate representatives of the United States to the United Nations to encourage the specialized agencies of the United Nations to transfer the funding of technical assistance programs carried out by such agencies to the United Nations Development Program.".

(e) In addition to amounts otherwise available for such purpose, there are authorized to be appropriated to the President not to exceed $1,000,000 for contributions to the World Assembly on Aging to be convened under the auspices of the United Nations, except that the amount so contributed may not exceed 25 percent of the expenditures of such Assembly. Amounts appropriated under this subsection are authorized to remain available until expended.

INTERNATIONAL DISASTER ASSISTANCE

SEC. 118. (a) Section 491(b) of the Foreign Assistance Act of 1961 is amended by striking "or international organization" and inserting in lieu thereof ", international organization, or private voluntary organization.".

(b) Section 492 of such Act is amended—

(1) in the first sentence by striking out "each of the fiscal years 1977 and 1978" and inserting in lieu thereof "the fiscal year 1979"; and

(2) by striking out the third sentence.

ASSISTANCE FOR AFRICAN REFUGEES

SEC. 119. Chapter 9 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 495D, as added by section 121 of the International Development and Food Assistance Act of 1977, as section 495E; and

(2) by adding at the end thereof the following new section:

"SEC. 495F. ASSISTANCE TO AFRICAN REFUGEES.—The President is authorized to furnish assistance, on such terms and conditions as he may determine, exclusively for the relief and rehabilitation of African refugees and other needy people located in Africa. There is authorized to be appropriated for the fiscal year 1979 for purposes of this section, in addition to amounts otherwise available for such purposes, $15,000,000, which amount is authorized to remain available until expended. Assistance under this section shall be provided in accordance with the policies and general authorities contained in section 491.".

LOCUST PLAGUES CONTROL IN AFRICA

SEC. 120. In order to assist in attempts to control locust plagues in Africa, especially in the Horn of Africa, there is authorized to be appropriated to the President, in addition to amounts otherwise authorized for disaster relief purposes, $2,000,000, which amount is authorized to remain available until expended.

REIMBURSABLE DEVELOPMENT PROGRAMS

SEC. 121. Section 661 of the Foreign Assistance Act of 1961 is amended by striking out "$2,000,000" the first place it appears and all that follows through "1978," and inserting in lieu thereof "$3,000,000 of the funds made available for the purposes of this Act for the fiscal year 1979".

AFRICAN DEVELOPMENT FOUNDATION

SEC. 122. (a) The Congress declares that the United States should place higher priority on the formulation and implementation of policies and programs to enable the people of African nations to develop their potential, fulfill their aspirations, and enjoy better, more productive lives. In furtherance of these objectives, the Congress finds that additional support is needed for community-based self-help activities in Africa and that an African Development Foundation, orga-

nized to further the purposes set forth in section 123 of the Foreign Assistance Act of 1961, can complement current United States development programs in Africa.

(b) The Congress therefore requests that the President report to the Congress not later than February 1, 1979, on steps he has taken to review proposals for an African Development Foundation.

## TITLE II—FOOD FOR PEACE

### EFFECTIVENESS OF FOOD ASSISTANCE IN MEETING BASIC FOOD NEEDS

SEC. 201. The Congress finds that food assistance provided by the United States to developing countries under title I of the Agricultural Trade Development and Assistance Act of 1954 often is distributed within those countries in ways which do not significantly alleviate hunger and malnutrition in those countries. In order to determine how United States food assistance can be more effectively used to meet the food needs of the poor in developing countries, the President shall submit to the Congress not later than February 1, 1979, a report (1) explaining why food assistance provided to developing countries under title I of the Agricultural Trade Development and Assistance Act of 1954 is not more successful in meeting the food needs of those suffering from hunger and malnutrition, and (2) recommending steps which could be taken (including increasing the proportion of food assistance which is furnished under titles II and III of that Act) to increase the effectiveness of food assistance under that Act in meeting those needs.

### TRANSPORTATION COSTS FOR FOOD FOR DEVELOPMENT PROGRAMS

Sec. 202. Section 304 of the Agricultural Trade Development and Assistance Act of 1954 is amended by adding at the end thereof the following new subsection:

"(d) The Commodity Credit Corporation may pay, with respect to commodities made available under this title to a country on the United Nations Conference on Trade and Development list of relatively least developed countries, freight charges from United States ports to designated ports of entry abroad or to designated points of entry abroad in the case of landlocked countries.".

### APPLICATION OF FOOD FOR DEVELOPMENT PROCEEDS TO REPAYMENT OBLIGATIONS

SEC. 203. Section 305 of the Agricultural Trade Development and Assistance Act of 1954 is amended—

(1) by inserting "(a)" immediately after "SEC. 305."; and

(2) by adding at the end thereof the following new subsection:

"(b) Such disbursements shall be deemed to be payments with respect to the credit furnished pursuant to the agreement or if, in the case of a country on the United Nations Conference on Trade and Development list of relatively least developed countries, the disbursements in a fiscal year are greater than the amount of the annual repayment obligation which that country would have to meet for that fiscal year under the agreement but for the disbursements in accordance with the Food for Development Program, then the disbursements which are in excess of the amount of that annual repayment obligation may, to the extent provided in the agreement, be considered as payments with respect to the annual repayment obligations of that country for that fiscal year under other financing agreements under this Act.".

## TITLE III—COORDINATION AND ADMINISTRATION OF THE DEVELOPMENT-RELATED PROGRAMS AND POLICIES OF THE UNITED STATES

### DECLARATION OF OBJECTIVES

SEC. 301. The Congress declares that the United States Government should place higher priority, in the formulation and implementation of governmental policies, on efforts to help meet the legitimate needs of poor countries for improving the quality of the lives of their populations. The Congress also declares that greater effectiveness and efficiency of United States assistance to such countries can be achieved through improved coordination and administrative consolidation.

### IMPLEMENTATION OF OBJECTIVES

SEC. 302. In furtherance of the objectives set forth in section 301, the Congress directs the President to institute a strengthened system of coordination of all United States economic policies which impact on the developing countries of the world, including but not limited to policies concerning international trade, commodity agreements, investment, debt, international financial institutions, international and multilateral development agencies and programs, and concessional and grant food assistance, in addition to policies concerning United States bilateral economic development assistance.

### REPORT

SEC. 303. The President shall report to the Congress not later than February 1, 1979, on the steps he has taken to implement this title and on any further legislation which may be needed to achieve the objectives of this title.

## TITLE IV—UNIFIED PERSONNEL SYSTEM

### ESTABLISHMENT OF A UNIFIED PERSONNEL SYSTEM

SEC. 401. (a) Not later than March 15, 1979, the President shall submit to the Congress, and publish in the Federal Register, regulations establishing a unified personnel system for all employees of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961. In preparing such regulations, the President shall keep the appropriate committees of the Congress fully and currently informed, and shall consult with them on a regular basis, concerning the nature of the unified personnel system to be established.

(b) The regulations submitted to the Congress pursuant to subsection (a)—

(1) may not become effective until after the end of the 90-day period beginning on the date of such submission in order to provide the appropriate committees of the Congress an opportunity to review them; and

(2) shall not become effective then if, during such 90-day period, either House of Congress adopts a resolution stating in substance that it disapproves the personnel system proposed to be established by the regulations.

(c) Regulations which take effect pursuant to this section shall have the force and effect of law and shall apply with respect to the personnel of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961, notwithstanding any inconsistent provision of law unless that provision of law specifically states that it supersedes regulations issued under this section.

## TITLE V—ADMINISTRATIVE PROVISIONS

### USE OF COMPETITIVE SELECTION PROCEDURES

SEC. 501. Section 601 of the Foreign Assistance Act of 1961 is amended by adding the following new subsection at the end thereof:

"(e)(1) The Congress finds that significantly greater effort must be made in carrying out programs under part I of this Act to award contracts on the basis of competitive selection procedures. All such contracts should be let on the basis of competitive selection procedures except in those limited cases in which the procurement regulations governing the agency primarily responsible for administering part I of this Act allow noncompetitive procedures to be used.

"(2) In order to provide the Congress with information to assist it in assessing the efforts of the agency primarily responsible for administering part I of this Act to make the maximum possible use of competitive selection procedures, the Administrator of that agency—

"(A) when submitting the congressional presentation materials for development assistance for fiscal year 1980, shall also submit to the Congress a report identifying and describing each contract in an amount in excess of $100,000 which the agency entered into without competitive selection procedures during the period April 1, 1978, to September 30, 1978, and explaining why each such contract was not the subject of competitive selection procedures; and

"(B) when submitting the congressional presentation materials for development assistance for fiscal year 1981, shall also submit to the Congress a report identifying and describing each contract in an amount in excess of $100,000 which the agency entered into without competitive selection procedures during the fiscal year 1979 and explaining why each such contract was not the subject of competitive selection procedures.".

### ANNUAL FOREIGN ASSISTANCE REPORT

SEC. 502. (a) Chapter 2 of part III of the Foreign Assistance Act of 1961 is amended—

(1) by striking out "(c)" in section 634 (c) and inserting in lieu thereof "SEC. 633A. "FURNISHING INFORMATION.—" and by inserting such redesignated section immediately after section 633; and

(2) by striking out the remaining provisions of section 634 and inserting in lieu thereof the following:

"SEC. 634. ANNUAL REPORT.—(a) In order that the Congress and the American people may be better and more currently informed regarding United States development policy, including the amounts and effectiveness of assistance provided by the United States Government to developing countries and international organizations, the Chairman of the Development Coordination Committee shall transmit to the Congress not later than February 1 of each year a report on foreign assistance for the fiscal year ending the previous September 30. The report shall include—

"(1)(A) a comprehensive and coordinated review of all United States policies and programs having a major impact on the development of developing countries, including but not limited to bilateral and multilateral assistance, trade, debt, employment, food, energy, technology population, oceans, environment, human settlements, natural resources, and participation in international agencies concerned with development;

"(B) an assessment of the impact of such policies and programs on the well-being of the poor majority in developing countries in accordance with the policy objectives of chapter 1 of part I, including the progress developing countries are making toward achieving those objectives which are indicative of improved well-being of the poor majority, which objectives shall include but not be limited to increasing life expectancy and literacy, lowering infant mortality and birth rates, and increasing food production and employment; and

"(C) an assessment of the impact of such policies and programs on economic conditions in the United States, including but not limited to employment, wages, and working conditions;

"(2) the dollar value of all foreign assistance and guaranties by category and by country provided or made by the United States Government by any means to all foreign countries and international organizations—

"(A) from 1946 to the fiscal year immediately preceding the fiscal year for which the report is required;

"(B) as presented to Congress for the immediate preceding fiscal year;

"(C) as obligated during the immediately preceding fiscal year;

"(D) as planned for the fiscal year in which the report is presented; and

"(E) as proposed for the fiscal year following the year in which the report is presented;

"(3) a summary of repayments, by country, to the United States from previous foreign assistance loans;

"(4) the status of each loan and each contract of guaranty or insurance theretofore made under this Act, predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unpaid obligation or potential liability; the status of each extension of credit for the procurement of defense articles or defense services, and of each contract of guarantee in connection with any such procurement, theretofore made under the Arms Export Control Act with respect to which their remains outstanding any unpaid obligation or potential liability; the status of each sale of agricultural commodities on credit terms, theretofore made under the Agricultural Trade Development and Assistance Act of 1954 with respect to which there remains outstanding any unpaid obligation; and the status of each transaction with respect to which a loan, contract or guarantee of insurance, or extension of credit (or participation therein) was theretofore made under the Export-Import Bank Act of 1945 with respect to which there remains outstanding any unpaid obligation or potential liability; except that such report shall include individually only any loan, contract, sale, extension of credit, or other transaction listed in this paragraph which is in excess of $1,000,000;

"(5)(A) the status of the debt servicing capacity of each country receiving assistance under this Act;

"(B) all forms of debt relief granted by the United States with respect to such countries, together with a detailed statement of the specific debt relief granted with respect to each such country and the purpose for which it was granted; and

"(C) a summary of the net aid flow from the United States to such countries, taking into consideration the debt relief granted by the United States; and

"(6) such other matters relating to foreign assistance provided by the United States Government under part I as the Chairman of the Development Coordination Committee considers appropriate.

"(b) For purposes of this section—

"(1) 'foreign assistance' means any tangible or intangible item provided by the United States Government to a foreign country or international organization under this or any other Act, including but not limited to any training, service, or technical advice, any item of real, personal, or mixed property, any agricultural commodity, United States dollars, and any currencies of any foreign country which are owned by the United States Government; and

"(2) 'provided by the United States Government' includes, but is not limited to, foreign assistance provided by means of gift, loan, sale, credit, or guaranty.".

(b) Part III of the Foreign Assistance Act of 1961 is amended by redesignating section 671 as section 634A and by inserting such redesignated section immediately after section 634.

(c) Part III of such Act, as amended by subsection (b) of this section, is further amended by adding the following new section immediately after new section 634A:

"SEC. 634B. CLASSIFICATION OF REPORTS.—All information contained in any report transmitted under this Act shall be public information. However, in the case of any item of information to be included in any such report that the President, on an extraordinary basis, determines is clearly detrimental to the security of the United States, he shall explain in a supplemental report why publication of each specific item would be detrimental to the security of the United States. A supplemental report shall be transmitted to the Congress at the time the report is transmitted.".

(d)(1) Title XI of chapter 2 of part I and sections 120(d), 222A(j), 495C(e), 620(w), 621A(c), 640B(d), and 657 of the Foreign Assistance Act of 1961 are repealed.

(2) Section 640B(g) of such Act is amended by striking out "subsection (d), the President" and inserting in lieu thereof "section 634, the Chairman of the Committee".

REIMBURSABLE TECHNICAL ASSISTANCE

SEC. 503. Section 607 of the Foreign Assistance Act of 1961 is amended by redesignating subsection (b) as subsection (c) and by inserting the following new subsection (b) immediately after subsection (a):

"(b) When any agency of the United States Government provides services on an advance-of-funds or reimbursable basis under this section, such agency may contract with individuals for personal service abroad or in the United States to perform such services or to replace officers or employees of the United States Government who are assigned by the agency to provide such services. Such individuals shall not be regarded as employees of the United States Government for the purpose of any law administered by the Civil Service Commission.".

AUDITOR GENERAL

SEC. 504. Section 624 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(g)(1) In addition to the officers provided for in subsection (a) of this section, there shall be an Auditor General who shall be appointed by the Administrator of the agency primarily responsible for administering part I of this Act. The Auditor General shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(2) The Auditor General shall report to and be under the direct supervision of the Administrator.

"(3) The Auditor General shall, with respect to the duties and responsibilities of the agency primarily responsible for administering part I of this Act and subject to the authority of the Administrator of such agency, supervise, direct, and control all audit and investigative activities relating to the programs and operations of the agency.

"(4) The Auditor General shall submit an annual report to the Administrator. This report shall be provided to the Congress without further clearance or approval as part of the annual report required by section 634 of this Act.

"(5) In the execution of the responsibilities and duties assigned in paragraph (3) of this subsection, the Auditor General shall have (A) access to all records, reports, papers, and documents of the agency and its administrative subdivisions, and (B) authority to request such information or assistance as necessary for carrying out the duties set forth in this subsection from any Federal, State, or local governmental agency or unit thereof, and from contractors, grantees, and loan recipients of the agency.".

MOTOR VEHICLES

SEC. 505. Section 636(a)(5) of the Foreign Assistance Act of 1961 is amended by striking "$3,500" and inserting in lieu thereof "the current market price in the United States of a mid-sized sedan or station wagon meeting the requirements established by the General Services Administration for a Class III vehicle of United States manufacture (or, if the replacement vehicle is a right-hand drive vehicle, 120 percent of that price)".

OPERATING EXPENSES

SEC. 506. Section 667(a) of the Foreign Assistance Act of 1961 is amended—

(1) in the text preceding paragraph (1) by striking out "1978" and inserting in lieu thereof "1979"; and

(2) in paragraph (1) by striking out "$220,200,000" and inserting in lieu thereof "$261,000,000".

## TITLE VI—MISCELLANEOUS PROVISIONS

REDUCTION OF AUTHORIZATION

SEC. 601. The total funds authorized to be appropriated in this Act (excluding funds authorized to be appropriated to carry out section 214 of the Foreign Assistance Act of 1961) shall be reduced by 5 percent.

PROHIBITIONS ON ASSISTANCE TO VIETNAM, CAMBODIA, UGANDA, AND CUBA

SEC. 602. Notwithstanding any other provision of law or of this Act, funds authorized to be appropriated in this Act shall not be used for any form of aid, either by monetary payment or by the sale or transfer of any goods of any nature, to the Socialist Republic of Vietnam, Cambodia, Uganda, or Cuba.

REPORTS TO CONGRESS ON DEBT RELIEF AGREEMENTS

SEC. 603. (a)(1) The Secretary of State shall keep the Committee on Foreign Relations of the Senate, the Committee on International Relations of the House of Representatives, and the Committee on Appropriations of each House of the Congress fully and currently informed of any negotiations with any foreign government with respect to any cancellation, renegotiation, rescheduling, compromise, or other form of debt relief (including any modification of the terms, conditions, or manner of repayment), with regard to any debt owed to the United States by such foreign government.

(2) The Secretary of State shall transmit to such committees a copy of the text of any agreement with any foreign government which would result in any such debt relief no less than thirty days prior to its entry into force, together with a detailed justification of the interest of the United States in the proposed debt relief. The requirements of this paragraph shall not apply with respect to an agreement if a statutory requirement exists that the amount of the debt relief provided by the agreement may not exceed the amount approved for such purposes in advance in an appropriation Act.

(b) Section 4 of the Foreign Disaster Assistance Act of 1974 is repealed.

MISCELLANEOUS REPEALS

SEC. 604. Sections 302(d), 302(e), 302(f), 302(g), 302(h), 304, 494A, 495A, 618, 619, 637(a), 649, 651, 655, 656, 658, and 665, and chapters 6 and 7 of part I, of the Foreign Assistance Act of 1961 are repealed.

EFFECTIVE DATE

SEC. 605. The amendments made by this Act shall take effect on October 1, 1978.

And the Senate agree to the same.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
CHARLES C. DIGGS, Jr.,
LEE H. HAMILTON,
JONATHAN B. BINGHAM,
MICHAEL HARRINGTON,
STEPHEN J. SOLARZ,
WM. BROOMFIELD,
PAUL FINDLEY,
LARRY WINN, Jr.,
*Managers on the Part of the House.*

JOHN SPARKMAN,
FRANK CHURCH,
DICK CLARK,
J. R. BIDEN,
CLIFFORD P. CASE,
JACOB K. JAVITS,
CHARLES H. PERCY,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12222) to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that act and the Agricultural Trade Development and Assistance Act of 1954, to improve the coordination and administration of U.S. development-related policies and programs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

The conference substitute contains authorizations for fiscal year 1979 appropriations of $1,795 million for bilateral economic assistance programs. The amount authorized to be appropriated in the conference substitute is $38.1 million less than the total House authorization, $49.4 million more than the total Senate authorization, and $43.5 million less than the original executive branch request.

The amount contained in the conference substitute compared to the amounts requested by the executive branch and recommended by the House and Senate follow:

AUTHORIZATION OF APPROPRIATION FOR FISCAL YEAR 1979

[In millions of dollars]

| Program | Executive branch request for fiscal year 1979 | House bill | Senate amendment | Conference substitute |
|---|---|---|---|---|
| Bilateral development assistance: | | | | |
| Agriculture, rural development, and nutrition | 673.2 | 673.2 | 665.2 | 665.2 |
| Population planning | 205.4 | 225.4 | 224.8 | 224.8 |
| Health | 148.5 | 148.5 | 144.0 | 148.5 |
| Education and human resources development | 109.0 | 109.0 | 98.2 | 109.0 |
| Technical assistance, energy, research reconstruction, and selected development problems | 126.2 | 126.2 | 126.2 | 126.2 |
| American schools and hospitals abroad | 8.0 | 25.0 | 25.0 | 25.0 |
| International organizations and programs | 282.2 | 283.5 | 290.1 | 285.5 |
| World assembly on aging | 0 | 1.0 | 1.0 | 1.0 |
| International disaster assistance | 25.0 | 25.0 | (1) | 25.0 |
| Locust control | 0 | 0 | 2.0 | 2.0 |
| Assistance to African refugees | 0 | 15.0 | 0 | 15.0 |
| Operation expenses (AID) | 261.0 | 261.0 | 261.0 | 261.0 |
| Subtotal | 1,838.5 | [2] 1,892.8 | 1,837.5 | 1,888.2 |
| Reductions | 0 | [3] 59.7 | [4] 91.9 | [5] 93.0 |
| Total | 1,838.5 | 1,833.1 | 1,745.6 | 1,795.0 |

[1] Senate amendment authorized "such amounts as may be necessary."
[2] House bill also included $1,855,000,000 for the economic support fund for fiscal year 1979, but the fund was included in the conference on S. 3075, the International Security Assistance Act of 1978.
[3] 5-percent cut, to be applied to each sum except for agriculture, rural development and nutrition and American schools and hospitals abroad.
[4] 5-percent cut, to be applied against the total funds authorized.
[5] 5-percent overall cut as required under the Senate amendment, except for the exemption for American schools and hospitals abroad provided in the House bill.

SHORT TITLE

The House bill cited the act as the "International Development and Food Assistance Act of 1978."

The Senate amendment cited the act as the "International Development Assistance Act of 1978."

The conference substitute is the same as the House provision.

DEVELOPMENT ASSISTANCE POLICY STATEMENTS

*Efficient utilization of energy*

The Senate amendment included as one of the principles to guide bilateral development assistance the statement that U.S. assistance shall recognize that the prosperity of developing countries and effective development efforts require the adoption of an overall strategy that promotes efficient utilization of energy and that U.S. assistance shall consider the full implications of such assistance on the price, availability, and consumption of energy in recipient countries.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

*Use of private sector "free labor unions"*

The House bill provided that, to the maximum extent possible, U.S. development efforts should be carried out through the private sector, including those institutions which already have ties in developing areas.

The Senate amendment stated the same policy and added "free labor unions" to the illustrative list of private sector institutions.

The conference substitute is the same as the Senate provision.

*Private investment*

The House bill stated that the development programs to which the United States lends support should reflect, to the maximum extent possible, the role of U.S. private investment.

The Senate amendment stated that, to the maximum extent practicable, U.S. private investment should be encouraged in development programs to which the United States lends support.

The conference substitute is the same as the Senate provision.

*Large-scale capital transfers*

The House bill stated that U.S. bilateral assistance should be concentrated on projects which do not involve large-scale capital transfers, but if such transfers are involved, they should be in a multilateral framework.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

*Absolute poverty*

The House bill encourages the President to explore with other countries the feasibility of a worldwide cooperative effort to overcome the worst aspects of absolute poverty and to assure self-reliant growth in the developing countries by the end of the century.

The Senate amendment did not contain a comparable provision.

Th conference substitute is the same as the House provision.

PRIVATE AND VOLUNTARY ORGANIZATIONS AND COOPERATIVES

The Senate amendment included a statement of policy (1) favoring an increase in development assistance activities by private and voluntary organizations and cooperatives without compromising their private and independent nature; (2) declaring the desirability of supplementing their resources with public funding for development activities; and (3) urging the Agency for International Development to draw on the resources of private voluntary organizations and cooperatives.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

REPEAL OF PROHIBITION ON ECONOMIC SUPPORT (ESF) RECIPIENTS RECEIVING DEVELOPMENT ASSISTANCE

The House bill repealed section 115 of the Foreign Assistance Act of 1961, which prohibits, without express congressional approval, the use of both development and ESF funds in the same country in the same fiscal year.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

The committee of conference expects that development assistance and economic support funds will be provided to the same country in the same fiscal year only in exceptional circumstances. The committee further expects that any development assistance funds used in countries receiving economic support funds will be fully justified in congressional presentation materials and will meet all criteria established in the Foreign Assistance Act for development assistance projects and programs. In repealing section 115, the committee of conference noted that under the prior notification procedures of section 671 of the Foreign Assistance Act of 1961 (which becomes section 634A under this bill), the House Committee on International Relations and the Senate Committee on Foreign Relations are to be notified of any proposal to modify programs justified to Congress in the annual presentation materials, including proposals that would result in the provision of development assistance and economic support funds to the same country in the same fiscal year.

FORESTRY AND SOIL CONSERVATION

The Senate amendment amended section 103(b)(1) of the Foreign Assistance Act of 1961, relating to assistance for agriculture, rural development, and nutrition, to include forestry and soil conservation in the exam-

ples of services and supplies needed by farmers.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

AGRICULTURAL RESEARCH

The Senate amendment amended section 103A(2) of the Foreign Assistance Act of 1961, relating to agricultural research, to add "environmental" factors to the list of factors affecting small farmers which shall be subjects for research carried out under that act.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

POPULATION AND HEALTH

*Contribution to World Health Organization's special program of research, development, and research training in human reproduction*

The Senate amendment earmarked $4.5 million for fiscal year 1979 to support the World Health Organization's special program of research, development, and research training in human reproduction.

The House bill did not contain a comparable earmark. The House International Relations Committee, however, recommended in its report on this bill that the Agency for International Development make a direct contribution of $4.5 million from the population account to the World Health Organization.

The conference substitute is the same as the House position. The committee of conference reiterates the directive contained in both the House report and the Senate amendment to the effect that the Agency for International Development contribute $4.5 million from the population account to the World Health Organization's special program of research, development, and research training in human reproduction.

*Prohibition on funding for abortions and involuntary sterilizations*

The House bill transferred the prohibitions now in section 114 of the Foreign Assistance Act of 1961 to section 104. In doing so, it made a grammatical change, substituting "None of the funds * * * may be used" for "None of the funds * * * shall be used" in two instances. This change does not alter the meaning of the prohibitions. The House bill also changed the prohibition on the use of funds as a financial incentive to "practice sterilization" to a prohibition on the use of funds as a financial incentive to "undergo sterilization."

The Senate amendment retained section 114 of the Foreign Assistance Act of 1961 without change.

The conference substitute is the same as the House provisions.

*Health assistance authorization*

The House bill authorized assistance under section 104(e) of the Foreign Assistance Act of 1961 for health, health education, disease prevention, and environmental sanitation.

The Senate amendment created a separate subsection for assistance for health and disease prevention activities.

The conference substitute is a compromise provision which maintains health and population authorizations in the same section. The provision authorizes assistance for health programs, to be used primarily for basic integrated health services, safe water and sanitation, disease prevention and control, and related health planning and research. It also requires that planning for health and population assistance programs be coordinated with appropriate food and nutrition programs and states that to the maximum extent practicable research be carried out in developing countries.

The committee of conference noted that the new statement of health policy is intended to emphasize the continuing role and responsibility of the Agency for International Development as the primary source of U.S. health assistance to developing countries.

WOMEN IN DEVELOPMENT

The House bill directed that up to $10 million be used for assistance to promote the participation of women in the economies of developing countries, with emphasis on programs which increase income and economic productivity and which strengthen the capacity of women and women's organizations to participate in development activities.

The Senate amendment was similar to the House provision, without specific reference to providing net increases in income or strengthening women's organizations.

The conference substitute is the same as the Senate provision. The committee of conference intends that the $10 million funding provided in this section be used to further programs to involve women in the development process, including technical support to Agency for International Development missions to help them implement this section, assistance where appropriate to indigenous women's organizations in developing countries, and dissemination of relevant research findings and data.

HUMAN RIGHTS

The House bill authorized and encouraged the President to use not less than $1.5 million of development assistance funds in fiscal year 1979 for programs and activities to encourage or promote increased adherence to civil and political rights, as set forth in the Universal Declaration of Human Rights.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

ENVIRONMENT AND NATURAL RESOURCES

The House bill directed the President to carry out studies to identify the major environment and natural resource problems, and the institutional capabilities to solve those problems, which exist in developing countries. The results of these studies were to be reported to Congress.

The Senate amendment included the same directive. In addition, it required that the studies indicate what the Agency for International Development is doing to assist developing nations to create environmental protection institutions, and that no less than $1.5 million would be used for the studies.

The conference substitute is the same as the House provision.

ENERGY TECHNOLOGIES

*Relationship to other agencies and programs*

The Senate amendment revised section 119 of the Foreign Assistance Act of 1961 relating to renewable and unconventional energy technologies, to provide that the Agency for International Development shall coordinate with the Department of Energy, to the maximum extent possible, the planning and implementation of energy programs authorized under chapter 1, part 1, of the Foreign Assistance Act including section 107, and shall consult with the Department of Energy on such planning and implementation.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

*Increasing awareness of energy programs*

The Senate amendment directed the Agency for International Development to insure that each country mission be aware of the programs available under section 119 and, to the extent practicable, that at least one officer at each mission be properly trained on how to identify energy needs and to develop, in conjunction with experts, energy programs.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position. The committee of conference urges the Agency for International Development to insure that each of its missions has personnel who are knowledgeable about the Agency's energy program and are capable of identifying energy needs and of developing energy programs in conjunction with experts.

RELATIVELY LEAST DEVELOPED COUNTRIES

The Senate amendment established a new section of the Foreign Assistance Act of 1961 setting forth special policies to guide assistance to the relatively least developed countries. The new section:

(1) Contained a statement that relatively least developed countries (RLDC's), as determined on the basis of criteria comparable to those used for the U.N. General Assembly list of least developed countries, are characterized by extreme poverty, very limited infrastructure, and limited administrative capacity which may require special measures to insure the full effectiveness of development assistance.

(2) Provided that assistance to RLDC's should be on a grant basis (similar to existing section 102(e) of the Foreign Assistance Act).

(3) Provided that prior assistance to RLDC's should be made consistent with present grant assistance and, therefore, authorized the President, on a case-by-case basis, (*a*) to permit payments on principal or interest of development assistance loans to be used for development activities, and (*b*) to waive interest payments on these loans if the President determined the country would be unable to use the funds for developmental purposes. The Senate amendment provided that amounts waived or paid into local currency accounts must be authorized and appropriated annually; that this authority should be used in concert with other creditor countries; and that this new authority would not become effective until fiscal year 1980.

(4) Provided that the President may, on a case-by-case basis, waive the requirement of section 110(a) for financial or "in kind" contributions by a recipient RLDC government (similar to the RLDC exemption in section 110(a) of the Foreign Assistance Act).

(5) Shifted language of section 110(b) of the Foreign Assistance Act, which exempts RLDC's from the 36-month limitation on grant project assistance, to this new section.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

PROJECT AND PROGRAM EVALUATION

The Senate amendment directed the Administrator of the Agency for International Development to improve the Agency's assessment and evaluation procedures. The amendment also required the President to report to Congress on the evaluation procedures of the international financial institutions and the United Nations Development Program.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

AMERICAN SCHOOLS AND HOSPITALS ABROAD

The House bill provided that assistance under the American schools and hospitals abroad program not be furnished in any fiscal year to more than four institutions in the same country, only one of which may be a hospital and one a university, excluding any institution receiving such assistance as of September 30, 1978.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the Senate position. The committee of conference feels that the programs carried out under section 214 of the Foreign Assistance Act of 1961, authorizing the American schools and hospitals abroad program, have proliferated beyond what the Congress intended when it first authorized the program in 1959. As a result, the authority to assist schools and hospitals abroad has been administratively expanded and the original legislative goal of supporting institutions of excellence which can be clearly identified as American institutions is not always being achieved in practice.

Although the committee of conference did not accept the House provision limiting assistance under this program to a certain number of institutions in any one country in a given year, it is intended that any new programs be restricted to those institutions which serve as demonstration centers for American ideas and practices in education and health.

The committee of conference noted with approval recent steps the Agency for International Development has taken toward this end. In particular, the committee of conference supported the concept of establishing criteria for project selection for the American schools and hospitals abroad program. The Agency for International Development should continue its efforts to define these criteria and complete such work seasonably in the coming fiscal year.

During the coming fiscal year, the Committee on International Relations and the Committee on Foreign Relations will pay particular attention to Agency actions to insure that the standards set forth are applied in project selection. To insure that this program encourages the spread of American ideas and practices on a worldwide oasis, special consideration should be given to programs meeting established criteria of excellence which also increase the geographic distribution of the program.

SOLAR ENERGY FOR HOUSING GUARANTY PROGRAM

The House bill directed consideration to be given in housing guaranty projects to solar energy. The provision covered not just the use but also the conservation of energy and stated that such consideration should be given where the technologies are economically and technically feasible.

The Senate amendment directed consideration to be given to the use of solar energy in housing guaranty projects which require the use of an energy source.

The conference substitute is the same as the House provision.

ASSISTANCE TO DISADVANTAGED CHILDREN AND ORPHANS

The Senate amendment authorized up to $2 million in development assistance funds for assistance to disadvantaged children in Asia, particularly those fathered by American citizens in countries where there has been, or continues to be, a large U.S. military presence. This assistance is to be furnished through international organizations and private voluntary agencies.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision. The committee of conference intends that up to $150,000 of the funds made available under this provision be used for the verification of birth records of children in Thailand born of American fathers and Asian mothers.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

*U.N. Trust Fund on South Africa*

The House bill earmarked $300,000 of the funds authorized for section 302(a) of the Foreign Assistance Act of 1961, which authorizes appropriations for voluntary contributions to international organization and programs, for a contribution to the United Nations Trust Fund on South Africa.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

*UN Institute for Namibia*

The House bill provided that none of the funds available under section 302(a) of the Foreign Assistance Act of 1961 for fiscal year 1979 may be used for the United Nations Institute for Namibia unless the President determines that funds contributed will not be used to support the activities of the South-West African People's Organization (SWAPO)

The Senate amendment did not contain a comparable provision

The conference substitute incorporates the House provision with an amendment to require a Presidential determination that funds contributed to the U.N. Institute for Namibia will not be used to support the military or paramilitary activities of SWAPO.

*U.N. University*

The Senate amendment provided that none of the funds authorized to be appropriated under section 302(a) of the Foreign Assistance Act of 1961 be expended for contribution to the United Nations University.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position.

*Relief and Works Agency for Palestine Refugees (UNRWA)*

The Senate amendment (*a*) increased the ceiling on the fiscal year 1978 U.S. contribution UNRWA by $9.5 million; (*b*) put a $52 million ceiling on a fiscal year 1979 U.S. contribution to UNRWA, with contributions above $42 million to be made available only upon Presidential determination of matching contributions from members of the Organization of Petroleum Exporting Countries; and (*c*) required a report from the Secretary of State by January 31, 1979, on improvements in the UNRWA ration distribution system.

The House bill did not contain comparable provisions.

The conference substitute is the same as the Senate provisions.

*U.N. Development Program Disaster Preparedness and Prevention Trust Fund*

The Senate amendment earmarked not to exceed $5 million for a Disaster Preparedness and Prevention Trust Fund to be administered by the United Nations Development Program.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position.

The committee of conference agreed not to provide the funds for this purpose pending completion of a United Nations study of the scope and magnitude of assistance required by the world's most disaster-prone nations. The committee of conference noted the urgent need to improve the capability of governments of poor, disaster-prone nations to manage international disaster assistance efforts and to develop their capacity to prevent disasters from affecting the lives and property of their people. If a U.N.-sponsored Disaster Preparedness and Prevention Trust Fund is agreed upon, the committee of conference urges the President to give careful consideration to requesting authorization of appropriations of funds for a U.S. contribution to the Fund. The committee of conference believes that such an international program would be complementary to international disaster preparedness efforts now being undertaken by the United States and would enlist other nations in sharing the burden.

*U.N. Development Program Technical Assistance*

The Senate amendment stated the sense of Congress that U.S. representatives to the United Nations encourage the U.N. specialized agencies to transfer funding of their technical assistance programs to the United Nations Development Program.

The House bill did not contain a similar provision.

The conference substitute is the same as the House provision.

INTERNATIONAL DISASTER ASSISTANCE

*General policy*

The Senate amendment added to present policy language on international disaster assistance in the Foreign Assistance Act of 1961, a statement that disaster assistance symbolizes U.S. humanitarian concern for those in need abroad and constitutes an important element in U.S. foreign relations and aid.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position.

*Assistance for reconstruction*

The Senate amendment added reconstruction to the existing purposes (relief and rehabilitation) of the disaster assistance program.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position.

*Private voluntary organization*

The Senate amendment added "private voluntary agency" as a vehicle for distributing assistance to the existing authorities for disaster assistance to foreign countries and international organizations.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provisions.

*Funding*

The House bill authorized an appropriation of $25 million for fiscal year 1979.

The Senate amendment established an International Disaster Assistance Fund with permanent authorization for appropriations of "such amounts as may be necessary."

The conference substitute is the same as the House provision.

RELIEF AND REHABILITATION ASSISTANCE FOR TURKEY

The Senate amendment amended section 495D of the Foreign Assistance Act of 1961, to allow use of funds made available for disaster assistance for Turkey to be used for disaster-related scientific equipment.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position. However, the committee of conference recognizes the desirability of using international disaster assistance funds for disaster preparedness and prediction and contingency planning for natural disasters abroad such as earthquakes and other calamities, as well as for relief and rehabilitation after a disaster has occurred.

ASSISTANCE TO AFRICAN REFUGEES

The House bill authorized $15 million in disaster assistance funds for relief and rehabilitation of refugees and other needy people in Africa.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

LOCUST CONTROL IN AFRICA

The Senate amendment authorized $2 million, in addition to amounts otherwise authorized for disaster relief purposes, for assistance in efforts to control locust plagues in Africa, especially in the Horn of Africa.

The House bill contained no comparable provision.

The conference substitute is the same as the Senate provision.

AFRICAN DEVELOPMENT FOUNDATION

The Senate amendment directed the President to report to Congress by February 1, 1979, on steps taken to review proposals for establishing an African Development Foundation, and to submit thereafter legislation to establish such a foundation.

The House bill did not contain a comparable provision.

The conference substitute requests the President to report by February 1, 1979, on the steps he has taken to review proposals for an African Development Foundation.

REPORTS ON EXCHANGES OF MATERIALS

The House bill required the President to report by February 1 of each year on steps taken to implement section 663 of the Foreign Assistance Act of 1961, which provides for the furnishing of foreign assistance in return for receipt of raw materials.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the Senate position.

IMPROVED COORDINATION AND ADMINISTRATIVE CONSOLIDATION

The House bill included a provision calling for improved coordination and administrative consolidation of U.S. development assistance programs. The provision declared that the U.S. Government should place higher priority on helping to meet the needs of poor countries and on greater effectiveness and efficiency through improved coordination and administrative consolidation of U.S. development assistance programs.

The House bill directed the President to institute a strengthened system of coordinating U.S. economic policies impacting on developing nations and to establish an International Development Cooperation Administration (IDCA) with primary responsibility for coordinating international development activities. The maximum range of such programs was to be placed under IDCA.

The House bill also required a Presidential report on implementation of these provisions by February 1, 1979.

The Senate amendment did not contain a comparable provision.

The conference substitute declares that the U.S. Government should place higher priority on helping to meet the needs of poor countries and on greater effectiveness and efficiency through improved coordination and administrative consolidation of U.S. development assistance programs. It directs the President to institute a strengthened system of coordination of U.S. economic policies which impact on developing nations and requires that he submit a report on implementation of these provisions by February 1, 1979.

The committee of conference urges the President to consider establishing an International Development Cooperation Administration, to supersede the Agency for International Development, which would have, subject to the foreign policy guidance of the Secretary of State, primary responsibility within the U.S. Government for coordination of international development-related activities and which would have within its organizational framework the maximum possible range of U.S. Government agencies and programs related to international development.

UNIFIED PERSONNEL SYSTEM

The House bill required the President to submit by February 1, 1979, regulations establishing a unified personnel system for the Agency for International Development, and in preparing such regulations, to keep the appropriate congressional committees informed. The regulations would not become effective until 30 days after they are submitted to Congress and could be vetoed by either House.

The Senate amendment did not contain a comparable provision.

The conference substitute incorporates the House provision with amendments to (*a*) set March 15, 1979, as the date by which the new personnel plan shall be submitted to Congress; (*b*) provide 90 days for congressional review; and (*c*) removes the provision allowing the Executive to alter the new regulations after they are issued.

The committee of conference declares that the new unified personnel system should be consistent with the President's civil service reform program. In general, it should be based primarily on existing provisions of law governing the Foreign Service personnel system (or where appropriate, with civil service authorities), and should be designed to meet the particular requirements of the Agency for International Development (or its successor agency), which include the need to have its personnel serve overseas and meet language and technical skill requirements.

USE OF COMPETITIVE SELECTION PROCEDURES

The House bill encouraged the Agency for International Development to make greater use of competitive procurement practices in the Agency's procurement process and required a report in the fiscal year 1980 and fiscal year 1981 congressional presentation documents.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

HUMAN RIGHTS REPORTS

*Submission of report*

The House bill retained section 116(d) of the Foreign Assistance Act of 1961 which directs the Secretary of State to make a separate annual report on human rights conditions in countries receiving development assistance.

The Senate amendment replaced the reporting requirements in section 116(d) of the Foreign Assistance Act with the requirement that the Chairman of the Development Coordination Committee include in his annual consolidated report to Congress the status of human rights in countries receiving development assistance.

The conference substitute is the same as the House provision.

*Countries covered by reports*

The House bill amended section 116(d)(1) of the Foreign Assistance Act of 1961 to include in the annual human rights report on recipients of development assistance those countries currently eligible for development assistance or that might become eligible if the requirements for eligibility were modified.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the Senate position.

REPORTING ON AGRICULTURAL DISINCENTIVES

The House bill required a description in the annual consolidated report of the governmental policies of each country receiving assistance which are disincentives to increasing such country's agricultural production and a description and evaluation of each country's efforts toward eliminating such governmental policies.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the Senate position. A separate report on this matter in addition to those already required would cause unnecessary and to some extent repetitive paperwork. However, it is the intent of the committee of conference that the substance of the information required by the House provision be included in the material which is submitted pursuant to section 634(a)(1)(B) of the Foreign Assistance Act of 1961 as part of the annual consolidated report to the Congress.

COMPETITIVE IMPACT REPORT

The Senate amendment required the Secretary to give full consideration, before extending aid with funds authorized to be appropriated by this legislation, to the extent of the likely adverse impact of such aid on U.S. industries and employment either by reducing demand for U.S. goods or increasing imports into the United States. The U.S. International Trade Commission would be required to report annually on the impact of such aid on U.S. industries and employment and make recommendations in the report concerning areas of aid which adversely affect domestic U.S. industries and employment.

The House bill did not contain a comparable provision.

The conference substitute is the same as the House position.

A similar report will be required by section 634 of the Foreign Assistance Act, as amended by this legislation.

REIMBURSABLE TECHNICAL ASSISTANCE

The House bill exempted from agency personnel ceilings those persons hired temporarily to perform services or to replace employees performing services under a reimbursable technical assistance program.

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

AUDITOR GENERAL

The Senate amendment established a statutory position of Auditor General for the Agency for International Development (AID) who would:

(1) Be appointed by the AID Administrator and compensated at Executive Level V;

(2) Report directly to the AID Administrator;

(3) Supervise, direct, and control all audit and investigative activities relating to the programs and operations of the Agency;

(4) Submit an annual report to the Administrator, which report would be provided to the Congress without further clearance or approval as part of the annual report required by section 634 of the Foreign Assistance Act of 1961; and

(5) In the execution of the responsibilities and duties described in paragraph (3) above, have access to all records, reports, papers, and documents of the Agency and its administrative subdivisions, as well as the authority to request such information or assistance as necessary for carrying out his duties from any Federal, State, or local governmental agency or unit thereof, and from contractors, grantees, and loan recipients of AID.

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

5-PERCENT REDUCTION

The House bill provided for a 5-percent reduction of each sum in the bill, with the exception of sections 103 (agriculture, rural development, and nutrition) and 111 (American schools and hospitals abroad) in title I.

The Senate amendment provided for a 5-percent reduction in the total funds authorized in the bill.

The conference substitute provides for a 5-percent reduction in total funds authorized in this bill, excluding funds for the American schools and hospitals abroad program.

PROHIBITION ON AID TO VIETNAM, CAMBODIA, UGANDA, OR CUBA

The House bill contained a provision prohibiting the use of funds authorized to be appropriated in this act for any form of aid or trade, directly or indirectly, to Vietnam, Cambodia, Uganda, or Cuba.

The Senate amendment contained a similar provision but it did not mention trade or specify that assistance either "directly or indirectly" to the four countries be prohibited.

The conference substitute is the same as the Senate provision. The committee of conference intends that the prohibition not apply to assistance to students from Uganda now completing their studies at U.S. institutions.

PRIOR REVIEW OF DEBT MODIFICATION AGREEMENTS

The Senate amendment required the Secretary of State to transmit to the Senate Foreign Relations Committee, the House International Relations Committee, and the Committee on Appropriations of each House of the Congress a copy of any proposed agreement with any foreign government that would modify the terms, conditions, or manner of repayment of any foreign governmental debt owed to the United States, together with a detailed justification of the U.S. interest in the proposed modification, at least 30 days prior to the date of its entry into force. Exempt from this provision were any proposed agreements subject to a statutory requirement that the amount of the debt so canceled, rescheduled, or otherwise modified could not exceed the amount approved in advance in an appropriation act. The Senate amendment also repealed section 4 of the Foreign Disaster Assistance Act of 1974 which deals with debt relief or submission of agreements prior to execution.

The House bill did not contain a comparable provision.

The conference substitute incorporates the Senate provision, with an amendment requiring the Secretary of State to keep the Senate Foreign Relations Committee, the House International Relations Committee, and the Appropriation Committees informed of such debt negotiations.

REPEALS OF OUTDATED SECTIONS OF THE FOREIGN ASSISTANCE ACT OF 1961

*Section 302(h)*

The House bill repealed section 302(h) of the Foreign Assistance Act of 1961 requiring certification that the United Nations Education, Scientific, and Cultural Organization (UNESCO) has taken steps to correct certain policies (the certification has been received).

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

*Section 494A*

The House bill repealed section 494A of the Foreign Assistance Act of 1961, requiring a report on solutions to problems of famine in the Sahel (the report has been received).

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

*Section 495A*

The House bill repealed section 495A of the Foreign Assistance Act of 1961, requiring reports on programing of funds for Guatemala relief. (The funds have been obligated and the reports received.)

The Senate amendment did not contain a comparable provision.

The conference substitute is the same as the House provision.

*Section 651*

The Senate amendment repealed section 651 of the Foreign Assistance Act of 1961, urging the sale of supersonic planes to Israel following the 1967 Middle East war (the planes were sold to Israel).

The House bill did not contain a comparable provision.

The conference substitute is the same as the Senate provision.

ANTITERRORISM

The Senate amendment prohibited the use of funds authorized to be appropriated by this legislation for aid to any nation which supports or harbors any terrorist groups or fails to take appropriate measures to prevent such groups from incursions into the territories of others.

The House bill did not contain a camparable provision.

The conference substitute is the same as the House position.

The committee of conference notes that the Foreign Assistance Act of 1961 already contains a similar provision, section 620A, which provides that,

* * * the President shall terminate all assistance under this act to any government which aids or abets, by granting sanctuary from prosecution, to any individual or group which has committed an act of international terrorism and the President may not thereafter furnish assistance to such government until the end of the 1-year period * * *.

The committee of conference also notes that S. 2236, an act to combat international terrorism, which includes the imposition of sanctions against states which support terrorism, is on the Senate calendar.

ECONOMIC SUPPORT FUND

The House bill amended the Foreign Assistance Act of 1961 to include a new chapter 11 in part I (relating to economic assistance). The amendment established an Economic Support Fund (ESF) program as a successor to the current security supporting assistance program which is in chapter 4 of part II (relating to security assistance) of that act, and authorized appropriation of $1,855 million (less 5 percent) for ESF in fiscal year 1979.

The Senate amendment did not contain a comparable provision. However, the Senate amended chapter 4 of part II of the Foreign Assistance Act for the same purposes in a separate bill, S. 3075, the International Security Act of 1978.

The conference substitute is the same as the Senate position, in that ESF is not included in H.R. 12222. The committee agreed that for fiscal year 1979, ESF should be included in the conference report on S. 3075. At the same time, the House conferees continued to believe that, for substantive reasons as expressed in House Report 95–1087 (pp. 13 and 36–37) and elsewhere in the legislative history of H.R. 12222, the ESF in the future should be contained in foreign economic assistance authorizing legislation and should be transferred to part I of the Foreign Assistance Act. The Senate conferees stated that they will consider the House position again next year.

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## CONFERENCE REPORT ON S. 3075, INTERNATIONAL SECURITY ASSISTANCE ACT OF 1978

Mr. ZABLOCKI submitted the following conference report and statement on the Senate bill (S. 3075) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 95–1546)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3075) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "International Security Assistance Act of 1978".

CONTINGENCY FUND

SEC. 2. Section 451(a) of the Foreign Assistance Act of 1961 is amended by striking out "fiscal year 1978 not to exceed $5,000,000" and inserting in lieu thereof "fiscal year 1979 not to exceed $5,000,000".

INVOLVEMENT OF UNITED STATES PERSONNEL IN NARCOTICS CONTROL ENFORCEMENT ACTIVITIES ABROAD

SEC. 3. Section 481(c)(1) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new sentences: "No such officer or employee may interrogate or be present during the interrogation of any United States person arrested in any foreign country with respect to narcotics control efforts without the written consent of such person. The provisions of this paragraph shall not apply to the activities of the United States Armed Services in carrying out their responsibilities under applicable Status of Forces arrangements.".

USE OF HERBICIDES TO ERADICATE MARIHUANA

SEC. 4. Section 481 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(d)(1) Assistance authorized by this chapter may not be made available or used for any program involving the spraying of a herbicide to eradicate marihuana plants if the use of that herbicide is likely to cause serious harm to the health of persons who may use or consume the sprayed marihuana. This prohibition shall not apply if the herbicide is used in conjunction with another substance that will clearly and readily warn potential users and consumers of the sprayed marihuana that a herbicide has been used on it.

"(2) The Secretary of State shall inform the Secretary of Health, Education, and Welfare of the use or intended use by any country or international organization of any herbicide to eradicate marihuana in a program receiving assistance under this chapter. The Secretary of Health, Education, and Welfare, on the basis of scientific information and testing and after receiving comments from the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, shall promptly advise the Secretary of State if the use of that herbicide is likely to cause serious harm to the health of persons who may use or consume marihuana sprayed with that herbicide. If the Secretary of State is so advised with respect to any herbicide, the prohibition contained

in paragraph (1) shall apply with respect to the use of that herbicide.

"(3) The Secretary of State shall submit a comprehensive report to the Congress not later than January 1 of each year explicitly detailing all efforts he has taken to ensure compliance with the requirements of this subsection and to prevent the spraying of marihuana with herbicides that are likely to cause serious harm to human health.".

INTERNATIONAL NARCOTICS CONTROL

SEC. 5. (a) Section 482 of the Foreign Assistance Act of 1961 is amended by striking out "$39,000,000 for the fiscal year 1978" and inserting in lieu thereof "$40,000,000 for the fiscal year 1979".

(b) Such section is further amended—

(1) by inserting "(a)" immediately before "To carry out"; and

(2) by adding at the end of the section the following new subsection:

"(b) Funds authorized to be appropriated by this section shall not be made available for the procurement of weapons or ammunition under this chapter.".

HUMAN RIGHTS

SEC. 6. (a) Paragraph (1) of section 502B (a) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.".

(b) Paragraph (2) of such section is amended by striking out "It is further the policy of the United States that, except" and inserting in lieu thereof "Except".

(c) Paragraph (3) of such section is amended by striking out "the foregoing policy" and inserting in lieu thereof "paragraphs (1) and (2),".

(d)(1) Paragraph (2) of such section is amended by adding at the end thereof the following new sentence: "Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1969 for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses.".

(2) Section 4 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection:

"(m)(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary of Commerce only pursuant to a validated export license.

"(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand.".

(e) Section 502B(a)(2) of the Foreign Assistance Act of 1961, as amended by subsection (d)(1) of this section, is further amended by adding at the end thereof the following new sentence: "Assistance may not be provided under chapter 5 of this part to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.".

MILITARY ASSISTANCE

SEC. 7. (a) Subsection (a)(1) of section 504 of the Foreign Assistance Act of 1961 is amended to read as follows:

"(a)(1) There is authorized to be appropriated to the President to carry out the purposes of this chapter not to exceed $133,500,000 for the fiscal year 1979. Not more than the following amounts of funds available to carry out this chapter may be allocated and made available for assistance to each of the following countries for the fiscal year 1979:

| | |
|---|---|
| "Portugal | $27,900,000 |
| "Spain | 41,000,000 |
| "Jordan | 45,000,000 |
| "Philippines | 17,100,000 |
| "Greece | 35,000,000 |

The amount specified in this paragraph for military assistance to any such country for the fiscal year 1979 may be increased by not more than 10 percent of such amount if the President deems such increase necessary for the purposes of this chapter.".

(b) Section 516(a) of such Act is amended by inserting immediately before the period at the end thereof ", and until September 30, 1981, to the extent necessary to carry out obligations incurred under this chapter during the fiscal year 1978 with respect to Indonesia and Thailand".

STOCKPILING OF DEFENSE ARTICLES FOR FOREIGN COUNTRIES

SEC. 8. Section 514(b)(2) of the Foreign Assistance Act of 1961 is amended by striking out "$270,000,000 for the fiscal year 1978" and inserting in lieu thereof "$90,000,000 for the fiscal year 1979".

INTERNATIONAL MILITARY ASSISTANCE AND SALES PROGRAM MANAGEMENT

SEC. 9. (a) Section 515 of the Foreign Assistance Act of 1961 is amended in the first sentence of subsection (b)(1)—

(1) by striking out "fiscal year 1978" and inserting in lieu thereof "fiscal year 1979"; and

(2) by striking out "Brazil" and inserting in lieu thereof "Turkey, Indonesia, Thailand".

(b) Such section is amended in subsection (d) by striking out "may not exceed 865 for the fiscal year 1978" and inserting in lieu thereof ", including any such members serving on a reimbursable basis pursuant to subsection (b)(3), may not exceed 790 for the fiscal year 1979".

(c) Such section is amended in subsection (f) by striking out "1976" in the last sentence and inserting in lieu thereof "1977, except that the President may assign an aggregate total of not to exceed eight additional defense attachés to such countries in order to perform overseas management functions under this subsection".

(d) Such section is amended in subsection (g) by inserting "for fixed" immediately before "periods of time" in the second sentence.

(e) Such section is amended by adding at the end thereof the following new subsection:

"(h) The President shall continue to instruct United States diplomatic and military personnel in United States missions abroad that they should not encourage, promote, or influence the purchase by any foreign country of United States-made military equipment, unless they are specifically instructed to do so by an appropriate official of the executive branch.".

ECONOMIC SUPPORT FUND

SEC. 10. (a) Chapter 4 of part II of the Foreign Assistance Act of 1961 is amended to read as follows:

"CHAPTER 4—ECONOMIC SUPPORT FUND

"SEC. 531. AUTHORITY.—(a)(1) The Congress recognizes that under special economic, political, or security conditions the national interests of the United States may require economic support for countries or in amounts which could not be justified solely under chapter 1 of part I. In such cases, the President is authorized to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. In planning assistance intended for economic development under this chapter, the President shall take into account, to the maximum extent feasible, the policy directions of section 102.

"(2) The Secretary of State shall be responsible for policy decisions and justifications for economic support programs under this chapter, including determinations of whether there will be an economic support program for a country and the amount of the program for each country. The Secretary shall exercise this responsibility in cooperation with the Administrator of the agency primarily responsible for administering part I.

"(b)(1) There are authorized to be appropriated to the President to carry out the purposes of this chapter for the fiscal year 1979, $1,902,000,000.

"(2) Amounts appropriated to carry out this chapter are authorized to remain available until expended.

"(c) Amounts appropriated to carry out this chapter shall be available for economic programs only and may not be used for military or paramilitary purposes.

"SEC. 532. MIDDLE EAST PROGRAM.—(a) The Congress recognizes that a peaceful and lasting resolution of the divisive issues that have contributed to tension and conflict between countries in the Middle East is essential to the security of the United States and the cause of world peace. The Congress declares and finds that the United States can and should play a constructive role in securing a just and durable peace in the Middle East by facilitating increased understanding between the Arab countries and Israel and by assisting the countries in the region in their efforts to achieve economic progress and political stability, which are the essential foundations for peace. It is the sense of the Congress that United States assistance programs in the Middle East should be designed to promote mutual respect and security among the countries in the region and to foster a climate conducive to increased economic development, thereby contributing to a community of free, secure, and prospering countries in the Middle East.

"(b)(1) Of the amount authorized to be appropriated to carry out this chapter for the fiscal year 1979, not less than $785,000,000 shall be available only for Israel, not less than $750,000,000 shall be available only for Egypt, and not less than $93,000,000 shall be available only for Jordan.

"(2) The total amount of funds allocated for Israel under this chapter for the fiscal year 1979 may be made available as a cash transfer. In exercising the authority of this paragraph, the President shall ensure that the level of cash transfers made to Israel does not cause an adverse impact on the total amount of nonmilitary exports from the United States to Israel.

"(3) Not less than two-thirds of the assistance furnished to Israel, and not less

than two-thirds of the assistance furnished to Egypt, under this chapter for the fiscal year 1979 shall be provided on a grant basis.

"(4) The President is requested to provide that at least $65,000,000 of the funds allocated for Egypt under this chapter for the fiscal year 1979 shall be available for the development and encouragement of private enterprise in Egypt. Programs financed under this paragraph shall be developed in close consultation with the Overseas Private Investment Corporation. It is the intent of the Congress that the funds made available under this paragraph should be used, to the maximum extent feasible, to encourage other donors, especially the Arab countries that are members of the Organization of Petroleum Exporting Countries, to participate in private enterprise development in Egypt. Funds made available under this paragraph may be used, among other things, for lending to Egyptian private business enterprise, to provide necessary surveys, services, and programs to encourage and support private enterprise development, and to contract for personnel to assist such programs.

"(5) It is the sense of the Congress that programs which stress regional development or regional scientific and technical cooperation between Israel and its Arab neighbors can contribute in an important way to the mutual understanding that must serve as the basis for permanent peace in the Middle East. Of the amount authorized to be appropriated to carry out this chapter for the fiscal year 1979, not less than $5,000,000 shall be available only to fund regional programs which stress development or scientific and technical cooperation between Israel and its Arab neighbors or programs which would be used for Arab-Israeli cooperation once normalization of relations between Israel and the Arab nations occurs.

"(6)(A) Funds appropriated to carry out this chapter for the fiscal year 1979 may not be expended for construction of the proposed potash production facility in Jordan until the President has determined, and has reported his determination to the Congress, that Jordan has obtained firm commitments from other sources for the financing, in addition to the proposed United States contribution, which will be required for that project.

"(B) Funds appropriated to carry out this chapter for the fiscal year 1979 may not be expended for construction of the proposed Maqarin Dam and Jordan Valley Irrigation System until the President has determined, and has reported his determination to the Congress, that Jordan has obtained firm commitments from other sources for the financing, in addition to the proposed United States contribution, which will be required for that project.

"SEC. 533. SOUTHERN AFRICA PROGRAM.—(a) Of the amount authorized to be appropriated to carry out this chapter for the fiscal year 1979, $60,000,000 shall be available only for the countries of southern Africa to address the problems caused by the economic dislocation resulting from the conflict in that region and for education and job training assistance. Such funds may be used to provide humanitarian assistance to African refugees and persons displaced by war and internal strife in southern Africa, to improve transportation links, interrupted or jeopardized by regional political conflicts, and to provide economic support to countries in the region.

"(b) No assistance may be furnished under this section to Mozambique, Angola, Tanzania, or Zambia, except that the President may waive this prohibition with respect to any such country if he determines, and so reports to the Congress, that furnishing such assistance to such country would further the foreign policy interests of the United States.

"SEC. 534. TURKEY AND CYPRUS PROGRAMS.—(a) Of the amount authorized to be appropriated to carry out this chapter for the fiscal year 1979, not less than $15,000,000 shall be available only for refugee relief and reconstruction on Cyprus.

"(b) Of the amount authorized to be appropriated to carry out this chapter for the fiscal year 1979, not less than $50,000,000 shall be available only for Turkey.".

(b)(1) Section 502B(d)(2)(A) of the Foreign Assistance Act of 1961 is amended by striking out "security supporting assistance" and inserting in lieu thereof "economic support fund".

(2) The second sentence of section 610(b) of such Act is repealed.

(3) Section 653(b) of such Act is amended by striking out "security supporting assistance" each of the three places it appears and inserting in lieu thereof "assistance under chapter 4 of part II of this Act".

(4) Sections 669(a) and 670(a) of such Act are each amended by inserting "(including assistance under chapter 4 of part II)" immediately after "economic assistance" and by striking out "or security supporting".

(5) Section 406(a) of the International Security Assistance and Arms Export Control Act of 1976 is amended by striking out "or security supporting assistance" and inserting in lieu thereof "assistance, no assistance under chapter 4 of part II,".

(6) After September 30, 1978, any reference in any law to security supporting assistance shall be deemed to be a reference to assistance under chapter 4 of part II of the Foreign Assistance Act of 1961.

INTERNATIONAL MILITARY EDUCATION AND TRAINING

SEC. 11. (a) Section 542 of the Foreign Assistance Act of 1961 is amended by striking out "$31,000,000 for the fiscal year 1978" and inserting in lieu thereof "$31,800,000 for the fiscal year 1979".

(b) Section 543 of such Act is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) to increase the awareness of nationals of foreign countries participating in such activities of basic issues involving internationally recognized human rights.".

ASSISTANCE FOR PEACEKEEPING OPERATIONS

SEC. 12. (a) Part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new chapter:

"CHAPTER 6—PEACEKEEPING OPERATIONS

"SEC. 551. GENERAL AUTHORITY.—The President is authorized to furnish assistance to friendly countries and international organizations, on such terms and conditions as he may determine, for peacekeeping operations and other programs carried out in furtherance of the national security interests of the United States.

"SEC. 552. AUTHORIZATION OF APPROPRIATIONS.—(a) There is authorized to be appropriated to the President to carry out the purposes of this chapter, in addition to amounts otherwise available for such purposes, $30,900,000 for the fiscal year 1979.

"(b) Amounts appropriated under this section are authorized to remain available until expended.

"SEC. 553. MIDDLE EAST SPECIAL REQUIREMENTS FUND.—(a) Of the amount authorized to be appropriated to carry out this chapter for the fiscal year 1979, $3,500,000 may be used only for special requirements related to international peacekeeping in the Middle East.

"(b) The President may obligate or expend funds under this section for a foreign country or international organization only if—

"(1) he has transmitted to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations and the chairman of the Committee on Appropriations of the Senate a report setting forth—

"(A) the name of such country or organization;

"(B) the amount of such funds to be made available to such country or organization;

"(C) the purpose for which such funds are to be made available to such country or organization; and

"(D) the reasons why it is in the national interest to use funds under this section for such purpose rather than—

"(i) using other available funds; or

"(ii) if no other funds are available for such purpose, awaiting the enactment of legislation making funds specifically available for such purpose;

"(2) a period of 30 calendar days has elapsed since the Congress received such report; and

"(3) the Congress did not adopt, during such 30-day period, a concurrent resolution stating in substance that the Congress does not approve the proposed use of funds described in such report.

"SEC. 554. ADMINISTRATIVE AUTHORITIES.—Except where expressly provided to the contrary, any reference in any law to part I of this Act shall be deemed to include reference to this chapter and any reference in any law to part II of this Act shall be deemed to include reference to this chapter.".

(b) Section 502B(d)(2)(A) of such Act is amended—

(1) by inserting "or chapter 6 (peacekeeping operations)" immediately after "and training)"; and

(2) by striking out "or part UI (assistance to the Middle East) of this Act".

(c)(1) Section 620B of such Act is amended in paragraph (1) by striking out "or 5" and inserting in lieu thereof "5, or 6".

(2) Section 653(b) of such Act is amended—

(A) by striking out "part V" both places it appears and inserting in lieu thereof "chapter 6 of part II"; and

(B) by inserting immediately before the comma in paragraph (2) "or assistance under chapter 6 of part II".

(3) Section 669(a) and 670(a) of such Act are each amended by inserting "providing assistance under chapter 6 of part II," immediately after "training,".

(4) Part VI of such Act is repealed.

(5) Section 406(a)(1) of the International Security Assistance and Arms Export Control Act of 1976 is amended by inserting "no assistance under chapter 6 of part II," immediately before "and no military" in the first sentence.

UNITED STATES POLICY REGARDING THE EASTERN MEDITERRANEAN

SEC. 13. (a) Section 620(x) of the Foreign Assistance Act of 1961 shall be of no further force and effect upon the President's determination and certification to the Congress that the resumption of full military cooperation with Turkey is in the national interest of the United States and in the interest of the North Atlantic Treaty Organization and that the Government of Turkey is acting in good faith to achieve a just and peaceful settlement of the Cyprus problem, the early peaceable return of refugees to their homes and properties, and continued removal of Turkish military troops from Cyprus in the context of a solution to the Cyprus problem, and the early serious resumption of intercommunal talks aimed at a just, negotiated settlement.

(b) The Foreign Assistance Act of 1961 is

amended by inserting immediately after section 620B the following new section:

"SEC. 620C. UNITED STATES POLICY REGARDING THE EASTERN MEDITERRANEAN.—(a) The Congress declares that the achievement of a just and lasting Cyprus settlement is and will remain a central objective of United States foreign policy. The Congress further declares that any action of the United States with respect to section 620(x) of this Act shall not signify a lessening of the United States commitment to a just solution to the conflict on Cyprus but is authorized in the expectation that this action will be conducive to achievement of a Cyprus solution and a general improvement in relations among Greece, Turkey, and Cyprus and between those countries and the United States. The Congress finds that—

"(1) a just settlement on Cyprus must involve the establishment of a free and independent government on Cyprus and must guarantee that the human rights of all of the people of Cyprus are fully protected;

"(2) a just settlement on Cyprus must include the withdrawal of Turkish military forces from Cyprus;

"(3) the guidelines for inter-communal talks agreed to in Nicosia in February 1977 and the United Nations resolutions regarding Cyprus provide a sound basis for negotiation of a just settlement on Cyprus;

"(4) serious negotiations, under United Nations auspices, will be necessary to achieve agreement on, and implementation of, constitutional and territorial terms within such guidelines; and

"(5) the recent proposals by both Cypriot communities regarding the return of the refugees to the city of New Famagusta (Varosha) constitute a positive step and the United States should actively support the efforts of the Secretary General of the United Nations with respect to this issue.

"(b) United States policy regarding Cyprus, Greece, and Turkey shall be directed toward the restoration of a stable and peaceful atmosphere in the Eastern Mediterranean region and shall therefore be governed by the following principles:

"(1) The United States shall actively support the resolution of differences through negotiations and internationally established peaceful procedures, shall encourage all parties to avoid provocative actions, and shall strongly oppose any attempt to resolve disputes through force or threat of force.

"(2) The United States will accord full support and high priority to efforts, particularly those of the United Nations, to bring about a prompt, peaceful settlement on Cyprus.

"(3) All defense articles furnished by the United States to countries in the Eastern Mediterranean region will be used only in accordance with the requirements of this Act, the Arms Export Control Act, and the agreements under which those defense articles were furnished.

"(4) The United States will furnish security assistance for Greece and Turkey only when furnishing that assistance is intended solely for defensive purposes, including when necessary to enable the recipient country to fulfill its responsibilities as a member of the North Atlantic Treaty Organization, and shall be designed to ensure that the present balance of military strength among countries of the region, including between Greece and Turkey, is preserved. Nothing in this paragraph shall be construed to prohibit the transfer of defense articles to Greece or Turkey for legitimate self defense or to enable Greece or Turkey to fulfill their North Atlantic Treaty Organization obligations.

"(5) The United States shall use its influence to ensure the continuation of the ceasefire on Cyprus until an equitable negotiated settlement is reached.

"(6) The United States shall use its influence to achieve the withdrawal of Turkish military forces from Cyprus in the context of a solution to the Cyprus problem.

"(c) Because progress toward a Cyprus settlement is a high priority of United States policy in the Eastern Mediterranean, the President and the Congress shall continually review that progress and shall determine United States policy in the region accordingly. To facilitate such a review the President shall, within 60 days after the date of enactment of this section and at the end of each succeeding 60-day period, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on progress made toward the conclusion of a negotiated solution of the Cyprus problem. Such transmissions shall include any relevant reports prepared by the Secretary General of the United Nations for the Security Council.

"(d) In order to ensure that United States assistance is furnished consistent with the policies established in this section, the President shall, whenever requesting any funds for security assistance under this Act or the Arms Export Control Act for Greece and Turkey, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate his certification, with a full explanation thereof, that the furnishing of such assistance will be consistent with the principles set forth in subsection (b). The President shall also submit such a certification with any notification to the Congress, pursuant to section 36(b) of the Arms Export Control Act, of a proposed sale of defense articles or services to Greece or Turkey.".

ANNUAL MILITARY ASSISTANCE REPORT

SEC. 14. Chapter 3 of part III of the Foreign Assistance Act of 1961, as amended by the International Development and Food Assistance Act of 1978, is amended by inserting immediately after section 654 the following new section:

"SEC. 657. ANNUAL REPORT ON MILITARY ASSISTANCE AND MILITARY EXPORTS.—Not later than February 1 of each year, the President shall transmit to the Congress an annual report for the fiscal year ending the previous September 30, showing the aggregate dollar value and quantity of defense articles and defense services, and of military education and training, furnished by the United States to each foreign country and international organization, by category, specifying whether they were furnished by grant under chapter 2 or chapter 5 of part II of this Act, by sale under chapter 2 of the Arms Export Control Act, by commercial sale licensed under section 38 of that Act, or by other authority.".

ARMS TRANSFER POLICY

SEC. 15. (a) Section 1 of the Arms Export Control Act is amended by adding at the end thereof the following new paragraph:

"It is the sense of the Congress that the President maintain adherence to a policy of restraint in conventional arms transfers and that, in implementing this policy worldwide, a balanced approach should be taken and full regard given to the security interests of the United States in all regions of the world and that particular attention should be paid to controlling the flow of conventional arms to the nations of the developing world. To this end, the President is encouraged to continue discussions with other arms suppliers in order to restrain the flow of conventional arms to less developed countries.".

(b) Not later than December 31, 1979, the President shall transmit to the Congress a detailed report assessing the results and commenting on the implications of the multilateral discussions referred to in the amendment made by subsection (a).

SALES FROM STOCK

SEC. 16. Section 21(e)(1) of the Arms Export Control Act is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(D) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.".

RENEGOTIATION ACT OF 1951

SEC. 17. Section 22 of the Arms Export Control Act is amended by adding at the end thereof the following new subsection:

"(c) The provisions of the Renegotiation Act of 1951 do not apply to contracts for the procurement of defense articles and defense services heretofore or hereafter entered into under this section or predecessor provisions of law.".

ANNUAL ARMS SALES PROPOSAL

SEC. 18. (a) Section 25 of the Arms Export Control Act is amended by adding at the end thereof the following new subsection:

"(d) On or before November 15 of each year, the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate the Arms Sales Proposal covering all sales under this Act (other than sales to members of the North Atlantic Treaty Organization, Japan, Australia, and New Zealand) of major defense equipment for $7,000,000 or more, or of any other defense articles or defense services for $25,000,000 or more, which are considered eligible for approval during the fiscal year beginning on October 1 of such year.".

(b) Subsection (c) of such section is amended by striking out "this section" and inserting in lieu thereof "subsection (a) or (b)".

DEFENSE REQUIREMENT SURVEY

SEC. 19. Chapter 2 of the Arms Export Control Act is amended by adding at the end thereof the following new section:

"SEC. 26. DEFENSE REQUIREMENT SURVEYS.—(a) The Congress finds that defense requirement surveys prepared by the United States for foreign countries have had a significant impact on subsequent military procurement decisions of those countries. It is the policy of the United States that the results of defense requirement surveys conducted by the United States clearly do not represent a commitment by the United States to provide any military equipment to any foreign country. Further, recommendations in such surveys should be consistent with the arms export control policy provided for in this Act.

"(b) As part of the quarterly report required by section 36(a) of this Act, the President shall include a list of all defense equipment surveys authorized during the preceding calendar quarter, specifying the country with respect to which the survey was or will be conducted, the purpose of the survey, and the number of United States Government personnel who participated or will participate in the survey.

"(c) Upon a request of the chairman of the Committee on International Relations of the House of Representatives or the chairman of the Committee on Foreign Relations of the Senate, the President shall grant that committee access to defense requirement surveys conducted by United States Government personnel.".

FOREIGN MILITARY SALES AUTHORIZATION AND AGGREGATE CEILING

SEC. 20. (a) Section 31(a) of the Arms Export Control Act is amended by striking out "$677,000,000 for fiscal year 1978" and inserting in lieu thereof "$682,000,000 for the fiscal year 1978 and $674,300,000 for the fiscal year 1979".

(b) Section 31(b) of such Act is amended

by striking out "$2,102,350,000 for the fiscal year 1978, of which" and inserting in lieu thereof "$2,152,350,000 for the fiscal year 1978 and $2,085,500,000 for the fiscal year 1979, of which amount for each such year".

(c) Section 31(c) of such Act is amended by striking out "fiscal year 1978" and inserting in lieu thereof "fiscal year 1979".

(d) Section 31(d) of such Act is amended by striking out "$100,000,000" and inserting in lieu thereof "$150,000,000".

FULL DISCLOSURE REPORTS

SEC. 21. Section 36(b)(1) of the Arms Export Control Act is amended—(1) by amending subparagraph (D) to read as follows:

"(D) an evaluation, prepared by the Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense, of the manner, if any, in which the proposed sale would—

"(i) contribute to an arms race;

"(ii) increase the possibility of an outbreak or escalation of conflict;

"(iii) prejudice the negotiation of any arms controls; or

"(iv) adversely affect the arms control policy of the United States;";

(2) by striking out "and" at the end of subparagraph (L);

(3) by striking out the period at the end of subparagraph (M) and inserting in lieu thereof a semicolon; and

(4) by inserting immediately after subparagraph (M) the following new subparagraphs:

"(N) the projected delivery dates of the defense articles to be offered;

"(O) a detailed description of weapons and levels of munitions that may be required as support for the proposed sale; and

"(P) an analysis of the relationship of the proposed sale to projected procurements of the same item.".

USE OF FOREIGN CURRENCY

SEC. 22. (a) Section 502(b) of the Mutual Security Act of 1954 is amended to read as follows:

"(b)(1)(A) Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law—

"(i) local currencies owned by the United States which are in excess of the amounts reserved under section 612(a) of the Foreign Assistance Act of 1961 and of the requirements of the United States Government in payment of its obligations outside of the United States, as such requirements may be determined from time to time by the President; and

"(ii) any other local currencies owned by the United States in amounts not to exceed the equivalent of $75 per day per person or the maximum per diem allowance established under the authority of subchapter I of chapter 57 of title 5 of the United States Code for employees of the United States Government while traveling in a foreign country, whichever is greater, exclusive of the actual cost of transportation;

shall be made available to Members and employees of the Congress for their local currency expenses when authorized as provided in subpapagraph (B).

"(B) The authorization required for purposes of subparagraph (A) may be provided—

"(i) by the Speaker of the House of Representatives in the case of a Member or employee of the House;

"(ii) by the chairman of a standing or select committee of the House of Representatives in the case of a member or employee of that committee;

"(iii) by the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, in the case of a Member or employee of the Senate;

"(iv) by the chairman of a standing, select, or special committee of the Senate in the case of a member or employee of that committee or of an employee of a member of that committee; and

"(v) by the chairman of a joint committee of the Congress in the case of a member or employee of that committee.

"(C) Whenever local currencies owned by the United States are not otherwise available for purposes of this subsection, the Secretary of the Treasury shall purchase such local currencies as may be necessary for such purposes, using any funds in the Treasury not otherwise appropriated.

"(2) On a quarterly basis, the chairman of each committee of the House of Representatives or the Senate and of each joint committee of the Congress (A) shall prepare a consolidated report (i) which itemizes the amounts and dollar equivalent values of each foreign currency expended and the amounts of dollar expenditures from appropriated funds in connection with travel outside the United States, stating the purposes of the expenditures including per diem (lodging and meals), transportation, and other purposes, and (ii) which shows the total itemized expenditures, by such committee and by each member or employee of such committee (including in the case of a committee of the Senate, each employee of a member of the committee who received an authorization under paragraph (1) from the chairman of the committee); and (B) shall forward such consolidated report to the Clerk of the House of Representatives (if the committee is a committee of the House of Representatives or a joint committee whose funds are disbursed by the Clerk of the House) or to the Secretary of the Senate (if the committee is a committee of the Senate or a joint committee whose funds are disbursed by the Secretary of the Senate). Each such consolidated report shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after the report is forwarded pursuant to this paragraph. In the case of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, such consolidated report may, in the discretion of the chairman of the committee, omit such information as would identify the foreign countries in which members and employees of that committee traveled.

"(3)(A) Each Member or employee who receives an authorization under paragraph (1) from the Speaker of the House of Representatives, the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, shall within thirty days after the completion of the travel involved, submit a report setting forth the information specified in paragraph (2), to the extent applicable, to the Clerk of the House of Representatives (in the case of a Member of the House or an employee whose salary is disbursed by the Clerk of the House) or the Secretary of the Senate (in the case of a Member of the Senate or an employee whose salary is disbursed by the Secretary of the Senate). In the case of an authorization for a group of Members or employees, such reports shall be submitted for all Members of the group by its chairman, or if there is no designated chairman, by the ranking Member or if the group does not include a Member, by the senior employee in the group. Each report submitted pursuant to this subparagraph shall be open to public inspection.

"(B) On a quarterly basis, the Clerk of the House of Representatives and the Secretary of the Senate shall each prepare a consolidation of the reports received by them under this paragraph with respect to expenditures during the preceding quarter by each Member and employee or by each group in the case of expenditures made on behalf of a group which are not allocable to individual members of the group. Each such consolidation shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after its completion.".

(b) Notwithstanding section 30 of this Act, the amendment made by subsection (a) of this section shall take effect on the date of enactment of this Act.

SPECIAL SECURITY ASSISTANCE PROGRAM FOR THE MODERNIZATION OF THE ARMED FORCES OF THE REPUBLIC OF KOREA

SEC. 23. (a)(1) The President is authorized until December 31, 1982—

(A) to transfer, without reimbursement, to the Republic of Korea, only in conjunction with the withdrawal of the 2d Infantry Division and support forces from Korea, such United States Government-owned defense articles as he may determine which are located in Korea in the custody of units of the United States Army scheduled to depart from Korea; and

(B) to furnish to the Republic of Korea, without reimbursement, defense services (including technical and operational training) in Korea directly related to the United States Government-owned defense articles transferred to the Republic of Korea under this subsection.

(2) Any transfer under the authority of this section shall be made in accordance with all the terms and conditions of the Foreign Assistance Act of 1961 applicable to the furnishing of defense articles and defense services under chapter 2 of part II of that Act, except that no funds heretofore or hereafter appropriated under that Act shall be available to reimburse any agency of the United States Government for any such transfer or related services.

(b) In order that transfers of defense articles under subsection (a) will not cause significant adverse impact on the readiness of the Armed Forces of the United States, the President is authorized, in lieu of such transfers, to transfer additional defense articles from the stocks of the Department of Defense, wherever located, to the Republic of Korea to compensate for the military capability of defense articles withdrawn from Korea in any case where he determines that—

(1) the transfer of specific defense articles located in Korea would have a significant adverse impact on the readiness of the United States Armed Forces;

(2) the defense capability provided by those defense articles is needed by the Armed Forces of the Republic of Korea in order to maintain the military balance on the Korean peninsula; and

(3) a comparable defense capability could be provided by less advanced defense articles in the stocks of the Department of Defense which could be transferred without significant adverse impact on the readiness of the United States Armed Forces.

The President shall report to the Congress each determination made under this subsection prior to the transfer of the defense articles described in such determination.

(c) The President shall transmit to the Congress together with the presentation materials for security assistance programs proposed for each fiscal year through and including the fiscal year 1983, a report describing the types, quantities, and value of defense articles furnished or intended to be furnished to the Republic of Korea under this section.

(d) The President should also transmit to the Congress, 120 days prior to each phase of troop withdrawal, a report on the viability of the withdrawal. This report should include assessments of the military balance on the Korean peninsula, the impact of with-

drawal on the military balance, the adequacy of United States military assistance to the Republic of Korea, the impact of withdrawal on the United Nations and the Republic of Korea command structure, Republic of Korea defensive fortifications and defense industry developments, the United States reinforcement capability, and the progress of diplomatic efforts to reduce tensions in the area.

(e)(1) It is the sense of the Congress that further withdrawal of ground forces of the United States from the Republic of Korea may seriously risk upsetting the military balance in that region and requires full advance consultation with the Congress.

(2) Prior to any further withdrawal, the President shall report to the Congress on the effect of any proposed withdrawal plan on preserving deterrence in Korea, the reaction anticipated fom North Korea, the effect of the plan on increasing incentives for the Republic of Korea to develop an independent nuclear deterrent, the effect of any withdrawal on our long-term military and economic partnership with Japan, the effect of any proposed withdrawal on the United States-Chinese and United States-Soviet military balance, and the possible implications of any proposed withdrawal on the Soviet-Chinese military situation.

UNITED STATES RELATIONS WITH THE SOVIET UNION

SEC. 24. (a) The Congress finds and declares that a sound and stable relationship with the Soviet Union will help achieve the objectives of the Foreign Assistance Act of 1961 and the Arms Export Control Act, strengthen the security of the United States, and improve the prospects for world peace.

(b) Therefore, it is the sense of the Congress that the President, in cooperation with the Congress and knowledgeable members of the public, should make a full review of United States policy toward the Soviet Union. This review should cover, but not be limited to—

(1) an overall reevaluation of the objectives and priorities of the United States in its relations with the Soviet Union;

(2) the evolution of and sources of all bargaining power of the United States with respect to the Soviet Union and how that bargaining power might be enhanced;

(3) what linkages do exist and what linkages should or should not exist between various elements of United States-Soviet relations such as arms control negotiations, human rights issues, and economic and cultural exchanges;

(4) the policies of the United States toward human rights condtions in the Soviet Union and how improved Soviet respect for human rights might be more effectively achieved;

(5) the current status of strategic arms limitations talks and whether such talks should be continued in their present framework or terminated and renewed in some other forum;

(6) the current status of other arms control negotiations between the United States and the Soviet Union;

(7) the challenges posed by Soviet and Cuban involvement in developing countries and a study of appropriate policy responses and instruments to meet those challenges more effectively;

(8) the impact of our relations with the People's Republic of China on our relations with the Soviet Union;

(9) the impact of strategic parity on relations between the United States and the Soviet Union and on the ability of the United States to meet its obligations under the North Atlantic Treaty;

(10) United States economic, technological, scientific, and cultural relations with the Soviet Union and whether those relations are desirable and should be continued, expanded, restricted, or linked to other aspects of relations between the United States and the Soviet Union;

(11) the evolution of Soviet domestic politics and the relationship between Soviet domestic politics and its foreign policy behavior, especially towards the United States; and

(12) what improvements should be made in the institutions and procedures of United States foreign policy in order to ensure a coherent and effective policy towards the Soviet Union.

(c) The President should report the results of the review called for by subsection (b) to the Congress not later than December 31, 1978.

REPORT ON REVIEW OF ARMS SALES CONTROLS ON NON-LETHAL ITEMS

SEC. 25. The President shall, within 120 days after the enactment of this Act, report in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate the results of the review conducted pursuant to section 27 of the International Security Assistance Act of 1977.

UNITED STATES-REPUBLIC OF CHINA MUTUAL DEFENSE TREATY

SEC. 26. (a) The Congress finds that—

(1) the continued security and stability of East Asia is a matter of major strategic interest to the United States;

(2) the United States and the Republic of China have for a period of twenty-four years been linked together by the Mutual Defense Treaty of 1954;

(3) the Republic of China has during that twenty-four-year period faithfully and continually carried out its duties and obligations under that treaty; and

(4) it is the responsibility of the Senate to give its advice and consent to treaties entered into by the United States.

(b) It is the sense of the Congress that there should be prior consultation between the Congress and the executive branch on any proposed policy changes affecting the continuation in force of the Mutual Defense Treaty of 1954.

RHODESIA EMBARGO

SEC. 27. In furtherance of the foreign policy interests of the United States, the Government of the United States shall not enforce sanctions against Rhodesia after December 31, 1978, provided that the President determines that—

(1) the Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference, held under international auspices, on all relevant issues; and

(2) a government has been installed, chosen by free elections in which all political and population groups have been allowed to participate freely, with observation by impartial, internationally-recognized observers.

NEGOTIATIONS BETWEEN ISRAEL AND EGYPT

SEC. 28. (a) The Congress finds that—

(1) a lasting settlement of the Arab-Israel conflict is vital to United States national interests as well as to the interests of the countries of the region;

(2) support for a strong and secure Israel and the maintenance for this purpose of Israel's effective defense capabilities as essential to peace remains a fundamental tenet of United States foreign policy;

(3) direct, face-to-face negotiations between Israel and Egypt without preconditions is an historic opening for peace, and the support of such negotiations by other moderate Arab countries, can best promote a peace settlement based on mutual concessions and accommodation;

(4) the establishment of secure, recognized, and defensible borders between Israel and its neighbors will discourage hostilities; and

(5) full, normalized relations between Israel and its Arab neighbors, including trade, travel, tourism, communications, and diplomatic relations are vital for peace.

(b) It is the sense of the Congress that the Government of the United States should continue to promote direct negotiations between Israel and Egypt and to encourage other Arab countries to enter into negotiations leading to peace treaties with Israel.

(c) It is further the sense of the Congress that the United States should be responsive to Israel's economic needs and defense requirements, including the provision of additional advanced aircraft, in order to maintain Israel's defense capability which is essential to peace.

REPORTS TO CONGRESS

SEC. 29. (a) Section 8(d) of the Act entitled "An Act to amend the Foreign Military Sales Act, and for other purposes", approved January 12, 1971, is amended in the second sentence by striking out "Additionally, the President shall also submit a quarterly report to the Congress" and inserting in lieu thereof "The annual presentation materials for security assistance programs shall include a table".

(b) Section 408(b) of the International Security Assistance and Arms Export Control Act of 1976 is amended by striking out "(1)" and by repealing paragraph (2).

(c)(1) The International Security Assistance and Arms Export Control Act of 1976 is amended—

(A) in section 202, by striking out "(a)" immediately after "SEC. 202." and by repealing subsection (b);

(B) by repealing section 217;

(C) by repealing section 218; and

(D) in section 407, by striking out "(a)" and by repealing subsection (b).

(2) The International Security Assistance Act of 1977 is amended—

(A) in section 9—

(i) by striking out "REVIEW OF" in the section heading;

(ii) by striking out "(a)" immediately after "SEC. 9."; and

(iii) by repealing subsections (b) through (e); and

(B) by repealing section 23.

(3) Section 5 of the Emergency Security Assistance Act of 1973 is repealed.

(4) Section 17 of the Foreign Assistance Act of 1974 is repealed.

SAVINGS PROVISION

SEC. 30. Enactment of this Act shall not affect the authorizations of appropriations and limitations of authority applicable to the fiscal year 1978 which are contained in provisions of law amended by this Act (other than sections 31(a), (b), and (d) of the Arms Export and Control Act).

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
BENJAMIN S. ROSENTHAL,
LESTER L. WOLFF,
LEE H. HAMILTON,
JONATHAN B. BINGHAM,
STEPHEN J. SOLARZ,
DONALD J. PEASE,
GERRY E. STUDDS,
WM. S. BROOMFIELD,
EDWARD J. DERWINSKI,
PAUL FINDLEY,
LARRY WINN, Jr.,
*Managers on the Part of the House.*

JOHN SPARKMAN,
FRANK CHURCH,
DICK CLARK,
JOE BIDEN,
GEORGE MCGOVERN,
CLIFFORD P. CASE,
JACOB K. JAVITS,
CHARLES H. PERCY,
HOWARD H. BAKER,
*Managers on the Part of the Senate.*

JOINT EXPLANATION STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3075) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes, submit the following joint statement to the House and to the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the committee of conference, and minor drafting and clarifying changes.

AUTHORIZATION OF APPROPRIATIONS

The conference substitute contains authorizations for appropriations for international security assistance and other assistance programs for fiscal year 1979 of $2,817,500,000 which represents a reduction of $32,500,000 in the Senate figure, an increase of $1,818,200,000 in the House figure, and an increase of $28,200,000 in the amount requested by the executive branch. Including the Economic Support Fund, funds for which the House authorized in the International Development and Food Assistance Act of 1978 (H.R. 12222), the total authorization represents a reduction of $36,800,000 from the amounts authorized by the House.

The amounts approved by the committee of conference compared to the amounts requested by the executive branch and recommended by the House and Senate follow:

[In millions of dollars]

| | Executive request | Senate recommendation | House recommendation | Conference agreement |
|---|---|---|---|---|
| Grant military assistance | 133.5 | 133.5 | 163.5 | 133.5 |
| Grant international military education and training | 32.1 | 31.8 | 32.1 | 31.8 |
| Foreign military sales (FMS) credits | 674.3 | 677.8 | 674.3 | 674.3 |
| FMS aggregate ceiling[1] | [1] (2,085.5) | [1] (2,120.2) | [1] (2,085.5) | [1] (2,085.5) |
| Subtotal, military assistance and sales program | 838.9 | 843.1 | 869.9 | 839.6 |
| Peacekeeping operations | [2] 32.4 | | 29.4 | 30.9 |
| Middle East Special Requirements Fund | [2] (5.0) | 6.0 | [3] (2.0) | [4] (3.5) |
| Sinai Support Mission | [2] (11.7) | 11.7 | [3] (11.7) | [3] (11.7) |
| U.N. Forces in Cyprus | [2] (8.7) | 8.7 | [3] (8.7) | [3] (8.7) |
| Spain | [2] (7.0) | 7.0 | [3] (7.0) | [3] (7.0) |
| Subtotal, peacekeeping operations | [2] 32.4 | 32.4 | 29.4 | 30.9 |
| Economic support fund | [2] 1,872.0 | 1,932.0 | [5] 50.0 | 1,902.0 |
| Contingency fund | 5.0 | 2.5 | 10.0 | 5.0 |
| International Narcotics Control | 40.0 | 40.0 | 40.0 | 40.0 |
| Total | 2,789.3 | 2,850.0 | 999.3 [6] (2,854.3) | 2,817.5 |

[1] The FMS aggregate ceiling represents the total program which could be funded under FMS credit authorization. The aggregate ceiling is not an authorization of funds for appropriation.
[2] Requested under the Security Supporting Assistance account.
[3] Included in the general peacekeeping operation assistance authorization, but no line item authorization made.
[4] Earmarked under the Peacekeeping Operations account.
[5] Only $50,000,000 (for Turkey) of the Economic Support Fund was authorized in the House amendment. An additional $1,855,000,000 was authorized in the International Development and Food Assistance Act of 1978 (H.R. 12222).
[6] Total including $1,855,000,000 authorized for an Economic Support Fund in H.R. 12222.

The conference substitute includes an authorization of $133,500,000 in new appropriations for the grant military assistance program in fiscal year 1979. The committee of conference adopted this figure in light of the usual practice of reappropriating unobligated balances in the annual foreign assistance appropriations legislation. New appropriations in the amount authorized by the conference report, together with the reappropriation of unobligated balances, will enable the President to carry out the fiscal year 1979 military assistance program provided for in this bill.

Under grant military assistance, both the Senate and the House provided that not more than the following amounts may be used in fiscal year 1979 for the following countries: Portugal, $27.9 million; Spain, $41 million; Jordan, $45 million. For the Philippines, the Senate authorized $18.1 million while the House authorized $13.1 million; for Greece, the Senate authorized nothing while the House authorized $35 million.

The committee of conference agreed to accept a reduction below the executive branch request of $1 million in grant military assistance for the Philippines because of continued failure by the Philippine Government to show significant progress in improving human rights practices as well as its refusal to lift martial law and restore democratic government.

The $35 million earmarked for grant military assistance for Greece is intended to maintain a proportional balance in total security assistance for Greece and Turkey pending implementation of defense cooperation agreements with both countries. In addition to grant military assistance, Greece will be eligible for FMS credits of $140 million. Turkey will be eligible for FMS credits of $175 million.

The committee of conference adopted the Senate position on authorization of grant military education and training funding and included a reduction of $300.000 below the executive branch request which equals the amount programed for Nicaragua and Paraguay.

The committee of conference adopted the House position on authorization of FMS credits. Therefore, it did not add to $140 million programed for Greece the $35 million provided in the Senate bill. Instead, $35 million is provided to Greece in grant military assistance.

The committee of conference adopted the House FMS ceiling. Adoption of the House authorization, however, is not intended to signify approval of the FMS program for Paraguay, funding for which was eliminated by the aggregate ceiling authorized in the Senate bill.

The committee of conference adopted the Senate position on authorization of funds for the Economic Support Fund with two exceptions: (1) Authorization for Southern African programs was set at $60 million; and (2) authorization for Middle East regional cooperation programs was set at $5 million.

The committee of conference believes that efforts should be made in Turkey to prevent or reduce the damage to persons and property resulting from earthquakes and other natural disasters. The committee of conferences believes the executive branch should encourage the use of a portion of the Economic Support Fund or any other available monies in Turkey for research, analysis, and equipment necessary to prepare for a more effective life and property saving response to such national disasters. Further, we believe such an effort could be of substantial benefit to other countries which suffer frequent, severe natural disasters.

INTERNATIONAL NARCOTICS CONTROL

*Involvement of U.S. personnel in narcotics control enforcement activities abroad*

The Senate bill amended section 481(c)(1) of the Foreign Assistance Act of 1961 to limit activities of U.S. employees abroad with respect to narcotics control efforts, by not allowing them to interrogate or be present during interrogation of any U.S. person arrested in a foreign country without the written consent of such person. It also exempted U.S. Armed Forces personnel carrying out their responsibilities under applicable status of forces arrangements.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

*Use of herbicides*

The Senate bill amended section 481 of the Foreign Assistance Act of 1961 to prohibit the use of foreign assistance funds directly or indirectly for spraying herbicides on marijuana plants if such herbicides are likely to be harmful to health. The Secretary of State was required to inform the Secretary of Health, Education, and Welfare of the use or intended use of any herbicide in a marijuana eradication program receiving foreign assistance funds. In turn, the Secretary of Health, Education, and Welfare was to advise the Secretary of State if the herbicide was likely to be harmful. The Secretary of State was required to report to Congress each January on compliance with these requirements.

The House amendment amended section 482 of the Foreign Assistance Act of 1961 to prohibit the use of fiscal year 1979 international narcotics control funds for the eradication of marihuana through the use of paraquat unless paraquat was used in conjunction with another substance or agent that would warn potential users that paraquat had been used.

The committee of conference adopted the Senate provision with two amendments: (1) to delete the words "directly or indirectly," and (2) to incorporate the essence of the House amendment, with the addition of the following language after the prohibition on herbicide use: this prohibition shall not apply if the herbicide is used in conjunction with another substance that will clearly and readily warn potential users and consumers of the sprayed marijuana that a herbicide has been used on it."

This language closely follows the House amendment. The use of the words "clearly and readily" is intended to emphasize that potential users should be warned of the pres-

ence of a herbicide by an ineradicable means without resorting to laboratory analysis or the use of costly, specialized equipment.

It is not the intent of the committee of conference to jeopardize programs for poppy eradication with this provision.

*Procurement of weapons*

The Senate bill amended section 482 of the Foreign Assistance Act of 1961 to prohibit the use of international narcotics control funds for the procurement of weapons or ammunition.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

HUMAN RIGHTS

*General policy statement*

The House amendment amended section 502B(a)(1) of the Foreign Assistance Act of 1961 to clarify current ambiguous language without changing the thrust of current policy pertaining to U.S. foreign policy and human rights.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the House provision.

*Human rights and security assistance*

The House amendment amended section 502B(a)(2) of the Foreign Assistance Act of 1961 to delete the introductory words "It is further the policy of the United States" and to substitute "except under extraordinary circumstances which necessitate a continuation of security assistance," for "except under circumstances specified in this section" in the prohibition on security assistance to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.

The Senate bill did not contain a comparable provision.

The conference substitute deletes "it is the policy of the United States" but otherwise makes no change in section 502B(a)(2).

In so doing, the committee of conference adhered as much as possible to the language in existing law in order to avoid further complications in this provision. However, the intended effect of this amendment is to substitute for the current policy statement a legal requirement to deny security assistance to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights, unless in accordance with the procedures of section 502B(c)(1), (1) the Secretary of State finds that extraordinary circumstances exist which necessitate a continuation of security assistance for such country, and, (2) that on all the facts it is in the national interest of the United States to provide such assistance.

The conference amendment to section 502B is not intended to require the executive branch to publicly identify those countries which it considers to be consistent violators of human rights. Rather it is the intent of the committee of conference to place renewed emphasis on human rights as a major factor that must, as a matter of law, be taken into account in making security assistance decisions.

ASSISTANCE TO POLICE AND OTHER LAW ENFORCEMENT FORCES

*Licensing of exports of crime control equipment*

The Senate bill amended section 4 of the Export Administration Act of 1969, to require that exports of crime control and detection instruments and equipment be approved by the Secretary of Commerce only pursuant to a validated export license. Exports to NATO countries, Japan, Australia, and New Zealand were exempted from this requirement.

The House amendment amended section 38(a) of the Arms Export Control Act to direct the President to include on the U.S. Munitions List crime control and detection instruments and equipment currently regulated by the Commerce Department pursuant to the Export Administration Act.

The committee of conference adopted the Senate provision. Given the sensitive nature of such exports, it is the expectation of the committee of conference that the State Department will participate in a review process with the Secretary of Commerce concerning exports of crime control and detection instruments and equipment. It should be noted that, in accordance with another provision of the conference substitute based on essentially identical provisions of the Senate bill and the House amendment, the issuance of export licenses for crime control and detection instruments and equipment is prohibited to countries which engage in a consistent pattern of gross violations of internationally recognized human rights, unless the President certifies in writing to the Congress that "extraordinary" circumstances exist warranting provision of such assistance.

In imposing a statutory requirement for validated licenses for crime control and detection instruments and equipment, the committee of conference believes it would be appropriate for the Department of Commerce to review the current listing of items classified as crime control and detection instruments and equipment in order to determine whether those classifications need to be revised. Such revision should be conducted with a view toward removing from the category of crime control equipment those items whose subjection to a validated license procedure is unnecessary to carry out the purpose of this legislation. These would include items currently listed as crime control and detection instruments and equipment which are not exported to law enforcement agencies; e.g., sporting shotguns which, by virtue of their special characteristics, are unsuitable for police and military use. Unlike riot shotguns, it is inappropriate to subject sporting shotguns to validated license requirements.

It is not the intention of the committee of conference that the Commerce Department in its revision exempt particular destinations from controls, with the exception of those destinations specifically exempted by the provision.

*Reports on exports to law enforcement agencies*

The House amendment amended section 36(a) of the Arms Export Control Act to require quarterly reports on Government sales and commercial exports of defense articles and services (including crime control equipment) sold for more than $100,000 to or for foreign government forces which perform law enforcement functions.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the Senate position. However, it is expected that the Senate Foreign Relations Committee and the House International Relations Committee will have ready access to data concerning the export licenses issued (1) for the export of crime control and detection equipment and instruments pursuant to the Export Administration Act, and (2) for the export of defense articles or services sold to or for forces performing law enforcement functions pursuant to the Arms Export Control Act.

The committee of conference expects that semiannual reports to Congress already required from the Commerce Department in accordance with section 10 of the Export Administration Act will include full reports on exports of crime control and detection instruments and equipment.

INTERNATIONAL MILITARY ASSISTANCE AND SALES PROGRAM MANAGEMENT

*Justification of continuation of military assistance advisory groups (MAAG's)*

The Senate bill amended section 515(a) of the Foreign Assistance Act of 1961 to express the sense of Congress that continuation of military assistance advisory groups is contingent upon executive branch justification that continuation is essential to U.S. foreign policy or national security interests.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position with the understanding that similar justifications are made annually by the executive branch in the Congressional Presentation Documents.

*Personnel serving on a reimbursable basis*

The Senate bill amended section 515(b)(3) of the Foreign Assistance Act of 1961 to specify that personnel serving on a reimbursable basis must be counted under the annual ceiling for MAAG's.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

*Ceiling on personnel*

The Senate bill amended section 515(d) of the Foreign Assistance Act of 1961 to set a ceiling of 775 military personnel assigned overseas to perform security assistance management functions during fiscal year 1979.

The House amendment amended the same section to set the ceiling at 800.

The committee of conference adopted the Senate provision with amendment to set the ceiling at 790. The committee of conference supports the continued phaseout of military assistance advisory groups and expects the executive branch to thoroughly review the need for such groups in fiscal year 1980.

*Assignment of additional defense attachés*

The House amendment amended section 515(f) of the Foreign Assistance Act of 1961 to allow the President to assign an aggregate worldwide total of up to eight additional defense attachés to perform security assistance management functions in countries to which defense attachés were authorized to be assigned on December 31, 1977.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the House provision.

*Exemption for temporary assignments*

The Senate bill amended section 515(g) of the Foreign Assistance Act of 1961 by adding "for fixed" before "periods of time." Section 515(g) provides exemptions from assignment prohibitions and numerical limitations for personnel performing services for specific purposes and periods of time on a fully reimbursable basis.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

By adding the words "for fixed" the committee of conference intends to make clear that temporary reimbursable groups should not be in existence for extended or indefinite periods of time.

*Promotional activity*

The Senate bill amended section 515 by adding a new subsection that requires the President to continue to instruct U.S. missions abroad that their actions should not encourage, promote, or influence foreign country purchase of U.S. military equipment.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

RHODESIA EMBARGO

The Senate bill prohibited the enforcement of sanctions against Rhodesia before fiscal year 1980 provided the President determines that (1) Rhodesia has committed itself to participate in, and negotiate at, an all-parties conference under international auspices; and (2) a government has been installed chosen by free elections in which all population groups have been allowed to participate freely, with international observation.

The House amendment prohibited the enforcement of sanctions against Rhodesia after calendar year 1978 unless the President determined that a government had not been installed chosen by free elections in which all political groups had been allowed to participate freely.

The committee of conference adopted a compromise version which provides that the United States shall not enforce sanctions against Rhodesia after December 31, 1978, provided that the President determines (1) that the Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference held under international auspices on all relevent issues; and (2) that a government has been installed chosen by free elections in which all political and population groups have been allowed to participate freely, with observation by impartial, internationally recognized observers.

In adopting the compromise version, it is the intent of the committee of conference that—

(*a*) the phrase "has demonstrated its willingness to negotiate in good faith at an all-parties conference" be interpreted to mean that the Rhodesian Government has committed itself to attend and participate in such a conference, if held, and that it is not necessary that the conference convene by December 31, 1978.

(*b*) the Presidential determination is obligatory and shall be made upon fulfillment of the conditions set forth in paragraphs (1) and (2).

(*c*) in making his determination on whether or not free elections were held, the President consider, among other factors, the extent of public participation in the elections. The committee further intends that any disruptions in the election process due to guerrilla activities shall not unduly prejudice an affirmative Presidential determination regarding participation in elections. By the same token, however, the possibility that many people may express their opposition to the internal settlement by voluntarily refraining from voting in the elections shall be taken into account in considering a negative Presidential determination.

(*d*) the phrase "all political and population groups" means that all the people of Rhodesia as well as all organized political groups have been given a fair opportunity to participate fully in the election without regard to their ethnic identity or political affiliation.

(*e*) "all relevant issues" to be considered at an all-parties conference include, among other things, the terms of majority rule, the protection of minority rights, the Anglo-American plan, and the terms of the Salisbury Agreement.

INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET)

*Nicaragua and Paraguay*

The Senate bill amended section 542 of the Foreign Assistance Act of 1961 to prohibit the use of fiscal year 1979 international military education and training funds for Nicaragua and Paraguay.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position.

The committee of conference agreed (1) to avoid naming specific countries in the statute, and (2) to cut the international military and education and training account by $300,000—the exact amount which had been programmed for both Nicaragua and Paraguay.

The elimination of references to specific countries should not be interpreted as approval of the human rights practices in either Nicaragua or Paraguay. This bill already contains a clear and concise prohibition on grant military training to any country which engages in a consistent pattern of gross violations of internationally recognized human rights.

*Human rights and international military education and training programs*

The Senate bill amended section 543 of the Foreign Assistance Act of 1961 to add to the purposes of training that of increasing the awareness of participants on human rights issues.

The House amendment amended chapter 5 of part II of the Foreign Assistance Act of 1961 to add a new section 554 to require a course on human rights as a prerequisite for completion of all other courses. The provision would have taken effect at the beginning of fiscal year 1980.

The committee of conference adopted the Senate provision.

PEACEKEEPING OPERATIONS

*General authority*

The Senate bill amended part II of the Foreign Assistance Act of 1961 by adding a new section 551 stating that under special circumstances U.N. and other peacekeeping forces can provide a measure of stability and promote the cause of world peace and authorizing assistance for such forces.

The House amendment amended part II of the Foreign Assistance Act of 1961 by adding a new section 551 establishing general authority for assistance for peacekeeping operations and other programs carried out in furtherance of U.S. national security interests.

The committee of conference adopted the House provision. The committee of conference notes that sections 551, 552, and 553 of the Senate bill contained specific authorizations for the same programs authorized generally in section 551 of the House amendment.

*Base rights*

The Senate bill amended the Foreign Assistance Act of 1961 by adding a new section 552(a) which states the sense of Congress that multiyear assistance authorizations should not be used to obtain base rights agreements.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position.

*Spain*

The Senate bill amended the Foreign Assistance Act of 1961 by adding a new section 552(b) which states that money authorized for Spain is to carry out programs of nonmilitary cooperation with the United States in certain fields pursuant to the 1976 treaty with Spain.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position. The committee of conference notes that this authorization for Spain is included in section 551 of the House amendment.

*Middle East Special Requirements Fund*

The Senate bill amended the Foreign Assistance Act of 1961 by adding a new section 553 which (1) authorizes a Middle East Special Requirements Fund, (2) requires a Presidential report on the Fund prior to obligation or expenditure of authorized funds, and (3) provides for a congressional veto by concurrent resolution. Both the Senate and the House provisions establishing the Economic Support Fund repeal part VI of the Foreign Assistance Act which previously contained the Special Requirements Fund.

The House amendment did not contain a comparable provision and hence would repeal the Middle East Special Requirements Fund.

The committee of conference adopted the Senate provision.

*Emergency assistance*

The House amendment added a new section 553 to the Foreign Assistance Act of 1961 which would have authorized the President in emergencies to transfer and consolidate with peacekeeping funds an amount not to exceed 10 percent of economic support funds without regard to the 20-percent limit on transfers into an account which is contained in section 610(a) of the Foreign Assistance Act of 1931.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the Senate position.

*Administrative authorities*

The House amendment added a new section 554 to the Foreign Assistance Act of 1961 which would make peacekeeping operations assistance subject to administrative authorities of part I of the act. The House amendment also made such assistance subject to the human rights policy, restrictions, and reporting requirements of section 502B; and made various conforming changes relating to prohibitions and limitations. The purpose of the provisions was to make the legal authorities and limitations which now apply to security supporting assistance apply to peacekeeping operations.

The Senate bill did not contain comparable provisions.

The committee of conference adopted the House provisions.

KOREA EQUIPMENT TRANSFER

*Transfer in conjunction with troop withdrawal*

The Senate bill amended the Foreign Assistance Act of 1961 by adding a new section 561 to grant the President the authority to transfer defense articles and services to Korea without expressly requiring the transfer to be in conjunction with withdrawals of U.S. Armed Forces.

The House amendment added a provision which granted the President authority to transfer defense articles and services to Korea in conjunction with the withdrawal of the 2d Infantry Division and support forces.

The committee of conference adopted the House provision with an amendment adding the word "only" before "in conjunction with." By adding the word "only," the committee of conference intends that the rate and proportion of the defense articles transferred shall correspond to the rate and proportion of the troop withdrawals and that equipment shall not be transferred to Republic of Korea at a rate faster than the withdrawal of troops.

The committee of conference intends that nothing in the language of subsections (a) and (b) of section 23 of the conference substitute shall be interpreted to mean that Congress either approves or disapproves the policy of withdrawing all U.S. ground forces from Korea. However, the committee of conference intends that the authorization of this equipment transfer in no way diminishes the expression of serious concern about the troop withdrawal contained in subsection (e) of section 23.

*Policy statement on troop withdrawal*

The Senate bill contained a policy statement on troop withdrawal, and a requirement that the President "should" report to Congress on the effect of any proposed withdrawal plan prior to further withdrawal.

The House amendment contained the same policy statement but required a mandatory report.

The committee of conference adopted the House position.

The committee of conference expects that the President will consult fully with Congress in advance of further troop withdrawals from Korea.

*$800 million ceiling*

The House amendment authorized the transfer of U.S. defense articles and defense services to the Republic of Korea but placed a ceiling of $800 million on the value of defense articles that can be transferred to Korea in connection with the withdrawal of U.S. forces. This authority would be terminated on December 31, 1982.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the Senate position.

The committee of conference intends that under no circumstances should the President transfer to the Republic of Korea, pursuant to this authorization, defense articles which cost more than the replacement value minus a standard depreciation of the defense articles now in possession of the 2d Division and support forces. The committee of conference notes that the authorization for the equipment transfer includes a requirement that the annual congressional presentation documents must contain a description and statement of the value of the equipment to be transferred during the period covered by the congressional presentation documents.

*Report on assessments*

The Senate bill amended the Foreign Assistance Act of 1961 to require assessments on the viability of withdrawal in a report 120 days prior to each phase of withdrawal.

The House amendment listed a series of assessments that must be included in an annual report on the equipment transfer to be included in the congressional presentation documents (CPD).

The conference substitute is essentially the same as the Senate provision.

*Placement of equipment transfer authority*

The Senate bill added the Korea transfer authority as a new chapter in part II of the Foreign Assistance Act of 1961.

The House amendment established this authority outside the Foreign Assistance Act of 1961.

The committee of conference adopted the House provision.

TURKEY ARMS EMBARGO

The Senate bill repealed section 620(x) of the Foreign Assistance Act of 1961. It further made policy statements regarding Cyprus, Greece, and Turkey. Finally, it required that any request for economic or military assistance for Greece, Cyprus, or Turkey must include a Presidential certification that the goals specified in the policy statements had been substantially achieved or that such assistance would contribute to their achievement.

The House amendment provided that section 620(x) would be of no further force and effect if the President determined and certified to Congress that resumption of military coperation with Turkey was in U.S. national and NATO interests and that Turkey was acting in good faith to achieve a just and peaceful settlement of the Cyprus problem, the early peaceable return of refugees to their homes and properties, continued removal of Turkish military troops from Cyprus, and the early serious resumption of intercommunal talks aimed at a just negotiated settlement. The House amendment also made policy statements different from those of the Senate bill. Finally, the House amendment required that a Presidential certification accompany any request for security assistance for Greece and Turkey stating that such assistance is intended solely for defensive purposes, including the fulfillment of their NATO responsibilities, and that furnishing security assistance is not inconsistent with the objectives of a peaceful settlement among all concerned parties to the Cyprus problem.

The committee of conference adopted the House provision with an amendment. This action clearly constitutes a de facto repeal of section 620(x) of the Foreign Assistance Act of 1961 although it is the intention of the committee of conference that removal of the prohibitions be contingent upon a Presidential determination and certification to the Congress that resumption of full military cooperation with Turkey is in the national interest of the United States and in the interest of the North Atlantic Treaty Organization and that the Government of Turkey is acting in good faith to achieve a just and peaceful settlement of the Cyprus problem.

The committee of conference recognizes the extreme volatility of the situation in the Eastern Mediterranean. In recognizing the need to maintain close relationships with two key NATO allies, Turkey and Greece, the committee of conference nevertheless regrets the lack of progress toward a Cyprus settlement. In the course of ensuing deliberations over these issues, the Congress will continue to assess and examine how it can best promote political and military stability in the Eastern Mediterranean, reduce tensions between Greece and Turkey, and help promote progress toward a Cyprus settlement while at the same time trying to bolster U.S. relations with all states in the region.

With regard to the fiscal year 1978 authorization of $48 million in grant military assistance to Turkey, it is the understanding of the committee of conference that the executive branch does not intend to obligate those funds for that purpose. It is the intention of the committee of conference that no new grant military assistance program be authorized for Turkey in fiscal year 1978.

ARMS SALES POLICIES

*Arms sales principles*

The Senate bill amended chapter 1 of the Arms Export Control Act by adding 10 arms sales principles which the executive branch would be directed to consider in making arms sales decisions affecting developing countries. The principles are as follows:

(1) Arms sales should be approved only if they clearly and demonstrably enhance United States national security interests and are consistent with United States foreign policy interests. Arms sales should be used only as an exceptional foreign policy implement. In determining the national security impact of an arms sale, account should be taken of the impact of the sale on United States defense readiness; and the sale of advanced weapons should not be approved unless the weapons system is operationally deployed by United States forces.

(2) Arms sales should not substitute for diplomacy in bringing stability to areas experiencing regional strife. No arms sale should be approved for a region if such arms are likely to disrupt ongoing diplomatic efforts to achieve regional stability.

(3) The United States should not be the first supplier to introduce into a region newly developed, advanced weapons systems which would create a new or significantly higher combat capability.

(4) The sale of advanced weapons should not be approved if less advanced existing weapons systems are available which have roughly comparable capabilities. In addition, development of advanced weapons systems solely for export should not be permitted unless such systems can substitute for a more advanced system.

(5) In general, weapons systems should be sold only if they can be utilized effectively by indigenous forces without large and long-term commitments of United States personnel in training, advisory, or maintenance capacities.

(6) If a weapons system being considered for sale includes highly sophisticated technology which could damage United States national security interests when acquired by unfriendly states, the sale should be approved only after special arrangements are made to guard against espionage, theft of equipment, and defection of key personnel. Similiar precautions should be taken for weapons that are especially useful to international terrorists.

(7) Coproduction agreements for significant weapons, equipment, and major components should be approved only if the coproduced items are solely for the coproducer's own security requirements.

(8) The sale of expensive weapons systems or related services should not be approved for less-developed countries if the impact of such sale would cause serious harm to such country's economic development prospects, unless such sales are vital for that country to deter a significant threat of external attack.

(9) The human rights situation in recipient countries should be taken into account in all arms sales decisions.

(10) Arms sales should not be approved simply because other arms suppliers might make the sale, unless it is determined that the sale of United States weapons is necessary for United States national security or foreign policy reasons.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position. The committee of conference strongly urges that the executive branch give consideration to the aforementioned principles in making decisions on potential arms sales. However, it is the understanding of the committee of conference that these principles need not apply in cases where extraordinary circumstances necessitate a Presidential exception or where countries friendly to the United States must depend on advanced weaponry to offset quantitative and other disadvantages in order to maintain a regional balance.

*Arms transfer policies*

The Senate bill added a new section 7 to the Arms Export Control Act containing a policy statement on multilateral conventional arms transfer restraint and requiring a Presidential report by December 31, 1979, which assessed the results of the multilateral approach and commented on its implications for U.S. arms export policy.

The House amendment amended section 1 of the Arms Export Control Act, adding a provision expressing the sense of Congress relating to the implementation of U.S. policy on conventional arms transfers. It stated that (1) U.S. arms sales should be balanced, (2) full regard should be given to U.S. security interests in all regions of the world, and (3) particular attention should be given to the flow of arms to the developing world.

The committee of conference adopted the House provision with two amendments: (1) To add after the word "Congress" the phrase "that the President maintain adherence to a policy of restraint in conventional arms transfers and"; and (2) to add a subsection: (b) Not later than December 31, 1979, the President shall transmit to the Congress a detailed report assessing the results and commenting on the implications of the

multilateral discussions with other arms suppliers.

SALES FROM STOCK

The Senate bill amended section 21(e)(1) of the Arms Export Control Act to require that appropriate charges for inventory losses be included in the price of defense articles sold to foreign governments.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

ANNUAL ARMS SALES PROPOSAL AND SURVEY REPORTS

*Annual arms sales proposal*

The Senate bill amended section 25 of the Arms Export Control Act to revise the requirements in existing law for an annual arms sales estimate and justification to require greater detail in the annual estimate and to focus it more on weapons and weapons related sales. With the amendment, section 25 would require a report early each year containing the President's security assistance and arms transfer plan proposed for the following fiscal year for countries other than NATO, Japan, Australia, and New Zealand. The report would include the following new information: (1) the estimated dollar value of all weapons and weapons related sales intended to be made under sections 21 and 22 of the Arms Export Control Act; (2) an estimate of the amount of all weapons and weapons related credits and guaranties requested for authorization; (3) a detailed country-by-country list setting forth a best estimate of the identity and value of each weapons or weapons related major defense equipment sale, credit, or guaranty to be made to each country; (4) a detailed statement explaining the foreign policy and U.S. national security considerations involved in determining each country's sales credit or guaranty level and weapons or weapons related major defense equipment list and how such sales would promote world peace; and (5) the best estimate of the number of U.S. Armed Forces and civilian personnel required to be stationed in each such country in connection with such sale, credit, or guaranty for training or any other purpose.

In addition, with respect to any sales which exceed the estimated aggregate country total or which involve the sale of any major defense equipment not identified in the estimate, the Senate bill would have required (1) a Presidential determination that the information: (1) The estimated dollar value (2) compliance with the normal congressional review procedures of section 36(b) of the Arms Export Control Act.

The House amendment made no change in section 25 of the Arms Export Control Act.

The committee of conference accepted a compromise provision that amends section 25 of the Arms Export Control Act to require the transmittal to Congress by November 15 sale is in the national security interest; and of each year a document known as the Arms Sales Proposal, setting forth the arms sales proposal of the executive branch which will cover all defense articles and services for $25 million or more and of major defense equipment for $7 million or more which are considered eligible for approval during that fiscal year to countries other than NATO, Japan, Australia, and New Zealand.

The Arms Sales Proposal is expected to be an authoritative projection of all sales the executive branch contemplates as being eligible for approval during the fiscal year.

After the November 15 report, it is expected that notification and that regular consultations will occur with the Senate Foreign Relations and House International Relations Committees on any changes which might be made in the Arms Sales Proposal. It is also expected, however, that the report received on November 15 contain the most accurate and up-to-date information on potential arms sales that is then available to the executive branch.

Reporting to Congress under this provision does not affect nor does it fulfill the notification requirements under section 36(b) of the Arms Export Control Act. This provision also will not alter in any way current procedures which provide for a prenotification of intent to issue a letter of offer 20 days before the formal 30 day notification period under section 36(b) of the Arms Export Control Act.

Given the highly sensitive nature of the assessments that will be made, it is expected that the report will be controlled under appropriate classification procedures.

*Policy statement on defense requirement surveys*

The Senate bill added a new section 26(a) to the Arms Export Control Act containing a policy statement that military surveys in no way represent a U.S. commitment to provide military equipment and that survey recommendations should be consistent with arms export control policy.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

*Survey reports*

The Senate bill provided for a quarterly listing of defense requirement surveys proposed for the following quarter and that the Senate Foreign Relations Committee and the House International Relations Committee be provided with a complete copy of any foreign military surveys upon request.

The House amendment required a quarterly Presidential report on security assistance surveys authorized during the preceding calendar quarter and provided for Senate Foreign Relations Committee and House International Relations Committee access to the results of such surveys.

The committee of conference adopted the House amendment with two amendments: (1) to strike all references to "security assistance surveys" and insert in lieu thereof "defense requirement surveys"; and (2) to strike "the results of." In adopting the latter amendment it is the intent of the committee of conference that upon the request of the chairman of either the Senate Foreign Relations or House International Relations Committee a complete copy of the survey will be provided to such committee.

INFORMATION ON SECTION 36(b) ARMS SALES

The Senate bill amended section 36(b)(1) of the Arms Export Control Act to require the President to provide to the Senate Foreign Relations and House International Relations Committees, on request, additional information in connection with certifications of major proposed arms sales transmitted under section 36(b). The additional information includes an arms control impact evaluation prepared by the Arms Control and Disarmament Agency in consultation with the Departments of State and Defense.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

EXTENDED REVIEW PERIOD

The Senate bill amended section 36(b)(1) of the Arms Export Control Act to permit two-thirds of the members of either the Senate Foreign Relations or the House International Relations Committee to extend for an additional 30 calendar days the period for congressional review and disapproval of proposed arms sales.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position. The executive branch has cooperated with the Congress recently in providing for advance notification of proposed sales, and is urged to continue this practice. Further it is the expectation of the committee of conference that the executive branch will consider acceding to appropriate congressional requests for additional time for congressional review of specific arms sales.

ANNUAL SECURITY ASSISTANCE REPORT

The Senate bill contained a provision that requires an annual report on military assistance and sales and commercial exports of military items.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision. The provision retains a reporting requirement of section 657 of the Foreign Assistance Act of 1961 that will be deleted upon enactment of the International Development and Food Assistance Act of 1978 (H.R. 12222).

UNITED STATES-CHINA MUTUAL DEFENSE TREATY

The Senate bill provided that it is the sense of the Senate that proposed policy changes affecting the Mutual Defense Treaty with China shall be a matter for prior consultation with the Senate.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision with an amendment to change all references to "Senate" to "Congress," with the exception of the reference to "Senate" which will remain in paragraph (a)(4) concerning advice and consent to treaties. The purpose of this change is to make clear that the House of Representatives is to be included in this consultation process.

NONIMMIGRANT VISAS

The Senate bill repealed section 21 of "An act to provide certain basic authority for the Department of State" which states that the Secretary of State should recommend to the Attorney General a waiver permitting the admission to the United States of any prospective visitor who is excludable under the immigration laws only for reason of organizational affiliation.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position. The committee of conference agreed that the continued implementation of procedures under section 212(d)(3) of the Immigration and Nationality Act which provides for the waiver of visa ineligibility because of membership in proscribed organizations shall not be construed as implying that Soviet citizens who visit the United States as labor representatives are actually trade unionists as the term is understood in the United States.

EXPORTS WITH POLITICAL/MILITARY IMPLICATIONS

The Senate bill amended section 4 of the Export Administration Act of 1969 by adding a new subsection which provided that exports regulated by the Commerce Department which could have direct military application may be exported to countries engaged in activities detrimental to important U.S. political/military interests only pursuant to a validated export license. The State Department would have 30 days to review such a license. Exports to NATO countries and Japan, Australia, and New Zealand were exempted.

The House amendment did not contain a comparable provision.

The committee of conference adopted the House position with the understanding that the Senate Subcommittee on International Finance and the House Subcommittee on International Economic Policy and Trade will give serious study to this matter and will review the need for such legislation in connection with their consideration next year of

the extension of the Export Administration Act of 1969.

UNITED STATES-SOVIET RELATIONS

The Senate bill contained a provision that expressed the sense of Congress that the President should review U.S. policy toward the Soviet Union and should report to the Congress.

The House amendment contained a comparable provision which provided it is the sense of the Congress that the President "shall", rather than "should", review U.S. policy toward the Soviet Union and which required a report on the results of the review not later than 90 days after the date of enactment of this Act.

The committee of conference adopted the Senate provision with an amendment to provide that the President should report to the Congress by December 31, 1978, on the results of the review.

USE OF FOREIGN CURRENCIES

The Senate bill amended section 502(b) of the Mutual Security Act of 1954 which authorizes the use of foreign currencies to defray expenses incurred by Members of Congress and eligible staff when on official business abroad. The Senate bill designated the Speaker of the House, the President pro tempore of the Senate, the majority leader of the Senate, the minority leader of the Senate or the chairman of any committee of the House of Representatives or the Senate or of any joint committee of the Congress as those authorized to approve the use of foreign currencies. It also contained a permanent authorization for the Secretary of the Treasury to purchase local currencies whenever local currencies owned by the United States are not otherwise available to defray official congressional travel expenses. The bill contained two reporting requirements: The first retained the annual consolidated reporting requirement of existing law itemizing the amounts and dollar equivalent values of each foreign currency expended and the amount of dollar expenditures from appropriated funds in connection with official foreign travel. Such reports were to be submitted to the Committee on House Administration or to the Secretary of the Senate, to be open to public inspection and to be published in the CONGRESSIONAL RECORD.

The Senate bill also required that each Member, staffperson, or group authorized to travel on official business submit a report to the Clerk of the House of Representatives or to the Secretary of the Senate setting forth the same information required for the annual reports, within 30 days after completion of such travel.

The House amendment, which also amended section 502(b) of the Mutual Security Act, differed from the Senate bill in several respects. First, it would have allowed committee chairmen to authorize travel only for members and staff of their respective committees. Second, it provided annual authority for the Secretary of the Treasury to acquire local currencies needed to defray official travel expenses. Third, it required quarterly consolidated reports itemizing the amount and dollar equivalent value of each foreign currency expended and the amounts of dollar expenditures from appropriated funds in connection with travel outside the United States.

The committee of conference adopted the House amendment with an amendment to provide for permanent authority for the Secretary of the Treasury to acquire currencies needed to defray expenses incurred by Members of Congress and eligible staff when on official business outside the United States out of foreign currencies as available or from a permanent appropriation to the Treasury Department for such purposes. The amendment also provides that the chairman of each committee of the Senate may authorize travel for members of that committee, staff persons of members of that committee and staff of that committee.

The committee of conference recognizes that congressional study missions and other official travel abroad is an essential and fundamental responsibility in a world of increasing interdependency. This amendment will provide the funds to defray official congressional expenses on a rational, manageable, and economic basis. The 30-day and quarterly reporting requirements, providing information subject to public inspection, are designed not only to promote business-like and accountable financing procedures with regard to congressional travel but also to help increase understanding of the need for and purposes of congressional missions abroad.

ISRAEL AND EGYPT

The Senate bill contained a provision that stated congressional findings concerning Israeli-Egyptian negotiations and expressed the sense of Congress that the United States should continue to promote negotiations and encourage other Arab States to enter into negotiations. The Senate bill also stated the sense of Congress that the United States should be responsive to Israel's economic needs and defense requirements including the provision of additional advanced aircraft to maintain Israel's defense capability which is essential to peace.

The House amendment contained no comparable provision regarding negotiations but stated the sense of Congress that the United States should be responsive to the defensive requirements of Israel and sell Israel additional advance aircraft in order to maintain Israel's defense capability which is essential to peace.

The committee of conference adopted the Senate provision.

REPORTS TO CONGRESS

The House amendment (1) amended section 8(d) of "An act to amend the Foreign Military Sales Act," approved January 12, 1971, by changing a quarterly reporting requirement to an annual reporting requirement and (2) repealed several provisions relating to reports which have already been submitted to Congress.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the House provision.

SAVINGS PROVISION

The Senate bill provided that, with specified exceptions, amendments made by the bill shall take effect on October 1, 1978.

The House amendment provided that with specified exceptions, enactment of the amendments made by the bill will not affect fiscal year 1978 authorizations and limitations.

The committee of conference adopted the House provision.

ECONOMIC SUPPORT FUND

The Senate bill amended part II of the Foreign Assistance Act of 1961 by deleting the current chapter 4 (security supporting assistance) and replacing it with a new chapter 4 (Economic Support Fund). The bill—

—states that under special economic, political or security conditions the national interests of the United States may require support for countries or in amounts that could not be justified under the development assistance accounts.

—assigns to the Secretary of State responsibility for policy decisions and program justifications for the Economic Support Fund (ESF), this responsibility to be exercised in cooperation with the Administrator of the Agency for International Development (AID).

—authorizes the appropriation of $1,932 million for the ESF for fiscal year 1979.

—continues existing authority for funds appropriated under this section to remain available until expended.

—stipulates that amounts authorized under the ESF shall be used for economic programs only and may not be used for military or paramilitary purposes.

—provides authority for an ESF program in the Middle East and earmarks not less than the following amounts for the following countries:

| | |
|---|---|
| Israel | $785,000,000 |
| Egypt | 750,000,000 |
| Jordan | 93,000,000 |

—provides that the total amount of the funds earmarked for Israel may be made available as a cash transfer, provided that the President shall insure that the level of cash transfers does not cause an adverse impact on U.S. nonmilitary exports to Israel.

—provides that not less than 67 percent of the assistance to Israel and Egypt shall be provided on a grant basis.

—requests the President to provide at least $65 million of the funds authorized for Egypt for the development and encouragement of private enterprise.

—earmarks $25 million of the funds authorized for the Middle East to be used to fund regional programs which stress development or scientific and technical cooperation between Israel and neighboring Arab countries, or programs which could be used for Arab-Israeli cooperation once normalization of relations occurs.

—provides that before proceeding with further U.S. participation in the potash production facility in Jordan and the Maqarin Dam and Jordan Valley Irrigation System the President shall determine and report to the Congress that Jordan has obtained firm commitments from other sources for the balance of the financing of the projects.

—earmarks $70 million of the funds authorized under this chapter for the countries of southern Africa to address problems caused by the economic dislocation resulting from regional conflict and for education and job training assistance. These funds may be used to provide humanitarian assistance to African refugees and displaced persons, to improve transportation links disrupted or jeopardized by regional conflicts, and to provide economic support to the countries in the region. Of the funds authorized, $10 million is earmarked for humanitarian assistance to the people of Rhodesia and $10 million is earmarked for educational and vocational training programs for Rhodesia.

—prohibits assistance under the southern Africa program to Mozambique, Angola, Tanzania, or Zambia unless the President determines that furnishing such assistance woud further the foreign policy interests of the United States.

—earmarks not less than $50 million of the funds authorized under this chapter for economic assistance to Turkey, and $15 million for refugee relief and reconstruction on Cyprus.

The House amendment did not contain a comparable provision. The House, however, did provide for an Economic Support Fund in the International Development and Food Assistance Act of 1978 (H.R. 12222). While H.R. 12222 was not before the committee of conference, House conferees urged the adoption of the Economic Support Fund pro-

visions of H.R. 12222 to the extent that such provisions were within the scope of the conference.

Many provisions relating to ESF as contained in H.R. 12222 were essentially identical to ESF provisions in S. 3075. In such cases the committee of conference adopted the Senate provision. Those provisions where the House had no comparable provision or a dissimilar position was taken in H.R. 12222 are discussed on the following pages.

The committee of conference adopted the Senate provision for a new chapter 4 in part II of the Foreign Assistance Act, establishing an Economic Support Fund to succeed Security Supporting Assistance. The name change more accurately reflects the actual purpose of these funds: to provide economic support to countries of special importance to United States foreign policy. It is the intent of the committee of conference that insofar as is possible development assistance criteria as set forth in part I of the Act be followed in the development and funding of economic supporting assistance programs.

*Type of assistance authorized under the Economic Support Fund*

The Senate bill amended section 531 of the Foreign Assistance Act of 1961 to add language emphasizing the economic nature of the program.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision with an amendment to add the word "economic" before the word "support" in the Senate provision. In H.R. 12222 the House included the word "economic" to emphasize the type support intended.

*Middle East Program—Earmarkings*

The Senate bill earmarked the following amounts for the following countries in the Middle East:

| | Million |
|---|---|
| Israel | $785 |
| Egypt | 750 |
| Jordan | 93 |

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision with the intent that funds will also be provided for the following Middle East programs and in the following amounts:

| | Million |
|---|---|
| Syria | $90 |
| Maqarin Dam project | 50 |
| Private voluntary organization development projects | 3 |

H.R. 12222 earmarked the above country and program amounts.

*Cash transfer to Israel*

The Senate bill provided that the total amount of funds earmarked for Israel may be available as a cash transfer if the President insures that it does not have an adverse impact on U.S. nonmilitary exports to Israel.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision. H.R. 12222 contained a similar provision but earmarked the cash transfer at not less than $560 million.

*Grant assistance to Israel and Egypt*

The Senate bill provided that 67 percent of the assistance to Israel and Egypt be provided on a grant basis.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision with an amendment providing that two-thirds of the assistance to Israel and Egypt be provided on a grant basis. The amendment is similar to a provision contained in H.R. 12222.

*Private enterprise in Egypt*

The Senate bill requested the President to provide at least $65 million of the $750 million authorized for Egypt to be used for the development and encouragement of private enterprise.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

*Promotion of regional cooperation and development*

The Senate bill earmarked $25 million for regional programs which stress development or scientific and technical cooperation between Israel and neighboring Arab countries.

The House amendment did not contain a comparable provision. H.R. 12222 earmarked $3 million for the promotion of regional cooperation and development.

The committee of conference adopted the Senate provision with an amendment:

(1) That not less than $5 million shall be available only for regional programs which stress development or scientific or technical cooperation.

(2) Substituting the word "nations" for the word "nation" where the Senate provision refers to future normalization of relations to indicate that the reference is to normalization between Israel and its Arab neighbors rather than to its relations with the entire Arab nation.

The committee of conference noted that the executive branch supports the encouragement of activities which might lay the base for programs of regional significance in the Middle East in suport of the peace process and that it currently has underway studies of possible regional projects and cooperation. The committee requests that the executive branch report to the Congress not later than February 1, 1979, on the results of its studies. The committee also requests that the executive branch include in its studies those programs which stress economic development and scientific or technical cooperation.

*Assistance for Southern Africa—Use of funds*

The Senate bill earmarked $70 million for economic programs in Southern Africa, with $20 million of the $70 million to be used as follows: $10 million for humanitarian assistance to the people of Rhodesia and $10 million for the establishment of or support for educational and vocational training programs for Rhodesia.

The House amendment did not contain a comparable provision. H.R. 12222 earmarked $65 million for southern African countries.

The committee of conference agreed to earmark $60 million for Southern Africa, and adopted the House position with regard to Rhodesia with the understanding that $10 million of the funds provided for southern African countries will be used to provide humanitarian assistance to refugees from or in Rhodesia, such assistance to be provided promptly as needed through appropriate international organizations. Education and training assistance under this section may be used for, but is not limited to, such assistance for Africans from Namibia and Zimbabwe.

*Authorization for Cyprus*

The Senate bill earmarked not less than $15 million for refugee relief and reconstruction for Cyprus.

The House amendment did not contain a comparable provision.

The committee of conference adopted the Senate provision.

H.R. 1222 earmarked $15 million for economic support for Cyprus.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
BENJAMIN S. ROSENTHAL,
LESTER L. WOLFF,
LEE H. HAMILTON,
JONATHAN B. BINGHAM,
STEPHEN J. SOLARZ,
DONALD J. PEASE,
GERRY E. STUDDS,
WM. S. BROOMFIELD,
EDWARD J. DERWINSKI,
PAUL FINDLEY,
LARRY WINN, JR.,
*Managers on the Part of the House.*

JOHN SPARKMAN,
FRANK CHURCH,
DICK CLARK,
JOE BIDEN,
GEORGE MCGOVERN,
CLIFFORD P. CASE,
JACOB K. JAVITS,
CHARLES H. PERCY,
HOWARD H. BAKER,
*Managers on the Part of the Senate.*

## SECURITIES AND EXCHANGE AUTHORIZATION, FISCAL YEARS 1979–81

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 11567) to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979–81 and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That section of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended—

(1) by striking out "and" after "September 30, 1977," in the first sentence;

(2) by inserting before the period at the end of the first sentence a comma and the following: "$69,000,000 for the fiscal year ending September 30, 1979, and $79,000,000 for the fiscal year ending September 30, 1980"; and

(3) by striking out "fiscal year 1978" in the last sentence and inserting in lieu thereof "fiscal year 1980".

SEC. 2. Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended by striking out "$1,500,000" and inserting in lieu thereof "$2,500,000".

Amend the title so as to read: "An Act to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979 and 1980, and for other purposes.".

The SPEAKER. The Clerk will report the House amendment to the Senate amendments.

The Clerk read the House amendment to the Senate amendments, as follows:

Page 2 of the Senate engrossed amendments, strike out "$2,500,000" on line 3 and insert in lieu thereof "$2,000,000".

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

A motion to reconsider was laid on the table.

## FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Mr. MURPHY of Illinois. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7308) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

The SPEAKER. The question is on the motion offered by the gentleman from Illinois (Mr. MURPHY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7308, with Mr. MURTHA (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee rose on Wednesday, September 6, 1978, the Clerk had read through line 25 on page 64.

Are there any further amendments to title I?

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 64, after line 25, add the following new section:

CONSTITUTIONAL POWER OF THE PRESIDENT

SEC. 111. Nothing contained in chapter 119 of Title 18, United States Code, section 605 of the Communications Act of 1934, or this Act shall be deemed to affect the power vested by the Constitution in the President to acquire foreign intelligence information by means of an electronic, mechanical, or other surveillance device.

Mr. BUTLER. Mr. Chairman, H.R. 7308 denies the existence of any inherent authority on the part of the executive to conduct warrantless electronic surveillance by vesting Federal courts with the jurisdiction to authorize—or to refuse to authorize—through a warrant procedure, foreign intelligence gathering activities. The judicial warrant approach in the administration's bill is premised on the proposition that the fourth amendment to the Constitution presumptively requires a warrant for every search.

The underlying reasoning for this assertion is the Supreme Court's holding in the Keith case, where they ruled that a warrant is required for electronic surveillance employed for domestic security purposes. However, the warrant requirement in the Keith case was limited to domestic security cases, as the courts made it clear that they were in no way addressing the issues involved in foreign intelligence electronic surveillance.

Not only is there no existing case authority for vesting the Federal courts with jurisdiction to authorize or refuse to authorize foreign intelligence gathering activities as proposed in H.R. 7308, but the U.S. Supreme Court has explicitly rejected such authority in *Chicago & Southern Air Lines Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948) holding:

> . . . It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

Even the most recent espionage case *United States* v. *Humphrey & Troung*, Crim. No. 78–25–A, E. D. Va., May 19, 1978, stated:

> It is not at all certain that a judicial officer, even an extremely well-informed one, would be in a position to evaluate the threat posed by certain actions undertaken on behalf of or in collaboration with a foreign state. . . . The Court is persuaded that an initial warrant requirement (for foreign intelligence electronic surveillance) would frustrate the President's ability to conduct foreign affairs in a manner that best protects the security of our government.

All the Federal judicial circuits which have considered the issue of the inherent constitutional right of the President to authorize warrantless electronic surveillance have held that such power does exist. (Third, fifth, and ninth circuits.)

In accordance with established case law, I believe not only that the President has the power under article II of the Constitution to authorize warrantless electronic surveillance, but that we would be in violation of article II by transferring this executive power to the judiciary under H.R. 7308. I, therefore, urge my colleagues to support the amendment that would continue to recognize the constitutionally inherent power of the Executive to authorize warrantless electronic surveillance in the area of foreign intelligence, a power which has been asserted by every President at least since Franklin D. Roosevelt.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding to me. I want to commend the gentleman on offering this amendment.

I am sure that the gentleman would agree that this amendment complies with article II of the Constitution, which vests in the President responsibility and authority with regard to our national security and our foreign affairs. It would be quite improper on our part to endeavor to undercut or deprive the President of his inherent constitutional power in this legislation. Do I accurately understand the gentleman's position on this point?

Mr. BUTLER. The gentleman is correct. That is a fair statement. We cannot do legislative damage to the Constitution. We have questions and problems which should not exist, and therefore I think we ought to make it perfectly clear with regard to the existence of the President's inherent power in this area.

The CHAIRMAN pro tempore. The time of the gentleman from Virginia (Mr. BUTLER) has expired.

(On request of Mr. McCLORY, and by unanimous consent, Mr. BUTLER was allowed to proceed for 1 additional minute.)

Mr. McCLORY. Mr. Chairman, will the gentleman yield further?

Mr. BUTLER. I yield further to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, would the gentleman not agree that it would be improper, if not unconstitutional, for the Congress to transfer this authority which constitutionally belongs to the President to the judiciary as far as the decisionmaking is concerned?

Mr. BUTLER. The gentleman is correct. I appreciate his contribution.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the immediate result of passage of this amendment would be to make the Congress look foolish and to announce to the country that we have wasted 3 years on this legislation.

The amendment negates the rest of the bill's provisions. It eliminates the standards the other provisions set up to authorize and control electronic surveillance and returns us, once again, to the thrilling days of the pre-Watergate era. Even the McClory substitute affects the so-called inherent power of the President by legislating how foreign intelligence information is collected.

The amendment says to the President—any President—"here's a statute that we have considered carefully for 3 years. It's the first piece of legislation intended to deal with the problems facing our intelligence operations. We hope you like it. If you don't, no sweat, just ignore it."

Make no mistake about it—that is precisely what the amendment says.

This amendment can be read two ways. Either the President has no inherent power to collect foreign intelligence information, or this bill and all its provisions are abrogated entirely.

Presuming the approach of the amendment to be the latter, it eliminates all standards of any kind in the use of electronic surveillance. It throws us right back into the pre-Watergate era.

Voting for this amendment is to ignore the need for legislation to settle the law and collect needed intelligence. It is to

ignore the plight of individual intelligence agents.

Even the McClory bill affects the so-called inherent power of the President by legislating how foreign intelligence information is collected.

This amendment is dilatory. "Death by delay," is what the New York Times called this approach.

Again, voting for this amendment is to ignore the need for legislation to settle the law and to collect needed intelligence. It is to ignore the plight of the individual intelligence agents.

I ask my colleagues to reject this amendment.

Mr. McCLORY. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I recognize that there has been a long period of time that has elapsed since the first hearings were conducted by the Subcommittee on the Judiciary with respect to the whole subject of requiring warrants for conducting electronic surveillance in the field of foreign affairs, but I think that the debates on the floor here yesterday and today indicate that there is a great deal more work that needs to be done and there are many, many issues that need to be carefully considered and extensively debated and ultimately resolved by this Chamber and by the other body. And to suggest that the mere fact that there has been a lapse of time since this subject originally began and that therefore it comes here in some sort of perfect form or with an aura of perfection around it is I think to misconceive what the situation is at the present time.

As I understand this amendment, this amendment is in existing law. It is not only in existing law but earlier Congresses have recognized that they could not restrict themselves from writing this into the existing law because it is in the basic law of our Nation, it is in the fundamental law of our country, it is in the Constitution. And if the President has that inherent power we cannot by any legislation in this bill or any other bill deprive the President of that authority. So that it seems to me that if we omit putting this into the legislation, while we establish purportedly "exclusive" requirements with respect to electronic surveillance, we are ignoring our responsibility to adhere to the Constitution.

Mr. FOWLER. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Georgia.

Mr. FOWLER. May I ask the distinguished gentleman from Illinois whether or not the gentleman's substitute bill would affect this so-called inherent power of the President by setting standards?

Mr. McCLORY. I would answer that by saying no, it does not. Actually what my substitute bill does in effect is to translate the Executive orders, the Executive authority, into statutory form to confirm in the President the inherent powers which he constitutionally has. So that it really reconfirms what the Constitution says, which I understand and believe it means. So that really the adoption of this amendment is entirely consistent with that concept of what our appropriate role here should be.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I discussed yesterday, with my friend the gentleman from Virginia (Mr. BUTLER) the author of the amendment, this matter. I told him I would think about it very carefully to see if I could find it possible to support it.

The gentleman brings a thoughtful approach to all legislation in our committee, but, however, having thought about it overnight and having read it thoroughly, I am constrained to oppose the gentleman's amendment.

I would like to ask the gentleman this particular question. I think the gentleman's amendment boils down to a value judgment that we must make as to whether or not specifically writing this section into the bill would give a declaration, or would send a signal or would issue notice that Congress suggests that the President has almost plenary power in this area anyway and Congress is just passing a bill for show but, in reality, by adopting this amendment we are maintaining the status quo.

I wonder if the gentleman could advise me: a person who looks at this bill with this language, were it to be adopted, could such a person look at it and say really, Congress is trying to expand the President's power rather than limit it?

Mr. BUTLER. Mr. Chairman, if the gentleman will yield, I appreciate the question very much, because I think the gentleman has put his finger on it. The Constitution of the United States is the preeminent law of the United States and that the Congress must not pass legislation that does not conform with the Constitution.

What we are trying to do here in this legislation—we say the exclusive means by which electronic surveillance is engaged in shall be under this standard. What concerns me is we are saying to the President of the United States: If you want to do what the Constitution tells you to do—and that is that you are the Commander in Chief of the Armed Forces and you have got the responsibility for protecting your country—if you want to exercise your constitutional authority, you do it at your peril.

I think that is a signal this legislation sends, that my amendment would say no, Mr. President, you have got the job, and you have got the responsibility, and if a crisis arises, you do not have to spend all of your time rushing up to the courts or asking the current Attorney General with his current opinion how he feels about it. What you have to do is to recognize that you have this responsibility and the Congress of the United States recognizes you have it.

What about war? If we had a war under this bill the President has to go through all this process.

Mr. MAZZOLI. Mr. Chairman, if I may reclaim my time. I certainly think the gentleman's observations are illustrative of his concerns. The gentleman, by his amendment, does not seek simply to restate the obvious. That is, Congress is not taking any powers from the President and his residual powers remain in his hands.

What the gentleman is basically trying to say, is that powers to surveill would be conferred upon the Chief Executive himself and he can take certain actions in connection with what he determines to be essential needs of foreign intelligence.

Is that a fairly correct analysis of the gentleman's feelings on this matter?

Mr. BUTLER. The gentleman's statement is somewhat correct; but, of course, we have an expression from the Congress here as to the areas in which we want the President to be cautious. Of course, we have had some experience with that area. We have "impeached" a few people who have trespassed on constitutional rights, so we have systematically, over the years—which is the American system—defined just how far the President can go.

However, all of a sudden, we come along with a bill and say that the Constitution does not really mean anything because we are saying that we have a higher authority. That is not right. I do not want our President, who is charged with the responsibility of protecting our country, to have to worry about just exactly what the law says as opposed to what the Judiciary says. That is not what the Constitution wants him to do.

Mr. MAZZOLI. As always, the gentleman from Virginia makes an important point. I share his concern about what happens in the event of an emergency which can, on its own terms, be clearly determined to any thoughtful and any alert person as an emergency.

My problem is, if I read the gentleman's language correctly, that he suggests that certain powers are vested by the Constitution in the President, yet the courts have not spoken to such an extent and with such particularity on the issue of what constitutes an emergency to which the President must respond. Therefore, I am not really aware of the precise situation at this point. If the gentleman is, I would appreciate his instruction.

The CHAIRMAN pro tempore (Mr. MURTHA). The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, I would ask the gentleman whether he can instruct me as to what are the particular powers or what is the defined area of powers which is retained or held by the Chief Executive. The gentleman from Kentucky only knows of the Keith case, in which the court avoided the question and put off for a later time the question of the existence and extent of the inherent power of the Chief Executive in foreign intelligence matters.

Mr. BUTLER. If the gentleman will yield further, Mr. Chairman, that is a very good question.

Of course, I cannot define that with particularity. I might say to the gentleman one of the reasons I might have a little difficulty in responding to the question is that the Committee on the Judiciary was not allowed an opportunity to go into this bill. The subcommittee denied us this privilege; I am not sure they did it wisely. But to the extent that we have not explored all the details of this matter, I do not think that is important at this moment.

What we are saying now is that the Constitution of the United States charges the President with these responsibilities, and he has to exercise them. He is guided somewhat by experience and precedent, so it is not all case law. It is not all the Keith case. Part is the impeachment case. Part of it is previous circumstances; but whatever it is, all this amendment really says is that the President of the United States has the constitutional responsibility. He still has it, and we cannot take it away from him.

Mr. MAZZOLI. I think the gentleman has said it very clearly. That is the reason I am constrained to oppose the gentleman's amendment. Putting this language in H.R. 7308, I think, would at best muddy up the waters as to where the line of demarcation is between Presidential powers retains and Presidential powers limited.

At worst, I think the language would suggest to any reader of the statute that basically what Congress had in mind is this: "Mr. President, you are pretty much on your own. We are saying a few things is H.R. 7308, basically if you want to do something in foreign intelligence, the law is not going to challenge you."

The CHAIRMAN pro tempore. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

(On request of Mr. BUTLER and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. BUTLER. Mr. Chairman, will the gentleman yield further?

Mr. MAZZOLI. I am happy to yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Chairman, I thank the gentleman for yielding.

On this point with respect to exactly where the line is drawn, we had a very learned colloquy yesterday between the gentleman from Wisconsin (Mr. KASTENMEIER) and the gentleman from California (Mr. EDWARDS). Unfortunately, it was not printed in the RECORD this morning, and I have not had a chance to pull it out. Therefore, I am drawing somewhat on my memory.

However, basically what the gentleman from California (Mr. EDWARDS) asked the gentleman from Wisconsin was that he make it perfectly clear that the President of the United States has no authority, under any circumstance, to authorize electronic surveillance. The gentleman from Wisconsin (Mr. KASTENMEIER) said absolutely yes, and then he cited a section on page 67, one which says that this legislation shall be the exclusive means by which electronic surveillance is carried out.

That does not leave a hazy line, does it, because what that says is that the President has no authority. How can we—and I ask the gentleman this question—arrogate to ourselves the authority to say to the President of the United States, this is the exclusive means we have for you to exercise your constitutional responsibility to see that the laws are enforced, to be Commander in Chief of our Armed Forces, and to protect our country. How can we arrogate that?

The CHAIRMAN. The time of the gentleman has expired.

Mr. KASTENMEIER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment. I regret that the colloquy referred to by the gentleman from Virginia did not appear in the RECORD. I trust that it will appear in the later RECORD, and I do not know the explanation for its failure to be there this morning.

This, I think, is a very dangerous amendment. What it tends to do is invite the President to exercise "constitutional powers" outside of this bill, outside of what we, the Congress, are doing. We might as well not do anything at all if we are to concede to this amendment and to grant affirmatively constitutional rights to the President to conduct this type of operation in this country. That is what the 3 years of work is all about.

Let me go back in time, if I may. I do not at this point yield to the gentleman from Illinois because I do want to make my point. The Committee on the Judiciary perhaps 10 years ago or so had a question of whether or not in title II of the Internal Security Act to terminate the authorization for the detention camps in America. Some people thought of these as concentration camps. Overwhelmingly the Congress decided against further authorization of those camps, and President Nixon signed it into law. But before that happened there was a very interesting circumstance. The Assistant Attorney General, Mr. Mardian, wanted a statutory recognition of a constitutional authority for the President to set up these so-called concentration camps, if needed, and thought that we should have a similar amendment in connection with it. But we, the Congress, decided no, that no person in this country would be detained except pursuant to the laws of the United States. Whether or not the situation would ever arise in which the President might round up Americans and put them in detention camps, nonetheless, he could not draw on the statutes we enacted with reference thereto, and so by analogy we ought not here give the Executive a statutory declaration of constitutional authority to conduct national security wiretaps. If he possesses such a power, he must assert it independent of the statute because we have provided the only authorized, the statutory way of dealing with this question. So it ought to remain, Mr. Chairman, and the gentleman's amendment ought to be rejected.

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Virginia.

Mr. BUTLER. I thank the gentleman for yielding.

We are handicapped on our side of the aisle because we are so young and inexperienced in the Congress. I have not been here for 10 years, but my recollection, having talked to staff, is that the detention camp legislation was an amendment to existing legislation. But the detention camps existed under statutory authority and not under constitutional authority. I pass that on as a second-hand suggestion.

Mr. KASTENMEIER. I appreciate that, and I would only comment that the question, nonetheless, arose: Does the President have constitutional authority, and should we state a statutory disclaimer in recognition of such authority? We declined to do so, and we ought not, indeed, assert such authority here for the President with regard to these wiretaps.

Mr. McCLORY. Mr. Chairman, will the gentleman yield to me for an observation?

Mr. KASTENMEIER. I yield to the gentleman.

Mr. McCLORY. I thank the gentleman for yielding.

The gentleman suggests that this legislation would provide that the President may not conduct foreign intelligence electronic surveillance. That is a misconception of what this bill is intended to do, as I understand it.

I think that we do not have the right or authority to deprive the Executive of the power to conduct electronic surveillance. Now, what we are doing here is saying that he conducts it, but he has to have another branch, the judicial branch, to pass on this. We are attempting to pass the Executive authority to the judiciary.

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. KASTENMEIER) has expired.

(By unanimous consent, Mr. KASTENMEIER was allowed to proceed for 1 additional minute.)

Mr. KASTENMEIER. Mr. Chairman, I appreciate the gentleman's comments. We here give the President authority to conduct foreign intelligence surveillance pursuant to this statute. Now, if, in fact, the President has constitutional authority in some other capacity to conduct wire tapping or surveillance on his own, then he must find it and assert it. We have given him the sole statutory authority in this bill to open that sort of thing.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield further, I think what the legislation demonstrates is that we do not have the authority to deprive the President of his constitutional authority.

Mr. KASTENMEIER. May I say to the gentleman we do not affirmatively assert that the President has no constitutional authority. What we have is a situation in which the extant President has said to us gratuitously that he will not, indeed, assert such power beyond the authority within this bill.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to comment on this amendment and briefly on the entire legislation.

I do think it is deplorable, and I am sure there were reasons adequate to those who exercised them, that this bill did not get a full hearing by the Committee on the Judiciary. If we have been dealing with this for 3 years, we could have found 3 weeks or 3 days or 3 hours for the full Committee on the Judiciary, a committee, on which I am proud to serve and which has a distinguished record for being punctilious in protecting civil rights and the human rights and the constitutional rights of everybody concerned; so I think, No. 1, we are making a serious mistake by not letting the Committee on the Judiciary deal with this bill completely.

No. 2, it is, of course, true that we cannot divest the President of any constitutional authority that the Constitution has given him. It is there and there is nothing this body can do to take it away; but, of course, we can put the President in a position of confrontation with this body if we are requiring him to exercise his judgment that, notwithstanding the strictures of this legislation, he is going to act under his inherent constitutional power. That is something we ought to do with great reluctance.

Third, you know, we are a coequal branch of Government, the President, the Congress, and the courts. This Congress in overreacting to the Watergate scandals insists on conferring on the Judiciary more and more authority to make them the supreme authority in this country in terms of running our school districts, running our jails, running our hospitals, and now they are going to run the intelligence services of this country.

Now, I have great respect for each and every Federal judge. I know how they are appointed and how they are confirmed; but I do not think their wisdom, individually or collectively, is superior to the wisdom of the Executive, with the checks and balances that are inherent in his office and in the press and in this body.

I think we are depriving the President of a necessary flexibility to face situations in terms of the national security of this country, and he may need that flexibility on short notice. He may need to act immediately on the best advice available.

We are not defending Richard Nixon. We are defending an institution, and we have so stripped away its powers and its constitutional authorities—we have attempted to anyway—that I think the vital interests of this country are being damaged.

This amendment is certainly innocuous. All it says is that we read the Constitution, too, and nothing we do here is designed or intended to deprive the President of his constitutional authority. I think it is a statement of sanity. I think it is a statement that recognizes that we know the Constitution has given the President some power that we cannot deprive him of.

I trust the President. I trust every President, and I trust the self-cleansing mechanisms of the executive department, the judiciary, and this Congress to see that the abuses, when they occur, will be swiftly discovered and swiftly punished.

But, Mr. Chairman, I just deplore further encroachments on the powers of Congress and the powers of the Executive by the judiciary, and I especially deplore our helping that process along.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I thank my colleague, the gentleman from Illinois, for yielding, and I will say that I respect his viewpoint very much.

I would like to say, however, that I note the gentleman refers to busing, the medical profession, and other things in which the Federal courts have intervened.

Mr. HYDE. And we could include school districts and jails.

Mr. MURPHY of Illinois. Yes, including school districts and jails. And I share the gentleman's apprehensions about an overactive judiciary. What we are asking in this particular piece of legislation is this: We are asking that a neutral arbitrator, a Federal judge, be appointed as a protection between U.S. citizens and their fourth amendment rights and a government that in the past has violated those fourth amendment rights.

We are not alone in asking this. We have had two Presidents send up this message and the philosophy underlying this bill: President Ford and now President Carter. I can say to the gentleman that I cannot imagine President Ford or President Carter trading away or exchanging their inherent executive rights to defend this country.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. HYDE) has expired.

(On request of Mr. MURPHY of Illinois, and by unanimous consent, Mr. HYDE was allowed to proceed for 3 additional minutes.)

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield further?

Mr. HYDE. Yes, I will yield, but let me just comment first on what has been said thus far.

President Ford was reacting to a deplorable situation in which he found himself following Watergate. As far as President Carter is concerned, I am really at a loss to understand his action except that he campaigned against the White House and against the "imperial Presidency." I am certainly not defending the "imperial Presidency," but I am defending the institution. I think the President has constitutional duties that we ought not to take away from him.

Mr. MURPHY of Illinois. Mr. Chairman, if the gentleman will yield, we are not taking the President's inherent constitutional powers away from him. We are extending the statutory standard or criteria by which we will judge the Executive Department as a coequal branch, to use the gentleman's own words, and it is a standard under which his actions are judged. We are not taking his powers away.

We are dealing with a domestic scene. Within the borders of the United States, when we are dealing with foreign intelligence wiretapping, we are concerned with American citizens' fourth amendment rights.

When the President deals with foreign countries off the shores of the United States, what he does with national security, as it relates to the Marines, the Army, the Navy, and the Air Force, is his business. This is not affected at all.

All we are saying is that "here is a statutory criteria, and when you go to tap or interfere with the fourth amendment rights of American citizens, you must follow these statutory standards."

Mr. HYDE. Mr. Chairman, if I may reclaim my time, I suggest to the gentleman that nothing we do is going to impinge on the President's constitutional authority, but we do put an obstacle in his way and we do restrain his free and flexible exercise of that authority at a very difficult time when he may not know if the person concerned is a citizen.

How does one determine whether a person is a citizen or not if one needs to make a tap immediately, today or tonight?

Mr. MURPHY of Illinois. Mr. Chairman, if the gentleman will yield, the gentleman knows that he can apply for a 24-hour emergency tap without a warrant. The gentleman was here yesterday, and he knows that.

Mr. HYDE. I understand that, but the gentleman assumes that he can get that emergency tap in 24 hours.

Mr. MURPHY of Illinois. That is not a consideration if he is a foreigner, a representative of a foreign government or foreign embassy.

Mr. HYDE. I am simply saying this amendment is a statement of constitutional fact that we ought not to eliminate from the bill.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thank the gentlemann for yielding.

The gentleman from Illinois (Mr. HYDE), for whom I have high respect, is a member of our Judiciary Committee, and I wish to ask the gentleman this question:

If it is the gentleman's feeling that there is no way the Congress can impinge or limit or circumscribe the President's constitutional power, then I wonder why we should insert this language at all if we are simply stating again what the gentleman feels is already the essence of the bill.

Mr. HYDE. Mr. Chairman, my answer to that question is that we put ourselves in a position of confrontation with the President, because without this in the law, the President may feel that he is breaking the law that we have passed, even though that part of it is constitutional. I just say that we ought to at least state that we know he is the President and he has some inherent authority.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. HYDE) has again expired.

(On request of Mr. BUTLER, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Chairman, I thank the gentleman for yielding, and I appreciate his contribution very much.

The gentleman is, of course, entirely correct in saying that what we are doing by this legislation, without the amendment I offered is, telling the President of the United States, "You assert your constitutional prerogatives and responsibilities at your peril." And that is wrong.

The real language of this legislation puts it in this context; that is, shall be the exclusive means, and "exclusive" is the key word in this legislation.

I do not think there can be any doubt in the gentleman's mind about what the people who wrote this bill had in mind, and I do not think there could be any doubt in the gentleman's mind, after the colloquy we had yesterday between the gentleman from Wisconsin (Mr. KASTENMEIER) and others, about what the people who wrote the bill and the intelligence community had in mind. What is meant here is that the President of the United States has no constitutional authority, and if he does have any, by God, he has to prove it. That is a heck of a position to put the President of the United States in.

If the gentleman will yield further, I am very much distressed that the impression is being left that this requirement of exclusive legislative authority was in President Ford's bill. There was no such thing at all. President Ford's bill expressly included language substantially in the language which I offer here today, which was a recognition of the President's inherent constitutional authority.

I quote from the Ford bill:

> Nothing contained in this chapter shall limit the constitutional power of the President to order electronic surveillance for the reasons stated in section 2511(3) . . .

I insist that what we are doing here is what was done in the Ford bill, and it is very clearly indicated in these circumstances.

Mr. HYDE. Mr. Chairman, I just do not know what that hearing is going to consist of when you go before the judge and say, "I have a feeling in this case, and will Your Honor give us a warrant." It is a charade and it is designed to sanctify something that is essentially meaningless.

Mr. ASHBROOK. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I have listened to this debate, and go back to what we said yesterday. We continually hear the assertion—and it is an incorrect assertion, I believe—that we are really not trying to go very far and we are really not trying to impinge on the power of the President in this legislation.

The truth of the matter is that what we are trying to do is to change the position of Congress expressed in the 1968 omnibus crime legislation.

Mr. Chairman, we clearly said in the 1968 legislation, in section 2511(3), that we were not going to impinge on the President's inherent power. Now we are trying to go exactly the opposite and saying the President does not have inherent power, he only has what we give him.

The people who drafted the legislation, those who appeared before the committee, those who testified, knew what they were doing.

Let us take what Common Cause said in their letter of August 7 to all of us. It said that H.R. 7308 eliminated once and for all the doctrine that the executive branch has inherent power to conduct national security wiretaps.

That is what the ACLU believes. That is what Common Cause believes. That is what people who will be going into court and litigating believe.

I do not think we should, as we have on page 67, indicate that the President of the United States does not have the authority that is inherent in the Constitution. That is done by using the word "exclusive."

I believe that he has certain inherent powers. We cannot change them. It is like saying tomorrow is Monday, although it is still Friday. It is like 435 Members of Congress voting and saying tomorrow is Monday, although it is still Friday. The President has the inherent power, regardless of what we say. But we do try to muddy the water here and I think that is why the language of my colleague, the gentleman from Virginia, is absolutely essential. It puts us back in the position we were in in 1968. It puts us back in the same position we were in in the Keith case. The President has what powers he has, and the court will uphold those powers. We should not at this point try to countermand those powers.

So the sponsors are not saying we are going to impinge on the President's inherent powers but they are going to try to cut it a little bit. That is the basis of page 67 of this bill.

It may be that Mr. Carter does not want to exercise his powers. There is little counterintelligence now. We are not talking, necessarily, about 1978, 1979, or 1980. We are talking about future Presidents. If Mr. Carter does not want to engage in wiretapping that he has a right in his constitutional power, that is his business. But why should we say at this point that future Presidents will be limited to the narrow action President Carter now wants to take in the vital field of internal security?

I certainly urge the support and the adoption of the amendment offered by the gentleman from Virginia (Mr. BUTLER), and I applaud him for offering the amendment.

Mr. LATTA. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Chairman, I thank the gentleman from Ohio for yielding.

I just want to clarify one point which the gentleman from Wisconsin, in the course of his references to the proposed legislation, has referred to time after time.

Mr. Chairman, if I could have the attention of the gentleman from Illinois (Mr. MURPHY), perhaps we could solve the problem which my amendment addresses. By inserting on page 67, line 11, the word "statutory," we could make perfectly clear that this legislation is the exclusive statutory means by which electronic surveillance is to be permitted. We will have solved the problem; and my amendment would be unnecessary.

Mr. Chairman, I wonder whether the gentleman from Illinois (Mr. MURPHY), the manager of the bill, would agree to that amendment. If so, we could avoid further discussion of the amendment in question.

Mr. MURPHY of Illinois. If the gentleman will yield, Mr. Chairman, would the gentleman repeat that statement again? I am sorry.

Mr. BUTLER. Yes. The amendment which I would ask the gentleman to consider would obviate the problem to which my amendment is addressed would be on page 67, line 11. At that point I would suggest inserting after the third word, and before the word, "means," one word, "exclusive." At that point I would insert the word "statutory" so that the legislation shall read the "exclusive statutory means."

Mr. MURPHY of Illinois. Mr. Chairman, if the gentleman will withdraw his amendment, we will accept that word "statutory" at that point in the bill.

Mr. BUTLER. Mr. Chairman, I thank the gentleman from Illinois (Mr. MURPHY).

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The CHAIRMAN pro tempore. The amendment offered by the gentleman from Virginia (Mr. BUTLER) is withdrawn.

Does the gentleman propose another amendment?

Mr. BUTLER. Yes, Mr. Chairman. If I may, I ask unanimous consent that I may offer an amendment not in writing and not published in the RECORD, which would insert the word "statutory" on page 67, line 11.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

Mr. MURPHY of Illinois. Reserving the right to object, Mr. Chairman, I would like to hear the amendment first.

Mr. BUTLER. All right.

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: On page 67, line 11, after the word "exclusive" insert the word "statutory".

Mr. MURPHY of Illinois. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. MURPHY of Illinois. Mr. Chairman, we will accept the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. BUTLER).

The amendment was agreed to.

PARLIAMENTARY INQUIRY

Mr. BUTLER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BUTLER. Mr. Chairman, is my amendment now accepted in the bill?

The CHAIRMAN pro tempore. The Chair will state that the gentleman's amendment is accepted.

Mr. BUTLER. As part of the bill, Mr. Chairman?

The CHAIRMAN pro tempore. As part of the bill.

Mr. BUTLER. I thank the Chair.

AMENDMENT OFFERED BY MR. LATTA

Mr. LATTA. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. Is the gentleman offering an amendment which appears in the RECORD?

Mr. LATTA. That is correct, Mr. Chairman.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. LATTA: Page 40, after line 4, insert the following new subparagraph and redesignate subparagraphs (2) and (3) accordingly:

(2) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods up to one year—

(A) during a period of war declared by the Congress; or

(B) during a period of national emergency, declared by the President in accordance with the National Emergencies Act, with specific reference to this Act, and upon the transmittal to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate of a statement by the President setting forth the facts and circumstances giving rise to the need for such declaration.

Mr. LATTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. LATTA. Mr. Chairman, I ask unanimous consent to substitute a modified amendment by reason of the fact that the McClory amendment has changed the page number into which this amendment would fit, and we have had to redraft the amendment to provide for a new section.

Mr. Chairman, this matter has been discussed with both sides, both managers of the bill.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN pro tempore. The Clerk will report the amendment, as modified.

The Clerk read as follows:

On page 64, after line 25, add the following new section:

"AUTHORIZATION DURING TIME OF WAR

"Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods up to one year during a period of war declared by the Congress".

Mr. LATTA. Mr. Chairman, I believe my amendment is needed to correct an oversight or an omission in this bill. At the time this matter came before the Committee on Rules, I raised the question of the need for the President to act in times of war without being required to take the time to secure a court order. There certainly would be no desire on the part of the proponents of this legislation to tie the hands of the President during such a period and to possibly put the security of the country in jeopardy. During such a period we ought to give the President of the United States all the discretion he needs to protect the best interests of the country. Therefore, I have proposed this amendment to give him that needed authority. I have discussed this amendment with the managers on both sides of the aisle and I believe they will accept it as a necessary amendment to the bill.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. I thank the gentleman for yielding.

The gentleman from Ohio brought this to our attention when the committee appeared before the Committee on Rules. I think it is a pertinent amendment, and this side of the aisle will accept it.

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentleman from Ohio (Mr. LATTA).

The amendment, as modified, was agreed to.

AMENDMENT OFFERED BY MR. ERTEL

Mr. ERTEL. Mr. Chairman, I offer an amendment that has been published in the RECORD.

The Clerk read as follows:

Amendment offered by Mr. ERTEL: Page 63, line 2, insert "(a)" after "Sec. 108.".

Page 63, after line 9, insert the following new subsection:

(b) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate shall periodically review the information provided under subsection (a). If either such committee determines that an electronic surveillance of a United States person under this title has produced no foreign intelligence information and that the disclosure of the fact of such surveillance to such United States person would not harm the national security, such committee shall inform such person of the fact of such surveillance and that no foreign intelligence information was derived from such surveillance.

Mr. ERTEL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Ms. HOLTZMAN. Reserving the right to object, Mr. Chairman, will the gentleman from Pennsylvania explain the amendment?

Mr. ERTEL. Yes, I will, Mr. Chairman.

Ms. HOLTZMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. ERTEL. Mr. Chairman, prior to discussing the amendment, I ask unanimous consent that one word in the amendment as printed in the RECORD be changed, that is, that the word in the third line of section (b) be changed from "shall" to "may."

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

In the third sentence of section (b) of the Ertel amendment following the word "Senate" strike the word "shall" and insert in lieu thereof the word "may".

Mr. ERTEL. Mr. Chairman, this amendment is basically an amendment for oversight by the Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate. It provides that in the event there has been electronic surveillance, whether it be by a wiretap or any other type of electronic surveillance, if the committee of the House or the Senate determines, one, that no foreign intelligence information has been obtained and, two, that there is no threat to the national security, then that committee should inform the target of that investigation that he has been under surveillance. It advises the person what has been done in regard to his particular activities by the intelligence community.

I point out that this is an oversight amendment. It gives the Select Committees on Intelligence a right. They do not have to, but they may disclose to the individual, but only after they make an affirmative determination there is no threat to the national security or, second, that no foreign intelligence information was obtained. The reason for the amendment is to hold over the intelligence agencies the threat that their activities if they are improperly done will be disclosed. There are criminal sanctions within this bill which are to be

used against intelligence agencies if they act in bad faith, but there is no way to know if they act in bad faith unless there is a disclosure.

We cannot provide a disclosure unless we know that there is no threat to the national security, and further, that there is no national security information obtained; so really what it is, is an oversight amendment to make sure that the agencies act properly.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I appreciate the gentleman bringing this to the committee's attention. I have talked with the gentleman, as have other members of our committee and the chief counsel, and with the change from "shall" on the third line to the word "may", this side will accept the amendment.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I do not know that I have any objection to the amendment; but I would just like to ask this question. How do you determine whether or not information has been obtained; who would make that determination?

Mr. ERTEL. The Select Committee on Intelligence, either of the House or of the Senate, they would make that determination under their oversight. Under the bill it is required that the Select Committee have oversight on a semiannual basis.

Mr. McCLORY. Mr. Chairman, we have no objection to the amendment.

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentleman from Pennsylvania (Mr. ERTEL).

The amendment, as modified, was agreed to.

AMENDMENTS OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer two conforming amendments.

The Clerk read as follows:

Amendments offered by Mr. McCLORY: Page 50, strike out line 22 and all that follows down through line 6 on page 51, and redesignate subsections (d) through (g) accordingly.

Page 51, line 9, strike out ", except that" and all that follows down through line 13 and insert in lieu thereof: ".".

Page 51, line 17, strike out ", except that an" and all that follows down through line 23 and insert in lieu thereof: ".".

In section 102(a) (as amended by the amendment offered by Mr. McCLORY), strike out "the Special Court" and insert in lieu thereof "a court".

In section 105(e) (as amended by the amendment offered by Mr. McCLORY), strike out "designated pursuant to" and insert in lieu thereof "having jurisdiction under".

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY of Illinois. Mr. Chairman, reserving the right to object, I wish the gentleman would explain the amendments.

Mr. McCLORY. Mr. Chairman, these are amendments which have been discussed by counsel on both sides.

Mr. MURPHY of Illinois. Mr. Chairman, reserving the right to object, I would insist on the amendments being read. Therefore, I object.

The CHAIRMAN pro tempore. Objection is heard.

The Clerk will read.

(The Clerk concluded the reading of the amendments.)

Mr. McCLORY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY of Illinois. Mr. Chairman, reserving the right to object, now that the amendments have been read, we have no objection on this side.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN pro tempore. The question is on the amendments offered by the gentleman from Illinois (Mr. McCLORY).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCLORY: Page 45, line 9, strike out "or" and insert in lieu thereof "and".

Mr. McCLORY. Mr. Chairman, this amendment really does nothing more than to add to the accountability of the Executive with regard to exercise of foreign intelligence electronic surveillance. In the foreign intelligence requirements in H.R. 7308 there is provision that the court application shall include a detailed certification.

It states that the certification should contain statements that the information sought was from intelligence information-gathering agencies, including a justification for the statement, and that the information cannot reasonably be obtained by normal investigative techniques. It states also that the certification should be approved by a senior executive branch official or the Assistant to the President for National Security Affairs.

What this amendment does is to require that the Assistant to the President for National Security Affairs and a senior executive official who is confirmed by the Senate shall make this certification. It merely assures that we can call before our body for purposes of oversight somebody who will be involved in this certification procedure. It affords us a better chance at oversight. It imposes a greater responsibility and puts greater restrictions on the Executive.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I have talked to the gentleman from Illinois (Mr. McCLORY) with regard to this amendment, and we are willing to accept it on this side.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. McCLORY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer an amendment that is referred to as "amendment number 11."

The Clerk read as follows:

Amendment offered by Mr. McCLORY: Page 63, line 2, strike out "semiannual" and insert in lieu thereof "quarterly".

Mr. McCLORY. Mr. Chairman, all this amendment does is require that the Attorney General shall report quarterly not semiannually to the House and Senate Intelligence Committees. It seems to me, particularly since we are going to be reporting with regard to electronic surveillance on U.S. persons, that we should have that kind of reporting.

The Attorney General, as I recall, said that this would not be too great a hardship on his part to provide for this quarterly report. It would give us increased oversight and enable the Congress to protect further the rights of persons who are subjected to electronic surveillance.

Mr. Chairman, it seems to me that this amendment is likewise a very desirable amendment, and I urge its adoption.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the committee spent considerable time and thought in deliberations over the congressional oversight provisions. We considered requiring quarterly reporting. The administration opposed it and gave convincing arguments against it.

It was decided that the advantages of more frequent reporting were outweighed by the administrative burdens and security risks involved in the proliferation of the paperwork that would ensue. It was also felt that the content of the report would be more thorough and substantive if it were developed over a 6-month period.

This is the view of the Director of the FBI, the Attorney General, and the heads of the NSA and the CIA.

On those grounds, Mr. Chairman, I reluctantly oppose the gentleman's amendment.

Mr. BOLAND. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I am happy to yield to the chairman of the committee.

Mr. BOLAND. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, as the distinguished chairman of the subcommittee indicated, the administration opposes this particular amendment because it does impose an administrative burden upon the administration.

But beyond that, it is going to impose an administrative burden upon this committee, and we have sufficient burdens right now. We have a difficult enough time now reading the voluminous reports that come to us and getting all the briefings from the intelligence agencies. I hope we are not impacted with yet another report.

The 6-month report is clearly sufficient to do the job that ought to be done by the administration and by the committee.

Mr. Chairman, I would hope that this particular nitpicking amendment would be rejected by the committee.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. McCLORY).

The amendment was rejected.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment, entitled "amendment number 10," which appeared in the RECORD on August 2, 1978.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 63, strike out lines 11 through 18 and insert in lieu thereof the following:

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally engaged in electronic surveillance under color of law except as authorized by statute.

Page 63, line 19, strike out "(1)".

Page 63, line 20, strike out "(1)".

Page 63, strike out line 25 and all that follows down through line 4 on page 64.

Mr. ASHBROOK (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. ASHBROOK. Mr. Chairman, this amendment was requested by the Justice Department in a letter to Chairman BOLAND of the House Permanent Select Committee on Intelligence dated April 17, 1978, and signed by John M. Harmon, Assistant Attorney General, Office of Legal Counsel. I have worked with my colleague, the gentleman from Arizona, Mr. RUDD, in developing this amendment.

The statement of the Justice Department on this section is:

The Administration objects to this section, which was added by Subcommittee amendment. The penalty section in the Senate version of this bill makes it a crime to willfully engage in an unauthorized surveillance or to willfully disclose information derived from an unauthorized surveillance. That is acceptable. This section in H.R. 7308, however, would cover unauthorized surveillances and a violation of any other provision of the chapter. Thus, it would be criminal to violate the minimization requirements of this bill.

As the Committee is aware, this is a very complicated legislation and the minimization procedures required by the bill will often be long and involved. We do not believe it is necessary to ensure that the bill's provisions are properly implemented to impose possible criminal violations on all of those employees who will have to deal with such minimization procedures on a daily basis. There are no comparable provisions in connection with Title III. We see no need to treat individual employees in the intelligence community substantially different than their colleagues involved primarily in law enforcement.

In this matter I find myself in agreement with the administration.

Under this section, if an FBI agent intentionally kept one piece of information he was supposed to destroy, or intentionally disseminated one conversation within the FBI to a person who was not supposed to receive it, he could be sent to jail. If an FBI agent intentionally violates the minimization procedures, he should be subject perhaps to disciplinary measures within the Bureau, but it is not a violation sufficient to justify criminal prosecution. Even more important, where he does not intentionally violate the procedures, but in the press of business makes a human mistake, he may fear that a prosecutor is going to be breathing down his neck, expecting the agent to prove that it was not intentional. Such a threat will impede the intelligence collection of this country and runs counter to one of the avowed purposes of the bill—to protect these agents and give them confidence that they will not be prosecuted for acting under the bill.

In addition, if this provision is not deleted, the ACLU will be encouraged to undertake additional civil suits to harass the FBI agents.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. I thank the gentleman for yielding.

Mr. Chairman, the gentleman from Ohio (Mr. ASHBROOK) and I have discussed this. The chief counsel and other members of the committee have reviewed it, and we will accept the amendment.

Mr. ASHBROOK. I thank my colleague.

Mr. RUDD. Madam Chairman, I move to strike the requisite number of words.

I would like to engage the distinguished gentleman from Illinois in a colloquy, if I may, and perhaps the gentleman from Ohio in a colloquy concerning the Ashbrook amendment which was passed. I have a couple questions that I would like to ask.

In the debate yesterday, I expressed concern about what might happen in the case of a subordinate, a loyal subordinate, the agent on the street, and I am wondering if this amendment will actually protect the person against prosecution while acting under legal guidelines and under authority of the President and the Attorney General in conducting surveillances prior to the time a warrant might be issued. Is that spelled out in this amendment?

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I will yield to anyone who can answer the question.

I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Madam Chairman, the subject of protection of FBI agents and law enforcement personnel is addressed by the Federal Torts Claims Act Amendments pending before the Committee on the Judiciary. That bill would be comprehensive with regard to all Federal agents and would substitute the United States as the party defendant in suits alleging that Federal agents have acted unlawfully.

This legislation would absolve Federal agents of defending against challenges to their activities performed under color of law and would guarantee to plaintiffs that their successful grievances will be fully remedied. This legislation is a matter of high priority with the administration and will, I believe, be considered in the Judiciary Committee next week.

Mr. RUDD. Madam Chairman, I thank the gentleman.

I yield to the gentleman from Ohio.

Mr. ASHBROOK. Madam Chairman, I thank the gentleman for yielding.

As I pointed out in my statement, the reason that John Harmon, Assistant Attorney General of Counsel, addressed a letter to Chairman BOLAND stating, in effect, the administration's opposition to a provision that was in the House bill, but not in the Senate bill, was for the precise purpose that my amendment was offered. As Mr. Harmon said, there was no comparable provision in title III of the Senate bill and he went on to say, and I think this will answer the question:

We see no need to treat individual employees of the intelligence community substantially different than their colleagues involved in law enforcement.

The thrust of my amendment, which was agreed to by both the majority and the minority side, was to delete the House provision, which in the case of minimization procedures would possibly make an FBI agent or a CIA agent guilty or subject to criminal prosecution for violation of a regulation.

Madam Chairman, we all agree that they should be guilty and found guilty if they willfully violate the law. I do not think there is any question about that. I do not think the FBI agents or the CIA agents disagree with that.

But what Mr. Harmon is saying and what my amendment attempted to clarify is that in those situations where we have good faith performances and cumbersome minimization procedures. the agent in the field should not be held criminally liable or stand a chance of facing criminal prosecution if by chance or in some way there is a name he forgot to turn in from his file or he did not comply with some procedure that was laid out in minimization.

My amendment precisely addressed itself to that problem. It did not relieve him of criminal liability in cases where he violated the law. It simply said that as far as minimization procedures and good faith performances are concerned, he has the same rights that other law enforcement officers have, and that counterintelligence officers and intelligence community officers should also have those rights. That is the only thrust of my amendment.

Mr. RUDD. Madam Chairman, I am sure the agent himself or anyone else would want to bo so assured. If he is acting in good faith, he is protected, and I assume this piece of legislation also

does the same thing civilly. That would derive also from the criminal action; is that correct?

Mr. ASHBROOK. Yes. If the gentleman will yield further, if an FBI agent intentionally violates the law, I think all of us agree, of course, that he can be subject to criminal prosecution. But where he might make some human error or unintentionally violate guidelines or procedures that would be handed down—and many times, as we all know, they are nebulous, particularly as they concern the man out in the field—he would not be subject to prosecution.

The CHAIRMAN pro tempore. The time of the gentleman from Arizona (Mr. RUDD) has expired.

(By unanimous consent, Mr. RUDD was allowed to proceed for 2 additional minutes.)

Mr. ASHBROOK. Madam Chairman, if the gentleman will yield further, my point was that the agent could and probably should be subject to discipline within the agency, within the FBI or CIA, for violation of minimization procedures, but he should not have the fear that some prosecutor or some court might be looking over his shoulder and saying, "You are guilty or you may be guilty of a criminal violation, and we are going to prosecute you."

Mr. RUDD. Madam Chairman, I wanted to be assured, of course, that an agent acting in good faith is properly protected, and after all, we want to guarantee to our intelligence agents they may operate without fear of reprisal for doing the job they may be ordered to do in a competent manner.

Mr. ASHBROOK. I do not completely agree with all the provisions of the bill, but the bill does not change the common law provisions, of course, and it protects the agents who are acting in good faith.

Mr. MURPHY of Illinois. Madam Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Madam Chairman, I agree with the remarks of the gentleman from Ohio (Mr. ASHBROOK). We have entered into a colloquy about this matter on a number of occasions.

There is a good faith defense in common law.

When an FBI agent does his job pursuant to a warrant or a court order and he goes out and he does it in good faith, he has a good faith common law defense. The only time I think they could bring a criminal action is for a conscious, open disregard of the law. The standard would be almost beyond a reasonable doubt. This is the problem we addressed.

I appreciate the gentleman's bringing this point to our attention.

The testimony before our subcommittee and the full committee by the head of the FBI, Mr. Webster, and the Attorney General was that we are having a hard time getting agents to execute orders today for conducting surveillance of foreign spies in this country, and there is a wealth of intelligence material that is undetected. That was not the fact in the past, because in the old days under Director Hoover orders were given to conduct surveillance, and the job was done.

The CHAIRMAN pro tempore. The time of the gentleman from Arizona (Mr. RUDD) has again expired.

(By unanimous consent, Mr. RUDD was allowed to proceed for 2 additional minutes.)

Mr. MURPHY of Illinois. Madam Chairman, if the gentleman will yield further, under Director Hoover, the agents were sent out into the field to conduct surveillance, and there was no memorandum or there were no written orders given. Mr. Hoover is now dead, and these agents stand naked in the "hall of justice" trying to defend themselves against criminal charges brought against them for their behavior.

What this bill does is to try to protect those agents, and I think it does it well.

Madam Chairman, I thank the gentleman for yielding.

Mr. RUDD. Madam Chairman, I thank the gentleman from Illinois (Mr. MURPHY) for clarifying this issue, and I am sure this legislation does protect the employees.

I hope the mention of Mr. Hoover's name will not be taken as disparaging or that anyone thinks we are disparaging in any way the name of this great American. Mr. Hoover was a great American, and he did a fine job for our country.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 31, line 11, strike out "and controlled".

Mr. BUTLER. Mr. Chairman, section 101(a) provides six definitions of the term "foreign power."

The sixth definition defines "foreign power" as an entity that is directed and controlled by a foreign government or governments.

This amendment would simply strike the words "and controlled," so that it would be sufficient if an entity is directed by a foreign government rather than directed and controlled. If an entity is directed by a foreign government, this should be more than adequate to allow our intelligence agents to target such entity for electronic surveillance to gather foreign intelligence information.

To burden the Government with the additional requirement that a showing also be made to the court that the entity is also controlled by a foreign government is entirely inappropriate, and the amendment would strike the words "and controlled."

Mr. FOWLER. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Georgia.

Mr. FOWLER. I thank the gentleman for yielding, and I have just one question of clarification that I would like to ask of the gentleman from Virginia.

How would this affect a foreign airline? Would the gentleman have an opinion as to whether or not a government airline would be directed and controlled, or simply directed and not controlled?

Mr. BUTLER. I would assume, under those circumstances, that an airline is both directed and controlled.

Mr. FOWLER. If it were a government-owned airline?

Mr. BUTLER. Right.

Mr. FOWLER. I thank the gentleman.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, any domestic group which would receive some direction from a foreign government could be targeted under this amendment. A law firm or public relations firm representing a foreign government falls into this category. Former CIA Director William Colby's firm is one such law firm. The majority of the American banking institutions and Madison Avenue firms also would be covered. They all receive some direction from foreign governments. I might say to my colleagues that the subcommittee, under the able leadership of the gentleman from North Carolina (Mr. ROSE), is considering starting hearings on terrorist groups, and this committee will in the future deal with domestic terrorist groups that I think the gentleman from Virginia is directing his amendment at. I might say that we recently in Chicago had a terrorist group take over the embassy or the German legation in Chicago. The gentleman from North Carolina (Mr. ROSE) is bringing down those officials who were involved in the peaceful settlement of those terrorists occupying the German legation office, and we are presently taking testimony on this. I would ask the gentleman to defer this amendment so that when this committee comes out with legislation—and I can assure the gentleman that as chairman of the subcommittee I will be working closely with the gentleman from North Carolina (Mr. ROSE)—in the not-too-distant future we will begin to discuss thoroughly this question. I feel it would be better not to deal with it today under this amendment.

Mr. BUTLER. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 31, beginning on line 20, strike out "contrary to" and all that follows through page 22, line 3, and insert in lieu thereof "; or".

Mr. BUTLER. Mr. Chairman, this amendment would broaden the definition of "agent of a foreign power" as it applies to non-U.S. persons by deleting from the foreign visitor provision the requirement that the circumstances of the visitor's presence in the United States would indicate that he was likely to engage in espionage. It would also delete the requirement that any espionage conducted by the visitor's country of origin by

"contrary to the interests of the United States" before the visitor could fall under the definition of "agent of a foreign power."

The requirement that the circumstances of the visitor's presence in the United States indicate that he is likely to engage in espionage creates inflexibility and denies positive intelligence-gathering opportunities. The principal responsibility of our intelligence services is to learn and understand the political, strategic, economic, and sociological forces of other countries. As former CIA Director William Colby pointed out in testimony before the Subcommittee on Courts, Civil Liberties and the Administration of Justice:

> When people with this kind of background come over here, even if they are going to Disneyland, they can have a considerable knowledge to that effect. In their side remarks and their conversations with their colleagues and communications homeward they can be communicating information which, putting those bits of pieces together, can give us a unique view of what is happening in some foreign country. It has nothing to do with protecting us in the narrow sense of that man doing something here, but it has a great deal to do with protecting us by understanding another country's politics.

It is clear that the requirement that the circumstances of the visitor's presence in the United States indicate that he is likely to engage in espionage would undermine this general intelligence gathering activity that has proven so useful to the United States in the past.

The additional requirement that any espionage conducted by the visitor's country of origin be contrary to the interests of the United States is equally restrictive and unnecessary. When a foreign power is conducting intelligence activities in secret in the United States it is highly inconceivable that the purpose of such activities is benevolence toward the United States.

Therefore, I urge my colleagues to support the amendment which would strike these two overly restrictive and unnecessary standards which would greatly undermine foreign intelligence activities conducted by the United States.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I certainly would agree 100 percent with what my colleague has said. I have brought up some of these precise points in committee before, and this is an area that concerns me very much.

The thing that bothers me the most about this bill, in addition to creating so many cracks that I think intelligence can fall through, is that it is almost a "Catch 22" in some cases. Our intelligence agencies almost have to show full control they can have surveillance in one section we just discussed.

One cannot really do that without first having some investigation. We have many, many examples where it took long, hard investigation with some surveillance to prove the case.

There are too many cases where we almost have to prove the end result before the intelligence agencies can do anything. I think the gentleman adequately makes the point, and I thank him very much.

Mr. BUTLER. I thank the gentleman.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman and my colleagues, most of the arguments made against the gentleman's previous amendment are equally compelling here.

The overriding point that wants to be noted is that the U.S. Government does not, cannot, and should not engage in the kind of indiscriminate electronic surveillance that the amendment would authorize.

The amendment will not contribute one iota toward the achievement of any intelligence goal that the intelligence people have suggested is necessary. The FBI does not seek this amendment. They have asked for nothing more than the current provision contained in H.R. 7308, which was inserted in committee to respond to the Bureau's concerns.

The FBI participated directly in drafting the existing language that the gentleman would amend. The existing language gives the Bureau the full authority it asked for to target specific classes of individuals from specific foreign countries.

The gentleman's amendment would lay hidden like a bomb with a long fuse waiting to be fired. If some future President or FBI wanted to utilize it—and the fact were made known—the political and diplomatic repercussions would be explosive. The amendment would authorize the wiretapping of any foreigner who comes to our shores in a representative capacity.

All that would need to be documented to a judge is that the foreigner comes from a country that engages in intelligence activities in the United States. Presumably, that is about any country with the money to support an intelligence service.

I oppose such wasteful and indiscriminate surveillance, as does the intelligence community, and I oppose the gentleman's amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. BUTLER).

The amendment was rejected.

Ms. HOLTZMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I ask for this time solely to clarify some of the language in the bill.

(Ms. HOLTZMAN asked and was given permission to revise and extend her remarks.)

Mr. Chairman, I would like to direct to the attention of the distinguished chairman of the subcommittee to the language on page 34 which gives the definition of "foreign intelligence information." The definition says that foreign intelligence information means "information with respect to a foreign power or foreign territory that relates to and, if concerning a U.S. person, is necessary to . . . the conduct of the foreign affairs of the United States."

I am concerned by what the term "the conduct of the foreign affairs of the United States" means. We are not talking here about the national defense or security position of the United States. We are talking about something much broader.

I am concerned that this term would authorize surveillance of a U.S. citizen in the United States who might be engaged in a perfectly peaceful activity. For instance, if a group of Americans organizes to protest the arms sale to Turkey, obviously that relates to the foreign affairs of the United States. Or suppose a group organizes to protest arms sale to Saudi Arabia or another nation. Are those groups of Americans now subjected to surveillance?

Foreign affairs is a subject of very grave concern to many Americans who participate in expressing their views in a perfectly peaceful manner, and I am concerned that we may be authorizing surveillance of them when they engage in these activities.

Mr. MURPHY of Illinois. Mr. Chairman, if the gentlewoman will yield, I would say the type of group she describes would not be the type of group that would come under observation. In other words, it is not the type of group the FBI and the National Security Agency or the counterintelligence or the CIA had in mind when we drafted this language.

Ms. HOLTZMAN. They might not have had these groups in mind at that time but I want to be sure that they never have them in mind and are never able to subject them to electronic surveillance, because the gentleman and I both agree that this kind of activity is peaceful and perfectly in accordance with our democratic system. I am concerned about the breadth of this term "foreign affairs of the United States" and what surveillance activities it would trigger.

Mr. MURPHY of Illinois. It was not intended to prohibit a first amendment activity. I do not know whether that would help the gentlewoman or not.

Ms. HOLTZMAN. Would it subject American citizens or U.S. persons—I guess that is the term used in the bill—to surveillance if, in a peaceable manner, they engaged in activities that relate to the conduct of foreign affairs of the United States?

Mr. MURPHY of Illinois. If they were exercising their first amendment rights, U.S. persons would not be the subject of this type of surveillance as the lady envisions.

Ms. HOLTZMAN. I thank the gentleman for his assurance.

Mr. DRINAN. Mr. Chairman, if the gentlewoman will yield, why should we not drop lines 17 and 18? I know that was in the Senate bill, and the Senate bill read at one time the successful conduct of U.S. foreign affairs.

The gentleman from Illinois (Mr. MURPHY) says there is no intention against American citizens who may be protesting, so why do we not just drop lines 17 and 18 seeing the bill relates only to the security of the United States.

Mr. MURPHY of Illinois. I can say to the gentleman from Massachusetts (Mr. DRINAN) that this language was suggested by the administration when they

testified before the committee, as the type of activity they were referring to.

The gentlewoman from New York (Ms. HOLTZMAN) brought up the fact it does not apply to this particular section. The gentleman from Massachusetts (Mr. DRINAN) says why should we not strike that out? The answer is no because there are circumstances under which the counter-intelligence divisions of the FBI and the NSA consider important, and would bring in under that definition.

Mr. DRINAN. But this is relating to the national defense or security of the United States so that that does broaden the vast powers that are vested in the CIA and the FBI, and they simply can state that it is necessary to have surveillance on certain American citizens because the information to be obtained is necessary for the United States to conduct the foreign affairs of the United States, they do not have to say it is necessary to the national defense.

The CHAIRMAN pro tempore. The time of the gentlewoman has again expired.

(On request of Mr. MURPHY of Illinois, and by unanimous consent, Ms. HOLTZMAN was allowed to proceed for 2 additional minutes.)

Mr. MURPHY of Illinois. Mr. Chairman, will the gentlewoman yield further?

Ms. HOLTZMAN. I yield further to the gentleman from Illinois.

Mr. MURPHY of Illinois. I would suggest that the gentleman turn to page 30 and read the definition of "foreign power" and what we mean by foreign power under that definition.

Mr. DRINAN. This section is speaking only, on page 13 and 14, that if this operation, that is a U.S. person, who wishes to demonstrate, so that it is necessary to obtain this surveillance because the information to be obtained is necessary to the conduct of the foreign affairs of the United States, that is far and above, it is much wider than just relating to national defense or security.

Mr. MAZZOLI. Mr. Chairman, if the gentlewoman would yield, in answer to the last question of the gentleman from Massachusetts (Mr. DRINAN) I would refer him to page 32 of our bill, at line 4, which protects the kind of person who would be targeted. I think this is a very important distinction because, in answer to what the gentlewoman also brought up, in order for a U.S. person, that is an American citizen or a resident alien, to be targeted, that person has to fit into the category on page 32. There is a criminal standard that that person has to measure up to. So, taking part in some activity relating to the arms sale to Turkey, or the embargo thereof, is not a criminal violation.

Ms. HOLTZMAN. Mr. Chairman, if I might refine my question a little, would this bill, let us say, allow a wiretap on a foreign power or its agent solely for the purpose of getting information about Americans who are engaging in a perfectly peaceful conduct? For example, would it permit wiretapping an agent of the Greek Government in order to find out whether or not Americans were going to engage in a protest against the arms sale to Turkey? I am very concerned that we in no way permit any such surveillance.

Mr. FOWLER. Mr. Chairman, if the gentlewoman will yield, the answer is an unequivocable no under the committee bill. It may be questionable now that the McClory amendment has been adopted.

The CHAIRMAN pro tempore. The time of the gentlewoman has again expired.

(On request of Mr. MAZZOLI and by unanimous consent, Ms. HOLTZMAN was allowed to proceed for 2 additional minutes.)

Ms. HOLTZMAN. I thank the gentleman for yielding and I yield further to the gentleman from Georgia.

Mr. FOWLER. I appreciate that very much.

Under the committee bill, the answer is no.

Now that we have no warrant to protect U.S. citizens from the very kind of abuse that might occur under the McClory substitute or under the McClory amendment which was adopted last night, we have to be even more vigilant that that does not occur.

However, I asked the gentleman from Kentucky to yield to me so that I could answer the original question which he has just elaborated upon.

First of all, when we have a U.S. person involved, the criminal standard has to apply that that person is either engaging in criminal activity or is likely to engage in criminal activity.

Ms. HOLTZMAN. I understand that would be the case if the U.S. person were the target of the surveillance; but what if the U.S. person is not the nominal target, but is the real target? Would this bill nonetheless authorize the intelligence agencies to obtain a warrant to snoop on foreign powers or persons for the purpose solely or primarily of getting information about Americans and American conduct? That is really my question.

Mr. FOWLER. If I may respond, the gentlewoman from New York undoubtedly knows about the Pike committee and the Church committee, on both of which the gentleman from Illinois (Mr. MURPHY), as subcommittee chairman, served. They have documented those abuses where a foreign agency or a foreign organization was targeted just to collect information on Americans.

Ms. HOLTZMAN. Yes; that is my point.

Mr. FOWLER. Therefore, we wrote into this bill the judicial protection that in an application for a tap, the magistrate should evaluate the reason for that tap in order to afford protection. Unfortunately, the McClory amendment knocked out that provision.

The CHAIRMAN pro tempore. The time of the gentlewoman from New York (Ms. HOLTZMAN) has again expired.

(On request of Mr. MAZZOLI and by unanimous consent, Ms. HOLTZMAN was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, will the gentlewoman yield?

Ms. HOLTZMAN. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thoroughly concur with what my friend, the gentleman from Georgia (Mr. FOWLER), has said.

I think that that protection which our bill, in the original form H.R. 7308, provided did protect the American citizen who is the incidental subject of a targeted search or surveillance, let us say, of the Turkish Embassy or of some foreign power.

Last night on this very floor I suggested that the committee bill did protect against that by requiring minimization procedures to be in effect and approved by the judge before the tap was put on. Further, if the judge, after inquiring into the matter, determined that this was an indirect effort to really target American citizens by going through this facade of targeting some foreign power solely to get this information, the original bill—now it is changed—would have said that there are minimization procedures as to this, and those minimization procedures would be periodically reviewed by the court.

When this committee goes back into the House, I hope we will have a chance to take another look at the McClory amendment That is why I opposed it last night. While I am sure it is well-intended, I think it has a pernicious effect.

Ms. HOLTZMAN. I thank the gentleman from Kentucky for his assurance.

Let me just ask again under the original bill, not as amended by the gentleman from Illinois if the courts were to find that the objective of the wiretap or of the surveillance was solely or essentially to get information about American people or the conduct of American citizens here in the United States or U.S. persons, even though the matter were related to foreign affairs in some way, that surveillance would not be authorized in the bill?

Mr. MAZZOLI. Absolutely not. The gentlewoman from New York is correct.

Ms. HOLTZMAN. I thank the gentleman for his assurance.

Mr. McCLORY. Mr. Chairman, will the gentlewoman yield?

Ms. HOLTZMAN. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would like to point out that with or without the McClory amendment, we have minimization procedures which are prescribed and must be adhered to.

If we had the abuses to which the gentleman from Kentucky (Mr. MAZZOLI) makes reference, then we have abuses which we can take care of both the congressional oversight and by appropriate action against anybody who is abusing the authority.

Mr. MAZZOLI. If the gentlewoman will yield, Mr. Chairman, one of the important distinctions of those minimization procedures to which the gentleman refers would then involve solely an executive function, reviewed by nobody.

Mr. BOB WILSON. Madam Chairman, I move to strike the requisite number of words.

I would like to clarify the colloquy which occurred here with respect to the McClory amendment.

The McClory amendment does not affect U.S. persons as far as the warrant

requirement is concerned. The statement made by the gentleman from Georgia (Mr. FOWLER) is completely inaccurate in that respect.

Mr. FOWLER. Madam Chairman, will the gentleman yield?

Mr. BOB WILSON. I yield to the gentleman from Georgia.

Mr. FOWLER. Madam Chairman, I would like the gentleman to specify in what way my statement was inaccurate.

Mr. BOB WILSON. The McClory amendment removes the warrant requirement for non-U.S. persons only; is that not correct? And U.S. persons are not only subjected to a warrant requirement in order for them to be surveilled, but also, they are protected through the minimization procedures.

Both the gentleman from Georgia and the other gentleman said that the McClory amendment took this right away from U.S. citizens, and that is completely unfair and wrong.

Mr. FOWLER. Madam Chairman, if the gentleman will yield further, I will be delighted, of course, to let the author of the amendment correct me if I make any inaccurate statements. First, however, I would like to have an opportunity to respond.

First of all, the question which the gentlewoman from New York (Ms. HOLTZMAN) asked was whether or not there was judicial protection for American citizens who are surveilled through a tap which was placed on a foreign entity.

I am sure the gentleman from Illinois (Mr. MCCLORY) will agree that under his amendment there is no judicial protection under that circumstance and that he inserts minimization protection which are, as the gentleman from Kentucky (Mr. MAZZOLI) pointed out, solely under the control of the executive branch.

The whole thrust of our legislation was to try to keep this Government, or any subsequent Government, from tapping a foreign power under the ruse of collecting foreign intelligence information when it is really trying to collect nonintelligence information about Americans. The amendment offered by the gentleman from Illinois would not give judicial protection in that instance.

Mr. MCCLORY. If the gentleman will yield, I would like to point out that if there is abuse of the authority which is granted, if there is some ruse employed, the guilty person is going to be subjected to criminal penalties under the McClory amendment or without the McClory amendment. So the question is as to whether or not we are going to require a judicial warrant when we want to target a foreign power or a foreign agent. It could be a foreign spy.

Let me point out that the minimization procedures are minimization procedures which are developed and put in place by the Executive. The judiciary does not have anything to do with either developing or promulgating these minimization procedures, and they should not. I am fearful that with the intervention of the courts they may try to usurp authority that is not granted to them in this legislation. But to suggest that the court is going to review the minimization procedures, then, this it seems to me is an aberration. It is an irrelevant explanation of this legislation. The court is supposed to be there presumably to protect the Attorney General or those who are exercising authority under his direction. They claim that they want this for the Attorney General and for the FBI agents, and so on, who have been sued or who are not going to be sued any more, and it may be that this legislation may discourage some of the suits. But let me say that if the Attorney General or others are abusing their authority, whether they have a court order or they do not have a court order, there is a right to sue and to recover, and the bill provides for it.

Mr. BOB WILSON. Madam Chairman, I yield back the remainder of my time.

AMENDMENT OFFERED BY MR. RAILSBACK

Mr. RAILSBACK. Madam Chairman, I ask unanimous consent to offer a clarifying amendment not previously printed in the RECORD, but which I have discussed with both sides and which I believe to be acceptable.

The CHAIRMAN pro tempore (Mrs. MEYNER). Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY of Illinois. Reserving the right to object, I would just say, Madam Chairman, if we could have the amendment read for the benefit of all of the members of the Committee, it would clarify it.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. RAILSBACK: In the amendment offered by Mr. MCCLORY, section 102(b)(4)(A)(1) is amended by adding the words "unobtrusively and" before the words "in such a manner"; and on page 50, lines 8 and 9, add the words "unobtrusively and" before the words "in such a manner".

Mr. MURPHY of Illinois. Madam Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois (Mr. RAILSBACK)?

There was no objection.

Mr. RAILSBACK. Madam Chairman, I offer this amendment to insure that H.R. 7308 will not impose new and onerous burdens of compliance on those telephone companies called upon to assist in the establishment of electronic surveillances.

Currently, I am told, telephone company assistance—pursuant to court order in criminal proceedings, authorizations of the U.S. Attorney General in national security cases—is limited to providing line access information and, when requested, a private line from the source of the tap to the listening post. All physical connections to the intercepted telephone line, however, are made by law enforcement personnel who also provide, connect, and operate listening or recording devices.

Language contained in this measure has been interpreted by some as opening the door to greater demands for telephone company involvement such as: The furnishing of monitoring equipment, the use of telephone company employee identification cards to gain access to customer premises, or even the use of telephone company personnel for access and listening device placement in customer premises. Such a direct role in electronic surveillance by the telephone companies would, in my opinion, be inappropriate. It would seriously conflict with the responsibility of these companies to safeguard the privacy of their customers.

The amendment which I am proposing is quite simple. It would merely replace the uncertain language contained in H.R. 7308 with the judicially tested and defined language found in the Federal Omnibus Crime Control Act. Found at 18 U.S.C. section 2518(4) this language provides that telephone companies will provide the technical assistance necessary to accomplish the interception "unobtrusively". This language is preferable over that found in the legislation currently under consideration because it has proven workable over a number of years, it is compatible with the responsibility owed by telephone companies to their customers, and its meaning has been clearly refined by judicial interpretation.

I urge my colleagues on both sides of the aisle to support this simple amendment.

Mr. MCCLORY. Madam Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Illinois.

Mr. MCCLORY. I thank the gentleman for yielding.

I am familiar with the gentleman's amendment, and I see no objection to the amendment.

Mr. MURPHY of Illinois. Madam Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. I thank the gentleman for yielding.

I would say to my colleague, the gentleman from Illinois, that we have discussed this amendment. The amendment that he offers makes it clear that the statute does not authorize the Government to request cooperation from a common carrier that is not authorized under title III of the Omnibus Crime Control Act of 1968. I made this point yesterday in colloquy with the gentleman from Wisconsin (Mr. KASTENMEIER) and the gentleman from Ohio (Mr. ASHBROOK) on the floor. We are not requiring anything other than what is required now under title III of the act I just mentioned.

Mr. RAILSBACK. I want to thank the gentleman very much.

Mr. MURPHY of Illinois. I will support the amendment, and I appreciate the gentleman's bringing it to our attention.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. RAILSBACK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. KEMP

Mr. KEMP. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KEMP: Page 62, after line 15, insert the following new subsection:

(l)(1) Notwithstanding any other provision of this title, whenever the President

has reason to believe that, based upon information obtained through an electronic surveillance under this title or otherwise, an individual who has diplomatic immunity conferred by the United States is, within the United States, intercepting by electronic means the communications of individuals in the United States and that such intercepting of communications is being conducted on behalf of a foreign power and in violation of the laws of the United States, the President shall—

(A) so inform the chairman and ranking minority member, or, in his discretion, the members, of the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate;

(B) except as provided under paragraph (2), so inform any individual believed to be a particular target of such intercepting of communications in order that such individual may take such precautions as such individual considers advisable; and

(C) except as provided under paragraph (2), so inform the Ambassador or Charge d'Affairs or other principal representative of such foreign power to the United States and demand that such intercepting of communications be ceased immediately.

(2) The President shall not be required to comply with the provisions of subparagraph (B) or (C) of paragraph (1) in any case in which the President certifies in writing to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate that to comply with the provisions of such subparagraph would cause serious damage to the national security of the United States.

Mr. KEMP (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. KEMP. Madam Chairman, my amendment would require the President to take the following actions when it became apparent that electronic communications of U.S. persons were being intercepted and monitored by foreign governments or their agents. First, the President would be required to notify such person that his communications were being subjected to electronic surveillance by the foreign government. Second, the President would be required to notify the foreign government to cease and desist such surveillance, since the act is in violation of U.S. law. The President would be relieved of this responsibility in the event that he notify the House Permanent Select Committee on Intelligence and the Select Committee on Intelligence of the other body that to comply would cause grave harm to the national security interests of the United States.

Information has been reported recently in the press that millions of Americans are having their telephone calls monitored and recorded by the KGB from various locations in the United States. Further, the press reports that the Soviets are engaged in electronic surveillance of Government activities and defense contractors, private businesses, stock and commodity exchanges, national and international banking institutions, and perhaps even the press, universities and other centers of information and research concentration.

It would appear that the Soviets carefully plan for this activity by determining the routes of communications, so as to optimize intercept capability. Further, it appears that the locations for new consulates and trade missions have been carefully selected to provide even greater opportunities for the Soviets to intercept personal information, and business and monetary secrets of our citizens and corporations. This situation could grow more serious in the near future as new consulates and trade missions are opened. Further, the techniques involved in electronic surveillance are neither technologically difficult, nor expensive. There is no guarantee that other foreign governments, and their intelligence organizations, will not similarly invade the rights to privacy guaranteed under the provisions of the fourth amendment.

The bill under consideration would provide protection to those few U.S. persons who were subjected to electronic surveillance by our intelligence organizations and, under the provisions of Executive Orders 11905 and 12036, only a few U.S. persons have been subjected to electronic eavesdropping. It is ironic that, during this same period, millions of American citizens have had their privacy right violated with impunity by the Soviet Union.

The House in dealing with this legislation has a responsibility to the American people to do all in its power to protect their right to privacy. Apparently, the fourth amendment provisions of our Constitution do not apply to acts of foreign governments, but are limited to acts of the Government of the United States. In view of the activities of the intelligence services of foreign governments operating against U.S. persons within our territory, I believe we must provide statutory protection to limit these criminal actions. Adoption of my amendment would accomplish these objectives by warning U.S. persons of the fact, and notifying foreign governments to cease and desist, unless the President personally determined that to do so would cause grave harm to the national security interests of the United States.

Madam Chairman, I urge support for this amendment.

Mr. McCLORY. Madam Chairman, I rise in support of the amendment.

Madam Chairman, I want to commend the gentleman from New York (Mr. KEMP) on the amendment that is being offered. I think at a time when we are seeking to protect the privacy of U.S. citizens through our own efforts and through actions of our executive branch, and to the extent that we may be also involving the courts in this matter of protecting the privacy interests of U.S. persons, to ignore the fact that Americans' privacy is being violated in a wholesale way, as is reported to us through the press and through the debates that were carried on in the other body at the time this measure was debated there, seems to me to be quite unthinkable.

This is a very modest approach to the subject of protecting U.S. citizens against intrusion by electronic surveillance of a foreign power right in our midst, in this city, and perhaps in other cities and other areas of our country. To the extent that these reports are or may be true, it seems to me that the very least we can do is to adopt this amendment.

It is, of course, a further protection to U.S. citizens. In part of the debate we have had here, we talked about protecting the incidental rights of American citizens whose communications are incidentally listened into—that is, not intentionally, but just because they happen to get overheard accidentally or incidentally. What this amendment would do would be to attack that type of electronic surveillance which is directly or deliberately imposed upon American citizens, so I cannot see that there is any reason for this body not to support this.

The bill that the gentleman has sponsored and that is sponsored in the other body by Senator MOYNIHAN goes a long way and deals precisely with this subject. I might say that the amendment was drafted very carefully in order to be sure that it was germane and was not objectionable from a parliamentary standpoint. It seems to me that it is entirely appropriate that we should adopt it.

Mr. STRATTON. Madam Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from New York.

Mr. STRATTON. Madam Chairman, I would just like to join the gentleman from Illinois in support of the amendment of my colleague from New York (Mr. KEMP). As a matter of fact, I have an amendment that bears on this same situation, which Senator MOYNIHAN has recently brought to the attention of all of us.

I think the gentleman's amendment is a very valuable addition to the bill, and at the proper time in title III I shall be offering my own amendment which will, I believe, further provide some restrictions in connection with the same situation as the amendment of the gentleman from New York (Mr. KEMP).

Mr. McCLORY. I thank the gentleman.

Mr. MURPHY of Illinois. Madam Chairman, I rise in opposition to the amendment. It serves no useful purpose here in furthering the dialog on H.R. 7308 or in protecting Americans from unlawful foreign surveillances. The President, the intelligence agencies, and the congressional intelligence committees share the gentleman's concern and are fully aware of the intrusive activities that some governments engage in within our borders.

It is a sensitive and complex problem with sweeping intelligence and diplomatic ramifications.

I suggest to the gentleman that I think any further discussion here of the sensitive issues involved can only serve to aggravate the underlying problem which has nothing to do with the merits of H.R. 7308.

I assure the gentleman and my colleagues in the House that this Member

and the Intelligence Committee will maintain the closest possible scrutiny of this delicate issue.

I think that on the floor of the House with our visitors and guests in the House is no place to discuss the sensitive issues involved.

Mr. KEMP. Madam Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from New York.

Mr. KEMP. Madam Chairman, I respect the gentleman's position. The gentleman knows I am not about to reveal anything that would hurt this Nation or its relations with other countries or the privacy of U.S. citizens. So I share that belief as far as the gentleman is concerned. I give him credit for that. I only bring it out because there have been reports about it. It was related in the Rockefeller report to the American people. So I apprecate the gentleman's attempts to deal with this quietly and in a proper forum, and I regret to having to bring it up, but it seems to me it is a legitimate concern to the American people, not by virtue of a KEMP or a MOYNIHAN bringing it up, but it was the subject of the Rockefeller report.

But if it is simply a matter of codifying what the gentleman has suggested, I cannot understand the gentleman's opposition to the amendment, thus making it a bigger issue.

It is just that it seems that this has been going on for quite some time? That is my only concern.

Mr. MURPHY of Illinois. Let me say that the methods the gentleman speaks about are very sensitive and sophisticated.

I just think now that, to go any further today with this dialog would be ill-advised.

Mr. ASHBROOK. Mr. Chairman, I move to strike the last word and I rise in support of the amendment offered by the gentleman from New York (Mr. KEMP).

Mr. Chairman, this amendment seems to present several of the arguments that I have heard on many amendments. For instance, I have heard it said a number of times, against amendments that I bring in that, well, a previous President agrees with the Carter administration on this bill so that makes it pass the litmus paper test.

Here it has been said that it would be premature to tread in this area. Let us be fair about it, Soviet eavesdropping was done in a previous administration and little was done, if anything. We have had the best part of 2 years of the new administration and little is done if anything. So it is not a partisan issue. I think there was a degree of allowing this to be the victim of détente, of looking the other way in both administrations. So it is not a partisan matter.

Mr. MURPHY of Illinois. Will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. The gentleman says nothing has been done. I do not know if the gentleman was present in the hearings, but definite moves have been made by the executive branch and the Secretary of State in this matter. They are in the midst of bearing fruit. Also the fact that protective measures are being directed at those individuals that have been conducting it.

The gentleman is fully aware of what those moves are without my describing them today.

Mr. ASHBROOK. That is right, and the gentleman indicated that some people have been contacted, but the sheer multitude of eavesdropping indicates if there are tens of thousands of American conversations being monitored, nobody is making an effort to contact tens of thousands of people.

Mr. MURPHY of Illinois. I will say to the gentleman that the most sensitive, the people that have the most to lose have been contacted.

Mr. ASHBROOK. Then let us not get caught in that trap. All the arguments I have heard have been made, the gentlewoman from New York (Ms. HOLTZMAN) presented them, and I have heard them any number of times. We are supposedly vigilant for all Americans' rights. How many times have I heard it said in this debate that we must make sure we protect the rights of Americans?

I think the Kemp amendment is a pretty good test of whether Congress wants to show it is zealous to protect Americans' rights against our Government and against actions directed by Communist agents against Americans.

Mr. MURPHY of Illinois. I am sure the gentleman recognizes the fact that we gave the counterintelligence division $10 million in the last appropriation here for this very purpose.

Mr. ASHBROOK. I would add one point to my colleague, the gentleman from Illinois, and that is that I do not see that the Kemp amendment does anything that would be adverse to our national security or to our intelligence gathering effort. It merely requires the President of the United States to indicate what is going to be done on this subject. It is not going to trespass into the intelligence field.

Mr. KEMP. Mr. Chairman, if the gentleman would yield, I would say, just to enter into this colloquy, that this issue was fully aired and discussed on April 20 in the other body.

I can understand the gentleman's concerns, and they are shared by me, but I want to remind the gentleman that the article pubulished in the New York Times, which suggests that the administration is mapping a secret plan to counteract Soviet activity is kind of interesting, because here we are mapping out a public plan, a congressional plan to take care of domestic surveillance, and yet we are working on a secret plan, according to the New York Times, to deal with the activities of the Soviets.

Why are we so sensitive about that and less sensitive about the intelligence gathering agencies of the U.S. Government. It seems to me to be a little bit counterproductive.

Mr. MURPHY of Illinois. We are talking about a sensitive apparatus and sensitive methods. We are not talking about the fourth amendment rights of American citizens, basic rights under the Bill of Rights.

Let me say, further, that the junior Senator from New York that brought this up in the Senate, after he made his point, he withdrew the amendment which you can see if you read the debate.

Mr. KEMP. I have.

Mr. MURPHY of Illinois. That the Senate committee was working on this, too, and they have the same information that we have.

Mr. ASHBROOK. Mr. Chairman, let me reclaim my time to say that my colleague, the gentleman from New York (Mr. KEMP), is not becoming involved in sensitive apparatuses. He is not becoming involved in foreign policy. He is not becoming involved in intrigue. All he is saying is that this foreign surveillance is going on on a massive scale and it deserves some attention. We know that to be a fact.

Mr. Chairman, there is no reason that the Congress should not at least recognize that fact in what we are doing, not with respect to countermeasures, not with respect to sensitive equipment, but to emphasize the knowledge of this invasion of privacy, indeed, criminal invasion of privacy of the American people by the Soviet Union, to escalate that knowledge of something which is at least known by the public. Countermeasures or what is being done to protect us has nothing to do with the Kemp amendment.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Let me suggest to my very good friend—and he is my friend—why does he not perform an act of statesmanship here, as was done by the junior Senator from New York? He has made his point in offering the amendment. Why does he not withdraw it?

One of the reasons I suggest that he do it is that as intelligent as he is, as smart and as persuasive as he is, he knows that this is a matter with ramifications which really travel beyond the matter which we are discussing today in this foreign intelligence surveillance bill. The gentleman from New York (Mr. KEMP) knows that.

He also knows that those ramifications do embrace other agencies of the Government such as the State Department and the Department of Commerce.

Mr. Chairman, it would occur to me that this is really not the place in which to accept this amendment.

The gentleman from New York (Mr. KEMP) has his own bill. He knows that he will get a hearing on that bill because it is a matter which the Congress is very interested in. He knows that he is going to get a hearing on the bill. He can bring that matter to the attention of the Congress at that time; and I am sure that with the persuasiveness of which he is so capable, we will get a bill which will answer the problems that he and the junior Senator from New York are so interested in.

Furthermore, the gentleman from

New York (Mr. KEMP) knows that the President is worrying about this matter and that the Congress is getting a look at it, as this committee is, and as are other committees, incidentally, of the House and Senate, too. He also knows that the President and the administration are engaged in the study of this very difficult problem; and hopefully, it will be resolved.

Again, why does not the gentleman perform that act of statemanship at this point? Why does he not withdraw his amendment? He is going to get a lot of credit for it anyhow.

Mr. KEMP. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from New York.

Mr. KEMP. Mr. Chairman, I am sorry that the gentleman from Massachusetts (Mr. BOLAND) suggests that I might be doing this simply to get credit.

I am doing it to get the Soviets to cease and desist their electronic surveillance of American citizens, which now mounts into the tens of thousands or more. This fact has already been confirmed by the gentleman as well as by our friend, the gentleman from Illinois (Mr. MURPHY).

My point is that if we knew about this, why was not something done in conjunction with bringing this bill to the floor? Why am I now being asked to remove the amendment from consideration and to be a statesman and lower the profile of our concern for the rights of American citizens?

Why was not this matter brought to the attention of the committee at an earlier time so that we could have had a bill that would have dealt with both of these problems, not only the surveillance of American citizens by domestic intelligence agencies, but also that of foreign intelligence agencies?

Mr. BOLAND. That is a good question, and it deserves an answer.

Let me say emphatically to the gentleman from New York that I do not think the gentleman offered his amendment for the purpose of getting publicity. I am aware of his intense interest in this matter as well as of the interest of a lot of Members of Congress, a lot of members of this committee, and a lot of members of the New York delegation.

One of the reasons I presume—at least, it is my judgment—that we did not include this matter in this bill is that we are not the only committee involved here. The International Affairs Committee would be involved in this matter; there is no doubt about it. There are some diplomatic ramifications. Let me indicate to the gentleman, we had enough difficulty with the foreign surveillance intelligence bill without impacting with something that might give us additional trouble. That is my response to the gentleman from New York.

Mr. KEMP. Will my friend, the gentleman from Massachusetts, yield again?

Mr. BOLAND. I yield to the gentleman.

Mr. KEMP. I thank the gentleman for yielding.

This act creates or amends all of the applicable law on electronic surveillance, and it seems, therefore, that any electronic surveillance undertaken by an intelligence-gathering source, domestic or foreign, in this country, is a violation of the specific provisions of this bill. I cannot understand why the Congress ought not make clear our concern for these violations and force the Soviets to cease and desist. I personally would like to make them persona non grata, but I understand that might not be germane.

We worked, as the gentleman from Illinois (Mr. MCCLORY) said, with the Parliamentarian in trying to work out something that would be acceptable. It seems to me a reasonable attempt to assure the people of this country that we are concerned as much about their rights vis-a-vis foreign intelligence services, as we are about their rights vis-a-vis our own agencies. So I rest my case and hope that the gentleman will support it.

Mr. BOLAND. Mr. Chairman, I think this is the wrong place and the wrong time for this particular amendment, and I would hope that the committee would reject it.

The CHAIRMAN pro tempore (Mr. MURTHA). The question is on the amendment offered by the gentleman from New York (Mr. KEMP).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. KEMP. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN pro tempore. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to report their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 732]

| | | |
|---|---|---|
| Abdnor | Conyers | Guyer |
| Ambro | Crane | Hagedorn |
| Ammerman | Danielson | Hansen |
| Andrews, N. Dak. | Davis | Harrington |
| Archer | Delaney | Harsha |
| Armstrong | Dellums | Hawkins |
| Beilenson | Dent | Holt |
| Bingham | Diggs | Holtzman |
| Bonker | Duncan, Oreg. | Huckaby |
| Brodhead | Emery | Kasten |
| Burke, Calif. | Erlenborn | Krueger |
| Burke, Fla. | Evans, Ga. | Leggett |
| Burton, Phillip | Fary | Lehman |
| Byron | Fish | Long, La. |
| Cederberg | Flowers | Lundine |
| Chisho'm | Forsythe | McCloskey |
| Clawson, Del | Fraser | McCormack |
| Clay | Frey | McDonald |
| Cochran | Gibbons | McFall |
| | Goldwater | Madigan |
| Mahon | Rinaldo | Treen |
| Mathis | Risenhoover | Tsongas |
| Meeds | Roncalio | Tucker |
| Mikva | Rooney | Waggonner |
| Miller, Calif. | Runnels | Waxman |
| Murphy, N.Y. | Santini | Whitten |
| Neal | Scheuer | Wiggins |
| Ottinger | Shipley | Winn |
| Pepper | Sisk | Wright |
| Pettis | Skubitz | Yatron |
| Pike | Solarz | Young, Alaska |
| Pressler | Staggers | Young, Tex. |
| Quayle | Steed | Zablocki |
| Quie | Symms | Zeferetti |
| Quillen | Teague | |
| Rangel | Thone | |

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MURTHA, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 7308, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 327 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

RECORDED VOTE

The CHAIRMAN pro tempore. The pending business is the demand of the gentleman from New York (Mr. KEMP) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 154, noes 230, not voting 48, as follows:

[Roll No. 733]

AYES—154

| | | |
|---|---|---|
| Anderson, Ill. | Forsythe | Moorhead, Calif. |
| Andrews, N. Dak. | Frenzel | Mottl |
| Applegate | Gammage | Myers, Gary |
| Archer | Gaydos | Myers, John |
| Ashbrook | Gilman | Nichols |
| AuCoin | Goldwater | Nowak |
| Bafalis | Goodling | O'Brien |
| Bauman | Gore | Oberstar |
| Beard, Tenn. | Grassley | Pritchard |
| Bennett | Green | Pursell |
| Biaggi | Hammer-schmidt | Quayle |
| Bowen | Harsha | Railsback |
| Breaux | Heckler | Regula |
| Brinkley | Hillis | Rhodes |
| Broomfield | Holt | Rinaldo |
| Brown, Mich. | Holtzman | Robinson |
| Brown, Ohio | Horton | Rousselot |
| Broyhill | Hyde | Rudd |
| Buchanan | Ichord | Runnels |
| Burgener | Jeffords | Ruppe |
| Butler | Johnson, Colo. | Santini |
| Caputo | Kemp | Sarasin |
| Carter | Kildee | Satterfield |
| Cederberg | Kindness | Sawyer |
| Clausen, Don H. | LaFalce | Schulze |
| Cleveland | Lagomarsino | Sebelius |
| Cohen | Latta | Shuster |
| Coleman | Leach | Smith, Nebr. |
| Collins, Tex. | Leggett | Snyder |
| Conable | Lent | Spence |
| Conte | Levitas | Stangeland |
| Corcoran | Livingston | Stanton |
| Coughlin | Lott | Steiger |
| Cunningham | Lujan | Stockman |
| Daniel, Dan | McClory | Stratton |
| Daniel, R. W. | McDade | Stump |
| Davis | McDonald | Taylor |
| Derwinski | McEwen | Treen |
| Devine | McKinney | Trible |
| Dickinson | Madigan | Vander Jagt |
| Dornan | Maguire | Walker |
| Drinan | Markey | Walsh |
| Duncan, Tenn. | Marks | Wampler |
| Edwards, Ala. | Marlenee | Watkins |
| Edwards, Okla. | Marriott | Weiss |
| Emery | Martin | Whalen |
| Evans, Del. | Mathis | Whitehurst |
| Evans, Ind. | Michel | Wilson, Bob |
| Fenwick | Mikulski | Winn |
| Findley | Miller, Ohio | Wylie |
| Flowers | Mitchell, N.Y. | Young, Fla. |
| | Moore | |

NOES—230

| | | |
|---|---|---|
| Addabbo | Fountain | Nedzi |
| Akaka | Fowler | Nix |
| Alexander | Fuqua | Nolan |
| Ambro | Garcia | Oakar |
| Anderson, Calif. | Gephardt | Obey |
| | Giaimo | Ottinger |
| Andrews, N.C. | Ginn | Panetta |
| Annunzio | Glickman | Patten |
| Ashley | Gonzalez | Patterson |
| Aspin | Gradison | Pattison |
| Baldus | Gudger | Pease |
| Barnard | Hall | Pepper |
| Baucus | Hamilton | Perkins |
| Beard, R.I. | Hanley | Pickle |
| Bedell | Hannaford | Pike |
| Benjamin | Harkin | Poage |
| Bevill | Harrington | Preyer |
| Bingham | Harris | Price |
| Blanchard | Hefner | Rahall |
| Blouin | Heftel | Rangel |
| Boggs | Hightower | Reuss |
| Boland | Holland | Richmond |
| Bolling | Hollenbeck | Risenhoover |
| Bonior | Howard | Roberts |
| Bonker | Hubbard | Rodino |
| Brademas | Hughes | Roe |
| Breckinridge | Ireland | Rogers |
| Brodhead | Jacobs | Roncalio |
| Brooks | Jenkins | Rose |
| Brown, Calif. | Jenrette | Rosenthal |
| Burke, Mass. | Johnson, Calif. | Rostenkowski |
| Burleson, Tex. | Jones, N.C. | Roybal |
| Burlison, Mo. | Jones, Okla. | Russo |
| Burton, John | Jones, Tenn. | Ryan |
| Burton, Phillip | Jordan | Scheuer |
| Byron | Kastenmeier | Schroeder |
| Carney | Kazen | Seiberling |
| Carr | Kelly | Sharp |
| Cavanaugh | Keys | Sikes |
| Chappell | Kostmayer | Simon |
| Chisholm | Krebs | Skelton |
| Clay | Le Fante | Slack |
| Collins, Ill. | Lederer | Smith, Iowa |
| Conyers | Lloyd, Calif. | Solarz |
| Corman | Lloyd, Tenn. | Spellman |
| Cornell | Long, La. | St Germain |
| Cornwell | Long, Md. | Stark |
| Cotter | Luken | Steed |
| D'Amours | Lundine | Steers |
| Danielson | McCloskey | Stokes |
| de la Garza | McCormack | Studds |
| Delaney | McFall | Thompson |
| Dellums | McHugh | Thornton |
| Derrick | McKay | Traxler |
| Dicks | Mahon | Tucker |
| Dingell | Mann | Udall |
| Dodd | Mattox | Ullman |
| Downey | Mazzoli | Van Deerlin |
| Early | Meeds | Vanik |
| Eckhardt | Metcalfe | Vento |
| Edgar | Meyner | Volkmer |
| Edwards, Calif. | Milford | Walgren |
| Eilberg | Mineta | Waxman |
| English | Minish | Weaver |
| Ertel | Mitchell, Md. | White |
| Evans, Colo. | Moakley | Whitley |
| Evans, Ga. | Moffett | Whitten |
| Fascell | Mollohan | Wilson, C. H. |
| Fisher | Montgomery | Wilson, Tex. |
| Fithian | Moorhead, Pa. | Wirth |
| Flippo | Moss | Wolff |
| Flood | Murphy, Ill. | Wright |
| Florio | Murphy, N.Y. | Wydler |
| Flynt | Murtha | Yates |
| Foley | Myers, Michael | Young, Mo. |
| Ford, Mich. | Natcher | Young, Tex. |
| Ford, Tenn. | Neal | Zablocki |

NOT VOTING—48

| | | |
|---|---|---|
| Abdnor | Fraser | Quie |
| Ammerman | Frey | Quillen |
| Armstrong | Gibbons | Rooney |
| Badham | Guyer | Shipley |
| Beilenson | Hagedorn | Sisk |
| Burke, Calif. | Hansen | Skubitz |
| Burke, Fla. | Hawkins | Staggers |
| Clawson, Del | Huckaby | Symms |
| Cochran | Kasten | Teague |
| Crane | Krueger | Thone |
| Dent | Lehman | Tsongas |
| Diggs | Mikva | Waggonner |
| Duncan, Oreg. | Miller, Calif. | Wiggins |
| Erlenborn | Murphy, Pa. | Yatron |
| Fary | Pettis | Young, Alaska |
| Fish | Pressler | Zeferetti |

Mr. ROBERTS changed his vote from "aye" to "no."

Mr. MAGUIRE changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. Are there any further amendments to title I?

The Clerk will read.

The Clerk read as follows:

TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this ttile or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

(e) Section 2518(4) is amended by inserting "under this chapter" after both appearances of "wire or oral communication".

(f) Section 2518(9) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after the first appearance of "communication".

(h) Section 2519(3) is amended by inserting "pursuant to this chapter" after "wire or oral communications" and after "granted or denied".

Mr. MURPHY of Illinois (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN pro tempore. Are there amendments to title II?

The Clerk will read.

The Clerk read as follows:

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following the designation of the chief judges pursuant to section 103 of this Act.

The CHAIRMAN pro tempore. Are there amendments to title III?

AMENDMENT OFFERED BY MR. STRATTON

Mr. STRATTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STRATTON: Page 68, strike out line 5 and all that follows down through "of this Act," on line 8 and insert in lieu thereof the following:

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made by this Act shall not take effect unless the President certifies to the Congress that no individual who has diplomatic immunity conferred by the United States is, within the United States, intercepting by electronic means the communications of individuals in the United States on behalf of a foreign power and in violation of the laws of the United States. If the President makes such a certification, the provisions of this Act and the amendments made by this Act shall take effect upon the date of such certifications.

Mr. STRATTON. Mr. Chairman, the previous amendment referred to a situation which is also at the heart of my amendment, but for different reasons. The House was unwilling to accept the amendment of the gentleman from New York (Mr. KEMP) because of the possibility that it might lead to discussions

and disclosures about the extent of our information.

My amendment also is premised on the news we have received in the press lately about the intelligence activities of certain foreign governments operating here in the United States, and even in the city of Washington.

This bill, essentially, places limitations on the operation of United States intelligence. It provides restrictions so that we do not get into the errors and abuses of the past and it requires various things—or did until the amendment of the gentleman from Illinois and the gentleman from Pennsylvania were adopted on yesterday—to be performed before intelligence collection can begin.

In effect this legislation is based on the philosophical concept enunciated, I think it was by Mr. Justice Holmes, that "it is better that one guilty man go free than that the Government play an ignoble role."

That kind of Marquis of Queensberry approach to intelligence might have been all right back in the easy-going early days of the 20th century or the last part of the 19th century; but the world that we live in today is a different world, as it was made clear yesterday in the debate. No other nation, either in the free world or the Communist world or the third world, operates by the type of system that we are proposing to place upon our intelligence services in this bill. Certainly not our number one competitor, the Union of Soviet Socialist Republics; so it is obvious that if we are going to place these limitations on our own intelligence activities, we are going to be operating at a distinct disadvantage in a tough, competitive real world where intelligence operations are sometimes matters of life and death.

It is a little bit as though you went to a football game and one team was allowed to tackle while the other team was only allowed to say, "Please slow down." Obviously, that is not the kind of situation we want to be in as far as our national security is concerned today.

Senator MOYNIHAN has already indicated the extent to which these intelligence activities are going on in Washington today. I do not want to say more about them, because, as the distinguished chairman of the subcommittee, the gentleman from Illinois (Mr. MURPHY) has said, we are indeed getting into a sensitive area. But we ought to be aware of it. So it seems to me that it is a little ridiculous for us to enact this legislation under these circumstances, because we would be in effect adopting the Unilateral Intelligence Disarmament Act of 1978.

We are going to be "good guys," we are going to be clean, we are going to play by Marquis of Queensberry rules, but we are operating in a world in which nobody else follows that same procedure.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. STRATTON. I will yield in just a moment.

Mr. Chairman, my amendment simply says that until American citizens are not being surveilled and "intelligenced" and spied upon in our country, we are not going voluntarily to restrict our own ability to protect ourselves against that kind of surveillance or insist on comparable intelligence to protect our own security.

Mr. Chairman, I will be glad to yield now to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding.

As I understand the gentleman's amendment, it only relates to the effective date of this legislation.

The CHAIRMAN pro tempore (Mr. MURTHA). The time of the gentleman from New York (Mr. STRATTON) has expired.

(On request of Mr. McCLORY, and by unanimous consent, Mr. STRATTON was allowed to proceed for 2 additional minutes.)

Mr. McCLORY. Mr. Chairman, will the gentleman yield further?

Mr. STRATTON. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, the legislation we are discussing here relates to restrictions and restraints which circumscribe our exercise of electronic surveillance of foreign agents and foreign powers for foreign intelligence. So all the gentleman is asking in this amendment is that the effective date of this legislation be postponed, and that these restraints and guidelines be imposed at such time as we are assured that similar electronic surveillance of American citizens by foreign agents or foreign powers has been discontinued.

In other words, we do not want to leave ourselves open to their electronic surveillance while we are preventing ourselves from engaging in that kind of intelligence gathering.

Mr. STRATTON. Exactly. The gentleman from Illinois (Mr. McCLORY) has expressed it very clearly.

We are living in a real world in which people are zeroing in on us, and we would be foolish, it seems to me, to impose these restrictions, which everybody acknowledges do limit the effectiveness of our intelligence, at a time when we are going to be hard pressed to maintain our own operations. That is all that is involved here.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. STRATTON. I am glad to yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, there are, of course, various constitutional restrictions in the Bill of Rights on our Government, such as the fourth amendment itself.

The argument the gentleman is making would require that we suspend the Bill of Rights until all the other countries in the world impose similar restrictions on their governments. I do not really see that that is practical.

Mr. STRATTON. Mr. Chairman, I do not think the gentleman from Ohio (Mr. SEIBERLING) was here last night when I had the opportunity to address the committee. I find that my remarks somehow never got into the RECORD, and so the gentleman may unfortunately be prevented from ever reading that "deathless prose."

What I was referring to were the fairly successful intelligence operations going on in this country during World War II and even before World War II. I believe we can all be grateful that those operations were not embargoed by the very restrictions we are instituting in this bill.

Mr. FOWLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, speaking on behalf of the committee, if we adopt the Stratton amendment as it is proposed, including that language that requires that we postpone the effective date of this act until the President certifies to Congress that no individual with diplomatic immunity conferred by the United States is engaging in electronic surveillance in the United States, that would require us to reveal—and I stress the hypothetical nature of my example—that if we determine that friendly governments such as the Government of New Zealand, for instance, was using electronic surveilling in this country against the Government of Australia, then this would cause this act not to go into effect.

In other words, the Stratton language is so broad that, if our Government gains knowledge of any electronic surveillance by any government against any other government within the borders of this country, then this would vitiate the entire act under the Stratton amendment.

Also, as if that were not reason enough to defeat this amendment, let me say this. First, I might say that I know the position of the gentleman from New York (Mr. STRATTON), because I heard what he referred to as his "deathless prose" last night. We are trying to protect the ability of this country to preserve the finest intelligence surveillance system in the world, and if we are to certify to the Congress or to the Executive or to anybody else that we know everything about what our enemies or our allies are doing in the electronic surveillance field, we are in the old Western position of revealing how our ambush is better than their ambushes, and immediately our enemies will have ways of targeting on us to find out how we know what we know from what we must reveal if the Stratton amendment passes.

It is overly broad, it is completely unworkable, it would work against our allies as much as it would work against our enemies, and I urge rejection of the amendment.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, I would point out to the gentleman that the text of my amendment says that—

> . . . intercepting by electronic means the communications of individuals in the United States on behalf of a foreign power and in violation of the laws of the United States.

It is the interception on behalf of a foreign power in violation of our laws that we are asking be certified as nonexistent before we will adopt these procedures ourselves.

In other words, the gentleman appears to be suggesting that we allow activities in violation of our laws, and I do not

think he really would want that to happen.

Mr. FOWLER. Mr. Chairman, the only place I will agree with the gentleman from New York (Mr. STRATTON) is that the basis of spying is nasty business. We are talking about spying. We are violating laws, both of this country and of others by spying, laws that are protected by the first and fourth amendments to the Constitution. What this legislation attempts to do is to set precise standards so that we balance that need for collection; that is, spying, and at the same time protect the rights of American citizens when those rights do not have to be violated.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman makes a very good point. I am against the amendment, and I join the gentleman in opposition to it.

I would ask the gentleman one further question. The administration of this, the handling, the mechanics of putting the Stratton amendment into play just completely befuddle me. If I understand the language, if the millennium ever arrives and nobody is spying on anybody, the Stratton amendment goes into effect. And what happens on the day when the spying resumes? Would the gentleman suggest that the Stratton amendment ceases to be in effect?

Mr. FOWLER. First of all, I cannot conceive of the scope of the administrative bureaucracy that would have to be set up in order for the President to make this determination.

Mr. MAZZOLI. That is right.

Mr. FOWLER. And, of course, everything the legislation is trying to protect would have to be held in abeyance.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I thank the gentleman for yielding.

Mr. Chairman, would not the gentleman from Georgia concede that the enactment of the Stratton amendment would in effect make the President a prisoner, literally, of persons beyond Presidential control because of diplomatic immunity? It makes a mockery of the whole process, in effect.

Mr. FOWLER. I certainly agree with the distinguished gentleman.

Mr. KASTENMEIER. Certainly the amendment ought to be rejected. I agree with the gentleman.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York (Mr. STRATTON).

The amendment was rejected.

AMENDMENT OFFERED BY MR. DRINAN

Mr. DRINAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DRINAN: Page 68 after line 15, add the following new section:

SUNSET PROVISION

SEC. 302. The provisions of this Act and the amendments made by this Act shall expire at the end of the five-year period beginning on the date of enactment of this Act.

Mr. DRINAN. Mr. Chairman, in general I do not favor the adoption of sunset provisions, calling for positive action by Congress to reenact a bill by a date certain. H.R. 7308, however, breaks so much new ground, contains so many provisions which are subject to differing interpretations, and deals to such a large extent with so many of our most fundamental rights, including the fourth amendment, that I believe it is essential that we reconsider this bill in its entirety after we have had an opportunity to study its implementation.

The amendment which I propose is a simple one. It states that the terms of this act shall expire 5 years after the date of its enactment. This will provide us with the time to consider the actual impact of this bill and also provide answers to the many questions which H.R. 7308 raises. How will the unprecedented three-judge special courts function? Will warrants be granted almost as a matter of course, as some fear, or will the intelligence agencies be denied the opportunity to conduct surveillance which is needed, as others believe? Can we depend upon rigid adherence to the rule of secrecy? Precisely how broadly will the intelligence agencies define the terms "foreign power" and "agent of a foreign power"? To what extent will some law enforcement agencies abuse the privileges granted by H.R. 7308 to obtain information about a wide range of individuals and activities not subject to the surveillance authorization?

One of the most important distinctions drawn by H.R. 7308 is between citizens and resident aliens on the one hand and all other persons within the United States on the other. Insofar as I am aware, there is little constitutional support for such a distinction, especially when it is a central concept of legislation which deals directly with the bill of rights. Many people in the United States are neither citizens, nor resident aliens, nor engaged in espionage of any kind. Tourists, lecturers, businessmen, scholars and others all visit the United States regularly. Yet these individuals are not accorded the same protections as citizens and resident aliens. The first and fourth amendments refer to people, not just citizens. To what extent will we, by passing this measure, diminish the scope of these amendments and subject our guests to eavesdropping? To this question, as to the others, we have no answer.

In a more general sense, a sunset provision will insure that, after a reasonable period of time within which to evaluate the act, we will be able to balance the amount and the importance of the intelligence information collected under the terms of this bill against its intrusions on our first and fourth amendment rights. The important respects in which this bill departs from our existing intelligence gathering methods mandate a comprehensive review of the act after we have seen its results. The only way to make absolutely certain that we have the opportunity to conduct such a review is by adopting a sunset provision.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I will be happy to yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, it seems to me that this is most appropriate legislation in which to have a so-called sunset amendment. We are venturing into ground that has been uncharted. It is an unprecedented piece of legislation. Many aspects of this legislation are really without precedent, and consequently I think a 5-year limitation on the legislation is highly desirable.

Mr. Chairman, I am happy to support the gentleman's amendment.

Mr. DRINAN. I thank the gentleman for his support.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the purpose of this bill is to assure Americans that their rights are being protected and to provide a sound legal basis for the continuation of vital foreign intelligence programs. Having it expire in 5 years' time puts both those principles in jeopardy.

If there were to be a delay in the legislative process and the bill was not passed again on time, the status of protection of individual rights and the legality of surveillances would be endangered.

The Senate has announced that it will take a hard look at this statute on an annual basis to determine if it needs to be modified on the basis of experience. That seems a far sounder approach where such important issues are at stake and the committee will certainly pledge to do that also.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The question was taken, and on a division (demanded by Mr. DRINAN) there were—ayes 21; noes 28.

Mr. DRINAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the distinguished gentleman from North Carolina (Mr. PREYER).

Mr. PREYER. Mr. Chairman, I thank the distinguished gentleman from Massachusetts for yielding to me. I wish to ask the chairman of the committee at this time if I am correct in my understanding that in accordance with section 2, 2(c) of House Resolution 658, jurisdiction to study and review intelligence activities other than those dealing exclusively with the Central Intelligence Agency is to be shared concurrently with the committee by other committees that have exercised jurisdiction over these activities in the past.

The Government Information and Individual Rights Subcommittee, which I

chair, has in the past held numerous hearings on such matters as the interception of nonverbal communications by Federal intelligence agencies and the notification to victims of improper intelligence activities. For this reason, I think the subcommittee's jurisdiction in the area of intelligence surveillance has been established.

I would appreciate the comments of the gentleman from Massachusetts (Mr. BOLAND) regarding this matter.

Mr. BOLAND. Mr. Chairman, in response to the question propounded by the gentleman, let me say that his understanding of House Resolution 658, establishing the House Permanent Select Committee on Intelligence, and his reference to section 2, 2(c) of that resolution conferring jurisdiction to study and review intelligence activities other than those dealing exclusively with the CIA, is to be shared concurrently with the committee by other committees that have exercised jurisdiction over these activities in the past is correct. Those committees that have exercised jurisdiction of these activities in the past will continue to have that jurisdiction.

And as he has indicated, his Subcommittee on Government Information and Individual Rights has actually dealt with some of the matters we are dealing with, and we will continue to share that jurisdiction with his subcommittee and the full committee.

Mr. PREYER. I thank the gentleman.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. McCLORY:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Foreign Intelligence Electronic Surveillance Act of 1978".

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Sec. 104. Congressional oversight.
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TITLE II—CONFORMING AMENDMENTS

Sec. 201. Amendments to chapter 119 of title 18, United States Code.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 101. As used in this title:

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

Such term shall not apply to any United States person solely upon the basis of activities protected by the first amendment of the Constitution.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person who—

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the foreign policy or security interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate that such activities are contrary to the foreign policy or security interests of the United States;

(B) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(C) conspires with or knowingly aids or abets any person engaged in any activity described in subparagraph (A) or (B).

Such term shall not apply to any United States person solely upon the basis of activities protected by the first amendment of the Constitution.

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are or may be a violation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power on an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto;

(3) the intentional acquisition, by an electronic, mechanical, or other surveillance device, of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Minimization procedures", with respect to a particular electronic surveillance, means specific procedures, reasonably designed in light of the purpose and technique of the surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States citizens consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information. To achieve such minimization, the Attorney General shall adopt procedures which shall include, where appropriate—

(1) provisons for the destruction of unnecessary information acquired through the surveillance;

(2) provisions with respect to what information may be filed and on what basis, what information may be retrieved and on what basis, and what information may be disseminated, to whom, and on what basis;

(3) provisions for the deletion of the identity of any United States citizen acquired through the surveillance if such identity is not necessary to assess the importance of or to understand the information;

(4) provisions relating to the proper authority in particular cases to approve the retention or dissemination of the identity of any United States citizen acquired through the surveillance;

(5) provisions relating to internal review of the minimization process; and

(6) provisions relating to adequate accounting of information concerning United States citizens that is used or disseminated.

In addition, the procedure shall include provisions that require that nonpublicly available information that is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner which identifies any individual United States citizen, without such person's consent, unless such person's identity is necessary to understand foreign intelligence in-

formation or to assess its importance; and shall allow for the retention and dissemination of information that is evidence of a crime that has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or of enforcing the criminal law.

(h) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a) (1), (2), or (3).

(i) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(j) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(k) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(l) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(m) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(n) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and the Trust Territory of the Pacific Islands.

AUTHORIZATION OF ELECTRONIC SURVEILLANCE TO OBTAIN FOREIGN INTELLIGENCE INFORMATION

SEC. 102. (a) Electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information may be authorized by the issuance of a surveillance certificate in accordance with subsection (h). If the target of the electronic surveillance is a United States citizen, the issuance of a certificate under oath and signed by the President stating that such electronic surveillance would be in accordance with the criteria and requirements of this title shall also be required.

(b) Electronic surveillance authorized under subsection (a) may only be performed according to the terms of a surveillance certificate issued in accordance with subsection (h).

(c) Electronic surveillance may be authorized under this section for the period necessary to achieve its purpose, except that—

(1) if the target of the surveillance is not a foreign power, the period of the surveillance may not exceed ninety days; and

(2) if the target of the surveillance is a foreign power, the period of the surveillance may not exceed one year.

(d) An electronic surveillance authorized under this section may be reauthorized in the same manner as an original authorization, but all statements required to be made under subsection (h) for the initial issuance of a surveillance certificate shall be based on new findings.

(e)(1) Notwithstanding any other provision of this title, if the Attorney General or Deputy Attorney General determines that—

(A) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before the requirements of subsection (a) can be followed; and

(B) the factual bases exist for the issuance of a surveillance certificate under subsection (h) to approve such surveillance,

the Attorney General or Deputy Attorney General, as the case may be, may authorize the emergency employment of electronic surveillance if, as soon as is practicable, but not more than forty-eight hours after the Attorney General or Deputy Attorney General authorizes such surveillance, the requirements of subsection (a) are met as they would have been.

(2) If the target is a United States citizen, the Attorney General or Deputy Attorney General shall notify the President at the time of such authorization that the decision has been made to employ emergency electronic surveillance.

(3) If the Attorney General or Deputy Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title be followed.

(4) If electronic surveillance is authorized under this subsection, it shall terminate when the information sought is obtained or after the expiration of forty-eight hours from the time of authorization, whichever is earliest. In the event that the requirements of subsection (a) are not met, all information obtained or evidence derived from electronic surveillance authorized under this subsection shall be destroyed within forty-eight hours of such determination, except that a record of the facts surrounding the Attorney General's or Deputy Attorney General's authorization and the failure to meet the requirements subsection (a) shall be made and preserved with all other records which under this title are required to be retained.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of persons incidentally being subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g)(1) Upon the issuance of a surveillance certificate under this section, the Attorney General may direct a specified communication or other common carrier, or a landlord, custodian or other specified person, to—

(A) furnish any information, facility, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect the secrecy of such surveillance and will produce a minimum of interference with the services that such common carrier or person provides its customers; and

(B) maintain any records concerning such surveillance or the assistance furnished by such common carrier or person that such common carrier or person wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence.

(2) Any direction by the Attorney General under paragraph (1) shall be in writing.

(3) The Government shall compensate any common carrier, landlord, custodian, or other specified person at the prevailing rate for assistance furnished pursuant to a direction under paragraph (1).

(4) Any individual may, for reasons of conscience, refuse to comply with a direction from the Attorney General under paragraph (1).

(h) A surveillance certificate issued under subsection (a) shall be issued in writing and under oath by the Attorney General and an executive branch official or officials designated by the President from among those officials employed in the area of national security or national defense who were appointed by the President by and with the advice and consent of the Senate, and shall include—

(1) a statement—

(A) identifying or describing the target of the electronic surveillance, including a certification of whether or not the target is a United States citizen;

(B) certifying that the target of the surveillance is a foreign power or an agent of a foreign power; and

(C) certifying that each of the facilities or places at which the surveillance is directed is being or may be used by a foreign power or an agent of a foreign power;

(2) a statement of the basis for the certification under paragraph (1) that—

(A) the target of the surveillance is or is not a United States citizen;

(B) the target of the surveillance is a foreign power or an agent of a foreign power; and

(C) each of the facilities or places at which the surveillance is directed is being used or may be used by a foreign power or an agent of a foreign power;

(3) a statement of the proposed minimization procedures;

(4) a statement that the information sought is foreign intelligence information;

(5) a statement that the purpose of the surveillance is to obtain foreign intelligence information;

(6) if the target of the surveillance is a United States person, a statement that the information sought cannot reasonably be obtained by normal investigation techniques;

(7) if the target of the surveillance is not a foreign power, a statement of the basis for the certification under paragraph (4) that

the information sought is foreign intelligence information;

(8) a statement of the period of time for which the surveillance is required to be maintained;

(9) a statement of the means by which the surveillance will be effected;

(10) if the nature of the intelligence gathering is such that the approval of an electronic surveillance under subsection (b) should not automatically terminate when the described type of information has first been obtained, a statement of the facts indicating that additional information of the same type will be obtained thereafter;

(11) a statement indicating whether or not an emergency authorization was made under subsection (e); and

(12) if more than one electronic, mechanical, or other surveillance device is to be involved with respect to such surveillance, a statement specifying the types of devices involved, their coverage, and the minimization procedures that will apply to information acquired by each type of device.

USE OF INFORMATION

SEC. 103. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such discloure is accompanied by a statement that such information, or any information derived therefrom, may only be used for or disclosed in any proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States. against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Before any State or political subdivision thereof may enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof must receive from the Attorney General an authorization to so use such information. Upon receiving such authorization, the State or political subdivision thereof shall notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the court, or if the case is before a court of a State or a subdivision thereof, then before the United States district court of the judicial district in which the case is pending, to determine the lawfulness of the electronic surveillance. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the court shall, nowithstanding any other law, if the Attorney General files an affidavit under oath with the court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the surveillance certificate and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making such determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the surveillance and if disclosure would likely promote a more accurate determination of such legality.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to any statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain surveillance certificates or other materials relating to surveillance pursuant to the authority of this title, or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines that the moving party is an aggrieved person, if the Attorney General files with the court of appeals of the circuit in which the case is pending an affidavit under oath that an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court or other authority, the court of appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the surveillance certificate and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court of appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney, portions of the surveillance certificate or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the court or court of appeals granting disclosure of surveillance certificates or other materials relating to a surveillance shall be binding upon all courts of the United States and the several States except the courts of appeals and the Supreme Court, and shall be final orders for purposes of appeal.

(j) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

CONGRESSIONAL OVERSIGHT

SEC. 104. On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all electronic surveillance under this title. Nothing in this chapter shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

PENALTIES

SEC. 105. (a) OFFENSE.—A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) violates section 102(a), 102(b), 102(d), 102(e), 103(a), 103(b), 103(j), or 107 or any order issued pursuant to this chapter, knowing his conduct violates such section or such order.

(b) DEFENSE.—(1) It is a defense to a prosecution under subsection (a)(1) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction;

(2) It is a defense to a prosecution under subsection (a)(2) that the defendant acted in a good faith belief that his actions were authorized by and taken pursuant to a surveillance certificate or otherwise did not violate any provision of this title, under circumstances where that belief was reasonable.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more

than $10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense in this section if the person was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 106. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or whose communication has been disclosed or used in violation of section 105 of this chapter shall have a cause of action against any such person who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of $1,000 or of $100 per day for each day of violation, whichever is greater;

(2) punitive damages, where appropriate; and

(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

RETENTION OF RECORDS

SEC. 107. All surveillance certificates and all documents used to support the issuance of surveillance certificates shall be retained for a period of not less than twenty years and shall be stored at the direction of the Attorney General under security procedures approved by the Director of Central Intelligence.

TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification under oath and signed by a person specified in section 2518(7) of this title of the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Electronic Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

(e) Section 2518(4) is amended by inserting "under this chapter" after "wire or oral communication" both places it appears therein.

(f) Section 2518(9) is amended by striking out "intercepted" and by inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and by inserting "intercepted pursuant to this chapter" after "communication" the first place it appears therein.

(h) Section 2519(3) is amended by inserting "pursuant to this chapter" after "wire or oral communications" and after "granted or denied".

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or a surveillance certificate authorizing that surveillance is obtained under title I of this Act within ninety days following such date of enactment.

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The amendment has been printed in the RECORD previously.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. McCLORY. Mr. Chairman, this is the substitute amendment about which there has been a great deal of information circulated. As a matter of fact, this is the substitute measure which has the support of a large number of Members on both sides of the aisle. A "Dear Colleague" letter was circulated bearing the signatures of 21 Democratic Members and 15 or 16 Republican Members, noting that this substitute was the preferable procedure for handling the subject of foreign intelligence and electronic surveillance.

What the substitute amendment does in essence, is to translate the existing Presidential guidelines issued formerly by President Ford and more recently by President Carter, into statutory form.

Let me say that the guidelines and restrictions are more circumscribed than are the provisions in the committee bill. For one thing there is a requirement that in order to engage in electronic surveillance of any foreign agent, foreign power, or a U.S. person, it has to be authorized by an executive department official who has been confirmed by the Senate. This is someone over whom we can exercise oversight.

If it relates to the exercise of electronic surveillance of a U.S. citizen, then it requires action by the President of the United States himself.

I do not think that there is any greater imposition on the executive department or Presidential responsibility contained in the substitute amendment. Nor is there any better way in which we can have executive department accountability. It seems to me that is where we want the accountability to be. The reason we have oversight committees is so that we can oversee what the executive does. If there are abuses, then we can take some appropriate action against them.

It is only the political personnel, the executive department officials, and the Members of Congress over whom the public has any control. We are the political entities in this great system of government, that we have and we are the ones that can be called to account for any abuses of our authority. And so it seems to me that this substitute is far superior to one which delegates to the judicial branch the authority to decide whether or not we shall have electronic surveillance.

If the judiciary abuses its authority, or serves as a patsy to the executive branch, and we find persons subjected to electronic surveillance who were not previously subjected, are we going to be able to discipline the court? Certainly not.

Or, if the judiciary denies the executive the opportunity to engage in electronic surveillance for our national security and defense purposes, are we going to be able to discipline the court? Certainly not.

If, for instance, the court decides that something that comes to its attention should be made public when, in fact, it should not be made public, is there any way to discipline the court? None whatsoever.

The only way we can discipline those charged with the responsibility regarding electronic surveillance of foreign intelligence is to repose that responsibility and accountability in the executive branch of the Government.

So, Mr. Chairman, in a sense, that is what my amendment does.

It is supported by all of the former intelligence officers, and by their entire

association. It is supported by virtually all of the former leaders in the intelligence community. If you wonder why we have support for the bill from those who have more recently been appointed, you will find that what they are saying, in effect, is that they can support the administration's bill. They can go along with it. They can live with it. And, of course, they are responding in a very obedient way to the demands of the executive.

The Washington Star has commented very favorably on this amendment. Former Deputy Attorney General Lawrence Silverman has commented favorably on this amendment.

The CHAIRMAN pro tempore. The time of the gentleman has expired.

(By unanimous consent, Mr. McCLORY was allowed to proceed for 1 additional minute.)

Mr. McCLORY. This is the last amendment. If this substitute can be adopted I can assure you that we will have effective electronic surveillance of foreign intelligence gathering while not experiencing any abuses. I can say under the existing executive guidelines that there is no evidence before our Committee on the Judiciary of any abuses, and I see none forthcoming. However, if any occur, we can find far more effective ways of taking care of them than the proposed bill.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. McCLORY).

Mr. Chairman and my colleagues, the McClory substitute is opposed by the administration and every intelligence agency.

It will not clear up the overriding legal issue of whether warrants are or are not required. It will not change the existing situation in which field agents are hesitant to rely on the Attorney General's orders. It sets no standard of proof to guide the executive officials in approving surveillances. Even the current executive branch guidelines require the Attorney General to find probable cause to believe that the target is an agent of a foreign power.

It allows electronic surveillance of American citizens with no showing of any connection with any criminal activity required.

The substitute allows common carriers and others to refuse to provide assistance to the government in the conduct of foreign intelligence surveillances.

Mr. Chairman, the gentleman from Illinois talked about the editorial of the Washington Star in support of his substitute. We have editorials from the New York Times, the Washington Post, the Chicago Tribune, the American Bar Association, all in support of the committee's well-thought-out legislation.

We have a letter from former President Ford.

I have talked personally with former Attorney General Levi, the present Attorney General, the President of the United States and they are all in favor of this legislation.

This legislation is the result and the work product of 3 years of intensive study of hearings and reports of over six committees. To scrap it now after all this work would appear to me to be the height of irresponsibility.

I respectfully urge my colleagues to oppose the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. McCLORY).

Mr. WRIGHT. Mr. Chairman, I hope my colleagues will reject this additional attempt to alter and redirect the entire thrust of this carefully drafted bill.

Rarely in the years that I have spent in the Congress have I seen a bill which was the product of so many labors. Rarely have I seen one which has brought together often disparate thoughts into one well-crafted piece of legislation supported by practically all of the thinking elements of our society. It is a shame that we have failed, apparently, to recognize the care and precision with which this particular legislation has been drafted.

Not only do I hope that we will reject the total McClory substitute; I hope that when a separate vote is requested in the House, we will reflect very carefully upon what was done in haste yesterday and will reject the McClory amendment which does away with the requirement of a warrant.

The requirement of a warrant was asked for by the FBI Director, Mr. Webster, when he appeared before the committee. It was asked for by the Director of the CIA, Admiral Turner. It was asked for by Chief Hinman of the National Security Agency. It was agreed to by all of those people as a protection for the agents of the United States against the jeopardy they otherwise might face with respect to criminal prosecution or civil suits.

President Carter wants this committee bill passed. President Ford wants this committee bill passed. Civil liberties groups have embraced and endorsed the committee bill. The distinguished chairmen of the Intelligence Committee of the House, the International Relations Committee of the House, the Judiciary Committee of the House, and of the Armed Services, Appropriations, and Budget Committees of the House all want this committee bill passed. The 95 U.S. Senators who voted for its companion measure want this bill passed.

Most important of all, perhaps, the Directors of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation want this committee bill passed. They believe that it will strengthen and assist them and give them tools which they have needed for a long time, and that it will clarify their rights and remove the jeopardy in which their agents sometimes are presently placed.

Mr. Chairman, I do hope the Members will recognize the enormous amount of time that has gone into the crafting of this particular piece of legislation, will respect its carefully balanced provisions, and will reject the McClory substitute; and when the time comes, on a separate vote, will reverse the narrow margin by which yesterday, in haste, the House adopted an ill-considered amendment.

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as a former FBI special agent for 20 years who spent many of those years in the foreign intelligence area, I would implore this body to adopt the McClory substitute as an alternative to H.R. 7308.

Mr. Chairman, one of the benefits of this substitute over the committee's proposal is that it will accomplish the objective of tightening up the procedures for conducting electronic surveillance for foreign intelligence purposes without compromising essential speed in emergency and other special situations.

The McClory proposal does not open up the Pandora's box of judicial involvement in the intelligence process. However, it does insure public accountability of the executive branch in its conduct of intelligence operations by requiring a much greater involvement by Congress and particularly of the special intelligence committees which we have established for that purpose.

I sincerely believe that the McClory substitute adequately meets all of the concerns which have been raised about former intelligence surveillance without compromising the essential speed and confidentiality of the intelligence activities which would occur under the committee bill.

Mr. Chairman, I urge passage of the McClory substitute.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding.

I just want to point out that former President Ford, in his speech at the University of South Carolina, stated in part as follows:

> The Carter Administration has asked the Congress to pass much of that responsibility to the courts. The conduct of foreign policy is not a judicial function. Moreover, after this responsibility is split, it will no longer be possible for the American people to hold the President, his political appointees, and any involved Members of Congress responsible for misdeeds in this area.

President Ford's position has been made clear there that he does not subscribe to this business of passing the responsibility on to the courts. I would like to point out, too, that while it is true that the ACLU has tremendous input insofar as this legislation is concerned, this is merely a foot in the door. This is merely a foot in the door. What they really want to get a warrant requirement with regard to informants and informers of the FBI, and that is well known. Of course, the New York Times editorial of July 26 pointed out that in their opinion electronic surveillance was less offensive than an informant who intrudes on individuals and organizations and then informs the law enforcement agencies of the information that he has gathered. So I think that we should be very, very cautious before we venture into this area

of a warrant requirement for foreign intelligence surveillance. I am hopeful that on a rollcall vote we can have a favorable vote on this substitute and then move on by in effect translating the very valid guidelines that the Executive has established into statutory form for permanent control of foreign intelligence electronic surveillance.

I thank the gentleman for yielding.

Mr. RUDD. No intelligence agency, no police agency can operate very long without dependable sources, and that is why this McClory substitute is a necessary substitute for H.R. 7308.

Mr. Chairman, I yield back the remainder of my time.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I would just take a brief few seconds to endorse what was recently said by the majority leader of the House, who I think eloquently stated in the well of the House the reasons why this McClory amendment, as well as the McClory amendment which was adopted by the House last night in haste, which will be revoted on in a few minutes, ought to be defeated.

H.R. 7308, which came out of the committee headed by the able gentleman from New Jersey (Mr. RODINO) and came out of the committee headed by the able gentleman from Massachusetts (Mr. BOLAND) is a very carefully developed bill which satisfies the unique and sometimes desperate needs of all of the intelligence community, those organizations and groups dealing with civil liberties in America, and those groups dealing with law enforcement. Mr. Chairman, it seems that if we deprive, take away—we strip away that protection. We strip away that device which gives security to those people and to all individuals, and then it seems to me that we have gutted the bill. I think instead of having the best of both worlds, we have the worst of both worlds.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

We have differences of opinion as to what a good foreign intelligence surveillance bill should provide, but I merely want to point out that the Committee on the Judiciary did not consider this legislation. As a matter of fact, what happened there was that there was a motion to table. The motion to table succeeded, and the matter remains in the Committee on the Judiciary right now, which in effect means that the bill is really not on the floor from the Committee on the Judiciary in any sense at all.

Mr. MAZZOLI. I appreciate the gentleman's comments. I think we spoke last night to the very point that the distinguished chairman of the subcommittee, the gentleman from Wisconsin (Mr. KASTENMEIER) conducted 3 days of very complete hearings and very vigorous debate, and I would say that probably in those 3 days this bill got as much attention as it might have gotten in many other committees of the House in perhaps weeks. It was a serious-minded effort, Mr. Chairman. I would hope that the Committee of the Whole House on the State of the Union would reject the gentleman's statement.

The McClory substitute and his amendment of yesterday would harm—not help—the Government's future ability to conduct surveillance of foreign persons in the United States.

First, it leaves a cloud of legal uncertainty over the surveillance of foreigners in the United States. There are grave doubts about the constitutionality of discriminating against all nonresident aliens simply on the basis of their being "foreigners." The Constitution requires reasonable grounds for any discrimination against aliens. The Supreme Court might easily find that there are no reasonable grounds for the blanket exclusion of all nonresident aliens from the fourth amendment warrant protection.

Second, this risk means that FBI agents and other intelligence officials will continue to act at their peril. Anyone who proceeds with the Attorney General's approved only—and no judicial warrant—has no certainty that his acts are constitutional. This is likely to keep intelligence agents from acting vigorously because their conduct might still, in the future, be considered illegal.

Third, the Attorney General himself will surely be reluctant to approve surveillances of nonresident aliens as long as these doubts persist. Without a warrant, he is left where he is now. He needs the support of legislation that includes a warrant to resolve any serious constitutional doubts in this area.

The purpose of the bill is to assure that the legality of surveillance is as clear as possible. Limiting the warrant to U.S. persons or having no warrants at all does not achieve that goal. Instead, it raises new constitutional questions that will inhibit intelligence gathering.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. M'CLORY

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

POINT OF ORDER

Mr. MURPHY of Illinois. Mr. Chairman, a point of order.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. MURPHY of Illinois. Mr. Chairman, this amendment is not germane in that it is not timely printed in the RECORD. The gentleman came up to us just a few minutes ago and said the gentleman had printed it in the RECORD yesterday; but the rule issued July 12 requires it be reported 3 legislative days prior to consideration.

The CHAIRMAN pro tempore. The Chair will rule that the rule applies to amendments to the bill and not to amendments to amendments. In this case we have an amendment to a substitute amendment, so the rule does not apply.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment in the nature of a substitute offered by Mr. MCCLORY: On page 24, line 24, after "SEC. 104" insert "(a)".

On page 25, after line 6 insert:

(b) In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(2) the total number of such orders and extensions either granted, modified, or denied.

(c) And in April of each year the Attorney General shall transmit a report to the appropriate Member of Congress or Congressional Committee on any information gathered by virtue of this act regarding any foreign government's attempt to improperly influence Congress, suborn individual Members or to threaten a Member.

Mr. GONZALEZ. Mr. Chairman, I offer this amendment to the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. MCCLORY) because it is the only opportunity that I have a chance to bring up a matter that I thought had been properly taken care of in other sections of the bill; but after looking at the bill and making a reading of the bill, I find that every consideration seems to have been given to the executive branch of the Government, to the FBI, to the CIA and the other surveillance agencies, but nothing safeguarding the basic rights of Members of Congress.

Let us suppose that in the course of a foreign intelligence wiretap or microphone surveillance, information is gathered that indicates some foreign power is attempting to bribe or otherwise suborn a Member of Congress. This is information that the Congress needs to know in order that we may protect our integrity, but the bill does not require, nor does the substitute amendment, that reports bearing on the integrity of the Congress be made available to us.

My experience has been that most statutes, such as those in title XVIII that make it mandatory for the FBI to investigate any threats of violence against the Congress, the FBI interprets that to mean they should investigate, but never report to the Congressman involved.

I have had three cases in which I have been unable to this day to get a written report from the FBI concerning information pursuant to threats that the FBI investigated; so that is the interpretation these agencies have given the statutes we have written for our protection.

Now, let us continue here and say that we have this hypothetical situation. A foreign intelligence gathering system reflects after our surveillance agencies have found out by virtue of the powers we give them in this act that a Member or Members of Congress are involved. The Executive can sit back with this information. He does not have to impart

it to the Members or other Members of Congress.

Let us suppose further that a surveillance indicates some dishonest behavior on the part of a Member. Does the bill require that a complete and immediate investigation be undertaken, and that the House be informed? It does not. Instead, such information can be held at the leisure and the pleasure of the Executive, the President, who may use it in any way he pleases. Can we imagine what would have happened just a few years ago with that power?

Let us suppose that one of our colleagues has in some way become entangled with a foreign government. Should we not know this? And should we not know if some foreign power is attempting to sway our actions one way or another? But the bill does not require that we be informed.

These are not hypothetical problems. There have been occasions in the past in which I have some good reason to know that there has been some forbearance in the case of Members who feared some retaliation on the part of the executive branch or who feared prosecution. If the Speaker or the Ethics Committee had known of any investigations involving these Members, there could have been some actions taken to disqualify at least the votes rendered in that case, if the House had been informed of the action of other governments in the past.

For instance, let us take the case of the Korean Government. We could have averted scandal and tragedy. As it is, we do not know what actions might have been taken to protect individual Members from being suborned, to protect the integrity of the House, and, as I have said, to cause even Members influenced by actions of Korean agents to disqualify themselves from voting on issues involving that country. The existence of such a system to help assure our own integrity would have caused that government never to have attempted to play its game of influence.

This bill does not address such questions. Because of the fact that the rule made it impossible to offer any amendment after the discovery of the need for it during the debate and because of the 3-day legislative rule, the only chance I have had to offer this amendment for consideration is under these circumstances as an amendment to the amendment offered by the gentleman from Illinois (Mr. McCLORY).

It is certainly true that intelligence gathering is in the national interest. I am not certain that civil rights are best protected by legitimizing what amounts to warrantless search. I am even less certain that a special court has any more competence to protect individual rights than any other court.

This bill has profound importance, because it establishes in law practices that heretofore have been of at best questionable legality, and confirms in law Presidential powers that have heretofore only been claimed to exist, never really legitimized. We are dealing here with questions that affirm—if we pass this bill—powers that Presidents have claimed they had, implicit powers or residual powers—previously undefined. These are but poorly charted constitutional grounds, and none of us should mistake the fact that we are in fact creating new powers here, in the name of confining quasi-legal practicies to some definable procedural law.

This is why this bill is embraced by the administration; it assures that the powers it now exercises only in legal peril can hereafter be exercised with impunity. We are confining nothing; we are confiding wholly new powers instead.

The CHAIRMAN pro tempore. The time of the genteman from Texas (Mr. GONZALEZ) has expired.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from Texas (Mr. GONZALEZ) brings an amendment to us late in the day. This bill has been under consideration for over 3 years. At least during the last 6 or 7 months or during the whole session of this Congress it has been thoroughly considered, and the gentleman brings this amendment to us at this late date. I am not saying that what the gentleman has to say is not meritorious, but this is not the manner to bring it up and discuss it in the waning moments of the consideration of the bill.

I urge my colleagues to reject this amendment. Then we will invite the gentleman from Texas (Mr. GONZALEZ) before our committee. I would be happy to have the gentleman testify before the committee and bring any information in that he has. The gentleman talks about a Member of Congress who might have been involved in the Korean scandal. My understanding of the situation is that the Member who pleaded guilty in that matter was engaged actively in the bribery that came about, so I do not imagine that if he was told about it ahead of time, it would have made much difference.

Mr. GONZALEZ. Mr. Chairman, will the distinguished chairman of the subcommittee yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Chairman, my amendment has been offered at a late date, for which I have apologized, but because of the fact of the narrowness of the rule accompanying this bill, I believe that had we been untrammeled in our consideration of the bill, I could have offered the amendment in a timely fashion.

Mr. MURPHY of Illinois. Mr. Chairman, does the gentleman realize that the rule was granted on July 12?

Mr. GONZALEZ. Right.

Mr. MURPHY of Illinois. The rule was granted on July 12, and the gentleman had from July 12 until last week to put his amendment into the RECORD.

Mr. GONZALEZ. That is correct.

Mr. MURPHY of Illinois. Does the gentleman say that is not enough time?

Mr. GONZALEZ. Mr. Chairman, it is a question of the sufficiency of that kind of a rule and the fact that this ought to be a body that should be untrammeled in the free flow of debate, because there are many things involved, and even if one knows of the existence of a rule, since one is not a member of the committee, he is going to have to wait for the full general debate and get the fine nuances of the facts before offering an amendment.

Mr. MURPHY of Illinois. There have been over 50 amendments printed in the RECORD, and I would imagine there have been over 100 "Dear Colleague" letters circulated.

Mr. GONZALEZ. Mr. Chairman, although, as I said, I admit that maybe we should have acted sooner, I want to get to the merits and the sufficiency of this amendment.

If the gentleman will bear with me a little further, this amendment encompasses what the gentleman has in the bill now accept the last four lines, in which I provide for a report to be made in a case involving an individual Member of the committee or of the House, and it provides that he will be informed. That is the only thing involved.

Will a Member have an opportunity to be informed that surveillance has discovered that he is involved? He may be an unwitting victim. Yet we are saying the executive branch ought to be the sole and exclusive judge as to his comportment and it is under no obligation to convey that information to him.

Mr. MURPHY of Illinois. Mr. Chairman, let me say to the gentleman that the intelligence agencies have to report to this committee on a semiannual basis, and they have to report all warrants or wiretaps taking place.

The counterintelligence division of the FBI talks to us constantly about the nature of the Soviet involvement within this country. I can assure the gentleman, speaking as chairman of the Legislative Committee, and, I am sure, the gentleman from Massachusetts (Mr. BOLAND), as chairman of this committee, that we would be glad to inquire of the FBI; and when we get that information I can assure the gentleman that we would inform any Member if any foreign government were attempting to influence Members of this House. The gentleman has my word.

Mr. GONZALEZ. I know the gentleman is very sincere in that.

Let me just add one thought, in addition. Let us look what we are doing now in the case of Korea. We are actually providing that Members be exposed, under no protection of our traditional constitutional rights, in the case of the interrogation of the former Korean ambassador. He could involve in his testimony an innocent Member who is wholly and completely vulnerable to the whims of a particular foreign agent.

Mr. MURPHY of Illinois. The gentleman has me at a disadvantage. I am not a member of the Ethics Committee that undertook the investigation into the Korean scandal. I do not think this is the forum or the time to discuss this. I know Members of Congress have been accused. I would like to afford any Member his day in court which is his due. I do not wish to discuss it on the floor. I have no information with relation to that.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. MURPHY) has expired.

(On request of Mr. CHARLES H. WILSON

of California and by unanimous consent, Mr. MURPHY of Illinois was allowed to proceed for 1 additional minute.)

Mr. CHARLES H. WILSON of California. Mr. Chairman, if the gentleman will yield, I do not want to discuss Korea, especially; but I was a little concerned, though, that the principal argument the gentleman had against the Gonzalez amendment was that it was submitted at a late hour in the day. When is a good time to submit an amendment? Would the gentleman tell me, please? What time of the day should we put in our amendments?

Mr. MURPHY of Illinois. If the gentleman will yield, a rule was granted on July 12. We had hearings for a year and one-half prior to that. This bill has been under consideration for 3 years.

Mr. CHARLES H. WILSON of California. Is there some rule that we have that prohibits a Member from putting in an amendment or that says when to put in amendments?

Mr. MURPHY of Illinois. We live by and go by the Rules of the House. The gentleman is aware of the open and closed rules. We do not need to get into that now.

I would like to say that I can assure the gentleman from Texas, as chairman of the Legislative Subcommittee, I will make inquiry into all of the intelligence agencies as to whether they have any information about any foreign government attempting to influence legislators.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. MURPHY) has again expired.

(On request of Mr. BOLAND and by unanimous consent, Mr. MURPHY of Illinois was allowed to proceed for 1 additional minute.)

Mr. BOLAND. Mr. Chairman, if the gentleman will yield, in response to the question propounded by my friend, the distinguished gentleman from California (Mr. CHARLES H. WILSON), frankly, I do not think either the gentleman from Illinois (Mr. MURPHY) or myself can give a very sound answer when amendments are to be offered. My only suggestion is you do not offer them after 9 o'clock at night because nobody seems to get any amendments adopted at that time. And I think the gentleman from California understands the response of the gentleman from Illinois (Mr. MURPHY) with reference to the rule itself which was granted on July 12. We then had 3 legislative days prior to consideration of this bill for any amendments to be printed in the RECORD. As the gentleman indicated, we have had something like 50 amendments, and maybe even more than that.

I think we have a reasonable rule. I do not think anybody can quarrel with that rule. I can understand the concern of the gentleman from Texas about this particular matter and, so far as this Committee is concerned, the assurance that has been given by the chairman of the Legislative Subcommittee I would agree with, and this is a matter which ought to be looked at a little bit more carefully. I do not think this is the time to do it.

Mr. Chairman, I oppose the amendment.

Mr. KAZEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to remind my good friend, the gentleman from Illinois, concerning the question of time limits on amendments, this is the very first opportunity that the gentleman from Texas has had to offer this amendment, since it would not have been in order under the rule before this time, until the gentleman from Illinois (Mr. MCCLORY) offered his amendment. This is an amendment to the McClory amendment. If the Gonzalez amendment is too late, the McClory amendment is too late. But so far as the timeliness is concerned, this is the earliest opportunity in the entire debate, in the entire consideration of this bill, that the gentleman from Texas had to offer his amendment.

I am not debating the merits of the amendment. I am questioning the point that the gentleman from Illinois has made on the procedure in this matter.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. MCCLORY).

The amendment to the amendment in the nature of a substitute was rejected.

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. MCCLORY).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. MCCLORY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 128, noes 249, not voting 55, as follows:

[Roll No. 734]

AYES—128

| | | |
|---|---|---|
| Andrews, N. Dak. | Flynt | Myers, John |
| Applegate | Forsythe | Nedzi |
| Archer | Fountain | Nichols |
| Ashbrook | Gammage | O'Brien |
| Bafalis | Goldwater | Poage |
| Bauman | Goodling | Pursell |
| Beard, Tenn. | Gradison | Quayle |
| Bevill | Grassley | Regula |
| Bowen | Hall | Rinaldo |
| Breaux | Hammer-schmidt | Roberts |
| Brinkley | Harsha | Robinson |
| Broomfield | Hightower | Rousselot |
| Brown, Mich. | Hillis | Rudd |
| Brown, Ohio | Holt | Runnels |
| Broyhill | Hyde | Ruppe |
| Buchanan | Ichord | Satterfield |
| Burgener | Jenkins | Schulze |
| Burleson, Tex. | Jones, N.C. | Sebelius |
| Butler | Kelly | Shuster |
| Carter | Kindness | Sikes |
| Cederberg | Lagomarsino | Skubitz |
| Chappell | Latta | Smith, Nebr. |
| Clausen, Don H. | Lent | Snyder |
| Coleman | Livingston | Spence |
| Collins, Tex. | Lott | Stangeland |
| Conable | Lujan | Stanton |
| Corcoran | McClory | Steiger |
| Coughlin | McDonald | Stockman |
| Cunningham | McEwen | Stratton |
| Daniel, Dan | Madigan | Stump |
| Daniel, R. W. | Mahon | Taylor |
| Devine | Marriott | Treen |
| Dickinson | Martin | Trible |
| Dornan | Mathis | Vander Jagt |
| Duncan, Tenn. | Michel | Walker |
| Edwards, Ala. | Milford | Walsh |
| English | Miller, Ohio | Wampler |
| Erlenborn | Mitchell, N.Y. | Watkins |
| Evans, Del. | Moore | Whitehurst |
| Fish | Moorhead, Calif. | Whitley |
| Flippo | Murphy, N.Y. | Wilson, Bob |
| Flowers | Myers, Gary | Wydler |
| | | Wylie |
| | | Young, Fla. |

NOES—249

| | | |
|---|---|---|
| Addabbo | Ford, Tenn. | Murtha |
| Akaka | Fowler | Myers, Michael |
| Alexander | Frenzel | Natcher |
| Ambro | Garcia | Neal |
| Anderson, Calif. | Gaydos | Nix |
| Anderson, Ill. | Gephardt | Nolan |
| Andrews, N.C. | Giaimo | Nowak |
| Annunzio | Gilman | Oakar |
| Ashley | Ginn | Oberstar |
| Aspin | Glickman | Obey |
| AuCoin | Gonzalez | Ottinger |
| Baldus | Gore | Panetta |
| Barnard | Green | Patten |
| Baucus | Gudger | Patterson |
| Beard, R.I. | Hamilton | Pattison |
| Bedell | Hanley | Pease |
| Benjamin | Hannaford | Pepper |
| Bennett | Harkin | Perkins |
| Biaggi | Harrington | Pickle |
| Bingham | Harris | Pike |
| Blanchard | Heckler | Preyer |
| Blouin | Hefner | Price |
| Boggs | Heftel | Pritchard |
| Boland | Holland | Rahall |
| Bolling | Hollenbeck | Railsback |
| Bonior | Holtzman | Rangel |
| Bonker | Horton | Reuss |
| Brademas | Howard | Risenhoover |
| Breckinridge | Hubbard | Rodino |
| Brodhead | Hughes | Roe |
| Brooks | Ireland | Rogers |
| Brown, Calif. | Jacobs | Roncalio |
| Burke, Mass. | Jeffords | Rose |
| Burlison, Mo. | Jenrette | Rosenthal |
| Burton, John | Johnson, Calif. | Rostenkowski |
| Burton, Phillip | Jones, Okla. | Roybal |
| Byron | Jones, Tenn. | Russo |
| Carney | Kastenmeier | Ryan |
| Carr | Kazen | Santini |
| Cavanaugh | Keys | Sarasin |
| Chisholm | Kildee | Scheuer |
| Clay | Kostmayer | Schroeder |
| Cleveland | Krebs | Selberling |
| Cohen | LaFalce | Sharp |
| Collins, Ill. | Leach | Simon |
| Conte | Lederer | Skelton |
| Conyers | Le Fante | Slack |
| Corman | Leggett | Smith, Iowa |
| Cornell | Levitas | Solarz |
| Cornwell | Lloyd, Calif. | Spellman |
| Cotter | Lloyd, Tenn. | St Germain |
| D'Amours | Long, La. | Staggers |
| Danielson | Long, Md. | Stark |
| Davis | Luken | Steed |
| de la Garza | Lundine | Steers |
| Delaney | McCloskey | Stokes |
| Dellums | McCormack | Studds |
| Derrick | McDade | Thompson |
| Derwinski | McFall | Thornton |
| Dicks | McHugh | Traxler |
| Diggs | McKay | Tucker |
| Dingell | McKinney | Udall |
| Dodd | Maguire | Ullman |
| Downey | Mann | Van Deerlin |
| Early | Markey | Vanik |
| Eckhardt | Marks | Vento |
| Edgar | Marlenee | Volkmer |
| Edwards, Calif. | Mattox | Walgren |
| Edwards, Okla. | Mazzoli | Waxman |
| Eilberg | Meeds | Weaver |
| Emery | Metcalfe | Weiss |
| Ertel | Mikulski | Whalen |
| Evans, Colo. | Mineta | White |
| Evans, Ga. | Minish | Whitten |
| Evans, Ind. | Mitchell, Md. | Wilson, C. H. |
| Fascell | Moakley | Wilson, Tex. |
| Fenwick | Moffett | Wirth |
| Findley | Mollohan | Wolff |
| Fisher | Montgomery | Wright |
| Fithian | Moorhead, Pa. | Yates |
| Flood | Moss | Young, Mo. |
| Florio | Mottl | Zablocki |
| Ford, Mich. | Murphy, Ill. | |
| | Murphy, Pa. | |

NOT VOTING—55

| | | |
|---|---|---|
| Abdnor | Gibbons | Rhodes |
| Ammerman | Guyer | Richmond |
| Armstrong | Hagedorn | Rooney |
| Badham | Hansen | Sawyer |
| Bellenson | Hawkins | Shipley |
| Burke, Calif. | Huckaby | Sisk |
| Burke, Fla. | Johnson, Colo. | Symms |
| Caputo | Jordan | Teague |
| Clawson, Del | Kasten | Thone |
| Cochran | Kemp | Tsongas |
| Crane | Krueger | Waggonner |
| Dent | Lehman | Wiggins |
| Drinan | Meyner | Winn |
| Duncan, Oreg. | Mikva | Yatron |
| Fary | Miller, Calif. | Young, Alaska |
| Foley | Pettis | Young, Tex. |
| Fraser | Pressler | Zeferetti |
| Frey | Quie | |
| Fuqua | Quillen | |

The Clerk announced the following pairs:

On this vote:

Mr. Teague for, with Mr. Richmond against.

Mr. Kasten for, with Mr. Zeferetti against.

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. BURLISON of Missouri. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I believe that legislation is needed to clear up the existing confusion and uncertainty surrounding the use of electronic surveillance, and that H.R. 7308, as reported, is best calculated to achieve this purpose.

For the past year I have had the privilege and responsibility of chairing the Intelligence Committee's Subcommittee on Program and Budget Authorization. I also serve on the Appropriations Subcommittee on Defense. As a result, I have spent a good deal of my time meeting with intelligence officials. I have attempted to use these meetings, the resources of the committee, and the budget authorization process itself, to obtain a useful understanding of the workings and complexities of our intelligence agencies.

In so doing, I have come to a few basic conclusions:

The people working in our intelligence services are competent men and women of good faith, dedicated to serving the national interest.

Occasionally, their view of what is in the national interest is clouded by their very dedication.

In its programmatic and budget concerns the intelligence community behaves like any other Government bureaucracy that must seek funding from the Congress.

These conclusions are not by any means novel or the result of any particular insight. But they did aid me in thinking through my position on H.R. 7308 when it came to the full committee from the Subcommittee on Legislation.

I do support this measure but, as my colleagues on the committee know, I had to be convinced.

The first question I had to answer for myself was whether electronic surveillance was a necessary and efficient method of obtaining needed foreign intelligence information. So I spoke to intelligence officials, listened to their testimony at both open and closed hearings, read the budget justification books, and made myself aware of some of the product of electronic surveillance activities. As a result, I concluded that such activities are, indeed, an essential part of our intelligence operations.

My next endeavor was to determine if legislation was needed to authorize, regulate, or control such activities. It soon became readily apparent that the answer was "yes"—not only because of the well known excesses and abuses committed pursuant to national security wiretaps, but also because of the political and legal uncertainties which surround the use of electronic surveillance.

Clearly, it seemed to me, our intelligence agents need legislation to authorize and legitimize their activities; and other American citizens need legislation to protect their legitimate privacy rights.

So, the question then became one of deciding whether H.R. 7308, with its judicial warrant requirement, was the proper legislation.

Having been a county prosecuting attorney for several years, I was familiar with warrants and the concepts behind them. I know the protections warrants afford, and that activities engaged in pursuant to a judicial warrant were more readily accepted as proper by the people of the community.

But I was also skeptical. I wondered if the bill's standards and procedures went too far. Was there an overreaction that would thwart our intelligence collection efforts?

I talked to some intelligence officials. I read their statements. I listened to their testimony given in executive session.

I heard the Director of Central Intelligence say that H.R. 7308 was good legislation that would not unduly burden intelligence collection.

I heard the Director of the National Security Agency state his unqualified support for H.R. 7308, as reported by the Intelligence Committee.

I heard the Director of the FBI say that the bill and its warrant requirement, including a warrant for embassies and other official foreign powers, would facilitate the work of and improve the morale of his agents.

I also heard Director Webster state that the bill's compromise version of a criminal standard for surveilling Americans was fully supported by him, because it was not the criminal standard required for law enforcement warrants.

Finally, I heard the Attorney General say that both he and the field agent needed the protections that could best be provided by a warrant, and that passage of H.R. 7308 would facilitate, not hinder, intelligence collection.

In summary, I have become convinced that electronic surveillance is a means of intelligence collection that must be utilized; that it is susceptible to abuse if not regulated by statute; and that H.R. 7308, as reported is carefully balanced legislation that will authorize needed intelligence activities while protecting the legitimate interest of our intelligence agents and our people. I hope the House will overturn the McClory amendment in the full House and pass the bill.

Mr. McCLORY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my understanding that a separate vote will be requested with regard to amendment No. 2, the McClory amendment that was adopted yesterday by a very narrow margin. I know there has been a great deal of activity undertaken to try to switch votes in order to try to change the outcome of that vote result when we get to the separate vote on that amendment after we return to the House. I am hopeful that the Members will hold the line and will, indeed, support this important amendment. I do not want any confusion as to the substitute that we just voted upon. The substitute was, indeed, my legislation. It was my view that we should establish clear statutory guidelines for conducting foreign intelligence surveillance. But my proposal would have eliminated the warrant requirement with regard to all foreign intelligence surveillance. It would have eliminated the court proceedings from the entire picture, and it would have done other things that I felt were desirable.

The amendment that I offered yesterday, which was favorably acted upon, was an amendment which would eliminate the warrant requirement for all except U.S. persons. In other words, there would be no need to go to a judge and have a judge decide whether or not the executive branch could conduct foreign intelligence surveillance. We are only talking about foreign powers and foreign agents and we are only talking about that insofar as national security is concerned. We are only talking about targeting foreign agents and foreign powers that will be defined in this bill. So the only change that would result from my amendment is that we would not have to go to a judge when we want to engage in foreign intelligence, national security intelligence, when these foreign powers or foreign agents are involved.

With regard to U.S. persons, we would still have this requirement. We know, that after the adoption of my amendment, we adopted overwhelmingly an amendment that will eliminate the special court, so that in the situation we are in now with no special court, unless we retain the McClory amendment, is that we will have a large barrage of applicants for warrants, which would be very burdensome for the district courts throughout the entire country.

In my opinion, the House acted very wisely in eliminating the special courts. This unprecedented provision for a special court with special prerogatives, special tenure, and all that sort of thing was appropriately eliminated from the bill; but without that and with a warrant requirement that would be so far reaching as to reach every foreign agent and every foreign power it seems unthinkable to me that we would want to restore such a provision.

I might say that the committee did adopt an amendment in the committee, which was my amendment No. 9, which excludes a large part of the foreign intelligence surveillance from the warrant requirement, where foreign powers are communicating with each other.

It seems to me appropriate that we should also eliminate the warrant requirement when we want to target in on foreign agents or foreign powers, by radio, telephone, even by television. Without my amendment you could not televise the Soviet Embassy unless you first got a court order. Now, how absurd can you get?

It seems to me the McClory amendment makes a lot of sense. It makes a

much better bill than the bill that the committee reported.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, first of all, I want to commend my colleague, the gentleman from Illinois. I know often work is done around this Chamber that is not appreciated by all of us; but I cannot express my appreciation enough for what the gentleman has done. The gentleman from Illinois has been diligent and worked hard and been on the right track.

Let me repeat what the gentleman said. I think the McClory amendment is absolutely necessary to this legislation. I am one who over the time we have been hearing this legislation gradually developed the view that we probably ought to wait until next year until the charter legislation comes up and tie this all together. But if this bill is necessary I think we should at least have the McClory amendment as a part of it.

In a lighter vein, let me say to my colleague that I have been the author of four amendments in the last session that have been rejected when we went into the House. Those who were listening to the debate voted for them and then when we go back in the Whole House in a separate vote, quite often the good intelligence and good sense of the Members have been reversed for some mysterious reason.

I hope this does not happen to the gentleman from Illinois, but it has happened to me four times in the last year.

Mr. Chairman, I had hoped that this bill could be amended enough so it could be supported by those of us who are concerned about the state of our Nation's security.

H.R. 7308 has been recommended to us as both a bill to authorize surveillance in foreign espionage and terrorism cases, and as a protection for the American people. The bill as it now stands does not do enough of either. The protections for foreign agents are too broad while the authorization to surveil them is too narrow. The only effect this bill will have on the freedom of the American people is to weaken the defenses we have against foreign agents and terrorists. If we cannot protect our country, we will really lose our freedoms.

During the next session Congress will be considering charter legislation for the intelligence agencies. The argument for such legislation is that it will provide "a carrot and a stick" for the intelligence community. "A carrot" in the sense that it will protect them by spelling out their duties and responsibilities. "A stick" in the sense that it will spell out restrictions. H.R. 7308 will upset that balance by placing some of the restrictions on in advance. Foreign intelligence wiretaps are clearly part of the charter package. In fact, this bill, or its equivalent, appears as title III in the proposed charter bill.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let the members of this committee understand precisely what we are going to vote on when we ask for a separate vote on the McClory amendment. That amendment would delete the warrant requirements for all targets—all targets, except U.S. persons.

I join with my distinguished friend, the gentleman from Ohio (Mr. ASHBROOK) in commending the gentleman from Illinois (Mr. McCLORY) for the gentleman's continual and persistent work on this particular bill. It has not been easy. We started at 3 o'clock yesterday afternoon, wound up after 9 o'clock last night. We started at some time around 2 o'clock today and it is now 6 o'clock in the evening; so we have spent considerable time on it.

Let me also say to the members of this committee that we have accepted a number of amendments that have been offered by Members on the other side of the aisle and also some offered by Members on this side. We have to go to conference on this bill. That is going to be a very difficult conference. The Senate bill is a bill which was not acceptable to a lot of the Members on both sides of this aisle, and because it was not accepted, some of the Members on both sides of the aisle, and to the members of the Select Committe on Intelligence, we perfected the Senate bill and brought the bill that we are now discussing to the floor and adopted the McClory amendment that we hope will be knocked out when we come to a separate vote on that particular amendment.

Mr. Chairman, all the intelligence committee agents and all the agents of our intelligence communities oppose the McClory amendment. It would be open season, it seems to me, on all foreign visitors. Tradesmen, athletes, teachers—you name them—anybody coming to the United States, whether they are from Russia, France, England, or any nation, if they are foreigners, they would be subject to surveillance without a warrant under the terms of the McClory amendment.

Need I recall for the Members the abuses that have occurred in the past, in years gone by?

All of these abuses or the majority of them that were detailed by the Church committee, detailed by the Pike committee, or detailed by any committee that has looked into this particular matter have been made known. These abuses occurred, because there was surveillance of foreign embassies and foreigners, and American names became involved. Then the names of those Americans were turned over to someone else in the administration that was in power at that time, be it a Republican administration or a Democratic administration.

Mr. Chairman, that is what we are trying to get rid of here. We are trying to get rid of the abuses. This bill was submitted by President Ford and by Attorney General Levi, and it was resubmitted by President Carter and Attorney General Bell. Their position is that this bill is a well-balanced bill, one that protects the national interests and the national security. It also protects, as I say, the constitutional rights of American citizens and foreigners who are in this land and who are entitled to the same protection under the fourth amendment as U.S. persons who are permanent resident-alien.

Mr. Chairman, it would be a disaster for this committee to accept the amendment offered by the gentleman from Illinois (Mr. McCLORY). We would then bring this bill to conference, and do we think that the other body is going to cave in on this amendment? This is a disastrous amendment. It ought to be rejected. I hope it is soundly defeated when we get back into the House and vote on it.

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MURTHA, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 7308) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information, pursuant to House Resolution 1266, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. BOLAND. Mr. Speaker, I demand a separate vote en bloc on the McClory amendments agreed to on September 6, and I demand a separate vote on the conforming McClory amendments agreed to today.

The SPEAKER. Is a separate vote demanded on any other amendment to the Committee amendment? The Clerk will report the amendments en bloc on which a separate vote has been demanded.

PARLIAMENTARY INQUIRIES

Mr. BAUMAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BAUMAN. Mr. Speaker, is it proper for the gentleman from Massachusetts (Mr. BOLAND) to demand a separate vote en bloc on the amendments, or must he ask for a vote on each one of these amendments?

The SPEAKER. The Chair will state that the rule provides that it shall be in order to consider the amendments en bloc, so under the rule the vote on the amendments would be considered as on the amendments en bloc.

Mr. BAUMAN. The amendments were considered en bloc?

The SPEAKER. Yes, under the rule.

Mr. BAUMAN. Mr. Speaker, am I correct that the original McClory amendment was considered separately and that the several others were adopted subsequently?

Mr. McCLORY. Mr. Speaker, if the gentleman will yield, I might inform the gentleman that the conforming amendments were considered separately, and the other amendments were considered en bloc.

Mr. BAUMAN. Mr. Speaker, may I inquire, on which amendment is it that the gentleman from Massachusetts (Mr. BOLAND) demands a separate vote? I wish the Chair would let the House know so we will know what we are voting on.

The SPEAKER. The Chair will state that the amendments offered by the gentleman from Illinois (Mr. McCLORY) that were agreed to yesterday will be voted on en bloc today. That is in conformance with the demand made by the gentleman from Massachusetts (Mr. BOLAND).

Mr. BAUMAN. A further parliamentary inquiry, Mr. Speaker.

The gentleman mentioned the McClory amendment and all amendments agreed to en bloc. So do we now face three or four separate votes?

The SPEAKER. The McClory amendment agreed to today is a separate amendment.

The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 39, strike out line 1 and all that follows down through line 12 on page 41 and insert in lieu thereof the following:

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a) An application for a court order under this title is authorized if the President has, in writing, authorized the Attorney General to approve applications to a court having jurisdiction under section 103. A judge to whom such an application is made may, notwithstanding any other law, grant an order in accordance with section 105 approving electronic surveillance of a United States person who is a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

(b)(1) If the target of electronic surveillance for the purpose of obtaining foreign intelligence information is not a United States person, such electronic surveillance may be authorized by the issuance of a surveillance certificate in accordance with subsection (c).

(2) Electronic surveillance authorized under this subsection may be authorized for the period necessary to achieve its purpose, except that—

(A) if the target of the surveillance is not a foreign power, the period of the surveillance may not exceed ninety days; and

(B) if the target of the surveillance is a foreign power, the period of the surveillance may not exceed one year.

(3) Electronic surveillance authorized under this subsection may be reauthorized in the same manner as an original authorization, but all statements required to be made under subsection (c) for the initial issuance of a surveillance certificate shall be based on new findings.

(4)(A) Upon the issuance of a surveillance certificate under this subsection, the Attorney General may direct a specified communication common carrier—

(i) to furnish any information, facility, or technical assistance necessary to accomplish the electronic surveillance unobtrusively and in such a manner as will protect the secrecy of such surveillance and will produce a minimum of interference with the services that such common carrier provides its customers: and

(ii) to maintain any records concerning such surveillance or the assistance furnished by such common carrier that such common carrier wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence.

(B) Any such direction by the Attorney General shall be in writing.

(C) The Government shall compensate any communication common carrier at the prevailing rate for assistance furnished by such common carrier pursuant to a direction of the Attorney General under this paragraph.

(c) A surveillance certificate issued under subsection (b)(1) shall be issued in writing and under oath by the Attorney General and an executive branch official or officials designated by the President from among those officials employed in the area of national security or national defense who were appointed by the President by and with the advice and consent of the Senate, and shall include—

(1) a statement—

(A) identifying or describing the target of the electronic surveillance, including a certification of whether or not the target is a foreign power or an agent of a foreign power; and

(B) certifying that each of the facilities or places at which the surveillance is directed is being used or may be used by a foreign power or an agent of a foreign power;

(2) a statement of the basis for the certification under paragraph (1)—

(A) that the target of the surveillance is a foreign power or an agent of a foreign power; and

(B) that each of the facilities or places at which the surveillance is directed is being or may be used by a foreign power or an agent of a foreign power;

(3) a statement of the proposed minimization procedures;

(4) a statement that the information sought is foreign intelligence information;

(5) a statement that the purpose of the surveillance is to obtain foreign intelligence information;

(6) if the target of the surveillance is not a foreign power, a statement of the basis for the certification under paragraph (4) that the information sought is foreign intelligence information;

(7) a statement of the period of time for which the surveillance is required to be maintained;

(8) a statement of the means by which the surveillance will be effected;

(9) if the nature of the intelligence gathering is such that the approval of electronic surveillance under subsection (b) should not automatically terminate when the described type of information has first been obtained, a statement of the facts indicating that additional information of the same type will be obtained thereafter;

(10) a statement indicating whether or not an emergency authorization was made under section 105(e); and

(11) if more than one electronic, mechanical, or other surveillance device is to be involved with respect to such surveillance, a statement specifying the types of devices involved, their coverage, and the minimization procedures that will apply to information acquired by each type of device.

Page 47, strike out lines 4 through 14 and redesignate the succeeding subsections accordingly.

Page 48, line 24, strike out ", if the target is a United States person,".

Page 50, strike out line 22 and all that follows down through line 6 on page 51, and redesignate subsections (d) through (g) accordingly

Page 51, line 9, strike out ", except that" and all that follows down through line 13 and insert in lieu thereof: ".".

Page 51, line 17, strike out ", except that an" and all that follows down through line 23 and insert in lieu thereof: ".".

Page 52, strike out lines 11 and 12 and insert in lieu thereof the following:

(2) the factual basis exists for the authorization of such electronic surveillance;

Page 52, beginning on line 14, strike out "if a judge" and all that follows through the period on line 20 and insert in lieu thereof the following: "if the otherwise applicable procedures of this title are followed as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. In addition, if the target of such electronic surveillance is a United States person, the Attorney General or his designee shall at the time of such authorization inform a judge having jurisdiction under section 103 that the decision has been made to employ emergency electronic surveillance.".

Page 52, beginning on line 23, strike out "for the issuance of a judicial order".

Page 52, line 24, insert "or surveillance certificate" after "a judicial order".

Page 53, line 5, strike out "such" and insert in lieu thereof "an".

Page 53, line 5, insert "or a surveillance certificate is not issued" after "approval is denied".

Page 53, line 6, insert "or surveillance certificate" after "order".

Page 59, line 3, strike out "application, order," and insert in lieu thereof "application and order or the surveillance certificate".

Page 59, line 18, strike out "applications or orders" and insert in lieu thereof "applications, orders, or surveillance certificates".

Page 60, line 8, strike out "application, order," and insert in lieu thereof "application and order or surveillance certificate".

Page 60, line 14, insert "surveillance certificate," after "order,".

Page 68, line 12, insert "or surveillance certificate" after "order".

Mr. BOLAND (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. BAUMAN. Mr. Speaker, reserving the right to object. I do so only to ask the gentleman from Illinois (Mr. McCLORY) a question.

The pending amendment now to be voted on is not a series of amendments en bloc, but only the amendment which was adopted yesterday in the Committee of the Whole: is that correct?

Mr. McCLORY. If the gentleman will yield, that is correct. The only thing that has occurred since the adoption of the McClory amendment yesterday was the adoption today by unanimous consent of two conforming amendments.

We had attempted to have those conforming amendments embodied in the bill yesterday, but that request was refused; so we did offer those conforming amendments today.

Mr. BOLAND. Mr. Speaker, if the gentleman will yield, in response to the question of the gentleman from Maryland, let me say that the amendment that we will be voting on is the McClory amendment No. 2, which deletes the warrant requirements of U.S. persons. The other amendments which were offered and accepted today by the Committee were accepted en bloc. But they are conforming amendments which will conform to the amendment that was offered yes-

terday by the gentleman from Illinois and accepted by the Committee.

Mr. McCLORY. Mr. Speaker, if the gentleman will yield further, I would say that there is this aspect involved, too: There was the Railsback amendment to my amendment which was adopted today, and I do not see how we can have a separate vote on that by putting them all en bloc. I think that what we require is separate votes, a separate vote on my amendment, and, if you wish to have a separate vote on other amendments, to request them separately.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, I just want the assurance of the Chair that we are voting on nothing but the McClory amendment adopted last night by the Committee. Is that correct?

The SPEAKER. The Chair must say, as modified today by the Railsback amendment.

Mr. BAUMAN. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to dispensing with further reading of the amendment?

There was no objection.

The SPEAKER. The question is on the amendment.

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. McCLORY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 176, nays 200, not voting 56, as follows:

[Roll No. 735]

YEAS—176

| | | |
|---|---|---|
| Alexander | Dickinson | Leach |
| Ambro | Dingell | Lent |
| Anderson, Ill. | Dornan | Livingston |
| Andrews, N. Dak. | Duncan, Tenn. | Lloyd, Tenn. |
| Applegate | Edwards, Ala. | Lott |
| Archer | Edwards, Okla. | Lujan |
| Ashbrook | Emery | Luken |
| Bafalis | English | McClory |
| Bauman | Erlenborn | McCormack |
| Beard, Tenn. | Ertel | McDade |
| Bennett | Evans, Del. | McDonald |
| Bevill | Evans, Ind. | McEwen |
| Blanchard | Fish | McKay |
| Bowen | Flippo | McKinney |
| Breaux | Flowers | Madigan |
| Brinkley | Flynt | Marlenee |
| Brooks | Forsythe | Marriott |
| Broomfield | Fountain | Martin |
| Brown, Mich. | Frenzel | Mathis |
| Brown, Ohio | Gammage | Michel |
| Broyhill | Gilman | Milford |
| Buchanan | Goldwater | Miller, Ohio |
| Burgener | Goodling | Mitchell, N.Y. |
| Burleson, Tex. | Gradison | Mollohan |
| Butler | Grassley | Montgomery |
| Carter | Gudger | Moore |
| Cederberg | Hall | Moorhead, Calif. |
| Chappell | Hammer-schmidt | Mottl |
| Clausen, Don H. | Harsha | Murphy, N.Y. |
| Cleveland | Heckler | Myers, Gary |
| Cohen | Hightower | Myers, John |
| Coleman | Hillis | Nedzi |
| Collins, Tex. | Holt | Nichols |
| Conable | Horton | O'Brien |
| Conte | Hubbard | Poage |
| Corcoran | Hyde | Pritchard |
| Coughlin | Ichord | Pursell |
| Cunningham | Jeffords | Quayle |
| D'Amours | Jenkins | Regula |
| Daniel, Dan | Jones, N.C. | Rinaldo |
| Daniel, R. W. | Jones, Tenn. | Risenhoover |
| Davis | Kazen | Roberts |
| de la Garza | Kelly | Robinson |
| Derwinski | Kindness | Rousselot |
| Devine | Lagomarsino | Rudd |
| | Latta | Runnels |
| Ruppe | Stangeland | Wampler |
| Sarasin | Stanton | Watkins |
| Satterfield | Steiger | White |
| Sawyer | Stockman | Whitehurst |
| Schulze | Stratton | Whitley |
| Sebelius | Stump | Whitten |
| Shuster | Taylor | Wilson, Bob |
| Sikes | Treen | Wilson, C. H. |
| Slack | Trible | Winn |
| Smith, Nebr. | Vander Jagt | Wolff |
| Snyder | Walgren | Wydler |
| Spence | Walker | Wylie |
| Staggers | Walsh | Young, Fla. |

NAYS—200

| | | |
|---|---|---|
| Addabbo | Garcia | Neal |
| Akaka | Gaydos | Nix |
| Anderson, Calif. | Gephardt | Nolan |
| Andrews, N.C. | Giaimo | Nowak |
| Annunzio | Ginn | Oakar |
| Ashley | Glickman | Oberstar |
| Aspin | Gonzalez | Obey |
| AuCoin | Gore | Ottinger |
| Baldus | Green | Panetta |
| Barnard | Hamilton | Patten |
| Baucus | Hanley | Patterson |
| Beard, R.I. | Hannaford | Pattison |
| Bedell | Harkin | Pease |
| Benjamin | Harrington | Pepper |
| Biaggi | Harris | Perkins |
| Bingham | Hefner | Pickle |
| Blouin | Heftel | Pike |
| Boggs | Holland | Preyer |
| Boland | Hollenbeck | Price |
| Bolling | Holtzman | Rahall |
| Bonior | Howard | Railsback |
| Bonker | Hughes | Reuss |
| Brademas | Ireland | Rodino |
| Breckinridge | Jacobs | Roe |
| Brodhead | Jenrette | Rogers |
| Brown, Calif. | Johnson, Calif. | Roncalio |
| Burke, Mass. | Jones, Okla. | Rose |
| Burlison, Mo. | Kastenmeier | Rosenthal |
| Burton, John | Keys | Rostenkowski |
| Burton, Phillip | Kildee | Roybal |
| Carney | Kostmayer | Russo |
| Carr | Krebs | Ryan |
| Cavanaugh | LaFalce | Santini |
| Chisholm | Le Fante | Scheuer |
| Clay | Lederer | Schroeder |
| Collins, Ill. | Leggett | Seiberling |
| Conyers | Levitas | Sharp |
| Corman | Lloyd, Calif. | Simon |
| Cornell | Long, La. | Skelton |
| Cornwell | Long, Md. | Smith, Iowa |
| Cotter | Lundine | Solarz |
| Danielson | McCloskey | Spellman |
| Delaney | McFall | St Germain |
| Dellums | McHugh | Stark |
| Derrick | Maguire | Steed |
| Dicks | Mahon | Steers |
| Dodd | Mann | Stokes |
| Downey | Markey | Studds |
| Early | Marks | Thompson |
| Eckhardt | Mattox | Traxler |
| Edgar | Mazzoli | Tucker |
| Edwards, Calif. | Meeds | Udall |
| Eilberg | Metcalfe | Ullman |
| Evans, Colo. | Meyner | Van Deerlin |
| Evans, Ga. | Mikulski | Vanik |
| Fascell | Mineta | Vento |
| Fenwick | Minish | Volkmer |
| Findley | Mitchell, Md. | Waxman |
| Fisher | Moakley | Weaver |
| Fithian | Moffett | Weiss |
| Flood | Moorhead, Pa. | Whalen |
| Florio | Moss | Wilson, Tex. |
| Foley | Murphy, Ill. | Wirth |
| Ford, Mich. | Murphy, Pa. | Wright |
| Ford, Tenn. | Murtha | Yates |
| Fowler | Myers, Michael | Young, Mo. |
| | Natcher | Zablocki |

NOT VOTING—56

| | | |
|---|---|---|
| Abdnor | Fuqua | Rangel |
| Ammerman | Gibbons | Rhodes |
| Armstrong | Guyer | Richmond |
| Badham | Hagedorn | Rooney |
| Bellenson | Hansen | Shipley |
| Burke, Calif. | Hawkins | Sisk |
| Burke, Fla. | Huckaby | Skubitz |
| Byron | Johnson, Colo. | Symms |
| Caputo | Jordan | Teague |
| Clawson, Del | Kasten | Thone |
| Cochran | Kemp | Thornton |
| Crane | Krueger | Tsongas |
| Dent | Lehman | Waggonner |
| Diggs | Mikva | Wiggins |
| Drinan | Miller, Calif. | Yatron |
| Duncan, Oreg. | Pettis | Young, Alaska |
| Fary | Pressler | Young Tex. |
| Fraser | Quie | Zeferetti |
| Frey | Quillen | |

The Clerk announced the following pairs:

On this vote:

Mr. Waggonner for, with Mr. Richmond against.

Mr. Teague for, with Mr. Zeferetti against.

Mr. Kasten for, with Mrs. Burke of California against.

Mr. Symms for, with Mr. Dent against.

Mr. Hagedorn for, with Mr. Diggs against.

Mr. Fuqua for, with Mr. Yatron against.

Mr. Guyer for, with Mr. Drinan against.

Mr. Kemp for, with Mr. Hawkins against.

Mr. Rhodes for, with Mr. Mikva against.

Mr. Badham for, with Mr. Miller of California against.

Mr. Hansen for, with Mr. Fary against.

Until further notice:

Mr. Byron with Mr. Abdnor.

Mr. Duncan of Oregon with Mr. Burke of Florida.

Mr. Fraser with Mr. Cochran of Mississippi.

Mr. Gibbons with Mr. Johnson of Colorado.

Mr. Ammerman with Mr. Caputo.

Mr. Huckaby with Mr. Armstrong.

Miss Jordan with Mr. Krueger.

Mr. Lehman with Mrs. Pettis.

Mr. Rangel with Mr. Del Clawson.

Mr. Rooney with Mr. Thone.

Mr. Shipley with Mr. Crane.

Mr. Sisk with Mr. Pressler.

Mr. Thornton with Mr. Wiggins.

Mr. Tsongas with Mr. Young of Alaska.

Mr. Frey with Mr. Quie.

Mr. Skubitz with Mr. Quillen.

So the amendment was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. EVANS of Colorado). The Clerk will report the conforming amendments upon which a separate vote has been demanded.

The Clerk read as follows:

Conforming amendments: Page 50, strike out line 22 and all that follows down through line 13 and insert in lieu thereof: ".".

Page 51, line 17, strike out ", except that an" and all that follows down through line 23 and insert in lieu thereof: ".".

The SPEAKER pro tempore. The question is on the conforming amendments.

The conforming amendments were rejected.

The SPEAKER pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. McCLORY. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. McCLORY moves to recommit the bill, H.R. 7308, to the Select Committee on Intelligence with the instructions to report back the same to the House forthwith with the following amendments:

Page 39, strike out line 10 and all that follows down through line 17 and insert in lieu thereof: "at a foreign power as defined in section 101(a) (1), (2), or (3); and".

Page 47, strike out line 4 and all that follows down through line 14, and redesignate subsections (c) and (d) accordingly.

Page 50, strike out line 22 and all that follows down through line 6 on page 51, and redesignate subsections (d) through (g) accordingly.

Page 51, line 9, strike out ", except that" and all that follows down through line 13 and insert in lieu thereof ".".

Mr. McCLORY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. McCLORY) is recognized for 5 minutes in support of his motion to recommit.

Mr. McCLORY. Mr. Speaker, this motion to recommit with instructions would impose much narrower restrictions with respect to the elimination of a warrant requirement. In other words, it is narrower than the so-called McClory amendment which would have eliminated all foreign agents and all foreign powers from the requirement that the intelligence agencies would have to go to court to get a warrant.

This would merely eliminate the warrant requirement with regard to a foreign government or a component thereof—an embassy, for instance—or to a faction of a foreign government—the Eritrean Liberation Front, or the PLO—or an entity openly directed and controlled by a foreign government—such as Aeroflot—or some agency like that that is operating here in our country but is owned and controlled by a foreign government. In other words, it seems to me for us to impose upon ourselves a requirement that we go and get a judicial warrant to engage in electronic surveillance of the Soviet Embassy means that we would be required to get a warrant if we wanted to be there with radio interception, or television surveillance, or whatever it might be, and that just seems to me to be completely absurd.

When I talk to individuals about this, they wonder what in the world we are getting ourselves into that we want our intelligence agencies to go to a court and get a judge to decide whether or not we should have electronic surveillance of foreign powers and foreign agents in power such as this.

When I say "foreign agents," I mean foreign spies who might be in this country, and yet we could not engage in electronic surveillance of that foreign spy under this legislation unless we first go to a court and get a court order. To what absurd length must we go in order to cleanse ourselves of some abuses that took place some years ago? The evidence before our committee is without question that there have been no abuses, no abuses of any rights of any American, during the period that we have had executive guidelines. The amendment embodied in the motion to recommit was intended to be offered by our colleague, the gentleman from Louisiana (Mr. WAGGONNER), if he were here. I know that the gentleman from Texas (Mr. HALL), is also supporting this position, and I hope that the Members will vote favorably on this motion to recommit.

Mr. BOLAND. Mr. Speaker, I rise in opposition to the motion to recommit with instructions.

Mr. Speaker, I cannot say with surety that the gentleman from Louisiana (Mr. WAGGONNER) would be offering this amendment or would propose it in the motion to recommit. The gentleman from Illinois (Mr. McCLORY) would probably have better knowledge of that than I. But be that as it may, the same arguments that prevailed with respect to the McClory amendment prevail in this, too. So, Mr. Speaker, without delaying the time of this House—they have been awfully patient—this motion to recommit ought to be rejected, just as the McClory amendment was rejected in the separate vote.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. McCLORY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 164, nays 207, not voting 61, as follows:

[Roll No. 736]

YEAS—164

| | | |
|---|---|---|
| Ambro | Dingell | Lagomarsino |
| Anderson, Ill. | Dornan | Latta |
| Andrews, N.C. | Duncan, Tenn. | Leach |
| Andrews, N. Dak. | Edwards, Ala. | Lent |
| Archer | Edwards, Okla. | Livingston |
| Ashbrook | Emery | Lloyd, Tenn. |
| Bafalis | English | Lott |
| Bauman | Erlenborn | Lujan |
| Beard, Tenn. | Ertel | McClory |
| Bennett | Evans, Del. | McCormack |
| Bevill | Evans, Ind. | McDade |
| Bowen | Fish | McDonald |
| Breaux | Flippo | McEwen |
| Brinkley | Flowers | McKinney |
| Broomfield | Flynt | Madigan |
| Brown, Mich. | Forsythe | Marriott |
| Brown, Ohio | Fountain | Martin |
| Broyhill | Frenzel | Mathis |
| Buchanan | Gammage | Michel |
| Burgener | Gilman | Milford |
| Burleson, Tex. | Goldwater | Miller, Ohio |
| Butler | Gonzalez | Mitchell, N.Y. |
| Carter | Goodling | Mollohan |
| Cederberg | Gradison | Montgomery |
| Chappell | Grassley | Moore |
| Clausen, Don H. | Gudger | Moorhead, Calif. |
| Cleveland | Hall | Myers, Gary |
| Cohen | Hammer-schmidt | Myers, John |
| Coleman | Harsha | Nedzi |
| Collins, Tex. | Heckler | Nichols |
| Conable | Hefner | O'Brien |
| Conte | Hightower | Poage |
| Corcoran | Hillis | Pritchard |
| Coughlin | Holt | Quayle |
| Cunningham | Horton | Regula |
| Daniel, Dan | Hyde | Rinaldo |
| Daniel, R. W. | Ichord | Risenhoover |
| Davis | Jeffords | Roberts |
| de la Garza | Jenkins | Robinson |
| Derwinski | Jenrette | Rousselot |
| Devine | Kazen | Rudd |
| Dickinson | Kelly | Runnels |
| | Kindness | Ruppe |
| Sarasin | Stanton | Watkins |
| Satterfield | Steiger | White |
| Sawyer | Stockman | Whitehurst |
| Schulze | Stratton | Whitley |
| Sebelius | Stump | Wilson, Bob |
| Shuster | Taylor | Wilson, C. H. |
| Sikes | Treen | Wilson, Tex. |
| Skubitz | Trible | Winn |
| Smith, Nebr. | Vander Jagt | Wolff |
| Snyder | Walker | Wydler |
| Spence | Walsh | Wylie |
| Stangeland | Wampler | Young, Fla. |

NAYS—207

| | | |
|---|---|---|
| Addabbo | Garcia | Nix |
| Akaka | Gaydos | Nolan |
| Alexander | Gephardt | Nowak |
| Anderson, Calif. | Giaimo | Oakar |
| Annunzio | Ginn | Oberstar |
| Applegate | Glickman | Obey |
| Ashley | Gore | Ottinger |
| Aspin | Green | Panetta |
| AuCoin | Hamilton | Patten |
| Baldus | Hanley | Patterson |
| Barnard | Hannaford | Pattison |
| Baucus | Harkin | Pease |
| Beard, R.I. | Harrington | Pepper |
| Bedell | Harris | Perkins |
| Benjamin | Heftel | Pickle |
| Biaggi | Holland | Pike |
| Bingham | Hollenbeck | Preyer |
| Blanchard | Holtzman | Price |
| Blouin | Howard | Pursell |
| Boggs | Hubbard | Rahall |
| Boland | Hughes | Railsback |
| Bolling | Ireland | Reuss |
| Bonior | Jacobs | Roe |
| Bonker | Johnson, Calif. | Rogers |
| Brademas | Jones, N.C. | Roncalio |
| Breckinridge | Jones, Okla. | Rose |
| Brodhead | Jones, Tenn. | Rosenthal |
| Brown, Calif. | Kastenmeier | Rostenkowski |
| Burke, Mass. | Keys | Roybal |
| Burlison, Mo. | Kildee | Russo |
| Burton, John | Kostmayer | Ryan |
| Burton, Phillip | Krebs | Santini |
| Carney | LaFalce | Scheuer |
| Carr | Lederer | Schroeder |
| Cavanaugh | Le Fante | Seiberling |
| Chisholm | Leggett | Sharp |
| Clay | Levitas | Simon |
| Collins, Ill. | Lloyd, Calif. | Skelton |
| Conyers | Long, La. | Slack |
| Corman | Long, Md. | Smith, Iowa |
| Cornell | Lundine | Solarz |
| Cornwell | McCloskey | Spellman |
| Cotter | McFall | St Germain |
| D'Amours | McHugh | Staggers |
| Danielson | McKay | Stark |
| Delaney | Maguire | Steed |
| Dellums | Mahon | Steers |
| Derrick | Mann | Stokes |
| Dicks | Markey | Studds |
| Diggs | Marks | Thompson |
| Dodd | Mattox | Traxler |
| Downey | Mazzoli | Tucker |
| Early | Meeds | Udall |
| Eckhardt | Metcalfe | Ullman |
| Edgar | Meyner | Van Deerlin |
| Edwards, Calif. | Mikulski | Vanik |
| Eilberg | Mineta | Vento |
| Evans, Colo. | Minish | Volkmer |
| Evans, Ga. | Mitchell, Md. | Walgren |
| Fascell | Moffett | Waxman |
| Fenwick | Moorhead, Pa. | Weaver |
| Findley | Moss | Weiss |
| Fisher | Motti | Whalen |
| Fithian | Murphy, Ill. | Wirth |
| Flood | Murphy, N.Y. | Wright |
| Florio | Murphy, Pa. | Yates |
| Ford, Mich. | Murtha | Young, Mo. |
| Ford, Tenn. | Myers, Michael | Zablocki |
| Fowler | Natcher | |
| | Neal | |

NOT VOTING—61

| | | |
|---|---|---|
| Abdnor | Gibbons | Rangel |
| Ammerman | Guyer | Rhodes |
| Armstrong | Hagedorn | Richmond |
| Badham | Hansen | Rodino |
| Bellenson | Hawkins | Rooney |
| Brooks | Huckaby | Shipley |
| Burke, Calif. | Johnson, Colo. | Sisk |
| Burke, Fla. | Jordan | Symms |
| Byron | Kasten | Teague |
| Caputo | Kemp | Thone |
| Clawson, Del | Krueger | Thornton |
| Cochran | Lehman | Tsongas |
| Crane | Luken | Waggonner |
| Dent | Marlenee | Whitten |
| Drinan | Mikva | Wiggins |
| Duncan, Oreg. | Miller, Calif. | Yatron |
| Fary | Moakley | Young, Alaska |
| Foley | Pettis | Young, Tex. |
| Fraser | Pressler | Zeferetti |
| Frey | Quie | |
| Fuqua | Quillen | |

The Clerk announced the following pairs:

On this vote:

Mr. Waggonner for, with Mr. Richmond against.
Mr. Teague for, with Mr. Zeferetti against.
Mr. Kasten for, with Mr. Dent against.
Mr. Symms for, with Mr. Drinan against.
Mr. Hagedorn for, with Mr. Hawkins against.
Mr. Guyer for, with Mr. Fary against.
Mr. Kemp for, with Mr. Rangel against.
Mr. Rhodes for, with Mrs. Burke of California against.
Mr. Badham for, with Mr. Mikva against.
Mr. Hansen for, with Mr. Moakley against.
Mr. Abdnor for, with Mr. Yatron against.

Until further notice:

Mr. Beilenson with Mr. Armstrong.
Mr. Brooks with Mr. Burke of Florida.
Mr. Huckaby with Mr. Caputo.
Mr. Sisk with Mrs. Pettis.
Mr. Shipley with Mr. Frey.
Mr. Rooney with Mr. Del Clawson.
Mr. Rodino with Mr. Pressler.
Miss Jordan with Mr. Johnson of Colorado.
Mr. Krueger with Mr. Thone.
Mr. Whitten with Mr. Young of Alaska.
Mr. Ammerman with Mr. Cochran of Mississippi.
Mr. Byron with Mr. Luken.
Mr. Duncan of Oregon with Mr. Wiggins.
Mr. Foley with Mr. Crane.
Mr. Fraser with Mr. Marlenee.
Mr. Gibbons with Mr. Quie.
Mr. Tsongas with Mr. Thornton.
Mr. Lehman with Mr. Quillen.
Mr. Fuqua with Mr. Miller of California.

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 246, nays 128, not voting 58, as follows:

[Roll No. 737]

YEAS—246

| | | |
|---|---|---|
| Addabbo | Burton, John | Evans, Ga. |
| Akaka | Burton, Phillip | Evans, Ind. |
| Alexander | Carney | Fascell |
| Ambro | Carr | Fenwick |
| Anderson, Calif. | Cavanaugh | Findley |
| | Chisholm | Fisher |
| Anderson, Ill. | Clay | Fithian |
| Annunzio | Cleveland | Flood |
| Applegate | Cohen | Florio |
| Ashley | Collins, Ill. | Foley |
| Aspin | Conte | Ford, Mich. |
| AuCoin | Conyers | Ford, Tenn. |
| Baldus | Corman | Fowler |
| Barnard | Cornell | Gammage |
| Baucus | Cornwell | Garcia |
| Beard, R.I. | Cotter | Gaydos |
| Bedell | D'Amours | Gephardt |
| Benjamin | Danielson | Giaimo |
| Biaggi | de la Garza | Gilman |
| Bingham | Delaney | Ginn |
| Blanchard | Dellums | Glickman |
| Blouin | Derrick | Gore |
| Boggs | Derwinski | Green |
| Boland | Dicks | Gudger |
| Bolling | Diggs | Hall |
| Bonior | Dingell | Hamilton |
| Bonker | Dodd | Hanley |
| Brademas | Downey | Hannaford |
| Brinkley | Early | Harkin |
| Brooks | Eckhardt | Harrington |
| Broomfield | Edgar | Harris |
| Brown, Calif. | Edwards, Calif. | Heckler |
| Burke, Mass. | Eilberg | Hefner |
| Burlison, Mo. | Evans, Colo. | Heftel |
| Holland | Meyner | Roybal |
| Hollenbeck | Mikulski | Russo |
| Horton | Mineta | Ryan |
| Howard | Minish | Santini |
| Hubbard | Mitchell, Md. | Sarasin |
| Hughes | Moakley | Sawyer |
| Ireland | Moffett | Scheuer |
| Jacobs | Montgomery | Schroeder |
| Jeffords | Moorhead, Pa. | Seiberling |
| Jenkins | Mottl | Sharp |
| Johnson, Calif. | Murphy, Ill. | Simon |
| Jones, N.C. | Murphy, N.Y. | Skelton |
| Jones, Okla. | Murphy, Pa. | Smith, Iowa |
| Jones, Tenn. | Murtha | Solarz |
| Kastenmeier | Myers, Michael | Spellman |
| Kazen | Natcher | St Germain |
| Keys | Neal | Staggers |
| Kildee | Nix | Stanton |
| Kostmayer | Nolan | Stark |
| Krebs | Nowak | Steed |
| LaFalce | Oberstar | Steers |
| Leach | Obey | Stokes |
| Lederer | Ottinger | Studds |
| Le Fante | Panetta | Thompson |
| Leggett | Patten | Traxler |
| Levitas | Patterson | Tucker |
| Lloyd, Calif. | Pattison | Udall |
| Long, La. | Pease | Ullman |
| Long, Md. | Pepper | Van Deerlin |
| Luken | Perkins | Vanik |
| Lundine | Pickle | Vento |
| McCloskey | Pike | Volkmer |
| McDade | Preyer | Walgren |
| McFall | Price | Waxman |
| McHugh | Pritchard | Weaver |
| McKay | Pursell | Weiss |
| McKinney | Quayle | Whalen |
| Madigan | Rahall | White |
| Maguire | Railsback | Whitten |
| Mahon | Reuss | Wilson, Tex. |
| Mann | Rinaldo | Wirth |
| Markey | Risenhoover | Wolff |
| Marks | Roberts | Wright |
| Marlenee | Roe | Wydler |
| Mathis | Rogers | Yates |
| Mattox | Roncalio | Young, Mo. |
| Mazzoli | Rose | Zablocki |
| Meeds | Rosenthal | |
| Metcalfe | Rostenkowski | |

NAYS—128

| | | |
|---|---|---|
| Andrews, N.C. | Fish | Myers, John |
| Andrews, N. Dak. | Flippo | Nedzi |
| | Flowers | Nichols |
| Archer | Flynt | O'Brien |
| Ashbrook | Forsythe | Oakar |
| Bafalis | Fountain | Poage |
| Bauman | Frenzel | Regula |
| Beard, Tenn. | Goldwater | Robinson |
| Bennett | Gonzalez | Rousselot |
| Bevill | Goodling | Rudd |
| Bowen | Gradison | Runnels |
| Breaux | Grassley | Ruppe |
| Brodhead | Hammer-schmidt | Satterfield |
| Brown, Mich. | | Schulze |
| Brown, Ohio | Harsha | Sebelius |
| Broyhill | Hightower | Shuster |
| Buchanan | Hillis | Sikes |
| Burgener | Holt | Skubitz |
| Burleson, Tex. | Holtzman | Slack |
| Butler | Hyde | Smith, Nebr. |
| Carter | Ichord | Snyder |
| Cederberg | Jenrette | Spence |
| Chappell | Kelly | Stangeland |
| Clausen, Don H. | Kindness | Steiger |
| | Lagomarsino | Stockman |
| Coleman | Latta | Stratton |
| Collins, Tex. | Lent | Stump |
| Conable | Livingston | Taylor |
| Corcoran | Lloyd, Tenn. | Treen |
| Coughlin | Lott | Trible |
| Cunningham | Lujan | Vander Jagt |
| Daniel, Dan | McClory | Walker |
| Daniel, R. W. | McCormack | Walsh |
| Davis | McDonald | Wampler |
| Devine | McEwen | Watkins |
| Dickinson | Marriott | Whitehurst |
| Dornan | Martin | Whitley |
| Duncan, Tenn. | Michel | Wilson, Bob |
| Edwards, Ala. | Miller, Ohio | Wilson, C. H. |
| Edwards, Okla. | Mitchell, N.Y. | Winn |
| Emery | Mollohan | Wylie |
| English | Moore | Young, Fla. |
| Erlenborn | Moorhead, Calif. | |
| Ertel | | |
| Evans, Del. | Myers, Gary | |

NOT VOTING—58

| | | |
|---|---|---|
| Abdnor | Breckinridge | Clawson, Del |
| Ammerman | Burke, Calif. | Cochran |
| Armstrong | Burke, Fla. | Crane |
| Badham | Byron | Dent |
| Beilenson | Caputo | Drinan |
| Duncan, Oreg. | Krueger | Shipley |
| Fary | Lehman | Sisk |
| Fraser | Mikva | Symms |
| Frey | Milford | Teague |
| Fuqua | Miller, Calif. | Thone |
| Gibbons | Moss | Thornton |
| Guyer | Pettis | Tsongas |
| Hagedorn | Pressler | Waggonner |
| Hansen | Quie | Wiggins |
| Hawkins | Quillen | Yatron |
| Huckaby | Rangel | Young, Alaska |
| Johnson, Colo. | Rhodes | Young, Tex. |
| Jordan | Richmond | Zeferetti |
| Kasten | Rodino | |
| Kemp | Rooney | |

The Clerk announced the following pairs:

On this vote:

Mr. Richmond for, with Mr. Drinan against.
Mr. Zeferetti for, with Mr. Kasten against.
Mr. Fary for, with Mr. Symms against.
Mr. Rooney for, with Mr. Abdnor against.
Mr. Fuqua for, with Mr. Hansen against.
Mrs. Burke of California for, with Mr. Hagedorn against.
Mr. Rangel for, with Mr. Rhodes against.
Mr. Mikva for, with Mr. Del Clawson against.
Mr. Yatron for, with Mr. Crane against.
Mr. Rodino for, with Mr. Kemp against.
Mr. Dent for, with Mr. Guyer against.
Mr. Hawkins for, with Mr. Teague against.
Mr. Miller of California for, with Mr. Waggonner against.
Mr. Lehman for, with Mr. Wiggins against.
Mr. Shipley for, with Mr. Badham against.

Until further notice:

Mr. Ammerman with Mr. Armstrong.
Mr. Beilenson with Mrs. Pettis.
Mr. Gibbons with Mr. Pressler.
Mr. Sisk with Mr. Thone.
Mr. Tsongas with Mr. Burke of Florida.
Mr. Krueger with Mr. Frey.
Miss Jordan with Mr. Quie.
Mr. Huckaby with Mr. Quillen.
Mr. Breckinridge with Mr. Caputo.
Mr. Byron with Mr. Duncan of Oregon.
Mr. Milford with Mr. Thornton.
Mr. Moss with Mr. Young of Alaska.

Mr. BROWN of Michigan changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to authorize electronic surveillance to obtain foreign intelligence information.".

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. FOLEY). Pursuant to the provisions of House Resolution 1266, the Committee on the Judiciary is discharged from the further consideration of the Senate bill (S. 1566) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves to strike out all after the enacting clause of the Senate bill S. 1566 and to insert in lieu thereof the provisions of H.R. 7308, as passed by the House, as follows:

That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1978".

TABLE OF CONTENTS

TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

Sec. 101. Definitions.
Sec. 102. Authorization for electronic surveillance for foreign intelligence purposes.
Sec. 103. Special courts.
Sec. 104. Application for an order.
Sec. 105. Issuance of an order.
Sec. 106. Use of information.
Sec. 107. Report of electronic surveillance.
Sec. 108. Congressional oversight.
Sec. 109. Penalties.
Sec. 110. Civil liability.

TITLE II—CONFORMING AMENDMENTS

Sec. 201. Amendments to chapter 119 of title 18, United States Code.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

## TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

### DEFINITIONS

SEC. 101. As used in this title:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed by United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life or property that are or may be a violation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or (2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner that identifies any individual United States person, without such person's consent, uless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102 (a), procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information may indicate a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

### AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a)(1) Notwithstanding any other law, the President, through the At-

torney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) communications exclusively between or among foreign powers, as defined in section 101(a) (1), (2), or (3); or

(ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a) (1), (2), or (3); and

(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h); and

if the Attorney General shall report such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him.

(3) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to a United States district court having jurisdiction under section 103, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

JURISDICTION

SEC. 103. (a) The United States district courts shall have jurisdiction to receive applications for court orders under this title and to issue orders under section 105 of this title.

(b) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the United States district court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the United States court of appeals.

APPLICATION FOR AN ORDER

SEC. 104. (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs and an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be effected;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a), but shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 105.

ISSUANCE OF AN ORDER

SEC. 105. (a) Upon an application made pursuant to section 104, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

(5) the application which has been filed contains all statements and certifications required by section 104 and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a)(7)(E) and any other information furnished under section 104(d).

(b) An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected;

(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith any and all information, facilities, or technical assistance necessary to accomplish the electronic surveillance unobtrusively and in such manner as will protect its secrecy and produce a minimum of interference

with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1), but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a) (1), (2), or (3), for the period specified in the application or for one year, whichever is less.

(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in section 101(a) (4), (5), or (6), may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Notwithstanding any other provision of this title, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearings, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information may indicate a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Certifications made by the Attorney General pursuant to section 102(a) and applications made and orders granted under this title shall be retained for a period of at least ten years from the date of the application and shall be stored at the direction of the Attorney General under security procedures approved by the Director of Central Intelligence.

USE OF INFORMATION

SEC. 106. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government

concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the court to determine the lawfulness of the electronic surveillance. Unless all the judges of the Special Court are so disqualified. The motion may not be heard by a judge who granted or denied an order or extension involving the surveillance at issue. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the Court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the surveillance and if disclosure would likely promote a more accurate determination of such legality, or if such disclosure would not harm the national security.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to any statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to surveillance pursuant to the authority of this title or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines that the moving party is an aggrieved person, if the Attorney General files with the United States court of appeals an affidavit under oath that an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court or other authority, the Special Court of Appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the application, order, and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court of appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney portions of the application, order, or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting or denying motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the district court or court of appeals granting or denying disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except the court of appeals and the Supreme Court.

(j) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

(k) If an emergency employment of electronic surveillance is authorized under section 105(e) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application;

(2) the period of the surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

REPORT OF ELECTRONIC SURVEILLANCE

SEC. 107. In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(b) the total number of such orders and extensions either granted, modified, or denied.

CONGRESSIONAL OVERSIGHT

SEC. 108. (a) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

(b) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate may periodically review the information provided under subsection (a). If either such committee determines that an electronic surveillance of a United States person under this title has produced no foreign intelligence information and that the disclosure of the fact of such surveillance to such United States person would not harm the national security, such committee shall inform such person of the fact of such surveillance and that no foreign intelligence information was derived from such surveillance.

PENALTIES

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally engaged in electronic surveillance under color of law except as authorized by statute.

(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a seach warrant or court order of a court of competent jurisdiction.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 110. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or whose communication has been disseminated or used in violation of section 109 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

AUTHORIZATION DURING TIME OF WAR

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods up to one year during a period of war declared by the Congress.

## TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the

person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive statutory means by which electronic surveillance, as defined in section 101 of such Act, and the interpretation of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

(e) Section 2518(4) is amended by inserting "under this chapter" after both appearances of "wire or oral communication".

(f) Section 2518(9) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after the first appearance of "communication".

(h) Section 2519(3) is amended by inserting "pursuant to this chapter" after "wire or oral communications" and after "granted or denied".

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following such date of enactment.

Amend the title so as to read: "An act to authorize electronic surveillance to obtain foreign intelligence information.".

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize electronic surveillance to obtain foreign intelligence information.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7308) was laid on the table.

## AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 7308

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that the Clerk may be authorized to make any necessary corrections in section numbers, cross references, and punctuation in the engrossment of the bill, H.R. 7308.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

## APPOINTMENT OF CONFEREES ON H.R. 6536, DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

Mr. DIGGS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. DERWINSKI. Mr. Speaker, reserving the right to object, may I ask the gentleman from Michigan if this procedure has been discussed with the ranking minority member of the committee.

Mr. DIGGS. If the gentleman will yield, it has, and I have the recommended conferees from the minority side.

Mr. DERWINSKI. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan? The Chair hears none, and, without objection, appoints the following conferees: Messrs. DIGGS, DELLUMS, FAUNTROY, MAZZOLI, MCKINNEY, and WHALEN.

There was no objection.

## APPOINTMENT OF CONFEREES ON HOUSE CONCURRENT RESOLUTION 683, REVISING CONGRESSIONAL BUDGET FOR THE U.S. GOVERNMENT FOR FISCAL YEAR 1979

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 683) revising the congressional budget for the U.S. Government for the fiscal year 1979, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut? The Chair hears none, and, without objection, appoints the following conferees: Messrs. GIAIMO, WRIGHT, LEGGETT, MITCHELL of Maryland, BURLESON of Texas, DERRICK, OBEY, SIMON, MINETA, LATTA, CONABLE, DUNCAN of Tennessee, and REGULA.

There was no objection.

## REQUEST TO CONCUR IN SENATE AMENDMENTS TO H.R. 1337, AMENDING THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ET CETERA

Mr. CORMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1337) to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, with Senate amendments thereto, concur in the Senate amendment to the title of the bill, and concur in the Senate amendment to the text of the bill with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.

(a) IN GENERAL.—Paragraph (1) of section 4216(b) of the Internal Revenue Code of 1954 (relating to constructive sale price) is amended by inserting after the second sentence thereof the following new sentence: "In the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost)".

(b) CONFORMING AMENDMENT.—The second sentence of paragraph (1) of such section 4216(b) is amended by inserting "(other than an article the sale of which is taxable under section 4061(a))" after "sold at retail".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act.

SEC. 2. HOME PRODUCTION OF BEER AND WINE.

(a) EXEMPTION FROM TAX ON WINE.—Section 5042(a)(2) of the Internal Revenue Code of 1954 (relating to production of wine for personal consumption) is amended to read as follows:

"(2) WINE FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary—

"(A) EXEMPTION.—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

"(B) LIMITATION.—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

"(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(ii) 100 gallons per calendar year if there is only 1 adult in such household.

"(C) ADULTS.—For purposes of this paragraph, the term 'adult' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.

(b) EXEMPTION FROM TAX ON BEER.—

(1) IN GENERAL.—Section 5053 of such Code (relating to exemptions from excise tax on beer) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new section:

"(e) BEER FOR PERSONAL OR FAMILY USE.—

Subject to regulations prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

"(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term 'adult' means an individual who has attained 18 years of age or the minimum age, if any, established by law applicable in the locality in which the household is situated for individuals to whom beer may be sold, whichever is greater."

(2) ILLEGALLY PRODUCED BEER.—

(A) Section 5051 of such Code (relating to imposition and rate of tax) is amended by adding at the end thereof the following new subsection:

"(c) ILLEGALLY PRODUCED BEER.—The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

"(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(B) Section 5054(a)(3) of such Code (relating to illegally produced beer) is amended to read as follows:

"(3) ILLEGALLY PRODUCED BEER.—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

"(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(B) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(3) DEFINITION OF BREWER.—Section 5092 of such Code (defining brewer) is amended to read as follows:

"SEC. 5092. DEFINITION OF BREWER.

"Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(e)) and every person who produces beer for sale shall be deemed to be a brewer.".

(4) EXEMPTION FROM CERTAIN PROVISIONS RELATING TO DISTILLING MATERIALS.—Section 5222(a)(2)(C) of such Code (relating to certain exemptions) is amended by striking out "; or" and inserting in lieu thereof "or 5053(e); or".

(5) PENALTY FOR UNLAWFUL PRODUCTION OF BEER.—

(A) Section 5674 of such Code (relating to penalty for unlawful removal of beer) is amended to read as follows:

"SEC. 5674. PENALTY FOR UNLAWFUL PRODUCTION OR REMOVAL OF BEER.

"(a) UNLAWFUL PRODUCTION.—Any person who brews beers or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

"(b) UNLAWFUL REMOVAL.—Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.".

(B) The item relating to section 5674 in the table or sections for part III of subchapter J of chapter 51 of such Code is amended to read as follows:

"Sec. 5674. Penalty for unlawful production or removal of beer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

SEC. 3. REFUNDS TO BE MADE TO AERIAL APPLICATORS IN CERTAIN CASES.

(a) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF GASOLINE TAX IN CERTAIN CASES.—Subsection (c) of section 6420 of the Internal Revenue Code of 1954 (defining use on a farm for farming purposes) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

"(B) if the person so using the gasoline is an aerial applicator who is the ultimate purchaser of the gasoline and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial applicator shall be treated as having used such gasoline on a farm for farming purposes."

(b) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF SPECIAL FUELS TAX IN CERTAIN CASES.—The second sentence of subsection (c) of section 6427 of such Code (relating to use for farming purposes) is amended to read as follows: "For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that 'liquid taxable under section 4041' shall be substituted for 'gasoline' each place it appears in such paragraph (4))."

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 6420(c)(3) of such Code is amended by striking out "except that" and all that follows down through the semicolon at the end of such subparagraph (A).

(d) EFFECTIVE DATE.—The amendments made by the first section of this Act shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act.

SEC. 4. PARTIAL ROLLOVERS OF LUMP SUM DISTRIBUTIONS.

(a) PARTIAL ROLLOVER PERMITTED.—Paragraph (5) of section 402(a) of the Internal Revenue Code of 1954 (relating to rollover amounts) is amended to read as follows:

"(5) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If the balance to the credit of an employee in a qualified trust is paid to him within his taxable year in a termination or discontinuance distribution or in a lump sum distribution and he transfers all or a portion of the total taxable amount (as defined in subsection (e)(4)(D)) of the distribution to an eligible rollover source, then the amount transferred shall not be included in gross income.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(ii) TERMINATION OR DISCONTINUANCE DISTRIBUTION.—The term 'termination or discontinuance distribution' means a distribution on account of a termination of the plan of which a qualified trust is a part, or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under the plan.

"(iii) LUMP SUM DISTRIBUTIONS.—The term 'lump sum distribution' means a distribution described in subparagraph (A) of subsection (e)(4) (determined without regard to subparagraph (B) of that subsection).

"(iv) ELIGIBLE ROLLOVER SOURCE.—The term 'eligible rollover source' means—

"(I) an individual retirement account described in section 408(a),

"(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(III) a retirement bond described in section 409,

"(IV) a qualified trust, or

"(V) an annuity plan described in section 403(a).

"(C) SPECIAL RULES.—

"(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTIONS UNDER SECTION 408.—A transfer described in subparagraph (A) to an eligible rollover source described in subclause (I), (II), or (III) of subparagraph (B)(iv) shall be treated as a rollover contribution as described in section 408(d)(3).

"(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—Qualified rollover sources described in subclause (IV) or (V) of subparagraph (B) shall not be treated as qualified rollover sources for transfers of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

"(iii) PROPERTY ROLLED OVER MUST BE THE PROPERTY RECEIVED.—Subparagraph (A) shall not apply to a transfer of property other than money unless the property transferred is the property which was received in the distribution.

"(iv) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.".

(b) TAXATION OF PORTION EXCLUDED FROM ROLLOVER.—Paragraph (6) of section 402(a) of such Code (relating to special rollover rules) is amended—

(1) by striking out "For purposes of paragraph (5)(A)(i)—" and inserting in lieu thereof "For purposes of paragraph (5)—". and

(2) by adding at the end thereof the following new subparagraph:

"(C) TAXATION OF NONROLLOVER PORTION.—If the total taxable amount of a distribution described in paragraph (5)(A) exceeds the amount transferred in a transfer described in such paragraph, then—

"(i) subsection (e) and section 62(11) shall not apply with respect to the distribution, and

"(ii) to the extent that the total taxable amount of such distribution exceeds the amount transferred, the excess shall be treated as ordinary income (or loss)."

(c) SPECIAL RULE.—For the purpose of applying the amendment made by subsection (a) of this section in the case of a taxpayer whose attempt to comply with the requirements of section 402(a)(5) of the Internal Revenue Code of 1954 (relating to rollover amounts) for a taxable year beginning before the date of enactment of this Act failed to meet the requirement of such section that all property received in a distribution be transferred, the provisions of such section (as amended by subsection (a)) shall be applied by treating any transfer of

property made on or before the later of December 31, 1978, or the 60th day after the date of enactment of this Act as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of this subsection, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the fair market value of the property distributed on (or at any time within 60 days after) the date on which the taxpayer received the distribution.

(d) EFFECTIVE DATE.—The amendment made by subsections (a) and (b) shall apply with respect to taxable years beginning after December 31, 1974.

SEC. 5. CASH PAYMENT IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SSI BENEFITS.

(a) Section 8(d) of Public Law 93-233 is amended by adding at the end thereof the following new sentences: "For purposes of this subsection, if the State requests the Secretary to make the finding specified in the first sentence of this subsection and to make an additional cash payment under title XVI in lieu of food stamps, in the amount and the manner described below, to every individual in the State who does not have an eligible spouse and who receives a supplementary payment pursuant to an agreement under section 1616(a) of the Act (other than an individual who (i) receives such a supplementary payment at a level prescribed by the State by reason of his or her residence in an institution, or other living arrangement in which board and care are provided, or (ii) receives payments pursuant to section 212 of Public Law 93-66 at a level in excess of the level applicable to such individual as established by the State under such agreement), the Secretary shall make such payments if he finds that the conditions of paragraph (1) has been met (and for this purpose the conditions of paragraph (1) shall be considered to have been met to the extent that they involve amounts payable under the law referred to in paragraph (1)(B) notwithstanding the suspension in 1978 of the cost-of-living increase in State supplementary payments under such law) for months beginning with the first month in which, as determined by the Secretary, such additional cash payment can be made, and ending with the month before the first subsequent month for which the conditions of paragraph (1) are met without regard to this sentence (and the requirements of paragraph (2) shall also be considered to have been met, effective on the first day of such first subsequent month, for purposes of applying the first sentence of this subsection to that month and succeeding months). For purposes of the preceding sentence, the amount of an additional cash payment under title XVI in lieu of food stamps shall equal the cash value of the minimum allotment specified by section 8 (a) of the Food Stamp Act of 1977 for one-person households, and such additional cash payment shall be appropriately included in or with the check issued to such individual in payment of his supplementary security income benefit (or supplementary payment under such section 1616(a)).".

(b) No additional cash payment under title XVI of the Social Security Act may be made pursuant to the third sentence of section 8(d) of Public Law 93-233 (as added by subsection (a) of this section) for any month beginning before October 1, 1978, or ending after September 30, 1979.

Amend the title so as to read: "An Act to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, home production of beer and wine, refunds of the taxes on gasoline and special fuels to aerial applicators, and partial rollovers of lump sum distributions.".

Mr. CORMAN (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the Senate amendments be dispensed with, and that they be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the House amendments to the Senate amendments.

The Clerk read the House amendments to the Senate amendments as follows:

Page 3, line 25, of the Senate engrossed amendments, insert a comma after "18 years of age".

Page 4 of the Senate engrossed amendments, strike out lines 1 through 5 and insert the following: age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater."

Page 4, line 19, of the Senate engrossed amendments, strike out "illegally produced beer" and insert in lieu thereof "to illegally produced beer".

Page 8, line 7, of the Senate engrossed amendments, strike out "paragraph (4)" and insert in lieu thereof "paragraph (4))".

Page 8, beginning in line 12, of the Senate engrossed amendments, strike out "the first section of this Act" and insert in lieu thereof "this section".

Page 8 of the Senate engrossed amendments, strike out line 16 and all that follows down through line 9 on page 13, and insert:

SEC. 4. PARTIAL ROLLOVERS OF LUMP SUM DISTRIBUTIONS.

(a) PARTIAL ROLLOVER FROM EMPLOYEES' TRUSTS PERMITTED.—Paragraph (5) of section 402(a) of the Internal Revenue Code of 1954 (relating to rollover amounts) is amended to read as follows:

"(5) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If—

"(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,

"(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

"(iii) the amount so transferred consists of the property (other than money) distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any qualifying rollover distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions.

"(C) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFYING ROLLOVER DISTRIBUTION.—The term 'qualifying rollover distribution' means 1 or more distributions—

"(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan, or

"(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)).

"(ii) EMPLOYEE CONTRIBUTIONS.—The term 'employee contributions' means—

"(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over

"(II) any amounts theretofore distributed to the employee which were not includible in gross income.

"(iii) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(iv) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' means—

"(I) an individual retirement account described in section 408(a),

"(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(III) a retirement bond described in section 409,

"(IV) a qualified trust, and

"(V) an annuity plan described in section 403(a).

"(E) SPECIAL RULES.—

"(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I), (II), or (III) of subparagraph (D)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

"(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan."

(b) PARTIAL ROLLOVER OF ANNUITY CONTRACTS PERMITTED.—Subsection (a) of section 403 of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following new paragraph:

"(4) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If—

"(i) the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution,

"(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

"(iii) the amount so transferred consists of the property (other than money) distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (E) of section 402(a)(5) and of paragraph (6) of section 402(a) shall apply for purposes of subparagraph (A)."

(c) TAXATION OF PORTION NOT ROLLED OVER.—

(1) GENERAL.—Paragraph (6) of section 402(a) of such Code (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF PORTION NOT ROLLED OVER.—If any portion of a lump sum distribution is transferred in a transfer to which paragraph (5)(A) applies, paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e) shall not apply with respect to such lump sum distribution."

(2) CONFORMING AMENDMENTS.—Paragraph (6) of section 402(a) of such Code is amended—

(A) by striking out "For purposes of paragraph (5)(A)(i)",

(B) by striking out "A complete" in subparagraph (A) and inserting in lieu thereof "For purposes of paragraph (5)(D)(i), a complete", and

(C) by inserting "For purposes of paragraph (5)(D)(i)—" after "Assets.—" in subparagraph (B).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply with respect to taxable years beginning after December 31, 1974.

(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1954 for a taxable year beginning before the date of the enactment of this Act, and

(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.

Mr. CORMAN (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the House amendments to the Senate amendments be dispensed with, and that they be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

Mr. STEIGER. Mr. Speaker, reserving the right to object, I reserve the right to object in order to give the gentleman from California an opportunity to briefly explain the amendments proposed by the other body and included in the text of the bill.

Mr. CORMAN. Mr. Speaker, will the gentleman yield?

Mr. STEIGER. I will be happy to yield to the gentleman.

Mr. CORMAN. I thank the gentleman for yielding.

Mr. Speaker, H.R. 1337, as passed by the Senate, is a combination of three small bills which have been passed by the House plus several Senate amendments.

The first section of the bill provides that the use of the administratively developed "cost floor" rule is specifically prohibited as an alternative tax base for purposes of computing the excise tax on trucks, buses, and other highway equipment sold by manufacturers at retail. Under a Senate amendment to the House bill, the September 30, 1977, effective date was changed so that this rule will apply prospectively beginning with the first calendar quarter which begins more than 30 days after enactment.

In this connection, I want to emphasize that the intent of the Committee on Ways and Means concerning the constructive sale price percentage for a type of taxable article is that the percentage is to be determined by reference to a comparison between the price at which these articles are sold at retail and the price at which these articles are predominately sold at other than retail, even though these latter sales may comprise a minority of the total sales of such articles.

The second section of the bill deals with Excise taxes on beer and wine. It corrects problems in interpreting present law so that an adult may brew beer or make wine in limited quantities for personal and family use without incurring beer or wine excise taxes or being subject to certain penalties. Under a Senate amendment to the House-passed provisions, which were contained in H.R. 2028, the treatment of home-brewing is made parallel to the treatment of home winemaking so that home brewers will be able to brew up to 200 gallons of beer each year without being subject to the 30-gallon-on-hand limitation and the registration requirement contained in the House bill. However, there are several clarifying amendments that are made to conform the language contained in the Senate amendment to that of the House bill.

The third section of the bill expands the farming exemption from fuel taxes to enable an aerial crop duster who uses fuel for farming purposes to claim the tax refund or credit. A Senate amendment to the House-passed provision, which was contained in H.R. 2852, requires that the farmer must waive his right to the refund or credit in order for the crop duster to claim it. A technical amendment is made to correct the effective date as contained in the Senate amendment.

The fourth section of the bill is a Senate provision which would allow tax-free treatment for any portion of a lump-sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan. There is also a special makeup rule for individuals who previously attempted to make a rollover deposit but failed to transfer the required amount.

In addition to various technical amendments, an amendment is made to this Senate amendment which is necessary to extend the relief provided by the bill to plans funded by annuity contracts. A similar makeup rule would apply to individuals who previously attempted to roll over distributions from annuity plans, but failed to transfer the entire amount of the distribution.

The final section of the Senate-passed bill deals with supplemental security income and is identical to H.R. 13814, which was favorably reported by the Committee on Ways and Means on August 16. It addresses a problem which has recently arisen regarding the SSI program in California.

The Senate amendment contained in section 5 of H.R. 1337 amends section 8(d) of Public Law 93-233. It provides that, upon the request of the State of California, the Secretary of Health, Education, and Welfare would make a monthly cash payment equal to the minimum food stamp allotment for an eligible one-person household ($10) to noninstitutionalized, SSI recipients who do not have an eligible spouse. This additional payment would be included in or with the individual's SSI check. Eligible SSI individuals would receive this $10 monthly cash payment in place of food stamps. These cash payments in lieu of food stamps could not be made before October 1, 1978 nor continue beyond September 30, 1979.

This amendment is identical to a bill, H.R. 13814, that has been approved by the Committee on Ways and Means and is scheduled to be considered by the House under a suspension of the rules.

The purpose of the Senate amendment and the committee approved bill is to provide eligible SSI individuals in California with a Federal payment equivalent to their food stamp entitlement in a manner that reduces administrative procedures and costs. Under both, noninstitutionalized SSI individuals in the State would receive a monthly $10 cash payment in lieu of food stamps. The amendment would allow California to resume the "cash-out" status for SSI recipients that has been in effect since the SSI program was implemented in January of 1974.

The Congressional Budget Office (CBO) estimates that, for fiscal 1979, the payments provided under this amendment will cost approximately $60 million; $57 million for benefits and $3 million for administration. CBO estimates that if this amendment is not enacted, and SSI recipients in California remain eligible for food stamps, annual Federal food stamp cost will increase by $50 million, $30 million of which would be for benefits and $20 million for the Federal share of administrative expenditures. Since States pay half the food stamp administrative costs, the CBO estimate indicates that California would pay an additional $20 million in yearly administrative costs if SSI recipients remain eligible for food stamps. In other words, it would cost approximately $40 million ($20 million Federal and $20 million State) to administer $30 million in food stamp benefits. Whereas, under this Senate amendment and the committee bill, it would cost only $3 million to administer $57 million in benefits. Almost twice as many needy aged, blind, and disabled individuals would receive the Federal benefits to which they are entitled at a fraction of the administrative cost, and at a comparable total cost to the Federal Government.

Mr. Speaker, I urge that the House concur in the Senate amendments, with the modifications just described.

Mr. STEIGER. Mr. Speaker, further reserving the right to object, I very much appreciate the explanation of the gentleman from California (Mr. CORMAN).

I would hope that the House might unanimously agree to this request. These amendments are in fact sensible. I urge their adoption.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, the gentleman from California (Mr. CORMAN) was good enough to discuss this matter with me before he made his request, and I indicated I had some questions about the procedure being followed. The gentleman has adequately described the problem, but I think the question is larger than just the immediate bill before us.

We are constantly faced with bills from the Committee on Ways and Means and from the other body containing a number of unrelated provisions.

There are some good provisions in this bill, but the Members should understand precisely the full implications of section 5 which was added by the other body. It would not be uncharitable to characterize this section as a direct result of the action taken by the voters in California who voted overwhelmingly in favor of proposition 13.

As I understand the explanation of what the gentleman from California (Mr. CORMAN) is asking, it would require the Federal Government to come up with $60 million to take the place of funds that the State of California was required to appropriate by law for SSI recipients. The California legislature did not provide these funds, because they wished to cut down on welfare costs in the wake of proposition 13.

The basic question, it seems to me, is why the Congress should step in and bail out California's welfare program in this instance, particularly when the Committee on Ways and Means has already reported out on August 17 a bill, H.R. 13814, that can be in due course considered by the House and acted on when there is chance for debate and amendment.

Mr. Speaker, I would hope that the gentleman from California (Mr. CORMAN) would withdraw his request at this time so it would be in order for us to debate this section 5, the other body's amendment, in proper order.

Mr. CORMAN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from California.

Mr. CORMAN. Mr. Speaker, I might explain to the gentleman from Maryland (Mr. BAUMAN) that this does not give any SSI recipient in California any more Federal welfare benefits than the existing law does. The existing law requires the Federal Government to give $10 in food stamps to noninstitutionalized SSI recipients in California who do not have an eligible spouse. It is estimated that $30 million would be spent for these food stamp benefits in fiscal 1979.

Additionally, the Federal Government will pay one-half of administrative costs and the State the other half of the costs of making these food stamp payments. The Congressional Budget Office estimates that total administrative costs associated with the payment of the $30 million in food stamp benefits will be $40 million in fiscal 1979, half paid by the Federal Government and half by the State of California.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, I would have to say to the gentleman that, according to the information before me, there is an additional cost of $10 million to the Federal Government, if this bill is passed, over and above what it would cost for the State of California to go into the food stamp program for the supplemental benefits. But the greater additional cost if they go into the food stamp program, as I understand it, will result because California will have to come up with the money for the administrative costs, which could be considerable. That seems to me to be the problem of the current government of California, in the wake of the wise decision of their electorate on proposition 13.

Mr. CORMAN. If the gentleman will yield, half of the administrative costs will be paid by the State of California and half will come from the Federal Government. All of the food stamp benefit costs will be paid by the Federal Government. It is uncertain as to how many aged, blind, or disabled people who are eligible for food stamps would actually go down to the welfare office, apply and go through the bureaucratic process required to get that $10 worth of food stamps. The $10 million net cost of the bill estimated by the Congressional Budget Office assumes substantially less than 100 percent participation in the food stamp program. If all who are eligible for food stamps collected them, the Senate amendment under consideration would result in substantial savings to the Federal Government, because of the lower administrative costs.

I would urge the gentleman to consider the importance of time. As soon as we can get this bill passed, HEW can begin making their computer adjustments, and they can abandon the process necessary to get several hundred thousand people processed and eligible for food stamps.

When this bill is passed, the basic administrative procedure will be to make the adjustment to the checks of those eligible for the additional $10. They are presently entitled to that $10 from the Federal Government; but they are now entitled to $10 of food stamps rather than the cash.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, I understand the gentleman's concern, but I also think there are better procedures available for the House to consider a request of this nature. Other States may wisely adopt spending and taxing limitation policies as did the California electorate, to control State officials, because of their inability to control themselves. But the request before us sets a precedent for the Federal Government to step in in each instance and bail out those States. Indeed, in this case it will cost $60 million, $10 million net more. I do not wish to set such a precedent.

I think we should debate the full issue in due course and not under unanimous consent. Unless the gentleman wishes to withdraw his request, I would object.

Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

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## CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 11280) to reform the civil service laws.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 307, nays 10, answered "present" 1, not voting 114, as follows:

[Roll No. 738]

YEAS—307

| | | |
|---|---|---|
| Akaka | Derwinski | Jones, Okla. |
| Alexander | Devine | Jones, Tenn. |
| Anderson, Calif. | Dicks | Kastenmeier |
| Andrews, N.C. | Dodd | Kazen |
| Andrews, N. Dak. | Dornan | Kelly |
| Annunzio | Duncan, Tenn. | Keys |
| Applegate | Edgar | Kildee |
| Ashbrook | Edwards, Ala. | Kostmayer |
| Aspin | Edwards, Calif. | Krebs |
| Bafalis | Edwards, Okla. | LaFalce |
| Baldus | Eilberg | Lagomarsino |
| Barnard | Emery | Latta |
| Baucus | English | Le Fante |
| Bauman | Erlenborn | Leach |
| Beard, R.I. | Ertel | Lederer |
| Beard, Tenn. | Evans, Del. | Levitas |
| Bedell | Evans, Ga. | Lloyd, Tenn. |
| Benjamin | Evans, Ind. | Long, La. |
| Bennett | Fascell | Long, Md. |
| Bevill | Fenwick | Lott |
| Biaggi | Findley | Lujan |
| Bingham | Fish | Luken |
| Blanchard | Fisher | Lundine |
| Blouin | Fithian | McClory |
| Boggs | Flippo | McCloskey |
| Boiling | Flood | McCormack |
| Bonior | Florio | McDade |
| Brademas | Flynt | McDonald |
| Breaux | Foley | McEwen |
| Breckinridge | Ford, Mich. | McFall |
| Brinkley | Ford, Tenn. | McHugh |
| Brodhead | Fountain | McKay |
| Brooks | Fowler | McKinney |
| Broomfield | Frenzel | Madigan |
| Brown, Mich. | Gammage | Maguire |
| Brown, Ohio | Garcia | Mahon |
| Broyhill | Gephardt | Mann |
| Buchanan | Giaimo | Markey |
| Burgener | Gilman | Marks |
| Burke, Mass. | Ginn | Marriott |
| Burleson, Tex. | Glickman | Martin |
| Butler | Goldwater | Mattox |
| Carr | Gonzalez | Mazzoli |
| Carter | Goodling | Meeds |
| Cavanaugh | Gore | Meyner |
| Cederberg | Gradison | Michel |
| Chappell | Grassley | Mikulski |
| Chisholm | Green | Miller, Ohio |
| Clausen, Don H. | Gudger | Mineta |
| Clay | Hamilton | Minish |
| Cleveland | Hammer-schmidt | Mitchell, N.Y. |
| Cohen | Hanley | Moffett |
| Coleman | Hannaford | Mollohan |
| Collins, Ill. | Harkin | Montgomery |
| Collins, Tex. | Harsha | Moore |
| Conable | Hefner | Moorhead, Calif. |
| Conte | Heftel | Moorhead, Pa. |
| Conyers | Hightower | Mottl |
| Corcoran | Hillis | Murphy, Ill. |
| Corman | Holt | Murphy, N.Y. |
| Cornell | Holtzman | Murphy, Pa. |
| Coughlin | Horton | Murtha |
| Cunningham | Howard | Myers, Gary |
| D'Amours | Hubbard | Myers, John |
| Daniel, R. W. | Hughes | Myers, Michael |
| Danielson | Hyde | Natcher |
| Davis | Ireland | Neal |
| de la Garza | Jacobs | Nedzi |
| Delaney | Jeffords | Nichols |
| Dellums | Jenkins | Nix |
| Derrick | Jenrette | Nolan |
| | Johnson, Calif. | Nowak |
| | Jones, N.C. | O'Brien |

| | | |
|---|---|---|
| Oakar | Runnels | Studds |
| Oberstar | Russo | Taylor |
| Obey | Ryan | Thompson |
| Ottinger | Santini | Traxler |
| Panetta | Sawyer | Trible |
| Patten | Scheuer | Tucker |
| Patterson | Schroeder | Udall |
| Pattison | Schulze | Ullman |
| Pease | Sebelius | Van Deerlin |
| Pepper | Seiberling | Vander Jagt |
| Perkins | Sharp | Vanik |
| Poage | Shuster | Vento |
| Preyer | Simon | Walgren |
| Price | Skelton | Walker |
| Pritchard | Skubitz | Walsh |
| Pursell | Slack | Wampler |
| Rahall | Smith, Iowa | Watkins |
| Railsback | Smith, Nebr. | Weaver |
| Regula | Solarz | Weiss |
| Reuss | Spence | Whalen |
| Rinaldo | St Germain | White |
| Risenhoover | Staggers | Whitehurst |
| Robinson | Stangeland | Whitley |
| Roe | Stanton | Winn |
| Rose | Stark | Wirth |
| Rosenthal | Steed | Wolff |
| Rostenkowski | Steiger | Wylie |
| Rousselot | Stockman | Yates |
| Roybal | Stokes | Young, Mo. |
| Rudd | Stratton | Zablocki |

NAYS—10

| | | |
|---|---|---|
| Dickinson | Mitchell, Md. | Wilson, C. H. |
| Harris | Spellman | Wydler |
| Heckler | Steers | |
| Lloyd, Calif. | Wilson, Bob | |

ANSWERED "PRESENT"—1

Gaydos

NOT VOTING—114

| | | |
|---|---|---|
| Abdnor | Fary | Pressler |
| Addabbo | Flowers | Quayle |
| Ambro | Forsythe | Quie |
| Ammerman | Fraser | Quillen |
| Anderson, Ill. | Frey | Rangel |
| Archer | Fuqua | Rhodes |
| Armstrong | Gibbons | Richmond |
| Ashley | Guyer | Roberts |
| AuCoin | Hagedorn | Rodino |
| Badham | Hall | Rogers |
| Beilenson | Hansen | Roncalio |
| Boland | Harrington | Rooney |
| Bonker | Hawkins | Ruppe |
| Bowen | Holland | Sarasin |
| Brown, Calif. | Hollenbeck | Satterfield |
| Burke, Calif. | Huckaby | Shipley |
| Burke, Fla. | Ichord | Sikes |
| Burlison, Mo. | Johnson, Colo. | Sisk |
| Burton, John | Jordan | Snyder |
| Burton, Phillip | Kasten | Stump |
| Byron | Kemp | Symms |
| Caputo | Kindness | Teague |
| Carney | Krueger | Thone |
| Clawson, Del | Leggett | Thornton |
| Cochran | Lehman | Treen |
| Cornwell | Lent | Tsongas |
| Cotter | Livingston | Volkmer |
| Crane | Marlenee | Waggonner |
| Daniel, Dan | Mathis | Waxman |
| Dent | Metcalfe | Whitten |
| Diggs | Mikva | Wiggins |
| Dingell | Milford | Wilson, Tex. |
| Downey | Miller, Calif. | Wright |
| Drinan | Moakley | Yatron |
| Duncan, Oreg. | Moss | Young, Alaska |
| Early | Pettis | Young, Fla. |
| Eckhardt | Pickle | Young, Tex. |
| Evans, Colo. | Pike | Zeferetti |

So the motion was agreed to.

The result of the vote was announced as above recorded.

Mr. CLAY. Mr. Speaker, I move to reconsider the vote pursuant to which the motion that the House resolve itself into the Committee of the Whole House on the State of the Union was agreed to.

Mr. UDALL. Mr. Speaker, I move to table the motion offered by the gentleman from Missouri (Mr. CLAY).

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CLAY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 296, nays 18, not voting 118, as follows:

[Roll No. 739]

YEAS—296

| | | |
|---|---|---|
| Akaka | Ellberg | Maguire |
| Alexander | Emery | Mahon |
| Ambro | English | Markey |
| Anderson, Calif. | Ertel | Marks |
| Anderson, Ill. | Evans, Del. | Marlenee |
| Andrews, N.C. | Evans, Ga. | Marriott |
| Andrews, N. Dak. | Evans, Ind. | Martin |
| Annunzio | Fascell | Mattox |
| Applegate | Fenwick | Mazzoli |
| Archer | Findley | Meeds |
| Ashbrook | Fish | Michel |
| Aspin | Fisher | Miller, Ohio |
| Bafalis | Fithian | Mineta |
| Baldus | Flood | Minish |
| Barnard | Florio | Mitchell, Md. |
| Baucus | Flynt | Mitchell, N.Y. |
| Bauman | Foley | Moffett |
| Beard, R.I. | Ford, Tenn. | Mollohan |
| Beard, Tenn. | Fountain | Moore |
| Bedell | Frenzel | Moorhead, Calif. |
| Benjamin | Gammage | Moorhead, Pa. |
| Bennett | Garcia | Mottl |
| Bevill | Gaydos | Murphy, Ill. |
| Biaggi | Gephardt | Murphy, N.Y. |
| Bingham | Giaimo | Murphy, Pa. |
| Blanchard | Ginn | Murtha |
| Blouin | Glickman | Myers, Gary |
| Boggs | Goldwater | Myers, John |
| Boland | Gonzalez | Myers, Michael |
| Bolling | Goodling | Natcher |
| Bonior | Gore | Neal |
| Brademas | Gradison | Nedzi |
| Brinkley | Grassley | Nichols |
| Brodhead | Green | Nix |
| Brooks | Gudger | Nolan |
| Brown, Mich. | Hall | Nowak |
| Brown, Ohio | Hamilton | O'Brien |
| Broyhill | Hammer-schmidt | Oakar |
| Burgener | Hanley | Oberstar |
| Burke, Mass. | Hannaford | Obey |
| Burleson, Tex. | Harkin | Ottinger |
| Burlison, Mo. | Heckler | Panetta |
| Butler | Hefner | Patten |
| Carney | Heftel | Patterson |
| Carr | Hightower | Pattison |
| Carter | Hillis | Pease |
| Cavanaugh | Holtzman | Pepper |
| Cederberg | Horton | Perkins |
| Chappell | Hubbard | Poage |
| Chisholm | Hughes | Preyer |
| Clausen, Don H. | Hyde | Price |
| Cleveland | Ichord | Rahall |
| Cohen | Ireland | Railsback |
| Coleman | Jeffords | Regula |
| Collins, Tex. | Johnson, Calif. | Reuss |
| Conable | Jones, Okla. | Rinaldo |
| Conte | Jones, Tenn. | Risenhoover |
| Conyers | Kastenmeier | Robinson |
| Corcoran | Kelly | Roncalio |
| Corman | Kildee | Rose |
| Cornell | Kostmayer | Rosenthal |
| Cornwell | Krebs | Rostenkowski |
| Cunningham | LaFalce | Rousselot |
| D'Amours | Lagomarsino | Roybal |
| Daniel, Dan | Latta | Rudd |
| Daniel, R. W. | Le Fante | Runnels |
| Danielson | Leach | Russo |
| de la Garza | Lederer | Ryan |
| Delaney | Levitas | Santini |
| Dellums | Livingston | Satterfield |
| Derrick | Lloyd, Tenn. | Sawyer |
| Derwinski | Long, La. | Schroeder |
| Devine | Long, Md. | Schulze |
| Dickinson | Lott | Sebelius |
| Dicks | Lujan | Seiberling |
| Dodd | Luken | Sharp |
| Dornan | Lundine | Shuster |
| Downey | McClory | Simon |
| Duncan, Tenn. | McCloskey | Skelton |
| Early | McCormack | Skubitz |
| Eckhardt | McDade | Slack |
| Edgar | McDonald | Smith, Iowa |
| Edwards, Ala. | McEwen | Smith, Nebr. |
| Edwards, Calif. | McFall | Solarz |
| Edwards, Okla. | McHugh | Spence |
| | McKay | St Germain |
| | Madigan | Stangeland |
| | | Stanton |
| | | Stark |
| | | Steed |
| | | Stockman |
| | | Stratton |
| | | Studds |
| | | Taylor |
| | | Traxler |
| | | Treen |
| | | Trible |
| | | Tucker |
| | | Udall |
| | | Ullman |
| | | Van Deerlin |
| | | Vander Jagt |
| | | Vanik |
| | | Vento |
| | | Volkmer |
| | | Walgren |
| | | Walker |
| | | Walsh |
| | | Wampler |
| | | Weaver |
| | | Weiss |
| | | Whalen |
| | | White |
| | | Whitehurst |
| | | Whitley |
| | | Winn |
| | | Wirth |
| | | Wolff |
| | | Wright |
| | | Wydler |
| | | Wylie |
| | | Yates |
| | | Young, Mo. |
| | | Zablocki |

NAYS—18

| | | |
|---|---|---|
| Broomfield | Holt | Staggers |
| Clay | Leggett | Steers |
| Collins, Ill. | Metcalfe | Stokes |
| Davis | Mikulski | Wilson, Bob |
| Gilman | Quayle | Wilson, C. H. |
| Harris | Spellman | Young, Fla. |

NOT VOTING—118

| | | |
|---|---|---|
| Abdnor | Fuqua | Pressler |
| Addabbo | Gibbons | Pritchard |
| Ammerman | Guyer | Pursell |
| Armstrong | Hagedorn | Quie |
| Ashley | Hansen | Quillen |
| AuCoin | Harrington | Rangel |
| Badham | Harsha | Rhodes |
| Beilenson | Hawkins | Richmond |
| Bonker | Holland | Roberts |
| Bowen | Hollenbeck | Rodino |
| Breaux | Howard | Roe |
| Breckinridge | Huckaby | Rogers |
| Brown, Calif. | Jacobs | Rooney |
| Buchanan | Jenkins | Ruppe |
| Burke, Calif. | Jenrette | Sarasin |
| Burke, Fla. | Johnson, Colo. | Scheuer |
| Burton, John | Jones, N.C. | Shipley |
| Burton, Phillip | Jordan | Sikes |
| Byron | Kasten | Sisk |
| Caputo | Kazen | Snyder |
| Clawson, Del | Kemp | Steiger |
| Cochran | Keys | Stump |
| Cotter | Kindness | Symms |
| Coughlin | Krueger | Teague |
| Crane | Lehman | Thompson |
| Dent | Lent | Thone |
| Diggs | Lloyd, Calif. | Thornton |
| Dingell | McKinney | Tsongas |
| Drinan | Mann | Waggonner |
| Duncan, Oreg. | Mathis | Watkins |
| Erlenborn | Meyner | Waxman |
| Evans, Colo. | Mikva | Whitten |
| Fary | Milford | Wiggins |
| Flippo | Miller, Calif. | Wilson, Tex. |
| Flowers | Moakley | Yatron |
| Ford, Mich. | Montgomery | Young, Alaska |
| Forsythe | Moss | Young, Tex. |
| Fowler | Pettis | Zeferetti |
| Fraser | Pickle | |
| Frey | Pike | |

Mr. LIVINGSTON changed his vote from "nay" to "yea."

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on August 11, 1978, all time for general debate on the bill had expired.

Pursuant to the rule, the Clerk will now read by titles the committee amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk proceeded to read the bill.

POINT OF ORDER

Mr. MEEDS. Mr. Chairman, I make a point of order against titles IX and X, based on their violation of clause 7, rule XVI, in that they are nongermane to the bill before us.

Title IX deals with two groups of em-

ployees not covered in the original bill. It includes postal workers and District of Columbia employees. There is much precedent which indicates that we have classes of subjects not covered by the basic proposition before us, which renders the new material nongermane. That is precisely what title IX does by adding two new subjects.

Title X, on the other hand, introduces new subject matter, the pay of firefighters that is not covered in the original bill. Title X deals exclusively with hours of work and wages of firefighters, while the original bill deals with the institution of the merit system within the system. Where hours or wages are included, it is only incidental to the basic proposition of the merit system, so both of these titles should be stricken for the above reason, and for the added reason that neither proposition amends the original bill. Rather, both seek to amend existing and basic law.

The CHAIRMAN. The gentleman from Washington (Mr. MEEDS) makes a point of order against titles IX and X.

Mr. CLAY. Mr. Chairman, I rise in opposition to this point of order.

For the life of me, I cannot understand how and why title IX should be treated in this discriminatory manner.

The facts are fairly obvious—and the connections between Hatch Act reform and the rest of H.R. 11280 are quite strong—

First, the bill, in section 2302 (on page 138, beginning on line 24) defines improper political activities as a prohibited personnel practice. Title IX of the bill states exactly what these improper political activities are.

Second, the bill charges the special counsel of the Merit System Protection Board (MSPB) with responsibility for not only investigating prohibited personnel activities in general but improper political activities in particular. (See page 160, beginning on line 24.) Title IX of the bill defines more fully these activities which apply to Federal civilian as well as postal employees.

Mr. Chairman, it is inconceivable to me that this bill—which touches on virtually every aspect of civil service—should have political activities and firefighters singled out for this kind of shabby treatment.

Title IX is virtually identical to H.R. 10, the Federal Employees' Political Activities Act of 1977, which passed the House on June 7, 1977, by a vote of 244 to 164. The only major differences between title IX and H.R. 10 is that title IX designates the special counsel of the Merit Systems Protection Board as the enforcing authority and the Board as the adjudicatory authority. H.R. 10 designated the general counsel of the Civil Service Commission as the enforcing authority while the Commission would have been the adjudicatory authority. These changes assume that the Civil Service Commission will be superceded by the Office of Personnel Management (OPM) and the Merit Systems Protection Board established under reorganization plan No. 2 of 1978. The investigative procedures of H.R. 10 were deleted to parallel those established in H.R. 11280.

Although both the committee and the House approved this legislation in the last two Congresses by overwhelming margins, it has become increasingly clear to me that the other body will not act on Hatch Act reform this year. I offered my amendment in committee in order to insure that both Houses of Congress have the opportunity to work their will in considering reform of the Hatch Act. Many of us have worked long and hard in pressing for passage of this and other legislation in recent years only to see it languish and die in the other body.

Mr. Chairman, the issue of full political participation for Federal employees and protection of the public interest should be addressed here and now.

Finally, inclusion of Hatch Act reform does not constitute a "burden" on civil service reform. Civil service reform and Hatch Act reform are inextricably interrelated. Each insures that the people's business—the business of our Government—is conducted in a fair and impartial manner.

Inclusion of Hatch Act reform in this bill is not "untimely" as the administration would like the public to believe. There can be nothing more "timely" than providing Federal employees with the right to full participation in the political process of our Nation.

Mr. Chairman, it is inconceivable to me that this bill, which touches on virtually every aspect of civil service, should have political activities and firefighters singled out for this kind of shabby treatment. Title IX is virtually identical to H.R. 10, the Federal Employees Political Activities Act of 1977, which passed this House on June 7 of last year by a vote of 264 to 164.

Mr. Chairman, I think that it is unfortunate that the kind of heavy-handed activity and pressure is taking place to combine both title IX and title X into the same point of order as permitted by the rule. Personally, I resent that kind of heavy-handed activity on the part of the leadership of this House and on the part of the administration of this Nation.

Mr. Chairman, I urge that the point of order not be sustained.

Mr. HARRIS. Mr. Chairman, I rise in opposition to the point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, the point of order under the rule applies to titles IX and X, and comes before this House in a most unusual, and indeed a peculiar, way that the Chair perhaps would have to rule against the germaneness of one title that will be germane, because it is connected in the rule to another title that the Chair may consider nongermane.

I think it is unfortunate that the House must consider the matter in that fashion. I would point out to the Chair with regard to this point of order that title X, in fact, does pass the jurisdictional test. It was in fact with the same jurisdiction committee, the Committee on Post Office and Civil Service, as this bill is brought; therefore, it passes that jurisdictional test as far as the case is concerned.

I would point out further that the firefighter bill was actually reported out of this committee and came before this House; it passed by almost a 2-to-1 margin. Again, it reaches the fundamental purpose test.

The bill itself is for the reform of the civil service system by title. This bill is for the reform of the working conditions of the firefighters, a part of the civil service system by title. The fundamental purpose of both bills are exactly the same, that is, reform of the system.

All the titles are not across-the-board application in this bill. I refer the Chair specifically to title IV, which deals with a very small segment of the civil service system, that is the senior executives. This title deals only with 9,000 senior executives of the civil service. The firefighters bill deals with 11,000 civil service employees. If in fact we would hold that the firefighters failed the germaneness test, because it dealt with a smaller group than an across-the-board structure, we would certainly have to argue that on title IV. Title IV deals with a subgroup. Title X deals with a subgroup. It deals with a particular application.

I can cite precedents to indicate that when a bill deals with several particulars, one particular may be held to be germane.

In fact, this class is the same as the other titles of the bill. A bill may be amended by a specific proposition of the same class.

I would be happy to quote to the Chair about a dozen precedents that make this point.

If in fact we were to deal with the whole civil service system, dealing with a particular part of that system, that is the firefighters and their work rules is a particular matter within that system. Therefore, I would urge the Chair to overrule the point of order and hold title X as germane.

The CHAIRMAN. The gentleman from Washington makes a point of order against titles IX and X of the committee amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service, on the grounds that those titles would not have been germane if offered as an amendment to the bill H.R. 11280, as introduced.

As indicated by the gentleman from Washington, the special order providing for consideration of this measure, House Resolution 1307, allows the Chair to entertain a point of order on the basis stated by the gentleman, that titles IX and X would not have been germane as a separate amendment to H.R. 11280 in its introduced form.

The bill as introduced and referred to the Committee on Post Office and Civil Service, although broad in its coverage of reform proposals within the competitive service and in the executive branch of the Government, is limited to merit system principles and personnel management within the civil service of the U.S. Government. Title IX of the

committee amendment is designed to characterize and to protect appropriate political activities of employees of the District of Columbia and Postal Service as well as civil service employees, by amending the Hatch Act. The Chair agrees with the argument of the gentleman from Washington that the amendment would add an entirely new class of employees to that covered by the bill, and for that reason is not germane.

Accordingly the Chair sustains the point of order.

Pursuant to the rule the Clerk will now read by titles the substitute committee amendment without titles IX and X, recommended by the Committee on Post Office and Civil Service, now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read the bill.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of section 2, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued the reading of the bill.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of section 3; and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Reserving the right to object, Mr. Chairman, this is an extremely important bill that some Members are trying to pass through in this Congress. I think it is extremely important that those of us who are here on the floor know what is in this bill.

There have been many agreements made in connection with parts of the bill with members of the committee who are extremely concerned about labor provisions and about other provisions affecting this new section by which they are going to destroy the civil service system which we have known for so many years.

Mr. Chairman, I do not think that this is something we should take so lightly. That is the reason I am asking that the bill be read. I think it is important enough to every member of this committee that we do have this bill read and that we understand what is in it.

Therefore, Mr. Chairman, I am going to have to continue to object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued to read.

POINT OF ORDER

Mr. CHARLES H. WILSON of California. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I know the Clerk is not deliberately skipping some of these lines. He must be getting tired, but he is beginning to go a little fast over some of these lines. I think that all of the lines should be read.

The CHAIRMAN. The Chair will state that the Chair observes that the Clerk is proceeding in regular order.

The Clerk will read.

The Clerk continued to read.

Mr. DERWINSKI (during the reading). Mr. Chairman, I have been impressed by the attention of the House, so therefore, I would ask unanimous consent that the remainder of the title be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CHARLES H. WILSON of California. Mr. Chairman, reserving the right to object, right up to now I have been very impressed with the principles of this bill, and it sounds pretty good so far, but I have to have the rest of it read, I will say to the gentleman from Illinois (Mr. DERWINSKI), because there may be something in here that is going to change my opinion about it. I think right up to now it sounds beautiful, but I will have to object.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. CHARLES H. WILSON of California. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding. Is it not possible for the gentleman to read by himself?

Mr. CHARLES H. WILSON of California. The gentlewoman is certainly correct. I think the gentlewoman understands what is going on here.

Mrs. FENWICK. If the gentleman will yield, I honestly do not.

Mr. CHARLES H. WILSON of California. I object to the legislation, and I am using the rights that are guaranteed to me as a Member of this body to exercise my opposition to the legislation. It has been done on the gentlewoman's side; it has been done on our side.

Mrs. FENWICK. If the gentleman will yield further, I know. Will the gentleman, though, consider that the people's time is involved here. Our time is short until we are supposed to adjourn, and we are not unpaid volunteers; we are paid public servants.

Mr. CHARLES H. WILSON of California. I realize that.

Mrs. FENWICK. I think we should be using our time in the most effective way for the public benefit.

Mr. CHARLES H. WILSON of California. If the Speaker will pull this bill off the calendar, we can proceed with the important business of the Congress. I do not think this bill is so important that it has to be passed in this Congress.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. CHARLES H. WILSON of California. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

I would like to comment in response to the gentlewoman from New Jersey. We are aware of our responsibilities, and we are aware of the people's concerns, and we are aware that there are many people in this country in government employment who would rather not have this bill see the light of day. We are exercising whatever legitimate tactic is made available to us through parliamentary procedure. To impugn the conduct that is procedural and proper, in my judgment, is strictly out of order, and I think it is unfortunate.

Mrs. FENWICK. I resent very much the fact that the gentleman from New York suggests that I impugn anything. I merely asked if we could not proceed in a more orderly manner.

The CHAIRMAN. All Members will suspend. The gentleman from New York (Mr. BIAGGI) will suspend, and all other Members will suspend.

The Chair will state that the time is under the control of the gentleman from California (Mr. CHARLES H. WILSON).

Mr. CHARLES H. WILSON of California. Mr. Chairman, still reserving the right to object, I would like to say to the gentlewoman from New Jersey (Mrs. FENWICK) that she is absolutely correct in any observation that she makes. That does not offend me at all at this point.

Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued to read.

POINT OF ORDER

Mr. CHARLES H. WILSON of California (during the reading). Mr. Chairman, I again make a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I think the Clerk forgot to read line 6 on page 142. I recognize the burden placed upon him; however, I must have all of the lines read, if I can.

The CHAIRMAN. The Clerk will read line 6 on page 142, commencing with line 6, "through affirmative action * * *"

The Clerk concluded the reading of title I.

The text of title I reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

SEC. 2. The table of contents is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

Sec. 201. Office of Personnel Management.
Sec. 202. Merit Systems Protection Board and Special Counsel.
Sec. 203. Performance appraisals.
Sec. 204. Adverse actions.
Sec. 205. Appeals.

TITLE III—STAFFING

Sec. 301. Volunteer services.
Sec. 302. Definitions relating to preference eligibles.
Sec. 303. Noncompetitive appointment of certain disabled veterans.

Sec. 304. Examination, certification, and appointment of preference eligibles.
Sec. 305. Retention preference.
Sec. 306. Training.
Sec. 307. Travel, transportation, and subsistence.
Sec. 308. Retirement.
Sec. 309. Extension of veterans readjustment appointment authority.
Sec. 310. Notification of vacancies in the civil service.
Sec. 311. Dual pay for members of the uniformed services.
Sec. 312. Minority recruitment program.
Sec. 313. Effective date.

TITLE IV—SENIOR EXECUTIVE SERVICE

Sec. 401. General provisions.
Sec. 402. Authority for employment.
Sec. 403. Examination, certification, and appointment.
Sec. 404. Retention preference.
Sec. 405. Performance rating.
Sec. 406. Awarding of ranks.
Sec. 407. Pay rates and systems.
Sec. 408. Pay administration.
Sec. 409. Travel, transportation, and subsistence.
Sec. 410. Leave.
Sec. 411. Disciplinary actions.
Sec. 412. Retirement.
Sec. 413. Conversion to the Senior Executive Service.
Sec. 414. Limitations on executive positions.
Sec. 415. Effective date; experimental application.

TITLE V—MERIT PAY

Sec. 501. Pay for performance.
Sec. 502. Technical and conforming amendments.
Sec. 503. Effective date.

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

Sec. 601. Research programs and demonstration projects.
Sec. 602. Intergovernmental Personnel Act amendments.
Sec. 603. Amendments to the mobility program.

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Sec. 701. Federal service labor-management relations.
Sec. 702. Backpay in case of unfair labor practices and grievances.
Sec. 703. Technical and conforming amendments.
Sec. 704. Miscellaneous provisions.

TITLE VIII—GRADE AND PAY RETENTION

Sec. 801. Grade and pay retention.

TITLE IX—POLITICAL ACTIVITIES

Sec. 901. Federal employees' political activities.
Sec. 902. State and local employees' political activities.
Sec. 903. Effective date.
Sec. 904. Study concerning political participation by Federal employees.

TITLE X—FIREFIGHTERS

Sec. 1001. Basic workweek of firefighters.
Sec. 1002. Effective date.

TITLE XI—MISCELLANEOUS

Sec. 1101. Study on decentralization of governmental functions.
Sec. 1102. Savings provisions.
Sec. 1103. Authorization of appropriations.
Sec. 1104. Powers of President unaffected except by express provisions.
Sec. 1105. Technical and conforming amendments.
Sec. 1106. Effective date.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(3) the authority and power of the Special Council should be increased so that the Special Counsel may investigate prohibited personnel practices and reprisals against Government employees for the lawful disclosure of certain information and may file complaints, against agency officials and employees who engage in such conduct;

(4) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(5) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified managers needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(6) in appropriate instances, pay increases should be based on quality of performance rather than length of services;

(7) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional review, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public; and

(8) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess.

TITLE I—MERIT SYSTEM PRINCIPLES

MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 21 the following new chapter:

"Chapter 23—MERIT SYSTEM PRINCIPLES

"Sec.
"2301. Merit system principles.
"2302. Prohibited personnel practices.
"2303. Responsibility of the General Accounting Office.
"2304. Coordination with certain other provisions of law.

"§ 2301. Merit system principles

"(a) This section shall apply to—

(1) an Executive agency;

"(2) the Administrative Office of the United States Courts; and

"(3) the Government Printing Office.

"(b) It is the policy of the Congress that in order to provide the people of the United States with a highly competent, honest, and productive Federal workforce reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with the merit system principles.

"(c) The merit system principles are as follows:

"(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

"(2) All employees and applicants should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and consttutional rights.

"(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

"(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

"(5) The Federal work force should be used efficiently and effectively.

"(6) Employees should be retained on the basis of the adequacy of their performance; inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

"(7) Employees should be provided effective education and training in cases in which education and training would result in better organizational and individual performance.

"(8) Employees should be—

"(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

"(B) prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for election.

"(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

"(A) a violation of law, rule, or regulation,

"(B) mismanagement, a waste of funds, or an abuse of authority, or

"(C) a substantial and specific danger to public health or safety.

"(d) The President shall take actions, including the issuance of rules, regulations, or directives, as the President determines are necessary to carry out the policy set forth in subsection (b) of this section.

"§ 2302. Prohibited personnel practices

"(a)(1) For the purpose of this title, 'prohibited personnel practice' means any action described in subsection (b) of this section.

"(2) For the purpose of this section—

"(A) 'personnel action' means—

"(i) an appointment;

"(ii) a promotion;

"(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

"(iv) a detail, transfer, or reassignment;

"(v) a reinstatement;

"(vi) a restoration;

"(vii) a reemployment;

"(viii) a performance evaluation under chapter 43 of this title;

"(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this paragraph; and

"(x) a substantial change in duties or responsibilities which may reasonably be expected to result in a reduction in pay or grade;

with respect to an employee in, or applicant for, a position in the competitive service in an agency or a position in the excepted service in an agency (other than a position which is excepted from the competitive service be-

cause of its confidential, policy-determining, or policy advocating character), or to a career appointee in the Senior Executive Service in an agency.

"(B) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(i) a Government corporation;

"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office.

"(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

"(1) discriminate for or against any employee or applicant for employment—

"(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

"(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

"(C) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);

"(D) on the basis of marital status or political affiliation, as prohibited under this title; or

"(E) on any basis prohibited under the provisions of any other law, rule, or regulation;

"(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

"(A) an evaluation of the work performance, ability, aptitude, or general qualifications of the individual; or

"(B) an evaluation of the character, loyalty, or suitability of the individual;

"(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

"(4) deceive or obstruct any person with respect to the person's right to compete for Federal employment;

"(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

"(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any person for Federal employment;

"(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position, any individual who is a relative (as defined in section 3110(a)(3) of this title) of an employee if the position is in the agency in which the employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which the employee exercises jurisdiction or control as a public official (as defined in section 3110(a)(2) of this title);

"(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

"(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

if such disclosure is not specifically prohibited by law or if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a waste of funds, or an abuse of authority, or a substantial and specific danger to public health or safety;

"(9) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for the exercise of any right of appeal granted by law, rule, or regulation;

"(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime of violence or moral turpitude under the laws of any State, of the District of Columbia, or of the United States; or

"(11) take or fail to take any personnel action on the basis of personal favoritism.

"(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, the compliance with and enforcement of applicable civil service laws, rules, and regulations and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

"(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

"(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

"(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

"(3) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition;

"(4) the provisions of this title, and rules and regulations thereunder, prohibiting discrimination on the basis of marital status or political affiliation; or

"(5) the provisions of any other law, rule, or regulation prohibiting discrimination on any such basis.

"§ 2303. Responsibility of the General Accounting Office

"If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

"§ 2304. Coordination with certain other provisions of law

"No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), Public Law 86–36 (73 Stat. 63; 50 U.S.C. 402), and Public Law 88–290 (78 Stat. 168; 50 U.S.C. 831–835).".

"(b)(1) The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 21 the following new item:

"23. Merit system principles..... 2301."

(2) Section 7203 of title 5, United States Code (as redesignated in section 703(1) of this Act) is amended—

(A) by striking out "Physical handicap" in the section heading and inserting in lieu thereof "Handicapping condition"; and

(B) by striking out "physical handicap" each place it appears in the text and inserting in lieu thereof "handicapping condition".

AMENDMENTS OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HARRIS: Page 136, line 4, after "(b)" insert "or (c)".

Page 138, strike out paragraph (2) beginning on line 13 and ending on line 23 and redesignate the following paragraphs accordingly.

Page 141, after line 19 insert the following:

"(c)(1) No employee may accept or consider, or influence or direct, or attempt to influence or direct any other employee to accept or consider, with respect to any personnel action, any recommendation unless—

"(A) the recommendation is furnished pursuant to a request made by an authorized representative of the United States solely to determine whether the individual involved in the personnel action meets the loyalty, suitability, and character requirements for employment; or

"(B) the recommendation—

"(i) is furnished pursuant to a request of an employee who is responsible for taking (or directing others to take), recommending, processing, or approving the personnel action; and

"(ii) consists solely of an evaluation of the work performance, ability, aptitude, character, or general qualifications of the individual involved in the personnel action.

"(2) Any employee who receives a written recommendation prohibited by paragraph (1) of this subsection shall return such recommendation to the person who provided it, with an appropriate indication that the acceptance or consideration of such recommendation would be in violation of this subsection.

"(3) Any employee who receives an oral recommendation which is prohibited by paragraph (1) of this subsection shall advise, in an appropriate manner, the person providing such recommendation that the acceptance or consideration of such recommendation would be in violation of this subsection.

"(4) For the purpose of this subsection—

"(A) 'recommendation' means any communication, oral or written, made directly or indirectly by—

"(i) a Member of Congress or a candidate for such office;

"(ii) a Congressional employee, as defined in section 2107 of this title (determined without regard to whether or not the employee's pay is paid by the Secretary of the Senate or the Clerk of the House of Representatives);

"(iii) an employee appointed by the President; or

"(iv) an employee in a position which is excepted from the competitive service because of its confidential or policymaking character;

"(B) 'recommendation' does not include an inquiry which is limited solely to a request—

"(i) for a statement on the status of any personnel action; or

"(ii) for an explanation of the basis on which a personnel action has been taken.

Page 141, line 20, strike out "(c)" and insert in lieu thereof "(d)".

Page 142, line 4, strike out "(d)" and insert in lieu thereof "(e)".

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this is an amendment to this very important bill which would make sure that we eliminated all unwarranted political influence in the civil service personnel matters. I think the important matter that civil service reform is designed to assure or should be designed to assure is that the merit system is not influenced by political recommendations or political pressures but is operated on the basis of merit and handled on the basis of a competitive service as it should be. This can be strengthened by the adoption of this amendment to clearly eliminate unwarranted political recommendations in hiring and promotions and other personnel actions.

Under my amendent the political recommendations from Members of Congress or staff or White House officials and political appointees in the executive branch would be explicitly prohibited. The notion that elected political officers ought to determine who gets what job in the career merit system is simply wrong.

Some argue that it is a fact of life. If so, that fact of life is wrong. It is time to stop working on that system. I think we should be making it clear to people that the hiring and promotion and firing is on the basis of merit, on the basis of competence and job performance, and not on the basis of whom one knows or who makes a recommendation for one.

If in fact we are going to make a case here that we are going to have a merit system that is not influenced by politics or political pressure, then we ought to have the clear language in this bill which says, as this amendment will make it clear, that such a recommendation may not be accepted. I think we should tell to every American that he can be considered for a merit system job if he has the competence and will enter the competitive examination and is qualified, and therefore the recommendation of a politician, an elected official or one appointed in the executive branch will have no bearing on his job application.

If we are really serious about civil service reform, we will put this language in very clearly and precisely, as my amendment does. I cannot imagine having any objection, but I offer it as an amendment and urge that it be adopted.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I will be happy to yield to my good friend and colleague, the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Chairman, I would ask the gentleman from Virginia (Mr. HARRIS) if this is the amendment that we defeated in the committee rather overwhelmingly?

Mr. HARRIS. As I recall—and I am not sure whom my colleague refers to as "we."

Mr. ROUSSELOT. Well, I am still on the committee, I am part of the committee.

Mr. HARRIS. I do not think it was a partisan effort at all. The amendment was offered in the committee and was not adopted in the committee.

Mr. ROUSSELOT. It was defeated?

Mr. HARRIS. Yes. And if I may continue, I thought that my amendment was defeated more by proxies than it was by people in the committee and I wanted to give the full house a chance to vote on it where proxies may not have the full effect on it as they do in the committee.

Mr. ROUSSELOT. I think the gentleman is right, proxies do not work here.

But it was defeated in the committee, is that right?

Mr. HARRIS. My colleague is correct, or I would not be offering it here on the floor, I might point out to my colleague.

Mr. ROUSSELOT. I thank the gentleman.

Mr. DERWINSKI. Mr. Chairman, I rise reluctantly, of course, to oppose the amendment offered by the gentleman from Virginia (Mr. HARRIS).

Mr. Chairman, I would also like to use this amendment to emphasize the seriousness of this measure, the importance of this measure to the well-being of this country and its citizenry and the absolute need for this Congress to pass this civil service reform which our noble President has so properly, legitimately and heroically requested.

I would first point out to my dear friend, the gentleman from Virginia (Mr. HARRIS) that I believe he used some weak logic in supporting his amendment. He first stated that it was a fact of life he was trying to correct. You do not correct facts of life, they are there.

Secondly, the gentleman referred to the fact that he lost the amendment in committee because proxies were in other people's hands. That sounds to me as if he is admitting that certain other Members had more charm and were able to exercise the use of proxies because often the person handling the proxies is the one you have the greatest confidence in, the one whose judgment you respect.

Mr. HARRIS. Mr. Chairman, will my colleague yield on that point?

Mr. DERWINSKI. Certainly.

Mr. HARRIS. I want to make it clear to this body, and to my colleague, that there is no question of a contest on charm between my colleague and me, there is no doubt about it, my colleague has the charm.

Mr. DERWINSKI. Mr. Chairman, I think I will put that statement in my campaign literature.

But, here is the point. Under the gentleman's amendment, it would prohibit Members of Congress and Presidential appointees from submitting a recommendation on the application of any person for Federal career employment. Note, it only says Members of Congress and Presidential appointees. It would not prohibit national committeemen or party chairmen, ward committeemen, or local political leaders. Or, to use the gentleman from Virginia's term, politicians should not influence career appointments. What he is saying is that we, as Members of Congress, are politicians. Presidential appointees are politicians, but a Chicago ward committeeman is not a politician.

I do not know if the gentleman has studied politics across the country, but a Chicago ward committeeman is a noble kind of politician. He is a powerful politician, and to say in this amendment, as you do, that a ward committeeman of the city of Chicago could recommend someone for Federal employment, but our distinguished majority leader, the gentleman from Illinois (Mr. ROSTENKOWSKI) could not, is a denial of practical politics.

So, as much as this amendment may have some unique appeal in the suburban areas surrounding Washington, D.C., it does not really square with the facts of life across the country.

There is nothing wrong with a dedicated Presidential appointee or a dedicated Congressman legitimately recommending someone for Federal employment.

I am not aware that there have been particular abuses in this field. I do not think Members of Congress should be denied that responsibility.

In summing up my point of view, may I point out that we will have hundreds of amendments, gosh knows how many days we will be on this bill, but we must not forget the noble goal ahead of us. That noble goal is to give the President of the United States a legitimate reform of the civil service. But I suggest that this amendment does not square with the overall concept of reform.

It is unneeded, it is unworkable. It actually discriminates against Members of Congress and Presidential appointees.

Mr. Chairman, I suggest a very effective rejection of the amendment.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from California, my distinguished friend.

Mr. CHARLES H. WILSON of California. Mr. Chairman, the gentleman has been the principal advocate within the committee for the administration on this legislation, he and the gentleman from Arizona (Mr. UDALL).

Is this one of the amendments which has to be defeated in order to retain the solid support of the Republicans for this legislation?

Mr. DERWINSKI. The Republicans are

not politically motivated by this legislation other than in recognizing the nobility of the Presidential request. The Republicans have risen above partisanship on this issue. We are totally nonpartisan. We want the President of the United States to have a good civil service reform bill.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Unfortunately, we must oppose this amendment, and I would not want the Members left with the impression that, in fact, it was the Republican members of the committee who made up the majority which defeated the amendment in committee. The vote in committee was 16 to 5 against the amendment when it was considered in committee.

Mr. Chairman, what should be borne in mind is that it was not considered in a vacuum as an alternative to no control on the recommendations of the employees to the civil service versus the Harris amendment. What he seeks to do in his amendment is substitute his restriction for the one which we carefully worked out in the bill.

Mr. Chairman, if the Members will look at lines 13 through 23 on page 138, they will see that we already restrict the people who would be covered by the Harris amendment to making a recommendation solely on the basis of their personal knowledge or record. In other words, if one of your employees is seeking a civil service position and puts you down as a recommendation, you can, in fact, say in the recommendation that the employee performed the duty of a legislative assistant and worked on certain kinds of legislation, that the employee came to work on time, and that the employee had good character and good work habits.

However, one could only say those things which he knew about the person, based on his personal knowledge and the records of his office.

Mr. Chairman, the Harris amendment would not only prohibit one from answering such an inquiry, but it would prohibit any other employee, not only of our individual offices, but an employee of a committee could not answer an inquiry from a Federal agency about a job applicant who had previously been employed in that agency.

Further, Mr. Chairman, I point to the fact that the kind of recommendation that congressional employees and Presidential appointees would be permitted to make under the committee bill as it comes to us is limited further to an evaluation of the work performance, ability, aptitude, or general qualifications of the individual.

Again, we are putting a greater restriction on Members of Congress and their employees and Presidential appointees than we put on the Chicago ward heeler or ward committeeman—that is a kinder word—or the chairman of either political party; but we recognize the very special nature of the relationship of the Congress and its employees to the civil service; and the committee bill already restrains and restricts recommendations by the Members of Congress and their employees far beyond that restraint or restriction that is put on any other political officeholder.

Mr. Chairman, I would urge the Members to support the committee and reject the Harris amendment.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, my colleague and I tried to have most of my amendment read so that our colleagues would understand it.

My colleague, the gentleman from Michigan (Mr. FORD) may oppose my amendment; but I wish that he would not oppose it for a provision which is not in there.

Mr. Chairman, I read to my colleague the body of the amendment, which says that the recommendation may be considered if it is furnished pursuant to a request of an employee who is responsible for taking—or directing others to take—recommending, processing, or approving the personnel action; and consists solely of an evaluation of the work performance, ability, aptitude, character, or general qualifications of the individual involved in the personnel action.

I am sure my colleague, Mr. Chairman, will now admit that the amendment as drafted will permit any Member of Congress or staff member of Congress to make a recommendation with regard to merit system employment if it did in fact consist of an evaluation of the work performance of the Member of Congress or staff member.

Mr. FORD of Michigan. I think the gentleman is making a comparison. If the Members will look at lines 22 and 23 on page 138, they will see that the committee bill will permit an evaluation of the character, loyalty, or suitability of the individual, all of which are specifically excluded by the gentleman. It is just an unsatisfactory last-minute attempt to further narrow the position worked out by the committee, and it should be defeated.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, under the direction of the leadership in just a few minutes I am going to try to get an agreement on limitation of time and vote on this simple and uncomplicated amendment. Before we do that, I want to kind of advise my colleagues where I think we are going on this legislation and what I see as being at stake. The clock is running on all of us. The elections are not too many weeks away, and adjournment time is coming rapidly upon us. We have got a whole load of the public's business to dispose of—tax legislation, energy, all the rest.

I chatted with the Speaker a moment or two today. The load is horrendous. I think it is incumbent upon all of us to make this a proud time of the House and act with dispatch on important legislation between now and the time we adjourn.

There is broad support for this bill. I do not think there is any question in anybody's mind that if we took a vote on final passage at this time, it would pass by a very large margin, possibly 2 to 1 or better. It has broad support among labor management people and business groups. It will give perhaps a little bit of ability to manage.

A group of us met with the Vice President today, and he told us about the President going off to Bonn to the Economic Summit. One of the things he could do, he could do administratively, and the frustration of all Presidents was there. He asked one of the bureaus—and I will not name which one—to give him a report in 60 days where he could get a fight going on inflation. When he asked for it, their response was, we are not ready yet. The President wrote a handwritten note to the director of that agency and said, "I am going to Bonn and want to take this with me. Will you have it ready when I come back?" The report came back from the bureau saying, "You don't really need it, and we probably won't be able to do what you want us to do." That type of thing has frustrated Presidents from time immemorial.

The American people are angry at the inexpressiveness of the Federal Government, and we are trying to give the President the tools with which to make this executive branch work.

Here we are with two eminent colleagues—and I love them both—the gentleman from California (Mr. CHARLES H. WILSON), and the gentleman from Missouri (Mr. CLAY) on the committee who do not want a bill. They are sincere about it. They do not want a bill this year. They are using procedures in the House rules and threatening to continue to use them. But I want the Members of the House to know what is at stake here.

We heard a charge here by the gentleman from California that we are acting hastily. Let me give you some of the history. The bill was introduced on March 3, had 13 long days of hearings. We heard from every segment all over this country. It was suggested by some that the Democratic members of the committee ought to get our act together. We met day after day and night after night, haggling over every section of the bill, and came up with the consensus of our party. The committee went to markup day after day, in night sessions, over a period of from June 21 to July 19. We finally got a bill. It was voted out by a big bipartisan consensus. The gentleman from Illinois (Mr. DERWINSKI), and a lot of good people on the other side helped bring it out by a vote of 18 to 7. There was general debate on August 11. Everybody has had time to study the amendments. Dozens of them are printed in the RECORD now. This is our President's major domestic bill, a bill our Speaker and the majority leader have given high priority to before the House. It is not going to go away. There is another body down at the other end of this building whose members can talk and decide what priorities and legislative schedules we will have, but this bill is going to be acted on in this session.

One of our options in scheduling is to

go tomorrow, quit at 3:30. The other option that will give the Members an idea of the importance of this legislation is that all suspensions are going to be knocked off on Monday. We will work on this bill all day Monday. We will stay Monday night to finish it. A lot of people are going to get hurt by having suspensions taken off of the calendar on Monday. I have some business on the Suspension Calendar. I think everybody has a stake in processing those important bills before we leave here. Some of them require conferences with the Senate.

So I would simply appeal to my colleagues who have strong feelings about this bill to work with us and let the legislative process work.

We are not going to shut off any Member. We have serious amendments to consider. There are a lot of amendments pending, and we want to give full consideration to them and then either vote them up or down.

Let me say to the Members, particularly my friends on this side, let us not go home having to say that the President and the Democratic Congress cannot even act in 6 or 8 months on this major piece of legislation to give us some flexibility and some management direction in the executive branch. This is a fine thing that we could take home to our constituents as one accomplishment of this Congress.

Mr. Chairman, I ask unanimous consent that all debate on the pending Harris amendment and all amendments thereto do now cease.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, will the gentleman from Arizona (Mr. UDALL) tell us what the program will be for tomorrow, since he has already indicated what might happen?

Mr. UDALL. Mr. Chairman, if the gentleman will yield, if we have some expression of cooperation, I think we might finish this bill tomorrow. We will come in at 10, and we could be out of here by 3 o'clock. Unless I have those assurances, I am going to accept the offer of the leadership to put the bill off until Monday.

In that event, the suspension calendar is going to be bumped, and then we will be in here on Monday and go as late as need be to finish this bill on Monday. That is our option.

Mr. Chairman, I would prefer to proceed tomorrow in an expeditious kind of way and decide these things on their merits. But if we are going to be forced to read every line and every section of a 300-page bill, considerable time will be taken.

Mr. BAUMAN. Mr. Chairman, let me assure the gentleman that I will be glad to cooperate with him.

Mr. UDALL. The gentleman from Maryland (Mr. BAUMAN) is always cooperative.

Mr. BAUMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. HARRIS. Mr. Chairman, reserving the right to object, I listened carefully to my colleague, the distinguished vice chairman of the committee, when he made his comments, and I wondered if my colleague would be kind enough to tell me this: The gentleman did not mention the amendment, and I was wondering if he is for it or against it.

Mr. Chairman, may the RECORD show that my colleague, the gentleman from Arizona (Mr. UDALL), put his thumb down toward the floor in a gesture meaning that he opposes the amendment, I assume.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, I told the Member that was my position, for the reasons stated by my friend, the gentleman from Michigan (Mr. FORD), and for those stated by that great Hart, Schaffner and Derwinski clothing firm.

Mr. HARRIS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. UDALL. Mr. Chairman, I move that all debate on the pending Harris amendment and all amendments thereto do now cease.

The CHAIRMAN. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and on a division (demanded by Mr. HARRIS) there were—ayes 11, noes 57.

So the amendment was rejected.

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11280) to reform the civil service laws, had come to no resolution thereon.

## REPORT ON RESOLUTION PROVIDING FOR FURTHER EXPENSES OF THE SELECT COMMITTEE ON ASSASSINATIONS

Mr. PANETTA, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1555) on the resolution (H. Res. 1276) providing for the further expenses of the Select Committee on Assassinations, which was referred to the House Calendar and ordered to be printed.

## PARLIAMENTARY INQUIRY

(Mr. CHARLES H. WILSON of California asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. CHARLES H. WILSON of California. Mr. Speaker, I was a little disappointed to hear my good friend, the gentleman from Arizona (Mr. UDALL), state what his plans would be in the event those of us who oppose the civil service reform legislation continue to utilize the House rules to take advantage of whatever we have to do to hold up the legislation.

The gentleman made an implied threat that if we do not let him go ahead tomorrow with the bill, he will arrange to have all the suspensions removed from the calendar on Monday, and then we will work until some unlimited time on Monday night.

I would like to know, Mr. Speaker, what the calendar is for tomorrow and what the program is, and I think the Members of the House are entitled to know.

The SPEAKER. Is the gentleman making a parliamentary inquiry?

Mr. CHARLES H. WILSON of California. Mr. Speaker, I make such a parliamentary inquiry, yes.

The SPEAKER. The Chair will advise the gentleman at the present time that the bill that we have before us, the civil service reform bill, will be postponed until Monday, and we will go forward with the schedule as scheduled for Friday.

Mr. CHARLES H. WILSON of California. I thank the Speaker.

## PERMISSION FOR SELECT COMMITTEE ON ASSASSINATIONS TO SIT TOMORROW AND THROUGHOUT NEXT WEEK DURING 5-MINUTE RULE

Mr. STOKES. Mr. Speaker, I ask unanimous consent that the Select Committee on Assassinations may be permitted to sit on Friday, September 8, 1978, and throughout next week during the 5-minute rule.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I wonder if the chairman of that distinguished committee could confine his request to tomorrow, and perhaps he could ask tomorrow, when we know what the schedule will be.

There might be days when very important bills are up and Members ought to be on the floor.

Mr. STOKES. Mr. Speaker, if the gentleman will yield, tomorrow the committee will be hearing witnesses who will be giving a specialized type of technical scientific testimony.

Next week we will be hearing from similar types of witnesses.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, the gentleman's problem is the uncertainty of being able to sit because of scheduling of witnesses; is that the problem?

Mr. STOKES. No, it is merely trying to comply with the House rules so that we are in conformity with the House rules.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, I have no wish to impede the progress of the gentleman and his committee, but it seems to me that in the last 3 or 4 weeks of the session—we have just received a lecture on what we should be doing on the floor—the committee might tailor its activities to the fact that we are all Members of the House of Representatives and there are numerous committees.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, do I understand that we are going to have another request for money for this committee?

Mr. STOKES. If the gentleman will yield, Mr. Speaker, there is a funding resolution which was voted out of the Committee on House Administration this morning which will be coming to the floor of the House at some date in the future.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, I will ask the gentleman this question: Why do we need so much more money? What have we already spent, 4 million bucks, or what is it?

Mr. STOKES. If the gentleman will yield, Mr. Speaker, I can say to the gentleman that at the time we last appeared before the Committee on House Administration it was made clear at that time that we would have to return for a supplemental resolution funding in order to complete the work of the committee. We anticipated it would be around the time that we begin public hearings on both the Kennedy and King assassinations.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, does the gentleman really need the whole time next week? Does the gentleman need to deny the members of his committee the right to be on the floor all that time? Could the gentleman maybe do it for a couple of days, or were those witnesses all scheduled a long time ago, or what is the problem?

Mr. STOKES. If the gentleman will yield, I will say to the gentleman that over 2 months ago, in a speech I made in the well of the House, I apprised the House of the schedule of this committee. We advised the House at that time that we would commence hearings, public hearings, on the Kennedy assassination on the 7th of September, and we would run those hearings throughout the entire month of September.

We further advised the House that, commencing immediately after the elections in November, we would return, notwithstanding the fact that the House would be in recess, that we would return and commence hearings on the King assassination throughout the entire month of November, and that we would further come back and have hearings in December in order to give final recommendations to the House.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, the gentleman is telling us that all of these witnesses were scheduled 2 or 3 months ago for this coming week?

Mr. STOKES. If the gentleman will yield further, I cannot say to the gentleman that all of these witnesses were scheduled, if the gentleman means did we actually have them under subpena for that time.

Over the past 15 months we have been conducting hearings in executive session, and many of these witnesses were kept under continued subpena so that at such time as the committee called them for public hearings, that they would be available to the committee.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## PERMISSION FOR SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT FRIDAY, SEPTEMBER 8, DURING 5-MINUTE RULE

Mr. BARNARD. Mr. Speaker, I ask unanimous consent that the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce be permitted to sit on Friday, September 8, during the 5-minute rule.

Mr. Speaker, it is my understanding that this has been cleared with the minority. The purpose of the hearing is for testimony only.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, what was the time frame?

Mr. BARNARD. One day.

Mr. ROUSSELOT. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

## LEGISLATION TO PROVIDE FISCAL RELIEF TO STATES AND LOCALITIES

(Mr. ZEFERETTI asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

● Mr. ZEFERETTI. Mr. Speaker, today I am introducing, along with Mr. NOWAK and Mr. GREEN a bill to provide fiscal relief to States and localities, and to begin movement toward the type of welfare reforms that are so urgently needed throughout the country.

This legislation is identical to S. 3470, introduced on August 25 by Senators MOYNIHAN, CRANSTON, and LONG. Effective July 1, 1979, the bill would eliminate the present AFDC funding mechanism which is based on Federal payment of a percentage of each State's AFDC costs. Instead, the bill would substitute a two-part block grant. The first part of the block grant to each State would be based on the actual Federal funding provided to that State for its AFDC costs in fiscal 1978. The second part of the block grant would be a fiscal relief element allocated among the States in proportion of their June 1978 AFDC expenditures and in proportion of their general revenue sharing allocations. Both elements of the block grant would be updated annually to reflect changes in the cost of living. For fiscal year 1980, the fiscal relief element is estimated to total $1.5 billion. The Senate Subcommittee on Public Assistance will be holding hearings on this bill Tuesday, September 12, 1978.

While it is no longer possible to enact comprehensive welfare reform legislation during this Congress, I think it is essential that we take immediate steps to provide some fiscal relief to State and local taxpayers who are struggling under the current costs of our welfare system. The Federal Government should assume for all States the present non-Federal share of benefit payments for the aid to families with dependent children and emergency assistance to families programs.

The arguments for increased Federal funding for public assistance programs are numerous and need not be repeated in detail here. Poverty is a national problem that is manifested in States and localities. Nationally induced economic and demographic trends have produced concentrations of public assistance recipients in urban and, increasingly, suburban areas that erode the financial base of these governments. States and localities did not cause and cannot cure the poverty problem in the Nation.

It costs every American taxpayer $548 to support the 25 million persons receiving public assistance. Behind the waste and failure of the $45 billion system is the Federal Government's lack of a uniform policy to prevent abuse, relieve the States of staggering and unfair financial burdens or insure equitable and sufficient coverage.

Mr. Speaker, the current system of public assistance in the United States is so poor that the words, "welfare" and "mess" have become inextricably linked in our political vocabulary. The most important unanimous conclusion is that the present welfare programs should be scrapped and a totally new system implemented. I believe Congress must take the initiative here and acknowledge this well-recognized fact. As my distinguished colleague from New York, Senator MOYNIHAN pointed out, this bill does not contain all that we would like to see done. But it does contain worthwhile changes and presents us with a real opportunity to enact substantial improvements to a welfare network that has long been riddled with both inefficiencies on the part of its administrators and unfairness suffered by its recipients.●

## CAROL FOREMAN GOES FROM FAVORITISM TO CRONYISM

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, Assistant Secretary of Agriculture Carol Tucker Foreman obviously intends to turn the position of Administrator of the Food Safety and Quality Service into a political patronage plum for a junior member of the White House Georgia Mafia.

The appointment of Sid Butler as Acting Administrator of the Food Safety and Quality Service following the resignation of Dr. Robert Angelotti last month is a clear signal that politics comes be-

fore qualifications in Mrs. Foreman's assessment of what is needed in filling critical positions in the Agriculture Department.

Although the Food Safety and Quality Service requires a person knowledgeable in scientific and technical areas, Sid Butler's sole qualification for serving even as Acting Director is that his brother Landon Butler works for Hamilton Jordan in the White House. Sid Butler may be well qualified as a lawyer and Carter campaign worker, but he has had no formal training or experience in microbiology or any of the other scientific-technical disciplines needed in a Food Safety and Quality Administrator.

It is my understanding that Assistant Secretary Foreman intends to put Sid Butler's name forward as permanent Administrator. This is simply another case of the White House Georgia Mafia's playing "All in the Family" with critical administrative positions in the executive branch. Far from seeking the best qualified replacement for Mr. Angelotti, Mrs. Foreman seems satisfied to fill this position on considerations of political favoritism.

This has been the consistent pattern followed by Mrs. Foreman in conducting her office. Under her jurisdiction, her former employer, the Consumer Federation of America, has been favored with special agriculture study grants funded by the Department. I have asked for an investigation into this questionable favoritism. Now we see this favoritism extend to the appointment of key Agriculture personnel.

Inasmuch as the Food Safety and Quality Administrator's office has jurisdiction in areas involving the Federal school lunch program, I intend to pursue the matter of Butler's appointment.

It is ironic, to say the least, that for all the high-sounding talk that has emanated from Mrs. Foreman's office regarding the need to upgrade the school feeding program, a job as vital as that of Food Safety and Quality Service Administrator should be treated by the Assistant Secretary as pure political favoritism.

I do not believe the Congress should sit idly by while the White House and Assistant Secretary Foreman disregard the need for a qualified scientist-technician to replace Dr. Angellotti. The questionable appointment of Sid Butler showed concern all of my colleagues, especially those who have agricultural constituencies.

## AN AGRICULTURE MARKET IN JAPAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, it is disappointing news which reached me this morning, that after the second day of the 3-day talks between Japanese trade officials and our Special Representative for Trade, Bob Strauss, little progress has been made on proposals to reduce tariffs for U.S. agricultural products exported to Japan.

I have taken a special interest in these negotiations, Mr. Speaker, because of the importance of the citrus industry to my congressional district. It is my understanding that the citrus issue was being considered today, but the lack of success in the first 2 days of these talks is cause for concern. While it would be desirable for our agriculture interests to see a complete lifting of the 45,000 tons per year quota on orange shipments, a doubling of our tonnage for export would be a boost to the industry, and help to turn the tide on our balance-of-trade deficit.

It is my understanding that the Japanese are not inclined to budge on this issue. The sale of citrus and beef to Japan, which is the topic of today's discussions between the Strauss team, Japanese Trade Envoy Nobuhiko Ushiba, and their Agriculture Minister Ichiro Nakagawa, amounts to less than $50 million a year for U.S. exporters. But the potential to sell more to Japan far exceeds this amount.

I know it is politically difficult for the Japanese to buckle under the pressure from the 700,000 growers of the tangerine-like mikans. More than half the seats in Japan's parliament are controlled by their domestic farm interests, and already they have protested over the mere prospect that concessions will be made to the United States. Many of my colleagues, I am sure, saw the ads in the Washington Post and Los Angeles Times last month, in which Japanese producers of citrus crops complained that the U.S. negotiators "threatened their livelihood."

Yesterday Secretary Blumenthal explained to the Japanese Vice Minister of Finance, Takehiro Sagami, of plans by our Government to improve the position of the dollar abroad. The United States sincerely wants to carry out its trade policies in an atmosphere favorable to the world economy. This, of course, will involve a concerted effort by both our country and the Japanese to reach some agreement mutually beneficial to our commercial activity in the international market.

In an effort to make the House aware of the ramifications of the present situation, I would like to share the observations of one of my constituents who recently returned from a trip to the Orient. Jacqueline Sherman of Woodland Hills, Calif., in a published letter to the editor of the Los Angeles Times, yesterday's edition, told of oranges costing 80 cents a piece in Japan. That is $1.60 a pound. A glass of orange juice is $6 there. Just a few days later she and her husband visited Hong Kong where a single orange cost only 15 cents, or 30 cents a pound. A glass of orange juice costs just 50 cents a glass there.

Clearly, it would serve the interest of the Japanese consumer to have the opportunity to purchase the less expensive American grown fruit. But this would mean that the Japanese Government would have to contend with the political consequenses of such an action, and I do not know if they are about to take that risk.

Let me conclude, Mr. Speaker, by adding that I have full faith in Ambassador Strauss in his efforts to obtain greater access for American exporters of citrus to Japan. These are an important 3 days for us, Mr. Speaker, and the cooperation and flexibility of the Japanese Government would do much to improve our relationship with them for the future.●

## QUESTIONS AND ANSWERS ON THE KEMP-ROTH LEGISLATION TO REDUCE INDIVIDUAL INCOME TAX RATES ACROSS THE BOARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 15 minutes.

● Mr. KEMP. Mr. Speaker, I had an opportunity during the just-concluded recess to compile, and to reflect further upon, the criticisms which were leveled at the Roth-Kemp legislation during the course of our recent debate on the Revenue Act of 1978.

The provisions of Roth-Kemp which pertain to individual income tax rate reductions of about 33 percent over the next 3 years were offered by me, through a motion to recommit with instructions to include those provisions in the Revenue Act, during the course of that debate. The motion failed on a surprisingly and regrettably partisan vote.

I want to raise the more obvious questions and also comment for a few moments on the criticisms and responding to them point by point.

### WHAT HARD DATA IS THERE THAT TAX RATE REDUCTIONS WORK?

"We are in a stage with persistently high inflation and one of our largest budget deficits ever. Now ROTH and KEMP are asking the country to take a bold economic gamble based largely on historic anecdotes that show major tax cuts will increase revenues. What hard economic data support such a notion?" This is an important, central question.

Today a growing number of economists believe our present inflation and large budget deficits are chiefly the result of a major inefficiency in the U.S. economy, one caused largely by high marginal tax rates. Individuals are not saving, investing, or working at desirable rates or in desirable ways.

A clear sign of this inefficiency is the existence of today's large "cash" or "subterranean" marketplace outside the taxable economy. The Government provides no hard economic data on this marketplace, because it exists outside the vision of the tax collector. But estimates are on the order of $200 billion. Lower marginal tax rates on capital and labor would draw part of this cash economy into the official tax paying economy by reducing Government's percentage in taxes of the reward for such activity, making the total economy more efficient and expanding the tax base.

Today's stock market is perhaps even harder evidence of inefficiency in the economy. The stock market is a precise measure of the value, after taxes, of the

Nation's capital stock, that is the economy's ability to produce a given flow of goods and services in the future and to reward the producers so they will sense the value of their efforts.

The Dow Jones industrial average (DJI) touched 1,000 in February 1966, as the market forecast highly efficient production flows from the capital stock. The DJI has not been close to 1,000 since then, in 1966 dollars; it is not below 900 in current dollars. For the stock market to now value the Nation's capital stock as highly as it did in 1966, the DJI would have to be roughly 2,500 or more.

One might say the economy today is not so much unemployed as it is underemployed, with individual workers and investors operating well below potential, to the detriment of the economy as a whole. They operate below their potential because tax rates are discouragingly high, standing as impediments to commerce.

Much has been said about the revenue reflows from Roth-Kemp, but not enough has been said of the effects of increased savings. Let us do so. Chase Econometrics estimates that personal savings, retained earnings, and other capital inflows will rise enough from the tax rate reductions found in Roth-Kemp to cover any added deficit, should there be such, and still have enough saving left over to increase net investment substantially. This would deliver an enormous noninflationary boost to real growth and productivity.

WHERE IS THE U.S. ECONOMY ON THE LAFFER CURVE?

Where is the U.S. economy today on the so-called Laffer curve, the graphic depiction of the relationship between tax rates and tax revenues by Prof. Arthur B. Laffer of the University of Southern California?

It is inappropriate to ask where a nation as a whole is on the Laffer curve. That curve is an instrument to analyze only "individual" economic actions. Some individuals face low marginal tax rates, and some face confiscatory rates. The Laffer curve looks at the latter, and we know these people exist in increasing numbers. The measure of total economic activity is the result of the summation of all of these individual calculations.

A nation as a whole does not face a marginal tax rate and thus cannot be placed on the Laffer curve, except as a rough, anecdotal expression of the collective problem of excessive taxation of individuals.

It is clear though that millions of individuals work and save less because they have been pushed into higher marginal tax brackets. Thus, if tax rates were reduced at the margin, saving and growth would increase and tax revenues from the expanded tax base from such savings and growth would increase. The Laffer curve is so true it is a truism.

WHY A 33-PERCENT REDUCTION IN INDIVIDUAL RATES?

I hear, "How did Roth-Kemp arrive at the 33-percent tax cut figure, 10 percent each year for 3 years cumulatively?

"If inflation is the major fear of enactment of Roth-Kemp, why not expand the tax cut time frame to 5 years, beginning the first year at a relatively low tax cut rate, increasing it year by year at an increasing rate?"

Roth-Kemp is designed as an after-the-fact adjustment of tax rates to offset the debilitating inflation rates of the 1970's.

If the progressive income tax rates had been indexed since 1970 to annually adjust for the rate of inflation, thereby preventing real increases in tax rates from occurring, the income thresholds would have been adjusted upward by more than 60 percent in that period, except that if the rates had been indexed, the deficits, contraction and inflation would not have been as severe as we have experienced.

In light of this, Roth-Kemp's 33-percent tax cut over 3 years is a relatively modest attempt to return to a sense of reasonableness in Federal income taxation.

As to the second question, I originally planned a 1-year adjustment but conceded to requests for a protracted phase-in. To extend that phase-in over 5 years would not adjust for the inflation the Carter administration forecasts for the future, let alone the last 8 years of inflation.

WHY NOT REDUCE PAYROLL TAXES INSTEAD OF LESS BURDENSOME PERSONAL INCOME TAXES?

I read, "Roth-Kemp aims its major tax cuts at the personal income tax. Yet, payroll taxes (social security, et cetera) have become far more burdensome to the average worker.

"If you really want to reduce labor costs (and thus slow inflation), raise employment, and provide incentives to invest, why not reduce the worker payroll tax and forget about the less burdensome personal income tax?"

This question confuses the difference between the burden of taxation and the incidence of taxation. There is an important distinction, which can be explained with this brief scenario.

If Government spends $x$ amount of the economy's resources, it must raise $x$ amount of resources through taxation. It places certain tax rates on one portion of the economy, say income recipients of all kinds. This is the incidence of the taxation.

If some of those income recipients are discouraged by the high tax rates, they can choose leisure over income, or lower nontaxable income over higher taxable income. To the degree they do this, the Government falls short of the $x$ amount of resources it has decided to spend, and the burden of providing $x$ falls on the remaining taxpayers who do not have the option to choose leisure on nontaxable income.

Thus, it is possible that raising tax rates on incomes can, in fact, increase the burden of taxation on other elements of society, such as people paying for public insurance programs like social security. As the wealthy withdraw from the tax economy, the rest pay more of a percentage of total taxes. As the wealthy come back into the taxable economy, the rest pay less of that percentage.

Government, after all, must provide x amount of resources to recipients of social security, to return to that example. If it does not get this amount by contributions to Social Security, it must place the incidence of taxation on some other element of the economy. Where will this be, if other elements of the economy are already slipping the incidence of taxation via leisure and nontaxed income because of high marginal tax rates?

As to social security taxes, they have become more burdensome because earlier contributors to the system, now retired, were promised benefits that presumed a level of wealth in the economy that does not now exist. It does not exist, many supply-side economists now believe, because of the disincentive effects of high marginal tax rates.

By lowering rates on incomes, the economy would draw capital and labor out of leisure and nontaxable income sources—bartering, loopholes—and both the incidence and burden of the now lower tax rates would fall, removing burdens from other elements of the economy. The now higher level of real national wealth can more easily provide the x amount of resources promised social security recipients.

WHY NOT SIMPLY REDUCE TAX RATES ON UNEARNED INCOME?

"If the Kennedy tax cuts of the early 1960's led to increased productivity, why didn't we see the same increase in productivity in the early 1970's when tax rates on earned income were cut from a maximum of 70 percent to 50 percent?

"Could it be that increased productivity only results from a decrease of tax rates on unearned income? If so, why not simply reduce tax rates on unearned income, a la the Hansen-Steiger bill to reduce capital gains tax rate, and forget Roth-Kemp?"

Let me respond to that.

In 1970, at the same time tax rates on "earned" income were falling from 70 percent to 50 percent in the highest marginal tax bracket, the tax rate on "unearned" income, including capital gains, was doubled. Had the rate on "earned" income not been reduced, the economic duress of the last several years would have been intensified.

Almost all economists now agree the prohibitive tax rates on "unearned" income must be reduced, "unearned" income merely being a perjorative way of describing income from capital. But Hansen-Steiger takes up only partly back to where income from capital was being taxed in 1969. The addition of Roth-Kemp would reduce tax rates on both capital and labor across the board, offsetting the debilitating effects of several years of inflation on the progressive tax system. Both actions—Hansen-Steiger and Roth-Kemp—are necessary to achieve the greatest leap in productivity over the next several years, a process already underway in mere anticipation of some amelioration of tax rates this year.

WHY SO MUCH WEIGHT ON THE INDIVIDUAL TAX RATE SIDE? SHOULDN'T THERE BE MORE FOR CORPORATIONS?

I hear from spokesman for business, "If the goal of Roth-Kemp is to generate economic expansion on the supply side of the economy, why is the proposal so stingy with cuts in the corporate income tax? Shouldn't the corporate income tax cuts be at least equal in magnitude to the personal income tax cuts to accomplish your called-for rate of economic expansion?"

It is a mistake to think of corporate taxes as taxes on capital and personal taxes as taxes on consumption. Both are taxes on production, with the former applied selectively to corporate income, the latter applied to all forms of productive income. Think about that; learn it.

In the final analysis, all income flows through to individuals, which is why Roth-Kemp emphasizes cuts in personal income taxes. An across-the-board reduction in individual income tax rates treats all forms of primary income sources without bias. In other words, individuals receive taxable income from wages and salaries, interest, dividends, royalties and capital gains, and all of these must encounter the personal income tax schedules.

There is a second reason why personal income tax cuts are so important. Any tax plan that cuts business taxes but neglects personal income taxes will do nothing to raise the rate of return on work effort. Nor will it increase the after-tax rate of return on savings. And increased savings is an important and sought byproduct of any tax cut plan.

Consider the administration's proposed tax plan, which would cut the corporate taxes while doing little to encourage increased individual work effort and savings. Businesses would be encouraged to expand. They would rush to the credit markets—today retained earnings and the investment tax credit meet only a fraction of business capital needs—and find Government trying to borrow back the tax cut it just granted. Interest rates would soar. The Federal Reserve would see this as crowding out, increase the money supply, and thus guarantee inflation.

The flaw, then, in a tax plan that fails to cut personal income taxes is that it provides no mechanism with which to expand savings. The Business Roundtable, the Conference Board, and so forth, should make note of that.

On the other hand, under Roth-Kemp, firms would reach the credit market, find a large increase in savings, providing funds for both themselves and Government, with no increase in interest rates, no crowding out, and no inflationary increase in the money supply.

The point is, we cannot modernize American industry simply by cutting taxes for business without cutting personal income taxes to encourage increased saving.

ISN'T ROTH-KEMP ANOTHER TAX RELIEF PROGRAM FOR THE RICH?

I hear from some critics:

"The Roth-Kemp bill has achieved the image of progressivity, yet its actual tax cuts would be aimed heaviest at high income taxpayers. For example, under Roth-Kemp a family of four with an adjusted gross income of $8,000 would save only $108 in taxes. A family of four with an adjusted gross income of $40,000 would save $2,616. Is not Roth-Kemp just another tax relief program for the rich?"

This question misdefines the notion of progressivity and taxes.

Although the actual dollar tax cut for higher income families as a result of Roth-Kemp is greater than for lower income families, the proposed tax cut applies equal percentage tax decreases across-the-board. The percentage decreases are equal to avoid the disincentive effect of the economy of shifting the tax burden from one income group to another.

In any event, the object of Roth-Kemp is not to put money into people's pockets. It could not do so in any case, the way this question is put. After all, where would the $108 and $2,616 come from? From Federal borrowing, or other tax increases.

The object of the Roth-Kemp proposal is to increase the efficiency of the entire economy, and thereby the level of wealth of the entire economy. In our particular economic climate today, it does no good to increase the aftertax rewards of lower income groups if this means the aftertax rewards of upper income groups must be decreased.

After all, it has traditionally been in the upper income levels where we find the managerial ability necessary to the assembling of enterprises. If the rewards associated with this activity are confiscated, or reduced to a level not matching the effort and risk entailed in attaining these capabilities, where will new job opportunities come from for lower income individuals who want to move up the ladder? The will not come, or will come in less number.

There is another misunderstanding embodied in this question. A tax rate reduction applies to future productivity, not past performance. The individual in the $8,000 AGI class should know that if he or she works productively and sharpens skills required to move toward the $40,000 AGI class, the greater reward will match the effort. And the individual in the $40,000 AGI class should know a slackening of effort, or leisure, will result in a greater loss of reward than was the case previously.

Roth-Kemp is designed to give the worker greater incentive to increase his work effort. It does this by increasing the yield from his labor.

WHY WOULD ROTH-KEMP RESULT IN HIGHER LEVELS OF CORPORATE INVESTMENT?

"Supporters of Roth-Kemp point to the high levels of business investment as a result of the Kennedy tax cuts in the 1960s. But didn't corporate investment increase because, at around the same time of the Kennedy tax cuts, the investment tax credit was introduced along with the much-needed reform of depreciation guidelines?

"Granted, Roth-Kemp may raise dividends and retained earnings, but there's no reason to believe it would result in dramatically higher levels of corporate investment."

Let me comment on this too?

The investment tax credit and reform of depreciation guidelines had beneficial effects on business expansion. But these measures are biased toward favoring mature enterprises; they do little to encourage new growth and young enterprise. Yet it is that new growth enterprise which our economy sorely needs today to renew itself.

The investment tax credit probably has not been as beneficial to the economy on the whole as its proponents believe. Why? It explicitly prejudices the entrepreneur's selection of the factors of production in favor of physical capital, against labor. To the degree labor is displaced, even temporarily, the cost to Government of social support programs increases.

With Roth-Kemp, higher levels of corporate investment would flow, in the first sentence, from encouragement of new enterprise and new corporate investment, as the pretax costs of all factors of production would fall and the potential rewards to risk capital would increase dramatically, facing not a marginal tax rate at the top of 70 percent, but of 50 percent.

WOULD NOT THE CAPITAL INVESTMENT SURGE CREATE MORE PROBLEMS THAN IT SOLVES?

"Dr. Norman Ture estimates the Roth-Kemp tax cuts will increase capital investment by $113 billion—more than a 30-percent jump—in 'real' dollars. This would be an investment boom without precedent; larger than the jump in investment between 1965 and 1972.

"But, writing in the National Journal, journalist Robert Samuelson comments that 'even if business wanted to increase investment that much, shortages in supplies and the needed machinery and materials almost certainly would rise.' Samuelson adds that without offsetting cuts in Federal expenditures, such huge tax reductions would risk creating an enormous surge in spending which would lead either to a dangerous accelerating of inflation or to a crippling credit crunch."

It is beyond our understanding of all variety of economic theory how a privately financed boom in capital investment could do all the terrible things imagined by Mr. Samuelson. Economists of all theoretical schools, including Marxists, would dismiss the Samuelson scenario. Any economist would welcome a $113 billion increase in capital investment, privately financed, if he could get it.

The more pertinent question goes to Dr. Ture's estimate of a 30-percent increase in real terms, greater than the investment jump between 1965 and 1972.

Supply-side economists believe such an increase within the realm of possibility because they believe the U.S. economy in 1978 is operating well below its potential, certainly at a far lower speed than it was achieving in 1965. Government statisticians, who can only measure quantity of production and static utilization rates—based on past rates of capital investment—dispute the supply-side theorists. But the electorate seems well aware that the economy is dragging along, espe-

cially in quality measures, relative to the preinflation era.

ISN'T ROTH-KEMP INFLATIONARY, ESPECIALLY IN THE SHORT-RUN

Much of our debate focused on inflation. Opponents said, "What about Roth-Kemp and its inflationary effects? Won't Roth-Kemp create a sudden and huge surge in consumer spending, creating the inflationary situation of too many dollars chasing too few goods? Even if investment spending increases at this time as capital stock is put in place, won't this too be inflationary, particularly in the short run?"

There are two effects of a tax rate reduction along the lines of Roth-Kemp. One, which this question addresses, is the increase in after-tax incomes of workers and investors.

In the first year of Roth-Kemp, this increase "in consumer pockets" would amount to $20 billion in a gross economy 100 times as large. But while $20 billion goes, in effect, into consumer pockets, $18 billion comes right out as a result of increased social security taxes and inflation-related tax increases. This $2 billion net is only one-thousandth the size of the economy itself—hardly enough to overwhelm capacity with great surges in consumer demand as the gloomy inflation scenarios predict.

In addition, to the degree the economy sees that this $2 billion must be paid back to finance the bonds that make it available, the economy will save, not spend, the $2 billion. Particularly in the lowest income classes, where credit is often necessary for survival, the net results of Roth-Kemp would tend to pay down debt, thus going into savings, not consumption.

The second, more important effect of Roth-Kemp is to remove unnecessarily high barriers to production. That is, a lower tax rate not only affects the current paycheck—or interest payment, or dividend check. It holds out greater incentive to work, save or invest in the future. The increased willingness of workers to produce plus the increased willingness of capital to assemble workers in new or added enterprise—there now being a greater reward for such effort—lifts the entire economy to a higher level of efficiency. Even if the physical effort expanded, in aggregate, remains the same, production of goods and services increases by increased efficiency, productivity.

As to the effects of increased investment spending, a tax rate reduction cannot focus on either labor or capital to the exclusion of the other. If tax rates on labor were zero and tax rates on capital 100 percent, there would be no employment, thus no enterprise, and no revenues. Roth-Kemp, of course, applies across-the-board on the incomes of workers, savers, and investors.

There would also be no short-run inflationary effect from Roth-Kemp. The economy simply does not await actual passage of a tax cut to begin expanding work, saving, and investment. The closer Congress gets to passing Hansen-Steiger and Roth-Kemp, and as White House resistance subsides, the more buoyant the economy will become.

Federal, State, and local tax revenues have, without doubt, increased already on the mere anticipation of lower Federal rates. That is, as individual workers, savers and investors "gear up" to take advantage of the lower rates, their taxed transactions and incomes provide increased revenue flows.

WOULD KEMP-ROTH OVERWHELM OUR EXISTING CAPACITY WITH "A TIDAL WAVE OF INCREASED DEMAND?"

Prof. Walter Heller says the Roth-Kemp tax cuts "would simply overwhelm our existing productive capacity with a tidal wave of increased demand and sweep away all hopes of curbing deficits and containing inflation". He is wrong.

Professor Heller and other opponents of Roth-Kemp think of a tax cut only in terms of the number of dollars it dumps into the economy. This is supposed to stimulate "demand" and purchasing power and be spent about twice over to increase GNP by a multiple of the tax cut. This line of reasoning is badly out of date, but for our purposes this afternoon, let's adopt it.

Opponents of Roth-Kemp then claim the proposed tax cut is too large and the resulting increase in spending would greatly exceed our unused capacity, currently between $70 and $90 billion. But is the net result of Roth-Kemp really that large?

Chase Econometrics estimates that social security tax increases and the tax increase from inflation, as it pushes people into higher tax brackets, will amount to $332.8 billion over the next 5 years. Yet, the Roth-Kemp tax cut itself totals only $383.1 billion for the same 5 years. Who is fooling whom about great spending surges?

Given that social security and other inflation-related tax increases will amount to $26.4 billion in 1979, $40.9 billion in 1980, $66.1 billion in 1981, $89.5 billion in 1982, and $109.9 billion in 1983, the net result of Roth-Kemp is only $12.8 billion in 1980, $15.9 billion in 1981, $16.1 billion in 1982, and $9.1 billion in 1983.

So how can Roth-Kemp overwhelm our existing productive capacity and generate wild inflation, even given Professor Heller's demand-multiplier analysis?

Clearly, if we ignore a $332-plus billion social security, inflation-related tax increase over the next several years without some offsetting tax relief, we will have a severe recession which will generate perhaps the largest deficits in history. That is what Roth-Kemp seeks to avoid.

WILL KEMP-ROTH CREATE SHORT-RUN PROBLEMS BECAUSE OF INADEQUATE CAPACITY ON THE SUPPLY SIDE?

I have heard it said here that, "Professor Laffer now admits Roth-Kemp may cause 'short-run' problems to the economy because of inadequate capacity on the supply side."

I do not agree.

Laffer's statement has been taken far out of context by economic journalists. Supply-side economists may "admit" to the possibility of short-term supply problems with Roth-Kemp, but only because as econometricians they refrain from making absolute statements. This, unfortunately, has not been the case with opponents of Roth-Kemp. In other words, while it is difficult for supply-side economists to imagine short-run supply problems—especially given the nature of the extended phase-in period, when asked, they will admit there is always the possibility such problems could occur.

These so-called problems, though, are only those temporary difficulties often associated with real growth. In periods of real expansion, some fragment of the economy will always run out of capacity before the rest of the economy, causing a short-term shift in relative prices that pushes the economy to seek substitutes, that is, imports or substitute goods.

But, if the fragment of the economy that runs out of capacity first believes the increased incentives to produce will be permanent—not a temporary "shot in the arm"—it will add capacity—putting on extra shifts, adding plant and equipment, training new workers—and in the midterm the relative prices will readjust.

In any event, are not temporary growing pains, if there be such, always preferable to shrinking pains?

WOULDN'T ROTH-KEMP SEND INTEREST RATES SOARING?

If the Roth-Kemp tax cut proposal were enacted today, how would interest rates be affected in 1979, 1980, and 1981?

Interest rates are, for the most part, a function of monetary policy. But if we can assume for analytical purposes, that monetary policy stays constant, interest rates would be lower with Roth-Kemp. This is because supply-side economists believe marginal tax rates are now in the prohibitive range of the Laffer Curve, and Roth-Kemp would expand the productive base, the tax base and revenues. The economy's savings pool would expand with production and there would be "crowding in," not "crowding out" in the capital markets.

Remember, too, that income tax rates are part of the wedge between borrowers and lenders. That is, there is an "interest rate paid" by the borrower and an "interest rate received" by the lender. The difference is the amount taken by the Government in taxes. When this wedge is reduced through a lowering of the tax rate, we would expect the interest rate paid by the borrower to fall, even though a part of the decreased wedge goes to a greater interest rate received by the lender.

AREN'T THE KENNEDY AND OTHER HISTORICAL EXAMPLES MISLEADING?

I hear partisans on the other side of the aisle say, "You continually say the Kennedy tax cuts of the early 1960's led to increased productivity. Why not consider the inverse situation? Was there a marked slowdown in economic growth and productivity in 1913 when the personal income tax was first imposed? Was there a marked slowdown in 1968 with the imposition of the 10 percent surcharge on income which went to finance the Vietnam war?"

What is the answer?

It is often misleading to relate tax rate and productivity changes by examining Government statistics. Markets do not respond with surges, up or down, on the official dates of change in tax laws, or any other laws. When the market gets the first inkling of a change in the wedge between effort and reward, it begins the adjustment process, so by the time the change is officially made, it often has already been fully discounted by the market.

Drawing economic assumptions based on marked slowdowns or surges in Government statistics can be a deceiving process. For example, economist Walter Heller argues that if, as Roth-Kemp supporters claim, the Kennedy tax cuts unleashed incentives by triggering a great leap forward on the supply side of the economy, where is the sudden bulge in productivity and GNP potential in the economic statistics of the mid-1960's? Heller concludes there was no bulge.

The answer is that there was a bulge in capacity, which is evident from the simple fact that without a tax cut in 1964 the economy would have been in a recession shortly thereafter. In fact, much of the support for the Kennedy tax cut was generated by the expectation that a recession was imminent. Professor Heller can answer his own question by comparing capacity after the cut to what would have happened to the economy had there not been a cut.

SHOULDN'T KEMP-ROTH BE COUPLED WITH A SPENDING LIMITATION TO ELIMINATE ANY RISK OF INFLATION-CAUSING DEFICITS?

I hear from some of the conservative Keynesians, "What about Roth-Kemp helping to maintain or even enlarge our present Federal deficit? Deficits have the inflationary effect (Federal borrowing, crowding out, and so forth) of pushing up interest rates, which usually results in pressure on the Federal Reserve to increase the money supply. Isn't the only safeguard against inflation in this situation some kind of accompanying cut or limitation in Federal spending?"

This is very important, so let me deal within several ways.

First, prudence—restraint in the expenditure of public funds—is always helpful to the Treasury and Federal Reserve in the management of public finance. And today's vigilant congressional efforts to restrain spending should be maintained.

But it is the opinion of a growing number of economists that not more than a reasonable fraction of the congressional effort should be invested in this endeavor. By this they mean that if half of Congress devotes itself to increasing Federal outlays, and the other half devotes itself to decreasing Federal outlays, there remains no political leadership devoted to economic growth. Yet this, essentially, has been the condition of the past dozen years.

Moreover, it does not seem realistic to expect that $50- or $60-billion level deficits can be ended suddenly by trimming back Federal outlays. The public demands collective expenditures for social-support programs during periods of collective economic contraction, which the United States has been experiencing for more than a decade. In fact, the public will even tolerate large waste in spending programs to insure that as many of their fellow citizens as possible are assisted, by collective effort, during this contraction period.

The approach Roth-Kemp takes is to end the economic contraction—which brought about most of the increase in Federal expenditures in the first place—and invite a period of economic growth by removing tax disincentives to commerce.

Both proposals are a suggestion that the time and intellectual resources of Congress be concentrated on expanding the economy's productive base, which, of course, expands the tax base as well. In such an expansion, we would expect the public demand for Federal outlays to diminish as the threat to their fellow citizens caused by contraction is ameliorated.

Second, if, in economic expansion, demand for Government services declines, as expected with Roth-Kemp, a budget cut occurs naturally, whether or not it has been anticipated. And a formal budget limitation becomes superfluous.

But if, for unforeseen reasons, a contraction occurs in the future—a hypothetical tariff war in Europe, for example—it is my opinion the average American would not appreciate his Government's hands being tied by a spending limitation.

The public expects Government to be flexible in managing the public economy, in good times and bad, and legislated spending limits are the equivalent of price controls in the private sector, for which the general electorate also has little enthusiasm.

In any event, supply-side economists predict the Roth-Kemp tax cuts will increase incentives for output and employment, while reducing demand for Federal outlays for unemployment and social welfare spending. But as to a forced accompanying budget cut or spending limitation it is as Irving Kristol put it in The Wall Street Journal of August 10, naive even to think that Congress can face down the spending lobbies until after it has cut taxes.●

## PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. SARASIN) is recognized for 5 minutes.

● Mr. SARASIN. Mr. Speaker, on August 16, 1978, I was absent for part of the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 712: House Concurrent Resolution 683: Second budget resolution. The House rejected a substitute amendment that sought to provide for a balanced budget, "yes"; and

Rollcall No. 713: House Concurrent Resolution 683: Second budget resolution. The House agreed to the concurrent resolution revising the congressional budget for the U.S. Government for the fiscal year 1979, "no."

On August 17, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 715: H.R. 13467: Second supplemental appropriations. The House agreed to the conference report on the measure making supplemental appropriations for the fiscal year ending September 30, 1979, "no";

Rollcall No. 716: H.R. 13467: Second supplemental appropriations. The House rejected motions to recede from its disagreement and concur in Senate amendments Nos. 48 and 82, "no";

Rollcall No. 717: H.R. 12935: Legislative branch appropriations. The House agreed to the conference report to the measure making appropriations for the legislative branch for the fiscal year ending September 30, 1979, "yes";

Rollcall No. 718: H.R. 12927: Military construction appropriations. The House agreed to the conference report on the measure making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, "yes";

Rollcall No. 719: H.R. 13468: District of Columbia appropriations. The House agreed to the conference report on the measure making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1979, "yes";

Rollcall No. 720: S. 9: Outer Continental Shelf. The House agreed to the conference report on the measure, Outer Continental Shelf Lands Act Amendments of 1978, "yes";

Rollcall No. 721: H.R. 12240: Intelligence authorization. The House agreed to the conference report on the measure to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, "yes";

Rollcall No. 722: H.R. 10898: USRA authorization. The House agreed to the rule (H. Res. 1321) under which the bill was considered, "yes"; and

Rollcall No. 723: H.R. 10898: USRA authorization. The House passed the measure to amend the Regional Rail Reorganization Act of 1973 to authorize appropriations for the U.S. Railway Association for fiscal year 1979, "yes".●

## CONSUMER EDUCATION AND ELECTRONIC BANKING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, crimes against the elderly have reached staggering proportions. What better victim is there for the hardened criminal than a frail senior citizen seen leaving the bank? And, older Americans are particularly vulnerable to attack at the first of the month, when many citizens receive Government benefits and social security checks.

Partly in response to this disgusting trend, there is a movement afoot to make Governments benefits subject to electronic banking. This would entail requiring senior citizens to set up a bank account to which their Government checks are directly deposited, via the rapidly growing system of electronic fund transfers (EFT's). This would eliminate the hazards senior citizens encounter when cashing their checks, proponents maintain.

This problem and possible solution were recently discussed by Bill Gold in his daily column, "The District Line," in the August 25 edition of the Washington Post. After considering the possibility of making EFT a condition of Government or employee benefit, Mr. Gold concluded that the best way to approach this situation is through improved consumer education of EFT systems, with a special emphasis on educating senior citizens.

Although I am greatly disturbed by the crimes being perpetrated against our Nation's senior citizens, I agree with Mr. Gold's conclusions. There is no room in the developing system of electronic banking for required use. One of the conditions of H.R. 13007, the Electronic Fund Transfer Act, which I sponsored and which passed the House August 11, is prohibition of such mandatory use. No person may be required to use electronic fund transfers as a condition of employment or Government benefit.

Consumers are traditionally slow to accept change. Consider the massive advertising campaign the banking industry launched to convince consumers to use checks. Bank customers had to be assured that checks are sometimes better than cash—that checks are like proof of payment, that checks could be stopped if merchandise is found faulty, and so on.

A similar campaign heralded the advent of credit cards. And today both checks and credit cards are an accepted way of life.

And now, the public is being asked to accept banking by computer, an inherently cold and dehumanized approach to transacting their money. And unfortunately for consumers, the banking industry has little ammunition to promote the new service. Only a handful of States have laws governing EFT transactions. There is no Federal law covering electronic banking.

Many consumers assume that because a debit card—the card used to activate electronic banking terminals—resembles a credit card, that the same laws govern the two. Nothing could be further from the truth.

The truth is if a consumer's life savings are wiped out through the use of a stolen debit card, the consumer has as much redress under Federal law as when a thief steals money from him on the street.

The most important provision of H.R. 13007 corrects this disparity by establishing a $50 consumer liability limit, very similar to that currently in effect for credit card holders. The bill further protects consumers by prohibiting the issuance of unsolicited, validated cards through the mail. H.R. 13007 also requires prompt error resolution and requires that detailed monthly statements are sent to card holders. The bill also requires that a card holder receives a receipt at the time of each transaction.

H.R. 13007 passed the House on August 11, by an overwhelming 314–2 margin. Still, the bill faces tough opposition in the Senate where a number of crippling amendments are already proposed. It will be a close race to see a comprehensive EFT bill passed this session.

I agree with Mr. Gold that consumer education is needed in the field of electronic fund transfers. And the first order of that education is letting consumers know that, as it stands, they have virtually no rights under the system.●

## MASTERS CHAMPION RUNNER, RAY GORDON: PROOF THAT YOU CAN STAY ACTIVE AND FIT AS YOU GET OLDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. PEPPER) is recognized for 5 minutes.

● Mr. PEPPER. Mr. Speaker, I would like to bring to the attention of my colleagues the outstanding achievements of Alexander R. "Ray" Gordon, Jr., age 60, who won the national title for persons over 60 in the 400-meter dash, 800-meter run, and the 1,500-meter run, at the National Masters AAU Track and Field Championships in Atlanta, Ga., July 7–9 of this year. Ray, the president of the Shenandoah Valley Runners, now holds the world record for the half mile for persons over 60 and holds other age-group records in the quarter-mile, 1,500-meter run, and may long distance cross-country and road races.

At the University of Alabama, in 1918, I ran on the cross-country team. I ran 10 miles a day during practices. While I do not run 10 miles a day now, I walk as fast as I can everywhere I go and often play 18 holes of golf.

You do not have to roll over and play dead as you get older. Ray Gordon is living proof of the potential of exercise to help one lead a vital life as one gets older. I commend him for his accomplishments and hope that Ray's achievements will serve as a model to encourage others to stay active and fit as they approach later years. By so doing, I am convinced people can live not only healthier, but longer lives.●

## IRRESPONSIBLE CONDUCT BY THE WASHINGTON POST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. FOUNTAIN) is recognized for 5 minutes.

● Mr. FOUNTAIN. Mr. Speaker, on August 5, the Washington Post ran an editorial "Urban Aid in Distress" on the administration's supplementary fiscal assistance proposal which contained two completely untrue allegations.

The Post alleged that the subcommittee which I chair has never been hospitable to urban aid plans and that I personally did not entertain any amendments before the subcommittee voted on that bill.

In addition to making these two allegations—which are demonstrably not true—the Post editorial displayed a lack of understanding about the relationship between unemployment rates and the fiscal condition of local governments.

I sent a hand-delivered letter to the Post's editor 2 days later (August 7) requesting that my response be printed while the untrue allegations were still fresh in the readers' minds.

I believe any person who is singled out for criticism in an editorial is entitled to an opportunity to defend himself and to have his response printed on a timely basis.

The Washington Post, I am sorry to report, has denied me an opportunity to reply to the untrue statements in its editorial. Moreover, it has done so in an inconsiderate and arrogant manner.

When my letter to the editor did not appear by August 11, I asked my staff to phone the Post to inquire when it would appear. Only then was I informed, through my staff, that the letter was considered too lengthy for the available space. My staff was advised that it would be printed more quickly if compressed into 850 words and rewritten as an op-ed piece.

Acting on that understanding, I took the time from a very busy schedule that same afternoon to rewrite the letter in accordance with the Post's specifications, and it was picked up by a Post messenger late in the day. What did I get for that effort? Dead silence from the Post. The Op-Ed piece did not appear, and I have never received even the courtesy of a call or letter of acknowledgement.

After repeated, unproductive phone calls to the Post's editorial office, my staff learned yesterday afternoon from Mr. Philip L. Geyelin, the paper's editorial page editor, that the Post has no intention of printing my response. So much for fair play.

I firmly believe that a free press is an essential component of a democratic society. But it is equally important that the rights and privileges accorded to the press be exercised with a sense of responsibility and a high regard for the rights of individuals.

Mr. Speaker, the Post editorial conveyed the erroneous impression that the subcommittee I chair acted hastily in voting to postpone further consideration of the supplementary fiscal assistance bill, and that I refused to consider amendments. That false impression has also been conveyed repeatedly by a subcommittee member who was on the losing side. What that member fails to disclose is the fact that he did not offer any amendment or alternative either in our Democratic caucus or in the subcommittee meeting, nor did he inform the chairman before the meeting of his intention to offer an amendment.

The truth is that the bill was fully and carefully examined in 3 days of public hearings, an executive session. a caucus, by in-depth staff analysis, and in numerous discussions among the Members. It was evident before the subcommittee meeting on August 2 that a majority of

the Members could not support the bill, and no amount of discussion would have changed the outcome. Indeed, the President personally sought to persuade at least one Member to change his position, and failed.

As for the false charge that the Chair did not permit amendments to be offered, the official stenographic record of the meeting clearly shows that I actually invited amendments on three separate occasions. This is shown on pages 7, 8, and 10 of the record. I would be delighted to furnish that transcript to interested Members.

Mr. Speaker, I request that my August 7, 1978, letter to the editor of the Washington Post be included at this point for the information of my colleagues and other readers of the CONGRESSIONAL RECORD.

The letter follows:

LETTER TO EDITOR, WASHINGTON POST

HOUSE OF REPRESENTATIVES,
*Washington, D.C., August 7, 1978.*

Your editorial, "Urban Aid in Distress", (Washington Post for August 5), makes the unwarranted assertion that the Subcommittee I chair "has never been too hospitable to urban-aid plans." I know of no factual basis for that statement. On the contrary, the Inter-governmental Relations and Human Resources Subcommittee was deeply concerned with urban problems and Federal-State-local relations long before these subjects became fashionable in Washington.

It would be correct to say that the Fountain Subcommittee has never been hospitable to unsubstantiated claims, the misuse of statistical data, and political slogans when it comes to spending the public's money.

The Subcommittee opposed the Antirecession Fiscal Assistance (countercyclical) program last year because it was poorly constructed and could not possibly serve the objectives stated for it. It was claimed the program was needed to help compensate State and local governments for their recession-related revenue losses, even though the recession had ended two years earlier. It was argued that the State and local governments would spend their allocations promptly, thereby stimulating the national economy. This argument ignored the legal reality that governments are required to follow budget procedures which preclude the rapid spending of temporary assistance. Further, a government qualified for aid if its unemployment rate exceeded 4.5 percent, a lower figure than the rate considered "full employment" by the Presidents' Council of Economic Advisers.

The use of local unemployment rates as the mechanism for targeting money to needy governments was the fatal flaw of the countercyclical program. Those rates are so unreliable that the Commissioner of Labor Statistics has described their fluctuations as no better than "random numbers" for communities under 50,000 population. Worse still, actual rates have been developed for fewer than 5,000 governments, with the vast majority of units receiving allocations on the basis of assigned "balance of the county" rates which bear little or no resemblance to the local situation. As a result, many of the wealthiest communities in the United States, located in counties like Nassua, Suffolk and Westchester in New York State, have been receiving assistance. And they would continue to receive money under the proposed new program.

Even if unemployment rates could be made reliable, they would still not be a useful measure of local need because these rates are wholly unrelated to a governments service responsibilities and fiscal condition. By an interesting coincidence, the lead story in the August 5 Washngton Post dealt with black teen-age unemployment. I agree that minority youth unemployment is a serious problem, and one which we have not yet addressed satisfactorily. It is important to note in this regard that approximately half of the national unemployment rate is attributable to youth unemployment, Youth unemployment, therefore, accounts for an even larger percentage of the high unemployment rates found in a great many central cities.

It is essential to ask in this connection what fiscal responsibility a particular local government has for this group or for the unemployed in general. The answer for most cities is "very little". There are, of course, exceptions. The cities mentioned in your editorial illustrate this point. Cleveland, New Orleans and Buffalo have no responsibility for financing any part of the costly public assistance and medicaid programs. These costs are borne by an overlying county for Buffalo and Cleveland and by the State in the case of New Orleans. Moreover, the public schools are the fiscal responsibility of independent school boards in both Cleveland and New Orleans.

In sharp contrast, a small number of cities, including New York and San Francisco, are required by their States to pay part of the non-Federal share of public assistance and medicaid costs, and they also support public education out of the municipal budget.

The fact is that local governments have widely differing responsibilities, revenue sources, and fiscal arrangements with their State governments. As a result, it is highly misleading to compare cities, especially across State lines, or to measure local need and tax effort without taking the total State fiscal system into account. And it is just plain silly to conclude a city is in fiscal need or distress on the basis of an unemployment rate or any other available socioeconomic indicator. Our Subcommittee has studied this problem, with the counsel of the Nation's leading experts, for the past several years. Like many social problems, this one is not susceptible to easy solutions.

The Washington Post has helped create the false impression that the Subcommittee acted hastily in votng to postpone consideration of the Administration's bill. The bill was carefully and fully examined in hearings, executive session, caucus, staff analyses, and in numerous discussions among the Members before last week's meeting. I am convinced that every Subcommittee member had made up his mind before the meeting, and no amount of discussion would have changed the outcome. It should be noted that not a single amendment was offered when the Chair made amendments in order on three separate occasions.

The defects of the proposed Supplementary Fiscal Assistance program are so fundamental that the bill is beyond salvage. Far from being a program to aid distressed communities, it would allocate money to fully 70 percent of the Nation's local governments. The quirks in the allocation formula result in its favoring wealthy communities over poorer ones.

How the program would operate in the Washington metropolitan area is instructive. The District government is treated as the third most distressed city among the country's one hundred largest municipalities, and would receive a per capita payment of $14.29. Among the one hundred largest cities, only Newark and New York would receive larger per capita amounts. On the other hand, no other large city or any county in the Washington area would receive a penny. However, payments would be made to such wealthy places as Chevy Chase Village, Chevy Chase Town, and Somerset. It would be difficult to devise a more irrational formula.

This legislation would surely encourage local governments to become permanently dependent on the Federal budget for such basic local services as police and fire protection and trash collection.

The local perception of need is a very flexible one when the Federal Government stands ready to hand out money. Last week, for example, I received a mailgram from the mayor of Jacksonville, Florida, which read: "Needless to say, these funds are most urgently needed and important to Jacksonville." This is the same city for which large advertisements were recently placed in the Wall Street Journal announcing its "property taxes are among the lowest in the nation and they've been going down . . . There is no State or local income tax. And independent research shows the cost of living for an executive is $10,000 a year lower here than in New York."

There is no justification for another general revenue sharing program when we already have one providing almost $7 billion a year in assistance. This is especially true at this time when the Federal Government has an astronomical national debt, a huge budget deficit, and when inflation is the most critical domestic problem facing all of us. Moreover, it is not widely known that the existing general revenue sharing program targets money more effectively to the large central cities than the Administration's proposal.

I believe there is need for a carefully designed program to help those local governments that are genuinely distressed as the result of long-term economic decline, and I plan to give this matter priority attention early next year. However, it would be a disservice to the American people to create the impression that a "quick fix" is possible now through political negotiation in the Congress.

Sincerely,

L. H. FOUNTAIN,
*Chairman, Intergovernmental Relations and Human Resources Subcommittee.*●

## THE NEED TO PROVIDE EQUAL ACCESS TO PUBLIC TRANSPORTATION FOR THE HANDICAPPED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island (Mr. ST GERMAIN) is recognized for 5 minutes.

● Mr. ST GERMAIN. Mr. Speaker, for the Nation's 30 million handicapped citizens, the Rehabilitation Act of 1973, the bill outlining a broad program to insure that Federal funds are spent in a manner that would promote accessibility and eliminate traditional obstacles, was a source of hope.

The hope carried in the bill was that the handicapped would soon be able to move about freely in a world that had, for years, been filled with impassable barriers.

A cornerstone in this quest for equal access is the Transbus, the vehicle that would give the infirm and handicapped the freedom of movement now enjoyed by the rest of the population.

The Secretary of Transportation in 1977 ordered that by September 1979 all public transportation must be accessible to the handicapped by use of the Transbus.

I am firmly committed to the concept of equal accessibility and feel that any

proposal aimed at delaying this program would undermine the intent of Congress as expressed in the Rehabilitation Act of 1973.

It has been brought to my attention that, due to a lack of technical know-how, the mandate requiring the Transbus would have to be scuttled.

The debate to determine the best possible system has been raging for over 5 years and now, according to opponents of the Transbus, we are still at step 1.

I cannot accept any further delays in the right to accessible transportation for the handicapped and urge the Congress and the Secretary of Transportation to act to insure that the intent of the Rehabilitation Act be carried out so that public transportation is provided to all Americans.●

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. RANGEL (at the request of Mr. WRIGHT), for after 6 p.m. today and for September 8 and 11, on account of official business.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GREEN) to revise and extend their remarks and include extraneous material:)

Mr. GOLDWATER, for 5 minutes, today.
Mr. KEMP, for 15 minutes, today.
Mr. SARASIN, for 5 minutes, today.

(The following Members (at the request of Mr. BARNARD) to revise and extend their remarks and include extraneous matter:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. PEPPER, for 5 minutes, today.
Mr. FLOOD, for 5 minutes, today.
Mr. FOUNTAIN, for 5 minutes, today.
Mr. ST GERMAIN, for 5 minutes, today.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. SIKES, in two instances and to include extraneous matter.

(The following Members (at the request of Mr. GREEN), and to include extraneous matter:)

Mr. FINDLEY in four instances.
Mr. DERWINSKI in three instances.
Mr. MICHEL.
Mr. COLLINS of Texas in three instances.
Mrs. HOLT.
Mr. SNYDER.
Mr. STEIGER.
Mr. ARCHER.
Mr. DORNAN in two instances.
Mr. RUDD.
Mr. WHALEN.
Mr. HOLLENBECK in two instances.
Mr. SARASIN in two instances.
Mr. WALKER.
Mr. STEERS.

(The following Members (at the request of Mr. BARNARD), and to include extraneous material:)

Mr. ANDERSON of California in three instances.
Mr. GONZALEZ in three instances.
Mr. ROGERS in five instances.
Mr. RYAN.
Mr. REUSS.
Mr. IRELAND.
Mr. LONG of Maryland.
Mr. YOUNG of Missouri.
Mr. BRECKINRIDGE in five instances.
Mr. BLOUIN.
Mr. TEAGUE in three instances.
Mr. MINETA.
Mr. MCDONALD.
Mr. VANIK.
Mr. HARKIN.
Mr. HARRIS.

## ENROLLED BILL SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 6669. An act to establish a comprehensive and coordinated national climate policy and program, and for other purposes.

## BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on September 6, 1978, present to the President, for his approval, bills and joint resolutions of the House of the following titles:

H.R. 185. To amend section 2632 of title 10, United States Code, to provide the Secretary of the department in which the Coast Guard is operating with the authority to transport Coast Guard employees to and from certain places of employment;

H.R. 2931. To amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State or local laws which are inconsistent with such contracts, and for other purposes;

H.R. 2952. For the relief of M/Sgt. William E. Boone, U.S. Army, retired;

H.R. 3532. To amend chapter 639 of title 10, United States Code, to enable the Secretary of the Navy to change the name of a publication of the Naval Observatory providing data for navigators and astronomers;

H.R. 7161. To amend title 10, United States Code, to allow nationals, as well as citizens, of the United States to participate in the Junior Reserve Officers' Training Corps program;

H.R. 7162. For the relief of Stephanie Johnson;

H.R. 8342. To amend title 5, United States Code, to provide for the application of local withholding taxes to Federal employees who are residents of such locality;

H.R. 8397. To provide that a certain tract of land in Pinal County, Ariz., held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation;

H.R. 8471. To authorize the Governor of the State of Wyoming to exhibit the Nameplate, ship's bell, and silver service of the U.S.S. *Wyoming* without restriction as to the place of such exhibition;

H.R. 8771. To amend title 5, United States Code, to authorize the Civil Service Commission to comply with the terms of a court decree, order, or property settlement in connection with the divorce, annulment, or legal separation of a Federal employee who is under the civil service retirement system, and for other purposes;

H.R. 10878. To extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, and for other purposes;

H.R. 10899. To provide for Federal regulation of participation by foreign banks in domestic financial markets;

H.R. 12106. To amend the Independent Safety Board Act of 1974 to authorize additional appropriations;

H.R. 12240. To authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes;

H.R. 12602. To authorize certain construction at military installations for fiscal year 1979, and for other purposes;

H.R. 12927. Making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 13235. For the relief of James Thomas Lantz, Jr., David D. Bulkley, and Arthur J. Abshire;

H.R. 13467. Making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes;

H.R. 13468. Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1979, and for other purposes;

H.J. Res. 773. Authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning September 17, 1978, as "National Port Week"; and

H.J. Res. 1014. Designating April 28 and 29 of 1979 as "Days of Remembrance of Victims of the Holocaust."

## ADJOURNMENT

Mr. BARNARD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 8 minutes p.m.) the House adjourned until tomorrow, Friday, September 8, 1978, at 10 o'clock a.m.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4932. A letter from the Director of Legislation, Department of the Navy, transmitting notice of the Navy's intention to donate a Japanese flying boat (Kawanishi H8K2: code name Emily) to the Japanese Foundation for the Promotion of Maritime Science, Tokyo, Japan, pursuant to 10 U.S.C. 7545; to the Committee on Armed Services.

4933. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense services to Saudi Arabia (transmittal No. 78–66), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4934. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain military equipment to Saudi Arabia (transmittal No. 78–68), pursuant to section 36(b) of the Arms Export Control Act; the Committee on International Relations.

4935. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to

sell certain defense services to Saudi Arabia (transmittal No. 78–87), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4936. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting, a monthly report on sales of retail gasoline for April 1978, pursuant to section 4(c)(2)(A) of the Emergency Petroleum Allocation Act of 1973; to the Committee on Interstate and Foreign Commerce.

4937. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting a monthly report on sale of retail gasoline for May 1978, pursuant to section 4(c)(2)(A) of the Emergency Petroleum Allocation Act; to the Committee on Interstate and Foreign Commerce.

4938. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting a monthly report on sales of refined petroleum products for May 1978, pursuant to section 4(c)(2)(A) of the Emergency Petroleum Allocation Act; to the Committee on Interstate and Foreign Commerce.

4939. A letter from the National Commander, Military Order of the Purple Heart, transmitting the report on the audit of the Order for the year ended June 30, 1978, pursuant to section 3 of Public Law 88–504; to the Committee on the Judiciary.

4940. A letter from the Chairman, National Transportation Safety Board, transmitting the Board's budget request for fiscal year 1980, pursuant to section 304(b)(7) of Public Law 93–633; jointly, to the Committees on Appropriations, Interstate and Foreign Commerce, and Public Works and Transportation.

4941. A letter from the Comptroller General of the United States, transmitting a report on the Agency for International Development's housing investment guaranty program (ID–78–44, September 6, 1978); jointly, to the Committees on Government Operations, and International Relations.

4942. A letter from the Secretary of Transportation, transmitting a report on the study of highway needs to solve energy problems, pursuant to section 153(b) of Public Law 94–280; jointly, to the Committees on Public Works and Transportation, and Ways and Means.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ZABLOCKI: Committee of conference. Conference report on H.R. 12222 (Rept. No. 95–1545). Ordered to be printed.

Mr. ZABLOCKI: Committee of conference. Conference report on S. 3075 (Rept. No. 95–1546). Ordered to be printed.

Mr. FOLEY: Committee on Agriculture. S. 409. An act to designate the Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center" (Rept. No. 95–1547). Referred to the House Calendar.

Mr. FOLEY: Committee on Agriculture. H.R. 7432. A bill to designate the U.S. Department of Agriculture's Bee Research Laboratory in Tucson, Ariz., as the "Carl Hayden Bee Research Center" (Rept. No. 95–1548). Referred to the House Calendar.

Mr. FOLEY: Committee on Agriculture. H.R. 11123. A bill to designate the U.S. Department of Agriculture's Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station" (Rept. No. 95–1549). Referred to the House Calendar.

Mr. FOLEY: Committee on Agriculture. H.R. 11079. A bill to amend the Farm Credit Act of 1971 (85 Stat. 583) to extend the term for production credit association loans to producers or harvesters of aquatic products; with amendment (Rept. No. 95–1550). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. H.R. 13675. A bill to amend section 103(f)(1) of the Agricultural Act of 1949 by deleting the third sentence thereof in order to insure that interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities (Rept. No. 95–1551). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. S. 2946. An act to authorize the Secretary of Agriculture to relinquish exclusive legislative jurisdiction over lands or interests under his control (Rept. No. 95–1552). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. S. 2951. An act to authorize the Secretary of Agriculture to accept and administer on behalf of the United States gifts or devises of real and personal property for the benefit of the Department of Agriculture or any of its programs (Rept. No. 95–1553). Referred to the Committee of the Whole House on the State of the Union.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 13331. A bill to amend title 28 of the United State Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines; wth amendment (Rept. No. 95–1554). Referred to the Committee of the Whole House on the State of the Union.

Mr. DENT: Committee on House Administration. House Resolution 1276. Resolution providing for the further expenses of the Select Committee on Assassinations (Rept. No. 95–1555). Referred to the House Calendar.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. COCHRAN of Mississippi (for himself, Mr. BOWEN, Mr. BUTLER, Mr. EVANS of Georgia, Mr. JOHNSON of Colorado, Mr. LOTT, Mr. MCDONALD Mr. STEED, and Mr. STOCKMAN):

H.R. 14002. A bill to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws; to the Committee on the Judiciary.

By Mr. DAVIS:

H.R. 14003. A bill to amend title XVIII of the Social Security Act with respect to the payment, under the medicare program, of services of physicians rendered in a teaching hospital; jointly, to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. GRADISON (for himself, Mr. BLOUIN, Mr. BOWEN, and Mr. WYDLER):

H.R. 14004. A bill to amend the Internal Revenue Code of 1954 to provide for automatic cost-of-living adjustments in the income tax and withholding rates; to the Committee on Ways and Means.

By Mr. RICHMOND (for himself, Mr. AKAKA, Mr. BONIOR, Mr. PHILLIP BURTON, Mr. CARR, Mrs. CHISHOLM, Mr. CORRADA, Mrs. COLLINS of Illinois, Mr. EILBERG, Mr. GARCIA, Mr. GREEN, Mr. HARRINGTON, Ms. KEYS, Mr. KRUEGER, Mr. LEDERER, Mr. LOTT, Mr. MITCHELL of Maryland, Mr. NOLAN, Mr. OTTINGER, Mr. PEASE, Mr. PEPPER, Mr. RANGEL, Mr. SIMON, Mrs. SPELLMAN, and Mr. STARK):

H.R. 14005. A bill to provide more effectively for the use of interpreters in courts of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. EVANS of Indiana:

H.R. 14006. A bill to prohibit the Secretary of Agriculture from prohibiting the use of nitrites as food preservatives as the basis of any carcinogenic effect nitrates may be represented to have until a satisfactory substitute is commercially available; to the Committee on Agriculture.

H.R. 14007. A bill to prohibit the Secretary of HEW from prohibiting the use of nitrites as food preservatives as the basis of any carcinogenic effect nitrates may be represented to have until a satisfactory substitute is commercially available; to the Committee on Interstate and Foreign Commerce.

By Mr. HARSHA:

H.R. 14008. A bill to amend the Packers and Stockyards Act, 1921, for purposes of requiring persons who purchase meat or meat food products from packers to pay for such purchases within 8 days; to the Committee on Agriculture.

By Mr. STEIGER (for himself, Mr. GEPHARDT, Mr. HORTON, Mr. FUQUA, Mr. GRADISON, Mr. WIRTH, Mr. HILLIS, Mr. HEFTEL, Mr. ERTEL, Mr. VOLKMER, Mr. BLANCHARD, Mr. GLICKMAN, Mr. YOUNG of Missouri, Mr. FINDLEY, and Mr. JOHN T. MYERS):

H.R. 14009. A bill to require biennial reports to Congress on the effectiveness of Government programs, and for other purposes; to the Committee on Government Operations.

By Mr. WATKINS:

H.R. 14010. A bill to change the name of Clayton Lake which is an element of the flood control project for the Clayton and Tuskahoma Reservoirs, Kiamichi River, Okla., to Sardis Lake; to the Committee on Public Works and Transportation.

By Mr. ZEFERETTI (for himself, Mr. NOWAK, and Mr. GREEN):

H.R. 14011. A bill to amend the Social Security Act to improve the operation of the aid to families with dependent children program and thereby provide fiscal relief for State and local welfare costs; to the Committee on Ways and Means.

By Mr. HARRIS (for himself, Mr. DIGGS, Mr. FAUNTROY, Mr. FISHER, Mrs. SPELLMAN, Mr. MCKINNEY, and Mr. STEERS):

H.R. 14012. A bill to amend the National Capital Transportation Act of 1969 to authorize additional Federal contributions for the cost of construction of the regional rail system of the Washington Metropolitan Area Transit Authority, to provide an orderly method for the retirement of bonds issued by such Authority, and to provide an annual operation and maintenance subsidy to such Authority to reflect the special Federal relationship to such system; to the Committee on the District of Columbia.

By Mr. LEACH (for himself, and Mr. BLOUIN):

H.R. 14013. A bill to amend title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954 to provide mandatory social security coverage for Members of Congress, offsetting against any benefits based on such coverage the amount of any civil service annuities simultaneously

payable (on the basis of such coverage) to such Members or their survivors; to the Committee on Ways and Means.

By Mr. QUAYLE (for himself, Mr. ABDNOR, Mr. AUCOIN, Mr. ANDERSON of Illinois, Mr. BADHAM, Mr. BAFALIS, Mr. BUTLER, Mr. CAVANAUGH, Mr. CONTE, Mr. FORSYTHE, Mr. FITHIAN, Mr. GOLDWATER, Mr. GRADISON, Mr. GUYER, Mr. HANSEN, Mr. HARRINGTON, Mrs. HECKLER, Mr. HOLLENBECK, Mr. KILDEE, Mr. LAGOMARSINO, Mr. LEACH, Mr. MCCLOSKEY, Mr. MCKINNEY, Mr. MAGUIRE, and Mr. MITCHELL of Maryland):

H.R. 14014. A bill to secure and protect the rights of citizens and protect the freedom of the press; to the Committee on the Judiciary.

By Mr. QUAYLE (for himself, Mr. MURPHY of Pennsylvania, Mr. NOLAN, Mr. PANETTA, Mr. PATTERSON of California, Mr. PATTISON of New York, Mr. RANGEL, Mr. SCHEUER, Mrs. SPELLMAN, Mr. SYMMS, Mr. THONE, Mr. WALKER, Mr. WALGREN, and Mr. WEISS):

H.R. 14015. A bill to secure and protect the rights of citizens and protect the freedom of the press; to the Committee on the Judiciary.

By Mrs. SMITH of Nebraska:

H.R. 14016. A bill to provide indemnities to beef, goat, or sheep producers or owners when import quotas are used to suppress market prices: jointly, to the Committees on Agriculture and Ways and Means.

By Mr. WALKER:

H.R. 14017. A bill to limit foreign assistance to programs relating to food production and nutrition and military assistance; to the Committee on International Relations.

By Mr. ADDABBO (for himself and Mrs. COLLINS of Illinois):

H.J. Res. 1131. Joint resolution to authorize and request the President to issue a proclamation designating November 30, 1978, as "National Postal Workers' Recognition Day"; to the Committee on Post Office and Civil Service.

By Mr. COLLINS of Texas (for himself, Mr. HAGEDORN, Mr. HYDE, and Mr. SYMMS):

H. Con. Res. 705. Concurrent resolution expressing the sense of the Congress that merit employment in the civil service be preserved; jointly, to the Committees on Education and Labor, and Post Office and Civil Service.

By Mr. SOLARZ (for himself, Mr. HORTON, Mr. PEASE, and Mr. JEFFORDS):

H. Con. Res. 706. Concurrent resolution expressing the sense of Congress that the Attorney General, under the authority of the Immigration and Nationality Act, should parole into the United States Cambodian refugees currently held in camps in Thailand; to the Committee on the Judiciary.

By Mr. VENTO:

H. Con. Res. 707. Concurrent resolution expressing the sense of Congress regarding the withdrawal of Syrian troops in Lebanon; to the Committee on International Relations.

By Mr. STEERS (for himself, Mr. MOFFETT, Mr. MOORHEAD of California, and Mr. COHEN):

H. Res. 1340. Resolution calling upon the President to communicate to the Government of the Soviet Union the concern of the United States that Issac Zlotver be granted permission to emigrate to Israel in order to be reunited with his family; to the Committee on International Relations.

## MEMORIALS

Under clause 4 of rule XXII,

469. The SPEAKER presented a memorial of the Legislature of the State of California, relative to Vietnamese refugees; to the Committee on the Judiciary.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. MCFALL introduced a bill (H.R. 14018) for the relief of Ignacio Aguila Ramos, which was referred to the Committee on the Judiciary.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 8729

By Mr. MINETA:

—Page 42, strike out line 18 and all that follows down through page 43, line 23.

—Page 43, strike out lines 16 through 21.

Page 43, line 22, strike out "(4)" and insert in lieu thereof "(2)".

H.R. 11280

By Mr. COLLINS of Texas:

—Page 147, after line 22, insert the following:

"(d)(1) In establishing and enforcing standards applicable to appointment or retention of any individual in any position in the Food and Drug Administration, the Drug Enforcement Administration, the National Institute on Drug Abuse, the Office of the Attorney General, or any other Executive agency designated by the Office of Personnel Management the functions of which relate to enforcement of laws relating to controlled substances, the Office shall provide for the investigation of such individual relating to the past and present use of controlled substances.

"(2) For the purpose of this section, the term 'controlled substance' has the meaning set forth in section 102(6) of the Controlled Substances Act.

H.R. 11280

By Mr. CORCORAN of Illinois:

—Page 305, beginning on line 14, strike out "Except as provided under subsection (e) of this section, if" and insert in lieu thereof "If".

Page 308, strike out line 3 and all that follows down through line 23.

Page 308, line 24, strike out "(f)" and insert in lieu thereof "(e)".

Page 309, line 3, strike out "(g)" and insert in lieu thereof "(f)".

Page 309, line 7, strike out "(h)" and insert in lieu thereof "(g)".

Page 310, line 12, strike out "(i)" and insert in lieu thereof "(h)".

H.R. 11280

By Mr. MCCLOSKEY:

—Page 244, after line 20, insert the following new subsection:

"(d)(1) Subject to paragraph (2) of this subsection, effective for pay periods beginning in October, November, and December of each year after calendar year 1980, each annual rate of basic pay determined under subsections (a) through (c) of this section shall be decreased or increased (as the case may be) so that the average of that annual rate (taking into account such adjustment) for all pay periods beginning in the calendar year is the same percentage of that annual rate of pay (disregarding any adjustment under this subsection) as the percentage that—

"(A) the revenues received by the United States during the fiscal year ending immediately before such 3-month period is of

"(B) the budget outlays made by the United States during such fiscal year.

"(2) For purposes of this subsection—

"(A) the average annual rate referred to in paragraph (1) shall be rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next highest multiple of $100); and

"(B) the percentages referred to in paragraph (1) shall be rounded to the nearest multiple of a tenth of a percent (or if midway between multiples of a tenth of a percent, to the next highest multiple of a tenth of a percent).

"(3) In applying subsection (b) of this section for pay periods beginning during such 3-month period, the rates of pay for level GS–16 and for level IV referred to in subsection (b) shall be adjusted in accordance with paragraph (1) of this subsection.

"(4) Effective for pay periods beginning after the 3-month period, the rate which shall apply, unless otherwise adjusted under this section, shall be that rate which would have been applicable for those pay periods if no adjustment had been made under this subsection.

"(5) For the purpose of this subsection, the Secretary of the Treasury shall determine and make public after the end of each fiscal year the revenues received and the budget outlays made during such fiscal year. The terms 'revenues' and 'budget outlays' shall be used for purposes of this subsection as those terms are used in the Congressional Budget and Impoundment Control Act of 1974.

Page 244, line 21, strike out "(d)" and insert in lieu thereof "(e)".

H.R. 11280

By Mr. PANETTA:

—Page 238, line 8, strike out "service" and insert in lieu thereof the following: service, including any significant reduction in paperwork".

—Page 265, line 9, strike out "service" and insert in lieu thereof the following: "service, including any significant reduction in paperwork".

Page 267, line 21, insert after "operations" the following: "or achieves a significant reduction in paperwork".

Page 268, line 6, insert after "operations" the following: "or achieves a significant reduction in paperwork".

Page 270, insert after line 16 the following new section:

INCENTIVE AWARDS AMENDMENTS

SEC. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

Page 270, line 18, strike out "Sec. 502." and insert in lieu thereof "Sec. 503".

Page 272, line 19, strike out "Sec. 503." and insert in lieu thereof "Sec. 504.".

Page 130, in the table of contents, strike out the items relating to sections 502 and 503 and insert in lieu thereof the following:

Sec. 502. Incentive awards amendments.
Sec. 503. Technical and conforming amendments.
Sec. 504. Effective date.

H.R. 11280

By Mrs. SPELLMAN:

—Page 208, line 4, after "recruited" insert "(including from within the civil service)".

Page 208, after line 12, insert the following new subsection:

"(d)(1) The regulation under subsection (c) of this section shall provide that in filling any position in an Executive agency for which a recruitment program under subsection (c) is being conducted by that agency for women, to the maximum extent practicable, an individual not entitled to status as a preference eligible under section 2108(3) (A) or (C) for purposes of preference in consideration for appointment shall be entitled, with respect to consideration for appointment to that position, to the preference

available to an individual having the status of a preference eligible under section 2108 (3) (A) if the individual—

"(A) is a woman; and

"(B) has completed, in the aggregate, at least 5 years of civilian service.

"(2) Such regulation shall provide, to the maximum extent practicable, that no individual shall be excluded from consideration for appointment by reason of the application of this subsection."

Page 208, line 13, strike out "(d)" an insert in lieu thereof "(e)".

Page 208, line 26, strike out "(e)" and insert in lieu thereof "(f)".

—Page 209, after line 12, insert the following new subsection:

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

SEC. 313. (a) Section 3102 of title 5, United States Code, is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out "and" at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

"(4) 'deaf employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned under regulations of the head of that agency, that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and";

(2) in subsection (b), by inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and amending the last sentence to read as follows: "A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18."

(3) in subsection (c), by inserting "or deaf" after "blind"; and

(4) by inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter VIII of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.".

(b) (1) The analysis of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.".

(2) The caption for section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.".

(c) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "open meetings)" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),".

Page 209, line 14, strike out "313." and insert in lieu thereof "314.".

Conform the table of contents accordingly.

# EXTENSIONS OF REMARKS

## KEEPING AN EYE ON AIRBUS

### HON. MARK W. HANNAFORD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. HANNAFORD. Mr. Speaker, I have been monitoring with great interest Airbus Industrie negotiations with China Airlines for the purchase of several wide-bodied jet aircraft. This is because I have received information indicating that the French Government has taken the extraordinary step of offering landing rights in Paris to the Chinese if they purchase the Airbus A300. Such an offer would violate international agreements between France and the United States and compel us to take Government precautions against similar future anticompetitive actions on the part of our European competitors.

When this matter first came to my attention, I wrote to Secretary of the Treasury Blumenthal alerting him to the problem it posed. I insert both that letter as well as his response for the RECORD:

WASHINGTON, D.C., *August 1, 1978.*

Hon. W. MICHAEL BLUMENTHAL,
*Secretary of the Treasury,*
*Washington, D.C.*

DEAR MR. SECRETARY: As you know from our telephone conversation of yesterday, I am extremely upset at the apparent violation of the 1975 Aircraft Understanding of the Organization for Economic Development and Cooperation by the French with regard to a pending aircraft sale to China Airlines. The Nationalist Chinese were considering the purchase of two Douglas Aircraft DC-10s with options for two more. The Airbus A300 was a competitor for this sale. Reportedly the French have offered the Chinese landing rights in Paris if they purchase the A300 (a privilege they do not presently enjoy), and reportedly the Chinese have responded favorably to this offer with a letter of intent.

The OECD Understanding prohibits the use of extraordinary sales or financing terms by any government to secure a sale of aircraft. The tie-in of landing rights with an aircraft sale is clearly extraordinary and unfair to American private aircraft manufacturers. Consequently, I urge you to take immediate action to persuade the French to rescind these extraordinary terms and allow the competition on these particular four planes to be decided on the merits of the aircraft.

While I am pursuing a legislative solution to this kind of predatory competition, I hope your efforts will secure an expeditious settlement to the problem at hand. Let me know if I can be of any assistance to you in the endeavor.

Sincerely,

MARK W. HANNAFORD,
*Member of Congress.*

WASHINGTON, D.C.,
*August 15, 1978.*

Hon. MARK W. HANNAFORD,
*House of Representatives,*
*Washington, D.C.*

DEAR MARK: Thank you for your letter of August 1, in which you restated your strong feeling that the French may have violated the OECD Aircraft Understanding by offering landing rights to China Airlines in return for purchasing the A-300 Airbus.

As I mentioned in our phone conversation of July 31, we are equally disturbed by the report that the French Government may be linking landing rights to purchases of the Airbus. As a result, we have inquired about this. Initial reports from our Embassies indicate that although Airbus Industrie may have offered to intercede on behalf of China Airlines for landing rights in Paris, it is not the policy of the French Government to offer landing rights for such reasons. The French state, moreover, that such an offer would be contrary to their policy towards Peking.

We are seeking further information on this matter from the Republic of China and have indicated to them our concern about linking landing rights with Airbus purchases. Should the McDonnell Douglas report be confirmed, we would intend to take up the issue with the French. We share your view very strongly that such extraordinary government intervention in a commercial sale is both inappropriate and unfair.

At present, the OECD Understanding does not exclude the use of such special inducements, although they run counter to the stated policy of both France and the United States. For this and other reasons, we hope to broaden the Understanding such that only market considerations—price, quality and service—will influence the choice of aircraft by an airline.

I hope we have your support in our efforts to strengthen the OECD Understanding.

Sincerely,

W. MICHAEL BLUMENTHAL.●

## ALCOHOL POWERS AUTOS IN BRAZIL

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. FINDLEY. Mr. Speaker, while we were in our home districts during the recess, the Washington Post printed on August 30 an account of the growing use of alcohol as a motor fuel in Brazil. The Brazilians are moving ahead rapidly in this petroleum-saving technology. Within 2 years it is planned that gas stations in Brazil will offer only pure alcohol or as gasohol mixture of 20 percent alcohol and 80 percent gasoline.

If the United States were to make a similar effort, I am certain, we could benefit from the widespread use of gasohol in this country. Gasohol use would reduce our need to import foreign oil, help our balance of payments, and provide a new use for American agricultural products. The Brazilian example shows what is possible with determined effort.

The Post article is well worth noting, and I commend it to my colleagues.

Text of article follows:

GAS GUZZLERS BECOMING ALCOHOLICS IN BRAZIL

(By Larry Rohter)

SAO PAULO, BRAZIL.—For the last year, hundreds of state-owned cars with stickers saying "This Vehicle Is Powered by Alcohol" have been driven around this city of more than 8 million people.

Local auto parts shops sell a $200 kit to convert conventional gasoline engines to run on pure alcohol.

A nearby industrial center has just ordered a fleet of non-polluting alcohol-powered buses. In half a dozen major cities, Brazilians now fill the tanks of their car with "gasohol"—a mixture of 80 percent gasoline and 20 percent ethyl alcohol.

That mixtures requires no engine modification. By 1980, when alcohol production is to reach 1 billion gallons annually, all pumps are to offer only gasohol or alcohol.

The president of the Brazilian Automobile Manufacturers' Association, Mario Carnero, has predicted that by 1981 more than 16 percent of all cars built here—currently 1 million per year—will come equipped with engines that burn pure alcohol.

Only a few year ago, none of these projects would have been considered practical. In the heady days of Brazil's economic upsurge in the early 1970s, planners here followed the example of the United States and other industrialized countries and looked to cheap gasoline to fuel the booming economy. They gave little thought to "nonconventional" energy sources.

Today, however, Brazil imports 83 percent of its petroleum, costing $4 billion yearly—the largest oil import bill in the Southern Hemisphere. Now, Brazil is seeking its salvation in one of the oldest and most plentiful substances known to man: alcohol distilled from sugar cane, manioc and other tropical plant that grow abundantly in this giant land.

The effort is already far enough along that energy experts consider Brazil the world leader in using alcohol as a motor fuel. This year alone, Brazil's alcohol program will result in the consumption of 635 million gallons of ethyl alcohol either as a gasoline substitute or supplement.

"This is one area of energy research and development in which the Brazilians have an advantage not only over us, but over everybody else," said a White House aide during President Carter's March visit here, when the United States and Brazil agreed on an energy information exchange program. "There are really a lot of things for us to learn from them."

The process by which vegetable material—or "biomass," as it is technically known—is transformed into alcohol fuel is simple. Brazilians have been converting sugar cane into alcohol by fermentation since colonial days, and ethyl alcohol was mixed with gas as early as the 1930s, when record low prices of sugar brought on by the worldwide depression forced Brazil to divert part of its bumper crop into fuel.

But systematic investigation of the large-scale use of alcohol as a gasoline substitute or additive began only with the advent of the international energy crunch in 1973. In the last five years, Brazil's National Alcohol Commission has approved some 170 projects and earmarked $800 million for biomass conversion and engine modification efforts.

"The emphasis has been not so much on research and development as on the expansion and implementation of programs that already existed on paper," says an American official in Brasilia. "They've mostly done things like modernize old sugar mills and improve their distribution system."

But at the aerospace and technology Center, a government research facility near here, scientists have undertaken 34 different programs to design engines that will run on pure alcohol or to convert gasoline engines to alcohol at minimum cost. Elsewhere, agronomists are engaged in genetic research in an attempt to increase yields of crops that will be distilled into alcohol.

Thus far, sugar cane alcohol has received more attention from the Brazilians, but Petrobras, the giant state oil monopoly, has recently begun operating a manioc distillery near the industrial city of Belo Horizonte that turns out 16,000 gallons of manioc alcohol daily.

Experimental programs conducted in major cities have shown that alcohol, whether derived from sugar cane or manioc, has several major advantages over ordinary gasoline. Although it leaves a slight odor, it burns cooler, cleaner and more efficiently, giving virtually the same mileage as gasoline, but without leaving lead or sulphur pollutants. Hydrocarbon residues "can be lowered to negligible levels," according to a recent study.

While alcohol engines are harder to start than ones that run on gasoline, this is less of a problem in Brazil's tropical climate than it would be in the temperate United States. The Brazilians attach a gadget to the motor that starts the car each day on a small quantity of pure gasoline. After that, they say, the residual heat is sufficient for the pure alcohol to catch without difficulty.

The converted cars use normal gas tanks and the experts say they have encountered no problems with evaporation. For all the interest in alcohol as fuel, the government—which is pouring billions of dollars into nuclear and hydroelectric energy programs—has proven more reluctant to take what one foreign energy expert calls "the big leap" to pure alcohol.

"There are no technological reasons whatsoever to prevent alcohol from eventually taking the place of gasoline," said Professor Jose Goldemberg of the University of Sao Paulo, president of the Brazilian Society of Physics and one of the strongest advocates of the biomass program. "What's holding them back are political and economic considerations."

"Petrobras opposes the alcohol program because the pump price it charges for gasoline is a purely artificial one that is four times the actual cost," Goldemberg said. "Since alcohol currently costs twice as much to make as gasoline, that means both Petrobras' profits and government tax revenues would drop if a crash program to replace gasoline with alcohol were put into effect."

Proponents of the alcohol program say these economic shortcomings are offset by other gains. In widely publicized speeches recently, two influential government ministers argued that a full-scale pure alcohol effort would generate jobs in Brazil and that all expenses incurred would be in cruzeiros, not dollars—thus avoiding adverse effects on Brazil's uncertain balance-of-payments situation.

In the long run, say both foreign and Brazilian energy experts, there is no doubt that alcohol will emerge as an economically attractive source of energy, both for Brazil and for other nations.

"The trend seems to be that while oil prices will rise, the price of alcohol will continue to drop, perhaps by as much as 20 percent as methods of production become more efficient," says a U.S. official.

Some Brazilian officials are already looking ahead a decade and predicting that their nation will be able to export alcohol and alcohol technology to Africa, Latin America and perhaps even the industrialized world. Patents have already been taken out by Brazil on engine modifications and distillery improvements that have been developed here.

"Biomass energy just may be the wave of the future," said the U.S. official. "If it is, the Brazilians are going to have the jump on the rest of us."

Biomass fuels were once associated with underdevelopment and Brazilians have had to overcome their pride to enter the field. They note, however, that others are following—West German and Scandanavian scientists have bought the results of Brazilian studies.●

## TRIBUTE TO SPONSOR AND BOARD OF TRUSTEES OF ST. ELIZABETH MEDICAL CENTER, COVINGTON, KY.

### HON. GENE SNYDER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. SNYDER. Mr. Speaker, I would like to take a moment of my colleagues' time to pay a well deserved tribute to a small group of people whose commitment and foresight make them worthy of recognition. I refer to the sponsor and board of trustees of the St. Elizabeth Medical Center in Covington, Ky.

Since 1860, St. Elizabeth Medical Center has provided the northern Kentucky area with exemplary, personalized health care. And it does not plan to stop doing so in the foreseeable future.

Some 10 years ago, the medical center's sponsor, the Most Reverend Richard H. Ackerman, S.T.D., Bishop of Covington, and the board of trustees recognized the limitations imposed by the center's downtown location in view of the southward expansion and general suburban growth in the area. So they went to the drawing board and drew up a dream—an outlying medical village with a new unit of the St. Elizabeth Medical Center as its core. Today that dream has been pushed from the drawing board to reality and, in mid-October, will open its doors to the public, providing accessible medical care for northern Kentucky for many years to come.

The value of any facility lies in its ability to change with the needs of the community it serves and its ability to plan for and fulfill future needs as well. The foresight and dedication of Bishop Ackerman and the trustees has insured that St. Elizabeth Medical Center will be able to provide northern Kentucky—a changing community—the same high quality of medical care it has come to expect from St. Elizabeth Medical Center.

Following is a list of the medical center's trustees:

The Most Reverend Richard H. Ackerman, Sponsor, John L. Cassidy, M.D., Charles H. Deters, Merwin Grayson, Jr., Julie Greene, Sr. Karen J. Hartman S.F.P., Henry M. Mann, William J. Mersch, M.D., William H. Middendorf, Ph.D., Donald H. Niehaus, Charles R. Perry, M.D., Rev. Msgr. John J. Rolf, James Simpson, Jr., Sr. Yvonne Thranow, D.C., George E. Weidner, A. Martin Zalla, and Paul C. Bellendorf, Administrator.

The foresight of these people and their commitment to the health needs of their community pushed a dream to reality, and the opening of the St. Elizabeth Medical Center-South Unit is a monument to their careful planning and their dedication to that dream.●

## HAZARDOUS WASTE CONTROLS

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. FINDLEY. Mr. Speaker, last Monday there appeared an excellent article in the Washington Post discussing the problems of burying hazardous chemical wastes, which I commend to all my colleagues. Within my district, in the town of Wilsonville, Ill., lies a hazardous waste treatment facility which was recently ordered shut down by an Illinois circuit court judge, because of the dangerous health hazards it posed to the local community.

Legislation I have introduced, H.R. 8657, is designed to deal with the dangers of treating and burying hazardous chemical wastes by requiring that waste treatment facilities and dumps be constructed on lands away from populated areas and dedicated to public ownership. Those hazardous waste disposal sites already in operation would also be acquired by the Federal Government after they have ceased operations to insure forever the highest safety and maintenance standards.

The people of Niagara Falls, N.Y., are painfully aware of the potential for tragedy which can result from the improper burial of chemical wastes. A chemical waste dump which was covered over 35 years ago now has a school and subdivision on top of it. Birth defects are abnormally high and people in the neighborhood see their lives slipping away from them. I would encourage my colleagues to read the following article from the Washington Post which outlines the growing and dangerous problem of hazardous chemical waste dumps:

OOZING EARTH—PAYING FOR CLEANUP OF BURIED CHEMICALS POSES NEW NIGHTMARE FOR OFFICIALDOM

(By Bill Richards)

The first inkling that something had gone wrong in rural Hardeman County, Tenn., came last winter when the local kitchen sinks started turning brown.

Then came reports from puzzled residents of the southwestern Tennessee farming region that their well water had developed a peculiar insecticide-like odor. When a rash of unexplained cases of stomach cramps and dizzy spells hit the area, federal and state health investigators moved in.

Their discovery—some 350,000 leaky 55-gallon drums of legally buried chemical waste on a nearby ridgetop owned by the Chicago-based Velsicol Chemical Co.—is likely to add another chapter to what is rapidly becoming a recurring chemical-age nightmare.

Velsicol admits that between 1965 and 1972 it dumped chemical waste at the site from its Memphis pesticide plant. But a company spokesman insists there is no concrete proof that 17 chemical contaminants identified thus far in the local well water came from its dump. Moreover, Velsicol says its dumping was perfectly legal under state laws at the time.

That leaves federal and state officials with a virtual sea of toxic chemicals—including some known carcinogens—apparently flowing into the local water supply and no clear villain on whom to place the blame.

If the Hardeman County problem seems Herculean it is by no means unique. Across the nation, new stores of nearly forgotten, highly toxic chemical waste seem to be oozing into the headlines every week. Federal officials estimate there may be as many as 400 more suspicious hazardous waste sites around the country. And no one seems to know who will pay to clean them up.

Some recent examples:

Authorities in Michigan, nervously keeping tabs on toxic chemicals leaking from a company dump in Montague into Lake Michigan, recently checked and were horrified to discover it could cost $100 million to clean up similar hazardous waste sites around the state. "There's no way we're going to ask the taxpayers to ante up for that," said a state official.

In Massachusetts, health officials got an emergency $1.3 million from the state legislature to remove 17,000 barrels of toxic chemicals leaking from an abandoned lot in Lowell into the Merrimac River, the water source for several downstream communities. State officials are pledged to try to recover the cleanup money from financial backers of the bankrupt disposal firm and those who originally shipped the waste to the site. But a state official concedes glumly: "We're not holding our breath waiting to get paid."

In the widely publicized Love Canal situation in Niagara Falls, N.Y., officials have estimated that preliminary cleanup costs alone will run to $8 million. "And that," says an Environmental Protection Agency official "is just to make the area liveable. We're not even talking about relocation costs."

Nearly 200 families may eventually have to be permanently moved out of the area where thousands of drums of cancer-causing chemicals have leaked into backyards and basements.

Who will pay? "There's no provision for the federal government to come riding to the rescue," says Fred Lindsey, an EPA official in charge of the agency's implementation section.

"It's kind of confusing," admits another EPA official. "I guess the one who pays is whoever gets left holding the bag."

That could include, says EPA's senior hazardous waste official Steffen Plehn, any of an estimated 425,000 firms which generate toxic chemical waste, or the 25,000 or so firms that transport it, or another 25,000 firms that store, treat or dispose of it.

Beyond that broad spectrum, Plehn admits, the focus of the blame becomes less clear. "If a company is still legally tied to the stuff then I guess it's theirs," says Plehn. "If they've been able to unload it then I guess the blame goes with it."

In the end, Plehn said, the answer may lie with efforts by EPA to set up a national trust to pay to clean hazardous waste sites. The trust would come from a per-ton tax on waste as it is dumped and would be held for emergencies such as the Love Canal disaster.

The problem with such a solution, however, is that it will tax waste generators who may be complying with the law today for the environmental sins of others in the past. "It's not fair, and more important it probably isn't legal," complained a chemical industry official who asked not to be identified.

Thus far, only Michigan has sought to force chemical waste generators to pay for the cleanup of hazardous sites, even though they may not be directly involved in the problem.

Earlier this year Michigan Attorney General Frank Kelly went to court to recoup $1 million the state spent to clean out a site in Pontiac. The site was so dangerous, officials said, that a spell of hot weather could have caused some of the chemicals to explode and send a toxic chemical cloud floating over the city's wealthy suburbs.

The state's efforts to force the issue were sidetracked, however, when about 17 big waste generators, including such names as Ford and Dow-Corning, agreed to come up with an out-of-court settlement.

Right now Michigan is closely watching another site owned by the Hooker Chemical and Plastics Corp. in Montague. There, quantities of C-56—a chemical building block for several carcinogenic pesticides—is leaking into White Lake, an arm of Lake Michigan.

Hooker's disposal site, as well as others in the state, may be legal, said Stewart Freeman, an assistant state attorney general. "But even assuming it is legal we can still say: all right you contain it or you pay for it," he said.

Hooker also operated the Love Canal site in Niagara Falls before deeding the site to a local school district under threat, according to the company, of condemnation proceedings against it.

Under a preliminary agreement, Hooker agreed to pay up to $280,000 to help clean up the Love Canal site. A company spokesman said Hooker also is spending several hundred thousand dollars on its Montague, Mich., disposal site where 11,000 tons of toxic chemicals are buried.

But the spokesman said Hooker will not admit legal liability in either case. "There's no way you could get us to say we're responsible for what happened at Love Canal," he said. Hooker or any company would "fight like hell" in court if the cleanup bills were turned over to them, he said.

That test could come in Tennessee. So far no one has formally blamed Velsicol for the polluted water in Hardeman County. But state officials note there does not appear to be another source for the unusual array of chemicals—including suspected carcinogens such as chlorobenzine, tetrachloroethelene and toluene—that have turned up in the area's water. In addition, a still-unreleased federal study has also concluded that chemicals from Velsicol's disposal site have leaked into nearby wells.

Velsicol officials are preparing to do their own study of the situation. Some have even hinted darkly that perhaps local residents put the chemicals in the wells themselves in an effort to force blame on the company.

"This is a puzzle and all the parts aren't together yet," says one Velsicol official. "We do know that once that ridge was supposed to be an ideal dumping location. Now there's some question whether it was so idea after all." ●

## PERSONAL EXPLANATION

### HON. ROBERT A. YOUNG

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

Mr. YOUNG of Missouri. Mr. Speaker, I was unavoidably absent from the floor due to a prior commitment in the district. Had I been present, I would have voted as follows:

Rollcall No. 616, an amendment to H.R. 12432 by Mr. BUTLER, "no";

Rollcall No. 617, an amendment to H.R. 12432 by Mr. BUTLER, "yes";
Rollcall No. 657, an amendment to H.R. 13635 by Mrs. HECKLER, "no";
Rollcall No. 659, an amendment to H.R. 13635 by Mr. BROWN, "no";
Rollcall No. 660, an amendment to H.R. 13635 by Mr. CONTE, "yes"; and
Rollcall No. 661, an amendment to H.R. 13635 by Mr. HARKIN, "no."●

## HOW TO GET A CHECK OUT OF UNCLE SAM

### HON. MARJORIE S. HOLT

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mrs. HOLT. Mr. Speaker, among the most traditional and popular publications on the American scene is the mail-order catalog. In recent times, the Government has composed a similar product called the "Catalogue of Federal Domestic Assistance," from which State and local governments and other service organizations can prepare their shopping lists by browsing through more than 1,000 programs.

It seems that we somehow forgot to publish a catalog of programs available to individual citizens, but do not be concerned about that oversight. A private company is operating a mass mailing to advertise its catalog of "137 perfectly legal ways to get a check out of Uncle Sam." It charges $8.98 for the book.

The flyer mailed to one of my constituents identifies the company as Instant Learning, Inc., 770 Lexington Ave., New York, N.Y. It apparently also has a facility known as a "Fulfillment Center," at 120 Smith St., Farmingdale, N.Y.

Advertising the wondrous book this company is peddling, the flyer announces that the results are "Guaranteed. This startling report must show you how to qualify for a minimum of $500 in Government checks this year alone * * * or you don't pay a penny."

The advertisement quotes the editor of the report as saying:

I'm beginning to wonder if there's a single adult American who isn't entitled to at least one of these government checks Or two! Or more!

Mr. Speaker, I would not blame any private company for attempting to make a profit from the spend-crazy follies of the Congress. Over many years, the Congress has created such a galaxy of programs, and stripped the people of so much of their substance to fund them, that many people are tempted to abandon the virtue of self-sufficiency to pursue the handouts available from Government.

The Congress has created the society of the big hustle. People who are perfectly capable of self-sufficiency are hustling to get an easy living from their fellow citizens through the Federal Treasury. The Federal Government has confiscated so much of the national treasure from the citizenry that many people reach the obvious conclusion: the Government is the source of money and you can get it just for the asking if you find the right program and follow the necessary procedures.

So, it is no wonder that a private company is selling information on how to pursue the goodies. This is just a symptom of the moral rot that is eating away the vitals of America.

Here we have a country committed since its earliest days to the ideal of individual liberty, but over many years Congress has behaved in a manner calculated to make every citizen a dependent of the Central Government, to some degree.

The Congress has taxed honest work and production to the extent that more and more people are doing less work and investing. The people become more and more dependent on Government, moving more and more toward the time when we will have a national mentality of serfs.

Mr. Speaker, the strength and freedom of American are being eroded.●

## A NATIONAL TRAGEDY

### HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. DORNAN. Mr. Speaker, a recent edition of the National Enquirer carried a story about the late "King" of rock and roll, Mr. Elvis Presley. At an age when most performers would be looking toward many more fruitful years, Mr. Presley's life was cut short, so it seems, by habituation to legal, prescriptive drugs, made available by licensed physicians.

It is my judgment that Dr. E. Eric Muirhead, who has made the charge that Elvis died from drug usage and not heart disease, should be invited to testify before the Select Committee on Narcotics Abuse and Control. If Dr. Muirhead's contention about the true cause of Elvis' death is true, then we in Congress, charged with protecting the health and welfare of Americans, should make a national self-assessment about the growing prescriptive drug dependency that is rapidly becoming a life style among the famous and the ordinary.

Elvis Presley had fans in virtually every nation on the planet whose citizens had record players. If Elvis did die from a legal form of drug abuse, what does that say about us as a nation? Is it really true that the kids need marihuana, the parents need valium to merely cope with the beauty and challenge of life?

Wake up, America. Your vitals are being consumed by the worm of self-indulgence.

The article follows:

EXCLUSIVE: SECRET AUTOPSY REPORT . . . IT CONTRADICTS MEDICAL EXAMINER'S OFFICIAL FINDINGS

Memphis officials have whitewashed the true facts behind the tragic death of Elvis Presley—covering up official autopsy findings that Presley actually died from a drug overdose, an Enquirer investigation has uncovered.

"There are some who say if this were a Joe Doe instead of Elvis Presley, drugs would be indicated as the cause of death . . . without question," declared Maurice Elliott, the vice president and official spokesman for Baptist Memorial Hospital in Memphis, where Presley's autopsy was performed.

The Shelby County medical examiner's official report states that Presley died of heart disease.

But Baptist Memorial Hospital refused to agree with the medical examiner. In an exclusive bombshell interview with The Enquirer, hospital spokesman Elliott disclosed for the first time that Presley's official autopsy report contains the opinion by top medical experts that Presley actually died of a drug overdose.

And medical experts from across the nation—asked by Baptist Memorial Hospital to review its autopsy findings on Presley—back up in the autopsy report itself that drugs were to blame for Elvis Presley's death.

After Presley died on Aug. 16, 1977, a team of pathologists at Baptist Memorial Hospital performed an autopsy on the star's body. Their findings went into the autopsy report, kept secret under orders from Elvis' father, Vernon Presley.

No report of any kind was ever publicly issued by the hospital.

But two months later, Shelby County Medical Examiner Dr. Jerry Francisco, who had reviewed the autopsy report, called a press conference and officially announced that—although eight different prescription drugs had been found in Presley's body—"drugs played no part in his death."

Dr. Francisco listed the cause of death as "hypertensive heart disease with coronary artery disease as a contributing factor."

The drugs found in Presley's body were barbiturates, a sleeping medication methaquaalone, a painkiller codeine and ethinamate, a sedative.

The chief pathologist at Baptist Memorial Hospital, Dr. E. Eric Muirhead, is still angry at Dr. Francisco's announcement that the cause of Presley's death was heart disease.

"His interpretation is not my interpretation!" said Dr. Muirhead.

"What I want to know is what authority did he have to call a press conference and interpret my autopsy?" he fumed.

Tennessee State Senator Jim White, a Memphis attorney, charges: "The public has never been given all the facts surrounding the tragic death of Elvis Presley.

"Under Tennessee law an autopsy report is public record," he said. But since the autopsy was ordered by Vernon Presley, local officials "contend the autopsy is a private matter. Thus we have what amounts to a legal sham calculated to circumvent Tennessee law."

Dr. Francisco, the county medical examiner, defended his official conclusions as to the death of Elvis Presley, though he admitted: "I wouldn't like to see the autopsy report made public.

"I feel comfortable with my findings," he added: "They don't need to be vindicated. We covered up nothing. My final report is the fact.

"People can like it or they can lump it."

But Dr. Francisco did admit that "half of the comments on the autopsy report disagree with the conclusions that I drew."

The mystery behind Elvis Presley's death "will never end," said Dr. Francisco. "I think it's possible that Vernon Presley doesn't want the report made public as a way to perpetuate the mystery and the Presley myth."●

## U.S. CITRUS INDUSTRY POSITION ON UNITED STATES-JAPANESE TRADE

### HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. IRELAND. Mr. Speaker, as you well know, one of the high visibility items now at issue between Japan and the United States in the ongoing trade negotiations is the question of increased access for United States citrus to Japan.

Last month a group of Japanese growers placed ads in the Washington Post and the Los Angeles Times urging the American public to support their position of restricted access to their market. Their basic argument is that the U.S. position, which is being vigorously and effectively pushed by Ambassador Strauss, is somehow unfair. Our position is, quite simply, that if they wish to continue to do business with us, the Japanese must grant us the same access to their market as we grant them to ours.

Mr. Speaker, all of us here have an enormous stake in the future of United States-Japanese trade. Therefore, I want to take this opportunity to share with our colleagues, the citrus industry's response to the Japanese growers ad campaign.

I am confident that you will find our position to be completely open and fair, and consistent with the principles we must adhere to if we are to have free trade worldwide.

Thank you, Mr. Speaker.

The statement follows:

JOINT U.S. CITRUS INDUSTRY STATEMENT

The following statement is endorsed by the California-Arizona citrus industry, the Florida citrus industry and the Texas citrus industry and is in response to an advertisement by the Mandarin Orange Growers of Ehime Prefecture, Japan, which appeared in the Washington Post and Los Angeles Times on August 18, 1978.

The advertisement is an effort on the part of the Japanese citrus growers to convince the American citrus industry and the United States Government to cease their demands that Japan eliminate quotas on importation of fresh oranges, orange juice and grapefruit juice, which are illegal under the General Agreement on Tariffs and Trade (GATT).

The Japanese mandarin growers claim that agriculture should be separated from industrial goods in discussing trade imbalances between the United States and Japan. This is impossible. The overall trade picture should be examined, and trade in citrus is only one part of the full trade problem.

The Japanese Minister of Trade and Industry recently forecast a trade surplus of up to $24 billion for this fiscal year, and trade with the United States is expected to create a favorable balance of $10 billion. Increased agricultural exports to Japan can help to offset this.

However, the heart of the matter is the fact that the present quotas on citrus are illegal under GATT. It would be just as illegal if the United States were to try to limit the import of Japanese automobiles. Long ago, Japan became a developed country and assumed status as a major economic force in the world. It must live up to its GATT treaty provisions, as do the other signers of the treaty.

It was interesting to note that in the same edition of the Los Angeles Times in which the advertisement appeared, there was an advertisement for Toyotas, and a major article appeared in the financial section headlined, "Nissan Will Push Top Line Cars in U.S." There were also numerous ads for Japanese stereo sets and cameras.

The Japanese citrus industry cites overproduction as the reason for wanting to maintain their illegal quotas. The overproduction of their industry is in reality the results of their own protectionist attitude in defense of the quota system. Much of the citrus acreage now under cultivation in Japan was planted after Japan had agreed in the early 1970's to move towards liberalization of imported citrus.

The advertisement contends that there is a surplus of frozen concentrated orange juice in Japan, and that attempts to create a market for it have been unsuccessful. The U.S. citrus industry says that if the quotas are removed, American promotion could easily develop the market for a blended juice comprising both U.S. and Japanese juice, thus assisting both countries' growers.

The Japanese claim that 340,000 Japanese households produce citrus, primarily mandarins, with only 11 percent holding more than one hectare of orchard acreage. The reason the word "household" was used is because most of these so-called growers are what are called backyard producers. They are hobbyists, or part-time growers, who do not make their living from the land, but instead work in other jobs, many of which are in factories producing products that will be sold in the United States. Because of these backyard producers, returns to the commercial producers in Japan have been lower than would be expected without them.

The Japanese new import quotas for oranges are less than 2% of the total Japanese production and only represent 2½ oranges per person per year. Yet their advertisement cites the large numbers of oranges that have entered Japan following increase of the quotas from 15,000 metric tons per year to 45,000 metric tons per year.

It is ironical that when U.S. television manufacturers recently petitioned the International Trade Commission to limit import of Japanese color television receivers to 62 percent of U.S. production, Japan prevailed with its argument that this was unreasonably restrictive. Yet American citrus imports to Japan, under the expanded quotas, remain at only 2 percent of Japanese production.

Does this mean that the Japanese would agree to limiting U.S. import of automobiles to just 2 percent of U.S. television production? Of course not. Nor would Americans agree to such a proposal.

Despite the increases in imported oranges, the price of Japanese fruit remains at the same level. And the price of American oranges remains quite high, too—as much as $1.00 per orange when and if the consumer can get them. The real loser in this is the Japanese consumer, who must continue to pay a premium price for something that should be readily available at a much lower price.

The Japanese growers have said that so-called "off-season" citrus production in Japan has allowed development of a year-round distribution system, and that there should be no difference between the Mikan season and the "off" season. The U.S. citrus industry agrees. Both seasons should be treated the same—with complete liberalization.

The U.S. citrus industry is sorry if the Japanese mandarin producers are upset and their patience is being tried because of the U.S. demands for market access for citrus, as the advertisement states. We are sure the same can be said of U.S. citizens in the automobile and electronic industries who are watching Japanese automobiles, television sets and cameras move into the United States marketplace.

In the advertisement, the Japanese growers make a statement, "We are in favor of importing products from the United States if they are in short supply in Japan". Let's carry this logic to the other side of the Pacific Ocean. Our own domestic manufacturers of cars and television sets can adequately supply the U.S. market, so why should we import these products from Japan?

Fortunately, the U.S. citrus industry doesn't agree with this line of reasoning. It believes in fair and just trade with equal access to all markets for all commodities with reasonable tariff and protective measures, which would allow for orderly and equitable entry of products from one country to another.

The U.S. citrus industry does agree with the Japanese growers that America and Japan have been reliable and faithful trading partners. It wants to continue to buy Datsun forklifts for their packing houses, they want to continue to drive Toyotas, watch Panasonic television sets, listen to Sony radios and tell time by their Seiko watches.

All we ask in return is fair and just access for our citrus in the Japanese market place as required by the General Agreement on Tariffs and Trade.●

## THE VA'S DOUBLE-BARRELED EDUCATION PROGRAM

### HON. RAY ROBERTS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. ROBERTS. Mr. Speaker, I have often commented on the superb professional staff of the Veteran's Administration. At hand is yet another example of how VA officials have gone far beyond duty to meet a community need. Under the leadership of John G. Miller, director of the Los Angeles VA regional office, and Jack Dweck, that office's loan guaranty officer, the VA has developed a program that costs the Government little, yet helps young people help themselves. It is described in the August issue of American Education:

THE VA'S DOUBLE-BARRELED EDUCATION PROGRAM

(By Clif Stallings)

Educators and government officials who are scratching their heads over what to do with their old surplus school buildings might take heart from one government agency that, richly experienced in being swamped with excess real estate, has come up with a canny way to make its shoddy buildings bright and serviceable—and to serve as teaching aids in the transition. Of course, the problems are not parallel, the Veterans Administration—that experienced government agency—having little or no traffic in school buildings. But the lesson is that perseverance will prevail over the knottiest surplus building problem, whether the buildings are schools or houses.

Some may be surprised to know that the Veterans Administration is among the largest real estate operators in the country. The

VA didn't intend it that way, but when an agency runs a guaranty loan program that over three decades has helped close to ten million veterans buy homes valued at more than $140 billion, some identity as a real estate operator is almost inevitable. As inevitable as some defaults in a volume of ten million loans. Each time the VA makes good on its guaranty of a loan in default, it acquires the property.

Since 1944, the VA has acquired some 405,000 properties, which comes to about four percent of the almost ten million homes for which loans were guaranteed for veterans. During that same interval VA has sold more than 390,000 of these properties and currently has title to about 11,000 others. Allowing for those undergoing repairs, adversely occupied, or burdened in other respects, there are about 7,300 vacant properties for sale. The turnover in VA sales averages about 1,300 monthly.

In order to recover its guaranty or as much of it as possible, the VA seeks to place acquired properties in a condition that compares favorably with competitive neighborhood properties. With rare exception the houses require only redecoration or modest repairs to place them in salable condition. Nevertheless, there are some that were abandoned and vandalized before VA acquired title, and appropriate repairs needed to be made.

California, housing more than ten percent of the nation's 30 million veterans, leads in VA home loan guaranty activities. The VA regional office in Los Angeles—one of three in California—acquired about 50,000 properties over the past 30 years, and sold virtually all of these shortly after they came into VA ownership. Today, that office has fewer than 600 houses on hand, and the sales rate runs almost 100 properties per month.

In a program started by the Los Angeles VA Regional Office five years ago, students at ten area high schools have contributed toward the rehabilitation of a number of abandoned houses while gaining valuable vocational training. Working as volunteers, the young men and women refurbish the houses, making minor repairs without doing any job that would require a license. The VA provides all tools and equipment and determines by appraisal of the property the amount that should be spent for materials. The program, currently being carried out in San Diego and Compton, has drawn praise not only from students and educators, but from area residents as well.

"The place next door was a dilapidated shack before the VA let those kids in there," recalls Compton resident Del Burnett, whose home is adjacent to a student-refurbished house now up for sale. "It had been broken into and vandalized. It looked terrible and made the whole neighborhood look bad. When the kids came to fix it, I was skeptical. Kids that age don't have too good a reputation these days. But those kids were something else. They turned that dump into a nice place. I never would have believed kids could do work like that."

According to Onward Montgomery, director of Vocational Education and Federal and State Projects for the Compton School District, students in the housing rehabilitation program have had a marked effect on every neighborhood in which they have worked. "The recurring sight of teenagers doing something beneficial for the neighborhoods has done a lot to restore people's confidence in our community youngsters," Montgomery says. "And in most cases, the program also seems to have left area residents with a fresh sense of community pride. Invariably, a completed project is followed by a general sprucing-up of neighboring properties."

Montgomery also notes that student-rehabilitated houses are seldom targets for vandals. "I think this is because the kids themselves, some of whom have probably vandalized other properties, use what influence they have among peer groups to protect what they've helped to restore."

Montgomery says that though school officials and Compton residents have praised the program as practical, productive education, the students themselves have voiced the most enthusiastic approval. Montgomery adds, "This program, besides providing a welcome break from classroom routine, offers youngsters a chance to expend energy in a useful way and learn directly applicable skills at the same time."

Compton High School student John Sims mentions that he has already learned things that he's been able to repeat in his own home. "I've learned enough so far to help me get a job," he says. "I can set tile, do roof repairs, handle regular carpenter work, and paint. I couldn't learn all that in a classroom."

Ernestine Pettigrew, also of Compton High, one of six girls from the district who has been involved in the program, feels that it provides needed opportunities for young women to gain experience that could help them maintain their homes or find employment in the construction industry. Says Pettigrew, "I think it's a good thing for women to be able to take advantage of the same opportunities that men have. This is a new time for women, and we need to prepare for it. I've really enjoyed this program and have learned a lot."

Montgomery also points out that the housing rehabilitation program in his district has been particularly helpful to youths with extensive juvenile records. "Some of the kids have gang-related problems, some have been involved in thefts or burglaries, and others have engaged in vandalism or just plain mischief," Montgomery says. "Probably the main reason they got into trouble is that they didn't have much of anything else to do. This program has given them something to do, along with a sense of pride and satisfaction, and has been the therapy these kids have needed to stay out of trouble."

A tribute to the VA housing rehabilitation program is the story of 20-year-old Lennon Hunter, who graduated from Compton High School two years ago. "I didn't have anything going for me before I got into that program," Hunter recalls. "I was bored with school, uncertain about the future, and had no skill or experience that I could apply toward a job.

"The rehab program opened up a new world for me. I found out I could do something worthwhile, something that I enjoyed. Even before I graduated from school I started working for contractors on weekends and earning a little money. One thing led to another, and now I have my own contracting business." To help others along his successful path, Hunter employs former housing rehabilitation participants and offers part-time employment to students in the program.

The housing rehabilitation program was initiated in Southern California in March of 1973 through an agreement between the Los Angeles VA Regional Office and the William S. Hart Union High School District in northern Los Angeles County. Since then, more than 130 students from Hart High School have participated in the refurbishment of 12 VA repossessed homes. In 1975 the Compton and San Diego Unified School Districts joined the program, which has now accounted for 29 completed projects.

Jack Dweck, VA Loan Guaranty Officer in Los Angeles, says the success of the rehabilitation program is primarily dependent upon two "musts": Distressed VA repossessed houses must be available, and school districts must make necessary administrative and funding arrangements for student participation.

"We've found that where we've encountered difficulties or delays in trying to establish a rehab program within a school district, it usually has been due to problems associated with transportation for the students, the hiring of a qualified vocational instructor, or a lack of complete school district support," says Dweck.

On occasion there has been misunderstanding of VA motives with respect to the use of students in place of commercial contractors. "There are those who have thought that the VA saves a considerable amount of money by letting the youngsters do the work of contractors," says Dweck. "While it's true that we pay only the cost of materials and equipment for a student-rehabilitated house, it takes students months to finish a job that a contractor could finish in days. This is partly due to the fact that the kids work only a few hours a day and only on certain days."

Additionally, students work under the supervision of an instructor who must ensure that, according to the terms of the school district's contract, all repairs meet VA specifications. "If the kids don't do the job right, the instructor has them do it over," Dweck says. "Nor are students allowed to perform electrical or plumbing repairs. We pay licensed contractors to do that." Consequently, during the extra time the student-refurbished houses are on our books, VA expenses include the likes of taxes, insurance, and certain maintenance supervisor fees. These pretty well offset the difference between the costs of students' equipment and the amount of contractors' bills."

Dweck emphasizes that the VA makes the program available solely for its beneficial educational and social effects, which have been lauded on numerous occasions by community and school district officials. Last year the Compton City Council issued a special resolution expressing appreciation to the Los Angeles VA Regional Office for the beneficial effects of the housing rehabilitation program. The council credited the VA not only with upgrading neighborhoods but also with "instilling a sense of pride in accomplishment on the part of the students who performed the work, and a spirit of pride on the part of area residents for the positive accomplishments of teenagers."

Home repair programs similar to the one sponsored by the VA in Los Angeles have been conducted elsewhere in the nation by state and local authorities and by some citizen organizations. Says Dweck, "These activities also have given disadvantaged youth valuable skills and, in some instances, have helped mental patients on their way to recovery. The VA is proud to be included in such community activity."

Unquestionably, it would add to VA pride if the rehabilitation program were to offer the headscratchers who worry over what to do with old school buildings some insight into their own peculiar problems.●

## LET'S RANK GOVERNMENT EFFECTIVENESS

### HON. WILLIAM A. STEIGER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. STEIGER. Mr. Speaker, a little over a month ago, Senator CHUCK PERCY

and I called a press conference to introduce a proposal of ours, inspired by a recent article by former Ambassador Larry Silberman, to better enable Congress to put a rein on increased Government spending.

Our proposal, the Government Accountability Act of 1978, would require a biennial ranking by the President and the Director of the Office of Management and Budget of all programs within a department. The ranking would be made available to the public. Thus, we provide the advantage of a comprehensive review of all programs, along with a safeguard through public input against an administration attempting to sabotage a program or agency for ideological or other reasons.

Support for our legislation has grown over the past month. On August 3, DICK GEPHARDT, DON FUQUA, and FRANK HORTON joined me in introducing the measure, H.R. 13723. Since then, we have gained 31 additional cosponsors, 11 of whom are going on the bill I am introducing today. Though we clearly cannot anticipate action on the legislation this late in the session, this provides an excellent base of support to build on in the 96th Congress.

Michael Novak, in an August 30 Washington Star column, referred to our proposal as "a shrewd technique to make big government accountable." He pointed out:

In the private sector competition helps. A ranking system will make the public sector competitive. . . . It restores a piece of invisible government to visibility. It will help presidents to get a handle on the monster they manage.

As we try to come to grips with the growing bureaucracy and increased Federal programs, we need better management tools than we now have. The Government Accountability Act provides those tools. For the benefit of those concerned about improving Government accountability, I am including for the RECORD the Novak column. Along with it, I am inserting a report I wrote on the proposal, articles from the August 6 Milwaukee Journal and August 9 Education Daily discussing it, and an editorial from the August 11 Savannah Morning News endorsing this new approach.

The article follows:

WASHINGTON REPORT

(By Congressman WILLIAM A. STEIGER)

A major focus of the media and Congress in recent months has been the growing taxpayers' revolt. The passage of Proposition 13 in California and the overwhelming support for the idea of cutting the tax on capital gains have shown clearly that the average taxpayer has a sophisticated understanding of our economic problems and sees the need for change.

With all the attention on efforts to reduce taxes has come a renewed awareness of another need—that of putting a rein on government spending. One approach has been to propose across-the-board 2 percent cutbacks on appropriations bills for various departments and agencies. This approach serves the immediate purpose of cutting spending, but it doesn't resolve the long-range problem.

After searching for a mechanism to help Congress better put the brakes on government spending, I read a recent article by former Ambassador Larry Silberman who suggests a proposal I'm confident can do the job. Senator Chuck Percy and I with bipartisan sponsors last week introduced the "Government Accountability Act," a measure that would require the Administration to give Congress a report card on the performance and cost-effectiveness of federal programs.

The bill would require biennial reports to Congress on the relative effectiveness of these programs. The President and the Director of the Office of Management and Budget would rank all programs within a department with all others in that department. Our bill sets forth a reasonably objective standard for ranking.

Though there have been other efforts aimed at ranking federal programs—the Carter Administration asked Members of Congress to do so in 1977—this proposal provides the advantage of a comprehensive review of all programs. More important, this ranking will be made available to the public.

The importance of public release of the rankings cannot be overstated. This will provide the opportunity for input by individuals and organizations affected by a particular program. By so doing, we provide a safeguard against an administration attempting to sabotage a program or agency for ideological or other reasons.

A high ranking by the Administration will not necessarily mean Congress will approve continuation of a program intact or with the authorization level requested by the Administration. Neither will a low ranking mean that a program is destined for elimination.

What the rankings will mean is that Congress can get a better handle on determining which federal programs could be improved or weeded out and which deserve more or less money than they're currently being given. They will also allow us to deal with the problems of overlapping or of contrasting goals.

The report would be filed at the beginning of each new Congress. It will thus enable responsible House and Senate committees to strengthen their oversight efforts. The key to effective, efficient management of programs oftentimes rests on the quality of oversight process in each Congress.

Too often, Congress creates new programs, then fails to follow up to see whether they're run as they should be and whether they're accomplishing the goals for which they're intended. For the first time, we would have a clearly spelled out, simple and inexpensive means of beginning the oversight process in each Congress.

Our proposal will not solve all the problems we have in bringing government spending under control. It will, though, offer an important tool to more effectively deal with the issue.

As we near the close of the 95th Congress, it is doubtful this proposal will be passed before the end of the session. My hope is that we can begin the education process and build bipartisan support for this legislation so that it will receive quick action in the 96th Congress.

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[From the Washington Star, Aug. 30, 1978]

LET'S RANK GOVERNMENT EFFECTIVENESS

(By Michael Novak)

I wish Democrats had thought of this idea first: a shrewd technique to make big government accountable. "Rank the bastards!" might be its battle cry.

My colleague at the American Enterprise Institute, former Ambassador Laurence H. Silberman, spelled out the idea in the new Republican intellectual journal Commonsense (310 First St. NE., Washington, D.C. 20003). Each year the president of the United States would be required to report to Congress on the rank of every program in each department of the executive branch according to its effectiveness. Then the Congress—and the people—would get an idea of the least effective programs in each department.

Every single program would be ranked. Each would be rated in comparison to other programs within its own department. Good programs would get due notice. So would poor ones. Silberman proposes three mandatory criteria for distinguishing them: (a) coherence of statutory objectives; (b) design of the program; (c) quality of management. The ranking system would give government programs something like the major-league baseball standing: a mandatory finish line with clear winners and losers each year.

The director of the Office of Management and Budget would be required to identify programs within the government that have contradictory aims (i.e., encouraging tobacco growers but discouraging smokers). The OMB director would be entitled to propose to Congress the elimination of ineffective programs. Good managers might welcome that opportunity.

Would this particular presidential report be buried from sight? Both journalists and the public would love it. Would budget-wise administrators place the most popular programs at the lowest ranking, to protect them? Lobbies for popular programs would almost certainly begin fighting for a high ranking months before the report was due.

Some ineffective but popular programs would always be at the bottom and some of the worst would be sure to be among them. Besides, the president would have to supply a rationale for each ranking. He would not want to appear to be naive.

Some administrators might try to hide poor programs within larger categories. But astute administrators would have an incentive to break programs down into smaller measurable units. In order to keep their empires as large as possible, some would sacrifice only smaller units at the bottom. Year by year, the worst of these could be pruned away.

Actually, Silberman notes, good managers of federal departments have been doing something like this for years. Faced with tighter budgets, they informally rank their programs when they allocate scarce resources. A new law would force them to make these rankings formal, analytically precise and public.

How can one compare apples and oranges? When you have a limited amount of money for fruit, you have to. A Government Accountability Act would force managers to compare real programs with read programs, on the basis of clear technical analysis. Over the years, evaluative techniques will become sharper. For the only way to diminish controversy will be to develop clear, objective, communicable criteria.

Recall that when students in college used to be ranked, each single one received a relative position. Nowadays, when students are not ranked, "grade inflation" occurs; the bottom half moves upward in an anonymous mass. In the old days, even if all passed, each knew where he stood. Ranking improves techniques of evaluation.

Most subcabinet officers today stay in one position less than two years. To make a name for themselves, some find an incentive to launch a "new" program. No one notices or rewards tough managerial skills (which usually provoke internal dissension).

Under a ranking system, new appointees would face the threat of seeing their program slip lower, compared to previous years, and some would hit bottom. Standards of excellence would change, as incentives changed.

In the private sector, competition helps. A ranking system will make the public sector competitive.

Leaders in the House and Senate have recently proposed a Government Accountability Act based on Ambassador Silberman's shrewd techniques. Democrats, who favor good government as well as big government,

should favor this act for the best of populist reasons.

It restores a piece of invisible government to visibility. It will help presidents to get a handle on the monster they manage.

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[From the Savannah Morning News, Aug. 11, 1978]

ACCOUNTABILITY SOUGHT

We doubt that a private enterprise would remain in business long if it never assessed the profit and loss of its operations.

But this is standard procedure for the federal government. Congress will debate a measure, pass a law and regularly appropriate money for the resulting program. In more cases than not, however, Congress directs few inquiries as to how well the program is working and whether or not it is meeting the goals that its sponsors set forth.

Sen. Charles Percy (R-Ill.) and Rep. William Steiger (R-Wis.) are disturbed by this situation and they have proposed legislation that would help Congress measure the success of failure of its handiwork.

Under this bill—The Government Accountability Act of 1978—the president and the Office of Management and Budget director would submit bi-annual ratings of programs within executive branch departments. The rating designations would be "Excellent," "Adequate" and "Satisfactory."

"Like any business," Senator Percy affirms, "the federal government should have a system of ranking programs on performance. Without such a system there is virtually no accountability to the taxpayers who support federal programs.

The passage of California's Proposition 13 has heralded 1978 as the year of the taxpayer. The proposed accountability act is a fitting step to celebrate the occasion. Too many old and useless programs never die and fade away. Congress needs prompting to shut them down.

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[From the Milwaukee Journal, Aug. 6, 1978]

BILL PROPOSES AGENCY RATINGS

WASHINGTON, D.C.—If Rep. William Steiger (R–Wis.) and Sen. Charles Percy (R–Ill.) get their way, each federal agency will get a "report card" every two years from the president.

The accounting would not include A's and F's, but it would rate each agency in terms such as "excellent," "adequate" or "unsatisfactory." And within each department, the performance of various agencies would be listed in the order of their relative efficiency.

Last week, Percy and Steiger introduced a bill entitled the Government Accountability Act of 1978 to accomplish their aims. They think it would fit in nicely with President Carter's crusade to reform the federal bureaucracy.

Under provisions of the bill, the biennial reports on each agency would be prepared by the president's Office of Management and Budget and would be submitted to Congress with the federal budget every two years.

The plan has the support of four former Republican budget directors—George Shultz, Roy Ash, Caspar Weinberger and James Lynn. And Percy and Steiger credit Laurence H. Silberman, a former Republican undersecretary of labor and deputy attorney general, for the research leading to the idea.

"Since there is no uniform method of evaluating programs," Silberman has written, "generating a national political consensus as to prime targets for elimination is extremely difficult."

The idea behind the bill, Percy said, is to provide not only a ranking, but also a presidential explanation of the ranking.

Obviously, such a requirement could present problems for any administration because a president would have to identify programs that were operating inefficiently under his jurisdiction.

PROBLEMS TO OVERCOME

Steiger and Percy conceded that this could present some problems, but they contended that such problems could be overcome.

Could a chief executive with some ax to grind try to get rid of a certain agency by giving it unfairly low ratings?

Steiger said that congressional committees would have to watch for this and protect agencies that deserve to continue their work.

But, he said: "Too often, government programs develop lives of their own long after they've lost their usefulness or effectiveness. Our bill will provide a mechanism for evaluating these programs and give Congress a better means of determining which ones could be improved or which ones could be weeded out."

Rating all of the departments and agencies might be a chore for any president.

But Percy and Steiger would spare the White House from one impossible task—judging its own performance.

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[From the Education Daily, Aug. 9, 1978]

BILLS CALL FOR RANKING GOVERNMENT PROGRAMS EVERY 2 YEARS

Sen. Charles Percy, R-Ill., and Rep. William Steiger, R-Wis., last week introduced identical bills, S. 3366 and H.R. 13723, aimed at evaluating the effectiveness of federal programs.

Called the Government Accountability Act of 1978, the Percy-Steiger measure would require the president to rank all federal programs every two years in a report to Congress. The ranking would be based on three criteria: clarity of the statutory objective; design of the program; and the quality of its management.

Every program ranked would carry with it a presidential explanation of the ranking and a rating of excellent, adequate or satisfactory. "Federal programs" are defined as those "carried out pursuant to separate statutory authorization or for which federal expenditures are specifically allocated by the Federal Government." The bills exclude independent regulatory agencies and the executive office of the president from the ranking procedure.

IMB's Role.—The legislation also would require the director of the Office of Management and Budget to identify programs that appear to have aims contradictory to other federal programs and recommend steps to correct the situation. In addition, OMB is called on to recommend "the termination or modification of any program whose relative ineffectiveness no longer justifies continued Federal expenditures or only justifies a lower level of Federal expenditures."

In introducing the bill last week, Percy noted his objective is "to provide the public and Congress with a ranking of federal programs so that those glaringly ineffective and mismanaged will stand out." He also noted that the legislation doesn't specify what steps Congress must take when the report is received.

In a prepared statement, Steiger said, "I wish to emphasize the concept of strengthening ineffective programs. Ranking a program as least effective should not be tantamount to elimination. It should assure action that will result in more for our tax dollars." ●

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## BOURNE DECISION SMACKS OF CRONYISM

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. FINDLEY. Mr. Speaker, the decision by Virginia and Federal officials not to prosecute Dr. Peter Bourne but instead to prosecute only the young woman who tried to fill the prescription for Dr. Bourne's secretary, is an unconscionable miscarriage of justice and smacks of cronyism at its worst in the White House. Virginia law enforcement officials state that Bourne will elude them because of technicalities and "an oversight" in the law, but Toby Long will not, even though she was not even the intended user of the drug Bourne illegally prescribed and, according to the Virginia prosecutor, is "the least culpable of the bunch." She now faces a possible 5 years in prison and a $15,000 fine, penalties which Dr. Bourne only narrowly escaped.

U.S. Attorney Carl S. Rauh, who has the prime responsibility for enforcement of Federal laws in the District of Columbia where the crime was committed, gives no intelligible reason for failing to bring Bourne to the bar of justice. He simply states that:

We originally deferred to Virginia authorities to decide whether to prosecute or not in this case. They've made their decision and as far as this office is concerned, that's the end of the matter.

Curiously enough, this bit of sleight of hand comes from the very office that had major responsibility for the prosecution of the Watergate burglars. It was Mr. Rauh's predecessor, Earl Silbert, a Republican, who prosecuted the burglars who broke into Democratic National Headquarters. I cannot see why Mr. Rauh, Silbert's successor and presumably a Democrat, should be under any less compulsion to prosecute White House crimes of the Carter administration. Perhaps he is afraid that if he upholds the law in this case his boss the Attorney General might see to it that he follows in David Marston's footsteps. Rauh cannot have missed the significance of the fact that Deputy Attorney General Benjamin Civiletti, and presumably the Attorney General, knew of Bourne's falsification of the prescription a full week before it was publicly revealed and took no action. He was also probably aware of President Carter's description of Bourne as "about the closest friend I have in the world."

The facts are clear. Dr. Bourne violated both Federal laws and those of the District of Columbia by writing a false prescription. There is no possible legal or ethical justification for Mr. Rauh turning his back on this illegal conduct and refusing to prosecute. If Mr. Rauh is kept on the job after this miscarriage of justice, and after David Marston was fired, then it is clear that this administration has a double standard of justice.

During his campaign, President Carter set forth his own code of ethics. He said:

As President, I will be responsible for the conduct of the Executive Branch of government. Errors will be immediately revealed and an explanation given to the public, along with corrective action to prevent any recurrence of such actions. There is only one person in this nation who can speak with a clear voice, who can set a standard of morals, decency and openness. That person is the President.

Dr. Bourne may have been "an able and dedicated public servant" as the

President described him after he had left the White House, but those words have an all too familiar ring, recalling former President Nixon's testament to Haldeman and Erlichman just a few short years ago. The question now is whether this administration will stand by the President's code of ethics, or stand by President Carter's long-time friend as Nixon stood loyally by his, ignoring the fact that the laws have been violated.

My hope is that Attorney General Griffin Bell will yet personally direct the Justice Department to investigate fully the illegal conduct of Dr. Bourne and take whatever steps are required—regardless of party or friendship. After Watergate, the American people deserve no less.

The medical societies of the District of Columbia, Georgia, California, and Colorado, all of which Dr. Bourne is a member, must also fulfill their own separate responsibilities. Officials of the American Medical Association, the American Psychiatric Association, and the D.C. Medical Association all agree that the use of a fictitious name in prescribing a controlled substance like Quaalude violates the law and therefore the standards of professional conduct. Dr. Bourne's actions must be reviewed by each medical society and appropriate disciplinary action taken. Just as most of the White House lawyers who participated in the Watergate scandal were disbarred, so too must Dr. Bourne pay the appropriate penalty for violating the ethics of his profession.

Following is an editorial from the Christian Science Monitor that is right on point:

CLEAR THE BOURNE CLOUD

"Bourne got off, why pick on me?" It is all too easy to imagine this kind of reaction from less privileged violators of drug laws than Dr. Peter Bourne, whose offense occurred while he was still President Carter's chief adviser on drugs and health. Indeed, if Dr. Bourne's falsification of a drug prescription can blandly be allowed to fall between the cracks of the legal system, a new encouragement to deception of all kinds is offered to impressionable young people—or their impressionable elders, for that matter.

We are not suggesting a personal hounding of Dr. Bourne. But his case has become symbolic of lapsed integrity at the top. And whatever the proper legal judgment on his admitted deceit may be, the nation needs a sense that the full legal process has been pursued—and that the administration *cares* about pursuing it.

As it is, the legal authorities in Washington get out from under by leaving a decision on prosecution up to authorities in Virginia, where the fabricated-in-Washington prescription was presented to a druggist. The Virginia authorities get out from under by disclaiming jurisdiction over Dr. Bourne's violation "outside the state." Attorney General Bell gets out from under on the grounds that the case did not reach his "level."

Of course, the country's main guardian of justice cannot be forced to swat gnats all the time. But it is no mere gnat when a high White House aide flouts the law, whatever lofty motives he claims. If Americans cannot expect concern for an uncompromising sense of ethics in the White House, where can they expect it?

Mr. Carter conveyed such a concern to many who voted for him. If he is to keep faith with them—not to mention with the office of the presidency—he cannot wash his hands of a case like this by leaving it to Virginia.

The swift elimination of Dr. Bourne from the administration was an improvement on the long clinging to Bert Vance. The President must not, of course, abuse his power by interfering with due legal process. But at the same time, he must help ensure the atmosphere in which that full process goes forward, without double standards, letting the chips fall where they may. The Bourne case cannot be left in legal limbo between Pennsylvania Avenue and Prince William County. The Attorney General, if no one else, ought to be able to find somebody willing to accept jurisdiction for carrying the case through.●

## CAPITAL GAINS AND EQUITY

### HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. DORNAN. Mr. Speaker, Thomas Jefferson, in his first inaugural address, remarked that "A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government . . ." It is indeed unfortunate, Mr. Speaker, that we have not taken to heart Mr. Jefferson's words. I refer in particular to the capital gains tax.

There is a great deal of talk these days, Mr. Speaker, about "equality of opportunity." But is there really equality of opportunity when in the past 10 years the capital gains tax has increased from 25 percent to 49 percent? Is there equality of opportunity when some 25 million stockholders are forced to pay homage to the Government on profits that rightfully belong to them? Is there equality of opportunity, Mr. Speaker, to tax those who work, plan, and save in order to support an increasing army of bureaucrats and those who rely on governmental largesse?

The principle involved here, I respectfully submit, Mr. Speaker, is not the principle of equality of opportunity but rather that of reverse discrimination, couched in the euphemistic terminology of "transfer payments." Those who through foresight and intelligence have accumulated savings and invested it in property and stocks are progressively discriminated against in direct proportion to the success of their investment.

It is no coincidence, Mr. Speaker, that the nations of Japan, Germany, France, Belgium, and the Netherlands, countries with the strongest currencies and lowest inflation rates in the free world, will not tolerate a capital gains tax. Is it not ironic that the most successful country on the face of the Earth does not recognize the debilitating effect of the capital gains tax on investment? Since 1969 there has been a 17-percent decline in individual stock market participation and a negligible percentage of equity issues for new high technology firms. If businesses do not find it profitable to invest in new ventures can a decline in productivity and a rise in unemployment be far behind? In addition, investors often feel "locked in" if their assets or investments have increased significantly in value. As a result, they may hesitate to sell because of the existence of a capital gains tax, with a resulting distortion of business and investment decisions.

The issue, Mr. Speaker, is pathetically simple and clear. If a people is to remain free and productive, they must be encouraged to exercise the virtues of an earlier era, the virtues of frugality, foresight, and planning (private sector planning). They must be permitted, within broad limits, to keep and use their resources as they think best, receiving the benefits and bearing the costs of their own decisions. Such a course of action, and only such a course, will lead to true equality of opportunity. The alternative, Mr. Speaker, is the road to serfdom.

I should consider it a great privilege at this time to incorporate the eloquent remarks of Mr. William F. Buckley, Jr., on this vital issue.

TURNING CAPITAL GAINS UPSIDE DOWN

(By William F. Buckley, Jr.)

A conservative journal of opinion leads off this week with a pithy item. "A small semantic milestone was passed in New Jersey on Aug. 16 when the Trentonian editorially blasted senatorial candidate Jeffrey Bell's tax-cut proposal. Allowing people to keep their own money, growled the Trentonian, is a 'giveaway.'"

The liberal counterpart of this journal, the New Republic, fired off during the same week with a long editorial entitled "Alms for the Rich," by managing editor Michael Kinsley.

Mr. Kinsley is talking about the tax bill which is certain to do something about capital gains taxes. There are several proposals on the floor. Most publicity has attached to the Steiger Amendment, which would return the tax code to the status quo ante, taxing only 50 per cent of a capital gain.

There are variations, trending up to President Carter's original position, now abandoned like the neutron bomb, in which it was proposed not to decrease the capital gains tax but to increase it. What is interesting is less the disputed figure than the underlying philosophical premises. These are nicely introduced by the semantic inversion quoted above. Under current practice, the decision to permit a man to keep the money he has earned is—a giveaway.

The New Republic lays its prejudices bare as though it were addressing its psychiatrist. "Indeed the present capital gains provisions are a layered history of the ebb and flow of favoritism and half-hearted reform." That sentence is as terminologically straightjacketed as anything Freud ever wrote. "Favoritism" sounds (pick one of the following): 1) Bad 2) Neutral 3) Good. The answer is of course: Bad. Why? If we could answer that question easily, we could easily peel off layer after layer of socialist superstition.

Let us put it in another way. The man who leaves his money to his son is 1) Good 2) Bad 3) Don't know. That question itself is heuristic, because the answerer finds himself worrying over the generic question, "Should a father be permitted to leave money to his son?" There are of course those who believe in the total taxation of inheritance. Unless that question is answered, how do you go on to answer the subsidiary question?

What is favoritism? Is favoritism as easy as pointing out that, numerically, only a few benefit? "Since less than 6 per cent of all

taxpayers have capital gains at all," the New Republic writes, "this means the Steiger Amendment would benefit about four taxpayers out of a thousand." That does sound like a chancy criterion does it not?

But try this one: That provision in the Bill of Rights which forbids Congress from passing any law affecting the freedom of the press directly benefits about one person out of one hundred thousand. Is it therefore favoritism?

And note, of course, the handy uses of the loaded word, "reform." Legislation to increase the taxes levied on Americans who make $100,000 or more per year are (mark one): 1) Desirable 2) Undesirable 3) Don't know. A reform is, by common semantic sanction, that which is more desirable than the antecedent situation. By the simple standards of the New Republic, a "reform" is that which increases the tax of the "rich."

This, of course, becomes troublesome at the margin, as Sen. George McGovern discovered in 1972 when he proposed that everybody who earned more than the average should turn over enough money to pay out $1,000 per year to those who earn less than the average. A lot of people thought that was a marvelous idea until the news broke that that meant that everybody earning more than $12,000 per year should be taxed an extra thousand dollars.

What is remarkable is that these are the same people who talk about a land of opportunity. A land of opportunity to do what? To qualify to pay more taxes to the government? There is a lot of common sense going around, of which Proposition 13 is an expression, but the real revolution will not take place until the good guys recapture the philosophical categories.

This means that a society of men committed to the proposition that people ought to be free not only to earn money but to keep the money they earn, is not more outrageous than a society committed to the proposition that people ought to be free to start newspapers and buy magazines even if they inherited the money to buy them with. Right? ●

## BALTIMORE COUNTY SUCCESS WITH CETA

### HON. CLARENCE D. LONG

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. LONG of Maryland. Mr. Speaker, the Baltimore County CETA (Comprehensive Employment and Training Act) program has achieved widespread recognition for its commendable goal of placing trained enrollees in unsubsidized jobs within the short period of 18 months. Over the last 2 years, two-thirds of the county's CETA enrollees have been placed in permanent unsubsidized jobs in the private sector.

Not only does this approach alleviate unemployment, but it also enables the county to use Federal funds to assist greater numbers of the unemployed.

I am pleased to share with my colleagues this paper "Managing Public Service Employment With an 18-Month Termination Policy: Turning Anxiety to Creative Energy" authored by Myra Shapiro, CETA Administrator; David Saunders, Senior Manpower Specialist; and Rona Blank, Director of Counseling; which describes the county's program.

MANAGING PSE WITH AN 18-MONTH TERMINATION POLICY: TURNING ANXIETY TO CREATIVE ENERGY

As of this writing, Congress is finishing hearings on the reenactment of CETA (Comprehensive Employment and Training Act). One key provision, section 121 (CLAI) may create major changes in the management of Public Service Employment (PSE) Programs by limiting PSE enrollment to 18 months, thus focusing the PSE effort on private sector unsubsidized placement.

On a national level, three-quarters of a million currently enrolled CETA-PSE enrollees will be moving from the CETA payrolls to private sector jobs or to unemployment insurance or public assistance. Enrollees will be terminating at the same rate at which they were hired. If a jurisdiction had a hiring goal of 100 slots per month, they will eventually have a termination schedule of nearly 100 enrollees per month.

From the start of CETA, Baltimore County, Maryland has planned PSE as a transitional program preparing employees for unsubsidized jobs within an 18-month enrollment period. To meet the goal of private sector placement, a multi-faced approach evolved based on strong linkages with first-line supervisors, creative use of career development workshops, a sound foundation of economic and learning theory and a humanistic approach to the anxieties of a transitional employee.

The positive placement rate of forced terminations has increased each month from 50 percent to 70 percent with an average of 66 percent (N-243) over the last two years. About two-thirds (65 percent) of the positive placements have been with local business and industry. The placement rate was improved by the cooperation of first-line supervisors, after they understood the goals of CETA.

WPA/CCC AND THE FIRST-LINE SUPERVISION

At first, regular county employees saw CETA as an extension of welfare. They were reluctant to get involved, slow in hiring, and generally treated the "CETA workers" with skepticism. On the other hand, CETA workers were eager, productive, and competing hard for the few merit system vacancies. The seeds of discord were sown long before the Economic Stimulus Act made CETA a high impact program of increasing importance to local jurisdictions.

The local CETA administration approached with trepidation an invitation to give over 120 merit system first-line supervisors part of a supervisory skills course. The workshops, limited to about 20 supervisors each, turned into a chess game, as attackers and defenders of CETA parried. CETA moved first with an analogy to WPA and CCC. "Anyone who worked in CCC or WPA please raise your hand. Tell us your experience." Every group had at least two WPA or CCC workers. Those who were positive about WPA/CCC tended to be supportive of CETA, those critical of WPA/CCC complained about CETA.

A pattern developed in each successive workshop. It became apparent that supervisors needed an outlet to vent frustrations. Novel special projects, unskilled workers, added responsibilities and the need to retrain a new CETA-PSE worker every 18 months irked the supervisors. However, after the antipathy for CETA-PSE workers was expressed, the workshop atmosphere changed.

A video-tape of job-finding workshops brought home the message that CETA was temporary. Supervisors were asked to imagine their own jobs ending in 18 months. The workshops built a new line of communication between supervisors and the CETA-PSE counseling unit. As a result, first-line supervisors became an arm of the counseling unit. Supervisors saw that under CETA local government had a responsibility to train workers for the private sector. Supervisors started taking initiative, they became advocates for CETA-PSE workers, and motivated dozens into finding private sector jobs.

The courting of first-line supervisors has really just begun. The effort has resulted in placements; on the drawing board is a follow up for 400 first-line supervisors on how to be better on-the-job trainers.

ECONOMIC THEORY AND PRIVATE SECTOR PRODUCTIVITY

Private business, department heads, middle-managers and locally elected officials also needed indepth briefings on CETA-PSE. A more esoteric approach was chosen, built on American history, economic theory and a hypothesis for increasing private sector productivity.

First, most briefings started with a retrospective look at the 1930's at which time the government intervened to combat the great Depression. A brief description of the War Manpower Commission that operated in the 1940's was followed by a quick review of the economic and technological changes that led to the 1958–1961 recession. This discussion was highlighted by recalling memories of the Baltimore County plant closing of the Martin-Marietta Corporation that resulted in 30,000 layoffs. The urban riots and Johnson's Great Society programs set the stage for an economic analysis of CETA.

Second, every college economic textbook contains a description of the multiplier effect, which readily explains the rationale for CETA as economic stimulus.

Third, the group is told about the following hypothesis that Baltimore County CETA wants to test: Workers are more productive if they go through a systematic process of vocational choice. As shall be described in the next section, each CETA-PSE worker is given an opportunity to examine his/her own skills, interests and aptitudes. When they return to the labor market, they do so with a specific vocational target.

Our hypothesis is that if workers make an intelligent vocational choice, then they will be more productive on the job. In the workshop setting, an intelligent vocational choice comes from self-assessment of skills, interest and aptitudes. It is the hope of the Baltimore County CETA office that someday it can demonstrate that CETA-PSE workers who attend career development workshops are more productive than the general labor force.

OCCUPATIONAL THEORY AND CREATIVE CAREER DEVELOPMENT

The experience of conducting briefings on CETA demonstrated that a strategy was needed to convince people that indeed it was possible to find private sector jobs in a tight labor market.

Fortuitously, the Baltimore County CETA office had the services of Ray Ziegler, former labor commissioner for the State of Oregon and professor at Dundalk Community College. Mr. Ziegler in the March, 1963 issue of Readers Digest theorized that, at any given moment, 4% of the total jobs are vacant and that anyone with the right job-finding skills can get one of those vacant slots.

The community college, at no cost to CETA, conducted dozens of Ziegler's "Creative Career Development Workshops." Hundreds of CETA workers took the workshops, examined their skills, interests, likes and dislikes, and wrote detailed resumes. To follow Ziegler's method of resume writing, CETA-PSE workers would paraphrase passages from the Dictionary of Occupational Titles that described in great technical detail aspects of their work history. This resulted in high quality resumes prepared in a relatively short period of time. DOT books became a highly valued resource and the scarce copies were closely guarded!

PAID RELEASE TIME AND COMMON COURTESY

The enrollee workshops had tapped an energy source in CETA-PSE workers who started to clamor to workshops and private sector job interviews Ziegler's workshop technique relied entirely on the CETA workers doing their own job development. A policy of paid time off for verified job search was initiated at an early stage. Complaints came from some departments that CETA-PSE workers were too frequently attending workshops, or going to job interviews. CETA administrators wanted to maximize job search activities, while not upsetting the daily scheduling of tasks. Permission slips for every workshop and job interview seemed cumbersome, so a compromise called "common courtesy" was initiated requiring negotiations between the enrollee and the supervisor for paid release time. All paid release time was verified by the counseling office. No amount of coercion from CETA administration could substitute for genuine concern of the first-line supervisor.

PERFORMANCE, ATTENDANCE AND COMMONLY HELD MYTHS

In the continual process of developing rapport with first-line supervisors, attitudinal problems were prevalent. A commonly held myth was that first-line supervisors were dissatisfied with CETA-PSE workers. Contrary to the stereotyped view of CETA workers as being poor performers and excessively absent, the CETA administration was pleased when the research data on the matter were tabulated.

The Baltimore County data reveal a 92% satisfactory and above performance evaluation, and a 90% satisfactory attendance record. The proportion of poor performance and excessive absence was 8% and 10% respectively, barely statistically significant, and certainly not high enough to stereotype 1500 CETA workers. These research findings were often shared with supervisors and enrollees to the disbelief of both. Myths proved difficult to dispel.

COMMUNITY RESOURCES AND CONSTANTLY EVOLVING WORKSHOPS

The educational and training needs of over a thousand enrollees were far greater than could be provided by the small CETA counseling unit. Attention was turned to existing educational and training resources that were found to be plentiful in the community.

The community colleges gladly set up classes right in the county office building. They taught career development along with a few specialized courses involving the artificial barriers women face in the labor market and popular courses such as stress management and values clarification. The stress management course grew out of a very real need expressed by CETA-PSE enrollees who faced the end of training just 18 months away.

Quickly surfacing also was the need for high school diplomas. Young and old alike, CETA-PSE workers who never finished high school found this a detriment when applying for private sector jobs. The county's public school adult education component, at no cost to CETA, supplied a certified GED instructor who came to the county office building each week. CETA-PSE enrollees, after diagnostic tests, came to weekly classes for individual self-paced instruction. There has been a total enrollment of 141; of these, 24 passed the GED, 10 failed, and 55 are currently enrolled to be tested at future dates. As word of the class spread, the enrollment doubled from 47 in 1976 to 97 in 1977. After curriculum adjustments for this particular group of adult learners, the drop-out rate dropped from 59% in 1976 to 25% in 1977.

Another inexpensive and often overlooked source of locally relevant career information is the private employers themselves. Personal invitations and a well designed program brought local businessmen, trades people, technical specialists from areas such as construction, retail, and personnel management to Career Opportunity Workshops (COW). Often the biggest problem with these workshops was finding a conference room large enough for the dozens of CETA enrollees who eagerly sought career information.

Workshops, although they can be categorized under orientation, technical skills, coping skills and job-finding skills, were most successful if they evolved from locally expressed needs. For example, a new workshop has just begun for CETA-PSE enrollees who are in danger of being fired for poor attendance.

TRANSFERS AND OPPORTUNITIES

The counseling unit was unable, on occasion, to resolve supervisor/employee conflicts. Rather than fire the CETA-PSE worker, an experimental transfer policy was initiated. Although each transfer generated a massive amount of paperwork, the CETA-PSE enrollee usually coped better in the new environment. One supervisor developed a special knack for handling enrollees who were unacceptable in other departments. After a few months of training, the supervisor's skill as a motivator and leader turned this group of problem workers into a hard-working, effective competent, workforce. They incidently had the job of cleaning a polluted county waterway, hauling debris out of the river, and handling the frequent fish kills. On rainy days, the "river rats" as they are called, went on job-finding excursions to local factories. The crew's dump trucks were regularly used for practice driving, and many of these enrollees used the county trucks to take the test for a truck driver Grade B license.

SUMMARY

CETA-PSE program operators need to prepare for the scheduled terminations that eventually must come if PSE is a truly transitional program. Enrollees properly prepared can locate the vacancies due to frictional employment, but their support should come from their day-to-day contacts with first-line supervisors, as well as workshops and counseling sessions.●

## CALLS FOR A DRUG INVESTIGATION: PARTISAN OR PRAISEWORTHY?

### HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. MICHEL. Mr. Speaker, on June 16, 1976, candidate Jimmy Carter appeared before the Platform Committee of the Democratic Party to present his platform proposals. Among those proposals, listed under title "An Open and Honest Government: Code of Ethics for the Federal Government," was this one:

Errors or malfeasance in the Executive Branch should be *immediately* revealed by the President and an explanation given to the public along with corrective action, where appropriate, to prevent any recurrence of such actions. (emphasis in the original)

One month later, on the night of July 15, 1976, Jimmy Carter gave his acceptance speech in Madison Square Garden. In that speech he said:

It is time for our government leaders to respect the law no less than the humblest citizen, so that we can end once and for all a double standard of justice. I see no reason why big shot crooks should go free and the poor ones go to jail.

Those two statements can be said to reflect Jimmy Carter's deepest convictions about how high level officials should conduct themselves. The rules Carter has set down for those who would work in his administration are clear and unambiguous. His own duty as President—to "reveal" errors or malfeasance on the part of his subordinates and to give an "explanation" to the public—is no less clear.

Recent charges of widespread use of illegal drugs among the White House staff bring these Carter statements to mind. How has the President lived up to his own high standards of conduct in light of these charges? The answer to that question can tell us much about the seriousness and the sense of purpose of the Carter administration.

The first point that must be made is that at the moment we have only second-hand testimony that illegal drug activities have taken place at the Carter White House or by members of his staff outside the White House. Dr. Peter Bourne, former White House drug expert has stated that marihuana and cocaine are used by White House aides. Various accounts in the media have reported that widespread use of drugs among White House staffers is well-known among journalists. One reporter has written that he knows the names of two high level White House staff members who use illegal drugs and that such drugs have been used at White House functions and even on Presidential trips.

If these charges are true, criminal activity has been going on in the White House. If they are false, a close friend and former high-ranking aide of President Carter and prestigious newsmen are deliberately telling lies. In either event, the response of the President has been curious, to say the least. It would appear that the first thing the President should have done was to immediately ask Bourne to either prove or retract his statement. If Bourne knows who has been breaking the law in the White House he has a moral and legal obligation to say who it is. If he does not know, he should be exposed as one who recklessly smeared the reputation of high-level officials and former associates. But President Carter has neither asked Bourne to provide evidence of his charges nor demanded that he apologize.

And what of the press accounts of drug use at the White House? The President has not publicly questioned the accuracy of these reports nor has he suggested he is a victim of press bias, which he most certainly would have done if he believed such serious charges to be false. It is to say the least untypical of the Carter White House (or any White House for that matter) to silently tolerate false reports of criminal wrongdoing among high level officials. The only logical reason that the President has not attacked the media on this point is that he believes or perhaps even knows the allegations are true. If he has any doubts whatsoever, his duty would be to save the reputations of innocent White House staff

members by having a full investigation of the charges. But he has not done so.

Since the President has not acted to either clear the air by publicly asking Bourne to name names or to conduct an investigation that will set the record straight, what is to be done?

Obviously someone else has to do what the President himself should be doing and, indeed, promised the American people he would do. Someone has to demand that an investigation of Bourne's charges be made so as to either clear the reputations of the White House staffers or to demonstrate that illegal drugs have been used and that "corrective action" is to be taken.

As matters now stand a "double standard of justice" is being used, no matter how you look at the situation. If Bourne is allowed to simply walk away from the serious charges he has made, it will appear that the President has one set of standards for his friends and another for everyone else, for it is inconceivable that the President would remain silent if such allegations were made, without supporting evidence, by someone outside his official family. And, of course, if Bourne's allegations are true, then the President, by not investigating the charges is allowing his high level aides to show disrespect for the law and even to break the law without revealing such conduct to the public.

The President will not do what must be done. No Democrat has asked the President to do what must be done. The media has thus far not demanded an investigation. So it remains for Republicans to do so. Senator HOWARD BAKER has suggested an investigation should be held and Congressman HENRY HYDE has written to the Attorney General asking for an investigation.

But some critics says that if Republicans demand that a thorough and impartial investigation be made by the Justice Department or a special prosecutor, partisanship will have reared its ugly head. Republicans—or so it has been argued—are simply trying to discredit the White House, to exploit a minor incident, to stir up trouble. Republicans who ask for such an investigation are simply trying to "get back" at the Democrats for Watergate.

This is an unconvincing argument because it focuses attention not on the merits of the proposal that is made, or the seriousness of the charges involved, but on the supposed motivations of those who make it. Since no Republican can prove he is not acting from "partisanship"—how can you prove a negative?—it would appear that the public will never be told the truth about drugs and the Carter White House.

But is it really partisan politics to remind the President of the United States of what he himself swore to do? Is it really partisan politics to, at the very least, seek to discover if Bourne is smearing Government officials or, if his charges prove to be correct, if Carter aides have been doing exactly the opposite of what he said his White House aides would do? Is it really partisan politics to ask if Bourne's charges about big shots at the White House have any basis in fact?

Even if it could be shown that Republicans who ask for an investigation are acting from the most ignoble, base, partisan motives—so what? Let the media report those motives and let the public judge. But get on with the investigation.

There have been arguments made, not by the White House, but in the press, that even if Bourne's charges are true, too much is being made about them. It is argued that many members of the generation currently occupying high level positions at the White House smoke pot and use cocaine. They are simply doing what many Americans of their age and class do. Why all the fuss about the breaking of an unpopular law?

To his credit Jimmy Carter has already stated that he does not agree with such an evaluation of the charges. He knows that charges like these strike to the very heart of public trust and public confidence. Carter does not share the casual attitude toward law that has marked the comments of many in and out of the media concerning these charges. He knows that if it is indeed true that members of his staff have been breaking the law with impunity, they have made a mockery of his principles and disgraced his administration.

Knowing all of this, why has the President not demanded an investigation that will either clear the White House of this cloud or bring to justice or to public attention those who feel it is not yet "time for our government leaders to respect the law"?

The truth about these charges must be known. There is no other fair way to go about it than to have an investigation and have Bourne and possibly others testifying under oath. If Bourne is a liar the White House has nothing to fear from such an investigation and the charges will be publicly laid to rest. But if Bourne is correct, the public deserves to know the names of Carter's aides who, big shots that they are, have treated with contempt laws that have put some "humble" citizens behind bars.

President Carter promised he would end "once and for all a double standard of justice." All the President has to do now is follow through on his sacred promise to the American people.

Nationally syndicated columnist Michael Novak recently addressed himself to the Bourne allegations. At this time I want to insert in the RECORD "Where's Carter's Ethic in the Bourne Case," by Michael Novak, published in the Washington Star, August 23, 1978.

The newspaper article follows:

[From the Washington Star, Aug. 23, 1978]

WHERE'S CARTER'S ETHIC IN THE BOURNE CASE?

(By Michael Novak)

On drug use at the White House the stone wall of silence is about to crack. An official of conscience in the Justice Department has grown uneasy about the cover-up. He talked by telephone from his home recently: "Here is a president who can lecture lawyers about equal justice for the downtrodden and the big shots. A ghetto kid caught with a small amount of marijuana can go to jail, but his own drug adviser—a federal official—escapes without even a federal investigation. If the president wants to crack down on big shots, he can begin right in his own office."

According to my source, the Justice Department is doing nothing about the Peter Bourne case. According to federal drug law, "controlled substances" may be given out by prescription only with three precautions: The name and address of the prescribing physicians, the amount, and the name and address of the patient must be registered in writing. Failure in one or more of these might normally lead to a federal investigation, especially since a federal official is involved.

If Dr. Bourne falsified the name and address of a patient—as he self-admittedly did—then he may be subject to these penalties: (1) revocation of his right to prescribe controlled substances; (2) civil charges; (3) criminal charges. The infringement is federal. It is not solely a local or a state matter. A federal investigation is called for in the case of ordinary folks.

Why isn't the Justice Department making an inquiry? Why isn't the president interested in "big shots"?

A U.S. attorney in Virginia not long ago had an employee on his payroll who was caught with a small amount of marijuana. To protect the integrity of his own office, the U.S. attorney prosecuted the minor employee, who went to jail. "Are only little fish to go to jail?" my informant at Justice asked.

"What exactly is the Justice Department doing, then?" he was asked.

"We are doing nothing," he said in disgust. "You'd think the era of cover-ups had passed."

Why is the White House doing nothing? There have been published allegations to the following effect: (1) Dr. Peter Bourne himself smoked marijuana and snorted cocaine at a Washington party. (2) Dr. Peter Bourne asserted that there was frequent marijuana use and occasional use of cocaine among the White House staff. (3) Jody Powell, the president's press secretary, asserted that Dr. Bourne had prescribed "controlled substances" on at least four occasions, not counting "diet pills" (alleged by others to be controlled substances, of multiple purpose) for Hamilton Jordan. (4) Hunter S. Thompson of *Rolling Stone* magazine has alleged that "a few" White House staffers have joined reporters in the use of drugs presently not legal.

The implication of these allegations is that illegal activity has reached to very high levels in the White House, touching federal officials very close to the president. So far as is known, no agency of the federal government is investigating these allegations. The White House has stonewalled. On one occasion, for which he later apologized, Powell made veiled threats against White House news personnel who might also be implicated.

President Carter promised "open" government. Why, my informant asked, is there not an open, public, federal investigation of alleged charges of illegal activity on the part of high federal officials close to the president, and part of his official family?

Highest among the Justice Department's declared priorities are white-collar crime, organized crime and narcotics abuse. At least two of these elements are, or may be, involved at the White House since, clearly, such illegalities as are alleged constitute: (a) white-collar crime; and (b) abuse of narcotics laws.

In the 12-month period ending March 31, 1978, more than 10 per cent of all federal criminal prosecutions (3,932 of 37,380) were for drug law violations. President Carter received praise for handling the Peter Bourne affair more quickly than he handled the Bert Lance affair. But a cover-up is going on in the former even more clearly than in the latter. The drug matter may be a more serious threat to the pillars of the Carter administration than the Lance affair.●

BALANCE(S) OF POWER SERIES BOOK III (F)—SOUTHERN AFRICA

## HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, today's selection in the continuing regional balance series trains its sights still further south on the African Continent. The balance of forces in southern Africa defies a comprehensive accounting, since guerrilla warfare conditions create an ebb and flow of loosely aligned revolutionary forces across national boundaries. It is essential, however, to maintain a position balance of forces to resist the incursion of these spoilers in the turbulent setting of southern Africa.

Of particular concern today are armed rebel forces within and around Rhodesia, seeking to influence and benefit from the political changes in that beseiged country. Today's article, "Chimurenga," by D. F. S. Fourie, shows that the insurgent forces are still of insufficient strength to impose a solution by force of arms. But it also shows that continued armed struggle in the face of existing odds are perpetuating a situation of unrest and instability in Rhodesia and in the southern part of Africa.

This article, which first appeared in the Bulletin of the Africa Institute in the fall of 1977, follows:

CHIMURENGA—THE WAR IN RHODESIA [1]

Rhodesia's war, is much in evidence today. Soldiers and armed civilians are a common sight. Commerce and industry are being disrupted by repetitive military call ups. Rural life has been disrupted by terror, by counter-insurgency measures and reprisals, the movement of villagers to new settlements and by the imposition of curfews.

It has become commonplace among observers—newspapermen, academics and politicians—to forecast the downfall of the Rhodesian government. Some even suggest that it would be in South Africa's interests if this were to happen. The arguments are based on what are perceived to be the weakening factors in Rhodesian security—manpower limits, foreign exchange shortage and general stress on the economy as the result both of sanctions and world-wide inflation.

In a war of this nature however, where there are no conclusive engagements, no defined fronts and no specific areas disputed by force predictions about the outcome are unwise and risky. It is appropriate to recall the words of D E H Russell in his book *Rebellion, Revolution and Armed Force: a comparative study of fifteen countries with special emphasis on Cuba and South Africa* [2] when he says "If it is true—that no mass rebellion can succeed without the defection of some of the régime's armed forces, then it helps revolutionaries not one jot to act in ignorance of this . . . In a situation where people are rebelling the behavior of the armed forces has been shown to be a decisive factor in the outcome of the rebellion".

If Russell is right, and his opinion is shared by others such as J. Bowyer Bell of Columbia University, then it is not the present campaign that will bring down the Rhodesian government while it continues to command the loyalty of the armed forces, black and white.

A military conclusion it seems would only result from the intervention of conventional force and it would appear that such a force would have to come from outside the African continent south of the Sahara. The Rhodesian war has gone through several phases. The first commenced in 1966, scon after UDI, and ended to the discredit of the insurgents in March 1970.

Thereafter followed a period of relative inactivity that ended in December 1972 after the military wing of ZANU had established itself among the rural inhabitants of the north-eastern districts around Centenary and Mount Darwin, using persuasion, intimidation and witchcraft. This second phase, beginning with Operation Hurricane, has continued until the present.

In 1974 prospects for the insurgents improved when the government of Prime Minister Caetano fell and Portugal summarily ended the colonial rule on Mocambique. With the effective ending of allied control of Rhodesia's eastern border, the insurgents were free to move along the frontier establishing bases and crossing into Rhodesia unhampered. It was to counter these operations that Operation Thrasher was mounted by the Rhodesian security forces in 1975. This extension of operations has been marked by a break down of relations with Moçambique and has resulted in strikes into Moçambique against bases and camps where considerable casualties have been reported amongst the insurgents.

DETAINED LEADERS RELEASED

The year 1974 was also significant in that a number of detained ZANU and ZAPU leaders were released as part of the South African accords respecting détente. Later, in 1975 South African Police units were finally withdrawn from Rhodesia, having been withdrawn from operational areas in 1974.

Many blacks, insurgents and uncommitted people, interpreted these events as a defeat for the Rhodesian government, particularly when the ZANU insurgents in the north-east continued to operate in defiance of the cease fire agreement. In the belief that the government was no longer able to protect them from terrorism many blacks switched their passive support from the security forces to the insurgents. Until then black support for the security forces had been a significant factor in the bush war, particularly as it provided a flow of intelligence of considerable and significant proportions. The intensification and spread of the war to new sections of the border lead to security forces having to undertake counter-insurgency operations south of Umtali (Operation Repulse) and between Victoria Falls and Beit Bridge (Operation Tangent).

A feature of the war on the eastern border has been the use of numbers of virtually untrained troops by the insurgents—frequently schoolboys who are no match of Rhodesia's security forces—counted among the best anti-insurgency forces in the world. During 1976 it was believed that some 1,700 insurgents would be sent; into Rhodesia between January and October—an imposing number when compared to the 260 believed to have been the highest number present in Rhodesia at any one time before that.

The Rhodesian response was a series of preamptive strikes against Mocambique between August and November 1976 which effectively reduced the danger of large scale incursions. One raid resulted the seizure of 50 tons of equipment and also valuable intelligence documents.

On the Zambian and Botswana side ZAPU has been engaged in much more limited operations (designated Operation Tangent by the security forces) using better trained forces, with only about 60 men in Rhodesia at any one time and only about 400 reported to be in reserve. They have concentrated on soft targets such as the Victoria Falls Hotel, lone travellers, farms, the Wankie mine and its compound and the railway from Zambia.

PSYCHOLOGICAL SIDE

Although there have been strikes as close as 30 km from Salisbury, these have been exceptions rather than the rule. It is clear from this that the insurgents have not been able to establish themselves far from the border, their refuge and source of supplies. The problem experienced with this kind of campaign is that isolated incidents are often spectacular beyond their significance, whereas the actual overall picture of the campaign shows that insurgents make little headway. A factor adversely affecting the government's political and psychological position is the number of civilians who have been killed by security forces while breaking the curfew that restricts night movement in the rural areas. There is no set picture of a campaign developing in the operations, but the numerous incidents have an adverse affect on the public at large. This is because the public, black and white, is influenced by the frequency of reports of incidents and because military service has become such a prominent feature of life in the country—Asians, Coloureds and whites all undertake national and operational service. Consequently, a feeling of uncertainty and fear is inevitable. Even the constant presence of uniforms and weapons does not dispel the fear and create an impression of protection, since the interpretation is that uniforms proliferate because things are going badly. Certainly, this is the way a number of observers interpret the situation, although how general the feeling is, is difficult to establish. This is of course, one of the characteristic problems of insurgency, namely that the psychological impact often outweighs the actual physical impact.

In Rhodesia's case the interpretation is further exaggerated by the tension between Rhodesia and neighbouring countries, and by the tension with the Catholic Church as a consequence of the dilemma in which missionaries find themselves when they have to support both sides for their own safety. (This has resulted departure of some nuns and missionaries). Then there is the tension generated by uncertainty about the future, notably among the whites and among the black civil servants, police and 2,500 soldiers whom Robert Mugabe had threatened with retribution. For them in particular, the future may be grim.

In such circumstances there is an inevitable tendency to regard a collapse as unavoidable. Superficial comparisons are drawn with experience in countries such as Kenya, Malaya, Vietnam, Angola and Mocambique to persuade one of the inevitability of military defeat. This disregards what actually led to a change of government in those countries—such as British policy to divert itself of colonies, a decision made long before the first postwar insurgency began. It also disregards the actual course of wars and how they were actually terminated, in favour of more subjectively acceptable interpretations.[3]

This results not only in unwarranted pessimism on one side but in injustifiable overoptimism on the other, and over-optimism that has led many a young Rhodesian black to a premature grave. (Table 1). Losses in action have been very heavy especially on the eastern border. This has been offset by the large numbers who are either willingly or forcibly recruited to take up arms and of course, by the seemingly unlimited resources available to them.

However long the war may continue there seems little evidence at present to suggest that the outcome will be settled to the satisfaction of the insurgents by the kind of military action being undertaken at present. To launch a campaign which can make a significant impact on the Rhodesian security forces will require a force of considerable quality.

[1] The name given to the rebellion of 1896, now used by the insurgents to arouse the spirit of the past.

[2] Academic Press, New York, London, 1974.

[3] See for examples, Bell, J. B. *The Myth of the Guerrilla*, Knopf, New York, 1971.

*Casualties in the Rhodesian war*

| | December 1972 to November 1976 | January to December 1976 | December 1972 to March 25, 1977 |
|---|---|---|---|
| Guerillas: | | | |
| Killed | 1,916 | ±1,500 | 2,118 |
| Captured | | | 520 |
| Blacks killed helping gangs | 126 | — | — |
| Blacks killed breaking curfew | 133 | — | — |
| Rhodesian Security Forces: Killed | 198 | ±130 | 213 |
| White civilians killed | 59 | ±40 | — |
| Black civilians*: | | | |
| Killed | 1,005 | ±600 | 1,053 |
| Injured | 1,338 | — | 1,424 |

Notes:

1. All kinds of injuries and causes of death related to the war, including battle, accident and terrorism.

2. Figures derived from various sources. Exact details as to figures for particular times require checking.

*Black civilians attacked by terrorist gangs, mine incidents, etc.●

## CONGRESS SHOULD ENACT CONSTITUTIONAL AMENDMENT MANDATING A BALANCED BUDGET

### HON. MICHAEL T. BLOUIN

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. BLOUIN. Mr. Speaker, I would like to call to the attention of the House that today I have filed a discharge petition for House Journal Resolution 468, a proposed constitutional amendment mandating a balanced budget by 1980 and repayment of the national debt over the next 20 years. This has been designated as Discharge Petition No. 11.

As we are all aware, three separate amendments were offered and defeated during the consideration of the second concurrent budget resolution which would have significantly reduced this year's projected deficit. While I did not support two of these particular amendments, I did support the amendment offered by Congressman FISHER of Virginia which would have reduced budget authority and outlays by $5 billion each respectively, thus reducing the projected deficit to $35 billion the same deficit figure offered as part of the Holt amendment without the corresponding excessive tax cuts that accompanied this proposal. Unfortunately, and to my surprise, the Fisher amendment failed by a larger note than the two previously offered amendments.

Based on the House's recent action, it now appears obvious that collectively the Congress appears unwilling to even modestly reduce Federal expenditures. given this fact, I believe that it is time to show the American public that their interests, and not that of "special interests" are protected from irresponsible spending.

The people of Iowa, as well as the people of this country, are well within their rights to expect that the Federal Government operate within the amount that is taken in annually in revenues.

In fact, in a questionnaire that I recently sent to my constituents on the subject of Federal spending, of the literally thousands that responded, the overwhelming consensus was that a balanced budget was the number one priority.

It is for this reason that I trust that the Members of the House will demonstrate their desire to begin consideration of this matter by joining me in signing Discharge Petition No. 11, which will provide for a balanced budget by 1980.●

## MIDDLE EAST OIL SUPPLIES

### HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. SIKES. Mr. Speaker, I am concerned that continued U.S. delays in military and economic assistance to Somalia and North Yemen could seriously threaten assured access to oil for the West and undermine Saudi Arabian efforts for peace and stability in the Middle East.

It was my privilege, in this connection, during the August congressional recess, to hold lengthy conversations with officials in Saudi Arabia and North Yemen. Included were Crown Prince Fahd, Deputy Prime Minister; Prince Sultan, Minister of Defense and Aviation; Prince Saud, Minister of Foreign Affairs, all from Saudi Arabia; and President Salih, Foreign Minister Al-Asnaj, Deputy Prime Minister for Economic and Financial Affairs, and Acting Prime Minister Junayd, Deputy Prime Minister Al-Kibse, Vice President and Chairman of the Peoples Constituent Assembly Al-Arashi from North Yemen.

There are many who hold strongly to the view that failure of the U.S. Government to move swiftly when overtures were made to the United States by South Yemen may have contributed to the assassination of the President and the rapid consolidation by the Russians of their hold on that country. An estimated 500 to 700 Cubans have been positioned at the important port of Aden and in the surrounding area. Another port development reputedly under development near Oman will further strengthen Russia's ability to threaten shipments of oil essential to the West and supplies necessary to the Middle East. Oman also is a target for Russian incursion.

The reconquest of Eritrea with Russian arms and Cuban support can be expected to open the Port of Massawa, giving the Russians the ability to dominate shipping both from the Persian Gulf and the Red Sea to the Indian Ocean and the Suez Canal. The Port of Aden already largely compensates the Russians for the loss of Berbera in Somalia.

The North Yemenese are very apprehensive about an invasion by their southern neighbor. Heretofore, North Yemen has accepted Russian arms and advisors. They see a continuation of this policy to be an acceptance of Communist control. They now seek United States support and alliance with Saudi Arabia. The Saudis realize the threat of continuing Communist encroachment as a very real danger which would leave Western oriented. anti-Communist powers encircled by Russian guns.

I must state regretfully that at present the United States is still following a policy of too little and too late. The nations which oppose communism are afraid to depend upon us. A promise of weapons to Somalia at the time that nation expelled the Russians from the strategic port of Berbera on the Horn of Africa—equally as important as Aden—still has not been kept. A year ago President Siad Barre of Somalia told me the Russians planned a force of 15,000 Cubans in Ethiopia for their conquest of Ogaden. The State Department insisted the number would be nearer 500. The actual number was 17,000. The Government of Somalia is now threatened from within because of U.S. dealliance. We simply cannot play games and maintain a posture of significance worldwide.

At the beginning of the August recess, I participated in the United Nations Conference Committee on Disarmament in Geneva, met with SALT officials there, attended military briefings in Ramstein, Germany, and NATO briefings in Brussels. Then flew to Baghdad in Iraq for discussions of that nation's hard line policies toward the West and the United States in particular.

I found that Iraq, which is now one of the world's major oil producers, is pursuing a policy of internal development which can open some trade doors to the United States, but there is no indication of a change in their hard line official attitude. The Iraqis blame the United States for the Arab problem with Israel. Iraq still poses a threat to the continued existence and security of Kuwait. They have never relinquished their claim for Kuwaite territory. Since Iraq also borders on Saudi Arabia, their militant stand causes apprehension in that country also.●

## HUMAN RIGHTS AND INTERNATIONAL FINANCIAL INSTITUTIONS


### HON. TOM HARKIN

OF IOWA

IN THE HOUSE OF REPRESENTATIVES


*Thursday, September 7, 1978*

● Mr. HARKIN. Mr. Speaker, in September 1977, the House of Representatives rejected the International Financial Institutions Act of 1977 because it failed to contain strong human rights language. Immediately following this rejection, the House adopted the same conference report except that the human rights language originally adopted by the House was reinstated.

Now that a year has passed since this crucial vote, time has come to assess the effectiveness of the human rights language. The following memo done by Jim Morell of the Center for International Policy for Senator MARK HATFIELD does just that. I think the record clearly shows that the House's decision to maintain its firm human rights position was correct.

Soon the House may be faced with the same situation in regard to another multilateral funding mechanism. It is very likely that the conference report establishing the supplementary financing facility of the International Monetary Fund will not contain any language referring to human rights or human needs. In the last few years our U.S. foreign policy has come a long way in recognizing the plight of the poor and the oppressed. If we authorize an expenditure of more than $1.8 billion through an international funding institution in which our U.S. representative does not have to acknowledge these valid policy concerns, we will be taking a giant leap backwards. I do not think Congress or the American people want this to occur.

I include the following:

A HUMAN RIGHTS SUCCESS STORY: THE HARKIN AMENDMENT ON THE INTERNATIONAL BANKS

A memo from Jim Morrell, Associate, Center for International Policy to Jack Robertson of Sen. Mark Hatfield's office.

The Harkin amendment on the international banks has been perhaps the most successful of all the human-rights amendments passed by Congress since 1974. The amendment, Section 701 of the International Financial Institutions Act of 1977 (PL 95–118), passed by the House April 6, 1977 and signed into law October 3, 1977, has stimulated the Carter administration to take more specific actions to advance human rights through aid policy than any of the similar amendments governing U.S. military aid, Agency for International Development programs, PL–480 loans, or Export-Import Bank financing authorizations. Since enactment of this amendment and its predecessor legislation, Section 28 of the Inter-American Development Bank Act, approved May 31, 1976, the Carter administration has voted "no" on 11 loans and abstained on 21 loans to human-rights violators, and the Ford administration voted "no" on one loan. (See Table 1).

TABLE 1.—U.S. HUMAN RIGHTS POLICY ACTIONS IN THE IFI'S

| Country | Action | Date | Institution | Project |
|---|---|---|---|---|
| (A) DURING CARTER ADMINISTRATION | | | | |
| Argentina | Abstention | June 16, 1977 | IBRD | Industrial credit. |
| Do | do | do | IFC | Soybean processing. |
| Do | No vote | Oct. 27, 1977 | IDB | Gas pipeline. |
| Do | do | Dec. 1, 1977 | IDB | Cellulosel. |
| Do | do | Dec. 8, 1977 | IDB | Petrochemical. |
| Do | Abstention | Feb. 21, 1978 | IBRD | Grain storage. |
| Do | do | Mar. 14, 1978 | IFC | Juan Minetti, South America. |
| Do | do | Apr. 25, 1978 | IFC | Massuh, South America. |
| Do | do | May 9, 1978 | IBRD | Agricultural credit. |
| Do | do | May 30, 1978 | IFC | IPAKO polyethyline. |
| Benin | do | May 26, 1977 | IDA | Roads. |
| Do | do | do | IDA | Regional development technical assistance. |
| CAE | do | Oct. 20, 1977 | AfDF | Education. |
| Chile | No vote | Dec. 8, 1977 | IDB | Roads. |
| Do | do | Mar. 2, 1978 | IDB | Rural public health. |
| El Salvador | Abstention | May 18, 1978 | IBRD | Telecommunications. |
| Ethiopia | Abstention | May 10, 1977 | IDA | Irrigation. |
| Do | do | do | IDA | Roads. |
| Do.[1] | do | Apr. 4, 1978 | IDA | Grain marketing and storage. |
| Guinea | do | Nov. 23, 1977 | AfDF | Kenaf production. |
| Korea | do | Oct. 31, 1977 | ADB | Asan Bay power. |
| Do | do | Dec. 22, 1977 | ADB | Mineral resources. |
| Paraguay | No vote | Mar. 7, 1978 | IBRD | Highways V. |
| Do | do | Mar. 23, 1978 | IDB | Trans-Chaco Road. |
| Do | do | May 25, 1978 | IDB | ANDE electrical transmission. |
| Philippines | Abstention | Nov. 29, 1977 | ADB | Development bank. |
| Do | do | Dec. 9, 1977 | ADB | Hydropower. |
| Do | do | Apr. 25, 1978 | IBRD | PISO Development Bank. |
| Do | do | May 18, 1978 | IBRD | Industrial credit III. |
| Uruguay | No vote | Dec. 21, 1977 | IDB | Paso Severino water supply. |
| Do | do | do | IDB | Coastal roads. |
| Yemen, PDR | do | Feb. 14, 1978 | IDA | Wadi Tuban agriculture. |
| (B) DURING FORD ADMINISTRATION | | | | |
| Chile | do | June 1976 | IDB | Industrial credit. |

[1] Abstention took into consideration concerns with expropriation as well as the human rights situation.

While these policy actions within the international financial institutions (IFIs) certainly reflect the Carter administration's own commitment to advancing human rights abroad, the passage of the Harkin amendment has also considerably strengthened the hand of human-rights advocates within an administration that is grievously divided on this issue. For although President Carter, Secretary of State Vance and Deputy Secretary Warren Christopher have all exerted pressure from the top for advancing human rights through our aid decisions, the majority of the State and Treasury Departments at the outset opposed this policy and it is still unpopular within the administration. As a result, human-rights advocates find themselves badly outnumbered within this administration. The existence of legal instructions and a definite Congressional mandate have made a clear difference.

Althouogh it is impossible to establish a direct cause-and-effect relationship between U.S. human-rights policy actions in the IFIs pursuant to the Harkin amendment and specific improvements in human-rights performance abroad, U.S. actions in the IFIs encouraged progress in four key countries:

TABLE 2

Human Rights Progress Encouraged by Harkin Amendment in IFIs

*Argentina.*—The right of option and release of names of 10 prisoners, and some releases since January 1978.

*The Philippines.*—Some prisoner releases, especially the prompt release of the 600 picked up after the elections.

*Chile.*— Some changes and a conditional easing of repression.

*South Korea.*—Releases in December 1977–January 1978 followed adverse U.S. votes in Asian Development Bank; these votes did register and influence Korean government decision.

Despite limited improvements as noted above, the State Department and non-governmental organizations continue to find serious human-rights problems persisting in these four countries. A further difficulty in precisely gauging the effect of U.S. policy actions in the IFIs under the Harkin amendment is the fact that other purely bilateral aid sanctions have also contributed to U.S. pressure for human rights improvements. In the case of Argentina and Chile, U.S. military aid has been discontinued (except for deliveries under prior-year agreements); in Chile, bilateral economic assistance has been cut to $6 million in FY 1979; and in the cases of the Philippines and South Korea, PL–480 Title I aid was temporarily deferred. Nevertheless, in coordination with these bilateral actions, U.S. action in the IFIs have exerted definite pressure for human-rights improvements.

Apart from the specific improvements cited in Table 2, the Harkin amendment has had three other beneficial effects. It has extended our policy to an arena, the international banks, that involves substantially larger flows of resources than bilateral aid, thus increasing the leverage for improvements; it has provided opportunities for internationalizing U.S. human-rights concerns; and it has focused attention, both in the U.S. government and in the international banks, on determining who are the beneficiaries of economic aid projects and whether they serve basic human needs.

*Extending policy to cover larger resource flows.*—Since early 1977, an inter-agency committee chaired by Deputy Secretary Christopher has met to review upcoming AID, PL–480 and international bank loans using human-rights criteria. Usually the international bank loans in question are many times larger than bilateral U.S. economic assistance programs. In FY 1977, for example, South Korea received $77.4 million in direct U.S. economic assistance, and $155 million in military aid (military aid is not reviewed for human rights by the Christopher committee but by the Arms Export Control Board) for a total of $232.4 million in U.S. bilateral assistance programs, while receiving $545.8 million from the international banks. The Philippines received $124.9 million in direct U.S. assistance and $474.8 million from the international banks. The figures for Indonesia were $175 million in direct U.S. assistance and $540.6 million from the banks.

In one other important area as well, the Harkin amendment on the IFI's extends the

scope of U.S. policy actions. Human-rights amendments on both bilateral and multilateral aid require U.S. opposition to loans unless they serve basic human needs. Today AID claims all its programs serve such needs (note: The Center for International Policy estimates that some 62 per cent of AID programs meet this standard), and thus automatically qualify for the exemption. But the majority of international bank projects coming before the Christopher committee are directed toward industry, infrastructure and balance-of-payments functions that clearly fall short of the basic human needs criteria. (Note: The Center for International Policy considers 55 percent of the World Bank's $9 billion FY 1979 lending program as directed toward industry, infrastructure or balance-of-payments functions rather than basic human needs.) The Christopher committee has followed a consistent policy of recommending U.S. "no" votes or abstentions on non-basic human needs projects in countries with serious human-rights problems and of the 32 loans the United States opposed by "no" votes or abstentions, all but four fell in the non-basic needs category.

*Internationalizing U.S. human-rights concerns.*—Once the Christopher committee has decided on a "no" vote or abstention on an upcoming IFI loan, the U.S. executive director and other U.S. officials consult with the other major donor members of the bank seeking to coordinate policy. In a number of instances the United States has induced other countries to follow its example. Here, the Harkin amendment has stimulated the United States to take the lead in advancing human rights—a clear advance from the previous situation when the major European countries in the World Bank opposed loans to Chile while the Ford administration continued to vote for them. Deputy Secretary Christopher earlier this year led a mission to Europe to explore a common human-rights policy with our major allies. Recipient countries who once denounced human rights as a unilateral U.S. crusade (despite the fact they are all signatories to the U.N. Universal Declaration of Human Rights, from which the phraseology of the Harkin amendment in derived) now increasingly face a coordinated front of donor countries.

During the first six months of application of the policy, the Treasury Department was apprehensive of politicization of the banks, but in recent months Treasury has taken a more relaxed view as human rights have been pursued with no visible ill effect on the functioning of the banks. The banks have not crumbled, and in recent inter-agency meeting Treasury has refrained from raising the politicization issue.

*Focusing on basic human needs.*—The Harkin amendment requires the United States to oppose any loan to human-rights violating countries unless it serves basic human needs. As already discussed, the administration has acted in the spirit of this legislation in the IFI votes. For each of the over 300 separate bilateral and multilateral aid agreements that the Christopher committee each month reviews for human-rights problems, a detailed one-page description of the project is prepared. The description includes a very careful review of the beneficiaries of the project. If a gray area arises, Christopher asks AID or Treasury and the bank in question to submit a more detailed description of the beneficiaries. This detailed and quite conscientiously applied review process, by clearly the basic human needs exemption, greatly increases the incentive for the banks and recipient countries to fashion projects to directly benefit the needy—a predictable although perhaps unintended consequence of the Harkin amendment.

The intensive review process and wide variety of actions taken by the Christopher committee illustrate another advantage of the Harkin amendment—its flexibility. In the spring of 1977, administration spokesmen somewhat melodramatically warned that the Harkin amendment would "tie the administration's hands." In opposition to this alarmist view, the Center for International Policy testified to the House Banking Committee in March 1977:

The broad areas of determination are, first, whether a loan directly benefits the neediest, which is an area where the administration has considerable flexibility; second, whether a country qualifies as a gross and consistent violator of human rights.

It is our feeling, in terms of human rights violations, that most countries in the world violate human rights on some scale or another. However, the language of the Harkin amendment is such that a country would have to work overtime in order to qualify as a consistent and gross violator of human rights.

This also gives the administration certain flexibility when these loans come before the banks. Consideration of the loans is a rather long process, sometimes taking years and always many months.

During this period the administration can work with both the bank officials and with authorities in the country in question and remind and prod the authorities in the country in question to improve their human rights record. It is thus left to the administration to determine whether or not release of a certain number of prisoners and an improvement in the human rights situation has in fact been made. This allows considerable flexibility, so certainly the Harkin language is not a straitjacket.

Eight months after passage of this legislation, it is clear that the administration has had wide latitude under the Harkin amendment to implement concrete policies, and no one today in the State Department contends the amendment ties their hands. The administration has retained full discretion to define a human rights violator simply by refraining from officially identifying any country as engaging in "a consistent pattern of gross violations of internationally recognized human rights", the language in the legislation; instead it has identified countries with "serious human rights problems," thus avoiding formally invoking the Harkin amendment. Likewise, in determining what projects serve basic human needs, it has retained freedom of action. The administration has acted within the spirit of the Harkin amendment on the IFIs; policy and legislative intent are in accord.

Overall, the Harkin amendment in the IFI's has done much to add substance and integrity to U.S. human rights policy, although much more remains to be done. The legislation backs up with action the President's recent warning at the Organization of American States conference that repressive regimes should know the price of their inhuman conduct: the forfeiting of U.S. and international cooperation, including financial cooperation. Pragmatically, the Harkin amendment and U.S. policy actions in the IFIs stimulated by it play a key role, for a violating government may calculate it can survive a deterioration of political relations with the United States. It can ignore cuts in small bilateral programs, and it can continue to obtain private bank loans. But any third-world government must think twice before jeopardizing the large amounts flowing through the international banks. The international banks are therefore the only remaining arena of effective U.S. government leverage for human-rights improvements in many countries. Many violating governments initially considered that President Carter's words were meant for domestic consumption. The Harkin amendment and U.S. policy actions show that the message is intended precisely for them.●



## TAXPAYERS AND GOVERNMENT INVOLVEMENT

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. DERWINSKI. Mr. Speaker, at a time when tax reform legislation, budget appropriations, as well as economic proposals effecting Federal, State, and local governments, are major items facing us, I wish to direct to the Members an editorial appearing in one of the newspapers serving my district, the Des Plaines Valley News, by the distinguished editor of that publication, Harry "Scoop" Sklenar. The editorial, which follows, depicts the grassroots viewpoint of the taxpayer about Government involvement:

BOTH WAYS IMPOSSIBLE—

Both organized political parties are currently circulating petitions asking for a limitation on taxes. The U.S. Congress has recently approved a tax cut plan.

Taxpayer groups in many areas are revolting against state and local tax levies. With November elections rapidly approaching, many candidates have adopted a cut-taxes campaign.

The trouble is that there are citizen groups, there are social service organizations, school officials, village and city authorities standing in line asking for either a state or federal grant at the same time.

Summit village learned last week that slow reimbursements caused a financial problem in that a sum of $50,000 had to be borrowed to pay CEDA workers since the village must wait 30 to 60 days to be repaid for salaries expended.

Now this happens in practically every grant provided. Ask your school boards. The school board depends on its state aid for a portion of its budget. The state aid sum at times is cut without notice, or other state funding is reduced. Thus the anticipated dollars fail to meet expectations. All social service agencies securing grants have a similar problem.

What must be learned is that a taxpayer cannot expect to have a tax cut and then expect to secure a money grant at the same time.

There seems to be a growing dependency on federal funding. Each village now is alloted a share of the income tax. Each village secures a share of the revenue sharing funding. Each village secures a share of their village sales tax. Right?

Now what's wrong about securing grants? Note that the threat of withholding federal grants or state grants has been increasingly used to secure compliance with regulations, creating a significant loss of local control and greater centralization of governmental power.

The bureaucrats say, you either do this or that or else the requested aid grant will be denied.

Secondly, that grant funding is taken from your taxes in some form or another, or in borrowing funds at an interest rate from banks.

In 1950 the federal aid to state and local governments was $6.5 billion, while in 1979, the figure is estimated at $85 billion. Then you are worrying about inflation!

Note that the value of the American dollar

dropped sharply during the past year or two. Prices are rising rapidly each month, creating a situation where workers ask pay increases to meet their cost of living, since they find they are buying less and less with the money they have been earning.

Now, a situation arose in Germany during World War II, where the money was so abundant that it almost took a wheelbarrow full to buy a postage stamp. In the United States, the stamp cost went from 3 cents to 15 cents. Gasoline is now nearing 75 cents a gallon with taxes at the state level, at the federal level, and RTA level in that sum.

Note that local property taxes are increasing annually. Note that your federal social security tax is increasing annually. Note that industries are being forced to build plants in Mexico, Canada, Ireland, and elsewhere, simply because the payroll taxes, the federal and state taxes, as well as the regulations, are becoming an increasing burden.

When you buy an article do you examine the country of manufacture? Look over those clothing racks today, and count how many articles are made elsewhere, rather than in the United States. Note the number of foreign autos on the streets. Note that recently another watch firm moved to Switzerland and an auto industry moved to Canada, and another to Ireland.

This week, two groups in Congress are battling over establishing a new hospitalization plan. Now, just who do you suppose is to fund either of the plans? Your taxes and mine, that's who.

The idea that on one hand one can secure a tax cut, and on the other hand secure a new service, without any more taxes added should be discarded, or else face increasing bureaucratic control over your life, from cradle to the grave.●

## ONE HUNDREDTH ANNIVERSARY OF THE PENNS GROVE RECORD

### HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. HUGHES. Mr. Speaker, I would like to take this opportunity to offer my heartiest congratulations to the Penns Grove Record on the occasion of its 100th anniversary as a weekly newspaper in Penns Grove, N.J.

Penns Grove, N.J., is my hometown, so I am especially delighted to have the opportunity to call to my colleagues' attention the fact that this small town newspaper has been publishing the news each week for the last century. The Record, in the great tradition of American small town papers, provides a spark that keeps the local residents of Penns Grove informed and aware of local activities and events. It has an outstanding history of service to the local community. For many residents of Penns Grove, the Record's weekly publication each Wednesday is a real high point.

So today, Mr. Speaker, I salute the Penns Grove Record and send my sincere congratulations and best wishes for its continuing success in meeting the community's informational needs.●

## WILL MR. CARTER NOW TAKE HEED?

### HON. BILL ARCHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. ARCHER. Mr. Speaker, I would like to share with my colleagues in the House of Representatives the following disturbing article which appeared in the August 7 edition of the Daily Telegraph in London, England.

If there ever was any doubt in the minds of any in this Chamber that the lapses of judgment which have so characterized this administration are having a major negative impact on our Nation's image abroad, this article should be most educational.

Mr. Carter should indeed take heed. The editorial follows:

CARTER DRUG SCANDAL IS NOT OVER

(By Robert Moss)

It is little more than a fort-night since Dr. Peter Bourne, President Carter's English-born adviser on drug abuse, was obliged to resign in the midst of dramatic allegations that he had supplied narcotics to an attractive assistant under a false name and sniffed cocaine at a Washington party.

Yet the scandal seems all but forgotten. Many were astonished to find that, after all that it suffered through Watergate, the American presidency could still be subjected to new indignities.

Who, before the Bourne affair, would have presumed to ask the President in front of the television cameras whether he himself had been supplied with drugs?

All the same, there seems to be widespread readiness to accept that Dr. Bourne's use of drugs, like Mr. Hamilton Jordan's table manners, is just one more case of the frivolity of the Carter entourage, something we might as well grin and bear.

I believe that it would be as mistaken to dismiss the Bourne affair as a casual peccadillo as to shrug off Mr. Andrew Young's pronouncements on the state of the world as slips of the tongue—rather than calculated attempts to undermine the chances of an effectively anti-Soviet-American foreign policy.

BIG QUESTIONS

We have barely begun to scratch the surface of the Bourne affair, and it will be interesting to see how deep America's much-vaunted new breed of "investigative reporters" will care to dig. There are two very big questions to be answered:

(1) How did Dr. Bourne, with his long record as a radical activist on political issues, as well as the drug question, become a trusted adviser of the President, with wide-ranging responsibilities in the White House?

(2) How far have other radicals—many of them associated with the Institute for Policy Studies (IPS)—succeeded in penetrating the Carter Administration?

Dr. Bourne's role as health adviser gave him a say in the selection of American doctors for foreign leaders who requested medical help. He also had broader duties—for example, a watching brief over international organisations that made him a regular visitor to Geneva.

It has also been alleged that he acted informally as the President's personal consultant since before his election as Governor of Georgia.

Dr. Bourne's position of influence—prior to the scandal—is the more remarkable given his earlier political career. He was a leading light in a radical organisation called Vietnam Veterans Against the War (VVAW), some of whose members led violent demonstrations at the Republican National Convention in Miami in 1972.

MARIJUANA CAMPAIGN

His involvement in the campaign to "decriminalise" marijuana was well known.

Less known and more intriguing was his role as a trustee of an outfit called the Institute for Southern Studies (ISS), founded in Atlanta, Georgia, in March, 1970, as a direct subsidiary of IPS in Washington.

One of Dr. Bourne's fellow trustees was Mr. Marcus Raskin, co-director of IPS, who has recently been a moving figure in the anti-intelligence campaign (and in a group providing legal support for the Socialist Workers Party (US) campaign to expose FBI informants).

According to ISS literature, its staff consisted of "active participants in the struggles of the sixties"—in other words, the radical anti-Vietnam student movements.

Atlanta's first radical think-tank declared its resolve to collect embarrassing data on private corporations in order to break their "colonial domination" of the southern states. The ISS has been notably active in campaigning against local defence projects.

One wonders how many of the people who voted for Mr. Carter in Georgia in 1976 were aware of the existence of this institute, let alone the involvement of Dr. Bourne, described in Carter's campaign material as a "long-term personal friend and adviser."

The link with IPS is striking. The Institute for Policy Studies had been described as the "link between the revolutionary and the respectable Left" in Washington.

It is dedicated to (a) promoting a socialist economic system; (b) encouraging unilateral disarmament; (c) the disruption and ultimate disbanding of the intelligence services in their present form; and (d) support for radical governments and guerrilla movements in the Third World.

In a society as visoerally conservative as the United States, it is strange that an organisation with these objectives can lay claim to any degree of influence within the Administration. Yet Dr. Bourne is not the only IPS associate who achieved a significant post under President Carter.

Founded in 1963, IPS now occupies a small, five-story building at 1901 'Q' Street in Washington. It is not short of funds, which mostly come from private foundations.

Between 1970 and 1976 alone, five foundations provided a total of about $8 million for IPS and its offshoots. The largest contributor was the Samuel Rubin Foundation, set up by the retired chairman of the Faberge Corporation, whose son-in-law, Peter Weiss, is chairman of the Board of IPS.

The Rubin foundation contributed heavily to the Transnational Institute, IPS's Amsterdam-based subsidiary, which has provided research grants for people like Tariq Ali, and is deeply involved in the campaign against the multinational companies.

Through seminars, conferences and study groups, the IPS has succeeded over the years in building an impressive range of contacts among congressional staffers and the media. In 1976, IPS was requested by 47 Left-wing Democrat Congressmen to prepare a critical analysis of the federal budget.

It has since prepared "alternative budgets" and even an "alternative defence budget," focusing on ways to bring about unilateral American disarmament, that have influenced congressional debates.

A current IPS project is to encourage government employees, especially intelligence officers, to become "whistleblowers" and to leak official secrets.

IPS has even created a special "whistle-blowers hotline," answered by Institute staffers, for the convenience of government employees who want to pass on classified information.

With the advent of the Carter Administration, some of the friends that the IPS organisers had made in previous years moved into offices in the federal government. The radical influx was particularly obvious in government agencies like ACTION, which controls the Peace Corps and other voluntary programmes.

Mary E. King, Dr. Bourne's wife, is deputy director of ACTION. Her boss, Mr. Sam Brown, had been involved in an IPS project called the National Conference on Alternative State and Local Public Policies (NCASLPP), and attended its conference in Denver last year.

Literature put out by this body with a long-winded title declares that it exists to bring together those who "share a radical or populist outlook" and also to build contacts with local government officials in Cuba.

Both Mr. Brown and the head of ACTION'S adult education programme, Marge Tabankir, were leading anti-Vietnam war activists who have given public support to Hanoi.

IMPRESSIVE LIST

IPS assocates pop up in more surprising areas of the Carter Administration. Mr. Sidney Harman, the Under Secretary of Commerce, is a former IPS trustee. Mr. Robert Pastor, a Latin American specialist on the National Security Council, who is reported to have asked the CIA to draw up a plan for toppling the Pinchet regime in Chile, had long been associated with Latin American projects supported by IPS.

The lists of IPS fellows contain an impressive number of people with government posts.

Since leading figures in IPS have aggressively supported Vietnam, Cuba, the Palestine Liberation Organizations and the Rhodesian terrorists and have drawn Marxist groups into a widening network, the links of a government official with the Institute may be a cause of legitimate concern.

The Bourne episode, and the evidence of radical penetration of the lower echelons of the Carter Administration should focus attention on the recent testimony of Mr. Alan K. Campbell, the Chairman of the U.S. Civil Service Commission, to the Senate Committee of the Judiciary.

Mr. Campbell testified that mere membership of an extremist, violence-prone organization—including the Communist party, the Ku Klux Klan, and the Nazi party—is no longer a bar to federal employment in the United States.

The Civil Service Commission, responsible for vetting would-be government employees, is not even allowed to question them on their membership, past or present, of such organisations unless they are known to have committed an overt criminal act.

The Chairman of the Senate Committee concluded that "we do not have a federal employee security programme worthy of the name."

Will Mr. Carter now take heed? ●

## FIFTIETH ANNIVERSARY COMMENDATION TO COLMA BRANCH 19 OF THE ITALIAN CATHOLIC FEDERATION

### HON. LEO J. RYAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. RYAN. Mr. Speaker, on September 30, Colma Branch 19 of the Italian Catholic Federation will celebrate the 50th anniversary of its founding. This branch, located in the 11th Congressional District of California which I have the honor to represent, was founded in 1928 at Holy Angels Church in Colma, Calif.

I would like to take this opportunity not only to acquaint my colleagues with the Colma Branch but also to commend the branch for its 50 years of outstanding community service. This organization is devoted to the purpose of upholding and developing a religious spirit among its members and to spreading that spirit among the people of Italian descent outside the organization. The federation also strives through its many and varied charitable and apostolic activities to assist effectively in enriching the lives of all citizens of its community. By all indications, the Colma Branch and its members have fully lived up to the goals of the organization. They are actively involved in providing assistance to the elderly in the local convalescent hospitals and in contributing donations to needy persons and for community activities. In addition, they sponsor the annual baccalaureate mass and graduation breakfast for Jefferson High School, sponsor scholarship grants, and promote youth activities in the community.

The anniversary celebration itself will be a twofold event. The anniversary dinner will be held on Saturday, September 23, at the Villa Hotel in San Mateo. A concelebrated mass will be held at Holy Angels Church on Sunday, October 1. The mass will be concelebrated by the pastors of the churches in Daly City, present and past branch chaplains, and the pastors and chaplains from the churches in San Mateo County where the federation is located.

I extend my very best wishes to the Colma Branch of the Italian Catholic Federation on its 50th anniversary, while also thanking its members for the active interest they have displayed in their community. If more people were as devoted to their fellow beings as the members of this organization are, it would make the job of any elected official much easier. I look forward to working with the Colma Branch as it begins its sixth decade of service to its church and to its community.●

## NOISY AIRCRAFT BILL: THE AIRLINES' SCHEME TO RAID $3 BILLION FROM THE TREASURY

### HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. VANIK. Mr. Speaker, title III of the Airport and Aircraft Noise Reduction Act, the so-called Noisy Aircraft Revenue and Credit Act, provides a $3 billion gift to the airlines for the purchase of new aircraft and engines. In a column entitled "'Clever Scheme' To Pay for Quieter Planes," Hobart Rowen of the Washington Post, on August 17, attacked the noisy aircraft bill as an airline scheme to rip off the American taxpayer to pay for the airlines' cost of complying with environmental standards. The column follows:

CLEVER SCHEME TO PAY FOR QUIETER PLANES

(By Hobart Rowen)

If the airlines have their way, every time you buy a ticket for a flight in this country, 25 percent of the taxes you pay would go directly to them to buy $3.3 billion worth of new aircraft and equipment. And every time you go abroad, $10 would go from your pocket to the airlines' treasuries—it wouldn't even go first to Uncle Sam—to finance their new equipment.

This rip-off is part of a clever scheme concocted by the airlines to have the public pay for the less noisy planes they are supposed to acquire. It is a lovely make-work project for the aircraft manufacturers. And among the more interesting aspects is that airline fares could be reduced by the amount of this bonanza to the industry if administration officials and congressional leaders have the guts to oppose the scheme.

Wage-price watchdog Barry Bosworth wrote a private internal memorandum to the Office of Management and Budget on Sept. 18, 1977, exposing the plan. But he has not been allowed to go public with it. The details of the proposed "Treasury raid" were first publicized by Rep. Gene Snyder (R-Ky.).

Here's what has happened: The airlines now collect, to pay for air-safety measures, an 8 percent tax on domestic tickets, 5 percent on domestic air freight, and a fixed $3 fee on each foreign departure.

Those monies go into a trust fund financing airport safety measures, including the salaries of personnel and the detection equipment used in the pre-boarding routines. But the money collected is said to be more than needed, suggesting that the 8 percent tax ought to be lowered to about 6 percent and the other charges accordingly. Wouldn't a 25 percent reduction in airline taxes be a nice anti-inflationary gesture?

But no. The airlines, required by a 1976 Federal Aviation Administration regulation to use less noisy aircraft after 1984, saw an opportunity to make the public pick up the check. Instead of lowering the tax bill by about $3.3 billion, the airlines' lobby has had two measures (H.R. 8729 and H.R. 11986) introduced in Congress.

They would divert 2 points of the 8 percent passenger tax (25 percent) and 2 points of the 5 percent freight charge (that's 40 percent) into a kitty to finance new planes. The $3 departure tax would be upped to $10, with all of it going to the airlines. And a brand-new 5 percent surcharge would be placed on international cargo—all going to the carriers.

So far, these measures appear to be moving with little opposition through the House Public Works and Ways and Means committees.

In 1976, the FAA estimated that the airlines could modify their planes to conform to anti-noise requirements for a total cost of $950 million. "Retro-fitting" a Boeing 727 by installing sound-absorbent material costs only about $225,000. A new plane can run to $12 million.

But if the airlines can squeeze $3.3 billion out of an unsuspecting public, they will have acquired all new equipment, by putting up barely over half of the total cost, estimated at $7 billion. You and I will pay for the rest.

If the airlines get away with this bad precedent, then the public should expect to be the victim—through taxes—of the cost of meeting any environmental standard.

But the devious nature of this particular proposal is extraordinary. The tax is sneaky, because it is already on the books for another purpose. Without publicity, the "raid" would have taken place, and no one would be the wiser.

This gift to the airlines ought to be vigorously contested by the Carter administration.

Instead, it is keeping quiet, in the hopes that it will get some congressional votes as a trade-off for an airline regulation reform bill.

Privately, Carter aides hope to get the House bills weakened in the Senate. But if the White House really wants to control inflation, and be convincing in denials that it has muzzled Bosworth (whose jawboning has offended George Meany), it can do so easily. It can unleash Bosworth and others for an active role in whipping an inexcusable handout to the airline industry at the taxpayers' expense.

These persuasive arguments show that the closed rule for title III must be opposed when the bill reaches the floor early next week. This would permit the House to consider amendments which would reduce the airline passenger tax by 2 percent and deny the airline industry an investment tax credit on the tax gift.

We cannot let the airlines fly away with $3 billion from the Airport and Airway Trust Fund. I urge you to vote against the closed rule on this bill that will raid the U.S. Treasury.●

## MRS. "TERRI BLAKE" BLALACH AND NATIONAL GRANDPARENTS DAY

### HON CHARLES W. WHALEN, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. WHALEN. Mr. Speaker, on Sunday, September 10, 1978. America celebrates National Grandparents Day. Passed by this body on July 10 and later signed into law by President Carter on July 28, 1978, this resolution has been the special concern of one of my former constituents. Mrs. "Terri Blake" Blalach of Hollywood, Calif.

In 1955 at the corner of Hollywood and Vine Ms. Blake began collecting signatures on a 50-foot scroll for a National Grandmothers Day. Later the grandmothers designation grew to include all grandparents. During the ensuing years, Ms. Blake traveled throughout the country speaking before countless groups on behalf of an official observance of a National Grandparents Day.

Now a great-grandmother, whose 75th birthday coincidentally was also September 10, Terri Blake is living proof that one is never too old to realize one's dreams. At age 50 she embarked on a career in movies, followed by parts in such well-known television programs as "Dennis the Menace" and "Highway Patrol." In addition, her book "You Can Do It" has provided inspiration for people faced with impending retirement.

Recently, Mayor Tom Bradley of Los Angeles honored Mrs. Blalach by presenting her with the official Los Angeles proclamation of Grandparents Day. Mr. Speaker, I think it is only fitting that this body similarly recognize her tireless efforts and many years of service on behalf of America's grandparents.●

## PLAYING POLITICS WITH U.S. DEFENSE

### HON. ELDON RUDD

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. RUDD. Mr. Speaker, I was appalled by refusal of the House today to override President Carter's veto of the defense budget authorization for next year.

Both the President and the Members of Congress who supported his veto are playing cheap power politics with the security and defense of our Nation, in an attempt to help the President's image and make him appear to be a tougher leader.

There was no reason to veto the entire defense program in the first place. If the President was sincerely concerned about the cost of the proposed new nuclear carrier, he could have used his authority to rescind funds for just that one budget item after Congress had appropriated the money—rather than delay and jeopardize our entire defense program, including vital support of NATO, just to help bolster his image.

I think it is a sad day for our country when the defense and security of our people become the victim and the hostage of politicians who are more interested in improving the President's low ratings in the polls.

In my book, this action should only serve to lower those ratings, because statesmanship has been discarded in favor of power politics.

Mr. Speaker, I was proud to vote today with the 191 Members of the House in support of the defense program, and to override the President's veto.

The Wall Street Journal's lead editorial this morning is an excellent factual commentary repudiating the President's position against the defense bill as originally passed by both Houses of Congress—including the new nuclear carrier—and this politically motivated vote to uphold the veto.

The editorial shows that plans, facilities, and construction crews are already primed to build a follow-on *Nimitz*-class nuclear carrier, as soon as the one now under construction is launched.

The design of a new oil-powered conventional carrier is not even complete. The molds and other expensive preconstruction work will have to be done all over again if we scrap the nuclear facilities. The total cost to build and operate a conventional ship will therefore eventually far exceed the cost of another nuclear vessel.

I would like to include this editorial showing the complete lack of basis for the action of the President, and the majority of the House in this matter today, at this point in the RECORD:

ADMIRAL RAFSHOON

"It's not just talk, Congress cut muscle for another layer of fat." So Gerald Rafshoon, Atlanta adman and student of the defense budget, instructs John Stennis, Melvin Price and other greenhorns who don't understand President Carter's veto of the defense procurement bill.

Admiral Rafshoon's military career has been the most meteoric since Gilbert and Sullivan's Ruler of the Queen's Navie, and he should be duly rewarded with the Order of the Cardigan and the title Lord Get Tough for helping to engineer a supposedly image-enhancing veto. But as Congress votes on the move to override, something is shaping up beyond cosmetic politics. If the veto is sustained, it will be largely through the votes of Congress's scrap-the-Pentagon bloc.

Critics of the veto in Congress include not only Armed Services Chairmen Stennis and Price, but Sen. Gary Hart, the chief apostle of a more-but-smaller-ships navy. Some who oppose nuclear carriers don't think the veto was procedurally wise, since it will reignite congressional debate on the bill's compromises and slow all military improvements. The President can count on the support of partisan loyalists like Speaker O'Neill, on votes for sale for dams or breeder reactors, and on the bloc that thinks slowing military improvements is a good thing. But among Congressmen sensitive to the merits of the issue, the administration has lost the debate.

This is scarcely surprising, considering the quality of the argument the administration has been advancing. We have already remarked on how in announcing the veto the President assailed Congress by confusing authorization bills and appropriations bills. He also remarked, "I have not had a single adviser who told me that we ought to go ahead with the nuclear aircraft carrier." We wonder if the President ever met his just-retired Chief of Naval Operations, James Holloway, who publicly testified in favor of another Nimitz-class boat last April.

Then there is the administration's persistent claim that the nuclear carrier would cost $1 billion more than the oil-powered version it wants. Some $268 million has already been spent buying the nuclear components for a new ship, and Congress figures it could finish the job for another $1,930 million. The oil-powered ship is estimated at $1,575 million. The nuclear ship comes with a 13-year fuel supply, worth $330 million in oil at current prices. Treating sunk costs as sunk, and adjusting for fuel included in one purchase price but not the other, the vastly more capable nuclear ship costs only $25 million more.

How this becomes $1 billion was explained in a letter last week from Thomas B. Ross, Assistant Secretary of Defense for Public Affairs (and, in a former incarnation, coauthor of "The Invisible Government," one of the first sensationalist assaults on the CIA): The nuclear components will be stored in case one of the present nuclear carriers breaks down, so add the sunk costs back into the nuclear purchase price. Forget fuel costs, because there are also other operating costs. Add in $200 million to put certain equipment contemplated for the conventional ship on the nuclear one as well. When you have done all this, $268 million plus $330 million plus $200 million plus the original $25 million, you get $823 million. Close enough for government work, call it $1 billion.

Now, there have been detailed life-cycle cost studies of the two carriers, most conveniently summarized in Admiral Rickover's April testimony. Including all operating costs and aircraft, the nuclear option costs 1.38 times as much as the conventional one over their respective lifetimes but the nuclear ship provides 1.45 times as many aircraft. Per plane, nuclear is 5% cheaper. And the nuclear ship is faster, freer of a logistical tail, more able to defend itself, and more able to sustain combat damage.

All of these calculations, further, are likely

to be dwarfed by a simple industrial fact. Plans, facilities and construction crews are primed to build a follow-on Nimitz-class boat as soon as the one now under construction is launched. The design of the oil-powered option is not even complete; in the end its estimated $1,575 million cost is altogether likely to work its way above the $1,930 million for the nuclear version.

The administration's contentions are simply unsustainable on the merits, which explains why it chose the essentially unprecedented route of vetoing the whole defense procurement bill. It could have asked for a simple recision without upsetting the rest of the bill, a course it took last year. But to get a recision it needs a majority in both houses, while it can sustain a veto with a third in either. And a third is an easy target because, despite much healing of the Vietnam trauma, there are still a significant number of Congressmen prepared to vote against anything military.

In pursuit of Mr. Rafshoon's "tough" image, the administration is striking an alliance with the antimilitary faction in Congress. Meanwhile, it charges that Sen. Stennis and the rest are soft on defense. By now it should be clear that the electorate wants not cosmetics but a stronger defense, and Congressmen who lend themselves to the administration's trick-mirror maneuver should be called to account in November.●

## FAMILIES: CORNERSTONE OF AMERICAN LIFE

### HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. HOLLENBECK. Mr. Speaker, at a time when many of our institutions are suspect, and are under attack from many directions, it is important that we recognize the importance of many of those institutions. One of the most important of those is the family. It is to recognize the importance of the family in our society that National Family Day is being celebrated on September 17, 1978.

In my own Ninth District of New Jersey, the celebration of National Family Day has been planned and carried out by parents, children, businessmen, workers, men, women, teachers, ministers. They come from all walks of life, from every age group, every religious faith and every political philosophy. They are united by their belief that the family is mortar in the foundation of our Nation.

Mr. Speaker, I share their belief. Although it has been fashionable in some circles to ridicule the idea of close family ties, and to mock the very idea of family love itself, the majority of Americans still know that families are important. They are a safe harbor, a constant source of strength and help. They are where we learn about life, about love, and about ourselves.

By learning how to live in our own family, we can learn how to live in the larger families of which we all are a part—the family of our friends, our fellow Americans, and or fellow men throughout the world.

So, Mr. Speaker, I commend those in my district, as well as those throughout the country who have worked so hard to bring National Family Day the recognition it deserves, and I urge my colleagues to give this day their strong support.●

## ASIAN AMERICAN PARTICIPATION IN FHWA APPRENTICESHIP PROGRAMS MUST BE INCREASED

### HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. MINETA. Mr. Speaker, the recent Supreme Court decision in the Bakke case to uphold the principle of affirmative action stands as testimony to our country's basic commitment to equal opportunity for all Americans. The Court struck down the use of quotas as a method of affirmative action, but chose to preserve affirmative action itself as an effective means of overcoming past discrimination. Although not the sole standard for selection in special school admissions and employment programs, the factors of race and ethnic origin as important criteria for consideration have been sustained.

I believe that we as a nation have a commitment to insure equality of opportunity in all facets of American life, and that affirmative action programs are necessary to fulfill that commitment. Innovative, creative, and fair ways of integrating disadvantaged persons into American life must now be designed and implemented. The Supreme Court's ruling may bring reform of current recruitment and admissions policies, but such reform must render affirmative action programs more sensitive and responsive to the special skills, needs, and talents of all individuals.

I would like to bring to the attention of my colleagues one sector of the construction industry where the needs of a particular ethnic minority apparently are not being met. The Federal Highway Administration of the U.S. Department of Transportation ordered a study to be prepared by Equivest Associates of Pasadena to assess the degree of involvement of Asian Americans in FHWA-sponsored highway construction apprenticeship programs in California. Results of the study indicate that very few Asian Americans are participating in highway construction apprenticeships generally, and few participate in FHWA support services specifically.

Formal apprenticeship training programs in California, as regulated by the State Department of Industrial Relations, Division of Apprenticeship Standards, combine on-the-job training with supplemental classroom instruction over a 4-year period. An individual apprenticeship is arranged by an agreement between the apprentice, the employer, and a Joint Apprenticeship Committee representative.

Concern for the lack of minority participation in apprenticeships led the California Conference on Apprenticeships in 1960 to propose equal opportunity committees to encourage sponsors of apprenticeship programs to devise ways of involving more minority persons. Federal and State regulations followed these early voluntary efforts, and as a result the FHWA established supportive services programs in parts of the State to act as liaisons between apprenticeship programs, potential apprentices, potential contracting companies, labor unions, and consultants from the Division of Apprenticeship Standards. Supportive services programs disseminate information about trade opportunities to eligible young adults in communities. They also prepare applicants for interviews and math and English requirements on qualifying tests for particular trades.

Asian Americans over the past decade have comprised the fastest growing ethnic group in California and, contrary to favorable stereotypes attributed to Asian Americans, poverty, unemployment, and underemployment are substantial problems with Asian-American communities. There is a great need for job training and development in Asian-American communities, particularly for young adults.

Problems are particularly severe for the Indochinese who settled in the United States following the collapse of Indochina in 1975. Of the roughly 130,000 of these recent immigrants, 30,500 have settled in California, and many are still dependent on cash assistance programs.

Currently, there exist three highway supportive services programs in California which provide assistance to minority groups, including Asians, in apprenticeship programs. The study examined these programs to evaluate their effectiveness in reaching out to Asian Americans. Asian-American apprentices were contacted to obtain their input regarding the quality of supportive services programs and their suggestions for change and improvement of such programs. Some conclusions of the study were:

(1) According to the Quarterly Training Reports from the State Department of Transportation, a total of 6 Asian Americans participated in Federal-aid highway construction apprenticeship programs in California between December 1, 1976, and September 30, 1977. While estimated 1977 census data indicate that Asian Americans accounted for 5.4% of California's population, statistics from the State Department of Transportation show that Asian Americans represented only 0.7% of the total apprentices in highway construction training programs.

(2) The low participation of Asian Americans in highway construction work in California has been due to a lack of outreach to Asian communities by apprenticeship programs in general, and by highway supportive services in particular. For example, in Southern California, the Mexican American Opportunity Foundation (MAOF), available to Asian Americans, has provided highway supportive services for the past six years. Yet most Asian American organizations in Southern California are not even aware of the existence of MAOF. Of the 14 Asian American apprentices contacted by the research study, only one was recruited by a highway supportive services program.

(3) There appears to be racial discrimination against Asian Americans within the construction industry generally, including highway construction-related apprenticeship programs. To illustrate this point, it has been documented that out of 11 Asian Americans who passed a test for a specific highway construction trade, many of them with solid educational backgrounds and work experience, not a single Asian trainee was hired by contractors participating in the apprenticeship programs.

Mr. Speaker, I believe more pressure must be brought to bear by government, by individual citizens and groups, and by the manager of recruitment and counseling services to change this state of affairs. The report which I have referred to today makes some specific recommendations for improvement:

(1) Greater communication between administrators of the apprenticeship programs and Asian American community and social service organizations should take place. Potential applicants must get the information they need to participate in FHWA-sponsored programs and supportive services.

(2) Programs to date have been geared toward blacks and Mexican Americans. Existing supportive services groups should be made to increase their sensitivity to the special needs of Asian Americans. Recruiting and counseling staffs should include members who are culturally sensitive to Asian Americans, preferably bilingual individuals who can help non-English speaking immigrants develop a working knowledge of English for qualifying tests of each trade.

(3) Existing State and federal regulations requiring affirmative action plans, goals, and timetables should be actively enforced by the FHWA in the highway construction industry to combat existing discrimination. The needs and characteristics of Asian Americans should be made clear to the industry.

The FHWA should specifically identify which ethnic groups constitute Asian Americans to both the industry and supportive services, in order to help eliminate this misconception that Asians consist only of such well-established groups as Japanese and Chinese. Stereotypes concerning the wealth and self-sufficiency of Asian Americans should be eliminated; there is definitely a large pool of highway construction trade apprentices within the various Asian American communities in both northern and southern California.

Mr. Speaker, the U.S. Department of Transportation recently gave final approval for construction of an 11 mile stretch of freeway in San Jose, Calif., within the 13th Congressional District, which I represent. I hope that this $53 million project will provide the FHWA with an opportunity to make more progress in helping Asian Americans acquire and use skills associated with highway construction.

Americans of Asian descent have made impressive contributions to the social, scientific, economic, cultural, and political development of the United States. Asian American participation in the growth of the farming, mining, and railroad industries of this country has been well documented. I urge the FHWA to adjust its apprenticeship programs to bring more Asian Americans into the highway construction industry. To do any less would be to undermine our basic commitment to equal opportunity for all Americans.●

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## BALANCE(S) OF POWER SERIES BOOK II (G)—NATIONAL CHARACTER

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## HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, in our consideration of the many factors which bear on the strategic balance between the United States and the Soviet Union, we turn next to an article written about the Soviet national character and making some comparisons with opposing American characteristics.

Different patterns of upbringing, education, national history, and other conditioning lead to behavioral responses and perceptions by a member of a nationality which would be completely unpredictable or misunderstood by a member of the other, if we did not take the time to study these differences.

The author of this selection in the strategic balance is a longtime student of the Soviet Union and Russian ways, Richard E. Pipes. By focusing on the historical experience which has produced today's Soviet elite, Professor Pipes shows why we must expect the Soviet Union to pursue a strategic role of aggression and opportunism. His article, entitled "Why the Russians Act Like Russians," first appeared in Air Force magazine in June 1970.

The article follows:

### WHY THE RUSSIANS ACT LIKE RUSSIANS

(By Prof. Richard E. Pipes)

The desire to seek explanation of a country's conduct in its history is a natural and justifiable one, since clearly every nation's outlook and behavior are in some measure influenced by its past experience. But the procedure is always fraught with danger. It is all too easy to fashion an image of another people's national character, to assume that it is eternal and immutable, and from this assumption to draw completely false deductions.

In reality, "national character" is an elusive and transient thing. In the seventeenth and eighteenth centuries, for example, the French were generally regarded as the most aggressive nation on the European continent, whereas the Germans were viewed as impractical dreamers, sovereigns of the "realm of clouds," as Voltaire called them. Then, in the second half of the nineteenth century the roles were neatly reversed, and the Germans, descending from their clouds, turned into a nation of Huns.

The Japanese, who were once thought to have inherited from their samurai ancestors an unquenchable thirst for blood, have recently become a nation of frenetic businessmen, at the same time that the Jews, whose unfitness for warfare had been proverbial, created in Israel a military machine of unsurpassed efficiency. Such examples could be multiplied many times over.

As every historian knows, that which is loosely called "national character" represents the spirit not of an entire nation, but only of that social group which at a given time happens to control the instruments of power and the organs of opinion, and manifests itself only as long as that group enjoys this control. The problem, therefore, is one of identifying the elite and ascertaining its particular experiences, interests, and expectations. Such knowledge is particularly useful in dealing with countries that have authoritative forms of government because there the ruling elite is relatively immune to public pressures.

In considering the elite that rules today's Russia and its possessions, four facts relevant to its conduct of foreign policy demand emphasis—its cultural background, the nature of its claim to authority, its class interests, and its colonial experience. Only when all four of these factors have been taken into account is it possible to understand something of that peculiar mixture of aggressiveness and caution that has distinguished Soviet foreign policy since 1917.

#### CULTURAL BACKGROUND

The Soviet elite is not the same one that had ruled Russia in the Imperial period—that is, from the accession of Peter the Great in 1689 to the Revolution. The Imperial elite, composed largely of landed and service gentry, was thoroughly Westernized; it considered itself part of Europe and in its majority emulated European models. This class was overthrown in 1917, and replaced by a new elite formed of elements that had never been much exposed to Westernization: the lower bureaucracy, small tradesmen, provincial intelligentsia, clergy, skilled labor, and peasantry. The cultural roots of these groups lay not in the Westernized Russia of Peter and his successors, but in the prePetrine culture of old Moscow, and even beyond it, in Byzantium and the Turkic tribes of the steppe.

In Imperial Russia, the ancestors of the Soviet elite had been kept out of the chambers of power. They always viewed the Western culture of the St. Petersburg court and of its gentry with distaste and suspicion. Though not averse to borrowing Western technology, especially of a military nature, they rejected the spiritual foundations on which this technology had grown. Their whole attitude toward the external world was decisively influenced by the teachings of the Orthodox Church, which more than any other Christian establishment resisted innovation and persecuted heresy. The xenophobia this Orthodox Church inculcated in its flock impressed itself very deeply on the mind of the Russian lower classes; and so did the belief that the Orthodox alone are pure and fit for salvation. This faith, in a secularized form, has remained very much part of the outlook of the Soviet elite; for although this elite professes militant atheism, it has no other culture to fall back on than the xenophobic, anti-Western culture of old Moscow.

The practical consequences of this fact are considerable. The group ruling the Soviet Union is not predisposed by its cultural background to regard itself as part of a broader international community; nor does it tend to think in terms of a stable world order that accords every nation a rightful place. Such an outlook is widespread in communities with a Protestant and a commercial culture, but it is rather rare elsewhere. The Soviet elite tends to think in terms of a perpetual conflict pitting right against wrong, from which only one side can emerge victorious. Needless to elaborate, Communist ideology with its stress on class warfare culminating in a vast revolutionary cataclysm neatly reinforces this inherited religiously inspired outlook.

THE QUESTION OF LEGITIMACY

The elite that rules Soviet Russia lacks a legitimate claim to authority, and this fact has critical bearing on its conduct of both domestic and foreign policy. Lenin, Trotsky, and their associates seized power by force, overthrowing an ineffective but democratic government. The government they founded, in other words, derives from a violent act carried out by a tiny minority. Furthermore, this power seizure was carried out under false pretenses. The coup d'etat of October 1917 was accomplished not on behalf of the Bolshevik party but on behalf of the soviets—a fact that survives today mainly in the name "Soviet Union." The soviets were representative bodies of soldiers, workers, and peasants, which, for all their structural looseness and lack of regular procedure, did in a fashion express the will of the people.

But although the Bolsheviks claimed to overthrow the Provisional Government in order to transfer power to these soviets, in reality they used them from the beginning as a facade behind which to consolidate their own authority, and the transfer was never accomplished. And, finally, the Soviet government has never dared to seek a mandate from its population. The one and only post-1917 election in which the Bolsheviks ran in competition with other parties—the election for the Constituent Assembly held in the winter of 1917–1918—gave them a quarter of the national vote, whereupon they ordered it dissolved. No elections giving the voter a choice even from among Communist candidates have been held since that disagreeable experience.

Now it is sometimes said by friends of the Soviet Union abroad that one must not apply to its government standards of democracy derived from the West. And, indeed, it is perfectly possible to exercise authority without recourse to the Western idea of popular sovereignty or by twisting it out of all semblance as Hitler had done when he claimed that the will of 80,000,000 Germans fused and became one with his own. But as a matter of record, the Soviet government makes no such claim on its own behalf: Its constitution and legal system claim to rest on democratic principles indistinguishable from our own, and hence it cannot escape being judged by them. A government that came to power by force in the name of slogans it did not honor and had no intention of honoring, and which has never dared to seek popular sanction, such a government cannot be said to be democratic no matter how broadly the term is defined. And herein lies its tragedy and insoluble inner contradiction. The yawning gap between constitutional promise and political reality stares in the eye of all but the most obtuse or cynical of Soviet citizens.

Legitimacy of some kind is essential to every political authority to justify the right of some men to order others about. The Soviet government is no exception. Unable to obtain a popular mandate, it seeks to obtain it in a variety of other ways, of which nationalism is the handiest. By appearing as the protector of Russian national interests from internal and external enemies, the regime can identify itself with the people. But to be able to do so, it must have enemies; and it conjures them up as the need arises. The atmosphere of a crisis is essential to the Soviet elite and can be counted on to remain an instrument of Soviet policy as long as the present elite remains in power.

In the 1930s and 1940s it was often said that Soviet behavior was motivated by fear. This is correct as far as it goes—only the fear is not of other peoples but of its own, and for that reason it is incapable of being allayed by concessions. Fear breeds insecurity, which in turn expresses itself, in nations as in individuals, in aggressive behavior. (It may be noted parenthetically, that the one time the Soviet Union confronted a genuine menace rather than one of its own making, namely Nazi Germany, it reacted by appeasing; its most determined reactions have always been reserved for imaginary enemies.)

CLASS INTERESTS

All elites have vested interests, or they would not be elites. But as a rule, the disparity between the interests of the elite and of the rest of the citizenry is wider in poor countries than in rich ones, and the dread of losing status is proportionately more acute. And Russia is still a desperately poor country, with a standard of living below that of some countries in the pre-industrial state of development. The bulk of the wealth created by Soviet industry since the inauguration of the first Five Year Plan in 1928 has gone into armaments and those branches of the economy of greatest direct benefit to the military. Agriculture has been ruined to pay for this most up-to-date military machine; and the consumer industry has been forced to operate on a shoestring.

This situation has not significantly changed since the death of Stalin, periodic promises of a vast outpouring of consumer goods notwithstanding (*e.g.*, Khrushchev's confident boast that by 1970 the Soviet Union would exceed the United States in the production of meat and milk). The Soviet citizen today is poor not only in comparison with his counterpart in other European countries, but also in comparison with his own grandfather. In terms of essentials—food, clothing, and housing—the Soviet population as a whole is worse off than it was before the Revolution and in the 1920s. If one considers such intangibles as access to information and the right to travel as elements of the standard of living (as they should be), then the Soviet citizenry is positively destitute.

This cannot be said of the Soviet elite, which enjoys a fairly decent standard of life. The closer a member of this group stands to the inner sancta of the bureaucratic-military-police establishment, the readier his access to the country's very limited store of goods and services, to the sources of objective information, to a passport authorizing travel abroad. No wonder, therefore, that the Soviet elite vigorously protects its privileged position and the political system which makes it possible; that it dreads democracy which would inevitably sweep away its status and force it to share the indescribably drab life of the ordinary Soviet citizenry; that it supports the regime in its nationalism and crisis-mongering.

THE COLONIAL EXPERIENCE

The Moscow state emerged on the fringe of Asia. In order to create a national state, its founders had not only to impose their authority on rival Russian principalities, but also to repel, subdue, and integrate the Turco-Mongol and Finnic populations by which they were surrounded. As a consequence, in Russia the process of nation-building took place concurrently with that of empire-building, rather than before. The two processes, so distinct in the history of Western states, in the case of Russia cannot be readily separated either chronologically or geographically. In the second half of the sixteenth century Moscow already administered a sizable colonial population of Tatars and Finns. To these were added in the seventeenth century the natives of Siberia and the Cossacks; in the eighteenth the nomads of Central Asia, the Crimean Tatars, the Ukrainians, Belorussians, Poles, Jews, and Baltic peoples; and in the nineteenth, the Caucasians and Muslims of Turkestan.

As a result of these acquisitions, the Moscow government acquired early a great deal of expertise in handling foreigners; but this expertise it gained from administering subject peoples, Western and Oriental, not from dealing on equal terms with other sovereign states. The Office of Ambassadors in Moscow knew less, comparatively speaking, about foreigners than did the various administrative offices charged with responsibility for administering immense territories inhabited by peoples of different races and religions. In some measure this also held true of the Imperial government and of the Soviet government; for techniques of government tend to survive changes of elites.

The implications are not far to seek. A country whose governing apparatus has learned how to deal with foreign peoples from what are essentially colonial practices is not predisposed to think in terms of a stable international community or of a balance of power. Its natural instincts are to exert the maximum use of force, and to regard absorption as the only dependable way of settling relations with other states, especially those located along its own borders. There is little need here for theory, because the options are narrow, and concern tactics rather than objectives or strategy.

To any one acquainted with the rich literature on the international relations of the Western powers, it must come as a surprise to learn that there is no definitive or even comprehensive history of Russian foreign relations. The literature on the theory of Russian foreign policy is so meager that it may be said not to exist. That Russians have felt no need to compile the record of their external relations or to investigate its principles is in itself a significant fact, illustrative of their general attitude toward the outside world.

THE CHARACTER OF THE RUSSIANS

These four factors impel the elite which rules Soviet Russia to conduct a dynamic and inherently aggressive foreign policy, very different from that pursued by such predominantly commercial countries as the United States, whose main aim is international stability. If the Soviet elite were not inhibited by other factors, which it is helpless to change, the Soviet Union very likely would conduct a policy of reckless external expansion such as Germany and Japan pursued in the 1930s. But fortunately, such inhibiting factors do exist, and these must be taken into account to provide a rounded picture of Soviet foreign policy.

The most important of these is the spirit and mood of the ordinary people: not only the people of Great Russian stock but also those belonging to the numerous ethnic minorities inhabiting the Soviet Union.

The Russian people have no tradition of glorifying war, perhaps because they never had a feudal culture in the proper sense of the word. Its great medieval epic celebrates not the victory of Russian arms but their defeat. Neither in the folklore nor in the proverbs of Russia is there much trace of militarism. The common people have always viewed war as a desperate act to defend one's home; and Russian troops, so effective on their home soil, have never shown much skill in foreign campaigns. This general attitude deserves comment even in the case of a country that allows its citizenry no say in governmental affairs, because in the long run the quality of the human material has considerable bearing on a government's freedom of action.

Even more significant, however, is the fact that the people of the Soviet Union are utterly exhausted. The country had been mobilized in 1914 and except for brief respites has not been allowed since then to return to normal life. Having dropped out of the international war in 1917, Russia suffered for the next three years an even more devastating civil war, followed by two years of famine. It barely recovered from these disasters during the New Economic Policy era, when in

1928 it was reharnessed into state service to carry out the most ambitious program of industralization ever attempted by a nation. To make this program economically feasible, a whole counterrevolution was inaugurated in the countryside, in the course of which the government confiscated, in the face of the peasantry's desperate resistance, its land, livestock, and implements. This tragedy was not even over when the regime launched a political massacre of nightmarish dimensions of actual, potential, or imaginary opponents.

And then came World War II. The losses in human lives which the population of the Soviet Union has suffered between 1914–1945 exceed those of any people in modern times including the Jews. They can be estimated at 2,000,000 casualties in World War I, 14,000,000 during the civil war and the famine, 10,000,000 during collectivization, 10,000,000 during the purges, and 20,000,000 during World War II, for a total of 56,000,000. The demographic pyramid of the Soviet population bears a visible scar from these stupendous losses showing a deep indentation in the age group between thirty-five and seventy, especially males.

After such exertions and bloodletting the inhabitants of the Soviet Union are simply incapable of being mobilized once again for any sustained national effort. Their fatigue is so profound that neither exhortations nor alarms can shake them from it. They require three things of which they have been deprived for the past half a century: peace, privacy, and prosperity, probably in this order. With a population in this state it is just not possible to launch ambitious drives of external expansion.

Consideration must also be given to the fact that approximately one-half of the population of the Soviet Union consists of peoples who are not of Russian nationality. This colonial population brought under Russian sovereignty by Imperial and Soviet conquest, not only shares the exhaustion of the Russians proper, but experiences a sense of national frustration as well. Neither blandishments nor prosecution have had much effect on the patriotic spirit among the ethnic minorities. They constitute a volatile and unreliable element.

Thus, a kind of dilemma arises before the Soviet elite: One of the principal factors inducing it to maintain an aggressive posture, namely lack of confidence in its popular support, also forces it to act cautiously. The Soviet government cannot risk a protracted war because such a war always makes the government dependent on its population. All the important concessions which the Imperial government had made were the consequence of long wars: the Crimean War, which compelled it to free the serfs and institute local self-government; the Japanese war, which forced it to grant a constitution; and World War I, which caused it to abdicate. These historic lessons have not lost on the Soviet Union and in large measure account for the prudence which its rulers have always shown in the face of firm resistance by other powers.

The same factor explains the haste with which the Soviet elite exploits any opportunity abroad where serious opposition seems unlikely. Guided more by the prospect of success than by any consideration of "national interest," Russian expansion follows no discernible pattern. The whole concept of "national interest," in the sense in which the term is used in the West, is altogether alien to the Russian mind. Most writings on the subject from the pens of foreigners who seek to locate behind Russian foreign policy patterns of a kind they are familiar with in their own countries. In Russian literature, prerevolutionary and Soviet, hardly anything is said on the matter. As for Communist theory, it too provides no guidelines for the conduct of a rational foreign policy insofar as the whole assumption of communism is that the forces of "progress" and of "reaction" are split along class lines, not national ones.

By and large, Russian expansion tends to focus on targets of opportunity. Historians have long noted what may be called the "pendulum" effect in nineteenth-century Russian expansion, meaning rapid shifts from one area to another in response to encountered resistance. Thus, frustrated by its defeat in the Crimean War from subjugating the Ottoman Empire, the Imperial government promptly sent its forces into Central Asia, which it conquered in a series of rapid expeditions. But as soon as the British, alarmed for the security of India, threatened to stop Russian advances in that region, St. Petersburg shifted its attention to the Far East. Defeated in Korea and Manchuria by Japan, it returned to the Balkans.

Such pendular swings can also be detected in Soviet foreign policy: for instance, the shift in 1948 from expansion in Europe—where it was halted by determined U.S. resistance—to East Asia. This evidence suggests that Russian expansion is motivated less by needs than by opportunities, less by what its elite wants than by what it can get. For this reason it is impossible to determine control over which areas would satisfy the Soviet government and induce it to assume a corporate international stance. Russia has all the territory and all the resources it needs; its external security is assured by its military power and by vast buffer zones separating it from potential enemies. If it nevertheless keeps on expanding it is precisely because its expansion is in large measure determined by internal rather than external factors, above all, by the tragic relationship of the government to its people.

DEVELOPMENTS SINCE WORLD WAR II

Developments which have occurred in military technology since the end of World War II, and particularly the emergence of a strategy based on rocketry and nuclear weapons, significantly affected the situation.

In some respects, the changes in warfare have had a positive effect on world peace. Scientific and technological warfare requires a large scientific and technical intelligentsia, whose outlook is bound to be very different from that of the traditional class of field or staff officers. That which has been learned of this intelligentsia through personal contacts during the past fifteen years suggests that it differs indeed from the rest of the Soviet elite of which it is a member by virtue of its privileged status. Soviet scientists and technicians think of themselves not only as Russians but also as citizens of the world, for they are better aware than administrators of common human problems. They are more objective and less emotional. Their whole temper is more liberal than that of the rest of the Soviet elite Their emergence is undoubtedly a healthy phenomenon, good for Russia and the rest of the world.

In other respects, the development of highly technical warfare has had a very deleterious effect on the prospects of peace. If it is true, as argued above, that the principal deterrent to a recklessly aggressive Soviet foreign policy is the unreliability of the Soviet population, then clearly any development which frees the regime from dependence on its population reduces the effectiveness of the deterrent.

The more mechanized warfare becomes the briefer and more devastating war tends to become, the less the Soviet elite needs to make allowance for the spirit of its population, the less it is afraid of war. The scientific-technical intelligentsia, of course, gains in status under these conditions; but its actual influence on government policy in Russia, as elsewhere, is questionable. It is a curious fact that the most liberal among American scientists, who have been so frustrated in their attempt to influence their own government on such issues as ABM are most sanguine about the power of their Soviet counterparts. But if they tried and failed to exert political power in a country where it is possible to appeal over the head of the administration to the mass of citizens, how can the Soviet scientific elite succeed in a country where no such opportunity exists?

On balance, the development of modern military technology will probably intensify the expansionist tendencies of the Soviet elite. It is likely to increase its self-confidence and encourage it to pursue targets of opportunity wherever they present themselves with greater boldness than before.

(NOTE. Richard E. Pipes (Ph.D. Harvard, 1950) is Professor of History and Director of the Russian Research Center at Harvard University, where he has been a member of the faculty since 1950. A former member of the Joint Committee on Slavic and East European Studies of the American Council of Learned Societies and the Social Science Research Council, he has also served as visiting professor at the University of California at Berkeley. His publications which bear directly on Russian history include: Formation of the Soviet Union: Communism and Nationalism, 1917–1923 (rev. ed., 1964); Karamzin's Memoir on Ancient and Modern Russia (1959); The Russian Intelligentsia (editor and contributor, 1961); Social Democracy and St. Petersburg Labor Movement (editor, 1963); Of the Russe Commonwealth by Giles Fletcher (1591) (co-editor with John Fine, 1966); Revolutionary Russia (editor and contributor, 1968); and Europe since 1816 (1970)).●

## AFFIRMATIVE ACTION

### HON. ROBERT S. WALKER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. WALKER. Mr. Speaker, because so much controversy has surrounded the real intent to the Walker equal opportunity amendment to the Labor-HEW appropriation bill, I would like to bring to my colleagues' attention an exchange of correspondence I had with a Pennsylvania resident during the August recess.

The letter I received included the following:

I wish to express my thanks to you for the anti-affirmative action amendment introduced by you to the Labor-HEW bill. I wish you would continue to fight the affirmative action program that has gone beyond the intent of the program. . . . and may you continue to fight to restore the incentive of the individuals that are qualified.

My reply follows:

Thank you for your letter regarding affirmative action.

You should be aware, however, that while I am a strong opponent of federally enforced quotas, I am also a supporter of affirmative action. I am deeply committed to the civil rights cause and believe strongly in equal opportunity for all.

Quotas are discriminatory by definition and their enforcement by the federal government destroys the concept of merit. Men and women must be judged on their abilities not

on the color of their skin. The federal government has used quotas as a convenience rather than seeking new, more imaginative ways to bring about increased opportunities for minorities and women.

Certain institutions have had success with affirmative action, outreach programs that do not rely on quotas. Temple University is one such institution. Minority enrollment in Temple's law school has increased under their affirmative action programs which retain the merit concept as an integral part of the admission process.

Cordially,

ROBERT S. WALKER.●

## TOP 15 DISSIDENTS

### HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. COLLINS of Texas. Mr. Speaker, the other day I had an interesting discussion regarding who would be the first dissidents to be eliminated. Here are the 15 groups listed in the order of priority:

(1) Preachers, (2) Military Leaders, (3) College Professors, (4) Writers, (5) Newspaper Staffs, (6) Politicians, (7) Jewish Communities, (8) Business Leaders, (9) Bankers, (10) Land Owners, (11) Sick and Infirmed, (12) Black Communities, (13) School Administrators, (14) Policemen and Firemen, (15) Lawyers.

The way the subject came up was the present trend toward nationalization and the way this Government is building more and more toward an all-powerful dictatorial Federal Government. If the Government continues this trend, which is gaining in momentum, it is believed that we might reach a complete nationalized state within 10 years.

We can look to the history of nationalized states to see how dictators establish their authority. Some are nationalized according to the Communist system and others have used the Fascist system. Anytime you have an all-powerful Federal state, the first thing the ruling dictator will do is murder all dissident groups. Obviously, the first group to be murdered would be the preachers, rabbis and priests. There is no God in a Fascist or Communist society because the state is God.

The next groups to be murdered would be all the leaders of the military. This would include not only the officers but also the sergeants, who are the backbone of the service. A dictatorship must have absolute control of the military.

Then on highest priority would be the independent-thinking college professors, writers, and responsible news staffs. In a dictatorship there is no tolerance for independent thinking. The government position is the only position. The writer with the fiery pen is buried the first day.

Politicians would be the next group. They would probably get about 90 percent of the politicians, as there are probably 10 percent that are fast enough on their feet and lack political conviction to where they could assimilate into the new movement.

If we refer to history, we would see the next group to suffer would be the Jewish community. In order to make a public appeal, the dictatorship would take one group and blame them for everything. Because the Jewish people are smart, hard working, and prosperous, it is also a group that is widely envied. Hitler with Fascism showed how quickly a dictator moved against the Jewish people. The same thing occurs with the Communists, so either type of dictatorship sees the entire Jewish family threatened with annihilation.

To gain popular support brings on redistribution of the wealth and giving the masses something for nothing. That means all the business leaders, bankers and any landowners that have more than 200 acres must be shot.

During the transition to a dictatorial state, the productivity standards drop, providing less in the way of material goods. So then they kill all of the sick and infirmed. These people are not able to produce and are only consuming, so the cold-hearted but effective solution is to eliminate them.

Italy used the black community as a target. The blacks have been oppressed in history. Dictatorships always concentrate on minorities.

Then we round out the group of the top 15 with the school administrators, policemen, firemen, and lawyers. School administrators would probably be eliminated within the first 2 weeks, as dictators must control the minds of the young generation in order to build a Fascist or Communist state. Policemen and firemen represent law and order and the dictatorship will choose their own. Lawyers would round out the group. Lawyers would be killed because they simply talk too much, and are contentious by the nature of their business. In a completely nationalized state, there is no need for lawyers because the government is the law.

The interesting part about preparing this list was the fact that so many of the groups, who will be the first to be killed, are the strongest advocates of building up a complete federalized, all-powerful, nationalized state.

Compassion and lack of common sense motivates many of our great leaders of public opinion. Constantly from the pulpit and from the press do you hear the suggestion and pressure for the Government to extend its bureaucracy to provide more regulations, collect more taxes, and extend more Government controls. As the Government now gets 42 cents out of every dollar of the gross national product, the Government greedily seems nearing the point where it wants to take it all.

All of the leaders of free enterprise would be the first to be killed. Because to operate an all-powerful, nationalized government, there is no room for a dissident voice. In China, they have been very successful in having the men and women march out together to the field for 10 hours of good work. Six days a week they work and they like it. The ones who voiced objection were buried soon thereafter. Today, all the citizens hear, read, or see are the Government's views.

The irony of the situation is that many individuals who encourage the people of this country to move toward an all-powerful Federal welfare state will be the first ones that the all-powerful Federal Government will eliminate. As we know, when these governments took over in Germany, Russia, and China there were between 10 and 40 million people killed. Will you be one of the first in the blood bath?

Why does not the United States move again toward freedom of the individual? Why do we continue to centralize all the power in Washington? Why does the Government spend so much and tax so heavy? Let us pray that America's leaders from coast to coast reestablish the United States of America as a land of freedom and opportunity for all?●

## THE TRAP

### HON. CLARENCE D. LONG

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. LONG of Maryland. Mr. Speaker, the preservation and protection of wildlife and the environment have always been of major concern to me. I have sponsored several measures in Congress to insure the humane treatment of animals, such as the Endangered Species Act and the Marine Mammal Protection Act, which are both public laws now.

I was therefore particularly pleased to note that my bill to curb use of the steel jaw leg-hold trap, H.R. 3516, was commended by the winner of this year's essay contest sponsored by Friends of Animals, Inc. and the Committee for Human Legislation, Inc.—organizations which do outstanding work to combat the mistreatment of animals. The admirable goal of this nationwide contest for college students is to foster a new environmental ethic that extends consideration to all forms of life.

I am pleased to share with my colleagues excerpts of the prize-winning essay by Anne E. Reiner—University of Texas, Dallas—entitled "The Trap."

The excerpts follow:

THE TRAP

The notion of man's uniqueness in his ability to reason, along with the Biblical concept of "dominion," combine to produce the conviction that man owns the earth and all the nonhuman creatures that inhabit it, to use as he pleases. This attitude is the trap which holds all animalkind in its jaws, helpless and doomed, just as surely as the mechanical device which is but one of its manifestations.

While the immediate purpose of this essay is to support legislation banning a particularly inhumane device, the leg-hold trap, its ultimate aim is much more profound. There is an urgent need to bring into public awareness the attitudes governing our actions toward the other species with whom we share this planet. These attitudes must be consciously examined, evaluated in terms of present-day knowledge, and either reaffirmed

or repudiated. Considering the immediate plight of animalkind, it is imperative that we weigh the consequences of each course of action open to us and follow our convictions as to which choice best demonstrates our "humanity."

There is cause for optimism in the fact that many of our policies toward nonhuman animals are increasingly becoming the subject of public debate. Awareness of specific injustice can initiate the process whereby we begin to make valuative judgments regarding the rationale behind our policies. When an informed public begins to recognize this rationale as a hollow shell of habit, prejudice and greed, a more realistic view of man's place in the hierarchy of life may be adopted. Nothing less than a major change in man's attitudes will suffice to free animalkind from its hopeless situation. Only when man ceases to look upon animals as useful objects and truly regards them as fellow living creatures, perhaps our only companions in the universe, will "the trap" be destroyed.

Arrogant man finds it demeaning to accept Darwin's reaffirmation of the unity of life, of our kinship with the beasts. Instead, Darwin's concept of individual and species competition, "the survival of the fittest," has been used as justification for man's domination of all other life forms. Two centuries earlier, Thomas Hobbes had described the state of nature as a "war of all against all." The attitude generated from a synthesis of these two concepts seems to be that man, the fittest species, must subdue all others in this war in order to survive.

We tend to forget that each species of animal (including man) and plant existing today is already a winner in the eons-long competition with others fighting for the same ecological niche. This "forgetfulness" is symptomatic of our picking and choosing among available information, incorporating into our attitudes only those facts that do not disrupt our comfortable habit patterns.

If we were truly rational beings, we would employ our "reason" to integrate new knowledge, as it becomes available, into our existing value system, and base our actions thereon. Instead, however, we have exercised our rationality by "rationalizing" our culturally determined attitudes and behavior. Instead of allowing habit to determine our behavior, we should exercise our supposed free will: *decide* which attitudes are based in reality and *choose* to act in accordance with them.

Until rationalization gives way to rationality, animalkind will remain caught in the trap from which the only release will be extinction.

In the process of rationalizing our prejudices against nonhuman animals, many characteristics are asserted to be uniquely human. Recent animal behavior and ethological studies, however, indicate that animals may possess some of these characteristics in varying degrees.

Some traits that seem obviously shared by both humans and nonhumans are the ability to feel pain and fear, to grieve, play, dream, and even to act altruistically. These are evident to anyone who has ever shared his home with a cat or a dog.

Less obvious in animals are the abilities to use language and to engage in abstract reasoning. Many people consider the latter to be dependent on the former; but even language is no longer considered strictly a human acquisition, especially since the successful experiments in teaching American Sign Language to chimpanzees.

The fact that animals share these abilities in varying degrees with humans, together with the fact that many humans lack them, in the same measure, destroys their validity as absolute distinctions by which to define "man."

The search for additional characteristics that purportedly distinguish man from other animals becomes more frantic and more absurd. It also creates its own pitfalls:

"(A)cademic writers tend to forget that the high-flown disparities they sometimes mention as of the essence of man are of enormously little concern to most non-academic men. If animals, on these criteria, are less than human, so are men."

Unless new, more accurate distinctions are invented soon, we shall be forced to consider the possibility that nonhumans might be heir to the same natural rights claimed for humans. Since the subject of animal rights has been so exhaustively explored by many writers, only the salient points need be mentioned here:

(1) If, indeed, humans do have rights, the only irrefutable criterion for granting those rights to all humans and only humans is, as Peter Singer has so thoroughly demonstrated, outright speciesism.

(2) It is claimed that humane laws already in existence were not passed for the purpose of protecting animals' rights, that their sole purpose is to benefit humans on the ground that cruelty to animals corrupts morals. If, however (and as seems more likely), these laws were adopted and are obeyed for the benefit of animals: if we believe

". . . that such treatment is something we *owe* animals as their *due*, something that can be *claimed* for them, something the withholding of which would be an *injustice* and a *wrong*, and not merely a cause of damage, then it follows that we do ascribe rights to animals."

Whatever the semantics involved, whether or not animals have rights in the legal sense, it would seem that a more responsible interpretation of the term "dominion" implies that man does have obligations toward those who are incapable of looking after their own interests, whether human or nonhuman. In a sense, we have "dominion" over children and the mentally incompetent; but this does not grant us the license to inflict harm on them. As Clark points out, "Let it be that animals have no *rights*—they can still be wronged."

The leg-hold trap, one incarnation of the trap which has been the subject of this essay, need hardly be described in detail. It is a device used to harvest the pelts of wild animals. Traps are preferred over guns because much less damage is inflicted on the pelts; this ensures a higher market value. Except when traplines are laid near human habitation, very few children and pets suffer injury or death because of them. Since animals cannot read, there is no way to warn nontarget wildlife that all who are not beavers, or foxes, should avoid certain areas. Should a nontarget animal be caught, the trapper faces the inconvenience of disposing of its carcass and rebaiting the trap. If he has killed an eagle, or a member of some other endangered species, after all, this was not his intent.

One could go on, but the message is already clear. As long as trafficking in furs remains profitable, trappers will continue to use the most efficient device available.

The Williams-Long bills (S. 818 and H.R. 3516) seek to negate this profitability by forbidding interstate and foreign commerce in fur and leather from any state or country in which the leg-hold trap is not banned. Both bills further seek to prevent the use of such painful devices by discouraging their manufacture, sale and use in the United States.

True progress consists of many small steps taken in the direction of a goal. Supporting these bills is one small step we can take toward our goal: respect for the worthiness of all creatures to share life on this earth.●

## AFL–CIO PRESIDENT GEORGE MEANY'S POSITION ON DEFENSE AND FOREIGN POLICY

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. DERWINSKI. Mr. Speaker, one of the most respected American voices on foreign affairs is that of AFL–CIO President George Meany. He has devoted much of his career to fighting for free trade unionism and against efforts of Communism to take over labor organizations throughout the world.

Therefore, I am especially pleased to call the Member's attention to Mr. Meany's remarks on defense and foreign policy. President Victor Bussie of the Louisiana AFL–CIO delivered Mr. Meany's speech to the 60th annual convention of the American Legion in New Orleans on August 22. The speech follows:

It gives me great pleasure on behalf of the AFL–CIO, to extend greetings and best wishes to the delegates and guests attending the American Legion's 60th Annual Convention.

I wish it were possible for me to present these greetings in person. Unfortunately, my schedule requires me to forego the delights of New Orleans, and I have therefore asked my good friend, Victor Bussie, to present these words for me.

One of the reasons I had hoped to be able to appear before you is that I know that among your ranks are many members of the AFL–CIO. This should come as no surprise. After all, when the peace breaks down, it is the working people of this country who are called upon to fight.

So whatever differences we may have on other policy matters, we share a common interest in maintaining peace. And, like the American Legion, the AFL–CIO believes that the surest force for peace in this world is a strong America, second to none.

I would like to take this opportunity to tell you something about some of the basic principles, some of the philosophy, that underlie the AFL–CIO's outlook on world affairs.

First of all, we start out with a vested self-interest, if you want to call it that, which we are not afraid to declare: We have an interest in the development of free trade unions throughout the world—not only on the moral grounds that all workers should have some of the good things in life that we have won in America, but also on the economic grounds that we don't want unfair competition from workers earning 50 cents or 75 cents an hour. We can't compete with those wages and support the American standard of living.

Now, in order to have unions, you have to have a climate in which human rights are respected. Without the freedom to assemble, to associate, to speak, and to strike, workers cannot establish or sustain effective trade union organizations. Human rights are the life blood of trade unionism.

So, long before President Carter launched his human-rights campaign, the AFL–CIO urged that the promotion of human rights throughout the world be undertaken, not simply as a moral crusade, but as an essential, integral part of our nation's foreign policy.

In the final analysis, what should be the goal of our foreign policy, if not the reversal of the totalitarian tide and the expansion of the democratic world community? Take this

away, and what have we left as a worthy object of foreign policy? The protection of private business investment abroad? Is that a goal that can justifiably claim the lives of workers and their sons?

So, as far as the American labor movement is concerned, the advancement of human rights and material well-being are not only the proper business of American foreign policy but should be its centerpiece. It is our trump-card.

We were, therefore, delighted and encouraged when candidate Jimmy Carter made human rights a theme of his Presidential campaign and then, after his election, made a number of dramatic pronouncements that focused world attention on human rights as an international issue and helped to restore meaning to American foreign policy.

For those actions we have repeatedly applauded the President. We have defended him against those in both parties who have criticized him for speaking out too loudly against Soviet violations of human rights, and we have noted that some of those critics would not apply the same "quiet diplomacy" to those of our allies whose human-rights records are wanting.

Of course, we believe the President's words and his deeds should match. Otherwise the language of human rights, which has inspired millions, would turn sour and a great opportunity to shift the moral balance of power toward the West would have been lost.

Some would prefer the President to scale down the rhetoric. We prefer to raise our deeds to the level of our democratic commitment—in other words, to do what we say.

In recent months, the Soviet Union has cracked down mercilessly on those of its citizens—like Orlov, Shcharansky, and Ginzburg—who have demanded that their nation live up to the human-rights provisions of the agreement it signed in Helsinki. It is clear that one of Mr. Brezhnev's objectives in this crackdown is to get rid of the dissident movement, at least in Moscow, before the 1980 Olympics.

But it is also clear that the jailings of Orlov, Scharansky and Ginzburg—as well as the incarceration of Vladimir Klebanov in a mental institution for trying to form a free workers movement—these acts not only violate the rights of the individuals involved: they violate a solemn international agreement which the Soviet Union signed with the United States and 33 other countries in Helsinki.

What has been the response of our government to these repeated violations of Helsinki?

Have we yet said that, if the Soviet Union continues to violate the human-rights provisions of Helsinki, we will not feel bound to respect the other provisions? No. In effect we have declared ourselves to be unilaterally bound by the Helsinki accords.

Have we yet said that, in view of the Soviet government's refusal to live up to the Helsinki agreement, we shall reconsider the advisability of entering into another agreement with them—on SALT? No. So far, we have said in effect that we are determined to sign a SALT agreement no matter what—and without regard to the issue of trust, of credibility.

Have we yet said that, we will use all our technological and economic leverage to press for Soviet compliance with Helsinki? No. After first considering cancelling the sale of oil drilling technology, the President decided to go ahead with the sale—thereby giving the Soviets the indispensable tools to develop their Siberian oil resources at the very time they are moving in on the Middle East oil that Europe and Japan desperately need.

So far, our only response to the barbaric trials of Soviet freedom fighters, aside from cancelling some official visits to Moscow, has been to stop the sale of the Sperry-Univac computer to TASS.

Now, I am not against signing agreements with the Soviet Union. I am not against negotiating with the Soviet Union. But I can tell you, as a trade unionist of more than half a century's experience, that if our labor leaders negotiated with employers the way our government has negotiated with the Soviets during the last 10 years, the rank and file would throw us out.

When we sit down at the bargaining table, we go tit-for-tat. We concede, the boss concedes. We give, he gives.

But that's not the way the U.S. has dealt with the Soviet Union. There has been no reciprocity. We give, they take.

Everything in my experience tells me that erosion of the principle of reciprocity, steady accommodation to totalitarian power, if not checked will lead to war. Twice before in our century appeasement led to war. If it happens again, it will be the last time. Thereafter the planet earth will repose in the peace of the graveyard.

I believe we should tell the Soviet Union, for starters, that we will not be complicit in their effort to create a dissident-free environment for the 1980 Olympics. The AFL–CIO has called for moving the 1980 Olympics from Moscow to a country which respects the human rights of athletes and all other persons. I hope the American Legion will join us in this effort.

I also believe that President Carter should inform the Soviets that, owing to their repeated and blatant violations of the human-rights provisions of the Helsinki Final Act, we no longer feel bound to abide by the other provisions—especially those economic, scientific, and trade provisions which are so disproportionately beneficial to the Soviet Union.

I believe the President should also make it clear to the Soviets that no SALT agreement can be signed, whatever its terms, until we have good reason to trust the Soviet Union to live up to such an agreement—and no such good reason can exist in the face of continuing Soviet violations of Helsinki.

I guess this goes by the name of "linkage"—and I'm for it. Linkage means that we apply our strengths—technological, economic, and moral—to Soviet weaknesses. The alternative to linkage is steady retreat before probing, advancing Soviet power.

"Linkage" is, I think, Henry Kissinger's term. Brezhnev talks about the "correlation of forces"—by which he means the balance of power in political, diplomatic, economic, *and* military terms. He sees the "correlation of forces" shifting to the advantage of the Soviet bloc. I fear he may be right.

If such a shift is taking place, it is based on one area of Soviet strength: its indisputably growing military strength.

When Dr. Kissinger was Secretary of State, he was asked whether we had lost our military superiority, and he said: What can you do with military superiority? Well, we may not know what to do with it, but the Soviets surely do. They know that military superiority not only makes possible military adventures of the kind the Cubans are carrying out for them in Africa, it also makes possible political and diplomatic pressures which weaker countries cannot withstand. And who can deny that for many small and weak countries, lacking the capacity for independent action, the choice between East and West will rest on their perception of our relative military strength and our will to use it?

Therefore, when it comes to national defense programs, the AFL–CIO has only one standard, one criterion. What do we need to do to maintain a favorable balance of power?

We reject the notion that bombers, submarines, and tanks should be built because that would create jobs. That has never been the position of the labor movement and, if it were, that position should be rejected by the rest of society. To create weapons of mass destruction in order to reduce unemployment would be immoral—and a confession of bankruptcy by our society.

We also reject the notion that we should *not* build bombers, submarines, and tanks in order to create jobs—or to make more funds available for domestic social needs. What good does it do to clear our slums and eliminate poverty if we then succumb to totalitarian military power—or are incinerated in a war brought on by a destruction of the balance of power?

We are therefore opposed to simplistic approaches to defense spending. We are opposed to just lopping off a certain percentage of the defense budget and transferring it into the social sector without regard to the real dangers on the international scene.

So, as far as we are concerned, the only legitimate questions to be asked about a particular weapon or weapons system is: do we need it? If we give it up, what will the other side do?

Now, I am not a military expert, but I do know something about collective bargaining, and I wonder: Could we not get iron-clad guarantees from the Soviets about the security of Western Europe in exchange for not constructing the neutron bomb?

I could cite other examples but they all can be quickly summed up: Is the conduct of foreign and defense policies by "good example" a sound policy?

If we show a sincere interest in disarmament by disarming unilaterally, will the Soviets do likewise? If we show restraint in Africa, will they do likewise? If we change our visa policies to allow Soviet agents disguised as trade unionists to tour our country, will they let Andrei Sakharov come and go as he pleases?

I doubt it. I doubt it will moderate Soviet behavior, reassure our allies, or protect our interests.

I propose our foreign and defense policies not be based on "good example" but rather on reciprocity.

I am convinced that the American people are tired of those in both political parties who have rationalized defeat and retreat by the language of detente. I think they are tired of those in both parties—and they are in both parties—who talk about human rights while accommodating militarily, diplomatically, and politically to the system that tramples human rights.

Following World War II, Americans came together behind a bipartisan foreign policy consensus which helped to maintain the peace, to rebuild war-torn Europe, to contain Communism, and to facilitate the independence movements of colonial peoples.

We cannot go back to the past. But we can put behind us the divisions, the self-doubt, and the illusions of the post-Vietnam era, and commit ourselves to a bipartisan policy whose goals would be unchallengeable military strength, and a completely reciprocal relationship with the totalitarian world.

Only on such a foundation can we hope to champion the course of human rights throughout the world.●

## TRADE READJUSTMENT ASSISTANCE PROGRAMS

### HON. RONALD A. SARASIN

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. SARASIN. Mr. Speaker, tomorrow the House of Representatives is

scheduled to consider H.R. 11711, a bill which attempts to improve the trade readjustment assistance programs. Although the measure had been scheduled to come before us on two previous occasions, time constraints prohibited our consideration until after the August district work period. Now, unfortunately, I find that I will be unable to participate in tomorrow's proceedings.

However, I do have very strong feelings about this legislation and the amendments which will be considered, and I would like to share my thoughts with my colleagues.

I strongly support the provisions of H.R. 11711, for the extensions and revisions to the TRA program are absolutely necessary. There are several areas of concern to me, though, concerns that focus on the extent of coverage provided under this measure. In particular, I am referring to section 112, dates of effective enactment. While the committee will seek to amend this section, the intent will remain the same. The sections dealing with individual trade readjustment allowances will still apply only to those people who have been separated from employment 60 days after date of enactment.

This will not allow us to protect those workers who, at the date of enactment, are in an approved training program and receiving benefits. Under these circumstances, an individual's benefits could easily expire prior to the completion of their training program, and in many cases, these workers will be forced to terminate their training programs prematurely. This is not the intent of the TRA program, and we should not take action which will harm those workers affected by trade or jeopardize their opportunities for future employment.

Fortunately, we will have the opportunity to correct this oversight during tomorrow's consideration. Congressman JIM JEFFORDS and I have drafted an amendment, which he will offer, to insure the inclusion of these people under the new TRA provisions. We did so because this is an issue of equity for the worker now in the program. While we cannot help those people whose benefits have already expired and who have already terminated their training programs, we cannot disregard the plight of those workers currently in programs—workers who sincerely believe that this measure will help them.

I strongly urge my colleagues to accept the Jeffords amendment tomorrow.

There is another amendment which I wish to call to the attention of my colleagues. Mr. CLEVELAND will introduce an amendment that would reinstate Federal reimbursement to the State for unemployment compensation benefits paid to workers who are eligible for adjustment assistance under provisions of the Trade Act. A good part of the responsibility for lost jobs lies with Federal trade policies, and the Federal Government should assume the financial burden of their impact. My own State of Connecticut is a good example of this serious problem. We have paid nearly $400,000 in unemployment benefits under the Trade Act, and this amendment would ease a burden that few States can afford.

In conclusion, I urge my colleagues to support final passage of H.R. 11711 and to support the two correcting amendments.●

## EMBARGOES ARE OF QUESTIONABLE VALUE

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. FINDLEY. Mr. Speaker, the disturbing tendency of using embargoes of U.S. exports to achieve political goals has persisted in American history, cropping up intensely from time to time. Recent years have seen such a time, with both the executive and legislative branches too willing to restrict the export of American products in futile attempts to influence the policies of foreign states. All such policies accomplish is a reduction of our exports and damage to our domestic industries and balance of payments. An analysis by Robert L. McNeill shows with special clarity the fallacy of such trade restriction policies. My colleagues would do well to pay careful notice to the article which follows:

AMERICA NEEDS MORE INTERNATIONAL BUSINESS

(By Robert L. McNeill, Executive Vice Chairman, Emergency Committee for American Trade)

During the Napoleonic Wars, Americans were outraged at the excesses of the combatants, England and France. In order to influence their behavior, we imposed an embargo on foreign commerce. The result was a disaster. New England almost broke away from the young Federal Union; President Jefferson wisely gave up the attempt to use the pressure of withholding American exports as a lever to influence the behavior of other nations.

I believe it is time that we re-examined some of the assumptions behind present-day policies that may be well motivated but are threatening to strangle American exports and overseas earnings.

Why? Because these policies are not working. Just as they did in Jefferson's time, they are hurting our exports and they are hurting Americans. But they are not doing anything to change the habits of other nations. They are, in fact, nothing but a windfall to our competitors. The result is that the American dollar is in a nosedive. It is only because of the absence of better alternatives that foreign nationals still hold on to their American dollars and accept new ones.

In the first 25 years after World War II, the United States earned billions of dollars in foreign trade surpluses. Our post-war cumulative trade surplus—excluding foreign aid shipments—was over $100 billion. We used that money wisely to build up investments overseas that poured profits into the United States.

In 1976, sales from American-owned companies located abroad amounted to $515 billion. If it weren't for the profits on those sales, the dollar would be in even deeper trouble.

Today, the shoe is on the other foot. In 1977, the United States had a trade deficit of $27 billion and other countries are investing that surplus here in the United States. This is not unwelcome. It helps maintain an equilibrium in international accounts. Still, it has caused the American dollar to plummet in value and it serves to make the world think that American strength is waning.

In my opinion, there is no reason that the dollar should be deprecated or depreciated. A rise in American exports would restore confidence in our currency and such a rise is well within our reach.

Thanks to our continental economy, the United States is capable of applying more resources to efficient production than any nation or group of nations in the world. It is for that reason that we are able to export 41 percent of the construction and surface mining machinery that we make, and 25 percent of our aircraft, and 22 percent of our agricultural chemicals.

In few fields have we shown the world more how our economy makes us efficient than in agriculture. We export 25 percent of our corn, 45 percent of our wheat, 57 percent of our milled rice and 60 percent of our soybeans.

These exports—$121 billion worth in 1977—provide millions of Americans with jobs, generally good jobs at higher pay than in industries where there is little export activity. But we need more exports. Other industrialized and agricultural nations are fiercely competing in world markets. They want the existing business and the new business. Nowhere is this competition more intense than in the new markets of the so-called developing nations, particularly those in the Middle East.

Many trade experts think that these markets are going to be critical to the future of advanced industrialized countries like the United States. The New York Times reported on July 30 that:

"Some observers, including Lehman Brothers chairman, Peter G. Peterson, a former Secretary of Commerce, see the engine for growth of United States exports as the Third World countries, markets that remain virtually untapped. Increased trade with developing nations would also relieve some of the tensions that would arise if American goods began flooding industrialized countries' marketplaces."

However, other experts like John W. Sewell of the Overseas Development Corporation caution that "An increasingly competitive world economy will require the United States to improve its export performance, overcome investment bottlenecks in export sectors, and put more resources into research and technological innovation."

That sounds reasonable, but are we doing it? I regret to say we seem to be doing just the opposite. In the case of the Middle East, we are limiting the ability of our exporters to obtain orders by technical requirements in legislation such as the anti-boycott provisions in the Export Administration Act.

The head of Deere & Company has informed the Congress that one such technical requirement has prevented the company from bidding to supply a substantial number of tractors from its Dubuque, Iowa factory. A successful bid could have resulted in U.S. business worth $18 million and 20,000 man days of work for Deere & Company's United States employees.

That is just one self-inflicted set-back. We also have legislation that makes it difficult to engage legitimate agents in developing countries. The result is our competitors are taking away business. The purpose is well-intentioned—to prevent questionable payments. Still, if American companies are so worried about a wrong interpretation of paying an agent that they avoid the use—the traditional way of doing business in many countries—the business will go to companies in Europe and Japan.

Much of our export business is also being held up by the restrictions on financing of shipments to countries that do not meet American standards on human rights or concern for the environment.

Again, the result is not to change the ways of these countries, but to take away needed American jobs. According to the July 19,

1978 Wall Street Journal, "The State Department is blocking an Export-Import Bank loan to Argentina for 20 large turbines and other equipment for a major hydroelectric power project." The company who would supply this equipment, Allis Chalmers, has said that unless the Ex-Im Bank relents, "We shall have no alternative but to inform the Minister of Economy (in Argentina) that Allis Chalmers will undertake to furnish the equipment from facilities in other countries where financing will be available." Good-bye to $268 million in exports.

All of this makes no sense. Americans need such business. We can restore the dollar to prominence if we help our exporters, not hurt them. It wouldn't take that much help. Our economy could easily pump out the additional goods that other countries need—even more than enough to cover our deficit in petroleum exports. That would balance the books on the high side—where the United States ought to be. The results would be beneficial to everyone. For every billion dollars of exports produces tens of thousands of American jobs. C. Fred Bergsten, Assistant Secretary of the Treasury for International Affairs, recently said that "One out of every five jobs in this country now produces for exports to other countries. One out of three dollars of corporate profit in this country derives from international activities of American firms."

We could increase these percentages. I say we have to increase them. But to do so we must be more practical and more realistic about international trade. Let us review some of the practices that restrict our exports and get rid of them and then let us look for new methods of delivering the goods to the rest of the world.●

## NATIONAL GRANDPARENTS' DAY

### HON. RONALD A. SARASIN

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. SARASIN. Mr. Speaker, as ranking member of the Human Services Subcommittee of the Select Committee on Aging, I have heard many witnesses testify to the neglect, indeed, abuse, of our country's senior citizens. America has not always been kind to its elderly, and we cannot pretend, by setting aside 1 day or 1 month, that we are adequately recognizing our elderly—our grandparents. I think it is fitting, nevertheless, that we have established a Senior Citizens' Month and a National Grandparents' Day to pay some small tribute to our elderly population.

Nearly a third of Americans are now choosing to remain single and some suggest that even the family itself is well on its way to becoming a thing of the past. With the decline of the family as an important element of our society, we are beginning to see our parents, grandparents, and children grow farther and farther apart. Alex Comfort, in his book "A Good Age," touches on the decline of intergenerational exchange, but is, finally, supportive of maintaining the essential contact between grandparents and grandchildren. I have included the section on "Relatives" from Mr. Comfort's most important work:

RELATIVES

One consequence of contraception, of changing family habits and a falling child death rate has been a shortage of kin, compared with the large traditional human family. The "extended family" on the Jewish, Chinese or Italian model has been overpraised—as well as mutual support, it generated pressures we now are unwilling to accept. Apart from the fact that one of numerous nonlib daughters could be drafted, often to her lifelong hurt, to "look after" older relatives, the great advantage of the extended family in later life was less its size than the cohabitation and intermixture of generations. With urban housing this was bound to decline anyway. The surrogates for generations sharing a house are the car and the telephone, but these don't provide constant interaction for the old with grandchildren, who become only occasional visitors. The older dynamics of the three-generation family have effectively disappeared.

Relatives, especially children, are people on whom you are perfectly entitled to rely for support of many kinds, but the folklore of independence has much that is valid in it, and children when adult aren't necessarily the people you most want to talk to. The real need of older people is for friends rather than the relatives of earlier peasant-type societies. Dr. Jacob Boronowski, the author of The Ascent of Man, remarked that Americans tend to be friendly, but friendless. In fact, all ages seem to be in a social transition from relationship-based to friendship-based social bonding.

The ideal outcome of this, envisaged by Tolstov, Thoreau, the early Christians and the hippies, is the "all people are brothers and sisters" formulation. This, however, remains hot air unless some quite powerful charismatic interaction takes place. At present we lack the use of straightforward concern, which gets neutralized by "independence" as an ideal in America and by "privacy" as an ideal in Britain, and do not universally draw bonding from religion—the nearest approach is through parareligious behaviors like humanistic psychology and the encounter group. At the same time, the void left by kin is widely sensed, and probably accounts for the appeal of "growth" movements among middle adults, and even the quite extensive reappearance of the Eskimo expedient of wife exchange, the aim of which is in fact to create surrogate kin, by one of the strongest types of primate bonding.

We cannot now predict how the children of this transition period will age. They will certainly be more peer-dependent and less kin-dependent, they may still go to encounter groups rather than to churches; ideally, if society is by then age-blind, the active extrusion of each generation by the next will have gone. In the meantime, grandparenthood is and will remain as basic a human learning experience as is parenthood, both for child and for grandparent. In all cultures good grandparenting tends to limit parent-child overexposure, which is particularly onerous in our isolated small-family households. Being an active grandparent is one continuing responsibility of seniors which they should hang on to, difficult as the institution of serial polygamy may make this. Children in general like the company of grandparents. They also like to hear about the past, and telling them about the past has a function, so don't confuse this with doting reminiscence. This is how tradition is passed on. Every wise young parent will involve grandparents to the full. Even if you fear that your own parents will be overindulgent or oversevere to your children, remember that exposure to a different set of child-rearing ways is highly beneficial to children as a learning experience in the diversity of people. Since few children who don't live with them get overexposed to grandparents, comprehension between grand-generations is often high.

Victor Hugo: "When you are old, you feel like a grandfather to all small children." ●

## JULIA REED PALMER AND THE AMERICAN READING COUNCIL

### HON. HENRY S. REUSS

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. REUSS. Mr. Speaker, the July 17, 1978, issue of Publisher's Weekly contained an informative article about the work being done by Julia Reed Palmer, chairman of the American Reading Council in New York. The council, under Mrs. Palmer's dedicated leadership, has been working on innovative and successful methods of improving literacy and reading skills, particularly for young people in our inner cities. These methods can and should be expanded to all of our cities, and I want to share the article, by Frank G. Jennings, with my colleagues.

The article follows:

ARC: WORKING TO WIN YOUNG READERS

(By Frank G. Jennings)

Since Julia Palmer founded the nonprofit American Reading Council three years ago, the membership has been energetically promoting two sets of programs. The first makes good books available, at cost, to parents and children. The ARC's elementary-school, paperback bookstores are open to parents and run by the students themselves, as a form of career education. The children's involvement in the project gives them a strong motivation to improve in reading and mathematics. And the stores make inexpensive books accessible in an ongoing program. Where these stores exist, reading scores go up; school library use and family reading sessions increase dramatically. Experience has proved boys and girls who browse and buy books—with their own money—make a commitment that goes beyond that of a child who is given or loaned a book by an adult.

The Council's second program makes the same, good, inexpensive softcovers available for sale to parents through book racks in day-care centers and nursery schools. Even parents in low-income areas seize the opportunity to create a home library for themselves and their children.

Palmer's interest in creating the Council stems from her long career as a teacher—largely in poverty areas—and as chairman of the successful Brooklyn Bookmobile, "Buttercup." She says that the idea of the ARC, however, was suggested by Dr. John Niemeyer, retired president of Bank Street College; Dr. Nancy Larrick, reading specialist and author; John Franz, formerly head of the National Book Committee, and Lucille Thomas, head of the New York Library Association. ARC also has the support of two former U.S. Commissioners of Education—Francis Keppel and Dr. Sidney Marland, as well as of the present commissioner, Dr. Ernest Boyer.

The ARC manages a special program for inner cities, a bookmobile to be combined with a Community Library Program, which will make the underutilized resources of libraries in these locations available to bookmobile graduates.

The bookmobile operation has been most gratifying, attracting previous nonreaders who now read as many as 16 books in 16 weeks. In addition, the program hired and trained semi-literate teenagers, giving them

basic education and job skills. Familiarity with the bookmobile also gave parents education and material for them to help their children to read more and appreciate books.

Plans for the Community Library Program will encompass the same features and add parent-education classes, after-school book and game clubs and other activities on matters of local interest. Both programs will run year-round and be extremely cost effective. (The bookmobile circulated books at approximately one-third the cost of the average public library.)

In Newark, N.J., the Public Library Board of Trustees has voted to implement the Community Library Program at its Central Ward branch, if ARC can get funding.

It is Palmer's belief that books should be made as available and attractive as drugs. To start her program required money, and money required an organization with purpose, legal status, a management and policy body (trustees and advisors) and tax-exempt status.

"We obtained a small grant from a charitable foundation and started business," Palmer says. The Council has prepared manuals on how to start and run a bookmobile to serve poverty areas and how to set up and operate school bookstores, set up book racks in day-care centers and nursery schools, and established a routine for encouraging similar activities throughout the country. Moreover, the ARC has sent proposals for funding future inner-city operations to a number of foundations and requested congressional legislation to fund the Council's programs. They report some progress, with the encouragement of HEW and the White House.

The biggest disappointment to date, says Palmer "is that the publishing industry has yet to offer any tangible support, although some of the leaders and many of their assistants have expressed interest in some or all of the aspects of the Council's work. In fact, one of the principal problems that arose in obtaining legislative support was the constant question from Congress: 'If the Council is helping with reading, where are the publishers?' "

Palmer notes that the British Bookshop Association's success with schoolchildren may serve the U.S. as a model. She reports a visit with Mrs. Clodagh Albrough, whose British enterprise is called "Books for Your Children." Last year Mrs. Albrough sold 1,600,000 children's paperbacks. "Imagine," says Mrs. Palmer, "these books are sold only through school bookstores or through what she calls community booksellers. If her figures are correct—and John Donovan of our Children's Book Council says she has the highest credentials—her average school bookstore is selling nearly 5000 books a year." Palmer believes that a comparable program in this country would have a potential for as many as 40,000 such school bookstores.●

## FORMER VETERANS' AFFAIRS COMMITTEE CHAIRMAN BRYAN DORN SUPPORTS HANLEY AMENDMENT

### HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. TEAGUE. Mr. Speaker, the former chairman of the Committee on Veterans' Affairs, the Honorable William Jennings Bryan Dorn of South Carolina, has made a strong statement in support of continuing veterans preference in Federal employment. He has outlined his views in a statement in which he supports the proposed Hanley amendment which will preserve veterans preference.

So that all Members will have the benefit of Mr. Dorn's views on this issue, there follows a copy of his statement of August 3:

VETERANS PREFERENCE

William Jennings Bryan Dorn, former Chairman of the House Committee on Veterans Affairs, said today he contacted members of the South Carolina Congressional Delegation and others in Washington and urged them to push for passage of the Hanley Amendment to preserve veterans preference.

The proposed bill (H.R. 11280), scheduled for House action next week, Dorn said, would erode veterans preference laws which have been fought for and established over a 200 year period. Any weakening of these laws now could be the entering wedge to abolish all veterans preference including VA hospital, insurance, housing and GI education programs and even benefits for widows, orphans and dependants of veterans.

The high unemployment rate for Vietnam veterans, Dorn said, is already of grave national concern. This bill would discriminate against Vietnam veterans at a time they need special help. This bill could adversely affect 6 million Vietnam veterans and terminate benefits for 20 million World War II and Korean veterans. Unless the Hanley amendment is approved, Dorn continued, 6 million Vietnam veterans, some 2.4 million of whom served overseas in Vietnam, will lose their veterans preference by 1987.

This is no time, Dorn said, to abandon the principal of equal benefits for equal service. Veterans who fought for their country in time of national emergency believe this bill is a calculated step to destroy veterans benefits. This is the first time, the former Congressman said, such legislation has been seriously proposed. The public sympathizes with the Vietnam veteran who fought so gallantly in a filthy, undeclared war 10,000 miles from home.

Too many people, Dorn said, forget too soon.●

## SEVENTH-DAY ADVENTIST CHURCH IN SYRIA

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. DERWINSKI. Mr. Speaker, recently, I received a letter from Baron Frary von Blomberg, President of the International Religions Council, calling my attention to the problems of human rights in Syria, and more specifically the complications encountered by the Seventh-Day Adventist Church in Syria.

Because of the savage slaughter of Christians in Lebanon by Syrian forces, I offered an amendment to the foreign assistance appropriations bill which denied Syria of $90 million in economic assistance. My amendment was adopted by a large margin in the House, much support has grown for its Senate counterpart.

I wish to direct Members' attention to a brief outline of the history of the Seventh-Day Adventist Church in Syria:

HISTORY OF THE SEVENTH-DAY ADVENTIST CHURCH IN SYRIA

In 1947 the government gave the Seventh-day Adventists permission to worship and to open schools. The permit was issued from the Prime Minister's office.

In 1951 a church was built in Bazak which today is called Rauda, near Tartous. After one year, a revolution occurred in Syria and the church in Rauda was closed.

Pastor Chafic Srour was told that he was not free to worship or preach. He was asked to sign a paper stating that he accepted the declaration given in 1947 as being invalid.

Although the church in Rauda was closed in 1951, the Seventh-day Adventists continued meeting in the homes of the members. Three pastors led out in the worship services.

Around 1955, some of the workers were put into prison, but after being taken to court, they were found not guilty. After 15 days they were released. During these years, different permits to sell books, operate a correspondence school, etc. were issued by the government.

In 1965 the Center in Damascus was opened. In connection with the Center there was a small church. Nobody stopped or even questioned the members about worshiping . . . they had freedom to assemble. However, in 1970 six people were taken to prison and the building in Damascus was left vacant.

The six people: Pastor Gabriel Katrib, Pastor Zaki Hennawi, Faris Dow, Adel Tayyar, Fahmi Lewis, and Michael Tannous were held for 92 days and investigated and questioned thoroughly so that everything was known about them. They were found not guilty. After being freed they were told not to preach as before until the government studied their case and gave permission.

Pastor Gabriel Katrib was moved to Lebanon, but Pastor Zaki Hennawi stayed in Syria. We knew that the building was frozen and we were not allowed to sell it. After a short time it was occupied.

Since then the Seventh-day Adventists tried to ask permission for our members to worship, but have so far been unsuccessful.●

## SOCIALIST WORKERS PARTY PROGRAM: INFILTRATE TRADE UNIONS, SUPPORT TERRORISM

### HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. McDONALD. Mr. Speaker, the Socialist Workers Party (SWP), the U.S. section of the Trotskyite Fourth International (FI), reconfirmed its program of support for revolutionary terrorist groups and of infiltrating the trade unions at its "Active Workers and Socialist Educational Conference," held August 5–12, 1978, at Oberlin College. The SWP conference was attended by 1,550 people, 400 more than the organizers had expected.

A new development at this SWP conference, held in nonconvention years, was the presence of members of the Puerto Rican section of the Fourth International, the International Workers League, who reported that they were recruiting from and working within the Committee to Free the Five Puerto Rican Nationalists. The Committee to Free the Five, as it is known, is a support group for terrorists from the Puerto Rican National-

ist Party who are serving Federal prison terms for the attempted assassination of President Truman in 1950 and for shooting several Members of Congress in 1954. The Committee to Free the Five groups in Chicago and New York have been closely linked with the terrorist Fuerzas Armadas de Liberacion Nacional (FALN).

The Puerto Rican Trotskyites said they have been able to stop the Puerto Rican Committee to Free the Five from making public statements in support of terrorism and to restrict discussions of terrorist "armed struggle" to private debates within the organization.

THE SWP AND TERRORISM

The Socialist Workers Party pretends in public that it disapproves of "terrorism." In fact like its sister Trotskyite Communist Parties in the Fourth International, the SWP supports "revolutionary armed struggle" including terrorism so long as the actions are carried out under the direction of their party which they claim is the real representative of the masses. The Trotskyites, like other Marxists-Leninists, term as terrorists those who commit violent acts outside the control of the party.

From 1969 until 1977, the SWP led a minority faction in the Fourth International which opposed the FI majority decision to make terrorist "armed struggle" a strategy for attracting new recruits and building a mass revolutionary movement. The debate was summed up by SWP Political Committee member, Mary Alice Waters, an SWP delegate to the FI's International Executive Committee, as follows:

> The majority held that they too were for building parties but that revolutionary parties could only be constructed today in Latin America if the Trotskyists proved themselves the best guerrilla fighters, arms in hand. Such was the only path to either the vanguard or the masses.
>
> The minority felt that such a strategy could only lead to the political miseducation of the entire world movement and the decimation of the small Trotskyist parties and cadres in Latin America. Logically it would have to be extended beyond Latin America to other parts of the world.
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> * * * * *
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> Other supporters of the Latin American majority document have tried to shift the discussion onto the axis of "for or against armed struggle." We reject any implication that that is what the discussion is really about. If supporters of the minority view were against armed struggle, they would be Social Democrats or Stalinists, not Trotskyists. What we reject is the strategy of "pick up the gun" as the road to power. As a strategy it stands in the way of the construction of mass revolutionary parties * * * and that is what the debate is about.

Since the 1969 decision of the Ninth World Congress, terrorist activities have been conducted by sections of the Fourth International in Argentina, Bolivia, Peru, Spain, France, England, Ireland, and the Middle East. In areas where the Fourth International sections have been too weak to themselves launch terrorist activities, they have provided logistical support for existing terrorist movements such as the Marxist terrorist movements in Southern Africa and the Palestine Liberation Organization (PLO).

It cannot be too strongly emphasized that the question in the Fourth International debate over terrorist "armed struggles" has always been when to use such tactics, not whether to do it. As SWP National Committee Member Peter Camejo wrote in 1973:

> Guerilla warfare is only one form of the utilization of arms. It cannot be correctly counterposed to terrorism.
>
> The word "terrorism" is commonly used to mean the politics of those who believe that violent actions against individual bourgeois figures can bring about social change, precipitate a revolutionary situation, or electrify or help mobilize the masses even if undertaken by isolated individuals or groups. Terrorism in that sense is rejected by the Marxist movement. But under conditions of civil war, terrorist acts can have a totally different political import. Their isolated nature fades. In the process of an insurrection, terrorist acts may be advantageous to the workers movement. They may also be damaging. But terrorist acts that are not part of a generalized mass armed struggle remain isolated and are detrimental to the workers movement.

The Canadian section of the Fourth International which works closely with the SWP, wrote the following in 1972:

> Lenin, of course, did not reject terrorism "in principle" * * *. Marxists do not reject any method of struggle "in principle." We judge each method according to one criterion: "will this method, used at this time and in these circumstances, advance the cause of proletarian revolution?" If the answer is yes, then we use the method if we are able. If the answer is no, then we don't. We are concerned only with effectiveness, and anyone who reads the works of Marxism on terrorism * * * will see that effectiveness is the only criterion used.

As it has turned out, the arguments of the SWP-led minority faction in the Fourth International have proved correct. The Argentinian Trotskyite terrorists have been virtually wiped out; and there have been serious reverses in the other areas in which the FI sections have directly engaged in terrorism. In a series of mergers, rival FI factions in Mexico, Canada, and other countries have healed their splits. Additional mergers are being planned in Ireland and several other countries.

The Fourth International recognizes now that their involvement with terrorism did not result in the recruitment of many new cadres and that it resulted in intense investigation by the police and security agencies of many Western nations. In order to expand their political base for future terrorist "armed struggle" operations, the Fourth International sections are attempting to penetrate the trade union movements of many countries, to take advantage of the anti-nuclear and disarmament movements, and to infiltrate various social democratic and some Communist Parties. But this does not mean that the Fourth International sections are ending their involvement in terrorism. Logistical support is being provided to terrorist "national liberation movements" in the Middle East, Southern Africa, Iran, West Germany, Spain, Ireland, and Corsica; and wherever feasible, the FI sections are expected to fulfill their "armed struggle" mandate themselves.

WORLD POLITICAL SITUATION

This double Fourth International drive of "party building" by involvement in the trade unions, antinuclear movement, and other organizations while providing support for many terrorist groups was made plain in the address by SWP National Secretary Jack Barnes to the conference audience. Barnes announced that a special convention of the SWP would be held in 1979 to select delegates for the upcoming 11th World Congress of the Fourth International. He said that the SWP's draft resolution on the world political situation would call for all FI sections to follow the SWP lead in penetrating the trade unions to make them the basis of a revolutionary movement.

With the healing of the FI factional disputes, the FI majority obviously agrees on most points with Barnes and company. The FI's confidential, members-only International Internal Discussion Bulletin (IIDB), vol. XV, No. 5, July 1978, gives its entire 28-page issue to the text of the FI majority's draft resolution on "The World Political Situation and the Tasks of the Fourth International."

The draft resolution has a number of interesting points which would require analysis too lengthy for this report. However, the Trotskyite discussion on "Eurocommunism," the latest intellectual fad among American liberals, is of interest. According to the Fourth International majority:

> * * * What is new in so-called Eurocommunism is the emphasis these bureaucrats place on their "independence" from the Kremlin. Formerly they rode high on the popularity of the Soviet Union, particularly after its victory over German imperialism. Today they seek to rid themselves of the political cost of publicly associating so intimately with the Kremlin. In the past, sharp turns in the international situation, to which Moscow responded with total reversals in foreign policy, would cause these mass Communist parties to make abrupt shifts in line. Under current conditions, such overnight reversals run the risk of causing disastrous losses of trade-union influence and voters.
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> Nevertheless, the Eurocommunist CPs have not cut their links with the Soviet Union, the "socialist camp," and the "world Communist movement." In fact they do their utmost not to let their more critical stance toward the Kremlin injure these links.

The Fourth International majority's draft resolution goes on to set forth as the priority tasks a number of projects involving providing support to terrorist movements, and "party building" by infiltration of other organizations. These included:

"Backing oppressed nations and national minorities in their struggle for liberation." Among the targeted groups specified are the Irish in Great Britain, the Corsicans in France, the Basques in Spain—all of which have active terrorist groups in operation among them; black revolutionary movements in Southern Africa; "and the blacks, chicanos, and Puerto Ricans in the United States."

"Participating in the struggles of poor peasants and working farmers." The

targeted countries included Peru, where Fourth International Leader Hugo Blanco, convicted of killing three police officers in a terrorist raid in the early 1960's, has returned following his election to the new Constituent Assembly at the head of a peasant-based coalition; Egypt, where the Trotskyites hope to use discontent that led to rioting in 1977 against the government of President Sadat; Mexico, the site of serious "land invasions" by unemployed peasants; and Spain.

"Defense of the revolutionary struggles of oppressed peoples that have been singled out by reactionary forces as special military targets." This includes "defense of the Palestinian people against the U.S.-backed military onslaught of the Israeli Government;" the "defense of the peoples of Southern Africa against the predatory attacks mounted by the racist regime of South Africa;" the "defense of the Cuban revolution against the belligerent threats, bullying tactics, and systematic economic and diplomatic pressure amounted by U.S. imperialism;" "defense of Vietnam;" and support for the Irish Republican Army—Provisional Wing demand to remove the British Army from Northern Ireland where it has successfully battled the IRA Provo terroists.

With regard to the Palestine Liberation Organization, the FI document urges the "Palestinian resistance" to "mobilize support among the millions of workers and poor peasants from Morocco to Iraq" not only to gain support in current political maneuvers, but in order to form a mass Arab revolutionary party to overthrow the governments of "Arab reaction," which is, of course, the PLO's long-term goal. Target countries include Tunisia, Morocco, Jordan, and Egypt. Also targeted is the "peace movement" inside Israel, and the draft resolution notes, "This antiwar sentiment can expand swiftly into political opposition, and shake the stability of the Israeli Government."

Providing "full assistance" to the Bertrand Russell Peace Foundation and to Amnesty International "in their defense work" for revolutionary "political prisoners" in Northern Ireland, Iran, Argentina, Brazil, Chile, and other countries is also an urgent task for FI sections. The Trotskyites view the "human rights" campaigns as ways to aid the revolutionary movements in those countries and as ploys to increase their contacts and credibility among revolutionary groups.

Supporting the antinuclear protest movement. The recent swift expansion of the antinuclear movement is of great significance. Its international character facilitates coordination of protest actions in a number of countries. The Trotskyists everywhere have met with a friendly reception in the antinuclear movement, demonstrating the opportunities open to the Fourth International in this arena.

Encouraging the formation of Trotskyite youth groups; and supporting the expansion of the women's liberation movement.

Ending Fourth International factional disputes.

Increasing electoral activities by Fourth International sections. "In many ongoing struggles, well-chosen initiatives can lead to substantial gains for the party. Fruitful work can be accomplished in the electoral field. The point is to organize campaigns that bring to the fore the favorable response of the Trotskyists to new advances by this or that sector of the working class and its allies. * * * Systematic campaign initiatives of this kind around key questions of the class struggle and political life can decisively consolidate party-building gains and help project the party's program as a general solution to the problems affecting all sectors of the working class and its allies. Under the present conditions of unemployment, well-planned campaigns for a shorter workweek without reductions in pay, closely linked to growing favorable sentiment inside the unions on this question, are an important example."

Penetration of and "fraction work inside mass Social Democratic and Stalinist parties, their youth groups, and mass organizations dominated by them." It should be noted that the SWP uses the term "faction" to denote an organized, formally declared grouping within the party, while a "fraction" is a generally secret grouping made up almost entirely of party members working within an outside organization such as a trade union, women's organization, or community group.

Among those named as targets are the Jusos (Young Socialists) in West Germany; the Finnish Socialist Youth; and in France, the CERES—Centre d'Etudes, de Recherches et d'Education Socialistes. Also subject to FI "colonization" are "Eurocommunist" parties such as the Communist Party of Spain and related parties such as the Japanese and Australian Communist Parties and the Venezuela Movimiento al Socialismo (MAS), a 1971 split from the Venezuelan Communist Party which has gained increasing strength.

"Defending sections and members of the Fourth International subjected to repressive measures." The draft resolution complains that "under the guise of 'battling terrorism' " by the offshoots of the Red Army Fraction/Baader-Meinhof gang and the "Carlos network" of international terrorists, the West German Government is conducting "a witch-hunt reminiscent of the McCarthyite period;" and attacks the governments of many countries in which the Trotskyites have been involved in terrorism such as Argentina, Chile, Spain, and Japan, where local Trotskyites have been involved in the violent riots against the new international airport, for cracking down on the activities of revolutionaries. The document continues:

As justification for hitting Trotskyists with special vindictiveness, a sustained effort has been made by reactionary forces to paint the Fourth International as a "terrorist" organization. Two of the most vicious agencies have been the CIA and FBI. * * * The American Socialist Workers Party and the Young Socialist Alliance have taken the lead in countering this witch-hunt. Through a $40 million suit against the government, they were able to uncover a great deal of evidence * * * and set in motion similar suits by others * * *.

The campaign of the SWP has greatly aided the efforts of the world Trotskyist movement to counter the propaganda smearing it as a "terrorist" movement. The Canadian section has taken a similar initiative against the Royal Canadian Mounted Police. Increased attention should be paid in the coming period to possibilities of this kind in other countries.

During the conference, a representative of the Swiss section of the Fourth International described how a campaign against the federal security agency was being conducted. The West German and Scandanavian FI sections have been looking into similar projects.

SWP LAWSUIT AGAINST THE FBI

SWP National Committee member, Larry Siegle, gave the main presentation on the SWP lawsuit against the FBI. He boasted of the Justice Department's lack of understanding of the SWP's motive in bringing the lawsuit and how the Justice Department's lawyers complained of their "unreasonableness" in refusing to make deals and concessions.

Speaking at a mass rally to support the lawsuit, Siegle said he had some news that the audience had not yet heard. He proceeded to give his version of a meeting called by the Justice Department earlier this year in which the U.S. attorneys offered to settle out of court and pay the SWP several hundred thousand dollars if the SWP would agree to give up its demands for the remaining FBI files, including the files on the FBI informants in the SWP. Said Siegle:

We authorized our negotiating team to make a simple and very reasonable proposal: give us millions of dollars and all files.

He said that the Justice Department response was to merely offer still more money in settlement and propose that the FBI files on the SWP be sent to the National Archives where no one could view them without the permission of the U.S. Attorney General. The SWP rejected this out of hand in favor of continuing Federal court litigation where the SWP, thanks to unbelievable Justice Department misfeasance, ignorance, and incompetence, has gained access to almost every document and file it has demanded.

Siegle said that the Justice Department does not understand the SWP's motives in filing the suit and went on to elaborate:

By the rulers' standards, we are unreasonable because we're not interested in helping them find a way out. We're interested only in exposing their system. * * * That's why we're not going to let Bell or Carter and the FBI off the hook. We're going to take full advantage of the openings presented by this case to mobilize all victims and potential victims of the FBI to strike a blow against the political police and the class they defend.

Siegle said:

We've one goal and one goal only, and that is to educate and organize and mobilize the working people of this country to use their power to defend their own interests, to take control of this country in their own hands, and to bring to power a workers government.

Siegle did not give his rally audience

any details of the "State Terror" instituted under the direction of Lenin by the SWP's hero, Leon Trotsky, after the "workers government" took power in Russia in 1917.

TURN TO THE TRADE UNIONS

First on the list of Fourth International priorities in the draft resolution of the Fourth International majority is "continuing the proletarian orientation." Recognizing that the majority of Trotskyites are recruited from among student, intellectual and professional classes, the document orders that "these cadres * * * be led to make a turn in this direction without further delay." And why must the members of Trotskyite parties give up their present jobs and take jobs in heavy industry so that they can join industrial unions? Why? Says the FI majority:

Their participation in trade-union fraction work from the base of jobs in industry can perceptibly increase the rate of successes of the party's political campaigns * * * by showing the workers how to think socially and act politically. * * *

On the internal level, it will facilitate training leaders and solving organizational problems in all aspects of our work. * * * The goal is parties of experienced worker-Bolsheviks who view themselves as political leaders of their class and its allies.

During the SWP's "Active Workers and Socialist Educational Conference," SWP National Committee member, Andrew Pulley, a member of United Steelworkers Local 1066 at the U.S. Steel Gary Works, encouraged the members of the SWP's steelworkers fraction to keep in mind that the "socialist order" would come about "only when a revolutionary party has been built that leads the masses of workers in action." Said Pulley, the role of the SWP was to gain the confidence of rank-and-file union members for a struggle to "transform the unions into revolutionary, fighting instruments."

In his opening presentation, Jack Barnes commenced by warning the Trotskyite cadres colonizing the industrial unions not to fall into the "trap" of "bread and butter unionism" by merely demanding higher wages and better working conditions. He said:

Simply sending the majority of our present cadres into industry and into the industrial unions is not in and of itself the solution to building a mass revolutionary party of workers. The key to doing this is winning thousands of workers to the party. Our goal is building a mass party of workers, a party that * * * represents the working class, by organizing its most advanced militant fighters in its own ranks.

What Barnes was saying is that the Trotskyite party will organize only the "vanguard party" numbering thousands of U.S. working people, and that party will then claim to speak for the "masses" by ruling them in the usual Leninist top-down structure. The millions of American workers will be "represented" by a centralized party composed of their alleged "leaders." Even Jack Barnes admitted that "Getting a big majority of our members into industry and into industrial unions now is a tactic to facilitate building such a party, nothing more."



It was reported that the SWP had increased its membership in the USWA to 130 members of which 30 were people recruited from the steelworkers by SWP colonizers. These SWP members have been assigned to work to be appointed delegates of the USWA to conventions of various union groups. It should be noted that not every member of a fraction need be a SWP member, but all fraction members operate as a disciplined unit under tight SWP control.

Rival Communist Parties were of considerable concern to the SWP during the convention. The activities of the Revolutionary Communist Party (RCP) and the breakaway Revolutionary Workers Jarvis were of considerable concern for the competition they provide in recruiting the trade union members. SWP union activists were particularly concerned with RWH leadership of the Good Contract Committee which led the wildcat strike of postal workers at the Jersey City Bulk Mail Center which handles much of the mail for the New York metropolitan region. According to the SWP, the RWH's Good Contract Committee has some 150 members and was willing to dampen sectarian differences and accept support from the SWP and other revolutionary groups.

The SWP members were told not to seek union offices, and that only in unusual situations, with approval from the SWP, to accept them. The Communist Party, U.S.A. (CPUSA) was strongly criticized for having its members and allies run for top union and local posts as "Stalinist bureaucrats." However, in several fraction meetings, SWP members discussed the value of running for "grassroots" union posts on grievance committees and as shop stewards. The examples of the RCP and RWH in these areas was noted. Participants in several fraction meetings told how their relatively open SWP membership and sale of the militant was advantageous in attracting individual militants to their cause.

During the conference, trade union fraction meetings were held that were closed to all but fraction members and top SWP organizers for auto workers, building trades, rail workers, shipbuilders, transit workers, public employees, teamsters, teachers, National Organization for Women (NOW), machinists, molders, postal workers, electrical workers, hospital workers, and printers.

During the conference Tony Austin, of USWA Local 12243 in New Jersey announced that the SWP would open two new branches in Gary, Ind., and Birmingham, Ala., both steel centers.

The national priorities for the SWP were outlined during the conference by Betsey Stone, of the National Committee. She stated that in addition to the present SWP trade union concentrations on steel, auto, rail, and coal, the party is planning to expand into the electrical and machinists unions, the Oil, Chemical, and Atomic Workers (OCAW), and help form a national fraction in the Teamsters.

SWP NATIONAL PROGRAMS

Other SWP national campaigns for 1978–79 include:

Support for the Equal Rights Amendment and full involvement in the national conference of the National Organization for Women (NOW) to open October 6, 1978, in Washington, D.C.

Support and involvement of the YSA in the regional conference of the North East Coalition for the Liberation of Southern Africa (NECLSA) to be held at New York University, November 17–19, 1978. An NECLSA Steering Committee meeting will be held September 30, 1978, at Yale University to make final plans for the conference. Operating from the offices of the American Committee on Africa (ACOA), 305 East 46th Street, New York, N.Y. 10017 (212/838–5030), the NECLSA's Divestiture Working Group will sponsor a Midwest Conference on University Investment in South Africa to be held at Northwestern University, October 20–22, 1978. The SWP and YSA will join some 50 other U.S. organizations invited to participate.

The SWP is also supporting the upcoming October U.S. tour by Drake Koka, founder and general secretary of the Black Allied Workers Union (BAWU) of South Africa in 1972, and a cofounder and first general secretary of the Black People's Convention (BPC), outlawed last year. According to the SWP, Koka fled to Botswana to avoid arrest for his participation in the Soweto rioting in 1976.

Increased efforts to colonize the anti-nuclear and disarmament coalitions, the Clamshell Alliance, the Mobilization for Survival (MFS) and related groups. This included SWP participation in the Louisville, Ky. No Nukes Strategy Conference held August 16–20, 1978, at which proposals for national and regional mass demonstrations were discussed; and will include strong SWP and YSA involvement in the upcoming second national MFS conference in Des Moines, Iowa, September 15–17, 1978.

Joining with the CPUSA's National Alliance Against Racist and Political Repression (NAARPR) in a campaign to free the Wilmington 10, particularly aiding in organizing a large demonstration this fall.

Using the Hector Marroquen case for recruiting in the Mexican-American community.

Attempting to greatly increase sales and circulation of "The Militant, Perspectiva Mundial," and launching a new theoretical journal to replace International Socialist Review which ceased publication in 1975, despite obvious financial strains which caused the closing of the regional offices of "The Militant."

INTERNATIONAL EVENTS

As at previous SWP conferences and conventions, "corevolutionists and friends" from Trotskyite parties in foreign countries were present and participating in the work of the meetings. Among the countries represented were Belgium, France, West Germany, and Switzerland; Iran and Israel; Australia and New Zealand; Canada, Mexico, the Dominican Republic, and Columbia.

Fourth International activities in a number of foreign countries were the subject of formal and informal meetings during the week-long conference. Gus

Horowitz, a member of the SWP National Committee who uses the alias "Galois" on the FI's International Executive Committee, spoke on his trip to Peru to witness the return of Hugo Blanco. Horowitz had been accompanied by Fred Murphy who presented a series of slides he had taken in Peru. Blanco ran on the ticket of an electoral front, the Front of Workers, Peasants, Students and the People (FOCEP), that received 12 percent of the vote in the Peruvian Constituent Assembly vote on June 18.

Blanco is a leader of the Peruvian Fourth International section, the Partido Socialista de los Trabajadores (PST). His goal is to unify the PST with the five other Trotskyite parties in Peru and bring them all into the Fourth International. Unification meetings were said to be planned for to start at the end of August and Peter "Pedro" Camejo had been designated the SWP's representative.

A representative of the Ligue Marxiste Revolutionnaire (LMR) (Revolutionary Marxist League), the Swiss section of the Fourth International, reported on the LMR Fourth Congress held in Lausanne in July. The LMR was formed by a core of some 100 French-speaking Swiss who split from the Swiss Communist Party (PdA) (Labor Party) in May 1978 in a protest against the French Communist Party decision not to back the student militants. The LMR claims more than 500 members and 1,000 sympathizers.

The LMR stated it had been working in the Swiss and Western European antinuclear movement and in a campaign against the Swiss federal security agency. Its representative said that in line with the "unified" FI line, the LMR is abstaining from direct involvement in violence and terrorism while attempting to expand its political base for future revolutionary activity.

The LMR claimed to have strength in the Swiss teachers and government employees unions, leading a strike of teachers in Geneva in 1977. It has been involved in electoral politics since 1973, and claims about 3 percent of the vote in Geneva and a number of rural farming villages where LMR cadre who are school teachers have developed followings of students and young adults. The LMR emphasized the importance of work among students by Trotskyist "revolutionary socialists."

Reportedly the LMR congress decided to enter candidates in many 1979 cantonal campaigns and will attempt to work with certain other leftist groups in presenting joint electoral slates, but rejected electoral cooperation with the Swiss Labor Party (the pro-Moscow Communist Party) or with the New Left Swiss Progressive Organization (POCH). The LMR also was said to have some 17 trade union militants on its new Central Committee. Like the other FI sections involved in a "turn" to the trade unions, the LMR hopes to make the unions instruments of class struggle with the openly declared aim of overturning existing power relationships, labor peace, and eventually the social, economic, and political order.

Chile is another area of increased Trotskyist activity. Chilean Anibal Vargas and the SWP's Rich Finkel led workshops on the history of the Chilean Marxist movement and on developments since the 1973 military coup. The Moscow-dominated section of the Chilean Socialist Party (PSCh) now called the External Secretariat and headquartered in East Berlin has been in a factional dispute with the secondary PSCh leadership that remained in Chile and has an external base in Mexico City that is called the National Coordination of Regional Committees (CNR). The SWP shares many of the CNR's criticisms of the Moscow-controlled External Secretariat, and the FI is clearly cultivating a relationship with the CNR.

The SWP noted that the terrorist MIR (Movimiento de la Izquierda Revolucionaria—Movement of the Revolutionary Left) had had Trotskyists among its initiators and the services it had provided to Salvador Allende's Unidad Popular coalition government. It was reported that a number of Latin American Trotskyist exiles in Sweden, where FI Peruvian leader, Hugo Blanco, had spent several years until his return to Lima in July, have begun publication of Combate, and that a new U.S. publication, Convergencia Revolucionaria, was available from Conrev Publications, DLD 63, 310 Franklin Street, Boston, Mass. 02120.

The Chile solidarity presentations concluded with the statement that the Socialist Workers Party "can contribute to the building of a revolutionary party in Chile by maintaining a relationship with exiled Chileans now living in the United States."

It is noted that the report on the MIR made little comment on the fact that its overseas headquarters are in Havana, or that the MIR has become increasingly active in Chile during a time of political stress for the ruling military government, with MIR's July activities including planting bombs in a Santiago bank and subway station and the armed robbery of passengers on a bus.

SWP RALLY

On August 11, those participating in the SWP's conference attended a rally to celebrate the successes of the SWP lawsuit against the FBI. Greetings were read from what the SWP terms "Stalinists" meaning veterans of the Communist Party, U.S.A. such as Anne Braden; from veterans of the pro-Hanoi anti-Vietnam movements such as David Dellinger, Dave McReynolds of the War Resisters League, Distributive Workers District 65 President David Livingston, and Dr. Benjamin Spock; and from Kate Millett, Attorney Leonard Boudin, Dick Gregory, and Walter Johnson, president of Local 1100 of the Department Store Employees Union.

In addition of Larry Siegle, rally speakers included:

Vernon Bellecourt, International Indian Treaty Council (IITC) and member of the national council of the militant American Indian Movement (AIM), who announced that AIM had assembled a team of lawyers, legal workers, and researchers to work on the 80,000 pages of FBI files recently released under the Freedom of Information Act.

Mary Zins, an SWP member in the United Mineworkers of America Local 284 who was active in organizing support for the July march in Washington, D.C., in support of the equal rights amendment by the National Organization for Women.

Sra. Rosario Ibarra de Piedra, a founder of the Mexican National Committee to Defend Political Prisoners.

Anne Sheppard Turner, a member of the Wilmington 10 convicted of arson conspiracy.

George Novack, a veteran SWP leader.

Robert Meeropol, of the National Committee to Reopen the Rosenberg Case and a son of the executed Soviet atom spies who represented the Fund for Open Information and Accountability (FOIA) and called for "unity" of all political parties and tendencies "against today's repression" in the struggle "forward toward justice, toward peace, and toward socialism."

Hector Marroquen, now a member of the SWP and its youth group, the Young Socialist Alliance (YSA), wanted by Mexican authorities on charges of having committed terrorist acts as a member of the 23d of September Communist League. Marroquen described his recent meeting in Washington, D.C., with Immigration and Naturalization Service Director Leonel Castillo who said Marroquen would be granted political asylum if he could prove he would be "persecuted if I return to Mexico."

Patricia Wright, SWP candidate for Governor of Ohio.

Maceo Dixon, SWP National Committee.

Olga Rodriguez, SWP Southwest Field Coordinator and National Committee member.

LEADING SWP ACTIVISTS

The following members of the Socialist Workers Party or its youth arm, the Young Socialist Alliance (YSA) took leading roles in the 1978 "Active Workers and Socialist Educational Conference as speakers, and as leaders of classes and workshops:

Rashaad Ali.

Eugenia Aranda, Partido Revolucionario de los Trabajadores, Mexico.

It is noted that the PRT spokeswoman was identified merely as "Christina" to her audience which may be her "party name" or alias, or may indicate a substitute speaker.

Tony Austin, USWA Local 12243, New Jersey.

Nan Bailey, SWP National Committee.

Reza Baraheni, member of the Sattar League, the Iranian section of the Fourth International.

Jack Barnes, SWP National Secretary.
Michael Bauman, managing editor, Intercontinental Press/Inprecor.
Susan Berman, YSA.
Nelson Blackstock, SWP National Committee.
Bob Bresnahan.
Jon Britton (Delivered SW Political Committe report to National Committee meeting held just prior to opening of conference).
Peggy Brundy, Alternate member SWP National Committee.
Peter Buch.
Jim Burfriend, SWP Louisville (formerly of Austin, TX).
Peter "Pedro" Camejo, SWP National Committee.
Steve Clark.
Nancy Cole.
Steve Craine.
Sharon Crawford.
Maceo Dixon, SWP National Committee.
Ted Edwards.
Dean Elder, UAW member at Bingham Stamping Plant, Toledo.
Leslie Evans, Alternate member SWP National Committee.
Betsy Farley, YSA National Organizational Secretary.
Diane Feeley.
Fred Feldman.
Rich Finkel, Alternate member, SWP National Committee; IRA liaison.
Gerry Foley, Alternate member, SWP National Committee; IRA liaison.
David Frankel, Palestine Human Rights Campaign workshop.
Marcia Gallo.
Catarino "Dick" Garza, SWP National Committee.
Ilona Gersh.
Raul Gonzales.
Bill Gottlieb.
Peter Green.
Patricia Grogan.
Don Gurewitz.
Lillian Haddock, International Workers League of Puerto Rico [FI section].
Fred Halstead, SWP National Committee.
Joseph Hansen, veteran SWP leader.
James Harris, Alternate member, SWP National Committee; national coordinator, National Student Coalition Against Racism (NSCAR).
Jamileh Harris, YSA.
Ernest Harsch, Intercontinental Press/Inprecor.
Osborne Hart.
Ed Heisler, Alternate member, SWP National Committee; member, United Transportation Union.
John Hillson.
Gus Horowitz, SWP National Committee, just returned from Peru.
Jerry Hunnicutt, YSA, Washington, D.C.
Doug Jenness, SWP National Committee.
Linda Jenness, SWP National Committee.
Sara Johnston, USWA member and SWP candidate for Governor of Texas.
Susan LaMont, Alternate member SWP National Committee.
Tom Leonard.
Bruce Levine.
Frank Lovell, SWP National Committee.
Caroline Lund, SWP National Committe.
Wendy Lyons, SWP National Committee.
Robin Mace.
Michael Maggi.
Malik Miah, SWP National Committee.
Ken Miliner, SWP New York City.
Mary Lou Montauk.
Paul Montauk.
Andrea Morrell, SWP National Committee.
Laura Moorhead.
Fred Murphy, accompanied Horowitz on Peru trip.
Omari Musa, Alternate member SWP National Committee.
Barbara Mutnick.
August Nimtz.
George Novack.
Thabo Ntweng.
Reiko Obata, YSA, New York City.
Kara Obradovic, YSA National Committee.
Miguel Pendas.
Jose Perez.
David Prince, SWP Finance Director.
Andrew Puley, SWP National Ccmmittee; USWA Local 1066 [U.S. Steel, Gary Works].
Socorro Ramirez, Partido Socialista de los Trabajadores [FI section in Colombia].
Evelyn Reed.
Willie Mae Reid, Alternate member SWP National Committee.
Dick Roberts, Alternate member SWP National Committee.
Olga Rodriguez, SWP National Committee.
Jane Roland.
Andy Rose.
Nancy Rosenstock.
Roger Rudenstein, workshop on recruiting lawyers, law students and legal workers.
Norton Sandler.
John Sarge, USWA Houston [Hughes Tool].
Bob Schwarz [provided an analysis of the Democratic Socialist Organizing Committee (DSOC)].
Glova Scott, YSA National Committee and SWP candidate for District of Columbia Mayor.
Cathy Sedwick, YSA National Chair.
Peter Seidman, Alternate member SWP National Committee; [PLO support and liaison].
Ken Shilman, Alternate member SWP National Committee.
Michael Smith, workshop on recruiting lawyers, law students and legal workers.
Katherine Sojourner, SWP National Committee.
John Staggs.
Syd Stapleton, SWP National Committee.
Betsey Stone, SWP National Committee.
Claudio Tavarez. Perspectiva Mundial.
Anne Teesdale.
Gaudencio Thiago de Mello, Brazilian guitarist.
Tony Thomas, SWP National Committee.
Anibal Vargas, Chilean.
Marilyn Vogt.
Alan Wald.
Susan Wald.
Diane Wang.
Mary-Alice Waters, SWP National Committee.
Scott Ware, Brooklyn Navy Yard shipfitter.
Arnold Weissberg.
Reba Williams.
Patricia Wright, Alternate member SWP National Committee.
Miguel Zarate.
Mathilde Zimmerman.
Mark Zola, SWP candidate for Governor of Pennsylvania.●

## ISAAC ZLOTVER TO REAPPLY IN JANUARY

## HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. STEERS. Mr. Speaker, I have learned of recent developments in the case of Isaac Zlotver that I would like to share with my colleagues.

For over a year now, I have been involved in an effort to secure emigration permission from the Soviet Union for an elderly engineer, Isaac Zlotver, who has terminal cancer, so that he may be reunited with his family and see for the first time his grandchild. I would like to say that I am most proud of this Congress for the support it has shown this man. Over 70 Members have joined me in various efforts in behalf of Mr. Zlotver, the latest one being the introduction of a House resolution urging the President to communicate to the Government of the Soviet Union the concern of the United States that Isaac Zlotver be granted permission, in accordance with the Helsinki Accords, to emigrate from the Soviet Union to be reunited with his family. Today I am reintroducing this legislation with additional cosponsors.

Mr. Zlotver's health has improved slightly and he is now working a few hours a day. He has been informed by local Soviet officials that his most recent application to emigrate received the highest attention in Moscow. While this information was probably designed to discourage Mr. Zlotver from reapplying this most determined gentlemen has taken it as a positive sign and he is going to reapply this January once again. The Members of this House who have worked on this case in the past should be commended for their work thus far, because without their support, Isaac Zlotver's application would most probably never have left Sverdlovsk.

Mr. Zlotver feels that he has been refused as an example for other Jews in Sverdlovsk who might wish to apply to emigrate, but have not. He is willing to continue his courageous efforts to emigrate, and I urge all my colleagues to become involved in this effort and write Soviet officials and Mr. Zlotver himself, as a show of support and concern for his next application this January. I am inserting into the RECORD at this point a letter I sent Mr. Zlotver yesterday:

SEPTEMBER 5, 1978.

Mr. ISAAC ZLOTVER,
*U.S.S.R.,*
*RSFSR Sverdlovsk K–62,*
*Pr Lenina 93/2.*

DEAR MR. ZLOTVER: I am certainly heartened to learn that your health has improved slightly, and that your physical condition has become stronger.

I want to assure you that the people I represent and many other Members of Congress have not forgotten your efforts to see for the first time your grandchild and be reunited with your children. I am enclosing copies of a resolution recently introduced in the House of Representatives in your behalf. This resolution has gained the support of over 60 Members of Congress who are willing to continue to work in your behalf.

I wish you continued improvement in your health and strength in your ordeal.

Yours sincerely,

NEWTON I. STEERS, Jr.●

# HOUSE OF REPRESENTATIVES—*Friday, September 8, 1978*

The House met at 10 a.m.

Rev. Morris Murray, Jr., Kansas Baptist Church, Kansas, Ala., offered the following prayer:

From among those of us who are assembled here this day, we who are Your children corporately extend to You our adoration and praise. We worship You not only as the Creator but also as the Emancipator who alone has delivered us from the cancerous disease of sin, and has made us acceptable to Yourself in Jesus Christ.

We thank You, our Father, that we have this privilege to enter Your presence. We confess our need of Your mercy and grace. We acknowledge that You alone are capable and worthy of directing our lives both individually and nationally.

We therefore renew our commitment to Your lordship. May the decisions made this day reflect that commitment.

We offer this prayer for Your glory. Amen.

## THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

## MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendments of the House to a bill of the Senate of the following title:

S. 2928, An act to amend the International Investment Survey Act of 1976, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 12112. An act designating Gathright Lake on the Jackson River, Va., as Lake Moomaw.

The message also announced that the Senate had passed bills and a joint resolution of the following titles, in which the concurrence of the House is requested:

S. 2358. An act to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands;

S. 2588. An act to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands; and

S.J. Res. 131. Joint resolution to change the name of Copan Dam and Lake in the States of Oklahoma and Kansas to Copan Dam and the Lake of the Delawares.

## REV. MORRIS MURRAY, JR.

(Mr. BEVILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, I was honored today to have Rev. Morris Murray, Jr., of Kansas, Ala., give the opening prayer in the House of Representatives.

Reverend Murray is pastor of the Kansas Baptist Church. The community of Kansas is located in the Fourth Congressional District of Alabama I am privileged to represent here in the Congress.

Reverend Murray is a graduate of Walker High School, Samford University, and the New Orleans Baptist Theological Seminary. He has been an active minister for 10 years now.

He is active in civic affairs and his work is known and appreciated throughout his community and the surrounding area.

He was accompanied to Washington by his lovely wife, Brenda, who is also with us today.

Reverend Murray and his work form one of the basic principles upon which our country was founded and it was my distinct honor and pleasure to have him as my guest on the House floor today.

## TRIBUTE TO THE LATE JOHN E. BOATWRIGHT

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. HUBBARD. Mr. Speaker, it is with both sadness and pride that I speak today in the House of Representatives regarding Kentucky's beloved J. W. (Johnny) Boatwright, Jr., of McCracken County, Ky.

Johnny Boatwright, State Representative for McCracken and Livingston Counties, died of cancer at the age of 30 on August 23, 1978. His recent untimely death has created a void in the lives of all who knew him. He served our country in the U.S. Air Force in Vietnam, was an active member of the Concord United Methodist Church in Paducah, and served in various civic endeavors.

In 1975, Boatwright, then 27 years of age, was elected to serve in the Kentucky House of Representatives, unseating a veteran incumbent. Then, running unopposed, he was returned to that office by the people of the fourth district in 1977. He served as vice chairman of the House State government committee and was a member of the joint interim committee. One of the youngest members of the Kentucky General Assembly, Johnny was also one of the most dedicated and hardworking. The members of the legislature all deeply respected him and any advice he offered. When he rose to speak on the floor of the House, silence reigned. He was dedicated, conscientious, and honest.

Boatwright proudly stood up for what he believed was right for his constituents and for all Kentuckians. Through his calm words of wisdom he enlightened many of his colleagues and was always happy to provide us with his confident, well-reasoned, rural point of view.

As a personal friend of Johnny Boatwright's, I would like to express my sympathy to his lovely wife Linda, his son Roger, his daughter Lynnette, his parents Anne and Johnson Boatwright and all other members of the family.

## REPORT ON SPECIAL COMMITTEE ON SOUTHEAST ASIA

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, in this morning's mail each Member of the House has received a copy of the report submitted to you on the findings and recommendations of the Special Committee on Southeast Asia. The report is brief and to the point and I urge my colleagues to take the 20 or 25 minutes required to read it.

The eight Members of our delegation feel our recent journey to Vietnam and Laos was beneficial and has made it possible to provide you with the most current information on the situation in Southeast Asia. The findings of our delegation will prove, we believe, to be helpful to our colleagues and our Government in determining America's future policy toward the nations of Southeast Asia.

## TRAGIC DESTRUCTION OF RHODESIAN AIRLINER BY RHODESIAN PATRIOTIC FRONT GUERRILLAS

(Mr. ROBERT W. DANIEL, JR., asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, recent news accounts have related how a Rhodesian airliner was destroyed by a surface-to-air missile and how passengers, including women and children, who survived the crash were shot and bayoneted to death. Responsibility for the destruction of the aircraft has been claimed by Joshua Nkomo, coleader of the Rhodesian Patriotic Front guerrillas.

Need I remind this House that these are the very people whom the administration and many of our colleagues insist must be included in a future Rhodesian Government.

It would seem to me that those who continue to adhere to this position can only be committed to the triumph of savagery over civilization.

## APPOINTMENT OF CONFEREES ON H.R. 13125, AGRICULTURE, RURAL DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS, 1979

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 13125)

making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1979, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. WRIGHT). Is there objection to the request of the gentleman from Mississippi? The Chair hears none, and without objection, appoints the following conferees: Messrs. WHITTEN, EVANS of Colorado, BURLISON of Missouri, BAUCUS, TRAXLER, ALEXANDER, MCHUGH, SIKES, NATCHER, MAHON, ANDREWS of North Dakota, ROBINSON, JOHN T. MYERS, and CEDERBERG.

There was no objection.

## APPOINTMENT OF CONFEREES ON H.R. 12934, STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION ACT, 1979

Mr. SLACK. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12934) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and without objection, appoints the following conferees: Messrs. SLACK, SMITH of Iowa, FLYNT, and ALEXANDER, Mrs. BURKE of California, and Messrs. EARLY, MAHON, CEDERBERG, ANDREWS of North Dakota, and MILLER of Ohio.

There was no objection.

## PROVIDING FOR CONSIDERATION OF SENATE JOINT RESOLUTION 4, HAWAIIAN NATIVE CLAIMS STUDY COMMISSION

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1265 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1265

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (S.J. Res. 4) establishing the Aboriginal Hawaiian Claims Settlement Study Commission, and for other purposes. After general debate, which shall be confined to the joint resolution and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, the joint resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, this rule came out of the Committee on Rules by a voice vote. While the matter it brings up has some controversy in it, as witness the vote on the suspension, so far as I know, there is no controversy whatsoever on the rule. It is a very straightforward, open rule providing for 1 hour of debate.

Mr. Speaker, I therefore reserve the balance of my time.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule provides 1 hour of general debate for the consideration of Senate Joint Resolution 4 to establish an Aboriginal Hawaiian Claims Settlement Study Commission. The rule contains no limitations on amendments and it contains no waivers of points of order. Rules such as this are becoming increasingly rare.

While the rule is simple and straightforward, Mr. Speaker, the joint resolution made in order by the rule is more controversial.

Senate Joint Resolution 4 was considered under suspension of the rules procedure on May 23, 1978. It failed to receive the two-thirds vote necessary for passage. The vote was 210 yeas to 194 nays.

The joint resolution appears to find that there is evidence indicating that the United States committed a wrong against the natives of Hawaii when it annexed the Hawaiian Islands to the United States and that the United States may have some obligation to compensate the natives for the alleged wrong.

The joint resolution provides for the establishment of a study commission to be appointed by the President. The 15-member commission must contain at least 7 members of Hawaiian native blood. If the commission finds that the United States has an obligation to compensate the natives, it is directed to recommend the nature of such settlement and how it should be implemented and administered.

The Congressional Budget Office estimates the cost of this joint resolution to be as follows:

| Fiscal year: | *Thousands* |
|---|---|
| 1978 | $190 |
| 1979 | 571 |
| 1980 | 96 |
| 1981 | ---- |
| 1982 | ---- |

Mr. Speaker, I voted against this joint resolution when it was considered under suspension of the rules procedure, and I still oppose it in its present form. However, there is nothing objectionable about the rule, so I will not oppose it.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## PROVIDING FOR CONSIDERATION OF H.R. 11711, ADJUSTMENT ASSISTANCE FOR WORKERS AND FIRMS

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1288 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1288

*Resolved*, That upon the adoption of this resolution it shall be in order to move, sections 401(a), 401(b)(1) and 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11711) to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974, and all points of order against said bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule by titles instead of by sections. It shall be in order to consider the amendments recommended by the Committee on Ways and Means now printed in the bill on page 11, lines 2 through 19, and beginning on page 11, line 24 through page 12, line 26, and all points of order against said amendments for failure to comply with the provisions of section 401(b)(1) of the Congressional Budget Act of 1974 (Public Law 93-344) and clause 5, rule XXI are hereby waived. No amendments to the bill or to the committee amendments shall be in order except pro forma amendments for the purpose of debate and germane amendments relating only to chapters 2, 3 and 5 of title II of the Trade Act of 1974 (Public Law 93-618), the trade adjustment assistance provisions of said Act. Any point of order to the contrary notwithstanding, it shall be in order to consider an amendment printed in the Congressional Record of July 25, by Representative Cleveland of New Hampshire, if offered. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore (Mr. NATCHER). The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA); pending that, I yield myself such time as I may consume.

Mr. Speaker, this resolution seems to be very complicated on the surface, but actually when you examine the various waivers and so on, it is not really all that difficult. The proof of that is that there was virtually no controversy in the Committee on Rules on the resolution that is before us. There is a limited controversy on the bill that it would bring up, but plenty of opportunity is offered to the opponents of one or two sections to deal with the problems where they do not agree with the committee.

Mr. Speaker, I do not know of any controversy on the rule and I reserve the balance of my time.

Mr. LATTA. Mr. Speaker, this is a rather complex rule and provides 1 hour of general debate for the consideration of H.R. 11711, adjustment assistance for workers and firms. There are a total of seven different waivers of points of order included in this rule. In addition, there are restrictions on offering amendments to certain parts of the bill.

Let me begin with the waivers.

First, in order to allow consideration of the bill, points of order are waived for failure to comply with section 401(a) of the Budget Act. Section 401(a) bars the consideration of any bill which provides new contract authority unless that contract authority is subject to the appropriation process. In this case, sections 108 and 203 of the bill provide authority to enter into contracts that is not expressly limited to amounts provided in appropriation acts, and therefore the bill would be subject to points of order. According to a letter from the chairman of the Budget Committee, amendments are to be offered to cure this Budget Act violation.

The second waiver of points of order is necessary because certain provisions in the bill violate section 401(b)(1) of the Budget Act. This section bars the consideration of any bill which provides new entitlement authority which is to become effective before the first day of the fiscal year which begins during the calendar year in which the bill is reported. Since title I of the bill provides new entitlement authority that could become effective prior to October 1, 1978, the year in which the bill was reported, the bill would be subject to points of order under section 401(b)(1) of the Budget Act. Again, the chairman of the Budget Committee has written a letter stating that amendments are to be offered to cure this Budget Act violation.

The third waiver of points of order in this rule is necessary because parts of the bill violate section 402(a) of the Budget Act. Section 402(a) provides that authorizations must be reported before May 15 preceding the beginning of the fiscal year when they take effect. Titles II and III of the bill provide authorizations which could take effect during the current fiscal year. In order to comply with the Budget Act requirement, it would have been necessary for the bill to be reported prior to May 15, 1977. Once again, the chairman of the Budget Committee has indicated that amendments will be offered on the floor to cure this Budget Act violation.

The fourth waiver of points of order is necessary because this bill technically violates clause 5 of rule XXI, which prohibits appropriations on a legislative matter. The problem arises because the bill expands eligibility for benefits. Funds previously appropriated for a narrower program may now be used for the expanded program. Technically, these funds are being appropriated to a new purpose, and this constitutes appropriation on a legislative bill.

The fifth waiver of points of order applies to the committee amendments printed in the bill. Points of order are waived against the committee amendments for failure to comply with the provisions of section 401(b)(1) of the Congressional Budget Act. This same point of order was waived against the bill. The problem with the committee amendment is the same as the problem in the bill, that is, there are entitlements which take effect before the Budget Act permits. Once again, the chairman of the Budget Committee has indicated his understanding that the Budget Act violation will be cured by amendment on the floor.

The sixth waiver of points of order also applies to the committee amendments printed in the bill. Points of order are waived against the committee amendments for failure to comply with clause 5, rule XXI, which prohibits appropriations on legislation. This same point of order was waived against the bill. The problem with the committee amendment once again is the same as the problem with the bill, that is, previously appropriated funds are technically being transferred to a new purpose.

The seventh and last waiver applies to the Cleveland amendment which is made in order by the rule. All points of order are waived against the Cleveland amendment. This was done to insure that the Cleveland amendment could not be knocked out on grounds of germaneness or for any other reason.

Mr. Speaker, in addition to the above waivers, the rule provides that no amendments to the bill or to the committee amendments will be in order except pro forma amendments for the purpose of debate and germane amendments relating only to chapters 2, 3, and 5 of title II of the Trde Act of 1974, the trade adjustment assistance provisions of the act. This restriction on amendments is in compliance with the request of the Committee on Ways and Means.

The rule provides that the bill will be read for amendment by titles instead of by sections.

Finally, the rule specifically makes in order an amendment by the gentleman from New Hampshire (Mr. Cleveland) providing for Federal reimbursement to States for unemplovment insurance benefits paid to workers under this program.

Mr. Speaker, I have no further requests for time.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous ouestion was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 333, nays 2, answered "present" 3, not voting 94, as follows:

[Roll No. 740]

YEAS—333

| | | |
|---|---|---|
| Addabbo | Anderson, Calif. | Andrews, N. Dak. |
| Akaka | Anderson, Ill. | Annunzio |
| Alexander | Andrews, N.C. | Archer |
| Ambro | Ashley | Aspin |
| AuCoin | Bafalis | Baldus |
| Barnard | Baucus | Bauman |
| Beard, R.I. | Beard, Tenn. | Bedell |
| Benjamin | Bennett | Bevill |
| Biaggi | Bingham | Blanchard |
| Blouin | Boggs | Boland |
| Boiling | Bonior | Bowen |
| Brademas | Breckinridge | Brodhead |
| Broomfield | Brown, Calif. | Brown, Mich. |
| Brown, Ohio | Broyhill | Buchanan |
| Burgener | Burke, Mass. | Burleson, Tex. |
| Burlison, Mo. | Burton, John | Burton, Phillip |
| Butler | Carney | Carr |
| Carter | Cavanaugh | Cederberg |
| Chappell | Clausen, Don H. | Clay |
| Cleveland | Coleman | Conable |
| Conte | Corcoran | Cornell |
| Cornwell | Coughlin | Crane |
| Cunningham | D'Amours | Daniel, Dan |
| Daniel, R. W. | Danielson | Davis |
| de la Garza | Delaney | Dellums |
| Derrick | Derwinski | Devine |
| Dickinson | Dicks | Diggs |
| Dingell | Dodd | Dornan |
| Downey | Drinan | Duncan, Tenn. |
| Early | Eckhardt | Edgar |
| Edwards, Ala. | Edwards, Calif. | Edwards, Okla. |
| Emery | English | Erlenborn |
| Ertel | Evans, Colo. | Evans, Del. |
| Evans, Ga. | Evans, Ind. | Fascell |
| Fenwick | Findley | Fisher |
| Fithian | Flippo | Flood |
| Florio | Foley | Ford, Tenn. |
| Forsythe | Fountain | Fowler |
| Frenzel | Gammage | Garcia |
| Gephardt | Giaimo | Gilman |
| Ginn | Glickman | Goldwater |
| Gonzalez | Goodling | Gore |
| Gradison | Grassley | Green |
| Gudger | Hall | Hamilton |
| Hammer-schmidt | Hanley | Hannaford |
| Harkin | Harris | Harsha |
| Hefner | Heftel | Hightower |
| Holland | Hollenbeck | Holt |
| Holtzman | Horton | Howard |
| Hubbard | Hughes | Hyde |
| Ichord | Jacobs | Jeffords |
| Jenkins | Jenrette | Johnson, Calif. |
| Johnson, Colo. | Jones, N.C. | Jones, Okla. |
| Jones, Tenn. | Kastenmeier | Kazen |
| Kelly | Kemp | Keys |
| Kildee | Kindness | Kostmayer |
| Krebs | LaFalce | Lagomarsino |
| Latta | Le Fante | Leach |
| Lederer | Leggett | Lent |
| Levitas | Livingston | Lloyd, Calif. |
| Lloyd, Tenn. | Long, La. | Long, Md. |
| Lott | Luken | Lundine |
| McClory | McCloskey | McCormack |
| McDade | McDonald | McEwen |
| McFall | McHugh | McKay |
| Madigan | Mann | Markey |
| Marks | Marlenee | Marriott |
| Martin | Mattox | Mazzoli |
| Meeds | Meyner | Michel |
| Mikulski | Miller, Ohio | Mineta |
| Minish | Mitchell, Md. | Mitchell, N.Y. |
| Moakley | Moffett | Mollohan |
| Montgomery | Moorhead, Calif. | Moorhead, Pa. |
| Moss | Mottl | Murphy, N.Y. |
| Murphy, Pa. | Murtha | Myers, John |
| Myers, Michael | Natcher | Neal |
| Nedzi | Nichols | Nix |
| Nowak | O'Brien | Oberstar |
| Obey | Ottinger | Panetta |
| Patten | Patterson | Pattison |
| Pease | Perkins | Pickle |
| Pike | Poage | Preyer |
| Price | Pritchard | Pursell |
| Quayle | Rahall | Railsback |
| Regula | Reuss | Rinaldo |
| Risenhoover | Robinson | Roe |
| Rogers | Roncalio | Rose |
| Rosenthal | Rousselot | Roybal |
| Rudd | Runnels | Ruppe |
| Russo | Ryan | Satterfield |
| Sawyer | Scheuer | Schroeder |
| Schulze | Sebelius | Seiberling |
| Sharp | Shuster | Sikes |
| Skelton | Slack | Smith, Iowa |
| Smith, Nebr. | Solarz | Spellman |
| Spence | Staggers | Stangeland |
| Stanton | Stark | Steed |
| Steers | Steiger | Stockman |
| Stokes | Stratton | Studds |
| Stump | Taylor | Thompson |
| Traxler | Treen | Trible |
| Tucker | Udall | Ullman |
| Vander Jagt | Vanik | Vento |
| Walgren | Walker | Walsh |
| Watkins | Weaver | Weiss |
| Whalen | White | Whitehurst |
| Whitley | | |

| | | |
|---|---|---|
| Whitten | Wolff | Yatron |
| Wilson, Bob | Wright | Young, Fla. |
| Wilson, C. H. | Wydler | Young, Mo. |
| Wilson, Tex. | Wylie | Zablocki |
| Wirth | Yates | |

NAYS—2

| | |
|---|---|
| Moore | Volkmer |

ANSWERED "PRESENT"—3

| | | |
|---|---|---|
| Eilberg | Rooney | Simon |

NOT VOTING—94

| | | |
|---|---|---|
| Abdnor | Frey | Pressler |
| Ammerman | Fuqua | Quie |
| Applegate | Gaydos | Quillen |
| Armstrong | Gibbons | Rangel |
| Ashbrook | Guyer | Rhodes |
| Badham | Hagedorn | Richmond |
| Bellenson | Hansen | Roberts |
| Bonker | Harrington | Rodino |
| Breaux | Hawkins | Rostenkowski |
| Brinkley | Heckler | Santini |
| Brooks | Hillis | Sarasin |
| Burke, Calif. | Huckaby | Shipley |
| Burke, Fla. | Ireland | Sisk |
| Byron | Jordan | Skubitz |
| Caputo | Kasten | Snyder |
| Chisholm | Krueger | St Germain |
| Clawson, Del | Lehman | Symms |
| Cochran | Lujan | Teague |
| Cohen | McKinney | Thone |
| Collins, Ill. | Maguire | Thornton |
| Collins, Tex. | Mahon | Tsongas |
| Conyers | Mathis | Van Deerlin |
| Corman | Metcalfe | Waggonner |
| Cotter | Mikva | Wampler |
| Dent | Milford | Waxman |
| Duncan, Oreg. | Miller, Calif. | Wiggins |
| Fary | Murphy, Ill. | Winn |
| Fish | Myers, Gary | Young, Alaska |
| Flowers | Nolan | Young, Tex. |
| Flynt | Oakar | Zeferetti |
| Ford, Mich. | Pepper | |
| Fraser | Pettis | |

The Clerk announced the following pairs:

Mr. Richmond with Mr. Frey.
Mr. Rodino with Mr. Guyer.
Mr. Rostenkowski with Mr. Rhodes.
Mr. Zeferetti with Mr. Sarasin.
Mrs. Chisholm with Mr. Kasten.
Mr. Waggonner with Mr. Abdnor.
Mr. Gaydos with Mr. Hansen.
Mr. Fuqua with Mr. Hagedorn.
Mr. Breaux with Mrs. Pettis.
Mr. Ammerman with Mr. Wiggins.
Mr. Cotter with Mr. Collins of Texas.
Mr. Dent with Mr. Cohen.
Mr. Flynt with Mr. Burke of Florida.
Mr. Murphy of Illinois with Mr. Ashbrook.
Mr. Pepper with Mrs. Heckler.
Mr. Mikva with Mr. Lujan.
Mr. Teague with Mr. Badham.
Mr. St Germain with Mr. Caputo.
Mr. Shipley with Mr. Del Clawson.
Mr. Rangel with Mr. Winn.
Mr. Brooks with Mr. Fish.
Mrs. Burke of California with Mr. Quie.
Mr. Byron with Mr. Pressler.
Mr. Corman with Mr. Skubitz.
Mr. Fary with Mr. Wampler.
Mr. Mathis with Mr. Cochran of Mississippi.
Mr. Krueger with Mr. Hillis.
Mr. Lehman with Mr. McKinney.
Mr. Hawkins with Mr. Milford.
Mr. Roberts with Mr. Gary A. Myers.
Mr. Santini with Mr. Young of Alaska.
Mr. Van Deerlin with Mr. Thornton.
Mr. Waxman with Mr. Snyder.
Mr. Tsongas with Mr. Sisk.
Mr. Applegate with Mr. Armstrong.
Mr. Bellenson with Mr. Conyers.
Mr. Ireland with Mr. Huckaby.
Mr. Harrington with Mr. Duncan of Oregon.
Mrs. Collins of Illinois with Mr. Fraser.
Ms. Oakar with Mr. Flowers.
Mr. Ford of Michigan with Mr. Miller of California.
Mr. Metcalfe with Mr. Symms.
Miss Jordan with Mr. Gibbons.
Mr. Nolan with Mr. Quillen.
Mr. Bonker with Mr. Mahon.
Mr. Maguire with Mr. Brinkley.

Mr. BEARD of Rhode Island changed his vote from "nay" to "yea."

Mr. BLANCHARD changed his vote from "present" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## HAWAIIAN NATIVE CLAIMS STUDY COMMISSION

Mr. RONCALIO. Mr. Speaker, I call up the Senate joint resolution (S.J. Res. 4) establishing the Aboriginal Hawaiian Claims Settlement Study Commission, and for other purposes, and ask unanimous consent that the Senate joint resolution be considered in the House as in Committee of the Whole.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from Wyoming?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 4

Whereas in the year 1893 the United States Minister accredited to the sovereign and independent Kingdom of Hawaii, acting wholly without the authority or knowledge of the Congress or the President, unlawfully conspired with a small group of non-Hawaiian residents of that kingdom, including citizens of the United States, to overthrow the indigenous and lawful government of Hawaii; and

Whereas in pursuance of such conspiracy the United States Minister and the naval representative of the United States, also acting without authority, caused Armed Forces of the United States to be put ashore and deployed in support of the overthrow of that indigenous and lawful government; and the United States Minister thereupon extended diplomatic recognition to a provisional government formed by the conspirators without the consent of the people or of the lawful government of Hawaii, which provisional government was sustained solely by the Armed Forces of the United States; and

Whereas, on December 18, 1893, in a message to the Congress, President Grover Cleveland did report fully and accurately on these illegal actions, which statement acknowledged that "by an act of war, committed with the participation of a diplomatic representative of the United States and without the authority of Congress, the government of a feeble but friendly and confiding people has been overthrown", that "a substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires that we endeavor to repair", and that "the United States cannot fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation"; and

Whereas a claim for repair of these wrongs to the Hawaiian people was presented to the Government of the United States of America by Queen Liliuokalani, the lawful monarch of Hawaii, and on July 15, 1893, a petition for redress was also presented by the Hawaiian Patriotic League, representing Aboriginal Hawaiians; and

Whereas, in 1898, Hawaii was annexed to the United States, and by such annexation, among other things, the United States acquired ownership of vast landholdings that had been common property of the Aboriginal Hawaiians prior to the overthrow of their indigenous government; and

Whereas some eighty-four years have now passed without the wrongs done Aboriginal Hawaiians having been repaired: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress hereby declares that a wrong has been committed against the Aboriginal Hawaiians which the United States is obligated to endeavor to remedy; that no wrong such as this committed eighty-four years ago in far different circumstances to a specific people few of whom survive today can be fully rectified in this or future Congresses; that the Congress, however, is desirous of determining whether a suitable remedy for such wrong can be fashioned; and that the Congress wishes to establish a commission of Aboriginal Hawaiians and other citizens to advise it on all matters pertaining to the best manner in which to provide such remedy.

(b)(1) The Commission shall be composed of fifteen members appointed by the President, of whom eight shall be from a list of not less than eighteen persons submitted to the President by the Governor of Hawaii. No less than nine of the members shall be of the blood of Aboriginal Hawaiians who inhabited the Hawaiian Islands prior to 1778 (hereinafter "Aboriginal blood"), three of whom shall be of one-half degree or more of Aboriginal blood, three of whom shall be of one-quarter or more degree of Aboriginal blood, and three of whom shall be of any degree of Aboriginal blood. Each of the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu shall be represented on the Commission by at least one member of Aboriginal blood who is an inhabitant thereof, and all persons of any degree of Aboriginal blood who are not residents of the State of Hawaii shall be represented by a member of any degree of Aboriginal blood who is not a resident of the State of Hawaii. The President, prior to appointing the members of the Commission, and the Governor, prior to submitting recommendations for members, shall consult Aboriginal Hawaiian organizations and the Aboriginal Hawaiian community in each of the islands named in this paragraph (1).

(2) The Commission shall elect a Chairman and Vice Chairman from among its members.

(3) Eight members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

(4) Vacancies in the membership of the Commission shall not affect the powers of the remaining members to execute the functions of the Commission and shall be filled in the same manner as in the case of the original appointments.

(5) Each member of the Commission shall receive $100 for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as shall be provided from time to time by regulations adopted by the Committee on House Administration of the United States House of Representatives.

(c) The first meeting of the Commission shall be called by the President within the sixty-calendar-day period following the date of approval of this resolution.

(d) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, a general counsel, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum

rate for GS-18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

(e) Each Federal department, agency, and instrumentality is authorized to furnish to the Commission such data, reports, information, and other resources as the Chairman of the Commission may request.

DUTIES OF THE COMMISSION

SEC. 3. The Commission shall—

(1) conduct a study of the culture, needs, and concerns of the Aboriginal Hawaiians; the nature of the wrong committed against, and the extent of the injuries to, the Aboriginal Hawaiians by reason of the actions set forth in the preamble of this resolution; and various means to remedy such wrong;

(2) hold such public hearings with public notice as it deems necessary to further such study, but not less than one hearing in each of the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu in the State of Hawaii and at another site elsewhere in the United States where a substantial number of persons of Aboriginal blood resides;

(3) provide public information concerning the actions set forth in the preamble wherever possible in advance of public hearings and such other methods employed by the Commission to obtain public participation in the study;

(4) publish, within one year of enactment of this resolution, a draft report of the findings of the study and make said report available to appropriate Federal and State agencies, Aboriginal Hawaiian organizations, and the public;

(5) solicit written comments from such agencies and organizations and the public;

(6) consider such comments in preparing the final report of the findings of the study; and

(7) submit to the President and the Committee on Energy and Natural Resources of the Senate and Committee on Interior and Insular Affairs of the House of Representativs, within six months of the publication of the draft report, the final report of the findings of such study, such report to include all written comments on the draft report submitted to the Commission.

COMMISSION RECOMMENDATIONS

SEC. 4. (a) The report required by section 3 shall provide recommendations for a remedy. Such recommendations shall include—

(1) the distribution, expenditure, investment, or other use of funds as a component of any such remedy, including, where appropriate, innovative uses of the funds which will permit such moneys to be employed successively for the benefit of Aboriginal Hawaiians, such funds to be appropriated in equal increments over a period of years;

(2) the provision of land as a component of any such remedy through any method, including the surplusing of Federal land and amendments to the Hawaiian Homes Commission Act of 1920 (42 Stat. 109): *Provided*, That, should the surplusing of Federal lands be recommended as a component of any such remedy, the Commission shall propose a method or methods for resolving, whenever a tract of such land is offered, whether such tract shall be conveyed to the State under applicable law or the Aboriginal Hawaiians under a subsequent Act to provide for such remedy;

(3) such other recommendations concerning the components set forth in clauses (1) and (2) of this subsection as the Commission deems appropriate;

(4) the preservation and enhancement of Aboriginal Hawaiian culture and lifestyles and the education of Aboriginal Hawaiians as principal purposes of any such remedy;

(5) the blood quantum or other requirements for eligibility to receive the benefits of any remedy, and, if the Commission deems appropriate, to receive specific benefits or shares of benefits;

(6) the form or forms of organization best suited to receive, distribute, or administer the benefits of any remedy; and

(7) other matters concerning any such remedy, including, but not limited to, alienability and tax status of the benefits of any such remedy, provision of technical assistance to Aboriginal Hawaiians on the use of such benefits, and the reporting to the Federal Government and the Aboriginal Hawaiians of the disposition of such benefits.

(b) Any such recommendation shall, to the extent possible, be designed to assure that any such remedy—

(1) will be a final settlement of all claims of Aboriginal Hawaiians against the United States arising from the actions set forth in the preamble of this resolution;

(2) will be capable of prompt implementation with a minimum of litigation;

(3) will be in conformity with the real economic and social needs of the Aboriginal Hawaiians;

(4) is fashioned and will be implemented with the maximum participation of Aboriginal Hawaiians;

(5) will not create a wardship or trusteeship;

(6) will not diminish any right, privilege, or obligation of the Aboriginal Hawaiians as citizens of the United States or the State of Hawaii; and

(7) will not relieve, or diminish any obligation of the United States or the State of Hawaii to protect and promote the rights and welfare of Aboriginal Hawaiians as citizens of the United States or the State of Hawaii.

TERMINATION OF THE COMMISSION

SEC. 5. Except as provided in subsection (b) of section 7, upon the expiration of the sixty-day period following the submission of the report required by section 3, the Commission shall cease to exist.

SAVINGS CLAUSES

SEC. 6. No provision of this joint resolution shall be construed as—

(1) constituting a jurisdictional act, conferring jurisdiction to sue, or granting implied consent to Aboriginal Hawaiians to sue the United States or any of its officers with respect to claims arising from the actions set forth in the preamble of this resolution; or

(2) constituting a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organization or any tribe, band, or identifiable group of American Indians.

AUTHORIZATION

SEC. 7. (a) There are hereby authorized to be appropriated for fiscal years 1979 and 1980 such sums as are necessary to carry out the provisions of this resolution. Until October 1, 1978, salaries and expenses of the Commission shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman. To the extent that any payments are made from the contingent fund of the Senate prior to the time appropriation is made, such payments shall be chargeable against the authorization provided herein.

(b) The Secretary of the Treasury shall reserve a reasonable portion of the funds appropriated pursuant to subsection (a) of this section for the purpose of providing payment for the transportation, subsistence, and reasonable expenses of the members of the Commission in testifying before the Congress with respect to their duties and activities while serving on the Commission or to such matters as may involve the findings of the study of the Commission after the expiration of the Commission pursuant to section 5.

Mr. RONCALIO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate joint resolution be considered as read, printed in the RECORD, and open to amendment at any point.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

Mr. RONCALIO. Mr. Speaker, I move to strike the last word.

Mr. Speaker and my dear colleagues, this is the second time around for this legislation which passed by a handsome majority but not by the necessary two-thirds vote when it was considered under suspension of the rules a few months ago.

Mr. Speaker, I cannot think of a better explanation of this legislation, historically and factually, than is set forth in the "Dear Colleague" letter that was sent out by the gentleman from Hawaii, Mr. CECIL HEFTEL, that all of the Members received about 2 months ago. I am going to quote from that letter of July 21, 1978.

He says that this resolution seeks to establish a commission and a study.

And I want to emphasize the word "study".

And I particularly want to state to my good friend and colleague, the gentleman from Maryland (Mr. BAUMAN), whom I consider to be the watchdog of the minority of this body, and his colleagues, that this does nothing by way of a cause of action, it does not make any admissions of any type of irresponsibility or wrongdoing. It carries some allegations of historical facts.

What should be stated, of course, is the fact of the 1893 overthrow of the government in the Island of Hawaii.

I realize that 85 years is a long time for most Americans. Memories grow short after that length of time and most events seem to be relegated to the history books, but this event has riveted the attention of some Americans ceaselessly—and it certainly has on the west coast and in the counties of Hawaii. Its details are as familiar to some children as are the stories of Paul Revere's ride and the signing of the Declaration of Independence.

This was an important incident, and it lies still in the hearts, as I say, of millions of Americans on our west coast and in Hawaii.

It is something that has to be faced, my colleagues, because it is a fact that the Armed Forces of the United States, without authority of Congress or direction of the President, supported a group of non-Hawaiian aliens in an unlawful seizure of power in the overthrow of the Government of Queen Liliuokalani on January 16, 1893.

I might add that I have been reading a book about the area of the Choptank River, where my friend, the gentleman from Maryland (Mr. BAUMAN), comes from, written by Mr. Michener, and I am recommending that the gentleman read the book that he also wrote about Hawaii, and he describes there with the same sort of accuracy regarding the incident of the overthrow of the Hawaiian government, just as he has described the development of eastern Maryland.

Mr. Speaker, I believe the Hawaiian people, and particularly the Hawaiian

natives, have been very patient and understanding of this incident, and they need some fair compensation and support, and better treatment. I believe that some attention should be paid to that act that took place, at least a study of the possibility of remuneration, compensation, and adjustment. We all have some "face" whether we are orientals or whether we are occidentals in this world, and I am sure in the case of a wrongdoing by our people, which of course, ought not turn into a handout type of thing—but where a nation has character, a nation with a character ought not wish to have history perpetrate its wrongs.

We certainly have treated all of our minorities with imminent justice over the years and there is no reason we should exclude the Hawaiian natives from that consideration.

We believe the people of Hawaii have waited long enough for their study. They have shown their patience. We believe it is now time for the U.S. Government to show its wisdom by creating a commission to study what loss, if any, the Hawaiian people suffered, and what compensation is possible.

When we get into a discussion of this matter I am sure we will get all of the details that are necessary, and let us do it calmly. I know that there are hot tempered types among the people there, just as there have been in other areas, who would like to use this effort to cause dissent, and to cause economic turmoil, and we have seen that happen.

We have seen that happen; but if that happens, it will not be the fault of the hotheads of Hawaii. It will be the fault of some of the persons in this House of Representatives who refuse to permit even a study or consideration of what should be an equitable, proper act on the part of the lawmakers of this Nation.

Therefore, Mr. Speaker, if each Member can, without great delay this morning, consider the amendments we have offered, then I hope we can have a good and full discussion of the matter and see to the passage of this joint resolution.

Mr. WHITE. Mr. Speaker, will the gentleman yield?

Mr. RONCALIO. I am happy to yield to the gentleman from Texas.

Mr. WHITE. Mr. Speaker, so that I can get a better understanding of this bill, could the gentleman elaborate on the type of wrongs to which the Hawaiian natives have been subjected? At the time of annexation was some of their property taken without compensation?

Mr. RONCALIO. I would be delighted to answer the gentleman.

The SPEAKER. The time of the gentleman from Wyoming (Mr. RONCALIO) has expired.

(By unanimous consent Mr. RONCALIO was allowed to proceed for 3 additional minutes.)

Mr. RONCALIO. To answer the gentleman, Mr. Speaker, land reform had taken place, ordered by the Queen, prior to that. A few years prior to this incident, such lands had been passed to the people of Hawaii, certain lands at certain places in each of the counties of Hawaii. Maps were prepared showing this particular land.

The claims made now are not to those lands by the descendants of these Hawaiians. That would be an impossible thing to achieve. The idea now is to have a study of the wrongs which took place and to give some type of consideration to those who are the descendants of those who were wronged.

The study commission could recommend, if it wishes, where there might be entitlements that can be added in a sort of Hawaiian homes commission type of function, or lands that can be used. For example, let us take the lands in Molokai. There could be homesteads there, and some people might be able to make a home out of the land there.

This matter involves those in the lower echelon economically, and the highest number of those in Hawaii, unfortunately, are the Hawaiian Natives. This situation puts a burden on our conscience, and we have a duty to do something to help these people to reach a higher economic level. If this device can be used to do that, it will serve a noble purpose.

Mr. WHITE. If the gentleman will yield further, in the first place, are there not existent programs which would address those in the lower income levels? The Hawaiians, after all, are members of a State of the United States.

Mr. RONCALIO. There are programs, but they are woefully, frightfully inadequate.

Mr. WHITE. How was the land taken in a wrongful manner? I am just trying to answer that question in my own mind.

Mr. RONCALIO. I can only refer the gentleman to a half-dozen history books to give him the details on that subject. It was President Cleveland who said that this was not done with the constitutional authority of the United States of America.

The very character of this Nation requires that some corrective action be taken to help the people of Hawaii. Mr. Michener's book comes to the same conclusion on Hawaii, and so does anybody else who ever studied the facts.

Frankly, we do not apologize for what this country did; but we recognize that some of the acts may have been less than circumspect. If it is appropriate to discuss them and to compensate them in some form, I think that should be done.

Mr. WHITE. Under our statutes, under the due process clauses of the Constitution, have any of these cases been taken to court and adjudicated?

Mr. RONCALIO. No; and this does not commit a cause of action to be taken. I am not conducting a revolution. I am just managing a little bill on the floor. I am not conducting a revolution, and I am not creating a cause of action in a court of law. I am a little old to be doing those things.

Frankly, all I want to do is to pass a bill to create a commission to study some of the wrongs done to the people of one of our States.

Mr. BUTLER. Mr. Speaker, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Speaker, I think it has been the practice in the House, in the brief time that I have been here, for claims against the United States to be considered by the Committee on the Judiciary.

Has the Committee on the Judiciary had an opportunity to consider the claims that we have before us, or has it had the time to consider any of these native claims?

Mr. RONCALIO. Actually, in response, I think the gentleman is correct. That may be the more proper and more appropriate committee having jurisdiction. It may be that this commission may find that in this case that should be done. This commission's work will start, and after a year or two they may recommend that this matter should be referred to the appropriate subcommittee of the Committee on the Judiciary.

If it so says, that is what the Study Commission will come up with. All this bill does is create a Commission to do it and give us a report and its opinion and that should be the procedure to take. I have no doubt that responsible officials of the Judiciary will want to appear before this committee and make that case, particularly if there is to be any consideration or action or litigation ensued; but I hope that will not be the result.

Mr. BUTLER. Mr. Speaker, if the gentleman will yield further, it is a fair statement that the Judiciary Committee has not had an opportunity to consider this problem up to this point.

Mr. RONCALIO. Oh, it has had 89 years of opportunity to consider the problem, but has not done it.

Mr. BUTLER. Mr. Speaker, if the gentleman will yield further, is it a fair statement to say that the Committee on the Judiciary, given the opportunity, has declined to consider this problem?

Mr. RONCALIO. No; I do not believe that to be a fair statement. I am not aware they have declined to consider it.

It has had massive opportunity to do so, but it has gone neglected by the Committee on Interior and Insular Affairs and by the Committee on Government Operations and by all the other committees of this House. They have had the opportunity. The Committee on the Judiciary is one that could have taken action, but did not take it.

Mr. BUTLER. Mr. Speaker, I thank the gentleman.

COMMITTEE AMENDMENTS

The SPEAKER pro tempore. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 3, after the enacting clause, strike out all of Section 1 and insert in lieu thereof the following:

That the Congress finds and declares—

(1) that there is substantial evidence that a wrong was committed against the Aboriginal Hawaiians, involving the complicity and unauthorized support of civil and military officials of the United States;

(2) that this wrong, committed eighty-four years ago in far different circumstances to a specific people, few of whom survive today, cannot be fully rectified by Congress;

(3) that the Congress, however, is desirous of determining whether a suitable remedy for such wrong can be fashioned; and

(4) that the Congress should establish a commission of Aboriginal Hawaiians and

other citizens to advise it on all matters pertaining to the best manner, if any, in which to provide such remedy.

Mr. RONCALIO (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

Mr. JOHNSON of Colorado. Mr. Speaker, reserving the right to object, yesterday under the rule we had 30 minutes. Are we in the amending process?

The SPEAKER pro tempore. The Chair would like to advise the gentleman, as the gentleman knows, this is being considered in the House as in the Committee of the Whole.

Mr. JOHNSON of Colorado. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

Mr. RONCALIO. Mr. Speaker, I rise in support of the amendment, but I would be pleased to yield 5 minutes of my time to the eminent minority member of my subcommittee, the gentleman from Colorado (Mr. JOHNSON). That is probably my fault. I failed to apprise the gentleman that we were proceeding in the House as in the Committee of the Whole.

The SPEAKER pro tempore. Does the gentleman from Colorado desire to be heard?

Mr. JOHNSON of Colorado. No, Mr. Speaker.

Mr. RONCALIO. Mr. Speaker, this amendment affects section 2(b)(1), the subsection providing for appointment of members to the Commission appointed by the President. It establishes criteria for their selection and provides for 15 members, no less than 9 being of the blood of Aboriginal Hawaiians. The committee felt this would impugn the objectivity of the findings; however, the committee did not feel it would be appropriate for prior representation on the Commission; however, the committee did feel there should be appropriate Hawaiian representation on the Commission.

The amendment reduces from nine to seven the representation. It makes corresponding adjustments in the blood criteria.

I would add that I do not like these kinds of amendments, but this is a necessary fact of life and I urge its adoption.

The SPEAKER pro tempore. The question is on the committee amendment.

The committee amendment was agreed to.

Mr. RONCALIO. Mr. Speaker, I ask unanimous consent that the remaining committee amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

The remaining committee amendments are as follows:

Committee amendments: Page 4, beginning on line 15 through page 5, line 11, strike out all of paragraph 1 of section 2(b) and insert in lieu thereof the following:

(b)(1) The Commission shall be composed of fifteen members appointed by the President, of whom eight shall be from a list of not less than eighteen persons submitted to the President by the Governor of Hawaii. No less than seven of the members shall be of the blood of Aboriginal Hawaiians who inhabited the Hawaiian Islands prior to 1778 (hereinafter "Aboriginal blood"), two of whom shall be of one-half degree or more of Aboriginal blood, two of whom shall be of one-quarter or more degree of Aboriginal blood, and three of whom shall be of any degree of Aboriginal blood. Each of the four counties of the State of Hawaii shall be represented on the Commission by at least one member of Aboriginal blood who is an inhabitant thereof, and all persons of any degree of Aboriginal blood who are not residents of the State of Hawaii shall be represented by a member of any degree of Aboriginal blood who is not a resident of the State of Hawaii. The President, prior to appointing the members of the Commission, and the Governor, prior to submitting recommendations for members, shall consult with Aboriginal Hawaiian organizations and with the Aboriginal Hawaiian community in each of the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu in the State of Hawaii.

Page 8, line 5, strike out "wrong" and insert in lieu thereof "wrong, if any,".

Page 9, strike out all of lines 13 through 15 and insert in lieu thereof:

SEC. 4. (a) Any recommendations for a remedy contained in the report required by section 3 may include, but shall not be necessarily limited to—.

Mr. RONCALIO. Mr. Speaker, these committee amendments have the effect of insuring that the resolution, itself, does not predetermine the very issues which the proposed Commission is required to study and report upon. As passed by the other body, the resolution statutorily makes findings which the Commission is to determine.

The first five committee amendments merely insert the word "alleged" in the preamble to make clear that we are not congressionally determining the validity of the assertions made in the preamble.

The sixth amendment amends section 1, involving congressional findings, to again make clear that, while there is some evidence to show that a wrong was committed against the Hawaiian Natives by the United States, the validity of that evidence is a matter for the proposed study and should not be predetermined by Congress.

Amendment 8 amends section 3 in like fashion to make clear that whether or not a wrong was committed must be left to the study.

Amendment nine amends section 4. As passed by the other body, section 4 requires that the Commission submit a report recommending a remedy and predetermining what such recommendations should contain. The committee amendment makes it clear that the Commission may or may not recommend a remedy and, if so, suggests areas and factors which should be considered in any such proposed remedy.

Mr. Speaker, I urge adoption of these committee amendments.

The SPEAKER pro tempore. The question is on the committee amendments.

The committee amendments were agreed to.

Mr. BAUMAN. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I regret that the gentleman from Wyoming (Mr. RONCALIO) has not given us a better explanation of the need for this legislation. I understand the gentleman's concern about this alleged wrong that was supposedly committed more than 80 years ago.

This bill was originally brought up on suspension, as has become the custom in this Congress. The leadership throws almost anything into the suspension procedure, including billion-dollar bills and bills with potentials of spending billions of dollars.

This matter was debated here at length before and the question can legitimately be asked of us: Why should we bother with fighting over a bill like this—$857,000 for a 3-year commission? That, some would say, is "peanuts" as money for commissions flies around this place. We create million-dollar select committees to do nothing for 3 years only to come up with no conclusion. So why get so excited?

I think the reason we ought to be concerned is the reason we are here in this House as Members representing our people. It is no disrespect to the people of Hawaii or to the aboriginal Hawaiians that this bill should be opposed by me or by others. We oppose it because the bill is a horrendous precedent for us to set, even though it is portrayed as only $857,000 for a commission.

Let me quote to the Members from an article that appeared in the New Yorker magazine written by Elizabeth Drew, who is a responsible journalist. She investigated bills that were considered by the House under suspension, and one that caught her eye was this bill. She went to the Office of Management and Budget and asked them about it. Here is her quote:

An official of the Office of Management and Budget has told me that the Hawaiian claims could end up costing the government thirty-five billion dollars.

Mr. JOHNSON of Colorado. Mr. Speaker, will the gentleman yield at that point?

Mr. BAUMAN. I will yield in a moment.

Here is a responsible journalist that says that she was informed this could wind up costing the taxpayers $35 billion. She may be wrong; it may not cost more than $857,000 for this Commission. We all know it will cost something.

But the point of the matter is that the potential cost to the taxpayers for this Commission has not been explained to this House. It is not in the report. This is sold to us on the basis that it is just another little study, that it means a few per diems for the Commission members, and then they will come back and perhaps say there is really no problem at all, that it can all be met through existing laws.

But that is not what will happen and we all know it.

The basic concept of this legislation is plain. There is going to be compensation to unknown numbers of people that will cost unknown numbers of dollars to the taxpayers. Worse than that, it sets a precedent. We have taken one course with Indian claims, we set another precedent with Alaskan Native claims, and now we are setting a still broader precedent with aboriginal Hawaiian claims. There will be no end to claims based on supposed past wrongs if Congress continues to permit this sort of thing.

How many people are alive today whose lands have actually been taken without compensation? I have wondered if I looked back at my own family tree—and I always shudder when I think about that because of what I might find—whether I might have a claim against the U.S. Government for some long-forgotten wrong against a great uncle or a great great grandmother or someone remote in the past.

It is the precedent that is important. How long do you have to go on looking for things on which to spend money? You spend too much as it is, and that is the issue here.

So why should Congress create a commission that should perhaps more properly be set up by the Hawaiian legislature with a few leftover dollars in its budget? Why should we pass a resolution that admits national guilt for some past alleged wrong?

Why should we start on a process that will inevitably lead toward the expenditure of more money to be paid to present living persons who are already eligible for help in the form of numerous existing Federal programs today?

We should not, I believe.

Mr. JOHNSON of Colorado. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Speaker, I thank the gentleman for yielding.

I am surprised that the gentleman raised the specter of a $35 billion program when he knows that that article from which he is quoting is a piece of irresponsible journalism.

Mr. BAUMAN. I do not know that at all.

Mr. JOHNSON of Colorado. We do not go to the OMB to get a figure of that sort and then quote it here on the floor of the House as being an authoritative report.

Mr. BAUMAN. I do not know its truth or untruth. I said that. Ms. Drew's responsibility is not at issue. The amount of money is the issue.

Mr. JOHNSON of Colorado. The gentleman asked a question, and I would like to respond.

Mr. BAUMAN. The issue is: What is the cost? The gentleman said $857,000 for a commission. The gentleman has to admit they are going to award at least $1 compensatory damages and more likely millions more.

Mr. JOHNSON of Colorado. They cannot award anything, and the gentleman knows it. The Commission will make a recommendation to the Congress and the Congress will then decide.

The SPEAKER pro tempore. The time of the gentleman from Maryland (Mr. BAUMAN) has expired.

(By unanimous consent, Mr. BAUMAN was allowed to proceed for 3 additional minutes.)

Mr. BAUMAN. Mr. Speaker, the gentleman from Colorado (Mr. JOHNSON) has one of the most able minds on the Interior Committee and in the House. I have served with him for 5 years on that committee, and I know the gentleman's ability. But I also know the central issue that I am raising, and one of the gentlemen ought to be addressing, is what the entire cost of this will be if the Commission leads to the logical conclusion this legislation suggests. And the report is silent on that cost. So it is just as logical for me to quote Elizabeth Drew. I do not have the figure.

Mr. JOHNSON of Colorado. I do not think there is a figure. I think it is irresponsible for anybody to quote any kind of figure, because, as the gentleman knows, the language of the resolution says—and this is at my insistence—"that this wrong committed 84 years ago in far different circumstances to a specific people, few of whom survive today, cannot be fully rectified by Congress."

We tried to acknowledge this, that although we acquired the land by conquest, nevertheless the possibility of rectification is one that seems very remote.

And we add "that the Congress, however, is desirous of determining whether a suitable remedy for such wrong can be fashioned * * *"

Mr. BAUMAN. Has the gentleman ever looked at the number of staff members on the Interior Committee? With all due respect to those staff members of the committee who are sitting on the floor, since its former chairman left the staff has grown by leaps and bounds. Perhaps they all are needed. Could not the staff write legislation rather than another commission?

My colleague, the gentleman from Virginia (Mr. BUTLER), just indicated his committee handles claims all the time, so we have a House procedure for that.

No, this is yet another costly commission. I am told everybody should try to get what they can out of the Congress, if they think it is a good cause, but the rest of us have to ask some serious questions. This bill has to be the bell ringer of all time, when people from Hawaii all the way back to Maryland are screaming about the cost of government and demanding less spending and lower taxes.

Mr. JOHNSON of Colorado. I guess we are just going to wrangle about this particular subject here until the time expires.

Mr. BAUMAN. My time is about up anyway.

Mr. JOHNSON of Colorado. I will get the gentleman more time.

This is not the kind of program which I ordinarily would endorse, to reimburse the Hawaiians for $1 billion, but I think the United States must recognize that when it acquired territory by conquest it was not done by any kind of legitimate authority. The President at the time was embarrassed and ashamed of it.

Mr. BAUMAN. Grover Cleveland, one of the greatest Democratic Presidents. I think we should have more Democrats like him.

Mr. JOHNSON of Colorado. If we had more like him, maybe we would have had a longer recession than we did under his Presidency.

Nevertheless, he was very candid in stating that the United States acquired this property by nefarious means. I do not think there is anything wrong in having a commission inquire into whether there is a possibility of a remedy of this wrong.

It is true, as the gentleman from Wyoming pointed out, that those natives are the people who are living at the lower end of the economic scale in Hawaii. It is a shameful incidence, a shameful experience that those people are living in.

The SPEAKER pro tempore. The time of the gentleman from Maryland (Mr. BAUMAN) has again expired.

(On request of Mr. JOHNSON of Colorado and by unanimous consent, Mr. BAUMAN was allowed to proceed for 1 additional minute.)

Mr. JOHNSON of Colorado. If the gentleman will yield further, it is a shameful experience, it seems to me, that we acquired by conquest a beautiful area of the world, Hawaii, and then the people we take it away from are those who are the poorest, the sickest, the most uneducated and the most downtrodden in that particular area of the world. That is a circumstance I know the gentleman would not endorse.

Mr. BAUMAN. The gentleman is correct. This is an unfortunate present circumstance the gentleman aptly describes. But he may as well describe the plight of the Indians in the United States as a result of similar conquests.

Mr. JOHNSON of Colorado. That is correct.

Mr. BAUMAN. And we have turned the American Indian nations into enormous welfare operations over the years, to their detriment, to the destruction of their pride and their nationhood. We have reduced them to a lesser people than they were before the conquest, and I have the same fear for the original Hawaiians if we put them on Federal dole.

But in the meantime they get social security, they are eligible for welfare. So are other hundreds of thousands of people regardless of race or color, but they get it because of their economic standing. They get no special treatment as this bill suggests.

Mr. HEFTEL. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, the gentleman has alluded to a $35 billion cost, and he has quoted from a journalist who obviously knows more than this body. During the course of the last 5 years, this body and the then Members from Hawaii, SPARK MATSUNAGA and Pasty Mink, introduced legislation, and in 1974 H.R. 15666 was proposed, the Hawaiian Native Claims Settlement Act. The bill sought to establish the Hawaiian Native Corporation in which every person with any Hawaiian blood would share equally. The Corporation would administer a $1 billion repa-

ration payment from the U.S. Government to be paid at the rate of $50 million per year for 20 years, which would be about 3/5 of a billion of actual cost.

Now, I would like to point out that at no time, even when the Members from Hawaii were proposing a sum certain, did they propose a sum that even equals $1 billion. One billion dollars at the rate of $50 million a year would be in the nature of $600 million of present value. There is no basis for using these extraordinary and untrue allegations of cost.

Assuming that a responsible commission is appointed, a responsible conclusion will be reached by that commission and recommended to this body. If this body concludes that the commission's findings are not reasonable, this body will reject them. But in no case should we ever hesitate to react to the qualities of conscience, of human decency, and a sense of responsibility.

I would like to remind the gentleman that because of a sense of responsibility and conscience, regardless of the consequences and the outcome, it does remain true that perhaps $500 billions were spent trying to defend peoples' freedom in Vietnam; trying to stop people from being overtaken in the same way that the Hawaiian people and their lands were overtaken in 1893 without an act of Congress, without the knowledge of the President.

Now, the gentleman is well aware that this commission is a responsive and responsible way to determine what, if any, reparations are due the Native Hawaiian people. We should not be afraid to study, to analyze, to think. We should not be afraid of the truth. We should not be afraid of our consciences, and I would hope that this body would at least see fit to establish the commission to determine what, if any, reparations are due Native Hawaiian people.

Mr. BAUMAN. Mr. Speaker, will the gentleman from Hawaii yield for a question?

Mr. HEFTEL. I yield to the gentleman from Maryland.

Mr. BAUMAN. The gentleman has given us more information than we have heard in two debates on this matter—did I understand the gentleman to say his estimate of the potential cost, if the claims are equitably settled, would be at least $1 billion?

Mr. HEFTEL. No, I did not.

Mr. BAUMAN. Could the gentleman give us his projected figure, if all the claims are equitably settled, as to what the total cost will be?

Mr. HEFTEL. I can only tell the gentleman that in 1974, when this body and the then Representatives from Hawaii, SPARK MATSUNAGA and Patsy Mink, endeavored to use a sum certain and did not propose a commission to be appointed to determine reparations, but rather determine what they thought reparations should be, determined that it should be $1 billion paid at the rate of $50 million a year, which would have a present value of 60 percent, or approximately $600 million.

That is the only time any sum certain has been mentioned in the 5 years that this dialog has continued about reparations for native Hawaiians. Assuming that the Congress decided and then rejected, Representatives MATSUNAGA and Mink decided it would be better to establish a commission, since that commission might come in at a lower or higher figure, or might want to utilize funds for native Hawaiians in a different way than merely establishing a corporation for meeting specific needs.

The SPEAKER pro tempore. The time of the gentleman from Hawaii (Mr. HEFTEL) has expired.

(On request of Mr. BAUMAN, and by unanimous consent, Mr. HEFTEL was allowed to proceed for 3 additional minutes.)

Mr. BAUMAN. Mr. Speaker, if the gentleman will yield further, is the intention in giving compensation to the descendants of those wronged, if some are still living, to compensate them for the value of the lands taken valued at the time they were taken or the value of the lands at the present time?

Mr. HEFTEL. It is not based on the value of the lands at the time they were taken or at the present time. The determination of the amount would be determined by what is considered to be fair in light of all the facts some 80 years later.

Mr. BAUMAN. I thank the gentleman.

Mr. WHITE. Mr. Speaker, will the gentleman yield?

Mr. HEFTEL. I yield to the gentleman from Texas.

Mr. WHITE. Mr. Speaker, I wonder if the gentleman would clarify these points for me. Is the wrongdoing and the compensation therefor to be for the taking over of government or the actual taking of land and titles for individuals?

Mr. HEFTEL. It is the Commission's responsibility to determine what should be the nature of the compensation and upon what wrong it should be based.

Mr. WHITE. But I am asking, Was land title taken from individuals or was there merely a change of government?

Mr. HEFTEL. Land titles changed hands. Individuals who owned lands no longer owned them afterward.

Mr. WHITE. Without compensation?

Mr. HEFTEL. Without compensation.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. HEFTEL. I yield to the gentleman from California.

Mr. PHILLIP BURTON. Mr. Speaker, I rise in support of this legislation.

I think much of the debate would be more relevant after we had the benefit of the recommendations of the Commission. I for one cannot anticipate what those recommendations will contain. I do not think anyone in the House can, but I do think it valid to construct this mechanism to bring to the Congress an informed point of view on what variety, if there be a variety, of approaches, if any, we should take to deal with this problem.

People living in the island areas, that by definition have a very small and limited amount of land, are confronted with a different measurement of continuum, if you will, of the kinds of problems that those of us living on the land mass of the continent do not have and have not been confronted with.

I can distinguish clearly this mechanism from a great deal of other matters, some of which are remotely similar and some of which are not similar at all, to the great variety of native American claims we hear bruited about from one end of the country to the other.

The SPEAKER pro tempore. The time of the gentleman from Hawaii (Mr. HEFTEL) has again expired.

(On request of Mr. PHILLIP BURTON, and by unanimous consent, Mr. HEFTEL was allowed to proceed for 1 additional minute.)

Mr. PHILLIP BURTON. Mr. Speaker, if the gentleman will yield further, finally we have an irony in the fact that if Hawaii were still a territory—and as our colleagues know, I happen to chair this committee as it relates to the insular areas—Hawaii's claims, to whatever extent they would have been valid, probably would have been dealt with. We do not need to have in any of the areas, that is, in the Virgin Islands or in Puerto Rico or in Micronesia or in Samoa or in Guam or in the Northern Marianas, any added mechanism for unfinished business in any of these matters. Hawaii fortunately became a State, but as a result of that they have been left out of the mechanisms set up for any other of the island areas where there was a demonstrated need to deal with these matters. So I would urge my colleagues to focus in on the short-term effort to set up this Commission.

The SPEAKER pro tempore. The time of the gentleman from Hawaii (Mr. HEFTEL) has again expired.

(By unanimous consent, Mr. HEFTEL was allowed to proceed for 2 additional minutes.)

Mr. PHILLIP BURTON. Mr. Speaker, if the gentleman will yield further, the effort today is to set up a short-term Commission, without prejudging how we will react to any or all or whatever recommendations may be brought to our attention.

Mr. MARRIOTT. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I would like to have a colloquy with the gentlemen from Hawaii (Mr. AKAKA and Mr. HEFTEL).

Mr. HEFTEL. It will be my pleasure.

Mr. MARRIOTT. First, Mr. Speaker, I would like to mention that probably few people, other than yourselves, in this body have spent more time in Hawaii than I have. I have lived there for a couple of years and have a lot of love for that area, but I do want to ask a couple of questions that bother me a little bit.

No. 1, why are we resurrecting this problem at this point? Why have 80 years elapsed and we are now just discovering that possibly there might be a claim against the United States, and therefore we are now entertaining this possibility?

Mr. HEFTEL. Mr. Speaker, if the gentleman will yield, the Hawaiian people are not as versed in the rights of citizens or in the law either as a territory or now as one of the States of the United

States. They were a trusting people. They never tried to exercise their rights. Ultimately through the educational process and the awareness of the way individuals express and exert their rights as Americans, the native Hawaiians concluded that they alone, among the native Americans, have been wronged and have never acted to have anything done to right that wrong.

So, ultimately, when they found themselves to be the overwhelming highest percentage of people on welfare, in prisons, and not well adjusted to the society in which they lived, they commenced finding out what their rights were, as did other native American groups.

If you will check, you will find that the Indians and the native Alaskans all exerted their rights while the native Hawaiians sat back and, among other things, waited for America to do that which was right.

It is to the credit of this body and this Nation that we did ultimately address those wrongs and have for the last 5 years been discussing what, if anything, should be done to right those wrongs.

The Commission would theoretically be the first official body to be established within our Government to make a report to this body as to what, if anything, should be done with respect to the wrongs against the native Hawaiians.

Mr. MARRIOTT. Why did not the Governor of the State or the legislature of the State or the local officials of Hawaii do something? Was there not a court system used back in those early years to get at this problem? Why are we doing this now in the Congress? It would seem to me to be perhaps an inappropriate place in which to do this.

Mr. HEFTEL. I suppose there is a reason. The people, when they established this Government of the United States, determined that there shall be a Congress, a Congress which represents the people, a body which is the conscience, perhaps, of the people. We are here to perform those functions which we will know we should perform when we determine what is right and what should be done. I am not afraid to find out that we have obligations which we should assume. That is why we are here. That is why this legislation has been proposed in this body. This is where it belongs.

The gentleman will note that most native Americans, most dissident groups in America, go to courts of law because they find that they want to sue. They want to use legal remedies. They sometimes want to attack.

The gentleman may recall what happened in the burning of Watts. He may recall other riots that we have had in the United States.

The native Hawaiians were willing to patiently wait for this body to act in good conscience and with some concern, and that is why we are here today.

I think we should meet this responsibility that has naturally been given to us.

Mr. MARRIOTT. I have just one other question.

Not to belabor the point, does the gentleman have a list of potential grants to those to whom the gentleman thinks a wrong has been done? Do we have some kind of preliminary list of those people, where they are located, and how much land is involved?

The SPEAKER pro tempore. The time of the gentleman from Utah (Mr. MARRIOTT) has expired.

(On request of Mr. HEFTEL and by unanimous consent, Mr. MARRIOTT was allowed to proceed for 2 additional minutes.)

Mr. HEFTEL. If the gentleman will yield further, Mr. Speaker, so that I may answer his question, we are not going back to the land as the basis for the establishment of the Commission or for the determination of what will be found by that Commission. What we are going back to is an illegal taking of land and now a determination of what, based on present day fact, should be the reparation.

The number of people, if we included all Hawaiians of any degree of Hawaiian blood, would be approximately 150,000 native Hawaiians. If we use something greater than .01 percent of native Hawaiian blood, then the number of people would be reduced from 150,000. They are all available for targeting, for identification, for participation; and at no time has the Commission that has been proposed or prior legislation that has been proposed conceived of direct payments to native Hawaiians. That may be the finding of the Commission; but up until this point, it has been a question of what kind of mechanism should be established to perform what kind of function for the native Hawaiian so as to right the wrong that was committed, if the Commission finds that wrong has been committed, and that some form of reparation should take place.

Mr. MARRIOTT. Most of this land, I take it, would be on the island of Oahu rather than the outer islands?

Mr. HEFTEL. No, no. If we want to address the question of where the land is, it would not necessarily be Oahu versus the neighboring islands. However, we are not trying to address the land, per se.

Mr. MARRIOTT. The purpose of this legislation, then, will be to study the 150,000 potential claimants and determine whether or not they, in fact, have a legitimate claim; is that what we are doing?

Mr. HEFTEL. The Commission would be established to do that and to make a recommendation of what, if any, remedy is due.

Mr. AKAKA. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, the background of Senate Joint Resolution 4 has been discussed many times over—in the Interior and Insular Affairs Committee, on the floor of the House, in the Rules Committee and in numerous dear colleague letters.

The Hawaiian Monarchy, an independent, foreign nation, was unilaterally overthrown by the U.S. Minister and a group of non-Hawaiians. The action was investigated by the Federal Government and decried by President Grover Cleveland. President Cleveland said that—

> if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States cannot fail to vindicate its honor and its senso of justice . . .

All Senate Joint Resolution 4 does is indicate that we in the Congress are willing to at least look into a situation that has been ignored for 85 years.

When this measure was brought up under suspension, certain objections were raised which I would like to place in proper perspective.

First. This is not a reparations bill. It merely establishes a study commission to look into the overthrow of the Hawaiian monarchy in 1893. The commission will determine if a wrong was committed and what obligation, if any, the United States may have in affording a remedy. It does not prejudge the issue. It does not mandate any compensation. There is no need for such alarmist statements as "the taxpayers of the United States ought to be protected against a wholesale raid on the Treasury under the guise of retroactive reparations." Anything, and I repeat, anything recommended by the commission will have to be approved by the Congress.

Second. Except in the case of Hawaii, the United States has never directly acquired territory by conquest. I believe that the examples used to illustrate our recognition of the right of conquest were Texas and the Louisiana Territory. Texas first declared its sovereignty from Mexico, then joined the Union. France acquired the Louisiana Territory from Spain by conquest, but we purchased it from France. Furthermore, the overthrow of the Hawaiian Government was carried out solely by the U.S. Minister to Hawaii and troops at his immediate command, without the knowledge or consent of the President or the Congress.

Finally, we are not, as some people have stated, setting any kind of dangerous precedent by addressing ourselves to claims that are 85 years old. The Alaska Native Claims Settlement Act was approved by Congress 104 years after the signing of the Treaty of Cessions, through which the United States purchased Alaska from Russia.

My friends, Native Hawaiians constitute 19 percent of the population of my State. This 19 percent accounts for 46 percent of all juvenile offenders and 35 percent of all adult offenders. In 1977, they had an unemployment rate of 13.6 percent, nearly twice the State average. According to the 1970 census, 58.8 percent of all Hawaiian families had incomes below $10,000.

The Hawaiians have made every attempt to help themselves, but the events of history and factors beyond their control have exacerbated their efforts.

Some people may try to relate Senate Joint Resolution 4 to disruptive land claims litigation. Some may try to relate it to dark visions of multi-million-

dollar reparations. Some may not be able to relate at all to an issue dealing with people 5,000 miles away. I can only say to you: This matter is as foremost in the minds of 150,000 of the people I represent as any issue of national or international note. It is as real and as close to them as are the personal concerns of any other citizens of any other part of the United States. It was passed by voice vote in the Senate. It was passed by the House Committee on Interior and Insular Affairs. I now ask that the full House pass Senate Joint Resolution 4, as presently worded, and fulfill our responsibilities as the representatives of all Americans.

Mr. RUDD. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I feel great sympathy for my distinguished colleagues from Hawaii, and I know that they feel great compassion for the people there.

I do, too. But I fail to see the differences that have been outlined here—differences such as the acquisition of New Amsterdam from the Indians by the Dutch, of what later turned out to be New York, part of the United States of America.

I do not quite see the difference between this approach, which could turn into great reparations for the Native Hawaiians, from that of the people who say that the Treaty of Guadalupe Hidalgo in 1847 was a travesty on the descendants, or the owners, or at least the occupiers of the land that encompassed a good portion of the Western part of our country today.

There is a movement afoot in the Southwest today to try to nail that one down.

What we are really talking about are territories acquired by one nation from another nation, where the territories are acquired by the country as a whole at a time when sometimes the people who have occupied the land probably did not have title to the land in the sense that we think about title.

We think of title as being the title they would have had under the government in this instance when the land was transferred to our Government.

But as we reach back into history to try to remedy these wrongs, thereby establishing a precedent like this, I think we will set up a means by which the descendants of the people who occupied the Southwest, the Louisiana purchase, and even Manhattan Island, would have a claim against our Government in this day and age—a claim against the people who pay taxes today.

This is something that should have been handled and remedied at the time of the acquisition. We cannot rightfully impose the potential high cost of the remedy being proposed here upon the taxpayers of the United States, today and tomorrow.

Mr. Speaker, I am opposed to this piece of legislation.

Mr. VANIK. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I may support this legislation. I think it has merit, but I would like to be sure that it is not going to result in any unjust enrichment.

I can understand why there might be a very proper claim for compensation for lands acquired by the Federal Government at Hickam Field and such installations that are involved in the State of Hawaii, but I would be terribly shocked if the Federal taxpayers were to be called on to make compensation payments from the people all over the United States to contribute to help recover the rights of people while others have been unjustly enriched.

If some of this land is now in the hands of private people or private corporations, I would hope that the commission would have the authority to determine this and determine whether some part of the cost of the compensation should not be paid by those who are unjustly enriched.

Mr. RONCALIO. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Wyoming.

Mr. RONCALIO. Mr. Speaker, I appreciate the gentleman's position.

I think the Commission will have a duty to look first into what lands on all the islands are not beneficially used in agriculture anymore because of the sinking of the water tables and the difficulty of irrigation and what lands lend themselves to residential purposes. If so, some of these lands can very readily be acquired at something less than high figures or at a very moderate price and can be put to a good purpose. I am looking forward to this sort of report from the commission.

Second, it is almost impossible to go to other Hawaiians and nonnatives and disturb peaceful possession of their homes. These are people who may have been there 50 or 75 years, and we do not want to disturb that. This is all privately owned land, and this is what we want to avoid. I am sure the Commission will realize this.

The problem is how to bring about a just use of surplus lands by the General Services Administration, and this addresses itself to the fundamental question. What value do we put on Hickam Field. Can the Congress value that at $10 billion? If we wish to put a value on it, the figure must be a fictitious one.

I am sure the clerk at OMB said to Elizabeth Drew what she reported, but that may not have been what OMB said.

Mr. Speaker, the Commission will have a job to do, and I am glad the gentleman brought this matter up.

Mr. VANIK. Mr. Speaker, let me ask, will the Commission have an authority and a mandate to see that there is no unjust enrichment, and that we do not simply use the Federal Treasury to pay off the native claims, which are very proper, and then let someone else enjoy the use of those lands today without having properly paid for them or obtained title to them?

Mr. HEFTEL. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Hawaii.

Mr. HEFTEL. Mr. Speaker, perhaps it would be helpful simply to read from the Senate joint resolution itself. The appropriate language is as follows:

Any recommendations for a remedy contained in the report required by section 3 may include, but shall not be necessarily limited to—

(1) the distribution, expenditure, investment, or other use of funds as a component of any such remedy, including, where appropriate, innovative uses of the funds which will permit such moneys to be employed successively for the benefit of Aboriginal Hawaiians, such funds to be appropriated in equal increments over a period of years;

(2) the provision of land as a component of any such remedy through any method, including the surplusing of Federal land and amendments to the Hawaiian Homes Commission Act of 1920 (42 Stat. 109): *Provided*, That, should the surplusing of Federal lands be recommended as a component of any such remedy, the Commission shall propose a method or methods for resolving, whenever a tract of such land is offered, whether such tract shall be conveyed to the State under applicable law or the Aboriginal Hawaiians under a subsequent Act to provide for such remedy;

Mr. Speaker, there has never been any intention that any individual will obtain improper enrichment or even enrichment per se. What we are talking about is a commission that can determine whether there are surplus lands or moneys which should be used in a responsive, responsible, and innovative way for the native Hawaiians. There is nothing involved in here that contradicts that.

Mr. VANIK. The section the gentleman has read does not answer my question.

Mr. HEFTEL. Would the gentleman like to offer an amendment?

Mr. VANIK. No. I am dealing with the issue of the original taking of the land.

Now, the Government of the United States, in all of its history, has never denied the right of the titleholders of property. We have always recognized established titles of those.

The SPEAKER pro tempore. The time of the gentleman from Ohio (Mr. VANIK) has expired.

(By unanimous consent, Mr. VANIK was allowed to proceed for 2 additional minutes.)

Mr. VANIK. I want to be sure that the land which was taken does not now somehow find itself in the hands of private people, private corporations, and then have the Federal taxpayers of all of the United States, paying our tax money for the benefit of the private enrichment of those who now hold the land. I am not talking about a claimant's right. I am talking about the person who now has the title, who somehow got title to the land and is now in possession of it. I want to be sure that person is not unjustly enriched at the expense of the U.S. taxpayers.

Mr. HEFTEL. If my colleague will yield to me, there is no way that can happen unless the commission reports findings that it wants to do that and this body votes to do it. It has never been the intention to do that. I can never believe the commission was established to do it. Therefore, it cannot happen.

Mr. VANIK. My one question is: Will the commission determine in its study that the lands were appropriated or taken by the United States of America and are now in private hands? Are you

going to identify those lands? Are you going to identify those lands and raise the question as to the legality of the title?

Mr. HEFTEL. There was no attempt in the establishment of this commission to concern itself with given parcels of land entitled to it. That was not the commission's objective.

Mr. VANIK. The gentleman is avoiding my question.

Mr. HEFTEL. I am not evading the gentleman's question.

Mr. JOHNSON of Colorado. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. I thank the gentleman for yielding.

Mr. Speaker, I would say that the answer to the gentleman's question is an unequivocal no. The commission does not have that kind of authority, the commission does not have that kind of mandate, and it should not. And when the gentleman from Maryland was talking about the kind of precedent that this would set, he obviously did not even have this notion in mind.

The SPEAKER pro tempore. The time of the gentleman from Ohio (Mr. VANIK) has again expired.

(On request of Mr. JOHNSON of Colorado and by unanimous consent, Mr. VANIK was allowed to proceed for 2 additional minutes.)

Mr. JOHNSON of Colorado. If the gentleman will yield further, if the gentleman's notion were taken seriously that this commission or Congress should go back and consider the doctrine of unjust enrichment and perhaps restore land, all the way from Maine to California the native claims would be filed with the same kind of justification, and I would assume that would include the same kind of Indian claims in Ohio. And that is the kind of bag of worms that the gentleman certainly does not want to open up. I do not think the gentleman is serious when he talks about unjust enrichment and taking the land away from the people who have had the land for the past 85 years. The means by which their ancestors got it is not the fault of the people who have it now.

Mr. VANIK. I am seriously interested in the question of unjust enrichment. I am going to consider it carefully. If this report does not dwell on it, then I may react to the report. But I would, frankly, feel that I would be deeply interested in how the people got title between the time the United States got involved and the present time. And I think we should be sure we are compensating for someone who has picked up the title wrongfully. We should not ask the American taxpayers all over the United States to pay to reimburse natives who ought to be reimbursed on their rights of the land which has now been conveniently transferred, the title for which remains in the name of a private corporation or a private individual. Action should be taken against those who wrongfully hold land appropriated or taken from the native Hawaiians. I just want to be sure there is no unjust enrichment.

Mr. JOHNSON of Colorado. I think that the legislative record should reflect that that is the gentleman's own personal view. It certainly is not the point of view of the Committee on Interior and Insular Affairs or the Subcommittee on Interior which considered it.

Mr. VANIK. We will deal with the report when it is made.

Mr. RONCALIO. Mr. Speaker, I move to strike the requisite number of words.

I believe we have spent an hour and 10 minutes on debate, and if there is no further debate, I should like to move the previous question. However, I do not wish to cut anybody off.

Mr. POAGE. Mr. Speaker, I move to strike the last three words.

Mr. Speaker, I take this time to try to clarify this thing in my own mind; not to try to give the Members information, but to try to get some.

Of course, there is one thing I think we have all overlooked that I think I do know. No commission on earth can settle this nor can the Congress. Only the courts can settle it. We cannot adjudicate land titles. We can pass legislation here, but we cannot adjudicate land titles, and neither can any commission.

Mr. RONCALIO. Mr. Speaker, will the gentleman yield?

Mr. POAGE. I yield to the gentleman.

Mr. RONCALIO. It is not our intention to adjudicate land titles, and not the intention of the commission to adjudicate land titles. It is not the intent of this bill and not the intention of this Congress in years to come. We hope to create a commission to study wrongdoing and recommend compensation or adjustment or atonement. That is all.

Mr. POAGE. In other words, the gentleman from Wyoming is saying that presumably the commission will make some recommendations to the Congress as to the possibility of making payments, rather than passing upon the titles. Here I think we get into terribly dangerous ground, or at least it seems that way to me. Maybe I am wrong. Am I right?

I am afraid that I voted for this bill when it was brought up the first time because I wanted to give these people every chance to recover anything that they owned, but now do I understand correctly that in about 1893 there was a revolution in Hawaii against the queen, and that our minister or ambassador there sent some American marines to take part in it on the side of the revolutionary group? Is that correct?

Mr. RONCALIO. That is alleged.

Mr. POAGE. What is that?

Mr. RONCALIO. That has been alleged. This report alleges that is the case.

Mr. POAGE. What are the facts? That is what I am trying to find. What are the facts?

Mr. RONCALIO. May I answer this, if I may? I think a little bit of reading on the part of all of us might enhance our knowledge on what the facts are, and I would recommend that we do that reading when the commission is meeting over the next few years.

Mr. POAGE. Well, I want to know some facts right now. I understand—at least, I have heard—that there was a revolution in Hawaii, and that the United States involved itself through our ambassador. The President later repudiated it, as I understand it. At least we took sides and at least we had some marines there. I do not know whether they did any fighting or did anything, but they were there.

Mr. JOHNSON of Colorado. Mr. Speaker, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. I think it is an exaggeration to call it a revolution, because it was a "Committee of Safety" made up of approximately a dozen businessmen who contacted the American minister, who sent in a couple hundred marines and overthrew the government. So, it was not a revolution in the traditional sense.

Mr. POAGE. Did the marines do anything? Did they shoot any guns, kill anybody?

Mr. JOHNSON of Colorado. No, they did not have to. It was such a peaceful event that it did not qualify as a revolution. They just took over the operation of the islands.

Mr. POAGE. Anyway, is it not fair to say that there was a new government established? A so-called interim or provisional government. This new government was established and operated over 4 or 5 years, as I recall. Is that about right? Is it not correct to say that that provisional government claimed the title of all the lands that the queen had owned, what had been royal or public lands?

Mr. RONCALIO. Not only royal lands, but it was a distribution of land in species to the various natives that had taken place, and we have seen the maps, which lands are involved, and we rejected the appeal of those among the natives who said that land in species should be returned because that land constitutes about 60 percent of the entire islands.

I personally said to them, "It will be a cold day in hell when you ever get back 60 percent of those islands."

Mr. POAGE. We have got a court system. We have had one in the 1890's. Did we, the United States or the U.S. Congress, take any lands or did the provisional government of Hawaii take the action? Is it not fair to say that there was a domestic government in Hawaii. that they had a local government?

We have a government in the United States sitting right here now that came here as a result of a revolution against King George. We threw him out and we set up a government here that the British looked upon as revolutionary and we adjudicated land titles.

We are only talking, are we not, about the public lands of Hawaii? The U.S. Government has never taken lands.

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

(By unanimous consent, Mr. POAGE was allowed to proceed for 3 additional minutes.)

Mr. POAGE. Mr. Speaker, as I understand it, we are talking about the public lands of Hawaii, call them crown lands, call them queen's lands, call them whatever we want to, but the land that

belonged to the government. The government changed. Whether that change was properly constitutional or not does not seem to be the question here. But the government did change, and the government which was the government for 4 or 5 years did adjudicate these lands as belonging to the government of Hawaii, and it passed title to people who possibly should not have received title, but the government of Hawaii passed the title. Now that is right, is it not? Is that not what happened?

Mr. RONCALIO. If the gentleman will yield, I believe that is an accurate accounting of what took place.

Mr. POAGE. All right.

Then we come in 1899 or somewhere along about then and the United States annexed Hawaii. We had a request from the government of Hawaii, just as we had earlier had a request from the Republic of Texas. The Republic of Texas asked and the U.S. Congress annexed, and they did the same thing in the case of Hawaii. And the public lands of Hawaii became public lands of the United States.

But the private lands, the lands that had passed under title arrangements of the previous governments, remained just where they were. When we annexed Hawaii, the United States of America did not take title to a single acre of privately owned land, did it, of privately owned land?

Mr. RONCALIO. I believe that is correct.

Mr. POAGE. All right. Then we are talking about the public lands, and the public lands passed. I am not trying to pass judgment on the justice of annexation because I do not know, but the public lands did pass from the queen to the provisional government and from the provisional government to the United States. But the private lands remained in the titles where they were and passed under the laws of the government that was in existence at the time of the transfer. And since 1898 any private transfer has been in accordance with the laws of the United States. And I do not suppose that we are now challenging any of those titles. If there is a challenge to those titles, the courts are open and any challenge to the transfer of lands.

Mr. RONCALIO. There is no challenge to those titles. I am sure of that.

Mr. POAGUE. That is what I am trying to get at.

Mr. HEFTEL. There is no challenge to any land title nor is the Commission intended to determine whether or not any land titles should change hands.

Mr. POAGE. I think that goes to the heart of the question that the gentleman from Ohio (Mr. VANIK) raised.

The SPEAKER pro tempore. The time of the gentleman from Texas (Mr. POAGE) has again expired.

(By unanimous consent, Mr. POAGE was allowed to proceed for 2 additional minutes.)

Mr. POAGE. Mr. Speaker, I think that goes to the question the gentleman from Ohio (Mr. VANIK) raised. He pointed out that we are not doing full justice by making payments if in fact we have taken their lands simply by paying the 1893 value of that land. Evidently, if land has been wrongly taken and is now in private hands someone must have been enriched. But what government is responsible? Is it contended that the United States should pay for what some previous government did by reason of having a different system from our own?

I agree that it seems to me very probable that some of those governments, whether it was the queen or whether it was the provisional government I know not, but somebody in Hawaii transferred a vast amount of land to five families. Is that not right?

Mr. RONCALIO. That is correct.

Mr. POAGE. Someone got a lot of the land into the hands of five families and it may or may not have been right, but it was not the U.S. Government, it was one of the previous governments of Hawaii, not the U.S. Government. And for the U.S. Government to now make payments in cash for the injustices perpetrated by a previous government, seems to me to be entirely out of line.

Mr. RONCALIO. Mr. Speaker, would the gentleman yield?

Mr. POAGE. Certainly.

Mr. RONCALIO. The point is well taken. I again wish to state to the excellent gentleman in the well, and to those who have applauded his remarks, that the maps that those Native Hawaiians have, who pursue this legislation, make a distinction between the land claims which you mention, and who are talking about compensation for the 62 or 63 percent of the surface of the islands, not the land you referred to. They want compensation for the land taken from them not for the land conveyed by the prior Hawaiian administrations.

Mr. POAGE. That is the point I am making, it was land taken by another government, not the United States. I do not believe the United States is responsible for what the kings and the queens of Hawaii did, nor what the provisional government of Hawaii did. I think the United States is responsible for its own acts and I will vote to pay the debts we have contracted, but I am not assuming responsibility for the acts done by some foreign government, because the government of Hawaii was a foreign government as far as we were concerned, up until 1898.

Mr. HEFTEL. Mr. Speaker, if the gentleman will yield, the Native Hawaiians are talking about, if nothing else, if you want to only talk about land, that land which the United States of America owns and lays title to as a result of that illegal takeover. The U.S. Government itself has its own multiple thousands of acres of ownership.

If you want to deal in land, you can restrict the dialog to the land owned by the United States of America as a result of the illegal actions which were committed in 1893. But we are not, in this case, trying to delve into that part of the issue. We are not talking about that land.

The SPEAKER pro tempore. The time of the gentleman has again expired.

(By unanimous consent, Mr. POAGE was allowed to proceed for 2 additional minutes.)

Mr. POAGE. Let us get the facts straight. Then we are coming down to the proposition that we are actually asking the United States to make payment for the inequitable acts of a previous government.

Now, it is alleged that the United States had a part in establishing that provisional government. I think the testimony is that all that happened was that the United States had some Marines over there, and they were there and supposedly exercised some moral influence, but no direct force.

Mr. JOHN L. BURTON. Mr. Speaker, would the gentleman yield?

Mr. POAGE. I would, but I am not going to ask for additional time so I would like to go ahead and conclude my statement.

So we are not talking, then, about restoring land that the United States has taken from anybody, but we are paying for something that somebody else did.

I live in a country where the King of Spain once owned all of the land and the King of Spain did not distribute it like I would like to see it done. Later the Mexican Government owned all of the land and did not grant it like I would like to see it granted. Are we now going to go back and pay for all the claims on the Mexican Government or on the King of Spain?

I will pay for every wrong that the United States has done, and if the United States took anybody else's land I want to pay for it, but when we did not take it, then I do not see why we should make such a payment.

Mr. HEFTEL. Mr. Speaker, will the gentleman yield?

Mr. POAGE. I would be glad to yield to the gentleman from Hawaii.

Mr. HEFTEL. Mr. Speaker, will the gentleman yield?

Mr. POAGE. Yes, I yield to the gentleman from Hawaii.

Mr. HEFTEL. Mr. Speaker, I would like to point out that armed Marines of the U.S. Government do not exert moral persuasion on a people who are not armed.

Mr. RONCALIO. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I want to thank the majority leader, the gentleman from Texas (Mr. WRIGHT), for the timely and appropriate message he has just concluded.

Mr. Speaker, I ask unanimous consent that all debate on this resolution and all amendments thereto end by 12:30 or in 30 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

Mr. BAUMAN. Reserving the right to object, Mr. Speaker, there are a number of Members seeking time and they have not spoken before.

I wonder whether we can just conclude this bill without cutting off debate on it.

Mr. RONCALIO. I am sorry, Mr. Speaker, I did not hear the gentleman's statement.

Mr. BAUMAN. I just wonder whether the gentleman could not withdraw his request at this time.

Mr. RONCALIO. I would be happy to extend the request, if that would be agreeable, to 12:45 or 1:15 p.m.

Mr. WHITE. If the gentleman will yield, Mr. Speaker, I do not think it will take that long.

Mr. RONCALIO. Mr. Speaker, I withdraw my unanimous-consent request.

The SPEAKER pro tempore. The gentleman from Wyoming withdraws his request.

Mr. JOHN L. BURTON. Mr. Speaker, I move to strike the requisite number of words.

I am not going to take 5 minutes, but before we read great thoughts, why not just read the bill? All the bill does is establish a study commission to investigate the claims that obviously need some investigating, because everybody in the House seems to be confused about what is at stake, and then to make a report to Congress with recommendations. The cost of the whole project will be something less than $900,000 for 3 years. That is all we are voting on. We are not voting on the five families; we are not voting on reparations; we are not voting on billions of dollars. We are voting to establish a commission to study the real problem, to report to us for final action, and according to the committee recommendation.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. JOHN L. BURTON. I yield to the gentleman from Ohio.

Mr. VANIK. I thank the gentleman for yielding.

What concerns me is the provision on page 3 beginning with line 15 in which Congress by its action today declares, that we, the American people, atone for a wrong committeed by the American people.

Mr. JOHN L. BURTON. What is wrong with that?

Mr. VANIK. I am not sure. I have not been convinced that a wrong was committed by the American people for which we must atone. That is what is wrong with this language. I do not mind the study. I do not mind the commission. I am not prepared to admit a confession of wrongdoing by the American people through this Government.

Mr. JOHN L. BURTON. A confession is good. I will take back my time. I yield no further.

Confession is good for the soul. There is substantial evidence; that is what we are saying. I think this study might even find that it is better to have plumbers working the plantations of Hawaii than have the plantations worked as plantations. I just think we ought to deal with what is before us. It sets up a commission. Less than $900,000 will be spent over 3 years to report to us what the problem is and what the recommendation is. We will probably end up spending more than $900,000 worth of our time wasting it discussing something that is very simple, very straight forward, and that everybody sees a lot of problems with. I just think we ought to get on with it.



Mr. MARRIOTT. Mr. Speaker, will the gentleman yield?

Mr. JOHN L. BURTON I yield to the gentleman from Utah.

Mr. MARRIOTT. I thank the gentleman for yielding.

I think just to get down to the bottom line, it seems to me that however we study this issue, the fact is that there were wrongs committed, and the issue today is whether or not we ought to have a commission to study it or whether some other method that we have in Congress can do it without an $800,000 or a million-dollar commission. Could the gentleman or somebody comment on whether or not we have really thought out in terms of whether the commission method is the only way to solve this?

Mr. JOHN L. BURTON. Yes. I mean we could just bow our heads for a minute and maybe divine guidance would strike us. A commission at a cost of less than $300,000, which is certainly a substantial amount of money, per year for 3 fiscal years is really the best way to solve this. The commission idea came about because Congress rejected a congressional solution to the problem in an authorization of $12 million. I think this is the sensible way to go about it. There may be other ways, but we could be debating them for 6 months. I think this is a simple, straightforward approach to find out what the problem is and to do something.

Mr. RONCALIO. Mr. Speaker, will the gentleman yield?

Mr. JOHN L. BURTON. I would be happy to yield to the gentleman from Wyoming.

Mr. RONCALIO. I thank the gentleman for yielding.

May I say to the gentleman from Utah (Mr. MARRIOTT) that the last Congress rejected a bill to provide a specific sum, so we are trying to find a common ground again for what seems to be the best approach.

Mr. CHARLES H. WILSON of California. I thank the gentleman for yielding.

Mr. JOHN L. BURTON. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. I thank the gentleman for yielding.

Will the gentleman be able to tell me what the makeup of the commission is? I think there was an amendment earlier today that changed the makeup of the commission.

Mr. JOHN L. BURTON. I do not know what the amendment was. I will be happy to yield to my friend, the gentleman from Hawaii (Mr. HEFTEL).

Mr. HEFTEL. I thank the gentleman for yielding.

The commission has been amended to comprise less than a majority of Native Hawaiians and less than a majority coming from a list submitted by the Governor to be appointed by the President.

Mr. CHARLES H. WILSON of California. The way I heard it was there were 15 people, no less than 9 of whom would be Native Hawaiians.

Mr. JOHN L. BURTON. No; that was changed.

Mr. CHARLES H. WILSON of California. That has been changed.

Mr. HEFTEL. It has been amended to no more than seven Native Hawaiians.

Mr. JOHN L. BURTON. It eliminates potential conflict.

Mr. KINDNESS. Mr. Speaker, I move to strike the requisite number of words.

It will be my intent to take much less than 5 minutes, but I think this debate has amply demonstrated that people of sincerity and good will may share a concern about a problem and yet differ greatly as to the means with which to attack and attempt to solve that problem. It seems quite clear to me from the debate that the problem is identified broadly in terms of the condition in which people find themselves living at the present time, which results in part from a disruption of a way of life that occurred some time ago.

Whatever involvement the U.S. Government has, appropriate or inappropriate, legal or illegal, constitutional or unconstitutional, it really matters very little. What we should be focusing upon is the problems confronted in living by the people in the grouping to which this whole matter is directed, this whole attempt to treat that problem is directed.

In other States of the United States perhaps you could find similarly situated people. The confusion seems to arise today from looking back. If we only looked forward, as I believe both the gentleman from Hawaii have been attempting to cause us to do. Let us look forward. The idea, or at least one of the principal ideas surrounding this Commission concept is that there should be planning for how to deal with the adjustment in a way of living or a change in the way of living that continues after these 80 some years. Those adjustment needs still are there today. We can see adjustment needs like these that still exist and have existed among people of different background circumstances for even longer periods of time.

I believe personally that the approach suggested in this resolution is a wrong approach. We ought to be considering, not the history and the background and "Who struck John", so to speak, but rather looking ahead to solving these problems.

In many programs enacted by this Congress attempts have been made to arrive at solutions to such problems. The whole concept of the Economic Opportunity Act and related legislation is to allow in specific areas and communities throughout this land the development of programs to meet problems of adjustment of people to the changes in our society.

Therefore, I would have to reach the conclusion that this is not the correct approach so long as it is directed to only one grouping or State.

I, for example, am descended from people who came to the United States since the time this matter occurred in Hawaii. It is a little difficult for me to look back in history and identify myself as a part of a nation 80 years ago that supposedly perpetrated this wrong.

Many other Americans who would pay the taxes to meet these needs through whatever programs might be recommended by the Commission and approved by the Congress have not been citizens and taxpayers of this country during all these 80 years. I think it is wrong for us to be backward looking. Instead, we should be forward looking.

Let us identify these problems, along with the problems of many other Americans and help to solve them as best we can, but not raise the hopes, as this bill will, perhaps false hopes, that there will be special attention given on some special basis to one group of people. Someone has suggested that maybe the people of Georgia at the time of the Civil War could suggest they ought to be entitled to some recompense from the United States for Sherman's drive through Georgia and the wrongs perpetrated there.

Mr. RONCALIO. Mr. Speaker, will the gentleman yield?

Mr. KINDNESS. I yield to the gentleman from Wyoming.

Mr. RONCALIO. Mr. Speaker, the analogy is totally inappropriate. That was an act of war. The Nation was at war and Congress had a hand in that. The Congress did not have a hand in the taking of Hawaii.

Mr. KINDNESS. Well, there are all kinds of ridiculous proposals that could be made. There are shades of differences. Looking back might have caused this country to be great; but we can be greater by looking forward.

Mr. WHITE. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I think that everyone is very sympathetic to the plight of Hawaii, and everybody is very proud of Hawaii.

I think the reason we are exercised is, No. 1, because of the precedent this bill would set, particularly in the Western States of this country, and, No. 2, in fairness to the taxpayer. I think the gentleman from Texas (Mr. POAGE) is correct when he points out that the title was lost to the provisional government. There is no showing to support the idea that title was lost to the United States or that the United States took title of any land or took land away from any individuals. Yet the bill does not address whether it is land of individuals or public land that would be compensated.

Mr. JOHNSON of Colorado. Mr. Speaker. will the gentleman yield?

Mr. WHITE. Let me finish what I have to say, and I will get back to the gentleman.

Mr. Speaker, the provisional government declared a Republic which existed for 4 years prior to the annexation by the United States. Those facts are clear. The question is apparently over an intrusion of some 160 marines, but there is no showing that there was any firing. In fact, it is acknowledged there was no firing of weapons.

The monarchy, at a minimum had some 500 armed troops readily available, and apparently the natives themselves did not feel the government was worth supporting. There is nothing to show that they supported the monarchy. There is nothing in the report to show whether some of the Hawaiians of native birth were supportive of this overthrow or of the new government. There is nothing to show they were not in support of the provisional government itself.

I think what we need to address is not only the assistance of Hawaiians, but I am also quite willing, as I am sure other Members are, to remove any statute of limitations which would prevent the local citizens of Polynesian blood from going forward with claims against the State of Hawaii or the U.S. Government for any act which is compensable, but I do not feel that the taxpayers should be called on at this time to pay present values or inflated values as a result of the pure act of troops going in, unauthorized by the U.S. Government. Any claim would be by the unauthorized act on the part of our minister at that time, but there is no showing that the troops themselves caused any aggression or performed an aggressive act, and there is no showing whatever of any title being taken by the United States.

Mr. JOHNSON of Colorado. Mr. Speaker, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Speaker, addressing myself to that point about the United States taking over the acreage, I think there is a great misunderstanding on the gentleman's part.

The government land at the time, in 1893, including the land on which the people lived, amounted to 1.5 million acres. The crown land amounted to 984,000 acres, land belonging to members of the Queen's family.

That was the land that was taken over by the Committee on Public Safety when the American Marines provided the force that took over. The gentleman can say that he absolves himself and the United States from any responsibility, but as a matter of fact, it was our troops under the jurisdiction of our Marines that took it over.

Mr. WHITE. Did the American troops themselves have an act in taking over the land, had they removed themselves by that time, or was there any action on their part?

Mr. JOHNSON of Colorado. No, the marines were there at the time the new government was established. The Queen withdrew and threw herself on the mercy of the United States.

Mr. WHITE. When was the land taken?

Mr. JOHNSON of Colorado. In 1893.

Mr. WHITE. Was it taken over under the auspices of the marines?

Mr. JOHNSON of Colorado. Yes, that is what I am telling the gentleman. It was taken as a result of that action.

Mr. WHITE. There is nothing in the report that says the United States caused the loss of that title.

Mr. JOHNSON of Colorado. The Queen was deposed by U.S. Marines at the instance of American businessmen.

Mr. WHITE. No. The Queen probably surrendered her government because of the presence of the marines, but she had superior forces at the time and obviously did not have the support of her own people.

Mr. JOHNSON of Colorado. No.

Mr. WHITE. There is nothing to show the marines were ready to fire a shot.

Mr. JOHNSON of Colorado. Mr. Speaker, the gentleman is drawing a conclusion that I think perhaps should be reported on by the Commission. But the land itself was the 2.5 million acres. That is what I wanted to inform the gentleman. There were 1.5 million acres which belonged to the government. That was the land on which the people lived, and the crown lands amounted to 984,000 acres. Those lands were administered by the Committee on Public Safety. That was the land that was subsequently distributed and taken away from the people of Hawaii.

Mr. WHITE. But were the marines there at that time?

Mr. JOHNSON of Colorado. Yes.

Mr. WHITE. No, I do not think that history will show that the marines were there during the course of all those actions throughout the history of the Republic.

The point is that I think that is a fallacy in the gentleman's argument. This could be handled through the court system, as the gentleman from Texas (Mr. POAGE) said, and if there is a statute of limitations as an impediment, we should remove that. Let us remove any legal obstacle whatever so they can carry their claims forward as to that land.

Mr. FOLEY. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I think I may be among those Members who are deeply troubled by the necessity of casting a vote, either affirmatively or negatively, on this bill at some time today.

As indicated in the debate here today, there appears to be some evidence that the misconduct of some elements of the U.S. Forces, operating in Hawaii under the direction of our then-minister, may have contributed in some way to the improper taking of lands. That, at least, is the allegation made by the sponsors of this legislation.

My primary concerns are that the Study Commission it would authorize is not really given the task of analyzing the validity of these allegations and reporting back its findings, nor are we in effect authorizing something resembling the British Royal Commission to look into these questions of possible moral or legal obligation on the part of the people of the United States with respect to oher groups of citizens or the descendants of an earlier group.

We are, in fact, told by the committee that the purpose of this bill is to create a study commission. Given this fact, the subsequent findings are interesting to me. In the two or three paragraphs that precede the actual legislative language, the bill states that there is substantial evidence that a wrong was done to aboriginal Hawaiians. Then, the next paragraph goes on to assert that while this wrong—not this alleged wrong or evidence of wrong, but this wrong, which in one paragraph has been transformed from substantial evidence to a positive fact—cannot be fully compensated for, we must nevertheless attempt to do so. To this end, the legislation establishes a commission, whose main function, as I

understand it, is simply to decide ways and means of determining the compensation and the manner of its distribution.

Apparently, as it turns out, somehow we have already decided that compensation is owed, that a wrong has been committed, and that an obligation, at least in the moral sense, exists.

This, I think, is what troubles not only me but others here. A number of us who would like to establish a way to explore these assertions of wrongdoing and moral responsibility further but are not ready in the absence of such an investigation, to vote a finding of moral and financial responsibility on the part of the American people on the basis of alleged wrongdoing. Another cause of concern to me is the fact that the Commission itself is to be so constituted that 8 of its 15 members are to be appointed by the Governor of Hawaii. Yet, the State of Hawaii, perhaps indirectly and its citizens, directly, are to be beneficiaries of the Commission's work. In other words, the majority of those on the Commission are to come from the State that is to be benefited through some form of material compensation.

Pursuing this further, seven members of the Commission—it does not say seven of the eight—are to be Native Hawaiians. So most of the Commission's members will obviously be of a blood quantum which would be financially benefited by any compensation paid. This raises a bit of a problem, I would suggest, with respect to a conflict of interest, in that the very Commission members who are going to assess the probability of need for a certain amount of compensation are people who are of the community to be benefited. They are in effect the recipients themselves. How is it possible that this is not going to be a disturbing element when we come down to the question of compensation? I hope that my personal inability to vote favorably on the measure before us today will not be construed as an unwillingness on my part to look into this question further, for I think it ought to be examined.

Yet, in my view the very precipitous transition which takes in this bill from evidence of wrongdoing, to a finding of wrongdoing, to a determination that compensation is due a group, the majority of whose members are from the State involved, coupled with the notion that a number of those to be benefited should be involved in decisions regarding the amount of compensation, raises very real questions as to whether this is an appropriate forum and mechanism for deciding a question which, I believe, all Americans would like to see addressed appropriately and objectively.

Mr. FRENZEL. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I was stuck in the House waiting for another bill to come up, and I have listened to this entire debate. I must say that I have come to the same conclusions that have been articulated by the gentleman from Washington.

We are admitting a wrong about which there seems to be some doubt. We are creating a commission, which is indeed a stacked commission, which can only come back with some verdict of some large amount of money or some other resource.

But perhaps even worse than that is the fact that since those people who are supporting this claim have never been able to get a claim through this Congress, they are asking us to establish a whole new level of bureaucracy to do the job which the Congress itself should do.

My constituents have not been asking me to create new study commissions at a cost of $900,000. I doubt that other Members have received such requests. My constituents have been asking me, indeed, why a $1 billion Congress cannot do the kinds of things that these study commissions are supposed to do.

In my judgment, we would make a terrible error if we were to accept this bill or to create a commission for something we ought to do ourselves, a commission which is stacked, a commission which is already charged or told that a certain wrong has been committed that it must recompense.

Mr. Speaker, I think it is a bad bill. It ought to be returned to committee, and that committee ought to work on it in the future.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Speaker, I would like to associate myself with the remarks of my colleague from Minnesota, and with the remarks of my colleague from the State of Washington.

Mr. RONCALIO. Mr. Speaker, I move the previous question on the Senate joint resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the third reading of the Senate joint resolution.

The Senate joint resolution was ordered to be read a third time, and was read the third time.

AMENDMENTS TO THE PREAMBLE

The SPEAKER pro tempore. The Clerk will report the amendments to the preamble.

The Clerk read as follows:

Committee amendments to the preamble: Page 1, after the "Whereas" in paragraphs 1 and 2, insert the words "it is alleged that".

Page 2, line 8, after "these" insert "alleged".

Page 2, line 19, after "these" insert "alleged".

Page 2, line 26, insert at the beginning of the line and before "by such annexation," the words "it is alleged that".

Page 3, line 1 of the Whereas clause, after "without the" insert "alleged".

Mr. RONCALIO (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendments to the preamble be considered en bloc, and that they be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

The amendments to the preamble were agreed to.

The SPEAKER pro tempore. The question is on the passage of the Senate joint resolution.

MOTION TO RECOMMIT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman from Maryland opposed to the Senate joint resolution?

Mr. BAUMAN. The gentleman is.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BAUMAN moves to recommit the Senate joint resolution (S.J. Res. 4) to the Committee on Interior and Insular Affairs.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore being in doubt, the House divided, and there were—yeas, 29; nays 10.

Mr. RONCALIO. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 190, nays 148, not voting 94, as follows:

[Roll No. 741]

YEAS—190

| | | |
|---|---|---|
| Anderson, Ill. | de la Garza | Jenrette |
| Andrews, N. Dak. | Delaney | Jones, N.C. |
| Annunzio | Derwinski | Kazen |
| Archer | Devine | Kelly |
| Ashley | Dickinson | Kemp |
| Aspin | Dicks | Kindness |
| Bafalis | Dingell | LaFalce |
| Barnard | Dornan | Lagomarsino |
| Baucus | Duncan, Tenn. | Latta |
| Bauman | Edwards, Ala. | Leach |
| Beard, Tenn. | Edwards, Okla. | Leggett |
| Bedell | Eilberg | Lent |
| Benjamin | Emery | Livingston |
| Bennett | Erlenborn | Lloyd, Calif. |
| Bevill | Ertel | Lloyd, Tenn. |
| Biaggi | Evans, Del. | Long, La. |
| Blanchard | Evans, Ind. | Long, Md. |
| Bolling | Fenwick | Lott |
| Bowen | Findley | Luken |
| Brodhead | Flippo | McClory |
| Broomfield | Flood | McCormack |
| Brown, Mich. | Florio | McDade |
| Brown, Ohio | Flowers | McDonald |
| Broyhill | Foley | McEwen |
| Buchanan | Ford, Mich. | Madigan |
| Burke, Mass. | Fountain | Mahon |
| Burleson, Tex. | Frenzel | Mann |
| Butler | Gammage | Marriott |
| Carney | Giaimo | Martin |
| Carter | Gilman | Mattox |
| Cavanaugh | Ginn | Mazzoli |
| Cederberg | Glickman | Meyner |
| Chappell | Goodling | Michel |
| Cleveland | Gradison | Miller, Ohio |
| Coleman | Grassley | Minish |
| Conable | Green | Mitchell, N.Y. |
| Conte | Hall | Mollohan |
| Corcoran | Harsha | Montgomery |
| Coughlin | Hefner | Moore |
| Crane | Hightower | Moorhead, Calif. |
| Cunningham | Holland | Murtha |
| Daniel, Dan | Hollenbeck | Myers, John |
| Daniel, R. W. | Holt | Neal |
| Danielson | Hyde | Nedzi |
| Davis | Ichord | Nichols |
| | Jenkins | |

| | | |
|---|---|---|
| Nowak | Runnels | Trible |
| O'Brien | Russo | Ullman |
| Obey | Satterfield | Vander Jagt |
| Panetta | Sawyer | Vanik |
| Pickle | Schulze | Walker |
| Poage | Shuster | Walsh |
| Price | Sikes | Watkins |
| Pritchard | Slack | Whalen |
| Quayle | Smith, Nebr. | White |
| Railsback | Spence | Whitehurst |
| Regula | Stangeland | Wilson, Bob |
| Reuss | Stanton | Wilson, C. H. |
| Risenhoover | Steers | Wolff |
| Roberts | Stockman | Wydler |
| Robinson | Stratton | Wylie |
| Rogers | Stump | Yatron |
| Rousselot | Taylor | Young, Fla. |
| Rudd | Treen | Zablocki |

NAYS—148

| | | |
|---|---|---|
| Addabbo | Gonzalez | Pease |
| Akaka | Gore | Pepper |
| Alexander | Gudger | Perkins |
| Ambro | Hamilton | Pike |
| Anderson, Calif. | Hanley | Preyer |
| | Hannaford | Pursell |
| Andrews, N.C. | Harkin | Rahall |
| Applegate | Harris | Richmond |
| Baldus | Heftel | Roe |
| Beard, R.I. | Holtzman | Roncalio |
| Bingham | Hubbard | Rooney |
| Blouin | Hughes | Rose |
| Boggs | Jeffords | Rosenthal |
| Bonior | Johnson, Calif. | Roybal |
| Brademas | Johnson, Colo. | Ruppe |
| Breckinridge | Jones, Tenn. | Ryan |
| Brown, Calif. | Kastenmeier | Santini |
| Burgener | Kildee | Schroeder |
| Burlison, Mo. | Kostmayer | Sebelius |
| Burton, John | Krebs | Seiberling |
| Burton, Phillip | Le Fante | Sharp |
| Carr | Lederer | Simon |
| Chisholm | Levitas | Skelton |
| Clausen, Don H. | Lundine | Skubitz |
| | McCloskey | Smith, Iowa |
| Clay | McFall | Solarz |
| Conyers | McHugh | Spellman |
| Cornell | McKay | Staggers |
| Cornwell | Markey | Stark |
| D'Amours | Marks | Steed |
| Dellums | Marlenee | Steiger |
| Diggs | Meeds | Stokes |
| Downey | Metcalfe | Studds |
| Drinan | Mikulski | Thompson |
| Early | Mineta | Traxler |
| Eckhardt | Mitchell, Md. | Tucker |
| Edgar | Moakley | Udall |
| Edwards, Calif. | Moorhead, Pa. | Van Deerlin |
| Evans, Colo. | Moss | Vento |
| Evans, Ga. | Mottl | Volkmer |
| Fascell | Murphy, N.Y. | Walgren |
| Fisher | Murphy, Pa. | Weaver |
| Fithian | Myers, Michael | Weiss |
| Ford, Tenn. | Natcher | Whitley |
| Forsythe | Nolan | Whitten |
| Fowler | Oberstar | Wilson, Tex. |
| Garcia | Ottinger | Wirth |
| Gaydos | Patten | Wright |
| Gephardt | Patterson | Yates |
| Goldwater | Pattison | Young, Mo. |

NOT VOTING—94

| | | |
|---|---|---|
| Abdnor | Frey | Myers, Gary |
| Ammerman | Fuqua | Nix |
| Armstrong | Gibbons | Oakar |
| Ashbrook | Guyer | Pettis |
| AuCoin | Hagedorn | Pressler |
| Badham | Hammer-schmidt | Quie |
| Bellenson | | Quillen |
| Boland | Hansen | Rangel |
| Bonker | Harrington | Rhodes |
| Breaux | Hawkins | Rinaldo |
| Brinkley | Heckler | Rodino |
| Brooks | Hillis | Rostenkowski |
| Burke, Calif. | Horton | Sarasin |
| Burke, Fla. | Howard | Scheuer |
| Byron | Huckaby | Shipley |
| Caputo | Ireland | Sisk |
| Clawson, Del | Jacobs | Snyder |
| Cochran | Jones, Okla. | St Germain |
| Cohen | Jordan | Symms |
| Collins, Ill. | Kasten | Teague |
| Collins, Tex. | Keys | Thone |
| Corman | Krueger | Thornton |
| Cotter | Lehman | Tsongas |
| Dent | Lujan | Waggonner |
| Derrick | McKinney | Wampler |
| Dodd | Maguire | Waxman |
| Duncan, Oreg. | Mathis | Wiggins |
| English | Mikva | Winn |
| Fary | Milford | Young, Alaska |
| Fish | Miller, Calif. | Young, Tex. |
| Flynt | Moffett | Zeferetti |
| Fraser | Murphy, Ill. | |

The Clerk announced the following pairs:

Mr. Jones of Oklahoma with Mr. Frey.
Mr. Zeferetti with Mr. Guyer.
Mr. Rodino with Mr. Rhodes.
Mr. Rostenkowski with Mr. Wampler.
Mr. Ireland with Mr. Snyder.
Mr. Waggonner with Mr. Sarasin.
Mr. Fuqua with Mr. Kasten.
Mr. Dodd with Mr. Abdnor.
Mr. Mathis with Mr. Hansen.
Mr. Breaux with Mr. Hagedorn.
Mr. Ammerman with Mrs. Pettis.
Mr. Cotter with Mr. Wiggins.
Mr. Dent with Mr. Cohen.
Mr. Flynt with Mr. Burke of Florida.
Mr. Murphy of Illinois with Mr. Lujan.
Mr. English with Mr. Badham.
Mr. Mikva with Mr. Caputo.
Mr. Teague with Mr. Del Clawson.
Mr. St Germain with Mr. Winn.
Mr. Shipley with Mr. Fish.
Mr. Rangel with Mr. Quie.
Mrs. Burke of California with Mr. Pressler.
Mr. Byron with Mr. Cochran of Mississippi.
Mr. Fary with Mr. Hillis.
Mr. Krueger with Mr. McKinney.
Mr. Lehman with Mr. Milford.
Mr. Hawkins with Mr. Young of Alaska.
Mr. Waxman with Mr. Thornton.
Mr. Tsongas with Mr. Sisk.
Mr. Bellenson with Mr. Armstrong.
Mr. Howard with Mr. Horton.
Mr. Bonker with Mr. Symms.
Mr. Harrington with Mr. Quillen.
Mrs. Collins of Illinois with Mr. Fraser.
Mr. Scheuer with Mr. Moffett.
Miss Jordan with Mr. Gibbons.
Mr. AuCoin with Mr. Ashbrook.
Ms. Keys with Mr. Rinaldo.
Mr. Jacobs with Mr. Collins of Texas.
Mr. Corman with Mr. Gary A. Myers.
Mr. Brooks with Mrs. Heckler.
Mr. Boland with Mr. Duncan of Oregon.
Mr. Maguire with Mr. Nix.
Ms. Oakar with Mr. Hammerschmidt.
Mr. Brinkley with Mr. Derrick.
Mr. Miller of California with Mr. Huckaby.

Mr. PRITCHARD, Mr. MATTOX, Mrs. MEYNER, Mr. HOLLENBECK, and Mr. LONG of Maryland changed their votes from "nay" to "yea."

Mr. RAHALL changed his vote from "yea" to "nay."

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. RONCALIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on Senate Joint Resolution 4.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

## AMENDING BANKRUPTCY ACT TO PROVIDE FOR UNIFORM SUPERVISION AND CONTROL OF EMPLOYEES OF REFEREES

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 3107) to amend the Bankruptcy Act to provide for uniform supervision and control of employees of referees in bankruptcy, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill as follows:

S. 3107

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraphs (2) and (3) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a) (2) and (3)) are amended to read as follows:

"(2) The actual and necessary office and other expenses of referees shall be authorized and approved by the Director, including compensation of clerical, stenographic, and other assistants of referees at rates fixed by the Director, at rates not less than the rates for comparable services prevailing in the respective offices of the clerks of the several district courts, and the costs of establishing and maintaining their offices with equipment and supplies, adequate for their efficient and economical operation, including mechanical equipment and devices and law libraries. Such expenses may be allowed when authorized by a judge of the judicial district or districts in which a referee serves in cases of emergency where it is not feasible to secure prior authorization of the Director.

"(3) When, in the opinion of the Director, the public interest requires it, he may, on the recommendation of a referee, which recommendation shall state facts showing the necessity for the same, allow the referee to employ necessary clerical, stenographic, and other assistants. All employees of the referee shall be utilized under the direct supervision of the referee exclusively in the processing of bankruptcy cases. The referee may at his pleasure remove any assistant in his employ. The authority of the referee to employ, direct, and remove assistants may not be exercised by anyone other than the referee. The Director may utilize funds collected or appropriated for the referred salary fund and the referees' expense fund pursuant to section 40c of this Act, to pay the salaries of only such clerical, stenographic, or other assistants as are employed under the direct supervision of the referee in the office of the referee: *Provided, however,* That salaries of the employees of the Bankruptcy Division of the Administrative Office of the United States Courts may also be paid out of such funds. If the office of the referee shall become vacant, the employment of his assistants shall not thereupon be terminated: *Provided, however,* That during such vacancy the Director may terminate the employment of any assistant, if, in his opinion, the services of such assistant are no longer needed.".

● Mr. EDWARDS of California. Mr. Speaker, S. 3107 is entitled "A bill to amend the Bankruptcy Act to provide for uniform supervision and control of employees of referees in bankruptcy." It amends two adjacent paragraphs of the Bankruptcy Act, found in section 62a. These two paragraphs currently provide for supervision of bankruptcy clerks by referees in bankruptcy, now called bankruptcy judges. Nevertheless, some question has arisen in recent years over the interpretation of these paragraphs. This bill simply adds language to make clear what Congress intent was in 1946 when this section of the Bankruptcy Act was last amended, and that is that the bankruptcy judges must have direct control over the work of their court clerks in

order for the bankruptcy court to function efficiently. The bill requires no expenditure of funds, and merely clarifies existing law. I urge its immediate adoption.●

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 3107.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

## ADJUSTMENT ASSISTANCE FOR WORKERS AND FIRMS

Mr. VANIK. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11711) to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. VANIK).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11711, with Mr. MCHUGH in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Ohio (Mr. VANIK) will be recognized for 30 minutes, and the gentleman from Wisconsin (Mr. STEIGER) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 11711, as amended by the Committee on Ways and Means, a bill to improve the operation and effectiveness of the trade adjustment assistance programs for workers and firms under chapters 2, 3, and 5 of the Trade Act of 1974.

Congress first established a trade adjustment assistance program under the Trade Expansion Act of 1962 for workers and firms dislocated by Federal policies to encourage increased foreign trade. The Trade Act of 1974 made substantial changes in these programs to ease the eligibility criteria, to streamline the petition and certification process, and to provide more adequate benefits and reemployment services.

Despite the far greater utilization of the new programs, the Subcommittee on Trade became aware of many legislative and administrative inadequacies and proposals for improvement brought to its attention by labor unions, industry associations, individual workers and firms, and Members of Congress during and subsequent to its oversight hearing held in the spring of 1977.

H.R. 11711, as amended, addresses the most common of these complaints. It broadens the coverage and removes certain inequities in the eligibility of workers and firms for adjustment assistance benefits, liberalizes certain of these benefits to workers and firms to promote their adjustment to import competition, contains provisions to accelerate the certification process and delivery of benefits, and introduces technical assistance on an industry-wide basis into the program for the first time.

H.R. 11711, as amended, extends adjustment assistance coverage to certain workers and firms which supply component parts or other articles or services essential to the production, transport, or storage of import-impacted articles, to workers laid off from import-impacted firms in situations involving exercise of labor union seniority rights, and to workers employed a minimum of 40 of the 104 weeks immediately preceding their layoff with one or more import-impacted firms. Benefits would become available retroactively to workers laid off prior to November, 1977 who were unaware of the 1-year time limit under the new program for filing petitions following layoff.

The bill extends benefit periods an additional 26 weeks, up to a maximum of 104 weeks, to enable workers to complete training and until older workers age 60 or over reach social security age. Job search and relocation allowances for workers are increased and the application period for these benefits extended. Demonstration projects would be established in trade-impacted areas to test vouchers as an alternative method to encourage worker retraining as an economic adjustment measure.

H.R. 11711 expands substantially technical and financial assistance benefits to import-impacted firms. It provides precertification technical assistance to help firms prepare their petitions, requires provision of technical assistance to firms unable to prepare their economic adjustment plans without outside help, and raises the ceiling on the Government share of the cost of technical assistance from 75 to 90 percent. On financial assistance, the bill lowers the interest rate on direct loans, raises the present ceiling on direct loans from $1 to $3 million and the limit on loan guarantees from $3 to $5 million, and authorizes interest rate subsidies to reduce interest paid by borrowers on guaranteed loans to rates comparable with direct loans.

To accelerate the certification process and benefit delivery, H.R. 11711 authorizes worker and firm certification on the basis of threatened as well as actual declines in sales and/or production of the firm, requires exchange of investigatory material between the Departments of Labor and Commerce, authorizes the Secretaries of Labor and Commerce to initiate petitions on behalf of workers or firms, and establishes the Commerce-Labor Adjustment Action Committee as a statutory body to coordinate operation of the program.

The subcommittee thoroughly discussed these and other issues during its drafting of the bill. The administration participated in the markup sessions and most of the proposals it submitted at that time were included in the bill. The subcommittee favorably reported H.R. 11711 by a rollcall vote of 10 to 3 to the full committee on March 22. On April 12 the Committee on Ways and Means ordered H.R. 11711 favorably reported by voice vote with two amendments.

The bill reflects the committee's concern that the adjustment assistance programs provide an effective response to the economic dislocations that increased imports can bring to certain segments of our society and a more viable alternative to increased import restrictions. This purpose is all the more important as the United States continues its historical leadership role in the current Multilateral Trade Negotiations of seeking the overall economic benefits from further liberalization of international trade. The bill strikes a balance of addressing some of the most serious criticisms of the program, while recognizing that the more basic problems of adjustment could not be solved within our budgetary constraints.

Mr. Chairman, I urge the Members of the House to join me in support of this important piece of legislation.

Mr. STEIGER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Ohio, the distinguished chairman of the Subcommittee on Trade, has done an excellent job in discussing this bill in some detail.

I must say, Mr. Chairman, that this bill has been slow in coming to the floor, and I regret that. I hope the bill can pass not only this body today but the other body in the not too distant future. It is a piece of legislation which is very badly needed, in my judgment, both from the standpoint of workers and management, and it makes some very necessary and very important changes in the Trade Adjustment Assistance Program. It represents, from the standpoint of the Subcommittee on Trade, nearly 2 years of very careful study and evaluations of how best to remedy the inadequacies of the present system and thereby to achieve more successfully the program's objectives.

The bill is extensive. It addresses a wide range of problems, and yet it adheres to rather stringent budgetary requirements.

Mr. Chairman, if the gentleman from California (Mr. JOHN L. BURTON) wishes me to yield, I will be glad to yield to him.

Mr. JOHN L. BURTON. Mr. Chairman, I am going to try to get time from the gentleman from Ohio (Mr. VANIK).

Mr. STEIGER. Would the gentleman rather wait for him?

Mr. JOHN L. BURTON. Mr. Chairman, I have been waiting for him for a long time. I thank the gentleman from Wisconsin (Mr. STEIGER).

Mr. STEIGER. The gentleman is quite welcome. Any time.

Let me, if I may, Mr. Chairman, simply outline for the Members a couple of things about which I have some questions.

There are two committee amendments that we will consider shortly about which I have very serious reservations. I urge my colleagues who are either here on the floor—all eight of us—or who are perhaps potentially watching in their comfortable offices to look at the minority views that accompany this bill in an effort to become more familiar with those two issues that we will face in a few minutes.

The first of the committee amendments is that one which expands coverage for certified workers over 60 in order to bridge them into Social Security. However compassionate the intentions, it is not appropriate to use this legislation as a vehicle for piecemeal implementation of social or other goals unrelated to trade. We should not forget that one of the very serious issues we faced in this Congress—mandatory retirement—was created partly as a result of tying various legislative proposals to the age at which a person may collect social security.

In addition, the equity of this particular committee amendment has not been adequately studied or discussed. There are many other situations where an individual between the ages of 60 and 62 would find himself or herself unemployed but would not have the protection afforded to trade-impacted workers by this amendment.

The second of the committee amendments is one to which I have equally strong objections, perhaps to a little further extent. It adds $16 million to the estimated cost of the bill. This amendment allows individuals to qualify for trade adjustment benefits on the basis of 40 weeks of work out of the preceding 2 years. This would be an alternative to the 26 weeks out of the preceding 52 weeks required under existing law. Not only is this amendment costly, but no forethought was given to the effect of such an amendment on the unemployment compensation program.

Although trade adjustment assistance is a program distinct from unemployment compensation, it operates in conjunction with it. The subcommittee has had no opportunity to consider a change such as the one added in committee, and nowhere has there been any consideration of the ripple effect it undoubtedly would cause in the unemployment compensation program.

Therefore, Mr. Chairman, I urge my colleagues to reject the two committee amendments, but to support the bill as originally approved by the subcommittee. The necessary improvement in the adjustment assistance programs, therefore, will be preserved, yet the cost of the bill will be kept near the level of expenditure approved in the second concurrent resolution on the budget.

A final word, Mr. Chairman, is that I should congratulate the gentleman from Minnesota (Mr. FRENZEL), a distinguished member of the Trade Subcommittee, and the subcommittee chairman, the gentleman from Ohio (Mr. VANIK), for their work on the bill.

The gentleman from Minnesota (Mr. FRENZEL) has given thoughtful and persistent attention to the problem of adjustment assistance—it says in my speech—since the middle of the 94th Congress, and it also says in my speech that the gentleman from Ohio (Mr. VANIK) has also labored tenaciously on this bill—can you imagine that, "tenaciously"?—against frustrating administration indifference for 18 months.

It ought to be said that the gentleman from Ohio has had to overcome the obstacle of the indifference of the administration and the downright frustrating attempts of the administration not to do anything to improve the adjustment assistance program. So all of us owe a debt of gratitude to those who have done such a superb job and I congratulate them both for their excellent work, and their contributions should be recognized.

I should also pay tribute to the gentleman from Indiana. I forgot to have his name on my list. The gentleman from Indiana (Mr. SHARP) has also been very instrumental in giving us his input and his attention, along with some of his friends on the outside, to this problem. And we have adopted the Sharp bill as a part of this bill.

Mr. WATKINS. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Mr. Chairman, I would like to thank the gentleman from Wisconsin in a serious vein, not in a light one. Does this bill in any way, can the gentleman tell me, actually right the wrongs of the displacement of a lot of cattle people in this country, when a large amount of beef imports, foreign beef imports have come into the country and the price has sunk so low that most of them have lost their herds and have gone bankrupt? Does this bill take anything into consideration for these people who have lost so much of their livelihood?

Mr. STEIGER. I would say to my friend, the gentleman from Oklahoma, that the answer is no, this bill does not do that. I think it is very clear that the Trade Subcommittee is mindful of the problems the American ranchers and producers have had. That is why we went yesterday to the Rules Committee to seek a rule on the Meat Import Act. I would, however, draw the gentleman's attention to chapter 3 of the Trade Act of 1974, particularly section 261. In this part of the Trade Act if cattle people can satisfy the definition of a "firm" under section 261 they can enjoy the benefits of trade adjustment assistance.

Besides, I must tell the gentleman, I think it would be fair to say that, given the limits of the import program, it would be exceedingly difficult for us to make a very good case that the gentleman's problem is one caused by imports as much as it is by a series of other factors over some of which we have no control.

Mr. WATKINS. If the gentleman will yield further, I know there is a great debate on this, but foreign beef imports did replace a lot of our cattle people through low prices, and so forth, and I just wanted to bring out that I hope the record would show that many of us do have a concern. We are thankful that prices have moved into the area today that maybe some of our cattle people are paid off in notes and are able to make a living now and get back on their feet. But it was a long 4-year period, and it was very hard to explain to the American cattle people and farmers who have given most of their lives putting something together and who had to give it all up, having seen thousands of tons of foreign beef hit the shores. I wanted to point this out, hoping that the committee would take this into consideration and help us solve it. Many of us are deeply concerned about the continued existence of these people.

Mr. STEIGER. I appreciate very much my colleague from Oklahoma raising that with us. Yes, we are aware of that problem. I am sure, as a matter of fact, that if we got the gentleman from Texas (Mr. POAGE) to make the same kind of speech he did on the Hawaiian claims bill, we could take it by acclamation if there was something we wanted to put in here.

Mr. PICKLE. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. I yield to my friend from Texas.

Mr. PICKLE. I thank the gentleman for yielding to me. While this particular bill does not address the problem the gentleman from Oklahoma has submitted to the gentleman from Wisconsin, I would point out to him that there is a bill pending, the Meat Import Act, that might be considered next week.

During the course of our committee hearings as amendment was offered by me which attempted to treat live cattle the same as we did frozen meats or frozen carcasses. That amendment may be submitted when this other bill is brought to the House. I mention this so that the gentleman knows that there is a possibility of some relief if the House would be willing to accept it.

Mr. STEIGER. I thank the gentleman.

Mr. CORCORAN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Illinois.

Mr. CORCORAN of Illinois. Mr. Chairman, my question concerns the fact that in the Trade Expansion Act of 1962 relative to the threatened dislocation as well as the actual decline in sales which is contained in title I and title II of the act according to the report, I can understand how we can make determination about actual decline in sales, but would the gentleman explain to me how we make a determination regarding threatened decline in sales?

Mr. STEIGER. What we are dealing with in this situation—and I am trying to find the language in the committee report which deals with that issue of threat, because I think the committee report does a very good job of outlining how we handle that problem—if the gentleman will look at page 7 of the committee report, he will find that what we are dealing with in the use of the

word "threat" is those who are eligible to apply for adjustment assistance not to receive benefits. Obviously, what we have is a situation as follows, and I quote:

In determining whether a "threat" or sales and/or production decline exists, the committee intends that the Secretary examine all economic factors relevant to the particular case, including but not limited to, indicators such as the overall financial status of the firm (including depletion of working capital), profit levels, the status of orders and inventory, and utilization of productive facilities. Alternatively, a "threat" might be based on an announced closing of the firm or plans to purchase a facility and transfer production overseas.

In addition to that, the gentleman will see that in section 103 we amend the act to provide that eligibility criteria for worker certification on the basis of a threat or an absolute decrease in the sales and/or production of a firm or subdivision. So, what we have is a situation in which a worker, in applying for assistance, or a firm—workers in this case—makes an application, but the application to be eligible to be approved by the Secretary, has to go beyond just somebody alleging that there is a threat. There are, in fact, objective criteria that must be met in order to receive certification.

Mr. CORCORAN of Illinois. I thank the gentleman.

Mr. VANIK. Mr. Chairman, I yield such time as he may consume to our distinguished colleague, the gentleman from Indiana, (Mr. SHARP).

Mr. SHARP. Mr. Chairman, I urge the House to pass the bill H.R. 11711, the bill to improve the operation of the trade adjustment assistance program established under the Trade Act of 1974.

I want to express my gratitude to the subcommittee chairman, the gentleman from Ohio (Mr. VANIK), the gentleman from Minnesota (Mr. FRENZEL), the gentleman from Wisconsin (Mr. STEIGER), the gentleman from Virginia (Mr. FISHER), and the other members of the subcommittee for their willingness to attend to a serious injustice that developed out of the operation of the 1974 act.

Mr. Chairman, the bill makes several changes in the program, and they have been explained and discussed by others. My main interest in the bill, and my original reason for seeking a provision which is incorporated in the bill, is a simple case of injustice involving thousands of workers.

The Trade Act of 1974 provided for various forms of adjustment assistance to workers who lost their jobs as a result of increased import competition. The reason for this assistance was to ensure that relatively few workers did not, through the loss of their jobs, pay the entire cost of a liberalized import policy that was supposed to bring greater benefits to the economy as a whole.

In order to ensure that the assistance was provided promptly, the 1974 act provided that workers must petition the Department of Labor for certification of eligibility within one year of their layoff. This 1 year limit is what has caused the inequity affecting thousands of workers in Indiana and elsewhere.

When the trade adjustment assistance program was new, many workers who would have been eligible to particiate missed the 1 year deadline for filing a petition because they lacked information about the program and the petition requirement.

As I testified in the Trade Subcommittee, there are three cases in my own district which illustrate the problem.

At the Warner Gear plant in Muncie, workers who lost their jobs in late 1974 and early 1975 due to increased auto imports actually asked the local employment office about applying for adjustment assistance. Because the officials who should have been able to inform them about the petition requirement were unaware of it, they missed the 1-year deadline.

Another factor made these workers acutely aware of the inequity. A petition was finally filed in February 1976, and some workers laid off after February 1975 were certified and received benefits. This meant that people who had worked side by side at the same jobs and who were laid off for the same reason were treated differently under the law.

Another example of the inequity of the implementation of the 1974 Trade Act occurred at the Jay Garment factory in Portland, Ind. The petition for these workers was approved by the Department of Labor, but the earliest eligibility date under the 1-year limit fell on a Sunday, March 9, 1975. Most of the workers had been laid off on the previous Friday, March 7, and there was insufficient flexibility in the law to allow these workers to receive their benefits.

A third example in my district involved workers in the Allegheny-Ludlum specialty steel plant in New Castle, Ind. A relatively small number of workers here were laid off, but the specialty steel industry was massively affected by imports. Confusion about whether a petition could or should be filed when the International Trade Commission had already undertaken an investigation of an industry may have led to missing the 1-year petition deadline in this case.

With the operation of the adjustment assistance program for a few years, the problem of people not knowing about it has become less important. The problem remains, however, of how to deal fairly with the individuals who were denied benefits due to the lack of information about the program in its early months.

The substance of a bill I introduced with 38 cosponsors has been incorporated, with amendments by the subcommittee, in H.R. 11711. It provides eligibility for workers who were unintentionally excluded from the program prior to November 1, 1977. It will correct the inequity which occurred by allowing the affected workers to receive their benefits retroactively.

Some of these workers are still unemployed, and their adjustment assistance benefits, however late, are still urgently needed. Others have been called back to work or have found other jobs, but they have not recovered financially from the harm they suffered due to their import-related layoffs. Receipt of benefits now will help them to pay off some of the debts they incurred during their period of unemployment.

Equally important, correction of the unfair application of the Trade Adjustment Assistance program will help alleviate a sense of injustice felt by these workers. They have paid the price for economic benefits shared by all of us. They have seen others receive benefits for similar suffering while they were excluded. And they have become convinced that international trade is something that the United States should avoid.

I believe fair trade with adequate consideration for workers and firms who bear the burden is in the best interest of our country. Equal treatment under the law should be an obvious goal of national policy. Passage of H.R. 11711 will help achieve both of these goals, and I urge my colleagues to support it.

Mr. VANIK. Mr. Chairman, I yield such time as he may consume to our distinguished colleague, the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Chairman, I rise in support of H.R. 11711, a bill to improve the operation of the adjustment assistance program for workers and firms under the Trade Act of 1974.

I would like to commend the Committee on Ways and Means for its recognition of the need to revise certain provisions of the Trade Act and for its fine efforts to address these shortcomings in a direct and responsible manner as evidenced in the language of this bill. The committee has drafted a sound and much-needed piece of legislation which deserves prompt enactment into law.

I first became aware of the need to improve delivery of adjustment assistance under the Trade Act through the events subsequent to the closing of a large electronics plant in my district. In late September of 1977, the Zenith Corp. announced a nationwide production cutback which was precipitated by the importation of electronic products from Japan at less than fair market value. The decision resulted in the displacement of 5,600 Zenith employees across the country. In Sioux City, Iowa, 800 jobs were eliminated, 500 of which were held by individuals who were the sole supporters of their families.

Unfortunately, announcement of the production curtailment and widespread layoffs was to be only the first in a series of disillusioning setbacks for these distressed workers. Having lost their jobs to unfair foreign competition, aided in part by the failure of past administrations to effectively enforce existing fair trade laws, the Zenith employees turned to the Federal Government for assistance under the Trade Act of 1974. However, these workers soon found their hopes for timely and direct aid dashed by the poor dissemination of information, lack of coordination among program officials, and general problems with implementation which became characteristic of the existing trade adjustment program.

Due in part to the complexity of the program, the suddenness of the layoff announcement, and the number of workers affected, information pertaining to the scope of benefits and procedural

steps provided under the Trade Act was not found to be readily available. To remedy this deficiency, the Director of the Trade Adjustment Assistance Office within the Department of Labor came to Sioux City, at my urging, to personally brief the former Zenith employees on the details of the program. Though then aware of available assistance, many workers encountered additional problems in obtaining a correct computation of their individual benefits and specific information relating to their own opportunities for retaining or relocation. This situation was further aggravated by an acute lack of coordination between Federal, State, and local officials in implementing the program and designating local administrating authorities.

In view of the shortcomings of the trade adjustment assistance program which I have observed firsthand, it is with a great deal of enthusiasm that I support the legislation presented before the House today. Notable among the changes in this bill are provisions streamlining eligibility certification procedures, making more equitable the formula used in determining individual worker eligibility, and extending to firms producing key components or providing essential services for trade-impacted firms coverage under the Trade Act. Also, I am pleased to note that the legislation calls for improved dissemination of program information to workers and firms adversely impacted by foreign competition. It is my hope that this improved information flow will further serve to foster improved program coordination among Federal and local officials.

Mr. Chairman, I think that enactment of this legislation will go a long way toward providing much needed assistance to workers displaced by foreign competition, and I urge its approval here today. However, I feel that it is important to recognize that this legislation provides only cosmetic relief for a problem whose root cause in many cases lies in the ineffective enforcement of existing fair trade laws. Many American firms and their employees have been adversely and unfairly affected by the lack of proper enforcement of U.S. fair trade laws, and I urge that the Congress also address this more general problem in a timely and responsible manner.

Mr. STEIGER. Mr. Chairman, I yield 5 minutes to the distinguished, articulate, able and effective gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, for the record I would like to state I am not now and never have been the speech writer for the gentleman from Wisconsin.

Mr. Chairman, I support the bill H.R. 11711. I think it is a necessary bill which the House should pass promptly.

I would state further that the genesis of the bill is the responsibility of our colleague, the gentleman from Indiana (Mr. SHARP), who brought to our attention the fact that some workers, due to being unaware of the provisions of the Trade Adjustment Assistance Act, were not getting the benefits which Congress intended that they should get. His original bill became section 101 in the bill now before us, and we are grateful to him for having brought this matter to our attention in the first instance.

In addition, the bill does contain other good things which were described by our distinguished colleague, the subcommittee chairman, the gentleman from Ohio (Mr. VANIK) and by the distinguished ranking minority Member, the gentleman from Wisconsin (Mr. STEIGER). It does improve the benefits to individuals. It also improves the adjustment assistance that goes to firms.

In response to the query of the gentleman from Oklahoma, firms are defined in the act as individuals and partnerships as well as corporations, so the advantages in the sections numbered in the 200's will be available to those cattle producers who are not incorporated.

I would also second some of the comments that have already been made, Mr. Chairman. In the first instance we received no help at all from the administration on this matter. We waited a year and a half, asking frequently for recommendations from the administration. None were forthcoming, and so the committee had to move on its own. As a result we probably have a better bill than we would have had had we waited for recommendations.

There is another important point. Section 106 and section 107, which were not in the original bill and will be before this committee today as committee amendments are amendments that should be defeated by this committee. One of them changes the qualification for adjustment assistance from 26 weeks of work in the last 52 weeks to 40 weeks of work in the last 104 weeks, which in the opinion of the administration and in my opinion does not demonstrate enough attachment to the labor market to qualify for that high level of benefits.

The second additional section, section 107, attempts to do a job which is socially desirable, that is to take care of older workers until such time as they can receive social security. However it does that at the expense of the unemployment compensation system and is a needless expense on that system. If we choose to achieve this social goal we should do it in some other way rather than loading down this particular system with that cost. The total cost of those two systems is $17 million per year, which takes the bill beyond the original budget request of this original subcommittee.

I hope those two amendments will be defeated, but, whether they are or not, it is essential that this bill be passed expeditiously by this House.

Mr. STEIGER. Mr. Chairman, I yield 3 minutes to the gentleman from New Hampshire (Mr. CLEVELAND).

Mr. CLEVELAND. Mr. Chairman, when we come to the amending process on this bill I am going to offer an amendment and I thought I would take advantage of this brief period of time to explain what my amendment does.

Although there are very few Members here on the floor, I hope at least some of the TV sets are on in the offices. In addition, I have written several "Dear Colleague" letters on this issue. One of them was cosigned by my friend and colleague, the gentleman from Alabama, WALTERS FLOWERS. I also had a great deal of help on this amendment from my colleague from New Hampshire (Mr. D'AMOURS).

Basically my amendment is sort of a fair play amendment and a common sense amendment. It does not add a nickel to the costs of this bill. Those who speak against the amendment will say it is a terribly costly amendment. What they mean is it will cost our Federal Government more. That is because what my amendment will do is simply revert to the situation that we had from 1962 to 1974. During that period of time it was the law that if the trade policies of the United States could be shown to definitely put people out of work then the United States Government would pay for the compensations under the Trade Expansion Act of 1962.

And that is fair. It was the Federal policy that put the people out of work and if the Federal Government wants to pursue that policy, then they should pay for it.

Then in 1974 the Senate slipped in an amendment which said, well, the States will have to pay for some of it and the States are paying for some of it. It is not fair for the States to have to pay part of this Federal program. So my amendment will simply revert to the 1962–74 situation when the Federal Government would pay all of the compensation benefits, which were caused by the Federal trade policies.

As I say, it is sort of a commonsense-fairplay type of amendment.

I think a lot of people are aware of the fact that there is a good deal of unrest out there in the States. Proposition 13 has been talked to death, but that proposition 13 told us that a lot of the people out there are not happy about the way the State and Federal Government and the Congress are conducting the business of our country.

I would suggest to you that here is a classic example.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEIGER. Mr. Chairman, I yield 2 additional minutes to the gentleman from New Hampshire (Mr. CLEVELAND).

Mr. CLEVELAND. If the Congress wants to pass this bill—and I do not even argue whether it is a good bill or a bad bill, I never get to that point. I will take the word of the gentleman from Minnesota (Mr. FRENZEL) that the bill is needed and should be passed. As I say, it may be a good bill or it may not be a good bill, but I do not even get to that point. The fact of the matter is that here we are, sitting in the U.S. Capitol and we are passing legislation. It may be good legislation, perhaps, or maybe some people do not like it, but the point is we are passing legislation that adds a crushing

burden on some of the unemployment compensation funds of the States. Many of those funds, as you probably already know, or should know, if you do not, have already had trouble and States have had to come to the Federal Government to borrow money. It does not make sense for us to pass legislation and then tell the States that they have to pick up part of the tab.

I read in the report on the recent Governors' Conference where one of the Governors got up and said, "For goodness sake, Washington, will you stop passing all those good bills that, in the long run, we have to pay so much of."

In this particular case the States do not have to pay all of it, but they have to pay a substantial part of it.

So, Mr. Chairman, I hope that my amendment will receive serious consideration and, indeed, I hope it will be adopted.

Mr. VANIK. Mr. Chairman, I yield such time as he may consume to the gentleman from Indiana (Mr. BENJAMIN).

Mr. BENJAMIN. Mr. Chairman, as a cosponsor of H.R. 4460 with my colleague and friend, Mr. SHARP, I am happy to rise in support of H.R. 11711, a bill to improve the operation of the adjustment assistance program for workers under the Trade Act of 1974.

As originated in 1962, the trade adjustment assistance program provided, among other things, financial and technical assistance to workers who were adversely affected by import competition. Unfortunately, under the 1962 program, the only help available to firms and employees injured by import competition was "escape clause" relief and the experience proved unsatisfactory.

This and other inadequacies of the program led to changes incorporated in the Trade Act of 1974. Under Public Law 93-618, the criteria under which workers and firms could be certified was liberalized, the program benefits were enhanced and a community program was initiated. Other changes were made with the intention of facilitating qualification for eligible petitioners for benefits under the program.

Many have been helped, many more were not, particularly in the steel industry, a problem of substantial concern to me.

In the words of Jack Parton, president of United Steel Workers' Local 1014, the number of those affected is "substantial." Norman Purdue, president of United Steelworkers Local 1011, on a number of occasions, has confirmed Mr. Parton's statement and expressed the deep concerns of his union's membership regarding the inadequacies of the present law. It is regrettable that many of those not aided were employees who were unaware of the 1-year time limit under the program for filing petitions.

With this problem in mind, I joined with Representative SHARP and others to sponsor H.R. 4460 which would have extended the "impact date" from 1 to 2 years prior to date of the filing of the petition to insure that the legislation assists all those intended.

Following hearings on H.R. 11711, this proposal was modified from 2 years to 18 months and incorporated in section 101 (b) of H.R. 11711.

In spite of the improvements incorporated in the bill, and that proposed by the Oberstar amendment to restore the time expansion proposed by H.R. 4460 which I shall support, at least one major difficulty has not been resolved.

Section 231 of the act provides that payment of a trade readjustment allowance shall be provided an adversely affected worker if such worker's last total or partial separation before his application was on or after the impact date.

As pointed out to me by President Jack Parton of United Steelworkers 1014 in Gary, Ind., neither the present Trade Adjustment Act or these amendments properly compensate workers who are laid off prior to the impact date. He suggests, and I concur, that these workers should qualify for trade adjustment assistance from the impact date to their reassignment, although not necessarily from the time of layoff to the impact date.

My office contacted the Trade Subcommittee of the Ways and Means Committee and advised them of President Parton's proposal. We were advised that although this problem was analyzed, its resolution was not included in H.R. 11711 because trade adjustment assistance was not intended to be merely unemployment compensation, as this proposal would purportedly make it.

The reasoning behind the use of an impact date is to determine at what point imports caused serious economic and employment problems in our domestic industries. It was decided that a worker laid off subsequent to the impact date could qualify for assistance and those laid off prior thereto would not qualify because their job was not lost as a result of foreign trade competition. I do not accept this contention. Moreover, their reemployment may certainly and unfortunately, be dependent upon the situation of our foreign trade.

Unfortunately, the subcommittee was not receptive to my proposal to open up trade adjustment assistance to workers who were laid off prior to the impact date.

Since H.R. 11711 incorporates a large number of improvements which have been needed and are vital to our workers, I would not do anything to jeopardize its success. However, my position is and will continue to be that these workers, described by President Parton, should be qualified. I hope that the other body will consider President Parton's proposal and that a final version will include adequate provisions for these previously laid-off workers.

I enjoin my colleagues to support H.R. 11711. I laud Chairman VANIK for the tremendous task that he has undertaken and in which he has suceeded, except for needed improvement to section 231 of the act.

Mr. VANIK. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman for yielding.

I want to commend our chairman of the Subcommittee on Trade (Mr. VANIK) for bringing this legislation to the floor to correct the very obvious inequity in the existing very good, very well-intentioned Trade Adjustment Act. I feel that the legislation has responded to a definite need in the country among those workers and industries that have been impacted by our present policy to expand world trade and to continue the policy of a free world-trade market.

In this process, however, of expanding trade and opening markets, workers have been injured by being laid off, family income lost, wages gone, never to be recovered. Therefore, we owe it to those people to provide some benefit to help them through that period of difficulty.

Mr. Chairman, these amendments will make that legislation more equitable. They affect very extensively the people in my own district, both in iron ore mining and those in the garment industry who have been adversely affected by our trade policies.

Mr. Chairman, the United States is committed to a reduction of the barriers to free and unrestricted trade among nations. This policy, however, entails a responsibility on the part of our Government to provide relief to the millions of individual workers who have been adversely affected by that policy and the competition of foreign goods in the American market.

In passing the Trade Act of 1974, Congress recognized that responsibility. The legislation before us today, H.R. 11711, represents our continued commitment to improving that act and meeting our commitment to the American workers who bear the heaviest burden of trade policies.

The chairman of the subcommittee (Mr. VANIK) and the members of the committee are most sensitive to the needs of these Americans.

I support the committee amendment which will enable a worker to qualify for trade adjustment assistance on the basis of having worked 40 weeks out of the previous 104 weeks in one or more affected industries.

This is a sound provision which maintains an appropriate attachment to the labor force as the basis for eligibility.

It does, however, recognize that many workers in impacted industries are unable to meet the present requirement because they were out sick, on paid vacation, or, as quite commonly happens, on temporary lay-off in the year prior to the lay-off actually certified as trade related.

The committee provision is, however, only prospective. It will not provide relief to those workers laid off as the result of the surge of imports in the past 2 years.

Probably every Member of this House has constituents who, if this committee provision had been in effect during the past 2 years, would be eligible for trade adjustment assistance. When this bill is considered for amendment under the 5-minute rule, I shall offer an amendment which will correct some unfortunate inequities, not intended by the original Trade Adjustment Act.

My amendment would enable any worker laid off in the 2 years prior to enactment to use the alternative 40/104 week provision to apply for benefits.

The Department of Labor estimates that an additional 20,000 workers would be able to apply for benefits under this amendment. The one-time cost would be approximately $32 million: $29 million in benefits and $3 million in administrative costs.

The 2-year retroactivity figure represents a reasonable compromise between excluding all workers already laid off from the benefits of the provision and extending retroactivity back to such an extent that the costs of administration would be prohibitive.

Most importantly, it recognizes that applications for trade adjustment assistance have risen dramatically in the past 2 years. In 1976, the number of applications for TRA received by the Department of Labor was 11,900. In 1976, that monthly figure rose to 12,750. In the first 6 months of this year, the number has rocketed to 20,375.

My amendment would reach the workers who are suffering the effects of the surge in imports in the past 2 years. In the steel industry alone, foreign imports as a share of domestic consumption has risen from 13.5 percent in 1975 to 18.4 percent for the first 6 months of this year.

This is a fair amendment which can be administered by the Department of Labor.

I urge its adoption.

Mr. STEIGER. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. REGULA).

Mr. REGULA. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise to support this legislation that will move toward achieving fairness under the readjustment provisions of the Trade Act.

I sponsored legislation which would have extended the eligibility for TRA benefits for 1 year. While the bill which was reported out of the House Ways and Means Committee provides for a 6-month extension, it has my support and is an effort toward remedying some of the unfairness of the present program.

I represent an area of the country which has been adversely affected by imported steel. As a member of the Executive Board of the Congressional Steel Caucus, I have become increasingly aware of the unfair conditions under which our domestic steel industry must compete. I believe progress is being made to insure fair competition within this industry and to save domestic jobs in the steel industry.

However, we must not forget those who through no fault of their own have suffered economic setbacks because of unfair competition. I particularly have received many complaints from older workers and these complaints indicate a trend of older workers being the first to be laid off and being excluded from eligibility for TRA benefits. Many of these older workers have strong ties to the community and extensive family responsibilities. Therefore, those who are in most need of assistance have in many cases been denied help. By extending the eligibility period we will lessen the economic impact on many communities, keeping many workers off of welfare and providing those affected with some help in preparing for new careers.

Mr. STEIGER. Mr. Chairman, I have one more request for time, I will say to my colleague, the gentleman from Ohio (Mr. VANIK). I yield 3 minutes to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Chairman, I take this time just to alert the membership that I intend to offer an amendment to title II of the bill which will take care of what I believe is a serious inequity in the present bill. The present bill extends benefits—and I think rightfully so—for people who are under the act and who are in training programs that last a couple of years, which most training programs do, and this will allow benefits to be payable for up to 104 weeks. The problem is, though, that it only applies to those people who get into the program after 60 days after the effective date of the act. It does not give any consideration to those people who are involved in the programs at the time of the effective date of the act. What this means is that those people who are presently involved in a 2-year training program, but whose benefits are going to run out after 18 months, would not get the benefits of coverage under this bill. Yet somebody, just by virtue of the circumstances of the business, coming into the program 60 days after the effective date would get the full 2 years of benefits. I do not think that is equitable. I think we ought to take care of those people already in the pipeline, those people already in the program, those people who are already suffering. These people should be given fair advantage of this bill in the extension of their benefits. I am hopeful that the Members will support my amendment. I think it is an equitable and fair one.

Mr. STEIGER. Mr. Chairman, would the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Wisconsin.

Mr. STEIGER. I thank the gentleman for yielding.

Would the gentleman make sure to give us a copy of that amendment, and make sure that the chairman also has one?

Mr. JEFFORDS. Yes; I most assuredly will do that. The staff has been provided copies.

Mr. STEIGER. We do not have copies. Therefore, it is a little hard to judge it. Second, I want to make sure that before we get to the amendment stage, has the gentleman got an estimate from the Department of Labor for the cost of the Sarasin-Jeffords amendment?

Mr. JEFFORDS. Yes. First I want to point out I am offering this myself and with the gentleman from Connecticut, Mr. SARASIN, who is deeply involved in these problems. It is my understanding the uppermost cost, the maximum cost, would be as high as approximately $14 million. However, I feel the actual cost would be much less.

Mr. STEIGER. I thank the gentleman. Please make sure we get a copy.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEIGER. I yield 1 additional minute to the gentleman from Vermont.

Mr. JEFFORDS. I yield to the gentleman from Minnesota.

Mr. OBERSTAR. I thank the gentleman for yielding.

The gentleman's amendment sounds very much like an amendment I had developed prior to today's session, which I will offer later on, to make the benefits of this legislation retroactive 2 years to cover those very same inequities the gentleman has already described. We have a very similar situation in my own congressional district. It occurs elsewhere in the United States. Some 10,000 workers would be affected by the retroactivity provision. I think it is very equitable, and I look for the gentleman's support.

Mr. JEFFORDS. I thank the gentleman. I will be happy to consider his, if he will consider mine. I thank the gentleman.

● Mr. DENT. Mr. Chairman, I rise in support of H.R. 11711, the trade adjustment assistance programs improvements. Until the Trade Act of 1974 (and its liberalized trade adjustment assistance provisions) was passed, the record of assistance to workers who had lost their jobs becaues of imports was totally unacceptable. The process required by the Federal Government was arduous and full of obstacles clearly designed to minimize any real help to a displaced worker.

The Trade Act of 1974 changed the adjustment assistance procedure by easing the very stringent criteria and taking into account the real hardships visited upon workers who have lost their jobs because of circumstances beyond their control. Under the new procedure (beginning on April 3, 1975, through July 31, 1978) 4,019 petitions have been decided: 1,342 have been certified, affecting 365,478 workers; 1,700 have been denied, effecting 383,123 workers; and 772 are still pending. As one can see. even under liberalized conditions over half the workers who petition for assistance do not get it. Moreover, that is only part of the picture, since only the worker who was directly involved in the manufacture of the imported goods can qualify for assistance. Any other worker indirectly affected by a plant shutdown or drop in business activity because of imports

could not qualify for any assistance. This is hardly a satisfactory answer to unemployed workers and their families, and hopefully this bill will go a long way toward improving these problem areas.

However, I do want once again to call the House's attention to the fact that the provisions of the Trade Act of 1974 shift the financial responsibility for unemployment caused by international trade agreements from the Federal Treasury, where it legitimately belongs, to State unemployment compensation funds, resulting in a hidden cost to the States that will ultimately total hundreds of millions of dollars.

Let me explain. Under the Trade Act of 1962, States that paid workers determined to be unemployed as a consequence of increased imports were reimbursed by the Federal Government for the unemployment compensation benefits paid to these workers. Reimbursement was, and is, an appropriate approach inasmuch as these workers were unemployed as a consequence of national policy decisions in an international forum, and for no other reason. Such dislocation and unemployment was inherently recognized and expected in the Trade Act of 1962 and in other subsequent trade arrangements, such as the Canadian-American Automotive Agreement.

It surfaced as an even greater issue in deliberations on the Trade Act of 1974, primarily because of the growing number of industries affected by imports, and because of complaints that TRA qualifying guidelines were far too stingent. In dealing with this aspect of the law, the guidelines were liberalized, but the burden for supporting the cost of these TRA benefits was shifted to the States, who have absolutely nothing to say about our trade policy. I pursued this matter in my own State of Pennsylvania and found the following, staggering information:

Under the Trade Act of 1962, 1,040 Pennsylvania workers received a total of $1,066,600 of TRA benefits from the State of Pennsylvania, reimbursed totally by the Federal Treasury, from 1962 through April 3, 1975.

Since the passage of the Trade Act of 1974 through June 31, 1978, 55,394 Pennsylvania workers have qualified for TRA benefits and have received $143,014,215. Of that, $59,552,000 came from the Federal Treasury; the remainder, $83,462,215 came out of Pennsylvania's unemployment compensation fund. This is the case in virtually every State in the country.

This raises two very important issues:

First. The cost this Nation bears as a consequence of its trade policies is vastly understated, and, in fact, hidden. In addition to the revenues lost to communities and States as a consequence of unemployment due to imports, we also pay out enormous amounts of money for these trade policies at both State and Federal levels. Now, if you call the TRA office of the Department of Labor and ask them what the cost of the TRA program is, they will report that under the new act from April 1975 through June 30, 1978, 365,478 workers received benefits totaling $486,785 million. Of that amount, Pennsylvania received $59,552,000. They are right. That is the Federal cost. It is staggering in itself. What they do not tell you is that the real cost to the country is approximately three times that because the States pay these same workers unemployment compensation. In the case of Pennsylvania, the State paid unemployment compensation benefits of $83,462,215 for which it should not be responsible, and for which it will not be reimbursed. And that is only through June 30, 1978. Petitions to the Department of Labor are increasing on a daily basis, and believe me, we have yet to see what unrestricted imports cost this Nation. It is estimated that TRA benefits are increasing by approximately $10 million a month. I suggest that the total payments of TRA, by both State and Federal Treasury will easily approach hundreds of millions of dollars on a yearly basis.

Second. The upshot of this shifting of costs is that it lends itself to easy misrepresentation of a program to which many look as part and parcel of the rationale to continue our present trade policies. It is easy to say that the damage of imports is minimal because we have only paid out of the Federal Treasury a small amount of dollars, ignoring that the major burden of the cost is State borne, and also ignoring that more than half the claims for TRA are denied. Moreover, some of the highest unemployment rates are evidenced in those areas where the most workers have applied for and received TRA benefits.

Thus far the Department of Labor, as of July 31, 1978, has certified 1,342 petitions covering a total of 365,478 workers. Over one-half of these workers are in the States of Michigan, Missouri, New York, Pennsylvania, Wisconsin, Ohio, and California.

I am not for a moment suggesting the dissolution of the TRA program. For many workers, it represents the difference between bread on the table and nothing. I am suggesting that the TRA program was never meant to be a supplemental welfare system, or an excuse for categorically relinquishing more of this country's production jobs in the name of free trade. Moreover, it is grossly inequitable at a time when States are experiencing serious financial difficulties, to expect States to pay for national trade decisions. If the high cost of our trade policy is able to be seen for what it is, then perhaps, those who make the trade decisions will pay closer attention to what their decisions are costing this country, and those of us who are committed to fiscal responsibility will realize the direct impact that trade policies have on unemployment and its concurrent problems.●

● Mr. LAFALCE. Mr. Chairman, I rise in support of H.R. 11711, which provides adjustment assistance for workers and firms adversely affected by imported goods from abroad.

H.R. 11711 will help correct many of the inequities and deficiencies in the trade adjust assistance programs, as originally enacted in the Trade Act. A substantial number of firms and workers who were adversely affected by a flood of inexpensive imports were inadvertently not covered by the original provisions of the Trade Act of 1974. The Committee on Ways and Means and its Subcommittee on Trade are to be commended for their lengthy and careful examination of this situation and for H.R. 11711, which is a response to those unfortunate omissions.

Section 101 of title I is particularly commendable, because it retroactively extends the one-year rule to 18 months for eligibility petitions for assistance filed before November 1, 1977. This would allow the Secretary of Labor to promptly and expeditiously reconsider petitions for assistance which had been previously denied because of the mandated and somewhat arbitrary deadline date of impact or because of the failure of the petitioning group of workers to meet the 1-year rule for the filing date of the petition under section 223(b)(1). Many qualified workers missed these deadline dates in the early months of the program, usually because they were unaware of the existence of the program. In almost every State of the Union, including thousands in New York State, there are workers who will finally get that assistance which was so long, and inequitably, denied them.

Section 103 of title I addresses another drawback in the original Trade Act of 1974. That act did not cover those workers who were secondarily impacted or affected by imports, which has left many workers without assistance for which they should have been qualified. Unlike section 101, this is an ongoing problem which must be dealt with as soon as possible. These workers are employed by firms which supply articles and services to and are economically dependent upon one or more "import-impacted firms." In reality, the sole difference between their status and that of employees for primarily impacted companies resides in the name of their employer, and not in the nature of their economic circumstances. Since H.R. 11711 imposes reasonable and strict criteria for measuring secondary impact, it will extend eligbility for assistance benefits to adversely affected firms and workers, without endangering the integrity and fairness of the whole adjustment assistance program.

There are many other worthwhile features in this bill, including provisions for enhanced opportunities for innovative and experimental retraining programs and provisions to significantly accelerate the certification process and benefit delivery for qualified firms and employees. I urge my colleagues to support H.R. 11711 which will help U.S. industry compete in the highly competitive climate of international trade and will succor those workers who were innocent casualties of that fiercely competitive world.●

● Mr. CORRADA. Mr. Chairman, I rise in support of H.R. 11711, a bill to improve the operation of the adjustment

assistance programs for workers and firms under the Trade Act of 1974.

H.R. 11711 proposes to liberalize the criteria for eligibility certification and the adjustment assistance benefits to workers and firms. Similarly, it would accelerate the processing of petitions for certification.

One of the most often heard complaints about the current trade adjustment assistance (TAA) programs is the lack of awareness by workers and firms of the existence and nature of the programs, and as a result, many otherwise eligible firms and workers have not filed petitions for certification. Section 225 of H.R. 11711 directs the Secretary of Labor to provide full information to workers about such things as benefit allowances, training and other employment services available under the TAA programs. This section also helps to emphasize the purpose of the assistance; that is, to aid the worker in readjusting to import competition, rather than simply providing him/her with unemployment compensation.

Another way in which the bill seeks to stress the true purpose of the TAA programs is demonstrated in section 108 of the bill which establishes a program of experimental or demonstration projects to improve techniques and demonstrate the effectiveness of specialized methods to meet the employment and training problems of workers displaced by foreign competition.

I am particularly pleased to see that section 101 of the bill provides for retroactive eligibility for TAA for workers who were previously denied benefits because they were either unaware of the program or because of the 1-year limitation for filing a petition. This provision acknowledges the early failings of the programs in becoming visible to eligible workers and firms.

I am in full agreement with section 103 and section 201 of H.R. 11711 insofar as they amend eligibility criteria to permit worker and firm certification on the basis of a "threat" of an absolute decrease in the sales and/or production of a firm or subdivision thereof. These amendments will enable certification of workers and firms in advance of actual reduction in firm output when it is clear that such reduction and resulting unemployment due to increased imports are imminent. In light of the fact that administrative delays in payment of benefits to workers occur in a majority of all cases under the current program, and in some cases workers are already reemployed by the time they begin to receive the benefits section 103 will help streamline the certification process and the payments of benefits.

H.R. 11711 proposes improvement in the TAA program for firms, primarily concerning requirements for the provision of precertification technical assistance, by raising the ceiling on the Government share of the cost of such technical assistance from 75 percent to 90 percent and raising the present ceiling on direct loans and guaranteed loans. It is important to note that the bill also authorizes interest rate subsidies to reduce interest paid by borrowers on guaranteed loans. This will help provide incentives where necessary for private job creating investments in areas of high unemployment in the form of low-interest loans.

Adjustment assistance is extremely important to my home district of Puerto Rico where the unemployment rate is around 18 percent and whose manufacturing sector is dominated by import sensitive industries such as textiles and related products, chemicals, petrochemicals, machinery, electrical equipment, and scientific instruments. These industries employed 85,638 workers and contributed $67,608,926 to the local treasury during 1977.

The important sensitivity of these industries in Puerto Rico is best illustrated by the case of textiles. In 1976 there were 453 plants in the apparel and textiles industry employing 41,331 persons. This is almost 100 firms and 7,000 jobs less than the numbers for 1973. Rising local wages and foreign competition in the U.S. market from low wage foreign areas caused 144 establishments to close down between 1968 and August 1977.

In spite of the adverse effects of foreign competition on the manufacturing sector of the Puerto Rican economy, only 19 worker adjustment assistance petitions were certified by the Department of Labor since the inception of the program under the Trade Act of 1974. Of the 19 petitions, 7 were granted and 2,165 workers have begun to receive benefits. On the other hand two firms on the island were certified by EDA and only one of these petitions, covering 682 workers, was granted.

H.R. 11711 proposes to improve the TAA programs in areas which have been in large part responsible for the programs' ineffectiveness.

I am pleased to support H.R. 11711 as a necessary measure to counteract the reality of import competition to those firms adversely affected as a result of it and workers who have become unemployed thereby, and I strongly urge my colleagues to vote for its passage.●

● Mr. AMMERMAN. Mr. Chairman, hospitalization as a result of a recent automobile accident precludes my recording my vote in favor of H.R. 11711, the Adjustment Assistance for Workers and Firms Act, a bill which will improve the operation and effectiveness of the trade adjustment assistance program. I do, however, wish to register my strong support for this legislation. Reforms such as these are long overdue.

Trade adjustment assistance should accomplish two major goals: It should provide temporary compensation to workers and firms adversely affected by imports; and it should provide job training programs and positive incentives for displaced workers who need to find new jobs.

A related ingredient in assisting firms and workers in all industries, and especially in those affected by import competition, is the provision of real incentives for the modernization of plant facilities and equipment. We have begun to address this need through investment and employment tax credits, as well as other important measures. The tax bill which was adopted by the House just last week will increase from the current 50 percent to 90 percent the investment tax credit that can be used to reduce tax liability.

The 23d Congressional District has had to bear more than its fair share of jobs lost due to imports. I have consistently fought to protect the jobs of workers in the industries within my district, including those producing textiles, steel and specialty steel, lightbulbs, and other products. Many cities and towns, including Bradford, St. Marys, Kane, Emporium, Houtzdale, Lock Haven, Johnsonburg, Oil City, and Franklin have suffered serious losses in employment directly because of imports. In some instances, workers and firms have qualified for trade adjustment assistance. But many have not. It is my hope that this bill will enable more workers to receive benefits and job search assistance than previously was the case.

The bill now before the House seeks to improve the operation of the adjustment assistance program by expanding many of the eligibility requirements. It provides retroactive eligibility for workers in certified units who were denied benefits between October 1974 and November 1977. It extends benefits to workers in firms which provide services or articles to import-impacted firms if such services or articles are essential to the production of the import-impacted good. The latter is a meaningful reform of the adjustment assistance program for all workers who produce component parts of import-impacted articles or services.

This bill expands the responsibility of the Department of Labor to provide full information to workers about allowances, training and employment services. It also broadens job search allowances by permitting partially separated workers as well as totally separated workers to apply, expands the date within which a worker may apply for these allowances, and increases the amount of the allowance.

In conclusion, this bill provides significant reforms within the trade adjustment assistance program which will expand the coverage and eligibility of many workers in industries adversely affected by imports. It is my deepest wish that many workers in Pennsylvania's 23d District will benefit from this legislation. They have paid the price for the expansionary and relatively free international trade policy of the United States.●

● Mr. MURPHY of Illinois. Mr. Chairman, I rise in support of this legislation. I believe this bill provides an effective response to economic dislocations of workers and firms due to increased imports. However, we would have no need for this bill if the Treasury Department and this administration stopped foot-dragging and started enforcing the antidumping laws that are on the books right now.

In 1971, the Treasury Department made a finding that Japanese TV receivers were being dumped in the United States at less than fair market value. Again, on March 9 of this year, the International Trade Commission ruled that Japanese imports were seriously damaging the domestic industry, costing thousands of American jobs. On March 31,

Treasury announced that the Customs Service had assessed dumping duties of $46 million on entries of television sets just through 1973. However, Treasury also announced that although the total amount of dumping duties reached approximately $400 million for that period, they were only acting to resolve unliquidated entries for this period, leaving unresolved 4 years of imports.

Why was this done, and more importantly, what kind of effect will this have on domestic companies wrestling with illegal dumping? Zenith has been forced to move its operation overseas, eliminating over 5,000 domestic jobs since it can no longer compete with TV imports. Treasury's consistent failure to enforce antidumping laws has seriously harmed this domestic company and the outlook for the industry is not good. I am tired of watching our industry get undercut as Treasury and this administration quietly sit back. I would hope that the Trade Subcommittee hearings scheduled for September will be able to look at this lack of Government enforcement and get some answers.●

● Mr. BOLAND. Mr. Chairman, I support this very important piece of legislation, H.R. 11711 is the latest in a series of bills designed to protect American workers and American firms. The Trade Expansion Act of 1962 first established these special programs. In 1974, this Congress revised the administration of trade adjustment assistance for workers and firms affected by Federal trade policies. Mr. Chairman, we now see that still a further need exists for improving the operation of these vital programs. We are attempting here to insure that this Nation's workers and firms have available to them effective and timely adjustments to the economic hardships which result from increased imports. H.R. 11711 does just that—insures that the congressional intent of trade adjustment assistance is made a reality.

All of us, Mr. Chairman, are aware of the balance-of-trade problems facing this Nation. We are continuing, of course, our efforts to restore some semblance of a balance of trade. A most important part of that effort is an effective program to protect American workers and American industry. The Adjustment Assistance Programs Improvements Act of 1978 broadens the coverage, corrects inequities and improves the entire benefit delivery procedure. In addition, Mr. Chairman, it provides for industrywide studies and technical assistance so that this Congress can continue to exercise our oversight function in this important area that affects all Americans.

I support this bill, Mr. Chairman. The alternative is to initiate import relief measures and I would rather not see that. For some time, Federal policies have encouraged increased foreign trade. In so doing, however, we must also continue to support trade adjustment assistance programs. American workers and American firms affected by these Federal policies should be protected and this bill is a further, necessary step in accomplishing that goal.●

Mr. VANIK. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. STEIGER. Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the bill by titles. No amendment shall be in order except pro forma amendments for the purpose of debate and germane amendments relating only to chapters 2, 3, and 5 of title II of the Trade Act of 1974 (Public Law 94–618), and it shall be in order to consider an amendment printed in the CONGRESSIONAL RECORD of July 25 by Representative CLEVELAND of New Hampshire, if offered.

The Clerk will now read.

The Clerk read as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

TITLE I—IMPROVEMENTS IN ADJUSTMENT ASSISTANCE FOR WORKERS

SEC. 101. SPECIAL TREATMENT OF CERTAIN CERTIFICATIONS AND PETITIONS.

(a)(1) This subsection applies—

(A) to any petition for a certification of eligibility to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974—

(i) if such petition was filed with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") before November 1, 1977; and

(ii) if the Secretary, on the basis of section 223(b)(1) of the Trade Act of 1974—

(I) denied issuance of such a certification,

(II) refused to accept the petition,

(III) caused the petition to be withdrawn, or

(IV) terminated an investigation undertaken with respect to the petition; and

(B) to any worker covered by a certification issued under section 223 of the Trade Act of 1974 on the basis of a petition filed before November 1, 1977, if such worker was not eligible for adjustment assistance under such chapter 2 by reason of subsection (b)(1) of such section.

(2) The Secretary shall promptly reconsider any petition referred to in paragraph (1)(A) and the eligibility for adjustment assistance of any worker referred to in paragraph (1)(B). In undertaking such reconsideration, the provisions of chapter 2 of title II of the Trade Act of 1974 shall apply, except that—

(A) for purposes of section 223(b)(1) of such Act, an 18-month period shall be applied rather than a one-year period; and

(B) for purposes of section 231(1)(B) of such Act, the date of the determination, if an affirmative determination is made incident to reconsideration, under section 223 shall be the 60th day after the date on which the petition concerned was initially filed with the Secretary, or, in the case of any petition to which pargraph (1)(A)(ii)(I) applies, the date of the initial determination by the Secretary denying certification.

(b)(1) Any group of workers separated from employment after October 3, 1974, and before November 1, 1977, may file, or have filed on their behalf (including a filing on their behalf by the Secretary), a petition for a certification of eligibility to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if a petition for such a certification for such group was not filed with the Secretary after April 2, 1975, and before November 1, 1977. The Secretary may not consider any petition filed under this subsection unless the petition is filed before the close of the 6-month period beginning on the date of the enactment of this Act.

(2) The provisions of such chapter 2 shall apply with respect to any petition filed under this subsection; except that—

(A) for purposes of section 223(b)(1) of the Trade Act of 1974, an 18-month period shall be applied rather than a one-year period.

(B) the date of the petition shall be April 3, 1975, or such other date deemed appropriate by the Secretary on the basis of the information obtained during the investigation, and

(C) for purposes of section 231(1)(B) of such Act, the date of the determination, if an affirmative determination is made, under section 223 with respect to the petition shall be the 60th day after the date of the petition established under subparagraph (B).

(c) In carrying out subsections (a) and (b), the Secretary may not pay, or recompute the amount of, any program benefit under chapter 2 of title II of the Trade Act of 1974 for the same week of unemployment for which any worker received, or is eligible to receive, such a benefit pursuant to such chapter under other than the authority of this section.

(d) The Secretary shall provide full information to workers regarding the provisions of this section and shall provide whatever assistance is necessary to enable workers concerned to prepare petitions or applications for benefits.

SEC. 102. FILING OF WORKER PETITIONS BY SECRETARY OF LABOR.

Section 221(a) of the Trade Act of 1974 (19 U.S.C. 2271(a)) is amended to read as follows:

"(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter—

"(1) may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the 'Secretary') by any group of workers or by their certified or recognized union or other duly authorized representative; or

"(2) may be filed by the Secretary on behalf of any group of workers.

Upon the filing of a petition under paragraph (1) or (2), the Secretary shall promptly publish notice in the Federal Register that the filing has been made and that the Secretary has initiated an investigation.".

SEC. 103. GROUP ELIGIBILITY REQUIREMENTS FOR ADJUSTMENT ASSISTANCE.

(a) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) by inserting "(a)" immediately before "The Secretary";

(2) by amending paragraph (2) to read as follows:

"(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, or threaten to decrease absolutely,";

(3) by inserting ", or the threat thereof" immediately before the period at the end of paragraph (3);

(4) by striking out the last sentence thereof; and

(5) by adding at the end thereof the following new subsections:

"(b)(1) The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

"(A) that not less than 25 percent of the total sales, or not less than 25 percent of the total production, of such workers' firm or subdivision is accounted for by the provision to import-impacted firms of—

"(i) any article (including, but not limited to, any component part) which is essential to the production of any import-impacted article,

"(ii) any service which is essential to the production, storage, or transportation of any import-impacted article, or

"(iii) any article and any service described in clauses (i) and (ii);

"(B) that a significant number or proportion of the workers in such workers'

firm or subdivision have become totally or partially separated, or are threatened to become totally or partially separated;

"(C) that the sales or production, or both, of such workers' firm or subdivision have decreased absolutely, or threaten to decrease absolutely; and

"(D) that the absolute decrease, or the threat thereof, in the sales or production, or both, by import-impacted firms of import-impacted articles, with respect to which such workers' firm or subdivision provides articles or services referred to in subparagraph (A), contributed importantly to the total or partial separation, or threat thereof, referred to in subparagraph (B) and to the decline in sales and production, or the threat thereof, referred to in subparagraph (C).

"(2) For purposes of this subsection—

"(A) The term 'import-impacted article' means any article produced by an import-impacted firm, if such article is one with respect to which a determination under subsection (a)(3) or section 251(c)(3) was made incident to the certification of the group of workers or firm concerned.

"(B) The term 'import-impacted firm' means—

"(i) any firm or appropriate subdivision thereof the workers of which have been certified pursuant to subsection (a), or

"(ii) any firm which has been certified pursuant to section 251(c).

"(c) For purposes of this section, the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

(b) The amendments made by subsection (a) shall apply with respect to petitions filed under section 221(a) of the Trade Act of 1974 on or after the date of the enactment of this Act.

SEC. 104. DETERMINATIONS BY SECRETARY OF LABOR.

Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) is amended—

(1) by redesignating subsection (d) as subsection (f); and

(2) by adding immediately after subsection (c) the following new subsections;

"(d) In any case in which the Secretary of Commerce notifies the Secretary that a petition has been filed under section 251 by any firm, if a petition has been filed under section 221 regarding any group of workers of such firm, the Secretary, notwithstanding any other provision of law, shall promptly provide to the Secretary of Commerce any data and other information obtained by the Secretary in taking action on the petition which would be useful to the Secretary of Commerce in making a determination under section 251 with respect to the firm.

"(e) If any certification issued under subsection (a) is based upon a determination made pursuant to section 222(a)(2) or (b)(1)(C) that the production or sales, or both, of the firm or subdivision concerned threaten to decrease absolutely, no adjustment assistance under this chapter shall be provided to any worker covered by such certification until after the date on which the Secretary determines pursuant to such section that the production, or sales, or both, of such firm or subdivision have decreased absolutely.".

SEC. 105. PROVISION OF INFORMATION ON BENEFITS TO WORKERS.

(a) Section 224 of the Trade Act of 1974 (19 U.S.C. 2274) is amended—

(1) by striking out "; ACTION WHERE THERE IS AFFIRMATIVE FINDING" in the section heading thereto; and

(2) by striking out subsection (c) thereof:

(b) Subchapter A of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271–2274) is amended by adding at the end thereof the following new section:

"SEC. 225. BENEFIT INFORMATION TO WORKERS.

The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter, and under other Federal programs, which may facilitate the adjustment of such workers to import competition. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance.".

(c) The table of contents of the Trade Act of 1974 is amended by striking out

"Sec. 224. Study by Secretary of Labor when International Trade Commission begins investigation; action where there is affirmative finding."

and inserting in lieu thereof the following:

"Sec. 224. Study by Secretary of Labor when International Trade Commission begins investigation.

"Sec. 225. Benefit information to workers.".

SEC. 106. WORKERS FOR MORE THAN ONE ADVERSELY AFFECTED EMPLOYER.

Section 231(2) of the Trade Act of 1974 (19 U.S.C. 2291(2)) is amended to read as follows:

"(2) Such worker had, in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more a week in one or more firms or appropriate subdivisions thereof with respect to each of which a certification has been made under section 223 and which is in effect on the date of separation; or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary.".

SEC. 107. TIME LIMITATIONS ON READJUSTMENT ALLOWANCES.

Section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)) is amended—

(1) by striking out "26 additional weeks" in paragraph (1) and inserting in lieu thereof "52 additional weeks"; and

(2) by amending the last sentence thereof to read as follows:

"In no case may any adversely affected worker be paid trade readjustment allowances for more than 78 weeks, or for more than 104 weeks in the case of workers to which paragraph (1) applies.".

SEC. 108.

(a) Part II of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2295–2296) is amended by adding at the end thereof the following new section:

"SEC. 236A. EXPERIMENTAL TRAINING PROJECTS.

"(a) The Secretary shall establish a program of experimental, developmental, demonstration, or pilot projects, through grants to, or contracts with, public agencies or private nonprofit organizations, or through contracts with other private organizations, for the purpose of improving techniques, and demonstrating the effectiveness, of specialized methods in meeting the employment and training problems of workers displaced by import competition. One such specialized method shall be the provision of certificates or vouchers to workers entitling employers and institutions to payment for on-the-job training, institutional training, or services provided by them to workers.

"(b) The Secretary shall carry out program projects under this section only within political subdivisions of States with respect to which the Secretary finds that—

"(1) a significant number or proportion of the workers within the political subdivision have become totally or partially separated, or are threatened to become totally or partially separated; and

"(2) increases in imports or articles like or directly competitive with articles produced by firms and subdivisions thereof located within the political subdivision have contributed importantly to the total or partial separations, or threats thereof, referred to in paragraph (1).

For purposes of paragraph (2), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

"(c) Participation by any worker in a program project established under subsection (a) shall be on a voluntary basis; except that a worker may not be selected by the Secretary for participation unless the worker is, at the time of his application for participation—

"(1) covered by a certification issued under section 223 relating to employment or former employment within the political subdivision in which the project will be undertaken; or

"(2) if not so covered, is—

"(A) included within a group of workers for which a petition has been filed under section 221 and on which a determination under section 223 is pending, and

"(B) totally or partially separated from employment within such political subdivision.

The Secretary shall select workers for participation in a program project on such basis as the Secretary deems appropriate to carry out the purposes of this section, but such selections shall be made in a manner so as to insure that each project undertaken includes workers who represent diverse skill levels and occupations within the political subdivision concerned.

"(d) Grants made, and contracts entered into, by the Secretary under this section shall be subject to such terms and conditions as the Secretary deems necessary and appropriate to protect the interests of the United States.

"(e) Section 239(c) shall apply in the case of any individual in training under a project undertaken pursuant to this section with respect to entitlement to unemployment insurance otherwise payable to such individual. The agreement under section 239 with any State shall be modified to effect the purposes of this section, if the State deems such a modification to be necessary.

"(f) Not later than March 1, 1981, the Secretary shall submit to Congress a report setting forth a description and evaluation of the effectiveness of the projects implemented under the program established under subsection (a), together with such recommendations as the Secretary may have for implementing on a permanent basis those methods used in the program which have proven most effective.

"(g) For purposes of carrying out this section, there are authorized to be appropriated to the Department of Labor not to exceed $1,500,000 for each of fiscal years 1979 and 1980.".

(b) The table of contents of the Trade Act of 1974 is amended by inserting after

"236. Training."

the following:

"236A. Experimental training projects.".

(c) Section 245(b)(1) of the Trade Act of 1974 (19 U.S.C. 2317) is amended by inserting "other than section 236A" immediately before the period.

SEC. 109. INCREASED JOB SEARCH ALLOWANCES.

Section 237 of the Trade Act of 1974 (19 U.S.C. 2297) is amended as follows:

(1) Subsection (a) thereof is amended—

(A) by striking out "who has been totally separated";

(B) by striking out "80 percent of the cost of his necessary" and inserting in lieu there-

of "100 percent of the cost of his reasonable and necessary"; and

(C) by striking out "$500" and inserting in lieu thereof "$600".

(2) Subsection (b) thereof is amended—

(A) by amending paragraph (1) to read as follows:

"(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;"; and

(B) by amending paragraph (3) to read as follows:

"(3) where the worker has filed an application for such allowance with the Secretary before—

"(A) the later of—

"(i) the 365th day after the date of the certification under which the worker is eligible, or

"(ii) the 365th day after the date of the worker's last total separation;

"(B) if such worker is age 60 or older on the date of his last total separation, the later of—

"(i) the 547th day after such date; or

"(ii) the 547th day after the date of the certification under which the worker is eligible; or

"(C) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.".

SEC. 110. INCREASED RELOCATION ALLOWANCES.

Section 238 of the Trade Act of 1974 (19 U.S.C. 2298) is amended—

(1) by amending subsection (a)—

(A) by striking out "who has been totally separated";

(B) by striking out the period and insert in lieu thereof the following:

", if such worker was, or is, entitled to trade readjustment allowances under such certification and files such application before—

"(1) the later of—

"(A) the 425th day after the date of the certification, or

"(B) the 425th day after the date of the worker's last total separation;

"(2) if such worker is age 60 or older on the date of his last total separation, the later of—

"(A) the 547th day after such date or

"(B) the 547th day after the date of the certification; or

"(3) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.";

(2) by amending subsection (c) to read as follows:

"(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days before or after the filing of the application therefor or (in the case of worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training."; and

(3) by amending subsection (d)—

(A) by striking out "80 percent" in paragraph (1) and inserting in lieu thereof "100 percent", and

(B) by striking out "$500" in paragraph (2) and inserting in lieu thereof "$600".

SEC. 111. DEFINITIONS.

Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) The term 'adversely affected worker' means an individual who—

"(A) because of lack of work in adversely affected employment, has been totally or partially separate from such employment;

"(B) has been totally separate from other employment with a firm, in which adversely affected employment exists, within 190 days after being transferred from work in adversely affected employment in the firm because of lack of work; or

"(C) has been totally separated from other employment in a firm in which adversely affected employment exists as the result of—

"(i) the transfer of an individual from such adversely affected employment because of lack of work, or

"(ii) the reemployment of an individual who was totally separated from such adversely affected employment, if the reemployment occurs within the 190-day period beginning on the date of such separation.";

(2) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively, and by redesignating paragraphs (6) through (14) as paragraphs (8) through (16), respectively;

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) The term 'appropriate subdivision' means—

"(A) any establishment or, where appropriate, any group of establishments operating as an integrated production unit or engaging in an integrated process, which is within any multiestablishment firm; or

"(B) any distinct part or section of any establishment which is within any firm, whether or not such firm is a multiestablishment firm."; and

(4) by inserting immediately after paragraph (6) (as redesignated by paragraph (1) of this section) the following new paragraph:

"(7)(A) The term 'firm' includes any of the following entities (regardless whether any such entity is under a trustee in bankruptcy or receivership under court decree):

"(i) Individual proprietorship.

"(ii) Partnership.

"(iii) Joint venture.

"(iv) Association.

"(v) Corporation (including any development corporation).

"(vi) Business trust.

"(vii) Cooperative.

"(B) Any firm, together with any—

"(i) predecessor in interest,

"(ii) successor in interest, or

"(iii) other affiliated firm (if both such firms are controlled or substantially beneficially owned by substantially the same persons),

may be considered to be a single firm for the purposes of this chapter.".

SEC. 112. EFFECTIVE DATES.

(a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) The amendments made by sections 106, 107, 109, 110, and 111(1) shall take effect on the 60th day after such date of enactment and shall apply with respect to workers separated from employment on or after such 60th day.

Mr. VANIK (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 11, strike out lines 2 through 5, inclusive, and insert the following:

(2) Such worker had—

(A) in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more a week; or

(B) in the 104 weeks immediately preceding such total or partial separation, at least 40 weeks of employment at wages of $30 or more;

in one or more firms or appropriate subdivisions thereof with respect * * *

Mr. VANIK. Mr. Chairman, I rise in support of the committee amendment.

This first amendment would allow workers to qualify for benefits if they have at least 40 weeks of employment in the 104 weeks immediately preceding their layoff as an alternative to the present 26 out of 52 weeks employment requirement. The committee adopted the amendment because of the many cases brought to its attention of workers unable to meet the 26 weeks of work requirement in the year preceding their layoff because their firm instituted shorter, intermittent work periods rather than immediate, permanent layoffs of all employees as it became impacted by imports. These workers have usually been in the labor force many years, the more junior employees with less seniority being laid off first rather than receiving shorter work schedules. The amendment provides greater equity in the coverage of eligible workers, at the same time preserves the intent of existing law that workers demonstrate a substantial attachment to the labor force to qualify for these supplemental benefits. A larger number of farmworkers should also be able to become eligible, particularly since the 40 weeks may be employment with more than one trade-impacted firm.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I am delighted to yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, the gentleman from Ohio said he would describe both committee amendments; but I think we are only voting on them one at a time.

Mr. VANIK. I was going to ask, if there is no objection, to vote on them en bloc.

Mr. FRENZEL. Mr. Chairman, I would object. I would hope the gentleman would not request that.

Mr. VANIK. All right; I will not make that request.

Mr. STEIGER. Mr. Chairman, I rise in opposition to the committee amendment.

Mr. Chairman, I will try and do this as briefly as we can, because I realize that time is limited and the hour is fast approaching in which we all turn into pumpkins.

Mr. Chairman, we note if we look at the bill that the committee amendment is one that strikes out language that was agreed to by the subcommittee. The language that is stricken is that which says that:

Such worker had in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more, in one or more firms or appropriate subdivisions thereof with respect.

The amendment that was adopted in the full Committee on Ways and Means strikes that language and goes to new language, in which it is 52 weeks, 26 or in the 104 weeks preceding, at least 40 weeks of employment at wages of $30 or

more in one or more firms or appropriate subdivisions thereof.

It is that to which we are addressing ourselves in the committee amendment. The cost of this committee amendment is $16 million on an annual basis according to a letter from the Labor Department.

Mr. Chairman, my hope is that the Committee of the Whole House on the State of the Union will reject this subcommittee amendment and will go back to the original committee view. I would caution those Members who have further amendments, including our colleague, the gentleman from New Hampshire (Mr. CLEVELAND), our colleague, the gentleman from Minnesota (Mr. OBERSTAR), and our colleague, the gentleman from Vermont (Mr. JEFFORDS), that, as they know, we are under a budgetary ceiling for adjustment assistance, and the effect of the adoption of the committee amendment means we have even less of a chance of adopting even those amendments that might be beneficial, whether it is that of the gentleman from Minnesota, that of the gentleman from Vermont, or that of the gentleman from New Hampshire.

So there are some reasons why I think we ought not to accept this committee amendment.

The historic fact is, however, that this $16 million committee amendment will, in my judgment, mean a disruption of the relationship between unemployment compensation and trade adjustment assistance. While it is true that trade adjustment assistance is a different program, it nevertheless is directly tied and has historically always been parallel to unemployment compensation.

We have not thought carefully on the implications or the ripple effect of the adoption of this amendment, because we are setting here new criteria, criteria which is not eligible to others in the unemployment compensation system but which might in fact become repressive and set a pattern for the rest of the unemployment compensation system.

I, therefore, Mr. Chairman, think the committee amendment ought to be rejected, and I hope the members of the committee will vote no.

Mr. FRENZEL. Mr. Chairman, I move to strike the last word. and I rise in opposition to the committee amendment.

Mr. Chairman, in the scheduled debate I discussed my opposition to this amendment. I would now like to read portions of a letter from the Secretary of Labor, Mr. Ray Marshall, to the distinguished chairman of the Subcommittee on Trade, the gentleman from Ohio (Mr. VANIK), in which the administration raises its objections to this particular amendment. Mr. Marshall says this:

> The alternative qualifying requirement, in the amendment to section 106 of the bill, would permit workers to qualify for up to 78 weeks of the tax free benefits on the basis of 40 weeks of employment in the 104 weeks immediately preceding layoff with one or more firms. This would be an alternative in addition to the present qualifying test of 26 weeks of employment in the 52 weeks preceding layoff. The administration opposes this provision because the proposed alternative does not reflect a sufficient attachment to the labor force.

Mr. Chairman, that says it about as well as anyone can say it. For working only 40 weeks in a 2-year period, with earnings as low as $30 a week, a person otherwise qualified for adjustment assistance is going to be able to earn 78 weeks of benefits. That means for a week of work at $30 a week they will earn 2 weeks of unemployment compensation.

It may be true that some of these people have long labor market attachment, and if that is true, there are far better ways one could write this law to pick up those people who had such long labor market attachment. But this particular section does not require long labor market attachment. It requires only 40 weeks of work in 2 years.

The gentleman from Wisconsin (Mr. STEIGER) has indicated this amendment has a first-year cost of $32 million and an annual cost of $16 million thereafter.

It seems to me we did a good job of trying to put this committee report and this bill together to do an honest and fair job of improving our adjustment assistance program. By this particular amendment which was put on by the committee after the subcommittee had carefully considered it, I think we have produced a feature which is a disincentive for work, and this is exactly the point Mr. Marshall was raising in his letter to the chairman of the subcommittee.

If the unemployment benefits are too long and too generous, there simply is no incentive to go back to work, and this is what I fear by this particular section.

Mr. Chairman, I hope the committee amendment to section 106 will be defeated.

Mr. VANIK. Mr. Chairman, I rise in support of the committee amendment, and I wish to voice my opposition to the position just taken by my distinguished colleague, the gentleman from Minnesota (Mr. FRENZEL).

The CHAIRMAN. Without objection, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

There was no objection.

Mr. VANIK. Mr. Chairman, I would simply like to state that the whole theory of trade adjustment assistance is to provide relief for people who lose their work through some action of Federal policy and trade which has caused them to separate from their employment.

I, first of all, do not understand how my colleague, the gentleman from Minnesota (Mr. FRENZEL), can contend that this has a budgetary impact of $32 million in the first year and $16 million thereafter. The figures that I have indicated it would have a budgetary impact of $16 million for the first year, and we are within the budget allocation on this issue.

The whole question is what happens when an industry and its worker is impacted by imports from foreign countries. The very natural thing happens. There are short-term layoffs; there are fewer workdays. There may be weeks in which work is suspended, and it all results from the impact of foreign products that have distorted the normal productive facilities of the industry.

These people are hurt, and evidence of the hurt or damage is traceable to that situation, and I think they should indeed be given this kind of protection that is afforded under this bill.

I think if the Trade Adjustment Assistance Act is going to be meaningful, it must correct the injustice that was the result of trade policy.

For those who feel that opposing the first committee amendment would create more revenue for their amendments, I want to tell them that I think that if they analyze the impact of the rejection of the first committee amendment they would find that it would hurt them in their constituencies even more than if they fail to get what they seek in their amendment.

I simply want to say that the language of the first amendment offered by the committee was carefully considered in committee. There was a division in the vote in the committee. It passed by a vote of 18 to 13. But we gave this matter very careful consideration. It was not a partisan deliberation. It was the way the membership of the Committee on Ways and Means broke down and divided on the issue.

I certainly hope the Members of this committee will support the determinations that were made by the Committee on Ways and Means in adopting the first committee amendment.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Minnesota.

Mr. FRENZEL. I thank the gentleman for yielding.

Mr. Chairman, I am quoting again from that same letter to the gentleman:

> The Department of Labor estimates that the cost of these provisions would total $48 million, of which $32 million is a short-time cost and $16 million is the annual cost.

Mr. VANIK. The language assumes it was made retroactive. And we have not done that. The figures you quote rely on an assumption that it will be made retroactive.

Mr. FRENZEL. I will look over the letter again. I was not under that impression. If so, I would be glad to admit another one of my frequent mistakes.

Mr. VANIK. As I understand it, that estimate was based on the idea that the amendment would be retroactive.

Mrs. FENWICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have a number of questions that I would like to ask the committee.

As I understand it, this bill refers to those who have lost employment through the action of the Federal Government, namely, the Trade Act of 1974. Is that correct?

Mr. STEIGER. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman from Wisconsin.

Mr. STEIGER. Mr. Chairman, the way the gentlewoman stated the question, the answer is that that would not be a correct analysis. What the trade adjustment assistance program is designed to do is to provide transitional help to employees and firms who have been im-

pacted by a rapid increase or a large percentage increase in imports.

Mrs. FENWICK. That is what I am talking about. That is what I meant. I did not put is quite as fully as I obviously should have. But there are two questions that I would like to ask of the chairman and the ranking minority Member.

Suppose that the men left employment in the 2 years preceding the effective date here, not because of the act, but because of some other reason. I notice here the mention of 104 weeks. In the 104 weeks immediately preceding, somebody might have left employment of this particular company, having been employed there for 40 weeks, but long before the effects of the Trade Act came into effect.

Would he be covered? That is my first question. Second, how is this going to be administered? Is it going to be governed by clear and specific provisions?

Mr. VANIK. I might just say in response to the first question that it applies to the workers laid off prospectively to the enactment of the bill.

Mrs. FENWICK. Yes, prospectively.

Mr. VANIK. Once they have been laid off.

Mrs. FENWICK. In other words, they would have to tie the laying off of the employee to some act of the Federal Government in relation to the Trade Act, is that correct?

Mr. VANIK. No. It has to be after a determination by the Secretary of Labor that there has been an impact.

Mrs. FENWICK. That there has been an impact on this particular company, and therefore on the employees. That is what I am talking about.

Mr. VANIK. That is correct.

Mrs. FENWICK. Very well. If we have the kind of interpretation that we have had on unemployment compensation generally, we are going to find that the interpretation gets broader and broader. I do not know what is happening in the gentleman's State, but I know what is happening in mine. When an employee leaves employer A because he has found a better job with employer B, and does not stay there long enough to qualify, he receives unemployment compensation at the expense of employer A. Is that what is contemplated by this Congress?

Mr. VANIK. The worker must have 40 weeks of employment with trade impacted firms. The gentlewoman does realize that trade must have an adverse effect on employment. So, it is the action of the Federal Government in trade policy which creates the trade impact on the unemployed.

Mrs. FENWICK. Is there anything in this bill which ties these clauses that go into effect closely to the condition that the gentleman has just described?

Mr. VANIK. Yes, all through the bill. The whole impact of the bill is directed very specifically to this narrow group of people.

Mrs. FENWICK. Unemployment compensation is not narrowly construed, as my example shows, in general. I think the problems really are on the other side.

Mr. STEIGER. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield.



Mr. STEIGER. It is a very different problem.

The CHAIRMAN. The time of the gentlewoman from New Jersey has expired.

(At the request of Mr. STEIGER and by unanimous consent, Mrs. FENWICK was allowed to proceed for 2 additional minutes.)

Mr. STEIGER. The gentlewoman does have to separate out the way that the unemployment compensation system operates, designed and written by the State Legislature of New Jersey, as compared to the adjustment assistance program. The gentlewoman is right, under most unemployment compensation programs in most States the circumstances the gentlewoman describes where an employee leaves employer A and then leaves employer B—employer A will have to pay unemployment compensation.

Mrs. FENWICK. Is that fair?

Mr. STEIGER. From my standpoint, no. The answer is, it is not, but that is not a matter covered by the Federal Government adjustment assistance. That is what we are dealing with. We have tried to be reasonably precise in terms of talking about how one achieves eligibility.

Mrs. FENWICK. All right.

Mr. STEIGER. One receives unemployment assistance as a result of a trade problem. It is not then a matter of leaving one employer and going to the other. It is a matter of having to be certified by the Secretary of Labor, of the fact that there is a trade impact, that imports have caused a decline. Therefore, the worker is eligible as a result of that import problem and the firm can receive assistance as a result of that. It is not the same as unemployment compensation, and I hope maybe in terms of the two questions the gentlewoman has asked that might help her better understand, and help all of us better understand, how this would operate. It is a good program.

Mrs. FENWICK. I thank the gentleman.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I ask unanimous consent to speak again.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. FRENZEL. Mr. Chairman, I simply want to apologize to the distinguished gentleman from Ohio. He was correct and I was wrong in the figures. The cost of the amendment is $16 million, as he indicated. The $32 million one-time cost, as I understand it, would be the cost of funding the Oberstar amendment. I apologize for the error.

The CHAIRMAN. The question is on the first committee amendment.

The question was taken; and on a division (demanded by Mr. VANIK) there were—ayes 21, noes 14.

RECORDED VOTE

Mr. STEIGER. Mr. Chairman, given the closeness of that vote, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 206, noes 110, not voting 116, as follows:

[Roll No. 742]

AYES—206

| | | |
|---|---|---|
| Addabbo | Gilman | Ottinger |
| Akaka | Glickman | Panetta |
| Alexander | Gonzalez | Patten |
| Ambro | Gore | Patterson |
| Anderson, Calif. | Green | Pattison |
| | Gudger | Pease |
| Anderson, Ill. | Hamilton | Pepper |
| Annunzio | Hanley | Perkins |
| Applegate | Hannaford | Preyer |
| Ashley | Harris | Price |
| Aspin | Heftel | Pritchard |
| Baldus | Holland | Quayle |
| Bedell | Hollenbeck | Rahall |
| Benjamin | Holtzman | Regula |
| Bevill | Hubbard | Reuss |
| Biaggi | Hughes | Risenhoover |
| Bingham | Hyde | Roe |
| Blanchard | Ichord | Rooney |
| Bolling | Jeffords | Rosenthal |
| Bonior | Johnson, Calif. | Roybal |
| Brademas | Jones, Tenn. | Russo |
| Brodhead | Kastenmeier | Ryan |
| Brown, Calif. | Kemp | Santini |
| Brown, Ohio | Kildee | Scheuer |
| Buchanan | Kostmayer | Schroeder |
| Burke, Mass. | Krebs | Schulze |
| Burlison, Mo. | LaFalce | Seiberling |
| Burton, John | Le Fante | Sharp |
| Burton, Phillip | Lederer | Shuster |
| Carney | Lent | Simon |
| Carr | Lloyd, Calif. | Slack |
| Carter | Lloyd, Tenn. | Smith, Iowa |
| Cavanaugh | Luken | Solarz |
| Chisholm | Lundine | Spellman |
| Clausen, Don H. | McCormack | Staggers |
| | McDade | Stanton |
| Conte | McEwen | Stark |
| Conyers | McFall | Steed |
| Cornell | McHugh | Steers |
| Cornwell | McKay | Stokes |
| D'Amours | Mann | Stratton |
| Danielson | Markey | Studds |
| Dellums | Marks | Thompson |
| Derwinski | Marlenee | Traxler |
| Dingell | Mattox | Trible |
| Downey | Mazzoli | Tucker |
| Drinan | Metcalfe | Udall |
| Early | Meyner | Ullman |
| Eckhardt | Mikulski | Van Deerlin |
| Edgar | Mineta | Vanik |
| Edwards, Ala. | Minish | Vento |
| Edwards, Calif. | Mitchell, Md. | Volkmer |
| Eilberg | Mitchell, N.Y. | Walgren |
| Ertel | Moakley | Walker |
| Evans, Colo. | Mollohan | Walsh |
| Fascell | Moorhead, Pa. | Weaver |
| Findley | Moss | Weiss |
| Fisher | Mottl | Whalen |
| Fithian | Murphy, Pa. | White |
| Flippo | Murtha | Wilson, Tex. |
| Flood | Myers, Michael | Wirth |
| Florio | Natcher | Wolff |
| Flowers | Neal | Wright |
| Foley | Nedzi | Wydler |
| Ford, Mich. | Nichols | Yates |
| Ford, Tenn. | Nolan | Yatron |
| Garcia | Nowak | Young, Mo. |
| Gaydos | O'Brien | Zablocki |
| Gephardt | Oberstar | |
| Giaimo | Obey | |

NOES—110

| | | |
|---|---|---|
| Andrews, N.C. | Crane | Grassley |
| Andrews, N. Dak. | Daniel, Dan | Hall |
| | Daniel, R. W. | Harsha |
| Archer | Davis | Hefner |
| Bafalis | de la Garza | Hightower |
| Barnard | Devine | Holt |
| Bauman | Dickinson | Jenkins |
| Beard, Tenn. | Dornan | Johnson, Colo. |
| Bennett | Duncan, Tenn. | Jones, N.C. |
| Boggs | Edwards, Okla. | Jones, Okla. |
| Bowen | Emery | Kazen |
| Breckinridge | English | Kelly |
| Broomfield | Erlenborn | Kindness |
| Brown, Mich. | Evans, Del. | Lagomarsino |
| Broyhill | Evans, Ga. | Latta |
| Burgener | Fenwick | Leach |
| Burleson, Tex. | Forsythe | Levitas |
| Butler | Fountain | Livingston |
| Cederberg | Fowler | Long, La. |
| Chappell | Frenzel | Long, Md. |
| Cleveland | Ginn | Lott |
| Coleman | Goldwater | McClory |
| Conable | Goodling | McCloskey |
| Corcoran | Gradison | McDonald |

| | | |
|---|---|---|
| Mahon | Roberts | Stockman |
| Marriott | Robinson | Stump |
| Martin | Rose | Taylor |
| Michel | Rousselot | Treen |
| Miller, Ohio | Rudd | Vander Jagt |
| Montgomery | Runnels | Watkins |
| Moore | Ruppe | Whitehurst |
| Moorhead, Calif. | Satterfield | Whitley |
| Myers, John | Sawyer | Whitten |
| Pike | Sebelius | Wilson, Bob |
| Poage | Sikes | Wylie |
| Pursell | Spence | Young, Fla. |
| Railsback | Stangeland | |
| | Steiger | |

NOT VOTING—116

| | | |
|---|---|---|
| Abdnor | Flynt | Murphy, N.Y. |
| Ammerman | Fraser | Myers, Gary |
| Armstrong | Frey | Nix |
| Ashbrook | Fuqua | Oakar |
| AuCoin | Gammage | Pettis |
| Badham | Gibbons | Pickle |
| Baucus | Guyer | Pressler |
| Beard, R.I. | Hagedorn | Quie |
| Bellenson | Hammer-schmidt | Quillen |
| Blouin | Hansen | Rangel |
| Boland | Harkin | Rhodes |
| Bonker | Harrington | Richmond |
| Breaux | Hawkins | Rinaldo |
| Brinkley | Heckler | Rodino |
| Brooks | Hillis | Rogers |
| Burke, Calif. | Horton | Roncalio |
| Burke, Fla. | Howard | Rostenkowski |
| Byron | Huckaby | Sarasin |
| Caputo | Ireland | Shipley |
| Clawson, Del | Jacobs | Sisk |
| Clay | Jenrette | Skelton |
| Cochran | Jordan | Skubitz |
| Cohen | Kasten | Smith, Nebr. |
| Collins, Ill. | Keys | Snyder |
| Collins, Tex. | Krueger | St Germain |
| Corman | Leggett | Symms |
| Cotter | Lehman | Teague |
| Coughlin | Lujan | Thone |
| Cunningham | McKinney | Thornton |
| Delaney | Madigan | Tsongas |
| Dent | Maguire | Waggonner |
| Derrick | Mathis | Wampler |
| Dicks | Meeds | Wayman |
| Diggs | Mikva | Wiggins |
| Dodd | Milford | Wilson, C. H. |
| Duncan, Oreg. | Miller, Calif. | Winn |
| Evans, Ind. | Moffett | Young, Alaska |
| Fary | Murphy, Ill. | Young, Tex. |
| Fish | | Zeferetti |

Messrs. RISENHOOVER, BEVILL, WALKER, and FOLEY changed their vote from "no" to "aye."

Mr. BROYHILL and Mr. LIVINGSTON changed their vote from "aye" to "no."

So the committee amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will report the second committee amendment.

The Clerk read as follows:

Committee amendment: Page 11, strike out line 24 through line 6 on page 12 and insert:

SEC. 108. EXPERIMENTAL TRAINING PROJECTS.

(1) by striking out "26 additional weeks" in paragraph (1) and inserting in lieu thereof "52 additional weeks";

(2) by amending paragraph (2) to read as follows:

"(2) such payments shall be made for not more than 26 additional weeks to an adversely affected worker who is not receiving payments under paragraph (1) and has attained age 60 on or before the date of total or partial separation, except that if payment is made for the 26th additional week and such worker has not attained age 62 before the close of such week, such payments shall be made for not more than the number of weeks occurring during the period beginning with the week after such 26th additional week and ending with, but including, the week in which the worker attains age 62." and

"(3) by amending the last sentence thereof by striking out "78 weeks" and inserting in lieu thereof "104 weeks".

Mr. VANIK. Mr. Chairman, I rise in support of the committee amendment.

The second amendment extends the benefit period for older workers age 60 or over at their time of layoff by up to an additional 26 weeks to a maximum of 104 weeks until the worker reaches age 62. Under present law older workers receive an additional 26 weeks beyond the basic 52-week benefit period to a maximum of 78 weeks. The committee believes that older workers are likely to experience the greatest difficulty among trade-impacted workers of finding alternative employment opportunities or in being retrained. The amendment provides a "bridge" whereby such workers can receive trade readjustment allowances during the 6 months beyond the 78 weeks before they reach social security age. Benefits would cease at age 62 or, as with any other worker, upon reemployment.

Mr. Chairman, I hope the committee will adopt the amendment.

Mr. STEIGER. Mr. Chairman, I rise to oppose the amendment.

Mr. Chairman, during the general debate I took some time to explain why I thought it was not appropriate for us to adopt this second committee amendment. Given the vote on the first amendment, I must say to my colleagues that I do not intend to push for a vote in opposition to it. I outlined why I thought it was bad public policy.

Mr. Chairman, I urge a "no" vote and yield back the balance of my time.

Mr. FRENZEL. Mr. Chairman, I move to strike the last word, and I rise in opposition to the committee amendment.

Mr. Chairman, I also described my opposition to this committee amendment earlier in the day's debate. I would, however, read a section from the same letter to which I referred before from the Secretary of Labor to the chairman of our Subcommittee on Trade, which reads as follows:

Under the amendment to section 107 of the bill, the extended duration of benefits for workers aged 60 or older would allow the payment of trade readjustment allowances (TRA) to workers up to the time that reduced social security benefits become payable. The Administration believes that providing additional tax-free TRA would serve as a disincentive to work and would result in the de facto establishment of an income maintenance program for such workers until they qualify for social security insurance benefits. The Department of Labor estimates that this provision would cost an additional $984,000 on an annual basis.

Mr. Chairman, what the committee and what the gentleman from Ohio (Mr. VANIK) are trying to do is a good thing. It, however, should not be done through the unemployment compensation insurance program. I hope the committee amendment is defeated.

Mr. LEDERER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the committee amendment.

Mr. Chairman, I wish to lend my support to the chairman of the Subcommittee on Trade, the gentleman from Ohio (Mr. VANIK), and urge adoption of the committee amendment. This is my amendment.

I think what we do by this amendment is to continue giving the working man dignity after, through no fault of his own, he becomes unemployed.

Mr. Chairman, I ask for the adoption of this committee amendment.

The CHAIRMAN. The question is on the second committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the third committee amendment.

The Clerk read as follows:

Committee amendment: Page 13, before line 1, after "SEC. 108." insert "EXPERIMENTAL TRAINING PROJECTS."

The committee amendment was agreed to.

AMENDMENTS OFFERED BY MR. VANIK

Mr. VANIK. Mr. Chairman, I offer technical and conforming amendments in all three titles of the bill to remove violations of the Budget Act and to insert a section heading.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. VANIK: Page 3, lines 23 and 24, strike out "date of the enactment" and insert "effective date".

Page 8, line 14, strike out "date of enactment" and insert "effective date".

Page 15, line 11, after "States." insert the following: "The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent, and in such amounts, as are provided in appropriation Acts.".

Page 22, strike out lines 5 through 12, inclusive.

Page 26, line 6, strike out "date of the enactment" and insert "effective date".

Page 27, line 25, strike out "section.'." and insert the following: "section. The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent, and in such amounts, as are provided in appropriation Acts.'."

Page 28, line 3, strike out "date of the enactment" and insert "effective date".

Page 28, lines 23 and 24, strike out "date of the enactment" and insert "effective date".

Page 29, line 2, strike out "date of enactment" and insert "effective date".

Page 30 line 7, after "SEC. 301." insert "ADJUSTMENT ASSISTANCE COORDINATION."

Page 34, after the matter appearing after line 6, insert the following:

SEC. 303. EFFECTIVE DATES.

(a) Except as provided in subsection (b), this Act shall take effect on October 1, 1978, or on the date of the enactment of this Act if the date of the enactment is after October 1, 1978.

(b) The amendments made by sections 106, 107, 109, 110, and 111(1) shall take effect on the 60th day after the effective date of this Act and shall apply with respect to workers separated from employment on or after such 60th day.

Mr. VANIK (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is the gentleman from Ohio (Mr. VANIK) also asking unanimous consent that the amendments be considered en bloc?

Mr. VANIK. Yes, Mr. Chairman, I also

ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. VANIK. Mr. Chairman, the purpose of these amendments is to correct certain technical violations of the Congressional Budget Act in H.R. 11711, as amended. The Budget Committee supported, and the Rules Committee approved in House Resolution 1288 waivers of all points of order against the bill for failure to comply with sections 401(a), 401(b)(1), and 402(a) of the act, based on the understanding that the Committee on Ways and Means would offer floor amendments to remove the Budget Act violations.

The amendments on pages 15 and 27 of the bill expressly limit the authority under sections 108 and 203(d) to enter into contracts to the extent or amounts provided in appropriation acts, as required by clause 5, rule XXI of the House. The amendment on page 34 stipulates that the bill will not take effect until the beginning of the next fiscal year on October 1, 1978, or on the date of enactment, whichever is later, in compliance with sections 401(b)(1) and 402(a) of the Budget Act. The other amendments make conforming changes on the effective date in titles I and II. The amendment on page 30 inserts a heading for section 301, missing in the bill as reported.

AMENDMENTS OFFERED BY MR. OBERSTAR TO THE AMENDMENTS OFFERED BY MR. VANIK

Mr. OBERSTAR. Mr. Chairman, I offer amendments to the amendments.

The Clerk read as follows:

Amendments offered by Mr. OBERSTAR to the amendments offered by Mr. VANIK: On page 2 of the amendments, in the matter proposed to be inserted as subsection (a) of section 303, strike out "subsection (b)" and insert in lieu thereof "subsections (b) and (c)".

On page 2 of the amendments, in the matter proposed to be inserted as subsection (b) of section 303, strike out "106,".

On page 2 of the amendments, in the matter proposed to be inserted as section 303, insert at the end thereof the following:

(c)(1) The amendment made by section 106 shall apply with respect to—

(A) workers separated from employment after the effective date of this Act, and

(B) workers separated from employment during the period beginning two years before the effective date of this Act and ending on the effective date of this Act, in the manner provided in paragraph (2).

(2) Any worker may apply, in a manner prescribed by the Secretary, for a trade re the Trade Act of 1974 for any week of unadjustment allowance under section 231 of employment during the period described in paragraph (1)(B) for which the worker was not qualified for such an allowance at the time of his separation. Payment of such an allowance shall be made to such a worker if the Secretary determines that the worker would have been entitled to the allowance if the amendment made by section 106 had been in effect at the time of the worker's separation.

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendments to the amendments be considered as read, printed in the RECORD, and considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, very simply stated, the purpose of this amendment is to make the provisions of the previously adopted committee amendment retroactive for a period of 2 years. It would affect some 10,000 employees at an annual cost of about $16 million or a 2-year cost of $32 million.

While I was home recently I met with the steelworkers who mine the iron ore that provides the basic raw material for the steel industry of this country. These workers have been affected by the imports of steel into this country just as much as employees in basic steel, because when the steel industry is not working, the iron ore mines of my area are not working and the miners of my district are laid off.

There were some 2,300 employees of one iron ore processing, or taconite, plant who were laid off because of imports. Most of them were eligible for trade adjustment benefits. In fact, 2,200 out of 2,300 were eligible for the benefits. But one elderly couple came to me with a very sad and, I think, very touching and very descriptive circumstance. The husband, who had worked in this mine for 25 years, was unfortunately injured, laid up in a hospital for a period of months. While he was hospitalized, the union went on strike. The day after the strike was settled, the company, instead of calling back the employees, laid them all off because of imports. This man was not eligible for trade adjustment benefits. He had used up whatever unemployment compensation to which he had been entitled. He was now in the worst of all worlds. He had a big hospital cost. He was not working, with little prospect of going back to work, and not eligible for trade adjustment benefits, because the misfortune happened to him prior to the date provided in the law.

All I am saying is that if we are going to liberalize this law, let us cover all of those equitable cases, all of those deserving cases, all of those people like this family in my district who need help, who have been injured by a conscious trade policy of the United States to open our doors to imports, which then results in domestic unemployment.

When the European Common Market opened their doors, they broke down the trade barriers. They made it possible for free exchange of goods. They strengthened their economy by doing it, but they also took care of the poor, the unfortunate, the working people who were laid off.

I know about the Common Market situation because I studied in Europe. I studied the problems of the unification of Western Europe. I saw what those economies did, what those governments did for their most unfortunate and poor people and those employees of the weakest industries in those countries—and they were taken care of. They were taken care of in the way that I am proposing to do in this amendment. If the European governments can care for their employees, then this most favored of all nations can do this little bit to rectify the wrong that has been wreaked upon some of our people. All this amendment does is roll back the effects, the very beneficial effects, of the Vanik amendment 2 additional years, to that point in history when the impact of the imports was being felt in this country with most serious effect—in the steel industry, in the clothing industry, and many other industries, in the smaller communities as well as the larger metropolitan areas throughout this country where people want to work for a living but because of unfair competition from abroad they cannot.

Mr. Chairman, I ask support of this amendment.

Mr. VANIK. Mr. Chairman, with great reluctance I must rise in opposition to this amendment.

I think the gentleman from Minnesota (Mr. OBERSTAR) has very well articulated the problem of his community. I feel a deep sensitivity to it. However, I must say that the amendment would involve a nonbudgeted item here, an additional $32 million over the funds that have already been approved in this second budget resolution. While I can understand the very difficult problems in his community, it is very difficult and there is very little logical reason to single out this particular provision for a retroactive application and not every other amendment in the bill.

Mr. Chairman, not only would this add a tremendous budgetary and administrative cost, but it would also be contrary to the basic purpose of the program, which is adjustment to reemployment rather than income maintenance or compensation for past unemployment.

Mr. Chairman, because of these factors, I hope that my colleagues in the committee will reject the amendment.

Mr. STEIGER. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Wisconsin.

Mr. STEIGER. I very much appreciate the gentleman's yielding to me and I want to join with him, with the same reluctance as the gentleman expressed, in opposing the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

Mr. Chairman, it simply would not be a very good idea at this point, given the budgetary restraints and given, yes, the precedence that is established in making this apply on a selective kind of retroactive basis.

We all understand the very real problems faced in the northern part of Minnesota and various other places throughout the country. But I must say in all honesty, it would be the wrong place and wrong time to rectify through this vehicle at this point, and I would hope that the amendment would be rejected.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Minnesota (Mr. OBERSTAR) to the amendments offered by the gentleman from Ohio (Mr. VANIK).

The question was taken, and on a division (demanded by Mr. OBERSTAR) there were—ayes 7; noes 38.

So the amendments to the amendments were rejected.

AMENDMENT OFFERED BY MR. JEFFORDS TO THE AMENDMENTS OFFERED BY MR. VANIK

Mr. JEFFORDS. Mr. Chairman, I offer an amendment to the amendments.

The Clerk read as follows:

Amendment offered by Mr. JEFFORDS to the amendments offered by Mr. VANIK: On page 2, line 16 of the Vanik amendment strike out "107," and insert in lieu there of "107(2)" and in Subsection 303(b) insert at the end thereof the following:

(c) The amendments made by section 107 (1) and (3) shall take effect on the effective date of this act and shall apply:

(1) with respect to workers separated from employment on or after such effective date, and,

(2) with respect to workers receiving trade readjustment allowances on the effective date to assist them in completing an approved training program as provided by section 233(a)(1) of the Trade Act of 1974.

Mr. JEFFORDS. Mr. Chairman, I am offering this amendment on behalf of myself and also on behalf of the gentleman from Connecticut (Mr. SARASIN). I believe the amendment is self-explanatory, and I would be happy to yield to the gentleman from Wisconsin (Mr. STEIGER).

Let me further explain the amendment in more details. In particular, I feel that the language in section 112 creates a serious inequity because of the limitations imposed. While the committee will seek to amend this section, the intent will be the same. Those sections dealing with individual trade readjustment allowances will still apply only to those people who have been separated from employment 60 days after date of enactment.

This, unfortunately does not protect those workers who, at the date of enactment, are participating in an approved training program and receiving benefits. Under these circumstances, an individual's benefits could easily expire prior to the completion of their training program, and in many cases, these workers will be forced to terminate their training programs prematurely. I do not believe this is the intent of the TRA program, and I think my colleagues would agree with me on that point. To exclude these workers from the provisions of this legislation is to blind ourselves to a very real problem—one that we can solve before it confronts us.

We now have the opportunity to correct this oversight, and amend the bill to include these people. With that in mind, Congressman RON SARASIN and I have drafted this amendment to insure that inclusion. RON and I both felt that this was clearly an issue of equity for the worker currently on the program. This is not a retroactive measure. We are not going back into the books of the Department of Labor to search out individuals who have encountered this situation in the past. We are merely saying that this dilemma is going to face many workers in the future, even after the enactment of this legislation, and by applying foresight, we can avoid such a problem. I have here with me a number of individual cases of workers who have contacted our offices seeking support for this legislation because their benefits are going to expire prior to the conclusion of their training programs. Unfortunately, these people have been misled. H.R. 11711 in its present form will not help these people. I have been informed that this is a nationwide problem and that thousands of workers have experienced this problem in the past. Today, I ask your support for my amendment to insure the presence of equity in this bill.

While some Members may argue that our amendment adds too much of the cost of the TRA program it must be remembered that whatever the cost is, it would be a one-time expense and the maximum amount it could add to a worker's benefits is $1,400 (DOL) for 26 weeks—I sincerely believe that in order to pass a bill today that will express our real concern for workers affected by imports, with an emphasis on their retraining, we must make this one-time expense and cover these people currently participating in the program.

Mr. STEIGER. Mr. Chairman, to clarify again the question I asked the gentleman earlier, what is the cost of this amendment?

Mr. JEFFORDS. I know the maximum cost. I do not know the actual cost, but I do know the maximum cost. The outer limits are $14 million, but that would anticipate that everyone who is available and eligible would apply.

Mr. STEIGER. If it gets to be that much, and I think we will have to clarify this over in the other body, we have a problem with the budget limitation. But, I think the amendment is essentially a fair and equitable one. I would be willing on the part of our side to accept the amendment with the understanding of the gentleman in the well and of Mr. SARASIN that we will have to further clarify exactly what, in fact, the cost would be.

Mr. JEFFORDS. I am confused, as the gentleman is, on the cost, because the figures given to me and to my colleague from Minnesota (Mr. OBERSTAR) are identical. I do not believe ours would be anywhere near as expensive as those in the previous amendment just rejected. That is why I said as a very outer limit it would be $14 million. I think it would be substantially lower.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Minnesota.

Mr. OBERSTAR. I think the gentleman's amendment is a very sound and responsible one. It does not reach as far as my previously offered amendment would, and represents a scaled down, bargain-basement model of my own proposal. I would certainly hope that the committee could accept it.

Mr. JEFFORDS. I thank the gentleman.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, the basic purpose of adjustment assistance is to provide adjustment for reemployment, with emphasis on training. I think, as I understand the gentleman's amendment, it deals with those already in training, and allows them to complete that training. Otherwise, the basic training would be a total loss.

I, with the same reservations that were made by my distinguished colleague from Wisconsin, the ranking minority member of the committee (Mr. STEIGER) have a concern on that cost which I hope to have clarified. With that understanding, I will accept the amendment.

Mr. JEFFORDS. I thank the gentleman. All this does is to make sure that those already in training do not get terminated prematurely if there is a 2-year program and benefits run out. They are extended like anybody else if they are eligible.

Mr. VANIK. I might say that I am also influenced by the fact that it will provide some relief for the cases that are so clear-cut in the explanation made by our colleague from Minnesota.

Mr. JEFFORDS. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. JEFFORDS) to the amendments offered by the gentleman from Ohio (Mr. VANIK).

The amendment to the amendments was agreed to.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Ohio (Mr. VANIK), as amended.

The amendments, as amended, were agreed to.

AMENDMENT OFFERED BY MR. CLEVELAND

Mr. CLEVELAND. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLEVELAND: Page 11, after line 19, insert the following:

SEC. 107. REIMBURSEMENT OF STATES FOR UNEMPLOYMENT INSURANCE PAYMENTS.

(a) Section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended by adding at the end thereof the following new subsection:

"(g)(1) If unemployment insurance is paid under a State law to an adversely affected worker for a week for which—

"(A) he receives a trade adjustment allowance, or

"(B) he makes application for a trade readjustment allowance and would be entitled (determined without regard to subsection (c) or (e)) to receive such allowance,

the State agency making such payment shall, unless it has been reimbursed for such payment under Federal law, be reimbursed from funds appropriated pursuant to section 245(b)(1), to the extent such payment does not exceed the amount of the trade readjustment allowance which such worker would have received, or would have been entitled to receive, as the case may be, if he had not received the State payment. The amount of such reimbursement shall be determined by the Secretary on the basis of reports furnished to him by the State agency.

"(2) In any case in which a State agency

is reimbursed under paragraph (1) for payments of unemployment insurance made to an adversely affected worker, such payments, and the period of unemployment of such worker for which such payments were made, may be disregarded under the State law (and for purposes of applying section 3303 of the Internal Revenue Code of 1954) in determining whether or not an employer is entitled to a reduced rate of contributions permitted by the State law.".

(b) Section 241(a) of the Trade Act of 1974 (19 U.S.C. 2313(a)) is amended by adding at the end thereof the following new sentence: "Sums reimbursable to a State pursuant to section 232(g) shall be credited to the account of such State in the Unemployment Trust Fund and shall be used only for the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.".

(c) Paragraph (3) of section 3302(c) of the Internal Revenue Code of 1954 (relating to credits against Federal unemployment tax) is repealed.

Redesignate sections 107 through 112 as sections 108 through 113, respectively.

Mr. CLEVELAND (during the reading). Mr. Chairman, this amendment has been printed in the RECORD previously and has been described in several "dear colleague" letters, so I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Hampshire?

There was no objection.

Mr. CLEVELAND. Mr. Chairman, this amendment is a simple one. It reinstates Federal reimbursement to the States for unemployment compensation benefits paid to workers who receive adjustment assistance under the Trade Act.

The purpose is equally simple. It is my belief that the Federal Government has the responsibility to assume the costs of the impact of the Federal trade policies. At the present time, since the passage of the Trade Act of 1974, the States have had to pay unemployment compensation benefits to workers whose jobs were eliminated mainly because of the increased imports. I submit that this is unfair and constitutes a considerable burden for States, including the depletion of their unemployment trust funds for reasons totally beyond their control.

Under provisions of the Trade Expansion Act of 1962 and until the passage of the Trade Act of 1974—and let me repeat this—under provisions of the Trade Expansion Act of 1962 until the passage of the Trade Act of 1974, the Federal Government did assume the entire cost of unemployment benefits to workers receiving trade adjustment assistance allowances. They did it, for 12 years, and if they did it for 12 years there must have been some reason and logic behind it. It is the same reason and logic behind my amendment. It was changed in 1974 by means of a Senate amendment and was never debated in the House, but adopted in a conference report.

Its impact caught many of us by surprise, and I appreciate very much the Rules Committee granting a rule which provides the House an opportunity to now debate this issue.

The present system is a two-tier program whereby the States must pay unemployment compensation benefits to trade adjustment workers and the Federal Government provides a supplemental benefit.

May I remind the Members that this is done by the decision of the Federal Government and is a decision over which the States have no control whatsoever.

An added problem in some States, particularly my own State, is that the differernce between the State program and the Federal supplement can be very large and it reduces a worker's incentive to obtain new employment. That also increases the burden on the States. Let us just take my own State, for example. By the way, I have the figures available at the desk for every State in the Union.

If you have any doubts about this and as to how it impacts your State, those figures are available. They were sent to your office.

Just to give you an example, in New Hampshire our maximum benefit is $102, but under the trade adjustment assistance program workers are eligible to receive as much as $227 per week. And that is tax free.

One can readily conclude that this discrepancy might, indeed, prolong the duration of unemployment for trade adjustment workers and I have figures from a number of States listing the average duration of unemployment for Trade Act workers which in some cases is as high as 48 weeks.

Also in New Hampshire—and I do not have these figures available for the other States—and perhaps some of the people who represent other States do not care, but if they do, they should listen to the figures from New Hampshire.

In New Hampshire 80 percent of Trade Act workers exhausted their benefits which meant they stayed on for as long as they could under the greatly enriched benefits.

The national average and the State average is somewhere around 20 to 30 percent for exhausting benefits.

That gives you some conception of what I am trying to tell the Members, and I regret there are not more Members present on the floor.

Earlier I circulated a letter to my colleagues containing figures which the Department of Labor supplied indicating the actual expenditures by States in fiscal year 1977 for unemployment compensation to Trade Act workers. Members from the 24 States who have been forced to borrow from the Federal Government in order to keep their unemployment compensation trust funds solvent would do well to bear in mind the added pressure of Trade Act expenditures on those trust funds.

In conclusion, I want to stress that my amendment does not in any way increase the actual costs of the program but merely shifts the burden from the States to the Federal Government since that is where the trade policies are set. I expect that the subcommittee chairman, the gentleman from Ohio, will make a point of the estimated costs of this amendment and, again, I would point out that the costs will be the same whether or not my amendment passes. However, in fairness, I think the Federal Government, not the States, should have to pay for Federal programs.

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. CLEVELAND. I yield to the gentleman from Alabama.

Mr. FLOWERS. Mr. Chairman, I thank the gentleman from New Hampshire (Mr. CLEVELAND) for yielding me this time.

Mr. Chairman, I want to say to my colleagues in the House that I fully support the gentleman in the offering of his amendment. In fact, I joined with the gentleman in a "Dear Colleague" letter, myself, to do that.

I will not say that this is a States rights amendment, although it is bordering on that, but it is an answer to the Federal Government's intrustion into the States' activities. Since we are going to tell the States what they have to do, then I think we have got to be able to back them up by paying them for the costs.

When the gentleman talks about his State of New Hampshire, the same thing is true of my own State of Alabama, and of all of the States where the States are required to make an enormous expenditure as a result of Federal policies. This particular action is the result of the Federal Fair Trade policies.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. FLOWERS, and by unanimous consent, Mr. CLEVELAND was allowed to proceed for 2 additional minutes.)

Mr. FLOWERS. Mr. Chairman, if the gentleman will yield further, let me say that I think it is of paramount importance, and only fair, that we do this now and compensate the States for what they have to pay out as a result of the act of the Federal Government.

I thank the gentleman for yielding.

Mr. CLEVELAND. Mr. Chairman, I thank the gentleman from Alabama (Mr. FLOWERS) for his remarks.

The gentleman is quite right that, although it is not essentially a States rights amendment, it is very much in that nature.

The fact of the matter is that there is increasing comment out there in the rest of the country that the States and local governments are getting sick and tired of the Federal Government passing well-intentioned bills with good purpose and good reason and then saying: all right, this is a good idea, therefore, we want Illinois to do it, we want California to do it, we want Missouri to do it, we want all of the States to do it and, in fact, you have to do it.

But, then who pays the bill? We foist part of the charge over on to them.

As I say, the people are getting sick and tired of that kind of procedure.

That is what my amendment is all about.

I hope the House will adopt the amendment, and it should, because if this legislation is as good as its proponents say it is, it ought to be good enough for the people who pass the act to pay for the act.

Mr. TREEN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to take just a minute to ask the author of the amendment a few questions.

The gentleman from New Hampshire (Mr. CLEVELAND) has said that this amendment is a desirable amendment and I would ask the gentleman whether this amendment has any retroactive effect to reimburse States for previously incurred costs?

Mr. CLEVELAND. I do not think it does. I do not want to be too definite, but I think it would become effective on the date of its enactment.

Mr. TREEN. If any Member can enlighten me on that point I would be interested in hearing the response.

Mr. STEIGER. Mr. Chairman, will the gentleman yield?

Mr. TREEN. Yes, I yield to the gentleman from Wisconsin.

Mr. STEIGER. Mr. Chairman, the answer is yes. The response of the gentleman from New Hampshire (Mr. CLEVELAND) is correct.

Mr. TREEN. It has no retroactive effect?

Mr. STEIGER. It does not.

Mr. TREEN. The other question I have is this: After the basic period of unemployment benefits, there is a 13-week additional under the extended benefits program, and half of that is paid now out of the Federal share of unemployment tax and 50 percent by the States.

What effect does the gentleman's amendment have with respect to unemployment benefits paid 50-50 by the Federal Government and the State government?

Mr. CLEVELAND. If the gentleman will yield further, I do not think it would have an effect on that. This would only affect payments that are made by virtue of the Trade Assistance Act.

Mr. TREEN. I understand that, but the States are going to be reimbursed only for the portion paid by the States; we are not going to reimburse the States for benefits that they have administratively paid, but which were contributed to by the Federal tax; is that correct?

Mr. CLEVELAND. I do not think my amendment does that.

Mr. TREEN. The intention of the gentleman's amendment is merely to reimburse, on a dollar-for-dollar basis, that which the State paid out of the State's collections, that is, the collections that are credited to the State's account; is that the intention of the gentleman's amendment?

Mr. CLEVELAND. The purpose of my amendment is to have the Federal Government pay all of what a worker receives in the way of compensation, because the trade policies of the United States have been declared to have caused his unemployment. The Federal Government will pay all of the compensation that the worker receives exactly as they did from 1962 when the Trade Expansion Act was passed to 1974, before the Senate sneaked in this amendment which made the States pay part of it.

Mr. TREEN. I appreciate the gentleman's amendment. I think it is consistent with the entire principle of unemployment compensation.

Moreover, I think the fact that the States have to take the burden of this is inconsistent with the Trade Assistance Act.

Mr. Chairman, I urge that the Members support the amendment.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the gentleman from New Hampshire (Mr. CLEVELAND) has described his amendment excellently. The problem is that things are never quite the same from one year to the next.

In 1962 under the act that was then in force until 1974, it was required that in order to receive adjustment assistance, one must be unemployed wholly by reason of imports. In 1974 we changed the definition so that imports only had to be one of the factors concerned with unemployment.

For that reason, the Federal share of the cost of such assistance was reduced to a point where it is around 45 percent.

To say that we are requiring the States to do something they would not have to do is not wholly accurate. Fires, famines, droughts, and plagues, which also cause unemployment, are beyond the ability of the States to cope with. Yet, the States must pay unemployment.

If we question the entire Unemployment Compensation Act, we have to go back to the 1930's; and I do not think we want to do that.

What we have said in this bill is that trade has to be only an important factor, not the most important factor, in unemployment. Were there no Trade Act, those States would have to pay a little lower rate of unemployment compensation; but if we take what the Federal Government pays to them now, the States would be paying even more, absent the act that is before us.

Mr. Chairman, as to total costs, the cost of the amendment of the gentleman from New Hampshire is around $270 million.

Mr. CLEVELAND. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from New Hampshire.

Mr. CLEVELAND. Let us be honest about that matter. The gentleman has misstated that. There is a total cost of $200 million. That would be a cost which the Federal Government would pay, but which the States are now paying; is that not true?

Mr. FRENZEL. Yes. That is what I said.

Mr. CLEVELAND. All right.

Mr. FRENZEL. I am telling the Members that the cost to the Federal Government of the amendment of the gentleman from New Hampshire, (Mr. CLEVELAND) is about $274 million as we have it from the Department of Labor. The bill before us, depending on whether one believes the committee or the CBO, has a cost of between $130 and 149 million. So if we accept the amendment of the gentleman from New Hampshire, we are not going to double the cost of the bill; we are going to triple it; and that is, of course, way out of whack with the second budget resolution. It only means that something else is going to have to give somewhere. So in my judgment, Mr. Chairman, the bill before us is fair. There is no reason to accept the amendment of the gentleman from New Hampshire. It is inordinately expensive, and it should be defeated.

Mr. STEIGER. Mr. Chairman, will my colleague yield?

Mr. FRENZEL. I yield to the gentleman from Wisconsin.

Mr. STEIGER. I thank the gentleman for yielding.

I want to join. Mr. Chairman. my colleague, the gentleman from Minnesota (Mr. FRENZEL) in opposing this amendment. Let us understand the two fundamental points that are involved: One, under the present law what we did in the Trade Act of 1974 by expanding in effect the effect of the old trade law in making trade impact only a part of the reason for unemployment and the receipt of unemployment compensation is we said that the Federal Government ought to pick up that share over and above what the State would otherwise be paying for unemployment compensation. What the Cleveland amendment does—and this is the second point—is to say that regardless of what happens, we are assuming that the State is being unfairly burdened, and that is simply not the case at all, so the record ought to be eminently clear that the Trade Act of 1974 concept of picking up the cost above the State unemployment compensation program was the right way to do it. We could go back, if we wanted to, and revise the other old concept of tightening and making it solely trade impact. Then we would have the argument that the Federal Government ought to come in and pick up the whole ball of wax, but that is not what this amendment does. So the amendment ought not to be passed. I urge its rejection.

Mr. FRENZEL. I thank the gentleman for his contribution. I think this is true. This is not a States' rights amendment; it is giving a little gift to the States and burdening the Federal taxpayer.

Mr. FISHER. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Virginia.

Mr. FISHER. I thank the gentleman for yielding.

I would like to join my colleague, the gentleman from Minnesota (Mr. FRENZEL), and others who have spoken in opposition to this amendment and for the same reasons that they give. There are really two reasons why this amendment is not a good idea.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. FRENZEL was allowed to proceed for 1 additional minute.)

Mr. FRENZEL. I yield to the gentleman from Virginia.

Mr. FISHER. The first reason is its cost would carry us way over the budget,

and we would be in serious trouble on that count. The other is a little more abstruse perhaps, but if we say that everything caused by national policy or national situations ought to be paid for by the Federal Government, there is no telling where we would end up. A great deal of unemployment is caused by national conditions or national tax, or fiscal or monetary or employment policy, and also by trade policy. There is no way we can disengage that and say that in the case of national trade policy all the unemployment costs shall be borne as a cost to the Federal Government, none to the States, because all these other things we do at the Federal level may also contribute to unemployment or to employment, and we just do not get anywhere along that track.

I would say we ought to stick with the conventional time-tested way of doing this, of financing the bulk of this program through the State level.

The CHAIRMAN. The time of the gentleman has expired.

Mr. D'AMOURS. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment offered by my colleague from New Hampshire to the Trade Adjustment Assistance Act.

I firmly believe that it is time for the Federal Government to once again take full responsibility for its trade policies, rather than shifting part of this burden onto the States and their unemployment compensation systems.

Until 1974 the Federal Government did assume full responsibility for the compensation of workers who were laid off as a result of U.S. trade policies and unfair foreign trade competition. But during consideration of the Trade Act of 1974 the other body adopted an amendment to the House passed bill which provided that each State would have to pick up the tab for the portion of trade adjustment assistance benefits that workers would receive if they were unemployed for other reasons.

Unfortunately, the House receded to the Senate position in conference and a longstanding Federal policy was reversed.

This amendment would reinstate the provisions of the Trade Act prior to the adoption of the 1974 amendments and would once again have the Federal Government assume its full responsibility to these workers by paying the full cost of their unemployment and trade adjustment assistance benefits.

We are all well aware that the past few years have been years of relatively high unemployment. This has placed a great strain on the unemployment compensation funds of many States. I think it is highly unfortunate that the Federal Government chose a time of high unemployment, when there was already a large demand on unemployment compensation funds, to shirk its full responsibility. It is particularly ironic that this change took place in a time period when the dollar has been declining and the pressures of unfair foreign competition have been increasing.

So I ask my colleagues, do you have shoe or textile firms in your district which have been adversely affected by Federal trade policy and cheap foreign labor?

Do you have steelworkers or autoworkers who have been laid off as a result of foreign dumping?

Do you have TV or electronic workers who have been affected by the recently disclosed anticompetitive actions from Asia?

Do you have agricultural workers who have been laid off because their employers cannot keep up with foreign cartels and unfair foreign subsidization?

If so, I urge you to support this amendment which will save your State the cost of unemployment benefits to workers who have been certified by the U.S. Government as unemployed due to foreign trade actions of the U.S. Government.

Mr. Chairman, this is another classic example of a situation where the Federal Government's actions create unemployment, the Federal Government mandates that States pay unemployment compensation, and yet the Federal Government refuses to accept the full financial responsibility for its actions.

I urge my colleagues to adopt this amendment and place the responsibility for trade policy right where it belongs, on the shoulders of the Federal Government which sets that policy, not on the shoulders of the States which have no influence over trade policies.

Let us make sure that Ambassador Strauss knows when he is negotiating trade policy with other nations that his actions may result in higher unemployment benefit payments, and that these payments will be fully borne by the U.S. Treasury.

This is the best incentive Congress can give the administration to make sure that U.S. trade policy adequately protects U.S. workers.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. D'AMOURS. I yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I rise in wholehearted support for the amendment.

I hear some saying, "Vote," but we will stay until 4 o'clock anyway, so they might as well shut up.

The Federal Government mandates the programs on to the State level and then with Federal policy creates unemployment and then expects the States to gargle the cost of the program. If it is a Federal policy, the Federal Government ought to pay the bill, and if the Federal Government does not want to pay the bill, we ought to change our trade policies.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire (Mr. CLEVELAND).

The question was taken; and on a division (demanded by Mr. CLEVELAND) there were—ayes 20, noes 31.

Mr. CLEVELAND. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

Mr. CARNEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of H.R. 11711, trade adjustment assistance for workers and firms.

As Representative from the 19th Ohio District, which includes Youngstown, Ohio, I have witnessed firsthand the importance of a strong, national program for workers who have lost their jobs because of imports.

Trade readjustment assistance benefits must be part of Government policy if we intend to foster international trade with a minimum of barriers.

Large numbers of workers should not be expected to pay the economic consequences of our inability to promote a more stable international trade climate.

Provisions for trade readjustment assistance under the "Trade Act of 1974" have greatly helped American workers who have lost their jobs due to imports.

However, many workers who lost their jobs due to increased imports have not been eligible for such assistance.

H.R. 11711 provides improvements in benefits, especially by protecting workers who are indirectly affected, that is, those who supply industries which are directly hurt by foreign imports.

It provides retroactive eligibility to those workers laid off up to 18 months prior to filing petitions before November 1977.

It extends benefit periods by 26 weeks up to 104 weeks for workers 60 and older and workers who have decided to seek training in another field.

In addition, the bill increases job search and relocation allowances to 100 percent of expenses up to $600.

Mr. Chairman, on behalf of the more than 7,000 workers in my district who receive trade adjustment assistance, I urge my colleagues to vote in favor of this legislation.

A responsible course on trade policy demands that proper consideration be given to those who are directly affected by our trade policy.

The CHAIRMAN. Are there any further amendments to title I?

If not, the Clerk will read.

The Clerk read as follows:

TITLE II—IMPROVEMENTS IN ADJUSTMENT ASSISTANCE TO FIRMS

SEC. 201. ELIGIBILITY REQUIREMENTS OF FIRMS FOR ADJUSTMENT ASSISTANCE.

(a) Section 251 of the Trade Act of 1974 (19 U.S.C. 2341) is amended—

(1) by amending subsection (c)—

(A) by amending paragraph (2) to read as follows:

"(2) that sales or production, or both, of such firm have decreased absolutely, or threaten to decrease absolutely,",

(B) by inserting ", or the threat thereof" immediately before the period at the end of paragraph (3), and

(C) by striking out the last sentence thereof; and

(2) by striking out subsection (d) and inserting in lieu thereof the following:

"(d)(1) The Secretary shall certify a firm as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

"(A) that not less than 25 percent of the total sales of such firm is accounted for by the provision to import-impacted firms of—

"(i) any article (including, but not limited to, any component part) which is essen-

tial to the production of any import-impacted article,

"(ii) any service which is essential to the production, storage, or transportation of any import-impacted article, or

"(iii) any article and any service described in clauses (i) and (ii);

"(B) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

"(C) that the sale or production, or both, of such firm have decreased absolutely, or threaten to decrease absolutely; and

"(D) that the absolute decrease, or the threat thereof, in the sales or production, or both, by import-impacted firms of import-impacted articles, with respect to which such firm provides articles or services referred to in subparagraph (A), contributed importantly to the total or partial separation, or threat thereof, referred to in subparagraph (B) and to the decline in sales and production, or the threat thereof, referred to in subparagraph (C).

"(2) For purposes of this subsection—

"(A) The term 'import-impacted article' means any article produced by an import-impacted firm, if such article is one with respect to which a determination under section 222(a)(3) or subsection (c)(3) was made incident to the certification of the group of workers or firm concerned.

"(B) The term 'import-impacted firm' means—

"(i) any firm or appropriate subdivision thereof the workers of which have been certified pursuant to section 222(a), or

"(ii) any firm which has been certified pursuant to subsection (c).

"(e) For purposes of subsections (c) and (d) the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

"(f) A determination shall be made by the Secretary as soon as possible after the date on which any petition is filed under this section, but in any event not later than 60 days after that date.

"(g) In any case in which the Secretary of Labor notifies the Secretary that a petition has been filed under section 221 by any group of workers, if a petition has been filed under subsection (a) regarding any firm in which such group of workers is, or was, employed, the Secretary, notwithstanding any other provision of law, shall promptly provide to the Secretary of Labor any data and other information obtained by the Secretary in taking action on the petition which would be useful to the Secretary of Labor in making a determination under section 223 with respect to the workers.

"(h) If any certification issued under this section is based upon a determination made pursuant to subsection (c)(2) or (d)(1)(C) that the production or sales, or both, of the firm concerned threaten to decrease absolutely, no technical assistance (other than assistance provided for in section 253(a)(1)) or financial assistance under this chapter shall be provided to the firm covered by such certification until after the date on which the Secretary determines pursuant to such subsection that the production, or sales, or both, of such firm have decreased absolutely.".

(b) The amendments made by subsection (a) shall apply with respect to petitions filed under section 251(a) of the Trade Act of 1974 on or after the date of the enactment of this Act.

SEC. 202. TECHNICAL ASSISTANCE

(a) Section 252 of the Trade Act of 1974 (19 U.S.C. 2342(c)) is amended—

(1) by striking out subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(b) Section 253 of such Act (49 U.S.C. 2343) is amended—

(1) by amending subsection (b)—

(A) by striking out "(b) The" and inserting in lieu thereof "(b)(1) Except as provided in paragraph (2), the"; and

(B) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall provide technical assistance, on such terms and conditions as the Secretary determines to be appropriate, to any firm certified under section 251 for the purpose of assisting such firm in preparing a proposal for its economic adjustment, unless the Secretary determines, after consultation with the firm, that it is able to prepare such a proposal without such assistance. If technical assistance provided to a firm under this paragraph is furnished, pursuant to subsection (c), through any private individual, firm, or institution, the Secretary shall bear, subject to the 90 percent limitation in such subsection (c), that portion of the cost of such assistance which, in the judgment of the Secretary, the firm is unable to pay.".

(2) by striking out "75 percent" in subsection (c) and inserting in lieu thereof "90 percent".

SEC. 203. FINANCIAL ASSISTANCE

(a) Section 254 of the Trade Act of 1974 (19 U.S.C. 2344) is amended by adding at the end thereof the following new subsection:

"(d) With respect to any loan guaranteed under this section, the Secretary may, without regard to section 3679(a) of the Revised Statutes of the United States (31 U.S.C. 665(a)), contract to pay annually, for not more than 10 years, to or on behalf of the borrower an amount sufficient to reduce by up to 4 percentage points the interest paid by such borrower on such guaranteed loan. No payment under this subsection shall result in the interest rate paid by a borrower on any guaranteed loan being less than the rate of interest for a direct loan made under this section.".

(b) The amendment made by subsection (a) shall apply with respect to loans guaranteed under section 254 of the Trade Act of 1974 on or after the date of the enactment of this Act.

SEC. 204. CONDITIONS FOR FINANCIAL ASSISTANCE.

(a) Section 255 of the Trade Act of 1974 (19 U.S.C. 2345) is amended—

(1) by amending subsection (b) by striking out "(1)", and by striking out ", plus" and all that follows thereafter and inserting in lieu thereof a period; and

(2) by amending subsection (h)—

(A) by amending paragraph (1) to read as follows:

"(h)(1) The outstanding aggregate liability of the Government at any time with respect to loans guaranteed under this chapter on behalf of any one firm shall not exceed $5,000,000."; and

(B) by striking out "$1,000,000" in paragraph (2) and inserting in lieu thereof "$3,000,000".

(b)(1) The amendments made by subsection (a)(1) shall apply with respect to direct loans made under section 255 of the Trade Act of 1974 on or after the date of the enactment of this Act.

(2) With respect to any direct loan made under such section 255 before such date of enactment, at the request of the borrower the Secretary of Commerce shall take such action as may be appropriate to adjust the rate of interest on such loan consistent with the amendment made by subsection (a)(1) effective with respect to the outstanding balance of the loan existing on October 31, 1977.

SEC. 205. PROVISIONS OF INFORMATION ON BENEFITS TO FIRMS.

(a) Section 264 of the Trade Act of 1974 (19 U.S.C. 2354) is amended—

(1) by striking out "; ACTION WHERE THERE IS AFFIRMATIVE FINDING" in the section heading thereto; and

(2) by striking out subsection (c) thereof.

(b) Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341–2354) is amended by adding at the end thereof the following new section:

"SEC. 265. BENEFIT INFORMATION TO FIRMS.

"The Secretary shall provide full information to firms about the technical and financial assistance available under this chapter, and under other Federal programs, which may facilitate the adjustment of such firms to import competition. The Secretary shall provide whatever assistance is necessary to enable firms to prepare petitions for certifications of eligibility.".

(c) The table of contents of the Trade Act of 1974 is amended by striking out

"Sec. 264. Study by Secretary of Commerce when International Trade Commission begins investigation; action where there is affirmative finding."

and inserting in lieu thereof the following:

"Sec. 264 Study by Secretary of Commerce when International Trade Commission begins investigation.

"Sec. 265. Benefit information to firms."

Mr. VANIK (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. Are there amendments to title II?

If not, the Clerk will read.

The Clerk read as follows:

TITLE III—GENERAL PROVISIONS

SEC. 301.

Section 281 of the Trade Act of 1974 (19 U.S.C. 2392) is amended to read as follows:

"SEC. 281. ADJUSTMENT ASSISTANCE COORDINATION.

"(a) There is established an Adjustment Assistance Coordinating Committee to consist of a Deputy Special Trade Representative as Chairman and the officials charged with adjustment assistance responsibilities of the Department of Labor, the Department of Commerce, and the Small Business Administration. It shall be the function of the Adjustment Assistance Coordinating Committee to coordinate the development and review of all policies, studies, and programs of the various agencies involved pertaining to the adjustment assistance of workers, firms, and communities to import competition for the purpose of insuring prompt, efficient, and effective delivery of adjustment assistance available under this title.

"(b) There is established the Commerce-Labor Adjustment Action Committee (hereinafter referred to in this subsection as the 'Committee') the members of which shall be officials charged with economic adjustment responsibilities in the Department of Commerce, the Department of Labor, and any other appropriate Federal agency. The chairmanship of the Committee shall rotate among members representing the Department of Commerce and the Department of Labor. In addition to any other function deemed appropriate by the Secretary of Commerce and the Secretary of Labor, the Committee shall facilitate the coordination between such departments in providing to trade-impacted workers, firms, and communities timely and effective assistance under this title (including, but not limited to, the implementation of sections 225 and 265) and under other appropriate programs admin-

istered by such departments. The Committee shall report quarterly on its activities to the Adjustment Assistance Coordinating Committee.".

SEC. 302. GRANT PROGRAMS AND STUDIES

(a) Chapter 5 of Title II of the Trade Act of 1974 (19 U.S.C. 2391–2271) is amended—

(1) by redesignating section 284 as section 287; and

(2) by inserting immediately after section 283 the following new sections:

"SEC. 284. GRANTS TO LABOR ORGANIZATIONS.

"(a) The Secretary of Labor may make grants to unions, employee associations, or other appropriate organizations for the purpose of enabling such organizations to carry out research on, and the development and evaluation of, issues relating to the design of an effective program of trade adjustment assistance for workers in industries in which significant numbers of the workers have been, or will likely be, certified as eligible for adjustment assistance. Such issues shall include, but not be limited to, the impact of new technologies on workers, the design of new workplace procedures to improve efficiency, the creation of new jobs to replace those eliminated by foreign imports, and worker training and skill development. Any grant made under this section shall be subject to such terms and conditions as the Secretary deems necessary and appropriate. The Secretary of Labor may not expend more than $2,000,000 in any one year for grants under this section.

"(b) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

"SEC. 285. GRANTS TO INDUSTRY ORGANIZATIONS.

"(a) The Secretary of Commerce may make grants, on such terms and conditions as the Secretary of Commerce deems appropriate, for the establishment of industrywide programs for research on, and the development and application of, technology and organizational techniques designed to improve economic efficiency. Eligible recipients may be associations or representative bodies of industries in which a substantial number of firms have been certified as eligible to apply for adjustment assistance under section 251. The Secretary of Commerce may not expend more than $2,000,000 in any one year for grants under this section.

"(b) There are authorized to be appropriated such sums as may be necessary and appropriate to carry out the purposes of this section.

"SEC. 286. INDUSTRY STUDIES BY SECRETARY OF COMMERCE.

"The Secretary of Commerce may conduct studies of those industries actually or potentially threatened by import competition. The purpose of such studies shall include—

"(1) the identification of basic industrywide characteristics contributing to the competitive weakness of domestic firms;

"(2) the analysis of all other considerations affecting the international competitiveness of industries; and

"(3) the formulation of options for assisting trade-impacted industries and member firms, including industrywide initiatives.".

(b) The table of contents of the Trade Act of 1974 is amended—

(1) by striking out

"Sec. 281. Coordination."

and inserting in lieu thereof

"Sec. 281. Adjustment assistance coordination."; and

(2) by striking out

"SEC. 284. Effective date.

and inserting in lieu thereof

"Sec. 284. Grants to labor organizations.

"Sec. 285. Technical assistance grants.

"Sec. 286. Industry studies by Secretary of Commerce.

"Sec. 287. Effective date.".

Mr. VANIK (during the reading). Mr. Chairman, I ask unanimous consent that title III be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. Are there amendments to title III?

If not, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. NATCHER) having assumed the chair, Mr. MCHUGH, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 11711) to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974, pursuant to House Resolution 1288, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 261, nays 24, not voting 147, as follows:

[Roll No. 743]

YEAS—261

| | | |
|---|---|---|
| Akaka | Bowen | Conyers |
| Alexander | Breckinridge | Corcoran |
| Ambro | Brodhead | Cornell |
| Anderson, Calif. | Broomfield | D'Amours |
| Anderson, Ill. | Brown, Calif. | Daniel, Dan |
| Andrews, N. Dak. | Brown, Mich. | Daniel, R. W. |
| Annunzio | Brown, Ohio | Danielson |
| Applegate | Broyhill | Davis |
| Ashley | Burgener | de la Garza |
| AuCoin | Burke, Mass. | Delaney |
| Bafalis | Burlison, Mo. | Derwinski |
| Baldus | Burton, John | Devine |
| Barnard | Butler | Dickinson |
| Beard, R.I. | Carney | Dingell |
| Beard, Tenn. | Carr | Dornan |
| Bedell | Carter | Downey |
| Benjamin | Cavanaugh | Drinan |
| Bevill | Cederberg | Duncan, Tenn. |
| Bingham | Chisholm | Early |
| Blanchard | Clausen, Don H. | Eckhardt |
| Boggs | Cleveland | Edgar |
| Bolling | Coleman | Edwards, Ala. |
| Bonior | Conable | Edwards, Calif. |
| | Conte | Eilberg |
| | | Emery |
| English | Livingston | Risenhoover |
| Erlenborn | Lloyd, Calif. | Robinson |
| Ertel | Lloyd, Tenn. | Roe |
| Evans, Colo. | Long, Md. | Rogers |
| Evans, Del. | Lott | Rooney |
| Evans, Ga. | Luken | Rosenthal |
| Fascell | Lundine | Rousselot |
| Fenwick | McClory | Roybal |
| Fisher | McCloskey | Ruppe |
| Fithian | McCormack | Russo |
| Flippo | McEwen | Ryan |
| Flood | McFall | Santini |
| Flowers | McHugh | Satterfield |
| Foley | Mann | Scheuer |
| Ford, Mich. | Markey | Schroeder |
| Fowler | Marks | Schulze |
| Frenzel | Marlenee | Sebelius |
| Garcia | Marriott | Seiberling |
| Gaydos | Martin | Sharp |
| Gephardt | Mattox | Shuster |
| Giaimo | Mazzoli | Simon |
| Gilman | Meeds | Skubitz |
| Ginn | Meyner | Smith, Iowa |
| Glickman | Michel | Solarz |
| Goldwater | Mikulski | Spellman |
| Gonzalez | Miller, Ohio | Spence |
| Goodling | Mineta | Staggers |
| Gore | Mitchell, Md. | Stangeland |
| Gradison | Mitchell, N.Y. | Stanton |
| Grassley | Moakley | Stark |
| Green | Mollohan | Steers |
| Gudger | Moore | Steiger |
| Hamilton | Moorhead, Calif. | Stokes |
| Hanley | Moorhead, Pa. | Stratton |
| Hannaford | Moss | Studds |
| Harris | Murphy, N.Y. | Thompson |
| Harsha | Murphy, Pa. | Treen |
| Hefner | Murtha | Trible |
| Heftel | Myers, John | Udall |
| Holland | Myers, Michael | Ullman |
| Holt | Natcher | Van Deerlin |
| Holtzman | Neal | Vander Jagt |
| Hubbard | Nedzi | Vanik |
| Hughes | Nichols | Volkmer |
| Ichord | Nowak | Walgren |
| Jeffords | O'Brien | Walker |
| Jenkins | Oberstar | Walsh |
| Johnson, Calif. | Obey | Watkins |
| Johnson, Colo. | Ottinger | Weaver |
| Jones, Okla. | Panetta | Weiss |
| Kastenmeier | Patten | White |
| Kemp | Patterson | Whitehurst |
| Kildee | Pattison | Whitten |
| Kindness | Perkins | Wilson, Bob |
| Kostmayer | Preyer | Wirth |
| Krebs | Price | Wolff |
| LaFalce | Pritchard | Wylie |
| Lagomarsino | Pursell | Yates |
| Le Fante | Quayle | Yatron |
| Leach | Rahall | Young, Mo. |
| Lederer | Railsback | Young, Tex. |
| Leggett | Regula | Zablocki |
| Lent | Reuss | |
| Levitas | | |

NAYS—24

| | | |
|---|---|---|
| Andrews, N.C. | Jones, N.C. | Roberts |
| Archer | Kelly | Rose |
| Bauman | McDonald | Runnels |
| Bennett | McKay | Steed |
| Burleson, Tex. | Mahon | Taylor |
| Crane | Montgomery | Whitley |
| Fountain | Pike | Wydler |
| Hall | Poage | Young, Fla. |

NOT VOTING—147

| | | |
|---|---|---|
| Abdnor | Collins, Ill. | Guyer |
| Addabbo | Collins, Tex. | Hagedorn |
| Ammerman | Corman | Hammer-schmidt |
| Armstrong | Cornwell | Hansen |
| Ashbrook | Cotter | Harkin |
| Aspin | Coughlin | Harrington |
| Badham | Cunningham | Hawkins |
| Baucus | Dellums | Heckler |
| Beilenson | Dent | Hightower |
| Biaggi | Derrick | Hillis |
| Blouin | Dicks | Hollenbeck |
| Boland | Diggs | Horton |
| Bonker | Dodd | Howard |
| Brademas | Duncan, Oreg. | Huckaby |
| Breaux | Edwards, Okla. | Hyde |
| Brinkley | Evans, Ind. | Ireland |
| Brooks | Fary | Jacobs |
| Buchanan | Findley | Jenrette |
| Burke, Calif. | Fish | Jones, Tenn. |
| Burke, Fla. | Florio | Jordan |
| Burton, Phillip | Flynt | Kasten |
| Byron | Ford, Tenn. | Kazen |
| Caputo | Forsythe | Keys |
| Chappell | Fraser | Krueger |
| Clawson, Del | Frey | Latta |
| Clay | Fuqua | Lehman |
| Cochran | Gammage | Long, La. |
| Cohen | Gibbons | |

| | | |
|---|---|---|
| Lujan | Pressler | Stump |
| McDade | Quie | Symms |
| McKinney | Quillen | Teague |
| Madigan | Rangel | Thone |
| Maguire | Rhodes | Thornton |
| Mathis | Richmond | Traxler |
| Metcalfe | Rinaldo | Tsongas |
| Mikva | Rodino | Tucker |
| Milford | Roncalio | Vento |
| Miller, Calif. | Rostenkowski | Waggonner |
| Minish | Rudd | Wampler |
| Moffett | Sarasin | Waxman |
| Mottl | Sawyer | Whalen |
| Murphy, Ill. | Shipley | Wiggins |
| Myers, Gary | Sikes | Wilson, C. H. |
| Nix | Sisk | Wilson, Tex. |
| Nolan | Skelton | Winn |
| Oakar | Slack | Wright |
| Pease | Smith, Nebr. | Young, Alaska |
| Pepper | Snyder | Zeferetti |
| Pettis | St Germain | |
| Pickle | Stockman | |

The Clerk announced the following pairs:

Mr. Brinkley with Mr. Buchanan.
Ms. Oakar with Mr. Coughlin.
Mr. Brooks with Mr. Cunningham.
Mr. Dodd with Mr. Latta.
Mr. Maguire with Mr. McDade.
Mr. Corman with Mr. Whalen.
Mr. Jacobs with Mr. Wampler.
Ms. Keys with Mr. Findley.
Mr. Nix with Mr. Hammerschmidt.
Mr. Pease with Mrs. Heckler.
Mr. Murphy of Illinois with Mr. Rudd.
Mr. Baucus with Mr. Sawyer.
Mr. Jones of Tennessee with Mr. Horton.
Mr. Jenrette with Mr. Hyde.
Mr. Biaggi with Mr. Stockman.
Mr. Blouin with Mr. Thone.
Mrs. Burke of California with Mr. Kazen.
Mr. Phillip Burton with Mr. Madigan.
Mr. Chappell with Mr. Snyder.
Mr. Howard with Mr. Forsythe.
Mr. Ireland with Mr. Aspin.
Mr. Long of Louisiana with Mr. Hollenbeck.
Mr. Mathis with Mr. Clay.
Mr. Dicks with Mr. Skelton.
Mr. Edwards of Oklahoma with Mr. Pickle.
Mr. Florio with Mrs. Smith of Nebraska.
Mr. Cornwell with Mr. Stump.
Mr. Mottl with Mr. Tucker.
Mr. Charles H. Wilson of California with Mr. Evans of Indiana.
Mr. Vento with Mr. Derrick.
Mr. Slack with Mr. Diggs.
Mr. Dellums with Mr. Ford of Tennessee.
Mr. Gammage with Mr. Roncalio.
Mr. Gibbons with Mr. Harkin.
Mr. Hightower with Mr. Charles Wilson of Texas.
Mr. Metcalfe with Mr. Traxler.
Mr. Wright with Mr. Moffett.
Mr. Addabbo with Mr. Frey.
Mr. Rodino with Mr. Guyer.
Mr. Fary with Mr. Sarasin.
Mr. Richmond with Mr. Kasten.
Mr. Zeferetti with Mr. Abdnor.
Mr. Brademas with Mr. Hansen.
Mr. Rostenkowski with Mr. Hagedorn.
Mr. Waggonner with Mrs. Pettis.
Mr. Fuqua with Mr. Wiggins.
Mr. Sikes with Mr. Cohen.
Mr. Miller of California with Mr. Burke of Florida.
Mr. Breaux with Mr. Lujan.
Mr. Ammerman with Mr. Badham.
Mr. Carter with Mr. Caputo.
Mr. Dent with Mr. Del Clawson.
Mr. Flynt with Mr. Winn.
Mr. Pepper with Mr. Fish.
Mr. Mikva with Mr. Quie.
Mr. Teague with Mr. Pressler.
Mr. St Germain with Mr. Cochran of Mississippi.
Mr. Shipley with Mr. Hillis.
Mr. Rangel with Mr. McKinney.
Mr. Byron with Mr. Milford.
Mr. Krueger with Mr. Young of Alaska.
Mr. Lehman with Mr. Thornton.
Mr. Hawkins with Mr. Sisk.
Mr. Waxman with Mr. Armstrong.
Mr. Tsongas with Mr. Symms.
Mr. Beilenson with Mr. Quillen.
Mr. Bonker with Mr. Fraser.
Mr. Harrington with Mr. Ashbrook.
Mrs. Collins of Illinois with Mr. Rinaldo.
Mr. Nolan with Mr. Collins of Texas.
Miss Jordan with Mr. Gary A. Myers.
Mr. Boland with Mr. Duncan of Oregon.
Mr. Minish with Mr. Huckaby.

Mr. GARCIA changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. PIKE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

## PERMISSION TO FILE CONFERENCE REPORT ON H.R. 3816, FEDERAL TRADE COMMISSION AMENDMENTS OF 1977

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

CONFERENCE REPORT (H. REPT. No. 95–1557)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Trade Commission Amendments of 1978".

PERSONNEL

SEC. 2. (a)(1) The first section of the Federal Trade Commission Act (15 U.S.C. 41) is amended—

(A) in the first sentence thereof, by inserting "(a)(1)" after "That";

(B) by inserting "(b)" before the second paragraph;

(C) in subsection (a)(1) thereof, as so designated in subparagraph (A)—

(i) by inserting after the first sentence thereof the following new sentences: "The President shall nominate persons for the Commission who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. In nominating persons for the Commission, the President shall insure that Commission membership is well balanced, with a broad representation of various talents, backgrounds, occupations, and experience appropriate to the functions of the Commission.";

(ii) by striking out "The Commission shall choose" and all that follows through "membership." and inserting in lieu thereof the following new sentences: "The President shall appoint one of the Commissioners as the Chairman of the Commission. The Chairman shall serve as Chairman at the pleasure of the President.";

(iii) by inserting "profession," after "vocation,"; and

(iv) by inserting after "or malfeasance in office." the following new sentence: "Once appointed, a Commissioner may serve until the conclusion of his term of office without regard to the provisions of section 8335 of title 5, United States Code."; and

(D) in subsection (a) thereof, as so designated in subparagraph (A), by adding at the end thereof the following new paragraph:

"(2) No person who is appointed to a term as a Commissioner after the date of enactment of the Federal Trade Commission Amendments of 1978, no employee of the Commission classified as a GS–16 or higher, and no employee appointed to any position by the Commission under section 2(c) shall, for a period of one year beginning on the last day of service as such Commissioner or employee—

"(A) make any appearance before; or

"(B) make any written or oral communication to;

the Commission, or any Commissioner or employee, on behalf of any person (other than the United States) on any particular matter which is before the Commission, except that the restriction established in this paragraph shall not apply to any matter of an exclusively personal and, individual nature.".

(2) The amendment made in paragraph (1)(D) shall apply to employees of the Commission specified in that amendment beginning on and after the first day of the 13th complete calendar month occurring after the date of the enactment of this Act.

(b) Section 2 of the Federal Trade Commission Act (15 U.S.C. 42) is amended—

(1) by striking out "SEC. 2. That each" and inserting in lieu thereof "SEC. 2. (a) Each";

(2) by inserting, respectively, "(b)", "(e)", "(f)", and "(g)" before the second, third, fourth, and fifth paragraphs thereof; and

(3) by inserting after subsection (b) thereof, as so designated in paragraph (2), the following new subsections:

"(c) In addition to the other authority conferred by this section, the Commission is authorized to establish, assign the duties, and fix the compensation for not more than 25 attorney, economist, special expert, and outside counsel positions. Individuals may be appointed to such positions by the Commission without regard to the provisions of title 5, United States Code, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that such individuals shall be paid at rates not in excess of the maximum rate of basic pay then currently paid for GS–18, but not less than the minimum rate of basic pay then currently paid for GS–16, of the General Schedule under section 5332 of such title.

"(d) The appointment or removal of any officer (other than a Commissioner or the general counsel of the Commission) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.".

APPLICATION OF ACT TO SAVINGS AND LOAN INSTITUTIONS

SEC. 3. (a) Section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) is amended by inserting after "banks," the following: "savings and loan institutions described in section 18(f)(3),".

(b)(1) Section 6(a) of the Federal Trade Commission Act (15 U.S.C. 46(a)) is amended by inserting after "banks" the following: ", savings and loan institutions described in section 18(f)(3),".

(2) Section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)) is amended by inserting after "banks," the following: "savings and loan institutions described in section 18(f)(3),".

(3) The proviso at the end of section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended—

(A) by inserting after "banks" the following: ", savings and loan institutions described in section 18(f)(3),"; and

(B) by inserting ", in business as a savings and loan institution," after "banking".

(c)(1) Section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(A) in the first sentence thereof—

(i) by inserting "or savings and loan institutions described in paragraph (3)" after "banks" each place it appears therein; and

(ii) by inserting "or (3)" after "(2)";

(B) in the second sentence thereof, by inserting after "System" the following: "(with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))"; and

(C) in the last sentence thereof—

(i) by inserting "each" before "such Board" the first place it appears therein;

(ii) by striking out "such Board finds that (A)" and inserting in lieu thereof "(A) either such Board finds that";

(iii) by inserting "or savings and loan institutions described in paragraph (3), as the case may be," after "banks" the first place it appears therein;

(iv) by inserting after "or (B)" the following: "the Board of Governors of the Federal Reserve System finds"; and

(v) by striking out "the Board" and inserting in lieu thereof "such Board".

(2) Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended by redesignating paragraphs (3), (4), and (5) thereof as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) thereof the following new paragraph:

"(3) Compliance with regulations prescribed under this subsection shall be enforced under section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) with respect to Federal savings and loan associations, section 407 of the National Housing Act (12 U.S.C. 1730) with respect to insured institutions, and sections 6(i) and 17 of the Federal Home Loan Bank Act (12 U.S.C. 1426(i), 1437) with respect to savings and loan institutions which are members of a Federal Home Loan Bank, by a division of consumer affairs to be established by the Federal Home Loan Bank Board pursuant to the Federal Home Loan Bank Act.".

REVIEW OF CEASE AND DESIST ORDERS

SEC. 4. (a) The first sentence of section 5(c) of the Federal Trade Commission Act (15 U.S.C. 45(c)) is amended to read as follows: "Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or any act or practice may obtain a review of such order in the court of appeals of the United States for the circuit within which such person, partnership, or corporation resides or maintains its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in the court within 60 days after the date of the service of such order, a written petition praying that the order of the Commission be set aside.".

(b) The amendment made in subsection (a) shall apply only with respect to petitions for judicial review of cease and desist orders served under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) after the date of the enactment of this Act.

EFFECTIVE DATE OF CEASE AND DESIST ORDERS

SEC. 5. (a)(1) Section 5(g) of the Federal Trade Commission Act (15 U.S.C. 45(g)) is amended to read as follows:

"(g)(1) For purposes of this Act (other than section 19(d)), an order of the Commission to cease and desist shall become final upon the expiration of 60 days after such order is served, except as provided in subsections (h), (i), and (j). After an order has become final the Commission may modify it or set it aside as provided in the last sentence of subsection (b). Any such order may be stayed in whole or part, subject to such conditions as may be appropriate, by—

"(A) the Commission;

"(B) an appropriate court of appeals of the United States, if a petition for review of such order is pending in such court and if an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, did not grant the application; or

"(C) the Supreme Court, if an applicable petition for certiorari is pending.

"(2) For purposes of section 19(d), such an order shall become final—

"(A) upon the expiration of 60 days after such order is served if no petition for its review is filed in accordance with subsection (c); or

"(B) if such a petition is so filed—

"(i) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by a court of appeals of the United States and no petition for certiorari has been duly filed;

"(ii) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by a court of appeals of the United States; or

"(iii) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review dismissed.".

(2) Section 19(c)(1) of the Federal Trade Commission Act (15 U.S.C. 57b(c)(1)) is amended by striking out "by reason of section 5(g)(1)" and inserting in lieu thereof "under section 5(g)(1) and no petition for its review was filed in accordance with section 5(c)".

(b) The amendments made in subsection (a) shall apply only with respect to cease and desist orders of the Federal Trade Commission served under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) after the date of the enactment of this Act.

ENFORCEMENT OF SUBPOENAS AND ORDERS

SEC. 6. (a)(1) Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended—

(A) by striking out "SEC. 10. That any" and inserting in lieu thereof "SEC. 10. (a) Any";

(B) by inserting, respectively, "(b)", "(c)(1)", and "(f)" before the second, third, and fourth paragraphs;

(C) by striking out the first two sentences of subsection (c)(1), as so designated in subparagraph (B), and inserting in lieu thereof the following: "Except as provided in paragraph (2), if any person, partnership, or corporation fails to comply with any subpoena or order (other than a cease and desist order) issued by the Commission under this Act and if such failure continues for 30 days after service on such person, partnership, or corporation of a notice of such default, such person, partnership, or corporation shall be liable to the United States for a civil penalty of not more than $5,000, as the court may determine, for each day that such failure continues after such 30th day. Such a civil penalty shall be recoverable in a civil suit, by and in the name of the Commission by any of its attorneys designated by it for such purposes, brought in a district court of the United States. If such a civil action is brought against one person, partnership, or corporation, it shall be brought in the district court of the United States within the jurisdiction of which such person, partnership, or corporation resides or transacts business. If such a civil action is brought against two or more persons, partnerships, or corporations, such civil action may be brought in any district court of the United States for a district within which the inquiry of the Commission is being carried on. In determining the amount of such a civil penalty, the court shall take into account the reasonableness and good faith of any action or inaction of such person, partnership, or corporation with respect to which such penalty is being assessed, and such other matters as justice may require. The amount of such civil penalty shall be payable into the Treasury of the United States."; and

(D) by inserting after subsection (c)(1), as so designated in subparagraph (B), the following:

"(2) Any person, partnership, or corporation which has been served with a notice of default issued by the Commission with respect to any subpoena or order referred to in paragraph (1) may apply to an appropriate district court of the United States requesting a stay of the accumulation of penalties under such paragraph for the default with respect to which such notice was served. If, before the expiration of 15 days after such person, partnership, or corporation is served with such notice, such person, partnership, or corporation—

"(A) makes such application; and

"(B) furnishes the court to which such application is made such records, documents, and other materials as may be required for the disposition of the application;

such person, partnership, or corporation shall, notwithstanding paragraph (1), not be liable for such penalties until the expiration of 45 days after service of such notice.

"(d) No court shall have jurisdiction over any action or claim seeking—

"(A) to stay the accumulation of any penalties authorized in subsection (c)(1) for for failure to comply with any subpoena or order referred to in such subsection; or

"(B) to challenge the validity of, or enjoin the enforcement of, any such subpoena or order;

unless the action is brought or the claim is made by a person, partnership, or corporation, or by a member of a joint venture, and a notice of default respecting such subpoena or order has been served upon such person, partnership, corporation, or joint venture.

"(e) No court shall stay the accumulation of penalties for failure to comply with any part of any subpoena or order referred to in subsection (c)(1) unless the party seeking such stay demonstrates that the applicable standards for such stays are satisfied as to such part.".

(2) The amendments made in paragraph (1) shall apply only with respect to failures to comply with a subpoena or order referred to in section 10(c)(1) of the Federal Trade Commission Act (as so designated in paragraph (1)(B) and as amended in paragraph (1)(C)) and issued after the date of the enactment of this Act.

(b) Section 16(a)(2)(D) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)(D)) is amended to read as follows:

"(D) relating to the enforceability or validity of a subpoena or order (other than a cease and desist order) issued by the Commission;".

(c)(1) Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is amended—

(A) by striking out "SEC. 9. That for" and inserting in lieu thereof "SEC. 9. (a) For";

(B) by inserting, respectively, "(b)", "(d)", and "(e)" before the second, fifth, and sixth paragraphs; and

(C) by striking out the third and fourth paragraphs and inserting in lieu thereof the following new subsection:

"(c) In case of failure to comply with any provision of a subpoena or of an order (other than a cease and desist order) issued pursuant to this Act, the Commission may invoke the aid of a court of the United States in requiring compliance with such subpoena or order. Any of the district courts of the United States within the jurisdiction of which the inquiry of the Commission is being carried on may, in the case of such refusal to obey, issue an order requiring compliance with such subpoena or order, and any failure to obey such order of the court may be punished by such court as a contempt thereof.".

(2) Section 9(b) of the Federal Trade Commission Act, as so designated in paragraph (1)(B), is amended by striking out the second sentence thereof.

CITIZEN PETITIONS FOR RULEMAKING

SEC. 7. Section 18(b) of the Federal Trade Commission Act (15 U.S.C. 57a(b)) is amended—

(1) by inserting "(1)" after "(b)";

(2) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(3) by adding at the end thereof the following new paragraph:

"(2) If the Commission receives a petition for the issuance, amendment or repeal of a rule described in subsection (a)(1)(B) of this section, the Commission shall either grant or deny the petition within 120 days after the date the petition is received by the Commission. If the Commission grants such a petition, it shall as soon as is practicable after the date the petition is granted, commence a proceeding under this section as requested by the petition. If the Commission denies such a petition, it shall notify the petitioner of the denial and the reasons therefor and shall publish such reasons in the Federal Register.".

STATEMENT OF BASIS AND PURPOSE

SEC. 8. The last sentence of section 18(e)(5)(C) of the Federal Trade Commission Act (15 U.S.C. 57a(e)(5)(C)) is amended to read as follows: "In the review under this subsection of such a rule, the court may not review the contents and adequacy of any statement of basis and purpose required by subsection (b)(4) except as part of a review of the rulemaking record taken as a whole.".

CONGRESSIONAL REVIEW OF RULES

SEC. 9. (a)(1) The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended (A) by redesignating sections 20 and 21 thereof as sections 21 and 22, respectively; and (B) by inserting after section 19 thereof the following new section:

"SEC. 20. (a) For purposes of this section, the term 'rule' means any rule prescribed by the Commission pursuant to section 18(a)(1)(B).

"(b)(1) The Commission shall, after prescribing a final rule, submit such rule to the Congress not later than 90 calendar days before the proposed effective date of such rule. Such rule shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session.

"(2) No rule which the Commission is required to submit to the Congress under paragraph (1) shall be effective if, during the period of 90 calendar days of continuous session of the Congress after the date upon which such rule is submitted, there is enacted (with the approval of the President or by the overriding of a veto of the President) a joint resolution disapproving such rule. If such approval by the President occurs after the end of such 90-day period, or if such joint resolution is enacted by overriding a veto of the President after such 90-day period, then such disapproval shall be effective if such joint resolution was adopted by both Houses of the Congress before the end of such 90-day period.

"(3)(A)(i) Each rule submitted to the Congress under paragraph (1) shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives, respectively. In the case of any rule referred to the Committee on Interstate and Foreign Commerce of the House under this clause, not later than the 5th day of session following the day on which such rule is submitted, a joint resolution shall be introduced (by request) in the House by the chairman of such committee or by a member or members designated by such chairman.

"(ii) A joint resolution with respect to a rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives, respectively, and all joint resolutions with respect to the same rule shall be referred to such committees, by the President of the Senate or the Speaker of the House of Representatives, as the case may be. In the case of a joint resolution referred to the Committee on Interstate and Foreign Commerce of the House under this clause, such committee shall make its recommendations to the House of Representatives during the period of 45 calendar days of continuous session of the Congress following the date upon which such joint resolution is introduced.

"(B) If the Committee on Interstate and Foreign Commerce has not reported a joint resolution introduced under subparagraph (A)(i) (or, in the absence of such a joint resolution, the first joint resolution with respect to the same rule) at the end of the period of 75 calendar days of continuous session of the Congress after submission of the rule by the Commission, such committee shall be deemed to be discharged from further consideration of such joint resolution and such joint resolution shall be placed on the appropriate calendar of the House.

"(C)(i) When the Committee on Interstate and Foreign Commerce has reported, or has been deemed to be discharged (under subparagraph (B)) from further consideration of, a joint resolution with respect to a rule, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the House to move to proceed to the consideration of the joint resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the House until disposed of.

"(ii) Debate on the joint resolution, and on all debatable motions and appeals in connection with such joint resolution, shall be limited to not more than 2 hours, which shall be divided equally between individuals favoring and individuals opposing the joint resolution. A motion to further limit debate is in order and is not debatable. An amendment to, or a motion to postpone, a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to shall not be in order.

"(iii) Immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with rules of the House, the vote on final approval of the joint resolution shall occur.

"(iv) If, before passage by the House of a joint resolution of the House, the House receives a joint resolution with respect to the same rule from the Senate, then—

"(I) the procedure in the House shall be the same as if no such joint resolution has been received from the Senate; but

"(II) the vote on final passage shall be on the joint resolution of the Senate.

"(4) For purposes of this subsection, the term 'joint resolution' means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress hereby disapproves the rule submitted by the Federal Trade Commission to the Congress on , 19 .' (The blank space shall be filled with the appropriate date.)

"(5) For purposes of this subsection, continuity of session is broken only by an adjournment sine die. If continuity of session is broken after the submission of a rule by the Commission, the Commission shall be required to resubmit such rule at the beginning of the next regular session of the Congress and the time period specified in paragraph (2) shall begin on the date of such resubmission.

"(6) This subsection shall not apply in any case in which the Commission for good cause finds (and incorporates the finding and a brief statement of reasons for such finding in the rule prescribed) that emergency conditions exist requiring the immediate effect of the rule to avoid imminent harm to persons or property or to the public interest.

"(c)(1) To the extent practicable and appropriate, the Chairman of the Commission shall submit with each rule submitted to each House of the Congress under this section—

"(A) a paperwork impact analysis, for such rule, containing—

"(i) an estimate of the numbers of, and a description of the classes of, persons who would be required to file reports, maintain records, and fulfill any of the information-gathering requirements under such rule;

"(ii) an estimate of the nature and amount of the information required to be filed in such reports, the frequency of such reports, the nature and number of records that would have to be kept by such persons, and the amount of time such persons would require, and the costs which would be incurred, to keep such records and make such reports; and

"(iii) a description of steps being taken by the Commission to insure that there is no unnecessary duplication in recordkeeping and report filing resulting from the issuance of such rule;

"(B) a judicial impact analysis showing the probable consequences of such rule on the operation, workload, and efficiency of the Federal courts, including an analysis of the cost impact on and benefits to court administration, changes in judicial procedures, effects on jurisdiction, and demands on court personnel; and

"(C) such other explanatory and sup-

porting statements and materials as the Commission determines necessary and appropriate for congressional consideration of such rule.

"(2)(A) Except as provided in subparagraph (B), no material submitted to the Congress by the Chairman of the Commission under this subsection shall be subject to any judicial review, including any judicial review to determine whether such material is sufficient to comply with the requirements of this subsection. In the event the Commission finds that it is impractical or inappropriate to submit the information required under subparagraphs (A) and (B) of paragraph (1), the Commission shall submit a statement as to why it cannot so comply.

"(B) If any material submitted to the Congress by the Chairman of the Commission under this subsection also is included in any rulemaking record of the Commission, any determination regarding whether such material is subject to judicial review in connection with any review of such rulemaking record shall not be affected by the submission of such material to the Congress under this subsection.".

(2) The amendments made in paragraph (1) shall apply to any rule of the Federal Trade Commission which has not become final before the date of the enactment of this Act.

(b)(1) For purposes of this subsection—

(A) the term "Commission" means the Federal Trade Commission;

(B) the term "rule" means—

(i) any trade regulation rule prescribed by the Commission under section 6(g) of the Federal Trade Commission Act (15 U.S.C. 46(g)); and

(ii) any rule prescribed by the Commission under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)); and

(C) the term "rulemaking record" has the meaning given it in section 18(e)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(e)(1)(B)).

(2) Within 18 months after the date of the enactment of this Act, the Commission shall conduct a study of all the rules which the Commission has issued and which are in effect on the date of the enactment of this Act. At the end of such 18-month period, the Chairman of the Commission shall submit a report to the Congress. The report shall, to the extent practicable and appropriate—

(A) recommend the deletion of particular rules and portions of rules, including reasons for such recommendation; and

(B) recommend the initiation of appropriate rulemaking proceedings under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) to make changes or modifications in particular rules or portions of rules.

(3) In any case in which the Commission proposes to delete any rule or portion of a rule during the 18-month period specified in paragraph (2), the Commission shall notify each House of the Congress of such proposal at the time such proposal is published in the Federal Register.

(4)(A) To the extent practicable and appropriate, the Chairman of the Commission shall include in the report submitted to the Congress under this subsection, for each rule which the Commission has issued and which is in effect on the date of the enactment of this Act—

(i) an economic impact analysis which takes into account, for such rule, the cost impact on and benefits to consumers and affected businesses (with particular attention to small businesses);

(ii) a paperwork impact analysis containing—

(I) an estimate of the numbers of, and a description of the classes of, persons who are required to file reports, maintain records, and fulfill any of the information-gathering requirements under such rule;

(II) an estimate of the nature and amount of the information required to be filed in such reports, the frequency of such reports, the nature and number of records that are kept by such persons, and the amount of time such persons would require, and the costs which would be incurred, to keep such records and make such reports; and

(III) a description of steps being taken by the Commission to insure that there is no unnecessary duplication in recordkeeping and report filing resulting from such rule;

(iii) a judicial impact analysis showing the effect of such rule on the operation, workload, and efficiency of the Federal courts, including an analysis of the cost impact on and benefits to court administration, changes in judicial procedure, effects on jurisdiction, and demands on court personnel; and

(iv) such other explanatory and supporting statements and materials as the Commission determines necessary and appropriate for congressional consideration of such report.

(B)(i) Except as provided in clause (ii), no material submitted to the Congress by the Chairman of the Commission under this paragraph shall be subject to any judicial review, including any judicial review to determine whether such material is sufficient to comply with the requirements of this paragraph. In the event the Chairman of the Commission finds that it is impractical or inappropriate to submit the information required under clauses (i) through (iii) of subparagraph (A), the Chairman of the Commission shall submit a statement as to why he cannot so comply.

(ii) If any material submitted to the Congress by the Chairman of the Commission under this paragraph also is included in any rulemaking record of the Commission, any determination regarding whether such material is subject to judicial review in connection with any review of such rulemaking record shall not be affected by the submission of such material to the Congress under this paragraph.

(5) The Committee on Commerce, Science, and Transportation of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives shall, in the exercise of their oversight responsibilities, examine, study, and take other appropriate action with respect to the report submitted to the Congress under this subsection and referred to such committees.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. Section 21 of the Federal Trade Commission Act, as so redesignated in section 9(a)(1), is amended—

(1) by striking out "and" after "1976;" and

(2) by striking out "1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law," and inserting in lieu thereof "1977; not to exceed $65,000,000 for the fiscal year ending on September 30, 1978; not to exceed $70,000,000 for the fiscal year ending on September 30, 1979; not to exceed $75,000,000 for the fiscal year ending on September 30, 1980; and not to exceed $80,000,000 for the fiscal year ending on September 30, 1981.".

TECHNICAL AND MISCELLANEOUS AMENDMENTS

SEC. 11. (a)(1) Section 5(m)(1)(A) and section 5(m)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A); 45(m)(1)(B)) are each amended by adding at the end thereof the following new sentence: "In such actions, the district courts of the United States are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate.".

(2) Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by inserting after paragraph (h) the following new paragraph:

"(i) To accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665(b)).".

(3)(A) Section 9(a) of the Federal Trade Commission Act, as so designated and as amended in section 6(c)(1)(A), is further amended—

(i) by inserting after "For the purposes of this Act" the following: ", or any other provision of law enforced by the Commission,"; and

(ii) by inserting "or other physical" after "documentary" each place it appears therein.

(B) Section 9(b) of the Federal Trade Commission Act, as so designated in section 6(c)(1)(B) and as amended in section 6(c)(2), is further amended by inserting "or other physical" after "documentary".

(C) The last sentence of section 9(d) of the Federal Trade Commission Act, as so designated in section 6(c)(1)(B), is amended by inserting "or other physical" after "documentary" each place it appears therein.

(D) The fourth sentence of section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) and the third sentence of section 9(d) of such Act, as so designated in section 6(c)(1)(B), are amended by inserting after "writing" the following: ", or shall be recorded through the use of any electronic or mechanical recording device,".

(4)(A) Section 19(a)(1) of the Federal Trade Commission Act (15 U.S.C. 57b(a)(1)) is amended to read as follows:

"(a)(1) If any person, partnership, or corporation violates—

"(A) any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 5(a)); or

"(B) any final cease and desist order issued by the Commission which is applicable to such person, partnership, or corporation; then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a district court of the United States or in any court of competent jurisdiction of a State.".

(B) Section 19(d) of the Federal Trade Commission Act (15 U.S.C. 57b(d)) is amended—

(i) by striking out "subsection (a)(1)" and inserting in lieu thereof "subsection (a)(1)(A)";

(ii) by inserting before "or the unfair or deceptive act or practice to which" the following: "the cease and desist order violation to which an action under subsection (a)(1)(B) relates,"; and

(iii) by inserting "(as prescribed by section 5(g)(2))" after "has become final".

(b)(1) Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended by striking out "violating" in second paragraph and inserting in lieu thereof "wool".

(2) Section 9(b)(1) of the Fur Products Labeling Act (15 U.S.C. 69g(b)(1)) is amended by striking out "violating" and inserting in lieu thereof "violating".

And the Senate agree to the same.

HARLEY O. STAGGERS,
BOB ECKHARDT,
RALPH H. METCALFE,
CHARLES J. CARNEY,
JAMES H. SCHEUER,
T. A. LURKEN,
MATTHEW J. RINALDO
(for consideration of section 112 of the Senate amendment only),
M. CALDWELL BUTLER
*Managers on the Part of the House.*

HOWARD W. CANNON,
WENDELL H. FORD,
JOHN A. DURKIN,
JOHN C. DANFORTH,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SUMMARY OF CONFERENCE ACTION

Briefly, in contrast to the previous conference report (Report No. 95-892), the conferees struck in its entirety the "equitable relief" section, which would have allowed the Federal Trade Commission (hereinafter in this statement referred to as the "Commission") to go to court to seek equitable relief (including the appointment of a trustee) in order to preserve a firm's assets for possible consumer redress if a law violation was found. The conferees also adopted a compromise which provides for a veto of a Commission rule by adoption of a joint resolution, subject to a Presidential veto (which could be overridden by the Congress), within a 90-day period before such rule could go into effect. Otherwise the conference report is substantially the same as the previous conference report, in providing for authorizations for fiscal years 1979, 1980, and 1981, and in containing a number of provisions designed to expedite the enforcement of Commission cease and desist orders and compulsory process orders.

QUALIFICATIONS OF MEMBERS

*House bill.*—The House bill contained no provision with respect to qualifications of members for service on the Commission.

*Senate amendment.*—The Senate amendment required the President to nominate persons for the Commission who are qualified by training, education, or experience to carry out the functions of the Commission. In addition, the amendment required the President to insure that the Commission is balanced with respect to the talents, backgrounds, occupations, and experience of the members nominated and appointed.

*Conference substitute.*—The conference substitute is the same as the Senate provision.

APPOINTMENT OF THE CHAIRMAN

*House bill.*—The House bill contained no provision with respect to the appointment of the Chairman of the Commission.

*Senate amendment.*—The Senate amendment provided for Senate confirmation of one of the Commissioners as Chairman of the Commission. It also codified existing law that the President appoints one of the Commissioners as Chairman and that the Chairman serves at the pleasure of the President. See section 3 of Reorganization Plan No. 8 of 1950, effective May 24, 1950, 15 F.R. 3175, 64 Stat. 1264.

*Conference substitute.*—The conference substitute does not contain any provision requiring Senate confirmation of one of the Commissioners as Chairman. The substitute does, however, adopt the Senate provision codifying existing law that the President appoints one of the Commissioners as Chairman and that the Chairman serves at the pleasure of the President.

AVOIDANCE OF CONFLICT OF INTEREST

*House bill.*—The House bill contained no provision with respect to avoidance of conflict of interest.

*Senate amendment.*—The Senate amendment contained two provisions designed to avoid both any conflict of interest or the appearance of a conflict of interest. First, it provided that no member of the Commission nor any employee classified as a GS-16 or higher shall, during the two years after leaving the Commission, represent anyone in any formal or informal proceeding before the Commission, or make any written or oral communication on behalf of any person with intent to influence the action of the Commission in connection with any proceeding involving a specific party which was under his official responsibility as a member or employee. Second, it contained a complete ban on former members or employees classified as GS-16 or higher making any appearance or communication with the intent to influence the action of any Commissioner or employee on any matter being considered by the Commission (including investigations, rules, and complaints) for one year after leaving the Commission.

*Conference substitute.*—The conference substitute adopts the Senate provision which prohibits former Commissioners and high-level staff members from making appearances or communications with the Commission, any Commissioner, or any employee of the Commission for a period of one year after such persons leave service with the Commission. The conferees intend the ban to apply to all matters of business, whether new or old, which are before the agency during that year. Thus, such persons would be prohibited from petitioning the Commission for the initiation of a rulemaking proceeding and from making any appearance or communication in connection with a Commission investigation, adjudication, rulemaking proceeding, or any other substantive matter.

However, the ban does not include contact concerning matters of an exclusively personal and individual nature. For example, a former Commissioner or employee covered by these provisions could appear before or contact the Commission on a personnel matter, a Freedom of Information request, a Privacy Act matter, a pension matter, or any other matter which relates to a personal right of the former employee.

The restriction also does not apply where such a person is representing the United States, as would be the case if he or she were to be employed by another department or agency of the Federal Government or to be reemployed by the Commission itself as either an employee or a consultant. Finally, the ban is not intended to apply where the former official, solely at the initiation of the Commission, is contacted for information or required to appear and give testimony. Otherwise, the prohibition does apply to self-representation.

The conferees dropped the two-year restriction concerning matters under the former Commissioner's or employee's official responsibility because they believed that this matter is adequately addressed by the provisions of section 207 of title 18, United States Code, and the Commission's own rules, which both prohibit such activities by *all* former employees, regardless of their grade, for one year.

NUMBER OF TOP LEVEL EMPLOYEES

*House bill.*—The House bill contained no provision with respect to the number of employees the Commission may employ at the supergrade level.

*Senate amendment.*—The Senate amendment provided for 25 positions at the Commission to be paid at the rates prescribed for supergrade positions.

*Conference substitute.*—The conference substitute adopts the Senate provision.

The Commission is currently authorized only 42 employees at the supergrade level, of whom 13 are administrative law judges. The following comparison of the ratio of Commission supergrade attorneys to attorney staffs in other organizations shows that the Commission has a worse ratio than other similar Federal agencies:

Antitrust, Justice, 1:17.
Justice Department, 1:19.
Securities and Exchange Commission, 1:19.
Federal Communications Commission, 1:20.
Federal Trade Commission, 1:22.

Further, the 29 supergrades at the Commission who are not administrative law judges are all in managerial positions. As a result, the Commission has no position or salary incentive beyond the GS-15 level to offer outstanding personnel who do not wish to become managers. Even with recent salary increases, the limitation on salaries at the GS-15 level for experienced litigators and other talented, specialized personnel makes retention of the best staff members a difficult task.

Similarly, the Commission has no incentives to offer experienced individuals who may wish to offer their services to the Commission for a limited period of time.

The substitute will enable the Commission to offer the necessary incentives to experienced litigators, senior economists, and other senior specialists who are not in management positions. While the substitute would permit the Commission to fill some or all of these positions from the outside, the conferees wish that it be understood that the principal purpose of the provision is to offer salary incentives to talented line personnel before using the new positions for short-term recruitment.

EXECUTIVE BRANCH POLITICAL CLEARANCE

*House bill.*—The House bill contained no provision with respect to political clearance of Commission personnel.

*Senate amendment.*—The Senate amendment provided that there would be no executive branch political clearance of any Commission employee.

*Conference substitute.*—The conference substitute is essentially the same as the Senate amendment, except that the position of general counsel of the Commission is not included. The intention of the substitute is to prohibit any executive branch political clearance of any employee classified as Schedule "C" or as a noncareer executive assignment.

APPLICATION OF ACT TO SAVINGS AND LOAN INSTITUTIONS

*House bill.*—The House bill exempted savings and loan institutions from the Commission's section 5 jurisdiction with respect to unfair methods of competition and unfair or deceptive acts or practices. An exemption also was accorded such institutions from the Commission's section 6 authority to compile information, conduct investigations and require the filing of reports. However, savings and loan institutions were still required to provide information and reports when the Commission investigation involved a person or entity not engaged in or only incidentally engaged in business as a savings and loan institution. In addition, the House bill amended section 18 of the Federal Trade Commission Act to require the Federal Home Loan Bank Board to establish a separate division of consumers affairs to act upon complaints regarding unfair or deceptive

acts or practices. The Board was further required to prescribe regulations defining unfair or deceptive acts or practices and to adopt Commission rules on such matters unless it finds that such acts or practices are not unfair or deceptive with respect to savings and loan institutions.

*Senate amendment.*—The Senate amendment exempted savings and loan institutions from the Commission's section 5 jurisdiction only to the extent that the Board is authorized to prohibit such acts or practices covered by section 5. No exemption from the Commission's section 6 authority was included. Section 18 of the Federal Trade Commission Act was amended to impose requirements upon, and provide authorities to, the Board similar to those under the House bill.

*Conference substitute.*—The conference substitute adopts the House provision. The conferees stress that the substitute is to operate prospectively. It is not the intention of the conferees to interfere wtih any further litigation in the case of *In re Perpetual Federal Savings and Loan Association*, FTC Docket No. 9083 (1978).

ENFORCEMENT OF SUBPOENAS AND ORDERS

*House bill.*—The House bill made several amendments to section 10 of the Federal Trade Commission Act, relating to the assessment of civil penalties for failure to comply with a Commission order to file annual or special economic or business reports. First, it made the penalty provisions applicable to all Commission orders (other than cease and desist orders), including subpoenas. Second, it raised the amount of penalties for failure to comply with a Commission subpoena or order (other than a cease and desist order) from a mandatory $100 per day to a range of from $0 to $5,000 per day. The amendment provided that in determining the amount of any such penalties, the court must take into account the reasonableness and good faith of any action or inaction of the person, partnership, or corporation against whom the penalties are being assessed, and such other matters as justice may require.

Third, the House bill modified the time frame regarding when civil penalties for noncompliance with Commission subpoenas or orders (other than cease and desist orders) would begin to accrue. Under present law, in such situations of noncompliance, penalties begin to accrue 30 days after the Commission issues a notice of default signaling its intention to seek civil penalties for noncompliance, unless the resisting company is able to secure a stay of penalties within that time. The House bill provided that penalties would begin to accrue after 30 days only if a company did not file for a stay of penalties within 15 days after the notice of default was served. If the noncomplying party filed with the court for a stay of penalties within 15 days and provided the court with all the necessary information to decide the stay petition, then penalties would not begin to accrue until 60 days after service of the notice of default, assuming that the noncomplying party failed to obtain a stay.

Fourth, the House bill prohibited any challenges to Commission subpoenas and orders (other than cease and desist orders) until the Commission issued a notice of default signaling its intent to seek penalties.

Fifth, the House bill provided that penalties for noncompliance would accrue as to any part of a Commission subpoena or order (other than a cease and desist order) with which a party failed to comply if a stay of penalties has not been obtained as to that part of such subpoena or order.

Sixth, the House bill authorized the Commission to bring suit against a noncomplying company for civil penalties in any district court within which the noncomplying company resides or does business.

Finally, the House bill provided that the amendments made by this section would apply with respect to failures to comply with a subpoena or order (other than a cease and desist order) that is issued after the date of enactment of the House bill.

*Senate amendment.*—The Senate amendment was the same as the House bill with the following exceptions—

(1) it omitted any reference to a defendant's reasonableness and good faith in determining the level of any civil penalties;

(2) it retained existing law with respect to when penalties begin to accrue after issuance of a notice of default, that is, 30 days thereafter;

(3) it authorized the Commission to bring suit for civil penalties against a single noncomplying company where that company resides or transacts business but if the suit were against two or more companies, the Senate amendment authorized the Commission to bring suit in any district court in which the inquiry of the Commission is being carried on;

(4) it set standards for when a court could refrain from enforcing any subpoena or order (other than a cease and desist order) of the Commission; and

(5) it provided that the amendments made by this section of the Senate amendment would apply with respect to failures to comply with a subpoena or order (other than a cease and desist order) insofar as they occur or continue after the date of enactment of the Senate amendment.

*Conference substitute.*—The conference substitute adopts the House provisions except in the following two respects: (1) it adopts the Senate provision on venue for civil penalties, that is, that the Commission can bring suit against a single company where that company resides or transacts business and against two or more companies in any district court where the inquiry of the Commission is being carried on; and (2) it provides that penalties will begin to accrue 30 days after a notice of default issues unless a company files all the necessary papers in seeking a stay of such penalties within 15 days after the notice of default is served. In that case, penalties will not begin to accrue until 45 days after service of the notice.

VENUE FOR ENFORCEMENT OF SUBPOENAS AND ORDERS

*House bill.*—The House bill provided that venue for a Commission suit to enforce a subpoena or order (other than a cease and desist order) would be proper in any district in which the Commission's inquiry is being carried on.

The House bill amended section 9 of the Federal Trade Commission Act, under which enforcement venue is bifurcated. Where the Commission seeks to enforce a subpoena, it may bring suit in a district where the inquiry is being carried on, which has been held to include the place where the Commission or the regional office of the Commission issuing the subpoena is located, and the place where the subpoena is returnable. The place where the documents sought by a subpoena are located may also be such a place. See, e.g., *FTC* v. *Browning*, 435 F.2d 96 (D.C. Cir. 1970); *FTC* v. *Cockrell*, 431 F. Supp. 558 (D.D.C. 1977); and *FTC* v. *Sherry*, CCH 1969 Trade Cas. section 72906 (D.D.C. 1969). Perhaps the best statement as to what constitutes a "place of inquiry" is found in *FTC* v. *MacArthur*, 532 F.2d 1135, 1140 (7th Cir. 1976): "The test whether the Commission is undertaking an inquiry in a particular place is whether that place and the activities there bear a reasonable relation to the subject matter of the investigation. Factors such as the convenience of the Commission, the location documents, and witnesses, and the corporate headquarters are relevant in determining whether there is an inquiry in a particular judicial district when the only action taken by the Commission is a request for information. As in other areas, the Commission's choice of place of inquiry is subject to the bounds of reasonableness."

On the other hand, in the case of enforcement of an order (such as an order to file a report or an access order), the Commission must proceed by writ of mandamus. No venue is specified for this proceeding, which is subject to the general provisions regarding venue and personal jurisdiction applicable to regular civil actions involving private parties. Particularly in cases in which the Commission is suing for enforcement of identical orders against a number of persons, partnerships, or corporations, the strict venue requirements may make it difficult or impossible to proceed in any single forum against all parties.

*Senate amendment.*—The Senate amendment likewise updated and streamlined the venue for enforcement of compulsory process, but included a requirement that, if there is only one person, partnership, or corporation involved, the Commission may maintain its suit only where the defendant resides or transacts business.

*Conference substitute.*—The conference substitute adopts the House provision. The conferees feel that there was no evidence that the Commission was abusing its authority in the case of the single recipient of a subpoena or order by bringing suit in an inconvenient forum. It therefore appeared unnecessary to provide additional restrictions on the process.

CITIZEN PETITIONS FOR RULEMAKING

*House bill.*—The House bill gave a specific right to petition the Commission for the issuance, amendment, or repeal of a rule under section 18(a)(1)(B) of the Federal Trade Commission Act. It required that the Commission respond to such a petition within 120 days of its receipt. If the Commission granted the petition, it was required to commence the requested proceeding as soon as practicable thereafter. If it denied the petition, it was required to so notify the petitioner, giving its reasons and publishing those reasons in the Federal Register.

*Senate amendment.*—The Senate amendment granted the same right of petition and required Commission response in the same time and manner. However, the right of petition encompassed not only section 18(a)(1)(B) rules but also any other rule and any order or regulation issued under any of the Acts the Commission administers.

Further, the Senate amendment, in cases of Commission inaction on or denial of a petition, granted the petitioner a right to sue to force the granting of the petition. If the petitioner, by a preponderance of the evidence in the material he had submitted to the Commission, met the standards set out in the section regarding appropriateness and need for the action, the court would be required to order the initiation of the requested Commission proceeding.

*Conference substitute.*—The conference substitute adopts the House provision.

STATEMENT OF BASIS AND PURPOSE

*House bill.*—The House bill amended section 18 of the Act with respect to court review of rulemaking proceedings under that section. The existing provisions of section 18 are open to the interpretation that the courts could not review a Commission failure to consider the factors specified by section 18(d)(1) for inclusion in a statement of basis and purpose issued pursuant to section 18(b)(4). Under the amendment, the court could consider the entire statement of basis and purpose as part of the rulemaking record in determining whether the Commission's action in promulgating the rule satisfies the judicial review standard specified by section 18. No separate review of the sufficiency or content of the statement of basis

and purpose was permitted. This review of the statement of basis and purpose would apply with respect to all rules where the rulemaking record has not been closed prior to the date of enactment of this Act.

*Senate amendment.*—The Senate amendment contained no comparable provision.

*Conference substitute.*—The conference substitute adopts the House provision.

CONGRESSIONAL REVIEW OF RULES

*House bill.*—The House bill provided that a Commission rule would not go into effect if a concurrent resolution disapproving such a rule were adopted within 90 calendar days of continuous session after the rule's issuance. Alternatively, the section provided for disapproval of a rule if one House adopted a concurrent resolution within 60 days and the other House failed to disapprove that resolution within 30 days thereafter.

*Senate amendment.*—The Senate amendment contained no directly comparable provision. However, section 102 contained a broad provision aimed at some of the same concerns for increased knowledge and control over Commission activities. It requires the Commission, within 660 days from the date of enactment of the Senate amendment, to prepare and submit to the Congress first an initial proposal and then a final recodification of all its rules. Each proposal was, to the extent practicable and appropriate, to include recommendations for transfer, consolidation, modification, and deletion of particular rules, as well as proposals for changes in structure, organization, language, etc., necessary to make the rules more up to date and easily understood. The recodification also would have included a comprehensive index of the rules.

The initial and final recodification proposals, to the extent practicable and appropriate, would include for each rule or class of rules an economic impact analysis, a paperwork impact analysis, a judicial impact analysis, and any other explanatory or supporting statements the Commission determined necessary and appropriate.

The term "rule" under the Senate amendment was broadly defined to include substantive statements of policy of general applicability and future effect, and also procedural rules and organizational rules of the Commission.

*Conference substitute.*—The substitute incorporates elements of each of the provisions. Thus, it establishes a procedure whereby Commission rules can be vetoed as well as a procedure for review of existing Commission rules in order to eliminate outdated ones and simplify those rules that are still appropriate.

The House bill provided a procedural mechanism for vetoing a Commission rule but had no requirement that the Commission provide the Congress with information concerning the potential impact of the rule on the paperwork of persons who would be affected by the rule and the potential impact on the Federal judiciary. Nor did the House provision deal with rules already in effect.

The Senate amendment, on the other hand, was designed to require the Commission to study all its past rules with a view of modernizing, simplifying, and codifying them. The relevant congressional committees would be involved in the review process in the exercise of their oversight responsibility. The Senate amendment, however, made no provision for expedited congressional consideration of Commission rules.

The conference substitute first seeks to strike a compromise between the strong House position in favor of the legislative veto and the strong Senate position in opposition to such a provision. The House position was expressed in the 272–139 vote on October 13, 1977, in favor of a motion to include a legislative veto provision in H.R. 3816. It was once again expressed in the 255–146 vote on February 28, 1978, to reject the first conference report on H.R. 3816. The floor debate in the House revealed that the vote reflected opposition to the fact that the conference report did not include a legislative veto provision and to the fact that it did include a provision which specifically would have allowed the Commission to go to court to seek equitable relief, including the appointment of a trustee, in order to preserve a firm's assets for possible consumer redress if a law violation was found. In this conference, the equitable relief section was struck in its entirety.

On the other hand, Senate opposition to the legislative veto was expressed in a 65–29 vote on July 20, 1978, against inclusion of a similar provision in the HUD authorization bill. While the HUD vote related to an executive agency and not an independent regulatory agency and while it was on a one House veto provision, the point was forcefully made by the Senate conferees that these are distinctions that are not meaningful to the Senate. In addition, a letter dated August 14, 1978, from the chairman and the ranking minority member of the Senate Government Affairs Committee confirmed this view, stating that,

"Volume 2 of our committee's 'Study on Federal Regulation' considered the matter (of legislative veto). In that regard, we concluded that 'Congress should reject an across-the-board use of the legislative veto for regulatory agency rules,' and that Congress 'refrain from routinely adding a legislative veto provision to regulatory agency statutes'. Thus, in our opinion, rules and regulations of the Federal Trade Commission should not be subject to 'legislative veto' by the Congress."

The compromise provision provides for expedited consideration by the Congress of a joint resolution of disapproval of any Commission Magnuson-Moss trade regulation rule.

Specifically, each proposed rule would be submitted to the Congress 90 calendar days prior to its effective date. Thereafter, the following expedited procedures would apply in the House. Within 5 days of the transmittal, a joint resolution would be introduced (by request) by the chairman of the House Interstate and Foreign Commerce Committee. The committee would then have 45 calendar days of continuous session (broken only by adjournment sine die) to make its recommendations to the House. If the committee had not reported such joint resolution at the end of the period of 75 calendar days of continuous session, the committee would be deemed to be discharged from further consideration and the joint resolution would be placed on the appropriate House calendar.

After a joint resolution was either reported by the committee or deemed to be discharged, it would be in order for any Member of the House to move to proceed to the consideration of the joint resolution. The motion would be highly privileged and not debatable nor subject to amendment, a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion was agreed to or disagreed to would not be in order.

If a motion to consider the joint resolution were adopted, two hours of general debate would be permitted on the resolution. Motions to amend, to postpone, to proceed to consideration of other business or to recommit the resolution would not be in order, nor would a motion to reconsider the vote on the joint resolution.

The conferees did not change the Senate procedures because Senate rules already permit expedited consideration of such a resolution of disapproval. Senate rules provide that a single Senator may move at any time to discharge a Senate committee from further consideration of a joint resolution, whereas the rules of the House provide that a motion to discharge is in order only if a majority of the Members of the House have signed a discharge petition. Thus, the conferees are confident that Commission rules will receive the close scrutiny of both Houses of the Congress.

If a joint resolution is approved by both Houses in the 90-day period, the proposed Commission rule would not take effect, unless the President vetoed the joint resolution. In that case, the rule would take effect unless the Congress overturned the President's veto.

The conferees adopted the approach of a joint resolution as the only compromise that was available to them in light of the strong House and Senate positions that run in opposite directions. Since the one House veto (or one House without disapproval of the disapproval resolution by the other House) was not acceptable to both Houses, the conferees felt that the only constitutionally permissible option was a two House veto with Presidential signature. While some present laws do authorize the Congress to reject a rule by concurrence of both Houses, such provisions have never been considered by the Supreme Court and the conferees believe that they clearly violate section 7 of article I of the Constitution, which provides that,

"Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

To assist the Congress in reviewing rules on an informed basis, the conference substitute requires the Commission to file with each rule, in addition to the economic impact analysis already required by existing law, paperwork and judicial impact analyses and other necessary and appropriate explanatory materials.

The conference substitute also adopts a Senate-passed requirement that the Commission study and make recommendations regarding each of its trade regulation rules already in effect. Those recommendations are to include a report where practicable and appropriate on the economic, paperwork, and judicial impact of each rule proposed to be retained, deleted, or modified. The economic impact analysis will take into account the cost impact on, and benefits to, consumers and affected businesses, particularly small businesses. The paperwork impact analysis will include study of the number and classes of persons subject to the paperwork requirements of the rule, as well as an analysis of the nature, amount, and frequency of paperwork required, and of the Commission's effort to minimize burdens and unnecessary duplication. The judicial impact analysis will show the effect of the rule on the courts.

In sum, the substitute reflects the view that the Congress should have an opportunity for expedited review of Commission rules before they take effect and that existing Commission rules should be reviewed, and modified and simplified where appropriate.

GRANTING OF EQUITABLE RELIEF

*House bill.*—The House bill contained no provision with respect to the granting of equitable relief.

*Senate amendment.*—The Senate amendment authorized the Commission to go to court to seek equitable relief when the Commission had reason to believe (1) that any person, partnership, or corporation is violating any provision of law enforced by the Commission; and (2) that, for the purpose of preserving the assets of the person, partnership, or corporation for consumer redress,

the granting of equitable relief is necessary pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission has become final.

*Conference substitute.*—The conference substitute contains no provision with respect to the granting of equitable relief.

AUTHORIZATION OF APPROPRIATIONS

*House bill.*—The House bill authorized to be appropriated $63,000,000 for fiscal year 1978, and $70,000,000 for fiscal year 1979.

*Senate amendment.*—The Senate amendment authorized to be appropriated $65,000,000 for fiscal year 1978; $70,000,000 for fiscal year 1979; $75,000,000 for fiscal year 1980; and $80,000,000 for fiscal year 1981.

*Conference substitute.*—The conference substitute adopts the Senate amendment.

JOINT SUBMISSION OF BUDGET REQUESTS

*House bill.*—The House bill contained no provision with respect to joint submission of budget information.

*Senate amendment.*—The Senate amendment would have required the Commission to submit a copy of any budget information it transmits to the President or the Office of Management and Budget to the Congress at the same time.

*Conference substitute.*—The conference substitute does not contain the Senate provision. The conferees felt that this issue should not be handled on an agency-by-agency basis.

CONCURRENT SUBMISSION OF LEGISLATIVE RECOMMENDATIONS, TESTIMONY, OR COMMENTS

*House bill.*—The House bill contained no provision with respect to concurrent submission of legislative recommendations, testimony, or comments.

*Senate amendment.*—The Senate amendment provided that the Commission would be required to submit any legislative recommendations, testimony, or comments on legislation to the Congress at the same time it was submitted to the President or the Office of Management and Budget. In addition, the amendment provided that no officer or agency of the United States shall have any authority to require the Commission to submit such comments for approval prior to submission of the comments to the Congress.

*Conference substitute.*—The conference substitute contains no provision with respect to concurrent submission of legislative recommendations, testimony, or comments. The conferees felt that this was an issue that should not be handled on an agency-by-agency basis.

CONGRESSIONAL ACCESS TO INFORMATION

*House bill.*—The House bill contained no provision with respect to congressional access to information collected by the Commission.

*Senate amendment.*—The Senate amendment provided that whenever an authorizing committee of the Congress made a written request to the Commission for documents, the Commission must supply such documents within 10 days, or submit a statement as to why the Commission cannot comply. Further, the amendment provided that submissions of information under this provision would not have constituted an offense under section 1905 of title 18, United States Code.

*Conference substitute.*—The conference substitute does not contain a provision with respect to congressional access to Commission information. The conferees felt that Congress' right to secure information from the Commission was clear.

AUTHORITY OF THE COMMISSION TO REPRESENT ITSELF IN COURT TO SEEK CIVIL PENALTIES

*House bill.*—The House bill contained no provision authorizing the Commission to represent itself in court to seek civil penalties for violations of Commission rules and cease and desist orders.

*Senate amendment.*—The Senate amendment provided that the Commission could represent itself in court to seek civil penalties for violations of Commission rules and cease and desist orders.

*Conference substitute.*—The conference substitute does not contain a provision with respect to Commission self-representation to seek civil penalties for violations of Commission rules and cease and desist orders.

CONSUMER PRODUCT SAFETY COMMISSION AMENDMENTS

*House bill.*—The House bill contained no provisions amending the Consumer Product Safety Act.

*Senate amendment.*—The Senate amendment contained numerous amendments to the Consumer Product Safety Act.

*Conference substitute.*—The conference substitute contains no provisions amending the Consumer Product Safety Act.

HARLEY O. STAGGERS,
BOB ECKHARDT,
RALPH H. METCALFE,
CHARLES J. CARNEY,
JAMES H. SCHEUER,
T. A. LUKEN,
MATTHEW J. RINALDO
(for consideration of section 112 of the Senate amendment only),
M. CALDWELL BUTLER,
*Managers on the Part of the House.*

HOWARD W. CANNON,
WENDELL H. FORD,
JOHN A. DURKIN,
JOHN C. DANFORTH,
*Managers on the Part of the Senate.*



## LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I have requested this time for the purpose of inquiring of the acting majority leader, the gentleman from California (Mr. DANIELSON), the program for the balance of today, if any, and for next week.

Mr. DANIELSON. Mr. Speaker, would the gentleman yield?

Mr. MICHEL. I will be happy to yield.

Mr. DANIELSON. Mr. Speaker, in response to the inquiry of the gentleman from Illinois (Mr. MICHEL) the program for the rest of today is that we have concluded our legislative calendar and propose to adjourn as soon as the closing comments have been made.

The program for next week is as follows:

On Monday, September 11, 1978, the House will meet at 12 o'clock noon.

There will be no suspensions.

We will take up H.R. 11280, the Civil Service Reform Act and carry it through to completion.

Following that we have scheduled the District of Columbia Calendar with seven bills, as follows:

H.R. 13224, transfer U.S. real property to District of Columbia Redevelopment Land Agency.

H.R. 12116, home rule charter amendments.

S. 3120, enlarge contracting authority of Commission on Financial Oversight.

H.R. 13243, revenue bonds for HFA.

H.R. 10311, District of Columbia Redevelopment Act amendments.

S. 1103, District of Columbia Reciprocal Tax Collection Act, and

S. 2556, rename District of Columbia Bail Agency.

Following that we have scheduled H.R. 11622, fuels transportation safety amendments with an open rule and 1 hour of general debate,

Plus H.R. 8729, Airport and Aircraft Noise Reduction Act, under a modified open rule with 2 hours of general debate.

On Tuesday, September 12, 1978, the House will meet at 12 o'clock noon and there will be eight suspensions. Votes on all suspensions will be postponed until the end of the suspensions.

The suspensions are as follows:

H.R. 12860, Rhode Island Indian land claims settlements.

H.R. 13311, ports and waterways safety amendments.

H.R. 12026, Indian Peaks Wilderness Area.

H.R. 12578, Miscellaneous Revenue Act of 1978.

H.R. 12165, extend duty suspension on waste and scrap metals.

H.R. 5265, temporary duty suspension on fluorspar.

A House resolution—which as yet has not been numbered—concurring in Senate amendments to H.R. 1337.

And H.R. 13331, United States Code amendments for Federal district courts.

These are to be followed by H.R. 12005, Justice Department authorizations under an open rule with 1 hour of debate, and,

H.R. 9214, International Monetary Fund, a motion to go to conference.

On Wednesday, Thursday, and Friday, the House will meet at 10 o'clock a.m. We have calendared the following items:

First, a conference report on House Concurrent Resolution 683, the second budget resolution.

Next, House Resolution 1276, funding for the Committee on Assassinations.

Then an as yet unnumbered House resolution, Executive Reorganization Plan No. 3.

After that we will take up the following:

H.R. 12611, Air Service Improvement Act of 1978, under an open rule, with 1 hour of debate;

H.R. 11733, Surface Transportation Assistance Act of 1978, under a modified open rule, with 2 hours of debate;

H.R. 1, Ethics in Government Act, under a modified open rule, with 2 hours of general debate; and

H.R. 12452, CETA amendments, on which we will complete consideration.

The House will adjourn by 9 p.m. on Tuesday, by 7 p.m. on Thursday, and by 3 p m. on Friday.

Conference reports may be brought up at any time, and any further program will be announced later.

Mr. MICHEL. Mr. Speaker, I thank the acting majority leader for his response.

I believe he would share my view that in view of our having the Civil Service Reform Act on the calendar until completed on Monday, with the balance of whatever there is on that bill, then with those District bills and the other two bills being scheduled for Monday, Members should be prepared to be here until a very late hour on Monday.

Mr. DANIELSON. I think that that would be a prudent attitude to take with respect to Monday.

Mr. MICHEL. Then, too, might I inquire in view of our hopefully drawing toward the end of the session, with only eight bills on suspension scheduled for Tuesday, while that is a good order of business, is the leadership planning to take up a considerable number of suspensions for the following Monday, September 18?

Mr. DANIELSON. The gentleman's surmise is correct. On Monday, the 18th day of September, there are at least 25 suspensions which are scheduled to be put on the calendar. The leadership is mindful of the fact that there are many suspensions and will make every effort to take care of them.

Mr. MICHEL. I think it is good that we have this particular dialog so that Members will be especially aware of that in making their weekend plans for the weekend after next, so as to be sure to be back here on the following Monday for fear of losing a chance to vote on some 25 suspensions.

Mr. DANIELSON. I think that is an excellent suggestion.

Mr. MICHEL. Mr. Speaker, I thank the gentleman. If he has nothing further to contribute to the program, I will be glad to relinquish my time.

Mr. DANIELSON. Mr. Speaker, I thank the gentleman for yielding.

## DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday of next week.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

## ADJOURNMENT TO MONDAY, SEPTEMBER 11, 1978

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 12 o'clock noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

## DANGERS OF NITRITE BAN

(Mr. LEACH asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. LEACH. Mr. Speaker, as a Representative from one of the largest pork-producing districts in the country, I would like to inform the House that I have today introduced legislation to spur research on nitrite substitutes and to mandate the Department of Agriculture to conduct further studies into the effects of nitrites on animals other than one strain of laboratory rats.

This legislation is designed to complement the bills introduced by Congressmen WAMPLER and MATHIS to prevent the disruption of consumer buying patterns and excessive losses to producers which would be the result of a precipitous nitrite ban.

Mr. Speaker, it would appear unreasonable to consider a ban on the use of nitrites when there is no meaningful effort underway by the USDA or the Food and Drug Administration to develop an effective and safe alternative.

There may be a need to develop alternative preservatives for meat, fish and poultry products. But what should be expected from the USDA is low-key scholarly research and prudent corrective measures rather than the high profile of public confrontation over how to insure the high quality of food products we take for granted in the United States.

In 1958 American cranberry growers lost a major portion of their market due to a mistaken cancer scare. There is no need for our pork producers to suffer the same consequences without any element of assistance from the Department of Agriculture, the primary Federal department charged with assisting farmers to profitably produce and market their products.

A product in use for hundreds of years should not be banned simply on the basis of one research project which fed rats 1,500 times as much nitrite on the average as humans ordinarily obtain from cured meats. In order to ingest a comparable amount of nitrite a person would have to eat 586 pounds of cured meat every day. Moreover, there is substantial evidence to indicate that nitrites consumed in food represent only a trivial percentage of the nitrites naturally manufactured and ingested into the human body.

Mr. Speaker, I urge the House to give early consideration to this issue. Livestock producers, especially pork producers, see the possibility of a lifetime investment of time and labor jeopardized by a bureaucracy unsympathetic to their concerns.

## THE PROBLEM OF DISCRIMINATORY DISTRICTING

(Mr. HANLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HANLEY. Mr. Speaker, we have in this country a practice popularly known as political gerrymandering which, for nearly 200 years, has hindered the concept of fair and effective representation within congressional districts.

I am sure that you are well aware of what the gerrymander has done—and is capable of doing—as an instrument of partisan political profiteering. This discriminatory districting which operates unfairly to inflate the political strength of one group and deflate that of another, disrupts entire cities, towns and communities of interest for the sole purpose of creating and maintaining a political power base within a State.

Although it runs in direct opposition to the principles upon which our republic was founded, gerrymandering remains within the boundaries of the law. It is sad to say that we, as a legislative body, have done absolutely nothing to bring this unfortunate practice to an end.

Some progress in this area, however, has been made. The "one-man, one-vote" Supreme Court decisions of the mid-1960's, in addition to the many judicial breakthroughs in the early 1970's have taken great strides toward the creation of fair and effective political representation on the congressional level.

At the present time, all State constitutions contain some type of provision regarding redistricting and apportionment. Most State constitutions require the legislature to reapportion on a basis of population following each Federal decennial census, while many of them also explicitly provide for district compactness and contiguity.

Although the courts have entered this political thicket, and many State constitutions now contain redistricting provisions, the standards are usually too vague and unenforceable to amount to any substantial change.

The gerrymander's scalpel has not been deterred from successfully dissecting congressional districts. As a result, State legislatures are given the green light to perform their handiwork with virtually no opposition.

Congress is the only legislative body in the United States which exercises no influence over its own districting and the time has certainly come for us to constructively influence the manner in which the States conduct this process. Fair and effective representation is not a privilege which is determined through the whims and fancies of State legislators—it is a constitutional right. Gerrymandering is an evil practice and Congress, having the power and responsibility, ought to eliminate it.

I am introducing today a bill, which is designed to lessen the opportunity for such gerrymandering to take place. The proposed law will take districting power away from the State legislatures and give it to bipartisan commissions in the various States, which will be required to hold open hearings, assimilate public input and publicize their final plan to allow for citizens input and challenge.

In cases where States prove incapable of coming up with a workable and constitutional scheme, the U.S. district courts shall order the commission to set up a new plan within 60 days. Only in this way can we eliminate the possibility of a partisan court decision in this apportionment process.

An additional safeguard against making districting a political football would be the provision limiting this redistricting process to one per census. These commissions would be required to follow guidelines in their work, such as maintaining the integrity of political subdivisions to the greatest extent possible, making districts compact, keeping within general numerical requirements and taking into account the fair representation of minority groups.

The track record of some State legislatures in dealing with this matter is not good. Past performances prove that some

are incapable of creating fair and constructive plans for redistricting and are willing to place personal gain ahead of democratic principles.

It is time to put away the toys of gerrymandering. It is time to stop playing the manipulative games of old politics in a smoke-filled room. We must now enter into an era where fair and effective representation is no longer a meaningless phrase but a political reality.

This bill is not the complete answer. We will not establish a redistricting utopia through the passage of this bill, but I feel that sound reform is desperately needed, and my bill will go a long way toward eliminating this worthless and undemocratic practice.

## AMENDMENT TO LAND AND WATER CONSERVATION FUND ACT

(Mr. RONCALIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RONCALIO. Mr. Speaker, since the land and water conservation fund was authorized in 1964, the program has grown in popularity and use. More than $1.7 billion has been made available to States and local governmental units to acquire and develop open space, parks, and outdoor recreation areas throughout the country.

In 1976, Public Law 94–422 amended the Land and Water Conservation Fund Act to, among other things, provide for the sheltering and enclosure of ice skating rinks and swimming pools.

Although the 1976 amendment is conceptually helpful in extending the use of the land and water conservation funds for sheltering outdoor recreation facilities, in terms of application, it is hardly helpful.

Even though Congress recognized that there was a need to extend public use of certain outdoor recreation facilities which receive limited use, because of climatic conditions, outdoor recreation still receives primary consideration in the alloctaion of funds. Because the thrust of the program is outdoor recreation, the use of funds for sheltering is very limited.

The amendment allowed assistance to be provided for the sheltering or enclosure of swimming pools and ice skating rinks in areas of the country that suffer from severe climatic conditions. The conference report also states that the sheltering or enclosure would be limited to Northern tier areas of the country which are subject to extreme cold, heavy snow, or high wind conditions. In addition, eligible States were limited to using up to 10 percent of their yearly allocation for sheltering.

I am, therefore, introducing a bill today to permit States to shelter or enclose, at their own expense, any outdoor recreation facility previously or hereafter developed with moneys from the land and water conservation fund.

Early in the spring of 1977, the Heritage Conservation and Recreation Service issued proposed guidelines to implement sheltering provisions; and the comments on the proposals clearly indicated the problems with the existing law. The problems can be summarized as follows:

The requirement that eligible areas be defined by climatic conditions does not recognize the reality of political and jurisdictional boundaries. Many States and possibly some counties would be divided because of slight variations in average temperatures and snowfall.

The limitation to northern tier areas of the country imposed by the Conference Committee Report discounts factors which limit public use of outdoor recreation facilities in other areas of the country. Excessive rainfall, cool summer temperatures, sand and dust, hot weather, and extreme temperature fluctuations are factors which to one degree or another affect virtually every area of the Nation. These conditions limit the public use of many outdoor recreation facilities and, in some cases, can prevent certain activities from being offered at all. Ice skating, for example, can't be provided in an outdoor setting in our southern States.

Limiting the use of Fund assistance to 10 percent of a State's yearly allocation places many States in untenable positions. For States that do not receive extremely large allocations, this limitation creates more problems than it may solve. For example, there have been States which have had to turn down many otherwise excellent proposals because funding was insufficient. In other States, the sheltering proposals may require the State's funding limit for several years. The Fund is not sufficient to meet existing needs.

Swimming pools and ice skating rinks are not the only outdoor recreation facilities which are affected. Tennis, basketball, and other court games can be provided only during certain months of the year. In some cases, simple shelters can shade the facilities from severe sun or a screen can provide protection from strong winds or dust conditions. In all cases, however, our citizens are not getting their full dollar value from facilities which may lay idle for many months out of the year.

People with physical handicaps, youngsters, senior citizens, and others with medical disabilities are most affected by climate conditions.

The bill which I am introducing today would help alleviate the problems by—

First. All outdoor recreation facilities eligible for Land and Water Conservation Fund Assistance could be sheltered or enclosed. Eligibility would no longer be limited to sheltering of swimming pools and ice skating rinks.

Second. Sheltering or enclosure could be undertaken in any area of the country. The northern tier qualifications and cold climatic criteria would be eliminated. thus recognizing types and degree of climatic conditions that affect outdoor recreational activities.

Third. Sheltering or enclosure would be undertaken without assistance from the fund. therefore, not affecting the Federal budget.

These changes are realistic. practical, and would be instrumental in extending the use of recreational facilities to a broader range of individuals. for a longer period of time throughout the year.

## THE CETA PROGRAM—IT'S WORKING

(Mr. CHARLES H. WILSON of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

● Mr. CHARLES H. WILSON of California. Mr. Speaker, a few weeks ago, the House of Representatives considered, but did not conclude work on legislation extending the life of the Comprehensive Employment and Training Act (CETA).

Frankly, I am concerned that some of the amendments adopted during that initial debate will diminish the effectiveness of this important program. Recently, I received a very constructive and positive statement of support for extending CETA from the mayor of Redondo Beach, Calif., the Honorable Dave Hayward.

My colleagues who have questions as to whether CETA is accomplishing its objectives—training and putting people to work—should invest a few minutes in reading Mayor Hayward's letter.

I think the record of this California city is sound evidence to the Congress that the CETA program works, and that its life should be extended.

AUGUST 23, 1978.

Hon. CHARLES WILSON,
*U.S. Congress,*
*Lawndale, Calif.*

DEAR CONGRESSMAN WILSON: In recent months we have become aware of the controversy in Congress over reenactment of the Comprehensive Employment and Training Act (CETA). Cities across the nation have been criticized for their misuse and outright abuse of CETA funds and attention to the negative aspects has caused some elected officials to actually support elimination of certain CETA programs.

While it is clear that there have been instances of abuse, we feel that there have been far more positive affects of CETA, and would like to share with you some of those benefits in our Community.

Approximately one year ago numerous projects were begun under title VI of CETA in which long-term, low income residents were employed for 12 months.

Project goals including providing training to participants so that they would have greatly improved chances of finding unsubsidized work after CETA, and accomplishment of specific improvements throughout the Community. We believe that both goals have been achieved. Not only are participants given training in specific areas, but they are encouraged to take advantage of City CETA policies allowing job related education and verified interviews or tests for unsubsidized jobs during their working hours. Numerous projects have been completed by the City, the school districts and community based organizations throughout Redondo Beach CETA.

In the City, projects included: a concrete project in which sidewalks, curbs and crossgutters were repaired throughout the City as well as installation of handicap ramps in over 40 intersections; a sewer lateral replacement and cleanout project in which sewer laterals which had been almost totally clogged by roots of Magnolia trees in the North of the City were replaced on 751 homes. In addition, over 150 miles of sewer lines were cleaned; landscaping projects in which new landscaping and sprinkler systems were installed in several parks, parkettes, parkways and intersections. Erosion control as well as repair of vandalized planters throughout the City were included in the project and the affect on the aesthetics of the City has been enormous. The South Bay Union High School District has completed extensive landscaping and sprinkler installation at all three high schools and their painting project has enormously improved interiors and exteriors of schools, as well as stadium fences, bleachers and gymnasiums.

The elementary school district has utilized CETA employees to transfer pupil records to microfilm, and create Conservation, Ecology and Multiculture education curriculum packages. South Bay Children's Health Center, an organization which provides no cost dental and psychological health services to children, was able to completely refurbish their facilities and as a result provide better service to more children. The Director, Frank Masi, cannot say enough about the benefits of CETA.

Importantly, none of these projects would have been completed without CETA. Local funds were in no way substituted with federal funds. These projects would simply not have been accomplished.

Naturally, there have been some difficulties, but they have to do with training individuals who are part of the hard core unemployed. Working with such individuals is not an easy task, but the City and school districts have tried very hard to offer productive opportunity to all CETA participants who are, after all, our own residents. The projects mentioned are only a sample of CETA benefits under titles II and VI over the last year.

CETA titles I and II also offer unique opportunities of training and job placement for economically disadvantaged residents of Redondo, Hermosa and Manhattan Beaches. An On-the-Job Training program with TRW, the areas largest private employer, has resulted in over 90 percent placement, and a new training program in micro-electronic assembly through TRW will result in $5–$6 per hour placement wages in a high demand occupation. Other training offered through title I includes EKG Technician, clerical, welding, and auto mechanics and past placement rates have all exceeded 70 percent.

A new and very innovative program funded technicial training to long term unemployed under title III offers non-commercial video technician training to long term unemployed youth (18–21). In this program private sector consultants to Sony Corporation helped to create and implement an outstanding program.

Needless to say, with so many positive programs in our Community funded through CETA, it is extremely distressing to realize that those funds and the manner in which they may be used are in jeopardy.

Please consider our successes as you make decisions on CETA Reenactment. CETA has worked well in Redondo Beach and we are very anxious for it to continue.

Sincerely,

DAVID K. HAYWARD,
*Mayor.*●

## INTERNATIONAL LITERACY DAY FOCUSES NEED FOR WORLDWIDE ACTION

(Mr. McCLORY asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. McCLORY. Mr. Speaker, in observance of International Literacy Day, it is important that we pause to note that there are literally 800 million adult persons around the world who are incapable of either reading or writing.

While the major problem of illiteracy exists in the underdeveloped or developing countries, it is important for us to recall that in our own Nation and other developed nations the problem of illiteracy is increasing.

An observance is taking place today in the State Department auditorium in recognition of International Literacy Day and I had hoped to attend this ceremony with other Members of Congress. Indeed, it had been my expectation to deliver remarks today at the Interparliamentary Union Conference taking place at this very time in Bonn, Germany.

Mr. Speaker, you were most gracious to appoint me as a delegate to this important conference; but, as my colleagues will understand, it has been incumbent for me to remain here for the legislative business which has taken place on the floor of this Chamber this week. However, I had prepared remarks to be delivered at the IPU meeting. These remarks, in my opinion, represent a significant statement in behalf of our Nation as we view the problem of illiteracy around the world from this vantage point of economic, social, and cultural development.

Mr. Speaker, I hope that all of my colleagues will join me today in directing their thoughts toward the problem of international illiteracy and will recognize that the ability to read and write are basic essentials to virtually every social, cultural, and spiritual advantage which is afforded to the human species.

Mr. Speaker, the title of the subject being discussed in Bonn, Germany, at the IPU Conference is "The Increase in Illiteracy as a Threat to World Development and as a Basic Cause of Poverty, Hunger, Disease, and Human Misery." My prepared remarks on this subject are attached for the benefit of my colleagues and of all who view the report of our proceedings in this Chamber today:

[Interparliamentary Union, 65th Conference, Bonn, Federal Republic of Germany, Sept. 3–14, 1978]

THE INCREASE IN ILLITERACY AS A THREAT TO WORLD DEVELOPMENT AND AS A BASIC CAUSE OF POVERTY, HUNGER, DISEASE AND HUMAN MISERY

Mr. Chairman, and fellow parliamentarians: today, September 8, has been proclaimed throughout the world as World Literacy Day. So I would like to take this opportunity to speak for a few moments on a problem of pressing urgency in all the nations of the world . . . illiteracy.

The continuing fight against illiteracy is important in industrialized societies just as it is in societies which have not yet attained a high standard of living. It is important to the productivity and the GNP of industrialized nations to have a high rate of literacy just as it is in the developing nations of the world. Recent studies and programs in some of the industrialized nations indicate that the ideal literacy rate has not been reached, despite generations of compulsory education. In my own country, despite a very high literacy rate for many years, information regularly comes to light of a hidden functional illiteracy, which means an inability to read well enough to function in an industriaized society. Much more pressing are the needs in developing countries which have fewer resources to devote to the eradication of illiteracy.

Few would argue that literacy is not an essential part of the developmental process. Governments have recognized the problem for years, and many have devoted considerable energy and expenditures to literacy programs, as well as to industrialization and other facets of economic development. On the surface, the problem appears to be gradually disappearing. In 1950, the world-wide illiteracy rate was 44 percent. Now it is estimated to be only 34 percent. But this impressive drop in the percentage of illiterates in the world does not reflect the tremendous growth in the world population during the same 28 years, from 1.6 billion in 1950 to an estimated 4 billion plus today. These figures mean that the actual number of illiterate adults in the world has increased from 700 million in 1950 to over 758 million today. And with population growth outstripping the abilities of developing nations to increase educational facilities, the number of children reaching adulthood without any formal schooling is also increasing.

Between 1954 and 1975, UNESCO attempted to help solve this problem of illiteracy with an intensive project involving 11 Third World countries. The Experimental World Literacy Program was aimed at halting the worsening situation with regard to illiteracy in the world . . . and changing the direction of the upward curve in the number of illiterate people. The program demonstrated the many difficulties in fighting illiteracy. All the money allocated for the programs was not spent. Responsibility for the literacy programs was scattered through many bureaucracies. Some of the governments did not give adequate support to the programs. Some pupils had to drop out to earn a living. In some countries with more than one language, the language used in the program was not the language spoken by a large segment of the people.

But the Experimental World Literacy Program was successful in some ways. It called attention throughout the world to the problems of illiteracy, and indeed kindled an increasing interest and effort among governments to attack the problems of illiteracy. It provided a large quantity of material resources which might not have been developed if the program had not taken place, and it demonstrated on a large scale several methods of literacy training. It taught the educators involved that literacy must be achieved by flexible programs, geared to the students, the society in which they live, and their needs. The Program had an important effect on education, especially in those countries directly involved. Adult education courses were added to the curriculums of teacher education programs. Follow-up programs to help the newly literate maintain their new skills were developed in some countries, including newspapers geared to new readers and the establishment of libraries and literacy centers.

The Program also showed that literacy must be tied to overall development, that the development of a nation creates both the need and the desire for literacy, and that since learning to read and write is a difficult task which requires highly motivated students, motivation is essential to the success of literacy programs. Literacy training alone cannot succeed. The UNESCO evaluation of the literacy program urged (1) that future literacy programs must "link literacy work with overall concerted action for development" including social changes as well as economic growth, and (2) that the function of literacy training must be interpreted in its widest sense to include improving the cultural, social and political situation of the student as well as the occupational and economic situation.

Literacy can provide a lubricant to ease a nation toward development. Literate people are more open to change . . . less hampered by traditional mores which may need to be changed in order to improve the economic situation. Literacy facilitates communication between sectors of the society. As the Population Reference Bureau stated in its study, *Literacy and World Population*,

"Literacy is perhaps the most important single way station to social and economic development, opening for the individual the door to innovative ideas, options, and actions and releasing him from only the known and traditional."

Nevertheless, the problems of the UNESCO literacy program, and other programs, have resulted in a certain amount of discouragement among educational experts and govern-

ments. We must guard against this discouragement and against any slackening of effort on the part of the nations or international agencies. There is compelling evidence that when a government gives a literacy program top priority, the program can succeed. Tanzania reduced its illiteracy rate from 67 percent to 39 percent in four years despite its status as one of the world's least-developed countries. Brazil's official statistics report that the illiteracy rate in that country has dropped from 36 percent to 18.7 percent since 1970. Iran has also been successful in substantially reducing the number of illiterates in its society.

The United States Congress has identified the reduction of illiteracy as one of the purposes of the foreign assistance program and in response the Agency for International Development has increased the amount of bilateral economic aid devoted to first level education programs, which include literacy.

Both the World Bank and UNESCO have announced substantial new programs to provide funds for literacy programs. For, while the problem of illiteracy is a universal one, it is most acute in the developing nations. Here illiteracy compounds and exacerbates every other manifestaton of underdevelopment, and adds to the sum total of human misery. Although the developing nations have less to spend on education, it is also true that many have not given education the highest priority. It is still true that developing nations as a whole spend more public revenue on military forces than on both education and health combined. And it has been pointed out in a survey of 140 nations that the top twenty nations in terms of expenditures for military purposes include several countries which rank very low in spending on health and education and equally low in their literacy rate.

The significance of the high rates of illiteracy in developing countries become clearer upon examining statistics showing who the illiterates are. The Population Reference Bureau points out that of all adult illiterates, most live in rural areas and most are women. An average of 80 percent of women in the developing countries are illiterate, and in some of the least developed, the percentage is virtually 100. This figure is especially disturbing since statistics have shown that educated mothers, even those with only a few years of schooling, tend to have fewer children and also are less likely to keep their children home from school to work. Equally tragic are the UNESCO figures on children between the ages of 6 and 11. Currently, more than half of these children in the developing countries are not in school, and if present trends continue, by 1985 less than 30 percent of the children in the least developed countries will be attending school, thus adding eventually to the number of adult illiterates.

The Interparliamentary Union has been intimately involved in the study of illiteracy and in the development of plans and programs aimed at the reduction of illiteracy in the world.

In light of all of these facts, this body has wisely reported a draft resolution supporting the right of all people to be literate, and acknowledging the unmistakable connection between literacy and social and economic progress. This resolution calls upon parliaments to bring about national awareness of the importance of literacy and to urge their respective governments to give high priority to literacy training, especially for women. I wholeheartedly support this resolution, and I urge its adoption by the membership.

I commend the Interparliamentary Union officers and delegates for designating an appropriate portion of time during this Conference for observing International Literacy Day . . . and for recognizing the significance of this day throughout the world.

## CALIFORNIA HOMEOWNERS BEWARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, the savings and loan industry in California is playing both sides of an issue to its benefit and the victim of the maneuverings is the California homeowner.

The game is being played with a new mortgage instrument called a variable rate mortgage—a mortgage in which interest rates fluctuate to reflect changes in the money supply.

Mr. Speaker, interest rates on home mortgages are at the highest rate ever recorded by the Federal Home Loan Bank Board. Leading the pack in high interest rates is California, where interest rates topped 10 percent this year. It is virtually impossible to acquire a home loan with an interest rate under 10 percent in the State of California.

But, suddenly, prospective homeowners are seeing that the two largest savings and loan institutions in California are offering variable rate mortgages at 9¾-percent interest. The conventional, fixed rate mortgages are still offered at 10-percent interest.

But, on the other side of the street, over 100,000 California residents will experience increases in the interest rates on their variable rate mortgages—as much as one-quarter of a percentage point rise.

The predictions from California are that interest rates will rise in October on most home mortgages made with a variable rate since 1975, and an excess of 100,000 California homeowners will be affected.

What will this rise in the interest rate mean to a California homeowner holding a variable rate mortgage? On a $60,000 home made at a 9-percent rate of interest in 1975, it means at least a 2-year extension on their mortgage. It means an additional 2 years of monthly payments for these thousands of homeowners. And there was no assurance that interest rates will not rise on variable rate mortgages again in 1978.

Mr. Speaker, as the thousands of homeowners holding these mortgages realize their plight, countless other consumers are being lured into a similar fate by the one-quarter percentage point differential the savings and loan institutions are offering on a new home mortgage made with a variable rate.

The variable rate mortgage is the most controversial of several new loan plans springing up across the country that are referred to as alternative mortgage instruments. The interest rate on variable rate mortgage are designed to reflect changes in the money supply. In other words, the homeowner signs a 30-year mortgage with the agreement that his interest rates are subject to change, with a maximum allowance of a 2½-percent rise in the rate. So, the amount of future payments are always an uncertainty.

The variable rate mortgage is not confined to California, although it is the only State in which the mortgage instrument has been tested on a wide-scale basis. In addition to California, there are 16 States which currently allow State-chartered savings and loan associations to offer the loan plan.

Over the past few years, there has been tremendous pressure generated from the savings and loan industry for a greater availability of VRM's. Specifically, the industry seeks congressional approval to offer VRM's in Federal savings and loan associations across the country. Short of this, proponents maintain that VRM's should be offered in the States where State-chartered institutions offer the loan plan.

The Federal Home Loan Bank Board issued proposals for variable rate mortgages in 1975. Both Houses of Congress moved to prohibit the issuance of these regulations by wide margins. Yet, still the industry pushed for variable rate mortgages in Federal associations.

On June 28, despite serious objections from consumer groups, members of the housing industry and organized labor, the full Committee on Banking, Finance, and Urban Affairs narrowly approved an amendment to the Financial Institutions Regulatory Reform Act of 1978 which allows Federal savings and loans to offer VRM's in States which allow State institutions to do so. I vigorously opposed this amendment in committee. I repeated my concern in a statement of additional views to the committee report of the Financial Institutions Regulatory Reform Act. And as we near consideration of the Reform Act, I feel compelled to bring this issue, again, to the attention of my colleagues in the House.

The increases that California residents will soon face in their mortgage payments indicates the primary problem with VRM's—the inflationary burden posed to consumers. Homeowners are already at the mercy of rising property taxes, rising utility costs, and an inflation rate that will top 8 percent this year. The monthly mortgage payment has always been a set figure to pay each month—however, high, at least the figure was set and known to the homeowner. With the variable rate mortgage, these payments could easily climb right out of the homeowners budget, because of rises in the interest rate.

I find it particularly ironic that California homeowners will be so gravely affected by this mortgage instrument. I need not remind my colleagues of the passage of proposition 13 this summer. Consumers are sick and tired of the rules being changed in the middle of the game. To approve the issuance of VRM proposals is to completely ignore the mandate of the people.●

## LEGISLATION TO CONTINUE AND REAFFIRM THE FEDERAL COMMITMENT TO A NATIONAL CAPITAL TRANSPORTATION SYSTEM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. HARRIS) is recognized for 5 minutes.

● Mr. HARRIS. Mr. Speaker, today I am introducing legislation entitled the National Capital Transportation Amendments of 1978. My colleagues Mr. FISHER,

Mr. DIGGS, Mr. FAUNTROY, Mr. STEERS, Mr. MCKINNEY, and Mrs. SPELLMAN join me in cosponsorship.

Although this legislation is written specifically to amend the National Capital Transportation Act of 1969, it is in fact a continuation and reaffirmation of a Federal commitment that officially began nearly 20 years ago. The title to the National Capital Transportation Act of 1969 reads in part as follows:

The Congress finds that an improved transportation system for the National Capital region is essential for the continued and effective performance of the functions of the government of the United States, for the welfare of the District of Columbia, for the orderly growth and development of the National Capital region, and for the preservation of the beauty and dignity of the Nation's Capital. . . . The Congress therefore declares that it is the continuing policy and responsibility of the federal government, in cooperation with state and local governments of the National Capital region, to encourage and aid in the planning and development of a unified and coordinated transportation system for the National Capital region.

In keeping with that commitment, this legislation addresses the three major challenges faced today by the Washington Metropolitan Area Transit Authority:

First. Reaffirmation of the long-standing Federal Government financial commitment to complete a total Metro transit system in the Nation's Capital;

Second. Establishment of a method for the orderly retirement of bonds issued by the Washington Metropolitan Area Transit Authority; and

Third. Creation of an ongoing Federal participation in operating costs to reflect the special Federal benefits accruing from the Metro system.

The Washington Metropolitan Area Transit Authority (WMATA) recently released a "proposed financial plan for completion and operation of the public transportation system for the national capital area." This plan, which was developed at the request of the Urban Mass Transportation Administration (UMTA) and the Department of Transportation, presents two alternative methods to reach the stated objective. This legislation is designed to implement the alternative plan endorsed by the WMATA board. It calls for a continuation of the special Federal relationship that created Metro in the beginning. It calls upon the Federal Government to meet the obligations of a partnership entered into over 20 years ago with the local governments of the Washington metropolitan area.

It calls for a 101-mile Metro system to be completed and fully operational by 1985 at a savings of $200 million over the other financial approach proposed.

A 101-mile Metro system has been supported by an alternatives analysis recently conducted by one of this Nation's leading consulting firms. That 18-month analysis concluded that a 101-mile system was not just the best thing for regional transportation goals, but was the best thing for the total development of the Washington metropolitan region.

A 101-mile Metro system has also recently won the support of the Department of Transportation and the Urban Mass Transportation Administration.

That 101-mile Metro system will be completed in the shortest possible time at the greatest possible savings to local and national taxpayers through enactment of this bill.

Under this bill, up to $1.7 billion in Federal funds would be authorized beginning in 1980 for capital construction purposes. This amount added to already identified highway transfer funds would serve to complete the remaining 40 miles of Metro on an 80 percent Federal/20 percent State and local basis. This approach, which is consistent with Congress philosophy of providing "advance authorization," would enable Metro to be fully operational 2 years sooner than would be otherwise possible and at a savings of over $200 million.

The second major element of this legislation relates to payment of the interest and principal on the approximately $1 billion in construction bonds due to expire in 2010. It is unfair and unrealistic to expect the farebox or the local taxpayer to cover this expense alone. The approach set down in this legislation is financially sound and consistent with Federal assistance currently provided to all U.S. cities now constructing mass transit systems.

The bill calls for Federal participation in a sinking fund that would pay off the bonds as they mature and in the interest payments now borne strictly by the local taxpayers. The ratio for participation in both cases would be on an 80 percent Federal/20 percent local basis.

The third area addressed by this bill is a direct Federal operating subsidy to reflect the benefit and convenience of Metro to the Federal Government. In fiscal year 1980 the subsidy is $20 million and increases at a rate of 6 percent a year to $30 million in 1987.

The benefits of Metro to the day-to-day operation of the government are immense. This Federal participation, at less than 10 percent of current Metro operating costs, is small compensation for the convenience and savings from stations dedicated to government facilities such as the Pentagon, NIH, and Arlington Cemetery. Time and dollars saved by employees using Metro instead of taxes on official Government business and greatly decreased lost time due to inclement weather are just two other advantages of Metro to the Federal Government.

This legislation emphasizes the special obligations the Federal Government has to the citizens of Northern Virginia, the District of Columbia and suburban Maryland when it sets special requirements that go beyond those set for similar projects in other parts of the country.

The Washington Metro system is a transit system befitting of a Nation's Capital. President Johnson specified that this be so. Metro has the mark of the National Capital Planning Commission. Station and car designs were reviewed by the Fine Arts Commission. Such costly requirements do not exist for the taxpayers of Atlanta, Chicago, or Philadelphia or any other U.S. city as they design and build their mass transit systems.

Neither does any other system maintain stations built strictly at Federal Government request as Metro does.

Neither does any other system have mass transit stations located in buildings dedicated to Federal Government use.

Metro is not just another mass transit system.

Metro is the mass transit system of the Capital of the United States.

Metro does not serve just one city or State. Metro serves two States, Virginia and Maryland, and the District of Columbia.

This legislation continues and reaffirms the special nature of Metro and the special commitment the Federal Government has to it.

The text of the bill follows:

H.R. 14012

A bill to amend the National Capital Transportation Act of 1969 to authorize additional Federal contributions for the cost of construction of the regional rail system of the Washington Metropolitan Area Transit Authority, to provide an orderly method for the retirement of bonds issued by such Authority, and to provide an annual operation and maintenance subsidy to such Authority to reflect the special Federal relationship to such system

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "National Capital Transportation Amendments of 1978".

SEC. 2. (a) The National Capital Transportation Act of 1969 (D.C. Code, sec. 1–1441 et seq.) is amended by adding after section 13 the following new section:

"AUTHORIZATION OF ADDITIONAL FEDERAL CONTRIBUTIONS FOR CONSTRUCTION

"SEC. 14. (a) The Secretary of Transportation is authorized to make contributions to the Transit Authority, in addition to the contributions authorized by section 3 of this Act, for the purpose of financing in part the cost of construction of the Adopted Regional System.

"(b) Federal contributions under subsection (a) for the Adopted Regional System shall be subject to the following limitations and conditions:

"(1) The work for which such contributions are authorized shall be subject to the provisions of the Compact and shall be for projects included in the Adopted Regional System.

"(2) The aggregate amount of such Federal contributions made during any fiscal year shall be matched by the local participating governments by payment of capital contributions for such year in a total amount that is not less than 25 per centum of the amount of such Federal contributions.

"(c)(1) There is authorized to be appropriated to the Secretary of Transportation for fiscal years beginning on or after October 1, 1980, a total amount not to exceed $1,700,000,000 to carry out the purposes of this section.

"(2) Amounts appropriated under paragraph (1)—

"(A) shall remain available until expended; and

"(B) shall be in addition to, and not in lieu of, amounts available to the Transit Authority under the Urban Mass Transportation Act of 1964 and the Federal Aid Highway Act of 1973.".

(b) Section 3 of the National Capital Transportation Act of 1969 (D.C. Code, sec. 1–1442) is amended—

(1) by inserting "under this section" in subsection (a) after "Federal contributions"; and

(2) by inserting "under this section" in

subsection (b) after "Federal contributions" the first place it appears therein.

SEC. 3. Effective October 1, 1979, section 4 of the National Capital Transportation Act of 1969 (D.C. Code, sec. 1–1443), relating to District of Columbia contributions, is amended—

(1) by striking out "Commissioner" in subsections (a) and (d) and inserting in lieu thereof "Mayor"; and

(2) by striking out "aggregating not to exceed $269,700,000" in the first sentence of subsection (a); and

(3) by striking out "not to exceed $219,-700,000" in the second sentence of subsection (a) and inserting in lieu thereof "such sums as may be necessary".

SEC. 4. (a) The National Capital Transportation Act of 1969 (D.C. Code, sec. 1–1441 et seq.) is amended by adding after section 14 (as added by section 2 of this Act) the following new sections:

"PAYMENT OF BONDS

"SEC. 15. (a)(1) The Transit Authority shall establish a sinking fund to be used for the accumulation of assets for payment of principal on bonds and other obligations issued by the Transit Authority. The fund shall be established and administered in accordance with the provisions of the Compact providing for funds established by the Transit Authority, and moneys in the fund may be invested by the Transit Authority in accordance with the Compact.

"(2) Assets of the fund shall be used to pay the principal on bonds and other obligations issued by the Transit Authority as payments for such principal become due.

"(b)(1) Beginning October 1, 1997, the Secretary of Transportation may make contributions to the fund established pursuant to subsection (a).

"(2) Any Federal contribution under paragraph (1) shall be matched by contributions to such fund by the local participating governments in a total amount that is not less than 25 per centum of the amount of such Federal contribution.

"(c) The Transit Authority, with the approval of the Secretary of Transportation, may use income from the investment of moneys in the fund established pursuant to subsection (a) to pay interest costs incurred on obligations issued by the Transit Authority after July 13, 1972, but any such payment by the Transit Authority may only be made after the payment with respect to such costs by the Secretary of Transportation under section 10.

"(d)(1) The Secretary of Transportation may make contributions to the Transit Authority, in addition to any other contributions authorized by this Act, in amounts sufficient to provide for the payment of 80 per centum of the amount of interest costs on obligations issued by the Transit Authority after July 13, 1972, remaining after the payment with respect to such costs by the Secretary under section 10 and any amount paid by the Transit Authority with respect to such costs under paragraph (1).

"(2) Any Federal contribution under paragraph (1) shall be matched by contributions by the local participating governments in a total amount that is not less than 25 per centum of the amount of such Federal contribution.

"ANNUAL FEDERAL CONTRIBUTION FOR RAIL OPERATING EXPENSES

"SEC. 16. (a) The Secretary of Transportation is authorized to make an annual contribution to the Transit Authority to finance in part the cost of operating and maintaining the rapid rail transit system of the Transit Authority.

"(b) There is authorized to be appropriated to the Secretary of Transportation to carry out the purpose of subsection (a) the following amounts:

"(1) For fiscal year 1980, the amount of $20,000,000.

"(2) For fiscal year 1981, the amount of $21,200,000.

"(3) For fiscal year 1982, the amount of $22,500,000.

"(4) For fiscal year 1983, the amount of $23,800,000.

"(5) For fiscal year 1984, the amount of $25,200,000.

"(6) For fiscal year 1985, the amount of $26,700,000.

"(7) For fiscal year 1986, the amount of $28,300,000.

"(8) For fiscal year 1987, the amount of $30,000,000.

"(c) Contributions under this section shall be made without any requirement of a matching contribution by the local participating governments and shall be in addition to contributions under any other section of this Act.

"(d) Amounts appropriated under subsection (b)—

"(1) shall remain available until expended; and

"(2) shall be in addition to, and not in lieu of, amounts available to the Transit Authority under the Urban Mass Transportation Act of 1964.".●

## PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. DRINAN) is recognized for 5 minutes.

● Mr. DRINAN. Mr. Speaker, I was unavoidably absent from the House of Representatives for a short time at the end of yesterday's session. Had I been present, I would have voted as follows: "no" on rollcall No. 734, the McClory substitute for H.R. 7308; "no" on rollcall No. 735, an amendment limiting the warrant requirements of H.R. 7308 to surveillance of American citizens; "no" on rollcall No. 736, a motion to recommit H.R. 7308 with instructions to allow certain warrantless surveillance; "no" on rollcall No. 737, final passage of the Foreign Intelligence Surveillance Act, H.R. 7308; "aye" on rollcall No. 738, to resolve into the Committee of the Whole for the consideration of H.R. 11280; "aye" on rollcall No. 739, to table a motion to reconsider the previous vote.●

## NEWSPAPER PRIVILEGE ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. OTTINGER) is recognized for 5 minutes.

● Mr. OTTINGER. Mr. Speaker, today I am introducing a bill which grants journalists the right to withhold the identity of confidential sources and information received from those sources.

Freedom of the press is essential to the survival of our democratic system. Prosecution of journalists to require them to reveal their confidential sources of information and the details of such information is a substantial impairment of press freedom. Without the privilege of confidentiality, sources will simply stop taking the risks implicit in revealing important information to the press. Justice Douglas understood this when he wrote, "The press has a preferred position in our constitutional scheme, not to enable it to make money, not to set newsmen apart as a favored class, but to bring fulfillment to the public's right to know."

When newsmen sit in jail for refusing to reveal confidential sources and information, the chilling effect on freedom of the press is painfully obvious. When newsmen sit in jail, it is time for Congress to act. The first amendment to the Constitution says:

Congress shall make no law * * * abridging the freedom * * * of the press.

It is time for Congress to effectuate this important first amendment right against the encroachments that have recently been imposed by the courts. The text of the bill follows:

H.R. 14029

A bill to protect from disclosure the confidential sources and information of newspersons

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Newspersons' Privilege Act of 1978."

SEC. 2 The Congress declares that—

(1) fundamental to democracy in a Nation is the ability to keep its people fully informed, and fundamental to this is a free press; and

(2) basic to the realization of the function of a free press is the ability to rely on confidential sources; and

(3) recent court actions requiring the divulgence by the press of sources and information have undermined the capacity to carry out this vital function; therefore

(4) the Congress must insure the basic first amendment guarantee of freedom of the press by protecting newspersons' confidential sources and information.

SEC. 3. No newsperson shall be required by the Congress, by any committee or subcommittee thereof, or by any court, grand jury, or administrative body of the United States or of any State, to reveal any information or source of such information received by such newsperson while acting in a journalistic capacity.

SEC. 4. For purposes of this Act—

(1) the term "information" means any written, oral, or pictorial news, or other material;

(2) the term "journalistic capacity" means the compiling, gathering, editing, writing, and disseminating of information;

(3) the term "news medium or media" includes regularly published newspapers and periodicals, wire services, news agencies, news associations, makers of newsreels or documentary motion pictures, licensed broadcasting stations and networks, broadcasting services, and community antenna television services;

(4) the term "newsperson" means any person who is regularly employed in a journalistic capacity by any news medium or media, or any person who is not regularly employed by any news medium or media but whose primary occupation is the preparation of news material for a news medium or media and who has had a significant number of pieces or works published or broadcast by any news medium; and

(5) the term "source" includes any agency, or person from or through whom information was obtained, supplied, or delivered.●

## FINANCIAL PRIVACY LEGISLATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. PREYER) is recognized for 5 minutes.

● Mr. PREYER. Mr. Speaker, later this month, it appears that the House will take up H.R. 13471, the Financial Institutions Regulatory Act of 1978. Of particular interest to me as the chairman of the Subcommittee on Government Information and Individual Rights is title XI of H.R. 13471, the Right to Financial Privacy Act of 1978. Based in large part on the work done by the Privacy Protection Study Commission, the Right to Financial Privacy Act is the only legislative recommendation of that Commission with a chance for passage by the House this year. Yet, although there is a great need for legislation spelling out standards for government access to bank depositor records, we must take great care to insure that any law we enact will effectively deal with this complex aspect of privacy protection. Our job in considering this bill is to decide whether it is adequate to its purpose.

Today, I would like to share with my colleagues some general observations on the purpose and design of legislation to regulate and control Government access to records maintained by banks about their customers' transactions. In doing this, I hope to explain the reasons why financial privacy legislation is needed and to suggest some standards by which the legislation can be measured. In the next few days, I intend to comment specifically on the features of the Right to Financial Privacy Act of 1978.

Financial privacy legislation has its origins in recent structural changes in the management of personal financial affairs. Not too many years ago, credit cards and checking accounts were rare, and most ordinary personal transactions were in cash. Today, we are in the midst of a transition to a so-called cashless society, and an ever-increasing percentage of our purchases of goods and services do not involve the exchange of cash. One of the major consequences of the use of other payment methods is the accumulation of large amounts of personal information in the hands of third parties such as banks and credit grantors.

The volume of personal financial information that is maintained in files beyond our control is surprisingly large. Suppose that your personal records were lost or unavailable but that you had to reconstruct your financial affairs for the last year. By going to the bank where you have a checking account, to department stores where you do business, to credit card companies, and other commercial establishments, you would probably be able to identify most of your transactions. However, this process would not permit you to trace any of your cash transactions. When you pay in cash for a newspaper, a meal, a taxi ride, or almost anything else, no one keeps a record of your identity or your purchase. The more cash you spend, the harder it is to use records maintained by third parties to determine after the fact how you have spent your money.

For most of this country's history, people conducted their business in cash, and a person's finances could not be reconstructed from records beyond that person's control. Because of a lack of a paper trail for most transactions, the only source of personal financial records was the individual himself. Nevertheless, even though personal financial records were not maintained elsewhere, the Government was prohibited from seizing the records maintained by an individual without probable cause. This limited availability of records was part of the overall balance struck in the Constitution between society's interest in law enforcement and an individual's interest in privacy and personal liberty.

That balance between individual liberty and the Government's investigatory powers has been affected by the change in modern recordkeeping practices. Records that were previously unavailable to the Government or that were accessible only after the individual had notice of and an opportunity to object to governmental access are now routinely kept by third party recordkeepers. These records are within easy reach of Government investigators, and a recent Supreme Court case confirms their availability.

In *United States* v. *Miller*, 425 U.S. 435 (1976), the Supreme Court decided that an individual has no constitutional protection against government demands for access to records about himself if the records are maintained by a bank. The Court held that an individual has no standing to challenge a government subpena issued to a bank, and that the individual has no protectible legal interest in the bank's records about his account and his transactions. Thus, despite the sensitive and revealing nature of these records, an individual has no legitimate expectation of privacy.

The Privacy Protection Study Commission's 2-year look at the problem suggested statutory modification of the Miller decision. To effectively do so, a financial privacy law must give the individual a statutory interest in depositor records as well as a statutory right to protect that interest. The experience with the Tax Reform Act of 1976 clearly shows that both of these features are crucial. Under that act, the Internal Revenue Service is required to give an individual notice that a summons has been served on a bank or other third party recordkeeper. The individual is then able to stop the recordkeeper from complying with the summons until a hearing is held, and the individual may intervene in the enforcement proceeding for the summons. This law gives standing to contest an IRS access request, but an individual still has no protectible legal interest. As the Privacy Protection Study Commission stated in its report of last year,

> The individual may go into court, but when he gets there he has nothing to say, because he has no legal interest to defend or to balance against the government's desire for the record.

It is not surprising therefore that all those who have actually gone to court in an attempt to quash an Internal Revenue Service summons have failed. Nor is it surprising that many who have initially filed an objection to a summons have later failed to appear in court to argue against IRS access, or that those who have appeared have made what appeared to be frivolous arguments. No substantive arguments are recognized under the tax reform law, nor, according to Miller, under the Constitution. By providing legal standing but no protectible legal interest in bank records, the Tax Reform Act accomplishes little. Standing to sue without a protectible legal interest is meaningless.

In enacting a general financial privacy law, we must take care not to repeat the mistakes of the Tax Reform Act. Individuals must not only be permitted to object to Government access requests for bank records, but they must be given a legally protectible interest in those records. The lesson of both the Miller case and the Tax Reform Act is that Congress and not the courts must define and limit the degree of intrusion into personal affairs that is permitted through the use of subpenas and summonses issued to banks.

How much protection should we allow? Some of the lines are relatively easy to draw. A financial privacy law is a failure if it does not prevent access by a government employee who is merely curious about someone's financial affairs and is on a fishing expedition. A financial privacy law is a failure if there is insufficient basis upon which the court can review the Government's access request.

On the other hand, we must take care not to be overly restrictive of legitimate law enforcement activities. A financial privacy law can also be a failure if it prevents access by a government investigator who has a legitimate and reasonable law enforcement purpose.

In evaluating the legislation before us, we should ask: What type of privacy interest in bank records are we creating? What type of access requests will be honored by the law? What burden must the individual shoulder to be successful in preventing Government access? Our goal must be to strike a fair and meaningful balance between the competing interests of privacy and law enforcement.

I hope to share further thoughts on this issue as we approach a vote on the measure.●

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BURGENER (at the request of Mr. MICHEL), for Monday, September 11, 1978, on account of official business to co-conduct Small Business Conference for firms seeking to compete for Federal contracts.

Mr. COTTER (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the re-

quest of Mr. DOWNEY) to revise and extend their remarks and to include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. HARRIS, for 5 minutes, today.
Mr. DRINAN, for 5 minutes today.
Mr. OTTINGER, for 5 minutes, today.
Mr. PREYER, for 5 minutes, today.
Mr. MAGUIRE, for 45 minutes, on September 12.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GREEN) and to include extraneous matter:)

Mr. FINDLEY in two instances.
Mr. LAGOMARSINO.
Mr. GILMAN
Mr. DORNAN.
Mr. KEMP in two instances.
Mr. ERLENBORN.
Mr. ROUSSELOT.

(The following Members (at the request of Mr. DOWNEY) and to include extraneous matter:)

Mr. HAMILTON.
Mr. SIKES in two instances.
Mr. FOUNTAIN.
Mr. ANDERSON of California in three instances.
Mr. GONZALEZ in three instances.
Mr. CARNEY.
Mr. IRELAND.
Mr. KILDEE.
Mr. APPLEGATE.
Mr. SIMON in two instances.
Mr. DINGELL.
Mr. ZABLOCKI.
Mr. KOSTMAYER.
Mr. POAGE.
Mr. BOLAND.

## SENATE JOINT RESOLUTION REFERRED

A joint resolution of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 131. Joint resolution to change the name of Copan Dam and Lake in the States of Oklahoma and Kansas to Copan Dam and the Lake of the Delawares; to the Committee on Public Works and Transportation.

## BILL PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on September 7, 1978, present to the President, for his approval, a bill of the House of the following title:

H.R. 6669. To establish a comprehensive and coordinated national climate policy and program, and for other purposes.

## ADJOURNMENT

Mr. DOWNEY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 20 minutes p.m.), under its previous order, the House adjourned until Monday, September 11, 1978, at 12 o'clock noon.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4943. A letter from the Secretary of Labor, transmitting a report on the 1978 summer youth jobs programs, pursuant to section 705(c) of the Comprehensive Employment and Training Act of 1973, as amended; to the Committee on Education and Labor.

4944. A letter from the Secretary of Labor, transmitting a report on the exemption of certain switchboard operators from the minimum wage and overtime provisions of the Fair Labor Standards Act, pursuant to section 4(d)(2) of the act, as amended (88 Stat. 73); to the Committee on Education and Labor.

4945. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of a license for the export of certain defense articles and services sold commercially to the Philippines (transmittal No. MC–12–78), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on International Relations.

4946. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting the final report on programing and obligation of funds for Lebanon relief and rehabilitation, pursuant to section 495C of the Foreign Assistance Act of 1961, as amended (90 Stat. 762); to the Committee on International Relations.

4947. A letter from the Secretary of Health, Education, and Welfare, transmitting the first annual report of the Director of the National Institute of Arthritis, Metabolism, and Digestive Diseases on arthritis activities under the Arthritis Plan, pursuant to section 434(f) of the Public Health Service Act, as amended (88 Stat. 2224); to the Committee on Interstate and Foreign Commerce.

4948. A letter from the Secretary of Health, Education, and Welfare, transmitting the findings of the assessment of health professions schools' admissions criteria for bilingual and bicultural activities, pursuant to section 904(a) of Public Law 94–484; to the Committee on Interstate and Foreign Commerce.

4949. A letter from the vice president for Government affairs, National Railroad Passenger Corporation, transmitting the financial report of the Corporation for the month of May 1978, pursuant to section 308(a)(1) of the Rail Passenger Service Act of 1970, as amended; to the Committee on Interstate and Foreign Commerce.

4950. A letter from the vice president for Government affairs, National Railroad Passenger Corporation, transmitting a report covering the month of June 1978, on the average number of passengers per day on board each train operated, and the on-time performance at the final destination of each train operated, by route and by railroad, pursuant to section 308(a)(2) of the Rail Pasesnger Service Act of 1973, as amended; to the Committee on Interstate and Foreign Commerce.

4951. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of certain aliens, pursuant to section 212(d)(6) of the act; to the Committee on the Judiciary.

4952. A letter from the Comptroller General of the United States, transmitting a report on the causes of food price rises (CED–78–170, September 8, 1978); jointly, to the Committees on Government Operations, Agriculture, and Education and Labor.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DANIELSON: Committee on the Judiciary. H.R. 11002. A bill to provide for the resolution of claims and disputes relating to Government contracts awarded by executive agencies; with amendment (Rept. No. 95–1556). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee of conference. Conference report on H.R. 3816 (Rept. No. 95–1557). Ordered to be printed.

## REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X,

The bill, to strengthen and improve the early and periodic screening, diagnosis, and treatment program, and for other purposes (H.R. 13611, as reported on August 11, 1978) was referred by the Speaker as follows:

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Appropriations for a period not to exceed 15 legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANNUNZIO (for himself and Mr. CARNEY):

H.R. 14019. A bill to amend chapter 59 of title 38, United States Code, to provide for the recognition of representatives of the Italian American War Veterans of the United States, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. CONABLE (for himself and Mr. RANGEL):

H.R. 14020. A bill to amend the Internal Revenue Code of 1954 with respect to the treatment of certain employees' trusts organized to invest in real estate; to the Committee on Ways and Means.

By Mr. CONABLE (for himself and Mr. YOUNG of Florida):

H.R. 14021. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

H.R. 14022. A bill to amend section 403(b) of the Internal Revenue Code of 1954 with respect to computation of the exclusion allowance for ministers and lay employees of the church; to the Committee on Ways and Means.

H.R. 14023. A bill to amend the Internal Revenue Code of 1954 to extend the special elections for section 403(b) annuity contracts to employees of churches, conventions, or associations of churches, and their agencies and to permit a de minimis contribution

amount in lieu of such elections; to the Committee on Ways and Means.

By Mr. DOWNEY (for himself, Mr. MOAKLEY, Mr. WHITEHURST, Mr. GUYER, Mr. EMERY, Mr. FRENZEL, Mr. CARR, Mr. RANGEL, Mr. OTTINGER, Mr. CLAY, Mr. DRINAN, Mr. SOLARZ, Mr. MAGUIRE, Mr. STOKES, Mr. STARK, and Mr. MURPHY of New York):

H.R. 14024. A bill to permit regulation of automated blood pressure machines to insure the accuracy and reliability of their performance; to the Committee on Interstate and Foreign Commerce.

By Mr. HANLEY:

H.R. 14025. A bill to provide for an equitable procedure for establishing congressional districts; to the Committee on the Judiciary.

By Mr. JOHNSON of Colorado (for himself and Mr. YOUNG of Alaska):

H.R. 14026. A bill to provide means for the acquisition and retention of title to certain lands by the village corporation organized pursuant to the Alaska Native Claims Settlement Act for the Natives of the village of Kake, Alaska, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. LEACH (for himself and Mr. GLICKMAN):

H.R. 14027. A bill to direct the Secretary of Agriculture to conduct research with respect to the effects of nitrites on animals and with respect to possible nitrite substitutes; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. MURPHY of Pennsylvania (for himself, Mr. MOAKLEY, Mr. SANTINI, Mr. WHITEHURST, Mr. LAGOMARSINO, Mr. RAHALL, Mr. PANETTA, Mr. STAGGERS, Mr. MATHIS, Mr. LEDERER, Mr. ERTEL, Mr BURKE of Florida, Mr. EILBERG, Mr. FOUNTAIN, Mr. FINDLEY, Mr. JEFFORDS, Mr. ROBERT W. DANIEL, Jr., Mr. CORRADA, Mr. SCHEUER, and Mr. FLOOD):

H.R. 14028. A bill to amend title 38, United States Code, to provide for an official memorial flag to honor war veterans; to the Committee on Veterans' Affairs.

By Mr. OTTINGER:

H.R. 14029. A bill to protect from disclosure the confidential sources and information of newspersons; to the Committee on the Judiciary.

By Mr. RICHMOND (for himself, Mr. EDWARDS of California, Mr. SEIBERLING, Mr. DRINAN, Mr. VOLKMER, Mr. BEILENSON, Mr. BUTLER, Mr. MCCLORY, Mr. THOMPSON, Mr. VENTO, and Mr. WAXMAN):

H.R. 14030. A bill to provide more effectively for the use of interpreters in courts of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. RONCALIO:

H.R. 14031. A bill to amend section 6(e)(2) of the Land and Water Conservation Fund Act of 1965, as amended; to the Committee on Interior and Insular Affairs.

By Mr. SCHULZE:

H.R. 14032. A bill to amend the Internal Revenue Code of 1954 to increase the dollar amount which is required before certain gambling winnings are subject to income tax withholding; to the Committee on Ways and Means.

By Mrs. SPELLMAN (for herself, Mr. EVANS of Indiana, Mr. RICHMOND, and Mr. VOLKMER):

H.R. 14033. A bill to assist cities and States by amending section 5136 of the Revised Statutes, as amended, with respect to the authority of national banks to underwrite and deal in securities issued by State and local governments, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. RONCALIO (for himself, Mr. WEISS, Mr. BALDUS, Mr. BAUCUS, Mr. BONIOR, Mr. EILBERG, Ms. KEYS, Mr. ST GERMAIN, Mr. STEERS, Mr. BEARD of Rhode Island, Mr. FORD of Tennessee, Mr. YATRON, Mr. STOKES, Mr. MURPHY of Pennsylvania, and Mr. LEDERER):

H.J. Res. 1132. Joint resolution to authorize the President to issue a proclamation designating March, 1979, as "Youth Art Month"; to the Committee on Post Office and Civil Service.

By Mr. BEDELL:

H. Con. Res. 708. Concurrent resolution to establish a Presidential commission to evaluate defensive weapons systems; to the Committee on Armed Services.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ICHORD introduced a bill (H.R. 14034) for the relief of Luis Acosta, doctor of medicine, Nereida Acosta, Julia Acosta, and Juan Carlos Acosta, which was referred to the Committee on the Judiciary.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. MOORHEAD of California:

—Page 44, line 2, strike out "; or" and insert in lieu thereof a dash.

Page 44, strike out line 3 and everything that follows through line 13 on page 45.

Page 45, strike out line 16 and everything that follows through line 21 on page 46.

Page 46, line 22, redesignate subsection (f) as subsection (c) and strike out "(a), (b), or (c)" and insert in lieu thereof "(a) or (b)".

Page 47, line 7, redesignate subsection (g) as subsection (d) and on page 48, line 3, redesignate subsection (h) as subsection (e).

—Page 44, line 2, strike out "; or" and insert in lieu thereof a dash.

Page 44, strike out line 3 and everything that follows through line 13 on page 45.

Page 45, strike out line 16 and everything that follows through line 21 on page 46.

Page 46, line 22, redesignate subsection (f) as subsection (c) and strike out "(a), (b), or (c)" and insert in lieu thereof "(a) or (b)".

Page 46, line 23, insert "(1)" immediately after "shall not apply if".

Page 47, line 6, strike out the period at the end thereof and insert in lieu thereof the following: "; or (2) the former officer's or employee's appearance before the agency is of a category exempt by the agency by general rule or regulation, approved by the Director of the Office of Government Ethics and published in the Federal Register, or the agency, after full disclosure of all facts by the former officer or employee, makes a written determination, subject to review by the Director of the Office of Government Ethics, that the former officer or employee will not exercise any undue influence on substantive agency action by virtue of his or her former association with the agency. All such written determinations shall be a matter of public record."

Page 47, line 7, redesignate subsection (g) as subsection (d) and on page 48, line 3, redesignate subsection (h) as subsection (e).

H.R. 11733

By Mr. BIAGGI:

—Page 195, strike out line 16 and all that follows down through and including line 2 on page 196.

Renumber succeeding sections and references thereto accordingly.

H.R. 12611

By Mr. YOUNG of Alaska:

—Page 138, after line 18, insert the following new section:

LABOR DISPUTES

SEC. 33. Within 10 days after the date of enactment of this section, the President, pursuant to section 10 of the Railway Labor Act, shall create a board to investigate and report on the dispute between Wein Air Alaska, Incorporated, and the Air Line Pilots Association. Such board shall report its findings to the President within thirty days from the date of its creation. After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

Renumber the succeeding sections of the bill accordingly.

H.R. 13850

By Mr. MOORHEAD of California:

—Page 46, line 22, strike out "; or" and insert in lieu thereof a dash.

Page 46, strike out line 23 and everything that follows through line 7 on page 48.

Page 48, strike out line 10 and everything that follows through line 14 on page 49.

Page 49, line 15, redesignate subsection (f) as subsection (c) and strike out "(a), (b), or (c)" and insert in lieu thereof "(a) or (b)".

Page 49, line 25, redesignate subsection (g) as subsection (d) and on page 50, line 21, redesignate subsection (h) as subsection (e).

# SENATE—*Friday, September 8, 1978*

*(Legislative day of Wednesday, August 16, 1978)*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. JOHN MELCHER, a Senator from the State of Montana.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray:

O Lord who has promised never to leave us nor forsake us, we beseech Thee to draw near to us as we draw near to Thee. Dispel the dark forces which debase the human spirit and frustrate doing Thy will. Shed Thy light upon everyone in this place. May Thy saving and redemptive spirit pervade all that we do. When the way is hard and the direction unclear may some miracle of divine grace work Thy will for this Nation and the world. Fill our lives with joy and peace that our work may arise from hearts that are pure and motives worthy of Thy Servant who went about doing good, and in whose holy name we pray. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., September 8, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN MELCHER, a Senator from the State of Montana, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. MELCHER thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

## THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, does any Senator wish me to yield time?

## THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are two measures which have been cleared for passage by unanimous consent and minority clearance has been secured also, I believe. They are Calendar Orders Nos. 1069 and 1094. I therefore ask unanimous consent that the Senate proceed to the consideration of those two calendar orders.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## PARLIAMENTARY CONFERENCES WITH JAPAN

The Senate proceeded to consider the joint resolution (S.J. Res. 111) to authorize participation by the United States in parliamentary conferences with Japan, which had been reported from the Committee on Foreign Relations with amendments as follows:

On page 1, line 4, after "periodically" insert "and when the Congress is not in session (except that this restriction shall not apply to meetings held in the United States)";

On page 1, line 7, after "House of" insert "Councilors";

On page 3, beginning with line 10, insert the following:

SEC. 5. No funds shall be authorized to be appropriated under this resolution until fiscal year 1980.

So as to make the joint resolution read:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That not to exceed twenty-four Members of Congress shall be appointed to meet jointly and periodically and when the Congress is not in session (except that this restriction shall not apply to meetings held in the United States) with representatives of the House of Representatives and House of Councilors of the Japanese Diet for discussion of common problems in the interests of relations between the United States and Japan. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the "United States group") half shall be appointed by the Speaker of the House from the Members of the House (not less than four of whom shall be from the International Relations Committee), and half shall be appointed by the President of the Senate from the Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee). Such appointments shall be for the period of each meeting of the Japan-United States Interparliamentary group except for the four members of the International Relations Committee, and four members of the Foreign Relations Committee, whose appointment shall be for the duration of each Congress.

SEC. 2. An appropriation of $50,000 annually is authorized, $25,000 of which shall be for the House delegation and $25,000 for the Senate delegation, or so much thereof as may be necessary to assist in meeting the expenses of the United States group of the Japan-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

SEC. 3. The United States group of the Japan-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

SEC. 4. The certificate of the Chairman of the House delegation or the Senate delegation of the Japan-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Japan-United States Interparliamentary group.

SEC. 5. No funds shall be authorized to be appropriated under this resolution until fiscal year 1980.

The amendments were agreed to.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was passed.

Mr. STONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later, the following occurred:)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all actions taken with respect to Senate Joint Resolution 111 today be vitiated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. That had not been fully cleared all the way around.

I thank the Chair.

## INTERNATIONAL AGREEMENTS CONSULTATION RESOLUTION

The Senate proceeded to consider the resolution (S. Res. 536) expressing the sense of the Senate with respect to whether certain international agreements should be submitted as treaties, which had been reported from the Committee on Foreign Relations with an amendment to strike all after the resolving clause and insert in lieu thereof the following:

*Resolved,* That this resolution may be cited as the "International Agreements Consultation Resolution".

SEC. 2. It is the sense of the Senate that, in determining whether a particular international agreement should be submitted as a treaty, the President should have the timely advice of the Committee on Foreign Relations through agreed procedures established with the Secretary of State.

SEC. 3. The Secretary of the Senate shall transmit a copy of this resolution to the President.

The amendment was agreed to.

The resolution, as amended, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1171), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE RESOLUTION

The principal purpose of Senate Resolution 536, sponsored by Senator Glenn and cosponsored by Senator Clark, is to facilitate the implementation of the "advice" portion of the treaty clause to the extent that such provision is applicable to the question of whether a given international agreement should be submitted as a treaty. The treaty clause, article II, section 2, clause 2 of the Constitution, provides that the "President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."

In mandating that the President receive not only the consent but also the advice of the Senate, the Framers contemplated close collaboration between the President and the Senate throughout the entire treaty-making process. The Senate was expected to render advice, in the words of Wilson, "in the spirit of an executive counsel." For several reasons, primarily early, unfavorable experiences with the "advice" process and the vastly increased size of the Senate, the "advice" portion of the treaty clause has largely withered through disuse. Nonetheless, the committee believes that thorough collaboration during the negotiation of international agreements can only strengthen the treaty-making process and improve its end product.

This applies in particular to the question of what form a given agreement should take. Considerable controversy has arisen in recent years over the use of executive agreements in situations which arguably required treaties. The simplest and most logical way of eliminating such disagreements, it appears to the

committee, is to have a full exchange of views before and during the process of negotiation regarding the form that a given agreement of consequence should take.

BACKGROUND

The resolution expresses the sense of the Senate that, in determining whether a particular international agreement should be submitted as a treaty, the President should have the timely advice of the Committee on Foreign Relations through agreed procedures established through the Secretary of State. This provision is similar to consultation provisions contained in Senate Resolutions 424 and 486 in the 95th Congress as well as Senate Resolution 24 in the 95th Congress, all sponsored by Senator Clark. The latter resolution was incorporated in the Foreign Relations Authorization Act, Fiscal Year 1979 (S. 3076) as section 502, as reported by the committee. This section was stricken on the Senate floor, with the exception of the consultation provision on which the Senate receded in conference. This resolution is similar to that provision.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## SENATE TO CONVENE AT 11 A.M. ON MONDAY, SEPTEMBER 11, 1978

Mr. ROBERT C. BYRD. Mr. President, for the record, at what time does the Senate convene on Monday?

The ACTING PRESIDENT pro tempore. At the close of business today, the Senate will be in recess until 11 a.m. on Monday.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I yield such remaining time to Mr. PROXMIRE as he may desire.

Mr. PROXMIRE. I thank the distinguished majority leader.

## BEST WISHES TO JOANN BAREFOOT

Mr. PROXMIRE. Mr. President, today the Subcommittee on Housing and Urban Affairs of the Senate Banking Committee will be losing a valued and valuable staff member—JoAnn Sweet Barefoot. JoAnn was appointed to the subcommittee staff in January 1976. Since that time, she has made a lasting and significant contribution to such areas of committee concern as mortgage finance, community reinvestment, displacement, and unassisted housing programs. Her approach to any issue was characterized by thoroughness, perseverance, and objectivity. In legislative markups her cogent and articulate explanations and presentations of complex matters was as pleasurable to listen to as they were enlightening.

On September 11, JoAnn will formally begin a new and equally challenging career as Director of Customer and Community Programs at the Office of the Comptroller of the Currency. In that capacity, she will oversee the Office of the Comptroller's programs implementing its civil rights, consumer affairs, and urban lending initiatives. It is a responsibility which I know JoAnn will handle with ease and assurance.

Mr. President, on behalf of my colleagues and staff of the Banking Committee, I wish JoAnn the greatest success and happiness in her future career.

## THE GREAT TRADITION OF NATURAL LAW DEMANDS RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, despite the often dismal record of man's treatment of his fellow man down through the ages, there has survived a belief in certain natural rights. From the Stoics and Roman jurists to the Atlantic Charter and Roosevelt's Four Freedoms, many have passionately defended the idea that men are entitled to make certain claims by virtue simply of their common humanity.

Can we deny the majesty of this belief?

Can we deny the powerful impact it has had over the centuries?

There seems no doubt that the assertions of certain Greek philosophers about the "natural" equality of men and their consequent right to freedom caused the contemporaries of those thinkers to become uneasy about the institution of slavery.

Similarly, the doctrines of the rights of man, including life, liberty, and the pursuit of happiness, were significantly connected to the American and French Revolutions.

Even the Communist Manifesto owed much of its success not to its "scientific" analysis of capitalist society, but to its denunciation of a kind of wage slavery and its appeal to all workers to assert their equal brotherhood.

But today, how do we treat fundamental human rights?

How should we treat fundamental human rights?

The Romans had an answer. In terms as applicable today as when they were first pronounced, Roman lawyers conceived of natural law as an ideal or standard, a standard fixed by nature, to be discovered and gradually applied by men.

For the lawyer, said the distinguished Roman jurist Ulpian, is not merely the interpreter of existing laws, but also the priest or guardian of justice, which is the "fixed and abiding disposition to give every man his right."

Today, centuries later, how energetically have we applied human rights?

How conscientiously have we tried to safeguard human rights?

Mr. President, whatever progress we have made in some areas of the world, we have not succeeded in stopping human rights violations from being a commonplace in the modern world. And it is shocking that the most fundamental of those human rights—the right to live—is still gravely threatened in many countries.

What is even more distressing is that the United States, with the right to live prominently contained in its Declaration of Independence, still has not ratified the United Nations Convention on Genocide that defines and punishes mass murder as a crime under international law.

In fact, 83 nations, many of which have nothing even resembling a written constitution or other written instrument of human rights, have seen fit to ratify this important treaty.

Who is responsible for this gross inconsistency in our policies?

Mr. President, it is none other than the U.S. Senate, which has had this document before it for nearly three decades.

Can we accept this delay?

Can we afford the diplomatic embarrassment that inevitably attends our failure to ratify the convention?

Can we condone any more needless deaths?

The answer to all these questions is no. It is time to stand behind the standard of natural law alluded to by the Roman jurists. It is time to place ourselves squarely in the middle of the great tradition of defending human rights. And the time to act is now.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Does the Senator from Indiana care to be recognized?

Mr. LUGAR. No, Mr. President, I yield back my time.

## AGRICULTURAL EXPORT TRADE EXPANSION ACT OF 1978

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 3447, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 3447) to strengthen the economy of the United States through increased sales abroad of American agricultural products.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The time for debate on this bill is limited to 1 hour, to be equally divided and controlled by the Senator from Florida (Mr. STONE) and the Senator from Kansas (Mr. DOLE), 30 minutes on any amendment, with 15 minutes on any debatable motion, appeal, or point of order.

Mr. STONE. Mr. President, I yield briefly to the Senator from Arkansas for a unanimous consent request.

Mr. HODGES. Mr. President, during consideration of this bill and any votes thereon, I ask unanimous consent that Randy Marble, Steve Moore, and Bill

Kennedy of my staff be granted privilege of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STONE. Mr. President, I ask unanimous consent that Nancy Foster of my staff, Bill Motes of Senator CLARK's staff, Dave Lyons of Senator LUGAR's staff, and the following staff members of the Committee on Agriculture, Nutrition, and Forestry be granted the privilege of the floor during consideration of S. 3447, including all rollcall votes thereon: Henry Casso, Carl Rose, Phil Fraas, Nelson Denlinger, Bill Lesher, Bill Taggart, and Stu Hardy.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STONE. Mr. President, I rise today on behalf of the Agricultural Trade Expansion Act of 1978, S. 3447.

This legislation is designed to strengthen the Nation's economy and improve the income of our agricultural producers. It would also serve to benefit the Nation's balance of payments and provide much needed strength for the dollar.

It would do that by selling more of our products abroad, as opposed to our present imbalance of purchasing far more than we sell abroad.

The legislation will provide the means for maintaining, developing, and increasing our agricultural export markets. While we have made significant strides in increasing our agricultural export markets during the past decade, there has been some erosion in our wheat exports, with our share going down from 31.5 million tons in the 1975–76 marketing year to 25.7 million tons in the 1976–77 marketing year, while the volume of wheat exports by Canada, Australia, and Argentina increased at the same time from 23.2 million tons to 27.0 million tons.

Mr. President, the legislation would provide a number of authorities for the Commodity Credit Corporation of the Department of Agriculture to increase the sale of U.S. agricultural products abroad. The CCC would be authorized to provide intermediate credit financing for the commercial sale of agricultural products for not less than 3 years nor more than 10 years to, first, develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal commercial sales; or, second, otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural commodities.

Intermediate export credit could be used among other purposes, first, for the establishment of reserve stocks; second, for breeding livestock and poultry (including freight costs); third, to establish handling and related facilities; and fourth, to meet credit competition for agricultural export sales.

Intermediate export credit could not be used to encourage credit competition, or for the purpose of foreign aid or debt rescheduling. Intermediate export credit would carry the same interest rate, as nearly as practicable, as that charged by the CCC for short-term export credit.

The legislation would also establish short-term credits, not to exceed 3 years, to exporters who offer deferred payment terms. Some countries prefer to deal directly with an exporter rather than a Government agency such as the Commodity Credit Corporation. This program would provide another option to enable the United States to be competitive with other exporting nations.

The People's Republic of China would be eligible for credits under the deferred payment program as well as the existing 3-year CCC credit program.

S. 3447 also provides for the establishment of from 6 to 25 agricultural trade offices in countries or regions where there are major U.S. trade interests. The establishment of U.S. agricultural trade offices would serve as a catalyst for aggressive export trade promotion and the consolidation of Department of Agriculture-financed export promotion activities.

The legislation would also raise the level of our agricultural representation abroad from "agricultural attaché" to "agricultural counselor" in at least 16 countries. In most foreign nations, great significance is attached to titles, and having our agricultural representatives no higher than the level of "attaché" has caused problems in gaining access to key foreign government officials. Another nation competing with the United States for agricultural export markets will more than likely be represented by a counselor, and may, therefore, have an advantage in reaching key purchasing officials.

Mr. President, this Nation has reason to be proud of its record in agricultural exports with their value increasing from $6.3 billion in 1968 to $24 billion in 1977. In recent years the annual net favorable agricultural export balance has been in the $10.2 to $12.6 billion range.

Compare that with so many other of our American products and we can see how important it is for us to expand further on our strong point, which is agricultural export sales.

As a result of this trend, agricultural exports have become extremely important to the U.S. balance of payments. An unfavorable nonagricultural trade balance of $40.1 billion in 1977 was reduced to a deficit of $29.9 billion through agricultural export sales. In 1976, a $20.7 billion imbalance in nonagricultural trade was reduced to an $8.7 billion deficit, because of a favorable agricultural exports may reach $26 billion in 1975, the United States had a favorable balance of trade of $9.7 billion, and this was the result of a $12.6 billion favorable balance in agricultural trade. Agricultural exports may reach $26 billion in 1978 with a net agricultural balance of around $12 billion.

Our agricultural producers have become heavily dependent on a strong agricultural export market. Our farmers devote around 100 million acres each year to production for export—almost 1 acre in 3 that are harvested. Almost 20 percent of U.S. farm income is provided by export sales. We presently export over half of our wheat, soybeans, and hides each year, roughly 40 percent of our cotton, nearly a third of our tobacco and over a fourth of our rice and corn.

It is anticipated that the legislation could result in outlays by the Commodity Credit Corporation approximating $100 million in loans per year. However, the repayment record for CCC loan has been very good. In addition, the loans will bear interest at rates above the cost of money to the Government. Thus, after a few years, we would expect to have a net inflow of funds to the Government. At the same time we would expect the program to be helpful in opening new markets for U.S. agricultural commodities.

In addition, increased exports will undoubtedly mean improved farm prices, thereby saving the Treasury in terms of deficiency payments. In the case of corn, each cent per bushel increase in market price would reduce deficiency payments to producers by about $54 million; in the case of cotton each cent per pound increase would mean a $60 million reduction in payments; and in the case of wheat each cent per bushel increase would mean a reduction of about $20 million in payments.

Thus an increase in the average market prices of 10 cents a bushel for wheat and corn and 10 cents a pound for cotton, as a result of increased export sales, could result in annual savings to the Treasury of about $1.3 billion

We also should note that other segments of the economy benefit from increased agricultural export sales. A Department of Agriculture study shows that the $22 billion of agricultural exports in 1974 generated about $43 billion of total business activity.

With regard to employment, an estimated 1.2 million full-time civilian jobs were related to our agricultural exports in 1974. Of this, around 500,000 U.S. farmworkers—14 percent of the U.S. farm labor force—were required to produce the agricultural commodities exported in 1974.

In addition, more than 650,000 nonfarm jobs were directly or indirectly related to the assembling, processing, and distribution of agricultural commodities for export. Around 50,000 of these jobs were in food processing; 300,000 in trade and transportation; 100,000 in other manufacturing; and 200,000 in other services.

Of the total U.S. work force in 1974, about 4 percent were involved in producing food and related products, and just under 1 percent of the total U.S. nonagricultural civilian labor force were engaged in providing goods and services for agricultural exports.

In developing S. 3447, the Subcommittee on Foreign Agricultural Policy, which

I chair, drew upon bills introduced by Senators HUMPHREY, LUGAR, DOLE, CLARK, and STEVENSON.

Our April hearings were well received by the witnesses. The thrust of much of the testimony was to the effect that, although U.S. agricultural exports have increased in recent years, much of the increase has happened by chance and without attention or support. The United States, the witnesses indicated, is now facing growing competition from other agricultural exporting nations, and a more sustained effort is required in order to maintain and hopefully expand our export markets.

The size and significance of our agricultural export markets are finally beginning to be recognized by policymakers in both the legislative and executive branches. S. 3447 will further this recognition and provide a commitment toward further growth and development.

In conclusion I wish to thank our distinguished chairman, Senator TALMADGE, for his strong support, and also the dedicated efforts of my committee colleagues, especially Senators CLARK, DOLE, BELLMON, and LUGAR.

Mr. President, I urge that this legislation be adopted.

Mr. President, I ask unanimous consent that a summary of S. 3447 prepared by the staff of the Committee on Agriculture, Nutrition, and Forestry be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF S. 3447

The bill authorizes several new Commodity Credit Corporation credit programs to expand export sales of U.S. agricultural commodities, authorizes the appointment of agricultural counselors to serve as representatives of the Department of Agriculture in diplomatic missions abroad, and authorizes the establishment of U.S. agricultural trade offices in foreign nations.

The bill would—

(1) Authorize the Commodity Credit Corporation (the "CCC") to finance export sales of U.S. agricultural commodities out of CCC and private stocks on "intermediate" credit terms (in excess of 3 years, but not more than 10 years) to—

(a) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal commercial sales; or

(b) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural commodities.

Intermediate export credit could be used, among other purposes—

(a) For the establishment of reserve stocks,

(b) For breeding livestock and poultry (including freight costs),

(c) To establish handling and related facilities, and

(d) To meet credit competition for agricultural export sales.

Intermediate export credit could not be used to encourage credit competition, or for the purpose of foreign aid or debt rescheduling. Intermediate export credit would carry the same interest rate, as nearly as practicable, as that charged by the CCC for short-term export credit (sec. 101);

(2) Require the Secretary of Agriculture, with respect to CCC "intermediate" export credit sales, to obtain commitments from purchasers to prevent resale or transshipment of the purchased goods to other nations and to prevent (with respect to sales to establish reserve stocks) domestic use of the reserve stocks in a manner inconsistent with an international commodity agreement or, if there is no applicable commodity agreement, domestic use except as needed for emergency relief required by a crop shortfall or other natural disaster (sec. 101);

(3) Provide that the cargo preference laws are not to apply to CCC "intermediate" export credit sales (sec. 101);

(4) Require the Secretary to provide "short-term" CCC financing (not to exceed 3 years) to exporters of United States agricultural commodities who need to provide their customers such short-term deferred payment terms to meet sales competition from other nations or to make additional export sales. This financing would be available only for export sales to nations that are eligible for direct CCC short-term financing and the People's Republic of China (sec. 201);

(5) Notwithstanding any other provision of law, authorize the CCC to provide direct short-term credit and deferred payment short-term credit for commercial sales of United States agricultural commodities out of private stocks to the People's Republic of China (sec. 202);

(6) Provide that the senior Department of Agriculture representative in the United States diplomatic mission at each of the major foreign agricultural posts (in no event less than 16 such representatives) will be given the title of "Agricultural Counselor" (sec. 302);

(7) Require agricultural counselors and agricultural attachés to submit annual reports to the Secretary (and the Secretary of State) (who shall transmit the reports to the agriculture committees of Congress) detailing the agricultural situation in the nations or areas to which the counselors and attachés are assigned (sec. 302);

(8) Require the Secretary to establish not fewer than 6 nor more than 25 United States agricultural trade offices in foreign nations to conduct foreign market development programs (sec. 402);

(9) Authorize the Secretary to establish one agricultural trade office in the United States (sec. 402);

(10) Authorize agricultural counselors, agricultural attachés, and agricultural trade officers to receive representation allowances (sec. 402); and

(11) Require the Secretary to report to Congress annually on the Department of Agriculture foreign market development activities (sec. 504).

Mr. STONE. Mr. President, I yield 5 minutes to the chairman of the Agriculture Committee, the distinguished Senator from Georgia (Mr. TALMADGE).

Mr. TALMADGE. I thank the floor manager of the bill and the ranking minority member. I congratulate the Senators and all other members of the subcommittee on doing an outstanding job.

Mr. President, as chairman of the Committee on Agriculture, Nutrition, and Forestry, I strongly support S. 3447—the Agriculture Export Trade Expansion Act of 1978. This bill would stimulate the growth of export markets for our agricultural commodies, and therefore merits the support of all Senators.

Five major provisions to maintain and expand our agricultural export markets are included in the bill. They are: First, the establishment of an intermediate export credit program; second, the extension of credit to exporters that offer deferred payment terms; third, the extension of Commodity Credit Corporation credits to the People's Republic of China; fourth, upgrading the title of our major foreign agricultural representatives from "agricultural attache" to "agricultural counselor"; and fifth, the establishment of agricultural trade offices in nations where significant market opportunities exist.

It is essential that S. 3447 be enacted. The value of U.S. agricultural exports has risen sharply in the past decade—from $6.3 billion in 1968 to $24 billion in 1977—and we have become dependent on a high level of agricultural exports for this Nation's economic well-being.

Agricultural exports are an important part of U.S. farm income. In recent years almost 20 percent of our farm income has been provided by export sales. We presently export over half of our wheat, soybeans, and hides each year, roughly 40 percent of our cotton, nearly a third of our tobacco, and over a fourth of our rice and corn. Consequently, our farmers devote over 100 million acres each year to production for export—almost one acre in three that are harvested.

In my home State of Georgia, exports are extremely important to farmers. Approximately $475 million worth of agricultural commodities produced in Georgia in 1977 were exported. These exports included such commodities as peanuts, soybeans, tobacco, cotton, broilers, and eggs.

Georgia exports have grown significantly in recent years, and could continue to increase since Georgia farmers, food processors, and manufacturers are just beginning to get a foothold in several overseas markets. This bill could help Georgia capture a larger share of these markets.

Mr. President, I ask unanimous consent that a letter to me from the Commissioner of Agriculture for the State of Georgia, Mr. Thomas Irvin, describing the importance of exports to Georgia agriculture and supporting export promotion legislation be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AUGUST 9, 1978.

Hon. HERMAN E. TALMADGE,
*Senator, Subcommittee of Foreign Agricultural Policy, Russell Senate Office Building, Washington, D.C.*

DEAR HERMAN: This concerns S. 2384—Agricultural Trade Act of 1978 which, in my opinion, is one of the most important pieces of legislation to come before Congress this year.

The plight of our farmers calls for new outlets for the sale of agricultural products. Georgia farmers, food processors and manufacturers are just beginning to get a foothold in the overseas markets. The value of 1977 agricultural exports in Georgia alone increased $20 million over FY 1975 to reach a total of $475.7 million. The 1978 total could well be much higher as more companies are finding it profitable to enter the export market.

Nations, who in the past have been unable to import quality food products, are now reaching the point where they can participate in the international market, thus opening new markets for U.S. agricultural products. If USDA is afforded the opportunity to expand its credit term program under the CCC sales export program, open trade offices in new areas and upgrade personnel in trade offices, then U.S. opportunities to export more agricultural products will be greatly increased.

I strongly urge you to give serious consideration to favorable movement of this legislation.

With warmest personal regards, I am,
Sincerely,

THOMAS T. IRVIN.

Mr. TALMADGE. Mr. President, as the demand for our agricultural commodities is strengthened through export sales, commodity prices are maintained. With higher commodity prices, lower Federal outlays for agricultural support programs are made, and reduced deficit spending and lower taxes are the results.

The benefits of agricultural exports are not limited to agriculture. Our balance-of-trade deficit is reduced by agricultural exports. In 1977 our balance-of-trade deficit was reduced by over $10 billion because of a favorable agricultural trade balance.

In addition, a Department of Agriculture study shows that for the $22 billion of agricultural exports in 1974 there was about $43 billion of total business activity. Thus, each dollar of agritural exports stimulated an additional 96 cents of output—a multiplier effect of almost two. Of the additional $21 billion of activity, $6 billion occurred in agriculture and $15 billion in the nonfarm economy. Thus, about 70 percent of the additional economic activity occurred in the nonfarm part of the economy. This means an estimated 1.2 million full time civilian jobs were related to our agricultural exports in 1974.

There is no doubt that agricultural exports are essential to our farmers and the Nation's prosperity. Measures must be taken to at least maintain and, hopefully, expand these markets—especially in light of the bumper crops predicted for this year.

However, there are indications that, instead, we are losing ground in the worldwide agricultural export market. For example, our share of the world wheat export trade has been reduced in recent years.

It is feared that we will always remain the world's residual supplier of agricultural commodities because we do not have the means to compete effectively with other nations.

There is evidence that we do not offer credit terms as flexible as those offered by other nations. More flexible credit terms are extremely important to increased agricultural trade—especially in the long run.

Extended credit for breeding livestock, for example, will encourage nations to shift from a primarily grain diet to one that includes more meat. As personal tastes and preferences change and the demand for meat increases, this will generate an even greater demand for our corn and other grains to feed the livestock.

Furthermore, credit given to construct facilities to help importing nations handle, process, store, and distribute agricultural imports will increase their capacity to buy more from us many years to come since these facilities would be in operation for several decades.

It appears that other exporting nations are much more aggressive than the United States in competing for agricultural export markets. For example, other nations spend relatively larger amounts of money to promote export sales in terms of trade offices and other sales efforts.

Furthermore, it seems that other nations regard agricultural trade as more important to their economy since their foreign agricultural representatives are given higher rank than our representatives.

Mr. President, the five major program initiatives undertaken by S. 3447 will enable this Nation to begin to compete effectively with others for agricultural export markets.

The cost of the bill in the years ahead will be minimal and far less than its benefits. Increased agricultural exports will increase domestic agricultural commodity prices, raise farm incomes, reduce our balance-of-trade deficit, create jobs, strengthen the dollar abroad, and reduce Government support payments to farmers. In the long term, the bill could save the American taxpayers millions of dollars.

I commend my distinguished colleague from Florida, Senator STONE, for his efforts to bring this important bill to the floor of the Senate. As chairman of the subcommittee on foreign agricultural policy, Senator STONE has worked long and hard, through several hearings and markups, to develop this piece of legislation. Also, I commend the other Senators from the Committee on Agriculture, Nutrition, and Forestry, especially Senators CLARK, BELLMON, DOLE, and LUGAR, who also have spent many hours helping make this one of the most important agricultural bills that the committee has considered this year.

I urge the speedy approval of this bill by the Senate.

Mr. STONE. Mr. President, I thank the distinguished chairman of the full committee for all the assistance he has given this bill.

I yield to the Senator from Indiana (Mr. LUGAR), a member of our subcommittee.

Mr. LUGAR. Mr. President, I appreciate the distinguished chairman of our subcommittee yielding to me in order that I might make this statement.

U.S. exports of agricultural products have increased greatly since 1972. As Senator STONE pointed out earlier, the value of our exports rose from $9.4 billion in 1972 to $24 billion in 1977, and it has been estimated that the value of 1978 U.S. agricultural exports will exceed $26 billion.

As a result of this trend, agricultural exports have become extremely important to the U.S. balance of trade. For example, in 1973 a trade deficit of $8 billion in nonagricultural trade was offset by a $9.2 billion surplus in agricultural trade which resulted in an overall trade surplus of $1.2 billion. In 1976, a $20.7 billion deficit in nonagricultural trade was offset by a $12 billion surplus in agricultural trade resulting in an overall trade deficit of $8.7 billion. Similarly, in 1977 the overall trade imbalance was $29.9 billion. Without agricultural trade the deficit would have been over $40 billion.

Agricultural exports are an important factor in the market for farm products. Nearly 1 acre in every 3 that is harvested goes into the export market. Presently about 60 percent of U.S. wheat production, about 40 percent of U.S. cotton production, about one-third of U.S. soybean production, and about one-fourth of U.S. corn and rice production, are exported. About 20 percent of U.S. farm income is provided by export sales.

The benefits of agricultural export sales are not limited to the farm sector of the economy. A great many nonfarm jobs are dependent on the income accruing from export sales. Thousands of jobs in industries supplying agricultural inputs and marketing agricultural products would be nonexistent in the absence of export sales.

While the growth in U.S. agricultural exports has been impressive and is the only bright spot in a very dark U.S. export situation, the need for increasing U.S. agricultural exports has never been greater.

Farm income declined in 1977 to $19.3 billion, the lowest level since 1964 when adjusted for inflation. Farm income will probably rise in 1978, but once again due to inflation—rising prices of practically all farm inputs, real income will increase very little.

The United States is faced with its second consecutive bumper crop. It is estimated by USDA that corn production in the United States this year will be 6.5 billion bushels, up from last years record 6.4 billion bushels. Soybean production is estimated to be a record 1.8 billion bushels, up from 1.7 billion bushels last year. USDA has estimated ending stocks of corn this year to be 1.3 billion bushels, the highest level in years. Add this 1.3 billion bushels of corn left over to the 6.5 billion bushels of corn produced and the United States has a tremendous 7.8-billion-bushel supply of corn. Add this

corn to the record soybean crop, plus a wheat crop estimated to be 1.8 billion bushels, plus over 1 billion bushels of wheat carried over from the previous year, and we know that the United States has a tremendous amount of agricultural products to consume domestically or to export. I have not even mentioned the huge supplies of many other agricultural products such as cotton and rice.

Any increase in agricultural exports will strengthen farm prices. Farmers will then be able to receive more of their income from the marketplace instead of the Federal Treasury. An increase in exports that would keep market prices above target prices would save the many millions of dollars otherwise expended for deficiency payments promised to farmers.

The United States is currently faced with the biggest balance-of-trade deficit in its history. This trade imbalance is responsible for the continuing decline of the U.S. dollar. This situation of a trade deficit and declining dollar have exacerbated the inflation problem here in the United States. It is really very simple. If the United States is going to import huge quantities of petroleum, automobilies, and other manufactured goods, then the United States must export something to pay for these imports. An increase in agricultural exports would be most beneficial in correcting this unfortunate trade situation.

In January, I introduced a bill that would provide intermediate term credit for the purposes of financing the sale of agricultural commodities produced in the United States. The ideas expressed in my original bill are a substantial part of this legislation—the Agricultural Export Trade Expansion Act of 1978.

Mr. President, I recognize that a leader in this area for a long time was our late colleague, Senator Hubert Humphrey, whose bill, S. 2385, was a part of our consideration. Also, under the distinguished leadership of Senator STONE, the bill introduced by Senator CLARK, S. 2968, and the bill introduced by Senator DOLE, S. 2504, encompassed the areas that I think bear heavily upon any consideration of success in this area—namely, the work of our diplomatic agricultural counselors abroad and the ways and means of expanding exports in the countries that more or less have been friendly or might be sought to be friendly, without leading to great diplomatic imbroglios that might have interfered with this legislation.

An extraordinary job was done by our subcommittee chairman, Senator STONE, in weaving through both the agricultural and the diplomatic aspects of this legislation. We all are indebted to him and to the chairman of our committee, Senator TALMADGE, for their diplomacy and their leadership in making certain that this measure came to the fore.

This legislation would allow for the extension of CCC credit to foreign purchasers of U.S. agricultural products for a period of time greater than 3 years, but not more than 10 years at an interest rate equal to the cost of CCC funds. Three years financing of exports is currently available under conventional short term CCC credit.

This 3- to 10-year intermediate term credit would be available only for uses consistent with developing, expanding, or otherwise improving the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural products. More specifically, this intermediate term financing could be used for the export of breeding livestock, the establishment of facilities in the importing nation to improve the handling, marketing, processing, storage, or distribution of imported agricultural commodities. For example, the money could be used for the construction of port facilities, grain elevators, processing plants, and so forth.

I mention this simply to indicate that we are not borrowing from current sales. We are looking toward legitimate purposes of establishing an intermediate term credit situation. The important point is that funds used for these purposes will serve to increase the long-term demand for U.S. agricultural products in foreign countries.

I strongly urge passage of this measure to promote export sales of U.S. agricultural products. This legislation would provide a step toward increasing farm income, reducing the need for Government deficiency payments to farmers, reducing the trade deficit, and strengthening the economy of this country.

Mr. STONE. Mr. President, I thank the distinguished Senator from Indiana for his kind words, but even more for the excellence of his work on the subcommittee and for the input which his own proposed legislation contributed in connection with this bill.

I yield to the ranking Republican member of the full Senate Agriculture Committee, whose bill was a valuable part and whose efforts are a valuable part of this bill.

Mr. DOLE. Mr. President, I thank the Senator from Florida. I commend him and the Senator from Indiana and others who really are responsible for this legislation. The need for it has been outlined rather clearly by the Senators who have spoken.

I share the view of the Senator from Florida, the Senator from Indiana, and the Senator from Georgia, as well as those of the Senator from South Carolina (Mr. MORGAN), who has been interested in this legislation and our efforts and his efforts for some time.

I know that the distinguished Senator from Arkansas will be offering an amendment which we all support and the Senator from Kansas will offer an amendment in a few minutes that would simply require that a minimum aggregate quantity of 7 million metric tons of U.S. farm commodities shall be exported under titles I, II, and III of this act during each of the next 4 years.

It seems to me that this would be of some assistance to what I consider to be a rather depressed farm economy, and I do not see any immediate hope for the American farmer. So this bill certainly will offer some assistance in the right direction as has been indicated before in the realm of exports.

As Senator TALMADGE indicated earlier, there are really five major provisions in this bill.

FIVE MAJOR PROVISIONS

This legislation contains five major provisions to maintain and expand our agricultural export markets. They are:

First: The establishment of an intermediate export credit program.

Second: The extension of credit to exporters that offer deferred payment terms.

And that might open up some markets in the People's Republic of China, for example. It would also, I think, provide a certain amount of flexibility. It is a new approach and one that I think could be helpful to our economy and to our farmers and to those who seek our commodities.

Third: The extension of Commodity Credit Corporation (CCC) credits to nations that promise to become significant new commercial markets;

A fourth important area is the upgrading of the title of our major foreign agricultural representatives from "agricultural attaché" to agricultural counselor." This may appear to be a cosmetic change but in the view of this Senator and others on the committee it will be helpful as they address some of the serious problems in each of their countries.

Fifth: The establishment of agricultural trade offices in nations where significant market opportunities exist.

The bill directly addresses areas that will increase the export of U.S. agricultural commodities. The cost of the bill in the years ahead will be minimal and far less than the benefits.

Increased agricultural exports will increase domestic agricultural commodity prices, raise farm incomes, reduce our balance of trade deficit, create jobs, strengthen the dollar abroad, and reduce Government support payments to farmers. In the long term, the bill could reduce budgetary outlays.

IMPORTANCE OF FARM EXPORTS TO U.S. ECONOMY

A large volume of farm exports is essential to U.S. agriculture. Our farmers devote around 100 million acres each year to production for export—almost 1 acre in 3 that are harvested. Almost 20 percent of U.S. farm income is provided by export sales.

I only suggest as the Senator from Indiana has pointed out we export a lot of our commodities. We presently export over half of our wheat, soybeans, and hides each year, roughly 40 percent of our cotton, nearly a third of our tobacco and soybeans, and over a fourth of our rice and corn. So exports, of course, are critical to our farm economy.

Besides providing an outlet for our abundant agricultural production, the export market serves to strengthen the demand side of the market price equation, and, thus, keep prices up. This is important not only to farmers, but to the Federal budget. Keeping farm prices above the target prices through increased exports saves Federal funds otherwise expended for deficiency payments paid to farmers under agricultural commodity legislation.

The benefits of agricultural exports are, however, not limited to agriculture.

A Department of Agriculture study shows that—for the $22 billion of agricultural exports in 1974—there was about $43 billion of total business activity.

Thus, each dollar of agricultural exports stimulated an additional 96 cents of output—a multiplier effect of almost two. Of the additional $21 billion of activity, $6 billion occurred in agriculture and $15 billion in the nonfarm economy. Thus, about 70 percent of the additional economic activity occurred in the nonfarm part of the economy.

U.S. BALANCE OF TRADE

It is also important to note that the value of U.S. agricultural exports has risen sharply in the past decade—from $6.3 billion in 1968 to $24 billion in 1977; and these exports have been a major positive factor in the U.S. balance of trade.

As a result of this trend, agricultural exports have become extremely important to the U.S. balance of payments. An unfavorable nonagricultural trade balance of $40.1 billion in 1977 was reduced to a deficit of $29.9 billion through agricultural export sales.

Agricultural exports may reach $26 billion in 1978, with a net agricultural balance of around $12 billion.

In a trade report for the marketing year 1976–77 published by the Department of State, corn, wheat, and soybeans ranked first, third, and fifth on the list of principal commodities exported by the United States.

Mr. President, agricultural, industrial, and political leaders increasingly have become convinced that a legislative initiative is necessary to strengthen efforts to increase agricultural exports.

The growing deficit in our balance of trade makes this legislation even more urgent. Agriculture has been one of the few bright spots in our balance-of-payments situation in recent years.

The decline in net farm income to just under $20 billion in 1977 provides a further incentive to increase our export sales and reduce stocks to more manageable levels.

This is why the Agricultural Export Trade Expansion Act ranks high on our list of legislative priorities for the 95th Congress.

Mr. President, I commend my colleagues for their efforts and also the staff in developing this legislation.

Mr. STONE. I thank the distinguished Senator from Kansas.

Mr. President, I ask unanimous consent that a statement by the Senator from Illinois (Mr. STEVENSON) on this bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR STEVENSON

I strongly support passage of S. 3447, The Agricultural Export Trade Expansion Act of 1978, and commend the distinguished Senator from Florida (Mr. STONE) for his outstanding leadership and hard work on this legislation.

In July, the U.S. ran a trade deficit of $3 billion, the fourth largest monthly deficit in U.S. history. The dollar plummeted.

The key to a stronger dollar is better U.S. trade performance which in turn depends upon improved export competitiveness. The July deficit was not caused by oil imports—they were down over the previous month. There were seasonal factors and special circumstnaces as there always are. But the key factor in the trade deficit is the declining competitiveness of the U.S. in the world—the decline in U.S. exports in July came in six of ten major caterogies, including agricultural products.

The Subcommittee on International Finance, which I chair, has conducted comprehensive hearings this year on ways to improve the competitiveness of U.S. exports. At a March 30 hearing in Chicago on Agricultural Export Policies, the Subcommittee heard extensive testimony on the need to improve our agricultural export programs in order to maintain and expand our agricultural export markets and meet increasingly stiff foreign competition. Three consistent suggestions were made by all the witnesses at that hearing—authorize the Commodity Credit Corporation to extend intermediate term credits in support of agricultural exports, enlarge the number of countries eligible for CCC programs, and improve our marketing and promotional activities abroad.

S. 3447 accomplishes each of these purposes. It provides for an intermediate export credit program to be conducted by the Commodity Credit Corporation which should increase the total world market for grains and other commodities. I appreciate the consideration given by the Subcommittee on Foreign Agricultural Policy and by the Committee on Agriculture, Nutrition and Forestry to my own bill in this regard—S. 3011. The availability of three to ten year credit terms, the exemption of the new intermediate credit program from the cargo preference laws, and a specific provision indicating that the intermediate credit program may be used to meet foreign competition are all necessary. In particular, I would like to stress that many of our best agricultural customers, such as Poland, need longer credit terms from the CCC because of bunchings of international debt that will be occurring over the next several years. Simply put, some countries will not be able to acquire substantial amounts of U.S. agricultural products without longer term credits.

S. 3447 will enhance our competitiveness in one of the most promising new export markets for our agricultural products—the People's Republic of China—by making it eligible for CCC financing out of private stocks and a new deferred payment program. S. 3447 will also improve our marketing efforts by providing for the establishment of Agricultural Trade Offices abroad and by upgrading the title of our major foreign agricultural representatives from "Agricultural Attaché" to "Agricultural Counselor."

These changes will benefit not only our trade balance but also our productive farmers and a hungry world. Almost one third of harvested cropland is devoted to agricultural products which are exported. My State of Illinois is the leading farm exporter, exporting farm products totalling $2.5 billion in 1977. It contributed an estimated 19 per cent of the feed grain, soybeans, protein meal, and soybean oil exported in 1977, and was our second largest exporter of meat products.

S. 3447 strikes the proper direction in our farm policy. We should be rewarding the American farmer for his productivity. We should be penetrating foreign markets with his crops, not pricing ourselves out of them. Instead of paying farmers to decrease food production, we should buy it and sell it to the earth's poor. We should use our productivity to assure a fair price for the farmer and food for a hungry, turbulent world.

I commend all the members of the Committee on Agriculture, Nutrition and Forestry for their throughful consideration of this bill, and the distinguished Chairman of the full Committee (Mr. TALMADGE) and the distinguished Chairman of the Foreign Agricultural Policy Subcommittee (Mr. STONE) for their prompt consideration of this most important legislation.

Mr. STONE. I yield to the Senator from Arkansas who I believe has an amendment.

Mr. HODGES. Mr. President, I thank the distinguished Senator from Florida.

He is to be commended, as are those who had so much input into this bill, for what I think is a significant step forward.

I personally know some of the difficulties he has had trying to hold together the State Department and our Agriculture Department and the committee. He has done a splendid job in bringing those various elements together.

I will offer in a moment an amendment to this bill, but I wish first to speak briefly on behalf of the bill, the need for and timeliness of such legislation. Farmers are always being told that the answer to their problems is a greatly expanded level of agricultural exports. This bill would enhance just such a development. Equally significant in my mind is the upgrading of some of our agricultural attachés to the rank of counselors and it should increase the authority with which they can deal with matters of agricultural trade. Establishing agricultural trade offices will increase both the visibility and access of our overseas agricultural representatives and the commodities available for export.

The provisions of the bill allowing for financing of intermediate credit sales, deferred payment sales and sales to the People's Republic of China, finally take account of the great complexity and variety of international agricultural trade today. The changes called for by this bill will greatly extend the flexibility and strength with which the United States can seek to expand agricultural exports and thus improve farm income.

However, I have one misgiving, and my amendment speaks to that point. In addition to providing for the financing of the sale of agricultural commodities to meet credit competition, for the construction of marketing and storage facilities, and for the export of breeding animals, S. 3447 would permit intermediate term financing of the sale of U.S. grain to be used in establishing a foreign country's reserve stock. My amendment would require simply that the Secretary of Agriculture notify the Senate Committee on Agriculture, Nutrition, and Forestry and the House Agriculture Committee of any such agreement and delay implementation of that agreement for 30 days after notification if Congress is in session, 60 days if Congress is not in session. This delay is necessary if Congress is to be able to fully evaluate the impact of a U.S. Government-financed sale to establish a foreign grain reserve and to allow some remedial action if the agreement is found to work against the interests of U.S. farmers.

I want to make it clear that no automatic veto power is intended and that this is not another effort to extend congressional control over program operations. The language in this amendment

is meant merely as a safeguard against a sale in violation of the spirit of this bill—a method of alerting us that an agreement has been made and of giving us time to assure that the agreement contains no long-run impacts that may be disadvantageous.

The Department of Agriculture has yet to win the complete confidence of American farmers. Time after time, the interests of farmers have lost out to the "war on inflation" or to the requirements of an "effective foreign policy." I need only go back as far as this last June for a demonstration. Only months after cattlemen had begun to see the first profitable prices in over 3 years, the import quota on foreign beef was raised, forcing live cattle prices down by almost $15 per hundredweight in a very short time.

The bill before us is meant to improve farm income by expanding agricultural exports. We should not, however, try to increase current export movement if it risks future damage to farm income. A grain reserve of unwarranted size made possible by provisions of this bill could be used to dampen or even control commodity prices at some time in the future.

This same fear generated several amendments which I offered in committee and which were adopted and stand in the current bill. Sections 6(B) and 6(C) of title I of the bill require that in any sales financed under this legislation for establishment of reserve stocks, the Secretary must obtain commitments from purchasers that will insure against any domestic sale or distribution of the reserve stocks except as dictated by an international reserve agreement governing the subject commodity, whether or not the purchasing country has signed the agreement. If there is no governing international agreement, there can be no domestic distribution except for emergency relief that would be required by a crop shortfall or some other natural disaster in that country. Any violation of these commitments by the purchasing country would result in the credit falling due immediately and the cessation of further USDA credits until payment had been made in full.

There has been much discussion during the last several years of the wisdom of allowing the U.S. Government to own any substantial quantity of grain. The size of the Commodity Credit Corporation inventory and the fear of its being dumped dominated American agriculture during the 1960's. To avoid a repeat of that experience, the administration has devoted much talk and energy to the concept of a domestic, farmer-held reserve. I agree that our Government should not hold any reserve. The temptation to use it for short-term economic political gains is too great. Similarly, while I sympathize with any nation's desire to guard against crop shortfall, I do not want any other government to have the power to depress commodity prices by dumping its reserve stocks for whatever short-term gains it may perceive. I am sure the spirit of this amendment reflects the concern of the Committee on Agriculture, Nutrition, and Forestry for the immediate and longrun health of the farm economy.

Mr. President, I urge acceptance of this amendment and encourage the passage of S. 3447 with this amendment.

● Mr. HUDDLESTON. Mr. President, the value of U.S. agricultural exports has risen sharply in the past decade to $24 billion in 1977; and these exports have been a major positive factor in the U.S. balance of trade.

Until 1960, agricultural imports often exceeded the value of agricultural exports, but since then agricultural exports have exceeded imports on a continuing basis.

In 1973, there was a dramatic upswing in the net favorable agricultural export-import balance. Since that time, the annual net favorable agricultural export balance has been in the $10.2 to $12.6 billion range.

As a result of this trend, agricultural exports have become extremely important to the U.S. balance of payments. An unfavorable nonagricultural trade balance of $40.1 billion in 1977 was reduced to a deficit of $29.9 billion through agricultural export sales. In 1976, a $20.7 billion imbalance in nonagricultural trade was reduced to an $8.7 billion deficit because of a favorable agricultural trade balance of $12 billion. In 1975, the United States had a favorable balance of trade of $9.7 billion, and this was largely the result of a $12.6 billion favorable balance in agricultural trade. I am told agricultural exports may reach $26 billion in 1978 with a net agricultural balance of around $12 billion.

In my judgment, a large volume of agricultural exports is essential to U.S. agriculture. Our farmers devote around 100 million acres each year to production for export—almost one acre in three that are harvested. Almost 20 percent of U.S. farm income is provided by export sales. We presently export over half of our wheat each year, roughly 40 percent of our cotton, nearly a third of our tobacco and soybeans, and over a fourth of our rice and corn.

Besides providing an outlet for our abundant agricultural production, the export market serves to strengthen the demand side of the market price equation and, thus, keep prices up. This is important not only to farmers, but to the Federal budget. Keeping farm prices above support prices through increased exports saves Federal funds otherwise expended for deficiency payments paid to farmers under agricultural commodity legislation.

But benefits of agricultural exports are not limited to agriculture. A USDA study shows that—for the $22 billion of agricultural exports in 1974—there was about $43 billion of total business activity. Thus, each dollar of agricultural exports stimulated nearly an additional dollar of output. Of the additional $21 billion of activity, $6 billion occurred in agriculture and $15 billion in the nonfarm economy. Thus, about 70 pecent of the additional economic activity occurred in the nonfarm part of the economy.

An estimated 1.2 million full-time civilian jobs were related to our agricultural exports in 1974. Of this, around 500,000 U.S. farmworkers—14 percent of the U.S. farm labor force—were required to produce the agricultural commodities exported in 1974. In addition, more than 650,000 nonfarm jobs were directly or indirectly related to the assembling, processing, and distribution of agricultural commodities for export. Around 50,000 of these jobs were in food processing; 300,000 in trade and transportation; 100,000 in other manufacturing; and 200,000 in other services.

Mr. President, this bill contains five major provisions to maintain and expand our agricultural export markets. They are: First, the establishment of an intermediate export credit program; second, the extension of credit to exporters that offer deferred payment terms; third, the extension of Commodity Credit Corporation ("CCC") credits to nations that promise to become significant new commercial markets; fourth, upgrading the title of our major foreign agricultural representatives from "Agricultural Attaché" to "Agricultural Counselor"; and fifth, the establishment of agricultural trade offices in nations where significant market opportunities exist.

Mr. President, S. 3447 is timely legislation. It is legislation that is highly important to our agricultural sector and our economy as a whole. I urge my colleagues to join me in supporting this measure.●

UP AMENDMENT NO. 1824

(Purpose: The amendment would require a 30-day waiting period (60 days if Congress is not in session) before any Commodity Credit Corporation financed intermediate credit agreement for the establishment of reserve stocks could become effective)

Mr. HODGES. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. HODGES) proposes an unprinted amendment numbered 1824.

Mr. HODGES. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 19, insert "(A)" after the paragraph designation.

On page 5, line 20, insert a comma after the word "subsection" and between that comma and the word "shall" insert the following: "except agreements to finance export sales for the establishment of reserve stocks,".

On page 5, add a new paragraph (B) after line 24 as follows:

"(B) Agreements to finance export sales of agricultural commodities under this subsection for the establishment of reserve stocks shall be subject to such other terms and conditions as the Secretary may deem necessary and appropriate. No such agreement, however, may become effective or be carried out until the expiration of 30 days following the date on which a detailed summary of such agreement or proposal is transmitted by the Secretary to the Senate Committee on Agriculture, Nutrition, and Forestry and the

House Committee on Agriculture, if transmitted while Congress is in session, or 60 days following the date of transmittal if transmitted while Congress is not in session.".

Mr. HODGES. Mr. President, I have described the amendment. This was discussed in committee. We simply did not have a final answer from the Department of Agriculture. We have been working on this. This is part of a series of controls and restrictions and guarantees the committee wanted and approved.

The Department of Agriculture is willing to go along with this amendment, and has given its consent thereto and, therefore, I ask for its adoption.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. HODGES. I yield.

Mr. CLARK. Mr. President, I ask unanimous consent that two members of my staff, Mr. Bill Motes and Marge Baker, be accorded the privilege of the floor during consideration of this debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STONE. Mr. President, the majority manager of the bill will accept this amendment. We will do the best we can in conference to persuade our House colleagues to accept this good amendment.

Mr. DOLE. I certainly have no objection. I have checked it with my colleague, Senator LUGAR, and we are very happy to accept the amendment.

Mr. STONE. We yield back our time.

Mr. HODGES. I yield back my time and I ask for the adoption of the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment was agreed to.

UP AMENDMENT NO. 1825

(Purpose: Adding a new title VI, relative to "Food for peace")

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 1825.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 22, line 11, insert the following:

TITLE VI

The Agricultural Trade Development and Assistance Act of 1954 is amended by adding at the end thereof a new section 413 as follows:

"SEC. 413. (a) In order more adequately to meet the food requirements of hungry and malnourished people in the developing countries while at the same time providing additional export outlets for American farmers, a minimum aggregate quantity of 7 million metric tons of U.S. farm commodities shall be exported under titles I, II, and III of this Act during each of the following fiscal years: fiscal year 1979, fiscal year 1980, fiscal year 1981 and fiscal year 1982. This aggregate quantity requirement, shall not affect the title II minimum quantities required under Section 201(b) of this Act, since those minimums shall be a part of the total minimum requirement for all titles.

"(a) The export of an aggregate quantity of 7 million metric tons for each such fiscal year under titles I, II and III shall be mandatory unless (1) export supplies are not available as determined under section 401(a) of this Act, or (2) food needs of developing countries do not merit such quantity as gauged by (a) a lack of request for food assistance by the developing countries, or (b) a determination by the Food and Agriculture Organization of the United Nations that unfilled food requirements of the developing nations are less than 7 million metric tons during such fiscal year.

"(c) Should less than the minimum quantities required by this section be exported because of the above criteria, the President shall report to the appropriate committees of Congress the specific reasons for such shortfall.".

Mr. DOLE. Mr. President, I mentioned earlier, at least cited briefly, what the amendment does. It is not a difficult amendment to understand. I might suggest that there is some opposition to the amendment from the administration. Perhaps we could work it out in conference.

Mr. President, this amendment would simply require that a minimum aggregate quantity of 7 million metric tons of U.S. farm commodities shall be exported under titles I, II, and III of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480) during each of the next 4 years.

This 7 million ton minimum export level for Public Law 480 (the Food for Peace program) would be mandatory unless the President determined that export supplies are not available, or that the food needs of developing countries do not merit such quantity.

Mr. President, during the past 24 years, the Public Law 480 program (or Food for Peace program) has been responsible for $30 billion worth of farm commodity exports.

The great value of this program, in terms of assisting hungry and malnourished people in developing countries, while helping our own farmers, is impossible to comprehend. It is one of the great practical humanitarian steps of all times.

Unfortunately, our Public Law 480 shipments have been declining in recent years. During the decade from 1960 to 1970, for instance, we exported an average of 13.2 million metric tons annually under title I alone. In fiscal year 1978, however, only about 5 million metric tons will be exported under all titles of Public Law 480, and that figure will decline to only about 4 million metric tons in fiscal year 1979.

This quantity will not adequately meet the food assistance needs of about 30 developing nations that will be requesting far more food than the combined quantities planned for fiscal year 1979.

Mr. President, my amendment mandates an annual export level of only 7 million metric tons. Moreover, the amendment provides for a Presidential waiver of this minimum level in the event of a domestic food shortage or a lack of need among developing nations.

Therefore, I ask the support of my colleagues for this amendment which will not only address the food problems of food-short developing countries, but will also help U.S. farmers improve their incomes at a time when many of them are receiving prices less than the cost of production for the commodities they are asked to raise.

Mr. STONE. Mr. President, the distinguished Senator from Kansas makes a very good and valid point. In my capacity as chairman of the Subcommittee on Near East and South Asian Affairs of the Committee on Foreign Relations, I became aware, for example, of a Public Law 480 case in Tunisia, a good friend and ally of the United States, a moderate, one that is helping us, but one which suffered a drought this year.

Yet when the price varied with respect to some of the grains, the commitment and the request, which looked like it was all set to be delivered, had to be altered, had to be reduced, and then they had a difficult problem.

Many countries in the third and fourth world are affected by budgetary and price fluctuations when we are talking about the poorest of the poor getting enough to eat, and when we are talking about our own farmers and growers knowing how much actual product is going to be delivered under this program as opposed to the variations and fluctuations which create uncertainties caused by world price conditions.

So I would accept this amendment with enthusiasm and take it to conference. We do understand the administration does not want to favor any fixed level but, nevertheless, the point made by the distinguished ranking Republican member of our committee is a good and valid one. So we will do everything we can to persuade our House colleagues that it is the right thing to do.

I yield back my time.

Mr. MORGAN. Mr. President, will the Senator yield for just a moment?

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. MORGAN. Mr. President, I joined with the distinguished Senator from Kansas earlier this year in cosponsoring a bill that would have done the same thing, and I am delighted that he brought it to the floor as an amendment. I think it is an excellent amendment, one that will not only benefit the farmers of America but certainly aid the poor of the world.

I ask unanimous consent that the Senator allow me to join with him in cosponsoring this amendment.

Mr. DOLE. I thank my distinguished colleague. It is an oversight. It should have been the Dole-Morgan amendment, based on our earlier work, and I appreciate the floor manager's willingness to accept the amendment.

It just seems to me, as I tried to point out in the brief statement, that it serves a twofold purpose: When we look at the decline in our food for peace shipments with some 30 developing countries needing this assistance—and we are talking about food, and this is the kind of assistance most Americans are willing to support—also when you couple that with

what we consider to be a rather important part of our total economy, talking about agriculture, and when we see what is happening in rural America—not in every case but in many cases—where farmers are receiving far less than their cost of production for what they raise, that is why thousands of farmers came to Washington last December, January, February, and all through the spring months—it seems to me that the amendment does have merit.

I might also suggest this was a matter of great interest to our late distinguished colleague, who has probably done more in the food for peace area than anyone, and that was the late Senator Humphrey. So I am pleased that the amendment is acceptable.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from North Carolina will be added as a cosponsor.

Is all time yielded back?

Mr. STONE. I yield back my time.

Mr. DOLE. I yield back my time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment was agreed to.

Mr. STONE. Mr. President, I yield to the distinguished cosponsor of this bill, the Senator from North Carolina (Mr. MORGAN) who, I believe, has an amendment.

Mr. MORGAN. Mr. President, I thank my distinguished colleague from Florida.

Mr. President, I am pleased to rise in support of the Agricultural Trade Export Expansion Act.

Before I begin my remarks, I would like to commend the Senator from Florida, Senator STONE, and the other members of the Senate Committee on Agriculture, Nutrition, and Forestry for developing this forward-reaching legislation.

This legislation is designed to strengthen the role of the U.S. farmer in the world market. As such, it should be considered major farm legislation.

The members of this chamber have discussed, on many occasions, the importance of agriculture in the world economy. This year we will earn about $25 billion in farm exports. Our overseas sales will generate domestic economic benefits of at least $50 billion, impacting in a significant way on an estimated 20 million U.S. jobs.

This legislation is made even more important by the sharp decline of the dollar. We need to export more to reduce our serious trade deficit. Even though agriculture has been one of the few bright spots in our international economic picture, I believe we can export even more food and fiber commodities.

This legislation should be viewed as one part of a two-part ongoing effort to increase our farm exports. Currently, our Government, represented by Ambassador Bob Strauss, is negotiating a new trade agreement that covers both industrial goods and farm commodities. We must have concessions on both tariff and nontariff trade barriers if we are to consider these negotiations to have been successful. Under the leadership of Ambassador Strauss, I believe that we will obtain such concessions.

Mr. President, I do not believe it necessary for me to review this legislation in depth. The four provisions—intermediate credit; establishment of trade offices; deferred payments to the People's Republic of China; and the naming of agricultural counselors—all are designed to move this Nation aggressively forward in the area of farm exports.

I would, however, like to discuss two provisions. The first has to do with the appointment of Agricultural Counselors. I believe that this is a positive step.

Across this Nation, farmers believe that the State Department has more say in farm export policy decisions than the Agriculture Department has. By upgrading the role of agriculture in rank-conscious embassies, agriculture will have more to say about issues of great importance such as trade policy, market development, and food assistance.

This particular provision has concerned me so much that I have introduced two amendments. One requires that these counselors be appointed within 3 years of enactment of this bill. Frankly, I am worried that they will never be appointed if such a provision does not exist. It is my understanding that the distinguished floor managers on both sides are willing to accept the first amendment.

My second amendment would have required that four individuals be named as Minister-Counselors of Agriculture. After much consideration, I have decided not to press this amendment. However, I think that such an amendment makes good sense from the standpoint of sound public policy, for the same reasons that the naming of Counselors makes sense. There are dozens of Ministers in our Foreign Service today. Given the importance of agriculture, it makes good sense to me that we have Minister-Counselors of Agriculture in key areas abroad. Because of my conviction on this approach, I am exploring the possibility of introducing similar legislation next year.

Mr. President, the second provision I would like to discuss momentarily concerns the arrangement of deferred payment sales, the provision that can be found in title II. I believe that this provision is innovative and responsive to a need that will help the United States make inroads into a potentially vast market. While I support this provision, which will help this Nation sell its food and fiber, I would have preferred a bill that would have facilitated credit arrangements with countries that are attractive markets for our farm commodities, but countries we cannot reach because of inflexible finanical arrangements.

Mr. President, I urge that my colleagues support this bill, and I thank our distinguished colleague from Florida for yielding.

AMENDMENT NO. 3580

(Purpose: To require that the sixteen senior Department of Agriculture representatives designated as Agricultural Counselors be designated as such within three years after the date of enactment of the bill)

Mr. STONE. I think the Senator should offer his first amendment now.

Mr. MORGAN. I was not sure whether I had called it up.

Mr. President, I ask that my first amendment, No. 3580, be called up.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) offers an amendment numbered 3580:

On page 10, line 18—

Mr. MORGAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, line 18, strike out the period after the word "Counselor" and insert in lieu thereof a colon and the following: *Provided further,* That not less than sixteen such representatives shall be designated as Agricultural Counselors within three years after the date of enactment of the Agricultural Export Trade Expansion Act of 1978.".

Mr. MORGAN. Mr. President, this amendment is very simple. My amendment would require that the individuals that are to be appointed to the rank of Counselor be appointed within 3 years of the date of enactment.

This amendment is not intended to be a criticism of the administration. However, I am fearful that there will be a delay in the appointment of these Counselors without such a provision.

Now, I would like to stress that this amendment does not mean that the administration is to wait 2 years and 10 months and then appoint 16 Counselors. Indeed, it is my hope that several Counselors will be appointed shortly after this bill is signed into law.

While I think it important the administration move quickly to name these Counselors, I do hope that the Department of Agriculture will consider individuals who currently are not in Government service. There are many individuals in the private sector with broad experience in market development and trade activities who should be considered for these appointments.

In summary, I expect that the Department of Agriculture will work to find the best individuals, from within or without Government service, to staff these new positions. It is my understanding that the floor managers have agreed to accept this amendment. Therefore, Mr. President, I move acceptance of the amendment.

Mr. STONE. Mr. President, speaking for the majority, we would accept the amendment of the distinguished Senator from North Carolina, and may I add a word: I am quite sympathetic with the Senator's second amendment, personally, and if time had permitted this year I would have loved to push that amendment to this measure. When the Senator offers it next year, I can assure the Senator that if it is assigned to the subcommittee that handled this bill, he will get an early hearing and personal, sympathetic attention from the chairman of the subcommittee, because I believe the Senator is quite right. that in a rank-conscious world, particularly the diplomatic world, the major agricultural markets, for example Japan, could well use a Minister-Counselor and not just a Counselor.

We are talking about big money, and we are talking about big efforts to balance our trade. In my previous travel abroad, I have found that the higher the official pushing for the sale of an American commodity or the lowering of the barriers to that commodity, the higher the official, the better chance you have in making some inroads in the difficult world of trade barriers and export-import sales.

So, speaking for the majority of the committee, we would accept the amendment just read.

Mr. LUGAR. Mr. President, speaking for the minority, we commend the Senator from North Carolina for a very constructive amendment. It follows along the fine work done within the subcommittee and the committee by Mr. CLARK in the production of legislation which upgrades the situation of agricultural diplomacy, together with, of course, the work of our subcommittee chairman, Senator STONE.

We would wish to echo the subcommittee chairman's words that the second portion of the distinguished Senator from North Carolina's remarks are equally commendable, even if such an amendment is not to be introduced today. We enthusiastically support the amendment.

Mr. STONE. Mr. President, I yield back the remainder of our time on this amendment.

The PRESIDING OFFICER (Mr. SASSER). Does the Senator from North Carolina yield back his time?

Mr. MORGAN. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment (No. 3580) of the Senator from North Carolina.

The amendment was agreed to.

Mr. STONE. Mr. President, I yield to the distinguished Senator from Iowa.

Mr. CLARK. I thank the Senator very much.

Mr. President, I support this bill and I hope my colleagues in the Senate will join me in voting to pass it very quickly so that we can complete work on it and get it signed into law this session.

This is, of course, a committee bill. We have all worked on it, I guess, every member of the committee, but many of the major provisions of the bill were also contained in a bill I originally introduced, S. 2968.

I particularly wish to commend Senator Stone and the Foreign Agricultural Policy Subcommittee, and the minority on the committee, for their work in developing this legislation.

Mr. STONE. Mr. President, will the Senator yield at that point?

Mr. CLARK. Yes.

Mr. STONE. I think the subcommittee ought to acknowledge its debt of authorship to the work of the Senator from Iowa. The Senator is quite correct in saying that his bill covers a lot of the subject matter of the subcommittee bill, and moreover, the subcommittee would say those provisions of his bill were extremely helpful to us in the preparation of the subcommittee bill.

Mr. CLARK. I thank the chairman very kindly.

I think this legislation is important not only to the people whom I represent in Iowa, the Iowa farmers, and not just the farmers in Iowa and in other parts of the country. It will help our entire agricultural export situation.

I represent a State that depends heavily on farm exports. Iowa is always either first or second in corn production, and first or second in soybean production. Our dependence on these crops means that production from one of every three acres in Iowa depends on overseas markets. Clearly, the growth and development of overseas markets is essential for a major share of the income of Iowa farmers—and for farmers across the Nation.

It is now a specific policy of our Government to depend on agricultural exports for both a major share of U.S. farm income, and for the $12 billion foreign exchange surplus we enjoy from agricultural trade. The administration used the explicit threat of a veto on many occasions last year when we were debating the 1977 farm bill in order to insure that Congress did not write provisions into that law that would damage our competitive position in foreign markets.

But competitive prices are not enough. If we are to have strong overseas markets, we must systematically work at developing and maintaining them. We must strengthen our market development programs for agriculture and make them more effective in finding new markets and hanging on to the customers we now have.

Other nations spend more of their revenue from exports on developing markets than we do, and they are threatening to beat us out of some markets. It is the purpose of this bill to strengthen our agricultural market development program; to give it more visibility and status; to give it some new tools for our exporters to work with; and to help it move outside the walls of the U.S. Embassy and into those cities where more of the agricultural trade takes place.

Mr. President, in spite of the fact that there is a real and significant need for the market development program to be strengthened and in spite of the fact that strengthening this program is entirely consistent with administration policy, I believe the administration opposes this bill. As I understand it, they would agree to the establishment of a greatly restricted program of intermediate credit, but oppose all the other provisions.

I must confess that I am somewhat puzzled as to why the administration continues to oppose this legislation. I visited with President Carter in late April in his office about this legislation. He seemed very receptive to the principles involved and, indeed, arranged for me to talk to Juanita Kreps, the Secretary of Commerce, who is responsible for coordinating an effort to try to increase exports. But very little has come of those discussions. No proposals were ever made by the administration and, to this date, although they apparently oppose this legislation, they have offered no meaningful alternative—indeed, as far as I know, no alternative of any kind—to increase agricultural exports.

I am deeply concerned by the administration's opposition to this bill—first, because I think it is simply wrongheaded. The administration is afraid to set up a broader intermediate credit program because they fear we might start a trade war with friendly competitors.

The answer to that concern is the observation that whether the State Department knows it or not, we are already in a trade war with some of these friendly countries. No one likes trade wars. But I am told by officials in USDA that our competitors use intermediate term credit when such terms are necessary to make sales.

In fact, we usually do not know the terms of their sales. We, at least, need to have intermediate credit to use as a threat in cases where our competitors use it against us, and that is the way the intermediate credit program in this bill would work. I think it is a good program, and that we need to have it.

Second, the administration's opposition is partly bureaucratic in nature, I think. They oppose the sections of the bill that would authorize more trade offices outside our embassies, and which would upgrade the rank of agricultural attachés. Frankly, I think this opposition is merely petty bureaucratic wrangling over turf. The State Department fears that USDA may get some authorities under this bill that would reduce the Ambassador's ability to control his mission.

I think it is this level of concern that annoys me the most about the administration's efforts against this bill. The State Department and OMB are greatly concerned about the bureaucratic pecking order. I fear that they are so concerned about these mechanical details that they have lost sight of concerns for the U.S. farmers, and for our balance of payments and the national need for foreign exchange. Like Senator TALMADGE, I wonder if we do not need a U.S. desk at the State Department to argue in the inner councils there for the needs of U.S. citizens and taxpayers.

I hope the Senate will pass this bill in spite of administration opposition.

All too often, Mr. President, our policy toward our agricultural market development programs seems to reflect the attitude that they are not really important. When there are shortages around the world, we seem to take the view that it is unnecessary to improve the basis for our agricultural trade, because we have so much of the available supply.

When there are surpluses here and around the world, our policy seems to reflect the view that either increases in foreign trade cannot be accomplished, or if they can, they will not be enough to do any real good. I think the simple fact is that in agriculture, as in high technology, we have one great advantage. These are our great advantages in terms of improving our balance of payments and the soundness of our dollar.

At any rate, as a result of these policies, our foreign market development programs have been turned on and off

several times since World War II. They have never been a central component of our agricultural policy. They have been peripheral, operating in the shadow of other efforts.

The PRESIDING OFFICER. All time of the proponents has expired.

Mr. CLARK. Will the Senator yield 2 minutes?

Mr. STONE. I ask the Republican manager of the bill if he can yield an extra 2 minutes to the Senator from Iowa.

Mr. LUGAR. I am very pleased to yield as much time as the Senator from Iowa requires.

Mr. CLARK. I thank the Senator very much.

It is my view that we can no longer consider the foreign trade component of our agricultural policy as secondary in importance. This is not because our domestic production or price policies are less important. It is because the success of our domestic policies now depend so heavily on the success of our foreign policies and programs.

The importance of our export policies and programs has increased dramatically since 1973. A change in economic circumstances and in world weather converted U.S. agriculture to an export orientation almost overnight. Almost overnight, we came to depend on foreigners for markets for more than half of our soybean production and a quarter of our corn production.

And, we have a very positive balance of trade in agriculture—perhaps some 12 billion in 1978. Clearly, our negative overall balance of trade would have been very much worse without the agricultural exports.

The factors that moved us to an export oriented agriculture were worldwide economic trends and weather, rather than a conscious change in our policy. Because we did not design the policy change, our system of efforts to maintain the increase our overseas markets has not kept pace. It is important that we upgrade these efforts, make them more visible and more effective, and that we insure that they are commensurate with the important role they play in maintaining and increasing the prosperity of American farmers.

Each of the provisions of S. 3447 would help meet that goal.

I believe the intermediate credit provisions of the bill are the most important. They are additions to the current program. We have short term (up to 3 years) commercial credits available from CCC at market rates, and we have very long-term credit under Public Law 480 that permits repayment over a 10- to 40-year period. However, for those purchasers who need somewhat better terms than the current 3-year CCC loans, but who do not need or who cannot qualify for the concessional sales provisions under Public Law 480 long-term programs, there is now no adequate source of credit.

Many countries that are potential markets for U.S. commercial exports do not have adequate facilities to handle or store these products. In many cases, these countries lack adequate credit to permit the construction of such facilities. S. 3447 would permit loans for such facilities.

It is impossible to know how much credit is needed under this program, or exactly what the cost would be. The programs would operate through the existing structure of CCC. The new authorities would permit loans, and Congress would reimburse CCC after the loans were made. The loans would be at commercial rates of interest, and would be repaid.

The level of loan activity under the program would depend on a number of factors, including the price of our products, and their availability both here and in importing countries. USDA estimates outlays under this program at approximately $100 million per year for the first year and at higher levels later on.

The second feature of this bill is to establish U.S. agricultural trade offices in a number of countries. We now have only one such office, in London. Elsewhere, the management of U.S. market development activities is but one of a large number of responsibilities agricultural attachés must carry out, working from U.S. Embassy offices. Because the attachés' attentions must be divided and because cooperators, and private trade representatives frequently cannot conduct business on the same premises as the attachés, coordination and consolidation of activities are greatly hindered. Furthermore, many nonresident exporters are discouraged by the lack of facilities and services at their disposal for market development activities.

This bill would permit trade offices to be located outside embassies. They would be headed by an assistant agricultural attaché and staffed by local nationals for professional and clerical help.

The offices would provide the data for the strategic planning activities needed to formulate long-term market development programs and policies. They would be responsible for the implementation and coordination of all USDA export market promotion activities within each country. They would assist visiting U.S. business representatives and nonresident cooperator personnel in their market development efforts and would provide guidance on the use of Public Law 480 as a development tool for U.S. agricultural markets.

These offices would also provide assistance for exhibits, sales teams, the trade opportunity referral system and assist in developing the industry support for removing trade barriers that inhibit U.S. agricultural exports.

In addition, this bill would upgrade the position of certain officials attached to the diplomatic missions of the United State from "attaché" to "counselor."

These are technical changes in structure, but they are important in making this program more visible and in making it work better.

The fact is, the rank of attaché is too low to permit agricultural representatives access to many of the meetings and functions they need to attend. It significantly reduces the effectiveness of these representatives. Increasing the status of these officials should help upgrade our program of expanding agricultural exports and make it more visible both here and abroad.

Mr. President, I have no illusions that these changes would instantly raise prices in our export markets. They would not. They are mainly technical changes, designed to make our system of export activities work better over the long term. They are not costly, and would far more than pay for themselves over the long run. I believe they are improvements that are long overdue. I hope my colleagues will join me in support of this bill.

Mr. President, I thank the distinguished chairman and the ranking minority member for granting me the time.

UP AMENDMENT NO. 1826

(Purpose: To make certain technical and clerical corrections in S. 3447)

Mr. STONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. STONE) proposes an unprinted amendment numbered 1826.

Mr. STONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 9, strikes out "For" and insert in lieu thereof "for".

On page 4, line 11, strike out "The" and insert in lieu thereof "the".

On page 6, line 23, strike out "Agricultural" and insert in lieu thereof "Agriculture".

On page 7, line 12, insert a comma immediately after "nations".

On page 7, line 13, insert a comma immediately after "sales".

On page 8, line 17, insert comma immediately after "commodities".

On page 10, line 4, strike out "whenever" and insert in lieu thereof "wherever".

On page 10, line 12, strike out "of" and insert in lieu thereof "as those of".

On page 13, line 25, strike out "17161" and insert in lieu thereof "1761".

On page 16, line 18, strike out "product for developing, expending" and insert in lieu thereof "commodity for developing, expanding".

On page 19, line 3, strike out "period" and insert in lieu thereof "periods".

On page 19, line 12, strike out "Embassy" and insert in lieu thereof "embassy".

On page 20, line 14, insert "Agricultural Trade" immediately after "the".

Mr. STONE. Mr. President, this is in the nature of a technical and clerical amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

AGRICULTURE AND WORLD TRADE

● Mr. McGOVERN. Mr. President, I support the Agriculture Export Trade Expansion Act of 1978 and view it as another step forward for the American agricultural community. This fiscal year exports will be up between $2 and $3 billion from last year's $24 billion and the volume of these exports will be up between 12 and 14 percent. Both will be new records. When nearly one in every three of our cultivated acres ends up

in international trade it is everyone's business to enact strong legislation to promote and expand our position in world trade.

This legislation pushes us forward on three basic fronts. First of all it expands CCC intermediate export credit from present limits of 3 years to a maximum of 10. A major breakthrough is including the People's Republic of China in that group of nations eligible for credit. Credit has become an important tool in international commerce as it has become in the Nation's national business community. Not only is it an expression of confidence with our trading partners but it gives us a competitive edge or at least an equal credit position with other nations who have a large stake in the international field.

The second important feature of the bill is that part which upgrades our present agriculture attachés to consular status. If we are going into the 1980's with a view toward expanding our agricultural exports, and this we must do, we must give our overseas representatives the status which they need and deserve in promoting our products and advising us of the crop conditions in nations far away from us where climatic conditions are volatile.

Not the last in order of importance is the authorization for establishment of a number of agricultural trade offices in important points of commerce throughout the world. State Department reservations notwithstanding, I feel that there are adequate safeguards in the history of this legislation to protect the integrity of our diplomatic services.

In connection with this legislation, I want to add a word of remembrance and tribute to our beloved and departed friend and colleague Hubert Humphrey. This legislation is Hubert Humphrey's kind of bill. Were he with us now he would applaud our efforts—and probably expand on them—Hubert Humphrey was as great an agricultural trader as this chamber has seen. This bill is certainly in the tradition of Hubert Humphrey's long public service to the Nation and I, for one, do not want to forget his long association with the subject.

Mr. President, as a member of both the Senate Agriculture Committee and the Committee on Foreign Relations I want to point out that in the course of the Senate's consideration of the proposed Agricultural Export Trade Expansion Act, I draw attention to the fact that there are a number of provisions in this measure which raise important foreign policy issues and which properly fall within the legislative purview of the Senate Committee on Foreign Relations. The bill, for example, authorizes short-term agricultural credits to the People's Republic of China; it also authorizes intermediate agricultural credits to permit the United States to compete more effectively against Canada, Australia, Argentina, and others; it provides for the designation of "Agricultural Counselors" in lieu of the more traditional "Agricultural Attachés," and it calls for the establishment abroad of at least six but not more than 25 "Agricultural Trade Offices."

Mr. President, all of these measures are soundly designed with one purpose in mind—to place American agriculture on a more competitive footing in the international arena. This goal is a worthy one and I fully support it. Having said this, I also recognize the foreign policy implications and potential legislative jurisdictional issues raised by the pending bill. Indeed, the jurisdiction of the Foreign Relations Committee is quite clear; it encompasses not only "relations of the United States with foreign nations generally," but also the "diplomatic service," "foreign loans" and "measures to foster commercial intercourse with foreign nations. . . ."

Mr. President, the long and the short of it is that there is much in this bill which the Committee on Foreign Relations could properly have asked to review and consider before it reached this stage of the legislative process. The chairman of Foreign Relations, the distinguished senior Senator from Alabama, was inclined to do just that in fulfillment of the oversight responsibilities assigned to the committee. These are serious responsibilities, as every Member knows and every committee chairman knows too well. In this particular instance, however, Senator SPARKMAN agreed not to request a sequestial referral of the bill in order to permit it to come up during this session. Under the circumstances and the severe time limitations we face, I believe that was the right decision—one in fact which I and others encouraged.

By the same token, however, I think the record ought to be made as clear as possible that this action does not denigrate the committee's jurisdiction or prejudice its oversight prerogatives in any way. In fact, I think it is well to put to advise the Senate that those issues contained in this bill which fall within the foreign policy area and which survive the legislative process this year will receive careful consideration and close scrutiny next year by the Committee on Foreign Relations. As chairman of the committee's Subcommittee on International Operations, I intend to review with the State Department and others the foreign policy implications of these issues during our regular hearings on the annual State Department authorization bill. These hearings will afford ample opportunity for the committee to undertake the kind of review that simply was not possible this year.

In summary, Mr. President, I applaud the spirit of accommodation that permits our consideration of this important measure during the current session and I look forward next year to examining several features of it more carefully from the foreign policy perspective.●

Mr. STONE. Mr. President, I believe there are no additional amendments or pending amendments, so I ask for third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. STONE. Mr. President, does the Republican manager of this bill have remarks at this time?

Mr. LUGAR. Mr. President, I wish to reiterate two things that have been said during this debate.

First of all, the imperative need for exports, the need for income on the part of American farmers and all who are dependent on our farm industry, is evident.

Second, I echo the remarks of the distinguished Senator from Iowa during this debate. He has visited with the President of the United States, the Secretary of Commerce, and others, in attempting to obtain the good will of the administration and various cabinet officials that is required for this legislation to be successful and to serve the country.

I hope that following the passage of this measure by this body and a successful conference with the House of Representatives, the administration will weigh the merits of this bill, which are evident to my colleagues today, and will proceed to give support to an expanded export program for this country.

Mr. President, I am ready to yield back my time.

Mr. STONE. Mr. President, I ask my distinguished colleague not to yield back his time just yet, because we may need a minute or two.

I ask unanimous consent that I may suggest the absence of a quorum, with the time to be charged to the time on the Republican side, since the time of the majority has expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STONE. Mr. President, I ask for the yeas and nays on final passage of this bill.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. STONE. Mr. President, I believe the Republican side is prepared to yield back their time.

Mr. LUGAR. I am prepared to yield back the time, unless the distinguished floor manager of the bill wishes time.

Mr. STONE. I do not.

Mr. LUGAR. I yield back the time.

The PRESIDING OFFICER. The bill having been read a third time, the question is, shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HAT-

FIELD), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Rhode Island (Mr. PELL), the Senator from Michigan (Mr. RIEGLE), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I also announce that the Senator from Massachusetts (Mr. KENNEDY) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. CURTIS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Virginia (Mr. SCOTT), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), and the Senator from Michigan (Mr. GRIFFIN) would each vote "yea."

The result was announced—yeas 65, nays 1, as follows:

[Rollcall Vote No. 376 Leg.]

YEAS—65

| | | |
|---|---|---|
| Abourezk | Ford | Moynihan |
| Bayh | Garn | Muskie |
| Bellmon | Glenn | Nelson |
| Bentsen | Goldwater | Nunn |
| Bumpers | Gravel | Packwood |
| Burdick | Hansen | Randolph |
| Byrd, Harry F., Jr. | Hart | Ribicoff |
| Byrd, Robert C. | Hatch | Roth |
| Cannon | Hayakawa | Sarbanes |
| Case | Heinz | Sasser |
| Chafee | Hodges | Schmitt |
| Chiles | Hollings | Schweiker |
| Church | Huddleston | Sparkman |
| Clark | Jackson | Stennis |
| Cranston | Leahy | Stone |
| Culver | Long | Talmadge |
| Curtis | Lugar | Thurmond |
| Danforth | Magnuson | Wallop |
| Dole | McGovern | Weicker |
| Domenici | Melcher | Williams |
| Eagleton | Metzenbaum | Young |
| | Morgan | Zorinsky |

NAYS—1

Proxmire

NOT VOTING—34

| | | |
|---|---|---|
| Allen | Hatfield, Paul G. | McIntyre |
| Anderson | Hathaway | Pearson |
| Baker | Helms | Pell |
| Bartlett | Humphrey | Percy |
| Biden | Inouye | Riegle |
| Brooke | Javits | Scott |
| DeConcini | Johnston | Stafford |
| Durkin | Kennedy | Stevens |
| Eastland | Laxalt | Stevenson |
| Griffin | Mathias | Tower |
| Haskell | Matsunaga | |
| Hatfield, Mark O. | McClure | |

So the bill (S. 3447), as amended, was passed, as follows:

S. 3447

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Agricultural Export Trade Expansion Act of 1978".

DECLARATION OF POLICY AND PURPOSE

SEC. 2. It is hereby declared to be the policy of Congress, in order to raise farm income, create a more favorable balance of trade for the United States, and promote the general economic welfare, that the United States Government, in concert with private enterprise, engage in a systematic program to expand international markets for United States agricultural commodities. It is the purpose of this Act to provide the means for the development and implementation of such program.

DEFINITION

SEC. 3. The term "agricultural commodity" as used in this Act shall include any agricultural commodity or product thereof.

TITLE I—INTERMEDIATE CREDIT

SEC. 101. Section 4 of the Food for Peace Act of 1966 is amended to read as follows:

"SEC. 4. (a) Commercial export sales of agricultural commodities out of private stocks on credit terms of not to exceed three years may be financed by the Commodity Credit Corporation under its export credit sales program.

"(b)(1) Export sales of agricultural commodities out of Commodity Credit Corporation and private stocks on credit terms in excess of three years, but not more than ten years, may be financed by the Commodity Credit Corporation.

"(2) No export sale may be financed under this subsection unless the Secretary of Agriculture determines that the sale will—

"(A) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities without displacing normal commercial sales; or

"(B) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, United States agricultural commodities.

"(3) Intermediate financing under this subsection shall be available for any use consistent with the provisions of paragraph (2) of this subsection, including, but not limited to, the following uses:

"(A) to establish reserve stocks consistent with international commodity agreements or other stock building plans acceptable to the United States;

"(B) the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations;

"(C) where determined feasible, for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (either through direct financing or the use of local currency generated from the sale and import of United States agricultural commodities to finance all or part of such facilities); and

"(D) to meet credit competition for agricultural export sales.

"(4) Intermediate financing under this subsection may not be used to encourage credit competition, or for the purpose of foreign aid or debt rescheduling.

"(5) The terms of credit for export sales financed under this subsection shall include the following terms:

"(A) repayment shall be in dollars with interest at a rate equal, as nearly as practicable, to the rate charged by the Commodity Credit Corporation for financing under the Corporation's short-term export credit sales programs; and

"(B) the Secretary may, if the Secretary deems such action appropriate to protect the interest of the United States, require an initial payment from the purchaser at the time of sale or shipment of the agricultural commodity.

"(6)(A) The Secretary shall obtain commitments from purchasers that will prevent resale or transshipment to other nations, or use for other domestic purposes, of agricultural commodities purchased with financing provided under this subsection.

"(B) In financing export sales under this subsection for the establishment of reserve stocks, the Secretary shall obtain commitments from the purchasers that will prevent the domestic sale or distribution of such stocks, except in a manner consistent with an international reserve agreement governing the agricultural commodity involved that has been adopted with the advice and consent of the United States Senate, whether or not the purchasing nation has adopted the agreement. If no such international agreement exists, the Secretary shall obtain commitments from the purchaser that agricultural commodities purchased for the establishment of reserve stocks with financing provided under this subsection will not be sold or distributed domestically, except as needed for emergency relief required by a crop shortfall or other natural disaster.

"(C) If the Secretary finds that a purchaser has failed to comply with commitments made under this paragraph, the full amount outstanding under financing arrangements entered into by the purchaser under this subsection shall become immediately due and payable and no further credits or credit guarantees shall be available to the purchaser from any agency of the Department of Agriculture until payment in full of the amount due has been made.

"(7)(A) Agreements to finance export sales of agricultural commodities entered into under this subsection, except agreements to finance export sales for the establishment of reserve stocks, shall be subject to such other terms and conditions as the Secretary may deem necessary or appropriate and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

"(B) Agreements to finance export sales of agricultural commodities under this subsection for the establishment of reserve stocks shall be subject to such other terms and conditions as the Secretary may deem necessary and appropriate. No such agreement, however, may become effective or be carried out until the expiration of thirty days following the date on which a detailed summary of such agreement or proposal is transmitted by the Secretary to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, if transmitted while Congress is in session, or sixty days following the date of transmittal if transmitted while Congress is not in session.

"(8) The provisions of the cargo preference laws shall not apply to export sales financed under this subsection.

"(9) The authority provided under this subsection shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

"(c) There are hereby authorized to be appropriated such sums as may be necessary to reimburse the Commodity Credit Corporation annually for its costs for the programs established under this section.

"(d) The term 'agricultural commodity' as used in this section shall include any agricultural commodity or product thereof.".

TITLE II—COMMODITY CREDIT CORPORATION FINANCING OF DEFERRED PAYMENT SALES; CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

COMMODITY CREDIT CORPORATION FINANCING OF DEFERRED PAYMENT SALES

SEC. 201. (a) To develop new market opportunities for the sale of United States agricultural commodities and to maintain and expand existing foreign markets for such commodities, the Secretary of Agriculture shall provide Commodity Credit Corporation financing to exporters of such commodities who wish to extend deferred payment terms to buyers in other nations in order to meet sales competition from other nations or to make additional export sales. Except as otherwise provided in section 202 of this title, financing under this section shall be available only with respect to sales to those nations that are eligible for financing under the short-term export credit sales program conducted by the Commodity Credit Corporation.

(b) Exporters who are willing to sell United States agricultural commodities to foreign buyers on deferred payment terms of not to exceed three years and who must extend such deferred payment terms in order to meet sales competition from other nations, or to make additional export sales, may apply to the Commodity Credit Corporation for financing such sales. Upon approval of the applicant's export sales plan by the Commodity Credit Corporation, and upon proof of export in accordance with the approved plan, the Corporation shall provide the necessary financing.

(c) Repayment to the Commodity Credit Corporation shall be made in dollars by the exporter in accordance with the terms and at interest rates contained in the approved export sales plan. Interest rates on such financing shall be no higher than those charged for financing under the short-term export credit sales program conducted by the Commodity Credit Corporation.

(d) The Secretary may, if the Secretary deems such action appropriate to protect the interests of the United States, require a performance guarantee from the exporter at the time of the sale.

(e) Financing agreements with exporters entered into under this section shall be subject to such other terms and conditions as the Secretary may deem necessary or appropriate and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

(f) The authority provided under this section shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 202. Notwithstanding any other provision of law, in order to develop new, and expand existing, markets for United States agricultural commodities, the Commodity Credit Corporation may provide financing for commercial sales of agricultural commodities out of private stocks on terms of not to exceed three years to the People's Republic of China under (1) the short-term export credit sales program conducted by the Commodity Credit Corporation, and (2) the deferred payment program for exporters established under section 201 of this Act.

TITLE III—AGRICULTURAL COUNSELORS

FINDINGS

SEC. 301. Congress finds that the officials of the United States Department of Agriculture attached to the diplomatic missions of the United States play an important role in developing, maintaining, and expanding markets for United States agricultural commodities and that their position and responsibilities should be at a level commensurate with the magnitude and importance of the objectives they are assigned to accomplish.

AMENDMENTS TO THE AGRICULTURAL ACT OF 1954

SEC. 302. Title VI of the Act of August 28, 1954 (68 Stat. 908–910, as amended; 7 U.S.C. 1761–1768), is amended by—

(1) amending the title designation to read:

"TITLE VI—FOREIGN MARKET DEVELOPMENT";

(2) inserting immediately before section 601 the subtitle designation:

"Subtitle A—Agricultural Counselors and Agricultural Attachés";

(3) in section 601, striking out "agricultural products" wherever that phrase appears therein and inserting in lieu thereof "agricultural commodities", and striking out "said products" and inserting in lieu thereof "such commodities";

(4) in sections 602(a), 602(e), 604, and 605, striking "this title" wherever that phrase appears therein and inserting in lieu thereof "this subtitle";

(5) amending section 602(b) to read as follows:

"(b) Officers or employees assigned or appointed to posts abroad under this subtitle still have the designation of Agricultural Counselor, Agricultural Attaché, or such other titles or designations that shall be agreed to by the Secretary of State and the Secretary of Agriculture, and shall be accorded the same rank and privilege as those of other counselors or attachés in embassies: *Provided,* That the senior Department of Agriculture representative in each of the major foreign agricultural posts, as determined by the Secretary of Agriculture after consultation with the Secretary of State, but in no case less than sixteen such representatives, shall have the title of Agricultural Counselor: *Provided further,* That not less than sixteen such representatives shall be designated as Agricultural Counselors within three years after the date of enactment of the Agricultural Export Trade Expansion Act of 1978.";

(6) adding immediately after section 602 a new section 602A as follows:

"SEC. 602A. (a) To effectuate review of the worldwide supply, demand, and price of agricultural commodities and to promote understanding of problems involved in selling United States agricultural commodities to other nations, each officer or employee appointed and assigned to a post abroad under this subtitle shall annually submit a report, through the Chief of the United States Diplomatic Mission for the nation to which the officer or employee is assigned, to the Secretary of State and Secretary of Agriculture (who shall transmit such report to the chairmen of the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry) detailing the agricultural situation in the nation or area to which the officer or employee is assigned, and including the following information:

"(1) a summary of the supply, demand, and prices of each major agricultural commodity in the nation or area, in order to discover long- and short-term trends in such supply, demand, and prices;

"(2) present and projected imports and exports of agricultural commodities for the nation or area;

"(3) unusual patterns, changes, or distortions, such as those caused by governmental intervention, in the trade and consumption of agricultural commodities in the nation or area;

"(4) trade barriers in the nation or area affecting United States imports;

"(5) governmental and other impediments to domestic food production in the nation or area; and

"(6) other matters that the Secretary of Agriculture considers appropriate in carrying out this section.

"(b) The information in this report shall be compiled periodically on a nation-by-nation basis (or on an area basis where appropriate), organized in a format suitable for a general audience with an interest in foreign agriculture, and made available at a reasonable price to the public."; and

(7) adding at the end of section 604 a new subsection (c) as follows:

"(c) Upon request by the Secretary of Agriculture, each Federal department and agency shall make its services, personnel, and facilities available to the greatest extent within its capability to the officers and employees appointed and assigned to posts abroad under this subtitle in the performance of their functions. The Secretary of Agriculture may reimburse or advance funds to Federal departments and agencies for the services, personnel, and facilities that are made available.".

TITLE IV—ESTABLISHMENT OF UNITED STATES AGRICULTURAL TRADE OFFICES

FINDINGS AND DECLARATION OF POLICY

SEC. 401. (a) Congress finds that United States Government assistance in developing foreign markets for agricultural commodities is declining in real terms and in relation to total agricultural exports, that other major agricultural exporting nations are opening new markets through aggressive market development programs larger in scope than those of the United States, and that the economic strength of United States agriculture depends on developing, maintaining, and expanding international markets for United States agricultural commodities.

(b) It is hereby declared to be the policy of Congress that foreign market development programs be periodically reviewed for their cost effectiveness and that no new demands be made on the United States Treasury unless it can be shown that the benefits from such increased spending will be reasonable in relation to the costs to the United States taxpayer.

ESTABLISHMENT OF UNITED STATES AGRICULTURAL TRADE OFFICES

SEC. 402. Title VI of the Act of August 28, 1954 (68 Stat. 908–910, as amended; 7 U.S.C. 1761–1768), is further amended by—

(1) adding immediately after section 605 the following new subtitle designation and sections:

"Subtitle B—United States Agricultural Trade Offices

SEC. 605A. (a) For the purpose of developing, maintaining, and expanding international markets for United States agricultural commodities, the Secretary of Agriculture, after consultation with the Secretary of State, shall establish not less than six nor more than twenty-five United States Agricultural Trade Offices in other nations.

"(b) Each United States Agricultural Trade Office shall be directed and administered by an Agricultural Trade Officer who shall be a person who by reason of training, experience, and attainments is qualified to carry out the purposes of this subtitle.

"(c) Each Agricultural Trade Officer may be appointed without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, and may be paid without regard to the provision of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that no Agricultural Trade Officer may be paid basic pay at a rate in excess of the maximum annual rate of basic pay payable for GS–17 of the General Schedule contained in section 5332 of title 5.

"(d) Each Agricultural Trade Officer shall perform such functions and duties, and have such powers relating to foreign market development, as may be delegated from time to time by the Secretary of Agriculture, after consultation with the Secretary of State, and shall report directly to the Agricultural Counselor or other senior representative of the Secretary of Agriculture in the nation or nations of concern or to such other person

as the Secretary of Agriculture may designate.

"(c) Each Agricultural Trade Officer shall be responsible for the exercise of the powers and the discharge of the duties of the United States Agricultural Trade Office to which the Officer is assigned and shall have the authority to direct and supervise all personnel and activities thereof, subject to approval by the Agricultural Counselor or other senior representative of the Secretary of Agriculture in the nation or nations of concern and guidance from the Administrator of the Foreign Agricultural Service.

"(f) The Secretary of Agriculture may appoint, after consultation wtih the Secretary of State, such other personnel as the Secretary determines to be necessary, and may employ local nationals for the professional and clerical help necessary, to carry out the duties of the United States Agricultural Trade Offices.

"(g) No employee of any United States Agricultural Trade Office may engage in any business, vocation, or other employment, or have other interests, that are inconsistent with official responsibilities.

"(h) Upon the request of the Secretary of Agriculture, the Secretary of State shall regularly and officially attach Agricultural Trade Officers and personnel of United States Agricultural Trade Offices to the diplomatic missions of the United States in the nations in which such officers or personnel are to be assigned by the Secretary of Agriculture, and shall request for Agricultural Trade Officers and other Office personnel, and agricultural officers and employees stationed at United States diplomatic missions, diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

"SEC. 605B. Subject to approval and guidance from the Administrator of the Foreign Agricultural Service and the Agricultural Counselor or other senior representative of the Secretary of Agriculture in the nation or nations of concern, the functions of each United States Agricultural Trade Office shall be to—

"(1) increase the effectiveness of agricultural export promotion efforts through consolidation of activities, providing services and facilities for foreign buyers and United States trade representatives, and coordination of market development activities sponsored by the Department of Agriculture;

"(2) establish goals by nation or region and agricultural commodity for developing, expending, and maintaining markets for United States agricultural commodities;

"(3) initiate programs to achieve the export marketing goals approved by the Department of Agriculture;

"(4) maintain facilities for use by nonresident cooperators, private trade groups, and other individuals engaged in the import and export of United States agricultural commodities where the use of such facilities will aid in the conduct of market development activities;

"(5) develop and maintain a current listing of trade, government, and other appropriate organizations for each agricultural commodity area and make such listing available to persons with a bona fide interest in exporting or importing United States agricultural commodities;

"(6) originate and provide assistance for exhibits, sales teams, and other functions for the promotion of United States agricultural commodities;

"(7) under the direction of the General Sales Manager, provide practical assistance for the use of the programs under the Agricultural Trade Development and Assistance Act of 1954, the export credit sales program, the export incentives program, and related programs of the United States Government where use of such programs will serve as a market development tool for United States agriculture;

"(8) supervise project agreements with United States cooperators, coordinate the activities of the United States Agricultural Trade Office with those of the cooperators, and submit annual recommendations to the Administrator of the Foreign Agricultural Service on the efficacy of coperator programs, including statements as to whether project agreements should be extended, amended, canceled, or allowed to expire;

"(9) publicize the services offered by the United States Agricultural Trade Office through advertisements in trade journals or by other appropriate means; and

"(10) perform such other functions as the Secretary determines necessary and proper for achieving the purposes of this subtitle.

"SEC. 605C. (a) In addition to the United States Agricultural Trade Offices to be established under section 605A of this subtitle, the Secretary of Agriculture may establish one such office in the United States if the Secretary determines that doing so would achieve the purpose of this subtitle.

"(b) Subject to exceptions made by the Secretary consistent with the purpose of this subtitle, any domestic United States Agricultural Trade Office shall operate under the same provisions of law applicable to any such office in another nation.

"SEC. 605D. Nothing in this subtitle shall be construed to diminish the authority of the officers and employees of the Department of Agriculture appointed and assigned to posts abroad under subtitle A of this title.

"SEC. 605E. In establishing the United States Agricultural Trade Offices, the Secretary of Agriculture, after consultation with the Secretary of State, may rent or lease (for periods of less than ten years) such offices, buildings, grounds, and living quarters as the Secretary of Agriculture may deem necessary, make payments therefor in advance, and maintain, improve, repair, and furnish water and utilities for such properties.

"SEC. 605F. United States Agricultural Trade Offices shall be centrally located in the cities of assignment to facilitate foreign trade meetings and foreign trade reliance on such offices for assistance in marketing activities, but shall not be colocated with a United States embassy.

"SEC. 605G. Upon request by the Secretary of Agriculture, each Federal department and agency shall make its services, personnel, and facilities available to the greatest extent within its capability to the United States Agricultural Trade Offices in the performance of their functions. The Secretary of Agriculture may reimburse or advance funds to Federal departments and agencies for the services, personnel, and facilities that are made available.";

(2) redesignating section 606 as section 606A and inserting immediately after new section 605G, as added by this Act, the following subtitle designation and new section 606:

"Subtitle C—Representation Allowances, Regulations, General Provisions, and Authorization for Appropriations

"SEC. 606. United States Agricultural Trade Officers, and officers and employees of the Department of Agriculture appointed and assigned to posts abroad under subtitle A of this title shall, under regulations prescribed by the Secretary of Agriculture, be entitled to a representation allowance in an amount determined by (1) the extent to which an Agricultural Trade Officer, or officer or employee, can effectively use such funds to further the purposes of this title and (2) the extent to which it is at a level commensurate with representational and promotional efforts by other major agricultural exporting nations competing in markets assigned to the Agricultural Trade Officer, or officer or employee.";

(3) redesignating sections 602(d), 602(f), and 603 as sections 606B, 606C, and 606D, respectively, and inserting the redesignated sections immediately after section 606A of this title, as redesignated by this section;

(4) in section 606C, as redesignated, striking out "subsection" wherever that word appears therein and inserting in lieu thereof "section";

(5) redesignating section 602(e) as 602(d); and

(6) adding at the end thereof a new section 609 as follows:

"SEC. 609. The term 'agricultural commodity' as used in this title shall include any agricultural commodity or product thereof.".

## TITLE V—GENERAL PROVISIONS

### IMPLEMENTATION OF THIS ACT; REGULATIONS

SEC. 501. (a) The Secretary of Agriculture shall implement this Act as expeditiously as possible consistent with the efficient and effective administration of the programs established under this Act and their integration with related foreign agricultural programs.

(b) The Secretary may issue such regulations as may be necessary to implement the provisions of this Act.

### AVAILABILITY OF APPROPRIATED FUNDS

SEC. 502. Appropriations made available to carry out foreign agriculture related functions within the Department of Agriculture shall be available to implement the provisions of this Act.

### PROHIBITION AGAINST DISCRIMINATION

SEC. 503. No person shall on the ground of sex, age, race, color, religion, handicap, or national origin be excluded from participation in, denied the benefits of, or subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this Act.

### ANNUAL REPORT

SEC. 504. The Secretary of Agriculture shall transmit to Congress each year a report that shall include a comprehensive statement of the activities and accomplishments of the Department of Agriculture in developing, maintaining, and expanding foreign markets for United States agricultural commodities during the preceding year.

### EFFECTIVE DATE

SEC. 505. The provisions of this Act shall become effective October 1, 1978.

## TITLE VI—EXPORTATION OF FARM COMMODITIES

SEC. 601. The Agricultural Trade Development and Assistance Act of 1954 is amended by adding at the end thereof a new section 413 as follows:

"SEC. 413. (a) In order more adequately to meet the food requirements of hungry and malnourished people in the developing countries while at the same time providing additional export outlets for American farmers, a minimum aggregate quantity of seven million metric tons of United States farm commodities shall be exported under titles I, II, and III of this Act during each of the following fiscal years: fiscal year 1979, fiscal year 1980, fiscal year 1981, and fiscal year 1982, This aggregate quantity requirement shall not affect the title II minimum quantities required under section 201(b) of this Act, since those minimums shall be a part of the total minimum requirement for all titles.

"(b) The export of an aggregate quantity of seven million metric tons for each such fiscal year under titles I, II, and III shall be mandatory unless (1) export supplies are not available as determined under section 401(a) of this Act, or (2) food needs of developing countries do not merit such quantity as

gauged by (A) a lack of request for food assistance by the developing countries, or (B) a determination by the Food and Agriculture Organization of the United Nations that unfilled food requirements of the developing nations are less than seven million metric tons during such fiscal year.

"(c) Should less than the minimum quantities required by this section be exported because of the above criteria, the President shall report to the appropriate committees of Congress the specific reasons for such shortfall.".

Mr. STONE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LUGAR. I move to lay that motion on that table.

The motion to lay on the table was agreed to.

Mr. STONE. Mr. President, I ask unanimous consent that the secretary of the Senate be authorized to make clerical and technical corrections in the engrossment of S. 3447.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STONE. Mr. President, I want to thank my distinguished colleagues, the Senator from Indiana (Mr. LUGAR), the Senator from Kansas (Mr. DOLE), and the other members of our subcommittee, Senator CLARK, Senator MORGAN, and others, who participated in this bill, and also the committee staff who worked diligently to make this bill a constructive effort to extend agricultural sales.

I yield the floor.

## ORDER OF BUSINESS

Mr. STONE. Mr. President, I ask unanimous consent that I be allowed to yield to the distinguished Senator from Georgia for the introduction of and the immediate consideration of a resolution without intruding on the time of the bill and that the record not be interrupted so that the resolution and remarks of the distinguished Senator from Georgia will appear after the passage or action on the current bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EXPRESSION OF THE SENSE OF THE SENATE ON OUTCOME OF THE MIDDLE EAST SUMMIT CONFERENCE

Mr. NUNN. Mr. President, I send to the desk a resolution and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the resolution.

The legislative clerk read as follows:

S. RES. 554

Whereas President Jimmy Carter, Prime Minister Menachem Begin, and President Anwar Sadat have requested people of all faiths to pray that peace and justice may result from the deliberations of the Middle East Summit Conference: Now, therefore be it

*Resolved*, That it is the sense of the Senate to urge people of all faiths to pray that the outcome of the Middle East Summit Conference will be successful, and that the deliberations of the Conference will be based on understanding, humility, and willingness to negotiate for solutions acceptable to all sides in order to further the effort for lasting peace and justice in the Middle East.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

Mr. SPARKMAN. Mr. President, reserving the right to object, and I do not intend to object, I do want to call attention to the fact that always, in the past, when resolutions such as this were offered, I as chairman and other members of the Foreign Relations Committee have insisted that they be referred to the committee for consideration. I do not intend to make that objection to this pending resolution because of the urgency and timeliness of it. Therefore, I shall not object, but I do not want this to be considered as a precedent in any way, because I think the only orderly way of handling these things, generally, is for them to be referred to the committee for consideration. This is an unusual case, and I, therefore, shall not object. Moreover, it is a resolution that I agree with completely.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the immediate consideration of the resolution.

The Senate proceeded to consider the resolution.

Mr. NUNN. Mr. President, I, of course, want to thank my colleague from Alabama, the chairman of the Foreign Relations Committee (Mr. SPARKMAN) for his understanding in permitting this resolution to be considered in a timely fashion. I do believe that if every Member of the Senate read the resolution, there would be 100 percent approval of it.

I have a number of cosponsors. The Senator from Alabama (Mr. SPARKMAN) has indicated that he will cosponsor the resolution. Also, Mr. CURTIS, Mr. HATFIELD of Oregon, and Mr. CHILES are original sponsors of the resolution.

I ask unanimous consent that the following Senators' names be added as cosponsors: Senator ANDERSON, Senator BELLMON, Senator ROBERT C. BYRD, Senator CHAFEE, Senator CRANSTON, Senator DANFORTH, Senator DECONCINI, Senator DOLE, Senator HANSEN, Senator GLENN, Senator HEINZ, Senator LUGAR, Senator MCCLURE, Senator PACKWOOD, Senator PERCY, Senator RANDOLPH, Senator STONE, Senator TOWER, Senator TALMADGE, Senator SCHMITT, Senator SASSER, Senator HOLLINGS, Senator HODGES, Senator LEAHY, Senator GARN, Senator RIEGLE, Senator STEVENS, Senator THURMOND, Senator ALLEN, and Senator MORGAN.

Mr. President, I ask unanimous consent their names be included as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, Wednesday afternoon, in a statement released at Camp David, President Carter, President Sadat, and Prime Minister Begin made a direct appeal for the prayers and support of people of all faiths as they begin their historic deliberations.

Mr. President, I would like to quote very briefly from that joint appeal. It states:

After four wars, despite vast human efforts, the Holy Land does not enjoy the blessings of peace. Conscious of the grave issues which face us, we place our trust in the God of our fathers, from whom we seek wisdom and guidance. As we meet here at Camp David we request people of all faiths to pray with us that peace and justice may result from these deliberations.

It is signed by Mr. Begin, Mr. Sadat, and Mr. Carter.

Mr. President, this really is a direct apepal from the leaders involved in this crucial set of negotiations for the prayers and support of people of all religious faiths as they begin their historic deliberations.

The resolution I off today is in response to this earnest and sincere solicitation of our prayers.

When I say "our prayers," I mean all the people of the United States and the world.

The three principals, although of different faiths, are deeply religious men. I am convinced that each truly seeks a meaningful and lasting peace in the Middle East.

This resolution calls on men and women of all faiths to prayerfully and reverently ask for God's guidance in the current deliberations at Camp David. Today, there can be no doubt that the three men gathered in the Cactoctin Mountains depend on the support of Almighty God as they seek to find mutually agreeable solutions to extremely complex problems.

There are many specific ways Americans can respond to the request for prayerful support from Mr. Begin, Mr. Sadat, and Mr. Carter on their search for peace. I will not in any way attempt to name all those ways today, because I cannot even envision all the ways that this prayerful support could come about through various groups in this country.

But churches and religious groups may want to hold special prayer services to pray specifically for the success of the Camp David summit conference.

Churches, synagogues, and mosques throughout the country may want to place a special emphasis on this initiative in their regular worship services over the next few days.

Men and women in public life may want to make a statement in support of the appeal.

Citizens may want to send messages supporting this "call to prayer" to the capitals of Israel and Egypt and to the White House.

These are just a few things people can do throughout the country.

A great repository of spiritual faith and strength exists within the hearts and minds of millions of citizens of this country and, indeed, throughout the world. I am confident Americans will respond with prayerful support of President Carter, President Sadat, and Prime Minister Begin as they continue their crucial mission searching for peace and justice in the land that is still known as the Holy Land, the Middle East.

I thank my colleague from Florida for yielding me this time. I thank the Senator from Alabama for his consideration in allowing this resolution to be brought forward for immediate consideration.

Mr. President, I will certainly yield

for comments any other Senator would like to make.

Mr. SPARKMAN. Will the Senator yield to me briefly?

Mr. NUNN. I am glad to yield.

Mr. SPARKMAN. I also want to say that I have discussed this with Senator CASE, the ranking minority member of the Foreign Relations Committee, and he is in full accord. He is not on the floor at the present time, but I believe the record should show that he supports this decision.

Mr. NUNN. I also express my appreciation to Senator CASE for his consideration.

Mr. LUGAR. Mr. President, I appreciate the comments by the distinguished Senator from Alabama, the chairman of the Foreign Relations Committee, that the resolution was cleared with the minority and, specifically, Senator CASE.

I commend Senator NUNN for an extraordinarily perceptive and sensitive resolution, of which I am proud to be a cosponsor.

I agree that the procedural question was important, that the Foreign Relations Committee should have been consulted, obviously has been on the majority and minority sides, and I simply wanted to record that for the record.

Several Senators addressed the Chair.

Mr. NUNN. I thank the Senator from Indiana for his comments and for his cosponsorship of this resolution.

Mr. President, I ask unanimous consent that during this day other Senators who have not been able to be contacted in terms of their cosponsorship of this resolution be permitted to add their names as cosponsors for the remainder of this legislative day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Will the Senator from Georgia yield?

Mr. NUNN. I yield to my colleague from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I found the call for prayer from Camp David to be a very moving one this week. I know, as a Catholic, I found myself joining our Baptist President, the Jewish Prime Minister of Israel, and the Moslem President of Egypt in prayer.

I hope that that was the attitude taken not only by those of us in Government, but by those throughout the United States and throughout the world.

None of us can predict what will be the result of Camp David, but, certainly, it is a setting in which there is total bipartisan hope for success.

There is no more troubled area in the world than the Middle East today. There is no area showing greater potential for disaster, disaster that conceivably can be worldwide, than the Middle East, and there is no area in the world needing the good will of all people more.

So I commend my colleague from Georgia for the resolution. I hope the combined prayers, wishes, hopes, aspirations of people in this country and, really, throughout the world, will help to move forward the talks at Camp David.

Mr. NUNN. I thank the Senator from Vermont for his comments.

Mr. GLENN. Will the Senator yield?

Mr. NUNN. I yield.

Mr. GLENN. Mr. President, I appreciate the Senator's yielding.

I would like to be added as a cosponsor of the resolution. I think it is very worthwhile. I commend the Senator from Georgia for his initiative in placing this resolution before the Senate. I think it is needed. I think we see too much going our own way in the world today and maybe not the way of whatever higher powers there are to guide us, whatever our religious background may be.

I commend the Senator from Georgia for bringing this to the attention of the Senate and I ask to be added as a cosponsor.

Mr. NUNN. I thank my colleague from Ohio.

Mr. President, I ask unanimous consent the Senator from Ohio be added as a cosponsor and that the Senator from Arkansas (Mr. HODGES) be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. I thank the Senator from Florida for yielding.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 554) was agreed to.

The preamble was agreed to.

## THE NATURAL GAS CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I would like to inquire at this time, so that Senators will be on notice as to what to expect during the afternoon, as to whether or not it would be possible to call up the gas conference report today, debate it, and get an agreement that for today only there would be no motion to table the conference report. This would protect Senators who are away from a surprise motion to table the conference report on, perhaps, the most important subject matter that has come before the Congress, and it would allow for some debate during the afternoon, with the time equally divided.

So I, therefore, ask unanimous consent that Senator JACKSON proceed with calling up the conference report today, that there be no votes with respect to the conference report, that no motion to table the conference report be in order today, and that the time for debate be equally divided between Mr. JACKSON and Mr. HANSON or their designees. That is my request.

Mr. ABOUREZK. Mr. President, reserving the right to object, may I be recognized?

Mr. ROBERT C. BYRD. Mr. President, I have the floor. The Senator may reserve the right to object.

The PRESIDING OFFICER. The Senator may speak on the reservation.

Mr. ABOUREZK. We went all through this yesterday, a couple of times. I have to just reiterate what I said yesterday when I objected to the same sort of request, now modified somewhat with respect to time.

If the majority leader or the distinguished chairman of the Energy Committee would like to bring up the national gas conference report under the Senate rules, either one has that right. Nobody is objecting to anybody bringing up the natural gas conference report. I am all for it. Everyone I know in this little coalition we have is all for bringing it up. The only thing we cannot agree to is some sort of a motion or—we do not want to preclude ourselves from offering anything, from any right we have under the rules, offering a motion, a tabling motion or whatever. We just do not want to preclude ourselves from that.

If we were to agree not to have any kind of a tabling vote today, for example, what would happen? I think everyone recognizes that Senator JACKSON, Senator METZENBAUM, and myself would be here on the floor discussing it with each other all day long, and everybody else goes home. We would be here, on perhaps the most important domestic issue of the last decade, talking to ourselves. I do not think that is right or fair, and I would hope the distinguished majority leader would not ask us to go through that.

We believe that if Members of the Senate are in their offices, at least if they think there is a vote or there might be a vote coming up, we believe we will have a shot, at least, at getting some of them over here to listen to the debate.

As I said yesterday, the conference report we are to consider was drafted in secret. We were not allowed to ask questions on it, we were not allowed to debate it all during the year; it was kept even from those of us on the conference committee who did not agree with deregulation.

I think we are entitled and I think the Senator is entitled to at least have an open-air debate, a debate out in the sunshine, as I have heard said so many times around here, where Senators can listen to the debate and where we can talk and argue back and forth; and I would hate, through a procedural maneuver, just to send everyone on back to their States to campaign for a few days, and the rest of us just sit here and talk to each other about it.

So, Mr. President, I regretfully and reluctantly must object to the unanimous-consent request.

Mr. ROBERT C. BYRD. Mr. President, I respect the distinguished Senator from South Dakota tremendously. I respect him for many reasons. I respect his courage, his forthrightness, and his integrity, and I respect his being against the conference report.

Let me say, however, when the Senator says there would be no objection to bringing up the conference report, that conference reports are privileged, and if they cannot be brought up by unanimous consent, they can be brought up by nondebatable motion. So it is not a question of being able to bring it up today. The question is whether it can be brought up without a surprise motion to table that conference report being made.

I had the votes here yesterday to defeat a tabling motion. My concern was, if we brought it up yesterday, that today, about 4 o'clock in the afternoon or 5 o'clock in the afternoon, or 6 o'clock, 7 o'clock, or 8 o'clock in the afternoon, a motion to table that conference report could be made, and I was not about to anticipate such a vote occurring when I would be concerned about absentees, many on both sides of the question, many on both sides of the aisle.

So for that reason I shall not ask Mr. JACKSON to proceed with the conference report this afternoon, because a motion could be made to table that conference report at any time today, up until midnight.

But, Mr. President, for the information of the Senate, agreement or no agreement, the Senate will proceed on Monday to take up the natural gas conference report. I have sought an agreement that would protect Senators from a sudden surprise motion, but all Senators are now on notice. They will be alerted over the weekend to expect anything to happen beginning Monday. There can be procedural votes, there can be motions to table the conference report, there can be votes on getting the Sergeant at Arms to get Senators to come in—there can be all kinds of motions made, if Senators want to indulge in them, and some of them are nondebatable and require immediate votes.

So, with that, may I say that the Senate is coming in at 11 o'clock on Monday morning, and Senators may expect anything, and they should, of course, prepare their schedules accordingly.

So, for today—and I apologize for the rollcall vote; I make no bones about it, I asked for that rollcall vote. I had not previously asked for a rollcall vote this year, but I asked for that rollcall vote so I could see what our absentee situation was, just in the event we did call up that conference report today, and to see where the votes were, and for various other reasons in connection with the natural gas conference report. I apologize to the Senate for doing that; I thought the reasons were sufficient, but that I should point them out.

Mr. METZENBAUM. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. METZENBAUM. I think it is only fair that the majority leader be advised, and I would hope he would advise other Members of the Senate, that at some time on Wednesday a motion to recommit with instructions will be brought up. At exactly what point that will be brought up is undetermined at the moment, but I think it would be fair to say we would not anticipate bringing that up on Monday or Tuesday.

I think I reflect a great body of opinion here in the Senate, particularly on the part of those who have joined in the "Dear Colleague" letter relative to the motion to recommit, that we do not anticipate nor do we support a motion to table the conference committee report, it not being our desire to kill the bill, but rather to have a positive alternative.

Mr. ROBERT C. BYRD. I appreciate what the Senator has said. I do not doubt his sincerity, and I know his word is his bond. But without absolute unanimous consent to guarantee no motion to table at any time today I cannot afford that risk, because when a Senator gets the floor, he cannot be taken off the floor, and can speak up to midnight and then move to table. As I say, I cannot afford to run that risk this afternoon.

May I say that I will make no further unanimous-consent requests with respect to the natural gas conference report today, and I will protect all Senators on both sides of the aisle against any unanimous-consent request that deals with the energy conference report, with this exception: I would like to get unanimous consent that the Senator from Washington (Mr. JACKSON) be recognized on Monday after the two leaders have been recognized under the standing order, or at any time during the day, and I will assure Mr. METZENBAUM and Mr. ABOUREZK that that will not be done until they are on the floor.

I ask unanimous consent that Mr. JACKSON be recognized at some point during the afternoon on Monday to call up the conference report.

The PRESIDING OFFICER (Mr. BURDICK). Is there objection?

Mr. ABOUREZK. Mr. President, reserving the right to object, and I shall not object, you are only asking, not for him to hold the floor, but just that he be recognized to call up the conference report, and at that time the rules take effect?

Mr. ROBERT C. BYRD. Exactly. I just want to guarantee that the conference report will be called up at that time.

Mr. METZENBAUM. Will the majority leader be good enough to explain why the unanimous-consent request is needed?

Mr. ROBERT C. BYRD. It is so that Senator JACKSON will get the floor. That is the only point.

Mr. BARTLETT. Mr. President, reserving the right to object, those of us on this side of the aisle, Senator HANSEN and myself, would also like to be notified.

Mr. ROBERT C. BYRD. Yes.

Mr. BARTLETT. I listened to a unanimous-consent request a little while ago and we got here as quickly as we could. We would like to be notified of any action to be taken. If that is the understanding, that is fine. If that is not the case, we will just be on the floor.

Mr. ROBERT C. BYRD. May I apologize to the Senator? I knew the request would be objected to. I knew the Senator's side was ably represented, and I knew the request was going to be objected to. I apologize to the Senator.

Mr. JACKSON. I will assure the Senator that the minority side will be notified in advance before I call up the conference report.

Mr. BARTLETT. Not only the minority side, but also Senator HANSEN and myself.

Mr. JACKSON. Specifically, Senator BARTLETT and Senator HANSEN.

Mr. ABOUREZK. I think the reason for Senator BARTLETT's concern is that he knew I was over here, and he knows I have been negotiating to get a poison gas facility built in South Dakota in exchange for my vote on the natural gas bill. He is concerned that I might sell out. That is why he is concerned.

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, today is a good day for jokes but we should get on with our work.

Mr. LUGAR. Reserving the right to object, and I will not object, I want to assure my colleague (Mr. BARTLETT) that I was going to object in his behalf as I know his feelings. I would raise the question with the majority leader, respectfully, if he has any idea, or if he could advise us, about what time on Monday morning or afternoon Senator JACKSON might be seeking recognition, if there is any time in mind?

Mr. ROBERT C. BYRD. The Senator thinks between 11 o'clock and noon.

Mr. LUGAR. Between 11 o'clock and noon on Monday he anticipates his opening statement?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. One moment. Is there objection? The Chair hears none and it is so ordered.

## SECOND CONGRESSIONAL BUDGET RESOLUTION

Mr. HUDDLESTON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 683.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the concurrent resolution (H. Con. Res. 683) revising the congressional budget for the U.S. Government for the fiscal year 1979, and requesting a conference with the Senate on the disagreeing votes of the two House thereon.

Mr. HUDDLESTON. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. MUSKIE, Mr. MAGNUSON, Mr. HOLLINGS, Mr. CRANSTON, Mr. CHILES, Mr. ABOUREZK, Mr. BELLMON, Mr. DOLE, Mr. MCCLURE, and Mr. HEINZ conferees on the part of the Senate.

## LICENSE FEES AND EXEMPTIONS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1079.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 976) to amend the Perishable

Agricultural Commodities Act, 1930, relating to practices in commodities.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Agriculture, Nutrition, and Forestry with an amendment to strike all after the enacting clause and insert the following:

SECTION 1. (a) Effective January 1, 1979, section 1 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), is amended by—

(1) in subsection (6), striking out "$100,000" and inserting in lieu thereof "$200,000"; and

(2) in subsection (7), striking out "$100,000" and inserting in lieu thereof "$200,000".

(b) Section 1 of the Perishable Agricultural Commodities Act, 1930, is further amended by inserting in subsection (6) immediately after "(C) no person buying any commodity" the following: "other than potatoes", except that no person buying potatoes for processing solely within the State where grown shall be deemed or considered to be a dealer under subsection (6) of section 1, as amended by this subsection, until January 1, 1982.

SEC. 2. Section 3(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c(b)), is amended by—

(1) striking out "$100" in the third sentence and inserting in lieu thereof the following: "$300, plus $50 for each branch or additional business facility operated by the applicant in excess of twenty such facilities, as determined by the Secretary. Total annual fees for any applicant shall not exceed $1,000 in the aggregate";

(2) inserting immediately before the fourth sentence a new sentence as follows: "The Secretary may assess a single uniform license fee for all applicants, or the Secretary may assess a graduated fee based upon the amount or type of business conducted by the applicant or both.";

(3) inserting immediately after "referred to above:" in the fourth sentence the following: *"Provided,* That the amount of money accumulated and on hand in the special fund at the end of any fiscal year shall not exceed 25 percent of the projected budget for the next following fiscal year:"; and

(4) inserting "further" immediately after *"Provided"* in the fourth sentence.

Mr. ROBERT C. BYRD. Mr. President, there may be rollcall votes on amendments to this bill and a rollcall vote on passage. I assure all Senators I will not ask for any further rollcall votes today, because I have the information I need.

May I ask Mr. HUDDLESTON if he has any indication of rollcall votes on amendments or final passage?

Mr. HUDDLESTON. I will advise the majority leader I have no information that any amendment or final passage will require a rollcall vote. I know of one amendment, the amendment by the Senator from Iowa.

Mr. ROBERT C. BYRD. Would Mr. CLARK indicate whether or not he expects a rollcall vote?

Mr. CLARK. Mr. President, I have no desire to ask for a rollcall vote.

Mr. HUDDLESTON. Mr. President, I do not think we can guarantee there will not be a rollcall vote so far as we know now.

Mr. ROBERT C. BYRD. I think we better take Mr. HUDDLESTON's words exactly at face value as we would at any time. He says, for the information of the cloakrooms, there can be no guarantee that there will not be rollcall votes on amendments or on passage. He knows of no desire for rollcall votes on anyone's part at this point, but they could occur.

I thank the Senate and I thank the Senator.

Mr. BAYH. Will the Senator yield for a unanimous-consent request?

Mr. HUDDLESTON. I yield,

Mr. BAYH. Mr. President, I ask unanimous consent that a member of my staff, Mr. Jay Townsend, be permitted access to the floor during the debate and discussion on this particular legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUDDLESTON. Mr. President, S. 976 amends the Perishable Agricultural Commodities Act (PACA) to—

First. Increase from $100,000 to $200,000 the value of fresh and frozen fruits and vegetables that retailers may purchase, and the value of transactions frozen food brokers may negotiate, annually before they become subject to PACA license requirements, effective January 1, 1979;

Second. Make potato processors subject to licensing under PACA as "dealers" (except that no person buying potatoes for processing solely within the State where grown would be deemed to be a dealer until January 1, 1982);

Third. Permit increasing the maximum annual license fee from $100 to $300, plus $50 for each branch or additional business facility in excess of 20, up to a total of $1,000, and permit the Secretary of Agriculture to assess a single uniform license fee for all applicants, or a graduated fee based upon the amount or type of business conducted by the applicant or both; and

Fourth. Limit the amount of money that could be accumulated and held in the special fund for the administration of PACA at the end of each fiscal year to not more than 25 percent of the projected PACA budget for the next fiscal year.

The basic objective of the Perishable Agricultural Commodities Act (PACA) is to establish a code of fair-trading practices governing the marketing in interstate and foreign commerce of fresh and frozen fruits and vegetables and cherries in brine and to aid in the enforcement of contracts for marketing these commodities. Under PACA, it is unlawful for any commission merchant, dealer, or broker in connection with any transaction in interstate or foreign commerce to engage in certain unfair trade practices. Among these are:

First. To reject or fail to deliver in accordance with terms of a contract, without reasonable cause;

Second. To dump, discharge, or destroy without reasonable cause any lot received on consignment;

Third. To fail or refuse to account correctly and pay promptly for any lot;

Fourth. To fail to perform any specification or duty arising out of a contract without reasonable cause;

Fifth. To misrepresent or misbrand as to character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin; and

Sixth. To fail to maintain adequate records and accounts. Enforcement is through a system of licenses. Every commission merchant, broker, and dealer, including certain retailers and processors, operating subject to PACA is required to be licensed. Most applicants encounter no problems in obtaining licenses. However, the Secretary of Agriculture may deny licenses to certain individuals for specific reasons spelled out in the law, including false or misleading statements in the application, a history of repeated violations of PACA, the criminal record of the applicant, failure to pay reparation awards, or failure to furnish required surety bonds. Licenses may be suspended or revoked for violations of PACA.

There are two main phases of activity in administering PACA. First, the Secretary is authorized to hear and decide disputes that involve claims for damages resulting from any violation of the fair trading principles. Complaints are filed with the Secretary; investigations are made as warranted; and, if possible, amicable settlements are worked out between the parties. If a dispute cannot be settled informally, it may become a formal proceeding in which the parties are given an opportunity to submit evidence in support of their positions, either at an oral hearing or by written submissions of evidence. If the Secretary concludes that a violation has occurred, he determines the amount of damages sustained and issues an order requiring the offender to pay such damages to the injured party by a specified date. The offender's license is automatically suspended unless he pays the amount of the award or appeals the Secretary's decision to a district court of the United States, as provided in PACA.

The second main phase of activity relates to disciplinary measures. These include administrative proceedings by the Secretary to suspend or revoke licenses for violations of PACA and court actions to collect civil penalties for operating without a license, together with injunctions to restrain further operations.

Mr. President, this legislation raises the exemption for both retailers and frozen food brokers from the licensing requirement of PACA from $100,000 to $200,000. The proposed increase in the index of wholesale food prices that have taken place since the amount of the exemption was last set by Congress in 1969. Since 1969, wholesale prices for fresh fruit and vegetables have doubled.

PACA is self-supporting from annual license fees. These fees are deposited in a special PACA fund and all costs of administration of PACA—except for legal services—are financed from these fees.

The Secretary may set the level of the annual license fee, within the maximum provided in the law, at an amount suffi-

cient to provide the revenue to meet anticipated expenses for administering PACA. Before the license fee can be raised, the Secretary must publish the proposed rate, giving all interested persons an opportunity to file their comments or objections. The present maximum fee authorization of $100 was established in 1969.

The statutory ceiling on license fees must be raised because of: First, the declining number of firms operating subject to license, and second, the increasing cost of administering the law. At present, the number of firms licensed is approximately 16,127, compared with an all-time peak of about 27,000 in 1956. This trend toward fewer licensees results from the continuing mergers and consolidations in the fruit and vegetable industry and the closing of many small firms.

Despite the decline in number of firms licensed, the number of complaints filed under PACA and the requests for advice and assistance have remained relatively constant. During the past fiscal year, a total of 2,318 reparation complaints were handled by the Department under PACA. Informal amicable settlements were arranged in 1,268 such cases, resulting in payments to the parties of approximately $5.5 million. In addition, 382 formal orders were issued by the Department's judicial officer awarding reparations amounting to over $2.3 million. The Department makes no charge for the handling of these complaints.

This bill limits the amount of money that could be accumulated and held in the special fund for the administration of PACA at the end of each fiscal year to not more than 25 percent of the projected PACA budget for the next fiscal year. Since the administration of PACA is dependent entirely on fees collected, the Department of Agriculture should maintain a reasonable reserve of collected fees to support the continued provision of program services. However, this reserve should be limited to the minimum amount necessary for reserve purposes, which is estimated to be one-fourth of annual program expenditures.

Mr. President, this bill is equitable and fair and I urge my colleagues to join me in support of this measure.

Mr. President, I ask unanimous consent that the committee amendment be agreed to and that the bill as amended be considered as original text for purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TALMADGE. Mr. President, will the Senator yield briefly?

Mr. HUDDLESTON. Yes; I yield.

Mr. TALMADGE. Mr. President, I should like to compliment the distinguished chairman of the subcommittee for the outstanding job he did on the bill.

I also commend the ranking minority member of the subcommittee and the full committee (Mr. DOLE) and Senator LUGAR and Senator CLARK for the outstanding jobs they did on this legislation. I wholeheartedly support its passage and urge the Senate to approve it.

Mr. DOLE. Mr. President, I only say, as has been expressed by the distinguished floor manager, the chairman of our committee, that this is a good bill.

Since it was enacted in 1930, the Perishable Agricultural Commodities Act has served us well in assuring fair trading and market practices in the fresh and frozen produce industry.

PACA protects growers from certain unfair trade practices, including nonpayment by commission merchants, dealers, and brokers of contract obligations. The Secretary of Agriculture may hear and decide disputes involving claims for damages resulting from violations of the act.

The Secretary may also take disciplinary actions against violators.

PACA's licensing system is an important enforcement tool. But since 1930, the fee charged for licenses has been the same for all operators, regardless of their size.

The structure of today's food marketing system has changed since 1930. Now there are not only the local operators, but large retail chains with hundreds of stores across the country. Branch stores often get their produce from local growers as well as through national chain distribution systems.

It seems to me that these big operators should carry more of the burden of financing PACA than the small operators.

The bill contains a provision permitting the Secretary of Agriculture to assess up to $50 for each additional branch store or business location that a licensee has, over 20 branches, up to a total of $1,000. Within this framework, the Department of Agriculture should be able to adjust the fee scale to provide adequate funding for PACA without hurting licensees like the "mom and pop" store whose operations are mostly local.

Mr. President, I urge the enactment of S. 976.

Mr. BUMPERS. Mr. President, I ask unanimous consent that Wanda Weaver of my staff be permitted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CLARK. Mr. President, I ask unanimous consent that Bill Motes and Marge Baker of my staff be granted the privilege of the floor.

Mr. LUGAR. I make a similar request for David Lyons of my staff.

Mr. DOLE. I ask the same privilege for Dolores Klumpp of my staff, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1827

Mr. CLARK. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) for himself and others, proposes unprinted amendment numbered 1827.

Mr. CLARK. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, after line 5 add a new section as follows:

SEC. 3. Section 3(b) of the Farm Labor Contractor Registration Act of 1963, as amended (78 Stat. 920, as amended; 7 U.S.C. 2042), is amended—

(a) by striking out the word "or" at the end of paragraph (8), striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "or"; and

(b) by adding at the end thereof a new paragraph (10) as follows:

(10) Any person who would be required to register solely because they are engaged in any such activity solely for the purpose of supplying full-time students or other persons whose principal occupation is not farmwork to detassel hybrid seed corn or sorghum for seed, and to engage in other incidental farmwork for a period not to exceed four weeks in any calendar year: *Provided*, That such students or other persons are not required by the circumstances of such activity to be away from their permanent place of residence overnight: *Provided, further*, That such full-time students or other persons, if under 18 years of age, are not engaged in providing transportation in vehicles caused to be operated by the contractor.".

Mr. CLARK. Mr. President, I ask unanimous consent that Senators BAYH, LUGAR, PERCY, STEVENSON, and MORGAN be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CLARK. Mr. President, I am submitting today an amendment designed to correct a problem that is an example of government out of control. This amendment would exempt a portion of the seed industry, including the hybrid seed corn industry, from the Farm Labor Contractor Registration Act of 1963.

Congress passed FLCRA in 1963 to protect migrant and seasonal workers who were being exploited by professional farm labor contractors. It was legislation that was very badly needed. When the act was amended in 1974, I supported that effort because the Labor Department was not adequately protecting workers from exploitation by unscrupulous contactors.

The Senate report to the 1974 amendments described the migrant workers which the act was intended to protect:

Today, the bulk of the migrant workforce is made up of Mexican-Americans, Puerto Ricans, West Indians, and native born black Americans.

Migrant and seasonal farm workers have long been among the most exploited groups in the American labor force. Despite their hard toil and valuable contribution to our nation's economy, their lot has historically been characterized by low wages, protracted hours, and horrid working conditions. The families, and particularly the children of these workers have also suffered from the typical symptons of chronic poverty—being undereducated, ill-fed, poorly housed, and lacking even the most rudimentary health and sanitary facilities.

The 1974 amendments to FLCRA were designed to prevent this exploitation by requiring farm labor contractors to be fingerprinted, to register annually with the Secretary of Labor, and to designate the Secretary as their agent for service of process. Detailed information concerning the vehicles and housing provided for workers was required as well

as compliance with special insurance provisions, and a medical examination for vehicle drivers. In addition, contractors were required to keep detailed employment records and make detailed disclosures to workers concerning all aspects of the worker's employment.

FLCRA required annual registration and detailed information (including fingerprints) because of the transient nature of this type of farm labor. Because migrant and seasonal farm workers often traveled far from their homes and because (as the Senate report indicated) they suffered from all of the handicaps of poverty, they were extremely dependent upon the contractor that recruited them and vulnerable to exploitation. The 1974 amendments have improved the protection of these workers.

Until last year, the Labor Department did not seek to enforce FLCRA against the seed corn industry. However, last year, the Labor Department made a series of decisions that extended the provisions of the act to people who are clearly not migrants by any reasonable definition, and who were not intended to be included in the coverage provided by the act. These are young people ranging in age from 14 to 16 years old who work for an average of 10 days to 2 weeks each summer to detassel seed corn, eliminate "rogue" plants, and perform other functions, related to seed production.

These young people normally work within 30 or 40 miles of their homes and return to it each evening. The act, as it is now construed by the Department of Labor, defines these persons as seasonal and migrant farm workers.

Because the act defines these young people as "migrant and seasonal farm laborers," any person—usually a local high school principal or coach—who recruits, hires, transports, supervises, or deals with these young people while they are detasseling corn, must now register as a farm labor contractor. That means that the law treats established, well-known local citizens in exactly the same way it treats the most unscrupulous, fly-by-night labor contractor.

My constituents in Iowa are very much up in arms about this, Mr. President, and I must say that I do not blame them. I think that it is ridiculous for the Government to classify a local high school coach or principal as a migrant labor contractor if he arranges for some of his students to detassel corn during the summer. I have been contacted by the Governor of Iowa, the chairmen of the house and senate agriculture committees of the Iowa State Legislature, and by the ranking members of those committees.

I have been contacted by several seed corn companies, and by dozens of private individuals. The people of the State of Iowa I believe, think that this application of the FLCRA is a prime example of what is wrong with our Government today. It is an example of the failure on the part of the Government to be sensitive to the difference between an important need for a strong protection, and a situation where such rule is frustrating, costly, and unnecessary.

Mr. President, I consider my amendment to be a last resort. Last February 23, when I first became aware of the construction the Department of Labor was putting on this act, I wrote to Secretary of Labor Ray Marshall and asked him to reconsider the decision to regulate corn detasseling operations under FLCRA. I discussed the problems with Assistant Secretary Elisberg in my office, and I discussed it with Secretary Marshall over the telephone. My staff had repeated contacts with USDA staff over the issue as well.

However, the Department of Labor has refused to change its position.

In a May 2 letter, signed by Assistant Secretary Elisberg, USDA said that existing exemptions in the law would be adequate when the industry modified its operations to take advantage of them.

Mr. President, the existing exemptions do not get to the root of the problem, and they are not adequate. The current exemptions do not change the fact that young Iowans who live at home and work near home, are classified as migrants because they work a few days detasseling corn. And the current exemptions do not change the fact that established local citizens must register and be fingerprinted and fill out long forms if they want a few days work arranging for kids to detassel corn.

And, the current exemptions do not effectively exempt most of those Congress intended to exempt in 1974. To detassel seed when it must be detasseled, workers must be moved to where the fields are. Frequently, that is more than 25 miles from the home of the person arranging for the labor. And, to arrange for labor, it is common for advertisements to be put in local newspapers.

If that paper has a circulation beyond a 25-mile radius from the home of the person arranging for the labor, he must register as a contractor. Most newspapers have a circulation beyond that radius. Thus, the current exemptions do not effectively deal with the problem.

Because we were unable to get relief from these rules from the Department of Labor, I am offering this amendment today. It is a narrow amendment. It is specifically designed to exempt from the FLCRA young people who work in the seed industry during the summer, primarily corn detasselers. I believe it would not affect other types of workers.

Mr. President, temporary summer work such as detasseling has been performed by young people in my State for many years; and there has never been any evidence of exploitation of the type which FLCRA is intended to prevent. Detasselers are covered by the minimum wage and child labor provisions of the Fair Labor Standards Act as well as by the Occupational Safety and Health Act.

In most cases, they are transported to the fields either in personal vehicles driven by local adults, who many of the young people have known all their lives, or in school buses subject to State school bus inspection laws and driven by specially licensed drivers. Companies operating in my State maintain liability insurance for their vehicles equal to that required by FLCRA.

The number of jobs provided by the seed industry to young people each year is very large. The American Seed Trade Association estimates that more than 280,000 young people are engaged as temporary employees by the seed industry. Pioneer Hi-Bred International, Inc., which is headquartered in Des Moines and produced about 30 percent of the seed corn in 1977, employed about 50,000 people in detasseling last year, paying wages of nearly $14 million. DeKalb AgResearch, Inc., another large company active in Iowa, employed 32,000 detasselers in 1977.

Not only does the seed industry utilize primarily student labor, but also the supervisors who recruit and transport them are not professional contractors.

Normally, detasselers are recruited, transported, and supervised by employees of the seed companies or by other community residents seeking some extra income through part-time work. Many of the people in my State who would be required to register are schoolteachers or college students who have returned home for summer vacation. In summary, the people employed on a part-time basis by the seed industry are generally middle-class Americans, far different from the exploited groups which FLCRA was originally intended to protect.

Under the Labor Department's present policy, any individual who recruits students to work in the seed industry or transports them beyond 25 miles would be required to register. As a result, thousands of community residents who organize or transport young people on a part-time basis must register as farm labor contractors. The American Seed Trade Association estimates that more than 19,000 people would have to register. In contrast, during 1977, the Department of Labor reported about 12,000 registrations for all agriculture activities (other than the seed industry throughout the entire country).

Registration of these individuals is not necessary and will harm legitimate enforcement of FLCRA. The adults that recruit and transport young people in the seed industry have been adequately regulated by State and local law for many years. When Congress looked into the exploitation of migrant workers, it found no evidence of abuse in the seed industry. I have heard from many people in my State who resent the unnecessary paperwork associated with registration, and especially the requirement to be fingerprinted. Unnecessary enforcement of FLCRO breeds resentment against this law and against the Government employees that enforce it, but more importantly, it diverts Labor Department resources from focusing on the abuses and exploitation that the act was originally intended to prevent. I am concerned that if resentment continues to grow, the public may seek to have the entire law repealed; thereby ultimately damaging the very groups which the law was intended to protect.

The amendment that I am introducing is a narrow exemption to FLCRA that will exempt the seed industry to the extent that it does not use traditional migrant workers and professional con-

tractors; and it will not disturb the coverage of "day haul" operators which Congress, in 1974, sought to regulate.

On two other occasions, since 1974, amendments to FLCRA were adopted, exempting activities which were never intended to be covered. Like certain activities of the sheep-shearing industry and the custom poultry industry, the activities of the seed industry I have enumerated today should not be covered by FLCRA.

Mr. President, we in Congress must reduce the unnecessary intrusion of the Federal Government into the lives of the ordinary citizen. My amendment is intended to correct just such an abuse, without in any way diluting the protection the act was originally intended to afford.

Mr. President, I ask unanimous consent to have Senator DOLE added as a cosponsor of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. Mr. President, it is a privilege for the Senator from Indiana to be able to join with my colleague and friend from Iowa in introducing this amendment.

I have been working with our distinguished colleague from Iowa and have shared many of the same frustrations he has shared. I would like to reiterate the general thrust of his very detailed and very thorough explanation of why this amendment is necessary.

When Congress amended FLCRA in 1974 strengthening the act, I supported that effort because the Labor Department was not adequately protecting migrant workers from exploitation by unscrupulous farm labor contractors. Hearings held by both the House and the Senate demonstrated that many contractors recruited workers with exaggerated promises, skimmed large amounts from the worker's wages, transported them for long distances in unsafe vehicles, failed to furnish adequate housing, and paid workers in cash without keeping records of withholding taxes.

In order to combat these abuses, the major provisions of FLCRA (as strengthened by the 1974 amendments) require that farm labor contractors register annually with the Secretary of Labor, and be fingerprinted. Detailed information concerning the vehicles and housing provided for workers is required as well as compliance with special insurance provisions and a medical examination for vehicle drivers. In addition, contractors are required to keep detailed employment records and make detailed disclosures to workers concerning all aspects of the worker's employment.

Annual registration and detailed information was required because of the transient nature of this type of farm labor. Since migrant and seasonal farmworkers often travel far from their homes, they are extremely dependent upon the contractors that recruit them.

Until a few years ago, anybody who spent much time in a migratory labor camp, could not help but come away with the terrible feeling that this really was not the way people who work for a living should be treated in the United States of America. I believe that the 1974 amendments have greatly improved the protection of these workers.

However, having been a supporter and involved in the passage of that original act, it came as a significant shock to the Senator from Indiana to see that particular act, designed to meet a very real life-or-death emergency situation, construed to be applicable to a totally different and unrelated situation.

One of the first jobs I had as a young farm boy was to work for a neighbor who was in the seed corn business, and participate in the detasseling process.

It is a short-term, short-period kind of situation. It involves the use, primarily if not totally, of neighborhood kids, friends, families, farm neighbors, and their children in trying to meet the intense labor requirements at a given moment.

Recently, the Labor Department has begun imposing FLCRA upon the seed industry which rarely employs traditional migrant and seasonal farmworkers and professional farm labor contractors. The seed industry should be subject to FLCRA to the extent that it employs migrant workers and professional farm labor contracts; however, for the most part, the industry hires local young people ranging in age from 14 to 16 years old for a few weeks each season to detassel seed corn, eliminate "rogue" plants, and perform other functions. These young people normally work on farms nearby their homes and return home each evening.

They receive the minimum wage and are protected by the child labor provisions of the Fair Labor Standards Act and by the Occupational Safety and Health Act. In addition, they are normally transported in schoolbuses which are subject to State schoolbus inspection laws or in personal vehicles driven by the same adults that might transport them to the community swimming pool. Companies operating in my State maintain liability insurance for their vehicles equal to that required by FLCRA. According to the American Seed Trade Association the number of jobs provided by the seed industry to young people each year is approximately 280,000.

Mr. President, normally, detasselers are transported and supervised by employees of the seed companies or by other community residents seeking some extra income through part-time work. Many of the people in my State who would be required to register are schoolteachers or college students who have returned home for summer vacation. It is not unusual for a high school football coach to recruit his players in order to raise money for uniforms.

Under the Labor Department's present policy any individual who recruits students to work in the seed industry or transports them beyond 25 miles would be required to register. This would require the Department to register thousands of these community residents as farm labor contractors. According to the American Seed Trade Association approximately 19,000 people would be required to register. In contrast, during 1977, the Department of Labor reported about 12,000 registrations for all agricultural activities throughout the entire country. It is hard to believe that the Department can protect the workers that the act was intended to protect with its current resources if it actually enforces FLCRA against the seed industry.

Moreover, the registration of these individuals serves no useful purpose and is virtually unenforceable. Because the individuals who supervise and transport the detasselers also live permanently in the community, annual registration, fingerprinting, and the other requirements designed to keep traveling contractors subject to regulation are not needed; State and local law is sufficient. In addition, since these supervisors work for only a few weeks a year and since there are literally thousands of them, it would be virtually impossible for the Labor Department to insure registration.

When this matter first came to our attention, I thought it would be relatively easy to resolve. I shared the experience that has already been related to the Senate by our good friend from Iowa of trying to persuade the Secretary to rectify this problem administratively. I think the problem was a handful of bureaucrats under the Secretary with the immediate responsibility for carrying out this act. They first refused to consider it. Second, they said, "We'll take a look at the regulation."

Later, they said, "We'll not change the regulation, but we will just turn our head and not enforce it very much."

That is a ridiculous state of affairs and that is why I think this amendment which is before the Senate now is critical.

Mr. President, FLCRA was intended to protect migrant workers by registering professional farm labor contractors. We in Congress never expected the Labor Department to register high school teachers. In 1974 when the strawberry industry in the Pacific Northwest expressed its concern that the act might be applied to teenage berry pickers and the community adults that supervised them, we specifically referred to this as the kind of situation the act was not intended to cover. The problem now confronting the seed industry in my State is virtually identical to that anticipated in 1974 by the strawberry industry. I am sure that had we known in 1974 that the Labor Department would seek to enforce FLCRA against the seed industry several years later, this too would have been mentioned as another illustration of the kind of activity which the act was not intended to cover.

The amendment that I am cosponsoring is a narrow exemption to FLCRA that will exempt the seed industry to the extent that it uses student workers and community supervisors. If a corporation or farmer uses both traditional migrant and seasonal farmworkers as well as students and other local temporary workers, it is the intention of this amendment that the corporation or farmer would be covered under the FLCRA only to the extent that it acts as a farm labor contractor with respect to traditional migrant or seasonal farmworkers. The corporation or farmer would not be sub-

ject to the act with respect to the students and other temporary local workers referred to in this amendment.

Mr. President, I deeply believe in the goals of FLCRA; the Federal Government has a legitimate role in protecting traditional migrant and seasonal farmworkers because of a long history of abuse and exploitation of this underprivileged workforce which is so vital to our Nation's economy. However, FLCRA was never intended to apply to the situation I have referred to today in which thousands of teenagers work in fields near their homes for a few weeks each summer. The intrusion of the Federal Government in this way is unnecessary and must be stopped.

I appreciate the excellent job the Senator from Iowa has done. I have considered it a privilege to work with him.

Mr. LUGAR. Mr. President, I appreciate very much the opening statements made on this amendment by Senator CLARK and my distinguished colleague from Indiana (Mr. BAYH).

Mr. President, early in July, I received a number of letters from the seed industry in Indiana and from young people employed in the detasseling of hybrid seed corn in Indiana informing me of a Department of Labor policy which regards these young people as migrant laborers and requires labor contractors engaged in the hiring, transporting, and supervising of these young people to follow complicated registration procedures.

This Labor Department policy is based on a new interpretation of a law to protect traditional migrant work crews. Beginning in 1976, the Department of Labor began to apply the Farm Labor Contractors Registration Act of 1963 (FLCRA) to the activities of the seed industry, principally, seed corn detasseling. These work activities are performed during several weeks of the summer by high school and college students on summer vacation. Students have historically detasseled, rogued, and pollinated seed crops and were never treated as migrant workers until 1976. Incidentally, most of the supervisors of these student crews are students or teachers, also on summer vacation.

On July 21, 1978, I wrote to Secretary Ray Marshall suggesting that the Department of Labor had stretched the intent of the FLCRA by applying it to seed corn detasselers. Labor, however, advised me that its application to detasselers was within the scope of the FLCRA as amendment in 1974. I disagree.

My study of the FLCRA's legislative history indicates that Congress did not intend for it to apply to the detasseling situation. In fact, report language accompanying the 1974 amendments offers specific direction that the act was not to apply to student or other local berrypickers in the Pacific Northwest—a situation nearly identical to that of seed corn destasselers.

On August 2, in an informal sense, I introduced an amendment to the Labor-HEW appropriations bill, H.R. 12929, which would, in effect, overturn this policy of the Department of Labor toward young workers who fill summer jobs detasseling seed corn in Indiana and other States. This amendment was referred to the Committee on Appropriations where no action was taken.

Shortly after introducing this amendment, I learned of a similar effort to correct this situation initiated by Senator CLARK. I have since joined this effort with Senators CLARK, CULVER, BAYH, and PERCY. We have drafted this amendment which would exempt certain activities of the seed industry from regulation under FLCRA. Activities exempted include detasseling but also include activities such as roguing and hand pollenating which are typically performed by young people. This amendment is narrowly drawn so that only temporary employees of the seed industry who work in the fields near their homes would be exempted. Furthermore, our amendment would not affect the various State and Federal laws, including OSHA and the Fair Labor Standards Act, which currently protect student detasselers.

I urge passage of this amendment that would correct a situation that has threatened the summer jobs of 280,000 young people.

Mr. President, clearly, the points at issue here have been well made, but let me reiterate them for the sake of my colleagues.

Each of us who has been in contact with young people involved in detasseling seed corn, whether in the State of Iowa, a great corn producing State, the State of Indiana that often ranks along with and just behind Iowa in terms of production of corn each year, realize that something has occurred here that we believe was not intended. Senator CLARK, Senator BAYH, both indicated, others might, as I will, that we have been in communication with the Secretary of Labor, Mr. F. Ray Marshall, and his agents to see whether this could, in fact, be clarified by simply administrative language and policies of that Department.

I think each of us have been frustrated and confounded that a point of view that seemed to us relatively commonsense and straightforward has not been accepted.

In view of that, each one of us in our own way has proceeded to try to bring some commonsense to the situation.

I am very pleased to be a part of the introduction of the amendment today and a part of this debate. I am hopeful that the signal given by what I am certain will be unanimous—well, I hope unanimous—but at least overwhelming consent, will be a relief to a problem which has been meaningful.

My colleague from Indiana (Mr. BAYH) has described in detail his youth in working with the detasseling process. In my own experience, I had a similar happy occupation on my own farm in Indiana working with other people.

I think that the facts of the matter are that in a narrow sense the Department of Labor is trying not to give ground unnecessarily. I appreciate the idealism through which this is all being approached.

Some time ago a 25-mile limit had been mentioned as the defining point as to what becomes a neighborhood farm exercise and something involving migratory labor of 25 miles on most country roads in Indiana or here or elsewhere is not very far. There should be a greater capacity to move and to work than this rather narrow conscription.

So, on behalf of many persons in the State of Indiana and on behalf of young people everywhere who are involved in this constructive activity, I hope the amendment will be adopted, and adopted with a pretty strong voice here today.

Mr. WILLIAMS. Mr. President, because the Committee on Human Resources has had no opportunity to hold hearings on this proposed exception to the Farm Labor Contractor Registration Act, I would like to emphasize the narrow scope of what is being proposed here.

I certainly understand the negative reactions by many citizens in the Midwest, about the application of the Farm Labor Contractor Registration Act to local people who transport high school students and other persons who are not migrant or seasonal farmworkers to detassel corn. Certainly, no one would suggest that high school students are migrant workers in the usual sense of that term. And, of course, no one would argue that high school principals or other responsible members of the community should not be trusted to transport students to engage in this work.

The language which has been developed makes clear that no exemption will be provided by this amendment for people who are engaged in farmwork as their usual or principal employment. This is, therefore, a very narrow exemption. It involves only crews composed principally of students who are employed to detassel hybrid seed corn, and to engage in some incidental activities, during a 10-day to 2-week period each summer.

Limitations in the amendment insure that migrant and seasonal farmworkers will lose no protections. The amendment also provides that children under 18 years of age will not be used to transport groups of workers under this amendment.

With these limitations, I am satisfied that the amendment is narrow and meets the problem at hand without weakening necessary protections for migrant and seasonal farmworkers.

This amendment does amend legislation that came from the Human Resources Committee dealing with the registration of farm labor contractors.

The Senator from Iowa has described completely all the reasons that prompted us to pass that farm labor contractor legislation, the crew leader legislation, as it was formerly called. He described the exploitation that had been discovered, on the part of those who recruit, and contract to supply, farm workers to the farms for the harvest.

The most recent expression of the need for protection in this area is found in the Farm Labor Contractor Act Amendments of 1974. The situation to which this amendment is addressed was not described in the purposes of the earlier Crew Leader Registration Act. As a matter of fact, I have learned that the particular processes of corn detasseling began after we had developed that basic

legislation. I understand that following the corn blight of the early 1970's, new strains of corn were developed, and out of that came the necessity for manual detasseling of the corn. All this came after the passage of the Farm Labor Contractor Registration Act of 1963.

This amendment is narrowly defined to reach the situation that now prevails in the detasseling of corn, where mostly young people, students, are taken for brief periods, described in the amendment, to the farms. They are not migrant laborers. They return to their homes in the evening, and it is a local situation.

We have been given every assurance that within the local community there will be adequate protection and concern for the young people who are involved in this part of agriculture, the detasseling of corn and other limited activities.

With this understanding about the limited nature of the amendment, our committee will not object to this amendment. It is an exceptional situation and can be reached through this amendment.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. BAYH. Mr. President, I should like to express my sincere appreciation to my good friend and colleague from New Jersey for his cooperation in this matter. It was really as a result of his leadership that we first were made aware of the terrible problem that existed in some of the migrant labor camps.

All of us who are concerned about decent workplaces for Americans, wherever they may work, owe the Senator from New Jersey a deep debt of gratitude. I express that to him again, as I did at the time we were considering the legislation.

Mr. WILLIAMS. I thank the Senator from Indiana.

I appreciate the way this situation came to us. The members of our committee are sensitive to the application of law in situations about which we did not have information when we passed the basic legislation. We try to respond as we have, in not blocking or attempting to defeat their amendment to the law.

Mr. LUGAR. Mr. President, on behalf of those on this side of the aisle, I commend the distinguished Senator from New Jersey.

The minority members of his committee also have been notified and have given their assent to this measure, as I understand it.

I simply wish to reiterate what my colleague from Indiana has pointed out: We appreciate the sense of humanity and the commonsense that are involved. The problems of migratory workers are serious, as are the problems of youth. This has been a meeting of the minds, for which we are grateful.

Mr. WILLIAMS. I appreciate the statement of the Senator from Indiana.

I know that our ranking minority member, the Senator from New York (Mr. JAVITS), although he is not here on the floor, is aware of this and shares my feeling that we will not oppose the amendment.

Mr. CLARK. Mr. President, one further word: I particularly thank the Senator from New Jersey for his cooperation and work. I think everyone in this body knows the efforts he has made in this particular area, both through his subcommittee and through the committee generally. I add my commendations.

I thank Senator BAYH for working carefully with us over the last several days with regard to this amendment, and I thank the other sponsors: Senator LUGAR, Senator CULVER, Senator DOLE, and others.

Mr. President, I ask unanimous consent that the name of the Senator from New Mexico (Mr. DOMENICI) be added as a cosponsor.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

Mr. CLARK. Mr. President, it really has been through a cooperative effort by all the people mentioned here that we have been able to put this amendment together. I appreciate the comments of my colleagues, and I hope the managers of the bill will see fit to accept the amendment.

Mr. DOLE. Mr. President, I support this amendment, which I have previously cosponsored.

The distinguished Senator from Indiana (Mr. LUGAR) has pointed out that last year the Department of Labor ruled that persons employed in the detasseling of seed corn are required to register under the Farm Labor Contractor Registration Act. The amendment simply exempts corn detasselers from the FLCRA.

During the last session of Congress, Congress granted similar exemptions from the Farm Labor Contractor Registration Act for berrypickers and for crews on custom combiners.

Persons employed in corn detasseling are usually neighborhood high school students, not adult migrant laborers. Corn detasseling is an important source of employment to thousands of young people in the corn-belt States. If the Department of Labor ruling is permitted to stand, this source of employment is likely to dry up because employers—those who operate hybrid seed corn farms—will be subject to the massive paperwork registration requirements under the FLCRA.

I therefore urge my colleagues to support this amendment which benefits both employers and laborers in hybrid corn operations.

Mr. HUDDLESTON. Mr. President, I commend all those who have participated in the development of this amendment and have presented it here. It does address itself to a very serious and real problem, and I think it is an adequate and proper solution to that problem.

We are happy to accept the amendment.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. HUDDLESTON. I yield.

Mr. BAYH. Mr. President, I think we would be in error if we did not express a special note of gratitude to the distinguished Senator from Kentucky, who is a principal mover of this particular piece of legislation. We appreciate his sensisivity and his willingness to consider this amendment on the merits. Without his help, we would not be prepared to meet the successful results which I anticipate are going to be forthcoming.

Mr. HUDDLESTON. I thank the Senator from Indiana.

Mr. President, is there time remaining on the amendment?

The PRESIDING OFFICER. There is no time limit on the bill.

Mr. LUGAR. Mr. President, the minority is delighted to accept this amendment.

I second the comment made by my colleague from Indiana, Senator BAYH, that we deeply appreciate the work of Senator HUDDLESTON and his staff in working out this matter with the distinguished Senator from New Jersey and others on the Human Resources Committee.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HUDDLESTON. Mr. President, I know of no further amendments to the pending bill.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 976

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. (a) Effective January 1, 1979, section 1 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), is amended by—

(1) in subsection (6), striking out "$100,000" and inserting in lieu thereof "$200,000"; and

(2) in subsection (7), striking out "$100,000" and inserting in lieu thereof "$200,000".

(b) Section 1 of the Perishable Agricultural Commodities Act, 1930, is further amended by inserting in subsection (6) immediately after "(C) no person buying any commodity" the following: "other than potatoes", except that no person buying potatoes for processing solely within the State where grown shall be deemed or considered to be a dealer under subsection (6) of section 1, as amended by this subsection, until January 1, 1982.

SEC. 2. Section 3(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c(b)), is amended by—

(1) striking out "$100" in the third sentence and inserting in lieu thereof the following: "$300, plus $50 for each branch or additional business facility operated by the applicant in excess of twenty such facilities, as determined by the Secretary. Total annual fees for any applicant shall not exceed $1,000 in the aggregate";

(2) inserting immediately before the fourth sentence a new sentence as follows: "The Secretary may assess a single uniform license fee for all applicants, or the Secretary may assess a graduated fee based upon the amount or type of business conducted by the applicant or both.";

(3) inserting immediately after "referred to above:" in the fourth sentence the following: "*Provided*, That the amount of money accumulated and on hand in the special fund at the end of any fiscal year shall not exceed 25 percent of the projected budget for the next following fiscal year:"; and

(4) inserting "further" immediately after "*Provided*" in the fourth sentence.

SEC. 3. Section 3(b) of the Farm Labor

Contractor Registration Act of 1963, as amended (78 Stat. 920, as amended; 7 U.S.C. 2042), is amended—

(a) by striking out the word "or" at the end of paragraph (8), striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "or"; and

(b) by adding at the end thereof a new paragraph (10) as follows:

"(10) Any person who would be required to register solely because they are engaged in any such activity solely for the purpose of supplying full-time students or other persons whose principal occupation is not farmwork to detassel hybrid seed corn or sorghum for seed and to engage in other incidental farmwork for a period not to exceed four weeks in any calendar year: *Provided*, That such students or other persons are not required by the circumstances of such activity to be away from their permanent place of residence overnight: *Provided, further*, That such full-time students or other persons, if under 18 years of age, are not engaged in providing transportation in vehicles caused to be operated by the contractor.".

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 976.

The PRESIDING OFFICER. Without objection, it is so ordered.

## INTEREST RATES ON UPLAND COTTON PRICE SUPPORT LOANS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1076 while both Mr. HUDDLESTON and Mr. LUGAR are in the Chamber.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3468) to amend the Agricultural Act of 1949 to ensure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities (Rept. No. 95–1154).

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 103(f) of the Agricultural Act of 1949 is amended by striking out the fourth sentence of paragraph (1).

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1154), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SHORT EXPLANATION

The bill would place upland cotton in the same category and on the same basis as other agricultural commodities with respect to the interest rates charged eligible producers on price support loans.

BACKGROUND AND NEED

I.

Prior to the enactment of the Food and Agriculture Act of 1977, there was no statutory provision specifically relating to the charging of interest by the Commodity Credit Corporation on price support loans for eligible commodities. Thus, the rate of interest to be charged, if any, and the method of computation were matters for administrative discretion.

II.

The Food and Agriculture Act of 1977, however, contains a specific provision for determining interest rates on price support loans for upland cotton. The act adds section 103 (f)(1) to the Agricultural Act of 1949, which provides, in pertinent part, that the rate of interest on loans to cooperators on the 1978 through 1981 crops of upland cotton shall be established quarterly by the Commodity Credit Corporation on the basis of the lowest current interest rate on ordinary obligations of the United States.

III.

Until October 1, 1974, it was the policy of the Commodity Credit Corporation to set interest rates on commodity loans on a crop-year basis with all loans on a particular crop bearing interest at the same rate from disbursement to repayment.

Effective October 1, 1974, the interest rate policy was changed to provide that commodity loans would be subject to changes in the interest rate while they were outstanding. The Executive Vice President of the Commodity Credit Corporation was directed to review the interest rate semiannually, each March and October, and to establish and publicly announce a rate which would recover the Corporation's cost of borrowing.

IV.

The policy on semiannual review of interest rates for commodity loans has not been followed since March 1, 1976. At that time, the Commodity Credit Corporation made the interest rate of 7.5 percent per year (which was established on October 1, 1975, for commodity loans) effective for a 1-year period—April 1, 1976, through March 31, 1977. On April 8, 1977, the Secretary of Agriculture announced that a rate of 6 percent per year would be effective for the 1977 crop loans and that the same rate would apply from April 1, 1977, on outstanding crop loans.

V.

On June 13, 1978, the Commodity Credit Corporation announced that the annual interest rates on price support loans for 1978 crop commodities, except upland cotton, would be increased from the then 6 percent to 7 percent, effective immediately. The increased interest rate reflected an increase to the Corporation in the cost of money that it borrows from the Department of the Treasury.

VI.

On July 26, 1978, the Commodity Credit Corporation announced that the interest rate on price support loans for upland cotton would be increased from 6 to 7¾ percent, effective immediately. This increase reflected the change in law made by the Food and Agriculture Act of 1977. It was also announced that future interest rates on upland cotton price support loans would be evaluated and announced quarterly.

VII.

The bill being reported by the committee would repeal the statutory requirement regarding the interest rate to be charged on price support loans for upland cotton. The enactment of the bill would enable the Commodity Credit Corporation to charge the same interest rate on price support loans on upland cotton as is charged on loans for other commodities, thereby resulting in more equitable treatment of all producers.

Mr. ROBERT C. BYRD. Mr. President, I know of no further rollcall votes today, and the cloakrooms can make that announcement.

## OSAGE TRIBE IN OKLAHOMA

Mr. ROBERT C. BYRD. Mr. President, there is one measure that has been cleared for consent on both sides. It is Calendar Order No. 1080. I ask unanimous consent that the Senate proceed to the consideration of that measure now.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1081) to amend the laws relating to the Osage Tribe in Oklahoma.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert the following:

That section 9 of the Act of June 28, 1906 (34 Stat. 539, 545), as amended is further amended to read as follows:

"SEC. 9. There shall be a quadrennial election of the officers of the Osage Tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage Tribal Council shall be elected, to succeed the officers elected in the year 1974 at a general election to be held in the town of Pawhuska, Oklahoma, on the first Monday in June 1982, and on the first Monday in June of each fourth year thereafter, in a manner to be prescribed by the Secretary of the Interior, and said officers shall be elected for a period of four years commencing on the first day of July following the election. In case of a vacancy in the office of principal chief or other officer by death, resignation or otherwise, the vacancy shall be filled in a manner to be prescribed by the Osage Tribal Council. In the event of a common disaster and a quorum of five of the Osage Tribal Council does not survive, the Secretary shall appoint a principal chief and/or the number of councilmen necessary to complete a total of eight, to serve until the next quadrennial election. The Secretary is hereby authorized to remove from the council any member or members for good cause, to be by him determined, after the party involved has had due notice and opportunity to appear and defend himself. The tribal government so constituted shall continue in full force and effect until January 1, 1984, and thereafter until otherwise provided by Act of Congress.".

SEC. 2. (a) The first paragraph of section 3 of the Act of June 24, 1938 (52 Stat. 1034, 1035), as amended, extending the mineral estate reserved to the Osage Tribe by the Act of June 26, 1906 (34 Stat. 539), is further amended by striking the phrase "until the

eighth day of April 1983, and thereafter until otherwise provided by Act of Congress" and substituting, in lieu thereof, the phrase "in perpetuity".

(b) The second paragraph of section 3 of the Act of June 24, 1938 (52 Stat. 1034, 1035), as amended, is amended by striking the phrase "unless otherwise provided by Act of Congress" and inserting, in lieu thereof, the phrase "and thereafter until otherwise provided by Congress".

(c) The fourth paragraph of section 3 of the Act of June 24, 1938 (52 Stat. 1034, 1036) is amended by striking the phrase "January 1, 1984" and inserting, in lieu thereof, the phrase "January 1, 1984 and thereafter until otherwise provided by Congress".

SEC. 3. (a) The Act of February 5, 1948 (62 Stat. 18) is hereby repealed.

(b) Any Osage Indian having received a certificate of competency under paragraph 7 of section 2 of the Act of June 28, 1906 (34 Stat. 539, 542); section 3 of the Act of March 2, 1929 (45 Stat. 1478, 1480); or the Act of February 5, 1948 (62 Stat. 18), may make application to the Secretary of the Interior to revoke such certificate and the Secretary shall revoke such certificate: *Provided*, That revocation of any certificate shall not affect the legality of any transactions heretofore made by reason of the issuance of any such certificate. Restrictions against alienation of lands heretofore removed are not reimposed.

(c) Sections 3 and 4 of the Act of February 27, 1925 (43 Stat. 1008, 1010–1011); and section 4 of the Act of March 2, 1929 (45 Stat. 1478, 1480); and sections 1 and 3 of the Act of June 24, 1938 (52 Stat. 1034) are hereby amended by striking, wherever they occur, the phrases "of one-half or more Indian blood", "of more than one-half Indian blood", "of one-half or more Osage Indian blood", and "or who is one-half or more Osage Indian blood".

SEC. 4. In order to conserve natural resources and provide for the greatest ultimate recovery of oil and gas underlying the Osage mineral estate, the Secretary of the Interior is authorized to establish rules and regulations under which oil and gas leases producing from a common source of supply may be unitized.

SEC. 5. (a) Section 8 of the Act of April 18, 1912 (37 Stat. 86, 88), is hereby amended to read as follows: "Any person of Osage Indian blood, eighteen years of age or older, may dispose of his Osage headright or mineral interest and the remainder of his estate (real, person, and mixed, including trust funds) from which restrictions against alienation have not been removed by will executed in accordance with the laws of the State of Oklahoma: *Provided*, That the will of any Osage Indian shall not be admitted to probate or have any validity unless approved after the death of the testator by the Secretary of the Interior. The Secretary shall conduct a hearing as to the validity of such will at the Osage Indian Agency in Pawhuska, Oklahoma. Notice of such hearing shall be given by publication at least ten days before the hearing in a newspaper of general circulation in Osage County, Oklahoma, and by mailing notice of such hearing to the last known address of all known heirs, legatees, and devisees. The cost of publication shall be borne by the estate. The rules of evidence of the State of Oklahoma shall govern the admissibility of evidence at such hearing. All evidence relative to the validity of the will of an Osage Indian shall be submitted to the Secretary within one hundred and twenty days after the date of the petition for approval of such will is filed with the Secretary, unless for good cause shown the Secretary extends time: *Provided*, That such time shall not be extended beyond six months from the date of the first hearing. For purposes of determining the validity of any will, the Secretary is hereby granted the same subpena power as is vested in the courts. All costs of obtaining witnesses and evidence before the Secretary shall be borne by the party producing such witnesses or evidence, subject to such costs being taxed to the estate in the event that District Court of the State of Oklahoma having jurisdiction should determine such costs beneficial to the whole estate. Notwithstanding any appeal from the decision of the Secretary, approval of such will by the Secretary shall entitle it to be admitted to probate without further evidence as of its validity or, upon disapproval thereof, the heirs may immediately petition for letters of administration in the district court. No appeal from the order of the Secretary approving or disapproving any will shall stay the issuance of letters testamentary or of administration: *Provided*, That such letters shall not confer power to sell any restricted assets by virtue of any provision in such will, pay or satisfy legacies, or distribute property of the decedent to the heirs or beneficiaries until the final determination of the appeal, but all other action taken by the district court pending said appeal shall be valid and binding. No court except a Federal court shall have jurisdiction to hear a contest of a probate of a will that has been approved by the Secretary. Such appeals shall be on the record made before the Secretary and his decisions shall be binding and shall not be reversed unless the same is against the clear weight of the evidence or erroneous in law.".

(b) Section 3 of the Act of April 18, 1912 (37 Stat. 86), is hereby amended to read as follows: "That the property of deceased and of orphan minor, insane, or other incompetent Osage Indians, such incompetency being determined by the laws of the State of Oklahoma which are hereby extended for such purpose to all Osage Indians, shall, in probate matters, be subject to the District Court of Oklahoma having jurisdiction. A copy of all papers filed in the district court shall be served on the Superintendent of the Osage Agency at the time of filing, and said Superintendent is authorized, whenever the protection of the interest of the Osage Indian requires, to appear in the district court. The Superintendent of the Osage Agency or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators, guardians, or other persons having charge of the estate of any minor, incompetent, or deceased Osage Indian. Whenever he shall be of the opinion that the estate is in any manner being dissipated, wasted, or permitted to deteriorate in value by reason of the negligence, carelessness, or incompetency of the executor, administrator, guardian, or other person in charge of the estate, the Superintendent of the Osage Agency or the Secretary is authorized, and it shall be his duty, to report said matter to the district court, take the necessary steps to have such case fully investigated, and prosecute any remedy, either civil or criminal, as the exigencies of the case may require The costs and expenses of any civil proceedings shall be a charge upon the estate of the Osage Indian or upon the executor, administrator, guardian, or other person in charge of the estate of the Osage Indian and his surety, as the district court shall determine. Every bond of the executor, administrator, guardian, or other person in charge of the estate of any Osage Indian shall be subject to the provisions of this section and shall contain therein a reference hereto: *Provided*, That no guardian shall be appointed for a minor whose parents are living unless the estate of said minor is being wasted or misused by such parents: *Provided further*, That no land shall be sold or alienated under the provisions of this section without approval of the Secretary.".

(c) Section 7 of the Act of February 27, 1925 (43 Stat. 1008, 1011), as amended, is hereby further amended to read as follows: "Hereafter none but heirs of Indian blood and children legally adopted by a court of competent jurisdiction and parents, Indian or non-Indian, shall inherit from Osage Indians any right, title, or interest to any restricted land, moneys, or Osage headright or mineral interest.".

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, disposition of any Osage headright or mineral interest shall be subject to the provisions of section 7 of this Act.

SEC. 6. (a) With the approval of the Secretary of the Interior, any person of Osage Indian blood, eighteen years of age or older, may establish an inter vivos trust covering his headright or mineral interest except as provided in section 8 hereof; surplus funds; invested surplus funds; segregated trust funds; and allotted or inherited land, naming the Secretary of the Interior as trustee. An Osage Indian having a certificate of competency may designate a banking or trust institution as trustee. Said trust shall be revocable and shall make provision for the payment of funeral expenses, expenses of last illness, debts, and an allowance to members of the family dependent on the settlor.

(b) Property placed in trust as provided by this section shall be subject to the same restrictions against alienation that presently apply to lands and property of members of the Osage Tribe, and the execution of such instrument shall not in any way affect the tax-exempt status of said property.

SEC. 7. After passage of this Act, a person not of Osage Indian blood, except a child legally adopted by an Osage Indian in any court of competent jurisdiction and the lineal descendants of such adopted child, subject to the stipulation that such adopted child or his lineal descendants cannot alienate his Osage headright or mineral interest and the devolution thereof is limited to intestacy, will, or inter vivos trust the same as if he were of Osage Indian blood, is prohibited from receiving more than a life estate in an Osage headright interest owned by any Osage Indian, such adopted child or his lineal descendants, whether such interest is received by will inter vivos trust, or Oklahoma law of intestate succession. Upon the death of such recipient, the Osage headright or mineral interest shall vest in the remaindermen thereof who are of Osage Indian blood, adopted children, and/or lineal descendants of such adopted children designated by the will or inter vivos trust of the deceased Osage Indian, his adopted child, or the lineal descendants of such adopted child. If such instrument does not designate remaindermen thereof who are of Osage Indian blood, adopted children, and/or lineal descendants of such adopted children, or if the deceased died intestate, the Osage headright or mineral interest shall vest in his heirs pursuant to the Oklahoma law of intestate succession, subject to the above limitations. On the death of the non-Osage beneficiary or heir, except in the case of adopted children or lineal descendants of such adopted children, such Osage headright or mineral interest shall vest in the Osage Tribe and the tribe shall pay the estate of the non-Osage beneficiary or heir the market value of such Osage headright or mineral interest. Payments under this section shall be made from Osage tribal mineral funds authorized to be expended by section 8(b) hereof.

SEC. 8. (a) Any individual right to share in the Osage mineral estate (commonly referred to as "headright") owned by a person not of Indian blood may not, without the approval of the Secretary of the Interior, be sold, assigned, or transferred. Sale of any such interest shall be subject to the right of the Osage Tribe to purchase it within forty-five days at the highest legitimate price offered the owner thereof.

(b) Prior to the time any tribal mineral income is segregated for distribution to in-

dividual headright owners, the Secretary of the Interior, at the request of the Osage Tribal Council, may direct the use of any such income for the purchase of Osage headright interests offered for sale to the Osage Tribe pursuant to this section or vested in the Osage Tribe pursuant to section 7 of this Act.

SEC. 9. Under such regulations as the Secretary of the Interior may prescribe, the heirs and legatees of any deceased owner of an Osage headright or mineral interest, real estate on which restrictions against alienation have not been removed, and funds on deposit at the Osage Agency may be determined by the Secretary is such aggregate interests do not exceed $10,000: Provided, That no court of competent jurisdiction has undertaken the probate of the deceased's estate and a request for such administrative determination has been made to the Secretary by one or more of the heirs or legatees.

SEC. 10. An Osage Indian or his estate is exempt from the payment of all estate, inheritance, and income taxes on any Osage headright or mineral interest and the income derived therefrom.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill is passed.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1157), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of S. 1081, as introduced by Senator Bartlett, for himself and Senator Bellmon, is to amend and supplement various laws relating to the Osage Indians of Oklahoma.

BACKGROUND

The Osage Indians were traditionally and aboriginally located in southern Illinois and Indiana. When first contacted by white explorers, the Osage were located in Missouri and northern Arkansas. Through a series of treaties with the United States, beginning 1808 and ending in 1870, the Osage gradually ceded these lands and were removed westward.

By the act of July 17, 1870, a reservation was created for the Osage in northeastern Oklahoma. The reservation contained 1,470,934 acres and is now coterminous with Osage County, Okla.

In 1887, Congress passed the General Allotment Act of February 8, 1887 (24 Stat. 388) which provided that the various Indian reservations would be allotted, in individual tracts, to the members of the tribe and any remaining lands would be declared surplus and sold to white settlers. The Osage strongly resisted the allotment of their reservation and the 1887 act was made inapplicable to them.

However, in 1906, Congress passed the Osage Allotment Act of June 28, 1906 (34 Stat. 539) over strong protests from the Osage.

This act provided for the allotment of 480 acres to each member of the tribe and, after making certain reservations for schools, dwellings, cemeteries, Government buildings, et cetera, the remaining lands were to be divided equally among the members. The Secretary of the Interior was authorized to issue certificates of competency to adult Indians, authorizing them to convey their lands, except that 160 acres of homestead lands were to remain inalienable and nontaxable for 25 years or during the life of the allottee. Oil, gas, coal, and other minerals were to be reserved for the tribe for 25 years, were to be subject to lease by the tribal council, with the approval of the Secretary, and royalties were to be paid to the tribe. Minerals then were to become the property of the individual allottees. Allotted lands were to be subject to lease for farming and grazing purposes, with approval by the Secretary.

Funds of the Osage Tribe were to be held in trust for 25 years and then distributed to the individual members except that (1) moneys received from sale of land in Kansas and any moneys found due on claims against the United States were to be placed to the credit of the individual members of the tribe, were to draw interest as provided by law, and the interest was to be paid quarterly to members or to parents or guardians in the case of minors, and (2) royalties from mineral leases moneys received from sale of town lots or from grazing lands were to be placed in the Treasury to the credit of the individual members of the tribe and distributed at the same time as interest on trust funds. Provision was made for election of the tribal officers and council.

The 1906 act constitutes the basic Federal law regulating the property and affairs, including tribal government, of the Osage Indians, and the descent and distribution of interests in individual trust lands and property and in tribal property. This act has been amended and supplemented by several subsequent statutes, particularly with respect to extending the life of the Osage Tribal Council, and in extending the tribal mineral reservation, and the trust status of the individual allotments.

LEGISLATIVE HISTORY

S. 1081 and S. 1087 were introduced by Senator Bartlett, for himself and Senator Bellmon. No hearings were held on the legislation.

A companion bill, H.R. 11894, was introduced on April 5, 1978 by Representative Risenhoover. A hearing was held before the House Interior Subcommittee on Indian Affairs and Public Lands on April 20, 1978. The House Committee on Interior and Insular Affairs reported H.R. 11894 on August 9, 1978.

COMMITTEE AMENDMENTS

The committee adopted an amendment in the nature of a substitute which incorporates the text of S. 1081–S. 1087 and S. 1089. Sections 1 through 9 of the substitute are identical to the companion measure in the House, H.R. 11984. The committee consolidated the bills in this fashion in order to expedite resolution of differences between the House and Senate versions of the legislation.

Section 10 of the substitute is identical to S. 1089. This section exempts an Osage Indian or his estate from payment of all estate, inheritance, and income taxes on any Osage headright or mineral interest and the income derived therefrom. This section does not appear in the House companion measure, H.R. 11894, but is identical to H.R. 4384, which was introduced by Mr. Risenhoover on March 2, 1977 and referred to the Ways and Means Committee.

EXPLANATION

The provisions of the substitute amendment are as follows:

Section 9 of the 1906 act, as amended, establishes the Osage Tribal Council and provides that such council shall continue in full force and effect until January 1, 1984. As of April 22, 1977, the Osage Tribe consisted of 9,205 persons of Osage blood who are carried on the Agency census records. Of these 9,205 individuals, an estimated 7,022 have no interest in the tribal mineral estate (known as a headright interest) and, under departmental regulations, have no vote in tribal election and no right to hold elective office, in the Osage Tribal Council. Osage headright interests may be passed by inheritance from one Osage to another. The inheritance process has resulted in some persons accumulating several headright's interests; others acquiring only a fractional interest; and still others of substantial Osage blood not acquiring any headright interest at all. In the last few years, a group of persons of Osage blood have filed suit against the Department of the Interior alleging that the tribal council has statutory authority only for management of the Osage mineral estate and not for general government of the Osage tribe. Section 1 of the substitute would extend the existence of the tribal council indefinitely and provides for filling of the various offices in the event of a common disaster. The committee does not intend by enactment of this section to affect in any way the question involved in the lawsuit noted above (*Logan et al.* v. *Andrus et al.* (Civ No. 77–165–C), N. D. Oklahoma). This section is similar to S. 1081.

Existing law with respect to the Osage provides that the mineral estate underlying the Osage reservation shall be reserved to the tribe until April 8, 1983 or until otherwise provided by Congress; that the property of the individual Osage shall continue to be held in trust until January 1, 1984, unless otherwise provided by Congress; and that the homestead allotment of individual Osage shall be exempt from taxation until January 1, 1984.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, that Senators may be permitted to speak up to 10 minutes therein, and that the period not extend beyond 1 hour and that I then be recognized for any final statement or orders that I may get before recessing.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

## EXECUTIVES MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 11:35 a.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to House Concurrent Resolution 683, revising the congressional budget for the U.S. Government for the fiscal year 1979,

requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. GIAIMO, Mr. WRIGHT, Mr. LEGGETT, Mr. MITCHELL of Maryland, Mr. BURLESON of Texas, Mr. DERRICK, Mr. OBEY, Mr. SIMON, Mr. MINETA, Mr. LATTA, Mr. CONABLE, Mr. DUNCAN of Tennessee, and Mr. REGULA were appointed managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to H.R. 6536, an act to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. DIGGS, Mr. DELLUMS, Mr. FAUNTROY, Mr. MAZZOLI, Mr. MCKINNEY, and Mr. WHALEN were appointed managers of the conference on the part of the House.

## HOUSE JOINT RESOLUTION REFERRED

The following joint resolution was read twice by its title and referred as indicated.

H.J. Res. 1088. A joint resolution providing financial assistance for the city of New York; to the Committee on Appropriations.

## COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–4283. A communication from the Vice President, Indian Claims Commission, reporting, pursuant to law, final determination with respect to cases before the Commission in docket numbered 59, 29–E and 133–B; to the Committee on Appropriations.

EC–4284. A comunication from the Chairman, National Transportation Safety Board, transmitting, pursuant to law, the Board's 1980 budget submission; to the Committee on Commerce, Science, and Transportation.

EC–4285. A communication from the General Counsel, Department of Energy, transmitting, pursuant to law, notices of meetings related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC–4286. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the department's third report on State Medicaid program compliance with section 1902(g) of the Social Security Act; to the Committee on Finance.

EC–4287. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Agency For International Development's Housing Investment Guaranty Program," September 6, 1978; to the Committee on Governmental Affairs.

EC–4288. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Customs' Cargo Processing—Fewer But More Intensive Inspections Are In Order," September 7, 1978; to the Committee on Governmental Affairs.

EC–4289. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Nuclear Regulatory Commission Needs to Aggressively Monitor and Independently Evaluate Nuclear Powerplant Construction," September 7, 1978; to the Committee on Governmental Affairs.

EC–4290. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report of findings of the Assessment of Bilingual and Bicultural Awareness Activities in Health Professions Schools; to the Committee on Human Resources.

EC–4291. A communication from the Secretary of Health Education, and Welfare, transmitting, pursuant to law, a report of findings of the Assessment of Health Professions Schools' Admissions Criteria for Billingual and Bicultural Activities; to the Committee on Human Resources.

EC–4292. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders suspending deportation, as well as a list of persons involved; to the Committee on the Judiciary.

EC–4293. A communication from the Assistant Attorney General for Legislative Affairs, Department of Justice, transmitting a draft of proposed legislation to improve the physical security features of the motor vehicle and its parts, increase the criminal penalties of persons trafficking in stolen motor vehicles and parts, and to curtail the exportation of stolen motor vehicles, and for other purposes; to the Committee on the Judiciary.

EC–4294. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders entered in 1,243 cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of such aliens; to the Committee on the Judiciary.

EC–4295. A communication from the National Commander, Military Order of the Purple Heart, transmitting, pursuant to law, its report of financial audit for the fiscal year ending June 30, 1978; to the Committee on the Judiciary.

## PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–784. A concurrent resolution adopted by the Legislature of American Samoa; to the Committee on Armed Services:

"HOUSE CONCURRENT RESOLUTION No. 106

Whereas, the Congress is now considering S. 1607, cosponsored by Senators Daniel Inouye and Spark Matsunaga, and H.R. 7161, sponsored by Congressman Richard White, identical bills that would include the Territory of American Samoa in the Junior Reserve Officers Training Corps for our high school students; and

"Whereas, in the statement of Deputy Assistant Secretary of Defense, Mr. I. M. Greenberg, he states that the 'enlistment rate is about three times the national U.S. rate' (speaking about American Samoan enlistments into the U.S. Armed Services now); and

"Whereas, Mr. Greenberg continues in that statement . . . (if) 'American Samoans can join our military forces, they should be able to join Junior ROTC. This proposed bill (H.R. 7161) corrects this inequity by enabling the high school students of American Samoa to participate in Junior ROTC'; and

"Whereas, the Fono has already passed one resolution endorsing this action HCR 44 of last August 1977, a copy of which it attached.

"Now, therefore, be it resolved by the House of Representatives of the Territory of American Samoa, the Senate concurring:

"That, the 95th Congress is respectfully requested to pass either S. 1607 or H.R. 7161 to correct the inequity of enabling the high school students of American Samoa to participate in the Junior ROTC program; and

"Be it further resolved, that the Chief Clerk of the House of Representatives is directed to send copies of this resolution to: Honorable John C. Stennis of Mississippi, Chairman of Senate Committee on Armed Services; Honorable Paul G. Hartfield of Montana, Member; Honorable Daniel Inouye of Hawaii, Member; Honorable Henry M. Jackson of Washington, Member; Honorable Spark Matsunaga of Hawaii, Member; Honorable Howard W. Cannon of Nevada, Member; Honorable John Tower of Texas, Member; Honorable Barry Goldwater of Arizona, Member; Honorable Melvin Price of Illinois, Chairman of House Subcommittee on Armed Services; Honorable Charles H. Wilson of California, Member; Honorable Richard White, Chairman of Subcommittee on Military Personnel; Honorable G. V. Montgomery of Mississippi, Member; Honorable Antonio Won Pat of Guam, Member; Honorable David Treen of Louisiana, Member; Honorable Elwood Hillis of Indiana, Member; Honorable I. M. Greenberg, Deputy Assistant Secretary of Defense for Program Management; Honorable Peter Tali Coleman, Governor of American Samoa; Honorable A.P. Lutali, Delegate-at-Large; Mr. Francis R. Valeo, Secretary of the Senate and Mr. Edmund L. Henshaw, Jr., Clerk of the House of Representatives."

POM–785. A joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 95

"Whereas, Since the fall of South Vietnam to Communist forces three years ago, the United States has welcomed the arrival of over 100,000 Vietnamese refugees; and

"Whereas, Over 80 percent of these refugees are seeking a better life in California and are gradually joining the mainstream of American life; and

"Whereas, These refugees have come to this country in order that they may enjoy the freedoms and human rights which constitute the basic principles for our system of government; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to promote respect for the rights of Vietnamese refugees in this country by granting the status of permanent resident alien to those refugees who request such status in order that they may have the opportunity to enjoy fully the American way of life; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. CULVER:

S. 3489. A bill to amend the Internal Revenue Code of 1954 to allow an additional carryback of 7 years for excessive net operating losses attributable to product liability losses; to the Committee on Finance.

By Mr. STENNIS:

S. 3490. A bill for the relief of A. Z. M. Rabiul Hasan; to the Committee on the Judiciary.

By Mr. WALLOP (for himself, Mr. MELCHER, Mr. HAYAKAWA, Mr. CURTIS, Mr. LAXALT, Mr. GARN, Mr. GOLDWATER, Mr. YOUNG, Mr. HATCH, Mr. DECONCINI, Mr. HANSEN, and Mr. STEVENS):

S.J. Res. 159. A joint resolution providing procedures for congressional disapproval of implementation of national water resources policies, and for other purposes; to the Committee on Governmental Affairs.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CULVER:

S. 3489. A bill to amend the Internal Revenue Code of 1954 to allow an additional carryback of 7 years for excessive net operating losses attributable to product liability losses; to the Committee on Finance.

● Mr. CULVER. Mr. President, I am today introducing legislation drafted by the Department of Treasury and endorsed by the administration as appropriate short-term financial relief to businesses hard-pressed by the rising costs and limited availability of product liability insurance. It would allow businesses suffering product-liability losses to "carry back" such losses and apply them against their taxable income in the 10 preceding years. This is an extension specifically for product liability 7 years beyond the 3-year carryback currently granted for most business losses. Earlier in this Congress, I introduced other tax measures, which had emerged from Senate Small Business Committee hearings which I chaired and from comprehensive studies by a Federal Interagency Task Force on Product Liability. These earlier bills, S. 1611 and S. 3049, while somewhat different in detail, share the essential common feature of allowing businesses to deduct from taxable income contributions to a reserve trust to be used only for product-liability related losses. The carry back legislation, in intent and in some of its effects, resembles S. 1611 and S. 3049. Introducing it today should facilitate the comparison of these two approaches in the hope of fashioning the best immediate response to a very complicated and serious problem.

Product liability is the term describing legal responsibility for injuries caused by items which a firm manufactures, distributes, or sells. Typically, firms protect themselves financially from payments which they may have to make to injured consumers and workers by purchasing conventional insurance coverage. Until recently, the cost of this coverage was a relatively minor portion of most firms' business expenses. In the past several years, for reasons which are still not entirely clear, this situation has changed dramatically. Startling increases in premiums for product liability extend across a broad range of industries. Averaging as much as 200 percent a year for such entire industries as machine tool building, sporting goods, and pharmaceuticals, these increases made it difficult for many small- and medium-size firms to afford insurance coverage. The situation was even worse for many individual firms confronted with yearly premium hikes of well over 1,000 percent. Some risked "going bare," taking the chance that a sizable settlement against them would cause bankruptcy or leave injured consumers without redress. The interagency task force reported that the problem had contributed directly to a number of business failures.

We should not be lulled into thinking that this is a minor problem limited to the relationship between manufacturers and insurers. To the extent that businesses must absorb increased costs, they inevitably pass them on to consumers as higher prices. Because one of the most severely affected industries is the machine tool area, the cost of virtually all products—which must be produced by machine tools—will feel the impact to one degree or another. To the extent that firms go without insurance, injured consumers have no assurance that their injuries will be duly compensated.

Long-range solutions to the product liability problem inextricably involve such complicated and fundamental issues as tort law, workers' compensation, insurance ratemaking, and manufacturing practices. It is clear that legal changes in these areas will require careful work and lengthy consideration. In the meantime, it is equally clear, some measure of immediate financial assistance to businesses is in the public interest.

Both tax deductible reserve trusts and extended carryback allowances would facilitate the ability of firms to provide themselves with adequate risk coverage. In the case of reserve trusts, dollars which otherwise would have been paid as taxes can be held against the possibility that they might be needed for product liability related losses. In the case of the carryback extension, dollars which have already been paid as taxes can be recouped to pay similar costs. The taxpaying business faced with a net operating loss in a current year due to product liability could file amended returns for preceding years, deducting from taxable income for those years the unused portion of the current year's net operating loss. Refunded taxes would then be available to help pay the product liability settlement.

Although the Department of Treasury maintains that the carryback extension is an effective substitute for a proposed reserve trust, I believe that it also merits attention as a supplement to such a trust. Businesses trying to fund a truly catastrophic loss might well find trust dollars or potential refunds from an extended carryback capacity individually inadequate—but in combination sufficient to meet their needs. Another benefit of extended carryback would accrue to firms which faced net operating losses for reasons including, but not limited to, product liability costs. These other losses can now be carried back for 3 years and conceivably might exhaust the firm's potential for a refund under current law. An additional 7-year period solely to carry back product liability losses would be extremely valuable for such firms.

The U.S. Department of Commerce which recommended the reserve trust approach earlier this year identified a number of very beneficial secondary effects to such an approach. Whether the carryback provision would achieve all of the advantages of a tax-deductible reserve account, as the Treasury believes, is a question which merits serious attention.

Among the advantages of the reserve trust is the incentive it provides to manufacturers to emphasize safe products. Manufacturers operating with such a trust would see their own funds directly at risk. In order to protect that investment they would be far more likely to undertake and maintain efforts to minimize dangerous defects in their products. Whether they would feel a similar incentive with extended carry back availability in which the tendency would be to view the dollars at risk as the Government's money—taxes already paid—needs to be explored.

Similarly, another advantage of a reserve trust is its potential to bring competition to bear upon insurance carriers to charge affordable premiums. Though extensive data was assembled by the task force, it was insufficient to measure precisely the justification of premium increases in recent years. The task force did feel confident, however, that claims and settlements experience did not fully justify the rising charges and that insurers were "panic pricing." The existence of a reserve trust serving as "self-insurance" or to cover. and thus allow a firm to accept a higher deductible or partial self-retention (leading to reduced premiums) would give firms improved "bargaining power" with their insurance carriers. Theoretically, I am told, the potential refunds of extended carry back give the same power. Whether this actually would prove to be the case has to be demonstrated.

Finally the deduction for funds contributed to a reserve account will be discerned as an immediate tax benefit in the eyes of business owners. It will actively encourage them to protect themselves and their customers through the establishment of a self-insurance trust. The tax benefit of carry back is a potential one, realized only after a loss occurs. When realized it can pay only part of a product liability loss, since the loss is applied against previous taxable income—not against previous taxes. It would need to be supplemented from currently available funds. We need to give serious thought to whether manufacturers would set aside "post-tax" dollars for such a purpose.

In summary, Mr. President, the legislation which I am introducing today has certain independent advantages which argue for its adoption. Taken in conjunction with a provision for a tax-deductible reserve account it can make a strong contribution to the ability of firms to guard against product liability losses. The administration has now formally acknowledged that product liability difficulties are serious problems for thousands of American small businesses. It is also important that it has urged a responsible use of the IRS Code as appropriate short-term solutions are

sought. I am pleased to introduce this legislation today in the hope that it will let us move promptly in the weeks ahead to refine the precise terms which this relief measure should take. I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3489

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 172 of the Internal Revenue Code of 1954 (relating to net operating losses) is amended—

(1) by striking out "and (G)" in clause (i) of section (b)(1)(A) and inserting in lieu thereof "(G), (H), and (I),",

(2) by inserting at the end of subsection (b)(1) the following new subparagraphs:

"(F) In the case of a taxpayer who incurs a product liability loss (as defined in subsection (i)) for any taxable year beginning after December 31, 1977, the smaller of—

"(i) the excess of the net operating loss for such year (determined without regard to any portion thereof attributable to a foreign expropriation loss) over the sum of the taxable income (as determined under paragraph (2)) for each of the 3 prior taxable years to which such loss may be carried under subparagraph (A)(i), or

"(ii) the product liability loss for such taxable year,

shall be a net operating loss carryback to each of the 7 taxable years preceding the earliest of such 3 prior taxable years.

"(I) In the case of a taxpayer who incurs a net operating loss for a taxable year beginning after December 31, 1977 (referred to in this subparagraph as the 'loss year') and who had both a net operating loss and a product liability loss (as defined in subsection (i)) for a prior taxable year beginning after that date (referred to in this subparagraph as the 'prior year'), if the amount of the net operating loss for the loss year which may be carried over under this subsection would be reduced by doing so, then the smaller of—

"(i) the net operating loss (determined without regard to any portion thereof attributable to a foreign expropriation loss) for the prior year, or

"(ii) the product liability loss for the prior year,

shall be considered to be a separate net operating loss for the prior year and shall be a net operating loss carryback to each of the 10 taxable years preceding the prior year.",

(3) by adding at the end of paragraph (2) of subsection (b) the following new sentence: "In the case of a taxable year to which paragraph (1) (H) applies, this paragraph shall be applied by treating the entire net operating loss as a net operating loss carryback to each of the 3 taxable years preceding the loss year and by treating that portion of the loss described in paragraph (1)(H) as a separate net operating loss carryback to each of the 7 taxable years preceding the earliest of such three taxable years." and

(4) by redesignating subsection (i) as (j), and by inserting after subsection (h) the following new subsection:

"(i) PRODUCT LIABILITY LOSS DEFINED; SPECIAL RULE.—For purposes of subsection (b)—

"(1) PRODUCT LIABILITY LOSS.—The term 'product liability loss' means, for any taxable year, the amount of the deductions under sections 162 and 165 attributable to product liability (as defined in paragraph (2)) and to expenses incurred in the investigation, settlement, and opposition to claims against the taxpayer on account of product liability.

"(2) PRODUCT LIABILITY.—The term 'product liability' means liability for damages on account of physical injury or emotional harm to individuals, or damage to or loss of use of property, on account of the manufacture, importation, distribution, lease, or sale by the taxpayer of any product if such liability arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

"(3) SPECIAL RULE.—For purposes of applying sections 6501 and 6511 to a net operating loss to which subsection (b)(1)(I) applies, the net operating loss for the prior year (as defined in such subsection) shall be considered to be a net operating loss for the loss year (as defined in such subsection).".●

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By Mr. WALLOP (for himself, Mr. MELCHER, Mr. HAYAKAWA, Mr. CURTIS, Mr. LAXALT, Mr. GARN, Mr. GOLDWATER, Mr. YOUNG, Mr. HATCH, Mr. DECONCINI, Mr. HANSEN, and Mr. STEVENS):

S.J. Res. 159. A joint resolution providing procedures for congressional disapproval of implementation of national water resources policies, and for other purposes; to the Committee on Governmental Affairs.

● Mr. WALLOP. Mr. President, a sound, comprehensive, and workable national water resource policy is a priority. However, the formulation and implementation of such a policy cannot be unilateral. To do so is a recipe for confrontation. The States, the Executive, and the Congress must all interact if such a policy is to be successful.

Today we introduce a Senate joint resolution which provides for State notification and congressional review of regulations which would implement certain new national water resources policies. Through the procedures which we seek to establish here, certain water policies initiated by the Executive will be channeled through Congress and the States to insure the interaction that is absolutely necessary to the successful implementation of any such policy of national scope and importance.

A brief review of the recent history of development of a Federal water resources policy will highlight the need for this procedure. For well over 1 year now, the Executive has been engaged in a comprehensive review of Federal water resources policy. The first few months of that study, conducted without participation by the public, the States, or Congress, resulted in the publication of July 15 and 25, 1977, of option papers in the Federal Register. The scope of these water policy option papers was well beyond the proper scope of an exclusively Federal policy study. They dramatically pointed to the need for increased State and congressional participation in the development of a national water resources policy.

The controversy which ensued was productive in that it fostered an increased level of necessary participation. However, the forum for policy development was still exclusively Federal, while the possible ramifications of the study would likely be felt most heavily by States and the individual water users.

Concerned with this disparity, the Senate, on October 5, 1977, agreed to Senate Resolution 284, which expressed the sense of the Senate that no new national water policy be implemented without congressional concurrence and review by the States.

The water resources policy study culminated in the President's announcement of a national water resources policy on June 6, 1978, that policy basically contained only broad policy statements, however, it was generally conceded that the policy reflected the increased degree of public, State, and congressional participation in the process. It represented significant improvement over what had appeared to be the policy's initial direction a year before.

The President's general policy statement of June 6, was followed on July 12, 1978, by a series of more specific Executive memoranda to the heads of Federal agencies and departments.

In most cases, these Executive memoranda directed agencies and departments to improve internal procedures, prepare legislative proposals for submission to Congress, and to further study particular areas of water policy which had been identified as posing special problems. However, in a few cases, the memoranda directed the immediate implementation of policies which would directly impact upon the American people. In these cases, the directives are directly contrary to the sense of the Senate as expressed in Senate Resolution 284.

Our resolution speaks only to this last type of directive. It does not seek to block their implementation en bloc, but only to provide State and congressional review so that their implementation will have the benefit of comprehensive review, or will be quickly identified as a policy for which there is no concensus.

The potential impact of these policies is unknown. On July 10, 1978, the Subcommittee on Water Resources of the Committee on Environment and Public Works held hearings on national water policy. At that hearing, those in the executive branch charged with the implementation of these policies could not explain the meaning of the directives which they were charged with immediately implementing. Yet the implementation process goes forward.

Under the terms of our resolution, two specific types of policies would be subject to rule regulation review and State notification. First, those which would impose additional burdens on those who contract for municipal, agricultural, and industrial water supply from Federal projects. Second, those which would impose additional burdens on those who receive or seek Federal grant or loan assistance for water supply and treatment works. The resolution would also require congressional and State notification of Federal legal actions which might extinguish or diminish rights to the use of water under the Reservation Doctrine.

Specifically, Congress would be provided 60 days in which to disapprove any rule or regulation which would implement the policies described above. If either House passed a resolution stating in substance that the House did not approve of the rule or regulation, it would cease to be effective. The provisions of section 1017 of the Impoundment Control Act of 1974, 37 United States Code 1407, would apply to the procedural require-

ments of such a resolution in either House.

The States would be provided with not less than 60 days notification before regulations to implement this limited portion of the policy could be promulgated.

Finally, our resolution would require the heads of Federal agencies or departments to notify Congress before instituting legal action which might extinguish or diminish rights to the use of water which have been perfected under State laws through the use of the doctrines of Federal or Indian reserved water rights. This does not represent a congressional affirmation of either doctrine or reserved rights. It does not seek to limit the powers of the Federal Government to claim or protect any of its property rights. It only seeks at this time to insure that Congress and the affected States will be informed of how the process of "inventory and quantification," which has been ordered, is progressing, and of the conflicts which may be generated by its implementation.

Mr. President, I wish to reemphasize that this resolution is not intended to put us at loggerheads with the executive branch on water policy. On the contrary, it seeks to establish a procedure through which policy on a limited number of issues will be implemented with full review so as to identify conflicts early. In this way we can insure that those policies which are implemented have had the benefit of wide review and consideration, and hopefully of consensus as well.●

## SENATE RESOLUTION 557—SUBMISSION OF A RESOLUTION REQUESTING THE PRESIDENT TO APPOINT A SPECIAL PROSECUTOR IN CONNECTION WITH GSA

Mr. ROTH submitted the following resolution which was referred to the Committee on the Judiciary:

S. RES. 557

Resolved, that it is the sense of the Senate that:

1. the President, with the advice and consent of the Senate, immediately designate an individual of the highest character and integrity from cutside the Executive Branch to serve as special prosecutor for the government of the United States in any and all criminal investigations, indictments, and actions arising from any illegal activity by any persons acting individually or in combination with others, relating to the General Services Administration.

2. the President should grant such special prosecutor all authority necessary and proper to the effective performance of his duties, subject to the following guidelines:

DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

THE SPECIAL PROSECUTOR

There will be appointed by the President with the advice and consent of the Senate within the Department of Justice a Special Prosecutor to whom the President & Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of any illegal activity by any persons acting individually or in combination with others, relating to the General Services Administration.

STAFF AND RESOURCE SUPPORT

1. Selection of staff.

The Special Prosecutor shall have full authority to organize, select, and fire its own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. Budget.

The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. Designation and responsibility.

The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the General Services Administration Special Prosecution Force and shall be responsible only to the Special Prosecutor.

CONTINUED RESPONSIBILITIES OF ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

APPLICABLE DEPARTMENTAL POLICIES

Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

PUBLIC REPORTS

The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest any assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part.

● Mr. ROTH. Mr. President, today I am submitting a resolution calling for the President to appoint an independent special prosecutor to be confirmed by the Senate to investigate the General Services Administration.

I believe this action is vital to insure the investigation is thorough and impartial. The alleged corruption in GSA has been called the largest money scandal in our Nation's history. After months of investigation, we still do not have a clear idea of the dimensions of these problems. We only know they are enormous and pervasive. We need a special prosecutor, fully empowered to investigate and prosecute.

I am very distressed to learn the current special counsel will soon leave GSA with a great amount of unfinished work. I am concerned that whatever momentum the current investigation has, might be slowed by this move. I have also learned the President has asked one of his closest friends and Attorney General Griffin Bell's former law partner to monitor and observe the GSA investigations. While I appreciate the President's concern, I believe this action in no way satisfies the need for an independent special prosecutor, confirmed by this body.

The American people are outraged by the press accounts of the GSA corruption. It is time to put a stop to this swindle and begin to restore public confidence in our Government.●

## NOTICE OF HEARINGS

AGRICULTURAL RESEARCH AND GENERAL LEGISLATION SUBCOMMITTEE—HEARINGS OF THE USE OF NITRITES IN THE PROCESSING OF MEAT

● Mr. LEAHY. Mr. President, I would like to announce that the Agricultural Research and General Legislation Subcommittee, of which I am chairman, will soon hold the third in a series of hearings on "Chemicals in Food and Agriculture." This section of hearings will be held on the issue of the use of nitrites in the processing of meats and will be held on September 13, 14, 15, and 25, from 8 a.m. to 11 a.m. in room 322, Russell Senate Office Building.

The series of hearings on "Chemicals in Food and Agriculture" were started in 1977. These hearings began with a broad overview of the state of science in regard to detection of chemicals in our food supply and then explored the status of regulation of these chemicals by Government. This series of hearings was undertaken to establish an objective record to which Congress can look when it addresses issues in this area of crucial importance to health and well-being of our Nation's 220 million citizens.

We are now about to address the issue of nitrites. Nitrites are used in the cur-

ing of meat and meat products. These additives are used for several reasons including botulism prevention, and color and flavor enhancement. However, their safety and their status as additives have been recently called into question by a study conducted by Dr. Paul Newberne of the Massachusetts Institute of Technology for the Food and Drug Administration, which indicates that nitrites may be carcinogenic.

These hearings on nitrites will focus on the Newberne study and its health, legal, and economic implications, the effects of a ban or limitation of the use of nitrites, especially focusing on the issue of botulism, the health effects of continued use of nitrites as additives, the alternatives to nitrite cured meats and their feasibility, and the economics of nitrite use or disuse.

Because of the limited time available for hearings at this time, the subcommittee will only be able to allow presentations from invited witnesses. These invited witnesses will cover all viewpoints and all segments of the affected public, industry, and Government—see attached witness list. However, we encourage all interested parties to submit written statements for the hearing record.

It is our subcommittee's hope that these hearings will provide an objective forum to thoroughly explore this complex issue.

To submit statements or for further information, please contact Ms. Denise Alexander, hearing clerk, Senate Agriculture, Nutrition Committee, room 322, Russell Senate Office Building, Washington, D.C. 20510 or call 202/224-2035.

The list follows:

SCHEDULE

Wednesday, September 13, 8 a.m. to 11 a.m.:

Dr. Paul Newberne, Professor of Nutritional Pathology, Department of Nutrition and Food Science, Massachusetts Institute of Technology.

Thursday, September 14, Scientific Panel on Newberne Study 8 a.m. to 9:45 a.m.:

Dr. William Lijinsky, Director of Chemical Carcinogenesis Program, Frederick Cancer Research Center.

Dr. John Weisburger, Vice President for Research, Naylor Danna Institute for Disease Prevention.

9:45 a.m. to 11 a.m.: Scientific Panel on Botulism.*

Friday, September 15, 8 a.m. to 8:30 a.m.:

Marvin Garner, Executive Vice President, National Pork Producers Council.

8:30 a.m. to 10:00 a.m., Consumers and Health Advocates Panel:

Ellen Haas, Director, Consumer Division, on behalf of Community Nutrition Institute and the Consumer Federation of America.

Mike Jacobson, Executive Director, Center for Science in the Public Interest.

Anita Johnson, Environmental Defense Fund.

Bill Schultz, Staff Attorney, Public Citizen Litigation Group.

10 a.m. to 11:30 a.m., Industry Panel:

Richard Lyng, President, American Meat Institute.

Stephen Krut, Assistant Executive Director, American Association of Meat Processors.

Arthur Buring, President, Buring Food Group, Inc., accompanied by Dr. William Brown, ABC Research, on behalf of National Independent Meat Packers Association.

Monday, September 25, 8 a.m. to 11 a.m.:

Dr. Donald Kennedy, Commissioner, Food and Drug Administration.

8 a.m. to 11 a.m.: Carol Tucker Foreman, Assistant Secretary of Agriculture.●

*To be determined.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to hold a hearing on truck safety.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

## ERA EXTENSION: THE ISSUE IS FAIRNESS

● Mr. GARN. Mr. President, many of my colleagues think that only those opposed to the Equal Rights Amendment in principle are disturbed by the process of extending the time limit for State ratifications. I suppose we are inclined to be more concerned than others, but it is only fair to note that many institutions and groups who strongly support ERA oppose the political power play now pushing the extension through the Congress.

As an example, I cite the New Republic. This magazine is not normally thought of as a bastion of conservatism, or resistance to social issues. And the New Republic strongly supports the ERA.

But its editors oppose extension, at least as it is being carried out.

In an editorial in the issue of July 29 of this year, the editors raise three questions: First, the length of the extension; second, rescission; and third, whether or not a two-thirds vote is required. TNR does not answer these questions; merely notes that they are real questions, and troubling. "These procedural problems make us doubt the wisdom of extension."

These same procedural questions trouble me, Mr. President, and lead me to use whatever parliamentary tactics are available to me to see that they are resolved properly before an extension for ERA is voted on.

Mr. President, I invite all Senators to read the editorial mentioned, and ask that it be printed in the RECORD.

The editorial follows:

ERA: START FROM SCRATCH

This has become the summer of the ERA. The Equal Rights Amendment was originally scheduled by Congress to be ratified or rejected by the states after a seven year period ending on a cool day now eight months away: March 22, 1979. But still three states short of the 38 needed for ratification and running out of time, the ERA was brought back to the capital in the July heat for a new lease on life. On July 9, a crowd in white sweated under the DC sun and posed a grand question: can there be a time limit on justice, the cause of equal human rights? Others in ordinary dress, both for and against the ERA, have been asking a more prosaic question: is extension of the ratification deadline for the ERA a fair or advisable procedural innovation? Sitting bleached under the TV lights in the committee room last week, opponents and proponents of the extension got their first answers from the House Judiciary Committee. Yes, there is a time limit—until June 30, 1982; but yes, extension is fair and advisable—for three and a quarter years. Proponents clapped at the results. We support the ERA, but we doubt this is the way to achieve it.

The long day of debate dealt with the constitutional procedure of extension, not with the substance of the ERA. Citing Supreme Court precedents and the testimony of constitutional scholars, the committee members generally agreed that Congress has the power to enact an extension of a ratification time limit that Congress itself has imposed. Here the consensus stopped. Committee members disagreed on the policy of exercising that power. Among those who supported an extension, there were three points of controversy. First, the length of the extension. How many years satisfies the vague standard that three-fourths of the states approve an amendment "contemporaneously"? Second, the issue of rescission. If states that have ratified an amendment wish to change their minds, is this merely fair play or a dangerous constitutional innovation? Third, the question of method. Must an extension be approved by the two-thirds majority required to start the amendment process, or only by a simple majority?

These procedural problems make us doubt the wisdom of extension. The controversy over procedure is not likely to be resolved easily, and it shouldn't be. It is a constitutional controversy and involves, like the ERA debate, principles we like to think are fundamentally important. But neither the constitution nor the ERA need be sacrificed to the other. If the extension passes, it may mean bad press for the ERA and a bad precedent for the constitutional process of amending. An extension could be the arbitrary time limit that ends up killing the ERA; if it fails to be ratified, even with a three-year extension—which can't be ruled out—the amendment will be dead.

Even if the ERA is ratified after an extension, its symbolic power may be diminished by general sentiment that the ratification procedure smacked of foul play, especially if rescission are not allowed. To tamper with the constitutional amendment procedure now makes it more susceptible to tampering later, when the purpose may not appeal to liberals who want to fiddle now.

Instead of extending the ERA, why not start from scratch if its deadline expires without three more ratifications? A conservative House Judiciary Committee has passed an extension and is hopeful that it will pass a full House, even with a two-thirds majority, if the Rules Committee calls for it. This makes it hard to believe that a new ERA, unencumbered by constitutional problems, wouldn't be approved. Ratification would be a bigger project with a fresh start, but there would be more time and fewer public relations problems. Polls show that most people support the ERA on its merits. A new beginning would shift the debate back to those merits. If the ERA is an important and necessary amendment, and we feel it is, an examination of what it really means should give it the full and informed support it may now lack.●

## THE MISEDUCATION OF MILLIONS: THE ALARMING RISE OF FUNCTIONAL ILLITERACY IN AMERICA

● Mr. McGOVERN. Mr. President, it is intolerable, but true, that on International Literacy Day in 1978, America's standing in world literacy ratings is fall-

ing sharply. The United States, the first country to provide public education for all, has now been surpassed by the Soviet Union in effectively educating its citizens. According to the United Nations in 1970, the U.S. illiteracy rate was three times higher than that of the Soviet Union; 2 million Americans of at least normal intelligence were illiterate, according to the U.N. count.

In fact, even this estimate of America's illiteracy rate is too low. The results of new and more accurate tests reveal that one out of every five Americans is reading with serious difficulty; they cannot read a newspaper intelligently, understand directions on household articles, or comparison shop for value. But nowhere is the evidence more frightening than among our youth. In 1977, Gilbert B. Schiffman, director of the Federal right-to-read program, reported that—

> At least one out of ten students nearing the end of high school is still not able to do basic everyday reading tasks . . . in certain low socio-economic areas the ratio exceeds one out of five.

Even many prospective teachers are not truly literate. For example, in 1976 one-third of the applicants for teaching jobs failed an eighth grade general knowledge test in Florida. And as the problem worsens, educational agencies do less and less about it, even though study after study continues to document the dimensions of our failure.

According to the national assessment of educational progress in 1974–75:

> Thirteen percent of all seventeen year olds were functionally illiterate.
>
> Forty-two percent of all blacks in that same age group were functionally illiterate.

But even these percentages understate the problem by not including high school dropouts, whose illiteracy rates are very high. The National Institute of Education estimates that "the majority of functionally illiterate students are dropping out of high school before they graduate."

U.S. STUDENTS BEHIND EUROPEANS

Unfortunately, the problem is not confined to those who drop out or are only hoping for a high school diploma. Incredibly, many college-bound graduates are also borderline literates. Colleges and universities complain that one out of four incoming freshmen need remedial help in reading and writing. The University of California found that 75 percent of the State's top high school students failed a nationally used English composition test in 1975. And as a group, American students scored considerably lower on achievement tests than students from other industrially advanced nations: 21.7 points lower in math than students in Germany, 25.5 points below students in Japan, and 31 points below British students.

Over the last 14 years, scholastic aptitude test scores have fallen steadily. There has been a 49-point drop in verbal skills and a 32-point drop in math skills. Annegret Harnischfeger and David Wiley found that a significant drop in English course enrollments, 11 percent nationwide and 19 percent in California from 1972 to 1975, along with a drop in basic and practical course enrollments, could account for the lower scores. They suggest that a 10-percent decrease in the total number of classroom hours spent in teaching the fundamentals caused the 10-percent drop in SAT scores. According to this study, and a later study by the college board, other causal factors included the high incidence of absenteeism and a 50-percent cut in homework. Both studies agreed that changes in test material were not responsible for the falling scores, but that softer academic requirements might be. The college board cautioned, however, that no diagnosis was certain: "The truth is that the real causes for this complex change are at present unknown." There is no certain explanation, but there is absolutely no excuses. Every high school graduate in this country should have at least a basic knowledge of the three R's.

Sadly, this is not the case. The problem is chronic and getting worse. And if this trend continues—if illiteracy remains underinvestigated and research tools underdeveloped—an already deteriorating situation will become an educational disaster and a national disgrace.

Therefore, the first step toward ending illiteracy is the most basic one. We lack an operational definition that sets the goals and standards that American education must meet. Lyndon Johnson once said:

> The answer for all our national problems—the answer for all the problems of the world—comes to a single word. That word is education.

Yet we have not defined even the minimal meaning of education—the threshold at which education makes a meaningful economic and vocational difference for students.

The Federal right-to-read program broadly and vaguely defines the "literate person as one who has acquired the essential knowledge and skills in reading, writing, and computation required for effective functioning in society." In other words, literacy does not mean that one can simply read or write one's name or, at the other extreme, that one can appreciate and understand intricacies of a Faulkner novel. The real meaning of literacy lies somewhere in between. But, as of today, no one has discovered or set its boundaries.

THIRTY MILLION ADULT AMERICANS "FUNCTIONALLY INCOMPETENT"

Dr. Norvell Northcutt, director of the adult performance project, attempts to close this gap by offering a more specific terminology than "functional illiteracy" to describe the increasing lack of basic skills. In defining "functional competency," he draws a mathematical relationship between the mastery of basic educational skills and economic or educational success. Literacy, in his study, is a set of applied skills necessary to survival in a technological society. He defines three levels of functional competence. At the lowest level, the functional incompetent cannot effectively read a want ad, fill out a job application, or perform simple computational tasks. By this standard, 16 percent of whites, 44 percent of blacks, and 56 percent of Spanish surnamed adults—30 million adult Americans—are functionally incompetent. According to another study, 20 million Americans over the age of 16 cannot read well enough to understand a want ad. All too often, economic poverty is due primarily to educational impoverishment.

Employers cannot and will not hire people who can barely read or write. When they do, as the armed services have been learning to their distress, they assume a high risk. An astounding 30 percent of Navy recruits, according to Adm. Hyman Rickover, are a danger to themselves and to costly naval equipment because they lack basic educational skills. One illiterate recruit recently caused $250,000 in damage because he could not read a repair manual; he tried and failed to follow the illustrations.

ECONOMIC COSTS OF LOWER LITERACY

A solid education is the essential foundation upon which a productive life is based. If that foundation is weak or defective, what is built atop it will not be straight or strong, but crooked and near collapse. Young Americans who lack a minimally functional base cannot enter society at the ground level and work their way up. Rather, they swell our unemployment lines; they fill our prisons and our drug treatment centers. Instead of becoming taxpayers, they become taxeaters. at an annual public cost of nearly $6 billion.

We are ending up with three classes in this society—the very rich, the very poor, and the very taxed. Unless some changes are made soon, the welfare and the unemployment rolls will grow even faster; the divisions will cut even deeper.

Once again, America must pay more in the end for spending less in the beginning. The latest bill for Federal aid to education authorized a meager $47 million for basic skill training. It would make more dollar sense to prevent higher social costs in the years ahead by spending additional money on basic education now. Exorbitant public expenditures for treatment programs have bought insignificant gains. Many young Americans who enroll in vocational or occupational programs find their basic educational skills so deficient that they are unable to profit from job training.

ILLITERACY BARS YOUTHS FROM JOBS

According to a recent survey in New York City, many employers consider the lack of basic educational skills—rather than the lack of specific job skills—to be the decisive obstacle in hiring unemployed inner city youth. Mayor Edward Koch of New York argues:

> These youths will never be able to successfully function in society unless, along with everything else, they are given remedial education, which can and should be done.

The most recent unemployment statistics show that nearly half of the black youth looking for work cannot find it. Adolph Slaughter of the District of Columbia Manpower Department has graphically explained the educational roots of this unemployment rate:

> Most of these unemployed don't have the educational skills to impress an employer. They can't speak well, they can't add well enough for you to put them on a cash register. . . . This is a problem here in Washington and in Chicago and New York, all the

big cities. . . . They lack educational skills and they need those things to sell themselves. It's just pitiful.

How can it be that after 12 years of schooling so many have learned so little?

The answer is neither simple nor self-evident. It is not primarily the fault of teachers, who on the whole are better educated than ever; they have to cope with many problems that arise outside the schools, but affect performance in classrooms. The cycle of poverty, shattered family lives, overcrowded schools, and teachers who must spend more time disciplining than teaching only begin to catalogue the list of contributing factors. The educational fads that tried to make learning easy rather than certain. the corroding effect of television, a decline in the total number of hours spent in school, and big city schools with a majority of poor students all have added to the large number of unemployable high school graduates we have today. And Federal efforts to stem the tide of functional incompetence have been inadequate and ineffective.

FEDERAL HELP: DECLINING AND MISALLOCATED

In 1965 title I of the Elementary and Secondary Education Act provided Federal assistance to improve the education available to low income, low achieving children. Yet, as the years go by and as illiteracy grows, the funds to combat it shrink. In 1967 the title I program served approximately 7.6 million children at an average level of $378 per child. But in fiscal 1977, only 5.2 million children received assistance at the same average level. This amounts to a 30 percent decrease in real spending.

Equally disturbing is the limited range of title I funds. Only 57 percent of those children who are eligible actually receive assistance. This means that 5 million children suffer from serious deficiencies that go untreated. Furthermore, of those who are helped, over half are not low achievers and nearly two-thirds are not low income.

There are several reasons for this misallocation of resources. One is that the allocation formula is based upon an outdated 1969 survey which insufficiently reflects the movement of the poor from the rural South to the urban Northeast. By the time new data becomes available, the currently used data will be 13 years old. In the farthest stretch of the imagination, could we see the Defense Department using 13-year-old data to plan military strategy? Yet that is exactly what we are doing with our educational strategy, which will determine the future strength of both our domestic economy and our defense.

Second, the process for distributing Federal dollars often results in less needy schools receiving more funds. The Federal Government allocates money to school districts based on the number of eligible children. The districts, however, may use their discretion in budgeting the money. Paul T. Hill, director of a 1977 study of compensatory education, explains that the "local educational agencies are using the flexibility now provided by the statutes and regulations to deliver services in schools which have relatively low concentrations of low income children." As a result, children whose real needs qualified a school district in the first place to receive Federal dollars may never benefit from a single dime of those dollars.

Third, where districts compete for scarce Federal funds, the district which spends the least per child usually receives the most aid. Government policy actually penalizes the district that makes a conscientious effort, even at fiscal sacrifice, to establish and expand remedial programs. The districts that lose such a competition are usually in urban areas where operating costs are higher and the number of poor children is greater.

To compound the irony, title I programs may actually hinder more children than they help. Title I students receive less time in reading and basic skills than nontitle I students. One-fourth of title I students are isolated from the other students which tends to lead to ethnic and racial segregation and tracking. These "pullouts" are more likely to miss some or all of their regular instruction than students who receve title I instruction in their regular classrooms.

Finally, fewer than 1 percent of American high school students benefit from title I, even though it was designed to aid both elementary and secondary schools. Consequently, the child who makes gains in the early years forfeits those gains in later years because funds are not available. The National Institute of Education sums up the situation in 1978:

The schools are failing to provide the help necessary to decrease the number of functionally illiterate students between the ages of twelve and seventeen.

A 1974 survey of high school students revealed that 89 percent felt the most seriously inadequacy in their schools was that students struggling with math and reading were ignored.

THE TREND TOWARD COMPETENCY TESTING

Many parents concerned about their children's substandard academic achievement have pushed for minimal competency tests. This grassroots movement took the educators and legislators by surprise; but today many States are seriously considering competency testing.

It is astounding that an industry, second only to the military in spending and employment, is subject to little or no systematic checking. Only after students graduate do the inadequacies of their preparation become apparent. However, a few graduates refuse to forget what they did not learn in school. Recently a high school student of normal intelligence sued his school in San Francisco for educational malpractice—he had been awarded a diploma even though he could only read at the fifth-grade level. This is not an isolated case. Such litigation is the first sign of the enlarging perception that schools may be liable for educational failure. The legal counsels of various State offices of education agree that the number of such suits will increase and that increasingly they will succeed during the next 5 years.

Forty-two States have moved toward adopting or developing competency tests, but only five States have completed the task. The majority are a long way from full implementation. States often lack the necessary resources for the development of a reliable and fair testing instrument. Some States complain that it is impossible to achieve a consensus as to what the requirements for high school graduation should be. In order to avoid paralyzing and protracted indecision, to insure that success in one State does not mean failure in another, and to avoid possible racial or ethnic bias in testing, the Federal Government should formulate optional national criteria for competency testing.

Competency testing should not be used, or misused, as a final day of reckoning. The tests should not be misused merely to label a student a failure or a success. Their greatest potential value would be as a tool to diagnose educational problems at all grade levels and to assist and guide teachers in developing prescriptive programs. It is vital to catch and correct basic deficiencies at an early age rather than waiting until the 11th or 12th grades when the difficulties are chronic. By then, time permits just a last ditch effort which will most likely result in a diploma that certifies only attendance, rather than one which reflects achievement and competence.

A PROPOSAL TO ESTABLISH A NATIONAL COMMISSION ON LITERACY

If we continue on our present course, it will mean that we have effectively denied the right to an education to those who need it most. We have closed the door of education behind poor students and the door of opportunity in front of them. No one knows the final answer, but we must begin at least to raise the right issues. I intend to introduce Federal legislation with the following five objectives:

First, the Federal Government should establish an independent National Commission on Literacy. The current educational establishment faces an inherent conflict of interest in attempting to address the problem of illiteracy. An example of the most disheartening kind came in a report for the National Institute of Education in January of 1978 which asserted, with hardly a shred of proof, that illiteracy is largely an aberration and that its high incidence is an exaggeration. The report offers no new research or documentation. To refute the estimates of the adult performance level project, the Harris study and the Educational Testing Service that between 5 and 15 percent of those in the professional or managerial occupations are functionally illiterate, the NIE report relied upon a simple and simple-minded argument:

Surely one would want to conclude that the functional literacy label had been applied inappropriately to individuals in the professional-managerial class.

Certainly one would want to conclude that, but unfortunately, it is neither logically necessary nor empirically proven. The studies finding relatively high illiteracy rates could be flawed; however, one cannot draw the inference that because they may not be 100 per-

cent accurate, they are 1 percent accurate. The NIE baldly states, but does not even barely show, that because a person has a job, he must be functionally competent at a professional level. Educational authorities agree that many such employees may get by with inadequate basic skills by having others do for them what they cannot do for themselves. At best, they are likely to be minimally competent in a narrow field, with little chance for advancement or change in jobs or careers.

The NIE report also concluded that "few, if any, functional illiterates were actually awarded high school diplomas." Yet recent evidence points to a directly opposite conclusion. It has become apparent that the number of repeaters has been held down artificially by policies of social promotion. Only within the last year have students in Washington area schools been held back when they did not meet minimum requirements for promotion to a higher grade. In that year retention rates rose dramatically; they are now 7 to 70 percent higher in various schools. It is clear that the end of social promotion and the advent of accountability mean that students will no longer have a sheepskin to disguise basic deficiencies. The NIE study unfortunately took that disguise at face value.

It is disturbing that the latest study for the National Institute of Education is an excuse rather than an examination of illiteracy. Too often the related agencies absolve the industry they are supposed to evaluate. The NIE study of illiteracy proves one point above all others—we need an independent commission to study the problem.

Second, the National Commission on Literacy should examine the possibility, the desirability, and the content of competency standards. The initial object should be the development of an operational definition of basic literacy: What every young adult, at minimum, needs to know in order to function successfully in American society. It should be emphasized that any Federal aid to education must provide the States with incentives not only to meet these standards, but to surpass them.

Third, the Commission should evaluate current programs and explore possible innovations to raise literacy levels through classroom instruction. The Commission should investigate present Federal and State programs (title I in particular), identifying their strengths, their weaknesses, and their bureaucratic inefficiencies. The extent and the effects of social promotion should also be measured. In light of recent evidence, it seems likely that this policy accounts for the larger number of illiterates graduating from high school today. Finally, the Commission should examine how teachers can make a difference, even in the vast majority of cases where the basic difficulties of students are not the teachers' fault. They should be encouraged to do their best job in teaching basic skills. Teachers should be rewarded for a job well done, not blamed for bad results caused by social problems outside the schools.

Fourth, the Commission should consider alternative solutions outside the traditional school setting. It has been empirically demonstrated that young people make tremendous gains in reading achievement when they are taught job skills and basic skills in unison rather than separately. Educational dollars may be more wisely spent on programs that are more than merely academic.

Jerry Kolker, director of the New York City Department of Employment, reported in 1977:

> I have personnally witnessed youngsters with a fifth grade reading level advanced three grades simply because they were not in school, but were in a work situation where they saw a direct relation between the skill they were learning and the need to improve their academic expertise.

Fifth, the commission should analyze the effectiveness of current Federal assitance in combating illiteracy and the effect of different formulas to distribute such funds. It is unacceptable to appropriate enough money to reach only half of those who need help, and then to misallocate even those insufficient funds. At the very least, there should be full funding of currently successful compensatory education and reading improvement programs.

Something is very wrong in American education. No one in education should be scurrying to protect particular professional interests. Public officials and educational leaders should be searching out the causes without fear or favor and with one paramount interest—the effective education of our children. Our children come first. Efforts to improve our country—efforts in health, housing, the economy, and defense—will be depleted if our children are shortchanged in the schools. What good does it do to spend $130 billion a year to defend our Nation militarily in the world when the citizens we seek to protect are ill equipped to function educationally in the world they live and work in every day? ●

## MR. JACK KAHN, SR.

● Mr. CURTIS. Mr. President, I would like to share with my colleagues a letter I recently received from Mr. Jack Kahn, Sr., an outstanding, patriotic citizen of Sarasota, Fla.

A veteran of World War II, Mr. Kahn distinguished himself in battle, and has since contributed his time, effort, and resources to the betterment of America and her people. Mr. Kahn is a founding member of the U.S. Citizens' Congress and its Education Foundation. His thoughts in this letter are consistent with his humane endeavors, and merit particular attention today when legislators often look down on the citizenry rather than up to it. I ask to print the letter in the RECORD.

The letter follows:

SARASOTA, FLA.,
*August 5, 1978.*

Hon. CARL T. CURTIS,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR CURTIS: Politics, more often than not, is the science of the image and nuance. The turn of a phrase, the degree of accessibility, the aspects of the relationship between petitioner and petitioned, all are components which swing the balance among legislators themselves, between legislators and the citizenry and among the three coequal branches of government.

From the first televised hearings conducted by Senator Estes Kefauver in the 1950's to the final gavel of Senator Sam Ervin in 1974, the seating arrangement of the members of the Committee in relation to the witnesses has deeply troubled me. The sight of Senators poised on high peering down upon the witness, strikes a discordant note and illbefits the fine and noble traditions of our Republic.

More importantly, the psychological effect of the image, on the legislator, witness and audience, may actually thwart the purpose of a hearing—the inflow of information. The witness, be he Cabinet member, labor leader, environmentalist, business leader or John Q. Public, is handicapped at the outset by his physical subordinance. Unlike a court of law, a Congressional hearing renders no judgement on the witness, and the legislators are not unbiased. The witness is clearly at a disadvantage.

Surely courtesy, equity and the principle of the consent of the governed would be wellserved if the legislator were to step down from the forbidding, semi-circular rampart to the level of the legislated where ideas can meet and survive or perish on their own merits.

Sincerely yours,

JACK KAHN, Sr.●

## IRS EDUCATION RULES SEEN HURTING POOR

● Mr. STONE. Mr. President, after studying S. 2388, a bill to provide for the exclusion from gross income of certain employee educational assistance programs, I have joined as a cosponsor of this bill. Senator PACKWOOD and Senator JAVITS, the principal sponsors of the bill are to be congratulated for a proposal which, if adopted, would encourage educational opportunity for many of America's workers. The present IRS rules make an unreasonable and unfair distinction against educational assistance to employees if such educational training is related to a new job or business. S. 2388 would correct this situation.

Sylvia Porter has written an excellent article on this subject in the September 6, 1978, Washington Star. I ask that Sylvia Porter's article entitled, "IRS Education Rules Seen Hurting Poor" be printed in the RECORD.

The article follows:

IRS EDUCATION RULES SEEN HURTING POOR

(By Sylvia Porter)

A secretary at a medium-size corporation decides to study for a degree in business administration, with the goal of moving up to a better paying, more demanding job at the same company. Her employer, as many do, pays for her tuition.

A market analyst at the same corporation also takes advantage of the employer's tuition aid program and he, too, gets a degree in business administration.

But here the similarities between the two

employees end. The secretary, under current Internal Revenue Service rules, must pay federal income taxes on the tuition support she receives from her employer. The higher-paid market analyst does not.

Q. Why the difference in taxation of education benefits?

A. Because the market analyst's training was related to his present job, while the additional schooling the secretary received could have prepared her for a job or business.

Tuition fees paid by employers for education or training to maintain or improve an employee's skills in a present job are nontaxable, under today's IRS rules. The employee need not report the payments as income, and if the payments are reported, they may be claimed as deductions.

But if the assistance helps the employee qualify for other jobs, the aid must be reported as income and is fully taxable.

If workers pay for the education themselves, the same distinctions on taxation apply.

It is this "job-related distinction" that is currently under attack in Congress.

Led by Sens. Robert Packwood (R.-Ore.) and Jacob Javits (R.-N.Y.), about 30 senators are co-sponsoring a bill to change IRS practice to make all education assistance provided by employers tax-exempt. You, the employee, could then exclude from your income all tuition fees, cost of books, supplies, etc., paid for or provided in-house by your employer. It wouldn't matter whether the training was related to your present job or to a future one.

Backing this Employer Education Assistance bill are some unions, Motorola, Mobil Oil, the American Hospitalization Society, and the American Society for Training and Development as well as other groups involved in education. These supporters argue that the present job-related test hits hardest at those who most need new skills and can least afford to pay taxes on additional training.

Specifically, these are lower-level workers: the typist striving to become a secretary, the secretary eager to become a para-legal, the mechanic who dreams of being a mechanical engineer. Today's IRS rules hinder the development and upward mobility of these workers.

"The big losers are unskilled persons, women and minorities," says Packwood. "They are less likely to have any skills to which training can relate, more likely to have low-paying, undesirable jobs. And perhaps, they are less likely to participate in a program if, the day training begins, the employer withholds an additional amount from their small paycheck to cover the federal tax."

The U.S. Treasury opposes the proposal, roughly estimated to cost about $23 million in '78, rising to $40 million in '83, reports my Washington associate, Brooke Shearer. It argues that exempting employer-provided education assistance would discriminate against, say, full-time students or workers in firms without such programs. These people would continue to pay for their education out of after-tax income, while some employees would receive schooling tax-free. It adds that highest-income taxpayers would receive the greatest benefits.

Raising the tax-exempt levels of income would be a more direct and equitable way of attacking the problems of the poor, it insists. And it fears a growing loss of revenue if many people arrange to receive tax-free tuition aid instead of taxable higher pay.

The measure has strong support in the Senate and companion bills have been introduced into the House. But the administration offers little basis for compromise.

Sen. Russell Long, D.-La., chairman of the Senate Finance Committee, will decide the fate of the bill. Long wants a tax law in '78, is anxious to steer clear of any amendments which are controversial and might slow down the tax bill. His assessment of support and opposition to this measure is the key.●

## THE SECOND CONCURRENT BUDGET RESOLUTION

● Mr. HART. Mr. President, I commend the distinguished chairman of the Senate Budget Committee for the work he and the committee have performed so diligently over the last several months. In this era of budget deficits and demands for fiscal responsibility, perhaps no committee of the Congress has as great a responsibility for gaining and maintaining the public trust. In my judgment, no committee deserves the public trust more.

The clearest message the American people have sent to their elected officials this year is that the time has come for more responsible Federal spending and the more efficient use of every tax dollar. The time has come for public officials to take another, more careful look at the long-term implications and results of the programs and policies they enact. The Budget Committee's second concurrent budget resolution before the Senate is an encouraging step in this direction.

In the time that has passed since the adoption of the first concurrent budget resolution, the committee has thoughtfully and effectively responded to major changes in the economy such as the decline in unemployment and the increasing rate of inflation. As the Senator from Maine has pointed out, the second concurrent resolution has reduced Federal spending by $9.3 billion in outlays, a reduction which represents a cut of nearly 2 percent in the level contained in the first budget resolution. The Senator must be commended for bringing a spending resolution before us which reduces the deficit projected in the first resolution by $8.6 billion, nearly 17 percent. Even more significant is the fact that the resolution provides for a 2-percent reduction in the future cost of Government by reducing budget authority for fiscal year 1979 by more than $11.1 billion.

The Budget Committee has, for perhaps the first time, given us an opportunity to get real congressional control over the budget—with all the hard and painful choices that responsibility includes. While some public figures and elected officials have sought to appease their constituents with rhetorical demands for less Federal spending and across-the-board cuts in the budget, the congressional Budget Committees have nurtured and shaped a process that will permit us to establish meaningful budget priorities. The across-the-board cuts that are now proposed with some regularity in the Senate are nothing more than a political sleight of hand whose hypocracy is bound to come back and haunt us. There is simply no substitute for the Senate doing its homework, no matter how difficult the task may be. This is what the Senate Budget Committee has been charged to do, and has done well.

I believe strongly that American taxpayers want the Congress to control the growth of the Federal Government. A combination of inflation and increased taxes has virtually eliminated any increase in family purchasing power over the last 7 years. We must reduce the burden of Federal taxes. We must reduce taxes in a way which neither aggravates inflation, nor reduces the growth of employment.

No one can disagree that the American people want controlled Federal budgets, less Federal spending, and the lower taxes that would result. What the American people want even more, however, is competence on the part of the government that was established in their behalf. We make a mockery of the public sentiment if we pretend to solve our economic dilemmas through across-the-board budget cuts or mechanical formulas to balance the budget. The American people expect their representatives to establish goals, objectives, and priorities. This is what a responsible budget process is designed to do.

I share a commitment with many of my colleagues to reduce the growth of Federal expenditures and achieve a balanced budget with lower rates of inflation and taxation. There are no easy means to this end. It's time that we face the work ahead and commit ourselves to confront it in a responsible fashion.

It has become clear that every Member of this body, regardless of which committees he sits on, must strive to familiarize himself with the budgetmaking process. I look forward to working with the Budget Committee and increasing my participation in one of the Senate's most important functions: the establishment of national spending priorities.●

## PHILIPPINE BASES RECONSIDERED

● Mr. McGOVERN. Mr. President, I am sure all Senators are aware of the broad questions involved in Philippine President Ferdinand Marcos' demand for a renegotiation of the 1966 agreement covering our rights to Clark Air Force Base and Subic Bay. While the current agreement runs until 1991, Mr. Marcos has demanded a renegotiation to provide, among other things, some $1 billion in rental for our continued access to these facilities.

Both the executive branch and the Congress seem to be dominated by the view that these bases are so vital to our security interests in the Pacific that we have no choice but to go along with the renegotiation. In my view that is not necessarily the case. There are a number of alternatives that deserve consideration.

The factors that should shape our thinking on this issue were outlined very succinctly in a compelling article which appeared in the Washington Post Outlook section on August 27. This piece was authored by Dr. George McT. Kahin, who is professor of international studies at Cornell University and who is one of the country's foremost authorities on Asian and Pacific affairs. Since it appeared during the recess and may therefore have escaped the attention of some of my colleagues, I ask unanimous consent that this thoughtful article be printed in the RECORD.

The article follows:

[From the Washington Post, Aug. 27, 1978]

THE NEED TO END OUR RISKY MILITARY TIES TO MANILA

(By George McT. Kahin)

On the northern Philippine island of Luzon, some 50 miles from Manila, stand two symbols of American Pacific power: the Navy's base at Subic Bay and the Air Force's Clark Air Base, two of the largest U.S. overseas bases. With the U.S.-Philippine 1951 Mutual Defense Treaty, they represent a major U.S. military commitment.

The Navy and Air Force are strongly wed to these bases, and the Pentagon offers many reasons why they should be kept. However, Congress recently has tended to question their strategic value and their political and financial costs. For some members of Congress, the mystique of Filipino-American brotherhood has been shattered as much by Philippine President Ferdinand E. Marcos' demands for a large payment of rent for the bases as by his destruction of the semi-democratic system they regarded as an American legacy to his country.

A modified agreement governing U.S. use of the bases was signed by Marcos in 1966. This was to run until 1991, with neither party having the right to alter its terms without the concurrence of the other.

However, since his proclamation of martial law in 1972 and his assumption of virtually dictatorial powers, Marcos has been demanding that the agreement be renegotiated to provided further Filipino control and a rental of well over $1 billion for a five-year period.

At the same time, Marcos expects the United States to honor its commitment to maintain the security mantle provided by the 1951 treaty—insisting this be broadened to provide firmer assurance of U.S. backing for his oil claims in the South China Sea.

The Carter administration has been involved in the same "delicate negotiations" for a new base agreement that Henry Kissinger got off to such a disastrous start. In December 1976, Kissinger yielded to Marcos' demands for rent and offered $1 billion in military and economic aid over a five-year period. Marcos turned down the offer. Apparently he believed that a new administration might give them more

But the Kissinger formula remains attractive to the Philippine leader because its one-shot transfer of funds bypasses potentially hostile yearly congressional scrutiny and leaves him in a financial position to buy arms from the United States. As the recently retired chairman of the Joint Chiefs of Staff, Adm. Thomas H. Moorer, acknowledged last year, "Rent from the bases—which more than likely will be in excess of $1 billion for a five-year period—will ensure Marcos a continued source of hard American currency should the Carter administration reduce aid in reaction to the alleged human rights violations of the Marcos regime."

Marcos has been doing well in his dealings with the present administration. Military aid has remained approximately the same as under Ford, and economic assistance has been significantly increased. Rather than refusing to pay additional compensation to keep the bases open and insisting upon adherence to the existing agreement, the assistant secretary of state for East Asian affairs, Richard Holbrooke, has secured presidential backing for picking up where Kissinger left off. The administration has mollified Marcos by a variant of Kissinger's proposal that provides for a large amount of annually appropriated economic support that need not be identified as rental for the bases. If Congress refuses to approve this increased aid, payment can be channeled through the International Monetary Fund, World Bank or other international agency where the administration's influence remains heavy and largely outside congressional control.

Whether remuneration to Marcos is called "rent" or by some euphemism more acceptable to Congress, the Philippines becomes the only country with which we have a mutual defense treaty that obliges us to pay for using local base facilities that serve the security needs of both countries. The costs of the bases have been borne by the United States, with wages and other U.S. expenditures bringing into the Philippines economy around $200 million a year. Beyond this, U.S. military personnel spend at least $50 million more.

Moreover, Marcos' demand for rent raises a serious question of precedent. We also have mutual defense treaties with Japan and South Korea, where we likewise have base facilities. If the United States pays rent to Marcos, why shouldn't these other countries exact rent?

Some knowledgeable officials believe that Marcos calculates he is better off with a publicly unresolved base dispute, and that he may continue making demands that he realizes the United States will not accept. This not only provides him with sustained leverage for exacting aid from Washington, but also helps give him the public image of a man willing to stand up to the United States. This is politically useful, both domestically and in his efforts to become a Third World leader.

Americans clearly have been misled as to the actual value of the bases and the 1951 Mutual Defense Treaty. Though for the Navy and the Air Force the bases are comfortable and convenient, they are no longer of fundamental importance to U.S. security. Indeed, our continuing occupation of them, together with certain features of the interrelated treaty, put some U.S. defense interests distinctly at hazard. There are strong arguments for positioning U.S. air and naval facilities elsewhere in the western Pacific and for either terminating the defense treaty or rewriting it.

HUMAN RIGHTS CONCERNS

While unsure as to their actual strategic value to the United States—and afraid to challenge Pentagon experts on this issue—many in Congress are dragging their heels on assistance because of Marcos' marital law. Their concern was not assuaged when the Department of State acknowledged last February that "no real steps have yet been taken toward the restoration of democratic government or the elimination of the more severe intrusions on individual rights," and said it had no reason to doubt the authenticity of continuing reports of human torture.

In April, Marcos staged a blatantly fraudulent election for what is actually a powerless legislative assembly. This was calculated to reduce congressional criticism by demonstrating that Marcos was moving back toward democracy. U.S. officials also believed that establishment of such an assembly would undercut congressional fears that any new base agreement might not endure after Marcos left office because while this new body might be Marcos' puppet, its endorsement would endow the agreement with a legitimacy that would continue beyond his death or loss of office.

But the nature of this "election" and the arrest of many of those who ran against Marcos' slate ensured that this maneuver would backfire. Congressional outrage was demonstrated in a letter drafted by the sober and respected Iowan, Berkeley Bedell, and signed by 114 members of the House. Expressing concern over violations of human rights, and shock at the conduct of the election and the arrests of opposition candidates, its signers made clear that their support for continued U.S. aid would be dependent upon "meaningful efforts to redress this situation."

Since then congressional disapproval has been less vocal, with many members bowing before the administration's arguments that criticism should be curbed lest it jeopardize U.S. base rights.

THE INTERNAL THREAT

Proponents of the bases now rarely argue that they are necessary to defend the Philippines under the Mutual Defense Treaty, for clearly adequate measures could be mounted from U.S. facilities outside the islands. The U.S. military privately acknowledges that there is no credible Soviet or Chinese threat to the Philippines, and it is evident that if either country were to try an air or naval assault, American power based in Japan and Guam could easily interdict the effort.

The only real threat to a Philippine government, it is widely agreed, is internal. Because of this and the ambiguity of the U.S. commitment under the Mutual Defense Treaty, any responsible discussion of keeping a U.S. military presence in the islands requires a close scrutiny of both the terms of this treaty, with their differing American and Philippine interpretations, and the political context within which it must operate. It is here that the Carter administration has been most complacent.

Both Subic and Clark are located near traditional centers of insurgent activity. The major insurgent force, the Maoist-oriented New People's Army, with 2,500 to 3,000 armed men, is still much smaller than its earlier counterpart, the formidable Hukbalahap, which in the early 1950s was strong enough to penetrate the suburbs of Manila. The NPA, however, is growing, and its emphasis upon building cadre, developing better rapport with peasants and acquiring weapons (mostly purchased surreptitiously from Filipino soldiers) rather than military confrontation gives a misleading impression of its potential capabilities.

Certainly the mounting economic disparities, the lack of progress with agrarian reform, the frequent brutality of the military and dissatisfaction with martial law provide increasing political capital for almost any opposition leadership. The possibility of increased insurgent activity adjacent to the bases is taken very seriously by some senior U.S. military officers.

With about 85 percent of the government's combat troops trying to suppress the rebellion by Filipino Moslems in the southern islands of Mindanao and Sulu or committed to garrison duty in the Spratley Islands, where many believe oil will be found, virtually no reserves are available to confront a serious increase in rebel activity in Luzon.

Nor should one overestimate the capacity of the Philippine military. Although their numbers have increased 300 percent since 1972, they have been able to achieve no more than a standoff with the Moslem insurgents, despite an enormous superiority in firepower.

Philippine military protection of the U.S. bases is not impressive. Several thousand impoverished peasant squatters have moved into Clark Air Base, and some are believed to have ties wtih the New People's Army. The fences around Clark and Subic are never fully intact, for there is a thriving black market industry in selling them for scrap.

Since the Carter administration has done nothing to disengage from the still operative Manila Pact—the center-piece of the old SEATO—the United States is bound to come to the support of either the Philippines or Thailand in case of external aggression. If their governments should be under serious threat from rebellion, presumably neither the present administration nor Congress would be disposed to accept the tortuous interpretation of the pact's language that per-

mitted the Johnson and Nixon administrations to employ it to send troops to fight an insurgency in Vietnam. Nor probably would they countenance interpretation of the U.S.-Philippine Mutual Defense Treaty as extending that commitment to countering a rebellion.

However, the existence of the Philippine bases provides something of a tripwire for American military intervention. Any American president would find it difficult not to order military measures against Philippine insurgents if they threatened military and civilian base personnel. It would be quite simple for Filipino insurgents to provoke an American military involvement that might be politically beneficial to them because of Philippine nationalist reaction.

A much more immediate danger is posed by the recent occupation of islets in the Reed Bank area of the Spratley Islands in the South China Sea some 250 miles west of Manila. These islands constitute a disputed area of overlapping claims by the Peking, Taipei, Hanoi and Manila governments, with the last three maintaining garrisons. The islet occupied by the Filipino troops is 200 yards from one garrisoned by the Vietnamese, whose claim has been inherited from that of the U.S.-supported Thieu government in South Vietnam. The reason for these expensive occupations is oil, believed to lie in the shallow seas surrounding the islets. Manila has already engaged at least one American firm in exploratory drilling, despite the efforts of the U.S. Embassy to discourage this.

Gen. Freddie Poston, commander of the 13th Air Force at Clark Air Base, told me, "An oil strike in the Spratleys could precipitate a dangerous situation." The Filipinos have very firm expectation of U.S. support if they get into trouble with the other claimants, and Gen. Poston has been under constant pressure from the Philippine military to put his planes on a standby alert to meet this contingency. So far he has refused.

This dangerous situation is not defused by our Manila Embassy's reiteration that the United States does not regard the Mutual Defense Treaty as applying to the Spratleys. The Filipinos insist that the treaty does cover them there. The treaty was drawn up during the Korean War when it was to the American interest that it cover our forces throughout the Pacific, and it is this language that has come back to haunt us. For its reciprocal Philippine protection extends not merely to attack against the Philippines themselves but also to Filipino "armed forces, public vessels or aircraft in the Pacific." It is difficult to argue that if its proivsions once covered Philippine-based operations of U.S. troops in Korea and later Vietnam (where SEATO was also invoked), it should not today cover a Philippine garrison in the Spratleys and supply ships and planes.

Because of heavy dependence on foreign oil, Marcos and his military leaders are intent upon holding onto and developing their Spratley claim. What if Marcos or a successor gets into serious trouble in the Spratleys and we don't use the air and naval power we have based at Clark and Subic to bail him out? Philippine nationalist sentiment would be outraged and probably no government could successfully resist the demand that we be ousted from the bases. Would the United States then have any alternative to withdrawal? The only answer one top military official could give me was: "Well if they didn't want us here, we'd have to leave."

KEEPING THE POLITICAL STATUS QUO

Keeping the American presence in the Philippines also draws the United States into the political arena in a way that heavily influences Philippine policies. We must support the government in power. This was perceived in the Senate's 1969 hearings by Sen. J. W. Fulbright, who observed that, because of our interest in the bases, "We will always resist any serious change in political and social structure of the Philippine government, which is very likely to be, in the long run, a detriment to the people of the Philippines." Thus, so long as the United States is intent upon keeping the bases, it will act to preserve the political status quo, even if that means support of Marcos' martial law regime.

Americans who have believed that it is traditional for this country to encourage democratic government may find it incongruous that U.S. military and economic assistance markedly increased in 1972 after Marcos proclaimed martial law. This year, the Carter administration is seeking the same $37.3 million in arms aid that was provided last year. This military support tells Filipinos that the United States stands four-square behind Marcos.

The symbolism was significantly enhanced in May when Vice President Walter F. Mondale, despite the strong opposition of Patricia Derian, the State Department's human rights coordinator, yielded to the urging of Holbrooke and Under Secretary David Newsom and traveled to Manila to sign a series of economic aid agreements to a kind that normally would be signed by an ambassador or other lesser official.

The administration's bases priority also provides Marcos with a useful foil for turning aside criticism of his political repression. It was because of the bases that the administration served notice that U.S. strategic interests—or more accurately, its definition of them—must take precedence over concern for human rights. The Marcos regime naturally concluded that it didn't have to take American protests over human rights very seriously. Thus, though Marcos' secretary of national defense assured Derian early this year that he would be "the first to order the investigation of any violation of human rights especially if those involved are members of the armed forces," some three months later when I visited the Philippines there was no indication of any investigation of the more than 80 officers cited by Amnesty International as allegedly involved in torture.

THE STRATEGIC ARGUMENTS

U.S. officials who argue for keeping the bases generally flourish a long list of reasons: their importance to U.S. global defense; their critical role in maintaining an equilibrium among the superpowers in Southeast Asia and for projecting U.S. power into that area; their contribution to the defense of South Korea, Japan and Taiwan; their superior effectiveness for surveillance of Soviet naval shipping in the Indian Ocean; their unique value as a back door for supplying Israel in case of another Middle East war, and their necessity for the defense of the Philippines.

With respect to global defense requirements, the U.S. has placed its major nuclear deterrents elsewhere. We have no ICBMs in the Philippines; our Polaris submarines use facilities in Guam, and we base our B–52s in Guam. It was understood during the Vietnam war that no Philippine government would permit B52s on its territory, so the United States had to build expensive facilities in Thailand and rely on its main base in Guam, from which it cost nearly four times as much to fly as it would have from the Philippines.

The thesis that the bases are essential for maintaining military equilibrium between the great powers in Southeast Asia simply does not stand up. There is nothing approaching equilibrium in the area, the ratio being enormously in favor of the United States. Only the United States has the capacity to maintain a substantial naval force in the area. American base facilities in Guam, Okinawa and Japan are close enough to permit sustained large scale naval deployment there. Moreover, the U.S. has access to facilities of friendly neighboring states, including Australia and Singapore, not available to the Soviet Union. The nearest Soviet base is Vladivostok and it is unlikely that any country in Southeast Asia, Vietnam included, would grant the Soviets a base.

U.S. officials are hard pressed to argue that planes of the 13th Air Force could not more effectively fulfill their primary responsibility of defending South Korea if based in Japan or Okinawa. The same holds for the view that U.S. withdrawal from the Philippines would signal to the Japanese and Koreans that we were abandoning Asia. The Japanese could be expected to welcome the Clark Field squadrons to facilities in Japan. The bases from which the 7th Fleet could most easily defend Japanese and South Korean waters are in Japan, not the Philippines.

Even if there still were vital American interests at stake in Southeast Asia, bases in the Philippines are no longer available for supporting U.S. military activities there. Regardless of whether U.S. public opinion would permit an American president to intervene militarily in Southeast Asia, it is clear that Philippine public opinion would be opposed. In July 1976, Marcos signed an agreement with Hanoi pledging that he would not allow the bases to be used by "any foreign country" for intervention against Vietnam or other countries of the region. The Philippines signed this pact (over strenuous U.S. objections) in part to ensure that Vietnam would not sell arms to the Moslem Filipino insurgents. (Whether or not Hanoi made such a pledge, it has made no arms available.)

ACCESS TO MIDDLE EAST

The argument that U.S. base facilities are needed to keep a back door to Israel open is specious. It overlooks recent advances in Air Force logistical capacity that permit our huge C5A Galaxies and C141 Starlifters to reach Israel via the Atantic directly from the United States. Unloaded, these planes can easily make it all the way without refueling and, by availing themselves of midair refueling, they can carry enormous loads—20 tons for the C141s.

Should countries of Western Europe again deny overflight permission, in the event of another Middle East war, we could reach Israel by flying over the Straits of Gibraltar because the range of our planes and the state of air tanker transport and mid-air refueling technology have advanced considerably since 1973.

Gen. Poston assured me that if he were given A15s, which are now being made available to both Israel and Saudi Arabia, he could operate toward the Middle East from Guam just as easily as he does with older planes from Clark Field. With ranges of at least 5,000, 6,500 and 7,000 miles respectively, the A15s and the C5A and C141 cargo transports can easily fly from Guam to the intermediate U.S. Indian Ocean base at Diego Garcia. They would only need the single refueling by air tanker that Poston's present shorter range planes require to get there from the Philippines.

Such Guam-based airpower would be as effective in keeping open Indian Ocean sea lanes as planes based in the Philippines. And the assertion that Philippine bases are necessary for Indian Ocean surveillance is outmoded; our Orion planes now make regular use of facilities in Singapore, much closer to the area.

We must not forget that Marcos has already felt the squeeze of an Arab oil embargo imposed as a consequence of his heavy-handed tactics against Moslem insurgents, and would not want a second reprisal. This would be likely if, during a renewal of Middle East fighting, he permitted the bases to be used for supplying Israel. Moreover, such action would antagonize the Philippines' two Moslem neighbors, Indonesia and Malaysia, the latter openly sympathetic to the cause of the Moslem insurgents.

THE RANGE OF ALTERNATIVES

Has the United States no choice but to remain in the Philippines, locked into a helpless dependency upon the unpredictable currents of local nationalism and the unpredictable moves of a Philippine dictator? Must American security interests remain hostage to the long-term threat of insurgent activity and the more immediate danger of embroilment in international disputes reflecting Philippine acquisitiveness rather than American defense needs? What are the feasible alternatives to remaining in the Philippines?

Moving the 13th Air Force from the Philippines 1,500 miles eastward to Guam would not pose significant difficulties. That island has well-developed air base facilities, with a longer runway than Clark. A guerrilla insurgency is unlikely to be mounted on its 209 square miles of well garrisoned territory, largely peopled by American citizens. The same would be true of the Northern Mariana archipelago that stretches northward from Guam.

Nor should the potential of the Northern Marianas be overlooked. It was from Tinian, one of the Northern Marianas, that the United States sent a plane to drop an atomic bomb on Nagasaki. Modern aircraft based there, or some 200 miles to the south on Guam, could easily operate in air space above Japan, South Korea and Taiwan. Both Guam and Tinian are closer than Clark to Tokyo.

The main loss in the Air Force's move to Guam and Tinian would be the excellent training facilities in the Clark complex. But these could be compensated for by heavier use of existing facilities in the United States or by development of new ones in the Marianas.

For the Navy, withdrawal from Subic would not be the loss that is sometimes alleged. The disadvantages clearly do not weigh so heavily as the threats to its continuing viability posed by unpredictable developments in the Philippines. The 7th Fleet's effectiveness in Southwest Pacific waters would not be greatly impaired if it made greater use of its major base facilities in Japan and Guam. In addition to communications facilities, Guam has considerable repair and logistical capacity, including a large drydock. If more extensive facilities were needed, these could be built in Guam and the Marianas.

In view of the 7th Fleet's responsibilities for keeping shipping routes open through the Straits of Malacca and its potential role in the Indian Ocean, Singapore is obviously much better positioned than Subic, some 1,500 miles northeast. The Singapore government would welcome greater American use of its modern Serangoon base. Some American officials try to spike arguments in favor of Singapore by asserting that its government makes drydocking facilities available to Soviet ships. The argument is dishonest because the Serangoon base, where Americans are welcome and the Russians are not, is on the other side of Singapore island from the commercial dry docks at Kepple harbor, the only place Russian ships are permitted.

Singapore is also hardly suitable terrain upon which to build up a guerrilla insurgency. Moreover, since the United States has no mutual defense treaty with Singapore, rental of its base facilities would not entail the incompatibility that attends such payment to the Philippines. (Which is not, of course, to say that the U.S. could not defend Singapore if this were to American interests.)

There is also the possibility of using the facilities of Australia at Darwin and North West Cape. These would require additional construction, but one location has well-developed communications and both have runways of at least 10,000 feet.

Moreover, withdrawal of the U.S. military presence from the Philippines need not mean abandonment of repair and logistical facilities at Subic and Clark. As a senior American diplomat said more than a year ago: "With the question of sovereignty and control finally resolved, the government of the Philippines would probably be as delighted as Singapore is to provide us with base facilities when we need them, for a fee." He observed that Manila would also probably accept the presence of small maintenance and repair teams on a permanent basis. Another formula would be to provide repair and logistical facilities at Subic and Clark under contract to American civilian management.

Thus a number of options could meet the needs of the Navy and Air Force. Initially some of them would be more expensive than Clark and Subic. However, they would all carry much less risk of exposing the United States to dangerous local political pressures and military entanglements.

THE DOMESTIC FACTORS

What then accounts for the administration's cap-in-hand approach to this arrogant Philippine dictator, and why is it unwilling to oppose his demand that the United States pay rent for the bases? One major reason is the reluctance of the U.S. military, especially the Navy, to give up what seems to be a good thing, and the Pentagon's consequent pressure on the administration for retaining the bases. They provide military facilities and physical amenities that are probably unmatched elsewhere outside the United States and unlikely to be duplicated at new bases.

Another is American domestic politics. In a period when the president is under attack for alleged weakness and indecisiveness in matters of defense and foreign policy, the administration believes that withdrawal of the U.S. military presence in the Philippines would strengthen the hands of its critics. This concern has apparently been heightened by the unwillingness of so many senators to relinquish American control over another traditional symbol of American overseas might, the Panama Canal, and the opposition of many of them to phasing out the U.S. military presence in South Korea.

The administration sees the Philippine bases and Mutual Defense Treaty as providing palpable symbols of a determination to maintain a forward position of U.S. power in the western Pacific and concrete evidence that the fiasco of Vietnam does not mean abandonment of a U.S. military capability in Southeast Asia.

A new base agreement with Marcos could dramatize—as the recent Panama treaty with Torrijos did not—the administration's resolve to maintain a posture of global military power. Being unaware of the insecure political foundations upon which these Philippine symbols of American strength rest, and of the unpredictable calls which a local insurgency or Marcos' oil claims might make on U.S. power based there, many Americans might find this gesture impressive. Moreover, it will make little difference that the Filipino people are unlikely to regard an agreement with Marcos as having any more legitimacy than the marital law rule under which he negotiated it, and consequently subject to their repudiation when he leaves the political scene. His departure may not be far off, but it is unlikely to come before the next U.S. presidential election.

Whatever the relative weight of these factors, the administration is keeping the United States hostage to unpredictable political developments within the Philippines and to Filipino military requirements that clash with U.S. strategic priorities. And it is doing so while acknowledging that the Manila regime continues to violate basic human rights. This policy reflects calculations of short-term expediency more than it does conscientious and responsible stewardship of fundamental American interests.

## THE NATURAL GAS CONFERENCE REPORT

● Mr. MUSKIE. Mr. President, In just a few days, the Senate will begin in earnest its consideration of the conference report on the natural gas bill.

This legislation, like much of the energy legislation considered by the Congress, is complex and very technical. Also, the provisions of the bill are sure to have a marked effect on our economy both in the near and longer term.

Several weeks ago, I asked the Congressional Budget Office to prepare an analysis of the conference documents available at that time. This morning, I would like to share the results of that CBO analysis with my colleagues.

In summary, the CBO analysis presents a positive view of the conference report. CBO determined that the provisions of the conference agreement will result in additional production of natural gas, protect consumers, and have a minimum impact on inflation and the economy in general.

Mr. President, I believe that the CBO report is a fair and accurate analysis of the provisions of the conference report on the natural gas bill. I ask that it be printed in the RECORD.

The report follows:

THE NATURAL GAS COMPROMISE

The CBO has not performed an independent analysis of the Natural Gas Policy Act of 1978. Instead we have reviewed the two existing studies which compare current policy to the House and Senate passed bills as well as to the Conference report. These two studies are: The Joint Explanatory Statement of the Committee on Conference (received July 31, 1978), and the Pricing Proposals by the Energy Information Administration (dated June 14, 1978; updated August 1, 1978). Given that review and our previous background in the natural gas area, we have made a number of qualitative and quantitative judgments regarding the potential impact of the Conference report. Essentially three topics are addressed in this overall review:

1. The objectives of the new legislation on natural gas pricing and the extent to which H.R. 5289 attains those objectives.

2. The current policy problem, that is, what should be assumed about future natural gas supplies, allocation of those supplies, and prices in the absence of new legislation.

3. A brief review of some of the strengths and weaknesses of the quantitative analysis contained in the Conference Committee Explanatory Statement.

THE GOALS OF NEW LEGISLATION

The principal objectives of H.R. 5289 are:

1. To permit interstate pipelines to compete with intrastate pipelines for new supplies of natural gas.

2. To increase the incentives for exploration and production of new natural gas.

3. To incrementally price at least some gas users who have realistic fuel alternatives so they will convert to coal or oil. This provision should also prevent wellhead prices from rising above the levels of competing fuels when deregulation finally takes effect. ...

4. To accomplish the above objectives with the minimum impact on the overall rate of inflation and, specifically, with the minimum impact on the prices paid for natural gas by residential users who, in general, are unable to switch to other fuels.

Advantages—CBO believes that H.R. 5289 accomplishes these goals reasonably well. The Conference agreement ends the price discrepancies between the intra and interstate markets and thereby enables the two groups to compete equally for new gas. Thus, gas curtailments, common in recent years in parts of the country served by interstate pipelines, will be reduced and possibly eliminated. Further, regions of the country not hitherto served by gas pipelines may have the opportunity to obtain natural gas.

H.R. 5289 raises the price for new interstate gas up to the approximate price of intrastate gas and allows for an orderly and predictable rise in prices over the next eight years. These price rises, combined with the special pricing provisions for high cost gas, should increase the supply of domestically produced gas by about .7 to .8 trillion cubic feet in 1985. This increase in domestic production could, in turn, reduce the demand for costly LNG imports and for other higher cost energy sources, including electricity. H.R. 5289 contains incremental pricing provisions that should transfer a portion of the new higher prices onto interstate boiler fuel users. This is the same group that is the target of the coal conversion portions of the Natural Energy Act. More than any other single group of fuel users outside the utility sector, industrial boiler fuel users have the technical potential to replace gas boilers with coal fired units. The advantage of these incremental pricing provisions is therefore not only to protect residential consumers from rapid large price increases, but it allocates the high cost gas to those consumers who can shift from natural gas to other fuels (principally oil and coal). Thus, at least a partial ceiling will be placed on the prices of new gas once complete deregulation takes effect.

Although the original analysis by the Energy Information Administration indicated that the Senate bill would have lower prices to residential consumers than the Conference agreement, CBO believes that their interpretation of the incremental pricing provision in the Senate bill was in error. (A letter to the Chairman of the Energy and Power Subcommittee of House Interstate and Foreign Commerce from the EIA Administration dated August 1, 1978 acknowledged the misinterpretation in the EIA analysis).

It is also important to note that the legislation gives the Federal Energy Regulatory Commission the right to extend the incremental pricing provision to all interstate industrial users which would, in turn, provide greater protection to residential consumers. Whether or not this will be implemented, however, is difficult to determine.

Disadvantages.—H.R. 5289 has three major disadvantages. First it represents a wealth transfer from consumers of gas to producers of gas. This transfer goes beyond the high prices paid for truly new gas and includes, in many cases, higher prices for already flowing gas. The Conference Committee has estimated these costs to be no more than $11 billion from now until 1985. In the view of the CBO, this $11 billion estimate is most likely an underestimate, but probably by no more than $9 billion. That is, the transfer from consumers to natural gas producers over the next 7 years is unlikely to exceed $20 billion. After consumer savings resulting from the increased domestic production are included, the net costs to consumers are unlikely to exceed $16 billion between now and 1985. (Details discussed in the last section of this paper).

Second, by immediately deregulating the prices for high cost gas, while retaining controls on all other gas, there is a possibility that the price of the high cost gas will increase dramatically. If such were the case, producers might channel their investment funds into these high cost resources and pass over lower cost and more accessible gas that was still under price controls. In such a situation, producers would be profiting at the expense of consumers who would be denied access to lower cost gas.

Third, the Natural Gas Policy Act of 1978 is extremely complex and, therefore, there are likely to be implementation problems. Despite the good intentions of the bill's authors, it is fair to say that this bill may allow abuse and legal challenge by producers. The extent of this abuse is, however, difficult to estimate at this time.

THE CURRENT POLICY PROBLEM

A major difficulty in estimating the consumer cost of H.R. 5289 is the great uncertainty over what gas prices would be in the absence of new legislation. Unlike oil and coal prices, where the major uncertainties evolve around OPEC prices and energy demands, interstate gas prices are regulated by the FERC. The current pricing policy used by the FERC (opinion 770 A) provides for increases in interstate gas price of one cent for each calendar year quarter. Nevertheless, many experts believe that, in the absence of new legislation FERC would diverge from this current policy and follow previously announced pricing formulas, thereby increasing interstate prices significantly. Other experts feel that the FERC would try to keep regulated prices constant in real terms. Further, those pricing decisions depend on the future price in the intrastate market. Given the great uncertainty with respect to pricing policies in future years, most analyses (including CBO) have assumed that gas prices will remain approximately constant in real terms in the absence of any new legislation. However, it is possible that without new legislation average gas prices would rise dramatically in real terms over the next decade. Were that to be the case, of course, H.R. 5289 could hold down consumer costs for natural gas.

STRENGTH AND WEAKNESSES OF THE CONFERENCE COMMITTEE REPORT

In the opinion of the CBO, the economic analysis contained in the Conference Committee is technically competent and relatively unbiased. It addresses the major sections of an extremely complex bill and makes reasonable estimates of the bill's impact.

Producer Revenues and Consumer Costs.—The principal conclusion of the Conference Committees' economic analysis is that, H.R. 5289 will increase producer revenues (for the same quantity of gas) by $7.4 to $10.8 billion from now until 1985. However, according to the Conference Report, consumers won't pay all these costs because H.R. 5289 will also stimulate .7–1.4 TCF of new natural gas production which will replace more expensive alternative energy sources, thereby reducing consumer costs to a net amount of $1–5 billion from now until 1985. On the basis of these calculations, the report concludes that the overall macroeconomic reports are virtually zero.

While CBO agrees with the direction of the estimates in the Conference report, we believe that total consumer costs could be some what higher but no more than $8–16 billion higher than the projections of current policy, over the 7 year period. The details of these differences are as follows:

1. The economic analysis of H.R. 5289 makes a complex set of assumptions regarding the volume of gas that would qualify for deregulation under the high cost provisions and for relatively high (regulated) prices under, for example, the stripper provisions. While this is difficult to forecast, the CBO's judgment is that the Committee may have understated the volumes of gas qualifying for the high priced categories, particularly for deep gas and for the stripper wells. Recent growth in the number of oil wells qualifying for the stripper provisions of EPCA would support such a conclusion. Therefore, the CBO believes that producers' revenues for this category may be understated slightly in the Conference report—possibly on the order of $3–5 billion from now until 1985.

2. The Committee seems to have made a strong effort to minimize the possibility that producers will take advantage of H.R. 5289 in a way not intended by its principal authors. Yet, in light of the extreme complexity of this bill, the possibility remains that producers will find a way to increase their revenues above the levels predicted by the Committee. CBO has no special knowledge in this area but believes that it is important to recognize the possibility of abuse under H.R. 5289.

3. The ranges of truly new production forecast by the Committee are, in the opinion of the CBO, too optimistic. We believe that additional production on the order of .7 TCF in 1985, which corresponds to the conservative estimate presented in the Conference Committee report, is the most likely outcome.

In summary, CBO believes that the likely increase in producer revenues over the 7-year period would range from $12–20 billion more than current policy. Offsetting those revenues by $4 billion in consumer savings from new gas production the likely consumer costs range from $8–16 billion.

A final point that may be important regarding price changes for a particular region. The high wellhead price of gas in 1985 in the intrastate market which is claimed in the EIA report under the terms of Conference agreement is, in the view of CBO, misleading. Because the compromise regulates gas prices until 1985 it is true that there is the potential for large increases thereafter to clear the market. However, the alternative proposed by the Senate is to allow prices to rise in the earlier years and thereby reduce potential price rises in the later years. The key point is that the consumer is not concerned solely with the new price in 1985. It is the average price that really matters and there is no doubt but that the Compromise agreement provides for lower consumer prices in 1985 then does the Senate bill. Examination of Table 2 in EIA's August 1, 1978 supplement clearly supports that statement.

Macro-economic Impacts.—Depending on the extent to which increased producer revenues are funneled into productive investments, the overall effects could be either slightly positive or slightly negative. However, in a $2 trillion economy, the effect would be relatively small in any event.

Regarding inflation, the effects are also likely to be small. If the increased consumer cost for gas were spread out evenly over the 7-year period, we expect the rate of increase of the GNP deflator would increase by a maximum of .05–.1 of one percent per year. If, as seems likely, the effects are very low in the initial years and build up in the later years, then we could see slightly larger inflation impacts in the 1982–1985 period.●

## JUVENILE ALCOHOLISM

● Mr. CULVER. Mr. President, we are witnessing an alarming increase in juvenile alcohol abuse. Testimony before the Juvenile Delinquency Subcommittee, which I chair, has shown that young people are beginning to drink earlier in life and in greater amounts. In my own State of Iowa, we have discovered that from 1974 to 1976 the earliest age of alcohol abuse fell from 9 years to 6 years of age. We also know that an estimated 17,000 Iowans between the ages of 14 and 17 have become heavy drinkers.

The task of preventing juvenile alcohol abuse is a difficult one. Alcoholism among young people has its roots in a society which tolerates and even encour-

ages the use of alcohol. In addition, the message which the media delivers to our youth is that drinking is glamorous and necessary for social acceptance.

At the Federal level, the Alcohol and Drug Abuse Education Office in the Department of Health, Education, and Welfare (HEW) provides training and resources for school programs in alcohol and drug abuse, education, and prevention. This office and its work deserve strong and continued congressional support.

Government programs alone, however, cannot halt the rise in juvenile alcoholism. We must also commit ourselves in our families, churches, and communities to provide the kind of personal guidance and support which will truly deter young people from the self-destructive use of alcohol. The importance of this approach was strongly supported by Mr. Gary Reidman, director of the Iowa Substance Abuse Authority, in an editorial that appeared in the Waterloo, Iowa Courier on August 20, 1978. Mr. Reidman traces the rise of alcohol's popularity among young people to its acceptance by society and to the relative lack of concern by parents about its use by their children. He suggests that parents should recognize alcohol as a drug and help to develop effective conditions for reducing the socially attractive appeal of alcohol.

I commend this article to my colleagues and ask that it be included in the RECORD.

The article follows:

SAYS NOT ENOUGH ATTENTION TO YOUTH ALCOHOL ABUSE

(By Gary P. Riedmann)

In the past 10 years we have heard much about the use of marijuana, heroin and other drugs by our youth.

Yet, at the same time, little attention has been given to the increasing use and abuse by young people of our society's most dangerous drug—alcohol.

The National Institute on Alcohol Abuse and Alcoholism estimates that there are 3.3 million teenagers in our country who are having problems with alcohol.

The proportion of teenagers who have experienced drunkenness has climbed from 19 percent to 45 percent in recent years.

These are national statistics, but we also have similar problems here in our own state, with data to support it.

In 1977, there were nearly 7,000 persons admitted to alcoholism programs for treatment. Of these, 900 or 13 percent, were under 21 years of age.

Younger and younger children seem to be drinking alcohol now.

In one statewide study conducted in 1974 and again in 1976, it was found that the earliest reported case of alcohol in 1974 was at age 10, while in 1976 it was age 6, with regular use reported by age 10.

The study also projected that 17,000 Iowa youth ages 14–17 exhibit a heavy drinking pattern.

Why is alcohol becoming more of a problem among our state's youth?

A primary reason is that alcohol has become such a socially acceptable drug to our society. This is true even to such a point that some parents are relatively unconcerned by their children's use of alcohol.

Undoubtedly, their reaction would be different if they discovered their child smoking marijuana.

Yet, at the same time, it is a fact that the disease, alcoholism, is the number three health problem in our country, causing more health, family, and adjustment problems and more directly or indirectly related deaths than any other drug.

The growing problem of the abuse of alcohol by young people has been blamed on a number of factors, including advertising, lack of parental supervision, lowered drinking ages and many others.

But in actuality, it is easy to see how the attitudes of society promote the use and abuse of alcohol.

We live in a chemical society. From an early age, children learn through watching others and television programs that alcohol is associated with having a good time and feeling good.

We see fathers and mothers coming home from the office or factory and reaching for a cold beer or martini "to help relax."

Some television programs subtly suggest that if a crisis develops, the immediate answer "to help cope" is to have a stiff drink.

Social events rotate around the use of alcohol, with friends pressuring you to "have just one more."

Young people are very aware of these attitudes and early develop the idea that alcohol is not a dangerous drug in the same sense as heroin.

Alcohol is not only acceptable, but also fun.

To use alcohol is to feel good.

If we are to deal with the rise in alcohol problems among youth, we must first deal with some of the attitudes of society.

Some ways you can personally help are:

Recognize that alcohol is a drug. Learn the facts about alcohol abuse and alcoholism. Understand that alcoholism is a disease which causes serious health and social problems.

Set proper models for youth to follow concerning the use of alcohol. Whether this means not using alcohol at all, or using more wisely, we must realize that we are helping to form either healthful or destructive attitudes toward alcohol by our own actions.

Explore ways for you and your family and friends to have a good time and feel good without the use of alcohol. There are many ways to relax after a hard day at work, and there are lots of unique non-alcoholic beverages that can add life to a party.

Through these ways and others, we can work together to insure that alcoholism does not become any worse among our youth.

There is so much talent and enthusiasm among our youth, it would be a shame to inhibit this potential by the use of alcohol.

For further information on alcohol or alcoholism or programs in the state, contact the Iowa Substance Abuse Information Center, Cedar Rapids Public Library, 428 3rd Ave. SE, Cedar Rapids, Ia., 52401.●

## ILLEGAL ALIENS

● Mr. HUDDLESTON. Mr. President, the problem of huge numbers of illegal aliens entering this country is escalating daily and it is imperative that this matter become a high priority item for the next Congress. A solution must be found in order to prevent the continued undermining of the labor force in this country.

In order to appreciate the severity and longrun implications of this problem, I believe it is imperative that we understand the motivating force behind most illegal immigration. Approximately 90 percent of the illegal aliens entering this country come from Mexico, and realization of the increasing economic and population pressures in that country should encourage us to enact strong measures to deal with the problem.

John Huey wrote an article for the August 30, 1978 edition of the Wall Street Journal which dramatically illustrates the Mexican dilemma and its impact upon illegal immigration in this country. Mr. Huey's article indicates that Mexico's unofficial plan for coping with the bleak economic future and burgeoning population is emigration through the "porous U.S. border." He quotes Patrick J. Lucey, U.S. Ambassador to Mexico, as saying, "They've [Mexican leaders] made it clear that they don't feel any sense of responsibility toward helping the U.S. with its problem of undocumented workers. The failure of [the U.S.] Congress to act on the question is viewed as a welcome breathing spell."

I do not believe that the United States can continue to act as a safety valve for other countries by permitting virtually unlimited immigration. Congress must act decisively and as soon as possible on this problem.

I ask unanimous consent that Mr. Huey's article be printed in the RECORD.

The article follows:

DESPITE RISING WEALTH IN OIL, MEXICO BATTLES INTRACTABLE PROBLEMS

(By John Huey)

MEXICO CITY.—Two years ago, in the waning days of Luis Echeverria's presidency, Mexico seemed near collapse. But since then, the tension that gripped this giant city has been soothed by visions of a sea of oil.

Mexico's sharp increase in its petroleum-reserve estimates has restored its international credit rating. Its $26 billion foreign debt seems certain to be whittled down, and phrases like "the next Saudi Arabia" are bandied about in flashy new discos springing up here.

But despite the oil-based balm, the cancers that have eaten away at Mexico for years are still afflicting it. So far, the private investment desperately needed to create jobs continues to lag. Mexican workers, robbed of purchasing power by inflation, are raising their wage demands and calling for more and longer strikes. Soaring population growth defies solution. Farm problems persist. And the flood of illegal emigrants to the U.S. continues as the primary safety valve.

It is becoming clear, in the words of a U.S. State Department economist, that "the problems of Mexico won't be solved by oil, and its major problems may well be worsened by it." Indeed, adds a Commerce Department analyst in Washington, "There is a growing school of thought that oil could be very harmful to Mexico right now. It's providing an excuse—a crutch—not to solve the basic structural problems." Some even compare Mexico's breakneck expansion of oil sales to a derelict selling his blood in the morning to buy an afternoon bottle of wine.

HUGE OIL RESERVES

Clearly, however, Mexico has plenty of blood to sell. Probable petroleum reserves are estimated at 31 billion barrels and possible reserves at 120 billion, while street-corner speculation puts the total at 160 billion barrels. Among other things, President Jose Lopez Portillo is expected to announce yet another sizable increase in reserves during his annual state of the nation address this Friday.

And amid a great debate over how to spend the newfound bounty, the money already has started pouring in. Pemex, the state-owned oil company, says exports this year should total about $2 billion, double last year's, and should hit $11.5 billion by 1985. Some U.S. observers see much-quicker growth in export revenue; they forecast $5

billion by 1980 and double that by 1982 or 1983. Such figures inevitably provoke comparisons with countries like Saudi Arabia, whose proven reserves exceed 150 billion barrels.

But other comparisons paint a far-different picture. The age makeup of Mexico's population of 64 million—almost half under 15 years old—is matched only by countries like Pakistan and Bangladesh. Mexico's income distribution ranks among the most unequal in the world, alongside countries like Uganda. And a slew of other social and economic ills presents an equally stark scene.

U.S. DEEPLY INVOLVED

These ills, moreover, are almost certain to become directly troublesome to the U.S. With almost 2,000 miles of common border, any further instability in Mexico will "create an entirely new type of international problem for the U.S.," a State Department official warns.

Of all these ills, unemployment is worrying Mexicans the most right now. The government concedes that only about half of the work force in Mexico City is fully employed, and official statistics show that industrial employment in the nation dropped 1.6% last year, with no signs of a reversal in the first half of 1978.

The job problem is evident in Mexico City whenever a traffic light turns red. Gaunt young men with rags and buckets rush out among the stopped cars and try to earn a few pesos by cleaning windshields. And their competition is constantly increasing. Each day, an estimated 1,400 country people pour into this city of 13 million and strain a system already struggling to import food and drinking water. Nationwide, an estimated 800,000 additional jobs a year are required just to avoid a rise in unemployment.

GRAVE NEED FOR JOBS

"The economic situation is grave," says Alfonso Sanchez Madariaga, No. 2 man in the Confederation of Mexican Workers, the nation's most-powerful labor group. He believes that the immediate need—quite apart from the future—is for five million new jobs, and he adds, "We are hoping that with the exploitation of oil, the government can create new jobs in all areas of basic industrial production."

But skeptics contend that employment isn't easily increased in "extractive" industries like petroleum, in which creation of one job requires an investment of $100,000 to $200,000, compared with only $1,000 to $2,000 in light manufacturing.

"There is no way that oil—its extraction, its refinement or its marketing—will improve employment in Mexico," says the skeptical State Department economist, who adds, "Given the way Mexico is organized, it (petroleum) will worsen income distribution." Professor Calvin Blair, longtime Mexico-watcher at the University of Texas, agrees. "If the government uses strong oil revenues as a reason for postponing fiscal reform—particularly tax reform," he says, "income distribution may well worsen."

Both income distribution and unemployment are intertwined in another of Mexico's devastating problems: the feudal inefficiency of its agricultural system. More than 45 percent of the labor force works millions of fertile acres but produces less than 10 percent of gross national product and receives only 6 percent of national income; half the farmers produce only 4 percent of total agricultural output and don't grow enough food to feed their own families; and the country hasn't grown enough to feed itself since 1971.

The agricultural system is divided between primitive ejido (communally owned) farms and large, mechanized agribusiness spreads. On the least-efficient farms, inferior seeds, insufficient fertilizer and archaic equipment hold down per-acre corn yields to less than one-quarter the U.S. average.

The farm problem is politically explosive. To one faction, nothing is as sacred as the field worker's right to own land—a tenet basic to the 1910 revolution. To another, nothing seems as urgent as increased efficiency. But Manuel Clouthier, president of Coparmex (a powerful employers' confederation), observes, "Every time agricultural production has increased anywhere, employment has decreased"—hardly what Mexico needs. Although the tension has eased since the violence that followed Mr. Echeverria's expropriations two years ago, the pressure for land reform hasn't abated; just last week the government expropriated about 26,000 acres of private land to be distributed to ejidos and accepted another 49,000 acres in "voluntary" donations.

If some solution isn't worked out, the benefits of oil exports could be largely lost. "Quite simply, the oil boom will be offset if agricultural production isn't increased," Mr. Clouthier says. He notes that producton dropped 1 percent in both 1977 and 1976. And even though 4 percent growth is forecast for this year, Mr. Clouthier cites projected imports—including 1.8 million tons of corn, 1.6 million tons of oilseeds and 700,000 tons of sorghum—as an alarming trend. As one agribusiness executive asks, "What good will it do to export $11.5 billion in oil in 1985 if we have to use it to pay for half our food in imports?"

BURGEONING POPULATION

Moreover, feeding Mexico today is literally only half the job that it will soon become. Already the 10th largest in the world, Mexico's population is expected to double by the year 2000. This surge—due to a high birth rate coupled with a relatively low death rate—is perhaps Mexico's worst problem, and the one least solvable by oil money. After decades of urging the populace to reproduce, the government's initial efforts to push birth control have met with some success in the past couple of years. But most experts credit that success to acceptance by the educated classes and express little hope of convincing the masses. Besides, demographers note, even if the birth rate suddenly plunged, population growth wouldn't be significantly affected for 20 years because of the multitude of women soon entering their childbearing years.

While oil revenues apparently can do little to solve such problems, they clearly can do much to aggravate some others: corruption, inflation and, subsequently, the distribution of income. The large influx of money understandably arouses widespread suspicion in a country that, ever since 1950, has seen strong economic development accompanied by deterioration in income distribution and by overt corruption. To combat doubt, President Lopez Portillo has initiated what appears to be the beginnings of an anticorruption campaign, but many observers wonder whether it is possible to overcome a malady so endemic here. As a popular expression puts it, "Oil, a gift of the gods; is the temptation of the Devil."

To the extent that oil money isn't used to service foreign debt, the funds also could become a temptation to spend—and thus a fuel for inflation. According to most U.S. estimates, inflation already is clipping along at well above 20 percent annually. Prices have risen so steadily that labor long ago was released from its voluntary 10 percent limit on wage increases and recently has been winning settlements as high as 16 percent. The unions are "more aggressive than they're been since they organized 40 years ago," a labor lawyer for several big corporations says. "They're better educated, and they expect more."

REAL WAGES DROP

But in real terms—adjusted for inflation—workers aren't getting more. A U.S. Embassy report shows that the average real wage declined in 1977 and will drop again this year. The report also counted, in the first quarter of this year, 427 strikes, 47 percent more than in the like 1976 period.

In the face of all these mounting pressures, Mexico's plan for stability has long been clear, most observers say. And it isn't oil.

"It's the same way the Irish and the English and the Germans and the Italians all solved their problems in the late 19th and early 20th Centuries, when their economies were transforming from agrarian to industrial," Prof. Blair of the University of Texas says. "Between 1890 and 1920, they sent 20 million immigrants to the U.S."

Mexican leaders don't deny the need for emigration. "They've made it clear that they don't feel any sense of responsibility toward helping the U.S. with its problem of undocumented workers," Patrick J. Lucey, U.S. Ambassador to Mexico, says. "The failure of (the U.S.) Congress to act on the question is viewed as a welcome breathing spell."

How these impoverished migrants will fare in the U.S. sparks much speculation here. But wealthier Mexicans have insured that they always will be welcome—by purchasing real estate in Texas, California, Colorado and elsewhere.

KEEPING U.S. TOEHOLDS

"We aren't seeing the large pools of money coming in, like we did during the Echeverria days; there's obviously a higher comfort level with Lopez Portillo," says Maylon Burnham, president of a San Diego real-estate firm that long has served Mexican investors. However, he says. "A lot of our Mexican investors have had opportunities to pull their money out, but they always prefer to roll it over into U.S. property. And we haven't seen any slowdown of the quarter-million, half-million and three-quarter-million-dollar investments.

Nor has Mexico seen any upturn in investment from the U.S., which accounts for more than 70 percent of foreign holdings here. In the 1978 first quarter, according to the central bank, new private foreign investment in Mexico totaled only $14 million, the lowest in at least six years. Business, a U.S. executive says, "is just sitting around waiting"—waiting to see what will happen next.

And concern over what comes next is increasing. For one thing, the fragility of oil dreams was made clear to most Mexicans by the failure of a much-heralded plan to sell natural gas to the U.S.; if failed because the price didn't conform to President Carter's energy plans.

"We don't know what the real situation is," a wealthy Mexican merchandiser complains, "but we're tired of fantasies. If the government has a plan for this petroleum, it should publicize it. We know the oil is a postponement; we just don't know what it's a postponement of." ●

## FOOD INFLATION

● Mr. McGOVERN. Mr. President, on Tuesday, August 29, the Labor Department reported that the consumer price index increased 0.5 percent in July. Though this monthly increase is the smallest since last December, the seasonally adjusted annual rate for the first 7 months of this year equals 9.8 percent—"the worst inflation rate in 3 years."

I have been deeply concerned over the extent to which food has been the main contribution to the double-digit inflation we have experienced this year. Due to the volatility of food prices, the figures for July essentially remained unchanged from the June statistics. However, it is imperative that we recognize that the American consumer is confronting a 15.3 percent seasonally ad-

justed annual rate of inflation for food. This is an intolerable situation.

A pertinent example of the severity of our present food price dilemma is in Washington, D.C., where supermarket prices rose 3.2 percent in the past 2-month period. In an article appearing in the Washington Post (August 30), a Washington shopper aptly expressed the depth of this problem: "It's absolutely ridiculous * * * During the last month, for the first time, my food bill amounts to more than half of my weekly paycheck."

Mr. President, I request that this Washington Post article of August 30, 1978, be printed in the RECORD.

The article follows:

[From the Washington Post, Aug. 30, 1978]

AREA PRICES UP 1.9 PERCENT

(By Charles S. Rowe, Jr., and Neil Henry)

Led by large increases for food, housing and transportation, consumer prices in the metropolitan Washington area rose 1.9 percent from June through July, slightly above the average national price increase of 1.8 percent during the two months, the Labor Department reported yesterday.

Since July a year ago, local consumer prices have risen 7.7 percent as prices nationwide increased 7.4 percent.

Locally, inflation is accelerating as the latest 1.9 percent increases in prices follows a 1.7 percent increase in April and May and an increase of seven-tenths of 1 percent during the first three months of the year.

During June and July, local food prices increased 2.8 percent, the largest increase for any of the major consumer expenditure categories. Grocery store food prices increased 3.2 percent during the two months. Nationally, food prices increased 2.2 percent during the two months.

Housing costs, which account for 46.7 percent of the average spending of Washington area consumers, increased 1.9 percent during the two-month period. Since July a year ago, local housing costs have risen 8.4 percent, while the costs nationwide have risen 8.8 percent.

Among housing costs, the cost of utilities increased 5.2 percent during June and July, partly reflecting an increase of 10 percent for gas and electricity.

The cost of traveling around the metropolitan area also increased significantly during June and July. Public transportation costs increased 2.5 percent and private transportation increased 2.6 percent. Since July 1977, local transportation costs have risen 6.2 percent compared to an increase nationwide of 4.5 percent.

The large increase in food prices was greatest for meats, poultry, fish, eggs, fruits and vegetables—which all increased in price more than 4 percent in the two months. Prices declined for a few products, including oranges, lettuce and tomatoes.

Among Washington shoppers interviewed yesterday, the increase in grocery store food prices came as no surprise. Many felt helpless while others were downright furious.

"It's absolutely ridiculous," said Louise Lemmon, cradling a bag of groceries in her arms as she left the Metro Supermarket at 141 P St. NW. "During the last month, for the first time, my food bill amounts to more than half of my weekly paycheck.

"You spend $4 or $5 for a piece of meat, and when you get home and cut away the fat you find it isn't hardly enough to feed one person, let alone four," she said. "Then when the rent comes due you wonder where all the money went."

Linda Jarman, interviewed outside the Townhouse Supermarket at 1800 20th St. NW, suggested a solution to the rise in local food prices.

"My husband and I are planning to move to rural North Carolina," she said, "because life is so expensive around here. I think down South we'll find it a bit cheaper to live."

Chau Phan, 71, who lives on 19th Street NW on a fixed income, left the store with a small bag of groceries.

"Last year, I was able to get a bag and a half of food for the same money," said Phan, who shops for food once a week with his wife. "My pension doesn't stretch at all, while food prices seem to always stretch. One or the other will have to give after a while."

Local consumers may find some relief in clothing prices, which decreased 2.1 percent during June and July. The price of footwear showed the sharpest drop, falling 5 percent as female apparel prices fell 3.4 percent and male apparel prices fell 1.8 percent. Nationwide, clothing prices fell 1.1 percent during the two months.●

## PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the three notifications I have just received.

The notifications follow:

In reply refer to: I–13504/77ct.

WASHINGTON, D.C.,
*September 7, 1978.*

Hon. JOHN J. SPARKMAN,
*Chairman, Committee on Foreign Relations, U.S. Senate,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78–66, concerning the Department of the Army's proposed Letter of Offer to Saudi Arabia for other than major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $460 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, USA, Director, Defense Security Assistance Agency.*

[Transmittal No. 78–66]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

| | *Million* |
|---|---|
| Major defense equipment* | $0.0 |
| Other | 460.0 |
| Total | 460.0 |

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Management of construction of Ministry of Defense and Aviation Headquarters facility at Riyadh. The facility will include office and administrative space, cafeteria, mosque, auditorium, atrium, underground command center, parking garage, market facilities, gatehouses, roads, and all utilities.

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: September 7, 1978.

WASHINGTON, D.C.,
*September 7, 1978.*

In reply refer to: I–2239/78ct.

Hon. JOHN J. SPARKMAN,
*Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78–68, concerning the Department of the Army's proposed Letter of Offer to Saudi Arabia for other than major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $35 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, USA, Director, Defense Security Assistance Agency.*

[Transmittal No. 78–68]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Saudi Arabia.

(ii) Total Estimated Value:

| | *Million* |
|---|---|
| Major Defense Equipment* | $0.0 |
| Other | 35.0 |
| Total | 35.0 |

*As included in the U.S. Muntions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: One (1) 35 MW Power Plant at Khamis Mushayt Military Cantonment.

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: September 7, 1978.

WASHINGTON, D.C.
*September 7, 1978.*

In reply refer to: I–4917/78ct.

Hon. JOHN J. SPARKMAN,
*Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78–87, concerning the Department of the Army's proposed Letter of Offer to Saudi Arabia for defense articles and services estimated to cost $272.1 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, USA, Director, Defense Security Assistance Agency.*

[Transmittal No. 78–87]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Saudi Arabia.

(ii) Total Estimated Value:

| | *Million* |
|---|---|
| Major Defense Equipment* | $0.0 |
| Other | 272.1 |
| Total | 272.1 |

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Additional design as required, con-

struction, and other related procurement, for Additional Support Facilities, Saudi Naval Expansion Program (SNEP), including U.S. Army Corps of Engineers costs for services provided in managing and administering the design and construction contracts. Facilities are to be located at Jubail.**

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(v) Date Report Delivered to Congress: September 7, 1978.●

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I suggest that the cloakrooms ask Senators, and I wonder if the cloakrooms know of any Senator who wishes to come over during morning business to make any statement or introduce a bill. If we could find out within 5 minutes the Senate could go out.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HANSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE NATURAL GAS COMPROMISE—PROS AND CONS

Mr. HANSEN. Mr. President, few issues we currently face are as complex and controversial as the question of whether to approve the report of the conferees on the natural gas part of the energy bill. The Congressional Research Service has now scheduled an informational debate seminar on this bill which may be of great value to Members and staff who are considering this critical question. Because of the late moment at which this program was arranged, notice of it may not have been delivered in time to all Senators' offices. For this reason, and because I believe that the program will provide an excellent airing of the arguments both for and against this legislation, I ask unanimous consent that the announcement of this program be included in the RECORD following my remarks.

There being no objection, the announcement was ordered to be printed in the RECORD, as follows:

THE NATURAL GAS COMPROMISE—PROS AND CONS

In response to the anticipated debate, the Congressional Research Service invites Members and staff professionals to a seminar on the Natural Gas Compromise.

Date: Tuesday, September 12, 1978.

Time: 9:00 a.m. to 11:00 a.m.

Place: Coolidge Auditorium, Library of Congress.

Panels will offer five-minute arguments on each of the following issues:

1. Is the natural gas compromise an enforceable piece of legislation?

2. What are the impacts of the compromise on consumers, both residential and industrial, compared to the status quo?

3. How will natural gas producers fare under the compromise, compared to the status quo?

4. How will gas supply respond under the compromise as compared to the status quo?

5. What is the impact of the compromise on the dollar, the balance of payments, and the U.S. image abroad?

6. Are there any practical current alternatives to the compromise and will Congress face the issue again if the compromise fails?

Written and oral questions from the audience will be entertained after the debate.

PANELISTS

*Pro*

Leslie J. Goldman, Prin. Dpty. Ass't Sec'y, DOE.

George H. Lawrence, Pres., American Gas Assoc.

William Demarest, Counsel, Energy and Power Subc.

J. N. Warren, Natural Gas Producer.

*Con*

Jack M. Allen, Pres., Indep. Petroleum Assoc.

Danny Boggs, Senate Energy Committee.

James Flug, Exec. Dir., Energy Action Committee.

A Noted Economist.

Mr. HANSEN. Mr. President, the administration argues that the country needs this gas bill to impress the outside world with its serious intent to control energy use and that the fate of the dollar might depend on the outcome of the vote.

But when the substance of this so-called compromise is weighed against its symbolism it reminds me of a man paying a bill with a bum check. And if this bill is passed, you can bet your bottom devalued dollar that it, too, will bounce.

As the distinguished chairman of the Finance Committee, (Mr. LONG) said in commenting on the bill:

What I find to be one of the most impressive arguments to some Senators, when thoroughly analyzed, becomes one of the most ridiculous. That is the argument that we must pass a bad bill, even though it be a very bad bill, because it will strengthen the dollar, that somebody abroad will think America has done something about the energy question and, therefore, they will have more confidence in the dollar.

. . . we might as well pass a blank sheet of paper and just write "energy bill" across the top of the sheet of paper and hope to fool somebody.

What good would it do us to pass a bad bill, a bill that is going to cause us to have less energy, not more energy, a bill that will hinder production, not increase production? What good will it do us to pass such a bill in the hope of fooling some foreigner?

Those are sophisticated people. They are not a bunch of idiots over there in Japan, in Europe, and elsewhere. They will know from everyone they talk to in the industry that the bill does more harm than good.

Mr. President, one of those European countries is doing just the opposite of what this so-called compromise proposes to do.

France is freeing itself of the yoke of price controls and restoring market forces as the prime mover in the French economy. For French Prime Minister Raymond Barre as well as President Valery Giscard d'Estaing, both trained economists, this bold new policy of economic liberalization constitutes a considerable economic and political gamble, for it inevitably means a period of rising prices and rising unemployment while waiting for the anticipated market forces to bring both down.

Barre pointed out that there are always risks in any policy, so it is important to acquire the means of limiting those risks. He said it was his belief that in the present state of the French economy, they had those means.

The price indices will go up in coming months, he said, but those increases are adjustments and not inflationary price rises.

Barre said:

Let's try to understand what is happening and understand that our policy is to build a sounder economy.

If this bill were a true deregulation bill such as the Senate passed almost a year ago rather than the monstrosity it is, I would be hailing it for partly restoring market forces as the prime mover in the U.S. energy economy as the French are doing.

Rather than that, this bill extends price controls and regulation to the only free gas market we have, the intrastate market.

The Energy Policy and Conservation Act of 1975 which extended price controls on crude oil has had a stifling effect on domestic crude production. Other than Alaska, domestic crude production continues to decline under a ridiculous four-tiered crude pricing system—lower tier oil, upper tier oil, stripper well oil, and foreign oil.

As though this jerry-built crude pricing system plus a crude oil entitlements program that encourages imports is not enough of a bureaucratic nightmare, this so-called natural gas compromise proposes to outdo the Rube Goldberg crude oil pricing system with one that was described by Robert J. Samuelson of the National Journal as "a law that promotes neither maximum gas production nor energy conservation and, simultaneously, is so complicated that it defies easy obedience or enforcement. Like all bad laws, it will ultimately breed contempt for the law."

Mr. Samuelson called the conference bill a "logrolling monstrosity."

The article ended with this observation:

So the Congress can choose between the disaster of passing an atrocious bill and the calamity of rejecting an "energy plan." It is a chapter straight from Dante.

With permission of the National Journal, I ask unanimous consent that the full text of Mr. Samuelson's copyrighted article be printed in the RECORD.

There being no objection, the article was ordered to be printed n the RECORD, as follows:

CONGRESS' CHOICE ON GAS BILL CHAPTER STRAIGHT FROM DANTE

(By Robert J. Samuelson)

There is no turning back once you start down the road to hell. Either you arrive or you get stranded in purgatory.

President Carter and Energy Secretary James R. Schlesinger might reflect on this during the final scenes of the natural gas debate—for it captures perfectly their predicament.

** Jidda, Riyadh and Dammam and includes: (1) Recreational Facilities, (2) Housing and Community Support Facilities, (3) Base Support Facilities, and (4) Base Accesss Roads and Channels.

If the bill passes, Congress will have enacted a law that promotes neither maximum gas production nor energy conservation and, simultaneously, is so complicated that it defies easy obedience or enforcement. Like all bad laws, it will ultimately breed contempt for the law.

But the bill also has acquired a symbolic importance far removed from its merits. If it fails, the United States will be seen—once again—as having rejected a "national energy program." Abroad, this rejection will confirm the view that the United States cannot manage its own economy.

Carter and Schlesinger have only themselves to blame for this denouement. Flawed in concept, their original natural gas proposal activated all the confusion and conflict inherent in this issue. The result was preordained.

The best way to understand their error is to take a detached look at natural gas—the way a Martian might.

Natural gas now supplies about 25 percent of the nation's energy and is used by more than half of all homes. Although nearly 60 percent of gas sales go to industry, this use is declining. Fearing future shortages, businesses have conserved more than consumers and have switched to other fuels.

Consequently, homes and apartments will constitute an ever-larger part of the gas market. For most residential users, gas prices today are cheaper than oil or electricity prices. Last year, for example, the average cost of gas for homeowners—$2.33 per thousand cubic feet—was about one-third less than the equivalent oil cost.

Federal price regulation accounts for much of this difference. About 55 percent of all gas moves between states (interstate) under prices set now by the Federal Energy Regulatory Commission and previously by the Federal Power Commission. The FERC has set wellhead prices ranging from 54 cents per thousand cubic feet (for gas discovered before 1973) to $1.50 (for gas discovered after 1975). Pipeline and distribution costs account for the rest of the retail price.

By contrast, gas produced and consumed in the same state (intrastate) isn't regulated and now sells for a wellhead price between $1.30 and $2.10 per thousand cubic feet.

The conclusions are relatively simple. The distinction between the interstate gas and intrastate gas means some consumers (in the interstate market) who want gas most can't get it because producers sell where the price is highest. So the government needs to end the distinction.

Likewise, the government needs to end price controls. If this would push prices up, it also would promote maximum production and conservation. The impact would extend over about a decade because most prices are now set by long-term contracts.

That Carter and Schlesinger did not accept this conclusion inevitably led to all their subsequent political and public relations problems. They simply fixed another artificial price for newly discovered gas, $1.75 per thousand cubic feet, and proposed applying this price to intrastate gas.

The justification for this new price does not stand scrutiny. Any higher price (they argued) wouldn't result in much more gas simply because there isn't much more. In fact, no one knows how much natural gas remains and, therefore, what the price should be. After two years of study, Resources for the Future Inc., a Washington research group, came to precisely that bland conclusion.

But if Schlesinger seriously believed in the scarcity of gas, the proper response would have been to let prices rise and to tax "excess" profits from producers. Holding down prices simply stimulates unnecessary consumption, depleting a scarce resource faster. It protects gas consumers, but creates more price pressures on oil—the most easily available substitute—and, consequently, hurts oil consumers. Because "conservation" was such a prominent part of the Carter rhetoric, this glaring inconsistency undermined the President's credibility.

Having embraced this ill-conceived plan, Carter and Schlesinger have been its chief victims. Not the least of its liabilities is a potentially stifling effect on the development of Mexico's vast gas reserves. Negotiations between the United States and Mexico over the export of two billion cubic feet daily to the United States (3 percent to 4 percent of total consumption) broke down early this year, in part because the Mexicans insisted on a price above the administration's regulated price.

Allowing a free market price would simplify talks with the Mexicans enormously. Mexico needs to sell its gas here. If it can't (or won't), it may slow its energy development. Much of the Mexican gas is found with new oil. The upshot is that there could be not only less gas production, but also less oil production—and more pressure on prices.

Nor did the Carter plan, inconsistent and incapable of being explained to the public, command much support in Congress. The resulting conference bill is a logrolling monstrosity. At last count, the bill contained at least 17 price classifications. Wells drilled to 15,001 feet get one price and those to 14,999 feet get another. Wells drilled within 2.45 miles of an existing well get one price and wells 2.55 miles away get another. Some gas would be freed from controls (theoretically) in 1985, and other gas wouldn't.

Consequently, almost no one is satisfied with the outcome. Staff members of the FERC fear that the bill may require detailed information on each new gas well—11,000 last year—and could not possibly be administered conscientiously. Sen. Edward M. Kennedy (D-Mass.) believes the bill will "result in endless litigation, delay and misunderstanding." The producers are appalled.

So Congress can choose between the disaster of passing an atrocious bill and the calamity of rejecting an "energy plan." It is a chapter straight from Dante.

Mr. ROBERT C. BYRD. Mr. President, I understand there is another Senator coming to the floor. As a matter of fact, I see him coming down the hall. I yield the floor.

## SENATE RESOLUTION 555 AND SENATE RESOLUTION 556—SUBMISSION OF RESOLUTIONS OF DISAPPROVAL OF MODIFICATION OF CERTAIN SHIPBUILDING CONTRACTS

(Referred to the Committee on Armed Services.)

Mr. PROXMIRE. Mr. President, I send to the desk resolutions of disapproval of the Navy's proposal to provide hundreds of millions of dollars of financial relief to bail out General Dynamics and Litton under Public Law 85-804.

Mr. President, I have just come from a hearing on this matter before the Joint Economic Committee. I testified there and before the Armed Services Committee.

This is one of the worst ripoffs in the history of our Nation. It is something that few people have had an opportunity to pay any attention to. I am very hopeful that we can get a vote on this. It will be difficult to do so, I realize, under the circumstances, but I am hopeful we can get a vote of the Senate up or down on this disapproval under the Senate rules. If we cannot get a vote, I propose that this should be a demonstration of why the rules should be changed, because the purpose of the law under which I am sending the resolution to the desk is to provide an opportunity for the Senate as a whole or the House of Representatives as a whole to disapprove settlements that are far above the contract terms. They have to be at least $25 million above the contract before we have an opportunity to vote on such a resolution. These are almost a billion dollars, in aggregate, above what the contract settlements provided.

I realize the hour is late and the Senate will go out of session shortly, so I will not detain the Senate by making a long substantive statement at the moment.

### AN APPEAL TO STOP A CLASSIC TAXPAYER RIPOFF

The proposals are objectionable on several grounds. They do not represent a solution to the shipbuilding claims problem. Because they were done as a result of threats by the shipbuilders to shut down operations, and because they provide them with hundreds of millions of dollars over and above the values placed on the claims by the Navy, they are bad precedents. They violate the integrity of the Navy's claims review process and they do severe injury to the defense procurement system.

The Navy wants to pay the two companies $541 million more than the value of the claims. It seeks to do this on grounds that to do so will facilitate the national defense. I fail to see how it facilitates the national defense. I believe the proposals will impair the national defense.

I do not object to the Navy's findings about the value of the claims. It says General Dynamics' claim is worth $125 million and Litton's is worth $312 million. But the Navy wants to pay the two firms $541 million over and above the value of the claims.

The issue is whether or not it facilitates the national defense to pay the firms $541 million more than the value of their claims.

The Navy has stressed the fact that without the relief it seeks to provide both firms face large losses on their Navy contracts. Indeed, the settlements were reached by splitting the potential losses between the Navy and the companies. The material supplied by the Navy implies that the contractors might go out of business if they had to absorb the total cost overruns.

### NO BANKRUPTCY PROBLEM

But there is no evidence that either company would go bankrupt without the generous bailouts offered by the Navy. Indeed, the audits conducted at the Navy's request show the opposite and the Navy now admits that neither company faces bankruptcy.

If we are not saving two contractors from bankruptcy, how are we facilitating the national defense?

Secretary Claytor believes these settlements will end the acrimonious relationship between the Navy and its shipbuilders and avoid expensive and time-consuming litigation over the claims.

Of course, if you give a defense contractor several hundred million dollars above the value of his claim he will agree

to stop arguing about it and to stop threatening you about it. But that hardly facilitates the national defense.

TAXPAYER SACRIFICED

What it does is sacrifice the taxpayers' interest to those of two large corporations:

First. The Navy is turning military muscle into fact by using funds that could build ships to pay for cost overruns;

Second. It is engaging in a form of backdoor welfare by paying shipbuilders $541 million over and above the value of their claims;

Third. It is rewarding waste, mismanagement, and inefficiency, because there is abundant evidence that the shipbuilders were unable to manage their labor forces and that corporate management is primarily responsible for the large cost overruns;

Fourth. It is giving in to the shipbuilders' threats to shut down operations unless its demands are met;

Fifth. It is establishing a harmful precedent which will lead to the needless expenditure of additional sums; and

Sixth. The Navy can provide no assurance that the contractors will refrain from filing future claims without adequate justification.

The message the Navy is sending out is this: If you are a large contractor and you dominate an important portion of the defense market, file an inflated claim and the Navy will pay the true value plus as much as 50 percent of the remaining portion.

The result will be to encourage future claims. It is highly probable that within a year or so we will be faced with new claims from the same and other contractors and we will find ourselves in the same predicament we are in today.

Indeed there is already evidence that General Dynamics is preparing the ground for a new major claim on the Trident. A memo by Admiral Rickover dated August 14, 1978, provides details on this new development. I will be very surprised if Litton is not doing the same thing.

NAVY POLITICAL APPOINTED TAKEOVER

The Navy is also telling the defense contractor community not to worry too much about the professional Navy claims examiners. After the claims examiners finish their work and determine, from the Government's perspective, what the claims are worth, the Navy's political appointees will take over. All the contractors have to do is wait for the political appointees to move in and deal directly with them. Likely as not, the political appointees will work out a way to bail you out.

I believe the better solution for the Navy is to enforce its contracts. Claims should be reviewed and settled strictly on their merits. If contractors do not agree to a settlement, as is their privilege, then the appeals process should be allowed to take its course.

The Navy and Congress should not give in to threats from contractors. When contractors threaten to stop work, the Government should coolly consider its options. The Government has options in these cases. If the shipbuilder tries to shut down, the Government can get an injunction from a Federal court to keep the yard open. In fact, this was done in the Litton case. When Litton decided to shut down in 1976, the Navy got a Federal injunction to keep the yard open.

Even if a company goes bankrupt, a Federal court can keep the company in business under the bankruptcy laws. As a last resort the Government can temporarily take over a shipyard if the contractor refuses to complete work on ships needed for national defense.

These are difficult choices for the Government to make, but the contractors are forcing the Government to make such choices. Unfortunately, in the present case the Navy has capitulated to the demands of the contractors rather than making the tough decisions.

MASSIVE BAILOUTS

I want to reiterate the point I have been trying to make that the Navy is proposing massive bailouts and that the present proposals are merely the tips of a gigantic bailout iceberg. Let me quote from a memorandum by Admiral Rickover to Secretary Claytor. The memorandum is dated August 14, 1978.

Rickover says:

The proposed PL 85-804 settlement with General Dynamics leaves the Navy vulnerable in future to unfounded and inflated claims of the same sort you are now proposing to settle.

The admiral goes on to say that—

Even after the announcement of the PL 85-804 settlement, Electric Boat is actively laying the groundwork for future claims on Trident and SSN 688 class submarine contracts; that unless special precautions are taken now, General Dynamics may well attempt in future to recover through new claims a major portion of the $359 million loss they are presently agreeing to absorb.

The remainder of Rickover's memorandum contains examples illustrating how General Dynamics is already taking advantage of the situation. Here is one, and I quote from the memorandum:

Recently the detailed government-furnished shielding drawings had to be revised to correct an error made by Electric Boat in its capacity as the government's design agent under the Trident design contracts. This revision added a requirement to drill a single 1½ inch hole in a steel shield box in each of seven ships. Fabrication of the affected part had not yet begun, so no ripout rework or disruption was involved. Nonetheless, the company contends that the drawing revision constitutes a change to the contract and has quoted a price of $1000 per ship to drill the hole. The Navy has rejected this request. Soon, I expect we will get a letter announcing that the company is proceeding with the work subject to submitting a claim.

Mr. President, even as we meet today General Dynamics and Litton are preparing new claims to be submitted in the near future. That is why Secretary Claytor's statements that the two companies are being forced to absorb large losses is nonsense. The ships that are the subject of the claims are still under construction. They would not be delivered to the Navy for years.

LOSSES OR PROFITS ON CONTRACTS

It is premature to talk about losses on ship contracts that would not be completed for years. This is especially so when the companies have a history of filing claims, are claims prone, and are known to be preparing the ground for future claims.

This is the second time the Navy has settled a claim from General Dynamics on the 688 submarine program. In 1976, the Navy gave the company $97 million on a $220 million claim. So this is the company's second bite of the apple. It is fair to say that it is now trying to get the portion it failed to get in 1976 and we would be fools to believe it will not try to get more after this settlement.

A few final words. It is time to rethink the way the Navy gets its ships. The premise of the present system is that private yards can build ships cheaper than Navy yards. But if we have to bail out the private yards and, in effect, guarantee them against losses the premise is undermined and the reason to rely on the private yards is lost.

I believe we ought to act on Admiral Rickover's suggestion that the Navy consider buying a shipyard as part of an overall settlement or that it uses an existing Navy yard which could be operated by a private contractor on a cost reimbursement basis as a Government-owned, contractor-operated shipyard. As an alternative, we might consider a TVA-type Government shipyard to provide the Navy with a facility to build some of its own ships and a measuring rod to compare the costs and performance of the private yards.

For the Navy to simply drop its tail and run whenever a company threatens to shut down or file a lawsuit is unacceptable. For the Navy to abandon its contractual rights and to be intimidated into bailing out the private shipyards is not in the interests of the Navy or the taxpayers.

We have a taxpayer ripoff before us and one that would not stop ripping until the Navy finds the courage to enforce its own contracts.

Mr. President, I send the two resolutions to the desk.

The PRESIDING OFFICER. The resolutions will be received and appropriately referred.

The resolutions are as follows:

S. RES. 555

*Resolved*, that the Senate disapproves the obligation of the United States proposed to be made by the Secretary of the Navy in modifications to contracts numbered N00024-71-C-0268 and N00024-74-C-0206 between the United States and the Electric Boat Division of General Dynamics Corporation, notification of such proposed obligation having been transmitted by the Secretary of the Navy to the Committee on Armed Services on June 22, 1978, under the provisions of the first section of Public Law 85-804 (50 U.S.C. 1431).

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S. RES. 556

*Resolved*, that the Senate disapproves the obligation of the United States proposed to be made by the Secretary of the Navy in modifications to contracts numbered N00024-69-C-0283 and N00024-70-C-0275 between the United States and the Ingalls Shipbuilding Division of Litton Systems, Inc., notification of such proposed obligation having been transmitted by the Secretary of the Navy to the Committee on Armed Services on June

24, 1978, under the provisions of the first section of Public Law 85–804 (50 U.S.C. 1431).

Mr. PROXMIRE. Let me ask, Mr. President, under the rules, is there a possibility that these resolutions could be held at the desk if referred? Is there any regulation requiring when they have to be reported to the floor? If sent to a committee, is there a limit on how long the committee can hold them? As I understand, the resolutions have to be acted on by September 20 or they are dead and, therefore, the rules may prevent the Senate from having an opportunity to vote on this matter. Could the Parliamentarian and the Presiding Officer advise as to what our rights are under the rules?

The PRESIDING OFFICER. The Chair would advise that under the normal procedure, these resolutions would be referred to the Armed Services Committee, and would reside with that committee until that committee took action upon them.

Mr. PROXMIRE. Well, I have already pleaded with the Armed Services Committee to report a resolution of disapproval, but it fell on, I should not say deaf ears, but ears that were not sympathetic to this particular cause. It is a very fine committee, but they do not agree with me.

I wonder if a Senator, under these circumstances, has any rights of any kind that would enable him to secure a vote by the Senate, or if we have to find a way of changing the rules so that under these circumstances something can be done; or can the committee simply block, under the circumstances, any action on the part of the Senate?

The PRESIDING OFFICER. The Chair is advised that unless the committee having jurisdiction reports the resolution back to the Senate as a whole, the Senate as a whole is not in a position to take the matter up and vote on it.

Mr. PROXMIRE. So if the Armed Services Committee does not decide to act favorably on these resolutions of disapproval, there is no opportunity for the Senate to exercise its will in the matter; is that correct?

The PRESIDING OFFICER. The Chair is advised that that is the normal course and practice.

Mr. PROXMIRE. Well, then, Mr. President, I understand the situation; in that event I will do my best to persuade that able committee to report the resolutions even if they disagree with their substance, and give the Senate an opportunity to act upon them. I will see what else I can do.

I thank the Chair.

## GRASSLANDS MIGRATORY BIRD CONSERVATION ACT

Mr. ROBERT C. BYRD. Mr. President, I understand that Calendar Order No. 1096 has been cleared for action by unanimous consent. I, therefore, ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1096. Mr. HAYAKAWA is here, and he can speak for the minority.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 691) to provide for the preservation and enhancement of critical habitat for migratory waterfowl and other wetlands-dependent migratory birds of the Pacific flyway in the grasslands area of the San Joaquin Valley, Calif.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. HAYAKAWA. Mr. President, we have no objection. Indeed, I want to endorse this measure completely. This is an enhancement of the critical habitat for migratory waterfowl, and so on. I wish to indicate that it has my full approval, and no objections from our side.

Mr. ROBERT C. BYRD. Let me say, Mr. President, on behalf of Mr. CRANSTON, who is the author of the bill, that he not only is agreeable to the Senate's action on this bill today, but urges it.

The bill was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Act of August 27, 1954 (68 Stat. 879), is amended by deleting the last sentence of section 6 and inserting in lieu thereof the following: "If and when available, such water shall be delivered from the Central Valley project to the contracting entity, and the cost of furnishing the water shall not be reimbursable or returnable under the Federal reclamation laws: *Provided*, That, in order for the delivery of such water to continue on a nonreimbursable or nonreturnable basis—

"(a) the public organizations or agencies contracting with the Secretary of the Interior, excluding the State of California, shall deliver annually to the United States Fish and Wildlife Service (hereinafter referred to as the 'Service'), at no cost to the United States, not less than three thousand five hundred acre-feet of water during the period October 1 through November 30, inclusive, and not less than four thousand acre-feet of water during the period May 1 through September 30, inclusive, if available: *Provided*, That such amounts of water and times of delivery may be changed upon approval of the Secretary of the Interior:

"(b) the public organizations or agencies, excluding the State of California, shall construct, operate, and maintain any water conveyance facilities necessary to deliver the water referred to in section 6(a) of this Act to a point or points within the boundaries of such public organization or agency as designated by the Service, or to such points as may be mutually agreed upon by the public organization or agency and the Service. The Service shall be responsible for delivering the water from such point or points to appropriate locations within lands under its jurisdiction;

"(c) any contract entered into by the Secretary of the Interior and any public organization or agency pursuant to this Act shall provide that in the event the public organization or agency for any reason fails to carry out the obligations imposed upon it by said contract or by this Act, the rights of use of any facilities referred to in subsection (b), and the rights to all water contracted for by the organization or agency pursuant to this Act shall revert to the Secretary of the Interior for migratory waterfowl purposes in accordance with the laws of the State of California; and

"(d) in accordance with existing or future contracts, the use of lands located within the boundaries of the public organizations or agencies shall be restricted by covenants requiring that such lands be used only for the purpose of waterfowl and wildlife habitat conservation or other uses as may be mutually agreed upon by the public organizations or agencies and the Service.".

SEC. 2. The Act of August 27, 1954 (68 Stat. 879), is further amended by adding at the end thereof the following new section:

"SEC. 8. The Secretary is hereby authorized to negotiate amendments to existing contracts to conform said contracts to the provisions of this Act.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1173), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

BACKGROUND

The Central Valley of California, which includes the 98,000-acre area of the San Joaquin Valley, is the most important wintering area for waterfowl in the Pacific flyway. This area, the last remaining habitat of its kind in the San Joaquin Valley, supports approximately 50 million waterfowl use-days annually for many species of waterfowl and shorebirds such as long-billed curlews, great blue herons, and snowy egrets. The preservation of this valuable wildlife area is the Fish and Wildlife Service's highest priority for its Pacific flyway habitat protection program.

While there are two national wildlife refuges in this section of the San Joaquin Valley, over half of the managed waterfowl lands are controlled by private property owners, including the members of the 46,000-acre Grassland Water District. In 1954, Congress passed legislation which reauthorized the Bureau of Reclamation's Central Valley project, in the San Joaquin Valley, incorporating for the first time fish and wildlife conservation as a specific project purpose. The act authorized the Secretary of the Interior to deliver water to public agencies, including the Grasslands Water District, for developing and maintaining migratory waterfowl habitat, and to levy a charge for such water service at rates not to exceed the prevailing rate for class 2 agricultural water services.

The Grasslands Water District members currently manage their lands both as native pasture for livestock production and wetlands for wintering waterfowl. Unfortunately, higher land taxes and operating costs are forcing some of these individuals to convert their property from wildlife conservation to more economically attractive land-intensive uses such as sugar beet or cotton farming. If this continues to occur, the Secretary of the Interior will have to move under existing authority to acquire the private lands of the Grasslands Water District for wildlife habitat. Acquisition of the land has already been approved by the Migratory Bird Conservation Commission, the Merced County Board of Directors, and the California State Fish and Game Commission.

DISCUSSION OF MAJOR PROVISIONS

S. 691 provides an incentive to landowners to conserve their lands for waterfowl by removing the charge for Central Valley project water which is delivered to the Grasslands Water District for waterfowl conservation. The following conditions must be met: (1) The water district continues an existing agreement to deliver to the Fish and Wildlife Service 3,500-acre-feet of water each fall and 4,000-acre-feet each summer for wildlife conservation at no cost to the Federal Government; (2) it constructs, operates, and maintains conveyance facilities for delivery of this water; and (3) it agrees by contract

to arrange for the use of lands within its boundaries for waterfowl habitat.

The committee did not accept an amendment proposed by the administration which would have made the costs of furnishing the water reimbursable from surplus power revenues. This provision would, in effect, require power users to bear the cost of preserving waterfowl habitat in the San Joaquin Valley. Since this habitat is of national significance, the committee decided that the Federal Treasury should absorb any costs incurred by furnishing water to the Grasslands Water District for waterfowl conservation purposes on a non-reimbursable basis.

The legislation would result in a reduction of water service revenues at an approximate rate of $5,000 per year, for a total of $250,000 over the next 50 years. The alternative to the legislation, acquisition of the area by the Federal Government for waterfowl conservation, would cost the Federal Government between $14 million to $20 million, according to the Interior Department. This alternative would have the added adverse effect of removing land from the tax rolls of State and local jurisdictions.

The National Environmental Policy Act, of course, applies to any action under this act.

The committee's action relating to water revenues on this bill in no way is intended to prejudge the committee's action relating to national water policy. This bill's action to relieve local sponsors of some project costs should not be viewed as a precedent for future actions. The committee intends to undertake a serious evaluation of a coordinated water policy.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HAYAKAWA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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## RESOLUTIONS OF DISAPPROVAL OF MODIFICATION OF CERTAIN SHIPBUILDING CONTRACTS

Mr. PROXMIRE. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. PROXMIRE. The majority leader was on the floor when I brought up my resolutions of disapproval. I want to make sure I am doing whatever I can under the rules to secure action to the extent that I possibly can.

It was my understanding, on the basis of the Parliamentarian's advice and the Presiding Officer's advice, that the resolution had to be referred to the committee, which it was, and that was proper. I understand that if I move to discharge the committee, although that motion would, in most circumstances, have great difficulty securing support—but even if I moved to do that, that motion would not be in order, I understand. It would have to lie over a day and then it could only be called up by unanimous consent.

Is that correct?

Mr. ROBERT C. BYRD. A motion to discharge—let me start with a few things here. A motion to discharge, of course, the Senator would have to give a day's notice and I would say that his chances to discharge the committee would be very poor under all of the circumstances that obtain in this instance. He could also ask unanimous consent—what is this, a resolution?

Mr. PROXMIRE. This is a resolution of disapproval that has been before the Armed Services Committee in a different form for a long time. There have been extensive hearings. They had the Secretary of the Navy, they had the GAO testify on it, and a number of others. So they have substantial documentation. They are well aware of the issue. They have had a substantial amount of time to consider it.

I appealed to them to report a resolution of disapproval and they have not decided to do so. What I am trying to do is all I possibly can to see if I can get an up or down vote on this on the floor of the Senate. I should be very grateful to the distinguished majority leader for any suggestion he has, as one who has truly mastered the rules and understands the opportunities and limitations of what a Senator can do.

Mr. ROBERT C. BYRD. I should have to say to the distinguished Senator that, in my 20 years in the service of the Senate, I do not believe I have seen a motion to discharge a committee that was controversial. We quite often do it by unanimous consent. If it is controversial, I cannot recollect any specific occasion on which it has been done. I am sure it may have been done during that 20 years once or twice, but if it is controversial, it has many obstacles, quite an obstacle course to run.

Of course, the motion, once the Senator had it before the Senate, could be tabled and——

Mr. PROXMIRE. We could get a vote on the tabling motion.

Mr. ROBERT C. BYRD. I would say the chances of discharging a committee, if he is having problems with getting the committee to act, his chances are about as good as the chances of a snowball in Shiloh.

Mr. PROXMIRE. I just want a vote on this. Of course, what I can do and certainly will do is try to persuade the Members to give us an opportunity to vote on the floor. That may or may not be successful. I doubt it will be, but I will try that route. It is one I take it I am free to pursue.

Mr. ROBERT C. BYRD. Yes.

Mr. PROXMIRE. My question is, Is there any other feasible action which the leader can suggest, because this is a puzzling situation? Here we have what is the biggest bailout in the history of the country, as far as I know, certainly the biggest in the Navy, almost a billion dollars. It is one that is extraordinarily controversial, one that has been bitterly attacked by Navy officials, including Admiral Rickover and other top Navy officials, who think it is a scandalous action to take. For that reason, I think it is one that Congress ought to decide under the Proxmire amendment, which provides that whatever settlement exceeds $25 million that is made under 85–804 is subject to a disapproval by either the House or the Senate.

So I think, when it is something that is this important, this far reaching, it sets a precedent which is likely to be far more expensive. It is one that should receive some deliberation on the part of the Senate when a Member presses it as I am trying to press it.

Mr. ROBERT C. BYRD. May I ask the Senator—I have been thinking about the rules while he has been talking and there may have been something I missed here. Is there a time limit on this disapproval?

Mr. PROXMIRE. Yes, there is. The time limit, I believe, is September 20. It expires September 20, dies, and action of any kind, a subsequent introduction, would not extend the time.

Mr. ROBERT C. BYRD. In the case of these disapproval resolutions on which there is a time limit, usually there are specifics in the law that are quite outside the normal rule of the Senate. The Chair could advise whether, in this particular instance, there is any other recourse that the Senator would have as a result of provisions that were written into the law governing the disposition of such a disapproval resolution, which are quite outside the normal rules of the Senate.

I ask the Chair that question.

The PRESIDING OFFICER. The Chair is advised that these resolutions have no special privilege under the law.

Does that answer the question the Senator is posing exactly?

Mr. ROBERT C. BYRD. No; it is not the answer.

Ordinarily, if a Senator wants to get a resolution on the Calendar, he can attempt to force it on, depending upon whether it is a joint resolution or a simple resolution or a bill. He can force it onto the Calendar by a certain mechanism. If it is a discharge resolution, about as far as it could get right now would be the table of resolutions and motions over, under the rule, which would mean that it would never get up, because there are at least nine resolutions and motions ahead of it and those are not at all likely to come over under the rule. There are so many roadblocks that can be thrown up against them at the only times during the day that they can possibly come over that it is next to impossible to get anything before the Senate by way of resolutions and motions over under the rule.

There is a mechanism under rule XIV for forcing bills onto the calendar, and I believe it also applies to joint resolutions. I am quite sure that rule does not put a simple resolution on the Calendar. It will put a simple resolution on the Calendar of Resolutions and Motions over, under the rule, but not on the General Orders Calendar, talking about a simple resolution.

Even if it were a bill or joint resolution that could be forced onto the Calendar via rule XIV, the Senator would still have a problem in getting it motioned up, which would be debatable, except during a certain period of a new legislative date, which rule was utilized by the majority leader in connection with the District of Columbia representation amendment, which has a lot of cracks into which to fall.

So I would say to the distinguished Senator that the only course I would see open to him—may I ask the Chair if rule XIV could be utilized in the instant case about which Senator PROXMIRE is talking, we are talking about a disapproval resolution?

The PRESIDING OFFICER. The Chair is advised that the resolution of-

fered by the Senator from Wisconsin could not be forced onto the Calendar of General Orders under rule VIII.

Mr. ROBERT C. BYRD. I mean, if the previous action referring the resolution to the committee already, if that action could be vitiated, could rule XIV——

The PRESIDING OFFICER. The Chair is advised, even if that action had been taken, that there is still no procedure for forcing a simple resolution onto the Calendar of General Orders under rule VIII.

Mr. ROBERT C. BYRD. Mr. President, I really did not need to answer that question because I already stated that if it is a simple resolution the only thing under rule XIV would be to put it on the Calendar of Resolutions and Motions over, under the rule. I thought it might be a joint resolution. but it is not.

Mr. PROXMIRE. It is a simple resolution.

The PRESIDING OFFICER. They are simple resolutions.

Mr. ROBERT C. BYRD. So the Senator really has no recourse other than to ask unanimous consent it be placed on the Calendar and, of course, there would be an objection to that. He would first have to ask unanimous consent that the referral to the committee be vitiated. There would probably be an objection to that. If he got unanimous consent to put it on the Calendar, he would have difficulty getting it up because that motion would be debatable, except at certain times, certain very nice moments during a new legislative day. that he might be able to get a motion to proceed without debate. But even if he got it up it would be debatable.

The other recourse is to move to discharge the committee, which the Chair has already discoursed on.

So I would say to the Senator that I think he has about exhausted all the practicable courses of action.

Mr. PROXMIRE. I want to thank the majority leader for his painstaking and thoughtful. most accommodating efforts to be helpful.

Mr. ROBERT C. BYRD. I think they are not open to him.

Mr. PROXMIRE. While I recognize the obstacles, I am still not completely discouraged. I intend to call members of the Armed Services Committee. the chairman of the committee. and others, to see if there is any possibility that they may report the resolution out.

I take it. that is my recourse.

Mr. ROBERT C. BYRD. That is the Senator's most practicable recourse. How practicable it may be remains to be seen. But I have great confidence in the Senator's tenacity and his persausive arts.

Mr. PROXMIRE. I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. He is very persuasive, very dedicated, very tenacious, and determined.

## ORDER FOR CERTAIN ACTION TO BE TAKEN DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 4 o'clock p.m. today to enter statements into the RECORD, to introduce bills and resolutions, petitions, and memorials, and for committees to submit reports.

The PRESIDING OFFICER (Mr. STONE). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized, during the recess of the Senate over until 11 a.m. on Monday morning, to receive messages from the other body and from the President of the United States, and that they may be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Vice President, the President pro tempore, and the Acting President pro tempore may be authorized to sign all duly enrolled bills and joint resoutions during the recess of the Senate over until 11 o'clock on Monday morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

## BEST WISHES FOR A GOOD WEEKEND

Mr. ROBERT C. BYRD. Mr. President, does any Senator wish recognition before the motion to recess is made?

If not, I thank all Senators, and with best wishes for a good weekend and with the prospects for hard days and diligent labors and many tests in the immediate days ahead, weeks ahead, may I say to the distinguished Senator from California (Mr. HAYAKAWA) I hope that the Senate can adjourn sine die—is that the correct pronunciation, sine die?

Mr. HAYAKAWA. Absolutely; that is perfectly acceptable.

Mr. ROBERT C. BYRD. Well, if it is acceptable to the Senator from California, it must be all right. It would be acceptable to Webster, would it not?

Mr. HAYAKAWA. Fine.

Mr. ROBERT C. BYRD. Sine die.

By the way, I often hear and use the words "p-e-r s-e."

Mr. HAYAKAWA. Per se.

Mr. ROBERT C. BYRD. Pronounced per se as in bee, or per se, as in bay. I pronounce it both per se, and per se, I suppose either is correct—is either correct?

Mr. HAYAKAWA. I would prefer per se.

Mr. ROBERT C. BYRD. Per se.

I will stick with per se.

Mr. HAYAKAWA. Chacun à son goût.

Mr. ROBERT C. BYRD. Speaking of words, I have heard these words pronounced in a myriad of ways. Amicus curiae, amicus curiae.

How would the Senator from California pronounce those words? I have heard amicus curiae, amicus curiae, amicus curiae, amicus curiae, and amicus curiae?

Mr. HAYAKAWA. Amicus curiae.

Mr. ROBERT C. BYRD. The Senator would.

Mr. HAYAKAWA. Yes. I took 4 or 5 years of Latin. I never got over it.

Mr. ROBERT C. BYRD. Well, I am not one to argue with the Senator, but I think I will just continue amicus curiae.

Mr. HAYAKAWA. That is dreadful.

Mr. ROBERT C. BYRD. Let me see if I can think of another word.

Well, sufficient unto the day is the evil thereof.

## RECOGNITION OF SENATOR PROXMIRE ON MONDAY, SEPTEMBER 11, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders have been recognized and before Mr. JACKSON seeks recognition under the order previously entered, Mr. PROXMIRE be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR RECOGNITION OF SENATOR GOLDWATER AND SENATOR BAKER ON TUESDAY, SEPTEMBER 12, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next Mr. GOLDWATER and Mr. BAKER each be recognized for not to exceed 15 minutes after the two leaders or their designees have been recognized under the standing order.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will shortly recess.

On Monday it will convene at 11 o'clock a.m. After the two leaders have been recognized under the standing order Mr. PROXMIRE will be recognized for not to exceed 15 minutes, after which Mr. JACKSON may be recognized to call up the conference report on natural gas pricing. The order for the recognition of Mr. JACKSON provides also that he may be recognized at any time during the day on Monday for that purpose. Am I correct, may I ask the Chair?

The PRESIDING OFFICER. The Chair is advised the Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. JACKSON has advised that he will be prepared to call up the conference report at a point between 11 o'clock and 12 noon on Monday. In view of the fact that Mr. Proxmire will have a 15-minute order, I would say that the conference report will be called up at some point between 11:20 or 11:30 a.m. and noon.

NATURAL GAS POLICY ACT CONFERENCE REPORT

Mr. President, for the information of all Senators, I sought several times unsuccessfully to get a time agreement to protect Senators against any motions to table the conference report up through next Wednesday, and I also sought to get an agreement that would allow for a definite hour to vote on a motion to recommit on Wednesday. These requests were objected to under the rules.

Mr. President, when the conference report is called up, therefore, many things can happen. There are various nondebatable motions that can be made, of course. I could list several of them but will only list a couple. One would be a motion to table the conference report; one would be to go into executive session.

Those are just two, and there are others. Of course, any Senator can make such a motion, which is nondebatable. And, in such a situation, there is nothing in the world that can be done by the leadership to protect absent Senators except to put in a quorum call or move to recess or adjourn if the leadership has the votes, or delay matters by demanding a rollcall vote on instructing the Sergeant at Arms to request the attendance of absent Senators, instructing the Sergeant at Arms to compel the attendance of absent Senators, or instructing the Sergeant at Arms to arrest absent Senators—which I have done on one occasion—which order did not have to be carried out because a quorum quickly appeared.

There can be quorum calls; there can be votes on procedural motions and matters. There can be a motion to adjourn with a rollcall vote demanded on it, and it is not debatable. There can be a motion to recess, a rollcall vote demanded on it, and it is not debatable.

What I am saying, Mr. President, is that Senators should be prepared for anything, be prepared for the worst case, hoping that the worst case does not happen. There is no way that the leadership can protect Senators in many of those situations.

There are of course, some situations in which the leadership can and will protect Senators.

Considering the circumstances surrounding this particular piece of legislation, it would be my suggestion that all Senators, as much as possible, be available for rollcall votes at any time beginning at noon Monday when the conference report is called up and continuing daily until it is disposed of.

Senators should also keep in mind that the order which was entered at the beginning of the session limiting rollcall votes to 15 minutes can be demanded, and Senators cannot be protected beyond 15 minutes if the regular order is called for and if a Senator is not on the floor seeking recognition to vote.

There is also no way that the leadership can force the Senate to go out of session on any day if a Senator has the floor and is talking at 6 o'clock, 7 o'clock, 8 o'clock, 9 o'clock, 10 o'clock, at night or 1 o'clock in the morning and declines to yield the floor. If that Senator wants to hold the floor, the leadership is helpless. It cannot make a motion to recess or to adjourn. The Senator holding the floor might, at his own discretion, put in a live quorum or make a motion to table the conference report at such a late hour.

What I am saying is that we are probably going to be in a situation that is not the norm; it can be an unusual situation, although usual if a filibuster occurs. I want to use that word carefully because I am not saying that a filibuster will occur on this occasion. However, there will be considerable debate. There should be a reasonable time for debate on this conference report, which is lengthy and which involves a complicated issue, even though the Congress has now considered it for 16 months and the conferees have discussed it back and forth for 8 or 10 months. Nevertheless, it is an issue that nobody should expect to be disposed of within a day, 2 days, 3 days, or perhaps even a week. So a reasonable length of time should transpire.

Sooner or later, however, I hope that the Senate will work its will up or down on the conference report. Naturally, I hope to see the Senate adopt the conference report, but this is a matter for each individual Senator to decide. My purpose here is just to emphasize that while the situation is not exactly a situation sui generis, it is, nonetheless, not at all the normal situation that confronts the Senate in our every day business, when Senators can often leave the floor with some assurance that they will be protected, or leave the floor with some assurance that there will be no votes, or some assurance that there will only be one or two votes, or whatever.

But there is absolutely no assurance which can be given with respect to the protection of Senators once this conference report is called up. Quite the contrary would appear to be the case, to wit, that anything can happen at any time unless—unless—the leadership is able to work out a time agreement, which it will try to do from time to time, to get a time agreement so that Senators can know in advance when a vote or votes will occur. That would be a different situation. But as long as we do not have a time agreement, then Senators have to protect themselves.

I would simply urge that they be prepared, be in town, be prepared to vote, be prepared to vote without warning, except the 15-minute warning that the rollcall vote bell gives, or a warning from the cloak rooms that a quorum is going to be called after which a rollcall vote will occur; be prepared for late sessions. It is not that I am desirous of keeping the Senate in late every day.

There might be an occasion or two when I would feel it necessary to keep the Senate in late, but this kind of situation really, Mr. President, is more under the control of the opponents than it is of the leadership, insofar as keeping the Senate in session late is concerned and insofar as making surprise tabling motions is concerned. Because of the rules, these are areas in which the opposition to any bill really has a measure of control that goes beyond the control of the leadership.

I am saying what I am saying in an effort to be helpful to all Senators on both sides of the issue. I have no desire to catch Senators out of town who are opposed to this measure, no desire whatsoever. If a motion to recommit were made, it would not be my desire to suddenly move to table that motion to recommit just because I might look down at the absentee sheet and find that they had 15 Members out and we had 8.

I am not interested in taking Members by surprise on a tabling motion. I would simply give Senators notice that, within 2 hours or 3 hours or 6 hours, or some such, I would seek recognition and move to table. Or if, in looking over the absentee sheets, I see all Senators are here who are going to be here today, tomorrow, and the next day, I might say that, as soon as Senator so-and-so finishes speaking, the matter having been discussed long enough, I shall seek recognition and I shall then move to table.

I do not want to take anybody by surprise on a motion to table, but I do not blame the opposition for doing it. If someone who is opposed to this conference report feels that he can take the Senate by surprise and move to table a conference report, I do not find any fault with him for doing that, although I would hope that does not occur. That is what I am trying to emphasize here, that Senators must take into consideration the very special circumstances that will be surrounding this controversial measure and be present and be ready to vote at any hour, at any time.

I close by saying that I hope that, from time to time, we can get time agreements that will give Senators on both sides of the aisle and both sides of the question notice in advance as to when a critical vote is going to occur such as a vote on a motion to recommit or a vote up or down on the conference report.

I should like to see us be able to work out time agreements. But this cannot be guaranteed at this time.

Having said that, I think I have said enough to alert Senators who read the RECORD that this situation that we are now about to confront is one in which every Senator had better have his eyes glued on the legislative radar, because storm warnings are apparent. I suggest that the seat belts be buckled and that people stay out of the aisle and be ready for politically climatic and procedurally climatic conditions that will be quite turbulent at points, with strong winds coming from various directions; and that everybody be prepared for a rough ride ad sudden jolts, but keep the faith and be prepared to vote at any time.

## RECESS UNTIL MONDAY, SEPTEMBER 11, 1978, AT 11 A.M.

Mr. ROBERT C. BYRD. So I shall thank the Senator from California, shake hands with him, and move, Mr. President, that the Senate, in accordance with the order previously entered, stand in recess until the hour of 11 o'clock a.m. on Monday next.

The motion was agreed to; and at 1:09 p.m., the Senate recessed until Monday, September 11, 1978, at 11 a.m.

## NOMINATIONS

Executive nominations received by the Senate September 8, 1978:

IN THE AIR FORCE

Lt. Gen. Bryan M. Shotts, U.S. Air Force (age 55), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 8962.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

*To be lieutenant general*

Maj. Gen. John Franklin Forrest, XXX-X... [redacted], U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

*To be lieutenant general*

Maj. Gen. Julius Wesley Becton, Jr., [redacted], U.S. Army.

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

*To be lieutenant general*

Lt. Gen. David Ewing Ott, [redacted], (age 55), Army of the United States (major general, U.S. Army).

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

*To be lieutenant general*

Lt. Gen. Rolland Valentine Heiser, [redacted], (age 53), Army of the United States (major general, U.S. Army).

IN THE MARINE CORPS

Lt. Gen. Leslie E. Brown, U.S. Marine Corps, (age 58), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

The following-named officer under the provisions of title 10, United States Code, section 5232, to be assigned to a position of importance and responsibility designated by the President, in grade as follows:

*To be lieutenant general*

Maj. Gen. Adolph G. Schwenk, [redacted], U.S. Marine Corps.

# EXTENSIONS OF REMARKS

## AMERICAN LEGION SUPPORT OF HANLEY AMENDMENT

### HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. TEAGUE. Mr. Speaker, I have received a copy of a communication of September 5 with enclosed fact sheet outlining the American Legion's views on what impact the civil service reform bill, H.R. 11280, would have on minorities and women, and a rebuttal to Civil Service Commission Chairman Campbell's August 11 "Dear Member" letter. The American Legion has been in the forefront to preserve veterans preference in Federal employment.

So that the Members will have the benefit of the latest thinking of the American Legion on maintaining veterans preference in Federal employment, there follows a copy of their letter of September 5 with attachments:

SEPTEMBER 5, 1978.

DEAR CONGRESSMAN: The House of Representatives next week is expected to consider H.R. 11280—the Civil Service Reform Act of 1978. The American Legion would like to present its views on how modification in veterans preference in federal employment proposed by this legislation would effect Vietnam-era and disabled veterans and its impact on minorities and women.

VIETNAM-ERA VETERANS

The so-called "Schroeder amendment" would limit veterans preference in federal employment to a "one-shot" use within a period of 15 years after the date of discharge from military service. Should that amendment become law, about 5 million of the 8.5 million Vietnam veterans would have 0 to 5 years of employment preference remaining—not 15 years. Only those who entered military service before the termination of veterans preference on October 15, 1976 and left the service after October 1980 would receive the full 15 years of employment preference. According to DoD projections, more than 1.5 million of the 2.5 million people on active duty when veterans preference was terminated in 1976 will have left service before October 1980. Thus fewer than 1 million veterans will have the full 15 years of preference, and many of them will be retirees whose service began before the Vietnam War period.

The "Schroeder amendment" would also limit veterans' "reduction-in-force" benefits to 8 years following initial appointment to federal service. That means that all veterans who had been employed by the government for 8 years or more—including the Vietnam era veterans who entered federal service between August 5, 1964 (the official beginning date of the "Vietnam era") and October 1972—would immediately lose their "RIF" protection when the law became effective October 1980. The 84,000 Vietnam era veterans who entered federal service in 1973 would have 1 year of "RIF" protection, the 113,000 Vietnam era veterans who began government jobs in 1974 would have 2 years of "RIF" protection remaining, and so forth.

Representative Schroeder stated in the Report of the Committee on Post Office and Civil Service on H.R. 11280 that "Vietnam veterans hold 9.6 percent of the federal jobs which veterans overall have obtained." That statistic is inaccurate. In fact, according to Civil Service Commission statistics, 538,501 Vietnam-era veterans were hired by the federal government between 1972 and 1977. The CSC does not know how many Vietnam veterans entered federal service between 1964 and 1972, but assuming that only half as many Vietnam-era veterans were hired during that 8-year period as were hired during the 6-year period between 1972 and 1977, a total of more than 800,000 Vietnam veterans have been hired by the federal government. Since it has been so difficult to obtain a federal job in the first place, and since the general job market has been so tight, it is reasonable to assume that the vast majority of them are still working for the government. Thus there is a very strong possibility that about half of the 1.2 million veterans now in federal service are Vietnam-era veterans. Any legislation—such as the reduction in "RIF" protection—affecting veterans employed by the government would therefore adversely impact on Vietnam veterans more than the veterans of other wars.

A recent "fact sheet" sent to Members of Congress by Representatives Bonior and Schroeder claimed that "Of about 150,000 veterans being hired annually . . . over half are pre-Vietnam veterans." That is untrue. During the past several years Vietnam-era veterans have consistently accounted for at least 56 percent of the veteran new hires, while 5-point perference, pre-Vietnam veterans have accounted for less than 40 percent. In per capita terms (there are only 8.5 million as opposed to 21 million World War II and Korean War veterans), Vietnam veterans have been utilizing veterans preference at a rate more than three times greater than veterans of other wars. By 1980, when the proposed legislation would take effect, the average age of World War II veterans will be 60—at or near retirement age. Thus it is clear that the ratio of Vietnam veterans entering federal service will increase rapidly.

DISABLED VETERANS

It is not at all certain that the proposed legislation will significantly benefit disabled veterans, whose preference benefits will nominally remain unchanged. Indeed, disabled veterans have been somewhat of a "problem" for the Civil Service Commission.

CSC Chairman Campbell, commenting on a study done by his staff on the effect of veterans preference on the PACE register, remarked that "the effect on the percentage of women lies not in eliminating either the 5 or 10 point preference alone but equally in eliminating the 'top of the register' provision." In other words, a disproportionate number of veterans "blocking" the PACE and other registers are disabled veterans, who "float to the top" of the register if they receive a passing score. According to CSC statistics, in mid-1977 disabled veterans were at the top of 5,997 of the 14,683 civil service hiring registers.

If the proposed legislation becomes law, disabled veterans will continue to "block" nearly half of the registers. Will they actually be hired in greater numbers? Or will federal agencies continue to "bypass" veterans—disabled and nondisabled alike—by employing one or more of the 11 methods listed by the GAO in a report issued last year? Thus far the Carter administration's performance with regard to the employment of disabled veterans has been less than satisfactory: only 3.8 percent of the total hires in 1977 were disabled veterans and only 1.8 percent were disabled Vietnam veterans. It is true that the proposed legislation stipulates that agencies "may" appoint disabled veterans with disability ratings of 30 percent or more to career or career-conditional positions, but we do not believe that that is tantamount to assurance that significant numbers of such appointments will indeed be made. Thus we have no reason to believe that disabled veterans will be any better off with the new legislation than they are now.

The American Legion is convinced that an "aye" vote for the Bonior-Schroeder substitute to H.R. 11280 will be detrimental to veterans . . . especially to those who served during the Vietnam era. We all realize that the civil service system cries out for reform but to say "veterans preference" is the reason women and minorities are being impeded from advancing or being completely kept out of the federal government would, in our opinion, be a false allegation.

The facts we have outlined speak for themselves. The American Legion urges you to vote against the Bonior-Schroeder proposal and support the "Hanley amendment".

Sincerely,

MYLIO S. KRAJA,
*Director, National Legislative Commission.*

## CIVIL SERVICE REFORM IMPACT ON WOMEN AND MINORITIES

MINORITIES

In testimony before the House Subcommittee on Civil Service in October 1977 a Government Accounting Office official, commenting on his agency's recent study of the impact of veterans preference on the hiring of minorities and women for federal jobs (the only major study done on that subject to date) commented as follows:

"In 8 of the 44 registers we examined, the potential for minority job candidates to be

certified increased when preference was excluded. On 15 registers there was a decrease. Twenty-one showed no change in minority representation when preference was excluded. In 32 of the registers the change involved only one individual. So we found it difficult to come to a conclusion about the impact of veterans preference on minority employment." Thus the GAO refutes the oft-repeated claim that veterans preference is a significant obstacle to the employment of minorities, and indeed shows that veterans preference helps minority candidates twice as often as it harms them.

In March 1978 a spokesman for the National Alliance of Postal and Federal Employees, an association of black government workers, termed efforts to curtail veterans preference a "backlash against what some consider a disproportionate number of black veterans" and insisted that veterans preference is a "useful tool" for unemployed black veterans. The NAPFE spokesman is backed up by statistics: minorities account for 8.5 percent of the U.S. veteran population but for 19 percent of all veterans employed by the federal government. Minority veterans make up only 2 percent of the national work force but 9 percent of the federal work force. And during the past 3 years 28 percent of the veterans hired by the federal government have been minority veterans—who have accounted for more than 20 percent of all minority new hires.

Nor has veterans preference harmed the employment prospects of nonveteran minority job seekers. According to a Civil Service Commission newsletter released on August 23, 1978, "Minority full-time employment has steadily increased by an average of 1.2 percent per year since November 1975, despite an overall decline in total full-time federal work force for this period." The CSC newsletter also pointed out that minorities, who account for only 12 percent of the national population, hold 21.6 percent of the federal jobs, and that in 1977 the number of minorities in GS 14 and GS 15 positions increased by 6.4 percent.

WOMEN

In essence, therefore, the issue of veterans preference is one of veterans "versus" women. But the CSC has not claimed that veterans preference has discriminated against women at the lower levels of federal service. Women hold more than 35 percent of all government jobs and 42 percent of all white-collar General Schedule jobs. Those figures are lower than the ratio of women to the total population, but are significantly above the approximately 30 percent of the full-time, year-round jobs they hold in the civilian work force.

Nor does the CSC claim that veterans preference handicaps women on all civil service registers. Chairman Campbell, commenting on the GAO study of selected hiring registers, admitted that, "The most surprising thing . . . is that the pattern of effects is not consistent across all exams. In some cases women obtain little or no advantages by eliminating veterans preference. Eliminating some or all veterans preference advantages will not have a systematic favorable impact on women."

Rather, the CSC has focused on the PACE (GS 5–6) register, which is the principal source of potential managerial talent and which, it claims, affords the clearest evidence of the adverse impact of veterans preference on the employment prospects of women. In fact, assuming that the ratio of veterans who would have been selected without veterans preference would have equalled the selection rate of nonveteran males, and that the jobs lost by veterans would have been distributed proportionately among women and nonveterans, women would have picked up only about 300 jobs in 1977 had veterans preference been eliminated. Last year 6.5 percent of the 40,000 women eligibles on the PACE register were selected. Without veterans preference, 7.5 percent would have been selected. Clearly, the women's organizations which envision greatly enhanced employment opportunties for women with the elimination of veterans preference are going to be sorely disappointed.

In a speech at the Federal Women's Program Seminar held in Washington in the summer of 1977, Chairman Campbell emphasized that, "Veterans preference is only one, and probably not the most important, of many built-in hindrances to the accomplishment of a genuine merit system," and singled out the fact that 80 percent of all personnel actions in the federal government are done within the system as being an "especially powerful deterrent to women, minorities, and other well-qualified for employment in the federal service." Another recent GAO study noted that although federal agencies have made special recruiting efforts to attract women and minorities, they "still face problems in their recruiting efforts—such as scarcity of women and minorities for some disciplines, hiring freezes and funding limitations, and competition from other sectors of the employment market, particularly private industry." It is clear to us that those who attribute real or imaginary imbalances in federal employment to veterans preference are taking an inaccurate and simplistic view.

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SEPTEMBER 5, 1978.

DEAR CONGRESSMAN: On August 15, 1978 CSC Chairman Alan Campbell sent a "Dear Member" letter to members of Congress in which he commented on the July 31, 1978 letter from VFW National Commander John Wasylik to members of the House and on a recent American Legion "fact sheet" on veterans preference. We will restrict our comments on Chairman Campbell's letter to his remarks regarding statements made by The American Legion.

1. With regard to preference benefits for disabled veterans, Chairman Campbell claims that "There would be statutory noncompetitive appointments, not before available, for veterans rated at 30 percent or more disabled."

In Fact, H.R. 11280, as amended by the House Committee on Post Office and Civil Service, stipulates only that "an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who (1) has a compensable service-connected disability of 30 percent or more, or (2) is enrolled in or has successfully completed a course of job-related training prescribed by the Administrator of Veterans Affairs." (Chapter 31, Sec. 3112)

Although under the amended legislation agencies may appoint veterans with a disability of 30 percent or more, we do not believe that that amounts to assurance that the administration's performance with regard to the employment of disabled veterans will improve. Thus we will stick to the conclusion we reached in our "fact sheet": "There is no reason to believe that disabled veterans will be any better off with the new legislation than they are now."

2. "Reduction in preference for nondisabled veterans would increase the value of preference for the disabled."

Chairman Campbell offers no further explanation or statistical data to back up that assertion. We find it rather baffling. Under the existing law and the amended version of H.R. 11280, veterans with a compensable disability of 10 percent or more would "float to the top" of civil service registers if they received a passing score. Nondisabled veterans receive only a 5-point bonus, which is added to their passing scores. Thus disabled veterans always rise above nondisabled veterans on the registers. How, then, could 5-point preference veterans stand in the way of the employment of disabled veterans who rise to the top of the register?

3. Commenting on The American Legion's assertion that the OPM will be able to "pass over disabled veterans with ease," Chairman Campbell remarked, "There would be no change in present statutory 'passover' provisions."

The original civil service reform legislation presented to Congress by the administration provided for an expansion of the Rule of Three to a Rule of Seven and also permitted the OPM to substitute any other "referral and selection procedure" it deemed appropriate. It is true that that stipulation was omitted in the House Committee on Post Office and Civil Service. But the administration has made and is making vigorous efforts to restore that key provision.

A GAO report on veterans preference issued in October 1977 pointed out that the CSC "encourages agencies to make use of a variety of hiring practices when problems are encountered in obtaining women eligibles from CSC registers" and lists 11 ways agencies bypass veterans—disabled and nondisabled alike—who are "blocking" civil service registers. Furthermore, during the past several years the CSC has approved about three-fourths of the formal requests from agencies for permission to pass over veterans.

The administration clearly wants even more "flexibility" to pass over veterans. In an Option Paper circulated in the fall of 1977 in preparation for the drafting of the civil service reform legislation, the CSC explained why it desires such "flexibility": "Managers and selecting officials feel constrained by the Rule of Three, as defined in the Veterans Preference Act, which requires selection of individuals from among the three highest rated candidates. The issue is how to provide greater latitude to selecting officials in choosing candidates who best meet their needs." Some of the options suggested in that option paper were ranking candidates in five broad categories, permitting agencies to make selections from the top three applicants on a register plus the three highest ranking minorities or women on that register, etc.

It is clear to us that if the administration succeeds in putting such "flexibility" back into the legislation the OPM could, indeed, "pass over disabled veterans with ease."

Sincerely,

MYLIO S. KRAJA,
*Director, National Legislative Commission.*●

## LEGISLATION TO CONTINUE AND REAFFIRM THE FEDERAL COMMITMENT TO A NATIONAL CAPITAL TRANSPORTATION SYSTEM

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## HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. HARRIS. Mr. Speaker, today I am introducing legislation entitled the National Capital Transportation Amendments of 1978. My colleagues Mr. FISHER, Mr. DIGGS, Mr. FAUNTROY, Mr. STEERS, Mr. MCKINNEY, and Ms. SPELLMAN join me in cosponsorship.

Although this legislation is written specifically to amend the National Capital Transportation Act of 1969, it is in fact a continuation and reaffirmation of a Federal commitment that officially began nearly 20 years ago. The title to the

National Capital Transportation Act of 1960 reads in part as follows:

The Congress finds that an improved transportation system for the National Capital region is essential for the continued and effective performance of the functions of the government of the United States, for the welfare of the District of Columbia, for the orderly growth and development of the National Capital region, and for the preservation of the beauty and dignity of the Nation's Capital. . . . The Congress therefore declares that it is the continuing policy and responsibility of the federal government, in cooperation with state and local governments of the National Capital region, to encourage and aid in the planning and development of a unified and coordinated transportation system for the National Capital region.

In keeping with that commitment, this legislation addresses the three major challenges faced today by the Washington Metropolitan Area Transit Authority:

First. Reaffirmation of the longstanding Federal Goverment financial commitment to complete a total Metro transit system in the Nation's Capital;

Second. Establishment of a method for the orderly retirement of bonds issued by the Washington Metropolitan Area Transit Authority; and

Third. Creation of an ongoing Federal participation in operating costs to reflect the special Federal benefits accruing from the Metro system.

The Washington Metropolitan Area Transit Authority (WMATA) recently released a proposed financial plan for completion and operation of the public transportation system for the National Capital area. This plan, which was developed at the request of the Urban Mass Transportation Administration (UMTA) and the Department of Transportation, presents two alternative methods to reach the stated objective. This legislation is designed to implement the alternative plan endorsed by the WMATA board. It calls for a continuation of the special Federal relationship that created Metro in the beginning. It calls upon the Federal Government to meet the obligations of a partnership entered into over 20 years ago with the local governments of the Washington metropolitan area.

It calls for a 101-mile Metro system to be completed and fully operational by 1985 at a savings of $200 million over the other financial approach proposed.

A 101-mile Metro system has been supported by an alternatives analysis recently conducted by one of this Nation's leading consulting firms. That 18-month analysis concluded that a 101-mile system was not just the best thing for regional transportation goals, but was the best thing for the total development of the Washington metropolitan region.

A 101-mile Metro system has also recently won the support of the Department of Transportation and the Urban Mass Transportation Administration.

The 101-mile Metro system will be completed in the shortest possible time at the greatest possible savings to local and national taxpayers through enactment of this bill.

Under this bill, up to $1.7 billion in Federal funds would be authorized beginning in 1980 for capital construction purposes. This amount added to already identified highway transfer funds would serve to complete the remaining 40 miles of Metro on an 80-percent Federal/20-percent State and local basis. This approach, which is consistent with Congress' philosophy of providing "advance authorization," would enable Metro to be fully operational 2 years sooner than would be otherwise possible and at a savings of over $200 million.

The second major element of this legislation relates to payment of the interest and principal on the approximately $1 billion in construction bonds due to expire in 2010. It is unfair and unrealistic to expect the farebox or the local taxpayer to cover this expense alone. The approach set down in this legislation is financially sound and consistent with federal assistance currently provided to all U.S. cities now constructing mass transit systems.

The bill calls for Federal participation in a sinking fund that would pay off the bonds as they mature and in the interest payments now borne strictly by the local taxpayers. The ratio for participation in both cases would be on an 80-percent Federal/20-percent local basis.

The third area addressed by this bill is a direct Federal operating subsidy to reflect the benefit and convenience of Metro to the Federal Government. In fiscal year 1980 the subsidy is $20 million and increases at a rate of 6 percent a year to $30 million in 1987.

The benefits of Metro to the day-to-day operation of the Government are immense. This Federal participation, at less than 10 percent of current Metro operating costs, is small compensation for the convenience and savings from the stations dedicated to Government facilities such as the Pentagon, NIH, and Arlington Cemetery. Time and dollars saved by employees using Metro instead of taxies on official Government business and greatly decreased lost time due to inclement weather are just two other advantages of Metro to the Federal Government.

This legislation emphasizes the special obligations the Federal Government has to the citizens of northern Virginia, the District of Columbia, and suburban Maryland when it sets special requirements that go beyond those set for similar projects in other parts of the country.

The Washington Metro system is a transit system befitting a Nation's Capital. President Johnson specified that this be so. Metro has the mark of the National Capital Planning Commission. Station and car designs were reviewed by the Fine Arts Commission. Such costly requirements do not exist for the taxpayers of Atlanta, Chicago, or Philadelphia or any other U.S. city as they design and build their mass transit systems.

Neither does any other system maintain stations built strictly at Federal Government request as Metro does.

Neither does any other system have mass transit stations located in buildings dedicated to Federal Government use.

Metro is not just another mass transit system.

Metro is the mass transit system of the Capital of the United States.

Metro does not serve just one city or State. Metro serves three States, Virginia, Maryland, and the District of Columbia.

This legislation continues and reaffirms the special nature of Metro and the special commitment the Federal Government has to it.●

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## BALANCE(S) OF POWER SERIES, BOOK IV (D)—MEANING OF SOVIET MILITARY DOCTRINE

**HON. JOHN B. BRECKINRIDGE**
OF KENTUCKY
IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, today's article in the continuing Book IV of the "Balance(s) of Power" series, which sets forth Soviet intentions and doctrine, is concerned with the rudimentary meaning of military doctrine as understood and defined by Soviet leaders. Entitled "Soviet Military Thought," and written by Joseph Douglass under Air Force auspices, this brief article summarizes brilliantly the basic meaning of military doctrine inside the Kremlin. Introductory in nature, especially compared to later insertions that will be made in book IV, "Soviet Military Thought," nevertheless, illustrates—by referencing Soviet writings—how the Russians view this subject and, implicitly, how there interpretation differs from Western and Amercan sources.

The article follows:

SOVIET MILITARY THOUGHT

In ways that are particularly important to this analysis, the Soviets have certain concepts and words that are very different from their U.S. counterparts and that need to be recognized in reading the Soviet literature. Although largely taken for granted in the United States, the organization of military thought into specific categories, such as military doctrine, science, art, and strategy, and the Marxist-Leninist interpretation of certain words and concepts, such as war, one-man control, and independence are very important to the Soviet and an appreciation of this and the definitions is essential and requisite to understand what the Soviets are saying. This is especially so for "doctrine," "strategy," and "war." This chapter will review how these very basic terms are used in the Soviet Union. Other definitional problems and idiosyncrasies will be discussed in the following chapters as the need arises.

A. SOVIET MILITARY DOCTRINE

In the United States, military doctrine is a very flexible word that means very different things to different people. In effect, everyone has his own meaning. There is national doctrine, allied doctrine, Army doctrine, Air Force doctrine, and tactical nuclear doctrine, to mention but a few. In contrast, in the Soviet Union, there is only one, and that is official Soviet military doctrine.

In the Soviet Union, military doctrine is very carefully defined and promulgated. It is worked out in conjunction with the political leadership, and it represents their guidance to the military in preparing for war. As stated in *Military Strategy*, military doctrine is ". . . the expression of the accepted views of a state regarding the problems of political evaluation of future war, the state attitude toward war, a determination of the nature of future war, preparation of

the country for war in the economic and moral sense, and regarding the problems of organization and preparation of the armed forces, as well as of the methods of waging war. Consequently, by military doctrine one should understand the system of officially approved, scientifically based views on the basic fundamental problems of war." [Ref. 8, p. 38]

As stated in *The Officer's Handbook* in 1971:

"Military doctrine is worked out and determined by the political leadership of the state." [Ref. 13, p. 109]

"The Central Committee of the Party . . . works out Soviet military doctrine. [Ref. 13, p. 25]

"*Military doctrine* is a system of guiding views and principles of a state on the character of war under given specific historical conditions, the determination of the military tasks of a state, the armed forces, and the principles of their construction, and also the methods and forms for the solution of all these tasks, including armed conflict, which issue from the goals of the war and the socio-economic and military-technical capabilities of a country." [Ref. 13, p. 109]

In the Soviet Union, military doctrine is drawn up under the guidance of the Central Committee of the Party. In contrast, U.S. doctrine is developed by the military to guide their action and tends to equate more evenly with Soviet principles of operational art or tactics, which are more at the base of the hierarchal structure of Soviet military thought. In the Soviet Union, doctrine is at the apex, developed at the Kremlin; while in the U.S., doctrine is something developed at lower command levels in the Services. Thus, "doctrine" in the Soviet system is not even similar to "doctrine" in the U.S. system. Military doctrine in the Soviet Union is official and is to be used in preparing the country for war. It identifies the nature of the war, the preparations to be undertaken, and the priority tasks and problems.

The doctrine is promulgated in books such as *Marxism-Leninism on War and the Army* [Ref. 3] and publications such as *Communist of the Armed Forces*. The basic characteristics and some of its content are set forth in *Methodological Problems of Military Theory and Practice* and *The Officer's Handbook*. As an example of Soviet doctrine, consider the following excerpts from *The Officer's Handbook:*

Soviet military doctrine has an offensive character. . . . The Soviet Union . . . will conduct the war which the enemies impose on them in the most offensive manner in order to attain the smashing of the enemy in short times.

Soviet military doctrine allocates the decisive role in contemporary war to nuclear missile strikes of a strategic and operational-tactical character, the armed forces will employ conventional armament. [Ref. 13, p. 116]

The basic ingredients that have consistently made up Soviet doctrine since at least the late fifties are its offensive character, the importance of nuclear weapons, and the belief that the war will be decisive in its early phase and, therefore, short. Soviet military doctrine has consistently held that surprise attack is the most probable method whereby "the imperialists will unleash war";

As for the means the imperialists have of unleashing [sic] war, Soviet military doctrine considers most probable a surprise attack of the aggressor without a declaration of war. This precisely is the main thing the imperialists are counting on. They have repeatedly resorted to such means of unleashing war in the past. The aggressors resort to it under modern conditions, too, as was shown, for example, by the attack of Israel on the Arab countries. [Ref. 14, p. 321]

Finally, should world war come about, the basic tenets of Soviet military doctrine are that it will be the conflict of two diametrically opposed social systems, a coalition war that is definitely nuclear, will result in destruction of the capitalist system, and the world-wide triumph of the socialist system.

The major change, introduced in the sixties, allows for the possibility of an opening conventional phase (phase, not war) that subsequently escalates to all-out intercontinental war.

It is possible that war can begin by gradual escalation of a limited conflict into a world conflict. Imperialists can begin it and wage it for any time without using nuclear weapons with only conventional means. [Ref. 14, p. 321]

More recently, as discussed in Chapter VI, the possibility of limited nuclear war is being investigated and may well emerge as doctrine in the near future.

### B. MILITARY SCIENCE AND STRATEGY

Soviet military thought is divided into two major compartments; military doctrine and military science. Within military science, strategy is the most important element. Soviet military science is defined in *The Officer's Handbook* as follows:

*Soviet military science is a united system of knowledge on the preparation and conduct of armed conflict in the interests of the defense of the Soviet Union and other socialist countries against imperialist aggression.* In its functions include:

The discovery and investigation of the objective laws of armed conflict;

The development, on the basis of the knowledge of these laws, of the means and forms of armed conflict for the achievement of victory over the enemy;

The investigation of the problems and determination of the methods for the preparation of the territory of the country and the Armed Forces for war, and the comprehensive support of the armed struggle economically, politically, morally, materially and technically, scientifically, and in other ways;

The development of the bases for the organization and training and education of the troops in accordance with the requirements of contemporary war;

The development of the method of military science as a whole, its general theory, theory of military art, the military-technological sciences, and its other parts and branches. [Ref. 13, pp. 82–83]

The interaction and difference between military doctrine and military science are important. While military doctrine guides military science, military doctrine also is developed using the conclusions of military science. Military doctrine exploits the conclusions of various sciences. The doctrine rests upon the conclusions of military science particularly as regards determining the nature of a future war and the methods for conducting it, and for determining the structure and preparation of the armed forces. [Ref. 8, p. 38]

As described in *Methodological Problems of Military Theory and Practice:*

"Military science studies a much wider circle of problems than necessary for realization of the practical problems of construction of the armed forces of the state during the given period. It considers all the probable means and conditions of waging armed struggle, including those which are not typical for the given country and do not entirely coincide with its means. But the conclusions of military science use doctrine, proceeding from the real conditions and means of the country. No contemporary military science can disregard the appearance of nuclear missiles and their determining effect on the means and form of armed struggle. However, for states without nuclear missiles military doctrine had to show ways of military construction different from those which countries having very modern means of armed struggle can go. And these ways are developed by military science.

"Military science studies the development of military affairs in many countries and evaluates the state of the armed forces and military means of states and coalitions and condition of waging armed struggle in various theaters of military actions. The doctrine considers only those factors which affect the construction of the armed forces in its country. In other words, of the entire variety of phenomena and trends studied by military science, of all its generalizations and recommendations, military doctrine takes only those which correspond to the political course of the state and to its strategic means." [Ref. 14, pp. 327–328]

Although military doctrine and military science have much in common, it should be clear that there are important differences. In addition to the above example, military science focuses on the past, present, and future, while doctrine is pointed to the present and immediate future; that is, to foresee the nature of war and probable enemy in order to provide guidance to military science regarding the course to follow. A further difference is that ". . . doctrine, being developed and accepted by the state, is a single system of views and a guide to action free from any particular subjective views and evaluations. Inherent to science, in its development, is the struggle of opinions. In the system of military theories which comprise military science there may be several different points of view, different scientific ideas, and original hypotheses which are not selected by doctrine for practical application and they thereby do not acquire the character of official state views on military questions." [Ref. 13, p. 115]

Military science includes a number of different fields, such as history, administration and organization, training, and the military art. The most important of these components is military art, which is made up of strategy, operational art, and tactics. The most important of these, which is also critical to this study, is strategy.

*Strategy* is the part of military art which studies the foundations of the preparation and conduct of war as a whole and its campaigns. In practice it is policy's direct weapon. With respect to strategy, policy plays the leading and directing role.

Strategy is general and single for all the types of the armed forces of the country because war is conducted, not by some one type of armed forces or combat arm, but by their combined efforts. The coordination of the actions of all the types of armed forces in war is possible only within the framework of a single military strategy. [Ref. 13, p. 101]

The most important problem of strategy is the determination of the character of modern war, the possible means of its emergence and conduct, its stages (periods) and targets (problems), which are landmarks for its planning. [Ref. 14, p. 313]

Strategy and doctrine are the areas of greatest interest in this study—with operational art and tactics examined to obtain greater detail, where important, regarding the organization and employment of various force elements. Probably the single study most representative of strategy is Sokolovskiy's *Military Strategy*, third edition. The Soviet officer is still referred to this important book for basic strategy.

Military strategy and doctrine, although very similar in coverage, are different in principle. For example:

Military strategy occupies a subordinate position with regard to military doctrine. Military doctrine determines over-all policy in principle, while military strategy, starting from this over-all policy develops and investigates concrete problems touching upon the nature of future war, the preparation of a country for war, the organization of the armed forces, and the methods of warfare. [Ref. 8, p. 40]

What is most important is the relationship between doctrine and strategy in time of war.

During war, military doctrine withdraws somewhat into the background because in armed conflict they are guided primarily by military-political and military-strategic considerations and by the conclusions and generalizations which follow from the conditions of a specific situation. Consequently, war and armed conflict are guided not by doctrine, but by strategy. [Ref. 13, p. 116]

In evaluating the Soviet threat to NATO and the prospects for controlling and terminating a NATO/Warsaw Pact war in Europe, the Soviet doctrine and strategy are coequal in importance and preeminent in the whole field of military thought.

C. WAR

A word that can introduce considerable definitional problems is the very simple word "war." In the Soviet doctrine, war is not just one word. There are two types of war—just war and unjust war—and which war is being discussed often has to be inferred from the context of the sentence. The distinction between just and unjust war is not trivial. It is particularly important because the interpretation can cast considerable influence on the meanings attached to various discussions in tthe Soviet literature and, in particular, to those discussions that are associated with limited nuclear war. It is essential to understand *whose* war is being discussed in interpreting Soviet statements.

A war is just or unjust depending on the social content and goals of the war—not by who attacks first, where the war is fought, or whether the troops are attacking or defending themselves.

Just wars are those which are liberating, directed at class or national liberation. Also wars defending the people from outside attack and attempts to enslave them, to free colonies and dependent countries from imperialist oppression, and civil wars. A special place is occupied by wars in defense of the socialist fatherland. These are the most just of all wars since they defend the system under which they live as well as their native land and national independence.

Unjust wars are predatory wars organized by exploiting classes. Their goal is to seize territory of others, defeat and enslave other peoples and working classes.

Dividing wars into just and unjust is very important. It helps orient communist to each war. At the same time communists have never been pacifists, that is, against any war. [Ref. 15, p.2]

When one reads a statement regarding wars, he must ask whether the statement applies to just wars or to unjust wars—the context is most important. In brief, anyone challenging the Soviets is fighting an unjust war; and, any war in which the Soviets are involved is, from their position, a just war.

As stated in a 1975 *Communist of the Armed Forces* editorial:

"War still is explained by the Leninist principle of just and unjust wars. A war which might be unleashed by imperialism against the Soviet Union would be unjust and reactionary and a continuation of their predatory policies. From the socialist countries' side, it would be the most just and progressive war. It would be defending the most advanced social structure—socialism, for the benefit of of all progressive mankind. Such wars might be those of the working classes against the bourgeoisie and wars of national liberation. Only wars in the interests of socialism can be just from the point of view of the working masses." [Ref. 15, p. 5]

When the Soviets denounce warfare, call for declarations against weapons of mass destruction, and emphasize the need to work to make nuclear war impossible, the war they are talking about is the unjust war. Such statements do not mean that they are at all interested in having curtailed *their* capability to conduct just wars of similar scale and using similar weapons.

As stated most clearly by Colonel V. V. Larionov, a prominent Soviet authority on military affairs and composing editor of all three editions of Marshal Sokolovskiy's classic *Military Strategy:*

"As for the Soviet Union it has always resolutely opposed international agreements legalizing *unjust* wars. Our country is consistently struggling for general and complete disarmament. *That is, for the destruction of all material means for waging such wars."* [Emphasis added] [Ref. 16, p. 33]●

## WE WILL NEVER GIVE UP

## HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. HOLLENBECK. Mr. Speaker, the following letter to President Carter speaks eloquently for the feelings of thousands of Cuban-Americans and the others concerned with the plight of those people in Cuba who are enslaved and jailed both behind prison walls and on the outside but denied freedom of movement.

The text of the letter—hundreds of which will be addressed to the President—follows in both English and Spanish:

(NOTE.—The letter in English is included in the RECORD).

UNION CITY, N.J.,
*August 5, 1978.*

Mr. JAMES CARTER,
*President of the United States of America, The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: From the gloomy Cuban prisons through underground channels we have learned that the political prisoners confined in the dungeon known as "Combinado del Este" in Havana, are in hunger strike as a protest against the farce of the so called "International Youth Festival" being staged in Havana under the auspices of the Castro-Communist regime.

The Cubans in exile as the outspoken voice of our muzzled and enslaved compatriots come forward at this time to denounce the crimes and atrocities being committed by the Soviet's puppet repressive police to our brothers in Cuba, asking for the active support to our cause of the free men of the world.

We feel that we have been abandoned by some of our former friends and allies. An ominous curtain of silence has been imposed on our struggle. Our freedom fighters are being persecuted and jailed. However, our uncompromising decision is stronger than ever to continue the fight by every and all means until the tyranny in Cuba is overthrown.

We demand a worldwide mobilization for the implementation of the Human Rights Principles and the Helsinki Accords in our homeland. May we count on you?

We'll never give up.

Recently, through many efforts on my part and because of the voices raised here in the United States, the Castro regime has indicated a willingness to free some incarcerated behind prison walls and to allow others to move to freedom as well.

This is a beginning—a beginning only—and should not be allowed to cause us to cease our unstinting efforts on behalf of human rights and implementation of the Helsinki accords in Cuba. Our voices and our efforts must continue until freedom prevails.●

## VETERANS ORGANIZATIONS SUPPORT HANLEY AMENDMENT

## HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 7, 1978*

● Mr. TEAGUE. Mr. Speaker, during the past several months all Members have received a number of communications from national veterans organizations calling for the preservation of veterans preference in Federal employment. In this regard, veterans organizations who speak for Vietnam veterans, as well as older veterans, are in total agreement in their support of the Hanley amendment which would continue veterans preference rights for all veterans.

There follows, therefore, copies of communications received from Eric Sandstrom, national commander-in-chief of the Veterans of Foreign Wars of the United States; Billy O. Hightower, national commander of the Disabled American Veterans; and a letter to the President from Frances S. Wapnick, national president of the National Ladies Auxiliary of the Jewish War Veterans of the U.S.A., Inc., in which it is indicated that a number of Ladies Auxiliaries and women's veterans organizations have expressed their opposition to the modifying of veterans preference in Federal employment.

The letters follow:

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
*September 1, 1978.*

U.S. HOUSE OF REPRESENTATIVES,
*Washington, D.C.*

On August 24, 1978, the Senate passed S. 2640, the companion bill to H.R. 11280, the President's proposed Reform of Civil Service Laws. In its wisdom, and for which I commend that august body, the Senate left virtually undisturbed the Veterans Preference Act of 1944, as amended. The only modification thereof was to abolish veterans preference for able-bodied Armed Forces retirees in the grades of Major or Lt. Commander and above.

Due to the Schroeder Amendment, H.R. 11280, as reported by the House Post Office and Civil Service Committee, would greatly curtail veterans preference and be particularly detrimental to our younger Vietnam veterans, those, the Administration purports to help. Although the Schroeder Amendment is an Administration compromise somewhat ameliorating a strong anti-veteran posture, it is wholly unacceptable to us. The Schroeder Amendment so incensed the 16,000 voting delegates to our 79th National Convention, held in Dallas, Texas last month, that they unanimously passed Resolution No. 601 entitled, "Preserve and Extend Veterans Preference". a copy of which is appended to my letter. This resolution enjoins me to advise Congress and the President of the United States of the opposition of the Veterans of Foreign Wars of the United States to H.R. 11280 in its present form.

In view of the foregoing, and on behalf of our 1.85 million members of whom 500,000, or 27 percent, are Vietnam veterans, and the 610,000 members of our Ladies Auxiliary, I urge each of you, as our elected representatives, to defeat the Schroeder Amendment to H.R. 11280 and adopt the Hanley Amend-

ment, which will bring your bill in line with that passed by the Senate, in this respect.

Our entire membership, as well as all veterans and their families, who constitute nearly half the population of our great nation, will be following closely your vote with respect to veterans preference.

With best wishes and kind regards, I am

Sincerely,

ERIC SANDSTROM,
*National Commander-in-Chief.*

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RESOLUTION NO. 601—PRESERVE AND EXTEND VETERANS PREFERENCE

Whereas, our federal government specially selected as mentally, morally and physically fit, certain members from its society, specially trained this group, subjected them to stringent rules and regulations removed them from home, family and employment, asked of them a special sacrifice, required some of them to suffer wounds they will live with forever; and

Whereas, a grateful nation, through its representatives in the Congress of the United States has, in recognition of that special service and loss of employment opportunity while defending the country in time of need, extended a long history of employing the returning veterans by enacting the Veterans Preference Act as contained in Title 5, U.S.C.; and

Whereas the term "veteran" includes every category of society—sex, age, religion, ethnic group, race, and creed; and

Whereas, absence from the highly competitive job market due to military service creates an unfair and unequal burden on veterans in competing for employment with their non-veteran peers upon completion of military service; and

Whereas, the veterans preference law accomplishes the legislative purpose of honoring veterans and provides a small advantage in competing for federal jobs; and

Whereas, there have been introduced into the Senate and the House of Representatives of the Congress of the United States proposed legislation known as S. 2640 and H.R. 11280, respectively, which bills would on their effective date, October 1, 1980, terminate veterans preference for more than 19 million non-disabled wartime veterans, including 3½ million nondisabled Vietnam veterans, and which bills would provide for termination of veterans preference for all of our nation's nondisabled veterans 10 years after they have completed their active duty military service; now, therefore

Be it resolved, by the 79th National Convention of the Veterans of Foreign Wars of the United States, that the Congress and the President of the United States be informed of this organization's strong opposition to the legislation proposed in S. 2640 and H.R. 11280 or similar type legislation; and

Be it further resolved, that this organization deplores each and every attempt to degrade, dilute or modify the historical precedence of giving job eligibility preference to those who were taken from their communities to serve their country in time of war, and that the President and the Congress of the United States reject any and all recommendations or requests for any change, amendment, or weakening of purpose of the Veterans Preference Act of 1944 as amended.

Adopted by the 79th National Convention of the Veterans of Foreign Wars of the United States held in Dallas, Texas, August 18–25, 1978.

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DISABLED AMERICAN VETERANS,
*Washington, D.C., September 5, 1978.*

Hon. OLIN E. TEAGUE,
*U.S. House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN TEAGUE: The Disabled American Veterans is again urging your support for the "Jim Hanley Amendment" to H.R. 11280, the Civil Service Reform Act of 1978. Congressman Hanley's Amendment, as you know, will prevent the sharp curtailment of veterans' preference in Federal employment as presently proposed by the Civil Service Reform bill.

I know my immediate predecessor, Oliver E. Madows, has written to you previously on this subject. As the newly elected National Commander of the DAV, I would like to bring to your attention what I consider to be three very important points concerning the veterans' preference issue.

(1) By recent vote of 87 to 1 the Senate not only gave overwhelming support for retention of the five point preference for nondisabled veterans, but through adoption of the Cranston Amendment, voted to strengthen the 10 point preference extended to service-connected disabled veterans.

(2) The Cranston Amendment included a provision to eliminate the five point preference now given to military retirees ranked Major (or the equivalent) and above—the so-called "double dipper". The Hanley Amendment would do this also.

(3) The attached statistical data, assembled by the Civil Service Commission itself (but not given wide distribution), completely refutes the Administration's claim that the use of veterans' preference adversely impacts upon the hiring of women and minorities by the Federal government. In fact, it suggests just the opposite.

Thank you very much for your kind attention to this letter. I trust that it will lead you to support your colleague, Jim Hanley, in his efforts to preserve veterans' preference for our Nation's veterans.

Sincerely yours,

BILLY O. HIGHTOWER,
*National Commander.*

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DATA TRANSMITTED BY ALAN CAMPBELL, CHAIRMAN, CIVIL SERVICE COMMISSION, TO CONGRESSWOMAN PATRICIA SCHROEDER IN A LETTER DATED JULY 24, 1978. THE C.S.C., AFTER BEING REQUESTED TO DO SO, LATER PROVIDED THE DAV WITH THIS SAME INFORMATION.

MINORITY HIRES

Figures below (rounded to nearest thousand) reflect governmentwide new hires (all pay systems). Figures do not include those for Guam, Hawaii and Puerto Rico.

| Calendar years | 1975 | 1976 | 1977 |
|---|---|---|---|
| Total new hires [1] | 458,000 | 509,000 | 495,000 |
| Total minority new hires | 141,000 | 145,000 | 141,000 |
| Total veteran new hires | 109,000 | 116,000 | 116,000 |
| Total minority veteran new hires | 29,000 | 31,000 | 31,000 |

[1] Does not include those who transferred, returned to duty, or restored to duty.

WOMEN NEW HIRES VERSUS VETERAN NEW HIRES

Figures below reflect only those new hires into General Schedule and pay systems for which an equivalency table can be supplied. Figures for Postal Service, Federal Wage Systems, etc., not available.

| New hires, GS and equivalent [1] | Calendar year— 1975 Women | 1975 Veteran | 1976 Women | 1976 Veteran | 1977 Women | 1977 Veteran |
|---|---|---|---|---|---|---|
| 1 | 6,594 | 577 | 7,444 | 609 | 7,019 | 597 |
| 2 | 35,079 | 5,676 | 33,177 | 5,690 | 33,743 | 5,266 |
| 3 | 45,582 | 11,681 | 48,230 | 12,312 | 50,522 | 12,413 |
| 4 | 22,054 | 7,948 | 25,165 | 8,055 | 27,434 | 8,726 |
| 5 | 9,679 | 7,455 | 10,919 | 7,574 | 11,192 | 7,749 |
| 6 | 1,673 | 1,076 | 1,606 | 1,119 | 1,614 | 1,126 |
| 7 | 4,324 | 5,565 | 5,091 | 4,818 | 5,131 | 4,536 |
| 8 | 854 | 334 | 892 | 330 | 950 | 306 |
| 9 | 3,165 | 3,956 | 3,157 | 3,482 | 3,323 | 3,325 |
| 10 | 77 | 104 | 80 | 90 | 112 | 86 |
| 11 | 1,058 | 2,525 | 1,099 | 2,174 | 1,321 | 2,162 |
| 12 | 398 | 1,662 | 454 | 1,517 | 537 | 1,500 |
| 13 | 228 | 1,014 | 207 | 847 | 284 | 700 |
| 14 | 117 | 679 | 120 | 500 | 164 | 421 |
| 15 | 65 | 749 | 66 | 554 | 124 | 478 |
| 16 | 7 | 109 | 5 | 64 | 16 | 46 |
| 17 | 2 | 63 | 4 | 31 | 11 | 34 |
| 18 | 0 | 31 | 2 | 19 | 6 | 27 |
| Total | 130,956 | 51,204 | 137,718 | 49,785 | 143,503 | 49,498 |

[1] DAV comment—Most new hires, for both women and veterans, occur in the ower GS levels. In recent years, women hires substantially outnumbered veteran hires in GS levels 1 through 8.

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NATIONAL LADIES AUXILIARY,
JEWISH WAR VETERANS,
*Washington, D.C., May 16, 1978.*

The PRESIDENT,
*The White House*

MY DEAR MR. PRESIDENT: The National Ladies Auxiliary, Jewish War Veterans of the U.S.A., recently asked allied veterans organizations to join with us in the following statement: "We strongly oppose the Administrations proposal to act against veterans preference. Such action would further erode the rights of thirty million veterans and their families. We urge the Administration to refrain from stripping veterans of the rights they have earned in the patriotic service of our country".

The following organizations are united on the statement:

American Gold Star Mothers, Inc.

Daughters of Union Veterans of the Civil War.

Ladies Auxiliary of the Military Order of the Purple Heart.

Ladies Auxiliary, Veterans of World War I, Inc.

National Ladies Auxiliary, Jewish War Veterans of the USA.

National Woman's Relief Corps Auxiliary to the Grand Army of the Republic, Inc.

Polish Legion of American Veterans Auxiliary.

We trust that you will consider our statement in your future deliberations in the matter.

With sincere good wishes,

Sincerely yours,

FRANCES S. WAPNICK,
*National Presidents.*●

## VETERANS' PREFERENCES

## HON. JOHN N. ERLENBORN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. ERLENBORN. Mr. Speaker, the well-known columnist and commentator, James J. Kilpatrick, recently did a commentary on the subject of Veterans' Preferences. It was aired over radio station WTOP.

Inasmuch as the House is currently considering the Civil Service Reform Act, I think this is a most germane and intelligent discussion of the subject.

I commend it to the attention of my colleagues.

The commentary follows:

COMMENTARY ON VETERANS' PREFERENCES

(By James J. Kilpatrick)

It was predictable, but it is disappointing all the same, that the American Legion and other veterans' groups should have erupted in knee-jerk opposition to Mr. Carter's proposals for civil service reform. The President's recommendations for retrenchment in this matter of "veteran's preference" are not extreme. They strike me as fair and reasonable, and ought to be adopted.

The present system goes back to the War Between the States, when Abraham Lincoln sought to reward the Union veterans with a little advantage in getting government jobs. The advantage carried over to the expanding system of Civil Service. As it operates today, a veteran now has a lifetime bonus toward a Federal job, even though he may have served a minimum hitch 20 years ago.

Under Mr. Carter's plan, the disabled veteran would continue to have a lifetime preference. For other veterans, the advantage would last for only ten years following their discharge from military services. High-ranking officers would get no special preference at all, on the theory that they need none to find satisfactory civilian employment. All this makes sense to me.

Persons in military service these days are better paid by far than they were in Lincoln's time. They have greater opportunities for job training, and for post-service education. It's a bit much to continue giving them a Civil Service advantage also, especially when the system operates inevitably against qualified women. Mr. Carter is on the right track here, and the Legion's opposition ought not to prevail. I'm James J. Kilpatrick.●

## TRIBUTE TO BASEBALL COACH ANG VACCARO

### HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. APPLEGATE. Mr. Speaker, last Wednesday, I had the honor of informing the House of Representatives of the American Legion Ohio State baseball champions. The team represented Teramana American Legion Post 33 of Steubenville, Ohio. In my remarks, I mentioned the names of the players and coaching staff, but for Head Coach Ang Vaccaro, this is not near enough.

Ang Vaccaro has guided and provided leadership to thousands of individuals over the years through his academic position as principal of the Steubenville High School and coach of both scholastic and amateur sports.

During his career as head coach of the Steubenville High School basketball team, Ang achieved a record of 213 wins and 98 losses. As head baseball coach for several years his teams enjoyed a total of 205 wins and only 23 losses. Because of these outstanding achievements, Ang Vaccaro had been inducted into the Ohio Basketball Coaches Hall of Fame upon his retirement as high school coach in 1960.

From the high school level, Ang turned his attention to the coaching of American Legion baseball, serving as head coach of Steubenville Post 33 for all of its 32 years. During that time, his teams won two State championships, one in 1964 and just 3 weeks ago for the 1978 crown. This past season, the team accomplished a 41 and 6 record, just missing a chance to go to the American Legion World Series by two runs in the final game of the Great Lakes Regional Tournament.

What is most impressive though, is Ang's winning record as American Legion coach. In those 32 years, his teams have won 924 games while losing only 210. This, combined with his high school coaching record gives him a lifetime record of 1,342 wins and only 331 losses, making Ang one of the most successful coaches in the history of American sports.

After reviewing this man's remarkable coaching career, which is far from over, I am sure we would all agree on the fact that Ang Vaccaro is truly a leader and an inspiration to thousands. On behalf of Ohio's 18th Congressional District, I extend hearty congratulations to Ang Vaccaro on a job truly well done.●

## INTERNATIONAL EMERGENCY WHEAT RESERVE

### HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. GILMAN. Mr. Speaker, recently both the House Committees on Agriculture and on International Relations reported out legislation establishing an international emergency wheat reserve. This measure authorizes the President to acquire and maintain a reserve stock of wheat to be targeted to nations in need of emergency food assistance during periods of critical food shortages.

In light of the world food crisis of 1972–74, when available supplies sunk dangerously below the needs of famine-stricken nations, the current administration (as did its predecessor), as well as key international food conferences, have advocated establishing such a reserve.

The Senate Agriculture Committee, however, has reported out legislation considerably different than the measure now pending in the House. The Senate bill, establishing an international emergency food fund, would set aside a fund of up to $500 million to be used by the President to acquire, during periods of shortages, grain stocks to be used for international emergency assistance.

Compelled by a dubious logic that would have us purchase grain stocks during periods of shortages of these stocks, when indeed that grain available is considerably more costly than if purchased during periods of abundant harvests, this measure would not enable us to meet our goal of adequately responding to food crises.

Writing in the August 31, 1978 Washington Post, Brennon Jones, an issue analyst with Bread for the World, an organization dealing with U.S. policy and world hunger, offers a cogent analysis of the serious shortcomings of the "Food fund" as compared to the grain reserve concept.

As a sponsor of legislation establishing an emergency grain reserve, and anticipating that the two measures to which I have referred will soon be before Congress, I wish to share this timely article with my colleagues and insert it at this point in the RECORD:

WORLD FOOD FUNDS: YOU CAN'T EAT MONEY

(By Brennon Jones)

Religious groups urge the administration to assist famine-struck nations with additional food aid, but are turned down because of the impact such purchases would have on domestic prices. U.S. consumers boycott in protest of skyrocketing food prices. And U.S. farmers lobby against embargoes and export restrictions that are imposed because of tight grain supplies.

That sounds like fiction, but it all happened during the 1972–74 food crisis. And the chances of a recurrence would be strengthened if Congress adopts a bill now under consideration.

The bill entitled the International Emergency Food Fund, authorizes the President to spend up to $500 million during periods of international food emergencies for purchases of U.S. food aid for humanitarian relief. Introduced by Sen. Robert J. Dole (R-Kan.), the bill was reported out of the Senate Agriculture Committee on Aug. 16 in preference to legislation that would establish grain reserves for such emergencies.

When the World Food Conference met in Rome in 1974, a key part of the global strategy that emerged for avoiding food crises in the future was established in an international grain-reserve system. The Carter administration endorses the concept and has advocated U.S. international emergency reserves. Both the House Agriculture and International Relations Committees passed legislation in mid-August that would establish such reserve stocks. The justification for emergency grain reserves is clear: Such stocks ensure that food aid levels do not shrink at precisely the time when they are most needed—during famines. Without reserves, food aid is bought at the current market price, and in times of scarcity the price soars. So the same aid dollar buys considerably less grain. Thus U.S. food-aid shipments dropped from 9.9 million tons in 1972 to 3.3 million in 1974.

The building of such reserves is clearly in the interest of U.S. producers, because grain for stocking them is purchased on the market—an insight that has not escaped the National Association of Wheat Growers, who have endorsed a wheat reserve of moderate size. The Congressional Budget Office estimates that, should a 6 million metric ton wheat reserve be established (the size the administration supports and the House International Relations Committee bill would provide), U.S. wheat prices could rise immediately by as much as 51 cents per bushel, with a season average increase of up to 34 cents. Such increases would result in a reduction in government outlays for price-support payments to farmers of $235 million in fiscal year 1979 alone.

By votes of 27 to 16 in the House Agriculture Committee, and 12 to 2 in the International Relations Committee amendments were rejected that would have substituted the International Food Fund for the grain-reserve bills. The arguments against the fund are based on these considerations:

Unlike a grain reserve, a fund ensures only that money—not food—is available. Ample grain supplies are on hand for the near future, but a combination of poor weather, rapid population growth and increased consumption due to rising affluence could quickly put us back into a period of scarcity. According to the International Food Policy Research Institute, by 1985 (just 6½ years from now) the annual food deficit of the developing nations alone will increase from this

year's level of 36 million metric tons to at least 95 million metric tons.

A food fund has price impact at exactly the wrong time. Purchases would be made in the market only during times of limited grain supplies and high prices. And the U.S. consumer would bear the brunt of the price impact—a situation that could set the stage for embargoes and export restrictions that ultimately disrupt commercial sales and hurt U.S. producers.

Having a food fund does not ensure its use. The fund is similar to the authority the president already has through the Commodity Credit Corporation (CCC). During the 1974 food crisis, when supplies were tight and prices high, the Ford administration had approximately $10 billion in unused CCC authorizations it could have used to purchase grain for emergency relief purposes. But because of the potential price impact, the choice was made to not respond immediately. For similar political and economic reasons, a president is likely to choose not to enter the market with an emergency food fund when food is critically needed in the future.

Cost is an additional factor that works against the food-fund approach. There are potential cost advantages in that the fund earns interest when not in use, while a grain reserve entails annual charges, including those for storage and quality control. However, the price at which grain is acquired is the key determinant. A grain reserve is acquired when market prices are depressed, or at least not excessively high. But a food fund would be tapped only in critical situations when supplies are tight and prices escalating—as in the 1972–74 period when wheat prices initially doubled, then ultimately tripled. A mere doubling of current wheat prices would be $5.60. Even if the administration were to purchase for the reserve at the current price of $2.80 per bushel (a price they have indicated they are unlikely to purchase much above) and held the stocks for six years, the initial cost, plus annual carrying charges, would still be cheaper than the $5.60 minimum price at which a food fund would conceivably be tapped.

Food fund or grain reserve? Now it's up to House and Senate floor action in September to decide which approach they want to take. Before they do, they might reflect on House Agriculture Committee Chairman Thomas Foley's comment during consideration of the food fund: "People cannot eat dollars. Even less can they eat CCC credits." ●

## LIBYA WANTS BETTER RELATIONS AND MORE TRADE WITH THE UNITED STATES

### HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. SIKES. Mr. Speaker, during my committee trip to Europe, the Middle East, and Africa, I found that Libya wants better relations and more trade with the United States. The problem lies in an American embargo, and the Libyan practice, now discontinued, of offering asylum to hijackers. There also is opposition by Jewish leaders because of Libya's hard line against Israel.

Libyan leaders of ministerial rank with whom I conferred indicated their country wants to buy American commercial aircraft, trucks, and autos, and American farm equipment. They also want the benefit of American expertise in industrial and agricultural development. They are now supplied with Russian weapons, many of them sophisticated, which they claim they first tried to buy from the United States.

The matter is worthy of active consideration, further delays are nonproductive and can be harmful. An important first step would be an exchange of Ambassadors. We maintain full diplomatic relations with many nations that offer less.

Trade is important to the United States. We buy $4 billion in oil each year from Libya and they buy from us $400 million. It is estimated their purchases could increase to $1 billion. An improvement not to be overlooked.

The United States should weigh all these matters rather than hold to the position of no change toward Libya. This is a changing world and we do not distinguish ourselves by being slow to take advantage of new openings for better relations with other countries.●

## VA ANNOUNCES OLIN L. TEAGUE AWARD

### HON. RAY ROBERTS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. ROBERTS. Mr. Speaker, as we draw near adjournment of the 95th Congress, we are reminded that one of the finest Members who ever sat in this body will not be returning. My colleague and friend, "TIGER" TEAGUE has announced his retirement. Honors, deservedly, have begun to pour in on him from some of the millions of Americans whose lives bear the beneficial imprint of his service.

Few honors will please him more than one announced September 7, 1978, by the Veterans' Administration. It is described in an agency news release which is reprinted below:

OLIN E. TEAGUE AWARD

The Veterans' Administration today honored long-time Texas Congressman Olin E. Teague by establishing an annual award in his name to recognize agency employees for outstanding achievements in the rehabilitation of war-wounded veterans.

In announcing the award, VA chief Max Cleland said it was fitting that it should be named for Teague, "one of the most decorated combat-disabled soldiers of World War II and a tireless champion of legislation benefiting veterans."

Teague, an infantry battalion commander who suffered multiple wounds and was decorated eleven times for gallantry, served 18 years as chairman of the House Committee on Veterans Affairs.

Earlier this year, Teague became the one person outside the Veterans' Administration to receive the agency's Exceptional Service Award. The award is VA's highest commendation for an individual by the agency.

Cleland cited Teague for "his extraordinary contributions" to America's veterans.

"No person in the history of America has had such a saluatory effect on the lives of veterans and their families," Cleland said.

Teague's investigations of shortcomings in the World War II VA education assistance legislation led to his authorship of the Korean-era GI Bill and Cleland pointed out that "much of the veterans legislation that has been approved by Congress since World War II bears his imprint."

Rep. Teague has announced his retirement from Congress at the end of the current session.

In advising him of the award's establishment, Cleland told Teague that "of all the programs and activities of the VA, none is more meaningful, more challenging or more representative of the distinctive mission of the VA than the rehabilitation of war-injured veterans.

"During your illustrious 32 years of service in the Congress, there has been no more staunch ally of America's wounded veterans, and none who has worked more enthusiastically or with more effect in their behalf.

"I therefore deem it most appropriate that this high award bear your name as a lasting symbol of what you have done for those whose service to our nation has cost them so dearly."

The Teague Award will be made annually to the VA employee or team of employees whose accomplishments in the area of rehabilitation involve an outstanding improvement in the quality of life for war-injured veterans or contribute in an outstanding manner to their rehabilitation.

Cleland said eligibility for the award "encompasses the whole spectrum of VA personnel who have dealt with wounded veterans. This includes medical personnel, social scientists, vocational counselors, engineers and basic scientists.

"The accomplishment may be a development of a technique or concept that has in a most significant or direct way materially improved the veteran's ability to function as normally as the present state of the art of physical and psychological rehabilitation can offer," he said.●

## SHOULD WE HAVE MAP?

### HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. BEDELL. Mr. Speaker, during House consideration of the fiscal year 1979 Department of Defense appropriations bill last month, I brought to the attention of my colleagues the existence within that bill of nearly $100 million for research and development of a proposed alternate launchpoint system known as MAP (Multiple Aim Point). During the ensuing debate, questions were raised about the efficacy of MAP, and concern was expressed about the lack of knowledge about the potential ramifications of this project. As a result of an informal consensus that grew out of this discussion of the implications of the MAP R. & D. program, I am today introducing a resolution that expresses the sense of the House that the President appoint a high-level commission charged with making a thorough evaluation of the MAP concept and the advisability of its full-scale implementation. I would like to take this opportunity to elaborate briefly on the need for such a study.

Full-scale implementation of MAP would mean the excavation of thousands of vertical silos located primarily in the Western and Midwestern regions of the United States. In a manner akin to a giant "shell game," the 1,000-plus Minutemen (or proposed MX if ever developed) would be covertly shuttled from silo to silo at a ratio of 20 silos to 1 missile so as to prevent the Soviets from knowing the precise locations of our ICBM's. MAP's proponents argue that it

would deter the Soviets from launching a counterforce strike against our land-based ICBM force since they would have to guess as to which silo contained the real missile, therefore making it likely that a sufficient number of missiles would survive to inflict unacceptable damage on the Soviet Union's own populace and industry.

Of course, another possible scenario is that the Soviets would feel constrained to target every missile silo in the United States in order to be relatively assured of depriving us of our counterstrike capability. In that event, Gen. Lew Allen's characterization of MAP as a "great sponge" of targets that would serve to "absorb" the Soviet warheads could very well prove to be prophetic, a prospect which in itself should make any American living west of the Mississippi River dubious about the advisability of deploying such a system. It seems to me that the U.S. strategic objective should logically be to draw Soviet fire away from the U.S. land mass rather than upon it.

This is just the first of many questions that I feel need to be more carefully explored by an objective group of experts prior to congressional action on further implementation of the MAP concept. Other disturbing questions that come to mind include:

First. The cost and strategic utility of the program—is the $20 billion price tag a cost effective means of spending taxpayer dollars? And, might not the money be better spent by upgrading the remaining two-thirds of our nuclear TRIAD?

Second. The impact on arms reduction—how will a commitment to full-scale development of MAP affect the chances for a successful negotiation of the already-endangered SALT II treaty?

Third. The impact on U S. land patterns—how will MAP affect domestic land use patterns given the fact that the total land required for the project would be roughly equivalent to an area the size of the State of Connecticut?

Fourth. The security implications—what sorts of security measures will be required to protect the inviolability of the secret missile locations? And, are there reasonable assurances that the Soviets do not now have, or are not on the verge of having, the surveillance capability that would make MAP a $20 billion "white elephant?"

I am aware that military preparedness is both necessary and expensive. It is not necessarily the intent of this resolution to thwart the development of the MAP system, but only to obtain the necessary information so that Congress will be equipped to intelligently deal with the likely administration request for full-scale funding in the near future. It is my concern that, without the advance access to information that this resolution would provide, history will repeat itself and Congress will find itself inadequately prepared to deal with all the nuances of a major strategic system like MAP.

The resolution itself would have no binding effect on the President, but it would hopefully serve to catalyze an administration initiative to conduct a thorough study of the potential ramifications of MAP. I believe, Mr. Chairman, that my colleagues will agree that this is a reasonable request and one that may save us much in the way of time, money, and resources in the final analysis.

The text of the resolution follows:

H. CON. RES. —

Whereas recent developments with respect to changes in the U.S./Soviet strategic nuclear balance have resulted in a heightened interest in the survivability of U.S. land-based ICBMs; and

Whereas the military and defense establishment community has, as evidenced by strong statements of support from highly-placed officials within the Administration, expressed interest in the full-scale development of the so-called Multiple Aim Point System (MAP); and

Whereas there has been a significant absence of debate as to the advisability of a full-scale implementation of the MAP System and an alarming lack of opportunity for its review and the presentation of opposing viewpoints; and

Whereas funds have already been expended for the testing and development of the MAP program and additional funds have been appropriated for the coming fiscal year for such purposes. and

Whereas the MAP program would require the excavation of vertical silos located primarily west of the Mississippi River on the continental United States land mass and would require the equivalent of an area the size of the state of Connecticut; and

Whereas there are serious questions about the effects that such a proliferation of vertical silos would have on land use patterns, agricultural productivity, and the environment in this vital region; and

Whereas severe reservations have been expressed about the effect a U.S. commitment to the MAP concept might have on the successful negotiation of the current SALT treaty; and

Whereas the minimum cost estimates for MAP of $20 billion raise extension concerns about the opportunity costs it would involve in terms of other alternatives that would have to be foregone; and

Whereas it is the responsibility of Congress to keep itself fully abreast of developments such as the MAP program, the funding of which would carry with it profound implications for each and every American; Now, therefore, be it

*Resolved by the House of Representatives of the United States in Congress Assembled*, That it is the sense of Congress that the President of the United States establish a Presidential commission composed of experts on defensive weapons systems from both the military and civilian strategic communities and representatives of the general public, or, if he should deem it appropriate, any other similarly-composed body that is now already in existence, to compare the Multiple Aim Point System with alternative defensive weapons systems, taking into account the effect of each such defensive weapons system on national defensive, foreign policy, and the national budget, and domestic priorities, to evaluate the desirability of implementing the multiple aim point system, and to report its findings to the President and to the Congress.●

## PERSONAL EXPLANATION

### HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. LAGOMARSINO. Mr. Speaker, on Wednesday, September 6, 1978, I was not recorded on the first quorum call. I missed that vote due to the fact that TWA flight 88 from Los Angeles to Dulles, scheduled to arrive at Dulles Airport at 6 a.m., September 6, 1978, did not reached the airport until noon on that day.

The flight was delayed for 6 hours in Phoenix, Ariz., due to engine trouble.●

## ANDERSON ASKS FOR SUPPORT FOR AIRCRAFT/AIRPORT NOISE REDUCTION LEGISLATION

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. ANDERSON of California. Mr. Speaker, from time to time I have entered letters of support from among the wide spectrum of supporters of the Airport and Aircraft Noise Reduction bill, H.R. 8729. These have been for the most part letters from national associations or others representing large groups attesting to their strong sense of need and urgency. I have entered only a fraction of the support letters and wires received either by me or others who have called such letters to my attention. In an attempt to be helpful to my colleagues I have had a list prepared of such communications which I request be entered here. Regrettably it does not constitute a complete list of those we know to be in support based on telephone calls and other reports, and many letters probably will be received in the days immediately ahead; however, the list does indicate wide geographic spread from places large and small, and from business, labor, citizens, and local public officials.

Although I have not been able to personally contact each of you, my colleagues, and ask you personally for your support even though I am confident a majority of you already support the bill, I do ask you for your support and commend the list to you in addition to the mail you have individually received. The chances are good that your local airport operators, your local city officials, your local chambers of commerce, your local labor unions, your State officials, and those airlines which serve you, or to whom you are looking for service, have something at stake here. Several thousand small businesses across the country also have a concern. If your district is impacted by aircraft noise your citizens know full well that they have very, very much at stake. But the general public, who will be involved in supporting this with their tax dollars, and especially the traveling public which depends on good and unrestricted air commerce, also have much at stake. Your support is needed. There is no better time.

The list follows:

SOME SUPPORTERS OF AIRCRAFT/AIRPORT NOISE REDUCTION LEGISLATION

International Association of Machinists and Aerospace Workers.

U.S. Conference of Mayors.

West Palm Beach, Florida, Chamber of Commerce.

Buffalo Area Chamber of Commerce.

St. Paul Area Chamber of Commerce.

Coraopolis, Pennsylvania, Chamber of Commerce.
Dayton Area Chamber of Commerce.
Phoenix Metropolitan Chamber of Commerce.
Chicago Association of Commerce and Industry.
Chamber of Commerce of Hawaii.
Matoon, Illinois, Association of Commerce.
New Jersey State Assembly.
New Jersey State Chamber of Commerce.
Mt. Vernon, Illinois, Airport Authority.
San Diego City Council.
Tucson Airport Authority.
Tulsa Airport Authority.
City of Rochester, Minnesota, and Rochester Airport Authority.
Salt Lake City, Mayor's Office.
Columbia Chamber of Commerce.
Clarksville, Tennessee, Chamber of Commerce.
Greater Hartford Chamber of Commerce.
Greater Providence, Rhode Island, Chamber of Commerce.
Newark Chamber of Commerce.
Empire State (New York) Chamber of Commerce.
Illinois Public Airports Association.
Long Island MacArthur Airport.
Los Angeles Area Chamber of Commerce.
Indianapolis Airport Authority.
Air Line Pilots Association.
Dade County Aviation Department (Miami International)
Hillsborough County Aviation Authority (Tampa)
Port of New York and New Jersey Authority.
Airport Operators Council International.
American Association of Airport Executives.
Metropolitan Airports Commission of Minneapolis/St. Paul.
Minneapolis Chamber of Commerce.
Tucson Chamber of Commerce.
Scottsdale, Arizona, Chamber of Commerce.
Governor of South Dakota.
Tennessee Division of Aeronautics.
Tri-City Airport Commission, Bristol, Tennessee.
Nashville Metropolitan Airport Authority.
Greater Lakewood, California, Chamber of Commerce.
California Director of Transportation.
National League of Cities.
Los Angeles County Federation of Labor.
Mayor of San Francisco.
San Francisco Airport Commission.
Pan Am Pilots Master Executive Council.
Mayor of Los Angeles.
Los Angeles Department of Airports.
Douglas Aircraft.
Los Angeles City Council.
City of Long Beach, California.
Rohr Industries.
Southern California Association of Governments.
Greater Boston Chamber of Commerce.
Wayne County Road Commission (Detroit Metropolitan Airport).
Greater Boston C. of C.
McDonnell-Douglas Corp.
Little Rock Municipal Airport Commission.
ALTA (Association of Local Transport Airlines).
Greater Detroit Chamber of Commerce.
Maine State Chamber of Commerce.
San Francisco Chamber of Commerce.
Massachusetts Port Authority (Logan Airport-Boston).
New England Council, Inc.
Mayor of Peoria, Ill.
City manager, Sioux Falls, S.Dak.
City manager, Pierre, S.Dak.
Rapid City, S.Dak. Chamber of Commerce.
Western South Dakota Development Co.
Marathon Battery Company, Waco. Tx.
Lockheed Aircraft Service Company, Ontario, Ca.
Ladish Co., Cudahy, Wis.
Shaw Aero Devices, Inc., East Hampton, N.Y.
Kirklid Rubber Co., Brea, Ca.
Marine Lumber Co., Tigard, Oregon.
Protection Systems Division, Ashland, Mass.
Narmco Materials, Inc., Costa Mesa, Ca.
Fairchild Industrial Products Division, Fairchild Camera and Instrument Corp., Commark, N.Y.
Consolidated Controls Corp., El Segundo, Ca.
American Sign/Indicator Corp., Spokane, Wash.
Litton Fastening Systems, Lakewood, Ca.
Port of Seattle, Seattle, Wash.
Nordskog Industries, Inc., Van Nuys, Ca.
Bendix Energy Controls Division, South Bend, Ind.
SSP Products, Inc., Burbank Ca.
Orcon Corp., Union City, Ca.
LeFiell Manufacturers, Santa Fe Springs, Ca.
American Avitron, Division of Lear Siegler, Inc., Rye, N.Y.
Radar Electric Co., Inc., Seattle, Wash.
Griggs Equipment, Inc., Belton, Tx.
Aerospace and Industrial Products Division, SPS Technologies, Inc., Jenkintown, Pa.
Bendix Corp., Davenport, Iowa.
Davis Industrial Products Co., Portland, Ore.
Sperry Flight Systems, Phoenix, Arizona.
Sperry Rand Corp., Phoenix, Az.
Plessey Dynamics Division, Plessey Industries, Inc., Hillside, N.J.
Smith Industries, Inc., Clearwater, Fla.
Star Machinery Co., Seattle, Portland & Spokane, Wash.
AFL–CIO.
Air Transport Association.●

## FURTHER UNDERLYING CURRENTS OF PROPOSITION 13


### HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES


*Friday, September 8, 1978*

● Mr. BROWN of California. Mr. Speaker, we in Congress have often discussed the possible meanings of the recent passage of Proposition 13. I believe the the initiative was partially a criticism of the decisionmaking process in our society. I would like to discuss this point here further today.

All decisions in our society ideally would be democratically made by those persons affected by their outcome, with due consideration to environmental, social and economic questions, and with an emphasis on decentralization. Our society thus would be providing its citizens with control over their own lives. We would be a free and equal people, and the goal of our Government would be the common good. Unfortunately, our system has evolved so that the outcome of most important decisions, made in both the public and private sector, benefit a relatively few persons. Their goal is not the common good but rather private gain (money, perks, prestige, and power over other people's lives). Government intervention was historically limited to protecting personal convictions and private property rights. Economic, social, and political decisionmaking has been slowly transferred from local governments and the private sector to the Federal Government as crises, most notably the Great Depression, and various wars have occurred. Those persons benefiting from the decisions are not mush different, though, as the decisionmakers have changed. Advertising, campaign financing, lobbying, and the general structure in which questions are asked limit most Government actions. The crises continue to occur, because we in Government do not usually attempt to solve the fundamental flaws of our systems, but merely devise further programs to keep our society hobbling along to the next crisis. These programs benefit a wealthy few, but are paid out of general tax funds. Proposition 13 shows that the people are not satisfied with what they receive from their Government. I believe, though, that the people are just as dissatisfied with the private sector. The message of Proposition 13 is that we should stop reforms that merely increase the power and size of Government and business. Our Government should end programs that provide for the private gain of a wealthy few and adopt the goals of the common good I first described.

Unfortunately, Propostion 13 is being used by many as an excuse for indiscriminate cuts in Government spending and attacks on social welfare programs. This could lead to the return of cowboy capitalism and social Darwinism, where the goals and welfare of the poor and middle classes are sacrificed almost completely for the private gain of a wealthy few without consideration of social and environmental consequences. Therefore, we should try to understand the fallacies of the arguments that lead to this end before we attempt to use Proposition 13 as a catalyst for social change. An article from the August 18 edition of the Los Angeles Times, by Blase Bonpane of Cal State Northridge, I think best explains these fallacies. I thus would like to insert here this article, entitled "It's Time to Chop Up Those Myths About the Distribution of Wealth":

PROPOSITION 13

The ideas of every age, according to Karl Marx, were the ideas that belonged to the ruling class. On that axiom he would base his explanation of why middle and lower-class people generally mimic the ideas of society's wealthiest members.

Even today the wealthy have the means and the media to define reality for the rest of us. They do it by perpetuating myths in the thinking patterns of both the ruling and the ruled—myths that, in the wake of the Jarvis-Gann "tax revolt," it is important to examine.

The possibility of establishing a real economic democracy—a truly equitable distribution of goods and services—depends on our ability to expose these myths for the fallacies that they are. Of the seven myths that I am listing here, five are already firmly established in the public mind. The last two have recently been promoted by some of our more frightened and opportunistic politicians.

Myth No. 1: We are middle-class.

So many people claim to be middle-class that it is hard to find anyone who admits to being anything else. However, if the father and mother of a family of four must both work, and if even with their combined salaries they sink deeper in debt each month, they are not middle-class—they are poor. The majority of Americans neglect regular medical and dental care; if this happens, as in many cases, in spite of rigorous budgeting, we are describing poverty. The vast ma-

jority of Americans still have not flown in an airplane or stayed in a hotel.

The people who owe more than they own are rarely suffering from bad management of their family finances. The money that is rationed out after taxes to hard-working Americans is simply not enough to justify referring to most of them as middle-class.

Myth No. 2: Those who have it earned it.

We do not actually live in a meritocracy. Most individuals in the highest ranks of wealth and position entered them at birth, usually on the strength of their parents' or grandparents' labor.

By contrast, no one puts in more demanding physical labor than do farm workers—and no one gets paid less. Even white-collar crime pays better. Offenses against society like tax evasion, embezzlement, price-fixing and consumer fraud are each far, far more lucrative than ordinary street crime. To cite just one example, Ramsey Clark notes in his book, "Crime in America," that "reported bank embezzlements cost 10 times more than bank robberies each year."

The same principle applies to education. The majority of students in college this year are there through parental support. Privilege is stacked on privilege: Once they have a college education, these students will be in a position to earn more than those without one. Farm workers may labor more hours, with equal dedication to their tasks, but their reward will never be as great.

Myth No. 3: "They" don't want to work.

Substandard jobs are filled with blacks and other minorities usually lumped together as "they." Such positions are not unionized (fewer than 25 percent of U.S. workers belong to a union), and they offer no health or pension benefits, and very little income. "They" also stand in line by the hundreds for any decent job opening—one that pays more than the minimum wage plus benefits.

The head of a family cannot realistically afford to accept a job that pays only the minimum wage; in doing so, he would draw approximately the same income as he does on welfare, while surrendering the secondary assistance of food stamps and the option of Medi-Cal in time of crisis.

Myth No. 4: All "they" want is welfare.

Over 90 percent of the people on welfare simply cannot work. They are children, aged, sick or mothers with dependent children whose day-care costs would eat up any income in excess of the amount supplied by welfare.

It is essential to remember that the poor did not design the welfare system. Liberals, including a number of rich ones, established it as a poverty-maintenance program. Welfare is not supposed to lead the poor out of poverty. Fundamentally, it is a domestic pacification program, not a means toward rehabilitation.

Myth No. 5: The middle class supports the poor.

The poor are not supported by anyone; that is why they are poor. In fact, both the poor and the middle class support the rich, by condoning a system that is impossibly weighted in favor of the rich. A person possessed of $100,000 who invests it conservatively can reap an average of $8,000 or better per year for doing nothing at all, while a hard-working husband and wife who rent their home and are struggling to pay bills can find themselves charged 25 percent or more to borrow $1,000 for that same year. And the larger the loan, the lower the interest rate.

For most people, the American Dream will remain just that. It is the exception, not the rule, for the poor and middle classes to move up. Generally they just move over, or down.

Indeed, through all the political and economic fluctuations of the 20th century, the distribution of wealth in this country has shown no fundamental change—this according to Douglas Dowd in his 1974 essay, "The Twisted Dream." Dowd notes that, back in 1910, the top fifth of the population on the economic scale received 46 percent of the national income, while the bottom fifth wound up with slightly more than 8 percent. Only five years ago the top fifth was still getting more than 40 percent, while the bottom fifth was scraping along with a little more than 5 percent.

Myth No. 6: We are going to cut the fat.

Payments to senior citizens do not constitute fat in anyone's budget. Reducing or eliminating those expenditures is a curtailment of essential services. So is the termination of summer school.

Budgetary fat does include inflated salaries and excessive privileges enjoyed by many elected officials. Do such luxuries as limousines, chauffeurs and tax allowances not available to the rest of us add measurably to the efficient performance of an officeholder? I think not. And my heart stops bleeding when I see salaries begin to rise much above $30,000 a year.

In condoning such inequities, Gov. Brown and the Legislature are making whipping-boys of precisely the members of society who are least able to defend themselves. Instead, in my view, California officials should stand up to the economic powers-that-be by instituting an impartial progressive state income tax that would be hardest on those who could most easily afford it.

The surplus already accumulated from state taxes could have been spent on services for the people of California who paid those taxes in the first place. Why is it now being trundled out as the reason that Proposition 13 cuts will not hurt so much?

Unfortunately, the reduction in statewide property-tax revenues will hand back about $2 billion in extra income taxes to the federal government, and an additional amount that may well run into billions to national and international corporations for their use outside California. Can this state so easily afford to lose that much money as "fat"?

Myth No. 7: The people have spoken.

The only statement that the people made in their vote for Proposition 13 was that they did not want their property taxed in the way it was being taxed. They did not, however, insist on forestalling a progressive state income-tax program; they did not even ask for a constitutional amendment to limit state spending (although they may have an opportunity to vote on such an amendment this November). The people did not ask to have schools closed for the summer, library hours cut or fees imposed for garbage collection. On the contrary, they believed that it was possible to have better education and better services available to all with lower property taxes on private homes.

It is time for the governor of California to ask himself whether he wants to maintain these myths or to serve the common good. Come on, Jerry—*noblesse oblige*.●

## KEEPING AN EYE ON AIRBUS, CONTINUED

### HON. MARK W. HANNAFORD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. HANNAFORD. Mr. Speaker, it has come to my attention that it is not only the House of Representatives and the Department of the Treasury that are particularly interested in French Government activities on behalf of Airbus Industrie in its sales efforts in the Republic of China. Our colleagues in the Senate are also watching. I insert a copy of a letter from four of our distinguished Senators to Secretary of the Treasury Blumenthal on this matter:

AUGUST 11, 1978.

Hon. W. MICHAEL BLUMENTHAL,
*Secretary of the Treasury, Department of the Treasury, Washington, D.C.*

DEAR MR. SECRETARY: We have received reports that the French have offered China Airlines landing rights in Paris in exchange for the purchase of the Airbus A-300. Landing rights tied to an aircraft sale would violate the OECD understanding with respect to the sale of aircraft.

We urge you to investigate the allegation and take appropriate action. Aircraft sales should be based on fair competition in conformity with the international rules previously agreed upon by the principal exporting countries.

We look forward to receiving the results of your investigation.

With best wishes,

Sincerely,

WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing and Urban Affairs.*
EDWARD W. BROOKE,
*Ranking Minority Member.*
ADLAI E. STEVENSON,
*Chairman, Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs.*
H. JOHN HEINZ,
*Ranking Minority Member.*●

## NATURAL GAS COMPROMISE SEMINAR SEPTEMBER 12

### HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. DINGELL. Mr. Speaker, if the Senate approves the conference report on the natural gas portion of the energy bill, the House will be casting the final, deciding vote on this critical question. The Congressional Research Service has just announced that it will be holding an informational debate seminar on the pros and cons of the natural gas compromise next Tuesday, September 12, for all interested Members and professional staff. Because this program is being planned on short notice, notification of it may not reach all congressional offices in time. I believe that the planned program may be of significant value to those who are considering the merits of the natural gas conference report. I therefore ask that the announcement of the seminar be printed in the RECORD and encourage all interested Members and staff to attend.

THE NATURAL GAS COMPROMISE—PROS AND CONS

In response to the anticipated debate, the Congressional Research Service invites Members and staff professionals to a seminar on the Natural Gas Compromise.

Date: Tuesday, September 12, 1978

Time: 9:00 a.m. to 11:00 a.m.

Place: Coolidge Auditorium, Library of Congress

Panels will offer five-minute arguments on each of the following issues:

1. Is the natural gas compromise an enforceable piece of legislation?

2. What are the impacts of the compromise on consumers, both residential and industrial, compared to the status quo?

3. How will natural gas producers fare un-

der the compromise, compared to the status quo?

4. How will gas supply respond under the compromise as compared to the status quo?

5. What is the impact of the compromise on the dollar, the balance of payments, and the U.S. image abroad?

6. Are there any practical current alternatives to the compromise and will Congress face the issue again if the compromise fails?

Written and oral questions from the audience will be entertained after the debate.

PANELISTS

Pro

Leslie J. Goldman, Prin. Dpty. Ass't Sec'y, DOE.

George H. Lawrence, Pres., American Gas Assoc.

William Demarest, Counsel, Energy and Power Subc.

J. N. Warren, Natural Gas Producer.

Con

Jack M. Allen, Pres., Indep. Petroleum Assoc.

Danny Boogs, Senate Energy Committee.

James Flug, Exec. Dir., Energy Action Committee.

A Noted Economist.

Questions about the seminar may be directed to John Jimison, 426-5880.●

## DEFENDING THE DOLLAR: THE CRISIS OF CONFUSION

## HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. KEMP. Mr. Speaker, that the U.S. dollar is in trouble can come as no surprise. We read daily of its decline in the world's money markets—a decline against currencies in Western Europe, against the Japanese yen.

International monetary policy can be an incredibly complex subject area. But what is wrong with the U.S. dollar and what ought to be done about it is not incredibly complex. It is something which can be dealt with in only a few movements, if there is national U.S. leadership committed to it, committed both to understanding the issue and to doing something about it.

The roots of the dollar's problems go back for several administrations, but the precipitous decline has occurred in the current administration. The year 1977 marked the beginning of the dollar's sharp decline, declining in that 1 year about 20 percent against the German mark and about 30 percent against the yen. In just 90 days, the dollar lost one-fifth of its value against the Swiss franc.

This issue must be understood and a course of action charted. A major contribution to those twin objectives has been made in the Washington Review of Strategic and International Studies by Richard J. Whalen. Mr. Whalen is a political and economic writer, consultant, and president of the Worldwide Resources, Inc., of Washington. Many will remember him as the author of such best sellers as "Catch the Falling Flag," and "Taking Sides."

Mr. Whalen has detailed what has happened to the dollar during the current administration and he has offered some thoughtful solutions for correcting the situation.

This important piece follows:

DEFENDING THE DOLLAR—THE CRISIS OF CONFUSION

(By Richard J. Whalen)

I

Early last spring, on his final day on the job, ousted Federal Reserve Board Chairman Arthur F. Burns held a rare, on-the-record, direct-quotation news conference and fired a few parting salvos at the misguided policies of the Carter administration, especially its failure actively to defend the international value of the dollar. In his best Old Testament manner, the white-haired, 73-year-old conservative economist solemnly warned: "I fear that if the dollar continues to depreciate, it may bring on, before very long, serious international economic and political trouble."

Privately, Burns was known to believe that this "trouble" had already overtaken the inept administration. The floating dollar was sinking beneath unprecedented trade and current account deficits, swollen by an accelerating domestic inflation. Nevertheless, Burns cast his public counsel in a somewhat more hopeful vein because, as he told a questioner, "the thinking of the government is evolving," and he evidently hoped it might yet be moved toward his position.

Repeating advice unheeded earlier in administration councils, Burns urged mobilization of the nation's official financial resources, including the expressed willingness to sell the entire $50 billion gold hoard if necessary to bolster confidence in the dollar. ("What the hell are reserves for?" he thundered.) He also proposed large-scale Treasury borrowing abroad through the issuance of new bonds to be denominated in foreign currencies, a scheme flatly rejected by Treasury Secretary W. Michael Blumenthal. These fairly dramatic short-term measures would buy time to pursue "fundamental correction" of the dollar's major problems, said Burns. Permanent solutions would be found along several "routes," he declared, pointing to such remedies as a "significant" energy-conservation policy, a "credible" antiinflation policy, a tax policy encouraging capital formation and business investment, and more rapid economic growth among leading U.S. trading partners.

The farewell news conference of the retiring Federal Reserve Board chairman, though skillful as ever, caused scarcely a day's ripple in the Washington media pond. So Arthur Burns was sounding off again on the dollar—and what else was new? Yet it was noteworthy nonetheless that Burns had chosen these international concerns for his closing lines. If one listened closely, one could detect in his words a disturbing echo of similar urgent warnings sounded in the spheres of international politics, strategy, and military affairs—warnings against the tendency of post-Vietnam America indiscriminately to slough off foreign burdens, obligations, and commitments. Our political leaders were seeking to redefine the nation's position in the world according to popular desires rather than as hard necessities dictated. In publicly admonishing the administration, Burns was trying to awaken proper concern for the dubious message sent overseas by the dollar's plunge amid official indifference.

Burns's departure removed from power one of the last representatives of the post-World War II leadership generation in the United States. He had first entered government service as a part-time adviser to the Treasury in the late 1930s, and like many other distinguished academics and men of business and finance, he had shuttled between New York and Washington during the decades after the Second World War to help steer the country on the course of international cooperation appropriate to its unique influence in world affairs. Burns and his contemporaries acted on assumptions that looked beyond crisis, and these anchoring beliefs gave long-term continuity to U.S. policy. They naturally inclined to the view that America's leadership combined moral and practical imperatives, and that the marketplace advantages of economic primacy were balanced by acceptance of responsibilities to others even at the cost of pain and sacrifice. One of these was the duty to uphold the dollar's integrity.

Like so much else that belonged to the post-World War II perspective and policy consensus, this view of America's role was a casualty of the strange war in Vietnam, which President Lyndon Johnson "escalated by stealth"—Eliot Janeway's telling phrase—and financed through inflation. This fiscal deception in the mid-1960s laid the groundwork for the economic upheavals of the early 1970s. At the same time, Johnson's Great Society social welfare programs, with their fantastic built-in spending increases, tilted the fiscal balance decisively from foreign to domestic priority and, by determining the shape of future budgets, confirmed the nation's inclination to become self-absorbed.

II

The international monetary system created at Bretton Woods in 1944 rested on the dollar and depended crucially on a reasonable degree of intelligence, foresight, and self-discipline in Washington's economic policy making. (It also depended, among other things, on the willingness of Americans and foreigners to live with a relatively overvalued dollar, but that is another and more technical matter.) Because U.S. domestic monetary policy determined monetary conditions for the rest of the world, stability at the center was essential. In return for the great financial and trading advantages of possessing at the world's key currency, the United States was expected to restrain those domestic political forces pressing for inflationary expansion measures. This proved to be too much to ask of politicians. The crucial attributes of American policy assumed to be the foundation of the dollar's position began to erode in the late 1960s and then disappeared in a rush in the early 1970s as inflation soared.

The dollar devaluations that President Nixon attempted to depict as triumphs of American statecraft were in fact the financial analogue to the military retreats of an overcommitted United States. And Nixon's ill-conceived New Economic Policy, with its import surcharge and peacetime wage and price controls, reflected the inwardness of post-Vietnam America. Thus, even before the spectacularly successful price-gouging of the Organization of Petroleum Exporting Countries and the onset of the Great Recession of 1974–75, the dollar-centered international economic system was in danger of being shaken apart by the fundamental inflationary disequilibrium developing within the United States.

Here we may briefly note the ambivalence that foreigners typically display toward the United States, the ubiquitous dollar, and official U.S. economic managers. They are dependent on the special status of the dollar, yet they resent it. Because the United States is the world's most important export market (it absorbs some 15 percent of total exports), foreigners have a clear self-interest in a prosperous and expanding American economy. Yet they also insist that such expansion should be as noninflationary as possible. Because they hold so many dollars (roughly 80 percent of official foreign currency reserves overseas are held in dollars; the private Eurodollar pool consists of an estimated $400 billion), they wish to preserve these assets

against the ravages of inflation and exchange-rate deterioration—hence their ceaseless clamor for a "strong" dollar. Yet they also fear the impact on them and their markets of the kind of trade and balance of payments surpluses that a fully competitive United States might generate in pursuit of unquestioned "confidence" in the dollar.

The self-perception of foreigners, especially in Europe and Japan, is profoundly affected by their seemingly helpless dependence on the dollar. As Claude Monnier, editor-in-chief of the prestigious *Journal de Geneve*, told an American interviewer last March: "We are very, very nervous about the fall of the dollar, not because it means we will be selling fewer Mercedes automobiles in the United States, but because it is proof that we are weak. We are weak because there is nothing we can do to stop the fall. We feel completely powerless."

In practical as well as psychological terms, there is no alternative to the dollar. More than 40 percent of the world's trade is denominated in dollars. The petroleum-exporting and consuming nations need ready access to scores of billions of dollars annually to finance the international oil trade. Only the dollar offers a currency supply large enough to meet the world's enormous trading and financing demands. Yet the fanciful notion of doing global business with "baskets" of several currencies, mixed together like so many apples, persists and invariably revives when the dollar weakens.

During the Burns era, foreign central bankers usually could resolve their recurring doubts about the dollar through their personal trust in the intelligence and integrity of their American counterpart. His professorial manner, even his old-fashioned rimless spectacles and his hair parted down the middle, seemed cause for reassurance. His European heritage helped. For his part, Burns recognized that the ultimate guarantee of the dollar's value was the performance of the U.S. economy. Washington's fiscal and monetary policies would satisfy dollar-holders abroad if they appeared to be working at home; but they were visibly failing, no official words, gestures, or "intervention" gimmicks could boost American credibility and foreign confidence. Of course, in his own antiinflation rhetoric, which sometimes bore only faint resemblance to actual Fed policy, Burns made a personal exception.

III

President Carter and his administration see the world economy, America's place in it, and the role of the dollar in an entirely different way. To the extent that high administration officials have truly settled on international economic policy, these are based, not on deep-rooted convictions and assumptions such as the post-World War II generation shared, but on freshly minted abstract theories about the way the real world ought to work. The arrival of such men as Richard Cooper of Yale at the State Department and of Fred Bergsten of Brookings at the Treasury, along with their supporting casts, signalled a coming to power by the academics under Carter that was far more consequential than the celebrated (but largely illusory) reign of the intellectuals in the Kennedy years.

In an interview early in 1977, a senior Treasury official under the sway of fashionable academic theories expressed to me his delight at "the strength and stability" of the dollar under the floating-exchange rate system, and his complete confidence in the systems' ability to continue to absorb a rising U.S. current account deficit, which he then underestimated at barely one-third its eventual mammoth size for the year. This head-on clash between theory and reality, between arrogant policy and unexpected results, explains much of the new administration's difficulty overseas in its first year. The near-collapse of the dollar destroyed Carter's credibility before he could begin building it. And the "tragedy," as Burns remarked, was that the dollar's fall was unnecessary.

Treasury Secretary Blumenthal, the former chairman of the Bendix Corporation (but no insider in the corporate business establishment) was himself an international economist as well as a Kennedy-era trade negotiator. Although he prided himself on being a pragmatic operator, he fell in easily with the theorizing of Undersecretary Anthony Solomon and Assistant Secretary Bergsten. Early in his tenure, Blumenthal began expounding the theme that the mounting U.S. payments deficit was not an embarassment but an exemplary American contribution to international financial stability and the collective adjustment to OPEC's steep levy on oil consumers. The United States thus was enabling other nations to earn or borrow the dollars to pay their oil import bills.

If he had stopped about there in his public remarks, Blumenthal would have been more right than wrong. In the unprecedented financial circumstances created by OPEC, a substantial U.S. payments deficit was appropriate and indefinitely sustainable, at least as long as the cartel ran a collective surplus with the rest of the world. After all, the OPEC nations with payments surpluses recycled their dollars through the American private banking system and bought many billions of dollars annually of Treasury bonds, thus painlessly financing a large fraction of the chronic U.S. budget deficit. (In 1977, as Blumenthal seemed to overlook, fully one-third of the Treasury's cash needs were borrowed overseas.)

With a cynical shrug, foreigners could have swallowed Blumenthal's claims of altruism when in fact the special status of the dollar made it easy for the U.S. to pay its oil bills. As a former senior Treasury official had once observed to me: "The U.S. can print dollars as fast as OPEC can pump oil." Foreigners might even have suppressed their suspicion that the U.S. was deliberately allowing its payments deficit to soar (an attitude soon dubbed "malign neglect") and thereby tacitly devaluing the dollar once again in order to gain a competitive edge for U.S. exports. As foreigners saw it, that official expediency postponed the evil day of reckoning when Americans would be forced to cease paying artificially low, government subsidized prices for imported energy.

But Blumenthal did not stop at any of these points. Noting the sharp swing in the U.S. payments position from an $11 billion surplus in 1975 to a larger and still growing deficit in 1977, the secretary presumed to advise our allies on how to run their economies. He insisted that the other major trading nations, especially Japan and West Germany, should quickly reduce their surpluses, stimulate their sluggish domestic economies to absorb more imports, and allow the value of their currencies to rise against the dollar. Even at this point, after semipublic hectoring of Bonn and Tokyo, Blumenthal could have halted without too much damage to his own or the dollar's credibility. Instead, presenting a spectacle that shocked and dismayed foreigners, he rushed headlong to throw his weight against the dollar in foreign-exchange markets.

In late June 1977, at a Paris meeting of Western finance ministers, Blumenthal bluntly declared: "We need significant shifts—into deficit—in the [balance of payments] positions of such surplus countries as Japan, Germany, Switzerland, and the Netherlands." He insisted on language in the conference communique indicating the deutschemark and the yen should be allowed to float upward. Until the American secretary of the treasury launched his "open mouth" devaluation effort, the dollar had been strong despite the mounting U.S. payments deficit. Capital inflows had made up for trade imbalance, insulating exchange and financial markets from the effects of the deficit. Swiftly, however, foreigners now heeded Blumenthal's advice that the dollar was overvalued and switched into "stronger" (undervalued) currencies such as the yen, the mark, and the Swiss franc.

By needlessly increasing the exchange risk to dollar holders, Blumenthal had triggered a panicky, self-reinforcing flight from the U.S. currency and dollar-denominated assets. After Blumenthal's mid-June speech, the dollar plummeted, and it kept on falling for the rest of the year. By the end of 1977, it had declined about 20 percent against the German mark and roughly 30 percent against the yen. Within a span of only 90 days, the dollar lost one-fifth of its value against the Swiss franc. The reversal of capital flows was stunning. In the first half of 1977, items reflecting private capital movements into the United States showed a net surplus of $2.9 billion; in the second half, this became a $6.6 billion outflow.

Like the sorcerer's apprentice, Blumenthal found the violent market fluctuations were too much of a presumed blessing, but neither he nor his colleagues had any idea how to turn off the devaluation process. Meanwhile, the wildly gyrating value of the world's trading money disrupted markets, caused record-level bankruptcies in Japan, pushed up unemployment in stagnant West Germany, and generally depressed international economic activity. Confidence in U.S. leadership fell even further than the dollar. West Germany's thoroughly alarmed Central Bank President Otmar Emminger declared: "The decline of the dollar has gone far beyond what could be justified by the facts."

Treasury officials emphatically agreed, complaining that the exchange markets were "irrational." If floating exchange rates had been working according to theory, adjusting currency values to differing rates of domestic inflation, experts calculated that the dollar might have lost perhaps 3 to 4 percent of its value against the German mark. Obviously, the markets were applying a much larger discount than the theorists anticipated for uncertainty arising from American unpredictability and demonstrated incompetence in managing both the dollar and the domestic economy. As the *Wall Street Journal* declared: "This flight from the dollar is a massive vote of no-confidence in the policies of the administration and the Federal Reserve." Ironically, long before producing any promised trade advantages, the cheaper dollar boosted the cost of imports and encouraged domestic producers to hike their prices, too, thus worsening the overall inflationary threat to American consumers and, more than incidentally, to the Carter presidency.

IV

Late in 1977, the administration heard a succession of entreaties from foreign leaders to "do something" about the free-falling dollar, climaxed by the plea of Saudi Arabia's King Khalid, whose kingdom possesses more than $55 billion in paper assets subjected to inflationary erosion. In a face-to-face meeting with President Carter, he made an impressive appeal backed by a credible "or else" threat pinned to higher oil prices. Carter at once gave the commitment demanded, turning it over to Blumenthal and his colleagues to redeem. Rather naively, they assumed that

they could talk and manipulate the dollar upward as surely as they had driven it down earlier. Their magic formula: "intervention."

By this time, the secret, behind-the-scenes campaign to gain the reappointment of Federal Reserve Board Chairman Burns had more or less conclusively failed. With his term due to expire at the end of January, the chairman, who had stood aloof from the efforts on his behalf, was as completely his own man as he had ever been. When informed by Carter and Blumenthal that official indifference to the dollar was now to be succeeded by "intervention," even on what the secretary called a "massive" scale, he approved the new approach. But he went on to tell them that "intervention in itself is not a policy."

On January 4, 1978 in an extraordinary joint statement, the Treasury and the Federal Reserve Board announced that they would begin to intervene "actively" in chaotic foreign exchange markets, using borrowed West German marks and other "strong" currencies to buy up dollars. To some anxious and credulous dollar-holders overseas, that statement may have had the same thrilling sound as the bugle call of the cavalry riding hard to the rescue in the final reel of the classic Western movie. But the speculators were unimpressed, and after a short-lived rally, the dollar resumed its decline. Although the battered currency was overdue for a strong technical rebound, the markets concluded that "intervention" left adverse fundamental factors unchanged.

As Burns had forewarned, official U.S. and foreign resources available for supporting the dollar—on which Blumenthal appeared unbriefed—were piddling alongside the hundreds of billions of dollars in private and potentially speculative hands. In 1977, foreign central banks had spent an estimated $40 billion to prop up the dollar, much of it by the skilled market-riggers of the Bank of Japan, but all to no avail. In terms of influencing flows of liquidity, "intervention" was like dipping a teaspoon into Niagara Falls.

Burns did more than deliver a private White House lecture. Acting on his own initiative, he resolved to give the Carter-Blumenthal exercise in symbolism at least a measure of substance. At a meeting of the Fed's board of governors on January 6, he proposed, and a divided board adopted by a close four to two vote, an increase in the discount rate from 6 to 6.5 percent. This was the first increase in the discount rate for balance of payments reasons in a decade, a fact that conveyed its own symbolic message abroad.

The Treasury was *not* informed in advance of the action. According to an aide, Blumenthal was "furious" at the news. He was angry chiefly because the Fed's decision to increase a key interest rate and restrain the domestic economy had been for *international* reasons, which he bitterly characterized as an "unforgivable" distortion of priorities. Burns stood his ground. He refused to allow the administration to waffle and attempt to embrace a fundamental contradiction. Either it would defend the integrity of the dollar through such classical (and credible) measures as raising rates and restraining the growth of the money supply, or it could persist in a kind of "America-first" economics based on continued inflationary expansion, regardless of the damage to the international value of the dollar. But it could not have it both ways.

Subsequently, in March, when the Treasury came up with an unconvincing defend-the-dollar plan, Burns personally intervened with West Germany's central bankers on Blumenthal's behalf. In transatlantic telephone calls, he persuaded his friends and former colleagues to agree to an additional $2 billion in "swap" arrangements to bolster the dollar. It remains to be seen whether these all-important lines of personal communications, based on trust, can be kept open in the future.

v

To defend the dollar, the source of its peril must be clearly identified. It is simply this: we are creating too many dollars. An inflationary monetary policy, reflected in more rapid recent price increases in the U.S. than in any other major industrial country, lies at the heart of the dollar's weakness. This dangerously accommodative stance is forced on the Federal Reserve by loose U.S. fiscal policy, which has produced 16 budget deficits in the past 17 years.

The dollar crisis grows out of the intellectual bankruptcy of orthodox, neo-Keynesian economic theory, which rationalizes mounting deficits as the sure-fire stimulus to achieve "full employment." Instead, the deficits now yield higher levels of inflation, a rapidly expanding federal borrowing requirement, and disappointingly slow growth. Nevertheless, despite the perverse effects, the prescription remains unchanged: *inflate.*

But astute foreigners are not so trusting as they once were, and they test avowals of good intentions by performance. Each Thursday afternoon, when the Federal Reserve issues the weekly money-supply figures, dollar-holders abroad are attentive and many adjust their investment strategies according to the changing inflation outlook. For more than a year, the biggest dollar-holders, the Saudis, have been sending not-so-subtle messages to Washington through the money markets—by buying British pounds and by shifting their short-term investment funds from dollars into marks and Swiss francs. If they have not already done so, they are in a position to send a message that cannot be ignored simply by restricting their purchases of U.S. Treasury debt issues. Such a "buyer's strike" could force the Treasury into borrowing in foreign currencies, a procedure that would compel Washington to bear exchange risk involved in committing itself to future repayment of marks or yen. "We always do the right thing after exhausting the other possibilities," notes a governor of the Federal Reserve who has urged such borrowing.

In a speech in mid-April, Henry Kaufman, one of the most respected economists in Wall Street, said: "I have come to the sobering conclusion that the dollar's role in international finance is overextended. In a global inflationary environment the key reserve currency is subjected to increasing volatility and pressure * * *. In addition, the compromise with inflation domestically arouses doubts among foreign dollar creditors about the will of the government of the key reserve currency to defend its currency and maintain its world banking role."

Kaufman, like many others, speculated on the possibility that eventually a new international monetary system might be devised, one that reduced the dollar's role and perhaps shifted the burdens to multiple reserve currencies. But the major trading nations, especially Japan and West Germany, are not willing to see their currencies become "internationalized" and thereby escape the control of domestic monetary authorities. It is precisely the absence of meaningful international cooperation that subverts the present system and makes a new and basically different one so difficult to imagine.

So the world is stuck with the dollar, at least in the near future, and has no real choice but to continue transacting its business and holding its reserve assets in U.S. paper. This should not be the excuse, however, for a short-sighted and complacent U.S. attitude that ignores the international consequences of domestic inflation. At a minimum, the U.S. needs to restrain its oil imports by one means or another, expand its agricultural and high-value technology exports as systematically as our Japanese competitors, and adopt tax measures and investment incentives to restore the productivity and competitiveness of American industry. Ideally, these measures would be taken within the framework as a new analysis and strategy for the U.S. economy, which outgrew Keynesianism a generation ago.

Unfortunately, a fairly broad consensus, including much of the business and financial community, favors inherently inflationary fiscal and monetary policies. The reason is as plain as the statistical evidence: we are a nation of debtors (private, corporate, and pub'ic) and we greatly prefer cheap money and ample credit to keep the leverage game going as long as possible. This "structural" bias is often overlooked. The vested organizational interests favoring "moderate" inflation are also vastly more powerful than those opposing it because the former are protected by various forms of "indexing."

All in all, the domestic priority in economic policy and politics is becoming very nearly absolute. Americans are unaware of any need to adjust their domestic appetites to their international financial condition, and their elected leaders, in this generation, are not telling them otherwise. Americans reject the discipline that balance of payments deficits impose on other nations more dependent on trade. From Congress to Main Street, they mentally inhabit a securely America-centered, dollar-oriented world—and so, apparently, does the provincial Jimmy Carter. Professor Ralph B. Levering, in his newly published book, The Public and American Foreign Policy, 1918–1978, predicts that "if the next series of international crises center on economic issues, the American people may be almost as ill-prepared to deal with these crises intelligently as they were to judge the merits of escalating the Vietnam War in 1965."

In April of this year, confidence at home and overseas rallied, sending the New York Stock Exchange into orbit. Newly appointed Federal Reserve Board Chairman G. William Miller, former chief executive of Textron Corporation, impressed businessmen (and surprised the White House) by echoing Burns's antiinflation opinions. What's more, the Fed gave weight to Miller's words by pushing up short-term interest rates.

Meanwhile, the president finally unveiled his own, largely voluntary program to deal with inflation, and it, too, boosted confidence because he put his most accomplished political aide, Special Trade Representative Robert Strauss, in charge. Finally, the Treasury announced plans to sell modest amounts of gold from its reserves over a period of several months. The West German press praised the move and especially the new attitude of Secretary Blumenthal. "He has undergone an inner change so exemplary as to be found only in Biblical history," a Frankfurt newspaper rejoiced.

The surge of optimism abroad was as excessive as the earlier deep slide into pessimism. It did not matter whether Blumenthal had seen the light or even whether Carter had seen the rapidly growing threat to his tensure beyond 1980. What did matter was Washington's belated acceptance of the seriousness of the inflationary danger, which at last put the administration in step with the allies.

Economics will not determine the future of the dollar or the international payments system based on it. Ultimately, this system rests on certain assumptions about the character and behavior of the political leadership of the United States. For semantic convenience, these assumptions are commonly bundled together in a single word—"confidence."

The steep decline of the dollar reveals in-

creasing doubts abroad not only about the immediate value of our currency and the near-term prospects for the U.S. economy but also about the long-term validity of the underlying political assumptions. To foreigners, the most important assumption is that, at the level of national policy, the United States can be depended on to act from a rational and intelligible estimate of self-interest. In calculating their risks and making decisions that must be translated into buying and selling dollars, foreigners may disagree with Washington's views, but they must be able to understand them, see how they reflect American calculations, and how they serve American objectives. In too many instances during the first year and a half of Carter's presidency, this has simply been impossible.

If we Americans seem to know where we are going and why, foreigners are better able to decide, for their own reasons, what course to pursue. It is an aimless, politically irrational, and morally self-indulgent America that alarms them and causes them to take flight from the dollar and our larger common causes.●

## NOTHING FUNNY ABOUT POLISH JOKES

### HON. CLEMENT J. ZABLOCKI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. ZABLOCKI. Mr. Speaker, recently my esteemed colleague and friend, Representative JOHN G. FARY, condemned in remarks before the House a current motion picture production defaming persons of Polish descent in the crudest possible manner.

I personally deplore such disparagement of Polish Americans or any ethnic group, and join in the denouncement of irresponsible filmmaking, which profits from such abuses of constitutionally protected freedom of expression.

In that vein, I would like to share the following commentary which appeared recently in the Milwaukee Journal, which succinctly expresses the righteous anger of Polish Americans everywhere whose contributions to the greatness of our Nation seem to be rewarded with ill-conceived, malicious humor:

NOTHING FUNNY ABOUT POLISH JOKES

(By Matt Babinski)

In the movie "The End," Dom DeLuise portrays a Polish schizophrenic. His performance is highlighted by a lengthy series of Polish jokes. Raw Polish jokes. Crude Polish jokes.

I am a first generation Polish American. A Pol-Am.

Polish jokes are protected in this instance by the First Amendment. As an individual, I have no practical recourse in a court of law for any defamation to me. What has been my injury? Impossible to measure. Theirs is a multimillion dollar enterprise. My resources are meager. As a distinct legal class, we don't exist. Second and third generation Polish Americans legally are simply Americans. Sub rosa, however, the Polish American is classified. He is a second class American.

I compared a few of the movie's reviews. Elliott of the Chicago Sun-Times ". . . and a full star to DeLuise, who shakes us awake as an asylum inmate traumatized by a childhood of Polish jokes. . . ." Siskel of the Chicago Tribune, ". . . DeLuise's is a rich performance that takes over the second half of the movie. . . ." Vincent Canby of the New York Times, ". . . the film's sustained comedy, supplied by the incomparable DeLuise, amounts to a solo nightclub act. . . ."

Not one of them mentioned that DeLuise's characterization might, just might, be highly offensive to many of the 12 million Americans of Polish descent. What in the world were these reviewers thinking of with this praise? Are they that blind to bigotry? That insensitive? Canby of the Times, Dodds of the New Orleans Times-Picayune, and Rich of Time Magazine made no reference whatsoever of the Polish characterization or the Polish jokes. How could they have failed to mention this blatant group defamation?

Has the evil of these Polish jokes now become so deep rooted that it is accepted as a norm by perceptive reviewers? This defamation, under the guise of movie irreverence, has become so commonplace that everyone is expected to participate. Next, a TV audience of 30 million will be invited to indulge, children included.

Recently, a friend attended a performance of Voltaire's "Candide" at Stratford in Canada. When a simple mention of a Polish something or other occurred in this 18th century play, the audience burst into laughter, totally unrelated to the play. Is this the future "Krystalnacht" for my people, where any reference to them within a dramatic piece will produce a similar wave of spontaneous laughter?

It's partially our own fault. We have permitted this to happen through the meekness of our politicians, the timidity of our clergy, our ignorance, our reluctance to get involved, shyness in speaking out, fear of jeopardizing opportunities to get ahead if too outspoken on Polishness. Maybe we're like the Jews were in Germany in the thirties.

No longer can I be silent. Come what may. Our awesome Bill of Rights protects the right of actors and writers to express themselves freely. For me, Polish jokes foul precious memories of my mother, widowed with seven children in the 1930s, knowing very little English, insecure, yet somehow guiding us through it all. The "rich performance" upstages the care, love, affection and traditions imparted to me by my small community of relatives and Polish neighbors. The DeLuise nightclub act ridicules my name, Babinski, about the only thing my TB victim father could pass on to us seven.

I must learn to hate. I must hate with a vengeance those who are trying to destroy by ridicule and irreverence all those things that are dear to me and to my people, my Polacks.●

## A VERY SPECIAL 40TH WEDDING ANNIVERSARY

### HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Ms. OAKAR. Mr. Speaker, a very special occasion was celebrated in my district recently—the 40th wedding anniversary of Ann and Emmet Holleran. I want to take this occasion to comment on the fact that in this day and age when marriage is looked upon by some as "old-fashioned" and bringing children into the world is not considered as important as it once was, the Hollerans are a joyful and wonderful family.

I want to extend my congratulations to them and their children on the occasion of their 40th wedding anniversary and to use this occasion to say that there are many families like the Hollerans in this country who adhere to the traditional family life, and who believe in the old-fashioned virtues we are so fond of extolling from our pulpits and our platforms. May they have many more years of happiness together.●

## "HELPERS FOR CHRIST" SET EXAMPLE

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. FINDLEY. Mr. Speaker, we all remember the fairy tale of the elves who did the shoemaker's work for him when he was too sick to do it for himself. Well, it happens in real life—only the "elves" are more like angels.

Each summer a group of 15 or more teenagers from Sherman and Athens, communities near Springfield, Ill., spend 12 days living away from home donating their labor to repair the homes of those who cannot do the work themselves or afford to have it done. During the year the teenagers earn money for building materials through pizza sales and by manning coat check booths at dances.

They are called "the Helpers for Christ" and are supervised by Father Peter Mascari, the pastor of Catholic churches in Athens and Sherman, formerly pastor at Pittsfield. It is an example that other groups, religious and secular, could well follow.

The nature and value of their work is reviewed in two articles that I would like to place in the CONGRESSIONAL RECORD. One article is by Bob Hastings, editor of the Illinois Baptist. The other is from the Cairo Evening Citizen.

It is hard to think of a better way for young people to spend some time. They help others, and no doubt learn a lesson in charity and goodwill that stays with them the rest of their lives.

Text of articles follow:

"THE NEEDIEST"

(By R. J. Hastings)

"The Helpers of Christ" is a group of Catholic teenagers from the Illinois communities of Athens and Sherman who *look* for people to help. Throughout the year, they raise their own funds in various projects. Then in June, they spend 12 days helping a needy family somewhere in the Midwest.

"We go to the public aid office," Father Peter Mascari told me, "and ask for the names of some of their neediest families. Maybe it's a family that needs a new roof on their house. Or the house needs painting, or some minor electrical or plumbing work. We go in with our own material and tools, and do the job for them. There's no cost, no obligation. We do it in the name of Christ, to make life a little easier for someone who really has it tough."

When pastor Mascari told me this story, I thought of Job 15–16, "I was eyes to the blind, and feet was I to the lame. I was a father to the needy; and the cause which I knew not, I searched out."

There's no end to appeals. Solicitors stop us on the street. Door-to-door canvassers

come with pledge cards and contribution envelopes. Almost daily, the mail brings another appeal for money. Each new fund-raising drive persuades us why we should give.

But the Bible verse from the book of Job, quoted above, talks about *looking* for places to give, not waiting to be solicited. "And the cause which I knew not, I searched not."

Some of the neediest people have no one to champion them, no one to plead their cause. They will be found only when we look for them. In fact, they may be too proud to signal their need. And remember, not all needs are material.

That's why I admire "The Helpers of Christ." They're looking—not waiting!

"HELPERS FOR CHRIST" GROUP ASSISTS NEEDY HOMEOWNERS

Several families in Alexander and Union counties will be getting some help in repairing their homes during the next week.

Members of the "Helpers of Christ" group headed by Father Peter Mascari, are in the area until June 30, painting repairing roofs, paneling, and constructing porches.

The group of 15 high school students and nine adults are from two communities outside Springfield, Ill.: Sherman and Athens.

The volunteers, all members of either the Holy Family Catholic Church or St. John Vainney Catholic Church, provide the materials and labor to repair homes year round in their own communities. They also spend 12 days a year working on homes in some area within 250 miles of Springfield.

"The group repairs the homes of persons too old or incapacitated to do the work, or those who don't have the finances.

"The only criteria" says Father Mascari, "is that they own their own homes. We don't want to repair some landlord's property free of charge."

The group works from referrals given to them by local Public Aid offices. The families referred don't have to be receiving any assistance to qualify, they merely have to fit the requirements above.

Each family referred is visited by a representative of the organization during the year in order to evaluate their needs and see if "helpers" are in a position to assist. A form is filled out at this time listing the work to be done.

The "Helpers" earn all money for their supplies and other costs themselves through pizza sales and proceeds from a coat check booth at parish dances. The group also receives private donations from persons who have heard of their work and want to support their efforts.

They earn between $3,500 and $4,000 a year. Father Mascari says they try not to take any contributions for their labor because this takes away from the real purpose which is to "live the Christian charity we hope we are learning in our religious instruction program."

This is the first time the group has been in Alexander and Union counties, although they have been in Southeastern Illinois and Southeastern Missouri in the past, and also in Ohio and Kentucky.

The group is working with the Cairo and Anna Public Welfare offices. The students are staying at St. Vincent's College in Cape Girardeau and rooms for the adults have been provided free of charge at the Ramada Inn through the generosity of a sponsor in St. Louis.

Members of the group are: Brother Michael, Father Mascari, Mark Barnett, Paul and Eileen Cerar, Karen Christen, Chris Cownan, Ann Dees, Mike Egizil, Angie Fontana, Les Freer, Lori Freer, Andy Johnson, Rick Johnson, Tammy Jones, Denise Markey, Rhonda McDaniel, Maureen Rork, Vicki Schmidt, Joe and Elizabeth Thompson, Clarence and Millie White, Jeff Young, Kim Young and Kelly Young.●

## ARCADIA'S DIAMOND JUBILEE

### HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. ROUSSELOT. Mr. Speaker, this is indeed a season of jubilant celebration in the city of Arcadia, located in the beautiful San Gabriel Valley in the golden State of California. Residents of this city are observing the 75th anniversary of Arcadia's incorporation. It gives me great pride, as the elected Representative of California's 26th Congressional District including the city of Arcadia, to offer this well-deserved tribute.

Arcadia has a background rich in the tradition of early Californian history. Situated in southern California, the city of Arcadia was once part of an enormous land grant given by the King of Spain to the San Gabriel Mission in 1771. Later, Spanish rule submitted to Mexican rule in 1822, and following the Mexican War and the treaty of Guadalupe Hidalgo, California was transferred to the United States and became a State of the Union in 1850.

Incorporated on August 17, 1903, Arcadia has grown from a small city of 696 residents to a "city of beautiful homes" with over 47,000 residents and encompasses an area of approximately 11 square miles.

With the awesome backdrop of the imposing, yet impressive, Sierre Madre Range and with easy access to mountain resorts, desert and ocean playgrounds and metropolitan cultural centers, Arcadia attracts both the business executive and professional as the ideal spot in which to settle and raise a family.

Arcadia offers exceptional recreational and educational facilities and opportunities. It is the home of the beautiful State and county aboretum, as well as thoroughbred horseracing at Santa Anita Race Track. In addition, the city has 12 attractive community parks, including the Wilderness Park and Nature Center.

Many people choose Arcadia as their residential community because of an outstanding public education system. The school district, staff members and students alike, continue to receive each year numerous scholastic, artistic, musical, and athletic honors and awards. Members of Arcadia's school district have been the recipients of 19 Freedom Foundation Awards.

Arcadia's library is a busy place, indeed, with appriximately 2,000 people per day utilizing the facility. Readers borrow over 400,000 items annually, making Arcadia truly a "reading community." As well as housing an outstanding collection of books, the library serves as a public service center offering a variety of remarkable programs to the citizens of Arcadia.

Assuring health care facilities for Arcadians, the Methodist Hospital of Southern California, with a bed capacity of 345, is a nonprofit charitable community hospital serving persons of all races, faiths and creeds. Every specialty of medicine is represented by the 300 distinguished members of the medical staff. Located on a 22-acre site leased from the city of Arcadia the Methodist Hospital continues to provide excellent care and service to those in need of treatment.

Helping people has not been limited to the hospital. Arcadia's churches open their doors to all who come to worship. Everyone is welcomed by these churches and in these challenging times they provide stability, faith, understanding, and guidance for all. Every denomination—Christian Reformed, Christian Science, Church of Christ, Church of God, Congregational, Episcopal, Evangelical Free, Friends, Lutheran, Methodist, Non-Denominational, Pentecostal, Presbyterian, Roman Catholic, Latter-Day Saints, Serbian Orthodox, and Jewish Synogogues—offer experiences in worship, education, fellowship and counseling for personal and family development.

In 1951, the electorate of Arcadia voted to become a charter city and establish the council-manager form of municipal government. The five-member city council, elected from the city of large, each year, selects one of its outstanding members to serve as mayor. This has proven a truly representative body, serving Arcadians wisely during the years. Boasting one of the lowest city property tax rates in Los Angeles County, Arcadia council members have actually reduced property taxes over the years. Presently, the rate is the lowest in the last 83 years and 20 percent below the rate of 10 years ago.

The Arcadia Chamber of Commerce represents over 900 member firms and provides a broad range of services for the community, including an official city hostess program which provides useful community information to all new residents.

The Arcadia Chamber of Commerce has been designated as the official agency charged with the responsibility to organize, coordinate and present the 75th birthday celebration on September 29 and 30. The Honorable James R. Helms, Jr., former mayor and councilman, now serving as president of the chamber of commerce has been named as general chairman of the Diamond Jubilee. Although Mr. Helms and the various committee chairmen will provide leadership for the festival, it is the 47,000 residents of Arcadia who will be the "stars" of the occasion. This promises to be a truly proud occasion for all Arcadians. Among the scheduled events are the: Jubilee Parade, Jubilee Dance, Alumni Homecoming, Jubilee Tournaments and Sports, Jubilee Judging and Awards and Jubilee Fiesta.

Tribute should be given to the individuals who have contributed their time and efforts to the festival: Kel Mason, chairman, Jubilee Parade; Marguerite Towsley, chairman, Jubilee Dance; the Honorable Charles Gilb, chairman, Jubilee Grand Marshall's and VIP Committee; Steve Lloyd and Caye Wells, cochairmen, Alumni Homecoming; Carol Papay, chairman, and Marilyn Daleo, vice chairman, Jubilee Publicity; Richard Miller, chairman, and F. Harold Roach, vice chairman, Jubilee

Historical Committee; Neal Johnson, chairman, Jubilee Judging Prizes and Awards Committee; Floretta Lauber, chairman, Community Coordinating; Rick Bundy, chairman, Jubilee Merchants Committee; Jerry Collins, chairman, Jubilee Tournaments and Sports Committee; and Ruth Gilb, chairman, Jubilee Fiesta Committee.

Before closing, Mr. Speaker, I would like to spotlight five dedicated individuals who have given guidance to the city of Arcadia. Mayor David E. Parry is serving his third year on the council. He is an attorney for the Santa Fe Railway Co. and has been a resident of Arcadia for the past 12 years. Mayor pro tem Robert G. Margett is currently serving his third year on the council. He is an engineering contractor and has been a resident for the past 18 years. Councilman Charles E. Gilb is a former Mayor and is serving in his 5th year on the council. He is the owner of a wholesale produce firm and has been a resident for 19 years. Councilman Don Pellegrino, elected to the council just this year, has been a fine resident for the past 17 years. Finally, Councilman Jack Saelid, who served as mayor last year, is currently in his fifth year on the city council. He is manager of Electrical Mechanical Engineering for the Xerox Corp. in Pasadena and has also been an Arcadian resident for 17 years.

Mr. Speaker, I ask that you and my colleagues in the House of Representatives join with me to offer our heartiest congratulations to the residents of the City of Arcadia as they celebrate their Diamond Jubilee.●

## W. A. MOORE TO BE 99 ON OCTOBER 1

### HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. KILDEE. Mr. Speaker. one of my constituents, Mr. W. A. "Wiley" Moore of Mount Morris, Mich., will be 99 years old on Sunday, October 1. His active and productive life, which covers nearly half the entire history of the United States as a nation, is a tribute to his fine spirit and to his determination to live a good life and raise a fine family.

Mr. Moore was born in Sanilac County, in the Thumb of Michigan.

Mr. Moore's education was limited to the grade school facilities of those times and location. However, he clerked in a legal office for a few years. Mr. Moore met his future wife, Martha Mable Whitely, while she was teaching at the local one-room school and boarding at Mr. Moore's parents' home. Mr. and Mrs. Moore went deer hunting every fall until he was 88 years old. Mrs. Moore passed away in 1972 at the age of 90.

Mr. and Mrs. Moore first ran a farm, and after World War I operated a local road building firm in the early State program to promote road building. Mr. Moore tells that in building his first new home, he considered the question of whether to install an acetylene gas plant for lighting the home, or an electrical generator. The gas was selected as being more safe and reliable.

Following the financial panic after World War I, Mr. Moore found himself nearly out of business upon the failure of the local country bank. At this time, he moved to the Flint area near Mount Morris to engage with others in home construction and manufacturing. After the depression of the early thirties, he continued the cement block business and remained in that business until his retirement at the age of 88. He says the biggest mistake he ever made was when he quit working, but he's delighted to say that he has never worked for anyone in his life time.

To talk to Mr. Moore is to turn back a whole book of history, not only in chronological terms, but in terms of attitude, language and philosophy of living. As an example—his children had difficulty in getting him to sign up for social security.

He was raised in a time that a trip to the county seat was of significance. Medical care was rarely available. For example, his teeth were completely extracted at an early age by an itinerant dentist, and all without the benefit of our modern pain killers.

As a youngster, there were limited churches nearby. As a result, his father held services of his own, and complemented this by a Bible reading before each evening meal.

Mr. and Mrs. Moore both saw that their children procured the best education available. As young parents, their two oldest sons traveled a distance of 7 miles by horse and buggy to attend high school.

Upon coming to Mt. Morris, their four children further attended college, some starting at what was then Flint Junior College. There were three sons and one daughter. The eldest, Stuart, was a civil engineer, graduate of Michigan State, and became assistant head of the Divisional Office of the U.S. Engineer Office. He died in a United Airlines crash in Chicago in 1940. Samuel graduated from our local General Motors Institute, married Jane Hyatt of Flushing, and worked mostly for Ismont Corp. as manager of its plastics division. He is now retired in New Jersey. W. James graduated in civil engineering from the University of Michigan, and following naval civil engineering, married Phyllis Kennedy of Detroit. He now operates a manufacturing business in Detroit. The daughter, Virginia, interrupted her stay at the University of Michigan to marry a Navy pilot at the beginning of World War II. Her husband, George Castle, continued as an airline pilot, and they now live in Seattle, Wash.

It is interesting that people of modest means not only sacrificed to send all four of their children on to college, but they instilled in them the desire to do so, something most of us do not appreciate in our more affluent times. Also, here is a man, who as a youth saw mostly only a local county and used horse and buggy, and now he jets from coast to coast to visit his children.

Mr. Moore has 13 granchildren and five great grandchildren.

Mr. Moore enjoys excellent health, retains a remarkable sense of humor and an avid interest in current events and political life. His slogan has been and continues to be, "Don't sell America short."●

## IRRESPONSIBLE CONDUCT BY THE WASHINGTON POST

### HON. L. H. FOUNTAIN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. FOUNTAIN. Mr. Speaker, on August 5, the Washington Post ran an editorial, "Urban Aid in Distress" on the administration's supplementary fiscal assistance proposal which contained two completely untrue allegations.

The Post alleged first, that the subcommittee which I chair has never been hospitable to urban aid plans, and second, that I personally did not entertain any amendments before the subcommittee voted on that bill.

In addition to making these two allegations—which are demonstrably not true—the Post editorial displayed a lack of understanding about the relationship between unemployment rates and the fiscal condition of local governments.

I sent a hand-delivered letter to the Post's editor 2 days later—August 7—requesting that my response be printed while the untrue allegations were still fresh in the readers' minds.

I believe any person who is singled out for criticism in an editorial is entitled to an opportunity to defend himself and to have his response printed on a timely basis.

The Washington Post, I am sorry to report, has denied me an opportunity to reply to the untrue statements in its editorial. Moreover, it has done so in an inconsiderate and arrogant manner.

When my letter to the editor did not appear by August 11, I asked my staff to phone the Post to inquire when it would appear. Only then was I informed, through my staff, that the letter was considered too lengthy for the available space. My staff was advised that it would be printed more quickly if compressed into 850 words and rewritten as an Op-Ed piece.

Acting on that understanding, I took the time from a very busy schedule that same afternoon to rewrite the letter in accordance with the Post's specifications, and it was picked up by a Post messenger late in the day. What did I get for that effort? Dead silence from the Post. The Op-Ed piece did not appear, and I have never received even the courtesy of a call or letter of acknowledgment.

After repeated, unproductive phone calls to the Post's editorial office, my staff learned yesterday afternoon from Mr. Philip L. Geyelin, the paper's editorial page editor, that the Post has no intention of printing my response. So much for fair play.

I firmly believe that a free press is an essential component of a democratic

society. But it is equally important that the rights and privileges accorded to the press be exercised with a sense of responsibility and a high regard for the rights of individuals.

Mr. Speaker, the Post editorial conveyed the erroneous impression that the subcommittee I chair acted hastily in voting to postpone further consideration of the supplementary fiscal assistance bill, and that I refused to consider amendments. That false impression has also been conveyed repeatedly by a subcommittee member who was on the losing side. What that Member fails to disclose is the fact that he did not offer any amendment or alternative either in our Democratic caucus or in the subcommittee meeting, nor did he inform the chairman before the meeting of his intention to offer an amendment.

The truth is that the bill was fully and carefully examined in 3 days of public hearings, an executive session, a caucus, by in-depth staff analysis, and in numerous discussions among the Members. It was evident before the subcommittee meeting on August 2 that a majority of the Members could not support the bill, and no amount of discussion would have changed the outcome. Indeed, the President personally sought to persuade at least one Member to change his position, and failed.

As for the false charge that the Chair did not permit amendments to be offered, the official stenographic record of the meeting clearly shows that I actually invited amendments on three separate occasions. This is shown on pages 7, 8, and 10 of the record. I would be delighted to furnish that transcript to interested Members, or anyone else who cares.

Mr. Speaker, I request that my August 7, 1978, letter to the editor of the Washington Post be included at this point for the information of my colleagues and other readers of the CONGRESSIONAL RECORD.

The letter follows:

INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
*Washington, D.C., August 7, 1978.*

LETTER TO EDITOR, WASHINGTON POST

Your editorial, "Urban Aid in Distress", (Washington Post for August 5), makes the unwarranted assertion that the Subcommittee I chair "has never been too hospitable to urban-aid plans." I know of no factual basis for that statement. On the contrary, the Intergovernmental Relations and Human Resources Subcommittee was deeply concerned with urban problems and Federal-State-local relations long before these subjects became fashionable in Washington.

It would be correct to say that the Fountain Subcommittee has never been hospitable to unsubstantiated claims, the misuse of statistical data, and political slogans when it comes to spending the public's money.

The Subcommittee opposed the Antirecession Fiscal Assistance (countercyclical) program last year because it was poorly constructed and could not possibly serve the objectives stated for it. It was claimed the program was needed to help compensate State and local governments for their recession-related revenue losses, even though the recession had ended two years earlier. It was argued that the State and local governments would spend their allocations promptly, thereby stimulating the national economy. This argument ignored the legal reality that governments are required to follow budget procedures which preclude the rapid spending of temporary assistance. Further, a government qualified for aid if its unemployment rate exceeded 4.5 percent, a lower figure than the rate considered "full employment" by the Presidents' Council of Economic Advisers.

The use of local unemployment rates as the mechanism for targeting money to needy governments was the fatal flaw of the countercyclical program. Those rates are so unreliable that the Commissioner of Labor Statistics has described their fluctuations as no better than "random numbers" for communities under 50,000 population. Worse still, actual rates have been developed for fewer than 5,000 governments, with the vast majority of units receiving allocations on the basis of assigned "balance of the county" rates which bear little or no resemblance to the local situation.

As a result, many of the wealthiest communities in the United States, located in counties like Nassau, Suffolk and Westchester in New York State, have been receiving assistance. And they would continue to receive money under the proposed new program.

Even if unemployment rates could be made reliable, they would still not be a useful measure of local need because these rates are wholly unrelated to a government's service responsibilities and fiscal condition. By an interesting coincidence, the lead story in the August 5 Washington Post dealt with black teen-age unemployment. I agree that minority youth unemployment is a serious problem, and one which we have not yet addressed satisfactorily. It is important to note in this regard that approximately half of the national unemployment rate is attributable to youth unemployment. Youth unemployment, therefore, accounts for an even larger percentage of the high unemployment rates found in a great many central cities.

It is essential to ask in this connection what fiscal responsibility a particular local government has for this group or for the unemployed in general. The answer for most cities is "very little". There are, of course, exceptions. The cities mentioned in your editorial illustrate this point. Cleveland, New Orleans and Buffalo have no responsibility for financing any part of the costly public assistance and medicaid programs. These costs are borne by an overlying county for Buffalo and Cleveland and by the State in the case of New Orleans. Moreover, the public schools are the fiscal responsibility of independent school boards in both Cleveland and New Orleans.

In sharp contrast, a small number of cities, including New York and San Francisco, are required by their States to pay part of the non-Federal share of public assistance and medicaid costs, and they also support public education out of the municipal budget.

The fact is that local governments have widely differing responsibilities revenue sources, and fiscal arrangements with their State governments. As a result, it is highly misleading to compare cities, especially across State lines, or to measure local need and tax effort without taking the total State fiscal system into account. And it is just plain silly to conclude a city is in fiscal need or distress on the basis of an unemployment rate or any other available socio-economic indicator. Our Subcommittee has studied this problem, with the counsel of the Nation's leading experts, for the past several years. Like many social problems, this one is not susceptible to easy solutions.

The Washington Post has helped create the false impression that the Subcommittee acted hastily in voting to postpone consideration of the Administration's bill. The bill was carefully and fully examined in hearings, executive session, caucus, staff analyses, and in numerous discussions among the Members before last week's meeting. I am convinced that every Subcommittee member had made up his mind before the meeting, and no amount of discussion would have changed the outcome. It should be noted that not a single amendment was offered when the Chair made amendments in order on three separate occasions.

The defects of the proposed Supplementary Fiscal Assistance program are so fundamental that the bill is beyond salvage. Far from being a program to aid distressed communities, it would allocate money to fully 70 percent of the Nation's local governments. The quirks in the allocation formula result in its favoring wealthy communities over poorer ones.

How the program would operate in the Washington metropolitan area is instructive. The District government is treated as the third most distressed city among the country's one hundred largest municipalities, and would receive a per capita payment of $14.29. Among the one hundred largest cities, only Newark and New York would receive larger per capita amounts. On the other hand, no other large city or any county in the Washington area would receive a penny. However, payments would be made to such wealthy places as Chevy Chase Village, Chevy Chase Town, and Somerset. It would be difficult to devise a more irrational formula.

This legislation would surely encourage local governments to become permanently dependent on the Federal budget for such basic local services as police and fire protection and trash collection.

The local perception of need is a very flexible one when the Federal Government stands ready to hand out money. Last week, for example, I received a mailgram from the mayor of Jacksonville, Florida, which read: "Needless to say, these funds are most urgently needed and important to Jacksonville." This is the same city for which large advertisements were recently placed in the Wall Street Journal announcing its "property taxes are among the lowest in the nation and they've been going down . . . There is no State or local income tax. And independent research shows the cost of living for an executive is $10,000 a year lower here than in New York."

There is no justification for another general revenue sharing program when we already have one providing almost $7 billion a year in assistance. This is especially true at this time when the Federal Government has an astronomical national debt, a huge budget deficit, and when inflation is the most critical domestic problem facing all of us. Moreover, it is not widely known that the existing general revenue sharing program targets money more effectively to the large central cities than the Administration's proposal.

I believe there is need for a carefully designed program to help those local governments that are genuinely distressed as the result of long-term economic decline, and I plan to give this matter priority attention early next year. However, it would be a disservice to the American people to create the impression that a "quick fix" is possible now through political negotiation in the Congress.

Sincerely,

L. H. FOUNTAIN,
*Chairman.*●

## SPEAK, MR. SPEAKER

## HON. W. R. POAGE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. POAGE. Mr. Speaker, H. G. Dulaney and Edward H. Phillips have just prepared a most remarkable and unique

book entitled, "Speak, Mr. Speaker." It is a big book, containing nearly 500 pages. It traces the life and actions of Hon. Sam Rayburn from his childhood to his death—and it lets Mr. Rayburn do the speaking, in the form of quotations.

The book is for sale by the Sam Rayburn Library at Bonham, Texas 75418. Of course, the proceeds all go to the support and maintenance of the library which is probably the finest legislative library in existence. I am sure that many of the senior Members, and I hope of the junior Members, of the House will want a copy of this book. It can be procured by sending a check for $12.50 to the Sam Rayburn Library, which pays for the postage as well as the book.●

## MR. ANDREW J. SUSCE OF NEWTON FALLS, OHIO, CONTINUES HIS 35-YEAR FIGHT WITH THE IRS

### HON. CHARLES J. CARNEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. CARNEY. Mr. Speaker, one of my constituents, Mr. Andrew J. Susce, of Newton Falls, Ohio, is continuing his 35-year battle with the Internal Revenue Service for justice and restitution. Mr. Susce was fired from his job with the IRS in 1943, allegedly because he "blew the whistle" on wrong-doing by his superiors.

The story of Mr. Susce's long struggle will be told in a book entitled "Lonely Fight: One Man's Battle with the Government," which will be published later this year. In addition, attorneys for Mr. Susce are preparing a civil suit against the Secretary of the Treasury, seeking full redress of Mr. Susce's grievances.

Recent developments in Andrew Susce's efforts to vindicate himself have been chronicled in the Youngstown Vindicator and other area newspapers, and I am inserting one of these articles in the RECORD at this time. The article follows:

[From the Youngstown Vindicator, Aug. 20, 1978]

FIRED FROM IRS IN '43, SUSCE WANTS JOB BACK

(By Emily Webster)

NEWTON FALLS.—Andrew J. Susce, frustrated in his attempts to regain a government job from which he was fired more than 30 years ago, is hoping that an imminent, double-barrelled attack will result in the righting of what he believes is an old wrong.

The story of Susce's fight for reinstatement to his Internal Revenue Service job—a job he lost after he conducted, on superiors' orders, an investigation that implicated some of those same bosses—has become the subject of a book slated for fall publication.

At the same time, a civil suit is being prepared in his name to force the government to recognize his claim and reinstate him with full back pay and benefits.

Susce's battle began in 1943, after he had been fired from the IRS's Pittsburgh office on a charge that he had "reflected on the integrity of a superior officer."

In fact, Susce's report on the tax evasion practices of Pittsburgh's top mobsters did more than "reflect"—it relayed direct accusations of bribery and corruption. And more than one of his superiors in the IRS, as well as Pittsburgh area city officials and policemen, were named.

DILIGENCE SURPRISED BOSSES

The report, ostensibly a study of possible tax evasion on the part of mob kingpin John S. LaRocca, had been wrongly assigned to him in the first place, Susce felt—it belonged in the IRS's intelligence division. But, ordered to pursue it, he did that with a diligence that, he thinks now, surprised his immediate superiors.

LaRocca, Susce learned, instituted the help of city leaders, law enforcement officials and government workers, including highly placed IRS men, in a successful attempt to amass more than $180 million annually in undeclared—therefore tax-free—income.

His information had come—surprisingly freely—from inside the very mob he was investigating. Susce says. Surprised and angered that some of the top men in the IRS were named as having been corrupted by the mob, he nevertheless dutifully recorded what he was told.

The implication of what he had learned was not lost on Andy Susce. He made a copy of his report before he turned it in—a move he was later to congratulate himself for, because he was immediately fired from his job.

He began the appeal process immediately, but the trail of justice always ended at the same place—the door of the Treasury Department, where a "Case Closed" sign was hung.

Just "Case Closed." No explanation, no investigation, no hearing were ever offered.

Congress heard of the Susce report, and for a while it looked as though his plight might be alleviated by the power of the people as represented in Washington. That excitement soon died down though it gave birth to the convening of a grand jury in Pittsburgh to investigate the circumstances of the report.

NO INDICTING JURY

The grand jury was impressed though as an investigative jury it had no indicating powers. An indicting jury was never called.

Subsequent indictments and convictions concerning tax evasion, and the unearthing of scandals within the IRS in the past several decades, have convinced Susce that his report is indeed being put to use. But he's never gotten credit for it.

Thirty-five years of repeated attempts through congressmen, senators, and government officials as high as the President resulted in the same response: Sorry. Wish we could do something for you. Too bad . . .

Now, he's found two people who can do something, and who are willing to try.

One of them's a journalism instructor at Temple University in Philadelphia, John Hayes. Hayes wrote a story on Susce's long fight for "Pittsburgh" magazine more than a year ago and then expanded that work into book length.

The manuscript was accepted by the Lyle Stuart Publishing Co. of Secaucus, N.J. "Lonely Fighter: One Man's Battle With the Government" will be published in November.

By that time, Susce's attorney, Ted Johnson, expects to have filed a civil action against the Secretary of the Treasury, seeking reinstatement of job status, retroactive pay and benefits, as well as reimbursement for the covert blacklisting that prevented his client from getting another government job.

"We've come to the end of the road," Johnson says of Susce's long struggle. "Something's got to be done for this guy."

HAS PROOF OF APPEAL

Johnson acknowledges that the statute of limitations may create some problems in prosecuting a case against the government but notes that an appeal was filed immediately after Susce was fired.

"He never had an appeal hearing—they just rubber-stamped the firing notice—but it establishes that he hasn't let this many years go by without trying to rectify the condition," Johnson explains.

An earlier appeal which Johnson filed with the U.S. Civil Service Commission resulted in "a long time without an answer, then a letter saying no appeal had ever been filed," Johnson says.

"But we have papers proving that the appeal was filed," he adds.

Susce, still nursing the shock and disappointment he first felt when the mighty power of the United States Government was turned against him, clings to the hope that, finally, his lifelong faith in ultimate justice will be justified.

Besides the matter of his own treatment, he insists, is the lingering question of that tax evasion. At $180 million a year in undeclared income, he says, "there's enough taxable money in this country to wipe out the national debt."

Someone, he says, should go out and collect it.●

## SENATOR STEVENSON GIVES SENSIBLE WARNING

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. SIMON. Mr. Speaker, one of the most distinguished Members of the Senate is the junior Senator from Illinois, ADLAI STEVENSON.

He is not one of the noisier Members of that body, but certainly one of the most reflective.

In remarks for the Senate, which were in the RECORD of August 18 (while the House was in recess) Senator STEVENSON pointed out that we are "shooting ourselves in the foot" in our policies on exports.

I am taking the liberty of inserting his remarks into the RECORD at this point, because many Members of the House probably did not see them.

What he has to say to those of us in the House and the Senate and what he has to say to business, labor, and the Nation makes a great deal of sense:

THE SLIPPING DOLLAR

U.S. exports are becoming less competitive in world markets. This conclusion is reinforced in the extensive hearings which the Subcommittee on International Finance has recently held on U.S. export policy.

The reasons for this decline in competitiveness are largely self-inflicted. Business too often ignores export markets, or fails to compete aggressively for them. It has seen increasing numbers of foreign competitors, including the LDC's, beat it with superior technology and marketing. Labor concentrates on protecting jobs from import competition, instead of creating jobs through more exports. Thus, it warmly endorses import restrictions, which threaten the fabric of international trade, and reacts grudgingly to export incentives. And we in Congress, with the best of motives, encumber trade laws with a maze of restrictions, limitations, and conditions designed to promote everything from emigration to environmental protection, but not exports.

This article contains a rude awakening—we are no longer the indispensable supplier of the world's commodities, goods, and serv-

ices. For every sale we forgo—for lack of effort, for other objectives—there is someone else ready to make the sale, to create jobs in their own country. I hope my colleagues will keep this in mind when we begin debate on the Eximbank bill. Any more unnecessary restrictions on exports, no matter how well intentioned, will be but another case of shooting ourselves in the foot. Soon, we may have no feet to stand on in international markets.

We are at a watershed in our international economic history. Either we compete, to sell more abroad to reduce the trade deficit or face the prospect of becoming a second-rate economic power. That may sound a harsh statement, but it is a harsh reality.

Included in the Senator's remarks was an article on exports which appeared in the National Journal of August 5, written by Robert J. Samuelson. For those interested in the subject, I would recommend either reading the Journal article or getting the CONGRESSIONAL RECORD of August 18.

Among other things Mr. Samuelson points out is the slippage in exports; that, for example, between 1974 and 1977, there was actually a drop in U.S. exports.

The Samuelson article also quotes Henry G. Walliich, a member of the Federal Reserve Board, as saying:

Treating our exports as a stick with which to beat people (is) completely ineffective. Every time we deny a country access (to sales) there's another country to take our place . . . we get a reputation as an unreliable supplier.

Among the OECD nations, the U.S. share of exports to Japan declined from 52.4 percent in 1974 to 48.2 percent in 1977; to the European community, our exports declined from 11 percent in 1974 to 9.8 percent in 1977; in the developing countries, the decline was 27.2 to 24.6 percent and to the Communist countries it was 12.4 to 8.4 percent.

Our colleague in the Senate and the author of the article in the National Journal are sending us a message that is not making any headlines but is extremely important for the economy of this Nation, and I hope we heed their sensible warning.●

## INFLATIONITIS REMEDIES

### HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. HAMILTON. Mr. Speaker, the September 4 issue of the Chicago Sun-Times carried an excellent article on inflation by my good friend, the Honorable JOHN BRADEMAS of Indiana. I insert the article into the CONGRESSIONAL RECORD and commend it to my colleagues with the suggestion that its prescriptions be carefully considered.

The article follows:

[From the Chicago Sun-Times, Sept. 4, 1978]

12 REMEDIES TO HELP US GET OVER INFLATIONITIS

(By John Brademas)

With another Labor Day upon us, Americans have reason to rejoice that the past 20 months have brought a record number of new jobs and substantially lower unemployment. But because these advances have been accompanied by a rising cost of living, the American economy is not as healthy as it should be.

Just as government led the effort to put more people to work, government now must take the lead in the drive to hold down inflation.

Congress is acting. On Aug. 16 the House adopted its annual budget resolution for fiscal 1979 with a deficit of $39.7 billion, the lowest in five years and a one-third slash from the $60.5-billion deficit President Carter proposed last January. This proposal allows for the $16.3-billion tax cut that the House approved early last month and continues the programs and policies that set the economy on the road to recovery.

Since January, 1977, nearly 6 million new jobs have been created, most of them in the private sector; the unemployment rate has dropped from 7.8 per cent to 6.2 per cent. But, although personal income has shot up 11 per cent this year, escalating costs strike at nearly every family.

So what's to be done about inflation?

First, we must understand its causes, which includes hikes in oil prices by the oil-producing countries, drought in the wheat belt, soaring interest rates and poor productivity. All these factors, in addition to unjustified government spending, contribute to inflation.

Also, we must realize that no quick, overnight fix is likely to solve the problem. If we are really serious, we must attack inflation on several fronts—in both the private and public sectors, and with a variety of approaches.

Here, with a comment or two, are a dozen prescriptions I think should be considered;

1. Keep lowering the federal deficit. This means gradually reducing the proportion of the gross national product represented by federal spending from the present 22 per cent to 20 percent by 1982.

2. Scrutinize the impact of the costs of government regulations. Estimates are that they add about three-quarters of a per cent annually to the rate of inflation.

3. Keep reducing unemployment. Stimulating recession is no way to fight inflation. It would take an additional 1 million unemployed to lower the inflation rate one percentage point—a bad tradeoff.

4. Press for a national energy policy that sharply reduces our reliance on imported oil, steps up energy conservation and develops alternative sources. We cannot expect to win the war against inflation as long as we pay billions of dollars a year for oil imports.

5. Encourage private investment and higher productivity by tax cuts for both individuals and business. The bill the House passed in August would mean $12.2 billion in tax reductions for individual's, including $1.8 billion in capital-gains relief and $4.1 billion for business.

6. Intensify the drive to sell Americans goods abroad, especially farm products, to improve our trade balance and strengthen the dollar.

7. Urge restraint on business and labor in price and wage policies. A careful look should be taken at tax-incentive plans—tax credits to workers for holding down wage demands and to companies for holding down price increases, plus penalties for stiff increases in either one.

8. Consider the use of vountary guidelines for wages and prices, geared to productivity, for companies and unions of significant size. Fact-finding, mediation and presidential jawboning would be the instruments of compliance.

9. Reduce interest rates as inflation subsidies. The rising cost of money is part of the rising cost of living.

10. Encourage competition in the private sector. Airline deregulation is a dramatic example of how a little free enterprise goes a long way in helping both consumers and business.

11. Zero in on sectors of the economy that have special inflation problems, such as health care, food and housing.

12. Provide job training and employment opportunities to chronic welfare recipients who are able to work, thereby reducing unwarranted public expenditures.

No single one of these remedies will eliminate the curse of inflation. All will mean sacrifice by some sector of our society. But, taken together, they could improve the well-being of all Americans.●

## MILITARY INTERVENTION IN BEHALF OF TAIWAN

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. FINDLEY. Mr. Speaker, if Taiwan were ever attacked by the Peking government, most of the people in my congressional district feel the United States should help in some way—but not with U.S. military forces.

This is the conclusion drawn from the nearly 18,000 answers to my annual survey of district opinion. One question asked:

The United States currently has a defense treaty with Taiwan (Republic of China). If Taiwan is attacked militarily by communists from the mainland (People's Republic of China), what should the United States do? (Check one or more.)

Only 21 percent checked doing nothing. Other checks went to sending some form of U.S. aid to Taiwan: Economic supplies, 28 percent; military supplies, 31 percent; U.S. air and sea forces, 16 percent; U.S. ground forces, 4 percent.

Interestingly only a total of 20 percent of the check marks fell in the last two alternatives which involve committing American military forces. Certainly most Americans are anxious to avoid getting bogged down again as happened in Vietnam. Also many see some advantage to better relations with mainland China.

The People's Republic of China has the world's largest population and offers a huge potential market for U.S. commodities and products. Earlier this spring I went to China, and recently I invited the Chinese representative stationed in Washington to Illinois in an effort to spur mutual understanding as the basis for peace and trade.

One of the challenges to American foreign policy in the future will be finding a satisfactory relationship with Taiwan which at the same time will allow improved relations with the Chinese mainland.

To that end I recommended earlier this year several steps toward modernizing our relations with Taiwan. They are:

First. The enactment of legislation which will assure continuity of our friendly relations with Taiwan.

Second. The termination at a date certain after 1 year's notice as provided in the treaty, of our mutual defense treaty with the Republic of China, a document

that was signed and ratified in a bygone era and which is now so out of date that it no longer serves as a proper instrument of U.S. national interest.

Third. The establishment of a diplomatic mission at Taipei at the consular level, the same that we have with the other island province of China, Hong Kong.

Fourth. The removal from Taiwan of the few U.S. military personnel who remain there, consisting of about 1,000 persons. Almost all of them serve in communications work assignments, which could be handled by civilians.

These changes would bring our relations with Taiwan up to date with today's security needs in the Far East as well as with American public opinion.●

## NEED FOR HIGHWAY BEAUTIFICATION ACT

### HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. KOSTMAYER. Mr. Speaker, I share today with my colleagues a letter from Secretary of Transportation Brock Adams citing his Department's objections to proposed amendments to the Highway Beautification Act contained in H.R. 11733, the Surface Transportation Assistance Act of 1978.

SECRETARY OF TRANSPORTATION
*Washington, D.C., August 17, 1978.*

Hon. PETER KOSTMAYER,
*U.S. House of Representatives,*
*Washington, D.C.*

DEAR M. KOSTMAYER: You have asked for our comments regarding sections 116 and 117 of H.R. 11733 (July 12, 1978 Committee Print), the Surface Transportation Assistance Act of 1978, which would amend the outdoor advertising control provisions of the Highway Beautification Act (23 U.S.C. 131).

These sections would change the existing Highway Beautification Act in several important ways. First, the amendment to 23 U.S.C. 131(g) contained in section 116 would require that just compensation be paid upon removal of a legally erected sign that is located adjacent to a federal-aid primary or Interstate highway, even though the removal may be for a purpose not related to the state or federal highway beautification laws. It is even possible that the amendments to 23 U.S.C. 131(k) would extend the compensation requirements of 23 U.S.C. 131(g) to highway systems not otherwise controlled by the Highway Beautification Act. In addition, section 116 amends 23 U.S.C. 131(o), which presently permits exemptions from removal requirements for tourist information signs located in areas that would suffer economic hardships if such signs were removed. The amended language would require the Secretary to approve any state application for exemptions and would strike the existing requirement that exempted signs be located in the area which suffers the hardship. Finally, section 117 of the bill would require the Department to permit many types of electronic signs.

We are very concerned that these amendments would seriously undermine the integrity of the outdoor advertising control program and would inject the federal government into areas which have long been the responsibility of state and local governments. The Highway Beautification Act has consistently been interpreted to require compensation only in those cases where signs are removed in furtherance of the Act. Typically, localities also regulate activities such as outdoor advertising pursuant to zoning ordinances that terminate nonconforming uses after a period of time by amortization. Section 116 of the bill would prohibit removal without compensation even under such local zoning ordinances. Federal protection would thus be provided for outdoor advertisers against legitimate local regulation that is not related to the specific purposes of the Highway Beautification Act. This would represent an unprecedented intrusion by the federal government into the prerogatives of localities to control land uses within their jurisdiction. Moreover, by requiring zoning authorities to give sign owners special treatment, it would raise constitutional problems of discriminatory treatment. Since most of these signs are not reached by the federal Act, they would in effect be guaranteed the right to stay up or receive compensation for removal, a protection not granted any other commercial interests. Local authorities would be inclined to leave signs up rather than pay compensation and therefore undermine their own zoning laws.

A number of recent decisions by state courts across the nation have considered local authority in this area. For example, the Maryland Court of Appeals recently upheld a Baltimore ordinance creating an historic district. Activities inconsistent with the purposes of the district were eliminated over a period of years by amortization. These activities included outdoor advertising. A company owning signs adjacent to Interstate and primary highways sued, claiming that state and federal highway beautification laws required compensation. The court ruled that the purpose of the Baltimore ordinance was not related to the purposes of the state and federal beautification laws and therefore signs removed because of it were not subject to the federal compensation requirements. *Donnelly Advertising Corp.* v. *City of Baltimore*, 370 A. 2d 1127 (Md. 1977).

A New York law providing for the removal of signs by amortization in the Catskill Park was upheld by the New York Court of Appeals, since the statute pursuant to which the signs were removed was a general land use law establishing the Catskill Park. Again the advertising company alleged a right to compensation under the state and federal highway beautification laws, but the court held that those laws were not related to the state park law, since the intent of the two statutes was different. *Modjeska Sign Studio, Inc.* v. *Berle*, 43 N.Y. 2d, 468, 402 N.Y.S. 2d 359 NE. 2d, 255 (1977).

The proposed amendments to section 131 would require us to penalize the states involved in these cases if compensation were not paid for the signs. Similar decisions have been rendered in recent months in Maine, Oregon, and Massachusetts. This is in addition to numerous other court decisions of less recent vintage. In fact, a brief review of the state statutes relating to outdoor advertising control indicates that should section 116 of H.R. 11733 be enacted, only five states could comply under their present laws. This would mean that, with respect to 45 states, immediate amendments to state law would be needed or we would have to take a penalty action. In some cases, the state government does not have constitutional authority to bind local officials, and a single city could cause the loss of ten percent of federal-aid highway funds to the state by refusing to pay for removed signs.

The Department recognizes that a small potential for abuse exists under present law. The outdoor advertising industry has argued that state and local governments may avoid their responsibilities under the Highway Beautification Act by the expedient of providing for removal of all signs pursuant to zoning ordinances without payment of the compensation that would otherwise be required under the Act. In order to deal with this problem, the Federal Highway Administration (FHWA) issued instructions to its field units regarding the review of advertising signs. A copy is enclosed.

These instructions set forth standards under which federal officials are to review local actions. The tests for this review are based on a decision of the United States Supreme Court dealing with the question of whether or not a local zoning ordinance had a racially discriminatory intent. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 97 S. Ct. 555 (1977). Only one matter has been brought to our attention in the eighteen months since these instructions were issued, and it was successfully resolved after federal review.

The Department recognizes its responsibilities under the Highway Beautification Act, including the responsibility to ensure that outdoor advertisers whose signs are removed because of the Act receive just compensation. However, section 116 of H.R. 11733 would enmesh the Federal Government in local matters to a degree unprecedented in the land use area. We do not believe that past experience indicates a need to make such fundamental changes to the Highway Beautification Act.

Section 116 of H.R. 11733 would also amend 23 U.S.C. 131(o). This provision, added to the Act in 1976, allows the Secretary to approve requests of a state to exempt from removal nonconforming signs which carry "directional information about goods and services in the interest of the traveling public" and which are located in a defined area that would suffer substantial economic hardship in the event such signs were removed. The proposed amendment appears to eliminate the Secretary's discretion to deny requests not made in conformance with section 131(o). Since we will in fact grant properly supported requests, there is no reason to eliminate the Secretary's discretion to deny requests which are fundamentally inconsistent with the Act.

The amendment would also exempt from removal all signs advertising a tourist oriented concern located within an economic hardship area, no matter where the signs are located. Exempted signs could be located hundreds of miles from the hardship area or the activity advertised.

In the almost two years since the adoption of section 131(o), not one request for exemption has been made by a state in accordance with the Act's provisions. The proposed amendment does not change the economic factors which would qualify an area for exemption; it simply increases the number of signs eligible for exemption. The result could be a proliferation of signs along our nation's highways, which would be seriously at odds with the basic intent of the Highway Beautification Act.

Finally, section 117 of H.R. 11733, dealing with electronic signs, would mandate the allowance of many types of signs with flashing, moving or intermittant lights. These signs are presently controlled under state/federal agreements and would necessitate legislative or regulatory changes in virtually every state. There are no indications that the states want to make such a change. Further, we are concerned that the safety and esthetic impacts of allowing signs of this type have not been adequately considered and believe that until these impacts have been thoroughly evaluated, a legislative mandate to allow such signs without limitation is premature.

The provisions of the 1978 bill would produce a profound change in the direction of the Highway Beautification Program and

would undermine efforts to control scenic blight along our highways. We do not believe such a change is warranted or desirable.

Your interest in this matter is greatly appreciated. If we can provide you with any further information, please do not hesitate to contact us.

Sincerely,

BROCK ADAMS.

Mr. Speaker, I am concerned that the Public Works Committee has approved the amendments to the highway beautification program without hearings and with little or no discussion during mark-up. As Secretary Adams states, the bill if adopted would "seriously undermine the integrity of the outdoor advertising control program." If we are to take such a drastic step, I believe we should do so only after a thoughtful reevaluation of the whole nationwide highway beautification program . I do not believe we have met this obligation, and I hope the Congress would not act too hastily in the rush to adjourn.

I will, therefore, offer amendments when H.R. 11733 comes to the floor next week to delete those sections of the bill which do damage the the highway beautification program, a program initiated in 1965. I ask my colleagues for their support in this effort to save the Highway Beautification Act from irreparable damage.

## A PLAN FOR ENERGY CONSERVATION

### HON. EDWARD W. PATTISON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. PATTISON of New York. Mr. Speaker, a great deal is said these days about the need to conserve energy. But not much is said about specific, practical ways to do this, beyond setting our heaters lower and our air-conditioners higher.

That is why I was so impressed with a plan for energy conservation developed by the city of Davis, Calif. The Davis plan is outstanding for two reasons: First, the ways that have been developed to save energy are practical, relatively cheap, simple, and clearcut, yet they may be able to cut energy consumption in that city by up to 50 percent; and second, these measures have been developed by a community on its own initiative.

I learned of the Davis plan early this year through an article in the New York Times by James Ridgeway, the editor of the Elements, a monthly journal on resources. Subsequently, I was able to obtain from the Elements copies of a booklet entitled "The Davis Experiment," which describes the plan in detail.

I think that "The Davis Experiment" is worth serious study. While some of the programs developed in Davis are not suited to other parts of the country, the Davis approach can be creatively adapted to the particular needs of any area.

Having a national energy plan is vital, and I hope that Congress will approve one before this session ends. But such a plan, however good, will not solve our energy problems. They will only be solved when communities across the country, like Davis, decide to get serious about conserving energy, and work together to find ways to do that.

At this point, I would like to insert the Times article in the RECORD. Copies of the booklet, "The Davis Experiment," can be obtained by writing to the Elements, 1747 Connecticut Avenue NW., Washington, D.C. 20009. The cost is $2 per copy.

The article follows:

A CITY'S ENERGY-SAVING

(By James Ridgeway)

WASHINGTON.—The small city of Davis, Cal., offers a good example of what a community can do on its own to save energy. With a population of about 33,000 Davis is set amidst the lush farmlands of the northern central valley. It is both the home of a major campus of the state university system and a residency for office workers in nearby Sacramento, the state capital.

When Davis was threatened by suburban sprawl and swarming traffic, the city council 10 years ago moved to limit growth. In 1973, before the Arab oil boycott, residents were troubled by rapidly rising costs of electricity and natural gas; a group of architects, professors and students persuaded the university and city council to support a study of how energy could be properly conserved in Davis buildings, many of which are apartment complexes.

The energy study showed that apartments that faced either East or West were especially hot during the summer and required large amounts of electricity to run air conditioners. In the winter, apartments with South windows needed much less energy for heating than apartments facing in other directions. The survey concluded that natural heating and cooling is obtained with well-ventilated buildings oriented on a North-South axis with maximum glass exposure on the South.

The city council thereupon drew up and approved an ordinance embodying a set of performance standards for building construction aimed at achieving conservation. The code regulates the amount of window area in relation to the floor area. If more glass is desired, then architects must arrange it on the South-facing portions of the building, or employ thermal glass. The amount of unshaded glass is severely limited. The code stipulates that light colors (to better withstand the sun) must be used on the roof, and it included upgraded requirements for insulation.

Plans for new buildings are carefully checked by city officials who put scale models of proposed buildings under a solar simulator. The simulator is a gadget with light bulbs canted at different angles to represent the rays of the sun on different days of the year. In this way you can get a quick idea of whether a proposed building is properly positioned on a lot, whether there is too much glass, whether the glass is properly shaded, and so on.

Since the code took effect last year, Davis has widened its efforts to conserve energy. There are 25,000 bicycles in town, and Davis has built a complex of special paths and set aside lanes on public roads to encourage their use. City Hall maintains its own bike fleet for the use of employees who need to shuttle about on their jobs. Bikes must be registered and youngsters learn how to use them in special courses presented at school by the police department.

To further cut down on use of cars, Davis has a fleet of old London double-decked buses that are run about the city by a student group as a sort of jitney service. Finally, the city itself is getting rid of its big cars and trucks, replacing them with compacts and sub-compacts.

Davis wants to narrow—not widen—its streets and take pains to be sure they are well-shaded. Research has shown that neighborhoods with narrow, shaded streets are 10 degrees cooler in summer than neighborhoods with wide unshaded streets. A citizens committee has made a careful survey of all the trees in the city, and takes care to see that new trees are planted in accordance with a general plan.

Until recently, Davis made heavy use of pesticides for controlling insects on trees and shrubs. Now the city sprays the trees with water, and has introduced biological control for bugs.

The city council has designed different kinds of solar houses as models to encourage builders to formally adopt such houses in major complexes; the model houses will be used as dwellings for migrant farm workers. There are more than 700 swimming pools in Davis, and the city council wants to cut down on energy by forbidding the use of gas or electricity for heating them. Finally, a solemn ordinance endorses the use of "solar dryers" or clotheslines.

By adopting these fairly simple, clear-cut measures, Davis hopes to cut energy consumption by up to 50 percent.

While the details of the Davis experiments in energy conservation are, of course, designed to meet the city's unique needs, the ideas and plans can be helpful elsewhere around the nation. For what the Davis experiments really show is that citizens working through local government actually can have a substantial impact on a major international issue.●

## TRADE AND WEAPONS SALES

### HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. SIKES. Mr. Speaker, my research shows that many nations, particularly among the Arabs, now supplied with Russian weapons, first sought to buy from the United States. They prefer U.S. aircraft and weapons for performance and durability.

In some instances sales were refused to help maintain peace. In others we said they should spend more on internal improvement. The prospective buyers simply went elsewhere. The Russians are knocking on doors worldwide to sell weapons on favorable terms. Our allies in the western world are equally anxious to sell. However, weapons sales offer one of the few opportunities open to the United States to improve our very serious trade deficit. We are falling behind year after year. Weapons sales are accompanied by assignment of technicians and advisors who in themselves can help to improve relations and to encourage dialog between the United States and other nations.

There are obvious benefits to U.S. industry and U.S. workers from increased sales of weapons abroad.

No amount of moralizing can change the fact that Russian and other Communist weapons are immediately available to almost anyone who will accept them. A certain amount of influence accompanies each sale. Weapons sold by

the Russians are more likely to be used against us and our friends than are American weapons.

Better the United States sell them than the Russians. Better that people look to us than the Russians. The number who do is dwindling year by year. ●

## PANAMANIAN POLITICAL CRISIS

### HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. DORNAN. Mr. Speaker, on August 9, 1978, the official Communist Party newspaper, "Pravda," praised the Republic of Panama for its new policy of "warmer relations" with the U.S.S.R. and the Soviet bloc. The Soviet journal also praised the Torrijos regime for supporting "national liberation" movements in the Third World and the Panamanian advocacy of U.S. abandonment of its naval base at Guantanamo, Cuba.

How well I remember those of us warning that the transfer of the Panama Canal would only be a prelude to Latin Communist agitation for the U.S. surrender of its Cuban naval base. Naturally, those of us who opposed the treaties were dismissed in liberal circles as alramists and jingoists. We were condescendingly reminded that we were no longer living in the age of Teddy Roosevelt and America's Great White Fleet. Our fears, we were told, were borne of our inability to grasp the broader view of modern geopolitics and the higher destiny of the American Republic. We could afford to be generous with a little dictator like Torrijos, we were told. Such a display of generosity was the proper testimony to our new greatness in a greatly changed world.

I am not here, of course, to repeat the litanies that could—easily and cruelly—burn the ears of pro-Canal Treaty Congressmen in this House. I am not, in other words, going to indulge in an orgy of "I told you so" recriminations. But I do think it is worthwhile to sketch, in outline, the character of the current Isthmian political crisis.

The geopolitical reality is this: The anti-American, anti-Western forces, openly backed by Havana (no Communist conspiracy here), are seizing every opportunity to establish bases of political and diplomatic support in the western Caribbean region. In Nicaragua, the Cuban-supported Sandanistas are trying to overthrow the Somoza regime. Whatever its drawbacks, and they are many, it is not clear that the rebels are going to establish a social order that is more open, free, or democratic than that of Somoza's. The one saving grace of rightwing regimes is that they do not aline themselves with an aggressive and expansionist ideological power. A Somoza is not a Castro; and the Nicaraguan troops are not fighting black nationalists in Africa. The outcome, as of today, is not entirely clear. But the regime has thus far had the support of the military.

In Panama, the situation is reversed. The Torrijos regime is supported by the military, or at least a large portion of it, the Cubans, and probably terrorists exiled from embattled Nicaragua. From what I have gathered, the Panamanian political condition is potentially explosive. All the political parties, rallying around the former, democratically elected President Arnulfo Arias, are opposing the Torrijos dictatorship. On August 28, there was a massive demonstration in Panama City by women, carrying pots and pans. The economic situation in this poorly managed political system is still chaotic. As far as I know, this great demonstration received little or no coverage in the U.S. press.

There is another development that is extremely significant. Former President Arias is being protected by segments of the Panamanian Guardia Nacional. This very fact suggests that there may be potentially explosive divisions of loyalty within the National Guard itself. I have no doubt that there are many officers and men in the Panamanian armed forces who, fearing for the future of their country, would favor a change in the government. They realize that the radical leftward position of the Panamanian regime is being consolidated. This fact is confirmed by recent announcements that Torrijos' Minister of Education Aristides Royo, will, in all likelihood, assume the full executive powers of the Republic of Panama in October. Royo is a protege of Escobar Bethancourt, whose sympathies for the Communist enterprise are a matter of historical record.

So the internal national crises will determine the political character of the region. The success or failure of President Somoza in Nicaragua will undoubtedly have a strong impact on the internal politics of Panama. If Somoza holds out against the radical left, there is every possibility that anti-Marxist Panamanian forces will be encouraged to take action against the Torrijos dictatorship. If Cuban-backed Communist forces are successful in Nicaragua, we will see an even hotter pace in Panama's move toward warmer relations with "national liberation" movements. Red terrorists, based in Nicaragua, could join forces with a hostile Panamanian regime in a classic "pincer movement" against Costa Rica. But the ultimate prize, of course, is not Costa Rica. The big stake is the undisputed control over the two, historic canal route sites: Panama and Nicaragua. This control will assure a stronger Cuban hand in the Gulf basin and the Carribbean region in general.

There are internal pressures in Panama which will no doubt be decisive in the shaping of that nation's relations with the United States and the world. Internally, there is a movement to control the education and outlook of Panamanian youth, to consolidate political control over the content of the educational curriculum. Externally there is a clear, unabashed desire on the part of the Torrijos regime to forge new, positive relations with Soviet Russia, now in possession of a powerful, modernized—blue water navy. It is no wonder that the Soviet leadership, sending such a high level functionary as politbureau candidate Vasiliy Zuznietsov, is deeply interested in the future of the Panama Canal.

Mr. Speaker, I am enclosing two relevant documents on the current situation. The first is a letter by a former professor of the University of Panama, Roberto Reyna, on the transformation of Panamanian education. The other is a report from "Matutino", an independent Panamanian newspaper on the recent high level meetings in Bogota, Colombia between Torrijos and Soviet leader Vasili Zuznietsov on the bright future of Soviet-Panamanian relations. I ask my colleagues to give these literary pieces their close attention.

The Documents follow:

Translation (Spanish)

Alert, Head of families
Alert, Consciencious educators
Alert, Attention, free men of Panama

PANAMA, *July 17, 1978.*

Mr. JULIO ORTEGA,
*Radio Mia,*
*Panama City*

DEAR MR. ORTEGA: I would like to discuss in this letter the intervention of a group of officials responsible for guidance, printing and publications of the new text books under the auspices of the Ministry of Education, during today's morning news bulletin of Radio Mia. Here are my remarks:

1. Love through hate. Despite the fact that I am unfamiliar with the books in question, in the "Republica Dominical" of yesterday I read the column "The world needs love," taken from the book "Spanish, the language of my country," and like you, I found it in very bad taste, that to guide a child towards love, they had recurred to hate, with aggravating circumstances which seek to indicate that egoism is rooted in a given social group so that you must feel "compassion, pity or disgust" and not in just any social class.

The eminent Panamanian educator, Professor José Daniel Crespo, told us in one of his psychology classes to a group of future teachers: "Never try to convey a positive message to a child's mind by negative means. Instead of saying to your pupils, 'Don't throw stones at birds,' invite them to place food in small bird houses made by them and put on the branches of trees. A child who does this will never throw stones at a bird and will never allow others to do so."

Unfortunately, from what I hear today, it is a question of breaking with the past, and what I deduce is that the teachings of the famous teachers of the National Institute, the Normal School and the Professional School will become outmoded in the new textbooks.

Who can judge: One of the visitors to Radio Mia today said unequivocally that her group was ready to listen to criticism made of her work by her students, but that they were not inclined to accept opinions about the books given by the parents. This mental attitude requires the following considerations:

a. It is really unbelievable for somebody called "educator," to have such a poor notion of the citizens of this country, and to try to make us believe that immature pupils of what they call the elementary level, without knowledge and experience, have more academic and spiritual acumen about what should be taught to them than their parents, among whom there are professionals, educators, craftsmen, farmers and individuals of all activities. Simply, the children are much easier to deceive.

b. the justification that they advanced for such an absurdity is that since their academic formation is of the old school, with which they are trying to break their children are better qualified than them to decide whether their text books are good or not. This is truly incredible.

I am not trying to say that the school in which so many generations of Panamanians have been educated was perfect. What I can state is that the majority of the teachers were ladies and gentleman incapable of spreading hate, people with minds open to new educational currents of humanity, citizens who taught their students the democratic principles of respect for the opinion of others and who did not fear open discussion of ideas, educators whose pupils left primary school without bitterness and with an academic formation which at least saved them from grammatical errors which we hear on the radio program today.

c. To deny parents, with whose taxes the salaries of those in charge of the texts and of all the educators are paid, the right to have an opinion on the books which are intended to be used for the academic and spiritual formation of their children is an unacceptable and dogmatic kind of authoritarianism which we Panamanians are not used to, and is also a violent attack against the legal provisions of paternal power, as they intend to pass over the parents, undermine their authority and cause conflict between parents and their children, characteristic of totalitarian political systems, and which lead to turning the children into political spies against their own parents. Will Panamanian parents allow this divisive activity?

3. Evasive reply: The reply which was given to you by one of the ladies from the Ministry of Education drew attention negatively when she observed the fact that in one of the texts there appeared a photograph of the commander of the National Guard in thought. The lady in question replied that as they only intended to show that the text books had no Marxist orientation, there was no reason to refer to this fact.

I, who share with you astonishment at the presence of the photograph in question because I do not agree with personal politics interfering in the education of children, I deplore the impolite reply, which I interpret as the result of her incapacity to give a reasonable explanation for that unusual fact without precedents in Panamanian educational history, because it is contrary to elemental norms in any serious and democratic educational system.

I believe, nevertheless, that this fact has a closer relation with the orders of the educational authorities who are making compulsory attendance of primary school pupils to political concentrations which under the name given to it by the military of "domestic patrolling" is currently being carried out by the Commander of the National Guard over all the country.

I congratulate you for your performance today and with my best greetings I remain

Sincerely yours

ROBERTO REYNA R.,
*Ced. 6 Av.–15–398.*

Translated by Casimir Petraitis CRS—Language Services, August 21, 1978.

Translation (Spanish)

Source: MATUTINO, (Independent Newspaper), Panama, Wednesday, August 9, 1978

The caption reads: The second of the high dignataries with whom the head of the Panamanian government, Omar Torrijos Herrera, had talks during his visit to Bogotá, Colombia, on the occasion of the transfer of power to the new Colombian President Dr. Julio César Turbay Ayala, was with the first Vice President of the Supreme Soviet of the Soviet Union, Vasily Kusnietsov, behind closed doors. Rogelio Achurra photographed this historical event.

THE MEETING BETWEEN TORRIJOS AND KUZNIETSOV INDICATES THE CHANGES THAT OPERATE IN LATIN AMERICA, SAYS PRAVDA

Bogotá, August 8 (TASS). The head of the Soviet delegation to the inauguration ceremonies of President Julio César Turbay, Vasili V. Kuznietsov, candidate for Political Bureau of the Communist Party of the Soviet Union and Vice President of the Supreme Soviet of the USSR met today with General Omar Torrijos, head of the government of the Republic of Panama. During the meeting, which took place in an atmosphere of friendship, there was an exchange of views concerning the relations between both countries as well as on other problems of interest to both nations.

Moscow, August 8 (TASS). The cooperation between the USSR and other states of the Socialist camp with the emerging countries of Latin America is fully in line with the interest in peace and progress, notes Juli Rusanov in Pravda, commenting on the intention of the Panamanian government to strengthen friendly relations and cooperation with the Socialist states and develop economic ties with them on a mutually beneficial basis.

The initiative of Panama, the commentary emphasizes, is an additional sign of the changes operating in Latin America, whose peoples do not want the U.S. to keep on considering them its fief. The editorialist notes that the desire to establish and strengthen economic, technical, scientific and cultural cooperation with the Socialist world is on the increase in various states of the region.

In the editorial it is said that the states of the Socialist camp base their relations with the emerging countries on a profoundly democratic basis, guided strictly by the principles of compete equality and mutual benefit. "By rigorously complying with these principles well-deserved confidence is gained as reliable partners."

The economic cooperation of the emerging states of Latin America with the countries of the Socialist Camp, the editorialist notes, has been enriched with considerable useful experience and led to positive and concrete results.

Prepared by Phillip Harman, Chairman, Committee for a Free Panama, 2401 H Street, N.W., Washington, D.C. 20037.●

## ARBITRATION VS. BARGAINING

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 8, 1978*

● Mr. SIMON. Mr. Speaker, the St. Louis Post-Dispatch recently carried an article by Gerald M. Boyd which pointed out the movement toward more and more compulsory arbitration in settling labor disputes.

I am inserting into the RECORD the article from the Post-Dispatch as well as a column I wrote in May of 1976.

The Post-Dispatch article suggests that some changes are taking place that have not received a great deal of attention. I concur with the reporter's conclusion that these changes are significant.

I hope my colleagues and members of congressional staffs will read the article.

ARBITRATION VS. BARGAINING

(By Gerald M. Boyd)

WASHINGTON.—With trepidation like that of somebody about to leave for a blind date, major unions are rethinking their long-standing opposition to compulsory arbitration to prevent prolonged and devastating strikes.

Thus far, the rethinking among most unions has been little more than an academic exercise, representatives of several major labor organizations have told the Post-Dispatch in interviews. But what organized labor once viewed as a straitjacket around its ability to bargain collectively, is no longer universally scorned.

In fact, some of the stiffest opposition to the use of binding arbitration is coming not from the ranks of the labor movement, but from governmental and management organizations, which argue that it gives labor an unfair edge.

"There is a movement toward compulsory arbitration in those areas where strikes are extremely destructive to the public welfare," said Robert Coulson, president of the American Arbitration Association. "When there is a strike by police or firemen, for example, there is the danger of a serious social breakdown in the community."

Both organized labor and management groups are watching with more than a casual eye the outcome of an eleventh-hour decision here last week that averted a national postal strike. Although the agreement, between Postal Service and union leaders is not being called such, it represents the potential use of binding arbitration to resolve a strike that could have crippled mail delivery nationwide.

Compulsory arbitration was proposed by federal mediators after the membership of two major postal unions rejected a contract that had been negotiated by postal and union officials. It is the first time in recent years that the concept has been offered and agreed to as a last-minute option to an unsuccessful collective bargaining process in a strike with national implications.

Under the compromise procedure, what represents binding arbitration would be used if the two sides failed to reach a settlement within 15 days, during which talks are to be held before a specially appointed mediator. The mediator, James J. Healy, a professor of industrial relations at Harvard University, would then become the arbitrator if a negotiated settlement is not reached.

Under a 1970 congressional law creating the Postal Service, arbitration can be required if labor and management fail to reach an agreement; thus a legal mandate exists for it to be used. But several other examples, in addition to the postal dispute, reflect a growing acceptance of the tactic.

Seven states presently have compulsory arbitration for some state nad local government employees. Six other states have such laws applicable only to fire fighters and policemen. In addition, several cities nationally have also adopted compulsory arbitration for municipal employees.

At least one major union, the United Steelworkers of America, has a contract with major steel companies that calls for the use of compulsory arbitration if an impasse occurs during contract negotiations. Since the agreement has existed, over the last several years, there have been no strikes in the steel industry.

The leadership of the largest union within the AFL–CIO, the American Federation of State, County and Municipal Employees, has supported the use of arbitration in contract disputes that involve public employees working in emergency-care type situations. It also favors arbitration as an option for public employees working in non-emergency type jobs.

"Things are changing somewhat," says John Leach, a spokesman for the union. "I don't know if it is a trend, because I don't think compulsory arbitration is really understood by the public as an alternative. But it is one of the avenues open, if both sides are not willing to bargain in good faith."

The union's statistics would seem to present an argument for the concept, at least in public sector labor disputes. The number of strikes in the public sector declined from a high of about 412 in 1970 to 384 in 1974 as increasingly more states passed laws calling for the use of compulsory arbitration.

Many union leaders and labor experts, however, are quick to note a key distinction. Where it is often viewed favorably among

public sector unions, it is opposed, often strongly, by unions in the private sector.

In 1975, for example, arbitration prompted a major dispute and bruising floor fight at the AFL–CIO convention in San Francisco. The American Federation of State, County and Municipal Employees led efforts to have the AFL–CIO adopt a resolution supporting compulsory arbitration for police and firemen unions, but sharp opposition erupted from representatives of private sector labor groups. The resolution was defeated.

Officially, the AFL–CIO is absolutely opposed to compulsory arbitration, spokesman said. But he pointed out that a distinction is at least being made by the leadership in its use in private sector strikes as compared to labor disputes in the public sector.

George Meany, the head of AFL–CIO, for example, called the agreement that ended the postal impasse "a responsible and sensible decision" and "a common-sense solution to a difficult problem." By agreeing to compulsory arbitration, he said, union leaders had done a solid job of representing their members.

The United Auto Workers union has a similar position, a spokesman said.

"The UAW has always taken a position against compulsory arbitration in private sector bargaining, but I believe it has an open mind in public sector disputes," the spokesman said. "If it can be used to achieve equality for public employees with private sector employees, it can be a healthy thing."

Only one major private sector union, the United Steelworkers, now has an agreement that calls for compulsory arbitration if a negotiated settlement cannot be reached. Two contracts that have been decided since it went into effect were arrived at by negotiation, so arbitration was not necessary.

"Because of good faith bargaining, it has not been necessary to test it," said Robert Moffet, a union spokesman in Pittsburgh. "Our position is that we are not wedded to the arrangement; the first time it doesn't satisfy our people we will probably dispose of it."

But Moffet said the fact that arbitration was available if a negotiation faltered, has been one reason behind the successful bargaining. And he said that under the arrangement union members have been the recipients of good contracts.

Recent statistics by the Labor Department, for example, show that four types of employees represented by the United Steelworkers have obtained recent wage increases substantially above the inflation rate. And the wage increase for steelworkers represented the highest salary gain in the 12-month period that ended on March 31.

Labor officials say that the compulsory arbitration agreement, as an aid to bargaining, has benefited both the steelworkers, by resulting in favorable contracts, and the steel industry, by alleviating strikes. But because no dispute has ever gone to arbitration, they add, no track record exists to gauge the agreement's effectiveness.

"In private sector employment, where the employer normally has an overwhelmingly strong economic advantage, he usually is not willing to have an impartial arbitrator dictating wages, hours and working conditions," said Howard Coughlin, board chairman of the American Arbitration Association. "The same is true when the union is very strong, and it will normally refuse, too, to agree to arbitration."

But perhaps the strongest, or at least the most vocal, opponents of binding arbitration are not unions, but local elected officials. Public sector groups adamantly opposed include the National League of Cities, the United States Conference of Mayors, the National Governor's Conference and the National Association of Counties.

"What we are finding is that cities now have a great concern about compulsory arbitration," said Allan Beals, the executive director of the National League of Cities. "There is a willingness developing to waive a position opposing strikes by public employees to give local officials the right to bargain. That trend is significant."

Last week, Beal and several organization officials met with a selected group of reporters in an effort to publicize their objectives to arbitration. At the same time, he said, the group is gearing its drive to several other levels, such as intervening in court challenges to state and local laws legalizing arbitration, he said.

In one instance, for example, it intervened in a Connecticut case now before the state Supreme Court in which a lower court held that binding arbitration was illegal because it denied decisionmaking by elected officials. That ruling, Beal said, supported the group's argument that arbitration destroys collective bargaining, not enhances it.

"A lot of people believe in collective bargaining, but binding arbitration is eating at the very foundation of collective bargaining and is forcing people to abandon it for a gamble on a strike," he said. "What happens is that both sides submit extremes to an arbitrator and he normally rules somewhere in the middle. That destroys collective bargaining."

One case Beal cites is in the city of Livonia, Mich., where an arbitrator decided in favor of the firemen's union in a dispute that lasted about 18 months. The ruling, said the city's mayor, meant the city had to ask voters to approve a $1.3 million tax increase to pay increased salary and fringe benefits firemen received, a precarious position for local officials in light of resistence nationally to tax increases.

Edward H. McNamara, the city's mayor, says compulsory arbitration dilutes local officials' control of tax rates and muddies their accountability and responsibility to the public.

McNamara heads the League of Cities labor relations committee, which has been attempting to help cities handle better compulsory arbitration. He said that about 60 percent of the cases nationally involving contract disputes that have gone to arbitration have been decided in favor of the labor organizations and not local officials.

McNamara said that had voters not approved the tax increase in August, he has no idea how the arbitrator-mandated settlement would have been met.

But Leach, of the American Federation of State, County and Municipal Employees, said that victories for unions reflect the fact that the public employees unions probably have a more responsible position than the local officials.

Leach cited a recent study of binding arbitration financed by the Department of Labor that concluded that arbitration is emerging as a politically acceptable means of resolving impasses. The study said that it had not had an adverse effect thus far on the collective bargaining process.

"It's very popular now to beat up on public employees," he said. "Officials are willing to take a strike and blame public employees so they can say that they are being responsible with the city's money; they never address the issue of whether a need exists."

Officially the Carter Administration does not have a public position on binding arbitration, a Labor Department spokesman said. Large management type organizations, however, generally are opposed to it, several labor experts said.

"Our policy and practice are strongly opposed to it, primarily because it involves having an outsider not familiar with working conditions settling disputes," said Randolph Hale, who works for the National Association of Manufacturers.

Another criticism expressed by several officials is that the public generally opposes arbitration and shows that position when given an opportunity. Several cited voters' rejection of a proposal which would have mandated compulsory bargaining in Dayton, Ohio.

Last June Dayton voters defeated a charter amendment for the proposal, 21,103 to 12,009. City officials, with several community and business organizations, had waged a strong campaign against adoption, arguing that it would interfere with the ability of local officials to bargain effectively. Although the defeat meant that the 390-member fire union still maintained the ability to bargain collectively, it could not place a contract impasse before an arbitrator.

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### Alternatives to National Strikes

(By Congressman Paul Simon)

The brief Teamsters strike a few weeks ago brings into focus a problem that the laws of the United States don't adequately face, and probably will not face for some time. But if we wait until a crisis situation develops we may make some bad judgments.

The United States economy is so interdependent, so intertwined, that a lengthy nation-wide strike of the Teamsters or the Auto Workers or the Steelworkers or a number of other unions would bring the national economy to a halt.

Then, in an emotional atmosphere, we might pass some radical legislation rather than sensible legislation.

The President now has the power to postpone a strike, through the Taft-Hartley Act provisions, but after a period a strike may continue.

One alternative some have suggested is to have special labor-management courts, with power to make some determinations both as to corporate profits and labor wages in any extreme situations which might be referred to the special courts by the President.

Proponents of this idea hope that both labor and management would increasingly find these labor-management courts fair, and would refer their disputes to such courts, without the necessity of presidential action.

Germany has another interesting alternative.

By law, Germany requires labor leaders to sit on the boards of directors of the large corporations; and since the labor representatives are involved in the decision-making, strikes as we know them are rare.

Volkswagen is a good example.

Seven of the 21 votes on the VW board are labor votes. Labor representatives are involved in all of the major decisions of the company. The union there is the Metal Workers Union, the largest in West Germany.

There has not been a nation-wide strike in the 30-year history of this union.

Recently, when there had to be a substantial layoff of workers because of the recession and decreasing car sales, union representatives on the board helped to make the decisions as to how many layoffs and how they would take place.

There are both management and union people in the United States who don't like the German idea.

I do.

It makes both union leaders and management personnel more realistic and more understanding of the problems the other side faces.

Germans call it "co-determination."

The United States has had remarkably little strike difficulty during the past few years, and one of the finest long-range pacts has been signed for the steel industry.

But whenever a strike occurs, it means loss of wages, loss of profits and loss of productivity.

I believe we should take a good, serious look at the German idea of co-determination.●

# SENATE—*Monday, September 11, 1978*

*(Legislative day of Wednesday, August 16, 1978)*

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the Vice President.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty and ever-living God, who has made of one blood all peoples to dwell upon this Earth, Thou hast made us for Thyself, and our hearts are restless until they rest in Thee. As Thou hast taught us to pray without ceasing, so unite us heart to heart, mind to mind, soul to soul with all who are in quest for justice and righteousness, especially those who have ascended to the summit of high peaceful purpose. Grant wisdom and courage to those in whom so many have placed their trust and their hope.

Show us once more that man is the highest order of creation and that people are of greater value than land or heritage. Give us grace and wisdom to know and to do Thy will in this place that we may have a part in moving forward Thy coming kingdom.

We pray in His name who rules above all men and all nations. Amen.

## RECOGNITION OF LEADERSHIP

The VICE PRESIDENT. The Senator from West Virginia is recognized.

## THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The VICE PRESIDENT. Without objection, it is so ordered.

## ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

The VICE PRESIDENT. Without objection, it is so ordered.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I yield 5 minutes of my allotted time under the standing order to the Senator from Texas (Mr. BENTSEN).

Mr. BENTSEN. I thank the distinguished majority leader.

## SALT II

Mr. BENTSEN. Mr. President, on June 28, I addressed the Senate on some of my concerns regarding the SALT II negotiations. I suggested at the time that, like it or not, diplomatic "linkage" would be a major factor in Senate consideration of SALT II for the simple reason that there can be no such thing as a sound agreement with an aggressive partner seeking to exploit every advantage and widen every loophole.

The record of past Soviet performance on SALT I and current Soviet adventurism make it apparent that adequate verification procedures are absolutely essential to any acceptable SALT II treaty. If we cannot trust the Soviets, clearly we must be able to tell when they are cheating, particularly on an issue as important as strategic arms limitations.

Furthermore, we cannot permit a SALT II agreement, no matter how sound or verifiable, to serve as a maginot line in our strategic posture. The Soviets clearly have the will, and may well have the capacity, to outflank any such agreement by aggressively exploiting opportunities for confrontation throughout the world, using conventional means.

Obviously Mr. President, no Member of this body is in a position to pass final judgment on a SALT II agreement that does not yet exist. I believe, however, that there is some merit in raising and discussing fundamental issues pertaining to SALT; issues that will inevitably bear on the question of Senate ratification regardless of the final form the treaty may take.

There are two aspects of SALT that currently cause me some disquiet. The first is the necessity of preserving MAPS in the forthcoming SALT II treaty—MAPS is the concept that we can confound a Soviet first strike against our Minuteman sites by digging more silos than we have missiles. The second issue is our general perception of arms limitations agreements over the years and the aura of inevitability that has developed around SALT II.

The faddishness and jargon of the arms control dialog would be amusing if the topic were not so important. Clearly, the latest vogue in the ongoing debate about SALT II is the multiple aim point system, or MAPS. The same concept is also referred to with the acronym of ALPS—alternate launch point system. MAPS or ALPS, the notion is identical and disarmingly simple. It is almost as if a talented layman were introduced into the arms control debate.

I am neither qualified nor inclined to deliver a long address on the pros and cons of MAPS. Certain elements of the problem and the proposed remedy are, however, beyond dispute.

We currently have a substantial number of ICBM's, mostly Minuteman III, targeted at the Soviet Union in hardened positions. This land-based missile force constitutes one element of our triad. There is substantial agreement within the brotherhood of strategic analysts that the Soviet Union will, by the early to mid-1980's, have the capability of destroying the majority of our Minuteman force without substantially depleting their own missile inventory. This situation will exist whether or not the SALT II treaty is signed in its current form, and it is not a comforting thought.

With these factors in mind, two questions immediately occur. What options are available to us, within and beyond the constraints of SALT II, to protect our land-based missile system? What purpose is this system intended to serve?

In regard to the first question, we could program, fund, and build a mobile missile system, the much-heralded, hotly debated and highly expensive MX. That is one option, and SALT II would not be an impediment. It has been deliberately delayed by the administration, and is scheduled to be operational in 1986, after the treaty expires.

The MAPS/ALPS multiple silo approach provides a second, theoretically less costly option for enhanced survivability, because it utilizes the existing Minuteman III. Our missiles are vulnerable because they exist in finite numbers; the Soviets know where they are; they can land a warhead close enough to take them out; and they will have sufficient warheads to do the job.

Let me just add parenthetically that I have always been a little puzzled by the notion that our ICBMs could be eliminated in their silos because I had always assumed that, even in the case of a Soviet first strike, we would have sufficient warning time to get our missiles up and off. But let us assume for the sake of argument that this launch-on-warning option is rejected.

Under the MAPS/ALPS approach, we simply diffuse about 250 of our missiles over a much greater number of holes, or launch points. They become safer because the Soviets do not know at any given instant which of up to 5,000 new holes has the missile and because they lack the means to attack all the launch points. Multiple silos should theoretically curb the Soviet appetite for a first strike and virtually assure the survival of at least a significant part of our minuteman force in any contingency.

At the very least, Mr. President, this is a clever idea. I would be hard-pressed to demonstrate why it would not work.

True, the multiple silo concept raises some very significant and difficult questions. It complicates verifiability, which is a critical aspect of SALT II. We would, in effect, set out to make it impossible for the Soviet Union to determine where our missiles are. We would make each silo look as if it contained a missle, a conscious effort at deception. We would make it more difficult for the Soviets to determine if we were cheating on the upper limit of missiles, assuming that

they lack the capacity to detect new missile production in this country.

Resort to the multiple silo approach would also invite the Soviets to follow suit, creating new verification problems for us and raising similar concerns about total numbers of missiles.

Considerations of this nature are important. They deserve to be addressed. But the option is also important. It deserves to be preserved. We gave up the B–1 bomber and got nothing in return. We are treading water on the neutron bomb, again with no reciprocal concession in sight. We have terminated minuteman III production and delayed MX and have production delays with Trident. I do not think we can gratuitously afford to scrap the multiple silo concept, and I am pleased to see Secretary Brown and ACDA Director Warnke agree with this position. They are insisting that the option to deploy a MAPS be preserved in a SALT II treaty.

One of the most intriguing aspects of the MAPS debate is the fact that it drives the Soviets up the wall. Pravda is indignant. They do not like it one bit.

Perhaps we should pause for a moment and attempt to determine why the Soviet Union is so clearly and strongly opposed to multiple silos, particularly when we do not deny their right to deploy the same system.

It takes no great strategic genius to divine the reasons for this protest. The reason is simple. The Soviets are acknowledging that they do not want to sacrifice their perceived ability to destroy our land-based missiles in a first strike.

I do not want the Soviet Union, even in a worse case hypothesis, to have that capability. I do not think we should permit it to exist. One way to circumvent it is to deploy a MAPS.

There may be some other, more arcane, or more legitimate reason for strong Soviet objections to multiple silos. If it exists, I would like to know what it is. In the absence of any such information, I must assume that the Soviets object for the reason stated.

I alluded earlier to a second question on MAPS/ALPS: What is the purpose of our land-based missile system? It should by now be apparent to even a neophyte in the field of arms limitations that we lack the capacity to take out the Soviet land-based missile force in a first strike with our Minuteman force. That is not the goal nor the purpose of Minuteman. Our land-based missiles serve only to deter a Soviet first strike; they are an element of our potential response to any such initiative. They do not, however, represent a significant first strike threat to the Soviet ICBM's.

Where, I ask, is the symmetry in an agreement that acknowledges the Soviet potential to wipe out our land-based missiles while denying us a reciprocal ability to provide for our own ICBM survivability? Clearly, this Nation must demand the creative latitude to take passive measures to protect this essential element of the triad.

If the Soviets want to dig more silos, more power to them. They are welcome to do so. We have no illusions about our ability to target and destroy their missile force now or in the future. If they want to double their invulnerability, that is their option. We simply seek to preserve ours in the face of a very real and legitimate threat.

I am not prepared at this stage to stand before the Senate and argue that an ability to deploy a multiple silo system is essential to our national security. I do not suggest that MAPS/ALPS is the only, or necessarily the best way to safeguard our land-based missile system.

I do, however, submit that our Minuteman force must be protected and must remain invincible to a Soviet first strike. If it can be demonstrated that the MAPS approach is the most efficient, least expensive means to make that system survivable, then I for one would be extremely skeptical of any SALT II agreement that impinged on our right to exercise this option.

What I am saying, Mr. President, is let us not discard this option until we determine whether it can serve our national interests. Let us not give it away for nothing. Let us weigh the multiple silos proposal on its merits, independent of SALT, independent of Soviet objections. Multiple silos are not a menace to the Soviet Union; they merely deny the Soviets the ability to destroy our land-based missile force in a first strike.

I am somewhat reluctant to make the point, but we must understand that there comes a point at which no SALT II agreement is preferable to an ambiguous, weak, or dangerous agreement. There is a limit to the concessions we can make on the altar of strategic arms limitation, and we are fast approaching that limit.

We have been engaged in the business of trying to brake our arms race with the Soviets for the past 15 years. During this time there have been a number of "successes." Agreements that have imparted momentum to the process and gradually created a sense of euphoria in the American public.

Now any reasonable person, Mr. President, would support the notion of arms limitation and reduction provided it does not pose a threat to our national security.

What concerns me, however, is that the American public has come to accept the notion that we are winding down our Union. Disarmament, it seems, is just around the corner.

We believe this for two reasons: Because we want to believe it, and because our fondest hopes have been reinforced by a series of pacts successfully marketed as significant steps on the road to an end of the arms race and—eventually—to a relaxation of the balance of terror that rules the world.

During the past 15 years we have become so committed to the concept of arms control limitation that I shudder to think how we might react if the process does not continue. What happens if we cannot negotiate a successful SALT II agreement with the Soviet Union? Are we prepared to accept an unsafe, inadequate agreement on the basis that it is better than no agreement at all; the best that the situation will permit? Are we prepared, as a nation, to accept the consequences of failure to agree with our traditional adversary on the issue of arms control? Do we, really and honestly, have any option but to conclude a SALT II agreement with the Soviet Union?

Fifteen years ago we set out on the path of arms limitation with the Soviet Union with conclusion of the limited test ban treaty, the first, tentative step back from the cold war policy of confrontation. At that time, so soon after the Cuban missile crisis, we were clearly and unequivocally superior to the Soviet Union in nuclear weaponry; we held a clear strategic advantage.

Today that is obviously no longer the case. We seek to preserve a position of "parity" and avoid a situation of outright inferiority.

I do not suggest that our slide from superiority to precarious parity is entirely a function of the era of arms control. Obviously, it is not. The United States has exercised unilateral restraint in deploying new ICBM and SLBM launchers since 1967, and our strategic budget has declined since 1963.

But I suggest that, having accepted and embraced the notion of arms control/limitation, we were better able to look with equanimity on the notion of parity. A security posture "second to none" became good enough. We accepted the inevitability of a Soviet Union as powerful and as advanced as the United States.

What bothers me, Mr. President, is the lingering suspicion that the Soviet Union might just see things a little differently. One does not have to be an expert in trend lines and force analysis to conclude that, during the past 15 years. the Soviets have been winning the race for strategic superiority. They have the momentum going their way.

The whole purpose of SALT II, of course, is to stabilize this process at rough equilibrium. To establish limits that insure essential parity. But the spirit of SALT II is as important as the letter of agreement. It is important to understand that there is no fat, no margin for error or miscalculation, in a U.S. position of parity.

The United States has available a number of options that could restore to this Nation a position of strategic superiority. They include the cruise missile, the B–1 bomber, and the multiple silo approach or MX missile. Most are expensive options, both in terms of cost and in terms of what they would do to the cherished notion of arms control/limitation. I think it is safe to assume that we can no longer have arms control and a position of strategic superiority. The Soviets will not permit it, and their attitude is probably understandable.

If we forsake superiority and opt for parity together with a welcome element of control, I must be convinced that our partners in the negotiations are not lead-

ing us down the garden path. Otherwise we might be deceived into accepting inferiority.

With every arms limitation agreement—the LTBT, the SALT I ABM Treaty, SALT I interim agreement, the Vladivostok aide memoire—the Soviets have continued to gain on us. What assurance do we have that SALT II will put an end to this historical progression and stabilize the balance of forces? What sign, what indication, do we have from the Soviets that they will be satisfied with parity? How do we know that they are not using arms limitations talks as a smokescreen to mask a drive toward superiority?

The answer, Mr. President, is that we have no such assurance. We just do not know. We are asked instead to credit the Soviets with honorable intentions, and that is no mean task on an issue this important. Their record of questionable compliance with the SALT I agreements alone should warn us that they may have more sinister intentions.

Perhaps the time has come to disabuse ourselves of the notion that a SALT II agreement is inevitable and inherently desirable. In a recent SALT paper circulated by the State Department the point is made that—

> The choice the United States now faces is between a good agreement protecting and enhancing our national security, and no agreement at all. It is against this standard that what has been achieved at SALT should be measured—not against some ideal agreement that as a practical matter, given the relationship between the two countries, cannot be concluded at this time.

I am bothered by this distinction between a good and an ideal agreement. It would seem to me that an agreement that truly protects and enhances our national security would be ideal. If it pretty much protects our national security, if it protects as well as it is possible to protect in the context of SALT, if there are gaps in this protection, then the agreement is not good at all. We should not accept negotiated risks to our national survival as inevitable. If it is simply the best we can do, then I am not prepared to accept that standard when it comes to national security; I do not think the Senate is prepared to accept it, and I do not think the American people will accept it.

The United States of America has clearly demonstrated its abiding commitment to arms control by unilaterally allowing itself to move from a position of superiority to a position of parity. The Soviets have yet to demonstrate a reciprocal commitment. It is now the turn of the Soviets to display good faith, to cease exploiting every loophole in existing arms control agreements, to cut back on their awesome increase in strategic capability, to accept the notion that we have the right to insure the survival or our land-based missiles—in short, Mr. President, to demonstrate that they are prepared to stop at parity and reach a truly equitable SALT II treaty.

In the absence of positive indications of good will from the Soviet Union, in the absence of positive indications of a commitment to parity and mutual deterrence, it is going to be difficult indeed for the U.S. Senate to approve any SALT II agreement.

(Mr. LEAHY assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I understand Mr. SPARKMAN has a conference report he wishes to call up, and it will only take 3 or 4 minutes.

I yield to him time on my time under the order for that purpose.

Is that all right with the acting Republican leader?

Mr. STEVENS. Mr. President, it is all right with me.

## INTERNATIONAL SECURITY ASSISTANCE ACT OF 1978—CONFERENCE REPORT

Mr. SPARKMAN. Mr. President, I submit a report of the committee of conference on S. 3075 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. METZENBAUM). The report will be stated.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3075) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 7, 1978.)

Mr. SPARKMAN. Mr. President, Senate and House conferees met on August 10, 14, and 15 to consider the International Security Assistance Act of 1978. The committee of conference recommends a fiscal year 1979 authorization of $2,817,500,000 for seven security assistance programs.

Mr. President, I ask unanimous consent that a table reflecting the executive request, the Senate recommendation, the House recommendation, and the conference agreement for funding of seven security assistance programs be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[In millions of dollars]

| | Executive request | Senate recommendation | House recommendation | Conference agreement |
|---|---|---|---|---|
| Grant military assistance | 133.5 | 133.5 | 163.5 | 133.5 |
| Grant international military education and training | 32.1 | 31.8 | 32.1 | 31.8 |
| Foriegn military sales (FMS) credits | 674.3 | 677.8 | 674.3 | 674.3 |
| FMS aggregate ceiling [1] | [1] (2,085.5) | [1] (2,120.2) | [1] (2,085.5) | [1] (2,085.5) |
| Subtotal, military assistance and sales program | 839.9 | 843.1 | 869.9 | 839.6 |
| Peacekeeping operations | | | 29.4 | 30.9 |
| Middle East Special Requirements Fund | [2] (5.0) | 5.0 | [3] (2.0) | [4] (3.5) |
| Sinai Support Mission | [2] (11.7) | 11.7 | [3] (11.7) | [3] (11.7) |
| U.N. Forces in Cyprus | [2] (8.7) | 8.7 | [3] (8.7) | [3] (8.7) |
| Spain | [2] (7.0) | 7.0 | [3] (7.0) | [3] (7.0) |
| Subtotal, peackeeping operations | [2] 32.4 | 32.4 | 29.4 | 30.9 |
| Economic Support Fund | [2] 1,872.0 | 1,932.0 | [5] 50.0 | 1,902.0 |
| Contingency Fund | 5.0 | 2.5 | 10.0 | 5.0 |
| International Narcotics Control | 40.0 | 40.0 | 40.0 | 40.0 |
| Total | 2,789.3 | 2,850.0 | 999.3 [6] (2,854.3) | 2,817.5 |

[1] The FMS aggregate ceiling represents the total program which could be funded under FMS credit authorization. The aggregate ceiling is not an authorization of funds for appropriation.
[2] Requested under the Security Supporting Assistance account.
[3] Included in the general peacekeeping operations assistance authorization, but no line item authorization made.
[4] Earmarked under the Peacekeeping Operations account.
[5] Only $50,000,000 (for Turkey) of the Economic Support Fund was authorized in the House amendment. An additional $1,855,000,000 was authorized in the International Development and Food Assistance Act of 1978 (H.R. 12222).
[6] Total including $1,855,000,000 authorized for an Economic Support Fund in H.R. 12222.

Mr. SPARKMAN. Mr. President, the authorization of appropriations agreed upon in conference is $32.5 million less than the authorization contained in the Senate bill and $28.2 million more than the authorization requested by the President. The conference bill provides $1,785,000,000 in economic aid and military credits for Israel and $750,000,000 in economic aid for Egypt, as requested by the President.

In addition to these authorizations, the committee of conference reached agreement on all policy issues, including repeal of the arms embargo on Turkey, economic sanctions on Rhodesia, troop withdrawal from Korea, conventional arms exports, and the economic support fund.

First. Repeal of the arms embargo on Turkey. The Senate bill repealed the arms embargo on Turkey, made policy statements regarding Cyprus, and required special Presidential certifications to accompany future economic and military aid requests for Greece, Cyprus, and Turkey. The House bill contained similar policy language and provided

that the arms embargo would have no further force and effect if the President made certain determinations. The conferees adopted the House version with an amendment containing some of the Senate's policy language. The action clearly constitutes a de facto repeal of the arms embargo and has the support of the President. The conferees also agreed to provide Greece with $35 million in grant military aid and $140 million in military credits. Turkey will receive $175 million in military credits and $50 million in economic aid.

Second. Sanctions against Rhodesia. The Senate bill required the President to lift sanctions against Rhodesia until fiscal year 1980 if determinations were made concerning Rhodesia's participation in an all-parties conference and installation of a freely elected government. The House bill permanently lifted sanctions after calendar year 1978 unless the President determined that a freely elected government had not been installed in Rhodesia. The conferees adopted a compromise version which retains the basic intent of the Senate bill. Sanctions would be lifted permanently only if the President makes certain determinations about Rhodesia's willingness to negotiate at an all-parties conference and to install a freely elected government. The conference report contains the details of the determinations.

Third. Compensation for troop withdrawal from Korea. The conferees adopted a compromise provision authorizing the President to transfer defense articles and services to South Korea in conjunction with U.S. ground troop withdrawal. The conferees also accepted the sense of the Congress statement that further withdrawal of U.S. ground forces may seriously risk upsetting the military balance in the region and requires full advance consultation with the Congress. Detailed reports are required 120 days prior to each phase of troop withdrawal.

Fourth. Arms transfer policy. The conferees accepted a number of modified Senate provisions on arms transfer policy including requirements for an annual arms sale proposal, reports on defense requirements surveys, and a policy statement on multilateral arms export restraint. The conferees also accepted provisions clairfying existing human rights language.

Fifth. Economic support fund. The conferees accepted Senate provisions creating an economic support fund as a successor to the security supporting assistance program. The fund would emphasize economic development. Peacekeeping programs would be authorized under a separate title.

Mr. President, I believe that this conference report represents a fine effort to bring together the best of both the Senate and the House bills. The administration generally supports the conference report. I urge its passage. I move the adoption of the conference report on the International Security Assistance Act of 1978 (S. 3075).

● Mr. CASE. Mr. President, the conference report on the security supporting assistance bill pretty much speaks for itself. I wish, however, to call attention to a section which is not in the conference report, because it was dropped by the conference committee.

Recent events make it worth pointing the section out to Members in the hope and expectation that work will continue on the matter.

I refer to the problem of giving adequate and thorough consideration to the export of equipment and technology which could have a political and military implication. The recent dispute over the sale of sophisticated drill bits to the Soviet Union illustrates that some of the problems still exist.

I recall to my colleagues that the original version of S. 3075, which passed the Senate on July 26, contained section 29, a modification by Senator STEVENSON of my amendment intended to assure an adequate review by the Secretary of State of commercial sales which might have a political and economic significance.

My amendment to S. 3075 sought to clarify the intent of Congress with respect to exports which could be damaging to U.S. foreign policy and national security interests.

While the provision was not too different from current authority, it did provide for a State Department review during a 30-day period. It also permitted the appropriate Federal agency to review the transaction.

Mr. President, I ask unanimous consent that a copy of my amendment be inserted at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

SEC. 29. Section 4 of the Export Administration Act of 1969, as amended, is amended by adding at the end thereof the following new subsection:

"(m)(1) With respect to any country engaged in activities which are detrimental to important political/military interests of the United States, any item which could have direct military application and could significantly assist such activities shall be approved for export by the Secretary of Commerce only pursuant to a validated export license.

"(2) The Secretary of Commerce shall determine, in consultation with the Secretary of State, the types of transactions which shall be reviewed by the Secretary of State to carry out the purposes of this subsection. The Secretary of State shall have thirty calendar days to conduct the reviews referred to in this subsection and at the end of such period of time shall state his recommendation or his reasons for not making a recommendation.

"(3) The provisions of this subsection shall not apply with respect to countries which are members of the North Atlantic Treaty Organization, or to Japan, Australia or New Zealand.

"(4) The provisions of this subsection shall not apply with respect to any agricultural commodity, including fats and oils or animal hides or skins.".

Mr. CASE. The amendment met with the immediate opposition of industry and the State Department. A spokesman for the Department said that while the amendment would limit the flexibility of the executive branch, it would enforce greater discipline upon the Department in expediting export approvals.

While the legislation was under consideration on the floor of the Senate, Senator STEVENSON wrote a letter to Senator PERCY, a member of the Senate Foreign Relations Committee, seeking the withdrawal of the amendment. At the same time, Senator STEVENSON promised that his Banking Subcommittee on International Finance would begin hearings on export controls this fall as part of the extension of the Export Administration Act of 1969.

Mr. President, I ask unanimous consent that a copy of Senator STEVENSON's letter to Senator PERCY be inserted at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
*August 10, 1978.*

Hon. CHARLES H. PERCY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR PERCY: I understand that when the conference committee meets on S. 3075, the International Security Assistance Act of 1978, the Senate conferees may move to recede to the House with respect to section 29 of the bill as passed by the Senate. Section 29 would amend the Export Administration Act to clarify the intent of Congress that exports which could be damaging to U.S. foreign policy and security interests be screened by the appropriate departments of the Federal Government before the transaction is completed. The House version contains no similar provision.

As I stated when I offered the language of section 29 as a floor amendment, export controls for political and national security as well as economic reasons will receive thorough study next year by the Committee on Banking, Housing and Urban Affairs which has jurisdiction over the Export Administration Act and the subject of exports controls generally.

As you know, that Act must be reviewed and extended next year because it would otherwise expire September 30, 1979. The Subcommittee on International Finance, which I chair, will begin hearings on export controls this fall. Accordingly, should the conferees decide to delete section 29 from S. 3075, I will not oppose such action.

With best wishes,
Sincerely,

ADLAI E. STEVENSON.

Mr. CASE. I understand that hearings have since been scheduled for the full Banking, Housing, and Urban Affairs Committee, chaired by Senator PROXMIRE. This committee, which has jurisdiction over export controls, is to begin those hearings September 21.

Mr. President, I cite my amendment and the subsequent turn of events in view of the Carter administration's approval of the sale of a drill bit factory to the Soviet Union.

As you may recall, Dresser Industries of Dallas, Tex., had sought approval from the Commerce Department to supply the Soviet Union with technology

and equipment to build its own plant to manufacture oil field drilling bits.

Part of the overall deal is a $1 million electron-beam welding machine which purportedly has direct military application in the production of armor piercing shells.

Most of the licenses for this $144 million deal—a transaction which is regarded as one of the largest United States-Soviet deals in recent years—had been approved May 30.

Then in the wake of human rights violations in the Soviet Union, including the imposition of prison sentences against dissidents, President Carter in mid-July ordered a review of all oil technology exports to the Soviet Union.

By August, however, no one reportedly had told the President's national security affairs adviser, Zbigniew Brzezinski, and Energy Secretary James Schlesinger that a Presidential go-ahead had been given to the Commerce Department to approve the rest of the project, which included the electron-beam welding machine. They purportedly learned of the resumption of the deal through the press.

After Schlesinger and Brzezinski raised strenuous protest over the sale, the Defense Department reconsiderd its position and opposed the sale.

Schlesinger and Brzezinski reportedly pressed for an independent review of the disputed licenses and the Defense Department's Defense Science Board undertook the study.

These events raise questions surrounding review procedures on the sale of equipment which may have national security application.

But it has happened before.

Earlier this year, American Motors Corp. announced the construction of a factory outside Cairo to manufacture so-called utility vehicles. That really meant jeeps.

The sale was approved by the Commerce and State Departments. What was not known to the Congress at the time was a classified document from State to the Commerce Department which, I am informed, indicated that the location of the factory would be next to a factory to build British Swingfire antitank missiles. It now is our information that these missiles are to be mounted on the jeeps, making them a highly versatile long-range weapon.

What seemingly appears to be an innocuous sale, Mr. President, turns out to be a new weapons system which increases the arms race while bypassing the congressional review procedure.

A similar development arose earlier this year when the Commerce Department approved the sale to Libya of 400 heavy duty trucks—suitable for tank transports.

The company, in Oshkosh, Wis., had been warned that there would be problems with that sale, but they went ahead with the contract signing anyway. The sale was ultimately turned down.

Mr. President, I cite these incidents not to rake over not-so-ancient history but to point out that there is a need to improve the review procedures for exports of items and equipment which have a direct or indirect military use. It may be that there are reasons for letting most of the proposed sales go through. But there are times when our national interests are best served by stopping or delaying such sales.

These decisions are not always clear-cut and seldom are easy. But it is important that the decisionmaking process be thorough and that all the various sections of the Government which should be involved in the process are fully consulted.

In the most recent case, that of the sophisticated drill bits, I and many of my colleagues believe that this is not the time to go ahead with the sale. The decision to go ahead was disturbing. But equally disturbing was the way it was handled.

I am glad, therefore, that the matter of review procedures will be taken up by the Senate Banking Committee.

It is important, too, that the Committees on Foreign Relations and Banking continue efforts to improve those procedures.●

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SPARKMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## PRIVILEGE OF THE FLOOR

Mr. STEVENS. Mr. President, I ask unanimous consent that Patricia Bennett, of my staff, be accorded the privilege of the floor during consideration of the conference report on the natural gas bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Erich Evered, of my staff, and Fred Craft and Danny Boggs, of the minority staff, be accorded the privilege of the floor during the vote and consideration of the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, will the Senator yield?

Mr. STEVENS. I yield.

Mr. CANNON. Mr. President, I ask unanimous consent that Frankie Sue Del Papa and Bruce Eggers, of my staff, be accorded the privilege of the floor during consideration of the natural gas conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RECOGNITION OF LEADERSHIP

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, there is no request for the minority leader's time. Therefore, I yield back the remainder of the minority leader's time.

## SPECIAL ORDER

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is recognized for not to exceed 15 minutes.

## UNCLE SAM'S TWO FATTEST WELFARE APPLICANTS—GENERAL DYNAMICS AND LITTON

Mr. PROXMIRE. Mr. President, last Friday I submitted resolutions of disapproval for the two proposals to bail out the giant Navy shipbuilders, General Dynamics and Litton. Under the terms of Public Law 85–804, either House of Congress has 60 days to disapprove use of Public Law 85–804 or else the proposed action will go into effect. That 60 days expires in about 1 week.

Without passage of this resolution or disapproval, General Dynamics and Litton will become the two fattest welfare recipients in this country.

As the author of the 60-day provision, along with the Senator from Virginia (Mr. HARRY F. BYRD, JR.) I can assert in unqualified terms that its purpose was to grant authority to Congress to act in extraordinary circumstances. The conditions are simple—there must be a large amount of money—public funds—at stake. While the legislation calls for congressional participation anytime the amount is over $25 million, the present case involves $931 million for two claims of which $541 million is in excess of what was substantiated by the Navy's own claims review process.

When I introduced this legislation, it had incorporated within its provision certain requirements which would make it certain that any controversial matter would come to a vote. There was an antifilibuster provision, for example. However, due to the request from the majority leader, this language was stricken. Senator Symington, then acting chairman of the Armed Services Committee, indicated that he thought these controversial subjects should be brought to the Senate for a vote. He wrote me a letter stating that he had instructed the staff of the committee to inform the authors of the amendment when the use of Public Law 85–804 was contemplated. He also said that he would work with me to insure votes on such matters. Given that assurance, I struck the antifilibuster and automatic vote provisions from the legislation and it was passed.

Perhaps I was too trusting for today we have a circumstance where it is possible that these resolutions of disapproval will be bottled up in the Armed Services Committee and not allowed to come to the floor for a vote.

I withheld offering these resolutions so that the committee could hold hearings and gather the facts. It seemed that this was the proper thing to do—to allow

the committee process to work. But now it appears that the committee process will not work and that the committee deliberately will take no action on the resolutions or will block consideration of these resolutions on the floor.

I hope that this will not be the case—that the committee will agree that the expenditure of nearly 1 billion of tax funds is worthy of a vote by the Senate. Even if the committee should be in oppositon to the resolutions, certainly there should be a vote on the substance of the issue.

Those who do not favor bailing out the giant shipbuilders at the expense of the taxpayers, those who disagree with the presumption that large corporations who mismanage Federal programs and find themselves in financial difficulty should become corporate welfare clients, those of us who argue that the Federal Government is taking the risk out of business and transferring it to the taxpayers—we believe that the Senate should take a stand on this issue.

If by one stratagem or another, a resolution of disapproval is blocked in the Senate, I serve notice that the Senate will not completely escape this responsibility. The payment of claims above that now set aside must be authorized in a new military procurement authorization bill or appropriated within a following defense appropriations bill. Language can be attached to the authorizing measure specifically disallowing the payment of any claims above that determined by the Navy's claim review process—no matter whether or not the 60-day period has expired and Public Law 85-804 is in effect.

I wish to make it clear that I will not agree to any unanimous-consent agreements regarding time or procedure on the new military procurement bill or the upcoming defense appropriations bill. Furthermore I now indicate that there should be a thorough if not exhaustive debate on this matter at that time. It would be far better to have a vote on the resolution of disapproval itself, but if individual Senators move to block this, I will take whatever action is necessary to safeguard the taxpayers against this arbitrary payout of $541 million in unaudited claims.

Mr. President, in view of the fact that there are no stipulations as to how these resolutions of disapproval will be handled, will the Chair please inform me if a resolution of disapproval can be attached as a rider to some appropriate bill that happens to be pending on the floor—that is regardless of any action taken by the Armed Services Committee, is that in order to place a resolution of disapproval on another measure?

The PRESIDING OFFICER (Mr. HART). The Chair wishes to inform the Senator that the procedure which he suggests would be appropriate under circumstances where the legislation to be amended does not have a germaneness condition attached to it for amendments.

The Chair further wishes to inform the Senator from Wisconsin that under rule XVI appropriation bills do have a germaneness requirement on amendments.

Mr. PROXMIRE. May I further inquire whether or not I could attach this to a bill that would not be an appropriation bill, say, an authorization bill? Would that be in order?

The PRESIDING OFFICER. If cloture has not been invoked, and there were no agreement otherwise providing for germaneness of amendments.

Mr. PROXMIRE. In other words, if I object to a unanimous-consent agreement until this is settled, I would be free to offer this on an authorization bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. Mr. President, I thank the Chair.

Let me just continue very briefly on this matter. Let me put the substance of this argument in the clearest terms. The civilian hierarchy of the Navy, the Secretary and Assistant Secretary, over the objections of the uniformed Navy, has arbitrarily decided to split the difference with General Dynamics and Litton on the size of their shipbuilding claims. Instead of auditing the claims, some of which may have been fraudulent, they simply divide the amount in half. Now this amount—$541 million—is in excess of the total determined by the Navy's own specialists and claims award process.

Therefore, we can now see the formula for success for defense firms. It goes like this. When in trouble, file millions of dollars in inflated claims, disregard any investigations or audits, do not cooperate with the auditors, threaten to stop production, and sit back and wait. Very shortly, the Defense Department will be pleading to provide at least one-half of what you want. And if you have inflated the claims originally by at least 100 percent, you will gain back every penny in your original plan.

The welfare handout doors are open. The treasury is large. The inclination on the part of the civilian leadership of the Pentagon is "come and get it."

## THE STATE OF PUBLIC EDUCATION AND THE ROLE OF THE FEDERAL GOVERNMENT

Mr. PROXMIRE. Mr. President, what an irony. The same week that the Senate passed the colossal $50 billion bill to extend the Elementary and Secondary Education Act, two major reports appeared which revealed both the failures of the present public school system and the fruitlessness of the present Federal school aid approach.

The first report was a CBS News three-part documentary entitled, "Is Anyone Out There Learning?" which showed why many parents, taxpayers, and even students and teachers have lost faith in our Nation's public schools.

The best test of any program is the results. Public education is not only doing badly it is getting worse. Why do I say this?

### INCREASING COSTS AND LOWER TEST SCORES

During the past 15 years our Nation has increased its spending on public schools, not by twofold, not by threefold, but by fourfold, and the results? Students are scoring lower on any number of standardized tests.

Since 1963 the educational achievement as measured by the scholastic aptitude test of collegebound students has fallen year after year in both verbal and math skills.

As the CBS documentary points out, the level of functional illiteracy among all 17-year-olds is at least 13 percent and is three times higher for 17-year-old blacks.

Studies supported by the Office of Education show a general decline in test scores over the last decade for grades 5 and above. Again, what is particularly striking is the fact that the decline becomes more pronounced at the higher grades.

These disappointing statistics reinforce the belief of many that there has been a serious deterioration in the ability of our young people to perform satisfactorily as informed citizens and skilled workers. Mr. President, why is our economic productivity declining? Here is one clear and shocking answer.

The tragically high unemployment rate among teenagers, especially black teenagers, can, in part, be traced to this group's deficiencies in basic English and math skills.

On the CBS broadcast the personnel manager of Mountain Bell says that 40 to 50 percent of the people applying for a job failed to even get past the company's entrance exams because of these deficiencies in math or English skills.

The CBS documentary also reports on the ugly atmosphere of insubordination, drugs, hostility, and fear which pervades some of our Nation's public schools. It is obvious that very little learning can go in in schools exhibiting that kind of unwholesome environment.

Finally, as CBS news reports, there have been runaway costs associated with educating children in our Nation's public schools. Higher salaries for teachers, more expensive textbooks, and larger amounts and more costly types of "teaching aids" such as audio visual equipment and computers have pushed the cost of educating children clear through the roof and into the sky. No wonder the hard-pressed taxpayer is looking for relief from school-related taxation.

Mr. President, this should be far more alarming to any American concerned with the strength of this country than any military deterioration. Why? Because the strength of this country—as in any country—is in the strength of its people. The skill, the understanding, the training of our citizens is what makes a nation strong. This is more important than our factories, our farms, our natural resources. The quality of our people is what will make this country succeed or fail. And the dismal record now shows we are failing.

The CBS news report never focuses on the role of the Federal Government in public elementary and secondary education. However, at the same time the CBS education documentary ran, the Rand Corporation was releasing a study funded by the Office of Education which re-

ported the results of a 4-year examination of a large number of federally supported educational innovations in public schools. And what were the results of this massive review of Federal aid to elementary and secondary education? The Rand researchers found that in general no existing educational approaches consistently improve student performances; that Federal aid had not fulfilled expectations and that questions continue to be raised about what might be the most appropriate and effective Federal role for improving the Nation's public schools.

The Rand study states what I believe to be true—that more Federal intervention and money cannot and must not be a replacement for local commitment and innovation. As the report says:

All the Federal programs had funded some successfully implemented projects as well as dismal failures and many projects in between. The difference between success and failure depended primarily on how school districts implemented their projects, not on the type of Federal sponsorship. The Federal spending was simply overwhelmed by local concerns and characteristics.

Did the huge increase in Federal money help? No! It did not "buy" more committed teachers, more effective project directors, more concerned principals, and so on. In other words, project outcomes reflected not the amount of funds available, but the quality and behavior of the local staff.

THE NEED FOR A REEXAMINATION

The Senate has recently passed a $50 billion education bill. That I voted against for that very reason. My first speech in the Senate more than 20 years ago addressed the need for a strong Federal commitment to education, and yet I was one of the few who voted against this year's education bill. Why did I vote as I did?

Because too much of our Federal education money is just going into the education slag heap. We must not continue to blindly, thoughtlessly, pour money into programs and approaches that simply are not working. What we need to do is to end Federal support of educational programs which have been shown to be failures. We need to reform those programs which can be salvaged. And most important of all, we need to control overall Federal spending and taxation so that additional funds can be retained through State and local taxation to be spent on locally created and controlled educational programs.

While there are legitimate and important Federal educational priorities, Federal aid to public education must always be a limited supplement, for limited purposes, to help support local and State educational programs and initiatives.

Mr. President, I ask unanimous consent that excerpts from the CBS News broadcast "Is Anyone Out There Learning?" and the summary of the Rand report entitled "Federal Programs Supporting Educational Change, Volume VIII, Implementing and Sustaining Innovations" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IS ANYONE OUT THERE LEARNING?

CHARLES COLLINGWOOD. Here comes the class of 1978, part of an army of three million young Americans who went through similar high school graduation ceremonies this year. This particular battalion comes from the John F. Kennedy High School in Denver, Colorado.

How good an education did they get? Many people think it was not good enough. There are widespread complaints that young Americans like these have not acquired in school the basic skills with which to lead full lives in today's society. There is a national demand that high school graduates must demonstrate academic competence to get their diplomas. There are taxpayers' revolts against the high cost of education. The rallying cry of the critics is: "Back to the basics!"

Ironically, among those members of the Denver school board conferring the diplomas was Mrs. Naomi Bradford, herself a critic of the present educational system.

NAOMI BRADFORD (member, Denver public school board). We are not giving the students the basics that we ought to be giving. The parents are telling me they want more of the basics. They want their children as well educated in the basics as they are. Let the alternatives go by the wayside if they need be, but give them the basics.

WALTER CRONKITE. Good evening. The appeal we heard a minute ago—they want their children as well-educated as they are—happened to come from Denver. It could have come from anywhere in this country. Parents, teachers, students, taxpayers—all are increasingly critical, increasingly emotional, about public schools they say are not educating young people as they could, as well as they should.

Well, what has happened? What we know is that tests show today's students scoring lower in basic subjects than they did 15 years ago. During those same 15 years, the cost of public education has almost quadrupled. So the question: "Is anyone out there learning?"

Starting tonight and for two nights to come, we will suggest some answers to that elemental question. First, some elements of the problem.

CRONKITE. The rate of functional illiteracy—the inability to read and write simple sentences—is now running at 13% or higher among 17-year-olds.

STIRLING COOPER [teacher]. The tests we're giving don't show literacy. They show bits and pieces of learning. If we really gave literacy tests, I would wager half or more of our students are illiterate in the old-fashioned sense.

CRONKITE. Students are passed on to higher grades, whether or not they can do grade-level work.

WILLIAM KOERBER [teacher]. We pass kids because they physically get big, not because they mentally or emotionally or any other ways get big. And that's been the pattern of—as long as I've been in the schools. We socially—we call it a social promotion.

CRONKITE. Most standardized test scores, including the SAT, the Scholastic Aptitude Test taken by those seeking to go to college, have been declining for the past 14 years.

WILLARD WIRTZ [Director, National Manpower Institute]. Starting in the early sixties, middle sixties, almost all of the academic scores started going down gradually. They all went down gradually until about 1970, and then they plummeted.

CRONKITE. There's a rapidly growing grassroots demand for minimal competency testing to determine whether a student actually has enough knowledge to qualify him or her for a diploma, or whether he or she is not qualified and should be denied a diploma.

CHRISTIAN C. PIPHO [Education Commission of the States]. I would say it's one of the few times in the history of American education that we've had a—a movement for reform come into education from outside of education—from legislators, from state board members, from citizens—something like this.

CRONKITE. It is said that the quality of teaching has declined.

LLOYD BAKER [parent]. Some of the teachers, truthfully, in my opinion, have been retired, as far as educating children are concerned, for many years; but sit there, because of tenure, and collect their—their pay. That's all they care about.

CRONKITE. Because of all this, widespread demands have emerged for "back to basics" in the school curriculum.

Mrs. BRADFORD. Anyone with their ear to the ground and really listening to the public right now will hear that the public demand is back to the basics. "Hey, my kid can't do the multiplication facts like I can." "Hey, my kid can't punctuate, can't sound out words, like I can." "That's what I want first for my children." I think that's what the public is saying.

CRONKITE. Across the nation, an HEW study shows that 42% of black 17-year-olds enrolled in school are functionally illiterate, three times the national average. And the absentee rate among black youngsters—it used to be called truancy or playing hooky—is also higher than the national average. An absentee rate of about 5% for reasons of health is considered about normal, but in inner-city schools, 30% is not uncommon.

CLARK BALLINGER (Denver teachers union head). You have a great number of youngsters, as you do in any urban city, that really haven't found themselves, and they just don't care. And so they have great problems in the absentee business. They don't—they don't want to come to school. The question is how do you force them to do that? What do you do? Do you—take a youngster that says, you know, "I'll come when I want to, and if I don't want to I won't." You can flunk them. You could kick them out if you wanted to, and say you can't—you can't come to school. There's any number of answers, none of which meet the needs of the youngster. The goal is to keep these kids in school, and to try to help them. And the Denver public schools—and I really want to give them credit here—work hard at that, And they do a—really a good job of—of putting together progams. They don't do a very good job of making those programs successful. They just frankly are not working. The absentee rate sometimes in a—in a high school can be as much as four and five and six hundred a day. That's horrendous. And they're trying to work on it. All I can say is we can only do so much as educators. Basically, if the parents cannot force and make their youngsters go to school, the teachers can't.

COLLINGWOOD. There is no father figure in the Craft family, and Mrs. Craft has enough to do with making ends meet and coping with her own problems that she is not a stern disciplinarian. Still, she feels keenly that two of her children seem to be missing out on the educational opportunities she herself tried to take advantage of in a less privileged time.

What kind of facilities did you have when you went to school?

Mrs. CRAFT. Nothing. [Laughs.] Not anything. Scratched up desks, a raggedy book and a few crayons, and a few scratched up blackboards.

COLLINGWOOD. But you still think you got more out of it than some of your children have?

Mrs. CRAFT. I think so. With—with all the latest equipment that they have, and different types of things they have to work with, I think my education's better than theirs.

CRONKITE. Mrs. Craft is not alone in believing that throwing money at the problem has not solved it. The public doesn't think so either. Our CBS News poll shows that 41% of

those who responded say that their children are not getting as good an education as they got. Only 35% think today's education is better; 16% feel it's about the same. And those are not very good marks.

One of the greatest public concerns is about violence and vandalism in the schools, and we'll look at that next.

CRONKITE. When we talk about violence in our schools these days, we're not talking about youthful high jinks. We're talking about a pattern of widespread mindless destruction. We're speaking of attacks on persons of incalculable cost, of attacks on property that cost enough each year to pay the salaries of 50,000 teachers. As Charles Collingwood tells us, Denver's been paying the price, too.

COLLINGWOOD. In Denver, Miss Barbara Piascik, who teaches social sciences at Smiley Junior High, finds that year by year her job becomes more difficult because of the growing lack of discipline tolerated in the schools.

MS. BARABARA PIASCIK. I—I think that when a kid comes to school, I mean, he should come there to learn something. And you know, we can—we can only do so much. But when—when a child—when—when a teacher reprimands a kid, and the kid comes back with—with four-letter words and all this kind of thing, that's a discipline problem. When I open the door and see kids in the hall, they're running around, kids with pieces of glass, and—and then other students telling me of—of kids of with guns, I get very depressed about it, because I don't see anything being done about it.

JOHN RYOR [President, National Education Association]. Our statistics suggest that about 70,000 teachers a year in the United States are victims of physical abuse, and it is a serious problem. It's—it's a problem that's been growing over the years. It's a problem again that needs resolution. It's difficult in a classroom of 40 people, of 35 people, for a teacher to accomplish his or her goals as they relate to the school's curriculum when you spend thirty, forty or—percent of your time perhaps with three or four students who just are either unwilling to—to fit the—the classroom situation, unwilling to behave according to standards that make it possible for all the children to learn, or—or simply are disruptive for whatever reason.

ROBERT HOLLEY. Yeah, some classes get pretty bad. It's—some of the classes that have the good kids in them, supposedly, are pretty bad discipline-wise. I'm in—in my ex-English class, there's absolutely no order. The—the teacher tries to do something about it, but he can't—he doesn't have the authority to whip the kids back into their place. All's he can do is slap their hand or send them down to the student advisor. And it doesn't do any good.

COLLINGWOOD. Part of the problem of discipline in the schools is the widespread use of drugs. Hank Holley was very frank about that.

Are there a good deal of drugs in high school in Denver?

HANK HOLLEY [laughs]. Yes.

COLLINGWOOD. Hard or soft?

HANK HOLLEY. Both. I can—yeah, there's—there's a lot. I've seem more than my fair share, let's put it that way. I've seen quite—quite a few that I wish I wouldn't have.

COLLINGWOOD. You ever into that much yourself?

HANK HOLLEY. I have been. And like my sophomore year I don't think I spent a day straight. Always high, always smoking dope. Going out before class and after class. That—that was—that was my status.

BALLINGER. The youngsters that come to school that are in high school, by the time they're in high school at least 80% smoke marijuana regularly or—or have at least tried some kind of hard drug. This is a lot different from the education in the fifties, in the sixties. The seventies is different, and it's very difficult to work with these youngsters.

DR. BEZEINSKI. Discipline is the number one concern of Denver parents, as well as the rest of the country. It's a problem that we're trying to do something about. We've appointed a very high-level discipline committee composed of administrators, teachers, parents and students. We're examining the discipline policies and practices. Prior to my taking this position, no one had been expelled from the Denver public schools for two years.

CRONKITE. What is the public perception of discipline in the schools. Well, it's overwhelming critical. A CBS News poll finds that 84% of those who responded say that discipline is not strict enough. Only 4% say it is too strict.

Elementary and high schools are a steppingstone, a training ground, for the young peole of the United States. They determine what happens to the student when he or she goes on to a job or to college. How do the universities and the employers feel about today's high school graduates? Charles Collingwood has some answers.

COLLINGWOOD. Of all the test American students take, perhaps the ultimate one is that administered by the marketplace, which decides what kind of a job the skills he has learned qualify him for. In Denver, the Mountain Bell Telephone System is the largest private employer. Mrs. Connie Bragg, Mountain Bell's personnel manager, is not happy about the qualifications of the young people who apply for jobs there.

CONNIE BRAGG. Forty and fifty percent of the people who come in to take our entrance exams are unable to qualify.

COLLINGWOOD. What are the reasons for that? What—what—what are their deficiencies?

Mrs. BRAGG. Basically, I guess the prime deficiency is in the area of math. But in some cases it's just an inability to understand or comprehend language.

COLLINGWOOD. Do you attribute this to the schools that they've gone through, or to the society in general, or to their homes, or what?

Mrs. BRAGG. Well, I guess inasmuch as—as we charge the school system with—with training our—our young people, you have to put some of the blame there. But it's—it's difficult for me to say how much of that really is—is the education system's fault and now much is—is a—a home environment.

COLLINGWOOD. What kind of qualifications would you ideally like to see in those coming in to Mountain Bell?

Mrs. BRAGG. If I can use some old-fashioned terms, I would certainly like to—I'd want to say reading, writing and arithmetic. Those are very basic skills that you need to operate in—in the business world.

COLLINGWOOD. Business is not the only end user of the products of American high schools; so are colleges and universities. At the University of Colorado at Boulder, which enrolls many Denver high school graduates, the head of the English Department, Dr. Paul Levitt, and his colleague, Professor Elissa Guralnick, have been waging a campaign against the illiteracy of the students they get.

Professor ELISSA GURALNICK. Most of our students are not prepared to write college papers when they come to the university, college-level papers. They tell us that they haven't written papers in high school. They'll tell us that they've written one or two papers in high school, usually in tenth grade for some reason. They'll tell us that they can't remember writing in junior high school.

Dr. PAUL LEVITT: I'm persuaded that the writing has—has—has grown terrible in the last few years. And the only—the only evidence I have is that on occasion I go back to my files and I look at papers that were written for me in 1964, '5, '6, and they are, in fact, better written papers than the ones I am receiving now.

COLLINGWOOD. Dr. Levitt, you wrote once that many students in this university are only marginally literate. Now, what do you mean by "literacy", and how many are only marginally literate?

Dr. LEVITT. In order for a student to be literate at a university level, he has—he has to bring with him, or she has to bring with her, a body of knowledge. There has to be an assumed ex— experience for that student. For example, we assume that the—that the student can, at a very fundamental level, can read and write. We assume that the student can recognize names like William Shakespeare and Winston Churchill. We assume that if we are talking to student—students about a grammatical error in a sentence and we say that the subject and the verb do not agree, the student won't look at us and say, "What's a verb?" We have students who are coming to us who, when you say to them, "What is the subject of this sentence?" they say, "What's a subject?" And so we can't talk to them about literature. That is to say we can't make any assumptions. We can't mention the word plot, because they don't know what a plot is. We can't mention the word character because they don't know what a character is. We can't say the subject of the sentence because they don't know what the subject is. So finally I say they're marginally literate, and I'm being polite when I say that.

WALTER CRONKITE. Public education is bigger than ever in America. Almost 44-million youngsters go to public elementary and high schools. Many more now graduate than ever before. We spend almost $81-billion each year on their schooling, a record. More than one person in every four is involved in some way in education. There are more school books—more expensive, more glossy, more pictures; more kinds of instructional kits and gadgets to supplement the books; more than two million teachers getting more pay, some quite a lot more. And there's more criticism, more concern, more questioning whether our public schools are doing the job. Why? Some say it's the teachers.

Mr. RONALD SEVIER: I don't think the teacher today is nearly as dedicated as the teacher was twenty years ago.

Mr. ROBERT HOLLEY. Just kind—lose interest after a little while, and they're just there for—to be there from day to day.

Dr. DIANE RAVITCH [educational historian]. Studies have shown that an awful lot of time spent in school is not spent in classroom, and a lot of time spent in classrooms is not spent teaching or learning. It's spent moving around, shuffling papers, gabbing, rapping, whatever. This is not teaching and learning.

CRONKITE. It's not just the teachers and teaching that are criticized. It's the books and other teaching equipment. Instructional materials are big business, too.

JERROLD ZACHARIAS [Professor Emeritus, MIT]. The control of education is in the hands of the publishers now; a handful.

CRONKITE. And there's television. It has transformed the lives of most of us. Certainly it's impact on the lives and minds of the young has been revolutionary. How and why?

ERNEST L. BOYER [U.S. Education Commissioner]. Children are now watching television four to five thousand hours every—before they go to school.

DUKE SEVIER. I enjoy television. That's probably the funest thing besides sports that I do. Actually, I watch more TV than I do anything else in life.

BARBARA PIASCIK [teacher]. Television! I mean, kids are glued to the television set all day. They don't have to read a book the way I did when I was growing up, or the way you did when you were growing up.

CRONKITE. Teachers, textbooks, television. These are some of the reasons critics say are behind the decline in American public education. There are other reasons, ranging from a permissive society to a change in family structure and basic social values. They help to explain why today's public school pupils are not learning as well as they could, as well as they should. And the reasons why are the subject of our broadcast tonight.

CRONKITE. Good evening. For most of America's history our pride and our boast have been that our system of public education is second to none. But today, to many Americans the boast seems hollow and the pride is gone. Last night we presented a situation report on the state of the country's public elementary and high schools, with the focus on the school system of Denver, Colorado. What we found was an alarming number of high school graduates who could not read well enough to function in society, lack of discipline in the schools, absenteeism, and widespread complaints by employers and colleges that the young people who come to them are sadly unqualified. Tonight in this second of three broadcasts, we'll look at the reasons why.

In the teaching process, nobody's more important than the teacher, and most people are not very happy with today's teachers. In a CBS News poll, we found that only 26% of those who answered said that today's teachers were better than those of a generation ago; 35% said teachers were worse; and 39% said they were about the same, or they voiced no opinion.

My colleague Charles Collingwood has been looking into the reasons for what is at least a perceived decline in the quality of teaching and school administration.

CHARLES COLLINGWOOD. There are more than two million public school teachers in our elementary and high schools. How are they doing?

STUDENT. They don't push you to read and they don't push you or, if it's not part of the class, you're not going to read.

MOTHER. My son brought home a paper that had something like seventy mistakes on it that I caught. His teacher didn't bother.

ROBERT HOLLEY. No teacher has ever really told me that I have to do some homework or I'm going to fail the class.

STUDENT. If you have an assignment due—a writing assignment due on Friday, you turn in some words written on a paper, she grades it—marks it up. Who cares? You get an A.

COLLINGWOOD. "She's not teaching." "They don't push you to read." His teacher "didn't bother." It all seems to suggest that teachers are part of the problem. A study prepared for the College Entrance Examination Board suggests that, too. Secondary school principals reported that their teachers today are less dedicated, have less desire to enforce high academic standards, are more permissive, spend less time outside the class with the students, and place less emphasis on classroom discipline than did their counterparts in 1965. They also hold more degrees. There are 61 percent more M.A. degrees or the equivalent than back in the early sixties, when test scores were at their peak.

Their defenders say teachers are better than ever.

JOSEPH A. CALIFANO, JR. [HEW Secretary]. I think that its—it's very easy for any of us at any point in time to say, "Well, my child is not learning because the teacher isn't good." I think schools by and large do a better job than they're given credit for, and I think teachers by and large do a better job than they're given credit for.

CULHANE. Do children watch too much television? Is that why they seem to be learning less? Many teachers and psychologists think that television is having a negative impact on the education of children. Indeed, some authorities say television is one of the main culprits. They are not talking only about too much violence and sex, too many candy commercials, and the reinforcement of racial and male-female stereotypes on TV. What they are saying is this: first, that children watch so much television that it becomes a thief of time, time that would be better spent reading or writing; and second, that there may be something inherent in the act of watching television that is detrimental to the educational process.

And the critics are talking about all television—good television, bad television, commercials, cartoons, educational TV—whatever children watch, and they watch everything. By the time children get to the first grade, they will have watched, on the average, more than 4,000 hours of TV. And by the time they graduate from high school, they will have expended more time watching television than they spent in the classroom, or indeed on any activity except sleeping.

ERNEST L. BOYER. There's an up side to television. It has traveled around—caused children to travel around the world through some of our marvelous specials. They've gone to the bottom of the ocean, to the top of our greatest mountains. They understand chemistry, and we've seen the moon. And we've looked at Earth from outer space. I just think it has had a marvelous expansion of our understanding of the nature of the world we live in and our relationships to it. So I think its force has been exciting, in my view, as well as—as somewhat destructive to formal education.

CRONKITE. In case you hadn't noticed, there's been a lot of finger-pointing in this hour, and I think we've shown there's plenty of blame to go around. The teachers: they're the key, but they place the blame on society, not themselves. And they're not altogether wrong, nor are they all that right. They're better paid than ever, better protected by unions than ever, hold more degrees than ever, but they do not do a better job than ever. If children are tuned out, so are many of their teachers.

Teaching materials are, we have heard, glossier and jazzier than ever, but are they better than ever? They talk down to students who cannot read and write as well as they used to, but that just perpetuates the vicious cycle we were told of.

Poor discipline—society's fault. That means everybody's fault, and nobody's. But our conclusion is that permissive parents and timid school administrations have to shoulder a lot of the balme.

Television. Well there seems no question that too many children look at television too much. And when they put on their statesmen's hats, many leaders of our industry agree, even if they dispute the criticisms that TV viewing shortens a child's attention span or makes him a passive participant in the world around him. Whose fault is too much TV? The parents? Sure. But what if the parents are busy or indifferent or incapable. What if they're not there?

Tomorrow night we'll search for some answers to the questions we have raised. If our schools do not teach our children as well as they should, what can we do? As we say in our trade, stay tuned.

WALTER CRONKITE. Good evening. On the first two broadcasts of this series, we talk about some of the problems facing American education, and some of the reasons those problems came into being. Tonight, we'll look at some proposals for improving our schools—experiments that are now under way in many parts of the country. Some appear to be working well; some are having difficulties. But there are lessons to be learned from all of them.

One proposed solution is called "minimum competency testing". It's been described as the hottest growth stock form of competency testing. In half of those, the test must be passed before a high school diploma can be issued. Our CBS News poll indicates how popular that idea has become: 82% of those polled favor requiring high school students to pass a standard test before graduation. But does that system produce results? Charles Collingwood reports on one example.

CHARLES COLLINGWOOD. The program here in Denver is the oldest in the country. It's been in operation 18 years now. Denver calls the tests P & R tests—proficiency and review—and they're given in four subjects: arithmetic, spelling, grammar and reading. A student must pass all four to qualify for a high school diploma. Otherwise he can graduate, but he gets only a certificate of attendance. And does this guarantee a good education? Some here say it does not. They argue that high school seniors are being tested at about a sixth grade level.

STIRLING COOPER [teacher]. I smile to myself when I hear this praise nationally about Denver's courage in giving a test. Sure, we've got courage; but, boy, do we have problems. We now have the courage to get kids up to the sixth grade level and give them a diploma for 12 years.

DR. JOSEPH BRZEINSKI [Superintendent, Denver Public Schools]. All the test does—and we've never tried to say that it does any more than this—is to ensure minimal competencies in reading, language, spelling and mathematics. It was certainly never intended to be the hallmark of an educated man or woman.

COLLINGWOOD. The fact of the matter is that almost all of Denver's high school seniors pass the test. But they don't necessarily pass it the first time. It's first given in the ninth grade, and students who fail can keep trying in later years. They can even come back after graduation and try again.

TEACHER. Do you have any questions?

STUDENT. No, I'm—been through it a couple of times, so I know what's happening.

TEACHER. Okay.

COLLINGWOOD. Some 40% of the students fail the test the first time, but all but two to four percent have passed it by graduation time. Should the tests be made more demanding?

Dr. BRZEINSKI. Now it's possible to change that standard. And there has been some criticism as to the level of competency demanded by that test. It's very possible to change that standard. It depends whether you expect the schools to become a sorting institution for society. We could put those requirements through changing the score that is required, so that only 50% of our students could get a high school diploma. I'm not sure society is ready to pay that price or to deal with that social dynamite that would exist.

COLLINGWOOD. There are other questions about the minimum competency tests. Can multiple choice exams graded by computer measure the true abilities of a student? Who decides what competencies to test? What do you do with those who fail? And when should the test be given?

ERNEST L. BOYER [U.S. Education Commissioner]. Testing should be done to keep children in school, not to force them out. So I would like to see testing start earlier, especially on the skills that we've mentioned, so that the progress can be measured. And if a young person is not moving forward, you can make changes before it's too late.

COLLINGWOOD. As a matter of fact, Denver began a pilot program this year to develop competency testing as early as the third grade. The results would be used by teachers in the next grade to give special help where needed. Across the country there seems to be a trend toward early testing. Those who favor minimum competency testing say it will force the schools to do a better job. Skeptics reply that's not necessarily true; it

depends on how the tests are designed, and how the results are used.

CRONKITE. So far tonight, we've been talking about what our schools can do for us. Perhaps it is time to talk about what we can do for them.

ERNEST BOYER. Very often the school reflects what the community is facing. And I think the—the lack of influence on the home has been a serious problem. If the parents are not deeply engaged in the school—helping the children read, encouraging homework, turning off TV occasionally—the school cannot do it all alone.

CRONKITE. Many Americans do read to their children. Educators believe that's important, not only because the child is learning to read; he's also learning that education is taken seriously in his family. That will be reinforced later on if his parents show they care about his homework assignments and study hours, and if they keep in touch with his teachers and counselors. One school believes there is much more parents can do. Barry Serafin reports.

BARRY SERAFIN. Just over one thousand children attend Hunt Valley Elementary School in Springfield, Virginia. What makes this school unusual—and, according to everyone involved, what makes it particularly successful—is the fact that hundreds of parents don't just drop their children off here each morning; they join them in the classroom.

STUDENT. . . . thirteen, fourteen, fifteen.

PARENT. Okay. Fifteen times three. Help her out.

SERAFIN. This woman is not a teacher. She's a parent. Several years ago the Hunt Valley school and the local PTA began a program under which parents help out teachers in the classroom. This year 467 parents volunteered nearly 4,000 hours of their time. For example, they help in the reading lab, of which the school is particularly proud. The lab is not just for slow learners, but for every student from the third grade on. Tests indicate that students make two-month gains for every month spent in the program, and more than 90 percent perform at or above their expected reading levels. Reading instructor Mike Matta says such results would be impossible without the parent's help.

CRONKITE. Charles, in the first two hours of this series we looked at the problems of our schools. And in this hour we've shown a whole array of solutions. We'd like now, before we sign off, to review both problems and solutions.

The biggest problem, at least as the public perceives it, is that the schools have strayed too far from the basics of learning; that we don't adequately teach reading, writing, mathematics.

COLLINGWOOD. And the solutions to that seem clear, at least in outline: a thorough review of curricula and courses; perhaps some reduction in the number of elective subjects, and certainly elimination of the softest electives; re-emphasis above all in courses that require writing; homework assignments that require both reading and writing.

CRONKITE. The second problem that bothers people most is the lack of discipline in our schools. You can't learn if you or those around you don't behave. And the problem's compounded by the fact that the schools are part of a more permissive society. You can't expect them to be enclaves of discipline in an increasingly undisciplined world.

COLLINGWOOD. One solution to discipline problems is simply better schools. We've seen that when a learning environment that stimulates students exists, discipline tends to take care of itself. In addition, teachers and administrators need greater community support to enforce discipline. And in that I would include fewer legal constraints upon them.

CRONKITE. Another problem that really bothers people is promotion from grade to grade whether or not the student deserves it. And a sort of corollary, what is called grade inflation. We've seen that youngsters get into honor societies even if they can't read or write adequately.

COLLINGWOOD. Again, Walter, we have seen solutions: tougher tests, tougher grading. Don't just pass student if they don't pass the tests. But that has to be accompanied by other things: starting testing and remediation in the earliest grades; remedial programs quickly, when it's seen that a student isn't up to standard. Don't wait until the higher grades until it's too late. And second, alternative education programs for those youngsters who, with the best teaching in the world, cannot or will not do well with a conventional curriculum.

CRONKITE. Another problem we've seen is with teachers. Too many of them are simply not as good as they should be.

COLLINGWOOD. Here again we've had solutions pointed out to us: competency tests for teachers before they enter the system; closer review of their records once they're in it; on the job training; and special training for teachers who work in the inner cities.

CRONKITE. And there's the problem and the opportunity called television. We can certainly not ignore the fact that critics say we've not lived up to our responsibilities: that too much of what appears on TV is simply not suitable for young viewers. And that too much television watching of any kind can interfere with education. But at the same time, TV is very much a fact of our lives. It's not going to go away. And it can be used both in and out of the classroom to enhance the learning process.

COLLINGWOOD. Again, there are indicated solutions. First, most obviously, stricter parental control of TV viewing. Second, encouraging teachers, many of whom become set in their ways, to use television and not just fight it. Certainly they should try to make full use of the best programming now available for young people. And third, though it hardly falls within the scope of these broadcasts, better overall television programming for young people.

CRONKITE. What we can say at the end of these three hours is that our children deserve a better education than they are now getting. They deserve better from their teachers, their school administrators and boards of education, their textbooks, the television industry. And most of all, they deserve better from us, their parents, and from the whole society.

For Charles Collingwood and me, good night.

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## FEDERAL PROGRAMS SUPPORTING EDUCATIONAL CHANGE, VOLUME VIII: IMPLEMENTING AND SUSTAINING INNOVATIONS

### SUMMARY

*Background*

Federal financial aid now makes up an important fraction of many local school district budgets, but its effectiveness in improving local educational practices is uncertain. Federally sponsored evaluations reveal inconsistent and generally disappointing results, and, despite considerable innovative activity on the part of local school districts, the evidence suggests that:

No class of existing educational treatments has been found that consistently leads to improved student outcomes (when variations in the institutional setting and non-school factors are taken into account).

"Successful" projects have difficulty sustaining their success over a number of years.

"Successful" projects are not disseminated automatically or easily, and their "replication" in new sites usually falls short of their performance in the original sites.

Consequently, although federal support for local school services has become well established, the "decade of reform" that began with ESEA has not fulfilled its expectations, and questions continue to be raised about what might be the most appropriate and effective federal role in improving the public schools.

To aid in reexamining federal education policies, the U.S. Office of Education awarded a contract to The Rand Corporation to study a national sample of educational innovations funded by federal programs. The study aimed to help improve federal change agent policies by describing how the process of innovation works in its local setting, and by trying to discern what factors affect the innovative process and its outcomes. This report reviews the findings of Rand's research.

*Study design*

Rand conducted a four-year, two-phase study. The first phase (July 1973 to July 1975) studied local innovations during their last or next to last year of funding by federal change agent programs and the research focused on the initiation and implementation of these local projects. Four federal programs were identified by USOE to be included in Phase I of the study: Elementary and Secondary Education Act Title III (now a part of Title IV-C), Innovative Projects; Elementary and Secondary Education Act Title VII, Bilingual Projects; Vocational Educational Act, 1968 Amendments, Part D, Exemplary Programs; and Right-to-Read. These change agent programs had a common purpose: the stimulation and spread of educational innovations. They also had a common policy instrument: the provision of temporary funds (3 to 5 years) which, although small relative to the budget of a school district (ranging from grants of $10,000 or less to several hundred thousand dollars per year), were intended to fund new educational services, not to support existing practice. A sample of 293 local projects funded by these four federal programs was drawn from 18 states. Field studies were conducted at 29 projects, and 1,735 personal interviews were conducted with staff at all levels in the school districts for all 293 projects.

Phase II of the study (August 1975 to April 1977) examined what happened to innovative projects after the end of the federal funding period (of 3 to 5 years). Accordingly, two years after the initial field research, Rand restudied a sample of approximately 100 of the projects, originally funded under Title III of ESEA. Fieldwork was conducted in 18 school districts, and 1,343 district staff were surveyed in 100 sites. By thus studying local innovations one to two years after the end of federal funding, we were able to explore the longer-run effects of the federal policy of providing "seed money" as a means to promote educational improvement.

This research was exploratory. Consequently, the analysis is subject to methodological reservations, and the conclusions are open to rival interpretations. These caveats notwithstanding, we believe the research sheds light on how innovation works and on the factors affecting educational change.

### Findings About the Effects of Federal Programs

We examined two questions relevant to the effects of the federal programs:

How did the "seed money" policy common to the change agent programs affect local projects?

Were the differences in guidelines and objectives among the federal programs reflected in their projects' implementation and continuation?

We found that federal change agent policies had a major effect in stimulating local education agencies to undertake projects that were generally consistent with federal categorical guidelines. This local response resulted from the availability of federal funds

and, in some programs, from guidelines that encouraged specific educational practices.

But the adoption of projects did not insure successful implementation; moreover, successful implementation did not guarantee long-run continuation. Neither those policies unique to each federal program nor those policies common to them strongly influenced the fate of adopted innovations. The net return to the federal investment was the adoption of many innovations, the successful implementation of few, and the long-run continuation of still fewer (with the exception of the special case of bilingual projects, where federal and state funding continues to be available)

All the federal programs had funded some successfully implemented projects as well as dismal failures and many projects in between. The difference between success and failure depended primarily on how school districts implemented their projects, not on the type of federal sponsorship. The guidelines and management strategies of the federal change agent programs were simply overshadowed by local concerns and characteristics.

Similarly, "more" money supplied by federal funds did not necessarily purchase those things that mattered; it did not "buy," for example, more committed teachers, more effective project directors, more concerned principals, and so on. In other words, project outcomes reflected not the amount of funds available, but the quality and behavior of the local staff.

This is not to say that "federal money doesn't matter." Federal seed money allowed some districts to undertake activities that their staff were anxious to pursue but that could not be supported out of district funds. Moreover, federal funding has bestowed legitimacy on local projects and given them the aura of "special status," which can provide some measure of "protection" for politically controversial or pedagogically untested educational practices.

Yet few districts in our sample planned for the long-term stability of projects. The end of federal funding generally resulted in a reduction of resources, particularly expensive ones. Many districts complained of insufficient resources to carry on project activities, although the financial requirements for project continuation could have been foreseen and planned for from a project's inception. Instead, budget and personnel decisions typically perpetuated the "special project" status of innovations, thereby leaving them particularly vulnerable to the financial and political fortunes of the district.

While the overall effects of federal policy may be disappointing, the positive results should not be overlooked. Some local projects worked well, and from these successes, we can identify factors that determine the fate of innovations.

Factors Affecting Implementation and Continuation

In addition to analyzing the effects of federal policies, we examined how characteristics of projects and school districts affect the outcomes of innovations. We studied the projects' educational method, resource levels, scope, and implementation strategies; the district characteristics we analyzed were school climate and leadership, teacher attributes, and district management capacity and support. We found:

1. *Eaucational methods.* A project's methods determined its implementation, effect, and continuation to only a small and limited extent. This is so because projects with essentially the same educational methods can be, and usually are, implemented very differently and thus with varying effectiveness. In short, what the project *was* mattered less than how it was done.

2. *Project resources.* More expensive projects were generally no more likely than less expensive ones to be effectively implemented, elicit teacher change, improve student performance, or be continued by teachers. Nor did variations in the number of project schools per district or in the funding per student strongly affect project outcomes in most cases.

3. *Scope of project.* Ambitious and demanding innovations promoted teacher change and teacher continuation of project methods without necessarily causing unmanageable implementation problems or diminishing gains is student performance. Teachers must clearly understand their project's goals and percepts; such clarity comes during implementation. We doubt whether projects aiming at significant change can be effectively implemented across a whole school system at once.

4. *Implementation strategies.* Implementation strategies are the local decisions and choices, explicit or implict, on how to put the innovation into practice. We found that these strategies could spell the difference between success or failure, almost independently of the type of innovation or educational methods involved; moreover, they could determine whether teachers would assimilate and continue using project methods or allow them to fall into disuse. The following strategies were frequently *ineffective* because they were not consonant with the conditions of school district life or with the dominant motivations and needs of teachers:

Outside consultants.
Packaged management approaches.
One-shot, preimplementation training.
Pay for training.
Formal evaluation.
Comprehensive projects.

Effective strategies promoted *mutual adaptation,* the process by which the project is adapted to the reality of its institutional setting, while at the same time teachers and school officials adapt their practices in response to the project. Effective strategies provide each teacher with necessary and timely feedback, allow project-level choices to be made to correct errors, and encourage commitment to the project. The following were effective strategies, particularly when applied in concert:

Concrete, teacher-specific, and extended training.
Classroom assistance from project or district staff.
Teacher observation of similar projects in other classrooms, schools, or districts.
Regular project meetings that focused on practical problems.
Teacher participation in project decisions.
Local materials development.
Principal participation in training.

5. *School organizational climate and leadership.* Three elements of a school's organizational climate powerfully affected the project's implementation and continuation—the quality of working relationships among teachers, the active support of principals, and the effectiveness of project directors. The importance of the principal to both short- and long-run effects of innovations can hardly be overstated. The principal's unique contribution to implementation lies not in "how to do it" advice better offered by project directors, but in giving moral support to the staff and in creating an organizational climate that gives the project "legitimacy." The principal's support was also crucial for continuation. Teachers were unlikely to continue a full array of project methods without the sanction of their principal, even if the methods were successful and had been assimilated. Moreover, after the end of federal funding, many districts took a laissez-faire attitude of letting the principals decide the fate of the project within their schools. Unless principals actively promoted the project, particularly in regard to seeking district financial support and replacing staff that moved elsewhere, even "successful" projects could wither away. All told, the principal amply merits the title of "gatekeeper of change."

6. *Characteristics of schools and attributes of teachers.* Change was typically harder to obtain and continue at the secondary level. Three teacher attributes—years of teaching, sense of efficacy, and verbal ability—significantly affected project outcomes. The number of years of teaching had *negative* effects: the longer a teacher had taught the less likely was the project to achieve its goals, and the less likely was the project to improve student performance. Furthermore, teachers with many years on the jobs were less likely to change their own practices and less likely to continue using project methods after the end of federal funding. The teacher's sense of efficacy—a belief that the teacher can help even the most difficult or unmotivated students—showed strong positive effects on all outcomes, where as teachers' verbal ability had a positive correlation only with improved student achievement.

7. *District management capacity and support.* Districts differ sharply in their capacity to manage change agent projects and in their receptivity toward them. Though we could not measure these factors with precision, our observation and interview data leave little doubt as to the importance of constant and active support from LEA officials and specialized staff for the project's short-run outcomes and especially its long-run fate.

*Implications for Federal policy*

Our research suggests that federal policy has often been based on misconceptions about the reality of school districts and the factors that produce change in their organizational and educational practices. Correct assumptions would not, of course, automatically improve policy effectiveness, because any policy may be poorly implemented. But faulty assumptions—indeed even one faulty assumption among otherwise good ones—can lead to ineffective and counterproductive programs. Federal policy to date has largely been based on a research and development point of view—that the federal government should develop new technologies, provide incentives for their adoption, and introduce these technologies into school districts by projects that were targeted, and thus accountable. In a very real sense, school districts were thought of as "black boxes." Federal "inputs" would be supplied to change and control district behavior so that a desirable educational "output" could be achieved. This R&D point of view was embodied in the following assumptions:

1. Improving educational performance requires innovative educational technologies.

2. Improving educational performance requires the provision of missing resources to school districts.

3. Improving educational performance requires a targeted project focus.

We believe that federal officials should set aside the largely ineffective R&D point of view. Instead, they might consider an approach that assumes school districts are ultimately responsible for improving their own performance but require both short- and long-run aid to achieve this end.

School districts need institutional assistance, but an institutional development strategy can work only if federal officials identify those aspects of the local change process and of district organizational characteristics where federal resources and influence can be effective. The following premises might provide building-blocks to formulate this point of view:

1. Educational performance could be improved if more attention were paid to all stages of the local change process.

2. Educational performance could be improved with adaptive implementation assistance.

3. Educational performance could be improved if the capacity of school districts to manage change were enhanced.

These premises, as well as mode specific recommendations suggested in the report, direct attention to areas that federal policy has tended to neglect. For example, they suggest that local adoption of projects should not be the sole federal policy focus; that federal efforts to improve the change process within school districts should take precedence over their past concern with improving educational products; that federal evaluators should expect and encourage the adaptation of programs to suit local needs; that the federal government should promote local institutional development in addition to more targeted project approaches; and that federal legislation should establish ways to provide more differentiated and flexible support to school districts. In short, these premises suggest a shift in the federal role toward the process of educational change, which might well imply a strengthened role for state educational agencies. We believe that policy should reflect the assumption that state education agencies are potentially better suited than federal agencies to influence and provide opportune assistance to school districts.

Mr. PROXMIRE. Mr. President, I point out that that splendid TV program should be included in the RECORD because, of course, it is highly perishable, and if it is not preserved in some way it is hard to refer to.

## LAWYERS, HUMAN RIGHTS, AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it should come as no surprise that, in the three decades since the Genocide Convention first came before the Senate, almost no one has objected to the treaty on principle. No, opponents have always rested their case on supposed legal shortcomings of the document.

That is why February 27, 1976, was such an important day in the history of the Genocide Convention. On that day, the secretary of the American Bar Association, Mr. Herbert D. Sledd, wrote a letter to my colleague, Senator SPARKMAN. The letter notified the Senate that the ABA's House of Delegates had voted at their February 1976 meeting to support the Genocide Convention. With opponents placing so much weight on the legal drawbacks of the treaty, the support of this distinguished body, the representative of the legal profession in America, was particularly heartening.

It is really not surprising that the American Bar Association should take such an enlightened, humane position on this crucial human rights treaty. In fact, the ABA has consistently recognized its peculiar responsibility to advocate the cause of human rights across the globe.

Let me mention just one recent example.

In May 1977, shortly before assuming his duties as president of the American Bar Association, Mr. William B. Spann spoke before the 20th conference of the Inter-American Bar Association, on the topic "Lawyers and Human Rights." Mr. Spann stated unequivocally the role lawyers must play in advancing human rights.

"There can be no doubt," he said, "where lawyers' responsibility as professionals lies in regard to human rights. They have a very special obligation to assert themselves in their behalf."

Mr. President, how is it that lawyers have a responsibility to human rights? What about their profession obligates them in this way?

From Plato and Cicero down to Rousseau, the great thinkers of Western civilization have known that for a society to be good, it must first have good laws. But they knew also that good laws are to no avail if not vigorously, scrupulously upheld.

Mr. President, the lawyer's obligation is twofold: To labor for good laws, and to make certain that the law is upheld.

This obligation comes through crystal clear when we consider human rights. These rights are so fundamental that any law abusing them is clearly a bad law, and any action denying them is clearly unlawful. Much of the responsibility for making certain that human rights receive the protection of the law, both in theory and in fact, must logically fall on the legal profession itself.

Mr. President, if we are ever to have peace and justice in the world, we must enact just, humane laws, and we must be vigilant in their defense. We need to make the protection of human rights a reality instead of an empty platitude. The Genocide Convention is an important step in that direction.

The support of the American Bar Association, and of clear-sighted individuals like William B. Spann, makes it all the more likely that we will soon take that step, and many more afterwards, toward safeguarding the human rights of all the world's people. With their help, and the help of all those who revere good laws and labor to make certain the law is good, we can enact just laws and make them stick.

The American Bar Association stands behind the Genocide Convention. What more assurance do we need?

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CANNON). Without objection, it is so ordered.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

## PRIVILEGE OF THE FLOOR

Mr. JACKSON. Mr. President, I ask unanimous consent for the privilege of the floor in connection with the conference report which will be called up shortly on the natural gas pricing bill, H.R. 5289, for Charles Gentry, of the Budget Committee staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I ask for the privileges of the floor during the consideration of the Natural Gas Pricing Act conference committee report for Barry Direnfeld, Rick Wilson, Roy Meyers, Dan Grady, and Rick Sloan.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. I yield to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I ask unanimous consent that the following staff members be given floor privileges during the consideration of and voting on H.R. 5289, the natural gas conference report: Fred Craft, Danny Boggs, Dave Swanson, Tom Imeson, Carol Sacchi, Rose Fillingane, Ted Orf, Chuck Trabandt, Nolan McKean, Peggy Kimbrough, and Judy Foley.

The PRESIDING OFFICER. Without objection, it is so ordered.

## NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

Mr. JACKSON. Mr. President, pursuant to the previous unanimous consent agreement, I submit a report of the committee of conference on H.R 5289 and ask for its immediate consideration.

Mr. HANSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. CANNON). The report will be stated.

Mr. HANSEN. As I understood the Senator, he stated——

The PRESIDING OFFICER. First, the clerk will report.

Mr. HANSEN. The Senator said "according to the previous unanimous-consent agreement."

Mr. JACKSON. That I be recognized.

Mr. HANSEN. All right; no objection.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing vote of the two Houses on the amendment of the House to the amendment numbered 8 of the Senate to the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Florida, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection? Without objection, the Senate will proceed to the consideration of the conference report.

Mr. JACKSON. Mr. President, the Senate today begins to consider the conference report on the Natural Gas Policy Act of 1978.

We do so at a critical time for national economic and energy policy. Rightly or wrongly, events have made congressional action on natural gas policy a serious test of our ability to deal with major

national problems and halt the erosion of confidence in our economic and political institutions.

I have participated in debates over natural gas pricing policy for 25 years in the Senate. For the past 18 months I have devoted the largest part of my time to the prolonged, painstaking and—at times—painful deliberations which produced this compromise.

I do not ask my colleagues to approve this conference report on the vague grounds of national interest or to satisfy the demands of world opinion.

If this bill is not a major step forward toward a sound natural gas pricing policy, we should defeat it. If it is not a vast improvement over the shambles of a regulatory system we have in natural gas today, we should defeat it.

I am convinced that the natural gas conference report is a sound compromise that will be good for the Nation and that we must pass it.

It will increase supplies of our premium fuel for the Nation's consumers while providing price certainty and new markets for the Nation's producers. Even the act's opponents do not dispute the critical fact that substantial additional quantities of natural gas will flow into the interstate market at prices below that of displaced alternate fuels if this bill is enacted.

The fact is that the conferees have agreed on legislation dealing in a definitive way with a central issue of energy policy—natural gas pricing—which has gone unresolved for a quarter of a century.

We are proposing a natural gas pricing policy to replace the increasingly unworkable, antiquated system we have today.

We are proposing a policy which opens the interstate market to producers, allowing gas now backed up in the intrastate market to flow into the interstate market, where it is sorely needed.

We are proposing a policy which concentrates the rewards of higher prices where they are most needed—on the development of new, high-cost gas.

We are proposing a policy which would, through incremental pricing, protect the residential and small commercial consumers who most need protection from excessive price increases.

We are proposing a policy which assures the privately-financed construction of the Alaska gas pipeline to bring 0.8 trillion cubic feet of production to domestic markets in 1985.

We are proposing a policy which, by opening Alaskan production and stimulating greater production in the lower 48 States, could increase interstate gas supplies by 30 percent by 1990.

We are proposing a policy which could, by 1985, reduce our dependence on high-cost foreign oil by 1 million barrels a day, saving more than $5 billion a year in our balance of payments.

Mr. President, over the past few weeks this conference compromise has been subject to attack from all sides. Consumer groups argue that it will set prices too high. Producers contend that prices will be too low. Many critics contend that the bill is unworkable, that it would cost billions more than no bill, that the status quo is far preferable.

As debate on the conference report begins, I will address two issues—whether the bill will work and produce new supplies, and whether it will cost consumers more than no bill at all. I plan to discuss incremental pricing in some detail later during the debate.

(Mrs. HUMPHREY assumed the chair.)

Mr. JACKSON. Madam President, the virtues of the status quo are worth examining in light of two basic criticisms: that the bill is unworkable and cannot be administered and that it will cost billions more than a continuation of present law.

Everyone has heard of the 17 or 18 or 22 categories of natural gas this legislation creates. But counting categories is a simplistic exercise which should be taken with a grain of salt.

According to the Independent Gas Producers Committee:

> The definitions of each category are clear cut, and should not be difficult to apply. New discoveries and new reservoirs qualify for the new gas price. A special incentive development price is available for bona fide reservoir extensions. Stripper wells qualify for a higher ceiling price, and high cost gas is deregulated in one year. Flowing gas prices are not affected until existing contracts expire.

That is it.

Most of the categories of natural gas in the conference report result from the differences between the House and Senate new natural gas definitions. Our objective was to target the revenues a producer can expect to receive from production from a given well. We wanted to elicit the maximum supply response at a minimum cost to consumers. For example, the most expensive kinds of wells to drill, those over 15,000 feet in depth, are deregulated in 1 year. So is natural gas produced from Devonian shale, methane gas from coal seams, and natural gas produced from geopressurized brine. Because production from these categories will be very important in our long-term natural gas supply picture, they deserve the maximum economic incentive. Gas produced from 15,000-foot wells represents 500–600 trillion cubic feet of potential; methane gas from coal seams represents 300–800 tcf; and geopressurized zones represent 3,000–50,000 tcf. The short-term supply response may be minimal, but the long-term potential is great. These were perfect candidates for the maximum price incentive.

As the Independent Gas Producers Committee puts it, "Although this process (of creating different categories) tended to make the bill more complicated, it also allowed the conferees to achieve a bill that will encourage production while protecting consumers from paying unnecessarily high prices for gas that they could expect to receive at lower prices under current policies."

Yes, Madam President, the legislation is complicated. But it works. And, more importantly, it works far better than existing law.

The existing system is, in my opinion, even more complicated than the conference report. Intrastate producers are generally unregulated, and are subject to a fickle market which is increasingly satiated and unable to expand to accommodate new supplies.

The interstate market price system is a patchwork quilt of various Federal Power Commission and Federal Energy Regulatory Commission, opinions, rules, and orders, I submit that if we could project the situation that would exist in 1985 without new legislation, there would be many more categories of natural gas under the Natural Gas Act than there are under this act. The chart of the interstate market in 1985 would be even more complicated than the chart of the conference report. Let me describe it.

First, you would have five pre-1978 "vintages." When the FPC allowed prices to increase for new natural gas, it did not necessarily allow prices to increase for old flowing natural gas. So you already have FPC opinion 749, which establishes a ceiling price for certain vintages of natural gas; then the rollover opinion which establishes another ceiling price for certain vintages of natural gas; then FPC Opinion 699 for recompletions which establishes yet another ceiling price for certain vintages of natural gas; then the 1973–74 vintage, which is yet another ceiling price; then the famous Opinion 770–A ceiling price for the 1975–76 vintage, which is yet another vintage. Second, you would have all of the 1978–85 vintage prices. Any FERC price decision issues between 1978 and 1985 will be open to question and will certainly be subject to challenge, and Commission review, and court review, by consumer groups, or farmer groups, or producer groups, or a combination of all groups.

Then, of course, one must consider emergency sales, and limited-term certificates, and the optional procedure, and the direct sales to a qualified industrial user under order 533, and the special relief procedures. And, of course, there is nothing to preclude the Commission from establishing new forms of cost-based pricing under the just and reasonable standard of the Natural Gas Act. And do not forget the special proceeding that would be necessary to establish the wellhead price for Prudhoe Bay gas. And so on and so forth. Based on past experience, FERC could be expected to establish at least one, and perhaps two or three, additional categories or vintages of gas every 2 years as it attempts to adjust the current system within the constraints of the Natural Gas Act to bring more gas into the interstate market.

It is easy to count the number of categories under the conference report. But it is very misleading to imply there will be fewer categories by 1985 under the Natural Gas Act. It is also easy to complain about the new litigation that will result under the new legislation. But that is misleading, too, unless you also account for the litigation that will be inevitable under the Natural Gas Act during the same period.

Is this the simple status quo that critics of the conference report seek to maintain?

COST OF STATUS QUO VERSUS COMPROMISE

Consider also the costs of continuing

under the status quo, as opposed to the costs of the compromise.

There are two ways of looking at the cost of the proposed legislation. One way examines the revenues that will be paid to producers between now and 1985. The other way examines the consumer cost between now and 1985. Obviously if you produce more natural gas under the compromise than you would under present law, the producer will have greater revenues.

But producer revenues should not be confused with consumer cost. The measure of consumer cost compares what consumers would pay for the energy supplies by natural gas with what consumers would pay for energy supplied from other sources if natural gas is not available.

In order to project either producer revenues or consumer cost for years to come, it is necessary to project what would happen to natural gas wellhead prices under existing law, without the legislation, and what would happen with the legislation. This crystal ball approach is hazy, at best, but it is a useful tool for assessing the consequences of no legislation.

I need to stress the importance of looking at the assumptions that are made about the future of natural gas prices without any legislation and the supply response projected to occur under the legislation before attempting to compare various cost estimates.

If you assume that the FERC will not raise interstate ceiling prices for natural gas, and that intrastate prices will also remain constant, the proposed legislation could cost $9 billion more in producer revenues than the status quo. The consumer cost of the proposal would be only about $1 billion with those assumptions, because consumers would pay nearly $8 billion less to foreign sources for heating oil, liquefied natural gas, and imported natural gas due to increased supplies of domestic gas. These are the assumptions and statistics used by the staff of the House Subcommittee on Energy and Power in analyzing the conference report.

Quite frankly, I do not agree with those assumptions. It is not reasonable to assume that FERC will keep interstate natural gas prices constant; nor is it reasonable to assume that intrastate prices will not increase.

If you assume that FERC will allow interstate prices to increase at a rate equivalent to projected increases in the cost of fuel oil, and that intrastate prices will increase at a similar rate, projected producer revenues would be $5 billion less with the proposed legislation than under the status quo. These are also statistics used by the House Subcommittee on Energy and Power which I believe are more reasonable ones.

Consumer group analysts assert that the proposed legislation will cost $35 to $55 billion more than we would pay—under the very generous House bill which is $21 to $41 billion more than the status quo—if we stick with the current gas price control law and the current law is fully enforced by the brandnew Federal Energy Regulatory Commission. Their analysis assumes there is no real price increase in interstate natural gas prices. They also assume that FERC is able to fully enforce the Natural Gas Act and in doing so control the price of old intrastate natural gas at the same price as old interstate natural gas. Intrastate rollovers would be limited to the same rate that interstate rollovers are allowed by the FERC.

In my view, their assumptions are simply unrealistic. The consumer groups have petitioned FERC to exercise authority under a nondiscrimination provision in the Natural Gas Act which they believe enables the Federal Government to control intrastate natural gas prices at the wellhead. I must say, Madam President, it is a novel legal theory and I give them credit for their idea. But even if FERC did grant their petition, it would no doubt be subject to challenge in the courts and the results would be tied up in litigation for years.

Indications are that even the friendliest circuit court of appeals the consumers could hope for, the District of Columbia Circuit Court of Appeals, would not accept their argument.

In a recent opinion, the court said that the plea "that intrastate sales be regulated, is a plea that must be addressed to the legislature. The courts cannot provide the relief desired." *American Public Gas Association et al.* v. *Federal Energy Regulatory Commission*, No. 75-2105, D.C. Cir., May 10, 1978.

But even if the consumers could convince the court to change its mind, and decide that the Natural Gas Act does provide authority to regulate intrastate prices, I doubt that it would roll back existing intrastate prices to interstate price levels. Under close scrutiny, the consumer groups' price projections simply do not hold up.

In sum, Madam President, this bill does not gouge consumers and cost them untold billions of dollars. Even conservative assumptions show it will cost consumers no more than $1 billion more than existing law between now and 1985. And more realistic assumptions show that it will save—not cost—consumers substantial amounts of money.

President Carter's National Energy Act has been before the Congress for 16 months. Those 16 months have been difficult ones.

Madam President, the time to act is now. The proposed legislation deals head on with the massive distortions of the dual market system for natural gas. It will produce more natural gas, at less to consumers, than no bill. It will provide producers with the certainty they need to make investment. It will decrease our balance of payments problems by reducing the amount of crude oil that we import.

I urge adoption of the conference report on H.R. 5289, the Natural Gas Policy Act of 1978.

(Mr. BAYH assumed the chair.)

Mr. BARTLETT. Will the Senator yield for a question?

Mr. JACKSON. Yes.

Mr. BARTLETT. The distinguished chairman of our committee has been very closely associated with this conference report for some time.

My question is, Would the Senator classify it as a deregulation proposal, or conference report, or as a regulation conference report?

Mr. JACKSON. It is a phased deregulation bill which, in 1985, if it does not work, the Congress and the President retain the opportunity to continue price regulations for 18 months, if necessary.

Mr. BARTLETT. Are there not classifications of gas that will be——

Mr. JACKSON. Deregulated?

Mr. BARTLETT. That will be controlled forever?

Mr. JACKSON. No—well, we are talking about ongoing contracts, and that is old gas.

But I am talking about the categories I mentioned in my remarks that will be deregulated within 1 year. That is the high cost gas.

Mr. BARTLETT. For example, the gas that might have great potential in the Baltimore Canyon that is just, possibly, being discovered now—at least it looks very interesting—I believe is on old leases. Would that not be controlled gas, the price of which will be controlled forever in the future as far as this legislation is concerned?

Mr. JACKSON. I point out to the Senator that the gas from the Outer Continental Shelf, as the Senator knows, has been dedicated by statute over the years to the interstate market.

I would point out to the Senator that even Pearson-Bentsen continued regulation of certain categories of natural gas. I think that is the bill the Senator voted for——.

Mr. BARTLETT. Are there not other categories of gas that will be controlled; stripper gas for one, intrastate gas with the price less than $1 for another; was that not controlled?

Mr. JACKSON. Yes, but let me add one thing. The Senator asked about the Baltimore Canyon. The new reservoirs that come in will be subject to deregulation.

Mr. BARTLETT. I understand that. But is it not true it takes about 10 to 15 years leadtime to develop any amount of production on new offshore leases?

These leases were awarded, I believe, in 1966.

Mr. JACKSON. Well, the OCS Act requires that on the Outer Continental Shelf they must act, that is, get drilling underway, within 5 years. I believe that is the existing law.

Already, they have discovered some gas in the Baltimore Canyon area allegedly—all I know is what I read in the papers.

Mr. BARTLETT. Well, does the Senator have——.

Mr. JACKSON. I want to emphasize to the Senator that the bill that passed the Senate, Pearson-Bentsen, which I voted against, made provisions for the continued regulation of certain categories. The Senator voted for that; I did not.

So when we went to conference, obviously, we had to try to reconcile the differences between a close vote in the Senate to deregulate and a close vote

in the House to regulate. I think we did the most sensible thing that one could do under all the circumstances.

The art of legislating—that is what we are here for—is to try to find a way in which we can reconcile real differences in bills that have been passed by one body versus the action taken by the other.

Mr. BARTLETT. Am I correct in my understanding that new reservoirs on old leases offshore are not deregulated by the conference report?

Mr. JACKSON. The Senator is in error on that. They are deregulated.

Mr. BARTLETT. We will do a little checking on that with the conference report.

I will ask another question.

At the present time we get about 40 percent of our gas production from the intrastate market. Is that not roughly correct?

Mr. JACKSON. My understanding is that last year the demand for natural gas was about 20 trillion cubic feet. Supply was a little more than 19 trillion. The intrastate market was a little more than 8 trillion. So that is better than 40 percent. Would the Senator agree with that? It is about 42 percent or 43 percent of the market.

Mr. BARTLETT. I was trying to be conservative. Yes, 42 or 43 percent.

Mr. HANSEN. Mr. President, will the Senator from Oklahoma yield?

Mr. JACKSON. Will the Senator withhold for a moment? The distinguished Senator from New York has a unanimous-consent request, and I yield for that purpose.

Mr. METZENBAUM. Mr. President, will the Senator yield for a unanimous-consent request?

The PRESIDING OFFICER. Does the Senator from Washington yield?

Mr. JACKSON. I yield.

Mr. METZENBAUM. On behalf of Senator HUMPHREY, I ask unanimous consent that Tom Gator have the privilege of the floor; and on behalf of the Presiding Officer, Senator BAYH, I ask unanimous consent that Eve Lubelan have the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I make the same request for Dr. Jerry Cohen, of my staff, and Mr. Sam Ratner and Miss Jocelyn Samuels.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington has the floor.

Mr. BARTLETT. I believe the Senator did say earlier that new reservoirs on old leases offshore are deregulated.

Mr. HANSEN. He said deregulated.

Mr. JACKSON. Yes. The staff advises me that the new reservoirs will get the new price but that they will not be deregulated after 1985.

Mr. BARTLETT. That was the point I was trying to make.

Mr. JACKSON. They are deregulated for nonprice purposes, but for price purposes regulation continues after 1985.

Mr. BARTLETT. The present percentage of deregulated gas, then, according to the Senator from Washington, is approximately 42 percent.

Mr. JACKSON. That is a rough approximation.

Mr. BARTLETT. I agree with that. I will call it 40 percent, if the Senator wishes.

Mr. JACKSON. It does not matter.

Mr. BARTLETT. I think 42 percent is a little more accurate.

What percentage will be deregulated for price in 1985, after we have deregulation?

Mr. JACKSON. I cannot give the Senator a figure on that. That will depend on new discoveries and the amount that will come into the market. That would be pretty much in the field of speculation.

Mr. BARTLETT. I think there is some speculation with it, but I think the Department of Energy has made some general determinations as to what that would be.

Let me put it this way, then: Does the Senator anticipate that the amount deregulated in 1985 would be greater than the amount today?

Mr. JACKSON. Oh, yes; there is no question about that. The staff has indicated that the Department of Energy has supplied estimates, and they talk about 24.6 percent of gas production being "new" gas in 1985 and thus subject to deregulation by that time.

Mr. BARTLETT. 24.6 percent?

Mr. JACKSON. That is the figure they have submitted.

Mr. BARTLETT. We looked at the figures that DOE had in the report. I do not have the name of that report before me, but the amount came out to be less than 40 percent.

I find that many people have been very discouraged with that kind of finding. They felt that there would be true deregulation, meaning to them a deregulation of the present interstate gas, which was deregulated in the Pearson-Bentsen bill, as the Senator knows. It appears that this certainly is not a deregulation bill.

Mr. JACKSON. I said it is a phased deregulation bill.

Mr. BARTLETT. Apparently, it would deregulate in the future, at such time as there were no controls, after 1985, but it does not phase deregulation in the 7 years or so of the existence of control under this conference report.

Mr. JACKSON. I am trying to describe this the best I can. The Senator from Washington philosophically, of course, supports regulation. As the chairman of the committee, I have a responsibility to put together legislation that would give us some kind of policy, despite the opposing views of the two bodies. I believe that regulation is the proper way to approach it. So I had to allow my views to be subordinated to the decision of this body and the views of the House.

I believe that, on balance, we have a bill here that will serve the public interests and the national interests, which the current law will not do.

As a regulator, when I talk to my friends who are for keeping the old law, I have to taunt them and say the old law is inadequate. After all, I have been here through all these battles, supporting regulation. I supported Mr. Truman when he vetoed legislation which would have taken away from the Federal Power Commission the authority to regulate gas.

I have to point out that if we have regulation, how do my friends on the side that are joined together with all you regulators and deregulators explain that the price of new gas in 1970 was 17 cents and that now, under so-called regulation, it is $1.50? I know the Senator will have a lot of fun with that.

Mr. METZENBAUM. If the Senator will yield, Mr. President, I would like to explain.

Mr. JACKSON. I yield.

Mr. METZENBAUM. That was because two previous Presidents had made the wrong appointments to the Federal Power Commission. Now, under the present appointments, I am looking for better protection for the American consumer.

Mr. JACKSON. I say to the Senator from Ohio that the trouble with that argument is that the Federal Energy Regulatory Commission does not have the power they should have, which is to get the gas.

And the reason that the price has gone up under the doctrine of just and reasonable compensation is that the price of oil has gone up, thanks to the OPEC oil cartel. It is fine to make these great statements about being for regulation when the existing law is totally inadequate. I challenge my friend, and I will support him if he really wants a motion to recommit with instructions to vote for tougher regulations, how many votes he will get. Does the Senator know, I say to my friend—and I was here—that under a Democratic Congress, Mr. President, we could not get the votes for tough regulation. I was here. I know. It was only a courageous Mr. Truman who stopped that move way back.

So I am here trying to be realistic because I know that under existing law the Federal Energy Regulatory Commission cannot adequately do the job of regulating.

Mr. METZENBAUM. Mr. President, will the Senator from Washington yield?

Mr. JACKSON. I quoted the dicta from the—may I just finish?

Mr. METZENBAUM. I am sorry.

Mr. JACKSON. I quoted the dicta from that most liberal category of judicial repose, the Circuit Court of Appeals for the District of Columbia, that they will not entertain the idea by legislation that you can regulate intrastate gas. That should be a clear signal to our friends who are laboring under the impression that by judicial action you can do it. But where are the votes, I say to my good friend from Ohio? Where are the votes for tough regulation?

Mr. METZENBAUM. I respond to my very good friend and my leader on the Energy Committee that the votes are not there for tougher regulation and hopefully the votes will not be there for this phased deregulation which really becomes almost total deregulation in some instances by reason of the redefinition of old gas and new gas and the rollover contracts.

I also say to the Senator from Wash-

ington that when he was talking a moment ago about how FERC is going to get the new gas, let us first agree there is a surplusage of natural gas in this country at the moment and there is a glut on the market, but let me also remind the Senator—if my friend from Washington says that I am in error I will publicly admit that—is it not the fact that at one point in these deliberations in the conference committee the Senator said he would never accept a natural gas bill if it did not contain a provision giving the President the authority to have mandatory allocation so that he might go into the intrastate market and bring out natural gas into the interstate market? And the conference committee report on the bill does not have that provision in it? Is that not correct?

Mr. JACKSON. That is correct, and this bill does make it possible to allocate gas for boiler fuel.

Mr. METZENBAUM. But that is just a de minimis item.

Mr. JACKSON. It is not de minimis.

Mr. METZENBAUM. But the fact is that is on emergency situations not in excess of 120 days, but as far as allocating intrastate gas into the interstate market, which the Senator indicated to those of us who serve with him and supported his leadership in the conference committee, he would never accept the bill that did not give the President the authority for mandatory allocation from the intrastate market to the interstate market and not merely for the limited extent that is provided for under the conference committee report.

Mr. JACKSON. We got part of it, and I think that is a helpful part. It is the best we could get. But I do not know how the Senator from Ohio can support a motion to recommit that will send the bill back which he knows will be dead and face the country with the fact that nothing is being proposed as an alternative to this bill. I have great respect for those who will come in and move to recommit the bill with tough regulations. Why is that not being offered?

Mr. METZENBAUM. Because that will not survive. The Senator knows it and I know it.

Mr. JACKSON. We are both going in opposite directions.

Mr. METZENBAUM. There is not any reason under the sun why our motion to recommit with instructions should not be agreed to. It will bring back this very provision that the Senator just talked about, which would make it possible for FERC to allocate gas from the intrastate market to the interstate market where there is surplus gas. That would all be in our motion to recommit with instructions. If the bill sounds a death knell, it will not be because the Members of the Senate were unwilling to have a natural gas bill. It will be because someone preconceived an idea many months ago that we have to hold hostage three bills that were the part of the national energy plan. We hold those bills hostage and what we will do is then get a natural gas bill that will satisfy the oil and gas industry, and then after we get that, we will get the wellhead tax. That was the preconceived plan, but it did not work.

Now we are saying none of this stuff has worked so far. It just did not. Why do we have to say to the American people that you are going to get hit with, I do not care what the number is—$20 billion, $11 billion, $29 billion, $40 billion—whatever the amount is? Why should the American people have to pay a price for a piece of legislation that even its best supporters say is nothing but a C-minus piece of legislation? I think that we are asking too much and we do not need legislation under these circumstances.

Mr. JACKSON. I wonder what the Senator from Ohio is going to do about the gas that should come from Alaska, which is in this bill? Why does he not say something about the gas that we need to bring from Alaska to do something about supply and about the balance of payments?

That is, Mr. President, a very critical part of this legislation and that part of the President's program will die if that motion to recommit carries.

Mr. METZENBAUM. Will the Senator from Washington be willing to go with us on the motion to recommit if we accepted that portion of it?

Mr. JACKSON. Why, of course not. That is only a part of the bill. But the Senator has made an arrangement with the deregulators. That is the unholy part of this alliance. The regulators on one side and deregulators on the other side are sending to conference a proposal which will not give us a program in the field of natural gas but is just dealing with emergency gas. How can one face the country, Mr. President, go home and tell the people of this country we do not have an alternative program to this one? What is your alternative program?

Mr. METZENBAUM. The alternative program is included. The Senator is well aware of the fact that in our motion to recommit we intend to give the President the emergency powers that the Senator just described in the Chamber giving him the authority to allocate gas to priority users. We also provide that the surplus gas, which may be moved from the intrastate market into the interstate market under orders made by FERC, will provide people some protection, and we also provide that you can move gas in the intrastate market along interstate pipelines without thereby becoming subject to the Federal regulations.

Mr. JACKSON. Does the Senator have his motion to recommit? I wish to see a copy of it. I have not seen it.

Mr. METZENBAUM. I will be happy to make a copy available to the Senator.

Mr. JACKSON. I wish to see it.

All I am saying, Mr. President, is how can one go home after this session of Congress, having been here for almost 18 months, and say that we just killed the program, we did not come in with an alternative program? If the alternative program is simply to extend the Emergency Natural Gas Act, that is buying deregulated gas, is it not? That is buying deregulated gas. I do not know how my good friend can be associated with that ideology.

Mr. METZENBAUM. I say to the Senator from Washington I will be very happy to share with him the terms of our motion to recommit which were outlined in the Dear Colleague letter signed by 24 Senators.

Mr. JACKSON. Fine. But is it not a fact that the Senator is proposing in this motion to recommit in an emergency to buy deregulated gas? I thought the Senator favored regulation.

Mr. METZENBAUM. That is the very provision that is in the bill that the Senator is standing on the floor advocating at this moment, and what we are saying is that we will take some portions of the bill that the Senator is advocating and which were needed on an emergency basis, but we do not want the pricing provision.

Mr. JACKSON. But the Senator knows in this bill for the first time—and that is why my colleagues from the producing States in the South are opposing it—for the first time we are providing for a ceiling price on intrastate gas on the same basis as interstate gas.

Mr. METZENBAUM. The ceiling price, I might point out, is much higher than the market price of that same gas, substantially higher.

Mr. JACKSON. In the summertime, and I would point out it is a ceiling and, obviously, they are not going to sell gas up to the ceiling if the market is below it.

Mr. METZENBAUM. It has been higher by about 40 cents per mcf for a good many months now.

Mr. JACKSON. All I want to say is, as one who has supported in this Congress regulation longer than any Member of this body, I had to face a problem, and that was to reconcile the action taken by the Senate, which supported regulation by a narrow margin, and by the House which supported regulation by a narrow margin.

All I want to say, Mr. President, is I think this legislation is, on balance, in the national interest for the consumers. I come from a State that pays the highest price of any State in the Union for natural gas. We get it all the way from Canada because we have not been able to get production, Mr. President. We have to buy it from Canada at $2.16 per 1,000 cubic feet, which is higher, Mr. President, than the unregulated intrastate price of new gas, which currently is about $1.80.

I do not want this country to be dependent on other countries for its gas supply.

I again emphasize, Mr. President, that this bill makes possible the movement of almost 1 trillion cubic feet of gas from Alaska across Canada into the middle of the United States, and that addresses itself to supply and that addresses itself to the balance of payments.

I believe this body, the Senate—yes, and the House—has a responsibility of facing the energy problem head on. If we want to reject this bill, then pass a bill that will get the supply and provide for a sensible price to the consumer. But where is that proposal? It is not being offered.

For the Congress to adjourn and say, "Well, we recommitted it," killed it, I would not want to face my constituents

under those circumstances or face a cold winter with a short supply of gas.

With the dollar, Mr. President, every time you turn on the radio in the morning, the first thing you hear—the radio or TV—is the dollar is down again today in Zurich, the dollar is down again today in London, Bonn, and in Tokyo.

I think we have to fish or cut bait in this operation in which we are involved. It is obvious that we have irreconcilable views in the Senate if we do not work out a compromise, we have irreconcilable views with the House if we do not work out a compromise. That, Mr. President, in my years in Congress is what legislation is all about. You just cannot say, "I am going to either have it my way or I am going to take my marbles and go home."

We have tried to put this all together in what I think is the best bill we can get after 15 months of labor.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that floor privileges be granted for Ed Tanzman and Chris Burke of Senator DURKIN's staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. President, I ask unanimous consent that Jim Fleming and Martha Moloney of my staff be granted the privileges of the floor during the debate and vote on this piece of legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I rise today to express in the strongest terms my opposition to the conference report now before us. I have great respect for the chairman of the Energy Committee, but in this issue I must disagree with him because I believe it is bad legislation. It is bad because it will saddle the consumers of gas in this country with up to $41 billion in additional costs between now and the end of 1985, costs which will fall heaviest on residential consumers.

The sad fact is that even the strongest supporters of this legislation do not claim it will call forth much in the way of additional gas production between now and 1985.

The very estimates—and I have just heard the distinguished Senator from Washington use it—is that it would mean a trillion cubic feet in 1985, which would be 5 percent.

The other figures that are being used by the CBO are seven-tenths of a trillion cubic feet, which would be 3½ percent, but it will be——

Mr. FORD. Mr. President, will the Senator yield?

Mr. METZENBAUM. I will not.

Mr. FORD. I just want to get the Senator straight on something.

Mr. METZENBAUM. It will have a severe effect on consumers. By 1985 the average wellhead cost of this legislation will be 353 percent of what it was last year, 618 percent of what it was in 1975, and 1,608 percent of what it was in 1970.

Those specific figures, Mr. President, are 17.1 cents per mcf in 1970; 44.5 cents in 1975; 77.9 cents in 1977; and a projected $2.75 average figure in 1985, although the actual maximum at that point would be about $3.50.

This bill is bad for consumers; it is bad for producers; it is bad even for the regulators, and it is bad for our economy as a whole.

By sharply raising the costs of the 27 percent of our total energy consumption that now derives from natural gas, the bill will contribute substantially to the inflation that is one of the main causes of the decline abroad in the value of the dollar.

The ripple effects of this price rise will touch every sector of the economy, and the direct impact of higher heating bills on residential consumers—and, I might point out, that over half of the homes in this country heat with gas—will lead inevitably to demands for compensating wage and salary increases.

Mr. President, the Natural Gas Pricing Act is a bill that has no constituency, no constituency outside of the White House and the Office of the Secretary of Energy. I stand corrected in one respect on that point, Mr. President, in that I did note the other day that the League of Women Voters has now come out for the bill, as being the only consumer organization in the country that has indicated its support for the legislation.

This bill has only one distinction. It is a bill that has produced the most widespread, broadly based opposition that this Chamber has probably seen in a great many years in opposition to a single piece of legislation. It is a bill that nobody wants. It is a bill that brings together in opposition such unlikely allies as the American Conservative Union and the ADA—that may be a first; the U.S. Chamber of Commerce, the UAW, and the AFL–CIO, the American Farm Bureau Federation, and the Consumer Federation of America.

It unites the Independent Petroleum Association of America with Energy Action, the Energy Policy Task Force, and the Environmental Policy Centers.

It joins together marathon oil, the Farmers' Union, and the National Association of State Regulatory Commissioners.

The Secretary of Energy has publicly dismissed this alliance of conservatives and liberals, of consumers and producers, and of labor and industry as a coming together of extremes. By using that language he has attempted to claim the middle ground for himself and his legislation.

But the bill does not represent a middle ground. It is, as one observer described it, "a feeble patchwork, the product of constant giveaways and give-ins."

It is a bill that has often been described as the end result of the administration's desire to get a bill—any kind of a bill.

While the members of the conference committee were meeting at night, keeping other members of the conference committee out of the meeting, what were they saying? They were saying the administration was willing to agree to anything, anything at all, just to get a bill—a bad bill, a good bill, any kind of a bill. This reflects the administration's willingness to pay any price to get a bill.

It is a bill whose strongest supporters grade it no better than "C—".

And it is a bill whose supporters argue for its enactment on grounds that have little or nothing to do with its legislative merits.

We are told, for example, that to vote against this bill is to undermine the President's ability to lead the Nation.

I do not for one moment accept this argument.

I have been a strong and loyal supporter of the President's legislative program.

An examination of my voting record will show that I rank in the top 5 percent of all Senators in supporting the President's positions.

But I cannot and I will not support the President when I know him to be wrong.

I cannot and I will not support him when he acts, as he has clearly done in this case, on bad advice.

And I fail to see any way in which enactment of this crazy quilt of a bill will enhance the administration's position in this country or abroad.

Nonetheless, we have repeatedly been told that failure to pass this bill will signal the rest of the world that, as Secretary Schlesinger recently put it, this country "lacks the discipline" to face up to our energy problems. That signal, the Secretary has assured us, will have what he described as a "devastating" effect on the value of the dollar overseas. It is interesting to note that the Secretary of Energy is the only one who talks in these terms except other administration spokesmen.

Leading experts in international finance do not agree with this assessment. In a letter dated August 23 to the Business Round Table, for example, the vice president for international economic forecasting of the Chase Manhattan Bank wrote as follows:

> The argument that passage of the compromise gas bill would play an important role in halting the decline in the dollar and strengthening the U.S. balance-of-payments outlook is at best highly exaggerated and at worst just plainly wrong. Adoption of the proposed legislation would probably result in a modest strengthening of the dollar in the very short run, but this improvement would not be permanent. In the longer run, the legislation could actually result in some weakening of the dollar as foreign exchange markets come to perceive that the longrun supply of natural gas in the U.S. is as likely to be reduced as increased under the new regulatory regime.
>
> There are two major weaknesses with the administration's position that international implications provide a strong argument for the bill. First, the major source of weakness in the dollar at this time is not a weak current or prospective trade balance but rather worsening expectations about U.S. inflation. Indeed, the dollar has entered a new phase of weakness in spite of widespread recognition by market analysts that the U.S. trade deficit has peaked and is likely to decline substantially in 1979. The movement of the U.S. trade account into a large deficit position—and concerns that growing energy imports would imply continuing balance-of-payments difficulties—were the major sources

of weakness in the dollar from the summer of 1977 until the spring of 1978. The current weakness of the dollar springs from the accelerated rate of inflation in the U.S. and perception that U.S. monetary policy seem designed to accommodate to increased cost-push inflation. No policy action that is not designed to affect inflationary expectations is likely to have a significant and permanent impact on the value of the dollar under current market conditions.

Second, it is by no means clear that the market will perceive the compromise bill as resulting in an enhanced long-run supply of natural gas in the U.S. and hence an improved long-run balance-of-payments outlook. The legislation is highly complex and difficult to analyze, thus there is likely to be a short period of euphoria in which the dollar temporarily strengthens in response to the assumption of favorable supply effects. Our belief is that once market analysts have time to examine the legislation carefully, they are likely to conclude that the status quo provides at least as much production incentive as the proposed regulatory regime.

This issue we confront today has nothing to do with this Nation's "discipline". Instead, it has everything to do with the Senate's ability to exercise commonsense.

And it makes no sense at all to pass a bad bill in order to somehow appear "tough" or "determined" or "disciplined" in the eyes of foreign observers.

Europeans and Japanese bankers, government officials, and businessmen are no fools. They know this legislation for what it is, and they also know that the problems of the dollar are complex—far more complex than the advocates of this bill would have the Congress and the American people believe.

Mr. President, natural gas pricing has little or nothing to do with the position of the dollar.

West Germany, Switzerland, and Japan are far more dependent than we are on imported energy. Yet their currencies are now the strongest in the world.

Our problem, Mr. President, is that inflation in this country is far worse than it is in the strong foreign economies.

Our problem is that foreigners do not want to hoard our dollar because they believe with good reason that it is a shrinking asset.

And our further problem is that, according to leading Wall Street economists quoted in an article that appeared in the August 18 edition of the Washington Post, foreigners doubt our Government's resolve to do something about it:

"As we read it," said the chief economist for Goldman, Sachs and Co., "there has been in the last couple of weeks a significant loss of credibility in the anti-inflation posture of the government as a whole."

And make no mistake about it, Mr. President, the gas bill is highly inflationary.

As I have already said, it will directly hit every family in this country that heats and cooks with natural gas.

It will have ripple effects on the costs of production of every single item that needs gas in the production process.

And it will inevitably lead to a strengthening of demands for higher wage and salary settlements.

My friend, the distinguished Senator from Maine, has argued in an article published this morning that it is difficult to measure what he calls the "confidence factor" with regard to the expectations of the American people about the economy.

I agree with him that such measurements are difficult for the economists and the statisticians. But I say that if you want to know the confidence factor, if you want to know about the impact of inflation, do not just take a statistician's figure about it being one-half of 1 percent or one-tenth of 1 percent, or whatever the case may be. Walk down the streets of any American community today or tomorrow, and ask the people whether they think inflation is 7 percent, 8 percent, or 10 percent. The American people have lost confidence that we can hold back the whole problem of inflation. I suggest to the Senator from Maine that he ask the people of my State what they think about the prospect of paying $2.75 per mcf by 1985 for gas that cost 17 cents in 1970.

I suggest that the Senator from Maine, or any other Senator, ask the people of my State or any other State in this Union what they think when they pay their soaring utility bills, or when they make a 20-cent telephone call that used to cost a dime. That is not 8-percent inflation or 10-percent inflation. Or go out and buy a hamburger, a 2-by-4, or a lady's dress. Ask them whether or not that is 8- or 10-percent inflation.

Ask them about the statistics and the figures, and you will find that the people of this country are not willing to support any bill that increases their utility bills more than they presently are; and they are complaining about those figures at the present time.

This bill means intolerable pressures on consumer budgets, and no statisticians' figures are going to change the result of the American people. When we went from 17 cents to the place where we are at the moment, about a dollar and a half, and where we go up immediately upon passage of this bill to about $1.93, and then when we go up to $3.00 by 1985, and then when we will go to deregulation after that, the people of American understand what we are talking about.

We are talking about a massive movement of billions of dollars from the consumers of this country to the gas producers of this country.

The gas pricing picture in this country is an unhealthy, dangerous situation. This bill will make it even worse.

We have also heard, Mr. President, that a vote against this costly, cumbersome, and ill-conceived natural gas bill is a vote against the national energy program.

Mr. President, I want to emphasize to the President of the Senate, to every Member of the Senate, and to the American people, that that is just not in accordance with the facts. It is just not true.

The truth is that the Nation could have had an energy program in place almost a year ago. Back in October and November, the conference committee came to agreement on the coal conversion measure, the Utility Rate Reform Act, and the Conservation Act. These three bills will achieve most of the reduction in foreign oil imports envisioned by the National Energy Act. But the administration has deliberately insisted that those measures be held hostage to passage of the gas bill.

I remember when I personally went to representatives of the administration and said, "Will you support us? Will you support the chairman of the Senate Energy Committee in moving those three bills so we can put them into place and we can make them law?" They were unwilling to do so.

Clearly, the strategy of the administration was to give the oil and gas industry enough dollars through the gas bill to enlist their support for passage of the administration's even more costly and inflationary crude oil tax.

This Nation urgently needs an energy program.

Let us go ahead and take up the bills that stand ready for action.

The Nation needs a natural gas bill as part of its energy program. But the Nation does not need a bill passed for the sole purpose of getting something—anything on the books.

Accordingly, I intend to join at the appropriate time with a number of other Senators in introducing a congressional alternative to the faulty legislation that is now before us.

That alternative will take the form of a motion to recommit the bill to conference. with instructions to delete its pricing provisions and to report back alternative legislation. That legislative alternative will restore to the President his expired authority to protect residential consumers from unnecessary supply interruptions in the event of an emergency, and to allow extra gas from the producing States to flow into the consuming States under prescribed conditions.

This alternative proposal will restore to the President the emergency powers that have expired to allocate interstate gas to high priority users like hospitals, schools, and homes. It will also make it possible for FERC to authorize emergency sales from intrastate markets under certain conditions. The alternative will help consumers by sparing them billions of dollars in extra costs and it will help producers and intrastate pipelines by minimizing complex regulations and bureaucratic mumbo jumbo.

And passage of the alternative will permit the Senate to move expeditiously to consideration of the remaining three parts of the national energy plan. It will, in other words, remove the logjam that has kept us until now from putting a national energy program in place.

Let me take a moment to talk about a point that keeps coming up, and that has been emphasized by both the President and the majority leader. It has been mentioned today by the chairman of the energy committee. It is a point that concerns and disturbs a number of Members of this body. Query: Does support and passage of the motion to recommit mean that we are killing the gas legislation? I have said it before and I repeat it now, and was joined by the distinguished Senator from Wyoming the other day:

We are proposing this legislative alternative with the sincere expectation that the conference committee, in these closing days, will promptly return the bill to both Houses for final passage. There will be nothing new in our version of the bill. The language and the issues are not controversial, because they are already in the conference committee bill. Let me emphasize this point:

If the House refuses, with or without the President's support, to accept this stripped-down version of the bill, then it will not be the Senate that has sounded the death knell of the gas bill. The responsibility will lie upon those who for almost a year have played the game of withholding the three parts of the national energy plan on which we have been in agreement. The Senate, if it agrees to our motion to recommit will have spoken in an affirmative manner for a national energy plan.

Mr. President, I have directed the bulk of my remarks so far to generalized issues like Presidential leadership, international currency movements, and the need for a national energy plan. I have done so because those are the themes emphasized so far by supporters of the bill. As such, they are topics that must be addressed.

But I believe that it would be a mistake for the Senate to confine its debate to these broad concerns. In the end, our decision must turn on the specifics of the bill.

There is a report around, and it has been repeated often, that the administration, when they are going out seeking votes for the conference committee bill, does not want to talk about the specifics of the bill. They do not want to talk about how this proposal before the Senate is different from that which the administration originally proposed.

It is no secret that the bill the administration now supports so strongly differs in almost every important respect from the gas bill proposed by the President in April 1977.

The original bill would have continued Federal regulation of the wellhead price of natural gas. The conference report provides for deregulation in 1985.

The original bill sought to abolish the current distinction between the interstate and intrastate gas markets, in spite of administration claims to the contrary. The conference report preserves much of the dual market system, eliminating the price differences only where "new gas" is conceived.

For all the many other categories of gas, price differences will continue to exist. And as I have stated already, the conference report will make it impossible in times of emergency for the Federal Government to allocate gas from low priority users in the producing States to homes, schools, and hospitals in the consuming States. In addition, the conference report will give a special advantage to industries located in producing States by exempting them from the incremental pricing provisions of the bill.

The original administration bill, which I opposed on the grounds that the regulated gas prices it established were unreasonably high, is a bargain for consumers when compared with the conference report. The additional cost of the conference report to consumers over the present system will come to an agreed upon $29 billion. It will cost at least $14 billion over the administration's original proposal. And last minute "corrections" in the compromise will reportedly add another $12 billion, or a possible total of $41 billion between now and 1985, or $27 billion over the President's original bill.

Even the CBO, which arrives at lower figures than the DOE, says that gas producers will be enriched by $20 billion between now and 1985 at the expense of the American consumer. And for what? For .7 tcf of extra natural gas in 1985, or a 3.5-percent increase over the amount otherwise expected. That translates down to an added cost for this new gas amounting to between $16 to $60 per mcf (depending upon whether you use the $11 billion figure used by the conference committee, the $20 figure used by the CBO, or the $29 billion figure used by the DOE, plus the unconfirmed $12 billion estimated cost of the last minute changes made in the conference committee report). Using any figure, it is understandable why the esteemed chairman of the Senate Finance Committee, who is known and recognized as an able spokesman for the industry, says:

> I would first like to make it abundantly clear that I am not opposed to the so-called natural gas compromise because of price. The new gas price called for in the conference report compares favorably with the prevailing unregulated intrastate market price and, therefore, is not an issue with me.

The protection from sudden, sharp price increases that residential consumers would have enjoyed under the bills passed by both the House and the Senate does not exist in the compromise legislation. I should point out that, after the DOE arrived at this conclusion, it was urged to change its original unpressured and unbiased assumptions. Thereafter, the DOE energy information administration reversed itself. We believe in its first conclusion that was independently made. That protection—which took the form in the House and Senate bills of requiring industry to bear the main burden of bringing expensive new gas into the system—disappeared altogether in conference. In a reversal of the clear intent of both Houses, the conference report lowers prices for industry and shifts much of the cost of new supplies to homeowners and small businessmen—those who can least afford to bear it.

Under the House bill, residential consumers would pay $2.89 per mcf by 1985, while industrial users would pay $2.78—or a difference of 11 cents.

Under the Senate bill, the difference would be 5 cents—$2.92 for residential users, $2.87 for industry.

Under the compromise, the difference is truly staggering.

Under the compromise, industrial users will pay $2.44; but for the average homeowner, the price will go to an astronomical $3.28.

That, Mr. President, is a difference of 84 cents. An incredible difference, Mr. President, and one that is totally unacceptable to the consumers of this country.

Mr. President, the chairman of the Committee on Energy and Natural Resources has stated on many occasions that he could not support a bill that did not include emergency authority for mandatory allocation of intrastate gas. The conference report contains no such provision.

(Mr. HODGES assumed the chair.)

Mr. METZENBAUM. Originally, we were told to be for the administration's bill because it made it possible for the President to go into the intrastate market and take gas out of the intrastate market and bring it into the interstate market. That is called mandatory allocation. I heard, as I previously mentioned, on the floor of the Senate that the distinguished chairman of the Energy Committee in the Senate said that was an absolute minimum, that unless we could get that provision in the bill, he could never be for it. That provision is not in the bill, and I hope that maybe, by my having pointed it out, he might possibly change his point of view, but I doubt it.

This topsy-turvy system wil penalize individuals who cannot readily switch from gas to other fuels. At the same time, it will reduce the incentive for industry to convert from gas to alternative sources of energy, including coal. They have taken away the incentives. It is unfair, it is unworkable. And it means that our national policy in the future will permit industrial users to burn America's remaining natural gas without restraint. It means that our national policy is not any longer to conserve our remaining gas by requiring those who can do so to convert to other fuels. The new policy embodied in this bill is to substitute gas for oil. It is a "deplete America" policy. It is anticonsumer, and it represents a reversal of what many Senators and the public thought our policy was and should be.

Both the President and Congress, at an early point, recognized the need to provide special incentives for exploration in difficult, high-risk areas, but the conference report provides those special incentive prices to gas that is already flowing. The result will be that, once again, consumers will pay more. And once again, they will get no additional production in return.

Finally, Mr. President, all Senators should be aware that this bill, for all the cost, complexity, and economic uncertainty it entails, will produce very little in the way of new gas production.

The administration claims that passage of the gas bill will, by 1985, reduce our oil imports by 1.4 million barrels per day.

That is a substantial figure. It is also a misleading one.

That figure includes a projected savings of the equivalent of 400,000 barrels per day because of the projected delivery by 1985 of Alaskan gas to the markets in the lower 48 States.

The arrival of Alaskan gas will be welcome, particularly in my part of the country.

But it is, I believe, misleading to attribute our supply gains from Alaska to passage of this bill. Congress has already expressed its support for construction

of the gas pipeline and although Alaskan gas pricing provisions happen to be included in the conference report, there is no reason whatever to believe that they cannot and should not be treated legislatively and affirmatively by this body and the House as well.

The administration figure also includes an estimate that we will gain the equivalent of 250,000 BBL/day as a one-time-only production spurt in response to deregulation in 1985. But that is 1985, and Mr. Schlesinger himself recently stated that talk about 1985 is, and I quote, "theological."

I must confess that I do not understand his use of the term, but apparently, he was saying it in some deprecating manner when he was on the Public Broadcasting Service program on the MacNeil-Lehrer show. Only the administration knows where they got this figure. Only Mr. Schlesinger knows when he talks about 1985 as being something theological. That figure has never been mentioned before and if it is as credible as many of the other puffed up claims made by DOE, then it has little or no relevance to our deliberations.

The remainder of the savings claimed by the administration for the bill are based on an estimate that additional gas production will replace 750,000 BBL/day of imported oil by 1985.

That, Mr. President, is an extremely optimistic estimate.

The Department of Energy's own Energy Information Administration, for example, projects potential replacement savings at 500,000 barrels per day.

My staff has been advised by the Congressional Budget Office that savings will be as low as 350,000 barrels per day.

So, Mr. President, let us take another look at the administration's figures.

The administration claims that the bill will save 1.4 million barrels per day, but 400,000 barrels per day of that will come from Alaskan gas. Alaskan gas will come on line with or without this particular legislation.

That leaves a million barrels.

Of that million, 250,000 are attributed to a highly speculative production "spurt" that may or may not materialize in 1985, and I am not certain whether it is a one-time "spurt" on whether it keeps "spurting."

Discounting that, we are left with the 750,000 barrels per day that is supposed to be saved by increased gas production.

As we have seen, that figure itself is open to serious question. The more accurate estimate may be the 500,000 barrels per day projected by the Energy Information Administration, or it may be that CBO's estimate of 350,000 barrels per day is closer to the mark.

Or perhaps the administration was correct in April 1977 in estimating that the original gas bill would save no oil whatever.

But the bottom line, Mr. President, is that when we remove the Alaskan gas, and the speculative "spurts" from the administration estimate and when we conservatively discount the administration's production claims, we come to a figure that is less than half the administration's claim, and maybe even as low as a quarter.

I point this out because I am disturbed about the manner in which the administration has made its case for this bill. They reached up in the air and picked out some figure that they found convenient.

The administration has wrapped a bad bill in the rhetoric of national interest. This is not the first time they have stated figures to support their position and, sometime later, had to back up when the facts were available.

The administration has presented misleading information to the Congress and to the public on this and on other energy-related issues. In this connection, I think of the CIA report that appeared so conveniently last year at a time when top officials of the administration were attempting to create a crisis atmosphere in order to persuade the Congress to take quick and uncritical action on the administration's energy proposals.

Those figures that were used at that time were subsequently proven to be erroneous and the administration had to back up with respect to the fact presentation as it was given to us.

I see these maneuvers, and I deeply resent them. They smack to me of the scare tactics that some in the military and the intelligence establishment have used in the past to move their budget requests through the Congress. These tactics have no place in the energy debate. And above all, they should have no place in this administration.

Mr. President, I do not believe that this bill is defensible on its merits.

I do not accept the assertion that we should pass this measure because, as a top administration official put it, "It's the only natural gas bill we've got."

And I give no credence whatever to the argument that the bill is needed to strengthen the President, or to the claim that we must pass it in order to send a signal to the world that we are serious about enacting an energy program.

These are hollow arguments.

They are arguments rooted in symbolism instead of substance.

They are arguments that do not square with the facts.

Mr. President, I believe that the case against this legislation is overwhelming.

I believe that this bill is worse than no bill at all.

And I am convinced that enactment of this bill would be a disservice to the people of this country.

Mr. President, the congressional alternative that we will propose will give the Senate the opportunity to act responsibly on natural gas.

I believe that the alternative is worthy of support and I hope the Senate will see fit to adopt the alternative in place of the costly and counter-productive legislation that is now before us.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Has the Senator from Ohio concluded?

Mr. METZENBAUM. Yes.

Mr. FORD. The Senator from Montana wishes to speak. I would like to make a remark or two and yield the floor then to the distinguished Senator from Montana.

I understand that the Senator said in the beginning, and I attempted to correct him at that time when he said that the distinguished Senator from Washington said that this bill would put a trillion cubic feet per year into the interstate pipeline.

He was referring at that time only to the Alaskan pipeline, which is a part of this bill. I was sure the distinguished Senator from Ohio would not want to make any mistake as it related to the statements of our distinguished chairman of the Energy Committee.

Also, I would like to correct one thing that the Senator from Ohio has said. He made a statement the other night I thought was adequate. He did not do it today, and that is when he was quoting the vice president of Chase Manhattan Bank.

I think the Senator has a telegram from the president of Chase Manhattan which said that the remark the Senator quoted was a personal view of the vice president and not the position of the bank.

So I would like to clear the air that there are other banking institutions with equal validity of Chase Manhattan Bank that see it somewhat differently.

But I did want to make that point that the president of Chase Manhattan said that it was only a personal view of that vice president and not the opinion of the bank.

Also, I would like to say that the Senator says in his statement that the chairman of our Energy Committee said without the emergency allocation he would not be for a bill.

He defended himself a few moments earlier as it related to his statement, that the emergency allocation was in this bill and is one of the major parts of it.

Therefore, I want the Senator to be sure he did not say something about our chairman, when he is not here to defend himself, when he already answered the Senator's question.

Also, I might say to the distinguished Senator from Ohio that he said to the Senator from Washington a few moments ago that he would like him to have a copy of this motion, to recommit, the Senator was going to make. We hope it will not be given to us just at the time he makes it several days from now. I am authorized to receive it if he would like to give it to us this morning or this afternoon. I will be delighted to take it and pass it around.

Mr. METZENBAUM. In due time. In due time.

Mr. FORD. In due time.

Well, I understand what due time is. But the Senator is not——

Mr. METZENBAUM. The Senator will have adequate notice, he will not be expected——

Mr. FORD. What does the Senator consider adequate notice?

Mr. METZENBAUM. Well, I think at the time and place when I decide to bring up our motion to commit, he will

be given adequate time and the opportunity to find if it is unsatisfactory, or happy to delay——

Mr. FORD. I understand, the Senator keeps wanting to delay all the time.

Mr. METZENBAUM. I have not asked any delay at all.

Mr. FORD. I have been asking for the copy and all the Senator says is that it will be in good time and he will give it to us.

Mr. METZENBAUM. I said in due time.

Mr. FORD. In due time, the Senator's time, because he has the motion.

I yield to the Senator from Montana.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky has the floor. Does the Senator from Kentucky yield the floor?

Mr. FORD. I would like to see the Senator——

Mr. MELCHER. I yield to the Senator from Ohio.

Mr. FORD. All right, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I thank the Senator from Montana. I just wanted to say to my good friend from Kentucky, and I shall be very brief, that all last week, including the first day I got here, I was urging the bill be called up and be brought up.

We have no desire to delay this matter. We will be prepared to move forward with it and at an appropriate time, hopefully, so that all Members of the Senate will have an opportunity to vote on a motion to commit.

Mr. FORD. I understand what the Senator from Ohio is doing. He is trying to disassociate himself from everybody with him a long time who has been objecting. I do not blame him for that.

Mr. METZENBAUM. Mr. President, that is not my desire at all, because Senator ABOUREZK, who made objection the other day, and Senator HANSEN, Senator BARTLETT, and Senator LONG, none of them had indicated any desire to keep the bill from coming to the floor. But there were certain conditions attached to it. Those conditions do not exist today and I have not heard any motion to table and I do not expect to. So it could have been brought up last week just as well as today.

Mr. MELCHER. Mr. President, one of the reasons the Senator from South Dakota (Mr. ABOUREZK) objected to bringing up the bill last week was that he feared bringing it up with an agreement that there would not be a tabling motion sometime this week against the bill, that there would not be enough Senators present, that there would be three or four on the floor, and it was necessary to have Senators here to understand the complexities of the bill, and its merits and demerits.

I find that he was exactly right. Even though there is no agreement on not having a tabling motion, there are still only three or four Senators on the floor and, notably among the absent, is the Senator from South Dakota.

The fact is that most of us know what we are going to do on the bill, whether we are going to vote for it or against it.

I was pleased to be able to listen to the Senator from Ohio in his delivery of his remarks on the conference report before us. He referred in part of his discussion to the price of hamburger and inferred that many consumers feel that the price of hamburger is too high.

Well, the fact is that the producers do not believe the price of hamburger is too high. The producers who are in the position of trying to rebuild their cow herds after a series of years of staggering losses are now realizing that the cows they sell to go into hamburger are not bringing anything too much in order to have the wherewithal of enough income on the farm or ranch to stay in business.

So I guess when we look at the price of a producer, it depends on whether or not we are consumers or producers.

The Senator from Ohio mentioned 7½ cents per thousand cubic feet as the price of natural gas only a few short years ago.

From the consumer's standpoint, that was a bonanza; but from the producers' standpoint, it did not work.

So in my State and many other States where there has been and continues to be natural gas production, we found that the wildcat operators, the independents who go out and drill wells and try to find natural gas or oil, were not going into the field to drill for natural gas. The price was much too low.

I might say, to bring this into context, that the price they are operating on is about $1.35 to $1.40 per thousand cubic feet, which is a great deal more than 17.5 cents per thousand cubic feet. Because of that price, almost all the independents in my State, based on the geologic knowledge they have, are not able to go out and wildcat for natural gas. They have told me that, for the past year, it would take somewhere in the neighborhood of $2 to $2.25 per thousand cubic feet for the sale of gas before they would be able to get into the field and drill to attempt to find it.

They have the geological information that would indicate that there are small amounts of natural gas at certain levels in certain areas in Montana, and they would feel fairly confident to go out in the field and drill—wildcat, mind you—to find out if gas could be produced. But they would not do it until the price got into a range of $2 or $2.25 per 1,000 cubic feet.

With respect to the $1.93 per thousand cubic feet which the Senator from Ohio mentioned would be the adjusted price for new gas if this conference report became law, it is necessary to take into view how that relates to the cost of other energy supplies.

I think it is fair to say that the price of $1.93 per thousand cubic feet for natural gas is substantially below what the cost would be in heating a home by using No. 2 fuel oil. I think it is fair to say that in most areas, $1.93 per thousand cubic feet of natural gas would be a better buy for a homeowner to heat his home than it would be to convert back to coal.

These are things we have to keep in mind. If our goal is to deplete the reserves of natural gas that we now know are available for use in this country, then perhaps we want a low price for it. But if we want to be realistic and practical and conserve natural gas for purposes of use in America where it best fits, in order to avoid using either fuel oil or coal, then we had better have a relaxation on the price of natural gas. Under the terms of this conference report, the natural gas prices that would be allowed would hardly rise to comparable rates for oil or coal in most homes or most industries until about 1985.

If we are going to be practical about it, what about the supply from Alaska that has been spoken of? I had the privilege of being the manager of the so-called Alaskan natural gas bill in the House of Representatives at the time of its adoption by the House. It was also adopted by the Senate, and the President signed it.

In relation to that measure, the President made the decision as to what would be the preferred pipeline company to bring that natural gas down to the lower 48, and the preferred route. They have been designated. They have been selected—if we care to use that term—as the ones that will be building a pipeline for natural gas from Alaska to the lower 48.

The owners of that company advise me that they feel that it is absolutely essential that this conference report be adopted this year. The conference report contains in its structure the so-called roll-in provisions for natural gas pricing for such new gas that is brought down to the lower 48 as is the case with Alaskan natural gas. The owners of that pipeline company tell me that without the bill, without adoption of this conference report this year, they will not be able to sell bonds in order to have financing to build that privately owned and privately operated natural gas pipeline.

I think it is also worth noting that after this conference report is adopted and after that company, through the provisions of roll-in pricing in this conference report, is able to go to the money market and to sell their bonds, and therefore gets into a position to construct that pipeline—and let us assume it takes 2 or 3 years after that to construct a pipeline—the cost of that natural gas delivered to the lower 48 will be much above what we are talking about now, in terms of $1.93, $2.25, or $2.50 per thousand cubic feet for natural gas.

So it hardly befits any practical sense of the situation we are in today to speak of the Alaskan supply being available to us to augment our supplies without this bill being enacted this year.

The Senator from Ohio (Mr. METZENBAUM) and the Senator from South Dakota (Mr. ABOUREZK) jointly have signed a letter to us, dated September 7, which we all have received. It has been widely publicized for the public. It is their intention to offer a motion for recommittal, and they list a series of supporters of their viewpoint.

I point out that the first one they list, the American Conservative Union, is on record and still maintains that the po-

sition they seek is one of full deregulation of gas.

The second one mentioned is Americans for Democratic Action, and the position of Americans for Democratic Action has been, and continues to be a position of opposing all deregulation of natural gas.

The third, the American Farm Bureau, is on record—and their letter is included with the letter from Senator METZENBAUM and Senator ABOUREZK—as wanting and still supporting full deregulation. I will read a portion of that letter from the American Farm Bureau to Senator METZENBAUM:

> We continue to believe the Farm Bureau's policy providing for immediate deregulation of natural gas pricing is in the best interests of farmers and the national economy.

Going down the list, the fourth one mentioned is the AFL–CIO, and they are on record as opposing all deregulation of natural gas. However, not mentioned is that the building trades of the AFL–CIO favor the conference report.

The Consumer Federation of America, the fifth one mentioned in the Metzenbaum-Abourezk letter, opposes natural gas deregulation.

The U.S. Chamber of Commerce is listed, and they are on record as wanting full deregulation. They want the bill recommitted, and they want action deferred on any bill until the next Congress.

The Independent Petroleum Association of America also advocates this bill being a bad bill; that it should be recommitted or killed; because they want deregulation. They hope they can get it next year.

The National Association of State Regulatory Commissioners also is listed as being in favor of a motion to recommit.

But it is clear from their letters they have a specific reason for recommital. It is on incremental pricing. They want that changed. But I believe they are on record as being for the bill otherwise.

So, the truth of the matter is that the advocates of recommital, as listed in the letter from the Senator from South Dakota and the Senator from Ohio, are a mixed bag. Some want one thing and some want the other. As a matter of fact, part of them are for total deregulation, instantaneously, some are for deregulation next year, and some do not want deregulation at any time.

Suppose their viewpoints were represented on that conference committee if there were recommital with instructions. It would be extremely difficult for such a conference committee to come back with any kind of a recommendation or any kind of an agreement whereby we could have a bill.

So I believe that it is correct to point out that the result of recommittal is (a) no agreement; (b) no bill. That is it. Recommit and no bill.

The very backers, the very endorsers of recommittal are not in agreement on what should be the terms of a different bill. So we have this choice: Do we want this bill or no bill at all?

I personally was in favor of the Pearson-Bentsen proposal as the Senate adopted it. I felt that a gradual deregulation was in the best interest of this country, and I still maintain that viewpoint.

It will be interesting when the votes are counted that we will probably see some of those who supported Pearson-Bentsen voting for this conference report and some of the others in the Senate who supported Pearson-Bentsen voting against this conference report.

But I think it is fair for me to say that those of us who supported Pearson-Bentsen, a phased in deregulation for natural gas, continue to feel that that is by far the wisest course. Why? Because I and I think all who backed Pearson-Bentsen and voted for it feel that there is a national need for finding more natural gas in the United States, that to accomplish that we have to have a better price incentive and that the price incentive for doing so would be fair and equitable and entirely practical if we tied it to the present cost and whatever the changing cost is of No. 2 fuel oil because that is what it is comparable to.

Personally I would rather have natural gas to heat my home than fuel oil. I am sure there are many industries that must have natural gas rather than No. 2 fuel oil or coal, or that will work a hardship on them and have them incur other costs.

So, if we had a phased-in deregulation that was realistic and looking at that kind of a price structure and arriving there rather quickly, as was the case in the Pearson-Bentsen approach, then I believe we would have a much superior part of the overall energy package for this country.

However, the conferees could not agree with that and so we have here a proposal that on pricing it gradually works up to a point of somewhere near the present cost of No. 2 fuel oil for natural gas that is new and also will work up gradually to a point of deregulation. It does not come as fast as I think it should. But, nevertheless, it is the only available method that I have to vote for deregulation at some point and a more superior method of pricing natural gas in comparison to other types of energy supplies.

In all cases that I have used this term of natural gas, I of course mean new natural gas. The method of describing what is new natural gas or fixing by law what is new natural gas under this conference report is somewhat complicated. I regret that. But, nevertheless, I am advised by some independent gas producers from my own State that it is workable on pricing. They do have a great concern about the necessary paperwork that will be foisted on them by the adoption of this conference report, particularly as it affects intrastate gas, gas produced in my State, for instance, of Montana, and sold within the State for use within the State.

I hope before the days of debate are concluded on this measure to have in my possession the mechanism that would be used by FERC, the Federal Energy Regulatory Commission, working with the individual State commissions on just how that paperwork would be accomplished. For instance, if an independent drills a well, a successful well, and then submits the data to the Montana Commission, first of all, to arrive at a determination whether or not it is new gas as identified under the terms of this act and then, second, when a contract for sale of that new gas has been accomplished, submits that contract between the independent gas producers, the wildcatter, mind you, and a utility firm, which might be in our case in Montana the Montana Power Co., that that is about the end of the paperwork that that wildcatter has to go through as an independent gas producer of new gas.

I am advised by officials in the Federal Energy Regulatory Commission that it will be handled in that way, the gas producer going to the State commission, the State commission establishing (a) that it is, first of all, new gas and then, second, (b), the (b) part of it being the price for that gas as established in the contract with a utility firm that will move and sell the gas to consumers in a State will be the procedure that is followed and that the old procedures of the Federal Power Commission on monthly reporting by each gas producer will not be required and that in general the State's requirements and the State's management of the reporting will govern.

If that is the case, as has been described to me by officials of the Federal Energy Regulatory Commission, which will have the responsibility for overseeing and enforcing these provisions, I think some of the problems that the independents envision in producing new natural gas within the State, the mechanism and the procedures of reporting it, and the reports that follow thereafter will be alleviated. One of their most vigorously and most understandably justified objections to the bill will have been wiped out.

I fervently hope that is the case. At a later point as we debate this issue before the Senate during the coming days, I expect to be able to substantiate that being the case under the Federal Energy Regulatory Commission's power, that that is truly their intent.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. HANSEN. Mr. President, before I begin my prepared remarks, it seems to me there is a need to at least try to be accurate about what is in this complex and confusing bill.

Earlier today my good friend, the junior Senator from Washington, said that new reservoirs on old leases are deregulated from nonprice controls. This is not correct.

Section 601(a) deals with nonprice deregulation. However, only new gas as defined in section 102(c) is so deregulated.

When we look to section 102(c) we see again that only gas from new leases is deemed new. So again gas from promising areas like the Baltimore Canyon, will not be freed from nonprice regulation either.

Mr. President, one of the myths being propagated with regard to this bill is that our only choice is between this bill or nothing. It is stated that the motion

to recommit that I and others will propound is only a disguised effort to kill the bill. And that the bill proposed by the motion to recommit could not be adopted. This is untrue, and I would like to provide some background on this.

The pricing provisions of the bill were the source of the months of endless debate, haggling, secret meetings and so on which finally resulted in the complex monstrosity that we have before us. However, when that process was finished in late May, there remained a number of provisions contained in somewhat similar form in both bills, which remained for resolution. These were handled quite expeditiously in a few meetings in June, and were placed into the bill with the virtuously unanimous support of the conferees on both sides of the question in both Houses. It is essentially these provisions, on emergency and surplus sales, which we propose to enact in our motion to recommit.

On the merits of these issues there is virtually total agreement. The only way in which the arguments made by the "all-or-nothing" crowd would be true would be if the conferees supporting the conference report were to adamantly insist on a "dog-in-the-manger" approach, refusing to report provisions unanimously agreed upon simply in spite at the failure of the rest of their handiwork.

I do not believe that the conferees would react in this fashion, and I do not believe the American people would stand for it. Let me address this tactical situation a bit further. The conference report could only command the barest majority of signatures of the conferees from each House. Those supporting the motion to recommit will be at most one vote short of majority support among the conferees of both Houses right now. If the motion to recommit succeeds, it is inconceivable that those who have just argued so loudly that there must be some natural gas legislation this year would be the instruments preventing adoption of the provisions whose merits were agreed on by all parties.

Finally, let me reiterate that the provisions we hope to adopt by the motion to recommit are provisions taken essentially verbatim from the language adopted by the conferees. These are not some novel or untried ideas cooked up on the spur of the moment. These are good and useful provisions adopted overwhelmingly by the conferees themselves, on which there is little dispute. It seems absurd to abandon the good parts of the work done by the two Houses of Congress and by the conferees simply by holding them hostage to the complex, repressive, and unworkable provisions that have been adopted with regard to pricing.

In fact, however, this argument is rather in line with the strategy of the proponents of this bill in other areas. In an attempt to adopt this bill they have essentially been perpetrating one of the greatest mass hostage-takings since the Middle Ages. Originally, only the other parts of the energy bill were being held hostage for the passage of the natural gas bill. Now, as we see, the attitude is to hold hostage the other good parts of the gas bill as security of the safety of the pricing and regulatory provisions. In addition, we have seen how totally unrelated issues such as the breeder reactor, steel imports, and almost any other activity with which a logical or illogical link can be forged have been "yoked unequally" with this bill.

I believe the time has come for this process to end. The time has come for the issues to be treated on their merits, and on those merits, Mr. President, there is little doubt that the outcome should be the support of the motion of recmmital, the adoption of the good and useful provisions along with the other parts of the national energy bill as acted upon by the conference committee.

A second myth being propagated about this bill is that in some way failure to adopt what has been dumped before us will be an unfavorable reflection of the U.S. Senate or on the national will of the United States. The distinguished majority leader previously stated:

> This Nation will be perceived as one that shrinks from its problems if we do not face this issue.

But what does it mean to face the issue? I have never understood that the U.S. Senate is obliged to adopt legislation simply because it is brought before it. That is why we are endowed with the power of debate and vote and endowed with the various devices to shape legislation to the national interest as we perceive it. We will certainly be facing this issue if we forthrightly declare that the bulk of the pricing provisions as reported by the conferees are bad legislation and should not be adopted and that certain provisions are good and useful and should be adopted.

Similarly, the charges made that failure to adopt this particular bill would mean that Congress cannot deal with the matter that is of vital interest to the Nation, or that "the Senate just did not have the courage and the decisiveness to act on this question" seem to me to be grossly misleading.

Perhaps what is intended by these statements is that it will be a poor reflection on the conferees and on the secret negotiators who hammered out this piece of legislation, or that it will be a poor reflection upon the staff and the members of the administration who help to draft it. If that is the argument, then so be it. If that process of secrecy, of backroom dealings and accommodations, has proven itself to be a failure, we should certainly state so forthrightly. It is certainly no reflection on the decisiveness of the thermometer that it truly reflects the temperature, or on the decisiveness of the calendar that it accurately reports what the day is. We should not revile the compass for telling us that we are going in the wrong direction.

And it will be no reflection on the character of the Senate if it accurately reports that this is a bad piece of legislation in most of its provisions and that only those that can be of use to the country should be salvaged through the motion to recommit.

In short, Mr. President, this argument that we are obliged not simply to decide this issue, but to decide it in a manner favorable to the proponents, is simply another one of a seemingly endless series of arguments which have been ingeniously devised to prevent us from focusing on the substance of the bill before us. It has been accurately said, by the senior Senator from Missouri, when we were on television together last week, that the supporters of the bill are rather loath to talk about what is in it. They would rather talk about the value of the dollar or the will of the Senate or the international prestige of the Presidency. And that itself is a sign of the weakness of the position they are attempting to foist on the Senate. And yet, all of those other factors must ultimately depend on the merits of the bill. There can be no prestige in willfully adopting a bad bill; there can be no long term support for our economy or our currency by adopting a bill that will do nothing to aid them.

Mr. President, one of the major talking points being used by the proponents of this bill is that it will produce large additional supplies of natural gas.

This is the keystone of the arguments for the bill. The argument for reducing oil imports depends entirely on this myth. Yet the argument seems very strange coming from those who last year argued that complete deregulation would produce no additional gas. How could this complex bill provide incentive for a "30 percent increase in interstate gas?" It does not.

The alleged advantages of this bill are in two major areas—price and regulatory certainty. I will deal with each of these in turn, but before I do I would like to present a brief overview of the situation of the gas producers and drillers in the United States. There is not a monolithic drilling industry in the sense that people who produce natural gas may operate in widely differing environments. Some may work on the outer continental shelf while others work on shore. Some may produce exclusively for the intrastate market while others produce exclusively for the interstate market or for both. Some have interest in shallow wells and production areas; others have interest in deep wells, so that these conditions and financial considerations may differ quite widely.

Now it is undoubtedly true that when you take this proposed bill, which is so full of nooks, crannies, gradations, splotches of color here and there that a visual representation would look like a Jackson Pollack painting, it is undoubtedly true that some producers are in such a situation that they will be better off under this bill than they would be under the status quo, at least in the short run.

And it is also true that the natural gas producers in this country, though many of them are indeed my friends, are not so devoted to principle that they would reject a proposal, whether you call it regulation or deregulation, that would genuinely encourage and allow them to produce more gas, because that is their business. In fact, many producers have at one time or another over the course of the negotiations been quite desirous of supporting a bill. The

fact is as this bill has finally emerged, as this bill now lies before us and as this bill will operate if we adopt it, the vast majority of the gas producers of the United States are opposed to it.

The Independent Petroleum Association of America, whose members drill the large majority of gas wells and find the large majority of reserves, is vehemently opposed to this bill. The local, state and regional associations of drillers and royalty owners in all of the producing States are opposed to this bill.

Many of the major producing companies, such as Standard of Indiana, Conoco, Marathon, Phillips, Getty, Sun, Pennzoil, have been willing to affirmatively state their opposition to this bill. It is true that some of the other major companies have been silent, or have been lending quiet support to the bill, although to my information no major producer has been willing to state its reasons for that support. Quite frankly, the neutrality or tacit acquiescence of such companies has been secured by the knowledge that the larger the company, the more it stands to gain or lose from future Government action either directly in the business of regulation of gas or through other governmental activities. So I think it is pretty clear that on the merits of this bill, on the substance of this bill, people who are supposed to produce the vast additional quantities of gas claimed by the supporters of the bill simply do not believe it will work.

Let us turn now to the mechanics of the bill and see just why this is the case. As a general matter what happens is that the currently unregulated intrastate market is regulated immediately and fully. This will undoubtedly lead to a relative reduction of incentive and new drilling activity in that area.

The intrastate market has produced most of the new gas finds in recent years, precisely because it was a free market, able to respond to changing needs and demands This bill would place immediate controls on that intrastate market. The price allowed for gas proven to be "new" under the complex system in the bill would be limited, today, to a price lower than some, though not most, current intrastate sales.

However, gas not considered "new" would get a lower price. In addition, the producer loses the right to renegotiate later for a better price, he loses the right to negotiate the length of his contract, and he loses the certainty that the deal he agrees to is the one that will stick. All of these matters are turned over to Federal bureaucrats. All of this has to reduce incentives, on balance.

In the interstate market, the bill junks a system of cost-based regulation that is at least relatively well understood for one that is far more complex, uncertain, and burdensome. For new drilling today, there is only one uncertainty—what is the price FERC will set for that gas. Even this uncertainty is due only to FERC's slowness in promulgating rates. Thus, in the last half of 1976, producers knew with certainty that wells drilled then, being in the 1975–76 biennium, would get the set rate of $1.42+ escalation. Drillers today know they will get the rate set for the 1977–78 biennium, although they do not yet know what that rate will be.

Under the new system, each well must be assigned a category and a price. This will require a separate State proceeding, followed by Federal review, with further judicial review and uncertainty that revenues from each well will be in jeopardy while this process goes on.

Nor is the prospect of "deregulation" beyond 1985 likely to add much incentive. For drillers now, 1985 is a long way off. As it comes closer, it will be more and more tempting to wait until after 1985 to drill, to see whether it actually comes off. The bill only guarantees deregulation for the first 6 months of 1985, and then only for some categories of gas.

The administration has tried to sell this bill as a deregulation bill, one that will bring the benefits that we had said would come from deregulation—though the administration denied any such benefits would arise at the time. In fact, however, this is also a myth. Today over 40 percent of all gas is sold in the unregulated, intrastate market. If this bill is passed all of that gas will come under regulation. One hundred percent of the gas in the country will be under regulation and price control. After a year, less than 1 percent of gas will be deregulated as high cost gas. Ninety-nine percent will remain regulated. By 1985, the best estimate of the distribution of gas among the many, many categories established by the bill is that less than 40 percent of gas would be deregulated, even assuming that deregulation sticks. After 7 years of complete regulation under this arbitrary and complex bill, we would have less deregulation than we have today. That certainly does not sound like incentive.

The above arguments, while we believe them conclusive, do require the exercise of judgment, and they are controverted by supporters of the bill. But what about the people who will have to live under these new rules, and risk their own money under them? What is their judgment?

If the bill's supporters are right, this bill will mean more production, more revenues and profits for drillers, more severance tax revenue for producing States and general prosperity for the industry. If so, why is this bill opposed by:

First. Senators from States representing 95 percent of America's gas production,

Second. The Governors of the three largest gas-producing States, and

Third. The overwhelming majority of independent producers and wildcatters and many major producers?

These are not stupid people. If they really believed this bill would make their areas better off, they would support the bill. At this later date, opposition to the bill is not a bluff. It is a simple recognition that this bill will provide less incentive for the producer than the status quo, and consequently less gas for the consumer, which is supposed to be the point of the whole exercise.

Let us look at another myth; that the bill's incremental pricing provisions are "fair, balanced and workable," and will protect consumers.

The original concept of "incremental pricing" was to insure that those who demanded supplies of new and high-priced gas received that gas, but also paid the increased cost. The incremental pricing in this bill is so badly designed that it causes higher prices for consumers, higher prices and more uncertainly for industrial users, and "an economic catastrophe" for all citizens of consuming States.

The flaws in incremental pricing are well set out in a recent "Open Letter to the United States Senate" by Charles Cicchetti, chairman of the Wisconsin Public Service Commission, and a leading advocate of fair and effective incremental pricing. He concludes:

> The so-called incremental pricing pass-through will cause industry to convert to foreign oil, move factories to gas producing states, and escalate the prices of their products.

This letter is based on the final version of the conference report as filed.

As indicated by the only full-scale study of this provision, done by the Department of Energy's own Energy Information Administration this bill will lead to higher retail residential prices than under the status quo, or under either the House or the Senate bills. The administration's claim that "the price of natural gas to industrial users will be lower than the price would have been under the Senate * * * bill" rests on this same EIA report, which they otherwise repudiate.

Further, as Cicchetti points out, industrial users will pay much higher prices than under current law, and are not likely to sit still and be hit with the double whammy of higher prices, and continued uncertain supplies due to the operation of curtailment programs. They will tend to switch where they can, usually to oil. Such switching will increase, not decrease, oil imports, and will further drive up the price to other industrial users, thus creating a "domino" effect.

Finally, this provision is very discriminatory between regions and users, on an arbitrary basis. In some areas, residences will be fully protected, and industries will not be hurt too badly if the residential load is very small and the industrial load very large. In other areas consumers will receive little protection, yet the industries being incrementally priced will be hurt badly. Some pipelines will have to price much of their gas incrementally, while others, with good long-term contracts, will be better off.

And throughout this process, FERC will be making decisions that will impose or shift literally billions in costs between users and between sections of the country. And intrastate users will not be incrementally priced at all, thus acquiring a vast advantage over the interstate users that are supposed to be the beneficiaries of this bill. It is little wonder that most of the major industries of this country oppose this bill.

(Mr. MOYNIHAN assumed the chair.)

Mr. HANSEN. Myth. The passage of this bill "Will have a direct impact on

our trade deficit, on the value of the dollar, and on the rate of inflation."

To the extent these claims have any validity, they would have to rest on the bill's actually increasing American production. As shown above, the bill will not do that. In addition, the increase in oil use through incremental pricing will actually worsen the economic situation. In the absence of such increased production, it is very hard to contend that the mere "psychological effect" of passing "an energy bill" will have much effect.

Surely we cannot believe that those who trade in dollars can be fooled by a piece of paper with "energy bill" at the top. We should also note that Canada, which is a net energy exporter, has seen its dollar fall even further than ours in the last few months. Statements by Milton Friedman, William Simon, and the Chase Manhattan Bank, which I will insert following my remarks, all indicate that passage of this bill, and fundamentally any energy bill, will have little effect on the dollar. The dollar's value rests on how many we print, and how many the rest of the world wants to hold, not on whether the President scores a legislative triumph.

Mr. President, I ask unanimous consent that the three articles to which I have referred be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HANSEN. In summary, this bill will not produce more gas, it will produce more regulation, and it deregulates less gas than is now unregulated.

As Senator JACKSON himself said, "If this bill is not a major step forward, we should defeat it."

The merits of the bill deserve defeat, but our motion to recommit will preserve the good parts of the bill, without bringing along the counterproductive regulatory baggage in this conference report.

EXHIBIT 1

HOOVER INSTITUTION ON WAR, REVOLUTION AND PEACE,
*Sanford, Calif., August 22, 1978.*

HON. CLIFFORD P. HANSEN,
*Senate Office Building, Washington, D.C.*

DEAR SENATOR HANSEN: I understand that one issue that has arisen in connection with the so-called gas deregulation compromise is what effect it might have on the value of the dollar abroad.

As compared with the present situation, the proposed compromise would have minor effects in both directions on the dollar. The compromise would certainly reduce the efficiency and output of that part of the gas industry now free from control, the intrastate market. On the other hand, this is by no means clear, the compromise might provide a greater incentive for additional production from the part of the gas industry now subject to control. The effect on intrastate gas, which would hurt the dollar, would be immediate and certain. The effect on interstate gas, which might help the dollar, would very probably be delayed. The complexity of the proposed arrangements are such that it would truly take a modern Einstein to figure out when these effects would occur and how great they would be.

In any event, the dollar has not been weak because of the energy problem, and no amount of tinkering with energy legislation will have any significant or lasting effect on the dollar. The dollar is weak because of bad domestic economic policy, policy which is destroying the unrivaled capacity for growth of American free enterprise by hampering it at every turn with taxes, controls, regulations, policy which is producing inflation through excessive government spending and excessive creation of money.

The way to strengthen the dollar fundamentally is to improve these policies, to set American enterprise free, to end inflation. From this point of view, a truly fundamental energy reform, which eliminated all controls on prices as well as our present subsidies of oil imports, which abolished the Department of Energy, enabling the market to go to work to produce, price, and distribute the energy we demand—such a program would truly strengthen the dollar, not because of its direct effects on energy imports, but because it would demonstrate to the world that we were awakening from our drugged state and were prepared to set our economic policy on the right path.

Sincerely yours,

MILTON FRIEDMAN.

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STATEMENT BY ROBERT L. SLIGHTON, VICE-PRESIDENT, THE CHASE MANHATTAN BANK

The argument that passage of the compromise gas bill would play an important role in halting the decline in the dollar and strengthening the US balance-of-payments outlook is at best highly exaggerated and at worst just plainly wrong. Adoption of the proposed legislation would probably result in a modest strengthening of the dollar in the very short run, but this improvement would not be permanent. In the longer run, the legislation could actually result in some weakening of the dollar as foreign exchange markets come to perceive that the long-run supply of natural gas in the US is as likely to be reduced as increased under the new regulatory regime.

There are two major weaknesses with the Administration's position that international implications provide a strong argument for the bill. First, the major source of weakness in the dollar at this time is not a weak current or prospective trade balance but rather worsening expectations about US inflation. Indeed, the dollar has entered a new phase of weakness in spite of widespread recognition by market analysts that the US trade deficit has peaked and is likely to decline substantially in 1979. The movement of the US trade account into a large deficit position—and concerns that growing energy imports would imply continuing balance-of-payments difficulties—were the major sources of weakness in the dollar from the summer of 1977 until the spring of 1978. The current weakness of the dollar springs from the accelerated rate of inflation in the US and the perception that US monetary policy seems designed to accommodate to increased cost-push inflation. No policy action that is not designed to affect inflationary expectations is likely to have a significant and permanent impact on the value of the dollar under current market conditions.

Second, it is by no means clear that the market will perceive the compromise bill as resulting in an enhanced long-run supply of natural gas in the US and hence an improved long-run balance-of-payments outlook. The legislation is highly complex and difficult to analyze, thus there is likely to be a short period of euphoria in which the dollar temporarily strengthens in response to the assumption of favorable supply effects. Our belief is that once market analysts have time to examine the legislation carefully, they are likely to conclude that the status quo provides at least as much production incentive as the proposed regulatory regime

SIMON CALLS GAS COMPROMISE "TERRIBLE" LEGISLATION

NEW YORK, August 24, 1978—Carter Administration attempts to force passage of bad energy legislation and an equally bad natural gas compromise on pleas that it will strengthen the U.S. dollar abroad were denounced today by former Treasury Secretary William Simon.

Simon, who was also first head of the Federal Energy Administration, acknowledged that while a "good" energy bill would assist in making the U.S. currency stronger in international markets, the fundamental cause of the disastrous decline of the dollar in world markets is the irresponsible economic policies of this Administration. "We have allowed inflation to dominate our economic affairs, and when a country debases its currency, people do not wish to own that currency. The energy legislation being considered is counter-productive and the natural gas compromise about to be taken up in the Senate," the former Treasury Secretary and energy czar said, "is not a bad compromise, it's a 'terrible' compromise. The Good Lord knows that we need an energy policy in this country, but I would prefer to have no legislation rather than bad legislation."

"The Administration's own energy enforcement authorities have made it clear," Mr. Simon noted, "that the natural gas bill is 'so complex, ambiguous and contradictory that it cannot be enforced and that the national interest will not be served by adoption of legislation which . . . is unenforceable'."

"I am in total agreement with this finding," Simon said. "Imagine the administrative chaos which would result when a Rube Goldberg agency attempts to develop regulations to implement legislation conceived in confusion and couched in cloudy language which will thrust almost every decision into the courts for adjudication."

"It is a tragedy," Simon went on, "that the Administration is no longer arguing the merits of the bill but is reduced to jawboning and arm twisting to win votes and is willing to sacrifice the U.S. economy in the vain hope of enhancing political prestige at home and abroad."

"Our international friends are not so naive as to believe that bad U.S. energy policy will lead to a stronger U.S.," Simon added, and concluded with the comment: "I really wonder if the Carter Administration is more concerned with the polls than with our energy policy."

Mr. MELCHER. Will the Senator yield?

Mr. HANSEN. I yield.

Mr. MELCHER. My friend from Wyoming and I stood together in voting for the Pearson-Bentsen proposal as the Senate passed it, that portion of the energy policy, almost a year ago. I think we stood together for the same reasons. We wanted some type of deregulation phased in, and believed it was absolutely essential if we were to have more production of natural gas in our area that there had to be a better price before people would go out in the field and wildcat.

We do not have Pearson-Bentsen before us. This is quite different.

I agree with the assessment made by my friend from Wyoming on almost all the points he raised in his delivery today. However, there is a point on recommittal that I would like to ask the Senator from Wyoming about.

If the recommittal motion were successful and only the two points were

changed in the bill as described in the August 23 letter to all of us, on which Senator BENTSEN was the first signer along with some 18 other Senators, if those were the only two points that were changed in the bill, how would these changes really benefit an independent gas producer in Wyoming or Montana?

One would provide the President with the authority needed to cope with emergencies by allocation of temporary sales and the other point is to allow interstate consumers to take advantage of surpluses in the producing States under conditions that will prevent brokering. Those are the only two points changed. How would it alleviate the problem for the independents to encourage them to feel more confident about going into the field to drill wells?

Mr. HANSEN. First, let me thank my distinguished friend from Montana for the interest he has taken in this legislation over the years, for his participation in the debate on the floor when we were debating Pearson-Bentsen, and for his attention now.

I respond by saying that the encouragement for independent producers in my State of Wyoming and his State of Montana would come about in this fashion: We would not be imposing regulation on the intrastate market. The intrastate market has provided the major incentive for additional drilling for both oil and gas because, insofar as natural gas goes, that was not regulated. As a matter of fact, about the only part of gas drilling activity that has shown any life lately has been that which was done for the intrastate market insofar as onshore drilling is concerned.

The trouble with this bill, and why, I think, there is the proposition we propose in our motion to recommit and to report back is that we would not be saddling the gas industry, those who are actually drilling, with regulation on the intrastate market, plus this other fact: Under FERC every 2 years, as my friend from Montana knows, it is the responsibility of that regulatory agency to establish a new price for all gas. That price, absent the activity in the legislation which engages us at the present time, would probably have been established earlier. They have been holding off down at the Federal Energy Regulatory Commission because of the prospect that legislation would be passed. When we make comparisons and when projections are made on what would be produced under the status quo or under the compromise or under the Senate-passed bill, Pearson-Bentsen, it has been, I think, an error on the part of the staff who have been serving the majority to assume that the comparisons can logically be made with what the price of gas is now under the old FERC definition, or what it would be under the terms of the bill.

That is part of the reason that I think the compromise we talk about would offer greater encouragement to the industry than it would have under the conference report.

Second, however, we should not overlook the fact that there is an enormous amount of regulation that will be imposed under the terms of the compromise bill. No one says that there will be fewer than 17 kinds of different gas identified. I pointed out in my remarks that first, before anyone drilling a well could say with certainty what price he would get for the gas under the compromise, he would have to pass the examination by a State regulatory agency. That would be subject to review by the Federal regulatory agency; and then, third, by court review if he wanted to go through all of the steps. So I think we have to recognize that, given the advantage and the encouragement that the gas producer now has and with the two terms that are contained in our motion to recommit—one to give the President emergency powers to allocate gas and to fix prices; and second, to permit the movement of gas from where it may be in surplus supply to areas where it is needed—with the avoidance of all of the regulatory controls that would be imposed under the terms of this bill, we can expect, subject to the limitation, the only limitation, that there can be no brokering, you certainly would expect, in times of need in one area, with surpluses in another area, that there could be a price improvement over what would happen in that particular area.

I shall just have to conclude by saying that I think that the industry is best able to speak for itself. The independents in my State of Wyoming are solidly on record that they would favor no bill at all as compared with this bill. I think that, as I recall the great number of independents that there are in the State of Montana, I suspect that the great majority of them share the view of the industry as a whole, of the IPAA as a whole, of my Wyoming producers, in saying that. They shall make up their own minds, but I shall have to say the final proof, to my friend from Montana, is best disclosed by what the independents say for themselves.

Mr. MELCHER. I thank my friend from Wyoming and I think that it would be accurate to say that the independent gas producers from Montana are opposed to the conference report. It is only fair, in saying that, also to say that some, perhaps most, feel that the pricing mechanism that is allowed under the conference report would be adequate to encourage them, to give the incentive to go out and risk their capital to see if they can find some more natural gas.

Mr. HANSEN. If my friend from Montana would yield at that point, let me just take this opportunity to make one observation.

A year ago, when my friend from Montana, whose friendship I cherish, and I were supporting Pearson-Bentsen and made the argument that greater incentive was needed, we were told then by the administration—this is just about a year ago—that there was no need at all to go above $1.75 for gas; if you went above that, nothing would happen in the way of additional production. All that would occur would be inflation. Even some of my friends, who represent important producing States, at that time were making the same argument. They did it on this specious reasoning: first, that there were only so many drilling rigs available so that a higher price would not do anything about encouraging greater production. Of course, the fallacy in that argument is simply this: given a higher price for anything, a greater effort will be made by any reasonably prudent person to get into that business. As regards the statement that there were only so many drilling rigs available, that is very true; at that time, there were in existence a definite number of drillings rigs. But if drilling rigs become valuable enough and if you have enough people wanting to get into the drilling business, there indeed will be bidding going on for drilling rigs. We know what that will do: it will drive up the price of drilling rigs.

If you make the production of drilling rigs sufficiently profitable, you will have a lot more drilling rigs produced in this country than we have today. I have made the statement that if it got profitable enough to build drilling rigs, you would find shipyards and steelmakers and automobile makers in the drilling rig business. Anyone who has observed the private enterprise economy knows that that is the way it works.

I apologize for taking so long, but I did want to get that in, because I think it spells out what was wrong with the argument that was being made against those that were offered by my friend from Montana and me last year.

Mr. MELCHER. I think my friend from Wyoming would agree, perhaps, with this belief that if you live long enough and are still around here, you see the wisdom of your original thoughts sometimes agreed to by others.

Mr. HANSEN. That encourages me to live longer.

Mr. MELCHER. I want to say on the other point that independents look at this conference report and have serious reservations on the reporting provisions that would accompany the discovery and sale of new interstate gas. It was described to me by several of my independent friends in Montana as being a requirement of the old Federal Power Commission reporting procedures and that, if that were the case, they would not go out in the field to try to find natural gas that we would probably be selling under contracts in 1979 for about $2.20 per thousand cubic feet, if they were subject to the reporting provisions that the Federal Power Commission used to require, and it does not anymore because it has one out of existence, or the authority was taken out by the Federal Energy Regulatory Commission, but still based on the Natural Gas Act, and they probably have a lot of the same reporting requirements in place yet. But if the independents were faced with those stringent reporting requirements which are very costly, and they explained it to me, a monthly report, a very detailed report, how gas was produced, the type of well and the conditions of the well, who got the gas, et cetera, they would not want to go into the field to try to find natural gas at about $2.20 per thousand cubic feet for sale in 1979 to intrastate utilities.

I find the burden of paperwork not

only to be frustrating on business, but to be extremely costly.

So I tended to believe their objection, that if it were the case and they were subject to all these reporting requirements it would be pretty much an unworkable situation for them.

I was relieved to find out from the staff and from the Federal Energy Regulatory Commission that such would not be the case, that the independent, having drilled a well successfully, found some gas, under the terms of the act, that was obviously new gas, would ask the regulatory commission in Montana to ascertain whether or not it was such gas, the commission would so find, and that part of it is not so hard to understand.

They would so find and then certify, inform the independent that it was new gas and certify in this case, the epitome of the "Great White Father" here in Washington that, indeed, an independent had found some gas in Montana and that it did fit into new gas.

So the interpretation of the new gas is placed in the hands of the State commission.

Then the next step, what is the price for that new gas, is also in the hands of the State commission, and they tell the independent. The independent sells the gas under terms of a contract, say, to a utility company such as Montana Power, for sale within the State, and that contract then is filed with the State commission. The commission approves it. Where does FERC come in? I am told FERC comes in to spot check what the State commission does.

Charlie Curtis and Mr. Smith are the two on the commission I spoke to in the last week that tell me they have no intention of ever getting bogged down in the reporting requirements, as was required under the Natural Gas Act.

The Federal Power Commission built up, I suppose, huge storage rooms of very detailed reports which probably received scant attention when they were filed.

FERC tells me they will not go through that exercise, that the bill is written to spot check the State commission. I find some comfort in that. I hope my independents in Montana will find some comfort in that. I hope they will find it workable.

They will have to carefully review it with our State commission, our State oil and gas commission, to see, will the State oil and gas commission interpret this bill as that, go along with it, described exactly by FERC—and I hope to have the definite writing signed by FERC in my possession before the debate on this subject is closed because it is an extremely important point—as regards independents and for reporting to a State commission, and not to be obligated to tons and tons of monthly paperwork by a Federal commission.

Now, the point I would like to stress with my good friend from Wyoming is this, a motion to recommit with instruction goes back then to a conference committee with the House, if they are willing—if they are willing—and in that conference committee, with a viewpoint espoused by my good friend and which I share with my good friend from Wyoming on the need for getting out of the business of regulating the price of natural gas so that we can have increased production, my friend having that point of view, and others that will vote for a motion to recommit, how would it be possible to arrive at a position of unity, a majority at least, in such a conference committee between the Senate and the House to come back with a bill?

Remember, I know my friend from Wyoming will recall, although I am a member of the Senate Energy Committee at this time, I was not a member until just recently. I participated in the debate and in the final outcome of the gas deregulation bill here in the Senate on the basis of Pearson-Bentsen. I was not a member of the committee at that time and I have never been a member of the conference committee.

So, I can join with my friend from Wyoming who can wash his hands of the result of the conference committee because he did not sign the conference report. But in all reality, what good would it do to go back to a conference committee with divergent views, absolutely 180 degrees apart, on gas deregulation as espoused by himself and others like him, and my friend from Ohio, my friend from South Dakota, who has a viewpoint of almost feeling that any type of deregulation is harmful to the people of this country?

How can a new conference committee resolve those issues?

Mr. HANSEN. I appreciate the question. I will try to make my response brief because I know the distinguished Senator from Kansas is on the floor and was told earlier that he might expect to be recognized about now.

So let me say very briefly that the two provisions we have included in our motion to recommit and to report back have the support of an overwhelming majority of Senators and of House Members. So that there was no argument about the desirability of extending the President's emergency powers which have now expired. Nor was there any serious opposition at all over the other portion of that recommittal motion which would permit the movement of gas from areas where it was in surplus to areas of greater need, through either interstate or intrastate pipelines, without getting bogged down in this great morass of Federal regulations.

I also say to my good friend from Montana, third, that the conference report was just signed by a bare majority of Senators and of House Members. I think it was 10 to 7 on the Senate side; but since, I understand, there have been some defections, and on the House side, I think, by a majority of one.

So I point out that there really is not, in my opinion, all that much likely opposition to what I should think would appeal to most people as being two actions which could be taken, which clearly would be in the national interest, which would address emergencies that would move gas from areas where it is surplus to areas where it is needed, which would not impose regulation upon the intrastate market, and which would eliminate the other things that are wrong.

When the Federal Energy Regulatory Commission took over from the Federal Power Commission, there were, I am told, some 12,000 pending applications for relief. Today there are more than 20,000 applications.

Sheila Hollis, a new enforcement officer at FERC, who came on board with the present chairman, has said that this bill is so complicated that it is going to be practically impossible to administer, that it will be an administrative nightmare. Chairman Curtis has said that they will need a large number of additional employees to administer this bill.

Mr. President, I ask unanimous consent that Bill Reinsch and David Deisley, of Senator HEINZ' staff, have the privilege of the floor during the debate and any votes on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HANSEN. I say again to my friend from Montana that I know there are other complex things to discuss. I would be happy to join in, but I am reluctant to intrude further on the time of the Senator from Kansas. I think the Senator from Wisconsin also wishes to speak.

Mr. MELCHER. I will respond briefly, and then I will yield the floor.

Mr. President, I think the Senator from Washington is extremely honest in his presentation of this matter.

I think it is apparent that by scuttling the whole report except for two provisions which he has described, which would continue the President's authority needed to cope with emergency conditions and allocations as one of the two points that would be retained, and the second, to allow for brokering of gas by intrastate pipelines to interstate distributors—these are two points, as he has outlined correctly, which are acceptable to both the House and the Senate. But there are other points that are clearly unacceptable to both the House and the Senate. One of them is incremental pricing.

We all can find some fault with the provision that is made in the conference report for incremental pricing. But the fact is that if the conference committee would come up with exactly what is asked for by those who are advocating a recommital motion, there would be no bill at all. It would be dead.

As to the point about the independents and the paperwork that might be imposed upon them, or that they fear would be imposed upon them, in intrastate sales, apparently that is a fear that is not justified, in that they would report much the same as they do now, to their own State commission.

That also brings up the consideration that if the conference report is not adopted, all the requirements of the Natural Gas Act remain in force and all the paperwork that is required under the Natural Gas Act presumably would have to be required by the Federal Energy Regulatory Commission, even though they have stated flatly they wanted to get out from under it.

The memorandum from Charlie Curtis, the chairman of the commission, speaks

right to that point: That in terms of relief from paperwork required under the Natural Gas Act, which the Federal Power Commission, the predecessor of FERC, had to enforce and had to require, it will continue if we do not have a bill.

So the score, I suppose, in defeating paperwork would be about 10 to 1. If we kill the bill, we still would retain that 10 parts of paperwork required under the Natural Gas Act, and which has been in effect for so many years through the Federal Power Commission.

If we go the other way and agree to this conference report, apparently we can hope to get down to one, a minimal requirement of paperwork and expense.

So it appears to me that, on balance, our best out is to agree to this conference report, get it into law, strike a lot of the paperwork for everybody involved in natural gas production and the sale and distribution thereof, find out if there really are going to be any big bugs in it for the independents, and correct it promply in the next Congress.

One other grcup that has some credibility around here—maybe it is belated; in my judgment, it is belated—but the independent oil and gas producers are beginning to have credibility in Congress, and I hope with the administration.

I think we are paying them a lot more attention, listening to their beefs, their legitimate gripes and complaints, and the hamstringing they are subjected to by Government regulation. If the conference report is adopted and we run into that next year, I think we will have some opportunity in the votes to straighten out some of those particular problems.

Mr. President, I yield the floor.

WHY THE NATURAL GAS BILL SHOULD BE DEFEATED

Mr. PROXMIRE. Mr. President, in my opinion the so-called natural gas compromise bill should be defeated. We should beat it outright, on the merits, and vote it down.

DOES NOT PROTECT CONSUMERS

First of all, does it protect consumers? The answer is a loud, emphastic, ringing "No!" Under it, prices will go up and up and up. By 1985, new gas prices probably will double.

ADDS TO THE BURDEN OF REGULATION

Second, does it reduce the burden of regulation? Again, the answer is "No!"

Regulations will be more complex, more onerous, and more difficult under it than they are now. The proponents of deregulation of natural gas always had one good argument on their side; namely, that deregulation would mean less paperwork and less government than its continuance. But this bill is the worst of all worlds, because it increases regulation while it lessens protections for the consumer.

Of course, while my good friend from Montana says there will be less paperwork, anybody who has been around here very long knows how these bills are supposed to reduce paperwork. The best index is what happens to the bureaucracy. Under this bill, they say that the bureaucracy will have to increase. They are asking for more people.

DOES NOT PROVIDE FOR ADEQUATE EMERGENCY ALTERNATIVES

Third, does it carry out one of the major purposes it was intended to carry out; namely, to provide intrastate gas to the interstate system in times of great emergency? The big push came for a gas bill two winters ago when industry and consumers in areas like eastern Ohio were without gas. No. Under the bill, the emergency allocation of gas is limited to pipelines already in the interstate market.

DOES NOT HELP DOLLAR PROBLEM

Finally, does it help the problem of the dollar? No! This bill not only will not help the problem of the dollar but in my opinion will make the dollar problem worse. There is a simple, straightforward reason for this. The dollar is in trouble because of rampaging, endemic, rising inflation. This bill, which will double the price of gas by 1985 and which provides for yearly increases 3 to 4 percent or more above the rate of inflation, will make inflation worse.

And, when those who say this bill is needed to solve the dollar problem find out the reality that this bill will add to the rate of inflation, the dollar problem will get relatively worse rather than relatively better.

DOES NOT CARRY OUT ORIGINAL ADMINISTRATION GOALS

This bill does almost none of the things the administration set out to do. It does not continue price ceilings, as the administration proposed, on all but very high cost and hard to produce gas. Instead, virtually everything is finally deregulated.

It does not simplify regulation and administration, it makes it worse.

It does not integrate the interstate and intrastate systems, one of the major reasons for the bill, but provides for incremental pricing only for interstate gas and restricts emergency allocation to pipelines in interstate markets.

The bill does not limit the maximum price incentives for genuinely new gas and very high cost gas, but gives the maximum prices to a variety of old gas by providing new definitions.

So here is a bill which is anathema to the consumers, which will raise prices and significantly add to inflation, which will add to the burden of regulation for producers, which will produce no significant increase in natural gas and may actually bring a reduction, and which achieves almost none of the objectives for which the administration originally advocated it.

SYMBOLIC BILL AT BEST

But in the face of these solid, factual, adverse arguments we are told we must pass it for "symbolic" reasons. We must have an energy bill, it is said, no matter what is in the bill or how much harm or how little good it will accomplish.

And the voices in pursuit of this end have now risen in crescendo.

I am reminded that George Santayana once defined fanatacism as redoubling once's efforts after having lost sight of one's aims.

Let me now elaborate somewhat on two of the points I have mentioned, first that the bill will vastly raise prices without significantly increasing production and hence will add to inflation; and second that far from helping the dollar it could make things relatively worse for the dollar.

Mr. MELCHER. Mr. President, will my friend from Wisconsin yield at this point?

Mr. PROXMIRE. I cannot yield at this point because I unfortunately have a commitment. After I finish with this, I will be delighted to yield. I do not have a very long speech.

RAPID INCREASE IN NATURAL GAS PRICES

Since 1973 we have witnessed a phenomenal increase in new gas prices for interstate natural gas.

From the time of the Phillips decision in 1954—when the Supreme Court told the Federal Power Commission to get on with the job of regulating wellhead prices as required by the 1938 Natural Gas Act —until 1965, the price of new interstate natural gas at the wellhead remained remarkably stable at the level of 14 to 17 cents per thousand cubic feet.

In 1964 the Federal Power Commission abandoned its wellhead regulation and went to an area pricing rate. Between then and 1973, the time of the Organization of Petroleum Exporting Countries (OPEC) oil embargo, prices increased from about 16.5 to 25 cents per thousand cubic feet, or by 57 percent.

In 1974 the Federal Power Commission shifted from the area rates of 1965 to a national rate for all new gas produced after January 1, 1973. The new price was 42 cents, or an increase of 17 cents or 68 percent in one year.

In 1975 the price was raised again by the Federal Power Commission, this time to 52 cents plus an inflation adjustment of 1 cent per thousand cubic feet per year.

Then on July 26, 1976, the FPC issued the infamous opinion 770 which established a radically higher national rate for new gas of $1.42 for all new gas produced after January 1, 1975. Meanwhile the old 52 cent rate was raised to 93 cents for gas priced under it, and older gas from contracts which had expired were allowed to be sold in interstate commerce at 52 cents.

In 1931 the British cabinet was persuaded by its Central Bank that it should cut unemplovment insurance in order to restore "confidence" to the international community, particularly to the international financial community and the New York Federal Reserve.

That, of course, was a disastrous policy. Similar action here and abroad deepened the depression and caused untold misery, all in the name of "confidence".

I am reminded of this incident when I read articles by eminent political columnists saying that the President is making a vote for the gas bill a vote of confidence in the system or that we should pass the bill, no matter how bad its provisions, on grounds that it will help the dollar.

Arguments of that kind have to be made as a last desperate resort. If the bill cannot and should not be supported on its merits it is not going to either

restore confidence to the President or to our international standing or help the dollar.

Since 1973, therefore, we have seen an explosion in natural gas prices. This is shown in Table I.

TABLE I.—*New interstate natural gas prices*

| Years: | Price (cents per mcf) |
|---|---|
| 1955–64 | 14–17 |
| 1965 (area rate) | 16.5 |
| 1973 | 25 |
| 1974 (national rate) | 42 |
| 1975 | 52 |
| 1976 | $1.42 |
| 1977 | $1.57 |

Since 1953, therefore, we have seen an explosion in natural gas prices. There was an explosion in the price of interstate natural gas. The increase was not just a modest increase. It did not only double or triple or quadruple. It went up tenfold, tenfold. It went up from around 14.5 cents per thousand cubic feet to $1.57 per thousand cubic feet. That is as dramatic an example in the increase in prices as we have anywhere in our economy, a tenfold increase, outpacing inflation by four or five times.

NO INCREASE IN PRODUCTION

Did this explosion in the price of interstate natural gas bring any significant increase in new discoveries?

We have seen a geometric increase in prices—a doubling in price from 1973 to 1975 and a tripling of price from 1975 to 1977. One would expect that such a vast increase in price would produce a great outpouring of supply. It would certainly tend to do that to the degree that the markets were competitive and reacted to an increase in price.

That did not happen. There has been no overall increase in supplies since 1972. Unlike the period between 1955 and the mid to late 1960's, when natural gas prices were relatively stable, new discoveries, revisions, and extensions are far lower now than when prices were low and stable.

In the former period they averaged about 20 trillion cubic feet a year. But since 1973, they have fluctuated up and down at a level about half that of the 1955–67 period and essentially since 1967 they have fallen off very much.

Table II shows this:

TABLE II.—*Natural gas production compared to discoveries, revisions, and extensions of proven gas reserves, 1950–1975 (tcf.)*

| Year | Discoveries, revisions, extensions | Net production |
|---|---|---|
| 1950 | 12.0 | 6.9 |
| 1951 | 16.0 | 7.9 |
| 1952 | 14.3 | 8.6 |
| 1953 | 20.3 | 9.2 |
| 1954 | 9.5 | 9.4 |
| 1955 | 21.9 | 10.1 |
| 1956 | 24.7 | 10.8 |
| 1957 | 20.0 | 11.4 |
| 1958 | 18.9 | 11.4 |
| 1959 | 20.6 | 12.4 |
| 1960 | 13.9 | 13.0 |
| 1961 | 17.2 | 13.4 |
| 1962 | 19.5 | 13.6 |
| 1963 | 18.2 | 14.5 |
| 1964 | 20.3 | 15.3 |
| 1965 | 21.3 | 16.3 |
| 1966 | 20.2 | 17.5 |
| 1967 | 21.8 | 18.4 |
| 1968 | 13.7 | 19.4 |
| 1969 | 8.4 | 20.7 |
| 1970 | *37.2 | 22.0 |
| 1971 | 9.8 | 22.1 |
| 1972 | 9.6 | 22.5 |
| 1973 | 6.8 | 22.6 |
| 1974 | 8.7 | 21.3 |
| 1975 | 10.5 | 19.7 |
| 1976 | 7.5 | 19.5 |
| 1977 | 11.9 | 19.45 |

*Includes Alaska.

Source: AGA Gas Facts, Table 4, reprinted from JEC Study, p. 14.

Interestingly enough, according to a study by the Congressional Joint Economic Committee, ". . . drilling activity, especially for gas wells, has risen sharply since 1973."

Thus we have higher prices—in fact spectacularly higher prices; more drilling for gas wells; but less gas.

Some people call that the "free market." But I do not.

What are some of the reasons for this contradictory situation?

HIGHER PRICES—LOWER PRODUCTION

One reason for this is the drive for deregulation by the natural gas industry. The figures on supplies and reserves are provided by the industry. Since the oil and gas industry started its big push for deregulation after 1967, discoveries have dropped phenomenally. They have dropped from the general level of 20 billion thousand cubic feet (mcf) per year to the 6.8 to 11.9 billion mcf since 1971.

INDUSTRY REVISES ESTIMATES TO GET DEREGULATION

But much of this is merely the revised estimates of the industry of its reserves on hand. For example, in what is called the Non-Associated Texas district 3, the estimates for the amount of gas held underground in that district, originally discovered in 1935, dropped from 5.8 to 3.8 billion cubic feet, or by 2 billion cubic feet or 35 percent in the period 1970 to 1973.

ARTIFICIAL BIDDING UP TO MINERAL RIGHTS

A second reason, according to a Joint Economic Committee study is that a considerable proportion of the increase in price went not only for the increased costs of labor and equipment, such as drilling rigs and pipe, but especially in the bidding up of the price of limited mineral rights.

As the study states (p. 41):

> Such an adjustment in the value of mineral rights (basically a rent payment) will have minimal effect on incentive to develop and produce from most properties.

RAPID PRICE INCREASES INDUCE WITHHOLDING SUPPLIES

The big rise in past prices—and we can expect the same under this bill—has created an incentive to keep gas off the market, not to sell it. As the JEC study notes:

> If the rate of energy price increase is higher than the return on alternative investments—i.e., the prevailing rate of interest—a producer will do better by holding his reserve.

As the study so succinctly puts it:

> In this situation, energy in the ground is a better investment than money in the bank. (p. 42.)

The increase in typical price of new gas since 1970—when it was about 20 cents—to 1976—when it was set at $1.42 nationally—was 470 percent, or 40 percent a year.

In other words, the rapid increase in the price and anticipation of further rapid increases under this bill encourages withholding of gas from the market. Under this bill the price goes up by 3 or 4 percent more than inflation. This makes it more profitable to keep gas in the ground than to produce it.

I cannot think of any investment one can make which is guaranteed to go up 3 or 4 percent more than inflation. If there is one I am sure a great deal of money would go into it. So why would any rational natural gas producer respond to this bill by making supplies available when he can keep them in the ground? Obviously the ground is a much better bank than he could find in a bank or he could find in any stock market investment or any real estate investment that one could count on.

The best alternative, both for bringing new production onstream and protecting the plight of the consumers, would be for reasonably small but fair increases which were predictable over a fairly long period.

The anticipation of higher and higher prices has brought the worst of all worlds, higher prices, more inflation, and less gas.

WHY THE GAS BILL IS IRRELEVANT TO THE DOLLAR PROBLEM

That passage of the natural gas bill is necessary to save the dollar is a ridiculous argument. Now that all other arguments have failed, we are told it must be passed, that the United States must have an energy bill—no matter how bad its substance—and that all this is necessary to save the declining dollar.

Mr. President, this is getting like King George's head. If people cannot think of any other reason to follow some economic policy, they say, "We have to save the dollar." We have heard that over and over again.

Like the flowers that bloom in the spring, with respect to the problem of the dollar, the natural gas bill has nothing to do with the case.

Mr. TOWER. Mr. President, will the Senator yield for a question at that point?

Mr. PROXMIRE. I will yield, but not at this point. Unfortunately, I have limited time, and I shall be through shortly and be happy to yield to the Senator from Montana and the Senator from Texas.

STOCK ARGUMENT

Mr. President, that passage of the natural gas bill is needed to save the dollar reduces the plea for its passage to a stock argument. Over the years in the Senate and in politics we have heard them all. From time to time they change. Prior to and during World War II, the stock argument was that a particular action would beat Hitler and stop fascism. After World War II almost every program and every proposal was advocated on the dubious grounds that it was

necessary to stop communism. Now the stock, fashionable argument of last resort is that it is necessary to save the dollar. Let us take a look at that argument on the dollar.

ENERGY IMPORTS DROP—DOLLAR DECLINES

First of all, during the period when the dollar has been declining relative to the German mark and the Japanese yen, the imports of energy from abroad have made up a smaller proportion of our total imports than before. So as our position with respect to energy imports has improved, the dollar, with relationship to the mark and the yen, has declined. So there is no direct cause and effect relationship. If anything the opposite cause could be argued with stronger persuasion.

JAPAN AND GERMANY IMPORT MORE ENERGY THAN WE DO

Second, the importation of energy is not the basic reason for the dollar problem. Consider both Japan and Western Germany. Japan imports almost all of its energy needs, but the yen has increased in value vis-a-vis the dollar. West Germany imports a far greater proportion of its energy needs than does the United States. Yet the mark has increased in value vis-a-vis the dollar.

How is it that the dollar is said to be in trouble vis-a-vis the yen and the mark because we import too much energy but that the yen and the mark, the currency of countries which import far more of their energy needs than we do, are strong in relation to the dollar? The argument does not make sense.

INFLATION CAUSE OF DOLLAR PROBLEM

There is a very different answer, one I touched on at the beginning of this speech. The basic reason for lack of confidence in the dollar is the endemic inflation this country now faces. That is the problem. And if we pass this natural gas bill and energy prices under it go up year by year not only at the rate of inflation but 3 or 4 percent or more per year faster than inflation, which is what the bill provides for, it will be seen that this bill adds to inflation and the dollar will remain in trouble. Those are the stark, objective, basic facts about this bill. It will hurt the dollar and not help the dollar.

SOME REAL CAUSES OF THE DOLLAR PROBLEM

The dollar problem has a host of causes, some good, some bad, and some neutral.

PROBLEM A MEASURE OF SUCCESS

With floating exchange rates now prevalent in the world, to some considerable degree the dollar problem is a measure of the United States post-World War II success in restoring the economies of the Western Allies first and strengthening the economies of the Third World second.

There was a period after World War II when there was a shortage of dollars abroad. No country could buy our goods. Economies were faltering because of the lack of dollars. We had to loan or give billions of dollars to Western Europe directly through the Marshall plan and less directly to other countries through foreign aid so they would have the funds to get back on their feet and to buy our goods.

That was no economic heaven. It cost us dearly in deficits and loans and in forgoing tariff reductions by other countries.

It added to our budget deficit. It increased our national debt. It took tax dollars from American citizens and spent them for the benefit of people abroad. Sure we had a strong dollar but the economic conditions were not good.

BETTER U.S. ECONOMIC GROWTH

The dollar problem is also the result of a much faster rate of economic growth in this country than in Germany and Japan in the last few years. We recovered from the 1974–75 recession far faster than they did. Our employment grew. Unemployment dropped. Our growth rate exceeds theirs. The dollar gap is to that degree an expression of our success—faster growth, increased employment, and declining unemployment. Do we really want slower growth, greater unemployment, and less employment in order that the dollar may improve vis a vis the mark and the yen?

NOT ALL BAD

The fall in the dollar is not all bad. It makes American goods cheaper abroad and hence increases our exports. It makes foreign goods more expensive here and thus decreases our imports. Already there has been some decrease in imports from Japan. Over time this problem will work itself out provided we come to grips with our basic economic problem here at home, namely inflation.

NATURAL GAS BILL WILL NOT HELP

Passing the natural gas bill will not make it easier for American farm products to get into the Common Market, which is one basic reason our exports are not as large as they should be.

Passing the gas bill will not make it one whit easier for American firms to sell their products in Japan, because that depends to a very considerable degree on the Japanese Government and their willingness to reduce barrier on the importation of our products.

FALSE BASIC PREMISES

The basic premises on which passage of the gas bill are based are false.

First, the premises that if prices rise, and in this case they will almost double by 1985, consumption will drop and gas energy will be conserved.

That has been shown to be false because demand for natural gas is relatively inelastic to price changes. Once a house is hooked up with gas stove, a gas furnace, a gas water heater, and a gas diswasher, a family has no real alternative fuel. It has to pay the price or go cold. And as the price of natural gas has risen far faster than any savings in supply which can be made by turning down the thermostat or washing the dishes in cold water, a very little savings have come about.

Far more savings can come from a policy of no more hookups or by requiring industry to convert from gas than in raising the price which will have little effect on demand and use.

The second premise is that prices will increase the supply. But as we have seen, a 10 fold increase in the price has resulted in no new supplies at all. Another doubling of the price will not solve this problem for it will still be more profitable to keep gas in the ground because the annual increase in value of gas in the ground under this bill will greatly exceed the benefit of selling the gas and putting the return in the bank to earn interest or to invest in stocks.

Finally, the premise that the bill is necessary to solve the dollar problem is without merit.

That problem—the dollar problem—is the problem of inflation. When those abroad who say we need a gas bill to solve the dollar problem find that it will result in higher prices and more inflation, and that it will result at best in only a marginal increase in the supply of gas, or an actual decrease in supplies if recent experience is any test, they will shortly be criticizing us for taking such foolish action.

WORST OF ALL WORLDS

This bill is the worst of all worlds. Consumers do not want it. Producers do not want it. Labor does not want it. Business does not want it. Liberals do not want it. Conservatives do not want it. Almost its only supporters appear to be the central bankers in Zurich and Bonn and Tokyo who if they knew what was really in this bill and how inflationary it was would not want it either.

Mr. President, I do want to add a note relating to my own State of Wisconsin.

Charles J. Cicchetti is chairman of the Public Service Commission of the State of Wisconsin. It was Wisconsin which brought the famous suit which resulted in the Phillips decision in 1954 which told the then Federal Power Commission to get on with the job of regulating natural gas.

As a consequence the administration and the Department of Energy have called and cajoled and attempted to persuade Mr. Cicchetti that the bill before us is acceptable. In fact, some changes were made in the bill at his suggestion to improve it.

In a letter to me and to all Senators he states that this it not a deregulation bill and that a natural gas bill is not necessary in 1978. He recommends, notwithstanding the administration's attempt to persuade him otherwise, that this bill be defeated and that either this year or next year Congress pass a good gas bill whose principal provisions he outlines.

Mr. Cicchetti is an avowed expert on this subject. He knows what this bill will do to Wisconsin and the country and he is against it.

I ask unanimous consent that his letter of August 22, 1978 be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF WISCONSIN,
PUBLIC SERVICE COMMISSION,
*Madison, Wis., August 22, 1978.*

*An Open Letter to the U.S. Senate.*

DEAR SENATORS: You will soon be considering the Natural Gas Policy Act. There are two things about this bill that you should know.

This is *not* a deregulation bill. While wellhead price regulation will be phased out over the next seven years, this bill substitutes a completely new form of price and use regulation. For the first time ever, federal regulations will apply to the pricing of industrial

natural gas. A series of exemptions and special considerations are permitted, making this new federal regulation a prime candidate for special interest domination and bad public policy. Furthermore, there are numerous categories of gas under phased deregulation policing and regulating them will be a public disaster and a bureaucrat's delight.

A natural gas bill is *not* necessary in 1978. Two years ago there was a serious natural gas crisis caused by a severe winter and foolish federal and state regulation. Now there is a natural gas supply bubble caused by conservation and conversion, and a favorable Supreme Court decision in the *California vs. Southland Royalty Co.* case. Many states which prohibited natural gas hookups are now reconsidering in light of the current gas surplus. The Department of Energy officials, who cried wolf, need any gas bill (phrases like "the best this Congress will produce" abound). But, the nation can afford to wait. To argue that a bad gas bill is necessary to help the dollar in international markets represents a sophomoric understanding of current energy and international monetary situations.

A good gas bill, which the nation most assuredly needs either now or in the next Congress, should have two simple features. First, in exchange for paying the same higher prices as the intrastate market, consumers in both the intrastate and interstate markets should come under identical amounts of federal price, non-price, allocation, curtailment and end-use pricing controls.

Second, new federal regulation of retail prices should be deleted from the current natural gas bill and kept out of future legislation. The so-called incremental price passthrough will cause industry to convert to foreign oil, move factories to gas producing states, and escalate the prices of their products. The industrial abandonment of gas in the interstate market will mean the higher gas prices, and a larger portion of fixed costs, will be passed on to the residential customers. The so-called consumer-oriented legislators who support this provision either have a strange view of how to help consumers, or have little knowledge of their own state's gas markets. I urge them to contact their public utility commissions to determine what is thought of this new layer of federal regulation and preemption of state authority, all in the name of deregulation.

In conclusion, I would like to see the nation end the two-tier natural gas market that has disrupted the natural gas industry for the past five years. I would like to see the President get the international credit for his ability to lead. In my opinion, this can be accomplished by sending the present bill back to Committee with instructions to: (1) treat all states alike in every respect, and, (2) delete the present attempt to substitute one form of new federal regulation for the one being phased out. If these goals cannot be accomplished, I believe natural gas should be a principal agenda item for the next Congress. It is simply not correct to claim that we as a nation will gain international credit and create domestic energy tranquility by passing a bad gas bill.

Sincerely yours,

CHARLES J. CICCHETTI,
*Chairman.*

Mr. PROXMIRE. I am happy to yield to my friend from Montana.

Mr. MELCHER. I thank my friend from Wisconsin for yielding, and I am happy that he mentioned the 1954 Phillips case where the Supreme Court decided that the Federal Power Commission had better get on with the job of regulating the price at the wellhead.

Between the time of 1938, when the Natural Gas Act was passed, and 1954 when the Supreme Court said, "You have got more duties then you have been doing, Federal Power Commission," there was not so much paperwork by that agency. But after 1954, as a result of that Supreme Court decision and the duty of the Federal Power Commission to regulate the price of natural gas at the wellhead, we have gotten to a point now in 1978 of overwhelming reporting.

We put the Federal Power Commission out of business and put the Federal Energy Regulatory Commission in business, and said they are going to take over, among other duties, the Federal Power Commission's duties.

Here is Charles Curtis, the chairman of that Commission, reporting to us on what this bill does in terms of paperwork that they have inherited under the Natural Gas Act that the Federal Power Commission was doing. They had 10,025 cases under section 4 of the Natural Gas Act when they took over from the Federal Power Commission since fiscal 1977, and in that fiscal year had received an additional 15,769 cases, for a total workload of 25,794 cases based on section 4 of the Natural Gas Act.

What does this conference report do? I tend to agree with the Senator from Wisconsin when he says if we think we are going to pass new legislation around here and end some paperwork we are generally fooled. The only way we can end any paperwork is if we repeal some law. This conference report repeals the Natural Gas Act, repeals all of those provisions under section 4 of the Natural Gas Act for those interminable 30-day reports.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. MELCHER. I would be delighted to yield. It is on the time of the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin has the floor.

Mr. PROXMIRE. The Senator is making an interesting argument. But this is not deregulation. As I pointed out in this Chicchetti letter it is not deregulation for the reason he gives, and I would like to point out also there are something like 23 different pricing tiers.

So, as my good friend from South Dakota reminded me, Senator ABOUREZK, you can multiply what you are doing now 23-fold. If that is deregulation it is 2,300 percent more. It may be that it will not be quite that bad, I suppose, but the fact that the energy agency is asking for more personnel for the purpose of administering the legislation suggests that they have to have that to regulate it.

Furthermore, as Mr. Cicchetti points out, what this really does is to provide regulation after the date given here, regulation eventually by the industry itself and, of course, they also are likely to have more paperwork. It is true it will not be Federal paperwork, it will be private paperwork.

Mr. MELCHER. I think the confusion that arises in the mind of my friend from Wisconsin is that he is talking about pricing regulations and not addressing the question of nonprice regulation. Section 4, to which I referred, and to which Charles Curtis refers, is nonprice regulation. It is interminable reports that are required by the Federal Power Commission that will not be required because it will be repealed under this act, and those reports will be turned over to the States. The requirement for all of that will be to a State regulatory commission on the nonprice regulations, and that is the point and how you get out of some paperwork on the Federal level.

Mr. PROXMIRE. Mr. President, I yield to my friend from South Dakota.

Mr. ABOUREZK. Mr. President, I thank the Senator for yielding. Just briefly I want to ask the Senator from Montana about this 23-level pricing system that has been established in the conference report—and, incidentally, I do not call this a compromise. A compromise is an area of agreement between two opposing sides. This particular thing was not an agreement between two opposing sides. It was between two people who agreed in any event. We ought to call it not the natural gas compromise, but the Jackson-Dingell conference report or the Jackson-Dingell-Schlesinger-Carter conference report because those are the folks who agreed on it, and hardly anybody else.

In this conference report there is a 23-level pricing structure set up with 23 different kinds of natural gas and nobody, including the Senator from Montana, can tell me there is not going to be a maze of regulations, there is not going to be a series of lawsuits. In fact, since I am going to go out and practice law next year, I ought to vote for this bill, because this is going to be wonderful for lawyers out in private practice. It is going to make everybody who gets into it wealthy. They are going to be able to send all their kids to college and buy several airplanes, yachts, and homes in the process as a result of this regulation system.

I believe in regulation of natural gas pricing. But I do not believe in clobbering people with this kind of a pricing system, 23 levels.

If you think they have had trouble enforcing the oil regulations that have been written since 1973—and lawsuits to make oil companies comply with the regulations have been lost on the basis that the regulations were too complicated—what do you think will happen with a 23-level pricing system? It is going to drive them crazy. Charles Curtis, the head of the FERC, Federal Energy Regulatory Commission, has announced, now that Schlesinger has got him straightened out, where he first said "we cannot enforce this thing," he now says, "Oh, yes, we can enforce it, but we are going to have to have more money, more staff, and a bigger bureaucracy."

Enormous costs are what you are foisting upon the American public with higher prices, and on the industry as well with this kind of a regulatory bureaucracy.

Mr. PROXMIRE. May I respond? I have the floor. I say to my good friend this is not a deregulation bill anyway. Charles Cicchetti points out why. It is true—and I am reading from his letter:

This is not a deregulation bill. While wellhead price regulation will be phased out over the next seven years, this bill substitutes a completely new form of price and use regulation. For the first time ever, federal regulations will apply to the pricing of industrial natural gas. A series of exemptions and special considerations are permitted, making this new federal regulation a prime candidate for special interest domination and bad public policy. Furthermore, there are numerous categories of gas under phased deregulation; policing and regulating them will be a public disaster and a bureaucrat's delight.

Now, this is a man who has devoted his life to regulatory policy. He is chairman of probably the finest public service commission in the country. We are very proud of it, and it has a great tradition, and this is his view of how to reduce the burden of deregulation.

Mr. MELCHER. May I answer the Senator from South Dakota?

Mr. PROXMIRE. Yes.

Mr. MELCHER. I thank the Senator for yielding to me. I will answer this way, in Charles Curtis' own words:

The staff has estimated that a like number of rate applications will be received in fiscal 1978 yielding a total workload of 28,407 cases.

That is a totally unreasonable number of cases.

Continuing:

FERC's current caseload is substantial, its backlog unacceptably large. This circumstance derives from a number of causes. First, the regulatory scheme, as presently implemented, is particularly cumbersome and appears incapable of keeping pace with the dynamics of the market. Second, this Commission's predecessor, the Federal Power Commission was singularly unsuccessful in obtaining from the Congress adequate resources to perform the Commision's duties.

Generally speaking, except for gas which is committed or dedicated to interstate commerce on the day before the date of enactment, the current utility-type regulatory mechanism would be terminated. Thus, it would no longer be incumbent on producers to obtain certificate authorization for new sales in interstate commerce, dedications of new gas reserves would not be required nor would a producer need abandonment permission from the Commission to allow it to sell gas to another upon the conclusion of the contractual term. Also, in the case of sales of gas not previously committed or dedicated to interstate commerce occurring after date of enactment, tariff filings and rate increase applications would be dispensed with. This would also be true in the case of production from new onshore producing wells, new gas wells, and high-cost wells even if the gas is currently committed or dedicated . . . it is reasonable to expect that the Commission's present caseload attributable to functions now conducted under the Natural Gas Act will significantly diminish in future years.

Mr. ABOUREZK. Why would Curtis say that in one breath, and in another breath say, "I need more money and more bureaucrats?" I do not understand.

Mr. MELCHER. For one reason: Because Congress seems to have given to the Federal Regulatory Commission a great deal more authority and responsibility under the law passed by Congress than was in the hands of the Federal Power Commission. The Federal Power Commission licensed some hydropower——

Mr. PROXMIRE. That does not require paperwork. What does that mean? That means they have to exercise it by persons that require paperwork.

Mr. MELCHER. That is exactly correct; plus some coal conversion work, plus a lot of other responsibilities we give to the Federal Regulatory Commission.

Mr. ABOUREZK. But you miss my point. The point is, Curtis said that if the conference report passes, he will need more money and more bureaucrats than he would otherwise need.

I think it is fair to say that Curtis would have said that regardless of whether this conference report passes.

Mr. MELCHER. But he has said that one portion of all the forms they require under the Natural Gas Act will require a workload of more than 28,000 cases.

Mr. ABOUREZK. It is fair to say——

Mr. MELCHER. And that is not just a small amount of storage of obsolete paperwork. That is more than this whole building could hold, over the course of a couple of years.

Mr. ABOUREZK. What is fair to say is this: In response to a direct question about the responsibility under this conference report, Curtis said, "I will need more money and more bureaucrats; there is no way you can escape it."

Mr. PROXMIRE. I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

A great deal has been made about the regulatory complexity under this bill, but not much has been said about the complexity in the absence of this bill.

A portion would be returned to the States for their regulatory commissions under this bill; so it would be returned to the States for their supervision, which I think is appropriate, and I think the Senator from Wisconsin would agree with me on that. Second, they already have some——

Mr. PROXMIRE. May I say it may or may not be appropriate, depending on the State, and I think the Senator has a good point. However, as Mr. Cicchetti, a distinguished public service commission regulator, said, it will also be returned to private industry under circumstances which will make it extremely difficult, and, as he said, make it a great hunting ground for special interest domination and bad public policy.

Mr. McCLURE. I understand, but that is the case that is already made. That is the case now. Every well that is drilled, they have to get new drilling cost permission. So you do not have dozens of classes of gas under current law, you have hundreds. Almost every one is a special case, in which special interests and special favors may be shown, and, because it is of limited application, it is one to which public interest would not be directed very widely, and therefore the opportunity for wheeling and dealing, if that is the suspicion, is greater under present law that under the new bill.

And I might point out, in response to the suggestion made earlier that for the first time we get into the industrial fuel, that one of the major reasons for industrial gas regulation under this bill is because of the DeConcini amendment adopted on the floor of the Senate dealing with incremental pricing. That is not something the conferees from the Senate were free to deal with in conference, because it had been added on the floor of the Senate. The Energy Committee had not put that in; it was offered and adopted on the floor of the Senate.

Therefore, that question of industrial price regulation was injected by an amendment, which I think the Senator from Wisconsin voted for.

Mr. ABOUREZK. Mr. President, will the Senator yield briefly on that point?

Mr. PROXMIRE. Yes; I yield to the Senator from South Dakota.

Mr. ABOUREZK. In the terms of the incremental pricing, the Energy Information Administration in its report and analysis on this conference report, has said that the incremental pricing provisions have been thrown out the window, that in fact homeowners will pay more for natural gas, proportionately, than will industry.

Mr. McCLURE. Will the Senator yield on that question?

Mr. ABOUREZK. He has the floor.

Mr. PROXMIRE. I yield.

Mr. McCLURE. Let me say that the Senator from South Dakota incorrectly reported what the EIA said. They said it will lead to a change in their regulations some 5 years from now, but not because incremental pricing has been thrown out the window.

Mr. ABOUREZK. No, sir, the Senate provision, which in fact was reversed in the Senate——

Mr. McCLURE. The Senator is incorrect.

Mr. ABOUREZK. Let me get a copy of that report, and read it.

Mr. PROXMIRE. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. FORD). The Senator from Idaho.

Mr. McCLURE. Mr. President, this question of the complexity of the bill seems to go to the heart of the controversy. There are various reports about how many regulations there may be pending action. I am amazed at the number of people who are opposed to this bill because they say it is too complex from a regulatory standpoint, but at the same time they say industry can do better under FERC, because they always go to FERC and ask for relief.

They cannot have it both ways. They can either ask FERC to help them, or object to the regulatory procedure, but they cannot do both, it seems to me. Yet at the same time they are doing precisely that. They are saying this requires FERC to protect the industry, and requires FERC to do what FERC cannot do now. They cannot come out with enough regulations to decide the pending applications rapidly enough to avoid the backlog, which I think is 700 major cases and 25,000 to 35,000 minor decisions, in addition to the major ones, that are backlogged now.

No wonder the Federal Regulatory Commission comes in and says, "We will need more staff." The Senator from Montana is exactly correct; we have, by the actions of this Congress, already increased the demands upon the Federal Regulatory Commission. This bill un-

doubtedly requires some additional complexity.

That was going to be true under Pearson-Bentsen, particularly with the incremental pricing provision, which the Senate in its wisdom added. I might add that I voted against that. I think the Senator from South Dakota voted for it. If there is to be, as a matter of fact, any additional complexity because of that regulation, it should not be tagged against the junior Senator from Idaho. I did not want that. There were others who said, "We have to protect the consumer." Now because we are protecting the consumer by a regulatory process, they object that we have a regulatory process. It does not seem to me one can have it both ways by at one time condemning the regulatory process in this bill and then commending the regulatory process as the only means to protect the consumer on the other hand.

This bill, certainly in my opinion, in this Senator's opinion, is not a perfect bill. I think the Pearson-Bentsen approach was better. I know my friend from South Dakota does not agree with that at all. That does not surprise me. But, as a matter of fact, if we array this bill against the current law, it is a step toward deregulation in a structure, measured, predictable manner, with no greater complexity than is in the existing law and, in my judgment, much less complexity; a greater certainly to those who wish to produce and, therefore, since they have greater certainty, there will be greater investment. And there is the immediate advantage of releasing to the interstate market, without the interference of the regulatory commission, releasing to the interstate market that which is now blocked within the intrastate market. That is a tremendous boon to those areas of the country which are not producing States.

I know there are those who say, "Well, we could have done it under the emergency procedures under existing law," but the same people are saying, "Well, depend upon FERC to release it," and are the same ones objecting to the regulatory complexity. Can you have it both ways? Can you say, "I will depend upon FERC to release it but I cannot depend upon FERC to do these other things because they are incompetent and the complexity of regulation is far too great"?

Mr. ABOUREZK. Can I read from this announcement under prices and consumption:

Table 4 represents the projected natural gas delivered prices by sector for each of the proposals in the current regulation case. Residential prices are estimated to be lower under the House and Senate bills than the series C case due to their respective incremental pricing provisions. Incremental pricing under these two bills passes on the lower cost of old contracts to high priority consumers, largely residential and small commercial consumers. In the compromise, however, the projected residential prices are higher than in the other two proposals due to the different allocations of high cost gas to the incremental pricing pool for low priority customers. The major factors are that the Alaskan gas, transportation costs, and existing and improved LNG and SNG projects as well as intrastate gas are rolled into all consumers under the compromise proposal and are not placed in the incremental pricing pool as they are in the House and Senate bills.

Now, does that square with what I said just a few minutes ago?

Mr. McCLURE. No, it does not, as a matter of fact.

Mr. ABOUREZK. Where is the difference?

Mr. McCLURE. The Senator is referring to the Alaskan pipeline compromise that was made, and it was the judgment of the conferees that that was the only way to get that supply here. Maybe the Senator from South Dakota would rather his consumers in South Dakota go without that gas. That is certainly not my understanding of what the Senator is trying to do, to increase a shortage.

Mr. ABOUREZK. What does that have to do with what I was talking about?

Mr. McCLURE. Because the reason for the difference is the rolled-in price treatment for the Alaskan gas pipeline which was not the case in the incremental pricing provision as adopted by the Senate in the first instance. To that extent there would be a higher cost to consumers, residential consumers, than otherwise.

I go back to the old story of the fellow who went into the store, looked for something on the shelf, and asked the merchant how much for that item on the shelf. The merchant said, "That is $1.49."

He said, "I don't know why I should buy it from you. Your competitor down the street has it for 50 cents."

The merchant said, "Why don't you buy it from him, then?"

He said, "I would, but he doesn't have any."

The merchant said, "If I didn't have any, I would sell it for 50 cents, too."

Mr. ABOUREZK. That is a fine story but what has that to do with this?

Mr. McCLURE. It has exactly to do with this because the question is whether or not you are going to have Alaskan natural gas in the Lower 48 State markets.

Mr. ABOUREZK. Sorry, the question is how much of the gas price gets treated as part of the incremental pricing pool. That is the question.

Mr. McCLURE. That is what I was trying to tell the Senator, that you are not going to have it unless you roll it in. If you are saying we cannot roll it into the price, you will not have in the market.

Mr. ABOUREZK. Just a minute.

Mr. McCLURE. I will be glad to wait however long it takes the Senator.

Mr. ABOUREZK. The reason the incremental pricing pool raises prices to residential consumers as indicated by the department analysis is that the Alaskan gas price is rolled in and it makes prices higher to residential homeowners in the conference report than it does in the House or Senate bill.

Mr. McCLURE. That is correct.

Mr. ABOUREZK. That is what exists in the conference report.

Mr. McCLURE. That is correct.

Mr. ABOUREZK. There is no way to change it now unless we recommit it and go back to the conference committee.

Mr. McCLURE. That is correct. I am not arguing with my friend on that subject. It is a question of whether or not you want the gas. If you do not want the gas, go ahead and say you do not want it rolled in.

Mr. ABOUREZK. Then you do not disagree that the conference report makes prices higher for residential consumers? Do you agree with that?

Mr. McCLURE. Let me answer my friend in this way

Mr. ABOUREZK. No, do not ask. Answer it.

Mr. McCLURE. I will answer it my way, not your way. I would say in the judgment of the conferees you have a choice to make. The question is whether or not you want to protect the consumer against the high price by guaranteeing that he will not have gas to pay for. You can do that if you want to. The conferees came to the judgment that if we are going to have the pipeline built we are not going to get it unless we pay for it. My friend can argue all day long if he wants to. There is no argument between us as to the pricing effect to the consumer. The question is whether or not he has that alternative supply of gas available. If he does not, then maybe we will go down to Mexico and——

Mr. ABOUREZK. Let us assume——

Mr. McCLURE. Just a moment.

Mr. ABOUREZK. Let us assume——

Mr. McCLURE. Just a moment. Maybe my friend would prefer we go down to Mexico and pay them $2.60 per mcf. That has been suggested as an alternative. Or perhaps he would rather we pay $4.50 per mcf for LNG. Perhaps my friend would prefer that we strip mine more in the West so we do not have to depend on natural gas. Those are some of the choices, too.

Mr. ABOUREZK. Let us assume that we have the Alaskan natural gas supply, so we have that argument out of the way.

Mr. McCLURE. Let us assume it how? Let us assume we can get it without paying for it?

Mr. ABOUREZK. No; let us assume that we have it at any price you want to set on it.

Mr. McCLURE. All right.

Mr. ABOUREZK. We have it. Under this conference report, that price is rolled into the price residential consumers have to pay, which makes their price higher than the industrial users.

Mr. McCLURE. No, not at all.

Mr. ABOUREZK. No?

Mr. McCLURE. Not higher than to the industrial users.

Mr. MELCHER. Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. MELCHER. The existing situation is that industry gets it cheaper than the homeowners get it. What is new about that? There is nothing at all new about that.

Mr. ABOUREZK. Will the Senator agree with my analysis of the conference report?

Mr. McCLURE. Let me put it this way——

Mr. ABOUREZK. Let us not argue about whether or not we have it now.

Mr. MELCHER. If the Senator will yield to me, let me refer exactly to the Energy Information Administration analysis that the Senator from South Dakota referred to. That agency, in their analysis, used two different assumptions about what incremental pricing would do, and then it came up and showed the following retail price projections in 1985 for residential consumers.

First of all, under the Senate bill, if you could assume that the intrastate pipelines and the local distribution companies within a State would use incremental pricing, the price would have been $2.97 by 1985. But there is no reason to make that assumption because it is not required by the Senate bill, and I have never heard of a local distribution company or an intrastate pipeline company that wanted to get into the morass of incremental pricing. So if you assume that they will not use incremental pricing because they are not required to do so under the terms of the act, under the terms of the Senate bill that price would have been $3.62 for home consumers in 1985.

Under the compromise, under this conference report, that price will be $3.31 in 1985.

Now, if the Senator from South Dakota has some weird idea that, since we have the natural gas in Alaska, it is going to get down here without building the pipeline, he is operating in a never-never land. If the Senator from South Dakota has the idea that the U.S Government is going to underwrite, is going to pay for that pipeline, assume the construction costs, then I think he should stick around with us in the next Congress to see whether that could ever come about. I do not think it will ever come about.

I do not think the U.S. Government is going to enter into the proposition of paying for pipelines. I think we are going to keep the status quo. That is that the pipeline companies, based on selling bonds, based on a projected tariff, are going to have a pipeline built eventually. But let me tell him something: I think the Senator from South Dakota assumes that we can get the Alaska natural gas pipeline constructed without rolling in the wellhead price and transportation costs, and that is a fictitious thought. That will never happen. That just will not happen.

They have to enter into the bond market. Those people who want to build that pipeline, that has been designated by the President as the preferred route, the preferred company, are never going to build a pipeline unless they go into the bond market and say to those money brokers, "Here is what we can do based on the contracts for selling the natural gas." And they do not have a contract that is worth a tinker's dam until the wellhead price and the transportation price are rolled in. That is why they have come to us and they have come to the Senator, too, I think, and said to him, as they said to me, "If we are going to do anything about selling bonds, we are going to have to have this bill or some bill like it that will allow the wellhead price and the transportation costs to be rolled into the final price of gas that we transport."

That is a serious situation and the question is exactly, do you want the natural gas to come down from Alaska or not? If the Senator does not want it to come down, let me tell him something else that will happen: That oil can only be pumped out of Prudhoe Bay out of those wells for so long under the process of reinjecting the gas that comes out along with the oil, for only a certain amount of time. When the point comes where the pressure is so great that the gas cannot be reinjected, the producers of those wells at Prudhoe Bay have two choices: expensive storage for the gas, which will make it tremendously costly—five times, six times, seven times more costly, just from adding the storage to it—or they can shut down the well.

Mr. McCLURE. The Senator might add that they have one other alternative if they were permitted under our law; that is, to flare the gas, just waste it.

Mr. MELCHER. Well, we are not permitting any flaring and we are not going to because it is absolute waste. The Senator from South Dakota would not advocate it and I do not think the Senator from South Dakota would advocate that we shut down the wells to make our situation even more dastardly than it is now.

I can hardly believe that the Senator from South Dakota would represent the people of this country and say, "You are going to have to build expensive storage for that gas in order to keep producing the oil," which in turn would mean when the gas is finally brought down here for use in the lower 48, it would be five or six times more costly than under this system. If we are going to have that gas from Alaska, it is going to have to be on the basis of this. And on that basis, it will still be plenty expensive and probably be more expensive than the incremental price I have suggested here that, under the terms of the bill, will cost residential users $3.31 in 1985. For all the home owners of this country who are finding fault with the high utility bills they have from their gas companies, I sympathize, and I include myself, but it is going to be worse if we are going to continue to use natural gas.

We are faced with a limited number of alternatives. This conference report gives us an alternative that none of us really likes very well, but it is the best one we have.

Mr. McCLURE. I yield to the Senator from South Dakota.

Mr. ABOUREZK. The only thing I want to wrap up with is to say that, apparently, both the distinguished Senators agree that the conference report increases the price to residential home owners. They do not disagree with that, as they are standing there arguing right alongside of me.

Mr. McCLURE. Let me say it will only be higher if Alaska gas comes. If Alaska gas does not come, it will be no higher. All the Senator from South Dakota is asking us to do is guarantee that the Alaska gas supply will not be available to the consumers in his State.

Mr. ABOUREZK. I did not ask that.

Mr. McCLURE. Yes, he did. He may not have known he was asking that, but that is what he was asking.

Mr. ABOUREZK. I asked the Senator to concede that this great incremental pricing provision that the Senate passed, which I remember very well, because I supported it and voted for it last year in September, has been tossed out the window and what is left is a price that is higher to consumers in the conference report. He cannot disagree with it; he has agreed with it already.

Mr. McCLURE. Let me tell my friend he can repeat that as often as he wants to, but that does not change the fact. The fact is if he wants that gas down here, his consumers are going to have to pay for it.

We did not throw the incremental pricing provision out in conference, although I dearly would have liked to do that. But the Senate had voted for one, the House had voted for one, and I could not throw it out. If I had had that latitude, I would have been urging that. But we did say the incremental pricing provision cannot be realistically applied to the Alaskan gas, because if it is applied to Alaskan gas, you will not have any down here.

My friend from South Dakota can argue it as long as he wants, but there is no begging the issue that that pipeline must be financed; it cannot get gas to the U.S. market until the gas pipeline is financed; and it cannot be financed under the incremental pricing provision. It is just that simple.

When the Senator from South Dakota suggests that we must have the incremental pricing provisions applied to the Alaska gas, he is arguing that the Alaska gas should not be permitted to reach this market. The financing requirements are very simple: the people who would like to build the gas pipeline must go to prospective consumers of that gas and negotiate contracts. They must go to the prospective suppliers of the natural gas, the producers in Alaska, and negotiate a purchase price. The spread between the two must be equal to the operating costs and the financing costs of that gas pipeline. If they are unable to negotiate the contracts on both sides, here will be no financing, there will be no pipeline.

I happen to believe that natural gas in Alaska ought to be made available to our consumers in this country, rather than forcing them to the alternatives of even higher-cost gas elsewhere. The Senator from South Dakota is presuming, when he makes that statement, that we shall be able to buy a sufficient supply of gas at lower cost than we can buy it from Alaska or that the Alaska gas should not be made available to the market in this country. That, to me, is an unacceptable and an unrealistic expectation. I just do not think it is going to happen that way. That is the reason why the conferees on the part of both the Senate and the House agreed to the modification of the incremental pricing provision. The balance of the incremental pricing provision remains in the conference report. It was not junked. It was narrowed.

There were those who wanted the incremental pricing provision across the

board and the House conferees said, "In order to protect the users of electricity, the utility rates that are produced by natural gas, you have to exempt utilities from the incremental pricing provision, because that will just show up in their utility bill next month if they are forced to buy the high-priced fuel."

There was another provision, which the Senator certainly does not disagree with—at least, I hope he does not—in regard to food processing, because the price of food on the consumers' table will reflect increased energy costs just as quickly and just as inevitably as will the consumption of gas in the utility structure.

So, in addition to the Alaska gas deletion, there was also the exception for utility and there was also the exception for food processing.

Surely, that is the reason some of the big industries, for whom the Senator from South Dakota is a sometimes ally, object, because they alone are left with absorbing all the incremental costs, and they do object. That is one of the major reasons for objection to this conference report, because they think they have been singled out as the broader incremental pricing market was narrowed and it has to focus on a smaller number of people. The result, of course, is that the incremental pricing provision weigh more heavily on them than otherwise under the original Senate bill.

But to argue that the consumer of natural gas in the Senator's State or mine will pay the bill because of the Alaska gas pipeline compromise on the incremental pricing simply presumes the gas pipeline can be built without cost, which we simply cannot make.

Mr. HATCH. Will the Senator yield for a unanimous-consent request?

Mr. McCLURE. I am happy to.

Mr. HATCH. Mr. President, I ask unanimous consent that Everett Wallace, of Senator BAKER'S staff, be granted privilege of the floor during debate and votes on the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, I make the same request for Sue Sadler.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I make the same request for Mike Hathaway, of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Does the Senator care to ask any other question or make any other comment? If not, I will be glad to yield the floor to him.

Mr. ABOUREZK. Not at this point.

Mr. McCLURE. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MELCHER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, would the Senator from South Dakota (Mr. ABOUREZK) inform me if he cares to take the floor at this time?

Mr. ABOUREZK. Not at this time.

Mr. MELCHER. Does the Senator intend to expound on the issue promptly, or does the Senator know of others that would care to address the Senate on the issue?

Mr. ABOUREZK. At this point, I do not know if anybody wants to talk.

Mr. MELCHER. Does the Senator care to inform me or anybody else in the Senate if he feels that a session late this evening is necessary to accommodate those who care to address the issue?

Mr. ABOUREZK. Nobody has told me that they want to make a speech today. I can make one, to fill the dead air time, but I would have to repeat it tomorrow.

Mr. MELCHER. Does the Senator from Utah wish to speak?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that Mr. Tom Perry, of my staff, have the privilege of the floor throughout the pendency of this matter and any votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, it is very fiitting that the Senate leadership has decided to reverse the order in which we had expected to consider the four remnants of the National Energy Act.

If there is one word that is synonymous with the issue of natural gas deregulation, that word is reversal.

A brief review of the President's opportunistic gearshifting on this vital issue requires no embellishment to make my point.

In a June 16, 1976, presentation to the Democratic Platform Committee, a fellow named Jimmy Carter had this to say:

> For natural gas we should deregulate the price of only that natural gas not currently under existing contract for a period of five years.

Four months later, and barely 3 weeks before election day, Carter promised Texas Governor Briscoe and Oklahoma Governor Boren, as well as Louisiana Governor Edwards:

> I will work with the Congress, as the Ford administration has been unable to do, to deregulate new natural gas.

But 6 months later, when President Carter submitted his hastily drawn National Energy Act to this Congress, he reneged on his unqualified commitment and recommended that price controls on natural gas be continued.

To compound his breach of faith, the President—on three occasions during September of 1977—implied incorrectly that the oil and gas industry was seeking immediate and total deregulation.

The demagoguery reached a new low at an October 13, 1977, press conference when the President—in a scathing attack that startled even the liberal press—accused deregulation advocates of "potential war profiteering," said it could lead to "the biggest ripoff in history," and claimed the oil companies "apparently want it all."

Despite his advocacy of continued regulation of interstate gas and his endorsement of a House bill extending controls, for the first time, to the unregulated intrastate market, the President, on two additional occasions saw fit to insult the intelligence of his audiences.

At an October 28 question and answer session with visiting newspaper executives, the President, at one point, told his audience:

> As I said in my campaign and also as I said to the Congress when I made my energy speech last April, we are working toward deregulation of natural gas.

A week later, in another question and answer session, the President, when challenged on the contradictions in earlier remarks, replied:

> I don't believe that I've changed my position. I don't interpret it that way. My position was that I would work with Congress, as had President Ford, for the deregulation of natural gas . . . The difference is in the rapidity with which natural gas is deregulated.

I found that to be extremely interesting.

As many Senators will recall, those baffling statements triggered an outpouring of skeptical and critical editorial comment that I am sure accounts in part for the unprecedented nosedive in the President's credibility.

But the worst was yet to come.

On March 9, 1978, the President—in a statement that was both incredible and incredulous—told a news conference he was willing to accept phased decontrol of natural gas, explaining:

> This was a campaign statement and commitment of mine—that I thought natural gas should be deregulated.

In lieu of the mere skepticism and criticism that greeted the President's earlier remarks, the commentary on his March 9 statement bordered on ridicule and insult. And it is no wonder.

In the light of this sad and somewhat sickening record, I would hope that many of my Senate colleagues would have the same difficulty I am having in accepting at face value any of the current White House and DOE claims regarding the virtues of this conference report on H.R. 5289.

As I have followed this natural gas deregulation fight in the Senate, I have supported deregulation because I feel this country is in trouble energywise—not because there is not enough energy, not because we cannot engage in efforts to find new and better enhanced recovery techniques, not because we do not have the ability to come up with new technology, not because there are no alternative forms, but because we have been emphasizing the public sector over the private sector. We have been relying on a Federal bureaucracy to produce natural gas and it does not have the ability to do so.

The fact is that the only ones who ever have produced natural gas in our society are the people in the private sector, the

independent business people, the people who can go out there and find it because there are incentives to go out and find it.

I might add that the only way to get the natural gas difficulties and the energy difficulties off our backs is to deregulate the price of gas and put the incentives in the private sector, where they belong, where we can find oil and gas and their alternative forms, and get the bureaucracy off our backs.

DOE has grown to approximately 20,000 employees just since its organization. Of course, they have taken already existing employees in the Federal Government and have added to their numbers. The budget is well over $10 billion a year, and not $1 is going to find 1 cubic foot of natural gas, let alone a drop of oil. In the process, we are finding that this country is not solving its energy crisis—or, perhaps I should say its energy difficulties, because I do not believe we have a crisis now.

I recall when the famous MOP study was being undertaken. It was before the Pearson-Bentsen amendment debates, and everybody was talking about energy as a crisis in America. I made a speech on the floor of the Senate called "the Bureaucratization of Our Energy Crisis." I made the point that we are not out of natural gas, that we are not out of oil, that we are just out of the ability and the will to find it, because of overregulation by the Federal Government, among other things.

I recall that people laughed at that point, but almost everybody has come to an agreement that I was right when I made that speech, way back in the early days of my first year in the U.S. Senate.

The MOP study was unsatisfactory to this President and his administration; because it proved that if we would deregulate the price of gas to the then world price of about $2.25 per thousand cubic feet of gas, we would be awash in natural gas, substantiating my opinion with respect to the bureaucratization of the energy crisis. Well, they got rid of those people in the original MOP study and sent them away, dispersed them throughout the bureaucracy.

Then they came up with another study, and that was not satisfactory, and finally they reduced it to a third study, which I understand now that Mr. Schlesinger is suggesting we burn.

The basic conclusion of the third study also was that if we would deregulate the price of natural gas to the world price, we still would be awash in natural gas.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. MELCHER. The Senator from Utah knows that I agree with him, that deregulation, at least phased-in deregulation, such as Pearson-Bentsen, is much preferable, which I believe the Senator advocates.

Mr. HATCH. I find no fault with the Senator from Montana, other than that we disagree on this particular issue.

Mr. MELCHER. The question of regulation, however, would not be with the Department of Energy. It would be with the Federal Energy Regulatory Commission.

Earlier we established a couple of facts pertinent to the manpower needed and the paperwork necessary under existing law as compared to passing this conference report.

One of the points made was that under section 4 of the Natural Gas Act passed in 1938, amended several times, with a requirement of the Supreme Court in 1954 in the Phillips case for wellhead pricing by the Federal Power Commission, there was a tremendous increase in reporting required for nonprice regulation.

Now Charles Curtis, the Chairman of the Federal Energy Regulatory Commission, points out that they anticipate during this fiscal year 28,000 new cases under section 4 that they will have to wade through and be inundated by the paper that is generated in those cases, all of which are on nonprice regulation under section 4 of the Natural Gas Act.

We established that section 4 of the Natural Gas Act will be repealed. Those requirements on those reports of nonproce will be repealed, and even under the terms of this act, if it is adopted, the pricing regulations for what has been described as 23 different price possibilities will be taken over by paperwork required by the State commissions, that most of us think can do it better, easier, quicker, faster, and with less frustration than if we leave the section 4 of the Natural Gas Act as the law of the land enforced by FERC to require all of that reporting that goes along with it.

So in one aspect we get rid of some paperwork and some regulation that is burdensome.

But I wonder if the Senator from Utah will tell me how he views a motion to recommit with instructions of this conference report? Does the Senator from Utah view that with favor?

Mr. HATCH. At the present time, I do.

To answer the Senator's question——

Mr. MELCHER. Yes; I wish to have the answer clarified.

Mr. HATCH. I think that the motion to recommit the natural gas conference report with instructions to report back a bill that will embody provisions already agreed on by the conferees facilitating transfer of surplus and emergency gas to the interstate market is a good thing. And the motion, it seems to me, would also require the conferees to finish action on the utility and conservation portions of the energy plan which have been held hostage to the gas bill and, as I see it, these provisions would do the following:

No. 1, under adequate safeguards they would provide the President with the authority needed to cope with emergency conditions by allocations and temporary sales, as he did successfuly after the passage of the Emergency Natural Gas Act of 1977. Such authority, as the Senator already knows, has now expired.

No. 2, it would allow interstate consumers to take advantage of surpluses in the producing States under conditions that will prevent "brokering" of gas by intrastate pipelines.

If you add these factors together with the coal conversion bill, these actions would provide an energy bill that addresses our energy problems without loading excessive costs on consumers or excessive regulations on producers. It would be a national and not an emotional response to the need for action and it will not worsen our situation simply to satisfy a demand for cosmetic change.

I simply say this, that in a Scripps-Howard national editorial which was entitled "If the Gas Bill Dies," its final conclusion was as follows:

> Here is a time when doing almost nothing is better than great showboating actions to make the public think "Government is rising to the energy crisis."

Those are reasons why I feel that the motion to recommit is a good motion.

But to go further, we think that this compromise will not produce more gas than the present situation or status quo and that the regulatory complexities imposed on the intrastate market will reduce producer incentives. In addition, interstate customers will have to pay higher prices without assured new supplies, and the incremental pricing provisions will damage many industrial areas dependent on interstate sources of gas.

Those are reasons why I feel, at least at the present time, and I am still studying it and giving it every consideration that I can, at the request of a number of my colleagues and Senators here in the Chamber these are some of the reasons why I tend to support and probably will support the recommittal motion, and I think it is a wise motion.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. MELCHER. I follow the position of the Senator from Utah, and I know it is presented very forthrightly and with no shades of manipulation, but just laying it out foursquare what he feels should be done and what he feels can be done.

But we, however, have to recognize, first of all, that the House of Representatives would not likely agree to a conference, but let us assume they do.

Mr. HATCH. I think they would. If they do not, then I think the conclusion of the Scripps-Howard newspaper is probably a good conclusion.

Mr. MELCHER. Let us assume that they do and that the House of Representatives and the Senate conferees agree on a bill with just the two provisions in it that the Senator has mentioned, which are not under any debate, either in the House of Representatives or the Senate. Both of those provisions are accepted. But, however, we would be giving up the provisions that rolls in the price at the wellhead and the transportation cost of the gas, which is particularly important if the Alaska natural gas pipeline is ever going to be built.

The owners of that company have told us that without this bill they are not in a position to go in the bonding market and sell bonds. They would have to wait until Congress acted at some subsequent time, adopting such provisions, so that they would be able to go to the market and sell the bonds and then at some later date, after being financed, start the construction work on that natural gas pipeline.

We would also have to give up this repeal of section 4 of the Natural Gas

Act and keep it in perpetuity until such time as Congress acted again and repealed section 4 of the Natural Gas Act, and we would still be saddled with the almost insurmountable task of 30,000 cases under section 4 which have nothing to do with pricing but with the nonpricing regulations called for under the Natural Gas Act.

And it is implied by the Senator from Utah and by the editorial he quoted that at a future time Congress could enact a bill deregulating natural gas, and we would forego these limited steps and these very admittedly hesitant steps of getting to deregulation of natural gas by 1985 and 1987. We would forego all that on the strength that Congress would wisely and promptly act, which is presumed by him to be shortly after the new Congress convenes in 1979.

I ask my friend from Utah how Senators and House Members in Congress in 1979, with the attitude he has on gas deregulation, and which I share, how we are going to pass that in 1979 when most of the advocates for recommittal are those advocates who do not want any deregulation? They do not want it. Are they going to change? Has the Senator from Utah any assurance that the votes are there, that the support is there, in 1979 to get the gas deregulation on the basis of Pearson-Bentsen?

(Mr. SARBANES assumed the chair.)

Mr. HATCH. I appreciate the sincerity of the Senator from Montana. All I can point out to him is has the Senator from Montana any proof or can he assure me we are going to have deregulation by 1985 even if we pass this monstrosity?

Mr. MELCHER. I have no proof, but I feel we would be most likely to have it in 1987. Remember there are two cases: Part of it is 1985 and the rest of it is 1987. I tell the Senator the part that concerns me the most and our independents the most is in 1987.

Mr. HATCH. I appreciate the vociferous arguments of the Senator from Montana. But it seems to me he is arguing that the Alaska natural gas will not be produced unless this bill is adopted in all of its portions.

Here again it seems to me that the supporters of the bill appear to be counting on short memories in this body because less than 2 years ago this body adopted legislation specifically designed to facilitate the construction of the Alaskan natural gas pipeline. Pursuant to that legislation the President of the United States made a decision as to the pipeline route, the conditions for building and the procedure for insuring that the pipeline was constructed, and, if I might just finish this, pursuant to previous legislation this Congress ratified the President's decision which we had been assured would make the gas available in a timely and economical manner.

Mr. MELCHER. That is all a bunch of hogwash.

Mr. HATCH. If I can just finish, we are told the situation is such that the pipeline will not be built unless what many in this body feel is extraneous legislation is passed.

I believe, Mr. President, if this argument were true it would speak very poorly for the original decision of the President and for the decision of Congress in ratifying that decision.

On the contrary, I believe that this is essentially an argument concocted at the last minute as an ace in the hole. If there were particular deficiencies in the previous decision by the President which required correcting that can be done by specific amendment to the Alaskan Gas Transportation Act or by specific legislation.

So although I sympathize with the Senator from Montana and feel very strongly about the Alaskan natural gas pipeline, as he does, I am not so sure his arguments are entitled to at least the great weight he feels they are and they should be.

Mr. MELCHER. May I enlighten the Senator? I will go back into the history of the legislation. I was intimately involved with the legislation.

The Alaskan Pipeline Act—and that was to produce or transport the oil that could be produced up in Prudhoe Bay by the bill I managed on the House floor and managed in the conference—set the way, it gave the provisions, for the permits for the construction of that pipeline to go forward without interference by more court cases, and the pipeline was subsequently built under conditions set under that act, which were rather stringent.

But all the time that it was being built, we were well aware of the fact that you could only produce the oil out of those wells in Prudhoe Bay by reinjecting the gas as it came out, and that after a number of years—and it is indefinite, but let us say 3, 4, or 5 years—the injection of that gas as it comes out with the oil, the injection back into the well, increasingly becomes more costly, and eventually it builds up a pressure of a nature so that the gas must be taken off.

Knowing that, we attempted to expedite the clearance of the Alaskan natural gas pipeline. We had the oil pipeline under construction, almost completed at that time, almost ready to start pumping, and we passed not really timely but not altogether too late the next step to set the stage for the construction of the natural gas pipeline.

But Congress followed the same pattern as it did with the oil pipeline in Alaska. It was private industry financing, first of all, for the construction of the lines and then the building of the lines. It cost a lot of money. Money was available for the oil pipeline.

The question of the natural gas pipeline, which must be built promptly or else we are going to have a very difficult position up there for the producers of Prudhoe Bay as to what to do with the gas when they finally find it too costly to reinject it and much too costly to build storage facilities there, why, they are going to have to shut down their wells pumping oil.

The people who are going to build the natural gas pipeline under the terms of the act and under all precedents in this country of a huge pipeline in interstate commerce—the pipeline which is going to be built under all precedents concerning natural gas pipelines in this country of a great size—this pipeline is going to be built by private industry.

In order to do that they have to be able to finance it. The contractors or the company that has been designated with the preferred route, the preferred company to build it, by the act to which the Senator from Utah has referred, is not going to go through Government funds. It has to approach the private money market, and it has to be able to be in a position to sell the bonds, and they have informed me, as I am sure they have at least attempted to inform the Senator from Utah, that without the provisions in this bill that will allow for the pricing at the wellhead and the transportation costs to be rolled into the eventual costs to the consumers, that there is no way in which they can go to the money market and sells bonds, and until they can do that there will not be 1 foot of right-of-way, easements, purchased or dealt with in Canada or any private land in Alaska or the lower 48. There will not be any bonds solds, there will not be anything done.

Unless this bill is passed this year they cannot get into the money market next year with their proposition or unless there is some assurance that Congress will act at some time next year, they cannot get into the money market next in late 1979. Until you have the money in the pipeline game, you do not do anything, as in most businesses.

Mr. HATCH. I appreciate the Senator's point. However, I disagree with him. I think the other ratification of the President's decision does take care it. But let us assume it does not.

Mr. MELCHER. It does not.

Mr. HATCH. Let us assume it does not.

Mr. MELCHER. It does not have anything to do with it, as a matter of fact.

Mr. HATCH. If it does not, then I would suggest there is a very simple way of solving that problem on the motion to recommit where all that the distinguished Senator from Montana has to do is to add his concern by way of amendment to the motion to recommit as an instruction, and they will bring the bill back with the Senator's concern contained in it.

I believe the other ratification by Congress does solve the problem. But assuming I am wrong—which I think is not the case—then the Senator should make it one of the instructions on the motion to recommit, assuming that it is agreed to. If that is so, we can solve the problem that way.

Mr. MELCHER. I can assure the Senator that at the time we acted on the Alaska natural gas pipeline, it was assumed that the wellhead price for the gas and some type of rolled-in pricing would be passed by Congress, and that is the very guts of the Natural Gas Act; and that is why we are now here at this point.

Mr. HATCH. Let me say I believe you could take your language right out of the other bill, adopt it in your instructions, and it would come back and solve your problem.

Mr. MELCHER. I believe that would be naive in this case, because I do not believe about half of the people who are going to vote for recommittal will vote for a blanket authority, that a wellhead pricing of the gas and a rolled-in pricing for transportation costs along with

that wellhead price will not be acceptable. That is what they object to; they do not believe like you and I do. They are against deregulation.

Mr. HATCH. I believe the conferees on both sides will agree. I do not think it is as big a problem as the Senator from Montana thinks. I think it is a red herring that is being flashed here, to put the remainder of these awful provisions on the American people.

I think there are close sides to this question; I am trying to keep my mind open, to be informed by the best prevailing side.

Mr. MELCHER. Well, the Senator should know that those who are interested in deregulation and who signed the conference report only agreed to this provision because they could get the rest of it, the rest of this hodge-podge of stuff which I do not advocate and the Senator from Utah does not advocate.

Mr. HATCH. That is true.

Mr. MELCHER. But it is the only game in town; and if we kill this bill we do not have any. If the Senator from Utah can really believe that promptly in 1979 the House, the Senate, and the new Congress will deregulate natural gas, there would be some merit to his argument and he might even have me on board, but I do not think it is going to happen, because I believe we will have the same argument in the new Congress made by many of the same people who never wanted deregulation.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. HATCH. I yield.

Mr. FORD. Does the Senator from Utah know what the motion is going to be, or whatever, that we take a vote on to recommit the bill?

Mr. HATCH. I have recited earlier much of what I thought the motion was going to contain.

Mr. FORD. You did? Well, what bothers me is that the Senator from Ohio said around noon today that he would allow Senators to see the motion at his pleasure. So if the Senator from Utah has a copy of the motion to recommit that will be made, the junior Senator from Kentucky would love to see it. If you have the privilege to do that, I would be delighted to get a copy of it. Will you let me have it? Will you let me have a copy of it?

Mr. HATCH. I have a draft copy of it, but I must say——

Mr. FORD. You have a "Dear Colleague" letter, I guess.

Mr. HATCH. Well, I have the "Dear Colleague" letter.

Mr. FORD. If you are going to vote on the base of the "Dear Colleague" letter, that does not necessarily mean——

Mr. HATCH. I will give you the provisions of the conference report that I think will be requested to be recommitted.

Mr. FORD. Well, if you start taking paragraphs out of some provisions, and little pieces out of the bill, and that sort of thing, I suspect we will get everybody a little bit confused.

What I would like to have is a copy of the motion that will be made for recommittal.

Mr. HATCH. I do not have a copy of that.

Mr. ABOUREZK. Will the Senator yield briefly on that?

Mr. HATCH. I yield.

Mr. ABOUREZK. When we are ready to make the motion, we will be very happy to provide it to the Senator.

Mr. FORD. That is fine; everybody is talking about what they are going to do about recommittal, but nobody will say what they are going to do.

Mr. ABOUREZK. You think you might vote for it if I show it to you earlier?

Mr. FORD. You have a better chance of getting my vote if you let me see it earlier than if I do not have a chance to see it, if I do not know what it contains.

Mr. ABOUREZK. Is that the same philosophy you used on the conference report?

Mr. FORD. No, I studied it very well; and I was at more of the meetings than you were, Senator. And by the way, you were not disinvited.

Mr. ABOUREZK. I just was not told they were being held.

Mr. FORD. Well, you were not very anxious to be at any of the hearings. I remember when you were voting proxies and other people were voting proxies, and they had to turn around and unvote the proxies because they were voted wrong, the Senator from Ohio.

So all of these things about the conference committee are not necessarily what you say, or the paper says. If you look at the votes cast by proxy, or one of them, and then later in that same conference, after the Senator left, they had to change the votes, because they had voted by proxy and voted wrong.

Mr. HATCH. Let me state what I think will be in the motion.

Mr. FORD. You are stating the things that will be in the motion?

Mr. HATCH. I think this will be the motion. I believe it will read as follows:

Mr. President, I move that the conference report on H.R. 5289, the Natural Gas Policy Act of 1978, be recommitted to the committee of conference with instructions that it be reported back with all references to the pricing of natural gas deleted therefrom, and that it embody the language contained in Titles III, IV, and VI of the conference report with such conflicting language and/or definitions deleted. The conferees are specifically instructed to report back with the following sections excluded—

Then there is a list of sections.

Mr. FORD. Will the Senator from South Dakota say, on the floor, for the record, that he agrees this is the language that will be in the recommittal motion?

Mr. ABOUREZK. I do not think it has been put in final form yet. That will be the bulk of it, but there might be more——

Mr. FORD. Or less?

Mr. ABOUREZK. More provisions.

Mr. FORD. Or less?

Mr. ABOUREZK. There could be less, yes.

Mr. FORD. But you think if you put in a couple more, you might get another vote, or a couple less you might get another vote?

Mr. ABOUREZK. We do not have any breeder reactors to promise.

Mr. FORD. How about a few blacktop roads?

Mr. ABOUREZK. We will consider that, too. Whatever you have to offer.

Mr. FORD. I do not have anything to offer. I thought you were offering.

Mr. ABOUREZK. All we can offer is another provision in that recommittal motion.

Mr. McCLURE. Mr. President, will the Senator from Utah yield?

Mr. HATCH. I am delighted to yield.

Mr. McCLURE. First of all, I think we ought to get back to the discussion earlier about the fact that the Senate had already acted with regard to the Alaska pipeline bill.

Mr. HATCH. I would be more than happy to listen to the distinguished Senator from Idaho on that point.

Mr. McCLURE. I think it quite possible that the Senate might vote for the Alaska gas pipeline provisions. Remember that the latest action the Senate has taken with respect to gas pricing is that the incremental pricing provisions shall apply. That was the last vote of the Senate on the subject to Alaskan gas as well, and if you listened carefully to our friend from South Dakota arguing earlier, that is one of the reasons he does not like this bill.

Mr. HATCH. It literally exempted the Alaska gas pipeline from the exemptions of the bill, which it imposes on every other producer.

Mr. McCLURE. That is correct.

Mr. HATCH. What is the reason for that? If this bill is so good, why would it not be imposed on everything?

Mr. McCLURE. Simply because if you analyze the Alaska gas pipeline, to be built it has to have provisions which will enable it to be financed.

Mr. ABOUREZK. Will the Senator yield on that point briefly?

Mr. McCLURE. Just a moment, if you will.

Mr. HATCH. Let the Senator from Idaho finish.

Mr. McCLURE. The conferees and those who are working on this matter in the Energy Committee have come to a pretty unanimous agreement, not totally but nearly so, that there is no likelihood that the Alaska pipeline can be built if it requires incremental pricing; that the only way it can be financed is by getting contracts from producer and consumer that assume a rolled-in pricing provision; and without that rolled-in pricing provision there is no likelihood that they can get it constructed, and hence no likelihood that they can get the financing; so that, if it has an incremental pricing provision; it simply will not be built.

In fact, the conferees, looking at that, say there is no way you can get the Alaska pipeline built under the incremental pricing provisions. The Senator from Utah has said we can get that Alaska pipeline built without the incremental pricing provisions.

The Senator from South Dakota says there is no way to get it without incremental pricing. Therefore, it casts the entire issue in doubt.

Mr. FORD. Will the Senator let me add, I suspect that the reason they are

waiting now to allow us to know what their recommittal motion might be is that they might even try to stick on the Alaskan pipeline now. That would be part of their package.

Let me ask the Senator——

Mr. HATCH. Mr. President, I believe I have the floor.

Mr. McCLURE. Would the Senator not agree that under the language he submitted that the effect would be to leave the Alaskan pipeline in there subject to the incremental pipeline provision?

Mr. HATCH. The recommittal motion I have submitted has no incremental pricing.

Mr. McCLURE. The incremental pricing is stricken in the bill or is that in the provisions which remain after striking the language?

Does the Senator from South Dakota agree? I see the Senator from Ohio has joined us. Do the Senator from South Dakota and the Senator from Ohio agree that the motion to recommit will strike the incremental pricing provision from this bill?

Mr. ABOUREZK. It depends on what is in the motion to recommit.

Mr. MELCHER. It will not have the Alaskan pipeline provision in it at all.

Mr. ABOUREZK. Does the Senator have a copy of the motion?

Mr. MELCHER. No, but I know the sentiments of the Senators from South Dakota and Ohio, and numerous people opposed to deregulation are opposed to that, because that is the very guts of the Natural Gas Act which they want to have stay in effect.

Mr. ABOUREZK. Would the Senator like to lay a little money on that?

Mr. MELCHER. Yes, I would like to lay a little bit on that.

Mr. McCLURE. What kind of a deal is the Senator offering?

The PRESIDING OFFICER. The Senator from Utah has the floor and is the Senator to whom requests to yield should be addressed.

Mr. MELCHER. Will the Senator yield so that we can complete our betting?

Mr. FORD. Will the Senator from Utah give me just a few moments to ask him, the Senator from Ohio, or the Senator from South Dakota, a question?

Mr. HATCH. I would be glad to yield.

Mr. FORD. I have a copy of a letter setting out the recommittal and the first two signatures are Senator HOWARD M. METZENBAUM and Senator CLIFF P. HANSEN, and then others. The first subparagraph under the first paragraph on the last page says:

> Under adequate safeguards provide the President with the authority needed to cope with emergency conditions for allocating and temporary sales as he did successfully after the passage of the Emergency Natural Gas Act of 1977. Such authority has now expired.

Are you saying here that you are just going to allow emergency allocation of the interstate? For example, will the motion allow allocation of intrastate gas from boiler fuel users? Section 303 of the conference report does allow for such allocations. The letter about the recommital motion implies that it will not allow such allocation. Where are we?

Mr. HATCH. It is the very same as in the original draft, as I understand it.

Mr. FORD. The Senator will have allocation of inter and intrastate gas both by the President? Does Senator HANSEN know that?

Mr. HATCH. As far as I know.

I am not going to make the motion.

Mr. FORD. You are going to support something they have probably——

Mr. HATCH. I am going to do all that I can, realizing that any Senator can amend, any Senator can change it, and any group of people can get together. The Senator asks what I know about it today and that is the best I have.

Mr. METZENBAUM. Will the Senator from Utah yield?

Mr. HATCH. I yield.

Mr. METZENBAUM. I think the Senator from Kentucky was adequately answered this morning and that in due time he will be apprised if that is to be included in a motion to recommit. Nothing much has changed in the last several hours.

Mr. FORD. If he is discussing me, can I have him back?

Mr. HATCH. Yes.

Mr. FORD. The Senator from Utah was defending your position.

Mr. METZENBAUM. And very ably.

Mr. FORD. He indicated he was going to vote for recommital. He was trying to explain what was in the motion for recommital. Then the Senator from South Dakota was trying to say what might or might not be in it. Now he is even thinking about adding the Alaskan pipeline as part of the direction to come back for recommital. All I ask him was would there be allocation of intrastate gas. I was asking if there would be something in the motion that would allocate intrastate gas.

Mr. METZENBAUM. Does the Senator from Kentucky suggest that that would be there?

Mr. FORD. Section 303 of the conference report does allow for such allocation.

Mr. METZENBAUM. Under that condition?

Mr. FORD. When there is an emergency and the President orders boiler fuel users to stop burning natural gas.

Mr. METZENBAUM. Is it not a fact that there is nothing in the bill that permits the allocation of intrastate gas into the interstate market which was the sine qua non, that about which there was nothing according to a number of members of the Senate Energy Committee, and that is not in the bill and the President said that was a necessary condition?

Mr. FORD. Under emergency conditions it is in the bill, Senator. It is in the bill.

Mr. METZENBAUM. That portion that will be in for the limited period you are talking about will be in the motion to recommit.

Mr. FORD. Oh, you are going to take intrastate gas and put it in the interstate pipeline? That is a fact?

Mr. METZENBAUM. Yes.

Mr. FORD. Is Senator HANSEN for that?

Mr. METZENBAUM. We have said that we are going to be agreeable to taking intrastate gas and moving it on an interstate basis or through an interstate pipeline without it becoming subject to FERC regulations. We have said that consistently.

Mr. FORD. I do not see how you are going to get agreement among yourselves.

Mr. METZENBAUM. We only have the same provision that is in the conference committee report at the moment.

Mr. FORD. That is not what the letter says that you signed. It is right there, bare cut. You ought to read it yourself.

Mr. METZENBAUM. I am looking forward to that.

Mr. MELCHER. Will the Senator yield?

Mr. HATCH. I yield.

Mr. MELCHER. Is it not obvious that the group that is going to back the motion to recommit is never going to come to an agreement on what they want to vote on the provisions for recommittal, the instructions they want to tie in? How could the Americans for Democratic Action and the National Farm Bureau ever agree on natural gas? Yet those are the proponents for a motion to recommit.

Mr. METZENBAUM. We also have the American Conservative Union. Do not leave them out.

Mr. MELCHER. They are there, and the Senators who are going to vote for recommital are there, because they have different ideologies. They are that far apart, and they are never going to come together.

If the motion to recommit would prevail, there is never going to be a bill, because there will never be agreement among all those people. I do not believe that the group that wants the recommittal motion—there, there, others—is ever even going to agree on what they want as instructions in the motion to recommit, if we stayed here until Christmas or on into the next year. We might as well get on to the motion to recommit, in whatever form it is going to be, and vote it down.

Mr. HATCH. I do not think that the Americans for Democratic Action and the Americans for a Conservative Union really will make the decision. I think it will have to be the compromise made by the Senators here. I have to admit it will take——

Mr. MELCHER. There is plenty of evidence to show there is no compromise.

Mr. HATCH. It will take plenty of prayers to get it done.

Mr. McCLURE. Is the Senator from Utah implying that there have been secret meetings for a new compromise?

Mr. HATCH. I would say only that the Senator from Idaho and some of the folks opposing this motion would know.

Mr. McCLURE. I do not know whether you have been having secret meetings or Senators ABOUREZK and METZENBAUM have been having secret meetings about whether to recommit.

Mr. METZENBAUM. The Senator from Idaho would have more information than we both as to secret meetings with the President of the United States and the conferees.

Mr. McCLURE. I have not been invited to those meetings.

Mr. METZENBAUM. We have not been invited to the meetings having to do with the breeder reactor. We do not hold secret meetings. We have our meetings in the sunshine.

Mr. HATCH. I point out that——

Mr. McCLURE. The Senator will not even tell us what is in the proposed motion to recommit and he talks about not——

The PRESIDING OFFICER. The Senate will be in order.

In response to the query by the Senator from Utah as to who has the floor, the Chair informs the Senators that the Senator from Utah was earlier recognized and continues to hold the floor.

Mr. McCLURE. Will the Senator from Utah yield?

Mr. HATCH. I shall be happy to yield to the Senator from Idaho, but I say this: If there have been secret meetings, I do not think they have been on the side of those who are against this bill. Knowing and trusting and believing in the Senator from Idaho as I do in this matter, even though we are on the other side at the present time, I should hope that he did get the commitment from the President that I believe he got, and that certainly was not done in a public meeting.

Mr. McCLURE. Will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. McCLURE. I keep hearing this talk about what is going to be in the motion to recommit. I can only assume that somebody has been talking about what is going to be in the motion to recommit. I know I have not. We have been trying to find out. The Senator from Ohio says that, by and by, we will learn. The Senator from Utah has tried to outline what he expects. All I can assume is that there have been some conversations somewhere. I do not care how you tag it, that is a secret meeting in my book.

I only raise that question, I say to my good friend from Utah, because a number of other people have been critical of the means by which the conferees arrived at an agreement.

Mr. HATCH. I appreciate that from the Senator from Idaho.

Mr. McCLURE. If the Senator will yield further, I only want to stress this, because I think the Senator from Utah does not approve of or voted against the DeConcini amendment with regard to pricing.

Mr. HATCH. The Senator is correct.

Mr. McCLURE. I know my friends from South Dakota and Ohio are in favor of it. The motion to recommit is going to deal with that question one way or another: either we are going to have an incremental pricing provision or we are not. From what the Senator said, the incremental pricing provision remains in the bill.

Mr. HATCH. That is right, but it is a total, far cry from what the DeConcini amendment is.

Mr. McCLURE. Am I correct in assuming, then, that the Senator from Utah understands that the others who are opposed to the compromise, for opposite reasons, are going to accept the incremental pricing provision——

Mr. HATCH. I cannot speak for other Senators, who are either on the floor of the Senate or who belong to the Senate, but I believe a compromise can be brought about on the motion to recommit. I shall be surprised if it is not, but anything is possible in this august body, especially when we have, if they are advocates of the ADA and the ACLU, then I suspect that would be the situation.

I think the Senator from Idaho is familiar with the situation.

I yield to the Senator from South Dakota.

Mr. ABOUREZK. I want to clarify something, if I might, as long as the Senator from Idaho is here.

The Senator from Idaho, I think very openly and very honestly, released a letter which purported to describe in detail an agreement made between him and the President regarding the nuclear breeder reactor. Subsequently, the White House, the President and the Secretary of Energy, denied ever having seen him. They did not even know who he was.

Mr. McCLURE. Would the Senator yield on that point?

Mr. HATCH. Yes.

Mr. McCLURE. May I correct that statement?

Mr. ABOUREZK. I just want to clarify what the agreement was.

Mr. McCLURE. The President and the Secretary of Energy have consistently said, yes, there was an agreement; yes, we do have an understanding; yes, those are the figures; yes, that is the proposed program on the breeder reactor program. So there has been no denial.

Mr. ABOUREZK. That is what I have been reading, that there is a denial.

Mr. McCLURE. Maybe I do not read the same things the Senator reads.

Mr. ABOUREZK. Would the Senator describe what the agreement was so it will be on the record?

Mr. McCLURE. I shall be glad to bring it in for the record and put in the RECORD. I do not think it is fruitful for discussion right now. It has nothing to do with the natural gas bill.

Mr. ABOUREZK. Was the agreement in return for his signature on the conference report?

Mr. McCLURE. It was not. I have said that repeatedly and the President has said that repeatedly.

Mr. ABOUREZK. Just out of the blue, then, they decided to put a breeder reactor in Idaho?

Mr. McCLURE. No, if the Senator will yield further, this was not out of the blue. As the Senator knows, this has been under discussion, under debate, within the Energy Committee for months. It has been an ongoing discussion and perhaps grew out of the same concern for the statement of energy policy and the position of various people in this country, an understanding by people outside of this country of what this country has as a matter of basic energy policy: Is there a natural gas bill? Is there an energy bill? Is there a breeder reactor program? Is there a nuclear program? It grew out of that discussion.

Certainly, I know the Senator was not there when we were discussing the so-called Jackson-Church-Johnston compromise. I think the Senator did vote on that in the Energy Commission. I know that the Senator was there at least during a portion of the debates on the Melcher amendment that was offered in the Energy Committee on the nuclear program, on the Department of Energy authorization. I know that the Senator knows that this has been going on for weeks, and it should not be surprising that the Senator from Idaho has feelings about it. I have expressed them openly in the committee and elsewhere. It is a matter that I have been discussing with them for a long, long while.

Mr. ABOUREZK. I understand that. What is not clear to me yet is why, since the administration had vehemently opposed the breeder reactor program for months and months—in fact, I was one of those who was asked by the administration to oppose it in the Energy Commitee, which I did. They did not even have to ask me; I would have done it anyway.

Mr. McCLURE. I am glad to know that the Senator——

Mr. ABOUREZK. If the Senator knows—though he may not know—I wish he would tell me: Why would they suddenly, just when they need his signature on the conference report, reverse themselves and come out in favor of the breeder reactor?

Mr. McCLURE. Will the Senator yield further so I may respond?

Mr. HATCH. I shall yield for one more comment. Then I should like to continue.

Mr. McCLURE. Let me say to the Senator from South Dakota I know that, from his wealth of experience and his deep cynicism about the political processes, he must make an assumption concerning agreements that come about.

Mr. ABOUREZK. All I know is what I read in the papers.

Mr. McCLURE. No, the question is perhaps better addressed to the administration than it is to me. I do not know what motivated them. I cannot tell exactly how. They did not consult me earlier in regard to the program. But I have consulted with them concerning it. They did not ask me to oppose it as, apparently, they did my colleague. I am glad to know my colleague is so close to the White House. I have not been that close to them on the nuclear programs. But I have been discussing with them, and they have not asked for my help on the nuclear program, but we did discuss what ought to be in the nuclear program. That eventually evolved to the point of an understanding as to what should be in the nuclear program.

The Senator from Idaho did not make any extortionate demands on them, that they agree or else, but I have seen the opponents of the breeder reactor program make extortionate demands: You go back on that or we oppose your natural gas bill. The linkage that was established was certainly not established by the Senator from Idaho. It has been established by those who are opposed to the breeder reactor program, a program which I happen to favor.

I hope that we shall be able to—if the Senator is at all interested, I shall send him a copy of my letter to the President and the press release so he may have full information. It has been in the public domain for weeks.

Mr. ABOUREZK. I would appreciate that. I would like to read it.

Mr. McCLURE. Perhaps the Senator has not read those.

Mr. ABOUREZK. I am grateful to the Senator for clarifying that matter, because as he said, in my mind, it seemed to me a quid pro quo. I am glad to hear him deny it here, although I understand that he cannot deny it on behalf of the administration.

Mr. McCLURE. If the Senator will yield further, I cannot speak for the administration, except that I know what they have said publicly and privately with respect to the question, was there a trade? There was not. There was a mutual coming to agreement upon two things that needed compromise.

The Senator has suggested that this is a reversal of administration program or policy position on the breeder program. The President has repeatedly denied that that is true, just as he denied that there was any change in his position with respect to deregulation of natural gas. I leave it to my friend from South Dakota to judge both positions, because I am sure he will do so regardless of what I say.

Mr. ABOUREZK. In other words, there is as much integrity in that breeder reactor position as there was in his position on natural gas.

Mr. McCLURE. I happen to approve of the position he has taken on natural gas, not because it is all that I would want, and I happen to approve of the agreement that the President has made with me on the breeder reactor program, not because it is all that I would want. I would like to see the Clinch River breeder reactor built now. I would like to see the commitment to go ahead with it now. But the nature of compromise between conflicting views says let us find an acceptable middle ground which we can occupy and move both programs forward.

Mr. ABOUREZK. The Senator said there was a compromise reached in two areas. One was the breeder reactor. What was the other?

Mr. McCLURE. The natural gas bill is a compromise between conflicting views.

Mr. MELCHER. Since the Senator from Idaho——

Mr. ABOUREZK. But was that the compromise discussed?

Mr. McCLURE. Excuse me?

Mr. ABOUREZK. Was that the compromise the Senator discussed?

Mr. McCLURE. We have discussed both those issues, among others involved in the energy program, just as the Senator from South Dakota and the Senator from Idaho have discussed it.

Mr. MELCHER. Since the Senator from Idaho has used my name in terms of the——

Mr. ABOUREZK. May I ask another question?

Mr. HATCH. I am happy to yield and then I would like——

Mr. ABOUREZK. I am curious if the discussion came up at the same meeting.

Mr. McCLURE. I would say that discussions of both matters have gone over a long period of time. There have been meetings in which both have been discussed, as other issues were discussed.

The junior Republican Senator from Idaho does not get to the White House as often as some other people on the other side of the aisle, and I have to use that opportunity, when there, to discuss whatever I have on my mind. I might not get back inside. So I am very happy to discuss whatever I have of concern to me when there.

Mr. ABOUREZK. I can give the Senator a formula for not getting back inside.

Mr. HATCH. I think the distinguished Senator from South Dakota knows a great deal about that and I would tend to believe that formula.

If I could, I would like to yield to the distinguished Senator from Texas.

Mr. MELCHER. Will the distinguished Senator from Texas yield me 30 seconds?

Mr. TOWER. I am delighted to.

Mr. MELCHER. I thank the Senator.

Since the Senator from Idaho mentioned a Melcher amendment in terms of the Clinch River breeder reactor, let me state that that is an amendment that was adopted in committee. Since the energy authorization bill is before us in the Senate, it will be in the bill and the Senate will have the opportunity to either approve it or reject it, or have a third alternative on modifying it.

It will be the pertinent provision dealing with whether or not the Senate and the House want to give the authority to the President to, first of all, cancel out the Clinch River breeder reactor, and second, to go on from that point with just the opportunity to engage in more experimentation, more research work, to determine whether a suitable method of using nonproliferating nuclear material in a breeder program would be practical, and report back to Congress on their recommendation, one way or the other, in 1981, and then Congress to decide at that point whether Congress wants to authorize further work on such a plan.

It is what the committee accepted. All the talk about what kind of an arrangement the President might agree to, if the House and Senate passed those provisions, that is all the opportunity the President and the executive branch will have.

Mr. McCLURE. Will the Senator from Texas yield just a moment so that I might respond?

The PRESIDING OFFICER. Does the Senator from Texas seek recognition?

The Chair recognizes the Senator from Texas.

Mr. TOWER. I yield 1 minute to my distinguished friend from Idaho.

Mr. McCLURE. I thank the Senator.

Let me just indicate that the chairman of the Energy Committee (Mr. JACKSON), Senator CHURCH and Senator JOHNSON, had offered a compromise that would allow the President to cancel the Clinch River breeder reactor program in return for certain base program improvements. That amendment was killed, that offer in the committee was killed on a tie vote of 9 to 9.

The Senator from Montana offered the amendment which he has now described, which also failed, with the junior Senator from Idaho abstaining.

I then changed my vote to vote in favor of it, not because I approved the agreement, but because it was necessary to get off dead center and get it to the floor.

The Clinch River breeder reactor is the core of a controversy. I would hope when we get to the floor of the Senate with the DOE authorization bill we will be able to debate in full what the breeder reactor program ought to be.

I would just remind my friends who may be concerned about what is in the agreement and the proposed compromise the President and I have agreed upon, it is a halfway point between the DOE authorization bill as reported by the Senate committee and the Appropriations Committee action dealing with the same provisions, the Appropriations Committee having agreed to spend more money on the breeder reactor program than on the liquid metal fast breeder reactor program than I have agreed to with the President in exchange with an assurance in 1980 and 1981, and the Presidential support, or at least agreement, not to veto or oppose those actions.

That is all set forth in a great deal of detail which has been released to the press and the public.

Mr. President, I thank the Senator from Texas for permitting me to make that explanation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. Mr. President, it is my firm conviction that this natural gas conference report does not deserve the approval of the Senate. At best, its enactment would do little, if anything, to increase our domestic supply of natural gas or to reduce foreign oil imports. More likely, its approval would tend to aggravate rather than solve this Nation's domestic crude oil and natural gas supply problems. Certainly its approval can have no significant or lasting effect on the strength of the dollar in foreign exchange markets.

As a proponent of legislation to deregulate new natural gas, I believe that enactment of this gas pricing compromise can be justified only if it will substantially contribute to achievement of the goal of unregulated, market-determined gas pricing at an early date. I must conclude that this bill is not designed to achieve that goal. In fact this bill, rather than moving toward less regulation, actually provides for a dramatic increase in the scope of Federal regulation.

For the Nation's natural gas producers, its enactment would mean a staggeringly complex new regulatory scheme which would reduce price certainty and significantly increase the regulatory cost of exploring for and producing gas. This additional regulatory burden will be especially heavy for the Nation's smaller gas producers, including most of the independents, and it is the independents who find most of the natural gas reserves in the United States and who drill most of the producing gas wells.

Not only does this bill expand the scope and complexity of Federal regulation of the interstate market, but it extends this regulation to the now unregulated market for natural gas produced and consumed in the same State. Many independent gas producers have chosen to operate in the intrastate markets not only because of the price incentives available there, but also because of the absence of costly Federal regulation. Extensive regulation imposes costs on the regulator and regulated alike, and the bill will increase the cost of regulation substantially.

Enactment of this bill will impose on the Federal Energy Regulatory Commission—the regulator—an almost impossible task of administration and enforcement. "Virtually impossible * * * to enforce" is how the FERC Director of Enforcement described it, and the provisions which led to that conclusion remain essentially intact despite changes subsequently made in the bill.

Even now, FERC has a backlog of approximately 10,000 pending wellhead pricing cases, and under current law the Commission regulates less than 60 percent of the gas produced. This bill mandates what is essentially a well-by-well evaluation to determine which of the numerous pricing categories applies to the gas produced from each individual well. With about 10,000 new gas wells drilled each year in the United States, it is apparent that this additional burden of regulation and review will only further increase the backlog and result in months and years of additional delays. Even if the bill is enforceable, as its proponents contend, FERC Chairman Charles Curtis has already conceded that the Commission will need significantly increased funding for a substantial number of new Federal regulators to do the job.

The States would suffer further encroachment of their authority and responsibility under the bill. With respect to wellhead pricing, not only does the bill initiate Federal control of intrastate gas, but Federal regulation would for the first time also be extended to cover natural gas owned by States and municipalities. In Texas and some other States, the volume of State-owned gas production is significant and the revenue derived from its sale helps to serve beneficial public purposes.

The prospect of all of this new Federal regulation leading to meaningful deregulation seems to me remote, at best. Despite what the bill and its proponents say about deregulation of some categories of natural gas in 1980, 1985, 1987, or 1989, it is my view that analysis of the bill in the context of our experience with oil price regulation leads inescapably to the conclusion that this is not a deregulation bill in any real sense of the word. The pricing mechanism established by this natural gas bill is strikingly similar to the oil pricing scheme created by the Energy Policy and Conservation Act of 1975. The EPCA was also a compromise measure and it too was promoted as a way to achieve gradual price decontrol. The curious idea behind that law and the current bill as well is that you extend the coverage of price controls now so that you can later remove them.

The EPCA extended then existing oil price controls to cover "new oil" which was then exempt. The law also provided for gradual increases in the ceiling prices and set June 1, 1979, as the date for completion of the phased removal of all controls on domestic crude oil.

However, that is not what has happened under the oil pricing law. Rather than gradually increase in real terms, oil prices have been frozen and even rolled back several times. Under the present administration, oil prices have not even been allowed to rise to the level permitted under the law. Further, if the repeated statements of the administration have any meaning, the clear prospect is that these oil price controls will be extended and continued indefinitely. I believe that a similar continuation of an expanded system of Federal price controls is precisely what can be expected to result from this compromise gas bill.

Even if one takes on faith this bill's promise of some ultimate price deregulation, I think it is apparent that the bill will significantly reduce incentives for natural gas exploration and production during the period in which controls remain in effect. Exploration and production incentives are determined not only by wellhead prices and the degree of price certainty, but also by consideration of regulatory cost. The regulatory costs imposed on producers by this bill would be substantial. Together with the price ceilings, these regulatory costs will have the effect of decreasing overall incentives to producers.

In the interstate gas market, this bill would result in little, if any, increases in wellhead price ceilings relative to those which would likely be applicable under new rates promulgated under existing law. The extension of price controls to the intrastate market will reduce wellhead price revenues substantially below those which producers could otherwise expect to receive in the absence of the bill. In both the interstate and intrastate gas markets, the added regulatory cost imposed by this bill would be substantial. Especially for those many independents now operating primarily in the intrastate markets, this bill will have a chilling effect on producer incentives.

For all of these reasons and others, Mr. President, it is quite clear to me that final approval of this natural gas conference report would not serve the national interest. It is apparent that the bill is designed not to add to overall supply but rather to shift shortages around in the short run by bleeding the intrastate markets. To adopt this bill to establish long-term pricing policy for natural gas is to perpetuate the current shortage of domestic gas and to opt for continued reliance on OPEC oil and import liquefied natural gas, at prices well in excess of those which are allowed our domestic energy producers.

This bill will not significantly increase the Nation's supply of natural gas, but it will lead to greatly increased Federal regulation. Its approval will contribute nothing to the solution of our domestic energy supply problems and it can in no meaningful way improve our domestic or international economic situation. I urge the Senate to reject this conference report and send it back to committee, with instruction. I believe that will provide Members of this body with a satisfactory alternative.

Mr. FORD. Mr. President, will the Senator from Texas yield for a question or two?

Mr. TOWER. I am delighted to yield.

Mr. FORD. Most of the Senator's comments—and I am about like the lamb charging the lion, trying to ask the Senator from Texas about oil——

Mr. TOWER. When somebody says that to me, I start looking behind me, to see what is gaining on me.

Mr. FORD. The Senator has referred to the bill primarily, and then right at the end——

Mr. TOWER. The Senator probably was going to say that he is just a country lawyer. Lyndon Johnson used to say, "When somebody says he is just a country lawyer, hold on to your pocketbook."

Mr. FORD. I say to the good Senator from Texas that I am not a lawyer.

Mr. TOWER. Neither am I, and I am tempted to say that I am delighted that there are at least two of us here who are not.

Right at the end of his fine statement, the Senator said that he hopes Senators will vote for recommital with instructions.

What are we going to vote on in that recommittal motion? Does the Senator know?

Mr. TOWER. It is my understanding that the motion that will be offered will be to recommit, with instructions to report a bill that, in effect, strips out the controversial gas pricing provisions, reports those provisions of the bill which are pretty generally acceptable to most Senators including provisions for extension of emergency allocation and temporary sales authority.

Mr. FORD. Is the Senator saying that he is going to support some legislation that would direct the President to go into intrastate gas out of the Senator's State into incremental pricing?

For example, will the motion allow elimination of intrastate gas from boiler fuel users?

Mr. TOWER. It is my understanding——

Mr. FORD. People do not really know what the recommittal is going to be, do they?

Mr. ABOUREZK. That is because it has not been filed.

Mr. TOWER. I am talking about my understanding of what is going to be filed. I am not going to blindly commit to any kind of instruction until I see it.

Mr. FORD. The Senator from Texas has not seen it yet, either?

Mr. TOWER. It is my understanding that this is generally what is agreed on by people who want to see this bill recommitted.

Mr. FORD. Is the Senator going to vote, for example, for a motion that would allow allocation of intrastate gas from boiler fuel users?

Mr. TOWER. I am not going to vote for extensive intrastate allocation authority that permits——

Mr. FORD. Oh, you are not.

Mr. TOWER. Wait a minute. I am not through [continuing] that permits some bureaucrat here in Washington to make a decision as to who needs our gas most.

Mr. FORD. Then, the Senator really is not in favor of the "Dear Colleague" provision is the recommittal proposal, and that carries very specific language, and the Senator signed it.

Does the Senator have a little trouble deciding what he signed?

Mr. TOWER. No, I have no difficulty at all. I am just trying to determine specifically what the Senator from Kentucky is referring to. It is my understanding that the Senator is referring to the Glenn amendment gas. Is that correct?

Mr. FORD. Yes, sir. Well, it is the authority to allocate the gas, and that is what the Senator refers to in section 303 of the bill.

Does the Senator want me to ask for a quorum call while he finds out what he signed?

Mr. TOWER. No. I know what I signed. I just do not have a copy of the letter here.

(Mr. PAUL G. HATFIELD assumed the chair.)

Mr. FORD. If the Senator wants an explanation of the provision I will be glad to give it to him. It is page 104 of the conference report, the first full paragraph.

Mr. TOWER. The Senator has a copy of the bill. The Senator has me at a disadvantage. He has a copy of the letter.

Mr. FORD. I thought that the Senator signed the letter that stated what——

Mr. TOWER. I signed the letter, but I do not have a copy of it in front of me.

Mr. FORD. Here is one here. I never sign a letter until I know what is in it.

Mr. TOWER. I know what is in it. I do not have details of the exact wording.

As I understand it, the Glenn amendment provision is in section 607, subparagraph 1. In order to assist in meeting natural gas requirements for high priority users of natural gas the President may by order allocate supplies of natural gas, the use of which has been prohibited by the President pursuant to authority under section 607 of the Public Utility Regulatory Policy Act of 1978 relating to the use of natural gas as a boiler fuel during any natural gas supply emergency.

This is an authority that does currently exist in the public utility rate bill.

Mr. FORD. That is right.

Mr. TOWER. Is that correct?

Mr. FORD. Interstate pipeline.

Mr. TOWER. That is right.

Mr. FORD. Interstate.

Mr. TOWER. This refers to authority the President already has in the public utility bill.

Mr. FORD. But the Senator refers in the letter to the provisions in the bill. The provisions in the bill allow the President to allocate intrastate gas. When the Senator refers to that provision in the bill I accept the point that he is taking that part out of the conference report and going to say in his motion of recommittal with instructions that that will be the part that he is giving the President which includes the authority to allocate intrastate as well as interstate gas supplies.

Mr. TOWER. The thing is if we would remove regulation altogether we would not need the allocation authority. We have already passed allocation authority. I do not necessarily agree with that.

Mr. FORD. I thought the emergency powers had expired.

Mr. TOWER. It has expired.

Mr. FORD. It has expired.

Mr. TOWER. To begin with, to be able to recommit this thing you have to make it as attractive to as many people as possible. For my part, I may not fully support every provision of this recommittal instruction, but legislation is after all the art of the possible.

Mr. ABOUREZK. A matter of preference.

Mr. TOWER. I would prefer to have those provisions rather than the extensive regulatory authority over intrastate gas which I think would have a stifling effect on the production of intrastate gas.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. TOWER. If the Senator will allow, when you couple the allocation authority with the authority to regulate all the other aspects of intrastate gas you run the risk of reducing the amount of production and jeopardizing the supply of gas. We have a surplus of intrastate gas. Why? Because the price was allowed to rise to a market regulated level. That is why we have it, and that is why there is some gas to spare. If regulation is not extended to intrastate gas, then it can be produced for availability under an emergency situation.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. TOWER. I yield to the Senator from South Dakota.

Mr. ABOUREZK. Mr. President, I shall take a few minutes to read a news story filed by United Press International, September 11. That is today:

WASHINGTON.—Gas home heating bills will increase sharply in the Midwest if the natural gas bill is approved, spokesmen for industry and regulatory agencies said Sunday.

The officials, in a series of telephone interviews, predicted heavy industry will switch from natural gas to oil if the compromise legislation to phase out price controls becomes law.

W. R. Wilson, Inland Steel's senior vice president for energy, said the bill would "certainly raise the price" of natural gas in the Midwest, prompting industry to convert to oil.

"We have the capability of making switches. . . . and we would probably put in more equipment to do that," he said.

The Northern Indiana Public Service Commission, which sells Inland Steel much of its gas, said the bill will force industry to switch to oil or "relocate to gas-producing states."

"Industry relocating means loss of jobs in Indiana," a spokesman said.

NIPSCO said a survey of its customers indicated the bill would cause enough switches from gas to lead to the loss of 24 percent of the utility's revenue.

"This revenue loss must be borne by the remaining customers and would result in an increase to residential customers of not less than 15 percent or $60 per year," the spokesman said.

The utility said ultimate industrial revenue loss could increase residential bills as much as $189 a year.

The Wisconsin Public Service Commission, which regulates the State's utilities, forecast "an economic catastrophe" in the State if the bill is approved.

"Wisconsin's industry would be forced to convert to higher priced energy, probably foreign oil," a spokesman said. "Wisconsin would lose jobs to energy producing States."

The Carter administration has insisted that the bill will increase production, reduce America's dependence on foreign oil and help regain international confidence in the troubled dollar.

I thank the Senator for yielding.

Mr. FORD. Mr. President, will the Senator from Texas allow the Senator from Kentucky to make an observation?

Mr. TOWER. I am delighted to yield for that purpose.

Mr. FORD. There are two things here. The Senator from South Dakota, as a regulator, likes that statement. I am sure the Senator from Texas, who is a deregulator, does not necessarily approve of that statement.

This morning the Senator from South Dakota was arguing that incremental pricing is no good, because it would put the load on the homeowner, the consumer. But now he comes in with great pride and reads this statement which says that industry is going to carry the big load and industry itself says it is going to carry the big load. So it means to me that this latest statement says that the consumer will be protected and the industry will be carrying the load instead of the residential user.

Mr. TOWER. Let me note that different people are supporting this recommittal for different reasons.

Mr. FORD. Yes, that is true. I agree with that.

Mr. TOWER. I do not think that is an extremely well-kept secret.

Mr. FORD. But the Senator from South Dakota has been on both sides of the same question in 1 day.

Mr. TOWER. That is between the Senator from Kentucky and the Senator from South Dakota. I am expressing my own views as to why I oppose it here. If they are not consistent with the views of others who are opposing it, so be it. We are more interested in numbers than rationale at this point, and I think the numbers are growing, and I think for very good reason. It is generally recognized this is not a good piece of legislation. Maybe some have bought the specious argument that this bill is going to help stop the slide of the dollar in international monetary markets, but that is certainly not the case. That is a massive delusion, and I think that perhaps Senator PROXMIRE and I may engage in more discussion tomorrow on that matter, hopefully to help disabuse some people of that notion.

Mr. FORD. Will the Senator allow us to get back to the original question about the allocation of intrastate gas?

Mr. TOWER. Go right ahead.

Mr. FORD. The Senator got off of it and went into regulation or deregulation, but in this Dear Colleague letter, which

the Senator signed, there is discussion of the allocation of inter- and intrastate, and the Senator read from the proposed statute which is absolutely correct on emergency allocation authority.

But the old Emergency Natural Gas Act has expired, and it expired in April, and that old emergency act did not allow allocations of intrastate gas.

But in this "Dear Colleague" letter the Senator referred to the provision in the bill, which is section 303, which does allow the allocation of inter- and intrastate gas. Now, is the Senator for that provision?

Mr. TOWER. I would prefer not to have it, but I am realistic enough to know that to avoid getting legislation that may be worse it is prudent for those of us who are, perhaps, not entirely satisfied with this provision to go ahead and support it.

Let me note, too, that the only intrastate gas that would be allocated would be the Glenn amendment gas which the President orders freed from industrial boilers. It is not likely that we would ever have any significant volumes of intrastate gas or any other kind of gas allocated under these provisions.

I think, too, with a free market situation in the intrastate markets we could produce enough gas to meet emergency needs [commitments] without even having to preempt gas from those who are currently using it for industrial reasons.

I think, too, that we should proceed apace with our efforts at conversion rather than wastefully and needlessly use gas under boilers.

I support the idea of conversion. As a matter of fact, we have been converting in Texas for a long time. We started converting in Texas before there was any coal conversion legislation. Why? Because the price of gas was going up. That was the incentive to convert. If we would take the lid off the price of gas there would be a lot of conversion going on. Then, no doubt, somebody would suggest that we control the price of coal in interstate markets.

Mr. FORD. It has already been suggested. We voted on it on the Senate floor this year.

Mr. TOWER. Is the Senator for it?

Mr. FORD. No.

Mr. TOWER. Neither am I.

Mr. FORD. I was for deregulation.

Mr. TOWER. We in Texas buy much of the coal we use from elsewhere. We buy much of it from Wyoming.

Mr. FORD, I believe the Senator said today——

Mr. TOWER. In fact, if you allow the price of gas to go above the Btu equivalent of coal and competing fuels, people are going to stop using gas inefficiently. It is unlikely that this allocation authority will be used. If I thought there were any imminent likelihood it was going to be used, I think I probably would be unable to support those provisions under these circumstances.

Mr. FORD. I was going to remind the Senator from Texas that he called the allocation of intrastate gas evil earlier today. Now the Senator is talking about the Glenn amendment. The Glenn amendment includes intrastate gas.

Mr. TOWER. I recognize that fact.

Mr. FORD. The Senator says he does not want the bureaucrats up here allocating intrastate gas even under an emergency situation. But you are getting into that now, and if the Senator is for the "Dear Colleague" letter that the Senator signed——

Mr. TOWER. Without the accompanying regulatory power over intrastate gas.

Mr. FORD. There must be a real——

Mr. TOWER. With continuation of a free intrastate market I do not think supplies would be adversely impacted such that you would have to preempt and allocate gas, and that is the point.

Mr. FORD. Well, the Senator——

Mr. TOWER. In other words, I feel a little bit more sanguine about some limited allocation authority in the absence of the regulatory power than I would if that authority were accompanied by the regulatory power.

Mr. FORD. Well, the only thing I can say is that the Senator from his letter that he signed said he was for the allocation of intrastate gas. The Senator has just now said that he would support——

Mr. TOWER. The Senator did not say that. The Senator is talking about—what the Senator signed was a letter——

Mr. FORD. But the Senator just said a few moments ago——

Mr. TOWER [continuing]. Supporting an instruction.

Mr. FORD. By the way, could I have a copy of my letter back?

Mr. TOWER. I do not know. I may not be through with it.

[Laughter.]

Mr. FORD. But the Senator just said he would support the allocation of intrastate gas, and I think it is in the RECORD. I was somewhat surprised——

Mr. TOWER. The Senator is wrong. I did not say I would support it.

Mr. FORD. The Senator said he would vote for——

Mr. TOWER. I said I would vote for the instruction because I believe it would be calculated to result in less dangerous legislation than that contained in the entirety of the conference report, and there is a difference.

Has the Senator from Kentucky ever supported an amendment which tended to ameliorate bad legislation?

Mr. FORD. Well, I have tried not to even vote for it in the first place.

Mr. TOWER. It is sometimes prudent to support an amendment that will gut it and then vote against the bill. But, in fact, we always have to——

Mr. FORD. The Senator reminds me of a Congressman we have at home who votes against every appropriation, every tax piece of legislation, and he is the first one to announce an expenditure.

Mr. TOWER. Well, I think the Senator from Kentucky is missing the issue a little bit here. In fact, I have never been a great supporter of allocation of any kind, I do not think we need or should have mandatory allocation authority, but I recognize that under the circumstances we have to strike a compromise, and that is what I am supporting, a compromise. The allocation authority under the circumstances, in my view, is not likely to be used, especially when not accompanied by the intrastate regulatory power.

Mr. FORD. I have no further questions of the Senator from Texas. If he has no questions from me——

Mr. TOWER. I just want to set the record straight on this particular point. My supporting an instruction to report out a bill with certain provisions does not necessarily mean I support every provision in that bill any more than I would necessarily support every funding item in an armed services bill that I vote to report from committee to the Senate. We must do so to have a bill to consider.

In this instance I think it is the only way to produce any kind of energy legislation. I think the responsible posture is to vote to recommit it. In the absence of that——

Mr. FORD. With instructions.

Mr. TOWER. I intend to vote against the conference report.

Mr. FORD. Mr. President, I have no further statements to make on the bill, the natural gas conference report, this afternoon. I do not know anyone else to whom to yield the floor on that matter.

I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Kentucky. I have talked to Members on both sides of the aisle, on both sides of the issue, and there seems to be no Senator at this point to speak on it.

● Mr. PEARSON. Mr. President, the conference report of the Natural Gas Policy Act of 1978 which is before the Senate today is an imperfect piece of legislation. Its imperfection arises out of the fact that it is a product of a compromise; a compromise forged from the cross currents of strongly conflicting political views, competing economic doctrines, and sharply differing interpretations as to the consequences of the bill's multitude of technical provisions.

Despite its imperfections and notwithstanding the fact that the pending compromise falls short of the Pearson-Bentsen bill previously adopted by the Senate, I have, after careful consideration, decided to support its adoption.

Mr. President, this bill is opposed on one hand by those who argue that it will result in unjustified profits to producers and excessive costs to consumers. On the other hand, there are those who argue that it does too little for the producers, that it provides too few incentives for the stimulation of new domestic gas production.

I do not challenge the sincerity of these beliefs held by each of these opposing sides. But, for me, Mr. President, it seems a matter of simple logic that the truth of the matter must lie somewhere between these opposing views. Both cannot be right.

Because this is a complex subject and a complicated bill, I cannot say with any absolute certainty precisely where on the scale the conference report comes down between these two opposing points of view. However, as a strong believer in the concept of deregulation, and I have been involved in this effort for a good long time, I am convinced that this measure is a positive step in the direction toward ultimate deregulation. And, al-

though the regulatory procedures contained in the conference report have been made unnecessarily complicated, I believe that there is sufficient flexibility in the administrative machinery provided by this bill to make it work.

Mr. President, there are those who argue that we should scuttle this bill on the assumption that the Federal Energy Regulatory Commission will, in the months ahead, make pricing and administrative changes that will substantially improve the incentives for increased natural gas production. I fully acknowledge that the FERC could, in fact, do a great deal in this regard. I recognize the possibility that indeed the FERC may do so. But I think the probability that it actually will, is not very high. The history of heavy handed regulation of the natural gas industry is long and all too clear and I frankly do not see the ingredients that would bring about a sudden and significant change in the situation. Even if the FERC did take actions to enhance natural gas production, I do not doubt that such measures would be tied up in exhausting litigation for years to come.

Therefore, I am fully convinced that legislative action is necessary. I am also convinced that if we do not act favorably on the conference report before us now, the chances for legislative action will not likely come our way for a good number of years. After President Eisenhower vetoed a deregulation bill in 1956 it was a decade and a half before the Congress was able to even seriously again discuss the issue. Circumstances today are quite different but, nevertheless, I am convinced that this is the critical moment for action. The Congress has studied and debated this issue for too long. The conflicts and the passions have been too strong. Should we fail to act now it is not likely that the Congress will have the will to take up a full scale review for natural gas policy for a good number of years.

On the other hand, if we proceed to put this particular bill into the statute books, I believe that the climate would be such that piecemeal amendments could be considered even as early as the next Congress if it were found that there are, indeed, critically serious defects in this legislation.

Mr. President, let me review some of the major reasons why I think this measure should be adopted.

First and foremost, it provides the process which will lead us ultimately to the deregulation of new natural gas pricing. It does not get us to that objective as soon as I would like and there are provisions in the bill which could, under certain circumstances, result in continued regulation beyond the target date of January 1, 1985. But I am convinced that the measure will work well enough so that by 1985, complete deregulation of new natural gas will be a politically acceptable proposition.

Second, I believe this measure does provide incentives for increased production of natural gas between now and the target date for deregulation. I do not reject the argument that the excessive regulatory aspects of the measure also provide certain disincentives, but I am convinced that the pricing incentives are sufficient to bring on an increase in new natural gas production and that the industry can adapt to the administrative procedures.

Third, adoption of this measure will bring a degree of certainty to the marketplace. This is in sharp contrast to the uncertainty which we have had during the past 3 years while the Congress has debated the natural gas legislation; a period during which natural gas production has continued to decline. Now there is no particular virtue in certainty itself, except that it is one of the important factors, I believe, that will serve to stimulate and encourage greater production. Decisions as to large scale capital investment in exploration and development could not be made with greater confidence. Likewise, users will have a much clearer picture of the future and this will have a salutary effect on their long-range planning.

Fourth, this bill will, by establishing a national pricing system, serve to bring more gas into the interstate pipeline system almost immediately. At the present there are surpluses in the intrastate market and shortages in the interstate system. I think most agree that this bill will help bring about a more effective balance. More natural gas in our interstate pipelines will help reduce the fixed per unit costs for transportation thus helping to offset the increased cost for new natural production. This helps the consuming States without penalizing the producing States.

Fifth, if this measure does in fact result in greater production, as indeed I believe it will, this should result in a lessening of our dependence on imported foreign crude oil and LNG. This means a reduction in our trade deficit. And, given the seriousness of our balance of payments problem, this is, indeed, a powerful argument in favor of adoption.

Sixth, this bill protects the residential user against sharply accelerating costs through incremental pricing. And it provides some very important provisions essential to the welfare of our farmers and small businessmen.

Seventh, passage of this measure paves the way for the adoption of a rather comprehensive national energy policy package. The final enactment of a national energy policy on which we have been working for the past year and a half, is important in it own right, in that taken together, all the parts of the package will help move us toward solving some of our more pressing energy problems.

But adoption of a national energy policy, including this natural gas bill, also has great symbolic value, both here at home and abroad. It is extremely important, it seems to me, that we demonstrate to the American people that we have the capacity to write controversial and complicated legislation on an issue which we all know is of paramount and fundamental importance.

It is also extremely important that through the adoption of this legislation we are able to demonstrate to the international community that we have the will and the capacity to move ahead with measures which deal in a positive way with the energy problem. There seems little doubt but that our failure to complete action on a national energy policy has been one of the root causes in the decline in the value of the U.S. dollar abroad.

Mr. President, this has not been an easy decision for me. I have expended much time and energy on behalf of the deregulation new natural gas pricing. I have never doubted the wisdom of deregulation. One of the great disappointments of my Senate career was that the Pearson-Bentsen bill, passed by the Senate, was not enacted into law. But I am a realist. Legislation on controversial, complex issues requires compromise. I am not happy with this particular compromise but I can accept it. Taking into account all the factors which I believe bear on this issue, I am convinced that it is in the national interest to move to adopt the confernce report of the Natural Gas Policy Act of 1978.●

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to exceed 30 minutes, with statements limited therein to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of the Senate of September 8, 1978, the Secretary of the Senate, on September 8, 1978, during the recess, received a message from the President of the United States submitting the nomination of Richard T. Mulcrone, of Minnesota, to be a Commissioner of the United States Parole Commission, which was referred to the Committee on the Judiciary.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

## PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on September 9, 1978, he approved and signed the following act:

S. 2543. An act to amend title 39 of the United States Code to provide better enforcement procedures for preventing fraudulent solicitations through the mails.

## MESSAGES FROM THE HOUSE

At 11:01 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to H.R. 12930, an act making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1979, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STEED, Mr. ADDABBO, Mr. ROYBAL, Mr. PATTEN, Mr. BOLAND, Mr. SLACK, Mr. MAHON, Mr. MILLER of Ohio, Mr. MCEWEN, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 12934, an act making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. SLACK, Mr. SMITH of Iowa, Mr. FLYNT, Mr. ALEXANDER, Mrs. BURKE of California, Mr. EARLY, Mr. MAHON, Mr. CEDERBERG, Mr. ANDREWS of North Dakota, and Mr. MILLER of Ohio were appointed managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to H.R. 13125, an act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1979, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. WHITTEN, Mr. EVANS of Colorado, Mr. BURLISON of Missouri, Mr. BAUCUS, Mr. TRAXLER, Mr. ALEXANDER, Mr. MCHUGH, Mr. SIKES, Mr. NATCHER, Mr. MAHON, Mr. ANDREWS of North Carolina, Mr. ROBINSON, Mr. JOHN T. MYERS, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

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At 12:18 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bill, without amendment:

S. 3107. An act to amend the Bankruptcy Act to provide for uniform supervision and control of employees of referees in bankruptcy.

The message also announced that the House agrees to the amendment of the Senate to H.R. 11567, an act to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979–81, and for other purposes, with an amendment in which it requests the concurrence of the Senate; and agrees to the amendment of the Senate to the title of the bill.

### ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

S. 2928. An act to authorize appropriations for the fiscal year 1979 under the International Investment Survey Act of 1976, and for other purposes.

The enrolled bill was subsequently signed by the Vice President.

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At 5:44 p.m., a message from the House of Representatives, delivered by Mr. Hackney, one of its reading clerks, announced that the House agrees to the amendment of the Senate to H.R. 9471, an act to amend title 5, United States Code, to provide that Japanese-Americans shall be allowed civil service retirement credit for time spent in World War II internment camps.

The message also announced that the House has passed the following bill in which it requests the concurrence of the Senate:

H.R. 11711. An act to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974.

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## HOUSE BILL REFERRED

The following bill was read twice by its title and referred as indicated:

H.R. 11711. An act to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974; to the Committee on Finance.

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## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, September 11, 1978, he presented to the President of the United States the following enrolled bill:

S. 2928. An act to authorize appropriations for the fiscal year 1979 under the International Investment Survey Act of 1976, and for other purposes.

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## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations, with an amendment:

S. 2053. A bill to promote the orderly and environmentally sound exploration for and commercial recovery of hard mineral resources of the deep seabed, pending adoption of an international regime relating thereto (Rept. No. 95–1180).

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment:

S. Res. 558. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to consideration of H.R. 2329. Referred to the Committee on the Budget.

By Mr. MOYNIHAN, from the Committee on Environment and Public Works, without amendment:

S.J. Res. 160. An original joint resolution to initiate preliminary studies for the restoration and renovation of the Pension Building in Washington, District of Columbia, to house a Museum of the Building Arts, and for other purposes (Rept. No. 95–1181).

By Mr. MATHIAS, from the Committee on the Judiciary, with an amendment:

H.R. 1445. An act conferring jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Commander Edward White Rawlins, United States Navy (retired) (Rept. No. 95–1182).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HASKELL (for himself, Mr. LAXALT, Mr. MCINTYRE, Mr. MATSUNAGA, Mr. BENTSEN, Mr. WEICKER, Mr. GARN, Mr. LUGAR, and Mr. GRAVEL):

S. 3491. A bill to extend for 2 years and modify the Federal income tax credit for employment of new employees; to the Committee on Finance.

By Mr. MOYNIHAN (from the Committee on Environment and Public Works):

S.J. Res. 160. A joint resolution to initiate preliminary studies for the restoration and renovation of the Pension Building in Washington, District of Columbia, to house a Museum of the Building Arts, and for other purposes. Original joint resolution reported and placed on the calendar.

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## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HASKELL (for himself, Mr. LAXALT, Mr. MCINTYRE, Mr. MATSUNAGA, Mr. BENTSEN, Mr. WEICKER, Mr. GARN, Mr. LUGAR, and Mr. GRAVEL):

S. 3491. A bill to extend for 2 years and modify the Federal income tax credit for employment of new employees; to the Committee on Finance.

### JOBS CREDIT EXTENSION ACT OF 1978

● Mr. HASKELL. Mr. President, I am pleased to be joined by Senators LAXALT, MCINTYRE, BENTSEN, MATSUNAGA, WEICKER, GARN, GRAVEL, and LUGAR in introducing the Jobs Tax Credit Extension Act.

Basically, the bill extends the existing jobs tax credit which was passed last year as part of the Tax Reduction and Simplification Act of 1977. However, it does incorporate some changes which I will explain in detail.

The existing credit, which expires at the end of 1978, is designed to influence a small or medium sized employer to increase his or her payroll by offering a credit of up to $2,100 for each new employee hired.

The bill which we are introducing today has the following provisions:

First. The credit is extended for 2 years through December 31, 1980.

Second. A credit of up to $2,100 per new employee is available to any employer who increases his number of employees.

Third. The credit is limited to $25,000 per employer and therefore, provides an incentive for the creation of up to 12 new jobs per employer.

### DETAILS OF THE EXISTING CREDIT

The jobs credit is equal to 50 percent of the increase in the aggregate wage base upon which the Federal unemployment tax, FUTA, is calculated above 102 percent of the prior years FUTA base. The wage base was $4,200 per employer in 1977 and although it increased to $6,000 in 1978, for the purpose of calculating the jobs credit it remained at $4,200. It is limited to $100,000 per firm.

### MODIFICATION FROM PRESENT CREDIT

First. The existing credit contains a confusing and unnecessary requirement

that the credit cannot exceed 50 percent of the increase in total wages paid by the employer for the year above 105 percent of total wages paid in the previous year. It is eliminated.

Second. The existing credit used 102 percent of the prior year's FUTA as the threshold above which the credit is applied. Our bill reduces the threshold to 100 percent; that is, if you exceed last year's FUTA payroll you get the credit.

Modifications 1 and 2 were made so that employers will know at the time they hire new employees whether they are likely to receive the credit at the time they file their taxes.

Third. To recover the revenue lost from lowering the threshold the cap is lowered from $100,000 to $25,000 per firm.

Fourth. The credit is made elective.

Fifth. It adds the maritime industry which had been inadvertently excluded.

The revised credit will be 35 percent of a $6,000 wage base instead of 50 percent of $4,200 in the existing credit. Both approaches result in a credit of $2,100 per new employee.

SIMPLICITY

The beauty of the jobs credit is that it requires absolutely no new forms, no certification process, and no identification of the new employees. The employer simply takes his or her aggregate FUTA (Federal unemployment tax) wages paid for the year, subtracts last year's FUTA wages and multiplies that figure by 35 percent. The product is the amount of the credit for which the employer qualifies.

SMALL BUSINESS FOCUS

Small business is the sector of the economy which creates jobs. According to testimony of the National Alliance for Business (a big business group), small business accounted for almost 80 percent of the new jobs created in the past 10 years. Capital intensive big business has the investment tax credit, ADR, and other capital-related tax devices. Labor intensive small business has argued eloquently at three recent jobs credit hearings conducted by the Finance and Small Business Committees, which I chaired, that the existing jobs credit, with minor modifications, should be extended and given a fair chance to demonstrate its long-range impact.

Enactment of the jobs tax credit was at the top of small businesses' priority list last year as is its extension and simplification this year.

As the Small Business Legislative Council testified on July 26, 1978:

> In the elimination of current high unemployment the small business sector (should) be the employer of first resort, with the incentive being provided by a job creation tax credit.

The Council's member organizations represent approximately 4 million small businesses nationwide.

The National Federation of Independent Business has written approximately 175,000 of its more than half million members, urging them to contact their Senators in support of our proposal.

The Smaller Business Association of New England (SBANE) testified that it, "supports an extension of the jobs tax credit because the credit does what it is supposed to do—serves as an incentive to increase employment for the small business community."

FAILURE OF PROMOTION

There is no question that the existing credit has had less of an impact on unemployment than it could have, because of intentional lack of promotion by the administration. The Labor and Commerce Departments did next to nothing to let businesspeople know about it. The IRS enclosed a one-page slip in a mailing to FUTA payers which never made it to most of the people who make hiring decisions. According to SBANE, the Governor of Vermont became so frustrated with lack of publication of the credit that he mailed explanatory flyers to most of the businesses in his State.

REVENUE IMPACT

According to the Joint Committee on Internal Revenue Taxation if extended, the existing credit would cost $1.9 billion in calendar year 1979. This bill would cost $2.1 billion.

These estimates do not include the positive revenue impact caused by additional taxes, saved unemployment compensation, and so forth.

I intend to raise this bill as an addition to the 1978 tax bill now being worked up in the Finance Committee. Several additions need to be made to the bill in its final draft by the committee, including a provision which prevents this credit from being taken in addition to any other employment credit which might be enacted. Additionally the bill needs language allowing the credit to be elective retroactively, thereby permitting a deduction for the full amount of wages otherwise deductible without regard to the jobs credit. Assessment authority for cases of retroactive election is also necessary. These are all technical changes which the committee can make in markup.

Mr. President, with the threat to employment represented by inflation and actions to control it, a program which offers a simple, substantial, and cost-effective incentive to increased private sector employment deserves our continued support. With impending increases in the minimum wage and social security taxes the credit is that much more important.

Mr. President, I ask unanimous consent that an article from the August 26, 1978, issue of Business Week entitled "The Surprising Impact of the Jobs Tax Credit," a section-by-section analysis, and the text of the bill itself be printed in the RECORD.

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

S. 3491

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Jobs Credit Extension Act of 1978".

SEC. 2. Section 44B of the Internal Revenue Code of 1954 (relating to credit for employment of certain new employees) is amended to read as follows:

"SEC. 44B. CREDIT FOR EMPLOYMENT OF CERTAIN NEW EMPLOYEES.

"(a) GENERAL RULE.—At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle the amount determined under subpart D of this part.

"(b) ELECTION.—

"(1) IN GENERAL.—An election under subsection (a) shall be made in such manner as prescribed by the Secretary.

"(2) TIME FOR FILING ELECTION.—An election under subsection (a) shall be effective for any taxable year only if filed on or before the last day for filing a claim for refund under section 6511 for such taxable year.

"(3) REVOCATION.—An election under subsection (a) for any taxable year may be revoked at any time on or before such last day.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart D.".

SEC. 3. (a) Section 51 of the Internal Revenue Code of 1954 (relating to the amount of the credit for employment of certain new employees) is amended to read as follows:

"SEC. 51. AMOUNT OF CREDIT.

"(a) DETERMINATION OF AMOUNT.—The amount of the credit allowable by section 44B for a taxable year beginning in any calendar year shall be an amount equal to 35 percent of the excess of the aggregate unemployment insurance wages paid during such calendar year over the aggregate unemployment insurance wages paid during the preceding calendar year.

"(b) MINIMUM PRECEDING YEAR WAGES.—For purposes of determining the amount of the credit under subsection (a) with respect to any calendar year, the amount of the aggregate unemployment insurance wages paid during the preceding calendar year shall be deemed to be not less than 50 percent of the amount of such wages paid during the calendar year in which the taxable year begins.

"(c) $25,000 PER YEAR LIMITATION ON CREDIT.—Except as provided in subsection (d), the amount of the credit determined under this subpart for any employer (and the amount of the credit allowable by section 44B to any taxpayer) with respect to any calendar year shall not exceed $25,000.

"(d) ADDITIONAL 10 PERCENT CREDIT FOR VOCATIONAL REHABILITATION REFERRALS.—

"(1) IN GENERAL.—The amount of the credit allowable by section 44B for any taxable year beginning in any calendar year (determined without regard to this subsection) shall be increased by an amount equal to 10 percent of the unemployment insurance wages paid by the employer to vocational rehabilitation referrals during the calendar year in which such taxable year begins.

"(2) ONLY FIRST YEAR TAKEN INTO ACCOUNT.—For purposes of this subsection, unemployment insurance wages may be taken into account with respect to any individual only to the extent attributable to services rendered during the 1-year period beginning with his first payment of wages by the employer after the beginning of such individual's rehabilitation plan.

"(3) ONLY FIRST $6,000 WAGES TAKEN INTO ACCOUNT FOR ANY INDIVIDUAL.—For purposes of this subsection, the unemployment insurance wages paid during any calendar year which are taken into account with respect to any individual shall not exceed $6,000 reduced by the amount of unemployment insurance wages paid by the employer to such individual during the preceding calendar year.

"(4) 20-PERCENT LIMITATION.—The amount of the credit allowable by reason of this subsection for any taxable year shall not ex-

ceed one-fifth of the credit determined for such year under this section without regard to this subsection and subsection (c).

"(e) DEFINITIONS.—For purposes of this subpart—

"(1) UNEMPLOYMENT. INSURANCE WAGES.—Except as otherwise provided in this subpart, the term 'unemployment insurance wages' has the meaning given to the term 'wages' by section 3306(b).

"(2) AGRICULTURAL LABOR.—If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306(d)) taken into account with respect to any calendar year constitute agricultural labor (within the meaning of section 3306(k)), the term 'unemployment insurance wages' means with respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes 'wages' within the meaning of section 3211(a), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

"(3) RAILWAY LABOR.—If more than one-half of the remuneration paid by an employer to an employee during the calendar year is remuneration for service described in section 3306(c)(9), the term 'unemployment insurance wages' means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year as is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

"(4) VOCATIONAL REHABILITATION REFERRAL.—The term 'vocational rehabilitation referral' means any individual who—

"(A) has a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

"(B) has been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

"(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

"(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

"(f) RULES FOR APPLICATION OF SECTION.—For purposes of this subpart—

"(1) REMUNERATION MUST BE FOR TRADE OR BUSINESS EMPLOYMENT WITHIN UNITED STATES.—

"(A) IN GENERAL.—Remuneration paid by an employer to an employee during any calendar year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in the United States in the trade or business of the employer.

"(B) EMPLOYMENT ON AMERICAN VESSEL.—For purposes of subparagraph (A), remuneration paid by an employer to a citizen of the United States for employment on, or in connection with, an American vessel (within the meaning of section 3306(c)) shall be treated as remuneration for services performed in the United States in a trade or business of the employer.

"(2) SPECIAL RULE FOR CERTAIN DETERMINATIONS.—Any determination as to whether paragraph (1) of this subsection, or paragraph (2) or (3) of subsection (e), applies with respect to any employee for any calendar year shall be made without regard to subsections (a) and (b) of section 52.".

(b)(1) Subsection (c) of section 52 of such Code (relating to special rules) is amended by striking out "December 31, 1975" each place it appears and inserting in lieu thereof "December 31, 1977".

(2) Subsection (e) of section 52 of such Code is amended to read as follows:

"(e) Change in Status from Self-Employed to Employee.—If—

"(1) during any calendar year an individual has net earnings from self-employment (as defined in section 1402 (a)) which are attributable to a trade or business, and

"(2) for any portion of the succeeding calendar year such individual is an employee of such trade or business

then, for purposes of determining the credit allowable for a taxable year beginning in such succeeding calendar year, the employee's aggregate unemployment insurance wages for such calendar year shall be increased by an amount equal to so much of the net earnings referred to in paragraph (1) as does not exceed $6,000.".

(3) Subsection (g) of section 52 of such Code is amended by striking out "$100,000" each place it appears in paragraph (3) and inserting in lieu thereof "$25,000".

(4) Subsection (i) of section 52 of such Code is amended—

(A) by striking out "$50,000" each place it appears and inserting in lieu thereof "$12,500"; and

(B) by striking out "$100,000" and inserting in lieu thereof "$25,000".

(5) Subsection (j) of section 52 of such Code is amended to read as follows:

"(j) CERTAIN SHORT TAXABLE YEARS.—If the employer has more than one taxable year beginning in any calendar year, the credit under this subpart shall be determined for the employer's last taxable year beginning in that calendar year.".

SEC. 4. Section 280C of the Internal Revenue Code of 1954 (relating to deductibility for portion of wages for which credit it claimed under section 44B) is amended by striking out "No" and inserting in lieu thereof "In the case of any taxable year for which an election is in effect under section 44B, no".

SEC. 5. Section 202(e) of the Tax Reduction and Simplification Act of 1977 is amended—

(1) by inserting "and before January 1, 1981," after "December 31, 1976,"; and

(2) by inserting "and carryovers" after "carrybacks".

SEC. 6. (a) Except as provided in subsection (b), the amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1979, and before January 1, 1981.

(b) The amendments made by the section 2 and section 4 of this Act shall apply with respect to taxable years beginning after December 31, 1976, and before January 1, 1981.

(c) Section 51(f)(1)(B) of the Internal Revenue Code of 1954, as added by Section 3(a) of this Act, shall apply to taxable years beginning after December 31, 1976, and before January 1, 1981.

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SECTION-BY-SECTION ANALYSIS

Section 2 of the Bill amends the presently mandatory credit by providing an elective credit. The election may be filed within the period of time allowed for filing for a refund. Therefore, a partnership of Subchapter S corporation which did not have taxable income against which to take the credit in its start-up years can later on take the credit and not claim the wage deduction relating to the credit. The election is retroactive.

The 102% test and the 105% test of section 51 of the Code have been eliminated by section 3 of the Bill. A 100% test has been substituted for the 102% test in section 51(a) of the Code. Therefore, the credit is still applied on an incremental basis. However, the employer will be able to more easily determine whether he is eligible for the credit, and accordingly adjust his cash-flow.

Section 3 of the Bill takes into account the changes in the FUTA wage base from $4200 to $6000. The amount of the credit remains $2100.

However, the $100,000 cap on the credit has been reduced to $25,000 in section 3 of the Bill.

Vocational rehabilitation referrals still get an additional 10 percent credit, with the same 20 percent limitation of present law.

A new subsection has been added to section 51(f) of the Code, by the bill. This section provides that the employer of a U.S. citizen employed on an American vessel is eligible for the credit. This provision is retroactive.

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THE SURPRISING IMPACT OF THE JOBS TAX CREDIT

Despite the erratic behavior of July's unemployment rate, employment has been rising more rapidly than production for nearly a year (chart). And one of the reasons, according to small-business spokesmen and several economists, may be the unexpected success of the new jobs tax credit, a program which the Carter Administration resisted last year and which now appears ready to shut down.

Businessmen have already claimed more than $1.1 billion in tax credits under this program, according to Emil M. Sunley, deputy assistant Treasury secretary. The credits are available to companies that increase employment by more than 2% from year to year, up to a maximum of $100,000—equivalent to about 48 employees, at the maximum credit of $2,100 (50% of earnings up to $4,200 per worker).

Sunley's figure reflects claims for the equivalent of 522,000 full-time employees. And filings for 1977 are far from complete—business may ultimately claim coverage for nearly 900,000 of 1977's new hires. That would be more than 20% of the year's total gain in employment.

Congress would not be likely to turn its back on a program that really provided so many jobs, particularly in an election year. But, heeding Administration arguments that most of the credits have subsidized fast-growing companies that would have done the same amount of hiring anyway, the House Ways & Means Committee voted July 27 to replace the present credit with a drastically curtailed program. And both the full House and the Senate now seem ready to go along.

Movement in Congress to scale back the credit arises from the fact that unemployment has dropped substantially since 1977, and some legislators increasingly feel that a more tightly-focused program attacking structural employment is now more appropriate than broader hiring incentives.

SABOTAGE EFFORT?

To proponents of the credit, congressional action along these lines simply spells the success of apparent Treasury Dept. efforts to sabotage the program. "Treasury was opposed to it last year, and they want a different program this year," says William J. Dennis Jr., spokesman for the National Federation of Independent Business (NFIB). "They say they've tried to publicize the credit," he adds, "but we have our doubts."

Northwestern University economist Robert Eisner is sharper in criticizing the Treasury's performance, as reflected in a February Census Bureau survey of business response to the credit. Eisner cites the bureau's finding that only 34% of surveyed firms even knew of the credit's existence as *"prima facie* evidence of inadequate administration of the jobs credit."

But government spokesmen back up the low recognition figure with the survey's finding that only 6% of the companies that were aware of the credit increased their hiring because of it. For all the other firms who qualified, often for the maximum credit, the tax break turned out to be a veritable windfall. "People are going to claim credits for what they would have done anyhow," says Assistant Labor Secretary Arnold H. Packer.

NO DIFFERENCE

Indeed, Compugraphic Corp. in Wilmington, Mass., is just one of many companies contacted by Business Week that fit Packer's description. With employment up 300 in the past nine months, says Vice-President David W. Hepworth, "we were happy to take the maximum from the jobs program." He adds: "But it certainly made no difference to our hiring pace."

Albuquerque's Aztech International Ltd., which qualified for just $43,000 in credits, comes closer to the NFIB's view that employment received additional impetus from the program. "We had to hire to meet demand," says Aztech President Bennett King, "but we're delighted with the credit." King adds a point made by many other surveyed businessmen, including those who exhausted the permissible credit: "It will keep prices lower because it's keeping our costs lower."

Job credit proponents stress this kind of anti-inflationary impact, while also rejecting government claims that the program has only puny job-creating powers. NFIB spokesmen point out that even a small proportion of the nation's 3.5 million small businesses is sufficient to generate a lot of employment. Based on a quarterly sampling of its own 340,000 members, the NFIB estimates that more than 300,000 jobs had been created by the credit in small business alone as of July, with 4.1 percent of the companies adding an average of 2.3 jobs apiece.

University of Wisconsin economist John H. Bishop, who has applied a complex statistical model to employment and cost data for the construction, trade, and trucking industries, estimates that the credit generated about 400,000 jobs in these sectors alone by April, while also helping retailers to accept significantly lower price markups. "The danger," says Bishop, "is that if we take the credit off, there may be a drop in employment in January. And the credit also helps us on the price front."

MORE WINDFALLS

Like Bishop, Northwestern's Eisner sees the credit as having an important anti-inflationary impact, offsetting to some extent increases in labor costs that were legislated by such measures as the higher minimum wage and increased payroll taxes. "We have a tax credit of 10 percent for machinery," he argues, "and payroll taxes of 12 percent to 16 percent against employment. Let's redress the balance." Eisner, along with the NFIB, Bishop, and others, accepts the Administration's interest in a "structural" credit targeted for workers in high-unemployment categories, but he also wants something like the present credit kept in place.

The Administration itself estimates that its proposed replacement, the targeted employment credit, will take three years before it creates as many as 160,000 net additional jobs per year. Nor will windfalls be avoided: Seven or eight credits will be claimed for every hire that is actually created, according to estimates presented by Labor's Packer. Moreover, the proposal's linkage to veterans and other special groups will give rise to certification paperwork that may smother the program.●

## ADDITIONAL COSPONSORS

S. 3277

At the request of Mr. DANFORTH, the Senator from Utah (Mr. GARN) was added as a cosponsor of S. 3277, the Small Communities Act of 1978.

S. 3422

At the request of Mr. BAKER (for Mr. WALLOP), the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 3422, a bill to establish a congressional award program.

S. 3471

At the request of Mr. TOWER, the Senator from Oklahoma (Mr. BARTLETT) was added as a cosponsor of S. 3471, a bill to postpone the increase in the minimum wage under the Fair Labor Standards Act of 1938.

UP AMENDMENT NO. 1719

Mr. HART. Mr. President, on August 23 of this year, I introduced an amendment to title VII of the Elementary and Secondary Education Act. That amendment was cosponsored by Senators DOMENICI and HASKELL, whose names I neglected to record. Because I believe their efforts in this area should be recognized, I would like to take this opportunity to record the fact that they were involved in the effort to improve the sections in title VII that strengthen parent involvement in bilingual education.

## SENATE RESOLUTION 558—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. RANDOLPH, from the Committee on Environment and Public Works, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 558

*Resolved*, That pursuant to section 402(c) of the Congressional Budget Act of 1974 the provisions of section 402(a) of such Act are waived with respect to consideration of H.R. 2329, an Act to improve the administration of fish and wildlife programs, and for other purposes.

Such waiver is necessary to permit consideration of H.R. 2329, a House-passed measure which was not received in the Senate until after May 15, 1978. Title III as reported by the Committee on Environment and Public Works contains authorizations available in fiscal year 1979. This title, however, was a provision in another bill which has already passed the Senate and was added to H.R. 2329 to expedite consideration in the House of Representatives.

## SENATE RESOLUTION 559—SUBMISSION OF A RESOLUTION AUTHORIZING PRINTING

Mr. RANDOLPH submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 559

*Resolved*, That the report of the Secretary of Transportation to the Congress of the United States (in compliance with section 153 of the Federal-Aid Highway Act of 1976, (Public Law 94-280) entitled, "Highway Needs To Solve Energy Problems" be printed with illustrations as a Senate document.

SEC. 2. There shall be printed one thousand additional copies of such document for the use of the Committee on Environment and Public Works.

## AMENDMENTS SUBMITTED FOR PRINTING

### TARIFF TREATMENT OF FILM, STRIPS, SHEETS, AND PLATES OF CERTAIN PLASTICS OR RUBBER—H.R. 5285

AMENDMENTS NOS. 3581 THROUGH 3584

(Ordered to be printed and to lie on the table.)

Mr. SCHWEIKER submitted four amendments intended to be proposed by him to H.R. 5285, an act to amend the tariff schedules of the United States with respect to the tariff treatment accorded to film, strips, sheets and plates of certain plastics or rubber.

● Mr. SCHWEIKER. Mr. President, I am today submitting a series of amendments to H.R. 5285, a House-passed tariff bill which will be the vehicle for Senate consideration of hospital cost containment legislation.

H.R. 5285 contains the text of S. 1470, the Medicare-Medicaid Administrative and Reimbursement Reform Act, recently amended by the Senate Finance Committee. While the Senate is also expected to address the broader hospital cost containment proposals of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Wisconsin (Mr. NELSON) when it considers the medicare-medicaid bill, the amendments I am filing today are directed only to H.R. 5285, as reported.

AMENDMENT NO. 3581

My first amendment concerns exemptions from the Federal cost control program for qualified plans initiated by the States. It applies to H.R. 5285 the thrust of a bill Senator MCINTYRE and I introduced earlier this session encouraging the establishment of State hospital review commissions as an alternative to the purely Federal approach proposed by the administration. My proposal would allow States to conduct their own cost containment activities as they saw fit, as long as certain criteria were met and their cost savings equalled Federal medicare and medicaid reimbursement limits.

State programs would only be required to cover medicare and medicaid reimbursements, though new and existing programs clearly could cover all payors if they chose. Qualifying States would be eligible for Federal financial assistance to help defray startup and administrative costs incurred in overseeing medicare and medicaid expenditures. Under my amendment, States would have more flexibility in designing cost containment methodologies than under the narrow State programs exemption of H.R. 5285. The discretion of the Secretary of HEW to disapprove such programs would be sharply limited. In addition, the States themselves could determine how best to recover excess expenditures, rather than be automatically subjected to the more rigid, percentage-based payback system contained in H.R. 5285.

Mr. President, I believe we must encourage the States to attack the skyrocketing costs of health care rather than use an already bloated Federal bureaucracy to impose purely Federal controls. State and local officials are more in tune with the unique health care needs of their communities and with the specific steps which would be most effective in curbing sharply rising costs.

AMENDMENT NO. 3582

My second amendment would delete H.R. 5285's provision for establishing a Health Facilities Cost Commission. As a member of the Senate Appropriations and Human Resources Committees, I have watched the Department of HEW

grow by leaps and bounds over the past few years, with many departments and bureaus overlapping each other in functions and authority. Since HEW already is so involved in the subject of hospital cost containment, I do not understand why we need yet another Commission—one with 11 members paid at the GS–18 level—to perform the function of making cost containment recommendations to the Secretary and the Congress. Moreover, the bill does not even contain a defined cost ceiling for the Commission; instead it simply authorizes it to be funded by "such sums as may be necessary." Not only would this new element of the bureaucracy carry an uncertain cost; its apparent purpose is to lead the way toward further Federal controls. I, therefore, believe it should be deleted.

AMENDMENT NO. 3583

Mr. President, a third amendment I am offering addresses section 31 of the bill which would require a skilled nursing facility to participate in both medicare and medicaid as a condition of participation in either program. The reason for this provision, as stated in the committee report, is that many nursing homes are declining to participate in one program or the other, reducing the availability of skilled nursing facilities, and that there is a need to encourage greater participation.

Mr. President, from all indications the reason for declining participation in medicare and medicaid is unmanageable paperwork, slow collection on claims, and a host of other administrative difficulties relating to red tape and bureaucratic inconvenience. It seems to me that it would be far more effective to aim reform efforts directly at those problems rather than try to coerce SNF participation with this kind of all-or-nothing condition. Because these deterrents to participation will not be removed by the amendment, I also doubt that it will work. My amendment would delete this new provision in hopes that a more constructive approach to the problem can be found.

AMENDMENT NO. 3584

The fourth amendment I am proposing, Mr. President, would reinforce the action taken by the Senate in passing S. 2410, the Health Planning Act Amendments of 1978, earlier this summer. In that bill, we strive to establish a health planning process that established priorities at the State and local level and let them emanate to the Federal level. S. 2410 contains provisions for payments to promote the closing and conversion of underutilized facilities, but programs established under that bill would give a far greater role to the States and localities than section 3 of H.R. 5285. In addition, H.R. 5285 would establish a Hospital Transitional Allowance Board at the Federal level to oversee such payments. Because section 3 would seek to promote closing and conversion of underutilized facilities in an additional but inconsistent manner relative to the already passed provisions of S. 2410, my amendment would propose to delete it.●

## NOTICES OF HEARINGS

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

● Mr. ABOUREZK. Mr. President, I wish to announce that the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, will hold a hearing on September 21, 1978, concerning the Regulatory Control Act, Senate bill 2862. The hearing will be at 10 a.m. in room 2228, Dirksen Building.●

CANCELLATION

● Mr. ABOUREZK. Mr. President, I wish to announce that the hearings scheduled for September 14, 1978, by the Subcommittee on Administrative Practice and Procedure, concerning the FBI charter, have been canceled.●

## ADDITIONAL STATEMENTS

### SENATE RESOLUTION 534—A RESOLUTION ON SOCIAL SECURITY FINANCING REFORM AND TESTIMONY OF HON. G. WILLIAM MILLER

● Mr. HART. Mr. President, on August 4th of this year I introduced a resolution Senate Resolution 534 which addressed the inflationary effect brought about by implementation of the social security tax increase scheduled to take effect early in 1979. The resolution would postpone the effective date of the scheduled increases in the social security tax for a 12-month period. The purpose of the 12-month delay is to give the Senate Finance Committee time to act upon legislation proposing alternate mechanisms of financing the social security program.

Economists now are almost uniformly of the opinion that imposition of the increased social security tax early next year would have a serious inflationary impact and would create incentives for firms not to hire workers.

On September 7, 1978, the Honorable G. William Miller, Chairman of the Board of Governors of the Federal Reserve System, testified before the Senate Finance Committee on H.R. 13511—the Revenue Act of 1978. Mr. President, I shall ask that it be in order to print the entirety of Mr. Miller's testimony in today's RECORD.

Mr. Miller addresses clearly the problem of inflation and the need for continued efforts in the battle to reduce unemployment. Specifically, I would like to direct the attention of my colleagues to Mr. Miller's statements regarding the inflationary impact of the increase in social security taxes. He suggests, as does Senate Resolution 534, that the effective date of the tax increase be delayed for 12 months, while we explicitly commit ourselves to action designed to deal realistically with the remaining long-range problems of funding social security. Mr. Miller states that inflation is our most important economic concern today, and goes on to point out that there is a great need to provide incentives for work, and that we have to take a close look at means of maintaining disposable income at its current level in order to overcome the forces of inflation. After Mr. Miller suggested that it would be desirable to defer the 1979 social security tax change, and in that way reduce taxes for individuals as well as reduce the inflationary impact of increased payroll taxes, he stated that the Board of Governors of the Federal Reserve System has estimated that the scheduled increase in social security taxes would add about one-half a percent to inflation next year. Chairman Miller states that anything that could be done to eliminate that increase should be given careful consideration.

Mr. President, I also ask that the text of Senate Resolution 534 be printed in the RECORD, and thereby place it before my colleagues once again for their consideration. The resolution recognizes both the need to effect fundamental reform of the financing structure for the social security system, as well as the need to delay changes in the tax structure that will cause us to take backward steps in our march against inflation. We most certainly cannot afford to aggravate our inflation problems. Nor can we afford to diminish the small gains we have made in reducing unemployment. I strongly urge my colleagues to join me in this effort to avoid a costly error.

The material follows:

STATEMENT OF HON. G. WILLIAM MILLER, CHAIRMAN, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

I certainly apreciate the opportunity to be here this morning. I do not know that taxes are the usual preserve of the Federal Reserve, but they usually influenced the entire economy and are very important in the coordination of monetary and fiscal policy, so I welcome the opportunity to give my thoughts on this subject.

All of you are familiar with the recent economic conditions, but I have prepared some charts that you might want to glance at, just to remind ourselves where we are. We have had quite a recovery from the great recession of '74–'75 with an 18 percent growth in real GNP since the trough and with 10.5 million jobs added to the payroll since that time.

While the unemployment rate is still much higher than we would like, we do have the highest percentage of Americans employed that we have ever had. So there have been some real improvements.

The problem on the job front, of course, is that much of the remaining difficulty with unemployment is structural in nature and particularly falls heavily on young people and blacks, and it deserves careful consideration.

But the main theme, I think, in looking at the economic situation generally is that we do need to maintain upward momentum, even though we have had this three and a half year period of growth, and even though that is a long upswing by historical standards, the conditions of this nation are such that we do need to continue to grow at a moderate pace that will allow us to add to the output and utilization of labor and capacity and, at the same time, to counter the inflationary pressures that have hit us so dramatically.

And we cannot afford to risk the mistakes of the past of overshooting by trying to either slow the economy down too rapidly and fall into recession by mistake, nor can we continue to grow at a level that will build the

inflationary pressures and cause difficulties later.

Inflation is our most important economic concern today. The advance in prices, which you can see in Chart 2, has been rather worrisome. We have had an almost 10 percent rate of growth, measured in CPI in the first half of the year at an annual rate. Food prices have accelerated very sharply.

If you look at the middle panel in Chart 2, you can see that in July, while there was a considerable improvement in CPI, the middle panel shows that if you take out food, that we still have a very unacceptable rate of increase in prices.

The depreciation of the dollar, of course, is one of the factors that has both influenced inflation and has been a very troublesome matter to us, and one that deserves continued close consideration.

Well, under all of these circumstances, it it would seem that Congress should weigh with great care the size and the composition of its tax program. A tax cut certainly should provide no more stimulus than is necessary to sustain moderate economic expansion. Anything beyond that would jeopardize our chances for restraining inflation.

It also seems to me that the structure of tax cuts should be very much programmed to provide incentives for work and for capital formation which are essential to overcome these forces of inflation. Congress can take a significant step by paying greater attention to the supply side effects, and I would like to discuss some of those aspects here today.

In my personal judgment, a tax reduction in the vicinity of the $15 billion effective January 1 that is being discussed in Congress is appropriate. Despite some bumpiness in recent economic activity, the balance of the economy is quite good. Yet, we do need to provide some further adjustment in private demand if we are going to sustain the growth.

If we look at Chart 3, we see that there is a continuing fairly satisfactory level of consumer attitude about buying, but there is already a fairly low rate of saving and a very high, historically high, burden of debt repayments. Consumer debt now, household debt, is at the point where about 20.5 percent of disposable personal income is required to service that debt, which is quite high.

So we have to look at disposable income and means of maintaining it to be sure that we do not create an undue burden there.

Chart 4 shows the private housing starts and this also is an area that, with some of the steps taken this spring to avoid disintermediation has continued at a fairly good level, but we could expect that with the maturity of the cycle and with the present level of rates, interest rates and available resources, that this would be tapering off.

Chart 5 shows that there has been, as is typical in recoveries from recessions, a growth in business fixed investment, but it has been rather sluggish by historical standards and only recently has reached to the peak of the prior cycle, and really is, in historical sense, lagging.

Well against this backdrop, a reduction in Federal taxes next year would provide timely support to spendable income, and without a tax cut, individuals will actually be facing substantial tax increases in 1979. You have to remember that, without a tax reduction, that we have mandated Social Security increases which will boost Federal revenues next year by $8 billion. I would like to point out that about half of that, about $4 billion, will be increased taxes on individuals. So without some tax relief, we not only have a $4 billion increase in payroll taxes, but we also have another $8 billion that will impact individuals because of the interaction of inflation and the progressive income tax structure.

Now, it is also important when thinking about tax cuts to consider the expenditure side of the budget ledger in deciding what size the tax cut should be and what can be afforded. Inflationary pressures are such that it is imperative that the budget deficit be reduced substantially below the $50 billion of this current fiscal year, and it is encouraging to see the action that has already been taken by Congress to perhaps narrow that deficit to the $40 billion area.

As a side note, I mentioned that the original plan for FY '79 contemplated a budget deficit of $60.5 billion, so reducing that to around the $40 billion level is a really outstanding accomplishment, and I think that Congress deserves a lot of credit for taking that initiative in the face of inflationary difficulties.

Well, if a tax cut is desirable and if the amount of it is on the order of magnitude that we have been talking, then the question is, how to structure it? We need to structure it to make maximum contributions for achieving our basic economic goals of full employment, price stability, and a sound dollar.

It is obvious that substantial contemporaneous tax increases for individuals suggests that a lot of the tax cut be allocated to this group in order to give them a sense of equity. Distribution of the tax cuts between the household and corporate sectors implied in the House bill appears to me to be reasonable. However, I would like to express just a few doubts as to the particular devices employed, not as to the level or the amounts.

A significant portion of the tax cuts for individuals, of course, would only offset these revenue impacts I have mentioned. It therefore might be asked, would it not be more desirable simply to defer the 1979 Social Security tax change, and in that way accomplish two things—to do part of the tax reduction for individuals in that way, but at the same time, to reduce the inflationary impact of increased payroll taxes.

The Board's staff has estimated that the scheduled increase in employer contributions to Social Security would add about one-half a percent to inflation next year, and one-half is a large number. Anything that could be done to eliminate that, I think, should be given careful consideration. A one-year deferral of the Social Security increase due to take effect next January 1 would not place an undue strain on the resources of the Trust Fund.

Nonetheless, a deferral should be considered only if there was an explicit commitment for action to deal realistically with the remaining longrange problems of funding Social Security. Last year's legislation did insure financial viability for Social Security, but with the people of this country faced with a rapidly growing financial burden and a Social Security tax that is both inflationary and regressive, it is certainly worthwhile to consider whether a deferral might not be coupled with an undertaking by Congress for a comprehensive study to reduce the funding requirements and therefore to make a permanent change in the level of taxation in this area.

I would be happy later, in the questions, to discuss some of the ways that this might be accomplished, because I am not suggesting for a moment that Social Security be deferred, or taxes be deferred or reduced in a way that would, in any way, impair the long-term financial integrity of the Social Security system; but, rather, that we look at means of improving the funding.

In considering the corporate and capital gains provisions of the House bill, I also want to focus attention today on how the proposed cuts would contribute, if at all, to enhancement of business fixed investments. The performance of capital spending in this economic expansion has not been satisfactory. Real business fixed investment has recovered much later than is the case in prior cycles. And, moreover, the growth of the nation's capital stock has not kept pace with the increases in its work force.

I would particularly call attention to Chart 6, and I think this is the most important chart that I have submitted to this Committee this morning. It shows that throughout the 1970's, the ratio of capital stock to labor has fallen ever shorter of its earlier growth trend line, and this, undoubtedly, has been a significant factor in the slower growth of productivity we have experienced over this period.

This upper panel shows this rather remarkable decline in the ratio of capital to labor and, of course, the lower panel shows the tremendous drop-off in productivity gain and, to my mind, increased productivity is one of the keys to achieving an answer to our inflation problem. The only way I know that we are going to break the cycle of wages chasing prices and prices shaking wages is to begin to get productivity gains so that prices do not have to go up in order to maintain profitability.

Capital accumulation is a critical ingredient in the long-range growth of labor activity and the raising of living standards. To compensate for the neglect of recent years, as well as to accommodate to the reality of scarcer and more expensive energy, a larger share of GNP must now be devoted to the expansion and modernization of the nation's capital stock. It will not be enough simply to reach the investment proportion of 10.5 to 11 percent that has been characteristic of past periods of prosperity and low unemployment.

In my opinion, the nation must set an ambitious goal of say 12 percent of GNP for an extended period—say, over ten years—a level that would foster more rapid improvement in productivity and faster economic growth.

The capital gains and corporate income tax cuts in the House bill would provide some impetus to business capital formation and is certainly a move in the right direction, but the question is, are these the most effective measures that might be taken at this time. And I do have some reservations.

There is considerable controversy, for example, about the effects of capital gains cuts on investment and on Federal revenues. This is not surprising. A change in capital gains treatment would work its influence through a complex and uncertain set of channels.

In assessing the impact of business capital formation, one must contend with the fact that the tax change would affect investment by both households and businesses in all sorts of assets and, therefore, in all sorts of ways. How much effect the tax cut would have on the price of corporate stock and thus on the cost and availability of equity capital is still unclear, and how this would translate into acquisition of new plant and equipment is a further uncertainty.

Yet, I would say the reduction in capital gains tax does have its advantages and its attractions. It would, for example, bring some relief to those who have been confronted with very high, real tax rates, often exceeding 100 percent because their cost base, in calculating capital gains, does not reflect the rise from inflation.

It would also benefit young, emerging companies which have little income and thus are not in a position to benefit from other changes in business taxes.

Lower capital gains taxes would encourage equity investment in such enterprises.

I would conclude that some cut in capital gains taxes would be appropriate, but I would not assign a high priority at this time to this particular tax initiative. I believe that it might have higher priority at some later time.

My reservation about the capital gains provision in the House bill extends to the corporate tax changes as well. In so far as incentives for business investment are concerned, this bill seems to use a shotgun approach rather than a rifle. It does provide for a phased liberalization of the investment tax credit, but the bulk of the corporate tax reduction occurs through a lowering of the rate structure.

Although lower tax rates would improve after-tax profits, the linkage between this improvement in cash flow and spending on new plant and equipment is a loose one. The additional cash might be channeled into any of a number of uses, including the acquisition of other firms, the purchase of securities, or an increase in dividends.

It is quite likely that a smaller gain in real investment would be achieved for a given dollar of tax revenue loss than would be the case with tax reductions that are linked directly to capital expenditures.

While some cut in the corporate tax rates is desirable, I believe greater emphasis should be placed on other, more efficient tax incentives for investment.

Accelerated depreciation is a very efficient way to encourage investment. The tax benefits of faster appreciation accrue to a firm only after new plant and equipment has been put in place. In addition, enlarged depreciation allowances would redress the serious drag on real corporate profitability that has occurred in recent years as inflation has caused replacement costs to exceed depreciation deductions by a wide margin.

Larger investment tax credits also provide direct incentives to capital formation and, therefore, are more efficient in stimulating investment than are corporate tax rate cuts.

There are, however, likely to be differences in the cost effectiveness of accelerated depreciation and investment credits, that is, the degree of investment stimulus that is achieved per dollar of tax relief. These differences will hinge on some rather technical factors, among the most critical of which is the importance that business attaches to the time pattern of income.

In my experience, as businesses are increasingly paying attention to discounted cash flow in making investment decisions, and in that regard, it is more favorable, there is more bang for the buck, through accelerated depreciation than through the investment tax credit.

I hope that these comments have been helpful for the Committee to set the stage for the questioning. I would just add that it seems to me that our problems today are very serious in this country—our economic problems are very serious. They have developed over a dozen years. They start with the advent of being involved in Vietnam, both as a divisive activity and one in which we did not elect to pay our way. We started the seeds of inflation.

This led into higher inflation rates with the experiment with wage and price controls which were ineffective and did not work properly. This led to the breakdown of the international monetary system.

We had the experience of the double digit inflation and double digit interest rates. We have had the oil embargo. We have had the great recession of 1975 and, for a dozen years, we have been having a serious, perhaps misdirection, of building our economy with the strength and productivity that it needs for the long-term.

It perhaps is time now for us to all give up some of our individual preferences and see if we can take the resources that are available for a sound economic plan and to use them as directly as possible and as honed-in as much as possible to achieve the important results of fighting inflation, of achieving productivity gains, and creating a sense of equity and fairness in our tax structure that will, in the long-term, best benefit our nation.

Thank you very much.

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SENATE RESOLUTION 534

*Resolved,*

Whereas, the Congress enacted the Social Security Amendments of 1977 in an effort to counteract the deteriorating financial position of the social security program;

Whereas, the Social Security Amendments of 1977 called for substantial new social security tax revenues to be raised in addition to those then provided for under law;

Whereas, the increase in social security payroll taxes provided for in the Social Security Amendments of 1977 represents one of the largest peacetime tax increases in the history of the United States;

Whereas, the increase in social security payroll taxes threatens to aggravate inflation and unemployment at a time when the economy of the United States can ill afford either such effect;

Whereas, there is a pressing need to effect fundamental reform of the financing structure for the social security system; and

Whereas, insufficient consideration has been given to the alternative of using general revenues to assist in defraying the rising costs of the social security program: Now, therefore, be it

*Resolved,* That it is the sense of the Senate that—

(1) the Senate Committee on Finance consider legislative proposals offering alternative mechanisms for financing the social security system, including those that advocate the use of general revenues to fund the Disability Insurance and Hospital Insurance Trust Funds, and report out to the Senate (favorably or unfavorably) a proposal for such an alternative mechanism prior to January 1, 1979; and

(2) if the Committee on Finance and the Senate have not acted on a proposal for such an alternative mechanism prior to January 1, 1979, the increases in the social security taxes scheduled to take effect on January 1, 1979, should be deferred for twelve months and any general tax cut enacted in 1978 by this Congress should take into account any effect such deferral has on efforts to achieve a balanced budget.●

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(At the request of Mr. BAKER, on behalf of Mr. HELMS, the following statement was submitted for the RECORD:)

MEDICARE-MEDICAID REFORM ACT—S. 1470

● Mr. HELMS. Mr. President, recently the Senate Finance Committee approved S. 1470, the Medicare and Medicaid Administrative and Reimbursement Reform Act, and reported this important legislation to the Senate as an amendment to H.R. 5285, a minor tariff bill passed by the House. My distinguished colleague from Georgia, Senator TALMADGE, the chairman of the health subcommittee, has worked for the last several years to perfect this legislation into a proposal which will improve the present Medicare reimbursement system, encourage more efficient hospital management, and, in the long run, produce substantial savings in the Federal government's expenditures for hospital care.

I understand that when H.R. 5285 comes to the Senate floor an attempt may be made to provide the Secretary of HEW with broad standby authority for imposing arbitrary cost constraints on the hospitals of this country. This amendment, though it may come disguised as a "reasonable compromise," will really be nothing more than a last minute effort to revive the Administration's hospital cost control bill—an ill-conceived, punitive, and wholly inappropriate proposal that has already been rejected by two House committees. It would, in effect, authorize wage and price controls on a single segment of our interdependent economy.

Mr. President, I will strongly oppose this amendment if it is offered, and I urge my colleagues to join me in opposing it. Rising hospital costs are a matter of concern to us all, but they are a complex problem that cannot be solved by a program of arbitrary, government-imposed price controls. Moreover, the hospital industry has voluntarily undertaken a program for reducing costs that is producing significant savings. The Voluntary Effort, developed under the auspices of the American Hospital Association, the Federation of American Hospitals, and the American Medical Association, has reported a 3.3 percentage point decline in the rate of increase in hosptial expenditures during the first 5 months of this year as compared to the same period in 1977.

This performance to date has exceeded the program's goal of reducing the rate of increase by 2 percentage points by the end of 1978. The hospitals in North Carolina are achieving substantial savings through their participation in this voluntary program, and I believe that their program and those of other states should be allowed to be carried out without the threat of government intervention. Standby cost control authority, as proposed in this amendment, can only serve to undermine the effectiveness of this nationwide voluntary effort by encouraging anticipatory charge increases on the part of some hospitals. Furthermore, this amendment negates the constitutional lawmaking prerogatives of this Congress by giving the Secretary of HEW, an unelected official, authority to make sweeping statutory changes—changes that could only be reversed by enactment of contrary legislation.

I commend Senator TALMADGE for his responsible approach to reducing hospital costs. In contrast to a program of price controls which might penalize well-managed institutions, his incentive payment system would provide increased reimbursement for efficiently-managed hospitals and reductions for institutions whose costs are out of line with those of their peers. His proposal, coupled with the hospital industry's voluntary cost reduction program, would produce a savings of at least $30 billion over the next 5 years. In addition, it would create an atmosphere of competition among hospitals that would, over time, lead to further savings. That is why I will support the bill reported by the Finance Committee and why I will oppose any 11th-hour attempts to dilute its effectiveness by providing for standby Federal controls and broad new regulatory powers for HEW.●

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## THE RANCHER'S BEEF IS NOT ALL IN THE STEAK

● Mr. McGOVERN. Mr. President, Americans accustomed to high protein diets largely through the consumption of quality cuts of beef seldom consider the economics or technology that go into the production of the product prior to its appearance on the dinner table. Among urban consumers this phenomenon is more of a mystery than in areas where the land is closer to the people. The urban

buyer's concern with beef generally goes no further than a price judgment he is forced to make at the meat counter in the supermarket. This general lack of understanding is further compounded because few publications which urbanites read take space to explore the production process of beef, or, for that matter, the production process of any of our major food products from the raw state to the retail outlet.

I was thus surprised to read in the August 29, 1978, edition of Esquire magazine a very perceptive and accurate account of the great American steak dinner, detailing the modern economic judgments ranchers and feeders must make in starting the calf on its way to the filet mignon. A rancher must be part cowboy, part agricultural economist, part veterinarian, part marketing agent, and part prestidigitator and soothsayer if Americans are to continue the diets to which they have become accustomed. Sensing that such material, largely relegated to trade publications or farm journals, would be of interest to other Members of the Senate, I ask that an article entitled, "American Beef! Steaks Are High, But Ranchers Are Down," by Geoffrey Norman, be printed in the RECORD.

The article follows:

AMERICAN BEEF! STEAKS ARE HIGH, BUT RANCHERS ARE DOWN

(By Geoffrey Norman)

At a meeting of the Colorado Cattlemen, in Lamar, a lanky man with leathery brown skin and thin unsmiling lips calls President Carter a son of a bitch in tones that let you know unmistakably that he still thinks these are fighting words. "We don't ask for a damn thing from the government except to be left alone. But just when we start to make some money for the first time in four years, Carter steps in and says no. He's nothing but a goddamned peanut farmer." From the way the man says this, you have to think that there is something suspect about peanut farming. That it is like hairdressing or something. That it isn't manly. "Peanuts are the most heavily subsidized crop in the country. Carter got rich off the government."

The man fairly represents the feelings of the cattlemen who are gathered in Lamar for meetings and speeches, a barbecue, and a show that features authentic Indian dancing. But just about everybody else in the country is mad about beef, too—shoppers who watched the price jump 6.5 percent a month during the spring, restaurant owners, local butchers and grocers. At a small grocery back East, a friend proved to me with invoices and meat scales that he is losing a penny a pound on hamburger even before he takes out for his overhead—and he was getting complaints from agitated customers at that price.

But Americans love to eat beef. From the best steak houses in Manhattan—places with names like Frankie and Johnnie's, the Palm, and Christ Cella—to the steak houses with names like the Beef Barn or the Sirloin Saloon that you see in every self-respecting town or aspiring city to the budget places for families that only get out once a month for a meal and a movie—places where you get a rib eye, a baked potato, and a lettuce salad served cafeteria style for $5—Americans eat beef with a passion that is truly carnivorous. There are the billions of McDonald's and lesser hamburgers, all those chuck roasts, pot roasts, and rib roasts wrapped in cellophane in the supermarket meat counters; hamburgers charcoaled in backyards across the land. Americans eat 154.6 pounds of red meat a year for every man, woman, and child. Lately the figure has gone up sharply.

So when President Carter and his advisers decided to move against inflation, beef probably looked like the most natural target available. The price of beef, after all, was rising faster than most other prices. By lowering the price of beef, or at least slowing the rate of increase, Carter would be helping the consumer directly. Also, according to the press, this price decrease came at a time when President Carter was getting poor grades in the polls and was being urged to act more forcefully. So in June he took a simultaneously drastic and expedient step and allowed an increase in the quota of imported beef. It amounted to about 200 million pounds of New Zealand and Australian beef. But the impact on the beef market was profound. Consumers were alerted and began substituting other foods for beef. Producers, consequently, cut back. The price of live cattle droped ten cents a pound—almost sixteen percent—in three weeks. It was a short-term victory for Carter and the consumer. But for cattlemen, it was a disaster.

Around the farms, feedlots, and ranches of eastern Colorado, there was a feeling of bilious resentment. Men who had gone humbly to the county banker for three straight years, taking out loans to keep small farms and ranches going until the price of beef went up again, felt betrayed. They knew they might have to get out of ranching altogether so that Carter might gain a temporary point or two at the polls and the spoiled shoppers in the city could have a free ride.

It is this knowledge—the certainty that ranchers will be forced off the land for the sake of votes—as much as anything, that feeds the resentment. The land is important to these men in a way, they feel, that nothing in this world is to a politician or to most city-dwelling consumers. They have made the land produce, and it has kept them and their families alive for generations. To be forced off, to see their kind of operation give way to huge corporate farms owned by mining and oil interests and operated at a cheerful loss for tax purposes and with no regard for the real values of ranching—this is almost too much to bear.

Keith Propst's house sits among some of the rare shade trees along the Platte River, in northeast Colorado. The trees were planted by his ancestors, who came to Colorado a few years after the Civil War had soured things for them back East. There were no trees at all when they arrived.

"Buffaloes," Propst says. "There were thousands of them back then. What they didn't eat, they trampled. There wasn't a tree anywhere in the Great Plains."

Propst is president of the Colorado Farm Bureau, an organization that tries to get the best deal it can for farmers by keeping the government out of agriculture. Propst is fifty-three and has the weather-beaten face and the squint of a lifelong rancher. He also has a broad and engaging smile: Whereas most ranchers are tight-lipped and smile by raising a corner of the mouth. Propst breaks out in teeth—one of them gold—when some thing strikes him funny or he recognizes a friend.

"I can show you the figures on paper," Propst says when I arrive. We sit in his living room, pleasantly furnished and cool in the heat of late June. Propst has scribbed columns of numbers and marginal notes on a sheet of paper that he holds in big hands and spreads out on the coffee table. It is a breakdown of his costs done just the way a grocery would do it, or a boutique, or a private university. "Here is what it costs me to feed a calf. This is for my overhead. Interest. Labor. Depreciation. Veterinary. Figure all of that in, and here is what I have to sell a steer for, live weight, just to break even." The figure is fifty-four cents a pound. About five cents more than he can get that morning on the market. Every time he sells a steer, he can lose $40.

"But maybe," Propst says, "you can get a better idea of what those numbers mean after we've taken a look around." So we climb into his Scout and drive out to the range.

There are eight windmills on Keith Propst's 10,000 acres of range. They turn monotonously in the steady Great Plains breeze that blows down from Wyoming, providing all the water for Propst's cow-calf operation, which is running at about 400 animals this year. He had planned to increase the herd, but after Carter's decision he is not sure he will.

"Twenty acres of this land will support one cow and her calf. Or maybe two and a half yearlings," he says. "So I could get it up to five hundred animals if the price was right. But it's hard. Politicians go with the votes. And all the votes are in town."

The land in question stretches out bleakly in every direction, relieved by a few folds and depressions and one long sand ridge that parallels the course of the river. The thin soil is held by sagebrush and yucca grass, which the cattle cannot eat, and by grama and bluestem grass, which they can. Besides Propst's cattle, the land supports rattlesnakes, jackrabbits, coyotes, and some mule deer. On hundred fifty miles to the west are the Rockies: Aspen and Vail and great forested peaks lush with conifers. When Propst's ancestors first arrived in Colorado, the Rockies were something just to get across. Now, the real money is up in those mountains.

"Get the gate, Koger."

Propst's son—eighteen years old, thin and straight as a pencil—climbs out of the Scout. He is dressed in cowboy boots, Levi's, and a T-shirt. It is the same outfit the kids in Denver are wearing.

Propst drives the Scout down a rutted trail to the first of the eight windmills. He is out here to check them and to get on with the breeding of his herd.

"We've got an AI program going out here, and we have to check the heifers just about every day."

AI is artificial insemination.

"We're breeding Simmentals. It's a European breed that has gotten popular over here in the last ten years. But you can't import animals directly from Europe. That's to keep out the hoof-and-mouth disease. So you import the semen. Then you artifically inseminate the heifer. Her calf will be a half-breed. You artifically inseminate that calf, and you get a three-quarter-breed And so on until, theoretically, you've got a full-blooded Simmental."

There are seventy or eighty animals around the first windmill, which is paddling along faithfully, pumping water into a large holding tank. Three or four animals are drinking lazily from it; the others are idly grazing or simply standing in that cone of bovine indifference that is the expression of cows everywhere.

Propst points out half- and three-quarter-breed Simmentals." See that bull over there?" he says pointing to a bulky animal that looks muzzled. "That's what we call a Gomer. His penis has been fixed so he can't actually breed a heifer. But he still has the urge, and he'll mount one when she is in heat. That muzzle has a paint roller in it so when a Gomer mounts a heifer, he leaves paint marks on her back. When we come out and find one with paint on her back, we know right away that she's ready to breed."

Propst drives the Scout around the herd, checking the heifers for paint marks. "I don't see any that are marked up. Do you, Koger?"

"Nope."

"Well let's go take care of that one we've got over in the corral."

The Scout lurches along the ruts, springs, and shocks, creaking with each bounce. A mile from the first windmill, Propst arrives at a small corral with a squeeze chute—a nervous heifer is pacing in one of the pens. Inside an equipment trailer, there is a large tank filled with liquid nitrogen to keep the Simmental bull semen a couple of hundred degrees below zero. Propst pulls a single vial from the tank and slowly thaws it in ice water. "I don't know how they figured this system out, but it works," he says. "You've got to keep it real cold until right before you use it. Then you warm it up just so much. Too much and you kill it."

When everything is ready. Propst and his son go back outside. Propst uses a leather surrey whip to force the skittish heifer down the narrow squeeze chute. The animal bolts.

"Damn. She acts like she's crazy."

Finally the heifer moves into the chute and down to the end where Propst's son springs a head gate and she is caught. She bellows and stomps, then quiets down.

Koger does the work. He raises the heifer's tail and forces his right arm, which is covered to the elbow in a sheet of clear plastic, far up the animal's dung-encrusted anal canal. With his hand, he massages her to make her receptive. Then with his left hand he runs a long, thin plastic tube up the vaginal opening, past the cervix, The valuable semen—it costs $15 to $25 a vial—will pass through this hollow plastic tube. The animal is still skittish. While Propst is paying attention to something else and before his son can force the semen through the tube, the animal bellows and sits down.

Propst's son tears the fouled plastic sheet from his arm in disgust and tries to prod the animal to her feet. The heifer only bellows.

"Here, let me help you," Propst says. "I didn't know you were having trouble." Propst stands by with a battery-powered prod in case the heifer should try to sit again, while his son repeats the procedure with his plastic-encased right arm and the plastic tube. This time, it takes. While his son returns the equipment to the trailer and makes some notes in a record book, Propst releases the panicked heifer. She will go back to the range to find the calf she bore in March; it will be weaned in the fall; and she will bear again in the spring. This is the first day in a cycle that keeps Keith Propst and his family on the land.

Farming is perhaps the least understood and appreciated of all the ways an American can go about making his living. Nobody understands things like parity and yields and acreage quotas—except the people who must understand them or go broke and the people who make the rules. American agriculture is so successful that for most consumers, food simply comes from the grocery store. It is always there, and when the price goes up, there doesn't seem to be any good reason for it. And since food is the *essential*, price increases lead to outrage. The fact that one farmer can produce enough to feed himself and fifty-six others and that the average American spends only eighteen percent of every dollar to eat doesn't make much difference, even though those figures are remarkable in this world. Unique.

But agriculture remains about as low in the interest and esteem of most Americans as . . . as what? Blue-collar workers are having their day in movies and books; coal miners were big not long ago; truck drivers and their radios have become a folk cliché. But it will probably never happen for farmers—not because what they do is too simple (what could be more simple than driving a truck?) but because it is too hard. And because, for the most part, it gets done so well.

Talking to Keith Propst and men like him, you learn about cow-calf operations; feedlots; backgrounders; speculators; champion breeders; breeds that started in England, India, France, and Switzerland. You learn the reasons why one farmer goes with Charolais and another with Angus and the thousands of variables that enter each equation.

Keith Propst's operation is a good place to start looking at cattle ranching because he does several things. The whole point of his operation and of the entire industry is to raise cattle to slaughter weight as efficiently as possible.

With Propst, it begins out on the range with a breeding herd more or less stationary in number. He can add heifers—and their calves—when he thinks the price will justify it.

The calves feed from the udder for about six months. "One of the reasons ranchers are high on Simmentals is that they are better milk producers than the English breeds. The Swiss use them as a combination beef producer and dairy cow. So the calf will be a little heavier when she's weaned. All calves lose a little at first when you wean them. They're bawling and looking for mother for three or four weeks. It's a real stressful time for them. So that little extra counts."

After the calf is weaned, it "goes to grass." This takes the animal from about 400 to about 600 pounds. It can be done on a range or pasture or field of cutover crops, which is the method Propst uses. His short yearlings (animals that have been weaned but aren't a year old yet) feed in his corn and sugar beet fields, then go back to the range until the steers weigh about 700 pounds and the heifers about 600. These yearlings are ready for the feedlot.

Virtually all beef cattle are "finished" in feedlots. Fed properly, a yearling can gain almost three pounds a day in a feedlot and reach slaughter weight in 120 to 150 days. The steers are ready at 1,100 to 1,200 pounds; the heifers, at 900 to 1,000.

There are several advantages to the feedlot, which is no more than a pen where a number of animals are crowded and fed a carefully balanced and very rich grain diet along with some mineral supplements. The animals eat and drink, sleep and defecate—nothing more, until they are ready to be shipped for slaughter. Because they are confined and inactive, they cannot burn many calories or manufacture any tough muscle. They gain good tender weight very fast.

Propst's feedlot is small: 1,500 animals. Some have come from his own breeding herd, and some he has bought from cow-calf operations as far away as Georgia.

There are lots that feed several thousand animals bought from cow-calf operations or from backgrounders who put weaned calves on grass for the few months it takes to get them up to sufficient weight for the feedlot. It is an age of specialization in all things. But Propst breeds his own cattle, fattens them in his own lot, and raises the food—mostly corn—for the lot on his 900 acres of irrigated land along the river valley. He buys additional cattle when he thinks the price will be right and the grain to feed them when its price is low.

Then comes the hard part, the aspect of ranching that makes it so tough. When Propst's cycle is complete and when the animal that he has bred, weaned, grazed, and fattened reaches a slaughter weight almost three years after its conception—perhaps at the end of a plastic tube—Propst must sell. He cannot keep feeding the cow and waiting for a better price in a month or so. If the animal goes on eating and gaining weight, "it'll get all wastey. Too fat. The price will go down and it'll cost money to feed, besides."

Propst knows how much it has cost to bring the animal to slaughter weight, so he knows how much he is losing—or making—on each animal he sells. When every animal sells at a loss, there is only one thing to do: You cut losses by selling fewer animals—which means, ultimately, breeding fewer animals.

"This thing works in cycles, and it always has," Propst says, irritated that people can't see how *simple* it all is. "When the price is way up, everybody wants to be grazing a few steers. The big feedlots can't buy enough yearlings. So the cow-calf operations go to work and breed more animals because everybody wants them. Then pretty soon you've got a surplus. So the price falls, and everybody who was making money starts losing and wants out. The wheat farmer who was feeding sixty head when the price was up says. 'To hell with that beef stuff, I'm sticking with wheat.' So he doesn't buy any calves. The demand goes down and the cow-calf operators don't breed as much. Pretty soon the supply gets back down, and the price goes up again. That's the way it works. We're ready to take the three or four bad years if we can just count on that one good year to make up our losses. We'd like to make up a little for inflation, too. Just like everybody else."

It takes two hours to check the remaining windmills once the skittish heifer is bred Propst drives the Scout across the hard scrabble terrain and explains the intricacies terrain and explains the intricacies of his trade: when to breed; when to wean; when to castrate; salts and supplements; inoculations; machinery; weather.

"One of the things about this part of the country is that we have about as good a weather as you could want for cattle. It gets cold in the winter, but we don't see the snow they get up in some of those mountain pastures, where they have to fly in hay with a helicopter. That'll run your costs up for sure."

The Scout comes over a small ridge and below, in the shade of a bent and crippled old cottonwood tree, are eight mule deer. They are up quickly, moving across the range in single file.

"I used to hunt a little," Propst says. "But the season comes right at the busiest time for us, and I don't fool with deer hunting anymore. We do some duck hunting, though."

Propst checks the last windmill, then leaves the scrub range and drives back to the lush valley of the Platte River and home for lunch.

"There's another thing," he says as we drive along the riverbank. "The EPA [Environmental Protection Agency] has set a deadline for cleaning up the river. It's never been a fishing river. There's some fish in it, but it has always been used for farming. For irrigation. But the EPA says that if you take water out to irrigate, then it has got to go back in clean as it was when you took it out. And you can't do it.

"But that's what the EPA wants, and it'll just mean the end of farming in this valley. They keep extending the deadline. And we'll probably get an exemption through Congress. But you have to wonder if those people know *anything* about farming."

Lunch is a big hot meal, the kind that sends you away from the table, especially on a hot day, desperate for a nap: roast beef, squash, potatoes, a salad, ice cream. Nell Propst, a small woman—petite in the appropriate word, in her case—and a very gracious hostess, presides at the table and says grace. Koger and his twenty-year-old brother Joel and his sister Holly, seventeen, are there.

During lunch, I learn more about how much there is to farming. In addition to EPA and its water standards, farmers and ranchers these days must cope with the most ubiquitous and despised of all the regulatory agencies: Occupational Safety and Health Administration.

"You know what they say about farm

animals?" Nell Propst asks. Her tone is a blend of indignation and wonder. "They say you can't have livestock within five hundred feet of a house. We've always had horses in the pasture right out behind the house. We like to have them there, so we can look at them and go out and ride them when we want to. Now it's illegal."

Keith Propst laughs, and laughs heartily. "I suppose the idea was to keep people from putting workers' shacks out in the middle of the same field where they were slopping pigs. But they don't say that. It's 'no animals within five hundred feet of any house,' and that's it."

"Well, what was that other one, Dad, the one about toilets out on the range?" Propst's son asks.

"Oh, they made some ruling about how nobody could work more than three or four hundred yards from a toilet. So I'd have to put those portable Johnnies all over ten thousand acres of land to be in compliance.

Propst laughs again. It is his most engaging characteristic. When he talks about things that usually turn a man's face into a mask of nearly unmanageable anger, Propst laughs. He probably figures that it is all he can do.

"The thing is," Propst says, "there are farmers around here who would go broke if they tried to do everything right. So they just figure on doing nothing right and hope they don't get caught. Either way, they go broke. It breeds disrespect all the way down when you have these rules that don't make any sense."

At a cattle auction and a slaughterhouse, there is more to learn. A weary man who buys live animals and sells cold slabs of beef over the phone says, "I don't know why Carter is picking on us. The price of everything else is allowed to go up two or three times. Beef isn't even essential. It's a discretionary item. If you don't want to pay the price of beef, you can eat chicken or fish or pork. You know what is essential for most people: a god-damned car. You don't have any choice about buying a car in this society. I need to have a car even if it means I've got to leave eight thousand dollars sitting out in the parking lot every day. Cars go up every year, and nobody says anything."

At the auction, Propst quietly guesses the final price of each lot before the bidding starts. He is usually right and never off by more than twenty-five or fifty cents.

"Those heifers have got a little pink-eye. They won't gain so well for a week or more. Won't get much for them." He guesses forty-three cents a pound, and they sell for forty-three and a quarter.

"Those steers will go for about fifty-nine. They're good yearlings, and some backgrounder can use them for cheap gain."

"That heifer is a little too wastey for its age—probably belonged to some kid who bucket-fed it."

Two hundred miles south, in Lamar, there is more to learn at the meeting of the Colorado Cattlemen: about the way the banks have carried ranchers for the last three years.

A banker who specializes in agricultural loans says that the small banks have already reached the limit: "They just couldn't use any more of their depositors' funds. So you are starting to see some bankruptcies. Some people, who are diversified, like Keith Propst, are going ahead, but very cautiously.

"There are smaller, less diversified operators who are selling," the banker continues. "Big corporate operations come in, and they seem to be able to smell a situation that is right for a sale. They are very tough: They know when a man is desperate, and they drive a hard bargain. But they pay cash.

"But they aren't really interested in the farming end of it. I was talking to one of their people the other day, and he said they were satisfied if the land appreciated and they could increase the capital value. They weren't in it for income.

"This spring there was some optimism in the air for the first time in three years. Both the bankers and the farmers were seeing a little daylight. Then Carter made that decision. It was the most demoralizing thing he could have done." The banker speaks with genuine regret. He knows these people and has seen them through hard times before. Like them, he hates to see the land taken over by big outside money.

Finally, there was the marker. It said more than anything else would about a way of life that men like Propst value and that is threatened by inflation and the expedient measures politicians have used to fight it.

At lunch, I asked if the house was on the same site as the original Propst settlement.

"Oh, you've got to show him the marker," Nell Propst said.

After lunch, full and sleepy, I went with Keith Propst to a small plot next to his front yard. There were two blue spruce growing there. "They got those in the mountains," he said. Then he showed me the centennial monument. It is almost five feet tall, cut from marble, and it sits on the site of the original Propst cabin, in Colorado. The inscription reads:

MICHAEL V. PROPST FAMILY MEMORIAL

This marker commemorates the centennial of the settlement of the Propst family on the South Platte River near Buffalo, Colorado, which is now Merino . . . Michael V. Propst and the other family members left Pickens County, Alabama, and arrived in this area on April 7, 1876. They came . . . to find land and to build homes. They developed cattle ranches, farms, and businesses. They helped establish schools, churches, irrigation systems, and communities. They served their nation in peace and war and left a legacy of love of country and faith in the future.

"We had a centennial celebration to dedicate it," Propst says. "My brothers came in from Florida and Michigan, and my sister came from Arizona. Nell has a degree in drama, and she wrote a play that we put on. The whole thing sort of moved you." ●

## WHAT THE DOLLAR DROP COSTS US

● Mr. JAVITS. Mr. President, on August 17, I addressed my colleagues about the serious consequences of a continued decline in the value of the dollar. At the time I explored the effect of the dollar's decline on the U.S. economy and especially on inflation and suggested a three-part approach to strengthening the dollar.

The recent actions of the administration and the Federal Reserve Board with respect to gold sales and interest rate increases are positive steps; but unless accompanied by serious moves to combat inflation and improve our balance of trade, these moves will not strengthen the dollar in the long run. The foreign exchange markets are waiting anxiously for further moves, and I hope that the administration will continue to face the problem forcefully.

At the time of my speech I indicated that the administration's policy, which I labeled as the "politics of despair," would, if continued, have serious negative effects on the U.S. and world economies.

In an incisive article entitled "What the Dollar Drop Costs Us" in the September 5 edition of the Washington Star, Lee Cohn dealt with these concerns in a very intelligent and analytical manner. He provides excellent documentation in support of the view that the decline of the dollar is "making Americans poorer and their lives harder" and will have serious effects on our ability to fight inflation.

Furthermore, he says that the decline in the dollar can have only a deleterious effect on the prestige of the United States in the international arena. Not only is Mr. Cohn's analysis good economics but it is also good journalism in that it explains the problem very coherently and intelligently.

Mr. Chairman, I commend this article to the attention of my colleagues and ask that it be printed in the RECORD.

The article follows:

[From the Washington Star, Sept. 5, 1978]

WHAT THE DOLLAR DROP COSTS US

(By Lee M. Cohn)

A basic economic fact, often obscured by sophisticated theories, at last is dawning on the Carter administration: The decline of the dollar abroad is making Americans poorer.

Ordinary people always have worried vaguely that it is bad for the dollar to fall in value. Those fears reflect ignorance and outmoded nationalism, many economists contended in the past. Some of them still scoff.

Devaluation or depreciation of the dollar boosts U.S. production and creates jobs, they have argued. The Nixon administration boasted that its two formal devaluations were triumphs of strategy and policy. Until recently the Carter administration welcomed the decline of the dollar as a boon to the economy.

Now the administration is starting to wonder about the claimed benefits of a falling dollar and seeing some drawbacks—though still not recognizing all the harmful effects. For President Carter and most officials, the new perspective on the dollar is only a glimmering, not a flash of light.

Carter now is trying to halt or cushion the fall of the dollar, but it is too late to save the country from all the painful consequences. A declining dollar:

Raises prices paid by American consumers for imported and domestic goods, while cutting prices paid by foreigners for American products.

Limits the quantity and variety of goods Americans consume and enlarges foreign consumption, thus lowering standards of living in the United States and raising standards of living abroad.

Increases costs of foreign travel by American tourists and business executives, and living expenses of civilian and military personnel stationed abroad.

Encourages foreigners to invest in the United States and deters Americans from investing abroad, shifting assets and future earnings from Americans to foreigners.

Heightens pressure for oil price increases.

Erodes the value of monetary reserves, savings and other financial assets held by governments, businesses and individuals.

Creates uncertainty and turbulence, which can disrupt financial markets, discourage investment, curtail trade and depress the world economy.

Compels the United States to restrain domestic economic growth.

Weakens U.S. prestige and power in international affairs.

A negative list like this makes it difficult to believe that U.S. policies ever pushed the dollar down deliberately. Yet the Nixon administration called its two devaluations

"good for the economy and a triumph for rationality over superstition." Though less openly, the Carter administration also encouraged the decline of the dollar until recently, and still is not fully convinced that a strong rise would be a plus for the United States.

The argument favoring a declining dollar rests on the price effects and their presumed impact on U.S. production and jobs.

West Germany's mark was pegged at 3.66 to a dollar, giving it a value of 27.32 cents, before the dollar devaluation of December 1971. In the worldwide realignment of currencies carried out then, the official value of the dollar was lowered to about 3.22 marks and the mark was raised to 31.03 cents. A second devaluation in February 1973 lowered the dollar to 2.9 marks and raised the mark to 34.48 cents.

Then the leading nations gave up trying to fix currency values and decided to let them "float"—rise and fall more or less in response to supply and demand in the markets, with only limited government intervention. The dollar has dropped in 5½ years of floating to about 2 marks and the mark has risen to about 50 cents.

Since December 1971 the dollar has dropped from 360 Japanese yen to about 190. The dollar also has declined substantially in terms of most other major currencies, with the notable exception of the Canadian dollar, which has been even weaker than the U.S. currency.

At present exchange rates, an American consumer pays $5,000 for a Volkswagen priced at 10,000 marks or a Toyota priced at 950,000 yen. If the 1971 exchange rates were still in effect, a 10,000-mark Volkswagen would cost only $2,732 and a 950,000-yen Toyota would sell for $2,639.

Americans logically should buy fewer autos at the sharply higher dollar prices, and should buy more U.S.-made cars. U.S. production and employment should rise. Imports of autos and some other goods have been declining, in fact, though not to the extent indicated by theory.

On the flip side, the decline of the dollar has lowered prices of U.S. goods in foreign currencies. A $50,000 American-made machine cost a German company 183,000 marks and a Japanese buyer 18 million yen in 1971. At today's exchange rates, a $50,000 machine would cost only 100,000 marks or 9.5 million yen.

The impact of dollar depreciation on prices has helped boost U.S. exports though not as much as theoretical computations suggested.

Price effects have been diluted by competitive forces. Trying to maintain sales here, exporters and importers of foreign goods sometimes shave profit margins or reduce production costs through improved technology to limit price rises. U.S. companies may fatten profit margins by raising prices on their exports.

Foreign countries may tighten restrictions on imports and subsidize exports, offsetting part of the U.S. price advantage. Americans prefer some foreign goods for quality, style, prestige or other reasons, and are willing to pay premium prices. U.S. companies sometimes fail to understand what their foreign customers want.

Even if the decline of the dollar is fully reflected in prices and customers react according to formula it will take time and hard effort to reduce the U.S. trade deficit—the excess value of imports over exports.

At 3.66 marks to a dollar, 1,000 autos priced at 10,000 marks each earned Germany a little over $2.7 million. If the dollar's fall to 2 marks reduces sales to 900 autos priced at 10,000 marks, Germany's earnings rise to $4.5 million. To hold dollar earnings down to the previous level, it would be necessary to reduce sales to 546 autos, and deeper reductions would be needed to lower earnings.

Sale of 100 machines at $50,000 each to Germany earned 18.3 million marks for the United States under the old exchange rate. At the present rate, an increase in sales to 125 machines would reduce earnings to 12.5 million marks. To earn 18.3 million marks, the United States would have to sell 183 of the machines.

Thus, the trade account at first may get worse instead of better. Any improvement will require the American economy to climb a steep, slippery slope. Export earnings in foreign currencies will rise and import payments will decline only if the price shifts cause very big gains in the volume of U.S. sales abroad and sharp reductions of purchases.

That exposes a flaw in the theory that depreciation of the dollar is good for the country. Even if U.S. production grows and jobs are created, the decline of the dollar makes Americans poorer in a basic way: They are paying more for less goods, and earning less for producing more.

Inflation is a big element in the impoverishment. Depreciation of the dollar directly raises prices paid by American consumers for imported products. Costs of imported raw materials and components also rise, boosting prices of American-made goods with foreign ingredients. And higher prices on imports ease competitive pressures on U.S. manufacturers, allowing them to raise prices higher than customers would tolterate otherwise.

Dollar depreciation and inflation feed on each other, whipping up an accelerating spiral. As the dollar falls, inflation quickens, and faster inflation pushes the dollar still lower.

The kind of inflation caused by the dollar's decline internationally is worse for Americans than home-grown inflation, because it discriminates against them and favors foreigners. Imported goods cost Americans more than consumers in the producing countries. American-made goods are sold cheaper abroad than in the United States.

Dollar depreciation has about the same effect as a tariff increase in raising prices on imports. Like a high tariff, the decline of the dollar may protect U.S. producers and their employees from import competition, but it's hard to see why consumers should cheer higher prices.

How would a consumer in Virginia benefit if a tariff to protect jobs and profits in his state raised the prices of products made in Maryland?

Price cuts help consumers, and U.S. producers are free to lower prices whether the dollar is rising, falling or holding stable. The special wrinkle in dollar depreciation is that it reduces prices of U.S. goods sold abroad, without cutting prices on the same goods at home.

If Maryland producers cut prices on goods sold in Virginia, but held prices up in Maryland, Virginians might be pleased but wouldn't Marylanders complain?

Higher prices, by definition, reduce purchasing power. If American consumers pay more for imports they continue to buy despite the decline of the dollar, they will have less to spend for other domestic and imported goods.

To be a success, depreciation of the dollar must reduce U.S. imports and increase exports. That means Americans will consume fewer goods with less variety, while foreigners will consume more. The U.S. standard of living will decline, or will not increase as fast as if the dollar were strong, and standards of living will rise abroad. That's another way of saying Americans will be poorer and foreigners will be richer.

Total consumption of goods by Americans, not just imports, will be held down if depreciation of the dollar works as intended. If a country has a trade deficit, its residents consume more than they produce. If there is a trade surplus, they produce more than they consume.

A trade surplus may increase production and employment. But do people work just to earn money, or to buy that they want with their earnings? How will Americans benefit if they produce more goods for Germans and Japanese to consume and less for themselves?

In fact, the United States has no choice but to reduce its trade deficit and move toward a surplus to pay its way in the world. This country has been spending much more abroad than it could earn. It has been paying foreigners with dollars, which have piled up as IOUs abroad. Foreigners could have spent the dollars here. They did not because they could get more for the money elsewhere.

The U.S. trade deficit is in a sense a measure of credit extended to this country by foreigners. U.S. imports exceeded exports by $26.5 billion last year and the deficit totaled $19.3 billion in the first seven months of this year.

Now the credit is running out. Depreciation of the dollar means the OIUs are being discounted. Americans must put up more dollar IOUs to obtain 1,000 marks or 1,000 marks worth of goods. If big trade deficits continue to enlarge the glut of dollars, the discounts will be deeper.

The United States must import less because this country no longer can afford to import more, not because it benefits American consumers to import less. And the United States must export more to earn its way—to pay for imports and avoid piling up more IOUs abroad—not because it helps most Americans to sell more goods to foreigners at lower prices.

Travel is a form of consumption, and the impact of dollar depreciation is similar to the effects on trade in good. American tourists and business executives traveling abroad are paying more to obtain less, while foreigners traveling in the United States are enjoying bargains.

Discretionary foreign travel by Ameriacns will be curtailed, or will grow more slowly. Civilian workers and military personnel stationed abroad cannot afford to live as well as before, unless their salaries are raised to compensate for the dollar's drop.

Just as a foreigner can buy more U.S. goods than previously with the same amount of marks, yen or other currencies when the dollar declines, foreigners can buy more stocks in U.S. corporations, build more plants here and expand other forms of investment. It costs more for Americans to invest abroad.

Foreign investments here expand the economy and create jobs. But the investments transfer U.S. assets and future earnings to foreigners, which could make it even harder to balance international accounts. Depending on the pattern and extent of the investments, foreigners could gradually take control of important sectors of the American economy.

Curtailed U.S. investment abroad would reduce potential earnings and limit growth of American-based multinational corporations. Some Americans say multinationals shift production and jobs out of this country. However, foreign subsidiaries also buy goods from their parent companies here.

The fall of the dollar aggravates oil price problems. Most oil producers set prices in dollars and take payment in dollars. As the value of the dollar declines, the real price of oil falls. That is, $14 received by Saudi Arabia for a barrel of oil will buy substantially less in Germany and elsewhere now than a few months ago.

Pressures are growing to raise the dollar price of oil, at least to stay even. Alternatively, some oil producers want to base prices on a "basket" of currencies to protect themselves. If the dollar continued falling, the price stated in dollars would rise automati-

cally. Either way, inflation would worsen in the United States and other oil importing countries.

Also discussed recurrently, but less likely to happen, is a switch from dollars to other currencies for oil payments. That would sharply reduce demand for dollars abroad, probably leading to further depreciation of the U.S. currency.

Aside from specific consequences in trade and other areas, the decline of the dollar hurts the U.S. and world economies in ways that are harder to measure but may be even more harmful.

The dollar is the world's main store of value. Governments hold most of their reserves in dollars. Businesses and individuals all over the world hold savings and other assets in dollar deposits and investments. When the dollar falls, those reserves, savings and assets lose value, which can upset financial plans, weaken governments, undermine banks and corporations, and disrupt markets.

Dollar holders fearing losses unload dollars, which pushes the value of the currency still lower.

Actual losses on the dollar are painful, and uncertainty can be as damaging. If the dollar fluctuates wildly and no one can reasonably estimate its value next week or next year, it is difficult to negotiate prices on goods to be delivered or terms of loans. Companies cannot predict confidently whether potential investments would pay off.

To protect themselves, investors and business executives may demand big premiums to cover risks, or they may play safe by curtailing investments, orders and other commitments. Such caution can reduce international trade, curb economic expansion and perhaps push the world into a recession or depression.

Even if severe disruptions can be prevented, the United States must defend the dollar and the defensive actions will include tigher credit and budget policies. The purpose is to restrain the U.S. economy in order to fight inflation, limit imports and increase exports. Restrictive policies may curb economic growth throughout the world, not just in the United States.

Beyond economic consequences, depreciation of the dollar hurts the United States in world politics. A sagging dollar limits what this country can afford to do abroad. The dollar's fall reflects unfavorably on management of the American economy and shakes confidence in U.S. leadership internationally. U.S. prestige and clout suffer.

The decline of the dollar signals that the U.S. economy is weakening. No country with a weak economy can be strong in world politics.

This nation's political stability, the depth of its financial system and the remaining strength of the economy despite recent deterioration have limited the damage so far. However, the margins of safety are shrinking rapidly.

Depreciation of the dollar is not a grand strategy. It has been forced on the United States as a result of the economy's failures and dissipation. If opportunities are not wasted, the dollar's decline can be a first step toward rehabilitating the economy.

But in the meantime, Americans will be poorer and life will be harder.●

## NATIONAL HISPANIC HERITAGE WEEK

● Mr. HART. Mr. President, the week of September 10–16 has been declared National Hispanic Heritage Week by President Carter. I am pleased by this formal recognition by the President of Hispanic people and their culture. In my home State of Colorado, persons of Latin descent comprise a large percentage of the population, and their contributions and culture have left an indelible imprint on our western way of life—from the names of our towns and streets, to the clothes we wear, to our rodeo and ranching vocabulary.

Executive branch officials will be conducting hearings in selected cities across the Nation, including Denver, to hear the views of Hispanic people on current economic and social issues. I intend to study carefully the testimony presented at these hearings, and intend to do my best to work with the administration in its efforts to meet the needs identified.

Again, I commend the President on his efforts to recognize, understand and assist the Hispanic/Chicano community. I hope that the President will continue his efforts in this direction, and join my colleague Senator PERCY in urging the President to fill one of the two vacancies for the position of Commissioner in the Equal Employment Opportunity Commission with a person of Hispanic descent. Although Hispanic people constitute the second largest minority in this country, there is not currently an Hispanic Commissioner in the EEOC to represent their interests and needs. It would be a visible and substantial demonstration of administration concern if the President provided Hispanic participation in the important work of this Commission.●

## EDITORIAL OPPOSES D.C. REPRESENTATION IN CONGRESS

● Mr. TOWER. Mr. President, the resolution proposing a constitutional amendment giving the citizens of the District of Columbia full voting representation in the Congress of the United States is now before the legislatures of the several States for consideration.

The rationale for and against approval of this issue has been both extensive and varied. One of the best arguments against its adoption has been presented in an editorial appearing in the August 31, 1978, edition of the Groesbeck Texas Journal.

In order that my colleagues and others may have the benefit of its contents, I request that the subject editorial be printed in the RECORD.

The editorial follows:

DO WE WANT A NEW STATE 1/14TH SIZE OF LIMESTONE COUNTY

Many, many bad ideas have come out of Washington down through the years, but the worst and most sinister idea ever hatched in the halls of state in our Nation's Capitol broke forth from the shell of skulduggery up there last week.

This very bad idea is to add a 51st state to the United States and to make this 51st State the City of Washington, D.C., with a population of 756,510 residing in an area of 67 square miles, approximately one-fourteenth the size of Limestone County.

But size and population has nothing to do with whether or not the District of Columbia should be a state. It should not become a state because that would go directly contrary to the purpose of its creation.

The District of Columbia and the brand new city of Washington were created in 1790 to be the nation's capital. Congress convened there for the first time in 1790 and has been convening there ever since. Prior to the establishment of the seat of government in Washington, D.C., the capital had been at intervals in four different states, Pennsylvania, Maryland, New Jersey, and New York.

During this period of uncertainty as to which state the capital of the world's newest nation should be located, the compromise plan evolved that the capital would be located in one of the thirteen states but in a district separate and apart from all the states. The creators of this nation not only desired that all men have equal rights but that none of the thirteen states should have advantage over the other twelve by having the nation's capital located within its boundaries.

Both Virginia and Maryland ceded contiguous land for the creation of the District of Columbia but only that of Maryland was used. The wisdom of this arrangement has been praised throughout the world.

Why is that now 188 years later the majority membership of the House of Representatives and the U.S. Senate has suddenly decided that the Congress of 1790 was wrong? There are several reasons and each of them is bad, selfish, and sinister, and most of them induced by political pressure and intimidation.

These reasons will be discussed in future issues of The Journal. Right now let's praise those founding fathers who created the District of Columbia for also undergirding their new nation with a Constitution that is not too easily changed. In order for the District of Columbia to become the 51st state it will take ratification by 38 of the present 50 states for the U.S. Constitution to be amended to make this possible.

Let us hope that none of the fifty states is so foolish as to ratify this preposterously foolish amendment, and let us take particular pains to see that the Texas Legislature doesn't.●

## LIBERALISM IS NOT DEAD

● Mr. MCGOVERN. Mr. President, during the clamor of recent times predicting the death of liberalism, I have been among those who have denied that liberal government is over. I believe, in fact, that a positive, dynamic role for the Federal Government is both a necessity and a desirability in American society. That has been my view for many years, and I see nothing in the current complexity of American life to indicate a diminishing role for government.

It is thus with some personal pleasure and satisfaction that I read Mr. William Greider's excellent piece in yesterday's Washington Post, supporting this view in a most compelling way. Mr. Greider, one of our most perceptive political writers, bases a considerable portion of this article on an important new book by Professor Edward R. Tufte, entitled "Political Control of the Economy."

I ask that this seminal article by Mr. Greider be printed in the RECORD.

The article follows:

(By William Greider)

Every few years, something comes along in public affairs, an outburst of public anger or stupendous scandal or whatever, which provokes a chorus of premature obituaries. Liberalism is dead. The New Deal is over, finally. Government is too big, too powerful. The people have spoken.

We are in one of those seasons now, stimulated mainly by the genuine public rage at government and taxes.

Corporate propagandists are busy proclaiming a new era of laissez-faire in which business is free at last, free at last from the heavy hand of meddling bureaucrats.

The anvil chorus of political pundits has

identified a "conservative tide" sweeping the land and boiled it down to simple-minded shorthand: The voters want less government, and that is what the smart politicians are promising them.

This fashionable chatter is not totally bilge. But it's mostly bilge.

The businessmen and political seers who think the nation is heading into an era of less government are setting themselves up for a severe case of whiplash, for the political necessities are headed in the opposite direction—toward greater government spending, toward much more serious government intervention in the private economy. If you're looking for a shorthand phrase, it might be more accurate to predict a period of "neo-liberalism."

Here is an alternative version of what to expect, a forecast which is prudently based upon the fundamental economic-political rhythms of modern American democracy:

Sometime in the next 15 months, the Carter administration, notwithstanding its previous rhetoric, will become strikingly more "liberal"—perhaps abruptly so. Congress, despite the usual carping and criticizing, will go along happily with this leftward turn.

This "liberal hour" for Jimmy Carter will be expressed in many ways. A plausible hunch list would include the following:

The Carter government will move to implement direct control over price increases, perhaps wage increases too, once all the voluntary measures have failed to control inflation. Simultaneously, it will begin to pump up the national economy, creating a government-induced boomlet, a temporary prosperity that will extend through 1980.

This will be accomplished by pulling the economic levers available to every president and usually used at election time: By loosening fiscal policies to step up economic growth, stimulating more production, more jobs. By delivering huge chunks of additional cash to voters through tax cuts and increased social-welfare programs. By leaning on federal agencies to step up their distribution of federal largesses, the billions of dollars in government grants which add jobs, construction projects and other tangible benefits to local economies.

If Jimmy Carter does all these things, if he does them wisely and well, his current low standings in the public opinion polls will become as irrelevant as last season's batting averages. By 1980, a grateful citizenry will reelect him to a second term.

If Carter rejects these economic imperatives or botches them or waits too long in his response, then he may well be remembered as the first one-term president since Herbert Hoover. In politics, courageous principle translates as stubborn foolishness, after one loses the election.

Does all this sound far-fetched? This scenario for Carter is a precise description of what Richard Nixon did to win reelection in 1972, confronted with quite similar problems—soaring inflation and sagging popularity. In general terms, leaving aside the extreme "liberal" solution of wage-price controls, the scenario describes the left-ward economic turn taken by every modern president, save one, as they approached national elections. The exception was Dwight D. Eisenhower, who stuck with his conservative economic policies and won a landslide victory anyway (but Ike's policies lost Congress to the Democrats three times and lost the 1960 presidential election for Nixon.)

Jimmy Carter, in any case, is not Ike. At the moment, Carter's unpopularity is more comparable to Nixon's in the spring of 1971, when the pundits were likewise predicting that Nixon would be a one-term president.

What changed, among other things, was that Nixon suddenly imposed old-fashioned liberal remedies in the grossest manner. An awkward regulatory lid was clamped on all prices and wages. The spigots were opened for an awesome pump-priming of federal dollars. By the autumn of 1972, Americans were "feeling good." The GNP in the final quarter of that election year jumped upward by an extraordinary 11.5 percent—nearly three times the normal growth rate. Nixon aided by the ineptness of his Democratic opposition, won by an historic landslide.

It is fatuous, of course, to predict flatly that this president will follow the exact behavior of that president or any other president. History doesn't repeat itself mindlessly. But history does offer us patterns and probabilities in public affairs, a strong cycle which reoccurs with such regularity that these patterns—not the short-term controversies and outbursts—are the true baseline for judging the shifts and turns of public policy.

No one, of course, would argue that Nixon's economic tricks were the only factor in this '72 landslide, that any president has omnipotent control over the economy, or that economics is the only issue in presidental elections. But the "liberal hour" is a fundamental rhythm in national politics, usually ignored and often misunderstod, yet crucial to most elections.

It was the late Adlai Stevenson, a man of ideas as well as wit, who coined that phrase. There is a brief period in American politics, he said, that moment just before national elections, when even the most obdurate conservatives bend themselves toward the liberal political ideas which serve the "greater good" and, of course, the greater number of voters. Every politician in national life knows this intuitively, the smart ones anyway, but it is hardly a fit subject for public debate. It just happens, year in and year out, without any headlines.

Fortunately, the political-economic cycle of the "liberal hour" now has been confirmed in an important new book, "Political Control of the Economy," by Yale political scientist Edward R. Tufte. With persuasive evidence, Tufte describes the biennial economic surges which flow from politics in even-numbered years of federal elections, strongest in the years when incumbent presidents are seeking reelection, but also present in "off-year" election seasons like 1978 when Congress is on the ballot.

The rhythms are quantified by Tufte: With extraordinary consistency, the American economy prospers more in election seasons. Unemployment is lower. Inflation is more likely to be under control. The national economy grows at twice the normal rate. Real disposable income—the cash which people have to spend after taxes, after inflation—increases twice as fast when a president seeks reelection as it does in odd-numbered years.

Tufte also found that the Federal Reserve Board, notwithstanding its alleged independence from politics, usually cooperates with the political surge in the economy. Except for the Eisenhower years, the rate of growth in the money supply usually increases in the biennial periods prior to presidential elections, and decreases afterwards.

The techniques of political management which produce these surges are also described, with great clarity, by Tufte. Some are obvious and well known: the government cuts taxes in election years but raises taxes in odd-numbered years. It increases the direct distribution of money to voters in election years. Social Security benefits, veterans' pensions and other social welfare programs.

Other techniques, revealed by Tufte's research, are not so obvious. Most government grant programs, he discovered, also go through a mysterious autumn surge of distributing cash in presidential election years. In the fall of 1972, for example, the quarterly flow of federal grants jumped by an extraordinary $12 billion, up by one-third. After the election, when Nixon began impounding every program in sight and turning off the spigots, the federal outlays shrunk dramatically.

Tufte asserts—and the political memos from the Nixon White House confirm—that intense political pressure was exercised on federal agencies all over the town, pushing them to deliver the bucks faster. Most sensible bureaucrats will cooperate with their president when he tells them to spend more.

WIDE PUBLIC SUPPORT

Reasonable citizens will disagree about the propriety of the "liberal hour," based on their ideological preferences or their notions of how government is supposed to behave. Conservatives or good-government reformers, reading Tufte's account, might shrink in horror at this portrait of politicians "buying" votes with the taxpayers' own money.

Liberals (and probably the overwhelming majority of the populace) probably would look at it differently. They might argue that, for a few months of a year at most, the electoral season forces politicians to worry about the masses of people, the working stiffs and the poor and the ordinary folks. The rest of the time, American politics is skewed toward serving more powerful and more conservative interests.

The strength of Tufte's analysis, the quality which sets him apart from so many purist theories of his academic colleagues, is that Tufte accepts the natural conflict between these two viewpoints as an inherent tension of democracy. The distinctions are not subject to easy definition or goo-goo reforms. An elected government which responds to public need and desire can always be accused of pandering. That does not make unresponsive government more clean or more desirable.

But do the American people really want these "liberal" policies? The answer is clearly yes, though that may come as a shock to those who are promoting the conservative revolt. If we define "liberal" in the old-fashioned way, bequeathed by Roosevelt's New Deal, the activist government which intervenes in the market economy, controlling the behavior of private corporations, stimulating growth and curbing corporate excesses, the American people are still very "liberal."

This is not a new trend or a seasonal anxiety—it is a more or less permanent fact of public opinion. Poll after poll has shown that the general public, when asked about issues of government intervention to manage the economy, is permanently to the left of the political establishment, Republican and Democratic, which decides those questions.

For instance, if Carter does move to wage-price controls, however reluctantly, he will find that popular political support is there waiting for him. His friends in business will be furious. Labor leaders will scream, having been burned in 1972 by the Republican-administered controls. But the public, according to Gallup, wants controls, 52 to 37 percent, as it always does when inflation becomes a severe problem.

In political terms, the hard choice for Carter would be how to impose controls. He could do it with a Republican bias, as Nixon did, or with a Democratic bias, holding down prices first and counting on that control to dampen wage inflation.

There are numerous other examples of the leftward tilt of public opinion. The public for years has endorsed the idea of government action to guarantee every American a job, yet that concept, embodied in the Humphrey-Hawkins bill, cannot win congressional passage.

The public favors the radical approach of rationing to conserve oil and gas—in prefer-

ence to the conservative solution of price and tax increases proposed under Carter's energy plan.

The public wants more regulation, not less, to clean up pollution. Indeed, cleaning up the air and water, even if it costs a lot more, is one goal on which the American people are unified. Aside from seasonal fluctuations, they do not want to retreat to laissez-faire.

The principal liberal idea which does not have majority support in popular opinion is the guaranteed annual income. A majority is against that, though the opposition is declining gradually, not increasing.

Why have these "liberal" ideas not become permanent government policy, if so many people want them? Again, the answer is a manner of political theology. A conservative might say that, mainly they are bad ideas which would be ruinous to the national well-being. Therefore, Congresses and presidents embrace them reluctantly or not at all, and then only when political fortune requires it.

A left-leaning spectator might answer that these "liberal" goals are examples of how unrepresentative the American government is, how politicians are more sensitive to narrow, intense objections to change, not to a general progressive atmosphere.

Except for periods of great upheaval and stress, like the Depression which spawned the New Deal, American politics moves quite slowly toward new ideas. National health insurance, for example, has been on the agenda for 30 years, long supported by a majority of Americans. Yet it is not enacted. But if American politics moves slowly—at a conservative pace—it moves toward liberal goals. There are very few exceptions to that rule, especially since 1932.

THE NEO-LIBERAL CONGRESS

Skeptical readers can test Tufte's analysis in the present season, when so many politicians are preaching empty sermons about less government. It is certainly true that the voters are angry about high taxes and slothful government, about programs that waste money or don't work (we can all say amen to that). And it is also true that Congress has taken selected whacks at this and that program, demonstrating its dedication to lean and small.

But, meanwhile, Congress is behaving in this election year pretty much the way Tufte's thesis would predict. It is enacting a tax cut of approximately $17 billion. It is raising veterans' pensions $700 million to $1 billion. It has set up Social Security increases so that millions of grateful recipients received bigger checks this June, increases worth nearly $6 billion a year (the tax boost to pay for that increase won't hit wage earners hard until next year, after the election).

A new wrinkle now has been added to these "feel good" levers—the federal budget calendar was shifted to begin on Oct. 1. This means the annual surge of new budget spending in all federal programs will occur at the best time for politicians—one month before the election.

If you listen closely to this season's political rhetoric, there is even a strong strain of neo-liberalism emanating from Republican conservatives. The Kemp-Roth tax cut proposal, embraced by the GOP, sounds like a pumped-up version of old liberal dogma—generous tax cuts reduce federal deficits by priming the economy.

Rep. Jack Kemp, who is the new Republican glamor stock, appears to have a sharp focus on these contradictions, judging from his press clippings. Kemp is an unorthodox conservative who wants an activist government in some areas, less in others. He rejects wholesale cuts in federal spending. He wants to spend more on defense, more on cleaning up air and water pollution. He praises John F. Kennedy and criticizes Herbert Hoover. Rep. Kemp, in short, has read a little history.

Back at the White House, Jimmy Carter on some days sounds very much like a Republican.

The other day, he praised the Federal Reserve Board for raising interests rates—liberal heresy. He struggles to reduce the federal deficits—conservative dogma. He proposes an energy plan designed to curb consumption by raising prices and taxes—a modified market approach which Carter asserts will help fight inflation. Whether he is right or not, individual voters are not likely to see it that way. Most consumers do not believe that higher prices at the gas pump or higher home heating bills will help them fight inflation.

POLITICAL DYNAMITE

Carter's conservative economic policies have been variously attributed to his character or his Georgia origins or to different neo-conservative and Republican experts who advise him. But there is at least one additional explanation: Carter is a Democratic president confronted with an economic problem—inflation—that traditionally demands Republican remedies. Tufte puts it this way:

"To win reelection, Carter must solve the most salient problem and that seems to be inflation. The next most important thing for him to do is behave like a Democrat and there's a lot of tension between those two things."

If inflation could somehow be set aside, Carter's performance as an economic manager looks pretty good. Since his inaugural, the unemployment rate has been dropping, slowly but steadily. Real disposable income is growing at a healthy rate. The nation's economy is recovering steadily from the Nixon-Ford recession, jobs are increasing.

Yet people are angry—mad as hell, you might say—and none of these accomplishments will count for much if the inflation rate continues near or in double digits. The general aggravation may be summarized in the following:

In 1973, the mythical average worker portrayed in labor statistics earned $146.50. By this spring, five years later, his wages were up handsomely to $212. He deserved more money because his productivity increased steadily during that period. Yet everyone knows, from personal experience, that the wage increases are unreal. The average wage level, when adjusted for inflation, have been sitting still for five years—no real increase from 1973 to 1978.

This is dynamite in American politics, a fact which threatens all the old rules, for all Americans have come to expect, especially since World War II, a steady improvement in their lives, what they buy and enjoy, the basic comforts and, yes, the luxuries too.

If this period of stagnation continues, millions of Americans will feel cheated, and then politics will continue to be angry. But history tells us that popular opinion moves toward government-imposed solutions in times of economic stress, not away from them.

Who is getting hurt the most? It is not so clear. The statistics tell us that, in general, everyone feels squeezed, but at least half the wage earners are losing ground—earning more pay and taking home less real income. The victims apparently do not fall into neat categories of Republicans or Democrats, professional or blue collar. When Dr. Gallup asks people who is mad about inflation, there are minor variations between groups but the short answer is: Most people are mad, young and old, rich and poor.

The relevant political point for Carter, however, is that his natural constituency, the Democrats who elected him in 1976, are the voters most favorably disposed to government controls. In short, it would be politically plausible for him to move in that direction.

The president obviously has not chosen at this point, though his economic advisers are turning up the heat on their anti-inflation warnings, promising tougher "guide lines" and other devices to cajole labor and business into restraint.

If one were cynical, it would make political sense in Tufte's cyclical terms for Carter to let unemployment rise a little in the next six months or so, dampening federal spending and the gross inflationary impulses in the economy. Then, as the election season approaches, assuming that inflation has abated, he can open up the spigots again and make everyone "feel good" for 1980.

President Carter does face one unique tactical problem, different from his predecessors. Carter's "liberal hour" must come earlier than most. He must aim his economic management not merely at 1980, but at next summer and fall when Democratic rivals like Gov. Jerry Brown will be deciding whether to challenge an incumbent president in the Democratic primaries. If Carter wants to avoid those potentially ruinous challenges, he must make everyone "feel good" about him much earlier than the autumn of 1980.

MORE DEMOCRACY, NOT LESS

None of this has really addressed the most important question about the "liberal hour." Is it bad for the country? Political experience tells us that the pre-election "liberal" tilt is good politics. In the short run, it helps to win elections. But, in the long run, do these policies distort the economy and produce a painful hangover?

Tufte, for one, is not prepared to condemn the political-economic cycle by itself. It represents democratic control of economic policies, and he does not relish the typical reform proposal—to "clean up" government decision-making by insulating it from dirty old politicians and turning it over to high-minded but non-elected technocrats. This remedy has been applied again and again by 20th century reformers, to problems of every variety, but it does not seem to have eradicated political corruption.

Tufte's solution to the sleazier political manipulation is more democracy, not less. The two modern examples of presidents who grossly damaged the economy by their political manipulation both depended upon deceit and secrecy.

Nixon's overheated economy in 1972 produced a boom-and-bust recession and aggravated the inflation which still haunts us. Lyndon Johnson deceived the nation and the Congress about the true cost of the war in Vietnam, a political trick which caught up with him eventually and set off a decade of high inflation.

In both cases, Tufte argues, a vigilant press and a full-blown political debate might have prevented these presidents from their damaging excesses. Tufte writes:

"The mistakes were not made because gluttonous voters were possessed with 'inflationary bias' or because of 'voter myopia' (except insofar as politicans failed to reveal their economic priorities), or because of an excess of democracy in economic policy-making. Quite the contrary. The operating assumption made by those who undertook and secretly pursued these mistaken policies was, I believe, absolutely correct: Sleazier efforts at manipulating economic policy for short-run advantage cannot survive public scrutiny."

That is a fancy way of saying that the American people aren't dumb, if someone will tell them the facts. Over time, they catch up with most charlatans. Over time, they support policies which are truly in their self-interest. That is another way of saying that democracy will work, if people will let it.●

## PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control

Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on September 8, 1978.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, Room S-116 in the Capitol.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
*Washington, D.C., September 8, 1978.*
In reply refer to: I-6889/78 ct
Dr. HANS BINNENDIJK,
*Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
*Lieutenant General, USA, Director.*●

## ERA EXTENSION: WHAT THE POLLS SHOW

● Mr. GARN. Mr. President, if House Joint Resolution 638 reaches the floor of the Senate we are sure to hear a lot about the results of this or that poll. In fact, I have already cited a number of polls in this regard in my testimony on extending the period for ratification of the amendment. My testimony was presented before the Subcommittee on the Constitution of the Senate Judiciary Committee and is reprinted in the RECORD of August 7, 1978. One of the major topical headings of that testimony was "Amending the Constitution According to Gallup and Harris." Clearly, polls provide insufficient reason for amending the Constitution, and any attempt to connect polls results with Senate action on constitutional issues must fall flat on its face. I noted, for example, that we are not following the polls showing a majority of the American people favoring a balanced budget, changing the electoral college, limiting congressional terms, and so on.

However, polls serve a certain purpose and, as politicians, it is unlikely that we will ignore them. Therefore, I wish to call the attention of our colleagues to two recent polls regarding extension of the ratification time limit.

The Associated Press-National Broadcasting Co. news poll (AP-NBC) taken in August 1978, showed the following results to this question:

The deadline for States to ratify the Equal Rights Amendment is next March. Do you think that deadline should be extended another 7 years, or don't you think so?

| | Percent |
|---|---|
| Yes—deadline should be extended | 34 |
| No—deadline should not be extended | 55 |
| Not sure | 11 |

The second poll was conducted by Opinion Research Corp. (ORC) Princeton, N.J., and was also done in August. The ORC survey asked the following questions, and produced the results shown:

1. In order to add an amendment to the U.S. Constitution, a resolution must be passed by Congress and then approved by 38 states. As with every other Constitutional amendment in the past 60 years, the Equal Rights Amendment, passed by Congress in 1972, specified that it would become part of the Constitution if the necessary number of states approved it within seven years. The seven year time limit expires next March. Some people now want to extend the time limit for an additional three years and three months so that states that have not yet approved the Equal Rights Amendment might do so.

Do you favor or oppose changing the Equal Rights Amendment resolution order to extend the time for states to approve the Equal Rights Amendment?

| | Percent |
|---|---|
| 1. Favor | 45 |
| 2. Oppose | 39 |
| 3. No opinion | 16 |

2. Some people say that because the average time for approval of the 26 existing amendments to the U.S. Constitution has been one year and four months, and that the longest time ever needed for any amendment was three years and eleven months, the time limit for the Equal Rights Amendment should not be extended beyond seven years.

Other people say that even though ERA has been debated for 6½ years, it still has not had a fair chance to be ratified. Do you feel that ERA has had a fair chance to be ratified or not?

| | Percent |
|---|---|
| 1. Yes, had fair chance | 61 |
| 2. No, did not have fair chance | 26 |
| 3. No opinion | 13 |

3. Among states which have approved ERA are several which originally voted against it. Several other states have changed their votes from approval to disapproval. Some people say that once a state has voted for ERA it should not be permitted later to vote against it. Others say that a state should be permitted to change its vote either way up to the deadline.

Do you favor or oppose a provision that would allow states to change their votes within the specified time limit?

| | Percent |
|---|---|
| 1. Favor | 61 |
| 2. Oppose | 28 |
| 3. No opinion | 11 |

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## THE FEDERAL OIL SHALE COMMERCIALIZATION TEST ACT

● Mr. HASKELL. Mr. President, it is with considerable sadness and disappointment that I take the floor today to report on the Carter administration's lack of response to my bill, S. 419—the Federal Oil Shale Commercialization Test Act.

The Senate passed this legislation on June 27, 1978, by an overwhelming bipartisan vote of 61 to 23. I think it is indicative of the wisdom of and widespread support for this proposal that it passed the Senate by such a margin even while the major components of the President's energy bill were and are locked in controversy. There is a general frustration throughout the land with our inability to arrive at a national energy policy. S. 419 could have constituted a major portion of such a policy—a portion which would emphasize our urgent need for alternative sources of liquid fuels to replace imported foreign petroleum.

I do not think it necessary to elaborate on the need for this legislation. However, I would like to briefly remind my colleagues of the facts.

First, there is no doubt that we do now face and will continue to face a liquid fuel shortage which can either be addressed by imports or alternatives. Oil shale constitutes one of the most attractive of such alternatives.

Second, oil shale is an enormous if not fabulous national resource. Approximately 2 trillion barrels of oil shale are estimated to be contained in deposits lying in Colorado, Utah, and Wyoming. Of this total, an estimated 600 billion barrels, an amount approximately equal to the entire world's known petroleum reserves, is in high grade deposits.

Third, oil shale technology is now at the point where commercial testing should commence. Government tests have shown it can be refined into high quality jet fuel.

Fourth, and perhaps most important, there is no on-going commercial test of oil shale technology in the United States today.

These four basic facts lead to an obvious conclusion—enactment of a program to test the commercial potential of various oil shale processes to determine whether and to what extent oil shale represents a viable alternative source of liquid fuel should be made a high priority goal of this 95th Congress.

Unfortunately, Mr. President, in spite of these facts, the solid support which this bill received in the Senate and a stated willingness on the part of the House Armed Services Committee Subcommittee on Seapower and Strategic and Critical Materials to hold hearings on the bill in the House, the Carter administration has seen fit to obstruct such proper consideration by delaying a response to that subcommittee chairman's, Representative CHARLES E. BENNETT, request for departmental reports on the legislation.

Chairman BENNETT requested reports from the Departments of Defense, Energy, and Interior on July 14, 1978, and has yet to receive any response. On August 17, 1978, I wrote to the Secretaries of these Departments asking that they expedite their responses. One week later, I was personally assured by spokesmen for two of them that the reports would

be forthcoming immediately. None have been received by the subcommittee.

It is obvious that time is now very short and that passage of S. 419 in this Congress is only a slim possibility. It need not have been so. I made every effort to work with the Carter administration throughout the consideration of S. 419 in the Senate. My bill offered a workable oil shale proposal. At the time it was introduced and for a year thereafter, the Carter administration had no alternative oil shale proposal except to rely on a forlorn hope that the world price would stimulate development.

I think it is a shame and a tragedy that, despite professions of extreme interest in a national energy plan, that this administration has not only refused to endorse and assist in the enactment of the Federal Oil Shale Commercialization Test Act, but has obstructed the efforts of its supporters. Perhaps, as our reliance on Arab oil continues to grow and as our balance-of-payments picture continues to darken, the Carter administration will one day wake up to the need to develop alternative sources of liquid fuel such as oil shale. However, should this ever happen, we will have to suffer the consequences of the sorry record of delays which we are now experiencing in this Congress.

Mr. President, I ask that my letters to the Secretaries of Defense, Energy, and Interior be printed in the RECORD at the conclusion of my remarks.

The letters follow:

COMMITTEE ON ENERGY
AND NATURAL RESOURCES,
*Washington, D.C., August 17, 1978.*

Hon. JAMES R. SCHLESINGER,
*The Secretary of Energy,*
*Washington, D.C.*

DEAR MR. SECRETARY: The question of the source of this Nation's future liquid fuel supplies continues to go unanswered. Once the temporary impact of the opening of the Alaska pipeline is absorbed, we will again be on the path of ever increasing reliance on foreign oil.

This dilemma can be partially addressed in various ways, including emphasis on conservation, solar energy, and other new sources of supply. However, the fact remains that liquid fuels will continue to constitute a very significant segment of domestic demand and new sources of liquid fuel supplies must be found.

One potential source of liquid fuels is the vast oil shale deposits in the West. These deposits contain almost twice the total world supply of crude oil in high grade shales alone. Yet, there is not a single on-going commercial test of oil shale technologies in the United States today, almost five years after the OPEC oil embargo.

On June 27, 1978, the Senate took a major step toward remedying this situation. On that day, it passed, by an overwhelming, bipartisan vote of 61–23, the Federal Oil Shale Commercialization Test Act, S. 419.

I introduced this bill in early 1977 at a time when it became clear to me that a Federal program such as the one contained in S. 419 was needed to test our oil shale potential. Although this administration has variously opposed, seemed to endorse and finally apparently become neutral on this legislation, I have been successful in convincing my colleagues in the Senate—on both sides of the aisle—of the need for this bill.

At the present time, the bill rests in two committees of the House of Representatives, the Committee on Armed Services and the Committee on Interior and Insular Affairs. The Chairman of the Subcommittee on Seapower and Strategic and Critical Matters, the Honorable Charles E. Bennett of Florida, has assured me that he will give this legislation an expeditious hearing upon receipt of departmental reports from your department and two others. Although Congressman Bennett requested these reports on July 14, 1978, he has as yet received no response.

I am sure you will recall our conversation of April 26 of this year during which you informed me that the Department of Energy would remain neutral on S. 419.

I hope, however, that you will submit your analysis of the benefits and negative aspects of the program.

Therefore, I urge you to complete the preparation of the requested comments. Without them, it will be very difficult for the Congress to work its will on this important energy legislation.

I hope I can expect a response one week from today.

Sincerely,

FLOYD K. HASKELL,
*U.S. Senator.*

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COMMITTEE ON ENERGY
AND NATURAL RESOURCES,
*Washington, D.C., August 17, 1978.*

Hon. CECIL D. ANDRUS,
*The Secretary of the Interior,*
*Washington, D.C.*

DEAR MR. SECRETARY: The question of the source of this Nation's future liquid fuel supplies continues to go unanswered. Once the temporary impact of the opening of the Alaska pipeline is absorbed, we will again be on the path of ever increasing reliance on foreign oil.

This dilemma can be partially addressed in various ways, including emphasis on conservation, solar energy, and other new sources of supply. However, the fact remains that liquid fuels will continue to constitute a very significant segment of domestic demand and new sources of liquid fuel supplies must be found.

One potential source of liquid fuels is the vast oil shale deposits in the West. These deposits contain almost twice the total world supply of crude oil in high grade shales alone. Yet, there is not a single on-going commercial test of oil shale technologies in the United States today, almost five years after the OPEC oil embargo.

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I am aware that the Department of the Interior opposed S. 419 in 1977. However, since that time virtually all of the items to which the Department objected have been deleted.

In my judgment, it would be in the interest of the Department to endorse S. 419 as an approach to testing oil shale technology which would mesh and not conflict with the Department's existing prototype oil shale leasing program. The program established by S. 419 tests technologies. If these tests prove successful, these technologies can be employed in the development of the leases issued under the Department's program. Moreover, the tests are most likely to occur on the lands of the Naval Oil Shale Reserves and not on public lands—a point to which Interior objected initially.

Therefore, I urge you to reconsider your position on S. 419. It is my firm judgment that such an effort would speed oil shale testing in general and the successful pursuit of the Department's program in particular.

In any event, I ask that the Department complete the preparation of the comments requested by the House committee. Without them, it will be very difficult for the Congress to work its will on this important energy legislation.

I hope I can expect an early response from you regarding my request.

Sincerely,

FLOYD K. HASKELL,
*U.S. Senator.*

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COMMITTEE ON ENERGY
AND NATURAL RESOURCES,
*Washington, D.C., August 17, 1978.*

Hon. HAROLD BROWN,
*The Secretary of Defense,*
*Washington, D.C.*

DEAR MR. SECRETARY: The question of the source of this Nation's future liquid fuel supplies continues to go unanswered. Once the temporary impact of the opening of the Alaska pipeline is absorbed, we will again be on the path of ever increasing reliance on foreign oil.

This dilemma can be partially addressed in various ways, including emphasis on conservation, solar energy, and other new sources of supply. However, the fact remains that liquid fuels will continue to constitute a very significant segment of domestic demand and new sources of liquid fuel supplies must be found.

One potential source of liquid fuels is the vast oil shale deposits in the West. These deposits contain almost twice the total world supply of crude oil in high grade shales alone. Yet, there is not a single on-going commercial test of oil shale technologies in the United States today, almost five years after the OPEC oil embargo.

On June 27, 1978, the Senate took a major step toward remedying this situation. On that day, it passed, by an overwhelming, bipartisan vote of 61–23, the Federal Oil Shale Commercialization Test Act, S. 419.

I introduced this bill in early 1977 at a time when it became clear to me that a Federal program such as the one contained in S. 419 was needed to test our oil shale potential. Although this administration has variously opposed, seemed to endorse and finally apparently become neutral on this legislation, I have been successful in convincing my colleagues in the Senate—on both sides of the aisle—of the need for this bill.

At the present time, the bill rests in two committees of the House of Representatives, the Committee on Armed Services and the Committee on Interior and Insular Affairs. The Chairman of the Subcommittee on Seapower and Strategic and Critical Matters, the Honorable Charles E. Bennett of Florida, has assured me that he will give this legislation an expeditious hearing upon receipt of departmental reports from your department and two others. Although Congressman Bennett requested these reports on July 14, 1978, he has as yet received no response.

The Department of Defense, through the Navy's research arm, has been exploring the jet fuel potential of petroleum produced

from oil shale for some time. It is my understanding that the testing of the first batch of shale oil refined to Navy specifications under this program was very encouraging. The Navy is continuing to test the potential uses of shale oil by refining an additional 100,000 barrels.

However, no matter how promising oil from shale may be as a military fuel, it will be of no value if it cannot be extracted from the rock. Additionally, the Naval oil shale reserves can provide very little in terms of safeguard against a petroleum supply interruption if we do not have the technology to recover it.

Therefore, it appears to me that enactment of S. 419 should be of great interest to the Department of Defense. Whatever your position, I urge you to complete the preparation of the comments requested by the House committee. Without them, it will be very difficult for the Congress to work its will on this important energy legislation.

I hope I can expect a response one week from today.

Sincerely,

FLOYD K. HASKELL,
*U.S. Senator.*●

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CORRECTION OF VOTE—S. 1423

Mr. McGOVERN. Mr. President, on September 7, on final passage of the Judicial Tenure Act, S. 1423, I was recorded as not voting. I was here and cast a "nay" vote. Indeed, my vote was so recorded by the unofficial recorder, Mr. Patrick Hynes, but was missed by the official recording the vote.

I ask unanimous consent, under those circumstances, that my vote be recorded as I voted. I point out that this change will not affect the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, this matter was brought to my attention this afternoon. While it is an extraordinary thing to change a roll call vote, I think it also would be extraordinary not to accept the representations just made by the Senator from South Dakota. Since it does not change the result, since he was kind enough to bring it to our attention before making the request, and since he was in the Chamber and did vote, we have no objection to the RECORD being changed in accordance with the request made by the distinguished Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGOVERN. Mr. President, I thank the distinguished minority leader.

## FEDERAL TRADE COMMISSION AMENDMENTS OF 1977—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, Mr. FORD is about to present a conference report on H.R. 3816. I ask unanimous consent that the time on that conference report, which deals with the Federal Trade Commission Act amendments, be limited overall to not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 3816 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 8, 1978.)

Mr. FORD. Mr. President, this legislation is the result of two extensive conferences. The only significant changes in this legislation from the version that was passed by the Senate by voice on February 22, 1978, are that there is now a two-House legislative veto provision contained in the bill with provision for a Presidential override of such veto and the equitable relief provisions have been deleted. Although the Senate has, in this conference, substantially accommodated the strong views of the House in regard to equitable relief and legislative veto, I still believe that this is a conference report that should receive the support of the Senate.

Mr. President, this conference report, I think, has been cleared on the other side. I do not want to take any more time of the Senate; therefore, I yield back the remainder of my time and move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## SENATOR CHURCH: KUDO OF THE MONTH FOR OLDER AMERICANS

Mr. MELCHER. Mr. President, Senator FRANK CHURCH has served on the Committee on Aging with distinction since it was created in 1961.

During the past 7½ years he has provided superb leadership as its chairman.

He has grappled with important day-to-day issues facing older Americans. These concerns may not always appear on the front pages of newspapers, but they are enormously important for the elderly, including:

Inadequate income in retirement;
Age discrimination in employment;
Quality care in nursing homes;
Gaps in medicare coverage;
Transportation difficulties;
Inflation; and
Tax relief.

He has also proved to be a resourceful and skillful legislator. One measure of his success is that he has never lost a floor amendment for the elderly since being named chairman of the Committee on Aging. And, most of his Senate-passed amendments have become law.

Over the years, he has been instrumental in the drive for many victories for older Americans:

The 20-percent social security increase in 1972;

A cost-of-living adjustment mechanism to make social security inflation-proof for the elderly;

A two-step, 11-percent social security increase in 1974;

Establishment of a community education program to provide recreational, educational, and other community services for the young and old alike;

Numerous improvements to the Older Americans Act;

Improved social security protection for elderly widows;

Expansion of the senior community service employment program to provide increased job opportunities for persons 55 or older in a wide range of fulfilling activities;

Reduced air fares on a space-available basis for older Americans;

Increased tax counseling assistance for elderly taxpayers;

Additional tax relief in taxable year 1976 averaging $182 for 165,000 elderly taxpayers who would be adversely affected because the new tax credit for the elderly replaced the former retirement income credit.

Since being appointed to the Senate Committee on Aging, I have been impressed by Senator CHURCH's leadership, his decency, and his ability to understand complex issues.

Jack Anderson selected Senator CHURCH for his "Kudo of the Month" award in the September edition of 50 Plus, and deservedly so. He describes Senator CHURCH as the "hero of the aging" who "has been doing the kind of legislative job that can have important results for folks over 50."

Mr. President, I ask unanimous consent that the article by Jack Anderson be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

KUDO OF THE MONTH

(By Jack Anderson)

The Kudo of the Month goes to that boyish-looking hero of the aging, Idaho's Senator Frank Church. Like a marshal in the Old West—hard-working, often unappreciated, and without fanfare—he has been doing the kind of unglamorous legislative job that can have important results for folks over 50.

His Special Committee on Aging is taking a hard, close look at the Medigap insurance huckstering that I have described on the opposite page. The investigation could lead to stricter disclosure requirements on insurance policies purporting to supplement Medicare.

Church also held three days of hearings on "The Graying of America." He explored the financial implications of our growing senior citizen population on federal programs.

And, finally, Church has pushed successfully for a White House Conference on Aging to be held in 1981. If past conferences of the elderly are any indication, this won't be just speeches and a Rose Garden ceremony.

## CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 1083, 1084, 1085, 1091, and 1092.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I rise only to advise the distinguished majority leader that the calendar order numbers that he identifies are cleared on our calendar, and we have no objection.

Mr. ROBERT C. BYRD. Mr. President, let me state to the distinguished minority leader that I was in error in respect to order No. 1092. It should have been 1093 instead of 1092; so I make that correction.

The PRESIDING OFFICER. The clerk will report the first measure.

## FEDERAL RECORDS COUNCIL

The bill (H.R. 8112) to repeal chapter 27 of title 44, United States Code, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1160), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of this bill is to abolish the Federal Records Council, as established by the Administrator of General Services Administration, under authority granted in chapter 27 of title 44, United States Code. Additionally, the bill will repeal chapter 27 of the above referenced title.

BACKGROUND

When the Federal Records Council was established in 1950, records management programs were relatively unknown in the Federal Government and it was believed that the Federal Records Council could perform a valuable function by providing direction and leadership in the early stages of records management programs.

The Council was active during the late 1950's and early 1960's but as agencies' records management activities became more sophisticated the Council's direction was no longer necessary. Gradually, the Council's meetings became infrequent and eventually stopped altogether. The Council's inactive status has not hindered advances in record management.

The original language on H.R. 8112 inadvertently failed to delete from the table of chapters of title 44, United States Code, the reference to chapter 27. This technical amendment conforms the table of chapters to reflect the substantive aspect of the bill, deletion of chapter 27 of title 44.

## NATIONAL ARCHIVES TRUST FUND BOARD

The bill (H.R. 12915) to amend sec. 2301 of title 44, relating to the National Archives Trust Fund Board, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1161), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD as follows:

PURPOSE

The purpose of this bill is to amend section 2301 of title 44, United States Code, to fill the existing vacancy on the Trust Fund Board created by the abolition of the Senate Post Office and Civil Service Committee. Additionally, this legislation will replace the congressional representatives on the Board with the Secretary of the Treasury and the Chairman for the National Endowment for the Humanities. These replacements are designed to remove any possible conflict of interest which might arise by having congressional representatives serve on executive branch boards and/or committees.

BACKGROUND

The National Archives Trust Fund Board was established in July 1941 (44 United States Code, sections 2301–2308), to receive and administer gifts or bequests of money, securities, or other personal property, for the benefit of the National Archives.

As a result of several congressional committee reorganizations, the membership of the Board has come to consist of the Archivist of the United States, as Chairman, and the chairman of the House Government Operations Committee and the chairman of the Senate Post Office and Civil Service Committee. However, since the Senate committee no longer exists, one position is vacant.

The legislation was introduced at the request of the Administrator of General Services Administration and has the support of the administration.

## SENATE PAYROLL DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS

The Senate proceeded to consider the bill (S. 2376) to authorize withholding from salaries disbursed by the Secretary of the Senate and the Architect of the Capitol for contributions to certain charitable organizations, which had been reported from the Committee on Governmental Affairs with amendments as follows:

On page 1, line 8, strike "them" and insert "the Secretary or who are employees of the Architect, including employees of the Botanic Garden or the Senate Restaurants";

On page 2, beginning with line 6, strike through and including line 11, and insert in lieu thereof the following:

(2) Upon request by such an individual specifying the amount to be withheld and one Combined Federal Campaign Center in the Washington metropolitan area to receive such amount, the Secretary, the Architect, or any other officer who disburses the pay of such individual, as the case may be, shall—

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) for purposes of this Act, the term—

(1) "Secretary" means the Secretary of the Senate; and

(2) "Architect" means the Architect of the Capitol.

(b)(1) The Secretary and the Architect shall notify individuals whose pay is disbursed by the Secretary or who are employees of the Architect, including employees of the Botanic Garden or the Senate Restaurants of the opportunity to have amounts withheld from their pay pursuant to this section for contribution to national voluntary health and welfare agencies designated by the Chairman of the Civil Service Commission pursuant to Executive Order 10927, dated March 19, 1961.

(2) Upon request by such an individual specifying the amount to be withheld and one Combined Federal Campaign Center in the Washington metropolitan area to receive such amount, the Secretary, the Architect, or any other officer who disburses the pay of such individual, as the case may be, shall—

(A) withhold such amount from the pay of such individual; and

(B) transmit (not less than once each calendar quarter) the amount so withheld to the Combined Federal Campaign Center as specified in such request.

(c) The Secretary and the Architect shall, to the extent practicable, carry out subsection (b) at or about the time of the Combined Federal Campaign and other fundraising in the executive branch of the Federal Government conducted pursuant to Executive Order 10927, dated March 18, 1961, and at such other times as each such officer deems appropriate.

(d)(1) No amount shall be withheld under subsection (b) from the pay of any individual for any pay period if the amount of such pay for such period is less than the sum of—

(A) the amount specified to be withheld from such pay under subsection (b) for such period; plus

(B) the amount of all other withholdings from such pay for such period.

(2) No amount may be specified by an individual to be withheld for any pay period under subsection (b) which is less than—

(A) 50 cents, if the pay period of such individual is biweekly or semimonthly; or

(B) $1, if the pay period of such individual is monthly.

(e) This section imposes no duty, burden, or requirement upon the United States, the Senate, or any officer or employee of the United States, except as specifically provided in this section. Nothing in this section shall be deemed to consent to the application of any provision of law which has the effect of subjecting the United States, the Senate, or any officer or employee of the United States to any penalty or liability by reason of the provisions of this section. Any paper, form, document, or any other item filed with the Secretary under this section is a paper of the Senate within the provisions of rule XXX of the Standing Rules of the Senate.

(f) The Secretary and the Architect are authorized to issue rules and regulations they consider appropriate in carrying out their duties under this section.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third third time, and passed.

The title was amended so as to read:

A bill to authorize withholding from salaries disbursed by the Secretary of the Senate and from certain employees under the jurisdiction of the Architect of the Capitol for contribution to certain charitable organizations.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1162), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of this bill is to authorize withholding from salaries disbursed by the Secretary of the Senate and from salaries of employees of the Architect of the Capitol for contributions to certain charitable organizations associated with the Combined Federal Campaign.

The amendments are technical in nature and are intended to assure that the bill's coverage includes all employees under the jurisdiction of the Architect of the Capitol.

STATEMENT

Executive Order 10927, March 18, 1961, authorized the Civil Service Commission to make arrangements for national voluntary health and welfare agencies to solicit funds from Federal employees and members of the Armed Forces at their places of employment or duty stations. Public Law 87–304, September 26, 1961, provides authority for the head of each department in the executive branch to establish procedures under which employees are permitted to make allotments or assignment from their compensation to be remitted directly to the designated recipient. With regard to the efforts of the Combined Federal Campaign, these procedures are commonly referred to as voluntary payroll deductions.

In contrast to the procedures established in the executive branch, neither the Senate, nor the Architect of the Capitol has established systems by which employees may have amounts voluntarily withheld from their paychecks for the purpose of contribution to the Combined Federal Campaign.

BACKGROUND

The Combined Federal Campaign of the National Capital area is a once-a-year solicitation on behalf of the 120 voluntary health and welfare agencies of the United Way, 11 national health agencies, and 6 international service agencies. The Combined Federal Campaign brings the solicitations of all these charitable agencies together for the benefit of both the charitable agency and the Federal employee.

The provision for voluntary payroll deductions was seen as critically important when the Federal campaigns were authorized by Executive Order 10927, March 18, 1961, to deal in a meaningful way with a growing multiplicity of separate fund drives. It was recognized that a single gift, to replace many gifts, would have to be relatively large, and that a pledge gift paid over time through payroll deductions would be the only way most contributors could give such a large amount. It should be noted that most large employers in metropolitan Washington, provide payroll deduction privileges for employees supporting the Combined Federal Campaign.

The House of Representatives adopted a similar measure earlier this Congress in House Resolution 12 which became effective in January 1978. Under the provisions of that resolution, employees in the House may voluntarily have payroll deductions contributed to the Combined Federal Campaign in the Washington metropolitan area.

## NATIONAL AQUACULTURE POLICY ACT OF 1978

The Senate proceeded to consider the bill (S. 3408) to provide for the development of aquaculture in the United States, and for other purposes, which had been reported from the Committee on Agriculture, Nutrition, and Forestry and the Committee on Commerce, Science, and Transportation, jointly, with an amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VITIATION OF ACTION

Mr. ROBERT C. BYRD subsequently said:

Mr. President, I ask unanimous consent that the action taken on Calendar No. 1091 be vitiated, inasmuch as the measure had not been fully cleared all the way around.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is restored to the Calendar.

## SALT RIVER PIMA-MARICOPA BOUNDARY MODIFICATION

The Senate proceeded to consider the bill (S. 3002) to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes, which had been reported from the Select Committee on Indian Affairs with amendments as follows:

On page 9, line 1, after "Service" insert "Reserve";

On page 9, line 4, strike "southwest" and insert "southeast";

On page 11, line 10, strike "There" and insert "Effective October 1, 1979, there";

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

FINDINGS AND POLICY

SECTION 1. (a) The Congress hereby finds that—

(1) the Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian community to live in peace and prosperity with other persons in Arizona;

(2) at the time of the creation of such reservation, a portion of the south boundary was established to follow the course of the Salt River;

(3) the United States granted patents for, and leaseholds and other interests in, lands adjacent to such boundary for sand and gravel excavation and for other purposes to persons who were not members of such Indian community;

(4) subsequent to the establishment of such boundary, the course of the Salt River shifted, creating uncertainty with respect to the precise location of such boundary; and

(5) by an Executive order, the Secretary of the Interior located and permanently fixed such boundary in a location which included within such reservation, lands for which the United States had previously issued patents, leaseholds, and other interests, causing confusion and an ongoing controversy between such Indian community and persons holding such patents, leaseholds, and other interests.

(b) The Congress hereby declares that it is the policy of the Congress to resolve, without costly and lengthy litigation, the dispute between the Salt River Pima-Maricopa Indian community and the persons referred to in subsection (a)(3) over the location of the south boundary of the Salt River Pima-Maricopa Indian Reservation.

MODIFICATION OF SOUTH BOUNDARY

SEC. 2. The south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona (hereinafter in this Act referred to as the "reservation"), created by the Executive order issued on June 14, 1879, shall be modified in accordance with the provisions of sections 3 and 4 of this Act. Any portion of such boundary established by this Act shall be fixed and permanent and not ambulatory.

RESERVATION LANDS

SEC. 3. (a)(1) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire by purchase or condemnation the lands described in paragraph (2). Upon acquisition, such lands shall be added to the reservation. The acquisition of lands under this subsection, and payment for such lands under section 5(b) of this Act; shall be deemed to have been pursuant to condemnation by the United States.

(2) The lands authorized to be acquired in paragraph (1) are located in township 1 north, range 5 east, Gila and Salt River base and meridian, Arizona, and are those portions of the land in—

(A) the south half of the southeast quarter of section 8 of such township, and range;

(B) the south half of the southwest quarter of section 8 of such township, and range; and

(C) the southwest quarter of the southeast quarter of section 4 of such township and range;

which lie north of the boundary line representing the middle of the south channel of the Salt River and the south boundary of the Salt River Indian Reservation as shown of record on a map entitled "Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Arizona, Dependent Resurvey and

Survey of the South Boundary of Salt River Indian Reservation" which consists of four sheets, dated August 17, 1972, and is on file and available for public inspection at the Department of Interior, Bureau of Land Management, Washington, District of Columbia.

(b) Upon the acquisition of the lands described in subsection (a), the reservation shall include all lands in township 1 north, range 5 east, Gila and Salt River base and meridian, Arizona, lying north of that boundary line representing the middle of the south channel of the Salt River and the south boundary of the Salt River Indian Reservation as shown of record on the map referred to in subsection (a)(2), except for any portion of the following parcels of land:

(1) the north half of the northwest quarter of section 18 of such township and range;

(2) the north half of the northeast quarter of section 18 of such township and range;

(3) the north half of the southeast quarter of the northeast quarter of section 8 of such township and range;

(4) the northwest quarter of the northwest quarter of section 9 of such township and range;

(5) the northeast quarter of the northwest quarter of section 9 of such township and range;

(6) the southeast quarter of the northwest quarter of section 3 of such township and range;

(7) the north half of the north half of the southwest quarter of section 3 of such township and range;

(8) the southwest quarter of the northeast quarter of section 3 of such township and range; and

(9) the northeast quarter of the northeast quarter of section 3 of such township and range.

(c) The boundary of the reservation shall be extended to include the following parcels of land:

(1) in township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona—

(A) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and a line parallel to and 150 feet north of the concrete canal lining on the northerly edge of the South Canal within the west 1,000 feet of section 13 of such township and range;

(B) any portion of the southeast quarter of the southeast quarter of section 14 of such township and range lying south and east of the reservation boundary created by the Executive order issued on June 14, 1879, as amended;

(C) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended and a line parallel to and 150 feet north of the top of the concrete canal lining on the northerly edge of the South Canal in sections 24, 23, 22, and 27 of such township and range and the east half of sections 28 of such township and range, except for approximately 16 acres of land described as that part of the west half of the southwest quarter of section 27 of such township and range lying north of the South Canal;

(D) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and the north line of the south half of the southwest quarter of section 28 of such township and range;

(E) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and the north line of the south half of the south half of sections 29 and 30 of such township and range; and

(F) the north 600 feet of the Granite Reef Reserve in lots 2 and 3 of section 13 of such township and range; and

(2) in township 2 north, range 5 east, Gila and Salt River base and meridian, Arizona, the south 450 feet of the Evergreen Reserve in the west half of the northwest quarter of the northwest quarter of the southeast quarter of section 23.

(d) Any lands added to the reservation under this Act shall become a part of the reservation in all respects and upon all the same terms as if such lands had been included in the Executive order issued by the President on June 14, 1879, as amended, except that such lands shall remain tribal lands and shall not be subject to allotment to individual Indians.

STATUS OF ARIZONA CANAL AND OTHER RECLAMATION PROJECT LANDS

SEC. 4. (a) The United States shall have, free of any claim of Indian title or trusteeship by the Salt River Pima-Maricopa Indian community, all rights and interests in, and absolute and unqualified title to, the following parcels of land:

(1) those portions of the Arizona Canal right-of-way within the exterior boundaries of the Salt River Indian Reservation as defined by the March 29, 1913, accepted United States general land office resurveys of township 2 north, range 5 east and township 2 north, range 6 east of the Gila and Salt River base and meridian, Arizona, and supplemental surveys dated September 30, 1924, plats of which are of record in the Arizona State Office of the Bureau of Land Management, United States Department of the Interior, Phoenix, Arizona;

(2) that portion of the reservation in section 13, township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona, lying between the southerly prolongation of the west line of lot 2 and the southerly prolongation of the east line of lot 3 of section 13 and lying between the southerly boundaries of lots 2 and 3 and the southerly reservation boundary created by the Executive order issued on June 14, 1879, as amended;

(3) United States Reclamation Service Reserve (Granite Reef), which consists of lots 2 and 3 in section 13, township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona, except the north 600 feet of such lots 2 and 3, title to which has been confirmed in the United States for the benefit of the Salt River Pima-Maricopa Indian community; and

(4) United States Reclamation Service Reserve (Evergreen), which consists of lot 9 and the west half of the northwest quarter of the northwest quarter of the southeast quarter of section 23, township 2 north, range 5 east, Gila and Salt River base and meridian, Arizona, except the south 450 feet of such Reserve, title to which has been confirmed in the United States for the benefit of the Salt River Pima-Maricopa Indian community.

(b) The reservation boundary shall be modified to exclude from the reservation the parcels of land described in paragraphs (1) through (4) of subsection (a).

COMPENSATION

SEC. 5. (a)(1) The Secretary shall determine the fair market value of those portions of the parcels of land described in paragraphs (1) through (9) of section 3(b) of this Act which lie north of the boundary line referred to in section 3(b) of this Act, and shall pay an amount equal to such fair market value or $1,964,520, whichever is greater, to the Salt River Pima-Maricopa Indian community.

(2) Acceptance of the payment described in paragraph (1) shall constitute a complete release and satisfaction of any claim which the Salt River Pima-Maricopa Indian community may have against the United States or holder of any interest with respect to any right, title, or interest in any portion of the parcels of land described in paragraphs (1) through (9) of section 3(b) of this Act which are located north of the boundary line referred to in section 3(b) of this Act.

(b)(1) Except as otherwise provided in paragraph (2), the Secretary shall determine the fair market value of each parcel of land acquired by the United States and added to the Reservation pursuant to section 3(a)(1) of this Act, and shall pay an amount equal to such fair market value to the owner, under a patent issued by the United States, of such parcel.

(2) If the aggregate of all amounts to be paid under paragraph (1) is less than the sum of $1,951,740, in lieu of such payments under paragraph (1), the Secretary shall pay such sum to the owners, under patents issued by the United States, of the parcels of land acquired by the United States and added to the reservation pursuant to section 3(a)(1) of this Act. In determining the amount of any payment to any person under this paragraph with respect to such parcels of land, the proportion of the amount of the payment to any person to $1,951,740 shall be equal to the proportion of the amount of the acreage of such parcel which such persons owns, under a patent issued by the United States, to the total acreage of such parcels.

(3) Acceptance of the payment described in paragraph (1) or (2) by any person shall constitute a complete release and satisfaction of any claim which such person may have against the United States, the Salt River Pima-Maricopa Indian community, or holder of any interest with respect to any right, title, or interest in any portion of the parcels of land described in subparagraphs (A), (B), or (C) of section 3(a)(2) of this Act which are located north of the boundary line referred to in section 3(a)(2) of this Act.

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 6. Effective October 1, 1979, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1170), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE MEASURE

The purpose of S. 3002 is to settle a dispute regarding the location of a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and to establish as fixed and permanent the south boundary of that reservation.

The legislation would ratify an agreement reached among the Salt River Pima-Maricopa Indian Community, the United States, the Salt River Valley Water User's Association, and the Salt River Project Agricultural Improvement and Power District. It would provide compensation consisting of money and land to the Salt River Indian Community for the loss of certain reservation lands transferred to non-Indian title. It would also provide monetary compensation to those pri-

vate landowners whose lands are to be added to the Salt River Reservation as part of this agreement. The bill will thus avoid protracted and costly litigation now pending among the parties.

BACKGROUND AND NEED

OVERVIEW

The Salt River Pima-Maricopa Indian Reservation was established by Executive order on June 14, 1879. Subsequent executive orders in 1910 and 1911 enlarged the reservation to its present size of 49,294 acres, which is nearly evenly divided between tribally owned trust land and individually allotted trust land. The reservation supports an Indian population of some 2,500. The urban centers of Phoenix and Scottsdale lie immediately adjacent to the west of the reservation, and the city of Mesa lies immediately south of the reservation's southern boundary.

When the reservation was created, a portion of its southern boundary was defined as the middle of the stream bed of the Salt River. Since 1879, the river has changed course, and another channel has been formed. Upstream, it has been increasingly diverted, causing its stream beds to become dry most of the year, thereby allowing access for the removal of quantities of sand and gravel.

Two subsequent Federal surveys in 1888 and 1910 established the southern boundary of the reservation as the center of the northern channel of the Salt River. The Federal Government declared those lands south of the surveyed boundary to be public land open for entry, and numerous patents and leaseholds were issued to non-Indian individuals and entities. Permits and rights-of-way were also granted to both public and private parties.

The surveys of 1888 and 1910 have always been questioned by the Indian community. In response to a request by the tribe, an Opinion of the Solicitor of the Department of the Interior dated January 17, 1969 established the southern boundary of the reservation as the middle of the south channel of the Salt River. Finally, in 1972, the Bureau of Land Management's Department of Cadastral Surveys located the southern boundary of the reservation as the lowest point of the south channel of the Salt River. Confusion has arisen as a result of these differing boundary interpretations.

That confusion resulted in the filing on July 17, 1972, in the U.S. District Court in Phoenix, Ariz., of an action in trespass by the Salt River Indian Community (Community) against the Salt River Valley Water User's Association (Association). The Association, an Arizona corporation, is the agent of the Salt River Project Agricultural Improvement and Power District (District), a political subdivision of the State of Arizona. The Association and the District are both a part of the Salt River Project, a Federal reclamation project operating adjacent to the south boundary of the Salt River Reservation.

The District and the Association, in a separate action in the U.S. District Court in Phoenix, filed in 1974, responded to the Secretary of the Interior, alleging that the Bureau of Land Management's 1972 survey was erroneous. The actions were consolidated and on August 16, 1976 the court found for the Secretary of the Interior on the issue of the validity of the survey. The issue of damages to the Community is pending. Approximately $109,000—revenues from sand and gravel leases received by the Community from the Allied Concrete and Material Company—is being held by the court pending final determination of the boundary dispute.

Litigation continued with the filing of a complaint on April 22, 1974, amended on June 3 and July 24, 1974, by the Community against the District, the Association, the Secretary of the Interior, the Federal Power Commission, and the United States, alleging that portion of the Granite Reef Dam, the Arizona Canal, and a 69/12 KV power transmission line constituted trespasses by the District, the Association, and the United States, and as such they were liable in damages. The complaint was dismissed on March 21, 1975, but the Community appealed that portion of the judgment regarding the Arizona Canal and Granite Reef Dam to the Ninth Circuit Court of Appeals on April 16, 1975. Briefs have been filed and oral arguments are pending.

In an administrative action, the Community filed a petition on March 3, 1975 with the Federal Power Commission, seeking cancellation of the license by which the District operates the 69/12 KV power line mentioned above, on the basis that the Commission does not have jurisdiction to license, and that the terms of the license have been breached. The presiding Administrative Law Judge found for the Community, but refused to cancel the license until a valid right-of-way had been arranged. All parties have taken exception to this ruling.

In a corollary matter which may have bearing for the District and the Association, the United States brought an action on August 23, 1976 in the U.S. District Court in Phoenix to condemn some 82 acres of reservation land to construct the Salt River Siphon, a part of the Central Arizona project. The community asserted in its response that the Congress must authorize the condemnation and that the Secretary of the Interior has not complied with the National Environmental Policy Act and Federal reclamation laws.

On August 25, 1976, the Community responded with a suit against the Secretary of the Interior and Bureau of Reclamation, seeking to enjoin construction of the Granite Reef Aqueduct and the Salt River Siphon, alleging that the defendants had failed to comply with the National Environmental Policy Act and certain Federal reclamation laws. A temporary restraining order has been stipulated to by the parties and no hearing has yet been held on the preliminary injunction.

THE SETTLEMENT

After extensive negotiations, on December 22, 1976, a settlement was reached among the parties (see Appendix for full text of this settlement). Briefly, the settlement recognizes that the United States holds fee title to the Granite Reef Dam, the Granite Reef Reserve, the Evergreen Reserve, and the Arizona Canal, free of Indian title, and that the United States has authorized the Association and the District to exercise exclusive jurisdiction for purposes of reclamation over this property and those facilities. It further agrees that the Community stipulates to the reversal of its appeal and the filing of a counterclaim by the United States to quiet title to the Arizona Canal and the Granite Reef Dam in the action on appeal before the Ninth Circuit Court of Appeals, Docket No. 75-2248. The Community further grants rights-of-way for the existing 69/12 KV power transmission line and agrees to an appropriate conclusion of the action pending before the Federal Power Commission.

The Community will also abandon its claim for damages and conclude the litigation in the matter filed in U.S. District Court on July 17, 1972; it will further withdraw its defenses in the condemnation action filed by the United States on August 23, 1976, Docket No. CIV 76-588; and it will abandon its injunction action against the Secretary of the Interior and others in the matter filed on August 25, 1976, Docket No. CIV 76-601.

The Community will grant the District an easement for a proposed 230 KV electric power line across the reservation; and it will grant to the Salt River Project a 50 year lease to 80 acres of sand and gravel land for extraction and sanitary landfill purposes. It also will grant a lease to the Salt River Project for refuse dumping purposes, and, along with the District, will make diligent good faith efforts to bring about the filing of a Cadastral survey of certain reclamation withdrawn lands in dispute.

THE LEGISLATION

S. 3002 will resolve the boundary dispute and provide compensation to both the Indian Community and those private landowners whose land will now become part of the reservation. Specific monetary amounts are authorized, and fair market values will be utilized to determine the exact rate of compensation for both the tribe and the non-Indians. It gives clear title to those lands in dispute in the trespass litigation between the tribe and the Salt River Project, as described in Section 4 of the bill.

This legislation also modifies the Executive Order of June 14, 1879, by the inclusion of the additional land now to become a part of the south boundary of the reservation. Section 3 specifically describes the land, and provides an exact description of the location of the boundary in the riverbed. It should be noted that the comment of the Department of the Interior with respect to retroactive inclusion of the lands in this settlement (see sections 3(c) and 3(d)), as part of the original reservation will constitute a full release and satisfaction of any claim for the depletion of these lands through sand and gravel extraction. This is accomplished by payment of fair market value as provided in Section 5(a).

LEGISLATIVE HISTORY

S. 3002 was introduced by Senator Goldwater on April 27, 1978. A similar measure, H.R. 12344, was introduced on April 25, 1978 by Mr. Rhodes, for himself and Mr. Stump, Mr. Rudd, and Mr. Udall. A joint hearing was held by the House Subcommittee on Indian Affairs and Public Lands and the Senate Select Committee on Indian Affairs on July 14, 1978. Mr. Goldwater, Mr. Rhodes, representatives of the City of Mesa, Arizona, the President of the Salt River Pima-Maricopa Indian Community, and the Director of Government Relations for the Salt River Project all testified in favor of the legislation.

On July 26, 1978, the full committee of the House on Interior and Insular Affairs ordered the bill reported. A legislative report was filed August 16, 1978.

## VICTIMS OF CRIME ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 895 with the understanding that no more than 30 minutes would be needed overall thereon, to be under the control of Mr. KENNEDY and the minority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 551) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Victims of Crime Act of 1978".

ADMINISTRATION

SEC. 2. (a) The Attorney General of the United States (hereinafter referred to as the "Attorney General") shall administer the provisions of this Act. The Attorney General shall not delegate primary responsibility for administering the provisions of this Act unless such delegation is made to an individual who is compensated at the rate provided for level II, III, IV, or V of the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code.

(b) There is established an Advisory Committee on Victims of Crime (hereinafter referred to as the "Committee") which shall advice the Attorney General with respect to the administration of this Act and the compensation of victims of crime. The Committee shall consist of nine members, one of whom shall be designated the Chairman, all appointed by the Attorney General. Seven members of the Committee shall be officials of qualifying State programs. The Committee shall meet at least two times each year, and at such other times as the Attorney General may direct. The term of office for each member of the Committee shall be one year. The Committee shall exist for a period of three years from the date of its establishment.

(c) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel and transportation expenses, including per diem allowance, in the same manner and to the same extent as persons employed intermittently in the Government service are allowed travel and transportation expenses under subchapter I of chapter 57 of title 5, United States Code.

POWERS OF THE ATTORNEY GENERAL

SEC. 3. (a) Subject to the availability of amounts appropriated, the Attorney General shall make an annual grant and may make supplemental grants for compensation of victims of crime to each State program that qualifies under section 4. Except as provided in section 5, the grants made to a qualifying State program under this Act with respect to a Federal fiscal year shall equal—

(1) 100 per centum of the then current cost, as determined by the Attorney General, of paying compensation for personal injury or death for such fiscal year for qualifying crimes that are described in section 7(8)(B); and

(2) 25 per centum of the then current cost, as determined by the Attorney General, of paying compensation for personal injury or death for such fiscal year for qualifying crimes that are described in section 7(8)(A).

Grants under this section may be made in advance or by way of reimbursement. The Attorney General shall not have the power to modify the disposition of any individual claim that has been processed by any State program.

(b) For the purpose of carrying out the provisions of this Act, the Attorney General is authorized to—

(1) promulgate such rules, regulations, and procedures as are necessary to carry out the provisions of this Act, including rules and regulations regarding the data to be kept by State programs receiving funds under this Act and the manner in which these data shall be reported to the Attorney General; and

(2) approve in whole or in part, or deny, any application for an annual or supplemental grant under this Act.

QUALIFICATIONS OF STATE PROGRAMS

SEC. 4. A State proposing to receive payments to carry out a State program under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General shall prescribe by regulation. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program substantially complies with the following criteria:

(1) The program offers—

(A) compensation for personal injury to any individual who suffers personal injury that is the result of a qualifying crime; and

(B) compensation for death to any surviving dependent of any individual whose death is the result of a qualifying crime.

(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

(3) The program requires as a condition for compensation that claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.

(4) The program does not have a limitation based on the financial means of the victim or any surviving dependent.

(5) There is in effect in the State a requirement that appropriate law enforcement agencies and officials exercise reasonable care to insure that victims of qualifying crimes are informed of—

(A) the existence of a State program of compensation for injuries sustained by victims; and

(B) the procedure for applying for compensation under that program.

(6) There is in effect in the State a law or rule that the State is subrogated to any right of action the victim, or a dependent of the victim, has against the perpetrator of the qualifying crime for personal injury or death resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the program.

(7) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefits prior to the occurrence of the qualifying crime that gave rise to the claim.

(8) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

(9) There is in effect in the State a law or rule that, in addition to or in lieu of any other penalty, a perpetrator of a crime may be required to make restitution to any victim or any surviving dependent of any victim for that crime.

(10) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

LIMITATIONS ON FEDERAL GRANTS

SEC. 5. In computing the annual cost of a qualifying State program for the purpose of establishing the amount of Federal grants under section 3, there shall be excluded from such cost any amount for administrative expenses incurred in carrying out the program, any amount for which the program has received proceeds pursuant to section 4(6) or for which the victim or any dependent has received restitution pursuant to section 4(9), and any amount representing State compensation awards—

(1) for pain and suffering;

(2) for property loss;

(3) to the extent the amount of any award to a victim, or the aggregate amount of any awards to the surviving dependents of a victim with respect to such victim, exceeds $50,000.

(4) to any claimant who is entitled to receive compensation for personal injury or death from any source, other than from a compensation program assisted under this Act or from the perpetrator of the qualifying crime, up to the amount of that compensation;

(5) to any claimant whose award would be for an amount less than $100 or for lost earnings or loss of support computed on the basis of less than five work days;

(6) to the extent the amount of any award for loss of earnings to a victim, or the aggregate amount of any awards for loss of support to the surviving dependents of a victim with respect to such victim, exceeds $200 per week;

(7) to any claimant who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure to file has been found by the appropriate State agency; and

(8) to any claimant who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure to report has been found by the appropriate State agency.

REPORT OF THE ATTORNEY GENERAL

SEC. 6. Not later than one hundred and thirty-five days after the end of each Federal fiscal year in which grants were made to State programs under this Act, the Attorney General shall submit a report to the House and Senate Committees on the Judiciary. The report shall include—

(1) with regard to each qualifying State program—

(A) the number of persons compensated;

(B) a statistical presentation of—

(i) the kinds and corresponding amounts of loss compensated;

(ii) the range in monetary value of claims awarded;

(iii) the reasons for denial of claims; and

(iv) the types of crimes that resulted in claims;

(C) a description of the administrative mechanisms and procedures used in processing claims, including claims for emergency assistance if the program provides for such assistance;

(D) the time required to process claims, including claims for emergency assistance if the program provides for such assistance;

(E) efforts made to publicize the program;

(F) administrative expenses; and

(G) the number of qualifying crimes described in paragraph (8)(B) of section 7 that were compensated; and

(2) with regard to the activities of the Attorney General in carrying out the provisions of this Act—

(A) an itemized statement of grants and expenditures;

(B) copies of all rules promulgated pursuant to section 3(b); and

(C) projected expenditures for the Federal fiscal year in which the report is required to be submitted.

DEFINITIONS

SEC. 7. As used in this Act—

(1) "administrative expenses" includes any fee awarded by the State agency administering a State compensation program to any claimant's attorney, if such fee is paid in addition to, and not out of, the amount of compensation awarded to such claimant;

(2) "claim" means a written request to a State compensation program for compensation for personal injury or death made by or on behalf of a victim, or any surviving dependent of a victim, of a qualifying crime;

(3) "compensation for death" means compensation for loss that is the result of death caused by a qualifying crime, including—

(A) all appropriate and reasonable expenses necessarily incurred for funeral and burial expenses; and

(B) loss of support to any dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the

dependency would have existed but for the death of the victim;

(4) "compensation for personal injury" means compensation for loss that is the result of personal injury caused by a qualifying crime, including—

(A) all appropriate and reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the appropriate State agency;

(B) all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

(C) loss of past and anticipated future earnings;

(5) "dependent" means, with respect to any State compensation program, any dependent as defined by such State for purposes of such program;

(6) "personal injury" means, with respect to any State compensation program, personal injury occurring in such State as defined by that State for the purposes of such program;

(7) "property loss" does not include expenses incurred for medical, dental, surgical, or prosthetic services and devices;

(8) "qualifying crime" means—

(A) any act or omission that is criminally punishable under any statute of a State and that such State designates as appropriate for compensation under its program; or

(B) any act or omission that would be a qualifying crime under subparagraph (A) except for the fact that such act or omission is subject to exclusive Federal jurisdiction; and

(9) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

AUTHORIZATION

SEC. 8. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $40,000,000 for the fiscal year ending September 30, 1979; $50,000,000 for the fiscal year ending September 30, 1980; and $60,000,000 for the fiscal year ending September 30, 1981.

EFFECTIVE DATE

SEC. 9. This Act shall be effective on the date of enactment, except that section 2(b) of the Act shall take effect six months after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, one issue which has concerned every Member of this Chamber at one time or another is the problem of crime in our Nation. While we may not always agree on how best to resolve that problem, we have all attempted to deal with the complexities of this issue.

We have all felt the rippling effect crime has upon the citizens of this country. We have recognized its devastating effect on the fabric of our society. We have witnessed how it has eroded our security, heightened our fears, and violated our lives.

Our attempts to deal with this serious problem have spanned a broad range of efforts. We have enacted laws which provide strict penalties for criminal activity. We have provided increased law enforcement resources to detect, prevent, and prosecute offenders. We have established programs which, indirectly at least, attempt to deal with the root causes of crime. We have set up agencies to make funds available to assist all levels of the criminal justice system. And we have spent hundreds of millions of dollars on the care, treatment, and rehabilitation of offenders in the hope that they might become productive and law-abiding members of our society.

Our attention has been focused on the needs of the criminal justice system on the one hand, and on the needs of the criminal offender on the other. These efforts, however, have almost completely failed to give anything but nominal recognition to victims of crime. Granted, some efforts have been made: Restitution programs have been set up, victimization surveys have been conducted, rape crisis centers have been established, and witness assistance programs have been initiated. These programs, as laudable as their goals and purposes are, have generally been fragmented overburdened and understaffed. They have tended to serve only a very miniscule portion of the victim population in isolated geographic areas.

I do not mean to criticize these programs, nor do I mean to disparage their efforts or belittle their achievements. My point simply is this: there are literally hundreds of thousands of victims of personal crimes that we have completely forgotten and totally ignored. These people have become victims, because our society and this Nation have been frustrated in their attempts to deal with the crime problem. These people are victims, because we have been totally unable to prevent crime, to deter criminals, and to provide a safe environment for all citizens to live in.

A crime-free society may always remain a dream, but this reality should not lessen our efforts to achieve this ideal. Crime should not be the price of progress and development in a civilized society. But if it is in fact the price that must be paid, that price should not be borne solely and disproportionately by innocent victims of those crimes. There is no logical, social, political, or human reason why a citizen who is assaulted, brutalized, injured, or maimed as a result of a criminal act should be required to bear the economic burden resulting from medical expenses and lost wages in addition to the physical suffering and property loss.

Mr. President, a recent study funded by LEAA noted that each year there are nearly 6 million victimizations involving contact with the criminal; 38 percent (2,271,880) of the cases involve instances where the victim was attacked; 27 percent (1,589,832) of these cases involve injury to the victim; 10 percent (580,505) of those injured required medical attention; and 7 percent (428,390) required hospital treatment. Many of those who were injured and received treatment were covered by some type of medical insurance, but 76,696 of the victims had unreimbursed medical expenses amounting to $22,575,545, which they had to bear themselves.

Seventy-five percent (57,520) had unreimbursed medical expenses of less than $100. The remaining 25 percent of the victims (919,176), however, had unreimbursed medical expenses which amounted to 91 percent of the total amount of unreimbursed medical expenses ($20,523,296). What is even more striking is that 2 percent (1,716) of this victim group had to personally absorb 46 percent ($10,296,000) of the unreimbursed medical costs. These figures demonstrate unequivocally the unequal price victims of crime must pay for being an innocent victim.

There is another side to our responsibility for trying in someway to make the victim of a crime whole again. Without their cooperation in reporting, identifying, apprehending, and testifying against the perpetrator, the law enforcement task would be impossible to perform. Regardless of the reasons for their cooperation, the victim's cooperation in bringing a criminal to justice and getting the perpetrator off the streets is an indispensible function of the criminal justice system. It is their assistance which makes our society just a little safer—a benefit we all share in. Is it fair by any imaginable standard then that we require these same victims to bear the economic burden resulting from lost earnings and medical expenses?

Mr. President, a number of States have already begun addressing this problem and providing assistance to crime victims. Many of these programs have operated successfully for a number of years. My own State, Massachusetts, initiated a program 10 years ago. Last year, the program distributed nearly $1 million to victims of crime for unreimbursed medical expenses and lost earnings. Let me take just a few more minutes and tell you about some of the people helped by this program:

Bill D., a 23-year-old trucking company employee, earned $120 a week. He used $75 of his take-home pay to take care of his father, who had polio, his mother, who had lost one of her hands, and his brother, who had cerebral palsy. On October 10, 1977, Bill was driving down a road and was stopped by a man who Bill thought wanted directions. The man grabbed Bill, pulled him out of the car, stabbed him to death and stole what little money he had. Bill's family received the maximum award of $10,000 which helped them to begin a new life without Bill.

Fred W., owned and operated a small liquor store. On Christmas Eve of last year, he left the store to deposit the store's daily receipts, and then he planned to go home and celebrate the holidays with his elderly wife. As he got in his car, a man approached him, attempted to rob him, and shot him to death. Fred's widow received an award of $10,000, which helped her to pay burial expenses as well as provide her with a minimum of financial support.

Robert O., was a 29-year-old high school teacher. Early one morning a man pounded on the door of his house and identified himself as a police officer. Robert opened the door, and two men rushed in, shot him in the head, and robbed him. As a result of this attack, Robert is now paralyzed from the waist down, and has suffered permanent brain damage which caused him to lose his teaching job. He received $10,000 from

the program which helped to defray medical expenses and to pay for intensive physical therapy.

Eleanor C., a 75-year-old resident of Boston, was walking down the street one day when she was assaulted and robbed. She suffered broken bones in her face, hand, and shoulder, and was knocked unconscious. After her hospitalization, she needed nursing assistance at home and transportation to and from the hospital where she went for therapy. None of these latter costs were covered by medicare, and the Massachusetts program awarded her $650 for these expenses.

Allieu M., a world-ranked marathoner, was assaulted one day while training by six people merely because he was black. He suffered serious injury in addition to having his teeth kicked out. He did not have any medical insurance, and his $2,500 in medical expenses were covered under the program.

Paul K., a truckdriver for a Boston newspaper, was robbed, shot, and stabbed one day while working. He had $7,000 in medical expenses which were paid by insurance, but lost over $6,400 which was not covered by workmen's compensation. The program reimbursed him for his lost earnings.

These are just a few of the many examples which I could relate to you about the victims which our program has helped. I am sure that these examples could be multiplied by every Senator whose State has a similar program.

Recently my staff completed a study of existing victim compensation programs throughout the country which showed that nearly $17.5 million had been provided for crime victims. Under the provisions of S. 551, the Federal share for these programs would have been approximately $4.4 million, far less than is presently authorized for the program. The following table provides a detailed breakdown of each of the State programs which have existed for more than 1 fiscal year, the total program costs, the total amount of payments to victims, and the total administrative costs. I have also included the ratio of administrative costs to total program costs which clearly shows that the States are operating their own programs very efficiently.

| State and budget year dates | Percent | Total administrative expenses | Total payments to victims | Total program costs |
|---|---|---|---|---|
| Maryland: | | | | |
| June 30, 1977 to July 1, 1978 | 11 | $139,122.00 | $1,133,383.00 | $1,272,505.00 |
| Delaware: | | | | |
| July 1, 1977 to June 30, 1978 | 37 | 87,941.82 | 146,872.92 | 234,814.74 |
| Virginia: | | | | |
| July 1, 1977 to June 30, 1978 | 23 | 31,076.10 | 103,268.83 | 134,344.93 |
| New York: | | | | |
| Apr. 1, 1977 to Mar. 31, 1978 | 15 | 739,317.00 | 4,313,078.00 | 5,052,395.00 |
| New Jersey: | | | | |
| July 1, 1977 to June 30, 1978 | 15 | 167,298.00 | 919,046.11 | 1,086,354.11 |
| Ohio: | | | | |
| July 1, 1977 to June 30, 1978 | 20 | 316,326.54 | 1,242,753.00 | 1,559,079.54 |
| Pennsylvania: | | | | |
| July 1, 1977 to June 30, 1978 | 24 | 237,586.00 | 746,320.00 | 983,906.00 |
| Wisconsin: | | | | |
| Jan. 1, 1977 to Dec. 31, 1977 | 22 | 56,201.35 | 201,912.31 | 258,113.66 |
| Kentucky: | | | | |
| June 30, 1977 to July 1, 1978 | 27 | [1] 24,417.15 | 66,902.16 | 91,319.31 |
| Minnesota: | | | | |
| July 1, 1976 to June 30, 1977 | 15 | 40,860.00 | 224,278.34 | 265,138.34 |
| North Dakota: | | | | |
| July 1, 1976 to June 30, 1977 | 39 | $16,567.24 | $26,161.22 | $42,728.46 |
| Washington: | | | | |
| July 1, 1977 to June 30, 1978 | 14 | 155,925.00 | 983,610.00 | 1,139,535.00 |
| California: | | | | |
| July 1, 1977 to June 30, 1978 | 15 | 867,306.96 | 5,025,288.84 | 5,892,595.80 |
| Alaska: | | | | |
| July 1, 1976 to June 30, 1977 | 20 | 74,985,31 | 120,968.07 | 195,953.38 |
| Massachusetts: | | | | |
| July 1, 1977 to June 30, 1978 | | [2] NA | 915,391.78 | NA |
| Hawaii: | | | | |
| Jan. 1, 1977 to Dec. 31, 1977 | 20 | 56,944.00 | 223,863.55 | 280,807.55 |
| Illinois: | | | | |
| June 30, 1977 to July 1, 1978 | | [2] NA | 1,082,214.26 | NA |
| Total payments to victims | | | 17,475,312.39 | |
| 25 percent Federal share | | | 4,368,828.10 | |

[1] Cost of claim investigators only. Total administrative cost combines victim compensations and Board of Claims—$248,665.98. Breakdown not available.

[2] Administrative costs combine Attorney General's office, Court of Claims and victim compensation program. Breakdown not available.

Note: Florida program established January 1978. Michigan program established October 1977. Oregon program established January 1978 (victim payments $126,000 to date). Tennessee program established July 1978. Indiana program established June 1978. Kansas program established August 1978. Nevada has a "good samaritan" policy where the victim is awarded compensation only if he was harmed while attempting to prevent a crime. Last fiscal year (June 30, 1977 to July 1, 1978) there was only 1 award amounting to $5,000.

Mr. President, I would be hard pressed to think of a better example of money well spent. In many instances, especially in the case of elderly victims which has deeply concerned me for many years, the assistance provided by these State programs was the difference between financial security and severe economic hardship. In the amendment which my distinguished colleagues, the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Wyoming (Mr. WALLOP), and I have introduced, special emphasis was placed on the elderly crime victim. We have included a provision which allows the States to waive the deductible provisions in instances where the crime victim is an elderly person. It is our strong desire and fervent hope that the several States will adopt this measure and take special care of our senior citizens who are not only more susceptible to becoming a crime victim but also more likely to suffer serious injury and severe financial hardship as a result of the crime.

Mr. President, S. 551 is the culmination of years of effort and concern for the forgotten victims of crime. Our work today stands as a special tribute to the man who spearheaded that effort and kept that concern alive. I am speaking, of course, of the former Senator from Minnesota, Mr. Humphrey, whose entire life and work was epitomized by a sense of human caring which continues to permeate this Chamber and inspire us all. It is principally because of his tireless efforts and because of his genuine concern that this important legislation has come to fruition. It is indeed sad that he cannot be here today to see the results of his dedication. But the challenge and inspiration he has left as his legacy certainly are present. It is that influence which has guided us in the past and brings us together today to act upon this legislation.

I urge all of my colleagues to join with us in adopting this legislation.

Mr. MATSUNAGA. Mr. President, I rise in support of S. 551, the proposed Victims of Crime Act of 1978, and urge my colleagues to join me in support of this important measure.

Mr. President, the enactment of the legislation before the Senate today designed to provide Federal assistance to the States for the purpose of compensating victims of crime is long overdue. As my colleagues well know, the Senate has long supported the idea of compensating victims of violent crime. In each of the past three Congresses, the Senate has approved some form of victims compensation legislation, only to watch similar measures die in the House of Representatives. During the current Congress, the Senate passed S. 1437, the Criminal Code Reform Act of 1977, which contains a provision providing for the compensation of victims of Federal crimes. Most significantly, however, the Senate Judiciary Committee, on June 28 of this year, favorably reported S. 551, the Victims of Crime Act of 1978, to the full Senate. This bill was introduced last year by the late Senator Hubert H. Humphrey and cosponsored by 20 Members from both sides of the aisle. I am proud to be one of the original cosponsors of the Senate bill, which I first introduced in a slightly different form in 1965, while a Member of the House of Representatives.

Mr. President, we are closer today than even before in the long history of this legislation to the enactment of a comprehensive crime victims compensation law. Support for the proposed Victims of Crime Act has been bipartisan and has come from national, State, and local groups and organizations not always found on the same side of the crucial issues of the day.

The act has been endorsed by officials, both Democrat and Republican, of many States with and without established crime victim programs. It has been endorsed by numerous and diverse groups and organizations such as the National Conference of State Legislatures, the National District Attorneys Association, the National League of

Cities and the U.S. Conference of Mayors, the American Bar Association, the National Council on Crime and Delinquency, the National Retired Teachers Association, the American Association of Retired Persons and the National Council on Senior Citizens, the International Conference of Police Organizations and the Fraternal Order of Police, the International Association of Chiefs of Police, Americans for Effective Law Enforcement, the National Moratorium on Prison Construction, the United Automobile Workers, and the Americans for Democratic Action.

Furthermore, President Carter last year announced his administration's full support for victims compensation legislation and urged the Congress to pass such a bill. I might remind my colleagues that the Ford administration also endorsed similar legislation during the 94th Congress.

The single most important signal of support, however, came last year from the House of Representatives. The House passed, for the first time, a victims compensation bill very similar to the legislation we are considering today. Indeed, I was particularly pleased about this action in the other body because of the fact that as as a Member of the House, I fought long and hard for the passage of this legislation. I am sure that the other cosponsors of S. 551 join me in commending the distinguished chairman of the House Judiciary Committee, PETER RODINO, and the other members of his committee for this long-awaited accomplishment.

Mr. President, it is now up to the Senate to take final action on the Victims of Crime Act. S. 551, is designed to provide federal assistance to qualified state programs for the purpose of compensating all victims of crime for losses resulting in physical injuries or death. State programs will be entitled to a Federal reimbursement of 25 percent of the costs of compensating victims of State crimes and 100 percent of the costs of compensating victims of federal crimes. This legislation will enable those States with crime victim compensation programs to favorably respond to more crime victims than ever before. It will assist more eligible victims by defraying the high cost of medical care and providing reimbursement for lost wages.

Mr. President, two of the important goals of the Victims of Crime Act are: first, to provide Federal financial assistance to insure the continuation of existing State victims programs, and second, to provide an adequate incentive to encourage States to establish victims compensation programs. In this respect, I join the Senator from Minnesota (Mrs. HUMPHREY) in hoping that the 25 percent Federal share established in this legislation will be increased during the next Congress.

Under S. 551, States are required to provide 75 percent of the costs of compensating victims of State crimes, as well as carry the full administrative costs of their programs. While I am convinced that the Federal assistance provided in the bill will provide financial relief to overburdened State programs and encourage other States to establish programs, I believe that a higher level of Federal reimbursement is necessary in order to insure the full attainment of goals of the Victims of Crime Act. I am hopeful that after reviewing the report of the Attorney General on the act, which is required by section 6 of S. 551, the Senate will have a better picture of the costs of State programs and take legislative steps to increase the Federal contribution to 50 percent of the costs of compensating State crime victims. At that time, I will also urge the Senate to consider applying such an increased Federal percentage to the total costs of state programs, rather than just to the costs of paying compensation.

Mr. President, S. 551 stands out from other crime victims compensation bills considered by the Senate in the past in that it addresses, to some extent, the difficult and unique problems of elderly crime victims. It has been brought to our attention that elderly victims, nearly half of whom live at or below the poverty level, experience monetary losses as a result of crime more often and more severely than any other segment of our population. S. 551, as introduced and reported, would unintentionally exclude many elderly victims because of a provision limiting Federal reimbursements for awards to claimants of less than $100. To insure that elderly victims are treated with special care and consideration under the Victims of Crime Act, we have amended S. 551 to provide a waiver of the $100 deductible clause for victims 62 years of age and over. I believe that this is an important and necessary modification of S. 551 in terms of assisting elderly victims and I hope that my colleagues will support it.

I might emphasize, in addition, that it is our intention in this legislation to encourage states to develop programs for the emergency compensation of elderly crime victims. The recent House Aging Committee study on elderly victimization had this to say:

> Many older people have no bank accounts from which they can withdraw funds in an emergency, that is, if robbed. They must often wait until their social security pension or supplemental security income checks arrive in the following month.

Indeed, emergency compensation payments to elderly victims are most important in view of the limited resources and special needs of senior citizens. I hope that the States will follow the lead of New York City which is the first jurisdiction to establish a program specifically designed to provide immediate, emergency financial assistance to elderly victims of crime.

Mr. President, I have heard it said from time to time that crime victims in this country are victimized first by the criminal offender and second by our own criminal justice system. Whether or not this statement is true has long been the subject of debate. However, I do believe that the plight of the innocent victim of crime in this country has had a serious impact on the functioning of our criminal justice system during these times of increasing crime and violence. While there is currently great public concern about crime in our neighborhoods, there is, ironically, a serious alienation on the part of the American public from our criminal justice system.

This alienation on the part of the public is reported and confirmed by both law enforcement officials and prosecutors. People are becoming more and more unwilling to assist in the apprehension and prosecution of criminal offenders. Those that are witnesses to crime do not want to become involved. Those who are victims of crime many times refuse to cooperate with police or refuse to press charges.

Mr. President, this desire not to become involved has an obvious and serious impact on our battle against crime. Without the full cooperation of victims and witnesses, it becomes very difficult, often impossible, to apprehend, prosecute, and convict criminals. An equally serious problem is the large number of crimes that are not reported to the public. As a result, many offenders who are dangerous to the community remain free.

Mr. President, in the final analysis, we will only be successful in our war against crime if we have the cooperation of all citizens—cooperation as victims, as witnesses, as complainants, and as voluntary obeyers of the law. Voluntary cooperation is indeed the foundation of our criminal justice system. I strongly believe that the legislation before the Senate is specially directed to reduce the alienation of the public from that system. The Victims of Crime Act will encourage both citizen cooperation with police and prosecutors and the reporting of crimes to law enforcement authorities. If this legislation would accomplish only these two goals, I believe that it would be worthy of our support.

Mr. President, Cicero said, in the first century before Christ, "The safety of the people is the highest law." In my judgment, this holds true under our Nation's constitutional system. It is the duty of our Government to provide for the general welfare of the people, particularly when it is beyond the means of the States acting alone, and beyond the capacity of the people individually, to provide for it. The enactment of the Victims of Crime Act will be an important recognition of our Government's responsibility to protect its citizens, and upon its failure to do so, compensate them for their injuries.

Mr. President, I commend to my colleagues the thoughtful and favorable consideration of the provisions of the Victims of Crime Act. I feel that the Senate should adopt this measure to show once again that our Government is not only a just government, but also a compassionate government.

Finally, Mr. President, I would like to commend the distinguished Senator from Massachusetts (Mr. KENNEDY) for his strong leadership on this important issue and his active support for this legislation in the Judiciary Committee and here on the Senate floor. I would like to thank the distinguished Senator from Wyoming (Mr. WALLOP) for his assistance in making this bill acceptable to his side of the aisle. I would also like to thank my dear colleague from Minnesota, with whom I worked very closely on this bill, for her

invaluable contribution to this measure which her deceased husband Hubert Humphrey introduced in the Senate early last year, and which will, when enacted, stand as another living memorial in his honor.

Mrs. HUMPHREY. Mr. President, I rise to urge my colleagues to support S. 551, the Victims of Crime Act of 1978.

It is clear that despite our best efforts, crime is increasing and will continue to plague society. It has become a cancer on society. It is no longer just a local problem, it is a major, national problem which continues to alienate our citizens.

S. 551 is a reasonable bill premised on the belief that the Federal Government has the constitutional responsibility and duty to provide for the general welfare, and that this includes the safety of the people.

Violent crime frequently maims and permanently injures the innocent victim, and it is certainly the Government's responsibility to assist our citizens when it is beyond their capacity to help themselves.

As we consider this bill, we should ask ourselves what is the value of being physically and mentally able to be productively employed, active members of society? I think we owe it to the innocent victims of crime when, because of society's failure to protect them, they are robbed of the ability to earn an income and to participate in society without being under the duress of a physical or mental handicap.

This bill provides that a qualified State crime compensation program is eligible for a grant equal to 25 percent of the current cost of paying victims of State crimes and 100 percent of its costs of paying compensation to victims of analogous Federal crimes. The cost of administering the crime victim compensation program would be borne entirely by the State.

My own State of Minnesota has a very successful program which is meeting the needs of victims and helping to improve law enforcement. In fiscal year 1977–78 the State spent $375,000 on its crime victim compensation program. Almost 90 percent of the budget was direct aid to the victims, who received an average claim payment of just over $1,500.

In 1974, Minnesota recognized the humanitarian need for a crime victim compensation program. Without the benefits of Minnesota's program, the victim is often left with burdensome bills and the anxiety they bring. Minnesota's program has helped alleviate the victim's anxiety and improved law enforcement by increasing citizen cooperation.

One important question which needs to be answered about the Federal role in crime victim compensation is how much will it cost? A recent Law Enforcement Assistance Administration study indicates that if the program's eligibility requirements: First, contain provisions requiring the victim to have incurred at least $100 worth of medical expenses in addition to those paid by a private insurance company; and second, require the victim to miss 1 week of work to be eligible for loss of earnings reimbursement, the total program costs, State and Federal, would be approximately $50 million. Since this bill provides for 25-percent Federal sharing of the compensation for qualifying State crimes, it is clear that overall Federal expenditures should easily fall within the authorization limits in the bill.

S. 551 contains an important step in our effort to fight crime across this Nation. A key provision of the bill provides that States cannot receive Federal funds for those crimes where the victim fails to cooperate with law enforcement authorities. This provision will assist law enforcement officers in apprehending, prosecuting and convicting suspects.

Mr. President, one of the outstanding features of this bill is its treatment of senior citizens. Although recent research indicates that the crime rate against the elderly is lower than that for other age groups, it also indicates that the psychological, physical, and economic impact of crime is considerably greater for the elderly. Victimization surveys indicate more frequent hospitalization of the elderly crime victim, subsequent to an injury, compared to other age group. In short, the problems and needs of the elderly victim are different from other classes of victims, and the elderly deserve special consideration. This bill gives them consideration by providing a waiver for elderly victims of the $100 deductible but, just as important, it should be clear to the States that we are encouraging them to provide immediate emergency payments to the elderly.

Finally, Mr. President, I would like to thank the Senator from Massachusetts for his leadership on this issue. Senator KENNEDY has been an active supporter of this legislation since it was first introduced by Hubert in 1977. I know he is as pleased as I am that it will soon become law.

Mr. MATSUNAGA. Mr. President, I am sure that the Senator from Minnesota will agree that the alarming increase in violent crime in this country in recent years has been directed toward a specific segment of our population—the elderly. As we all know, America's senior citizens are virtually defenseless against criminal assault because of their physical limitations, lifestyles, and social habits. A recent study conducted by the House Select Committee on Aging clearly shows that crime against the elderly is ever-increasing, with Americans 65 and over experiencing the greatest overall increase in crimes of violence with the exception of males between the ages of 16 and 19.

The House study reveals that our Nation's elderly—some 20 million Americans—have become the primary victims of common street and household crimes such as muggings, purse snatchings, burglaries, and confidence games. Elderly victims are not only less resilient to the trauma and personal injury of a criminal attack, but they are also very vulnerable to serious financial injury due to the fact that they live on low, fixed incomes. Other studies on the effects of crime on the elderly have found that elderly crime victims become particularly fearful of falling victim to crime again. In some cases, they place themselves under a self-imposed house arrest to the extent that they may suffer from bad health and malnutrition because they are afraid to move out of their homes for medical care and food.

In my judgment, it is clear that physically, psychologically, and financially, the elderly who have been victimized by crime suffer more hardships than any other group of Americans. I know that the Senator from Minnesota is deeply concerned, as I am, about the many problems of America's elderly citizens and will agree that if we do not begin today to address the difficult problems faced by elderly crime victims, those problems will continue to grow in size and severity. I believe that this legislation, the Victims of Crime Act, represents an important first step in this direction and for this reason is worthy of our support.

Mrs. HUMPHREY. Will the Senator from Hawaii yield?

Mr. MATSUNAGA. I am happy to yield to the distinguished Senator from Minnesota.

Mrs. HUMPHREY. Mr. President, I agree with my good friend from Hawaii that violent crime is a serious and growing problem for the elderly and that we have to do something to help the elderly victim now. As the Senator knows, more than 20 States have crime victim compensation programs. Both Minnesota and Hawaii have very fine programs.

Furthermore, 14 States with crime victim compensation programs also have provisions for emergency compensation prior to the receipt of the final award. Minnesota's and Hawaii's programs have such a provision and I know that the emergency compensation program is working well in Minnesota.

In many of these 14 States, if not in all of them, all innocent victims of crime, not just elderly victims, are eligible for emergency compensation. What I think we need to make clear to the other States who currently have programs and to those States which will develop programs is that at a minimum, the elderly should be eligible for emergency compensation. In some States, it may mean partial compensation on the same day a claim is filed. In other States, because of administrative procedures, it may take a little longer to provide emergency compensation. We need to make clear that it is our intent for States to provide the elderly emergency relief in the most expeditious manner possible. This can be done at a minimal cost, and, as the Senator from Hawaii has pointed out, there is a great need for this type of help for the elderly.

● Mr. McCLURE. Mr. President, I oppose S. 551, not because I oppose the types of systems which it seeks to fund—I heartily endorse State programs to compensate victims of criminal acts—but because Federal Government involvement is both unnecessary and destructive of the programs already in existence.

Nearly half of the States have been able to establish programs to compensate victims of crime without the benefit of S. 551. Furthermore, there is no indication that these programs have undergone the type of dire financial

hardship that would suggest the necessity of Federal involvement. To the contrary, State programs appear to have prospered without the fatherly intervention of the Federal Government.

Rather, this is one more case of the Federal Government spending money without any real indication that funding from the Federal Government is necessary for the furtherance of its social purpose.

In a post-Jarvis era, we can no longer afford this type of expenditure. It is no longer enough that a federally funded program be "nice" or efficacious—although it would help if some of the programs already in existence fit this description. We need instead to ask ourselves whether a pressing national purpose demands a Federal Government commitment as a sine qua non to its accomplishment. In this case, the answer is clearly "no."

Why, then, are proponents of this legislation so eager to entwine the Federal Government in State programs to compensate victims of crime? Part of the reason is the insatiable desire of interest groups, both governmental and nongovernmental, for increased levels of subsidization.

At least as important, however, is the feeling on the part of those of us in Washington that we can run State programs better than the States can. As a result, the bill reported out of committee would have disqualified from receiving funding a majority of the State systems currently in existence. Although the Wallop amendment does improve the bill slightly by removing some of the Federal strings, between a third and a half of State programs would still have to be legislatively altered in order for those States to qualify for continued funding under this bill.

Mr. President, the genius of our federal system is the ability of 50 governmental units to experiment with various ways of accomplishing governmental purposes. While I do not agree with every policy embodied in State programs to compensate victims of crime, I believe that States should have the right to make the types of distinctions which they deem to be reasonable.

Hence, I would not, out of hand, deny the States the right to target funding at those individuals who are most needy. Neither would I definitely circumscribe expedited procedures which States might establish in order to avoid extensive judicial proceedings. These are areas in which the States should be free to experiment for the purpose of developing systems tailored to their individual needs and philosophies. This bill, although not definitively binding on the States would, practically speaking, put an end to such experimentation.

In this respect the draftsmen of S. 551 are more candid than most legislative sponsors. Normally, the funding comes first; then, the strings. With S. 551, we can already see the emergence of the types of conditions which so inexorably flow from the receipt of Federal money. This should alert us to the fact that the States will inevitably pay dearly for the breadcrumbs embodied in this legislation.

Finally, I oppose S. 551 because of my expectation that funding will increase geometrically when the time comes for reauthorization. We have seen the same pattern before, frequently with the same cast of characters: A program is created and is provided with just enough money to lobby for more money. Two or 3 years down the line, what began as a small program becomes voracious.

This was the pattern for legal services activities, health care research programs, and protection and advocacy for the handicapped—all programs in which the Senator from Massachusetts has displayed a more than passing interest.

In view of the fact that proposals have already been made to double the size of S. 551 by increasing the Federal share to 50 percent, how can the proponents assure us that this program will not follow the path of all of the others? Will the Senate never learn from its experiences with this type of program?

Mr. President, for all of the reasons I have enumerated, I oppose this legislation.●

Mr. BAKER. Mr. President, I ask unanimous consent that the statement of the Senator from Wyoming (Mr. WALLOP) and the Senator from Alaska (Mr. STEVENS) appear appropriately in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR WALLOP

Mr. WALLOP. Mr. President, my remarks will be brief and are intended to explain the amendment to S. 551 that I am cosponsoring today with Senators Kennedy, Humphrey and Matsunaga.

The Victims of Crime Act of 1978, S. 551 is designed to serve as an incentive to states to set up and maintain compensation program for victims of crimes. The bill originally set forth ten mandatory criteria with which a state would have to comply in order to be eligible for federal funds. If a state did not satisfy all ten requirements, it could not participate in the federal program created by S. 551. The vast majority of the twenty states which had compensation programs in existence at the time the bill was introduced would have been ineligible for federal monies because they differed in several respects from the ten mandatory requirements of the legislation. To become eligible for federal monies, each of these state legislatures would have been compelled to amend the authorizing statutes for their state programs. No grace period was provided.

It is anamolous that a bill designed to encourage states to establish crime compensation plans would not fund those states that already have plans, particularly in light of testimony before the Senate Subcommittee on Criminal Laws and Procedures and the House Criminal Justice Subcommittee, which is summarized in the report accompanying S. 551, excerpts of which are as follows:

"From this testimony, and from various reports submitted to the Committee, it must be concluded that the States are administering their victim compensation programs in a commendable way. There seems to be a conscious effort to keep a firm rein on the expenditure of public funds for this purpose."

The amendment I offered during committee markup would have changed this result. The majority of the twenty existing programs would have been eligible to participate in the federal program envisioned by S. 551. Under the amendment a state would be eligible for federal funds if the state plan was in "substantial compliance" with the ten criteria in the bill. In adopting this "substantial compliance" language, the Committee accepted my contention that the requirements of the bill should not be so rigid as to penalize those states whose programs did not fully comply with the subsequently imposed federal criteria, especially where it has been demontrated that these programs were operating effectively and efficiently.

The amendment we are offering today to Section 4 of S. 551, as amended, is a refinement of the amendment adopted by the Judiciary Committee. It is the product of weeks of deliberation and discussion between Senator Kennedy and I. It avoids any difficulties in interpretation and application of the "substantial compliance" language without compromising the goals I sought to reach.

This amendment restricts federal dominance over state programs to those areas in which the federal government has a legitimate interest by reducing the number of mandatory criteria in the bill from 10 to 6. In addition, it provides that all existing programs will be funded for at least one legislative session after the effective date of this legislation whether or not they comply fully with the newly imposed federal criteria.

The effect of this amendment is to grandfather all programs in existence on the effective date of the act for at least one regular session of the State legislature which should provide adequate opportunity for state legislatures to take whatever steps are necessary to bring the state plan into full compliance with the six mandatory criteria in the bill.

Mr. President, I am satisfied that this amendment deals fairly and equitably with all the states which are presently administering victims compensation plans, and I hope that by reducing the number of mandatory criteria in the bill, many other states will be induced to participate in the program created by this legislation.

Finally, I am pleased to endorse the portion of this amendment which will make special provision for elderly victims of crime.

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STATEMENT BY SENATOR STEVENS

Mr. STEVENS. Mr. President, one of the most appalling discrepancies of our time is the difference in treatment received between the criminal and the victim of crime. Criminals may receive free legal representation, counseling, job training, rehabilitation, medical care, etc., at great cost to the American taxpayer. But what happens to the victims of those crimes? Generally the victim is simply ignored while he or she experiences mental or physical anguish, often expensive medical and hospital bills and lost earnings. Further, as is often the case when death results from the criminal activity, dependents of the victims are left without means of support. I believe that S. 551 takes a big step in righting that injustice.

S. 551 encourages States to enact legislation to set up their own programs by providing for payment by the Federal Government of 100 percent of certain costs of compensating victims of exclusively Federal offenses and 25 percent of those costs with respect to the victims of State offenses. This bill permits the States to establish their own programs with a minimum of Federal red tape and bureaucracy.

Although the guidelines are miminal, I believe that they adequately protect the system from abuses and unnecessary costs. For example, the bill provides certain limitations on Federal grants specifying types of compensation awards for which the Federal Government will not provide funding—including payments for pain and suffering, payments for property loss, aggregate payments exceeding $50,000 to a victim on his dependents,

payments for awards of less than $100, and payments for lost earnings or lost support in excess of $200 per week for a period of less than 5 work days.

Further, Federal money will not be used to pay for administrative costs—it will be provided only to pay for the grant to the victim. Mr. President, I believe the bill before us is an equitable one. The States will bear 75 percent of the costs, as well as administer and shape their own programs. Today there are already 20 states which have their own programs. My state of Alaska, for instance, began just such a program several years ago and I believe that they have done an excellent job. It is important that programs such as this be encouraged and that other States have the opportunity to build such a program which they might not otherwise have without the passage of this legislation.

● Mr. CHURCH. Mr. President, as chairman of the Committee on Aging, I shall direct my remarks to provision in S. 551 directly affecting older Americans.

The Victims of Crime Compensation Act is especially helpful for the elderly because it waives the $100 deductible provision for persons 62 or older. This exemption recognizes that criminal victimization—even though the resultant personal injury loss may be small—may have a devastating financial impact for older Americans struggling on limited income. A $50 loss, for example, may result in unpaid utility bills, unfilled prescriptions, or missed meals. This exemption further recognizes that the older victim is most likely to be a low-income individual involved in a purse snatching or other street crime involving minor, but still serious, monetary loss due to physical injury. This bill also encourages elderly victims to come forward, report crimes, and seek assistance by prohibiting any means test or requiring claimants to seek welfare. This is consistent with other major programs for older Americans—such as medicare or the Older Americans Act—which do not impose any demeaning means test because it is cumbersome and expensive to administer.

The Committee on Aging has heard repeatedly that elderly victims frequently suffer longterm harm due to their physical frailties and fixed incomes. Many older Americans live under a form of house arrest because of fear of criminal victimization. To the extent that a Federal contribution can encourage the establishment and expansion of victims compensation programs, it can help to reduce this fear by letting the elderly know that a criminal attack need not result in crippling financial losses.

It is also my understanding that Senator KENNEDY and other Senate conferees will seek conference report language encouraging the States to establish emergency compensation procedures for elderly victims. Immediate aid is often essential for the traumatized older person. Fourteen States already provide immediate assistance. An article in the July 2 New York Daily News describes the workings of such a program administered by the dedicated staff of the Jamaica Service Program for Older Adults. Mr. President, I ask that this article be inserted in the RECORD at the conclusion of my remarks. As this article notes, the program has two beneficial effects: First, to give direct and immediate help, and second, to see that the State compensation program is functioning properly for older victims.

The inclusion of these provisions must be credited to the effective research and advocacy of the National Committee on Crime and the Elderly, working in conjunction with staff of the Committee on Aging and Committee on the Judiciary. The National Committee was founded in 1974 to develop a national program of crime prevention and assistance for older persons. It is composed of leading organizations representing and working in behalf of older Americans—the National Council of Senior Citizens, National Retired Teachers Association/American Association of Retired Persons, National Center on the Black Aged, National Council on the Aging, U.S. Conference of Mayors, and the Urban Elderly Coalition. The committee's activities are funded through the Administration on Aging, Community Services Administration, Law Enforcement Assistance Administration, Department of Housing and Urban Development, and the Ford Foundation. I salute the constructive contribution which the committee has made in improving this legislation in behalf of older Americans, and look forward to continuing to work with them so that the Nation's elderly can have less fear of being the victims of a criminal attack, and greater assurance of quick and effective aid when they are victimized.

The article follows:

[From the New York Daily News, July 2, 1978]

AGED CRIME VICTIMS GET AID FAST

(By Jack Leahy)

"I told him take everything, only please don't hurt me," said the 79-year-old Jamaica woman. "But he still knocked me down and kicked me and kicked me . . ."

The woman, still tearful and too terrified to allow her name to be revealed, was a victim of one of the human animals that roam the city's streets and apartment buildings, preying on defenseless old people.

Since April, when an emergency assistance program for elderly crime victims was started in Jamaica, more than 175 persons have been helped financially or otherwise, according to Ellen Camerieri, coordinator of the project for the Jamaica Service Program for Older Adults, 9247 165th St.

MANY NEED ASSISTANCE

"Fortunately or unfortunately, depending on how you look at it, the program is going very well," said Camerieri. "It proves that a great many crime victims need this kind of assistance."

The case of the beaten woman was typical of many others, Camerieri said. If anything, the woman was more cautious than most.

"I have my Social Security check sent directly for deposit in my bank," said the woman. "The day I was robbed, I had gone to the bank to withdraw some money I needed.

"It was an unusually large amount—more than $100—and the teller warned me not to go directly home with it because someone might be watching for me," she recalled.

"DIDN'T SEE ANYONE"

"I can't walk very far because of arthritis, but I stopped at the library for a while. When I got to my apartment, I didn't think anyone was following me and I didn't see anyone in the hallway.

"But this big man appeared from nowhere, just as I opened my door. He wore a pink nylon jacket and he took a knife out of his pocket and he said he'd cut me to pieces if I didn't give him money.

"I'd have given him anything, anything . . . he didn't have to hurt me. I would rather he killed me than make me suffer so much pain."

The emergency assistance program couldn't remove the woman's pain, but it did see that she got medical aid, daily nursing and a homemaker to help her until she regains use of her right arm, which had been immobile since the vicious assault.

FOR IMMEDIATE NEEDS

Emergency assistance is meant to be just that, Camerieri emphasized. The program is geared to provide help immediately after a crime—overnight shelter, replacement of broken locks, transportation to medical facilities, temporary homemaker service, psychological counseling, etc.—not long-term assistance that is provided for the elderly by other social agencies, she said.

"The program has a two-fold purpose," said Camerieri. "First, to help the victim directly and second, to see that state crime victim systems are functioning properly for the aging.

"We have found there is a great need for advocates to help senior citizens to negotiate with the Crime Victims Compensation Board, for example, and the Emergency Assistance for Adults program of the State Department of Social Services."

Recently, a police officer from the 103d Precinct in Jamaica, who was unusually knowledgeable about such agencies, referred an elderly crime victim to Emergency Assistance for Adults for help in moving to a safer neighborhood, Camerieri said.

"The victim was first told that she was ineligible for relocation aid," recalled Camerieri. "Then we interceded for her and she was eligible."

The Jamaica program is privately funded through the Community Service Society for an 18-month period to serve residents of the 103d, 105th, 106th and 113th police precincts.

Capt. John Kelly, commanding officer of the 103d, hailed the program for meeting "a very real need."

"When older people get ripped off, very often they shut themselves in their homes and don't go out for a week or more, even to get food," Kelly said.

LONG WELFARE LINES

"They might not have any money to buy anything until the next check comes in from Social Security," he continued. "Welfare takes time, and many oldsters feel their dignity is imposed upon if they have to wait on long lines in a welfare office.

"Some fast emergency cash or even a simple thing like getting a lock fixed can be very important at such times."

Just the fact that someone was interested in helping her boosted the spirits of 91-year-old Lydia Loebmann, who heard about the program at the Archer Ave. Seniors Center, located in the same building as the Jamaica Service Program for Older Adults.

"I was mugged and hurt in my apartment building by some young punk," said Loebmann. "He took my purse with what few dollars I had in it, along with my Social Security card and my half-fare seniors transit card.

PAID FOR MEDICINES

"The emergency assistance people were wonderful," she declared. "They paid for my doctor bill and medicines and they took care of getting new copies of my cards."

About 80% of victim referrals have come from police precincts; the remainder applied

directly to the Jamaica Service Program, Camerieri said.

"It's a very positive program," a police official said. "It could be used citywide, if we could ever come up with the money for it." ●

UP AMENDMENT NO. 1828

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, Mrs. HUMPHREY, Mr. MATSUNAGA, Mr. BIDEN, and Mr. WALLOP, proposes an unprinted amendment numbered 1828.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(1) On page 14, section 4, beginning with line 16, strike through and including line 23 on page 16 and insert in lieu thereof the following:

"SEC. 4. (a) A State proposing to receive payments to carry out a State program under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General shall prescribe by regulation. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program meets the following criteria:

"(1) The program offers—

"(A) compensation for personal injury to any individual who suffers personal injury that is the result of a qualifying crime; and

"(B) compensation for death to any surviving dependent of any individual whose death is the result of a qualifying crime.

"(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

"(3) The program does not have a limitation based on the financial means of the victim or any surviving dependent.

"(4) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefits prior to the occurrence of the qualifying crime that gave rise to the claim.

"(5) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

"(6) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

"(b) If a State has a program in effect on the effective date of this Act which does not comply with the requirements of subsection (a) of this section such program shall be eligible for grants under this Act until the day after the close of the first regular session of the State legislature that begins after the effective date of this Act. Thereafter, only those programs which comply with the requirements of subsection (a) shall be eligible for grants under this Act.".

(2) On page 17, strike out lines 7 through 10 and insert in lieu thereof the following: "has received proceeds pursuant to any State right of subrogation or for which the victim or any dependent has received restitution from the perpetrator of the crime, and any amount representing State compensation awards—".

(3) On page 17, strike out line 22 and insert in lieu thereof the following:

"(5) to any claimant, other than a claimant sixty-two years of age or older, whose award would be for an".

(4) On page 18, line 12, strike out the word "and".

(5) On page 18, strike out line 17 and insert thereof the following:

"found by the appropriate State agency; and

"(9) to any claimant who failed to cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.".

(6) On page 22, line 22, strike out "1979" and insert in lieu thereof 1980"; line 23, strike out "1980" and insert in lieu thereof "1981"; and line 25, strike out "1981" and insert in lieu thereof "1982".

(7) On page 23, strike out lines 2 through and including line 4 and insert in lieu thereof the following:

"SEC. 9. This Act shall be effective on October 1, 1979.".

Mr. KENNEDY. Mr. President, I urge the adoption of the amendment.

So the amendment (UP No. 1828) was agreed to.

Mr. KENNEDY. Mr. President, I urge the adoption of the committee substitute, as amended.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, has the bill been advanced to third reading?

The PRESIDING OFFICER. No, it has not been.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. KENNEDY. Mr. President, I would like to add as cosponsors, Senators BROOKE, HEINZ, INOUYE, METZENBAUM, WILLIAMS, FORD, CRANSTON, and PACKWOOD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H.R. 7010 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I move to strike all after the enacting clause of the House bill, H.R. 7010, and that the text of the Senate bill, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate bill, S. 551, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to H.R. 7010.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I move that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses on H.R. 7010, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. BAYH, Mr. BIDEN, Mr. METZENBAUM, Mrs. HUMPHREY, Mr. THURMOND, Mr. HATCH, and Mr. WALLOP conferees on the part of the Senate.

## ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, are there any special orders entered for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. Yes, there are orders for Senator GOLDWATER and Senator BAKER, for 15 minutes each.

Mr. ROBERT C. BYRD. Then, Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 a.m. tomorrow, rather than 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RESUMPTION OF THE UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. I ask unanimous consent that at the conclusion of the recognition of Senators under special orders tomorrow, the Senate resume its consideration of the natural gas conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

## SPECIAL ORDER AND RESUMPTION OF THE UNFINISHED BUSINESS ON THURSDAY

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on Thursday?

The PRESIDING OFFICER. No, there are not.

Mr. ROBERT C. BYRD. I thank the Chair. I ask unanimous consent that after the two leaders are recognized on Thursday under the standing order, the Senator from Idaho (Mr. CHURCH) be recognized, after which the Senate resume its consideration of the natural gas conference report.

The PRESIDING OFFICER. Fifteen minutes to the Senator from Idaho?

Mr. ROBERT C. BYRD. Fifteen minutes, yes. I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, the order is for the convening of the Senate at 9:30 a.m. tomorrow. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. And there are two special orders, one for Mr. BAKER and one for Mr. GOLDWATER?

The PRESIDING OFFICER. The Senator is correct.

## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 9:30 a.m. tomorrow.

After the two leaders or their designees have been recognized under the standing order, Mr. GOLDWATER and Mr. BAKER will be recognized, each for not to exceed 15 minutes, after which the Senate will resume its consideration of the conference report on the natural gas pricing bill.

Rollcall votes could occur tomorrow. I imagine that there will be continued debate.

It has been indicated by Mr. METZENBAUM and others that a motion to recommit the bill with instructions likely will be made sometime on Wednesday. I hope an agreement can be reached for a vote on the motion to recommit.

So far as I am concerned, I would be willing to waive any rights to move to table that motion to recommit, if we could get an agreement as to a time certain for a vote up or down on the motion to recommit, so that all Senators on both sides of the aisle and both sides of the question could be alerted in ample time to make arrangements to be present for that vote.

So I look forward with hope that such an arrangement can be agreed to and that such a vote could occur on Thursday. I have discussed it with Mr. METZENBAUM and Mr. ABOUREZK, and they seem to be amenable to consideration of the proposal. I believe they have been in touch with their supporters on the minority side and on the majority side, and they have indicated that they will discuss the matter further on tomorrow.

## RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 9:30 a.m. tomorrow.

The motion was agreed to; and at 6:02 p.m. the Senate recessed until tomorrow, Tuesday, September 12, 1978, at 9:30 a.m.

## NOMINATIONS

Executive nomination received after the recess of the Senate September 8, 1978, under the authority of the order of the Senate of September 8, 1978:

U.S. PAROLE COMMISSION

Richard T. Mulcrone, of Minnesota, to be a Commissioner of the United States Parole Commission for a term of six years, vice James R. Cooper, term expiring.

Executive nominations received by the Senate September 11, 1978:

DEPARTMENT OF STATE

Thomas R. Pickering, of New Jersey, a Foreign Service officer of the class of Career Minister, to be an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

THE UNITED NATIONS

The following-named persons to be Representatives of the United States of America to the Thirty-third Session of the General Assembly of the United Nations:

Andrew J. Young, of Georgia.

James F. Leonard, Jr., of New York.

Abraham A. Ribicoff, United States Senator from the State of Connecticut.

James B. Pearson, United States Senator from the State of Kansas.

Set Charles Momjian, of Pennsylvania.

The following named persons to be Alternate Representatives of the United States of America to the Thirty-third Session of the General Assembly of the United Nations:

Donald F. McHenry, of Illinois.

Melissa F. Wells, of New York.

Angelique O. Stahl, of Florida.

John W. Hechinger, of the District of Columbia.

Richard W. Petree, of Virginia.

# HOUSE OF REPRESENTATIVES—*Monday, September 11, 1978*

The House met at 12 noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

*Endeavor to keep the unity of the spirit in the bond of peace.*—Ephesians 4: 3.

Almighty God, our Father, whose love never lets us go and whose light follows us all our lives, help us to begin the tasks of this day aware of Thy presence, and eager to do our best for the good of our country.

Give to us and to our people a determination to strive for unity, a desire to live with good will in our hearts, and a devotion to the highest and best we know. Deliver us from differences which divide us, from difficulties which defeat us, and from disillusionments which dampen our spirits. Guide us in the way we should go and the work we should do as we seek to make our country great and strong and good.

In Thy holy name we pray. Amen.

## THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

## MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3075) entitled "An act to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes."

The message also announced that the Senate insists upon its amendments to the concurrent resolution (H. Con. Res. 683) entitled "A concurrent resolution revising the congressional budget for the United States Government for the fiscal year 1979," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MUSKIE, Mr. MAGNUSON, Mr. HOLLINGS, Mr. CRANSTON, Mr. CHILES, Mr. ABOUREZK, Mr. BELLMON, Mr. DOLE, Mr. MCCLURE, and Mr. HEINZ to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 691. An act to provide for the preservation and enhancement of critical habitat for migratory waterfowl and other wetlands-dependent migratory birds of the Pacific flyway in the grasslands area of the San Joaquin Valley, Calif.

S. 976. An act to amend the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities;

S. 1081. An act to amend the laws relating to the Osage Tribe in Oklahoma;

S. 1423. An act to establish a procedure in addition to impeachment for the retirement of disabled members of the Judiciary of the United States and the removal of those whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution, and for other purposes;

S 3467. An act to designate the U.S. Department of Agriculture Pecan Field Station in Brownwood, Tex., as the "W. R. 'Bob' Poage Pecan Field Station," and to designate the U.S. Department of Agriculture Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center";

S. 3468. An act to amend the Agricultural Act of 1949 to ensure that the interest rates

Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a "bullet" symbol, i.e., ●

on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities; and

S.J. Res. 154. Joint resolution authorizing the President to invite the States of the Union and foreign nations to participate in the International Petroleum Exposition to be held at Tulsa, Okla., from September 10, 1979, through September 13, 1979.

## HISPANIC WEEK

(Mr. BROWN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of California. Mr. Speaker, I would like to bring to the attention of my colleagues the week of September 10 to 16 as "National Hispanic Heritage Week." President Carter has made this proclamation recognizing the "countless historical, cultural, and scientific contributions that Hispanics have made to the development of our country."

Many of my colleagues have asked why we need to have a "Hispanic Week." Indeed, the entire growth of our Nation is attributable, not to cultural diversity, but rather to the "melting" of the various cultures into one. However, the accomplishment of the Hispanic to which we should pay tribute is that, although they have chosen to adhere to their cultural identity, they have succeeded to make gains and thus contribute to American society. I believe that, as much as this is a tribute to Hispanic heritage, it is also a tribute to our fundamental notions of opportunity for all.

This is not to gloss over the problems that Hispanics have encountered, and continue to encounter, in their efforts to advance. Discrimination is a persistent and pervasive element of our society that must be overcome if we are to advance as a nation. But I call to the attention of my colleagues today those Hispanic-Americans who, despite the discrimination and despite the disadvantage of cultural difference, have succeeded to make contributions to our Nation's growth.

## THE LAUGHING GAS ACT?

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, everybody wants a serious and effective resolution of our quest for a national energy policy. I am afraid we are not on the right track, judging from a report in the Washington Post this morning. It carries a highly dubious endorsement of the gas compromise by a distinguished Senator who has been laboring earnestly in this area. He writes:

> Very little * * * is certain about the (natural gas) bill or its consequences, * * * No one really knows what will happen to energy prices and supplies if we pass the bill * * *
>
> But the compromise is infinitely preferable to doing nothing * * * The bill will bring some desperately needed certainty to the question of natural gas prices.

I just wonder, if "no one really knows what will happen" if we pass the bill, how can it produce "some desperately needed certainty?"

Confused? Well, you should be. The compromise itself is hopelessly confusing. The kind of contradictory endorsement quoted above, offered by the distinguished Senator, is very appropriate.

All this time I thought we were worried about natural gas prices. Now it turns out possibly to be about laughing gas. But it will not be a laughing matter for either consumers or producers if we pass this bill. Gas is not what they will get; it is what we will all take.

## CIVIL SERVICE RETIREMENT CREDIT FOR JAPANESE-AMERICAN WORLD WAR II INTERNEES

Mrs. SPELLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 9471) to amend title 5, United States Code, to provide that Japanese-Americans shall be allowed civil service retirement credit for time spent in World War II internment camps, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

> Page 3, strike out lines 13 to 15, and insert:
>
> SEC. 2. (a) The amendments made by this Act shall take effect on the later of—
>
> (1) the date of the enactment of this Act, or
>
> (2) October 1, 1978.

The SPEAKER. Is there objection to the request of the gentlewoman from Maryland?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I think we should know what is going on here. What does the bill purport to do?

Mrs. SPELLMAN. Mr. Speaker, if the gentleman will yield, this is a bill which has been passed, of course, by the House. The sole purpose of the bill is to authorize civil service retirement credit for periods in which people of Japanese ancestry were interned against their will in World War II internment camps.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, it would apply to those on civil service before their service was interrupted by internment; is that what the gentlewoman is saying?

Mrs. SPELLMAN. Mr. Speaker, if the gentleman will yield further, some may have been, others may not have been; but they would be given credit for the time they served involuntarily and, indeed, it was involuntary service. Our treatment of these people represents one of the most shameful episodes of our history.

We did, of course, go through this whole question and then passed this measure with an overwhelming vote in the House. The only difference between our bill, our House bill, and the other body's measure, is the effective date.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, I yield to my colleague from Iowa (Mr. LEACH).

Mr. LEACH. Mr. Speaker, this bill was passed with overwhelming support on both sides of the aisle. It was supported unanimously both in subcommittee and the full committee and it affects a very limited number of people who will under this legislation be allowed to apply to their civil service retirement credit for work performed for the Government while these individuals were interned during World War II.

Virtually every member from the State of California, virtually everyone that was closely concerned with this legislation approved it. I think it is the type of measure that this House should pass.

The Senate amendment, which is a limited one, was very carefully drawn.

Mr. Speaker, with the chairwoman of the subcommittee, as the ranking Republican, I strongly endorse it.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, one last question. I assume there were no amendments from the Senate that would not have been germane under the House rules?

Mrs. SPELLMAN. Mr. Speaker, if the gentleman will yield further, that is right. The only amendment was to make the effective date the date of the beginning of the fiscal year.

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

A motion to reconsider was laid on the table.

## CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 11280) to reform the civil service laws.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 318, nays 4, answered "present" 2, not voting 108, as follows:

[Roll No. 744]

YEAS—318

| | | |
|---|---|---|
| Abdnor | Beard, Tenn. | Burleson, Tex. |
| Addabbo | Bedell | Burlison, Mo. |
| Akaka | Benjamin | Burton, John |
| Alexander | Bennett | Burton, Phillip |
| Ambro | Bevill | Carney |
| Anderson, Calif. | Bingham | Carr |
| Anderson, Ill. | Blanchard | Carter |
| Andrews, N.C. | Blouin | Cavanaugh |
| Andrews, N. Dak. | Boggs | Cederberg |
| Annunzio | Bolling | Clausen, Don H. |
| Archer | Bonior | Clay |
| Ashbrook | Bowen | Cleveland |
| Ashley | Brademas | Coleman |
| AuCoin | Breckinridge | Collins, Ill. |
| Badham | Brinkley | Collins, Tex. |
| Bafalis | Brodhead | Conable |
| Baldus | Brooks | Conte |
| Barnard | Broomfield | Corcoran |
| Baucus | Brown, Calif. | Corman |
| Bauman | Brovhill | Cornell |
| | Buchanan | Cornwell |
| | Burke, Mass. | |

| | | |
|---|---|---|
| Coughlin | Johnson, Calif. | Rhodes |
| Crane | Jones, N.C. | Rinaldo |
| Cunningham | Jones, Okla. | Risenhoover |
| D'Amours | Kastenmeier | Roberts |
| Daniel, Dan | Kazen | Robinson |
| Daniel, R. W. | Keys | Roe |
| Danielson | Kildee | Rogers |
| Davis | Kindness | Rooney |
| de la Garza | Kostmayer | Rose |
| Dellums | Krebs | Rosenthal |
| Derrick | Lagomarsino | Rostenkowski |
| Derwinski | Le Fante | Roybal |
| Devine | Leach | Runnels |
| Dickinson | Lederer | Ruppe |
| Dicks | Leggett | Russo |
| Dingell | Lent | Ryan |
| Dornan | Levitas | Santini |
| Downey | Livingston | Satterfield |
| Drinan | Lloyd, Tenn. | Sawyer |
| Duncan, Oreg. | Long, La. | Scheuer |
| Duncan, Tenn. | Long, Md. | Schroeder |
| Early | Lott | Schulze |
| Edgar | Luken | Sebelius |
| Edwards, Ala. | Lundine | Seiberling |
| Edwards, Calif. | McClory | Sharp |
| Edwards, Okla. | McCormack | Shuster |
| Emery | McDade | Sikes |
| English | McDonald | Simon |
| Erlenborn | McEwen | Sisk |
| Ertel | McFall | Skelton |
| Evans, Colo. | McKinney | Slack |
| Evans, Del. | Madigan | Smith, Iowa |
| Evans, Ga. | Maguire | Smith, Nebr. |
| Evans, Ind. | Mahon | Snyder |
| Fascell | Markey | Solarz |
| Fenwick | Marks | Spellman |
| Findley | Marriott | Spence |
| Fisher | Martin | Stangeland |
| Fithian | Mathis | Stanton |
| Flippo | Mattox | Stark |
| Florio | Mazzoli | Steed |
| Flynt | Meeds | Steers |
| Foley | Metcalfe | Stockman |
| Ford, Mich. | Meyner | Stokes |
| Forsythe | Michel | Studds |
| Fountain | Mikulski | Symms |
| Fowler | Mikva | Taylor |
| Frenzel | Miller, Ohio | Thompson |
| Gammage | Mineta | Thone |
| Gaydos | Minish | Treen |
| Giaimo | Mitchell, N.Y. | Trible |
| Gilman | Moakley | Tucker |
| Ginn | Mollohan | Udall |
| Glickman | Montgomery | Ullman |
| Gore | Moore | Van Deerlin |
| Gradison | Moss | Vento |
| Grassley | Motti | Volkmer |
| Green | Murphy, N.Y. | Waggonner |
| Gudger | Murphy, Pa. | Walgren |
| Guyer | Murtha | Walker |
| Hall | Myers, Gary | Walsh |
| Hamilton | Myers, John | Wampler |
| Hammer-schmidt | Myers, Michael | Watkins |
| | Natcher | Waxman |
| Hanley | Nedzi | Weaver |
| Hannaford | Nichols | Weiss |
| Harkin | Nix | Whalen |
| Harrington | Nolan | White |
| Harris | O'Brien | Whitehurst |
| Harsha | Oberstar | Whitley |
| Hawkins | Obey | Whitten |
| Heckler | Ottinger | Wilson, C. H. |
| Hefner | Patterson | Wilson, Tex. |
| Heftel | Pattison | Winn |
| Hightower | Perkins | Wirth |
| Hillis | Pike | Wolff |
| Holland | Poage | Wright |
| Hollenbeck | Pressler | Wydler |
| Holt | Preyer | Wylie |
| Horton | Price | Yates |
| Hubbard | Pritchard | Yatron |
| Hughes | Quillen | Young, Fla. |
| Hyde | Railsback | Young, Mo. |
| Ichord | Rangel | Zablocki |
| Jacobs | Regula | |
| Jeffords | Reuss | |

NAYS—4

| | | |
|---|---|---|
| Lloyd, Calif. | Mitchell, Md. | Quayle |
| Marlenee | | |

ANSWERED "PRESENT"—2

| | |
|---|---|
| Goodling | Patten |

NOT VOTING—108

| | | |
|---|---|---|
| Ammerman | Brown, Mich. | Clawson, Del |
| Applegate | Brown, Ohio | Cochran |
| Armstrong | Burgener | Cohen |
| Aspin | Burke, Calif. | Conyers |
| Beard, R.I. | Burke, Fla. | Cotter |
| Bellenson | Butler | Delaney |
| Biaggi | Byron | Dent |
| Boland | Caputo | Diggs |
| Bonker | Chappell | Dodd |
| Breaux | Chisholm | Eckhardt |
| Ellberg | Kemp | Rahall |
| Fary | Krueger | Richmond |
| Fish | LaFalce | Rodino |
| Flood | Latta | Roncalio |
| Flowers | Lehman | Rousselot |
| Ford, Tenn. | Lujan | Rudd |
| Fraser | McCloskey | Sarasin |
| Frey | McHugh | Shipley |
| Fuqua | McKay | Skubitz |
| Garcia | Mann | St Germain |
| Gephardt | Milford | Staggers |
| Gibbons | Miller, Calif. | Steiger |
| Goldwater | Moffett | Stratton |
| Gonzalez | Moorhead, Calif. | Stump |
| Hagedorn | | Teague |
| Hansen | Moorhead, Pa. | Thornton |
| Holtzman | Murphy, Ill. | Traxler |
| Howard | Neal | Tsongas |
| Huckaby | Nowak | Vander Jagt |
| Ireland | Oakar | Vanik |
| Jenkins | Panetta | Wiggins |
| Jenrette | Pease | Wilson, Bob |
| Johnson, Colo. | Pepper | Young, Alaska |
| Jones, Tenn. | Pettis | Young, Tex. |
| Jordan | Pickle | Zeferetti |
| Kasten | Pursell | |
| Kelly | Quie | |

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Thursday, September 7, 1978, the Clerk had read through line 2 on page 144.

Are there any further amendments to title I of the bill?

Mr. HANLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as we initiate our deliberation on civil service reform today, it is my fondest hope that this legislation will move relatively smoothly and, without taking up too much time, be voted on in the Chamber at some point late this afternoon.

I would like to respond if I can briefly to some remarks on the part of my dear friend and colleague and manager of the bill, the gentleman from Arizona (Mr. UDALL), going back to Thursday night, when it was about 9 o'clock and the tempers were not that good. I would have preferred to have responded at that point but logic suggested that it was time to break it up and come back here on Monday and start anew. I have great respect for the gentleman from Arizona, Mo UDALL, and have worked closely with him from the very beginning.

I do believe, however, that the issue of civil service reform has to be put into another perspective. Certainly I know that he did not intend it that way, but the implication was that by virtue of the activity of several members of the committee that this measure was not moving and was slowed down in the committee process.

I would take issue with that implication and I would have to put it this way that any delays that have been attributed to the deliberation of this measure we have to fault the administration itself because from the very beginning the administration insisted upon expediency. As a result, that insistency agonized many, many entities, This was totally unnecessary. The implication the other evening was that everybody embraced this measure and all America was out there waiting for its enactment into law. That is not necessarily the case in its present form.

I would hope very much that certain amendments today will prevail to make this measure more palatable to most Americans.

Few disagree with the necessity for civil service reform. We all agree, and I think that this committee on the whole is committed, to reforming the civil service system. The problem happens to relate to the methodology employed by the White House in pursuit of this legislation.

As a result of which, for instance, the largest union of Federal employees, the American Federation of Government Employees, is somewhat unhappy with it. It did not have to be that way. There were compromises that could have been effected.

For instance, the American veterans' community is not happy with the legislation in this present form. It did not have to be this way at this point in time.

I could allude to a number of other entities such as the National Association of Treasury Agents, and many others, who are very unhappy with the bill. All of this was unnecessary if we could have applied sufficient deliberation to the measure but expediency was the order of the day on the part of the White House and the President, time in and time out, said that we have to have a bill this year. Well, in my judgment, if you are moving in the direction of something as complex and as broad in scope as this measure, certainly, then, it was due a decent foundation and, unfortunately, the measure that we are deliberating never enjoyed that decent foundation.

So we are going to do the best we can this day to make the measure more palatable so that we will be doing justice to the taxpayers and at the same we are not inflicting harm upon that good dedicated Federal employee.

Yes, we do have problems within our personnel complement but they are relatively few and most of the people happen to be very dedicated people who want very much to produce a day's work for a day's pay.

There are aspects of this legislation which could be unfair in this regard and we intend, through the amendment process, hopefully to effect responsible change.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. HANLEY was allowed to proceed for 2 additional minutes.)

Mr. HANLEY. Mr. Chairman, we hope very much that during the course of this day, through the amendatory process, we make the measure far more palatable and far more fair to all.

Incidentally, I have the highest regard for the administration's chief technician on this measure, the Chairman of the Civil Service Commission, Allen "Scotty" Campbell, whom I regard as a great professional from the standpoint of public administration.

Unfortunately, the accelerated time frame provided the problems we have with this measure. It is unfortunate that

this situation had to prevail throughout the period of deliberation.

Therefore, Mr. Chairman, I am very hopeful that today, posthaste, but yet responsibly, we can do what has to be done to this bill so that we can say, "All right, Mr. President, here is the tool you have asked for. We are providing it for you in this 95th Congress. We would have preferred to have taken a little more time and to have done something far more responsible in the next Congress; but, in any event, we are saying, Mr. President, that this is what you have asked for; and we are going to give you the best possible bill given the environment under which we worked."

Mr. Chairman, I yield back the balance of my time.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I move to strike the second from the last word.

Mr. Chairman, I do not relish the role of speaking against quick passage of the civil service legislation, H.R. 11280, perceived by many to be a good reform vote in an election year. If the stakes were not so high I suppose that we could just let this one sail by.

To put it quite bluntly most Members of the House seem to feel that anything labeled civil service reform is better than nothing.

I would have hoped that we would have learned from the ill-conceived Postal Reform Act of 1970 that that is not the case.

Indeed the similarity between this civil service bill and the 1970 postal bill is glaring.

Just as we do today, back in 1970 we had a juggernaut of forces—many totally unfamiliar with the subject matter—descending on the Hill to lobby for passage. Is it not interesting that in the past few months the Business Roundtable has sent scores of representatives to lobby the Congress on the civil service bill despite the fact these representatives when pressed for details openly admitted they did not understand the bill?

Just as we do today, back in 1970 we had a new President pushing for a dramatic "reform" bill.

Just as we do today, back in 1970 we had broad bipartisan support. Incidentally, Republicans must have wry smiles on their faces as they watch Democrats support their bill.

If President Nixon were pushing this particular bill to open so many positions to political appointees, he would have been laughed off the floor, by my Democratic colleagues. Now we are doing this for an administration which has announced through its Secretary of Agriculture that it will soon start disciplining errant congressional Democrats by removing their friends from appointed positions.

Just as we do today, back in 1970 during consideration of the Postal Reform Act the White House had a Democratic champion for the bill, ironically the same one we find today. I do not think we want to further damage Mr. UDALL's record by passing this bill, too.

Virtually every Member of the House will agree that the postal reform bill of 1970, to put it mildly, did not solve all of the troubles of the Postal Service, as passage in the House this year of corrective legislation by a 384 to 11 vote proved. We do not have to make the same mistake with civil service reform by acting in haste.

I think that it is also important to emphasize that during consideration of this bill all Members should understand that when in some cases Mr. UDALL implies certain support for this legislation he is talking about very different forms of the bill. Indeed this bill now being discussed by Mr. UDALL is not the same one approved by the Post Office and Civil Service Committee—there are substantive differences. Contrary to the implication given by Mr. UDALL, the Federal employee unions do not support this bill.

In summary, I hope that every Member of this House will realize that a bad civil service bill would not simply hurt a few of the local Washington area members with a concentration of Federal employees, it will damage every citizen's contact with every aspect of the Federal Government.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am pleased to announce that I have received assurances from the President that he will press for consideration and action by the other body on Hatch Act reform prior to adjournment. Accordingly, in view of President Carter's personal assurances of his intent, I deem it unnecessary to continue my effort to attach Hatch Act reform to civil service reform or to further oppose consideration of the reform measure on the House floor.

I applaud the President for his continued support to Hatch Act reform and am delighted by his assurances that he will use the powers of his office to encourage Senate consideration and action prior to adjournment. My efforts were geared to insure Senate consideration of the bill in the forthcoming House-Senate conference on civil service reform. Now, assuming that the President's efforts are successful. I feel a lessened sense of urgency for Hatch Act reform to be a part of civil service reform.

Mr. Chairman, for the consideration of my colleagues I am submitting the following letter from the President of the United States.

THE WHITE HOUSE,
*Washington, September 8, 1978.*

Hon. WILLIAM CLAY,
*Chairman, Subcommittee on Civil Service, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Early in my administration I proposed to Congress that the Hatch Act provisions affecting the political activities of federal employees be modified.

I was pleased that the House, under your leadership, voted overwhelmingly last year to strengthen the protections of federal employees from political coercion on the job while permitting them to freely exercise their First Amendment rights to participate in the political process. I continue to support Hatch Act reform.

Because I am concerned that the issues surrounding Hatch Act modification and Civil Service reform not become intertwined, I have consistently sought reform of the Hatch Act independent of action on Civil Service reform.

I believe separate consideration of the two bills is the best way to insure that each bill is eventually passed. This does not reflect any diminution of my commitment to fuller political participation for federal employees while affording necessary protections to the public. It does reflect my belief that the Hatch Act should not be considered together with Civil Service reform.

I share your concern that the Senate has not yet acted upon Hatch Act legislation, and intend to bring this concern to the attention of the Senate leadership. Hopefully, consideration and action will be taken without undue delay—prior to adjournment.

Your efforts on behalf of Hatch Act reform merit the appreciation of all federal employees anxious to exercise their basic political rights. I look forward to continuing our mutual efforts in support of those federal employees.

Sincerely,

JIMMY CARTER.

AMENDMENTS OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. COLLINS of Texas:

On page 137, line 12 after "(ii)" insert the following: "the Federal Bureau of Investigation,".

On page 142 after line 22 insert:

(e) With regard to employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b)(8)(A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

On page 213, line 5: after "(B)" insert the following: "the Federal Bureau of Investigation,".

On page 258, line 7: strike out 10,920 and insert in lieu thereof "10,780".

On page 258, line 13: strike out "Management." and insert in lieu thereof the following: "Management, except that the Director of the Federal Bureau of Investigation, without regard to any other provision of this section, may place a total of 140 positions in the Federal Bureau of Investigation in GS-16, 17, and 18."

On page 273, line 15: after "(B)" insert the following: "the Federal Bureau of Investigation,".

Mr. COLLINS of Texas. Mr. Chairman, I ask unanimous consent that the amendments I have offered, which are related to the FBI and are to title I, title IV, and title VI, be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. COLLINS of Texas. Mr. Chairman, I have offered four amendments which would insert identical provisions into titles I, IV, and VI of the bill. I asked and was given unanimous consent that they be considered en bloc.

My amendments exclude the Federal Bureau of Investigation from the bill on the same basis as the various national security agencies—the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency.

Title I of the bill sets forth merit system principles, but its prohibited personnel practices section would contradict the current status and flexibility of the

FBI. The Bureau has been exempted, for example, from considering alcoholics and drug abusers for employment—the Alcoholism Rehabilitation Act, Public Law 91–616, and the Drug Abuse Rehabilitation Act, Public Law 92–255—but under the merit system language of title I and a recent ruling by the Civil Service Commission defining "handicapping condition" to include alcohol or drug abuse, the FBI might have to consider for employment individuals with histories of alcoholism or drug abuse.

Existing law also limits the FBI from the purview of the Civil Service Commission in such areas as recruitment, qualification requirements, promotion and internal placement, career and career-conditional employment, and temporary assignments. Title I of the bill would allow active overview of the Bureau by the Merit Systems Protection Board and the Office of Personnel Management and affect the authority of the FBI Director to place up to 140 positions at supergrade levels in order to respond to the investigative priorities of the Justice Department.

Title IV should also exclude the FBI on the same basis as other national security agencies. The Senior Executive Service could place executives from other agencies in positions of high sensitivity in which demanding, rigorous or dangerous duties could be thrust upon them. The lives and safety of FBI personnel should not be jeopardized by the possibility of assignment of supervisory executives from other than law enforcement backgrounds.

Title VI on research and demonstration projects should exclude the FBI for obvious reasons. The Bureau is charged with the investigation of 78 different types of violations of criminal statutes relating to the integrity of Federal officials. The impartiality of such investigations is threatened by any program which makes it dependent on other agencies for its executive staffing or compels it to participate in exchanges of executives with these agencies. The bill's exclusion of the General Accounting Office is based on the same reasoning: The impartiality of GAO's Government-wide audits would be threatened.

Finally, Mr. Chairman, the bill as drafted empowers the President to exclude from coverage by the three titles "any executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities," but the FBI has exclusive investigative responsibility for foreign counterintelligence activities within the United States. It is therefore unreasonable to refrain from excluding it for substantially the same reasons as for exempting the other security agencies.

Mr. Chairman, I urge enactment of my amendments.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, if I can have the attention of my friend, the gentleman from Texas, I hope maybe we can work this thing out in just a few minutes to the gentleman's satisfaction.

One of the many problems we have wrestled with in this legislation is what do we do about exempting intelligence agencies? The President's bill as originally submitted did not exempt the FBI from the bill.

I am prepared this morning to offer a substitute, and I hope to have the substitute language ready in just a moment for the gentleman from Texas (Mr. COLLINS). What my substitute will do is this—and I hope it will be acceptable to the gentleman from Texas (Mr. COLLINS) because we are giving him most of what he wants and most of what the Bureau wants—we will totally exempt the FBI from the senior executive provision of the bill. That is No. 1.

No. 2, we will exempt the FBI from the title VI experimental personnel demonstration portion of the bill which they wanted out from under.

With regard to the "whistle-blower" section, the language of the bill now permits the President to exempt the FBI from that section, and based on language submitted to us by the White House today, I think they have worked this out with the Justice Department. If the President does decide to exempt them—and he may exempt them, he will under the language of the bill be required to issue special rules and regulations so that the FBI "whistle-blowers" will be in a position to have someplace to go and so that they will have some protection. This will be done through a system to be designated by the President. This would be essentially consistent with the amendments the gentleman from Texas (Mr. COLLINS) has offered and showed me this morning.

I will have this language ready in just a moment as further discussion goes on. I hope it will be acceptable to the gentleman from Texas (Mr. COLLINS), and I hope we put this matter to rest.

I want to say that I have great regard for the FBI. This in a fine agency, but it is an agency that has suffered some agonies in the past. I know of the concern the professional members of the FBI have about the status of their agency today, and I do not want to come out here with legislation that will disrupt them further and submit them to additional agony.

I am reluctant to start exempting agencies, because many of the Federal agencies think they are special and think they ought to have special treatment. I am going to be pretty careful about exempting any other agency, but I think the FBI has made a case for the compromise I am going to offer in just a moment, as soon as the staff gets it ready for us.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, I appreciate the gentleman's yielding.

Mr. Chairman, as the gentleman knows, in our FBI present system, as far as the investigation of what they call the whistle-blowers is concerned, the present setup within the FBI involves four different places where they can go. The first one, of course, is the Inspection Staff where they have the Office of Professional Responsibility, known as the OPR.

As I understand it, in Phoenix, Ariz., in Dallas, Tex., or St. Louis, any place they live or work, they can pick up the telephone and call directly to the OPR, and in confidence they can discuss anything they want to discuss or they can make it an FBI agency matter. They have their choice of either doing it confidentially or going before FBI as a complainant.

I checked on and found out that so far this year there have been 248 citizens who reported to the FBI, to the Office of Professional Responsibility. So it is an active section of FBI. I can see why we are very aware, from the comments we have in Washington today, that we must be very certain we have all and full access for any employee.

The second referral point is that they can go to the Justice Department itself. The Justice Department has its own Office of Professional Responsibility, and that particular OPR is reporting only to the Attorney General.

Now, that was in the clarification amendment that we put into this law on the gentleman's suggestion. The gentleman from Georgia (Mr. LEVITAS) clarified this point so it now codifies the Justice Department referral. That is the way it works in practice, and it works well. It depends on a strong Attorney General, and we have a strong Attorney General.

It is interesting that last year under this provision, there was someone who reported to the Attorney General, and after a full investigation the No. 2 person in the FBI was removed. When we have a provision strong enough to remove the No. 2 executive within an agency, we do have something that is unusually strong.

Mr. UDALL. Mr. Chairman, the concern I have, if I may express this to the gentleman from Texas (Mr. COLLINS), is that the public should have confidence that there are channels within the Government so that people can "blow the whistle" on the FBI just as they can on other agencies.

We all remember our old Watergate fears, and the fear of some of our friends was that we would have been in a situation where, concerning L. Patrick Gray, if he had blown the whistle on one of his people, he would have blown the whistle and the appeal would have gone on to John Mitchell.

We want to have the President set up a channel through the agency that will satisfy most people that there is a channel available so that these matters can come forward.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of amendments to provide certain exclusions for the Federal Bureau of Investigation.

The rigorous and dangerous duties performed by the Bureau's employees do not lend themselves to some aspects of this legislation.

The best argument for exclusion of the FBI is probably the exclusion in the bill

of other national security agencies. The Bureau's domestic work is as dangerous and rigorous as that of the Central Intelligence Agency, which the bill excludes; and because the FBI is in cnarge of investigating white collar crimes throughout the Nation, we have at least as much reason for excluding it from the personnel exchanges and experiments proposed in title VI as we have for excluding the General Accounting Office. The bill rightfully excludes the GAO in order to preserve the objectivity of its audits, but the objectivity of investigations into alleged Federal employee wrongdoing is at least as important.

Mr. Chairman, I urge support of these amendments in order to conform this bill to the laws which rightfully correspond to the FBI's unique investigative needs.

Basically, Mr. Chairman, I support the package of amendments offered by the gentleman from Texas (Mr. COLLINS), but I certainly hope that we can work out this adjustment that the gentleman from Arizona (Mr. UDALL) will offer.

There are two points here, though, that I would like to make to the Members of the House. One is that the reason I would like to see a very satisfactory adjustment of this issue of the FBI is because there has been doubt on the part of some Members on this bill and it is an honest doubt.

The FBI is a sensitive agency. We should clear up any concern over how the FBI would be influenced. We can clear up some of the concerns about the bill itself. I think the entire bill will receive more support if some of these lingering doubts—that is with regard to the FBI—are cleared up.

So in that sense, I would hope that we can work out a solution to which the gentleman from Texas and the gentleman from Arizona have provided a very positive role in adding to the momentum of this bill.

There are unique problems facing an intelligence agency such as the FBI, and I think this package of amendments is necessary to clarify any questions that we do have.

Mr. UDALL. Mr. Chairman, will the gentleman yield to me for the purpose of offering amendments as a substitute for the amendments offered by the gentleman from Texas (Mr. COLLINS)?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

AMENDMENTS OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. COLLINS

Mr. UDALL. Mr. Chairman, I offer amendments as a substitute for the amendments.

The Clerk read as follows:

Amendments offered by Mr. UDALL as a substitute for the amendments offered by Mr. COLLINS: Page 137, after line 18, insert:

"(3) If the President does not designate the Federal Bureau of Investigation, in its entirety, under paragraph (2)(B)(ii) of this subsection, functions of the Special Counsel relating to the enforcement of this section with respect to the Bureau, or any unit thereof, shall be carried out by the President (or his designee) notwithstanding any provision of law to the contrary."

Page 213, line 5, after "(B)" insert the following: "the Federal Bureau of Investigation,".

Page 273, line 15, after "(B)" insert the following: "the Federal Bureau of Investigation,".

The CHAIRMAN. The gentleman from Illinois (Mr. DERWINSKI) still has the floor.

Mr. DERWINSKI. Mr. Chairman, in order to expedite the procedure, I will yield back the balance of my time, so that the gentleman from Arizona (Mr. (UDALL) can explain his amendments.

The CHAIRMAN. Does the gentleman from Arizona (Mr. UDALL) wish to be heard on his amendment?

Mr. UDALL. Mr. Chairman, for the time being, I shall reserve my time.

Mr. LIVINGSTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendments offered by the gentleman from Texas which would exempt the FBI from coverage under titles I, IV and VI of the Civil Service Reform Act.

Enactment of H.R. 11280, as written now, could effectively deprive the Director of the FBI of his prerogative to control all phases of personnel administration. Traditionally, this authority, which would be lost under title I, has been one of the keystones of the Bureau's semi-autonomous status and has provided insulation from improper external influences into matters which could compromise classified information or sensitive operations.

With the creation of the senior executive service under title IV, one can easily imagine the consequences of other agencies' officials, previously unexposed to the broad scope of criminal law enforcement, who would be entrusted with new responsibility for its leadership in the Bureau executive system.

Inclusion of the FBI under title VI would seriously threaten the impartiality of investigations the Bureau is mandated to conduct with regard to violations of criminal statutes dealing with official and political corruption.

Mr. Chairman, there can be no credible argument in favor of inclusion of the FBI in the present bill. The FBI ranks as one of the agencies in the Government most subject to oversight. It must make regular reports to six committees of Congress—Senate and House Judiciary, Intelligence and Appropriations—and is subject to oversight by the Department of Justice, the General Accounting Office and the Office of Management and Budget.

Finally, failing to exempt the FBI, like all other security agencies, from these three titles of the bill, could mean the end of the FBI as we know it—a centrally administered, tightly disciplined, responsive career law enforcement agency. Such action would create just one more agency, subject to the traditionally inefficient bureaucratic mechanisms.

Mr. Chairman, I urge this body to agree to the amendments. Possibly, if we can reach an amicable compromise through the efforts of the gentleman from Arizona, I would like to join in those efforts. I would like to see how the ultimate compromise comes down, but in the meantime I would be happy to yield to the gentleman from Texas (Mr. COLLINS) for his comments.

Mr. COLLINS of Texas, Mr. Chairman, at this time I would like to offer an amendment to the substitute amendments offered by the gentleman from Arizona (Mr. UDALL).

The CHAIRMAN. The gentleman from Texas (Mr. COLLINS) is advised that the gentleman from Louisiana cannot yield for the purpose of offering an amendment. He can yield time for debate.

Mr. LIVINGSTON. Mr. Chairman, I yield back the balance of my time.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS TO THE AMENDMENTS OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment to the amendments offered as a substitute for the amendments.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas to the amendments offered by Mr. UDALL as a substitute for the amendments offered by Mr. COLLINS of Texas:

On page 141, line 20, after "(c)" inserts "(1)"; on page 142 after line 3, insert the following:

On page 142 after line 22 insert:

"(2) In the case of employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b)(8)(A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

The CHAIRMAN. The gentleman from Texas (Mr. COLLINS) is recognized.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I will be glad to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, this amendment to my substitute is perfectly acceptable. It carries out the intent of what the gentleman from Texas was trying to do earlier.

So, if we will adopt the Collins amendment to the Udall substitute, and adopt the Udall substitute, we will have this compromise worked out.

Mr. COLLINS of Texas. Let me ask one question: It is my understanding that the President, when he wants to use this authority would go to the Attorney General. That would be the person he would turn to to follow up on this?

Mr. UDALL. The President will be empowered to set up a separate system, and under the gentleman's amendment to my substitute it would be required that it go through the Attorney General.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to my colleague from Georgia.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for yielding to me. First of all, I would like to commend the gentleman from Texas (Mr. COLLINS) on the leadership he has taken in this regard.

I have one question. I think it is impor-

tant to clarify through the chairman, the gentleman from Arizona, with respect to the language contained in the first part of his amendment to which the gentleman from Texas has offered an amendment. Under this language, would it be possible for the President to designate, as his designee, the special counsel otherwise created in this legislation for purposes of investigation in an FBI matter? Because, if that is the case, it would seem to me to defeat the purpose of the Collins amendment.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, it is very clear. The Collins amendment to my amendment states that it is ordered by the Congress that he not do it this way, that he work through the Attorney General. The President is given pretty broad powers, but I cannot imagine that he would go to the special counsel with this history we have made here today.

Mr. LEVITAS. I thank the chairman for that clarification. I think that does relieve not only myself, but others on these concerns, because I think the legislation is quite clear that the special counsel created by this legislation would not be the vehicle through which these matters would be pursued. I think it is very important because without this clarification, the FBI would be treated substantially different in the sensitive areas from the other intelligence agencies.

Mr. UDALL. The gentleman from Georgia has accurately stated what I am trying to do in this compromise.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I would ask of the gentleman from Texas, and through him the chairman of the committee, whether or not the amendment that is proposed by the gentleman from Arizona, as proposed to be amended by the gentleman from Texas, is the essence of agreements and understandings made with the chairman of the House Intelligence Committee, the gentleman from Massachusetts (Mr. BOLAND), whom I do not see on the floor today.

I would ask the gentleman from Arizona, as I just asked the gentleman from Texas, whether or not the substitute proposed by the gentleman from Arizona to be further amended by the amendment offered by the gentleman from Texas, incorporates the agreements or understandings or discussions had with Chairman BOLAND of the House Intelligence Committee?

Mr. UDALL. If the gentleman will yield, here we are dealing with another matter. That is a different matter. I have worked out an amendment with the gentleman from Massachusetts (Mr. BOLAND) which I will accept later in the proceedings on that matter.

Mr. MAZZOLI. I thank the gentleman from Arizona.

Mr. COLLINS of Texas. Mr. Chairman, I think we now have an understanding that questions will go through the Attorney General and the FBI, and I would accept the substitute with the amendment.

Mr. UDALL. Mr. Chairman, the staff tells me the Collins amendment to the Udall amendments has not been placed properly in the bill.

I would ask unanimous consent that the Collins amendment to the Udall substitute amendments be clarified as to its place in the bill as identified in the amendment at the desk.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

On page 141, line 20, after "(c)" insert "(1)";

On page 142, after line 3, insert the following:

"(2) In the case of employees and applicants for employment in the Federal Bureau of Investigations, disclosures described in subsection (b)(8)(A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a repraisal for such disclosure.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona to modify the amendment?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS), as modified, to the amendments offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendments offered by the gentleman from Texas (Mr. COLLINS).

The amendment, as modified, to the amendments offered as a substitute for the amendments was agreed to.

The CHAIRMAN. The question is on the amendments, as amended, offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendments offered by the gentleman from Texas (Mr. COLLINS).

The amendments, as amended, offered as a substitute for the amendments were agreed to.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Texas (Mr. COLLINS), as amended.

The amendments, as amended, were agreed to.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 141, line 20, insert "(1)" after "(c)".

Page 142, after line 3, insert the following:

"(2)(A) The head of each agency shall establish a personnel office and appoint an individual to be the head of such office.

"(B) The position to which any individual is appointed under subparagraph (A) of this paragraph shall, notwithstanding any other provision of law, be a position within the competitive service or a career reserved position within the Senior Executive Service. The requirement of the preceding sentence shall not apply if a majority of the civil service positions within such agency are excepted from the competitive service by or under any law (other than this title).

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read, and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this is a simple amendment, but I think a very important amendment. One of the biggest fears that is in the minds of many Federal employees today is to what extent we allow this bill to politicize the system. I think the flexibility we have talked about and the modernization we have talked about is supported by the average citizen and Federal employees alike. What they fear is who is going to implement these merit principles that are so finely pronounced in title I. What this amendment does is say that we will have in fact a personnel director that is not a political appointee. It is a competitive merit system person himself or herself who will be responsible for implementing these principles.

I would point out to my colleagues that under the bill we do centralize a great deal of the responsibility with respect to guarding the merit system principles and hiring principles enunciated in title I. No longer will we have a centralized bureau like the Civil Service Commission that will have total responsibility of making sure that merit system principles are adhered to.

There is provision in the bill to delegate this responsibility to individual agencies. I think we have had the experience in the past of agency heads saying they were not responsible for implementing it, it was the job of the Civil Service Commission, and so forth. Perhaps this delegation is a good idea, but only if we are sure who has the responsibility within each agency to guard against the politicization of the system and make sure that these merit principles are adhered to.

This amendment does one thing, somebody in that agency is a personnel officer where that agency is composed mostly of competitive people, to make sure that this person is a career person and not a political appointee.

I think it is one small step toward guarding against the appearance of, and the actuality of, in many cases, of politicizing the system, and will be a major reform in the bill as it is.

I would hope my colleagues can consider this favorably. I think it establishes a very important element with regard to a reform measure by saying simply that within each agency there is somebody responsible for safeguarding these merit principles we are enunciating, and, No. 2, that that person is not a political appointee and that person has knowledge of and understands the merit principles.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from Virginia (Mr. HARRIS) for yielding to me.

Mr. Chairman, I rise to applaud the efforts of the gentleman from Virginia (Mr. HARRIS) and endorse the goal that he seeks.

If we truly fear the politicization of both the SES as well as the entire Federal bureaucracy, what better way to accomplish this than to permit a political appointee to decide the fate of job applications and promotions.

Casting doubt on the integrity of the hiring and promotion process, as we will if the gentleman from Virginia's amendment is not adopted, will likewise cast doubt on the independence and impartiality of Federal decisionmaking.

I urge my colleagues to support this amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment is unnecessary, and it was soundly defeated in the committee.

There are really two things wrong with it. First, it mandates that every agency, however large or small, must have a full-time personnel officer-director. There are a whole variety of agencies, there are agencies such as HEW that has tens of thousands of employees and there are Federal agencies that may have a mere handful of employees. If you want a formula to increase the number of bureaucrats in every agency, however small or large, then this will do it through requiring a full-time personnel director.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I am sorry that I have not explained the amendment well enough so that my colleague understands it. There is no requirement that this person's job has to be fulltime with regard to personnel director, it simply says that somebody in that agency is the personnel director. It means that that person may have other duties, and that is not covered by this amendment at all. This in no way creates any additional requirements so far as the number of personnel is concerned, it simply designates one person in that agency as the personnel director.

Mr. UDALL. My theory is that if we accept this requirement, that even very small agencies must have an individual who is the personnel director, we will have to have some individual designated to do that.

Mr. HARRIS. That is right.

Mr. UDALL. The second point is that we will not be giving the management a little bit more freedom and flexibility.

So that in every case, whether it is HEW or a smaller agency, the personnel director has to be a career officer. I hope and I believe that in most cases they will be career officers, but clearly there are some advantages there, but to say that even very large agencies must do this, is a critical requirement to impose, especially if we are going to grant the President and the Cabinet officer freedom to put somebody in these agencies who is responsible, and then say we are going to take away the flexibility of the President and the Cabinet secretary and require in all cases that they have to be career persons in this particular personnel spot.

I urge defeat of the amendment.

Mrs. SPELLMAN. Mr. Chairman, I would like to point to a comment made by our distinguished chairman who pointed out that this is an important position and that he would hope that these people who were doing the hiring would be career people.

We are talking about attempting to keep from total politicization of the system. If we are going to have political appointees doing the hiring, we can be certain that additional political types are going to be hired.

Do we have a civil service system which we are working to retain? Do we have a merit system which we are working to preserve? If so, should we demand anything less than to have people who are professionally trained do the hiring? It has nothing at all to do with the number of people they hire. It has nothing at all to do with the number of hours which these people work in doing the hiring—whether they work at their recruitment functions full time or part time. We merely ask that career people should be hiring career employees.

Mr. Chairman, I find it very difficult to see how we can object to that. If, indeed, we are trying to protect a merit system, then I feel we can do no less than to adopt the amendment.

Mr. FISHER. Mr. Chairman, will the gentlewoman yield?

Mrs. SPELLMAN. I yield to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, I support this amendment. It is one of the things which we can do to add an extra protection against undue political influence in the various departments and agencies of Government.

The personnel officer, part time or full time, as the case may be, is in a sensitive position. It seems to me that we ought to protect against loading these sensitive positions with political appointees.

This amendment would be a way of doing it very clearly, and it would then make it possible for Members, perhaps like this Member from Virginia, to support final passage of a bill; but we have to be convinced on behalf of thousands upon thousands of Government employees that here and there extra steps have been taken and that care has been taken to see that undue political influence cannot be exerted.

Mr. Chairman, it seems to me that this is a sensible, a manageable, and a logical way to achieve just that highly necessary objective.

Mrs. SPELLMAN. Mr. Chairman, I thank my colleague, the gentleman from Virginia (Mr. FISHER).

I would like to point out that we are looking out not only for those people who are Federal employees, but for all of the citizens of the United States who are served by these Federal employees; and I feel that if the people were given their choice, they certainly would want the job of hiring performed by professional staff rather than by political appointees.

Mr. Chairman, I yield back the balance of my time.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, before I give my devastating argument against the amendment, I first wish to commend the gentleman from Virginia (Mr. HARRIS) for very dramatically representing his unique constituency. We appreciate the fact that in northern Virginia one does have a substantial number of Federal employees, and they look to their Congressman for support when they feel that their interests are affected.

However, Mr. Chairman, this is a gut issue. Basically, this bill is intended to strengthen the hands of the President as the Chief Executive of the Federal Government. That is the purpose of the bill. But this amendment would restrict management in personnel matters. This amendment is one of a pattern of amendments which would turn this bill away from the direction in which it is properly headed.

A real problem with our Federal Government is its huge size and the fact that it is almost uncontrollable. A President of the United States, we must keep in mind, is not just a world figure meeting at Camp David with heads of state. He is not simply the spokesman for the aspirations of a free people. He is something more than that: He is the Chief Executive of our Government. We have shackled our Chief Executives over the years with restrictions which prevent them from effectively managing the entities over which they presumbly preside. This amendment would follow that costly path.

Mr. Chairman, I suggest that the bill before us is in this area a good bill. It is a strong bill, and I would suggest not only rejection of this amendment, but of any other amendments which would have the effect of adding new shackles to the ability of the President and his appointees to properly run this huge Federal Government of ours.

If you want to know what proposition 13 is all about, it is not just dollars and cents or objections to a tax bill. Proposition 13 mentality includes frustration over the inability of the average citizen to get proper service from Government.

Why is this frustration felt? Because the Federal Government, especially the civil service bureaucracy, often does not respond to the public interest. Frankly, the bureaucracy sometimes does not respond to the directives of a President.

What we are trying to do in this bill before us is to give the President the legitimate authority a Chief Executive should have, and on that basis I strongly recommend the rejection of the amendment.

Mr. LEACH. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Iowa.

Mr. LEACH. I thank the gentleman for yielding.

The current head of the Civil Service Commission is Mr. Scotty Campbell, who has a good deal of respect on the Democratic side as well as on our side of the aisle. If this amendment were adopted, would not someone like Mr.

Campbell, who comes largely from academia and experience in State government, become ineligible to head a Federal personnel office? And is that not a good argument against adoption of the amendment?

Mr. DERWINSKI. The gentleman is using an unusual example, but the analysis is correct. If I read this amendment correctly, someone coming to head the personnel service must, in fact, under this amendment be a career official.

Mr. HARRIS. Mr. Chairman, will my colleague yield on that?

Mr. DERWINSKI. I yield to the gentleman from Virginia.

Mr. HARRIS. I thank the gentleman for yielding.

I would like to respond to both of my colleagues on that. I rise in defense not of the amendment but of Mr. Campbell. Any implication made on this floor that Mr. Campbell could not pass a civil service test I think is an unfair impugning of his ability.

Mr. DERWINSKI. Just a minute. Mr. Chairman, I reclaim my time. I do not want the gentleman to abuse my time. No one is impugning anyone. All we are trying to do is point out the basic unacceptability of the gentleman's amendment.

Mr. HARRIS. Will my colleague yield on that point?

Mr. DERWINSKI. I will yield if the gentleman behaves himself.

Mr. HARRIS. My colleague certainly does not want to put any restrictions on behavior. I am sure of that. I certainly think that the notion that was brought up by the last question that this in any way hampers bringing competent people into the personnel director position is unwarranted.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. HARRIS, and by unanimous consent, Mr. DERWINSKI was allowed to proceed for 2 additional minutes.)

Mr. HARRIS. Will the gentleman yield further?

Mr. DERWINSKI. Of course. I yield to the gentleman.

Mr. HARRIS. I thank the gentleman for yielding, but I think the point is that we are not saying here that they have to be existing in competitive service now. We say that the position has to be a competitive service position. That means that the person in that position has to be qualified; that is all. I would want to assure the gentleman that many personnel directors would and could come from outside the system. All we are saying here is that that person comes in and qualifies as a competitive employee and not just as a political hack. That is all this amendment does, and I would hope that we would not misconstrue the amendment as doing anything more than that.

Mr. DERWINSKI. Just as the gentleman was a little concerned that we not cast some reflection on Mr. Campbell, may I point out that noncareer appointees are not necessarily political hacks. Many of them are great statesmen. They are needed to rejuvenate the civil service. They are needed to bring in imagination, spirit, and creativity. So I think if we would just keep in mind that the injection of experts from acadamia or from the business world often brings the kind of leadership that we need to shake up a bureaucracy, I think in that sense the gentleman should welcome a blood transfusion for the tired Federal service.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

I think the point here is that in the bill we have pronouncements against politization of the civil service. Ninety percent of the senior executive service must be career service. There are only 10 percent who will be political appointments. They are the people we bring in from the outside to carry out the administration program. I do not think the ordinary Federal employee thinks some career Federal employee is going to be his friend any more than some competent person brought in from the outside. I think the amendment is unnecessary. It just attaches some additional restrictions.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

Mr. Chairman, very briefly, I want to commend the gentleman from Virginia for attempting to do just exactly what it was that the gentleman from Illinois (Mr. DERWINSKI) stated that the gentleman was doing; namely, to turn this bill away from the general direction in which it is headed.

I remind the House that the Chief of Government, in addition to meeting with heads of state and also running the Federal Government, is also the Chief of a political party. This amendment would reduce, I think clearly the amount of clout that the President of the United States would have.

I was against this politicization of the bureaucracy when it was proposed by Persident Nixon. I am still against it.

The gentleman from Arizona (Mr. UDALL) has properly said that it is only 10 percent, and 90 percent and will still be governed by the civil service. I would point out to this body that if this idea is such a good one, how come we are restricting it only to 10 percent? What is good for 10 percent should be good for the other 90 percent.

Of course, the answer is that the 10 percent who would be selected would be at the top and they would be subject to the President's direction. They would be subject to politicization. We would, thereby, take an enormous step toward the spoils system which we finally got rid of 80 years ago.

Mr. Chairman, I yield to the gentleman from Virginia (Mr. HARRIS) first, then to the gentleman from Illinois (Mr. DERWINSKI).

Mr. HARRIS. Mr. Chairman, I thank the gentleman for yielding. The point the gentleman makes is an important one and should be expanded.

When we speak of 90 percent that must be qualified, that does not mean, and I hope it is not misrepresented to mean, that 90 percent has to come out of the career services. It does not. It simply means that 90 percent has to be qualified, that is all. Any percentage can be brought in from the outside. It is a question of whether they are qualified, or whether they are brought in as political appointees.

May I make the point and ask the gentleman from Illinois (Mr. DERWINSKI) and the gentleman from Arizona (Mr. UDALL) to listen to the point. If, in fact, we mean in the bill if, in fact, first, the merit principles recently set down in title I are meaningful, and, second, if we really mean 90 percent of the senior executive service are going to be competitive appointments, then should we not have a personnel director that is competitively appointed, rather than politically appointed? If 90 percent of the people that the personnel directors are going to deal with in the senior executive service and the rest are going to be competitive appointments, should not the personnel director be a competitive appointment; or should we under the bill open up, not to this President, but perhaps to some future President the opportunity of putting a fox in charge of the chicken house?

Should we allow a political appointee to be the one to implement these merit principles that we think are so important?

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I do not represent a rural area, so I do not know what foxes do in chicken houses; but evidently that term applies to the amendment of the gentleman from Virginia, because the gentleman would insist, that this person who is appointed would be one who would be drawn from the ranks of civil servants and would be basically motivated to protecting the tenure of the civil servant, contrary to the public request for more efficient services.

Just to use numbers, if the gentleman from Maryland would agree with my numerical calculations, there are approximately 2 million Federal civilian employees, outside of the Postal Service. Let us assume, even for purposes of argument, that these 9,000 positions would all be political. That is just 9,000 out of 2 million, and all we are speaking of is 900 so I see no spoils system nor political grab.

I see nothing behind the basis thrust of this bill but pure governmental nobility.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HARRIS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 16, noes 336, not voting 80, as follows:

[Roll No. 745]

AYES—16

| | | |
|---|---|---|
| Bedell | Gilman | Murphy, Pa. |
| Bennett | Gonzalez | Myers, Gary |
| Breckinridge | Hannaford | Spellman |
| Carney | Harris | Steers |
| Fish | Holt | |
| Fisher | Lloyd, Calif. | |

NOES—336

| | | |
|---|---|---|
| Addabbo | Findley | Mikulski |
| Akaka | Fithian | Mikva |
| Alexander | Flippo | Milford |
| Ambro | Florio | Miller, Ohio |
| Anderson, Calif. | Flynt | Mineta |
| | Foley | Minish |
| Andrews, N.C. | Ford, Mich. | Mitchell, Md. |
| Andrews, N. Dak. | Ford, Tenn. | Mitchell, N.Y. |
| | Forsythe | Moakley |
| Annunzio | Fountain | Moffett |
| Archer | Fowler | Mollohan |
| Ashbrook | Frenzel | Montgomery |
| Ashley | Gammage | Moore |
| AuCoin | Garcia | Moss |
| Badham | Gaydos | Mottl |
| Bafalis | Gephardt | Murphy, N.Y. |
| Baldus | Giaimo | Murtha |
| Barnard | Ginn | Myers, John |
| Baucus | Glickman | Myers, Michael |
| Bauman | Goldwater | Natcher |
| Beard, R.I. | Goodling | Nedzi |
| Beard, Tenn. | Gore | Nichols |
| Beilenson | Gradison | Nix |
| Benjamin | Grassley | Nolan |
| Bevill | Green | O'Brien |
| Biaggi | Gudger | Oberstar |
| Bingham | Guyer | Obey |
| Blanchard | Hall | Ottinger |
| Blouin | Hamilton | Panetta |
| Boggs | Hammer-schmidt | Patten |
| Boland | | Patterson |
| Bolling | Hanley | Pattison |
| Bonior | Harkin | Pease |
| Bowen | Harrington | Pepper |
| Brademas | Harsha | Perkins |
| Brinkley | Hawkins | Pickle |
| Brodhead | Heckler | Pike |
| Broomfield | Hefner | Poage |
| Brown, Calif. | Heftel | Pressler |
| Broyhill | Hightower | Preyer |
| Buchanan | Hillis | Price |
| Burke, Mass. | Holland | Pritchard |
| Burleson, Tex. | Hollenbeck | Quayle |
| Burlison, Mo. | Howard | Quillen |
| Burton, John | Hubbard | Rahall |
| Burton, Phillip | Hughes | Railsback |
| Butler | Hyde | Rangel |
| Carr | Ichord | Regula |
| Carter | Ireland | Reuss |
| Cavanaugh | Jacobs | Rhodes |
| Cederberg | Jeffords | Rinaldo |
| Clausen, Don H. | Jenrette | Risenhoover |
| | Johnson, Calif. | Roberts |
| Clay | Jones, N.C. | Robinson |
| Cleveland | Jones, Okla. | Roe |
| Coleman | Jones, Tenn. | Rogers |
| Collins, Ill. | Jordan | Rooney |
| Collins, Tex. | Kastenmeier | Rose |
| Conable | Kazen | Rosenthal |
| Conte | Keys | Rostenkowski |
| Conyers | Kildee | Roybal |
| Corcoran | Kindness | Runnels |
| Corman | Kostmayer | Ruppe |
| Cornell | Krebs | Russo |
| Cornwell | LaFalce | Ryan |
| Cotter | Lagomarsino | Santini |
| Coughlin | Le Fante | Satterfield |
| Crane | Leach | Sawyer |
| Cunningham | Lederer | Scheuer |
| D'Amours | Leggett | Schroeder |
| Daniel, Dan | Lent | Schulze |
| Daniel, R. W. | Levitas | Sebelius |
| Danielson | Livingston | Seiberling |
| Davis | Lloyd, Tenn. | Sharp |
| de la Garza | Long, La. | Shipley |
| Dellums | Long, Md. | Shuster |
| Dent | Lott | Sikes |
| Derwinski | Luken | Simon |
| Devine | Lundine | Sisk |
| Dickinson | McClory | Skelton |
| Dicks | McCloskey | Skubitz |
| Diggs | McCormack | Slack |
| Dingell | McDade | Smith, Iowa |
| Dodd | McDonald | Smith, Nebr. |
| Dornan | McEwen | Snyder |
| Downey | McFall | Solarz |
| Drinan | McHugh | Spence |
| Duncan, Oreg. | McKinney | Staggers |
| Duncan, Tenn. | Madigan | Stangeland |
| Early | Maguire | Stanton |
| Edgar | Mahon | Stark |
| Edwards, Ala. | Markey | Steed |
| Edwards, Calif. | Marks | Stockman |
| Edwards, Okla. | Marlenee | Stokes |
| Emery | Marriott | Studds |
| English | Martin | Symms |
| Erlenborn | Mathis | Taylor |
| Ertel | Mattox | Thompson |
| Evans, Del. | Mazzoli | Thone |
| Evans, Ga. | Meeds | Treen |
| Evans, Ind. | Metcalfe | Trible |
| Fascell | Meyner | Tucker |
| Fenwick | Michel | Udall |
| Ullman | Waxman | Wolff |
| Van Deerlin | Weaver | Wright |
| Vanik | Weiss | Wydler |
| Vento | Whalen | Wylie |
| Volkmer | White | Yates |
| Waggonner | Whitehurst | Yatron |
| Walgren | Whitley | Young, Fla. |
| Walker | Whitten | Young, Mo. |
| Walsh | Wilson, Tex. | Zablocki |
| Wampler | Winn | |
| Watkins | Wirth | |

NOT VOTING—80

| | | |
|---|---|---|
| Abdnor | Flood | Neal |
| Ammerman | Flowers | Nowak |
| Anderson, Ill. | Fraser | Oakar |
| Applegate | Frey | Pettis |
| Armstrong | Fuqua | Pursell |
| Aspin | Gibbons | Quie |
| Bonker | Hagedorn | Richmond |
| Breaux | Hansen | Rodino |
| Brooks | Holtzman | Roncalio |
| Brown, Mich. | Horton | Rousselot |
| Brown, Ohio | Huckaby | Rudd |
| Burgener | Jenkins | Sarasin |
| Burke, Calif. | Johnson, Colo. | St Germain |
| Burke, Fla. | Kasten | Steiger |
| Byron | Kelly | Stratton |
| Caputo | Kemp | Stump |
| Chappell | Krueger | Teague |
| Chisholm | Latta | Thornton |
| Clawson, Del | Lehman | Traxler |
| Cochran | Lujan | Tsongas |
| Cohen | McKay | Vander Jagt |
| Delaney | Mann | Wiggins |
| Derrick | Miller, Calif. | Wilson, Bob |
| Eckhardt | Moorhead, Calif. | Wilson, C. H. |
| Eilberg | | Young, Alaska |
| Evans, Colo. | Moorhead, Pa. | Young, Tex. |
| Fary | Murphy, Ill. | Zeferetti |

Mr. DENT changed his vote from "aye" to "no."

Mr. GONZALEZ changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLAY: On page 138, after line 5, insert a new section as follows:

"(C) on the basis of sex, as prohibited by the Equal Pay Act of 1963, 29 U.S.C. 206(d);", and redesignate the subsequent section accordingly.

On page 142, after line 14, add a new section as follows:

"(3) under the Equal Pay Act of 1963 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;", and renumber the subsequent sections accordingly.

Mr. CLAY. Mr. Chairman, this amendment is offered at the request of the Equal Opportunity Commission. It clarifies the statutory basis of discrimination and is intended to insure that nothing in the bill can be construed to detract from the provisions of title VII of the Civil Rights Act of 1964, as amended.

Specifically, the amendment clarifies that the provisions of the Equal Pay Act are included in allegations of discrimination, and that a trial de novo remains available to complainants in discrimination cases.

The amendment makes no changes in the bill, it simply makes explicit the intent of the bill's drafters.

Mr. Chairman, I urge adoption of the amendment.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, this amendment makes no change in existing law, it simply carries these nondiscrimination principles forward into this legislation and it is perfectly agreeable to me.

Mr. CLAY. I thank the gentleman.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, the gentleman from Missouri (Mr. CLAY) has very properly explained his amendment. I congratulate the gentleman for his attention to detail and his support for this legislation.

Mr. CLAY. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FISHER: Page 142, line 24, insert "(a)" before "If".

Page 143, after line 6, insert the following new subsection:

"(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit System Protection Board and the Office of Personnel Management. Such report shall include a description of—

"(1) significant actions taken by the Board to carry out its functions under this title; and

"(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

Mr. FISHER. Mr. Chairman, I ask unanimous consent that the amendments may be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Mr. Chairman, if I may have the attention of the gentleman from Arizona (Mr. UDALL) who is managing the bill, I would say that this is a general amendment to title I, which would extend somewhat the role of the General Accounting Office in keeping track and monitoring and examining the work done under this bill. The bill, as it stands, says this: That if a Member requests a General Accounting Office study of some facet of the bill, it will be done. The GAO on its own may initiate a study. My amendment would simply extend this a little bit and specify that the GAO shall prepare and submiit annually a report on significant issues to the President and the Congress on the activities of the Merit System Protection Board and the Office of Personnel Management. This, no doubt, would result in improvements in both of the new agencies and would increase their accountability.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. FISHER. I will be glad to yield to the gentleman from Arizona.

Mr. UDALL. My concern about the amendment basically is that we are going to add some more to the voluminous paperwork that is produced every year. This mandates the GAO to do this, even though the GAO already has the authority to conduct investigations. They would be mandated by this amendment to make a report each year. However, my inclination is to accept the amendment offered by the gentleman from Virginia on the understanding that the Senate bill does

not have such a provision, and that possibly we may want to take a look at it in the conference. But, with that understanding, I am inclined to accept the amendment offered by the gentleman from Virginia. (Mr. FISHER), who is trying to work toward improvements on this bill.

Mr. FISHER. I thank the gentleman.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I rise in support of the gentleman's amendment. This amendment is designed to insure effective accountability for the actions of the Office of Personnel Management in view of the enormous concentration of power that would be placed in the Office under the administration's proposal. One of the more serious weaknesses of H.R. 11280 is that the possibility for manipulating the civil service for personal or political favoritism is greatly increased because personnel policy would be made by an administrator serving at the pleasure of the President, instead of by a bipartisan body. Another serious weakness is the sweeping authority to be granted the Director to delegate to the agencies the functions of the Office of Personnel Management. A further loophole is the potential opening of thousands of positions formerly reserved for the competitive service to the ravages of political patronage.

The number and rapidity of changes contemplated by H.R. 11280 and Reorganization Plan No. 2 will make it virtually impossible for Congress to effectively oversee the Office of Personnel Management unless provision is made for an annual systematic review of the policies and program decisions and the compliance and enforcement actions of the Office of Personnel Management by the GAO.

Mr. Chairman, I believe this amendment is necessary to help reduce the great risk of reverting to political and personal favoritism on a grand scale in the civil service. I believe it is absolutely essential if the Congress is to have the minimum information it needs to hold the Office of Personnel Management accountable and to oversee the executive branch with regard to merit in the civil service.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. FISHER).

The amendments were agreed to.

The CHAIRMAN. Are there any other amendments to title I?

AMENDMENTS OFFERED BY MR. LEACH

Mr. LEACH. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. LEACH:

Page 137, line 4, after "which is" insert "in the Foreign Service of the United States or which is".

Page 143, line 15, after "831–835)" insert "or the authorities or responsibilities under the Foreign Service Act of 1946 (60 Stat. 999; 22 U.S.C. 800 and following)".

Page 149, at the end of the matter below line 14, insert the following new item:

"1209. Exception for the Foreign Service."

Page 165, line 15, strike out the quotation marks and the period which follows.

Page 165, after line 15, insert:

"§ 1209. Exception for the Foreign Service."

"This chapter shall not apply to the Foreign Service of the United States.".

Page 178, line 5, strike out the period and insert in lieu thereof "; or".

Page 178, after line 5, insert:

"(3) whose position is in the Foreign Service of the United States.

Page 182, in the analysis for chapter 77, insert the following new item:

"7703. Foreign Service Grievance Board."

Page 188, line 12, strike out the quotation marks and the period which follows.

Page 188, after line 12, insert:

"§ 7703. Foreign Service Grievance Board

"This chapter shall not apply to any individual who is entitled to utilize the Foreign Service Grievance Board under sections 691 through 694 of the Foreign Service Act of 1946 (22 U.S.C. 1037–1037c).".

Page 274, line 1, after "individual" insert "(other than an individual in the Foreign Service of the United States)".

Mr. LEACH (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Chairman, I also ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Chairman, the three amendments I am proposing have been prepared with the support of the Department of State and are consistent with the position taken by the full Post Office and Civil Service Committee in July, when it voted to exempt the Foreign Service from the Senior Executive Service and from provisions pertaining to Federal Labor Management relations.

The first amendment simply excludes the Foreign Service from the provisions in title I of the bill pertaining to merit system principles and prohibited personnel practices.

The second amendment excepts the Foreign Service from the authority of the Merit Systems Protection Board and Special Counsel since the service already has its own apparatus—the Board of the Foreign Service—and officer—Director General of the Foreign Services—to oversee personnel policies and practices.

The third amendment excepts individual members of the Foreign Service from the categories subject to personnel research and demonstration projects under the direction of the Office of Personnel Management.

These proposed modifications are designed to preserve the Foreign Service personel system which the Congress has taken special care to maintain over the years.

Mr. Chairman, the Foreign Service has a substantially different personnel system than the civil service involving the establishment of rank-in-person rather than rank-in-grade. I believe it would be a mistake to change the Foreign Service system through this legislative vehicle. Accordingly I urge adoption of these amendments.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendments.

Mr. Chairman, I think we are seeing the beginning of what we are going to be wrestling with this afternoon.

The gentleman from Iowa (Mr. LEACH) is a very distinguished and valuable member of our committee. He has a special concern about protecting the Foreign Service. The Foreign Service is important, and they do have special problems.

Mr. Chairman, we have been lobbied since this bill began by the Park Service and the Forest Service. I spoke with a distinguished member of the other body today who wants to exempt the Smithsonian Institution. Each one of us probably has some special agency with which we have a special relationship, and we would like some special provisions or special exemptions written into the law with respect to that agency.

With regard to the Foreign Service, in the committee the gentleman from Iowa (Mr. LEACH) offered an amendment to exempt the Foreign Service from the Senior Executive Service in this bill. I was opposed to that amendment, and he carried the day. It was a major victory for the gentleman from Iowa.

Now in these amendments he would go further. We have in title I some basic statements of principle with regard to the merit system Government-wide, and those principles include the following: that employees should be protected against arbitrary action, personal favoritism, coercion for partisan political purposes, and so on; that employees should be protected against reprisal for the disclosure of information, and so on; that employees should maintain high standards of integrity, conduct, and concern.

Mr. Chairman, these amendments exempt the Foreign Service from those provisions. I am sure that just as soon as we pass this kind of amendment, other Members on the floor will be in with similar amendments to exempt agencies for whom they have some special concern.

Mr. Chairman, I would hope that we would leave the bill as it is and not begin to make exemptions. It is going to be a long night. If we continue at the speed at which we have been going, I think we can finish the bill at a reasonable hour this evening.

This amendment is unsound. We have already made our major concessions to the Foreign Service.

Mr. Chairman, I would hope that these amendments would be defeated.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Iowa (Mr. LEACH).

The amendments were rejected.

The CHAIRMAN. Are there other amendments to title I? There being none, the Clerk will read title II.

The Clerk read as follows:

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

OFFICE OF PERSONNEL MANAGMENT

SEC. 201. (a) Chapter 11 of title 5, United States Code, is amended to read as follows:

"Chapter II.—OFFICE OF PERSONNEL MANAGEMENT

"Sec.
"1101. Office Personnel Management.
"1102. Director; Deputy Director; Associate Directors
"1103. Function of the Director.
"1104. Delegation of authority for personnel management.
"1105. Reports to the Congress.
"1106. Administrative procedure.

"§ 1101. Office of Personnel Management

"The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal which shall be judicially noticed and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

"§ 1102. Director; Deputy Director; Associate Directors

"(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate.

"(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of the Director is vacant.

"(c) No person shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or by the President.

"(d) There may be within the Office of Personnel Management not more than five Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

"§ 1103. Functions of the Director

"The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or by such employees of the Office as the Director designates:

"(1) securing accuracy, uniformity, and justice in the functions of the Office;

"(2) appointing individuals to be employed by the Office;

"(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

"(4) directing the preparation or requests for appropriations for the Office and the use and expenditure of funds by the Office;

"(5) executing, administering, and enforcing—

"(A) the civil service rules and regulations of the President and the Office and the statutes governing the civil service; and

"(B) the other activities of the Office including retirement and classification activities;

"(6) reviewing the operations under chapter 87 of this title; and

"(7) the functions prescribed in part I of Reorganization Plan Numbered 2 of 1978.

"§ 1104. Delegation of authority for personnel management

"(a) Notwithstanding any other provision of this title—

"(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

"(2) the Director may delegate, in whole, or in part, any function vested in or delegated to the Director including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service.

"(b)(1) The Office of Personnel Management shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

"(2) The Office shall establish and maintain oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

"(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.".

"§ Reports to the Congress

"Notwithstanding any other provision of law or any rule, regulation, or directive, the Director, or any employee of the Office of Personnel Management designated by the Director, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

"§ 1106. Administrative procedure

"In the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.".

(b)(1) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(24) Director of the Office of Personnel Management.".

(2) Section 5314 of such title is amended by inserting at the end thereof the following new paragraph:

"(68) Deputy Director of the Office of Personnel Management.".

(3) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Associate Directors of the Office of Personnel Management (5).".

(c)(1) The heading of part II of title 5, United States Code, is amended by striking out "THE UNITED STATES CIVIL SERVICE COMMISSION" and inserting in lieu thereof "CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES".

(2) The item relating to chapter 11 in the table of chapters for part II of such title is amended by striking out "Organization" and inserting in lieu thereof "Office of Personnel Management".

MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

SEC. 202. (a) Title 5, United States Code, is amended by inserting after chapter 11 the following new chapter:

"Chapter 12—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

"Sec.
"1201. Appointment of members of the Merit Systems Protection Board.
"1202. Term of office; filling vacancies; removal; quorum.
"1203. Chairman; Vice Chairman.
"1204. Special Counsel; appointment and removal.
"1205. Powers and functions of the Merit Systems Protection Board and Special Counsel.
"1206. Authority and responsibilities of the Special Counsel.
"1207. Hearings and decisions on complaints filed by the Special Counsel.
"1208. Reports to Congress.

"§ 1201. Appointment of members of the Merit Systems Protection Board

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. No member of the Board may hold another office or position in the Government of the United States. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

"§ 1202. Term of office; filling vacancies; removal; quorum

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term.

"(d) Members may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty or malfeasance in office.

"(e) Except as otherwise provided in this title, the Board shall act upon majority vote of those members present, and any 2 members present shall constitute a quorum for the transaction of business of the Board.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time designate one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Merit Systems Protection Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1204. Special Counsel; appointment and removal

"The Special Counsel of the Merit Systems Protection Board shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 7 years. The Special Counsel may be removed by the President only upon notice and hearing and only for misconduct, inefficiency-neglect of duty, or malfeasance in office.

"§ 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

"(a) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may—

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, and

"(2) administer oaths, take or order the taking of depositions, order responses to writ-

ten interrogatories, examine witnesses, and receive evidence.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"(d) In addition to functions otherwise provided in this title, the Board shall have the functions prescribed in part II of Reorganization Plan Numbered 2 of 1978.

"§ 1206. Authority and responsibilities of the Special Counsel

"(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred.

"(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

"(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred.

"(b)(1) If the Special Counsel determines that there are reasonable grounds to believe—

"(A) that a personnel action was taken, or is to be taken, as a result of a prohibited personnel practice; and

"(B) except with regard to a prohibited personnel practice described in section 2302(b)(8) of this title, that the personnel action would have a substantial and adverse impact on the employee involved;

the Special Counsel may order a stay of the personnel action for 30 calendar days or any longer period the Board may prescribe under paragraph (2) of this subsection.

"(2) If the Board—

"(A) has received a petition of the Special Counsel for an extension of a stay ordered under paragraph (1) of this subsection, and

"(B) concurs in the determination of the Special Counsel under paragraph (1), after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved,

the Board may extend the period of such stay for any period it considers appropriate. If the aggregate period of the stay, as proposed to be extended, will not exceed 60 days, the function of the Board under this paragraph may be performed by any one member of the Board.

"(c)(1) In any case involving—

"(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation; or

"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation; or

"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (2) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to effectively carry out the investigation.

"(2) Within 15 days after receiving any information under paragraph (1)(B) of this subsection, the Special Counsel shall determine whether the information warrants an investigation. If an investigation is determined to be warranted, the Special Counsel shall—

"(A) transmit the information to the head of the agency involved;

"(B) require the head of the agency to—

"(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

"(ii) submit a written report to the Special Counsel and to the General Accounting Office setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel; and

"(C) transmit a copy of the report to the employee or applicant for employment who disclosed the information.

"(3) Any report required under paragraph (2) of this subsection shall be reviewed and signed by the head of the agency and shall include—

"(A) a summary of the information with respect to which the investigation was initiated;

"(B) a detailed description of the conduct of the investigation;

"(C) a summary of any evidence obtained from the investigation;

"(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(E) a description of any corrective action taken or planned as a result of the investigation, such as—

"(i) changes in agency rules, regulations, or practices;

"(ii) the restoration of any aggrieved employee;

"(iii) disciplinary action against any employee; and

"(iv) referral to the Attorney General of any evidence of a criminal violation.

"(4) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (2) of this subsection is referred to the Attorney General, the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(5) Upon receipt of any report of the head of any agency required under paragraph (2)(B)(ii) of this subsection, the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency are reasonable;

"(B) the agency's investigation was complete and unbiased; and

"(C) the corrective action taken or planned is sufficient in light of any violations found to have occurred.

"(6) Upon receipt of any report of the head of any agency required under paragraph (2)(B)(ii) of this subsection, the General Accounting Office shall review the report and determine whether the agency investigation involved was adequate and whether the corrective action, if any, taken or planned by the agency is adequate. The General Accounting Office shall report the results of its review to the Congress if it determines that the agency's investigation or any corrective action taken or planned by the agency is inadequate.

"(7) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by the Congress, any agency, or any person which is—

"(A) specifically prohibited from disclosure by any other provision of law; or

"(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(8) The Special Counsel may, with the consent of the employee or applicant for employment involved, participate in any proceeding before the Merit Systems Protection Board under section 7701 of this title, to the extent the Special Counsel determines appropriate, if the Special Counsel believes the personnel action which is the subject of the proceeding involves a reprisal for a disclosure of information described in paragraph (1)(A) or (B) of this section."

"(d)(1) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred which requires corrective action action, the Special Counsel shall report the determination together with any findings or recommendations to the Merit systems Protection Board, the agency involved, and to the Office of Personnel Management, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken, but the final decision on the corrective action to be taken shall be made by the Merit Systems Protection Board after opportunity for comment by the agency concerned and the Office of Personnel Management.

"(2) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

"(A) that the head of the agency has personally reviewed the report; and

"(B) what action has been, or is to be, taken, and when the action will be completed.

The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heals of agencies and their certifications under this paragraph.

"(e)(1) In addition to the authority other-

wise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

"(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

"(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

"(C) arbitrary or capricious withholding of information prohibited under section 552 of this title;

"(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(f) During any investigation initiated under subsection (a), (c), or (e) of this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"(g)(1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disicplinary action should be taken against any employee—

"(A) after any investigation under this section, or

"(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order or requirement of the Special Counsel under subsection (b), (c), or (d)(3) of this section or an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

"(2) In the case of an individual appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

"(h) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(i) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

"(j) The Special Council shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

"(k) The Special Counsel shall prepare and submit an annual report to the President and to the Congress on—

"(1) the investigation and disposition of each case considered by the Special Counsel during the annual period covered by the report; and

"(2) actions by the Special Counsel on each case referred by the Special Counsel to the President during the annual period covered by the report.

"§ 1207. Hearings and decisions on complaints filed by the Special Counsel

"(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206(g) of this title shall be entitled to—

"(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(2) be represented by an attorney or other representative;

"(3) a hearing before the Board, an administrative law judge appointed under section 3105 of this title and designated by the Board, or any other employee of the Board designated by the Board to conduct the hearing;

"(4) have a transcript kept of any hearing under paragraph (3); and

"(5) a written decision and reasons therefor at the earliest practicable date including a copy of any final order imposing disciplinary action.

"(b) A final order of the Board may impose disciplinary action—

"(1) in the case of political activity prohibited under subchapter III of chapter 73 of this title, as provided in section 7327 of this title; or

"(2) in any other case, consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(c) There may be no administrative appeal from an order of the Board. An employer subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States district court for the judicial district in which the employee resides.

"(d) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

"§ 1208. Reports to the Congress

"Notwithstanding any other provision of law or any rule, regulation or directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.".

(b) Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under section 1201 and 1202 of title 5, United States Code (as added by this section).

(c)(1) Section 5314(17) of title 5, United States Code, is amended by striking out "Chairman of the United States Civil Service Commission" and inserting in lieu thereof "Chairman of the Merit Systems Protection Board".

(2) Section 5315(66) of such title is amended by striking out "Members, United States Civil Service Commission" and inserting in lieu thereof "Members, Merit Systems Protection Board".

(3) Section 5315 of such title is further amended by adding at the end thereof the following new paragraph:

"(123) Special Counsel of the Merit Systems Protection Board.".

(4) Paragraph (99) of section 5316 of such title is hereby repealed.

(d) The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 11 the following new item:

"12 Merit Systems Protection Board and Special Counsel.....1201."

PERFORMANCE APPRAISAL

SEC. 203. (a) Chapter 43 of title 5, United States Code, is amended to read as follows:

"Chapter 43.—PERFORMANCE APPRAISAL

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"4301. Definitions.
"4302. Establishment of performance appraisal systems.
"403. Actions based on unacceptable performance.
"4304. Responsibilities of Office of Personnel Management.
"4305. Regulations.

"§ 4301. Definitions

"For the purpose of this subchapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) the Administrative Office of the United States Courts; and

"(C) the Government Printing Office;

but does not include—

"(i) a Government corporation;

"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office;

"(2) 'employee' means an individual employed in or under an agency, but does not include—

"(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

"(B) an individual in the Foreign Service of the United States;

"(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;

"(D) an administrative law judge appointed under section 3105 of this title;

'(E) an individual in the Senior Executive Service; or

"(F) an individual appointed by the President; and

"(3) 'unacceptable performance' means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

"§ 4302. Establishment of performance appraisal systems

"(a) Each agency shall develop one or more performance appraisal systems which—

"(1) provide for periodic appraisals of job performance of employees;

"(2) encourage employee participation in establishing performance standards;

"(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees; and

(4) shall be the basis, notwithstanding any other provision of law, for promotions of one or more grades during any 12-month period in individual cases of exceptionally meritorious performance.

"(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

"(1) establishing performance standards which will permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee under such system;

"(2) as soon as practicable, but not later than October 1, 1981, with respect to initial

appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

"(3) evaluating each employee during the appraisal period on such standards;

"(4) recognizing and rewarding employees whose performance so warrants;

"(5) assisting employees in improving unacceptable performance;

"(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performane; and

"(7) promoting employees one or more grades during any 12-month period, notwithstanding any other provision of law, in individual cases of exceptionally meritorious performance, subject to limitations prescribed by the Office of Personnel Management on the number or proportions of such promotions.

§ 4304. Actions based on unacceptable performance

"(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

"(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

"(A) 30 days' advance written notice of the proposed action which identifies—

"(i) each instance of unacceptable performance by the employee on which the proposed action is based; and

"(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

"(B) be represented by an attorney or other representative;

"(C) a reasonable time to answer orally and in writing;

"(D) an opportunity during the notice period to demonstrate acceptable performance; and

"(E) a written decision which—

"(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

"(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

"(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

"(c) The decision to retain, reduce in grade, or remove an employee—

"(1) shall be made within 30 days after the date of the expiration of the notice period, and

"(2) in the case of a reduction in grade or removal, may be based only upon those instances of unacceptable performance by the employee—

"(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

"(B) for which the notice and other requirements of this section are complied with.

"(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

"(e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit System Protection Board under section 7701 of this title.

"(f) This section does not apply to—

"(1) the reduction to the grade previously held of a supervisor who has not completed the probationary period under section 3321(a)(2) of this title,

"(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

"(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

"§ 4304. Responsibilities of the Office of Personnel Management

"(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

"(b) If the Office of Personnel Management determines that a performance appraisal system does not meet the requirements of this subchapter (including regulations prescribed under section 4305 of this title), the Office of Personnel Management shall direct the agency to implement an appropriate system or to correct operations under the system, and the agency shall take any action so directed.

"§ 4305. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.".

(b) The item relating to chapter 43 in the table of chapters for part III of title 5, United States Code, is amended by striking out "Performance Rating" and inserting in lieu thereof "Performance Appraisal".

ADVERSE ACTIONS

SEC. 204. (a) Chapter 75 of title 5, United States Code, is amended by striking out subchapters I, II, and III and inserting in lieu thereof the following:

"SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

"§ 7501. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

"(2) 'suspension' means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

"§ 7502. Action covered

"This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

"§ 7503. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less only for such cause as will promote the efficiency of the service.

"(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

"(1) an advance written notice stating the specific reasons for the proposed action;

"(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

"§ 7504. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application

"(a) For the purpose of this subchapter—

"(1) 'employee' means—

"(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee—

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, or policy-advocating character by—

"(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

"(B) the head of an agency for a position which is excepted from the competitive service by statute.

"(c) The Office of Personnel Management may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office of Personnel Management.

"§ 7512. Actions covered

"This subchapter applies to—

"(1) a removal;

"(2) a suspension for more than 14 days;

"(3) a reduction in grade;

"(4) a reduction in pay; and

"(5) a furlough of 30 days or less;

but does not apply to—

"(A) a suspension or removal under section 7532 of this title,

"(B) a reduction in force action under section 3502 of this title,

"(C) the reduction in grade of a supervisor who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held

immediately before becoming such a supervisor,

"(D) a reduction in grade or removal under section 4303 of this title, or

"(E) an action initiated under section 1206 or 7521 of this title.

"§ 7513. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

"(2) a reasonble time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answers;

"(3) be represented by an attorney or other representatives; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

"§ 7514. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"§ 7521. Actions against administrative law judges

"(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

"(b) The actions covered by this section are—

"(1) a removal;

"(2) a suspension;

"(3) a reduction in grade;

"(4) a reduction in pay;

"(5) a furlough of 30 days or less; and

"(6) a written reprimand or admonition based on the performance or nonperformance of adjudicatory duties;

but do not include—

"(A) a suspension or removal under section 7532 of this title;

"(B) a reduction in force action under section 3502 of this title; or

"(C) any action initiated under section 1206 of this title.".

(b) So much of the analysis for chapter 75 of title 5, United States Code, precedes the items relating to subchapter IV is amended to read as follows:

"Chapter 75.—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

"Sec.
"7501. Definitions.
"7502. Actions covered.
"7503. Cause and procedure.
"7504. Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application.
"7512. Actions covered.
"7513. Cause and procedure.
"7514. Regulations.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"7521. Actions against administrative law judges.".

APPEALS

SEC. 205. Chapter 77 of title 5, United States Code, is amended to read as follows:

"Chapter 77.—APPEALS

"Sec.
"7701. Appellate procedures.
"7702. Judicial review of decisions of the Merit Systems Protection Board.

"§ 7701. Appellate procedures

"(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

"(1) to a hearing for which a transcript will be kept; and

"(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

"(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

"(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision is supported by a preponderance of evidence.

"(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

"(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

"(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

"(C) shows that the decision was not in accordance with law.

"(d)(1) Except as provided in subsection (e) of this section, any decision under subsection (b) of this section shall be final unless—

"(A) a party to the appeal or the Director of the Office of Personnel Management petitions the Board for a review within 30 days after the receipt of the decision; or

"(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.

"(2) The Director of the Office of Personnel Management may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on civil service laws, rules, or regulations under the jurisdiction of the Office of Personnel Management.

"(e) The Equal Employment Opportunity Commission may delegate to the Merit Systems Protection Board the authority to provide an employee or applicant with a preliminary determination on the issue of discrimination whenever, as part of a complaint or appeal before the Merit Systems Protection Board on other grounds, the employee or applicant involved alleges a violation of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). Nothing in the subsection shall be construed to authorize the Equal Employment Opportunity Commission to delegate the function of making a final determination concerning the issue of discrimination.

"(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

"(1) consolidate appeals filed by two or more appellants, or

"(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

"(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted.

"(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

"(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

"(i) The Merit Systems Protection Board may prescribe regulations to carry out the purpose of this section.

"§ 7702. Judicial review of decisions of the Merit Systems Protection Board

"(a) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Sys-

tems Protection Board may obtain judicial review of the order or decision.

"(b) A petition to review a final order or decision of the Board shall be filed in the Court of Claims or a United States district court as provided in chapters 91 and 85, respectively, of title 28. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

"(c) The court shall review the record for the purpose of determining whether the findings are in accordance with law, and whether the procedures required by statute and regulations were followed. The findings of the Board are conclusive if supported by the evidence in the record. If the court determines that further evidence is necessary, it shall remand the case to the Board. The Board, after such further proceedings as may be required, may modify its findings, and shall file with the court the record of such proceedings. The findings of the Board are conclusive if supported by the evidence in the record as supplemented.

"(d) If the Director of the Office of Personnel Management determines, in his sole discretion, that the Board erred in interpreting a civil service law, rule, regulation, or policy directive affecting personnel management and that the Board's final decision or order will have a substantial impact on any civil service, law, rule, or regulation, the Director may file a petition for judicial review of the order or decision in the United States District Court for the District of Columbia. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court. The granting of the petition for judicial review shall be at the discretion of the court.".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title II, and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MR. HANLEY

Mr. HANLEY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HANLEY: Page 186, after line 25, insert the following:

"§ 7702. Pretermination hearings

"(a) If an agency gives notice under—

"(1) section 4303(b)(1) of this title of its intention to separate an employee; or

"(2) section 7513(b)(1) of this title of its intention to remove an employee, or to suspend an employee for more than 14 days;

such employee may, on or before the 10th day after such employee receives such notice, elect a pretermination hearing under this section in lieu of further proceedings under section 4303 or section 7513 of this title. An election of a pretermination hearing under this section must be made in a writing submitted to the Merit Systems Protection Board in accordance with regulations prescribed by the Board.

"(b) Any pretermination hearing elected under subsection (a) of this section shall be treated as an appeal to the Merit Systems Protection Board under section 7701 of this title, except that—

"(A) such hearing shall be conducted by an administrative law judge appointed under section 3105 of this title and employed by the Board, whose decision shall be final, subject to judicial review under section 7703 of this title as a decision by the Board;

"(B) subsection (d) of such section 7701 shall not apply; and

"(C) no hearing pursuant to such election shall be scheduled before the 14th day after the date of the submission of such election to the Board.

"(2)(A) Subject to subparagraph (B) of this paragraph, an employee who has elected a pretermination hearing under this section shall not be removed or suspended under section 4303 or section 7513 of this title before the issuance of a decision under this section.

"(B) If, on the 90th day after the submission of an election of a pretermination hearing under this section, a decision under this section has not been made in connection with such hearing and the administrative law judge involved determines that such delay was caused primarily by the employee involved, such employee may, after such day, be removed or suspended in accordance with the proposed action on which the election under this section was based, pending a final decision by the administrative law judge under this section.

"(c) This section shall not apply in any case in which—

"(1) there is reasonable cause to believe the employee involved has, in connection with the matter on which the proposed action involved is based, committed a crime for which a sentence of imprisonment may be imposed; or

"(2) a matter affecting the national security is involved.

"(d) The parties to a negotiated collective bargaining agreement may agree to implement or substitute in whole or in part the procedure of this section as part of a collective bargaining agreement, or may agree upon alternative methods of settling matters subject to this section.

"(e) The Merit Systems Protection Board shall prescribe such regulations as are necessary to carry out the purpose of this section.

Page 170, line 8, insert "and, in the case of removal of an employee, subject to section 7702 of this title," after "section,".

Page 179, line 9, insert "and subject to section 7702 of this title," after "Management,".

Page 182, in the matter following line 17, strike out "7702" and insert in lieu thereof "7703", and insert after the item relating to section 7701 the following: "7702. Pretermination hearings.

Page 187, line 1, strike out "§ 7702" and insert in lieu thereof "§ 7703".

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HANLEY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HANLEY. Mr. Chairman, I rise to submit amendments to title II that would streamline the appeal procedure for Federal workers who are discharged or suspended for more than 14 days.

Under the present system, there is a two-step appellate procedure which takes up to 2 or more years to process from the time action is initiated until the final administrative appeal is concluded.

In my judgment it is unconscionable to keep an employee in limbo and most likely out of work for this period of time. Moreover, it is unfair to an agency because if that employee is ordered reinstated after 2 or more years the agency must return the employee to his or her position even though it may have been filled in the interim. This could result in an agency paying two employees to do one job.

Neither the President's proposal nor the committee's bill prevents these inordinate delays. They both perpetuate the two-step appeal procedure without providing for necessary time limits on the appeal process. My amendments, on the other hand, would prevent these foreseeable consequences. For the first time strict time limits would be incorporated into the procedure. They provide that an employee who is the subject of a discharge action or suspension for more than 14 days will receive a notice of charges, be afforded a hearing before the MSPB and be provided a final decision in a maximum of 90 days. This would end the administrative appeal process.

If it is determined that discharge or suspension is warranted the action will be immediately imposed, and the only appeal from the administrative determination is to the Federal courts after the employee is discharged or suspended. This procedure parallels the private sector where collective bargaining agreements provide for one hearing before an arbitrator. The only appeal from binding arbitration is to the courts.

Additionally, unlike the present system and the one proposed in this bill, my amendments attempt to build into the system a motivation to expedite appeals. The employee is motivated to act expeditiously because if he or she requests a delay or otherwise makes it impossible for the process to be completed within the 90 days, then he or she is removed at the end of the 90-day period. Any further right of the employee to a hearing will be after the discharge or suspension action is imposed. Moreover, the agency is motivated to act promptly because if delay results from a request by the agency or the failure of the MSPB to schedule a timely hearing, the employee remains on the payroll until a decision is rendered.

Based upon private sector experience, I strongly believe that it would be beneficial to all sides to eliminate the present cumbersome layers of appeals. Employees will not have to suffer long periods of uncertainty and unemployment before knowing the disposition of their cases. And agencies will not be faced with staffing problems that result from appealed adverse actions remaining open for so long.

I urge my colleagues to join me in support of these amendments.

During the markup of H.R. 11280 Con-

gressman DERWINSKI alleged that the streamlined appeal procedure would result in increased Government cost. In support of this claim he relied upon the estimates of the Congressional Budget Office which estimated an increased cost of $2.6 million in fiscal year 1978, $11.0 million in fiscal year 1979; $11.6 million in fiscal year 1980, $12.5 million in fiscal year 1981, and $13.4 million in fiscal year 1982.

These claims of increased costs based upon the Budget Office estimates are erroneous. Their estimates were based upon H.R. 6225, the pretermination hearing bill ordered reported by the Post Office and Civil Service Committee on January 25, 1978. The streamlined appeal procedure amendment to H.R. 11280 is vastly different than H.R. 6225 thus rendering the Budget Office's analysis inapplicable. It differs on the following basis:

First. These amendments do not expand coverage of the appeal procedure to employees in the excepted service as provided for in H.R. 6225. Thus, the Budget Office estimate of increased costs resulting from additional cases is not applicable.

Second. H.R. 6225 extended coverage to include the appeal of all suspension actions. These amendments limit coverage to suspensions of more than 14 days.

Third. H.R. 6225 required that appeal cases be heard by Administrative Law Judges instead of hearing examiners. The Budget Office determined this would result in increased salary costs. These amendments eliminate the requirement of Administrative Law Judges, thereby negating the increased salary cost estimates. Under the amendments cases would be heard by hearing examiners of the Merit System Protection Board.

Fourth. Unlike H.R. 6225 these amendments also place a 90-day time limit on the processing of appeals. The Budget Office's estimates were based on employees remaining on the payroll 120 days longer than under the present system. According to Chairman Campbell during the markup session on June 22, 1978, under the present system it takes between 30 to 60 days to remove someone from the payroll. Thus their figures were based on employees remaining on the payroll for between 150 and 180 days. However, under these amendments it would only be 90 days, therefore, the estimates do not apply.

Fifth. The Budget Office does not take into account the fact that these amendments would provide for binding arbitration as a substitute to the Statutory appeal procedure. This could result in a net cost savings to the Government because under such an alternative procedure the unions generally assume one-half the cost. Under the statutory procedure the Government pays the entire cost.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I am delighted to yield to my friend, the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, is this not virtually what passed the subcommittee that I chair in the Committee on Post Office and Civil Service?

Mr. HANLEY. Essentially, there was similar dialogue on the committee passed measure and I know that during the course of Committee consideration of this amendment there were some figures provided by OMB which suggested the cost of this concept would be rather heavy; however, in analysis, the cost provided by the OMB applied to the bill you refer to.

Mr. CLAY. Mr. Chairman, if the gentleman will yield further, so virtually it is the same proposal that passed the subcommittee and the full committee and is now awaiting a rule from the Committee on Rules,

Mr. HANLEY. Well, no; there are substantive differences in the committee-passed bill and this amendment. The cost associated with this amendment is substantively less than the cost associated with that bill.

The CHAIRMAN. The time of the gentleman from New York (Mr. HANLEY) has expired.

(By unanimous consent, Mr. HANLEY was allowed to proceed for 2 additional minutes.)

Mr. CLAY. Mr. Chairman, will the gentleman yield further?

Mr. HANLEY. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, I thank the gentleman and I intend to support the amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is a major amendment and was debated at some length in the committee and was then rejected by a vote of 10 to 15. There is something very fundamental and very basic at stake here. This amendment goes exactly opposite to the main thrust of what we are trying to do in this bill. Presently, it is pretty hard, one of the premises on which this legislation is founded is that it is too difficult to discharge or discipline inefficient Federal employees.

Now, if one is a Federal employee, the current law is that he can be given 30 days notice and then be terminated. After that, there is an opportunity to come in and have a hearing. The employee is entitled to have a written decision and an appeal may be taken by the employee to an outside appeals authority. This turns it around and says that employee cannot be fired unless you have a hearing before they are fired. It moves in the opposite direction and instead of doing what this bill is trying to do to make it easier to fire incompetent Federal employees, it makes it much more difficult; so it is contrary to the basic purpose of the bill. It will make it even more difficult than it is today to remove an incompetent employee.

There was an estimate by the Congressional Budget Office that it would cost $63 million. That was an earlier pretermination bill and I do not know the differences in cost between that one and this one.

Clearly, if we are going to set up a whole new structure and a whole new web of protection for Federal employees against being fired, we are going to have some costs involved.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, just to clarify the point with respect to the cost of this measure, the dollar figure associated previously was in error. That was the figure of OMB in association with a similar but much heavier measure that had been passed by the committee and is now pending in the Committee on Rules.

So that figure should not at all be associated with this amendment.

The dollar factor is very minimal, and I would repeat what I have already said: That in essence what we would be doing here is we should be applying the concept that is utilized in the private sector where, if that employer for some reason decides he is going to dismiss an employee, in fairness there is a bit of consultation with the employee prior to definitive action. So he calls the gentleman or the gentlelady in and says, "For these reasons it appears that termination of your tenure is in order."

In that way we give the individual the benefit of the rationale of the employer. So actually what we are doing here, if we adopt the amendment, is simply concurring with the traditional concept in the private sector in fairness to that employee.

Mr. UDALL. Mr. Chairman, if the gentleman agrees, as I do, that one of the fundamental purposes of this bill is to make it easier and not harder to discharge incompetent employees, then the gentleman's amendment goes directly in the wrong direction.

We have testimony that it takes 152 days now—and that is the average time—to complete this appeals process. The real vice of this amendment is that it would keep this person on the payroll sitting around for that length of time. We would encourage employees who otherwise would go away and accept their discharge to appeal because they are going to get paid, and there they are inflicting their presence on the whole system while this appeal process is going on.

Mr. Chairman, I think it would be a major mistake to accept this amendment. I strongly urge that it be defeated.

Mr. DERWINSKI. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendments.

Mr. Chairman, I am going to be very brief. The gentleman from Arizona (Mr. UDALL) made the proper arguments against the amendment.

Actually here again we are in what may be a pattern in working on this bill. This is a classic case of an immediate retreat from a new goal. Basically, this amendment would add an extra step which would impede termination of the services of an incompetent employee.

As I understand this amendment, it would encourage everyone to appeal. If I may have the attention of the gentle-

man from New York (Mr. HANLEY), the figure he earlier quoted of $63 million as the possible cost of the application of this amendment was the result of research for the Civil Service Commission, but the gentleman, with a brush of his hand ruled that out.

Can the gentleman tell us specifically what figures he has to substantiate the cost of his amendment?

I am speaking of something other than an opinion now. I would like to have something specific.

Mr. HANLEY. Mr. Chairman, if the gentleman will yield, I believe in fairness, the figure used by OMB and provided the committee at that time was a figure used in association with an entirely different bill, and the committee labored under the impression that that was the cost of this amendment in committee. That is not true.

What the actual cost is I do not know. However, I do know that this cost is substantively less than the cost in the singular bill that was approved by the committee and is now pending in the Committee on Rules.

Mr. DERWINSKI. But the point is—and I am sure the gentleman will not dispute the other statistics we have—that the Civil Service Commission appealing now is 152 days. We would in fact, through the gentleman's amendment, add more days over and above whatever we provide for in this bill.

Mr. HANLEY. Mr. Chairman, will the gentleman yield on that point?

Mr. DERWINSKI. Let me finish my thought first.

Mr. Chairman, the gentleman starts taking us down the road of adding to the appeal time, adding to the delay, and, therefore, denying the very goal of the bill, which is a streamlining of personnel procedures.

Mr. HANLEY. Mr. Chairman, will the gentleman yield now?

Mr. DERWINSKI. Yes, I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, obviously, on the basis of what the gentleman has just said, a misunderstanding prevails, because what I would suggest through this amendment is that we are expediting that process, because within a timeframe of not more than 90 days that matter would have to be disposed of one way or the other, as opposed to present law or the language of this bill, which still makes it possible that the process could continue up to 2, 3, or maybe 4 years.

Think of the cost involved in that procedure, where again you are dealing with administrative law, just in an effort to resolve that one employee problem.

My guess is that this would be far less expensive than the present methodology; and, beyond that, certainly fair to that individual.

It certainly is not my intent to encourage continued employment of incompetent people, but I do not feel that that individual should certainly be entitled to his or her day in court.

Mr. DERWINSKI. They are entitled to their day in court under the bill. The effect of the gentleman's amendment would be to add an additional layer, an additional step, and this would have the effect of encouraging people to utilize it. And that is where the cost factor comes in. I think it is the height of optimism for the gentleman to imply that there would be minimal cost because, in effect, through the gentleman's amendment, he would be encouraging almost automatic use of this provision, and the costs are almost impossible to calculate.

Mr. HANLEY. If the gentleman will yield further, is it not rather logical that the cost factor associated with an endeavor that can be washed out within a 90-day period would be far preferable to a procedure which currently provides maybe up to 2 or 3 or 4 years before that decision is made? That is a rather costly process.

Mr. DERWINSKI. The gentleman is talking about the present system which takes 2 or 3 or 4 years. That has been streamlined. The gentleman's amendment would add an additional 20 or 30 days.

Mr. HANLEY. No.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

Mr. Chairman, in the interest of due process, I rise in support of the gentleman's amendment.

The courts have generally found that a job is a property right and, therefore, that due process should apply in any decision with regard to that right.

Due process, in our system of justice, means an individual is innocent until proven guilty.

What the gentleman from New York is seeking to do is to provide the Federal employee with an opportunity to prove his or her innocence before they would lose their jobs. Removing employees from their jobs prior to any hearing would reverse our standards of justice.

In our committee hearings, I might add, there was testimony that, while in some instances it did take an inordinate length of time to remove an employee, there are statutory and regulatory provisions and procedures available that, if properly utilized, would enable the discharge of an employee within a very reasonable period, and not the 152 days as suggested by our acting chairman.

Accordingly, Mr. Chairman, I urge the adoption of this amendment.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Speaker, I would like to call to the attention of all of those Members present—and, I would hope, of anyone who is at all interested in the bill—the words of our distinguished Chairman. He made it very clear, and he was absolutely right, that under today's system an employee can be out of the system in 30 days.

We have heard a great deal of talk about how it takes 18 months, to fire an employee. We were at times told it took 27 months. and 3 years, and all that sort of thing. That was nonsense. An employee can be out of the system today in 30 days, and then the appeals process starts. And, indeed, there have been situations where it has taken a couple of years, and even 3 years, but when we looked into those situations we found that that was because the Government itself had dragged its feet, that the Government had caused the delay, not the employee. The idea was to drag the case out, to the point where no employee could afford to continue to fight his dismissal.

So what we are having proposed here at this time really is not going to extend the time. It will give a date finite to the Government, and the Government will be advised that at the end of 90 days it must have reached some conclusion. Therefore, it makes very good sense, No. 1, to give an employee a fair opportunity and, No. 2, to allow that employee to know that in 90 days his or her case will be disposed of. The citizens of the United States would also be spared the expense incurred by delays.

It has been really cruel and unusual punishment to have dragged cases out, as they have been in the past. The amendment makes very good sense, and I would certainly support this proposal by the gentleman from New York.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I support this amendment, and I only want to make one additional point in connection with it. The acting chairman has pointed out that the purpose of the bill is to enable the boss to get rid of incompetent employees. Of course, that sounds good until we stop to remember that competence is a matter of opinion. So, when this bill gives the power to fire incompetent employees, it also gives the power to fire competent employees.

Now, let us assume the most favorable supposition, and that is that the great majority of the firings are of incompetent people. There is no question that out of a large number that may get fired over a number of years, there are going to be some mistakes made for one reason or another, so somebody gets fired who is not incompetent, and so his salary ceases.

It is all very well to talk about reinstatement and payment of back salary and so forth. The family, however, of this employee has got to eat, and they cannot eat on future pay. I think that to deny the employee a hearing before firing him for "incompetence" is quite unfair. I support the amendment proposed by the gentleman from New York.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. HANLEY).

The question was taken; and the Chairman being in doubt, the committee divided, and there were—ayes 15; noes 23.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 150, line 2, after "United States." insert the following "One member of the Board shall

be selected from among individuals who have served in the competitive service.".

Mr. HARRIS. Mr. Chairman, this bill and the reorganization plan that Congress approved this past month separates the Civil Service Commission into two parts. It has a Merit System Protection Board, which has the job of protecting the rights of the employees. It has taken the personnel function out of the Civil Service Commission and set it up in another office.

All right, so in this amendment we are just talking about the Merit System Protection Board. The Board purports to have a three-person board that has one single job, and that is to protect the civil service employees with respect to the merit principles espoused in the bill. What this amendment does is say that one person appointed to that Board will have had experience in the merit system. It requires only that one person on that Board, at least, will have served in the merit system to the extent of knowing what the problems of the employees are, what the employees' side of the contest is, what the needs are to protect the particular rights of an employee.

I think it is a matter of simple justice and a matter of simple appearance here if we are truly trying to restore confidence in the employees with respect to whether there is an arm of the Government that protects that employee's rights. That is what the Board is created for; that is what the Board is supposed to do; that is what the Civil Service Commission was created for. But, most of us know that the Federal employee lost confidence in the Civil Service Commission some time ago with regard to that agency's protecting employee rights.

All right, if we are going to have a separate Board to protect employees' rights, if that Board is to be a three-person Board, I think it makes eminently good sense to have at least one person on that Board with experience in the merit system competitive service.

I would urge my colleagues to adopt this amendment and to make this little recognition that in establishing something to protect employees' rights we will have somebody on there that has had the employee perspective and not management perspective.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this was considered in the committee. The amendment offered by the gentleman from Virginia was defeated in that forum and should be defeated today.

This is not a major matter but there is a principle at stake. We are going to set up a merit system protection. The President is going to appoint the board members and they will be confirmed subject to the will of the Senate. We will start in by saying one of the three must be a person who served in the career service. That seems to make a good deal of sense. But if we adopt that, let us start putting other restrictions on the President: that one of them ought to be a lawyer; one of them ought to be a woman; one of them ought to be a non-Caucasian; and one of them ought to be of some other qualifications.

I would hope and believe the President would appoint from time to time people on this board who have had actual civil service employee experience, but to suggest on all occasions and at all times there must be someone to meet that particular qualification ties the hands of the President and suggests the Senate is not going to exercise any oversight jurisdiction on this matter.

I do not think this is a necessary amendment. I think it is a mischievous amendment and ought to be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. STEERS. Page 144, strike out line 16 and all that follows down through line 19 on page 145 and insert in lieu thereof the following:

"§ 1102. Appointment of members of the Office of Personnel Management

"The Office of Personnel Management is composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate, not more than two of whom may be adherents of the same political party. No Commissioner of the Officer of Personnel Management may hold another office or position in the Government of the United States.

"§ 1103. Terms of office; filling vacancies; removal; quorum

"(a) The term of office of each Commissioner of the Office of Personnel Management is four years.

"(b) Any Commissioner appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term.

"(c) Any Commissioner appointed for a four-year term may be reappointed to any following term.

"(d) Any Commissioner may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(e) Except as otherwise provided in this title, the Office of Personnel Management shall act upon majority vote of those members present, and any two members present shall constitute a quorum for the transaction of business of the Board.

"§ 1104. Chairman; Vice Chairman

"(a) The President shall from time to time designate one of the Commissioners of the Office of Personnel Management as the Chairman of the Office of Personnel Management. The Chairman is the chief executive and administrative officer of the Office of Personnel Management.

"(b) The President shall from time to time designate one of the members of the Office of Personnel Management as Vice Chairman of the Office of Personnel Management. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1105. Functions of the Office

"The following functions are vested in the Commissioners of the Office of Personnel Management, and shall be performed by the Commissioners, or by such employees of the Office as the Commissioners designate."

Page 146, lines 23, 24, and 25; page 147, line 25; and page 148, line 1, strike out "Director" and insert in lieu thereof "Commissioner".

Redesignate the following provisions (and references thereto) accordingly.

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland (Mr. STEERS)?

There was no objection.

Mr. STEERS. Mr. Chairman, this amendment is simple enough, which is why I thought it need not be read. It certainly would change the character of this bill and I think in a very salutary manner.

Of course, I believe the Civil Service ought to be reformed, but I believe the measure before us is not the appropriate vehicle.

I am most concerned about the concentration of personnel authority in the hands of one individual, one man, the Director of the Office of Personnel Management. In my opinion this would politicize the Federal service and destroy the merit system which has served the American people well for nearly 100 years.

Placing Government-wide personnel responsibility in the hands of one Director would take the decisionmaking process out of the public's eye. The Director would have merely to make a proposal affecting Government-wide personnel decisions to himself, debate it by himself, and make a unilateral decision whether to implement the proposal. Thus there is no check on arbitrary and capricious actions by a Director.

My amendment would preserve the impartial administration of the civil service system. While it would continue the proposed split of the Civil Service Commission's responsibilities between the Office of Personnel Management and Merit System Protection Board, it would vest the powers of the Office of Personnel Management in three Commissioners. By so doing, it will provide for checks and balances against misuse of authority.

By creating a commission, the decisionmaking process would be opened to the public and all decisions would require a majority vote. Moreover, it would be a bipartisan commission. Therefore it will act as a check against an incumbent President using the authority of the Office of Personnel Management for personal political reasons.

While no system is "fail safe," as the Watergate era demonstrated, I believe the public would be better served by an open system which would decentralize authority instead of the system proposed in this bill.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I rise in support of the gentleman from Maryland's amendment.

The most serious weakness in the administration's proposals to reform the civil service is that it increases the possibilities for manipulating the civil service for personal or political favoritism. Instead of having personnel policy made by

a bipartisan body, it would be made by an administrator serving at the pleasure of the President. Although this change has been accomplished by Reorganization Plan No. 2 of 1978, it was done under a procedure that excluded amendments.

On July 7, 1947, the 80th Congress approved Public Law 162, thereby establishing the Commission on Organization of the Executive Branch of the Government. The Commission became known as the First Hoover Commission. It was directed to investigate the structure of the executive branch and recommend ways of improving its efficiency, effectiveness, and accountability.

Between July of 1947 and May of 1949, 300 men and women worked for the Hoover Commission. Twenty-four task forces scrutinized each of the major functional areas of the Government and reported their findings and recommendations. The Commission then studied and evaluated the task force reports and issued a series of 19 reports to the Congress.

In a statement of purpose and principle, the Hoover Commission declared:

> There is perhaps no time in history when it has been more important to evaluate the effectiveness of the Executive Branch of the Government in carrying out the will of the Congress and the people. While we recognize that efficiency in itself is no guarantee of Democratic Government, the sobering fact remains that the highest ideals and aims of democracy can be thwarted through excessive administrative costs and through waste, disunity, apathy, irresponsibility, and other by-products of inefficient government.
>
> The Commission's recommendations in total, therefore, are directed to the achievement of reforms which it hopes will bring about a more responsible and a more responsive government, a government that will act with dispatch, with greater internal coordination and harmony, with consistency of administrative policy, and economy of operation.

On considering restructuring the Civil Service Commission, the Hoover Commission warned that—

> The Government must impose upon itself many regulations and controls to fend off myriad pressures and influences which seek special privilege or gain, particularly for political reasons.

It therefore rejected all single-administrator forms of organization and concentrated on organizational structures which would protect the merit system and at the same time provide the desirable benefits of single administration. It refused to propose any reorganization which would weaken the protective functions of or sacrifice the public confidence in a full-time, bipartisan commission of three members.

Accordingly, the Hoover Commission recommended that the bipartisan, three member Commission form be retained but that the President designate one of the Commissioners as Chairman and vest in him full responsibility for administering the operating organization and program of the Commission. The Chairman's role, apart from that of the other Commissioners, was to be the principal point of contact between the President and the heads of operating agencies in all matters of civilian personnel management, both domestic and foreign, acting within the rules and regulations established by the full Commission.

Thus, while the Chairman would exercise authority to implement the rules and regulations of the civil service, the full Commission would retain its power and responsibility for establishing those rules and regulations. In addition, the Commissioners not designated as Chairman the duty of continuing the study of the nature, frequency, and source of abuses of the merit system in order to initiate steps to prevent their recurrence.

I agree that daily operations of the central personnel agency do need to be the responsibility of a single individual. This is, in fact, what happens now with the Chairman of the Civil Service Commission. He is designated by law as the Chief Operating Officer of the Agency. Everything the administration wants a new Office of Personnel Management to do, can be done under a single administrator serving under a bipartisan body with the Chairman acting as the Chief Operating Officer.

However, under this bill, the merit system would be seriously endangered, for a single individual would be making personnel policy for the entire Federal Civil Service work force of more than 2 million employees.

Administration spokesmen point to some States and cities where responsibility for making personnel policy was recently shifted from a multiheaded agency to a single administrator. The analogy, however, is inapt for none is comparable to the size, complexity, diversity, and power of the Federal Government. In addition, no one has studied whether the policies made by these local administrators are better or worse, or whether they have resulted in more or less political and personnel favoritism in the civil service, than before.

For the above reasons, Mr. Chairman, I urge my colleagues to adopt the gentleman's amendment.

Mr. UDALL. Mr. Chairman. I rise in opposition to the amendments offered by the gentleman from Maryland (Mr. STEERS).

Mr. Chairman, you cannot run an army by a committee of generals, you cannot run a business by a committee of businessmen, and you cannot run a personnel system by a committee. The vice of this amendment is that is exactly what the gentleman from Maryland is asking us to do. But the administration's overhaul of the civil service system is to break up the system in which the Civil Service Commission used to be both the adjudicator, the judge, and the protector of the integrity of the system and also the personnel manager for the Government.

Now in the reorganization proposal which the committee headed by the gentleman from Texas (Mr. BROOKS) handled, we have broken these down into separate functions, so that the adjudicators can adjudicate and the managers can manage.

The amendment offered by the gentleman from Maryland, (Mr. STEERS) seeks to create a three-headed agency which would manage the Federal Government's personnel system. It would be unworkable, it is unwise, and it would be a serious mistake.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to my colleague, the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Chairman, I am opposed to the amendments offered by the gentleman from Maryland. Just a few weeks ago, the House overwhelmingly approved Reorganization Plan No. 2, which established the Office of Personnel Management and the Merit Systems Appeal Board. This plan very properly provided for a multimember board to protect the rights of civil service employees. But, it also very properly assigned to a single-headed office the personnel management role for the Federal Government. This role was previously carried out by the multimember Civil Service Commission and it proved to be a very unwieldly and inefficient management process. That is one of the major problems the reorganization plan and this legislation are trying to correct.

The Federal Government, like any large employer, needs a well run, responsive personnel operation. This can certainly be achieved more efficiently with a single-headed office. That is the way it is done in private industry and that is the way more than 30 States carry out their personnel practices.

We should not confuse the role of personnel management with that of handling employee grievances and civil service compliance. I believe that the Congress and this administration have made a significant step forward in setting up the Office of Personnel Management, and I oppose this effort to revert to the previous inefficient and unmanageable structure.

Mr. UDALL. Mr. Chairman, I thank the gentleman from Texas (Mr. BROOKS), and I associate myself with his remarks.

What we would be saying by passage of this amendment, if I may say in conclusion, is, "Your personnel management, Mr. President, is a three-headed independent board, the members of which are removable for cause only and are in effect free from Presidential direction."

Mr. Chairman, I think it would be a serious mistake to adopt this amendment.

Mr. FORD of Michigan. Mr. Chairman, I think the gentleman's amendment misses the target he described for us because I am afraid he has not read this bill very carefully.

In the next section of the bill he will find that there is a merit system protection board of three members which performs the merit system protection functions that the present three Civil Service

Commissioners have traditionally performed.

What is being created in the section which the gentleman would amend is a single personnel administrator, a new concept for the administration of Federal employment, not a new concept at the State and local level. At that level that is an accepted practice which has gone on for many years in the more enlightened structures of State and local government.

For the first time we would have the ability to have an executive head of the management function in administering a large Federal civilian work force. To create a second three-member board or a troika to go with the one included in the committee bill would just be foolish because we would then have two committees meeting, and we would still have no one initiating any executive-type action on behalf of the Government in administering its affairs with its vast work force.

I think the gentleman's amendment is defective because it is obsolete. It is an alternative which might have been considered to what we have done in the committee had we done nothing; but as an alternative to what we have done in the committee bill at the suggestion of the administration, it is a bad amendment. Had we done nothing in this area, the gentleman's amendment would be better than the status quo, but it is not better than what we have proposed as a change.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. STEERS. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Maryland, the author of the amendment.

Mr. STEERS. Mr. Chairman, very briefly, just to correct the record, the Member who spoke just previously said something about my not having read the bill. As proof thereof, he mentioned the Merit System Protection Board.

Mr. Chairman, I am afraid he was not listening to me because in my argument in behalf of my amendment, I mentioned the Merit System Protection Board.

He is quite right in saying that this would create another committee. I point out that the presidents of practically every major corporation in the United States are chosen by committees known as boards of directors. I do not think it follows at all that we have to have a one-headed member who will be judge, jury, and decider of all of these major personnel management problems.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. Yes; I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I would simply like to indicate that with respect to the operation of the Federal Government and the Federal work force, we and the body on the other side of the Capitol are the board of directors. We do not need a substitute board of directors which is not elected by the people.

Mr. DERWINSKI. Mr. Chairman, to emphasize that brevity is sometimes a virtue, I would like to limit myself by saying I believe that this amendment is unnecessary. I think it borders on infringement of the constitutional rights of the President. I think the arguments made against it have been sound, responsible, and, of course, objective. Therefore, I join in opposing the amendment.

Mr. STEERS. Would the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Maryland.

Mr. STEERS. I thank the gentleman for yielding.

In other words, since the Civil Service Commission is clearly now doing what I have proposed be done by a new board, the gentleman believes that the Civil Service Commission for the last 80 years has been unconstitutional?

Mr. DERWINSKI. No, no. What I am saying is that the Merit System Protection Board will continue to function, which is the principle involved. And I am saying that the President will now have control over this Agency through appointment. What the gentleman, I think, approaches is diluting Presidential control.

Mr. STEERS. If the gentleman will yield further, the gentleman said it was unconstitutional, and it is now being done by the Civil Service Commission.

Mr. DERWINSKI. It borders on being unconstitutional.

Mr. STEERS. All right, then, you acknowledge it is not actually unconstitutional.

Mr. DERWINSKI. In light of the reorganization plan that we accepted a few weeks ago.

Mr. STEERS. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mr. STEERS).

The amendments were rejected.

The CHAIRMAN. Are there other amendments to title II?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 150, line 17, strike out "inefficiency,".

Mr. HARRIS. Mr. Chairman, the bill places a great deal of reliance on a Merit System Protection Board that is supposed to be independent of the President, appointed for a term certain, and, therefore, able on a nonpartisan basis—which is one of the requirements of the bill—to act with regard to a contest between employee and management in an impartial manner. The question is how independent or how truly for a term certain are these members of the Merit System Protection Board appointed? The bill makes it clear that they can be removed for misconduct. It also makes it clear they can be removed for neglect of duty or malfeasance in office. These grounds for dismissal of these independent members of the board, who are appointed and confirmed are left in the bill by my amendment. The one term that this amendment would strike is the term "inefficiency," which I think negates the whole principle that is currently in the bill. The term "inefficiency" is clearly and completely a subjective term, which would mean that any President could fire any member of the Merit System Protection Board that he wanted to at any particular time. I think it is wrong to present to the people, to the Federal employee, and to our colleagues a proposition that the bill tries to do. It says that this is an independent board appointed for a term certain, 7 years, and then does not reach the fact that any member of that board could be dismissed summarily on the grounds of the subjective term "inefficiency." This amendment simply tries to perfect the bill to the point of saying, Yes, these are in effect independent appointments. They could be fired for misconduct, even if they have been appointed for a term certain, or for neglect of duty, or malfeasance, but not just on the basis of inefficiency.

I would urge my colleagues to support this amendment, and I would suggest to my colleague, the gentleman from Arizona (Mr. UDALL) that we have a point in the bill that should be corrected if, in fact, we are going to have an independent Merit System Protection Board.

Mr. SOLARZ. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I understand what my good friend, the gentleman from Virginia (Mr. HARRIS) is trying to do, but I really think that the adoption of this amendment could create some unfortunate consequences for the operation of the Merit System Protection Board. Nobody is perfect. We all make mistakes. The man in the White House we hope will do the right thing for America, but the fact of the matter is that some Presidential appointees have turned out bad in the past, and there is no doubt that some Presidential appointees will turn out to be inadequate in the future.

One of the primary responsibilities of the Merit System Protection Board is the expeditious consideration of the appeals that are sent to it, and it is not inconceivable that with the best of intentions, in spite of the fact that the Senate has to ratify these appointments, that in the future someone could be appointed to the MSPB who will simply not be able to cut the mustard, who will lack the ability to do the job.

I think that under those circumstances it really would be most unfortunate to deny the President the right to remove such an individual, because if this amendment is adopted, a simple inability to do the job will no longer constitute adequate justification for the removal of such an individual.

The point that I want to make here is that the 2 million Federal employees who work for the Federal Government, other than for the Postal Service, really are going to require the effective concern of the Merit System Protection Board, its fervent efforts on their behalf, and if it should turn out that someone is appointed to the Board who is not doing the job, I think the President ought to remove that individual in their interest.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I cer-

tainly agree with my colleague. I do not mean to sound crass, but I wish the gentleman would not strain at a gnat. The term "neglect of duty" is clearly left in the statute. Any member of the Merit Board that is guilty, as my colleague describes, is subject to neglect of duty even though he or she has been appointed and confirmed by the Senate.

What this bill does is not allow such a subjective term of "inefficiency" to be added to it. Let us not kid ourselves. If we leave the term "inefficiency" in there, we leave it up to the President to fire any member of the Merit System Protection Board that is supposed to be a member of that Board without any other justification than that member has been "inefficient."

Mr. SOLARZ. Mr. Chairman, I thank my friend, but I would insist there is an important and critical distinction between neglect of duty on the one hand and inefficiency on the other. There may be people who serve on the Merit System Protection Board who do attend to their responsibilities, and who do not neglect their duties, but who nonetheless are completely and totally inefficient, and in the interests of the Federal employees whom this Board is supposed to protect, I think it would be a mistake to deny the President the right to remove someone who is clearly and completely inefficient, because if it turns out they are trying to attend to their responsibilities, if this amendment is adopted, there would be no other way to get rid of them.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

In keeping with the pattern here, Mr. Chairman, I will be very brief. I would like to point out to the gentleman from New York that the gentleman very effectively addressed the amendment; but I would like to comment quite simply that I cannot conceive of the Congress of the United States telling the President he cannot remove someone from office that he deems inefficient. If you want to be on record as saying the President should not be able to remove someone on the grounds of inefficiency, I do not think in the light of today's demands of the public for better service that one wishes to take that position; so I suggest the rejection of the amendment.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to my friend and great statesman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I thank the gentleman for yielding to me.

What would be the benchmark or definition of being inefficient? To what level of performance do we hold these people, to the highest performance level in the land or what?

Mr. DERWINSKI. I would say an acceptable, practical level. For example the kind of efficiency that the gentleman expects in his office and the kind of great efficiency the gentleman brings to the Congress. That is the kind of standard we would expect.

Mr. JOHN L. BURTON. Mr. Chairman, if the gentleman will yield further, so it would be my level of performance that would set the level of efficiency throughout the civil service system?

Mr. DERWINSKI. Even the most able civil servant would be hard put to meet the level of efficiency the gentleman from California represents.

For example, the gentleman's brother does not quit achieve his efficiency.

Mr. JOHN L. BURTON. Well, would it be safe to say it would be the level of performance that my brother shows in the Congress?

Mr. DERWINSKI. Yes, or that of a mere mortal.

Mr. JOHN L. BURTON. I think I will accept that.

Mr. STEERS. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

Mr. Chairman, I am going to use my time only to ask the gentleman from Illinois (Mr. DERWINSKI) a question, and that is this:

Is it possible to remove members of the FTC, the SEC, and other administrative agencies for inefficiency? Does the gentleman know?

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Does the gentleman mean under present law?

Mr. STEERS. Yes, under present law, is it possible to fire a Commissioner from the Federal Trade Commission?

Mr. DERWINSKI. I am sure some of our experts on Government operations would know the answer to that question.

Mr. STEERS. Mr. Chairman, I will ask if any Member who is opposed to this amendment knows whether members of other agencies can be fired for inefficiency. And if they do not know, why on Earth, then, are they voting against this amendment, without even knowing what the practices of other agencies are?

I believe the administrative agencies cannot be massacred one by one by firing for inefficiency, and I think this is a very reasonable amendment for that reason, if for no other.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield further, may I point out to the gentleman that we are not speaking of massacres; we are speaking of a Presidential appointee, and if the President in his judgment feels this particular appointee is not operating in an efficient manner and is in fact inefficient, I think, given the sensitivity of his position and the effectiveness we want from this new civil service system, the President should have this prerogative.

Mr. STEERS. Does the gentleman mean the Merit System Protection Board should be sensitive to the desires of the President? I though it was instituted to protect employees.

Mr. DERWINSKI. No, I am not saying that at all. I am saying the Presidential appointee should perform at a high standard of efficiency.

I should say that where the gentleman from Maryland (Mr. STEERS) and I have our fundamental disagreement is not on an amendment like this or on any other amendments that may have preceded this or that may come later. I think the difference is that the gentleman has strong positions as to the motive of the bill as it relates to what he may call the "spoils system" or "politics."

I take the position that this bill is motivated by the highest of political principles. There is no spoils system or political motivation present. I think in that very fundamental way we differ.

The point here is that what is required from this revised Civil Service structure is a degree of efficiency that the public has judged the present Federal structure to be lacking. As I look at this, this means a return to efficiency and a desire to improve the performances. That is our goal.

Mr. STEERS. Mr. Chairman, is this not my time?

Mr. DERWINSKI. No, this is my time.

Mr. STEERS. Mr. Chairman, I thought it was my time.

The CHAIRMAN. The time is that of the gentleman from Maryland (Mr. STEERS).

Mr. DERWINSKI. Excuse me, Mr. Chairman, I did not mean to usurp the gentleman's time.

Mr. STEERS. Mr. Chairman, I am happy to get the gentleman's interesting observations, but I would reclaim my time merely to say that I do not raise any question as to the motivation of the President or of the administration. I simply think the result of this bill would be very detrimental, and I do not want to let the record go uncorrected.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I appreciate my colleague's comments on this amendment.

I think our colleagues who have been engaged in colloquy on the floor make it crystal clear that even though we present it to the public and to our colleagues that we have an independent merit system protection board whose members are appointed for a term certain, they cannot be removed at the will of the President, but this provision is in fact put in here so that these members can be removed at the whim of the President if in fact these members do not perform in accordance with what the President wants them to do.

How in the world are we going to have an independent board whose job it is to protect employees' rights, not to put forward the administration's position but to protect employees' rights, if in fact we allow them to be dismissed at the whim of the President?

I think this is what my colleague sees in the bill, because that is what is in the bill. I think we have to in all fairness show to the public and to the Members of the House that by this language we do not have in this bill an independent merit system protection board but we have members who can be fired by the President anytime the President wants to fire them. I wonder if my colleague agrees with that statement.

Mr. STEERS. Mr. Chairman, I certainly do agree.

The CHAIRMAN. The question is on

the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken, and on a division (demanded by Mr. HARRIS) there were—ayes 5, noes 20.

So the amendment was rejected.

AMENDMENTS OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. STEERS. Page 148, strike out lines 12 through 24 and insert in lieu thereof the following:

(b)(1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (5).".

Page 165, strike out line 24 and all that follows down through line 12 on page 166 and insert the following:

(c)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Systems Protection Board."

(3)(A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

Page 300, line 6, strike out "Senate" and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule,".

Page 347, strike out lines 5 through 8 and insert in lieu thereof the following:

(e) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(47) Members, Federal Labor Relations Authority (2).".

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. STEERS. Mr. Chairman, what this amendment would do is quite simple. It would save money. The problem of the size and cost of the bureaucracy is not adequately addressed in H.R. 11280. Streamlining the existing bureaucracy should make it smaller and more cost effective; it should not increase its size and cost. The amendment which I am offering here, which was offered by the junior Member of the Senate from Pennsylvania. This amendment was adopted by the Senate and will partially address this inconsistency.

Inherent in H.R. 11280, and in the reorganization plan which will go into effect between now and January 1, is an increase in the number of top-level appointed positions in the civil service system and an increase in the cost of these top-level positions. In sum, Mr. Chairman, we are seeing a so-called reform measure transform 3 full-time positions, and 3 very much part-time positions, into a total of 13 top-level, full-time positions, all at a higher pay level than currently. While it is tempting to try to restructure and prune back this proliferation of top-level political appointees, this amendment only seeks to reduce the pay of these positions by one level, thus preventing the pay inflation in the bill.

Mr. Chairman, I am including at this point the following table of the proposed positions and the pay levels for them under the administration's proposal and also under the Senate bill:

COMPARISON OF COSTS FOR APPOINTED POSITIONS BETWEEN THE ADMINISTRATION PROPOSAL AND HEINZ AMENDMENT

| Administration proposal | Annual salary | Level | Senate amendment | Annual salary | Level |
|---|---|---|---|---|---|
| OPM: | | | OPM: | | |
| Director | $57,500 | 2 | Director | 52,500 | 3 |
| Deputy Director | 52,500 | 3 | Deputy Director | 50,000 | 4 |
| Five Associate Directors | 250,000 | 4 | Five Associate Directors | 142,500 | 5 |
| Total | 360,000 | | Total | 245,000 | |
| MSPB: | | | MSPB: | | |
| Chairman | 52,500 | 3 | Chairman | 50,000 | 4 |
| Vive Chairman | 50,000 | 4 | Vice Chairman | 47,500 | 5 |
| Member | 50,000 | 4 | Member | 47,500 | 5 |
| Total | 152,500 | | Total | 145,000 | |
| Special Counsel | 50,000 | 4 | Special Counsel | 47,500 | 5 |
| FLRA: | | | FLRA: | | |
| Chairman | 52,500 | 3 | Chairman | 50,000 | 4 |
| Two members | 100,000 | 4 | Two members | 95,000 | 5 |
| Total | 152,500 | | Total | 145,000 | |
| Total for appointees | 715,000 | | Total for appointees | 582,500 | |

Amendment total for appointed positions (including Associate Directors) is 18.5 percent ($132,500) less than Administration proposal.

Mr. Chairman, I will yield to the acting chairman if the gentleman would like to speak at this point.

Mr. UDALL. Mr. Chairman, I was going to rise in opposition to the amendment. If the gentleman will yield for that purpose, maybe we can save some time.

Mr. STEERS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I want to make a couple of points. The first point is that all of these positions are under compression now. These executive-level positions involved in this amendment are not going to get the October pay raise, in any event, so it has no practical application. The main opposition to the amendment, however, is that the scheduling of these positions in the different executive levels was done by the administration when they drafted the bill, so that positions of equal responsibility here in the new agencies we are creating would be equivalent to those of other agenices. For example, the head of the Office of Personnel Management should be the same level, unless you are going to get out of the synchronized salary system, as the Director of the Office of Management and Budget. And so it goes with the new adjudicatory positions. They should be the same as the positions of the Federal Labor Relations Board, the National Labor Relations Board, and similar positions. This would knock them all out of comparability status with other similar positions in the Federal Government.

For that reason, the amendment is unwise, and I would oppose it.

Mr. STEERS. Mr. Chairman, if the gentleman will yield back my time, what is the OPM Director under the bill supposed to be paid?

Mr. UDALL. Level 2, which would be $$57,500.

Mr. STEERS. It is the gentleman's position that this job is so important that it is comparable to the Director of the Office of Management and Budget?

Mr. UDALL. That is the position the administration took in drafting the bill. Frankly, I think we have grade creep in the whole Federal Government. I think all executive positions and generals and admirals maybe ought to go down one

notch, but I am not sure the place to start is in this bill.

Mr. STEERS. Mr. Chairman, reclaiming my time, I would just say that the time to start will never arrive if it is continually postponed. I think we do have grade creep, and I commend the gentleman from Arizona for acknowledging the grade creep. I regret that he has accepted it by failing to support this amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mr. STEERS).

The amendments were rejected.

AMENDMENTS OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HARRIS: Page 150, line 24, strike out "President shall from time to time designate" and insert in lieu thereof "Board shall, every 2 years, elect".

Page 151, line 3, strike out "President shall from time to time designate" and insert in lieu thereof "Board shall, every 2 years, elect".

Page 151, after line 8, insert the following new subsection:

"(c) Any vacancy in the Office of Chairman or Vice Chairman shall be filled, for the balance of the term in which the vacancy occurred, by a special election which shall be held at the first meeting attended by 3 members.

Mr. HARRIS. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this is another effort to try to make sure that we have a Merit System Protection Board that is independent of any President's manipulation. I think my colleagues realize how important it is—or perhaps they do not—to make sure that we have a Merit System Protection Board, no matter which way a President wants to go, no matter how bad the effect might be, that that Merit System Protection Board is standing there as a buttress against any intrusion on these merit principles we adopted in title I.

The way the bill is drafted, the chairman and vice chairman of the Merit System Protection Board can be designated by the President "from time to time." I think it makes eminently good sense, if we are going to have an independent board, to have them elect their own chairman and vice chairman. This is what this amendment does.

The amendment sets up a procedure, where there are vacancies, for those to be filled, and makes clear that the vice chairman fills those duties of the chairman when that office is vacant. I think it is important, Mr. Chairman, that we have in the bill a clear distinction here between an agency such as the Office of Personnel Management directly under the hand of the President, and an independent board such as the Merit System Protection Board. I think this amendment would make it clear that the board is, in fact, independent; that a chairman who may not be operating in accordance with the will of the President still will remain the chairman, and the President cannot change him or her simply because the President disagrees.

I hope my colleagues can distinguish in their minds the difference between the Personnel Board and the Merit System Protection Board. This Merit System Protection Board is supposedly independent; it is supposedly a bulwark against a President who may want to somehow intrude upon the merit system. That is the purpose of the board.

I hope my colleagues can adopt this amendment so that a chairman or vice chairman cannot, in fact, be disciplined by a President if he does not perform the way the President wants him or her to perform.

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the amendments.

I will be as brief as possible, Mr. Chairman. I do wish, however, to commend my good friend from Virginia on his consistency—consistency in trying to undo what we are trying to do with this bill. This amendment takes the bill away from its main thrust. It ties the President's hands in an appointment area.

The President deserves this flexibility, and I would think that if Members wanted an orderly program for the Federal personnel system, if we want the proper concept of top level management responsibility, that would include appointment of this chairman by the President. I suggest, in keeping with the constructive goals of this measure, that this restrictive amendment be rejected.

Mr. SOLARZ. Mr. Chairman, I rise in opposition to the amendment.

I will be very brief. The gentleman from Virginia is a good man but I am afraid that this is not a good amendment. In addition to the fact that the Merit System Protection Board is already effectively insulated from Presidential pressure by virtue of the fact that the members of the board are ineligible for reappointment and can only be removed for cause, this amendment constitutes a gratuitous slap at the President. I say this because the President is now permitted to appoint the chairman of almost every other regulatory body in the Federal Government, and it would be both unfair and unnecessary to deny him the right to appoint the chairman of the Merit System Protection Board as well.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. HARRIS).

The amendments were rejected.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer five amendments which I would like to have considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. GILMAN: Page 145, line 18, insert ", subject to section 1104 (a) of this title," after "or".

Page 147, line 5, strike out "service." and insert in lieu thereof "service;".

Page 147, after line 5, insert the following: "except that the Director may not delegate open competitive examination authority with respect to positions whose requirements are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.".

Page 146, line 18, strike out "(a) Notwithstanding" and insert in lieu thereof "(a)(1) Subject to subsection (b)(3) of this section and notwithstanding".

Page 147, insert after line 14 the following:

"(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to ensure compliance with the civil service laws and regulations."

Page 152, after line 20, insert the following:

"(e) The Merit Systems Protection Board shall submit its request for annual appropriations to the Office of Management and Budget and to the Congress."

Page 152, insert after line 17 the following:

"(d) The Board shall conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.

Page 152, line 18, strike out "(d)" and insert in lieu thereof "(e)".

Page 145, line 16, insert "(a)" before "The following".

Page 146, insert after line 16 the following:

"(b)(1) The Director shall publish in the Federal Register general notice of any proposed rule or regulation which affects any agency or its employees Any such notice shall be in accordance with the notice requirements of section 553(b) of this title. Upon receipt of such notice of any proposed rule or regulation, the agency shall, under regulations which shall be prescribed by the Office of Personnel Management, post such proposed rule or regulation in such locations of such offices of the agency as the agency finds reasonably necessary to ensure notice to the maximum number of employees affected. The issuance of any such rule or regulation shall be in accordance with the rule making requirements of section 553(c) of this title. Any such rule or regulation shall be published in the Federal Register at least 60 days before its effective date.

"(2) Paragraph (1) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency need.

Mr. GILMAN. Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, my first amendment prohibits the delegation of competitive examination authority for the positions common to agencies, except that there may be delegation when the positions are unique to agencies or in extraordinary circumstances in the interests of economy and efficiency.

In view of the sweeping authority entrusted to the Director of OPM and his ability to delegate such authority under

title II, section 1104(2), and to insure that any such delegation by the Director does not relieve him of his responsibility to assure compliance with civil service laws and regulations, my second amendment specifically prohibits delegating to the agencies the ultimate responsibility of the Director of OPM for the execution, administration and enforcement of the Civil Service Act, other statutes, rules, and regulations of the President and the Office of Personnel Management.

My third amendment requires the Merit Systems Protection Board to submit its budget requests simultaneously to the Congress and the President, as is the case with the Consumer Product Safety Commission and the Federal Energy Regulatory Commission. Without this change, the Merit Systems Protection Board would be little more than a one-eyed watchdog tied by a very short leash to the White House.

The number and rapidity of changes contemplated by H.R. 11280 and Reorganization Plan No. 2 will make it virtually impossible for Congress to effectively oversee the Office of Personnel Management unless provision is made for an annual systematic review of the policies and program decisions and the compliance and enforcement actions of the Office of Personnel Management by the Merit Systems Protection Board. My fourth amendment would require such a review and would further require the Board to prepare annually a comprehensive report to the Congress as well as to the President on whether these policies, decisions, and actions of the Office of Personnel Management are in accord with and contributing adequately to a civil service based on merit principles and free of prohibitive practices.

The last amendment requires the Director of the Office of Personnel Management to notify each agency consistent with the APA of any proposed rulemaking which affects such agency or its employees at least 60 days before the proposed rule or regulation's effective date. Upon receipt of the proposed rulemaking from the Office of Personnel Management, the agency must post the proposed rule or regulation in such locations within the agency to insure notice to the maximum number of employees affected.

Mr. Chairman, I urge my colleagues to adopt these five amendments.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the acting Chairman.

Mr. UDALL. Mr. Chairman, I have had an opportunity to review with the staff the amendments and, in the interest of saving time and finishing at a reasonable hour today, I would be pleased to accept the amendments.

Mr. GILMAN. I thank the gentleman from Arizona.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I studied the gentleman's amendments very carefully. I want to be sure of one thing on which the gentleman could reassure me. None of his amendments in any way weaken the amendments adopted in the committee in the area of administrative law judges; do they?

Mr. GILMAN. No. In fact, if anything they may enhance the authority.

Mr. DERWINSKI. Fine.

Mr. GILMAN. I thank the gentleman for accepting these amendments, which I assume the gentleman is willing to do.

Mr. DERWINSKI. Yes.

Mr. GILMAN. I thank the gentleman from Illinois.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FISHER: Page 152, insert after line 17 the following:

"(d)(1) At any time after the effective date of any rule or regulation issued by the Office of Personnel Management in carrying out its functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face—

"(i) require any employee to violate section 2302(b) of this title; or

"(ii) is contrary to any merit system principle; or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision—

"(i) has required any employee to violate section 2302(b) of this title; or

"(ii) has been contrary to any merit system principle.

"(3)(A) The Director of the Office of Personnel Management, and any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(B) Any review conducted by the Board pursuant to this paragraph shall be limited to determining—

"(i) the validity on its face of the provision under review; and

"(ii) the validity on its face of the provision under review has been validly implemented.

"(C) The Board shall require any agency—

"(i) to cease compliance with any provision of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been so invalidly implemented by the agency.

Page 152, line 18, strike out "(d)" and insert in lieu thereof "(e)".

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with, that they be printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Mr. Chairman, the purpose of this amendment is to add a small bit to the protection of Government employees throughout the Merit System Board.

According to the bill, the Office of Personnel Management can issue rules and regulations on personnel matters, even those pertaining to the Merit System Protection Board. This amendment simply says that the Merit System Protection Board can review any OPM regulation and if it violates a prohibited personnel practice, then it can overrule that regulation and prevent its going into operation.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, I am advised that the administration is willing to accept this amendment. I find it agreeable and I will support it.

Mr. FISHER. I thank my colleague.

I might add that this provision was also included in the Senate bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. FISHER).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 144, strike out line 6 and all that follows down through line 8 on page 149 and insert in lieu thereof the following:

SEC. 201. (a) Title 5, United States Code, is amended by adding after chapter 9 the following new chapter:

"CHAPTER 10—OFFICE OF PERSONNEL MANAGEMENT

"Sec.
"1001. Office of Personnel Management.
"1002. Director; Associate Directors.
"1003. Functions of the Director.

"§ 1001. Office of Personnel Management

"The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal which shall be judicially noticed and shall have its principal office in the District of Columbia, but it may have field offices in other appropriate locations.

"§ 1002. Director; Associate Directors

"(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. No person shall, while serving as Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or by the President.

"(b) There may be within the Office of Personnel Management not more than four Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director. Such appointments may be made without regard to the provisions of this title governing appointments in the competitive service.

"§ 1003. Functions of the Director.

"(a) The following functions are vested in the Director of the Office of Personnel Man-

agement, and shall be performed by the Director, or by such employees of the Office as the Director designates—

"(1) recommending to the President for transmittal to Congress or the Commission such legislation or other measures as will promote an efficient civil service and systematic application of merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees;

"(2) appointing individuals to be employed by the Office;

"(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

"(4) directing the preparation of requests for appropriations and the use and expenditure of funds;

"(5) executing, administering, and enforcing—

"(A) the civil service rules and regulations of the President and the Commission, the statutes governing the civil service; and

"(B) such other activities of the Office as usual in civil service administration;

"(6) investigating matters pertaining to the administration of functions of the Office or the Director; and

"(7) reviewing the operations under chapter 87 of this title.

"(b) The functions enumerated under subsection (a) of this section shall not include any function which is either reserved to the Commission or the Merit System Protection Board including, but not limited to—

"(1) the preparation of rules under section 1301 of this title;

"(2) the prescription of rules, regulations, or similar policy directives;

"(3) the hearing or providing for the hearing of appeals, including appeals with respect to examination ratings, veterans' preference, racial and religious discrimination, disciplinary action, performance ratings, and dismissals, and the taking of final action on these appeals.".

(b)(1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management.".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Associate Directors of the Office of Personnel Management (4).".

(c)(1) Section 1104(a) of title 5, United States Code, is amended by striking out paragraph (5) and redesignating paragraph (6) as paragraph (5).

(2) Section 1302 of such title is amended—

(A) by striking out ", control, supervise, and preserve the records of," in subsection (a);

(B) by striking out "and enforce" in subsection (b); and

(C) by adding at the end thereof the following new subsection:

"(e) The Commission, subject to the rules prescribed by the President under this title, shall have authority to issue such regulations as necessary to prescribe general policy relating to the civil service laws. The Office of Personnel Management shall be guided by such policy in carrying out its functions under this title.".

(d)(1) The United States Civil Service Commission, as constituted under chapter 11 of title 5, United States Code, prior to the transfer of its functions under section 101 of Reorganization Plan Numbered 2 of 1978, is continued as an agency of the United States, except that of the first members appointed after the date of the enactment of this Act, one shall be appointed for a term of 2 years, one for a term of 4 years, and one for a term of 6 years, each such term expiring on March 1 of an odd-numbered year. Thereafter, members shall be appointed as provided under such chapter 11.

(2) If transfer of any function under such section 101 of such reorganization plan is inconsistent with the provisions of this section, such transfer is superseded by this section.

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York (Mr. GILMAN)?

There was no objection.

Mr. GILMAN. Mr. Chairman, conforming to the wishes of the House which obviously desires the retention of the Office of Personnel Management, I am offering this amendment which establishes an Office of Personnel Management as an independent establishment in the executive branch structured basically as it is in this legislation before us and in the Reorganization Plan No. 2. However, the amendment further provides for the continuation of the U.S. Civil Service Commission, as formerly constituted, except for certain specified changes in the terms of the Commissioners.

The Commission, subject to the rules prescribed by the President, shall continue to enjoy the authority to issue such regulations as necessary to prescribe general policy relating to the Civil Service laws.

The power to make personnel policy includes the power to interpret the laws; to decide the policies for authorizing exceptions to certain laws; to make the policies which determine how job applicants shall be ranked for employment consideration; to take positions out of the competitive service so they can be filled by political cronies; and to set aside almost all civil service laws in demonstration projects that would affect many thousands of individuals. The citizens of the United States would have far greater confidence in the wisdom and impartiality of such policies if they were made by a bipartisan body. This is, of course, the primary reason for having established the bipartisan Civil Service Commission in the first place.

The Office of Personnel Management shall be guided by the policy prescribed by the Commission in carrying out its functions specified in section 1003 of my amendment. The Director of OPM will be vested with the authority to recommend to the President legislation under title 5; directing the preparation of requests for appropriations and the use and expenditure of funds; the execution, administration, and enforcement of the civil service rules and regulations of the President and the Commission and the statutes governing the civil service; and the investigation of matters pertaining to his functions.

The functions enumerated under section 1003, however, shall not include any function which is either reserved to the Civil Service Commission or the Merit System Protection Boards.

The 95-year-old civil service system is not without faults; it has gone through many changes to overcome weaknesses as they have been identified. But abolishing bipartisan personnel policymaking will not correct any of these flaws. Nor will it improve the quality and performance of the civil service system or increase the public's confidence in it. None of the civil service problems identified by the administration as reasons needed for reform would be solved by having personnel policies made by one person. No rational case has been made for abolishing policymaking by a bipartisan body, while the advantages of having a bipartisan policymaking body are obvious.

This division of personnel policymaking from its execution will serve to deter the creation of a civil service czar, and at the same time, insure the continuation of bipartisan policymaking.

Mr. Chairman, I move my amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

This amendment, Mr. Chairman, would drastically distort one of the purposes of the bill.

We have already agreed in connection with the reorganization proposal that we are going to break up the dual functions now handled by the Civil Service Commission. The adjudicatory judicial function of protecting the merit system which we have will be lodged in the Merit System Protection Board. The personnel management function will be headed up by the director of the OPM.

Now comes this amendment by the gentleman from New York (Mr. GILMAN), which transfers the authority to make personnel policy and to manage that policy from the President's personnel manager, the Director of OPM, to this three-headed judicial body.

It simply guts the authority of the President's personnel policy adviser and places it in the hands of an unresponsive personnel board.

That is exactly what we have been trying to get away from in this bill.

Mr. Chairman, adoption of this amendment would be a major mistake, and I urge the rejection of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. GILMAN).

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The clerk read as follows:

Amendment offered by Mr. HARRIS: Page 151, strike out line 18 and all that follows down through line 5 on page 152, and insert in lieu thereof the following:

"(a)(1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, and receive evidence.

"(2) Any member of the Merit Systems Protection Board, the Special Counsel, and

any administrative law judge appointed by the Board under section 3105 of this title may—

"(A) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, and

"(B) take or order the taking of depositions and order responses to written interrogatories.

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, I think this is also an important change to be made with regard to the subpena power that we give a Government agency, and I think it touches upon many other actions which we have taken in the past with regard to subpena powers given to various Government employees.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am happy to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, if the gentleman will save us 5 minutes by not explaining the amendment, I am prepared to accept it.

Mr. HARRIS. Mr. Chairman, since I tried to explain the amendment to members of the committee and since my chairman apparently now understands the amendment, I will give it no further explanation and ask for a vote.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am happy to yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, the gentleman from Virginia (Mr. HARRIS) is now exploring his great success with respect to this amendment.

Perhaps we could have an understanding whereby he would just henceforth offer amendments that are acceptable and would drop all of those which are not acceptable. In that case we could really move this afternoon.

Mr. HARRIS. Mr. Chairman, I say to my colleague that apparently that is basically the system we are operating under right now except for the gentleman from Virginia, who has always been known as a man who fights for principles, whether they are acceptable or not at the time.

Mr. DERWINSKI. I am thinking more of this great civil service reform and of the fact that down in the gentleman's noble heart, he knows we are pursuing the proper course for our country.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was agreed to.

The CHAIRMAN. Are there other amendments?

AMENDMENTS OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer two amendments.

The Clerk read as follows:

Amendments offered by Mr. CLAY:

On page 185, line 7, insert the following after "(42 U.S.C. 2000e–16),": "the Equal Pay Act of 1963 (29 U.S.C. 206(d)),".

On page 187, line 17, insert after the word "followed" the following: ", except that in a case of discrimination brought under 42 U.S.C. 2000e–16(c), 29 U.S.C. 633a(c), or 29 U.S.C. 216 and 217, the proceeding shall be de novo.".

Mr. CLAY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York (Mr. GILMAN)?

There was no objection.

Mr. CLAY. Mr. Chairman, these amendments are precisely the same as the two I offered this morning which were accepted.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

We have studied these amendments, and they are acceptable. I urge that they be adopted.

Mr. CLAY. I thank the gentleman.

Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Missouri (Mr. CLAY).

The amendments were agreed to.

The CHAIRMAN. Are there other amendments to title II?

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer a fifth amendment. I thought it was coming up under title III.

The Clerk read as follows:

Amendment offered by Mr. CLAY: On page 187, strike lines 7 through 13, and insert the following in lieu thereof:

"(b) A petition to review a final order or decision of the Board shall be filed in the Court of Claims or a United States district court as provided in chapters 91 and 85, respectively, of title 28 except that cases of discrimination shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c) under section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216 and 217), as applicable. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.".

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

Mr. Chairman, this is a technical amendment which improves the bill and is acceptable.

Mr. CLAY. Mr. Chairman, I thank the gentleman. I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. BOLAND: On page 155, line 9, strike "information which" and insert in lieu thereof: "information, other than foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by executive order, which".

On page 159, after line 5, insert the following new paragraph:

"(9) In any case under paragraph (c)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by executive order, or in any case in which the Special Counsel, in consultation with the head of an agency under paragraph (d)(3) of this section, determines that information involved is prohibited from disclosure by law or by executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

On page 160, line 19, strike "paragraph." and insert in lieu thereof: "paragraph, except that prior to including any information in a public list, the Special Counsel shall consult with the head of the agency involved to determine if any of the information to be contained therein is prohibited from disclosure by law or by executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, in which case the information shall not be included in such a public list."

On page 161, line 7, strike "title;" and insert in lieu thereof: "title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by executive order."

Mr. BOLAND (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BOLAND. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BOLAND. Mr. Chairman, as we all know, this bill creates a Special Counsel. The Special Counsel has the responsibility and the authority to receive allegations, to investigate allegations and to assess any corrective action taken with regard to allegations which are made to him. These allegations may be about prohibited personnel practices as defined by the bill, but they may also include any possible violation of law,

rule, regulation or any mismanagement or abuse by an officer or employee of the Government. The jurisdiction is very wide and the purpose of this amendment is to quarrel with only one part of it.

It seems to me that when matters involving classified intelligence information are involved, then the Special Counsel ought not to be involved. The various intelligence agencies presently have Inspectors General. There is a Presidentially created Intelligence Oversight Board and in addition, there are the oversight committees of Congress, including the Permanent Select Committee on Intelligence, which have, and ought to exercise, jurisdiction in matters that involve improprieties but which also concern intelligence information.

Mr. Chairman, section 1206 of the bill does exempt classified information from consideration by the Special Counsel in some circumstances. However, it does not in others. To be specific, if there has been a disclosure of classified information in the newspapers or in some other public form, then the Special Counsel is not involved. If, however, disclosure by an employee or applicant has been to a specific Inspector General or, indeed, to the Special Counsel himself, then the Special Counsel may investigate.

Mr. Chairman, the Special Counsel may investigate the most sensitive kinds of intelligence information. Further, the bill requires that when the Special Counsel determines that there ought to be an investigation, he should transmit that recommendation to the head of the agency involved and require the head of that agency to conduct an investigation about the allegation and submit a written report to him, the Special Counsel, and to the General Accounting Office. Further, the Special Counsel is required to publish a public list of matters which have been referred to the heads of agencies.

These provisions give me pause. I can understand very well the reasons which have convinced the committee that there ought to be a Special Counsel to investigate the allegations of whistle blowers. Indeed, that may be a very healthy thing to have within a civil service system like our own. I think allegations of impropriety, no matter by whom they are alleged to have been committed, ought to be investigated. The question, of course, is who is the proper authority to investigate them? When national security information is involved, it is my strong feeling, and that of the President and the intelligence agencies, as well, that the proper authorities to investigate these allegations are the Inspectors General which have been created in the intelligence agencies.

These Inspectors General have the ability and the authority to investigate any impropriety brought to their attention and they are required by Executive order to bring any activities which they deem indeed to be improper to the attention of the Intelligence Oversight Board. This Board, which has been in operation for some years, has the duty of investigating such matters and making its recommendations to the President. In addition, any actual or probable violations of law must be brought to the attention of the Attorney General.

Beyond this, the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate are, and have been, exercising continuing oversight over all intelligence agencies—with a particular emphasis on any improprieties or illegalities. These committees require and will receive under these amendments reports detailing any possible improprieties or illegalities from the Special Counsel in those cases which he is precluded from investigating. The committees will then conduct investigations of their own.

Mr. Chairman, the intelligence agencies are already explicitly exempted from the mandatory applicability of merit system principles established in title I of this bill. As originally introduced, this legislation limited the scope of the Special Counsel's authority to investigation of allegations of prohibited personnel practices. In expanding the authority of the Special Counsel, the committee has exempted intelligence agencies in some respects, but not in others from investigations conducted by the Special Counsel. This seems to me to be inconsistent with the exemptions found in title I and those partial exemptions contained in section 1206. It seems to me that this confusion of purpose is ill considered. I believe the House should focus on the inconsistencies in the bill and I believe it should agree to delete intelligence agencies from the coverage of the bill completely.

Mr. Chairman, the question of whether or not intelligence information would be subject to review by the Special Counsel was a topic not covered in hearings before the Committee on Post Office and Civil Service. Admiral Turner, the Director of Central Intelligence, and other intelligence officials did not have an opportunity to testify on this matter. They, understandably, are very concerned about its application. They are concerned not because they wish to avoid investigations of improprieties or illegalities but simply because they wish to assure the absolute confidentiality and inviolability of the kinds of information that may be involved in such investigations. They feel, as do I, that current investigatory machinery, such as the Inspector General, the Intelligence Oversight Board and most particularly the congressional oversight committees, are more than adequate to perform the task.

The classic rule of intelligence is that the fewer people know a secret, the safer that secret remains. That is why intelligence information is so closely guarded. That is why the two intelligence committees are as careful as they are in the selection and screening of their staff and in the procedures under which they handle classified material.

Mr. Chairman, the job of legitimate, responsible congressional oversight can be done under these circumstances. Within the intelligence agencies, watchdog institutions like Inspectors General who have independent authority to perform their investigations and make their recommendations without fear of reprisal can be very effective if they work within the agencies and they themselves hold very closely the information which they gather in the pursuit of their investigations.

Mr. Chairman, I do not wish to impugne the patriotism or the professional integrity of those who will occupy positions in the Office of the Special Counsel. I feel very simply, however, that there is danger in expanding access to classified intelligence information which can be of the most sensitive nature through the Office of the Special Counsel. I do not feel that it was carefully considered. I do not feel, nor do the responsible intelligence officials, that it provides for the safeguarding of the kind of information that may be involved and finally, I am concerned about further discussion in the public forum about classified intelligence information.

I suggest that the best course at this point is to exempt from the provisions of this bill all intelligence information or any allegations which might involve such information. This is the action which the Senate has taken, it is to me the most prudent course and at the same time, it does no violence to the jurisdiction to the Special Counsel as recommended by the committee. He is still empowered to look into any and all allegations of improprieties or illegality except those which may involve intelligence information.

I should note to the members that I have drafted these amendments in such a way as to exclude only intelligence information. I should also note that the amendments would have the effect of preventing classified information from being disclosed in the public list which is also referred to within this section. Finally, the amendments make a qualifying change to that part of section 1206 which refers to other authorities of the Special Counsel.

Specifically, the amendments make clear that where the Special Counsel has authority under the Freedom of Information Act, it preserves the authority currently exercised by the Civil Service Commission. This last change, Mr. Chairman, in my understanding, merely clarifies the intent of this legislation and is not inconsistent with the intent of the committee in offering this bill.

Mr. Chairman, let me just close with this assurance to the Members. The intent of these amendments is not to preclude the raising of complaints or allegations about improprieties or illegalities within our intelligence community. It is not to prevent such allegations reaching the surface. Rather, it is intended to insure that they are considered under procedures which have been adopted to handle such allegations. These procedures can also safeguard any sensitive, classified intelligence information which may be the subject or somehow involved with such allegations.

It seems to me the best course to exempt the intelligence agencies from the authorities of the Special Counsel. It seems to me that no case has been made that the Inspectors General and the Intelligence Oversight Board are not doing

their jobs. I am certain that the Members of this House will recognize that the Senate Select Committee on Intelligence, which has now been in operation for some 2½ years, has done a fine job in considering many aspects of the intelligence business. The Permanent Select Committee on Intelligence, which I chair, has been in this business for only a year. I can report to the Members of the House that we are doing as careful and as considered a job of oversight as we can. We will continue to do so. That, it seems to me is the way to go. The procedures of this bill are neither crafted for, nor were they carefully considered in light of, the kind of sensitive intelligence information that might be the subject of allegations brought before the Special Counsel. I therefore urge that such information not come within the jurisdiction of this Special Counsel.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

Mr. Chairman, I have studied the amendments. We modified them a little bit following our discussion, so they are acceptable to us, and I am told the administration finds that they are acceptable as well.

Mr. BOLAND. I thank the gentleman from Arizona.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I am very pleased to yield to my friend, the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

Anything that is acceptable to the administration is acceptable to us.

● Mr. MAZZOLI. I rise in support of the Boland amendments.

As initially proposed, I had reservations about the amendment. However, the gentleman from Massachusetts graciously agreed to the two modifications which I requested be made to the amendments.

First, I asked that the proposed exemption of intelligence matters from the jurisdiction of the Special Counsel be limited to "foreign intelligence and counter intelligence." Thus, domestic matters, such as criminal intelligence, would not qualify for an exemption. This modification was agreed to.

Second, I requested that a provision be added to give the House and Senate Intelligence Committees oversight jurisdiction over the Special Counsel's decision not to take—or to publicly list—"whistleblowers" involving foreign intelligence or counter intelligence.

This modification will assure—with the anticipated cooperation of the Special Counsel and the agencies—that the exemption will not be misused to cover waste, mismanagement, or illegal operations by the agencies.

I urge the House to adopt the gentleman's amendments.●

The CHAIRMAN. The question is on the amendments offered by the gentleman from Massachusetts (Mr. BOLAND).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. LEVITAS: On page 168, strike line 13 and insert: "such employee's position, which shall include, but not be limited to conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.".

On page 175, strike lines 9 and 10 and insert: "Fourteen days or less for such cause as will promote the efficiency of the service, including conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.".

On page 179, strike lines 10 and 11 and insert: "by this subchapter against an employee for such cause as will promote the efficiency of the service, including for conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.".

Mr. LEVITAS (during the reading). Mr. Chairman, first, I ask unanimous consent that the two other substantially identical amendments to title II be considered as read, printed in the RECORD, and that all the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. LEVITAS. Mr. Chairman, first of all, I would like to take this opportunity to state that I consider this legislation not only to be the centerpiece of the President's reorganization program, but I consider it to be an extremely important and long overdue reform in government and improvement in the civil service. It is this bureaucracy that deals directly with the people, that implements the policies of the administration and of this Congress, and unless the civil service is the proper tool which it should be to effectively carry out these purposes, then we not only frustrate the policies of our Government, but we generate the type of public cynicism and disrepute of Government that frequently has been true in the past. That attitude undermines the effectiveness of the decisions made by the administration and by this Congress. That attitude is cause of lack of confidence in our Government and is the cause of lack of respect for our Government by the people of the United States.

Mr. Chairman, I want to commend the chairman of the subcommittee, as well as the ranking minority Member, for the truly outstanding way in which they have handled a most difficult bill.

The overwhelming number of employees of the Federal Government are loyal, hard-working, dedicated people, who seek to serve the public and, indeed, they are public servants in the best sense of the term. There are some few, however, and they are very few, indeed, who do not realize they are servants of the public. As a result, they do not act toward the public in encounters with them as public servants should. Too often they treat citizens with unconcern, arrogance, slowness, callousness, and plain rudeness. In short, they treat the public with discourtesy.

The amendments which I offer would make it very clear that under the new procedures relating to the civil service and accountability, where there are provisions made for performance appraisal, where there are provisions made for disciplining employees who fail to meet those standards, that one of the specific matters which shall be taken into account is the question of discourtesy to the public, discourtesy by public servants to the public they should be serving.

Some may say, "Well, this is so trivial, this is such an unimportant item when we are dealing with all these great decisions, why should we be troubled by something like rudeness or discourtesy?"

Well, I suggest that most Americans, the millions and millions of Americans who have to deal with public servants, deal with them on a one to one basis. The frustration and the anger and the embarrassment that result from rudeness and discourtesy creates more problems for our Government and for the civil service, perhaps, than some of the large decisions we so frequently hear about.

What this amendment does is this: it defines as "unacceptable performance" in the appropriate section of title II so that the definition of "unacceptable performance" includes a pattern of recurring discourtesy to the public. This definition would give a very clear mandate to the rulemakers and administrators that this is important to the American people and to this Congress to eliminate unprovoked discourtesy by federal employees. I think it will do a great deal to remove some of the problems which the few bad apples in the barrel create for others and will do more to make those good, dedicated public servants recognize that there are people in Government who stand behind them.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I have not seen the amendments until a moment ago. If the gentleman is going to make a record that the Congress is going to say that discourteous treatment to the public involving a pattern of repeated instances could be a ground for discipline, I do not see how anyone could quarrel with that.

I can see how it can be used mischivously by supervisors if we are not careful with the way it is administered. There is nothing in the Senate bill on this, but we can take a look at it in the conference.

Mr. Chairman, I personally think it is a good idea for the Congress to go on record in support of this basic principle.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman, and I want to say I think it would do a great deal to strengthen the civil service reform and the public's regard for public employees.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I wish to go beyond the immediate language of the gentleman's amendments and point out that those of us on the committee who worked hard to produce this bill appreciate the kind of interest and support and understanding we are getting on the floor.

This is a complex measure, and I believe all the Members appreciate the fact it is the public who will be better served if we write a good bill on the floor this afternoon.

Mr. Chairman, I thank the gentleman from Georgia (Mr. LEVITAS) for offering his amendment.

The CHAIRMAN pro tempore (Mr. BOLLING). The question is on the amendments offered by the gentleman from Georgia (Mr. LEVITAS).

The amendments were agreed to.

The CHAIRMAN pro tempore. Are there other amendments to title II?

If not, the Clerk will read.

The Clerk read as follows:

TITLE III—STAFFING

VOLUNTEER SERVICES

SEC. 301. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3111. Acceptance of volunteer service

"(a) For the purpose of this section, 'student' means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if the individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the head of an agency may accept, subject to regulations issued by the Office of Personnel Management, voluntary service for the United States if the service—

"(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for students;

"(2) is to be uncompensated; and

"(3) would not, under the facts and circumstances involved, be performed by an employee in the absence of voluntary service under this section.

"(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).".

(b) The analysis for chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"3111. Acceptance of volunteer service.".

DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

SEC. 302. Section 2108 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by inserting in paragraph (3) after "means" the following: ", except as provided in paragraph (4) of this section";

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(4) except for the purposes of chapters 43 and 75 of this title, 'preference eligible' does not include a retired member of the armed forces unless—

"(A) the individual is a disabled veteran; or

"(B) the individual retired below the rank of major or its equivalent; and

"(5) 'retired member of the armed forces' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.".

NONCOMPETITIVE APPOINTMENT OF CERTAIN DISABLED VETERANS

SEC. 303. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3112. Preference eligibles; disabled; noncompetitive appointment

"Under regulations prescribed by the Office of Personnel Management, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who—

"(1) has a compensable service-connected disability of 30 percent or more, or

"(2) is enrolled in or has successfully completed a course of job related training prescribed by the Administrator of Veterans' Affairs under chapter 31 of title 38.".

(b) The analysis for chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"3112. Preference eligibles; disabled; noncompetitive appointment.".

EXAMINATION, CERTIFICATION, AND APPOINTMENT OF PREFERENCE ELIGIBLES

SEC. 304. (a) Chapter 33 of title 5, United States Code, is amended by adding after section 3303 the following new section:

"§ 3303a. Preference eligibles; appointment; time limit

"(a) For the purpose of this subchapter—

"(1) the status of an individual, who is not a retired member of the armed forces, as a preference eligible under section 2108(3)(A) or (B) of this title for purposes of perference in consideration for appointment shall terminate—

"(A) at the end of the 15-year period beginning on the date of the individual's separation from active duty in the armed forces, or

"(B) upon appointment to a position that is not time limited,

whichever occurs first; and

"(2) the status of an individual, who is a retired member of the armed forces and who retired below the rank of major or its equivalent, as a preference eligible under section 2108(3)(A) or (B) of this title for purposes of preference in consideration for appointment shall terminate at the end of the 3-year period beginning on the date of the individual's separation from active duty in the armed forces.".

(b) Section 3305 of title 5, United States Code, is amended to read as follows:

"§ 3305. Competitive service; preference eligibles; applications

"On the application of a preference eligible, a competitive examination shall be held for any position for which there is an appropriate list of eligibles.".

(c) Section 3309 of title 5, United States Code, is amended to read as follows:

"§ 3309. Preference eligibles; examinations; additional credit for

"(a) Preference eligibles shall be referred for appointment in accordance with regulations issued under section 3317(a) of this title. A preference eligible who qualifies in an examination for entrance into the competitive service is entitled to additional points above the individual's earned rating, as follows:

"(1) subject to section 3303a of this title, a preference eligible under section 2108(3)(A) or (B) of this title—5 points; and

"(2) a preference eligible under section 2108(3)(C)–(G) of this title—10 points.

"(b) A preference eligible under section 2108(3)(C) of this title who qualifies in an examination for entrance into the competitive service and who has a compensable service-connected disability of 10 percent or more, shall be placed at the head of the list of eligibles, except that in the case of scientific and professional positions in GS–9 or higher, the preference eligible shall be placed on the list of eligibles in the order of the eligible's rating, including points added under subsection (a)(2) of this section.

"(c) If other rating systems are used, preference eligibles are entitled to comparable preference.".

(d) Section 3314 of title 5, United States Code, is amended by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management" and by striking out ", in the order named by section 3313 of this title".

(e) Section 3315 of title 5, United States Code, is amended—

(1) in the first sentence of subsection (a), by striking out ", in the order named by section 3313 of this title";

(2) in the second sentence of subsection (a), by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management"; and

(3) in the first sentence of subsection (b), by striking out "Commission" and inserting in lieu thereof "Office of Personnel Management".

(f) Section 3317(a) of title 5, United States Code, is amended to read as follows:

"(a) The Office of Personnel Management shall prescribe regulations for the referral of eligibles to a nominating or appointing authority for consideration for appointment to each vacancy in the competitive services.".

(g) Section 3321 of title 5, United States Code, is amended to read as follows:

"§ 3321. Competitive service; probations; periods of

"(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant, for a period of probation—

"(1) before an appointment in the competitive service becomes final; and

"(2) before an initial appointment as a supervisor or manager becomes final.

"(b) An individual—

"(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

"(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position occupied by the individual immediately before the transfer, assignment, or promotion of the individual to the supervisory or managerial position. Nothing in this section prohibits the taking of an action against an individual serving a probationary period under section (a)(2) of this section for cause unrelated to supervisory or managerial performance.".

(j) Section 3326 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by striking out

", and, if the position is in the competitive service, after approval by the Civil Service Commission"; and

(2) in subsection (c), by striking out ", or the authorization and approval, as the case may be,".

(k) The following sections of chapter 33 of title 5, United States Code are repealed:

(1) section 3313 (relating to registers of eligibles); and

(2) section 3319 (relating to members of family restriction).

(l) The analysis for chapter 33 of title 5, United States Code, is amended—

(1) by inserting after the item relating to section 3303 the following new item:

"3303a. Preference eligibles, appointment; time limit.";

(2) by amending the item relating to section 3305 to read as follows:

"3305. Competitive service; preference eligibles; applications.";

(3) by amending the item relating to section 3309 to read as follows:

"3309. Preference eligibles; examinations; additional credit for.";

and

(4) by striking out the items relating to sections 3313 and 3319.

RETENTION PREFERENCE

SEC. 305. (a) Section 3501(a) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) 'employee with limited preference' means any preference eligible (other than a preference eligible under section 2108(3)(C)–(G) of this title or subsection (a)(3)(A) of this section).".

(b) Section 3502(b) of title 5, United States Code, is amended to read as follows:

"(b) An employee with limited preference is entitled to military preference in retention under this section only during the 8-year period following the date of the employee's initial appointment in or under an Executive agency, or if later, during the 8-year period following the date of such employee's initial return following a leave of absence during which the employee was performing active service in the armed forces.".

(c) Section 3502(a)(2) of title 5, United States Code, is amended to read as follows:

"(2) military preference, subject to subsection (b) of this section and section 3501(a)(3) of this title;".

(d) Section 3502 of title 5, United States Code, is further amended by adding at the end thereof the following new subsection:

"(c) An employee who is entitled to retention preference and whose performance meets a standard of adequacy under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees."

(e) Section 3503 of title 5, United States Code, is amended—

(1) in subsection (a), by striking out "each preference eligible employed" and inserting in lieu thereof "each competing employee"; and

(2) in subsection (b) by striking out "each preference eligible employed" and inserting in lieu thereof "each competing employee.".

TRAINING

SEC. 306. Section 4103 of title 5, United States Code, is amended by inserting "(a)" before "In order to increase" and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

"(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

"(3) In selecting an employee for training under this subsection, the head of the agency shall consider—

"(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

"(B) the employee's capability to learn new skills and acquire knowledge and abilities needed in the new position; and

"(C) the benefits to the Government which would result from retaining the employee in the Federal service.".

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 307. Section 5723(d) of title 5, United States Code, is amended by striking out "not".

RETIREMENT

SEC. 308. Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;".

EXTENSION OF VETERANS READJUSTMENT APPOINTMENT AUTHORITY

SEC. 309. Section 2014(b) of title 38, United States Code, is amended to read as follows:

"(b) To further this policy, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe for veterans readjustment appointments and subsequent career-conditional appointments, under the terms and conditions of Executive Order Numbered 11521 (March 26, 1970), except that these appointments may be made up to and including GS–7 of the General Schedule described in section 5104 of title 5, or its equivalent, and, for disabled veterans, the fourteen years of education limit shall not apply. Notwithstanding any limitations with respect to the period of eligibility as prescribed in Executive Order Numbered 11521, a veteran of the Vietnam era who was eligible for appointment under such Executive order on April 9, 1970, or a veteran of the Vietnam era who was separated on or after such date, may be appointed at any time. No veterans readjustment appointment may be made under the authority of this subsection after September 30, 1980.".

NOTIFICATION OF VACANCIES IN THE CIVIL SERVICE

SEC. 310. Chapter 33 of title 5, United States Code, is amended by inserting at the end thereof the following new section:

"§ 3327. Notification of vacancies in the civil service

"(a) For the purpose of this section—

"(1) 'agency' has the meaning set forth in section 5102 of this title; and

"(2) 'vacant position' means a position in an agency which is considered by the agency to be available for employment.

"(b) Each agency shall promptly notify the Office of Personnel Management of—

"(1) each vacant position in the agency together with the address to which requests for information concerning the position may be sent; and

"(2) each position of which the Office was notified under paragraph (1) of this subsection and which has since been filled or is otherwise no longer considered by the agency to be available for employment.

"(c) The Office shall transmit to the United States Employment Service, and make available to each employment office established by the Service, a comprehensive listing of all vacant positions and addresses of which the Office has been notified under subsection (b)(1) of this section. The Office shall revise the listing each month in accordance with the notifications of filled or otherwise unavailable positions received by the Office under subsection (b)(2) of this section and shall promptly transmit to the Service each revision.".

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3326 the following new item:

"3327. Notification of vacancies in the civil service.".

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 311. Section 5532 of title, 5, United States Code, relating to retired officers of the uniformed services, is amended by striking out so much of such section as precedes subsection (c) and by inserting in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed service is receiving retired pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired pay, exceeds the rate of basic pay then currently said for level V of the Executive Schedule, such member's pay for such employment shall be reduced by an amount computed under subsection (b) of this section. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

"(b) The amount of each reduction under subsection (a) of this section for any pay period in connection with employment in a position shall be equal to the retired pay allocable to the pay period, except that the amount of the reduction may not result in the amount payable for the pay period, when combined with the retired pay allocable to the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule.".

(b) Section 5531 of title 5, United States Code, relating to definitions, is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'member' has the meaning given such term by section 101(23) of title 37;";

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) 'retired pay' means—

"(A) retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (A) through (D) of such section 8311(3); and

"(B) a pension or compensation paid under laws administered by the Veterans' Administration after a waiver of retired pay pursuant to section 3105 of title 38.".

(c) Section 5532(c) of title 5, United States Code, is amended—

(1) by striking out "subsection (b) of";

(2) by striking out "or retirement" each place it appears;

(3) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member of a uniformed service who is receiving retired pay"; and

(4) in paragraph (1), by striking out

"whose retirement was" and inserting in lieu thereof "whose retired pay is computed, in whole or in part,".

(d) Section 5532(d) of title 5, United States Code, is hereby repealed.

(e) The item relating to section 5532 in the analysis for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in pay."

(f)(1) The amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first become eligible for retired pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

(2) The provisions of section 5532 of title 5, United States Code, is in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed service who is eligible for retired pay on or before such date in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

MINORITY RECRUITMENT PROGRAM

SEC. 312. Section 7151 of title 5, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 7151. Antidiscrimination policy; minority recruitment program";

(2) by inserting after such section heading the following new subsection:

"(a) For the purpose of this section—

"(1) 'underrepresentation' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

"(2) 'category of civil service employments' means—

"(A) each grade of the General Schedule described in section 5104 of this title;

"(B) each position subject to subchapter IV of chapter 53 of this title;

"(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.";

(3) by inserting "(b)" before "It is the policy"; and

(4) by adding at the end thereof the following new subsection:

"(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

"(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

"(2) that the Office conduct a continuing program of—

"(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

"(B) evaluation and oversight of such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

"(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

"(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

"(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

"(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

"(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.".

EFFECTIVE DATE

SEC. 313. The amendments relating to the following sections of title 5, United States Code, shall take effect on October 1, 1980:

(1) section 2108(4) and (5),
(2) section 3303a,
(3) section 3305, and
(4) section 3309.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that title III be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. SOLARZ: Page 209, insert after line 12 the following new section:

COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

SEC. 313. (a) Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"5550a. Compensatory time off for religious observances

"(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

"(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.

"(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.".

(b) The analysis for chapter 55 of title 5, United States Code, is amended by adding after the item relating to section 5550 the following:

"5550a. Compensatory time off for religious observances.".

Page 209, line 14, strike out "313." and insert in lieu thereof "314.".

Page 129, in the table of contents, strike out the item relating to section 313 and insert in lieu thereof the following:

Sec. 313. Compensatory time off for religious observances.

Sec. 314. Effective date.

Mr. SOLARZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SOLARZ. Mr. Chairman, these amendments have the support, I believe, of the majority and the minority managers of the bill. I know they have the support of the administration and of all the relevant Federal employee unions.

These are in fact amendments which were adopted by voice vote a few months ago on the floor of the House when I offered them as amendments to the flextime bill. The only reason I am offering them now is that, in spite of the fact the flextime bill to which these amendments were attached was reported out of both the Committee on Government Operations and the Human Resources Committee in the Senate, it now appears that legislation is caught up in a parliamentary and political tangle, and even though there is no objection to it in the Senate, the bill may not actually come up for a vote on the floor of the other body.

These amendments, in brief, would provide that any Federal employee who is obligated to take time off from work for religious reasons will be permitted to make up for it by working overtime on a voluntary basis without having to be paid at the overtime rate in the process. Under existing law, Federal employees who are obligated to take time off for religious reasons must either make up for that time through a reduction in leave time, thereby significantly reducing the amount of time they have to spend with their families, or through a reduction in pay.

Mr. Chairman, I would submit that current law in effect penalizes Federal employees who choose to adhere to the dictates of their religion. This amendment, on the other hand, would make it possible for all Federal employees to observe the tenants of their religion without being penalized for it in the process.

And that, I would submit, is what America is all about.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to my friend, the gentleman from New York.

Mr. GILMAN. Mr. Chiarman, I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman from New York (Mr. SOLARZ) for having focused attention on this problem at recent hearings in New York City which were conducted by the gentlewoman from Maryland (Mrs. SPELLMAN) and her Subcommittee on Compensation and Employee Benefits, during which hearings we found an obvious need for legislation of this nature to assist those who wish to pursue their religious observance.

This amendment provides Federal employees the opportunity to take time off for religious observance while at the same time enabling those Federal employees who make such an election an opportunity to opt to work additional hours as compensation for the time taken to practice religious beliefs.

Mr. Chairman, I urge my colleagues to support these worthy amendments.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I thank the gentleman for his leadership on this matter, and I support the amendments.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I am pleased to support the gentleman's amendments.

Mr. Chairman, I would like to commend the gentleman from New York (Mr. SOLARZ) on his amendment and, I reemphasize that it has been carefully drafted to avoid any constitutional problems. This was the principal concern of the Civil Service Commission. Therefore, this is a practical amendment which meets the interest of those individuals who do have such religious beliefs and who otherwise have been faced with complications.

This amendment was unanimously approved earlier by the House in passing H.R. 7814, the flexitime bill.

The CHAIRMAN pro tempore. The question is on the amendments offered by the gentleman from New York (Mr. SOLARZ).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. HANLEY

Mr. HANLEY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HANLEY:

Page 190, line 8, strike out "Section 2108" and insert in lieu thereof "Effective beginning October 1, 1980, section 2108".

Page 192, strike out line 3 and all that follows down through page 195, line 9.

Page 195, after line 9, insert the following section heading:

"APPOINTMENTS".

Page 195, line 10, strike out "(g)" and insert "Sec. 304." in lieu thereof.

Page 196, strike out line 11 and all that follows down through line 5 on page 199.

Page 199, line 7, strike out "306" and insert in lieu thereof "305".

Page 200, line 10, strike out "307" and insert in lieu thereof "306".

Page 200, line 13, strike out "308" and insert in lieu thereof "307".

Page 200, line 23, strike out "309" and insert in lieu thereof "308".

Page 201, line 19, strike out "310" and insert "309" in lieu thereof.

Page 203, line 3, strike out "311" and insert "310" in lieu thereof.

Page 206, line 5, strike out "312" and insert "311" in lieu thereof.

Page 209, strike out line 13 and all that follows down through line 20.

Conform the table of contents accordingly.

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendments offered by the gentleman from New York (Mr. HANLEY) and to commend him for his leadership on this issue.

Mr. GILMAN. Mr. Chairman, I do not intend to repeat today the same arguments that I put forward earlier on behalf of my colleague's amendment when it was first considered by the Post Office and Civil Service Committee. Nor do I intend to restate my views on veterans preference which were expressed in the committee report accompanying H.R. 11280.

Under existing law, a veteran (which generally means an honorably discharged individual who has served in the Armed Forces on active duty during a period of war or armed conflict, or in an area for which a campaign badge is authorized, or for a period exceeding 180 days any part of which occurred between January 31, 1955, and October 31, 1976, and in certain cases the spouse or mother of such a person) is entitled to appointment and retention preference in the competitive service. Preference is given by adding 5 points to the passing score of an applicant entitled to preference, but an applicant who is disabled on account of his military service received 10 points, and an applicant who is disabled and is receiving compensation from the Veterans' Administration because of such a disability is entitled to 10 points and automatically rises to the top of the civil service register of eligibles. A preference eligible may not be passed over to select a nonpreference eligible unless the Civil Service Commission approves the appointment. For retention purposes, all preference eligibles are retained within their competitive group during a reduction in force until all nonpreference eligibles have been displaced.

The committee has amended the bill to modify veterans' preference in the following manner:

In the case of any individual who is retired from the Armed Forces on account of physical disability, no change in existing law is proposed. These individuals will continue to enjoy lifetime veterans' preference for both appointment and retention.

In the case of an individual retired at the rank of major or its equivalent except a disabled veteran, appointment preference for a period of 3 years following his separation from the military service.

In all other cases, individuals who under current law have preference on account of military service, will have appointment preference for a period of 15 years following separation from the military service or until appointed to a permanent position in the civil service, whichever occurs first.

For retention purposes in reductions in force, individuals retired for physical disability incurred as a direct result of armed combat will continue to have full preference. Others retired will have no preference, as is the case under existing law, 5 U.S.C. 3501(a)(3)(A). All other individuals entitled to retention preference will have retention preference for a period of 8 years following their separation from the military service.

Permit me, however, to summarize the arguments set forth in behalf of this amendment that were circulated to you in my "Dear Colleague" letter of August 11, 1978.

First. The Schroeder amendment does not aid Vietnam-era veterans seeking Federal employment.

The administration would have you believe that their amendment to title III would mean a substantial gain in Federal employment for the Vietnam-era veterans. Regrettably, that will not be the consequence of the committee's action.

It is contended that Vietnam-era veterans would benefit from the Schroeder compromise amendment because it would limit the use of veterans' preference for nondisabled veterans to 15 years following discharge or upon appointment to a permanent civil service position, whichever occurs first. This would, of course, lead you to believe that the number of older veterans competing for jobs against younger veterans would be diminished, thereby affording the more youthful veterans less competition, and correspondingly, more employment. Again, this is not correct.

First, veterans of prior conflicts, the youngest now being in his early forties, would have already exercised their preference eligibility rights, at least those intending to do so, and having successfully sought Federal employment, may not utilize preference eligibility rights to advance their civil service status except for transfers into a different job series. Second, nondisabled veterans whose service commenced on or after October 15, 1976, are not entitled to five-point civil service preference, in accordance with the provisions of Public Law 94-502, the Veterans Education and Employment Act of 1976. Thus, Vietnam-era veterans will still be competing for entry level positions in the Federal Government against other Vietnam-era veterans and nothing done by this committee will change that. There will still be too few jobs available for the number of veterans applying for them.

Second. Veterans preference has far less impact on the employment of nonveteran minorities and women in the Federal Government than the Carter administration would have the public—and Members of Congress—believe.

With few exceptions, the witnesses appearing before our committee have argued for the retention of veterans' preference, and those who did not, failed to produce any statistical material or to demonstrate convincingly that preference eligibility discriminates against women or minorities. In fact, the minority groups that have testified before our committee pleaded for the retention of veterans' preference.

What we have learned, however, is that veterans' preference has hurt neither the promotion system nor the quality of the civil service. What faults that do exist in the civil service are inherently the problem of the system itself and the way it is being administered and cannot be laid at the doorstep of preference eligibility rights.

Third. Veterans' preference does not apply to promotions.

Under existing civil service law, disabled and nondisabled veterans receive preference in examination, appointment, and retention. In examination, nondisabled veterans have 5 credit points and disabled veterans have 10 credit points added to their passing scores. It should be noted that veterans must have recorded a passing grade before any credit points are added. Veterans, as with other nonveterans taking civil service examinations, must qualify first. After appointment, veterans may not utilize preferance eligibility rights to advance their grades except in limited circumstances where there is a transfer to another job series.

Fourth. Retention preference for veterans is not absolute.

Mr. Arch S. Ramsay, Director of the Civil Service Commission's Bureau of Recruiting and Examining testified before the Committee on Post Office and Civil Service, earlier in 1977 and said:

In retention, veterans have the right to be retained over competing nonveterans in a reduction in force. Retention standing under the law is based on four factors: type of appointment, veterans preference, performance rating, and length of service. Although, this gives veterans a significant advantage, it is not absolute. For example, in fiscal year, 1976, 1800 veterans were separated in Reduction in Force actions versus 3,000 nonveterans. An equal number of veterans and nonveterans (approximately 4,500) were also reduced in grade.

Fifth. Another matter that should be put into perspective is how veterans are distributed within the Federal Government, for to say that "veterans comprise 50 percent of the Federal Service" may give the impression that that ratio holds true "across the board." In fact, more than 75 percent of the veterans in Federal service are employed by three agencies: The Department of Defense, the U.S. Postal Service, and the Veterans' Administration. Veterans thus account for only 37 percent of the Federal jobs outside those three agencies. That is a significant figure, but it is considerably lower than the ratio of veterans in the full-time national work force.

Sixth. The danger to veterans' preference eligibility rights posed by the administration's amendment is further compounded when we consider that veterans' preference and the system under which those scoring highest on examinations are to be appointed is today widely evaded. The agencies disregard the registers, job descriptions are rewritten, veterans are passed over, and those jobs supposed to be reserved for veterans under section 3310 of title V as guards, elevator operators, messengers, and custodians have upon the whole been contracted out.

Seventh. It has been the traditional philosophy in this country, that those who were ordered to serve their Nation in the Armed Forces in time of war should be preferred to serve their Nation in a civilian capacity when qualified. Removal of this preference is a matter that goes beyond any question of "flexibility," greater employment of other groups, or like concerns. It is really a question of whether this is a country that feels free, in time of national emergency, to call upon its very best to serve in its Armed Forces and face death, injury, disruption of normal life, and all the other conditions of that service, and after service to their country, to then discard them as veterans, to announce they must compete "as equals" against all nonveterans, except for such nonveterans as may be given preference in recruiting, examination, and selection.

Accordingly, I urge your support for the Hanley amendment.

PERFECTING AMENDMENT OFFERED BY MR. BONIOR

Mr. BONIOR. Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

Perfecting amendment offered by Mr. BONIOR: Page 192, after "(A)" insert "(i)".

Page 192, line 17, after "armed forces, or" insert "(ii) if later, December 31, 1985, but only if the individual's service in the armed forces on or after August 5, 1964, is the basis for awarding the Vietnam Service Medal or the Armed Forces Expeditionary Medal for Vietnam; or".

Mr. BONIOR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

(By unanimous consent, Mr. BONIOR was allowed to proceed for an additional 3 minutes.)

The CHAIRMAN. The gentleman from Michigan (Mr. BONIOR) is recognized for 3 minutes.

Mr. BONIOR. Mr. Chairman, my amendment would provide more than 1.5 million Vietnam veterans with an extension of their preference. Simply put, veterans who served in the Vietnam theater between August 1964 and May 1975 would have 15 years from date of separation or until December 31, 1985, whichever occurs later, to use their preference. Vietnam theater veterans would thus have a minimum of 7 years to exercise their preference.

The question is asked: How would this help the Vietnam veteran? First of all, in sheer numbers and when taken in conjunction with the committee bill, the pool of veterans eligible for preference is diminished by 20 million people which, in and of itself, elevates the Vietnam veteran. When the pie remains the same size but those who partake diminish in number, the size of the shares are bound to increase. One needs only to look at Oregon which instituted this system in 1977. The data indicates the average age of veterans on the preference eligible lists dropped from 43 to 34. Further, competition from other veterans reusing their preference for other State jobs dropped significantly.

Second, many early Vietnam veterans may have put off a decision on whether or not to enter the civil service. Under the bill's current provisions, some would have as few as 2 years to use their preference.

With my amendment, all Vietnam theater veterans have a minimum of 7 years preference.

Further, the VVIC, of which I am a member, is attempting to obtain an extension of the delimiting date for the GI bill education benefits of those whose benefits may have expired before the large increases of late 1973 made them viable. This amendment would assure those veterans their 4 years of college, or other training, with time remaining to use their preference.

Mr. Chairman, I commend the chairman of the Veterans Affairs Committee, Mr. ROBERTS, and his predecessor, Mr. TEAGUE, and members of the Veterans Affairs Committee for the fine work they have done in providing for our older veterans. This country does owe a special debt to its veterans and theirs is a system without equal in the Western world. But it is also a system that has not met the needs of the Vietnam veteran.

Time and again, Vietnam veterans have told us "all we want is what our father had." Specifically, what was it that their fathers had.

They were given a veterans' preference in which they alone participated.

They were given Veterans Home Administration loans much more consistent with the market, areas like Levittown were practically built with VA loans.

They were provided broad, small business loans.

They had hospital care second to none within the VA system.

They had psychological programs geared to their needs.

They were given full tuition benefits under the GI bill.

They were provided a sizable monthly stipend in addition to their tuition.

They have recently been voted a substantial pension which automatically declares them at 65 to be disabled and eligible for pension.

They had the full and enthusiastic gratitude and support of the Congress and the country.

Is not it about time that we turned our attention to those with the greatest readjustment needs?

Mr. HANLEY has stated his belief that veterans preference is a lifetime privi-

lege. I understand his concerns and am convinced of his sincerity. However, it seems obvious to me from the language of President Roosevelt at the signing of the Veterans Preference Act that veterans' preference was meant as a readjustment tool:

I believe that the Federal Government functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces, that when they return, special consideration will be given to them in their efforts to obtain employment.

It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the nation, and then expect them to resume their normal activities without having any special consideration shown to them.

Yet, some of our older vets have had the use of their preference for over 30 years. Today 1 out of 2 Federal employees is a veteran, but only 1 out of 10 is a Vietnam-era veteran.

Although the 8½ million Vietnam-era veterans are nearly one-third of the 30 million total veterans Vietnam era veterans hold only 18 percent of the Federal jobs held by veterans in the civilian work force. This is not because Vietnam era veterans do not want Federal jobs, but because even with preference they cannot compete with the more experienced, older veteran who also enjoys lifetime preference.

A look at the Federal new hires illustrates the difficulties younger veterans have in competing for jobs. In 1977, there were 448,000 new hires in the Federal Government, of which 151,000 were veteran new hires. Of these, 47 percent were pre-Vietnam era career military, 11 percent veterans. Thus, out of 151,000 veterans hired, only 57,000 of these veterans were Vietnam-era veterans.

Further, a significant number of older veterans exercise their preference more than once further limiting the opportunities for younger veterans, existing provisions permit unlimited use of veterans preference. A broad Civil Service Commission survey found that 23.2 percent of 3,500 veterans on registers were current or former Federal employees. This survey drew upon three Federal regions and the Washington area.

We are told that older veterans are not block younger veterans, that they have already settled into careers, that the average age of the World War II vet is 58 and that of the Korean vet is 48 and they are, therefore, not interested in a civil service career. Then why are they so vehemently opposed to yielding their preference?

Opponents of our approach have mentioned Peace Corps and VISTA volunteers, people who also performed honest service to their country, will maintain their preference after vets lose theirs. What they do not mention is that these people are eligible for appointment for only 1 year after leaving ACTION service.

They have asserted that my amendment would adversely affect the families of MIA's and widows and orphans, that is simply not true. It does not affect their status.

They have also stated that 95 percent of Vietnam veterans support the Hanley amendment, a figure that certainly bears no relationship to reality. They have stated that all veterans' organizations oppose the Bonior and Schroeder amendments despite the fact that we have the support of groups like the National Black Veterans Organization, the American Veterans Committee, the Council of Vietnam Veterans, and a majority of the Vietnam veterans in Congress, not to mention the Nation's No. 1 veteran, VA Administrator Max Cleland, who has given his endorsement to the committee approach and my amendment.

The Vietnam veteran is at a critical juncture in his life. He is 32 years old, married and has two children. In many cases, if they are not unemployed they are underemployed. VA statistics show that over 855,000 Vietnam veterans earn less than $4,000 per year, and over 2 million earn less than $7,000. For many of them, if they do not get adequate education benefits, if they do not get psychological help soon, if they do not get employment help, their life patterns will be established and we will bear the awful responsibility for perhaps thousands of desolate and wasted lives—lives that were once offered to us in honest service. I look upon these reforms as a beginning to the fulfillment of that trust.

The argument is made that Vietnam vets will lose their preference in 15 years. We are not concerned about preference in 15 years. In 15 years, the Vietnam vet will be 47 and it will be too late to have a beneficial effect on their lives.

I have talked to many of the older veterans in my district and once they understand what it is we are really trying to do, the great majority of them are supportive.

The point to be made is that I am not anti-World War II veteran, I am not anti-Korea. I am for justice and compassion and I cannot believe that the veterans of those conflicts, who have known the stresses of war and its aftermath, and who have received much for their distinguished service, would deny this one small advantage for Vietnam veterans. If I am wrong, then I have made a grievous misjudgment of the American character.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. BONIOR. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, I thank the gentleman for yielding.

I want to commend him. In the past he has earned great respect in the House for what he has done for the Vietnam veteran.

I just am concerned that the gentleman might be taking the wrong approach in wanting to help the Vietnam veteran.

I know he now has a bill in our committee which would extend the G.I. bill from 10 to 12 years, and it will be considered. Yet, the gentleman has an amendment which would cut off the veterans' preference at 15 years. I do not believe the gentleman is quite consistent in that position; and also, as I understand it, the gentleman will limit it to those Vietnam veterans.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. BONIOR) has expired.

(On request of Mr. MONTGOMERY and by unanimous consent, Mr. BONIOR was allowed to proceed for 1 additional minute.)

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield further?

Mr. BONIOR. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, as I understand the gentleman's amendment, it would be restricted to the Vietnam veteran who served in combat in Southeast Asia; is that correct?

Mr. BONIOR. That is correct.

Mr. MONTGOMERY. The only problem I have with it is this one—and I like the idea of taking care of those persons who really went over there and fought—however, serving on the Committee on Veterans' Affairs as I do, I want to say that we have never discriminated against certain veterans on the basis of where they happened to serve

During the Vietnam war, for example, I know a number of people wanted to go to the Vietnam war, believe it or not; but they were sent to Europe because we had to build up our forces there.

Under the amendment, that would discriminate against those persons who did not have the choice of assignment and had to go somewhere else.

Mr. BONIOR. The gentleman's remarks are well taken, but, as I indicated at the beginning of my remarks, I think what we have not done with the Vietnam veteran is deal with the readjustment problems.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. BONIOR was allowed to proceed for 1 additional minute.)

Mr. BONIOR. If we take them as a group, as an aggregate, I agree with the gentleman that those who need it the most are those who fought.

Dr. Charles Vigley, one of the most noted psychologists on Vietnam veteran problems, has indicated in a recent article in The American Legion magazine that that is exactly the case. The problems of those who serve in combat are much, much broader and different and deeper, and their wounds and scars are much deeper than those who did not serve.

I guess also another point is we are trying to strike some balance in this bill between veterans and younger veterans and women and the minorities. This is the whole civil service package. My objective was to include all Vietnam veterans but to strike a balance. We thought this was the best way to make that approach for those who need it the most, those who fought in combat.

Mr. HANLEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, in anticipation of the Bonior amendment I did a bit of analysis, and here is what I came up with—and when I say "I," this is a collective judgment of people very close to the subject matter. The problem with the gentleman's amendment is this: It would eliminate almost 4 million Vietnam-era veterans, of whom more than

1,360,000 had served in a combat theater. Now we have a new preference. The administration through this amendment applies only to Vietnam theater veterans, so if one served in the armed services during the Vietnam War but was not assigned to the combat theater, forget it. He loses his preference. This could set a new and disturbing precedent that veterans' benefits would be geared to a combat theater prerequisite.

Another negative aspect of the amendment is this: It would limit veterans reduction-in-force benefits to 8 years following initial appointment to the Federal Service. That means that all veterans who had been employed by the Government for 8 years or more, including the Vietnam-era veterans who entered Federal service between August 5 of 1964—which incidentally was officially the beginning of the Vietnam era—and October 1972, would immediately lose their RIF protection when the law becomes effective in October of 1980. I do not believe we want to do that; do we? Of course not.

The 84,000 Vietnam-era veterans who entered Federal service in 1973 would have 1 year left in RIF protection. The 113,000 Vietnam-era veterans who began Government jobs in 1974 would have but 2 years of RIF protection remaining, and so forth. So again the effect of the amendment takes heavily away from traditional preference.

The gentleman again alluded to support for his amendment on the part of Vietnam veterans. We do not see it that way. If The American Legion, as representative of its 675,000 Vietnam veterans, and the Veterans of Foreign Wars, as representative of over a half million Vietnam veterans, and the Disabled American War Veterans, with almost 150,000 Vietnam veterans, say that that amendment is wrong and my effort is correct, to whom, then, are we supposed to listen?

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, I want to associate myself with the remarks of the gentleman in the well. As the gentleman has said so eloquently, the Vietnam veteran, as we all know, has had numerous employment difficulties. He is almost exclusively the one who will be helped in the future by veterans' preference and now the gentleman from Michigan, I am sure with all good intentions, proposes a plan which will completely eliminate veterans' preference within the next 7 years. The Vietnam veteran deserves the same benefits as his World War II counterpart.

A recent "factsheet" sent to Members of Congress by proponents of this amendment claimed that "of about 150,000 veterans being hired annually * * * over half are pre-Vietnam veterans." That is untrue. During the past several years Vietnam-era veterans have consistently accounted for at least 56 percent of the veteran new hires, while 5-point preference, pre-Vietnam veterans have accounted for less than 40 percent. In per capita terms there are only 8.5 million as opposed to 21 million World War II and Korean war veterans, Vietnam veterans have been utilizing veterans' preference at a rate more than three times greater than veterans of other wars. By 1980, when the proposed legislation would take effect, the average age of World War II veterans will be 60—at or near retirement age. Thus it is clear that the ratio of Vietnam veterans entering Federal service will increase rapidly.

I submit it is the duty of Congress to preserve veterans' preference in the form it is now embraced.

I compliment the gentleman on his earlier amendment, and at a later time I want to support it; but at the present time I want to join the gentleman in opposition to the Bonior amendment.

Mr. HANLEY. Mr. Chairman, I appreciate the gentleman's comments.

If I may allude to a letter from the leadership of the National Association of Concerned Veterans, and mind you, their membership is totally Vietnam veterans, other veterans do not qualify for membership, I read the concluding paragraph of the rather lengthy letter:

> Moreover, we point out that much of the information that the administration is using to support its case was provided in our previously alluded to testimony. What the NACV does object to is legislation which harms Vietnam veterans, as is the case with the amendment adopted in committee and the original Civil Service Reform Legislation proposed by the administration. Perhaps even more importantly, as citizens, we object to any legislation which undermines its alleged purpose and which is supported by only the most piecemeal and conclusory evidence.

Mr BONIOR. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, the gentleman alluded to the NACV group of Vietnam veterans that support the amendment.

I would just like to say to the gentleman that a recent article in the Stars and Stripes by Mr. Otto Lukert speaking for the NACV said that he wanted some provision geared more to the Vietnam veteran. He was not pleased with the situation.

Just one other point. Is the gentleman saying the amendment I am offering would eliminate 1.3 million combat veterans from veterans' preference? It is geared not to eliminate, but to protect them for 7 years.

Mr. HANLEY. That could be the gentleman's intent; but. unfortunately, the language of the gentleman's amendment would have this effect.

Mr. BONIOR. In what way?

Mr. HANLEY. It would eliminate almost 4 million Vietnam era veterans. of whom more than 1,360,000 had served in the combat theater, by virtue of restricting the tenure of their preference.

Mr. BONIOR. Mr. Chairman, if the gentleman will yield further. I would tend to disagree with the gentleman The amendment specifically is intended to protect those veterans.

The CHAIRMAN. The time of the gentleman from New York has expired.

(At the request of Mrs. SCHROEDER, and by unanimous consent, Mr. HANLEY was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I just wanted to ask the gentleman from New York about the comments the gentleman made about the RIF protection, because a lot of people do not quite understand what is in the bill.

Right now, under the preference as it stands without the bill, you have a lifelong RIF protection once you are in the Federal service, which means everybody else goes first and veterans will never, never be touched.

Under the bill we give them a RIF protection for 8 years after they are hired, and, of course, we always add on the years in service. So the minimum amount of time would be 10 years of seniority, and, of course, we do have seniority considered very heavily in the whole process of civil service.

Mr. Chairman, I just want to make it clear that we would not leave veterans totally unprotected or that they will lose their RIF protection. They will not have seniority protected forever but they will, as long as they have their 8 years of service, have that edge.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Hanley amendment.

Mr. Chairman, I think if a reporter were to ask what ingredient of the Congress is one of the most important to the individual Member, most Members would probably respond, "To be fair," because after all, we sit in judgment of many events of this Nation and we are trying to be fair and balance things out for all peoples.

Recently, in 1976 we passed a bill that became law, a bill that cut off veterans' preference for the future, so, in other words, the percentage of veterans in the Government will decrease in the coming years without any modification of veterans' preference.

I want to point out a few statistics that I think will help the Members in making their decision.

The new hires in the Federal Government, according to the Bureau of Labor Statistics, have been going down for veterans. For instance, in 1975 the figures for females were 42.2 percent, and the figures for veterans were 32.2 percent. In 1977, just 2 years later, the veterans were 27 percent—in other words, more than 5 percent less than they were previously.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield on that point?

Mr. WHITE. Mr. Chairman. I will vield at the end of my remarks, if the gentlewoman will wait, please.

Approximately 7 out of every 10 annual new hires in the Federal civil service are nonpreference eligibles. The bulk of the veterans currently employed in the Government are World War II veterans who will soon be retiring in large numbers.

I would like to point out that the veterans' preference represents a promise made to those who entered the armed

services. Any modification of the veterans' preference system would be a breach of that particular promise.

On June 15 the Senate Government Affairs Committee voted 9 to 7 to delete the veterans' preference provision entirely from the bill, and the reason cited was it would threaten the passage. But the Members of the Senate realize there was indeed a promise, and they did not wish to breach that.

In September 1977, the General Accounting Office issued a report which supports the claim that veterans' preference is not a significant obstacle to minorities, and it in fact shows that veterans' preference helps minorities twice as often as it harms them, based on an examination of the Federal Register. The minority veterans make up only 8.5 percent of the U.S. veteran population but comprise 19 percent of the veterans employed by the Federal Government.

The chart shows that by 1987, 6,290,000 veterans of the Vietnam era, veterans under the bill as it is now proposed, will lose all veterans' preference opportunities currently provided in Federal employment. That is 70 percent of all such veterans and approximately 82 percent of those who served in the Vietnam combat theater.

What is so very wrong with having a strong infusion of people who served their country and came to its defense, many indeed in battle? I think it is a good fiber-building factor in our Government to have patriotism and to have people who are willing in peace as well as war to come to the front and serve their country.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I just want to emphasize a few things the gentleman pointed out, and I thank the gentleman for yielding.

I know there have been many statements made that veterans' preference does not hurt women, and so forth. The GAO has concluded otherwise in many studies, and I think one of the things we lose when we look at general figures is the fact that most of the women hold very low grade jobs. They are being hired as stenographers and secretaries, and is a very large portion of their Federal service.

If we look at who passes the tests, we find that 20 percent of the veterans passed the examinations and 34 percent of the people hired were veterans. So they do much better from passage to hiring.

We also find, when we look at super grades, that 65 percent of them are veterans, and that women are less than 3 percent. So the women and minorities tend to be compacted down in the lower grades, and we are counting them in the statistics equally.

Mr. Chairman, I think a part of what we are talking about here is having a fair shake across the board. I think the gentleman from Texas (Mr. WHITE) understands that, and we could play with figures all day and lose sight of that.

Mr. WHITE. Mr. Chairman, many of these veterans are also women, so when we are talking about veterans, we are talking about women as well as men. We are also talking about the minorities, as I said. The fact is that 42 percent, as I cited earlier, of those hired are women at the present time.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, in contradiction to what the gentlelady from Colorado (Mrs. SCHROEDER) is saying, in 1977, 203,000 females were hired and only 163,000 veterans were hired to Federal jobs, so the women are being protected.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman from Texas (Mr. WHITE) will yield further, that is exactly what I am saying. The majority of women and minorities who are being hired are lower grades, secretaries and stenographers, and they really were not bidding against veterans in getting those jobs.

We are counting them in the total statistics, and I think that that changes the figures.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has expired.

(By unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. WHITE. Mr. Chairman, I am not contesting what the gentlewoman is saying. What I am saying is that in innumerable bills, time after time, this Congress has grandfathered groups or individuals, has not tried to change the rules in the middle of the game, and has said to those who are eligible that we are going to allow them to continue in their participation in the existing law. That is all we are saying here. This is going to be phased out. The bulk of World War II veterans are being phased out shortly. The Vietnam veterans are the ones who need it most, and those are the ones we want to get the same opportunities as the World War II veterans, and eventually they will be phased out as well. The percentage of those veterans will continue to go down as the percentage for women will go up. Pretty soon there will be far less veterans. I am saying that we should phase them out fairly.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Kansas.

Mr. SKUBITZ. I thank the gentleman for yielding.

Mr. Chairman, I am a little disturbed because of the fact that we never seem to focus on the Korean veteran. We speak of the way the World War I veteran and the World War II veterans are being phased out. No one says anything about the Korean veteran. I intend to offer an amendment to the Bonior amendment which will include the Korean veteran. It seems to me that any veteran who served in the Korean War in Korea is entitled to veterans' preference just as his Vietnam comrade.

Mr. WHITE. Mr. Chairman, I totally agree with the gentleman. And if we vote for the Hanley amendment, they will be included. The only ones that will not be included in the Hanley amendment will be those who are double dipping, majors and over. We should allow these veterans to participate in the law, and I believe we would have a moral question if we did indeed change the law suddenly so that those veterans would not have that opportunity.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has again expired.

(On request of Mr. SKUBITZ and by unanimous consent, Mr. WHITE was allowed to proceed for 1 additional minute.)

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, our colleague, the gentleman from Mississippi (Mr. MONTGOMERY), emphasized the point that old soldiers never die, they just fade away. When Mr. MONTGOMERY spoke of the veterans of World War I and World War II fading away, he also included the Korean veterans. It is my feeling the Korean veteran should be protected.

Mr. WHITE. The Hanley amendment does that. The Hanley amendment also includes the Korean veteran.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment offered by the gentleman from Michigan (Mr. BONIOR).

Mr. Chairman, I rise in opposition to the Bonior amendment, and I urge that my colleagues be not so hasty as they embark on civil service reform that they forget the sacrifice of our veterans who, in responding to their Nation's call to duty, gave of themselves and of their careers.

Mr. Chairman, permit me to remind my colleagues that veterans' preference does not apply to promotions. Veterans' preference generally is utilized for entry-level positions, in other words, from GS–5 to GS–9, but not for promotions.

I further point out to my colleagues that most of our older veterans, the veterans from World War II and the veterans from the Korean War, are in the upper echelon positions and do not utilize veterans' preference to advance their careers. Our younger veterans, in other words, the Vietnam-era veterans, are competing not against other veterans and not against old-guard people. If we reduce the use of veterans' preference, as the Bonior amendment implies, we will only be harming opportunities for Vietnam-era veterans and not older veterans. I think there must be a better way to aid Vietnam-era veterans without diluting the veterans' preference which the Bonior amendment will do.

Modifying veterans' preference would only render it meaningless. Accordingly, I urge my colleagues to oppose the Bonior amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I

think the gentleman from New York is correct in pointing out that veterans' preference does not aid one in a promotion on the career ladder he or she is on, but it will allow one to bid into a career ladder so that he could use it several different times. As to the use of statistics on how many people, 23 percent have used it numerous times to go on other career ladders once one is on the ladder, and he can use it to get on the ladder once, use it for promotion within. But he can use it for horizontal transfer and utilize it because that is considered bidding on a whole new job.

Mr. GILMAN. I think the gentlewoman is correct. However, statistics point out that it is not used frequently for that purpose. I would like to address a remark by the gentlelady from Colorado with regard to retention preference. In my earlier remarks I noted retention preference for veterans is not absolute. Mr. Arch S. Ramsay, Director of the Civil Service Commission's Bureau of Recruiting and Examining, testified before our committee—and the gentlewoman may recall when he said:

> In retention, veterans have the right to be retained over competing non-veterans in a reduction in force. Retention standing under the law is based on four factors: type of appointment, veterans' preference, performance rating, and length of service. Although, this gives veterans a significant advantage, it is not absolute. For example, in fiscal year, 1976, 1800 veterans were separated in Reduction in Force actions versus 3,000 nonveterans. An equal number of veterans and nonveterans (approximately 4,500) were also reduced in grade.

Mrs. SCHROEDER. First of all, on bidding, my understanding is that the Civil Service Commission says that over 23 percent of the people in the civil service have used their veterans' preference more than once on the horizontal job ladder. Whether the gentleman thinks that is a large number or not depends on his viewpoint.

Secondly, I think on the other issue, on RIF's, that is exactly correct, nothing is really absolute except death and taxes, but it certainly does give one an advantage to hold veterans preference in the Federal service. I think on that we have no disagreement.

Mr. GILMAN. Of course, the basis of our argument is that they are entitled to that advantage, and we hope to preserve that advantage under the Hanley amendment.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the Hanley amendment and in opposition to the Bonior amendment.

Mr. Chairman, I want to thank the very able gentleman from New York for his firm commitment to our veterans and their families. The gentleman served on the Committee in Veterans' Affairs for several years and he is well aware of the many problems that confront wartime veterans.

Administration officials, and those who advocate that we curtail the preference under the guise of helping women and Vietnam veterans either don't understand the issue or simply haven't gotten their facts straight.

First, the 5-point veterans' preference is a benefit that goes only to veterans who served during a period of war. Peacetime veterans are not entitled to the benefit and veterans who entered service on October 15, 1976 and thereafter are not entitled to the benefit. So the benefit has been terminated for all individuals who volunteered for service after that date. The pool of eligibles is continuing to increase.

The administration would have us believe that the so-called Schroeder amendment, by limiting the use of preference for able-bodied veterans to the first 15 years after discharge, would actually enhance employment opportunities for Vietnam-era veterans. How? By reducing the pool of eligible veterans competing for jobs with the termination of eligibility for World War II and Korean veterans. Surely the House is not going to buy that line. Does any Member of this body believe a 60-year-old World War II veteran is competing with a Vietnam veteran for a Federal job?

Everyone knows World War II veterans employed by the Federal Government are retiring in great numbers annually. After all, the average age of the World War II veteran is 59 years. What about the competition from Korean veterans? The average age is 49 years, and they are well established in their careers. There is no competition with these veterans in the Federal marketplace.

The administration also attempts to sell its proposed program on the fact that the bill gives agencies the authority to give special appointments without competitive examination to Vietnam era veterans. Of course this authority was established by Executive order several years ago, and is already in force. Our committee has expanded the authority already. This is nothing new.

We are involved in the old "shell game" of now you see it and now you do not. As first presented, the 5-point veterans' preference would be limited to 10 years. Proponents quickly determined such short-time use of the preference was unthinkable and the administration began seeking some alternative. Proponents then suggested a 15-year, one-time use of the preference.

JIM HANLEY quickly reminded every Member of the House that even with the additional 5 years, more than 6 million Vietnam-era veterans would lose their preference by 1987. Proponents of the administration proposal then called a press conference to announce that an amendment would be offered on the floor to provide some additional time for veterans who served in the Vietnam theater. I will admit such an extension would give a few Vietnam veterans from 2 to 5 years of additional time in which to use the 5-point preference.

But why make a distinction based on the location of the individual during war. We have never made any distinction between a combat veteran and a noncombat veteran in providing educational benefits. No matter where they served during their tour of service, they get equal benefits. I would not want to see us change that principle because a man or woman in service during war has no control over their destiny. All of them support the war effort and we should not treat them differently.

Mr. Chairman, it does not take a genius to understand the impact of the proposed change in the law. I do not care how many "5-year extensions" are added to the administration's proposal, the fact remains that Vietnam veterans come out on the short end. There is no mistake about it.

If the administration thinks the 60-year-old World War II veteran and the 49-year-old Korean conflict veteran is competing with the Vietnam veteran for Federal jobs, reducing the pool can be accomplished without limiting the benefit for Vietnam veterans. You can never convince me that a one-time use of the preference during 15 years after discharge is a better benefit than the Vietnam veteran now has.

The administration's proposal is full of flaws. One of the most serious inequities appears in the proposed plan to limit the reduction-in-force protection to only 8 years. We have not heard from the proponents on this provision of the bill because it will have such an adverse impact on Vietnam veterans in the future. Consider this typical case. Two young men complete high school in 1968. One is drafted into service and is sent to Vietnam. The other individual is not drafted. In fact, he may have purposely evaded the draft. He takes a job with the Federal Government. After serving in Vietnam the first person completes his 2-year tour and is honorably discharged. Within 30 days from discharge, he obtains a job at the same agency as the nonveteran. In 1982 there is a reduction-in-force at the agency.

Under the bill, all else being equal, the veteran will not be retained because the nonveteran has seniority. The nonveteran did not have to serve his country during a period of war. Unless the Hanley amendment is adopted, the veteran would be laid off from work and nonveteran would continue on the job. Is this the position in which we want to place our veterans for having defended their country in time of war? I certainly hope not.

Mr. Chairman, I do not care how many briefings are held and no matter how many press conferences are held to try to peddle this package as one that will benefit Vietnam veterans, it simply will not work. This administration proposal will not give the Vietnam veteran any advantage in Federal employment. It should be noted on this point that we cannot get the Civil Service Commission to enforce the laws already on the books to place Vietnam veterans on jobs.

Look at the poor records of most of the departments and agencies who have failed to hire Vietnam veterans through noncompetitive appointments under the veterans' readjustment authority we granted several years ago.

Quite frankly, Mr. Chairman, there is no valid data to show that the 5-point veterans' preference is keeping well quali-

fied women and minorities from being hired by the Federal Government. During 1977, newly hired employees included 213,000 females and 163,000 veterans. Veterans preference is helping minorities. Minority veterans make up only 8.5 percent of the U.S. veteran population but comprise 19 percent of the veterans employed by the Federal Government.

Most importantly, if one bothers to check with the personnel managers of the various Federal departments and agencies, they will find that veterans are outstanding employees. They are all well-qualified, notwithstanding the opinion of some high administration spokesmen that they are experiencing difficulty in hiring qualified women because unqualified veterans appear above them on the civil service register.

Anyone knowledgeable in veterans' affairs knows that a veteran never receives a 5-point preference on his or her examination unless the score is 70 or better.

In closing, I urge my colleagues to support the Hanley amendment. Otherwise, the House will, for the first time, violate the principle of equal benefits for equal service. Veterans who fought in Vietnam deserve benefits equal to those who fought during World War II and the Korean conflict. Now is not the time to give them less.

On May 7, 1975, just a little over 3 years ago, President Gerald Ford terminated the Vietnam era by Presidential proclamation. Already we see evidence, by this provision of the bill, that this terrible war is fading from the memory of some people. But I say to you, let us not forget those who served during such difficult times. They were drafted to serve. Let us not abandon them now. That is exactly what we will be doing if the Hanley amendment is not adopted.

Mr. Chairman, I also rise in opposition to the amendment offered by the gentleman from Michigan.

As I understand the gentleman's amendment, it would provide for veterans who served in the Vietnam theater, a one-time use of the 5-point preference 15 years from date of discharge, or December 31, 1985, whichever occurs later. I would assume that this is being done because of the flaw in the committee bill called to our attention by JIM HANLEY, which indicated that by the year 1985, more than 4,400,000 Vietnam veterans would lose their entitlement.

Mr. Chairman, this is a perfect example why we should oppose the veterans preference part of this reform bill and support the Hanley amendment. The proposal is full of flaws. First, the administration recommended a 10-year limit on the use of the preference. Finding that would be quickly rejected, the administration agreed to extend the time to 15 years.

Mr. HANLEY alerted all of us to the tremendous adverse impact even this period of time would have on some 6 million Vietnam veterans by the year 1987, and the administration scrambled to plug the dike. It was agreed that an amendment would be supported by the administration to provide some additional time for those who served in combat.

The proposed amendment would give a reprieve for some veterans who served in combat. I have real problems with the principle involved here. Why make a distinction between those who served in combat and those who supported the war effort located throughout the world? Should we now decide how close the individual was to the field of fire in determining the level of benefits to be paid? I think not. Equal benefits should be provided for equal service.

Further, Mr. Chairman, the gentleman's amendment does nothing to protect this same Vietnam-era veteran in his employment beyond the 8 years provided in the bill. Therefore, after years of employment, this same veteran who served in the Vietnam theater could be terminated from his job in a reduction-in-force action while the nonveteran continues on his job since he has seniority in that he did not have to answer the call to duty in Vietnam. It simply is not fair and equitable.

I urge my colleagues to vote no on the amendment offered by the gentleman from Michigan and to support the Hanley amendment.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the distinguished gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, I think it should be pointed out that under the bill as reported a veteran is protected in a reduction in force for only 8 years. Under the Bonior amendment, the protection is still only 8 years. Under current law the veteran is protected for life in a RIF action. So under the bill as reported or with the Bonior amendment we are cutting back the veterans' preference, any way we slice it.

Mr. ROBERTS. Of course it is subject to his performance, and I am perfectly willing that he should have to perform properly.

I thank the gentleman for his contribution.

Mr. BONIOR. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, does the gentleman have any figures on how many women are veterans? The figures we have are about 2 percent.

Mr. ROBERTS. I would not contest the gentleman's statement, but according to data before the committee, there are well over 600,000 of them.

Mr. BONIOR. Mr. Chairman, if the gentleman will yield further, I would ask just for one other point. The gentleman from Mississippi indicated the question of the 8-year guarantee. That is 8 years, but we also give them the years in military service, which comes out to a minimum of 10 years and maybe 11 or 12 years, and that is sufficient protection it seems to me. It is 11 or 12 years seniority and it also includes the inservice time.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, in response to the gentleman's inquiry with regard to the number of women who hold veterans' preference, there are presently enough women entitled to veterans' preference, 831,800 women who are now entitled to hold Federal jobs, to more than fill those jobs. There are some 893,500 jobs in that category.

I thank the gentleman for yielding.

Mr. ROBERTS. I thank the gentleman from New York for his contribution.

If we have the amendment of the gentleman from Michigan it would give a reprieve to some people who have served in combat. I have some problems with doing that. Why make a distinction between those who served in combat or those who supported the war effort throughout the world? I am a combat veteran and I support veterans' preference, but when a man is out in the open sea and his ship goes down, is he in combat or not? It is not that simple. Combat is more than just being in a hostile area and pulling a rifle trigger.

I hope the amendment offered by the gentleman is not adopted. I urge my colleagues to vote "no" on the amendment offered by the gentleman from Michigan and support the Hanley amendment.

The Hanley amendment is supported by the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans and, as far as I know, all of the other major veterans organizations.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Texas (Mr. KAZEN).

Mr. KAZEN. Mr. Chairman, I thank the gentleman for yielding.

Will the gentleman tell me how he distinguishes between a Vietnam veteran who was actually in combat and one who served in a combat zone but was never fired on?

Mr. ROBERTS. The gentleman makes an excellent point and it was the point I was trying to make. How is combat defined?

Mr. BONIOR. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I will be happy to yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, I would like to answer both the gentlemen from Texas. The specific language in this amendment relates to people who were awarded the Vietnam Service Medal, the Armed Forces Expeditionary Medal for Vietnam. So the guidelines of combat are specifically drawn up by the military by itself by the awarding of those medals.

Mr. TAYLOR. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Missouri.

Mr. TAYLOR. Mr. Chairman, my colleague from New York seeks to delete one of the most objectionable provisions of the committee bill, and by doing so he would preserve our existing veterans' preference in Federal employment.

I support his amendment because I simply do not believe the arguments of those who would have us turn our backs on this Nation's veterans.

The committee bill calls for substantial dilution of this Nation's longstanding policy of according military veterans' preference in examination, appointment, and job retention in Federal employment. In doing this, the committee would deny veterans' preference to millions of Vietnam era veterans and would severely limit retention preference for those who are now employed or become employed in Government service.

The committee accepted the argument of the Carter administration that the intent of veterans' preference is to provide for some sort of readjustment to civilian life, and that modifications are now in order because the employment of veterans has caused discrimination against women.

I reject the Carter administration arguments out-of-hand, because I do not believe that veterans' preference laws have hurt the quality of the Federal civil service, nor do I believe that the application of our current law has harmed the employment opportunities of any qualified persons.

Our current laws give honorably discharged veterans an advantage in appointment and job retention, although it is not as overwhelming one.

The concept of veterans' preference is based on the belief that those men and women who served their country honorably in time of war should have some first consideration in serving their country as civilians from among those with the same relative qualifications.

The committee bill is being sold under the guise of helping Vietnam-era vetnam-era veterans will lose all veterans' colleague from New York has pointed out that, by 1987, nearly 7 million Vietnam era veterans will lose all veterans' preference opportunities if the committee's provisions are left intact.

I urge my colleagues to support the Hanley amendment, for by doing so we will be keeping the faith with those who have served this country with honor.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. ROBERTS was allowed to proceed for 2 additional minutes.)

Mr. ROBERTS. Mr. Chairman, I would like to say to my colleagues that we have a system that works. It may not be perfect, but it has worked for a long period of time. We have men and women who have a vested interest in that system. Let us not change the rules in midstream.

Mr. UDALL. Mr. Chairman, I wonder if we could get some agreement as to a limitation of time?

Mr. Chairman, I ask unanimous consent that all debate on the amendment offered by the gentleman from New York (Mr. HANLEY) the perfecting amendment offered by the gentleman from Michigan (Mr. BONIOR) and all amendments thereto, close at 5 o'clock.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Members who were standing at the time the limitation of debate was agreed to will be recognized for approximately 1½ minutes each.

The Chair recognizes the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of the gentleman from New York's amendment.

I find it highly ironic that those who have been the strongest advocates of affirmative action for women and minorities now oppose veterans' preference. Affirmative action, for which the administration recently reaffirmed its support, is designed to compensate a class of people for opportunities lost by their ancestors. It is speculative at best, when applied to an individual applicant. There is absolutely no guarantee that an individual applicant suffered the lost opportunity that is presumed to have been suffered by the class accorded affirmative action. Veterans' preference, on the other hand, is designed to compensate individuals for the actual loss of opportunities, due to military service during time of war. I can understand how a person can support veterans' preference and not affirmative action, but it is beyond me how a person can be in favor of affirmative action and not veterans' preference.

As stated earlier by the distinguished gentleman from New York (Mr. HANLEY), there is no evidence whatsoever that veterans' preference is harmful to the hiring opportunities of women and minorities. The administration and its allies have been playing a very simplistic game. They look at the proportion of women and minorities in the higher levels of the civil service, and at the proportion of veterans in those levels, and then conclude that veterans preference is responsible for the low percentages of women and minorities.

First, it is rational that veterans be represented in those categories. A majority of our male population in the 50 and above category is veteran. Second, the lack of women and minorities parallels a similar lack of women and minorities in higher positions in the private sector. Did veterans' preference cause that imbalance too? It is clear that, in both cases, those disparities have little to do with veterans' status, and much to do with societal structures which are being overcome. Furthermore, the disparities are certain to change rapidly even without a change in veterans' preference. World War II veterans make up the bulk of our veteran civil servants. These veterans are now almost 60 years old, on the average, and will be retiring in droves.

Without regard to representation in the upper echelons of civil service, it is interesting to note that women now constitute almost as large a percentage of professional new hires as veterans. Last year, 11,929 women were hired at GS–7 positions and above, while 13,621 veterans were. When we couple this with the fact that, overall, women constitute 42 percent of the Federal hires, and veterans 27.8 percent, it seems clear to me that women are faring very well: Those who want careers are getting them. Those who want clerical jobs to supplement their family's income are getting them.

Considering that the Vietnam veteran, even with the veterans' preference notion, holds a median grade of only a GS–6, at the average age of 31 years, I wonder how well veterans preference really works.

We know one thing: It does work for minority veterans, despite arguments that veterans' preference works to the disadvantage of minorities. Minority veterans make up 2 percent of the national work force, and fully 9 percent of the Federal work force. In fact, Mr. Speaker, minority applicants on the whole have been unaffected by veterans' preference. Some 12 percent of the country's population is minority, but 23 percent of the Federal work force is minority.

I have heard it said that veterans' preference affects equal employment opportunity, and that its elimination would restore that notion. It is clear, however, that the administration is not interested in establishing a completely unbiased employment system. Affirmative action discriminates in favor of women and minorities. Even more disconcerting have been the administration attempts to create special noncompetitive appointment positions for many of its friends. For instance, the so-called Sugarman plan would allow noncompetitive appointments for women and minorities all the way up to GS–18.

Even worse, in recent months the administration announced a special, noncompetitive hiring program for individuals who served for 1 year in ACTION programs such as VISTA and the Peace Corps. How can this administration embrace on a noncompetitive basis those who served voluntarily in capacities that were often exotic vacations, and then seek to cut off from a mere 5-point boost the veterans who suffered in the foxholes and the trenches of our Nation's wars?

Mr. Chairman. it has become a standard criticism of the traditional veterans' organizations that they are comprised of older veterans who care only for benefits that accrue to those who fought in World War II. I would submit to you that this issue, which is fully supported by all of our veterans' organizations, impacts almost exclusively on the well-being of our Vietnam veterans. The World War II veteran will use veterans' preference sparingly in the future, if at all. The Korean war veteran is for the most part ensconced in his profession. It is the Vietnam veteran who has encountered employment difficulty, and it is the Vietnam veteran who will be helped—or hurt—by the way the House votes on this amendment today. Again, Mr. Chairman, I find an irony in the makeup of those who oppose veterans' preference. How many of those who are trying to end perhaps the most meaningful benefit for the men who went off and fought our most unpopular war cried crocodile tears over his status last year when they supported the de-

serters and malcontents who were helped by the Carter discharge review program? Veterans' preference rewards honorable service. There has been few enough rewards for those who did their duty in Vietnam.

Mr. Chairman, I submit that now is the time to demonstrate a concern and appreciation for what the Vietnam veteran went through in the mud and jungles of Southeast Asia. If the Members of this body truly appreciate his sacrifices, they will support this amendment and now.

I rise in opposition to the gentleman from Michigan's amendment.

I find it highly ironic that the gentleman and some of his colleagues have been especially critical of the Committee on Veterans' Affairs for not having done enough for veterans of the Vietnam era, and now offer as their first congressional initiative a plan which would eliminate the future by veterans' preference. And nam veteran has available to him. The Vietnam veteran has had numerous employment difficulties. He is almost exclusively the one who will be helped in the future by veteran's preference. And now the gentleman proposes a plan which will completely eliminate veterans' preference within the next 7 years. The Vietnam veteran deserves the same basic benefits as his World War II counterparts, and I submit it is the duty of the Congress to preserve veterans preference in the form it now enjoys. Does the gentleman submit that the service of the Vietnam veteran was less deserving than his World War II counterpart's? If not, I should think he would vote against his own amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. HILLIS).

Mr. HILLIS. Mr. Chairman, I rise in wholehearted support of the amendment to H.R. 11280 being offered by our distinguished colleague, Mr. HANLEY and in opposition to the Bonior amendment. For years, this Nation has recognized its commitment, a lifelong commitment, to our veterans.

Due to the nature of military service, careers and educational plans are disturbed. These disruptions put veterans at a disadvantage when they return to civilian life and begin to look for meaningful employment. To compensate, the VA has solicited American businessmen to "hire the vet." Employment counseling services are provided to veterans before and after their separation from active duty.

For its part, the Federal Government has given preference to veterans in securing employment. However, no preference has ever been given to veterans of a particular war over other veterans. The committee's bill is designed to "provide greater employment opportunities to Vietnam-era veterans and to encourage the recruitment and retention of qualified applicants, particularly women and minority applicants." This is to be accomplished by eliminating veterans' preference after 15 years for nondisabled veterans. Further bonus points could only be used once within that 15-year period.

The Vietnam veteran is a different type of veteran.

First, they served in a very unpopular war, and moreover, it should be remembered that a great percentage of Vietnam veterans are minorities. One of the arguments against the draft was that it unfairly selected minorities to serve. I believe that veterans' preference, in fact, will do more in the future to assist minorities in obtaining meaningful jobs in the Federal Government than any other group. We have numerous programs already designed to insure equal employment opportunities for minorities and women in the Federal Government. This is not to say that we do not need to do more to assist these groups; however, eliminating the veterans' preference is not the answer.

Our Nation's veterans need our support now more than ever, particularly the Vietnam veteran who served his country well only to return in many instances to an ungrateful Nation. Because of the difficulty many veterans experienced upon their return home, it seems to me to be unconscionable that we now arbitrarily cut them off 15 years after their separation from service. By 1980 alone, nearly 500,000 Vietnam-era veterans will lose their eligibility rights; and in the next 7 years, over 6 million veterans will lose these rights.

If we are to alter these regulations, we must do so prospectively, not retroactively. It is totally unfair to tell those who served "Sorry, but we are changing the rules on you in the middle of the game." It is totally unfair for our Nation—this Congress—to act in such a capricious, arbitrary manner, and I cannot emphasize to my colleagues too strongly that we must not permit this erosion to begin.

A vote for the Hanley amendment is a simple way for the Congress to say thank you to our Nation's veterans, and to retain veterans' preference as we have known it—and as those who served their country in its time of need thought was the case. This is not a pro-Vietnam veterans' bill as has been suggested. This is a well-disguised, antiveterans program. I urge adoption of this amendment.

AMENDMENT OFFERED BY MR. SKUBITZ AS A SUBSTITUTE FOR THE PERFECTING AMENDMENT OFFERED BY MR. BONIOR

Mr. SKUBITZ. Mr. Chairman, I offer an amendment as a substitute for the perfecting amendment.

The Clerk read as follows:

Amendment offered by Mr. SKUBITZ as a substitute for the perfecting amendment offered by Mr. BONIOR: In lieu of the language of the Bonior amendment insert the following: Page 192, after "(A)" insert "(1)".

Page 192, line 17, after "armed forces, or" insert "(ii) if later, December 31, 1985, but only if the individual's service in the armed forces on or after June 25, 1950, is the basis for awarding the Vietnam Service Medal, the Armed Forces Expeditionary Medal for Vietnam or the Korean Theater Service Ribbon."

Mr. SKUBITZ. Mr. Chairman, the amendment I offer does no violence to the Bonior amendment.

What I am proposing to do is to expand the Bonior amendment so that Korean war veterans who served in that theater of war will be given the same protective rights which we give to Vietnam soldiers who served in a theater of war.

All my amendment does is to give to the Korean war veterans the same rights and privileges so far as eligibility is concerned as we give to the Vietnam war veterans.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. SKUBITZ. I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, may I say to the gentleman from Kansas that the effect of his amendment actually is already in place in my amendment. My amendment would include, as present law does, those who served in Korea.

Mr. SKUBITZ. Mr. Chairman, I would like to reclaim my time.

Let me say to my colleague the gentleman from New York is only partly correct. The gentleman's amendment goes further and maintains everything in its present place. My amendment only applies to Korean veterans and Vietnam veterans who served in theaters of war. His amendment maintains the status quo.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. CORNWELL).

Mr. CORNWELL. Mr. Chairman, being one of three Vietnam combat veterans in the House of Representatives and in the Senate, in Congress as a whole, I have to take issue with the statement which was just made regarding the Vietnam veteran, saying that the Vietnam veteran is different. I do not think that we are any different than any other veteran who ever fought a war for this country for the purposes of liberty and freedom. We have probably had as many legs blown off, as many wounds, as many traumas as were suffered by any other veteran in any other war. I do not think we are different because it was an unpopular war. I think we are different because we are younger and we do demand and do deserve a preference here as regards jobs in the public sector. Facts and statistics aforementioned prove this overwhelmingly.

I think we need to focus attention on those veterans who need it the most and who deserve it the most at this time.

(By unanimous consent, Mr. CORNWELL yielded the balance of his time to Mr. BONIOR.)

The CHAIRMAN. The Chair recognizes the gentleman from Mississippi (Mr. LOTT).

Mr. LOTT. Mr. Chairman, the Schroeder amendment which was adopted by the House Committee on Post Office and Civil Service was a compromise to the administration's original proposal on veterans' preference.

Outwardly, veterans' preference seems absolute. It gives an impression that nonveterans stand little if any chance in gaining Federal employment when competing with veterans. No doubt this is why the supporters of modifications suggested veterans' preference be diluted. The administration has charged that its

application adversely affects the employment opportunities of women and minorities.

The so-called Schroeder amendment would limit veterans' preference to a "one-shot" use within 15 years after discharge from military service. If we allow this legislation to become law, 21 million World War II and Korean war veterans would immediately lose all employment preference rights when the law went into effect in October 1980. What really concerns me, however, is 5 million of the 8.5 million Vietnam-era veterans would have zero to 5 years of employment preference remaining—not 15 years. Only those who entered military service before the termination of veterans' preference on October 15, 1976, and left the service after October 1980, would receive the full 15 years of employment preference.

The legislation would also limit veterans' "reductions-in-force" benefits to 8 years following initial appointment to Federal service. That means that all veterans who had been employed by the Government for 8 years or more—including the Vietnam-era veterans who entered Federal service between August 5, 1964, to October 1972—would immediately lose their "RIF" protection when the law became effective in October 1980.

Veterans' preference, currently in effect, was based upon recognition of the fact that millions of young men and women had been called upon to give up their usual occupations, often at great economic sacrifices and many had been exposed to personal danger and hardships. It was felt that readjustment to civilian life would be difficult for many, that those who remained at home would acquire a tremendous headstart financially over the serviceman and that, therefore, some assistance should be given to the veterans in readjusting and retaining lost ground.

Unemployment, as well as competing for and holding jobs, is still uppermost in the minds of many. According to a recent Harris study, unemployment and the lack of jobs is listed as the greatest problem facing returning Vietnam veterans. It is, therefore, inconceivable that this body would even contemplate reducing any aspect of veterans' preference.

I recognize the unemployment needs, including promotion and upward mobility of women and minorities but veterans are finding themselves a minority.

I cannot help but believe that my colleagues continue to feel as I do, that our veterans are in fact special and deserve more than a little consideration. Veterans' preference is a longstanding legitimate expression of public policy that has been folded into the overall merit system framework. I feel the present laws are achieving their intended effect of giving an advantage to veterans while preserving the essential elements of competition. Because of their service and the sacrifices so many of our veterans were called upon to make, I urge my colleagues to support the Hanley amendment.

The CHAIRMAN. The Chair recognizes the gentlewoman from Maryland (Ms. MIKULSKI).

Ms. MIKULSKI. Mr. Chairman, I rise in opposition to the Hanley amendment regrettably and enthusiastically rise in support of the Bonior amendment. The United States must continue to be a grateful nation to those of who fought and defended us in World War II, that created the Korean and the Vietnam conflicts.

However, we must meet the needs of those veterans according to the point of life in which they now find themselves.

I feel the Bonior amendment perfects the administration bill by extending both time and opportunities for the Vietnam veteran where time is running out. But for the World War II veteran, who is 58 years old, giving him 5 points in his old age is not the way to help him. That veteran is concerned about other needs, it is the need for retirement security, and he is particularly afraid that a catastrophic illness will wipe him out. I propose that instead of keeping the 5-point preference when he does not need it, that, to show our gratitude, on developing a comprehensive health care program for veterans that, No. 1, would care for them in terms of catastrophic illness and, No. 2, would provide for long-term care, where perhaps we could take unused nursing home beds in veterans' hospitals, where they could be cared for with respect and dignity along with their comrades.

Mr. Chairman, as we consider the Hanley amendment to the civil service reform legislation, my colleagues and I are faced with a very difficult decision. I, for several reasons which I will enumerate, cannot support this amendment.

The United States is a grateful nation for the gallant efforts made by the veterans who defended our cause abroad during World War I, World War II, the Korean war, and the Vietnam conflict. But the United States had made commitments to two constituencies and neither one can be overlooked.

When the veterans returned from war, we made a commitment then to help them readjust to the new lives to which they were returning by offering them the GI bill and veterans' preference, besides other benefits. Now we have reached a new phase, and these veterans are concerned with different priorities. Yet at the same time, we made a promise to nonveterans, many of whom supported the war effort, that they would have equal access to jobs within the Government, and that through the merit of their work, they would be upwardly mobile within the ranks of the civil service. Now these groups are converging and we must resolve their problems.

We need to look more closely at the real problems facing the veteran today. After meeting with several veterans' groups, I have found, as I suspected, that the real concerns of the veteran is planning for the future to make sure that he will be able to continue to take care of his family if he becomes ill. He no longer needs to worry about financing his own education or finding a job after finishing school or just finding a first job after being released from the service. The World War II veteran, whose average age is 58, must make provisions for his future well-being, as well as that of his family. For that reason, I have introduced House Joint Resolution 1113 which requires the Veterans' Administration to develop a comprehensive plan to provide health and social services to the ever-increasing number of senior veterans. Such a plan would include providing retirement counseling and planning services for senior veterans; converting unused acute-care hospital facilities under the jurisdiction of the Administrator to long-term care facilities; expanding the number of hospital-based home care units; expanding and improving long-term care and catastrophic health care programs; establishing new facilities to provide daytime care (in lieu of nursing home care) for senior veterans who are able to live with their families; establishing hospice programs for terminally ill senior veterans; and extending health care services to surviving spouses of veterans.

My colleague, Representative HECKLER, has also introduced legislation, the Veterans' Geriatric and Gerontological Health Services Expansion Act, which is also aimed at the real problem that face the veteran.

Today, when we vote on the Hanley amendment, we have to keep in mind the new needs and the new phase of care required by the veteran. We have a new commitment to the veterans which we must meet and extending veterans' preference as it now exists is not the way.

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. GRASSLEY).

Mr. GRASSLEY. Mr. Chairman and members of the committee, we were asked during this debate, and in Dear Colleague letters previous to this debate, to consider what veterans' preference needed to be changed in order to be fair to minorities and women. I and many other Members have taken that challenge into consideration. I have come down on the side of voting in favor of the Hanley amendment and leaving veterans' preference basically as it is for the simple reason that without the sacrifice of a veteran, most of us in this country would not have the freedoms that we have now. The great advancement in the opportunities for women and minorities in the last 50 years in this country has come about only because of the environment of freedom that has been preserved in this country by the sacrifice of our veterans in combat, and this is no time to take away the rewards that we have given and that we owe for that service to our country that has made possible the preservation of freedom for all. Because of this sacrifice I stand in support of the Hanley amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. YOUNG).

Mr. YOUNG of Florida. Mr. Chairman, I rise in support of the Hanley

amendment and in opposition to the amendment of our colleague, the gentleman from Michigan (Mr. BONIOR).

Mr. Chairman, there is just something wrong, in my opinion, with the idea of placing restrictions on the number of times that a veteran might use his preference, or place a limitation on the time that that preference is available. There have been many other arguments made on many other good points, but let me speak on just these two.

All of us, of course, know that in any of our wars there has been no practical restriction on the number of times that many veterans were called on to go into battle day after day after day, and I just do not think there should be any restriction placed on the amount of times that that eligibility should be available to him once he gets back into the civilian job market.

On the limitation of time, every one of us knows personally and knows of many more veterans who have come home from the wars missing an arm or missing a leg.

Mr. Chairman, I submit that that arm or that leg is gone forever, not 8 or 15 years, but it is gone forever. We know of those who came home physically but left their mental abilities and sanity in a foxhole someplace forever.

Mr. Chairman, to provide for those who did fight and for those who were standing by ready to fight is in keeping with the commitment of our country as expressed by President Lincoln, "To care for him who shall have bourne the battle—"

The CHAIRMAN. The time of the gentleman from Florida has expired.

(By unanimous consent, Mr. ROBERTS yielded his time to Mr. HANLEY.)

The CHAIRMAN. The Chair recognizes the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Chairman, I rise in support of the Bonior amendment and in referfence to women, I would like to say a word about this subject to the Members of the House. We have in Washington, D.C., in the Civil Service Office, 34 veterans at the top of the register. The only nonveteran woman, an applicant with a score of 100, is 35th on that list. Now, that really ought to tell us something about what is happening to women. I do not think women are necessarily the most important part of the whole population, but we certainly should do a little better than that.

Of all the positions at the 16 to 18 levels of civil service, women hold less than 3 percent. Below that, in grades 13 to 15, the proportion is only 6 percent. They are the clerks. Thev are the typists. They are down at the lower levels where men do not want to be. This is what is happening to women in the United States of America.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. GARCIA).

Mr. GARCIA. Mr. Chairman, I rise in support of the Bonior amendment and in opposition to the Hanley amendment.

Mr. Chairman, I speak as a veteran of the Korean war. I want the RECORD to note that I was among those who was in Korea with a regimental combat team. When I was discharged from the service I was able to take advantage of the opportunities afforded me by the GI bill. I think many veterans similarly took advantage of these many benefits offered them simply because they were veterans.

I do not believe I have a lifetime franchise on all of these special provisions. Especially as regards a preference for employment in the Federal Government, I believe the time under which a veteran can exercise that option should be limited. There is a very good and sensible reason for limiting this preference. And that is so that the younger veterans can now reap the benefits we all have been able to take advantage of.

The veterans of the Vietnam war are the ones who suffered most from fighting a war that was unpopular. And I think that most of those who fought there came out of urban America. Those are the ones who need our help and those are the ones I want to help. That is why I support the Bonior amendment and oppose the Hanley amendment.

As a leader in the Hispanic community, I can truly say that I am not expressing an isolated point of view. I want you all to know, as you consider this progressive section of the bill, that it is supported by the American GI Forum—one of the country's largest veterans' organizations; by the Mexican-American Legal Defense Fund, the Puerto Rican Legal Defense Fund, the National Conference of Puerto Rican Women, the National Conference of Cuban-American Women, the League of United Latin American Citizens, the National Council of LaRaza and by Image—which is the Hispanic Federal employees' national organization.

I urge you to share their view that altering veterans' preference via this Civil Service Reform Act will benefit future generations of veterans and civil servants.

The CHAIRMAN. The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Chairman, I rise in support of the Bonior amendment and against the Hanley amendment.

I just want to point out that I honestly think if we could do this vote by secret ballot, it would pass by a very heavy margin. Why? Because everybody talks about wanting to have the veterans all get a crack at the jobs, but nobody is for increasing the Federal service so they will all have that crack. Probably there will not be more than 150,000 new jobs in the Federal service next year for veterans, 150,000.

If we go with the Hanley amendment, it will leave 28 million potential people bidding for those jobs. If we go with the Bonior amendment, it gets us closer to 8 million people competing for those jobs. They all happen to be Vietnam-era people and they will have a much greater chance.

If we look at the Federal service, 48 percent of the people in the Federal service are veterans and only 9 percent of those are from the Vietnam era. That is basically because other veterans can come in with a higher standing, a higher educational background and more experience, and when they are bidding veteran versus veteran the other veterans tend to come out on top.

(By unanimous consent, Mr. WHITE yielded his time to Mr. HANLEY).

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Chairman, I rise in support of the Hanley amendment and in opposition to the Bonior amendment.

One last point that I wish to make concerns a statement made earlier by the gentlewoman from Colorado on veterans' preference. Conceding the gentlewoman's assertion that 23 percent of the veterans utilize veterans' preference to transfer into other job series, it is unlikely that veterans would exercise veterans' preference to transfer into another job series for the purpose of taking a downgrade.

It would be more likely that a switch into another job series would be for an advancement in grade or responsibility. Further, if most of our veterans are in upper echelons of management, then a switch into another job series would be for a job in the upper echelon of management, and not entry-level positions that veterans and nonveterans are competing for, which is the troubled area we are trying to correct by this legislation.

Accordingly, Mr. Chairman, I urge support for the amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I think the gentleman has just proven my point. By just bidding into a higher level job, they have preempted other people from being qualified for that job. That is basically my point, and I think about those 23 percent.

Mr. GILMAN. The gentlelady misunderstands the point I am trying to make. Vietnam-era veterans, for the most part, are just beginning to apply for entry-level positions or are in the lower grades, years away from eligibility for upper echelon positions.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. BONIOR).

Mr. BONIOR. Mr. Chairman, in the short time I have been in Congress I have seen much legislation dealing with veterans coming before Congress, most of it on suspension. In fact, practically all of it has been under suspension. Most of it is geared toward those people who fought in earlier wars.

The pension bill that we pass is going to cost close to $700 million in the first year. Yet we have out in America, as I indicated earlier, 855,000 Vietnam-era veterans suffering from underemployment, earning $4,000 a year, or making less than $7,000. I think there are 3 million people making less than $9,000. All we are asking for is a bill for these people.

It has been argued time and again on the floor that these people are going to phase themselves out, those who are veterans of World War II and Korea. Why not, then, give the preference to those people who need it the most now, the Vietnam veterans? No one is going to need it to that extent when they are 39, 40, or 42. The readjustment problems of these people are occurring now. Their career problems are occurring now.

Mr. Chairman, I hope the Members of the Congress and of this committee will look with some compassion on this issue. These people fought bravely in that war, as they did in other wars, and the traditional benefits for veterans should be extended to Vietnam-era veterans in this country. They should be considered in this bill.

The CHAIRMAN. The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I rise in support of the Bonior amendment, and I am opposed to the Hanley amendment.

We ought to recognize that no one is arguing today against the concept of veterans' preference. It is a good concept, it is a sound concept. The gentleman from Michigan (DAVE BONIOR) supports it, I support it, and the gentleman from New York (JIM HANLEY) supports it. The question is: What kind of veterans' preference are we going to have?

We say it ought to be focused on those areas involving the disabled veterans, and the Bonior amendment enlarges the protection for the disabled veterans. Indeed it doubles the number of disabled veterans who receive benefits.

We also say that it ought to be focused on the Vietnam-era veterans.

Let me tell the Members a few war stories. Let me give an example of why the present system is not working. More than 30 years ago I served in World War II for 4 years. I was on the U.S. side, in case there is any doubt among my detractors. I never heard a shot fired. Most of my time was spent pounding typewriters and performing other vital services in time of war.

I arrived on Iwo Jima on D-Day plus 100 with some baseball equipment and a piano to entertain troops who had been involved in the invasion.

Under the persent law, a young person, a widow 29 years old who lost her husband and has children may be applying for a Federal job, and let us say I apply for that Federal job. I get absolute preference.

The Government gave me an education. I got my law degree under the GI bill, and the Government helped me buy my first house. My first house was bought under Government insurance, and the Government helped me with my first law office. I do not need the help now, it is the young people who need this help.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, historically there has been veterans' preference of some sort since the founding of our Nation but in a more structured form since 1865 and finally, as we know it today, resulting from the enactment of the Veterans' Preference Act of 1944.

Veterans' preference has come under increasing attack from various quarters. It has been stated that veterans' preference is discriminatory. Veterans' preference, if one must call it discriminatory, does discriminate against those who remained civilian and got their preference by attaining an early education and establishing themselves in the job market while their contemporaries answered their country's call and shouldered arms.

It has been traditional philosophy in this country that, "those who were preferred to serve their Nation in the Armed Forces in time of war should be preferred to serve their Nation in a civilian capacity when qualified."

Removal of this veterans' preference is a matter that goes beyond any question of "flexibility," greater employment of other groups, or like concerns. It is really a question of whether this is a country that feels free, in time of national emergency, to call upon its very best to serve in its Armed Forces and face death, injury, disruption of normal life, and all the other conditions of that service. Then for the country to discard them as veterans, to announce they must compete "as equals against all nonveterans, except for such nonveterans as may be given preference in recruiting, examination and selection.

Right now we have no need for an emergency armed service, but if the need arises, the response will be forthcoming. However, the law should be there, needing only a slight amendment on qualifying dates of service, to acknowledge that the Nation that calls for sacrifice will also hire its veterans when qualified.

Supporters have waged an extensive campaign for the modification of veterans preference.

I have every reason to believe that with the enactment of this title, veterans will not only lose their preference benefits but will be subjected to discrimination in hiring, reduction in force, promotions, and assignment to and retention in the Senior Executive Service which will encompass upper level officials. I urge my colleagues to support the amendment to restore veterans' preference which this body has historically extended to those men and women who have served our Nation in the Armed Forces.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. HANLEY).

Mr. HANLEY. Mr. Chairman, the issue at stake here this afternoon is the integrity of the U.S. Government. Traditionally, we have heard the phrase "the full faith and credit of the U.S. Government." And during our periods of hostility, we said to a certain category of American citizens, the person who served in the military establishment, "My friend, once you go back to civilian life, here are the benefits that have accrued to you."

Mr. Chairman, for the life of me I cannot conceive of the attitude of this administration in wanting to renege on that commitment we made traditionally. It is wrong. It is improper. It is unjust.

When we talk about the Vietnam veterans, that is what it is all about. And as I have said time after time during the course of this debate this afternoon, the good majority of the Vietnam veterans, as represented by virtually all of the organizations, sustain this position, and that is to preserve this law.

Mr. Chairman, there is another ramification associated, too, with this. We know that all of the State governments have a tendency to follow suit, once the Federal Government acts. So what you would be doing is that you would be putting the veterans' community on the threshold of total erosion of benefits throughout the 50 States of this Union.

I do not believe that the majority in the House of Representatives wants to do that.

So, despite all that has been said about the effect of this amendment on the Vietnam veteran, there is only one good effect, and that is the provisions of my amendment which preserves veterans' preference, as our Nation committed itself to do to all of the men and women who served.

Reference was made to the person who was 58 years old. Generally speaking, my contemporaries are not in the job market. It has little effect on us. For that matter, it does not have that much effect on the Korean veteran. But it does have a major effect on the Vietnam veteran. And if ever there was a less than glorious war in the history of this Nation, it was Vietnam, and if ever a set of veterans got shortchanged, it was the Vietnam veterans. Some in this Chamber would move in the direction of further shortchanging them.

Someone has said that minorities and women suffer by virtue of the veterans' preference. Let me allude, if I might, for a minute, to the matter of women. I quote Chairman Campbell, commenting on the GAO study of selecting and hiring registers. He said:

> The most surprising thing is that the pattern of effects is not consistent across all examinations. In some cases, women obtain little or no advantages by eliminating veterans' preference. Eliminating some or all veterans' preference or advantages will not have a systematic favorable impact on women.

That is the Chairman of the Civil Service Commission. They are not my words. They are his words. So, hopefully, those words can put to rest the apprehension or the concern of those who feel that, by taking this right away from the veteran, you are going to expand upon employment for women and minorities.

That is not at all the case. I implore you, my friends, to vote down the Bonior amendment, to vote down the Skubitz amendment, and vote for the Hanley amendment.

I think that President Franklin Delano Roosevelt best explained the rationale for veterans preference when he stated:

I believe that the Federal Government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces that when they return special consideration will be given them in their efforts to obtain employment. It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without having any special consideration shown them.

● Mr. MONTGOMERY. Mr. Chairman, I rise in support of the Hanley amendment which would have the effect of retaining veteran's preference as it is in current law. I feel very strongly that we should not change the present rules of giving a five point preference to those men and women who have served our Nation so nobly as members of the Armed Forces.

If we accept this section of the bill as reported, we would be breaking an implied contract with our former servicemen and servicewomen and changing the rules for no reasonable purpose. Veterans preference was intended as a lifetime reward for those who served in the defense of their country.

It should be noted that the current veterans preference law does not apply to able-bodied veterans who entered the peacetime service after October 14, 1976. We are mainly talking about veterans of World War II and Korea, who are fast approaching retirement age anyway. What I fear is that the changes in the veterans preference as reported by committee will be harmful to our Vietnam-era veterans.

Mr. Chairman, according to recent studies I have seen, the facts do not show that veterans are disproportionately represented in the civil service.

I hope my colleagues will give their strong support to the Hanley amendment and vote against the Bonior and Skubitz amendments.●

● Mr. WOLFF. Mr. Chairman, I rise in support of the amendment offered by the distinguished gentleman from New York, which would amend the veterans' provisions of H.R. 11280, the civil service reform bill.

I would like to take this opportunity to congratulate my distinguished colleague (Mr. HANLEY) for the leadership he has shown in preserving the preference eligibility rights of all of America's veterans in Federal employment.

It is quite obvious that the veterans' preference modification proposals contained in H.R. 11280, as amended by the Schroeder amendment in Committee, will deny veterans' preference to millions of deserving Vietnam-era veterans. Why, in 1985 alone over 1 million Vietnam-era veterans will lose their preference eligibility. Mr. Chairman, these veterans were asked for an unlimited commitment by this Nation in its time of need. Simple justice requires in return that in their time of need these veterans be given a special degree of consideration which reflects the unlimited gratitude of an appreciative nation.

I, therefore, believe that the Vietnam-era veteran deserves far better than the proposed veterans' provisions of H.R. 11280, which would stigmatize Vietnam-era veterans as a disfavored class among the past defenders of this Nation. Equal benefits for equal service, in my mind, applies to the veterans of any war. This is not the time to change a principle when it would adversely affect so many young Vietnam-era veterans. Congress is not the place for this trampling of rights and expectations to occur.

Mr. Chairman, I strongly urge my colleagues to reject the undermining of the preference eligibility rights of America's veterans in Federal employment. I strongly urge rejection of the Schroeder amendment provisions of H.R. 11280, and support the Hanley amendment.●

● Mr. CORCORAN of Illinois. Mr. Chairman, I would like to urge my colleagues to support the compromise provision that was reported out of the Committee on Post Office and Civil Service. I refer to the compromise provision because this is emphatically not the original Carter proposal, which, rather than restructuring and reshaping benefits, blindly eliminated them. Moreover, this compromise does not irresponsibly abolish veterans' benefits. It is not an anti-veterans' compromise. Rather, it addresses a matter of philosophy. Is veterans' preference a matter of a lifelong right to preferential treatment as part of the veterans' payment for a job well done, or is it a more limited mechanism for easing the transition from military to civilian life?

I believe that veterans' preference should provide a source of support in the process of exchanging a uniform worn with pride for a shirt and tie. It should compensate our honored veterans for time spent in the service of our great country, but it should not act as a barrier to equal protection for our younger veterans, who not only served our country, but suffered because their war was unpopular at home. They did not return to our shores to cheers and ticker-tape parades. They returned to silent eyes and turned backs.

Contrary to the rampant spread of misinformation, this bill most assuredly does not make life more difficult for Vietnam-era veterans. After the first 2 years following enactment of H.R. 11280, during which all veterans would have an opportunity to apply for a civil service position, only veterans who have been discharged within 15 years would be eligible for veterans' preference. When combined with an amendment that my colleague from Michigan (Mr. BONIOR) will be introducing, this 15 years is sufficient to give all Vietnam veterans an opportunity to apply for and obtain a position with the benefit of preference points and without competition from older, more experienced veterans who also have preference points and are, therefore, so often more qualified. This can only limit the competition which would otherwise be experienced * * * that is, a preference would be provided for all Vietnam-era veterans.

The compromise would also limit absolute preference during reductions in force to 8 years, but surely 8 years is sufficient time to learn a job and, therefore, to equip a veteran to compete without the advantage of preference points. This is particularly true when coupled with the fact that in addition to all the time actually spent in the civil service, all the time spent in the military is included in seniority calculations for veterans in the Federal civil service.

This compromise definitely improves the situation for disabled veterans. It more than doubles the number of disabled veterans eligible for noncompetitive appointment by lowering the requirement from a 50-percent disability to a 30-percent disability. This is an increase in eligibility from 494,000 to 996,000 disabled veterans who are not required to compete for job appointments.

This is not an antiveterans bill. I would not support an antiveterans proposal. I am, myself, a veteran, having served in Germany with the U.S. Army in the midsixties. In fact, I am a member of my local American Legion post back home. And I have always strongly supported veterans' rights and benefits. I supported the veterans on all the issues brought before the House of Representatives in 1977. Mr. Chairman, you will recall that the measures which I was pleased to support included:

Legislation to provide veterans with automobile assistance allowance and adaptive equipment;

Legislation to increase service-connected compensation for veteran's loss of use of paired extremities;

GI Bill Improvement Act of 1977;

State grants for home facilities for veterans;

Retired serviceman's family protection plan and the survivor benefit plan;

Veterans' Administration Medical Facilities Acquisition Act of 1977;

Veterans' Administration Physicians and Dentists Comparability Act extension;

Veterans and Survivors Pension Adjustment Act of 1977;

Veterans' Disability Compensation and Survivors Benefits Act of 1977; and

The Beard amendment to the HUD appropriations bill eliminating benefits for veterans whose discharges were upgraded under the Carter amnesty plan.

And, Mr. Chairman, during 1978, I was with the veterans again in supporting the following measures:

Legislation providing burial expenses (in allowances to States) for veterans;

Legislation increasing the pension for veterans who are recipients of the Congressional Medal of Honor;

Veterans' Disability Compensation and Survivors Benefits Act of 1978;

Legislation extending hospital care in States, territories, and possessions outside the continental United States for veterans;

Veterans' Housing Improvement Act of 1978;

Legislation increasing benefits for permanently disabled veterans' survivors and increasing compensation for veterans rated at 40-percent disabled;

Roberts amendment to the first budget resolution increasing veterans' programs by nearly $1 billion;

Veterans' and Suvivors' Pension Im-

provement Act of 1978; and I cosponsored the Anderson of California bill to increase benefits for World War I veterans.

I support this legislation before us now because it restructures benefits to reach those who need them most, and, surely, the people who need our help most are the Vietnam-era veterans and the disabled veterans. I believe that it is to them that we should offer this preference. In addition, I think it is time to recognize that our aim is to help veterans through the transition to civilian employment, not to offer them a lifetime guarantee of job security far above and beyond that offered to other civil servants in this day and age.

You are all being asked to make a difficult choice today, but I would ask you to consider the question that I asked myself during our committee deliberations: "Who needs our help most now, in 1978?" It should be apparent that the older, more experienced nondisabled veteran is not as desperately in need of help in making up for losses suffered, as is a Vietnam veteran or a disabled veteran.

Therefore, I urge my colleagues to defeat the Hanley amendment and support the committee provision in the bill on veterans preference.●

● Mr. TEAGUE. Mr. Chairman, I rise in support of the Hanley amendment. To limit veterans preference will be a gross violation of the long-held principle that veterans of all wars should have equal benefits for equal service. The amended provision on veterans preference will do a great disservice to the Vietnam veterans. The argument that by taking away veterans preference we will help Vietnam-era veterans, is a lot of hogwash. There is no supporting data, that I can find, which shows that Vietnam veterans whose average age is 30, are competing for jobs with World War II veterans, whose average is 60, and Korean veterans, whose average age is 50. There is no evidence that veterans use their preference over and over again. On the other hand, there is evidence that veterans preference is doing well for the minority veteran, who comprise 19 percent of the veteran work force, as opposed to only 8 percent of the general veteran population.

The facts do not bear out that women are being hurt by the Veterans Preference Act. Last year new hires show that 213,000 females were hired in civil service jobs as opposed to 163,000 veterans.

All veterans must obtain a passing grade before the five-point add on. There is nothing mandatory about hiring a veteran. The law provides an appointing officer may pass over a veteran to hire a nonveteran. This was done many times during the past year. There is simply no truth to the allegation being peddled by the administration and others, that the Veterans Preference Act is serving to load up our civil service jobs with less than qualified applicants.

All veterans organizations favor the Hanley amendment. Including the National Association of Concerned Veterans, which speaks exclusively for Vietnam-era veterans.

There is no bona fide national veterans organization, that I know of, that favors the Schroeder amendment in the bill.

Why does the Federal Government want to eliminate five-point preference for persons who served in the Armed Forces in the Vietnam war, and at the same time make eligible for a noncompetitive appointment in the Federal civil service, by Presidential Executive Order, persons who served as volunteers in the Peace Corps, Vista, and ACTION programs.

I see nothing wrong with giving a veteran who served in Vietnam an extra five-point preference when such veteran is seeking employment in the Federal Government. Our veterans gave everything they had for their country, and deserve in return everything a grateful Nation can possibly afford. We gave veterans of previous wars five-point and lifetime retention preference, and I see nothing wrong with keeping it for Vietnam veterans.

I strongly urge that the Hanley amendment will be approved.●

The CHAIRMAN. The hour of 5 o'clock has arrived.

The question is on the amendment offered by the gentleman from Kansas (Mr. SKUBITZ) as a substitute for the perfecting amendment offered by the gentleman from Michigan (Mr. BONIOR).

The amendment offered as a substitute for the perfecting amendment was rejected.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from Michigan (Mr. BONIOR).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 149, noes 222, not voting 61, as follows:

[Roll No. 746]

AYES—149

| | | |
|---|---|---|
| Alexander | Downey | Krebs |
| Anderson, Ill. | Drinan | LaFalce |
| Ashley | Edgar | Leach |
| Aspin | Edwards, Calif. | Leggett |
| AuCoin | Evans, Colo. | Lundine |
| Baldus | Fascell | McCloskey |
| Barnard | Fenwick | McCormack |
| Bedell | Findley | McHugh |
| Bellenson | Fisher | McKinney |
| Benjamin | Fithian | Madigan |
| Bingham | Foley | Maguire |
| Blanchard | Ford, Mich. | Markey |
| Blouin | Ford, Tenn. | Mattox |
| Bolling | Forsythe | Mazzoli |
| Bonior | Fowler | Meeds |
| Brademas | Garcia | Metcalfe |
| Breckinridge | Giaimo | Michel |
| Brinkley | Glickman | Mikulski |
| Brodhead | Gore | Mikva |
| Brown, Calif. | Gradison | Mineta |
| Burton, John | Green | Mitchell, Md. |
| Burton, Phillip | Hamilton | Moffett |
| Butler | Harkin | Moss |
| Carr | Harrington | Mottl |
| Cavanaugh | Harris | Nedzi |
| Clay | Hawkins | Nix |
| Conable | Hightower | Nolan |
| Conte | Hollenbeck | Nowak |
| Conyers | Holtzman | Oakar |
| Corman | Howard | Obey |
| Cornwell | Hughes | Ottinger |
| Cotter | Jacobs | Patterson |
| Coughlin | Jeffords | Pattison |
| Danielson | Jones, Okla. | Pease |
| Dellums | Jordan | Pike |
| Diggs | Kastenmeier | Poage |
| Dodd | Keys | Pritchard |
| Pursell | Sharp | Ullman |
| Quayle | Simon | Van Deerlin |
| Railsback | Smith, Iowa | Vanik |
| Rangel | Solarz | Walgren |
| Reuss | Spellman | Waxman |
| Rosenthal | Stark | Weaver |
| Rostenkowski | Steers | Weiss |
| Roybal | Stockman | Whalen |
| Ruppe | Stokes | Whitehurst |
| Ryan | Studds | Wilson, Tex. |
| Scheuer | Thompson | Wirth |
| Schroeder | Tucker | Yates |
| Seiberling | Udall | |

NOES—222

| | | |
|---|---|---|
| Abdnor | Gaydos | Myers, John |
| Addabbo | Gephardt | Myers, Michael |
| Akaka | Gilman | Natcher |
| Ambro | Ginn | Neal |
| Anderson, Calif. | Goldwater | Nichols |
| | Gonzalez | O'Brien |
| Andrews, N.C. | Goodling | Oberstar |
| Andrews, N. Dak. | Grassley | Panetta |
| | Gudger | Patten |
| Annunzio | Guyer | Pepper |
| Applegate | Hall | Perkins |
| Archer | Hammer-schmidt | Pickle |
| Ashbrook | | Pressler |
| Badham | Haniey | Preyer |
| Bafalis | Hannaford | Price |
| Baucus | Harsha | Quillen |
| Bauman | Heckler | Rahall |
| Beard, R.I. | Hefner | Regula |
| Beard, Tenn. | Heftel | Rhodes |
| Bennett | Hillis | Rinaldo |
| Bevill | Holland | Risenhoover |
| Biaggi | Holt | Roberts |
| Boggs | Horton | Robinson |
| Boland | Hubbard | Roe |
| Bowen | Hyde | Rogers |
| Brooks | Ichord | Rooney |
| Broomfield | Ireland | Rose |
| Broyhill | Jenrette | Runnels |
| Buchanan | Johnson, Calif. | Russo |
| Burke, Mass. | Jones, N.C. | Santini |
| Burleson, Tex. | Jones, Tenn. | Satterfield |
| Burlison, Mo. | Kazen | Sawyer |
| Caputo | Kelly | Schulze |
| Carney | Kildee | Sebelius |
| Carter | Kindness | Shipley |
| Cederberg | Kostmayer | Shuster |
| Clausen, Don H. | Lagomarsino | Sikes |
| | Le Fante | Sisk |
| Cleveland | Lederer | Skelton |
| Coleman | Lent | Skubitz |
| Collins, Tex. | Levitas | Slack |
| Cornell | Livingston | Smith, Nebr. |
| Crane | Lloyd, Calif. | Snyder |
| Cunningham | Lloyd, Tenn. | Spence |
| D'Amours | Long, La. | Staggers |
| Daniel, Dan | Long, Md. | Stangeland |
| Daniel, R. W. | Lott | Stanton |
| Davis | Luken | Steed |
| de la Garza | McClory | Symms |
| Dent | McDade | Taylor |
| Derrick | McDonald | Thone |
| Derwinski | McEwen | Treen |
| Devine | McFall | Trible |
| Dickinson | McKay | Vento |
| Dicks | Mahon | Volkmer |
| Dingell | Mann | Waggonner |
| Dornan | Marks | Walker |
| Duncan, Oreg. | Marlenee | Walsh |
| Duncan, Tenn. | Marriott | Wampler |
| Early | Martin | Watkins |
| Edwards, Ala. | Mathis | White |
| Edwards, Okla. | Meyner | Whitley |
| Eilberg | Milford | Whitten |
| English | Miller, Ohio | Wilson, C. H. |
| Erlenborn | Minish | Winn |
| Ertel | Mitchell, N.Y. | Wolff |
| Evans, Del. | Moakley | Wright |
| Evans, Ga. | Mollohan | Wydler |
| Evans, Ind. | Montgomery | Wylie |
| Fish | Moore | Yatron |
| Flippo | Moorhead, Pa. | Young, Fla. |
| Florio | Murphy, Ill. | Young, Mo. |
| Flynt | Murphy, N.Y. | Young, Tex. |
| Fountain | Murphy, Pa. | Zablocki |
| Frenzel | Murtha | |
| Gammage | Myers, Gary | |

NOT VOTING—61

| | | |
|---|---|---|
| Ammerman | Clawson, Del | Frey |
| Armstrong | Cochran | Fuqua |
| Bonker | Cohen | Gibbons |
| Breaux | Collins, Ill. | Hagedorn |
| Brown, Mich. | Corcoran | Hansen |
| Brown, Ohio | Delaney | Huckaby |
| Burgener | Eckhardt | Jenkins |
| Burke, Calif. | Emery | Johnson, Colo. |
| Burke, Fla. | Fary | Kasten |
| Byron | Flood | Kemp |
| Chappell | Flowers | Krueger |
| Chisholm | Fraser | Latta |

| | | |
|---|---|---|
| Lehman | Roncalio | Thornton |
| Lujan | Rousselot | Traxler |
| Miller, Calif. | Rudd | Tsongas |
| Moorhead, Calif. | Sarasin | Vander Jagt |
| Pettis | St Germain | Wiggins |
| Quie | Steiger | Wilson, Bob |
| Richmond | Stratton | Young, Alaska |
| Rodino | Stump | Zeferetti |
| | Teague | |

The Clerk announced the following pairs:

On this vote:

Mr. Richmond for, with Mr. Fary against.

Mrs. Chisholm for, with Mr. Breaux against.

Mrs. Burke of California for, with Mr. Chappell against.

Mr. Corcoran of Illinois for, with Mr. Emery against.

Mr. Miller of California for, with Mr. Zeferetti against.

Mr. Eckhardt for, with Mr. Stratton against.

Mr. Flood for, with Mr. Teague against.

Mrs. MEYNER and Messrs. YOUNG of Texas, MURPHY of Pennsylvania, MURPHY of Illinois, PRESSLER, WRIGHT, MOAKLEY, DERRICK, HEFTEL, DE LA GARZA, VOLKMER, NEAL, LEVITAS, RAHALL, and DICKS changed their vote from "aye" to "no."

Mr. STEERS changed his vote from "no" to "aye."

So the perfecting amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. HANLEY).

RECORDED VOTE

Mr. CHARLES H. WILSON of California. Mr Chairman, I demand a recorded vote

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 281, noes 88, not voting 63, as follows:

[Roll No. 747]

AYES—281

| | | |
|---|---|---|
| Abdnor | Carney | Evans, Ind. |
| Addabbo | Carter | Findley |
| Akaka | Cavanaugh | Fish |
| Alexander | Cederberg | Fisher |
| Ambro | Clausen, Don H. | Fithian |
| Anderson, Calif. | Cleveland | Florio |
| Andrews, N.C. | Coleman | Flynt |
| Andrews, N. Dak. | Collins, Ill. | Foley |
| Annunzio | Collins, Tex. | Forsythe |
| Applegate | Conable | Fountain |
| Archer | Conte | Fowler |
| Ashbrook | Cornell | Frenzel |
| AuCoin | Cornwell | Gammage |
| Badham | Cotter | Gaydos |
| Bafalis | Coughlin | Gephardt |
| Baldus | Crane | Giaimo |
| Barnard | Cunningham | Gilman |
| Baucus | D'Amours | Ginn |
| Bauman | Daniel, Dan | Glickman |
| Beard, R.I. | Daniel, R. W. | Goldwater |
| Beard, Tenn. | Danielson | Gonzalez |
| Benjamin | Davis | Goodling |
| Bennett | de la Garza | Gore |
| Bevill | Dent | Gradison |
| Biaggi | Derrick | Grassley |
| Boggs | Derwinski | Gudger |
| Boland | Devine | Guyer |
| Bowen | Dicks | Hall |
| Brademas | Dingell | Hamilton |
| Breckinridge | Dodd | Hammer-schmidt |
| Brinkley | Dornan | Hanley |
| Brooks | Duncan, Oreg. | Hannaford |
| Broomfield | Duncan, Tenn. | Harris |
| Broyhill | Early | Harsha |
| Buchanan | Edwards, Ala. | Heckler |
| Burke, Mass. | Edwards, Okla. | Hefner |
| Burleson, Tex. | Eilberg | Heftel |
| Burlison, Mo. | English | Hightower |
| Butler | Ertel | Hillis |
| Caputo | Evans, Del. | Holland |
| | Evans, Ga. | |
| Hollenbeck | Miller, Ohio | Sawyer |
| Holt | Minish | Schulze |
| Horton | Mitchell, N.Y. | Sebelius |
| Howard | Moakley | Sharp |
| Hubbard | Mollohan | Shuster |
| Hughes | Montgomery | Sikes |
| Hyde | Moore | Sisk |
| Ichord | Moorhead, Pa. | Skelton |
| Ireland | Mottl | Skubitz |
| Jeffords | Murphy, Ill. | Slack |
| Jenrette | Murphy, N.Y. | Smith, Nebr. |
| Johnson, Calif. | Murphy, Pa. | Snyder |
| Jones, N.C. | Murtha | Spellman |
| Jones, Tenn. | Myers, Gary | Spence |
| Kazen | Myers, John | Staggers |
| Kelly | Myers, Michael | Stangeland |
| Kildee | Natcher | Stanton |
| Kindness | Neal | Steed |
| Kostmayer | Nichols | Stockman |
| Krebs | Nowak | Symms |
| Lagomarsino | O'Brien | Taylor |
| Le Fante | Oberstar | Thompson |
| Lederer | Panetta | Thone |
| Lent | Patten | Treen |
| Levitas | Pepper | Trible |
| Livingston | Perkins | Tucker |
| Lloyd, Calif. | Pickle | Ullman |
| Lloyd, Tenn. | Pressler | Vanik |
| Long, La. | Preyer | Vento |
| Long, Md. | Price | Volkmer |
| Lott | Pursell | Waggonner |
| Luken | Quayle | Walgren |
| Lundine | Quillen | Walker |
| McClory | Rahall | Walsh |
| McCormack | Railsback | Wampler |
| McDade | Regula | Watkins |
| McDonald | Rhodes | Weaver |
| McEwen | Rinaldo | White |
| McFall | Risenhoover | Whitehurst |
| McKay | Roberts | Whitley |
| McKinney | Robinson | Whitten |
| Madigan | Roe | Wilson, C. H. |
| Mahon | Rogers | Winn |
| Mann | Rooney | Wirth |
| Marks | Rose | Wolff |
| Marlenee | Rosenthal | Wright |
| Marriott | Rostenkowski | Wydler |
| Martin | Roybal | Wylie |
| Mathis | Runnels | Yatron |
| Mattox | Ruppe | Young, Fla. |
| Meyner | Russo | Young, Mo. |
| Michel | Santini | Young, Tex. |
| Milford | Satterfield | Zablocki |

NOES—88

| | | |
|---|---|---|
| Anderson, Ill. | Green | Obey |
| Ashley | Harkin | Ottinger |
| Aspin | Harrington | Patterson |
| Bedell | Hawkins | Pattison |
| Bellenson | Holtzman | Pease |
| Bingham | Jacobs | Pike |
| Blanchard | Jones, Okla. | Poage |
| Blouin | Jordan | Pritchard |
| Bolling | Kastenmeier | Rangel |
| Bonior | Keys | Reuss |
| Brodhead | LaFalce | Ryan |
| Brown, Calif. | Leach | Scheuer |
| Burton, John | Leggett | Schroeder |
| Burton, Phillip | McCloskey | Seiberling |
| Carr | McHugh | Simon |
| Clay | Maguire | Smith, Iowa |
| Conyers | Markey | Solarz |
| Corman | Mazzoli | Stark |
| Dellums | Meeds | Steers |
| Downey | Metcalfe | Stokes |
| Drinan | Mikulski | Studds |
| Edgar | Mikva | Udall |
| Edwards, Calif. | Mineta | Van Deerlin |
| Erlenborn | Mitchell, Md. | Waxman |
| Evans, Colo. | Moffett | Weiss |
| Fascell | Moss | Whalen |
| Fenwick | Nedzi | Wilson, Tex. |
| Ford, Mich. | Nix | Yates |
| Ford, Tenn. | Nolan | |
| Garcia | Oakar | |

NOT VOTING—63

| | | |
|---|---|---|
| Ammerman | Delaney | Johnson, Colo. |
| Armstrong | Dickinson | Kasten |
| Bonker | Diggs | Kemp |
| Breaux | Eckhardt | Krueger |
| Brown, Mich. | Emery | Latta |
| Brown, Ohio | Fary | Lehman |
| Burgener | Flood | Lujan |
| Burke, Calif. | Flowers | Miller, Calif. |
| Burke, Fla. | Fraser | Moorhead, Calif. |
| Byron | Frey | Pettis |
| Chappell | Fuqua | Quie |
| Chisholm | Gibbons | Richmond |
| Clawson, Del | Hagedorn | Rodino |
| Cochran | Hansen | Roncalio |
| Cohen | Huckaby | Rousselot |
| Corcoran | Jenkins | Rudd |
| | | Sarasin |
| | | Shipley |
| | | St Germain |
| | | Steiger |
| | | Stratton |
| | | Stump |
| | | Teague |
| | | Thornton |
| | | Traxler |
| | | Tsongas |
| | | Vander Jagt |
| | | Wiggins |
| | | Wilson, Bob |
| | | Young, Alaska |
| | | Zeferetti |

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Richmond against.

Mr. Breaux for, with Mrs. Chisholm against.

Mr. Zeferetti for, with Mrs. Burke of California against.

Mr. Ammerman for, with Mr. Eckhardt against.

Mr. Chappell for, with Mr. Corcoran of Illinois against.

Mr. Stratton for, with Mr. Diggs against.

Mr. St Germain for, with Mr. Miller of California against.

Mr. Krueger for, with Mr. Flood against.

Mrs. BOGGS changed her vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

AMENDMENTS OFFERED BY MRS. SPELLMAN

Mrs. SPELLMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SPELLMAN: Page 208, line 4, after "recruited" insert "(including from within the civil service)".

Page 208, after line 12, insert the following new subsection:

"(d)(1) The regulation under subsection (c) of this section shall provide that in filling any position in an Executive agency for which a recruitment program under subsection (c) is being conducted by that agency for women, to the maximum extent practicable, an individual not entitled to status as a preference eligible under section 2108 (3)(A) or (C) for purposes of preference in consideration for appointment shall be entitled, with respect to consideration for appointment to that position, to the preference available to an individual having the status of a preference eligible under section 2108 (3)(A) if the individual—

"(A) is a woman; and

"(B) has completed, in the aggregate, at least 5 years of civilian service.

"(2) Such regulation shall provide, to the maximum extent practicable, that no individual shall be excluded from consideration for appointment by reason of the application of this subsection."

Page 208, line 13, strike out "(d)" and insert in lieu thereof "(e)".

Page 208, line 26, strike out "(e)" and insert in lieu thereof "(f)".

Mrs. SPELLMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

Mrs. SPELLMAN. Mr. Chairman, I rise to offer an amendment to section 212 of title III of the bill. Section 212 is entitled, "Minority Recruitment." I am very much in favor of that section, but I would like to broaden it.

What I am seeking here today is not to add a new class of people who are going to be given special treatment. I seek nothing special for women in general.

But we have a very unique situation in the Federal Government today which is triggered by affirmative action programs. We are happy to have affirmative action programs; had there not been affirmative action programs I know that a great many Members who voted for the Hanley amendment would have voted against it. Had they felt that they were hurting women, they would not have voted in favor of the Hanley amendment. So we do acknowledge the fact that even right within this bill there are affirmative action provisions to enable the hiring of women.

But, we have a very unique and a very unfair situation which is developing. As we reach out to bring women into the Federal Government where the agencies specifically seek women, we are finding that women are being brought in from the outside over the women who for years have served in the Civil Service.

And the women in the system are helpless. Here we have women who are capable, who only because they were women were held back. We recognize today how wrong that is, but we did not recognize it years ago. I was part of that kind of system and I thought it was all right. I did not know better. Now we know better. Yet we have no way of helping these women, who have trained the men who are today their bosses, to move up to the positions that they are capable of holding.

Instead, every time there is an affirmative action program we are reaching from outside the system and bringing women in over the women who have for years been doing the work. Women outside the system supersede those within the system for placement in upper grade jobs.

There is something very, very wrong with that. I am asking that we give recognition to that unusual situation.

According to the White House over 82 percent of all the women are concentrated in the GS grades 1 through 11 and earn less than $11,000 per year. We know that so many of them are capable of filling top grade positions. We know that many grade 9's, had they been male, would have been 11's or 12's or 15's today.

The Schroeder amendment did not address this problem. The Garcia amendment does not address it either.

So I am offering this today.

How do the veterans' groups feel on this? I would like to call to the attention of the Members the fact that veterans are generous people. They are not opposed. We posed this question to a group of people about to go to a meeting. After they studied the matter, and because of their own knowledge of the situation, this is the telegram I got from the Maryland American Legion. It says:

> On behalf of the 60,000 Legionnaires of Maryland we wish to express our appreciation for the Hanley amendment. We also pledge our support for the Spellman upward mobility amendment designed to help women in government gain better positions.
>
> JAMES R. THOMAS,
> *State Commander.*

This discussion was led by men who themselves had been in the Federal system and who knew that throughout the years there were women who were training men who went on ahead of them.

Let me repeat—we are asking nothing special for women. We are just saying: Let us not pit women against women—let us not forget those who for years have served. We are not creating a new affirmative action program. We are merely providing that when there is an affirmative action program in which women are being sought, that we help those women who are within the system apply and qualify for the jobs that they are capable of handling, instead of bringing new people in above them.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if I listened correctly to the gentlewoman from Maryland, she in fact by her amendment would pit women against women, because what she provides is for a preference to women who have already had 5 years of civil service. New women applicants or those with less than 5 years would be by this amendment facing greater odds in seeking employment than those who have already the 5-year edge.

I am a firm defender of women's rights. But this amendment would be administratively impossible to handle.

You could not possibly conduct your Federal personnel system when you start to, by the back door, insert provisions presumably to correct, for example, the law that Congress just restated of veterans' preference. So what we would be doing, if we accepted this amendment, would be to completely contradict the two votes we just had.

Further, this amendment was not considered in the committee. We have no idea how in the world it could be administered. So in the usual parlance of committee terminology, we will be pleased to give it priority at the start of the next session. But I do not see how we could possible accept this amendment in this bill not knowing what its effect would be.

Mrs. SPELLMAN. Mr. Chairman, if the gentleman will yield, the amendment calls for regulations to be prepared to carry out the concept being proposed.

There will be regulations and we will have an opportunity to see them. We will have an opportunity to provide oversight over both the regulations and the administration.

Mr. DERWINSKI. But as the gentlewoman from Maryland (Mrs. SPELLMAN) well knows, oversight is a difficult field. Oversight over something we have had no background on or contract with or study about puts us in an impossible situation. I am not speaking just for the committee, but I do not believe that the Civil Service Commission could effectively administer this amendment.

Mrs. SPELLMAN. Will the gentleman yield further?

Mr. DERWINSKI. Yes, of course I yield further.

Mrs. SPELLMAN. Had the gentleman had the opportunity to be with us as we held hearings in five different departments throughout the city and throughout the Government, he would have found that over and over and over again this was one of the complaints that we had on the part of women.

I might say that we have also participated in meetings to discuss the subject and have invited the chairman of the Civil Service Commission to join in meeting with the women affected and to attempt to address the problem. The solution that was offered to the women at the time was, "Well, we will have to start somewhere so we will hire women for the top grades—they will then reach down to help you.

"You will never get anywhere until we put these women up here at the top."

We think that that is blatantly unfair on the face of it and I am sure the gentleman will agree.

Mr. DERWINSKI. But, if you take a good look at the amendment, I emphasize what I told you, this would develop women's preference and would automatically discriminate against all other category areas. As I said, each time you provide a preference for someone obviously this has some negative effect on some other category.

Since we do not have a real record in committee, and I do not believe the committee in the other body touched this subject, either, I think the best course of action would be to keep this bill as uncluttered as possible and give this matter priority when we go back to our work within the committee.

Mrs. SPELLMAN. If the gentleman will yield still further, I wish to remind my colleagues that this amendment addresses itself to only those situations in which affirmative action calls for women. It does not create a new situation, it does not spell out something else that must be done, but it does say when women are being sought for jobs, then it shall apply.

Mrs. SCHROEDER. I move to strike the requisite number of words.

Mr. Chairman, I think one of the things that we women have talked about more or less, and have snickered about has been the "old boys club."

I really object to this amendment because I see it starting an old-girls club.

As I recall the testimony of the women's groups—and I went out to check it with them—the women's groups in essence have been supportive of removing all preference points rather than cluttering the whole thing up with finding all sorts of new systems.

I think that any woman who wishes to compete within the affirmative action program for a higher job is certainly not prohibited from going ahead and filing for that job. She can file for that job at any time or on any day. The fact that she already has a job in the Federal civil service does not preclude her from taking that step. In fact, it probably helps her because she has some kind of background and she has certain experience. She already has several different ways in which she can move forward in that endeavor.

Therefore, Mr. Chairman, I really urge the Members to turn this amendment down. I think this is a dangerous prece-

dent. I can understand the politics of it in that what we could do is to give everyone points. We could give veterans points; we could give points to people who were in the war on poverty; we could give blacks preference; we could give Chicanos preference; we could give young people and old people preference. We could just nullify everything.

We could all run home and tell everybody, "Do you see what we did? We gave you all the goodies." We would not be telling them that we gave them to everyone else, too.

Really, this amendment would be counter productive. I think it goes against the thrust of what women's groups have been trying to do in the Federal service. They want merit promotions based on merit, on background, and on educational ability. They want, based on their own ability, to move forward. They do not want to be given five points just because they are women and they have been around a long time.

Mrs. FENWICK. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I would like to associate myself with the remarks of my colleague, the gentlewoman from Colorado (Mrs. SCHROEDER).

I would only like to point out that we have forgotten the Aleuts who are also a group which may be applying for a special preference if we continue with amendments like this one.

Mrs. SPELLMAN. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentlewoman from Maryland.

Mrs. SPELLMAN. Mr. Chairman, would the gentlewoman from Colorado tell us how we can move? Will she tell us how women who are in grade 9 and have been kept in grade 9 because only men were allowed to move into grade 10, 11, and 12, can move forward when they are applying for jobs and are being told, "We cannot move you a couple of grades"?

I might point out that the Civil Service Commission has had a little difficulty in answering that question. Has the gentlewoman given that any thought?

Mrs. SCHROEDER. I think we can allow them to bid on that job and prove they have background and the qualifications, and that we can do testing as we have always done. We do it on the basis of merit. However, to give them points because they have been in the Federal service and someone else has not is something which I do not think we want to do. I think we want to do it on the basis of whether they can or cannot do that GS–11, GS–12, or GS–13 job.

I think women want that, too, not just because we were here and staked it out. The points do not measure whether or not that woman in a GS–9 or a GS–10 job truly is qualified for the higher job. As a matter of fact, if we argue that they were flatly discriminated against with respect to getting the higher jobs, I think there have been blacks also who have been discriminated against, and Chicanos. Many of them in my area have not been able to move up at all; but to just flatly assign all of them points, too, say, double-bid so that they can go up several steps on the ladder without doing the testing violates the whole notion of merit, and what we are trying to do in the area of Civil Service reform.

Mrs. SPELLMAN. If the gentlewoman will yield further, of course, the point is that they would be taking a test, they would be qualified. They would have to be qualified. However, because they have been held down, they are in a position where they cannot jump these additional grades; and that is what we have to address ourselves to.

Mrs. SCHROEDER. However, they could go out and rebid on the register, and someone would look at the points on the test and the experience in the job. I think that is what should be measured. We do not give them extra points for that.

I think all of us have felt discriminated against at times, whether we are male, female, or what have you; but at some point we are going to end up with white males staging a revolt if we go too far on this sort of amendment.

I think we are really missing the whole point of what this bill is all about.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I strongly support the statement just made by the gentlewoman from Colorado (Mrs. SCHROEDER).

We are plunging into a very, very difficult area if we say to a woman, "Because you are a woman in the Federal service and have been such for 5 years, we are giving you the same preference as we give to a veteran."

The next thing we know, other groups will say, "We want five points," and then more people will want five points.

Mr. Chairman, it is a bad amendment, untried, untested, and will lead us into a great deal of difficulty.

I ask that the amendment be defeated.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Chairman, does the gentleman agree with the gentlewoman from Colorado (Mrs. SCHROEDER) that the author of the amendment is a member of the old-girls club?

Mr. UDALL. I am with the gentlewoman from Colorado (Mrs. SCHROEDER), on this one and against my good friend, the gentlewoman from Maryland (Mrs. SPELLMAN).

Mr. GARCIA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this particular section of the bill is one that my staff and I have devoted many, many hours to. The reason for this section is because I felt very strongly that one of the factors which most hampers minorities in terms of Federal civilian employment is that their names are not on those civil service registers. The purpose of this section, then, is to insure that minorities will get on those registers, by placing heavy emphasis on their recruitment.

The amendment that has been put forth by the gentlewoman from Maryland (Mrs. SPELLMAN) came to my attention less than 1 hour ago. It may have a great deal of merit, Mr. Chairman, but because of the complexities involving this amendment, I do not believe this is the proper time to consider this measure. I therefore urge that the Spellman amendment be defeated.

Mr. HAMMERSCHMIDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the gentlewoman's amendment.

If we were to pass this amendment, Mr. Chairman, it would be the height of discrimination based on a person's status as a member of a class. I am not a lawyer, but it does not take legal training to question the constitutionality of such a provision. And even more, Mr. Chairman, it would be an abominable injustice.

Veterans' preference points are awarded for affirmative service during a period of war. They are awarded without regard to race, sex, or creed. The qualifying criteria is military service. There is simply no correlation between this concept, and the concept of awarding points to people merely because they are women, or black, or from Arkansas, or any other reason not connected with an affirmative act as opposed to an inherent status.

If this amendment passes we will indeed have begun to discriminate in reverse, and for this reason, Mr. Chairman, I strongly oppose the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentlewoman from Maryland (Mrs. SPELLMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mrs. SPELLMAN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Seventy-five Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

Mrs. SPELLMAN. Mr. Chairman, I withdraw my demand for a recorded vote.

So the amendments were rejected.

AMENDMENTS OFFERED BY MR. LEACH

Mr. LEACH. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. LEACH: Page 209, after line 12, insert the following new section:

TEMPORARY EMPLOYMENT LIMITATION

SEC. 313. (a) Effective one year after the date of the enactment of this Act the number of individuals enployed in or under an Executive agency shall not exceed the number of individuals so employed on January 1, 1977.

(b) The President shall prescribe regulations to carry out the purpose of this section, including regulations to ensure that no increase in the procurement of personal services by contract occurs by reason of the enactment of this section.

(c) In administering this section, an individual employed on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such individual's regularly scheduled workweek.

(d) For the purpose of this section, "Executive agency" has the meaning set forth in section 105 of title 5, United States Code.

(e) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

(f) The provisions of this section shall terminate at noon on January 20, 1981.

Page 209, line 14, strike out "313." and insert in lieu thereof "314."

Page 129, in the table of contents, strike out the item relating to section 313 and insert in lieu thereof the following:

Sec. 313. Temporary employment limitation.

Sec. 314. Effective date.

Mr. LEACH (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Chairman, the amendments I am offering will simply establish a statutory ceiling on the total number of Federal employees in the executive branch.

There has been a great deal of discussion on the Federal bureaucracy, its ineffectiveness, its inefficiencies, the morass of redtape, and the need to reform our civil service laws. Clearly the existing system should be improved and management afforded greater flexibility in mobilizing the bureaucracy to accomplish its objectives. At the same time, the bill before us, in present form, is silent on the issue of the appropriate size of that bureaucracy.

According to Civil Service Commission statistics, executive branch employment, excluding those working for the U.S. Postal Service, has increased over the past year and a half by 112,000. While that figure includes all employees, whether employed full time, part time, or on an intermittent basis, it is significant to note that the increase in full-time jobs alone is 103,000.

I stress this growth figure because it is sudden. During the previous 8 years of Republican administrations, total executive branch employment decreased by 115,000. Yet in the past 18 months of the Carter administration Federal employment has increased by an almost identical 112,000.

It is easy to say this represents only a 5 percent increase compared to total executive branch employment of over 2 million, but in actuality it is rather extraordinary. When I first started looking into the matter 8 months ago, executive branch employment had increased by 15,000 and I reported to my constituents that this figure was larger than Fort Madison, Iowa—the seventh largest city in my district. Then the growth figure increased to 40,000 and I reported that the increase in Government employment was larger than Burlington, Iowa—the third largest city in my district. The latest available statistics now reveal that Government employment has jumped by more than 100,000, which is larger than Davenport, Iowa—the largest city in my district.

This trend must be reversed. In an effort to work constructively with the administration in accomplishing the major goal of civil service reform, I am offering this amendment to limit the number of executive branch employees to the number so employed in January 1977, which was 2,119,000. The ceiling would become effective 1 year after the date of enactment of the Civil Service reform bill, which permits the administration to reach the target level of reduced employment through attrition. According to the Civil Service Commission, the attrition/separation rate for 1977 was approximately 22 percent. Clearly the administration could refrain from filling one in four vacancies during the coming year and thus easily reach the statutory ceiling. I might also point out that the amendment further requires the President to issue regulations to insure that no increase in the procurement of outside services results from the limit on Federal employment. In addition, the amendment assures that part-time employment will be calculated as a fraction of full-time equivalent hours in order to avoid any inadvertent bias against part-time employment for which this body has expressed clear support.

The amendment also provides waiver authority in the event of a national emergency so as to permit the hiring of employees in excess of the statutory ceiling if necessary.

In sunset fashion, the amendment will expire with the termination of the President's current term of office, providing the Congress and the administration the opportunity, at that time, to review and evaluate the effectiveness of a ceiling on Federal employment.

Mr. Chairman, the current trend in Federal employment runs directly counter to the prevailing mood in this country. American taxpayers are weary, not only of high taxes, but of excessive and costly Government bureaucracy. Nowhere in the reform bill before us today is any meaningful effort made to meet that particular outspoken concern. Without explicit direction in this legislation, we may see, with all of the ensuing activity to reorganize and reform all aspects of the civil service system, an even greater growth in the number of employees on the Federal payroll.

During committee consideration, this employment ceiling amendment was rejected by a 13-to-8 vote. Frankly, I was disappointed that the Civil Service Commission and administration spokesmen argued strongly that a ceiling would be inappropriate because of the need to establish new Federal programs in the next several years. From the point of view of the minority, this reasoning underscores our philosophical commitment to put a halt to the growth of bureaucracy. Clearly, if one supports the initiation of massive new programs, this amendment should be opposed. But, just as clearly, those of us that are skeptical of the need for more programs should reflect that skepticism in a vote for this amendment.

In a 1976 interview with Business Week—well before the recent development popularly characterized as the proposition 13 tax revolt—the President responded to a question put to him regarding the substantial increase in State employment that occurred during his term of office as Governor of Georgia, that he had promised State employees that no one would be discharged as a result of his reorganization but that he did reserve the right not to fill vacancies as they occurred and would do the same thing upon being elected to office. I believe this approach the President outlined in the Business Week interview is on the right track and desire in no way to jeopardize the jobs of Federal employees now on the payroll. At the same time, I do believe this Congress ought to work cooperatively with the administration to allow for a reduced level of employment through the simple process of attrition.

Finally, let me stress again that not only should direct Federal employment be capped, but indirect employment should also be more carefully constrained. Frightening statistics recently presented by HEW Secretary Califano to the Senate Appropriations Committee, indicate that at the same time the U.S. Government is paying salaries to 144,000 regular HEW employees. HEW is indirectly paying the salaries of another 980,000 who work for private think tanks, universities, State and local government, and related programs. Thus the equivalent payroll for this one Federal Department alone exceeds 1 million jobs.

While my amendments do not address all of these hidden and indirect personnel costs, I believe the Civil Service reform bill offers us a timely opportunity to move beyond rhetoric on the issue of big, costly Government, and take a meaningful step to limit the bureaucracy.

I urge adoption of the amendments.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from Iowa has a good idea, and everybody has got a lot of good ideas about civil service. I expect that before midnight we are going to hear most of them at the rate we

are going. I had a Member back here with the bright idea that every Member of Congress should have the right annually to fire one bureaucrat without any cause or argument.

The gentleman from Iowa is a very valuable member of our committee, and I do not want to put down the amendment he has offered, but this is a drastic action to take this afternoon in the middle of a very complicated bill. Maybe we ought to have a limitation on the number of employees in Federal Government, but we do not do it without hearings, not without bringing the departments and the administration in and finding out what is ar. appropriate limit. We do not legislate in this fashon, in this broadcast manner, in this particular bill.

This was considered by the committee and defeated by a vote of 13 to 8. I would hope we would not get into this business this afternoon of trying to adopt this amendment. Sure, we ought to look into this overall problem of excessive Federal employment, but I do not think there are many of us here tonight who have the information we need to say that we are going to put a rigid ceiling on Federal employment.

What we will end up doing is coming in with exemptions and additional legislation to let people out of it, so I would hope that we would have a vote and reject this amendment.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

Mr. Chairman, if I could I would like to call on the gentleman from Iowa who is sponsoring this amendment, because I think the key to the amendment is the fact that the gentleman says it will place a ceiling on civil service. Did the gentleman state that during the past two administrations we had actually had a decrease?

Mr. LEACH. Yes, we had a decrease of approximately 115,000 Federal employees.

Mr. COLLINS of Texas. During the two Presidential terms of Ford and Nixon they have been able to decrease 115,000 in civil service. Under this administration, which has only been here for a year and a half, how many people actually have been added?

Mr. LEACH. As of June, approximately 112,000.

Mr. COLLINS of Texas. In other words, the Carter administration has offset all of the gains that were made in reducing and getting civil service in line. Has the gentleman had anyone who objects basically to this concept the gentleman has of putting a ceiling on the size of the Government?

Mr. LEACH. Well, I have, of course, talked a good deal to my constituents about it, and I get very little resistance in the State of Iowa to that sort of restraint.

Mr. COLLINS of Texas. Of course, down in Texas everyone likes your recommendation. I have been interested in talking about it to many people in civil service who also liked the idea of applicants qualifying although doing temporary duty or wating for these attrition openings. They want civil service to be a merit proposition instead of being on a political basis.

In the past, to get recognition in civil service there was supposed to be a statute whereby one would make a career out of civil service instead of trying to turn it into a political pork barrel through building new agencies which, as I said, would be the only reason people would oppose this amendment.

Has this been publicized enough to allow people to understand the full ramifications of it?

Mr. LEACH. I think the gentleman from Arizona has a good point. The committee has not held adequate hearings. However, people throughout the country understand this issue. It is a very clear issue. I might also say to the civil servants I talk to are very concerned. Not only is good government more limited government but an immediate and pressing problem for civil servants is the unfounded liabilities of the civil service retirement fund. If we continue to expand our Federal employees system willy-nilly, we will be risking the retirement of a very large number of civil servants.

Mr. COLLINS of Texas. Without a ceiling it would mean personnel headquarters could just go out and pick anybody here and there without giving present civil service people a chance for advancement.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Iowa to limit the number of Federal employees. It is abundantly clear to me, American taxpayers are at the absolute limit of their tolerance on Federal spending and bureaucracy.

As the gentleman carefully explained, this amendment will not work an unreasonable hardship on the administration since the President is required to comply with the employment limit within 1 year of enactment and the number, by which Federal employment will be reduced, may easily be reached through attrition.

By requiring the President to insure, by regulation, that no increase in the contracting out of services will result from the limit on Federal employment, will effectively prevent the administration from attempting to "end-run" the Congress.

As my colleagues may have noted, recent testimony by HEW Secretary Califano, before the Senate Appropriations Committee, painted a pretty bleak picture for the American taxpayer. According to Secretary Califano, the Department is paying the salaries of 144,256 regular HEW employees plus the salaries of another 980,217 people who work for private think tanks, universities, State and local government agencies, and the like. The total exceeds 1 million, direct and indirect jobs, dependent on HEW funds. This figure, mind you, refers only to one of our major departments.

Mr. Chairman, Federal spending and "jobs creation" by Uncle Sam has grown to staggering proportions. I believe this amendment will enable us to help stem this growth, and I encourage my colleagues to join me in supporting it.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, one of the questions I would have about this is when we start throwing figures out about how many people there are or there are not in civil service employment, one question is how many of those jobs then get contracted out? One of the difficulties we have on this, and I would appreciate the help of the gentleman from Iowa on this, is what we see happening is a shell game. Very often when one tries to get the number of people on the Federal employee rolls down, then they contract out jobs. We still have those people to pay and sometimes it even costs more.

I would hate to see only in-house personnel figures set in an amendment. I think we are aware of the A–76 circular from OMB, which went out under the previous administration, which was to try to force as many jobs as possible out under contract. I wonder if the gentleman is aware how many we contract out and whether or not we count those in the ceiling, and how do we deal with that?

Mr. LEACH. Since 1961 Federal employment has increased 25.8 percent while the population as a whole increased about 19 percent. And, although we do not have the exact figures, clearly the number of individuals involved in contracted service has increased substantially greater than the civil service itself.

The Civil Service Commission does not know how many contracted-out jobs there are in America today. This amendment addresses this issue by saying the ceiling that will be placed cannot be subverted by creating new contracted-out jobs in place of Federal positions. This amendment then does address the issue Mrs. SCHROEDER has referred to.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I move to strike the requisite number of words.

I wonder if the gentleman from Arizona could respond to a question for me. I was a little surprised that the gentleman from Iowa mentioned that the Federal work force of employees went down during the past 2 administrations, talking about the Ford and Nixon administrations. Did not the gentleman from Arizona hold some studies that showed they went up? What levels are we talking about?

Mr. UDALL. The gentleman from Iowa is talking about overall levels and his figures are right in terms of reduction over the previous 8 years. But that makes the point I was trying to make earlier. We do not have enough facts. Does anyone feel that we have enough facts here about what is a valid personnel ceiling? Maybe we ought to have one, but we cannot solve all the problems of the world in this bill today.

Mr. CHARLES H. WILSON of California. I would hope we could.

Mr. UDALL. The point I was making is the supergrades and executives increased greatly. I have made a study of that. The White House upper levels went

completely out of hand. They more than doubled the top levels in the White House.

Mr. CHARLES H. WILSON of California. In other words, they got rid of the lower levels and put in more upper levels?

Mr. UDALL. They have had more chiefs and fewer Indians in those years.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Iowa (Mr. LEACH).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. LEACH. Mr. Chairman, I demand a recorded vote, and, pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 748]

| | | |
|---|---|---|
| Ambro | Fithian | Pease |
| Ammerman | Flood | Pettis |
| Andrews, N.C. | Florio | Pike |
| Applegate | Flowers | Quie |
| Archer | Flynt | Rangel |
| Armstrong | Fraser | Reuss |
| Aspin | Frey | Rhodes |
| Badham | Fuqua | Richmond |
| Beard, R.I. | Giaimo | Rinaldo |
| Beard, Tenn. | Gibbons | Risenhoover |
| Biaggi | Glickman | Rodino |
| Bingham | Hagedorn | Rosenthal |
| Boggs | Hansen | Rousselot |
| Boland | Harrington | Rudd |
| Bonker | Harsha | Russo |
| Brademas | Heckler | Ryan |
| Breaux | Hollenbeck | Santini |
| Brown, Calif. | Huckaby | Sarasin |
| Brown, Mich. | Ireland | Scheuer |
| Brown, Ohio | Jenkins | Shipley |
| Broyhill | Johnson, Colo. | Shuster |
| Burgener | Jones, N.C. | Sisk |
| Burke, Calif. | Kasten | St Germain |
| Burke, Fla. | Kemp | Stark |
| Burton, John | Krueger | Steed |
| Burton, Phillip | Latta | Steiger |
| Byron | Leggett | Stratton |
| Chappell | Lehman | Stump |
| Chisholm | Lujan | Symms |
| Clawson, Del | McDonald | Teague |
| Cochran | McHugh | Thornton |
| Cohen | Madigan | Traxler |
| Collins, Ill. | Mathis | Treen |
| Conyers | Meeds | Tsongas |
| Corcoran | Mikva | Tucker |
| Cornwell | Milford | Ullman |
| Coughlin | Miller, Calif. | Vander Jagt |
| Delaney | Mitchell, Md. | Walgren |
| Dickinson | Moakley | Waxman |
| Dingell | Moorhead, Calif. | Wiggins |
| Downey | Moss | Wilson, Bob |
| Eckhardt | Neal | Wilson, Tex. |
| Emery | Oakar | Wright |
| Evans, Colo. | Obey | Young, Alaska |
| Evans, Del. | Pattison | Young, Tex. |
| Evans, Ga. | | Zeferetti |
| Fary | | |

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA), having assumed the chair, Mr. NEDZI, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, H.R. 11280, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 294 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

RECORDED VOTE

The CHAIRMAN pro tempore. The pending business is the demand of the gentleman from Iowa (Mr. LEACH) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 251, noes 96, not voting 85, as follows:

[Roll No. 749]

AYES—251

| | | |
|---|---|---|
| Abdnor | Edwards, Okla. | Livingston |
| Ambro | Eilberg | Lloyd, Calif. |
| Anderson, Ill. | English | Long, La. |
| Andrews, N. Dak. | Erlenborn | Lott |
| | Ertel | Luken |
| Annunzio | Evans, Ind. | Lundine |
| Applegate | Fascell | McClory |
| Archer | Fenwick | McCloskey |
| Ashbrook | Findley | McCormack |
| Aspin | Fish | McDade |
| AuCoin | Fithian | McDonald |
| Badham | Flippo | McEwen |
| Bafalis | Florio | McKay |
| Baldus | Flynt | McKinney |
| Barnard | Foley | Madigan |
| Baucus | Forsythe | Maguire |
| Bauman | Fountain | Mahon |
| Beard, R.I. | Fowler | Mann |
| Beard, Tenn. | Frenzel | Markey |
| Bedell | Gammage | Marks |
| Benjamin | Gaydos | Marlenee |
| Bennett | Gephardt | Marriott |
| Bevill | Gilman | Martin |
| Blanchard | Ginn | Mattox |
| Blouin | Glickman | Mazzoli |
| Bowen | Goldwater | Michel |
| Brademas | Goodling | Mikulski |
| Breckinridge | Gradison | Milford |
| Brinkley | Grassley | Miller, Ohio |
| Brodhead | Green | Mitchell, N.Y. |
| Broomfield | Gudger | Moakley |
| Broyhill | Guyer | Moffett |
| Buchanan | Hall | Mollohan |
| Burke, Mass. | Hamilton | Montgomery |
| Burleson, Tex. | Hammer-schmidt | Moore |
| Burlison, Mo. | | Motti |
| Butler | Harkin | Murphy, Pa. |
| Caputo | Harrington | Myers, John |
| Carney | Harsha | Natcher |
| Carter | Heckler | Neal |
| Cavanaugh | Hefner | Nichols |
| Cederberg | Heftel | Nowak |
| Clausen, Don H. | Hightower | O'Brien |
| | Hillis | Oakar |
| Cleveland | Holland | Panetta |
| Coleman | Holt | Pepper |
| Collins, Tex. | Horton | Perkins |
| Conable | Hubbard | Pickle |
| Conte | Hughes | Pike |
| Cornell | Hyde | Poage |
| Cornwell | Ichord | Pressler |
| Cotter | Ireland | Pritchard |
| Coughlin | Jacobs | Pursell |
| Crane | Jeffords | Quayle |
| Cunningham | Jenrette | Quillen |
| D'Amours | Jones, N.C. | Railsback |
| Daniel, Dan | Jones, Okla. | Regula |
| Daniel, R. W. | Kazen | Rhodes |
| de la Garza | Kelly | Roberts |
| Dent | Keys | Robinson |
| Derwinski | Kildee | Roe |
| Devine | Kindness | Rogers |
| Dodd | Kostmayer | Rose |
| Dornan | Krebs | Runnels |
| Drinan | Lagomarsino | Ruppe |
| Duncan, Tenn. | Leach | Russo |
| Early | Lederer | Santini |
| Edgar | Lent | Satterfield |
| Edwards, Ala. | Levitas | Sawyer |
| Schroeder | Stockman | Weaver |
| Schulze | Studds | Whalen |
| Sebelius | Symms | White |
| Sharp | Taylor | Whitehurst |
| Shuster | Thone | Whitley |
| Sikes | Treen | Whitten |
| Skelton | Trible | Winn |
| Smith, Iowa | Vanik | Wirth |
| Smith, Nebr. | Vento | Wolff |
| Snyder | Volkmer | Wydler |
| Spellman | Waggonner | Wylie |
| Spence | Walgren | Yatron |
| Staggers | Walker | Young, Fla. |
| Stangeland | Walsh | Young, Mo. |
| Stanton | Wampler | Zablocki |
| Steed | Watkins | |

NOES—96

| | | |
|---|---|---|
| Addabbo | Gonzalez | Obey |
| Akaka | Gore | Ottinger |
| Alexander | Hannaford | Patten |
| Anderson, Calif. | Harris | Patterson |
| | Hawkins | Pattison |
| Andrews, N.C. | Holtzman | Pease |
| Ashley | Howard | Preyer |
| Bellenson | Johnson, Calif. | Price |
| Bingham | Jones, Tenn. | Rahall |
| Boggs | Jordan | Reuss |
| Bolling | Kastenmeier | Roncalio |
| Bonior | LaFalce | Rooney |
| Brooks | Le Fante | Rosenthal |
| Burton, John | Leggett | Rostenkowski |
| Carr | Lloyd, Tenn. | Roybal |
| Clay | Long, Md. | Scheuer |
| Collins, Ill. | McFall | Seiberling |
| Corman | McHugh | Simon |
| Danielson | Meeds | Slack |
| Davis | Metcalfe | Solarz |
| Dellums | Meyner | Stark |
| Derrick | Mineta | Steers |
| Dicks | Minish | Stokes |
| Diggs | Moorhead, Pa. | Thompson |
| Downey | Murphy, Ill. | Tucker |
| Duncan, Oreg. | Murphy, N.Y. | Udall |
| Edwards, Calif. | Murtha | Ullman |
| Evans, Colo. | Myers, Gary | Van Deerlin |
| Fisher | Myers, Michael | Waxman |
| Ford, Mich. | Nedzi | Weiss |
| Ford, Tenn. | Nix | Yates |
| Garcia | Nolan | |
| Giaimo | Oberstar | |

NOT VOTING—85

| | | |
|---|---|---|
| Ammerman | Flood | Richmond |
| Armstrong | Flowers | Rinaldo |
| Biaggi | Fraser | Risenhoover |
| Boland | Frey | Rodino |
| Bonker | Fuqua | Rousselot |
| Breaux | Gibbons | Rudd |
| Brown, Calif. | Hagedorn | Ryan |
| Brown, Mich. | Hanley | Sarasin |
| Brown, Ohio | Hansen | Shipley |
| Burgener | Hollenbeck | Sisk |
| Burke, Calif. | Huckaby | Skubitz |
| Burke, Fla. | Jenkins | St Germain |
| Burton, Phillip | Johnson, Colo. | Steiger |
| Byron | Kasten | Stratton |
| Chappell | Kemp | Stump |
| Chisholm | Krueger | Teague |
| Clawson, Del | Latta | Thornton |
| Cochran | Lehman | Traxler |
| Cohen | Lujan | Tsongas |
| Conyers | Mathis | Vander Jagt |
| Corcoran | Mikva | Wiggins |
| Delaney | Miller, Calif. | Wilson, Bob |
| Dickinson | Mitchell, Md. | Wilson, C. H. |
| Dingell | Moorhead, Calif. | Wilson, Tex. |
| Eckhardt | | Wright |
| Emery | Moss | Young, Alaska |
| Evans, Del. | Pettis | Young, Tex. |
| Evans, Ga. | Quie | Zeferetti |
| Fary | Rangel | |

Mr. MARKEY changed his vote from "no" to "aye."

Mr. NOLAN changed his vote from "aye" to "no."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take just a moment to answer the inquiries which a number of my colleagues have made about our plans for this evening.

This is the third full day of action on this important legislation. The leadership had committed to us this evening

so that we could go as long as necessary to finish action on the bill. We are on title III, and a lot of the controversy still remains. There are 11 titles in the bill.

It had been my hope and expectation that by 9 o'clock or so, we could finish the bill, but at the rate we are going, it does not look very good. However, we do intend to stay as long as necessary tonight to finish the legislation.

Mr. Chairman, I would urge on my colleagues the philosophy that I have always followed, which is that the function of debate in the House Chamber is to let the House act as a court of appeal on major issues, a half dozen or 8 or 10 major issues that could not be resolved in the committee, where we had a close vote, and not try to have a full-scale markup.

However, this subject of civil service arouses the passions of the Members. Most of us have one or two pet ideas about what ought to be done to improve the civil service.

I know of three noncontroversial amendments to title III. I am going to accept them. I think there is one and perhaps two amendments which may require a little bit of discussion, but I would hope that we could close out the debate on title III in the next 30 minutes or so and get on to some of the more important parts of the bill.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 190, after the matter following line 6, insert the following new section:

EXCEPTIONS FROM THE COMPETITIVE SERVICE

SEC. 301A. (a) Section 2103 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) The President may, by Executive order, except any position from the competitive service if the President determines that—

"(A) the duties of such position—

"(i) require significant involvement in the advocacy of Presidential administration programs and support of their controversial aspects,

"(ii) require significant participation in the determination of major policies of such administration, or

"(iii) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such a personal assistant or advisor; or

"(B) it would be impracticable to apply competitive examination procedures in the filling of such position because of—

"(i) national security,

"(ii) statutory or other significant requirements establishing special employment conditions,

"(iii) the unusual nature of the duties of such position,

"(iv) duration and frequency of service,

"(v) work location, or

"(vi) inadequate number of applicants.

"(2) Periodically (but not less often than 2 years), the President shall review exceptions from the competitive service under Presidential authority, and shall revoke an exception if the President determines that, because of changed circumstances, the exception is no longer appropriate under the provisions of paragraph (1) of this subsection.

"(3) The President shall periodically review exceptions from the competitive service in the Executive agencies made by or under statute, and shall prepare and transmit a report on each such review to each House of the Congress containing such legislative and administrative changes as the President considers appropriate.".

(b) Section 3302(1) of title 5, United States Code, is amended by inserting ", to the extent authorized under section 2103(c) of this title," after "necessary exceptions".

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this amendment simply calls for placing into statute what is already in law, under the Executive order with respect to excepting positions from the civil service merit system.

It further calls for a study of those positions which have been excepted from the civil service system and calls for such report to be made to Congress.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, this is a reporting amendment, and it carries forward some of the Executive order provisions.

I am prepared to accept it.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am happy to yield to my colleague, the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I always prided myself on recognizing a good amendment when I see one. Therefore, we will accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. HANNAFORD

Mr. HANNAFORD. Mr. Chairman, I offer the following amendments.

The Clerk read as follows:

Amendments offered by Mr. H(&&(6*84: Page 200, line 13, insert "(a)" after "Sec. 308.".

Page 200, after line 20, insert the following new subsection:

(b)(1) Section 8339 of title 5, United States Code, relating to computation of annuity, is amended by adding at the end thereof the following new subsection:

"(n)(1) An employee or Member who, at the time of retiring—

"(A) if married, notifies the Office of Personnel Management under subsection (j) of this section that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of this title; or

"(B) if unmarried, does not elect a reduced annuity under subsection (k)(1) of this section;

may, during a period of one year beginning on the date of the retirement of such employee or Member, elect a reduced annuity with a survivor annuity under subsection (j) or (k)(1) of this section, as the case may be, if during such period such employee or Member deposits into the Fund the amount specified in paragraph (2) of this subsection.

"(2) The amount to be paid under paragraph (1) of this subsection is an amount equal to the sum of—

"(A) the full amount by which the annuity paid to such employee or Member would have been reduced for the period beginning on the date of his retirement and ending on the date on which he makes an election under paragraph (1) of this subsection if he had elected at the time of retirement to receive a reduced annuity under subsection (j) or (k)(1) of this section, as the case may be; plus

"(B) interest on such amount at the average annual interest rate earned during such period by securities held by the Fund.

"(3) An election by an employee or Member under paragraph (1) of this subsection voids prospectively any election previously made by such employee or Member under subsection (j) or (k)(1) of this section.

"(4) An annuity which is reduced by reason of an election made under paragraph (1) of this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the employee or Member whose annuity is so reduced.

"(5) Rights and obligations resulting from the election of any reduced annuity under this subsection shall be the same as those rights and obligations which would have resulted had the employee or Member involved elected such annuity at the time of retiring.".

(2)(A) Section 8339(j) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "An employee or Member who, at the time of retirement, elects not to receive a reduced annuity under this subsection may, as provided in subsection (n) of this section, later elect to receive such an annuity.".

(B) The first sentence of section 8339(k) of title 5, United States Code, is amended—

(i) by inserting "or as provided in subsection (n) of this section" before ", an unmarried employee"; and

(ii) by inserting after "retired employee or Member" the following: ", except that an election under subsection (n) of this section may be made only with respect to an individual who had an insurable interest in such employee or Member at the time of the retirement of such employee or Member".

(3)(A) Subject to the provisions of subparagraph (B), the amendments made by this subsection shall apply with respect to employees and Members retiring before, on, or after the date of the enactment of this Act.

(B)(i) For purposes of applying the provisions of paragraph (1) of section 8339(n) of title 5, United States Code, as added by this subsection, to employees and Members retiring before the date of the enactment of this Act—

(I) the period referred to in such paragraph shall be considered to begin on the date of the enactment of this Act, and

(II) the amount referred to in such paragraph shall be computed without regard to the provisions of paragraph (2)(B) of such section 8339(n) respecting interest.

Mr. HANNAFORD (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

Mr. UDALL. Mr. Chairman, I reserve a point of order against the amendments.

The CHAIRMAN. The gentleman from Arizona (Mr. UDALL) reserves a point of order.

Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HANNAFORD. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HANNAFORD. Mr. Chairman, I rise to offer amendments.

The language of my amendment is embodied in H.R. 3800, which I introduced last year. This gives civil service retirees a second chance to elect a survivor annuity.

Since its initial introduction, the bill has received the support of 44 cosponsors including Chairman NIX of the Post Office and Civil Service Committee, GLADYS SPELLMAN, chairman of the Subcommittee on Compensation and Employee Benefits, and nine other members of the Post Office and Civil Service Committee. The National Association of Retired Federal Employees has fully endorsed the bill. Furthermore, I have recently received 103 petitions signed by concerned constituents and 569 persons have written expressing support for this measure.

Under current law, a civil service employee must announce a survivor beneficiary at the time of retirement. If a survivor is not named at that time, the individual has no recourse. My amendment would give the retiree a second chance.

My amendment provides an equitable solution to a problem faced by many elderly individuals. But the amendment does not provide a free ride. It requires that a retiree who takes advantage of this second-chance election must pay back into the fund a sum equal to the amount that would have been deducted from his or her annuity since the time of retirement. In addition, a reasonable amount of interest must be paid. This provision will deter individuals from using the additional money as an interest free loan and then declaring a survivor after retirement.

CBO estimates that an average of $2,000 will be paid by about 2,600 retirees to participate in the program. This would total $5.2 million in additional revenues to the Federal Treasury.

To ease the administrative burden, I have stipulated that retirees will have 1 year from the date of enactment or 1 year from the date of retirement, which ever is later, to make use of this second-chance election.

Your support for this equity proposal is important and I urge a "yes" vote.

I do want to commend the gentleman from Arizona (Mr. UDALL) and the Members on both sides of the aisle for their splendid work on this historic piece of legislation. The problem that many of us have found—at least which I have found—is that because of the importance of this piece of legislation it has been difficult to get action that is worthy and related, and that is the reason perhaps for the difficulty that the distinguished committee and the chairman of the subcommittee have had with the bill. I want to explain the purpose of the legislation and get the reaction, if I could, from the gentleman from Arizona.

This amendment simply allows a second chance annuity selection for Federal retirees. We have had it analyzed by the CBO, and their determination is that it has no added cost. It has widespread support. I have personally had over 500 letters in support of this legislation. My bill has 44 cosponsors, including wide support on the Committee on Post Office and Civil Service. I think the gentleman from Arizona (Mr. UDALL) has a clear understanding of the intent of my amendment, and I would like to get his response to it, if I could.

Mr. UDALL. Let me say to the gentleman from California, if he will yield, that I admire and respect the work that he has done on this place of legislation. I regret that the committee, and the committee in the other body have not had time to act on it. It is not directly related to the overall subject of civil service reform, and there are conflicting estimates as to its cost. For example, the Civil Service Commission estimates that the increase in the unfunded liabilities of the system would be something on the order of $200 million if this were passed. Nonetheless, I would be prepared in the next Congress to take a look at the legislation to see if we cannot do justice to the thousands of people the gentleman has been working very hard for. I am going to be constrained at this time to oppose the amendment or to insist on my point of order. I would hope the gentleman, with the assurances that he has here, would not insist on his amendment, and perhaps he might be willing to withdraw it.

Mr. HANNAFORD. Mr. Chairman, I appreciate the gentleman's assurances. I do think the hasty estimates of added cost are incorrect. If they are correct, then the instructions on my amendment to the staff and to the counsel were not followed, because I am assured that the beneficiaries of this amendment would be, indeed, required to fully compensate both in terms of added payment and interest on their added payment in order to bring themselves in with the survivor. But I will accept the gentleman's assurances and withdraw out of respect for the fine work that the committee has done and their difficult job that they had before them. I do hope that we can get early hearings on this in the next Congress, as I have tried to do for the last 2 years.

Mrs. SPELLMAN. Mr. Chairman, will the gentleman yield?

Mr. HANNAFORD. I yield to the gentlewoman from Maryland.

Mrs. SPELLMAN. I thank the gentleman for yielding.

I want to commend the gentleman on offering this amendment, something that certainly is much needed. As the chairman of that subcommittee, I would pledge to hold hearings on this so that we can move it forward.

I appreciate this assurance from the gentlewoman from Maryland and I yield back the balance of my time.

Mr. HANNAFORD. With these kinds of assurances, Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENTS OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SCHROEDER: Strike out section 311 (beginning on line 1 of page 203 and ending on line 3 of page 206) and insert in lieu thereof the following:

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 311. Section 5532 of title 5, United States Code, relating to retired officers of the uniformed services, is amended by striking out so much of such section as precedes subsection (c) and by inserting in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay, exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under subsection (b) of this section. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

"(b) The amount of each reduction under subsection (a) of this section allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period, except that the amount of the reduction may not result in the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule.".

(b) Section 5531 of title 5, United States Code, relating to definitions, is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'member' has the meaning given such term by section 101(23) of title 37;";

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) 'retired or retainer pay' means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311 (3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10.".

(c) Section 5532(c) of title 5, United States Code, is amended—

(1) by striking out "subsection (b) of";

(2) by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer";

(3) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member of a uniformed service who is receiving retired or retainer pay"; and

(4) in paragraph (1), by striking out "whose retirement was" and inserting in lieu thereof "whose retired or retainer pay is computed, in whole or in part,".

(d) Section 5532(d) of title 5, United States Code is amended by inserting in lieu thereof the following:

"(d) The Office of Personnel Management may authorize exceptions to the restrictions in subsections (a) and (b) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met."

(e) The item relating to section 5532 in the analysis for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in pay."

(f)(1) The amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

(2) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed service who is receiving retired pay on or before such date in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be consider as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, these are amendments suggested by the administration to section 311, the Dual Compensation Act amendments, in the bill.

The amendments do not change the general thrust of the section, which is to place a "cap" of Executive Level V (now $47,500 per year) on retired military personnel holding civil service jobs and also drawing military retirement.

The changes do the following:

First. Reduce retired pay, rather than salary, to meet the cap. The Department of Defense informed me that from the bookkeeping standpoint they will have a much easier time in assuring that all affected individuals are covered.

Three examples will suffice to explain this change:

A retiree draws $30,000 in retired pay and is appointed Secretary of State, at $60,000 per year. The provision reduces his retired pay to $0. It does not provide for a reduction in his Secretary's salary so, like any other Secretary of State, he gets the $60,000 salary for the job he is now doing. The amendment never reduces salary, even if the salary itself is more than $47,500.

A retiree draws $10,000 in retired pay and holds a $37,500 per year civil service job. There is no reduction in retired pay since his retired pay does not push him over Executive Level V ($47,500 per year).

A retiree draws $12,500 in retired pay and holds a $37,500 per year civil service job. His retired pay would be reduced by $2,500 per year, since if he was paid that $2,500 in retired pay he would be over Executive Level V.

Second. Eliminate the reference to VA benefits falling under the reduction provision. The Veterans' Administration and DOD both were concerned that inclusion of such benefits would set an unwanted precedent and make it extremely difficult to administer the act in a uniform manner. Exclusion of the amount of these benefits are, in any event, not large enough to have any appreciable effect upon the intentions of the amendment.

Third. Assure, through certain language changes, that military survivor benefits are not unintentionally covered by the reduction provisions, and that retired naval enlisted personnel who technically draw "retainer" pay are covered.

Fourth. Permit, in extremely limited circumstances, an exception to the pay cap in the case of medical officers who are in severe shortage.

Mr. UDALL. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. The gentlewoman would be delighted to yield.

Mr. UDALL. Mr. Chairman, the amendment has been cleared with the Civil Service Commission. It carries out the purposes of what the committee did and it is acceptable to us.

Mr. DERWINSKI. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. The gentlewoman would be delighted to yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I would just ask if in the process of revising and extending the gentlewoman would provide the full explanation of the amendment for the RECORD and that would give us what we need for this procedure?

Mrs. SCHROEDER. Mr. Chairman, I would be more than happy to. I have written out here exactly what we are doing. I had planned to read it, but I thought at this point I would give our ears a break and just put it in the RECORD.

Mr. DERWINSKI. Mr. Chairman, we realize the amendment of the gentlewoman is consistent with what the gentlewoman put in the committee and that works out fine.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado (Mrs. SCHROEDER).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 195, insert after line 9 the following:

(g) Section 3318(b) of title 5, United States Code, is amended by striking out ", on request, is entitled to a copy of" and inserting in lieu thereof "is entitled to receive, on or before the 15th day after the day on which he is passed over, a copy of".

Page 195, line 10, strike out "(g)" and insert in lieu thereof "(h)".

Page 196, line 11, strike out "(j)" and insert in lieu thereof "(i)".

Page 196, line 18, strike out "(k)" and insert in lieu thereof "(j)".

Page 196, line 24, strike out "(l)" and insert in lieu thereof "(k)".

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, my amendment would require the Office of Personnel Management to provide a preference eligible or his designated representative, if said preference eligible is listed on a certificate of the highest three eligibles available for appointment furnished under section 3317(a) of this title, within 15 days of having been passed over by an appointing authority, a copy of:

First. The written reasons submitted by the appointing authority for having passed over a preference eligible; and

Second. The finding of the Commission as to the sufficiency or insufficiency of the reasons submitted by the appointing authority for the passover.

As matters now stand, a preference eligible or his designated representative may only receive the above mentioned information upon written request to the Commission. This procedure has proven inadequate, and more pointedly, has rendered the rule of three meaningless for those preference eligibles interested in Federal employment and certified by the Commission as eligible for appointment.

Current law requires the Commission to make up registers of those scoring highest, from which appointing officers are to select from any one of the top three available eligibles certified by the Commission (the so-called rule of three). An appointing authority may not pass over a preference eligible and appoint a nonpreference eligible lower on the list unless the Commission agrees that the reasons for passing over the preference eligible are sufficient. If a preference eligible is passed over, and is aware of it, he may appeal the passover as an adverse action. More often than not, however, a preference eligible is not advised or even aware of the fact that he has been passed over, thereby preventing him from initiating such an appeal.

This sad state of affairs is made doubly unfortunate both by the manner in which the Commission has blatently circumvented the rule of three, as I will next outline, and the increasing frequency with which the Commission rubber stamps requests from agencies for permission to passover preference eligi-

bles among the top three candidates. For instance, in fiscal year 1976–77 alone, somewhere between 73 percent and 78 percent of passover requests were granted by the Commission.

The Civil Service Commission (CSC) has encouraged agencies to make use of a variety of hiring practices when problems are encountered in obtaining individuals, other than preference eligibles, from CSC registers by turning a blind eye to questionable procedures used by agencies to circumvent veterans' preference.

CSC, in its June 8, 1976, report to the House Committee on Post Office and Civil Service, "A Self-Inquiry Into Merit Staffing," recognized the veterans' preference causes agencies to utilize questionable hiring practices.

This problem has been recently highlighted in a letter to the chairman of the Post Office and Civil Service Committee, Congressman NIX of Pennsylvania, dated June 26, 1978, from the Disabled American Veterans, wherein it was specifically alleged, and documented, that "the Civil Service Commission chairman or responsible staff members have known since March 1977 that 26 of 40 agencies studied 'Did not have proper procedures in place for the observance of veterans preference requirements in the hiring of attorneys'. Included among the 65 percent of agencies in non-compliance were the Department of Justice, Immigration and Naturalization Service, Drug Enforcement Administration, and the Law Enforcement Assistance Administration."

Another indication of the Commission's lack of concern and neglect of preference eligibility rights in this area is reflected in the Commission's failure to maintain any records advising as to the number of preference eligibles who were taken off a certified register for reason of having been passed over three times. Sec. 3317(b) of title 5 provides that if a preference eligible who was certified from a register has been passed over three times, with such passovers approved by the Commission, certification of the preference eligible may be discontinued, but the preference eligible is entitled to advance notice of such discontinuance. Yet the Commission has advised veteran groups that they do not know how many preference eligibles were taken off registers after the required three passovers.

Mr. Chairman, the decision of the House today to retain the "rule of three" underlines the Congress commitment to continue this procedure. My amendment only insures that the House's will be carried out by the Office of Personnel Management and the agencies.

Mr. Chairman, this amendment was urged by the American Legion, the VFW, and the DAV on their testimony before our committee and enjoys their wholehearted support.

Mr. Chairman. I urge my colleagues to adopt this amendment.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am happy to yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York (Mr. GILMAN).

Mr. Chairman, I rise in support of the gentleman from New York's amendment.

At present a preference eligible who is passed over is not aware of any reason why he or she should request a copy of the reasons for being passed over nor are they aware of the Civil Service Commission thereon since he is not aware he has been passed over.

Such a requirement as composed by the amendment from the gentleman from New York would both inform the preference eligible he has been passed over, aid him in evaluating and improving his job search, and put the Agency and Commission squarely on record.

About 75 percent or more of all agency requests to the Commission for approval of passovers are approved. The Commission argues that this almost blanket approval is granted because only cases which the agencies are confident will be approved are submitted to the CSC. However, there is no way to check this since only rarely do preference eligibles ever request information on being passed over.

If there is no way to determine whether the passover system is equitable under present law and regulations, how could any preference eligible determine whether he had been passed over when the personnel selection system, as contemplated under the new system would be decentralized to the agencies in most cases?

Mr. Chairman, I urge the adoption of the gentleman's amendment.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from Arkansas (Mr. HAMMERSCHMIDT) for his support.

Mr. DERWINSKI. Mr. Chairman, since the debate on this amendment seems to be centered on this side, I wish to express my opposition to this amendment.

I would like to alert the Members to the fact that there are at least two, if not three, amendments of which I am aware that Members have to offer attacking what they call "paperwork." The effect of this amendment is to add to paperwork.

This amendment requires certain reporting provisions to individuals when at the present time we have a system which has worked well, and as far as I know, there have not been major complaints against the procedure.

This amendment would in effect mandate certain additional reporting requirements and would be a bonus for attorneys, but I do not believe it would help run our Government, and I do not believe it would help the Civil Service structure function more properly.

Mr. Chairman, the amendment was offered in committee, and it was rejected by a vote of 15 to 6, reflecting bipartisan opposition and support.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I associate myself with the remarks of the gentleman from Illinois (Mr. DERWINSKI).

This amendment is unnecessary. It would simply generate a great deal more paperwork.

A veteran now is entitled to this information if he asks for it. This says that if a veteran has moved away and is no longer interested, they still have to run him down and tell him he is entitled to this copy. This would simply create more paperwork. The system we have now has worked very well.

Mr. Chairman, the administration does not support this amendment, and the committee is opposed to it. The system has worked very well the way it is, and I hope we will reject the amendment.

Mr. GILMAN. Mr. Chairman, will the gentleman yield further?

Mr. DERWINSKI. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I wish to point out that if the system was working well, we certainly would not need this sort of amendment. At present a preference eligible is not aware of any reason why he should request a copy of the reasons for being passed over after they have been filed by the Commission since he is not even aware that they were filed or that he had been "passed over." Such a requirement as imposed by this amendment would both inform the preference eligible that he has been passed over and it would assist him in evaluating his job search. It would put the agency and the Commission squarely on record.

Mr. Chairman, this amendment does nothing more than give proper notice to a veteran who has been passed over.

Mr. DERWINSKI. But, Mr. Chairman, we have to face up to the facts of life, and the facts of life are that the average veteran in civil service is well aware of what his rights are, and if he has any doubt of the procedure after being passed over, he can get the information.

I may also say—and I say this with great respect for my dear friend, the gentleman from New York (Mr. GILMAN)—that at the time the gentleman offered this amendment in committee, it was when the committee had already adopted its version of the veterans' preference, and one of the gentleman's arguments for this amendment was that this was needed as sort of the last defense that a veteran should have.

Having corrected the committee's action earlier through the adoption of the Hanley amendment, this makes it a moot question in terms of veterans' protection and veterans' preference. I really look on this amendment as a "paperwork" amendment.

Mr. GILMAN. Mr. Chairman, will the gentleman yield further?

Mr. DERWINSKI. I yield to the gentleman from New York.

Mr. GILMAN. Far from obviating the need for the measure by the adoption of the veterans' preference provision, such passage makes it even more important, because this is one of the abuses that has continually occurred and which has eroded veterans' preference.

About 75 percent of the requests for passover are perfunctorily granted. Most veterans not knowing that they have been passed over on the list; have no way of objecting. This amendment merely provides reasonable opportunity to a veteran to be heard.

Mr. DERWINSKI. The gentleman from Arizona (Mr. UDALL) emphasized that when the Civil Service Commission passes over a preference eligible, it makes those reasons part of the record. The veteran, in most cases, does then review that record. And I do not think that the additional requirements that the gentleman is attempting to put in are going to do anything but create the very thing we want to avoid, which is a more complex, complicated paperwork and, therefore, an artificial delay in personnel matters.

Mr. GILMAN. If the gentleman will yield further, it is perfectly true that the information is placed in the veteran's record. The problem that necessitates this remedial legislation is that the veteran has no way of knowing that he has been passed over and has no opportunity to be heard when such information is placed in his record without adequate notice. That is precisely what this amendment seeks to correct, to give the veteran 15 days' notice of having been passed over so that if the facts warrant it, he can take the issue up on appeal to the appropriate authority.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GILMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendments were rejected.

AMENDMENTS OFFERED BY MRS. SPELLMAN

Mrs. SPELLMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SPELLMAN: Page 209, after line 12, insert the following new subsections:

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

SEC. 313. (a) Section 3102 of title 5, United States Code, is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out "and" at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

"(4) 'deaf employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned under regulations of the head of that agency, that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and";

(2) in subsection (b), by inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and amending the last sentence to read as follows: "A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18."

(3) in subsection (c), by inserting "or deaf" after "blind"; and

(4) by inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter VIII of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.".

(b)(1) The analysis of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.".

(2) The caption for section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees".

(c) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "open meetings)" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),".

Page 209, line 14, strike out "313." and insert in lieu thereof "314.".

Conform the table of contents accordingly.

Mrs. SPELLMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Marvland?

There was no objection.

Mrs. SPELLMAN. Mr. Chairman, the amendments which I am introducing clarifies some existing doubt as to the authority of the Federal Government to hire or assign readers for blind employees. This amendment would also expand current law to provide specific authority for the employment or assignment of interpreters for the deaf and, additionally, would specifically apply such authorizations to the Postal Service.

I believe this amendment to be noncontroversal.

Section 501 of the Rehabilitation Act of 1973, requires each department, agency, and instrumentality of the Federal Government, including the Postal Service and Postal Rate Commission, to submit to the Civil Service Commission an affirmative action program for the hiring, placement, and advancement of handicapped individuals. Section 7153 of title 5, United States Code, authorizes the President to presecribe rules which shall prohibit as nearly as conditions of good administration warrant discrimination because of physical handicap in an executive agency or in the competitive service. They enunciate clearly Congress general goal that the Federal Government be a leader and set an example with respect to the employment of handicapped individuals.

Section 3102 of title 5, United States Code, initially enacted in Public Law 87-614, provides authority for the head of each agency to employ nonpaid readers for blind employees of the Federal Government without regard to provisions governing appointments in the competitive service. Contrary to the general prohibition against receiving salary from sources other than the Federal Government, subsection (b) of the section provides specifically that the reading assistant may be paid for his or her reading assistance services by the blind employee or a nonprofit organization. At the time of passage of Public Law 87-614, it was envisioned that readers would also serve on a voluntary basis. But no comparable provision was included regarding the use of nonpaid employees as interpreters for deaf employees.

Mr. Chairman, the limitation of section 3102 to nonpaid employees and the exclusion of interpreters for deaf employees from this statute's provisions, have restricted some Federal agencies from meeting their section 501 obligations. Indeed, in a letter to Senator RIFICOFF, Jule Sugarman, Vice Chairman of the Civil Service Commission, stated:

It is my understanding that an amendment to Section 3102 of title 5, United States Code, essentially authorizes the employment of reading assistants for blind employees and interpreters for deaf employees.

In our view, the authorization to provide for these services is needed very much. Federal employees are required by law to exercise affirmative action in the hiring, placement, and advancement of handicapped persons. For the successful employment of blind and deaf persons, two of the most important accommodations are readers and interpreters. We have stated for some time that such services are allowable on an "as required basis" by other Federal employees, but experience shows that these services are often inadequate.

The real need is to convince managers that these are legitimate services and refusal to employ or promote deaf or blind individuals cannot be based upon a need for "extra" services. (The) proposed amendment will be very helpful in overcoming these barriers and in assuring that the payment of these services is indeed legal. For these reasons, the Administration favors the amendment.

In summary, section 3102 currently is too vague and, at the same time, too restrictive to allow the Federal Government to effectively promote the hiring of blind and deaf individuals as required by section 501 of the Rehabilitation Act of 1973. My amendments would correct these flaws by providing, in law, specific authority for the employment and assignment of readers and interpreters for the handicapped. They have the full support of the administration, and I believe they should have the full support of my colleagues.

Mr. UDALL. Mr. Chairman, will the gentlewoman yield?

Mrs. SPELLMAN. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentlewoman for yielding.

Mr. Chairman, the gentlewoman submitted these amendments to us earlier. The Civil Service Commission has looked them over. They are consistent with

existing law. The Senate, in a similar bill, adopted an amendment like this.

Mr. Chairman, I personally support the amendments.

Mrs. SPELLMAN. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentlewoman from Maryland (Mrs. SPELLMAN).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLAY: Page 209, after line 13, insert the following:

CATEGORY RATING SYSTEM

SEC. 313. (a) Section 3304 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(e)(1) Subject to the provisions of this title (other than section 3318(a)), in cases in which the qualifications of applicants are being determined without the use of written examinations, the Office may provide that individuals shall be evaluated in accordance with a category rating system established by the Office which divides the qualified applicants into three or more categories. The appointing or nominating authority may select any individual within the highest category, or, if at least three candidates have not received such a rating, any individual in the next highest category or categories if necessary to provide the appointing or nominating authority with at least three applicants from which to choose.

"(2) For the purpose of applying section 3318(b) of this title in cases to which paragraph (1) of this subsection applies, an individual shall not be considered to be passed over unless a selection is made from a category which is lower than the category for which that individual qualified.

Page 209, line 14, strike out "313." and insert in lieu thereof "314.".

Conform the table of contents accordingly.

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Chairman, this amendment provides category ratings of job applicants in Federal employment. This amendment has the support of the administration and is offered at their request.

It authorizes the Office of Personnel Management to evaluate job applicants according to three or more quality levels. This authority could only be used where the Office of Personnel Management measures the qualifications of candidates by other than written tests.

Like most private businesses, the Commission judges the qualifications of applicants for professional, administrative, and technical jobs by evaluating their experience and education, because it generally is not feasible to use written tests for those occupations. Yet, personnel laws written many years ago require that all applicants be rated numerically and that selections only be made from the three highest rated. Thus the Commission must make overly fine distinctions among applicants with virtually the same qualifications when, in fact, no measurable differences exist.

Mr. Chairman, under these conditions, use of category ratings—grouping together of all eligibles with relatively "equal" qualifications into broad classes would be appropriate. The categories would be "outstanding," "well-qualified," and "qualified"—which would permit selection for a larger number of eligibles, rather than individual scores. Federal agencies have expressed almost unanimous concern about inflexibilities imposed on their managers by Federal personnel laws, and many have suggested using alternate ranking procedures for Federal job applicants, along the lines of those already in use in State and local public merit systems.

Mr. Chairman, my amendment seeks to provide this needed flexibility. I urge my colleagues to support this amendment.

Mr. SOLARZ. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have great respect for our dearly beloved colleague from Missouri. He has contributed creatively and constructively to the shaping of this legislation, but I must say that this amendment really goes too far. In fairness to him, however, I take note of the fact that he indicated that it was supported by the administration and was presumptively introduced at their request.

I think that our colleagues on the committee should know just a little bit about the history of this amendment. When the President's proposal was submitted to our committee, it contained a recommendation that we reject the Rule of Three, which has historically determined selections within the merit system, and substitute for it instead the so-called Rule of Seven. Our committee, after carefully considering this proposal, rejected it by a substantial majority, on the grounds that a change from the Rule of Three to the Rule of Seven would substantially increase the possibilities for selection to Federal personnel on grounds other than merit.

Having suffered such a defeat in our committee, the administration now comes before the Committee of the Whole and asks us, in effect, to accept an amendment which goes, not from the Rule of Three to the Rule of Seven, but from the Rule of Three to the rule of anyone who is in the category of qualified. That could mean a selection not from the three most qualified, not even from the seven most qualified, but potentially from the 100 or 150 or 200 who were most qualified. I would submit that not since the passage of the Pendleton Act in 1883 has there been such an opportunity to fill the Federal service with as many patronage seekers such as would be provided by the adoption of this amendment. It would open the door to cronyism, to favoritism, to patronage, to racism, and to racism in reverse.

This amendment is presumably being offered in order to make it easier to bring women or minorities or others who have suffered from discrimination in the past into the Federal Government, and it is possible that under certain administrations it might work that way. But the fact is that it is also very possible that in the hands of other administrations this amendment would work the other way by making it possible to deny the most qualified jobseekers, particularly if they were black or if they were women or if they came from other minority groups in the population, jobs which, under the current Rules of Three, they would be able to obtain.

I would submit that the Rule of Three has served us well. I think the merit system has served us well. This amendment would go a long way toward gutting the merit system entirely. It is a frontal assault on the merit system and I urge my colleagues on the committee to reject it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The question was taken; and on a division (demanded by Mr. CLAY) there were—ayes 12, noes 18.

Mr. CLAY. Mr. Chairman, I object to the vote on the ground that a quorum is not present.

The CHAIRMAN. The gentleman cannot object to the vote on the ground in the Committee of the Whole.

Mr. CLAY. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Mr. CLAY. Mr. Chairman, I ask unanimous consent to withdraw the point of order.

The CHAIRMAN. Without objection, the point of order is withdrawn.

There was no objection.

The CHAIRMAN. Does the gentleman ask for a recorded vote?

Mr. CLAY. No, Mr. Chairman, I withdraw my request.

So the amendment was rejected.

The CHAIRMAN. Are there other amendments to title III?

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JACOBS: Page 209, insert after line 12 the following new section:

LIMITATION ON THE NUMBER OF CERTAIN EXECUTIVE POSITIONS

SEC. 313. (a) Notwithstanding any other provision of law, the number of positions in the Federal civil service classified in grades higher than GS-13 shall, by September 30, 1981, not exceed—

(1) in the case of positions in GS-14, 44,658;

(2) in the case of positions in GS-15, 21,555;

(3) in the case of positions in GS-16, 2,906;

(4) in the case of positions in GS-17, 857; and

(5) in the case of positions in GS-18, 298.

(b) The Office of Personnel Management shall prescribe regulations necessary to carry out the purpose of this section.

Page 209, line 14, strike out "313." and insert in lieu thereof "314.".

Page 129, in the table of contents, strike out the item relating to section 313 and insert in lieu thereof the following:

"Sec. 313. Limitation on the number of certain executive positions.
"Sec. 314. Effective date".

Mr. JACOBS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. JACOBS. Mr. Chairman, the amendment goes this way. In what I call the GS rich, the GS–14's and above in the civil service, 10 percent of those people, roughly 10 percent leave Government every year—attrition, in other words.

Mr. DERWINSKI. Mr. Chairman, the House is not in order.

Mr. JACOBS. We are not in the House either, I might point out.

Mr. DERWINSKI. The Committee is not in order.

Mr. JACOBS. In any case, 10 percent of these people retire every year. What this amendment calls for is if we replace half the people who leave Government service in the GS–14 and above levels every year we will have this. In my hometown there is the Lilly pharmaceutical firm. Fifty years ago Mr. Lilly conducted a tour through his plant and somebody said: "Mr. Lilly, how many people work here?" And he said: "About half of them."

What we can do with this is replace about half the people in the GS–14 levels and above who leave Government service every year. That is, nobody would be fired, to quote a Presidential candidate in 1976, nobody would be fired, but they would leave only by attrition.

The best figures I can get are that 82,675 were on the payroll as GS–14's and above in 1977. That is where we just went back to, as Members will recall, by the previous amendment dealing with the subject. We would get over a 3-year period to work our way down to 70,274 employees, the reduction being half or 5 percent in each of those successive years, to a total of 15 percent reduction and a total savings to the taxpayers of something over a third of a billion dollars.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Indiana (Mr. JACOBS).

Mr. Chairman, this amendment may well have some appeal with some of the Members. I agree with my friend, the gentleman from Indiana (Mr. JACOBS) that there may be too many supergrade positions, too many highly paid persons in the different departments, but I have not the vaguest idea, at this hour of the night, what is a fair number of GS–14's or what is a fair number of GS–15's or GS–16's. I just think it is unwise to legislate in this way at this time.

Let me tell you what the bill does: We are trying to get at this in the bill and we are setting up in the bill, a pool. At long last we will have a Government-wide pool of supergrades. On page 217 of the bill there is a formula by which each agency submits its request for supergrades. They come to the Office of Personnel Management which makes the decision. The Congress every 2 years under this new system will fix these limits.

I would hope my friend the gentleman from Indiana (Mr. JACOBS) would be satisfied to let this new system try and work and see if we cannot get control of that problem in that fashion rather than legislating in the blind tonight. Maybe after it has been in effect we can exercise better judgment as to its results, but I do think it would be very unwise to adopt this amendment. That is why I am strongly opposed to it.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, let me say that I concur with the observations of the gentleman from Arizona (Mr. UDALL) to the gentleman from Indiana (Mr. JACOBS). The gentleman from Indiana is rightly concerned over the excessive number of supergrades, but I also concur with the gentleman from Arizona (Mr. UDALL) that this is not the way to approach the problem. Because actually, if we applied this proposal, it would bring administrative disaster to the Government. Because, in this blanket type of approach, it does not give any clues as to what agencies or departments should be involved, and in what manner. Congress is mandating, for example, under the growing Department of Energy certain supergrades, but we do not know how this would be affected under any new provisions in the energy bill that is now in the other body.

If you take a look at the practicality of it all, the attractiveness of it on the surface disappears once one takes a look at the administrative impossibility this would create.

Mr. UDALL. Mr. Chairman, what will occur if this amendment is adopted is, I think that every Member in this Chamber is going to be immediately besieged by people from the agencies over which his particular committee has jurisdiction, who will be wanting certain numbers of supergrades in that agency and they will be wanting exemptions to cover their agency and pretty soon we will be having exemptions in the authorization and the appropriation bills for different agencies and we will be right back where we are today.

This bill sets up a good framework, at least along the lines pointed out, so that I believe that the approach taken by the gentleman from Indiana, even though it may be commendable, is not the way to do it.

Mr. JACOBS. Mr. Chairman, if the gentleman will yield, first I want to say that maybe the janitor should assume that position in the Indianapolis office, as the supervisor, but I simply say that when you walk down the cavernous buildings in the city of Washington and see somebody reading a funny book, somebody who is asleep and somebody flirting at the water cooler, it would certainly seem to me that it is going to take until the turn of the century in order to catch up to the jobs through the procedure that you are suggesting.

As the gentlewoman from Colorado has said, when they come down to testify we do not understand them, they sound like they have feathers in their mouths, and all that, so that you will never do it if you wait until the end of the century this way.

I would say that this is just another way of how Parkinson's law can be repealed if you just choose to repeal it.

Mr. UDALL. I believe we have a formula in this bill to gradually cut down on these supergrades, and the way in which we can get a little better grip and control over the growing ranks of supergrades in the Government if we can get this bill passed tonight and get this section on page 217 on the statute books.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment proposed by the gentleman from Indiana (Mr. JACOBS.)

I would like to take this opportunity to ask the gentleman from Indiana a question. Is the gentleman from Indiana aware of the fact that since the time when Mr. Lilly inspected his plants, the number of supergrade employees at Lilly has increased?

Mr. JACOBS. If the gentleman will yield, Mr. Chairman, that is right, but they could not hold a candle to the Federal Government because Mr. Lilly's people have to pay the bills themselves. They cannot tax somebody to do it.

Mr. STEERS. Mr. Chairman, I agree that the problem in the Federal Government is not as easily solved as it is in a private enterprise where one can recognize that a company either makes a profit or loses money.

However, I would have to say that just as the Lilly Co. has grown and has done a better job as a result, so has the Federal Government.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. JACOBS).

The question was taken; and on a division (demanded by Mr. JACOBS) there were—ayes 14, noes 24.

So the amendment was rejected.

The CHAIRMAN. Are there further amendments to title III?

AMENDMENT OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Steers: Page 200, line 13, after "308." insert "(a)".

Page 200, after line 20, insert the following new subsection:

(b)(1) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) The annuity of an employee retiring under this subchapter with less than 20 years, but at least 5 years of service as a law enforcement officer or firefighter, or any combination thereof, as computed under subsection (a) of this section, except that the annuity of such employee is computed with respect to the service of such employee as a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½ percent of his average pay by the years of that service.".

(2) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. STEERS. Mr. Chairman, the purpose of this amendment is to provide Federal law enforcement and firefighting personnel with less than 20 years' service, but at least 5, a special 2½ percent of salary per year of service, in recognition of the special hazardous service which they perform. Current law (Public Law 93-530) already extends this credit to those with 20 or more years of service, but failed to provide similar credit to those who serve less than 20 years.

This amendment would correct this inequity by extending the special, hazardous duty retirement rate to all Federal law enforcement and firefighting personnel who retire with between 5 and 20 years of service.A similar amendment has been accepted by the Senate.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I hope that as the evening goes on, we will keep in mind the purpose of the bill we are considering here. The bill is to reform and reorganize the overall civil service system.

There is a temptation among the Members to correct old injustices, to find pet peeves that they have about the civil service system, and generally to use this as a vehicle to accomplish a lot of long-sought gains.

This amendment would make a major change in the provisions regarding the pay of firefighters and other people in law enforcement. It is a 2½ percent addition after 20 years of service.

Mr. Chairman, this aim may be meritorious; and if it is, we ought to have hearings and an opportunity to have a bill reported out. We should not be legislating at this hour of the night.

Let me give my colleague just one statistic. The unfunded liability of the civil service system today is $110 billion. This little old amendment we are asked to adopt on a couple moments of debate will only add $5 billion to the unfunded liability.

Mr. Chairman, I do not think it is responsible to take that kind of action at this time of night on this kind of record, and I urge that the amendment be defeated.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words. I rise to associate myself with the comments of the gentleman from Arizona (Mr. UDALL) and point out that this would set a precedent. The next thing we would know is that we would have a rash of such amendments. The bill woul t be out of control, and the deficit noted in the retirement system is something that should be kept in mind.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. STEERS).

The amendment was rejected.

The CHAIRMAN. Are there other amendments to title III?

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JACOBS: Page 203, strike out line 7 and all that follows down through line 25 and insert in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed service is receiving retired pay and is employed in a position, such member's pay for such employment shall be reduced—

"(1) by an amount computed under subsection (b)(1) of this section in the case of any member or former member who has engaged in combat with an enemy of the United States while serving as a member of a uniformed service and who is serving in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired pay, exceeds the rate of basic pay then currently paid for level V of the Executive Schedule; and

"(2) by an amount computed under subsection (b)(2) of this section in the case of any member or former member who has not engaged in combat with an enemy of the United States while serving as a member of a uniformed service.

The amounts of such reductions shall be deposited to the general fund of the Treasury of the United States.

"(b)(1) The amount of each reduction under subsection (a)(1) of this section for any pay period in connection with employment in a position shall be equal to the retired pay allocable to the pay period, except that the amount of the reduction may not result in the amount payable for the pay period, when combined with the retired pay allocable to the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule.

"(2) The amount of each reduction under subsection (a)(2) of this section for any pay period in connection with the employment of any member or former member in a position shall be equal to the lesser of—

"(A) the member's retired pay allocable to such pay period; or

"(B) the member's pay for such employment for such pay period.".

Mr. JACOBS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

Mr. UDALL. Mr. Chairman, I reserve a point of order on the amendment.

Mr. JACOBS. Mr. Chairman, this amendment deals with the so-called double-dipping issue. The bill itself provides in essence, I guess, that a double-dipper cannot get more from the taxpayers than about $47,000. This provides that one cannot double-dip at all, but one can double-dip—a veteran—up to $47,000 if that veteran has actually been engaged in combat.

I am reminded of Bill Mauldin's cartoon—no, I am not reminded of it; I was reminded of it this afternoon, and I have it written down here—about the hairy trooper, and that is the fellow who is too far forward to shave, and too far back to get shot. This would exclude that individual from the privilege of taking two refreshing dips from the U.S. Treasury while working for the Federal Government and collecting a pension from that same Federal Government. That is about it.

Mr. Chairman, I yield back the remainder of my time.

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Arizona (Mr. UDALL) wish to be heard on his point of order?

Mr. UDALL. Mr. Chairman, I insist on the point of order. The section involving the Jacobs amendment has already been acted on by the House in connection with the Schroeder amendment.

I am concerned about the double-dipping situation myself, and we took the beginning action in the committee.

The gentlewoman from Colorado (Mrs. SCHROEDER) struck out and rewrote the entire section to which the Jacobs amendment would apply and, therefore, it is subject to a point of order.

The CHAIRMAN. Does the gentleman from Indiana (Mr. JACOBS) wish to be heard on his point of order?

Mr. JACOBS. Mr. Chairman, I am not sure I understand the point of order. It is a matter of first impression with me. I simply ask the Chair to consider whether the title is open for amendment at any point and whether that relates to the gentleman's point of order.

The CHAIRMAN (Mr. DANIELSON). The Chair is prepared to rule.

It is true the title is open for amendment at any point. However, it is also true that section 311 was earlier amended and rewritten by the gentlewoman from Colorado (Mrs. SCHROEDER). The gentleman's proposed amendment would seek to amend the same section and, therefore, it is not in order.

The point of order is sustained.

Are there other amendments to title III? If not, the Clerk will read title IV.

The Clerk read as follows:

TITLE IV—SENIOR EXECUTIVE SERVICE

GENERAL PROVSIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101a. The Senior Executive Service

"The 'Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).".

(b) Section 2102(a)(1) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

"(C) positions in the Senior Executive Service;".

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or Senior Executive Service".

(d) Section 2108(3) of title 5, United States Code (as amended in section 302 of this Act), is further amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"but does not include applicants for, or members of the Senior Executive Service.".

(e) The analysis for chapter 21 of title 5,

United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"2101a. The Senior Executive Service.".

AUTHORITY FOR EMPLOYMENT

SEC. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112 (as added by section 303(a) of this Act), the following new subchapter:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"§ 3131. The Senior Executive Service

"(a) It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

"(1) provide for a compensation system, including salaries, benefits, and incentives and for other conditions of employment, designed to attract and retain highly competent senior executives;

"(2) ensure that compensation, retention, and tenure are contingent on managerial success which is measured of the basis of individual and organizational performance (including such factors as improvements in quality of work or service, cost efficiency, and timeliness of performance);

"(3) recognize exceptional accomplishment;

"(4) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

"(5) provide for severance pay, retirement benefits, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

"(6) protect senior executives from arbitrary or capricious actions;

"(7) provide for program continuity and policy advocacy in the management of public programs;

"(8) maintain a merit personnel system free of improper political interference;

"(9) ensure accountability for honest, economical, and efficient Government;

"(10) ensure compliance with all applicable civil service laws, rules, and regulations including those relating to equal employment opportunity, political activity, and conflicts of interest; and

"(11) provide for the initial and continuing systematic development of highly competent senior executives.

"§ 3132. Definition and exclusions

"(a) For the purpose of this subchapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office;

"(2) 'Senior Executive Service position' means any position (other than a position in the Foreign Service of the United States or an administrative law judge position under section 3105 of this title) in an agency which is in GS–16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

"(A) directs the work of an organizational unit;

"(B) is held accountable for the success of one or more specific programs or projects; or

"(C) supervises the work of employees other than personal assistants;

"(3) 'senior executive' means a member of the Senior Executive Service;

"(4) 'career appointee' means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on—

"(A) approval by the Office of Personnel Management of the managerial qualifications of such individual; and

"(B) selection through a merit staffing process consistent with Office of Personnel Management regulations;

"(5) 'limited term appointee' means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

"(6) 'limited energency appointee' means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

"(7) 'noncareer appointee' means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

"(8) 'career reserved position' means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

"(9) 'general position' means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

"(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office of Personnel Management shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

"(2) A position for which a designation is in effect under this subsection may be held only by a career appointee.

"(3) The Office of Personnel Management shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

"(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

"(c) An agency may file an application with the Office of Personnel Management, setting forth reasons why it, or a unit thereof, should be excluded from any provision or requirement of this subchapter. The Office of Personnel Management shall—

"(1) review the application and stated reasons,

"(2) undertake an investigation to determine whether the agency or unit should be excluded from any provision or requirement of this subchapter, and

"(3) upon completion of its review and investigation, recommend to the President whether the agency or unit should be excluded from any provision or requirement of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from any provision or requirement of this subchapter, the President may, on written determination, make the exclusion to the extent and for the period determined by the President to be appropriate.

"(d) The Office of Personnel Management may at any time recommend to the President that any exclusion previously granted to an agency or unit under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

"(e) If—

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (d) of this section,

the Office of Personnel Management shall, within 30 days after the action, transmit to the Congress a report concerning the exclusion or revocation.

"§ 3133. Authorization of positions; authority for appointment

"(a) During each odd-numbered calendar year, each agency shall—

"(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

"(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

"(b) Each agency request submitted under subsection (a) of this section shall be based on—

"(1) the anticipated type and extent of program activities of the agency for each of the 2 fiscal years involved; and

"(2) such other factors as may be prescribed from time to time by the Office of Personnel Management.

"(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (b) of this section, a specific number of Senior Executive Service positions for each agency.

"(d)(1) The Office may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any Agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office of Personnel Management shall prescribe.

"(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

"(e) Appointments to the Senior Executive Service may be made by appropriate appointing authorities of agencies subject to the requirements and limitations of this title.

"§ 3134. Limitations on noncareer appointments

"(a) During each calendar year, each agency shall—

"(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

"(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

"(b) The number of noncareer appointees in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

"(c) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

"(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

"(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

"(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

"(B) appointments to level IV or V of the Executive Schedule which were not required to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

"§ 3135. Biennial report

"(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each even-numbered calendar year, a report on the Senior Executive Service. The report shall include—

"(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

"(2) a description of each exclusion in effect during the preceding calendar year under section 132(c) of this title;

"(3) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for such fiscal year;

"(4) the number of limited term appointees and limited emergency appointees, in the aggregate and by agency, employed during the preceding calendar year;

"(5) the titles of career reserved positions designated for such fiscal year;

"(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding calendar year;

"(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding calendar year; and

"(8) such other information regarding the Senior Executive Service as the Office of Personnel Management considers appropriate.

"(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each odd-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

"§ 3136. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section.".

(c) The analysis for chapter 31 of title 5, United States Code, is amended—

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

"Chapter 31—AUTHORITY FOR EMPLOYMENT

"SUBCHAPTER I—EMPLOYMENT AUTHORITIES"

and

(2) by inserting at the end thereof the following:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"Sec.
"3131. The Senior Executive Service.
"3132. Definitions and exclusions.
"3133. Authorization of positions; authority for appointment.
"3134. Limitations on noncareer appointments.
"3135. Biennial report.
"3136. Regulations.".

EXAMINATION, CERTIFICATION, AND APPOINTMENT

SEC. 403. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"§ 3391. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3392. General appointment provisions

"(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency and shall be in accordance with requirements established by the Office of Personnel Management.

"(b)(1) An individual may be appointed to a Senior Executive Service position only if the appointing authority has determined in writing that the individual meets the qualification requirements of the position.

"(2) Not more than 30 percent of the individuals serving at any time in Senior Executive Service positions may have served less than an aggregate of 5 years in the civil service before appointment to such positions, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government.

"(c) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office of Personnel Management may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

"(1) to the extent provided under regulations precribed by the Office, and

"(2) so long as the appointee continues to serve under such Presidential appointment.".

"§ 3393. Career appointments

"(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

"(1) all groups of qualified individual applicants within the civil service; or

"(2) all groups of qualified individual applicants whether or not within the civil service.

"(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office of Personnel Management—

"(1) review the qualifications of candidates for appointment as career appointees; and

"(2) make written recommendations concerning candidates to the appropriate appointing authorities.

"(c)(1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate, the members of which shall be appointed by the Director from within and outside the civil service on the basis of their knowledge of public management and other appropriate occupational fields. It is the function of the boards to certify the managerial qualifications of candidates for entry as career appointees into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management.

"(2) The Office of Personnel Management shall, in consultation with the various qualification review boards, prescribe criteria for establishing managerial qualifications for appointment to the Senior Executive Service. The criteria shall provide for—

"(A) consideration of demonstrated managerial experience;

"(B) consideration of successful participation in a career executive development program which is approved by the Office of Personnel Management; and

"(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of managerial success and who would not otherwise be eligible for appointment.

"(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

"§ 3394. Noncareer and limited appointments

"(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined by the appointing authority.

"(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

"§ 3395. Reassignment and transfer within the Senior Executive Service

"(a) A career appointee in an agency—

"(1) may be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

"(2) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

"(b)(1) A limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

"(2) A limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

"(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

"(d) A noncareer appointee in an agency—

"(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

"(2) may transfer to a general position

in another agency with the approval of the agency to which the appointee transfers.

"(e) A career appointee in an agency may not be involuntarily reassigned within 120 days after an appointment of the head of such agency.

"§ 3396. Development for and within the Senior Executive Service

"(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office of Personnel Management.

"(b) The Office of Personnel Management shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office of Personnel Management finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

"(c)(1) The head of an agency may grant a sabbatical leave to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical leave shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel and per diem costs as the head of the agency may determine to be essential for the study or experience.

"(2) A sabbatical leave under this subsection may not be granted to any career appointee—

"(A) more than once in any 10-year period;

"(B) unless the appointee has completed 7 years of service—

"(i) in one or more positions in the Senior Executive Service;

"(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

"(iii) in any combination of such positions; except that not less than 2 years of such 7 years of service must be in the Senior Executive Service: and

"(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

"(3)(A) Any career appointee in an agency may be granted a sabbatical leave under this subsection only if the appointee agrees, as a condition of accepting the sabbatical leave, to serve with the agency upon the completion of the leave, for a period of 2 consecutive years.

"(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency involved) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical leave. The amount shall be treated as a debt due the United States.

"§ 3397. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"3391. Definitions.
"3392. General appointment provisions.
"3393. Career appointments.
"3394. Noncareer and limited appointments.
"3395. Reassignments and transfer within the Senior Executive Service.
"3396. Development for and within the Senior Executive Service.
"3397. Regulations.".

RETENTION PREFERENCE

SEC. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or to a member of the Senior Executive Service.".

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"§ 3591. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3592. Removal from the Senior Executive Service

"(a) A career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the 1-year period of probation under section 3393(d) of this title; or

"(2) at any time for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"(b) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

"§ 3593. Reinstatement in the Senior Executive Service

"(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

"(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. Guaranteed placement in other personnel systems

"(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(b) A career appointee—

"(1) who has completed the probationary period under section 3393(d) of this title; and

"(2) who is removed from the Senior Executive Service for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title; shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(c)(1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career appointee is placed under such subsections shall be a continuing, full-time position at GS–15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

"(B) any career appointee placed under subsection (a) or (b) shall be entitled to receive basic pay at the higher of—

"(i) the rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b); and

"(C) the placement of any career appointee under subsection (a) or (b) may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) until the rate is equal to the rate in effect under paragraph (1)(B)(i) for the position in which the employee is placed.

"§ 3595. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

(b) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"3591. Definitions.
"3592. Removal from the Senior Executive Service.
"3593. Reinstatement in the Senior Executive Service.
"3594. Guaranteed placement in other personnel systems.
"3595. Regulations.".

PERFORMANCE RATING

SEC. 405. Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"§ 4311. Definitions.

"For the purpose of this subchapter, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title.

"§ 4312. Senior Executive Service performance appraisal systems.

"(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

"(1) provide for systematic appraisals of performance of senior executives;

"(2) encourage excellence in performance by senior executives; and

"(3) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

"(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

"(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the executive and communicated to the executive;

"(2) that written proposals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

"(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing to the appraisal and rating and have the appraisal and rating reviewed by an employee in a higher managerial level in the agency before the appraisal and rating become final.

"(c) If the Office of Personnel Management determines that an agency performance appraisal system does not comply with the requirements of this subchapter or regulations under this subchapter, the Office of Personnel Management shall order the agency to take any corrective action necessary to bring such system into compliance.

"§ 4313. Criteria for performance appraisals

"Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

"(1) improvements in quality of work or service;

"(2) cost efficiency;

"(3) timeliness of performance; and

"(4) meeting affirmative action goals and achievement of equal employment opportunity requirements.

"§ 4314. Ratings for performance appraisals

"(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

"(1) one or more fully successful levels,

"(2) a minimally satisfactory level, and

"(3) an unsatisfactory level.

"(b) Each performance appraisal system shall provide that—

"(1) any appraisal and any rating under such system—

"(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

"(B) are conducted at least annually, subject to the limitation of paragraph (3) of this subsection;

"(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

"(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

"(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award as prescribed in section 5384 of this title;

"(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service, and

"(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

"(c) Each agency shall establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency. The members of each board shall be appointed by the head of the agency from among employees of the agency other than senior executives with respect to which recommendations are being made the board. In making the recommendation with respect to a career appointee, each board shall include at least 1 career appointee.

"§ 4315. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purposes of this subchapter.".

(b) The analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end thereof the following:

"Subchapter II—Performance Appraisal in the Senior Executive Service

"Sec.
"4311. Definitions.
"4312. Senior Executive Service performance appraisal systems.
"4313. Criteria for performance appraisals.
"4314. Ratings for performance appraisals.
"4315. Regulations.".

AWARDING OF RANKS

SEC. 406. (a) Chapter 45 of title 5, United States Code is amended by adding at the end thereof the following new section:

"§ 4507. Awarding of ranks in the Senior Executive Service

"(a) For the purpose of this section, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title.

"(b) Each agency shall forward annually to the Office of Personnel Management recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual's performance over a period of years. The Office of Personnel Management shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

"(c) During any fiscal year, the President may, subject to subsection (d), award to any career appointee recommended by the Office of Personnel Management the rank of—

"(1) Meritorious Executive, for sustained accomplishment, or

"(2) Distinguished Executive, for sustained extraordinary accomplishment.

"(d) During any fiscal year—

"(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

"(2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

"(e)(1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of $2,500, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

"(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of $5,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.".

(b) The analysis for chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"§ 4507. Awarding of ranks in the Senior Executive Service.".

PAY RATES AND SYSTEMS

SEC. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter VIII—Pay for the Senior Executive Service

"§ 5381. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', and 'senior executive' have the meanings set forth in section 3132(a) of this title.

"§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service; comparability

"(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

"(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS–16 of the General Schedule and the highest rate shall not exceed the rate of level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5308 or 5363 of this title.

"(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such rate of basic pay which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305(a)(3) or (c)(1) of this title.

"(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

"§ 5383. Setting individual senior executive pay

"(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each

senior executive under such appointing authority.

"(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed 95 percent of the annual rate payable for positions at level II of Executive Schedule in effect at the end of such fiscal year.

"(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

"§ 5384. Performance awards in the Senior Executive Service

"(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

"(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay under section 5382 of this title or any award paid under section 4507 of this title.

"(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful as the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

"(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career appointee's rate of basic pay.

"(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

"(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

"§ 5385. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter, and may provide guidance to agencies concerning the proportion of funds available for Senior Executive Service salary expenses which may be used for performance awards.".

(c) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"Subchapter VIII—Pay for the Senior Executive Service

"Sec.
"5381. Definitions.
"5382. Establishment and adjustment of rates of pay for the Senior Executive Service; comparability.
"5383. Setting individual senior executive pay.
"5384. Performance awards in the Senior Executive Service.
"5385. Regulations.".

PAY ADMINISTRATION

SEC. 408. Chapter 55 of title 5, United States Code, is amended—

(1) by inserting "other than an employee or individual excluded by section 5541(2)(xvi) of this section" immediately before the period at the end of section 5504(a)(B);

(2) by amending section 5541(2) by striking out "or" after paragraph (xiv), by striking out the period after paragraph (xv) and inserting "; or" in lieu thereof, and by adding the following paragraph at the end thereof:

"(xvi) member of the Senior Executive Service.";

and

(3) by inserting "other than a member of the Senior Executive Service" after "employee" in section 5595(a)(2)(i).

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 409. (a) Section 5723(a)(1) of title 5, United States Code, is amended by striking out "; and" and inserting in lieu thereof "or of a new appointee to the Senior Executive Service; and".

(b) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5752. Travel expenses of Senior Executive Service candidates

"Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency.".

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item:

"5752. Travel expenses of Senior Executive Service candidates.".

LEAVE

SEC. 410. Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a), by striking out "and (e)" and inserting in lieu thereof "(e), and (f)"; and

(2) by adding at the end thereof the following new section:

"(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

DISCIPLINARY ACTIONS

SEC. 411. Chapter 75 of title 5, United States Code, is amended—

(1) by inserting the following in the chapter analysis after subchapter IV:

"Subchapter V—Senior Executive Service

"Sec.
"7541. Definitions.
"7542. Actions covered.
"7543. Cause and procedure.";

and

(2) by adding the following after subchapter IV:

"Subchapter V—Senior Executive Service

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment ot the Senior Executive Service; and

"(2) 'suspension' has the meaning set forth in section 7501(2) of this title.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

RETIREMENT

SEC. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

"(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful managerial performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.".

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336 (d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

SEC. 413. (a) For the purpose of this section "agency", "Senior Executive Service position", "career appointee", "career reserved position", "limited term appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title), and "Senior Executive Service" has the meaning set forth in section 2101a of such title 5 (as added by this title).

(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

(B) submit to the Office of Personnel Management a written request for—

(i) a specific number of Senior Executive Service positions; and

(ii) authority to employ a specific number of noncareer appointees.

(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act).

(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and

benefits associated with such type of appointment and pay system; or

(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsection (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under—

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service position, as determined by the Office of Personnel Management;

shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393 (c) and (d) of title 5, United States Code (as added by this title).

(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5 United States Code, other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed to an appropriate general position in the Senior Executive Service or shall be separated.

(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office of Personnel Management, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

(j) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Merit Systems Protection Board orders in its decision on an appeal under this subsection.

LIMITATIONS ON EXECUTIVE POSITIONS

SEC. 414. (a)(1)(A) Subsections (b) through (g) of section 5108 of title 5, United States Code, relating to special authority to place positions at GS–16, 17, and 18 of the General Schedules are hereby repealed.

(B) Notwithstanding any other provision of law (other than section 5108 of such title 5), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) under any such provisions to place one or more positions in GS–16, 17, or 18 of the General Schedule, is hereby terminated.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows: "The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,920) which may at any one time be placed in—

"(i) GS–16, 17, and 18; and

"(i) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS–16, 17, or 18, only by action of the Director of the Office of Personnel Management.".

(2)(A) Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a)(1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 525) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director of the Office of Personnel Management.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).".

(C) Subsection (c) of such section 3104 is amended—

(1) by striking out "(c)" and inserting in lieu thereof "(b)"; and

(ii) by striking out "to establish and fix the pay of positions under this section and section 5361 of this title" and inserting in lieu thereof "to fix under section 5361 of this title the pay for positions established under this section".

(3)(A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The director of the Office of Personnel Management—

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS–16, 17, and 18 of the General Schedule, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting "(a)" before "The Executive Schedule," and by adding at the end thereof the following new subsection:

"(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position' means—

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title.".

(2) The President shall transmit to Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions.

EFFECTIVE DATE; EXPERIMENTAL APPLICATION

SEC. 415. (a)(1) Except as provided in subsection (b) of this section, the provisions of this title, other than section 414(a), shall take effect on the date of the enactment of this Act.

(2) The provisions of section 414(a) of this title shall take effect 180 days after the date of the enactment of this Act.

(b)(1) Not later than 60 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall prescribe regulations providing for an initial experimental application of the amendments made by sections 401 through 412 of this title and the provisions of section 413 of this title. Such regulations shall provide that Senior Executive Service positions will be designated, authorized, and filled only in 3 Executive departments designated by the Director.

(2) Within 30 days after the end of each of the first two fiscal years to which such amendments apply, the Director shall prepare and transmit to each House of the Congress a report on the Senior Executive Service, including an evaluation of its effectiveness and the manner in which such Service is administered. The second such report shall include proposed regulations which would provide for conversions and other adjustments

which would be appropriate in the event the Senior Executive Service does not continue by reason of paragraph (3).

(3) The provisions of the regulations under paragraph (1) providing for an initial, limited experimental application shall cease to have effect and the amendments made by sections 401 through 412 of this title and the provisions of section 413 of this title shall have full effect (without regard to the limitations under paragraph (1)) beginning on the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to Congress under paragraph (2) of this section, unless the Congress before such day adopts a concurrent resolution which states that the Congress does not favor the continuance of the Senior Executive Service. If such a resolution is adopted before such date, then the provisions of such regulations, and such amendments (and the provisions of section 413), shall cease to have effect on such 90th day (or, if later, 30 days after the date of the adoption of such resolution).

(4) For purposes of paragraph (3), the continuity of a session of Congress shall be considered to be broken only by an adjournment of the Congress sine die, and the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period under such paragraph.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title IV, and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Are there amendments to title IV?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 209, strike out line 21 and all that follows down through line 13 on page 263, and insert in lieu thereof the following new title:

TITLE IV—SENIOR EXECUTIVE SERVICE

GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101a. The Senior Executice Service

"The 'Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).".

(b) Section 2102(a)(1) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

(C) positions in the Senior Executive Service;".

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or the Senior Executive Service".

(d) Section 2108(3) of title 5, United States Code, is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following: "but does not include applicants for, or members of the Senior Executive Service.".

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"2101a. The Senior Executive Service.".

AUTHORITY FOR EMPLOYMENT

SEC. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112, as added by this Act, the following new subchapter:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"§ 3131. The Senior Executive Service

"(a) It is the purpose of this subchapter to establish a Senior Executive Service in order to ensure that the management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

"(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent career senior executives;

"(2) ensure that compensation, retention, and tenure are contingent on managerial success which is to be measured on the basis of individual nad organizational performance (including such factors as improvements in quality of work or service, cost efficiency, and timeliness of performance);

"(3) recognize exceptional accomplishment;

"(4) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

"(5) provide for severance pay, retirement benefits, and placement assistance for career senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

"(6) protect career senior executives from arbitrary or capricious actions;

"(7) provide for both program continuity and policy advocacy in the management of public programs;

"(8) maintain a merit personnel system free of improper political interference;

"(9) ensure accountability for honest, economical, and efficient Government;

"(10) ensure compliance with all applicable civil service laws, rules, and regulations including those relating to equal employment opportunity, political activity, and conflicts of interest; and

"(11) provide for the initial and continuing systematic development of highly competent career senior executives.

"§ 3132. Definitions and exclusions

"(a) For the purpose of this subchapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, except that such term does not include—

"(A) a Government corporation;

"(B) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; and

"(C) the General Accounting Office;

"(2) 'Senior Executive Service position' means any position in an agency which is in GS–16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which (other than a position in the Foreign Service of the United States) is not required to be filled by an appointment by the President, by and with the advice and consent of the Senate, and in which an employee—

"(A) directs the work of an organizational unit;

"(B) is held accountable for the success of one or more specific programs or projects; or

"(C) supervises the work of employees other than personal assistants;

"(3) 'career senior executive' means an individual in a Senior Executive Service position whose appointment to such position or previous appointment to another Senior Executive Service position was based on—

"(A) approval by the Office of Personnel Management of the managerial qualifications of such individual; and

"(B) selection through a competitive staffing process consistent with Office of Personnel Management regulations;

"(b) An agency may file an application with the Office of Personnel Management, setting forth reasons why it, or a unit thereof, should be excluded from any provision or requirement of this subchapter. The Office of Personnel Management shall—

"(1) review such application and stated reasons,

"(2) undertake such other investigation as it considers appropriate to determine whether the agency or unit should be excluded from any provision or requirement of this subchapter, and

"(3) upon completion of its review, recommend to the President whether the agency or unit should be so excluded from any provision or requirement of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from any provision or requirement of this subchapter, the President may, on written determination, make such exclusion to such extent and for such period as the President determines appropriate.

"(c) The Office of Personnel Management may at any time recommend to the President that any exclusion previously granted to an agency or unit under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

"(d) If—

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (d) of this section,

the Office of Personnel Management, shall within 30 days after such action, transmit to the Congress a report concerning the exclusion or revocation.

"§ 3133. Authorization of positions; authority for appointment

"(a) On or before December 31 of each odd-numbered calendar year, each agency shall—

"(1) examine its needs for Senior Executive Service positions for each of the two fiscal years beginning after such calendar year; and

"(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

"(b) Each agency request submitted under subsection (a) of this section shall be based on—

"(1) the anticipated type and extent of program activities of the agency for each of the two fiscal years involved;

"(2) such other factors as may be prescribed from time to time by the Office of Personnel Management.

"(c) The Office of Personnel Management, upon consultation with the Office of Management and Budget shall review the request of each agency and shall authorize, for each of the two fiscal years covered by requests required under subsection (b) of this section, a specific number of Senior Executive Service positions for each agency.

"(d)(1) The Office may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on

such factors, as the Office of Personnel Management shall prescribe.

"(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed the total number of positions authorized under subsection (c) of this section for such fiscal year plus 5 percent of such total number.

"(c) Appointments to the Senior Executive Service may be made by appropriate appointing authorities of agencies subject to the requirements and limitations of this title.

"§ 3134. Biennial report

"(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each even-numbered calendar year, a report on the Senior Executive Service. The report shall include—

"(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

"(2) a description of each exclusion in effect during the then current fiscal year under section 3132(c) of this title;

"(3) the percentage of career senior executives at each pay rate and the distribution and amount of performance awards, in the aggregate and by agency; and

"(4) such other information regarding the Senior Executive Service as the Office of Personnel Management considers appropriate.

"(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress each odd-numbered year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

"§ 3135. Regulations

"The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this subchapter.".

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section.".

(c) The chapter analysis of chapter 31 of title 5, United States Code, is amended—

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

"Chapter 31—AUTHORITY FOR EMPLOYMENT

"SUBCHAPTER I—EMPLOYMENT AUTHORITIES"; and

(2) by inserting at the end thereof the following:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"Sec.
"3131. The Senior Executive Service.
"3132. Definitions and exclusions.
"3133. Authorization of positions; authority for appointment.
"3134. Biennial report.
"3135. Regulations.".

EXAMINATION CERTIFICATION AND APPOINTMENT

SEC. 403. (a) Chapter 33 of ttile 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"§ 3391. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 3392. General appointment provisions

"(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in such agency and shall be in accordance with requirements established by the Office of Personnel Management.

"(b) An individual may be appointed to a Senior Executive Service position only if the appointing authority has determined in writing that the individual meets the qualification requirements of such position.

"(c) If a career senior executive is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule such executive may elect (at such time and in such manner as the Office of Personnel Management may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, and retirement apply as if such executive remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

"(1) to the extent provided under regulations prescribed by the Office, and

"(2) so long as such executive continues to serve under such Presidential appointment.

"§ 3393. Career senior executive appointments

"(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career senior executives from—

"(1) all groups of qualified individual applicants within the civil service; or

"(2) all groups of qualified individual applicants whether or not within the civil service.

"(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of such agency from among employees of such agency. It is the function of such boards, in accordance with competitive staffing requirements established by the Office of Personnel Management, to—

"(1) review the qualifications of candidates for appointment as career senior executives; and

"(2) make written recommendations concerning such applicants to the appropriate appointing authorities.

"(c)(1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate, the members of which shall be appointed by the Director from within and outside the civil service on the basis of their knowledge of public management and other appropriate occupational fields. It is the function of such boards to certify the managerial qualifications of candidates for entry as career senior executives into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management.

"(2) The Office of Personnel Management shall, in consultation with the various qualification review boards, prescribe criteria for establishing managerial qualifications for appointment to the Senior Executive Service. Such criteria shall provide for—

"(A) consideration of demonstrated managerial experience;

"(B) consideration of successful participation in a career executive development program which is approved by the Office of Personnel Management; and

"(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of managerial success and who would not otherwise be eligible for appointment.

"(d) An individual's initial appointment as a career senior executive shall become final only after such individual has served a 1-year probationary period as a career appointee.

"§ 3394. Reassignment and transfer within the Senior Executive Service

"(a) A career senior executive in an agency—

"(1) may be reassigned to any Senior Executive Service position in the same agency for which the executive is qualified; and

"(2) may transfer to a Senior Executive Service position in another agency for which the executive is qualified, with the approval of that agency.

"(b) A career senior executive in an agency may not be involuntarily reassigned within 120 days after an appointment of the head of such agency.

"§ 3395. Development for and within the Senior Executive Service

"(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of career senior executives or require agencies to establish such programs, which meet criteria prescribed by the Office of Personnel Management.

"(b) The Office of Personnel Management shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of such programs. If the Office of Personnel Management finds that any agency's program under subsection (a) is not in compliance with the criteria prescribed under such subsection, it shall require such agency to take such corrective action as may be necessary to bring such program into compliance with such criteria.

"(c)(1) An agency head may grant a sabbatical leave to a career senior executive for not to exceed 11 months in order to permit such executive to engage in study or uncompensated work experience which will contribute to the executive's development and effectiveness. Such leave shall not result in loss of, or reduction in, pay, leave to which the executive is otherwise entitled, credit for time or service, or performance or efficiency rating. The agency head may authorize in accordance with chapter 57 of this title such travel and per diem costs as such agency head may determine to be essential for such study or experience.

"(2) Sabbatical leave under this subsection may not be granted to any career senior executive—

"(A) more than once in any ten-year period;

"(B) unless such executive has completed 7 years of service—

"(i) in one or more positions in the Senior Executive Service;

"(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

"(iii) in any combination of such positions; except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

"(C) if such executive is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of

employees to State and local governments, shall not be considered a period of service for this purposes of subparagraph (B) of this paragraph.

"(3)(A) Any career senior executive in an agency may be granted sabbatical leave under this—subsection only if such executive agrees, as a condition of accepting such sabbatical leave, to serve with such agency upon the completion of such leave, for a period of two consecutive years.

"(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career senior executive fails to carry out such agreement (except for good and sufficient reason as determined by the head of the agency involved) such executive shall be liable to the United States for payment of all expenses (including salary) of such sabbatical leave. Such amount shall be treated as a debt due the United States.

"§ 3396. Regulations

The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this subchapter.".

(b) The chapter analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VIII—APPOINTMENT REASSIGNMENT, TRANSFER, AND DEVELOLPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"3391. Definitions.
"3392. General appointment provisions.
"3393. Career appointments.
"3394. Reasignment and transfer within the Senior Executive Service.
"3395. Development for and within the Senior Executive Service.
"3396. Regulations.".

RETENTION PREFERENCE

SEC. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or a member of the Senior Executive Service.".

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"§ 3591. Definitions

"For purposes of this subchapter, 'agency', 'Senior Executive Service position', 'and career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 3592. Removal from the Senior Executive Service

"(a) A career senior executive may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the one year period of probation under section 3393(d) of this title; or

"(2) at any time for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"§ 3593. Reinstatement in the Senior Executive Service

"(a) A former career senior executive may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which such executive is qualified if—

"(1) such executive has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) such executive left the Senior Executive Service for reasons other than misconduct, neglect of duty, or malfeasance, or less than fully successful managerial performance by such executive as determined under subchapter II of chapter 43 of this title.

"(b) A career senior executive who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves such position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the executive applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. Guaranteed placement in other personnel systems

"(a) A career senior executive who was appointed from a civil service position under a career or career-conditional appointment (or an appointment of equivalent tenure), as determined by the Office of Personnel Management, and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position in any agency other than a Senior Executive Service position.

"(b) A career senior executive—

"(1) who has completed the probationary period under section 3393(d) of this title;

"(2) who has not completed in the aggregate, 5 years of service in the Senior Executive Service; and

"(3) who is removed from the Senior Executive Service for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position in any agency other than a Senior Executive Service position.

"(c)(1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career senior executive is placed under such subsections shall be a permanent, full-time position at GS–15 or above of the General Schedule, or an equivalent position;

"(B) any career senior executive placed under subsection (a) or (b) shall be entitled to receive basic pay at the higher of—

"(i) the maximum rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of such placement for the position such executive held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for such executive immediately before being placed under subsection (a) or (b); and

"(C) the placement of any career senior executive under subsection (a) or (b) may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B) (ii) or (iii) of this subsection is entitled to have such basic pay rate increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position to which such employee is placed under subsection (a) or (b) until such rate is equal to the rate in effect under paragraph (1)(B)(i) for the position to which such employee is placed.

"§ 3595. Regulations

"The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this subchapter.".

(b) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"3591. Definitions.
"3592. Removal from the Senior Executive Service.
"3593. Reinstatement in the Senior Executive Service.
"3594. Guaranteed placement in other personnel systems.
"3595. Regulations.".

PERFORMANCE RATING

SEC. 405. Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"§ 4311. Definitions

"For the purpose of this subchapter, 'agency' and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 4312. Senior Executive Service performance appraisal systems

"(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

"(1) provide for systematic appraisals of performance of career senior executives;

"(2) encourage excellence in performance by career senior executives; and

"(3) provide a basis for making eligibility determinations for Senior Executive Service retention and performance awards.

"(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

"(1) that, on or before the beginning of each rating period, performance requirements for each career senior executive in such agency are established in consultation with such executive and communicated to such executive;

"(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

"(3) that each career senior executive in such agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing to such appraisal and rating and have such appraisal and rating reviewed by an employee in a higher managerial level in such agency before such appraisal and rating becomes final.

"(c) If the Office of Personnel Management determines that an agency performance appraisal system does not comply with the requirements of this subchapter or regulations under this subchapter, the Office of Personnel Management shall order the agency to take such corrective action as may be necessary to bring such system into compliance.

"§ 4313. Criteria for performance appraisals

"Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performers, taking into account such factors as—

"(1) improvements in quality of work or service;

"(2) cost efficiency; and

"(3) timeliness of performance.

"§ 4314. Ratings for performance appraisals

"(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

"(1) one or more fully successful levels,

"(2) a minimally satisfactory level, and

"(3) an unsatisfactory level.

"(b) Each performance appraisal system shall provide that—

"(1) any appraisal and rating under such system—

"(A) is made only after review and evaluation by a performance review board established under subsection (c) of this section;

"(B) is conducted at least annually, subject to the limitation of paragraph (3) of this subsection;

"(C) may not be made within 120 days after the beginning of a new Presidential administration; and

"(D) is based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency conducting such appraisal determines that an adequate basis exists on which to appraise and rate the executive performance;

"(2) any career senior executive receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award as prescribed in section 5384 of this title;

"(3) any career senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or separated from the Senior Executive Service, except that any executive who receives 2 such unsatisfactory ratings in any period of 5 consecutive years shall be separated from the Senior Executive Service; and

"(4) any career senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be separated from the Senior Executive Service.

"(c) Each agency shall establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards, as appropriate. It is the function of such boards to make recommendations to the appropriate appointing authority of such agency relating to the performance of career senior executives in such agency. The members of such a board shall be appointed by the head of such agency from among employees of such agency other than career senior executives with respect to which recommendations are being made by such board. In making any such recommendation with respect to a career senior executive, such a board shall include at least 1 career senior executive.

"§ 4315. Regulations

"The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter.".

(b) The chapter analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end of the chapter analysis the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"4311. Definitions.
"4312. Senior Executive Service performance appraisal systems.
"4313. Criteria for performance appraisals.
"4314. Ratings for performance appraisals.
"4315. Regulations.".

AWARDING OF RANKS

SEC. 406. (a) Chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 4507. Awarding of ranks in the Senior Executive Service

"(a) For the purpose of this section, 'agency' and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"(b) Each agency shall forward annually to the Office of Personnel Management any recommendation of career senior executives in such agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The Office of Personnel Management shall review such recommendations and provide to the President recommendations as to which of the agency recommended executives should receive such rank.

"(c) During any fiscal year, the President may, subject to subsection (d), award to any career senior executive recommended by the Office of Personnel Management the rank of—

"(1) Meritorious Executive, for sustained accomplishment, or

"(2) Distinguished Executive, for sustained extraordinary accomplishment.

"(d) During any fiscal year—

"(1) the number of career senior executives awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

"(2) the number of career senior executives awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

"(e)(1) Receipt by a career senior executive of the rank of Meritorious Executive entitles such individual to a lump-sum payment of $2,500.

"(2) Receipt by a career senior executive of the rank of Distinguished Executive entitles such individual to a lump-sum payment of $5,000.".

(b) The analysis for chapter 45 of title 5, United Startes Code, is amended by adding at the end thereof the following new item:

"4507. Awarding of ranks in the Senior Executive Service.".

PAY RATES AND SYSTEMS

SEC. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"§ 5381. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

"(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each career senior executive shall be paid at one of such rates. Such rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

"(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS–16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of such rates shall not be subject to the pay limitation of section 5308 of this title.

"(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such rate of basic pay which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305(a)(3) or (c)(1) of this title.

"(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

"§ 5383. Setting individual executive pay

"(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each career senior executive under such appointing authority.

"(b) In no event may the aggregate amount paid to a career senior executive for any fiscal year under sections 4507, 5382, and 5384 of this title exceed 95 percent of the annual rate payable for positions at level II of the Executive Schedule in effect at the end of such fiscal year.

"(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any career senior executive may not be adjusted more than once during any 12-month period.

"§ 5384. Performance awards for the Senior Executive Service

"(a)(1) To encourage excellence in performance by career senior executive performance awards shall be paid to career senior executive in accordance with the provisions of this section.

"(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

"(b)(1) No performance award under this section shall be paid to any career senior executive whose performance was determined to be less than fully successful at the time of such executive's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

"(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career senior executive's rate of basic pay.

"(3) The number of career senior executives in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This subsection shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

"(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

"§ 5385. Regulations

"The Office of Personnel Management shall prescribe such regulations as are necessary to carry out the purpose of this subchapter and may provide guidance to agencies concerning the proportion of funds available for Senior Executive Service salary expenses which may be used for performance awards.".

(c) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"SUBCHAPTER VII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"Sec.
"5381. Purpose; definitions.
"5382. Establishment and adjustment of rates of pay for the Senior Executive Service.
"5383. Setting individual executive pay.
"5384. Performance awards for the Senior Executive Service.
"5385. Regulations.".

PAY ADMINISTRATION

SEC. 408. Chapter 55 of title 5, United States Code, is amended—

(1) by inserting "other than an employee or individual excluded by section 5541(2)(xvi) of this section" immediately before the period at the end of section 5504(a)(B);

(2) by amending section 5541(2) by striking out "or" after paragraph (xiv), by striking out the period after paragraph (xv) and inserting "; or" in lieu thereof, and by adding the following paragraph at the end thereof:

"(xvi) member of the Senior Executive Service."; and

(3) by inserting "other than a member of the Senior Executive Service" after "employee" in section 5595(a)(2)(i).

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 409. (a) Section 5723(a)(1) of title 5, United States Code, is amended by striking out "; and" and inserting in lieu thereof "or of a new appointee to the Senior Executive Service; and".

(b) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5752. Travel expenses of Senior Executive Service candidates

"Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency.".

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item:

"5752. Travel expenses of Senior Executive Service candidates.".

LEAVE

SEC. 410. Chapter 63 of title 5, United States Code, is amended by inserting in subsection (a) of section 6304 "(e), and (f)" in lieu of "and (e)," and by adding at the end of such section the following new subsection:

"(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

DISCIPLINARY ACTIONS

SEC. 411. Chapter 75 of title 5, United States Code, is amended—

(1) by inserting the following in the chapter analysis after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"Sec.
"7541. Definitions.
"7542. Actions covered.
"7543. Cause and procedure."; and

(2) by adding the following after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' has the meaning set forth in section 7501 of this title.

"§ 7542. Actions covered

"This subchapter applies to removal from the civil service or suspension for more than 14 days, but does not apply to a suspension or removal under section 7532 of this title or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days advance written notice unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the individual affected upon such individual's request.

RETIREMENT

SEC. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

"(h) A member of the Senior Executive Service who is separated from the Senior Executive Service for less than fully successful performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.".

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336 (d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

SEC. 413. (a) During the period beginning on the date of the enactment of this title and ending on the effective date of this title, each agency under the guidance and review of the Office of Personnel Management and the definitions in chapter 31 of title 5, United States Code, as amended by this title, shall designate those positions which are to be incorporated into the Senior Executive Service.

(b) Each agency shall also submit a request for total Senior Executive Service position allocations. The Office of Personnel Management shall establish interim authorizations in accordance with section 3133 of title 5, United States Code, as amended by this Act.

(c)(1) Each employee serving in a position at the time it is designated as a position in the Senior Executive Service may elect to—

(A) decline conversion and remain in a position under such employee's current appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with career and career-conditional appointment; or

(B) convert to a Senior Executive Service appointment according to the automatic appointment conversion provisions of subsection (d) of this section.

The placement of an employee because of an election under subparagraph (A) shall not cause the separation or reduction in grade of any other employee.

(2) The employee shall be notified in writing that such employee's position has been brought into the Senior Executive Service and what the employee's options are under subsection (d) of this section. The employee shall be given 90 days from the date of such notification to elect one of the options.

(d) Each employee who has elected an automatic appointment conversion, is serving immediately before the effective date in a position designated as a Senior Executive Service position, and is currently under—

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service as determined by the Office of Personnel Management;

shall receive an appointment to that position in the Senior Executive Service not subject to section 3393 (c) and (d) of title 5, United States Code.

(e) Employees whose actual base pay at the time of conversion exceeds the pay of the rate to which they are converted shall retain their pay. If there are comparability increases under section 5305 of title 5, United States Code, these employees will receive half of each comparability increase until the base pay equals the established Senior Executive Service rate.

(f) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. The regulations shall provide a right of appeal to the Merit Systems Protection Board for an employee who believes such employee's agency has violated the employee's rights under this section. An agency shall take the corrective action that the Merit Systems Protection Board orders in its decision on an appeal under this subsection.

LIMITATION ON EXECUTIVE POSITIONS

SEC. 414. (a)(1)(A) Subsections (b) through (g) of section 5108 of title 5, United States Code, relating to special authority to place positions at GS–16, GS–17, and GS–18 of the General Schedule, are hereby repealed.

Notwithstanding the provisions of any law (other than section 5108 of such title 5), the authority granted to an agency (within the meaning of section 5102(a)(1) of such title 5) under any such provisions to place one or more positions in GS–16, GS–17, or GS–18 of the General Schedule, is hereby terminated.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows: "The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of ) which may at any one time be placed in—

(i) GS–16, GS–17, and GS–18 of the General Schedule; and

(ii) the Senior Executive Service, in accordance with section 3133 of title 5, United States Code (as added by this Act).

A position may be placed in GS–16, GS–17, or GS–18 of the General Schedule, only by action of the Director of the Office of Personnel Management.

(2)(A) Notwithstanding the provisions of any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (within the meaning of section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a)(1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed ) for carrying out research and development functions which require

the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director of the Office of Personnel Management.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).".

(C) Subsection (c) of such section 3104 is amended—

(i) by striking out "(c)" and inserting in lieu thereof "(b)"; and

(ii) by striking out "to establish and fix the pay of positions under this section and" and inserting in lieu thereof "to fix under section 5361 of this title the pay for positions established under this section".

(3)(A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The Director of the Office of Personnel Management—

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of provisions which may be placed in GS–16, GS–17, and GS–18, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting "(a)" before "The Executive Schedule," and by adding at the end thereof the following new subsection:

"(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on such date of enactment, and shall publish such determination in the Federal Register. Effective beginning on the date of such publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position' means—

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

except that such position does not include any Senior Executive Service position, as defined in section 3132(a) of this title.".

(2) The President shall transmit to Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions.

CRITERIA FOR EXCEPTED POSITIONS

SEC. 415. (a) Section 3302 of title 5, United States Code, is amended to read as follows:

"§ 3302. Competitive service; rules

"The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7152, 7153, 7321, and 7322 of this title. Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.".

(b) Subchapter I of chapter 33 of title 5, United States Code, is amended by inserting after section 3302 the following new section:

"§ 3302a. Positions excepted from the competitive service

"(a) The President may, by regulation, except any position from the competitive service if he determines that—

"(1) the duties of such position—

"(A) require significant involvement in the advocacy of Presidential administration programs and support of their controversial aspects,

"(B) require significant participation in the determination of major policies of such administration, or

"(C) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such a personal assistant or advisor; or

"(2) it would be impracticable to apply competitive examination procedures in the filling of such position because of—

"(A) national security,

"(B) statutory or other significant requirements establishing special employment conditions,

"(C) the unusual nature of the duties of such position,

"(D) duration and frequency of service,

"(E) work location, or

"(F) inadequate number of applicants.".

(c) The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3302 the following new item:

"3302a. Positions excepted from the competitive service.".

EFFECTIVE DATE

SEC. 416. The provisions of this title shall take effect 9 months after the date of the enactment of this title with the exception of section 413, regarding conversion procedures, which shall take effect immediately upon enactment.

Page 2, revise the table of sections accordingly.

Mr. HARRIS (during the reading). Mr. Chairman, this is a complicated amendment, but I ask unanimous consent that we consider the amendment as read and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this amendment appears to be fairly lengthy because it is a rewriting of Title IV with one purpose in mind, and that purpose is to contain in Title IV all of those items that the administration and the committee in fact say that they need for Senior Executive Service, with the exception that we make sure that the Senior Executive Service is limited to career employees and does not contain political appointees.

Mr. Chairman, I think that we should recognize that we are dealing here with a relatively small group of top management officials, about 9,200. What the bill purports to do is set up a system that would permit the appointment of, the transfer of, and the removal of such officials.

We have been told that as an important element of this in any one of these positions of the Senior Executive Service the administration should have the authority to put a political appointee in that position. This is a tremendous departure from the existing system and one that I think strikes at the very heart of the viability of this bill. If in fact the civil service system has been designed to prevent the politicization of the system, it is in this title IV that we have opened it up to said politicization.

Mr. Chairman, I am offering a substitute to title IV, the title creating the new Senior Executive Service.

First, I want to emphasize that under my substitute, the key features and purposes of the proposed Senior Executive Service would not be changed. It retains the pay and performance evaluation provisions of the committee bill. The main concepts—pay for performance, mobility among agencies, flexibility in assignments, and management accountability—would remain.

It covers the same levels as the committee bill, GS–16 through executive level IV supervisory and managerial positions.

Basically, my substitute does two things: First, it stipulates that the Senior Executive Service would consist only of career employees; and second, it puts into law the standards now used to except a position from the career competitive service—for example, advocacy of administration programs, confidential assistant, national security.

My objection to the proposal under the bill is that the type of appointment—competitive or excepted—has no bearing on the responsibilities of the job. Agency heads who are political appointees, designate which positions are career and which are political. The bill has numerical limits on the number of political hirings, but these numbers are arbitrary. They have no relationship to the duties of the position.

I believe that some positions can legitimately be filled by political appointees, particularly those high-level jobs requiring advocacy or development of administration policies. But many positions should be filled by persons competitively hired, such as the head of a division handling tax returns, grants, or contracts.

My substitute is similar to current practice which is governed by regulation. Currently, under the Civil Service Commission rules if a position meets certain standards, it can be excepted from the competitive service. Those standards provide that the President may except certain positions if he determines that—

(1) the duties of the position—

(a) require significant involvement in the advocacy of Presidential administration programs;

(b) require significant participation in the determination of major policies of such administration, or

(c) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such personal assistant or advisor; or

(2) it would be impractical to apply a competitive staffing process in the filling of such position because of—

(a) national security,

(b) statutory or other significant requirements establishing special employment conditions,

(c) the unusual nature of the duties of such position,
(d) duration and frequency of service,
(e) work location, or
(f) inadequate number of applicants.

My substitute would place these standards in the law; the effect would be the same as the current practice. The difference is that Congress would be providing clear direction and controls over which positions are political and which are career.

I believe my amendment goes to the heart of civil service "reform," a popular slogan that could be dangerously perverted under this bill. Politicizing the bureaucracy is not reform, in my view. There is a place for political appointments in the top layers of Government. But this bill leaves too many loopholes.

It was not that long ago that we saw political manipulation ripple throughout the bureaucracy under the guise of "getting control of the government." The taxpayer wants to know that Federal laws and programs are administered impartially, that decisions are made on principle, not politics. This is my goal, and I believe this amendment would accomplish that. I hope my colleagues will support it.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

(By unanimous consent, Mr. HARRIS was allowed to proceed for 2 additional minutes.)

Mr. HARRIS. Mr. Chairman, what we do if we do not adopt this substitute is open up a system where all top management jobs could by Presidential decision be filled by political appointment. It means that anyone entering into the senior executive service where pay increases are not automatic under the theories of this bill would be in competition with political appointees with respect to such merit pay. We would be setting up a system diametrically opposed to the current system.

We are throwing out with this bill one of the concepts, one of the underlying principles of the civil service plan that we have developed over the last 80 or 90 years. We should not do this casually.

I urge my colleagues to adopt this substitute so we can give the administration the new vitality, the flexibility that they want, the mobility that they want, but not allow them to mix up political appointees and civil service merit employees in the same positions. If we do, I predict we will rue the day we do this probably as much as we rue the day we accepted the Postal Reform Act a few years ago.

Mr. Chairman, I urge we adopt this amendment.

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would like to point out that I consider the facts of life in a Government as huge as ours, that any President has to have a few people in office that are politically loyalists and share the philosophy of the administration.

We cannot have a President come into office and have a totally neuter Federal civil service. That is really the philosophy behind the argument of the gentleman from Virginia (Mr. HARRIS).

But the facts of life are these: That these new Senior Executive Service people will be the troubleshooters, the management experts, and the key people who keep Government working. It stands to reason some outside expertise and some new blood—a transfusion, if you will—will be needed.

It also stands to reason that when they draw some assignments in areas where there might be some controversial administration programs, there be a certain commonsense factor relating to political loyalties. If anyone thinks we can run a government as large as ours and not have at least a handful of people with honest-to-goodness political loyalties, then they have their heads buried in the sand.

Basically, we provide the procedure whereby only 10 percent of these people will come in without competitive examinations, and the real concept of it is that at least those civil servants who are excellent administrators and who will voluntarily accept these assignments will not as such then be subject to political label if the next administration then comes in and inherits the program.

This amendment was thoroughly debated in committee. It was subjected to real good, sharp, clean debate. The political facts of life are that the mix we envision is necessary for the proper functioning of Government and the response of the bureaucracy to the President of the United States.

Mr. Chairman, I as a Republican strongly urge we reject this amendment and give the present President an opportunity to mix with the career civil servants an occasional political loyalist to do a tough job in a tough situation.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, the gentleman from Illinois (Mr. DERWINSKI) has stated the case against the amendment very accurately, and I associate myself with his remarks.

The heart of this bill is the career senior executive civil servant. The gentleman from Virginia (Mr. HARRIS) very vigorously represents the feelings of many of his constituents on this subject.

We debated this amendment thoroughly, and it was a major amendment offered in committee. The vote for the amendment was 2, and the votes against it were 21.

The present bill for the first time would limit political appointments to not more than 10 percent of the total positions in the executive service, and this would be the first time that such a limit existed. So we are not turning it all wide open; we are saying 90 percent would be career and 10 percent would be people who could be brought in from the outside.

Mr. Chairman, it would be a very dangerous blow to this legislation and it would drastically harm it if this amendment were adopted. I, therefore, urge its defeat.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I am really surprised, after all these months of discussions concerning this bill, to hear anyone still saying only 10 percent of the Senior Executive Service will be political. That is not factual. The fact is 100 percent may be political appointees. Ten percent need not be qualified.

We can take our uncles who are carrying the trash today and make them part of the Senior Executive Service in that 10 percent. The other 90 percent is required to be qualified. Nevertheless all 100 percent could conceivably be political. That is quite different, and we should understand that.

I know that there was an amendment in the committee which our good colleague, the gentleman from New York, offered, limiting political appointees to no more than 25 percent in each agency but it did not pass the Senate. Since it did not, we cannot be sure it will survive in conference. As the bill came to us from the administration, it provided for a 100-percent political possibility—9,200 employees.

But what concerns me about this section is that this could very well be the beginning of the end of the separation of powers between the various branches of Government.

Let us consider what would happen if a President were to call on each of us for 20 very well qualified people whom he would then appoint. Then each time we disagreed with him, we would get a call and be reminded that some of our appointees were in danger of being fired. "It would be well," the President would urge, "for you to reconsider your decision to oppose my program."

Just a couple of weeks ago the Secretary of Agriculture was quoted as saying that some of the Members of Congress might find that, if they do not get into line behind the President, that their political appointees will be fired. I am happy to say that the President hastened to deny that he would do that, and I am also happy to say that the Secretary of Agriculture hastened to disclaim those words. But somewhere in the future there may very well be a President who would believe in doing just that, or a Secretary of Agriculture, or whatever, who would feel that this would be the way to conduct the business of the Government.

So I warn my colleagues that we really ought to take a long, hard look at this situation.

There is no reason why we cannot have really good qualified people carrying out the business of the Government without creating a spoils system which we might someday regret.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman from Virginia's substitute to title IV.

In my opinion, the most worrisome aspect of this legislation, next to the over concentration of authority in the Direc-

tor of the Office of Personnel Management, is the danger of the politicization of the Career Executive Service posed by title IV.

The gentleman from Virginia's substitute would alleviate this concern, a concern, I might add, which is shared by a number of the Members of this body, by insuring that only career executives would be appointed to positions within the SES.

Why is this necessary?

Title IV would give to Presidential appointees absolute power to significantly reduce the responsibilities and pay of career executives, including reassignment to an unwanted location, without any stated reasons or possibility of review by an impartial body. There is no restraint against ill-considered and arbitrary action. But perhaps even more important, this power in the hands of Presidential appointees will have the effect of denying to the American people the kind of responsible sharp criticism from career executives that over the years has been essential to both determining and serving the public interest when proposed policies, programs, and priorities are being debated within the agencies.

The Presidential appointees who would exercise this new power are for the most part exceptionally able and highly dedicated to the national interest. They constitute for our democratic process the vital link between the decisions of the electorate in choosing a President and the overall direction and management of the agencies. But it is a plain fact that many such appointees lack experience in public policymaking and in managing large organizations, and their initial perceptions of problems and alternative solutions are often cloudy, if not faulty. As the pressures and problems daily test the political-career relationships, it is important for the public interest that political appointees not have suffocating power over career executives: power that could be used intemperately, or to satisfy a special interest, or to provide a scapegoat for a poor decision made at a higher level. And we should have no doubt that when Presidential appointees have this power, even the vast majority who are well intentioned and competent will be subjected to pressure from many sides, often irresistible, to use the power to serve special interests rather than the public interest.

Career executives represent an important national resource which the Federal Government develops at considerable cost; their central commitment is to nonpartisan professional advice and the impartial administration of the laws, and both would be jeopardized by such a grant of authority.

The argument is made that this unrestricted power to reassign and reduce pay and responsibilities is needed for management flexibility and is no change from the present. But no evidence has been provided as to the widespread existence of real and important problems that this extraordinary grant of power would solve. Further, it is specious reasoning to argue that the unrestricted authority to reassign exists now and that there is no change. Title IV would combine five separate grades—GS–16, 17, and 18, and executive levels V and IV—into one Senior Executive Service without grades. Under existing law the Presidential appointee's absolute power applies only to reassignments from one position to another in the same grade and rank. This is completely different from authority to reassign to any job within the proposed Senior Executive Service. For example, unrelated to performance and simply to put someone else in the job who is more to his personal liking, the proposed unlimited power would permit a Presidential appointee to reassign a career executive from a position of Bureau Director in Headquarters now at level V or GS–18 to the position of Deputy Regional Director now at GS–16 and located some hundreds or thousands of miles from Washington. At the same time, the Presidential appointee could reduce the annual pay of the career executive by up to $8,000.

Advocates for this grant of power argue that top executives in large corporations have it, and so should Presidential appointees in order to encourage responsiveness. But the analogy is meaningless because no corporation could be successful if it lost its top three levels of executives every 2 to 4 years as the Federal agencies lose their Presidential appointees. This underscores the need for professionalism, objectivity, competence, and continuity of career executives to assure reasonable stability in the operations of Federal agencies.

Presidential appointees in the agencies occupy their positions for relatively short periods, and in their eagerness to exercise leadership by making changes in policies and operations, many often are impatient with career executives who disagree with them by identifying weak or undesirable elements in their ideas. They have a tendency, particularly in the first year or two of a new administration, to characterize such disagreement, or even questions, as evidence of unresponsiveness. The proposed new power for presidential appointees would send a clear signal to many career executives that if they do not want to be shipped out. they should not question or disagree with the views of their bosses. We would substitute a new generation of "agreeable" career executives for the constructively critical and politically neutral professionals who now serve this Nation well. A new quietness at the crucial point where political and career appointees should debate proposed policies, programs, and procedures would serve the Nation badly.

For these reasons, Mr. Chairman, I urge my colleagues to adopt the gentleman's substitute.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was rejected.

AMENDMENT OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLARZ: Page 223, line 23, strike the words "before appointment to such positions".

Mr. SOLARZ. Mr. Chairman, I will be brief. This is a technical amendment. I think it has the support of the majority and minority managers of the bill. The legislation before us provides that at any given time at least 70 percent of the people in the Senior Executive Service have to serve 5 years in the Federal Government before being appointed to that position.

This amendment would provide instead that at any given time 70 percent of the people in the Senior Executive Service had to have served for 5 years in the Federal Government, period.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, this cleans up and clarifies what we were trying to do in committee, and moves a little bit in the direction of the concerns of the gentleman from Virginia (Mr. HARRIS). I think it is a good amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. SOLARZ).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STEERS: Page 262, strike out line 16 and all that follows down through line 6 on page 263 and insert in lieu thereof the following:

(3) The amendments made by sections 401 through 413 of this title shall cease to have effect on or after the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to the Congress under paragraph (2) unless both Houses of the Congress have adopted a concurrent resolution which states in substance that the Congress favors the continuation of the Senior Executive Service.

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. STEERS. Mr. Chairman, what this amendment does is terminate sections relating to the Senior Executive Service at the end of 2 years. Notice that at present the bill provides that the Senior Executive Service and the rest of the bill will be extended unless terminated. What this amendment would do is terminate unless extended.

I would like to point out to those Members present that this is an example of sunset legislation which many of us have at least given lip service to. Here is a chance to vote for it. Of course, we can always reconsider the matter, but this amendment will require us to reconsider the Senior Executive Service; it will give us the opportunity to put it out of existence.

I, of course, feel it should be put out of existence as soon as possible.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

This would be a disaster to the Senior Executive Service concept. It is going

to take about a year to 15 months to set up the system. We are trying to attract into it the permanent career people, and we are telling them to cut their moorings, leave all they have and join this exciting new innovative service, and the whole thing is going to go down the drain in 2 years.

It will take at least 4 or 5 years to give this a fair trial. We went along in committee with a somewhat similar amendment offered by Mrs. SPELLMAN. This, in my judgment, destroys it. There would be no chance of getting the kind of people we want in the Senior Executive Service if it is a 2-year trial. It would hardly be on the way.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. STEERS).

The amendment was rejected.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: On page 258, line 7: strike out 10,920 and insert in lieu thereof "10,780".

On page 258, line 13: strike out "Management" and insert in lieu thereof the following: "Management, except that the Director of the Federal Bureau of Investigation, without regard to any other provision of this section, may place a total of 140 positions in the Federal Bureau of Investigation in GS–16, GS–17 and GS–18."

Mr. COLLINS of Texas. Mr. Chairman, I submit this amendment with Mr. LEVITAS of Georgia and Mr. VOLKMER of Missouri.

By reason of its unique responsibilities, the FBI has historically been afforded a measure of exemption from overview of the Civil Service Commission regarding personnel policies and authorizations. At present the FBI and all positions therein are in the excepted service (title 28 U.S.C. 536) and the Director is authorized to place up to 140 positions in the Bureau into grades GS–16, GS–17 and GS–18 (title 18 U.S.C. 5108 c2). Further, it has been the policy of the Department of Justice that the Director have complete latitude in managing the personnel policies and functions of the Bureau below the rank of Assistant Director, subject only to post-audit and correction by the Assistant Attorney General for Administration (title 28 CFR X, 0.137).

The effect of the FBI's excepted status is to remove it from the purview of the Civil Service Commission in such areas as recruitment, qualification standards, promotional requirements, internal placement, career and career-conditional employment, and temporary assignments. The authorization afforded to the Director to manage the executive manpower of the FBI, its supergrade employees, is central to this degree of independence. It insures that the FBI may respond in a prompt, flexible, and unfettered manner to the investigative priorities provided it by the Attorney General without need to obtain concurrence of other agencies or authorities.

Given the demanding, sensitive, and unique responsibilities of the FBI, particularly its role as the primary investigative arm of the Department of Justice, there is ample rationale for providing it as great a degree of insulation with regard to its personnel function as is practical. This consideration is most important when consideration is afforded the role of the FBI as the Department of Justice's primary investigative arm for 78 public integrity violations of the criminal statutes of the United States.

Since these violations, by definition, involve misconduct on the part of officials of the U.S. Government the most prudent course for the future would appear to be to insure that the FBI is not dependent upon other agencies in such important matters as executive staffing levels. To do otherwise detracts from the ability of the Attorney General to fully utilize the investigative capabilities of the FBI in a manner he believes best serves the interests of the United States.

This amendment is fair and consistent. It places the FBI on the same basis as the CIA, the National Security Agency, Defense Intelligence, and the GAO. For our national security, I ask your full support for the FBI amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the FBI is a good organization, a good professional organization, and it has been beleaguered in recent years. I know many Members have been concerned about it and many people have been lobbied by the FBI and their friends on these amendments.

I was determined today in this debate that nobody was going to have any legitimate ground to complain that the FBI had not been given everything they were entitled to and had been given all the exemptions they needed to perform their mission.

This morning I accepted an amendment that gave the FBI, I thought, everything they could ask for within reason. The FBI has been totally exempted from the Senior Executive Service and they have been given a total exemption from title VI, which had concerned them about demonstration practices and experimental efforts. We gave the President authority to exempt them from the standard personnel practices and standard provisions of the Personnel Act, and the President will exercise that.

We gave them the special authority this morning, in an amendment I agreed to, to let the President set up their own whistle-blower system so that appeals would not be to the outside but to the Attorney General.

Now they want it all. I do not think they are entitled to this amendment.

What are we talking about here? We are talking about supergrades. One of the worst things that has happened in the last few years is the end runs around the supergrade pool. The idea was to have one supergrade pool for all Government, and when an agency completes its mission and may not need all the supergrades it had, then those executives would transfer to another agency. Or an agency may need an increase. They could move them around. But what has happened is this. If we were dealing, for instance, with the Park Service, we would say to them that notwithstanding the pool they get 140 supergrades in this service here.

Then the next agency would come in, NIH, the Smithsonian, or the Labor Department, and they will all want their own little pools.

Today about 80 percent of the supergrade positions are outside the pool and the pool is really a joke because under existing law we give special exemptions to the FBI, to the GAO, the Library of Congress, the Secretary of Defense, the Immigration Service, NASA, Bureau of Prisons, Railroad Retirement, OSHA, the Law Enforcement Administration, the Tax Court, IRS, EEOC, they all have their own little supergrade pool.

So the bill before us would abolish all of them and we would just have one governmentwide pool. Each one of the agencies will come in, and they will say here is what we need. Then the Office of Personnel Management will evaluate the need.

But now, in this amendment, it is proposed that we give the FBI a special pool of 140 supergrades, and as of now, they will be the only agency in the whole bill that has been separately singled out, and the Members will say why single the FBI out, why not the defense agencies, the Defense Department and everybody else? They will all be in one separate pool, but the FBI will be treated separately.

So, I repeat, if we accept this amendment, I guarantee that before the evening is out, I think that every one of you will be on your feet trying to single another agency out because there is not a Member in the whole House who does not have his own special agency and who thinks they ought to have their own pool, forever and ever, world without end, amen.

So, if we are going to do this and get this problem settled, then let us do it right, and let us not start eroding it with the FBI, let us start out with a supergrade Government-wide overall pool, and with all of the agencies and their supergrades treated alike.

We have done that in this bill. I repeat, let us start with a good supergrade proposal. But, if we start out by singling out one particular department, and get that chain in the door, then we will not be able to stop the flood.

Mr. VOLKMER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Texas (Mr. COLLINS).

Mr. Chairman and members of the committee, I do not plan to take the full 5 minutes in support of this amendment, however, as one who has tried to keep up with this legislation because of its known importance to this Nation and make it possible to restore public confidence in our National Government, and the operation of that Government by the separate individuals in it, and also to get better and still better operations through our public employees, and our Federal Government, as I say. I have tried to keep up with it, and specifically in this one area, and I have done so because I have been a member of the subcommittee that also has jurisdiction and oversight of this

agency, and also as one who has been involved in law enforcement, I have a great feeling for this agency. I realize that this agency must remain independent.

I must disagree with the gentleman from Arizona in that respect, and, in my opinion, if this amendment is not adopted, there will be a backing away from the independence of the FBI and thus cause harm to the criminal law enforcement in our Federal Government. I say that because the FBI is the one that investigates all of the other agencies of the Federal Government such as we have right now going on with the GSA.

It is the one agency that investigates the wrongdoings in the Federal Government, the white-collar crimes. If such a thing would occur, let us say, within the Civil Service Commission itself, then it would be investigated by the FBI. So, in my opinion, this could jeopardize that agency.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER Yes, I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I agree with everything that the gentleman is saying about the special role of the FBI. It is a good, honest agency, and I will praise it and I will defend it, but why, can the gentleman give me one reason why this agency out of all of the other agencies, not even the defense departments, not OSHA, not NASA, should have its own separate pool of supergrades? Why should this one agency be treated differently?

Mr. VOLKMER. That is because they are the agency that does the investigating of wrongdoings within the Federal Government.

Mr. UDALL. But what does the number of supergrades in that agency have to do with its ability to investigate wrongdoings?

Mr. VOLKMER. So that it will not depend on any other agency which it may have to investigate, including the Civil Service Commission.

I had been informed, and as a result of what happened this morning, I had discussed this matter with the man on the staff of the gentleman from Arizona, the man sitting next to him during the debate on that substitute, because I was concerned specifically about this point.

It was my understanding this morning when it was first brought up it included this provision. It was not until after that was all done that I determined that it did not, and I was greatly upset about it.

I had discussed it with our Attorney General. He is greatly upset about it, about the fact that this is not included.

I discussed it today with him. I have also been informed by another source, which I feel to be very reliable, that the Chairman of the Civil Service Commission has no objection to this amendment.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, I just came back on the floor. I am shocked.

Is the gentleman saying that Attorney General Griffin Bell discussed with him amendments to the President's civil service reform bill?

Mr. VOLKMER. I will emphatically say yes, y-e-s.

Mr. FORD of Michigan. Is the gentleman saying that the Attorney General is lobbying amendments into this bill?

Mr. VOLKMER. No, I am not saying that he is lobbying at all. I called him up. We discussed it among other things in which I am interested.

Mr. FORD of Michigan. The gentleman said that he is upset about the contents of the amendment this morning?

Mr. VOLKMER. Yes, because this was not included. I thought it was.

I talked to the staff man of the gentleman from Arizona. He is sitting right next to him. There was a misunderstanding there because when the gentleman answered me, at my request—and I am not blaming him—there was a misunderstanding. When he spoke to me he said it was the same as in the bill. It was my understanding that it was the same as in the present law.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, there was an obvious misunderstanding.

I gave them everything they want, their independence and their exemptions from the system. What I cannot understand is of all of these dozens of agencies in the Government, this one agency has to have supergrades when we are trying to set up a system under which no one has.

Mr. VOLKMER. It is so that it remains solely independent as a law enforcement agency, as it should.

Mr. GOLDWATER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I think there is ample precedent here to exclude the FBI from this provision, especially in the higher grades we are talking about.

The FBI has a very unique mission with respect to law enforcement. These individuals are not just civil servants. They are very specialized. They are very narrowly categorized. They require a very special kind of training, and their mission is of the highest order. Certainly their responsibility and authority are important activities which we are dependent upon, not only for our security, but also for internal vigilance.

Mr. Chairman, it just seems to me that it makes a lot of commonsense that if we are going to continue the type of organization which we expect the FBI to be, that agency should have full control and authority over the type of personnel whom they are going to be relying upon for life and death and the security of this country and certainly for the internal vigilance which we expect. It just seems to me that this makes a lot of commonsense. I think we ought to support the amendment.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, may I pose this question: What do I say and how is the gentleman going to vote when the gentleman from Oregon wants to give the Forest Service its pool of supergrades?

The gentleman from California contacted me last week. He is on the board of the Smithsonian, and they want their own pool. What am I going to say to the CIA when somebody from the Committee on Intelligence gets up tonight and says that they are a special agency and they want their own allocation?

Will the gentleman join me in voting for all those amendments, or does he think the FBI is a special agency and it alone has to have a carved-out pool of supergrades?

Mr. GOLDWATER. I would agree with the gentleman in saying that the FBI is unique in the mission which they are set up to do.

Mr. UDALL. Does the accomplishment of the mission of the FBI depend on whether the President says they can get by with 135 supergrades or whether they have to have 140?

Why should this one agency alone, in the accomplishment of its mission, be dependent on having this number carved out for it, world without end, with no limit on it?

Mr. GOLDWATER. I would suggest to my friend, the gentleman from Arizona, that this agency's mission is of the highest priority as far as national security, as far as internal vigilance, and as far as law enforcement is concerned. It is a prime and singular agency. It does nothing else but pursue that particular mission.

Mr. UDALL. How is the accomplishment of that mission dependent upon the number of supergrades it has?

Mr. GOLDWATER. It depends on the quantity and the quality of personnel. I think that is that we are talking about here, and I think only those who have that responsibility of directing the FBI and its people really know and understand what is needed in this area. I think it is going to be completely confusing if we interject another sector such as OPA into it. I urge support of the amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

I have a feeling that this debate is getting totally out of control in the sense of our all appreciating precisely what the amendment does and precisely what classifications of positions are involved.

The gentleman from Arizona (Mr. UDALL) has properly ponted out that heretofore every committee, every subcommittee, has played around like little crown princes knighting people and sending then off as supergrades. As a result, all through Government in every appropriation and authorization bill we are creating supergrades. Nobody has a hold on them—not even the President or the Office of Management and Budget—nobody. So what we have got in this bill is an attempt to pull them all together.

As I understand the supporters of the amendment, they seem to feel that we are going to put 140 misfits into the FBI. That is not the case at all. All that is going to happen is that the FBI under this reformed structure will in fact request the number of supergrade slots it wishes to have designated. They will be FBI agents, the agents in charge, for example, in the major cities, and we are not going to send a diet technician from Walter Reed Hospital to be the agent in charge of Phoenix, Ariz. He will be a career FBI law enforcement officer there. So the Members are reading into this a lot of things that are not there. But the point the gentleman from Arizona (Mr. UDALL) has made is one we should all follow. For example, our friend, the gentleman from Oregon, is going to take care of the Forest Service. Then there might be those Members who are interested in protecting the chief judge of the U.S. Tax Court. He has five supergrades. Why not let the chief judge rather than his pool handle that? What about the Commodity Futures Trading Commission? That is one of our newest little bureaucracies. They have 20 supergrades. Why should they not be excluded, and just have the farm interests? We go on and on and on.

So I would suggest the point the gentleman from Arizona (Mr. UDALL) is making is a sound one. What we have here is legitimate control of total numbers. The allocation will be practical. The allocation will take into account the expertise needed in the departments, and in the case of the FBI we are going to have the FBI in effect redesignate—and it is 140 or even more, if they can justify it—and they are not going to be square pegs in round holes. They are going to be good, loyal law enforcement officers, and the fear that somehow the FBI is going to be directed or administered by a bunch of locomotive engineers, not all law enforcement officers, just is not the case.

I appreciate the superconcern about the FBI. I do not want the FBI politicized. I do not want the FBI mishandled. I do not want it criticized, but I think we have greatly exaggerated the presumed danger of the FBI in the arguments against the position the gentleman from Arizona (Mr. UDALL) enunciated.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. I thank the gentleman for yielding.

On page 213, just for clarification, it has been said that only the FBI is concerned. On the top of page 213 it refers to the exclusion. It sets up the terms, definitions, and exclusions, and it says the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency. They talk about the security agencies.

Mr. UDALL. Mr. Chairman, will the gentleman yield to me?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

The gentleman from Texas (Mr. COLLINS) is making my precise point. In the bill as it came out of the committee we excluded the CIA. We said they are not even in the Senior Executive Service. This morning we did that for the FBI. We gave them complete exclusion from the SES. We excluded them from titles I and II. We took them out of the whistle-blower, and the only thing left here is whether they are going to have carved out a specific number of supergrades that will go to the President, and the pool will get all they need. But they should not be singled out forever to have an allocation. The thing the gentleman is talking about was taken care of in the amendment this morning. The FBI is the same as the CIA.

Mr. COLLINS of Texas. If the gentleman from Illinois would yield further to me, is the gentleman telling me in these categories they have no supergrades at all in any of these agencies?

Mr. UDALL. Nobody would have an allocated permanent pool of supergrades under this rule, and we are trying to hold that line.

Mr. DERWINSKI. What we are speaking of here is the Senior Executive Service. The Senior Executive Service will not be running the FBI.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. COLLINS of Texas. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee of the Whole appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Texas (Mr. COLLINS) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 124, noes 217, answered "present" 1, not voting 90, as follows:

[Roll No. 750]

AYES—124

| | | |
|---|---|---|
| Alexander | Bafalis | Buchanan |
| Andrews, N. Dak. | Barnard | Burke, Mass. |
| Annunzio | Bauman | Butler |
| Applegate | Beard, Tenn. | Carter |
| Archer | Bowen | Cederberg |
| Ashbrook | Brinkley | Clausen, Don H. |
| Badham | Broomfield | Cleveland |
| Coleman | Kindness | Runnels |
| Collins, Tex. | Lagomarsino | Ruppe |
| Crane | Leach | Satterfield |
| Cunningham | Lederer | Schulze |
| Daniel, Dan | Lent | Shuster |
| Daniel, R. W. | Levitas | Sikes |
| Dent | Livingston | Skelton |
| Devine | Lloyd, Calif. | Slack |
| Dornan | Lloyd, Tenn. | Smith, Iowa |
| Duncan, Tenn. | Lott | Snyder |
| Edwards, Okla. | McClory | Spellman |
| English | McDonald | Spence |
| Fountain | McEwen | Stangeland |
| Fowler | Madigan | Stanton |
| Frenzel | Marriott | Steers |
| Gaydos | Martin | Steiger |
| Gephardt | Mathis | Symms |
| Gilman | Miller, Ohio | Taylor |
| Ginn | Minish | Treen |
| Goldwater | Mitchell, N.Y. | Tucker |
| Gradison | Mollohan | Vanik |
| Gudger | Montgomery | Volkmer |
| Guyer | Moore | Waggonner |
| Hall | Mottl | Walsh |
| Hammer-schmidt | Murtha | Wampler |
| Harris | Myers, Gary | Watkins |
| Harsha | Myers, John | Wolff |
| Hillis | Neal | Wydler |
| Hubbard | O'Brien | Wylie |
| Hyde | Quillen | Yatron |
| Ichord | Regula | Young, Fla. |
| Johnson, Calif. | Roberts | Young, Mo. |
| Jones, N.C. | Robinson | Zablocki |
| Kelly | Rooney | |
| | Rose | |

NOES—217

| | | |
|---|---|---|
| Abdnor | Fisher | Mikulski |
| Akaka | Fithian | Milford |
| Ambro | Flippo | Mineta |
| Anderson, Calif. | Florio | Moakley |
| Anderson, Ill. | Foley | Moorhead, Pa. |
| Andrews, N.C. | Ford, Mich. | Murphy, Ill. |
| Ashley | Ford, Tenn. | Murphy, N.Y. |
| Aspin | Gammage | Murphy, Pa. |
| AuCoin | Garcia | Myers, Michael |
| Baldus | Giaimo | Natcher |
| Baucus | Glickman | Nedzi |
| Beard, R.I. | Goodling | Nichols |
| Bedell | Gore | Nix |
| Beilenson | Grassley | Nolan |
| Benjamin | Green | Nowak |
| Bennett | Hamilton | Oakar |
| Bevill | Hannaford | Oberstar |
| Blanchard | Harkin | Obey |
| Blouin | Hawkins | Ottinger |
| Boggs | Heckler | Panetta |
| Bolling | Hefner | Patten |
| Bonior | Heftel | Patterson |
| Brademas | Hightower | Pattison |
| Breckinridge | Holland | Pease |
| Brodhead | Hollenbeck | Pepper |
| Brooks | Holtzman | Perkins |
| Brown, Calif. | Horton | Pickle |
| Burlison, Mo. | Howard | Pike |
| Burton, John | Hughes | Poage |
| Caputo | Jacobs | Pressler |
| Carney | Jeffords | Preyer |
| Carr | Jenrette | Price |
| Clay | Jones, Okla. | Pritchard |
| Collins, Ill. | Jones, Tenn. | Pursell |
| Conable | Jordan | Quayle |
| Conte | Kastenmeier | Rahall |
| Corman | Kazen | Railsback |
| Cornell | Keys | Reuss |
| Cornwell | Kildee | Rhodes |
| Cotter | Kostmayer | Roe |
| Coughlin | Krebs | Rogers |
| D'Amours | LaFalce | Roncalio |
| Danielson | Le Fante | Rosenthal |
| Davis | Leggett | Rostenkowski |
| de la Garza | Long, La. | Roybal |
| Dellums | Long, Md. | Russo |
| Derrick | Luken | Santini |
| Derwinski | Lundine | Sawyer |
| Dicks | McCloskey | Scheuer |
| Dingell | McCormack | Schroeder |
| Dodd | McDade | Sebelius |
| Downey | McFall | Seiberling |
| Drinan | McHugh | Sharp |
| Duncan, Oreg. | McKay | Simon |
| Early | McKinney | Skubitz |
| Edgar | Maguire | Solarz |
| Edwards, Ala. | Mahon | Staggers |
| Edwards, Calif. | Mann | Stark |
| Eilberg | Markey | Steed |
| Erlenborn | Marks | Stockman |
| Ertel | Marlenee | Stokes |
| Evans, Ga. | Mattox | Studds |
| Evans, Ind. | Mazzoli | Thompson |
| Fascell | Meeds | Thone |
| Fenwick | Metcalfe | Thornton |
| Findley | Meyner | Trible |
| | Michel | Udall |

| | | |
|---|---|---|
| Ullman | Weaver | Wilson, C. H. |
| Van Deerlin | Weiss | Wilson, Tex. |
| Vento | Whalen | Winn |
| Walgren | White | Wirth |
| Walker | Whitehurst | Yates |
| Waxman | Whitley | |

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—90

| | | |
|---|---|---|
| Addabbo | Fary | Moss |
| Ammerman | Fish | Pettis |
| Armstrong | Flood | Quie |
| Biaggi | Flowers | Rangel |
| Bingham | Flynt | Richmond |
| Boland | Forsythe | Rinaldo |
| Bonker | Fraser | Risenhoover |
| Breaux | Frey | Rodino |
| Brown, Mich. | Fuqua | Rousselot |
| Brown, Ohio | Gibbons | Rudd |
| Burgener | Hagedorn | Ryan |
| Burke, Calif. | Hanley | Sarasin |
| Burke, Fla. | Hansen | Shipley |
| Burleson, Tex. | Harrington | Sisk |
| Burton, Phillip | Holt | Smith, Nebr. |
| Byron | Huckaby | St Germain |
| Cavanaugh | Ireland | Stratton |
| Chappell | Jenkins | Stump |
| Chisholm | Johnson, Colo. | Teague |
| Clawson, Del | Kasten | Traxler |
| Cochran | Kemp | Tsongas |
| Cohen | Krueger | Vander Jagt |
| Conyers | Latta | Whitten |
| Corcoran | Lehman | Wiggins |
| Delaney | Lujan | Wilson, Bob |
| Dickinson | Mikva | Wright |
| Diggs | Miller, Calif. | Young, Alaska |
| Eckhardt | Mitchell, Md. | Young, Tex. |
| Emery | Moffett | Zeferetti |
| Evans, Colo. | Moorhead, Calif. | |
| Evans, Del. | | |

Messrs. BROOKS, STOKES, and ABDNOR changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think we can finish this bill this evening in a couple of hours. We are on title IV. The bill has eleven titles, but most of the remaining controversy is in title VII, the labor-management section.

Therefore, Mr. Chairman, I ask unanimous consent that all debate on title IV and all amendments thereto close at 9:45 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. DUNCAN of Oregon. I will be glad to reconsider after we see how many of the pending amendments are affected, but for now I object.

Reserving the right to object, Mr. Chairman, how many more amendments are pending, if the gentleman knows?

Mr. UDALL. There are a large number of amendments which have been noticed. I do not think that very many of them will be offered. I have no way of telling.

I think that the amendments which Members seriously want to offer will get an opportunity to be offered in this period of time. Most Members with major amendments have already printed them in the CONGRESSIONAL RECORD, and they would be outside the limitation, in any event.

Mr. DUNCAN of Oregon. They would be outside the limitation with respect to the 5 minutes which the sponsor is entitled to.

Mr. Chairman, until we can get some more information as to the number pending and going to be considered, if there is a large number pending, I think a half hour is unreasonable on a bill of this magnitude.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. DUNCAN of Oregon. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I especially appreciate that there has been a kind of bipartisan support and opposition to this bill. However, I have looked over all of the pending amendments; and really, as the gentleman from Arizona indicated, the gut issues are in title VII. The remaining amendments to titles IV, V, and VI may be important to some individual Member, but they are not going to alter the direction of the Republic.

Mr. Chairman, I really think we could expedite the relatively noncontroversial titles, and we could do a good job on the one tough title remaining.

Mr. DUNCAN of Oregon. Further reserving the right to object, Mr. Chairman, I am interested, as I know a number of other Members are, in a specific amendment which I think should be relatively noncontroversial. If the chair and the ranking minority member would study it and give us some assurance that it would be accepted, I should think in that instance a half hour would be plenty of time.

Mr. UDALL. If the gentleman will yield, Mr. Chairman, I will say to the gentleman that I do not think I am going to accept the amendment he refers to. However, we can process it very quickly. It is not complicated. I think that in 3 or 4 minutes the Members will be able to make a sensible decision on it.

Mr. DUNCAN of Oregon. Mr. Chairman, I will be constrained to withdraw an objection at a later time, but at this point I am constrained to object.

The CHAIRMAN. Objection is heard.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer five amendments.

The Clerk read as follows:

Amendments offered by Mr. GILMAN: Page 212, line 21, strike out "and".

Page 212, line 23, strike out "executives." and insert in lieu thereof "executives;".

Page 212, insert after line 23 the following:

"(12) insure career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices;

"(13) provide for a professional management system which is guided by the public interest and free from improper political interference; and

"(14) insure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by noncareer appointees, political appointments to such positions are minimized to the maximum extent possible.".

Page 228, strike out lines 10 through 12 and insert in lieu thereof the following:

"(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

"(A) within 120 days after an appointment of the head of such agency; or

"(B) within 120 days after the appointment in such agency of such career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to reassign such career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314 (b) (3) of this title; or

(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment.

Page 232, line 12, strike out "A career appointee" and insert in lieu thereof "Except as provided in subsection (b) of this section, a career appointee".

Page 232, after line 19, insert the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of such agency; or

"(B) within 120 days after the appointment in such agency of such career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove such career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314(b) (3) of this title or;

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment.".

Page 232, line 20, strike out "(b)" and insert in lieu thereof "(c)".

Page 227, line 3, insert "(1)" after "(a)".

Page 227, line 4, strike out "(1)" and insert in lieu thereof "(A)" and insert ", subject to paragraph (2) of this subsection," after "may".

Page 227, line 7, strike out "(2)" and insert in lieu thereof "(B)".

Page 227, after line 10, insert the following:

"(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of such reassignment—

"(A) at least 15 days in advance of such reassignment; and

"(B) containing a statement of the critical reasons for such reassignment.

Any career appointee who is reassigned in violation of subparagraph (A) of this paragraph may appeal such violation to the Merit Systems Protection Board.".

Page 245, after line 15, insert the following:

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of such reduction—

"(1) at least 15 days in advance of such reduction; and

"(2) containing a statement of the critical reasons for such reduction.

Any career appointee whose rate of basic pay is reduced in violation of paragraph (1) of this subsection may appeal such violation to the Merit System Protection Board.

Page 228, insert after the line 12 the following:

"(f) A career appointee may be transferred only if—

"(1) he consents to the transfer; and

"(2) the transfer is part of a program designed to enlarge the responsibilities of

the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection to not consent to such a transfer. Any career appointee against whom an adverse personnel action is taken in violation of this subsection may appeal such personnel action to the Merit Systems Protection Board.

Page 215, strike out lines 4 through 11 and insert in lieu thereof the following:

"(8) 'career reserved position' means a Senior Executive Service position which is designated under subsection (b) of this section as a position to which a career appointee may be appointed;

"(9) 'general position' means any Senior Executive Service position which is not a career reserved position.

Page 215, beginning on line 15, strike out "career reserved positions." and all that follows down through "Government." beginning on line 19, and insert in lieu thereof "Senior Executive Service positions to which career appointees may be appointed.".

Page 215, line 21, strike out "career reserved" and insert in lieu thereof "such".

Page 215, line 24, insert after "appointee." the following: "Any other Senior Executive Service position may be filled only by a noncareer appointee, limited term appointee, or limited emergency appointee.".

Page 219, line 4, strike out "noncareer appointments" and insert in lieu thereof "general positions".

Page 219, beginning on line 6, strike out "employment of noncareer appointees" and insert in lieu thereof "general positions".

Page 219, beginning on line 11, strike out "authority to employ a specific number of noncareer appointees" and insert in lieu thereof "a specific number of general positions".

Page 219, strike out lines 13 through 18 and insert in lieu thereof the following:

"(b) The number of general positions in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency for such positions, except that the total number of general positions in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

Page 219, strike out "Senior Executive Service" on line 19 and all that follows down through "appointees" on line 20 and insert in lieu thereof "general positions".

Page 222, in the matter following line 15, strike out "noncareer appointments" in the item relating to section 3134 and insert in lieu thereof "general positions".

Page 223, line 9, insert "'career reserved position'," before "and 'general position'".

Page 227, beginning on line 4, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, beginning on line 7, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, line 12, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 227, line 18, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 254, line 25, strike out "title)." and insert in lieu thereof "title), and such position shall be considered a career reserved position.".

Page 256, line 7, strike out "position." and insert in lieu thereof "position, and such position shall be considered a career reserved position."

Page 256, line 19, strike out "appointment;" and insert in lieu thereof "appointment, and such position shall be considered a general position.".

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, I am offering five amendments to title IV.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, if the gentleman will save us a little time by not making a speech on the amendments, I am prepared to accept them.

Mr. GILMAN. Mr. Chairman, I appreciate the gentleman's kind offer. I think, though, for the benefit of the House there should be just a brief explanation of the five amendments so that we will know what the amendments are.

My first amendment establishes three important principles in the administration of the Senior Executive Service.

Section 3131 of title IV sets forth 11 principles to guide the administration of the Senior Executive Service. I propose to add three new principles to his section. Principle No. 12 would insure that career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices. The purpose of this is to bring the Senior Executive Service under the umbrella of protections accorded employees by virtue of section 2302 of title I which enumerates specific practices which may not be engaged in and for which an individual shall be disciplined if these prohibited actions occur.

Principle No. 13 represents a policy statement advocating maximum utilization of career service employees. H.R. 11280 authorizes a ceiling of 10 percent for the placement of political appointees. The 10-pecent ceiling should not become a goal of each administration. I hope the goal of placement in the Senior Executive Service will center on individual qualifications for Government service. Therefore, maximum placement of career employees will be in the best public interest.

The final principle states a goal for the Senior Executive Service. I believe that statement is self-explanatory and self-supporting. The change establishes as Senior Executive Service policies: "Goals for a professional management system and the necessity to assure career members protection from prohibited personnel practices."

Subsection 3395(e), which provides that a career appointee may not be involuntarily reassigned or transferred within 120 days following the appointment of an agency head, admits a loophole. This provision should relate to the time of appointment of a Presidential appointee to whom the career official reports and not to the agency head, because most career officials report to a Presidential appointee under an agency head.

My second amendment amends subsection 3395(e) to provide that a career appointee may not be involuntarily reassigned or removed from the Senior Executive Service within 120 days after an appointment of the head of his or her agency, or within 120 days following the appointment of a Presidential appointee to whom the career appointee reports, whichever is later in time.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield for an observation?

Mr. GILMAN. I am pleased to yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

I think the gentleman is on the verge of getting a unanimous vote for his series of amendments. I have read those statements earlier, and I can assure the Members that these are fine amendments. Let us accept his amendments.

Mr. GILMAN. I thank the gentleman for his kind remarks, but I do think that since this is such an important measure to the administration and since the acting chairman has indicated that there is a sense of urgency in adopting this measure, that it is important to the House to know exactly what the measures are that they are voting upon. Accordingly, if I may proceed:

My amendment makes clear that corrective action initiated under subsection 4323(b)(3) prior to changes in supervisory personnel may continue or any disciplinary action initiated before such appointment.

This amendment was suggested by the National Academy of Public Administration and is along the lines of an amendment suggested by the administration.

My third and fourth amendments would have the effect of precluding arbitrary action by a Presidential appointee against a career appointee in the SES involving a change in either the career appointee's reassignment or reduction in pay by insuring that any such change, first, be preceded by 15 days' notice; second, be accompanied by a statement detailing the critical reasons for the reassignment or reduction in pay; and third, if timely notice is not accorded the career executive, the career executive would be permitted to complain of such action to the Special Counsel or the MSPB.

My fifth amendment limits the right of the Director of OPM or an executive department or agency to transfer a career appointee. First, a career appointee may not be involuntarily transferred. Second, if a transfer is proposed and consented to by a career appointee, the transfer must be part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the SES.

Mr. Chairman, in the interests of further perfecting this measure, I urge my colleagues to adopt these amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GILMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FISHER: Page 225, strike out line 15 and all that follows down through line 24 and insert in lieu thereof the following:

"(c)(1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the managerial qualifications of candidates for entry as career appointees into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management. Of the members of each board—

"(A) At least one-half shall be appointed from among career appointees; and

"(B) Up to one-half may be appointed from outside the civil service.

Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and other appropriate occupational fields of the intended appointee.

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Mr. Chairman, I will be very brief. I believe there is no objection to this amendment. It would make some improvement in the way the Qualification Review Board operates.

Mr. Chairman, these qualification review boards play a key role in the SES. They certify the managerial qualifications of candidates for the SES. Knowledge of Government management is the primary qualification for appointment. Because persons who have had experience in the civil service really know the most about the requirements of SES positions, I believe it would be desirable that half the members of the qualification review boards be career employees.

This is at the critical level where SES persons are selected. Knowledge and experience in the career service are essential. I urge a vote for this amendment.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, we accept the amendment.

The CHAIRMAN. Without objection, the amendment offered by the gentleman from Virginia (Mr. FISHER) is agreed to.

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The question is on the amendment offered by the gentleman from Virginia (Mr. FISHER).

The question was taken; and on a division (demanded by Mr. SYMMS) there were—ayes 59, noes 11.

Mr. BAUMAN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred seventeen Members are present, a quorum.

The pending business is the demand of the gentleman from Maryland (Mr. BAUMAN) for a recorded vote.

A recorded vote was refused.

So the amendment was agreed to.

The CHAIRMAN. Are there further amendments to title IV?

AMENDMENTS OFFERED BY MR. PANETTA

Mr. PANETTA. Mr. Chairman, with some trepidation, I offer a series of amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Page 238, line 8, strike out "service" and insert in lieu thereof the following: "service, including any significant reduction in paperwork".

Page 265, line 9, strike out "service" and insert in lieu thereof the following: "service, including any significant reduction in paperwork".

Page 267, line 21, insert after "operations" the following: "or achieves a significant reduction in paperwork".

Page 268, line 6, insert after "operations" the following: "or achieves a significant reduction in paperwork".

Page 270, insert after line 16 the following new section:

INCENTIVE AWARDS AMENDMENTS

SEC. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

Page 270, line 18, strike out "Section 502." and insert in lieu thereof "Sec. 503.".

Page 272, line 19, strike out "Sec. 503." and insert in lieu thereof "Sec. 504.".

Page 130, in the table of contents, strike out the items relating to sections 502 and 503 and insert in lieu thereof the following:

Sec. 502. Incentive awards amendments.
Sec. 503. Technical and conforming amendments.
Sec. 504. Effective date.

Mr. PANETTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. PANETTA. Mr. Chairman, I wish to commend the committee for its hard work on this very complex bill. Clearly, this is an important issue and one that demands close and careful scrutiny. This truly is our golden opportunity to reform the civil service system and we must be sure to do all that we want to and nothing that we do not want to do.

It is in this spirit that I ask the House to consider making a reduction in the level of Federal paperwork part of the goals of the civil service reform bill. I have pending two amendments, to titles IV and V, which would make reduction in paperwork one of the criteria for eligibility in the various incentive programs for Federal employees that exist in present law and that would also be established by this bill.

There can be no doubt that we all are aware of both the facts about the extent of Federal paperwork and the public's feelings about that situation. According to OMB, Americans spend a total of 785 million hours a year filling out 4,987 different Federal forms. The Commission on Federal Paperwork estimates that Federal forms cost about $100 billion a year to file and process, or $500 for every American citizen. Broken down, this works out to annual expenditures of from $25 to $32 billion by industry, $8.7 billion by individuals, $5 to $9 billion by State and local governments, and $43 billion by the Federal Government itself. The worst-case example might well be the filing of an application to operate a nuclear powerplant, which can take more than 55,000 hours, or the work of 27 people working 40-hour weeks for a year.

Clearly, this excessive paperwork does not gain us anything. I think, then, that it makes sense to build into the civil service system an incentive to reduce paperwork. My amendments would do this by including paperwork as a criterion for eligibility for the merit pay and cash bonus awards established in the bill for the GS levels 13 through 15 and as a criterion for the achievement ratings to be conducted under the new Senior Executive Service, for GS levels 16 through 18 and for the executive levels through level V. In addition, I would amend the existing incentive awards program to make paperwork reduction an eligibility determinant.

I believe this approach, rather than a new regulatory statute, emphasizes individual initiative, the way America has traditionally solved so many of its pressing problems in the past. Although conceivably we would be expending some funds in the recognition of paperwork reduction, it is certain that the long-term benefits and savings would more than justify any small payment to a Federal employee. The savings would come first from reduced Federal printing costs, then reductions in handling and processing of the paper; in addition, of course, the person dealing with the paperwork would be saved excessive expenditures to file the materials.

Most importantly, perhaps, the resultant reduction in paperwork would help restore people's faith that the Government serves them, rather than the other way around. The most frequent point of contact between citizens and the Federal Government is the exchange of paper, whether it is in the filing of tax returns, the application for a Federal grant, or the application for some benefit, such as medicare or social security. The tremendous load of paper involved in each of these transactions plays a key part in discouraging people, in making them feel that the Government has lost touch with the needs of people and has become too involved in regulation and meaningless detail. It is precisely this feeling

that underlies the sense of apathy or alienation that we each see so frequently in our capacities as representatives. If we can do anything to alleviate or even reverse that trend, we will have made a real achievement indeed.

It is my feeling that by giving every Federal civil servant from GS-1 to Executive Schedule V a reminder that she or he has a responsibility to try to reduce paperwork and an incentive to do so that we have a real chance to do just that.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, as far as these amendments are concerned, I wish they would have been presented in committee. They would have been adopted by a wide vote margin.

The amendments will use paperwork as a criterion for the bonus, and they make available the criteria for determining performance, since we are going to take into account innovative ways to save paperwork.

Mr. Chairman, I think these amendments are a good addition, and I am strongly in favor of them.

Mr. DERWINSKI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, some years ago our committee produced a work called "The Paperwork Jungle," and it was so thick that most Members developed eyestrain trying to read it.

Mr. Chairman, these are practical amendments and I think they will be helpful to the bill and to the operation of our Federal Government. They are fine amendments and should be adopted.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California (Mr. PANETTA).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. WEAVER

Mr. WEAVER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WEAVER: On page 219, between lines 3 and 4, insert the following:

"(f)(1) Not later than one hundred and twenty days after the date of the enactment of the Civil Service Reform Act of 1978, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director of the Office of Personnel Management shall establish, by rule issued in accordance with section 1103 (b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of such Act, that are to be career reserved positions. Except as provided in paragraph (2), the number of positions required by this subsection to be career reserved positions shall not be less than the number of positions which, prior to such date of enactment, were authorized to be filled only through competitive civil service appointment.

"(2) The Director of the Office of Personnel Management may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) only if he determines it necessary to designate as a general position a position which—

"(A) involves policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

"(B) involves significant participation in the major political policies of the President; or

"(C) requires the executive to serve as a personal assistant of, or adviser to, a Presidential appointee or other key political figure. The Director shall provide a full explanation for his determination in each case.

"(3) All positions in and hereafter established in the senior executive service shall be designated as career reserved positions for the Fish and Wildlife Service, the Bureau of Land Management, and the Park Service of the Department of the Interior and the Forest Service and Soil Conservation Service of the Department of Agriculture."

Mr. WEAVER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. WEAVER. Mr. Chairman, although the administration proposes that at any one time, no more than 10 percent of all executive positions could be occupied by political appointees, with the exception of a relative small group of career reserved positions, all other positions could be filled by a career or noncareer appointee. The Senate in their consideration of the legislation had a similar concern and adopted an amendment—CONGRESSIONAL RECORD August 24, 1978, p. 27560-27562—which provides that within 120 days of the effective date of the Civil Service Reform Act, the Director of the Office of Personnel Management, by rule and in accordance with the rulemaking provisions of the Administrative Procedure Act, must specify the number of positions in the Senior Executive Service that are to be career reserved positions. That number can be no less than the number of positions that can today be filled only through competitive civil service appointment. This means that the Director of the OPM will designate approximately 5,100 of the almost 9,000 positions in the Senior Executive Service that will be career reserved. The Director of the OPM is given the authority in the amendment to reduce the number of career reserved positions by designating them general positions under certain specific conditions. I endorse and offer a similar amendment.

I have however added one additional provision to the amendment, a provision to provide for career reserved status for positions in the Senior Executive Service responsible for directing public lands and resources programs in the National Park Service, Fish and Wildlife Service, Bureau of Land Management, Forest Service, and the Soil Conservation Service.

Successful natural resources management requires skilled coordination of many professional disciplines. Because of their long-term nature, natural resources programs must have continuity of support and direction. I firmly believe that this best can be accomplished by clear separation of the policy formation and policy implementation levels in Government. Policy formation should continue to be met at the Assistant Secretary and above levels.

My amendment would not preclude reassignment of high-level employees of those agencies. But their replacements, who could be appointed to meet an administration's policy objectives, would be required to be selected from those with career status. The amendment would provide the administration an opportunity to select top agency personnel having compatible philosophy while at the same time assuring that they possess strong professional background and experience in the resources disciplines. I strongly urge the adoption of my amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have been preaching here all day that if we are going to have a Government-wide personnel system, we must have basic principles that are not waived for particular agencies. I said that those of us in charge of legislation might see our colleagues seeking an exemption as with the FBI a little while ago, and now the gentleman is in my ballpark again. Here we are talking about the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and so forth.

And here again, the Department has been lobbying its friends. The gentleman from Oregon is a very valuable member of my committee and the Committee on Agriculture. These people say now, "We are special," just as the FBI said they were special. And the amendment provides that all positions—not 90 percent or 95 percent, but all positions—in this agency are reserved for career positions in these particular departments. I think we open the door here, and other Members will have special agencies who feel they are career agencies and should not have any infusion of outside people or noncareer people. I think we should draw the line and say that we are going to have a Government-wide executive service and we should not make these exemptions. I am going to take this position in speaking for my own committee's jurisdiction, the Committee on the Interior, and for that reason I regretfully oppose the amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to point out that the observation and the analysis of the gentleman from Arizona is practical. It explains the situation just as it realistically is. If you want an absolute attack on personnel administration you should support the amendment. But consistent with the vote on the earlier amendment, I urge the rejection of this amendment.

Mr. DUNCAN of Oregon. Mr. Chairman. I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I support this amendment and I urge the Members here tonight to support it.

I would like to say that almost all of this amendment has already been ac-

cepted and inserted in the bill in the Senate.

The chairman points out, quite correctly, that the amendment does reserve all of these senior executive positions in these five specific natural resource agencies for career people. But he says it as though there were something wrong with it, and I ask you: What is wrong with that? In these natural resource agencies which we have created to protect the land from which all wealth flows, why should not they be managed by professional career people insead of political appointments who can be put into these senior executive slots. And you might say that that cannot happen, that it will not happen. I would only have to refer the Members back two administrations, to a point where it did happen, and Mr. Erlichman, and all of the rest of his assistants, were in the process of politicizing the civil service.

Mr. Chairman, I think this is a very, very important segment of this bill. I think this amendment is one way we can strike a blow for having professional civil service people running these natural resource agencies on which we depend in so many of our districts.

The chairman suggested it is just like the amendment we just defeated. It is not. That amendment reserved for ever and ever, world without end, 140 positions for the FBI. This has no specific numbers for these natural resource agencies. The provision is made in this amendment that these people can be transferred freely, just as other career senior executive people can. The only thing is, when you move someone back into there agencies you would have to move a civil service career-oriented person. The morale in these agencies is very important. Every forester, every biologist who starts out ought to be able to look forward to being the chief of the service or head of the Bureau of Fisheries. I think this is a very, very important amendment. I can take the points the chairman has made, turn them around, and say that every argument he has made is an argument in support of this. I do not see how it affects the bill. I do not see how it affects the overall purpose of the administration. They can move them around. They can reduce the number. All it says is that about 5,000 of these 9,000 jobs are going to be pulled out for the people who have spent their lifetimes serving each one of our constituents and the American people.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. DUNCAN of Oregon. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I agree so much with what the gentleman said. I can well agree with him that we ought to have professional people running these programs with regard to our land and water and our forests and our natural resources. Some of the words seemed familiar. I was wondering if it did not make good sense also to have professional people running our health programs.

Mr. DUNCAN of Oregon. If I had drafted this amendment, I would agree with the gentleman. I think the same thing really ought to apply to the doctors in the Veterans Administration and to the scientists in the National Institutes of Health. I think this provision in the bill as it came out of committee is the Achilles heel of the bill. I think it is one of the weakest policies, and we can help the bill a little with this amendment.

Mr. HARRIS. Did my colleague support my amendment that did this about a half hour ago?

Mr. DUNCAN of Oregon. I am sorry, I was not on the floor at the time.

Mr. HARRIS. I am too. I thank the gentleman.

Mr. DUNCAN of Oregon. I just would like to reiterate that it is in the Senate bill. I do not know whether the administration accepted it over there or not. I would say that if they did, they accepted it reluctantly.

I would tell the Members that I just visited with them out there in the hall, and was told, no, they would not accept it; they wanted to strike it out. To me, that is an insult to the House of Representatives, and I felt humiliated to have to go out in the hall and ask the consent of the executive branch of Government for action to be taken by the House of Representatives.

Mr. LEACH. Mr. Chairman, I move to strike the requisite number of words.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Very, very briefly, Mr. Chairman, let me just point out that the gentleman from Oregon made a wonderful, impassioned plea. Can the Members imagine, now, every other Member getting up and making the same type of impassioned plea for a unit of Government for which he has special affection?

This is the very problem we feared an hour ago. The same arguments that basically prevailed in the Collins amendment are here.

The only thing they will have to do is look for their supergrade slots from a central pool. I am sure that with this administration, there is going to be enough allocation of supergrades.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. There is nothing in this amendment, if the gentleman will study it, that says that these agencies do not have to go to the same pool. The only thing it says is that pool is going to have to be made up of a certain number of career civil service people—only about 5,000 out of 9,000. It also says with respect to these agencies that out of that central pool those who are going to be assigned are going to have to be out of that pool represented by those career civil service people.

Mr. DERWINSKI. Let me reclaim my time. That is not exactly what is going to happen.

Mr. LEACH. I yield to the gentleman from Illinois.

Mr. DERWINSKI. The facts are, from the standpoint of administration personnel, they are not going to take people from the Fish and Wildlife Service, Land Management, the Department of the Interior, the Forest Service; they are not going to be moving people in there who have been street inspectors in Brooklyn. They are, in fact, going to be their people.

The only controversy here is whether there shall be proper control of Government-wide supergrades. That is the issue. May I say, with all due respect to the gentleman, because as I recall he once pursued a position in the other body, arguing that just because the other body adopted an amendment does not really make it all that much of an asset, because we know legislative-wise there are many, many more mistakes made across in the other body than there are in this body.

Mr. DUNCAN of Oregon. There are not only mistakes made in the other body, but there are a lot of mistakes made on the way to the other body, as I can testify to myself.

The point which the gentleman makes with respect to the limitation on numbers just does not exist in this amendment. If that is all, that is not what this amendment does. The other point the gentleman makes when he says that we need not fear streetcar conductors being moved in.

If we do not intend to do it, then why should the gentleman have any objection to putting it in the law—stating that it cannot be done—because I do not have the same confidence in the continued benevolence and good will of the executive branch of the Government. I share the same apprehension with respect to it as you have with respect to the Senate.

Mr. DERWINSKI. The gentleman may argue that point, but the fact is that through this amendment this is a back door approach to guarantee for these five special units of Government absolute control of their supergrades. The gentleman is going through the back door rather then by a frontal attack.

Mr. DUNCAN of Oregon. Would the gentleman please find out where, in this amendment, it says that, because it just does not. It says the same authority exists to move people around as with the other agencies.

It does not change the total number of career service employees. It does not set a ceiling for these agencies. All it says is a certain number of senior executive service will be professional civil service people and that when those movements are made from these agencies the replacements must likewise be civil service.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon (Mr. WEAVER).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. GILMAN: On page 215, strike out lines 4 through 11 and insert in lieu thereof the following:

"(8) 'career reserved position' means a Senior Executive Service position which is designated under subsection (b) of this section as a position to which a career appointee may be appointed;

"(9) 'general position' means any Senior Executive Service position which is not a career reserved position.

Page 215, beginning on line 15, strike out "career reserved positions." and all that follows down through "Government." beginning on line 19, and insert in lieu thereof "Senior Executive Service positions to which career appointees may be appointed.".

Page 215, line 21, strike out "career reserved" and insert in lieu thereof "such".

Page 215, line 24, insert after appointee." the following: "Any other Senior Executive Service position may be filled only by a noncareer appointee, limited term appointee, or limited emergency appointee.".

Page 219, line 4, strike out "noncareer appointments" and insert in lieu thereof "general positions".

Page 219, beginning on line 6, strike out "employment of noncareer appointees" and insert in lieu thereof "general positions".

Page 219, beginning on line 11, strike out "authority to employ a specific number of noncareer appointees" and insert in lieu thereof "a specific number of general positions".

Page 219, strike out lines 13 through 18 and insert in lieu thereof the following:

"(b) The number of general positions in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency for such positions, except that the total number of general positions in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

Page 219, strike out "Senior Executive Service" on line 19 and all that follows down through "appointees" on line 20 and insert in lieu thereof "general positions".

Page 222, in the matter following line 15, strike out "noncareer appointments" in the item relating to section 3134 and insert in lieu thereof "general positions".

Page 223, line 9, insert " 'career reserved position'," before "and 'general position' ".

Page 227, beginning on line 4, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, beginning on line 7, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, line 12, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 227, line 18, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 254, line 25, strike out "title)." and insert in lieu thereof "title), and such position shall be considered a career reserved position.".

Page 256, line 7, strike out "position." and insert in lieu thereof "position, and such position shall be considered a career reserved position.".

Page 256, line 19, strike out "appointment;" and insert in lieu thereof "appointment, and such position shall be considered a general position.".

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, simply stated, my amendment insures that the 90:10 ratio of career appointees to noncareer appointees within the Senior Executive Service (SES), a goal chosen by the administration itself, is preserved. This is accomplished within the amendment by causing "career reserved positions" and "general positions" to be mutually exclusive. That is, only career appointees can be designated to fill career reserved positions, and conversely, only noncareer appointees, limited term appointees, or limited emergency appointees could be employed in general positions. My amendment then restricts the total number of general positions in all agencies to 10 percent of the total number of SES positions in all agencies.

You may well inquire if this amendment is really necessary and/or if it is too restrictive. Both questions are fairly asked, and I will do my best to answer them.

Among the many controversial aspects of this legislation, the most controversial, in my opinion, has been the allegation put forth by several of the witnesses and a number of our colleagues in Congress that the administration's proposal for the SES is a back-handed attempt to politicize the merit system, or at the very least, to restore the patronage system at the upper levels of Federal management.

Let us briefly review the administration's proposal, in light of these charges, and the oft-pronounced claim of the administration that political appointees within the SES will approximate the present number of political appointees in the executive branch.

Currently there are about 9,000 executive positions in the Federal service, other than those filled by Presidential appointees. About 10 percent or 900 of these are designated as specific positions to be filled politically. The administration proposes to change this so that most of the 9,000 positions could be filled by political appointment, although at any time no more than 10 percent of all executive positions could be occupied by political appointees. How could this be accomplished?

First, while it is true that political appointees are limited to 10 percent of the total SES corps, there is no similar cap on limited term appointees or limited emergency appointees. Second, limited term appointees or limited emergency appointees can be and very probably will be pseudonyms for political appointees, thus greatly increasing the 10-percent figure. Third, since the 10-percent cap is governmentwide, a large portion of the general positions could be placed in an agency that was deemed necessary to control with "favorable" executives. And fourth, once it is established that politics, and not impartiality and nonpartisanship, is the criteria for selection for general positions within the SES, the baser elements of human nature will flourish. We can assume that significant numbers of noncareer appointees will be encouraged and some, unfortunately, will be tempted to use their official discretion in subtle ways to serve partisan and special interests, rather than the public interest, in hopes of being looked on favorably as they seek advancement in the SES.

Will this administration appoint significant numbers of noncareer executives to the SES? The answer lies in their own admission that only a small proportion of the 8,000 career executive positions need to be filled by career executives "to preserve public confidence in the impartiality of certain functions of Government." In other words, most of the positions within the SES would be filled by noncareer appointees because there is no compelling need to preserve public confidence in the impartiality of most of the functions of the executive branch.

To return to my original question, then—is my amendment necessary? My answer is, indeed it is, if we hope to avert a return to the spoils system, and if we truly believe there is a compelling need to preserve public confidence in the impartiality of our SES. And to quote from U.S. News & World Report of August 28, 1978,

> No one alleges that Jimmy Carter lusts after power. But his reforms would enable any future political dictator to reach down through the levels and take the whole organization captive. Members of the Senior Executive Service would work close to the administration. In turn 72,500 intermediate managers, the GS–13s, 14s and 15s, bereft of automatic raises, would depend largely on SES review for their rewards. And the lower grade, finding appeal more difficult than at present, would have to please the middle managers in whatever shades of political control the managers transmit.

This still leaves unanswered the other question as to whether this amendment is too restrictive, a change generally leveled by the gentleman from Arizona to other amendments I have offered. The answer is, of course, no.

Section 3132, subsection (c) on page 129 of the committee print provides that agencies may apply to the Office of Personnel Management for exclusion of the entire agency or a part of it from being required to place positions in the Senior Executive Service. The reasons justifying the exclusion must be included in the application, but the range of possible justifications is not limited in the act. After review and investigation, as appropriate, the Office of Personnel Management will recommend to the President inclusion or exclusion of the agency or component. If the President makes a written determination of exclusion, the agency or component will be excluded from being required to place positions in the Senior Executive Service.

Thus, we see that the OPM has wide flexibility to exempt agencies for any number of reasons from the 10-percent cap on general positions.

In closing, I urge my colleagues to adopt this amendment, and I assure you that without the benefit of this amendment increased politicization is inevitable.

Mr. Chairman, I move my amendment.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I want to applaud my colleague, the gentleman from New York (Mr. GILMAN), for the amendment. It is actually a good backup type of amendment.

The CHAIRMAN. The time of the gentleman from New York (Mr. GILMAN) has expired.

(On request of Mr. HARRIS and by unanimous consent, Mr. GILMAN was allowed to proceed for 2 additional minutes.)

Mr. HARRIS. Mr. Chairman, will the gentleman yield further?

Mr. GILMAN. I am pleased to yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I thank the gentleman for yielding. I would like to applaud his efforts here.

His amendment is actually a good backup amendment since we were not able to pass the basic amendment to eliminate political appointees from the Senior Executive Service. I believe my colleague's amendment at least tries to make certain that the 10 percent limitation on political appointees is a meaningful limitation which actually applies to the Senior Executive Service, and that they will not find any backdoors to get additional political appointees in.

Mr. Chairman, I think by placing this amendment in statute, at least we have made the bill more honest in that regard, in that the 10-percent limitation does, in fact, act as a meaningful limitation on the number of political appointees that may infiltrate the top ranks of Government.

Do I understand my colleague's amendment correctly?

Mr. GILMAN. Mr. Chairman, I thank the gentleman for his contribution. The gentleman is precise in his definition of the objective and goals of this amendment, and, I thank the gentleman for his support.

Mr. UDALL. Mr. Chairman, I raise in opposition to the amendment.

Mr. Chairman, at this hour of the night I am not going to try to descirbe the technical effect of this amendment.

Let me say that it guts the bill. It guts this key section of title IV of the bill. That is why it makes my friend, the gentleman from Virginia (Mr. HARRIS), happy. He has never been very pleased with title IV.

Mr. Chairman, let me tell the Members what is invloved here. We are talking about the Senior Executive Service. We are talking about 10,000 positions. There are about three million Federal employees if we count political workers and everybody else, so that we are talking about one-third of one percent of the Federal work force. There are the top executives. These are the people who would be vice preseidents in charge of major divisions of very large companies.

Mr. Chairman, one of the central purposes of this bill is to give a President of any party who is elected to carry out his own program, who has some ideas, and who has made some campaign promises the machinery so that he can have in this career executive service 10 percent of noncareer people who would be brought in, out in the open, and labeled as such. He will be able to move them around and get them to respond, and that is what it is all about.

We have had a whole series of amendments, and I guess we will have some more, which are trying to undercut this principle and violate it and get away with it. This is as bad as any amendments offered to this title; it ought to be defeated.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

Mr. Chairman, I concur with the observations made by the gentleman from Arizona (Mr. UDALL). Let me say there is no doubt as to the nonpolitical thrust of our effort and that I would support this very bill with every minute detail even if the gentleman from Arizona (Mr. UDALL) were in the White House at the present time.

Mr. Chairman, under the Gilman amendment all positions in the Senior Executive Service are divided into two categories: First, career reserved position; and second, general position.

Career reserved positions are those to which only a career executive may be appointed.

General positions are those to which noncareer, limited term, and limited emergency executives may be appointed.

The amendment then limits the total number of general positions to 10 percent Government-wide and 25 percent in any one agency.

The first effect of the amendment is to freeze 90 percent of all Senior Executive Service positions so that only a career person could be appointed. The administration bill would permit the agency to decide whether a particular position should be filled on a career or noncareer basis. Provided that the 10-percent or 25-percent limitation is not exceeded and provided it is not one of the positions designated as career reserved.

The second effect is to reduce the number of political appointees in the SES because from the general-position pool must come all noncareer (political), limited term, and limited emergency appointees. On the other hand, if an administration were to initially use the 10 percent pool for all noncareer, then there would be no flexibility for limited term or emergency appointees.

Under the administration bill, the 10-percent limitation applies only to noncareer appointees and the limited term and emergency appointees would come from the career pool.

Mr. UDALL. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The amendments were rejected.

The CHAIRMAN. Are there further amendments to title IV? There being none, the Clerk will read title IV.

The Clerk read as follows:

TITLE V—MERIT PAY

PAY FOR PERFORMANCE

SEC. 501. Part III of title 5, United States Code, is amended by inserting after chapter 53 the following new chapter:

"Chapter 54.—MERIT PAY AND CASH AWARDS

"Sec.
"5401. Purpose.
"5402. Merit pay system.
"5403. Cash award program.
"5404. Reports.
"5405. Regulations.

"§ 5401. Purpose

"It is the purpose of this chapter to provide for—

"(1) a merit pay system which shall—

"(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

"(B) use performance appraisals as the basis for determining merit pay adjustments; and

"(C) regulate the costs of merit pay by establishing appropriate control techniques; and

"(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

"§ 5402. Merit pay system

"(a) In accordance with the purpose set forth in section 5401(1) of this title the Office of Personnel Management shall establish a merit pay system which shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS–13, 14, or 15 of the General Schedule described in section 5104 of this title.

"(b) The merit pay system established under subsection (a) of this section shall provide for a range of basic pay for each grade to which it applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each such grade under chapter 53 of this title.

"(c)(1) Under regulations prescribed by the Office of Personnel Management, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

"(2) Determinations to provide pay increases under this subsection—

"(A) may take into account individual performance and organizational accomplishment, and

"(B) shall be based on factors such as—

"(i) any improvement in efficiency, productivity, and quality of work or service;

"(ii) cost efficiency; and

"(iii) timeliness of performance;

"(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

"(D) shall be made in accordance with regulations issued by the Office of Personnel Management which relate to the distribution of increases authorized under this subsection.

"(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

"(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of each such fiscal year by the Office of Personnel Management, after consultation with the Office of Management and Budget. The funds available to any agency shall be determined by the Office of Personnel Management on the basis of the amount estimated by the Office to be necessary to reflect within-grade step increases and quality step increases, which would have been paid

under subchapter III of chapter 53 of this title during such fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered.

"(d)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the percentage of the annual rate of pay which corresponds to the percentage generally applicable to positions in the same grade as the position.

"(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

"(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

"(e) Under regulations prescribed by the Office of Personnel Management, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employement during a period of war or national emergency.

"(f) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

"§5403. Cash award program

"(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficency, economy, or other improvement of Government operations; or

"(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, his heirs, or assigns.

"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to an agency cash award under subsection (a) of this section. The President shall determine the amount to be controlled by each activity to a Presidential award under subsection (b) of this section.

"(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed $10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

"§ 5404. Reports

"The Office of Personnel Management shall submit to the appropriate committees of each House of the Congress on or before January 1, 1982, a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

"(1) a statement, together with supporting facts, as to whether the purpose of this chapter has been met during the period covered by the report, including, to the extent practicable, quantitative measures of costs and accomplishments of the merit pay system and the cash award program; and

"(2) any recommendations for legislation to amend the provisions of this chapter relating to the merit pay system or the cash award program considered necessary by the Office.

"§ 5405. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 502. (a) Section 4501(2)(A) of title 5, United States Code, is amended by striking out "title; and" and inserting in lieu thereof "title, but does not include an employee covered by the merit pay system established under section 5402 of this title; and".

(b) Section 4502(a) of title 5, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(c) Section 4502(b) of title 5, United States Code, is amended—

(1) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) by striking out "$5,000" and inserting in lieu thereof "$10,000"; and

(3) by striking out "the Commission" and inserting in lieu thereof "the Office".

(d) Section 4506 of title 5, United States Code, is amended by striking out "Civil Service Commission may" and inserting in lieu thereof "Office of Personnel Management shall".

(e) The second sentence of section 5332(a) of title 5, United States Code, is amended by inserting after "applies" the following: ", except an employee covered by the pay system established under section 5402 of this title,".

(f) Section 5334 of title 5, United States Code (as amended in section 801(a)(3)(G) of this Act), is amended—

(1) in paragraph (2) of subsection (c), by inserting ", or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount," after "step"; and

(2) by adding at the end thereof the following new subsection:

"(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent.".

(g) Section 5335(e) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,".

(h) Section 5336(c) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,".

(i) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following new chapter:

"54. Merit Pay and Cash Awards.....5401".

EFFECTIVE DATE

SEC. 503. The provisions of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title V and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Are there amendments to title V?

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FISHER: Page 270, beginning on line 1, strike out "January 1, 1982, a report on the operation" and insert in lieu thereof the following: "January 1, 1986, and biennially thereafter, a report on the operation during the preceding 2 fiscal years".

Page 272, strike out lines 19 through 24 and insert in lieu thereof the following:

EFFECTIVE DATE; EXPERIMENTAL APPLICATION

SEC. 503. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981.

(b)(1) Not later than 60 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall prescribe regulations providing for an initial, experimental application of the amendments made by this title, which shall begin on the first day of the first applicable pay period which begins on or after October 1, 1981. Such regulations shall provide that the merit pay system and the cash award program will apply with respect to positions only in 3 Executive departments designated by the Director.

(2) Within 30 days after the end of each of the first two fiscal years to which such amendments apply, the Director shall prepare and transmit to each House of the Congress a report on the merit pay system and the cash award program, including an evaluation of their effectiveness and the manner in which they are administered. The second such report shall include proposed regulations which would provide for adjustments which would be appropriate in the

event such system or such program does not continue by reason of paragraph (3).

(3) The provisions of the regulations under paragraph (1) providing for an initial, limited experimental application with respect to the merit pay system and the cash award program shall cease to have effect and the amendments made by this title relating to such system and such program shall have full effect (without regard to the limitations under paragraph (1)) beginning on the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to the Congress under paragraph (2), unless the Congress before such day adopts a concurrent resolution which states that the Congress does not favor the continuance of such system and such program. If such a resolution is adopted with respect to such system and such program before such date, then the provisions of such regulations and such amendments relating to such system and such program shall cease to have effect on such 90th day (or, if later, 30 days after the date of the adoption of such resolution).

(4) For purposes of paragraph (3), the continuity of a session of Congress shall be considered to be broken only by an adjournment of the Congress sine die, and the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period under such paragraph.

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Briefly, Mr. Chairman, the bill establishes a merit pay system for supervisors and managers in Grades GS–13 to 15. My amendment would make the merit pay system an experiment to be carried out in three agencies for 2 years. This would parallel the 2-year experimental provision for the Senior Executive Service which we have accepted. After the 2 years are up, the merit pay system will go into effect Government-wide, unless both Houses of Congress veto it. This controversial proposal for attempting to motivate midlevel managers to perform better through monetary incentives should be tested before all managers throughout the Government are brought under the system. I think this is the way to do it.

In discussion with the Chairman of the Civil Service Commission, I find that in his opinion it would take some period of years to launch an effective incentive pay system for these GS–13 to GS–15 middle-level managers, and since it is going to take some time anyway, I think we would all be reassured if my amendment were passed and we said explicitly, as we have with the Senior Executive Service, let us try this out for 2 years on an ample scale and see how it works.

One final word: I am telling the Members from a lot of experience, both personal, in the civil service, and as a Representative of a district that has more civil servants than any other, that we are now talking about more than 9,200 people. We are reaching into tens of thousands, and it is the express intention that if this works, it would be extended all the way down to—what is it—GS–5.

Then we would be dealing with 1 million employees or more, so I think we ought to go a little slowly here to try to do it, to experiment with it, try it on an ample scale for a couple years, which is what it would take anyway to do it intelligently, and then make up our minds.

In my version of the amendment, the merit raise program would go Government-wide, so to speak, unless both Houses of Congress voted to the contrary. If that works, as I hope it does, I think thereafter we can consider extending it farther into the civil service so as to make merit pay characteristic of most of the civil service.

I urge very much that we consider this amendment, although I know it will not meet with the approval of the manager of our bill; but I urge that we consider it carefully and see if we do not want to vote for it as really the best way to go forward here.

I speak now, not as somebody with a lot of civil servants in his district and who is automatically going to vote against this bill. If it can be brought into reasonably good shape, I intend to vote for it and maybe I will vote for it even if this is not passed; but I do urge that we consider this amendment and see if we really do not want to vote for it.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment deals with the middle managers in the Federal Government, the GS–13. 14 and 15 people. Today they get an annual comparability raise in October. Most of them get an annual or biannual step increase, so that every year or two you get a raise unless you are so bad that you are fired. More than 95 percent of the Federal employees get raises every year or 2 years, and they get comparability pay.

What we would do is leave the comparability pay in October alone. Everybody would get that. What we will do is use the step increases for merit pay, so that if somebody does a crackerjack job, that person will be recommended by the supervisor. You would be recommended by your supervisor and get a modest increase in pay. By saying we will try it in two or three departments and if it is bad we will cut it out and if it is good we will have the Executive sign it and find out whether it will work or not.

The gentleman from Virginia has been sincere and I know the gentleman is constructive, but I think it is a bad amendment. I urge its rejection.

Mr. FISHER. Mr. Chairman, will the gentleman yield for a very brief colloquy?

Mr. UDALL. I yield to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, in the first place, my amendment has nothing to do with comparability pay advances or cost-of-living.

Mr. UDALL. I tried to say that.

Mr. FISHER. Yes. Second, on the other type of increase, I too, hope we can go in the direction of this bill. I want to see merit pay pervade the government; but I really think we are stepping along too fast if we apply it everywhere in Government without the trial period. We could choose three departments that would represent a large percent of the total Government employment, even more than 50 percent if the administration wanted to.

I am thinking partly of the morale of all this. I am very close to these civil servants. I think I know them almost as well as I know my own family. Whatever we do here, we are still going to have to rely on these same people to run our Government. Anything that supports them and does not tear down their morale, and yet really gets us on rapidly toward a fair and workable merit pay system, I think really ought to be voted for.

Mr. UDALL. I understand; but the Civil Service Commission says it will take about 3 years to implement this; yet the gentleman would have a judgment made on the scheme at the end of 2 years. I think on that basis alone, it is a poor amendment.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I want to congratulate my colleague, the gentleman from Virginia (Mr. FISHER), for making this recommendation. There was a recommendation made, and it was passed in the committee, that this Senior Executive Service be tried in three departments. That represents hundreds of agencies, not three agencies. Hundreds of agencies are involved in three departments.

I might point out that during that 2-year period there would be reports back to the Congress on the progress being made. A the end of 2 years the Senior Executive Service would spread out over the whole Government unless both Houses of the Congress determined that it should be brought to a stop. It would take legislative action to do that.

What we are attemping to do is to prevent the kind of chaos we have had with the Post Office reorganization. Surely we have learned something there, and surely we ought to recognize that if we move just a little more slowly and a little more surely, we will come up with a better product.

That recommendation did pass in committee. To incorporate this pay schedule so that it can be worked in the same way here makes very good sense. We are not limiting this to a small sample of employees. If the President were to select his three largest agencies, Defense, HEW, and Veterans, he would have over 66 percent of the Government covered. Surely 66 percent is a large enough sampling so that the Congress is able to keep an eye on what is going on.

Oversight after chaos is very difficult. It is far better that we monitor what is happening and change the rules if we

need to change the laws if we need to in order to help the administration administer the program.

Mr. Chairman, let us do it properly. I commend the gentleman from Virginia (Mr. FISHER) for his recommendation.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I will use very little time, Mr. Chairman. I would like to point out that one might be tempted to refer to this as an amendment that guts the program, but the gentleman from Virginia (Mr. FISHER) is more of an expert in finesse than he is in gutting. He is not the type that guts; he is smooth, he is effective, he is knowledgeable, and he is scholarly. He has a wonderful approach to legislation.

But the effect of this amendment would really be to limit the program to a 2-year minimum period, and it would be difficult to get an honest evaluation in that time. The best guesses are that it would take anywhere from 3 to 5 years to implement major parts of this law, and it would be unwise to have sunset after 2 years without a fair period of evaluation, given the sheer size of this Government of ours and the obvious time it will take to really understand and see the workings of this new program.

I think limiting the program to just 2 years is too arbitrary. It is just too brief a period. I suggest, using pure commonsense and taking into consideration the headaches of a massive government structure such as the one we have, the job obviously cannot be done in 2 years, and this amendment is too restrictive.

Mr. FISHER. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. Of course, I will yield to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, I really think this phrase of "gutting" the program is a bit overdone.

Mr. DERWINSKI. I did not say the gentleman was gutting the program; I said the gentleman was finessing it.

Mr. FISHER. Mr. Chairman, in the gentleman's own fairly smooth and attractive manner, however, that is what he implied.

I have no intention of gutting the program. As I said several times over, it is altogether likely that I will vote for this bill even if it does not contain this amendment along with some of the others. I may be the only Member who comes from a district dominated by Federal employment who is likely to do that.

This does not gut the bill at all. It simply says: Let us try it out on a large scale for 2 years, and then we can make changes. But if we do not do anything, then automatically it goes Government-wide unless both bodies vote to the contrary. In no way can this directly or by implication be thought of as gutting what I consider to be a bill with very, very many important, innovative, and necessary features for the improvement of our Government.

Mr. DERWINSKI. Mr. Chairman, for the record, let me state that I had no intention of stating that the gentleman from Virginia (Mr. FISHER) was gutting the bill. I want to make it clear that what he is doing is imposing artificial restraints within which the management prerogative we all envision could not logically be properly implemented.

Mrs. SPELLMAN. Mr. Chairman, will the gentleman yield so that I may ask the gentleman from Virginia a question?

Mr. DERWINSKI. I yield to the gentlewoman from Maryland.

Mrs. SPELLMAN. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from Virginia (Mr. FISHER) if he does not have a provision there which says that at the end of the 2 years this program automatically extends over the entire Government unless it is aborted by definite action by the Congress.

Mr. FISHER. That is correct.

Mrs. SPELLMAN. Both Houses of Congress?

Mr. FISHER. That is correct.

Mrs. SPELLMAN. Then it certainly is not a limited program, it is not just a small trial; it is an attempt to move into a new program, and one that is really quite different, at a deliberate pace.

Mr. FISHER. The gentlewoman has stated the matter correctly.

Mrs. SPELLMAN. I thank the gentleman.

Mr. DERWINSKI. But you would, in fact, say it is premature judgment by the Congress because of the lack of time to fully be able to understand and appreciate what is being done?

Mrs. SPELLMAN. If by "premature" the gentleman means before chaos has completely set in, I would hope so.

Mr. DERWINSKI. No. I am saying before efficiencies will be demonstrated in the civil service, then all of us in a nonpolitical fashion could appreciate it.

Mrs. SPELLMAN. I think we would have a pretty good idea of the route it was taking, and also the administration would be forced to do a better job because the eye of the Congress was upon it.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. FISHER).

The question was taken; and on a division (demanded by Mr. FISHER) there were—ayes 9, noes 38.

So the amendments were rejected.

The CHAIRMAN. Are there other amendments to title V?

There being none, the Clerk will read title VI.

The Clerk read as follows:

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

SEC. 601. (a) Part III of title 5, United States Code, is amended by adding at the end of subpart C thereof the following new chapter:

"Chapter 47.—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

"Sec.
"4701. Definitions.
"4702. Research programs.
"4703. Demonstration projects.
"4704. Allocation of funds.
"4705. Reports.
"4706. Regulations.

"§4701. Definitions

"For the purpose of this chapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office.

"(2) 'employee' means an individual employed in or under an agency;

"(3) 'eligible' means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

"(4) 'demonstration project' means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

"(5) 'research program' means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"§ 4702. Research programs

"The Office of Personnel Management shall—

"(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

"(2) evaluate the research programs established under paragraph (1) of this section;

"(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

"(4) carry out the preceding functions directly or through agreement or contract.

"§ 4703. Demonstration projects

"(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority to take the action contemplated, or by any provision of law in effect which is inconsistent with the action, including any law or regulation relating to—

"(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

"(2) the methods of classifying positions and compensating employees;

"(3) the methods of assigning, reassigning, or promoting employees;

"(4) the methods of disciplining employees;

"(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

"(6) hours of work per day or per week;

"(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

"(8) the methods of reducing overall agency staff and grade levels.

"(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office of Personnel Management shall—

"(1) develop a plan for such project which identifies—

"(A) the purposes of the project;

"(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

"(C) the number of employees or eligibles to be included, in the aggregate and by category;

"(D) the methodology;

"(E) the duration;

"(F) the training to be provided;

"(G) the anticipated costs;

"(H) the methodology and criteria for evaluation;

"(I) a specific description of any lack of specific authority for any aspect of the project; and

"(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project as proposed;

"(2) publish the plan in the Federal Register;

"(3) submit the plan so published to public hearing; and

"(4) transmit a copy of the plan, taking into account any revision resulting from the hearing, to each House of the Congress.

"(c)(1) Any demonstration project under this section may not be undertaken, or any agreement or contract with respect to such project may not be entered into, unless—

"(A) the plan under subsection (b) of this section for the project is approved by each agency involved;

"(B) a copy of the plan, as so approved, is transmitted to each House of the Congress; and

"(C) the plan is disapproved by either House of the Congress during the first period of 60 calendar days of continuous session of the Congress after the date on which the plan is transmitted to such House.

"(2) For the purpose of paragraph (1)(C) of this subsection—

"(A) the continuity of a session is broken only by an adjournment of the Congress sine die; and

"(B) the days on which either House of the Congress is not in session because of an adjournment of more than 3 calendar days to a day certain are excluded in the computation of the 60-day period.

"(d) No demonstration project under this section may provide for a waiver of—

"(1) any provision of chapter 63 (relating to leave) or subpart G (relating to insurance and annuities) of this title;

"(2) any provision of law—

"(A) referred to in section 2302(b)(1) of this title;

"(B) providing for equal employment opportunity through affirmative action under any such provision of law;

"(C) providing any right or remedy available to any employee or applicant for employment in the civil service under any such provision of law;

"(3) any provision of chapter 15 or subchapter III of chapter 73 of this title (relating to political activity); or

"(4) any rule or regulation issued under the provisions of law referred to in paragraph (1), (2), or (3) of this subsection.

"(e)(1) Each demonstration project shall—

"(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

"(B) terminate before the end of the 5-year period beginning on the date of the transmittal to each House of the Congress by the Office of Personnel Maagement of a copy of the plan for the project under subsection (b)(4) of this section, except that research may continue beyond the date to the extent necessary to validate the results of the project.

"(2) Not more than 10 demonstration projects may be contracted for or conducted at any time.

"(f) Subject to the terms of any written agreement or contract between the Office of Personnel Management and an agency, a demonstration project involving the agency may be terminated by the Office of Personnel Management, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

"(g) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under section 7111 of this title shall not be included within any project under subsection (b) of this section—

"(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

"(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

"(h) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under section 7111 of this title shall not be included within any project under subsection (b) of this section unless there has been agency consultation regarding the project with the employees in the unit.

"(i) The Office of Personnel Management shall evaluate the results of each demonstration project and its impact on improving public management.

"(j) Upon the request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (i) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

"§ 4704. Allocation of funds

"Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office of Personnel Management to any agency conducting demonstration projects or assisting the Office of Personnel Management in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

"§ 4705. Reports

"The Office of Personnel Management shall include in the annual report required by section 1308 of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

"§ 4706. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.".

(b) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 45 the following new item:

"47. Personnel Research Programs and Demonstration Projects—4701".

INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

SEC. 602. (a) Section 208 of the Intergovernmental Personnel Act of 1979 (42 U.S.C. 4728) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"TRANSFER OF FUNCTIONS AND ADMINISTRATION OF MERIT POLICIES

(2) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c), (d), (e), (f), (g), and (i), respectively, and by inserting after subsection (a) the following new subsection:

"(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office of Personnel Management for positions engaged in carrying out such programs. The standards shall include the merit principles in section 2 of this Act."; and

(3) by inserting after subsection (g), as redesignated by this section, the following new subsection:

"(h) Effective one year after the date of the enactment of this subsection, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

"(1) those requirements listed in subsection (a) of this section;

"(2) those that generally prohibit discrimination in employment or require equal employment opportunity;

"(3) the Davis-Bacon Act (40 U.S.C. 276 et seq.); and

(4) chapter 15 of title 5, United States Code, relating to political activities of certain State and local employees.".

(b) Section 401 of such Act (84 Stat. 1920) is amended by striking out "governments and institutions of higher education" and inserting in lieu thereof "governments, institutions of higher education, and other organizations".

(c) Section 403 of such Act (84 Stat. 1925) is amended by striking out "(less applicability to commissioned officers of the Public Health Service)".

(d) Section 502 of such Act (42 U.S.C. 4762) is amended in paragraph (3) by inserting "the Trust Territory of the Pacific Islands," before "and a territory or possession of the United States,".

(e) Section 506 of such Act (42 U.S.C. 4766) is amended—

(1) in subsection (b)(2), by striking out "District of Columbia" and inserting in lieu thereof "District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands"; and

(2) in subsection (b)(5), by striking out "and the District of Columbia" and inserting in lieu thereof", the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands".

AMENDMENTS TO THE MOBILITY PROGRAM

SEC. 603. (a) Section 3371 of title 5, United States Code, is amended—

(1) by inserting "the Trust Territory of the Pacific Islands," after "Puerto Rico," in paragraph (1)(A); and

(2) by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following:

"(3) 'Federal agency' means an Executive agency, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other appropriate agencies of the legislative and judicial branches as determined by the Office of Personnel Management; and

"(4) 'other organization' means—

"(A) a national, regional, State-wide, or metropolitan organization representing member State or local governments;

"(B) an association of State or local public officials; or

"(C) a nonprofit organization, one of whose principal functions is to offer professional advisory, research, or development services, or related services, to governments or universities concerned with public management.".

(b) Sections 3372 through 3375 of title 5, United States Code, are amended by striking out "executive agency" and "an executive agency" each place they appear and inserting in lieu thereof "Federal agency" and "a Federal agency", respectively.

(c) Section 3372 of title 5, United States Code, is further amended—

(1) in subsection (a)(1), by inserting after "agency" the following: ", other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy determining, or policy-advocating character,";

(2) in subsection (b)(1), by striking out "and";

(3) in subsection (b)(2), by striking out the period after "agency" and inserting in lieu thereof a semicolon;

(4) by adding at the end of subsection (b) the following:

"(3) an employee of a Federal agency to any other organization; and

"(4) an employee of an other organization to a Federal agency,"; and

(5) by adding at the end thereof (as amended in paragraph (4) of this subsection) the following new subsection:

"(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve with the agency upon the completion of the assignment for a period equal to the length of the assignment.

"(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the Federal agency involved) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.".

(d) Section 3374 of title 5, United States Code, is further amended—

(1) by adding the following new sentence at the end of subsection (b):

"The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.";

(2) in subsection (c)(1), by striking out the semicolon at the end thereof and by inserting in lieu thereof the following: ", except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;"; and

(3) by striking out the period at the end of subsection (c) and adding the following: ", or for the contribution of the State or local government, or a part thereof, to employee benefit systems.".

(e) Section 3375(a) of title 5, United States Code, is further amended by striking out "and" at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) thereof the following:

"(5) section 5724(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that title VI be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Are there any amendments to title VI?

AMENDMENT OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLARZ: Page 288, insert after line 11 the following new subtitle:

Subtitle D—Federal Employees Flexible and Compressed Work Schedules

CONGRESSIONAL FINDINGS

SEC. 631. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

DEFINITIONS

SEC. 632. For the purpose of this subtitle—

(1) the term "agency" means an Executive agency and a military department (as such terms are defined in section 105 and 102, respectively, of title 5, United States Code);

(2) the term "employee" has the meaning set forth in section 2105 of title 5, United States Code;

(3) the term "Office" means the Office of Personnel Management; and

(4) the term "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

EXPERIMENTAL PROGRAM

SEC. 633. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 662 of this subtitle and the terms of any written agreement referred to in section 662(a) of this subtitle, the Office shall establish a program which provides for the conducting of experiments by the Office under parts 1 and 2 of this subtitle. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

(2) Each agency may conduct one or more experiments under parts 1 and 2 of this subtitle. Such experiments shall be subject to such regulations as the Office may prescribe under section 665 of this subtitle.

(b) The Office shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Office will study and evaluate experiments conducted under parts 1 and 2 of this subtitle. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

(1) the efficiency of Government operations;

(2) mass transit facilities and traffic;

(3) levels of energy consumption;

(4) service to the public;

(5) increased opportunities for full-time and part-time employment; and

(6) individuals and families generally.

(c) The Office shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this subtitle.

(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) of this section would substantially disrupt the agency in carrying out its functions, such agency head shall request the Office to exempt such agency from the requirements of any experiment conducted by the Office under subsection (a) of this section. Such request shall be accompanied by a report detailing the reasons for such determination. The Office shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Office shall exclude the agency from the experiment until the Office has made its determination or until 180 days after the date the request is filed, whichever first occurs.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS DEFINITIONS

SEC. 641. For the purpose of this part—

(1) the term "credit hours" means any hours, within a flexible schedule established under this part, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

(2) the term "overtime hours" means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

FLEXIBLE SCHEDULING EXPERIMENTS

SEC. 642. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday. An election by an employee referred to in paragraph (2) of this subsection shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle—

(1) any experiment under subsection (a) of this section may be terminated by the Office if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) of this section is being substantially disrupted in carrying out its

functions or is incurring additional costs because of such participation, such agency head may—

(A) restrict the employees' choice of arrival and departure time,

(B) restrict the use of credit hours, or

(C) exclude from such experiment any employee or group of employees.

(c) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 643. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 642 of this subtitle—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 646 of this subtitle or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork shall not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of title 5, United States Code, and section 4107(e)(2) of title 38, United States Code, night differential shall not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this part—

(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

HOLIDAYS

SEC. 644. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this part is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office).

TIME-RECORDING DEVICES

SEC. 645. Notwithstanding section 6106 of title 5, United States Code, the Office or any agency may use recording clocks as part of its experiments under this part.

CREDIT HOURS: ACCUMULATION AND COMPENSATION

SEC. 646. (a) Subject to any limitation prescribed by the Office or the agency, a full-time employee on a flexible schedule may accumulate not more than 10 credit hours, and a part-time employee may accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule experiment under this part and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES DEFINITIONS

SEC. 651. For the purpose of this part—

(1) the term "compressed schedule" means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

(2) the term "overtime hours" means any hours in excess of those specified hours which constitute the compressed schedule.

COMPRESSED SCHEDULE EXPERIMENTS

SEC. 652. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) of this section unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) of this section would impose a personal hardship on such employee, shall—

(A) except such employee from such experiment; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such experiment,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle, any experiment under subsection (a) of this section may be terminated by the Office, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

(d) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 653. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) of this section are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), whichever provisions are more beneficial to the employee.

PART 3—ADMINISTRATIVE PROVISIONS

ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

SEC. 661. For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under part 1 or 2 of this subtitle, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

SEC. 662. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under part 1 or 2 of this subtitle except to the extent expressly provided under a written agreement between the agency and such organization.

(b) The Office or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 643 or 653 of this subtitle, as applicable.

PROHIBITION OF COERCION

SEC. 633. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under part 1 of this subtitle to elect a time of arrival or departure to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 652 (b) (1) of this subtitle to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 652(b)(2) of this subtitle.

For the purpose of the preceding sentence the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(b) Any employee who violates the provisions of subsection (a) of this section shall, upon a final order of the Merit Systems Protection Board, be—

(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Board may prescribe;

(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

(3) disciplined in such other manner as the Board shall deem appropriate.

The Board shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

REPORTS

SEC. 664. Not later than 2½ years after the effective date of parts 1 and 2 of this subtitle, the Office shall—

(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this subtitle, and

(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Office shall prepare a final report with regard to experiments conducted under this subtitle and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

REGULATIONS

SEC. 665. The Office shall prescribe regulations necessary for the administration of the foregoing provisions of this subtitle.

EFFECTIVE DATE

SEC. 666. The provisions of section 633 of this subtitle and parts 1 and 2 of this subtitle shall take effect on the 180th day after the date of the enactment of this Act.

Page 273, insert after line 2 the following: "Subtitle A—Research Programs and Demonstration Projects".

Page 282, insert before line 4 the following: "Subtitle B—Intergovernmental Personnel".

Page 282, line 5, strike out "602." and insert in lieu thereof "611.".

Page 284, insert after line 10 the following: "Subtitle C—Mobility Program".

Page 284, line 12, strike out "603." and insert in lieu thereof "621.".

Page 130, in the table of contents, strike out the items relating to title VI and insert in lieu thereof the following new items:

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

Subtitle A—Research Programs and Demonstration Projects

Sec. 601. Research programs and demonstration projects.

Subtitle B—Intergovernmental Personnel

Sec. 611. Intergovernmental Personnel Act amendments.

Subtitle C—Mobility Program

Sec. 621. Amendments to the mobility program.

Subtitle D—Federal Employees Flexible and Compressed Work Schedules

Sec. 631. Congressional findings.
Sec. 632. Definitions.
Sec. 633. Experimental program.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS

Sec. 641. Definitions.
Sec. 642. Flexible scheduling experiments.
Sec. 643. Computations of premium pay.
Sec. 644. Holidays.
Sec. 645. Time-recordings devices.
Sec. 646. Credit hours; accumulation and compensation.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

Sec. 651. Definitions.
Sec. 652. Compressed schedule experiments.
Sec. 653. Computation of premium pay.

PART 3—ADMINISTRATIVE PROVISIONS

Sec. 661. Administration of leave and retirement provisions.
Sec. 662. Application of experiments in the case of negotiated contracts.
Sec. 663. Prohibition of coercion.
Sec. 664. Reports.
Sec. 665. Regulations.
Sec. 666. Effective date.

Mr. SOLARZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SOLARZ. Mr. Chairman, I will be very brief. This amendment provides for the establishment of an experimental flexitime program under the supervision of the Civil Service Commission throughout the Federal Government.

It came before the House a few months ago in bill form. At that time it was supported by the administration, by all of the relevant Federal employee unions, and by the majority and minority managers of the bill. Indeed, it passed the House by an overwhelming margin and it was sent over for the consideration of the other body. After a relatively brief period of time is was reported out by two separate committees in the other body, both of which had jurisdiction over the bill, without any dissenting votes in either of them. And, in fact, it was scheduled to be taken up on the calendar of the other body today. Unfortunately, however, one of the distinguished Members of the other body had an amendment to the bill which clearly was not germane, and the manager of the legislation said he would not call up the bill on the Senate floor if his colleague in the Senate insisted on offering this nongermane amendment.

To the extent that the author of the amendment has indicated his intention to offer this nongermane amendment, which has nothing whatever to do with flexitime itself, it means the other body will probably not take up the flexitime bill during the remainder of the session, despite the fact that it was voted out unanimously by two separate committees in the other body, and no objections to the bill itself have surfaced in the Senate.

Consequently, I am offering it today as an amendment to title VI. So if it is passed by the House today, as I hope and trust it will, it should be accepted by the Senate conferees, and thus become law.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I support the amendment.

Mr. SOLARZ. Mr. Chairman, I appreciate the gentleman's support.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Chairman, as I recall, when we passed the flexitime measure, there was also a part-time provision. Does the gentleman's amendment include both part-time and flexitime?

Mr. SOLARZ. No; that was a separate bill. It does not include the part-time provision which passed the House as a separate piece of legislation.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

Mr. Chairman, does the gentleman's amendment contain the religious holiday aspects, as passed in the House?

Mr. SOLARZ. No; that was adopted in the committee a few hours ago.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. SOLARZ).

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to title VI?

There being none, the Clerk will read title VII.

The Clerk read as follows:

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Sec. 701. So much of subpart F of part III of title 5, United States Code, as precedes

subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F—Labor-Management and Employee Relations

"Chapter 71—LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"7101. Findings and purpose.
"7102. Employees' rights.
"7103. Definitions; application.
"7104. Federal Labor Relations Authority.
"7105. Powers and duties of the Authority.
"7106. Management rights.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"Sec.
"7111. Exclusive recognition of labor organizations.
"7112. Determination of appropriate units for labor organization representation.
"7113. National consultation rights.
"7114. Representation rights and duties.
"7115. Allotments to representatives.
"7116. Unfair labor practices.
"7117. Duty to bargain in good faith; compelling need.
"7118. Prevention of unfair labor practices.
"7119. Negotiation impasses; Federal Service Impasse Panel.
"7120. Standards of conduct for labor organizations.

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

"Sec.
"7121. Grievance procedures.
"7122. Exceptions to arbitral awards.
"7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.
"7131. Reporting requirements for standards of conduct.
"7132. Official time.
"7133. Subpenas.
"7134. Compilation and publication of data.
"7135. Regulations.
"7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in such capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities,

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter, and

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose work as such an employee (determined under the preceding provisions of this paragraph) has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official; or

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority; or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

"(B) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; or

"(C) an organization sponsored by an agency;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective baragining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to confer, consult, and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition;

"(B) relating to political activities prohibited under subchapter III of chapter 73 of this title; or

"(C) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished

by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related worked under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election, or

"(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter.

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b) An agency may file an application with the Authority requesting that it, or any unit thereof, be excluded from any provision or requirement of this chapter. The Authority shall—

"(1) review the application, and

"(2) undertake any other investigation it considers appropriate.

If, upon completion of its review and investigation, the Authority determines that the agency, or any unit thereof, has a primary function intelligence, counterintelligence, investigative, or security work, and that any requirement or provision of this chapter cannot be applied to the agency, or unit thereof, with respect to which such a determination has been made in a manner consistent with national security requirements and considerations, the Authority may issue an order excluding the agency, or unit thereof, with respect to which such a determination has been made from such requirement or provision.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office,

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed by the President.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter,

"(C) intervene before the Authority in proceedings brought under section 7118 of this title, and

"(D) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions.

"(e)(1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(g) In order to carry out its function under this chapter, the Authority may—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title.

"§ 7106. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws—

"(A) to direct employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; and

"(C) to take whatever actions may be necessary to carry out the agency mission during national emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) procedures which management officials of the agency will observe in exercising their authority to determine the mission, budget, organization, number of employees, and internal security of the agency, or

"(2) appropriate arrangements for employees adversely affected by the exercise of the authority described in subsection (a) of this section by such management officials.

"SUBSECTION II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

"(b)(1) If a petition is filed with the Authority—

"(A) by any person alleging—

"(i) in the case of an appropriate unit for which there is no exclusive representative that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(ii) in the case of an appropriate unit for which there is an exclusive representative that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(B) by any person seeking clarification

of, or an amendment to, a certification then in effect or a matter relating to representation;

"the Authority shall investigate the petition, and if it has reasonable cause to believe that question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. Except as provided under subsection (e) of this section, if the Authority finds on the record of the hearing that a question of representation exists, the Authority shall, subject to paragraph (2) of this subsection, conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(2)(A) If, after the 45-day period beginning on the date on which the petition is filed pursuant to paragraph (1) of this subsection, unresolved issues exist concerning—

"(i) the appropriateness of the unit in accordance with section 7112 of this title;

"(ii) the eligibility of one or more employees to vote in the proposed election; or

"(iii) other matters determined by the Authority to be relevant to the election;

the Authority shall direct an election by secret ballot in the unit specified in the petition and announce the results thereof.

"(B) After conducting an election under subparagraph (A) of this paragraph, the Authority shall expedite the resolution of any disputed issues described in subparagraph (A) of this paragraph. If the Authority determines that matters raised by the disputed issues did not affect the outcome of the election, the Authority shall certify the results of the election. If the Authority determines that the matters affected the outcome of the election, it shall conduct a new election by secret ballot in accordance with such requirements as are appropriate on the basis of its determination, and shall certify the results thereof.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such deletion, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) The Authority may, on the petition of a labor organization, certify the labor organization as an exclusive representative—

"(1) if, after investigation, the Authority determines that the conditions for a free and untrammeled election under this section cannot be established because the agency involved has engaged in or is engaging in an unfair labor practice described in section 7116(a) of this title; or

"(2) if, after investigation, the Authority determines that—

"(A) the labor organization represents a majority of employees in an appropriate unit;

"(B) the majority status was achieved without the benefit of any unfair labor practice described in section 7116 of this title;

"(C) no other person has filed a petition for recognition under subsection (b) of this section or a request for intervention under subsection (c) of this section; and

"(D) no other question of representation exists in the appropriate unit.

"(f) Any labor organization described in section 7103(a)(16)(B)(ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(g) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(h) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collection bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

"(A) the collective bargaining agreement has been in effect for more than 3 years, or

"(B) the petition for exclusive recognition is filed during the 4-month period which begins on the 180th day before the expiration date of the collective bargaining agreement; or

"(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election involving any of the employees in the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative or chose not to be represented by any labor organization.

"(i) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

"§ 7112. Determination of appropriate units for labor organization representation

"(a)(1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

"(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

"(1) except as provided under section 7136(a)(2) of this title, any management official or supervisor, except that, with respect to a unit or majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to insure that the duties are discharged honestly and with integrity.

"(c) Two or more units which are in an agency and for which a labor organization is the exclusive representative by reason of elections within each of the units shall be consolidated into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"(d) In the case of the reorganization of one or more units for which, before the reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

"§ 7113. National consultation rights

"(a)(1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

"§ 7114. Representation rights and duties

"(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership. An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(1) any discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance, personnel policy or practice, or other conditions of employment; or

"(2) any discussion between an employee in the unit and a representative of the agency if the employee reasonably believes that the employee may be the subject of disciplinary action.

Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any conditions of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data which is normally maintained by the agency in the regular course of business, and which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

"§ 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or disscriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement: or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the term or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult, confer, or negotiate in good faith with an agency as required by this chapter:

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to call or engage in a strike, work stoppage, or slowdown, or to condone any such activity by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law; or

"(2) any grievance procedure negotiated pursuant to section 7121 of this title;

may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

"§ 7117. Duty to bargain in good faith; compelling need

"(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with Federal law, extend to matters which are the subject of any rule or regulation which is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law, extend to matters which are the subject of any Government-wide rule or regulation for which the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists.

"(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any Government-wide rule or regulation which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines, after a hearing under this section, that compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection

shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

§ 7118. Prevention of unfair labor practices

"(a)(1) If an agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period.

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

"(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(C) requiring an award of reasonable attorney fees;

"(D) requiring reinstatement of an employee with back pay, together with interest thereon; or

"(E) including any combination of the actions described in subparagraph (A) through (D) of this paragraph or such other actions as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(7) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

"§ 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse.

"(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings;

"(2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and

"(3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to its members.

"(b) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official or a supervisor, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement applies may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representive, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance and satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

"(2) retirement, life insurance, or health insurance; or

"(3) a suspension or removal under section 7532 of this title.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration. If upon review the Authority finds that the award is deficient because—

"(1) it is contrary to any law, rule, or regulation;

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title) together with interest thereon.

§ 7123. Judicial review: enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

"§ 7132. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section—

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

"§ 7133. Subpenas

"(a) For the purpose of any hearing or investigatiion which the Panel or the Authority, or any member of the Authority or any individual employed by the Authority

and designated for such purpose, (hereinafter in this section referred to as the 'issuer') determines is necessary and proper for the exercise of its responsibilities under this chapter, the issuer shall at all reasonable times have access to, for the purpose of examination and copying any evidence relating to the subject matter of the hearing or investigation The issuer may, on the application of any party or on its own initiative, issue subpenas requiring the attendance and testimony of witnesses, the production and examination of any books or papers (including those of the Federal Government to the extent otherwise available under law), or any other evidence relating to the hearing or investigation requested in any such application or considered by the issuer to be relevant. Within 5 days after the service of a subpena on any person requiring the production of any evidence the person may petition the issuer to revoke, the subpena. The issuer shall revoke the subpena if in its opinion the evidence sought under the subpena does not relate to any matter under consideration in the hearing or investigation, or if in its opinion the subpena does not describe with sufficient particularity the evidence.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses appearing pursuant to a subpena issued under subsection (a) of this section shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"(d) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena under this section on the ground that the testimony or evidence required of the person may tend to incriminate or subject the person to a penalty or forfeiture, except that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction or other matter concerning which the person is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, except that the person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(e) Any person who shall willfully resist, prevent, impede, or interfere with any member of the Authority or Panel or any individual employed by the Authority or Panel in the performance of duties pursuant to this chapter shall be published by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

"§ 7134. Compilation and publication of data

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the tests of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

"§ 7135. Regulations

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

"§ 7136. Continuation of existing laws, recognitions, agreements, and procedures

"(a) Nothing contained in this chapter shall preclude—

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.".

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code, is amended to read as follows:

"(b) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or a part of the pay, allowances or differentials of the employee—

"(1) is entitled, on correction of personnel action, to receive for the period for which the personnel action was in effect—

"(A) an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period;

"(B) interest on the amount payable under subparagraph (A) of this paragraph; and

"(C) reasonable attorney fees and reasonable costs and expenses of litigation related to the personnel action; and

"(2) for all purposes, is deemed to have performed service for the agency during that period, except that—

"(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

For the purposes of this subsection, 'grievance' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practice' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

"Chapter 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

"Sec.
"7201. Antidiscrimination policy; minority recruitment program.
"7202. Marital status.
"7203. Handicapping condition.
"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"7211. Employees' right to petition Congress.";

and

(3) by adding at the end thereof the following new subchapter:

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"§ 7211. Employees' right to petition Congress

"The right of employees, individual or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.".

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies..... 7101"

and inserting in lieu thereof

"Subpart F—Labor-Management and Employee Relations

"71. Labor-management Relations... 7101
"72. Antidiscrimination; Right to Petition Congress..... 7201".

(c)(1) Section 2105(c)(1) of title 5, United States Code, is amended by striking out "and 7143" and inserting in lieu thereof "and 7204".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 39, United States Code, is amended by striking out "chapters 71 (employee policies)" and inserting in lieu thereof the following: "chapters 72 (antidiscrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority.".

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

"(145) Members, Federal Labor Relations Authority (2), and its General Counsel.".

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(b) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c)(1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code;

(C) or any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title VII, and that it be printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENT OFFERED BY MR. ERLENBORN

Mr. ERLENBORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN: Page 288, strike line 12 and all that follows thereafter through line 12 on page 348.

Mr. ERLENBORN. Mr. Chairman, I join with the gentleman from Illinois, my colleague (Mr. DERWINSKI) in supporting the basic concept contained in this bill for civil service reform. This itself is a very complex subject, but it is a very laudable and a very necessary goal. The question I think that is given to the House at this point is whether we should at the same time consider another very complex question that will impinge upon and, in some way, affect the goals of civil service reform; that is, to reform our labor-management relations at the same time.

I submit that we should not, that if we are to move from the present labor-management relations controls that are contained in the President's Executive order, it should be done in separate legislation and probably after civil service reform has been enacted and we have had an opportunity to see how that works under the present labor-management rules.

In submitting a civil service reform package in March, the President did not—did not—include legislation to rewrite the Executive order governing labor-management relations, nor even to take the present Executive order and write it into law. Later, he apparently agreed to make his Executive order statutory. As late as his August 3 forum in Fairfax County, he admitted that a few technical amendments had been worked out with Ken Blaylock, the head of some of the Government unions, and with the union, before the legislation was introduced. That is what is now title VII, the collective-bargaining legislation.

He said that this would in some way expand the Executive order, and I quote, "in ways that I do not understand."

In other words, the President suggested that he did want the Executive order, per se, written into law, and that there were some agreements reached with the union chief that the President himself did not understand. He went on to add that his preference is to limit the collective-bargaining processes of this legislation to what was included in the Executive order.

Now, when administration officials sent to Congress on May 10 a proposed title VII on labor relations, it was headlined as incorporating into law the existing Federal employee labor relations program. Title VII before us, as reported by the committee, is not the Executive order. The changes are not, as the President referred to them, a few technical amendments. I think we had better understand the differences before anyone votes for title VII, because we all know how important a few changes and a few words here and there may be.

We should not make it possible for some Federal officials to give a union exclusive recognition, with all that conveys, without an election, but that is in title VII. Members may recall H.R. 77, which was the predecessor to the famous labor law reform bill, contained such a provision, certification of a union as the exclusive bargaining agent for a unit of Government without an election before determining that they are supported by a majority of the employees in that unit.

Even President Carter rejected that concept and before he supported a labor law reform bill insisted that certification without election come out of the bill—and so it did:

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. The gentleman made reference to H.R. 7700. I do not think it is related to this at all.

Mr. ERLENBORN. I am sorry. The gentleman misunderstood me. I said H.R. 77. H.R. 77 was in the Education and Labor Committee and was the first of a series of bills labeled labor law reform.

Mr. CHARLES H. WILSON of California. Then the gentleman is not talking about the great bill the gentleman from New York (Mr. HANLEY) and I brought out. I thought that was it.

Mr. ERLENBORN. No. It is a different bill altogether.

There is another provision. Under the current law and the Executive order a strike by Federal employees is illegal. The provision here in title VII instead makes it merely an unfair labor practice.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLENBORN) has expired.

(By unanimous consent, Mr. ERLENBORN was allowed to proceed for 5 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, under the Executive order an illegal strike by Federal employees causes the union that has been certified as the bargaining agent to lose their status an exclusive agent.

The bill creates a divisive factor in Federal employment between union members and bargaining units and may affect employees who feel no need to affiliate with a labor union in such because under this bill they will be provided a two-track appeals process concerning disciplining of an employee or denial of automatic salary increases or disciplining action.

This also will produce a major incentive to vote for union representation or to join the union if one has been certified so that the individual employee will have this additional appeal alternative.

The bill allows a union with only 10 percent representation in the unit under question to negotiate for a voluntary dues check off, a form of union security. Now this is a strange provision in that a governmental agency as the employer will be required to bargain with a union that represents as little as 10 percent of the members of the bargaining unit for the purpose of check off. Agency discretion for withholding dues is removed. That discretion is now current under the Executive order.

The definition of dues is expanded to include assessments, which is extraordinary. That is not true under the Executive order. It is not true under the National Labor Relations Act. It means though that those who have agreed, an employee who has agreed to a check off will also have union assessments taken off his pay automatically. A worker who agrees to dues check off today commits himself only for a 6-month period. Title VII will commit without chance to change to his mind to that employee to a 1-year period.

How does title VII relate to the major objective of this bill, and that is change in the merit system? We do not know, because we have not had time to consider the relationship but it is altogether likely that negotiated contracts under title VII may directly go contrary to the major thrust and objective of the balance of the bill.

To top it off, title VII goes far beyond telling agency managers to meet and confer with unions as the Executive order currently does, it will order the manager to reach an agreement with the union. By adding two words to the definition of labor organization, title VII could allow other than public employee unions to represent Federal employees. Let us say, then, that we have a private sector union that organizes a unit in an agency in the Federal Government. Will then strife in the private sector lead to picketing at the Federal agency and refusal of Federal employees to cross the

picket line, thus interfering with governmental business? It is altogether possible.

Expanding the scope of the Executive order as title VII will do means that we will need more administrative law judges, probably with all of the attendant personnel such as regional directors and their supporting personnel. Thus title VII will be expanding the Federal bureaucracy and adding to the cost of Government.

If you really want to tell your constituents that you voted for a civil service reform bill that is going to give the Government the flexibility and the abilities that are necessary for effective Government management, I urge you to vote to strike title VII. That will leave the Executive order in place governing labor-management relations and we will be able to get on with the business of civil service reform and if we desire later to change labor-management relations beyond this Executive order, this Congress will have the ability to do so.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, I thank the gentleman from Illinois (Mr. ERLENBORN) for yielding to me and I believe that he has summed it up well in just suggesting, very plainly, that we should strike this particular section of the bill.

I was impressed with a letter I received from the Chamber of Commerce of the United States.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. COLLINS of Texas and by unanimous consent, Mr. ERLENBORN was allowed to proceed for 2 additional minutes.)

Mr. COLLINS of Texas. Mr. Chairman, if the gentleman will continue to yield, the letter said:

> However, title VII goes so far beyond Executive Order 11491 that an entirely new system is created which clearly ignores the essential differences between private and public sector labor relations.

So what the gentleman has said is that this is not the time or the place or the bill to change this legislation.

I think the gentleman has summed it up well.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I thank the gentleman for yielding. I might say that I am a little bit concerned, I just do not know what the gentleman is referring to about the issue of a strike. And on page 320, it indicates that calling a strike on behalf of a union, constitutes an unfair labor practice.

Mr. ERLENBORN. That is right. What I was pointing out is that at the present time it is illegal, not just an unfair labor practice, an illegal strike by Federal employees, supported by their union will lead to the union no longer being allowed to be the exclusive bargaining agent. Now that will be changed, in substance, by this title VII.

Mr. GLICKMAN. If the gentleman will yield further, participating in or calling an illegal strike, being in violation of any other Federal laws, or perhaps other criminal laws—or does this section supersede anything like that? What I am trying to figure out, does this apply only to an unfair strike, or do other applications of the Federal law still prohibit the strike?

Mr. ERLENBORN. So far as I know this will be the only remedy, the unfair labor practice charge and no longer will it lead to decertification of the union or the union being any longer considered the exclusive bargaining agent for bargaining purposes.

Mr. FORD of Michigan. Mr. Chairman, if the gentleman will yield, I know the gentleman from Illinois (Mr. ERLENBORN) and I are totally in disagreement on some issues, and have been for the past 14 years, we have been in disagreement, but I know the gentleman well enough to know that he would not be wanting to mislead the Members, but the prohibition against Federal employees striking is in a single sentence which prohibits them from joining any organization.

The CHAIRMAN. The time of the gentleman has again expired.

(On request of Mr. FORD of Michigan, and by unanimous consent, Mr. ERLENBORN was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, as I was saying, that prohibits them from joining any organization advocating the overthrow of the Government by force or violence, or as mentioned, participating in a strike, and the Supreme Court has said that the effect of the strike provision is not enforceable because it is in violation of the first amendment to the Constitution. That statute is not affected by this law at all, or by this bill, rather, so the act of striking will continue to be a violation of Federal law.

The difference is that this bill for the first time will add on top of that a specific procedure available to the Government to go after a labor organization which advocates strike activity by making that an unfair labor practice reachable in the same way that any other unfair labor practice committed by the union or its representatives is reached by the statute, so that, in fact, we did not affect the existing law on strikes. We add a remedy for the Government in the case of someone advocating an illegal strike, which we think meets the court test of still not violating any first amendment rights.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLENBORN) has expired.

(By unanimous consent, Mr. ERLENBORN was allowed to proceed for 5 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, let me understand this. Is the gentleman suggesting that this bill, being a later enactment. would not be considered to be a repeal of the current law, and is it the gentleman's understanding that besides being an unfair labor practice, an illegal strike will also lead to a decertification of the union or to the union's no longer being able to act as the exclusive bargaining agent of the employees?

Mr. FORD of Michigan. If the gentleman will yield further, Mr. Chairman, title 18 of the United States Code 1918 provides criminal penalties against strikes in violation of 5 United States Code. Five United States Code prohibits the strike. Title 18 makes participating in the illegal strike a crime.

Neither of those titles is affected by any of the provisions in this act.

Mr. ERLENBORN. I thank the gentleman for his contribution.

Let me just wind this up by saying I would hope that the Members would support this motion to strike title VII. It is highly controversial; and if we would strike title VII, we can move on very expeditiously to concluding the consideration of this bill and going home tonight.

Mr. MARRIOTT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to the gentleman from Utah.

Mr. MARRIOTT. Mr. Chairman, I just want to ask the gentleman what the Senate did with this particular provision.

Mr. ERLENBORN. The Senate has a title VII that is in substance the incorporation of the Executive order with some few changes. Primarily it is an incorporation into the law of the Executive order. That title is not making the changes contemplated in this title VII.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield for one additional question?

Mr. ERLENBORN. I am happy to yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, perhaps the gentleman from Michigan (Mr. FORD) will want to answer this question.

I would like to ask two basic questions, if possible.

Number one, how does this provision in title VII expand on the provisions in the Executive order with respect to calling a strike or engaging in a strike?

Number two, I think unequivocally we need to have it stated whether this title in any way limits the Federal Government's ability to control strikes. Our constituents are concerned about public employees striking and Federal employees striking.

I think those two questions need to be answered. Could the gentleman from Illinois (Mr. ERLENBORN) or the gentleman from Michigan (Mr. FORD) answer them?

Mr. ERLENBORN. I am afraid I was trying to read a note from the staff and did not hear the gentleman's question.

Mr. FORD of Michigan. If the gentleman will yield, Mr. Chairman, the answer to the gentleman's question is that it does not expand on the right to strike. It does not deal with the right to strike except to enumerate the advocacy of strike activity which is not now prohibited by law as an unfair labor practice, so that, in fact, the passage of this law will provide the Government, as management, with a tool it does not now have to go after a union which advocates the

right to strike, because the Supreme Court has said that the current prohibition against advocating the right to strike is an unconstitutional impairment of their first amendment rights and that one cannot totally abrogate someone's right to advocate something, such as withholding his labor.

However, the court has in the past, under the National Labor Relations Act, upheld illegal strike advocacy for the wrong purposes at the wrong time; and we are following that kind of pattern.

I do not know why this particular section is picked on by the gentleman from Illinois (Mr. ERLENBORN) or why he does not like it because, very clearly, I will be very happy to strike that provision from the bill. It is an antilabor provision. It is a restraint on labor, a tool to be used against labor unions which does not now exist in the Executive order. In fact, this provision of the act is stronger than the Executive order when viewed from the perspective of anyone wanting to see unions challenged on the right to strike.

Mr. ERLENBORN. If the gentleman will yield back, it is very apparent it is not spelled out here. One of the effects of conducting an illegal strike would be the decertification of the union. Under the present practice of the Executive order, if an illegal strike is engaged in, the union that backed such an illegal strike can no longer act as the exclusive bargaining agent of the employees of that unit. Besides, in that definition section we allow a labor organization composed of one unit in whole or in part of Federal employees. In other words, this is an open invitation to mix in the same local employees in the private sector and the public sector.

Again I would point out that this could lead to strife in the private sector, leading to an interruption of work in the public sector. These are only a few. I have pointed out many of the other changes from the Executive order that are in this particular title VII. None of them were specifically backed by the President. The most he has said so far was that he would like possibly to see incorporated into the statute the Executive order. I hope the amendment is adopted.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I want to say, without any intent to offend my friend, the gentleman from Illinois (Mr. ERLENBORN), that I thought for about 20 minutes there that he was going to filibuster his own amendment, so I will not take much more time. It should be very simple for everyone to understand that there are some tradeoffs in legislation of this kind.

We have heard very eloquently, particularly from that side this evening when we were talking about the SES, about all the new power we are giving the executive branch to control the destinies of employees, not just the employees who belong to the bargaining agents, the workers, not only the Indians but the chiefs as well, all the way to the top. In the process of the giving of this new power and expanded power and authority to management to manage the Federal work force, I think we might understand that the Federal employees become a little restive about where their status quo fits into a future with all this new power coming on one side of the picture. So the committee over a long period of time has tried to work out a balance to reassure the Federal employees that they are in fact going to maintain the status quo.

I wish that I could say to my friends in organized labor that what we have constructed here is a monumental new breakthrough for the future of public employee collective bargaining, but that would not be true. I must say parenthetically that the discussion of the gentleman from Illinois (Mr. ERLENBORN) about striking is all sheer nonsense, because not at any time did we spend 5 seconds talking about the right to strike. No practical person on our committee would have talked about that as a possibility. It has never been in the draft of any legislation. It has never even been whispered in a closet by any member of the committee. We know, I will say to the gentleman from Illinois (Mr. ERLENBORN) that that would be a foolish attempt to make here, and it has never been advocated. For us to spend all of this time talking about the right to strike as if at some time we had it in the bill is sheer nonsense. The bill does not deal with any expanded right in that regard. The bill does not deal with lots of rights that public employees have in the State arena and on the local level across the country. As a matter of fact, this is anything but a model that I would recommend that public employees would want adopted in their States for their States. What it does represent is an attempt to restructure John Kennedy's Executive order of 1962 into the realities of 1978 and the future, as the name of the game is changing and the rules of the game are changed by this civil service reform.

It is true that there are people in this country who would like to have us go home and say, "I voted for civil service reform," and when they say, "What is that?" we have to reply, "Well, that is the way which we use to kick the lazy, no good Federal employees off of their duffs and get them up to work." If we want to demagogue against Federal employees in that fashion, this is a handy vehicle to do it, but we need not at the same time create chaos in the Federal work force by destroying the morale of the employees.

It is absolutely essential that the employees believe, when we get through reforming the system and giving all of the top management these new powers, that the system is at least as fair to them in the exercise of their rights as it was before. And it is true that there is some change made in the language, the familiar language of the Executive order, although I think the gentleman from Illinois has illustrated that he is far more familiar with the National Labor Relations Act than he is with the Executive order, and I defer to his superior knowledge as a labor lawyer on the National Labor Relations Act.

We are dealing here with an entirely different ball game, I say to the gentleman from Illinois, and there are no dramatic changes from or departures from the existing rights of unions. We are not trying to write a collective bargaining agreement. We are not changing the method by which collective bargaining comes into play. We are drawing a more definitive picture of what the proper subject for collective bargaining would be, what the limitations on the subject matter of collective bargaining might be and the methodology. We are talking about grievance procedures for the first time. We are talking about them in a fashion that we calculate is going to save the Government a great deal of time and money.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(At the request of Mr. FRENZEL, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for yielding.

I would like to inquire if one of those tiny little changes the gentleman is talking about is the installation of a binding arbitration system. That is not in the current Executive order, is it?

Mr. FORD of Michigan. The installation of a binding arbitration system? No; we are not installing a binding arbitration system.

Mr. FRENZEL. We are not? That is not the way I read the act.

Mr. FORD of Michigan. Is the gentleman talking about arbitration of grievances?

Mr. FRENZEL. Yes.

Mr. FORD of Michigan. Not arbitration of contract benefits?

Mr. FRENZEL. I will find it in a minute.

Mr. FORD of Michigan. I hope the gentleman understands the difference.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, first of all, I would like to associate myself with the gentleman's general remarks with respect to this title.

Second, to point out to my friend and colleague from Illinois, whose knowledge of the NLRA is not questioned at all, it seems to me there is a bit of confusion, if anything, here. In addition to the existing regulation emanating from 1962, there is being added by the committee a further restriction heretofore not extant in the form of creating an unfair labor practice where none exists now in the Federal Government. This does not relate at all, and the gentleman knows perfectly well, to the proposed H.R. 7777 relating to public employees, State, county, municipal, and Federal. It is really not in any way similar.

I certainly agree with my friend, the gentleman from Michigan (Mr. FORD) that I would not recommend this title, which I consider entirely too restrictive, to State, county, or municipal employees.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. FORD of Michigan. Mr. Chairman, let me say to my colleagues, it comes down to this. The gentleman from Illinois (Mr. ERLENBORN) and I have been arguing for 14 years. I have not persuaded the gentleman from Illinois very much and the gentleman from Illinois has not persuaded me very much.

Let me say, we are wasting our time arguing; but if title VII goes under the Erlenborn amendment, the bill goes, because this is like a balance. It is like a teeter-totter. We are trying to keep a balance with the employees and the new rights we are conferring on management.

You have heard those of us identified with labor tonight consistently fighting those people off who want to give management too many rights. Just a few minutes ago they were helping to try to gut the new management rights we are giving the administration. Who was fighting for them? We were fighting for them, but we were fighting in good faith, relying on the fact that what we had done in writing out agreements for employees would stay in the bill as a balance for what we were giving employees.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. FORD of Michigan. Mr. Chairman, really, if we accept the Erlenborn amendment, it simply ends everything and ends the ball game. We will rewrite this bill in a way that is harmful and there will be a subsequent amendment offered by the gentleman from Arizona (Mr. UDALL) that has been worked out over many months with all kinds of disagreeable choices, pushing and shoving, and finally coming to an agreement that does not make anyone so happy that they can walk away from here claiming a victory; but it is a reasonable legislative solution to our problems.

I just ask those of us who want to support this bill and want to see the President have a chance to put civil service reform into effect to support us in defeating the Erlenborn amendment, because passage of the Erlenborn amendment kills the bill.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, the gentleman said a few minutes ago that no one would offer the right to strike, and that that was not in the bill. I call the attention of the gentleman to his H.R. 1589, which provides the right to strike.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The gentleman from Michigan (Mr. FORD) does seek further time. The time of the gentleman has expired.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, the gentleman from Michigan invited me to peruse the bill to find what I consider to be binding arbitration within the bill.

I refer the committee and the gentleman to section 7119 on page 326, et seq., which states as follows:

If the parties do not arrive at a settlement after assistance by the Panel . . .

And this is the Impasses Panel.

Then it states:

Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement . . .

That is No. 1. Now, this is No. 2.

Mr. FORD of Michigan. Mr. Chairman, let me take my time back.

Mr. FRENZEL. Mr. Chairman, it is not the gentleman's time, but I will be glad to yield to him in a minute.

Mr. FORD of Michigan. Does the gentleman want an answer?

Mr. FRENZEL. Let me state the second part first.

The CHAIRMAN. The Chair will state that the time is that of the gentleman from Minnesota (Mr. FRENZEL).

Mr. FORD of Michigan. Mr. Chairman, I ask the gentleman if he is seriously asking a question. If he is, I will be glad to answer it.

The CHAIRMAN. The Chair will repeat that the time is that of the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, my second point is in relation to section 7121, which is the grievance procedure, found on page 331, et seq., and there, of course, we have binding arbitration of grievances.

Mr. Chairman, I would ask the gentleman from Michigan (Mr. FORD) if that is not true, and I yield to the gentleman for his response.

Mr. FORD of Michigan. Mr. Chairman, it is true, but it is irrelevant, because what the gentleman is reading from on page 326 of the bill is the present Executive order, which the gentleman from Illinois, Mr. JOHN ERLENBORN, has taken to himself as the "Holy Grail."

Mr. FRENZEL. Do we have an impasses panel in the present Executive order?

Mr. FORD of Michigan. Yes; in the exact language the gentleman just read, and this is taken from the executive order.

Mr. FRENZEL. That is not my understanding.

Mr. FORD of Michigan. It represents no change in the status at all.

Mr. FRENZEL. That is not my understanding. How about the grievance procedure?

Mr. FORD of Michigan. That is this gentleman's understanding, and I think the gentleman from Minnesota misunderstands the situation.

Mr. FRENZEL. It would not be the first time I misunderstood, nor would it be the first time I misunderstood the gentleman from Michigan (Mr. FORD).

How about section 7121? Is that right out of the Executive order, too?

Mr. FORD of Michigan. No; that is grievance arbitration.

Mr. FRENZEL. That is binding arbitration, and that is new law; is it not?

Mr. FORD of Michigan. With respect to wages, hours, and working conditions.

Mr. FRENZEL. Is that not what we grieve over usually?

Mr. FORD of Michigan. No; we do not grieve a contract; we negotiate a contract.

Mr. FRENZEL. Mr. Chairman, I no longer yield.

Mr. Chairman, I think the situation is quite obvious. I think it is quite obvious there is new law, and it is different law. I think a lot of us do not know whether it is good law or bad law, but it seems to me we would be best served to revert to the time-tested Executive order.

Mr. Chairman, I hope the amendment is agreed to.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. DERWINSKI) a question. The gentleman is the administration's supporter of this bill, and I want to know whether he is for this amendment or not.

Mr. FRENZEL. Mr. Chairman, I cannot advise the gentleman on that. I do not know.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I see the gentleman from Illinois (Mr. DERWINSKI) is over here, and I will ask the gentleman, who is the administration's supporter of this bill, whether he is for this amendment.

Mr. DERWINSKI. Mr. Chairman, may I use this microphone?

Mr. CHARLES H. WILSON of California. The gentleman may use any microphone he wants to use.

Mr. FRENZEL. Mr. Chairman, I yield to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, my personal position is that this bill should have as title VII the President's Executive order, which was in fact the action taken in the Senate.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield further?

Mr. FRENZEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Chairman, let me ask: Is that what the gentleman from Illinois (Mr. ERLENBORN) is seeking?

Mr. FRENZEL. That is what the gentleman from Illinois (Mr. ERLENBORN) is trying to do.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I will ask the gentleman from Illinois (Mr. DERWINSKI):

Is that what the gentleman from Illinois (Mr. ERLENBORN) is trying to do?

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, the gentleman from Illinois (Mr. ERLENBORN) is a very free gentleman.

Mr. CHARLES H. WILSON of California. No, what I would like to know is this: I think the Democrats should understand who is for who and what is for what. Now, if the gentleman from Illinois (Mr. ERLENBORN) is presenting the Presidential position, I think we should know that.

Mr. DERWINSKI. Mr. Chairman, the gentleman from Illinois (Mr. ERLENBORN) and I are both for civil service reform. We have a difference of opinion on title VII.

Mr. CHARLES H. WILSON of California. Who is for what?

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Missouri?

Mr. CLAY. I thank the gentleman for yielding.

Mr. Chairman, the President recommended the provision that is in this title relating to binding arbitration. The Senate bill also includes this provision. In addition to that, the reason and the basis for this precise procedure is to save the taxpayers money.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. FRENZEL) has expired.

(On the request of Mr. CLAY and by unanimous consent, Mr. FRENZEL was allowed to proceed for 1 additional minute.)

Mr. FRENZEL. Mr. Chairman, I yield further to the gentleman from Missouri (Mr. CLAY).

Mr. CLAY. Presently, Mr. Chairman, under the process of appealing through statutory appeals, the Government pays the entire cost of the proviso. Under the provisions of this title, subjecting grievances to binding arbitration, the costs will be shared equally by the Government and the parties who are alleging grievances. And that is one of the provisos for us including it and accepting the recommendation of the administration to include it in the bill.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for his contribution.

I think it is an interesting point and may be a good one. I am not sure it would be pervasive in asking us to accept this new concept, however.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the issue before us is the Erlenborn amendment, which would strike all of title VII. And as my friend, the gentleman from Michigan (Mr. FORD), said a minute ago, if there is no title VII, there simply is no bill.

The administration came forward early on in this controversy. The original administration's submission had no title VII, had no labor-management title in it at all. We raised questions about this, and the administration finally said, "We are willing to write into this new management rights bill, this new civil service reform bill, something the Federal employee unions have always wanted," which was not to be at the whim or the mercy of the President, who, with a stroke of the pen, could undo all of these collective bargaining rights enjoyed since 1963.

We argued a good deal over the last few months about what should be in that title VII, and no one has seriously suggested until tonight that there should be no title VII at all.

A number of my colleagues have asked me where we are in this debate today, and most of the remaining controversy is in title VII. Title VIII is a short title. Title IX and title X have been stricken by a point of order. We can be out of here fairly soon if we decide what we are going to do about title VII.

The first thing to do is to get rid of the Erlenborn amendment and get on with the real issues. There will be an amendment which will be offered by the gentleman from Texas (Mr. COLLINS) which sets up a labor-management framework. It is not at all acceptable to the Federal employee unions. It is acceptable to the administration. I will have a substitute for that amendment which represents the product of long negotiations. My labor friends do not like it very much. The gentleman from Michigan (Mr. FORD) has very limited enthusiasm for it. We have finally reached that limited ground, but we cannot get on with that as long as we are involved with an amendment which strikes out all of the title. I thought we were making good progress until I saw all of the big guns on the Education and Labor Committee rise, but I would hope that at least we could proceed very shortly to get a decision on the Erlenborn amendment which totally strikes all of title VII and, then, so far as I am concerned, we can end the debate.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Illinois.

Mr. ERLENBORN. I thank the gentleman for yielding.

Mr. Chairman, as the gentleman knows, I have been waiting patiently since noon to reach title VII. I would like to comment on the gentleman's statement about the Education and Labor Committee. About an hour ago, about 8 or 9 o'clock, several of my colleagues mentioned that the gentleman's committee was making the Education and Labor Committee look good.

Mr. UDALL. I claim full credit for that.

Mr. Chairman, I would hope that we could have a vote now on the Erlenborn amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN).

RECORDED VOTE

Mr. ERLENBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 125, noes 217, not voting 90, as follows:

[Roll No. 751]

AYES—125

| | | |
|---|---|---|
| Abdnor | Frenzel | Montgomery |
| Andrews, N.C | Ginn | Moore |
| Archer | Goldwater | Myers, Gary |
| Ashbrook | Goodling | Myers, John |
| Badham | Gradison | Neal |
| Bafalis | Grassley | Nichols |
| Barnard | Gudger | Poage |
| Bauman | Guyer | Preyer |
| Beard, Tenn. | Hall | Pritchard |
| Bennett | Harsha | Quayle |
| Bowen | Hefner | Quillen |
| Breckinridge | Hightower | Regula |
| Brinkley | Holt | Roberts |
| Broomfield | Horton | Robinson |
| Broyhill | Hubbard | Rose |
| Butler | Hyde | Runnels |
| Carter | Ichord | Ruppe |
| Cederberg | Ireland | Satterfield |
| Clausen, Don H. | Jones, N.C. | Schulze |
| Collins, Tex. | Jones, Okla. | Sebelius |
| Conable | Jones, Tenn. | Shuster |
| Coughlin | Kazen | Snyder |
| Crane | Kelly | Spence |
| Cunningham | Kindness | Stangeland |
| Daniel, Dan | Lagomarsino | Stanton |
| Daniel, R. W. | Leach | Stockman |
| de la Garza | Levitas | Symms |
| Devine | Livingston | Taylor |
| Dornan | Lloyd, Tenn. | Thone |
| Duncan, Oreg. | Lott | Treen |
| Duncan, Tenn. | McClory | Trible |
| Edwards, Ala. | McDonald | Waggonner |
| Edwards, Okla. | McEwen | Walker |
| English | Madigan | Wampler |
| Erlenborn | Mahon | Watkins |
| Ertel | Marlenee | White |
| Evans, Ga. | Marriott | Whitehurst |
| Findley | Martin | Whitley |
| Flippo | Mathis | Wilson, C. H. |
| Flynt | Michel | Winn |
| Fountain | Milford | Wydler |
| | Miller, Ohio | Wylie |

NOES—217

| | | |
|---|---|---|
| Akaka | Derwinski | Kostmayer |
| Alexander | Dicks | Krebs |
| Ambro | Diggs | LaFalce |
| Anderson, Calif. | Dingell | Le Fante |
| Anderson, Ill. | Dodd | Lederer |
| Andrews, N. Dak. | Downey | Leggett |
| Applegate | Drinan | Lent |
| Ashley | Early | Lloyd, Calif. |
| Aspin | Edgar | Long, La. |
| AuCoin | Edwards, Calif. | Long, Md. |
| Baldus | Eilberg | Luken |
| Baucus | Evans, Ind. | Lundine |
| Beard, R.I. | Fascell | McCloskey |
| Bedell | Fenwick | McCormack |
| Bellenson | Fisher | McDade |
| Benjamin | Fithian | McFall |
| Bevill | Florio | McHugh |
| Bingham | Foley | McKay |
| Blanchard | Ford, Mich. | Maguire |
| Blouin | Ford, Tenn. | Mann |
| Boggs | Fowler | Markey |
| Boland | Gammage | Marks |
| Bolling | Garcia | Mattox |
| Bonior | Gaydos | Mazzoli |
| Bonker | Gephardt | Metcalfe |
| Brademas | Gilman | Meyner |
| Brodhead | Glickman | Mikulski |
| Brooks | Gonzalez | Mineta |
| Brown, Calif. | Gore | Minish |
| Burlison, Mo. | Green | Mitchell, N.Y. |
| Burton, John | Hamilton | Moakley |
| Caputo | Hammer-schmidt | Moffett |
| Carney | Hanley | Mollohan |
| Carr | Hannaford | Moorhead, Pa. |
| Cavanaugh | Harkin | Mottl |
| Clay | Harris | Murphy, Ill. |
| Cleveland | Heckler | Murphy, N.Y. |
| Coleman | Heftel | Murphy, Pa. |
| Collins, Ill. | Hillis | Murtha |
| Conte | Holland | Myers, Michael |
| Corman | Holtzman | Natcher |
| Cornell | Howard | Nedzi |
| Cornwell | Hughes | Nix |
| Cotter | Jacobs | Nolan |
| D'Amours | Jeffords | Nowak |
| Danielson | Jenrette | O'Brien |
| Davis | Johnson, Calif. | Oakar |
| Dellums | Jordan | Oberstar |
| Dent | Kastenmeier | Obey |
| Derrick | Keys | Ottinger |
| | Kildee | Panetta |
| | | Patten |

| | | |
|---|---|---|
| Patterson | Sawyer | Udall |
| Pattison | Scheuer | Ullman |
| Pease | Schroeder | Van Deerlin |
| Pepper | Seiberling | Vanik |
| Perkins | Sharp | Vento |
| Pickle | Sikes | Volkmer |
| Pike | Simon | Walgren |
| Pressler | Skelton | Walsh |
| Price | Skubitz | Waxman |
| Rahall | Slack | Weaver |
| Railsback | Smith, Iowa | Weiss |
| Reuss | Solarz | Whalen |
| Rhodes | Spellman | Wilson, Tex. |
| Roe | Staggers | Wirth |
| Rogers | Stark | Wolff |
| Rooney | Steed | Yates |
| Rosenthal | Steers | Yatron |
| Rostenkowski | Steiger | Young, Fla. |
| Roybal | Studds | Young, Mo. |
| Russo | Thompson | Zablocki |
| Ryan | Thornton | |
| Santini | Tucker | |

NOT VOTING—90

| | | |
|---|---|---|
| Addabbo | Flood | Pursell |
| Ammerman | Flowers | Quie |
| Annunzio | Forsythe | Rangel |
| Armstrong | Fraser | Richmond |
| Biaggi | Frey | Rinaldo |
| Breaux | Fuqua | Risenhoover |
| Brown, Mich. | Giaimo | Rodino |
| Brown, Ohio | Gibbons | Roncalio |
| Buchanan | Hagedorn | Rousselot |
| Burgener | Hansen | Rudd |
| Burke, Calif. | Harrington | Sarasin |
| Burke, Fla. | Hawkins | Shipley |
| Burke, Mass. | Hollenbeck | Sisk |
| Burleson, Tex. | Huckaby | Smith, Nebr. |
| Burton, Phillip | Jenkins | St Germain |
| Byron | Johnson, Colo. | Stokes |
| Chappell | Kasten | Stratton |
| Chisholm | Kemp | Stump |
| Clawson, Del | Krueger | Teague |
| Cochran | Latta | Traxler |
| Cohen | Lehman | Tsongas |
| Conyers | Lujan | Vander Jagt |
| Corcoran | McKinney | Whitten |
| Delaney | Meeds | Wiggins |
| Dickinson | Mikva | Wilson, Bob |
| Eckhardt | Miller, Calif. | Wright |
| Emery | Mitchell, Md. | Young, Alaska |
| Evans, Colo. | Moorhead, Calif. | Young, Tex. |
| Evans, Del. | Moss | Zeferetti |
| Fary | Pettis | |
| Fish | | |

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Addabbo against.

Mr. Burleson of Texas for, with Mr. Mitchell of Maryland against.

Mr. Teague for, with Mr. Richmond against.

Mr. Lujan for, with Mr. Zeferetti against.

Mrs. FENWICK and Mr. SAWYER changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PREFERENTIAL MOTION OFFERED BY MR. CHARLES H. WILSON OF CALIFORNIA

Mr. CHARLES H. WILSON of California. Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. CHARLES H. WILSON of California moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I am not going to take too much time. I think this amending process could go on indefinitely. It is a bad bill. We have not passed the right amendments, and I think it is about time that we went home and started doing other business.

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the preferential motion.

Mr. Chairman, I appreciate the Members' frustration. I appreciate that some of them are tired, and I appreciate all the complications of the hour.

However, I would like to point out that we have gone about 90 percent of the way with a very difficult, absolutely necessary piece of legislation. I would like to commend all of the Members who have in any way participated in the debate. This has been a good, high class, nonpartisan handling of a major national issue.

Mr. Chairman, this is necessary legislation. This is legislation that is good for every Member's constituents. If the Members will just be patient, we are within an hour of wrapping this legislation up properly. The Members are within an hour of casting a vote for what will go down in history as one of their greatest votes as Members of Congress. If they will just stay here, Mr. Chairman, we will pass civil service reform legislation.

Mr. RHODES. Mr. Chairman, would the gentleman yield?

Mr. DERWINSKI. I yield to my distinguished statesmanlike leader.

Mr. RHODES. I do not recognize the description. I would like to differ with the gentleman most respectfully. It seems to me that after the hour of 9 o'clock—and I thought we had agreed upon this—very little is done to save the Republic. I do not recognize the absolute necessity of passing this bill tonight. It seems to me that we have many days left, and some say we are even going to come back after the election. It seems to me, if the gentleman will yield further, that this might be a very propitious time to shut down the proceedings of the House tonight. I just do not believe that it is necessary for us to consider a bill of this importance—and it is of great importance—in this type of a situation. With all of the regrets and my great respect for the gentleman from Illinois (Mr. DERWINSKI) and my good friend, the gentleman from Arizona (Mr. UDALL), I hope that the motion of the gentleman from California (Mr. CHARLES H. WILSON) will be adopted.

Mr. DERWINSKI. No; just a minute. Do not hope that much. The gentleman from California is moving to strike the enacting clause, and I am sure my distinguished leader, the gentleman from Arizona, is just referring to the Committee's rising for the evening.

Mr. RHODES. If the gentleman would yield further, actually, if the committee votes to strike the enacting clause, we would go back into the House, and then, before the House agrees to the recommendation of the Committee we could adjourn, if we want to adjourn. We cannot adjourn from the Committee of the Whole. That is the main reason I think the gentleman's motion is well taken.

Mr. DERWINSKI. I realize that, but we do not want anybody in the well to think that our distinguished minority leader is momentarily in the embrace of the gentleman from California (Mr. CHARLES H. WILSON).

Mr. CHARLES H. WILSON of California. If the gentleman will yield, why not?

The CHAIRMAN. All time for debate on the motion has concluded. The question is on the preferential motion offered by the gentleman from California (Mr. CHARLES H. WILSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. CHARLES H. WILSON of California Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 46, noes 286, not voting 100, as follows:

[Roll No. 752]

AYES—46

| | | |
|---|---|---|
| Applegate | Hammer-schmidt | Rhodes |
| Ashbrook | Harris | Runnels |
| Barnard | Holt | Sawyer |
| Bauman | Kindness | Schulze |
| Breckinridge | Leggett | Sebelius |
| Broomfield | McDade | Shuster |
| Broyhill | McDonald | Snyder |
| Carter | McEwen | Spellman |
| Coleman | Marlenee | Stangeland |
| Collins, Tex. | Mazzoli | Steers |
| Crane | Murtha | Symms |
| Davis | Myers, Gary | Taylor |
| Dornan | Myers, John | Waggonner |
| Duncan, Tenn. | Quayle | Walsh |
| Edwards, Okla. | Quillen | Wilson, C. H. |
| Flynt | | |

NOES—286

| | | |
|---|---|---|
| Abdnor | D'Amours | Harkin |
| Addabbo | Daniel, Dan | Harsha |
| Akaka | Daniel, R. W. | Heckler |
| Alexander | Danielson | Hefner |
| Ambro | de la Garza | Heftel |
| Anderson, Calif. | Dellums | Hightower |
| | Dent | Hillis |
| Anderson, Ill. | Derrick | Holland |
| Andrews, N.C. | Derwinski | Holtzman |
| Andrews, N. Dak. | Devine | Horton |
| | Dicks | Howard |
| Archer | Diggs | Hubbard |
| Ashley | Dodd | Hughes |
| Aspin | Downey | Hyde |
| AuCoin | Drinan | Ireland |
| Badham | Duncan, Oreg. | Jacobs |
| Bafalis | Early | Jeffords |
| Baldus | Edgar | Jenrette |
| Baucus | Edwards, Ala. | Johnson, Calif. |
| Beard, R.I. | Edwards, Calif. | Jones, N.C. |
| Beard, Tenn. | Eilberg | Jones, Okla. |
| Bedell | English | Jones, Tenn. |
| Bellenson | Erlenborn | Jordan |
| Benjamin | Ertel | Kastenmeier |
| Bennett | Evans, Ind. | Kazen |
| Bevill | Fascell | Kelly |
| Bingham | Fenwick | Keys |
| Blanchard | Findley | Kildee |
| Blouin | Fisher | Kostmayer |
| Boggs | Fithian | Krebs |
| Boland | Flippo | Lagomarsino |
| Bolling | Florio | Le Fante |
| Bonior | Foley | Leach |
| Bonker | Ford, Mich. | Lederer |
| Bowen | Ford, Tenn. | Lent |
| Brademas | Fountain | Levitas |
| Brinkley | Fowler | Livingston |
| Brodhead | Frenzel | Lloyd, Calif. |
| Brooks | Gammage | Lloyd, Tenn. |
| Burlison, Mo. | Garcia | Long, La. |
| Butler | Gaydos | Long, Md. |
| Caputo | Gephardt | Lott |
| Carney | Giaimo | Luken |
| Carr | Gilman | Lundine |
| Cederberg | Ginn | McClory |
| Clausen, Don H. | Glickman | McCloskey |
| | Goldwater | McCormack |
| Clay | Goodling | McFall |
| Cleveland | Gore | McHugh |
| Collins, Ill. | Gradison | McKay |
| Conable | Grassley | Madigan |
| Conte | Green | Maguire |
| Corman | Gudger | Mahon |
| Cornell | Guyer | Mann |
| Cornwell | Hall | Markey |
| Cotter | Hamilton | Marks |
| Coughlin | Hanley | Marriott |
| Cunningham | Hannaford | Martin |

| | | |
|---|---|---|
| Mattox | Pike | Steiger |
| Meeds | Poage | Stockman |
| Metcalfe | Pressler | Stokes |
| Meyner | Preyer | Studds |
| Michel | Price | Thompson |
| Mikulski | Pritchard | Thone |
| Miller, Ohio | Rahall | Thornton |
| Mineta | Railsback | Treen |
| Minish | Regula | Trible |
| Mitchell, N.Y. | Reuss | Tucker |
| Moakley | Roberts | Udall |
| Mollohan | Robinson | Ullman |
| Moore | Roe | Van Deerlin |
| Moorhead, Pa. | Rogers | Vanik |
| Mottl | Rooney | Vento |
| Murphy, Ill. | Rose | Volkmer |
| Murphy, N.Y. | Rosenthal | Walgren |
| Murphy, Pa. | Rostenkowski | Walker |
| Myers, Michael | Roybal | Wampler |
| Natcher | Ruppe | Watkins |
| Neal | Russo | Waxman |
| Nedzi | Santini | Weaver |
| Nichols | Satterfield | Weiss |
| Nix | Scheuer | Whalen |
| Nolan | Schroeder | White |
| Nowak | Seiberling | Whitehurst |
| O'Brien | Sharp | Whitley |
| Oakar | Sikes | Winn |
| Oberstar | Simon | Wirth |
| Obey | Skelton | Wolff |
| Ottinger | Skubitz | Wydler |
| Panetta | Slack | Wylie |
| Patten | Smith, Iowa | Yates |
| Patterson | Solarz | Yatron |
| Pattison | Spence | Young, Fla. |
| Pease | Staggers | Young, Mo. |
| Pepper | Stanton | Zablocki |
| Perkins | Stark | |
| Pickle | Steed | |

NOT VOTING—100

| | | |
|---|---|---|
| Ammerman | Flood | Pettis |
| Annunzio | Flowers | Pursell |
| Armstrong | Forsythe | Quie |
| Biaggi | Fraser | Rangel |
| Breaux | Frey | Richmond |
| Brown, Calif. | Fuqua | Rinaldo |
| Brown, Mich. | Gibbons | Risenhoover |
| Brown, Ohio | Gonzalez | Rodino |
| Buchanan | Hagedorn | Roncalio |
| Burgener | Hansen | Rousselot |
| Burke, Calif. | Harrington | Rudd |
| Burke, Fla. | Hawkins | Ryan |
| Burke, Mass. | Hollenbeck | Sarasin |
| Burleson, Tex. | Huckaby | Shipley |
| Burton, John | Ichord | Sisk |
| Burton, Phillip | Jenkins | Smith, Nebr. |
| Byron | Johnson, Colo. | St Germain |
| Cavanaugh | Kasten | Stratton |
| Chappell | Kemp | Stump |
| Chisholm | Krueger | Teague |
| Clawson, Del | LaFalce | Traxler |
| Cochran | Latta | Tsongas |
| Cohen | Lehman | Vander Jagt |
| Conyers | Lujan | Whitten |
| Corcoran | McKinney | Wiggins |
| Delaney | Mathis | Wilson, Bob |
| Dickinson | Mikva | Wilson, Tex. |
| Dingell | Milford | Wright |
| Eckhardt | Miller, Calif. | Young, Alaska |
| Emery | Mitchell, Md. | Young, Tex. |
| Evans, Colo. | Moffett | Zeferetti |
| Evans, Del. | Montgomery | |
| Evans, Ga. | Moorhead, Calif. | |
| Fary | Moss | |
| Fish | | |

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have had a long and difficult day, and I must say that it has been a very productive day. The Members have been cooperative, and we have not had the kind of dilatory tactics some had feared. But the hour is late, and I am not sure we can be productive much longer. We do have a number of important amendments left.

Mr. Chairman, I am going to make a unanimous-consent request in just a moment, and if it is agreed to, at that point I would move that the committee rise. I am told by the leadership that we will come back on this bill perhaps on Wednesday, but not tomorrow.

Mr. Chairman, my unanimous-consent request is that the remaining time for debate on title VII, and all amendments thereto—that is the title we are now considering—be limited to a total of 2 hours.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, reserving the right to object, this is just title VII?

Mr. UDALL. If the gentleman will yield, this is title VII only.

Mr. CHARLES H. WILSON of California. Further reserving the right to object, the gentleman is not asking that the entire bill be limited to 2 hours?

Mr. UDALL. No.

The remaining titles are not very controversial and are not very long. I am assuming that after we finish title VII, in a very rapid pace we could finish up the bill. But the pending request relates to title VII only.

Mr. CHARLES H. WILSON of California. I thank the gentleman.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. ASHBROOK. Mr. Chairman, I reserve the right to object. Could I be informed as to how many amendments are pending on title VII?

Mr. UDALL. It has been anticipated at this point that the gentleman from Texas (Mr. COLLINS) would offer a complete substitute for title VII. Immediately after that, I was going to offer a substitute for that substitute, which represents a compromise we have put together over here.

The gentleman from Illinois (Mr. ERLENBORN) indicated that he had a number of amendments to my substitute, and that he would offer them in a fairly prompt fashion. At the close of that we would choose between the Collins substitute and the Udall substitute. If either one of them carries, that is the end of title VII.

Mr. ASHBROOK. Further reserving the right to object, those do sound like very substantial amendments. Does the gentleman know whether there are any other amendments?

Mr. UDALL. I am not aware of any major amendments to title VII except those that have been proposed by the distinguished gentleman from Illinois (Mr. ERLENBORN). It might be that there are perfecting amendments to either the Collins or Udall substitutes. I doubt that there would be any besides that. In any event, the Members who have printed amendments in the RECORD would be protected.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I am sure the gentleman from Ohio will be pleased to know that the amendment to be offered by the gentleman from Texas is identical to title VII in the Senate passed bill, so that what we are down to is really a narrow difference between the Udall substitute, which is an administration amendment, in effect, to the Collins amendment, which is the Senate title VII. So, the differences between the two positions are not extreme.

Mr. ASHBROOK. I thank the gentleman, and withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. GARY A. MYERS. Mr. Chairman, reserving the right to object, I do so make inquiry on parliamentary procedure. It is normal parliamentary procedure upon such a request for Members to stand and request time. Is it the Chairman's intent that the time to be divided be divided tonight?

The CHAIRMAN. The Chair would advise the gentleman that the Chair would not intend to divide the time tonight, but that subject will be taken up at the time we reconvene in connection with this bill.

Mr. GARY A. MYERS. I thank the Chair, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, as I understand it, there will be two substitutes posed, and a number of Members have amendments in the RECORD. They are, of course, amendments to the bill and not to the substitutes. I wonder if the Chair could tell me how we could protect the amendments which are now filed so that they would be in order and have time under the proposal that the gentleman suggests, to either of the substitutes.

The CHAIRMAN. The Chair advises the gentleman that the amendments which have been printed in the RECORD would be protected under our rules.

Mr. FRENZEL. Will we be able to make the amendments to the substitute, Mr. Chairman?

The CHAIRMAN. Yes. If they can be redrafted to pertain to the substitute, and placed in the RECORD, the answer is in the affirmative.

Mr. FRENZEL. I thank the Chair.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, to further demonstate the absolute cooperation that is developing, the gentleman from Illinois (Mr. ERLENBORN) has filed his amendments in the RECORD so that the record of what we are going to get to is clear. We think we are moving on an open basis toward final solution.

Mr. FRENZEL. I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chariman, I object to the unanimous-consent request.

The CHAIRMAN. Objection is heard.

Mr. UDALL. Mr. Chairman, I move that all debate on title VII and all

amendments thereto be limited to 2 hours for that debate purpose when we resume.

The CHAIRMAN. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

● Mrs. SCHROEDER. Mr. Chairman, I want to make a few comments regarding the effect of the two amendments offered by Mr. BOLAND and Mr. COLLINS of Texas as they affect the "whistleblower" provisions of H.R. 11280.

First. Generally, the merit system principles apply throughout Government to all executive agencies, including CIA, FBI, and everybody else. The President is required to take action to implement these principles, including section 2301 (c) (9) which requires the protection of whistleblowers.

Second. Generally, although Government corporations, CIA, FBI, and GAO are exempted from prohibited personnel practices, other existing law prohibits discrimination, Hatch Act violations, and nepotism in these agencies. With the exception of the whistleblower protection, the prohibited personnel practices are merely the codification of existing law. As to whistleblower protection, the FBI is specifically brought in under the Collins-Udall compromise, and the President will act as Special Counsel. For other agencies, the merit system principles, as implemented by the President will cover them.

Third. Generally, although the Special Counsel is only required to receive complaints and guarantee anonymity to employees in agencies covered by Prohibited Personnel Practices, nothing precludes the Special Counsel from receiving complaints and guaranteeing anonymity to anyone. He cannot, however, ever receive foreign intelligence or counterintelligence information nor can he order an agency investigation where the complaint does not come from an agency covered by prohibited personnel practices, whether or not the complaint concerns the agency in which the individual is employed.

Fourth. With regard to the FBI, the President's regulations required for the FBI must protect the same sort of information as the bill protects. What the President can vary is the enforcement of those principles. He can, but need not, give the enforcement power to the Special Counsel. The President's regulations must include some employee complaint handling mechanism, although the current procedures are satisfactory to meet this requirement.

Fifth. Generally, under the Special Counsel's general investigatory powers, as modified, the Special Counsel has the basic power to investigate allegations of arbitrary or capricious withholdings of information under the Freedom of Information Act, regardless of whether court-ordered discipline is required under section 552(a)(4)(F), unless the request deals with foreign intelligence or counter-intelligence information.

Sixth. Generally, the Special Counsel, under 1206(g)(1)(A) to seek disciplinary action against offending employees as the result of any investigation in the section, including investigations prompted by employee complaints to the Special Counsel.* * *

Seventh. Generally, the basic thrust of the whole section dealing with employee complaints is to encourage, but not require, internal attempts at revolving the wrongdoing. The goal is to rout wrongdoing out of the Federal Government as much as to protect the first amendment rights of employees.●

● Mr. FRENZEL. Mr. Chairman, the President has a rather low batting average in converting ideas into law. Partly it is his fault, but partly it is ours. When he has a good proposal, we ought to pass it even if it disturbs our personal comfort zones.

The President's civil service reform is a good idea. The American people think so, too. So did ex-President Ford who submitted a similar proposal. The need for tightening up the Federal bureaucracy, and for making it more responsive and manageable, is obvious.

The administration's plan was basically a good one. It still is. It addresses not all, but many, of the most glaring problems. Even our hard-to-please colleagues in the other body have passed it overwhelmingly.

Our Post Office and Civil Service Committee, has, however, made many changes which I deem inappropriate and unacceptable. The original bill was designed to make the civil service more manageable. The committee amendments, in some cases, make it the opposite. A case in point is the expanded scope of collective bargaining. These changes, made by the committee should be eliminated, and the original language, essentially retaining the provisions of the Executive order covering labor-management relations, should be restored.

Perhaps the most controversial section of the bill deals with the preference accorded to veterans in Federal employment. There is a real problem here. Women and minorities are not advancing as quickly as most of us would like in the Federal service. Nevertheless, a good, clear-cut case has not been made that veterans' preferences are a major retardant. I am unwilling, at this time, to take away the rights and preferences now accorded to veterans, and therefore intend to support the Hanley amendment to restore current preferences. However, there is some justice in what the President is saying and I would suggest a thorough study of this whole subject by the committee. At this point, we should not hold up, or jeopardize the passage of the bill because of this item.

The other highly controversial change made by the committee is the repeal of the Hatch Act. It is not germane to this bill and should be removed in a point-of-order. If not, I shall certainly support a motion to strike it.

The Hatch Act does need revision. But Federal employees need its protection. It should not be repealed in any case, and it should not be a part of this bill at all.

Some of my colleagues in the Republican minority are concerned about the increase in high-level, appointed jobs in the bureaucracy. Some concern is justified, but I endorse the position of the distinguished gentleman from Illinois (M. DERWINSKI) that any Chief Executive needs his own people to manage and motivate the bureaucracy. President Carter, like his predecessors, and like his successors, needs the authority to put capable managers of his own choosing into his Government if it is to be run well.

When the bad amendments are removed the House should promptly pass civil service reform. The President has made a good recommendation. This is one issue on which he has strong and justified popular support. Support here in Congress ought to be bipartisan, and it ought to be just as strong.●

● Mr. GARCIA. Mr. Chairman, I rise in support of the Civil Service Reform Act of 1978. I believe the time for change is long overdue. And I know there is much room for improvement in the functioning of the Federal civilian work force—for both those in labor and those in management.

In fiscal year 1977, $46,247,517,000 was spent on the Federal civilian employees' payroll. Presently, this payroll is averaging out to around $4,052,817,148 per month. That is an awful lot of money for the American people to pay for something that is less than the best. I welcome civil service reform because I think it is a major step toward giving us the best.

I, as one of the newest Members of Congress, am very pleased to have had the opportunity to be assigned to the committee which handled this major piece of legislation. It has been an honor for me to work long, hard hours with such fine colleagues on this committee to bring us to where we are right now. I would especially like to commend the gentleman from Arizona (Mr. UDALL) and the gentleman from Illinois (Mr. DERWINSKI) for their leadership throughout the entire process.●

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, (Mr. DANIELSON), Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11280) to reform the civil service laws, had come to no resolution thereon.

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## GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on debate, including debate on the Hanley amendment.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

## APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 11445, SMALL BUSINESS ADMINISTRATION PROGRAMS AND AUTHORIZATIONS

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint additional conferees solely for the consideration of sections 117 and 118 of the Senate amendment to the bill (H.R. 11445) to amend the Small Business Act and the Small Business Investment Act of 1958.

The SPEAKER. Is there objection to the request of the gentleman from Iowa? The Chair hears none, and appoints the following conferees: Messrs. THOMPSON, GAYDOS, and BUCHANAN.

## MAKING IN ORDER CONSIDERATION OF DISTRICT DAY BILLS ON TUESDAY, SEPTEMBER 12, 1978

Mr. DIGGS. Mr. Speaker, I ask unanimous consent that the business in order today under District Day be in order tomorrow, Tuesday, September 12, 1978.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

Mr. BAUMAN. Reserving the right to object, Mr. Speaker, and I shall not object, a number of us including the gentleman from Maryland have had some concern about the proposed rules changes which are the subject of hearings or possibly a markup in the Rules Committee on Wednesday. I am referring to those proposed rule changes attempting to end a Representative's right to demand a second on motions to suspend the rules and the right to vote on motions to resolve into the Committee of the Whole and various other fundamental changes in the rules of the House all, I should add, under the guise of doing away with "pointless" votes on so-called "minor" procedural questions.

As the gentleman from Michigan (Mr. DIGGS) knows, unanimous-consent requests are a very useful tool in the House. They accomplish ends, and those of us who feel strongly about rules changes are not disposed to grant these unanimous-consent requests in certain circumstances.

I have had conversations with the Speaker of the House and he has told me that no rules changes will occur in this session, and with that understanding I am glad to only reserve the right to object and not object. I believe the Speaker to be a man of his word and I respect him for that. I think that we are in agreement that the best interests of the House would be served by the postponement of any rule changes until the first session of the 96th Congress.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

## ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair makes the following announcement:

It would be the hope of the Chair that we would take up the suspensions first tomorrow and have all the rollcalls occur in the afternoon, and then follow with the District bills, keeping in mind the fact that there are 14 primaries around the country tomorrow and that would give Members an opportunity to vote and then to come back here. So we would hope that the voting will take place in the afternoon.

The House will meet at noon tomorrow, the votes will come sometime late in the afternoon, and we will finish the session sometime around 9 o'clock tomorrow night.

## COMPREHENSIVE REVIEW OF RETIREMENT INCOME PROGRAM

(Mr. ROONEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROONEY. Mr. Speaker, together with several of my colleagues on the Select Committee on Aging as well as Congressman JOHN H. DENT, chairman of the task force on welfare and pension plans, I am today introducing a House concurrent resolution to express the support of the Congress for the work of the President's Commission on Pension Policy and to urge this Commission, during the year long study it is about to undertake, to come to grips with the most basic issues which must be resolved before we can hope to develop the kind of cohesive and comprehensive national policy on retirement income which this country so desperately needs.

Earlier this year the Subcommittee on Retirement Income and Employment, which I chair, held several days of hearings on our national pension policies with particular emphasis on the private pension system. As you know, this Nation's present system of retirement income is a panoply of programs ranging from social security to various public and private pensions to individual savings and investments.

Since the security of millions of older Americans is directly affected by these programs and since greater demands will be placed on these various sources of retirement income by a growing proportion of retired persons, it is obvious that a more equitable and more well-coordinated system of retirement income is an urgent necessity in the United States.

In its hearings on this subject our subcommittee addressed such questions as: What should be the relative roles of social security, pension plans—public and private—and individual savings and investments in providing income to retired Americans? How should these programs be coordinated? What is an "adequate" pre-retirement earnings replacement rate? How should it be derived? We found not only that there are no readily available answers to these elementary questions, but that they have not even been adequately researched or fully discussed in any appropriate public forum.

This lack of an overall national policy is reflected in the private pension system which covers slightly less than half of the work force. The Employment Retirement Income Security Act of 1974 (ERISA) does not require employers to establish pension plans; it does not prescribe a minimum amount of benefits under any given plan; it does not require that benefits be adjusted according to changes in the cost of living.

While I believe that ERIS has extended much needed protection to individuals covered by private pension plans, the upsurge in plan terminations coupled with a decrease in the annual ratio of new plans to terminated plans since the enactment of this law would certainly seem to indicate that the private pension system is burdened with unnecessarily complex regulation by a multiplicity of Government agencies to the ultimate detriment of individuals who seek to rely on private pensions as a source of retirement income.

Notwithstanding the substantitve reforms made by ERISA, significant numbers of workers covered by private pension plans will not receive pensions reflective of their working years. Many people will never receive any benefits because they will be employed by several different employers during their careers and will change jobs before they acquire vested rights to their pension credits. We were informed by at least one expert witness that defined benefit plans can afford to pay pensions to the small proportion of employees who become vested in these plans only because of the high forfeiture rates among the preponderance of their covered workers. This, in my opinion, is a lottery system which runs contrary to basic principles of fairness and to the generally held belief that pensions are deferred wages.

All retirement income issues must, of course, be assessed within the context of today's economy. As we are all well aware, the ravages of inflation are experienced most acutely by individuals attempting to survive on fixed incomes. Regrettably only about 4 percent of private pension plans contain cost-of-living escalators.

Mr. Speaker, on the basis of the testimony presented to the subcommittee, we have concluded that if private pension plans are to be a substantial and reliable source of retirement income, the scope of their coverage must be expanded, their benefits must be distributed in a fairer manner and they must be able to keep pace with inflation. If the attainment of these goals is not feasible in the near future, I believe it will be necessary either to redefine the role of the social security system, or mandate a layer of private pension protection over and above social security, or make individual retirement accounts more widely available—or combine some or all of these approached.

It is my sincere hope that the President's Commission on Pension Policy will produce some imaginative and sound solutions to these problems, and, more importantly, that it will propose, as a result of its study, a farsighted, equitable and clearly defined policy on retirement income which we in the Congress can support and on which all older Americans can rely.

## A MODEL FOR WELFARE REFORM

The SPEAKER. Under a previous order of the House, the gentleman from Cali-

fornia (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, we are constantly hearing of cases involving fraud in our welfare system. Just a few weeks ago I shared with the House the case of a Los Angeles County woman who collected nearly a quarter of a million dollars in welfare payments by claiming, at age 33, that she had 48 children. There are countless other cases with which, I am sure, you are familiar, probably right in your own congressional districts.

It is the failure of the bureaucracy to detect and confront welfare cheaters which incenses me and many of my colleagues, Mr. Speaker. The entire concept of providing temporary relief to economically disadvantaged individuals is not at all an improper undertaking for Government. Citizens of other nations are not quite as fortunate to have such assistance available to them.

The flagrant abuse of the system, however, demonstrates the need for an effective welfare reform program at all levels of government. It is a simple case of efficient organizational management, of being certain that the criteria for receiving benefits is complied with.

My attention has been drawn to the way in which the State of Oregon has taken action to institute reforms in its welfare system. Since last May the State has dropped 2,000 people a month from its rolls. That amounts to a reduction of about 6½ percent, an impressive figure, indeed. The Oregon Welfare Department is making an effort to reduce its $30 million deficit by passing on to volunteer private agencies, the task of caring for applicants in desperate straits. Computers have been installed to search for evidence of fraud. If an applicant applies for food stamps in one office, the computer will reject any claim made for food stamps in another welfare office. An attempt is made to provide every applicant for welfare with a suitable job, or training which will prepare them for one. A recent feature on the CBS Morning News profiled one applicant for welfare money who started training with a Portland firm, and has now earned three promotions in his 2½ years with the company, not to mention the sense of pride and self-esteem he has gained.

I think the strides toward welfare reform which Oregon has made is worthy of congressoinal review. I represent a district in the neighboring State of California, and I know my constituents would certainly welcome changes in this direction for its welfare system. If Oregon could do it, I do not see why this cannot be a reasonable goal for other jurisdictions. We can make the welfare program a viable one, Mr. Speaker, if the Congress would only make the commitment to take reform measures along the lines of those which Oregon has put into practice.●

## A PERSONAL EXPLANATION

The SPEAKER. Under a previous order of the House, the gentleman from Connecticut (Mr. MCKINNEY) is recognized for 5 minutes.

● Mr. MCKINNEY. Mr. Speaker, due to commitments in the Fourth Congressional District, I was unable to be present during consideration of the legislative calendar for Friday, September 8. Had I been in attendance, I would have cast the following rollcall votes:

Rollcall No. 740; "yea."
Rollcall No. 741; "nay."
Rollcall No. 742; "yea."
Rollcall No. 743; "yea."●

## IN OPPOSITION TO THE VARIABLE RATE MORTGAGE

The SPEAKER. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, homeowners across the country may be saddled with 40-year mortgages if a title to the Financial Institutions Regulatory Reform Act becomes law.

I am referring to title XVIII of the Reform Act, which allows Federal savings and loan institutions to offer variable rate mortgages in States where State-chartered associations may offer the controversial loan plan.

The variable rate mortgage has an interest rate that fluctuates with change in the money supply, with an allowance of a 2½-percentage-point increase over the life of the mortgage. When interest rates rise, the homeowner is given the choice of increased monthly payments or an extension of the mortgage at the same rate of interest. On a $60,000 home made with today's prevailing interest rate of 10 percent, which was adjusted to the maximum amount of interest allowed, 12½ percent, this theoretical mortgage would be extended a full 10 years.

Mr. Speaker, it is not out of the question for interest rates to rise by 2½ percent under a variable rate mortgage. I cannot fathom how this mortgage plan can possibly be construed as beneficial to consumers in any manner, considering a very real possibility of a 10-year extension on a home mortgage.

What rationale does exist for a variable rate mortgage? The savings and loan industry maintains that the VRM is needed for two reasons: First, consumers want a broader choice in home financing, and second, the instrument is needed to insure a steady flow of funds into savings and loan associations to be used for mortgage lending.

The problems faced by the savings and loan industry during periods of tight credit are very real. However, in the past several months, important steps have been taken to assure that savings and loan associations can effectively compete for savings during such periods. I am referring to the two new savings certificates that savings and loans began issuing June 1. One new instrument allow thrifts to pay rates on 6-month certificates equal to the 6-month Treasury bill discount rate plus 25 basic points. The other new instrument is an 8-year certificate that draws 8 percent interest. Together, these new instruments have greatly aided the savings and loan industry in attracting new savings during today's period of tight credit.

The industry has already felt the positive effects of these two certificates. The Federal Home Loan Bank Board reported that net new savings receipts of savings and loan associations rose sharply in July, in fact, to the largest volume since last summer. The amount of savings in certificates rose 20 percent in July, to a total of $3.059 billion as compared to $2.538 billion in June. And the industry further reported that 40 percent of the money invested in these certificates is "new money," that is, money from other sources than that already in savings accounts.

It would be ridiculous to say that all of the savings and loan industry's problems have been solved by these two new certificates. But, the truth is that the industry has benefited greatly from these instruments and they have come a long way in stabilizing the deposit base in savings and loan associations as well as attracting new funds.

These two new certificates have helped avert the situation of 1975, when savings and loan associations were greatly strapped for new funds. It was also in 1975 when Congress previously considered allowing variable rate mortgages to be offered in Federal associations. Despite the gravity of the S. & L.'s situation in 1975, a period of severely tight credit, both Houses of Congress prohibited any issuance of variable rate mortgage regulations. The prevailing reason—the threat this mortgage instrument posed to consumers far outweighed the advantages offered to the savings and loan industry.

Consider the typical homeowner today. He is the victim of record housing costs, record interest rates, record utility costs and record food costs. Fewer and fewer Americans can afford to buy a home. And an even smaller amount can afford to buy a home on one person's income. Many young couples must put off starting a family in order to afford a home.

This brings us to the issue of consumers wanting a broader choice in home financing. There is a great deal of truth in this statement. A recent survey found that 87 percent of those surveyed wanted greater availability of alternative mortgage instruments as opposed to the conventional, fixed rate loan. But, when the survey further broke down into the different types of alternative mortgage instruments, a more accurate picture emerges. Only 12 percent of those surveyed were interested in an increased availability of the variable rate mortgage. The loan plans that consumers want are the graduated payment mortgage, a loan plan where the monthly payments begin at a lower rate and increase over the life of the loan, and the reverse annuity mortgage, a loan plan which allows senior citizens to draw a monthly payment based on the equity of their homes.

What constituency does exist for the variable rate mortgage? It is clearly not the consumer. The administration has opposed the loan plan, calling it inflationary. The housing industry has opposed the VRM. The president of the National Association of Home Builders, Ernest A. Becker, Sr., has said the mortgages will "cost future homebuyers untold millions of dollars in additional mortgage interest." Organized labor has gone on record opposing the variable rate

mortgage, as well as consumer groups across the country.

It is clear that the only group pushing for the VRM is the savings and loan associations themselves. The reasons are self-explanatory. It allows the industry to pass on the increased costs of inflation to the borrower, and will represent a tremendous profit to the associations each time the interest rate climbs.

I stand in total opposition to title XVIII of the Reform Act. It poses a great threat to consumers. I shall do everything in my power to see this amendment defeated on the floor of the House.●

## THE NATION TO OBSERVE ROSH HASHANA, OCTOBER 2 AND 3

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. ADDABBO) is recognized for 10 minutes.

● Mr. ADDABBO. Mr. Speaker, on October 1, 2, and 3, the Nation will observe Rosh Hashana, which are the High Holy Days for the people of the Jewish faith. I join with my colleagues in wishing a very happy and healthy new year to all of our citizens of the Jewish faith.

I also ask unanimous consent to put into the RECORD a short article by Rabbi Jehuda Melber of the Briarwood Jewish Center, which provides a historical summation of these important holidays. I think the Members of the House who might not be familiar with the background of these holidays will find the article fascinating reading:

FROM THE RABBI'S DESK

Due to the fact that last year 5738 was a leap-year, we celebrate the High-Holidays of 5739 at a much later period. This gives us a greater opportunity to do some deeper thinking and contemplating about the significance of Rosh Hashana and Yom Kippur. Rosh Hashana will be on Monday, October 2nd and Tuesday, October 3rd; Yom Kippur on Wednesday, October 11th. Let us therefore consider two questions with regard to Rosh Hashana:

A) What is the difference between Rosh Hashana and the other Jewish holidays?

B) What is the difference between the Jewish New Year's celebration and that of the Gentile world?

The replies to these questions shed brighter light for a better understanding of our tradition in general.

A) The difference between Rosh Hashana and the other Jewish holidays lies in the fact that all other holidays are referred to the Jewish *"nation"* in historical retrospect, whereas Rosh Hashana is addressed to the Jewish *"individual"* on a strictly singular basis: a day of judgement for every *single* person. Here the Jewish calendar in its totality represents a double concept of developing a sense of responsibility: Every person is responsible for *himself* and for the *society* in which he lives. No one has the right to disregard this double responsibility, as a wholesome discipline for proper human life. And when you ask which comes first, the answer is: Rosh Hashana is the *beginning* of the year, and so it is with the principle of responsibility. The accountability of the individual comes first.

B) The difference between the Jewish New Year's celebration and that of the Gentile world is quite obvious: The first of January is celebrated with dining and wining, with merry making spectacles and hilarity. But the first of Tishrei is celebrated with prayer and devotion, with soul searching and spiritual inventory taking. That makes it of course more inspiring and uplifting.

Let us therefore hope that Rosh Hashana of 5739 will indeed bring a new era of dedication to the tenets of the Bible's guidance, a new period of peace and harmony between man and neighbor, and nation. Let this forthcoming Rosh-Hashana be the end of our suffering and the beginning of our salvation for Klal-Israel and for all mankind.

Wishing all our members and friends a very Happy and Healthy New Year.

Your devoted Rabbi

Dr. JEHUDA MELBER.●

## GETTING DEADWOOD OUT OF CONGRESS

The SPEAKER. Under a previous order of the House, the gentleman from Montana (Mr. BAUCUS) is recognized for 5 minutes.

● Mr. BAUCUS. Mr. Speaker, once progressives called Congress an enemy of change. People said moss-headed Congressmen prevented progress in the country.

Recently that has changed. Congress has found new solutions as new problems developed.

We have been successful in reducing poverty and expanding educational opportunities for all Americans. We have closed many of the legal loopholes that benefited only the rich and powerful.

We have curbed the disastrous decline in environmental quality. We have increased employment opportunities.

But Congress has missed a point. The point is that we have only a limited amount of resources to commit to solving national problems.

Too many times Congress has addressed problems by creating new programs. The result is that Government has gotten out of touch and out of control.

The Federal Government now consists of 11 Cabinet-level departments. Plus 44 independent agencies. Plus 1,240 advisory boards, committees, commissions, and councils.

In all, we have over 1,000 Federal spending programs.

There may have been a time when we could afford those programs, and and not worry which ones were working and which ones were not.

But budget realities of today and tomorrow do not leave room to waste scarce resources. We cannot—and should not—continue to pay for a system where one hand does not know what the other is doing.

Let me give you one example. A General Accounting Office study of health care clinics in the District of Columbia found eight clinics in one neighborhood. These clinics were funded under several Federal programs, and each administrator was unaware of what the others were doing.

Several of these subsidized doctors were seeing only a handful of patients a day. Meanwhile, the citizens of Baker, Mont., cannot find a doctor at all.

I would like to discuss some of my ideas for attacking Government spending. None of these ideas are new—I have been pushing some of them for years.

We have heard many proposals recently that frankly amount to wishful thinking or hot air or a combination of both.

I am going to talk about solid proposals—ideas that will work, and that have a reasonable chance of being enacted by this Congress.

LIMIT FEDERAL SPENDING

First, Congress must limit Federal spending. Recent growth in Federal outlays is shocking: From less than $200 billion in 1970 to $480 billion for 1979.

The time has come for a freeze on spending. I recommend that next year's budget resolution call for—at most—$490 billion in outlays. I will vote against any budget resolution calling for higher spending.

And I will point out that I voted against both the first and second concurrent budget resolutions this year because the spending levels were unacceptably high.

A $490 billion limit would let current programs continue. Because of inflation, there would be a reduction in real terms.

But there is some waste and unnecessary spending in every agency; all we would really be doing is cutting out some fat.

During the spending freeze, Congress can concentrate on getting the most service per dollar spent.

SLASH FEDERAL PROGRAMS

In 1975 I joined Congressman BLANCHARD in introducing the Government Economy and Spending Reform Act. Senator MUSKIE introduced a similar bill in 1976.

Senator MUSKIE calls our legislation the Sunset Act. I prefer to call it the meat ax bill.

The notion is that all spending programs would be divided into five groups. Each year, Congress would examine one of the groups.

And unless Congress specifically voted to continue each specific program, it would automatically expire.

Let me point out why this meat ax approach is needed.

The medicaid program began in 1965. This year it will cost $11 billion, and I am concerned that too much of that money goes to line doctors' pockets. But medicaid has never had a top-to-bottom review by Congress.

We are spending million every year to improve rivers and harbors. Some of these expenditures are the result of laws passed by Congress in 1899—laws the Congressional Budget Office says have never been reviewed.

Revenue sharing was designed in 1976 to provide assistance for State and local governments hit by recession. The program was supposed to end automatically when unemployment dropped. Unemployment dropped all right, but now President Carter wants to continue the program and focus it exclusively on big cities.

Of the 1,200 spending programs identified by the General Accounting Office, over 800 are permanently authorized. That means they never come up for review or reconsideration by Congress.

The spending reform bill did not get much attention in the 94th Congress, so I cosponsored it again in April of 1977.

The measure will soon be debated on

the Senate floor and the House Rules Committee has held hearings.

This legislation is essential to help Congress rein in on excessive spending. It is essential to get the deadwood out of Government.

ABOLISH "TAXFLATION"

Our tax system provides automatic tax increases that let Government keep getting bigger. I call this phenomenon taxflation and I want it stopped.

Here is how it works. Suppose you and your spouse together have a taxable income of $22,000. Your income tax would be $4,044.

Suppose that you both get a 7-percent cost-of-living increase to help keep up with inflation. Your income would be $23,540—and according to IRS schedule Y, your new tax is $4,489.

That is an 11-percent tax increase, even though in real terms your income stayed the same.

One report I read estimated that a 10-percent increase in the Consumer Price Index raises Government revenues 16 percent.

Several months ago I introduced legislation to end this taxflation. My bill would adjust tax brackets upward each year according to the CPI—the best available measure of inflation.

I am gratified that part of this year's tax reduction bill adjusts brackets upward 6 percent to account for last year's inflation. But I will continue my efforts to pass legislation so this is done automatically every year.

Ending taxflation would be a solid step toward making Government more accountable and less expensive.●

## COMMUNITY CREDIT NEEDS ACT OF 1978

The SPEAKER. Under a previous order of the House, the gentleman from Rhode Island (Mr. ST GERMAIN) is recognized for 5 minutes.

● Mr. ST GERMAIN. Mr. Speaker, today, I am introducing a bill which will be the focus of a Subcommittee on Financial Institutions markup in the near future. This legislation is a composite of three bills, the subjects of which have been discussed during hearings held in July and August and concluding Thursday of this week. The Thursday hearing will allow formal testimony on the provisions of H.R 13748 (regulation Q extension and transaction account differential elimination—CONGRESSIONAL RECORD, August 4, 1978, p. 24479). In addition, testimony will be received from those witnesses whose requests to testify could not be accommodated during the hearing period July 20 to August 10.

Title I of the bill extends regulation Q for 3 years and eliminates the differential on savings accounts at thrift institutions which are tied to an automatic transfer of funds to third-party accounts. This is identical to H.R. 13748. The hearing will allow opportunity for the subcommittee to consider suggestions for changes in the language regarding such accounts. For example, it has been suggested that the treatment of bill-payer services and transfers of interest income from certificates of deposit may need clarification.

Title II is a restatement of the investment authority of Federal savings and loan associations with four substantive changes in that authority. Section 5(c) of the Home Owners' Loan Act of 1933—the basic statute governing the operation of federally chartered savings and loans—is a complex statute which has needed simplification for many years. This legislation will accomplish that goal. the changes in investment authority all relate to the Federal Home Loan Bank Board's efforts to encourage more activity by Federal savings and loans in urban areas. Three of these changes were recommended by the Federal Home Loan Bank Board:

First. An updating of the authority of savings and loans to invest in community development assistance areas.

Second. A clarification and enhancement of the authority of savings and loans to invest in loans for property alteration, repair, or improvement.

Third. A revision and expansion of the authority to invest in obligations issued by State or local governments for the purposes of rehabilitation, financing or construction of residential real property.

The fourth change builds upon the Home Loan Bank Board's efforts to encourage Federal savings and loans to work in cooperation with State and local governments by placing in the unlimited investment category the authority for associations to invest in or lend to State housing corporations provided that the obligations are secured by real estate insured under the provisions of the National Housing Act. As stated the Board recommended a change in investment authority to allow savings and loans to invest in obligations issued by State or local governments for residential housing. This authority would limit such investments to 5 percent of an association's assets subject to requirements that the obligations be rated, or have a reserve or sinking fund, or have sufficient collateralization or guarantees. There are, however, some State obligations which are similar to direct investments in National Housing Act insured mortgages already allowed by statute. These obligations are issued by State housing corporations, are fully secured by residential mortgages, have full FHA insurance, and have full protection available in the event of default. Thus, the State housing corporation is between the savings and loan and FHA, the savings and loan receives a good yield and invests in a productive community project, and the State housing corporation can more readily market its bonds. This additional authority is in conjunction with the Board's own proposals and should make more funds available for housing in our communities.

Title III establishes a central liquidity facility for credit unions and is almost identical to H.R. 11310. The changes reflect suggestions made by National Credit Union Administrator Lawrence Connell, Gov. Philip Jackson of the Board of Governors of the Federal Reserve System and others during subcommittee hearings. The changes are:

First. Language to eliminate the possibility of double stock subscriptions in the facility;

Second. A requirement that NCUA not approve an extension of credit which is intended to expand a credit union's portfolio rather than to serve liquidity needs.

Third. A requirement that NCUA consider a credit union's creditworthiness prior to granting an application for assistance from the facility;

Fourth. A provision for emergency extensions of credit to State chartered credit unions by using a State share insurance fund of which the credit union is a member;

Fifth. Language to allow Federal reserve banks to act as fiscal agents, custodians, or depositories for the facility; and

Sixth. Revised borrowing authority to limit the total amount of such borrowing to 12 times capital stock and surplus of the facility. The 12 would apply whether the borrowings have a Government guarantee or not. This is comparable to the borrowing authority for other Federal Government entities.

It is my hope that the committee can expeditiously act on this legislation.●

## REPORT ON SELECT COMMITTEE ON ASSASSINATIONS

The SPEAKER. Under a previous order of the House, the gentleman from Ohio (Mr. STOKES) is recognized for 5 minutes.

● Mr. STOKES. Mr. Speaker, the Select Committee on Assassinations is well on its way to fulfilling the legislative mandate of this House. Each of the three main areas of our legislative mandate—First, who were the assassin(s) of Dr. Martin Luther King, Jr. and President John F. Kennedy; second, did the assassin(s) have aid or assistance either before or after the assassinations; and third, how did the agencies and departments of the U.S. Government perform in investigating the assassinations—are being fully explored.

The public hearings into the assassination of Dr. Martin Luther King, Jr. commenced the week of August 14, 1978. During the course of those hearings, I believe the extensive and professional work the committee has done was apparent. The committee commenced to make public the results of its year-and-a-half-long investigation into this case. It has looked at over 21 conspiracy allegations, and made numerous trips to every place James Earl Ray was known to visit. Indeed, the total number of points traveled to were over 700. More than 75 witnesses gave testimony in executive session and on 41 occasions, orders of immunity were obtained so that witnesses could fully testify. As for agency files, over 360 have been reviewed. Their quantity, however, was far greater than that number as one file can range from a few pages to literally thousands. Finally, several consultants were employed to bring scientific expertise into the required areas.

Public hearings on our investigation into the assassination of President John F. Kennedy commenced last week. As is equally apparent from these hearings, the select committee has spent long and detailed hours investigating this case. More than 500 places had to be visited. Over 1,500 witness interviews were conducted and more than 75 witnesses were

questioned in executive session. In excess of 500 files were reviewed. Indeed, these figures are as of the first 6 months of the year and have steadily grown. More so than the investigation into the death of Dr. Martin Luther King, Jr., scientific consultants have played a major role in the investigation of President Kennedy's assassination due to the evidence available. They have ranged through such diverse fields as photography, pathology, acoustics, ballistics and neutron activation analysis.

The supplementary funding request the committee is currently seeking will enable the committee to fully and professionally complete the work that has been mandated by this House. The failure to do so would be a disservice to the American people and only further foster rumors and allegations that surround each of these assassinations. By giving the select committee the full amount that we have requested, we can be assured that no shortcuts will have to be taken or necessary work left undone. The public hearings and, equally if not more important, the select committee's final report will be a credit to the House of Representatives.

During the course of the select committee's request for sufficient funds to complete its public hearings and write a complete final report, several allegations have been reported in the newspapers concerning the manner in which the select committee has been fiscally managed. I wish to assure you, and other Members of the House, that the select committee has been extraordinarily mindful of the taxpayer's dollar—it has operated in a responsible manner that is totally consistent with the directives of this House. The allegations of excessive expenditures and fiscal management are totally false.

It was reported in a newspaper that a Member of Congress loudly complained that the committee had made no effort to live within the $2.5 million budget the House gave it earlier this year. When the select committee's budget request earlier this year was reduced by the Subcommittee on Accounts, that subcommittee gave the select committee the same amount of money the select committee had appropriated in 1977. However, the forecast known requirements of the investigation were higher. In addition, there were other costs, for example, scientific projects, where actual expense could not then be forecast. When informed of these facts, the Accounts Subcommittee told the select committee that it would be perfectly appropriate to request additional funds if the appropriated funds could not finish the investigation. This is precisely what has happened, and why these funds are now being requested. The directive from the Accounts Subcommittee was not to restrict the investigation to only $2.5 million; it was to do a proper investigation, and if more than $2.5 million should be necessary, additional funds could be requested and authorized. The Accounts Committee was informed at that time that this additional request was almost certainly necessary—they did not change their position.

It has been charged and reported in the newspapers that the Select Committee's salaries are excessive. In fact, monthly reports filed with the Committee on House Administration for other House committees of comparable size to the Select Committee show their average salaries to be $4,600 to $5,400 higher than the Select Committee, with the percentage of salaries $30,000 and up substantially higher than the Select Committee.

It was reported in the newspaper that the Accounts Subcommittee staff was ordered to examine the Select Committee's financial records and put them in order. In fact, the senior staff member from the Committee on House Administration dispatched to carry out this assignment declined to do so as being unnecessary.

It was reported in the newspaper that the Select Committee has not been properly reporting its spending, especially in the area of its 56 secret consulting contracts. In fact, the Select Committee has filed every report required by the Committee on House Administration, the Finance Office of the Clerk of the House, and the Rules of the House of Representatives. As to consultants, the Committee on House Administration approved keeping that part of the monthly reports on a confidential basis until conclusion of the investigations. This was done mainly to protect the consultants from being prematurely harassed by the news media and others for the results of their findings.

As can be seen, Mr. Speaker, the Select Committee has consistently operated within the directives of the House. The allegations of fiscal mismanagement are without any merit, and I believe it important that the record reflect the true facts. At this point, I request permission to insert into the RECORD an analysis of the Select Committee's funding request which was submitted to the Committee on House Administration. The first chart reflects the committee's actual funding expenditures for the first 7 months of this year. The second chart reflects our projection of the committee's funding requirements for the balance of the year.

Finally, Mr. Speaker, there has been an allegation that a member of the Select Committee staff engaged in improper conduct. On the basis of evidence available to date, this allegation is totally without merit. I hereby request permission, Mr. Speaker, to insert into the RECORD a memorandum on this subject which was submitted to the Committee on House Administration on September 6, 1978.

Mr. Speaker, I trust that this report brings the Members of the House up to date on the progress of the Select Committee and answers any questions they may have had in conjunction with this request for additional funding.

SELECT COMMITTEE ON ASSASSINATIONS—ANALYSIS OF FUNDING REQUIREMENTS, 2D SESS., 95TH CONG.

| | Actual | | | | | | |
|---|---|---|---|---|---|---|---|
| | Jan. 3-31 | February | March | April | May | June | July |
| Number of staff | (115) | (115) | (117) | (116) | (118) | (118) | (114) |
| Salaries | $200,416 | $212,328 | $214,374 | $213,516 | $218,035 | $218,531 | $195,171 |
| Travel | 41,218 | 39,409 | 53,739 | 58,546 | 56,588 | 34,131 | 26,369 |
| Witnesses | 368 | 3,451 | 10,659 | 13,649 | 7,466 | 7,428 | 9,102 |
| Stationery and supplies | 18 | 444 | 1,947 | 1,802 | 2,839 | 75 | 1,048 |
| Telephone abd telegraph | 4,672 | 5,909 | 7,107 | 6,367 | 7,035 | 6,910 | 3,807 |
| Equipment—Lease | 2,145 | 2,512 | 2,455 | 2,731 | 2,496 | 2,341 | 2,132 |
| Reproductions, etc | 457 | 988 | 753 | 749 | 1,975 | 1,287 | 2,588 |
| Books and periodicals | 85 | 152 | 345 | 154 | 244 | 117 | 593 |
| Subtotal | 249,379 | 265,193 | 291,379 | 297,514 | 296,678 | 270,820 | 240,810 |

STATUS OF CONTRACTS

| | Obligated | Estimated expenditures | Paid to July 31, 1978 | Balance |
|---|---|---|---|---|
| Consultants | $119,642 | $100,300 | $49,724 | $50,576 |
| Scientific projects | 171,000 | 171,000 | 18,386 | 152,614 |
| | 290,642 | 271,300 | 68,110 | 203,190 |

| | Projection | | | | | | |
|---|---|---|---|---|---|---|---|
| | August | September | October | November | December | Jan. 1 and 2 | Total |
| Number of staff | (92) | (90) | (90) | (90) | (90) | (90) | |
| Salaries | $171,600 | $169,000 | $170,500 | $171,000 | $171,400 | $9,129 | $2,335,000 |
| Travel | 25,000 | 25,000 | 25,000 | 20,000 | 15,000 | 0 | 420,000 |
| Witnesses | 7,877 | 14,000 | 8,000 | 14,000 | 4,000 | 0 | 100,000 |
| Stationery and supplies | 3,702 | 1,375 | 1,375 | 1,375 | 0 | 0 | 16,000 |
| Telephone and telegraph | 4,193 | 4,000 | 4,000 | 4,000 | 4,000 | 0 | 62,000 |
| Equipment—Lease | 3,388 | 3,200 | 3,400 | 3,200 | 3,000 | 0 | 33,000 |
| Reproductions, etc | 4,203 | 16,000 | 4,000 | 2,000 | 0 | 0 | 35,000 |
| Books and periodicals | 310 | 175 | 175 | 175 | 175 | 0 | 2,700 |
| Subtotal | 220,273 | 232,750 | 216,450 | 215,750 | 197,575 | 9,129 | 3,003,700 |
| Consultants | | | | | | | 100,300 |
| Scientific projects | | | | | | | 171,000 |
| Reserve for contingencies | | | | | | | 15,000 |
| Total funding requirements | | | | | | | 3,290,000 |
| Less primary funding H. Res. 956 | | | | | | | 2,500,000 |
| Supplemental request H. Res. 1276 | | | | | | | 790,000 |

To: Committee on House Administration
From: Chairman Louis Stokes, Select Committee on Assassinations
Re: Allegation of Illegal Conduct by Committee Staff
Date: September 6, 1978

Attached to this memorandum is a report analyzing the allegations of illegal conduct made by Oliver Patterson and Mark Lane against the Select Committee. As of the date of this memorandum, the Committee has not yet conducted a personal interview of Mr. Patterson. The Committee attempted to interview Mr. Patterson as soon as he made his public accusations. One interview that we scheduled with Mr. Patterson for August 12, 1978 was cancelled by Mark Lane, then acting on behalf of Mr. Patterson. Mr. Patterson's present attorney, Melvin Wulf, was contacted to arrange an interview. On August 31, Mr. Wulf informed the Committee that Mr. Patterson would be interviewed, but not earlier than the week of September 11, 1978. An interview is presently scheduled with Mr. Patterson for September 15, 1978.

To evaluate Mr. Patterson's allegations, the Committee Report relies on Mr. Patterson's affidavit (Exhibit 1) and his known public and private statements. The Committee has also attended a Mark Lane/Oliver Patterson press conference during which Lane "offered" physical evidence of claimed illegal conduct on the part of the Committee. This evidence, consisting of a taperecording between Patterson and Baetz, a photograph of one of their meetings and some scrawled notes, confirmed no more than the fact that Patterson was providing information to Baetz.

In the absence, to date, of an interview with Mr. Patterson, and the production of any physical evidence he may wish to offer, the attached report is complete.

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HOUSE SELECT COMMITTEE ON ASSASSINATIONS STAFF REPORT ON ALLEGATIONS OF OLIVER PATTERSON

On August 7, 1978, Oliver Patterson in a news conference publicly alleged that a Committee staff investigator, Conrad Baetz, had engaged in illegal and improper activities during the course of his Committee assignments. (See Ex. 1, formal affidavit of Patterson concerning his allegations.) Present with Mr. Patterson during his public appearances in which he has made such allegations has been Mark Lane, attorney for James Earl Ray. This report is designed to set out each of Mr. Patterson's allegations in detail and provide responses to each. The Committee is confident that these responses will reveal that Mr. Baetz's conduct was legal as well as consistent with the Rules of this Committee and the Rules of the House of Representatives.

Before engaging in an analysis of Patterson's allegations and the Committee investigation of such, it is significant to understand the lawful function that informants in general *can* and *do* perform during investigations into criminal activity. Such an appreciation is particularly appropriate in the instant case where Mr. Patterson, Mr. Lane and others have attempted to suggest that the use of informants is inherently sinister and in contravention of constitutional rights.

UTILIZATION OF INFORMANTS IN GENERAL

Proper and lawful utilization of informants and informant information has long been recognized by the federal courts to be a necessary and permissible law enforcement technique. Various court decisions have dealt specifically with the implementtaion of informants and the relationship of such to certain fundamental guarantees.

I. *Fourth Amendment:* Conversations with, or in the hearing of, an undercover agent or government informant are not a search and seizure within the meaning of the Fourth Amendment. The Supreme Court held in *Hoffa* v. *United States*, 385 U.S. 293, 302 (1966), that a person speaking within the hearing of a government agent is not relying on the security of any constitutionally protected area, but rather on his misplaced confidence that the listener will not reveal what is said. The use of an informant to gather evidence of incriminating statements for use against the speaker does not pose a Fourth Amendment problem. *See also United States* v. *Satillo*, 507 F.2d 629, (3d Cir.), *cert denied*, 421 U.S. 968 (1975) (undercover agent's testimony from notes admissible at trial); *Berlin Democratic Club* v. *Rumsfeld*, 410 F. Supp. 144, 153 (D.D.C. 1976) (covert penetration of organization does not violate Fourth Amendment); *State* v. *Humm*, 234 N.W. 2d 60, 63 (S.D. 1975) (use of informant to "pump" suspects does not violate Fourth Amendment).

Electronic eavesdropping on conversations to which a consenting informant is a party or is physically present is not a search and seizure and no warrant is required. *United States* v. *White*, 401 U.S. 745, 752 (1971). This is so whether a) the conversation is transmitted by a device worn by the informant, *United States* v. *White, supra*; b) taped by the informant, *Lopez* v. *United States*, 373 U.S. 427, 439 (1963); c) taped by other agents monitoring a transmission, *Ansley* v. *Stynchcombe*, 480 F.2d 437, 441 (5th Cir. 1973); or d) taped by other agents monitoring a telephone call, *United States* v. *Bonano*, 487 F. 2d 654, 658 (2d Cir. 1973).

II. *Fifth Amendment:* The Supreme Court in *Hoffa* v. *United States*. *supra* at 304, also held that the use at trial of incriminating statements made to, or overheard by, an informant does not violate the defendant's privilege against compulsory self-incrimination. Such statements are made voluntarily and lack any element of compulsion. Lower federal courts have consistently held that informant obtained statements are admissible and do not violate the defendant's Fifth Amendment privilege. *See, e.g., United States* v. *DiLorenzo*, 429 F. 2d 216, 219 (2d Cir. 1970), *cert. denied*, 402 U.S. 950 (1971); *Ansley* v. *Stynchcombe*. *supra*.

III. *Due Process:* Courts have seldom treated the argument that the use of an undercover agent is *per se* a violation of due process. The argument was flatly rejected by the Supreme Court in *Hoffa* v. *United States, supra* at 311. It failed again in *United States* v. *Crow Dog*, 532 F. 2d 1182, 1197 (8th Cir. 1976), where the informant infiltrated a political organization when several of its members were under indictment.

Hence, this brief review of relevant case lay clearly identifies the constitutional propriety of informant use. No provisions of either the Rules of this Committee or the Rules of the House of Representatives limit or modify in any way the constitutionally prescribed methods of informant utilization.

COMMITTEE INVESTIGATION OF PATTERSON ALLEGATIONS INTRODUCTION

By his own admission (See Patterson affidavit, Exhibit 1 at page 1, paragraph 4), Oliver Patterson was an informant for the FBI during 1970 and 1971 to obtain information from Jerry Ray, brother of James Earl Ray, and J.B. Stoner, an avowed racist with an alleged background of violence. (Stoner also was a former attorney for James Earl Ray.) This Committee has clearly indicated to both Jerry Ray and Stoner that they are considered as subjects of its investigation into the murder of Dr. Martin Luther King, Jr. Given this characterization of Jerry Ray and J. B. Stoner and the proven intelligence capabilities of Patterson, who on one occasion advised the FBI that Jerry Ray had indicated to him the existence of a conspiracy to kill Dr. King, this Committee determined it only appropriate and propitious to ascertain Patterson's state of knowledge and capabilities for providing information relative to the possible roles of Jerry Ray and J. B. Stoner in the assassination of Dr. King. Accordingly, Patterson was not only served with a subpoena to appear before this Committee but he was also asked to provide information concerning Jerry Ray and Stoner on a continuing basis. He enthusiastically agreed.

SPECIFIC ALLEGATIONS

A. Role and payment of money.

Mr. Patterson himself was never a member of the staff of the Committee. His role was solely that of a subpoenaed witness, who, in fact, provided a statement under oath, and who provided additional information to the Committee relative to J. B. Stoner and Jerry Ray. Neither the testimony of Mr. Patterson nor his information were paid for. Mr. Patterson was advised that his role as a testimonial witness and source of information would not result in the payment of money to him by the Committee, except to the extent that Patterson, like all other witnesses who have testified or provided information to the Committee, would be accorded routine reimbursement for actual expenses for lodging, food, travel, telephone and similar costs incurred during the period that such testimony or information was provided. The Committee has every reason to believe that

Patterson understood precisely that he could receive only reimbursement for his expenses and not payment for information on a *quid pro quo* basis. That Patterson knew to expect only "expense" money is demonstrated in his response to the following question administered during a recent polygraph test:

Question: Were you promised *expense* money for travel and undercover work by Pete Baetz?

Answer: Yes. (Emphasis added) [1]

B. Electronic Surveillance

Committee interviews indicate that the staff investigator did not engage in physically recording any conversation overheard by him with the consent of Patterson. Nor did he overhear any conversation without the consent of Patterson. Patterson was also explicitly told that the Committee would not seek his cooperation in the utilization of otherwise proper and legal electronic surveillance techniques in order that the recordings made as a result of such surveillance could be used by the Committee.[2] See *United States* v. *White*, supra. Accordingly, electronic surveillance equipment has neither been provided nor used by the Committee in this or any other instance. Apparently, Patterson, with a background in electronics and personal possession of the necessary equipment, elected to record certain conversations on his own. Committee interviews indicate that the conduct of the staff investigator, therefore, did not constitute violation of the Committee Rules or House Rules; it also was not illegal.[3]

C. Hair Samples and Map

Patterson has also alleged in his affidavit (Exhibit 1, page 2, paragraph 7) and his polygraph test (footnote 2, *supra*, question No. 3) that the Committee was provided with hair samples and a map from the belongings of Jerry Ray. With respect to the map, on approximately April 17, 1978, while in Washington, D.C., and sharing a motel room with Jerry Ray, Patterson asked if the staff investigators with whom he was in contact wanted him to look through the personal effects of Jerry Ray for documents pertinent to the Committee investigation. Patterson was told immediately and repetitively by both investigators that he should not engage in such conduct. Patterson next advised the Committee on the following day, and *after the fact*, that he had indeed rummaged through Jerry Ray's belongings and discovered a map that he thought would be of interest to the Committee. He inquired if he should take it and photocopy it for the Committee. After this matter was immediately brought to the attention of the Chief Counsel for the Committee, Patterson was again explicitly instructed not to take the document in question or even allow staff members to view it. Patterson advised a staff investigator in response that he was going to make a copy anyway for his own use in case he wanted to write a book. Subsequent conversations with Mr. Patterson revealed that the nature of the map suggested an active plan by James Earl Ray to escape from the Tennessee Penitentiary where he is incarcerated. Given this significance to the map, the Committee asked Patterson to provide a *copy* of the map, which was in James Earl Ray's handwriting, so that the Committee could alert the appropriate law enforcement officials to prevent any escape attempt on the part of James Earl Ray. The actual map never came into the possession of the Committee. Information from the map was, in fact, conveyed to the FBI and the Tennessee Bureau of Investigation, as well as to the Governor of Tennessee. Hence, despite the Committee admonitions to Patterson, he obtained a xerox copy of the map which the Committee felt compelled to accept, in order to prevent a possible catastrophic event, i.e., another escape attempt by James Earl Ray. (Interestingly, on August 15, 1978, in a TV interview, Jerry Ray falsely denied even possessing a copy of the map which Patterson had obtained from him.[4])

As to the hair samples of Jerry Ray provided by Patterson to the Committee, Patterson advised the Committee that he had obtained such from a bathroom where Jerry Ray resided. This technique of suspect identification is clearly recognized in our judicial system. *Schmerber* v. *California*, 384 U.S. 757 (1966); *Gilbert* v. *California*, 388 U.S. 263 (1967); and *Biggers* v. *Tennessee*, 390 U.S. 404 1968). Further, given the existence of unidentified hairs in the FBI investigation of Dr. King's murder and the necessity of determining Jerry Ray's possible involvement in the assassination, it is most appropriate for the Committee to seek the production of this type of evidence.

D. Subornation of Perjury

With respect to allegations that staff members suborned perjury during Mr. Patterson's sworn statement to the Committee, he has specifically contended in his August 14, 1978 press conference with Mark Lane that, while he cannot remember the questions and answers involved in the subornation effort or even whether he in fact lied, at least he was furnished answers for the last three questions that were posed to him. The last three questions and answers in Mr. Patterson's sworn statement are:

(1) Mr. EBERHARDT: Do you still actively participate in the National States Rights Party matters?

Mr. PATTERSON: No, I have not seen Jerry for about four years.

(2) Mr. EBERHARDT: During the last couple of days that you have been with Jerry Ray, has he expressly admitted to you any personal role on his part in the assassination of Dr. Martin Luther King?

Mr. PATTERSON: None.

(3) Mr. EBERHARDT: Has he indicated that John Ray had any personal involvement in the shooting of Dr. King?

Mr. PATTERSON: No, the statements are there has been no involvement whatsoever.

If it is Patterson's contention that perjury was suborned and obtained in the instance of these three answers, such a contention is not supported by the nature and content of his responses. Question (1) is inquiry with a response consistent with Patterson's known involvement with the National States Rights Party. The answers to Questions (2) and (3) could hardly be instances of suborned perjury since one of the key issues involved in the Committee investigation is a determination of the involvement of Jerry and John Ray in the assassination. The Committee could hardly be expected to suggest negative answers to Questions (2) and (3) where such negatives are so fundamentally inconsistent with its mandate to identify any conspiracy to the murder of Dr. King. Staff members present during Patterson's statement confirm the absence of any effort to encourage false testimony from Patterson.

E. False Statements to the Media

Patterson has alleged that the staff investigator advised him to give false information to the New York Times regarding the following three matters:

(1) Patterson claims that the staff investigator told him to state that Mark Lane had said that there was "Raoul" (the individual alleged by James Earl Ray to have set him up as a "dupe" in the assassination of Dr. King). In fact, Patterson had previously reported that both Jerry Ray and Mark Lane had implied in conversations in Patterson's presence that there was no "Raoul." Other evidence gathered by the Committee clearly establishes Raoul's non-existence and acknowledgements of such by Jerry Ray (who coincidentally was originally represented by Mark Lane in his initial appearance before the Committee).

(2) Patterson further claims that the same investigator advised him to state that Lane had no new evidence about the King case. Not only has Lane implicitly so indicated according to earlier Patterson reports to the same staff investigator, but James Earl Ray's recent public testimony before this Committee, with Lane as his attorney, confirms those earlier reports that there would be no "new evidence."

(3) Patterson also contends that the staff investigator advised him to claim that he was terrified of Jerry Ray and that such was the reason why Patterson wanted his relationship with the Committee out in the open, so as to perhaps discourage any harm that might come to him. In fact, Patterson had been warned by the FBI prior to the instant allegations that Jerry Ray had discovered his role with the Committee and that the FBI had reason to express concern for his safety because of such.

F. Threats of Incarceration

Patterson contends that the staff investigator threatened to send his girl friend, Donna Stayton, to prison if she revealed what she had learned of Patterson's role with the Committee. In fact, only after Patterson had initially contacted the staff investigator with the advice that his then disenchanted girl friend, who was acquainted with both Jerry Ray and J. B. Stoner, had knowledge of his sensitive posture, did the staff investigator caution her, out of a sense of concern for Patterson's security, that any disclosure on her part of his role could be construed as an obstruction of a Congressional investigation and therefore a violation of law. See Title 18, U.S.C., Section 1505 which states in pertinent part:

Whoever corruptly . . . endeavors to obstruct or impede . . . the due and proper exercise of the power of inquiry . . . by any Committee of either House . . . (s)hall be fined not more than $5,000 or imprisoned not more than five years, or both.

Such information was imparted in the form of advice, not a menacing threat as Patterson suggests. Furthermore, such advice was rendered by the staff investigator after consultation with staff counsel.

G. Personal Allegations

Patterson has sought to further discredit the staff investigator by making allegations of a personal nature. The Committee is satisfied that these allegations are totally false and deems their nature unworthy of further comment.

CONCLUSION

Based on all available information and evidence the Committee is satisfied that the allegations of Oliver Patterson are not founded in fact and that no unlawful or improper conduct has been engaged in by members of its staff.

FOOTNOTES

[1] The only other questions and answers contained in the polygraph test arranged with a private polygraphist by Mark Lane are as follows:

1. Question: Did you telephone and record calls to Jerry Ray, J. B. Stoner, and others with Pete Baetz monitoring some of the calls?

Answer: Yes.

2. Question: Did Pete Baetz furnish you with replacement tape cassettes to record telephone calls with Jerry Ray and others?

Answer: Yes.

3. Question: Did Pete Baetz direct you to mail documents and hair samples, illegally obtained by you from Jerry Ray, to his Wood River Illinois Post Office Box?

Answer: Yes.

The Committee has not yet had the opportunity to independently evaluate this test or review the post-examination interview of Patterson by the polygraphist who administered the test.

[2] Patterson's allegation relative to electronic surveillance is somewhat amorphous since it is his contention, in an interview with KSD–TV in St. Louis, that Baetz never gave him specific instructions in the form of "you do this or you do that," but rather that Baetz had in some way *suggested* that Patterson record his conversations with Jerry Ray.

[3] Rule 7.1 of the Committee Rules reads in pertinent part: "*Tape Recordings.* No conversation of Committee members or staff with any person shall be recorded without the prior knowledge and/or written consent of the person whose conversation is to be recorded." Further, it does not preclude the use of an informant to record conversations between the informant and a subject of the investigation, although such a technique involving consensual tape recording by an informant has not been implemented by this Committee in any instance. Rule 7.1 does limit the ability of "Committee members" and "staff" to engage in consensually recorded conversations, but the limitation extends no further.

[4] It is also interesting to note that in Patterson's description of how he obtained his copy of the map he specifically avoids any indication that he searched Ray's belongings in the first instance at Committee instructions. (See Exhibit 1, page 2, paragraph 7.)

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STATEMENT OF OLIVER PATTERSON

Oliver Patterson, being duly sworn, deposes and says that:

1. I reside at 12350 Old Halls Ferry Road, in the City of Black Jack, State of Missouri.

2. For the past several months I have been working as an undercover agent for the House Select Committee on Assassinations.

3. During that period I testified before the Committee's staff in Washington, D.C. During that testimony, I was asked questions by a lawyer for the Committee named Michael Eberhardt and on several occasions I was handed written "answers" to the question by Conrad Baetz, hereinafter referred to as Baetz, a staff investigator for the House Select Committee on Assassinations, hereinafter referred to as HSCA. I read the Baetz-supplied answers into the record and the stenographer apparently took it down as my own. I do not believe that the members of Congress on the Committee know that their staff is functioning in this fashion.

4. During 1970 or 1971, I was assigned by the FBI, an organization I had worked for since 1968, to meet Jerry Ray, the brother of James Earl Ray, and J. B. Stoner, and to secure information from them. I continued to carry out that assignment for approximately three years.

5. Early this year I was recruited by Conrad Baetz to work for the Select Committee. I was sent to Georgia by the HSCA to meet Jerry Ray and to renew my relationship with him.

6. Baetz regularly instructed me to telephone Jerry Ray and to tape record those conversations. I often did that while Baetz was in my house. Often Baetz would listen in on the conversations by using earphones through which he monitored those telephone conversations. This went on for several months. Baetz took the tapes of the recorded conversations with him and gave me back new tapes regularly.

7. On one occasion when I was in Washington, D.C. with Jerry Ray and while I was working for the HSCA, I searched Jerry Ray's belongings. I found some letters from James Earl Ray to his brother Jerry and a map which Jerry had placed in his toilet article bag. Following directions from Baetz, I took the letters and the map from the Quality Inn on Capitol Hill where I had discovered them, across the street to the Hyatt Regency Hotel and there I had all of the documents photocopied. I had several copies of each document made. Following the specific directions of Baetz, I then mailed copies of each of the documents to him at his P.O. Box in Wood River, Illinois. Baetz gave me directions to photocopy the documents and send them to him in telephone conversations that I had with him almost immediately after I found the documents. I called Baetz at a special number he had given me and left word that he should call "David Rogers" at once. "David Rogers" was a code name that the Committee used to identify me. Baetz called me back almost immediately and told me that he had been called out of the hearing room. He told me that Jerry Ray was then testifying. When I told Baetz about the documents, he agreed to try to detain Jerry Ray longer before the Commitee so that I could make copies of the documents.

8. Later, Baetz told me that the documents were so important that a meeting was held in Washington, D.C. to discuss them. Baetz said those present at that meeting were, G. Robert Blakey, general counsel of HSCA, the Director of the FBI and Attorney General Bell.

9. During the course of my undercover work for the HSCA, I went to Georgia to see Jerry Ray. I was instructed by Baetz to secure samples of Jerry Ray's hair. A woman named Donna Stayton, (1619 Board Walk, Florissant, Missouri, 63031) who travelled with me at the time, assisted in securing hair samples.

10. Later, after I told Baetz that Donna and I had an argument, Baetz immediately visited Donna and thereafter told me that he had threatened to send her and her husband to a federal penitentiary if either of them ever told of our secret work for the HSCA. Baetz called me and told me that he had threatened Donna with prison.

11. Recently the HSCA discovered that Mark Lane had learned of our operation. Baetz told me that I had three options. He said I could leave town and just disappear. Or, I could hold a press briefing which he could set up and then leave town. Or, he said the FBI could visit me and arrange a new identity for me so that I could not be found.

12. Baetz told me that he had talked with Eberhardt and Blakey. He told me that they wanted me to meet with the New York Times. The House Select Committee arranged with the New York Times for a reporter to come to St. Louis on August 6, 1978 so that I could give him false information. Baetz called me in the afternoon to tell me that because the Pope had died it was a bad news day for our story and he put off the meeting with the New York Times until August 7, 1978.

13. Baetz told me that I was to tell the New York Times that "Mark Lane is a queer." In fact, I have not the slightest indication that that is true.

14. Baetz told me to tell the New York Times that Lane had said that there is no Raoul. Mark Lane has never made such a statement to me and in fact I have heard him say on many occasions that he was convinced that Ray was duped by a man who had identified himself as Raoul.

15. Baetz told me to tell the New York Times that Lane had no new evidence about the King case. Lane has told me just the contrary.

16. Baetz told me to tell the New York Times that I was terrified of Jerry Ray and that was why I was talking to the New York Times and requesting protection from the FBI.

17. Two weeks prior to the time that Mel Waxman and Baetz of the Select Committee had called upon me at my home in Black Jack for the first time, I was warned by the FBI of their impending arrival. Within 48 hours after having been warned by the FBI that the Select Committee was going to interview me, I wrote a letter to Jim Haggerty, Special Agent of the FBI, stating that I wished to withdraw from all further work with the FBI. I stated clearly that I did not wish to be involved any further with the Committee or with the FBI. However, my requests to be left alone were ignored. Not long after I wrote to the FBI, Baetz and Waxman visited me and asked me to work for the Select Committee by spying on Jerry Ray and J. B. Stoner.

18. I am now telling the truth about the secret operation against James Earl Ray, Jerry Ray and their lawyer, Mark Lane, that the Select Committee set up. I am willing to take a lie detector test and to make my statement before an investigating Committee under oath. I am willing to be cross-examined by an impartial investigating body.

19. In addition to urging me to call Jerry Ray, to tape record those conversations and to learn of Mark Lane's flight schedule and schedule of meetings, Baetz spent a lot of time at my house playing the pinball machine, watching pornographics films and urging me to get one of the girls in the film to my house so that he might have sexual intercourse with her. He was so persistent and so insistent that one day while Baetz was as my house, I did call the young woman. She came over to the house and Baetz and she had intercourse in the bedroom next to the room that I was occupying. They were in there for fifteen minutes and Baetz later told me that they had had intercourse.

OLIVER PATTERSON.

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STATEMENT OF G. ROBERT BLAKEY, CHIEF COUNSEL AND DIRECTOR, SELECT COMMITTEE ON ASSASSINATIONS, AUGUST 10, 1978

On Monday, August 7, 1978, a man who has been associated with an attorney for the convicted assassin of Dr. Martin Luther King, Jr. held a press conference in which he made several serious allegations concerning the conduct of an investigator for the Select Committee on Assassinations. The man making the charges has given a statement under oath to the Committee, though he has never been an employee of the committee.

Since the integrity of the committee's investigation of the assassination of Dr. King has been questioned, the committee is looking into the allegations. The investigator charged with misdeeds, a law enforcement officer who has a top secret security clearance based on an extensive background examination of his character, has been interviewed, as have other members of the committee staff who may have had information concerning the investigator's conduct.

On the strength of a preliminary investigation, the committee categorically denies each and every allegation of wrongdoing. It states with assurance that no federal, state or local law or any rule of the House or of the committee has been violated by the investigator or by any other member of the committee staff.

The committee will continue to conduct a complete investigation of the allegations. If any indication of wrongdoing is uncovered, prompt and appropriate action will be taken and brought to public attention. The committee is determined that the American people will not be misled by attempts to discredit the committee and its investigation.●

## NOISY AIRCRAFT REVENUE AND CREDIT ACT

The SPEAKER. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

● Mr. VANIK. Mr. Speaker, if H.R. 11986, the Noisy Aircraft Revenue and Credit Act, passes in its current form—

First. United Airlines could receive $640 million for its $1.6 billion order of Boeing 767's and 727-200's.

Second. Eastern Airlines could receive over $311 million for its $778 million purchase of the Airbus Industrie A300.

Third. Pan American Airlines could receive $200 million for its $500 million purchase of 12 Lockheed jets equipped with Rolls Royce engines.

Any airline purchasing a new aircraft with a less noisy engine is eligible to receive up to a 40-percent credit under this bill.

The Noisy Aircraft Revenue and Credit Act is an outrageous raid on the airline safety trust fund. If this fund is in surplus, the airline passenger tax should be reduced by 2 percent. The $3.2 billion that H.R. 11986 would give to the airline industry, by transferring 2 percent of the airline excise tax, belongs to the consumer.

I urge Members of the House to vote down the previous question on the rule on this bill so that an open rule may be considered. However, if the rule is not defeated, vote against H.R. 11986, the Ways and Means substitute to title III and for the motion to strike sections 301–304 of H.R. 8729. If these efforts fail, support the Snyder motion to recommit the bill.●

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## ABORTION AND GENETIC COUNSELING

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, the September 10 edition of the Parade Magazine contains a very informative article on the significant progress being made in methods for identifying, prior to birth and even prior to conception, hereditary diseases with which the children of some parents may be afflicted. These diseases include the following:

Cystic Fibrosis: Afflicts children and young adults with breathing problems, intestinal difficulties and malnourishment, with life expectancy limited.

Down's Syndrome (Mongolism): Involves mental retardation and other functional difficulties often leading to institutionalization.

Sickle-Cell Anemia: Produces general weakness and susceptibility to infection leading to multiple crises and, finally, fatal bodily deterioration.

Spina Bifida: A birth defect affecting the central nervous system, causing a defect in the bony structure of the spinal column. Victims may never control the lower part of their bodies.

Tay-Sachs Disease: Causes a destruction of the nervous system. The affected child appears normal for about 6 months, then deteriorates rapidly, losing all physical skills, and eventually dies.

Thalassemia: Symptoms include anemia or multiple physical problems throughout childhood, requiring periodic blood transfusions; in more severe cases, still-birth or death soon after birth.

In some cases, tests of prospective parents prior to conception may indicate likelihood that their children will be afflicted with a genetic disease. In other cases, prenatal tests after conception are available or will soon be available to determine whether the infant will suffer the disease.

Where prenatal tests are available, the parents have the option of an abortion in order to avoid giving birth to a genetically diseased child. Unfortunately, under the restrictions imposed by the current so-called "right to life" amendments, many women in lower economic circumstances will be denied the right to such an abortion. The unfairness of this is obvious.

On this point, the article quotes Dr. Henry L. Nadler of Childrens' Memorial Hospital and Northwestern University Medical School:

What do you do when you tell a woman who can't afford to pay for an abortion that she is going to have a child with mongolism, for example? I simply don't think we can selectively set up a particular socioeconomic section of the population and say, "Sorry, we can't help you." There will be a hue and cry that will make something happen.

Mr. Speaker, this is but one of the many unrealistic aspects of the so-called "right to life" campaign. It would deny the fruits of medical progress to poor women, forcing them to give birth to defective human beings, many of whom, such as mongoloid children, cannot live life in any meaningful sense. They would also, of course, force unwanted children on women lacking the financial means to care for them.

Certainly the "right to life" should include some considerations as to the quality of life of those who are born and not merely the question of whether all fetuses, once conceived, must proceed to birth whether or not the mother is willing and whether or not the person who is born will be able to have a meaningful existence.

The full text of the Parade article follows these remarks:

### HELPING THE NEWBORN VIA GENETIC COUNSELING

(By Jeanne Helen Jones)

When Mrs. Robert W. Howard of New York give birth to a baby with Tay-Sachs disease, she and her husband felt they had only one person to blame—their obstetrician. After 22 months, the baby died a horrible death, and the Howards sued their obstetrician for failing to advise them of two means of preventing the tragedy: a blood test and a prenatal test.

Had they known about and taken these tests, they would have found themselves to be carriers of Tay-Sachs and the fetus destined to die of the disease. Mrs. Howard would have aborted.

The Howards won their original suit but lost on appeal to the Supreme Court of New York, which stated that it is the public policy not to weigh the quality of a life.

There have been many other cases similar to the Howards' and the outcomes have been mixed. Moreover, the abortion issue is aggravating the controversy over genetics.

Also adding to the confusion is the ignorance of the public and many medical professionals about what can be done to prevent genetic diseases. In fact, whether a woman receives expert or outdated advice on genetic risks could depend on when her physician graduated from medical school. "Ten years ago, many medical schools taught practically nothing about genetics," says Dr. Connie Sandlin, director of genetic services at Loma Linda (Cal.) University Medical Center. She notes that most chromosome diseases weren't charted and identified until the late 1950's.

As a result, "The average physician of any kind does not know what he or she should about handling genetic problems," says Dr. Henry L. Nadler of Children's Memorial Hospital and Northwestern University Medical School in Chicago. "Now at Northwestern a very significant amount of the obstetrics-gynecology training is spent in genetics."

The National Foundation—March of Dimes estimates that genetic factors account for 40 percent of all childhood deaths and 80 percent of the 3 million retarded in the United States today.

Infant genetic diseases usually arise through mistakes in one of the hundreds of thousands of genes within the chromosomes of the parents' egg or sperm, or through abnormalities in the chromosomes, most frequently those of the child—not the parent.

How can these diseases be detected? In the case of gene defects carried by the parents, prepregnancy blood tests are available to pinpoint risks for three diseases: Tay-Sachs, thalassemia and sickle-cell anemia. A blood test for cystic fibrosis is within a year of development, says the March of Dimes.

Another early-warning system is being devised to detect spina bifida, the second most common birth defect in this country. A blood test during pregnancy followed by a prenatal test for absolute diagnosis are being administered to prospective mothers in pilot projects throughout the country.

The prototype for genetic counseling is the highly successful California Tay-Sachs Disease Prevention Program directed by Dr. Michael Kaback. The program employs blood test to identify Tay-Sachs carriers and makes prenatal diagnoses of the fetus using amniocentesis.

But many genetic diseases cannot be detected through simple blood tests of the parent. In chromosome-related diseases, for example, the defects usually occur by chance in a particular baby. Fewer than 5 percent of the chromosome abnormalities are due to the parents' defective chromosomes. These diseases can be detected within the pregnant woman's uterus through amniocentesis, the most widely used prenatal test now available.

#### POOR RESPONSE

An alarming number of people fail to make use of this technique. Even in California, where amniocentesis is widely offered through 11 state-sponsored centers, the response has not been overwhelming. During fiscal year 1976–77, the state estimates that 3500 amniocentesis procedures were performed out of 18,700 pregnancies at risk and eligible.

"It is dramatic how slow society has been to utilize an outstanding technique that can greatly reduce birth defects," says Dr. Aubrey Milunsky, director of genetics and pediatrics at Harvard's Eunice Kennedy Shriver Center and author of Know Your Genes, a book for lay readers. He strongly suggests that the use of amniocentesis in this country should be expanded from the current 20,000 a year to 160,000 by testing every pregnant woman over 35.

Dr. Kaback takes a more moderate view: "Not every woman over 35 who is pregnant should have an amniocentesis. On the other hand, a pregnant woman beyond 35 should be informed that she is at a relatively increased risk for having a child with Down's

syndrome or with an often more serious chromosomal imbalance, that there is a safe and accurate test available to her to find out whether this pregnancy is an affected pregnancy, and that there are various options open to her to deal with this discovery."

ABORTION FOES

One of those options is, of course, abortion, which has its opponents. Shirley Murtaugh, education director of The Right to Life League of Southern California, says, "Many families have been advanced and enriched by having a defective child. We regret that abortion is connected with amniocentesis because we feel that under no circumstances, once a life exists, can there be an abortion. If the fetus is defective, we do not change our position one iota."

Last fall, Congress enacted the Michel Amendment, which cut off federal Medicaid funds in most abortion cases. Thirty-three states have also cut off public funds, with others showing signs of doing the same.

What this means for prenatal testing and genetic counseling is not clear. "What you basically do if you follow the letter of the law is make screening for genetic defects unavailable to a specific socioeconomic class," says Northwestern's Dr. Nadler. "What do you do when you tell a woman who can't afford to pay for an abortion that she is going to have a child with mongolism, for example? I simply don't think we can selectively set up a particular socioeconomic section of the population and say, 'Sorry, we can't help you.' There will be a hue and cry that will make something happen."

The demand for better genetics services nationwide has been heard in Congress. Sen. Jacob Javits (R., N.Y.) is spearheading a new bill providing funds for a network of genetics clinics around the country. And should current research seeking carrier detection for scores of diseases succeed, Dr. Kaback envisions the following scenario for a national counseling program:

"Twenty to 30 years from now, when a couple decides to have children, a state will provide a service, either through a clinic or private physician. The couple's blood will be drawn, and tests will be run on that blood for 50 different genetic problems—all paid for, all voluntary. The couple will then receive a report that they have been found not to be at risk for passing any of the tested diseases on to their offspring and are free from concern. If they are found at risk, counseling and amniocentesis services would be made available free of charge."

Whether this sounds like "playing God"—as some have labeled all things genetic—or like an idea whose time has come may depend on your philosophy, your religion, your family history, your physical health or your own genetic composition.

BASIC GENETIC GLOSSARY

Amniocentesis—the most common prenatal test. Fluid is drawn from the uterus during pregnancy for laboratory analysis. Danger to fetus and mother is generally accepted as far below 1 percent, and in more than 97 percent of people tested, no genetic problem is discovered. Can detect all chromosome abnormalities and at least 70 chemical errors in the genes.

Carrier—a healthy individual, usually not affected by the deleterious gene he or she carries, who can pass on a disease to offspring because of it.

Cystic Fibrosis—the most common severe birth defect of body chemistry affecting people of northwestern European ancestry. Children and young adults commonly suffer from breathing problems, intestinal difficulties and malnourishment, with life expectancy limited. Carrier blood and prenatal test in final research stages.

Down's Syndrome (Mongolism)—the most common birth defect and the one most screened for by amniocentesis. Caused by an error in the parent's ovum or sperm, producing an extra chromosome 21. Retardation and other functional difficulties often lead to institutionalization. Prenatal test now commonly available.

Genetic Counseling—making available knowledge about hereditary problems to the public. Counselors can reassure prospective parents who fear they may pass on a genetic disease, educate families with histories of genetic disorders and refer families with genetically impaired members to treatment facilities.

Genetic Disease—a mistake in the basic blueprint of an individual because of an error in one or a group of chromosomes or genes.

Sickle-cell Anema—genetic disease afflicting black children. Symptoms can include general weakness and susceptibility to infection leading to multiple crises, and, finally, fatal bodily deterioration. Carrier blood test is currently available.

Spina Bifida—the most common birth defect affecting the central nervous system, causing a defect in the bony structure of the spinal column. Victims may never control the lower part of their bodies. Maternal blood and prenatal test now in pilot study stage.

Tay-Sachs Disease—an inherited genetic disorder most common in Ashkenazi Jews, causing a destruction of the nervous system. The affected child appears normal about six months, then deteriorates rapidly, losing all physical skills, and eventually dies. Blood and prenatal tests widely available.

Thalassemia—genetic disease prevalent among people of Mediterranean descent. Symptoms may include mild anemia or multiple physical problems throughout childhood, requiring periodic blood transfusions: more severely, still-birth or death soon after birth. Carrier blood test is currently available.

For counseling and referral:

The National Genetics Foundation, Inc., 9 West 57th Street, New York, N.Y, 10019. [212] 759–4432.

National Foundation—March of Dimes, Box 2000, White Plains, N.Y., 10605. [914] 428–7100.●

## WE NEED TO KNOW ZAMBIA BETTER

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD.)

● Mr. SIKES. Mr. Speaker, Zambia is an enigma to most Americans. But it is highly important to negotiations affecting Rhodesia and Namibia. It is one of the few countries in Africa that holds meaningful elections, that has a relatively free press, and where whites are welcome.

The President, Kaunda, is Methodist mission trained and claims to be nonalined. However, both Russian and Cuban military personnel are in his country to assist in the training of forces of Nkomo, the Rhodesian guerrilla leader who plans an invasion of Rhodesia unless he is offered a place which is attractive to him in the present government.

Ironically, Nkomo's army and his Russian-supplied weapons are much larger in number than the Zambian forces. Because of a close personal friendship of many years, Kaunda has permitted Nkomo to use Zambia as a base of operations against Rhodesia. Now he is powerless to get rid of them. Estimates on the size of Nkomo's army range from 6,000 to 12,000. There are also 25,000 to 35,000 refugees from Rhodesia who accompany Nkomo's army. Feeding them is a major undertaking for a poor country and it is generally accepted that Russia is paying the bill.

Initially the Chinese assisted in training Nkomo's forces, but apparently the Chinese have been replaced by Cubans and Russians and are no longer there.

Kaunda does not approve of Cubans in Angola and he objected to U.S. efforts in Vietnam. It is known that he tried to curb SWAPO's recent incursion into the Capriva strip of Southwest Africa. This venture ended in disaster for SWAPO, which has been seeking for years to establish a new government in Southwest Africa and still enjoys strong support from the United Nations.

Despite these seeming contradictions, those who know Kaunda say that he is not a socialist, that he is widely respected in Africa, and that the United States should keep open our options for dealing with him.

Zambia needs western expertise. A major problem is food and self-sufficiency in agriculture production is a primary goal of the present government.●

## THE REAL GOVERNMENT IN ANGOLA TODAY IS RUSSIA ALIAS CUBA

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD.)

● Mr. SIKES. Mr. Speaker, U.S. feelers toward better relations with Angola are directed to the wrong group. There is nothing to be gained by negotiating with a government which is kept in power only by Cuban bayonets, controlled by Russia, and used to obtain a major base of operations for Russian air and naval forces. The real government in Angola today is Russia alias Cuba.

The Communist faction in power in Angola, the MPLA, has no stronger claim for recognition as the legal government than does UNITA, which controls more than one-third of the country, including Angola's bread basket and principal railroad.

The MPLA government operating from Luanda, is far from secure despite 3 years of massive Russian aid and Cuban troop support.

Intelligence reports which were made available to me show 23,000 Cubans now in Angola, of whom 17,000 are troops and the remainder are Cuban technical and maintenance personnel. There has been much mystery about Cuban casualties, a subject generally ignored by the American press. It is obvious that casualties result from battle wounds and tropical illnesses, and best estimates from the local level are that there have been 5,000 Cuban deaths there. This does not include the numbers of sick and wounded. Castro has attempted to conceal the casualties. Notification is sent to families of deceased, sometimes months after death occurs. The seriously wounded and ill are flown to Communist nations in Europe, notably East Germany, for treatment and convalescence.

There are now an estimated 1,500 Russians in Angola, principally in the capital, in part to direct the Cuban war effort which often has been ineffective in the field. The Russians also maintain a sub-

stantial naval presence in Luanda, including combat surface ships and submarines. Russian aircraft, including reconnaissance planes and transport aircraft, are based there. This gives Russia an important stronghold in the South Atlantic.

There are reports of growing friction, sometimes with serious outbreaks, between Cubans and Angolans. As a result, Cubans are being kept more and more in their own compounds. Local Angolans accuse the Cubans of helping themselves to radios, TV sets, refrigerators, even automobiles, and shipping them back to Cuba.

The glamour of Castro's African adventure is wearing off as word of deaths, mutilation of captives, and other stories gain circulation in Cuba. Soldiers who are rotated back are instructed not to talk but word gets around. Despite Castro's continued bombastic statements, there is growing uneasiness on the island about "Cuba's Vietnam." More and more Cubans are seeking, by whatever means possible, to avoid service in Africa.

Even with Cuban and Russian support, MPLA troops do not venture out except in strength. This causes supply problems which they do not cope with effectively. Food sometimes is short, even in the capital, because UNITA controls so much of the food producing area and because of interruptions in the operation of the railroad. Defections from MPLA forces are reported to be occurring with increasing frequency.

Although UNITA is the principal adversary of the MPLA, another insurgent movement, the FMLA, continues to operate in the northern part of Angola. However, the FMLA controls but little territory.

The UNITA forces, headed by Savimbi, are careful to avoid a direct confrontation with the MPLA. Savimbi is Chinese-trained and he fully understands Mao's tactics of guerrilla warfare. His hit-and-run attacks have kept the MPLA off balance. He has a supply problem and a considerable part of his weapons are those captured from the MPLA forces. Although UNITA can operate with much more flexibility, the struggle is not an easy one. They are badly outnumbered and short of mobile equipment. They have tried repeatedly to obtain mobile radio broadcast facilities possessing greater power than those they now have in order to broadcast their story to the world.

Russia's interest is in maintaining a puppet government in the capital and in using the port and airfield facilities at Luanda for their own purposes. Admittedly, it will be almost impossible for UNITA to oust the MPLA from the capital area while the Cuban and Russian effort persists. However, there is no reason for the United States to place its stamp of approval on this situation by opening negotiations with the MPLA for recognition.●

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. YOUNG of Alaska (at the request of Mr. RHODES), for September 11 through 13, on account of official business.

Mr. BURKE of Florida (at the request of Mr. RHODES), for the week of September 11, on account of official business.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. KINDNESS) and to revise and extend their remarks and include extraneous matter:)

Mr. GOLDWATER, for 5 minutes, today.
Mr. MCKINNEY, for 5 minutes, today.
Mr. YOUNG of Florida, for 5 minutes, today.

(The following Members (at the request of Mr. RAHALL) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. PEPPER, for 5 minutes, today.
Mr. ADDABBO, for 10 minutes, today.
Mr. BINGHAM, for 10 minutes, today.
Mr. BAUCUS, for 5 minutes, today.
Mr. ST GERMAIN, for 5 minutes, today.
Mr. STOKES, for 5 minutes, today.
Mr. VANIK, for 5 minutes, today.
Mr. DOWNEY, for 45 minutes, September 12, 1978.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. KINDNESS), and to include extraneous matter:)

Mr. JEFFORDS.
Mr. FINDLEY in two instances.
Mr. PRITCHARD.
Mr. RHODES.
Mr. LEACH.
Mr. DORNAN.
Mr. FRENZEL in five instances.
Mr. MARRIOTT.

(The following Members (at the request of Mr. RAHALL), and to include extraneous matter:)

Mr. ANNUNZIO in six instances.
Mr. ANDERSON of California in three instances.
Mr. GONZALEZ in three instances.
Mr. BROWN of California in 10 instances.
Mr. KILDEE.
Mr. EILBERG in 10 instances.
Mr. IRELAND.
Mr. BOLLING.
Mr. BINGHAM in 10 instances.
Mr. THOMPSON.
Mr. RODINO.
Mr. HAMILTON.
Mr. LUNDINE.
Mr. MOORHEAD of Pennsylvania.
Mr. NOLAN in two instances.
Mr. DOWNEY.
Mr. HARRIS.
Ms. KEYS.
Mr. STARK.
Mr. WOLFF.
Mr. BRECKINRIDGE in four instances.
Mr. OTTINGER.
Mr. AUCOIN.
Mr. SIMON in three instances.
Mr. VANIK.
Mr. JONES of Oklahoma.
Mr. EDGAR.

## SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 691. An act to provide for the preservation and enhancement of critical habitat for migratory waterfowl and other wetlands-dependent migratory birds of the Pacific flyway in the grasslands area of the San Joaquin Valley, California; to the Committee on the Judiciary; and

S. 1423. An act to establish a procedure in addition to impeachment for the retirement of disabled members of the Judiciary of the United States and the removal of those whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution, and for other purposes; to the Committee on Interior and Insular Affairs.

## SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2928. An act to authorize appropriations for the fiscal year 1979 under the International Investment Survey Act of 1976, and for other purposes; and

S. 3107. An act to amend the Bankruptcy Act to provide for uniform supervision and control of employees of referees in bankruptcy.

## ADJOURNMENT

Mr. RAHALL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 51 minutes p.m.), the House adjourned until tomorrow, Tuesday, September 12, 1978, at 12 o'clock noon.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of title XXIV, executive communications were taken from the Speaker's table and referred as follows:

4953. A communication from the President of the United States, transmitting notice of the issuance of a determination that the extension for 1 year of the authorities currently exercised under section 5(b) of the Trading With the Enemy Act, with respect to various Communist countries, is in the national interest, pursuant to section 101(b) of Public Law 95-223. (H. Doc. No. 95-380); to the Committee on International Relations and ordered to be printed.

4954. A letter from the Director, Office of Management and Budget, Executive Office of the President transmitting a cumulative report on rescissions and deferrals of budget authority as of September 1, 1978, pursuant to sction 1104(e) of Public Law 93-344 (H. Doc. No. 95-381); to the Committee on Appropriations and ordered to be printed.

4955. A letter from the president and chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction with British Airways exceeding $60 million, pursuant to section 2(b)(3)(1) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

4956. A letter from the U.S. Commissioner of Education, Department of Health, Education, and Welfare, transmitting the 27th annual report on Federal financial assistance for maintenance and operation of schools and

for construction of school facilities in federally affected areas, and on disaster relief of schools in disaster areas, pursuant to section 401(c) of Public Law 71–874 and section 12 (c) of Public Law 81–815; to the Committee on Education and Labor.

4957. A letter from the U.S. Commissioner of Education, Department of Health, Education, and Welfare, transmitting a report on graduate fellowships and assistance for fiscal year 1977, pursuant to section 971 of the Higher Education Act of 1965, as amended; to the Committee on Education and Labor.

4958. A letter from Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b; to the Committee on International Relations.

4959. A letter from the Secretary of Health, Education, and Welfare, transmitting the findings of the assessment of bilingual and bicultural awareness activities in health professions schools, pursuant to section 904(c) of Public Law 94–484; to the Committee on Interstate and Foreign Commerce.

4960. A letter from the executive director, American Historical Association, transmitting the audit of the association's accounts for the year ended June 30, 1978, pursuant to section 3 of Public Law 88–504; to the Committee on the Judiciary.

4961. A letter from the chairman, Board of Directors, Future Farmers of America, transmitting a report on the audit of the accounts of the organization for the year ended June 30, 1978, pursuant to section 3 of Public Law 88–504; to the Committee on the Judiciary.

4962. A letter from the Comptroller General of the United States, transmitting a report on the Nuclear Regulatory Commission's procedures for inspecting nuclear powerplants under construction (EMD–78–80, September 7, 1978); jointly, to the Committees on Government Operations, Interior and Insular Affairs, and Interstate and Foreign Commerce.

4963. A letter from the Comptroller General of the United States, transmitting a report on cargo processing by the U.S. Customs Service (GGD–78–79, September 7, 1978); jointly, to the Committees on Government Operations, and Ways and Means.

4964. A letter from the Assistant Attorney General for Legislative Affairs, transmitting a draft of proposed legislation to improve the physical security features of the motor vehicle and its parts, increase the criminal penalties of persons trafficking in stolen motor vehicles and parts and to curtail the exportation of stolen motor vehicles and for other purposes; jointly, to the Committees on Interstate and Foreign Commerce, the Judiciary, and Ways and Means.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ULLMAN: Committee on Ways and Means. H.R. 13750. A bill to implement the International Sugar Agreement between the United States and foreign countries; to protect the welfare of consumers of sugar and those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; and for other purposes; with amendment (Rept. No. 95–1484, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee on Education and Labor. H.R. 9158. A bill to provide for grants to tribally controlled community colleges, and for other purposes; with amendment (Rept. No. 95–1558). Referred to the Committee of the Whole House on the State of the Union.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ARCHER:

H.R. 14035. A bill to amend the Internal Revenue Code of 1954 to provide that individuals will not be required to make declarations of estimated tax if the amount of estimated tax is less than $500; to the Committee on Ways and Means.

By Mr. EVANS of Colorado:

H.R. 14036. A bill to provide for the orderly construction, operation and maintenance of the previously authorized Fryingpan-Arkansas Federal reclamation project in Colorado, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. HOLLAND:

H.R. 14037. A bill to authorize the Secretary of the Interior to conduct a study of the historic resources of Camden, S.C., and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 14038. A bill to authorize the establishment of the Historic Camden National Historic Park, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. JACOBS (for himself and Mr. ERTEL):

H.R. 14039. A bill to amend title II of the Social Security Act to provide that renewal commissions, received by a retired insurance agent from life insurance policies which were sold by him before his retirement, shall not be taken into account in determining his net earnings from self-employment for purposes of the earnings test; to the Committee on Ways and Means.

By Mrs. LLOYD of Tennessee:

H.R. 14040. A bill to provide that any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter be subject to the provisions of the Federal Tort Claims Act; to the Committee on the Judiciary.

By Mr. PICKLE (for himself, Mr. BAUMAN, Mr. ANDREWS of North Carolina, and Mr. LOTT):

H.R. 14041. A bill to amend the Internal Revenue Code of 1954 to clarify the application of the investment tax credit to certain enclosures or structures used for the housing, raising, or feeding of poultry or their produce; to the Committee on Ways and Means.

By Mr. PRICE:

H.R. 14042. A bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes; to the Committee on Armed Services.

By M. PRICE (for himself and Mr. BOB WILSON) (by request):

H.R. 14043. A bill to amend title 10, United States Code, to remove chaplains from under the cognizance of the Chief of Naval Personnel; to the Committee on Armed Services.

By Mr. ST GERMAIN:

H.R. 14044. A bill to amend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions, to facilitate urban lending investment by Federal savings and loan associations, to establish a Central Liquidity Facility for Federal and State credit unions, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. WHITEHURST (for himself and Mr. ARCHER):

H.R. 14045. A bill to assist former spouses of Federal employees in obtaining court-ordered payments; to the Committee on Ways and Means.

By Mr. OTTINGER (for himself, Mr. ROSE and Mr. FUQUA):

H.R. 14046. A bill to provide for a research, development, and demonstration program to establish an experimental public service satellite communications system; to the Committee on Science and Technology.

By Mr. STOCKMAN:

H.R. 14047. A bill to implement the International Sugar Agreement of 1977; jointly, to the Committees on Agriculture, and Ways and Means.

By Mr. THONE (for himself, Mr. EDWARDS of Oklahoma, Mrs. HOLT, and Mr. WAMPLER):

H.R. 14048. A bill to amend the Congressional Budget and Impoundment Control Act to limit total Federal budget authority and budget outlays in fiscal years 1980, 1981, 1982, and 1983; jointly, to the Committees on Government Operations, and Rules.

By Mr. TUCKER:

H.R. 14049. A bill to amend sections 170, 2055, and 2522 of the Internal Revenue Code of 1954 to provide a deduction for income, estate, and gift tax purposes for contributions to a section 501(c)(10) organization for the purpose of building or maintaining a building; to the Committee on Ways and Means.

By Mr. NOLAN (for himself, Mr. HOLLAND, Mr. KRUEGER, Ms. KEYS, Mr. ANDREWS of North Dakota, Mr. WINN, and Mr. FLIPPO):

H.J. Res. 1133. Joint resolution raising the price support levels for milk, wheat, corn, soybeans, and cotton to 90 percent of the respective parity prices therefor, and for other purposes; to the Committee on Agriculture.

By Mr. RISENHOOVER:

H.J. Res. 1134. Joint resolution to change the name of Copan Dam and Lake in the States of Oklahoma and Kansas to Copan Dam and the Lake of the Delawares; to the Committee on Public Works and Transportation.

H.J. Res. 1135. Joint resolution to change the name of Oologah Lake in the State of Oklahoma to Will Rogers Lake; to the Committee on Public Works and Transportation.

By Mrs. MEYNER (for herself and Mr. LONG of Louisiana):

H. Con Res. 709. Concurrent resolution requesting the President to convene a White House Conference on Foreign Trade; jointly, to the Committees on International Relations, and Ways and Means.

By Mr. ROONEY (for himself, Mr. PEPPER, Mr. DENT, Mr. ROYBAL, Mr. BIAGGI, Mr. JOHN L. BURTON, Mr. BEARD of Rhode Island, Mr. BLOUIN, Mr. FLORIO, Mr. HUGHES, Mr. SANTINI, Mr. RISENHOOVER, Mr. DRINAN, Mr. LUNDINE, Ms. OAKAR, Mr. WAMPLER, Mr. HAMMERSCHMIDT, Mr. COHEN, Mr. SARASIN, Mr. GRASSLEY, Mr. COCHRAN of Mississippi, Mr. RINALDO, and Mr. MARKS):

H. CON. RES. 710. Concurrent resolution expressing the support of the Congress for a comprehensive review of retirement income, survivor benefit, and disability benefit programs in the United States; to the Committee on Education and Labor.

By Mr. BRECKINRIDGE (for himself, Mr. ROSE, Mr. PRESSLER, Mr. BAUCUS, Mr. WATKINS, Ms. KEYS, Mr. SIMON, Mr. EVANS of Georgia, Mr. ABDNOR, Mr. RAILSBACK, and Mr. FOUNTAIN):

H. Res. 1341. Resolution to establish a select committee to study nonmetropolitan America; to the Committee on Rules.

## MEMORIALS

Under clause 4 of rule XXII,

470. The SPEAKER presented a memorial of the Legislature of the State of California, relative to victims of crimes; to the Committee on the Judiciary.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. HAMMERSCHMIDT:

H.R. 14050. A bill for the relief of John H. Parker; to the Committee on the Judiciary.

By Ms. HOLTZMAN:

H.R. 14051. A bill for the relief of Michael Carl Brown; to the Committee on the Judiciary.

H.R. 14052. A bill for the relief of Joy Marsia Dehaney; to the Committee on the Judiciary.

By Mr. LEVITAS:

H.R. 14053. A bill for the relief of Mirko Mark Sedlak; to the Committee on the Judiciary.

By Mr. PATTERSON of California:

H.R. 14054. A bill for the relief of Orange County Fair Housing Council, Inc.; to the Committee on the Judiciary.

By Mr. STEERS:

H.R. 14055. A bill for the relief of Javid Saadian; to the Committee on the Judiciary.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. DANIELSON:

(Amendment to the amendment in the nature of a substitute.)

—Page 30, line 21: Strike "101" and insert "202".

Page 34, lines 21 and 22: Strike "the appropriate committee shall so inform the reporting individual and direct him" and insert: "the reporting individual shall be informed and directed".

Page 41, line 9: Strike "the" and insert "a".

Page 41, line 10: Strike "required by section 206(b)".

Page 44, line 2: Strike "1978" and insert "1979".

Page 51, line 22: Strike "January 1, 1978" and insert "July 1, 1979".

Page 62, line 2: Strike "101" and insert "302".

Page 64, lines 17 and 18; Strike "appropriate committee" and insert "Committee".

Page 66, line 3: Strike "(a)" and insert "(d)".

H.R. 1

By Mr. FRENZEL:

(Amendment to the amendment in the nature of a substitute.)

—Strike "and candidates for Federal office" in the title of H.R. 13850.

On page 2, lines 8–9, strike ", and any individual who becomes a candidate in any election for the office of Member"

On page 2, lines 17–18, strike "(1) Except as provided in paragraph 2," and capitalize the word "Each".

On page 2, lines 19–20, "other than an individual who becomes a candidate in any election for the office of Member,"

On page 3, strike lines 6–14 and on line 10 strike (B) and insert (2).

On page 3, strike lines 15–25 and on page 4 strike lines 1–2.

On page 4, line 3 strike (c) and insert (b).

On page 4, on lines 3–4 strike "or an individual who is a candidate for the office of Member".

On page 12, line 4 after ", except" strike all that follows through line 8,

On page 15, strike lines 12–22, and redesignate (2) as (1), (3) as (2), (4) as (3), (5) as (4), (6) as (5), (7) as (6), (8) as (7), (9) as (8), (10) as (9), (11) as (10), (12) as (11), (13) as (12), (14) as (13), and (15) as (14).

—On page 3, lines 16–17, strike "October 1, 1978," and insert "January 1, 1979,".

—On page 7, line 10, strike the "period", and insert "or any deposit in a personal savings account which bears interest."

—On page 8, line 5, after the word "children." insert the new paragraph:

"(7) The identity of all positions held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution: Provided, that this paragraph shall not require the reporting of positions held in any religious, social, fraternal, charitable, or political entity."

—On page 8, line 5, after "children." insert:

"(8) A description of the date, parties to, and terms of any agreement or arrangment with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employee."

—On page 10, line 25, after the word "holdings" insert the following "at the time his interest in the trust was originally placed in such trust, if available,".

—On page 11, strike lines 14–25, and insert:

"(c) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefitting the public."

—On page 12, strike lines 1–8 and insert:

"(d)(1) Any report filed under this title shall be available for public inspection for a period of five years, so long as the reporting individual remains in a position designated in section 2, after which the report shall be destroyed.

(2) If the individual who filed the report is no longer within any position designated in section 2 and so notifies the office designated in section 6 holding his report, the report shall, one year after such notification, no longer be available for public inspection. Such report shall be retained by the office designated in section 6 of the remainder of the five year period after which it shall be destroyed;

(3) If the individual specified in subsection d(2) returns to any position designated in section 2 during such five year period, his report shall again be made available for public inspection for the remainder of that seven year period."

—On page 12, strike lines 17–19 and insert:

"(D) for use, directly or indirectly, in the solicitation of money for any purpose, other than for a political purpose."

H.R. 1

By Mr. MAZZOLI:

(Amendment to the amendment in the nature of a substitute.)

—On page 32, line 2, strike "In addition" and all that follows through the end of the subsection.

H.R. 1

By Mr. VOLKMER:

(Amendment to the amendment in the nature of a substitute.)

—On page 8, strike lines 12 through 19 and insert in lieu thereof the following:

"(1) up to $5,000;
"(2) from $5,000 to $15,000;
"(3) from $15,000 to $50,000;
"(4) from $50,000 to $100,000;
"(5) from $100,000 to $250,000;
"(6) from $250,000 to $500,000;
"(7) from $500,000 to $1,000,000;
"(8) from $1,000,000 to $2,000,000;
"(9) from $2,000,000 to $5,000,000; and
"(10) greater than $5,000,000."

—On page 26, strike line 22 and all that follows through line 1, page 27 and insert in lieu thereof the following:

"(1) up to $5,000;
"(2) from $5,000 to $15,000;
"(3) from $15,000 to $50,000;
"(4) from $50,000 to $100,000;
"(5) from $100,000 to $250,000;
"(6) from $250,000 to $500,000;
"(7) from $500,000 to $1,000,000;
"(8) from $1,000,000 to $2,000,000;
"(9) from $2,000,000 to $5,000,000; and
"(10) greater than $5,000,000."

—On page 57, strike lines 17 through 21 and insert in lieu thereof the following:

"(1) up to $5,000;
"(2) from $5,000 to $15,000;
"(3) from $15,000 to $50,000;
"(4) from $50,000 to $100,000;
"(5) from $100,000 to $250,000;
"(6) from $250,000 to $500,000;
"(7) from $500,000 to $1,000,000;
"(8) from $1,000,000 to $2,000,000;
"(9) from $2,000,000 to $5,000,000; and
"(10) greater than $5,000,000."

H.R. 11280

By Mr. EDWARDS of Alabama:

(Amendment to the Udall Substitute.)

—In section 7106(a)(1), strike the semicolon and the word "and" after the word "agency" and insert a comma and the following: "the numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty.".

In section 7106(b), delete all of item "(1)", which reads as follows: "at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;".

H.R. 11280

By Mr. ERLENBORN:

(Amendments to the amendment in the nature of a substitute offered by Mr. UDALL to title VII.)

—Newly designated section 7103(a)(4) of subpart F of part III of title V, United States Code is amended by striking the words "in whole or in part", and by striking the words "and pay dues".

—Amend newly designated section 7103 of subpart F of part III of title V, United States Code by striking the "or" after subparagraph 7103(a)(4)(B); by inserting an "or" after subparagraph 7103(a)(4)(C); and by inserting the following new subparagraph 7103(a)(4)(D):

"(D) an organization which assists, or participates in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;".

—Newly designated section 7103(a)(5) of subpart F of part III of title V, United States Code, is amended by striking the words "dues, fees and assessment" and substituting therefor "periodic dues and initiation fees uniformly required".

—Newly designated section 7104(f)(1) of subpart F of part III of title V, United States

Code is amended by inserting before the final period the words "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office".

—Newly designated section 7105(e) of subpart F of part III of part V, United States Code, is amended by striking the number "(1)", redesignating the letters "(A)", "(B)", "(C)", and "(D)" as numbers "(1)", "(2)", "(3)", and "(4)"; and striking all of subsection 7105(e)(2); and striking the words "or administrative law judge" in subsection 7105(f).

Section 7118(a)(5), as presently designated, is amended by inserting before the period in the fourth sentence thereof the words "and filed with the Authority". Section 7118(a)(6), as presently designated is amended by striking "(or any member thereof or any individual employed by the Authority and designated for such purpose)"; and by striking the words "individual or individuals conducting the hearing shall state in writing their" and substitute therefor "Authority shall state in writing its". Section 7118(a)(7), as presently designated, is amended by striking all of section 7118(a)(7) and substituting therefor: "(7) If the Authority determines that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in any such unfair labor practice, the Authority shall state in writing its findings of fact and shall issue an order dismissing the complaint.".

—Newly designated section 7111(b) of subchapter II of subpart F of part III of title V, United States Code is amended by striking "(b)(1)" and substituting therefore "(b)"; and is further amended by striking from presently designated 7111(b)(1)(B) the words "Except as provided under subsection (e) of this section, if" and substituting therefore "If," and by striking the words "subject to paragraph (2) of this subsection"; and by striking all of paragraph (2), including (2)(A) and (2)(B).

—Newly designated section 7111(b)(1)(B) of subchapter II of subpart F of part III of title V, United States Code is amended by striking the words "Except as provided under subsection (e) of this Section, if", and substituting therefore "If"; and section 711 is further amended by striking all of subsection (e) and redesignating the subsequent subsections accordingly.

—Newly designated section 7112 of subpart F of part III of title V, United States Code, is amended by inserting after subsection (c), a new subsection (d) (and redesignating the subsequent subsections accordingly) which reads as follows:

"(d) Any employee who is engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated, or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal Office.".

—Strike newly designated section 7113 of subpart F of part III of title V, United States Code, and redesignate the subsequent sections accordingly; and amend newly designated section 7117 by striking all of subsection (d).

—Newly designated section 7115 of subpart F of part III of title V, United States Code is amended by striking all of subsection (c) thereof.

—Newly designated section 7116(a)(5) of subpart F of part III of title V, United States Code is amended by inserting immediately before the semicolon the following: "; *Provided*, That nothing in this chapter shall be construed as requiring an agency to negotiate in good faith with any labor organization certified after the enactment of this Act until such labor organization has been determined by means of a secret ballot election conducted in accordance with the provisions of this chapter. This provision shall not be construed to bar a consolidation of units without an election".

—Amend newly designated section 7116 of subpart F of part III of title V, United States Code, by inserting after subsection (b) a new subsection (c), redesignating the present subsection (c) and subsequent subsection accordingly, which reads as follows:

"(c) The expression of any personal views, argument, opinion or the making of any statement shall not (1) constitute or be evidence of an unfair labor practice under any of the provisions of this chapter or (2) constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any provisions of this chapter, if such expression contains no threats of reprisal or force or promise of benefit.".

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H.R. 11280

By Mr. FRENZEL:

(Amendment to the Udall substitute for title VII.)

—In new section 7103(a)(3)(F) strike the word "or".

In new section 7103(a)(3)(G) after the word "Panel;" insert the following: "or (H) the Federal Election Commission;".

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H.R. 11622

By Mr. EDGAR:

—Page 56, after line 11, delete "." and insert the following:

"(3) Not later than 1 year after the date of the enactment of this subsection, the Secretary shall conduct a study, and submit a report thereon to the Congress, on the effects which would result from including within the coverage of this Act various types and classes of facilities and equipment used in the transportation on land of gas or liquified petroleum gas in interstate or foreign commerce, or storage in connection with such transportation.".

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H.R. 11733

By Mr. EDGAR:

Page 204, strike out line 9 and all that follows down through page 209, line 11, and insert in lieu thereof the following:

SEC. 401. Section 134 of title 23, United States Code, and section 8 of the Urban Mass Transportation Act of 1964 are amended, both to read as follows:

"(a) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective, the Secretary shall cooperate with the State and local officials in the development of transportation plans and programs which are formulated on the basis of transportation needs, as determined by the State and local officials, with due consideration given to the national goals set forth in subsection (c) of this section.

"(b)(1) The transportation planning process for urbanized areas shall be carried on, in collaboration with the State, by elected local officials acting through a metropolitan planning organization or other metropolitan instrumentality which, at the minimum, shall encompass the entire urbanized area within the State as designated by the Bureau of the Census. Where an urbanized area encompasses communities in more than one State the Secretary may, at his discretion and upon the request of the responsible local officials, assist in the development of separate plans and programs for those parts of the urbanized area within a single State.

"(2) Within one year after the enactment of this section, in the absence of State law to the contrary, the local officials of the urbanized area for which a metropolitan planning organization has been designated prior to enactment of this section, or for which a metropolitan planning organization has not been designated for the purposes of this section, may under rules established by the Secretary designate the State or any representative regional instrumentality as the metropolitan planning organization for the purposes of this section.

"(c)(1) On a date established by regulation, and at subsequent two-year intervals, urbanized areas desiring Federal financial assistance under this Act shall submit to the Secretary for his approval a comprehensive transportation plan. The planning process required under this section shall consider all modes of transportation, and shall be continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems. All plans submitted under this section for approval by the Secretary shall include both a long-range and a short-range element.

"(2) The long-range element shall set forth a multi-year program of transportation improvement projects, staged according to priority. Such multi-year programs shall be based on an assessment of transportation needs, as determined by the responsible local officials, and shall include concise statements relating the program to each of the following objectives, which are declared to be in the national interest: (A) Coordination of the urbanized area transportation system with the Statewide Transportation System; (B) Development and implementation of strategies to reduce transportation improvement costs by making more efficient use of existing transportation facilities; (C) Development and implementation of strategies to coordinate various modes of passenger transportation; (D) Development and implementation of strategies to reduce traffic fatalities and improve other aspects of transportation safety; (E) General improvement of mobility, with special effort made in meeting the needs of the transportation disadvantaged; and (F) with respect to urbanized areas of 1,000,000 or more population, conservation of energy and improvement of air quality by development and implementation of strategies to reduce peak hour single-passenger automotive travel to and from major centers of employment.

"(3) The short-range element shall set forth those transportation improvement projects, together with alternative transportation management strategies, proposed for the following two calendar years. The short-range element shall be developed, under the supervision of the designated metropolitan planning organization, by an appropriate forum involving the State transportation department (or its equivalent), operators of public mass transportation, and other public bodies responsible for the implementation of the urbanized area's transportation policy.

"(4) The Secretary shall approve a comprehensive transportation plan submitted under this subsection unless he determines that the planning process on which the plan is based has not been carried out in conformance with this section, or unless he determines that the programs contained in the plan, when considered in the aggregate, will not reasonably promote each of the national objectives set forth under this subsection.

"(5) Concurrent with submission to the Secretary, metropolitan planning organizations shall submit the comprehensive transportation plan required by this section to the Governor of the State or States affected, to principal sponsors of projects proposed in the plan, and to the Environmental Protection Agency. If within thirty days thereafter any of the recipients submits comments to the Secretary, the Secretary shall con-

sider such comments before taking final action on the plan.

"(6) Approval by the Secretary of any plan submitted under this section shall not prevent the Secretary from subsequently disapproving any individual project on the program, pursuant to the provisions of the Urban Mass Transportation Act of 1964 or title 23, United States Code, nor shall it be considered an action or approval for the purposes of the National Environmental Policy Act or any other federal law.

"(d) No project assisted under this Act (title) and within an urbanized area as designated by the Bureau of the Census shall be approved by the Secretary (after the date of the enactment of rules established by the Secretary to implement this section) unless the proposed project is part of an approved short-range transportation planning element under this section.".

H.R. 11733

By Mr. WINN:

—Page 100, after line 4, insert the following:

URBAN SYSTEMS DISCRETIONARY GRANTS

SEC. 109. Subsection (a) of section 104 of title 23, United States Code, is amended by inserting "(1)" immediately after "(a)" the first place it appears and by adding at the end thereof the following new paragraph:

"(2) In addition to the deduction authorized by paragraph (1), the Secretary shall deduct an amount equal to 10 per centum of the sums authorized to be appropriated in each fiscal year for expenditure on the Federal-aid urban system. The sum so deducted shall be available for expenditure at the discretion of the Secretary for grants to States and to political subdivisions of States for projects on the Federal-aid urban system in accordance with those provisions of this title otherwise applicable to such projects unless the Secretary finds any such provision to be inconsistent with the purpose of this paragraph. No grant shall be made under this paragraph to any State, or to any political subdivision thereof, which has not obligated all of the funds apportioned to such State for such fiscal year for expenditure on the Federal-aid urban system. Any sum deducted by the Secretary under this paragraph shall remain available until expended. Sums apportioned to a State under paragraph (6) of subsection (b) of this section unexpended at the end of the period of their availability shall lapse as provided in section 118(b) of this title and shall thereupon become immediately available for expenditure, at the discretion of the Secretary, in accordance with this paragraph."

H.R. 12005

By Mr. SOLARZ:

—Page 8, line 16, insert "(a)" before "The".

Page 9, insert after line 24 the following new subsection:

(b) In recognition of the severe plight of refugees from Democratic Kampuchea (Cambodia) and in view of the magnitude and severity of the violations of human rights committed by the government of that country, the Attorney General should exercise his authority under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) to parole into the United States, during the two-year period ending on September 30, 1980, 15,000 of such refugees who seek admission to the United States.

H.R. 12611

By Mr. CAVANAUGH:

—Page 137, strike out line 17 and all that follows through line 18 on page 138 and insert in lieu thereof the following:

EMPLOYEE PROTECTION PROGRAM

SEC. 32. (a)(1) Any protected employee who suffers a qualifying dislocation shall have the right to be hired, regardless of age, for any position in such employee's occupational specialty by any air carrier before such air carrier hires any other individual for such position unless such other individual (A) was furloughed or terminated by such air carrier, or (B) suffered a qualifying dislocation before such protected employee and such other individual is a protected employee.

(2) The Secretary shall establish, maintain, and periodically publish in the Federal Register a comprehensive list of available jobs with air carriers. Such list shall include descriptions of, and qualifications for, such jobs and such other information with respect to such jobs as the Secretary deems advisable. The Secretary may require each air carrier to submit such reports, data, and other information at such times and in such manner as the Secretary deems necessary to carry out his responsibilities under this section. The Secretary shall be responsible for determining the accuracy of such reports, data, and information.

(b)(1) The Secretary of Labor shall make every effort to assist any protected employee who has been furloughed or terminated by any air carrier because of a qualifying dislocation in finding employment reasonably comparable to such employee's employment with such air carrier.

(2) The Secretary of Labor shall require each air carrier to comply with the requirements imposed by this section.

(c)(1) The Secretary may issue, amend, or repeal such regulations as the Secretary deems necessary to carry out his responsibilities under this section.

(2) Simultaneously with the promulgation of any regulation pursuant to paragraph (1) of this subsection the Secretary shall transmit a copy thereof to the Congress. Except as provided in paragraph (3) of this subsection, such regulation shall take effect 60 legislative days after the date of its promulgation unless—

(A) during such 60-day period and before either House of Congress adopts a resolution under clause (B) with respect to such regulation, both Houses adopt a concurrent resolution which states that both Houses approve such regulation, in which case such regulation shall take effect on the date of the adoption of such resolution by the second House taking action on such resolution; or

(B) during such 60-day period and before both Houses adopt a concurrent resolution under clause (A) with respect to such regulation, either House of Congress adopts a resolution which states that such House disapproves such regulation, in which case such regulation shall not take effect.

(3) Under provisions contained in a regulation described in paragraph (2) of this subsection, such regulation may be effective at a time later than the date on which such regulation would otherwise take effect under such paragraph.

(4) For purposes of this subsection, the term "legislative day" means a calendar day on which both Houses of Congress are in session.

(d) For purposes of this section—

(1) the term "air carrier" means any air carrier, as such term is defined in section 101 of the Federal Aviation Act of 1958, which holds a certificate issued under section 401 of such Act;

(2) the term "protected employee" means any individual who was employed full-time by any air carrier prior to the date of enactment of this Act for a period or periods totaling at least 12 months, except that such term shall not include any employee of the air carrier terminated for cause or any member of the Board of Directors or officers of the air carrier;

(3) the term "qualifying dislocation" means any furloughing or terminating of an employee by any air carrier due to any change in the Federal regulatory system made under the authority provided in this Act or in any amendment made by this Act to any other law which the Civil Aeronautics Board determines to have occurred on any date on which the total number of employees of such air carrier is less than the total number of employees of such air carrier on the date of enactment of this Act;

(4) the term "employee" includes individuals who are employed by an air carrier but not working because of any labor strike; and

(5) the term "Secretary" means the Secretary of Transportation.

(e) This section shall cease to be in effect after the last day of the 10-year period beginning on the date of enactment of this Act.

# EXTENSIONS OF REMARKS

## JUDGE PHILLIP FORMAN

## HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. THOMPSON. Mr. Speaker, during our recent district work period while the House was out of session, my community of Trenton and the legal profession lost one of its most respected and able men. I have reference to U.S. District Court Judge Phillip Forman.

Judge Forman had a remarkable career on the Federal bench, serving for 46 years. He was appointed in 1932 by President Hoover and at the time was the youngest Federal judge in the Nation. I had the honor and privilege of having Judge Forman as a lifelong friend. He was a schoolmate of my late mother, Mrs. Beatrice Thompson, and did me the honor of admitting me to practice before the U.S. district court.

I know that Judge Forman's many friends join me in extending condolences to his widow, Mrs. Pearl Forman, and his brother, Mr. Milton Forman. It is with a great sense of personal loss that I place before my colleagues Judge Forman's obituary as it appeared in the Trenton Times:

PHILLIP FORMAN, 46-YEAR VETERAN OF FEDERAL BENCH

(By Ed Chelland)

U.S. District Court Judge Phillip Forman, a 46-year veteran of the federal bench and an expert in the field of antitrust and bankruptcy law, died yesterday at the Mercer Medical Center at the age of 82.

Judge Forman, who resided at 5 Belmont Circle, was named to the federal bench in 1932 by President Herbert Hoover. At the

time he was the youngest federal judge in the nation.

He was admitted to the New Jersey Bar in 1917. He became an assistant U.S. attorney that year and served as U.S. attorney for the District of New Jersey from 1923 to 1929.

As U.S. attorney, he was hailed for tough actions against racketeering bondsmen who operated in federal courts in New Jersey. He shared offices with the firm of Hutchinson & Hutchinson in Trenton and later joined I. Herbert Levy in a law firm, a partnership which continued until his appointment as judge in 1932.

Judge Forman was named chief federal judge for New Jersey in 1951, a post he held until 1959 when he was named to the 3d Circuit Court of Appeals.

In 1961, he became a senior judge, and continued in active service until last year. During his career he presided over a number of major precedent-setting antitrust cases.

Also in 1961, Judge Forman was named as the chairman of the Advisory Commission on Bankruptcy Rules of the Judicial Conference of the U.S. The commission last year brought about changes that were hailed as the single greatest improvement ever made in the administration of the nation's bankruptcy laws.

Judge Forman was well-known for his numerous activities in charitable organizations and was one of the founders of the Trenton Council on Human Relations.

A veteran of World War I, he served in the U.S. Navy as a chief petty officer. He subsequently became commander of the Elkins-Olphant Post of the American Legion, which is now Post 93. In 1923 he was elected commander of the New Jersey American Legion.

He served as a major in the Organized Reserve Corps and as a lieutenant colonel in the Judge Advocate General's Department of the New Jersey National Guard.

After World War II, Judge Forman traveled to Europe with the Joint Distribution Committee to assist in the relocation of the survivors of concentration camps.

He was a member of the National Conference of Christians and Jews, the American Bar Association, the American Judicature Society, the Federal Bar Council, the New Jersey Bar Association and the Mercer County Bar Association.

He was a director of the McKinley Memorial Hospital, now Helene Fuld Medical Center, and a trustee of Rutgers University. He was also president of the board of managers of the New Jersey State Hospital, now the Trenton Psychiatric Hospital.

Judge Forman was born in New York City in 1895. Five years later the family moved to Trenton where his father established a tailor shop. He was a graduate of Trenton High School, Class of 1913, and of Temple University.

He is survived by his wife, Pearl Karlberg Forman, and a brother, Milton Forman of Hollywood, Fla.

Private funeral services will be held under the direction of Orland's Ewing Memorial Chapel, 1534 Pennington Road.●

## MESSAGE FROM THE MAYOR OF KYRENIA, CYPRUS

### HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. HAMILTON. Mr. Speaker, at the request of the mayor of the town of Kyrenia on the island of Cyprus, I would like to bring to the attention of my colleagues a letter sent to Chairman Zablocki of the Committee on International Relations.

Although the mayor expresses bitterness and disappointment at the lifting of the arms embargo against Turkey, he and his people are thankful for the continued assistance and concern shown by the United States for the plight of the refugees and human suffering created as a result of hostilities between the Turks and Greeks on the island in 1974.

It is the hope of all of us that in the coming weeks the Greek and Turkish Cypriot communal talks can resume and negotiations for the return to the town of Famagusta of more than 30,000 of its former Greek-Cypriot inhabitants can be completed. We all share a continued interest in alleviating human suffering on Cyprus and our hopes are with the mayor of Kyrenia and other Cypriots that substantial progress for a Cyprus settlement can be achieved shortly after direct talks resume.

The mayor's letter follows:

Mr. CLEMENT J. ZABLOCKI,
*U.S. House of Representatives.*
*Washington, D.C.*

Mr. CHAIRMAN: Although we have heard with bitterness and disappointment of the lifting of the arms embargo on Turkey which we strongly believed to be the only means that Turkey would eventually have seen reason and allowed all refugees to return to their ancestral homes, we still see a ray of hope that America has not abandoned its responsibility to the support of justice and human rights, and that she recognises the immensity of the human tragedy that Turkish troops with American arms created in Cyprus, and voted financial aid to the 240,000 refugees.

We can assure you that whilst all refugees do appreciate the assistance afforded to them they will never forget or abandon their homes and towns and the problem in Cyprus will never be solved until every single refugee returns to his ancestral home. We wish to believe that we shall continue to enjoy the American government's support until the injustice is corrected and the refugees' aim and expectation is achieved.

Please Mr. Chairman we would appreciate if you would kindly circulate this message to all members of the House.

GEORGE TSIMON,
*Mayor of Kyrenia, Cyprus.*●

## BOSTON IMPACT FELT BY THE FUELS TRANSPORTATION SAFETY AMENDMENTS DEBATE

### HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. MOAKLEY. Mr. Chairman, today the House is scheduled to debate the Fuels Transportation Safety Amendments of 1978. It goes without saying that this is extremely significant legislation, especially for those of us in the Metropolitan Boston area where such a high volume of liquified natural gas finds its way through our city streets and highways on a daily basis.

I would like to take this opportunity to register my support of the Dingel-Markey bill governing the transportation of LNG and LPG through densely populated urban areas such as Boston. National media attention has been focused on the city of Boston in recent weeks, as officials from almost every level of the city and State government registered their strong opposition to the continued transportation of LNG through the heart of the city. Some of the statistics cited on national television are overwhelming. Experts have agreed that if the LNG commonly carried in one tanker, approximately 125,000 cubic meters, were to accidently escape for any variety of reasons, it could expand to cause a low-lying vapor cloud that would drift with the prevailing winds and cover an area of many square miles. If 40 cubic meters of LNG in one truck, perhaps half a load, were to spill and vaporize, it could mix with air and produce enough flammable gas to fill more than 110 miles of sewer lines or 15 miles of subway lines.

These are especially significant and awesome statistics for my constituents in the city of Boston because most of New England's LNG supply is shipped through the city of Boston on the southeast expressway. I do not doubt the necessity of insuring a continued supply of LNG to New England. Obviously, LNG is a very necessary element in the Northeastern area's energy picture. What I am concerned with is the literally life and death fears of my constituents in the impacted transportation network areas over what they perceive to be a very obvious threat to their own well-being. I urge my colleagues to support Mr. DINGELL's and Mr. MARKEY's proposed legislation as a necessary and rational first step in creating safer road conditions for LNG transportation, in maintaining a noninterruptible flow of LNG into New England, and in securing a safer environment for all Boston residents.●

## NOISY AIRCRAFT AND REVENUE CREDIT ACT OF 1978

### HON. JOEL PRITCHARD

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. PRITCHARD. Mr. Speaker, this week the House of Representatives considers H.R. 11986, the Noisy Aircraft and Revenue Credit Act of 1978. Legislation that assists the airline industry to meet the multibillion dollar Federal noise reduction requirements.

The Seattle Times, in an August 27th editorial, explains why this bill is not a "rip-off" for the airlines and why its enactment is in the national interest.

As a strong supporter of this legislation, I recommend these remarks to my colleagues.

The editorial follows:

[From the Seattle Times, Aug. 27, 1978]

FINANCING QUIETER AIRPLANES

An airplane noise-reduction bill now making its way through Congress has attracted a certain amount of controversy, not over the objective of mandating quieter airplanes, but over how the improvements would be financed.

The measure provides for diversion of a part of the existing airline-ticket tax to noise-abatement programs over five years.

The tax is now used to finance airport-improvement and air-safety programs, and most of it would continue to be used for those purposes. The diversion amounts to a

means of helping the airline industry meet multibillion-dollar federal noise-reduction demands with no increase in ticket costs, no new taxes, no direct appropriations, and no increase in federal spending.

That strikes us as a pretty sensible arrangement.

The principal objection to the legislation appears to be that it might set a bad precedent for other industries, giving them an excuse to seek special help in meeting environmental standards. But the objection overlooks the retroactive nature of the noise-abatement rules the airlines must meet.

The treatment given the airlines is different from that accorded all other transportation modes. For example, the Environmental Protection Agency has determined that it will not require railroad locomotives to be retrofitted for noise requirements, because, among other things, that would be too expensive for the railroads.

But the airlines, in addition to spending billions of dollars for new aircraft to meet normal demand in the years just ahead, must spend some $7 billion through 1984 to meet the noise-reduction rules imposed retroactively on two-thirds of the jet fleet. The noise rules, in effect, ground 1,600 airplanes unless they are modified or replaced.

The bill before Congress, H.R. 11986, would not only provide some form of environmental-cost equity for the airline industry at no taxpayer cost, but would encourage the replacement of planes now in service with new energy-efficient aircraft that are quieter than is required.

It would help maintain technological and sales leadership for the aerospace industry, which is, of course, this country's No. 1 exporter of manufactured goods.●

## NATIONAL AFFAIRS

### HON. RICHARD BOLLING

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. BOLLING. Mr. Speaker, the American Veterans Committee (AVC) has recently adopted its current platform. I would like to draw your attention to the AVC policy on national affairs:

NATIONAL AFFAIRS

AVC stands for the Bill of Rights as a living force animating the political life of our Nation and as a firm limitation on the arbitrariness of government.

AVC stands for the Bill of Rights as a guarantee of our freedom to speak, to assemble, to believe, and to dissent without fear from the conformities of the day.

AVC stands for equality for all, regardless of race, color, ancestry, national origin, religion, sex or age, and for the constitutional guarantees of such equality.

AVC stands for just legislative representation of the people of the United States, the States and their subdivisions, without poll taxes or property qualifications for voting, with equal weight for each vote, and on a geographically fair basis, within the frame work of the Constitution of the United States.

AVC stands for honesty and integrity in public affairs and calls upon public officials scrupulously to uphold their oaths of office.

AVC stands for a policy of gainful, full employment and security for all, as outlined in the Employment Act of 1946.

AVC stands for responsible, efficient, and honest government and for the merit system in government employment.

AVC stands for a government willing to exercise all constitutional powers necessary to bring about solutions to our national problems.

AVC supports the active intervention of government, primarily of the Federal Government, in the economy and the general welfare of our country to stimulate and provide employment to improve the physical condition of our cities and towns, of our housing and our schools, to bring all the greatest benefits from the development and conservation of our natural and industrial resources and to provide for the general welfare and health of our people.

AVC supports a tax policy based on ability to pay and opposes regressive sales and excise taxes.

AVC stands for the recognition of equal rights for labor and management and for improved social benefits of employees.

AVC supports an educational system and a public health system which will give the American people, and America's youth in particular, the knowledge, skills, and training, and the physical and mental health and stamina, to continue their forward march toward America's democratic fulfillment.●

## FFA PLAYING A PART IN AMERICA'S FUTURE

### HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. JEFFORDS. Mr. Speaker, earlier this summer I, along with many of my distinguished colleagues, attended a congressional breakfast sponsored by one of the Nation's outstanding youth groups—The Future Farmers of America. Those in attendance witnessed excellent remarks from several individuals, however, one of the most impressive of those statements was uttered by Rob Hovis, National FFA Vice President from Helene, Ohio. It is with a great deal of pleasure that I share the full text of the Rob Hovis speech with you.

FFA PLAYING A PART IN AMERICA'S FUTURE

(By Rob Hovis)

We appreciate the opportunity to share with you today some of our personal views concerning our program.

There are two great success stories of cooperation among local, state, and federal agencies that involve agriculture. The first is the story of the Cooperative Extension Service for agriculture, where local and state agricultural agencies, land-grant colleges, and the United States Department of Agriculture work together to generate, interpret, and distribute the research data that has ushered this Nation to the forefront of world agricultural production.

The second is the story which began with the passage of the Smith-Hughes Act of 1917. Since then, local communities have cooperated with state educational agencies and the United States Office of Education to provide facilities and personnel for vocational training programs.

Today, this program represents our best agent for effecting social and economic change in this country. And we should move quickly to activate this potential. In many cases, the only difference between the United States and nations similar to ours that have fallen in the past is a public education system that reaches all youth! And our system does, with some states having as high as 52% of their high school juniors and seniors enrolled in vocational education programs.

We are sure that many of you are aware of some of these facts, but we, as National student officers of the FFA want to reemphasize them today.

Vocational Education can help correct economic problems. Two great fears that the trustees of state and the National economies always have are unemployment and inflation. Our track record is very good in these areas. Let me illustrate by using my home state as an example. In Ohio, unemployment among graduates of vocational education programs who are four months out of high school is 7.5%, compared to a rate of 21% for all youth of similar age, and compared to as high as 45% for some minorities. (This statistic does not include those in college or military service because they are not seeking a job.)

Vocational education has great impact in the area of inflation. The single greatest factor in the cost of producing most goods in the United States is labor, and it is vocational education which increases worker productivity and efficiency.

Today, the American agricultural industry is placing severe demands upon the labor force for trained people. Some of the very largest of our vocational agriculture and FFA programs are in places like Philadelphia, Cleveland, Cincinnati, Los Angeles, etc. Fifty of the Nation's largest cities have vocational agriculture and FFA programs and it is from these student populations, as well as from our traditional programs in the high schools of rural America that we train food processors, farmers, horticulturists, agricultural mechanics, conservation technicians, and so on.

We must do more in vocational agriculture. Statistics collected by the United States Department of Labor show that there were 404,000 job replacement opportunities in American agriculture in 1975–76. Our own data tells us that the vocational agriculture and FFA programs generated only 131,000 qualified graduates—only 26% of the need. Some states are providing as low as 6% of their need. That cannot continue very long! We must work to expand our programs so that the industry of agriculture receives its due from public education. Vocational Agriculture/FFA is the best learning system we have for providing a student with up-to-date skills and a high degree of personal development for employment in agriculture. We are sure beyond question that a vocational student organization such as FFA, legally tied to the public education system as is FFA through its Federal Charter, Public Law 81–740, is the best way to secure the benefits of the organization for that instructional program. Public Law 81–740 demands performance from the FFA and establishes excellent lines of cooperation with the United States Office of Education, all of which has helped to give us the "Golden Past" which we speak of in our 1978 theme. All vocational student organizations and their corresponding instructional program would benefit from such legal linkage to their respective service area of the United States Office of Education.

Our priorities should be not merely to treat the problem of an untrained or mistrained population with massive investments in remedial programs designed to correct the shortcomings of education among people several years removed from high school, but to prevent the problem at its most likely point of origin—in the schools and, ladies and gentlemen, it is within this void between graduation from high school as a mistrained, untrained, or undertrained person, and the time at which the remedial program designed to correct that deficiency, may affect the individual, that the Nation's crime rate soars. Let's be wise enough to buy the ounce of prevention before we are assessed for the pound of cure.

In conclusion, I would like you to listen to what Confucious once said: "If you give a man a fish, you have provided for his food needs for one day. If you teach a man to fish, you have fed him for the rest of his life." We in vocational agriculture and FFA are in the business of teaching men to fish. You, the Congress of the United States, have paved the way by constructing the legal framework in

which the program functions, and we salute you.

As in any field of endeavor, vocational education is now facing some difficult and frustrating problems, but, realizing that our problems are really only the absence of ideas, we have no good reason to believe that they cannot be solved.●

## CLEANER WATER IN PHILADELPHIA

### HON. JOSHUA EILBERG

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. EILBERG. Mr. Speaker, I am pleased to announce that the city of Philadelphia will construct a new sludge recycling center as part of its program to promote cleaner streams and phase out the dumping of sludge in the ocean.

According to an announcement by Mayor Frank L. Rizzo, the $11 million center will be located next to the new Southwest Water Pollution Control Plant, at 80th Street and Penrose Ferry Road. It will provide for the dewatering, drying, composting, cleansing, storage, bagging, and distribution of digested sludge and sludge-based products.

This project will promote cleaner water throughout the entire Philadelphia area, and will make use of waste product for enriching the soil. The center will occupy 38 acres of vacant land. Water Commissioner Carmen F. Guarino says the center will supply rich and usable soil conditioners to what will be a growing market in future years.

The sludge, Mr. Speaker, will be given away and sold to homeowners, farmers, gardeners, horticultural firms, wholesalers, and other outlets. Eventually the center will be able to fill up to 1 million 40-lb. bags a year, besides distributing thousands of tons in dry bulk or liquid form by truck.

The new center will be built in three phases between 1979 and 1981. The first phase will provide for processing 60 dry tons of sludge a day, and the second phase an additional 150 tons. Thus by 1982, the center will have the capacity to convert over 76,000 dry tons of digested sludge (equal to all of Philadelphia's current annual output) into soil conditioner each year.

Guarino said that the plan calls for the pumping of digested sludge from the southeast and southwest sewage treatment plants to the recycle center. There, part of the sludge will be naturally dried in a dozen open-air drying beds, and then composted to increase the drying process.

Special treatment will be given to another part of the sludge, intended for sale. This will be mixed with wood chips and then force dried through perforated air pipes laid under the sludge in another area. This process will take 21 days. The resulting product will then be cured, screened for removal of wood chips, and shredded.

Phase 1 construction in 1979 will include:

Air drying beds, forced aeration beds, and a curing, shredding, screening area;

A storage area for dewatered sludge ready for composting, and for large quantities of bulking agents such as wood chips;

A liquid storage tank holding 730,000 gallons;

A liquid loading platform, where up to 25 tank trucks daily can take on liquid sludge;

A liquid sludge pumping station, plus pipelines;

An operations building to house offices, an information center, storage tanks, polymer pumps, and spare equipment;

A pick-up site, where the public can obtain sludge-based products free; and

Various access roads.

In phase 2, the water department will build more forced-aeration installations, storage areas, and curing and distribution areas, as well as composting facilities. The department will also build a full scale dewatering system that might include centrifuges, belt presses, air drying beds, or other processes. Additional liquid storage will also be provided.

Phase 3 will include an improved bulk-handling system for onsite transfer and truck loading, and a facility for bagging and warehousing sludge products destined for sale. Liquid storage will be further expanded.

Guarino said that in accordance with requirements of the Environmental Protection Agency, the water department has prepared an environmental assessment statement and description of the proposed facilities.

The city water department is seeking 75 percent funding from the EPA for the sludge recycling center.●

## JOHN M. CAREY IS THE NATIONAL COMMANDER OF THE AMERICAN LEGION

### HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. KILDEE. Mr. Speaker, it is with great pride that I wish to bring to the attention of my colleagues in the Congress the recent election of a constituent and personal friend of mine as national commander of the American Legion. He is John M. Carey, of Grand Blanc, Mich. Mr. Carey was elected national commander for 1978–79 at the recent convention of the American Legion in New Orleans.

Commander Carey is in Washington, D.C., this week. He will be appearing on Tuesday, September 12, before the House and Senate Committees on Veterans' Affairs to present the legislative goals and priorities of the American Legion for fiscal year 1980. That evening he also will be present to meet Members of Congress at a reception being hosted by the American Legion in recognition of the many services rendered to the veterans of America by the committee members.

A devoted family man, Mr. Carey brings an exceptional record of public involvement to his term as national commander. He has been active for many years both in the American Legion and in his community in many volunteer, appointive, and elective posts. I would like to just briefly outline some of his many accomplishments as a means of introducing him to my colleagues in the Congress.

John M. Carey is a native of Michigan, and served during World War II in the Pacific with the U.S. Army Corps of Engineers, 64th Engineering Battalion. He was married to Mildred Vanderlip on June 19, 1948, and today they have a son, John, and two daughters, Janice and Marsha. He and his wife went to Grand Blanc as high school teachers, before he began employment at General Motors, for which he has worked the last 27 years. Mr. Carey is now on a leave of absence from his position as department supervisor of the industrial engineering fabricating unit at the Fisher Body Plant in Flint.

As a member of the American Legion, he is a life member of Grand Blanc Post 413, and served as that post's adjutant for 28 years. He also is a past post commander, past district commander, past State finance officer, past State commander (1959), and past national executive committeeman (1965–67). He served as chairman of both the Michigan and national internal affairs committees, was a member of the national foreign relations council in 1977 and a member of the national public relations commission from 1970 to 1974.

As a citizen, Mr. Carey's exemplary record includes 8 years of service as the elected mayor of Grand Blanc. He was chairman of the Genesee County Small Cities Association in 1974, vice chairman of the Michigan Municipal League for Region Four in 1971, chairman of the Grand Blanc Regional Planning Commission from 1967 to 1971, and secretary-treasurer of the Michigan Republican Serviceman's Council. His awards for community service and involvement include the General Motors Award for Excellence in Community Activities for both 1972 and 1977. He also was the Grand Blanc Rotary Club's Man of the Year in 1972 and the Grand Blanc Community Veteran of the Year in 1975. He also has received the Minuteman Award from the Governor of Michigan and the Personal Leadership Award from the Flint Industrial Executives Club. Since 1969 Mr. Carey has been a member of the board of managers for the Michigan Veterans Facility in Grand Rapids.

The American Legion is fortunate to have such an outstanding individual for its national commander, and I look forward to working with Jack Carey on issues of vital concern to America's veterans.●

## HUMAN RESOURCES DEVELOPMENT ACT

### HON. STANLEY N. LUNDINE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. LUNDINE. Mr. Speaker, I would simply like to clarify the copyright status of a manuscript submitted during hearings on the Human Resources Development Act in March of 1977. The item appearing in the appendix on page 225 of the record of the hearings before the

Subcommittee on Economic Stabilization of the Committee on Banking, Finance and Urban Affairs, House of Representatives, 95th Congress, 1st session, on H.R. 2596, inadvertently omitted the following reference:

Copyright 1977 Mitchell Fein.
All rights reserved.
Reproduction in whole or in part is prohibited.

"Draft 5."●

## BUSINESS WEEK INVALIDATES FEDERAL-MILITARY PAY CAP RATIONALE

**HON. HERBERT E. HARRIS II**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. HARRIS. Mr. Speaker, last Wednesday I introduced House Resolution 1336 to overturn the President's proposed 5.5 percent pay cap on Federal employees and military personnel. My resolution would put into effect the 8.4 percent pay adjustment which the President's pay advisers have recommended to achieve comparability between current public employee-military pay levels and private industry pay raises since 1977.

There has been much talk from the administration about the need for the Government to "set an example" for private industry in the fight against inflation. This is a commendable goal, but in singling out one sector of the economy for wage controls, the President has chosen an unfair and ineffective vehicle for providing an example to business. I have stated repeatedly, the Comparability Pay Act does not authorize cost-of-living increases; rather it directs that regular pay adjustments be made to bring military and Federal pay up to levels of comparable private industry salary increases.

A recent study by the Congressional Budget Office found pay caps in the past to have been an ineffective means of setting an example for private industry (see "Capping Federal Pay: Alternative Pay Adjustments for 1979," Congressional Budget Office report, August 1978). This new report shows that "in the 6 months following the 1975 (Federal pay) cap, major wage settlements in the private sector averages—for the first year—10.4 percent as compared with 9.4 percent for the preceding 6 months."

Today's issue of Business Week contains an excellent article which further illustrates the ineffectiveness of pay caps in setting an example for private industry. My colleagues will recall that in the spring of this year, President Carter announced his intention to freeze Federal and military pay as such an example, well in advance of any reliable data on what private industry increases would be, or what size of pay adjustment would be necessary to bring about comparability under the law. This article "A Boom in White-Collar Salaries" (Business Week, September 11, page 50) makes it clear that private white-collar salaries have risen far faster than the level which the President seeks to impose on employees under his control.

I commend this article to the attention of my colleagues:

A BOOM IN WHITE-COLLAR SALARIES

The Carter Administration may be making loud noises about holding a lid on salary increases, but apparently it is speaking into a vacuum. The Bureau of Labor Statistics recently announced that the 7.9% average white-collar raise for the 12-month period ending March, 1978, was the second largest overall increase recorded in the 18-year history of the BLS surveys—topped only by the 9% average for the inflation-heavy period of March 1974–75. What is more, the BLS numbers may be on the low side: A recent check of 20 industrial companies by Robert H. Hayes & Associates, a Chicago management consulting firm, showed average white-collar increases of 8.16% in 1978, with an 8.35% average projected for 1979. Business Week's own telephone survey showed nonpromotional raises hitting as high as 10% and 11% in some companies, with no downward swing in sight.

Clearly, the lull in salary pressure that many companies enjoyed in 1976 and 1977 is over, and the strongest heat is being felt at the lower rungs of the white-collar ladder. "The rate of pay increases at upper levels is definitely slowing down, while that at lower levels is speeding up," states Edwin S. Mruk of Arthur Young & Co., which does periodic surveys of executive compensation. "We find that management groups are moving ahead at an 8% clip nationally, while secretarial salaries are moving at 10% to 12%," adds Raymond F. Sasso, director of corporate compensation at Pitney-Bowes Inc.

HEAVY UNION PRESSURE

Unionized companies, of course, are affected most, as hefty blue-collar settlements cause a ripple effect upward through the lower management ranks. At Pillsbury Co., Robert Sayer, vice-president of personnel and organization planning, says that union settlements are coming in at 9%, which has put heavy pressure on white-collar raises. One result: Pillsbury raised salary midpoints for lower and middle management levels by about 6% in January, while grade levels for senior management have remained unchanged since June, 1976.

Even those companies that were first to hop on the White House bandwagon on fighting wage inflation are finding that union pressures on white-collar pay are almost irresistible. A General Motors Corp. spokesman admits that while the company is trying to hold the line on management salaries, lower-level white-collar raises now and in the future "will take into consideration what union employees get." And Jan Robbins, supervisor of compensation for American Telephone & Telegraph Co., notes that while salary ranges for employees in most middle- to upper-management jobs went up 5% in 1978, lower-level salary ranges were pushed up 7%. "We have to look at the outside competitive market for our managers, but we look at the internal lower-level pay pressures for secretaries and the like," she says.

In some parts of the country, however, fierce competition for really good lower-level employees rivals blue-collar wage hikes as the culprit in the renewed upward salary pressure. One large Midwestern insurance company recently granted 10% across-the-board increases to all employees making less than $20,000. In Greenwich Conn., Iroquois Brands Ltd., which granted white-collar raises of between 8% and 11% this year, bases its managerial increases on national salary surveys that it conducts once or twice a year, but bases its secretarial salaries on more frequent local salary surveys. "We know that if we give our secretaries, say, a 6½% raise and five companies within 20 blocks give 8%, we'll wind up with mass applications [for new jobs] going out," says Robert L. Cummings, executive vice-president. Similar competitive pressure in Houston has caused Pullman Kellogg to increase the frequency, if not the actual amount, of raises to secretaries. "Our lower-level people get about the same percentage increases as our middle and upper managers, but we are spreading the raises out, granting smaller ones several times a year," says David Bartlett, vice-president of personnel and facilities.

MERIT-RAISE CONFLICTS

All the corporate scurrying to remain competitive in salaries and, at least, to keep employees even as the cost of living surges is "battering the so-called concept of merit increases about the head," says Victor V. Veysey, director of the California Institute of Technology's Industrial Relations Center, which holds periodic discussion sessions with compensation managers. Still, at least some companies are struggling to continue linking monetary rewards to performance. Xerox Corp., for one, increased the upper level for possible nonpromotional raises in all pay categories to 15% in 1978 from 13% in 1977, but a company source stresses that "criteria for raises have been toughened."

Companies are also, of course, still looking for ways to keep outstanding performers at all levels happy without building huge increases into their base pay. Pitney-Bowes this year started granting overtime pay to exempt employees all the way up to senior executives, and Sasso says the company has already loosened restrictions on who qualifies. For example, managers formerly had to work more than 45 hours a week for four consecutive weeks to receive overtime. Now, working extra time in any week can bring in extra pay. Sasso adds that P-B is also looking to include more people under the umbrella of lump-sum performance bonuses. "We've already removed any restrictions on the proportion of our work force that can get the payment," he says, "and we're looking at possibly giving bonuses for the next-best level of performance as well as for the top achievers."

SALARY CRUNCH

Iroquois Brands also is striving to broaden the base of those employees who are covered by its incentive compensation program, but it, too, is trying to make sure that management bonuses are linked to actual performance. "Where three to four years ago bonuses were granted on a discretionary basis, we are now really taking hard looks at returns on investment, on sales, and the like," Cummings says. "Our objective is to hold salaries to a prudent level, and if a bad year comes along and bonuses are low, employees will understand how they were arrived at."

Still, keeping salaries reasonable is not going to be an easy task for any company this year. And most industry experts predict that 1979 is not going to be much better. "Through the end of this year and the beginning of next, there will be a great psychological impact from union bargaining that in normal times—times of less inflation—might well be ignored," says Harland Fox, executive compensation specialist at the Conference Board. Sums up Joseph W. Kimmel, vice-president of management consultants William E. Hill & Co. Inc., "The increasing rate of inflation, coupled with the pressure of blue-collar settlements, will put tremendous pressure on management to keep raises up."

And, of course, a thorny question remains: What can be done about the continual erosion of spendable income? The combination of progressive taxation and inflation continues to keep take-home pay frustratingly low despite the large increases.

Nearly every company contacted by BUSINESS WEEK is "working on the problem." But apparently no one is close to a solution. Until that solution is found, it is unlikely that the clamor for raises will ease.

THE ADMINISTRATION BELIEVES IN PROMISES

The responses are mostly in to the letters that Robert S. Strauss, President Carter's

chief inflation fighter, sent to the 1,000 largest U.S. companies, asking them to hold down price and compensation increases. And although only about 10 percent of the corporate heads responded with positive commitments of one sort or another, the Administration apparently is trying to convince itself that the glass is not half empty, but half full. Strauss said responses came from a "significant number of American businesses [that] are now demonstrating a will to take the necessary steps to help reduce our rate of inflation."

In fact, Strauss did receive some specific commitments from corporate leaders. Uniroyal Inc. Chairman David Beretta promised that Uniroyal "will establish for the 12-month period from July 1978 through June 1979 a goal of maintaning salary increase costs for our mid and top management group at a 5 percent rate." And International Business Machines Corp. Chairman Frank T. Cary assured Strauss that "in 1978 the average increase in the compensation of IBM employees will be less than the average increase for the past two years."

But, if Strauss's statement is any indication, most of the commitments—particularly on prices—were hedged. For example, Du Pont Co. Chairman Irving S. Shapiro advised Strauss that "our domestic selling price index for 1978 will increase less than the average annual rate of increase for our firm for 1976 and 1977, assuming that our forecasts for raw materials and labor costs are reasonably accurate." In fact, the only actual number commitment cited by Strauss came from McGraw-Hill Inc. Chairman Harold W. McGraw, who specified that "the impact of increases in our domestic prices on our 1978 sales will be below 7 percent."

Possibly, many companies are still waiting to see if Washington will clean its house first. H. Barclay Morley, chairman and president of Stauffer Chemical Co., did pledge that Stauffer would hold 1978 price increases below the 1976–77 average annual rate. But Strauss quotes Morley as adding, "The majority of the business community will pitch in and help if they believe that more than cosmetic actions are being taken and that other sectors of the economy, especially government, are doing their share."

Of course, none of the companies is legally committeed to fulfilling even those salary and price restraint promises they did make. Still, some of them may have an easier time than others. One of the companies that promised to hold down wages was New York Times Co., which has been closed down by a strike for the last month.●

## PERSONAL EXPLANATION

### HON. MARTHA KEYS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Ms. KEYS. Mr. Speaker, on Friday September 8, 1978, I was unavoidably absent from the House. Had I been present, I would have voted on matters coming before the House as follows:

"Nay" on rollcall No. 741, on a motion to recommit Senate Joint Resolution 4, establishing the Aboriginal Hawaiian Claims Settlement Study Commission, to the Committee on Interior and Insular Affairs.

"Aye" on rollcall No. 742, on committee amendment No. 1, that provided for an alternative eligibility requirement which permits workers to qualify on the basis of 40 weeks of employment in one or more trade-impacted firms on the preceding 2 years.

"Yea" on rollcall No. 743, final passage of the bill H.R. 11711, trade adjustment assistance for workers and firms.●

## BALANCE OF TERROR

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. SIMON. Mr. Speaker, columnist Tom Braden had a column in the Washington Post and other newspapers recently which discussed the whole question of military superiority and "the balance of terror."

He reaches the conclusion that—

The peace of mutual terror requires care, wariness, restraint and vigilance. But the one thing that might destroy it is a chauvinistic determination to be No. 1.

I concur completely.

The article follows:

THE BALANCE OF TERROR

(By Tom Braden)

We must accept the fact that there is no such thing any more as being No. 1 in military matters. If we try, we run the risk of suicide.

I bring this up because another group dedicated to military superiority has just formed in the Congress. It is called the Coalition for Peace Through Strength and, like its sister organizations—the American Security Council, the Committee on the Present Danger and a number of others—it is dedicated to achieving and maintaining, "military superiority over Moscow."

Maybe those people get a certain satisfaction out of crying alarm. Maybe they fancy themselves as modern-day Paul Reveres. Consciously or unconsciously, they are, of course, fronting for an enormous weapons industry, which wants to build bombers and ships the Pentagon has declared unnecessary.

But whatever their reasons for talking nonsense, nonsense is what these people are talking. They want to embark on a huge civil-defense program, build more missiles, beef up our conventional forces, build a bigger Navy and Air Force.

And what will the Russians do? Why, of course, they will then do precisely the same thing. We can both spend ourselves into bankruptcy while the Japanese become the world's leading economic power.

All the spending in the world will not change the strategic balance, which rests today exactly where it did when Winston Churchill defined peace as "mutual terror." Each side knows that if it strikes first, the other can retaliate. Each side knows that if it strikes to kill, the other can and will kill before it dies.

Peace should not depend on mutual knowledge of possible obliteration, but it is fact. And all of us, owing our lives to the balance of terror, ought to be wary of efforts to upset that balance.

Because, of course, there is always the possibility that, if one side believes the other is achieving real superiority, some dangerous or desperate act may ensue.

We know, for example, that the Soviet Union is building up its forces in Eastern Europe to a level our secretary of defense estimates at "2 to 1 or more." We don't quite understand this. Some people think the Russians are only doing what they have always done, which is to try to maintain superior strength along their own borders. Others suspect they have or will develop offensive designs on Western Europe.

What do we do about this? Obviously we do not let the Russians achieve such superiority along their own borders as to tempt them to adventure. We maintain a NATO force that is capable of holding the pass.

Also, we obviously take counsel with our allies, and we talk with the Russians to see if we can determine why they are building up their conventional forces and whether we can reach some agreement, tacit or otherwise, in limiting the buildup.

But the one thing we must not do is to try to scare hell out of the Russians by embarking on an effort to be stronger than they are along their own borders.

The peace of mutual terror requires care, wariness, restraint and vigilance. But the one thing that might destroy it is a chauvinistic determination to be No. 1.●

## HORROR STORIES

### HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. IRELAND. Mr. Speaker, we often hear "horror stories" about the stupidity of particular Government regulations, or the blundering of certain agencies.

Well, today I would like to share with my colleagues a situation which is occuring in Palmetto, Fla., and is a prime example of just these kinds of problems.

What follows is a letter by the mayor of Palmetto, the Honorable John J. "Toby" Holland, describing the problem and a newspaper article filling in the details.

Mr. Speaker, the situation described by Mayor Holland is fast becoming the rule rather than the exception all across this Nation. We have far too many Government regulations and too much Government intervention in our lives. The American people are looking to us in Congress to help them with this problem. Up to now, we have disappointed them. We can and must do better.

Thank you, Mr. Speaker.

The material follows:

PALMETTO, FLA.,
*August 24, 1978.*

HON. ANDY IRELAND,
*House of Representatives,*
*Congress of the United States.*

DEAR ANDY: May I take this opportunity to enclose an article sent to me by one of my friends in Georgia from an Atlanta newspaper. Big Brother in Washington has also affected this little community, this might be a reprint of our own problem.

As I am sure you are aware, we were threatened with a $10,000 a day fine for noncompliance of our sewage treatment plant. To avoid this we recently floated a 4.1 million dollar bond issue to meet the federal government requirements. The cost to renovate the plant will be some two million dollars and we hope to solve the number one problem, that of infiltration and exfiltration for an excess of one-half million dollars. The balance is the expense of the bond issue.

Had we not solved this problem totally with local funding but rather had applied to the 201 program we would have expended ten million dollars in local funds. That is the price of the carrot that the Feds hold in front of us for federal dollars. This plus a five year delay to get in compliance.

I am convinced that the least government is the best government and hope that you and the rest of the Florida delegation concur with my philosophy. Please do whatever you can to stop the threat of the federal government trying to solve all of the local problems because it has become a disaster. I hope that it will get back to the problem of trying to solve some of the world and national problems, an even greater disaster.

Sincerely,

JOHN J. HOLLAND,
*Mayor.*

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MILLIONS WASTED ON SEWAGE PLANTS, HOUSE PANEL TOLD

(By Jeff Nesmith)

WASHINGTON.—Cities and towns in the Tampa Bay area of Florida are spending millions of dollars to comply with state water quality edicts that include a requirement that phosphate compounds be removed from sewage.

But the streams and rivers flowing into the bay drain an area that contains one of the world's richest deposits of phosphate rock—an area that for decades has provided one-third of all the commercial phosphate on earth.

The amount of phosphate that finds its way into Tampa Bay from city sewage is miniscule in comparison with the phosphate that would flow into the bay even if there were no towns or cities in the area.

Congressional investigators say the millions of dollars—federal, state and local—being spent to remove phosphates from area sewage will have no appreciable effect on water quality in the area.

In Toledo, Ohio, million of dollars have been committed to remove phosphates from sewage that empties into the Maumee River and ultimately flows into Lake Erie.

But most of the phosphate in the Maumee River does not come from Toledo sewage. It comes from the Tampa Bay area—in the tons of phosphorous-rich fertilizer that farmers in northern Ohio apply to their crops.

"Even if Toledo were wiped off the map, the Maumee River would still be full of phosphates," federal consultants recently reported.

LEAKY SEWER SYSTEM IS MAJOR PROBLEM

Moreover, the most serious water pollution problem in the Toledo area is a leaky sewer system that will keep a lot of wastewater from ever reaching the new treatment plant.

Yet most federal grants to Toledo are being spent on the new advanced water treatment facility, rather than on repairing the leaky sewers.

"Until the sewers are fixed, no amount of treatment will do much to improve these squalid, smelly waters," consultants Jerome Howoritz and Berry Bazel told a House subcommittee recently.

"If the sewage never gets to the treatment plant, it can't be treated. It's that simple."

The Toledo and Tampa Bay cases are among several cited in an upcoming House subcommittee report that will warn that U.S. cities and towns may be spending billions of dollars for expensive sewage treatment equipment that won't work, is too expensive to operate, or is not needed.

The House Public Works subcommittee on investigations and review has heard testimony that inadequate design processes and a lack of knowledge about what is actually being dumped into the nation's waters could mean that billions being spent for advanced water treatment equipment will not achieve the expected improvements in water quality.

"Not only are the capital costs for building the waste treatment plants high, but operation and maintenance costs paid by the users are staggering as well," investigators from the General Accounting Office told the subcommittee.

TREATMENT PLANT NEVER WORKED RIGHT

For example, an advanced treatment plant was constructed in Greenville, Maine, to treat sewage discharges into scenic Moosehead Lake. The plant has never worked properly.

But to cover operating costs, the town's 1,500 residents are having to pay user charges of $200 a year per family, even though 80 per cent of the families have incomes below $10,000 a year.

Recently, the town put the plant up for sale.

In Walton, N.Y., a new $9 million sewer system and treatment plant for a community of 1,700 people is so expensive to operate that it now accounts for 88 percent of the town's expenditures. The eight workers who operate the plant outnumber the police force.

Despite such operating costs, surveys have repeatedly shown that as many as half of the wastewater treatment plants in the country are not operated properly, according to the committee's staff.

"The operation and maintenance problem is a very serious and massive one," a staff report noted. "In fact it may well be scandalous. Billions of federal, state and local tax dollars have already been invested in plants over the years which are not doing the job intended.

"This is known and admitted—and little if anything has been done over the years to correct the problems."

Environmental Protection Agency Administrator Douglas M. Costle appeared before the subcommittee and criticized a consultant's recommendation that funding for advanced water treatment plants be suspended until design and maintenance problems are better understood.

"I feel very strongly that the recommendation that we discontinue funding advanced water treatment pending further investigation is sadly misconceived," Costle said, calling the recommendation "a dramatic illustration of the old cliche about throwing the baby out with the bath."

He said new regulations and amendments to the federal Water Quality Act will make it possible to reduce some costs.

Rep. Ronald (Bo) Ginn, D-Ga., chairman of the subcommittee, has called for more careful planning and improved design for future plants.

"We do not always need to apply technology just because it's there," Ginn said. "If there are better ways to achieve progress and the goal of clean water, that is what we are seeking—not symbols or monuments or ego re-enforcement." ●

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## CARTER'S CURIOUS ARM SALES POLICY

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. FINDLEY. Mr. Speaker, the United States has refused to build eight frigates worth $2 billion for Iran but will sell $350 million in armaments for the vessels.

The refusal means an enormous loss in shipbuilding jobs for the United States. In fact, since being turned down by the United States, Iran has decided to buy 12 frigates, not just 8. The larger package will cost about $2.5 billion and the Netherlands and West Germany will get the business. I made this disclosure for the first time August 18.

Coming at a time when the U.S. dollar is sinking abroad while the U.S. shipbuilding industry is sinking at home, the administration's handling of the Iranian transaction deserves high marks for stupidity. The three shipyards which build the U.S. frigate, Bath Iron Works in Bath, Maine, and Todd Shipyards in San Pedro, Calif., and Seattle, Wash., and their employees will, of course, be most directly hurt by such a confused and shortsighted decision. But the Nation as a whole will also suffer.

The reason for this curious decision to reject business which would have brought badly needed foreign exchange and jobs to the United States, to refuse to sell the ships but to sell the weapons that will equip the ships, is to be found in an absurd interpretation of its arms control policy by the administration.

Simply put, the armaments we have agreed to sell cost less money and therefore fit within an arbitrary and meaningless gross dollar ceiling on arms sales the Carter administration has set. The frigates, at $200 million a piece, cost more money and would have exceeded the ceiling. Therefore, this country finds itself in the ludicrous position of selling the armament suites or "lethal" components to Iran while it refuses to sell the "nonlethal" ships merely because the former are cheaper.

The Carter administration is willing to increase the firepower in the Persian Gulf by selling the armaments to Iran but not to benefit the U.S. balance of trade and provide more jobs for Americans.

The Carter administration's decision had nothing to do with arms control rationale. Indeed, it was a rigid attachment to the appearance of arms control rather than to the reality of arms control which motivated this amazing decision.

A dollar ceiling should not become the primary determinant of U.S. arms control efforts. Prudent and sincere arms control must depend upon a careful assessment on a case-by-case basis of U.S. interests, of the security needs of our friends and allies, and of regional and international military balance and stability. If these criteria were fulfilled in the case of the sale of the 12 armament suites to Iran, they must also apply to the transfer of the frigates themselves. If they do not permit the sale of the frigates, neither do they permit the transfer of the armament suites. To deviate from fundamental arms control principles and to attach instead the utmost importance to a dollar figure of annual sales displays an insincerity in the U.S. approach to arms control and robs our arms control efforts of all credibility.

Frankly, the Carter dollar ceiling is not impressive no matter how viewed. The fiscal year 1978 arms control ceiling of $8.6 billion belies the fact that total U.S. foreign military sales agreements worldwide for fiscal year 1978 will, it is estimated, approach $13.2 billion. The difference between $13.2 and $8.6 billion involves sales to countries exempted from the ceiling which includes

the members of NATO, Australia, Japan, and New Zealand and it includes all construction, making no distinction between a military hospital or an airbase runway. Of the $5 billion in foreign military sales agreements with Saudi Arabia in fiscal year 1978, for example, over $2.5 billion is in construction and, therefore, does not count under the administration's arms sales ceiling.

I attach several recent commentaries:

[From the Washington Post, Aug. 19, 1978]

IRAN SHIP PLOY LETS U.S. SKIRT CEILING ON ARMS

(By Don Oberdorfer)

The Carter administration has found a way to supply Iran with some very expensive armed frigates without violating the president's self-imposed ceiling on overseas arms sales.

The method: Let European countries build the costly ships, and then the United States will supply the less expensive weapons to make them effective.

Rep. Paul Findley (R-Ill.), who disclosed the ploy yesterday, called it "an enormous loss in shipbuilding jobs for the United States" with no gain in actual control of armaments. "Coming at a time when the U.S. dollar is sinking abroad while the U.S. shipbuilding industry is sinking at home, the administration's handling of the Iranian transaction deserves high marks for stupidity," he said.

According to Findley's account and interviews with embarrassed administration officials, Iran is buying more than $2 billion in hulls and propulsion systems for 12 guided missile frigates from Dutch and West German shipyards. However, the United States is selling the guns, missile and torpedo systems and other weaponry for the ships at a total cost of $350 million.

Informed sources attributed the idea for the split-level sale to Lt. Gen. Howard Fish, formerly the Pentagon's chief arms salesman, and Ambassador to Iran William H. Sullivan. Both the shah and top U.S. Navy officials were reported to be unhappy with the arrangement but powerless to find a way to allow Iran to buy the ships from the United States without breaching Carter's ceiling.

A recent White House review of arms for Iran within the past several weeks looked again at the separate sales of ships and their arms but took no action to change it, the sources said.

Congressional and executive branch sources said the shah has long wanted to buy heavily armed frigates as escorts for the four big Spruance class destroyers that the Nixon and Ford administrations agreed to sell to Iran. A preliminary request to purchase the frigates was made to the United States late in 1976.

As Carter's policy took shape in 1977, the decision to impose a U.S. arms sale ceiling beginning in 1978 caused a problem for the Iranian ship purchase.

Carter and the shah discussed the arms purchases in their meeting last November. According to administration sources, the shah was told then or a short time later that he would have to choose between the frigates or some other high priority weapons, such as the Airborne Warning and Control System plane, but he could not buy them all and stay within the Carter ceiling.

Originally the shah requested eight frigates, which would have cost at least $200 million each. Together with associated equipment, the total cost would have been $2 billion. The other weapons that Iran is buying from the United States this year will cost at least $1.8 billion and perhaps as much as $2.6 billion—a large share of Carter's overall arms sale ceiling of $8.6 billion for the year.

After deciding to buy his ships from the Netherlands and West Germany—and to increase the order to 12 ships—the shah formally requested the U.S. weaponry so that the frigates would have the same armaments as the destroyers they were to protect. This would make the ships more compatible and improve operational efficiency.

Within the last few days, Congress has been informed that the sale of U.S. weaponry for the 12 European-built ships has been approved by the Carter administration. The arms include two kinds of surface-to-surface missile systems, high powered automatic guns and a modern torpedo launching system.

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[From the Houston Post, August 27, 1978]

SHELL GAME

"The Carter administration has found a way to cut off our arms to spite our balance of payments and American workers, but still deliver the goods. President Carter set a ceiling of $8.6 billion on U.S. arms sales this year to curb the spiraling global weapons trade. He considered this an exemplary move since the U.S. is the world's leading arms salesman. But the shah of Iran has been pressing us to sell him eight small warships in addition to other military hardware.

"Arms sales to Iran this year will total about $2 billion without the vessels—guided-missile frigates to be used as escorts for the large destroyers the U.S. had previously sold the shah. Their total cost would exceed $2 billion. If the entire arms sale package to Iran were made within the $8.6 billion ceiling, the administration decided that it would account for too great a proportion of the total allowed sales. If, on the other hand, the frigate sale were approved in addition to the other arms sales, it would breach the administration's self-imposed limit.

"But the shah of Iran is no ordinary customer. Iran is a major oil producer, a key member of OPEC, shares a long border with the Soviet Union and occupies a strategic position in the Persian Gulf region. When Iran, reportedly prompted by the U.S., decided to let West Germany and the Netherlands build the frigates (the order was raised from eight to 12), the administration agreed to supply the missiles, guns and torpedoes to arm them. Iran wants our weaponry because of its compatibility with the equipment on the destroyers. Luckily, the administration found that the $350 million cost of this hardware will not violate its arms sales ceiling.

"The deal will be a windfall for West German and Dutch shipbuilders, but the administration's ploy to get around its own barrier has drawn sharp criticism from members of Congress such as Rep. Paul Findley. The Illinois Republican charges that the maneuver cost us a chance to improve our deficit-dogged trade balance and forfeited contracts and jobs that could have gone to the U.S. shipbuilding industry.

"A declaration by the administration that it intended to work for reduction of the world arms traffic would have been more prudent than setting a specific ceiling on our own weapons sales without regard to what the rest of the world was doing. Once again the administration has trapped itself by adopting rigid policy limitations on a matter that demands maximum flexibility. If the only penalty for such blunders as the Iran frigate deal were official embarrassment, it might be discounted as a self-inflicted wound—richly deserved. But the nation must pay for its administration effort to circumvent its own policy in lost jobs and more red ink on our trade ledger."●



## UNDERLYING CURRENTS OF PROPOSITION 13—FURTHER DISCUSSIONS

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### HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. BROWN of California. Mr. Speaker, the passage of proposition 13 in California was most obviously against high and unfair taxes. Our Nation's history records many movements against taxes, beginning with the colonial import taxes, and continuing with tariff fights, poll taxes, and now property taxes. I have commented these past few weeks on the underlying currents of proposition 13 that deal with the planning and structuring of Government programs. Our Government must tax its citizens and industries to finance its programs because it does not control the production of wealth in our society. The major forms of government revenue today are property, sales, and income taxes.

I would like to focus mainly on the questions of fairness and equity while I discuss the advantages and problems of these tax systems. Specifically, fairness means only taxing realized income and accounting for personal hardships. Horizontal equity means those persons earning the same income pay the same taxes, given considerations of fairness. Vertical equity means progressivity of rates, that is, those persons most able to pay higher taxes should, while less fortunate persons would pay proportionally less. The recent revision of the California income tax toward greater fairness and equity follows from the pressure of the Jarvis-Gann initiative. I hope proposition 13 will be a catalyst for many further such reforms throughout the Nation.

High property taxes in California caused the passage of proposition 13, and similar high property taxes in other States have placed further tax relief measures on the November ballots of these States. Further elections will probably have still more such initiatives. While I am concerned with the consequences these measures will have on local governments, I agree that the present system of property taxes is unreasonable. I believe these taxes are inherently unfair and should be completely phased out.

They are regressive and especially difficult for elderly and poor homeowners to pay. They tax unrealized earnings without concern to income differences. They also do not account for inflated property values. They discourage home improvements by the poor who cannot afford to have their property increase so much in value. These taxes force many people to sell their homes, go into debt and accept lower standards of living. Business and apartment owners usually pass their property taxes to consumers through higher prices.

Moderate priced homes and businesses are much more likely to be fully assessed as market values and taxed at full rates than are higher priced properties. The

more expensive estates are more likely to have untaxed or undertaxed improvements, such as swimming pools, tennis courts, and large gardens. Property taxes thus fail both in terms of fairness and equity. I feel these inherent defects, therefore, supersede any usefulness property taxes might otherwise have.

Sales taxes, unfortunately, are also regressive. Everyone pays the same rate, regardless of their ability to pay. These taxes thus take more proportionally from the incomes of poor people than from the incomes of wealthy persons. I believe, however, that sales taxes can be reformed into a more equitable revenue system. These taxes are relatively simple to administer and collect and are on realized income (though this is debatable with items bought on credit). Exemptions, such as that presently allowed on food in most States, can be expanded to cover other basic needs. The poor, who spend the greater portion of their income on the basic needs, would then pay less of their income to sales taxes. A luxury surcharge could be added to items generally bought by high income persons. A surcharge would allow those persons to pay higher taxes who can most afford them. The net result of these and similar adjustments hopefully would be a more progressive sales tax structure.

Income taxes are the major source of revenue for the Federal Government. The taxes are on realized income and are potentially the fairest and most equitable of all our tax systems. They are easily collected from most workers, though self-employed and wealthy people have greater inherent opportunities for fraud. Unfortunately, various loopholes and other problems now exist with income taxes that reduce their fairness and equity. The oil depletion allowance, for instance, lets oil companies not only have the usual investment credits and loss writeoffs, but also a special break for depleted resources. It seems horizontally inequitable to me to allow companies to extract minerals from the earth, process it, sell it at a large profit and then deduct an enormous sum from their taxes because they now have less of that mineral to extract.

It is argued that oil companies should receive some recompense for land that has deflated in value due to the loss of minerals. The oil depletion allowance, though, gives the companies a set deduction from their taxes regardless of their actual losses. I believe it would be fair to eliminate this allowance and simply expand the investment tax credits and loss write-offs. This would allow greater horizontal equity.

The double taxation of stock dividends is also inequitable. Investment tax deductions do not really solve the problem. I would favor having dividends only taxed as income to the stockholders, and withheld profits at full corporate tax rates. Personal exemptions, in vertical terms, are an example of how income taxes are made less progressive. Someone in a 50 percent tax bracket saves 50 cents that would have been paid in taxes for every dollar they can deduct from their income. A poorer person in a 10 percent bracket, though, only saves 10 cents for every dollar they deduct from their taxable income.

Income taxes would be much more progressive if tax credits were substituted for exemptions. The dollar a poor person is able to reduce from their taxes is a much larger proportion of their total tax bill than the dollar a wealthy person saves. Thus aid would be focused more on those in need of it. I believe there are only a few extraneous circumstances where people earning the same income should not pay the same taxes. It would be fair to allow tax credits for these few conditions.

The present hodgepodge of exemptions and credits should be greatly reduced. This would probably allow a large reduction of general income tax rates, and thus be much more beneficial to the whole public. Inflation causes income taxes to become unfair. People are pushed into higher tax brackets without increases in real income. Inflation does not affect those persons, though, already at the highest tax levels in this manner.

The present combination of regressive taxes and income tax loopholes renders our overall tax structure unfair and inequitable. Polls show that tax reform is high in the priorities of the public, just behind controlling inflation and lowering the crime rate. I believe inherently flawed taxes, such as those on property, should be gradually eliminated. Other taxes, such as those on sales and income, need many basic reforms. Our general principle should be fairness and equity. Proper tax reforms would be a great improvement over our current standard of tax rebates and cuts. The relief would be large and permanent, as polls and proposition 13 show the public wants. We in Congress should thus restructure our Government financing and follow the message of proposition 13.●

## REPRESENTATIVE FASCELL SPEAKS ON HUMAN RIGHTS

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. SIMON. Mr. Speaker, one of our colleagues who has provided exceptional leadership in the field of foreign affairs, as well as leadership for the people of his district and leadership of this Nation, domestically, is Representative DANTE FASCELL.

I serve on the Commission on Security and Cooperation in Europe, more commonly known as the Helsinki Commission, which he chairs.

I have the opportunity to view his deft, friendly but firm leadership at first hand.

Recently he spoke to the Chicago Council on Foreign Relations on the human rights policy and, particularly, the outcome of the Belgrade meeting.

I am taking the liberty of inserting it here because I know some of my colleagues who join me in my high esteem of DANTE FASCELL will want to read it.

HUMAN RIGHTS POLICY: THE U.S. AT BELGRADE

(Address of Rep. Dante B. Fascell)

For the last year and more President Carter's human rights policy has been a subject of continual comment, concern and controversy in Washington and around the world. In the United States, especially, the Administration's stand has been repeatedly put through the wringer of pragmatic questioning. Is it working? What are the results? What has it cost? Where is the payoff?

Those questions are proper, of course. They are the tests we would use in judging any political investment, whether it be for national defense or international decency, for creating jobs at home or promoting democratic values abroad.

Unfortunately, when we try to judge the efficacy of the policy against this standard of tangible achievement we inevitably get bogged down in partial and contradictory measurements. Which matter more—the release of thousands of political prisoners in Indonesia or the thousands more still detained in brutalizing conditions? Was it a plus to have martial law lifted in Nicaragua, or do we score it as a debit that people have been killed in riots there?

Is the increase in the number of Jews and others permitted to leave the Soviet Union a tribute to our steadfastness or a temporary and cynical gesture meant to buy off American public opinion for a few months?

The fact is that facts mislead. The scorecard on human rights shifts so often that tallies which can be made to look good today can also turn dismissal tomorrow. And the attempt to keep count of successes and of failures diverts us from what I think are the two central aspects of the pursuit of human rights.

The first has been cynically described as the "feel-good" quotient of the policy. It makes Americans feel good—after Vietnam and Watergate and other episodes of governmental deceit—to be on the side of the angels again.

I like the description, but I reject the cynicism with which it is applied.

There is nothing wrong—and a great deal right—about a policy which reminds Americans of the values our history reflects. There is nothing wrong—and a great deal right—with the attempt to project those values again into the international arena as the expression of an American consensus about ourselves and our role in world.

The second aspect of the policy is its nature as a long-term commitment. Advocacy of human rights is not a quick fix. The renewed American determination to defend civil and religious liberty, to seek broadened protection of individual rights and welfare holds no promise of easy victories. The effort is certain to be a long one, but so have been our programs to aid economic development around the world. The pursuit is likely to be frustrating, but so are trade negotiations or disarmament talks or the search for cancer cures or treatments.

We do not draw back from those endeavors just because the price is high in terms of patience and perseverance. Nor can we turn away from the pursuit of human rights because the goal remains distant. At his inaugural 17 years ago, John Kennedy asked Americans "to bear the burden of a long, twilight struggle, year in and year out . . . against the common enemies of man: tyranny, poverty, disease and war itself." The struggle is still on, and it is too early to say for sure who is winning it.

The Belgrade Conference, now nearing its

conclusion, however, gives me a change to illustrate the conduct of human rights policy as part of that long, frustrating, but crucial "twilight struggle." The first formal meeting of the 35 Eastern, Western and neutral states which signed the 1975 Helsinki accords on security and cooperation in Europe shows up all the problems of trying to keep a scorecard on human rights. It also demonstrates all the potential for gradual change that makes American policy one of hope and promise.

Let me go back over some basic, recent history to put the Belgrade talks in perspective. The Helsinki accords themselves were the outgrowth of a twenty-year-long Soviet effort to obtain formal recognition of the postwar boundaries of Europe. Moscow sought a peace treaty. It got instead a declaration of political resolve in which, as tradeoffs for the recognition of the sanctity of existing frontiers, the West insisted on provisions for "a freer flow of people and ideas"—another goal of President Kennedy—across those frontiers.

When the long negotiations ended at the Helsinki summit, most Western observers thought and said that the Soviets had gotten the best of the bargain. The West acceded to the legitimacy of Communist conquest in Europe. In return, the East made undertakings to respect human rights and dignity, but without the expectation that it could be held to the promises it made.

What happened, instead, was a remarkable turning of the tables. It was accomplished not by any brilliant strategists in Washington or at NATO, but by a small band of intrepid Soviet citizens who began to say out loud—so that the rest of the world could hear—that the Soviet Union must make good on its own laws and its Helsinki commitments. Their demands made us respond. It was they—members of what has come to be called the Soviet Helsinki Watch and, later, the signatories of Charter '77 in Prague—who made the West aware of the value of Helsinki.

A year ago yesterday when the Helsinki Commission held its first public hearings in Washington on human rights, former Ambassador Leonard Garment summed up what had happened. "The existence of a formal, written document, to which the Eastern regimes gave their public consent and their formal stamp of legitimacy, has made a difference.

The words matter and are beginning to move human minds," he testified. Then he added: "Perhaps we in the West, who pay such frequent tribute to the worth of ideas, should be a little embarrassed that at the time of Helsinki we entertained such a low opinion of their power."

By the time of Belgrade—the substantive part of which began last October—our opinion had changed. We in the West approached the conference as a significant test of our ability to give and get an account of the progress promised in the Final Act, the formal name of the Helsinki document. And from the East—in a few areas of Helsinki undertakings—we could already see surface gestures of compliance.

Those gestures were made with an eye to Belgrade, out of concern for what would be said there if there were no signs of movement. The gestures included the amnesty of political prisoners in Romania, Poland and, later, Yugoslavia. The rise in the emigration figures from the Soviet Union and other countries were also gestures toward the Helsinki promise to "facilitate" the reunification of divided families. The sale of a few more Western papers and magazines and the easing of travel restrictions on some Western journalists also constituted gestures in the field of information.

For the scattered positive signals, however, there were balancing negative acts. Journalists could get around with greater ease perhaps, but they could also be subjected—and were in the Soviet Union and Czechoslovakia—to outrageous harassment. New applicants for exit visas could be processed with greater speed, but many with applications long pending could be—and were in the USSR—treated with brutality and renewed contempt. Finally, and most tragically, 16 of the 43 members of the Soviet Helsinki Watch have been jailed for daring to raise their voices to demand domestic compliance with international human rights standards.

On the second anniversary of the signing of the Final Act, the U.S. Commission issued its comprehensive report on compliance. In a capsule judgment, it found: "Progress has been inadequate. Measured against either the hopes voiced at the Helsinki summit or the need for smoother and more stable relations among the signatories, the implementation of the Final Act has fallen short."

That judgment formed the background of the U.S. effort at Belgrade, an effort made up of two parts. The first part was simply to register our dissatisfaction with the pace and quality of progress under the Final Act, especially its human rights and humanitarian provisions. But beyond holding the Communist states to account for their nonperformance, the second American goal was to seek reaffirmation of the common Helsinki commitments themselves, to stimulate better behavior out of the examination of the imperfect past record.

The first goal has been fully met. In fact, the first eleven weeks of the conference brought a welcome bonus. In the period devoted to the review of Final Act implementation, the firm U.S. voice of Justice Arthur Goldberg—whose many distinctions include his being a Chicagoan—was joined by that of many Western and neutral spokesmen in a persuasive chorus of concern on the issue of human rights.

The Communist delegations tried to blunt this assault, but failed. They argued first that the Final Act itself made any criticism of their domestic conduct off limits, because the accords banned "interference" in internal affairs. The West, however, showed clearly that human rights are matters of international agreement, of specific Final Act pledges, and thus not purely issues of domestic competence.

Then when Justice Goldberg cited the treatment of specific individuals—Charter '77 signers jailed in Prague or Soviet dissenters such as Yuri Orlov, Aleksandr Ginzburg, Anatoli Shcharansky and Andrei Sakharov—the Soviets made a feeble attempt to rebut us with "you're-another" arguments. Guilty of racial discrimination, of imprisoning the Wilmington Ten, of letting millions go jobless—even, they said in apparent seriousness, of executing Sacco and Vanzetti 50 years ago—the United States had no right to lecture others on respect for human rights.

I do not claim that these exchanges make up a dialogue. Obviously, on both sides, there was much more give than take. But the Belgrade review period did something no other international meeting has done: it broke the silence barrier on human rights. Diplomats found themselves talking about a subject they generally prefer to duck, but having been confronted with the issue, they found no way to put it aside. Instead, because the Helsinki process is a continuing one and the Belgrade talk will be revived when the signatories meet again in Madrid in two years, human rights has won a place on the international agenda it should have had long ago.

I want to discuss the importance of that precedent in a moment, but first let us look at how far we have gotten with our second goal: reaffirming the Final Act's importance as a means of stimulating improved performance. Barring new developments today, the Belgrade Conference's concluding document has not yet been agreed upon. But it has now become obvious to all that the Soviet Union and its closest Warsaw Pact allies are inalterably opposed to a document of real substance. We have worked hard for such a document throughout the proceedings in the face of Soviet intransigence. At a minimum, the concluding document will note that delegates met and talked and that they will meet again in Madrid.

So brief a concluding document would be a disappointment to many. But I do not believe that the final communique should be considered the sole—or even the main—measure of the impact of the Belgrade meeting. Certainly it would have been better to have a conference document of real political substance that gave a candid assessment of implementation, reaffirmed the commitment to all provisions of the Helsinki Accords and marked out specific areas for improved performance. But given the rule of consensus, under which each country has effective veto power, a strong Belgrade concluding document was never in the cards.

Nevertheless, what has emerged has the potential for being just as valuable. After Belgrade comes Madrid, another occasion to insist on implementation of the Final Act, to hold up the record for candid review, to try and win the fresh commitments that could not be achieved at Belgrade. And after their experience at Belgrade—that of being forced to hear out their critics—the Communist states must be even more determined than before to avoid a second round of diplomatic embarrassment.

They have two roads to choose from. One is to renounce the Helsinki process, to boycott the Madrid meeting or so rewrite its rules that it become an empty exercise. The other is to show a measure of good-faith implementation between Belgrade and Madrid that deflates criticism and lightens the international atmosphere.

Neither alternative is attractive. The Helsinki accords were meant to be a capstone of the Brezhnev detente policy. To turn away from them is to pronounce that policy a failure.

The other choice—that of heeding the concerns voiced at Belgrade and moving to remedy the practices which drew such heavy fire—is not easy either. It would mean, over the long run, according the individual real protection against monopoly state power. To do so would be to invite more challenges against Communist rule in its present form, to tolerate that very diversity which every dictatorship must deny.

There is, of course, one other way for the Soviet Union to slip from between the rock and the hard place where, on the human rights—Helsinki issue, it is now held. That is for the West and the United States, in particular, to relax the pressure for Helsinki compliance so forcefully brought to bear in Belgrade.

We could slip into that path too easily. We could say that we asked too much from Belgrade, got too little and need to try another course. We could go further—in our impatience for results that can be totted up on a scorecard—and pronounce the whole push for human rights standards a profitless game. And thus we could let the Soviet Union, for one, off the hook.

But I said earlier that we had set an important precedent at Belgrade in legitimiz-

ing international, diplomatic treatment of concrete human rights issues. The precedent is one we must observe as well as insist that others acknowledge. If we change our signals now because of dissatisfaction with the Belgrade outcome, we lose the new ground onto which we moved ourselves and the East-West relationship.

The precedent set at Belgrade is only as valuable as the follow-up to it. Having won the right to speak out on the importance of our values to our security and the ordering of a real détente, we cannot afford to turn away, back into silence.

We have found in Helsinki a framework in which to pursue a policy which both feels good and can do good. The patience to put up with the slow pace of results from that policy is something Americans have yet to learn.

Along the road we are certain to have anxious moments and even set backs of our own. But the road toward international respect for human rights is the right one for us to be traveling.

At Belgrade we began the trip with honor and realism. We are moving in the right direction.●

## "SPAIN WEEK"

### HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. RODINO. Mr. Speaker, for many generations New Jersey's 10th Congressional District has been an excellent example of the cultural diversity which has given America its unique strength. Our Hispanic citizens, with their strong family bonds and rich heritage, have been a vital part of the community ever since Spanish immigrants began settling in Newark in the last century.

Newark Mayor Kenneth A. Gibson and the city council have declared this week "Spain Week" in honor of the tremendous contributions of the Hispanic people to the city.

I am very proud to join in this salute and I would like to place in the CONGRESSIONAL RECORD the following article on this special occasion which appeared in the Newark Star-Ledger's Sunday, September 10, 1978, edition.

NEWARK PLANS HONORS FOR ITS HISPANICS

(By Al Post)

More than 10,000 descendants of Spanish immigrants, who first began arriving in Newark's Ironbound section in the 1880s, will be honored tomorrow as Mayor Kenneth Gibson and the City Council proclaim "Spain Week" in Newark.

The Spanish Consul General of New York, several members of his staff, Essex County Judge John Dios, Newark Councilman Henry Martinez and many Newark residents of Spanish descent will take part in the proclamation signing at 10 a.m. in the mayor's office.

Joseph Vazquez, president of Club Espana—the largest Spanish civic and social club in Newark—said the Spanish tradition of strong family ties has helped the ethic community to grow in Newark during the past century.

"Although our exploits do not make the public press very often," Vazquez said, "we feel strongly that Spanish nationals and their descendants have contributed greatly to the cultures of both Newark and America."

The "work ethic," a key feature in the Spanish heritage, is one of the reasons so many persons of Spanish origin settled in Newark, Vazquez said.

"The Spanish community is here to stay. Members of our community plan to live here, work here and die here. We do not plan to retire and move back to our ancestors' homeland," he said.

Club Espana's 1,200 members are vitally interested in the future of the Spanish children of Newark, said Ramon Venero, club vice president.

The club sponsors a school that emphasizes Spanish language, culture and traditions. In addition, the club and one of its members—attorney Bernard Escandon—sponsor college scholarships of $1,000 and $500 for Spanish youths.

The club has three teachers to instruct three levels of classes—beginners, intermediate and advanced—which are based on academic skills, not on age.

In the school the students are taught to have pride in Spain's role in American history.

Some of the key aspects include Spain's role in the discovery of the New World, Ponce de Leon's discovery of the area that is now Florida, Spanish colonists establishing the town of St. Augustine (the first permanent white settlement in the United States), the Spanish government's $5 million loan to the colonists during the Revolution, and the sale of Florida to the United States.

A map of the United States showing the period when Spanish influence was at its peak has been put on display in the club by Rafael Gonzalez, public relations officer.

The map depicts Spanish colonies across the southern United States—from the Atlantic to the Pacific—and as far north as Montana.

In addition to history, the teachers also instruct the students in playing the bagpipes (similar to those used by the Colts in northern Spain) and flamenco dancing (similar to the style popular in southern Spain).

Because of the school program, the club's youth activities and the stress placed on respect for parents, juvenile delinquency is not a major problem in the Spanish community, Venero said.

When a young member of the Spanish community steps out of line, Venero said, an adult usually takes him aside.

The mini-lectures usually bring favorable responses from most youths because few want to bring disgrace to their families, Venero said.

Another of Club Espana's successful projects is its championship soccer team, which won the title of the Schaefer League of North Jersey in 1970 and 1976.

The club and the team both made history last month, when they joined the first flight from Newark International Airport to Spain.

Acting on the invitation of the Sporting Ciudad—a soccer team sponsored by the city of LaCoruna, Spain—the Newark club made a 10-day tour of the Spanish city and nearby areas.

LaCoruna city fathers passed a resolution asking Newark officials to establish a "sister city" relationship.

While in Spain the Newark soccer team played three exhibition games with local Spanish teams, winning one of the three.

The club has grown since its founding in 1964 and now has a three-story headquarters on New York Avenue.

The club's women's auxiliary has aided many of the unit's civic and social projects since its inception.

"And to prove that we could be modern as well as traditional," Vazquez said, "we just elected Linda Fernandez—our club's treasurer—as the first woman member of our board of directors."

## THE GENERAL DYNAMICS AND LITTON INDUSTRIES SHIPBUILDING DISPUTES—SETTLEMENT, BUT AT WHAT PRICE?

### HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. DOWNEY. Mr. Speaker, on Thursday, August 10, I introduced resolutions of disapproval regarding two Navy contract settlements with General Dynamics Electric Boat Division and Litton Industries, Ingalls Boat Yard. If passed by the House, these resolutions would block implementation of contractual reformations totaling over $900 million—the largest shipbuilding claims settlement in U.S. history.

In order to facilitate the understanding of the important issues contained in the settlements and to explain my rationale for introducing disapproval resolutions, I would like to include in the RECORD at this time a short statement and an expanded background paper:

STATEMENT BY HON. THOMAS J. DOWNEY

I introduced resolutions of disapproval in the General Dynamics and Litton Industries contract reformations for a variety of reasons involving the particulars of each settlement. However, my main concern was to insure that the reformations received a full and complete review by Congress and that the implications of these agreements were seriously weighed and evaluated before the Government commits itself to this course of action.

At the present time, I remain unconvinced that the settlements are in the best interest of Navy shipbuilding or the national defense. The Navy proposes to pay close to a billion dollars to General Dynamics and Litton Industries when only a fraction of this amount may constitute the actual liability of the Government. Additionally, the use of "extra-contractual" relief in these situations may have undesirable ramifications for future Government contracting.

I believe the settlements present a crucial juncture for both Navy shipbuilding in specific and federal procurement law as a whole. We are faced with a sensitive situation in which the Government must balance the pursuit of its contractual rights versus the national interest in "getting the ships built".

With the scales poised as they are, I feel we must be careful not to give in to the pressures of the moment. Instead, the ultimate effect of these settlements must be measured in dollars and in the precedent that these reformations will set. There are important questions of policy which must be accurately defined and resolved.

We simply cannot afford to "bail-out" contractors who find themselves in a loss position due to their own actions. We cannot compensate companies for their own ineffi-

ciencies. Congress has a duty to the public to make sure that the Government receives full value for the tax dollars it spends.

Thus, in the situation before us, I feel Congress must send a message to the defense industry that all extra-contractual relief will be heavily scrutinized. It must be communicated that such relief will be approved in only the truly exceptional circumstance—when it will indeed be in the national interest to forgo the Government's contractual rights and when there is no other viable alternative to secure contract performance.

In both the General Dynamics and Litton settlements, the Government could have pursued other legal alternatives instead of the extra-contractual provisions of P.L. 85–804 which were utilized.

With regard to General Dynamics, it was possible for the Government to exercise the default clause in the contract, seek a court order to compel performance, or buy the Electric Boat facility and operate it as a Government-owned, contractor-operated facility.

In Litton's situation, the Government similarly could have terminated for default, continued litigation before the ASBCA, or negotiated a settlement on the LHA claim using ordinary forms of contractual relief.

For various reasons, the Navy rejected each of these alternatives in favor of a P.L. 85–804 settlement. Although analysis of each of the alternatives is a complex task—I believe that the Navy might have too readily embraced P.L. 85–804.

While the pursuit of legal rights through the judicial system may be a long and arduous course, I feel it may be seen as the duty of the Government. Indeed, in most instances, the relinquishment of contractual rights should be the last alternative chosen. Involved is the integrity of Government contracts and the reasonable expectations of the public regarding Government expenditures. These considerations cannot be lightly brushed aside.

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AN OVERVIEW OF ISSUES IN THE GENERAL DYNAMICS AND LITTON INDUSTRIES CONTRACT DISPUTES

I. THE SETTLEMENT AMOUNTS

The Navy has repeatedly pointed out that both General Dynamics and Litton Industries will assume massive losses in the settlement agreements. In the case of General Dynamics, the settlement provides that the company will absorb a $359 million fixed loss, an amount which is said to wipe out all Electric Boat profits back to 1959. With regard to Litton Industries, the settlement fixed loss has been placed at $200 million.

While these amounts are certainly staggering, there are several factors which blunt their impact. First, the present I.R.S. Code allows both corporations to offset these contract losses against earned income before taxes. Assuming that the loss figures are correct and that the corporate income tax is still 48% in the year that the General Dynamics' contract are completed—it is possible that General Dynamics may realize a tax benefit of $172 million on its $359 million loss. With respect to Litton—given similar assumptions, it is possible that the corporation may realize a tax benefit of $96 million on its $200 million loss.

Additionally, it should be remembered that both corporations may benefit by underrunning the estimated loss figure. In the case of General Dynamics, the settlement agreement provides that it will benefit from 50% of cost underruns. As for Litton, that corporation will receive 80% of cost underruns while the Government's share will only be 20%.

Further, although the settlements are intended to be an encompassing agreement—neither General Dynamics or Litton is prevented from submitting more claims on the contracts based on events occurring after the settlement date. Thus, it is at least theoretically possible that both corporations could reduce their fixed loss through submission of contractual claims at some point in the future.

Moreover, despite the enormity of the losses, it appears that neither General Dynamics or Litton is faced with immediate bankruptcy in the event it had to absorb the full amount of cost overruns. While Litton's financial position is somewhat less secure than General Dynamics, an independent audit of General Dynamics concluded in part that the corporation "should be able to sustain even a $774 million loss and remain solvent if its lenders would agree to either waive or revise certain existing minimum loan covenants".

With respect to the settlement amounts, Secretary Claytor has stated that the fixed losses assumed by the corporations "reflect the shipbuilder's problems primarily in controlling manpower and associated productivity". The Secretary has affirmed that the settlements "closely approximate the Navy's best evaluation of the responsibility shared" for such things as design changes, late Government Furnished Information and Materials and productivity and manpower problems.

However, there are still those who assert that the proposed settlements are a "bailout" and that the amounts arrived at do not reflect the relative responsibilities for the cost overruns.

A former Industrial Relations Manager for Electric Boat has stated that productivity is still much below an acceptable level at the shipbuilding facility and that Electric Boat was forewarned of the "impossibility" of securing adequate manpower by outside consulting firms. In his opinion, the amounts contained in the General Dynamics settlement are unwarranted given the company's handling of its labor force.

With respect to Litton Industries, allegations were made as early as 1970 that the company intentionally underbid on the DD–963 destrover contracts. Senator Margaret Chase Smith questioned at that time whether a last minute change in the contract provisions "may have permitted a contractor to take irregular advantage of regulations to lower estimated cost with the full knowledge that cost can be negotiated upward several years later after the award at a small sacrifice in profit—but at the expense of another substantial overrun to the Government".

II. GOVERNMENT LIABILITY

Responsibility or "fault" for the overruns is a complex issue. In one sense, the actual liability of the Government is a question which can only be resolved after years of litigation in the courts. Contractual liability is dependent upon both factual and legal determinations which have traditionally been considered the province of the judiciary.

However, since the proposed settlements seek to circumvent the judicial process and established fixed obligations on the part of the government and the contractors—the question must be raised now and answered by the situations as they presently appear.

In this regard, many general allegations have been made as to government liability. Both the Navy and the contractors have laid much emphasis on "overly optimistic projections" of the work involved and manhours needed to construct the ships. The flow of Government information and materials has been criticized as a component of the unanticipated price increases and it nas been claimed that some deliveries of information and materials were not in compliance with normal expectations. Additionally, it has been asserted that excessive design aud contract changes were required by the Navy.

Nevertheless, none of these general allegations provides an accurate guage of liability. Although the Navy has claimed that the settlement amounts reflect relative responsibilities—it must be remembered that the settlements were the product of long negotiations. Thus, it is reasonable to suspect that some amount of compromise took place as to the end settlement amounts.

Interposed in the vagueness surrounding the proposed settlements, though, is the Navy's own analysis of General Dynamics and Litton contract claims. While the proposed settlements were based on the estimated cost of completing the contracts (as opposed to the formally submitted claims of General Dynamics and Litton) the determination of these claims yield some interesting figures.

In the General Dynamics situation, analysis of that company's $544 million claim produced a figure of $125 million as the amount of General Dynamics' "entitlement". However, fully $29 million of the $125 million entitlement figure is attributable to sums allocated for "litigative costs" and "litigative risk". These amounts do not indicate a finding of liability but rather represent subjective judgements as to the prospects and projected outcome of possible litigation.

The history of Litton claims present an even more distrurbing situation. In 1973, a contracting officer decision allowed no increase in the contract price for Litton claims totalling $475 million. Moreover, after two years of analysis, the NAVSEA claims team arrived at a $312 million determination of $1.088 million in Litton claims, $18 million of which is attributable to litigative cost.

Thus, the only available analysis of government responsibility other than the settlements has produced a determination which suggests a liability figure of less than $400 million (excluding additional claims which have been mentioned but not submitted by General Dynamics). Although these determinations do not establish the liability present in the proposed settlements—they do represent years of expert claims analysis. As such, they are at least relevant to the ultimate liability question.

III. SPECIFICS IN THE GENERAL DYNAMICS SETTLEMENT

*A. Costs incurred*

The proposed settlement is based on the estimated cost of completing the SSN 688 contracts. Involved in this figure are "costs incurred" or the amount of expenditures that Electric Boat claimed were allocable to its contract performance to the date of the settlement.

The costs claimed to have been incurred by Electric Boat in the construction of the 688 class total $1.341 million (as of 12/24/77). However, GAO testimony noted that neither the independent audit of Coopers and Lybrand or the DCAA reviewed the accuracy of this figure until the GAO suggested this action in the spring of this year.

After analysis by the DCAA, $36.8 million of the reported costs incurred were questioned (although a final determination of the allowability of these costs rests with the contracting officer, ASBCA, or the courts). The GAO then suggested that the proposed settlement be adjusted to reflect the unallowable costs—but the Navy refused feeling it was too late.

Thus, the present settlement is based on figures which may include $36.8 million in unallowable costs, according to the DCAA and GAO. While this amount may be relatively small when compared to the overall cost of the contracts—it is still a significant figure which should not be overlooked. If indeed the $36.8 million is an unallowable cost, it would appear to negate claims that the settlements closely approximate responsibility for cost overruns.

*B. Projected cost of completion*

In its review of the General Dynamics settlement, the GAO commented:

"General Dynamics' independent auditors . . . found that several of the assumptions upon which the labor hours and labor rates are based are optimistic in light of the contractor's recent experience. The estimate of the cost at completion was compiled assuming 7 percent labor rate increases each year. Recent Electric Boat wage settlements have averaged 10.7 percent annually. The difference between the recent labor increase experience and the 7 percent rate used to estimate the completion costs amounts to over *$110 million* for labor and overhead". (Emphasis added)

Although the 7 percent figure was used to conform to Administration predictions of inflation—such a finding has critical import. That is, if the estimated cost to complete the General Dynamics contracts is too low, the Navy will become obligated for substantial sums above the previously projected figures.

In this regard, under the settlement if the actual cost to complete the contracts exceeds $100 million or more and if the labor and overhead escalation rate through the construction period exceeds 7 percent, the Navy may be required to pay General Dynamics *$50 million* more than the $484 million figure the Navy is committed to under the settlement. Further, for every 1 percent increase in labor and overhead escalation rates over the 7 percent rate provided for in the settlement—the Navy will have to pay an additional *$31 million* (if, again, the cost to complete the contract exceeds the estimated cost by $100 million).

Thus, altogether the Navy's end liability in the settlement could vary considerably from the cited figure of $484 million although at the present time it would appear impossible to predict exactly how much the Navy will be obligated. However, given that the cost of a single SSN 688 has risen from an initial ceiling price of $71 million to an estimated construction cost of $148 million so far—further increases might seem likely over the remaining six years of the contracts.

IV. SPECIFICS IN THE LITTON SETTLEMENT

*A. Cost estimates*

The DCAA has audited the costs incurred on the Litton LHA and DD-963 contracts and has termed them reasonable. Additionally, an independent audit has confirmed the cost of completion figures for both contracts. Thus, given these audits and the rather advanced stage of the contract performance, cost variances would seem less likely in the Litton reformations than in the General Dynamics' settlement.

However, unlike the 50/50 sharing provision of the General Dynamics' settlement—if Litton underruns the estimated cost figure of the settlement, it will benefit from 80% of the saved costs while the Navy will only receive 20%. This sharing arrangement is an unusual provision in that it provides Litton with a much greater share of underrun savings than in most other government contracts.

The Navy has justified this arrangement on the basis that—in their opinion—an underrun will be difficult to achieve and therefore greater incentive must be provided to Litton. However, $720 million of the costs of the Litton contract have yet to be incurred. While the Navy claims this amount is rather definite—it must still be considered a significant sum in which variance is possible. Thus, the 80/20% sharing provision has at least the potentiality to measurably diminish Litton's fixed loss under the settlement.

*B. "Buy-in" allegations*

The initial target price of an LHA unit was $112.5 million. This price was supposedly a reasonable estimate of the cost to build an LHA unit according to the information available at the time of bidding. However, under the proposed settlement the estimated cost for an LHA unit has been placed at $260 million.

Similarly, the initial target price for a DD-963 destroyer was $59.6 million. At present, though, the estimated cost of a DD-963 is projected to be $107.5 million.

While contractual and design changes along with inflation have certainly increased the cost of these vessels—the enormity of the cost overruns is, at a minimum, disturbing. Moreover, when the history of the LHA and DD-963 contracts is examined, more cause for concern is produced.

In 1970, Senator Margaret Chase Smith cited a last minute $270 million drop in Litton Industries' DD-963 bid as possible evidence of a "buy-in". (I.e., Up until the last round of bidding Litton's proposal had been almost identical to its nearest competitor—but with a contractual change involving future repricing, Litton's bid dropped substantially more than its competitors). Although this allegation was never explicitly proven or confirmed—its existence is certainly relevant to the presently proposed settlements in light of the massive cost increases that have taken place.

V. THE USE OF PUBLIC LAW 85–804

In the General Dynamics and Litton contracts, the Navy Secretary invoked his "residual powers" under Public Law 85–804 in order to negotiate the settlements. Historically, P.L. 85–804 has been primarily utilized in comparatively "minor" contract disputes, although in 1976 there was an aborted attempt to invoke the statute in these same contracts. Thus, the General Dynamics and Litton settlements present a major precedent for the future role of Public Law 85–804 and the implications of its use need to be carefully analyzed.

With regard to General Dynamics, an independent analysis of that firm's financial position concluded in part that the company should be able to sustain the full loss under the existing contracts depending on the actions of its creditors. In Litton's case, while the firm would sustain serious cash flow problems if it absorbed the full loss—immediate bankruptcy was not predicted. Thus, the question that must be asked is whether P.L. 85–804 *should* be used in a situation where it appears a contractor may be able to survive a loss that could possibly be imposed under the contract and the Government could use other means to secure performance.

The invocation of residual powers bears with it the potentiality to make payments out of line with the financial necessities of a particular contractor on the vague justification that such action will "facilitate the national defense". In this instance, we have the assurances of the Navy that the P.L. 85–804 settlement is necessary and that the proposed payments are the product of lengthy and acrimonious negotiation. However, the question still remains—what sort of precedent are we establishing?

The Navy has contended that given the large losses assumed by General Dynamics and Litton in the settlements "it would be unreasonable for anyone to conclude that another contractor would in his right mind venture down a similar road to obtain the kind of relief that these settlements provide for". Possibly this is a valid assertion. However, I would ask whether the settlements would provide more incentive for a contractor in a loss position to raise the specter of massive litigation in the hope of attaining a generous P.L. 85–804 settlement.

Indeed, the avoidance of massive litigation has been cited as a justification for the proposed settlements. In this a proper consideration on which the government should abandon its contractual rights? If so, what are its limits? There have been no assurances made by either of the contractors that they will not pursue massive claims again in the future. If that occurs will the Government be forced to implement extra-contractual measures once again?

Additionally, it must be investigated whether the proposed settlements are merely a temporary solution to a particularly pressing problem—or whether they will foster a new era of Navy/shipbuilder co-operation as has been claimed. It is woefully possible that we could extend $900 million for these settlements and not learn from the experience.

In all, the Navy Secretary has stated that it is "impossible" to predict the future utility and specific application of P.L. 85–804 authority and that there are no specified limits to negotiation under the statute other than the facilitation of the national interest. Such a power is, by understatement, incredibly broad. Thus, I feel Congress needs to analyze the use of Public Law 85–804 with reference to its application in the General Dynamics and Litton contracts and in terms of the policy that is sought to be pursued by the statute's existence. Although similar questions have been asked before by the House Armed Services Committee, I believe the extent of the present settlements and the possible ramifications for defense contracting demand further consideration of the issues.

VI. APPENDIX: BACKGROUND INFORMATION

*General Dynamics contracts*

The first contracts for the production of SSN 688-class submarines were awarded in January 1971. Under the contracts, the Electric Boat Division of General Dynamics was awarded seven SSN 688s while Newport News received four. (Newport News had previously been designated as the design agent for the SSN 688 as well as being awarded a contract for the lead ship of the 688 class.)

In October 1973, Electric Boat was awarded a second flight contract for an additional seven 688s and received an option for four more of the submarines less than two months later. The second flight contract and the option brought the total number of SSN 688 submarines awarded Electric Boat to 18, or about 80 percent of the total construction program authorized at that time.

Both of the Electric Boat (EB) contracts were fixed-price-incentive type and provided for escalation payments over and above the contract price. The original contract ceiling prices were $428 million for the first group of 7 boats and $847 million for the second group of 11 boats for a total of $1.275 billion—or an average price of about $71 million per submarine.

Presently, the ceiling prices for the 688s have been increased to $1.476 billion as the result of a $97 million claim settlement, adjudicated contract changes and a provisional payment of $66.5 million on EB's most recent claims. In addition, as of May 31, 1978, $252

million has been provided in escalation. However, General Dynamics estimates that the ultimate cost of the 18 688s will amount to $2.688 billion (or over twice the initial ceiling price contained in the contracts). Barring further cost increases, the estimated loss under the contracts is projected to be $843 million.

*Electric Boat claims*

The history of claims concerning the 688 contracts is long and complex but basically involves two major sets of claims which have been formally filed and notification to the Navy regarding the preparation of a third set.

Electric Boat submitted its first major claim in February 1975 for $220 million based on defective and late Government furnished design data and additional work. This claim was settled about a year after submission for $97 million plus an 84 month extension of ship delivery dates. In December 1976, EB filed further claims of $544 million based on delay and disruption to the first and second contracts resulting from design changes and delays experienced on the first contract. This claim has been evaluated at $125 million by the Navy Claims Settlement Board (although this figure should not be taken to be equivalent to "actual" government liability).

Additionally, during the course of negotiations with EB this spring the Navy was notified that General Dynamics was preparing claims totalling $750 million. These claims have not been formally submitted at the present time, however, and it should be noted that the proposed settlement would preclude a submission of claims based on events before June 1978.

*Causes of increased costs in EB contracts*

Although exactly who is responsible or liable for the increased costs of the 688 program is an issue that is in much dispute, there is general agreement as to the underlying causes of the cost escalation.

First, major problems were experienced with the build-up of the labor force at Electric Boat. With the award of 18 688-class submarines plus the first TRIDENT contract, it was necessary for Electric Boat to vastly expand its workforce. Thousands of new employees were required and an expansive job training program had to be established. In retrospect, it is evident that this build-up experienced severe problems and that training programs were in many cases inadequate for the highly technical needs of the EB shipyard.

Significant miscalculations were also made in the estimates of man-hours required to construct the 688-class. At the time the contracts were negotiated, it was apparently assumed that the 688-class would merely be an evolution of the SSN 637-class submarine previously constructed by Electric Boat. Such proved not to be the case and the complexity of the 688 demanded man-hours much in excess of those experienced in 637-class construction.

The flow of information to Electric Boat has also been cited for cost increases—although again the question of "fault" is at issue. Design drawings and specifications have been criticized as well as the delivery of Government-furnished equipment. Change orders effected in the contract have been a matter of dispute, but assuredly contributed to the cost overrun experienced. Concomitantly, the massive inflation of the mid-1970's undoubtably impacted upon the resulting costs of the program.

In all, the SSN 688 program was subject to overly optimistic projections. The contracts negotiated in 1971 and 1973 just did not accurately reflect the amount of man-hours and productive capability and organization required to build the 688-class.

*The proposed Electric Boat settlement*

The specific terms of the Electric Boat settlement and the various implications of the agreement are reflective of the nature of the dispute—they compose an intricate document achieved only after a long period of negotiation. However, the important aspects of the agreement and the basic elements of the settlement may be summarized as follows:

(1) The settlement was negotiated by the use of Public Law 85–804. This statute allows the modification of government contracts without regard to traditional contract law or liability when such modification is deemed to "facilitate the national defense".

(2) Of an estimated $843 million additional cost to complete the contracts—General Dynamics will assume a $359 million fixed loss over the three year remainder of the contract.

(3) The Navy will pay General Dynamics an estimated $484 million over the existing contract price.

(4) Should the allowable costs at completion prove greater than the current estimate (at a 7 percent labor and 6 percent material inflation rate) the Navy and General Dynamics will share such cost growth 50–50 percent up to $100 million, but above that figure General Dynamics will assume exclusive responsibility.

(5) Additional costs for the construction of 688 submarines, solely attributable to inflation rates, above the 7% labor and 6% material, will be the responsibility of the Navy.

(6) General Dynamics will release all claims on the 688 contracts, as well as for impact of those contracts on the TRIDENT contract, based on events prior to June 19, 1978. However, there are no restrictions on the submission of claims after that date.

(7) There is a shortfall of funds available to effect the contract reformations. The Navy has proposed to reprogram $325.6 million in FY1979 to cover the cost of the Electric Boat and Litton settlements (i.e. at least $207.6 million will be required just for the EB and Litton reformations, not considering any other contractor claims).

*Litton Industries' contracts*

Contracts for the LHA (helicopter assault carrier) and the DD–963 destroyers were signed in 1969 and 1970, respectively. The contracts were fixed-price-incentive, successive target type, with an initial target price of about $2.8 billion and an initial ceiling price of about $3.3 billion for 9 LHAs and 30 DD–963 ships.

With regard to the LHA contract, the initial target and ceiling prices were reset in 1973 when the contract was amended, eliminating 4 ships. Ceiling prices were also adjusted a total of $51.6 million in 1973 and 1978 to account for contractual changes. Thus, as of May 1978, the LHA target price was $827 million and ceiling price of $852 million for the five ships to be built under the amended contracts. This adjustment amounts to a target price increase from $112.5 million to $165.4 million per vessel and a ceiling price increase from $133.3 million to $170.4 million per vessel. (Note: Under the terms of the contract, Litton pays 20% of incurred costs between the target and ceiling price and the Government pays 80%.)

With respect to the DD–963 contract, the initial target and ceiling prices were increased in July 1975 and again in May 1978. The target price of the ships has been raised from $1.78 billion in 1970 ($59.6 million per ship) to $2.16 billion in 1978 ($72.2 million per ship). Corresponding to this, the ceiling price has been increased from $2.14 billion in 1970 ($71.3 million per ship) to $2.27 billion in 1978 ($75.6 million per ship). As with the LHA contract, there is a sharing arrangement for costs incurred between the target and ceiling price. However, in the DD–963 contract this sharing is on a 15/85% contractor/Navy basis.

Additionally, both the LHA and DD–963 contracts contain escalation provisions. In the LHA contract, an escalation of $161.8 million is provided and in the DD–963 contract this amount totals $790 million. Adding these sums to the current ceiling prices of the contracts yields a figure of $4.079 billion as the total allowable costs under the contract. This amounts to an allowable price tag of $202 million for each LHA and $101 million for each DD–963.

The present estimated cost of completion of the LHA and DD–963 contracts is projected to be $4.726 billion, $647 million more than the allowable costs under the contract. The estimated cost of an LHA unit under the P.L. 85–804 settlement presently proposed by the Secretary is $260 million and for a DD–963 unit is $107.5 million. This estimated cost involves a cost increase over the initial price ceiling of $127 million for each LHA unit built and $36 million for each DD–963 unit.

*Litton Industries' claims*

Litton initially submitted a claim on the LHA contract in March 1972 for an increase in the ceiling price of $475 million based on design changes and allegedly defective Government furnished information. A negotiated settlement on the claim failed in 1973 and the contracting officer (CO) issued a unilateral decision resetting the contract. The CO decision granted a 6 month delivery date extension but did not provide for an increase in price. Instead, the CO concluded that Litton had received about $55 million in excess progress payments (a decision which was later upheld on appeal to the Fifth Circuit U.S. Court of Appeals).

In April 1975, Litton updated and repriced its initial $475 million claim to $505 million. About two weeks after this action, the Deputy Secretary of Defense proposed P.L. 85–804 extra-contractual relief through reformation of the contract escalation provisions. The relief under the Secretary's proposal would have provided Litton with an additional $239 million in exchange for releases from current and future LHA and cross impact claims. Litton, however, considered this proposal inequitable and notified the Navy of its intent to discontinue LHA contract performance on August 1, 1976.

On August 3, 1976, however, the Navy obtained a preliminary injunction requiring Litton to continue work on the LHA contracts but also requiring the Navy to pay 91% of the weekly invoiced costs of performance. An agreement entered into in November 1977 subsequently modified this order to 75% of the actual costs of performance.

Between April 1975 and September 1977, Litton raised its claims to a total of $1.076 billion including $373 million for alleged impact on the DD–963 program. Further adjustments and repricing have increased this total claim figure to $1.088 billion.

A two year analysis by the Naval Sea Systems Command (NAVSEA) has valued the $1.088 claim at $312 million. It should be noted, however, that this $312 million figure contains sums for litigative cost and litigative risk (as does the Navy's $125 million determination of Electric Boat's $544 million claim). Basically, litigative cost and litigative risk are subjective judgments made by the body determining the "claim value"

based on the projected cost of defending a suit by a contractor and the likelihood that a contractor will pursue his claims and be successful in the courts.

*Causes of increased costs*

Some of the same factors that aided the rise in Electric Boat's cost of completion on the SSN 688 contracts affected Litton's contracts with the Navy (although, again, responsibility for the causes of the increased costs are a matter of dispute). Overly optimistic original estimates as well as late delivery of Government furnished information and materials and contractual changes have been cited as reasons for the cost escalation. The impact of inflation is also considered a major factor.

With respect to Litton's particular situation, however, several specialized causes are alleged to have been factors in the increased costs. First, the concept of Total Package Procurement, under which a contractor assumes virtually full responsibility for the delivery of a weapons system meeting specified performance standards is claimed to have been a failure in the Litton contracts. Also, the attempt to construct the LHAs and DD-963s utilizing high-technology, modular techniques and material flow patterns in Litton's new West Bank yard appears to not have been as successful as projected.

In all, however, the broad category of "misjudgement" as to the productive capabilities of Litton and the ability to achieve a skilled manpower supply appears as the most central, albeit general, reason for the cost overruns.

*The proposed Litton Industries' settlements*

The Litton settlement (as the EB settlement) was negotiated under the Navy Secretary's Public Law 85-804 "residual powers". The "residual powers" of the Secretary have been used rather infrequently as compared to other P.L. 85-804 powers—but, significantly, they allow the widest use of discretion. Practically speaking, there are few limitations as to what type of settlement may be entered into under the powers. Otherwise, the basic elements of the Litton settlement may be summarized as follows:

(1) Of the estimated $647 million loss on the contracts, Litton will absorb $200 million.

(2) The Navy will pay $447 million of the loss, in addition to the $47 million it has already paid in provisional price increases and adjustment for delay.

(3) Should the aggregate allowable costs at completion prove less than the aggregate anticipated costs, Litton and the Navy will benefit from such a reduction in a proportion of 80/20%, respectively.

(4) Should the aggregate allowable costs at completion prove greater than the anticipated costs, the Navy and Litton will share cost growth 50/50% up to $100 million. Past $100 million in additional costs, Litton will assume responsibility for cost growth arising out of events prior to June 22, 1978.

(5) Litton agreed that no portion of the total $133 million it booked and identified as Manufacturing Process Development Costs (MPD) would be invoiced against the LHA or DD-963 contracts.

(6) Litton will release all claims and actions based on events occurring before June 22, 1978.●

## AMENDMENTS TO H.R. 13850

### HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. FRENZEL. Mr. Speaker, I have today filed nine amendments to H.R. 13850. They are Mr. WIGGINS' amendments which I have entered into the RECORD so that they will be protected in case the gentleman from California is absent when H.R. 13850 is called up.●

## SURVEY SHOWS CITIES UNWILLING TO INCUR GREATER DEBT

### HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. MOORHEAD of Pennsylvania. Mr. Speaker, the Subcommittee on Economic Stabilization of the Banking Committee has concerned itself for some time with various proposals for domestic "development banks." We have begun hearings on the administration proposal in this area and will return to the subject early in the new session of Congress.

The first problem in assessing the widely differing proposals for development banks is to define exactly what the bank is supposed to do—what credit gaps it is meant to fill. That leads directly to a central question: Should a domestic development bank lend to State and local governments or should it be confined to private sector economic development in designated "distressed" areas.

As part of our exploration of this issue, the subcommittee conducted a survey of large cities as a followup to a highly useful study by the Joint Economic Committee. I am placing the results of that survey in the RECORD today:

DEBT AND UNMET CAPITAL NEEDS IN LARGE CITIES

INTRODUCTION

In the spring of 1977 the Joint Economic Committee of Congress surveyed 67 of the nation's 75 largest cities to determine their fiscal condition. A summary of the replies was published as a Joint Economic Committee print in July of that year, covering various aspects of the fiscal problem.

Responses to one question in the survey, answered by 50 cities, identified "unmet capital needs" of $22.4 billion, for maintenance, upgrading and new construction, exclusive of housing. The Joint Committee survey, however, did not attempt to identify the constraints on the cities which prevented them from making these desired capital outlays.

The Subcommittee on Economic Stabilization of the House Committee on Banking, Finance and Urban Affairs was at the time considering, and continues to consider, various proposals for a "domestic development bank." Some versions of the bank, such as H.R. 8562, would contain a "window" for lending to state and local government to meet capital needs.

The Subcommittee, having in hand the results of the Joint Economic Committee survey, felt it woud be useful to have these large cities identify the reasons for their large backlog of unmet capital outlays. Such outlays are typically financed by borrowing. What was the problem?

The Subcommittee sent to the same cities a sample questionnaire with a checklist of possible reasons for the cities' inability or unwillingness to undertake the needed capital outlays. The finance officers were asked to check the item or items applicable to their cities and to add comments if desired. Replies were received from 47 cities.* This Subcommittee staff report discloses the findings of the survey.

SUMMARY AND CONCLUSIONS

In the overwhelming majority of the cases capital outlays were held back by an inability or, more often, unwillingness to incur more debt. The problem was not a lack of access to the municipal bond market, though in a very few cases cities feared that additional bond issues might adversely affect their current satisfactory credit rating. Rather, the cities—or, where applicable, their voters—felt that the current level of debt service was as much as should be carried, given the existing levels of taxation and the claims of current operating expenditures on their budgets. The amount of new debt each year is evidently limited by these factors.

The results clearly raise questions about the usefulness of new Federal loans, as distinct from public works-type grants, for meeting urban capital needs. However, several points should be kept in mind.

The survey covered only large cities. The problem may be different in smaller communities.

There was no effort to explore the usefulness to these cities of deeply subsidized "soft" loans for capital purposes from the Federal Government or a new Federal "bank". By definition, these loans—with a very low rate of interest or very long maturity or both—would require less annual debt service. They would also, of course, constitute an important claim on the Federal budget and/or the capital market.

THE QUESTIONNAIRE

The cities were asked to check which of the following possible reasons for unmet capital needs were applicable:

1. Debt service already so large that further debt service claims on the budget would not be supportable except at the expense of needed current services.

2. Further debt would require a local tax increase for debt service, which the city is unable or unwilling to impose.

3. Further debt impossible without voter approval, and voters unlikely to approve.

4. No access at all to the municipal bond market.

5. Access to the municipal bond market, but rating so poor that interest cost is deemed insupportably high.

6. State or local constitutional limits on further debt.

7. Other—please specify.

In 11 of the 47 cases the cities checked only Item 7 and supplied verbal explanations. Some of the remaining 36, as would be expected, checked more than one item. The results for these 36 cities were as follows:

Item 1—12.
Item 2—25.
Item 3—16.
Item 4—0.
Item 5—1.
Item 6—8.

It should be noted that the verbal responses of the 11 cities that checked only Item 7 came to much the same thing—a

*The cities responding to the questionnaire, in alphabetical order, were: Albuquerque, Anaheim, Austin, Baltimore, Baton Rouge, Birmingham, Buffalo, Cincinnati, Colorado Springs, Columbus, Dallas, Dayton, Denver, Detroit, Fort Worth, Honolulu, Jacksonville, Kansas City (Mo.), Knoxville, Lexington (Ky.), Los Angeles, Memphis, Miami, Minneapolis, Mobile, Nashville, New Orleans, Norfolk, Oklahoma City, Philadelphia, Phoenix, Pittsburgh, Portland (Ore.), Richmond, St. Louis, St. Paul, San Antonio, San Diego, San Jose, Seattle, Syracuse, Toledo, Tucson, Virginia Beach, Washington, D.C., Wichita and Yonkers.

limit for one reason or another on the willingness or ability to incur more debt for capital purposes.

As will be seen, the item checked most frequently is Item 2—"Further debt would require a local tax increase for debt sevice, which the city is unable or unwilling to impose." The questionnaire was sent out many months before the "taxpayer revolt" made the headlines following the results of the referendum on Proposition 13 in California, in which a large majority voted for an absolute reduction in local property taxes. Essentially the same problem is manifested by those cities that checked Items 3 and 6. Several checked Items 1 and 2 jointly, considering them simply two sides of the same coin.

Except where there are strict constitutional limits on new debt, it is evident that cities could finance more capital outlays if they were willing either to raise taxes or to cut current services. The constraint does not lie primarily in the ability to borrow, though that is the case for some cities under voter or constitutional constraints, but rather the willingness to borrow, with the accompanying rise in debt service claims on the budget.

The cities are in large measure masters of their own choice. Given current levels of taxation and the sentiment of their citizens, they have chosen to defer capital outlay in varying degrees.

This budgetary constraint would evidently apply regardless of the source of new borrowing, though it would be less if the loans were "soft". A number of cities commented and developments in the municipal bond market confirm—that they have been able to expand their borrowing through "revenue bonds" of various kinds: industrial, hospital, housing, pollution. But these all have earmarked revenues other than general taxes and are not normally available for ordinary municipal infrastructure.●

## A STATEMENT COMMENDING THE SUCCESSFUL EFFORTS OF A YOUNG LADY TO GENERATE PATRIOTISM IN OUR COUNTRY

### HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. RHODES. Mr. Speaker, too often news accounts only report on the unfortunate happenings of our Nation's youth when they are involved in crime or trouble, without highlighting some positive efforts that young people make to the betterment of their fellow man. An example of an outstanding youth who has worked very hard to promote freedom, free speech, and the traditional values that this country was founded upon, is a young lady from my congressional district back in Arizona, Miss Lori Cox.

Lori first received national recognition when she was in high school by campaigning to reinstate the practice of having the Pledge of Allegiance recited in the classroom. Lori was concerned about her generation's lack of knowledge of our country's origins and symbols. Consequently, she presented her idea for a National Patriotism Week to me.

For the past two terms of Congress, Lori and I have worked diligently to see National Patriotism Week become a reality. In that time, I am sure as a result of her efforts to draw attention to the need for a commemorative time period to honor America with public gatherings and activities at which people can celebrate and pay tribute to their country in an appropriate fashion, the Congress passed into law Honor America. This celebration commences on Flag Day and ends on Independence Day, a time period when our country has historically paid tribute to our national heritage and the freedoms we so greatly cherish.

I am sure you join with me in commending Miss Cox in her efforts to instill in all the people with whom she comes into contact a deep sense of pride in our country and its youth. Even though Lori's initial drive to have National Patriotism Week become law has been supplanted by Honor America, I am sure you will applaud with me her efforts to reestablish the traditional values on which this country was founded, and acclaim her efforts to honor America so that these values will never be forgotten.●

## TRIBUTE TO EDWARD BRODY

### HON. JOSHUA EILBERG

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. EILBERG. Mr. Speaker, this Thursday evening a well-deserved tribute will be paid to a man who has unselfishly devoted more than 30 years of service to Pennsylvania citizens needing long-term health care—Mr. Edward Brody.

The Health Care Facilities Association of Pennsylvania will honor Ed Brody for his leadership and his many accomplishments which have marked his distinguished career.

Sd Brody, Mr. Speaker, has been a nursing home administrator since 1947. He is a member of the Board of Examiners for Nursing Home Administrators, and is president of the American College of Nursing Home Administrators.

Mr. Brody earned his undergraduate degree in 1940 from the University of Pennsylvania. He served in the U.S. Army from 1943 to 1946, achieving the rank of 1st lieutenant in the Medical Administration Corps.

Early in his career, Ed Brody was a moving force in the founding of the Philadelphia Nursing Home Association, the forerunner of the Health Care Facilities Association of Pennsylvania. He served as both executive director and president of the group, and later went on to serve as a member of the board of directors and as secretary of the American Nursing Home Association.

In addition, he has served as a member of the long term institutional care advisory committee of the office of medical programs, Pennsylvania Department of Public Welfare, and has been a member of the nursing home research and development committee of the Philadelphia ombudsman program.

As an example of his innovative work in this field, Mr. Speaker, I might add that Ed Brody conceived of a voluntary recreation program cooperative for nursing homes. This enabled the participating facilities to offer recreation programs in a joint effort, until they were able to put programs into effect in their own institutions.

Mr. Speaker, I know that my colleagues will join with me in congratulating Ed Brody for his years of devoted labor, and the Health Care Facilities Association of Pennsylvania for the fine choice it has made in paying tribute to his citizenship and public service.●

## THE TRUTH ABOUT AIRLINES PROFITS

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. ANDERSON of California. Mr. Speaker, lately we have heard much abount soaring airline profits, and I am afraid that some uninformed people may believe that all is roses for the future as far as the airline industry is concerned. I therefore, would like to commend to my colleagues' attention the following commentary, which appeared in the current—September 18—edition of Business Week. I think it presents a true picture of the profit future for our airlines as we see it today.

WHY THE AIRLINES' RECORD PROFITS ARE BOUND TO FADE

A summer no one in the U.S. air transport industry is ever likely to forget had its final huge traffic peak over the Labor Day weekend. As schools start and the vacation season ends, airline passenger volume should now be merely robust, not overwhelming.

Even though September probably will show a sharp fall-off from July's 20.5 percent increase in revenue passenger-miles over July, 1977, this will not necessarily indicate a softening in demand for airline seats. It will reflect the fact that the air travel boom began in September a year ago, and from now on spectacular year-to-year gains will be harder to achieve. But even if the traffic gains do diminish somewhat, last year's base figures were so large and this autumn"s advance booking continue so strong that barring a catastrophe, the airline industry will have a super-record year.

Sardines. In all likelihood, the 23 scheduled U.S. passenger airlines belonging to the Air Transport Assn. (ATA) will carry 275 million passengers this year, up from 240 million in 1977. They should gross more than $23 billion from passenger operations, compared with roughly $18 billion a year ago, and net more than $1 billion, up from approximately $754 million in 1977. But lurking in these heady numbers are problems to which there are no easy solutions.

If the industry is to achieve the same $1 billion net profit in 1979, given probable increases in fuel, labor costs, and airport fees, says the ATA's economist, George W. James, the airlines will have to carry more than 10 percent additional traffic or 25 million to 30 million more passengers. As anyone who has flown or visited an airport this summer knows, there is simply no place to put these additional passengers. The airlines so far this year have been carrying 3 million more people a month than in 1977, and the result has been long waits to make reservations, to get tickets, to collect bags, and to get to and from airports, to say nothing of jammed, uncomfortable flights. But to keep

the present level of profitability, the airline industry must still accommodate 2.5 million more passengers a month.

Aside from simple capacity problems, the airlines have got themselves into a bind where half of their passengers are flying at promotional discount fares, and, as this percentage has climbed through 1978, the average amount per mile paid by each passenger—the yield—has declined. The industry's average yield is now about 3 percent below a year ago. Such a decline is acceptable only as long as traffic is growing. But there is little room for further traffic growth. On many days this summer, airlines were flying with 80 percent or more of their seats full systemwide, and that means that the most popular flights in dense markets were 100 percent filled.

Reverse leverage. So, if traffic growth falls short of 10 percent next year, as seems probable, and ends up at only 5 percent, and if costs continue to rise as yields fall, James sees many airlines showing losses quickly because the reverse leverage is so great. And the losses could be big ones.

Says Charles J. Simons, vice-chairman of Eastern Air Lines, Inc., "The dilution in yield, plus increases in essential operating costs, has driven our breakeven load factor to unprecedented highs." (A load factor is the percentage of total seats occupied by paying passengers.) In the second quarter of 1978, Eastern showed a 4.9 percent decrease in yield and a 17 percent increase in operating costs—and a record second-quarter profit of $24.2 million. "As long as we can maintain traffic volumes such as those at present, we can realize a fair profit," Simons adds. "But we must remain constantly diligent and be ready to adjust quickly if passenger volume slips below the breakeven point."

Price competition. The Civil Aeronautics Board, in an Aug. 28 decision, made things a little easier for the airlines. The board permitted them to reduce fares as much as 70 percent below existing full-fare levels (most discounts today are 35 percent to 40 percent below full fares) and to raise fares up to 10 percent in any market served by four airlines—without getting prior CAB approval. This would allow an increase in yields, which Julius Maldutis, airline analyst for Salomon Bros., says is "a must."

Beyond that, the airlines this fall will be trooping to the CAB asking for fare increases to forestall next year's profit problems. Their timing could not be worse, because third-quarter earnings will be so high that there is no way for the board to grant the request. But by giving airlines new freedom to raise and lower at least some of their fares without board approval, the CAB may be fostering something new for the airline industry: price competition. Since no two airlines have the same breakdown load factor, and since there may be more passengers demanding seats than there are seats available on some routes, airline management might decide not to match each other's fares in lock-step the way they always have in the past. What is more, the CAB seems determined to allow freedom of entry into markets that could mean different levels of quality of service, and this also could promote price competition.

Pan Am's move. Yet another solution to the airline industry's dilemma may be for individual carriers to walk away from markets if, despite higher fares, a given market remains unprofitable. This also would be a departure for airline management: the recognition that if a carrier cannot handle all the business that is proffered, it should concentrate its assets in the markets where it wants to keep its identity and where it makes the most money.

Pan American World Airways Inc. is about to make such a move. Faced with carrying hordes more passengers next summer than it carried this summer, and mindful of the number of passengers it turned away or delayed this summer because of full flights, Pan Am will shortly announce a severe pruning of its route structure. This will allow it to put jets where they will do the most good, both in terms of improving passenger service and of maximizing profits. It will also give foreign-flag airlines, such as Aeroflot, a monopoly in, for example, the Moscow-New York market.

Peak-time slots. A seemingly obvious solution for the airlines' problems—more aircraft—is not a solution at all, at least for next year. Even if they were ordered today, planes would not be ready by next summer. And, as a Delta Air Lines Inc. official puts it, "No one in his right mind would buy a jet today to carry passengers, 50 percent of whom are not meeting full costs." Airlines, burned by a surge of low-fare traffic for which they bought jets in the early 1970s, are still wary. Finally, airports can hardly accommodate the jets that are flying now. There are no more "slots" for landing and taking off at peak times at Washington National, New York's LaGuardia, Chicago's O'Hare, and Atlanta's Hartsfield airports, for example.

Ironically, airlines are in a vicious circle here. The more that promotional fares attract new passengers, the greater the hassle and the worse the service for frequent business travelers who are paying full fare, thus enhancing the attractiveness of corporate jets. The wave of corporate jet flying, meanwhile, exacerbates the airport slot problem.

But if coping with 1979 seems difficult, the early 1980s look to be worse. By then airlines will need an estimated $22 billion to $35 billion worth of new jets to replace today's aging planes and to handle the full-fare passenger traffic growth that is predicted. Another $6 billion will be required to satisfy expected antinoise legislation, and to finance all of this the industry needs an extended period of healthy, stable earnings. It is hard to see where they will come from. With the breakeven load factor going up dangerously close to the ceiling of total available capacity, and with yields going down, airlines will have to take Draconian measures. They are going to have to treat their full-fare passengers better, cut costs of handling discount-fare passengers, and devise a whole new fare structure that meets the needs of both while returning profit sufficient to enable the industry to renew itself and grow.●

## RISING HEALTH COSTS

### HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. PICKLE. Mr. Speaker, one of the most serious problems facing our Nation today is the problem of rising health costs. I would like to share with my colleagues a report from Texas hospitals on their efforts at cost containment.

It is obvious that substantial savings can be made when thorough planning and study is made. Perhaps some of the examples listed will be of interest to my colleagues.

The article is as follows:

HOSPITALS ARE SAVING MORE THAN LIVES—THE TEXAS VOLUNTARY EFFORT

(By R. William Warren)

For many years, the Texas Hospital Association has been actively promoting cost containment and cost effectiveness among its 600 member hospitals. Our membership's dedication to providing the highest quality of care at the lowest cost has resulted in an average cost per patient stay that is $307.00 lower than the national average ($1,323.00 U.S. average—$1,016.00 in Texas).

The cost containment activities currently being utilized in Texas hospitals are as numerous and diverse as the hospitals themselves. As you might expect, many Texas hospitals actively utilize and participate in one of the on-going programs at the Association; these programs include—among others—the Texas Hospital Association Management Engineering Services (THAMES), the Shared Electrical Safety Service (SHESS), the Texas Hospital Association Recruitment and Placement Service (THARPS), the Texas Hospital Insurance Exchange (THIE) and the Texas Hospital Association Statewide Hospital Productivity Center. Although the tangible results of these special programs are well known to you, some reiteration of their successes would seem appropriate in light of the current fervor for cost containment.

For example, Memorial Hospital in Marshall has recently completed a $6,000,000 expansion program. Part of its planning effort included a survey to indicate the needed staffing level for the expanded facility. However, after the expansion was completed and in service, a reexamination of necessary staffing levels indicated that fewer people (than originally forecast) would be needed to operate the additional facility. Additionally, through continual monitoring of staffing levels via the Productivity Management Report (PMR*) system, the hospital has been able to effect an annual savings of between 10–12% of its total labor cost.

Similarly, Brackenridge Hospital of Austin was able to save $1,921,000 in labor expense between September 1976 and August 1977. This savings was attributed to compliance with suggestions made in a number of staffing studies conducted by THAMES. Since the hospital's administration utilized these studies and the PMR to monitor the staffing productivity in the hospital, Brackenridge was able to hold its increase in labor cost for this period to one percent while the statewide average increase in wages and benefits amounted to 14.5%.

Additionally, the Texas Hospital Insurance Exchange (THIE) has been operational since July 1, 1976 and now writes professional liability insurance for 115 Texas hospitals representing a total of 6,460 beds. The liability insurance written by THIE is as much as $152.00 a bed less than the rates available from the Joint Underwriting Association of Texas (the pool of insurance companies required by law to provide the coverage). On the average THIE saves Texas hospitals $980,000 annually—representing a total of $1,960,000.00 during its first twenty-four months of operation.

Furthermore, Pasadena Memorial Hospital in Pasadena utilized the THA Recruitment and placement Service to provide the hospital with two additional physicians. In addition, THARPS has saved this hospital $14,000 in other recruitment fees.

Similar savings can be attributed to the other programs. However, the purpose of this column is not to "rest on the laurels" of past successes but to share ideas and programs that have proven successful for other hospitals. The following programs are currently operative and producing savings in Texas hospitals:

Hopkins County Memorial Hospital in Sulfur Springs conducted an in-depth study of

* NOTE.—The Productivity Management Report is a computerized system based on time standards specifically adapted to the cost centers of the individual hospital, resulting in a monthly management report useful in determining the level of productivity for the hospital.

hospital utilities patterns and reviewed suggestions on how to make better use of their utility expenditures. This hospital found that, heretofore, it had been using 100 percent fresh air in the operating room, the intensive care unit, all labor and delivery rooms and in the nurseries—whether or not these facilities were in use. Simply by connecting the fresh air handling system to the light switch in these rooms, the system now circulates regular and recycled air in those rooms when they are not in use. However, when the room is occupied (as indicated by the use of the lights) the system cycles 100 percent fresh air; the hospital estimates that this system alone nets savings of many thousands of dollars each year in heating and cooling costs.

The administration of Community Hospital of Brazosport in Freeport has established a strong working relationship with the business and industrial community in the area served by their hospital. This liaison has afforded the hospital the use of a wide variety of experts to solve special problems. For example, Dow Chemical Company is the major industry in Freeport and often lends support to the hospital. Bill Smith, hospital administrator, has indicated that on many occasions when he has a problem, he will ask the management of Dow Chemical Company to loan him the use of one or more of their experts to help solve that problem. By utilization of this industry's expertise, a number of problems have been resolved in a way that is best cost-effective and advantageous to the hospital. Similar liaisons are possible in many other situations.

Memorial Medical Center in Corpus Christi has established a program that looks to the future and provides a foundation for continued cost containment efforts. The hospital, a teaching facility, provides educational programs for resident physicians. As part of their training, the residents are involved in a continuing course in cost containment; the course is designed to raise cost consciousness among these future doctors. For example, the instructor might ask the students to write up a set of treatment orders for a hypothetical patient. A bill is then compiled for the prescribed orders and possible alternative treatments discussed. Hopefully, these discussions lead to more economical ways of providing the same high quality treatment.

The programs presented here are just a sample of cost containment efforts being made statewide. If we are to continue our successes in the area of cost containment and maintain our lower than average cost per patient stay, we must share our ideas and programs. Therefore, each member hospital is invited to submit to THA information concerning savings programs that are now in use. As is the case with each of the above, we need your permission to use your data as a basis for future columns.●

## SMALL BUSINESS AND SCIENTIFIC AND TECHNOLOGICAL INNOVATION

### HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, I previously mentioned in this space that a joint House-Senate Small Business hearing revealed an unpublished and unimplemented 1977 report prepared by the White House Office of Management and Budget. The interagency study, headed by Jacob Rabinow, shows that Federal agencies in effect discriminate against small business in awarding research and development contracts, despite the fact that small businesses are far more innovative and cost effective than large corporations.

These conditions the Congress and the administration must rectify.

The following is a March 10, 1977, memorandum from the Office of Management and Budget, testifying to the overwhelming importance of small business to the innovative process. Included are several attachments in the form of reports summing up the countless contributions small business has made to the advancement of science and technology in this century.

For reasons which are not clear, this report was not made public until released on August 9 at a joint hearing held by my Small Business Subcommittee on Antitrust, Consumers and Employment and the Senate Small Business Committee.

MEMORANDUM FOR CERTAIN OFPP AGENCY CONTACT POINTS

Subject: Increased Use of Small Technology Based Firms

The importance of small business firms in our American private enterprise system has been accepted for many years within the Federal Government. Passage of the Small Business Act of 1953, coverage in the Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949, and advocacy by the Commission on Government Procurement in its Report of 1972 are some of the many ways the importance of small business has been recognized. Special legislation and programs of emphasis have attempted to improve the capabilities of small firms to operate effectively in the marketplace. Although the success—or lack of success—of these actions frequently cannot be measured, there are strong indications that more attention needs to be given to the support of small firms.

Federal Government contracting for research and development is one area in which small firms are inadequately used—less than four percent of research and development expenditures are with small firms. Recognizing this, the Office of Federal Procurement Policy established an interagency panel in early 1976 to consider ways of increasing the utilization of small technology based firms. The panel was chaired by Jacob Rabinow of the National Bureau of Standards. Other members were from the National Science Foundation, the Department of Defense, the National Aeronautics and Space Administration, the Energy Research and Development Administration, and the Office of Federal Procurement Policy.

In establishing the panel, we noted the increasing concern that our Country will lose significant high technology capabilities absent a concerted effort to increase small business research and development awards by the Government. The report of the panel, which is attached, confirms this concern. As a means to bring the recommendations of the panel to the attention of executive branch agencies, we have drafted the attached memorandum on which we would appreciate your views. Comments on this proposed action are requested by April 1, 1977.

ROBERT F. TRIMBLE,
*Assistant Administrator for Contract Administration.*

ATTACHMENT

Mr. Edmund Alvarez, Director, Office of Operations, Department of Agriculture, Washington, D.C. 20250.

Mr. Dale R. Babione, Deputy Assistant Secretary of Defense (Procurement), OASD (I&L), The Pentagon, Room 3E760, Washington, D.C. 20301.

Mr. William E. Mathis, Director, Contracts Management Division (PM 214), Environmental Protection Agency, 401 M Street, S.W., Room 2003, Washington, D.C. 20460.

Mr. Michael J. Tashjian, Director of Procurement, Energy Research and Development Administration, Washington, D.C. 20545.

Mr. Paul A. Stone, Deputy Assistant Secretary for Grants and Procurement Management, Department of Health, Education, and Welfare, Room 513-4, South Portal Bldg., Washington, D.C. 20201.

Mr. James E. Johnson, Assistant Director for Procurement, Office of Management Services, Department of the Interior, Washington, D.C. 20240.

Mr. Stuart J. Evans, Assistant Administrator for Procurement, NASA, Washington, D.C. 20546.

Mr. Eldon Taylor, Assistant Director for Administration, National Science Foundation, 1800 G Street, N.W., Room 525, Washington, D.C. 20550

Mr. Harold K. Fletcher, Associate Administrator for Procurement, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Mr. Barnett M. Anceleitz, Director, Installations & Logistics, Department of Transportation, Washington, D.C. 20590

MEMORANDUM FOR HEADS OF EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES

Subject: Increased Use of Small Technology Based Firms

Federal law requires that a "fair proportion" of Government procurement go to small business. This Administration is committed to that principle and to efforts that support and assist the small business community.

The Office of Federal Procurement Policy has advised me that there is need to strengthen our efforts with respect to small business participation in Federal research and development activities. There is considerable evidence that the small proportion of Federal research and development work that is being awarded to small technology based firms is contributing to a serious loss of high technology capabilities in our Nation. Less than four percent of Federal research and development expenditures are with small firms.

Implementation of the measures set forth in the recommendations of the Office of Federal Procurement Policy would, I am confident, significantly increase Federal research and development awards to small businesses. I urge that you undertake an aggressive program to apply the guidance contained in these recommendations. Further, I request that you monitor the progress made in increasing the small business share of research and development awards in your organization. It is important that we see some real progress within the first 18 months of this Administration.

Thank you for your assistance in the important matter.

———— ————,
*Director.*

SMALL FIRMS AND FEDERAL RESEARCH AND DEVELOPMENT

[A Report to Office of Federal Procurement Policy Ofice of Management and Budget by Ad Hoc Interagency Panel]

Jacob Rabinow, Chairman, National Bureau of Standards.

Frank Peneranda, National Aeronautics and Space Administration.

George Sutherland, Department of Defense.

Richard Sutz, Energy Research & Development Administration.

Donald Templeman, Small Business Administration.

William Wetmore, National Science Foundation.

Robert Trimble, Office of Federal Procurement Policy, OMB.

INTRODUCTION

There is increasing concern that the capability of the United States to continue its historic successes in technology is in a serious decline. While astonishing achievements have occurred since World War II, there is now considerable evidence that product innovation has either leveled off or declined in many industries. Predictions of a weakened military posture and a less favorable economic position in world trade are associated with analyses showing that the U.S. is losing a significant part of its capability to invent new products essential for the country's defense and for its international sales market.

Analysis of technological capability is an exceptionally complex matter affected by many diverse factors involving individual and organizational motivations, economics, and governmental actions. Since the Federal Government is the biggest source of research and development (R&D) ($26.3 billion proposed for expenditure in 1978), Government acquisition procedures have a large impact on the country's utilization of its best technical and management talents.* One part of the problem—the role and difficulties of the small firm in selling R&D to the Government—was given particular attention by an ad hoc interagency panel under Mr. Jacob Rabinow, nationally known inventor, lecturer and writer, in 1976. The Panel was composed of representatives from the National Science Foundation, Department of Defense, National Space and Aeronautics Administration, Energy Research and Development Administration, Small Business Administration, and the Office of Federal Procurement Policy.

To assist the Rabinow Panel in its inquiry, the services of Mr. William K. Scheirer, an economist, were obtained to perform a literature search and analysis of the role of small firms in fulfilling Government contractual requirements for research and development. Significant findings of Mr. Scheirer are summarized below. His report, with an extensive bibliography, is available for inspection at the National Technical Information Service, Department of Commerce, as Report Number OMB/OFPP/CA-77/1, and in the Office of Federal Procurement Policy.●

*"A Government Takeover of R. and D.?" Richard Morse, Pres., MIT Development Foundation, N.Y. Times, Dec. 19, 1976.

## RAILROAD CAR STORAGE

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. SIMON. Mr. Speaker, Prof. Walter J. Wills is a specialist in the field of economics who teaches at the School of Agriculture at Southern Illinois University in Carbondale.

Recently he wrote about the railroad car shortage, and I am reprinting his comments in the RECORD because what he has to say makes a great deal of sense.

I would particularly call the attention of the members of the House and Senate to the fact that he points out the deterioration of the railroad beds. One of the fundamental problems in the railroad car shortage is that we have let the railroad beds deteriorate to the point where they move much too slowly. In fact, if we had good railroad beds, we probably would not have a railroad car shortage.

I hope my colleagues on committees where they have responsibilities in connection with the railroads will particularly note his comments.

RAILROAD CAR SHORTAGE

(By Walter J. Wills)

The press has recently had a number of articles concerning the rail car shortage to move grain. For nearly two years this shortage has been evident nearly every week. This shortage has been chronic since at least the mid-sixties.

Each year the railroads assure shippers there will be no shortage. Then at harvest they assure shippers the situation is only temporary. But when a shortage is reported 45 weeks a year there is reason to doubt this is a temporary situation.

The present situation did not develop overnight. A solution will not be quick and easy. However, it is time railroads and government started being honest with the public and took a look at the magnitude and causes of the problem. Treating symptoms may have some politically cosmetic benefits but it doesn't move grain.

There are many reasons government and the public should be concerned with an efficient transportation system for U.S. grain from the producing areas to the consuming areas and the ports.

1. Food and feed grains and oil seeds are a major ingredient either directly or indirectly in U.S. food.

2. These products are a major export product to help reduce the U.S. balance of trade deficit.

3. For humanitarian reasons U.S. food production potential must be available to help alleviate world hunger in case of production disasters in other countries.

Many alleged authorities suggested if farmers built adequate storage there would not be a transportation shortage. The object of production is to move the grain to places where it can be used, not storage. Farmers built storage. But as new crop years appear on the horizon and price indicates the market wants the product are farmers to continue to build more storage because the transportation network is unable to handle the product?

There are three necessary ingredients for moving product: power (energy), shipping facilities, and facilities to move the grain (roadbed, highway, water). Energy consumption will become an ever increasingly more important consideration. Freight cars, trucks and barges are expensive storage facilities. Highways are rapidly deteriorating and many railroad beds are already seriously deteriorated. There is need to use existing facilities more efficiently.

Transportation availability and price determines market outlets available, price farmers receive and where economic activity occurs. There is need for more consideration to moving product and less concern with who moves it. Obviously there is a substantial volume of product for all firms to move.

The solutions that evolve will be an important factor in determining the amount and type of competition in the grain industry. Train load movements and barge tows can use transportation facilities more efficiently than 3–5 car shipments. But only large firms can originate and/or receive train loads (in excess of 300,000 bushels) or 15 barge tows (about 750,000 bushels). Are the U.S. and State governments concerned with maintaining some semblance of competition in the grain industry? The public has a right to expect the government to foster competitive marketing. But historically in the U.S. economic power also is able to exert political power!

It is generally conceded railroad cars, barges and trucks make money (assuming rates are compensatory) for their owners only when moving loaded. Railroad data suggest cars on the average move less than 60 miles a day. There obviously must be some inefficiencies in traffic control that permits this situation to persist.

If the railroad provides clean cars in condition to load and picked the cars up when loaded; and if the cars were unloaded when delivered to the siding there would be an opportunity for more loaded ton miles of movement of available cars each year. If circuitous routings were discouraged cars could make more trips each year.

Even casual observers have seen empty cars on sidings for many days, weeks or even months. This, at a time when shippers are pleading for cars. Except in the railroad industry, most businesses are concerned with how they can meet the demands of their customers!

It has been suggested shippers should own more cars. Each month shippers are placing more cars in service. This scarcely absolves the railroads of the responsibility to also provide more cars. In remote rural areas there are sidings filled with bad order cars. Many have been there for months or years. This suggests railroad management may not be particularly concerned with developing facilities to serve customers or increase stockholder returns.

CONCLUSIONS

The rail car shortage is persistent. Governments and the rail industry continue to treat symptoms and not causes. The brush fire approach to problem solving seldom contributes to a workable solution.

Any solution that concentrates only on large volume shipments will have devastating and irreversible consequences on competition in the grain industry.

The short run solution must consider:

1. More loaded miles per time period per car.
2. Less circuitous billing.
3. Less time loading and unloading.
4. Rapid return of empty cars.
5. Delivery of clean serviceable cars.

The long run solution must consider:

1. More concern with moving product.
2. Greater coordination and cooperation between modes.
3. Expanded improvement of road beds, highways and waterways.
4. Production of cars and barges.
5. An improved, effective program to repair bad order equipment.
6. Further improve on system to keep accurate control on car movement. Then take the necessary steps to correct inefficiencies such a system would reveal.●

## PROBLEMS ASSOCIATED WITH A NITRITE BAN

### HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. LEACH. Mr. Speaker, American livestock and poultry producers are vitally concerned about a possible ban on the use of nitrite in cured meats. One of America's leading agricultural spokesmen Richard Lyng, president of the American Meat Institute, recently prepared an extensive editorial comment on problems related to insuring the con-

tinued safe supply of American meat and poultry products. His comments are worthy of congressional attention and I urge my colleagues to read his statement which follows:

STATEMENT BY RICHARD LYNG

The last rat died in March 1977. That's fifteen months ago.

Nothing much happened, at least publicly, to note that rodent's passing until about 6:30 p.m. on Friday, August 11, 1978, when, in a great disorganized rush, the USDA and the FDA announced that a Massachusetts Institute of Technology rat feeding study "strongly suggests that nitrite produces cancer of the lymphatic system in test animals." These two mammoth agencies then ponderously stated that they had not yet decided what to do about it and would let us all know.

It is hard to put a finger on when this classic example of bureaucratic ineptness actually started. It is even harder to predict where it will end, but—wow!—what a problem it has created for the U.S. meat industry. Meat people have found themselves almost defenseless against what appears to be a case of government regulators gone wild.

After last Friday's peculiarly timed and even more peculiarly worded USDA–FDA announcement it might have been expected that the next thing we'd hear would be the promised decision about what they were going to do.

No such luck. On Wednesday, August 16, the press was given copies of a "secret plan" to "ban nitrites completely." Who gave away the secret? That's a secret too, but it had to be someone from USDA or FDA. Was it a policy decision? Sometimes such leaks are deliberate. Regardless, it was a super leak which got massive media coverage nationwide.

When the affected meat industry called USDA and FDA asking for a copy of the "secret plan" they were told that it was not available because it was only a "working document." Yet, media continued to use the "working document," sometimes in scare stories about cured meat products. The Wall Street Journal started its headline "U.S. Plans Total Ban of Use of Nitrites. . ."

Congressmen Wampler (R., Va.) and Martin (R., N.C.) called a joint press conference at noon on Thursday, August 17, to announce that legislation was being introduced which would delay any action to ban nitrites until mid-1979. Congressman Martin, who holds a Ph.D. in organic chemistry, pointed out: "In the case of nitrite we believe the risks from banning it far outweigh the moderately small risk derived at worst from this new evidence."

Late on Thursday afternoon, August 17, at about 5:30 p.m., USDA and FDA released another hurried announcement presumably designed to cool the situation. Assistant Secretary of Agriculture Carol Tucker Foreman and Commissioner of Food and Drug Administration Donald Kennedy in a vaguely worded statement said that "regulatory action on nitrite is not contemplated while Congress is out of town. Even if that were our intention—and we repeat that it is not—it would not, under law, be possible to propose, publicize, order and implement such action before Congress returns in January."

Theoretically, this should now lead to a quiet period while FDA and USDA scientists, lawyers, administrators, and political appointees study the laws, the scientific facts, the options they have, and then make a proposal for public comment.

Fat chance! If past experience tells us anything at all we should be prepared for leaks from both agencies in which dire predictions for hog farmers, meat processors, and consumers will be widely circulated.

The harm from this kind of regulatory amateurism is hard to measure precisely. But it is huge, perhaps totaling billions of dollars.

It is so sad, because it is unnecessary. The facts should be publicly disclosed as quickly as they are available. This is supposed to be an "open" administration. The agencies should not give their horseback opinions—("strongly suggests")—until they have completed their analysis and are ready to make a recommendation. And as they study, *no* comments or speculation should be made.

The facts are:

1. The MIT study is solid research, but it is inconclusive and must not be used as a basis for recommending a nitrite ban. The final paragraph of the report itself says:

"While these observations require some consideration, the data are only suggestive and the biological significance of nitrite associated lesions of the lymphoreticular system is unclear. There are suggestions, however, of sufficient magnitude and the study used sufficient animals to raise questions about the widespread use of relatively high concentrations in our food supply."

2. There is a more recent MIT human study which concludes that no more than 2 percent of the human exposure to nitrites comes from cured meats. The other 98 percent comes from other foods or is produced in the body itself.

3. The MIT rat study does raise some questions which seem to call for further research, especially since its results are quite the opposite of other earlier feeding studies.

4. The whole area of rat studies needs to be evaluated. These were specially sensitive rats, fed diets which do not resemble human diets, and were given huge nitrite quantities. Is this sufficient to make decisions having the impact of a nitrite ban? Or should it call for more study, especially of epidemiological data?

5. Virtually all cured meats also contain vitamin C in one form or another in quantities greater than nitrites. The diet of the MIT rats contained no vitamin C!

The wrongs done to the meat industry by FDA and USDA are the result of either malice or ineptness born of inexperience. Assuming that it is the latter, let's hope that they can somehow begin to understand the obligations they have to be responsible in their pronouncements. And let's pray that somehow they acquire the wisdom to make valid judgments.

As this wearying week in August comes to a close we look back incredulously at what happened and ask, in wonderment, why such a great fuss right now, in the summer of 1978, when the last rat died in March of 1977.●

## UNITED STATES-ARGENTINE RELATIONS

### HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. YATRON. Mr. Speaker, during during the course of hearings recently held by the Subcommittee on Inter-American Affairs which I chair, I became more convinced than ever that present policy is seriously threatening the future of United States-Argentine relations.

At the end of this month, an embargo will enter into force, prohibiting all military sales, credits, and export licenses for Argentina. Approved by the Congress as an amendment to the International Security Assistance Act of 1977, this measure will effectively end a United States-Argentine military cooperation relationship of long standing. As a result, our ability to protect the sea lines of communication in the south Atlantic, vital to U.S. interests in both the Middle East and Europe, will be seriously compromised.

In addition, the Department of State has carried the intent of the Congress to the point of refusing Export-Import Bank loans for strictly commercial U.S. business transactions in Argentina. These arbitrary decisions not only deprive American companies of business in Argentina today and in the future; they deprive the Argentine economy of needed investment and the Argentine people of a higher standard of living.

In a recent speech in Washington, Dr. Jose Rafael Trozzo, a prominent Argentine financier and businessman, commented on the state of United States-Argentine relations. His statement provides valuable insight into the reaction of the Argentine people to present U.S. policy which I feel is particularly relevant. I would like to share Dr. Trozzo's comments with our colleagues.

The comments follow:

I want to close my speech by talking to you a little bit about Argentine-American commercial relations.

The United States expanded because of its technical supremacy after World War II. You have billions of dollars invested in Argentina and we have purchased billions more in plants and spares.

The balance of payments is heavily in your favor as it regards trade between our two countries.

Hopefully with our bank in the United States we will reverse that! Or at least we will try to do so.

But today as Argentina emerges as a society based on a system that is best for us—where we are giving great emphasis to private initiative—there is a problem between our two nations which affects not only our banking and commercial business but is affecting the relations between our people and I believe it must be corrected.

I believe it is a transitory situation and being a profound optimist I know it will change.

But it would not be right for me to be here today and not touch on it as a businessman.

There is a trade embargo against Argentina caused by what the papers have referred to as the "State Department Group on Human Rights". Some papers have given it names but I do not wish to personalize the situation.

The embargo has caused what I am told is over $2 billion of American exports to be sitting and waiting to be shipped to Argentina, with no export licenses approved. I said $2 billion. The Export-Import Bank has not granted a license for Boeing planes to an airline of Argentina that has previously bought 15 Boeing; it has denied a license to export $290 million in equipment from Allis Chalmers for a dam and I am told that spare parts to repair American-made military planes are also embargoed, which will mean that other nations will do the business of repairing them and you in the U.S. will not have the business.

We do not understand this, as it is illogical.

Here is a nation, Argentina, where all people are seeking good trade relations, something that has not occurred for a long time, where there is a mutual admiration by the people of our two nations, where we have common roots and heritage and political

ideologies and where the United States does not have to give aid or go to war with us—where the balance of your trade shows an enormous deficit, where the value of your dollar touches a new low each day against the pound, the yen and the mark, where the value of gold climbs each day—and where Argentina is seeking to rebuild a friendship with you and a trade which will result in more trade for both our nations—and Argentina is singled out for a trade embargo because we, for some reason, are not considered as important as Korea, Viet Nam or Russia. It makes no sense politically or economically.

I am hopeful that with closer contacts in the commercial field which will be exemplified by our bank being here in Washington the people in charge of this policy will begin to get a better idea of what Argentina is and what she is trying to do in the commerce area, and to reconstruct the great nation she once was, and I hope that we can help in this educational process, because the problem is, in my opinion, a lack of experience in knowing our nation. That is partially our fault and partially your fault. With these closer commercial contacts, maybe we can correct that problem.

In many ways Americans and Argentines are remarkable people. We are tough when we need to be, and resilient. But both qualities are tempered by a capacity for caring—caring enough to constantly struggle for a better life for more people.

We as an Argentine nation and people are in a reconstruction and reeducation period—and we have to build a society where our children can live in peace and tranquility with hope for the future and using their knowledge in the pursuit of their jobs or professions uninterrupted by war or battles or the threat of foreign ideologies which we do not want . . .●

## HIGH FOOD PRICES: GAO SAYS FARMERS ARE NOT TO BLAME

### HON. RICHARD NOLAN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. NOLAN. Mr. Speaker, the General Accounting Office has just released a 3-year-long study of reasons behind the widening gap between prices farmers receive for their production and the prices consumers pay for the same product on supermarket shelves. The conclusion? When food prices go up, the Nation's farmers are definitely not to blame.

The 154-page report, entitled "What Causes Food Prices To Rise and What Can Be Done About It," cites general inflation, high labor and processing costs, and high transportation costs as the main culprits behind a $76 billion increase, since 1970, in the amount of money Americans are paying for food actually produced in the United States. Since 1973, according to GAO, "Higher marketing charges accounted for $54 billion, or 71 percent of the increase."

The report, which Congressmen FRED RICHMOND and JOHN JENRETTE requested along with me in December of 1975, makes it inherently clear that it is simplistic and terribly unjust for anyone—inside or outside of government—to suggest that higher farm market prices and higher farm support prices automatically cause higher consumer prices—unless the other components of the food industry use farm prices as the excuse and the opportunity to raise prices to consumers. Indeed, the food processors, the wholesalers, and the retailers have continued to make substantial profits—$8 billion in 1977. As a result, 1977 was the first year that the value of the marketing process of the food we produce in America exceeded the farm value of the food—$62 billion to $57 billion.

The report, in our judgment, clearly strengthens our case for parity prices for farmers by proving that higher farm market prices would have only an infinitesimal effect on consumer prices.

What follows is the official summary of the GAO report, including specific recommendations to the Congress. I trust my colleagues will take note, and join us in upcoming new efforts to curb rising retailing, processing, and transportation costs within the food industry.

[Comptroller General's Report to the Congress]

WHAT CAUSES FOOD PRICES TO RISE? WHAT CAN BE DONE ABOUT IT?

DIGEST

Food prices:

How are they determined?

What makes them change?

Why don't retail prices decline when farmers get less for commodities?

Do Department of Agriculture food price statistics really tell Americans what they pay for food?

What of the future?

These questions are on the tips of everyone's tongues these days; and GAO attempts to answer them in this report. In doing so, GAO offers recommendations to the Congress and to the heads of a number of Federal departments and agencies on steps it believes, after a long and careful review, should be taken by all concerned.

From 1970 through 1977 consumer expenditures for U.S. farm-produced food increased 72 percent—41 percent of this increase occurring in 1973 and 1974 when there was a worldwide grain shortage and pervasive domestic inflation.

These sharp price increases and the continuing increases or lack of decreases have brought charges of unfair pricing policies in the food industry; caused consumers to be concerned with the rate at which food prices increases; and led farmers to complain that the prices they receive are too low compared with their production costs.

FOOD PRICE ECONOMICS

Food prices rise generally because farm prices of raw agricultural commodities rise and/or the costs and profits to market these commodities as finished food products rise

Farm prices of raw agricultural commodities are influenced largely by rather unpredictable natural forces such as the weather, pests, and crop disease. Farm prices and food prices are influenced also by other factors that affect supply, such as Federal programs for cropland set-aside, commodity disposal, export sales, storage, and marketing orders; production costs; and the length of the production cycles of most agricultural commodities.

Consumer expenditures for U.S. farm-produced food increased by $76 billion from 1970—$106 billion—to 1977—$182 billion. Higher marketing charges accounted for $54 billion, or 71 percent of the increase. Of the $22 billion increase in the farm value, 55 percent occurred in a single year—1973. Since 1973, 87 percent of the increase in consumer expenditures thas been caused by higher marketing charges.

The largest food marketing cost is labor. In 1977, for the first time, food marketing labor costs ($62 billion) exceeded the farm value ($57 billion) of the commodities marketed. From 1970 through 1977, food marketing industry profits both before and after taxes rose as much as or more than any other cost element on a percentage basis; however, the amount of 1977 before-tax profits (approximately $8 billion) was relatively insignificant when compared with the labor costs of $62 billion. Food industry profits, therefore, cannot logically be cited as a major reason for food price increases.

Does inflation cause high food prices or do high food prices cause inflation? The truth seems to be that one feeds on the other. In April 1978 the President announced plans to moderate inflation through a number of Government actions aimed at achieving voluntary wage and price restraints, reduction of crude oil imports, greater economy and productivity in Government, and an appropriate fiscal and monetary balance in economic policy.

The proper balance and administration of Government programs affecting the supply of agricultural commodities can do much to stabilize domestic food prices.

WHY FOOD PRICES DON'T ALWAYS DECLINE WHEN THE FARMER GETS LESS FOR THE RAW COMMODITY

There are four principal reasons:

When a product's farm value represents a small percentage of its retail price—such as in the case of canned goods, which require a high degree of processing, or fresh produce, which requires special handling—a drop in farm value may have little or no impact on the retail price.

A decrease in a product's farm value may be partially, completely, or more than offset by increases in food marketing costs—the costs of assembling, transporting, processing, wholesaling, and retailing products.

Various retail pricing methods, such as following competitors' prices, setting gross profit margins by department rather than for each product, letting retail margins increase somewhat when wholesale or farm prices fall and absorbing some of the cost increases when prices rise, and running specials at lower prices or offering cents-off coupons rather than reducing the established prices, are based on factors other than just product cost and may result in no reduction in a particular product's regular retail price in response to a drop in its farm price.

In areas where a few manufacturers, retail stores, or food chains account for a high percentage of total food sales, price competition may be limited and there is less likelihood that a drop in a commodity's farm price will be passed on to the consumer.

Various possible combinations of these conditions and lack of specific and timely data on changes in the cost and profit components at the various levels of the food industry make it difficult, if not impossible, to determine precisely why a product's price does not decline when the farmer gets less for the raw commodity.

The total farm value of U.S. farm-produced food remained relatively stable from 1975 through 1977. Total consumer expenditures for food for the period, however, increased 22 percent, or about $33 billion. Most of the increase was received by the food industry.

Legislation has been proposed to provide for an agency or commission to monitor food prices or study the food industry. However, the legislation does not provide for the agency or commission to have access to the records of the food industry. Such access would facilitate checking the validity of reported food price information.

WAYS TO STABILIZE FOOD PRICES IN THE FUTURE

At what rate will food prices rise in the future? Answering this question definitively is obviously difficult because of the unpredictability of so many key variables—infla-

tion, weather, crop disease, pests, technology, and Government policies and programs.

There are things that the Government and the food industry could do, however, to help lower food price levels or slow the rate of price increases. These include—the relaxation of certain Federal transportation regulations which cause truckers to travel many miles with empty trucks and thus serve to increase food distribution costs and more rapid adoption by the food industry of available technology such as computerized checkout systems at the retail level, methods to decrease the amount of food loss or spoilage, and standardization of food containers.

Also, Government decisionmakers need to consider the effects of their proposed actions on food industry costs and thus on food prices. Among actions now being discussed or formulated by the Congress and/or the executive branch are nutritional labeling of all food and food products, drained weight labeling, percent of characterizing ingredients labeling such as the amount of beef in beef stew, mandatory unit pricing, mandatory open dating, and more stringent noise and water pollution standards.

Because all or part of the costs of such actions are invariably passed along to the consumer, both their beneficial and detrimental effects need to be considered in deciding whether to implement them.

FEDERAL FOOD PRICE STATISTICS NEED IMPROVING

The Department of Agriculture, using information obtained from various sources, produces several statistics on food prices and the food industry. During the period covered by GAO's review, these included the farm value—retail price spread, percentage of disposable income spent for food, the retail cost of a market basket of food commodities, and the marketing bill. In addition, the Bureau of Labor Statistics, from which Agriculture obtains certain of its information, publishes a monthly Consumer Price Index, which includes a measurement of food price changes.

Although these statistics are considered the best available information on these subjects, several problems have limited their reliability and usefulness. For example, one of Agriculture's most widely used statistics has been the farm value-retail price spread which represents that part of a product's retail price which goes to the food marketing industry. GAO found that:

Retailer specials were not adequately considered in the retail price computations of either the Bureau or Agriculture.

Farm prices were not collected on a statistically sound basis.

The lag between the time a product is sold by a farmer and the time it is displayed on a retailer's shelf was not considered in computing the spreads.

Recently, because of a change in the Bureau's retail price collection method and a delay in developing a revised method to calculate nationwide average retail prices used in the spreads, Agriculture has temporarily discontinued publishing spreads for most individual foods. A Bureau official said that it would take 6 months to 1 year to determine if prices are being collected for a sufficient number of like items to calculate nationwide average retail food prices.

Until 1977 Agriculture used Department of Commerce disposable personal income and food expenditure statistics to calculate and publish the percentage of disposable income spent for food. Many Government and private organizations' studies found, however, that the percentage was not representative of food expenditures by low-income families.

Because of such complaints, Agriculture stopped publishing the percentage, although it continues to publish disposable personal income and food expenditure totals. Information on food expenditures by income level and/or family size would be helpful in monitoring the Nation's economy and in the Federal decisionmaking process, although an Agriculture official said that the expense involved might be prohibitive. Agriculture has not, however, studied the data needs and costs of data collection.

The market basket and marketing bill published by Agriculture and the Consumer Price Index published by the Bureau are frequently misused. Neither agency has been very successful in educating users about the statistics' limitations and uses.

RECOMMENDATIONS TO THE CONGRESS

Bills to establish a permanent Bureau of Agricultural Statistics (House bills 256, 497, and 3132) or a temporary National Commission on Food Production, Processing, Marketing, and Pricing (S. 1223) are now being considered by the Congress. To facilitate gathering and verifying information, GAO recommends that if such a bureau or commission is to be established, the Congress provide (1) it with the authority needed to assure access to food industry records and (2) for adequate safeguards to protect the confidentiality of such records.

If the Bureau of Labor Statistics is unable to revise its method of computing nationwide average retail prices because of changes in its retail price collection procedures, GAO recommends that the Congress direct the Bureau to institute a retail price collection program which would allow (1) the Bureau to resume publishing nationwide average retail prices for many individual commodities and (2) Agriculture to resume publishing farm value-retail price spreads.

RECOMMENDATIONS TO THE EXECUTIVE BRANCH

The Secretaries of Agriculture and Transportation and the Chairman of the Interstate Commerce Commission should initiate and coordinate an indepth study of the problem of haulers of raw agricultural commodities driving many miles with empty trucks. The study should ascertain the extent of, reasons for, and extra costs caused by the problem. The Secretaries and the Chairman should develop and propose legislation to modify existing regulations if the study indicates such a need.

The Secretary of Transportation and the Chairman of the Interstate Commerce Commission should also provide for a study of the projected effect of authorizing intercorporate hauling—compensated transportation between related companies—including a determination of the (1) net benefits to the trucking industry and (2) effect on consumer prices.

The Director, Office of Management and Budget, should direct his staff to implement and oversee a coordinated Federal effort to assist the food industry in implementing those efficiency-increasing actions discussed in this report.

The Secretary of Agriculture should provide for an assessment of the possible ways in which the food marketing industry could be required to submit monthly data on cost and profit margins. Upon completion of this assessment, the Secretary should develop proposed legislation to accomplish this.

The Secretary of Agriculture should also direct the Economics, Statistics, and Cooperatives Service to:

Improve the method for computing farm value-retail price spreads by better adjusting retail prices for the effect of retailers' special prices and instituting a system which considers time lags in computing the spreads;

Determine the data needs and cost of data collection required to calculate and publish the percentages of disposable personal income spent for food by income level and/or family size and, if found to be feasible and economical, initiate gathering and analyzing the data and publishing the resultant percentages; and

Increase efforts to inform users of its statistics on the retail cost of a market basket and the marketing bill what these statistics show and their uses and limitations.

The Secretary of Labor should direct the Bureau of Labor Statistics to:

Determine the additional labor and cost necessary to institute a retail price collection system which would note quantities sold at regular and special prices and, if found to be practicable and economical, institute such a system and

Increase efforts to inform users of the food portion of the Consumer Price Index what the Index shows and its uses and limitations.

The Secretaries of Agriculture and Labor should direct their staffs to identify areas of common data needs and explore the feasibility of adjusting data collection and data presentation methods to better accommodate both users.

Also, the Secretary of Labor and the Director, Office of Management and Budget, should further consider updating the Consumer Price Index more often than every 10 years to recognize shifts in consumer buying patterns.

AGENCY COMMENTS

The Departments of Agriculture and Transportation and the Interstate Commerce Commission provided written comments, while Labor and the Office of Management and Budget provided oral comments. Their comments are discussed where appropriate in the report.

Agriculture generally agreed with the recommendations to improve food price statistics but pointed out several problems that would be encountered in implementing the recommendations. The Office of Management and Budget and Labor generally disagreed with the need for improved food price statistics.

Agriculture, Transportation, the Office of Management and Budget, and the Interstate Commerce Commission generally agreed with the need for studies to determine the impact of and possible alternatives to certain transportation regulations.●

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## FARMING IS A BUSINESS

### HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. AuCOIN. Mr. Speaker, every Member of the Congress who represents an agricultural area understands that the operation of a farm is very similar to any other business. The farmer must buy supplies, meet a payroll, and produce and sell a product.

Like any other business, it is important for the farmer to be able to obtain operating loans as quickly, easily, and cheaply as possible. Yet at the present time, Federal law inhibits quick and easy access to loans.

The Truth in Lending Act requires that time-consuming full disclosure provisions apply to agricultural loans under $25,000. This requirement does not apply to similar commercial loans.

I do not want to diminish the importance of the protections provided by the Truth in Lending Act. The occasional borrower, having little experience with finance, should be provided with a state-

ment of the estimated finance charge, annual percentage rate and a repayment schedule. But farmers can hardly be classified as inexperienced occasional borrowers. Farmers normally receive a substantial amount of income only once a year at harvest so borrowing to meet interim operating expenses is an important aspect of their business. And because farmers borrow frequently, they usually know well the smalltown banker with whom they do business.

There are two other reasons why I think the requirement for agricultural loans is excessive.

First, the disclosure required by the act for agricultural loans are often misleading and meaningless. Because of the unique nature of the farmer's business, it is impossible to predict accurately the likely costs of credit. The farmer simply does not know when he will need disbursements of loan funds or for what length of time.

Second, agricultural loans are extended on different terms and conditions than consumer credit. Consumers typically borrow under a standardized financial package. Agricultural loans, on the other hand, are financing packages tailored to meet the needs of the specific borrower. When the consumer loan-oriented requirements of the Truth in Lending Act are applied to agricultural loans, the result is a complicated and time-consuming disclosure process.

Mr. Speaker, it is clear that farmers are experienced borrowers who deal frequently with lenders and have financial requirements that are very unlike those of ordinary consumers. In sum, the rationale for applying the Truth in Lending Act requirements is not present in the case of agricultural borrowers.

Every Member of this House knows how important it is to cut excessive and duplicative redtape whenever possible. We have an opportunity to do just that by approving an exemption of agricultural loans from coverage by the Truth in Lending Act.●

## MIA SIGHTINGS AND THE MONTGOMERY MISSION

### HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. DORNAN. Mr. Speaker, last Friday morning I received a copy of the report of the Special Committee on Southeast Asia, detailing the opinions of my colleagues on their recent sojourn to the Socialist Republic of Vietnam. I can only say that the report was, at the very least, intriguing. Like so many of these documents, they are a sound record of impressions, rather than a disciplined geopolitical analysis. The content and conclusion must, in justice, be viewed in that light.

However, I still cannot help thinking that the report itself will serve as a relevant "period piece" in some future academic text on our Southeast Asian foreign policy in the post-Vietnam era. It breathes with the spirit of reconciliation, an understandable sentiment. It reflects the pervasive sense of American policymakers that we ought to "put Vietnam behind us" and get on with the business of the world.

It is precisely this tone, this spirit, that is, I think, dangerously naive.

The leadership of Communist Vietnam is a revolutionary military elite, hardened by long years of brutal conflict. No one has better estimated the character of the regime's personnel than my colleague, HENSON MOORE, in his addendum to the Montgomery special report:

> The Vietnamese are tough and dedicated people. They are led by shrewed and capable leaders. We can be sure that their every concern is for what is in their best interests. Our relations with them are unrealistic if we perceive their motive as anything more.

So different is Mr. MOORE's realistic observation from the tenor of the Montgomery report. I am unable to fathom whether this spirit and tone is based on unguarded optimism or merely a wishful assessment of future United States-Vietnamese relations. Consider the evaluations of the committee.

The report states that the Communist Vietnamese attitudes have radically changed in the post-war calm. In the explicit language of the report:

> It is our opinion that there has been a dramatic and fundamental change in the attitudes by the Vietnamese Government toward the United States.

The committee goes on to state that there are "compelling reasons" for this change of mind, which are directly related to Vietnam's internal and external problems. According to the committee, the first of these is the recent change in Sino-Vietnamese relations. The second is the current Vietnamese need for: "food, raw materials, insecticides, fertilizers, machinery, technical help, and equipment by means of full-scale and open trade." In other words, the Communist regime in Vietnam is in trouble.

It can be surely no surprise to anyone familiar with the history of Southeast Asia politics that there has been a traditional enmity between the Chinese and the Vietnamese. These antagonisms are rooted deep in Asian history. Periodic eruption into diplomatic and even military hostility is understandable. There is no reason to believe that the heirs of Chairman Mao have lost the imperial visions of the ancient Middle Kingdom. Vietnam had best beware.

Mr. Speaker, given these severe domestic and foreign problems, we have at our disposal the perfect leverage for influencing Vietnamese behavior. If my reading of the report is correct, we have here an historically unique opportunity to pursue profitable diplomatic initiatives. Vietnamese leaders speak of their need to reduce the dangerous tensions with the Chinese Communists to the north, to develop their oil and natural gas resources along their coast, and to repair the internal damage to the agricultural and industrial sectors of their economy. We have here the very condition that we need to pursue, to our satisfaction, an honorable resolution of the issue of our personnel missing in action. As I have said before on the floor of this House, there is no effort we should spare in the resolution of this issue to the satisfaction of all Americans, most especially the families of those men listed as missing in action. If the Vietnamese would be totally forthcoming on this matter, I am sure that very few, if any, Members of this Congress would object to taking a new view on the entire question of Vietnamese-United States relations.

It is the frightening possibility of missing this opportunity that greatly concerns me, second only to the question itself of the status of those brave men listed as missing in action. The committee report is not comforting in this regard. The committee merely tells us that the Vietnamese deny holding any POW's. Moreover, the special committee informs us, that in discussions with representatives of the U.N., various church groups, and officials of the International Red Cross, there is widespread "feeling," get that word "feeling," that no Americans are being held alive. The committee report, then, goes on to say that it is in agreement that no American is alive in Southeast Asia and recommends a "status change"—a presumption of death—of approximately 1,330 listed as MIA's.

Please note, Mr. Speaker, this recommendation is officially based, on, among other things: First, Vietnamese denials and second, the "feelings" of assorted groups. Feelings. Do Vietnamese formal denials in and of themselves, formally constitute a basis for any valid conclusion on the MIA issue? Is Mr. MONTGOMERY and company really saying to us, between the lines, that if the Communist Vietnamese were holding living Americans for all of these years, they would admit it? Come on. I know, who are we to question the ethical integrity of the Communist leadership of Vietnam? The very idea.

Mr. Speaker, the truly amazing thing is that the committee was prepared to agree with the conclusion that there were no Americans being held alive and that we should go ahead with a change of status, after being told—point blank—by Vu Hoang, chairman of the Missing Persons Search Committee in Vietnam, that international search teams would not even be allowed to come into the country. What kind of cooperation is this? What evidence of good faith can be discerned here?

The situation is similar in Laos. According to the report, the Laotians said that the search for MIA's was seriously compromised by the presence of unexploded bombs and other ordnance. They said that they had lost 50 persons by virtue of such "bomb accidents" occurring hither and yonder in the Laotian countryside. The Laotians told the committee that they wanted assistance in bomb disposal equipment, but not bomb disposal technicians. I, for one, cannot believe that the Vietnamese and the Laotians are acting in good faith in resolving this issue when they prohibit qualified international search teams and technicians from even entering the critical territory for the sole purpose of expediting the recovery of MIA remains.

The Vietnamese, according to the re-

port, oppose the imposition of any conditions precedent to normalizing relations. Of course, they do. Because the conditions are there; they are there for us to use in our own diplomatic initiatives. If the economic problems in Vietnam are chaotic; if the relations with Red China are diplomatically and militarily precarious; if war and the current threats of war have fatigued her people, then it seems to me that we have every opportunity to move decisively now to resolve the MIA issue to our own satisfaction. It is certainly not an opportunity that we should allow to slip through our diplomatic fingers. It is certainly not enough for us to rely upon Vietnamese denials or the starkly subjective feelings of either well or ill-intentioned people on the status or the condition of men listed as missing in action.

As I have already said, if we could get the Vietnamese to agree to our terms for the full resolution of this MIA problems, I cannot imagine many of us in this House or even in the Senate opposing a positive reassessment of our current relationship with Vietnam. But that is precisely the option that the committee is prepared to forego. In the language of the report:

> The Committee feels that the recovery of remains by countries in Southeast Asia is a humanitarian issue and should never be linked with other matters between the United States and the Vietnamese and Lao.

"Never?" Such a strong word. An irrevocable condition. Even the Vietnamese Communists, according to the report, say they are willing to be "flexible." But the special committee says "never." We are being asked, in other words, to abandon any and all political, economic, or diplomatic leverage on Hanoi in the final resolution of the MIA problem, the problem that is most important to the people of this Republic.

Mr. Speaker, the committee can recommend to this House anything it wants. But this House has no cause to honor such recommendations while there is even a flicker of hope that the MIA issue can be resolved to our satisfaction, including the satisfaction of the families of these brave men. Reports of "live sightings" of Americans held in Southeast Asia continue to appear. Each and every one must be thoroughly checked and cross-checked and double checked again.

Mr. Speaker, Mrs. Le Thi Ahn, leader of the Vietnamese community in the United States and an interpreter for the Natural League of Families, has transmitted to me copies of letters from Vietnamese refugees who claim to have actually seen or heard of Americans being held captive in Vietnam after the end of the war. These letters were written in response to an ad in "Trang Den," a Vietnamese language newspaper circulating in the West, asking for such information. I have turned over copies of this critically important information and untranslated letters to the Defense Intelligence Agency. For those appearing below, I have sanitized previously translated refugee letters, deleting names and addresses, in order to protect the identities of the authors and their families. Of course, I fear retaliation by the Vietnamese Government.

Mr. Speaker, I cannot vouch for the truth of these letters. No one can until the proper interviews by responsible authorities have been completed. But I do think that the emergence of these documents is ample ground for calling a halt to premature recommendations of a change of status of those listed as MIA's. I appreciate the work of the members of the special committee; but I must respectfully disagree with the report's overall naive tenor and most of the conclusions. Printed below are the first of a series of memos by Mrs. Ahn and letters I will be inserting into the RECORD. The two items below are translations by Mrs. Ahn of the relevant portions of letters she recently received. I ask that my colleagues give these documents their closest attention:

AUGUST 20, 1977.

REPORT ON SEEING MIAs ALIVE IN XEO RO, RACH-GIA SOUTH-VIETNAM BY LATE 1975

Name of reporter: (delted).

Born on 1952 in Phong Phu, Phong Dinh province.

Place of residence before escape: Xeo Ro, Dong Yen, An Bien, Rach-Gia.

Position under the former regime: Sergeant.

(Deleted) has spent several periods in re-education camps, totaling more than 8 months. On Jan. 18, 1977, he bribed his way out of detention by giving (through a family member) 20 taels of gold to the (deleted) District commissar. He then bought new identity papers and traveling documents and fled to Phu-Quoc Island.

(Deleted) left Phu Quoc by fishing boat on the morning of March 27 1977 and arrived in Leasing, Thailand, on April 2, 1977.

He was admitted to the U.S. on July 77. His present address is: (deleted.)

REPORT ON MIA

(Deleted) live at that time in Xeo Ro, Rach-Gia; Xeo Ro is a remote district near Chuong Thien province. He has seen two White Americans at the Xeo Ro dock during the month of October 1975; the prisoners were on their way to the U-Minh forests. They lay in a motor sampan, their heads were shaven like monks; their wrists were tied with ropes behind their backs.

One man was very thin and tall, the other also very thin, was of medium height. Their escorts encouraged the curious gathered to see them to throw accusations and insults at the prisoners and even to beat them with small sticks. The sampan later continued its journey South, towards the thick, swampy forests. Asked if other witnesses can be cited, (deleted) replied that all people living around the Xeo Ro dock have seen the prisoners. They would testify, if their lives were safe afterwards.

A friend of (deleted), named (deleted), a recent escapee, previously in a Thai refugee camp, now in Australia has seen MIAs in the U-Minh forests (Ca-Mau province). A number of Americans, both Blacks and Whites were being detained in a forced labor camp. Communist authorities completely isolated the area and forbade local people to come near the camp. Nevertheless, many people have sighted the tall Americans. The U-Minh (meaning Darkness and endless) Forest is a thick mangrove and palm tree forest.

(Deleted) also explained that the Viet Communists used the tactic known as "making noise in the East and strike the West." They know that people assume that they keep American prisoners in the North, so they move them to the South and keep them in a place where no one suspect it.

REPORT ON THE SIGHTING OF THREE MIA's GRAVES

We put an ad on the Trang-Den Newsmagazine and received a letter from a recent escapee who left Vietnam July 1977. His name is (deleted). His address is (deleted).

In his first letter, (deleted) wrote: My sister, you ask about the Americans. Yes, I have seen them, but they were no longer living when I saw them, so is there any point in talking about them now?

I answered (deleted) and told him that if he has seen Americans, even dead, he should tell me when and where and under which circumstances he saw them.

He wrote back. Following is a translation of the main points in his second letter.

"MARCH 22, 1978.

"My sister:

"I believe those unfortunate men who lay in those tombs were our friends, they were our allies and share our ideals in the struggle against Communism, therefore I don't mind telling you the truth about what I saw.

"The sighting took place maybe nine months ago, in June 1977 I was called upon to do forced labor for what they called the 'Socialist Republic of Vietnam.' We were sent to do land clearing in a jungle and mountain area named Nui-Ba-Vien in the Q.N.D.N. province. (It is, as you know, the new name of the province; before 1975, it had another name.)

"The jungle was thick, yet it had a lot of bomb craters. I found out that the area we were ordered to clear was the site of a Viet-Cong small hospital. The hospital is now destroyed. Clearing the jungle there was very hard work because the soil was full of rocks and stones.

"There were a number of graves around the hospital. A number of those graves, the Communist cadres who supervised our work told us to build them up and to take good care of them. We knew the dead who laid there were their men. There were other graves which the cadres told us not to bother clearing the weed around, let them go to hell. they said. . . .

"Days after days, we worked from dawn to dusk clearing the jungle. One day, we discovered three tombs a little farther away from the hospital, all the three were well on their way to be flattened by the rain. We knew at once they were American tombs because of the helmet, the clothes and shoes we found on the tombs. On each of those, a piece of wood was planted as a tombstone. I took one of the helmets and saw that inside there was a plastic lining to cushion the shock when the soldier wore it in combat. The lining bore the name of the dead person in English language. I do not read English, and I'm sorry I don't remember the names of the dead. The clothings have deteriorated. but still very recognizable; still no ID that we could see.

"We reported the 3 American tombs to the cadres but they used even harder words against those tombs and told us not to do anything about them. We thought, well, the dead are dead. all is finished and we must treat them with kindness, so my friends and I we sneakingly gather the stones around the tombs. I'm sorry that I do not remember the names.

"The jungle we cleared was later planted with manioc (tapioca). By mid-June, I was released from the labor camp because my time was up. In July, I escaped from Vietnam. That is what I saw. I don't know whether my words are of any help to the families of those still missing in Vietnam.

"Signed (deleted)."

This morning March 26, 1978, we received a call from a friend in (deleted). A woman refugee in this city has seen a white American prisoner being paraded through the city of Rach-Gia about five months after the fall of Saigon. I am getting in touch with

her and will have more detailed information on her sighting.

According to (deleted) a friend of his, a young woman who recently escaped from Phu-Quoc Island and is now in the U.S.A. may know a great deal about MIAs. She is the daughter of (deleted). We are trying to trace her now.

A Vietnamese (deleted) now living in (deleted), has written about a POW he has seen in a cage along the Ho Chi Minh trail during the war. A detailed description of the POW was in his (deleted).●

## THE COMPROMISE NATURAL GAS BILL—WHERE LIE ITS MERITS?

**HON. FORTNEY H. (PETE) STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. STARK. Mr. Speaker, it is understandable that the President has attempted to switch the focus of debate on the compromise natural gas bill away from its impact on energy use in the United States and toward its impact on our international prestige and the foreign exchange value of the dollar. Admittedly, it is difficult to sell a bill whose cost to the American consumer will be almost $30 billion by 1985 and which will not produce any additional supply of natural gas. Neither is the bill's overwhelming complexity a strong selling point—it creates over 20 categories of gas and, according to the Office of Enforcement within the Federal Energy Regulatory Commission, "the proposal is so complex, ambiguous and contradictory that it would be virtually impossible for this Commission to enforce it in a conscientious and equitable manner." Clearly, the merits of the bill must lie outside of its effects at home.

Unfortunately, the statements emanating from the White House about the bill's importance in arresting the decline of the dollar's value in foreign money markets do not hold up under examination. Few economists are persuaded by Mr. Carter's argument and believe it has anything more than political value. Robert Slighton, a vice-president of Chase Manhattan Bank, stated in an internal memo that,

It is by no means clear that the market will perceive the compromise bill as resulting in an enhanced long-run supply of natural gas in the U.S. and an enhanced long-run balance of payments outlook.

Similarly, a study by the Federal Reserve Bank of St. Louis concludes that,

The increased value of U.S. oil imports has not caused the U.S. balance of payments deficit and the declining foreign exchange value of the dollar . . . Thus, policies directed toward reducing oil imports will have little effect on the current trend of the dollar's declining foreign exchange value.

I am submitting for the record an article from Saturday's Washington Post entitled "Changing Face of 'Centerpiece' Gas Bill." It pinpoints the changes which have been made in the bill since it was proposed by the President last year and the ever-so flexible administration rationale which accompanied it. I commend it to my colleagues attention.

[From the Washington Post, Sept. 9, 1978]

CHANGING FACE OF "CENTERPIECE" GAS BILL

(By Robert G. Kaiser and J. P. Smith)

The natural gas legislation that President Carter has transformed into the life-or-death "centerpiece" of his beleaguered energy program is a far cry from the gas program he first proposed last year.

Indeed, this legislation is much closer to what the president once denounced as "war profiteering" than it is to the administration's original gas plan.

Instead of maintaining price control of gas as originally proposed, the new legislation provides for the complete deregulation of new gas by 1985.

In addition, the new legislation lacks some provisions Carter proposed to tilt the anticipated price increases so that more would be borne by industry, less by homeowners.

These two changes in the bill would have two results.

First, prices paid by homeowners would rise more than under Carter's original plan, while those paid by industry would rise less.

Second—partly because industry would not face such large price increases—overall U.S. consumption of gas would not be curtailed as Carter first intended.

Instead of conserving gas, in fact, the bill is now presented as a way of increasing production of natural gas to substitute for imported oil.

The original Carter plan would have eliminated the present two-tier market, in which the price of gas is limited when it is sold across state lines and unlimited when it is sold within the state where it is produced. When demand is high, this system encourages producers to sell gas intrastate, creating shortages like the crippling ones of 1976–77 in nonproducing states.

The compromise now before Congress would not guarantee that such shortages could not recur, according to Energy Secretary James R. Schlesinger, Jr., although it would make them less likely.

To help explain many of these changes, the administration now offers new rationales for its policies and provides new statistics—some of which have been changed repeatedly—to support its argumentation.

Last November, Carter's press secretary, speaking for the president, said, "No bill would be better than a bad bill." Today, administration officials say the compromise measure is not a good bill, but the best obtainable, and that passage of some bill—this one—is crucial to the country's image aboard and to the future of the dollar.

When Carter declared "the moral equivalent of war" in April 1977, he unveiled a plan to reduce U.S. oil consumption—and thus oil imports—in two main ways. The first was to increase prices by a new tax on domestically produced crude oil. The second was a series of devices to encourage industry to switch from gas and oil to coal.

Today, the crude oil tax is regarded as dead in the Capitol, and the coal conversion measures have been weakened. Now a major projected saving the administration is predicting would come from the new gas legislation. (In April 1977, the administration predicted that its original gas program would not save any imported oil at all.)

For months Carter called the crude oil tax the central element of his energy program, but he has not advanced that view in many weeks. Now he says that the compromise gas bill is the centerpiece of the energy program.

Indeed, only once before has Carter embraced a piece of legislation as fervently as he has this compromised and recompromised gas legislation—the other example was the Panama Canal treaties. The White House has engaged the entire Cabinet and every ally it can find—including some oil companies Carter once vilified—to press for passage of the gas bill, which is scheduled to come before the Senate Monday.

The strongest argument the administration is now making for the gas bill is that the world is waiting for a sign that America can take strong action to solve its "energy crisis." Without such a sign, the administration warns, the dollar will take a new beating in world exchange markets.

Carter has called the bill "a symbol of our national will."

Carter has also criticized the gas compromise as imperfect, acknowledging its substantial differences with his original plan. Special Ambassador Robert S. Strauss, a leading administration campaigner for the legislation, has repeatedly criticized it. In one meeting with steel executives, Schlesinger began to argue that the bill was actually a good one, but Strauss cut him off, saying it is not a good bill, but it is the only bill available, according to a source present.

As the content of the gas bill has been altered by House and Senate action, then the secret deliberations of a long-deadlocked conference committee, the statistics used to justify or explain the measure's provisions have shifted, too. These changes in the figures have been a major source of the continuing controversy surrounding the legislation.

For example:

Soon after publication of the compromise gas bill at the end of July, the administration circulated briefing papers on Capitol Hill that said the bill would save 1 million barrels of oil a day by 1985. Soon after that claim was circulated, Carter and Schlesinger told businessmen at the White House that the sayings would be 1.4 million barrels a day.

Gas industry spokesmen say both figures are essentially guesses that cannot be confirmed. Such predictions depend on elaborate assumptions about the growth of the economy, inflation, industrial use of energy and other variables, none of which can really be predicted, according to many industry officials.

"Any firm prediction is bull," said one gas industry lobbyist.

Schlesinger last year repeatedly told Congress that raising the gas price above $1.75 per thousand cubic feet would be useless, since that price would induce the maximum possible production out of gas producers.

When Carter assailed the oil and gas companies last fall for "potential wartime profiteering," he said: "If we tripled the price of oil and natural gas there could be no substantial increase in the rate of exploration" for new supplies.

By last month, however, Schlesinger was arguing that the compromise bill—which would put prices well above $1.75—would result in higher drilling rates "putting more gas in the interstate market."

Schlesinger's reassessment stems from an alteration of the Department of Energy's basic assumptions about future gas production that was made earlier this year after the gas bill became deadlocked in the House-Senate conference.

The Energy Department's quasi-independent Energy Information Administration has altered its projections about gas prices to make the new compromise appear more favorable to consumers.

Last July the EIA said the compromise bill would raise the price of residential gas to $3.31 per thousand cubic feet—$.34 higher than the price would have been under total deregulation of new gas.

This figure alarmed Rep. John D. Dingell (D-Mich.), an architect of the compromise, and he prodded EIA to recalculate its figures, using new assumptions. A subsequent EIA "further evaluation" concluded that the compromise bill would establish a price for residential gas $.31 lower than total deregulation.

Changes in the administration's objectives began to become evident in December of last year, during the Senate filibuster against the Pearson-Bentsen total deregulation bill. At the outset of that filibuster, Carter was telephoning senators, urging them to defeat Pearson Bentsen in favor of something close to the original administration plans.

When pro-administration forces concluded that they could not defeat Pearson-Bentsen outright, the White House abandoned its previous position and began to look for compromises. The process of compromise led finally to the unusually complex and detailed compromise bill that comes before the Senate Monday.●

## UNNEEDED GUN LAWS

### HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. FINDLEY. Mr. Speaker, the June 29, 1978 issue of the Gazette-Times, Virginia, Ill., gave the most persuasive case I have yet seen against new laws to register, license, and control firearms.

It is written by an outdoorsman, Jack French, whose trade is carpentry but whose love is nature. I commend it to my colleagues, especially those who may not have had the opportunity to reflect on the importance of firearms to people who live in rural areas.

NEW GUN LAWS: NOT NEEDED

(By Jack French)

Those of us that belong to the National Rifle Association and other gun-related associations have noticed a lot of new firearm laws being proposed in Washington the last few years. A new one came up May 22, 1978; a type of national gun registration system which would cost several million dollars just to put into effect. But, Congress moved against it, at least for the time being. Some lawmakers would like to register all firearms while others suggest banning all handguns, except for military or police use. Some would even like to confiscate them all, saying it would make our country a safer place to live.

First, the gun laws are only obeyed by the honest citizen, so what good do they do? Can you see a criminal registering his gun? Certainly not. But you can believe he would be in favor of any gun laws that would make his illegal entries safer.

Should I have been raised in a large city and the only place I'd have seen a gun was either in the back of some dresser drawer or hanging from some policeman's belt, maybe my views on gun control would be different.

I, like most of you readers, was raised in a rural area where a gun hanging above the door was just part of the household furnishings. It was used to put wild game on the table, rid the garden of pests, and I even remember one night Grandad retrieved a couple gunny sacks of chickens that the thieves dropped after he sprinkled their old truck with birdshot.

Gun control certainly isn't crime control. This has been proven too many times. New York City has one of the strictest gun control systems in our nation and it is continuing to fail miserably. It's nearly impossible to own a firearm there unless you are a thief or mugger!

Firearms were once an important part of our country when Colt & Winchester were household words and these old guns were used to furnish food and protection to our pioneer families.

Now it seems the general public isn't interested in guns anymore. You don't see much coverage on the T.V. about good guys in the news. For instance, do you know who won the Grand American Trapshoot? Or even where the Grand American is held? Do you know that we have dedicated, hard-working shooters on our Olympic shooting teams?

I read once where a writer stated that handguns were manufactured for the sole reason to shoot people. I assume he wasn't aware of the many thousands that are made for serious target shooters and the many, many thousands more made for the collectors, investors, and the casual target shooter, and the hunter.

It's true that a lot of guns are bought for protection. In our county, crime is pretty well kept to a minimum compared to other counties I know of, thanks to our good peace officers. But another factor is involved, I'm sure. In rural communities such as ours there are very few homes without a gun of some kind. This I'm sure, gives a thief second thoughts.

I would be the first to admit that in our modern day living we do need gun laws. The Federal Gun Control Act of 1968 prohibits the transfer or receipt of firearms or ammunition in interstate or foreign commerce by any person who has been convicted of a crime punishable by more than one year imprisonment; is a fugitive from justice; is an unlawful user of drugs or has been committed to any mental institution. This 1968 Act makes it illegal for persons under 21 to buy handguns or handgun ammunition and you must be over 18 to buy a rifle or shotgun. It even means if you are under 21 you can't buy a box of .22 cartridges (.22's are now classified as handgun ammunition). With existing laws such as these it wouldn't seem we need more. Some say just enforce the ones we have instead of adding new ones.

One state seems to think this paid off. Florida has a three-year mandatory sentence without parole for anyone convicted in using a handgun in a felony. The first year, armed robberies dropped 20 percent. The second year, I traveled Florida's roads and saw the large full-sized billboards along the highway spelling out the three-year mandatory sentences. That year armed robberies dropped 40 percent, gun homicides dropped 21 percent, chainstore robberies dropped 20 percent and so on. There are 11 states that have similar laws and Illinois is one of them.

Most of my police officer friends say that no laws will keep criminals from getting guns, no more than they stopped the flow of moonshine in the Prohibition days.

I have hunted with a pistol or revolver most of my life. I carry one on back-country hunting and fishing trips if for no other reason than a signal gun. A series of three evenly spaced shots is a well-known signal that will bring help to a troubled woodsman from within hearing distance. I have never aimed or fired a gun in fear or anger, but the presence of my old Colt protruding from beneath my fishing vest didn't do any harm a couple times I'm sure. Once when I rounded a bend and saw an undesirable looking person watching my wife from a willow thicket as she fished a remote mountain stream and another time when we were driving down a narrow jeep road returning from a high mountain lake when we approached a pile of watermelon sized rocks blocking the road in front of a hippie-type camp. The rock pile wasn't there when we went up a few hours earlier.

Gun confiscation allowed German leaders to turn that country into a land of total dictatorship once. Other European countries had gun registration laws allowing the enemy forces to merely check the records and take the privately owned guns. Some say that gun control is people control. I haven't said this yet. Some of the lawmakers, I'm sure, are aware of the importance of an armed nation.

I have a couple guns set aside for my young grandsons, and when they are old enough I hope they will be able to enjoy shooting and hunting as much as I have, although I'm beginning to wonder.

Living out here in rural communities, where no matter how efficient a police officer is, he still may be 15 minutes away, it is comforting to know you've got something available besides a golf club as you answer the knock on a door at 2 a.m., hoping it's a troubled motorist and not a troublemaker.●

## LOOKING BACK

### HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. FRENZEL. Mr. Speaker, over the past couple of years I have noted mounting protectionist pressures on the Congress from many different areas of our economy. I have always thought such pressures to be extremely detrimental to U.S. interests at a time when promotion of our own exports has become so important. As a little history lesson and reminder of what can happen when protectionism runs rampant, I attach a copy of an editorial which appeared in the July 29 Houston Post. I am sure none of us wants to return to the economic destruction of the Smoot-Hawley days, and I think a reminder of those days may be enlightening to all of us. The article follows:

LOOKING BACK

After World War I, Americans and most of the world, except for Germany, rode a wave of economic euphoria for several years. But as the 1920s neared their end, financiers, bankers and economists saw trouble ahead. Land booms fizzled. Unemployment grew. And at that point, with the best of intentions, President Hoover asked Congress to provide just a little protection for farmers and a few industries. As the legislation developed, every industry feeling any pinch put in a bid. By the time the Smoot-Hawley Act was passed, Congress had added 1,250 amendments to protect various products. Tariffs were raised by an average of 53 percent.

Over 1,000 economists petitioned President Hoover to veto the bill. Our world trade partners pointed out that if their goods no longer sold on the American market, they would have no dollars with which to buy our goods. Businessmen and investors foresaw what the law would do and backed away from an already shaky stock market. And of course our foreign trade partners reacted in kind, raising high tariff walls against American goods to make them expensive in their stores.

Within three years, our industrial exports had dropped 73 percent, our farm exports by 67 percent. As we lost foreign trade, plants closed down, more jobs were lost and the Great Depression deepened. President Franklin Roosevelt pushed through the Reciprocal Trade Act of 1934 to get our foreign trade moving again. Ever since, the U.S. has worked to make world trade freer.

We need to remember this history amid the rising cries for just a little protection here and there. The U.S. exports one-sixth of all it manufactures, a third of its farm products. We exported $120 billion in goods and services last year, and this trade directly or in-

directly supported 4.5 million jobs in this country. To try the kind of protectionism that started on a small scale and ended in the Smoot-Hawley Act would be flirting with danger and economic destruction.

What we need is a continuing and vigilant system of negotiating, country by country, product by product, to insure fair trade for us and our trading partners. As Rep. Stephen L. Neal, D-N.C., points out, "Indiscriminate protectionism would * * * deprive consumers of the wide choices and lower prices made available by imports. It would accelerate inflation by eliminating export competition. * * * It would poison our relationships with the emerging countries of the Third World, who need trade to survive, to pay debts, to modernize and—significantly—to be able to buy our products." Through negotiations, we can oppose dumping of foreign products on our shores at prices less than those paid in the home market. We will yield trade concessions only to those willing to make concessions in return. We can be tough but selective. Protectionism is a bulldozer in an operation where a scalpel is needed.●

## HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. OTTINGER. Mr. Speaker, today, along with my distinguished colleagues from Florida (Mr. FUQUA) and North Carolina (Mr. ROSE), I am introducing legislation to develop inexpensive satellite communications technology and begin applying that technology to the social development and public interest uses for which it has great potential.

This legislation will direct the Department of Commerce and the National Aeronautics and Space Administration to undertake an experimental program to develop a low-cost, interactive satellite communications system for public service uses. Just over 1 year ago, the National Academy of Science's National Research Council recommended that NASA undertake such a development program.

"There are a number of potential communications services, such as for health care delivery, educational services, search and rescue, electronic mail, teleconferencing, and environmental data collection which apparently cannot readily or economically be provided using the technology available to the common carriers for producing conventional telephone and television services. If the option to initiate some of these services is to remain open in the future, then advances must be made in needed technology by undertaking research and development programs now." Federal Research and Development for Satellite Communications, National Academy of Sciences, 1977.

The applications of advanced satellite communications systems to public service needs has been experimentally employed on a limited basis using the high-cost systems presently available. One example is the network established by 36 Veterans' Administration hospitals in the West that went into operation last November. Recently, Congress, itself experimented with satellite videoconferencing, and the participants lauded the potential and "great significance for the future" made possible by interactive satellite communications. However, the available satellite communications channels will soon be filled by the increasing demand. Even if the public service users could afford such high cost systems, most would soon find themselves priced out of the available channels.

The Federal Government ended its involvement in the satellite communications research and development field in 1973. The previously mentioned NASA report notes:

> Following the withdrawal of the Federal Government from satellite communications R. & D. there have been no commercial satellites to test new techniques and concepts or to permit users to experiment with new services.

British scientist Eric Burgess, in a recent "working paper" on the development of a public interest satellite and information system comments on the lack of advanced private-sector R. & D. "Research and development costs for advanced technology applications are so great that they cannot be accommodated in corporate budgets without some support from the Federal Government or the user. So far the users of communications satellites have been common carriers who in good faith cannot justify to their stockholders research and development that could very well put them out of business."

Advanced satellite technology, such as large-antenna, multibeam satellites paired with low-power and inexpensive ground facilities, could potentially be available by the late 1980's. Such satellites could reduce the user cost by possibly a factor of 100, and increase the efficiency of our use of the available communications spectrum by a similar factor. This would expand existing communications channels, open new channels, and make thousands of new uses for satellite communications possible.

Some other countries, particularly Japan and Canada, have programs underway for the research and development of advanced interactive communications systems. Before NASA's departure from the satellite R. & D. field, many of the component parts of such a system were tested. However, they were never all put together.

The communications field has long been a stronghold of American technology. Many of our exports relate directly or indirectly to advanced technology information and communications systems. If we desire to maintain our lead in this area, we must pickup where NASA left off in 1973, and undertake the research and development program outlined in the legislation I am introducing today.

The "Public Service Satellite Communications Act" would authorize the Department of Commerce and the National Aeronautics and Space Administration to define, develop, and test such an advanced communications satellite within the context of a public service communications system. Commerce and NASA would cooperatively manage the program, and in advance detail their respective areas of responsibility. The exact division of telecommunications responsibilities between these two agencies is currently under discussion by the administration. This proposal would allow flexibility to accommodate any final division of responsibilities which is reached, while still assuring that such a specific breakdown of authority is carried out for this program.

NASA and Commerce would have the responsibilities of developing both a new technology and a communication system to service social and community needs. It is the intention of this proposal to limit the involvement of the Federal Government to the areas of higher risk which cannot be met alone by the private sector. Once this technology is developed, the deployment of any additional satellites would be solely carried out by the private sector. It is therefore important that the private sector be closely involved in the research and development of this technology.

It is equally important that the communications system which the initial satellite will service be developed under the guidance of the public service community, and that it be designed with the foresight and imagination necessary to fully utilize the abilities of advanced technology to meet social and community needs. The identification and aggregation of the public service user community is a critical element of this approach, since one of the greatest obstacles to applying advanced satellite technology to social and community needs—besides cost—has been the fragmentation and lack of knowledge of potential users.

A parallel concern which must be addressed is the radio frequency spectrum requirements necessary to assure the development and operation of such a satellite communications system at the least possible cost to users and to society.

In September of 1979, representatives of the world's government will meet in Geneva at the World Administrative Radio Conference (WARC) to apportion the frequency spectrum and the positions used for satellites in geosynchronous orbit. It is important that the WARC Conference, and the U.S. delegation to it, understand and make provision for the development and operation of high-power multibeam satellites paired with small low-power ground facilities.

The program carried out by NASA and Commerce would follow the four-phase decision process recommended by the National Academy of Sciences. At each phase the Congress would receive an evaluation of the outcome of the previous phase with an outline of the projected actions for the next phase. Briefly, the four decision phases would be conceptualization, experimentation, acceptability—transition to operational—and early operational.

Finally, the user community and individuals with appropriate expertise from industry, universities, and the administration would serve on an advisory council to advise the administrator of NASA and the Secretary of Commerce in carrying out this program.

The United States has led the world in communications technology. By un-

dertaking this program, we will be insuring our lead in this technological field for possibly the rest of this century. At the same time, we will be providing for significant advances in health care, education, and other services to the public—services which will not only improve the condition of the American public, but of people throughout the world. This low-cost technology has the potential, too, of bringing advanced health care and education to many areas of the Third World which are now inaccessible or which existing technology cannot service economically.

I urge my colleagues to join in cosponsoring this important legislation. Following is the text of the bill:

H.R. —

A bill to provide for a research, development, and demonstration program to establish an experimental public service satellite communications system

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Service Satellite Communications Act of 1978".

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds that—

(1) it is in the public interest to encourage the planning and development of noncommercial communications satellite services in such areas as health care delivery, education, search and rescue, electronic mail, teleconferencing, and environmental data collection which cannot presently be made available at affordable cost by technology now being used by common carriers for producing conventional telephone and television services;

(2) the introduction of affordable, noncommercial communications satellite services for public service depends upon the development of new communications technologies and the judicious use of scarce natural resources, including technology for utilizing both existing and new portions of the radio frequency spectrum, employing larger and more sophisticated spacecraft antenna, utilizing a satellite as a switchboard in space, and advancing technology to drive down the cost of small earth station technology for both the transmission and reception of communications signals;

(3) since the economic risks involved in developing the sophisticated space technology required to provide affordable noncommercial communications satellite services is too great for the private sector to bear, there is an appropriate and immediate role for the Federal Government to assume in the encouragement and support of the requisite technology for public service use;

(4) it is necessary and appropriate for the Federal Government to assist in the aggregation of potential public service users, both government (including the Federal Government and State and local governments) and private, and to support the development of a comprehensive system plan designed to assure that the interactive, two-way, communications needs of public service can be met at affordable costs; and

(5) the earliest possible establishment of affordable, noncommercial communications satellite services depends on the development of a cooperative and working relationship between the Federal Government and the public service user community, including the public service licensees of Instructional Television Fixed Service systems that presently own and operate terrestrial microwave communications systems for educational, medical, and other public service purposes.

(b) The Congress declares that it is the policy of the Federal Government—

(1) to pursue an experimental program to define, develop, and test a new public service satellite communications system; and

(2) to develop and test advanced satellite communications and associated large antenna, multispot beam spacecraft technology for an experimental public service satellite system.

ESTABLISHMENT OF PROGRAM

SEC. 3. (a) There is hereby established a public service communications satellite research, development, and demonstration program to carry out the policy of this Act.

(b) There is hereby established within the National Aeronautics and Space Administration an office to manage the program, in cooperation with the Secretary of Commerce, in accordance with the provisions of this Act.

(c) The program shall be carried out jointly by the Administrator of the Administration (acting through the office established in subsection (b)) and the Secretary. The Administrator and the Secretary shall jointly prescribe rules which shall specify the manner in which the program will be carried out, including rules which detail the authority and specific areas of responsibility of the Administrator and the Secretary in connection with carrying out the program.

(d) Funding requests for the program shall be specifically identified.

INITIAL RESEARCH AND DEVELOPMENT

SEC. 4. (a) The Administrator and the Secretary shall initiate the program by conducting research and development in advanced satellite communications and associated large antenna, multi-spot beam spacecraft technology and by defining, developing, and testing an experimental public service satellite communications system. Such testing shall include flight demonstrations.

(b) In connection with, or as part of, the actions specified in subsection (a), the Administrator and the Secretary (acting in accordance with rules prescribed under section 3(c)) shall—

(1) assess and aggregate user needs, technology projections, service concept development, and program design with the close participation of the ultimate user community, inculding public service agencies of the Federal Government and of State and local governments and private, public service entities;

(2) consider the available competencies and resources of the private sector;

(3) consider the full range of equipment and operational aspects of such a satellite communications system; and

(4) assess the radio frequency spectrum requirements to assure the development of such a satellite communications system at the least possible cost to users and to society.

CONDUCT OF PROGRAM

SEC. 5. To implement and carry out the program, the Administrator and the Secretary (acting in accordance with rules prescribed under section 3(c)) shall—

(1) apply a four-phase decision process consisting of—

(A) a conceptualization phase involving needs assessments, technology projections, service concept development, and program design;

(B) an experimentation phase using communications satellites developed and launched by the Administration and, where appropriate or necessary, available commercial communications satellites in an experimental system, including formulation of criteria by which the experiments may be judged for acceptability and worthiness for transfer to operational status;

(C) an acceptability phase in which the transition to an operational system is initiated and implemented; and

(D) an early operational phase;

(2) report to the President and the appropriate committees of the Congress their evaluations of the outcome of each phase, along with an outline of their projected actions for the next phase; and

(3) take such other actions as may be necessary or appropriate for the effective conduct and administration of the program, including assuring that the option for dedicated frequency spectrum is preserved immediately for a future, operational, large antenna, multi-spot beam communications satellite system for public service.

COMPREHENSIVE PLANNING AND PROGRAMMING

SEC. 6. The Administrator and the Secretary (acting in accordance with rules prescribed under section 3(c)) shall transmit to the Congress not later than September 30, 1979, a comprehensive plan for the program which shall be designed to meet the policy of this Act. Such plan shall identify—

(1) the basic elements of the program;

(2) the program schedule;

(3) a series of decision points within the program at each of which the program may be evaluated to determine that the values of services and technology to be developed will justify the investment being made, without prejudice to slow but promising developments; and

(4) the funding required to carry out each major element of the program in each fiscal year of the program.

ADVISORY COUNCIL

SEC. 7. (a) There is hereby established a council to be known as the Public Service Satellite System Advisory Council.

(b) The Council shall advise the Administrator and the Secretary in the performance of their duties under this Act.

(c) The Council shall consist of representatives of the prospective user community, and individuals with appropriate expertise drawn from the Administration, the Department of Commerce, industry, and universities.

(d) The President may appoint not more than 12 individuals to serve as members of the Council, one of whom he shall designate as its chairman. Not less than one-half of all individuals serving on the Council shall be members of the potential user community.

(e) Members of the Council appointed under this section shall be appointed for the life of the Council.

(f)(1) Except as otherwise provided in this subsection, members of the Council shall serve without pay.

(2) Members of the Council who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Council.

(3) While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the service of the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(g) The Council may secure directly from any Federal agency information necessary for it to carry out its responsibilities under this Act. Upon request of the Chairman, the head of such agency shall furnish such information to the Council.

(h) The Council may use the United States mails in the same manner and upon the same conditions as Federal agencies.

(i) The Administrator of General Services shall provide to the Council on a reimbursable basis such administrative support services as the Council may request.

(j) The Council shall cease to exist two years after the date of the enactment of this Act.

DEFINITIONS

SEC. 8. For purposes of this Act—

(1) the term "Administration" means the National Aeronautics and Space Administration;

(2) the term "Administrator" means the Administrator of the Administration;

(3) the term "common carrier" has the meaning given it in section 3(h) of the Communications Act of 1934;

(4) the term "Council" means the Public Service Satellite System Advisory Council established in section 7(a);

(5) the term "program" means the public service communications satellite research, development, and demonstration program established in section 3(a); and

(6) the term "Secretary" means the Secretary of Commerce.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There is hereby authorized to be appropriated, to carry out this Act, $10,000,000 for fiscal year 1980, and such sums as may hereafter be authorized by law for subsequent fiscal years.

## BALANCE(S) OF POWER SERIES BOOK II (H)(i) POLITICAL CULTURE

## HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, continuing with the strategic balance portion of the ongoing Balance of Power series, today's selection addresses the factor of political culture. An understanding of Soviet political culture, like national character, as analyzed in the previous entry, is important in assessing accurately the relative strengths and weaknesses of their country and ours.

The sorts of strengths which political culture may present include breadth of consensus, stability in crisis and succession, and active involvement in and popular support for Government decisions. Weaknesses, on the other hand, may occur as a result of rapid change or patterns of popular alienation from ruling elites.

Today's article, "Generations and Politics in the U.S.S.R.," suggests that the legitimacy of the Soviet Government has grown in the eyes of some Russians (the masses), while shrinking in the eyes of the more active citizens. The author, Walter D. Connor, finds reason to believe that the broader base of more diverse political activities will make possible a leadership succession after Brezhnev with less instability than many have foreseen. It remains for U.S. leadership to reflect on the strategic importance of this political trend in the Soviet Union.

This article first appeared in Problems of Communism, September-October 1975, issue of the American Sociological Review. The first part of Professor Connor's article follows:

GENERATIONS AND POLITICS IN THE U.S.S.R.

(By Walter D. Connor)

The "collective leadership" which displaced Nikita Khrushchev in 1964, and which in its early phase evoked so much speculation about the viability of committee rule in the USSR, has endured a decade and more—an impressive record in a period of global political instability. But whether one is inclined to persist in calling it "collective" rule or chooses to refer to "Brezhnev's Politiburo" (he, at least, restored its old name), the members of the ruling body of the Communist Party of the Soviet Union (CPSU), the watchdog of the Soviet state and society, have aged. Gradually but inevitably, they will leave the scene, making way for their successors.

This essay is not a venture in "Kreminology." I do not proposed to wade in surnames or to assess the durability of a Kirilenko succession in the face of claims by a Kulakov or by others more junior. Nor is it my intention to explore the factors militating for the inclusion or exclusion, in an emergent new leadership, of particular personalities among those eligible.[1] What the following discussion will attempt to do is to clarify some important aspects of contemporary Soviet political reality—mainly the problem (or nonproblem) of "generations" and the properties of Soviet political culture—as they relate to the politics and consequences of succession. Consideration of these matters will not enable us to predict the main personalities in the succession (at least I do not see how it can). What it may yield are some reasoned judgments, grounded in historical experience, concerning the path any new Politburo, whatever its composition, can be expected to follow, and how it will probably cope with both inherited problems and new ones.

GENERATIONS AND CHANGE

One might as well, at the outset, surrender to the temptation to use the term "generation"—but not without a caveat. The temptation is especially strong for Western analysts because the tenure of the Brezhnev-Kosygin "regime," whose passing is now anticipated in the near future, coincides roughly with an epidemic of youthful alienation, student revolt, and other manifestation of generational cleavage in the industrial West—a once seemingly "endless crisis" that peaked in 1968 and has only recently shown signs of abatement.[2] The Soviet Union was apparently free of such tensions, although they did affect Poland, Yugoslavia, and Czechoslovakia. But were they, perhaps, smoldering beneath the tranquil surface? If generational chasms open wide everywhere else, why should the USSR, despite its impressive apparatus of internal control, remain untouched? And if "youth" vs. "age" is not the critical confrontation there, it is not still reasonable to surmise that the convictions and expectations of the "middle-aged"—the educated, "industrial" generation—may differ greatly from those of the "gerontocracy" in the Politburo?

In trying to assess whether generational differences exist and, if so, what their political impact is, or is likely to be, we should beware of confusing our own hopes and expectations with reality, or with evidences of what we assume to be reality. This is an easy danger to succumb to, especially when we have the convenient peg of "generations"[3] (for we know that one generation must succeed another) on which to hang our expectations, and the danger should be recognized as such. Perhaps, after all, it is not the seeming gap between generations, but rather the impregnable solidity of the Soviet system, the stability of the Soviet "way of life" as it involves masses, elite, and the political process, that is the datum—the reality rather than the appearance. At least, raising this possibility provides a starting point for posing questions about Soviet "generations" and their relevance to the prospects for political change in the USSR.

These generational questions involve two distinct groups. First, there is Soviet "youth," i.e., the under 30 population. Does a broad gap divide it from the Brezhnev geenration; and if so, what is the gap about, and will it make a difference to the future of the Soviet politics? Second, there is the generation of presumptive Politburo "successors," those no longer "young," but younger than the current leadership. Do its members view their current rulers across some sort of chasm, and if so, is the nature of the chasm such that their succession to power can be expected to make a difference?

The question of "youth" can be handled in relatively short order. Western journalists and analysts are still inclined, on occasion, to point to the dissatisfaction of Soviet young people with the lack of consumer goods, to their desire for more rock music, miniskirts, blue jeans, etc., as evidences of a generation gap, and—more important—they view this gap as the portent of a transformed political future. It is understandable enough that they should be impressed by such manifestations of youthful discontent. One must gather impressions from someone, and Soviet young people are much more ready than their elders to talk freely to Westerners. However, the political implications are open to question, for such a gap—between youth who yearn for a certain lifestyle and their parents and political leaders who often deplore it—has demonstrably little to do with politics. (To paraphrase Andrei Amalrik, socialism with bare knees does not equal socialism with a human face.)

The fact is that Soviet youth in the mass is less differentiated from its elders along critical political lines than is its counterpart in the West. The combined machinery of tightly-controlled youth organizations and a traditional, nonpermissive educational system focused on the "adult" concern of preparation for the world of work, rather than on providing a hiatus between infancy and maturity in which one "explores" one's feelings, beliefs and needs, has had its effect. The social space in which Soviet youth might develop its own group consciousness, its own set of political orientations, has been tightly circumscribed by that machinery. Also, material affluence and a modicum of privacy, which have been essential to the development of youth cultures in the West, are still lacking in the USSR. Whatever generation gap does exist there, it does not involve a politicized "youth culture."

Even if such a culture did exist, it could have no near-term political effect since it is not from youth's ranks that the successors to today's "gerontocracy" will come. Unlike the US Congress, the mechanisms of Soviet government have not yet reached the point of welcoming those in their late twenties and early thirties to a share of the seats of power. Thus, the relevance of the current political convictions of Soviet youth, whether they be oppositional (unlikely) or conformist-apolitical (more likely), lies only in the distant future, by which time those convictions may or may not have changed but will certainly no longer be the convictions of "youth."

More relevant, surely, are questions about those who will succeed to power, and what we may expect from them as the iron law of the actuary works to change the composition of the Politburo in their favor. Here, if there is a "gap" which will have a marked effect on the conduct of Soviet politics, it must, in the author's view, be of a particular type. Certainly we may anticipate gaps—in styles of management, in readiness to rely on "technical" expertise, in propensity to employ Marxism-Leninism as a rationalization for actions—that arise from career differences. An older generation whose educational/professional credentials were often attained after their potential leadership ability was noted by the party and a younger one whose

Footnotes at end of article.

similar credentials were their "ticket" of admission into the lower ranks of the elite can doubtless be expected to behave differently in some cases. But these differences, however significant, are not the stuff of which political transformations are made. The gap must come in the realm of "political culture" itself—in that region where questions about the purposes and uses of politics are explicitly raised. This being the case, it is well now to turn to an examination of political culture in the contemporary USSR.

SOVIET POLITICAL CULTURE

Years ago, one of the pioneering students of political culture argued that it was the product of "both the collective history of a political system and the life histories of the individuals who currently make up the system . . ." [4] Considering what those histories have been in the USSR, it is hardly surprising that an astute analyst of Soviet affairs quite recently characterized the political culture of the Soviet Union as "almost unbelievably aberrant and deviant." [5] The Soviet political culture is clearly rooted in the extraordinary history of Russia over the last 60 years, portions of which, greater or smaller, have shaped the consciousness of both the elites and the masses. Without attempting an exhaustive inventory, I would argue that three major, historically-rooted elements characterize the current political culture: apoliticality, the conviction of impotence, and expectancy.

Apoliticality. It might seem paradoxical to assert that in a society so evidently "politicized," where such a wide range of behavior is accorded political significance by the regime, the overwhelming mass of the population is apolitical. Yet the paradox is only apparent. It is all very well to emphasize the heavily politicized content of the educational processes and the mass media, to which all Soviet citizens are exposed. It is, however, a very different thing to assert that this exposure results in a politicized population. If anything, the major effects—and probably the main purposes—of official socialization and communications efforts have been and are, on the one hand, to assure the public that there are no more major domestic political issues (these having all been resolved correctly and immutably in the course of Soviet history) and, on the other, to depoliticize social and economic issues such as housing, incomes policy, environmental preservation, and access to education, in order to prevent dicussions of these matters from reaching the point where any kind of political change might be entertained, even hypothetically, as a necessary step toward their solution. If indeed these have been the purposes of the regime's virtual monopoly of education, communications, and extra-familial socialization, they have been pursued with vigor—and effectiveness—for the more than 40 years since Stalin initiated the "second revolution."

To say that most Soviet citizens are apolitical is not to say that they are "parochials," as were, no doubt, many of the inhabitants of the Russian Empire, to whom the state was little more than taxgatherer. Today's citizens are quite aware that they have a central government (they could scarcely escape such awareness); they are oriented toward it; indeed, in some generalized sense, they are in large measure loyal to it. But the face of that government as a political mechanism, as an arena in which conflicts at high levels are resolved, with consequences for those citizens, remains vague and blurred. Nor do most Soviet citizens, at least to the author's knowledge, find this strange. To them, "politics," insofar as its existence is perceived, is the business of the leaders, not of the common folk. Enough for them to identify with the system and to focus their grumblings about the vicissitudes of everyday life on the middle- and low-level bureaucrats (whom they see excoriated with monotonous regularity anyway on the pages of Pravda and Izvestia).[6] Notwithstanding all the complaints of Agitprop about inadequate idealogical training, low levels of political consciousness, etc., on the part of the masses, the Soviet leadership is probably quite satisfied, on balance, that it has such a docile population to deal with, presenting little need at the moment for the regime to resort to coercion to keep it in line. Those who view the complaints of Agitprop and idealogical specialists about "shortcomings" as the tip of an iceberg whose submerged mass contains widespread, smoldering resentment forget that, like any bureaucratic organization, Agitprop must justify its continued existence, expenditures, and personnel demands. The line that, in spite of great progress to date, there is yet "more to be done" is a conventional way of doing this.

Of course, the threat of coercion also plays a role in encouraging apoliticality. If one were to paraphrase Anthony Downs [7] and attempt to construct an "economic theory" of Soviet "post-totalitarianism," one element would be the costs of political participation going beyond the permissible limits prescribed by the system. In a democracy, citizens may remain politically uninvolved because they feel the system works tolerably well; or, alternatively, because they may calculate that the costs of political action to remedy the defects that they perceive are too high—in terms of energy, time, money, and foregone opportunities for other, non-political gratifications—when balanced against the potential benefits to be gained. For citizens in a polity of the Soviet type, the costs of engaging in unsponsored political activity are high, and they are clear—harassment, loss of job, imprisonment—while the potential benefits are few and doubtful. The cost-benefit calculus is thus much clearer in the East than in the West, and it is one that leads many citizens of Soviet-type policies to prefer a safe apoliticality to a risky political activism.

(It is precisely this calculus that Solzhenitsyn has in mind in his recent writings when he urges people to withdraw support from the "official lie." Addressing himself to the intelligentsia, he argues that one cannot fight for change without costs, on "weekends and in our spare time, without giving up our scientific research institutes." Moreover, he warns that each citizen will stand alone, "in chilling isolation," at least at the outset; yet he invites his countrymen to brave the punishment they will receive for even the nonviolent, "spiritual," but open resistance he encourages:

"A society to vicious and polluted . . . can only be cured and purified by passing through a spiritual filter. And this filter is a terrible one, with holes as fine as the eye of a needle, each big enough for only one person. And people may pass . . . only one at a time, by squeezing through.

"By deliberate, voluntary sacrifice." [8]

If not utopian, Solzhenitsyn's exhortation certainly idealistic. It asks much, perhaps too much, of a people for whom the consequences of open opposition have been only too clear.)

These observations may throw the particular "heresy" of Soviet dissidents into sharper relief. It is rooted not so much in opposition as in laying claim to participation. To be a dissident is to enter politics without a license, to participate without official sponsorship. It is to attempt (as do the writings of the Solzhenitsyns, Medvedevs, and Sakharovs) to restore "politics" as a weighing of alternatives. This is the major crime of the dissenters; their break with the apoliticality of the mass political culture.

The Conviction of Impotence. A different matter from "apoliticality" is an individual's socially-conditioned assessment of his own political efficacy. Concerned he may or may not be about politics—but if he were concerned, could he have any effect? Were he to translate generalized feelings of support or opposition into action, would his acts strengthen or weaken the system in any way, or are the levers of power so far removed from reach as to make such efforts pointless?

This is a broad question, but the answer, in my view, is fairly clear. The Soviet citizen, whether comfortable or not with the feeling, experiences a sense of his own powerlessness. Though writing in the different context of the "Sovietization" of Eastern Europe, the Polish émigré writer Juliusz Mieroszewski captures this point well when he notes that the "goal (of Sovietization) is acceptance—not of the system (the party does not depend on this) but of one's own impotence." And indeed, the whole history and experience of the Soviet population could scarcely have had any other effect. They have been "mobilized" for industrial and agricultural efforts, for defense and reconstruction—and always from the top, whence their revolution emanated. Though sometimes consultative in style (for example, when discussions on public issues are conducted in the press with "broad representation" of public views), Soviet politics has been manipulative and perspective in substance. The great political decisions of Soviet history—ranging from Stalin's commitment to the rigors of coercive and rapid modernization, through Khrushchev's denunciation of the Stalin cult, to the current leadership's decision to pursue détente—may have been received with pain or pleasure by the masses, but they did not emanate from any structured participation by the masses in determining the course of policy.

No less able than other peoples to distinguish reality from appearance, the Soviet people have drawn the proper conclusions from such historical examples as to their place in the system. If we accept the view of Valery Chalidze that the regime has in any case convinced the population at large that it is the only possible regime and that, whatever flaws it may possess, "any other conceivable regime would be frightful," [10] then such conclusions may not be painful for the majority. For the minority who harbor the germs of a "participant" orientation, for the "middle class" which has much to gain from legality, predictability, and rationality, the conviction that they are powerless, that to protest is to beat one's head against a wall, is no doubt agonizing, but it is nonetheless a real conviction.[11]

What Soviet political culture lacks, in a sense, is a citizenry, in the normative sense of a collectivity of persons with "participant" orientations toward politics adequate to support movement toward what Gabriel A. Almond and Sidney Verba have called the "civic culture"—i.e., toward democracy. As these authors noted, democracies do not rely on "participants" alone; they require subjects and parochials as well, in a viable mix.[12] But when "participants" are in such short supply as they are today in the USSR, the prospects for democracy seem bleak indeed—even if a liberalizing regime were to plant the appropriate seeds.[13] The contemporary mass political culture may not require the type of government the USSR now possesses. It could tolerate and support a wider range of authoritarian or totalitarian, looser or tighter political structures—but hardly stable democracy. The point is not only that the older Soviet generations have been trained to the garrison disciplines of totalitarianism, but also that no generation has been socialized into the disciplines of democratic participation.[14]

Although the general scheme formulated by Almond and Verba provided a framework for examining specifically democratic polities, one element of their characterization of a

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"subject-participant" culture is suggestive in the Soviet case:

"Because participant orientations have spread among only a part of the population, and because their legitimacy is challenged by the persisting subject subculture and suspended during authoritarian interludes, the participant-oriented stratum of the population cannot become a competent, self-confident, experienced body of citizens." [15]

FOOTNOTES

[1] For a perceptive recent discussion of these factors and other aspects of the succession, see Grey Hodnett, "Succession Contingencies in the Soviet Union," *Problems of Communism* (Washington, D.C.), March–April 1975, pp. 1–21.

[2] A characteristic Western (or American) response to such problems (and one that provides evidence of a significant difference between the Western and Soviet political cultures) is to organize a widely-publicized conference, such as the one in Princeton, N.J., in December 1968, which produced *The Endless Crisis: A Confrontation on America in the Seventies* (edited by François Duchêne), New York, Simon and Schuster, 1970.

[3] "Generation" is of course, an exceedingly slippery and imprecise term. People are born "all the time," not at intervals convenient for grouping under such terms. It is used here in a very loose sense, bearing in mind its deficiencies as well as its familiarity.

[4] Lucien W. Pye, "Introduction," in Lucien W. Pye and Sidney Verba, Eds., *Political Culture and Political Development*, Princeton, N.J., Princeton University Press, 1965, p. 8.

[5] Robert Conquest, "A New Russia? A New World?," *Foreign Affairs* (New York), April 1975, p. 483.

[6] Roy Medvedev, in the revised English-language version of his treatise on socialist democracy, which came to hand after the bulk of this essay was written, makes somewhat similar points about apoliticality ("the majority of the people and a large part of the intelligentsia are politically passive—indifference, or even a conscious rejection of politics, has become an ingrained habit, a form of self-protection"); about the purposes of political socialization as conceived by the "dogmatists" ("to assure us that the general development of the country is proceeding correctly, that basically it was always moving in the right direction"); and finally about the popular view of the government ("an assumption by the common people . . . that those in charge are pursuing a correct policy, that the leadership is composed of people best qualified to interpret Marxism"). (Regarding this last, however, I would scarcely agree that the common people's assumptions about their leaders' adequacy in interpreting Marxism are a major component in the legitimacy the leadership is accorded.) See Roy A. Medvedev, *On Socialist Democracy*, New York, Alfred A. Knopf, 1975, pp. 172, 197, 298, respectively.

[7] See Anthony Downs, *An Economic Theory of Democracy*, New York, Harper, 1957.

[8] From "The Smatterers," in Alexander Solzhenitsyn *et al.*, *From Under the Rubble*, Boston, Little, Brown, 1975, p. 272.

[9] "The Political Thought of *Kultura*", in Leopold Tyrmand, Ed., *Kultura Essays*, New York, Free Press, 1970, p. 309.

[10] *To Defend These Rights: Human Rights in the Soviet Union* (Translated by Guy Daniels), New York, Random House, 1974, p. 149.

[11] See Andrei Amalrik's remarks on this in "Will the USSR Survive Until 1984?" in *Survey* (London), Autumn, 1969, pp. 54–55.

[12] *The Civic Culture*, Princeton, N.J., Princeton University Press 1963, p. 20.

[13] It was evidently in the "participant" sense that the Czech writer Ludvik Vaculik understood the word "citizen" when he said (at the Czechoslovak Fourth Writers' Congress in June 1967): "I believe that there are no citizens in our country any more." Yet, a year later, the "reserves" of the Czechoslovak democratic tradition *had* reasserted themselves in the Prague Spring. There *were* citizens; they had emerged from hiding. However, the vastly different traditions and history of Soviet Russia would make the "responsiveness" of the masses there to democratic-participatory stimuli from a liberalizing regime a matter of some doubt. For a summary of Vaculik's address, see Barbara Wolfe Jancar, *Czechoslovakia and the Absolute Monopoly of Power*, New York, Praeger, 1971, pp. 73–75.

[14] Many Soviet dissidents have characterized the mass political "mind" in their country in terms suggesting that democratic procedures, if allowed, could not flourish. Nadezhda Mandelstam sees much of the population as "mentally ill" and observes that no one could be "normal" after fifty years of Soviet history (*Hope Abandoned*, New York, Atheneum, 1974, p. 479). Solzhenitsyn, in his *Letter to the Soviet Leaders*, New York, Harper and Row, 1974, p. 52, argues that over the last fifty years "Russia's preparedness for democracy, for a multiparty parliamentary system, could only have diminished."

[15] Almond and Verba, *op. cit.*, p. 25. Frederick Barghoorn has characterized the Soviet political culture as "subject-participatory," using these terms in a slightly different sense from their connotation in the Almond-Verba conceptualization of a "subject-participant" culture (see his *Politics in the USSR*, 2nd ed., Boston, Little Brown, 1972, pp. 20 ff; and his essay "Soviet Russia: Orthodoxy and Adaptiveness," in Pye and Verba, *op. cit.* pp. 450–511.) ●

## HOUSE ACTION STRENGTHENS DOMESTIC AIRLINES

### HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. JONES of Oklahoma. Mr. Speaker, during the 95th Congress, the Ways and Means Committee has taken two significant actions to insure that our airline industry remains a viable force in our Nation's transportation system.

Both actions had caused a certain amount of controversy, but the solutions drafted by the committee should be supported by all Members of Congress who seek fairness in our transportation policies.

The first action concerns the taxation of so-called "fringe benefits" received by employees of airlines. As you may recall, the Internal Revenue Service circulated proposed rules in 1976 that would provide for the taxation of airline employees' flight passes.

This attempt by the IRS to reverse years of tax policy in this area was both unwarranted and unwise. First of all, the taxation of such passes would be incredibly difficult to administer from the IRS's point of view. Second, it would be most difficult for airline employees to calculate the amount of benefit received from passes for purposes of filing their taxes. Third, these flight passes are used to encourage the best qualified personnel to enter the airline industry. Oftentimes, the salaries paid by airlines are not commensurate with other occupations. The existence of limited free or reduced flying privileges is a great incentive for the airlines to retain and keep the best personnel possible to insure the safe trips of thousands of Americans aboard our air carriers.

Mr. Speaker, as you know, the Ways and Means Committee became active in this area of fringe benefits. We held hearings, and questioned the administration on the reason for this change of policy. We passed H.R. 9251, which I authored, which prevented the IRS from changing long-standing tax policy in this area and other areas of fringe benefits. The committee recently passed yet another bill that reaffirmed my position that the Congress, not the bureaucracy, will make the rules by which citizens are governed.

The second action the committee considered and passed was a provision dealing with aircraft noise reduction. The committee worked out an equitable provision that would earmark a portion of the excise tax currently collected on the sales of tickets and freight for purposes of reducing noise due to the operations of commercial aircraft.

A little over a year ago, the Federal Aviation Administration declared that many of the present aircraft flown by U.S. airlines violated Government noise control standards. This FAA declaration forced many airlines to either abandon their present fleet of airplanes, or expend large sums of money to retrofit present aircraft for less noisy operation.

The Ways and Means Committee studied the current excise tax on tickets and freights, and decided that the airlines should be allowed to use a portion of the funds derived from this tax to offset the cost of such conversion. I think it is important to keep in mind that the Federal regulations are the cause of this conversion, and considering the financial picture of most of the airline companies, I think it is proper to fund part of the cost from the current excise tax. If this is not done, airline customers will pay for the conversions anyway through higher air fares.

Mr. Speaker, American Airlines is the largest civilian employer in the State of Oklahoma. It is true that much of the noise conversion work for American will be done in my district. I would not be truthful if I did not say American's presence in my district did not affect my vote on the noise bill, for I am charged with representing the best interests of my constituents. Nevertheless, I hope my other colleagues will also share my opinion that the noise reduction bill is an equitable solution to a problem placed on the airlines in part due to the Government's environmental policy. I hope they will join me in supporting this legislation and working for its passage in this Congress.

These two actions by the Ways and Means Committee—the fringe benefit tax treatment bill and the noise reduction bill—should be supported by the Congress. I urge continued support for our efforts to fashion a fair and workable policy toward our airline industry. ●

## AIRLINE PASSENGERS OPPOSE NOISY AIRCRAFT BILL AS A $3 BILLION GIVEAWAY OF TREASURY FUNDS TO THE AIRLINES

### HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. VANIK. Mr. Speaker, the opposi-

tion to the $3 billion Treasury giveaway program to the airlines continues to grow. In a letter that appeared in the Washington Post of September 11, Harold J. Salfen of the Airline Passengers Association outlined why the airline traveling public opposes the bill. The letter follows:

THIS YEAR'S TREASURY AIR RAID

The Airline Passengers Association agrees with your Aug. 8, editorial "This Year's Treasury Air Raid." APA, as the representative of over 40,000 frequent airline travelers, is strongly opposed to the financing proposal of the Airline Noise Reduction Bills as a giveaway of over $3 billion to U.S.-certificated airlines.

Currently, there is an 8 percent domestic passenger-ticket tax, a 5 percent domestic air-freight tax, and an international passenger-departure tax, which the airline passenger and shipper agreed to pay because the funds to be collected would be placed in a trust fund and used to improve airport and aviation safety. APA opposes the financing proposal, which provides for diversion to the airlines of a portion of these safety taxes to pay for quieter airplanes or engines to re-

APA's position is that, first, taxes should not be utilized to pay for improvements in aircraft owned by private airline companies. The current record of airline earnings should enable the airlines to comply with the federally mandated noise standards without federal assistance.

Second, APA opposes the precedent that would be set by the federal government's providing funds through a dedicated tax to a private industry to pay for environmental changes. If this legislation passes, any industry required to make changes as a result of a federal requirement will have strong precedent to demand that the federal government pay for such changes.

APA understands that if this taxing proposal is not enacted, then some carriers will have to raise fares to finance the new aircraft or engines to meet the new noise standards, and under the new regulatory environment this would be a great deal easier. However, many well-managed airlines have already re-equipped or replaced much of their aging jet fleets, and they would be in a position to reduce fares when they have completed their retrofit replacement programs. APA feels that this is a more equitable situation than a giveaway of a portion of the safety ticket tax.

HAROLD J. SALFEN,
*Executive Director, Consumer Affairs, Airline Passengers Association.*

The airline passengers are adding their voices to the chorus that opposes the bill. I urge my colleagues vote against the closed rule so that amendments which would reduce the airline passenger tax and deny the airline industry and investment tax credit on the Treasury gift may be considered.

The airline passengers want to keep the cost of their tickets down and do not want their tax dollars going to pay the airlines' bills. We cannot afford to disagree with them.●

## REFORM OF TRANSPORTATION PLANNING REQUIREMENTS

### HON. ROBERT W. EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. EDGAR. Mr. Speaker, during the course of my service on the Public Works and Transportation Committee I have watched impatiently as group after group has come before the Surface Transportation Subcommittee to request more money for this need or that need. In many cases, the need for more funding is genuine, but the facts show that much of the transportation funding now authorized by law is not being spent. What are the causes of this spending lag, especially in view of pressing bridge, highway repair, and public transportation needs in our communities?

I have attempted to look at how these programs operate down at the local and State levels. From this perspective one can see clearly the impact of all of the redtape various well-intentioned Federal acts have created over the years. State highway programs are throat-deep in redtape; it is impossible for a lay person to understand how Federal highway funds are allocated and spent. The Federal urban mass transportation program, by and large, seems better run but no less complicated. All of the transit funds we appropriate are being committed to projects, but the lag between commitment and expenditure is distressingly long.

One of the things this Congress can do to improve this situation is reform and streamline the Federal transportation planning requirements that now apply to urban areas.

Under the current system, urban highway funds are received by States but passed through to urbanized areas; local officials initiate projects and prepare the areawide highway improvement programs. Transit funds are sent directly to applicants within urbanized areas; again the local officials initiate projects and prepare programs for public transportation improvements. Highway planning and mass transit planning is supposed to be unified, and an elaborate system of institutional arrangements has been created to accomplish this.

Current Federal planning requirements call for an areawide transportation plan, a "prospectus" summarizing the plan, a "transportation improvement plan" which is really a program, an "annual element" listing TIP projects for the coming year, a "transportation system management element" proposing all ternative strategies to make better use of existing transportation resources, and finally—under a new agreement between the Transportation Department and the Environmental Protection Agency—a "transportation control plan" that links all of the above documents to the EPA-mandated "State Implementation Plan" for air quality improvements.

All of this has gotten out of hand. Just try to explain the process to a citizen interested in monitoring transportation planning in his community. If we can not explain this process, it is time to change it.

Working with several advisers at the local level, and with the benefit of comments from many individuals here in Washington, I have developed an amendment to this year's surface transportation legislation, H.R. 11733, to reform the urban transportation planning process.

This amendment replaces several overlapping planning sections now found in the transportation statutes. The six-step planning process is replaced by a two-step process: under my amendment, urban areas would prepare one transportation plan with two components: long-range and short-range. As under current law, the Secretary must approve these plans before planning certification is granted. Funds for projects in any given year cannot be spent until planning certification is granted for that year. This central fact remains the same, but for the first time we would be giving the Secretary of Transportation guidelines by which to judge the plans submitted to him under this process.

Currently, under section 4(a) of the Urban Mass Transportation Act, plans submitted to the Secretary must "meet criteria established by him." This blanket authority is a carte blanche to the rule writers, and I recommend that we repeal it. Instead, I propose a system where, every 2 years instead of annually, the Secretary reviews urban transportation plans, granting certification in all cases except where local officials propose programs that are plainly inappropriate to six basic, national goals:

First. The urban area transportation system should be coordinated with the statewide transportation system;

Second. Transportation plans should be consistent with areawide land use plans—as adopted by the local officials;

Third. Transportation improvement costs should be minimized by making more efficient use of existing transportation resources;

Fourth. Energy consumption should be reduced, and air quality improved, by reducing single-passenger automotive travel to and from major centers of employment during rush hours;

Fifth. Traffic fatalities should be reduced, and other aspects of transportation safety improved; and

Sixth. Mobility should be improved for all people, with special efforts made in meeting the needs of the transportation-disadvantaged.

These are sensible goals for the Federal transportation program in urban areas. These goals would not be used, and it is important to emphasize this, as an axe over individual highway or transit projects proposed by local officials. Rather, my amendment stipulates that the project decisions of local officials must be certified by the Secretary unless, in the aggregate, the program of projects does not promote these national goals. It is actually a weak test, but it can be effective in promoting sound use of Federal transportation resources.

In summary, my amendment reduces planning requirements from a six-step to a two-step process. It puts the process on 2-year rather than an annual cycle. It repeals open-ended authority in current law, and states six modest but important goals by which the Secretary is instructed to review the plans submitted to him.

The current planning requirements are based on the following sections of Federal law, which are printed here for easy reference by congressional staff. Today I am inserting in the RECORD the amendment which I hope will replace

these overlapping sections. The amendment is listed under H.R. 11733. Here are the planning sections of current law:

URBAN MASS TRANSPORTATION ACT OF 1964

SECTION 3(a)(2) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an urbanized area after July 1, 1976, under this section unless he finds that such project is based on continuing comprehensive transportation planning process carried on in conformance with the objectives of this paragraph.[10] [11]

SECTION 4. (a) No [23] Federal financial assistance shall be provided pursuant to subsection (a) of section 3 unless the Secretary determines [24] that the facilities and equipment for which the assistance is sought are needed for carrying out a program, meeting criteria established by him, for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area, and are necessary for the sound, economic, and desirable development of such area.[25] Such program shall encourage to the maximum extent feasible the participation of private enterprise. Where facilities and equipment are to be acquired which are already being used in mass transportation service in the urban area, the program must provide that they shall be so improved (through modernization, extension, addition, or otherwise) that they will better serve the transportation needs of the area. The Secretary, on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 3 cannot be reasonably financed from revenues—which portion shall hereinafter be called "net project cost." The Federal grant for any such project to be assisted under section 3 shall be in an amount equal to 80 per centum of the net project cost.[26] The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds. Such remainder may be provided in whole or in part from other than public sources, and any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. No refund or reduction of the remainder of the net project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant.[27]

(g)(1) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvement in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an urbanized area after July 1, 1976, under this section unless he finds that such project is based on a continuing comprehensive transportation planning process carried on in conformance with the objectives stated in this paragraph.

(2) The Governor or designated recipient shall submit to the Secretary for his approval a program of projects for utilization of the funds authorized, which shall be based on the continuing comprehensive planning process of paragraph (1). The Secretary shall act upon program submitted to him as soon as practicable, and he may approve a program in whole or in part.

(3) An applicant for assistance under this section (other than a Governor) shall submit the program or programs to the Governor of the State affected, concurrently with submission to the Secretary. If within thirty days thereafter the Governor submits comments to the Secretary, the Secretary shall consider such comments before taking final action on the program or programs.

Title 23, United States Code (Highways):

§ 134. Transportation planning in certain urban areas

(a) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States, as authorized in this title, in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperathis section. No highway project may be constructed in any urban area of fifty thousand population or more unless the responsible public officials of such urban area in which the project is located have been consulted tively by States and local communties in conformance with the objectives stated in and their views considered with respect to the corridor, the location and design of the project.●

## SENATE COMMITTEE MEETINGS

Title IV of the Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 12, 1978, may be found in Daily Digest of today's RECORD.

### MEETINGS SCHEDULED

SEPTEMBER 13

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To resume hearings to examine the Federal Government's role in food safety and quality, with emphasis on the nitrite situation.
322 Russell Building

9:00 a.m.
Judiciary
Administrative Practice and Procedures Subcommittee
To continue hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

9:30 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

10:00 a.m.
Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Foreign Relations
To meet in closed session to receive a briefing on the current situation in Nicaragua from Assistant Secretary of State Viron Vaky.
S–116, Capital

Governmental Affairs
Permanent Investigations Subcommittee
To resume hearings with regard to the widespread nature of arson-for-profit, including evidence of the role of organized crime.
3302 Dirksen Building

11:00 a.m.
Conferees
On H.R. 12936, making appropriations for the Department of Housing and Urban Development and certain independent agencies for FY 79.
H–140, Capitol

1:00 p.m.
Conferees
On H.R. 11445, authorizing funds for programs administered by the Small Business Administration.
2359 Rayburn Office Building

2:00 p.m.
Conferees
On H.R. 12255, authorizing funds through FY 1980 for programs administered under the Older Americans Act.
H–328, Capitol

SEPTEMBER 14

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To continue hearings to examine the Federal Government's role in food safety and quality, with emphasis on the nitrate situation.
322 Russell Building

9:30 a.m.
Judiciary
To hold hearings on the nomination of Bruce S. Jenkins to be U.S. district judge for the district of Utah.
2228 Dirksen Building

10:00 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 1699, proposed Diesel Fuel and Gasoline Conservation Act.
235 Russell Building

Energy and Natural Resources
To hold hearings on S. 3283, proposed State Energy Management and Planning Act.
3110 Dirksen Building

Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Governmental Affairs
Permanent Investigations Subcommittee
To continue hearings with regard to the widespread nature of arson-for-profit, including evidence of the role of organized crime.
3302 Dirksen Building

Rules and Administration
To further consider S.J. Res. 142, authorizing the FDR Memorial Commission to proceed with construction of FDR Memorial in West Potomac Park, and on other pending legislation.
301 Russell Building

Select on Intelligence
To meet in closed session to receive a briefing by CIA officials.
S-407, Capitol

2:00 p.m.
Appropriations
To mark up H.R. 1291, making appropriations for FY 79 for foreign assistance programs, and H.J. Res. 1088, to provide for loan guarantee authority for New York City and appropriations in the case of any eventual default.
S-128, Capitol

Select on Ethics
To hold a closed followed by an open business meeting.
S-207, Capitol

3:00 p m.
Conferees
On H.R. 7577, extending through FY 1981 certain programs administered under the Economic Opportunity Act.
H-328, Capitol

3:30 p.m.
Select on Intelligence
To hold a closed business meeting.
6226 Dirksen Building

SEPTEMBER 15

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To continue hearings to examine the Federal Government's role in food safety and quality with emphasis on the nitrite situation.
322 Russell Building

SEPTEMBER 18

10:00 a.m
Finance
To resume mark up of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume hearings to examine alleged abuses in the GSA's contracting and procurement divisions.
3302 Dirksen Building

SEPTEMBER 19

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
6226 Dirksen Building

9:30 a.m.
Human Resources
Labor Committee
To hold hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To mark up S. 3485, to provide for the maintenance of reserves for certain financial institutions, to require the imposition of charges for certain services by Federal Reserve banks, and to authorize the payment of interest on reserves held in Federal Reserve banks.
5302 Dirksen Building

Energy and Natural Resources
Energy Research and Development Subcommittee
To hold hearings on S. 3392, to accelerate the use of solar energy as a source of electricity.
3110 Dirksen Building

SEPTEMBER 20

9:00 a.m.
Judiciary
Administrative Practice and Procedures Subcommittee
To resume hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

9:30 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Human Resources
Labor Subcommittee
To continue hearing on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue mark up of S. 3485, to provide for the maintenance of reserves for certain financial institutions, to require the imposition of charges for certain services by Federal Reserve banks, and to authorize the payment of interest on reserves held in Federal Reserve banks.
5302 Dirksen Building

2:00 p.m.
Commerce, Science, and Transportation
To hold hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 21

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

9:30 a.m.
Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

Judiciary
Administrative Practice and Procedure Subcommittee
To hold hearings on S. 2862, proposed Regulatory Control Act.
2228 Dirksen Building

SEPTEMBER 22

9:30 a.m.
Human Resources
Labor Subcommittee
To resume hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

SEPTEMBER 25

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To resume hearings to examine the Federal Governments' role in food safety and quality, with emphasis on the nitrite situation.
322 Russell Building

SEPTEMBER 26

10:00 a.m.
Banking Housing, and Urban Affairs
To hold oversight hearings on problems of small business defense contractors.
5302 Dirksen Building

Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to receive testimony on nuclear reactor safety systems from NRC Chairman Hendrie.
4200 Dirksen Building

Finance
Public Assistance Subcommittee
To hold hearings on H.R. 10848 and H.R. 12972, to modify the disability aspects of the Supplemental Security Income program.
2221 Dirksen Building

2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 27

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on financing of future energy needs.
5302 Dirksen Building

SEPTEMBER 28

10:00 a.m.
Banking Housing, and Urban Affairs
To continue oversight hearings on financing of future energy needs.
5302 Dirksen Building

2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

OCTOBER 3

9:30 a.m.
Human Resources
Labor Subcommittee
To hold oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building

Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 4

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the Administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 5

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the Administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To hold oversight hearings on International housing programs
5302 Dirksen Building

OCTOBER 6

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To continue oversight hearings on international housing programs.
5302 Dirksen Building

CANCELLATIONS

SEPTEMBER 14

10:00 a.m.
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter and its overall policy.
2228 Dirksen Building

# SENATE—*Tuesday, September 12, 1978*

*(Legislative day of Wednesday, August 16, 1978)*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. PAUL G. HATFIELD, a Senator from the State of Montana.

## PRAYER

The Reverend Monsignor John J. Murphy, director, the National Shrine of the Immaculate Conception, Washington, D.C., offered the following prayer:

Let us pray:

Father of everlasting goodness, our origin and guide, be close to all of us assembled here and hear our prayers of praise.

Accept our humble thanks and praise for the opportunity to make Your noble concept of sacred trust a visible sign of Your influence upon our lives.

Deepen our faith in the mystery of Your presence, strengthen our hope for eternal life with You, and let our love for You bear cheerful and joyous witness to the works of righteousness.

Open our eyes to the wonders this world sets before us, that we may serve You free from fear and address You as God, our Father.

We ask this in the name of Jesus, the Lord. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., September 12, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PAUL G. HATFIELD, a Senator from the State of Montana, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. PAUL G. HATFIELD thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

## THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## NATIONAL AQUACULTURE POLICY ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1091.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3408) to provide for the development of aquaculture in the United States, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, I wish only to advise the majority leader that that item on our calendar is cleared and we have no objection to proceeding to its consideration.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture, Nutrition, and Forestry and the Committee on Commerce, Science, and Transportation, jointly, with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "National Aquaculture Policy Act of 1978".

FINDINGS

SEC. 2. Congress finds and declares that—

(1) Through intensive applications of science and technology, agriculture has met man's needs for food supplies and for other renewable resources by extensive husbandry of terrestrial plants and animals, but similarly extensive husbandry of aquatic animals or plants has not been achieved.

(2) Many segments of the world population are now facing serious nutritional deficiencies and food shortages due to environmental degradation, adverse climatic conditions, and the steady growth of population. These problems will become more severe. The resulting demand for increased food production will have to be met in part through the application of scientific and technological advances from research on aquaculture and other underused food production systems.

(3) The world demand for seafood is increasing, but the harvest of some natural populations of fish and shellfish has exceeded levels of optimum sustainable yield.

(4) Aquaculture is contributing to world food supplies with production equal to 10 percent of current landings of seafoods, and that production has the potential for significant increase before the end of this century.

(5) Certain stocks of fish and shellfish of importance to the United States are declining, or are depleted, which has had an undesirable effect on both commercial and recreational fisheries.

(6) There is an extensive market for seafood in the United States, but the United States imports more than 50 percent of its fish and shellfish for human consumption (and those imports are 10 times greater than the level of exports). This dependence on imports results in balance of payment deficits and uncertainty and often inequality of supplies.

(7) Less than 3 percent of current United States fisheries production results from aquaculture, but there is good potential for expanding aquacultural production in the United States so that such production can equal or exceed the worldwide average. This would help to provide domestic consumers with a stable supply of high quality aquatic foods and assist the United States in its balance of payments.

(8) Aquatic plants are a source of food for human and animal consumption, a source of industrial materials and pharmaceuticals, a potential source of energy, and can be used to assist pollution control and abatement efforts.

(9) The rehabilitation and enhancement of the publicly owned fish and shellfish resources are desirable applications of aquaculture technology as a means to ensure the

general public benefits to be derived from the use of these common property resources.

(10) Aquaculture in the United States has traditionally been concentrated on a few species, but many other aquatic species have a potential for commercial culturing and other uses. While many scientific and technological problems are unsolved, there is sufficient knowledge to further the development of aquacultural production systems for additional species of fish, shellfish, and plants. Congress recognizes the importance of developing aquaculture of both plant and animal species.

(11) The application of aquacultural technology offers opportunities for the recovery of wasted thermal energy, nutrients, and other resources.

(12) Water areas, whether fresh, brackish, or marine, which are suitable for aquaculture are, in many cases, underused, and their total acreage is diminishing as such areas are put to other uses or destroyed.

(13) In those areas of the United States that are suitable for aquaculture but have land-use or water-use management policies that may inhibit the development of aquaculture facilities, consideration should be given to changing those policies so that aquaculture will be considered along with the other possible uses of such areas.

(14) The development of aquaculture in the United States has been inhibited by many economic, legal, and production factors; these include inadequate credit, diffused legal jurisdiction, lack of management information for such stocks as are available, or the lack of reliable supplies of seed stock.

(15) Government programs that help to reduce the risks associated with production of agricultural commodities have not been generally available to producers of aquatic species.

(16) Current efforts to develop aquaculture in the United States are numerous, but sometimes diffuse; a strong commitment by the Federal Government will bolster and consolidate these efforts and make aquaculture more viable, thereby stimulating private and public investment and development.

(17) Much knowledge of and many initiatives for aquacultural development exist at the State and local levels that should be used to assist any Federal effort in fostering cooperation between individuals and institutions to improve the aquaculture industry.

(18) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

PURPOSE

SEC. 3. It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national plan for aquaculture; and

(3) developing programs and encouraging activities in both the public and private sectors of the economy that will result in increased aquaculture, the coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

DEFINITIONS

SEC. 4. As used in this Act, unless the context otherwise requires the term—

(1) "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including ocean ranching, except private ocean ranching of Pacific salmon for profit.

(2) "aquaculture facility" means any land, structure, or other appurtenance, if such land, structure, and appurtenance is located within the United States and is used for aquaculture, including, but not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment.

(3) "aquatic species" means any natural species, native or introduced, or any variety of species produced by selective reproduction of finfish, mollusk, or crustacean or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) "Director" means the Director of the Office of Science and Technology Policy establishing under the National Science and Technology Policy Organization and Priorities Act of 1976.

(5) "fund" means the Federal Aquaculture Assistance Fund established under section 13 of this Act.

(6) "person" means any individual who is a citizen or national of the United States and any corporation, partnership, association, Indian tribe, or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(7) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other commonwealth, territory, or possession of the United States.

(8) "United States", when used in a geographical context, means all States.

NATIONAL AQUACULTURE POLICY

SEC. 5. Congress finds and declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

AQUACULTURE ASSESSMENT AND NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 6. (a) Within 1 year after the date of enactment of this Act, the Director, in cooperation with the Secretary of Agriculture, the Secretary of Commerce, the Secretary of the Interior, other Federal departments or agencies, State aquaculture agencies (designated under section 7 of this Act) and appropriate Regional Fishery Management Councils established under section 302 of the Fishery Conservation and Management Act of 1976, shall make a comprehensive assessment of aquaculture in the United States and shall by regulation establish a National Aquaculture Development Plan (hereinafter in this Act referred to as the "Plan").

(b)(1) The Director shall give interested persons an opportunity to participate in the development and establishment of the Plan in accordance with the provisions of section 553 of title 5, United States Code.

(2) The Secretaries of Agriculture, Commerce, and the Interior, shall provide such clerical assistance and staff personnel as may be required by the Director to carry out the provisions of this section.

(3) At the earliest possible time in the development of the Plan, the Director shall hold public hearings; the number and location of such hearings shall be determined on the basis of the following criteria:

(A) geographical proximity of States to one another;

(B) similarity of States in aquacultural activities and potential; and

(C) other relevant factors.

(c) The assessment of aquaculture in the United States required to be made under subsection (a) of this section shall include—

(1) a complete profile of the United States aquacultural industry as to incidence, size, and status of commercial aquacultural enterprises;

(2) identification of private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) identification of the various aquatic species currently being cultured and a description of the status of commercial development with respect to each such species;

(4) to the extent possible, identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog and description of all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture;

(6) a consideration of the need and appropriateness of designating a single Federal lead agency for all matters relating to aquaculture;

(7) identification of legal, regulatory, economic, physical, and social constraints that inhibit the development of aquaculture in the United States;

(8) a determination of the adequacy of Federal guarantees for loans for the construction, repair, expansion, or improvement of aquaculture facilities, disaster loans for persons engaged in aquaculture, and property and stock insurance for aquaculture facilities; and

(9) an exposition of the major policy issues that need to be addressed by the Plan and the presentation of policy alternatives in a manner that will facilitate both the formulation and implementation of the Plan.

(d) The Director shall submit a report with respect to the status of aquaculture in the United States to the President and Congress upon completion of the assessment conducted under subsection (a) of this section, but in no event more than 12 months following the date of enactment of this Act.

(e) The Director shall use the assessment conducted under subsection (c) of this section as a basis for developing the Plan that shall consist of a series of development programs for those aquatic species that the Director determines to have a potential for culturing on a commercial or other basis.

(f) The Plan shall set forth those actions that the Director determines should be undertaken, and the period of time within which each such action should be completed, with respect to—

(1) the implementation of each development program, including the research and development, technical assistance, demonstration, extension education, and training that may be necessary and appropriate with regard to—

(A) aquaculture facility design and operation;

(B) water quality management;

(C) use of waste products (including thermal effluents);

(D) nutrition and the development of economical feeds, including natural food sources;

(E) life history, behavior, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish but are injurious to humans);

(F) processing and market development;

(G) production management and quality control; and

(H) the development of adequate supplies of seed stock;

(2) research on the effect of aquaculture on estuarine and other water areas, and the management of such areas for aquaculture;

(3) the identification and analysis of any legal or regulatory constraints that may affect a development program;

(4) the construction, purchase, lease, or acquisition of necessary developmental aquaculture facilities; and

(5) such other actions relating to research and development, technical assistance,

demonstration, extension education, and training as the Director deems necessary and appropriate.

(g) The Plan shall include the allocation of funds appropriated under section 14 of this Act, in such amounts as the Director deems appropriate, to the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior for implementation of the aquaculture development programs under their respective jurisdictions.

(h) In preparing an aquaculture development program and in reviewing any such program under subsection (j), the Director shall, to the extent practicable, take into account any significant action which has been, or that is proposed to be, undertaken by any other Federal agency, any State agency, or any person, and that may affect the accomplishments of the program.

(i) Each action under an aquaculture development program prepared under this section shall be implemented, either individually, jointly, or collectively, by the Secretary of Agriculture, the Secretary of Commerce, or the Secretary of the Interior, as specified by the Director in the program. The Director shall determine which Secretary or Secretaries are to have responsibility for implementing any such action on the basis of—

(1) the responsibilities conferred on the respective Secretaries by law or any executive action having the effect of law (including, but not limited to, Reorganization Plan Number 4 of 1970); and

(2) the experience, expertise, and other appropriate resources that each department may have with respect to the action required under the program.

(j) The Plan shall provide for its revision, following review on a biennial basis to determine—

(A) if there are any aquatic species not currently identified in the Plan that have potential for aquaculture; and

(B) whether the actions specified in the Plan are being accomplished on a successful and timely basis.

(k)(1) The Director, in consultation with the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior, shall establish and appoint an advisory committee to assist in the assessment and in the development of the Plan.

(2) The Advisory Committee shall consist of 15 members who shall not be employees of the Federal Government, and at least 8 of such members (of whom at least 1 shall be from each area over which each Regional Fishery Management Council has authority) shall be engaged in private aquacultural enterprises.

(3) The members of the committee, while away from their homes or regular places of business in the performance of services for the committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

STATE AQUACULTURE AGENCIES

SEC. 7. (a) Any State wishing to participate in any national aquaculture development program under section 10 or 11 of this Act and authorized under this Act shall designate a single agency of such State to carry out such program in such State.

(b) Any State wishing to participate in the formulation of the Plan, but wishing to defer designation of an aquaculture agency for the State, may designate an aquaculture planning agency for the State as an interim measure.

(c) Any grants made to or contracts entered into with any agncy of a State, or any agency of any political subdivision of a State, under section 10 of this Act, shall be made only with the approval of the aquaculture agency designated for such State, and such approval shall be an indication to the Federal sponsor of compliance with all State and local regulations that apply to that action.

(d) The Director shall inform the Governors of all the States of the povisions of this section and shall consult as the Director determines apppropriate with representatives of the State aquaculture agencies during the development of the plan.

FUNCTIONS AND POWERS

SEC. 8. (a) In implementing the aquaculture development program prepared under section 6 of this Act for any aquatic species, the Secretary of Agriculture, the Secretary of Commerce, or the Secretary of the Interior, as the case may be, shall—

(1) provide advisory, educational, and technical assistance (including training), with respect to aquaculture of such species to interested public and private organizations and individuals, but in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal or State agencies;

(2) consult and cooperate with interested persons, Federal, State, and local government agencies, regional commissions, educational institutions, and Indian tribes regarding the development of aquacultual technology;

(3) prescribe such regulations as may be necessary to carry out such a program; and

(4) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including such enhancement by private non-profit enterprises), as well as in the promotion of private commercial aquacultural enterprises.

(b) In implementing any aquacultue development program, the Secretary of Agriculture, the Secretary of Commerce, or the Secretary of the Interior, as the case may be, may—

(1) conduct scale tests of any aquaculture system for the purposes of assessing the biological and economic feasibility of the system;

(2) produce, under the authority of section 11 of this Act, and sell at cost, seed stock for commercial aquatic species when privately produced seed stock is unavailable, unreliable, or insufficient in quantity to meet production needs;

(3) develop methods to enhance aquatic species stocks by aquaculture;

(4) conduct such studies and research with respect to aquatic species as may be appropriate, regardless of whether such species is or has been identified as a commercial species; and

(5) conduct such other tests or analyses or take such other actions as such Secretary deems necessary and appropriate.

(c) In addition to performing such other functions as are required under this Act, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior shall jointly—

(1) establish and maintain an aquaculture information center that shall function as a national clearinghouse for the collection, selection, analysis, and dissemination of scientific, technical, lethal, and economic information relating to each aquaculture development program that is their individual, joint, or collective responsibility;

(2) conduct appropriate surveys, in coordination with other agencies, of public and private aquaculture activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(3) arrange for the mutual exchange of information relating to aquaculture with foreign nations;

(4) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study (A) an assessment of the economic effect by species and by geographical region on such fisheries, and (B) recommended measures to ameliorate any adverse effect; and

(5) report to Congress on the findings made under the study provided for under clause (4) of this subsection in the biennial status report required by section 9(b)(4) of this Act.

(d) Any production information submitted under clause (2) of subsection (c) of this section to the Secretary of Agriculture, the Secretary of Commerce, or the Secretary of the Interior shall be confidential and shall not be disclosed except to each other or to the advisory committee that may be appointed under section 6(k) of this Act or when required under court order. The Secretaries shall by regulation prescribe such procedures as may be necessary to preserve such confidentiality, except that such Secretaries may release or make public any such information in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person who submits such information.

(e)(1) The Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior are each authorized to accept any gift, temporary donation, or devise or bequest of real or personal property, or the proceeds from the sale or other disposition of such property or interests therein, for use in performing any function that such Secretary may have under this Act. Any such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude, if such terms are deemed by the Secretary concerned to be in accordance with law and compatible with the purpose for which acceptance is sought.

(2) Any gift or bequest of money, and proceeds from the sale of other property received as a gift or bequest under this subsection, shall be deposited in a separate account in the Treasury of the United States and shall be disbursed upon the order of the Secretary concerned.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 9. (a) There is established the Interagency Aquaculture Coordinating Committee (hereafter in this section referred to as the "Committee") that shall be composed of the following representatives or their designees:

(1) The Director of the Office of Science and Technology Policy, who shall be the Chairman of the Committee unless, after the Plan is established, the President wishes to designate another member of the Committee as Chairman.

(2) The Secretary of Agriculture.

(3) The Secretary of Commerce.

(4) The Secretary of the Interior.

(5) The Secretary of Energy.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Commissioner of Food and Drugs.

(9) The Assistant Secretary of Labor for Occupational Safety and Health.

(10) The Administrator of the Small Business Administration.

(11) The Governor of the Farm Credit Administration.

(12) At least five representatives to be appointed by the Chairman of the Committee from the various State aquaculture agencies designated pursuant to section 7 of this Act.

(b) The functions of the Committee shall be—

(1) to ensure that there is a continuing exchange of information among the agencies represented on the Committee with respect to the nature and status of the programs or projects being conducted by such agencies

that relate, or that may relate, to aquaculture in general or to the implementation of the Plan;

(2) to review on a continuing basis the relevant programs and projects of all Federal agencies to determine whether such programs are being conducted in compliance with subsection (c) of this section; and

(3) to ensure that the aquaculture information center established under section 8(c)(1) of this Act is functioning in conformance with the policy expressed in section 5 of this Act;

(4) to submit a biennial report to Congress on the status of aquaculture in the United States, including an explanation of any revision to the Plan made pursuant to section 6(j) of this Act; the first such biennial report shall be completed not later than 2 years after the date of submission to Congress of the Director's report as specified in section 6(d) of this Act.

(c) Each Federal agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or may affect, the achievement of the purposes of this Act, shall, in consultation with the Committee and to the maximum extent practicable perform such function, responsibility, or activity in a manner that is consistent with the purposes of this Act.

(d) Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer or any Federal agency to perform any functions relating to aquaculture that are authorized under any other provision of law.

CONTRACTS AND GRANTS

SEC. 10. (a) The Secretary of Agriculture, the Secretary of Commerce, or the Secretary of the Interior may carry out any function of this Act, other than demonstration projects undertaken pursuant to section 11 of this Act, relating to any aquaculture development program that such Secretary is directed to implement under the Plan, through grants to, or contracts with, any other Federal agency, any agency of any State, any agency of any political subdivision of a State, any Indian tribe, any regional commission, any educational institution, or any person.

(b) Any contract entered into, or any grant made, under subsection (a) of this section shall contain such conditions and limitations as the Secretary concerned shall by regulation prescribe as being necessary and appropriate to protect the interests of the United States, except that no such contract may be entered into, and no such grant may be made that is in violation of any applicable State or local law.

(c) The amount of any grant made under subsection (a) of this section may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) Any State agency, any political subdivision of a State, or any person who receives a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any books, documents, papers, and records that are pertinent to the funds received by such agency, political subdivision, or person under such grant or contract.

AQUACULTURE DEMONSTRATION PROJECTS

SEC. 11. (a) In order to promote the development of aquaculture, the Secretaries of Agriculture, Commerce, and the Interior are authorized jointly to distribute funds to promote the establishment and operation of aquaculture demonstration projects within each State that has established a State aquaculture agency pursuant to section 7 of this Act, and to conduct the activities described in subsections (b), (c), (d), and (e) of this section. Upon a determination by the Secretaries that a proposed demonstration project (1) demonstrates phases of aquaculture that are useful and beneficial to the State and aquacultural producers, and (2) is not duplicative of demonstration projects in the State or region involved, such funds shall be distributed, in the case of any State, to one or more of the following: the State aquaculture agency of such State, the State cooperative extension service of such State, the State agricultural experiment station of such State, and any university of such State eligible to receive funds under the sea grant program. The amount of funds distributed in any State for any demonstration project may not exceed an amount equal to one-half of the estimated cost of such project.

(b) The recipient in any State of any funds distributed under subsection (a) of this section shall—

(1) establish at least one aquaculture demonstration project within the State;

(2) sell the products of the demonstration project established under clause (1) of this subsection and pay to the United States a proportion of the proceeds equal to the proportion that the grants under this section bear to the total cost of operating the project, which payments shall be deposited in the fund;

(3) provide tours of the demonstration project to aquaculture producers and other interested groups and individuals and, upon request, provide such producer groups and individuals with information concerning the operation of the project;

(4) determine the total income and the total cost of the project; and

(5) annually compile a report concerning income, costs, operating difficulties, and producer interest with respect to the demonstration project, and submit the report to the Secretaries concerned along with any recommendations concerning project changes.

The production of seed stock shall be a possible demonstration project.

(c) The results obtained from each demonstration project conducted under this section that prove economically practical shall be extended to aquacultural producers in each State through the State cooperative extension service and the Sea Grant Marine Advisory Program of each State as part of the ongoing education programs of such service.

(d) Two or more States may cooperate in the designation of a regional project, in which event the sums assignable to all the cooperating States shall be paid to the agency or institution responsible for the operation of the demonstration project.

GUARANTEES OF OBLIGATIONS ISSUED FOR AQUACULTURE FACILITIES

SEC. 12. (a)(1) The Secretary of Agriculture and the Secretary of Commerce (further reference in this section to the "Secretary" shall mean the Secretary concerned) may, subject to the provisions of this section, guarantee or make a commitment to guarantee, the payment of interest on, and the principal amount of, any obligation issued by an obligor for any of the following purposes:

(A) the financing of the construction, reconstruction, or reconditioning of any aquaculture facility (including the financing of the purchase cost of any aquaculture facility to be reconstructed or reconditioned), except that no obligation may be guaranteed under this section later than 2 years after the date of the completion of the construction, reconstruction, or reconditioning of the aquaculture facility involved;

(B) the acquisition of stocks of aquatic species in all stages of development necessary to initiate any aquaculture facility;

(C) the financing of the initial operating expenses of any aquaculture facility;

(D) the financing of marketing operations exclusively for aquacultural products; or

(E) the refinancing of any existing obligation issued for any of the purposes specified in subparagraph (A), (B), (C), or (D) of this paragraph, whether or not guaranteed under this section, including, but not limited to, any short-term obligation incurred for the purpose of obtaining temporary funds for refinancing.

Guarantees and commitments to guarantee may be made under this section without regard to section 3679(a) of the Revised Statutes of the United States (31 U.S.C. 665 (a)).

(2) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to both principal and interest, including any interest, if provided for in the guarantee, that may accrue between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(3) Any guarantee, or commitment to guarantee, made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligation for such guarantee, and the validity of any guarantee, or commitment of guarantee, so made shall be incontestable.

(4) The aggregate unpaid principal amount of all obligations guaranteed under this section and outstanding at any one time shall not exceed $100,000,000.

(b)(1) Obligations guaranteed under this section—

(A) shall have an obligor approved by the Secretary as being responsible and possessing the ability, experience, financial resources, and other aquaculture necessary for the adequate operation and maintenance of the aquaculture facilities;

(B) shall be in an aggregate principal amount that does not exceed 90 percent of the obligation involved;

(C) shall have maturity dates satisfactory to the Secretary, but not to exceed 25 years;

(D) shall provide for payments by the obligor satisfactory to the Secretary; and

(E) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per annum percentage on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary.

(2) In guaranteeing any obligation under this section, the Secretary shall give preference to any person with 40 or fewer employees who, together with such person's affiliates, is primarily engaged in the business of aquaculture or commercial harvesting or gathering of aquatic species.

(3) No obligation may be guaranteed under this section unless the obligor conveys or agrees to convey to the Secretary such security interest as the Secretary may reasonably require to protect the interests of the United States.

(c)(1) The Secretary may charge a fee for any obligation guaranteed under this section, the amount of which shall be established by the Secretary by regulation not to exceed one-half of 1 percent per annum of the outstanding principal balance of the obligation. Fee payments shall be made by the obligor to the Secretary when moneys are first advanced under a guaranteed obligation and at least 60 days before each anniversary date thereafter.

(2) The Secretary shall charge and collect from the obligor such amounts as the Secretary may deem reasonable for the investigation of the application for any guarantee, for the appraisal of properties offered as security for any guarantee, and for the inspection of such properties during construction, or reconditioning, except that such charges shall not aggregate more than one-half of 1 percent of the original principal amount of the obligation to be guaranteed.

(3) All fees and other amounts received by the Secretary under the provisions of this subsection shall be deposited in the fund.

(4) Obligations guaranteed under this sec-

tion, and agreements relating thereto, shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may prescribe.

(d)(1) In the event of a default, which has continued for 90 days, in any payment by the obligor of principal or interest due under any obligation guaranteed under this section, the obligee or the obligee's agent shall have the right to demand, at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 180 days from the date of such default, payment by the Secretary of the unpaid principal amount of said obligation. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of the obligation and unpaid interest thereon to the date of payment; except that the Secretary shall not be required to make such payment if before the expiration of such period the Secretary finds that there was no default by the obligor in the payment of principal or interest or that such default has been remedied before any such demand.

(2) Payments required to be made by the Secretary under paragraph (1) of this subsection shall be made by the Secretary from the fund.

(3) In the event of any payment by the Secretary under paragraph (1) of this subsection, the Secretary shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary may, under such terms and conditions as the Secretary prescribes or approves, complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to a security agreement with the obligor.

(4) After any default referred to in paragraph (1) of this subsection, the Secretary shall take such action against the obligor or any other parties liable thereunder that, in the Secretary's discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary may accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event the Secretary receives through the sale of property an amount of cash in excess of any payment made to an obligee under paragraph (1) of this subsection and the expenses of collection of such amounts, the Secretary shall pay such excess to the obligor.

(5) Whoever, for the purpose of obtaining any loan or advance of credit from any person with the intent that an obligation relating to such loan or advance of credit shall be offered to or accepted by the Secretary to be guaranteed, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage relating to an obligation guaranteed by the Secretary, or the acceptance, release, or substitution of any security on such loan, advance or credit, or for the purpose of influencing in any way the action of the Secretary under this section, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 2 years, or both.

(e) The Secretary of Agriculture and the Secretary of Commerce shall each promulgate such rules and regulations as they deem necessary or appropriate to carry out the purposes and provisions of this section.

(f) For purposes of this section, the term—

(1) "actual cost" of an aquaculture facility, as of any specified date, means the aggregate, as determined by the Secretary, of—

(A) all amounts paid by, or for the account of the obligor with respect to such facility on or before that date; and

(B) all amounts that the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such facility;

(2) "construction", "reconstruction", or "reconditioning" includes, but is not limited to, designing, inspecting, outfitting, and equipping of the aquaculture facility involved;

(3) "depreciated actual cost" means the actual cost depreciated on a straightline basis over the useful life of the property involved as determined by the Secretary;

(4) "obligation" means any note, bond, debenture, or other evidence of indebtedness issued for one of the purposes specified in subsection (a) of this section;

(5) "obligee" means the holder of any obligation; and

(6) "obligor" means any person primarily liable for payment of the principal of or interest on any obligation.

FEDERAL AQUACULTURE ASSISTANCE FUND

SEC. 13. (a) There is established in the Treasury of the United States a Federal Aquaculture Assistance Fund. The fund shall be available to the Secretaries of Agriculture, Commerce, and the Interior: (further reference in this section to the "Secretary" shall mean the Secretary concerned) as a revolving fund for the purpose of carrying out, and administering, sections 11 and 12 of this Act. The fund shall consist of—

(1) any sums appropriated to the fund;

(2) any fees received by the Secretary from the sale of products from demonstration projects as provided in section 11 of this Act;

(3) any fees received by the Secretary in connection with any guarantee made under section 12 of this Act;

(4) recoveries and receipts received by the Secretary under security, subrogation, and other rights and authorities under section 12 of this Act.

All payments made by the Secretary to carry out the provisions of section 12 (including reimbursements to other Government accounts) shall be paid from the fund, only to the extent provided in appropriation Acts. Sums in the fund that are not currently needed for the purposes of section 11 or section 12 of this Act shall be kept on deposit or invested in obligations of or guaranteed by the United States.

(b) If at any time the moneys in the fund are not sufficient to pay any amount the Secretary is obligated to pay under section 12, the Secretary shall issue to the Secretary of the Treasury notes or other obligations (only to such extent and in such amounts as may be provided for in appropriation Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations to be issued hereunder, and for such purpose the Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury at any time may sell any of the notes or other obligations acquired by the Secretary of the Treasury under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Moneys borrowed under this subsection shall be deposited in the fund and redemptions of such notes and obligations shall be made by the Secretary from the fund.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 14. (a)(1) For purposes of carrying out the provisions of this Act, there are authorized to be appropriated, notwithstanding any authorization for appropriations in any other Act in effect before the date of the enactment of this Act:

(A) $10,000,000 for the fiscal year 1980;

(B) $20,000,000 for the fiscal year 1981; and

(C) $30,000 for the fiscal year 1982.

(2) The authorization for the fiscal year 1980 is not to exceed:

(A) $4,000,000 to the Department of Agriculture;

(B) $4,000,000 to the Department of Commerce; and

(C) $2,000,000 to the Department of the Interior.

(3) The authorization for the fiscal year 1981 and the fiscal year 1982 shall be allocated as provided in section 6(g).

(4) Not less than 50 percent of the funds appropriated to the Departments under this section shall be used for the purposes of section 10 and section 11 of this Act; and of such funds 3 percent shall be available to the Departments for administrative purposes.

(b) Commencing with fiscal year 1980, there are authorized to be appropriated, without fiscal year limitation, to the fund such sums as may be necessary and appropriate for purposes of carrying out section 12; but not to exceed $100,000,000.

EFFECTIVE DATE

SEC. 15. The provisions of this Act shall become effective October 1, 1978.

Mr. LEAHY. Mr. President, I strongly support S. 3408, the National Aquaculture Policy Act of 1978.

Many of my fellow Senators may not be familiar with aquaculture. A concise description of aquaculture comes from Dr. H. R. Schmittou, the aquaculture program coordinator at the Department of Agriculture. Dr. Schmittou's description is as follows:

Aquaculture is agriculture. It's the raising of animals and plants in a controlled water environment. That's similar to raising cattle, only you do it in the water. It's animal husbandry.

Aquaculture is not a new idea. Its roots can be traced back to 4,500 years ago in China. The United States is a relative newcomer in this field having started to practice aquaculture about 100 years ago. Today, aquaculture in the United States produces salmon, catfish, trout, oysters, mussels, shrimp, clams, and other species. Despite the great po-

tential of aquaculture as an energy-efficient means of food production, its growth has been much slower, and levels of production are much lower, than elsewhere in the world.

Jurisdiction over aquaculture in the Senate is shared by the Committee on Agriculture, Nutrition, and Forestry, which has authority over food from fresh waters, and the Committee on Commerce, Science, and Transportation, which has authority over marine fisheries. The Subcommittee on Agricultural Research and General Legislation, of which I am chairman, has a continuing interest in insuring the viability of and expanding opportunities for aquaculture in this country.

There is a tremendous potential for aquaculture in this country. In recognition of this potential, the Food and Agriculture Act of 1977 made aquaculture one of the four basic functions of the Department of Agriculture, along with agriculture, rural development, and human nutrition.

The 1977 law did not, however, remove the major barriers to successful fish farming in this country. These barriers include:

First. Inadequate technical and economic information;

Second. Inadequate funding for aquaculture research;

Third. Inadequate marketing practices of aquaculture species;

Fourth. Inadequate credit and financing;

Fifth. The existence of local, State, and Federal laws that prohibit or inhibit the development of aquaculture; and

Sixth. Duplication and lack of coordination among governmental agencies responsible for conducting aquacultural programs.

S. 3408 addresses these barriers. The bill provides for an assessment and development of a national aquaculture plan to support and encourage aquaculture. A national aquaculture coordinating committee composed of State and Federal officials responsible for aquaculture or related areas would be established. Demonstration projects would be carried out in the various States and regions to demonstrate the technology and viability of aquaculture. A guaranteed loan program and a Federal aquaculture assistance fund would be established under the bill.

This bill may not solve all of the present or potential problems that face aquaculture. However, it states our commitment to and provides the means for the further development of this important food supply.

I praise Senator DICK STONE for his leadership in this regard and I thank the distinguished majority leader for bringing it up for action. I urge its passage

● Mr. STONE. Mr. President, I strongly support S. 3408, the National Aquaculture Policy Act of 1978, which was reported by the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Commerce, Science, and Transportation.

The purpose of this bill is to encourage the development of aquaculture in the United States by establishing a national acquacultural policy.

When we talk about aquaculture we are talking basically about the production of food, especially high quality protein. This is true of aquaculture in fresh, marine, and brackish waters. However, aquaculture, which is as old as civilization, going back at least 4,000 years in China, has languished in this Nation.

The potential for expanded contribution is enormous. This is particularly true of our Nation since we have never had coordinated support or encouragement for aquaculture.

The importance of aquaculture has become evident in the last few years with the world food crisis, and the serious scarcity of high quality protein. We also are beginning to recognize the potential of aquaculture to supplement our declining fisheries, reduce our balance of payments deficit, and afford the Nation a new viable economic activity.

However, we must get our house in order. In fact, the fragmented and disorganized approach to aquaculture by the Federal Government is one of the principle barriers to aquacultural development in the United States. This, to a large extent, has been because we never fully recognized the importance of aquaculture. Further, the fragmented industry, Government programs, and legislative initiatives have contributed to a devisiveness within aquaculture.

The need for unification and coordination and development of a national policy became even more evident this year when our committees considered five legislative initiatives including two that were exclusively referred to the Committee on Commerce, two exclusively referred to the Committee on Agriculture, and one referred jointly to the two committees.

The development of aquaculture must be our final objective, not jurisdictional battles. To find a way to support aquaculture meant we had to find a way to resolve the split jurisdiction within the Congress and the executive agencies.

Mr. President, under the leadership of Chairman TALMADGE and Chairman CANNON our committees were able to do this.

We proceeded with our hearings separately but with full awareness and concern about all aspects of all bills. We then began developing means to bring together the thinking and needs of all aspects of aquaculture. The ways this was finally achieved was through the development of a new bill that incorporated much of what had previously been introduced as well as some new. Most important, the new bill does this in, I believe, an acceptable and meaningful way for all concerned.

The leadership in developing this new bill was assumed by Senator INOUYE, a member of the Committee on Commerce, Science and Technology. I want to commend Senator INOUYE for his efforts in helping us find a workable solution.

Mr. President, at this point I would like to have included in the RECORD a short explanation of the National Aquacultural Policy Act of 1978.

The explanation follows:

SHORT EXPLANATION

The National Aquaculture Policy Act of 1978 declares a national policy to promote aquaculture in the United States.

S. 3408, as reported, would—

(1) Provide for an assessment of aquaculture in the United States. The assessment would be completed within 1 year under the leadership of the Director of the Office of Science and Technology Policy in cooperation with the Secretaries of Agriculture, Commerce, and the Interior, and other Federal, State, and regional entities interested in aquaculture. The assessment would provide a complete profile of aquaculture in the United States, including the identification of private and public institutions involved in acquaculture research, extension, credit, and market development; identification of species being cultured or that could be cultured; identification of legal, regulatory, economic, physical, and social constraints that inhibit aquaculture in the United States. The Director would submit a report on the status of aquaculture to the President and the Congress within 12 months after enactment. This assessment shall be the basis for development of the National Aquaculture Plan;

(2) Provide for the development of a national aquaculture plan to support and encourage aquaculture, including development programs to be carried out by various Secretaries and departments. These programs would focus on problems with regard to aquaculture facilities, water quality, use of waste products, nutrition, processing, and marketing, biological aspects of various species, management, and development of adequate seed stocks;

(3) Provide for an advisory committee of 15 members to assist in the development of the national Plan. It would be disbanded after the Plan is completed. At least eight members of the advisory committee would be directly involved in private aquaculture enterprises;

(4) Encourage the development of State aquaculture agencies to coordinate aquaculture activities at the State level;

(5) Establish a national aquaculture coordinating committee chaired by the Director of the Office of Science and Technology Policy and include the Secretaries of Agriculture, Commerce, the Interior, and Energy; the Administrator of the Environmental Protection Agency, the Chief of Engineers, the Commissioner of Food and Drugs, the Assistant Secretary of Labor for Occupational Safety and Health, the Administrator of the Small Business Administration, the Governor of the Farm Credit Administration, and at least five representatives to be appointed from various State aquaculture agencies. The responsibility of this coordinating body would be to ensure the exchange of information, compliance of various programs with the national policy, to prevent duplication of effort, and to develop biennial reports for Congress and the President on the status of aquaculture;

(6) Provide for contracts and grants that permit the various Secretaries with authorities under the bill to contract with other Federal agencies, States, Indian tribes, universities, or individuals to carry out any of the activities or functions of the bill;

(7) Provide for demonstration projects to be carried out in the various States or regions to demonstrate the technology and viability of aquaculture;

(8) Provide for a guaranteed loan program with a limit on the maximum amount of guaranteed loans at any one time of $100 million. The loans would be available for financing various aquacultural activities and the Secretaries of Agriculture and Commerce could draw on the loan guarantee authority;

(9) Provide for a Federal Aquaculture Assistance Fund, as a revolving fund, for the purpose of carrying out the demonstration projects and loan guarantee programs; and

(10) Authorize appropriations, effective for the fiscal year 1980, at the rate of $10 million, $20 million in 1981, $30 million in 1982. In the first year the funds will be allocated as follows: 40 percent to the Department of Agriculture, 40 percent to the Department of Commerce, and 20 percent to the Department of the Interior. However, not less than 50 percent of the funds allocated in any given year would be used for contracts, grants, or demonstration projects as provided in the bill.

Mr. President, the potential of aquaculture is evident in the remarkable growth that we have seen the last 10 years in the trout and catfish industries. However, we have barely scratched the surface of the potential in these industries. Further, there are significant opportunities in other areas. These opportunities and potentials can only be realized with a coordinated and effective aquaculture policy.

The bill provides the flexibility for the various departments that are involved in aquaculture programs to respond individually or jointly to the needs of specific segments of the overall aquaculture industry. But in all cases it assures coordination of the ongoing programs.

The bill also will bring the State and regional aquaculture interests into the planning process as well as private sector people. This will insure that our national programs are responsive in solving the problems that have been identified as being major inhibitors of aquacultural development.

Mr. President, aquaculture and agriculture are the two hands of food production. Unfortunately, one hand has not been developed. I see this bill as giving the stimulus to aquaculture similar to that which we have given to agriculture in the past by providing a national agricultural policy. It will permit the great potential of aquaculture to be realized. It also provides the basis for other economic activities in aquaculture that exists and can provide our Nation with significant benefits.

I am pleased to be able to report this bill on behalf of the two committees and I urge my colleagues to pass this legislation.

Mr. President, I wish to make one further statement. There are innumerable people from the two committees who deserve special note. However, I believe we should take time to note the interest and support of the late Senator James Allen for aquaculture. He was a longtime champion of aquaculture who gave significant support to the development of a national aquaculture policy. I think this bill will be a tribute to Senator Allen's interest.●

● Mr. GRAVEL. Mr. President, I strongly urge passage of S. 3408, the National Aquaculture Policy Act of 1978. As a cosponsor of this measure I have been intimately involved in its fashioning for some time now and I believe the time is right for passage of legislative encouragement for aquaculture activity in the United States.

Aquaculture activities throughout the United States are at once too scarce and too poorly coordinated. Those projects that do exist suffer from a lack of integration with other similar projects. This legislation will help to overcome both of these deficiencies.

To encourage increased activity in aquaculture a guaranteed loan program is instituted with a guarantee fund of $100 million. This money will be available for financing various aquacultural activities and will be made available through the Departments of Commerce and Agriculture.

To coordinate various existing aquaculture activities throughout the country as well as to encourage new ones in the future, a national aquaculture assessment will be undertaken. This assessment will identify present activities, interests and possibilities for aquaculture coordination and expansion.

Mr. President, my home State of Alaska has been involved in the activity of aquaculture for practically a century. With greater than 50 percent of the entire U.S. coastline located within Alaska, one can understand my enthusiasm for this legislation. The possibilities for aquaculture activities within my State are truly staggering.

In that regard, three aspects of this bill are particularly significant to Alaskans. All three were originally introduced as parts of S. 2762, the aquaculture bill I introduced. They have been lifted from my bill and transferred to this final Senate compromise version of which I am now a cosponsor. Each is especially important to the unique Alaskan approach to aquaculture. They are:

First, the national plan will not be formulated at the national level as originally proposed. Local input will be gathered from regional hearings and State aquaculture agencies. This will guarantee that Alaska's unique activities with respect to aquaculture will not be disregarded.

Second, the enhancement and rehabilitation of traditional publicly owned fish stocks is a major goal to be addressed by this legislation. This will insure that in addition to encouraging development of commercial aquaculture for the private sector, we will not overlook the desirability of rehabilitating the numerous depleted fish stocks which are of vital importance to the public sector.

Third, this legislation identifies the land and water access problems so often met in the attempt to find a suitable aquaculture facility location. The bill mandates that aquaculture must be viewed as a significant activity that must be given appropriate consideration among competing land and water use activities.

Mr. President, this legislative encouragement for aquaculture has been much too long in coming. The numerous benefits to be gained—commercial, nutritional and conservational—to name but three, fully justify passage of this legislation before another day passes. I urge my fellow colleagues to support this measure and enact today the National Aquaculture Organic Act of 1978.●

● Mr. WEICKER. Mr. President, I would like to congratulate the Senate for passing H.R. 9370, the National Aquaculture Policy Act of 1978.

This is landmark legislation that will prove to be of great value to this Nation.

I am pleased that the Senate bill has included Senator INOUYE's version containing major parts of my bill, S. 2582, which I introduced earlier in the year. I believe that the stimulus which this bill will provide is the only way in which aquaculture will get a solid foothold in the United States.

The various bills, both in the Senate and House, all provide provisions for obligation loan guarantees to the small aquaculture businessman. Large industrial interests are not included, but will also benefit by aquaculture legislation in terms of scientific knowledge and improved communications.

Presently, aquaculture is only contributing about 3 percent of U.S. production of foodfish. In view of the growing market for all kinds of seafood worldwide, and the resultant pressure on many stocks of living resources, this low yield from aquaculture must be increased.

It is my understanding, and quite surprisingly, that imports of fish and fish products are the third highest contributor to our national trade deficit. It alone amounts to over $2 billion.

The domestic fisheries can do much to this tremendous inequality, but will not likely be able to cut the deficit completely.

A comprehensive national aquaculture policy and industry stimulus can significantly increase our production of seafood in the near future, thereby contributing to the decrease in this debilitating trade deficit.

Several species of both food and industrial living marine resources are being overfished to the point that commercial extinction is possible. These species have traditionally been the mainstay of the consumer markets and only a shift in consumer interest or increased stocks can solve the problem. I believe that a national aquaculture program can and should address such problems by first providing for increased availability of such species as cod, haddock, lobster, and so forth. This can be done by either raising these animals in captivity to marketable size or to enhance the natural populations through stocking techniques in the wild.

It is my firm hope that some form of legislation in the Senate, House or compromise version, goes to the President for his signature.

The time is right for such legislation. Aquaculture must be put in the proper prospective before it becomes a critical necessity, and I believe that aquaculture will be a necessity in the not-too-distant future. Our production from landbase agriculture has reached a peak, so has agricultural technology. It is doubtful that great new innovative agricultural techniques will be realized for some time. As a matter of fact, the alarming rate in which our farms are giving way to development and the increasing problems with soil erosion and pesticide ineffectiveness will decrease our agricultural productivity.

The time is right to nurture the fledgling aquaculture industry, the small

businessman, and give encouragement to larger industry interests such as Coca Cola and Weyerhaeuser. Aquaculture is considered a high-risk, capital-intensive industry and Federal help to get things started make good economic sense.

The time is also right to help upgrade the nutritional base of our country. Seafood is one of the best sources of protein possible containing little fat and calories.

Even though we are still the richest country in history, our overall nutrition is below a healthy balanced diet. I look to our fisheries and a growing aquacultural system to help bring the right foods to our tables.

Mr. President, I hope that whatever the complexity of a national aquaculture bill, it will maintain the $100-million ceiling for obligation guarantee loans and not contain provisions for disaster loans and all-risk insurance.

My bill embraced these restrictions for reasons of not giving the industry too much Federal help at one time and involving all of its redtape and regulations. I believe that the industry needs Federal assistance only in the form of scientific data, information dissemination, and loan guarantees and only until the industry gets on its feet. Too much Federal involvement could be inhibiting and have a softening effect in the long run. The $100-million figure should be enough for the next few years to give the needed boost to the industry.

Disaster loans are already provided by the Small Business Administration and rather than duplicate their efforts, the SBA should be given a congressional mandate to increase their involvement in aquaculture ventures.

With the exception of stock insurance, other forms of insurance—property, liability—is available to the industry and should be no harder to obtain than is available to other industries within the same geographic confines. Once the industry starts to grow, private insurance should become more involved.

I would like to further express my gratitude to the Commerce, Science, and Transportation, and Agriculture, Nutrition, and Forestry Committees for resolving the jurisdictional problems of the bill. I am looking forward to the growth of our aquaculture industry and anticipate some fine dining on the fruits of our efforts.●

● Mr. MAGNUSON. Mr. President, I strongly support the passage of H.R. 9370, the National Aquaculture Policy Act of 1978, which was unanimously reported by both the Committee on Commerce, Science, and Transportation and the Committee on Agriculture, Nutrition, and Forestry. The bill is the result of months of discussion between the committees, and this bill represents a resolution of the issues discussed which is acceptable to all concerned.

The aquaculture industry in the United States is currently very small, but it has tremendous potential for increasing this country's food supplies. In the past, the Department of Commerce has done excellent work in promoting marine aquaculture, and the Department of Agriculture has done excellent work in promoting fresh-water aquaculture. However, there has been little overall planning or coordination of these efforts. It is therefore the purpose of this bill to provide for that planning and coordination so that the departments involved can continue their work in a more effective and efficient manner.

The bill also provides funding for contracts and grants to carry out the purposes of the bill, encourages the States to play a more active role in aquaculture development while preserving their rights to prohibit certain types of aquaculture, authorizes the Departments involved to guarantee loans for aquaculture development, and encourages the use of aquaculture for the enhancement of natural fisheries resources. The bill therefore represents a strong commitment by the Federal Government to the development of aquaculture, and I urge that the bill pass.●

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1168), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

SHORT EXPLANATION

The National Aquaculture Policy Act of 1978 declares a national policy to promote aquaculture in the United States.

S. 3408, as reported, would—

(1) Provide for an assessment of aquaculture in the United States. The assessment would be completed within 1 year under the leadership of the Director of the Office of Science and Technology Policy in cooperation with the Secretaries of Agriculture, Commerce, and the Interior, and other Federal, State, and regional entities interested in aquaculture. The assessment would provide a complete profile of aquaculture in the United States, including the identification of private and public institutions involved in aquacultural research, extension, credit, and market development; identification of species being cultured or that could be cultured; identification of legal, regulatory, economic, physical, and social constraints that inhibit aquaculture in the United States. The Director would submit a report on the status of aquaculture to the President and the Congress within 12 months after enactment. This assessment shall be the basis for development of the national aquaculture plan;

(2) Provide for the development of a national aquaculture plan to support and encourage aquaculture, including development programs to be carried out by various Secretaries and departments. These programs would focus on problems with regard to aquaculture facilities, water quality, use of waste products, nutrition, processing, and marketing, biological aspects of various species, management, and development of adequate seed stocks;

(3) Provide for an advisory committee of 15 members to assist in the development of the national plan. It would be disbanded after the Plan is completed. At least eight members of the advisory committee would be directly involved in private aquaculture enterprises;

(4) Encourage the development of State aquaculture agencies to coordinate aquaculture activities at the State level;

(5) Establish a national aquaculture coordinating committee chaired by the Director of the Office of Science and Technology Policy and include the Secretaries of Agriculture, Commerce, the Interior, and Energy; the Administrator of the Environmental Protection Agency, the Chief of Engineers, the Commissioner of Food and Drugs, the Assistant Secretary of Labor for Occupational Safety and Health, the Administrator of the Small Business Administration, the Governor of the Farm Credit Administration, and at least five representatives to be appointed from various State aquaculture agencies. The responsibility of this coordinating body would be to insure the exchange of information, compliance of various programs with the national policy, to prevent duplication of effort, and to develop biennial reports for Congress and the President on the status of aquaculture;

(6) Provide for contracts and grants that permit the various Secretaries with authorities under the bill to contract with other Federal agencies, States, Indian tribes, universities, or individuals to carry out any of the activities or functions of the bill;

(7) Provide for demonstration projects to be carried out in the various States or regions to demonstrate the technology and viability of aquaculture;

(8) Provide for a guaranteed loan program with a limit on the maximum amount of guaranteed loans at any one time of $100 million. The loans would be available for financing various aquacultural activities and any of the three Secretaries could draw on the loan guarantee authority;

(9) Provide for a Federal aquaculture assistance fund, as a revolving fund, for the purpose of carrying out the demonstration projects and loan guarantee programs; and

(10) Authorize appropriations, effective for the fiscal year 1980, at the rate of $10 million, $20 million in 1981, $30 million in 1982. In the first year the funds will be allocated as follows: 40 percent to the Department of Agriculture, 40 percent to the Department of Commerce, and 20 percent to the Department of the Interior. However, not less than 50 percent of the funds allocated in any given year would be used for contracts, grants, or demonstration projects as provided in the bill.

PURPOSE

S. 3408 would encourage the development of aquaculture in the United States by establishing a national policy to encourage the development of aquaculture; requiring the development of a national aquaculture development plan; providing funding for contracts and grants and for demonstration projects to carry out the national aquaculture development plan; establishing an interagency aquaculture coordinating committee; and providing authority to guarantee loans for aquacultural activities.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be discharged for further consideration of the bill H.R. 9370.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 9370.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 9370) to provide for the de-

velopment of aquaculture in the United States, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, I move to strike out all after the enacting clause of H.R. 9370 and substitute the language of S. 3408, as amended, in lieu thereof.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 9370) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 3408 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I intend to yield my time allotted to me under the special order for this morning to the distinguished Senator from Arizona.

Mr. President, I have no need for my time under the standing order and I yield that time plus the time under the special order allotted to me this morning to the distinguished Senator from Arizona.

## SPECIAL ORDER

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. GOLDWATER. I thank my leader very much. I doubt that I will need all of my time. I will return what I do not use.

## GOLD

Mr. GOLDWATER. Mr. President, it is shameful and tragic to note the current lack of confidence, worldwide, in our dollar. I cannot remain silent in this critical period in our history. Our Nation, the most powerful on Earth, has a printing press, fiat money, dollar, so beset by inflation that it has to bow to the German mark, the Japanese yen and the Swiss franc. How humiliating.

Of course, this monetary development is no surprise to those who have followed, apprehensively, since 1934 fashionable and popular Keynesian economics. The end result is the ruinous inflation plaguing the Nation and an extraordinary rise in the price of gold to over $200 per ounce. Who would have dreamed it a few years ago? Even higher prices are envisaged.

This should bring joy and happiness to those Government officials in Treasury and elsewhere who have advocated and put into force the policy of reducing gold to commodity status domestically and internationally.

The latest Government sale of gold was at $185 per ounce, a marvelously high market price. Had it been delayed a few weeks longer, over $200 per ounce could have been obtained. Indeed, the prospect is good for still higher prices as a dollar not redeemable in gold prevails, and the budget continues to be deplorably unbalanced. Perhaps there may be a spell of devaluations, in time, under the currently respectable practice of modern "coin clipping."

After all, look at the profit, in paper, made by the New Deal back in 1934, when the dollar was devalued by raising the price of gold from $20 to $35 following the confiscation of the gold holding of the citizens so they could not profit. The Government made over $2 billion on the deal, an easy way to profit. The late Adrian Massie, chairman of the Chemical Bank, has termed that devaluation one of the most tragic episodes in American financial history. I concur.

There was a price to pay. A grave moral issue was raised involving the sanctity of contracts. Senator Carter Glass, chairman of the Banking Committee, said,

> It's dishonor, sir. This great government, strong in gold, is breaking its promise to pay gold to widows and orphans to whom it has sold government bonds with a pledge to pay gold coin of the present standard of value. It is breaking its promise to redeem its paper money in gold coin of the present standard of value. It's dishonor, sir.

Some Supreme Court Justices stated the devaluation was counterfeiting when the issue reached the Court.

The moral issue permeates deeply the world's monetary mess. This is nothing new for mankind. It reminds me of the conclusion reached by the Federalist Papers authors when they examined the reason for hostility between nations. They sought to subdue the possibility of strife between the States and observed that "men are ambitious, vindictive and rapacious." I do not wish to pursue this thought any further but the evidence of its truth is all around us. It illustrates the difficulty of establishing sound and honest money.

I am confident Americans desire to have the finest kind of money ever conceived. What is it? Experience for countless years shows that, above all, while people may not be knowledgeable about monetary principles, they can readily distinguish good money from bad. They respect the store-of-value quality in any money. By this test, no wonder gold is No. 1 money today, and always has been. Despite the incredible policy of our Government to reduce gold to commodity status and to eliminate its use as money domestically and internationally, the effort has been utterly futile.

Ask yourself the question, which is the better dollar, one redeemable in gold, or the current fiat, printing-press variety that is not? The answer is obvious.

I do not profess to be a monetary expert nor do I have to be one to understand the plight of our dollar. For guidance and enlightenment, we need merely turn to our superb Constitution. It specifies only gold and silver coin as money. No reference to paper. Why? Because the Founders of our Nation knew firsthand the sad result accruing to government using fiat money such as the bankruptcy of France caused by John Law's paper money, or our own experience with the complete erosion of the continental currency.

Our Nation, comparatively young in history, nevertheless can profit from the lesson of five troublesome inflations. All were related closely to increased paper money supplies. First, the Revolutionary War inflation, then that of the War of 1812, followed years later by the tragic Civil War with its paper greenbacks. Then came World War II, and nowadays the heritage of the Vietnam war, the reason for gigantic Government expenditure to cover both guns and butter simultaneously. The deficit is with us today.

The Civil War example showed that when the paper greenbacks became redeemable in gold in 1879 after a long depression, and against the opposition of numerous legislators, the Nation began the greatest period of commodity stability and steady growth in its history, only to have it end when World War I erupted.

In the light of that record, I cannot understand antipathy to gold as money. It demonstrated the power of gold to discipline Government expenditure, a discipline absent now. The sky is the current limit to Government disbursement, especially as the statutory limit on the gold reserve behind Federal reserve deposits and notes was removed by the Congress in 1965 and 1968, respectively.

Currently, people are helpless, nationally, in curbing government expenditure for they have lost the power of the purse which they possessed when they could redeem their dollars in gold.

The people are not helpless in the 50 States of the Union, however, as the Californians demonstrated recently with proposition 13. Nationally, the job is different and tough because all the Federal Government need do if it requires funds is, under the Federal Reserve System, to send its bonds to the System and receive dollars in return. This is known as monetizing the debt. It was not always thus. The Federal Reserve System was designed, originally, to facilitate the flow of commercial transactions, not the fi-

nancing of the Government. That important change was brought about by World War I which required vast amounts of Federal funds. Taxing the citizens would have been unpalatable.

This history suggests one remedy for our devastating inflation—return to the original premise of the Fed so that the Government would have to go to the marketplace, as industry has to do, for the funds it requires. My main recommendation, based upon our own experience, is an early return to an honest dollar which means the gold standard.

I am conscious of the fact that the road may be rough and long to attain a sound dollar. Five years were required to make the Civil War greenbacks redeemable in gold.

Fortunately, two important steps have already been taken. The first was a restoration of the right to own gold coin or bullion. Imagine, it took 40 years to reachieve that basic freedom. The second step, which occurred last November, was congressional action permitting the use of the gold clause in contracts.

The next step is fundamental and largely political. It is to balance the budget and reduce our horrendous deficit. I am confident there is general agreement on the merit of that needed action. How to do it in the absence of the discipline of gold, and the current loss of the power of the purse by the people, is something requiring early attention.

As Thomas Jefferson wisely stated:

I place economy among the first and most important virtues, and public debt as the greatest of dangers to be feared . . . to preserve our independence, we must not let our rulers load us with public debt . . . we must make our choice between economy and liberty or profusion and servitude.

One highly pertinent suggestion made to me is to curb the ability of the Federal Reserve System to monetize the public debt, to which I have already alluded.

Another recommendation is to return to the States some or all of the welfare load carried by Federal authority. I have an idea the end result would be beneficial all around.

Still another suggestion, after the budget has been balanced, is to note the open market price for gold and, at a specified interval, which need not be long, declare paper dollars once again redeemable in gold, at a price close to the market.

Our dollar has a serious responsibility as the most favored money to settle international commerce, having displaced the pound sterling many years ago. This brings added urgency to restoring confidence in our dollar.

My emphasis is on the quality of the dollar, not its quantity; in other words, furnishing the world with the best store-of-value monetary unit. I stand by the precept of our Constitution. Our forefathers had thousands of years of human experience with money to guide them. They settled on gold. Let us return to it as speedily as possible so we no longer have to be chagrined at the entire world's current attitude to our paper money.

From the time of President Franklin Roosevelt, intellectuals drawn from universities to Washington officialdom have had undreamed of influence. Under popular Keynesianism, they apparently believed that if sufficient power was placed in the hands of Government they could cure the ills of our society, unemployment, and so forth.

For example, observe the following remedy for inflation offered by a former Government adviser, Prof. Gardner Ackley of the University of Michigan. He has stated:

Finally, we must accept the necessity for a permanent and prominent government authority which will actively and continuously monitor important wages and prices and be equipped with specific legal powers to strengthen the ability to get at the facts and to influence private decisions. It might also be given limited power to impose temporary control over any wage or price.

This monetary medicine to cure inflation appalls me. Goodby, free enterprise. It is completely unnecessary for a people who cherish their freedom. Jawboning has already been shown to be futile.

Nowadays, it is popular to place the blame for inflation on corporate greed, labor, bankers, or other scapegoats, whereas it is the Government which sits in the driver's seat. The correct answer, to my mind, was given by one of the greatest, if not the greatest, economists of the century. He was a valiant and incorrigible battler against omnipotent government and devoted to fostering free markets. He is the late Ludvig Von Mises. This is what he has to say about gold and inflation:

The eminence of the gold standard consists in the fact that it makes the determination of the monetary unit's purchasing power independent of the measures of governments. It wrests from the hands of the 'economic tsars' their most redoubtable instrument. It makes it impossible for them to inflate. That is why the gold standard is furiously attacked by all those who expect they will benefit by bounties from the seemingly inexhaustible government purse.

Although the financial world, for the first time in history, floats on a sea of paper money, the gold standard continues to function, strange as it may seem, but on a seriously crippled basis. This is because a yardstick is absolutely indispensable in money, just as standards of measurement are fundamental to commerce and every day life. All governments show gold on their balance sheets. The prevailing extraordinary high price is a rough measure of inflation in commodities.

As part of my ongoing research in money, a fascinating experience, I have resurrected a profound statement on money and gold by the late great European banker, Per Jacobsson which he made before the American Philosophical Society many years ago. Here is what he said:

In the first place, the alignment of currencies to gold gives a certain stability to the world's monetary system which cannot be ignored—gold cannot be arbitrarily created as credit can, and from the point of view of stability, the guarantee given by gold is therefore felt to be superior to that of credit as a means of payment.

Secondly, when international liabilities are settled in gold, this is a definite and final settlement, leaving no credit nexus as in the case when settlement is made in other ways. Gold payments are less complicated, and this is an advantage.

Thirdly, in a world in which we live with so many beliefs and, I must admit, prejudices inherited from past generations, the possession of gold inspires confidence in a way that the possession of no other monetary asset can. Given human beings as they are, they need "props" for their confidence to be sustained, and gold still proves useful in this respect.

Fourthly, the use of gold as the well-nigh universal basis of money may not by itself give cohesion to the world's monetary system but it greatly facilitates the task and it would not be easy to establish the same degree of cohesion in any other way.

And, fifthly, the current gold output, insofar as it becomes available for monetary purposes, gives a certain impetus to financial expansion and an increase in international liquidity.

Per Jacobsson became the first president of the International Monetary Fund. As you doubtless know, the IMF is the creator of special drawing rights, paper gold, a far cry from the Jacobsson declaration. Indeed, the IMF has been busy disposing of some of its gold in part to be returned to original subscribers. The proceeds of some sales are to aid underdeveloped nations. The IMF has been termed an engine of inflation.

I could go on but I had better conclude with the word of an exemplary and great American, a former President of the United States, renowned for his relief to the suffering of mankind caused by war. He never took a cent for his service to the Nation while in office. Contrast this with the recent congressional action raising salaries of legislators $13,000 annually without a record vote. That President was, of course, Herbert Hoover. He states in his memoirs:

Currency convertible into gold of the legal specifications is a vital protection against economic manipulation by the government. As long as currencies are convertible, governments cannot easily tamper with the price of goods, and therefore the wage standards of the country. They cannot easily confiscate the savings of the people by manipulation of inflation and deflation. They cannot easily enter into currency expansion for government expenditures. Once free of convertible standards, the executives of every "managed-currency" country had gone on a spree of government spending, and the people thereby lost control of the public purse—their first defense against tyranny.

These are words of monetary wisdom, in violent opposition of fiat money Keynesianism, so popular currently. I urge my colleagues, regardless of party, to find the time, difficult as it may be, to penetrate an apparently bewildering, but vital topic to the future of our Nation; how to restore quality and integrity to the dollar. That is what I have been doing.

I believe they may find, as I have, that our Constitution is the best guide, as it always has been, to protect our liberties and to restore confidence in our dollar. I repeat, it only specifies gold and silver coin as money, not paper.

It is clear to me that if we do not get back to honest money, the gold standard, we must anticipate even more turmoil in every direction than we have today.

Mr. President, if I have any time left, I am glad to yield it back.

## NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume its consideration of the conference report on H.R. 5289, which the clerk will report.

The second assistant legislative clerk read as follows:

An act (H.R. 5289) for the relief of Joe Cortina of Tampa, Florida.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask the Senator from Ohio how much longer it will be before he will be prepared, and if he has anything else, so we might schedule something.

Mr. METZENBAUM. I am ready.

Mr. FORD. Is the Senator now ready to go on?

Mr. METZENBAUM. I am.

Mr. FORD. I am delighted to yield the floor to the Senator from Ohio.

The ACTING PRESIDENT pro tempore. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise this morning to address myself to the question of the impact of the pending legislation and the need for that legislation with respect to the value of the dollar.

We have heard a good deal of comment and a good deal of pressure brought on many Senators on the basis that we need this bill, the conference committee bill, because, if we do not pass it, it will somehow have a negative impact upon the value of the dollar and it will look bad for us throught the world.

I do not know too many economists, but I know one that I consider a great authority in the whole field of economics, the value of the dollar, the stock market. He is carried by a tremendous number of newspapers in this country as an authority.

So I picked up the telephone yesterday and I asked Eliot Janeway for his view with respect to this subject.

I now read his telegraphed answer to my inquiry:

Answering your inquiry, it is my considered judgment that passage of the pending gas bill will make no contribution whatever toward restabilizing the dollar. On the contrary it will advertise the strangulation of our regulatory procedures in red tape and it will accelerate the liquidation of independent gas producing enterprises. Thereby weakening the dollar further it is reassuring to have your reaffirmation of top priority for the goal of strengthening the dollar.

Sincerely,

ELIOT JANEWAY.

Mr. Janeway's opinion must be and has to be a respected one. He is considered one of the top economists in the entire Nation.

Is he alone in his view? No, he is not alone in that view. There are others who have arrived at the same conclusion.

Yesterday, I addressed myself to the letter written by the senior vice president for international economic analysis of the Chase Manhattan Bank. Although I did not respond to my good friend from Kentucky, it is a fact that he was not speaking of the position of the Chase Manhattan Bank, but, rather, was speaking his own independent position, a position that is certainly credible. The man is the senior economic analyst for international economic matters for the Chase Manhattan Bank.

Are there others who have arrived at the same conclusion that this bill has nothing to do with the value of the dollar overseas?

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. METZENBAUM. Not at this point.

In a recent article in the Christian Science Monitor, dated Tuesday, September 5, 1978, under the heading of "Financial," "Taking Oil Imports Off the Hook as Dollar's Nemesis," by David R. Francis, this subject is addressed.

I say to the Senator from New Mexico that as soon as I conclude, I will be happy to respond to his question, but I would not like to lose my train of thought.

The article reads as follows:

The reason for the fall in the foreign exchange value of the dollar is the huge increase in oil imports.

Right?

No! Wrong!

"Balance-of-payments deficits and weak currencies are monetary phenomena, resulting from excess money growth in the country with the deficit relative to money growth abroad," maintain Douglas R. Mudd and Geoffrey E. Wood in the August Review of the Federal Reserve Bank of St. Louis.

That's a view obviously not shared by the Carter administration. President Carter has often blamed the declining dollar on the rise in oil imports, to $45 billion last year. He uses this argument to persuade Congress to pass his energy legislation.

Abroad, Chancellor Helmut Schmidt of West Germany and some other national leaders berate the United States for its high rate of oil consumption. It is politically handy to be able to blast the U.S. with impunity because the U.S. Government welcomes such criticism. And perhaps Mr. Schmidt and others even believe that the dollar decline is oil-related.

Whatever, some economists—especially those of the monetarist school—hold that such charges are nonsense.

Says New York's Citibank: "Even if the United States became a net exporter of oil, as Norway is today, the dollar would probably be weak, just as Norway's krone is—provided the United States, like Norway, clung to a monetary policy that was persistently more expansionary than other countries."

Citibank and the St. Louis Fed economists use two levels of argument to buttress their position that oil imports should not be blamed for the sliding dollar.

First, Messrs. Mudd and Wood note, the U.S. has imported less oil as a percentage of its gross national product (total national expenditures on goods and services) than either Germany or Japan each year from 1970 through 1977.

Last year, for instance, U.S. oil imports amounted to 2.2 percent of GNP. In Germany the comparable percentage was 2.9 percent and in Japan, 3.4 percent.

Nonetheless, both the Deutsche mark and the Japanese yen have been rising in value against the dollar and almost every other currency in the world.

Moreover, U.S. imports of oil from the members of the organization of petroleum exporting countries have been self-financing a commerce department study shows that from 1974 through 1977 the U.S. ran a $36 billion deficit on transactions in goods and services with OPEC. But over the same period, cumulative capital inflows from these countries into the U.S. totaled $38 billion.

"So," Citibank says, "whatever caused the dollar's decline, it seems likely that petrodollars did not."

The St. Louis Fed economists make the same point, though not quite so successfully, by looking at 1977 figures alone. The U.S. balance-of-trade deficit with the oil-exporting countries that year was $16.9 billion. These oil-rich countries made net purchases of U.S. corporate stocks and bonds and U.S. Government securities of about $7 billion. And they increased their deposits in U.S. commercial banks by about $400 million. So these capital inflows offset about 45 percent of the U.S. trade deficit with oil-exporting countries.

A decline in the value of the dollar, these economists say, results from an excessive supply of dollars in the foreign exchange market. The trade balance is only one factor in that supply-and-demand picture.

Also important to the exchange rate is capital flows, both private and governmental.

Most important to the supply of dollars is how many of them the U.S. creates. Messrs. Mudd and Wood explain: "If the U.S. money stock, for example, exceeds the amount people are willing to hold, given the structure of interest rates and income levels—that is, there is an excess supply of money—then people will increase their spending as they attempt to reduce their holdings of money to desired levels. Spending on foreign goods, services, and securities, as well as domestic spending, will rise. As a result, the amount of dollars supplied on the foreign exchange market will increase."

If that increase in dollars is greater relative to the increase in foreign currencies, the dollar will decline in value.

Moreover, the two argue; if the U.S. decreased its imports of oil without changing the supply of new money, that extra new money would merely flow into the purchase of other imports, of domestic goods that would otherwise be exported, and into foreign capital assets. The U.S. would be no further ahead in its balance of payments.

Thus, these economists conclude, to stop the decline of the dollar, the U.S. must not create so many new dollars.

Mr. President, we now have on one side the President of the United States and Helmut Schmidt, and I guess you have to include Jim Schlesinger and Bob Strauss. On the other side, you have Elliot Janeway, senior vice president for international economic analysis of the Chase Manhattan Bank; the St. Louis Federal Reserve Bank economists; New York City Bank; and later today I expect to address myself to an article in the London Economist on the same issue.

What about some other people in this country? One of the people who have been going around the halls lobbying and twisting arms and trying to tell Members of the Senate how important it is to vote

for this bill in order to save the dollar, in order to make us appear good around the world, is none other than the Chairman of the Federal Reserve Board. Let us see what he said the other day, when he was before the Finance Committee.

Senator RIBICOFF said to Mr. G. William Miller:

As you go around the world talking to your fellow bankers, those who are responsible for making policy and determining the value of the dollar, please explain why that gas bill has become the symbol of America's intention to do something about inflation and, if I may be so bold and ask you to comment, do you think that the Congress of the United States has abdicated its responsibility in this field to do something about inflation?

Mr. MILLER. Senator Ribicoff, the world for whatever reason, has built up the question of the energy bill as an almost essential element in our determination to cope with our problem of inflation and the problem of the dollar, and particularly the problem of the dollar.

I cannot say it is logical. It perhaps is a result of our own actions of perhaps raising expectations and creating the impression ourselves, but more than that, it has been a dramatic element in all of the international conferences I have attended or heard about in terms of the viewpoints and perception of foreigners, and I am sure it has a great influence on the foreign exchange markets.

I do not have the remainder of that quotation.

Mr. FORD. Mr. President, I would be glad for the Senator to have unanimous consent to put the remainder of that statement into the RECORD. It is an awfully good statement for our side.

Mr. METZENBAUM. I intend to do that, and I will offer the remainder of the statement.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. METZENBAUM. Subsequently in the same hearing, Senator LONG questioned Mr. Miller:

Senator LONG. I must say, for my part, the the potential for that tax has become increasingly discouraging, and I think I find myself more and more agreeing with those sophisticated people overseas.

In other words, the sophisticated people overseas having to do with the COET tax.

Senator LONG continued:

Now, if they are smart enough to see that the COET tax is not going to pass, how long do you think we are going to fool them with a gas bill that says we are going to do a lot about gas, only to find out that very little is going to happen?

Mr. MILLER. I do not think we can fool anybody very long. If we do not get production, the decision to pass the gas bill will have turned out to be not able to accomplish its purpose, then it will be necessary to pass another gas bill.

Mr. President, I agree with Mr. Miller. I agree with Senator LONG. You cannot fool people. This bill, even at the best, is a question of symbolism. Nobody rates it a good bill. I am not sure whether Mr. Strauss calls it a C-minus or a C-plus bill, but it is really quite irrelevant. Nobody says it is an answer. Nobody says it is going to cause great amounts of new gas to be forthcoming from the ground.

It is said that it would give us 3.5 percent more gas by 1985. Great—3.5 percent more gas. You can pick your figure—$11 billion or $41 billion. That amounts to anywhere from $16 to 60 per mcf, compared to the present price of $1.50.

Does anybody really think that 3.5 percent more gas 7 years from now is going to solve the gas problems of this country or the energy crisis?

The bill also does something we have not touched upon yet. It causes industrial users to use more natural gas, not less.

When the Senate bill and the House bill went to the conference committee, it provided that residential users would be paying the lower amount. But when it came back from the conference committee, the ball game had changed and it was made better for the industrial users.

When the President sent a letter to every Member of the Senate, he proudly pointed that out. Well, I say to the President and I say to those in the conference committee who agreed to that language in the bill, "You did a disservice." We do not want more industrial gas being used. We want coal.

We want coal to be burned in this country. And my good friend from Kentucky, who is handling the bill at the moment in the Chamber, knows that the emphasis up until this conference committee report has been to get people to go from oil and gas to coal. That is the reason we have an oil and gas users tax that this Senate passed and the House of Representatives is still holding back in the conference committee as is the Finance Committee of this body.

But the fact is we do not want more industries to use more gas. We want them to turn to coal. But somehow the President in his letter to us emphasized the fact that this will make industrial use more and now they are saying to us what a great thing that is going to be because we are going to save so much oil as a consequence.

That is not in the national interest. The national interest is to get people to go from oil and gas to coal because coal is very adequate in this country and there is plenty of it. It is to get them to turn to alternative energy sources.

The Department of Energy has been in business for almost 20 months. What have they done about developing alternative energy sources? What have they done about coal gasification? What have they done about liquefying coal? What have they done about developing solar energy? They have not done much because they have been too busy lobbying the Members of the Senate and House of Representatives in order to get a conference bill through even if the bill is not any good. That is the kind of legislation we are talking about.

Someone, somewhere, thinks we are going to fool those people over there in Japan, Switzerland, and Germany, and they are going to suddenly say: Great. We just passed an energy bill.

We could have passed an energy bill almost a year ago, if the administration and the House of Representatives had not decided upon a course of action to hold back three parts of the bill, and that they have done, hold back three parts as hostage in order to get a natural gas bill. They thought if they got a natural gas bill and put enough billions of dollars in the pockets of the oil and gas producers then maybe they could get through their wellhead tax and all their other taxing measures.

That plan has failed.

Mr. President, I think we have heard enough arguments about what this means to the dollar. I think we have heard enough arguments about the symbolism that this bill will create.

This bill is a meaningless piece of legislation, with the exception of the fact that it will not be meaningless to the consumers of America, to the people who use gas in their homes—over 50 percent of the homes in this country do use gas to heat with—to heat and energy for their stoves for them to cook with.

If we pass this bill, it will be meaningless to America as far as world trade is concerned, as far as the dollar is concerned, but it will not be meaningless to the American people who will pay the price. And it will not be meaningless to the oil and gas producers who will be enriched by whatever number you want to pick, $11 billion, $20 billion, $41 billion, but the money will go directly from the American people into the pockets of the oil and gas producers.

Mr. FORD. Mr. President, I always enjoy listening to the Senator from Ohio. He gets reasonably worked up and gives at least the few of us who are here the opinion that we are debating the bill somewhat, and it is typical for him and others to select economists that favor their position. It would be our direction to select economists that favor our position.

So, Mr. President, I wish to say that the Irving Trust Co., New York, Mr. Gordon T. Wallis, chairman of the board, supports this legislation, and I wanted to be sure that the distinguished Senator from Ohio knew that at least there is one bank, and I suspect there are a great many more that do support this legislation.

I always thought that John C. Sawhill is a fairly decent economist. I believe he is president of the New York University, and he has sent me a cover letter on the executive summary on the Aspen Institute study, and I wish to just quote one paragraph from Mr. Sawhill's cover letter:

Immediately following our White House presentation I expressed at press briefing my personal views of strong support for the natural gas pricing compromise, the cornerstone of the administration's national energy plan. I believe it represents a vital step to the future of gaseous energy, enabling gas to make its optimum contribution to the Nation's total energy mix, which was the principal thrust of the Aspen conference conclusions. I think at the present time, viewed from both the national and international perspectives, it is overwhelming in our Nation's best interest that the energy bill be immediately adopted.

He offers to discuss this with anyone who wishes to discuss it.

I am not an economist. I do as best I can to pay my bills, pay my monthly payments on my mortgages, and have something remain at the end of the month.

But if I am reasonably correct as to what this compromise will do, in placing

additional natural gas into the interstate pipeline, some 2 trillion feet in 1985 without Alaska gas, this I think would save approximately a million barrels of oil per day and, if you save the purchase from foreign sources of a million barrels of oil per day, that is 365 million barrels of oil that will not be purchased from foreign countries. That is $5.4 billion, if my figures are reasonably correct, and I always will stand corrected, because I think I am in the ballpark, that we would not pay foreign sources.

What is wrong? What is wrong with giving the American producer an opportunity to go out and try to find additional sources of energy? I cannot see why we wanted to prevent a scale of natural gas pricing over the next 7 years that would give the American producer, whether he is the smallest wildcatter or the largest oil company, an opportunity to secure new sources of energy and allow them then to have a steady incline or increase in price over the next 7 years. They will know what the price is going to be. They will be able to develop their future. They will be able to have some capital. They will be able to hire Americans to work for them. And I just think it is important that we follow down this path of taking care of the American economy and not worrying about the foreign sources of energy.

In fact, I am sure the foreign sources of production of energy have economists and they say to this country that we are purchasing too much outside sources of energy.

Mr. President, in 1973, after the embargo, began in my humble judgment the largest transfer of funds from one area of the world to another and those transfers of funds were American dollars to other countries, instead of leaving them here. And let me say something to Mrs. Smith or Mrs. Jones when she turns on her stove in Ohio to heat the soup for the evening meal. If the production of natural gas declines in this country the cost to her will go up, because of the fixed price and her ability to have gas to heat her evening meal or whatever will decline.

She cannot win. Talk about consumers, the housewife cannot win unless we have this piece of legislation, and I would be very hopeful that when we phase in this cost, we will be able to say to Mrs. Smith or Mrs. Jones, "We are doing what is right to see that you have what is necessary to make life somewhat easier".

My distinguished colleague from Ohio talks about the additional cost of natural gas. He has a great deal of statements that are associated with the EIA and their analysis, he leans on them pretty hard, and I have listened to him use the EIA study. He said the reason it is going to cost more is that under this bill we will have more to use. That $2.2 billion in 1981, if that figure is close to right, $1.6 billion of that is new natural gas produced by American producers. He stands up and says that the Energy Department has not done anything to try to find new sources of energy.

Well, I want to disagree with him just a little bit. The coal in Ohio that he pushes so hard to sell—and I do not fault him for that, I want people to buy Kentucky coal every chance they get—but the contracts have been signed for preliminary design for SRC-2, and SRC-1 which give us two sources of energy from coal.

He says they are not doing anything. I can give him point after point after point. You see, in this argument you pick the side that favors you and you forget about those who are just as smart, just as qualified, just as capable, who have the ability to make some decisions.

You know, if you are going to save $5.4 billion from going overseas, it seems to me that is going to strengthen the dollar at home. The Senator says the oil companies or the gas companies are going to get the money in America. What is wrong with that? What is wrong with paying American producers money? Is the Senator against profit? Is the Senator against the American producer having an opportunity?

Let me go back here and just give a little example. Under the proposal of this bill they want to stay with the old law, they do not want any new law. I was right concerned about the distinguished Senator from Texas (Mr. TOWER) yesterday when he stood there and on three separate occasions said:

> Yes, Senator, I am for moving intrastate gas out of my State into the other States.

That brought home to me that there is going to be trouble in River City trying to get a recommitment statement that will go along with the motion to recommit, because when the Senator analyzed it last night and analyzes it this morning he will regret that he made that statement last night that he is going to take intrastate gas out.

But the Senator from Ohio says, "I want the present law. Send it back. Give them a little authority to move this gas out."

Under the conference agreement compare the current law and we stay the same and we have to take it on that basis, and there are just 9 cents difference per Mcf over 7 years to the residential user. The Senator quotes EIA lots of times, and there it is, and I am just quoting from here, 9 cents more per Mcf at the end of the next 7 years.

Commercial prices will go up only 23 cents; raw material up about 17 cents, industrial up about 23 cents. So somewhere along the way those who make these decisions must be given a little credit.

Mr. METZENBAUM. Mr. President, will the Senator from Kentucky yield for a question?

Mr. FORD. The Senator would not yield to the distinguished Senator from New Mexico a while ago, and I think I will just continue with where I am going. and after I am through the Senator from Ohio can stand there and ask me questions all day, because I think we are going to have a lot of time, and if we have a lot of time you just sit there and relax and listen to me for a while. I did not interrupt the Senator.

He talked about Mr. Miller. He did not get to finish his statement a while ago, but what he read—I thought he ought to get the balance of the statement in, because it was not making him look too good—Mr. Miller, the Chairman of the Federal Reserve Board, his statement was excellent that the Senator read into the RECORD. It really substantiated, I thought, what he was able to read about our position and Mr. Bosworth, Chairman of the Council on Wage and Price Stability kind of favors this piece of legislation.

The Senator brought up the name of Robert Strauss. OK. If there is anybody I want on my side, it is Robert Strauss. I do not know where the Senator wants him to be. If the Senator wants him to be against him that is fine, but I want Robert Strauss on my side.

Mr. METZENBAUM. You have him.

Mr. FORD. I want to tell the Senator when Robert Strauss says this bill is a "C" bill, it is a pretty doggone good bill because Bob Strauss has high expectations. He does not have anything flimsy, and when he rates it, he rates it with a very critical eye. So if this is a "C" bill in Bob Strauss' estimation, then, in my opinion, it is a good bill, and it is a good bill, because Robert Strauss does not have his sight set very low. He does not have his sights set low at all.

I know the distinguished Senator from New Mexico wants to ask some questions or the Senator from Ohio, one, but I want to say to the Senator from Ohio yesterday he said this conference committee bill has no constituency—it is in the RECORD, and it is what the Senator said—has no constituency——

Mr. METZENBAUM. Except the League of Women Voters.

Mr. FORD. The Lord have mercy, do you not want the women on your side? Yes, I do. And the General Federation of Women's Clubs. I want them on my side.

Mr. METZENBAUM. I do not know if they took a position.

Mr. FORD. Senator, you do not have the floor; I do.

So I just want to put something in the RECORD to show the Senator that what he said yesterday was wrong. He already mentioned some people who favor the bill, people like Bob Strauss and Chairman Miller. I will take those.

I would like to give the Senator the letter from the R. J. Reynolds Industries which favors this bill. It is signed by Frank D. Gorham III. Somewhere along the way the farming community of this country is very interested in this piece of legislation. They do not have many people percentagewise, but, boy, they sure are important to this country, and I want the Senator from Ohio to look at this list of farm groups, food processors, even chocolate candymakers out of Pennsylvania that are supporting this piece of legislation.

So, Mr. President, I ask unanimous consent that the telegram that I hold in my hand listing 15 major groups around this country, and some from Ohio, I say to the Senator, I think you would like to know about, be printed in the RECORD.

There being no objection, the Mailgram

was ordered to be printed in the RECORD, as follows:

AUGUST 28, 1978

Hon. WENDELL H. FORD,
*U.S. Senate,*
*Washington, D.C.*

We, the undersigned groups involved in agricultural production, processing and distribution, after long and careful consideration of the final language of the natural gas compromise find the following:

The compromise will produce more gas than the status quo;

The compromise contains provisions to protect the agricultural sector, from production to the point of last sale, from unduly higher costs;

The compromise contains provisions that are equitable and reasonably provide for the essential needs of agricultural production during periods of curtailment;

The gas pricing sections represent a reasonable compromise between the advocates of immediate deregulation and the advocates of extended price controls;

The incremental pricing provisions are adequate to insure that residential consumers are protected from higher gas prices while still providing adequate incentives for new exploration, development and production.

Consequently, we the undersigned strongly urge you to support the bill and oppose attempts to modify the agreement. The organizations listed below will be in contact with your office to give you additional details during the next few days.

American Bakers Association, Robert Wager, 296–5800.

American Feed Manufacturers Association, Gerald Karstens, 524–0810.

American Frozen Food Institute, Thomas B. House, 821–0770.

Chocolate Manufacturers Association, Tim Rugh, 790–5011.

Corn Refiners Association, Kyd Brenner, 331–1634.

International Association of Ice Cream Manufacturers/Milk Industry Foundation, Robert Mulligan, 296–4250.

National Agricultural Chemicals Association, Jack Early, 296–1585.

National Association of Wheat Growers, Jerry Rees, 466–8630.

National Broiler Council, George Watts, 296–2622.

National Council of Farmers Cooperatives, Kenneth D. Naden, 659–1525.

National Food Processors Association, Leonard Lobred, 331–8151.

National Grange, John Scott, 628–3507.

National Milk Producers Federation, Patrick B. Healy, 393–8151.

Society of American Florists and Ornamental Horticulturists, Timothy Burne, 836–6700.

United Fresh Fruit & Vegetable Association. Llewellyn Gerson, 293–9210.

Mr. FORD. We have no constituency for this legislation is what the Senator said. Who is closer to the consumer and the voter than the mayor or a county judge? Who lives with them every day? Who gets the phone calls at night which say, "Somebody forgot to pick up my garbage yesterday?" Who knows more about the consumer and the individual than the mayor, and who is for this bill? The National Conference of Mayors has endorsed this piece of legislation. Mr. President, I ask unanimous consent that the telegram from the mayor of Denver be included in the RECORD in support of this piece of legislation.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
*September 8, 1978.*

Hon. WENDELL H. FORD,
*Senate Office Building,*
*Washington, D.C.*

"On behalf of the U.S. Conference of Mayors and our Nation's cities, I urge that you approve pending energy legislation at the earliest possible moment. This Nation needs an energy policy without further delay."

W. H. MCNICHOLS,
*President, U.S. Conference of Mayors.*

Mr. FORD. Mr. President, I wish to file telegrams from 13 independent Texas producers; a telegram from the Great Atlantic & Pacific Tea Co., better known as A&P; a telegram from the Fairbanks Industrial Development Corp., and also a letter from Associated Industries of Kentucky, all in support of this conference report.

I would also like to add that the U.S. Association of Journeymen and Apprentices of the Plumbing and Pipefitters of the United States and Canada, AFL–CIO are in favor of this conference report.

Mr. President, let me file this entire list and ask unanimous consent that all of this material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Senator WENDELL H. FORD.

The undersigned are active, aggressive explorers for natural gas. There are many opinions being voiced about the Natural Gas Policy Act. We are of the opinion that although this is not a perfect bill the pluses of the bill are much greater than the minuses and it does provide certainty and should be passed by the U.S. Senate.

For 30 years we have been attempting to get decontrol of natural gas. This bill gives us decontrol in 1985 which is much better than the status quo.

We urge you to support the Natural Gas Policy Act.

Jack Blanton, George Brown, Joe Foy, Neil Hanson, Allan King, George Mitchell, Pat Rutherford, J. N. Warren, George Watford, Jim Wooten.

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Senator WENDELL H. FORD,
*Dirksen Senate Office Building,*
*Washington, D.C.*

Hon. WENDELL H. FORD: Quintana Petroleum Corporation has been actively involved in oil and gas exploration for many years, there are many opinions being voiced about the Natural Gas Policy Act of 1978, because of increased regulation and uncertainties caused by confusing provisions, this is by no means a perfect bill. However, the bill does provide some degree of certainty and its passage will cause an increase in drilling activity and additional supplies of natural gas.

We also foresee that without passage of this bill Congress will not again consider a natural gas policy act for some time except in an extreme emergency, in such an event, the results could possibly be much more stringent control.

We believe that despite the shortcomings, this bill is preferable to the alternatives. We urge you to "support" the natural gas policy act of 1978.

JOHN B. BROCK, III.

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Senator WENDELL H. FORD,
*Dirksen Senate Office Building,*
*Washington, D.C.*

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HARRY CULLEN.

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*Dirksen Senate Office Building,*
*Washington, D.C.*

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We believe that despite the shortcomings, this bill is preferable to the alternatives. We urge you to "support" the Natural Gas Policy Act of 1978.

CORBIN J. ROBERTSON, Sr.

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Senator WENDELL H. FORD,
*Capitol Hill, Washington, D.C.*

It is our understanding that the natural gas pricing compromise, which has recently been signed by the Senate and House conferees will come before the Senate soon. This bill is of vital importance to Alaska and the nation's economy. Since the price of Alaska North Slope gas is determined by this legislation, the Alaska gas pipeline project will be substantially delayed unless an early decision on pricing is reached. The pending legislation would provide a pricing arrangement which assures marketability of the gas in the lower 48. Without this rolled in pricing mechanism in the gas compromise bill, we are deeply concerned that the project sponsors will find it difficult. If not impossible, to obtain financing for the project. The Prudhoe Bay pool accounts for approximately 10 percent of the nation's domestic gas reserves. Production of this great resource and bringing it to market would reduce oil imports and help stabilize the value of the dollar. On behalf of the member firms of the nonprofit Fairbanks Industrial Development Corporation that provide more than ten thousand local nongovernment jobs. We urge you to pass the energy bill and help bring Alaska's much needed gas to market.

WILLIAM R. WOOD,
*Executive Vice President.*

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Hon. WENDELL H. FORD,
*Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR FORD: A and P urges your support for the natural gas legislation (H.R. 5289) which is scheduled for a vote during the week of September 11.

We appreciate that some of the provisions in the legislation are controversial ones.

Although not perfect, passage of this compromise legislation now would be, in our

opinion, a step in the direction of a more comprehensive, coordinated energy policy.

From the perspective of the food industry this legislation is important to all phases of agriculture from seed to table in that it insures the availability of reasonably priced natural gas for agricultural users during times of shortages.

Respectfully,

THOMAS K. ZAUCHA,
*National Director of Government Affairs.*

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Sen. WENDELL H. FORD,
*Dirksen Senate Office Building,*
*Washington, D.C.*

Re: Compromise on Natural Gas Bill.

This is to convey to you the endorsement of Associated Industries of Kentucky of the compromise that has been hammered out on natural gas deregulation and to urge your support of same.

While the committee compromise falls far short of our desire for complete deregulation, it seems to be the only step that it is possible to take at this time, because of the various pressures that are at work.

Lest it seem a little strange that an organization representing employers would favor something that might entail some cost increase, I should explain that our members are sophisticated enough to realize that continued, steady availability of supply is equally important . . . and that the interplay of market forces themselves will result in a fair price if those forces are allowed to work.

In this connection I have heard both producers and users alike complain that government interference years ago caused much of the problem in the first place.

At any rate, this is to express appreciation for the work you have done to get SOMETHING accomplished and to let you know that AIK backs the compromise despite its shortcomings.

Sincerely,

S. RAYBURN WATKINS,
*President.*

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GROUPS SUPPORTING NATURAL GAS COMPROMISE

American Bakers Association.
American Feed Manufacturers Association.
American Frozen Food Institute.
American Gas Association.
Aspen Institute Committee on Energy (John Sawhill, Chairman).
Atlantic Richfield Company.
Bank of America.
Building and Construction Trades Council, AFL–CIO.
Burlington Industries.
Chemical Bank.
Chocolate Manufacturers Association.
Corn Refiners Association.
Corning Glass.
DuPont Industries (Irving Shapiro, Chairman).
Exxon Corporation.
Gas Appliance Manufacturers Association.
Gulf Oil Corporation.
Independent Gas Producers Committee.
International Association of Ice Cream Manufacturers/Milk Industry Foundation.
Interstate Brands.
Interstate Natural Gas Association.
Irving Trust Company (Gordon T. Wallis, Chairman of the Board).
League of Women Voters.
Mobil Oil Company.
National Agricultural Chemical Association.
National Association of Wheat Growers.
National Broiler Council.
National Conference of State Legislatures.
National Council of Farmer Cooperatives.
National Food Processors Association.
National Milk Producers Association.
National Steel.
Phillips Petroleum Company.
R. J. Reynolds, Inc.
Shell Oil Company.
Society of American Florists and Ornamental Horticulturalists.
Solar Energy Industry Association.
Union Oil Company of California.
United Fresh Fruit and Vegetable Association.
U.S. Association of Journeymen and Apprentices of the Plumbing and Pipefitters of the United States and Canada, AFL–CIO.
U.S. Conference of Mayors.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. FORD. I will be glad to yield. I have got some more constituents I want to get in here. They just keep coming. And I just want the Senator from Ohio to know we do have some support. Including the Bank of America.

I yield to the Senator from New Mexico.

Mr. DOMENICI. I want just a couple of minutes, and then I have to go to a markup, as the Senator knows.

Mr. FORD. I give you 2 minutes, without losing my right to the floor.

(Mr. HOLLINGS assumed the chair.)

Mr. DOMENICI. I just want to make a couple of comments about the statement of my good friend from Ohio. I say to my good friend—sometimes we agree and sometimes we disagree, on this floor and in committee; on this issue we very seldom agree, obviously, but I wonder if the Senator asked the economist whom he quoted, Mr. Janeway, what would happen if we had no bill. I wonder if he asked him would we be better off if we followed the approach Senator METZENBAUM wants to take on natural gas.

That is the issue, no bill or the kind of bill he wants, which is another 50 years of regulation of the marketplace by Federal bureaucracy, and then, at the same time, he wonders why we are not doing things in other energy fields, when it is well known that in the American economy you cannot perform miracles.

When natural gas is three or four times cheaper than solar energy, you expect Dr. Schlesinger, out of the Department of Energy, to have the American people buy solar energy, and then you get up here and complain because he is not producing it.

The issue is not whether or not someone is interested in solar energy or geothermal or coal. The issue is that we have a natural gas policy in this country right now that totally distorts the interstate market, and you know it distorts the price, diminishes the research, and cuts the production, and yet you want the other sources of energy to come on board and compete with it, when it is the cheapest energy, a good three times as cheap as electricity produced from coal.

But you stand here and say, "I have asked the economists if this bill will solve the financial problems of the world." Of course it will not, all by itself. But the real issue is, does America need an energy policy? That is one. The second is, is it significantly better than the one we have? The answer is yes. Those are the questions that should be asked.

And, since you are an opponent of this measure, you ought to lay your proposal for natural gas before us, and then ask them what they think of what you like. If you asked them what they thought of your approach, they would probably say it is ruinous, and that with that plan we will never bring the other sources on line.

When we in conference had a political position to adopt deregulation and a political position to adopt several regulatory schemes, and when we felt conscience-bound to produce a bill for the American people that, somewhere in the middle, protects the consumer and will bring new gas on board, if regulation is going to be there for this whole period—it can be there for 9 years after 6 months, we know, and you know that; and if that is working, you know that 9 years is plenty of time for Congress to take another look.

What I am suggesting is that it is very easy, with no alternative proposal, to ask people to be critical of this one, but it is only fair that you ask those same people about your proposal, what you have in mind for natural gas pricing for America. Ask those same people what they think about your ideas on it. I am sure you would get a very positive answer about it being ineffective, about it doing nothing for the American dollar, about it doing nothing to bring other energy on board. And I assume all of those combined would be good for the American dollar. I assume they would say, "Oh, that will have a great beneficial impact on the problems we have in this country."

The facts of the matter are that we have to do something, and in this body and the other body we can only do the doable. We cannot perform miracles. Somewhere in between those two political positions represented here on the floor, one by you, who seemed to love the idea that the Federal Power Commission ought to fix the price on every bit of gas that comes across this country—24,000 cases pending before that body now, with little ideas on abandonment, certification, and pricing, and you stand up and say this bill is too complicated.

Let us talk about solar energy for just a minute, and then I will sit down. You criticize the Department of Energy for not bringing solar energy on board.

The last report produced by an independent body on solar energy said the only way to really bring solar energy on board, in an abundant way, I mean, is to price natural gas today at its present-day value, and to get rid of all the vintaging, that is, bringing old gas on and rolling it in with new. They said if you did that, you would have solar energy in abundance.

Do not misunderstand; I am not here advocating that, because that is about as silly a political approach as anyone can have; but what they are saying is that when you mix old 9-cent, 10-cent, and 30-cent gas with new $1.40 gas, the price is still too cheap for solar energy to be brought on. It is not fair to stand here and say that research can solve that problem, that the Department of Energy can solve that problem. You are standing here criticizing the President for saying that industry is going to pay more for natural gas. Is that not what you want, if you want them to convert to coal? You expect them to convert to coal as we con-

tinue the present policy of letting them buy that rolled-in mixture of old and new natural gas, and just burn it at that cheap price?

What will bring coal on for American industry? The coal conversion bill plus this bill, which will make their gas higher, and yet leave the residential user at a lower rate. That will bring coal on probably faster than anything else.

I conclude by just saying this: You know you and I agree on many things and disagree on many others.

Mr. FORD. Mr. President, will the Senator yield to me for an observation as relates to solar energy?

Mr. METZENBAUM. A point of order, Mr. President. One Senator may not yield the floor to another Senator.

Mr. DOMENICI. I will yield for a question to the Senator from Kentucky.

Mr. FORD. Do you know the position of the solar energy industry on this legislation?

Mr. DOMENICI. I do not. I would suspect they favor it.

Mr. FORD. They do, and I have a statement here which shows they support the natural gas bill, that the solar energy people are very much for it.

Mr. DOMENICI. I would suspect that, and it seems to me they might even have favored total deregulation, because they are very much aware of the fact that they cannot get into the marketplace until the price of gas is somewhere near its replacement cost.

I think one thing in the President's energy message, one point that he makes that has been overlooked rather frequently—and I am not one to say that that entire 481-page package on energy was a good package—but there is one statement in it that we ought to put at the top of the page, and as we go through these debates we ought to remember it. The President made one bold statement. He said, "Sooner or later, and the sooner the better, the American people are going to have to pay the replacement cost of energy."

That was the goal of his entire energy package. We cannot do that overnight. We cannot do it next week. We cannot do it in the field of natural gas in 2 years. It is politically not doable. But basically what this bill is trying to do is say that at the end of 7 years, or 8, or 9, we will be getting close, for new natural gas, to its replacement cost. And as soon as we can get there in every field of energy, and only then, will the alternatives we have been waiting on for so long in this country come on board.

Let me conclude by saying this: People ask, "Why don't we convert that shale up in Colorado and Utah to crude oil, and use it?"

(Mr. METZENBAUM assumed the chair.)

Mr. HOLLINGS. Mr. President, will the Senator yield?

Mr. DOMENICI. Let me finish this one thought, and I will be delighted.

The Senator wants to criticize the administration, the Department of Energy, and industry for not bringing that shale on board.

It is just this simple: The lowest estimates are that it will cost $20 a barrel; the highest estimates are $22 or $23 a barrel, against the price of old domestic crude oil, which is frozen at $5 a barrel, with new crude oil at $12 and $13, and imported oil at about $15. Are we going up there and produce that shale at $22 or $23, against those prices? Who is going to take the risk of producing it, to assure that it will be used? And we have the same pattern across the board, as far as the use of alternatives is concerned.

Until those two basic energies have some common sense approach attached to them, America will continue to be dependent on them.

I truly believe in the final analysis that this conference committee report, with Congress able to watch it for 7 years, with the price of both inter and intra regulated at reasonable prices, will bring all the natural gas possible on board in those years. Whatever we bring in addition to what we are bringing on now moves us toward independence, saves crude oil, and ultimately saves the consumers of America billions of dollars because if they do not use it they use something that is now, today, two, three, and four times higher. Electrical energy from coal is at least three times as high as natural gas.

It appears to me the issue is not to be totally critical of this report, but to ask of those who are, what are they for? What constructive approach are they for? If they are asking economists and experts about this approach, then ask them about their approach and see what they say about it.

I am one who obviously had a difficult time with this bill. I come from a producing State. Eighty-five percent of our production is exported to other States. Out-of-State consumers continue to buy it there far cheaper than my own constituents can buy it in my State. And we continue to produce less and less for the interstate market as a result of price controls on the interstate market.

I believe this bill will bring gas on as fast as we can in the next 7 years, at prices that are realistic.

For those who have a criticism, about the only thing they can say is that it is complicated—and it is. But I remind those who are living under the existing law that it is certainly not absent and void of complications. It is not void of litigation. There are more lawsuits pending over the existing policy than almost any law in this land. There are more cases pending before this commission than almost any commission in history.

I do believe, after a couple of years, when some of the questions in this get shaken out, relying on our States to make determinations as they must under this bill, the independent producers will find that there is significant revenue in this for them to produce, and the American consumer is not going to be hurt. He will be protected by price, protected by more supply. I just honestly believe it is time for us to show our people and the world that on something as complicated as this grown people can agree.

I thank the Senator.

Mr. HOLLINGS. Will the Senator yield?

The PRESIDING OFFICER (Mr. METZENBAUM). The Chair recognizes the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I was going to engage in colloquy with my good friend from New Mexico. I had come in, obviously, to preside. But then I heard him talking about solar energy and then he picked up on a couple of other subjects with respect to crude oil and realistic prices.

It interested me when the Senator in one breath was talking about solar energy and a discussion relative to the fact that we ought to be bringing in more solar energy, or someone was blaming the Department of Energy for not bringing on solar energy. The Senator said that the way to do that, someone had suggested, was to go ahead and bring the price of natural gas up to its true value and not have this, and not take it 8, 10—I see the Senator's head nodding. The reporter cannot get that in the RECORD, but I would like to have it in the RECORD.

Mr. DOMENICI. I am nodding that that is what I said.

Mr. HOLLINGS. I thank the Senator. Anyway, you would not have that cheap gas. But, the Senator said, that was one of the politically silliest suggestions that had ever been made, just asking for the higher prices.

Then in a minute the distinguished Senator from Kentucky got up and asked, "Do you know who is endorsing this conference report? It is the solar energy crowd."

Does it not strike the Senator that that is the exact reason why they do endorse it, because of that silly political idea of just putting gas up to an exorbitant price?

Mr. DOMENICI. Absolutely not.

Mr. HOLLINGS. What was the silly political idea of not having what this calls for?

Mr. DOMENICI. What I was saying was that the report I was referring to says that the method of utility ratemaking in the United States as far as natural gas is concerned, for decades has taken into consideration for the consumer a mix of the new and the old, which is vintaged, as the Senator knows, and a few years later it goes up a few cents, but that is also mixed with that old, which is cheaper. So the ultimate price does not represent today's market but, rather, the mix of all. I said this report suggests the way to bring solar energy on is to do away with all of that.

Mr. HOLLINGS. By doing away with all of that, you mean doing away with the vintage?

Mr. DOMENICI. Vintage, on all the old. I am saying that that is not in this bill, that is not doable. No one ever suggested deregulating old natural gas. That is what I was referring to as being not doable. Obviously, this moves in the direction for the future, I say to my good friend, 10 or 15 years out, in a direction that obviously they would prefer we move in to bring on solar energy. It is only in that context that I referred to it.

Mr. HOLLINGS. I understand. At least the Senator from New Mexico and the Senator from South Carolina agree that

it would be a silly political idea to deregulate old natural gas.

Mr. DOMENICI. Absolutely.

Mr. HOLLINGS. If we read this conference report on what they describe as new gas, I can show you a lot of old natural gas that becomes deregulated.

Mr. FORD. Name one.

Mr. HOLLINGS. Well, I can get all of these definitions by siphoning and everything else.

Mr. FORD. Does the Senator know how many categories of natural gas we now have on board?

Mr. HOLLINGS. How many are there in the conference report?

Mr. FORD. Seventeen.

Mr. HOLLINGS. Seventeen.

Mr. FORD. Does the Senator know how many are on board now? At least 700.

Mr. HOLLINGS. That is right.

Mr. FORD. We are reducing it to 17. It seems like that would be a pretty feasible way to go. We are trying to reduce the cost of Government, trying to reduce the bureaucracy up here. We reduce it from 700 categories down to 17. It seems like that is pretty good.

Mr. HOLLINGS. I would say to the Senator from Kentucky it is not the numbers game that I am going to engage in but what really has been old gas, siphoning and putting another straw in the soda and characterizing that same old gas now as new gas.

Mr. FORD. No.

Mr. HOLLINGS. It is one of those 17

Mr. FORD. No.

Mr. HOLLINGS. Well, I have been reading the news reports. I used to be in this for many years. I know that they want to try to characterize as new gas. At least we agree on that proposition.

But why does the solar crowd come for the natural gas bill? Because they want gas priced up so high—and I am back to my original points—that it makes solar energy cheap. That is the first point.

The Senator was talking again with the expression that we were going to save crude oil. Does the Senator from New Mexico really think that is the purpose of the natural gas bill, to save crude oil? I heard the Senator from New Mexico just a minute ago in his closing comments remembering the President a year ago going to war or the moral equivalent of war, and everyone to their battle stations. He said it was not going to save any crude oil. Does this not change that completely? We have a gas bill in order to save oil. I wonder does the Senator, since he is from a producing State, think we have domestically more oil left in the United States or more gas left?

My point is, are we trying to conserve gas with a gas bill or are we trying to conserve oil?

(Mr. METZENBAUM assumed the chair.)

Mr. DOMENICI. At this particular point, we are saying that if this bill works as planned, it will produce somewhere between two and six trillion cubic feet of new natural gas that would not otherwise be produced and, to the extent that industry uses it instead of imported crude oil, our estimates are that we would use about a million barrels a day less of crude oil.

Mr. HOLLINGS. I thank the distinguished Senator, because that is one of the big changes that I think comes about in the mind of those who have been dealing over the years with this particular problem. Until this conference report hit this Congress, we never had that idea in mind in either House, that we are going to save crude oil. There is a geologist named King Hubbert, whose work has finally been recognized and who received the Rockefeller Award in July. He estimated that we had in the vicinity, give or take 5 years, of a 25- to 35-year supply of gas left in the United States—onshore, offshore and domestic gas, proved and unproved. And if you meaned it out, a 30-year supply of gas, and about a 45-year supply of oil; that it was finite.

The whole thrust of the energy policy that you and I have been trying to promulgate here on the floor of the U.S. Senate was one of conservation, it was one to save—not to get what they called a realistic price, or what the solar crowd would call for as a realistic price. What is realistic to them is so high that it is uneconomic. Solar is pretty good except for the economics of it. Everyone knows that. But if you can get it up high enough, you can go in, as the Senator was just talking about—tertiary recovery, shale, or everything else, $22 a barrel oil. Is it the Senator's intent to get the gas up so that we make economic then the recovery of shale oil at the cost of $22 a barrel? Is that the new policy?

I am beginning to wonder. That is what is bothering me. I did not bring my notes—I shall have to get up a talk on this. But, it seems like the poor general has battle fatigue. He has lost the front line. I am talking about the conference committee and the President having gotten battle fatigue. They have lost the front line and they are turning now and firing on their own troops.

Last year, when the President submitted that particular program, it was going to conserve gas. Now, we are forgetting about the conservation of gas and we are, all of a sudden, going to conserve oil.

I am glad to yield.

Mr. FORD. The Senator must know that the Alaska pipeline is in this piece of legislation. If it goes down, then we have the problem of trying to have another piece of legislation. Otherwise, if it continues as it is, we shall get a trillion cubic feet a day down to the Lower 48. That is bound to give some stimulation to the reduction of sending our money overseas. I do not believe the Senator wants to send any more of our money overseas to foreign countries.

Mr. HOLLINGS. That is clever. I always hear my Senator friend from Kentucky say he is not a lawyer, but he sure acts like one. He has changed the subject. If we want to worry about the money overseas, I have asked the President personally to act on this, by letter, in the office, and on the White House tennis court——

Mr. FORD. Oh, the Senator plays tennis?

Mr. HOLLINGS. Yes, I get there. We hit them.

I said, please impose an excise tax on imported oil. I have asked for that. If the Senator wants to try to reestablish the value of the dollar, and cut out the outflow of American dollars and everything else, fine—but let us get back to gas and not the pipeline and the dollar situation. I want to get back to where we were starting on a gas bill for this country.

Mr. FORD. I want the Senator to understand that I am talking about the gas pipeline now, not about the oil.

Mr. HOLLINGS. I know about that.

Mr. FORD. I want to be sure that he understands that he is talking about gas and I was talking about gas.

Mr. HOLLINGS. We can take care of that. Do not worry about the Alaska pipeline.

Mr. FORD. We are not doing it very well. It is in this bill and that is about the only way it is going to be done.

Mr. HOLLINGS. Oh, no, we have all kinds of ways to take care of that. If we waited on this bill to take care of anything, we would all be dead and gone. This bill the Senator is talking about has done absolutely nothing. We seem to be moving at least in the right direction. Let us talk about that.

The right direction, because the Senator from New Mexico is a most reasonable fellow and he should have been here in the day and time when we had the Phillips 66 team and we had the dollar-an-mcf natural gas—just 3 years ago. Let me fix in the Senator's mind right here and now what it costs for gas, the most expensive gas. My friend talks of the Alaska pipeline. I have something even more expensive than that: Algerian liquefied natural gas. They bring it all the way from Algiers. Do you realize that? They are doing that right now. And after they liquefy the gas and they bring it in by way of vessel——

Mr. DOMENICI. Why do they bring it?

Mr. HOLLINGS. They can really sell it cheaper. Ha, ha, ha, the Senator asked the wrong question. The Senator wants me to say because there is a shortage. Oh, no. Oh, no, they are going to bring it in, I say, because it is cheaper than the Senator's New Mexico gas. That is why they are bringing it in.

The Senator has tripped up now. Let me give him the story. I am going to tell him. Southern Natural out of Birmingham, Ala., has a long-term contract with Algiers. They liquefy that gas and get it for $1. The transport cost to Savannah, Ga.—if that fellow keeps whispering, the Senator cannot hear—costs them 30 cents. Then they bring it back to the form of its gaseous state and put it back in the pipeline and deliver it to South Carolina today for a total cost of $1.60.

Somebody write that down—$1.60 for Algerian gas and this crowd comes out, what a great compromise they have, at $1.93, and they wonder why people oppose a conference report of this kind.

We are taking foreign gas into the country, bringing it in costly tankers into the ports of the United States of America, gasifying it and putting it in the

pipelines, and selling it for cheaper than this starting point. That is my problem, the conference report. That is why I say to do nothing is a good policy rather than to accept the conference report.

That is why I say, do you know, Senator from New Mexico, that we picked up the shortage? They are talking about the emergency. We picked it up with a better Federal Power Commission, with the new group that went over there. (I hate that name, FERC—Federal Energy Regulatory Commission.)

When we got Mr. CURTIS and his crowd over there, they cut out a loophole. And when they cut that loophole out, they actually brought in gas by administrative procedure. But talk about the 24,000 cases. Take the conference report and we will have 224,000 cases. We can all retire and be gas lawyers, I can tell you that right now.

But let us not get off on that subject. Let us talk about just producing gas with proper administration. They closed that offshore gas coming in and being treated as intrastate gas in Texas and Louisiana. Now we have in excess of what we had with the shortage two winters ago, when we put in S. 2410, the emergency bill. They are on both sides. That is your bill. That is in the other side's bill, which wants to defeat the conference report and recommit it and have the United States continue on its present policy at $1.46, with every right to come in for inflation and everything else, and with the stated purpose and conviction that we are going to conserve gas in this country and stated no later than last December by the Secretary of Energy, Mr. Schlesinger, that all of our $1.75 would not bring in an extra mcf of gas.

Where we differ, the Senator's formula and equation and the Senator from Kentucky's formula and equation, the bigger the money, the bigger the gas; the more the money, the more the gas.

That is not necessarily true. We reach a plateau where only so much gas comes in and the rest of it is windfall. We have a pretty good idea what windfall there is because we have got the testimony of those in the gas business.

In 1972, the principal witness for the gas industry was testifying. He was Mr. Richard A. Rosan, senior vice president of Columbia Gas Systems, the largest integrated natural gas system in the United States. At that time, the industry was recommending that the price be increased from 26 cents to "35 cents to 40 cents." But I was trying to learn what effect the bill would have at 26 cents:

Senator HOLLINGS. Suppose the price stays the same and you pass this bill?

Mr. ROSAN. At 26 cents?

Senator HOLLINGS. Yes.

Mr. ROSAN. The area rate?

Senator HOLLINGS. Yes, and you pass this bill. How much more exploration would we get in your opinion?

Mr. ROSAN. I think there would be more exploration. Of course, there cannot be until we get more leases by the Federal Government because there are just a few places to drill. But I think that standing by itself it would increase the incentive to explore for gas. I have no way of giving you a better measure than that, sir.

Senator HOLLINGS. Increase it substantially, or minimally, or what?

Mr. ROSAN. I would say significantly.

So, when I come to the floor in 1978, I have a certain historical feel about it, from those hearings and going back even to the hearings I chaired in 1967, following the blackouts and brownouts. I have been talking and others have been talking about the shortage and conservation and pricing, trying to find where is that price level at which, like the Mafia, they cannot any longer refuse it but would have to bring it in? And where, over and above that price, is there a windfall?

Now that price has gradually gone up, of course. But in 1972, we were told that exploration could increase significantly at 26 cents an Mcf. Today 6 years later, the industry refuses to agree to many times that amount.

The Senator is updated on these figures. What is the average price of interstate gas in the pipeline today?

Mr. FORD. The Senator is doing very well; I will let him quote his figures.

Mr. HOLLINGS. All right. I would like to be accurate. I think it is slightly over $1. I think intrastate used to be $1.30 only a couple of years ago, about 18 months ago, about $1.30. That is up to about $1.60.

I think that is where, again, the $1.60 comes out with the imported gas in the intrastate, that both are around $1.60. That is what makes this economically possible.

Mr. FORD. I know the Senator wants to be correct.

Mr. HOLLINGS. Now we should be corrected.

Mr. FORD. No.

Mr. HOLLINGS. I appreciate it.

What is the average price of interstate gas?

Mr. FORD. The Senator is confusing average prices and new prices.

Mr. HOLLINGS. No. Average. I never did mention new.

Mr. FORD. Well, the new price there is $1.33 or $1.45. That is for new gas, not the average price in the interstate pipeline. I do not have that figure, but I will get it for the Senator.

Mr. HOLLINGS. Average is the new and the old.

Mr. FORD. Correct. But the Senator is talking about the $1.30 and $1.40 as if that is the price.

Mr. HOLLINGS. Yes.

Mr. FORD. Now, average interstate, in my judgment, is around 90 cents.

Mr. HOLLINGS. Less than $1.

Mr. FORD. The average intrastate, somewhere around $1.

Mr. HOLLINGS. Intrastate has got to be above $1.

Mr. FORD. No, average. The Senator is talking about new price. $1.80 is the new price and the short-term contract intrastate.

Mr. HOLLINGS. I remember something, just by way of memory——

Mr. FORD. Mine is not very good.

Mr. HOLLINGS. Yes.

We went into the intrastate market and were pleased to get $3 and $4 gas in the emergency. At that particular time, contracts were being made below that, obviously, but the average intrastate price was about $1.30. I think it is over that, up around $1.60 now.

Mr. FORD. The new gas we take intrastate now is about $1.80. It has fluctuated somewhere between that and over $2, and this is not—nonregulated gas.

Mr. HOLLINGS. Right.

Let me try to complete a thought because I came and I was listening, and we started talking about saving crude oil.

I am looking for a gas bill that will save gas. That is what I am looking for. I know supply is finite and I know that the energy market should be competitive.

I wish we had a Secretary of Energy and Administration that would carry out its promises. When I understood the President was promising the Senator from Idaho a breeder reactor, I said, "Well, I ought to be able to get something for my vote."

So I thought perhaps I ought to get a promise he would carry out his promise for horizontal divestiture, because this gas bill is not a linchpin or centerpiece for the international charade, or whatever he is talking about. It is one of the important, substantial factors in a national energy policy, if the national energy policy can possibly be promulgated, in part, by this Congress. We participated in the offshore drilling bill, the conservation bill, the automobile fuel economy bill that I coauthored and which is now part of the law under the Energy Policy Conservation Act of 1975, the coal conversion bill, the refurbishing of our railroads, the prohibition against the waste of natural gas under boiler fuel use, the excise tax or fee on imported oil, and a natural gas bill, all culminated into what we call a policy.

But let us not come with a gas policy talking about saving oil, and let us not eliminate the competition, the little that does remain.

I remember as a governor when we used to, as Governor Ford would, solicit industry and try to bring it to our State. The cost of energy was one of the competitive factors, along with the industrial base, wage scales, productivity of the workers, the business climate, the balanced budget of our General Assembly. All these things we used to consider. Oil was the most expensive, coal the second most expensive, and gas was the cheapest fuel.

In fact, I wish someone would go and find out what the cost of natural gas was from the North Sea.

I have a Senator from Louisiana friend and every time he gets a group in, he starts digging way down. He says, "These are not 500 or 5,000 foot wells we are going into now. He shakes his head, and says, "We are going down 10,000 and 15,000 feet, and going down costs money."

Then everybody jumps around—it costs money. I want them to go down into the North Sea and find out what the British have got and factor it out for as the cost of an mcf. It used to be 26 cents. There might be some inflationary rise.

However, talking about the competition we are in, they want to eliminate competition. They are trying to dicker around with crude oil. They have given an unrealistic price that was not in the President's word, I believe, when he said it last year. They are not going to bring in an additional mcf of natural gas.

I went home, and everybody was making speeches about proposition 13 and

inflation. Nobody wants to talk about inflation, including business. They do not want wage controls and price controls. But this would be one of the biggest reasons I know of for fueling our inflation.

This is the biggest inflationary bill we have had this year, I say to the Senator, and I say that respectfully. If inflation is on the Senator's mind, he and I are going back to the Budget Committee again at 3 o'clock this afternoon. We are trying to hold back and cut the budget. We took President Carter's $60 billion deficit in January and cut it in the first concurrent resolution to $50.1 billion. In the second one, which we are working on, we are to bring it down to $42.3 billion. The Appropriations Committes and their subcommittees are cutting.

I do not know where the Senator from Wisconsin stands on this. I want to hear his talk on inflation with respect to this conference report. I imagine he would be with us. He tries to be consistent.

I wish I had brought the Congressional Budget Office report. Talk about a bunch of children getting together—it is like the king who wore no clothes. He is just garmented in the most beautiful garment you could possibly find. They get the CBO to take prices that go jumping, zooming up.

If we take the Senator from Kentucky's figure of 90 cents for interstate and a little more than a dollar for intrastate, and let us talk of the dollar right now, they want to carry it, bam, with the bill to $2, and if they have CBO write me and say that is not inflationary, that begs the commonsense and judgment of all of us. We just take judicial notice that the report is not worth reading. We will get with those economists, Mr. President, in the Budget Committee. I listen to all these economists. On the one hand, you follow them, and it is like drawing a line in the dirt, and they have my attention. About the time I understand it, they say, "But on the other hand." All my life I have looked for a one-armed economist. Somehow or other, that crowd always has been wrong. It is that little Annie song: "Tomorrow, tomorrow, you always are a day away."

All I knew was that when they came in January, whatever they said in the most persuasive fashion was going to be wrong. I did not know how to guess what was going to be right, but I should have guessed it on inflation. When they said 6 percent, I should have doubled that in my mind and said 12 percent; because it is nearing that right now, Senator, for this year. The Senator and I had to listen to those economists.

The Senator from Washington (Mr. JACKSON) has worked on this. I would like him to come and tell me how this dollar going up immediately to $2, and in the next several years to more than $3, is not inflationary.

I think the inflationary cost has been estimated to be almost $29 billion on up. I know that the President was using the $70 billion figure last year, when we were talking about conserving gas; and that had come out of not the CBO but the Library of Congress or the Congressional Research Service, one or the other.

Let me get back to a conference we were having on the Interior Department bill. It just came about in my little time here as presiding officer. I beg my colleagues, as they consider this measure, that we get back to the fundamentals. Gas is short in this country. We will have to do our level best to stretch it out and give time for solar energy to develop, which we favor, and nuclear and all the alternative fuels. We are the only industrialized country, along with Canada, that has gone nuclear.

According to this morning's newspapers, the Shah of Iran has troubles, but he is thinking years ahead on energy. They are building light-water reactors and reprocessing plants.

All you have to do is go to the people who have the oil. They know it is not finite. They would not legislate a conference report of this kind, which is sold on the basis that we are going to consume more gas and therefore save more oil.

I never before heard of that in the entire debates we have had around here for the last 12 years. They are off on the wrong track. I said earlier that they lost because of battle fatigue on the front line. They have turned and they are firing on their own troops. I do not know why. I think the gentleman is confused.

Let them go ahead with an excise tax on imported oil; let the Federal Energy Regulatory Commission continue to administer. The old Federal Power Commission never did take cognizance of the additional cost for rediscovery when they set that price of the cost of gas plus a 15-percent guarantee.

No one has lost money on natural gas in America—no one. I made money on it. I made money on this—more on gas than anything else. It is a delightful investment, Senator. The Senator should try it sometime. It is really windfall. It is delightful. No one has lost on this.

Let me go back to the proposition that we are trying to save the gas, that we are trying to get a realistic price, as the Senator says, when you are up with a new Commission now that has it at $1.48, when the Commission will now include the added cost of exploration and replace that new gas that is being sold—in other words, take cognizance of inflation—plus the guaranteed profit.

Whether it is $1.60 or $1.75, there has been good debate. The President was anxious. He thought in April, when he gave that much, that it was over and above the $1.40 that the Federal Power Commission had at that particular time; and he knew it was 75 cents over and above the $1 that the gas people were talking about only 18 months previously, which would bring in all the gas.

So, like me, he thought he was making them an offer they could not refuse. But there it is. We have reached that price, and now we have come and broken ranks and put in an administrative hiatus, so that instead of 24,000, it is going to be 224,000 regulations. Instead of actually increasing the production, it would stultify and award withholding.

If I am Hollings Natural Gas—and everybody will say that is a good name for me—if I am Hollings Gas, Inc., and if I know that if I hold my gas back and next year I am going to get an increased price, and get even more the following year, then I am not anxious. I did not organize the business to go out of business in 30 years, and we could be running out of gas. So I am going to have to start getting the highest price possible and looking for diversification.

So the present conference report, sold in the name of conservation, really is going to cause increased reckless consumption. It was sold in the name of trying to be realistic and in the face of inflation would take care of that factor, but actually it is more inflationary than any other bill we will face on the floor of the U.S. Senate this year. It was sold in the name of a good measure that would constitute policy instead of administrative hiatus. It should not be called a bill or a policy at all. I hate to say it that way, but I am trying to be respectful.

I think the best thing we can do is recommit this bill and put it back out with the emergency provisions and any others that the conferees think would be necessary, if Alaska is in there, or whatever it is.

But I have one particular thought that the American people should really appreciate. Natural gas has prospered in America as the result of regulation. Back in the thirties they were burning this gas off in the noonday sun, and Sam Rayburn and the Texas boys came and said:

> Look, if you can protect our investment, the heavy costs of these pipelines up East, we will invest, but you have to protect that with a monopoly. We do not mind you fixing the price. We have to get a guaranteed profit. If you will regulate us and regulate everyone else, so our monopoly is protected, then we will go ahead with that investment.

And the Texas crowd and the Oklahoma group were the ones who came and asked for the regulation.

I ask, in a similar fashion, is there any electric utility back in your home town that, having gotten its monopoly and certificate for public convenience and necessity, having built its powerlines and brought the electricity into the homes and industries around, developed the market and everything else, would walk into the Senator's office and say, "Now let us do away with the Public Service Commission and regulations and have what they call competition?"

What kind of competition is that? It would be a little bit of competition because they have some public and private power companies to cause some of it. But here there is none of it. And, on the contrary, we are regulated by the OPEC Congress, not the U.S. Congress. We do not have anything to do with this.

The Senator is asking us to come to the OPEC cartel. He is saying when they meet in December, let them set the price.

We have no input at all. They meet in those little tents with their hairdos, and they will come out and say 5 percent, 10 percent, whatever percent it is.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HOLLINGS. No. I wish to get through with the thought.

When they get through all of that pricing, then we will all run dutifully back to the Senate Chamber and say:

Please, bring gas up to the price that the sheiks in their tents have set that would be realistic, that would be in the national interest, that would help the dollar and have nothing to do with inflation. It would be just a nice thing that we could finally get up to the OPEC cartel price.

Is that not a great policy? That is what they are asking us to do.

Mr. FORD. Mr. President, will the Senator just yield?

Mr. HOLLINGS. Can you imagine that as a national policy?

Mr. FORD. Instead of the Hollings Gas Co., it is the Hollings Theatrical Group.

Mr. HOLLINGS. No.

Mr. FORD. I want the Senator to know that the basic reason for this bill is to set the price for the next 7 and possibly 9 years so we will not get trapped in that way. But the Senator wants to let us get trapped. He wants us to go back free and open with the old bill.

Mr. HOLLINGS. No. As I understand the recommittal motion of the Senator from Ohio——

Mr. FORD. The Senator has not seen the recommittal motion because the Senator from Ohio has not put it together and no one knows what that recommittal motion is going to be. It is speculative.

Mr. HOLLINGS. We both looked at its elements.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HOLLINGS. I am going to yield to the distinguished Senator in a minute.

I get the Washington Post, and the newspaper says he is going to move to recommit with the emergency provisions, and there is something else about an intermix, I think; but in any event it would put us to regulation. It would put us under the Federal Energy Regulatory Commission where we are right now, where we have abundant gas right now, where we have just increased the supplies, with the administrative rulings that they cannot commit that offshore gas to the intrastate market.

Excuse me. I yield now to the Senator.

Mr. MELCHER. I thank the Senator for yielding because I wanted to get in on the sheik part the Senator was referring to in purchases of natural gas.

Mr. HOLLINGS. Yes.

Mr. MELCHER. I was extremely interested in my office just a few moments ago listening to the distinguished Senator from South Carolina speak about a gas contract that Southern Gas Co. has.

Mr. HOLLINGS. That is Southern Natural.

Mr. MELCHER. Southern Natural purchased liquefied natural gas based on a contract from Algeria where the total price was $1.60 per thousand cubic feet, and a very attractive price that is for liquefied natural gas.

I checked to find out when the contract was signed. It became effective in 1970. That is almost ancient history in terms of natural gas contracts. That is when oil was selling at $2.50 to $3.25 a barrel.

Now the whole energy deal has changed. That for natural gas from Algeria was signed at 30 cents per thousand cubic feet FOB Algeria with the additional costs of liquefaction and transportation bringing it to $1.60 delivered in the United States.

To build facilities that are necessary, to contract for natural gas now from Algeria, Saudi Arabia, or any other Arab country, is going to put it into the United States somewhere between $3 and $4 per thousand cubic feet. That would be the case now to deliver liquefied natural gas from any other country in Africa, Europe or Asia.

It is hardly relevant to be talking about how nice liquefied natural gas is, when you can get it to the United States from Algeria and it only costs $1.60, based on a contract in 1970, when energy costs were a fraction of what they are now, and relate that to the existing costs of new contracts several times higher. That does not solve our problem now.

It does not. It is $3 to $4, if you want to sign the contract today. If you want to sign it next year it is probably going to be higher than that for liquefied natural gas delivered to the United States from another contract.

Mr. HOLLINGS. I appreciate the Senator's question.

Mr. President, I do not want to infringe on your good nature much longer. I am supposed to be there presiding.

Let me say this to the distinguished Senator from Montana: I do not know why, when we are talking about the average cost and talking about energy, we do not take into account gas contracts which are all for 20 years. When you go home and if you use gas in your home in Washington, Langley, Va., Maryland, wherever the distinguished Senator lives, and you turn it on, it is under a 20-year contract. I am willing to make a bet on it. I am willing to bet—I do not know what year it is in—they might have made it just last week—but if he had to talk about averaging that was made over 10 years ago, it is all very relevant. All of this is relevant. Do not worry about that 1970. Did they tell the Senator since he ran over here so dutifully? That gas crowd is pretty alert. They send someone over right away. I am glad to meet the gentleman. Let me just say this: Did they tell the Senator how long the contract ran?

Mr. MELCHER. I say to the Senator from South Carolina that is a good price and that it probably runs for at least 20 years, but I hope it is longer for the sake of the consumers who are going to use it.

Mr. FORD. I have the information in the Chamber. No gas company came to call me. I have been sitting here with the Senator. I have all the information. It is $1.66 to $1.81. It was in 1969 for 25 years. What is the next contract? Does the Senator know of the next contract from the same people he was talking about? He does not know about that. It goes to $2.82. That is the same people, the same contract, only the contract is in 1975 for only 20 years.

This is what the Senator has been talking about. I hope that he would get his facts straight.

Mr. HOLLINGS. I have my facts straight.

Mr. FORD. I have them here.

Mr. HOLLINGS. Do not tell me about the facts. Whether the Senator liked that or not, the president of that company and gentlemen came in my office and told me those facts I have given.

Mr. FORD. $1.66 and $1.81.

Mr. HOLLINGS. I do not care what the Senator is reading from.

Mr. FORD. I admit those. The Senator does not go to the next phrase.

You do not go to the next phrase.

Mr. HOLLINGS. Do not take me to the next phrase.

Mr. FORD. No.

Mr. HOLLINGS. There you go, lawyer Ford. You say you are not a lawyer, and here you are on another phrase.

Mr. FORD. I said $1.60, Senator.

Mr. HOLLINGS. Wait a minute, the Senator from South Carolina has the floor. It is piling on another phrase, and he is going back to the year 1970, and I am going to try to keep up with both of you as best I can.

Mr. FORD. The Senator quoted $1.60 himself.

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. HOLLINGS. The $1.60 is the price, and I have not misquoted the President.

Mr. FORD. And I said the Senator has not.

Mr. HOLLINGS. The Senator from Kentucky says he agrees with that.

Mr. FORD. I agreed with that in the beginning, Senator.

Mr. HOLLINGS. All right, wait a minute.

Mr. FORD. In 1969, 25 years, I agree with that.

Mr. HOLLINGS. We will go to other phases.

Mr. FORD. I agree with the Senator. I did not dispute his word. I said he was accurate and correct, so now do not blame me for getting off.

Mr. HOLLINGS. All right. Let us stick to the facts and let us stick——

Mr. FORD. That is what I am trying to do is get the Senator to stick to the facts.

Mr. HOLLINGS. What we are really trying to do—and, Mr. President, I will yield in just a minute so I can get back there—I thank the distinguished Presiding Officer for this opportunity.

Natural gas is an awfully complicated subject, and obviously you have got to keep up with the various nuances and changes and policies and everything else. I am trying to impart in some way a feel to the particular debate relative to how we got regulated at the request of the gas industry, how the regulation has worked extremely well, extremely profitably. Many a company stretched its luck on interruptible contracts that made just that, interruptible contracts. Let me cite another particular incident. When we had the emergency a couple of years ago I went to a conference of business leaders in my State and there was one particular gas company president, the

president of Piedmont Natural, who insisted that the allocation for South Carolina had been diverted to New Jersey, and the reason for the shortage in South Carolina was a political decision by the diversion of the Federal Power Commission of South Carolina's gas up to the State of New Jersey.

He went on and on. He did not want to admit that he had made some contracts that were interruptible, and at times of shortage they were interrupted. They were not firm contracts. The average contract in the Northeast is firm for a shorter term. They are not for as much gas. They do not rely on it as much as we do in the Southeast, but in the Northeast they have got firm contracts, and when you have to cut back, their firms apply almost like a hospital contract.

We had many interruptibles, a lot of new industries, and they make a lot of new contracts, they wing it economically, if you might characterize it that way. But it has not been because of political decisions.

I had to stand him down and I said, "All right. we have got another company in this State, the Carolina Pipeline." They happen to deliver more gas than any other gas servicing company in the State of South Carolina. I told him I would be delighted to try to jump out of that window on the 14th floor if he could prove that Carolina Pipeline was curtailed a single mcf during the crisis, during the shortage, during the emergency.

Yes, we had cut back in my State. Was that political? Was that a defect of the regulation or were those business decisions they were trying to blame on the politicians?

Let us thank heavens that the regulation, in a sense, was complicated, because with that particular complication I can tell the Senator here and now maybe we have held back on excessive consumption, maybe as a result of the bureaucracy and administrative procedures we have not accelerated and facilitated more, and maybe in that inverted sense the Federal Power Commission has helped us to conserve.

Whatever the facts are, let us say we have got not more than 25 or 30 years left. Let us not come in with a bill or a conference report that promotes increased consumption, that promotes inflation, that promotes it when we are talking about regulation and, heavens, everybody has got in a bill, and we go back home and say, "I am against inflation; oh, yes, I am against inflation. I want you all to know I am working hard up in Washington against regulation."

Well, heavens above. in addition to being the most inflationary Senator from Ohio, you are right that this particular measure will constitute more regulation than all the other bills we will pass in the Congress this year. Everybody connected with it knows it, they know it from Senator JACKSON on down.

Mr. McCLURE. Mr. President, will the Senator vield?

Mr. HOLLINGS. I will be glad to yield.

Mr. McCLURE. I thank the Senator for yielding, because I wanted to make just two points in regard to what he had been urging: One, with respect to the concept of imported LNG. It is true contracts that were signed 8, 10, 12 years ago are relatively low-priced, but we have seen since that time the Federal Power Commission turn down an application for $2.35 LNG, and the renegotiated contract came in very much above that figure. The pending projects now are in the $4 to $4.50 per thousand cubic feet of gas for LNG projects. So if it is to be inflationary, it would seem to me it would be far more inflationary to place our reliance and our faith upon the uncertain sources of LNG from overseas at far higher prices.

With respect to the regulatory burden, I am not happy with the regulatory complexity of this bill, and I would like to get rid of it. But if you want to look at regulatory complexity, look at the existing law. You know this conference report has been criticized for having maybe 17, maybe 20, maybe 22 classes of gas. But we have several hundred classes of gas now and we will be adding at least one new class each quarter under the existing law.

So you are adding four new classes to the dozens, hundreds, we have now under existing law.

That is no great dream about doing away with regulatory complexity.

So I would share with my friend the desire to achieve more relief from the regulatory complexity, but we are not getting it under the existing law and we might hold out for a better one. But I suggest that, perhaps, some want one kind of a better law, another wants another kind of a better law, and there is not a majority in favor of either one, so a year or two or three from now we come back to about where we are now.

Mr. HOLLINGS. Mr. President, I thank the Senator for the question.

Now that we have assistants going out and getting these additional bits of information, let me ask the distinguished Senator from Montana and the distinguished Senator from Idaho to please go and learn, if they will, the cost of natural gas out of the North Sea. You all can run and get them. I do not know how the network works, but you can all run to the back and see if we can find out what North Sea gas costs.

Mr. MELCHER addressed the Chair.

Mr. HOLLINGS. Wait a minute, I will not yield just now.

Now, we heard about 1970 and $1.60. It is coming in now, but they are turning down $2.35. That is not disputed. This thing is inflationary as all-get-out. I am telling you what is happening right now. I am telling you what could have happened if we would have held the line on the cost of natural gas. I am telling you what could be the case if we could dispel the idea for some reason that gas ought to cost the very same thing as oil. I resist, I resent, that idea.

Why, amongst millions of reasons, I do not like that crowd I cannot control or cannot influence—the OPEC cartel—from setting that oil price. Once I agree to that premise that the price of oil ought to fix the price of gas, I am lost, I am finished. My good industrialized economy of the United States that does not have a wage advantage, does not have an hourly work advantage, does not have a safety advantage or social security or unemployment compensation or any of the other advantages, does have an energy advantage that has caused us increased productivity, it has allowed us to compete and, by Jove, I am tired of this crowd that does not want to compete on defense. They go around here talking about rough equivalency. I want to compete, I want to be in a winning position. When it comes to the economy I want to compete and I want to be in a winning position.

The other side is organized, they have mailouts and speakers and all the rest. I have not mailed out anything on gas or energy, and have not had the time. But the others are organized. I will never forget the Platt report.

Some 2 years ago, I went down to Houston to make a report, and Ed Bragg and others had sent out 200 speakers against me. They went to the Rotary, the Kiwanis, and everywhere else. We could not get through the Bicentennial without an oil company saying, "This is the way it was." They wrapped themselves in the American flag. The prices were going up. They had the airwaves, the newspapers, the Rotary clubs, the civic clubs, the national Congress all singing the same song: "It costs like the devil, and you better hurry up and get the gas price up to the oil level."

That is why I tested this, I resist it. But the conference report does it, and that is why I cannot vote for it.

I should congratulate you all for not agreeing to that. Let us congratulate the conference and the conferees, the distinguished presiding officer (Mr. BUMPERS) and others, for not agreeing to that for the last year, or 16 months. or whatever it is. They ought to get some kind of an award for resistance. Maybe they have got battle fatigue, too. I do not blame them. I would not have wanted to be on that conference: I readily agree to that.

They have changed Jim Schlesinger from horizontal divestiture now, and he does not care any more about competition. Where he said, "We are not going to bring in or even save any oil consumption," in April of 1977, now he says we are going to save a million barrels. Where he said that this was not the centerpiece, but the crude oil equalization tax provision was the centerpiece, now this measure becomes the centerpiece, and where it was not going to bring in a single additional mcf over $1.75, now all of a sudden it is deemed solely to be bringing in all the additional.

Where are our Senators in this thing? You cannot get enough Senators or staff to go around and bring all the facts to the American people.

Mr. MELCHER. Mr. President, will the Senator yield?

Hr. HOLLINGS. Yes, I will be glad to yield.

Mr. MELCHER. The Senator asked the Senator from Idaho or myself what the

additional price of gas in the North Sea would be.

Mr. HOLLINGS. Yes.

Mr. MELCHER. Let me say that the price for natural gas in the North Sea will be comparable to the price for natural gas at the wellhead for Prudhoe Bay natural gas, which is in Alaska, a part of our own domestic gas supply.

The fact of the matter is that with——

Mr. HOLLINGS. What is that price, Senator? I really do not know. I would guess at it if I had even a dim memory. I remember at one time they had a meeting of the bureau of the industry, back in 1969 or 1970, and the ministry met, and they were trying to fix a price for gas, and at the time they fixed, in the ministry in London, a 26-cent price, because that was the U.S. price.

If they were emulating the United States then, maybe they have emulated us by going up now. I seriously do not know, but I doubt if it is very high. I risked the question because I was willing to risk the answer. I do not believe it is very high; I do not believe it is any $1.93.

Mr. MELCHER. No, I would agree with the Senator; I think it is substantially lower at the wellhead than that.

The reason why I say it is comparable to Alaskan Prudhoe Bay natural gas is that British Petroleum, the owner with their subsidiary Standard of Ohio (Sohio) of about 51 percent or 52 percent of the Prudhoe Bay oil and natural gas, are also involved in the North Sea, involved with the Government of England, and so, when the gas price is established, in Alaska, I believe it will be comparable to North Sea natural gas.

But it is not going to mean a lot to our consumers if that natural gas price is established at around a dollar to a dollar and a quarter, at Prudhoe Bay on Alaska's North Slope unless there is a pipeline to bring it down to the lower 48 States. And we have gone through two relevant bills in the last several years that deal with this. The first of all had to deal with the oil pipeline, so the oil could be pumped down to tne Lower 48. Then we rather belatedly passed the Alaskan Natural Gas Pipeline Act, which was procedural, to allow the expediting of the permitting and the decisionmaking on where the selected and preferable route would be, and what method it should be.

El Paso, which was one of three companies making a proposal for that pipeline, was not found to be acceptable. They would have brought the natural gas down paralleling the oil pipeline to Valdez or some point on the coast of Alaska, perhaps farther down the coast, and then liquified it and then by tankers to California to put it into the pipeline distribution system of the lower 48 States.

But that route was not selected. The route that was selected, if we can get the Government of Canada and the Provinces to agree, and they seem to be agreeing, looks to be the most practicable. The route would follow the oil pipeline down to about Fairbanks, and then follow the Alcan Highway through the rest of Alaska, and then through Canada coming into the lower 48 States in my State of Montana, and then bringing it on east.



But McMillan's company, Northwest Alaska Pipeline Co., that has the preferred route, very sincerely tells every Member of the Senate—and I suppose every Member of the House, too—that without some change in the basic law that would permit rolling in the wellhead price with the transportation cost, into the eventual price consumers would pay, that without that provision enacted into law they cannot approach the money market to sell bonds to finance construction of their pipeline.

So, while the wellhead price when fixed for Prudhoe Bay natural gas may be a dollar or a dollar and a quarter, which is the best guess, I think. By the time it gets down here and you have rolled in the cost of construction of that pipeline to get it down to consumers in the Lower 48, I suspect we are talking about $3.50 to $4 or $4.25 per thousand cubic feet.

So we are back to the same position we would be if we would get gas from the North Sea or from Saudi Arabia, or more from Algeria: By the time you build the facilities to handle it, to liquefy it, and then to bring it to the continental United States, the Lower 48, and then go through the process of putting it back to the state of natural gas, we are talking about $4 per thousand cubic feet of natural gas, and that is what we talk about with Alaska, too.

The Alaskan natural gas would have the advantage of being domestic, and presumably could not be interrupted, whereas a change in government in Algeria, or some problem from Saudi Arabia with shipping, might cause liquefied natural gas to be interrupted.

We could mention war as another factor. God forbid any of these things happen, but there would be some comfort in knowing that if we are going to have consumers paying that kind of a high price for natural gas it would be more comfortable to know that it is domestically produced and would be under our control, and would help our balance of payments.

Mr. HOLLINGS. I thank the Senator from Montana for his observations and the Senator from Ohio, particularly, for his courtesy in yielding. Let me find out some of these facts and figures, and then I might come back again, if anybody else wants to debate this thing.

Mr. METZENBAUM. Mr. President, I enjoyed listening to the Senator from South Carolina so much that I hope he will be back. It was my privilege to relieve him in the Chair for the purpose of his remarks. I know he has been a leader in this battle over a period of many years, and it is not a new subject to him; and when his voice, his experience, and his knowledgeability on the subject are brought to the Senate floor, it has been extremely helpful, and I am particularly pleased that I had the opportunity to relieve him in the Chair so that he could come to the floor to make those remarks.

Mr. HOLLINGS. I thank the Senator very much.

Mr. FORD. Mr. President, I have enjoyed listening to the distinguished Senator from South Carolina for the last hour and 20 minutes. I do think I tried to agree with him a few moments ago about his pricing, but I did want to correct him. It seems as if it is a typical operation as we debate this piece of legislation to take whatever arguments benefit one side or the other.

I tried to agree with the distinguished Senator from South Carolina a few moments ago as to the price that he said was going into the pipeline from LNG. I wanted to bring to his attention that this was a contract that was signed in 1969. I have extensive information about pending LNG projects, including the receiving terminals, I have the producing country, I have the contract date and length of the contract, I have the amounts for the initial delivery date, I have the annual volume to be expected, and what the Federal regulatory status might be. I could have given him all this if he had given me some little attention to answer his question.

The distinguished Senator from South Carolina failed to mention that the new contract dated in 1975 for 20 years makes that gas go to $2.82. That is almost $1 more than the initial price for American-produced natural gas. I wonder what the Senator from South Carolina was trying to shield or what kind of smokescreen he was trying to put up, saying what a great thing it was.

Sure, I told him the average cost of interstate pipeline gas now was about 90 cents, and the average price of intrastate gas in the pipeline was something in excess of $1. But today if we go to the intrastate producing States, the new gas price is somewhere between $1.80 and $2.

It is all right to live in 1969 for your own purposes, but we have to live with 1978 and beyond in order to accommodate the constituents we are representing.

The Senator talked about withholding gas. The distinguished Senator mentioned "I am going to hold gas back. I have been in the gas business. I have made more money in the gas business than anything I have ever done."

Fine, I am glad the distinguished Senator from South Carolina is in the gas business, that he understands what natural gas is, that he is making money off of it, that he is making a profit. That is fine.

He said that less than an hour ago, that that is the most money he has ever made in his life, that he ought to quit the Senate and go into the courtroom and make more money than he is making here to argue the case under this bill.

Well, it is obvious that the distinguished Senator from South Carolina has not read the bill because this bill protects the consumer from producer withholdings.

You cannot withhold and get the new gas price. It is subject to a price penalty. The distinguished chairman of the conference committee, Mr. STAGGERS from West Virginia, said this was one thing that must be in the conference bill or he would never approve it. He got what he wanted. We said it was wrong to withhold natural gas.

He said he wished he had his facts with him and the papers. I wish he had had his facts and papers with him, too.

The Senator said he did not know what the Congressional Budget Office position would be. Obviously, he does not read the mail which comes to his office. Senator MUSKIE, the chairman of the Budget Committee, in that "Dear Colleague" letter, signed by some dozen or more distinguished Members of this body, quoted the Congressional Budget Office on the inflationary impact of this legislation.

I will quote from their study and their report, marked Economic Impacts:

Depending on the extent to which increased producer revenues are funneled into productive investments, the overall effects could be either slightly positive or slightly negative. However, in a $2 trillion economy the effect would be relatively small in any event.

That is what the Congressional Budget Office reported.

I wish the Senator from South Carolina were here to listen to these things. I hope he reads the RECORD tomorrow so that he can know these things.

He quoted one fellow—I could not quite understand him, but I think he said King Hubbert. Well, King Hubbert is known as a man who has made a report on natural gas reserves. He claimed he got the Rockefeller award. What is the Rockefeller award? I do not know whether it is a liberal award or a conservative award or a moderate award. I do not know. It sounds like a political award.

But King Hubbert said that the years of natural gas and oil reserves that were available in the future were based on the prices paid at the time he made the judgment.

That means that that was several years ago, like in the 1969 Algerian contracts.

I am not in favor of paying $4.50 to Algeria while they harbor the hijackers, and not paying the American producer to go out and try to find energy and keep our money at home.

The Senator from South Carolina brags—he stood on the Senate floor and bragged—about buying LNG in Algeria. I disagree with him on that.

The Senator from South Carolina, along with other Senators, is unaware today what will be in the recommital motion because those on that side are now calling around saying, "Would you be for us if we put in the Alaskan pipeline?"

They do not know what they are going to put in. They are going to try to get some votes.

It is just like the distinguished Senator from Texas said yesterday, that he was for letting them take away their intrastate gas. He said it on three separate occasions yesterday afternoon.

I do not believe that is going to be a very favorable prospect back home.

Mr. DOMENICI. Will the Senator yield for a question on the Algerian gas?

Mr. FORD. I would be glad to yield for just a few minutes. I was just beginning to get worked up. I thought I would try theatrics like some others.

Mr. DOMENICI. The Senator was speaking of Algerian and foreign gas. I could not agree more wholeheartedly with the Senator's last statement, when he said he was not for paying Algerians $4.50 for natural gas and paying American producers far less. The Senator should also remind the Senate that under this conference report that $4.50 Algerian gas is not going to get a break any more because it is not going to get rolled in with the American cheap, old natural gas, thus making it appear to be a good price. Because under this proposal, the only kind of foreign LNG like the Algerian that will get rolled in and get the benefit of all the years of our old gas is that kind for which approval is pending or has already been granted or the plants are already built, the expenditure made, or financial and contractural commitments made. In the future, they are going to bring that $4.50 gas in and it is going to be incrementally priced and it is not going to be such a bonanza for them to sit on the outside and mix it in with American natural gas and say, "The consumer does not know it because it is mixed in the rest and we will charge whatever we want."

That is another good point in this bill. The Senator from South Carolina should have been here to hear that point. That will not happen any more, either, in the future under this bill.

Mr. FORD. There are some questions that are in my mind that are bothersome. They worry me a little bit. How will the motion to recommit provide a wellhead price for natural gas transported through the Alaska gas pipeline? The conference report does so in section 109 of the bill.

How will the motion to recommit settle the incremental pricing issue? Under existing law, FERC could require incremental pricing for our Alaskan gas. The conference report provides rolled-in pricing for the Alaska gas pipeline under section 203.

So let us not do anything, let us just leave it as it is. I think this legislation gives stability to the industry. It gives stability to the industry so they will know what the price will be and they know what it is going to be when they go out and look for it. They know that they can plan 7 to 9 years in advance.

You know, Henry Clay was not a bad fellow. He came from my great Commonwealth of Kentucky. Henry Clay was a compromiser. I was told, in my days before I ever entered into politics, that you could be in a room with a group of people and those on the right side were just as dedicated, just as sincere, in one way; those on the left-hand side were just as sincere and just as dedicated, but in the opposite way, and somehow, if you make a political decision, you would make both sides mad, but you would help the general public. I want Mrs. Smith and Mrs. Jones in Ohio or Kentucky or New York or Massachusetts, or wherever, to be able to turn her stove on, heat her soup, and cook her meal for her family at night, knowing that this Senator and others have made a sincere and dedicated effort to say to the smallest wildcatter in this country or the largest producer in this country, "We want you to have the incentive to go find that energy if we have it so that that will go into the pipeline and it will get to Mrs. Smith and Mrs. Jones."

I remember the Senator from South Carolina referred to when he was Governor, how he worked hard to have industrial development in his State. And I did, too. I was Governor during the oil embargo in 1973. That put somewhat of a damper on my ability to bring new industry in. I think we all had a setback at that time. But I also recall, as Governor, when we had our crisis in 1973 and 1974, that I had to shift the use of natural gas to industry because that was the only fuel they could use in order to keep people working. So the community college shifted their natural gas to industry and that community college started using oil.

There are 20,000 employees at one industrial complex in Louisville, Ky. They kept everyone working in that operation, as I recall, without any layoff, as there has been in some other States, those who are not on my side, those States were harder hit than my State. But by providing the emergency operation, by doing the things that were necessary, those people continued to work. When we sat down and chatted with them and we whittled on the country store porch, they much preferred to pay a few more cents per mcf for natural gas so they could draw their paycheck. I think that is what we are looking forward to here.

I might say to those who complain about the complexity of this bill, there are over 700 decisions under the Natural Gas Act now. This bill provides only 17 distinct categories. What are we going to pay the new price for? What is going up? The new price will go to new gas that is found. That is basically it. The price they talk about, $1.98 or $2.09, whatever it might be, is only paid for new-found natural gas. Under the oil price law, we have been able to reduce, by about 2 billion barrels, the consumption of oil shipped in from overseas by deregulating small oil wells, under 10 barrels. They have uncapped those old wells and three to five or six barrels of oil per day are now financially feasible to bring out of the ground.

Under this bill, we say to the small gas wells that are now capped, 60,000 cubic feet, if you have a well like that, uncap it; it is deregulated.

And we have special incentive prices for other gas. In my county and others, there is the Devonian shale, geopressurized brine, new wells drilled 15,000 feet down, where most of the reserves are. That is deregulated.

We have made an attempt in this bill to find a balance. There is no way you can give in totally, one way or the other. So what are we doing? We are trying to compromise so that the consumer can have his gas and the employee can work. I just do not see how both sides can be right. There is no way that both sides can be right. I do not believe that this body wants to leave all the decisions to the Federal Energy Regulatory Commission. I just do not believe they want to do that.

Somewhere, sometime, we shall find

somebody that can give us all the answers. You work hard to find them, you take the best advice available, you pray a little, and hope—hope with all the fervor you can—that the decision you made is correct. I would be more than pleased to find someone that could give us the answer and we would know that it would be true.

The only thing I know is that we have 20–20 hindsight. I do not think there is anybody—anybody—who has 20–20 foresight.

Mr. President, I have rambled on some. I do not know whether there are others who wish to make some remarks as it relates to the bill. I do not know whether anyone wants to make any statements.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MELCHER). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, there have been some things said in the debate this morning that I think should be responded to. My good friend from Kentucky offered some figures from the Department of Energy, the Energy Information Administration, relative to the fact that in 1985 the extra cost of the residential users will only be something like 11 cents; that is, the cost between the residential and the industrial users.

Mr. President, there is a report out to that effect, but I think we ought to go back and talk about circumstances surrounding that report.

At an earlier point, the Department of Energy, Energy Information Administration, made available a comprehensive report as to the impact of the conference committee bill. Under that report, they pointed out that although in the House bill and the Senate bill there would have been very little variation in the residential and industrial users costs, with the special kind of concern being given residential users, that when the bill came back from the conference committee, the differences had changed mightily.

Under those new conclusions, the residential users will pay $3.28 per mcf and the industrial users will pay $2.44 for 1985, or a difference of 84 cents per mcf.

Mr. President, what happened thereafter is interesting. The Department of Energy did not like those figures, those higher ups, and there were certain people who were concerned about the passage of this energy bill who were great supporters of it, who had put their names on the line for this conference committee report. They said, "Oh, no, that is not the way it should be, that doesn't sound right, because those who are opposed to the bill are pointing out that what we have done in this conference committee bill is place the burden on the residential users of this country and taken it off the backs of the industrial users, and the industrial users would have a chance, as we all know, to make it a part of their costs and make it tax deductible."

So they went back to the Department of Energy and they said, "Make these new assumptions, if you do this and if you do that, what will be the answer?"

Lo and behold, when they changed the assumptions, then they came out with the conclusions as indicated by my good friend from Kentucky.

Let me say, I find no fault with his using those figures. I might point out it was not he who went back to the Department of Energy, it was Members of the House. But the fact is that when the Department of Energy, Energy Information Administration, was called upon to give unbiased, impartial, objective figures based upon reasonable assumptions, they concluded that this bill will cost the residential consumers 84 cents per mcf more than the industrial users.

That, Mr. President, is what is in this bill, not what somebody else decided ought to be the new assumption, not the changing of the rules in midstream, and that is what we are dealing with in this legislation. Every time we have had any relationship with the Department of Energy since it has been created, if the facts did not come out the way they wanted them to come out, they somehow adjusted them so that they did. When they had to tell us about all the crises of oil imports and how there was going to be a problem in the future, they even came up with some CIA figures about foreign imports and Soviet production, all of which afterwards was changed.

Mr. President, this bill is so complicated that in order to try to get it passed, even the President of the United States, in my opinion, has arrived at a wrong and contrary conclusion and emphasis to that which his own people were saying not too many months earlier. In the letter he sent around to all the Senators, dated August 31, 1978, he says the following:

> Significantly, under the incremental pricing provision, the price of natural gas to industrial users will be lower than the price would have been under the Senate-passed deregulation bill.

Well, what is so great about that? We do not want to cut prices for industrial users. I thought we wanted the price to go up for industrial users so they would turn to coal, a major product of the State of the Senator who is handling the bill, a major product of my State.

When I say that they have changed their emphasis, let us go back and look at what they were saying early on when they talked about the national energy plan and they were trying to sell the oil and gas users tax. On page 54 of that plan, it reads as follows:

> In addition to these wellhead pricing changes, taxes would be levied on the use of oil and gas by industry and utilities, in order to encourage conservation and conversion to coal and other fuels.

That was the emphasis then, back when the national energy plan was formulated.

On page 63 of the same report, what do they say on the same subject?

> Oil and natural gas are scarce, and generally they are needed more by other sectors of the economy. Industry and electric utilities can convert to other energy sources more readily than can other users; therefore, a large-scale conversion by industry and utilities from oil and gas to more abundant resources is needed.

That is exactly what the emphasis was and had been, until now the President tells us that we are reducing the price for industrial users. Great. That ought to cause them to use more natural gas. That will accomplish a lot for the national energy plan.

As the distinguished Senator from South Carolina stated, he thought the purpose of this legislation was to get people to quit using natural gas. He did not think the purpose was to get them to use more natural gas in order to cut the importation of oil. That is a new argument.

When the natural gas hearings were held by the Energy Committee of the Senate, Mr. John O'Leary appeared, and what did he say? He said:

> The tax is coordinated and slightly below a similar tax on oil so as to prevent gas-to-oil switches that would increase imports. It is estimated that these taxes will encourage the switching of approximately 3.5 tcf of gas per year to 110 million tons of coal by 1985.

Mr. FORD. There is no tax in this bill.

Mr. METZENBAUM. There is no tax in this bill. The Senator from Kentucky is 100 percent accurate. If the administration had their way, there would be taxes all over the place. There is no tax in this bill, but I am pointing out to the Senator from Kentucky that from the very inception, the administration told us, day in and day out, whether it was taxes, whether it was coal conversion, whether it was a natural gas bill, that the implication, the thrust, the direction, the concern was to get people away from oil and gas and get them into coal.

Mr. FORD. By taxes?

Mr. METZENBAUM. By taxes and by this bill. By taxes, by the gas bill, and by the coal conversion bill—in every part of the legislation.

Mr. FORD. Let me——

Mr. METZENBAUM. I have the floor, Mr. President, and I do not intend to be interrupted.

Mr. FORD. I will ask the Senator to yield after a while.

Mr. METZENBAUM. On page 50 of the natural gas hearings, held on June 7, 1977, Mr. O'Leary stated, in an additional comment:

> By establishing incentive prices that emphasize the development of harder to find new supplies, eliminating the split market, and encouraging the conversion from natural gas to coal, the President's program does not favor any single interest but rather calls on all parties in this debate to compromise in the interests of a balanced, reasonable energy policy that can break the 24-year-old deadlock between natural gas producers and consumers.

In the same hearing, I asked Mr. O'Leary the following question:

> We have a coal utilization bill. Can we achieve the same objectives without bringing the price of natural gas up as you indicate?

Mr. O'LEARY. I don't think we can. Our studies indicate—first of all, the need for internal reform. To motivate a consumer that continues to use gas, that is to say

who gradually replaces his inefficient burning equipment with efficient burning equipment, and to get him to switch over to coal, and that is the direction we want him to go, is going to take the price increase.

Mr. O'Leary says we need the price increase to cause them to switch over. The President of the United States says that this is a good bill because it reduces the price of coal to industrial users. Which is it? Do we want the price to go down? Do we want it to go up? I think that if we have a real belief in and concern for a national energy plan, we want the price for industrial users to go up, so that they will switch to coal.

Mr. President, I think that is what this whole issue is about. But in the anxiety, in the enthusiasm, in the determination to get a gas bill, any kind of bill, they are now telling us that it is better to cut the price for industrial users, exactly contrary to what Mr. O'Leary was telling us on June 7, 1977. He said:

. . . that is to say who gradually replaces his inefficient burning equipment with efficient burning equipment, and to get him to switch over to coal, and that is the direction we want him to go, is going to take the price increase.

Mr. O'Leary, of the Department of Energy, is for the price increase. The President of the United States says this is a good bill because there is a price decrease for industrial users.

Mr. President, I ask unanimous consent, on behalf of Senator DURKIN, that Phil Swink, of his staff, have the privilege of the floor during the natural gas debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I wish the distinguished Senator from Ohio would argue the merits of the bill, instead of getting into a confrontation with the administration, which he has supported 95 percent of the time.

It is strange when the people on the same side argue different courses. I was amused today to listen to the distinguished Senator from Ohio talk about reducing the cost of natural gas to industry, whereas yesterday afternoon, on this floor, the distinguished Senator from South Dakota (Mr. ABOUREZK) read a UPI story which stated how harsh the load was going to be on industry.

Now we have people from the same side arguing different ways. The only thing I want to point out to them is that under this bill, there is approximately a 30-percent increase in natural gas to industry and approximately a 10-percent increase to residential users.

Mr. President, I hope that in the future we can keep the debate as it relates to this legislation, rather than getting into confrontation and little frills in other places. I thought I should correct the Senator on that point. I knew that he would want me to correct him when he was so wrong.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, it appears that few Senators are apparently in a position at the moment to either debate the conference report or to listen to the debate. I see five Senators in the Chamber, including the Presiding Officer, Mr. FORD, of Kentucky, and it appears that the Senate is just wasting its time right now waiting. There is no other bill that can be taken up right now with a time agreement on it. So I believe there are indications that the best thing right now to do is to recess for about an hour.

RECESS UNTIL 2 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 2 p.m. today.

There being no objection, the Senate, at 1:05 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. NELSON).

Mr. TALMADGE. Mr. President, natural gas is a major energy source to agriculture and the food and fiber system. It is essential that a dependable supply of reasonably priced natural gas be assured to power this sector. To do otherwise would cause utter chaos.

The use of natural gas in the agricultural production, processing, and distribution sectors is widespread. Many of the inputs farmers use depend upon natural gas. Natural gas provides the energy to manufacture the nitrogen fertilizer and chemical pesticides which are essential for efficient food production. Also, for the farmer, it powers his irrigation pumps in the Southwest, it dries his crops in the Midwest, and it is used to condition his cotton for ginning in the South.

For the food processor, it is the major energy source for processing the multitude of food items that this Nation enjoys. Canneries, meat, and dairy processing plants rely heavily on this energy source. Bakeries with open flame ovens depend on this clean burning fuel to impart no residues that could be health hazards. For the food retailing sector, it provides energy for warehouse storage to assure food quality maintenance and operation of retail outlets.

As chairman of the Committee on Agriculture, Nutrition, and Forestry, I have an obligation to protect agriculture's interest concerning the establishment of a natural gas policy. While it is my understanding that this bill provides adequate protection for agriculture, I have some questions that will clarify this issue.

First. It is my understanding that this bill directly affects agriculture in two primary ways. First, section 206(b) assures agriculture the same high priority accorded households and small businesses in protection against sharply high natural gas prices by exempting agricultural users from the incremental pricing features of the bill. Second, section 401 provides an exemption against natural gas supply curtailment for essential agricultural uses. Am I correct that these two features are a part of the bill?

Mr. JACKSON. The Senator is correct. Agriculture is accorded a high priority in this bill.

I might say to my good friend from Georgia that we follow the basic rule that we followed, of course, in connection with the Oil Allocations Act in which the Senator will recall agriculture was given top priority. The whole thrust of it is in that same vein.

Mr. TALMADGE. I appreciate that.

Second. Concerning the agricultural exemption for incremental price increases, does this mean that farmers, processors, food warehousemen, and fertilizer, and other agricultural chemical manufacturers will not experience the higher price increases that will bring in new supplies of natural gas? If so, this should help farmers and others in their struggle with the cost-price squeeze by minimizing the cost of increases of some major production inputs.

Mr. JACKSON. There will be, as the Senator is aware, price increases. But the significant point, and that is what I gather my friend is addressing himself to, is that those increases will not be as great as boiler fuel or other industrial price increases.

There is no guarantee to anyone that there will not be price increases, but agriculture will be accorded that benefit which basically runs to the residential and small business user.

Mr. TALMADGE. Third. Concerning the provisions of this bill that apply to an exemption against natural gas supply curtailment for essential agricultural uses, what does this really mean? It is my understanding that section 401 requires the Secretary of Agriculture to certify the essential needs for natural gas for agriculture to assure that full food and fiber production continues. The Secretary of Energy then prescribes a rule that incorporates this certified need so that interstate pipelines may not curtail supplies to these end users.

It is also my understanding that the conferees indicated that the definition of essential uses in agriculture should be interpreted in the broadest possible concept so that our food and fiber production continues without impairment. Am I correct in my assessment of this section?

Mr. JACKSON. The Senator is correct.

Mr. TALMADGE. Fourth. In recent winters we have seen dairy processing plants denied natural gas and without an overall effort to replace the supplies, some 3,000 dairy farmers at one plant were within hours of having to dump their milk. Fertilizer plants have been curtailed and during the winter of 1973–74 curtailments seriously shorted supplies and fertilizer prices rose to record levels. Will section 401 prevent repeti-

tion of such curtailments and eliminate the prospects of curtailments of even greater magnitude?

Mr. JACKSON. The answer is, yes. What we have done is to protect essential agricultural uses.

Mr. TALMADGE. Fifth. As I comprehend it, however, the Federal Energy Regulatory Commission has the authority, in consultation with the Secretary of Agriculture, to deny exemption from curtailment if it can prove that there are alternative fuels which are both economically practicable and reasonably available. In such instances, food system participants would be denied the exemption from curtailment and encouraged to switch to the alternative fuels. Does this leave too much discretion so that millions of farmers and ranchers would be placed under the thumb of the Federal Energy Regulatory Commission—a Government body that might force farmers and ranchers to switch to high-cost alternatives without fully understanding the situation?

Mr. JACKSON. Might I just read from page 114 of the conference report:

> The Commission, in consultation with the Secretary of Agriculture, will determine if alternative fuels are economically practicable and reasonably available to meet the needs of agricultural uses as certified by him.

So that is an unusual step.

Then, on down that same page I read as follows:

> The conference agreement specifically includes authority for the Secretary of Agriculture to intervene before the Commission in curtailment proceedings implementing this section. The conferees do not intend that anything in this Act shall give the Secretary of Agriculture authority to exercise, or limit the performance of his duties under this section for the purpose of restricting production of any crop or crops.

Mr. TALMADGE. And, lastly, No. 6, moreover, as I am told, the Federal Energy Regulatory Commission, or its predecessor, has been buried in a backlog of cases to be processed. Is there any chance that crops could perish in the field while applications for priority allocation of natural gas for crop drying or irrigation languish in some bureaucrat's files?

Mr. JACKSON. Let me say, first of all, there is a big backlog that the Senator referred to, but agricultural cases will be given top priority in the consideration of those matters.

Second, I would point out that the procedures here—addressing myself now both to this specific area and to the whole conference report—have been substantially simplified in comparison with the existing law. So the procedural aspect of it, I think, will be far more effective in bringing early adjudicatory results.

Mr. TALMADGE. I am grateful indeed to my distinguished friend from Washington, who is always cognizant of our food needs in this country, the most important thing, of course, in the Nation. None of us can survive without adequate food.

I appreciate the clarification the distinguished manager of the conference report has made in providing for this agricultural priority.

Mr. JACKSON. Mr. President, I want to express my appreciation to the distinguished chairman of the Committee on Agriculture, the senior Senator from Georgia, for raising these questions because I feel they are very important in light of the comprehensive nature of the bill.

I want to thank my good friend from Georgia.

Mr. TALMADGE. I thank my distinguished friend.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. RIEGLE). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WEICKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAVEL). Without objection, it is so ordered.

The Senator from Connecticut.

Mr. WEICKER. Mr. President, the natural gas pricing conference report before us today is meant to represent a major step by this country in solving its energy problems. However, this report, rather than being a step forward toward a brighter energy future represents a step backward deeper into the morass of regulation and farther from our goal of energy independence.

I would support this compromise if I thought it could provide additional gas supplies. But it will not. Production incentive depends on price and on freedom from uncertain and complex regulation. This compromise will provide neither.

In the intrastate market, which has provided the bulk of new gas finds, this bill will impose price controls for the first time, and will impose a totally untried system of price categories and determinations.

In the interstate market, under the current system, anyone who drills knows he will get at least the current new gas price, without undergoing the incredibly complex process laid down in this compromise for categorizing gas prices; under the compromise, much new drilling would get considerably less than the "new gas" price.

Over the past 20 years, we have had a dual natural gas market. We have had this regime of controls in the interstate market and we have had a system of freedom in the intrastate market. We have now seen the results of that comparison. It is not freedom that has failed, it has been control.

Year after year, the intrastate market has discovered the reserves necessary to replace gas consumption. The interstate market has not. Month after month, since we began discussing gas legislation, intrastate production has exceeded the levels of the previous year while interstate production has continued to fall.

This difference is the basic reason that I have supported deregulation, it is the basic reason that the Senate as a whole voted for deregulation, yet the essence of today's proposal is not deregulation but rather an extension of controls. That is, possible deregulation in 7 years—more likely 9—but an extension of controls now.

So the first question that has to be asked is that if deregulation is the correct and proper economic theory 7 or 9 years hence, then why is it not correct now?

The extension of controls to the one gas market that has worked is bad enough, but this compromise then adds insult to injury by further complicating the pricing system to the extent that no one—consumer, producer, or energy regulator, and, more importantly, U.S. Senators—can understand the system. It is hard enough to get a majority of people in this country to agree on any major policy and in the energy area it is almost impossible to do so, but I cannot understand how the supporters of this compromise expect the American public to endorse so complex and contorted a measure.

The only way they could do it would be to abandon all fact contained in the measure and substitute for it the very simple statement, "We need an energy bill." At the conclusion of my prepared remarks, I would like to go further into that type of reasoning because it could certainly apply to any legislation that comes before the Congress of the United States. Forget the substance, emphasize the form.

I realize we are getting a little lazy as far as this Nation is concerned, in the sense of legislation, in the sense of our adherence to obeying the laws, or in our devotion to the Constitution, and we like to substitute form for substance, and increasingly so. But then I think it should be pointed out as to what it is we are doing, and that is my intention here on the floor this afternoon.

Even the administrators have their doubts. The Director of Enforcement of the FERC, Shelia Hollis, says:

> The legislative framework envisioned by the final Conference Report is exceptionally complex and intricate. Administration and enforcement of this highly technical bill could be undertaken only with substantial additional staff and other resources committed to the Commission.

Tomorrow or the next day, when this very important vote on recommittal is taken, I can guarantee that there will not be a half-dozen Senators on this floor voting that can understand what it is they are voting on. Nobody knows the consequences of what it is that we are about to either pass or defeat, including those at the Department of Energy, and certainly including those at the White House.

But the slogan under which passage is demanded by the President is that "we need a bill."

There will be over 20 new categories of gas with separate pricing systems for each. What a nightmare. What production incentive is there for the producers who, to get the higher prices, have to incur enormous costs just to understand and comply with these regulations.

But compliance is only the beginning. As we have seen in recent years, the new controls get cranked up and in a few years every firm is in court for violations of one kind or another, because no one understands the regulations in the early years. So the taxpayer has to ab-

sorb not only the higher costs of new energy but the legal costs of these lawsuits, paying both sides—in tax dollars for the Federal regulators and in higher costs for the producers. Now where is the sense in all of that?

The incremental pricing provisions in this compromise provide another example of its shortsightedness. If industries in the gas-consuming States are to suffer the provisions of incremental pricing while those in the gas-producing States are not, then there is bound to be a flow of jobs away from consuming areas. The impact on jobs and economic prosperity is obvious, but what about the effect on energy prices throughout the Nation? As companies and industries shift away from a consuming State, the cost of energy to those citizens and businesses increases as the fixed distribution costs have to be spread among those left.

The chairman of the Public Service Commission in Wisconsin, a consuming State, has perhaps put it best. He says that—

> This bill is not really a gas deregulation bill that closes the gap between inter- and intrastate markets. It is an industrial gas conversion bill, a higher priced forced residential gas conservation bill, and an incentive for jobs to move from gas consuming to producing states.

He concludes that this bill will tend to cause industry to convert toward, not away, from oil because of price and uncertainty of supply.

The President and supporters of this so-called compromise see it as the savior of the U.S. dollar. Without a gas bill, they tell us, the dollar will continue to decline against the major currencies of the world. They tell us that the international financial community is watching us, waiting to see if this country can forge an energy policy that will lead it back to something approaching balance in its international trade.

The world is not waiting to see whether or not we forge an energy policy. The world economic community is waiting to see whether or not we can engage in acts of self-discipline. Self-discipline—not in exercises of rhetoric saying that we have a bill.

Unfortunately, in an economic sense, there have been no acts of self-discipline, either in our domestic fiscal policies or our international fiscal policies.

Yes, there is no energy bill, and there is no question about the fact that the lack of an energy policy is at the root of our economic difficulties. But saying that you have a policy does not substitute for the substance of that policy.

It was almost 4 years ago that I stood on this floor with the then majority leader, Mike Mansfield, of Montana, one of the giants of the U.S. Senate, a man of enormous courage. The two of us said then, at the imposition of the Arab oil embargo, that this Nation needed to impose upon itself mandatory fuel conservation. There was not another Democrat and there was not another Republican who stood with us on that issue back in 1974.

So, for 4 years, the people of this Nation and their representatives in the U.S. Senate have rationed by price—in effect, have rationed the poor of this country, have rationed the elderly of this country, have rationed the lower income segments of our population; they to bear the energy cross for all of us. That is because none of us wanted to go ahead and change our lifestyle.

Yet, if we had changed that lifestyle back in 1974 with an act of self-discipline, rather than the volutarism that has led us to increase our consumption of oil and gas—if we had engaged in an act of self-discipline in 1974, there would have been respect for the President of the United States on his recent visit to Bonn. But nobody wanted to incur the slightest discomfort, and nobody wanted to inform their constituency of the discomforts required. So the conservation aspects of energy in this country went out the window.

The figures have been rehashed many times. What is our bill from Saudi Arabia? It is up some 1,000 percent in the last 4 years. Gas consumption is up. Oil consumption is up. We say we are doing well with the cars, and all of a sudden we are all using vans, and they use twice as much gas. Any suggestion that there be an act of self-discipline in the conservation sense, and everybody runs out of this Chamber.

That is what was at issue at Bonn, not the fact that we did not have a bill.

America, for quite some time, has not shown its willingness to make the substantive changes and to take the substantive measures which will bring us into fiscal soundness, a fiscal soundness on which the world relies, since the dollar is the premier currency.

Leaving conservation aside for a minute let us look at the complexity of this compromise. Twenty different categories of gas pricing. Why is it that we have to so contort ourselves? The reason is very simple. As I stated on the floor the other day, in putting together this compromise, producing interests have been consulted, consuming interests have been consulted, the Southwest has been consulted, the Northeast has been consulted, liberals have been consulted, conservative interests have been consulted, Republican interests and Democratic interests have been consulted.

But nowhere in the bill is there an attempt to consider the American interests, that one common bond which can produce a common solution—the free market.

I find it ironic that those who speak for the principles of the free market, of deregulation and decontrol, have to explain why it is that we feel the Nation once again should go back to that system. Ask the individual on the street why supplies are short and prices are high. It did not come to pass by virtue of a system of deregulation or decontrol. It did not come to pass, because of the free market. We have not had that in the last 4 years. It has been a system of controls.

Yet, it is those who advise a change in the game plan who somehow have to do the explaining, rather than those who have built the most horrendous track record in the history of our free enterprise system.

The American people were promised that with controls there would be lower prices. Question: Are the prices lower?

In essence, I suppose it has been the philosophical attitudes of most of the Members of the two major parties that have prevented any sort of realistic solution. In the main, Democrats have been opposed to deregulation and decontrol; so there has been no incentive to get additional supplies. Hence, the supply portion of the equation of the law of supply and demand has made it impossible to do anything to try to resolve our energy crisis. No incentive, no supplies.

Republicans, in the main, have been opposed to any form of mandatory conservation. So it has been impossible to do anything with the demand side of that equation.

So you are stymied on the one hand, unable to do anything with the demand, unable to do anything with supply on the other, and everybody wonders why there has been no resolution to the energy crisis.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. WEICKER. I do not want to be rude to the Senator. I would like to finish my comments, and I will be glad to yield.

Mr. MELCHER. I want to join the Senator from Connecticut in encouraging an increase in supply.

Mr. WEICKER. If the Senator would like to speak later, it would be a matter of his convenience. I will be finished in a few minutes.

Mr. MELCHER. I will withhold. There have been points raised by the Senator from Connecticut with which I agree.

Mr. WEICKER. I thank the distinguished Senator.

So, really, the roots of this problem were recognized clearly by all hands 4 years ago. Frankly, there was not a majority leader running around the floor saying that we have to have a bill. There was a majority leader who said we have to conserve and we have to do it in a mandatory way. That is a big difference in the exercise of leadership right there. Form rather than substance. Politics rather than reality. That is why we are in the present impasse.

The dollar is going to recover, but only when we come up with an energy policy that makes sense.

I think anyone who has read even a summary of the provision or any of the debate on this issue will realize that this compromise does very little to address the real problems we face in this part of the energy spectrum. If anything, it probably will worsen our trade balance by forcing industries to convert to other fuels, probably oil.

Why? Because it will push gas prices up until oil becomes an attractive substitute for gas. So let us not kid ourselves thinking that the international financial community, not to mention the American public, is going to be fooled by believing we are going to have a sensible "energy policy" by passing this bill.

The dollar, as I said, will recover when we do come up with an energy policy that makes sense, that has substance to it, and that substance is to provide for

more domestic production and for tough steps to reduce consumption and encourage conservation.

I stand on the floor of this U.S. Senate in the year 1978 saying exactly what I said in my reelection campaign of 1976. It is a rather oddball platform to run for election on, but I said it in the State of Connecticut: Rationing on the consumption side; deregulation, decontrol of free market on the supply side. And for whatever inconvenience that might be caused for a few months or a few years we will come out of the woods together not having penalized just a segment of our population but each one of us having borne the burden required to make the solution meaningful. We will not talk our way out of this crisis. We will not armtwist our way out of the crisis. More gas, more oil, and less use of the same—it is as simple as that, and we do not need 190 pages to satisfy the egos in this Chamber and down on Pennsylvania Avenue to tell us that.

If any member of the American public is fooled into thinking that this is going to resolve our problem and give us lower prices and stable supplies, then I say this afternoon: Should the bill pass, watch what happens for the next year or so, because that is the other part of the political strategy. All will be forgotten a year from now, 2 years from now, by the American public.

So, while this bill is worse than the status quo, we all recognize the current situation in the consuming States is difficult, and we must do what we can to improve it. That is why my colleagues and I support certain portions of the conference report which are generally agreed upon and which will provide some production in supply for the interstate market. The free market has worked so well in the intrastate market that an excess of gas is available, at least at certain times of the year.

The provisions already agreed upon will allow that gas to flow to the interstate market at reasonable prices without bringing the sellers under FERC control. Together with provisions similar to the Emergency National Gas Act of 1977, which worked quite well, but which now expired, our motion to recommit will actually improve the current situation, as opposed to the conference report, which will lock up into an interminable web of regulation and control.

Throughout the natural gas debate I have always supported a bill that would provide for deregulation at some reasonable time and certain point in the future. I think it should be tomorrow. I recognize the necessity of compromise in this business called Government. But as to the 7 years, 9 years possibly, as is contained in this bill, do Senators know what that is for? That is to let the politicians down easily who have for the last 4 or 5 years been saying that controls would give us those lower prices and those stable supplies, which predictions have proved to be incorrect. It is not 7 or 9 years to achieve an orderly transition in an energy sense, but 7 to 9 years to allow my colleagues in the House of Representatives and the Senate to prepare escape routes to make provision for other employment.

Indeed, if we agree on the bill as it now stands, we will still need a national energy policy, and every day we continue to embrace the pretense that we have one will take us 1 day further from achieving our goal of energy independence.

The real difficulty is that should the legislation be passed by the House of Representatives and the Senate and signed by the President the assumption will be made by the man on the street that the United States has an energy policy, and that probably is the greatest danger contained in this legislation, for regardless of what your point of view is on regulation or deregulation or on consumption, believe me what is contained in here after the title is nothing. And there will be no pressure to do anything further. If, indeed, all the pressure that has been generated in 4 to 5 years has wrought nothing except this monstrosity, what will happen when the country thinks we have an energy bill or at least is able to point to something that was signed into law? There will be no demand for conservation. There will be no incentive for additional production. There will be the standard comeback: "We have an energy policy. Why don't you find out? Let us just see how it works for the next 7 to 9 years."

This country cannot afford 7 to 9 years of the profligacy in energy in which we are now engaged.

I am fully aware of the fact that my views bring me much into conflict with most of my colleagues. I really do not know anyone who is both for mandatory conservation and for deregulation. But that is the honest answer, and all I can say is that, however, it will hurt, it will only hurt for a little while. As it is now, too many people have been hurt for too long. For 4 years shortages of supply in the gas field have put people out of work. People have actually frozen to death. These are not just dramatic footnotes that are figments of my imagination. It has happened. The tragedies are already there.

Everyone said when the gas lines went away in 1974:

> Fantastic. I don't have to wait in line any more at the gas pump. There is not even that inconvenience, no more waiting at the gas pump. So the crisis is gone.

Just ask the elderly who have gotten their utility bills over the past 4 years whether or not the crisis is gone. I have had them in my office, Mr. President. And given a choice between a rise in social security or some alleviation of the prices they have to pay for their light and their heat, they would choose the latter. It is that bad. Or take the individual who cannot get to work. Maybe since we have achieved a great degree of affluence for so many Americans, people do not think about the price of gasoline anymore. But many of our citizens do, because unfortunately wages and all the rest of it has not gone up correspondingly with the artificial price of energy imposed upon us by the OPEC nations.

So there was a price to pay. That was not standing in line at the gas pump. But it was death, it was joblessness, it was the fright of not being able to have utilities or the fear of not being able to pay the bills. This has been a part of American life for too many Americans over the past 4 or 5 years.

So we did not get away scot-free. The failure of Congress or the President of the United States to enact an energy bill, the chicken politics that have been played on this issue, have exacted, I think, a very painful toll.

I suppose there are those who are going to argue, "Well, all that is behind you. We have an energy bill here which is not going to pinch anybody's toe in an election year, so you can vote for it. You can go home and say, 'I voted for an energy bill.' Believe me, there will be nothing there which will ruffle your constituents." But if you accept that argument, you are, in effect, saying that you are satisfied with the situation as it exists today, and I just do not believe in that.

I believe we can have stable supplies, and I believe there should always be the prospect of prices going down. Under this bill there is no such prospect. Do not forget that a free market involves that possibility, whereas under this so-called "deregulation" bill the price always goes up every year. It is going to go up to a price that apparently is acceptable to some of our producers.

Where in the bill does it provide for prices to go down over the next 7 to 9 years? It does not. It cannot, because you are talking about a controlled economy in this matter.

So, first of all, let the administration explain to the American people on natural gas that the extension of controls or the gradual phasing in of deregulation guarantees only one thing, that the price is going to go up, whereas the price under total deregulation in a free market, can go down if the supply is too great.

Mr. President, not wishing to step on partisan toes, I have some partisan comments to make. Maybe I ought to stop at this juncture and let my good friend from Montana have his say on this matter, a man whom I greatly respect and, I might add, a successor to the distinguished former majority leader of whom I have spoken so affectionately and so admiringly.

I yield temporarily to the distinguished Senator from Montana.

Mr. MELCHER. I want to thank my good friend, the Senator from Connecticut. I want to say there are many points the Senator from Connecticut has raised with which I agree. However, I do not agree with the need for gasoline rationing. Indeed, despite what my very good friend and very great predecessor believed in, in that regard it was totally uacceptable in our State.

But when the Senator from Connecticut speaks out about the need for conservation, I totally agree with him. I know from our experience together on the Senate Energy Committee that we think alike on the subject.

I also join the Senator from Connecticut in advocating very strongly an opportunity for increasing production of oil and gas in this country, and I agree with him that the incentives have been re-

moved. That is why both he and I voted for the Pearson-Bentsen proposal that received a majority of the votes here in the Senate when we dealt with this subject last fall.

But we split here, the Senator from Connecticut and myself, on this proposition, because while this has presented not nearly as much as I wanted in terms of Pearson-Bentsen, in terms of deregulation, it is, in my judgment, better to have this, and to have it now, than to delay until some future time, so indefinite that it is impossible to calculate, when both the House and the Senate would pass another type of gas bill called gas deregulation or gas regulation for at least this does have some deregulation in it.

There is something in this bill, and something connected with it, that I do not believe the Senator from Connecticut has considered.

We can talk about what will be in a motion for recommittal.

Mr. McCLURE. Mr. President, will the Senator yield for just one comment?

Mr. MELCHER. Yes.

Mr. McCLURE. I think it deserves some comment at this point about the alleged complexity of the bill, because of the number of classes of gas.

Mr. MELCHER. I was going to get to that, I can tell the Senator.

Mr. McCLURE. I would just like for the record, unless the Senator would prefer to do it himself, to state there are actually under this proposal fewer classes of gas for regulation purposes than there are under existing law, because it establishes essentially four classes of new gas wells. There would be the new, there are wells with on-chart production, deregulated high-cost gas, and wells which do not qualify for either, and those would be the new gas wells, and the old gas wells which are divided into three categories: Stripper wells, and you have to do something to deal with the question of what do you do on interstate roll-over contracts and intrastate roll-over contracts? What do you do when a contract expires and they must negotiate for a new price? That is the seven classes of gas that are established under this bill.

A great number of people have said, "There have been 17 or 22 or 23 or 26." I would say to the Senator there are probably some 300 to 400 classes of gas now being administered by the Federal Energy Regulatory Commission, and they must, under existing law, establish for new gas, on a quarterly basis for new wells, a new price in a separate proceeding under each application, and they are losing ground under those applications. That will be true during all of the period of time in the future until the law is changed.

Mr. WEICKER. I only respond to my good friend from Idaho by saying that I have never—I do not believe the Senator from Idaho has either—used the present system as a model either of workability or of philosophy or good economics.

Mr. McCLURE. Mr. President, will the Senator yield to me? Certainly I do not intend to convey that the present law is the very best we can have nor do I contend that the proposed conference report is the best law that could be written. I am saying that the choice we have confronting us now is between the existing law and the conference report, and the hope that we might somehow do something better. Those are the only choices we have.

I think any objective assessment of the difficulty of passing the law, passing a new law, to improve where we are now must rest upon a judgment, and it is a political judgment, it is not an economic or factual judgment, but a political judgment, about whether or not Congress is in the future more likely to enact better law than they are to do so right now.

I would just point out that the Pearson-Bentsen bill passed this last year in the Senate by a margin of only four votes. At the time we voted on it before, the margin was six votes.

In the House last year it failed of passage by a margin of 13 votes. The last time it had been voted on before that, in 1975, it failed of passage in the House by only three votes.

The reason I mention those things is that I am not sure that the trend in Congress is away from deregulation of gas but may, as a matter of fact, have reached a high point during the aftermath of the gas shortages which saw factories, homes, and schools running without a sufficient supply of natural gas. Congress, in its usual tendency to run from crisis to crisis, very nearly responded affirmatively in the immediate aftermath of that crisis. But as we moved farther away from it the tendency on the part of Congress to correct the obvious inequity and obvious faults of the existing law diminished.

My assessment, for whatever value there may be in my own personal assessment, would be that the likelihood of passing a better bill next year is less than the likelihood of being able to correct it this year.

Mr. WEICKER. I would like to ask the distinguished Senator from Idaho a question: If, as he maintains, the categories are less complex in the bill before the Senate than the present system, how does he explain—I will repeat the statement of the Director of Enforcement referred to—how does the Senator explain the statement that SHEILA HOLLIS made, that "the legislative framework envisioned by the final conference report is exceptionally complex and intricate. Administration and enforcement of this highly technical bill could be undertaken only with substantial additional staff and other resources committed to the Commission."?

Mr. McCLURE. She has made that statement. The simple answer is that they started out 9 months ago with a 14,000-case backlog, that the backlog of unresolved issues now exceeds 20,000, and is nearly 23,000 at the present time, and they will need additional personnel and resources to carry out their functions under existing law.

It is her opinion that they will need additional personnel. I would invite the Senator, if he would like, to read the fuller statement of the Chairman of the Federal Regulatory Commission that appears in the same memorandum, in which he says that as a matter of fact under existing law they could well require less personnel, and I could read about three pages of his comments as to various ways in which regulatory complexity under this bill could well be less than the regulatory complexity under existing law; and I refer the Senator to pages 10, 11, 12, and 13 of the section-by-section analysis from which he has just quoted one sentence.

Mr. MELCHER. Well, the Senator from Idaho is correct in stating the cases of the categories, and I would like to read what Charles Curtis, the chairman of the Federal Energy Regulatory Commission, stated on about September 8:

> There has been a great deal of discussion in the press concerning the number of pricing categories, production classifications, and other administrative determinations under the proposed NGPA. There is no single response to these various claims. The answer is keyed to how narrowly or broadly you construct the categories. For example, the staff has identified approximately 11 different and specific price levels permissible under the Act. Of this number, four derive from the incorporation of currently effective Commission determined just and reasonable rates and two others result from the creation of a statutory equivalent to previously determined just and reasonable rates.

Those 11 categories are set out on the next page, and I will mention a couple of them and incorporate all of them in my remarks. I ask unanimous consent that the 11 rate categories be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(1) $2.09 rate with both inflation adjustment and escalation (described in section 108(a)).

NEW CATEGORY—STRIPPER WELLS

(2) $1.75 base rate with both inflation adjustment and escalation (described in section 102(b)).

NEW CATEGORY—NEW GAS

(3) $1.75 base rate with inflation adjustment only (described in section 103(b)).

NEW CATEGORY—IN FIELD GAS

(4) $0.93 base rate established by Opinion No. 770–A as incorporated and modified by section 104(b)(1)(A).

OLD CATEGORY—(UNDER FPC-CODIFICATION)

(5) $0.295 base rate established by Opinion No. 749 as incorporated and modified by section 104(b)(1)(A).

OLD CATEGORY—(UNDER FPC-CODIFICATION)

(6) $0.52 base rate with $.01 annual escalation under Opinion Nos. 699 and 770 with inflation adjustment beginning in the month following the effective date of the rollover for those rollover contracts which were executed on or after January 1, 1973 and before the date of enactment.

OLD CATEGORY—(UNDER FPC-CODIFICATION)

(7) $0.54 base rate with inflation adjustment described by section 106(a)(2).

OLD CATEGORY—(UNDER FPC-CODIFICATION)

(8) $1.00 base rate with inflation adjustments, described by section 106(b)(1).

NEW CATEGORY—FOR CERTAIN OLD INTRA-STATE GAS

(9) $1.45 base rate with inflation adjustment described in section 109(b). This rate is equivalent to the $1.42 base rate established by Opinion No. 770–A as incorporated and modified by section 104(b)(1)(A).

OLD CATEGORY—OLD FPC-CODIFICATION

(10) Various special relief or optional procedure rates prescribed by the Commission after April 20, 1977 and before enactment, covered by section 104(b)(1)(A) or (B).

OLD CATEGORY—OLD FPC-CODIFICATION

(11) Special incentive price for high cost natural gas. Section 107(b).

New category—high-cost new gas (such as western shale). Incentive price.

Mr. MELCHER. The first one is a $2.09 per thousand cubic feet base rate, with both inflation adjustment and escalation, for stripper gas wells.

This fits into two of the points that the Senator from Connecticut and I agree on completely. You can look at a stripper gas well as new production if it will increase the production and get something out of there you would not have otherwise gotten out of it. And you can look at it on the basis of conservation, because if it is a producer, if you have the well and it has been producing, it is in the stream of supplying gas, and if you do not get the gas out, you are wasting it.

So I think the Senator from Connecticut would agree with me that we need something in the law to allow an incentive price for stripper gas wells, just as we have had for several years an incentive for stripper oil wells. It has worked for stripper oil wells; we knew it worked when we first adopted it, the very first time. We modified it several times, and now we have incorporated it into this conference report as a part of this bill for stripper gas wells. I think it makes sense. I think the Senator from Connecticut would very much agree with me on the necessity for having that modification in the present law.

Now, there is another basis for incentive in the 11th one of these 11 different categories. It is a special incentive price for high-cost natural gas.

That high-cost gas could be something like Western shale. If it is there, and if there is a feasible way that meets the practical question of satisfying the market demand for natural gas at a price that people are willing to pay, then we ought to allow under the law for such an incentive price. I think the Senator from Connecticut would agree with me on that, too.

Then there is another point about talking about increasing production within the United States. We have got the oil flow from Prudhoe Bay in Alaska on the North Slope. The gas is there, which is being reinjected now into the wells as it comes out with the oil. For a period of time that can be successfully done without incurring additional costs.

But I think the Senator from Connecticut would envision that the natural gas from Alaska should add to our domestic supply here in the Lower 48. It is not much use sitting up there in Prudhoe Bay, and we need to have it brought down here. We have established the conditions for right-of-way permits and agreed on a route for the natural gas pipeline from Alaska. Yet it will not come about unless we adopt a law to require the rolling in not only the wellhead price, but of transportation costs; and that is in the bill, too.

Mr. WEICKER. Mr. President, what the Senator is saying to me is that if we can only get that natural gas into the United States, then we have the possibility for lower prices. Believe me, we do not have the possibility for lower prices in the United States under this legislation, not at least for the next 7 to 9 years.

Mr. MELCHER. No, Senator, I am not making that claim, that natural gas coming down from Alaska would assure us of lower natural gas prices. We may find that even though we allow that gas to come down here, by allowing the rolling in not only of the wellhead price but of the transportation price so that pipeline company can sell the bonds to get the money to build that pipeline, it may well be that it will be at such a price that no one wants to buy it.

I am not saying that Alaskan gas, when it comes down to the Lower 48 States will sell at an attractive price. I do not know; if it were here today it might not be too attractive, because we are looking at $4 a thousand cubic feet, and that must compete with a lot of resources that are cheaper than that.

No, I would not attempt to make that case.

Mr. WEICKER. But then it is also fair to state to the consuming public that under this bill there is no possibility, regardless of the supply of gas, of the price going down.

Mr. MELCHER. Yes, there is. Let me tell the Senator why there is.

Mr. WEICKER. How? I am talking about the next 7 to 9 years.

Mr. MELCHER. These are only approximations. The escalation only applies to the maximum. Let me tell the Senator why this may lead to cheaper prices in the future. Alberta adjoins Montana. The way they run the province there, the Canadian Energy Board in partnership with the province runs the production. It is one where they do not want to export oil or gas. In the situation with oil it seemed to work out all right with them for a while because they have been steadily decreasing their sales of oil to the United States. They have it down to quite a small amount now. But at the same time they were trying to utilize the gas in the Alberta gas field for themselves and not sell any new contracts to the utility companies in the United States, they found that they needed to have more gas sales. The price was increased and it is up to right around $2.13 to $2.30 per thousand cubic feet right now.

When that time came, when they allowed that added price, there were hundreds of new gas wells brought in in Alberta. I am advised by people familiar with the market there, familiar with the natural gas market there, that the current contracts that they have in the Canadian Province of Alberta, and which the Canadian companies have now, are about $2.13, which look very good to them. At this moment they have not had sufficient buyers in the area to absorb all of the gas they think they are going to be able to sell on contract during the next year or two.

A slight increase in the price, we would call it slight now though it was quite a dramatic increase at the time, allowing that price to get above $2 increased drilling, brought in more gas wells, and, for their market, has made a substantial quantity of natural gas available. They are now exporting more than they really planned on or thought they would a few years ago,

Mr. WEICKER. I have no argument with the Senator from Montana on that point at all.

Mr. MELCHER. I know the Senator agrees with me on that. But in a small way, in a much smaller market, a slight increase—and believe me I am not trying to say that going from $1.25 up to $2 is not a big percentage increase but $2 natural gas sounds attractive to us now—by doing that they brought in a lot more natural gas.

Under the terms of this, getting above $2, which it will in 1979 for new gas, it could probably bring in a lot more gas than we could envision at this time. So we might reach the point of additional supply. I know the Senator agrees with me that that is ideal, if that happens. I cannot say it will happen. I would like to think we have a shot at it.

Mr. WEICKER. I have no arguments whatsoever with the distinguished Senator from Montana on the additional price producing additional exploration and a greater amount of gas. But still left unanswered, however, is the last question: With the additional exploration and the additional gas, once on-stream has the price gone down? Apparently there is no proof to that point.

Mr. BUMPERS. Will the Senator yield?

Mr. WEICKER. If I might complete my comments with regard to the comments of the Senator from Montana, then I will yield.

To respond to the distinguished Senator from Idaho, whose point is to the complexity of the provisions of this bill, may I repeat a letter that was written by the chairman of the Federal Energy Regulatory Commission, the letter of September 8? I will read the whole paragraph so as not to try to give any tilt to my response to the statement of the Senator from Idaho.

As you will note, the conference report is set out in elaborate detail. If one accepts the policy conclusions of the conferees as given, the question still remains whether the Act can be effectively administered and enforced. It is my basic conclusion that it can be. I could not have made the same judgment with respect to the July 31 draft.

This is obviously Chairman CURTIS trying to respond to the statement of unenforceability. But that is not the point that I raised with the Senator from Idaho. That point is now discussed by Chairman CURTIS when he says:

I must responsibly point out, however, the task of administration and enforcement of the statutory scheme will be most difficult. The legislation will necessitate an augmentation of Commission personnel and financial resources.

Augmentation of personnel resources? Why do you augment your personnel and your resources if the regulations are simple? It is an ambiguity, a contradiction.

He goes on:

a sustained and dedicated effort by members of the Commission and its staff and a high degree of cooperation of the various State and Federal agencies who are assigned responsibilities under it.

I might add indeed there will be increasing regulatory problems at the Federal level, and much of this will also be thrust on the shoulders of the various State regulatory agencies.

I do not see how it can possibly be argued here on the floor of the Senate that the legislation before us is going to simplify that which we already have. The only simplification which could occur which would be meaningful would be to go to a free market, to deregulate, total deregulation and decontrol. There you indeed would go ahead and simplify the process.

I realize that that is an impossibility, that there has to be some sort of a transition stage. Indeed, Pearson-Bentsen went ahead and complicated that in the course of the 2- and 5-year deregulation and decontrol. But 7 to 9 years, maintaining all the existing categories as they apply to old gas, changing really only the basic ground rules for new gas, and someone is going to stand on the floor here and say this actually simplifies? I do not care how you want to categorize. That is an argument in semantics. Believe me, when people say the bill is complex, it is complex and its enforcement is going to be complex. That is by the judgment of two people who sit on the agency responsible for that enforcement.

Now, Mr. President, I realize that partisan minds are every which way on this legislation, be it my Republican colleagues who have come out in support of the bill, in support of the President's position, or Democratic Senators opposed to the President, but there are a few political facts of life which I believe are worth mentioning. These are not directed, I might add, to any of my colleagues, but a rather general political situation which has existed without our Government for the past 4 to 5 years.

It could be argued back in 1974 that any sort of energy bill would be difficult to obtain in the sense that there was a split of authority between a Republican White House and a Democratic Congress. Indeed, I remember the tremendous efforts put forth by President Ford to go ahead and get everyone together. I might add, they were efforts which were joined in by both the majority leader of the House and of the Senate, both Albert and Mansfield. It was the inability to go ahead and deliver, so far as the troops were concerned in the House and the Senate, that had that matter fall apart.

In any event, no energy policy was achieved. We had arrived at that stalemate in our political system where the authority was split.

I do not think it improper to point out that of the politics in this country, and specifically the two-party system, which everybody likes to toot their horn about, every time I step up here and suggest we ought to expand our campaign financing and Federal communication laws, and all the rest, to encompass more than our two political parties, I get this big spiel from my colleagues about the importance of the two-party system.

"That is the way we have accountability. We do not want a fragmented system as in Europe."

The argument is not always new. Whenever I try to open up our political processes to see if be it in terms of being heard or terms of money, or all the rest, whether politics in this country really belongs not to two political parties but to everyone, the argument is used that the reason for having the two-party system is that we have accountability.

I do not accept that argument. I think it would be the greatest thing in the world to have a few more political parties around here and have a little more competition going. But for the purposes of what I am going to say, I will accept it.

Accountability—the greatness of the two-party system. Well, here it is, 2 years after the elections of 1976. No longer do we have that split in authority as between a Democratic Congress and a Republican President. We have a Democratic White House, and we have 2-to-1 majorities in the House and the Senate, of the same party. And after 2 years, the President has to go running around this town, using as the basis of his argument to pass the bill, "We need a bill." Two years have gone by and it is only in the last 3 weeks that the President of the United States has involved himself in the energy crisis. Those of us who sit on that conference—and I sit on that conference—did not hear a word from the White House for nigh onto 3 months—October, November, December. Finally, at the end of December, there was a little murmur out of the Energy Department, but no involvement whatsoever.

I think that, in terms of this accountability that we like to talk about in the two-party system, somebody has dropped the ball and, quite frankly, I am not anxious to go ahead and pick it up to, in terms of the quote of the day, "Let's have a bill." The President, when he went off to Bonn, said he points to the Congress. In a political sense, I do not think there is any question of the fact that a little effort, a little placing of this item high on the list of priorities, rather than delivering sermons out of the White House, rather than dividing our society by ripping various aspects of it apart—whether they are doctors, lawyers, or what have you—a little concentration on the homework at hand was in order. But none for 2 years. Now a mad scrambling around, just so he can say that he has a bill, when the political power has been there all along to make sure that we not only had a bill, but that it was a good bill.

I was not much in favor of the excuses of my own party when our administration could not produce a valid energy effort, but certainly, if I were critical of my own party or my own administration at this time—and I was—I am going to be doubly critical when it comes to an administration that enjoys the majorities that that administration enjoys, both in the House and in the Senate.

Again, I repeat, my criticism of the legislation before us is not on a partisan basis. I have supported this President in many of his initiatives and his endeavors—Panama Canal, human rights, many other measures on this floor. But this fails. This fails as to what it says, what it does, and, indeed, in terms of accountability, the President fails.

(Mr. SASSER assumed the chair.)

Mr. WEICKER. The dollar will be strengthened when we balance our budget at home. The dollar will be strengthened when Europe knows that we have our own energy supplies, that we have changed our lifestyle to cut down our energy consumption.

Parenthetically, to my good friend from Montana, when he says that rationing is abhorrent in the State of Montana, I say it is abhorrent in the State of Connecticut, also. That is the whole difficulty. Nobody wants to tread on anybody's toes around here.

Mind you, I did not advocate a repetition of World War II rationing. I recommended some system where you have a 6-day week for the automobiles, with a colored sticker on your windshield for the day of the week that that vehicle is not going to be in operation. I asked people to change ther lifestyle for 1 day a week, to keep that car off the road 1 day a week. I exempted agriculture and commercial vehicles so that we in no way stop the wheels of commerce in this country. I asked this country, for 1 day a week, to change our lifestyles to that extent. Even there, the answer comes out a loud "No."

No successful energy policy is going to be production alone. It has to be conservation. I realize that conservation is not in the bill before us, but neither is it in any bill coming up behind. It is miniscule. It will nowhere near do the job, either in terms of gas or oil, or anything else.

The bottom line of all this, Mr. President, is whether or not we shall have truly resolved the various problems posed to this country in an energy sense through the passage of this legislation. It is special-interest legislation. It satisfies some producers. I might add that I do not think there are many great marks that are going to be handed out to American business in their performance on this legislation. I have seen telegrams and letters from some of the large corporations in this country, saying, "For God's sake, pass it; pass it."

Where were these corporations—if I fault the President for his silence for 2 years, where have these corporations been for 4 years? Now, just at the last minute, something, some little glimmer out there, 7 to 9 years hence, in the large corporate scheme of things, is better than nothing, regardless of the hardships it will impose upon people during the course of those 7 to 9 years. So, maybe a corporation will not feel it, but believe me, the individual will.

Even among the energy companies now, there is a waffling going on. They feel that these guaranteed prices in the bill enable them to make some profit, with the prospect of a great deal more beyond that. I did not go ahead and

argue for deregulation and decontrol to satisfy them entirely. I argued for it because I felt it would bring a greater supply on stream and eventually lower the price. But there is enough in here, in this bill, for some corporations. So they are for it, albeit reluctantly so.

There is enough here for the philosophical and political types so that they can claim victory in either a philosophical or a political way.

For those that have espoused the theory of controls, they are not forced to admit they are wrong. They are allowed to tiptoe out of the room, so this bill is OK.

It is a patchwork of concessions to special interests. And now, speaking, as I said before, in the partisan sense, I am not willing to make the final concession to give a political—a political—victory to this President when I know it will be accomplished at the expense of the men and women out there who have suffered long enough with instability of supply and high prices. He talks sacrifice; yet he does not ask it, either of himself or his administration or of the voters in any meaningful way.

At one time, the centerpiece of his energy policy was the COET. Now he knows he has more than his match in our distinguished colleague from Louisiana and feels that possibly, that tax will not pass. Have you noticed how it is no longer the centerpiece of his energy package? It is now the natural gas bill that is the centerpiece of his energy package.

I might add, on the equalization tax, and hopefully, it will not pass, all that does is, instead of having the money go into the free market and to private enterprise, who would produce more, it goes into the hands of the politicians here in Washington, to send as they see fit. We do not need more politics, we need more energy. Fortunately, the scheme has been bared for what it is and so it will not be the centerpiece of his energy policy; it will be the rear end, if that.

My opposition to this bill is that it does nothing, in a physical sense, to give us credibility abroad, it does nothing in the sense of energy to assure that the people of this country will be able to escape from under the blackmail threat of foreign nations, it does nothing to enhance our national security in the sense of energy.

It might be a politician's dream come true, but it is going to be a consumer's nightmare.

I yield the floor, Mr. President.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I wanted to take this time to make my decision known on what I intend to do on this bill. Some of my colleagues will recall I was one of the leaders on the floor when this was debated here. I fought strenuously for a bill more in keeping with the House provision to keep rather rigid regulations on natural gas pricing.

The so-called Pearson-Bentsen bill which we debated here and which the Senate finally accepted would have deregulated natural gas at a very rapid rate. I thought it was wrong, and at that time I expressed my reservations about the very fact I did not think it would produce any more gas, no matter how high the price. We were not going to get a lot of gas because every rig in the country was busy. The industry was then looking for natural gas and oil with picks and shovels because the price was adequate, and I so stated.

Since that time, certain things have changed, and I will talk about those in a moment. But I want to point out, we are living in the real world as it is and not as we would like it to be.

I do not take a great deal of pride in this bill, even though I helped mold this so-called compromise in those months of tedious, laborious negotiations. It is not a work which I want to leave to my grandchildren as one of my great legacies during my tenure in the Senate. But, as I say, we are dealing with things as they are.

We had a very tenuous coalition of about 10 Senators, and, many times, when as many as 2 opposed any proposal, we had to back up and start all over again because it takes 9 Senators to report a bill.

So it was a very unhappy and uncomfortable place for me to be all those months. Nevertheless, I stuck with it because, as long as it did not offend my conscience, it was in the best interest of this country and, certainly, better than doing nothing. About that time, I finally psyched myself up to become a rather ardent proponent of the bill. Then there is this brouhaha that the President has got a deal on breeder reactors with my distinguished colleague from Idaho, which dampened my enthusiasm considerably.

But I finally concluded it would not be fair to my constituents or to the Nation, to hold this bill hostage to my strong opposition to liquid metal fast breeder reactors and to what I thought was at inappropriate arrangement between the administration and the Senator from Idaho.

Suporting liquid metal fast breeder reactors is like saying that everybody in the country ought to have 20 pounds of plutonium in his back yard to use as he sees fit.

So, I finally concluded we were really talking about apples and oranges. even though I want to say here that my vote for this bill should not ever be construed as an approval of the deal the White House made with the Senator from Idaho, and, believe me, I have heard several versions of it and I do not know which one is right.

But, as I say, I decided to face that issue somewhere down the pike. It will be back before our Committee on Energy. I will talk to the President, the Vice President, and others about that later.

But I want to talk just briefly about the state of the Nation, especially in the field of energy.

If I were President of the United States and I was going to the House of Representatives tonight to address a joint session about the state of the Nation on energy, I would have to say that it is very poor. Nothing is going on. Consumption is up, imports of petroleum remain steady despite a million barrels a day coming down from Alaska, trade deficits will equal last year's devastating $27.6 billion or more, and inflation continues to run unabated, now at an annual rate of about 9 percent during the first 8 months of this year, almost double digit for the first 9 months.

We have seen the popularity rating of the President, which was 65 to 70 percent after his nomination in 1976, continually degenerate and deteriorate since that time until now it is something like 35 percent to 38 percent, maybe less.

I guess the press asked me as much as any other single question, "How do you account for this?"

Well, I do not know how to account for it, but I can state some of the thoughts I have. It is not because some of the initiatives he has taken have not been eminently correct. I even agreed with him on some of the water projects. My distinguished colleague from Colorado, of course, convinced me water is, indeed, the life blood of the West, and perhaps the President was wrong on some of those projects. He was certainly right about the one in my State.

But what else has he done? He torpedoed the B–1 bomber and the defense authorization bill. He was for the Panama Canal Treaties. He was for raising the embargo on Turkish arms. He was for the social security tax increase. He was for selling airplanes to Saudi Arabia and Egypt.

He was eminently right on those and a lot of other points. So why is his popularity so low? Well, because most of those things are not relevant in people's lives in this country. It has nothing to do with going to the grocery store day after day and seeing the price of everything going up at a high rate.

They have a tough time paying utility bills. They have a tough time paying grocery bills. Inflation is the only game in town to about 98 percent of the people of this country, and our President has simply not been able to deal with that problem in a meaningful way.

He has sent a tax reform bill to the Congress with which we have not dealt. He has sent a welfare bill with which we have not dealt. He has sent a stringent energy bill over here with which we have not dealt.

Those are the things that are relative in people's lives, and Congress has not dealt with a single one of them.

When he says that the tax system of this country is a disgrace to the human race, he could not be more right.

Mr. President, here is a chance for Congress to make a small beginning in doing something that is relevant in people's lives and dealing with a very critical issue. But to what have we been committed? What is this country committed to right now? We are not committed to anything, if Congress is any manifestation of popular thought across this country. We have continued to act as though there is no tomorrow, and that there is indeed a free lunch.

I will tell you what we act like. We act like that old saw, I say to the Senator

from California: We know the price of everything and the value of nothing.

This bill, as I said, certainly leaves plenty to be desired. A moment ago, the Senator from Connecticut talked about the complexity of it. It is indeed a complex bill.

I saw that famous memo from the Federal Energy Regulatory Commission—saying that it is an administrative nightmare, and I will not disagree with that. We did address some of those problems before this conference report was signed.

But let me ask this: How does the nightmarish potential for administering this bill compare to the absolutely bizarre batch of regulations that the Federal Power Commission is trying to implement now? It certainly cannot be any worse. They are sitting over there on 20,000 cases. They do not have the manpower to solve them, and they do not know how to solve them, because their own regulations are confusing. How could this bill possibly be any worse than a backlog of 20,000 cases which they cannot deal with right now because of their own regulations? It is Byzantine.

Do you know what the people in the business community in my State say to me when I go home? They say, "Senator, you know, we can take a lot of things. We may disagree with the government; we may disagree with your votes on a lot of things; but the one thing we need and want more than anything else is certainty. Just tell us what we have to live with, and we will live with it."

This bill is complex. It does not fit the purposes of any ideology of which I know. If you are a total regulator or if you are a total deregulator, this bill will not please you. If you believe that incentive can be furnished only by an exorbitant price or a decontrolled price, vote against the bill. If you think that you can hold gas prices down to what they have been for the past 20 years and solve the energy problems of this country, vote against the bill. It does not do either of those things.

The interesting Catch-22 situation here politically is that it does not make any difference how you vote. You are going to get it. Gas prices are going to go up. They are going to go up if we defeat the bill, and they are going to go up if we pass the bill. You just book that.

When you go home next winter, your constituents are going to be mad if you voted for this bill and it passes, because they are going to say that is what raised their utility bills. If you vote against this bill and it passes, you can always say, "I voted against that bill, so don't blame me." But if you vote against the bill and it fails, you get it again. They are going to say, "If you had voted for that energy bill, my rates wouldn't be so high. But you tried to kill the President's energy bill, and you did it, and now look at my rates."

Do you know from whom you are going to hear that the most? You are going to hear that from industry—not the gas industry. I am talking about manufacturers. You are going to hear it from manufacturers and from the commercial industry, because the one thing we have done in this bill is to put in a political provision called incremental pricing.

Do you know what incremental pricing is designed to do? It is designed to protect residential customers. When gas prices go up, these price increases will first be borne by industry, and residential homeowner will be the last one to absorb these increases in prices.

If we defeat this bill, the homeowner gets no protection from increased prices. If we pass the bill, they at least get the provisions of incremental pricing. So there you are.

I listened to the debate earlier between the distinguished Senator from Connecticut (Mr. WEICKER) and the distinguished Senator from Montana (Mr. MELCHER), and the Senator from Connecticut said there is no way for prices to go down if this bill is passed. That is not true.

I will say this: I worried when we were setting these prices that we were setting a floor instead of a ceiling, because if there is a glut of gas in this country in the next 2 years—and some of the opponents of this bill say there is a glut now—the assumption is that gas will continue to bring the price that is set out in this bill, anyway. Do not believe it. Prices can go down, and they will go down, just as they have gone down in the intrastate market.

A year ago, intrastate gas contracts were running around $2.10 to $2.20 a thousand cubic feet. Today, they are running about $1.75 to $1.80. Why? It is simple. It is a glut of gas on the intrastate market.

Incidentally, that brings me to another point. Do you know that agriculture is the first one that gets curtailed? Every winter since I have been in the Senate, the people who are in the soybean-drying business and the rice-drying business in my State come running up here and say, "Would you please call the Federal Power Commission for us? We have a case over there. We are trying to get them to give us more gas. They have our gas company curtailed, and they say they can't give us gas, and we can't dry rice." Therefore, they cannot export rice, and the farmers cannot get the money for their crop.

There is not a Senator in this body from an agricultural State who has not dealt with the same situation.

So what do we have in this bill? We have created a priority for agriculture. They are going to be the last ones curtailed in the future, as they should be. That is a little feature of the bill that some of the Senators from agricultural States should be thinking about.

Mr. President, there is another little point that many people do not realize. When I started out on this bill last year, I said that we should capture the gas that is in the intrastate market. As Senators know, one of the gross inequities in this country is that only about four States produce gas—Louisiana, Texas, Oklahoma, and California. I do not want to slight the State of Wyoming, I say to the Senator, but Wyoming is just not that big a producer. We produce in my State. The people in my State think we are a great gas producer, but the truth of the matter is that we import 80 percent of the gas we use in our State. Those four States produce 90 to 95 percent of the gas produced in this country.

What happens to it? Forty-two percent of all the gas in this country is being retained in those States, and it is being used in those States. The people in this body should understand one thing: 42 percent of all the gas being produced in this country, virtually every cubic foot of it, is being used in those four States.

Ninety percent of the electricity in Texas is generated with natural gas. We quit generating electricity with natural gas the first year I was Governor, and that is so long ago I cannot remember it. These producing States continue to use it for the most wasteful, profligate reasons.

What have we done? We were not able, because we could not get the votes, to say that this gas must be sold in interstate commerce. So we set up a pricing mechanism. There would be no incentive to keep it there.

There is a trillion to two trillion cubic feet in Louisiana and Texas right now that is being capped and being held and is not going to be sold in the intrastate market because the price is depressed. When this bill passes, that gas should move into the into the interstate market.

I will tell Senators something. If that does not shock a lot of Senators in this body and people across this country, I do not know what does. Think about 42 percent of all the natural gas in this country being held in four States because of a pricing mechanism.

So, if the Secretary of Energy is right and if the Department of Energy is right, this gas is going to start flowing across State lines and it is going to go into the Midwest and Ohio where the schools, hospitals, and everything else had to shut down the winter before last because it was not available in a lot of those Midwestern States, it will replace petroleum products that we are now importing from OPEC nations and helping build this $27 billion trade deficit which, in turn, is one of the principal contributors to inflation in this country.

It is only an embryonic beginning to save 350,000 barrels a day while we are using 17 to 18 million. Hopefully by 1985 we will save a million and a million and a half barrels a day. And that is a beginning.

I talked about the 42 percent of the gas that is being held in about four States. Of the other 60 percent that is traveling in interstate commerce, 40 percent of that is traveling at deregulated rates today. Why? Because we have a little loophole in the law. You send a form over to the Federal Energy Regulatory Commission and you say: "This is an emergency. I have a chance to sell this gas." And the buyer says: "I have to buy this gas. If I do not get it I am going to have to shut my plant down."

This is an emergency. And you can get those 30-, 60-, and 90-day permits as fast as the printing press will grind them out. The Federal Energy Regulatory Commission may be at fault. I am not defending this program. I am telling what the real

world is right now. I am telling that they are permitting those things as fast as they are filed, and 40 percent of the remaining 60 percent of the Nation's gas supply is traveling in interstate commerce right now at a deregulated rate. It is not totally deregulated. There is a $2.25 cap on it. But it is selling as high as $1.75 to $2.25.

So what are we doing? How are we damaging the country and the consumer so terribly when 42 percent of the gas is deregulated already because it is in intrastate commerce and 40 percent of the remainder is deregulated because it is being sold under these emergency contracts.

Mr. President, I was over at the White House the other morning and incidentally I have been getting invited over there regularly lately. While I was over there the other morning, William Miller, Chairman of the Federal Reserve System, made an interesting statement.

I think that economics is about the most imprecise science there is. I heard Mark Russell say one time he was up in Canada and he found out that the members of the separatist movement in Quebec refused to speak English. Mark Russell said, "We've got the same crowd down in our country. Only we call them economists."

William Miller is not an economist. He is a businessman. Apparently he has put the pencil to this. He says that for every 10 percent in the decline of the dollar, inflation goes up 1 percent.

The reason I keep tabs on this is because I have a son who goes to college in Germany. He is costing me a lot more money now than he did when he started. But if you compare the dollar with the German mark and all the other Western European currencies, in the past 18 months there has been a 20-percent decline. Against the Japanese yen there has been a 33⅓-percent decline. The Japanese yen right now is about 195 to a dollar. A little over a year ago it was 302.

That is the reason we have a $7 billion trade deficit against Japan, and we do not buy a barrel of oil from Japan. But we bought $7 billion worth more from them last year than they bought from us.

Talk about an insidious thief. Talk about the possibility of this bill causing an inflation increase of a quarter to a half percent. Let me tell Senators so they know what it costs the American consumer. Let me give some statistics.

This year we are going to import $160 billion worth of goods from all other countries. Of that amount, let us just say, for hypothetical reasons $50 billion of that is oil. That leaves $110 billion of all products except oil. If the dollar goes down 20 percent in 1 year, and that decline is reflected in increased prices of that $110 billion, we are paying $22 billion more at the end of this year for just those imports, $22 billion in 1 year for those imports than we would have paid if we had an even trade deficit and the dollar had been stable.

Senators come in here and say, "My gosh, this bill is going to cost $9 billion between now and 1985."

That is less than half the inflated price we are paying for merchandise in 1 year because of the decline of the dollar.

Other Senators say: "Do not think these foreign bankers and these foreign countries are idiots. They have good economists. They know what this bill is. Do not think for an instant we are going to pass off some cosmetic piece of product or piece of goods like this as a really good beginning toward curbing consumption habits and dealing with energy. They are not going to be fooled."

I am not asking them to be fooled. I think more of the bill than that. I think the bill is a beginning and a beginning we must make.

I tell Senators finally that if we do not pass this bill we can just forget it until after the 1980 election. I know the politics of the thing and everyone in this body knows the politics of the thing.

There will not be an energy bill of any substance until after 1980 unless we do it now.

The Senator from Colorado had the courage and the good sense to get up here in the Senate the other day and put the solar energy tax credits on a rather innocuous tax bill because we all know the so-called uncertainties of the President's energy policy. The crude oil equalization tax is not going to pass. I hope they stand up in conference.

That brings me to another point. Until we get this bill passed, we are not going to pass coal conversion, we are not going to pass utility rate reform, and we are not going to pass the conversion bill. They are vital. They are important, and they will make a very significant impact on this country's problems.

Mr. President, I intend to vote for this bill. I have not reached this decision lightly or easily. I think it will be much better for us to correct whatever inequities there are in this bill next year and the year after than it will be to start again in 1981. So far as I am concerned, the cow is not only going to be out of the barn but she is going to be out of sight by 1981.

We can deal with it if there is something there. This is a chance for this body to do something that is relevant in people's lives.

I yield the floor, Mr. President.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, like the Senator from Arkansas I intend to support and vote for this bill. I think it is unfortunate that the statement which the Senator from Arkansas has just made will not be more widely available not only to our colleagues but also to the people of our country because I think it is one of the best arguments I have heard on any side of this issue in the last year and a half, and I wish to commend him for his remarks and to associate myself with them.

Mr. President, the issue, as difficult as it is before the Senate, is not whether to deregulate natural gas. The issue is whether the Government of the United States can work.

If I had any convictions whatsoever that the parties-in-interest to this legislation had moved one iota toward each other and indicated any willingness to find any common ground between the producers, on the one side, and the consumers, on the other, that would produce a consensus that all those warring factions could live with, and that this country could go forward with in its economy and in its energy program, then I would vote against this bill.

But right there today and for the last week or two in the reception room of the Senate we have had representatives of the major oil companies, we have had representatives of every consumer group, we have had representatives of most of organized labor demanding that we vote against this bill, saying what a horrible, terrible bill it is.

Well, they produced it. It is the factions in this country that cannot get themselves together that have to take a lot of the responsibility for the kind of legislation they claim they do not like.

If there were any suggestion at all to the Senators in this body that those factions that have divided themselves so deeply, not only within the course of the last few weeks but in the last 2 years on this issue, could get together on some common principles of what they think a good natural gas bill should be, then I for one, would vote against this bill tomorrow.

But there is no indication of that.

The big oil and petroleum and natural gas companies are as far away from the consumers as they were 2 years ago. The consumers are as committed to keeping the price unrealistically low as they were 2 years ago. Many of the producers are committed to getting immediate and total, unequivocal, deregulation as they were 2 years ago. You can go on and on about every group that has lobbied every Senator here and every Member of Congress.

I say, Mr. President, this bill is a classic piece of representative legislation. If it is a hodgepodge it is because the poor conferees attempted in the best way they knew how to accommodate everybody, and if I had been one of those conferees I would probably have done just the same thing. There is something for the producers. there is something for the consumers, there is something for this group, there is something for labor, and then every one of those factions comes in and says, "Yes. but it is a complex bill." Well, I wonder why.

I found in my 4 years in the Senate almost that when you are doing what somebody wants you to do, you are representing them the way they think you should. When you are doing something that they do not want you to do and they do not like, then suddenly you have abandoned your connection with your constituency, you have no concern for the electorate; you do not care about the people you represent, and all the rest of it.

Well, this bill is not perfect. The Senator from Arkansas, I think, has pointed out in what ways it is not, and the opponents have pointed out the way in which it is not perfect. But in many ways, Mr. President, it does what needs to be done. It deregulates natural gas,

which is what needs to be done, but it does it over a period of time so the shock on the economy is not so great as to send this country into a tailspin.

It has a variety of categories of natural gas—probably too many. But it offers more certainty and more guidelines to the people who have to administer it than the people have today.

It will not encourage as much production of natural gas as, perhaps, some other piece of legislation, but it will encourage a lot more production.

We could go on and on about what this bill will not do but, Mr. President, I think it goes a long way toward doing what needs to be done.

On the matter of natural gas, on energy or the economy or anything else that has this country so deeply divided and has this reception room packed with representatives of one faction or another on every issue we face, until we learn how to sit down and reconcile our differences among each other in a better way than we are doing it today, this Government is going to continue to stumble along, and this country is going to continue to stumble along.

I, for one, am sorely pressed to be sympathetic with groups that say they do not like this bill or that bill. And they had as much to do with the product as any of us had in terms of their pressure and their lobbying and all the rest of it.

The real test before the Senate is not whether we can pass a natural gas bill; I think the real test is whether this country can be governed.

Our job is to try to point out to people how they can get together; but until those people are willing to get together on this issue or any one of a hundred of others we are not going to be the kind of country we ought to be, and I think that is a shame.

Mr. President, I think the issue is whether this Senate can decide, whether it can act, whether it can make a decision, and whether it can move on. We can do better. We can do a better job than we did on this bill. But I do not think we can do it without the support of all of those groups that have played a role in the framing of this legislation, better support really than we have gotten, more accommodation and more consensus, and that is my hope on energy and economic issues and foreign policy issues for the future.

Mr. President with regard to natural gas legislation presently before us, the specific issue is whether to support an extremely complex bill, which eventually deregulates the price of natural gas. Support for this bill cannot be based solely on what is in the bill, however. That support must also take into account likely energy and economic events if the bill is defeated.

My vote in favor of this natural gas compromise legislation is based on belief that it is preferable to maintenance of the status quo. I wish Congress could have developed a better proposal, but I believe this bill is superior to the situation we have now. It does resolve some of the problems which have plagued both producers and consumers, and it gives an important and strong signal to nations around the world that we are committed to reducing our dependence on foreign oil and our profligate energy consumption.

As we learn to live with this bill and the new policy it puts forward, we may find areas which need clarification and improvement. I am committed to help insure that Congress takes any necessary steps in the future to accommodate this legislation to changing circumstances.

KEY PROVISIONS OF THE BILL

Before discussing the broad issues, I would like to discuss the provisions of the bill itself. There are three key criteria to judge natural gas pricing and regulation proposals. First, the price of gas must be high enough to assure maximum supply to consumers.

Current prices for newly discovered natural gas are approximately 40 percent below the price of fuel oil. Current price regulations, in effect, prohibit a gas producer from marketing gas which may cost more than current supplies, but is still cheaper than imported oil. This situation is not logical during today's need to rely more on domestic energy and less on imported oil and gas. It is in the consumers' interest to substitute domestically produced for imported oil.

The natural gas bill before us today improves the pricing situation for new gas. This bill would gradually decontrol the price of newly discovered gas over a period of 7 years. To maximize the search for new gas supplies, I would personally prefer that newly discovered reserves, which require great risk to find, be deregulated immediately. However, the bill before us is an improvement over the status quo. It will result in some additional new supplies.

The second criterion for a sensible natural gas policy is that the price of previously discovered gas be kept in proportion to the cost of producing it; that is, cost-based. Consumers should continue to be protected by regulations which prevent the price of old, inexpensive gas from rising to the price of new, hard-to-find gas.

This bill maintains cost-based prices on most old gas. The exceptions to this rule occur primarily in the form of higher prices for old gas previously sold only in the State where it was produced. This legislation offers a price higher than costs for old intrastate gas as old contracts expire, but is in fact a relative bargain.

Without this legislation, when contracts expire, the old intrastate gas might instead be sold at a higher, deregulated price. Also, gas from new wells in previously discovered reservoirs will get a very high price. With this bill, consumers in States like Colorado and Ohio will be able to buy gas which otherwise would remain in States like Texas and Louisiana. While these categories of gas may be priced above its cost in the State where produced, the gas will still cost less than substitutes such as oil in the State where consumed. Thus, again the bill in question is an improvement over the status quo.

The third criterion is that a single, national market be created for newly discovered gas supplies. Currently, producers of new gas tend to sell it mostly in the producer States where unregulated prices are higher. This creates an excess supply of gas in some States and shortages in others.

The proposed legislation corrects this situation by regulating the price of intrastate sales, as well as the price of interstate sales, until 1985. During this period producers will have equal incentives to sell in all States where consumers are willing to pay the controlled price.

Another major question about this bill is its enforceability. This bill is extremely complicated, because it contains about two dozen different categories of gas. However, complicated enforcement is different from weak enforcement. This bill contains extensive details and guidelines so regulatory bodies and producers will be able to determine the appropriate price for a given sale of gas. The bill also contains strong enforcement measures to assure strict compliance.

The Chairman of the Federal Energy Regulatory Commission, Charles Curtis, said this week that the mechanisms to enforce this legislation are more substantial than those presently available. Mr. Curtis has stated that he believes this legislation can be administered and enforced effectively. I truly hope that he is right, but I will be ready to sponsor improving legislation if it becomes necessary.

EFFECTS ON PRODUCERS AND CONSUMERS

As a result of the higher gas prices under this legislation, we can expect that the current high rate of drilling will continue for many years, and more new reservoirs will be discovered. Our energy supply situation will probably not be greatly changed by this legislation, but this legislation should allow our country at least to maintain its current level of gas production for a decade or two. Without new reserve discoveries, we would run out of gas in a decade.

The higher prices in this bill will also give all consumers greater incentives to conserve gas, and to shift to more abundant fuels such as coal and solar energy where they can. In the near future, this bill is actually quite minimal in its impact on residential consumers, agricultural users, and on small industrial boilers. These categories of consumers will not pay the higher gas prices for some time. Instead, the higher gas prices will be allocated to large industrial boilers, until these prices rise to the equivalent price of fuel oil. Only then will the higher prices for new gas be averaged in with the price of old gas used by residential, agricultural, and other commercial users.

This gradual approach is particularly good because it allows time for households, farmers, and most businessmen and women to plan for higher gas prices and to adjust their use accordingly.

OTHER MAJOR CONSIDERATIONS

To decide on this bill, one must also consider what would happen if this bill fails. Based on extensive discussion with my colleagues in the Senate and in the administration, I truly believe that this is the only chance for passage of major

gas legislation for several years. If this fails, we would be left with the status quo, which not only deprives consuming States of needed gas, but also deprives producers of adequate incentives to maximize new supplies. Failure to pass this bill will not resolve the issue for anyone. Failure to act is not a solution. Nor is recommittal. With the status quo, producers will continue to push for complete deregulation, and many Members of Congress will try to achieve that. This unsettled situation will also encourage some producers to postpone the search for new reserves until they can be assured a deregulated price. Thus, we need this gas bill to give producers the certain information now that the risks of searching for new reserves will be rewarded with higher prices in the mid 1980's.

Another major consideration is the bill's symbolic meaning for the world money market. Currently, the price of the dollar is declining in relation to European and Japanese currencies. This decline is due to a fundamental imbalance in our trade, particularly in energy, steel, agriculture, and automobiles. Passage of this gas bill will not improve our energy trade imbalance for several years. However, it will give a strong signal to the world's bankers that the United States is taking medicine which will put us on the road to recovery from our addiction to imported oil. This will provide at least a temporary boost to the willingness of international bankers to hold dollar reserves. As a consequence of this legislation, sales of the dollar should decline, and the value of the dollar in relation to other currencies should stabilize.

COMPARISON WITH STATUS QUO

All of these arguments in favor of this bill are compared to the status quo. If I could be given reasonable assurances that the status quo could otherwise be improved, I would be less inclined to support this legislation. However, the current interpretation of the Natural Gas Act of 1938 is that intrastate gas sales cannot be regulated, and that interstate sales must be. This law, in effect, established a dual gas market which is sorely in need of correction.

Similarly, if I could be assured that the interests of gas consumers and gas producers would coalesce on an improved gas bill during the next year, I would also be less inclined to support this particular bill. However, consumers interests seem to be more intent on keeping gas prices low during the next 5 to 10 years than on encouraging more supply or the developing of domestic substitutes which will be cheaper and more plentiful than imports.

Domestic producer interests seem to be more intent on receiving higher prices for new wells drilled into fairly well known areas than on taking risks on drilling into truly frontier areas. These conflicting interests do not appear willing to compromise and, given this inflexibility, I doubt that a better gas bill can be passed in Congress within the next 5 years.

SUMMARY

In summary, I will vote to accept this natural gas bill as the preferred alternative to inaction. Otherwise, continued regulation and continued price uncertainty will slow the search for new reserves and the transition to greater conservation of this precious national resource.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HART. I yield.

Mr. ROBERT C. BYRD. I want to thank the Senator for a cogent, lucid, persuasive, well-reasoned and courageous statement.

I have listened to his reasoning and I have found it to be excellent, able, and clear. I compliment the Senator on the decision he has made, and I also commend him on the rationale on which he has based his decision.

It is not a single proposition; it is for a number of excellent reasons which he has well articulated, and I again commend him.

Mr. HART. I thank the majority leader, Mr. President, for his kind remarks, and I appreciate the sentiments behind them.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I, too, have listened with interest to the remarks and the reasoning of the Senator from Arkansas and the Senator from Colorado. I have to say that I find myself in disagreement with them, and cannot, for the life of me, come in front of the Senate and say that because I disagree I think that I, and others who feel the same way, ought to somehow or other apologize for the posture that we take.

It seems to me that the process that the Government of this country was designed to provide to the American people is the process we are indulging in right now. I do not think it is all a question of whether or not we can be governed. This is the act of governing, and the decisions before this body are more than just to accept and roll over and take a compromise constructed by people who basically have no interest in the result in terms of either their States or the country or whether we, who have parochial and nationwide interests, are allowed to participate in this debate with our heads in the air. I do not see any reason to apologize for having a different view from that of the Senator from Colorado or the Senator from Arkansas.

Their arguments were lucid, but I just happen to disagree with them, and I do not find that a reason to apologize either to the Senate or to the country.

Mr. HART. Mr. President, will the Senator yield?

Mr. WALLOP. Yes, I am happy to yield.

Mr. HART. First of all, I do not attempt to speak for the Senator from Arkansas, but I do not think there was anything in the remarks I made or the intent behind them that suggested everyone should agree with me, or that if anyone did not, they should apologize.

I was commenting on the fact that this bill was being heavily lobbied against on the ground that it was not very good, by people who have not taken one step toward the people they have been tilting with for 2 years to start putting out something better. This body has labored, the House has labored, and heaven knows the conference has labored mightily to achieve this result, and now people come in and say that since we have tried and failed, in their judgment, they have to vote against this measure.

If those same people who have been working on the House, working on the Senate, and working on the conferees showed one degree of reconciliation with each other, I would vote against this measure, but I have seen not one degree of reconciliation between producers and consumers in the last 2 years.

The Senator does not need to apologize. All I am saying is that until we approach this problem of cementing this society back together, we are going to keep stumbling along. I do not think an apology is necessary.

Mr. WALLOP. I think that is very adequate democracy, stumbling along. That is the legislative process. We are involved in the very thing we are designed to be involved in.

All I am saying is that the Senate came up with something which, in my judgment, was unfortunately better when it left this body in the first place, but saying that those in opposition to this are intransigent and have very little alternative to offer is hardly a derogation of the democratic process.

Mr. HART. It is not that the people who oppose it do not have alternatives. It is they cannot sell those alternatives to the people who disagree with them. Of course, everyone has alternatives. I have a perfect natural-gas bill, but I cannot get a consensus for it. The producers have their solution to the problem, but they cannot get a consensus for it.

Mr. WALLOP. Is a consensus required, simply because we are at this time in history? Do we take a piece of paper like this, regardless of what it contains, stamp it with big red letters "energy bill," and then say we can hold up our heads in the world, or do we try to achieve what those of us on this side of the issue believe is in the best interests of the country?

Mr. HART. What indication does the Senator from Wyoming see that anything has changed in 2 years? What indication is there?

Mr. HANSEN. Mr. President, will the Senator yield to me for a moment?

Mr. WALLOP. I will be happy to.

Mr. HANSEN. If I may give the Senator one little ray of hope, I would say he should direct that question to the junior Senator from Washington. He has been on record, and has said so repeatedly on this floor for a number of years, as being opposed to deregulation. And now who has shepherded this compromise through secret sessions, despite the fact that he was the one who first came forward and said we are going to legislate in the sunlight, we are going to let the American people know what goes on behind closed doors and in smoke-filled rooms?

It was he who said we are going to lay it all out in the open, and it is he who, today and on previous days, has been on this floor saying that now, reluctantly, he has come around to the conclusion that

we are going to have deregulation. That is Senator JACKSON.

Now, maybe that gives no encouragement to my friend from Colorado, for whom I have the greatest respect, but it does indicate to the Senator from Wyoming—and I suspect maybe to both Senators from Wyoming—that it is just possible, as Cromwell said, we must consider there is the possibility that we could have been wrong, you know, or that someone else may have been wrong.

I think what we are seeing today is the frustration and, indeed, the anger of Americans in seeing we have followed a procedure for some 25 years or more that has insured low prices, but what it has also insured has been shortages, has been discouragement of those in the field of drilling. We have witnessed about 75 percent of the wildcatters going out of business simply because there were better ways of making money. Now I think that is what the Senator from Washington is reflecting when he champions this bill that says we will have deregulation 7 years away. Of course, as I pointed out, and as has my colleague from Wyoming, actually right today 48 percent of the gas is deregulated.

These are not my figures; they come from the Energy Information Administration of the Department of Energy. And the interesting thing is that by their own examination of the facts——

Mr. FORD. Mr. President, will the Senator yield?

Mr. HANSEN. Not for just a moment yet, because I want to tell you what the facts are.

Mr. FORD. I want to help you keep them straight.

Mr. HANSEN. And I want to keep you straight.

Mr. HART. Will the Senator yield, before he gets into the facts? You two can argue the facts; all I want to say is this: If there were more Senators like the Senator from Washington, who had to concede on a point, and the Senator from Kansas, who had to concede on a point, then we would get somewhere. It is the people who will not concede anything who are holding things up. And I am not talking about any Senator; I am talking about the fuel men in this country. So I applaud the Senator from Washington and I applaud the Senator from Kansas, who fought as hard as they could in the Senate for deregulation.

Mr. WALLOP. If we are talking about the process of legislation and the processes of democracy, when there is a person against deregulation and a person for it both saying "This is the best we can do" that is the kind of thing we are talking about.

Mr. HANSEN. If my good friend and colleague from Wyoming will yield, and I do not wish to intrude on his time——

Mr. WALLOP. I will be happy to yield.

Mr. HANSEN. I just want to make this point: I am just saying that this so-called deregulation will not in reality deregulate anything for at least 7 years. It will impose total regulation of one kind or another on all of the gas, all of the gas in this country, from the time that it becomes law, if indeed it does become law, until 7 years down the road, and then, by the admission of the Energy Information Administration of the Department of Energy, only 37 percent—only 37 percent—of the gas 7 years down the road will be deregulated, as contrasted with 48 percent which is not now deregulated.

I want to join my colleague from Wyoming in saying that it seems strange—and I have done it, and I have great respect for my good friend from Colorado—but it seems strange that when people do not agree with us, we get up on the floor of the Senate and deplore the situation. We always seem to question the ability of the country, as my good friend from Colorado has said, to govern ourselves.

I think what we are engaged in right now is that act of governing. We are doing what my colleague from Wyoming says this institution is designed to do. I do not see anything wrong with that.

You know, I remember one of the first times I was in the Senate, when the late great senior Senator from Illinois, Everett Dirksen, stood where my distinguished colleague from Wyoming now stands, and said that in time there is a way that this body comes around to the right decisions.

The reason we are here today is that we would hope that when more Senators are aware of what the facts are, when more Senators understand that despite our futile efforts time after time after time to repeal the laws of supply and demand, we cannot repeal them. As we have pursued a policy of natural gas regulation, to say the laws of supply and demand do not work, all we found out that we have encouraged excessive use of natural gas; we have discouraged American entrepreneurs and American drillers from going out and trying to find more natural gas; we have increased our dependence upon foreign sources of supply; we have brought about a great outflow of dollars in this country, simply to buy gas and oil abroad that we could have been purchasing here more cheaply, employing Americans here in more and more jobs, adding to the strengths of this economy, insuring the security of this Nation by decreasing our relative dependency upon foreign sources, simply because I think we have been too hardheaded to recognize what the facts are.

I thank my colleague from Wyoming. I say to him that I have enjoyed very much working with him these last 2 years. As I anticipate leaving this body, I do so with the full confidence that the State of Wyoming is going to be extremely well-represented in one MALCOLM WALLOP. I thank my friend.

Mr. FORD. Will the junior Senator yield for a question?

Mr. WALLOP. If the Senator from Kentucky has anything half as nice to say as that, I would be happy to yield.

Mr. FORD. Well, I am not going to say anything real nice, but I am not going to say anything real bad.

Mr. WALLOP. OK, I would be happy to yield on that rather nebulous basis.

Mr. FORD. Well, it is nebulous, but that is about as good as you can get, I guess. Are you going to vote for recommittal?

Mr. WALLOP. I intend to vote for recommital.

Mr. FORD. Do you know what you are going to vote on?

Mr. WALLOP. How do you mean that?

Mr. FORD. You do not know what the recommittal motion is going to be?

Mr. WALLOP. To the extent I have read it, the recommittal motion will bear instructions with it.

Mr. FORD. But they are changing it now. They are calling Senators asking, "Would you vote for this if we add this onto it?" We have not seen the recommittal motion. You have not seen the final recommittal motion. But you are committed to vote for recommittal.

Mr. WALLOP. I would say this to my friend from Kentucky: If there was an unsatisfactory recommittal motion, I would vote to kill the conference report as it lies right now because I think it is destructive to the future of this country.

Mr. FORD. But the point I want to make is we are going to get a recommittal motion tomorrow or Thursday, and the Senator is committed to voting for something he has not seen.

Mr. WALLOP. Does the Senator from Kentucky say he is going to vote against recommittal?

Mr. FORD. I do not know. I have not seen it. I do not know what is in it. I cannot make a judgment, but you have.

Mr. WALLOP. I can make a judgment to say this, that I would sooner recommit this bill than to see it go forth and become law. If the recommittal motion is not satisfactory, I will join the Senator from Kentucky in voting against that and just vote to kill this conference report.

Mr. FORD. I think we ought to vote up or down on the conference report.

Mr. HANSEN. Will my colleague yield for one further observation?

Mr. WALLOP. I would be happy to yield.

Mr. HANSEN. I would like to say to my good friend from Kentucky that I hope he will not impose the same standard that he has just suggested to my colleague from Wyoming on all Members of this body because if he does my guess is that there will not be very many people voting for this bill. I venture to say that not more than as many Members of this body as I have fingers on one hand know what is in this bill. I say further that when they got it all signed on and when they got the signatures affixed to it, they had some further difficulty. They had to go back and change the language on 119 pages. What was a work report, a tentative work draft, insofar as I know, has never yet been finalized.

I say also to my friend from Kentucky that my colleague from Wyoming and I have had several conversations on what likely will be contained in a recommittal motion. I think it begs the question to have the kind of question asked that my friend from Kentucky asked. When someone writes me and asks will I vote for this bill or that bill, oftentimes, on the basis of experience, it has been my duty and responsibility to say, "Well, you know, I am not going to tell you categorically that I will vote for the bill."

I remember when the senior Senator from Massachusetts (Mr. KENNEDY) one time offered a bill, and we had some

inquiries from Wyoming people wanting to know how I was going to vote on that bill. I told them. Before that bill finally was voted upon in this Chamber, it had been amended and changed to the extent that the Senator from Massachusetts had to speak against his own bill.

I think it is cute, it is interesting, to ask my friend from Wyoming if he knows what is in the bill. Obviously, until it has been put on the floor and any amendments may be put to it, I would defy anybody to say precisely what is in it.

I can say one thing: My good friend from Wyoming has a pretty good concept of what we are talking about. There may be some changes made. There may be some more changes made. I suspect that we are going to incorporate, if needed, into that recommittal motion enough ideas that will be appealing to enough people that we would hope that it can pass. It is on that basis that I think he and I are going to be working in that direction.

I thank my friend from Wyoming.

Mr. FORD. Will the Senator yield for one additional point?

Mr. WALLOP. I am happy to yield.

Mr. FORD. The senior Senator from Wyoming has a great deal of experience. He is articulate, intelligent, and very forceful in his statements. He has been on many conference committees, many more than I have been on. I have only been on a few in the 4 years I have been here. But the senior Senator from Wyoming must know that the document that was sent around was a draft to see if those on the conference agreed with the language. There was not 100-percent agreement. I am sure he has read a draft before and wanted to change a word or two. There were changes when the draft went around. No one had signed at the time the draft was sent around and the changes were made.

I just want the Senator from Wyoming to understand that, yes, there were some changes, but I thought it was the usual procedure that was used as a result of a conference report and a conference bill and would be similar to those on which he has served in the past.

Mr. HANSEN. There is just one exception, if I could take one more moment, and I apologize to my good friend from Wyoming. This really was not a conference report. It was a star chamber production that carried on over several month's time, meeting in secret session, without all of the conferees even being there. I would have to say that that is most unusual, as far as I know. That is the first time that I have been a member of a conference and have been excluded by selected conferees and was told repeatedly I was not welcome, that I could not participate because this kind of deal required backroom finagling.

They had, so I am told, the Secretary of Energy there; they had, at times, the Chairman of the Federal Energy Regulatory Commission there; they had administration officials coming and going. But they did not have all of the conferees there. So I have not read it. I think I have a fair idea of what is in it. I would have to say that you can say this is a common procedure if you want to, but it is a most uncommon procedure so far as I know. It is the first time to my knowledge that this kind of backroom, star chamber, secret-session-in-the-dark-of-the-Moon deal has been worked out without all of the conferees who were legally entitled to be there being permitted to participate. I shall not impose further.

Mr. WALLOP. I will say to my good friend from Wyoming that it has been kind of a Halloween sort of arrangement, and in some respects would bear on the questions and arguments of the Senator from Colorado that he had not seen any give on the part of those who were opposing it. It is pretty hard to give when you are not allowed to go to the party.

Mr. FORD. Will the Senator yield on that?

Mr. WALLOP. I would be happy to yield one more time. Before I yield, I would just say one other thing, that the standard that the Senator from Kentucky suggests, that everybody know exactly what is in that motion before they commit to it, is an admirable standard and I only wish the Senate would follow it on everything.

Mr. FORD. I try. I only want to say that on every conference every conferee was notified and invited to every meeting of the conference. I do not think the senior Senator from Wyoming will deny that every conferee was notified and invited to every meeting of the conference.

Mr. WALLOP. It is funny how the stories change. I would not suggest there was any way that perhaps the conference was not conferring, that the deal was made before the conference got there. I think that probably more accurately describes it than saying every Member was invited to the conference and had the opportunity to participate in the thing that lies in front of us.

Mr. President, I have some other concerns with the legislation to the extent that we know about it. Admittedly, it is a funny deal that we have to sit here and argue about something that is still held secret, but apparently, that is the face that we are required and requested to accept. But to the extent that the knowledge about it is out, I should like to express the reservations that I feel.

The Natural Gas Act of 1938 was a piece of New Deal legislation designed to insure that consumers paid "fair" prices for gas sold by a natural gas monopoly—for example, the pipeline industry—which was just beginning to develop at the time of passage. In many producing areas, single pipeline buyers were often able to dictate Federal prices. As initially interpreted by the Federal Power Commission, only the pipelines' transportation tariffs were regulated.

Wellhead prices paid to gas producers were excluded in this early interpretation by a section of the act which states,

> The provisions of this act . . . shall not apply . . . to the production or gathering of natural gas.

The FPC operated under this interpretation of the Natural Gas Act until 1954, when the Supreme Court, ignoring the language in the act, ruled in the Phillips case that the FPC indeed had regulatory responsibility for production and gathering. In a dispute with Phillips Petroleum, the Wisconsin Public Service Commission successfully sued the FPC to force them to take jurisdiction over the sale of natural gas in interstate commerce.

In 1956, Congress lifted this court imposed mandate by passing the Harris-Fulbright Act. But the act was vetoed by President Eisenhower, who sympathized with its content but felt compelled to do so because of "arrogant lobbying" for its passage and allegations of bribery.

The FPC, which became the Federal Energy Regulatory Commission (FERC) in 1977, regulates interstate natural gas by setting and enforcing nationwide rate schedules. Although exceptions exist, there are basically two operating rate categories. "New" gas—discovered from wells where drilling commenced after January 1, 1975—brings $1.50 per thousand cubic feet (Mcf) at the wellhead. "Old" gas from expiring contracts is allowed a rate of about $0.50 per Mcf. All rates are subject to adjustments for Btu content, State severance tax reimbursement, and gathering allowances.

The intrastate market, which consists of natural gas produced and consumed within State boundaries, is regulated by State statute. New Mexico is the only producing State that has placed wellhead price controls on intrastate gas.

President Carter rekindled interest in the natural gas issue by making it a part of his campaign promise. In a letter to the Governors of producing States he supported deregulation, then reversed himself when he introduced his national energy plan. Under his post campaign proposal, the Federal Government would continue price controls on gas sold in the interstate market and, for the first time, regulate the intrastate market.

The House agreed with that concept, but as we all recall, in the Senate we did not.

Voting last year, by a narrow margin, the Senate chose to remove price controls on "new" natural gas and to continue to prohibit Federal regulation of the intrastate market. Price controls on "old" interstate gas continued under both bills.

When members of the House-Senate conference committee met several months ago to resolve their differences in approach, they had to answer one question: Should price controls on new natural gas be lifted or continued? Their answer has to astonish anybody who takes a look at it: To create 17 new definitions of natural gas, each of which could be priced differently. After 1985, some gas would be deregulated. Several new rate categories were established. To "new" and "old" gas, the conferees added; "incentive" gas, "stripper" gas, "high cost" gas, and four categories of "roll over" gas. "Roll over" rates are price ceilings placed on expired contracts that are being renegotiated. This should not be confused with "roll-in" pricing which enables the cost of more expensive gas to be averaged (or rolled-in) with less expensive gas.) It

could best be describe as "How to complicate friends and influence no one."

But the conferees made the pricing even more complicated than merely creating new rate categories. They compounded the regulatory problem by inventing several more tests to establish how gas would qualify for different rate categories. The old dividing line was simply the date that drilling began on the well. Under the "compromise" a maze of new factors comes into play. They include whether or not gas is offshore or onshore, interstate or intrastate, and from old or new reservoirs. Other factors which determine the price are; the depth of the well, the date of drilling, the date the lease was signed, the type of formation, the distance from existing wells, the rate of flow, and the date gas was discovered. FERC is to digest all of this information and then assign the gas to one of the rate categories. Oddly, the factors have little scientific or geological significance. They exist primarily in the conferees' minds.

Traditionally, the Federal Government limited its role to setting the price that interstate pipelines purchased gas at the wellhead. The resale (or burner tip) price has been approved by State public utility commissions. That, too, will change under the "compromise."

This legislation orders the States to incorporate an incremental pricing mechanism into their ratemaking process. Incremental pricing, a mixed blessing, is one of the most controversial measures in the bill. It puts the burden of higher costs on only industrial users.

Previously, expensive gas was "rolled-in" with less expensive gas and an average rate was established. That rate was then shared by all users on a pipeline system industrial, agricultural, small business, schools and hospitals, and residential.

By way of illustration, assume that equal amounts of $0.50 Mcf "old" gas and $1.50 Mcf "new" gas are available to an interstate pipeline system. Under existing law, the two categories would be blended together—rolled-in—to establish an average wellhead cost of about $1 per Mcf for all of the customers on the system. Under incremental pricing, industrial users must buy all of the "new" gas at $1.50 per Mcf. The rate for other users would remain at $0.50 per Mcf.

The intent of this provision, which is to discourage large volume consumers from using natural gas, is understandable. But there is an albatross that has been overlooked in the "compromise." Although many industrial users will indeed be forced off natural gas, environmental constraints may prevent them from switching to coal. If that is the case, their other option would be fuel oil—a move that would increase our dependence on foreign oil. The whole idea—now lost to us—was to relieve our thirst for imports.

As more and more industrial users abandon a pipeline system, other problems arise. The fixed costs of operating a line are left to the remaining customers. A half-full line has about the same fixed cost as a full one. If the industrial users make a small percentage of the total load—the impact will be minimal.

However, in Wyoming, 50 percent of the gas consumed in the State is by industrial users. Naturally, some residential growth would occur to offset the loss of the industrial sector. But it is still likely that the Wyoming result of incremental pricing will be a more expensive and inefficient distribution system.

FIVE KEY QUESTIONS

WHAT IS THE IMPACT ON CONSUMERS?

It is difficult to evaluate the cumulative impact on residential consumers. Charts and graphs have been displayed in abundance during the debates but none have produced an accurate prediction of the nationwide impact.

As already noted, incremental pricing could burden homeowners, and small businesses in interstate systems. Yet the most immediate jolt will be felt by consumers served by major intrastate pipeline companies, including residential consumers in Wyoming.

New rate increases will be precipitated by a contract phenomenon known as a "most-favored-nation" clause. Under this type of contract, a producer automatically excalates his rates whenever FERC permits any other producer in the area a higher rate. For example, producer A may have a supply of gas that only qualifies for an "old" gas rate category if sold in the interstate market. But, if he is operating under a "most-favored-nation" clause, he is entitled to the highest rate category granted to any producer in the area. If a neighbor, producer B, qualifies for a "new" gas rate, producer A also qualifies.

In many cases, intrastate pipeline companies do not have access to a large quantity of inexpensive gas. Producers prefer not to make long term commitments to the intrastate market unless they are assured of at least the going interstate rate. Hence, the "most-favored-nation" clause was born.

Interstate pipelines, on the other hand, have several categories of gas available because Federal pricing policies link wellhead price to the date a well was discovered or the date drilling began. This vintaging concept allows interstate pipelines to blend—roll-in—all types of gas to produce a composite rate which is usually lower than the intrastate market.

Because the "compromise" will establish higher rate schedules, "most-favored-nation" clauses will be activated. For Wyoming consumers dependent on intrastate lines, that translates into a jump in wellhead price from approximately $1.50 per Mcf to $1.96 per Mcf—a 30 percent hike. It is probable that Wyoming gas will cost more in Wyoming than it will in distant States.

It is probable that that same Wyoming gas will cost more in Wyoming than it will in Kansas, Nebraska, Minnesota, or even Kentucky, if it gets that far, and I do not see how my people can be expected to make that kind of sacrifice when we are not a net exporter of natural gas.

WILL IT PRODUCE MORE GAS?

For producers selling in the interstate market, it is doubtful whether the incentive they receive from higher rate schedules will be offset by the growth in the regulatory burden. Because Federal price controls are placed on the intrastate market for the first time, the "compromise" would reduce the incentive to drill for gas in this market.

One of the few positive notes in the bill is the stimulus it will have in bringing Alaskan gas to the Lower 48. Provisions in the bill allow transportation costs for Prudhoe Bay gas to be "rolled-in" to the cost of other natural gas and spread among all consumers. The provision enables the sponsors of the project to obtain financing by guaranteeing a competitive market for their gas.

IS IT ENFORCEABLE?

The Federal Energy Regulatory Commission, operating under existing law, already has a backlog of 20,000 rate cases—some as old as 21 years. Today, the average case requires 41 months to process and that time will undoubtedly skyrocket if the "compromise" is enacted, simply because of the incredible additional volume of requests for processing and ratesetting.

Utilities, producers, consumers, and industrial users will be placed in eternal limbo while FERC wades through the puzzle of new regulations created by this compromise.

WHAT IS THE EFFECT ON THE VALUE OF THE DOLLAR?

Some of the world's foremost experts on U.S. monetary policy, including Nobel Prize winning economist, Milton Friedman, and former Secretary of the Treasury, Bill Simon, have expressed loud dismay at the administration's contention that this bill would help the value of the dollar. Since no other part of our economy feels the daily fluctuation of the dollar than our international business community, it is appropriate to quote Robert L. Slighton, vice president of Chase Manhattan Bank:

> The argument that passage of the compromise gas bill would play an important role in halting the decline in the dollar and strengthening the US balance-of-payments outlook is at best highly exaggerated and at worst just plainly wrong. Adoption of the proposed legislation would probably result in a modest strengthening of the dollar in the short run, but this improvement would not be permanent. In the longer run, the legislation could actually result in some weakening of the dollar as foreign exchange markets come to perceive that the long-run exchange supply of natural gas in the US is as likely to be reduced as increased under the new regulatory regime.

The dollar is weak because of bad domestic policy. Policy which consistently hampers this country's creativity with excess regulation, excess taxation, excess inflation, excess Government spending, and excessive creation of money. Ironically, Germany and Japan, which have strong international currencies and little domestic inflation, import essentially all of their energy.

IS THERE AN ALTERNATIVE?

The status quo presents the most attractive alternative at the moment. Consumers, producers, and regulators are at least familiar with the rules of the game.

In addition, under existing law FERC is required to publish an updated rate

schedule to compensate producers for the increased drilling and exploration costs that have accrued since 1975.

Moreover, in the event of severe winter shortages, the President has the ability to facilitate the transfer of surplus and emergency gas from the intrastate system to the interstate system. Such power was granted to the President by the Emergency Natural Gas Act of 1977. That authority has since expired, but can be renewed.

The potential for 26 trillion cubic feet of Alaskan gas cannot be overlooked by Congress. The "roll-in" pricing section for Prudhoe Bay gas is worthy of support as an amendment to existing law.

No other issues exemplifies the lack of a national consensus on energy than the natural gas bill. Throughout the debate, there have been emotional exchanges between those who fear consumers cannot absorb price increases and others who realize producers must have more incentives to provide future supplies. The administration has added to the confusion by vacillation and seeking to wear all hats.

It is difficult to outline all the complexities of the "compromise" in the limited space of this backgrounder. Nevertheless, it is important to emphasize that the bill contains all the disadvantages of deregulation and none of the advantages of deregulation.

Some have argued that even a bad bill is better than no bill at all. I disagree. Congress has taken positive steps in solving the energy crisis by passing three good measures—energy conservation, uitlity rate reform, and the coal conversion bill.

The natural gas "compromise" cannot be considered as a positive step. It is plagued with too many flaws. Foremost among them is the problem of "most-favored-nation" clauses. There are several pockets in Wyoming where people will continue to pay disproportionately high utility rates because this has been ignored in the "compromise."

There are areas of the country where incremental pricing is a good idea. But the controversial issue is far too complex to be congressionally mandated to cover widely varying local conditions across the country. In each case, a sensitive trade-off must be made between industrial users, residential rate structure, and subsequent impacts to the employment market. There is room for Federal support, but the final arbitrator must be the State governments, not Washington.

Perhaps the strongest argument against passage of the "compromise" is the revealing action by the agency that would administer the bill, the Federal Regulatory Commission. Last month, an internal memo from FERC's enforcement division was leaked to the press. It disclosed that the "compromise" was "too complicated to administer."

The memo sparked a flurry of action and brought about some minor clarifications in the bill. Later, a "revised" evaluation from FERC stated they could effectively administer the "compromise" but only if Congress appropriated funds for more regulatory personnel. The extra personnel were needed, FERC continued to explain, because it may take years of litigation to establish what the new bill really means.

Their energy policy can only be described as this: What this country really needs is a good, healthy increase in the bureaucracy. Sadly, it is a scenario that is all too familiar.

While we are talking energy options and the opportunity of this country to do something in the energy field, let me just say that a number of good ideas are being held hostage by the administration, pending passage of this natural gas compromise. In fact, you could say that the administration has more bills held hostage than the Bader-Meinhoff gang.

Just take the larger issues waiting in the wings while we are fiddling and telling each other we cannot get our energy act together. The energy conservation bill, the utility rate bill, the coal conversion bill, 533 sales, the Southland decision, steel imports, breeder reactors, the Alaska natural gas pipeline, and the emergency natural gas sales are being held hostage by the administration.

We have things to do out there in the energy field, waiting for us, while we fiddle and create a new bureaucracy, demanding hundreds of extra people who climb on the economy of this country, get in the way of it, pour paper on it, and refuse to make decisions for it. While we wait and fiddle with that, the real portions of the Energy Act, which could do something for the country, are lying dormant, held hostage to the tactics of this bill.

Mr. President, I have no more to add right now. It remains to be seen, as the Senator from Kentucky says, as to what is in the motion to recommit and with what instructions. But I can say this much: Everything that is known about this secret message is not satisfactory enough to make me support it, even though the motion to recommit may not be entirely satisfactory as well.

Mr. FORD. Mr. President, the distinguished Senator from West Virginia wants to make a statement, and I would like to have 60 seconds, if I may.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. There are two points I would like to make as they refer to the junior Senator from Wyoming.

They keep referring to the expired emergency gas bill that would be reinstated. The expired emergency gas bill did not allocate intrastate gas. I am wondering if the——

Mr. WALLOP. Mr. President, if the Senator will yield on that, it certainly mandated the interconnection between interstate and intrastate.

Mr. FORD. No, sir. The Senator from Wyoming has to go back to the legislation and read it. He is absolutely wrong. The expiring emergency gas bill did not allocate intrastate gas.

Mr. WALLOP. Did it not provide a means by which it could get into the interstate system?

Mr. FORD. Transportation, and that is all.

Mr. WALLOP. Sure, but it was there, and we got it.

Mr. FORD. How are you going to allocate it?

Mr. WALLOP. They got it because they were able to pay for it. Did they not get it?

Mr. FORD. Some did.

Mr. WALLOP. They did get it.

Mr. FORD. No, because 42 percent was retained in the four States that used it.

Another thing I want to point out to the Senator from Wyoming: He used Chase Manhattan Bank again, and that has been going on here for 2 days. The Senator used it and I have used it.

Here is a telegram to the senior Senator from Wyoming:

> I am in receipt of your memorandum of August 30 addressed to the staff assistants of your Senate colleagues with regard to an alleged Chase position on the compromise gas legislation. I want to take this opportunity to clear the record on this important matter.

It is signed by Willard C. Butcher, president of Chase Manhattan.

Mr. WALLOP. I say to the Senator that I did not propound a position of the Chase Manhattan Bank. I took an exact quotation from an officer of that bank, in which he said nothing about whether or not he was for or against this bill. He simply said that there was no way they could make a claim that it would have any effect on the value of the dollar.

Mr. FORD. I yield to the Senator from West Virginia. He is probably more articulate than both of us.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, the Senator from West Virginia will be in good humor, and, of course, in good purpose, as are my colleagues the Senator from Kentucky (Mr. FORD) and the Senator from Wyoming (Mr. WALLOP), and even our good friend the senior Senator from Wyoming (Mr. HANSEN), who has been a part of this three-way colloquy.

Mr. President, the conference report on the Natural Gas Policy Act of 1975 perhaps should be the single issue which can determine whether or not the United States of America will have an energy plan during the 95th Congress.

I hope it is not presumptuous for me to indicate that this is a subject that I understand and of which I have been a part, for many, many years.

I recall when I felt it was necessary to pass the Synthetic Liquid Fuels Act, in 1944. With the Senator from Wyoming, Mr. O'Mahoney, we coauthored a measure. It provided funds to take coal, and oil shale, and process it into liquid fuels to provide the energy supplies which would have and frankly would now have made America energy independent had we moved ahead with that program.

I became convinced of the value of synthetic fuels in 1943, when with another young man by the name of Arthur C. Hyde of Moorefield, W. Va., we took the regular aviation fuel from a single-engine Stinson plane at Morgantown, W. Va., and poured in the aviation fuel processed from West Virginia coal. That again was in 1943, November 6.

We flew 175 miles across the Allegheny and Blue Ridge Mountains into this Nation's Capital, and I was met there by Senator O'Mahoney and others of the Senate and the House of Representatives. It was an indication that we could do in this country what had been done by the German Luftwaffe.

Let us remember an actual, let us say careful reading of the facts will indicate that the Luftwaffe did not run out of aviation fuel when bombing London and environs. The Luftwaffe had made within the hierarchy, the decision to have only 50 percent of their aircraft in attack status. There were those who argued, but lost the argument, that it should be 80 percent attack aircraft and 20 percent of the other types of planes in the Luftwaffe. The Germans were using coal, Mr. President, using coal with which they made their aviation fuel.

They were also moving their trucks and tanks and other materials and implements of war with synthetic fuels.

We had a problem here in World War II, with oil imports. The German U-boats were prowling up and down the east coast and in New England waters and blocking the shipping lanes used for petroleum shipments coming into our country at that time.

The synthetic fuels program in this country was scrapped even though we had spent almost all of the funds appropriated for that initiative. In place of a strong synthetic fuels effort, today the U.S. Government and taxpayers of the United States of America are currently committed to spending $12.5 billion to do what? To just store, by and large, imported petroleum as a protective measure, against another possible Mideast embargo. I returned to the Senate, in November 1958 with my able colleague, the leader of the Senate, ROBERT BYRD. We both took formal office in January; however, I actually started my duties in the Senate in November 1958 because of serving out the unexpired term of M. M. Neely of West Virginia.

The first legislation that I introduced in 1959 was a Commission to create a fuels and energy policy for the United States of America, emphasizing, in testifying before the Interior and Insular Affairs Committee now the Energy and Natural Resources Committee, "that each year we delay perhaps brings us one year nearer to disaster." That was not an overstatement. It was true.

But nothing happened. I will not detail what took place later except to say that subsequent, administration did not take energy with a seriousness of purpose. I still have the letter from President Nixon in which he said he would refer the Commission proposal to the Domestic Council. It is representative of the attitude of official Washington at that particular time in our national life.

Then I began to think of other ways to create the Commission and we brought into being legislation that created an overall group within seven or eight committees, and we were working under an umbrella of cooperation among committees, and we established a task force in the Senate of the United States on energy policy.

What were our objectives? To find ways to begin, and solve, at least in part, the energy problems of this country that affect not only our own people but the peoples of the world.

In 1954 the Federal Government initiated control of the well-head price of gas moving in interstate commerce. The Members of the Senate since that time have held strong positions on what steps to take on pricing natural gas. On October 4, 1977 I voted for the Senate version of natural gas pricing, the Pearson-Bentsen amendment, which would have deregulated onshore natural gas in 2 years and offshore gas in 5 years.

This, however, was not the first time the Senate had considered the question of deregulating natural gas.

On December 10, 1973, the Senate considered a bill (S. 2776) to provide for the management of national energy programs during the energy emergency that then existed. In considering that legislation, the issue of natural gas deregulation surfaced. Senator Buckley from New York, and I sponsored an amendment at that time to immediately deregulate the price of new natural gas in the interstate market. The amendment to the Natural Gas Act was tabled by a narrow margin of 45 to 43 on a rollcall.

On October 22, 1975, the Senate considered an amendment to a bill (S. 2310), providing temporary provisions to assure the availability of natural gas supply, which would have also quickly deregulated natural gas. This time the vote was 50 to 41 in favor of deregulating natural gas. This measure was later defeated in the House. All votes on deregulation of natural gas have been close but in general, as indicated in 1975 and 1977, support for expedited deregulation in the Senate has solidified.

The conference agreement on natural gas pricing does not embrace the level of deregulation or the range of pricing incentives which I previously endorsed. A deregulation measure which does not take full effect for 7 years is less than a firm policy decision. Many of my colleagues who voted for decontrol last October, because of methods of negotiations with the House, the time frame involved in achieving deregulation, the intrastate provisions, and the Federal regulatory potential now feel the conference report represents the principles of deregulation without carrying them forward.

The conference report, however, is one which Senators such as myself who have worked for energy production incentives should support, and I commend Senator JACKSON and my colleagues on the Energy and Natural Resources who worked and cooperated with him in forming the basic structure of the compromise.

I admit that the conference report represents reregulation for an 8-year period and not deregulation. It does, however, represent a step toward that goal. If the Senate fails to take this first step after 13 months of work on the issue, I feel the country may never see the deregulation of natural gas prices. Again, this compromise represents an initial effort toward the position the Senate took last October 4. It does not represent a final solution to natural gas pricing. Specifically, I anticipate Congress will have to reassess, before 1985, the many definitions of natural gas and the paperwork associated with those increased Federal regulatory responsibilities along with emergency gas allocation measures contained in the bill.

I often use in my remarks a quotation, about redtape and Government. Senators will note that the quotation is very clear on the effects of redtape and should also give attention to the fact the quote was made some 15 generations ago, speaking of the government of the Roman Empire.

The quotation follows:

If all the skies were parchment
If all the seas were ink
If all the reeds were pens
And all men could write
They still could not match the Red Tape of this government.—Talmudic scholar of the Roman Government, 14 to 15 centuries ago.

So redtape has surrounded us for more than the past few months or years in this country.

My analysis of the work done by the energy conferees on natural gas pricing is for the most part positive. The definition of "new gas" and "new reservoirs" are basically fair and reasonable and should allow small and medium gas producers to increase their drilling activity. The allowance for special development incentive gas from new wells within an old reservoir and within a 2.5-mile radius will help to offset negative aspects of the "new gas" definition. According to the West Virginia Oil and Natural Gas Association investment in new natural gas wells is continuing to rise. An expected 1,400 new wells will be drilled in West Virginia this year showing an investment of $125.6 million. Provisions which allow stripper wells already producing less than 60,000 cubic feet per day a starting price of $2.09 per mcf should also encourage drilling activities.

When I say mcf, that is thousand cubic feet. I was once an investor in a company called the MCF Gas Co. in West Virginia. I was an investor in that company, and wells were drilled in my home county of Randolph, to the number of 18. Other companies, these little companies, came in and drilled their wells, and almost all of them are producing, of long life though not of great volume.

Yet I remember this chance we took in our State.

I have heard many comments the last 2 days inferring that all independent oil and gas producers are against passing this conference report. This is just not true.

Mr. President, I would like to read into the RECORD a letter which I received today from Mr. David Taylor, president of the Allegheny Land and Mineral Co., located in West Virginia. He is one of the most respected and active independent gas producers in our State. He states in his letter:

As you know, I have been engaged in the production of natural gas in the Appalachian basin since 1952. I founded Allegheny Land and Mineral Company in 1956 and served as

its President and Chairman of the Board and still remained a member of its Broad of Directors. I have, also, been a member of the Independent Oil and Gas Association of West Virginia since its inception. However, in this communication I am expressing my personal conclusions and opinions.

The bill on natural gas which has been released from the conference committee of the House and Senate is now before your senatorial body for consideration is not everything that can be desired. I am sure it is not exactly what you had in mind in your letter to Senator Long at the beginning of this legislative effort. Nevertheless, the conference bill is better for your constituents among the producers of natural gas in the Appalachian basin than the existing law. I believe you will be serving the producers and consumers in West Virginia well by supporting the conference bill.

I would also like to point out that while the U.S. Chamber of Commerce opposes the natural gas pricing report, the West Virginia Chamber of Commerce, in a letter to me dated September 2, endorsed the natural gas compromise as an indispensable component of the national energy plan.

(Mr. STEVENSON assumed the chair.)

Mr. RANDOLPH. The bill would also deregulate, in one year, gas found in new wells deeper than 15,000 feet. This provision would also help producers in states like West Virginia because it includes high cost gas which would be freed from price controls in one year. High cost gas includes gas from expensive sources such as devonian shale, methane from coal seams, and geopressurized methane. This alone would encompass 34 percent of the known natural gas reserves. The agreement also will give the Federal Energy Regulatory Commission power to authorize special price provisions for gas supply which are difficult to extract, including low permability gas methane.

During September and October of last year when we spent 2 arduous weeks debating the natural gas issue, I saw scores of conflicting reports on the effect of deregulating natural gas. Much uncertainty surrounded statistics on total reserves possible shortages, and consumer prices. Much rhetoric was heard on contrived hoax, ripoffs, and obscene profits. After studying the issues and listening to the debate the Senate voted to approve deregulation 50 to 46.

Now we have a report from the Energy Information Administration concluding the proposed compromise might mean higher residential prices and lower industrial prices because of incremental pricing. The conference report using an economic model with different assumptions than those used by the EIA states that industrial use of natural gas will not increase and not deprive residential customers of gas supplies. This body is now faced once again with members comparing differing studies and projections to prove a political point. The result will again be to delay resolution of our national energy problem. I submit this type of activity is not in the public interest but only serves to confuse all concerned on whether we really have a national energy crisis, merely for the sake of a press story or mention on a news broadcast.

I am willing to stand by figures developed by the staff of Members working on the National Energy Act, which show that gas costs would increase about $20 a year for a family of four between now and 1985, with incremental pricing provisions in place. This means a residential consumer in 1985, would pay $3.36–$4.80 per mcf under the conference agreement compared to $4.70 under the continued regulatory process we have now. In West Virginia the average home heating bill for the residential user is about $268 per year. The $13 to $20 per year increase could allow for about 1.25 trillion cubic feet more gas to be produced on an annual basis and will keep transportation costs for moving this fuel at a lower rate. I believe the conference version of the gas bill will eliminate some of the need for imposition of higher cost of alternative fuels (electric, fuel oil, and synfuels) and the possibility of long term shortages affecting residential as well as industrial users. It is interesting to note that gas today should sell at $3.85 per thousand cubic feet to put oil and gas producers in the same comparative competitive position they were in before 1954.

We need assurances of a stable rate of production and supply. This will not be accomplished by relying on high prices from liquid natural gas from such countries as Algeria, Mexico, and Indonesia. Such reliance would be the same mistake we made on oil imports. The U.S. Geological Survey indicates that only 2 percent of the domestic rock containing oil and gas has been drilled to date. Only one-fiftieth of the gas reserves in Appalachia have been tapped.

Necessary incentives must be provided to both major producers and independents. As elected representatives we need to have some degree of confidence and credibility in those private concerns in the gas and oil business. West Virginia's independent production is 0.9 percent of the national domestic gas production, with potential new supplies in deep geological formations that could be developed under provisions of the act. While we make the necessary adjustments to convert to coal, gas and oil will still be included in the major mix of fuels at least for the next 7 to 8 years.

Mr. President, for more than 50 years natural gas has been clean, cheap, and abundant. It is still clean, the most desirable form of primary energy because of near-ideal combustion characteristics. And it is still cheap, when compared on an energy-content basis with most energy sources—and it is competitive with all. The inplace transmission, storage, and distribution system, built at a cost of $50 billion and literally irreplaceable today, is available to serve these markets. The Natural Gas Policy Act of 1978 is a well-reasoned attempt to assure that all producers and consumers do their share in using wisely a energy fuel which is no longer in overabundance.

Mr. President, the natural gas compromise will result in more exploration and production, more gas flowing into the interstate systems needing it most, lower energy costs for consumers, and reduced imports of foreign energy. These considerations must override the objections of those who have taken extreme positions on either side of this issue during the past 6 months of debate.

These considerations must override the objections of those well-meaning Senators, but ill advised, who have taken opposing positions.

I am against polarization. The able minority leader of the Senate and those in the committee which I chair, in which he is an active and helpful member, know that I often speak against polarized positions. We have to take our stands, but we have to work together if we are to bring a measure into this body and have it appeal to people of varying views and then become a piece of legislation that expresses, in part, at least, the opinions and convictions of the membership.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. BAKER. I thank the distinguished Senator from West Virginia for his remarks and observations. I want to say that it has been a distinct pleasure for me to serve under his chairmanship in the Environment and Public Works Committee. The Senator is a man of great perception and great courtesy. I wanted to observe that he has given this matter, I am sure, the same careful attention he has always given to matters before his committee. While we have ended up on opposite sides on this issue, he nonetheless has my deepest respect.

Mr. RANDOLPH. If my colleague, my friend, will remain for this moment, the characteristics which his father-in-law, Senator Everett Dirksen, had in such abundance are shared in full measure by him. To have had the friendship of Everett and now to have the friendship of HOWARD—different generations to be sure, but with the dedication to public service—is enjoyed. It is very unusual if not completely unique that two Senate Members from different generations but the same family ties, have both risen to the top minority leadership positions in the U.S. Senate.

Mr. BAKER. I also enjoy our association.

Mr. RANDOLPH. The differing views of public servants sometimes cause an issue to die when it should live is implicit in this conference report. This Senator recognizes the responsibility which we cannot and should not shirk. And when the rollcall comes. Although the compromise is not the 100-percent agreement which I wanted and others would have completely approved of, we must make a decision; and the decision, I hope and believe, must be in the interest of America and our people regardless of party, place of residence, or political preference.

I thank the Chair.

Mr. FORD. Mr. President, it is my understanding that there are no further statements to be made relative to the natural gas conference report. I do not have anyone on my side that wants any more time. Therefore, Mr. President, I yield to the majority leader so that we may call it an evening.

Mr. ROBERT C. BYRD. Mr. President,

I thank the distinguished Senator from Kentucky and commend him on his good floor work today and his excellent debate on the pending conference report.

● Mr. GRAVEL. Mr. President, it almost goes without saying that the natural gas conference report is the most complicated and controversial energy measure Congress has ever dealt with. There is no need to relate the efforts that have been made to bring this measure to final consideration by the Senate. There is no reason to repeat the types of difficult questions each of us is being asked to answer as we come closer to rollcall votes. I merely wish to share with my colleagues my reason for supporting the conference report, and the importance I see in passage of this measure.

Mr. President, last fall President Carter decided, and Congress concurred in the decision, that a natural gas pipeline should be built from Prudhoe Bay, Alaska, to Dwight, Ill., to carry some 26 trillion cubic feet of domestically produced natural gas. Construction of the Alaska Highway gas line would provide the further benefit of bringing to the Midwest and East additional supplies of supplemental gas from Canada in 1980. Before construction can begin, however, certain legislative provisions are necessary to assure private financing of the gas line. Put simply, the natural gas conference report includes those essential provisions. At this point, there is no other viable vehicle available which can resolve these essential issues to assure financing. Passage of the conference report will enable financing of the project.

Let me explain to my colleagues what the natural gas conference report does provide concerning Prudhoe Bay natural gas.

First, the legislation sets the maximum wellhead price to be paid for gas from the Prudhoe Bay unit at $1.45 per million Btu's as escalated by the annual inflation adjustment factor as of April 20, 1977. The report of the Senate Committee on Energy and Natural Resources states that a legislative pricing provision is essential. Failure to so provide would add at least a year's delay and consequent increased costs. Establishment of the relatively low wellhead price will help insure the marketability of the gas in the Lower 48.

Second, the legislation assures that the wellhead price and transportation costs of Prudhoe Bay gas will be priced on a rolled-in basis. In addition, that portion of Alaska State severance taxes in effect as of December 1, 1977, will also be rolled in. Costs of conditioning the gas may be incrementally priced. While we would have preferred to have all costs rolled in, the legislation rolls in the majority of the costs, thus enabling financing of the line, and marketability of the gas.

Third, the legislation enables Federal Energy Regulatory Commission to make adjustments to the ceiling price of Prudhoe Bay gas for recovery of costs of compressing, gathering, processing, treating, liquifying, or otherwise "conditioning" the gas.

Finally, the legislation assures early completion of a portion of the Alaska natural gas transportation system and early delivery of gas from Canada in 1980. Under the legislation, deliveries of this gas pursuant to contracts entered into prior to May 1, 1978, will be placed on a rolled-in basis.

Thus, passage of the conference report will assure passage of provisions necessary to financing of the line and enabling construction of the line, without creating unnecessary and costly delays. It is a simple fact that gas sales contracts will not be executed until these provisions are passed, and that the pipeline system cannot be financed until such measures are available.

What are the benefits of including the provisions in the conference report on Alaska gas pricing—what are the benefits of assuring completion of the Alaska natural gas transportation system? There are many, and they have been discussed at great length in this body. Let me summarize them.

First, construction of the line will assure a valuable and needed source of domestically produced supplemental gas. At its initial operation, the Alaska gas line will transport at least 2 billion cubic feet per day. That figure will increase, even assuming no further discoveries and production on the North Slope of Alaska. That is a total of at least 0.7 trillion cubic feet per year of domestically produced gas.

The House Subcommittee on Energy and Power published in June of this year a report prepared by the Congressional Research Service on supplemental sources of natural gas. The report identifies several potential sources of supplemental gas that may be used to meet gas demand in the 1980's and 1990's. It analyzes those sources on the basis of 10 criteria. North Slope gas stacks up very well indeed against all other sources of supplemental gas. For example, the report concludes that Alaskan gas is a secure supply, not subject to diversion from domestic markets. It is less likely to be subject to price fluctuation than foreign sources. The technology for development and delivery of Alaska gas is essentially available today. It is a safe source of supplemental gas. It is environmentally preferable to a number of other supplemental sources because the route selected is along existing transportation corridors. There will be massive economic benefit to the Nation as a result of construction and operation of the Alaska line.

Second, gas from Prudhoe Bay will have favorable impact on use of imported oil and our balance of payments picture. It is estimated that some 150 million barrels of imported oil per year can be replaced, helping to reduce our deficit in balance of payments by some $2 billion per year (assuming current prices).

Third, early deliveries of Canadian gas will become available to the gas consumers in the Midwest. The lower portion of the gasline will be completed by 1980, allowing transport of Albertan gas to some 24 States in the Lower 48. That should provide some assurance to the gas consumers of this Nation that we do not intend to rely on warm winters and cooler summers as an answer to gas shortages in the near future.

Fourth, construction of the line will provide additional incentive for further exploration and production of natural gas on the North Slope of Alaska. Current proven reserves on the North Slope amount to some 26 trillion cubic feet, as determined by the U.S. Geological Survey (USGS). However, the USGS currently estimates that the undiscovered recoverable resources of natural gas onshore on the North Slope of Alaska range from 14 to 49 trillion cubic feet. Offshore estimates range from 5 to 50 trillion cubic feet. That is a projection of some 20 to 132 trillion cubic feet that may still be discovered and delivered. No one really knows. But until there is a system capable of removing any gas that has already been discovered, there is absolutely no incentive to find any additional gas. It should be noted that the gas pipeline would be available to deliver other gas from the remainder of Alaska as well.

Fifth, the project will provide great national net economic benefit. Simply stated, that means jobs and tax dollars. Of the $10 to $14 billion cost of construction, some 70 percent will be expended in the United States, nearly equally divided between Alaska and the rest of the areas of construction in the Lower 48. At the peak of construction, some 20,300 people will be employed in construction. Several thousand miles of pipe will have to be made in American steel plants. Countless thousands of related jobs and products will be needed to supplement construction. Regardless of how you figure it, the construction of the gasline will provide significant economic stimulus.

Finally, inclusion of Alaskan gas in the domestic supply in 1985 will actually decrease the weighted average price of domestic production. You have heard that Alaska gas will be expensive and you have even heard proponents of both the conference report and the gasline say that, "Well, it may be more expensive, but it will be a necessary addition to our supply picture." It will be a necessary addition, but it will also have the additional salutary effect of driving down the average price of gas in the United States when it is delivered to the markets in the Lower 48 in 1985. Read the analysis done by the Energy Information Administration. Look at table XI. The overall retail price of gas in 1985 will be less with North Slope gas on line than without. The reason is simple: Without Alaskan gas, some source of new gas will be necessary to provide what Alaska would have supplied. Without Alaska gas, the average price of new gas under the compromise will be 15 cents per mcf higher.

Mr. President, it is obvious to me that the pipeline to deliver gas from our North Slope must be built, and built soon. The conference report will provide the necessary measures to permit financing to be completed and to allow construction to begin. Without those provisions, we will add $1 billion to the cost of construction for every year of delay. That is pointless. I support the conference report so that

this project, which Congress authorized last year, may begin.●

● Mr. RIBICOFF. Mr. President, for almost a year and a half the effort to formulate a comprehensive national energy policy has dominated the Congress and public affairs more than any single domestic issue. The enactment of a broad-based national energy program has been a top legislative priority throughout the 95th Congress. This goal has yet to be achieved.

Today we continue to debate a key element of the President's energy proposal, the natural gas compromise. The world is watching and waiting to see how we act on this controversial measure. Our trading partners in Western Europe and Japan are anxious to know whether we have the will and ability to deal with our energy challenges in an affirmative manner. Americans throughout the country look to us to take meaningful steps to curb and reverse the inflationary spiral which has been fueled by our indecision on an energy policy.

As consideration of the natural gas conference report begins I want to share with my colleagues the article by Senator MUSKIE which appears in this morning's Washington Post. In a most cogent and well-reasoned fashion, the distinguished chairman of the Senate Budget Committee outlines the major issues involved in the natural gas debate. Senator MUSKIE focuses on the impact this legislation will have in restoring world confidence in the value of the dollar and its impact in controlling inflation at home. I believe Senator MUSKIE's article very successfully sums up why the natural gas compromise warrants our support and I commend it to my colleagues' attention. I ask that the article be inserted in the RECORD.

The article follows:

[From the Washington Post, Sept. 11, 1978]

NATURAL-GAS COMPROMISE: THE COST OF DELAY

(By Edmund S. Muskie)

Two things are certain about the natural-gas compromise. First, it is nowhere near so bad as the opponents claim. Second, if the Senate does not approve it, the consequences are likely to be much worse than learning to live with the new policy.

The country is so evenly split between energy-importing states and energy exporters that finding a satisfactory compromise is almost impossible. But compromise we must. In the 16 months the Senate has wrestled with the price of gas, we have been playing economic roulette. We are losing.

Very little else is certain about the bill or its consequences, although "facts" are abundant. No one really knows what will happen to energy prices and supplies if we pass the bill, or even if we defeat it.

But the compromise is infinitely preferable to doing nothing at all. The bill will bring some desperately needed certainty to the question of natural-gas prices. People who were laid off or cold the last two winters cannot be enthusiastic about the present policy. Neither should the Senate be.

And the present uncertainty clearly affects business decisions as well as the average family's budgeting. Here at home this "confidence factor" is difficult to measure. But internationally we do have a yardstick: the value of the dollar.

The dollar's value on the international market is in one sense almost purely a measure of the confidence the international community has in the dollar's long-term value. That judgment is based on perceptions of American economic policy. Since the natural-gas debate began, the dollar has lost 10 percent of its value against all other currencies. Against stronger currencies like the West German mark and Japanese yen, the dollar's value has plummeted by as much as 30 percent.

The overall 10 percent decline has increased inflation here at home by about 1 percent. That means American consumers are already in the process of losing $15 billion to $20 billion in purchasing power in a single year—more than the natural-gas bill would cost in seven years.

There is abundant evidence that the lack of an energy policy is a prime cause, along with inflation, of the dollar's decline. The dollar has dropped 4 percent in value since the August summit on energy. The international community is less concerned with present policy than it is with the long-term trend. The international community must be convinced that America is indeed committed to an energy policy and to controlling inflation. If it remains unconvinced, it will continue to bet against the dollar. We must begin to prove the international community wrong.

If we do not, we face at least the possibility of more inflation, more restrictive interest rates and slower economic growth; an increase in the price of foreign oil; and growing demands from our allies for a voice in America's economic policy.

And the consequences could be much worse.

The bill itself is a moderate attempt to bridge the yawning gulf that has separated the House and Senate on the question.

Predictions are impossible in a highly complex and uncertain field. But from the information we do have, coupled with an independent review by the Congressional Budget Office, we can say this much about the natural-gas compromise:

1. It will allow prices to rise gradually enough to avoid serious consequences to our economy. CBO estimates that by 1985 the price of gas will be 5 to 8 percent higher under the bill than under current policy. With the gross national product approaching $4 trillion by then, the inflationary effect of that increase would be negligible.

The price increase will not be trifling to the individual consumer, but even by 1985 he will still be paying less for natural gas than he would pay for alternative fuels such as heating oil and electricity. In addition, the bill throws the bulk of the new cost on industrial users.

2. Supplies will increase and the supply will be more stable. The distinction between gas produced and consumed in a single state and gas on the interstate market will be abolished. There should be enough gas to avoid curtailments and allow increased residential use. Industrial users will be encouraged to switch to alternative fuels.

3. Finding a "quick fix" to replace the bill is impossible. If the question were easy we would have answered it by now. Congress is not being dilatory. Energy is the most difficult political, economic and social question to come before the Congress in our lifetime. The natural-gas compromise may not be perfect, but I am not so foolish as to think that given time much improvement could be made in it.

So I will vote for the natural-gas compromise. It is not perfect. It will not entirely satisfy anyone. It is by no means the last word on energy policy. But the consequences of our remaining mute are already costing us dearly.●

## FEDERAL INFORMATION CENTERS ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 1048.

Mr. BAKER. Mr. President, I have no objection to the request by the majority leader. This item is cleared on our calendar and we have no objection to proceeding to its consideration.

The PRESIDING OFFICER. Without objection, the clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 3259) to authorize the permanent establishment of a system of Federal Information Center.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1829

Mr. ROBERT C. BYRD. Mr. President, I on behalf of Mr. CHILES, I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for Mr. CHILES proposes an unprinted amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 1, line 5, after Sec. 2 insert the following: "(a)"

Page 1, line 11, strike out "Information Centers" and insert in lieu thereof the following: "information centers"

Page 2, line 6, strike out "Information Centers" and insert in lieu thereof the following: "information centers"

Page 2, after line 10, insert the following:

"(b) The table of contents of the Federal Property and Administrative Services Act of 1949 is amended by inserting immediately after the item pertaining to section 111 the following new item:"

"Sec. 112. Federal Information centers."

Mr. ROBERT C. BYRD. This is a group of technical amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and to be read a third time.

The bill was read the third time, and passed, as follows:

S. 3259

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Information Centers Act".

SEC. 2. (a) Title I of the Federal Property and Administrative Services Act of 1949 is amended by adding at the end thereof the following new section:

"FEDERAL INFORMATION CENTERS

"SEC. 112. (a) The Administrator is authorized to establish within the General Services Administration a nationwide network of Federal information centers for the purpose of providing the public with information about the programs and procedures of the Federal Government and for other appropriate and related purposes.

"(b) The Administrator is authorized to prescribe such rules and regulations as may

be necessary to the functioning of the Federal information centers.

"(c) There is hereby authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1980, and such sums as may be necessary for each succeeding fiscal year for carrying out the purposes of this section.".

(b) The table of contents of the Federal Property and Administrative Services Act of 1949 is amended by inserting immediately after the item pertaining to section 111 the following new item:

"Sec. 112. Federal information centers.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1129), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE AND SUMMARY OF THE ACT

The purpose of S. 3259 is to establish legislative authority for a national system of Federal information centers.

Federal information centers provide direct help to citizens with questions about Federal Government services, programs and regulations. They provide better access to the Federal Government, cut redtape and reduce paperwork for many citizens who merely seek basic information about Government.

The Federal Information Centers Act authorizes the Administrator of the General Services Administration (GSA) to establish a nationwide network of Federal information centers. The centers are to provide the public with information about programs and procedures of the Federal Government.

The Administrator is further authorized to prescribe necessary regulations for managing the information centers. A sum of $7 million for fiscal year 1980 and such sums as may be necessary for succeeding fiscal years are also authorized to finance the program.

NEED FOR LEGISLATION

Federal Information Centers were first proposed by President Johnson in 1965. The first pilot center was opened in Atlanta, Ga., the following year. The GSA has developed a 12-year experience with this demonstration program.

Presently, information centers are located in 38 major metropolitan areas. An additional 47 cities are connected by toll-free tielines. (See appendix A.) In fiscal year 1977 more than 8 million inquiries were answered. Half of the Nation's population have the advantage of this service. While every segment of society has access to the centers, the principal beneficiaries were poor people least informed and knowledgeable about Government.

In early 1977, the Office of Management and Budget (OMB) conducted a study of the information centers program. (See appendix B for executive summary of study.) The OMB found that the centers operate at a high degree of responsiveness to the substantial volume and diversity of questions they receive.

The OMB further found that the centers could be improved through strengthened overall management, better information system design, improved support facilities and expansion of the population served.

The study concluded that before improvements should be undertaken, legislative authorization and separate appropriations should be sought from the Congress in order to better assure central control and accountability for center operations. Presently 17 agencies reimburse the GSA for the costs of the centers.

Permanent establishment of Federal information centers was also recommended by the Federal Paperwork Commission because of the frustration the Commission found many citizens experienced in just trying to obtain simple information about Government.

S. 3259 will meet the need to provide a permanent legislative basis for greater central control and accountability for center operations. The bill will also enable the program to expand and meet the needs of citizens in 22 States who do not have information centers today.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are two other bills that are cleared for action by unanimous consent. They are Calendar Orders No. 1099 and 1105. I ask unanimous consent that the Senate proceed to consideration of those two orders.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Reserving the right to object, Mr. President, there is no objection. These items are cleared on our calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ISSUANCE OF SUBSTITUTE TREASURY CHECKS

The bill (H.R. 13087) to authorize the issuance of substitute Treasury checks without undertakings of indemnity, except as the Secretary of the Treasury may require, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1176), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

H.R. 13087 would authorize the Department of the Treasury to issue substitute checks to replace checks which have been received by the payee and subsequently lost, stolen, destroyed, mutilated, or defaced, except as the Secretary of the Treasury may require.

Under existing law, before a substitute check may be issued for an amount in excess of $200, the payee must agree to indemnify the United States by formally promising to repay the Treasury, in the event that both the original and the substitute checks are lawfully cashed.

Enactment of H.R. 13087 would eliminate this requirement, unless the Secretary of the Treasury determined that an undertaking of indemnity was necessary to protect the interests of the United States.

BACKGROUND

CURRENT LAW

Section 3646(a) of the Revised Statutes, as amended (31 U.S.C. 528(a)), requires that an undertaking of indemnity be obtained by the Secretary of the Treasury before a substitute Treasury check can be issued to replace an outstanding Treasury check where the check has been lost, stolen, destroyed, mutilated or defaced. In the undertaking, the claimant agrees to reimburse the Federal Government if both the original and substitute checks are cashed.

Section 3646(b) (31 U.S.C. 528(b)) lists five exceptions to the requirement for an undertaking of indemnity, but nevertheless authorizes the Secretary of the Treasury to require such an undertaking, even in the excepted situations if he deems it essential to the public interest.

Among the exceptions are loss of a check while in the custody of the Government prior to delivery to the payee, checks issued for $200 or less, and claims filed by the United States, a State, certain other political subdivisions, a foreign government, or a Federal Reserve bank.

EXPERIENCE UNDER CURRENT LAW

The Treasury Department has advised the committee that the current requirement that undertakings of indemnity be obtained unnecessarily delays for weeks, and even months, the settlement of valid claims from members of the public for relatively small amounts of money.

The Treasury Department advised further that at present, substitute check claims not included in the five exceptions in subsection (b) constitute between 7 and 8 percent of the claims processed by the Department. The undertakings which are obtained are generally without sureties, private or corporate, because of the small amounts involved. Therefore, the undertaking of indemnity provides only the promise of the claimant to reimburse the amount of any overpayment caused by the cashing of both the original and substitute checks.

Technically, the undertakings have some significance in view of the fact that they obligate the claimant to refund the proceeds of the checks whether or not he or she has received an overpayment. However, the Treasury states that they are not of practical significance because the Department does not as a rule seek reimbursement from a claimant who has not participated in the negotiation of the original check. Further, the Department does not use the undertakings as a legal basis for taking action against a claimant in the event of a double payment, but instead relies solely upon the grounds of the overpayment itself.

The Treasury Department advises that of the exceptions appearing in subsection (b), only that which excepts checks issued for $200 or less is of concern, since the other exceptions are of limited applicability and the Department does not now and would not in the future use Treasury's discretionary authority to require bonds of indemnity in the situations described in the other exceptions.

The $200 or less exception was established in 1945 when it was raised from $50. In the intervening 30 years, the dollar amount of checks has escalated dramatically. In a survey taken in August 1975, 1,500 checks were chosen at random, and 41.4 percent of them exceeded $200. Thus, what was, in 1945, a small percentage of checks has now become nearly a majority. The same survey revealed that 2.5 percent of the checks exceed $500, 1.3 percent exceed $750, and 0.9 percent exceed $1,000.

The Department concluded that these figures indicate the need to eliminate the requirement for undertakings of indemnity, except in the discretion of the Secretary of the Treasury, rather than to raise the amount of the exception provided. The Department concluded further that a newly established amount would soon become outdated if check amounts continue to escalate.

NEED FOR LEGISLATION

In requesting enactment of this legislation, the Treasury Department has stated that (1) a total of $18,000 is expended an-

nually for clerical time and supplies in the procurement of undertakings of indemnity for a relatively small number of cases; (2) settlement actions on over 12,000 valid claims per year are unnecessarily delayed for long periods of time because of the indemnification requirement; (3) a 1978 survey revealed that over 50 percent of Treasury claims were for checks in excess of $200—a dollar limit originally set in 1945 when claims in this amount were relatively rare; (4) since the Federal Government receives no benefit whatever from the undertakings of indemnity, the administrative burden involved in handling them is unwarranted; and (5) since the Secretary of the Treasury has the authority under section 3646(d) of the Revised Statutes to issue regulations, if the subject bill is enacted, the Secretary would exercise that authority to establish the criteria for undertakings of indemnity.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## CMDR. EDWARD WHITE RAWLINS

The Senate proceeded to consider the bill (H.R. 1445) conferring jurisdiction upon the U.S. Court of Claims to hear, determine, and render judgment upon the claim of Comdr. Edward White Rawlins, U.S. Navy (retired), which had been reported from the Committee on the Judiciary with an amendment on page 2, beginning with line 15, insert the following:

SEC. 3. If such court renders judgment in favor of such claim, such court may award, in addition to any amount awarded for retroactive active-duty pay and allowances and retirement pay, reasonable litigation costs, and a reasonable attorney's fee in an amount not to exceed five percent of the amount awarded for retroactive active-duty pay and allowances and retirement pay.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1182), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive applicable limitations, lapses of time or laches and to confer jurisdiction upon the U.S. Court of Claims to hear, determine and render judgment upon the claim of Comdr. Edward White Rawlins, U.S. Navy (retired) of Washington, D.C., for retroactive active-duty pay and allowances and retirement pay for his nonpromotion to the grade of captain, such nonpromotion allegedly being the probable consequence of improper and inequitable actions within the Department of Navy. The bill, as amended, stipulates that any suit instituted under its provisions must be brought within 1 year of the date of enactment and that its enactment does not constitute an inference of liability on the part of the United States.

FACTUAL SUMMARY

Comdr. Edward White Rawlins, U.S. Navy, retired, [hereinafter, "claimant"], now 76, was graduated from the U.S. Naval Academy on June 4, 1924. Effective the following day, he was appointed to the grade of ensign, U.S. Navy, and served continuously on active duty until July 1, 1951, when he was retired in the grade of commander upon his own application, pursuant to the provisions of section 6, act of February 21, 1946, 60 Stat. 26, 27, as amended 34 U.S.C. 410(b) (1952); see 10 U.S.C. 6323 (1970). During his active service, claimant received the following promotions: Lieutenant (junior grade), June 5, 1927; lieutenant, June 30, 1942; lieutenant commander, May 22, 1939; and commander (temporary), August 30, 1942.

In June 1942, just prior to claimant's last promotion in grade, supra, the Department of the Navy instituted a "panel" system to review roster of names submitted by the Secretary for temporary promotions to commander and captain. Each panel member, who was one of a number of senior naval officers at both domestic and foreign duty stations selected by the Secretary, would review the roster of names and check off those names of eligible candidates who he felt were "qualified for temporary promotion."[1] Once the rosters were returned, the "votes" were tabulated and a composite list of nominees was prepared for the President's approval. Claimant, along with other line commanders, was considered for temporary promotion to the grade of captain by three such panels, convened during the following periods: August–November 1943; June–August 1944; and January–April 1945. Claimant failed to be nominated for promotion in all three instances.

At the close of 1945, the Navy utilized at least one "administrative board" in effecting promotions. That type of board, consisting of some 15 members (8 Regular Navy and 7 Naval Reserve officers), also considered commanders for temporary promotion to the grade of captain. Members of the Board, which convened in Washington, D.C., were furnished the names and records of officers (Regular and Reserve) eligible for such promotions and were instructed to recommend "only those officers who are considered qualified to assume the responsibilities of the higher rank."[2] In November–December 1945, one such board considered, but did not recommend, claimant for promotion.

By letter dated June 9, 1947, claimant petitioned the Secretary of the Navy for promotion, with the "lineal position" he would have occupied had he been nominated by the first panel, for "reasons of equity and justice as supported by the facts set forth" in his letter. His request was denied, in substance on the ground that, between 1943 and 1945, four duly constituted selection boards had considered his "name and official record" and had failed to recommend him and further that there was no evidence of unfairness or partiality in the history of the case.

Twice in 1950, once in January and again in October, claimant's eligibility for promotion was passed upon by statutory selection boards convened pursuant to the Officer Personnel Act of 1947, 61 Stat. 795, as amended. He was not selected for promotion by either Board and, in 1951, submitted his application for retirement in lieu of mandatory retirement which was accepted.

[1] It was never established whether panel members on foreign duty had regular access to complete personnel files for record review purposes. Rather, overseas panel members were "'authorized to confer with a senior officers in two areas as desired in making your selections.'" *Rawlins* v. *United States*, 197 Ct. Cl. 972, 980 (1972).

[2] Rawlins, *supra*, n. 1, at 981–82.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## TECHNICAL AND CLERICAL CORRECTIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendment to H.R. 9370.

The PRESIDING OFFICER. Without objection, it is so ordered.

## FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1566.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1566) entitled "An Act to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1978".

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Sec. 301. Effective date.

TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 101. As used in this title:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization,

not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life or property that are or may be a violation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner that identifies any individual United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102(a), procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information may indicate a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) communications exclusively between or among foreign powers, as defined in section 101(a)(1), (2), or (3); or

(ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a)(1), (2), or (3); and

(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h); and

if the Attorney General shall report such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him.

(3) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a min-

imum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to a United States district court, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

JURISDICTION

SEC. 103 (a) The United States district courts shall have jurisdiction to receive applications for court orders under this title and to issue orders under section 105 of this title.

(b) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the United States district court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the United States court of appeals.

APPLICATION FOR AN ORDER

SEC. 104. (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foregn power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs and an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be affected;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraph (6), (7)(E), (8), and (11) of subsection (a), but shall contain such information about the surveillance techniques and communications or orther information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 105.

ISSUANCE OF AN ORDER

SEC. 105. (a) Upon an application made pursuant to section 104, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

(5) the application which has been filed contains all statements and certifications required by section 104 and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a)(7)(E) and any other information furnished under section 104(d).

(b) An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected;

(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith any and all information, facilities, or technical assistance necessary to accomplish the electronic surveillance unobstrusively and in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1), but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a) (1), (2), or (3), for the period specified in the application or for one year, whichever is less.

(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the

same manner as required for an original order, except that an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in section 101(a) (4), (5), or (6), may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Notwithstanding any other provision of this title, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information may indicate a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Certifications made by the Attorney General pursuant to section 102(a) and applications made and orders granted under this title shall be retained for a period of at least ten years from the date of the application and shall be stored at the direction of the Attorney General under security procedures approved by the Director of Central Intelligence.

USE OF INFORMATION

SEC. 106. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the court to determine the lawfulness of the electronic surveillance. The motion may not be heard by a judge who granted or denied an order or extension involving the surveillance at issue. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the surveillance and if disclosure would likely promote a more accurate determination of such legality, or if such disclosure would not harm the national security.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to any statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to surveillance pursuant to the authority of this title or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines

that the moving party is an aggrieved person, if the Attorney General files with the United States court of appeals an affidavit under oath that an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court or other authority, the Special Court of Appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the application, order, and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court of appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney portions of the application, order, or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting or denying motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the district court or court of appeals granting or denying disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except the court of appeals and the Supreme Court.

(j) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

(k) If an emergency employment of electronic surveillance is authorized under section 105(e) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application;

(2) the period of the surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

REPORT OF ELECTRONIC SURVEILLANCE

SEC. 107. In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(b) the total number of such orders and extensions either granted, modified, or denied.

CONGRESSIONAL OVERSIGHT

SEC. 108. (a) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

(b) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate may periodically review the information provided under subsection (a). If either such committee determines that an electronic surveillance of a United States person under this title has produced no foreign intelligence information and that the disclosure of the fact of such surveillance to such United States person would not harm the national security, such committee shall inform such person of the fact of such surveillance and that no foreign intelligence information was derived from such surveillance.

PENALTIES

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally engaged in electronic surveillance under color of law except as authorized by statute.

(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 110. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or whose communication has been disseminated or used in violation of section 109 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

AUTHORIZATION DURING TIME OF WAR

SEC. 111. Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods up to one year during a period of war declared by the Congress.

TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive statutory means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

(e) Section 2518(4) is amended by inserting "under this chapter" after both appearances of "wire or oral communication".

(f) Section 2518(9) is amended by striking out "intercepted" and inserting "inter-

cepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after the first appearance of "communication".

(b) Section 2519(3) is amended by inserting "pursuant to this chapter" after "wire or oral communications" and after "granted or denied".

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following such date of enactment.

Amend the title so as to read: "An Act to authorize electronic surveillance to obtain foreign intelligence information.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER TO HOLD H.R. 12026 AT DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that if and when H.R. 12026 is received from the other body, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond 30 minutes, with statements therein limited to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 9:35 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 3107. An act to amend the Bankruptcy Act to provide for uniform supervision and control of employees of referees in bankruptcy.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. PAUL G. HATFIELD).

At 12:12 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the Speaker has appointed Mr. THOMPSON, Mr. GAYDOS, and Mr. BUCHANAN on the part of the House as additional conferees in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 11445, an act to amend the Small Business Act and the Small Business Investment Act of 1958, solely for the consideration of sections 117 and 118 (OSHA).

The message also announced that the House has passed the following bill with amendments in which it requests the concurrence of the Senate:

S. 1566. An act to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

At 1:08 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the Speaker has signed the following enrolled bills:

H.R. 8112. An act to repeal chapter 27 of title 44, United States Code;

H.R. 9471. An act to amend title 5, United State Code, to provide that Japanese-Americans shall be allowed civil service retirement credit for time spent in World War II internment camps; and

H.R. 12915. An act to amend section 2310 of title 44, relating to the National Archives Trust Fund Board.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. PAUL G. HATFIELD).

At 1:56 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bill, without amendment:

S. 3454. An act to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 12936, an act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. BOLAND, Mr. TRAXLER, Mr. BAUCUS, Mr. STOKES, Mr. BEVILL, Mrs. BOGGS, Mr. BURLISON of Missouri, Mr. ALEXANDER, Mr. MAHON, Mr. COUGHLIN, Mr. MCDADE, Mr. YOUNG of Florida, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, September 12, 1978, he presented to the President of the United States the following enrolled bill:

S. 3107. An act to amend the Bankruptcy Act to provide for uniform supervision and control of employees of referees in bankruptcy.

## ORDER FOR STAR PRINT OF REPORT NO. 95-1175

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a star print be made on the report on H.R. 2329, the Fish and Wildlife Improvement Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

## COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-4296. A communication from the Director, Office of Mangement and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on rescissions and deferrals, September 1978; to the Committee on the Budget, the Committee on Appropriations, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Foreign Relations, the Committee on Armed Services, the Committee on the Judiciary, the Committee on Human Resources, the Committee on Governmental Affairs, the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Finance, jointly, pursuant to order of January 30, 1975.

EC-4297. A communication from the Director, Office of Legislative Affairs, Department of the Navy, reporting, pursuant to law, of the intention of the Department to donate certain surplus property to the Japanese Foundation for the Promotion of Maritime Science, Tokyo, Japan, a nonprofit educational organization under the jurisdiction of the Japanese Government's Ministry of Transportation; to the Committee on Armed Services.

EC-4298. A communication from the Secretary of Housing and Urban Development, reporting, pursuant to law, on the late submission of a report on the progress of states and units of general purpose local government in adopting and enforcing energy conservation standards; to the Committee on Banking, Housing, and Urban Affairs.

EC-4299. A communication from the Vice President, Governmental Affairs, National Railroad Passenger Corporation, transmitting, pursuant to law, a report on (1) total itemized revenues and expenses; (2) revenues and expenses of each train operated; and (3) revenues and total expenses attributable to each railroad over which service is provided, for the month of May 1978; to the Committee on Commerce, Science, and Transportation.

EC-4300. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting,

pursuant to law, a report on changes in the market shares of the statutory categories of retail gasoline marketers; to the Committee on Energy and Natural Resources.

EC–4301. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report on changes in the refiner distribution and market shares of the statutory categories of refined petroleum products; to the Committee on Energy and Natural Resources.

EC–4302. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report on changes in the market shares of the statutory categories of retail gasoline marketers; to the Committee on Energy and Natural Resources.

EC–4303. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties hereafter entered into by the United States within sixty days of the execution thereof; to the Committee on Foreign Relations.

EC–4304. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "What Causes Food Prices to Rise: What Can Be Done About It?" September 8, 1978; to the Committee on Governmental Affairs.

EC–4305. A communication from the Chairman, National Advisory Council on Adult Education, transmitting, pursuant to law, the Council's 1978 annual report; to the Committee on Human Resources.

EC–4306. A communication from the Commissioner of Education, Department of Health, Education, and Welfare, transmitting, pursuant to law, the 27th annual report of the Commissioner of Education on the administration of Public Laws 81–874 and 81–815, 81st Congress, as amended, for the fiscal year which ended on September 30, 1977; to the Committee on Human Resources.

EC–4307. A communication from the Secretary of Labor, transmitting, pursuant to law, a report on the 1978 Summer Youth Jobs Programs; to the Committee on Human Resources.

EC–4308. A communication from the U.S. Commissioner of Education, Department of Health, Education, and Welfare, transmitting, pursuant to law, a report on Graduate Fellowships and Assistance for Fiscal Year 1977; to the Committee on Human Resources.

EC–4309. A communication from the President of the United States, transmitting a proposed reduction in fiscal year 1978 supplemental appropriations in the amount of $200,000,000 and an amendment to the request for appropriations for the fiscal year 1979 in the amount of $1,831,640,000 for International Monetary Programs; to the Committee on Appropriations.

## PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–786. A resolution adopted by the Council of the American Library Association, relating to funding for the Library of Congress; ordered to lie on the table.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary, with amendments:

S. 1147. A bill to relieve the liability for the repayment of certain erroneously made contributions by the United States (Rept. No. 95–1183).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

H.R. 1427. An act for the relief of Marie Grant (Rept. No. 95–1184).

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased (Rept. No. 95–1185).

H.R. 5097. An act for the relief of Doctor Daryl C. Johnson (Rept. No. 95–1186).

H.R. 6760. An act for the relief of Charles M. Metott (Rept. No. 95–1187).

FEDERAL PESTICIDE ACT OF 1978—CONFERENCE REPORT

Mr. LEAHY, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1678) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Rept. No. 95–1188).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

Gloria Schaffer, of Connecticut, to be a member of the Civil Aeronautics Board, for the remainder of the term expiring December 31, 1978, and for the term of 6 years expiring December 31, 1984.

(The above nomination from the Committee on Commerce, Science, and Transportation was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Edith Huntington Jones Dobelle, of Massachusetts, for the rank of Ambassador during her tenure of service as Chief of Protocol for the White House.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: Edith J. Dobelle.
Post: U.S. Chief of Protocol.
Contributions, amount, date, and donee:
1. Self, all contributions were joint.
2. Spouse, Evan S. Dobelle, $15.00, 1977, Lt. Gov. Thomas O'Neil, Massachusetts; $50.00, 1977, Mayor Paul Brindle, Pittsfield, Mass.; $200.00, 1976, Jimmy Carter for Pres.; and $200.00, 1975, Evan S. Dobelle for Mayor of Pittsfield, Mass.
3. Children and Spouses, none.
4. Parents, Mary C. and Hays Jones, none.
5. Grandparents, Not living.
6. Brothers and Spouses, Hays Jones, none.
7. Sisters and Spouses, Alice and Alexander Chorin, Mary Ellen Jones, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

William H. Luers, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States to Venezuela.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: William H. Luers.
Post: U.S. Ambassador to Venezuela.
Contributions, (If none, write none), amount, date, and donee:
1. Self, William H. Luers, none.
2. Spouse, Jane F. Luers, none.
3. Children and Spouses, Mark B., David L., William F., Amy L., none.
4. Parents, deceased.
5. Grandparents, deceased.
6. Brothers and Spouses, none.
7. Sisters and Spouses, Mr. and Mrs. Richard Phelps, $25.00, Fall 1976, Jimmy Carter; (brother-in-law), $100.00, Fall 1976, Misc. Massachusetts; and Dr. and Mrs. John J. McCaffrey, none, State and Local officials.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. BUMPERS:

S. 3492. A bill for the relief of Ahmad Shuja Khan McGuire, to the Committee on the Judiciary.

By Mr. NELSON:

S. 3493. A bill to amend the Internal Revenue Code of 1954 to provide simplification, reform, and relief for small business; to the Committee on Finance.

By Mr. NELSON (for himself and Mr. PERCY):

S. 3494. A bill to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes; to the Committee on Governmental Affairs.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON:

S. 3493. A bill to amend the Internal Revenue Code of 1954 to provide simplification, reform, and relief for small business; to the Committee on Finance.

SMALL BUSINESS DEPRECIATION REFORM ACT OF 1978

● Mr. NELSON. Mr. President, I am introducing today a bill to reform the depreciation system for small business.

This bill would permit any business to recover more rapidly the capital which it has invested in machinery and equipment by allowing depreciation deductions to be taken over a 3–year period for purchases of up to $100,000 of such property each year. This provision would be optional, and those firms which elected it would apply only straight-line depreciation, so that this system would make available a massive simplification of depreciation for the 97 percent of the 14 million U.S. businesses which are defined as small business.

With one significant exception, this bill is identical to a bill I introduced earlier this year, S. 2742. The major difference is that this bill will allow all companies to recover their capital investment faster and still receive the full benefit of the 10-percent investment tax credit.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3493

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Depreciation Reform Act of 1978".

SEC. 2. DEPRECIATION REFORM.

Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $100,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $100,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.".

SEC. 3 Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

Notwithstanding subsection (c) (2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

SEC. 4. EFFECTIVE DATE.

The amendment made by sections 2 and 3 of this Act shall apply in the case of property acquired after the date of enactment of this Act and placed in service in taxable years ending after the date of enactment of this Act.●

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By Mr. NELSON (for himself and Mr. PERCY):

S. 3494. A bill to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes; to the Committee on Governmental Affairs.

PRESIDENTIAL RECORDS ACT OF 1978

● Mr. NELSON. Mr. President, for myself and Mr. PERCY, I am today introducing a revised version of the Presidential Records Act of 1978. This legislation will assert public ownership of the documentary materials created or received by future Presidents and their staffs and establish procedures governing retention of those documents and access to them and would take effect in January 1981.

This bill is similar to H.R. 13364, which was introduced on June 29, 1978, in the House by Congressmen PREYER, BRADEMAS, and ERTEL and which has been reported by the House Government Operations Committee, and is now awaiting action by the full House. The bill reflects a compromise between the so-called Freedom of Information Act and historical records approaches to the issue of public ownership of Presidential records. These approaches were embodied in H.R. 10998 and H.R. 11001/S. 2596 respectively. I believe that the present legislation incorporates the best aspects of the previous bills and represents a balanced and reasonable approach to this difficult problem.

This bill is being cosponsored by the ranking minority member of the Committee on Governmental Affairs, the distinguished senior Senator from Illinois, Mr. PERCY. The administration has cooperated fully with us in developing this bill, which, in its present form, will have the President's support.

On February 27, 1978, I introduced S. 2596. At that time I spoke at some length on the need for legislation to provide for public ownership of Presidential papers. I reviewed the past practices of Presidents under the system of private ownership of Presidential papers, the recommendations of the National Study Commission on Records and Documents of Federal Officials, upon which I served, and the constitutional issues which must be dealt with when legislating in this area.

My conclusions were that legislation to assert public ownership was essential, but that the legislation must be carefully drawn to insure protection of the President's constitutional rights to privacy and freedom of association and to safeguard the confidentiality of the White House decisionmaking process. I believe that the legislation which I am introducing today meets these criteria and is worthy of the support of all who believe that the documentary materials of future Presidencies should be preserved and should find their way into the public domain under the rule of law.

The legislation would divide "Presidential papers" into two categories. "Personal records," as defined in the bill, would remain the personal property of those who create them. "Personal records" are defined as all documentary materials of a purely private or nonpublic character which do not relate to or have an affect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Diaries, journals, personal notes, and materials relating to private political associations of the President or his aides would be included under this definition. It is hoped that allowing former Presidents considerable leeway in the definition of "personal records" will encourage those Presidents to make available those records after a reasonable length of time.

"Presidential records," which the legislation defines as documentary materials created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function it is to advise and assist the President in carrying out of his official duties, would become public property. "Presidential records" would include any documentary materials relating to the political activities of the President or members of his staff, but only if such activities related to or had a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President. At the conclusion of a President's term of office, the Archivist of the United States would assume control over these records.

The line between "personal" and "Presidential" records cannot be drawn with absolute certainty. The bill's definitions provide guidance to the Archivist in making individual determinations, but leave the necessary flexibility which allows for the exercise of informed professional judgment.

The bill grants to the outgoing President the right to impose restrictions on access to the Presidential records of his administration for a period not to exceed 13 years within one or more of the following categories:

(1)(A) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense of foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) Records relating to appointments to executive or judicial positions;

(3) Records specifically exempted from disclosure by statute (other than the Freedom of Information Act), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) Records containing trade secrets and commercal or financial information obtained from a person and privileged or confidential;

(5) Records concerning confidential communications requesting or submitting advice, between the President and his advisors, or between such advisors; or

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

The legislation provides that a former President could waive a previously imposed restriction and that restrictions would be lifted on any Presidential record placed in the public domain by publication by a former President.

Any Presidential record which is left

unrestricted by an outgoing President would be exempt from disclosure until the earlier of (A) the date which is 5 years after the date on which the Archivist obtains custody of such records or (B) the date on which the Archivist completes the processing and organization of such records.

The legislation's essential concern is with the treatment of Presidential records once a President leaves office. However, the condition of these records will depend on the manner in which the President maintains the records of his administration while in office. The degree to which outsiders can or should interfere with White House recordkeeping while a President is in office has been a source of considerable controversy among those concerned with the question of Presidential papers. The approach to this problem chosen in this legislation is a straightforward one. The President is merely enjoined not to dispose of those of his Presidential records which have administrative, historical, informational, or evidentiary value and the bill provides that the Archivist shall advise the President about the potential value of Presidential records proposed for disposal.

The legislation also provides that the Archivist will establish guidelines to determine the types of Presidential records deemed to have administrative, historical, informational or evidentiary value. The bill also requires the Archivist to provide guidance to the President concerning records whose value may be difficult to assess.

During the period of restricted access, the legislation provides that decisions concerning the proper classification of documents shall be made by the Archivist, though the former President may challenge any decision of the Archivist in U.S. district court. Here again, the intent is to provide for a sensible balance between the public interest and the rights of the former President.

At the conclusion of the period of restricted access, Presidential records shall be administered as agency records under the terms of the Freedom of Information Act, 5 United States Code section 552. Under the terms of the FOIA, properly classified materials pertaining to national security would continue to be protected from disclosure until the need for their classification had lapsed.

Also, after the 13 years were concluded, the Archivist would retain discretion under the FOIA to prevent the disclosure of materials whose disclosure would violate other statutes and could maintain the confidentiality of trade secrets, investigatory records and the like.

Mr. President, this legislation is fair to all parties concerned and will insure the creation of a fully documented, rich historical record of all future Presidencies. It will also contribute to the achievement of greater governmental accountability to the people than presently exists. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3494

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Presidential Records Act of 1978".

RECORDS MANAGEMENT, PRESERVATION, AND PUBLIC AVAILABILITY

SEC. 2. (a) Title 44 of the United States Code is amended by adding immediately after chapter 21 the following chapter:

"Chapter 22.—PRESIDENTIAL RECORDS

"Sec.
"2201. Definitions
"2202. Ownership of Presidential records.
"2203. Management and custody of Presidential records.
"2204. Restrictions on access to Presidential records.
"2205. Exceptions to restrictions on access.
"2206. Regulations.
"2207. Vice-Presidential records.

"Sec. 2201. Definitions

"As used in this chapter—

"(1) The term 'documentary material' means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audiovisual, or other electronic or mechanical recordations.

"(2) The term 'Presidential records' means documentary materials created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

"(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

"(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(c) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

"(3) The term 'personal records' means all documentary materials of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

"(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business, and

"(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

"(4) The term "Archivist' means the Archivist of the United States.

"(5) The term 'former President', when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

"Sec. 2202. Ownership of Presidential records

"The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

"Sec. 2203. Management and custody of Presidential records

"(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

"(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

"(c)(1) During his term of office, the President may not dispose of those of his Presidential records which have administrative, historical, informational, or evidentiary value. The Archivist shall advise the President about the potential value of Presidential records proposed for disposal.

"(c)(2) The Archivist shall promulgate guidelines to establish the types of Presidential records which shall be deemed to have administrative, historical, informational, or evidentiary value. The President shall be governed by these guidelines in determining whether or not Presidential records scheduled for disposal ought to be retained. The Archivist may specify categories of Presidential records whose potential administrative, historical, informational, or evidentiary value may be difficult to assess. The President may dispose of Presidential records which fall within any such category only after he obtains the views, in writing, of the Archivist concerning the proposed disposal of such records. The Archivist may review any such records prior to submitting his views.

"(d)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President.

"(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

"(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

"Sec. 2204. Restrictions on access to Presidential records

"(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 13 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

"(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

"(2) relating to appointments to Federal office;

"(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (a) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

"(6) personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

"(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

"(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

((ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

"(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President.

"(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

"(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

"(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

"(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except that initiated by such President. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

"(c) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Service of the General Services Administration. Access to such records shall be granted on nondiscriminatory terms.

"(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

"(e) The United States District Court for the District of Columbia shall have jurisdiction over any claim of the former President that a determination made by the Archivist of the United States made after the period of Presidentially-imposed restrictions violates his rights or privileges.

"Sec. 2205. Exceptions to restricted access

"Notwithstanding any restrictions on access imposed pursuant to section 2204—

"(1) the Archivist and persons employed by the National Archives and Records Service of the General Services Administration who are engaged in the performance of normal archival work shall be permited access to Presidential records in the custody of the Archivist;

"(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

"(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

"(B) to an incumbent President if such records contain information that is needed for the conduct of current business of his office and that is not otherwise available; and

"(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

"(3) the Presidential records of a former President shall be available to such former President or his designated representative.

"Sec. 2206. Regulations

"The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

"(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(d)(3); and

"(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2).

"Sec. 2207. Vice-Presidential records.

"Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.".

(b)(1) The table of chapters for title 44, United States Code, is amended by inserting immediately after the item relating to chapter 21 the following new item:

"22. Presidential Records ---------- 2201".

(2) Section 2107 of ttile 44, United States Code, is amended by adding at the end thereof the following new sentence: "This section shall not apply in the case of any Presidential records which are subject to the provisions of Chapter 22 of this title.".

(3) Section 2108(c) of title 44 is amended by adding at the end thereof the following: "Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.".

EFFECTIVE DATE

SEC. 3. The amendments made by this Act shall be effective with respect to any Presidential records (as defined in section 2201(2) of title 44, as amended by section 2 of this Act) created during a term of office of the President beginning on or after January 20, 1981.

SEPARABILITY

SEC. 4. If any provision of this Act is held invalid for any reason by any court, the validity and legal effect of the remaining provisions shall not be affected thereby.●

## ADDITIONAL COSPONSORS

S. 2388

At the request of Mr. JAVITS, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 2388, the Employee Education Assistance Act.

S. 2978

At the request of Mr. MCCLURE, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2978, a bill to amend the Occupational Safety and Health Act of 1970 to prohibit restrictions on work rules in locations in which there is hunting, fishing, or shooting sports, and for other purposes.

SENATE JOINT RESOLUTION 153

At the request of Mr. ANDERSON, the Senator from Nevada (Mr. CANNON) was added as a cosponsor of Senate Joint Resolution 153, to authorize the President to proclaim the third week in June, 1979, as "National Veterans Hospital Week."

SENATE JOINT RESOLUTION 155

At the request of Mr. ZORINSKY, the Senator from Colorado (Mr. HASKELL), the Senator from North Dakota (Mr. YOUNG), the Senator from North Dakota (Mr. BURDICK), and the Senator from Alabama (Mrs. ALLEN) be added as cosponsors of Senate Joint Resolution 155, to increase the price support for milk, wheat, corn, soybeans, and cotton to not less than 90 percent of the respective parity prices therefor, and for other purposes.

AMENDMENT NO. 3437

At the request of Mr. LEAHY, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of amendment No.

3437 intended to be proposed to S. 2584, the Nuclear Regulatory Commission authorization.

AMENDMENT NO. 3478

At the request of Mr. NELSON, the Senator from Colorado (Mr. HART) was added as a cosponsor of amendment No. 3478, intended to be proposed to H.R. 5285, the Medicare-Medicaid Reform Act.

SENATE RESOLUTION 557

At the request of Mr. ROTH, the Senator from Nebraska (Mr. CURTIS), the Senator from Kansas (Mr. DOLE), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Utah (Mr. HATCH), the Senator from Virginia (Mr. SCOTT), and the Senator from Texas (Mr. TOWER) were added as cosponsors of Senate Resolution 557, requesting the President of the United States to appoint a Special Prosecutor in connection with the General Services Administration.

## AMENDMENTS SUBMITTED FOR PRINTING

### REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3585

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BAKER (for himself, Mr. BELLMON, Mr. RIBICOFF, and Mr. DANFORTH) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

JOB CREATION CREDIT

Mr. BAKER. Mr. President, on behalf of Senators BELLMON, RIBICOFF, DANFORTH and myself, I send to the desk an amendment to H.R. 13511, the bill presently pending before the Senate Finance Committee, and ask that it be so referred.

Mr. President, in March of this year Senators BELLMON, RIBICOFF, DANFORTH and I introduced a welfare reform bill which was called the Job Opportunities and Family Security Act of 1978. As the title indicates, major emphasis was placed upon unemployment, with particular attention to the creation of private sector jobs for the structurally unemployed.

Although an employment tax credit has been in existence for almost a year, it is not targeted upon any particular class of unemployed individuals. I consider that a major drawback to the provision and called for a targeted employment tax credit last December.

Since then, the administration has endorsed a targeted employment tax credit and Members of this body have proposed various targeted tax credits. The employment tax credit amendment which we offer today represents a revision and improvement upon the tax credit provision in S. 2777, the so-called Baker-Bellmon welfare bill.

Mr. President, I ask unanimous consent that a summary of that amendment, as well as the text of the amendment, be printed in the RECORD at the conclusion of my remarks.

There can be no doubt, Mr. President, that a targeted employment tax credit has broad support in both the House and the Senate. In light of that support and the need for an effective incentive for private employers to hire structurally unemployed, I hope that the Senate Finance Committee will give our amendment, and those which are similar to it, the most careful consideration.

There being no objection, the amendment and summary were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 3585

On page 76, beginning with line 1, strike out all through page 91, line 8, and insert in lieu thereof the following:

JOB CREATION CREDIT

SEC. 315. (a) IN GENERAL.—Section 51 (relating to amount of credit for employment of certain new employees) is amended to read as follows:

"SEC. 51. AMOUNT OF CREDIT.

"(a) DETERMINATION OF AMOUNT.—The amount of the credit allowable by section 44B for any taxable year shall be equal to the sum of—

"(1) one dollar multiplied by the number of qualified first-year new employee hours for such year, and

"(2) 50 cents multiplied by the number of qualified second-year new employee hours for such year.

"(b) $100,000 or 20 PERCENT PER YEAR LIMITATION ON CREDIT.—The amount of the credit determined under this subpart for any employer (and the amount of the credit allowable by section 44B to any taxpayer) with respect to any calendar year shall not exceed the greater of—

"(1) $100,000, or

"(2) an amount equal to 20 percent of the taxpayer's total employee hours.

"(c) DEFINITIONS.—For purposes of this subpart—

"(1) NEW EMPLOYEE.—The term 'new employee' means any individual employed after December 31, 1978, who is certified by the designated agency of the State in which he is employed as being an individual who—

"(A) is receiving aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

"(B) is receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 616 of such Act or section 212 of Public Law 93-66); or

"(C) is an unemployed youth who has attained 18 years of age (or graduated from secondary school) but not 25 years of age and whose family income does not exceed 70 percent of the lower living standard income level published by the Bureau of Labor Statistics.

"(2) EMPLOYEE HOURS.—The term 'employee hours' means the number of hours of employment for which the taxpayer compensates an employee at a rate of pay not less than the prevailing rate for the occupation and job classification of individuals employed by the same employer but only to the extent such hours exceed 30 hours and are not more than 40 hours in any full calendar week. An employee whose compensation is not determined on an hourly basis shall be considered, for purposes of this paragraph, to be compensated for not more than 40 hours of employment for each full calendar week he is employed.

"(3) QUALIFIED FIRST-YEAR NEW EMPLOYEE HOURS.—The term 'qualified first-year new employee hours' means, with respect to any new employee, the number of employee hours during the 1-year period beginning with the day such employee begins work for the employer.

"(4) QUALIFIED SECOND-YEAR NEW EMPLOYEE HOURS.—The term 'qualified second-year new employee hours' means, with respect to any new employee, the number of employee hours during the 1-year period beginning on the day after the last day of the 1-year period described in paragraph (3).

"(5) DESIGNATED AGENCY OF A STATE.—The term 'designated agency of a State' means—

"(A) the State agency administering the State plan under part A of title IV of the Social Security Act, or

"(B) the State employment agency, and which is selected by the chief executive officer of the State to certify employees under this subpart.

"(d) RULES FOR APPLICATION OF SECTION.—For purposes of this subpart—

"(1) REMUNERATION MUST BE FOR TRADE OR BUSINESS EMPLOYMENT WITHIN UNITED STATES.—Remuneration paid by an employer to an employee during any calendar year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in the United States in a trade or business of the employer.

"(2) SPECIAL RULE FOR CERTAIN DETERMINATIONS.—Any determination as to whether paragraph (1) of this subsection applies with respect to any employee for any calendar year shall be made without regard to subsections (a) and (b) of section 52.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsections (a) and (b) of section 52 (relating to special rules in determining credit for employment of new employees) are amended by striking out "unemployment insurance wages" and inserting in lieu thereof "new employee hours".

(2) (A) Section 52 (relating to special rules for computing credit for employment of certain new employees) is amended—

(i) by striking out subsections (c), (e), and (j), and

(ii) by redesignating subsections (d), (f), (g), (h), and (i) as subsections (c), (d), (e), (f), and (g), respectively; and

(iii) by adding at the end thereof the following new subsection:

"(h) CERTAIN DISMISSALS.—If any employer dismisses any employee for the purpose of securing (or increasing) a credit under section 44B for any taxable year, the amount of the credit allowable under section 44B for such year (determined without regard to this subsection) shall be decreased by an amount equal to 2 times any increase in such credit which would (but for this subsection) have resulted in whole or in part by reason of such dismissal.".

(B) Subsection (e) (3) of section 52 (as redesignated by subparagraph (A)) is amended—

(i) by striking out "$100,000" the first place it appears; and

(ii) by striking out "$100,000" the second place it appears and inserting in lieu thereof "such amount".

(C) Subsection (g) of section 52 (as so redesignated) is amended—

(i) by striking out "$50,000" in the heading; and

(ii) by striking out "$50,000 in lieu of $100,000" and inserting in lieu thereof "one-half of the amount specified in such section".

(3) AMENDMENT OF SECTION 53.—Section 53 (relating to limitation based on amount of tax) is amended by striking out subsection (b) and by redesignating subsection (c) as subsection (b).

(4) (A) Section 280C (relating to portion of wages for which credit is claimed under section 44B) is amended—

(i) by inserting "attributable to qualified first-year and second-year new employee hours" after "year"; and

(ii) by inserting "with respect to such hours" before "determined".

(B) (i) The heading for section 280C is amended by striking out "PORTION OF WAGES" and inserting in lieu thereof "AMOUNT".

(ii) The table of sections for part IX of subchapter B of chapter 1 is amended by striking out "Portion of wages" in the item relating to section 280C and inserting in lieu thereof "Amount".

(c) Effective Date.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts paid or incurred after December 31, 1978, in taxable years ending after such date.

(2) TRANSITIONAL RULE.—In the case of a taxable year which begins in 1978 and ends after December 31, 1978, the amount of the credit allowable by section 44B of the Internal Revenue Code of 1954 (determined without regard to section 53 of such Code) shall be the sum of—

(A) the amount of the credit which would be so allowable without regard to the amendments made by this section, plus

(B) the amount which would be so allowable by reason of the amendments made by this section.

SUMMARY OF AMENDMENTS TO THE TAX BILL

EMPLOYMENT TAX CREDIT

We would propose an employment tax credit with the following provisions:

(1) Private and non-profit employers would be provided a tax credit equal to $1 per hour of employment for one full year and $.50 per hour for the second year;

(2) The individuals who would be eligible for this credit consist of employable AFDC recipients, employable SSI recipients, and unemployed youth (age 18-24) from families whose income does not exceed 70 percent of the BLS lower living standard income level;

(3) The States would have the option of selecting between the state welfare agency or the state employment agency as the administering agency with primary responsibility for certifying eligibility;

(4) There would be a ceiling of $100,000 per firm each year or 20 percent of the firm's employees, whichever is higher;

(5) There would be a requirement that employers sign a statement affirming that no non-subsidized salary employee performing comparable work at a comparable salary was laid off within the previous 60 days in order to hire a tax credit eligible employee (an appropriate penalty should be included); and

(6) Employers would be required to reduce their business expense deductions for wages by the amount of the credit claimed.

## TARIFF TREATMENT OF FILM, STRIPS, SHEETS, AND PLATES OF CERTAIN PLASTICS OR RUBBER—H.R. 5285

AMENDMENT NO. 3586

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself, Mr. SPARKMAN, Mr. BROOKE, Mr. BENTSEN, Mr. TOWER, Mr. MATHIAS, Mr. STONE, Mr. FORD, Mr. SARBANES, Mr. HODGES, Mrs. ALLEN, Mr. HUDDLESTON, Mr. ANDERSON, Mr. GLENN, Mr. SASSER, Mr. DECONCINI, Mr. RIEGLE, Mr. MCINTYRE, Mr. RANDOLPH, Mr. MAGNUSON, Mr. CHILES, Mr. LUGAR, Mr. CURTIS, and Mr. SCHWEIKER) submitted an amendment intended to be proposed by them, jointly, to H.R. 5285, an act to amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips, sheets, and plates of certain plastics or rubber.

● Mr. BUMPERS. Mr. President, I am submitting an amendment that will repeal a portion of section 227 of Public Law 92-603, which was passed in 1972 and changed the method of medicare reimbursement for physicians in teaching hospitals from a fee-for-service to a cost basis.

Regulations have been proposed by the Department of Health, Education, and Welfare pursuant to section 227. This section was to have become effective in 1973, but Congress has postponed the effective date several times. Unless Congress takes action, regulations implementing section 227 will be implemented on October 1, 1978.

A further delay in the implementation date does not solve the problem facing teaching hospitals. Therefore, I am proposing to repeal a section of the law which, if implemented, would create a two-class system of care based on the patient's ability to pay.

The amendment that I am introducing to H.R. 5285 does not repeal those sections of section 227 providing that hospitals may elect to be reimbursed on a cost basis. Only 27 teaching hospitals have elected this method of payment, but my amendment will not disturb their election.

If section 227 is implemented, it will have the following effects on teaching hospitals:

First. The change to a cost-based method of reimbursement will result in an inability to retain the services of the teaching physicians who now provide direct and personal patient care, regardless of the patients' ability to pay. In the end the patients would suffer most, since these physicians would be forced to leave the teaching faculty and join a non-teaching hospital in order to remain eligible for reimbursement for medicare patients.

Second. All medical school faculties are supported in some part by professional fee revenues; a reduction in revenues will result in the need to identify replacement revenue, reduce faculty, reduce faculty time in intern-resident supervision, and reduce faculty time in patient care.

Third. Any reductions in the number of house staff positions might fall in the needed primary care specialties because training in ambulatory care is expensive but contributes relatively little to hospital revenues.

Fourth. The effect of the fiscal test restriction will be to force teaching hospitals into one of two categories: To become either a hospital for indigents or a hospital for paving patients. The current highly desirable situation in which both classes of patients are served would be impossible.

Mr. President, since implementation of Section 227 will create these inequities, I propose an amendment, and I ask unanimous consent to have the amendment printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 3586

At the end of the bill insert the following new section:

PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL

SEC. 26. (a) Section 1861(b)(7) of the Social Security Act is amended to read as follows:

"(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title.".

(b) Section 1832(a)(2)(B)(i)(II) of such Act is amended to read as follows:

"(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861 (b) (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), where the conditions specified in paragraph (7) of such section are met, and".

(c) Section 1861(v)(1)(C) of such Act is amended by inserting after "services as such hospital," the following: "and where the conditions of subsection (b)(7) have been met,".

(d) The amendments made by this section shall apply with respect to accounting periods beginning on or after October 1, 1978.

On page 3, amend the table of contents by adding at the end thereof the following:

SEC. 36. Payment for services of physicians rendered in a teaching hospital.●

## REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3587

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to H.R. 13511, an act to amend the Internal Revenue Code of 1954, to reduce income taxes, and for other purposes.

● Mr. BUMPERS. Mr. President, all of us from time to time receive letters from constituents calling our attention to various inequities and omissions in the Internal Revenue Code—precisely the kind of complaint that led President Carter, during his campaign for election, to refer to the code as "a disgrace to the human race." I can associate myself with this characterization without reservation, and I would like to offer for the edification of my colleagues a particularly glaring example that has been called to my attention by one of my constituents, Mr. Joe Redding of North Little Rock, Ark. There are many ironies in his case, not the least of which is that Mr. Redding, before he was compelled to retire on account of permanent and total disability, served the Internal Revenue Service as an agent for 25 years.

In 1954, when the Internal Revenue Code was enacted, Congress wisely saw fit, in section 105, to recognize the special situation in which ill, injured, or disabled citizens find themselves. Under this provision, which was substantially unchanged for 22 years, an employee could exclude from income up to $100 a week received under wage-continuation plans when he was absent from work on

account of injury, sickness, or disability. Persons in this category obviously have special problems and special demands on their resources. The sick-pay exclusion, as section 105 came to be called, is a recognition of these problems much like the deduction for medical and hospital expenses.

The Congress and President Ford then enacted the so-called Tax Reform Act of 1976. I say "so-called" because the title of this act is a complete misnomer. As a matter of fact, I joined 21 other Senators in voting to strike the word "Reform" from the title of the bill, but unhappily the motion failed. In any case, section 505 of this act, which is now Public Law 94–455. repealed the sick-pay exclusion and provided in its place an exclusion of up to $5,200 a year for retirees under age 65 who are permanently and totally disabled. This exclusion is to be phased out dollar for dollar for adjusted gross income in excess of $15,000, the theory being, I suppose, that people with income in that range do not need the exclusion so much.

In view of the tremendous costs that illness and disability can bring, I question the validity of this premise, but the portion of the act that has attracted my attention is even more unfair. New section 105(d)(4), as added by the 1976 act, requires married taxpayers to file a joint return if they are to get any benefit from the exclusion. The purpose of this requirement is unhappily clear. It is simply to attribute to a taxpayer whatever income his or her spouse may have for purposes of computing the $15,000 phaseout level. A taxpayer will lose the benefit of the exclusion, in other words, just as surely if his spouse has income as if he has income himself. No showing is required that the taxpayer actually benefits from his spouse's income, nor is account taken of the fact that the spouse also may be disabled or ill, with high medical expenses.

Furthermore, Mr. President, the law goes on to say that a married taxpayer can get the benefit of the exclusion, even if he does not file a joint return, if he and his spouse live apart at all times during the taxable year.

I cannot imagine a clearer financial incentive for the separation of families. The provision is especially cruel because the incentive, by definition, applies only to taxpayers who are permanently and totally disabled.

In other words, Mr. President, a permanently and totally disabled citizen can exclude his disability payments from gross income regardless of what his spouse earns if he gets a divorce or separates himself from her completely. But if he continues to live with his family, and if his spouse works and earns a living, he loses the benefit of this important exclusion. No doubt there are many quirks in the Internal Revenue Code and many inequities, but I defy my colleagues to come up with one so striking as this. Those who wrote the 1976 act probably thought that by adding section 105(d)(4) they were protecting the public revenues, and there is no doubt that revenue probably will be increased, to some extent, because this provision is in the statute. I cannot believe, however, that the minuscule increase to the Treasury is worth the hardship and suffering, mental and economic, that this kind of law can provoke. I am therefore, Mr. President, today submitting an amendment for appropriate reference to repeal section 105(d)(4) of the Internal Revenue Code. The general rule that sick-pay exclusion phases out at $15,000 of adjusted gross income will remain untouched. The only effect of my amendment will be to restore to taxpayers their customary election whether to file a joint or separate return, and the amendment will also, of course, remove one of those incentives, with which the Internal Revenue Code is strangely full, for the splitting up of families.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 3587

At the appropriate place in the bill, add the following new section:

"SEC. . (a) Paragraphs (4) and (6) of subsection (d) of section 105 of the Internal Revenue Code of 1954, as amended by subsection (a) of section 505 of the Tax Reform Act of 1976, Public Law 94–455, approved October 4, 1976, are hereby repealed.

(b) Paragraphs (5) and (7) of subsection (d) of section 105 of the Internal Revenue Code of 1954, as amended by subsection (a) of section 505 of the Tax Reform Act of 1976, Public Law 94–455, approved October 4, 1976, are hereby renumbered (4) and (5).

(c) The amendments made by this section shall be effective as of the effective date of section 505 of the Tax Reform Act of 1976, Public Law 94–455, approved October 4, 1976.●

## NOTICES OF HEARINGS

COMMITTEE ON GOVERNMENTAL AFFAIRS

● Mr. PERCY. Mr. President, I wish to announce that the Committee on Governmental Affairs will hold a hearing on September 15, 1978, concerning the Presidential Records Act of 1978, Senate bill 3494. The hearing will be at 1 p.m. in room 3302, Dirksen Building.●

SUBCOMMITTEE ON CIVIL SERVICE AND GENERAL SERVICES

● Mr. SASSER. Mr. President, I wish to announce that the Subcommittee on Civil Service and General Services will hold a hearing on September 27, 1978 at 9 a.m. in room 3302 of the Dirksen Senate Office Building regarding S. 1390 which would authorize certain national guard employment to be credited for civil service retirement.●

SUBCOMMITTEE ON CIVIL SERVICE AND GENERAL SERVICES

● Mr. SASSER. Mr. President, I wish to announce that the Subcommittee on Civil Service and General Services will hold a hearing on September 27, 1978 at 10 a.m. in room 3302 of the Dirksen Senate Office Building regarding S. 1821 which would provide paid leave for a Federal employee participating in certain athletic activities as an official representative of the United States.●

## AUTHORITY FOR COMMITTEES TO MEET

PERMANENT INVESTIGATIONS SUBCOMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the permanent Investigations Subcommittee of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, September 13, 1978 and Thursday, September 14, 1978 to hold a hearing on arson for profit.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet during the session of the Senate on Friday, September 15, to discuss legislation dealing with Presidential papers.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, September 14, 1978 to consider Senate Joint Resolution 142, the Franklin Delano Roosevelt project, and other legislative matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENT

## HEALTH CARE

● Mr. BUMPERS. Mr. President, an article that appeared in the September 10 issue of the Washington Post pointed out most dramatically the effect of competition on the health care delivery system. I have supported the initiatives of the administration to encourage the development of health maintenance organizations. However, until we review the experience in Minneapolis-St. Paul, we may not understand the end result of these efforts. The health-care delivery experience in the Twin Cities is one of the most encouraging illustrations of the proper way to reduce health-care costs—through competition.

Mr. President, I ask that the article by John Iglehart be printed in the RECORD.

The article follows:

COMPETITION CUTS MEDICAL COSTS: TRADITIONAL PLANS MEETING CHALLENGE OF HMOs IN MINNESOTA

MINNEAPOLIS-ST. PAUL.—While Government repeatedly has failed to impose cost controls on the burgeoning medical industry, physicians here have clamped mandatory constraints on their own prices without government uttering a word.

The phenomenon does not stem from greater altruism among the 1,700 physicians in the Twin Cities orbit; rather, it is one consequence of a mounting struggle for patients in an area where doctors, hospitals and private purchasers of health care are demonstrating that medicine is susceptible to economic competition.

Consider these developments: seven health maintenance organizations now compete for customers against conventional health

insurance plans on the basis of price, convenience of service and benefit coverage.

These health maintenance organizations, or HMOs, now serve 224,000 people, 11.6 percent of the area's population, and all have experienced substantial growth in the past year as more employers offer their employes a choice between HMOs and traditional insurance coverage.

HMOs have stimulated competitive responses from Blue Cross and Blue Shield of Minnesota and the Hennepin County Medical Society, the local affiliate of the American Medical Association. The Blues and the medical society formed their own HMOs to counter the loss of patients.

With their emphasis on keeping the rate at which they hospitalize patients to an absolute minimum, the Twin Cities' HMOs are adding to an already serious community problem, a surplus of hospital beds.

Doctors who plunged into the rivalry for patients against HMOs never dreamed that the initial result would be fiscal chaos and, ultimately, the imposition of strict cost controls to save their own HMO, Physicians Health Plan, from bankruptcy. But that is what happened when physicians created their plan and thought they could compete effectively without changing their traditional practices. "We kept telling doctors they could practice medicine as they always had," said Dr. Richard Simmons, chairman of the Physicians Health Plan, "but we found out we were wrong."

Health maintenance organization was the label former President Nixon attached to his administration's effort to inject marketplace economics into health care. Unlike in most economic markets, consumer choice plays only a limited role in medicine, and price competition is not very important because insurance makes the buyer less conscious of its cost.

In traditional medicine, the consumer pays for care on a piecemeal basis, depending on the number of times he or she visits the doctor. There is no limit on how much a consumer can pay. HMOs, on the other hand, provide services for a fixed monthly fee.

This prepaid feature, as Nixon noted when he first promoted HMOs in 1971 as an answer to soaring medical costs, reverses the "illogical incentive" of traditional medicine, in which "the more illnesses [doctors] treat and the more services they render, the more their income rises."

HEW Secretary Elliot L. Richardson testified in 1971 that, by 1976, the department expected 1,700 HMOs to be in operation, serving some 40 million members. But today, owing to HEW's mismanagement of the program over its seven-year history and a reticence on the part of medicine and the public to chance the cottage industry approach to medical care, there are only 175 HMOs serving 6.5 million members.

When President Carter assumed office in January 1977, his administration strongly embraced the HMO concept. HEW Secretary Joseph A. Califano Jr., has sought to develop more HMOs by upgrading the program from a tiny bureaucratic outpost to a more central position in the department.

REMARKABLE GROWTH

Ironically, the federal government has had little to do with HMO growth in Minnesota, but HEW officials point to the Twin Cities as one of the few areas in the country where the kind of HMO incentives the administration advocates actually are being demonstrated in the medical marketplace.

HEW Secretary Hale Champion, addressing the 20th annual meeting of the oldest and largest (114,156 members) HMO in the area, Group Health Plan Inc., noted the "remarkable [enrollment] growth in the Twin Cities—from 2 to 11.6 percent of the population—in just seven years. . . HMO competition inspires healthy change leading to the formation of more HMOs. This area now has seven. And third-party insurers, Blue Cross particularly, are instituting cost controls and offering fuller benefit packages. Also, physicians are changing their behavior—in some cases moving voluntarily to mandatory cost controls such as preadmission certification, length-of-stay reviews and limitations on fees and charges per visit."

Dr. Paul M. Ellwood Jr., the physician who sold the HMO concept to the Nixon administration and continues to work with HEW to nurture it, also underscored the significance of the Twin Cities' experience. "The idea of a competitive medical care environment where consumers have a real choice and where most providers are competing with each other on price and other considerations has until now been an attractive but largely theoretical goal. But the Twin Cities appears to be the first large-scale health-care market in which one could say there is active price competition involving a majority of the area's 20 hospitals and approximately 1,700 doctors. If this community is a fair test, then the competitive market strategy appears to work."

The progressive environment of Minneapolis-St. Paul has been an important ingredient in fostering HMO development. Paul L. Parker, executive vice president of General Mills Inc., which is based in Minneapolis, said: "Corporate leaders are reasonably liberal on social issues here. They don't raise the specter of communists around every corner."

In fact, 57 local employers now offer their workers a choice between HMOs and conventional insurance plans, and most health care providers are vying for this business.

Among major employers offering a choice are Cargill Inc., Control Data Corp., Dayton Hudson Corp., General Mills, Honeywell Inc., International Multifoods Corp., Minnesota Mining and Manufacturing Co., Pillsbury Co. and the Prudential Insurance Co. Significantly, more than half of the employes here of Prudential, a major indemnity insuror, have opted for HMO coverage because of its broader benefits and lower cost.

The first step in the competitive struggle for HMOs is to convince employers to offer their workers this choice. "HMO administrators and marketing agents identify the enthusiasm of the employer as a primary factor determining the ability of HMOs to enroll employes," said Jon B. Christianson, an economist at InterStudy, a private health policy research organization based here and headed by Ellwood. "They believe that when employers allow HMOs to market directly to employe groups, the HMO enrollment share is substantially increased for initial enrollments," Christianson wrote in a study last April.

General Mills provides the clearest example of what can happen when corporate leadership pushes the HMO idea. Sixty per cent of the company's employes here, 1,600 salaried, nonunion workers, have opted for HMO coverage. General Mills provides company time for HMOs to explain their plans.

In other General Mills plants, such as those in Chicago and northern California, HMO penetration has been much lower, around 5 percent. Employes there who are unionized have less rapport with management, and it is more difficult to provide company time in a production plant for HMO education sessions, Parker said. "One sticking point is moving into an area where it might look like management is trying to play Big Brother," he added.

COMPARATIVE COSTS

Because HMO benefit packages are more extensive than those generally offered by traditional insurers, the monthly premium is sometimes, but not always, higher. The major items covered by HMOs, but not by indemnity plans are routine visits to a physician's office, physical examinations, immunization and other preventive services.

In 1977, for example, Minnesota state employes were given a choice between the Blue Cross-Blue Shield high option plan for $94.78 a month, the Nicollet-Ethel HMO for $92.24 and Group Health Plan for $87.26.

In selected instances, HMOs that once were more expensive are now less so, because rising costs have impacted more severely on indemnity coverage.

At General Mills, for example, the corporation first offered its employees an HMO option in March 1973. Family HMO coverage cost the worker $9 a month, while the regular insurance plan required no employee contribution.

Today, however, General Mills foots the entire bill for both forms of coverage, $103 per family per month for indemnity coverage and $93 for HMO membership. But eventually, Parker said, the company will have to decide whether it should permanently subsidize the employe who selects the more expensive health insurance coverage or require the worker to pay the extra cost.

In calculating their rates, HMOs are no more altruistic than the private insurance business. They are able to offer members more health care per dollar because they aggressively control the rate at which they hospitalize their members, a lesson that Physicians Health Plan learned only after flirting with bankruptcy.

HMOs in the Twin Cities have hospital utilization rates ranging from 375 to 650 days per 1,000 members a year. The annual hospital bed rate for the metropolitan population is 1,350 days per 1,000 individuals.

Thomas Hoban, executive director of the Hennepin County Medical Society, said: "Without the competition, we could not have imposed those controls. The doctors would not have tolerated those controls, but they're willing to go along with the system because they feel it is important to have a stake in the HMO market. Nearly every major industry in town has made a commitment to offer the HMO option."

The HMO movement has by no means transformed the Twin Cities into a marketplace mecca, where supply matches demand for medical services with any precision. Indeed, the area has an acknowledged surplus of hospital beds, more doctors than the medical society says are needed, and a prestigious health complex at the University of Minnesota that has all but ignored the competitive struggle.

Major parties with a stake in the economics of health care, including government and organized labor, have not been heard from or, at best, have played only limited roles in the struggle for the private health dollar here.

Federal and state laws helped shape the competitive environment by requiring employers of 25 or more to offer their employes, on request, a choice between HMO and indemnity insurance coverage. But neither level of government has nurtured the HMO concept by purchasing services directly from these facilities, a shortcoming that afflicts HMOs throughout the country.

HMOs here have virtually no members who receive care under Medicare or Medicaid, which finance the medical care of some 50 million elderly and poor individuals. Medicare reimburses HMOs for medical care rendered on a basis that provides such facilities little financial incentive to enroll elderly patients, who generally need health care about twice as often as younger individuals.

The state of Minnesota has not aggressively pressed HMOs to enroll beneficiaries of Medicaid, a federal-state program that underwrites the health care of poor families. Without the enrollment of a segment of society's most vulnerable citizens, HMOs can hardly lay claim to being the answer to the health cost problem.

Howard Veit, director of the federal HMO program, said several weeks after he visited here to discuss developments with area HMO directors, "Our basic view of the Twin Cities is that it represents in many ways the prototypical community for the future development of HMOs."

The HMO saga here remains only partially written. Thus far, Blue Cross-Blue Shield and the commercial insurors like Prudential have suffered the most in lost business. The first time Honeywell offered its Twin Cities employes an option in 1977, one-third of its workers, about 4,000 people, dropped the conventional Blue Cross coverage and chose an HMO plan. "The growth of our traditional insurance program would have been a lot higher without the HMOs here, there's no doubt about that," said George Halvorsen, director of affiliated services for Blue Cross and Blue Shield of Minnesota.●

## PUERTO RICO

● Mr. SASSER. Mr. President, on August 28, the Governor of Puerto Rico testified before the Committee on Decolonization of the United Nations. His statement is an eloquent affirmation of the freedom that American citizens, including Puerto Ricans, cherish.

Without taking a position on the question of Puerto Rico's statehood, I would like to join with my colleague, Senator DOLE in commending the statement of Gov. Carlos Romero-Barceló to my colleagues. I ask that the testimony be printed in the RECORD.

The testimony follows:

TESTIMONY BY THE HONORABLE CARLOS ROMERO-BARCELÓ, GOVERNOR OF PUERTO RICO

Mr. Chairman, members of the Committee: My name is Carlos Romero-Barceló. I am the Governor of Puerto Rico, elected to a four-year term by the people of Puerto Rico on November 2, 1976.

In 1946, during the United Nations' first full year in existence, the United States of America offered voluntarily to submit annual reports on the status of its non-self-governing territories, in keeping with the spirit of Article 73 of the United Nations Charter. Those territories then included Alaska, Guam, Hawaii, Puerto Rico, American Samoa, and the United States Virgin Islands. Annual reports on Alaska and Hawaii were discontinued upon their admission in 1959 as the forty-ninth and fiftieth of the United States of America.

A quarter of a century ago, the United Nations Committee on Information from Non-Self-Governing Territories—also known as the Fourth Committee—determined that the people of Puerto Rico enjoyed a full measure of self-government. In response to that determination, the United Nations General Assembly, at its Eighth Session, adopted on November 27, 1953 its Resolution 748, wherein it relieved the United States of America from any responsibility for filing annual reports concerning Puerto Rico's political status, and wherein the General Assembly declared that, and I quote, "in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity." End of quote.

That was twenty-five years ago.

Since then, the people of Puerto Rico have elected a total of five different men from among two different political parties to lead them as Governor. During that interval, the people of Puerto Rico have also held a plebiscite on their political status.

During that period of time, not one of the island's five governors has come before any instrumentality of the United Nations to register a complaint against the United States, nor to request any review or reconsideration of Resolution 748 of the Eighth General Assembly Session. Indeed, until today, no Governor of Puerto Rico had ever formally approached the United Nations on any matter related to our island's relationship with the United States.

Nevertheless, despite the absence of any initiative on the part of any duly elected Government of Puerto Rico, your Committee has since 1972 been discussing "the Puerto Rico question" on a regular basis.

These discussions have been held at the behest of an adversary of the United States, in support of a political faction in Puerto Rico whose electoral strength has remained at less than seven percent of the voting public for two decades.

During our twenty-five years as a community enjoying "a full measure of self-government," Puerto Rico's democratic institutions have received the enthusiastic support of the island's inhabitants. From three to six political parties have appeared on the ballot in each general election. An average of four-fifths of Puerto Rico's eligible voters have participated in each election. Both men and women possess the right to vote, and in 1970 the minimum voting age was lowered from twenty-one to eighteen years.

But perhaps the most eloquent demonstration of the strength and integrity of Puerto Rico's democratic system of government has been the fate of incumbent Administrations: in each of the last three quadrennial elections held in Puerto Rico, the political party in power has gone down to defeat; moreover, the last five elections in Puerto Rico have elevated no less than five different men to the governorship, even though the Puerto Rican Constitution permits an incumbent Governor to seek re-election to an indefinite number of terms. And I might add that each change of Administration was effected lawfully and peacefully.

As we survey the Puerto Rican people's aggressive and responsible exericse of their electoral prerogative over the past quarter-century, one highly significant fact stands out clearly: each and every time the Puerto Rican people have removed from office an incumbent Governor and/or political party, they have chosen a new Governor and/or political party which, like their predecessors, firmly espoused the principle of permanent union between Puerto Rico and the United States of America.

In each of these elections, candidates advocating Puerto Rico's independence participated freely, energetically, and without constraint. And in each election they were resoundingly defeated. In 1976, even the local Communist faction took its case to the electorate. Calling itself the Puerto Rico Socialist Party, it campaigned throughout the island, yet won only seven-tenths of one perecnt of the total vote, and elected no candidates. The non-Communist Puerto Rico Independence Party elected two Representatives and one Senator in 1972, but lost all three seats in 1976.

Just as is the case in Puerto Rico, I am confident that virtually all of the twenty-four nations here represented contain within their borders political factions which are firmly opposed to the policies of the government in power. As is not the case in Puerto Rico, however, opposition political factions in some of these twenty-four nations are severely inhibited—and in some instances officially prohibited—from working openly and freely to enlist broad public support for their causes, and from seeking peacefully to have the ruling party removed from power.

Should an opposition faction within any of the twenty-four nations here represented solicit the assistance of a foreign power in bringing its case before the United Nations, I strongly suspect that the government of the nation in question—regardless of its political system, regardless of its economic system, regardless of its alignment or nonalignment vis-a-vis the major world powers—would firmly oppose United Nations involvement, on the grounds that the matter at issue constituted a strictly internal affair, over which no international body whatsoever had any claim to jurisdiction.

Nevertheless, this Committee has repeatedly agreed to entertain discussion of the political status of Puerto Rico under precisely the above circumstances: the separatist political faction in Puerto Rico has solicited the assistance of a foreign power—in this case Cuba—to urge United Nations intervention in the internal affairs of the people of Puerto Rico.

All five elected Governors of Puerto Rico have until now abstained from involvement in these discussions. We have done so because we too recognize the issue to be strictly an internal matter, to be debated and resolved within Puerto Rico itself, in consultation with the Government of the United States, the nation of which we are all citizens.

Among the five elected Governors of Puerto Rico, there is no unanimity of opinion as to what our island's ultimate political destiny should be; we differ considerably among ourselves on both large and small aspects of the question. We are, however, fully in agreement regarding the capacity of the Puerto Rican people to reach a final decision independently. Moreover, we recognize that a decision of such magnitude not only can be reached independently, but must be reached in such a manner, if it is to be valid and permanently binding upon the people of our island

If, as is true, we have not yet reached a final decision, then the responsibility for our inaction lies with us and with us alone. We have the means to change our political status. Whether and how we shall use those means is for us and us alone to decide. All three political status alternatives—statehood, independence, and commonwealth—appeared on the ballot in our 1967 plebiscite, and Puerto Rico's voters elected to retain commonwealth status. I have publicly stated on numerous occasions that I believe a new plebiscite should be held after the 1980 general election, to allow our people to express themselves once again. And if I am re-elected to the governorship, the holding of such a plebiscite will be a firm commitment of my Administration's second term.

So long as we continue to possess the means to determine our own destiny, however, we shall neither welcome nor tolerate outside interference in this ongoing process.

So it is that I come before you today not to request that you intervene, but rather to explain why I believe you should not even consider attempting to intervene.

I come before you in the knowledge that most of you are devoting your time and energy to the Puerto Rico question with the best of good intentions. I am sure you are all aware of the ulterior motives that have prompted one member of your Committee to bring this issue before you. Nevertheless, I have no doubt that most of you are acting in the best of faith in giving it your consideration. I thank you for that, despite my firm conviction that intervention by this Committee is neither necessary nor appropriate, and is totally unacceptable to the people of Puerto Rico.

In the past, this Committee has reaffirmed Puerto Rico's right to self-determination. No one in Puerto Rico—myself included—disputes that principle, so long as it is clearly understood that the concept of self-determi-

nation includes the right to move from commonwealth to statehood as well as the right to move from commonwealth to independence.

Were I to conclude that Puerto Rico were in any way being impeded from exercising its right to self-determination, then I would not hesitate for a moment to seek the support of this Committee, or any other responsible international institution, in helping our people to re-establish beyond doubt our right to self-determination.

I have the highest admiration for the United Nations. It is a pioneer confronting enormous obstacles in a slow and painful quest toward a goal upon which hinges the survival of our species: peaceful cooperation and coexistence among the enormously diverse peoples and philosophies which exist in even-increasing interdependence upon this planet. As must be expected in a pioneering venture, tangible progress has been achieved neither easily nor quickly. In its finest hours, the universal human emotions which fuel this noble institution are hope, purposefulness, and good will. All three are indispensable if it is to succeed in its mission. Both now and in the future, I shall always be available to contribute whatever I can to further the goals so eloquently set forth in the United Nations Charter.

Indeed, it is in part for that very reason that I appear before you now: in the hope that I may perhaps be of assistance to you in your important work.

Setting aside for a moment the hemispheric rivalries and/or international ideological struggles which, in reality, we all know are responsible for the presence of the Puerto Rico issue on the agenda of this Committee, allow me to examine with you now the seemingly legitimate concerns that might prompt those who are truly impartial members of this Committee to regard the Puerto Rico question as a matter worthy of study on its own merits.

Basically, I submit that these concerns are three.

Foremost among them, without doubt, must be the undeniably ambiguous nature of the island's present political status. Neither a sovereign nation nor a fully integrated unit of the United States of America, Puerto Rico occupies an ill-defined middle ground; which might understandably arouse the curiosity—if not the suspicion—of an impartial international observer.

Coupled with this is the apparent imbalance in political leverage between a medium-sized Caribbean island and a continental super-power. Here again, the disinterested outsider might understandably have occasion to wonder whether the smaller partner in this relationship could truly be at liberty to chart its own course toward a final political destiny.

And finally, there are obvious cultural and linguistic disparities, which might prompt the observer to wonder whether there can really be an authentic social, psychological, or spiritual basis for the existence of a harmonious political union between Puerto Rico and the fifty existing United States.

To the above points I should add a fourth consideration: that there is evident dissatisfaction with the status quo among the people of Puerto Rico themselves. At these hearings will appear Puerto Ricans of widely differing viewpoints; yet most, if not all, of them will agree that Puerto Rico's current political status does not in its present form adequately fulfill the legitimate aspirations of the Puerto Rican people.

Given the above facts, I can readily appreciate that a fair-mined member of this Committee could reasonably conclude that the case of Puerto Rico might well merit investigation.

Indeed, I myself am on record to the effect that Puerto Rico's relationship with the United States retains vestiges of colonialism.

Yet I do not come before you to solicit your intervention.

Why?

Because I believe such intervention can never be either appropriate, relevant, or in the least degree effective until and unless it can be demonstrated that Puerto Rico lacks the wherewithal to freely determine its own destiny.

For most of this decade, this Committee has annually given consideration to the political status of Puerto Rico. Yet at no time has this Committee undertaken to investigate firsthand the extent to which the Puerto Rican people have the capacity to exercise for themselves their inalienable right to self-determination.

I cordially invite this Committee to conduct just such an investigation. I cordially invite the delegates of each nation here represented to visit Puerto Rico. Come whenever you wish; stay as long as you like; talk to whomever you please; study our institutions for yourselves.

The Government of Puerto Rico does not fear the consequences of such an inspection. On the contrary, we would welcome it.

If you come, you will hear a variety of opinion, just as you will hear a variety of opinion during these hearings. That is because Puerto Rico is an open society, in which every citizen is entitled to express himself, and in which any citizen or group of citizens is entitled to work peacefully to effect change.

We have no illusions, however. We are all aware that Puerto Rico is an imperfect society, as is every society of human beings in every community on earth. Nevertheless, we are a people who take great pride in the progress we have made—economically, politically, and socially—during the twentieth century.

It is no accident that Puerto Rico's per capita income and standard of living are markedly higher than those to be found anywhere else in the Caribbean, or in Central or South America. Despite our island's very high population density of more than nine hundred persons per square mile, despite our severe shortage of mineral resources, and despite the massive poverty which existed in Puerto Rico only a few decades ago, we have in recent years emerged as a people blessed not only with free institutions of government, but also with the extraordinary increase in prosperity that only hard work and a private enterprise economy can make possible.

Today, each child born in Puerto Rico has a statistical life expectancy that actually exceeds that of the average American citizen born elsewhere in the Nation. Moreover, the per capita enrollment of our young people in colleges and universities exceeds the United States national average.

Puerto Rico's spectacular advances in health care, education, in economic opportunity, and in democratic self-government have been accomplished by the Puerto Rican people themselves, through our determination to leave to our children and grand children a better way of life than we ourselves knew as children and young adults.

Because of Puerto Rico's small size, dense population, and limited resources, much of our recent progress would have been extremely difficult, if not impossible, to achieve without the friendship and cooperation of fellow American citizens from other parts of the Nation, and without the comprehension and financial support of the United States Government.

The Puerto Rico of today is still not especially wealth; we are not mighty; our people do not live in total internal harmony. Nevertheless, ladies and gentlemen, we do enjoy, individually and collectively, the basic human rights which define a free society. And believe me, the people of Puerto Rico appreciate with every fiber of their being how rare and how precious a blessing freedom is.

Moreover, we know why we are free.

We know that we are free precisely because we are natural-born citizens of the freest and most open and most culturally diverse nation in the history of mankind: the United States of America.

We are free, if we so desire, to continue enduring the vestiges of colonialism that characterize our so-called commonwealth relationship with the United States. We are free to declare ourselves an independent nation, and to have that decision respected by the United States. And we are free to incorporate our island fully into the Republic as the fifty-first of those United States.

Should the day come when the people of some future date choose to do so, I recognize that it has the military might to act illegally and immorally to abrogate those freedoms. We have no illusions in that regard, either. Although the overwhelming majority of our people have demonstrated at every opportunity that we treasure our United States citizenship and our permanent political union with the United States, we all recognize that, like our own and like every other community on earth, the United States too is an imperfect society.

Should the day come when the people of Puerto Rico were to find themselves oppressed by the United States, it would not be necessary for a totalitarian adversary of the United States to bring the matter to the attention of this Committee: I can assure you that the freedom-loving people of Puerto Rico would virtually lay siege to this building in their clamor for redress of grievances. And I should emphatically add that I myself would not hesitate to stand at the forefront of such a movement.

Yet I remain fully confident that no such action will ever be necessary. Because, for all its occasional faults, the Government of the United States has by and large conducted itself with grace and with fairness in its relationship with the American citizens of Puerto Rico. And I have every reason to believe that it will continue to do so.

Individuals and groups of individuals within every state of the United States have, at one time or another, expressed indignation at, and intense opposition to, actions or inactions for which they perceived the Federal Government to be responsible. In nearly every instance, these conflicts have gradually been resolved through compromise and consensus, and a resumption of cordial relations between the parties involved has followed. And thus it has been also with Puerto Rico.

Although the people of Puerto Rico cherish our identity as a unique community within the American nation, we likewise cherish our right to participate in the process by which our nation as a whole arrives at decisions in the common interests of all.

It is no accident that I address you today in the Spanish language. For more than four centuries Spanish has been the first language of the people of Puerto Rico. It will continue to be our first language, regardless of the changes we may make in our political status. Our cultural heritage as a people has not been, and shall not be, an obstacle to the exercise of our rights as United States citizens. So long as we remain true to the principles of governance that bind our Nation together, we shall always remain free to exercise our inalienable human right to life, liberty, and the pursuit of happiness in accordance with the specific personal traits which define us as Puerto Ricans.

On December 31, 1976, when President Gerald Ford announced his support for the admission of Puerto Rico to the Union of States, he did not attach any cultural or linguistic provisos. His call was uncondi-

tional. He was prepared to accept us as Puerto Ricans.

On July 25, 1978, President Jimmy Carter issued a proclamation in observance of the 26th anniversary of the adoption of Puerto Rico's local Constitution. In that proclamation he said to the Puerto Rican people, and I quote, "Since 1898, and as American citizens since 1917, you have made a rich contribution to the life of the United States, while preserving your own unique culture and traditions within the broader community . . . My administration will respect the wishes of the people of Puerto Rico and your right to self-determination. Whatever decision the people of Puerto Rico may wish to take—statehood, independence, commonwealth status or mutually-agreed modifications in that status—it will be yours, reached in accordance with your own traditions, democratically and peacefully . . . The people of the United States are proud of our cultural and political associations with Puerto Rico over the last eighty years. We know that we can best honor our friendship, and our own democratic principles, by respecting your free choice about your own future." End of quote.

Not only did President Carter not attach cultural conditions, he underscored clearly the United States Government's acceptance of and commitment to the defense of the inherent right of the Puerto Rican people to retain and enhance our individual qualities as a people.

How can this be possible?

Simply because that is the tradition of the American nation. Tolerance of individual differences is a cornerstone of American freedom. Instances of individual intolerance exist everywhere on earth. So do instances of institutional intolerance—even in the United States.

But the overwhelming majority of all United States citizens understand fully that the acceptance of diversity—racial, cultural, religious, regional, ethnic, linguistic—is fundamental to the existence of liberty in a nation whose population is the product of immigration from every corner of the globe.

And because the people of Puerto Rico have the self-confidence and the determination to demand that our rights as United States citizens be recognized and respected, we look to the future with optimism, certain of our ability to resolve our political destiny in an environment characterized by civil debate, unconditional self-determination, and respect for the rights of the individual.

Before I continue, I should like to invite your attention to one especially blatant example of the hypocrisy of the separatists' position.

In regard to the question of language and culture, they firmly oppose the teaching of English in Puerto Rico. They oppose having our people become fully bilingual. They say it would undermine our identity as a people.

What is ironic, however, is that these same separatists are without exception bilingual themselves. They know English, and yet their sense of identity as Puerto Ricans seems not to have been impaired in the slightest. Indeed, they regard themselves as the purest of Puerto Rican patriots. Can it be, therefore, that their true motivation is not the preservation of our identity as a people, but rather the preservation of their own elite status as self-appointed bilingual spokesmen for our people? Why else would they propose to deny to the rest of the Puerto Rican people an advantage they themselves enjoy? It is something to think about.

It is these individuals—the separatist elements within Puerto Rican society—who year after year have sought United Nations intervention in our internal affairs. This too reflects their hypocrisy.

Let me explain.

We must keep in mind not only that, within Puerto Rico itself, the separatist forces have been massively and repeatedly repudiated at the polls, but that these same elements have never at any time seriously challenged our elections as fraudulent. They know they have been defeated fair and square.

That they have responded to their internal rejection by seeking support for their cause outside of Puerto Rico demonstrates eloquently their own cynical disregard for the principle of self-determination for our people.

Instead of respecting the clearly and repeatedly expressed will and wisdom of the Puerto Rican electorate, they resort to maneuvers in the international arena, hoping to have their political status preference imposed upon Puerto Rico from outside. Why? Obviously it is because they realize that within Puerto Rico itself they have been making no headway whatsoever.

In 1952, the year our commonwealth constitution took effect, political parties favoring independence for Puerto Rico polled a total of 19 percent of the vote in the island-wide general election. Political parties favoring statehood polled only 12.9 percent of the vote that year.

In our most recent election—in November 1976—independence parties polled only 6.4 percent of the vote—just one-third of their electoral strength twenty-four years earlier. In dramatic contrast, the pro-statehood political party which I lead won that 1976 election with 48.3 percent of the vote, nearly four times the pro-statehood total of 1952.

It has been this indisputable trend within the Puerto Rican electorate which has prompted the pro-independence forces to seek refuge in international forums, and to mount a calculated betrayal of the principle of self-determination by turning their backs on their own people as the sole legitimate judges of the course Puerto Rico should set for itself.

Where are Puerto Rico's political exiles? There are none.

Separatist Puerto Ricans operate openly from within Puerto Rico itself. They travel the world preaching their gospel, carrying United States passports. They run for elective office in Puerto Rico, and their political parties—despite their lack of significant voter support—receive regular allotments of public funds, equal in amount to those received by non-separatist political parties. Separatists speak out virtually every day on television and radio news and panel discussion programs, and their pronouncements are given ample coverage in every daily newspaper. In addition, some of them publish their own newspapers.

Separatist Puerto Ricans take full advantage of Federal law, federally-funded programs, and the protection of the Federal courts. Like many other American citizens in other parts of the Nation, Puerto Rican separatists have invoked the recently-enacted Federal Freedom of Information Law to search for evidence of abuses they allege have been perpetrated against them in the past by the Federal Bureau of Investigation.

Wherever they may have occurred, within Puerto Rico or elsewhere in the United States, such abuses are contemptible and I repudiate them unequivocally. But it must never be overlooked that the same government which may have been guilty of abuses also provides the mechanisms for bringing them to light, and for correcting them. And of course it is precisely this extraordinary capacity for self-criticism and self-improvement which makes the United States of America a source of wonder and inspiration for the many peoples residing in nations which are less free and less blessed with effective democratic institutions of government.

During four centuries of Spanish rule, dissident Puerto Ricans were often summarily jailed or exiled. Indeed, my own great-grandfather was jailed and exiled by Spain for advocating the abolition of slavery. The American citizens of Puerto Rico are not ignorant of the liberating changes that have occurred on our island during the eight decades since the United States flag was first raised over Puerto Rico's shores.

Where are Puerto Rico's political prisoners? There are none. Those Puerto Ricans dubbed political prisoners by our separatist elements are individuals tried and convicted in open court for the commission of such violent crimes as murder, attempted murder, kidnapping, arson, or assault. No Puerto Rican has ever been defined as a "prisoner of conscience" by the Nobel Prize-winning human rights organization Amnesty International.

Ladies and gentlemen, not only do Puerto Ricans not flee the island because of alleged political persecution, but, on the contrary, the exact opposite occurs: tens of thousands of persons from foreign countries—including over thirty thousand from Cuba alone—have in recent years fled to Puerto Rico precisely to escape political persecution in their homelands.

This then is a small part of the panorama that is Puerto Rico's contemporary political reality. As I mentioned earlier, you are cordially invited to examine it for yourselves. Not on a carefully sanitized government tour, but as individual men and women, free to go where you wish and to talk to whomever you please: not just to politicians and ideologues, but to housewives, students, laborers, shopkeepers and farmers.

In the meantime, we the people of Puerto Rico shall continue to advance toward a final decision on our political destiny, free of outside pressure and secure in the knowledge that our decision will be respected by the Executive, Legislative, and Judicial branches of the Federal Government, as well as by our fellow American citizens in the fifty existing United States of America.

Thank you.●

## CRIME VICTIM COMPENSATION

● Mr. BIDEN. Mr. President, yesterday the Senate passed S. 551, as amended. The amendment offered by Senator KENNEDY to S. 551 yesterday was the result of several weeks of negotiations between the staff of the Subcommittee on Criminal Laws which I chair and the staffs of members who had concerns about this bill, including Senators HUMPHREY, MATSUNAGA, WALLOP, and MCCLURE.

The result in an excellent compromise between those who feel that the States should have the prerogative to design their own programs and those who are concerned that certain uniform standards should apply to these programs as a precondition to Federal financing. At the heart of the compromise is a provision that gives any State which has a crime victims compensation program until the end of the next State legislative session to seek any necessary conforming amendments.

Another important feature of the amendment offered today is an effort to take into account the unique problems faced by elderly victims of crime. S. 551 was processed by the Criminal Laws Subcommittee before I was named its chairman and once the bill was reported to the floor it was brought to my attention that at least in one respect the bill

might be strengthened as it relates to elderly victims.

We worked with the National Council of Senior Citizens and other senior citizen groups to improve the bill through the amendment offered by Senator KENNEDY today. The most important feature of the amendment as it relates to senior citizens is the provision that relaxes the minimum claim requirement of $100 for older Americans .

Over 40 percent of senior citizens are at or below the poverty level. As a recent report of the House Select Committee on Aging pointed out, the loss of $20 can represent a much greater relative loss to a senior citizen whose only source of income is his or her social security check. A $20 loss can deprive the elderly person of food, essential drugs or cause a utility bill to go unpaid.

In conclusion I might point out that the concept of a crime victimization program was first experimented in the States not the Federal Government. Indeed Delaware was one of the first States to develop such a program and this legislation is modeled in large part after the Deleware program. Furthermore, Delaware is one State which has a program which is entirely consistent with the proposed Federal statute and if it is enacted Delaware will be immediately eligible for Federal assistance.●

## INTERNATIONAL AIRCRAFT SALES

● Mr. STEVENSON. Mr. President, the Department of the Treasury has responded to two letters from Senators PROXMIRE, BROOKE, HEINZ and myself, concerning excessive and unfair foreign government intervention in international aircraft sales. In several recent cases foreign governments have taken, or are alleged to have taken, actions which violate the letter or spirit of international understandings limiting government measures to secure export sales. Such actions harm U.S. producers and exporters, and can provoke further wasteful competition in government subsidization of export sales.

The Treasury Department has told the foreign governments involved that the United States will insist upon fair trade practices with respect to export sales. The OECD "Standstill" agreement on aircraft sales and the International Arrangement on Export Credits must be strengthened and negotiations to that end are underway. The United States will be prepared to take effective countermeasures if unfair official export credit competition is not curbed.

The International Finance Subcommittee of the Senate Banking Committee, which I chair, has held extensive hearings on export competition and the need for a comprehensive U.S. export policy to meet foreign government-supported export competition. S. 3077, the legislation to extend and enlarge the Export-Import Bank, will strengthen the U.S. negotiating position by providing sufficient authority to meet foreign official credit competition when necessary. I expect the bill to be called up for floor consideration soon and hope the Senate will act promptly in a manner that leaves no doubt abroad that this country will not tolerate foreign volations of international understandings limiting official export credits and other export subsidies.

Mr. President, I ask that the correspondence to which I referred be printed in the RECORD.

The correspondence follows:

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
*Washington, D.C., June 7, 1978.*

Hon. W. MICHAEL BLUMENTHAL,
*Secretary of the Treasury*
*Washington, D.C.*

DEAR MR. SECRETARY: We urge you to exercise your authority under section 303 of the Tariff Act of 1930, as amended by section 331 of the Trade Act of 1974, to initiate a formal investigation of two recent cases in which foreign governments appear to have subsidized, directly or indirectly, the sale of aircraft and aircraft engines to U.S. airlines. The two cases to which we refer are the purchase by Eastern Airlines of 23 A-300-B4 aircraft from Airbus Industrie and the purchase by Pan American World Airways of 12 Lockheed L-1011-500 aircraft.

According to information obtained by the International Finance Subcommittee, Eastern Airlines purchase was arranged by means of a 15-year lease offered by Airbus Industrie in addition to an initial "free trial" period of six months for four of the aircraft. The leasing arrangements and other financing provided by Airbus Industrie would not have been possible without extensive financial underwriting of Airbus Industrie by European governments.

In the case of the Pan American purchase of the Lockheed aircraft, the Subcommittee has been informed that the British Government furnished guarantees of 15-year debt for the full purchase price of the aircraft although the Rolls Royce engines are the only British components of the aircraft. The British Government appears to have violated the terms of the OECD standstill agreement of 1975 with respect to aircraft.

The subsidies provided by foreign governments in both cases may constitute a bounty or grant within the meaning of the statutes which provide for the imposition of countervailing duties upon imports fostered by such bounties or grants. If your investigation reveals that domestic industries have in fact been subjected to unfair competition, we trust you will act promptly to remedy that situation.

The U. S. companies involved, as you know, are reluctant to initiate action in these cases because they fear that foreign governments will find ways to retaliate against the companies' operations abroad. U. S.-headquartered multinational corporations cannot be relied upon to protect our national interests when their international offices and sales are the implicit hostages of foreign governments bent upon capturing U. S. markets at any cost. The responsibility for ensuring that fair trading practices are observed by our foreign competitors rests with public officials.

We hope that you will give prompt attention to this matter. Rumors abound that U. S. aircraft and engine manufacturers are giving fresh consideration to shifting major portions of their production abroad in order to enjoy the benefits of foreign subsidies of international aircraft sales.

With best wishes,
Sincerely,

H. JOHN HEINZ, III,
*Ranking Minority Member.*

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THE SECRETARY OF THE TREASURY,
*Washington, D.C., August 28, 1978.*

DEAR MR. CHAIRMAN: In the Secretary's absence I want to assure you that he and I are in complete sympathy with your letter of June 7, 1978 concerning what we believe to be the danger of excessive government intervention in international trade. The two cases you cited—the sale of Airbus Industrie of A-300's to Eastern Airlines and the sale of Rolls Royce engines to Pan American World Airways for installation on Lockheed L-1011 aircraft—have caused us great concern and are matters which emphasize the need for a broadened and strengthened International Arrangement on Export Credits. Moreover, as you know, we continue to hope for, and work diligently to achieve, international agreement on the use of production and export subsidies affecting trade in the context of the MTN. These cases well illustrate the need for the code we are negotiating.

Whatever terms may have been offered by private industry competitors to Rolls Royce, we do not believe those terms provide a basis for the action taken by the British Government. As you know, the U.K. export credit agency provided a 15-year loan guarantee (which we understand may be reduced to 10 years) for 100 percent of the value of the Rolls Royce engines and a financial guarantee for 100 percent of the value of the Lockheed airframe on the sale to Pan American. Our strong feelings on this matter were conveyed to the British authorities as soon as we found out about it. Subsequently, Secretary Blumenthal discussed our views with Prime Minister Callaghan during his visit here on June 1, 1978.

The British Government formally told us that they hope and trust this instance will prove to be unique. In my reply, I told them that if this should turn out not to be the case, we will have no choice but to initiate a countervailing duty investigation or take other action under our trade laws as we consider appropriate.

With regard to the sale of the A-300 in the United States, we have consistently stated that the Government support of Airbus Industrie sales should be in accordance with the terms of OECD understandings. However, this case is but one being discussed with the Europeans in the light of the general question of aircraft financing and the need to improve the International Arrangement on Export Credits. Secretary Blumenthal strongly emphasized the need for such negotiations at the OECD Ministerial Conference on June 15. On that occasion, he advised the OECD Ministers of our views that the recently concluded International Arrangement on Export Credits—while good in its way—only goes part way to meet the need for eliminating destructive competitive practices in official export financing activities. This Arrangement came into effect in April of this year, but it needs to be strengthened and expanded. The Secretary urged the Ministers to negotiate this year to obtain the necessary substantive improvements.

He left no doubt that if there are no restraints on unfair official export credit competition, and such competition continues to escalate, there will be swift and effective U.S. reaction. One possible action we could take would be recourse to the remedies available under the U.S. Countervailing Duty Law which you cited. The fact that a particular export finance transaction violates an international credit arrangement does not *per se* make the aid a "bounty or grant" under our law. The possible violation of international understandings, however, such as those involved here, provides us with a basis for further examination of the facts and issues.

In this case, we must of course always consider the possibility of foreign retaliation, a matter of particular concern in the aircraft industry where U.S. dominance is perceived abroad—in part due to alleged past U.S. Government subsidies—and where our own sales of aircraft to foreign airlines are enormous. We also must take into account the in-depth discussions occurring in Geneva and in other international forums which are

focusing on these problems. While we stand willing and able to take unilateral action should any of these talks yield no comprehensive resolution to the issues, we must insure that premature unilateral actions do not jeopardize the chances for more satisfactory and long-term solutions.

Sincerely,

ROBERT CARSWELL,
*Acting Secretary.*

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COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
*Wahington, D.C., August 11, 1978.*

Hon. W. MICHAEL BLUMENTHAL,
*Secretary of the Treasury,*
*Washington, D.C.*

DEAR MR. SECRETARY: We have received reports that the French have offered China Airlines landing rights in Paris in exchange for the purchase of the Airbus A-300. Landing rights tied to an aircraft sale would violate the OECD understanding with respect to the sale of aircraft.

We urge you to investigate the allegation and take appropriate action. Aircraft sales should be based on fair competition in conformity with the international rules previously agreed upon by the principal exporting countries.

We look forward to receiving the results of your investigation.

With best wishes,

Sincerely,

WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing, and Urban Affairs.*
EDWARD W. BROOKE,
*Ranking Minority Member.*
ADLAI E. STEVENSON,
*Chairman, Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs.*
H. JOHN HEINZ,
*Ranking Minority Member.*

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THE SECRETARY OF THE TREASURY,
*Washington, D.C., August 30, 1978.*

Hon. ADLAI E. STEVENSON,
*Chairman, Subcommittee on International Finance of the Committee on Banking, Housing and Urban Affairs, United States Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letter of August 11 to Secretary Blumenthal. As he is out of town, I have taken the liberty of answering for him. We appreciate the concern which you and Senators Brooke, Heinz and Proxmire expressed over the reported offer by the French to grant landing rights to China Airlines in exchange for the purchase of the Airbus A-300. As you know, there have been several reports that certain foreign governments may be engaging in unfair competitive practices in the export of aircraft. Such practices are of particular concern to me, and have been under investigation by Treasury staff.

The report that China Airlines has decided to purchase the Airbus is particularly distressing inasmuch as they—according to a press report—had previously considered the Airbus a "third choice" behind the DC-10 and the L-1011. The decision to buy the Airbus would certainly suggest the possibility that special concessions had been offered to make the A-300 more appealing.

Treasury has, therefore, undertaken to investigate the validity of the press and industry reports. Information from our Embassy in Taipei indicates that Airbus Industrie representatives offered to intercede with the French Government to obtain landing rights in Paris. The French, however, have denied that they would offer landing rights in linkage with aircraft sales. They further state that an offer of landing rights would in fact be harmful to their relations with the People's Republic of China. Nevertheless, we are watching developments in this case closely. Should the Airbus sale to Taiwan materialize and be followed by approval of landing rights in Paris for China Airlines, there would be a valid presumption of a linkage.

We have impressed upon the Taiwanese that any linkage of landing rights and aircraft purchases would introduce unfair competition into the market place and thus violate the spirit of OECD understandings on aircraft sales. At present the OECD Aircraft Standstill does not prohibit the use of such special inducements, although they are against the stated policy of both the United States and France. We intend to seek an agreement to broaden and strengthen the International Arrangement on Export Credits, including a better understanding on sales of aircraft, so that only market considerations—price, quality and service—will influence the choice of aircraft by an airline. We hope we have your support in this.

For the present, our approaches through diplomatic channels are intended to encourage both the French and Taiwanese governments to recognize the impropriety of linking landing rights to aircraft sales and to reconsider the wisdom of such offers. If developments in this case are not satisfactory to us, we would intend to take further action.

I want to assure you of our continuing efforts to guarantee an equal competitive opportunity for the American aircraft industry by insisting on fair trade practices by foreign governments in the world market.

Sincerely,

ROBERT CARSWELL,
*Acting Secretary.*●

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## COLUMBIA, THE GEM OF SOUTH CAROLINA

● Mr. HOLLINGS. Mr. President, in the September edition of "Nation's Business" magazine, there appears an article entitled "Columbia, The Gem of South Carolina," which I commend to my colleagues.

It was written by Mr. W. D. Workman, Jr., an old friend and a perceptive observer of the political, economic, and social development of our native State. Bill Workman currently serves as editorial analyst of the State newspaper in Columbia, and for many years he has enjoyed a well-deserved reputation as an outstanding journalist. No one could be better qualified to write about our capital city, and he has done a splendid job in this article.

We hear so much these days about the "New South" and the "Sunbelt" that it seems, at times, as though the South has arrived at its present condition through an almost magical combination of events.

But if the South—and South Carolina—has arrived at the mainstream of American life in the decade of the 1970's, there has been little magic involved. Its strength and security today were not inevitable or automatic consequences. What has moved the South is what has moved Columbia, S.C., for so many years: commonsense government, a hard-working citizenry, an imaginative approach to educational and industrial development, and a dedication to the future.

Though the article describes Columbia as "The Gem of South Carolina," it could just as well be called "The Gem of the South," because it is representative of what is happening everywhere. I congratulate Bill Workman on the article and "Nation's Business" for presenting it, and I ask that it be printed in the RECORD for the benefit of the Senate.

The article follows:

[From Nation's Business, Sept. 1978]

THE GEM OF SOUTH CAROLINA

(By W. D. Workman, Jr.)

Long before Congress created the District of Columbia and engaged the noted French engineer, Pierre L'Enfant, to design the nation's capital, another planned city called Columbia was taking shape in South Carolina. In 1786, the general assembly decided to move the state's seat of government from the historic port city of Charleston to a central site.

Exercising a foresight still appreciated almost two centuries later, the legislators directed Columbia's builders "to lay off a tract of land of two miles square, near Friday's Ferry, on the Congaree River, including the plain of the hill whereon Thomas and James Taylor, Esquires, now reside, into lots of half an acre each, and the streets shall be of such dimensions, not less than 60 feet wide, as they shall think convenient and necessary, with two principal streets, running through the centre of the town at right angles, of 150 feet wide. . . ."

RAVAGED BY FLAMES

By 1790, when Congress initially established the District of Columbia, South Carolina's legislature was convening in Columbia.

There is another parallel between Columbia and the District of Columbia: Both capitals were ravaged by flames after being overrun by invading armies. Washington's ordeal by fire came in 1814 from the British; Columbia's came in 1865 during a brief visitation by the Union forces under Gen. William Tecumseh Sherman. After what might be called an early federal urban renewal program, Columbia rose from the ashes and began a pattern of growth that is best described as progress by design.

Much of that progress can be attributed to favorable climatic, physical, and political features. Columbia's location in the center of the state makes it a natural marketing center, easily reached from the mountains or the sea. The central location also affords Columbians convenient vacation spots along the Atlantic coast or within the Blue Ridge mountains.

"We can be at the beach in two hours with no crowds," says Mrs. Ruth MacLean, who, with her doctor husband, came to Columbia from Canada five years ago. Dr. Lloyd MacLean, a urologist at Lexington County Hospital, used to have to drive more than 100 miles to go hunting. Now he travels only a few miles into the mountains to pursue one of his favorite pastimes.

As the seat of state government, Columbia has a stable tax income, direct and indirect. This is not an unmixed blessing, however, because property owned by the state produces none of the ad valorem taxes needed to sustain city and county services.

A similar mix of gain and loss characterizes the considerable acreage occupied by colleges and universities within the Columbia area. The venerable University of South Carolina, charactered in 1801, accounts for 222 acres of untaxed land immediately adjacent to the capitol complex. But, on the positive side, the university's enrollment of 23,500 students at the Columbia campus, coupled with a faculty of 1,350, constitutes a continuing and predictable economic asset.

Besides the economic benefits, USC contributes meaningfully to the intellectual, social, cultural, and recreational life of Columbians, as do other institutions of higher learning in the area, including Columbia College, the Lutheran Theological Southern

Seminary, Columbia Bible College, Allen University, and Benedict College.

"It's exciting living in a university town," says Rhonnie Newton, who moved to Columbia when her husband, Will, became general agent for Connecticut Mutual Life Insurance Co.

"The university attracts people skilled in many areas. We really enjoy being in an academic community where things are happening, and new ideas are whirling."

TRAINING FOR TODAY

Another category of higher education is that state's technical education. Conceived in 1961, that system was designed to provide workers with the technical training demanded by modern industry. Today, 16 Technical Education Centers—some identified as TEC college—operate throughout the state. Altogether, they have trained about 700,000 South Carolinians—male and female, young and old, black and white—for jobs in fields ranging from air conditioning to nuclear engineering.

Midlands Technical College has one Metropolitan Airport in Lexington County, and a third opening this winter in Harbison on the northwestern fringe of metropolitan Columbia. A fourth campus is projected for 22 acres near the intersection of U.S. 21 and Interstate 77 northeast of Columbia.

One notable feature of the TEC program is the tailoring of special training courses for particular industries. While a new plant is being constructed, its work force is being trained—through state and corporate cooperation—in the technologies required to operate the plant. More than 480 industrial establishments have benefited from this special feature.

EXPLOSIVE GROWTH

Through its Economic Development Commission, Columbia has shared substantially in South Carolina's industrial development. The annual industrial product for the Columbia Standard Metropolitan Statistical Area increased from $170.5 million in 1960 to $1.16 billion in 1976.

A significant aspect of this increase is the growth of industries other than textile plants which have long dominated the South Carolina scene. Today, textiles make up about eight percent of the Columbia area's total industrial product, compared to 29 percent only 18 years ago.

A brief roll call of some of the larger industries in the two counties discloses some familiar names. Anchor Continental, Inc. Hewitt-Robins, Hobart Manufacturing, Rockwell International Corp., Stone Manufacturing Co., Inc., Square D Co., and Westinghouse are in Richland County.

Allied Chemical Corp., Burlington Industries, Inc., Menco/Electra, Inc. (a subsidiary of North American Philips Corp.), Canron, Ltd., Colite Industries, Inc., Horsman Dolls, Inc., Monroe Calculator, and NCR Communications Division are in Lexington County.

Nassau Recycle Corp., a Western Electric affiliate and recent addition to that list, moved its corporate headquarters as well as plant to the Columbia area. So did Artex Hobby Products, Inc., and Wheel Trueing Tool Co.

"Our employees relate very much to our plant and are genuinely interested in its being a success. As a result, they have a great attitude, which results in excellent productivity. This attitude and pride are very common in the area and contribute to the success of most companies that have located here."

Simultaneous with this industrial movement has been a series of continuing economic studies to determine how Columbia and the metropolitan area might improve municipal services, involve the total community in progressive development, and avoid the urban blight and fiscal crises which have plagued many American cities.

SURVEYS OF PROGRESS

Columbians periodically survey their assets and liabilities, weigh progress against potential, and attempt to reconcile past planning with contemporary conditions. In 1905, for example, landscape architects from Boston were brought in to assess how much Columbia was deviating from its original pattern and to devise a plan for land use and urban development compatible with a "new kind of tomorrow."

Similar surveys have been conducted repeatedly ever since, especially in the past two decades. The sponsoring organizations have changed, but almost always the groups have involved both public and private sectors in the two-county area.

In 1959, the Columbia-Richland County Industrial Development Commission engaged an economic research firm to assess the development potential of the Columbia area. Two years later, the Columbia City Planning Commission produced its own comprehensive report, "In Step With Tomorrow."

TRANSPORTATION NEEDS

The year 1965 brought forth another survey, the "Citizens' Design for Progress," which involved hundreds of Columbia's business, professional, civic, and government leaders. Within six months, yet another report, this one called "The Economy of Metropolitan Columbia," was in circulation.

A study of the area's transportation needs was made in 1966; by then the spectacular growth of the two-county region had spawned traffic and parking problems. The Columbia Area Transportation Study sought not only to cope with the burgeoning development but also to anticipate future growth patterns.

Another specialized study was made in 1969, this one on the continued viability of the downtown area in the face of proliferating and attractive shopping centers and malls around the perimeter of Columbia. Local architects, engineers, and planners were involved in the study, which became known as the Doxiadis report. Recommendations ranged from the obvious to the imaginative, from short-range to long-term, and from the generally acceptable to the highly problematical.

The most spectacular consequence of the Dioxiadis report has been the revamping of Main Street, a costly project which converted a conventional main drag into an artistic thoroughfare replete with flowers, trees, floodlights, and a mall atmosphere which caters to both pedestrian and vehicular traffic, although buses and other through traffic have been diverted away from Main Street.

Other goals include the concentration of city, county, and federal government offices in a complex at the other end of Main Street from the capitol complex.

More distant goals are the development of the large tract between the central business district and the Congaree waterfront, the channeling of railroad and vehicular traffic into corridors, and the provision of middle and upper-income housing in the downtown area.

There is increasing interest in converting the upper floors of stores on Main Street and nearby into apartments for those people who want to live downtown. Along with this interest is a continuing project to refurbish the facades of the Main Street stores. The Capital City Development Foundation provided much help toward these goals in directing the Main Street renovation. But, in recent months, the foundation has gone out of business.

J. Willis Cantey, the banker who headed the organization during its restructuring of Main Street, feels that its own mission has been accomplished. He wants the foundation leadership and staff to turn to other projects suggested in the Doxiadis and similar reports.

SYMPTOM AND STIMULUS

The spectacular increase in air traffic at Metropolitan Airport, which is served by Delta, Eastern, Southern, and Piedmont airlines is a symptom and a stimulus of the area's growth.

The annual passenger flow in and out of the airport has increased by more than 100,000 since 1975 and now exceeds 800,000 a year. The tonnage of mail and cargo has also increased.

In the course of its growth since the end of World War II, Columbia has gained intermittent national recognition. In 1951, Columbia was designated an All-American City in the competition sponsored by the National Municipal League. In 1964, there was a repeat performance. Broadcast executive Charles A. Batson, then president of the Greater Columbia Chamber of Commerce, praised the city for again winning national laurels. But he reminded his fellow citizens that there remained another Columbia, which needed constant attention to stave off urban blight, raise per capita income, increase civil facilities, and meet the challenge of a burgeoning metropolitan area.

"Let's enjoy to the fullest this wonderful All-American recognition," he said. "Then let's get back to work."

Back to work it was, with the goal of convincing the nation that Columbia was, in the words of then Mayor Lester L. Bates, "the South at its best." During the next decade, the Columbia area became one of the leaders of the emerging Sunbelt. Just last May, Columbia was listed eighth among the top ten U.S. cities with the most favorable growth prospects.

One Columbian deeply involved with the city's achievements and challenges is John T. Campbell, who served two terms as mayor (1970–78) after two four-year terms on the city council. A pharmacist and drugstore proprietor, Mr. Campbell is proud not only of Columbia's dramatic growth but also of the city's ability to hold the line on taxes.

LOW TAX INCREASES

"During the eight years that I was mayor," he says, "we had only two small increases—nothing like the rate of inflation. We have had less tax increase in Columbia than any city in the Southeast.

"I received some criticism for using federal revenue sharing money to help operate the city, but, after all, those federal funds were designed to help local people, and I don't know of any better way to help them than to keep taxes down. We made a lot of capital improvements, too, but we tried to keep the costs of government to a minimum."

The former mayor sees one major obstacle to further development of the central city. An essential element of the Doxiadis report is conversion of the acreage fronting on the Congaree River into a residential area, with recreational facilities. Such a conversion close to downtown Columbia would help to rejuvenate the central city.

The big roadblock is the location in the riverfront area of the grim and gray state prison known as CCI (Central Correctional Institution).

"Once we get CCI out of that location," says Mr. Campbell, "we'll see the entire area west of Main Street blossom into a tremendous development. Those 28 acres occupied by CCI are holding up the whole thing. It all depends on what the state does."

LOBBYING IN WASHINGTON

Columbia's present mayor, Kirkman Finlay, Jr., has some ideas of his own on that subject. He sees the need for closer coordination with state and Federal governments.

"We need someone to lobby systematically for our best interests, and I intend to do that—not just with our state legislators but with those who represent us in Washington."

Mayor Finlay will need that kind of help with the long-range goal of rechanneling the railroad tracks which penetrate the city. The costs involved in such a massive undertaking will require much more money than can reasonably be expected from the city and from the railroads, which have no financial incentive to invest the large sums needed.

Mayor Finlay shows even greater enthusiasm, however, for the development of 1,000 under-utilized acres between the main business district and the Congaree riverfront. He believes that this area has great potential for residential and commercial use. Development would include a green belt of parkland extending from the river almost to Main Street.

The mayor is convinced that Columbia can continue to gain population, productivity, and reputation without sacrificing the city's historic assets. He sees a positive developmental opportunity in restoring and revitalizing the many historical residences and other structures in the central city area. Already, a number of former residences have been converted into legal, medical, or business offices, thus preserving the traditional appearance of the structures while providing needed work space.

PRESERVING HISTORY

Much credit for this rehabilitation rather than demolition goes to the Historic Columbia Foundation, an organization supported by 1,000 individuals, corporations, and civic and professional groups. The foundation raised $700,000 in the early 1960's to restore the handsome Classic Revival house designed in 1823 by Robert Mills, an architect and engineer who also designed the Washington Monument and the Old Treasury Building in the nation's capital.

Today, the Mills house is visited annually by 15,000 to 20,000 people, many of whom also see the Tuscan villa-style residence nearby where President Woodrow Wilson lived as a boy.

Columbia's cultural appetitie has long been satisfied—and whetted—by the Columbia Museum of Art. Its exhibits, lectures, and classes have been matched in another cultural realm by the Columbia Music Festival Association's presentation of ballet, lyric opera, and symphonic music.

Ultimately, Columbia hopes to have its own center for the performing arts. Current expectations hinge on the admittedly ambitious prospect of establishing such a center in the area scheduled for development along the Congaree riverfront.

The underdeveloped potential of that riverfront is one of the major concerns of the new president of the Greater Columbia Chamber of Commerce. Robert L. Gandy, Jr., president of the Richtex Corp., wants the chamber to play a major role in bringing about such development.

CONSOLIDATION CONSIDERED

As another major objective, Mr. Gandy wants to develop greater coordination, perhaps leading to consolidation, of the municipalities in the greater Columbia area. That possibility has long been discussed—and cussed—by city and county political leaders, but prospects are much improved today. Columbia City Council and Richland County Council are conferring about specifics such as providing fire protection, sewer and water lines, and other services to the urban areas outside the city limits.

Whatever the obstacles and the opportunities, the business, civic, and governmental leadership of the two-county community is determined that the Columbia area will continue its progress by design.●

## OLD DEFENDERS DAY

Mr. MATHIAS. Mr. President, September 12 is Old Defenders Day in Maryland. It is one of the State's most significant holidays because it marks the anniversary of the battles of North Point and Fort McHenry where the resolute and gallant citizens of Baltimore successfully defended the city against the British onslaught. Those battles were a turning point in the War of 1812. They are a proud chapter in the history of Baltimore, of Maryland and of our country.

As we celebrate Old Defenders Day, it is sweet to reflect on these past glories. But we would badly serve the memory of the heroic men and women who defended North Point and Fort McHenry if, on Old Defenders Day, we did not also consider contemporary questions of defense as well.

Today, there is no more serious defense issue on our national agenda than the SALT II agreement being negotiated at Generva. And that treaty is in trouble.

SALT is under attack from a number of directions, but it suffers especially because the administration has not made a strong case for it. The President, of course, is hampered in this by not having a completed agreement to defend. But it is not really necessary for the President to go into the details of this particular agreement in order to let the American people know that the issue itself is absolutely vital. A world with the capacity for the ultimate crime of total genocide should not hesitate too long before renouncing that fatal course. For the sober, the prudent, the wise, the courageous, all know there is no alternative to a cooperative effort to end the arms race.

My greatest hope for this Old Defenders Day 1978 is that the President of the United States will take the lead in moving this country toward the conclusion of a SALT II agreement that will enhance our national security. Otherwise, there may some day be something far worse than those old-fashioned "bombs bursting in air" above Fort McHenry as they did 166 years ago today.

## CENSORSHIP OF ADMIRAL HOLLOWAY

Mr. THURMOND. Mr. President, administration efforts to suppress the views of our military leaders reached a new high this summer when attempts were made to muzzle the retiring Chief of Naval Operations, Adm. James L. Holloway III, in his farewell address at the Naval Academy July 1.

Columnists Rowland Evans and Robert Novak reported on these events in the September 4, 1978 issue of the Washington Post newspaper under a heading entitled "Washington's Naval Battle."

This article reveals previously unreported events by the Carter administration to muzzle the Navy's leadership in their determination to maintain U.S. Naval supremacy against arms control advocates in the Pentagon, White House, and Arms Control and Disarmament Agency.

First, President Carter denied Admiral Holloway the usual end of tour courtesy visit by a retiring Chief of a military service apparently because the Admiral insisted on his final speech including the words "maritime superiority."

Evans and Novak reported in their column that when Admiral Holloway submitted his farewell remarks for review he was informed that five references to "maritime superiority" must be eliminated or softened. Holloway appealed this ruling making clear he would talk about "maritime superiority" with or without approval. All but one of the changes was then rescinded.

Mr. President, this column also reveals the blanket opposition within the Navy to the administration's shipbuilding policies. It further points out the pressure being placed on the new Chief of Naval Operations, Adm. Thomas Hayward, to support the administration drive to ax the nuclear carrier and cut back on earlier supported shipbuilding plans.

In announcing his veto of the nuclear carrier President Carter made the statement that not one of his advisers favored it. When one looks at his advisers, this is not a surprising statement. The military leaders with experience in these matters are being shut out. They are not only being denied access to the President, they are also being censored within the Pentagon itself.

These events are similar to those of the days of former Defense Secretary Robert McNamara who put such a muzzle on military leaders Congress eventually held hearings aimed at breaking this effort. While civilian authority must be supreme once decisions are made, military leaders must be free to give their views to the President rather than shut out as was done in the case of Admiral Holloway.

Many of the McNamara appointees are back in the Pentagon in key positions. Their influence has damaged our already weak defense programs in the past 2 years, and they would be doing more if they thought they could get away with it. Now is the time for Congress to send them a message that such policies will not be tolerated.

Mr. President, I ask unanimous consent that the Evans and Novak article cited earlier be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WASHINGTON'S NAVAL BATTLE

President Carter's effort to put a short leash on his admirals has run into their determination to maintain U.S. naval supremacy against arms-control pressures inside the administration.

Adm. Thomas B. Hayward, newly installed Chief of Naval Operations, is caught in the middle. On Aug. 18, he gave verbal orders to senior officers not to speak out against the president's veto of the defense bill (which authorized a new nuclear aircraft carrier of the Nimitz class). But those orders evoked such anger in the Navy that Hayward's private memo to flag officers a week later was an exercise in ambiguity that avoided clear support of the president.

In truth, the naval brass clearly support an override of the president's veto with nothing less at stake than naval superiority—not mere equivalence with the Soviet fleet. Arms-control advocates dominating the national-security bureaucracy oppose naval supremacy as inimical to U.S.-Soviet strategic balance. To admirals and arms controllers alike, the

nuclear carrier is integral to naval supremacy.

The conflict resulted in peculiar circumstances attending the retirement of Hayward's predecessor, Adm. James L. Holloway III, two months ago. Holloway, who advocates a nuclear carrier, was denied the visit with the president traditionally accorded to a military chief completing his term.

Even more revealing was Holloway's experience in making farewell remarks at Annapolis July 1. Submitting prepared remarks to the office of the secretary of defense June 28, the admiral was informed that five references to "maritime superiority" must be eliminated or softened. An aide to Holloway snapped that Pentagon civilians would have midshipmen exhorting their football team to "tie Army" next year.

Holloway appealed the blue-pencilling, making clear he would talk about "maritime superiority" at Annapolis, with or without approval. Deputy Assistant Secretary of Defense Tom Lambert rescinded all but one of the changes but insisted on keeping one.

Hayward had been no less an advocate than Holloway of naval supremacy and the nuclear carrier, but encountered new White House determination to leash the Joint Chiefs of Staff. That resolve hardened after the defense-bill veto became a centerpiece of the president's campaign for political rehabilitation.

Accordingly, meeting with several assistant chiefs and other flag officers at the Pentagon Aug. 18, Hayward supported the veto and ordered the officers not to help the override. His motives seem clear: not to jeopardize White House backing for a conventionally powered (non-nuclear) carrier next year. Besides, the president's veto then seemed sure to be sustained.

But Hayward was rocked by criticism from naval officers over his capitulation to Mr. Carter just as support for the override was building in Congress. The result was an Aug. 25 "confidential" memorandum from Hayward (signed "Tom") for "eyes only" of the Navy's flag officers. It is a masterpiece of obfuscation.

"Our fundamental goal at this point must be to preserve the momentum already obtained for the early authorization and funding of a follow-on carrier to replace [the] Midway," Hayward told his fellow admirals. "My position has been, and remains, that we must start as soon as possible on a replacement for Midway, and that the replacement must be at least as capable as the ship replaced." This Delphic utterance falls obviously short of Defense Secretary Harold Brown's desire that a conventional carrier be endorsed.

Nor does Hayward's memo flatly instruct the admirals to stay clear of the veto override fight, saying instead: "It is important that we refrain from any actions that could jeopardize the existing basic support for a follow-on carrier, or diminish our influence over decisions relating to it." This could be interpreted as follows: If you lobby to override the veto, don't get caught.

Although hard-nosed admirals feel Hayward abandoned naval interests, it is doubtful whether he could do more under the intense pressure he faces—as when he attended the Armed Forces Policy Council meeting Aug. 28. Deputy Defense Secretary Charles Duncan instructed all present to help sustain the president's veto (informing them they would be coordinated by Richard Moe, political aide to Vice President Mondale).

The admirals view such activity as incompatible not only with traditions of American naval strategy, as laid down by Adm. Alfred Mahan, but with Defense Department Directive 5100.1 instructing the Navy "to gain and maintain general naval supremacy." In a difficult hour, Hayward's memo avoids violating that trust.

## U.S. POLICY TOWARD ARGENTINA

Mr. THURMOND. Mr. President, U.S. foreign policy must not be structured in such a way as to drive friendly governments into situations where they become easy prey for a Communist takeover.

Recent testimony before Congress by Assistant Secretary of State Patricia Derian was most damaging to continuance of friendly relations with Argentina as well as other South American allies.

Secretary Derian, a key proponent of President Carter's human rights policy, is using this policy in such a way that the effect is to encourage revolutionary forces and possible Communist takeovers in South America.

While every American is concerned about the human rights of all people, most of us know that human rights amounts to zero if the Communists gain control. If our human rights policy leads to or encourages Communist takeovers the end result is to reduce those values we all cherish for many people in foreign lands.

Mr. President, a column by Rowland Evans and Robert Novak entitled "Undiplomatic Incident" on this subject appeared in the September 6, 1978, issue of the Washington Post newspaper. I ask unanimous consent it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

"UNDIPLOMATIC" INCIDENT

A thrice-repeated but unsubstantiated indictment of Argentina by Assistant Secretary of State Patricia Derian testifying publicly before Congress reveals the shattering impact on U.S. foreign policy of human-rights crusading.

Under questioning Aug. 9 by the House inter-American affairs subcommittee, human-rights chief Derian responded with language seldom used by one friendly power to another, accusing the Argentine regime of killings, kidnappings and torture. So harsh was her language that the State Department tried to expunge it from the record. But apart from being undiplomatic, there is considerable doubt of accuracy.

The impact could prove tragic for U.S.-Argentine relations and perhaps for Argentina itself. Moderate and pro-U.S. elements within the Argentine junta have been weakened; deterioration of the U.S. position in the strategic southern corner of South America has been accelerated.

This cannot be dismissed as merely unfortunate ardor by an idealist unfamiliar with diplomacy. Deterioration of U.S. relations with Brazil, Chile and now Argentina too closely follows the scenario of Latin American specialists in the Carter administration who privately predicted the human-rights crusade would foster the left in the Western Hemisphere.

Concern that the human-rights tail is wagging the foreign-policy dog is spreading in both the administration and Congress. On Capitol Hill, growing attention is paid to the imminent loss of up to $1.4 billion in sales to Argentina—including $620 million in Export-Import Bank transactions.

So, when Derian testified Aug. 9, she was asked by subcommittee chairman Gus Yatron (D-Pa.) why her human-rights office recommended against the Export-Import Bank loans. Even Derian's own aides were taken aback by her answer.

"The reason for our advice was the continuing violation of basic human rights by Argentina. The systematic use of torture, summary execution of political dissidents, the disappearance and the imprisonment of thousands of individuals without charge, including mothers, churchmen, nuns, labor leaders, journalists, professors and members of human-rights organizations."

Moments later, Derian repeated her indictment, adding "kidnappings" and "unwarranted killings" this time. In her soft Mississippi accent, she read the litany a third time, concluding, "We see nothing to indicate that there is a genuine trend toward human rights."

Horrified officials in the State Department's Inter-American Bureau crossed out Derian's indictment in the transcript, but it was too late. Word had gone to Argentina, where Pat Derian has become a household word. The U.S. ambassador in Buenos Aires was called in for a stiff protest; the Argentine ambassador in Washington was called home.

The tragedy is that Derian's outburst may well weaken the junta's relatively moderate elements headed by the president, Gen. Jorge Rafael Videla, and strengthen the extreme right. While President Carter's human-rights admonitions probably have improved conditions in Argentina, the point of diminishing returns has been reached.

Apart from undiplomatic ravages, was Derian telling the truth? Her office insists the Argentine junta has "executed 3,000 persons since seizing power in 1976 and at least another 5,000 persons are missing." But those figures come from private sources of dubious reliability. U.S. government bureaus with vastly more experience than Derian's say the figures cannot be verified and seem inflated.

Actually, the junta, in confronting bloody far-left revolt in 1976, used an iron fist to prevent a communist takeover. But many killings and kidnappings are traceable to rightist paramilitary groups not under government control and should not be counted as government "executions." Moreover, objective observers agree that Argentina's human-rights record has improved markedly in the past year.

Those nuances are disregarded by Derian's office. While unable to draw distinctions between moderates and extremists inside the junta, the human-rights crusaders claim that military rule in Argentina cannot last much longer and that the United States should disengage from the Junta. Such a prospect is rejected by Latin American experts, whatever their ideology.

But behind the naiveté, a pattern emerges. Before Carter took office, a prediction was made by Brady Tyson, now with the U.S. mission to the United Nations, that human rights would be used to support revolutionary forces in the hemisphere. An identical prediction was made privately last year by Robert Pastor of the National Security Council staff. Derian's undiplomatic incident could help fulfill those prophecies.

## THE MIDDLETON FAMILY AND MIDDLETON PLACE

Mr. THURMOND. Mr. President, I find it most heartening in these days when we are struggling to find solutions for today's problems in this great Nation that there are still those American citizens who serve us well by reminding us again of the great leadership and sacrifices of the Founding Fathers of this Nation. My particular reference here is to an article written by Mr. Horace Sutton of United Press International and appearing in the Washington Post on September 10, 1978. The article is titled, "A Place Worth a Detour."

Mr. Sutton's article is directed primarily to describing the beauty and the history of Middleton Place, including its gardens of unusual splendor and beauty, near Charleston, S.C. It is indeed a glorious place to visit and to feel again the grandeur and historical significance of this cradle of earliest America. The gardens were begun in 1741 by Henry Middleton, the president of the First Continental Congress.

Middleton Place is a centerpiece of southern American history and threaded through it all is the Middleton family. Edward Middleton emigrated from England to Barbados and then on to South Carolina in 1678, 300 years ago. It was his grandson, Henry Middleton, who represented South Carolina at the First Continental Congress and who actively opposed the British. One of the signers of the Declaration of Independence was Henry's son, Arthur.

Mr. President, the courage, loyalty, and responsibility of these great American leaders is an inspiration to all of us as we attempt to serve this Nation today.

The attached article by Mr. Sutton provides additional information about Middleton Place and the illustrious Middleton family.

Mr. President, I ask unanimous consent that the article to which I have referred be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A PLACE WORTH A DETOUR

(By Horace Sutton)

MIDDLETON PLACE, S.C.—Plantation life in the Old South may evoke images of Tara, "Aunt Jemimah" cooks in white aprons and red kerchiefs scurrying about the halls, and field hands picking cotton. But the serenity and the elegance that come to life here at Middleton Place are of a different sort.

The soft hand of style is everywhere, and the grandeur of European influence is surely reflective of what its creators had seen in the great gardens of France and England. It is a sight that remains today as purely refined as anything on the continent. In the imperative words of Michelin, that French arbiter of taste, style and public interest, Middleton Place is worth a detour.

Fourteen miles from downtown Charleston, and nearer still to the airport that serves the city, Middleton Place is a broad expanse of splendid gardens, a family seat that watched over the fortunes of 20 other rice plantations. It still maintains the stableyards, and the Gentlemen's Guest Wing, a handsome red brick house that after the Civil War served as the family residence.

Threaded through it all is the Middleton family, an illustrious lot that served government, country and region as loyalty and responsibility dictated. It was Henry Middleton, the president of the First Continental Congress, who began the gardens in 1741. The use of slaves in the English colonies was common then, and it took over 100 workers more than a decade to create the ornamental lakes, the velvet green terraces and the grand allees that cover 65 acres of formal gardens.

Visitors who come now park near the long Reflection Pool. From there one can promenade through allees like green tunnels perfumed in January and February with camellias.

The 19th-century azaleas come in March and April, then the magnolia, the roses and the mountain laurel. Crepe myrtle is summer's bloom, and through it all, as a green backdrop, are the pines, the palmetto and the live oak.

The Great Middleton Oak, beyond the formal Sundial Garden, is a huge canopy of a tree reputed to be over more than 900 years old, a growing relic that had its origins in Indian days and survived good and bad through Middleton's historic years. It stands 85 feet high, its limbs reaching out for 145 feet, a growing, living symbol of durability.

Middleton Lake commands a site above the Ashley River, flowing by and providing the irrigation for the rice fields, for Rice Mill Pond and for the Butterfly Lakes, those delicate ornamental ponds spread like wings just below the broad green terraces, descending from the ruins of the Great House.

Edward Middleton started it all, emigrating from England to Barbados and then on to South Carolina in 1678. His son Arthur was an activist who begat Henry. Middleton Place was part of the dowry of Henry's wife, Mary Williams. It was Henry who represented South Carolina at the First Continental Congress and Henry who rebuffed the British.

His son Arthur, educated in England, and both cultivated and radical, signed the Declaration of Independence. Arthur's son, the so-called second Henry, served in the state legislature, became governor of South Carolina and then America's first minister to Russia.

Henry's friends, the French botanist Andre Michaux, brought the first camellias to Middleton in 1786. Williams Middleton, Henry's son, signed the Ordinance of Secession, and so when Sherman's troops came through, they put the torch to the plantation. Only the Gentlemen's Wing survived and it became the main house.

Restored now to much of its glory, Middleton Place fairly throbs with southern American history—the riches brought by rice, indigo and cotton, the battle against the British and the civil struggle.

The stableyards have been recreated and enlivened with farm animals. There is a fowl house and hog crawl and a blacksmith shop as well as sheep, goats, rabbits, peacocks and a wagon pulled by mules.

All sorts of events are celebrated on the grounds at Middleton Place—a Greek festival in spring, a Highland gathering in late September, a lancing tournament in October and plantation days in November. But best of all is Arthur Middleton's birthday, celebrated in June with colonial lawn games, a concert of 18th-century music he'd by the Butterfly Lakes and a torchlight tour of the gardens.

A fife and drum corps parades in revolutionary rig on Arthur's birthday, and muskets are fired when the field music is played. It pleases the revolutionary bones of Arthur Middleton, buried on the grounds in a shady glen.

## MODERN WAR TECHNOLOGY NECESSITATES A GENOCIDE TREATY

Mr. PROXMIRE. Mr. President, for the past several years I have urged ratification of the Genocide Convention. The purpose of the treaty is to make the "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group" an international crime.

Today the threat of genocide is greater than ever before. The numbers of people and conflicting beliefs continue to grow. The biggest and most frightening development, however, has been in the weapons of war. Modern technology has given us a wide array of techniques which make it easier than ever to selectively eliminate particular groups.

Biological warfare, particularly germ warfare, can be selectively targeted. In the French and Indian War, masses of Indians were purposely killed by giving them blankets infected with smallpox. The tragedy of this genocidal use of biological warfare is increased when we consider the many other tactics available to make genocide an easy feat. Chemical warfare and nuclear warfare are grave tools of war. We cannot forget the instant destruction of Hiroshima and Nagasaki. Add to these methods of warfare, conventional weaponry, which Hitler proved unquestionably effective in wiping out millions of innocent people.

It is obvious that the world's rapidly advancing war technology compels us to act. We have no hesitancy about working from the strategic end—the SALT talks. Why then are we so hesitant to condemn the actions which would make use of weaponry? The Genocide Convention is a treaty which gets at the core of the issue; it condemns genocide and genocidal attempts and morally obligates those who sign it to do all they can to prevent these heinous murders. The United States has not done this. What must the rest of the world think of us?

Mr. President, 82 other countries have ratified the Genocide Convention because they know it is a valuable foundation for international harmony, an expression of international morality we all can, and must, share in order to survive.

## APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mr. STEVENSON). The Chair, on behalf of the President pro tempore of the Senate, pursuant to Public Law 94-201, appoints Mr. Clement John Sobotka, Jr., to the Board of Trustees of the American Folklife Center, effective January 3, 1979, for the remainder of the term which expires March 1982, in lieu of Mr. John Voight.

## SPECIAL ORDER FOR THURSDAY, SEPTEMBER 14, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Thursday, after the two leaders have been recognized under the standing order, Mr. KENNEDY be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RESUMPTION OF CONFERENCE REPORT ON NATURAL GAS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees are recognized under the standing order tomor-

row, the Senate resume its consideration of the conference report on natural gas pricing.

The PRESIDING OFFICER. Without objection, it is so ordered.

### RECESS TO 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 10 o'clock tomorrow morning.

The motion was agreed to; and at 6:33 p.m. the Senate recessed until tomorrow, Wednesday, September 13, 1978, at 10 a.m.

### NOMINATIONS

Executive nominations received by the Senate September 12, 1978:

INTERNATIONAL MONETARY FUND

G. William Miller, of California, to be U.S. Alternate Governor of the International Monetary Fund for a term of 5 years, vice Arthur F. Burns.

CIVIL AERONAUTICS BOARD

Marvin S. Cohen, of Arizona, to be a member of the Civil Aeronautics Board for the remainder of the term expiring December 31, 1979, vice G. Joseph Minetti.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Armando M Rodriguez, of California, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1983, vice Lowell W. Perry.

DEPARTMENT OF STATE

Ambler Holmes Moss, Jr., of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Panama.

# HOUSE OF REPRESENTATIVES—*Tuesday, September 12, 1978*

The House met at 12 o'clock noon.

Father Warren F. Braun, State chaplain, State of Florida Veterans of Foreign Wars, Pompano Beach, Fla., offered the following prayer:

Let us pray.

We ask Your blessing, Almighty God, on this opening session of Congress and beg that this blessing continue as long as the people act so as to deserve good men representing them in a government operating under God's grace. Relying on the purity of their intentions, the justice of their cause, and the integrity and intelligence of the people, our Founding Fathers established the Congress of the United States under an overruling providence which has so singularly protected our country to this very moment. Divine being, supreme over all, patron of order, fountain of justice, continue Your blessing on this Nation and the men responsible for its laws so their acts may always be consistent with the ends of Your providence. Amen.

### CALL OF THE HOUSE

Mr. ASHBROOK. Mr. Speaker, under clause 1, rule I, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. WRIGHT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 753]

| | | |
|---|---|---|
| Ambro | Dickinson | Ireland |
| Ammerman | Diggs | Johnson, Colo. |
| Andrews, N.C. | Dingell | Kasten |
| Archer | Dodd | Kemp |
| Armstrong | Drinan | Kostmayer |
| Ashley | Edwards, Calif. | Krueger |
| Barnard | Fary | Leach |
| Bellenson | Fish | Leggett |
| Breaux | Fithian | Lehman |
| Brown, Mich. | Flowers | Long, Md. |
| Brown, Ohio | Ford, Tenn. | McCloskey |
| Burke, Calif. | Forsythe | McDonald |
| Burke, Fla. | Fraser | McKinney |
| Burton, John | Frey | Mathis |
| Butler | Fuqua | Meeds |
| Byron | Garcia | Mikulski |
| Cederberg | Gibbons | Miller, Calif. |
| Chisholm | Goldwater | Mitchell, Md. |
| Clawson, Del | Hansen | Murphy, N.Y. |
| Clay | Harrington | Ottinger |
| Cochran | Harsha | Pepper |
| Conyers | Heckler | Pursell |
| Davis | Holtzman | Quie |
| Delaney | Huckaby | Railsback |
| Rangel | Shuster | Traxler |
| Richmond | Skubitz | Tsongas |
| Risenhoover | Spellman | Tucker |
| Rodino | St Germain | Udall |
| Rudd | Stockman | Van Deerlin |
| Santini | Stokes | Vander Jagt |
| Sarasin | Stratton | Waggonner |
| Sawyer | Stump | Wiggins |
| Scheuer | Symms | Young, Alaska |
| Shipley | Teague | Zeferetti |

The SPEAKER. On this rollcall 330 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

### MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 8112. An act to repeal chapter 27 of title 44, United States Code; and

H.R. 12915. An act to amend section 2301 of title 44, relating to the National Archives Trust Fund Board.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3816) entitled "An act to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes."

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 3447. An act to strengthen the economy of the United States through increased sales abroad of American agricultural products.

### FATHER WARREN F. BRAUN

(Mr. YOUNG of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YOUNG of Florida. Mr. Speaker, in the absence of my colleague, J. HERBERT BURKE, I would like to introduce Father Warren F. Braun who offered the opening prayer for the U.S. House of Representatives today. Father Braun is the State chaplain of Florida's Veterans of Foreign Wars. He retired to Florida for health reasons after many years of service in the Youngstown, Ohio, diocese, and despite his health problems has been vigorously active in community affairs.

Father Braun was born and raised in the Pittsburgh, Pa., area, the son of a professional baseball player. He attended Duquesne College and St. Mary's of the West and enjoyed a career as a professional dancer for seven seasons prior to being ordained in the Catholic Church.

He has always been active in veterans organizations. He is a past national chaplain of the Veterans of Foreign Wars and chaplain emeritus of the VFW in Ohio. Although Father Braun is now a Floridian, many of you may know him from Ohio or Pennsylvania or from his fine work with the VFW.

His accomplishments have been many and his friends are legion. It is an honor and privilege to know this man of God and I hope you will make him welcome in Congressman BURKE's absence. The Florida primary is today and regrettably Congressman BURKE will not be able to hear Father Braun's prayer, but I know he will read it when it is published.

### MILITARY POST EXCHANGE PRIVILEGES

(Mr. DAN DANIEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAN DANIEL. Mr. Speaker, for a number of years now, military personnel and critics of the Department of Defense have questioned that there is a financial advantage from shopping at post exchanges. Recently I have obtained the results of a survey showing Armed Forces personnel save an average of 22 percent on items purchased from Army-Air Force Exchange Service. The pilot retail price

comparison survey, conducted by the A. C. Nielsen Co., lays that question to rest.

This survey was commissioned by AAFES to develop methods and procedures for documenting the savings provided by the exchange service and for determining the relative position of AAFES pricing in order to evaluate the need for revisions in pricing procedures. The individual markets surveyed were Fort Dix-McGuire AFB, N.J., area, Fort Lewis-McChord AFB, Washington area, San Antonio area, and Fort Benning, Ga.

After applying standard sampling techniques, Nielsen's local market observers checked prices at 41 stores in the Tacoma, Wash., area around Fort Lewis and McChord AFB, and at 53 stores in the Wrightstown, N.J., shopping area serving the Fort Dix-McGuire market. In San Antonio, 48 stores were checked and in Columbus, Ga., serving Fort Benning, a total of 48 stores were surveyed.

In all, 3,203 comparative prices were collected in the civilian stores in August, and "prices of the day"—including specials and other promotions—were reported for comparison against identical items sold by AAFES.

Nielsen called AAFES prices "very competitive" and said the survey showed that prices were higher on only 9 percent of the observations and that 89 percent of the observations were lower; 2 percent were the same.

Each month it becomes more difficult for the military services to attract and retain the quality of personnel needed for the maintenance of defense. Repeatedly, I have been told by these fine men and women that they feel they have been "had" insofar as the nonpay items which they have been promised are concerned. PX privileges and prices are among these items. I believe it is important that enlistees and careerists be made aware of the dollar value realized in this area.

## MEMBERS URGED TO REJECT OFFER OF FINANCIAL ASSISTANCE IN EXCHANGE FOR VOTE ON JARVIS PLAN

(Mr. CORMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CORMAN. Mr. Speaker, in what appears to be tantamount to a bribe, Howard Jarvis, as chairman of the American Tax Reduction Movement, sent wires to many Members of the House pledging financial support to candidates favoring his Freedom for Taxpayers National Tax Plan.

The wire briefly sketches a meat ax-like approach to cut Federal spending, and gives no indication of how or where meaningful and reasonable cuts could be made.

Mr. Jarvis espouses that his proposal is the only one that would bring relief to taxpayers, and threatens to publicly portray any congressional candidate not supporting his plan as an "opponent" of tax fairness and reform.

His message is not merely an attempt to rally support for his proposal, but rather a blatant effort to coerce candidates to succumb to bribery. According to Mr. Jarvis' mailogram a candidate pledging support for his tax plan could receive financial and/or media assistance in the November election from the Tax Reduction Movement Political Action Committee. Any offer of financial assistance in return for support of any legislative action is illegal, as is acceptance of such an offer.

Section 201(b) of title 18, United States Code, makes it an offense for any person to directly or indirectly, corruptly give, offer, or promise anything of value to any public official or person elected to any public office to influence an official act. It is clear that the message of the wire holds out an offer of financial assistance to those Members of this body and other candidates who are willing to take certain legislative actions. It raises serious questions of propriety either as a violation of the Federal statute or at the very least an attempt to improperly influence the Members of this body.

As chairman of the Democratic Congressional Campaign Committee and an individual Member of the House, I believe the Jarvis attempt to bribe public officials and pressure them into possible misconduct must be crushed. This can be accomplished by rejecting this offer of financial support or public endorsement and any other contribution which attaches similar illicit conditions. No candidate should ever fall victim to a threat of dire political consequences because he or she does not support specific legislation.

Public financial support and determination to maintain honest and ethical political action committees are shattered by the Jarvis effort to subvert funds for the purpose of bribery. It prostitutes the entire PAC system, and places a heavy cloud over the integrity of all political action committees.

## FOURTH CONGRESSIONAL DISTRICT STUDENTS OF INDIANA WELCOMED

(Mr. QUAYLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. QUAYLE. Mr. Speaker, it is my pleasure to welcome the second group of fourth congressional district students from Indiana to the House of Representatives. Mr. Speaker, these students were selected on a nonpartisan, competitive basis and I commend them for their success and enthusiasm.

The purpose of the program is to stimulate student interest in our Government. As the adage says "the youth of today are the leaders of tomorrow." These high school students are getting an inside look at Washington which may encourage them or their friends to seek public service at some juncture in their career.

The congressional student program is an annual event with the funding and operations of the program derived from a nonpartisan, not-for-profit organization.

The following list of students are this year's participants:

Jim Nolan, Leo High School.
Pamela Lynne Geiger, Bishop Dwenger High School.
Byron S. Collier, Elmhurst High School.
Mark E. Kiefer, South Side High School.
Deborah Reynolds, Fort Wayne Christian School.
Tony L. McCarrol, Wayne High School.
Gigi Salij, Paul Harding High School.
Larry Stoller, Woodlan High School.
Beth Bechler, Carroll High School.
Keith E. Schuman, Whitko High School.
Randall L. Stump, Churubusco High School.
Barry Eppley, Southwood High School.
Jennefer Kay Shockley, Huntington North High School.
Elizabeth Boone, Fremont High School.
Keith Howard, Hamilton High School.
Miriam Graham, Eastside High School.
Kelly Sue Odell, Lakeland High School.
Denise L. Smolek, Central Noble High School.
Amy Hartzler, West Noble High School.

Again, Mr. Speaker, it is my honor to welcome these students and insert for the RECORD their presence in the House this afternoon.

## PERMISSION TO FILE CONFERENCE REPORT ON H.R. 12934, DEPARTMENTS OF STATE, JUSTICE, COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS

Mr. SLACK. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight, Tuesday, September 12, 1978, to file a conference report on the bill (H.R. 12934) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

## APPOINTMENT OF CONFEREES ON H.R. 12936, HUD APPROPRIATIONS

Mr. BOLAND. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts? The Chair hears none, and appoints the following conferees: Messrs. BOLAND, TRAXLER, BAUCUS, STOKES, and BEVILL, Mrs. BOGGS, and Messrs. BURLISON of Missouri, ALEXANDER, MAHON, COUGHLIN, MCDADE, YOUNG of Florida, and CEDERBERG.

## AMENDING ARMED FORCES ACT OF AUGUST 29, 1974

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent to take from the

Speaker's table the Senate bill (S. 3454) to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. MITCHELL of New York. Mr. Speaker, reserving the right to object, I do so only to provide the chairman of the Subcommittee on Military Compensation, the gentleman from Alabama (Mr. NICHOLS) an opportunity to explain what we are attempting to do here.

The SPEAKER. May the Chair ask the gentleman from Alabama if he has cleared this with the leadership on both sides? The Chair has no knowledge of this bill being brought up.

Mr. NICHOLS. Mr. Speaker, it has been cleared with the leadership on both sides.

Mr. Speaker, will the gentleman from New York yield?

Mr. MITCHELL of New York. I yield to the gentleman from Alabama.

Mr. NICHOLS. Mr. Speaker, H.R. 5503—the Defense Officer Personnel Management Act (DOPMA)—passed earlier this year by the House will not be acted on by the Senate during this Congress. As a result of the National Emergencies Act of 1976, on September 14, 1978, certain powers and authorities of the President to act under a period of national emergency terminate.

Severe problems will arise if action is not taken to extend some of these authorities. Most of the required actions were included in the House-passed version of DOPMA. The Senate has taken the most urgent provisions and incorporated them in S. 3454.

A periodic problem that the Congress has faced in the past is the temporary extension of authority for the Air Force to exceed the grade limitations imposed under title 10, United States Code, section 8202. The Officer Grade Limitation Act of 1954 established ceilings on the number of Air Force lieutenant colonels and colonels significantly below their cohorts in the other services. This was done at that time recognizing that the Air Force was a young service and required fewer senior officers. Of course, as the Air Force matured, the Congress has passed temporary relief from these grade limitations. The current authority for temporary grade ceilings expires on September 30, 1978. DOPMA would have solved this problem permanently.

As a result of the National Emergencies Act of 1976 (Public Law 94-412), on September 14, 1978, certain powers and authorities of the President to act under a period of national emergency terminate. Severe problems will arise—particularly in the Navy—if action to extend some of these authorities is not taken. Most of the required actions were included in the House-passed version of DOPMA.

Those provisions that are affected by the National Emergencies Act are as follows:

A 2-year sea duty requirement for promotion of certain naval officers to lieutenant commander or above would be reinstated. Because of rotational problems, this requirement has been suspended since 1964. If the suspension is not continued, considerable personnel turbulence would be caused as the Navy attempts to order officers back to sea in order to qualify for promotion.

Below the zone selection for regular Navy and Marine Corps officers would be made inconsistent with the other services. Consistency has been maintained since 1970. If current authority is not extended approximately 20 limited duty officers would revert in grade, regular officers would have a 5 percent limitation placed on below the zone selection, and reserve officers would have no limitation.

Time in grade requirements for establishing promotion eligibility for Navy and Marine Corps officers would be reinstated. The requirements for different grades have been suspended beginning at various times since 1954. If current authority is not extended, promotion opportunity would be increased to fill the expected vacancies.

Spot promotion of Navy lieutenants serving in critical lieutenant commander engineering billets would be terminated. Approximately 140 officers would revert in grade if authority for these temporary promotions is not extended.

Membership on Marine Corps Major General Selection Boards would be restricted to require that each major general serve on the board every other year.

Members with less than 8 years of service would not be eligible for disability retirement unless the disability were incurred as a proximate result of the performance of active duty. Presently the disability system covers individuals if the disability is incurred in line of duty.

Recognizing that DOPMA would not be passed in this Congress, the Senate passed S. 3454, which would:

First. Extend the authorization—for 1 year—of an increase in the number of Air Force lieutenant colonels and colonels;

Second. Authorize the President to suspend the application of certain laws—currently suspended—through September 30, 1979, thereby maintaining current personnel practices for the military in these areas.

Third. Extend authority for 1 year to allow temporary promotions of certain junior officers, to allow below the zone promotion for Navy limited duty officers, and to allow temporary Marine Corps major generals to sit on the Major General Selection Boards.

Mr. MITCHELL of New York. Mr. Speaker, because all the provisions are simple 1-year extensions of existing law, and because there is nothing new in this legislation at all, and because of the urgency associated with the legislation and extreme disruptions which could take place if we delay action on this legislation, I support the provisions of the Senate bill and withdraw my reservation of objection.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, I understand the need for the bill.

I just want the assurance from my colleague that there is nothing in the Senate bill that would not have been germane under the House rules.

Mr. MITCHELL of New York. I am sure there is not.

Mr. ASHBROOK. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3454

An Act to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), is amended by striking out "through September 30, 1978" and inserting in lieu thereof "through September 30, 1979".

SEC. 2. (a) For the period beginning on September 15, 1978, and ending on September 30, 1979, the President is authorized to suspend application of the following provisions of title 10, United States Code:

(1) Section 5707(c).

(2) Section 5751 (a), (b), and (e).

(3) Section 5770.

(b) No suspension invoked by the President under authority of subsection (a) shall be effective after September 30, 1979.

SEC. 3. Effective only for the period beginning September 15, 1978, and ending September 30, 1979—

(1) Section 1201(3) of title 10, United States Code, is amended as follows:

(A) striking out the word "or" at the end of subclause (B)(ii);

(B) striking out the period at the end of subclause (B)(iii) and inserting in lieu thereof a semicolon and the word "or"; and

(C) adding at the end of subclause (B) a new item as follows:

"(iv) the disability was incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1979, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect.".

(2) Section 1203(4)(A) of such title is amended by—

(A) striking out the word "or" at the end of item (i);

(B) striking out the semicolon at the end of item (ii) and inserting in lieu thereof a comma and the following: "or (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1979, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be

effective during such period and issues an Executive order to that effect;".

(3) Section 1203(4)(C) of such title is amended by striking out "the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency" and inserting in lieu thereof "(i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1979, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect".

SEC. 4. (a) Chapter 545 of title 10, United States Code, is amended by inserting after section 5787c a new section as follows:

"§ 5787d. Navy lieutenants: temporary promotion

"(a) Line officers not restricted in the performance of duty in the grade of lieutenant, possessing skills in a critical shortage and serving in lieutenant commander billets requiring such skills, may be temporarily promoted to lieutenant commander under such regulations as the Secretary of the Navy may prescribe. Temporary appointment under this section shall be made by the President alone.

"(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotions or appointments, or abridge their rights or benefits.

"(c) Temporary promotions under this section may be made only upon the recommendation of a board of officers convened for that purpose. In addition to recommending officers for promotion, a board so convened shall make the report required by section 6384 of this title.

"(d) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date made, and the member so appointed is entitled to the pay and allowances of the grade to which promoted from that date.

"(e) Temporary appointments under this section will terminate upon an officer's detachment from a qualifying billet so designated by the Secretary of the Navy. When an officer, whose name is on a promotion list as a result of selection to lieutenant commander other than under this section, is detached, an appointment will be issued to include the interim period between the subject officers' detachment from the qualifying billet and the date of promotion as a result of selection board action.

"(f) When his temporary appointment under this section is terminated or expires, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment.

"(g) No appointments may be made under this section after September 30, 1979.".

(b) The table of sections at the beginning of chapter 545 of such title is amended by inserting

"5787d. Navy lieutenants: temporary promotion."

below

"5787c. Navy and Marine Corps, warrant officers: temporary promotion.".

SEC. 5. Section 5504(d) of title 10, United States Code, is amended by inserting "or 5787d" after "5787".

SEC. 6. (a) Section 5786(c) of title 10, United States Code, is amended by inserting "or 5787d" after "5787".

(b) Section 5791(a) of such title is amended by inserting "and 5787d" after "5787".

SEC. 7. Section 6325(b) of title 10, United States Code, is amended by inserting "or 5787d" after "5787".

SEC. 8. (a) Section 6384(a) of title 10, United States Code, is amended by inserting "and each board of officers convened under section 5787d" after "under chapter 543".

(b) Section 6385 of such title is amended by striking out "or 5787" and inserting in lieu thereof "5787, or 5787d".

(c) The catchline of such section is amended by striking out "and 5787" and inserting in lieu thereof "5787, or 5787d".

(d) The table of sections at the beginning of chapter 573 of such title is amended by striking out "and 5787" in the item relating to section 6385 and inserting in lieu thereof "5787, or 5787d".

SEC. 9. Section 905(h) of title 37, United States Code, is amended by inserting "or 5787d" after "5787".

SEC. 10. (a) Section 5703(a)(1) of title 10, United States Code, is amended to read as follows:

"(1) A board to recommend brigadier generals for promotion to the grade of major general, consisting of nine officers serving in the grade of major general or above.".

(b) The amendment made by subsection (a) shall be effective only for the period beginning on September 15, 1978, and ending on September 30, 1979.

SEC. 11. (a) Section 5787c of title 10, United States Code, is amended to read as follows:

"§ 5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty; temporary promotion

"(a) Warrant officers may be temporarily promoted to higher warrant officer grades under such regulations as the Secretary of the Navy may prescribe.

"(b)(1) Officers designated for limited duty may be temporarily promoted to a higher grade under such regulations as the Secretary may prescribe.

"(2) No promotion may be made under this subsection under September 30, 1979.".

(b) The table of sections at the beginning of chapter 545 of such title is amended by striking out the item relating to section 5787c and inserting in lieu thereof

"5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty; temporary promotion.".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

After all motions to suspend the rules have been entertained and debated and after those motions, to be determined by "nonrecord" votes have been disposed of, the Chair will then put the question on each motion on which the further proceedings were postponed.

The Chair hopes that the Members will take into consideration that there are 14 primaries, that about 100 Members, including some from each side, are running, and that there are about 100 Members absent according to the latest quorum.

## RHODE ISLAND INDIAN LAND CLAIMS SETTLEMENTS

Mr. RONCALIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12860) to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12860

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Rhode Island Indian Claims Settlement Act".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. Congress finds and declares that—

(a) there are pending before the United States District Court for the District of Rhode Island two consolidated actions that involve Indian claims to certain public and private lands within the town of Charlestown, Rhode Island;

(b) the pendency of these lawsuits has resulted in severe economic hardships for the residents of the town of Charlestown by clouding the titles to much of the land in the town, including lands not involved in the lawsuits;

(c) the Congress shares with the State of Rhode Island and the parties to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims within the State of Rhode Island; and

(d) the parties to the lawsuits and others interested in the settlement of Indian land claims within the State of Rhode Island have executed a Settlement Agreement which requires implementing legislation by the Congress of the United States and the legislature of the State of Rhode Island.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) "Indian Corporation" means the Rhode Island nonbusiness corporation known as the "Narragansett Tribe of Indians";

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(c) "lawsuits" means the action entitled "Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al., C.A. No. 75-0006 (D.R.I.)" and "Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (D.R.I.)";

(d) "private settlement lands" means approximately nine hundred acres of privately held land outlined in red on the map marked "Exhibit A" attached to the Settlement Agreement that are to be acquired by the Secretary from certain private landowners pursuant to sections 5 and 8 of this Act;

(e) "public settlement lands" means the lands described in paragraph 2 of the Settlement Agreement that are to be conveyed by the State of Rhode Island to the State Corporation pursuant to legislation as described in section 7 of this Act;

(f) "settlement lands" means those lands defined in subsection (d) and (e) of this section;

(g) "Secretary" means the Secretary of the Interior;

(h) "settlement agreement" means the document entitled "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims", executed as of February 28, 1978, by representatives of the State of Rhode Island, of the town of Charlestown, and of the parties to the law-

suits, as filed with the Secretary of the State of Rhode Island;

(i) "State Corporation" means the corporation created or to be created by legislation enacted by the State of Rhode Island as described in section 7 of this Act; and

(j) "transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of land or natural resources.

RHODE ISLAND INDIAN CLAIMS SETTLEMENT FUND

SEC. 4. There is hereby established in the United States Treasury a fund to be known as the Rhode Island Indian Claims Settlement Fund into which $3,500,000 shall be deposited following the appropriation authorized by section 11 of this Act.

OPTION AGREEMENTS TO PURCHASE PRIVATE SETTLEMENT LANDS

SEC. 5. (a) The Secretary shall accept assignment of reasonable two-year option agreements negotiated by the Governor of the State of Rhode Island or his designee for the purchase of the private settlement lands: *Provided*, That the terms and conditions specified in such options are reasonable and that the total price for the acquisition of such lands, including reasonable costs of acquisition, will not exeed the amount specified in section 4. If the Secretary does not determine that any such option agreement is unreasonable within sixty days of its submission, the Secretary will be deemed to have accepted the assignment of the option.

(b) Payment for any option entered into pursuant to subsection (a) shall be in the amount of 5 per centum of the fair market value of the land or natural resources as of the date of the agreement and shall be paid from the fund established by section 4 of this Act.

(c) The total amount of the option fees paid pursuant to subsection (b) shall not exceed $175,000.

(d) The option fee for each option agreement shall be applied to the agreed purchase price in the agreement if the purchase of the defendant's land or natural resources is completed in accordance with the terms of the option agreement.

(e) The payment for each option may be retained by the party granting the option if the property transfer contemplated by the option agreement is not completed in accordance with the terms of the option agreement.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF CLAIMS AND ABORIGNAL TITLE INVOLVING THE NARRAGANSETT TRIBE AND THE TOWN OF CHARLESTOWN, RHODE ISLAND

SEC. 6. (a) If the Secretary finds that the State of Rhode Island has satisfied the conditions set forth in section 7 of this Act, he shall publish such findings in the Federal Register and upon such publication—

(1) any transfer of land or natural resources located anywhere within the United States from, by or on behalf of the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, and any transfer of land or natural resources located anywhere within the town of Charlestown, Rhode Island, by, from, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in subsection (a) may involve land or natural resources to which the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, had aboriginal title, subsection (a) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of a transfer of land or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy) shall be regarded as extinguished as of the date of the transfer.

(b) Any Indian, Indian nation, or tribe of Indians (other than the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof) whose transfer of land or natural resources was approved or whose aboriginal title or claims were extinguished by subsection (a) of this section may, within a period of one hundred and eighty days after publication of the Secretary's findings pursuant to section 6, bring an action against the State Corporation in lieu of an action against any other person against whom a cause may have existed in the absence of this section. In any such action, the remedy shall be limited to a right of possession of the settlement lands.

FINDINGS BY THE SECRETARY

SEC. 7. Section 6 of this Act shall not take effect until the Secretary finds—

(a) that the State of Rhode Island has enacted legislation creating or authorizing the creation of a State chartered corporation satisfying the following criteria:

(1) the corporation shall be authorized to acquire, perpetually manage, and hold the settlement lands;

(2) the corporation shall be controlled by a board of directors, the majority of the members of which shall be selected by the Indian Corporation or its successor, and the remaining members of which shall be selected by the State of Rhode Island; and

(3) the corporation shall be authorized, after consultation wih appropriate State officials, to establish is own regulations concerning hunting and fishing on the settlement lands, which need not comply with regulations of the State of Rhode Island but which shall establish minimum standards for the safety of persons and protection of wildlife and fish stock; and

(b) that the State of Rhode Island has enacted legislation authorizing the conveyance to the State Corporation of land and natural resources that substantially conform to the public settlement lands as described in paragraph 2 of the Settlement Agreement.

PURCHASE AND TRANSFER OF PRIVATE SETTLEMENT LANDS

SEC. 8. (a) When the Secretary determines that the State Corporation described in section 7(a) has been created and will accept the settlement lands, the Secretary shall exercise within sixty days the options entered into pursuant to section 5 of this Act and assign the private settlement lands thereby purchased to the State Corporation.

(b) Any moneys remaining in the fund established by section 4 of this Act after the purchase described in subsection (a) shall be returned to the general Treasury of the United States.

(c) Upon the discharge of the Secretary's duties under sections 5, 6, 7, and 8 of this Act, the United States shall have no further duties or liabilities under the Act with respect to the Indian Corporation or its successor, the State Corporation, or the settlement lands; Provided, however, That if the Secretary subsequently acknowledges the existence of the Narragansett Tribe of Indians, then the settlement lands may not be sold, granted, or otherwise conveyed or leased to any one other than the Indian Corporation, and no such disposition of the settlement lands shall be of any validity in law or equity, unless the same is approved by the Secretary pursuant to regulations adopted by him for that purpose: Provided, however, That nothing in this Act shall affect or otherwise impair the ability of the State Corporation to grant or otherwise convey (including any involuntary conveyance by means of eminent domain or condemnation proceedings) any easement for public or private purposes pursuant to the laws of the State of Rhode Island.

APPLICABILITY OF STATE LAW

SEC. 9. Except as otherwise provided in this Act, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

FEDERAL BENEFITS PRESERVED

SEC. 10. Nothing contained in this Act or in any legislation enacted by the State of Rhode Island as described in section 7 of this Act shall affect or otherwise impair in any adverse manner any benefits received by the State of Rhode Island under the Federal Aid in Wildlife Restoration Act of September 2, 1937 (16 U.S.C. 669–669(i)), or the Federal Aid in Fish Restoration Act of August 9, 1950 (16 U.S.C. 777–777(k)).

AUTHORIZATION OF FUNDS

SEC. 11. There is hereby authorized to be appropriated $3,500,000 to carry out the purposes of this Act.

LIMITATION OF ACTIONS

SEC. 12. Notwithstanding any other provision of law, any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within one hundred and eighty days of the date of enactment of this Act. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Rhode Island.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF CLAIMS AND ABORIGINAL TITLE OUTSIDE THE TOWN OF CHARLESTOWN, RHODE ISLAND, AND INVOLVING OTHER INDIANS IN RHODE ISLAND

SEC. 13. (a) Except as provided in subsection (b)—

(1) any transfer of land or natural resources located anywhere within the State of Rhode Island outside the town of Charlestown from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (other than transfers included in and approved by section 6 of this Act), including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1970, Act of July 22, 1970 (ch. 33, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof), and Congress

does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in paragraph (1) may involve land or natural resources to which such Indian, Indian nation, or tribe of Indians had aboriginal title, paragraph (1) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of such transfers of land or natural resources effected by this subsection or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by any such Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or rights involving such land or natural resources (including out not limited to claims for trespass damages or claims for use and occupancy), shall be regarded as extinguished as of the date of the transfer.

(b) This section shall not apply to any claim, right, or title of any Indian, Indian nation, or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred and eighty days of the date enactment of this Act: *Provided*, That the plaintiff in any such action shall cause notice of the action to be served upon the Secretary and the Governor of the State of Rhode Island.

The SPEAKER. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Wyoming (Mr. RONCALIO) and the gentleman from California (Mr. LAGOMARSINO) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Wyoming (Mr. RONCALIO).

Mr. RONCALIO. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, H.R. 12860 provides for the settlement of the Narragansett Indian claims to lands in the town of Charlestown, R.I. These claims are for possession of the lands and for monetary damages for trespass to such lands.

The claims are based upon alleged violation of the Indian Trade and Intercourse Act of 1790, as amended and supplemented, when the State of Rhode Island acquired these lands from the Indians in 1880. This act provides that any sale or conveyance of Indian-owned lands to any party other than the United States, without the consent of the United States, is null and void.

Before getting into details of the bill, let me make four points very clear.

One, this bill implements a settlement agreement involving the State of Rhode Island; the town of Charlestown; the individual non-Indian defendants; and the Indian tribe. As amended, the bill has the full support of the Rhode Island congressional delegation and the administration and the Senate has already passed a nearly identical bill.

Two, the administration has already determined that the legal claims of the tribe are credible and not at all frivolous.

Three, the State of Rhode Island is sharing in this settlement by contributing 900 acres of State-owned lands, which has been appraised at between $1,000,000 and $2,000,000.

Four, if this bill passes, it will cost the United States $3,500,000.

The bill provides for the creation of a State-chartered, Indian-controlled corporation to administer the land settlement. The State will transfer the 900 acres of State lands to this corporation.

The United States would appropriate $3,500,000 for the purpose of purchasing approximately 1,000 acres of private lands subject to the suit for transfer to the State corporation. The State corporation would administer the settlement lands primarily for conservation purposes.

In return for this settlement, the Narragansett Indian tribe would agree and the act provides that any and all claims they may have to lands or interests in lands in the town of Charlestown and in the rest of the State would be extinguished. In addition, the bill provides for the extinguishment of any claims any other Indian tribe or group may have to lands in the State of Rhode Island.

Mr. Speaker, I am pleased to bring this negotiated settlement to the House for legislative ratification and hope that it is a precursor of other settlements of like claims in other eastern States.

However, I would like to make this last general comment.

There has been a growing resentment and antagonism against the Indian tribes for asserting their claims to lands and other resources or rights. We have seen that resentment evident in the deliberations and debates in this House.

But these Indians are not asserting any rights or claims based upon their laws and in their courts. They are asserting claims and rights based upon the Constitution and laws of the United States in the courts of the United States. If we can act to deny them their right to pursue their claims under the laws of our Nation, and if we can close our courts to them, then it will not be long before our laws and our courts are set against any view which is unpopular in our eyes.

Mr. Speaker, the parties to this dispute have reached an amicable accord which requires legislative ratification by the Congress. This bill provides that ratification and I urge the passage of the bill.

Mr. Speaker, I assure my colleagues, including the gentleman from Washington, that this is not an Indian claim act or such. It is substantively a request for a congressional act putting a stamp of approval upon a negotiated settlement between three negotiating parties: First, the corporation or town of Charleston; second, the State of Rhode Island and its involvement; and third, the individual non-Indian defendants, and the Indians whose ancestors were in this group.

The lawsuit has been pursued since it was filed in May of 1963. As the litigation proceeded toward trial, negotiations began, and a settlement was arrived at then that could be speedily and amicably arranged. About 1,800 acres would be involved in the settlement of this claim.

First, the bill implements a settlement agreement involving these entities: the State of Rhode Island; the town of Charlestown; the individual non-Indian defendants; and the Indian tribe. As amended, the bill has the full support of the Rhode Island congressional delegation and the administration, and the Senate has already passed a nearly identical bill.

The administration has already determined that the legal claims of the tribe are credible and not at all frivolous.

The State of Rhode Island is sharing in this settlement by contributing 900 acres of land owned by the State of Rhode Island appraised at between $1 and $2 million in value.

If this bill passes, it will cost the United States $3.5 million.

The bill provides for the creation of a State-chartered, Indian-controlled corporation to administer this land settlement. The State will transfer the 900 acres of State lands to this corporation plus the 900 acres they would otherwise acquire.

This will cost the United States about $3,500,000. It will probably cost the United States of America that much anyway, either by judgment of a court of law or by this approval of the Congress.

In return for the settlement, the Narragansett Indian Tribe agrees to extinguish all claims on lands—and, Mr. Speaker, I must interrupt to say that I have not had a memory like this since World War II days. You know, I was an infantryman in World War II, and I began in North Africa. I can remember crawling around on my belly with my rifle, and once in a while I could catch a German helmet in my gunsight, running around from place to place and then it would duck and I would put my rifle down again, and I can recall those times in World War II as I see the gentleman from Washington (Mr. CUNNINGHAM), and the gentleman from Maine (Mr. COHEN), heads up, staring at me, I am reminded of my days in World War II.

But, Mr. Speaker, to get back, in return for this bill we have an amicable settlement of the claims. I believe I could not more strongly recommend the passage of the simple piece of legislation for the approval of this settlement as a most wise and appropriate act of this Congress.

It is inconceivable to me to find anybody who may object to this, the above named Members excepted.

Now I will yield to the two gentlemen.

Mr. COHEN. Mr. Speaker, if the gentleman will yield, I wonder if the gentleman would like to clarify his statement that he feels as if he were emerging from the trenches in World War II in looking at the gentleman from Maine, I was not sure exactly what the import of that statement was.

Mr. RONCALIO. The fact that I have had such great success in handling Indian legislation recently, and for Hawaiian natives just last week, I feel much like a soldier who has been fired at.

Mr. CUNNINGHAM. Mr. Speaker, if the gentleman will yield, and I appreciate the gentleman yielding, I would like to assure my colleague, the gentleman from Maine (Mr. COHEN), that I am sure the gentleman in the well in his

remarks meant that it was nice to see a friendly face.

So, if the gentleman will yield further for the purpose of a question, I understand from the report that the specifics of the claims have really not been adjudicated and no one has made a determination stating that there is a claim or not; is that correct?

Mr. RONCALIO. I do not believe it is correct. I believe the specifics of the claims have been negotiated and the claim has been found not to be frivolous.

Mr. CUNNINGHAM. Mr. Speaker, if the gentleman will yield still further.

Mr. RONCALIO. I yield further.

Mr. BEARD of Rhode Island. Mr. Speaker, will the gentleman yield?

Mr. CUNNINGHAM. The gentleman in the well has control of the time.

Mr. RONCALIO. I yield to the gentleman from Rhode Island.

Mr. BEARD of Rhode Island. Mr. Speaker, if the gentleman will yield to me so that I might answer the question directly, since I come from the State of Rhode Island, the Department of Interior has reviewed the entire claim, and they say it is correct and accurate.

Mr. CUNNINGHAM. If the gentleman in the well would yield still further, it is my understanding that this arises from the threat of a suit but that the suit has not been resolved, is that correct?

Mr. RONCALIO. It has been filed, there may be a threat of a judgment, but it has not proceeded to judgment, a final appealable order.

Mr. CUNNINGHAM. If the gentleman will yield further, it is my understanding that this bill originally said, as proposed by the administration, when advised about this compromise worked out by the State of Maine, that the Secretary would not pay this until he had made a determination. My understanding is that section has been deleted, is that correct?

Mr. RONCALIO. That is correct.

Mr. CUNNINGHAM. So what I am really saying, if the gentleman would yield further, is that the State of Maine, in recognizing that there is——

Mr. RONCALIO. The State of Rhode Island, not the State of Maine.

Mr. CUNNINGHAM. I stand corrected, these are concerns of the State of Rhode Island.

Mr. RONCALIO. The gentleman has to go south a little bit in New England.

Mr. CUNNINGHAM. The State of Rhode Island, in trying to respond to a suit that was filed, but not yet adjudicated in this case, has proposed that the State of Rhode Island resolve the suit through settlement in which the State is giving approximately $2½ million worth of land, 1,000 acres, is that correct?

Mr. RONCALIO. Plus 900 acres.

Mr. CUNNINGHAM. And they have volunteered the Federal Government to cough up $3½ million and therefore the suit can be settled out of court, is that correct?

Mr. RONCALIO. That is a pretty rough, roughly, roughly. The $3½ million goes towards purchasing additional land, you have about a 1,800 acre tract which will be acceptable by the parties involved in lieu of the 3,200 acres that they asked for originally.

Mr. CUNNINGHAM. Mr. Speaker, if the gentleman will yield further, by concern is whether we are volunteering to get involved before we have been properly and legally mandated to be involved, and we have other similar claims in other States, such as Massachusetts and Maine, to be specific, on virtually the same issue.

I wonder whether the gentleman would care to comment as to whether he feels that we are setting a precedent.

Mr. RONCALIO. Precedential legislation? I do not think we are setting a precedent as such. But the Congress has put its stamp of approval upon settlements of complaints in virtually every year of its 200-year existence, so to the extent that we are being used as a final arbiter between citizens, the answer is not, it is not precedential.

I hope that it is precedential, if it will lead toward amicable settlements of disputes and put them to rest. I would assume that the gentleman from Washington (Mr. CUNNINGHAM) would join me in that hope.

Mr. CUNNINGHAM. I agree with the gentleman in the well that settlements are always advantageous, but I would hope, from the point of legislative intent and for legislative history, that we are not suggesting the U.S. Congress is going to take taxpayers' dollars and get involved in settlements that have yet to go the full legal course, as part of our Constitution says they will do.

Mr. RONCALIO. Let me answer that twofold.

I practiced law for much of my adult life. If I can make a fair albiet poor settlement, I would rather do it any day for my client than to win a good case in court. My client would be better off money-wise, and in spirit with that kind of disposition of his case. That has been proven; it is irrefutable.

If we are going to settle this claim by acquiring 900 acres of land today for $3.5 million, I believe history will show that we are much wiser than to wait until a judgment issues and then we try to buy the land for that $3.5 million.

I have just been through 10 years of watching land acquisitions for national parks; and every time we wait a few years, we pay that much more. It is tremendous in its exponential growth of costs of land.

The town of Charlestown, R.I., has an interest in these lands; and if the Indians involved have come to a negotiated settlement, and if the court feels that that terminates the litigation, I do not think it would be in order for any of us to vote against this type of settlement. The stamp of approval of Congress is necessary.

Mr. CUNNINGHAM. If the gentleman will yield further, one of the things which concerns me is that I understand that some of the litigants we have today are third-and fourth-generation persons. In the future they could question the legal authority of their ancestors to enter into these claim settlements, and I certainly wonder whether in this case, without going the full legal course, we are leaving that possible door ajar again.

With that, Mr. Speaker, I thank the gentleman for yielding very much.

Mr. MARLENEE. Mr. Speaker, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Montana.

Mr. MARLENEE. Mr. Speaker, I certainly compliment the gentleman from Wyoming (Mr. RONCALIO) on the amount of work that has been gotten out of that subcommittee this year.

In the gentleman's opening statement he said that this was merely a stamp of approval on a negotiated settlement. Is it the gentleman's opinion that this will not set a precedent and not be used as a case history in settling other land or territorial claims by these Indians?

Mr. RONCALIO. I would be happy to respond. Insofar as the use of an act of Congress as a means of stamp of approval of pending negotiated settlements is concerned, it is not a precedent; in the fact that it is used now on a particular Indian claim, that may be a precedent. I hope it will be a precedent if it means that a good settlement of a claim will resolve these disputes once and forever, rather than dragging claims out interminably in courts of law, and rather than seeing them almost paralyze the cities of an area by clouding land titles, and rather than seeing title company people put out of business. I would much rather see a good precedent set. That is my answer.

Mr. MARLENEE. However, each case would be studied on its own merits; is that correct?

Mr. RONCALIO. Of course, just as any other case is considered on a new set of facts.

Mr. MARLENEE. Mr. Speaker, I thank the gentleman.

Mr. RONCALIO. Mr. Speaker, I yield such time as he may consume to the gentleman from Rhode Island (Mr. BEARD).

Mr. BEARD of Rhode Island. Mr. Speaker, it has been mentioned today that there are approximately 100 Members of the House missing because of the various elections across the Nation. I also have a primary in Rhode Island, but I consider this to be extremely important—extremely important legislation for the State of Rhode Island. First of all, we are the smallest State in the union. We are approximately 50 miles in length and about 30 miles in width. It is a very small State. This legislation affects a good portion of the southern part of the State of Rhode Island. We are not trying to set a precedent for other States. What we are trying to do is unscramble problems since 1790 in the State of Rhode Island.

We have a bipartisan agreement on this. Senator CHAFEE, a Republican Senator from Rhode Island, supported it in the U.S. Senate. Senator CLAIBORNE PELL has supported it. The gentleman from Rhode Island of this Chamber, Mr. ST GERMAIN, has supported this legislation. We have support from the Narragansett Indians. We have support from the residents who cannot sell their land or buy land in such a dilemma in the Charlestown area. We have support of the Gov-

ernor of the State of Rhode Island in this. We have support of the Republican and Democrat members of the General Assembly in Rhode Island. We have support of the administration. I know very few people who openly really oppose this particular bill. It is important. It is 1800 acres.

We are asking the Federal Government to put the stamp of approval on what has already been approved out of court. The parties have agreed in Rhode Island. They have agreed that this is right. If I have ever been bugged in the 4 years that I have been in Congress with telephone calls, it has been on this legislation. I can report to the Members that we have a tremendous amount of cooperation from every segment of Rhode Island in support of this legislation.

They are waiting to hear from me when this vote takes place because of its importance to the State of Rhode Island.

It has not been too often in the 4 years that I have taken the floor, and I have never had too many opportunities, to really speak on one piece of legislation for the smallest State of the Union. But today I am here fighting for an awful lot of people back home who need the Members' cooperation and their support.

As I said in the beginning, we are not setting a precedent. Every State, every situation is different, but please remember our dilemma. Please remember the size of our State, and please remember that all parties have agreed.

Mr. Speaker, I yield back the remainder of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in the absence of the gentleman from Colorado (Mr. JOHNSON) who is the ranking member of the Subcommittee on Indian Affairs and Public Lands, who is in strong support of this legislation, I rise in support of H.R. 12860 which provides for settlement of the claims of the Narragansett Indian Tribe against the State of Rhode Island and other parties. The claims of the tribe arise from alleged violations of the Trade and Intercourse Act of 1790 occurring in 1880 when the State of Rhode Island allowed illegal transfer of tribal lands. This bill provides the mechanism whereby those claims will be extinguished, thereby relieving the cloud which hangs over the titles to the acreage involved. The lawsuits which claim some 3,200 acres of land as being in violation and, therefore, subject to the rights of the Indians were consolidated into a single action. And I think this is a very important point. The tribe won a favorable ruling on a preliminary motion to strike certain defenses raised by the State. To paraphrase, perhaps, what my colleague, the gentleman from Wyoming (Mr. RONCALIO) has pointed out, in the practice of law it is often said—and this was one of the first things I was told when I started practicing law; I did not necessarily always follow it, sometimes to my regret—that a poor settlement is better than a good lawsuit for both sides. I think that this bill, which as has already been pointed out, provides for a total transfer of 1,800 acres to the Narragansett Tribe, 900 owned by the State and 900 by private owners is a good one. The Federal Government, in the interest of promoting an equitable settlement of Indian claims, and to assist in the restoration of economic vitality to the local community—which I understand is in dire straits as a result of this claim—will contribute $3.5 million for the purchase of private lands, and the State will contribute the 900 acres that it owns free across-the-board with no claim or no compensation at all.

All claims of the Narragansett Tribe will be extinguished. As has already been pointed out by the gentleman from Rhode Island, the agreement has the support of all interested parties, including the Federal Government, the State, the tribe, and private parties.

The Rhode Island delegation supports the bill and I believe it will provide an excellent model, if not a precedent, for future and fair settlement of claims under the Trade and Intercourse Act. I think the Federal Government does have a moral, if not a legal obligation here, because the Federal Government was involved, as I understand, in the ratification of the land transfers that gave rise to this claim that is now before us.

Mr. Speaker, I urge my colleagues to vote for the bill, H.R. 12860.

Mr. RONCALIO. Mr. Speaker, I yield 2 minutes to my friend, the gentleman from Washington (Mr. MEEDS), who will be taking leave of these Chambers in a few months.

Mr. MEEDS. Mr. Speaker, I thank the gentleman from Wyoming for yielding this time.

Mr. Speaker, I am not as familiar with the Narragansett claim as I would like to be. I do not know all the facts of this aboriginal claim, but I do know some things.

First of all, I know that I might not even agree with the original claim. I have some substantial disagreement with a lot of the claims that have been made in the Northeast under the Nonintercourse Act. I will not go into the details of that disagreement, but I do want the House to know in the final aspect I might not even agree with the Narragansett claim. But I do know the Narragansett claim has clouded title on substantial acres of Rhode Island land and townships, particularly in one town which has been under clouded title for some time. They have been unable to convey their land and it has caused a very substantial problem.

I know, second, that the Narragansetts have won a very important preliminary legal skirmish, when they won some very crucial motions on this; so at this time, as a lawyer, I would have to say they have the better side of this lawsuit, at least at this time.

I know, third, that this settlement before us will be shared equally by the Federal Government, which is putting up money to secure 900 acres and the State of Rhode Island is going to provide 900 acres. It is an equally shared settlement, and if there was fault under the Nonintercourse Act, it should be borne equally by the State and by the Federal Government.

The SPEAKER. The time of the gentleman from Washington has expired.

Mr. RONCALIO. Mr. Speaker, I yield 1 additional minute to the gentleman from Washington (Mr. MEEDS).

Mr. MEEDS. Mr. Speaker, I know, fourth, and most importantly, that this agreement has been agreed upon by everyone in a position of authority in the State of Rhode Island, by everyone in a position of authority representing the State of Rhode Island in the Congress, by the administration, by this subcommittee and, indeed, everyone who has dealt with this in any substantial regard has agreed to this settlement.

Now, while I do not know all about the claim, I know that if that set of facts were presented to me as a Member, knowing a lot about some claims in the State of Washington, and if there were a settlement that was agreed upon by all the parties, as this has been agreed upon, I would think it would be a good resolution of the problem. I hope this bill passes.

Mr. LAGOMARSINO. Mr. Speaker, I yield 5 minutes to the gentleman from Maine (Mr. COHEN).

Mr. COHEN. Mr. Speaker, first, I would like to indicate to the chairman of the subcommittee of the Committee on the Interior and Insular Affairs that I would hope that while over the years we have served in Congress together, while we may not always have been on the same side, we have been adversaries on an intellectual basis only and certainly I took the gentleman's comments in jest when the gentleman suggested that the gentleman felt that he was popping his head out of a trench in World War II looking at an enemy across the line.

The gentleman and I have had many occasions to engage in debate, and we have always done so in a very positive and constructive spirit.

So by taking this position today, I hope I can convey the sincerity with which I am going to reluctantly oppose this particular measure. I do so on two counts.

First, as has been pointed out, there are over 100 Members missing from this body today. I do so on the basis that we are bringing up a matter of this magnitude under suspension, which normally is reserved for noncontroversial matters.

I also point out to my good friend, the gentleman from Rhode Island (Mr. BEARD), that he said we are trying to unravel the problems going all the way back to 1790, and here we are trying to resolve an issue that has been with us since 1790 on a primary day, under suspension, with approximately 100 Members missing. We are doing this under a procedure which is normally reserved for noncontroversial matters.

Mr. BEARD of Rhode Island. Mr. Speaker, will the gentleman yield?

Mr. COHEN. I will yield to the gentleman when I finish.

Mr. Speaker, the second point on which I object is the basis on which we ought to be considering these claims under the Nonintercourse Act. They should be considered on a comprehensive rather than

a piecemeal basis. As pointed out when the question was asked by the gentleman from Washington (Mr. CUNNINGHAM), the question is whether or not this is going to set a precedent.

I would note that the committee report points out this bill is the first legislation submitted in Congress to resolve Indian land claims under the 1790 Nonintercourse Act, and it will serve as a landmark for the resolution of other land claims by the Eastern tribes under the 1790 act.

It has been pointed out previously that these are a number of cases pending. It is my understanding, as a matter of fact, that there are at least 10 States that now have similar claims pending. Rhode Island is one. Other States are Florida, Louisiana, my own State of Maine, Massachusetts, Nevada, New York, Oklahoma, and South Carolina, as well as Rhode Island. They all have similar claims or at least they have an issue involving a similar statute as the Nonintercourse Act of 1790.

I would also question the statement that it is always better to settle out of court under any circumstances rather than going through to full litigation in a matter of this magnitude. I would point out, for example, that that certainly did not apply to the State of Massachusetts, which has endured a similar type of difficulty over the past year or so. The matter to which I refer has gone to suit, and serious financial harm has been caused to the town of Mashpee. Yet they went to court and were successful in court.

Under this particular settlement arrangement, if it is going to serve as a landmark. I would like to call the attention of my colleagues to exactly what is involved here, because this is the way it works out: Perhaps my mathematics is wrong, but it works out to a payment of about $4,000 an acre for the purchase of that land.

In the State of Maine we have an issue that will be coming up, if not in this session, surely in the next session, that encompasses two-thirds of the land area in the State of Maine, some 12 million acres of land. Certainly if we apply the figure of $4,000 an acre, we can see how much would be involved for the Federal Treasury if we would settle on a similar basis even assuming the claims were confined to 500,000 acres of land.

That brings me to the point about this being a model for other States to follow. Here we have a 50–50 settlement basis, one-half by the State and one-half by the Federal Government. Let me tell the Members what has happened as far as settlement goes in the State of Maine.

The White House Task Force has recommended a settlement to resolve the issue currently before the State of Maine by extinguishing the claim of two tribes to all privately owned land in exchange for a payment of $25 million by the Federal Government. This would result in extinguishing claims to the people who own land under 50,000 acres. For all those who own over 50,000 acres, they would have the following voluntary option:

They would have the option of selling to the Federal Government 300,000 acres of their land, not at $4,000 an acre but at $5 an acre. That is the White House proposal to the State of Maine, to take the large landowners of the State of Maine and give them an option of divesting themselves of 300,000 acres at $5 an acre.

The SPEAKER pro tempore (Mr. SISK). The time of the gentleman from Maine (Mr. COHEN) has expired.

Mr. LAGOMARSINO. Mr. Speaker, I yield 4 additional minutes to the gentleman from Maine (Mr. COHEN).

Mr. COHEN. Mr. Speaker, those landowners, of course, would have an option of giving up another 200,000 acres at the fair market value. The State of Maine would either have to contribute $25.5 million over a 15-year period or be sued for all its holdings, and the private landowners who refused to settle under the White House's proposed plan would then be subject to suit for all 3 million acres of their holdings.

So we can seen that it is not always the most desirable thing to settle under any circumstances in order to avoid litigation.

The basic point I would make here is that I understand the issue and I am totally sensitive to what Rhode Island has been enduring, because indeed the one factor that is involved is that it does place a cloud on the title of real estate. It prohibits the purchase of homes and the sale of homes, and it has an effect upon the bond markets of local and State governments. I am certainly sensitive to that issue as far as Rhode Island is concerned.

The course on which we are embarking today is going to set a precedent which I believe we will come to regret. I would only hope that we would reject setting that precedent under a procedure which is ordinarily classified as noncontroversial. We would in fact be setting a landmark or a precedent for the other 10 States involved to follow and which I think will prove to be quite costly.

Mr. BEARD of Rhode Island. Mr. Speaker, will the gentleman yield?

Mr. COHEN. I yield to the gentleman from Rhode Island.

Mr. BEARD of Rhode Island. I thank the gentleman for yielding.

When I first arrived in Congress I was embarrassed to find out that when I looked at the weather map that they did not even have Rhode Island on the weather map. I had to call the Weather Bureau. In speaking for all of us in the State, all we are saying to the strangers, all of you on the outside of the State of Rhode Island, is that you give us an equitable decision for Rhode Island, for all of the parties. We are just asking to resolve this thing on a proper basis or we are in serious trouble.

Mr. COHEN. Let me just respond to my colleague, the gentleman from Rhode Island, that, as I indicated, I am truly sensitive to the economic pressure under which the State of Rhode Island has been operating. I see my colleague from Massachusetts, who has been laboring under a similar problem in his State. What I am suggesting today is that there are a number of other States who are going to be under similar threats of lawsuits or the actual filing of lawsuits, which will cause havoc with their economic climate, much as has occurred in the gentleman's own State. What I am suggesting is that, rather than handling these particular claims on a piecemeal basis, the Congress does have the responsibility of resolving the disputes surrounding the applicability of the 1790 Nonintercourse Act. It is my belief, based on extensive research, that this act was never designed to apply to eastern States. I have suggested one way, perhaps, of resolving all of these claims, and that would be to allow a direct suit to the Supreme Court, and if we had a ruling by the Court perhaps these matters could be settled on a compromise or a settlement basis. But to take these cases one by one and say that these should be settled out of court or to say that this is a landmark settled on a 50–50 basis, we are committing ourselves to a course that in the years ahead we will regret.

For these reasons, I would urge the Members to reject this measure.

Mr. RONCALIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to use the remainder of my time to make a few statements in rebuttal to the statements made by my dear friend and colleague, the gentleman from Maine.

First of all, it is a noncontroversial matter, compared to the many things that we labor with here week after week in the House of Representatives. If we allow 20 minutes of debate on each side in a matter involving 9 million acres and millions of dollars, then we ought to be spending 6 months on legislation such as the appropriations bill passed last week. We vote to spend trillions of dollars in this body, and I believe it is not inappropriate that we spend only a few minutes on this matter. In my opinion, it is fair to make the observation that if the other 10 claims similarly passed can be settled as readily, and as easily, and as amicably to the local economy and to the well-being of all the people, as this matter is being asked to be settled, then we are indeed a fortunate nation to be able to so resolve our Indian disputes.

There may be a precedent value in it, but it is not on all fours with every other similar dispute. Obviously, a State as small as Rhode Island is unique, as compared to a large State like Wyoming or like a State such as Alaska. I think each case has to be settled on its own merits, but I think in order to have balance you have to have something that is just and equitable.

I think this is a good case which can be solved with a comparable contribution from the State and the Federal Government, and that seems to be the best way to do it.

Mr. COHEN. Mr. Speaker, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Maine.

Mr. COHEN. Mr. Speaker, once again the gentleman has slipped into the use of wartime jargon. I submit, by referring to the troops over here on this side. I would have the gentleman take note that I have indeed supported a number of

claims during the past few years, and have not rejected each and every one out of any sense of arbitrariness or lack of understanding of the issues.

But, I would ask the gentleman from Wyoming as to whether or not, if we should settle these other cases, if we could do so on the same or comparable basis, would he support the allocation of $4,000 per acre on the settlement of the Maine case?

Mr. RONCALIO. No, I do not know enough about the relative values of land, in the two States and I do not know enough about the relative merits in each case.

Mr. LAGOMARSINO. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Speaker, I thank the gentleman for yielding. I sympathize with my colleague from Rhode Island and know of his desire to try to resolve this particular problem. I appreciate the position of the gentleman from Wyoming, but I must agree with my colleague from Maine that we should recognize that we have this specific problem in 10 other States, and we are wrong to go about it in a piecemeal fashion.

In the State of Washington we have many problems, as the Members have heard before, arising from judicial interpretations, but at least we have gone to the courts. I would strongly suggest that this should go to the courts, and we should not preempt the judicial solution that is a constitutional guarantee to all of us. Admittedly, Rhode Island has gone ahead and has made a settlement. Fine. Let them settle it. They can settle this whole thing without involving us one iota.

Mr. RONCALIO. Mr. Speaker, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman with Wyoming.

Mr. RONCALIO. That is precisely the point. If the courts could settle it without congressional approval, it would be done. But Congress—the United States—is the guardian of the Indians, and they are our wards. There is no way to settle without the approval of the U.S. Congress. That is why we are here, so the argument of the gentleman falls.

Mr. CUNNINGHAM. Would the gentleman respond to this question: Is it our stamp of approval or our 3.5 million taxpayer dollars that they really need?

Mr. RONCALIO. I think they need the approval of the Congress to the specifics of their settlement.

Mr. CUNNINGHAM. Then why was this bill not brought up so that we could strike the appropriation, so that it could be amended and delete the $3.5 million?

Mr. RONCALIO. We did request a rule. We cannot do everything perfectly in this committee; you know that. We are like the gentleman on his side; we do the best we can.

Mr. CUNNINGHAM. I agree with the gentleman that we do not do everything perfectly, but at the same time my colleague should understand that using these dollars, if the solution in Maine is arrived at in similar fashion, the taxpayers of the United States—using these figures on the 50–50 participation—stand to have a liability of $25 billion.

Mr. BEARD of Rhode Island. Mr. Speaker, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from Rhode Island.

Mr. BEARD of Rhode Island. Mr. Speaker, would it not be a lot better, what we are trying to do here is, we are trying to spend some money, some Federal dollars to help a State on something that we have all agreed on. There are a lot of arguments every week here. For instance, when we talk about foreign aid to foreign countries. We are talking about a very small State, an individual situation, and I do not think it is too much to ask because it is something the Federal Government missed the boat on many, many years ago. That is why we are in this dilemma today.

Mr. CUNNINGHAM. I appreciate the gentleman's comments and charges, but frankly, coming from the State of Washington, I would rather work with my colleagues and others who have similar problems to reach a universal and fair solution rather than this piecemeal approach.

Mr. RONCALIO. I would wish the gentleman well and hope that he could achieve a universal and correct solution for all Indian claims, but that is almost an impossibility.

For half a moment, let me correct the gentleman's main analogy. Maine would not come down to $25 billion in cost. This administration offered $25 million (not billion), and the Indians were willing to accept that for the Federal portion of the Maine dispute, but the negotiations were derailed. That is a vast difference. I do not think we can take the gentleman's argument and measure with that yardstick the other 10 cases. Each case must be reviewed on its own unique merits and differing facts.

Mr. CUNNINGHAM. I appreciate the gentleman's viewpoint, but just mathematically, price times acreage times 50 percent does come out to that figure.

Mr. LAGOMARSINO. Mr. Speaker, I yield 1 minute to the chairman of the committee, the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, H.R. 12860 is a legislative ratification of a negotiated settlement of the land claims of the Narragansett Tribe of Indians against the State of Rhode Island and several private landholders in the town of Charleston, R.I.

As many of the Members know, there are several of these kinds of land claims by Indian tribes along the eastern seaboard. These claims relate to the transfer of tribal lands to various eastern States under conditions alleged to be in violation of the Indian Trade and Intercourse Act of 1790. This act and its later versions prohibit such conveyances without the consent of the United States. Where transfers of lands have been made by Indian tribes to States or other parties without the consent of the United States, the conveyances are null and void and the underlying title of the Indians is unaffected.

The various claims which have been filed by Indian tribes seek possession of the lands and damages for past trespasses to the land.

Mr. Speaker, it is difficult to assess the validity of these claims. Ultimately, that is a matter for the courts. We do know that, in some of the cases including the Narragansett claim, the administration has determined the claims to be legally credible.

We also know that, while these claims may be ancient and the existing land titles of longstanding duration, the Indians have a clear legal right to pursue their claims under our laws and in our courts.

Finally, we know that because of alleged violation of a Federal law by the States in the early 19th century, the land titles, the economy, and the society in the communities subject to these claims have been severely disrupted and isolated cases of extreme hardship have resulted.

It is clear that the United States has no legal liability to the States or the non-Indian defendants because of these claims. However, since the United States did not act to prevent the alleged illegal transfers or to ratify the transfers contemporaneous with the conveyances, some moral responsibility attaches to the United States to prevent undue hardship.

In addition, if these land titles are ever to be fully clear, Congress, under the law, must act.

It is with this background that we bring this legislation to the House for approval. The parties have negotiated a settlement, with each one giving up a part of its claims or defense as a contribution to the settlement.

The State is contributing 900 acres of State lands.

The private parties have agreed to sell some of their lands to the Indians by way of compromise.

The tribe has agreed to drop its suit and have its title extinguished in return for the settlement lands which will be administered by them primarily for conservation purposes.

The contribution of the United States, which is supported by all the parties and by the administration, is the amount of $3,500,000 to be used to purchase the private held lands for the benefit of the Indian party.

Mr. Speaker, I urge the Members to vote for passage of this bill.

Mr. LAGOMARSINO. Mr. Speaker, I would like to add a few more words in closing.

I think it would be very nice too if we could have a comprehensive settlement of all Indian claims, but I do not think that is a very practical thing to aspire to at this time. Look how long it has taken us to get to the base of a settlement of a relatively simple claim like this where all parties agree. But how much longer will it take when the properties are different and the claims are different and the interests of the people involved are different? It seems to me in this case, where

the administration recognizes that the Indians do have a credible claim and the court has recognized that by its ruling on the motion that was made, and where all the parties as in this case can agree, it behooves the Federal Government to go along and assist in settling this matter.

If we drag it out I think the Federal Government is going to be not only responsible for a lot of economic chaos in Rhode Island but also we may be ultimately responsible for a lot more money that might be required to settle this.

Mr. COHEN. Mr. Speaker, if the gentleman will yield, I would like to point out that in some of the other cases the land is different and the facts are different and the claims are different and therefore this has no precedential value, in the gentleman's opinion, does it?

Mr. LAGOMARSINO. I think where all parties agree and the Federal Government agrees there is a valid claim and where perhaps the courts have made an initial determination, that is a pretty good pattern to follow. I agree it is not a precedent for all.

Mr. COHEN. But the fact that there is an initial court ruling that indicates the claim is not frivolous does not mean that it is a valid claim. What it means is there is a justiciable issue. but it does not mean they have a valid claim, which may be one reason why we might want to refer there matters to the Court of Claims for a judicial review of the merits and therefore perhaps an award of monetary value for the claims may be made eventually.

● Mr. ST GERMAIN. Mr. Speaker, I rise in support of this legislation, which I have cosponsored. It is intended to settle once and for all the claims of aboriginal title being asserted by the Narragansett Indians to lands in the town of Charles Town on the grounds that past transfers of those lands were made in violation of the Nonintercourse Act.

The bill is drawn against the background of an agreement reached by the State of Rhode Island, the southern Rhode Island Land Development Co. and the Narragansett Indians at the culmination of a 3-year dispute. Under this agreement the State of Rhode Island must contribute approximately 900 acres of land to a State-chartered corporation to be established to hold the land in trust. In addition, the agreement calls for the acquisition of an additional 900 acres of land from private owners who are willing to sell their lands at the fair market value.

The funding for this additional 900 acres is to be provided by the Federal Treasury. The bill before us today performs this function. It authorizes the payment of $3.5 million to the State chartered corporation for the purpose of purchasing property from private landowners who are willing to sell their lands. If enacted, this legislation would effectively implement the settlement reached by all parties involved.

Mr. Speaker, I have mentioned that this legislation is intended to aid in resolving a dispute which is 3 years old. Throughout these 3 years this dispute has brought economic hardship not only to those parties directly involved, but to all of the citizens of the town. It has created a cloud on the validity of the real property titles of those directly involved, resulting in their inability to sell, mortgage, or develop their lands. Likewise, due to the fear that subsequent claims on the other land in Charles Town might be asserted by the Narragansett tribe, citizens who are not directly involved in the present dispute find that the titles to their lands are also clouded. The result has been economic stagnation for the entire town. This unfortunate situation will continue for some time unless this legislation is enacted.

The bill was drafted with the help of the White House, the Interior Department, and the appropriate committee counsels in both the House and Senate. It will eliminate the uncertainty which now exists for the defendents in the litigation and the private landowners in the town of Charles Town. Because all parties are currently in agreement as to the resolution of this problem, I believe that this bill is a matter of some urgency and must be passed without delay. Therefore, I hope that my colleagues here in the House will look favorably upon this measure and vote for its passage.●

The SPEAKER pro tempore (Mr. SISK). The question is on the motion offered by the gentleman from Wyoming (Mr. RONCALIO) that the House suspend the rules and pass the bill, H.R. 12860, as amended.

The question was taken.

Mr. EMERY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

## PORTS AND WATERWAYS SAFETY AMENDMENTS

Mr. BIAGGI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13311) to amend the Ports and Waterways Safety Act of 1972, and for other purposes, as amended.

The Clerk read as follows:

H.R. 13311

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Port Safety and Tank Vessel Safety Act of 1978".

SEC. 2. PORTS AND WATERWAYS SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT

The Ports and Waterways Safety Act of 1972 (Public Law 92-340, 86 Stat. 424) is amended to read as follows:

"SECTION 1. STATEMENT OF POLICY.

"The Congress finds and declares—

"(a) that navigation and vessel safety and protection of the marine environment are matters of major national importance;

"(b) that increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property, and the marine environment;

"(c) that increased supervision of vessel and port operations is necessary in order to—

"(1) reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment;

"(2) prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States or the resources within such waters;

"(3) insure that vessels operating in the navigable waters of the United States shall comply with all applicable standards and requirements for vessel construction, equipment, manning, and operational procedures; and

"(4) insure that the handling of dangerous articles and substances on structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements; and

"(d) that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other Federal agencies, State representatives, affected users, and the general public, in the development and implementation of such measures.

"SEC. 2. VESSEL OPERATING REQUIREMENTS.

"(a) IN GENERAL.—Subject to the requirements of section 3, the Secretary of the department in which the Coast Guard is operating (hereinafter referred to as "Secretary") may—

"(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 9, establish, operate, and maintain vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and can include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

"(2) require vessels which operate in an area of a vessel traffic service to utilize or comply with that service;

"(3) require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service: *Provided*, That the Secretary shall not require fishing vessels under 300 gross tons or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this Act;

"(4) control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be especially hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

"(A) specifying times of entry, movement, or departure;

"(B) establishing vessel traffic routing schemes;

"(C) establishing vessel size, speed, draft limitations and vessel operating conditions; and

"(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances; and

"(5) require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port and the environment.

"(b) SPECIAL POWERS.—The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to operate or anchor in a manner he directs if—

"(1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this Act or any other applicable law or treaty;

"(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 7; or

"(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

"(c) PORT ACCESS ROUTES.—

"(1) In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, and subject to the requirements of paragraph (3) hereof, the Secretary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

"(2) No designation may be made by the Secretary pursuant to this subsection, if such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law: *Provided*, That such right has become vested prior to the time of publication of the notice required by clause (A) of paragraph (3) hereof: *Provided further*, That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

"(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 3, the Secretary shall—

"(A) within six months after date of enactment of this Act (and may, from time to time thereafter), undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

"(B) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration (including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing); and

"(C) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

"(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a Notice of Proposed Rulemaking for the designation contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study.

"(5) In connection with a designation made pursuant to this subsection, the Secretary—

"(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

"(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separation schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

"(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: *Provided*, That such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues; and

"(D) shall, through appropriate channels, (i) notify cognizant international organizations of any designation, or adjustment thereof, and (ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation schemes designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

"(d) EXCEPTION.—Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this Act shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in——

"(1) innocent passage through the territorial sea of the United States, or

"(2) transit through the navigable waters of the United States which form a part of an international strait.

"SEC. 3. CONSIDERATIONS BY SECRETARY.

"In carrying out his duties and responsibilities under section 2, the Secretary shall—

"(a) take into account all relevant factors concerning navigation and vessel safety and protection of the marine environment, including but not limited to—

"(1) the scope and degree of the risk or hazard involved;

"(2) vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;

"(3) port and water configurations and variations in local conditions of geography, climate, and other similar factors;

"(4) the need for granting exemptions for the installation and use of equipment or devices for use with vessel traffic services for certain classes of small vessels, such as self-propelled fishing *vessels* and recreational vessels;

"(5) the proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;

"(6) environmental factors;

"(7) economic impact and effects;

"(8) existing vessel traffic services; and

"(9) local practices and customs, including voluntary arrangements and agreements within the maritime community; and

"(b) at the earliest possible time, consult with and receive and consider the views of representatives of the maritime community, ports and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed actions.

"SEC. 4. WATERFRONT SAFETY.

"(a) The Secretary may take such action as is necessary to—

"(1) prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

"(2) protect the navigable waters and the resources therein from vessel or structure damage, destruction, or loss. Such action may include, but need not be limited to—

"(A) establishing procedures, measures, and standards for the handling, loading, unloading, storage, stowage, and movement on the structure (including the emergency removal, control, and disposition) of explosives or other dangerous articles and substances, including oil or hazardous material as those terms are defined in section 4417a of the Revised Statutes, as amended;

"(B) prescribing minimum safety equipment requirements for the structure to assure adequate protection from fire, explosion, natural disaster, and other serious accident or casualty;

"(C) establishing water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

"(D) establishing procedures for examination to assure compliance with the requirements prescribed under this section.

"(b) Nothing contained in this section, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those prescribed by regulations hereunder.

"SEC. 5. PILOTAGE.

"The Secretary may require federally licensed pilots on any self-propelled vessel, foreign or domestic, engaged in the foreign trade, when operating in the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by State law. Any such requirement shall be terminated when the State having jurisdiction over the area involved establishes a requirement for a State licensed pilot and has so notified the Secretary.

"SEC. 6. INVESTIGATORY POWERS.

"(a) SECRETARY.—The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this Act, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States.

"(b) BOARD.—The National Transportation Safety Board shall, upon its request, be made a party in interest, with all the rights attendant thereto, in the investigation of any transportation-related incident conducted pursuant to this section.

"(c) POWERS.—In an investigation under this section, the Secretary may issue subpenas to require the attendance of witnesses and the production of documents or other evidence relating to such incident, accident, or act. If any person refuses to obey a subpena, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance with the subpena. Any district court of the United States may, in the case of refusal to obey a subpena, issue an order requiring compliance with the subpena, and failure to obey the order may be punished by the court as contempt. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

"SEC. 7. CONDITIONS FOR ENTRY TO PORTS OF THE UNITED STATES.

"No vessel, subject to the provisions of

section 4417a of the Revised Statutes, as amended, shall operate in the navigable waters of the United States or transfer cargo or residue in any port or place under the jurisdiction of the United States, if such vessel—

"(1) has a history of accidents, pollution incidents, or serious repair problems which, as determined by the Secretary, creates reason to believe that such vessel may be unsafe or may create a threat to the marine environment; or

"(2) fails to comply with any applicable regulation issued under this Act, under section 4417a of the Revised Statutes, as amended, or under any other applicable law or treaty; or

"(3) discharges oil or hazardous material in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party; or

"(4) does not comply with any applicable vessel traffic service requirements; or

"(5) is manned by one or more officers who are licensed by a certificating state which the Secretary has determined, pursuant to section 4417a(11) of the Revised Statutes, as amended, does not have standards for licensing and certification of seafarers which are comparable to or more stringent than United States standards or international standards which are accepted by the United States; or

'(6) is not manned in compliance with manning levels as determined by the Secretary to be necessary to insure the safe navigation of the vessels; or

"(7) while underway, does not have at least one licensed deck officer on the navigation bridge who is capable of clearly understanding English:

*Provided*, That clauses (1), (2), (3), and (4) shall not apply if the owner of such vessel proves, to the satisfaction of the Secretary, that such vessel is no longer unsafe or a threat to the marine environment, and is no longer in violation of any applicable regulation, law, treaty, or condition, as appropriate: *Provided further*, That clauses (5) and (6) shall become applicable eighteen months after the effective date of this section.

"SEC. 8. APPLICABILITY.

"This Act shall not apply to the Panama Canal. The authority granted to the Secretary under sections 2, 3, 4, and 5 of this Act shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this Act shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent he determines such delegation is necessary for the proper operation of the Saint Lawrence Seaway.

"SEC. 9. INTERNATIONAL AGREEMENTS.

"(a) TRANSMITTAL OF REGULATIONS.—The Secretary shall transmit, via the Secretary of State, to appropriate international bodies or forums, any regulations issued under this Act, for consideration as international standards.

"(b) Agreements.—The President is authorized and encouraged to—

"(1) enter into negotiations and conclude and execute agreements with neighboring nations, to establish compatible vessel standards and vessel traffic services, and to establish, operate, and maintain international vessel traffic services, in areas and under circumstances of mutual concern; and

"(2) enter into negotiations, through appropriate international bodies, and conclude and execute agreements to establish vessel traffic services in appropriate areas of the high seas.

"(c) OPERATIONS.—The Secretary, pursuant to any agreement negotiated under subsection (b) which is binding upon the United States in accordance with constitutional requirements, may—

"(1) require vessels in the vessel traffic service area to utilize or to comply with the vessel traffic service, including the carrying or installation of equipment and devices as necessary for the use of the service; and

"(2) waive, by order or regulation, the application of any United States law or regulation concerning the design, construction, operation, equipment, personnel qualifications, and manning standards for vessels operating in waters over which the United States exercises jurisdiction if such vessel is not en route to or from a United States port or place, and if vessels en route to or from a United States port or place are accorded equivalent waivers of laws and regulations of the neighboring nation, when operating in waters over which that nation exercises jurisdiction.

"SEC. 10. REGULATIONS.

"(a) In accordance with the provisions of the Administrative Procedure Act, as amended, the Secretary shall issue, and may from time to time amend or repeal, regulations necessary to implement this Act.

"(b) The Secretary, in the exercise of this regulatory authority, shall establish procedures for consulting with, and receiving and considering the views of—

"(1) interested Federal departments and agencies,

"(2) officials of State and local governments,

"(3) representatives of the maritime community,

"(4) representatives of port and harbor authorities or associations,

"(5) representatives of environmental groups,

"(6) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterway safety, and protection of the marine environment, and

"(7) advisory committees consisting of all interested segments of the public when the establishment of such committees is considered necessary because the issues involved are highly complex or controversial.

"SEC. 11. PENALTIES.

"(a) CIVIL PENALTY.—

"(1) Any person who found by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or a regulation issued hereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

"(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

"(3) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

"(b) CRIMINAL PENALTY.—

"(1) Any person who willfully and knowingly violates this Act or any regulation issued hereunder shall be fined not more than $50,000 for each violation or imprisoned for not more than a year, or both.

"(2) Any person who, in the willful and knowing violation of this Act or of any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in paragraph (1), be fined not more than $100,000, or imprisoned for not more than ten years, or both.

"(c) IN REM LIABILITY.—Any vessel subject to the provisions of this Act, which is used in violation of this Act or any regulations issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to subsection (a) and may be proceeded against in the United States district court for any district in which such vessel may be found.

"(d) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this Act or of regulations issued hereunder, for cause shown.

"(e) DENIAL OF ENTRY.—The Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States or to any port or place under the jurisdiction of the United States to any vessel not in compliance with the provisions of this Act or the regulations issued hereunder.

"(f) WITHHOLDING OF CLEARANCE.—The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel, the owner or operator of which is subject to any of the penalties in this section. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.".

SEC. 3. STUDY OF MONITORING SYSTEMS.

(a) CONTENT.—The Secretary, in consultation with the Secretary of Commerce and other appropriate departments or agencies of the Federal Government, shall study possible shore-station systems for monitoring vessels, including fishing vessels, within the Fishery Conservation Zone as defined in section 3(8) of the Fishery Conservation and Management Act of 1976. Each system examined shall be capable of reporting vessel position, identification, course, and speed using either a land, sea, or space monitoring technique.

(b) REPORT.—Within two years after the date of the enactment of this Act, the Secretary shall report his findings to the Congress. This report shall describe the capabilities, limitations, and cost effectiveness of each monitoring system examined from the standpoint of both the Federal Government and any vessel owners who would be affected by the imposition of each approach. The report shall also include the Secretary's recommendations for a single, comprehensive, cost effective shore-station system for monitoring vessels within the Fishery Conservation Zone.

(c) APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the purposes of this section, not to exceed $500,000 for the fiscal year ending September 30, 1980, and not to exceed $500,000 for the fiscal year ending September 30, 1981.

SEC. 4. IMPROVED PILOTAGE STANDARDS.

Section 4442 of the Revised Statutes of the United States (46 U.S.C. 214) is amended to read as follows:

"SEC. 4442. (a) The Secretary of the department in which the Coast Guard is operating shall, in accordance with subsection (b) of this section, establish eligibility requirements for the issuance of a Federal license to pilot any steam vessels.

"(b) No person may be issued a Federal license to pilot any steam vessel unless he—

"(1) is at least twenty-one years of age;

"(2) is of sound health and has no physical limitations which would hinder or prevent the performance of a pilot's duties;

"(3) agrees to have a thorough physical examination each year while holding such license;

"(4) demonstrates, to the satisfaction of the Secretary, that he possesses the requisite general knowledge and skill to hold such license;

"(5) demonstrates proficiency in the use of electronic aids to navigation;

"(6) maintains adequate knowledge of the waters to be navigated and knowledge of regulations for the prevention of collisions in such waters;

"(7) has sufficient experience, as determined by the Secretary, to evidence his ability to handle any vessel of the type and size which he may be authorized to pilot; and

"(8) meets any other requirement which the Secretary considers reasonable and necessary.

"(c) No Federal license to pilot a steam vessel shall be valid for a term longer than five years. Upon expiration of any such license, the holder may reapply for an additional term and may be reissued a license if he meets the requirements specified under subsection (b) of this section.".

SEC. 5. VESSELS CARRYING CERTAIN CARGOES IN BULK.

Section 4417a of the Revised Statutes of the United States, as amended (46 U.S.C. 391a), is further amended to read as follows:

"SEC. 4417a. (1) STATEMENT OF POLICY.—The Congress hereby finds and declares—

"(A) that the carriage by vessels of certain cargoes in bulk or in residue creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and to the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems, and recreational and scenic values;

"(B) that existing standards for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of all such vessels, which use any port or place subject to the jurisdiction of the United States or which operate in the navigable waters of the United States, must be more stringent and comprehensive for the mitigation of the hazards to life, property, or the marine environment;

"(C) that existing international standards for inspection and enforcement are incomplete, that those international standards that are in existence are often left unenforced by some flag states, and that there is a need to prevent substandard vessels from using any port or place subject to the jurisdiction of the United States or from operating in the navigable waters of the United States, for the mitigation of the hazards to life, property, or the marine environment;

"(D) that standards developed through regulations shall incorporate the best available technology and shall be required unless clearly shown to create an adverse economic impact which is not outweighed by the benefits to navigation and vessel safety or protection of the marine environment;

"(E) that standards developed through regulations shall not impede or interfere with the right of innocent passage or any legitimate use of the high seas in accordance with recognized principles of international law; and

"(F) that the United States should continue to actively support and encourage efforts to obtain international agreements concerning navigation and vessel safety and protection of the marine environment.

"(2) DEFINITIONS.—As used in this section, unless the context otherwise requires—

"(A) 'Discharge' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

"(B) 'Foreign vessel' means any vessel of foreign registry or operated under the authority of any nation other than the United States.

"(C) 'Hazardous material' means any liquid material or substance which is—

"(i) flammable or combustible; or

"(ii) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321); or

"(iii) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803).

"(D) 'Marine environment' means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority; and the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superjacent thereto.

"(E) 'Oil' includes oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"(F) 'Person' means any individual (whether or not a citizen or national of the United States), or any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

"(G) 'Public vessel' means a vessel which—

"(i) is owned, or chartered by demise, and operated by the United States or any foreign government; and

"(ii) is not engaged in commercial service.

"(H) 'Commercial service' means all types of trade or business involving the transportation of goods or persons, excluding the service performed by combatant vessels.

"(I) 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(J) 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

"(K) 'United States', when used in a geographical context, means all the States thereof.

"(L) 'Vessel of the United States' means any vessel documented or numbered under the laws of the United States.

"(M) 'Tanker' means a vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

"(N) 'Crude oil tanker' means a tanker engaged in the trade of carrying crude oil.

"(O) 'Product carrier' means a tanker engaged in the trade of carrying oil, other than crude oil, or hazardous materials.

"(P) 'Major conversion' means a conversion of an existing vessel which substantially alters the dimensions or carrying capacity of the vessel; or changes the type of vessel; or substantially prolongs its life; or which otherwise so alters the vessel that it is essentially a new vessel, as determined by the Secretary.

"(Q) 'New' means, with respect to various types of vessels subject to subsection (7), a vessel—

"(i) for which the building contract is placed after June 1, 1979; or

"(ii) in the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction after January 1, 1980; or

"(iii) the delivery of which is after June 1, 1982; or

"(iv) which has undergone a major conversion, which is contracted for after June 1, 1979, or construction work of which is begun after January 1, 1980, or completed after June 1, 1982.

"(R) 'Existing' means, with respect to various types of vessels subject to subsection (7), a vessel which is not a new vessel.

"(S) 'Crude oil' means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

"(3) APPLICABILITY.—Except as provided in subsections (4) and (5), this section shall apply to any vessel—

"(A) regardless of tonnage, size, or manner of propulsion;

"(B) whether self-propelled or not;

"(C) whether carrying freight or passengers for hire or not;

"(D) which is a vessel of the United States, or which operates on or enters the navigable waters of the United States, or which transfers oil or hazardous materials in any port or place subject to the jurisdiction of the United States; and

"(E) which carries oil or any hazardous materials in bulk as cargo or in residue.

Any such vessel shall be deemed to be a steam vessel for the purpose of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof.

"(4) EXCEPTION.—This section shall not apply to—

"(A) any public vessel; or

"(B) any vessel of not more than 500 gross tons, documented in the service of oil exploitation, which is not a tanker and which would be subject to this section only because of the transfer of fuel from fuel supply tanks of such vessels to offshore drilling or production facilities, if the crew member in charge of such transfer is certificated as a tankerman; or

"(C) cannery tenders, fishing tenders, and fishing vessels of not more than 500 gross tons, used in the salmon or crab fisheries of the State of Oregon, Washington, and Alaska, when engaged exclusively in the fishing industry; or

"(D) any foreign vessel not destined for, or departing from, a port or place subject to the jurisdiction of the United States that is in innocent passage through the territorial sea of the United States or in transit through the navigable waters of the United States which form a part of an international strait.

"(5) FISH PROCESSING VESSELS.—This section shall not apply to vessels of not more than 5,000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, and such vessel shall be allowed to have on board flamable or combustible liquid cargo in bulk to the extent authorized, and upon such conditions as may be required, by regulations issued by the Secretary.

"(6) REGULATORY AUTHORITY.—

"(A) In accordance with the provisions of the Administrative Procedure Act, as amended, the Secretary shall issue, and may from time to time amend or repeal, regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, or manning of vessels to which this section applies, as may be necessary for protection against hazards to life and property, for navigation and vessel safety, and for protection of the marine environment. The regulations issued by the Secretary under this subsection shall be in addition to any other regulations, issued under other provisions of law, that may apply to such vessels. The regulations issued by the Secretary under this subsection shall include, but need not be limited to, requirements relating to—

"(i) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;

"(ii) the handling or stowage of cargo, the manner of such handling or stowage of cargo, and the machinery and appliances used in such handling or stowage;

"(iii) equipment and appliances for lifesaving, fire protection, and prevention and mitigation of damage to the marine environment;

"(iv) the manning of such vessels and the duties, qualifications, and training of the officers and crew thereof, in accordance with subsections (9), (10), and (11);

"(v) improvements in vessel maneuvering and stopping ability and other features which reduce the possibility of collision, grounding, or other accidents;

"(vi) the reduction of cargo loss in the event of a collision, grounding, or other accident; and

"(vii) the reduction or elimination of discharges during ballasting, deballasting, tank cleaning, cargo handling, or other such activity.

"(B) In issuing regulations under paragraph (A), the Secretary shall give due consideration to the kinds of grades of cargo permitted to be on board such vessel.

"(C) The Secretary, in the exercise of this regulatory authority, shall establish procedures for consulting with, and receiving and considering the views of—

"(i) interested Federal departments and agencies,

"(ii) officials of State and local governments,

"(iii) representatives of the maritime community,

"(iv) representatives of port and harbor authorities or associations,

"(v) representatives of environmental groups, and

"(vi) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment.

"(7) MINIMUM STANDARDS.—In issuing regulations pursuant to subsection (6), the Secretary shall require that any self-propelled vessel shall, as a minimum—

"(A) if a new crude oil tanker of 20,000 deadweight tons or above, be equipped with—

"(i) segregated ballast tanks which are protectively located;

"(ii) a crude oil washing system; and

"(iii) a cargo tank protection system, consisting of a fixed deck froth system and a fixed inert gas system;

"(B) if a new product carrier of 30,000 deadweight tons or above, be equipped with segregated ballast tanks which are protectively located;

"(C) if a new product carrier of 20,000 deadweight tons or above, be equipped with a cargo tank protection system consisting of a fixed deck forth system and a fixed inert gas system or, if such a product carrier carries dedicated products which are incompatible with such a cargo tank protection system, an alternate protection system as authorized by the Secretary;

"(D) if an existing crude oil tanker of 40,000 deadweight tons or above, not later than June 1, 1981, be equipped with—

"(i) segregated ballast tanks; or

"(ii) a crude oil washing system:

*Provided*, That compliance many be delayed for vessels operating with dedicated clean ballast tanks if of 70,000 deadweight tons or above until June 1, 1983, or until June 1, 1985, for all other such vessels;

"(E) if an existing crude oil tanker of 20,000 deadweight tons or above but less than 40,000 deadweight tons, fifteen years or older, not later than January 1, 1986, or the date on which it reaches fifteen years of age, whichever is later, be equipped with segregated ballast tanks or a crude oil washing system;

"(F) if an existing crude oil tanker of 20,000 deadweight tons or above, not later than June 1, 1985, be equipped with an inert gas system: *Provided*, That for a crude oil tanker of less than 40,000 deadweight tons not fitted with high capacity tank washing machines, the Secretary may grant an exemption, if the vessel's owner can clearly show that compliance would be unreasonable and impracticable due to the vessel's design characteristics: *Provided further*, That an existing crude oil tanker of 70,000 deadweight tons or above must be in compliance herewith not later than June 1, 1983;

"(G) if an existing product carrier of 40,000 deadweight tons or above, not later than June 1, 1981, be equipped with segregated ballast tanks or, in lieu thereof, may operate with dedicated clean ballast tanks;

"(H) if an existing product carrier of 20,000 deadweight tons or above but less than 40,000 deadweight tons, fifteen years or older, not later than January 1, 1986, or the date on which it reaches fifteen years of age, whichever is later, be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks;

"(I) if an existing product carrier of 40,000 deadweight tons or above, or an existing product carrier of 20,000 deadweight tons or above but less than 40,000 deadweight tons, which is fitted with high-capacity tank washing machines, not later than June 1, 1985, be equipped with an inert gas system: *Provided*, That an existing product carrier of 70,000 deadweight tons or above must be in compliance herewith not later than June 1, 1983;

"(J) if of 10,000 gross tons or above, not later than June 1, 1979, be equipped with—

"(i) a dual radar system, one with short-range and one with long-range capabilities and each with true-north features;

"(ii) an electronic relative motion analyzer;

"(iii) an electronic position fixing device;

"(iv) adequate communications equipment;

"(v) a sonic depth finder;

"(vi) a gyrocompass; and

"(vii) up-to-date charts:

*Provided*, That the effective date of compliance with the requirement of clause (ii) shall be July 1, 1982 or such earlier date as agreed to internationally and accepted by the United States;

"(K) if a new tanker of 10,000 gross tons or above, be equipped with—

"(i) two remote steering gear control systems operable separately from the navigating bridge;

"(ii) main steering gear control in the steering gear compartment;

"(iii) means of communication and rudder angle indicators on the navigating bridge, remote steering gear control station, and the steering gear compartment;

"(iv) two or more identical and adequate power units for the main steering gear;

"(v) an alternative and adequate power supply, either from an emergency source of electrical power or from another independent source of power located in the steering gear compartment; and

"(vi) means of automatic starting and stopping of power units with attendant alarms at all steering stations;

"(L) if an existing tanker of 10,000 gross tons or above, not later than June 1, 1981, be equipped with—

"(i) two remote steering gear control systems operable separately from the navigating bridge;

"(ii) main steering gear control in the steering gear compartment; and

"(iii) means of communications and rudder angle indicators on the navigating bridge, remote steering gear control station, and the steering gear compartment;

"(M) if an existing crude oil tanker of 20,000 deadweight tons and above, which is engaged in the transfer of oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States, not later than June 1, 1979, be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks; and

"(N) in accordance with relevant international agreements to which the United States is a party, exempt vessels from the minimum requirements established in this subsection for segregated ballast, dedicated clean ballast, or crude oil washing if he determines that shore-based reception facilities are a preferred method of handling dirty ballast, and that adequate facilities are readily available.

In prescribing minimum requirements, unless otherwise required by law, the Secretary shall apply standards which are consistent with the International Convention for Prevention of Pollution from Ships, 1973, and the International Convention for Safety of Life at Sea, 1974, as modified by the respective Protocols of 1978 relating thereto. After the effective date of this subsection, the installation of segregated ballast tanks, a crude oil washing system, or an inert gas system, required by regulations issued hereunder, on a vessel which is entitled to engage in coastwise trade in accordance with section 27 of the Merchant Marine Act of 1920 (46 U.S.C. 883) shall be effected within the United States, its territories (not including trust territories), or its possessions, and vessels which fail to comply with this requirement shall thereafter not have the right to engage in the coastwise trade.

"(8) EVIDENCE OF COMPLIANCE.—

"(A) No vessel of the United States to which this section applies shall have on board oil or hazardous materials in bulk as cargo or in residue until it has a Certificate of Inspection, issued under the provisions of title 52 of the Revised Statutes of the United States, and such certificate has been endorsed to indicate that the vessel is in compliance with the regulations issued under this section. If any such vessel is found not to be in compliance, the Secretary shall notify the owner or agent of the vessel and indicate how the vessel may be brought into compliance.

"(B) No foreign vessel to which this section applies shall operate on or enter the navigable waters of the United States, or transfer oil or hazardous materials in any port or place under the jurisdiction of the United States, unless such vessel has been issued a Certificate of Compliance by the Secretary. The Secretary shall not issue such certificate until the vessel has been examined by the Secretary and found to be in compliance with the provisions of this section and the regulations issued hereunder. If such vessel is found not to be in compliance, the Secretary shall notify the owner or agent of the vessel and indicate how the vessel may be brought into compliance. The Secretary may allow provisional entry for the purposes of conducting examinations.

"(C) The Secretary may accept, in whole or in part, a certificate, endorsement, or document issued by any foreign nation pursuant to any treaty, convention, or other international agreement to which the United States is a party, as a basis for issuance of a Certificate of Compliance.

"(D) No vessel may carry any kind or grade of oil or hazardous materials in bulk as cargo or in residue unless its certificate is endorsed to allow such carriage. No such certificate may allow any vessel to carry any material prohibited by section 4472(3) of the Revised Statutes, as amended (46 U.S.C. 170).

"(E) A certificate issued under this section

shall be valid for a period not to exceed twenty-four months and may be renewed as specified by the Secretary. The Secretary may issue a temporary certificate under this section in appropriate circumstances; except that the temporary certificate shall be valid for not more than thirty days. Any certificate shall be revoked or suspended if the Secretary finds that the vessel involved no longer complies with the conditions upon which the certificate was issued.

"(9) PERSONNEL AND MANNING STANDARDS FOR VESSELS OF THE UNITED STATES.—The Secretary shall prescribe standards for the manning of any vessel of the United States subject to the provisions of this section and the duties, qualifications, and training of the officers and crew thereof, including, but not limited to, standards relating to—

"(A) instruction in vessel and cargo handling and vessel navigation under normal operating conditions in coastal and confined waters and on the high seas;

"(B) instruction in vessel and cargo handling and vessel navigation in emergency situations and under accidental or potential accident conditions;

"(C) license qualifications by specific type and size of vessels;

"(D) qualification for licenses by use of simulators for the practice or demonstration of marine-oriented skills;

"(E) minimum health and physical fitness criteria for various grades of licenses and certificates: *Provided*, That the Secretary shall waive the applicability of such criteria to any individual holding a license or certificate in effect on the effective date of this subsection, including subsequent renewals thereof: *Provided further*, That, when such a waiver is granted, the Secretary may prescribe conditions or limitations to the license or certificate, or the renewal thereof, as he may find reasonable and necessary for the safety of any vessel on which the individual may be employed;

"(F) periodic retraining, and special training for upgrading positions, changing vessel type or size, or assuming new responsibilities; and

"(G) determination of licenses and certificates, conditions of licensing or certification and period of licensing or certification by reference to experience, amount of training completed, and regular performance testing.

"(10) TANKERMAN REQUIREMENTS.—

"(A) Any vessel of the United States having on board oil or hazardous materials in bulk as cargo or in residue shall have a specified number of the crew certificated as tankerman, as may be required by the Secretary, and such requirement shall be so noted on the Certificate of Inspection issued to the vessel.

"(B) Any foreign vessel having on board oil or hazardous materials in bulk as cargo or in residue shall have a specified number of personnel certificated as tankerman, or equivalent, as may be required by the Secretary, when the vessel transfers oil or hazardous materials in any port or place subject to the jurisdiction of the United States; and such requirement shall be noted in applicable terminal operating procedures. No transfer operations may take place unless the crew member in charge is capable of clearly understanding instructions in English.

"(C) The Secretary shall prescribe procedures, standards, and qualifications for the issuance of certificates or endorsements as tankerman, stating the kinds of oil or hazardous materials that can be handled with safety to the vessel and the marine environment.

"(D) Certificates or endorsements as tankerman shall be subject to suspension and revocation on the same grounds and in the same manner as provided for under the provisions of section 4450 of the Revised Statutes of the United States, as amended (46 U.S.C. 239).

"(11) PERSONNEL AND MANNING STANDARDS FOR FOREIGN VESSELS.—The Secretary shall issue regulations and procedures for the verification of manning, training, qualification, and watchkeeping standards promulgated by the certificating state of any foreign vessel which operates on or enters the navigable waters of the United States, and transfers oil or hazardous materials in any port or place under the jurisdiction of the United States. Such regulations and procedures shall include, but need not be limited to, provisions relating to—

"(A) the receipt through the Inter-Governmental Maritime Consultative Organization or from the certificating state of the English text of laws, decrees, orders, regulations, specimen licenses and certificates, and other pertinent documents pertaining to manning, training, qualification, and watchkeeping of seafarers;

"(B) the publication and distribution of, or otherwise making available to the public and appropriate enforcement personnel, copies of materials received as provided for in paragraph (A);

"(C) the evaluation, at intervals of not less than five years, of each foreign state's system for licensing and certification of seafarers, including study course content and duration, examination requirements and prerequisites for licensing and certification, and related controls;

"(D) determination, after the evaluation required by clause (C), of whether or not the foreign state, whose system for licensing and certification of seafarers was evaluated, has standards which are comparable to or more stringent than United States standards or international standards which are accepted by the United States;

"(E) publication in the Federal Register of each determination made pursuant to clause (D), together with a brief explanation of the reasons therefore; and

"(F) manning levels, based on vessel size and type of operation, when operating in the navigable waters of the United States, or in the safety zone in connection with utilization of deepwater ports.

"(12) MODIFICATIONS.—The Secretary may modify any regulation or standard prescribed under this section to conform to the provisions of an international treaty, convention, agreement, or an amendment thereto, which is ratified by the United States.

"(13) PROHIBITED ACTS.—

"(A) It is unlawful for any person—

"(i) to violate any provision of this section or any regulation issued under this section; or

"(ii) to refuse to permit any officer, authorized by the Secretary to enforce the provisions of this section, to board any vessel or to enter any shore area, place, or premises, under such person's control for purposes of inspection under this section; or

"(iii) to refuse to obey any lawful directive issued under this section.

"(B) It is unlawful for any vessel subject to the provisions of this section—

"(i) to operate in or on the navigable waters of the United States, or to use any port or place subject to the jurisdiction of the United States, while not in compliance with any provision of this section or any regulation issued hereunder; or

"(ii) to fail to comply with any lawful directive issued pursuant to this section.

"(14) PENALTIES.—

"(A) CIVIL PENALTY.—

"(i) Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated this section or a regulation issued hereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

"(ii) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

"(iii) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

"(B) CRIMINAL PENALTY.—

"(i) Any person who willfully and knowingly violates this section or any regulation issued hereunder shall be fined more than $50,000 for each violation or imprisoned for no more than a year, or both.

"(ii) Any person who, in the willful and knowing violation of this section or any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in subparagraph (1), be fined not more than $100,000, or imprisoned for not more than ten years, or both.

"(C) IN REM LIABILITY.—Any vessel subject to the provisions of this section, which is used in violation of this section or any regulation issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to paragraph (A) and may be proceeded against in the United States district court for any district in which such vessel may be found.

"(D) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this section or of regulations issued hereunder, for cause shown.

"(E) DENIAL OF ENTRY.—The Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States or to any port or place subject to the jurisdiction of the United States to any vessel not in compliance with the provisions of this section or the regulations issued hereunder.

"(F) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel, the owner or operator of which is subject to any of the penalties in this subsection. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

"(15) INSPECTION.—

"(A) NATIONAL PROGRAM.—

"(i) The Secretary shall establish a national program for inspection of any vessel subject to this section. Each such vessel shall be inspected or examined at least once each year. Any such vessel over ten years of age shall undergo a special and detailed inspection of structural strength and hull integrity, as specified by the Secretary.

"(ii) An inspection or examination may be conducted by any officer authorized by the Secretary. If any such officer is not reasonably available, the Secretary may contract for the conduct of inspections or examinations in the United States and in foreign countries. Under such contract, an inspector may be authorized to act on behalf of the Secretary, except that no such inspector may issue a Certificate of Inspection or Certificate of Compliance, but may issue a temporary certificate.

"(iii) Notwithstanding the provisions of

section 1 of the Act of June 19, 1886, as amended (46 U.S.C. 331), the Secretary shall prescribe by regulation reasonable fees for any inspection or examination which is conducted pursuant to this section outside the geographical limits of the United States, or which, involving a foreign flag vessel, is conducted pursuant to the contract authority provided for in subparagraph (ii) of this paragraph. The owner or operator of any vessel inspected or examined by the Secretary or his designee shall be liable for such fees. Amounts received as fees shall be credited to the General Treasury.

"(B) VESSEL DOCUMENTS.—Any vessel subject to provisions of this section shall have on board such documents as the Secretary deems necessary for inspection or enforcement under this section, including, but not limited to, documents indicating—

"(i) the kind, grade, and approximate quantities of any cargo on board;

"(ii) the shipper and consignee of the cargo;

"(iii) the points of origin and destination of the vessel; and

"(iv) the name of an agent in the United States authorized to accept legal process.

"(16) MARINE SAFETY INFORMATION SYSTEM.—

"(A) IN GENERAL.—The Secretary shall establish a marine safety information system which shall contain information with regard to any vessel subject to this section which operates on or enters the navigable waters of the United States, or which transfers oil or any hazardous materials in any port or place under the jurisdiction of the United States. The Secretary may, by regulation, require any such vessel to furnish such data or other information as he deems necessary, in order to carry out the purposes of this subsection, including, but not limited to—

"(i) the names of any person with an ownership interest in such vessel;

"(ii) details of compliance with the financial responsibility requirements of applicable statutes or regulations;

"(iii) registration information, including all changes in the name of the vessel;

"(iv) the history of accidents or serious repair problems of the vessel; and

"(v) a record of all inspections or examinations of a vessel conducted under subsection (15).

"(B) INTERAGENCY COOPERATION.—The head of each department or agency of the Federal Government shall, upon a written request from the Secretary, furnish any available information which the Secretary deems necessary to confirm the information received pursuant to paragraph (A).

"(17) LIGHTERING.—

"(A) IN GENERAL.—After the effective date of regulations issued by the Secretary pursuant to paragraph (B), no vessel may transfer oil or hazardous materials in a port or place subject to the jurisdiction of the United States, if the cargo has been transferred from another vessel in the navigable waters of the United States or in the marine environment unless—

"(i) the transfer was conducted in accordance with regulations issued by the Secretary, and

"(ii) both the delivering and receiving vessels had, on board at the time of transfer, a Certificate of Inspection or a Certificate of Compliance, as would have been required under subsection (8), had the transfer taken place in a port or place subject to the jurisdiction of the United States.

"(B) REGULATIONS.—The Secretary shall issue, and may from time to time, amend or repeal regulations for the transferring of oil or hazardous materials in the navigable waters of the United States or in the marine environment when such oil or hazardous material is destined for a port or place subject to the jurisdiction of the United States. Such regulations shall include, but need not be limited to—

"(i) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similar factors;

"(ii) prevention of spills;

"(iii) equipment for responding to any spill;

"(iv) prevention of any unreasonable interference with navigation or other reasonable uses of the high seas, as such uses are defined by treaty, convention, or customary international law;

"(i) establishment of lightering zones; and

"(vi) requirements for communication and pre-arrival messages.

"(18) TANK WASHINGS.—

"(A) No vessel may transfer cargo in a port or place subject to the jurisdiction of the United States, if the vessel has discharged tank washings containing oil or hazardous materials in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party, in preparation for loading cargo in any port or place subject to the jurisdiction of the United States.

"(B) The Secretary shall establish effective control and supervisory measures to implement the provisions of this subsection.

"(19) REPORT.—Within six months after the end of each calendar year, the Secretary shall submit to the Congress—

"(A) a report on the administration of this section during the preceding calendar year;

"(B) a summary of inspection and enforcement activities during the preceding calendar year; and

"(C) recommendations to the Congress for any additional legislative authority necessary to improve navigation and vessel safety and protection of the marine environment.".

SEC. 6. SAVINGS CLAUSE.

(6) Regulations previously issued under statutory provisions which are amended by section 2 of this Act shall continue in effect as though issued under the authority of the Ports and Waterways Safety Act of 1972, as amended by this Act, until expressly abrogated, modified, or amended by the Secretary. Any proceeding under title I of Public Law 92-340 for a violation which occurred before the effective date of this Act may be initiated or continued to conclusion as though such public law had not been amended by this Act.

(b) Regulations previously issued under statutory provisions which are amended by section 5 of this Act shall continue in effect as though issued under the authority of section 4417a of the Revised Statutes of the United States, as amended by this Act, until expressly abrogated, modified, or amended by the Secretary. Any proceeding under the provisions of section 4417a of the Revised Statutes of the United States, as it existed prior to amendment by this Act, for a violation which occurred before the effective date of this Act, may be initiated or continued to conclusion as though such section had not been amended by this Act.

(c) If a provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

The SPEAKER pro tempore. (Mr. SISK). Is a second demanded?

Mr. RUPPE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. BIAGGI) and the gentleman from Michigan (Mr. RUPPE) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from New York (Mr. BIAGGI).

Mr. Speaker, before I make my comments in connection with the bill, I would like to take this opportunity to commend the members of the Subcommittee on Coast Guard and Navigation of the full Committee on Merchant Marine and Fisheries, the staff, and all those responsible, for their commitment, dedication, and diligence in producing this product.

Mr. Speaker, I urge the support of the House in passing H.R. 13311—a landmark piece of maritime safety legislation—which concerns itself with the safety of our ports and waterways—the safety of tank vessels—and the protection of the marine environment.

As you no doubt are aware, many Members of the House—as well as many of our colleagues in the Senate—have been and continue to be gravely concerned over these major issues and the problems they have created.

Early in this Congress, more than two dozen bills were introduced in the House reflecting these congressional concerns. Many involved proposals for oil pollution liability and compensation—which, I am happy to state, resulted in the passage by the House of H.R. 6803—now pending in the Senate.

Other proposals were related to the safety of our ports and the vessels themselves. In preparing for the consideration of these bills—as chairman of the Subcommittee on Coast Guard and Navigation—I held a series of oversight hearings for a number of days on the overall marine safety program of the Coast Guard.

The subcommittee also held 5 days of hearings on specific legislative proposals—including S. 682, a similar bill which had been passed by the Senate during the first session.

Since the President, in his March 17, 1977 message to the Congress, placed heavy emphasis on the international aspects of tank vessel safety—I felt it necessary to provide delegation representation to the International Conference on Tanker Safety and Pollution Prevention held in London during February of this year—and to await a review of the conference results.

The subsequent hearings culminated in 6 days of markup—with considerable opportunity to air all matters of controversial concern. I believe we have accommodated most of the concerns which have been expressed—while also reflecting and accommodating the concerns of many of our colleagues in both Houses.

As you no doubt are aware, the need to amend the "Ports and Waterways Safety Act of 1972" and the "Tank Vessel Act of 1936" resulted from the fact that existing law has not been completely satisfactory.

The general concern which resulted in the 1972 enactment arose from:

The increasing growth of maritime traffic in the ports and harbors of the U.S.;

The increased congestion resulting therefrom;

The increase in the size of vessels involved; and

The increasing number of marine casualties.

Since 1972, the maritime traffic has continued to expand—marine casualties have continued to occur—and the marine environment has been increasingly damaged by pollution. In addition, there has been a severe problem with the control of foreign tank vessels using our ports.

Also, since 1972, there has been a massive increase in the importation of oil and oil products—particularly crude oil—with the United States now importing more than 8 million barrels of crude oil per day. This movement of crude oil means that approximately 35 tank vessels enter U.S. ports every day—and this number of tanker movements is expected to continue at a high level for many years to come.

This shipping activity obviously increases the potential for marine casualties—which run the gamut from simple groundings and minor collisions to more serious groundings, major collisions, and disastrous explosions and fires.

I need not remind you of the most noteworthy of a series of casualties during the winter of 1976–77 involving the Liberian tank vessel *Argo Merchant* which grounded in international waters about 28 miles southeast of Nantucket Island in the early morning hours of December 15, 1976.

While the casualty resulted with no loss of life and no personal injuries, the resulting oil pollution involved some 204,000 barrels of heavy heating oil destined for the Boston area.

I would also like to point out that the report of the Liberian Marine Board of Investigation which inquired into this tragedy made certain recomendations which are strikingly similar to some of the conclusions contained in the President's March 1977 message to the Congress on tanker safety and oil pollution. They are also similar to various legislative initiatives before us today.

Another noteworthy casualty which occurred in December 1976 involved the Liberian tank vessel *Sansinena*—which suffered an explosion and fire while taking on ballast and fuel at an oil terminal in Los Angeles Harbor.

In addressing some of these problems, H.R. 13311 will provide for greater supervision and control over all types of vessels—foreign and domestic—which operate in our waters or ports.

It will also provide for an effective inspection and compliance program for all tank vessels—foreign and domestic—which transport or transfer oil or hazardous cargoes in ports or places subject to the jurisdiction of the United States.

With specific reference to tank vessels, this bill includes many actions endorsed by the administration and the international maritime community concerning standards for new and existing tank vessels—with respect to segregated ballast—crude oil washing systems—inert gas systems—steering gear systems—and navigation equipment.

It provides a stringent and comprehensive program dealing with the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualifications, and manning of all vessels which desire to use our ports to transfer cargoes of oil and hazardous materials.

This legislation has widespread support—and a number of the controversial issues have been accommodated. However, it is the consensus of many that something had to be done to cover the international maritime community's failure to address construction and oil pollution prevention standards for the smaller existing tank vessels—those of 20,000 deadweight tons or above, but less than 40,000 deadweight tons.

We have recognized the technical difficulty—the cost of redesign and retrofit—and the need for continuing international cooperation by requiring compliance with certain standards within a reasonable and realistic timeframe.

These smaller vessels will have to be equipped with segregated ballast tanks—or a crude oil washing system—if they are 15 years or older—not later than January 1, 1986 or the date on which the vessel reaches 15 years of age, whichever is later.

It is my belief that the dates agreed to will provide sufficient lead time to enable vessel owners to make valid judgments with respect to retrofit, layup, scrapping, replacement, or reassignment. I also believe it will provide the international community with the time necessary to evaluate what must be done to upgrade these smaller tankers.

I believe this is an absolutely necessary requirement when you realize that somewhere near 80 percent of the tankers using our ports are within this tonnage range.

I want to make it very clear that—in developing this requirement for the lower tonnage tank vessels—there was and remains a general recognition of the excellent results which were achieved by international agreement—and also recognition of the dedicated efforts of the U.S. delegation during the February 1978 conference on tanker safety and pollution prevention.

The bill also includes regulatory authority over areas not previously covered—such as participation with neighboring nationals in coordinated vessel traffic systems in boundary waters—and the control of dumping of tank washings at sea in preparation for loading cargoes in U.S. ports.

It also provides, for the first time, regulatory control over lightering operations—that is, the offshore transfer of oil or hazardous cargoes from large vessels to smaller ones for delivery to our shallow-water ports.

It also permits the development of improved personnel qualifications—as well as realistic manning standards for all tank vessels using our ports.

Finally, H.R. 13311 also provides for the initiation of a study looking into comprehensive cost-effective shore station systems for monitoring vessels operating off our coasts.

Mr. Speaker, in this comprehensive port safety and tank vessel safety legislation, it is my firm belief that we have reported a bill which will accommodate domestic concerns—as well as meet international objectives within a flexible framework.

It is my opinion that the bill meets the President's overall objective when—on March 17, 1977, in his message to Congress—he announced a number of measures to be adopted, designed to reduce the risks associated with the marine transportation of oil.

I, therefore, urge all Members to support the passage of H.R. 13311—as developed by the Subcommittee on Coast Guard and Navigation—and as reported by the Committee on Merchant Marine and Fisheries.

Mr. RUPPE. Mr. Speaker, I yield myself so much time as I may consume.

Mr. Speaker, I would like to join my colleagues in supporting H.R. 13311, the "Port Safety and Tank Vessel Safety Act of 1978."

In recent years the volume of vessel and tanker traffic off our coasts, and in our ports, has increased significantly. To a large extent this is the result of the dramatic increase in the importation of oil into the United States. This increase in vessel traffic creates a serious potential for marine casualties such as groundings, collisions, and disastrous explosions and fires.

During December 1976, there was a rash of serious tanker casualties. Most noteworthy was the grounding and subsequent breakup of the SS *Argo Merchant* off Nantucket, Mass. and the explosion of the SS *Sansinena* at an oil terminal in Los Angeles Harbor. Marine casualties such as these brought about a demand, both nationally and internationally, for improved marine safety standards.

On March 17, 1977, the President announced his initiative on marine oil pollution. This initiative directed the Secretary of Transportation to prepare, within 60 days, proposed new regulations governing tanker construction and equipment. The initiative also instructed the Department of State to begin diplomatic efforts to improve the international system of inspection and certification of tankers and called for an early convening of an International Conference of Training and Certification of Seafarers. These international efforts culminated in the International Conference on Tanker Safety and Pollution Prevention of February 1978, and the International Conference on Training and Certification of Seafarers of June 1978.

H.R. 13311 amends the Ports and Waterways Safety Act of 1972, the Tank Vessel Act of 1936 and 46 United States Code 214 concerning pilotage.

The Ports and Waterways Safety Act Amendments would, among other things, authorize the Coast Guard to establish vessel operating requirements. This

would include vessel traffic services in waters subject to U.S. jurisdiction and, in accordance with negotiated international agreements, in areas of the high seas. The Secretary can also establish necessary fairways and traffic separation schemes and provide safe access routes for U.S. ports.

The Ports and Waterways Safety Act Amendments also authorize the Coast Guard to establish conditions of entry for tank vessels into U.S. ports. A tank vessel can be denied entry if it: has a history of accidents, pollution incidents, or serious repair problems; does not comply with applicable laws or treaty; discharges oil or hazardous material in violation of U.S. laws or treaties; does not comply with the applicable vessel traffic service; or is improperly manned.

Recognizing that tankers do not transit areas of particular concern in isolation, the Secretary is also directed to study and report on the feasibility of shore-based monitoring systems for all vessels trafficking within the Fishery Conservation Zone.

The principal amendment to the Tank vessel can be denied entry if it: Has a construction standards for United States and foreign tankers, product carriers, and other vessels which enter U.S. navigable waters or use any port or place under U.S. jurisdiction. These minimum construction standards are in most respects consistent with the provisions of the International Conference on Tanker Safety and Pollution Prevention. Depending on vessel size, and whether the vessel is new or old, these standards include: segregated ballast tanks; a crude oil washing system; an inert gas system; or dedicated clean ballast tanks.

The Coast Guard is also directed by the tank vessel act amendments to establish minimum personnel and manning standards for U.S. tank vessels and for foreign vessels entering the U.S. navigable waters for the discharge of oil or hazardous materials in any port or place under U.S. jurisdiction.

Finally, the amendment to 46 United States Code 214 directs the Coast Guard to establish eligibility requirements and sets certain minimum standards for the issuance of a Federal pilot's license.

I believe we have a good bill, one that is comprehensive and takes a systems approach to the problems at hand. It provides for minimum safe operating, construction, personnel and manning, and pilotage standards. I strongly urge your support of its passage.

Mr. Speaker, I would like to congratulate the gentleman from New York (Mr. BIAGGI), the chairman of the subcommittee, for the gentleman's long and very careful work in insuring what I think is a complete and very satisfactory bill which is before us today.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. MCCLOSKEY).

Mr. MCCLOSKEY. Mr. Speaker, I take this time, because in the report on this bill, the minority views that I submitted to that report indicated my concern that the provisions of the bill, as then written, went beyond the IMCO agreement which was so painfully negotiated by our representatives in London. The IMCO agreement was the subject of a breakthrough in February which finally achieved tough international standards at the instance of the United States. Those standards were relatively close to the provisions of this bill.

Mr. Speaker, I would like to commend the gentleman from New York (Chairman BIAGGI), the gentleman from Massachusetts (Mr. STUDDS), and the gentleman from Louisiana (Mr. TREEN) for the incredibly long and painful process they went through in drafting this bill and to state clearly that after examining the provisions of IMCO and discussing it with our representatives at IMCO, I am satisfied there are no serious differences of substance between this bill and the terms of the IMCO agreement. Because the bill appears to be reasonably consistent in matters of substance with the IMCO Treaty, I do not think it is an act of bad faith, as was once suggested by the Secretary of Transportation before the bill was amended.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. MCCLOSKEY. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I know the gentleman has acted as a congressional liaison in the Law of the Sea Conference and has been actively engaged in discussing some of the waterways safety regulations at that conference.

Is the gentleman also satisfied this bill meets some of those problems that have been raised in the Law of the Sea Conference and the proposed treaty our Nation has been urging?

Mr. MCCLOSKEY. Mr. Speaker, I do not think this agreement in any way conflicts with the Law of the Sea Treaty. There still remains a difference between our position at the Law of the Sea negotiations and the Ports and Waterways Safety Act; but this bill does not intrude in any way on that position, so far as I can tell.

Mr. GILMAN. Mr. Speaker, I thank the gentleman.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. MCCLOSKEY. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, I want to thank the gentleman from California for these kind comments; but even more importantly, the gentleman's invaluable contribution. As the gentleman well knows, it is the purpose of our subcommittee and the chairman, under whom I serve on that subcommittee, to meet the objective, the stated goal, and try to accommodate all the concerns, without losing sight of the primary objective.

I daresay that it has been an arduous road. We are embarking on new areas, but I am satisfied that the solution we offer all Members and our country is a satisfactory one. It should produce the kind of relief and safeguards that we have been clamoring for and that the Nation as well as the world needs.

Mr. Speaker, once again let me say we are grateful for the gentleman's contribution.

Mr. MCCLOSKEY. Mr. Speaker, I want to thank the gentleman from New York (Mr. BIAGGI) and again congratulate him upon achieving the delicate balance between what we could achieve by international negotiations and what our own people expected us to impose as pollution control standards for tankers entering U.S. waters. It seems to me the gentleman has crafted a very fine compromise.

The concern that has been expressed by certain foreign nations that the differences between the precise language of IMCO and the precise language of this bill result in differences in substance has not been proven to me, and I am hopeful that Congress will enact the bill into law.

Mr. BIAGGI. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, I rise in support of H.R. 13311, the Port Safety and Tank Vessel Safety Act of 1978.

Mr. Speaker, I also want to commend the Committee on Merchant Marine and Fisheries, its chairman the gentleman from New York (Mr. MURPHY), our colleague, the gentleman from New York (MARIO BIAGGI), as well as the minority member of that committee, the gentleman from Michigan (Mr. RUPPE). I also commend the members of my own committee, the Committee on International Relations, including the gentleman from Massachusetts (Mr. STUDDS), for their efforts on this particular piece of very necessary legislation.

Mr. Speaker, this bill was sequentially referred to the Committee on International Relations on July 21, for consideration of subsections (A) and (B) of section 9. On August 3, by voice vote, the committee ordered the bill favorably reported with amendments.

The committee believes that section 9 of the Ports and Waterways Safety Act of 1972, which deals with international agreements, is an important provision. This section encourages the President to enter into negotiations with neighboring states and within international bodies to establish appropriate international standards to prevent and control pollution. The committee amendments to the section make explicit the President's authority not only to negotiate, but also to conclude and execute international agreements with respect to vessel standards and vessel traffic services.

The International Relations Committee has had a continuing interest in the efforts of international organizations to solve the global problem of prevention and control of marine pollution. The committee also has a general concern for the implications that domestic legislation to control marine pollution may have for U.S. foreign relations, particularly U.S. policy in multilateral agencies such as the Intergovernmental Maritime Consultative Organization (IMCO). The committee would like to congratulate the U.S. delegation to the recent IMCO Conferences for their hard work in successfully negotiating new international agreements in two important areas: One on tanker safety and pollution preven-

tion, and the other on standards of training and certification of seafarers.

Mr. Chairman, I would like to add that the Committee on International Relations recently received an aide memoire concerning this bill from the Governments of Belgium, Denmark, Finland, Italy, Japan, the Netherlands, and the United Kingdom. These governments expressed their concern that certain provisions of H.R. 13311 go beyond the recently negotiated IMCO Agreement on tanker safety and pollution prevention, to which the United States was party. While the committee supports the bill in its present form, as amended, it is incumbent on the International Relations Committee that these concerns be made known. I, therefore, include the text of the aide memoire in the RECORD at this point.

DEPARTMENT OF STATE,
*Washington, D.C., September 1, 1978.*

Hon. CLEMENT J. ZABLOCKI,
*Chairman, Committee on International Relations,*
*House of Representatives*

DEAR MR. CHAIRMAN: I have been asked by representatives of Belgium, Denmark, Finland, Italy, Japan, the Netherlands, and the United Kingdom to transmit to you the enclosed Aide Memoire to the Department of State concerning H.R. 13311.

In the Aide Memoire, the above-mentioned governments expressed their concern that the bill's provisions differ substantially from those agreed internationally at the February 1978 Intergovernmental Maritime Consultative Organization Conference on Tanker Safety and Pollution Prevention, to which the United States was party.

Thank you for your consideration.

Sincerely,

J. BRIAN ATWOOD,
*Acting Assistant Secretary for Congressional Relations.*

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AIDE MEMOIRE

The Governments of Belgium, Denmark, Finland, Italy, Japan, the Netherlands and the United Kingdom refer to Bill HR13311 entitled the "Port Safety and Tank Vessel Safety Act of 1978", approved by the House of Representatives Committee on Merchant Marine and Fisheries on 22 June and 8 August and the Committee on International Relations on 3 August.

The above-mentioned Governments have noted with concern that the Bill contains provisions which go beyond the standards agreed internationally at the February 1978 Inter-Governmental Maritime Consultative Organisation Conference on Tanker Safety and Pollution Prevention. The agreements reached at that Conference, which was convened primarily in response to a timely initiative by the President of the United States, mark a noteworthy achievement in responsible international cooperation in IMCO and should lead to significant improvements in tanker safety and pollution prevention. The above-mentioned Governments therefore consider that it would be regrettable if the United States, on return from an international meeting at which its delegation (which included Congressional observers) participated fully in discussions with delegations of other nations, were to adopt different standards, applicable to foreign-flag tankers, in its national legislation. Such action would impede the free movement of international shipping, could not but undermine the value of international discussion in IMCO to which the President attaches importance, and might create a precedent for similar action by other nations.

The above Governments have welcomed the testimony presented by the Departments of State and Transportation and other witnesses on 27 July before the Subcommittees of the International Relations Committee, expressing concern about the unilateral provisions in HR13311 which parallels their own. They welcome the changes to the Bill made on 8 August, which they understand may have been in response to this testimony. Nevertheless, they still consider that there are differences of substance between the provisions of the Bill and those contained in the IMCO Protocol of February 1978, and express the hope that, in the light of the considerations outlined above, the Government of the United States will not enact national standards at variance with those agreed in IMCO.

Mr. BIAGGI. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Speaker, I would like to ask the distinguished gentleman from New York (Mr. BIAGGI) whether in this legislation there is any requirement that there be special fire control systems or navigational procedures for vessels that are bringing into our ports highly explosive or volatile materials.

More and more the people from whom we are buying oil are going to insist that some of it come in here in processed, in gasoline, naphtha and in other forms.

As these shipments increase into this country, with refining going on offshore, what insurance do we have that these ships are capable of resisting and controlling a fire or an explosion that might break out on a vessel carrying highly inflammable or explosive materials?

Mr. BIAGGI. If the gentleman will yield, one of the purposes of the bill is to incorporate the type of design that would minimize the possibility of any inadvertent development, any catastrophe, any untoward incident.

The gentleman asks, further, what can we do in the event of an explosion. I would suggest at that point that we say a prayer. But on a more serious note, we are dealing with the law.

Mr. VANIK. I pray that we might write proper law here today.

Mr. BIAGGI. The gentleman's question dealt with the question of an explosion. If we are talking about design, design deals with structure, as far as carrying capacity, the safety and the ability to carry that oil safely and also the prevention of any possible fire and explosion. The ship would have to incorporate in its design the necessary firefighting equipment. But the important thing is, for the first time these vessels will be required, as a matter of law—not just a matter of proper seaman's practice, but as a matter of law—to have the proper kind of design, the proper kind of prevention equipment and procedures; and, of course, the proper type of firefighting ability. But if we are talking about the kind of explosion we see periodically, that it just goes up in the air, that is one of the things I do not know if we can deal with.

Mr. VANIK. Mr. Speaker, I commend the gentleman's committee and I commend the gentleman's efforts. Will there be any provision or any authority to provide that such vessels would probably operate at times of little commercial transport?

In other words, by allocating their movement to and from ports during times when there might be a minimum hazard of collision, a minimum hazard of exposure to the other vessels such as we do when we transport flammable and explosive material over bridges. On bridges we allow special security coverage, and at times when there is a minimal amount of other traffic, so that the hazard is reduced for that kind of catastrophe.

Mr. BIAGGI. The gentleman makes a valid point, and his theory is a substantial one. The Coast Guard has already embarked on this type of program in many ways. We are talking in terms of carrying hazardous substances, very volatile substances. In Boston, when that occurs all vessel traffic stops. The only vessel permitted to go is that vessel. We have a vessel-traffic control system which is being put into effect in the major ports of our Nation, a separate and distinct Coast Guard program, which should produce the kind of safe conditions we want.

Mr. RUPPE. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana (Mr. TREEN), the distinguished ranking member of the subcommittee that has developed this legislation.

Mr. TREEN. Mr. Speaker, first of all, I want to commend the chairman of the subcommittee, the gentleman from New York (Mr. BIAGGI), for his very diligent efforts and competent work in presenting this bill to the full committee and to the floor, the gentleman from Massachusetts (Mr. STUDDS), who brought his usual wisdom in the crafting of this bill, and the staff of both the majority and the minority, who have worked diligently on this bill.

Mr. Speaker, I join my colleagues in supporting H.R. 13311, the Port Safety and Tank Vessel Safety Act of 1978.

The use of petroleum has played a major role in the development of the U.S. economy. The continued need for oil for the foreseeable future is unquestioned. Currently, the United States imports about 43 percent of its oil requirements. Most of the oil imported into the United States comes by vessel, with over 96 percent imported on foreign vessels.

The amount of oil we import will increase. The United States presently imports over 7.7 million barrels of petroleum products a day. By 1980, the total should reach 10 million barrels a day. This constitutes a 71 percent increase in foreign imports between 1975 and 1980, and it is estimated will increase port calls by over 89 percent. These figures no not include the amount of petroleum which is not imported but moved by vessels in the domestic trade.

This increase in shipping activity will result in an increase in the danger of marine casualties resulting from groundings, collisions, and fires and explosions.

During the month of December 1976, a series of tanker casualties occurred. This included the grounding of the SS *Argo Merchant* 28 miles southeast of Nantucket which released an estimated 204,000 barrels of oil, and the massive

explosion of the SS *Sansinena* in Los Angeles harbor.

As a result of these incidents, the Secretary of Transportation established a special departmental task force to undertake a comprehensive review of marine safety and oilspill regulations. This review, and a subsequent interdepartmental review, constituted the basis for the President's initiatives on marine oil pollution of March 17, 1977.

Part of the President's initiative called for diplomatic efforts to improve the international system of inspection and certification of tankers, and for an early convening of the International Conference on Training and Certification of Seamen. These efforts resulted in the International Conference on Tanker Safety and Pollution Prevention of February 1978, and the International Conference on Training and Certification of Seafarers of June 1978.

H.R. 13311 amends the Ports and Waterways Safety Act of 1972, the Tank Vessel Act of 1936, and 46 U.S.C. 214 (concerning pilotage). The bill authorizes the Secretary of the Department in which the Coast Guard is operating to: Establish vessel operating requirements, including traffic services; establish fairways and vessel traffic separation schemes; establish conditions of entry into U.S. ports; provide for waterfront safety; provide for eligibility requirements for federally licensed pilots; establish a Marine Information System; regulating lightering; establish minimum manning standards for United States and foreign vessels; and establish minimum construction standards for large tankers, product carriers and other vessels which enter or use any port or place in U.S. jurisdiction. The minimum construction standards adopted by H.R. 13311 are basically the same as those adopted at the International Conference on Tanker Safety and Pollution Prevention. Depending on the size of the vessel, the minimum standards may include: Segregated ballast tanks; a crude oil washing system; and inert gas system; and dedicated clean ballast tanks.

Rather than discuss each individual provision of the bill, I would like to highlight several sections I feel are of significance.

MINIMUM CONSTRUCTION STANDARDS

Vessels engaged in the U.S. coastwise trade are protected by law from competition from foreign vessels. In return for this protection, the vessels must be built in the United States and owned by U.S. citizens. The coastwise trade laws also provide that any vessel entitled to engage in coastwise trade which is "rebuilt" will lose that privilege unless the "entire rebuilding, including the construction of any components of the hull or superstructure of the vessel" is done in the United States, its territories, or possessions.

H.R. 13311 will require the installation of segregated ballast tanks, a crude oil washing system or an inert gas system on certain vessels. The Coast Guard has ruled that the installation of this equipment on vessels entitled to engage in coastwise trade is not "rebuilding" within the intent of the coastwise trade laws. This is perplexing, since the U.S. Customs has also ruled that the installation of this equipment on U.S. vessels in foreign shipyards would be regarded as a rebuilding through an alteration of the hull and, therefore, not dutiable as a "repair of equipment" under the Tariff Act of 1930.

H.R. 13311 makes it clear that the installation of this required equipment on vessels entitled to engage in the coastwise trade must be effected within the United States, its territories or possessions. Vessels which fail to comply with this provision lose the privilege of engaging in the coastwise trade.

PILOTAGE

Under the admiralty and martime jurisdiction of the United States, Congress clearly has the authority to determine whether pilotage will be regulated by the Federal or State government, and under what terms or conditions. However, except for pilotage in the coastwise trade and on the Great Lakes, Congress has, since 1978, felt it best to leave the regulation of local pilotage areas to the various States. This was because different conditions existed in each State with regard to its harbors, ports and waterways and, therefore, it was best to allow the States to promulgate different rules based on local knowledge of these conditions. For the same reason, it was thought best to allow the States to determine the competency of pilots to navigate these local conditions.

Recently, the Coast Guard has sought to exercise disciplinary authority over pilots. This is particularly true with regard to Federal licenses which are required as a condition of a State pilot's license. However, the courts have denied the Coast Guard this authority.

Several individuals who testified before the Committee on Merchant Marine and Fisheries stated that "statistics" indicated a need for Federal regulation of State pilotage. However, when asked for these statistics, none were forthcoming. On the other hand, the American Pilot's Association submitted to the committee a letter from the Chief of the Coast Guard's Office of Merchant Marine Safety which states that based on spot checking "the actions of the State pilot commissioners are about the same as the (Coast Guard's) administrative law judges."

The State pilots feel that only they have the specialized knowledge of local waters and conditions necessary to regulate pilotage properly. They also feel that over the years they have done a very good job. Since this system of pilotage has been in existence since 1789, I feel we should have strong proof that the system is no longer functioning properly before we change it. That proof was simply not presented. H.R. 13311 upholds State regulation of pilotage by providing that the Federal Government may require a federally licensed pilot on a vessel engaged in foreign trade only where "not otherwise required by State law."

LIGHTERING

Lightering is the practice of transferring cargoes at sea from a large deep-draft vessel to a shallow-draft vessel for subsequent transfer ashore. The practice of lightering oil from large crude tankers, or "superships," to smaller tankers at sea has increased greatly due to the inability of most new large tankers to enter the relatively shallow ports of the United States. This transfer may occur very close to our shoreline, or as far offshore as 100 or 200 miles. Testimony indicated that as much as 1 million barrels of oil are lightered daily in my area of the country, the Gulf of Mexico, alone.

Currently, the practice of lightering is not regulated when it occurs beyond our territorial jurisdiction. The oil industry testified that lightering has been going on for many years under strict industry guidelines, and that its safety record was excellent. However, there is always the possibility that less reputable operators may become involved in lightering operations. H.R. 13311 will provide legislative authority to control lightering operations by prohibiting any tanker, which has engaged in lightering, from unloading any cargo of oil or hazardous material in any port or place under the jurisdiction of the United States unless the lightering is performed in accordance with regulations isued by the Secretary of Transportation. These regulations would apply to lightering in the navigable waters of the United States; waters over which the United States asserts exclusive management authority; and waters superjacent to the Outer Continental Shelf.

I believe this bill is a good bill and I urge its passage.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. TREEN. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, I would like to thank the gentleman from Louisiana (Mr. TREEN), the ranking minority member of the subcommittee, for his kind comments; but even more importantly, for his diligence and his contribution, the absence of which would have resulted in a lesser bill for our consideration today.

Mr. TREEN. I thank the gentleman.

Mr. RUPPE. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. PRITCHARD).

Mr. PRITCHARD. Mr. Speaker, I rise in support of H.R. 13311, an amendment to the Ports and Waterways Safety Act which will provide for an overall reduction of the risk associated with the marine transport of oil. Chairman BIAGGI has been diligent in putting together a package of legislation which meets our Nation's need to provide greater protection for the marine environment.

In the Puget Sound area many of the citizens are reluctant to see any increase in the level of oil transport because of such incidents as the *Argo Merchant* and the *Torrey Canyon* disasters. In Puget Sound, being a deepwater estuary, a large oil spill could have drastic impacts on marine life. Therefore, it is essential that we enact this legislation which will provide clear guidelines for safe tanker

operations. This legislation would provide for an improved vessel traffic safety system, by applying available technology. This legislation includes standards for new and existing vessels with respect to segregated ballasts, crude oil washing systems, inert gas systems, steering gear systems, and navigation equipment. It also provides for improved personnel qualifications and manning standards for all oil tankers using U.S. ports. This legislation is important in that it encourages the application of existing and new technologies to the marine transport of oil. There are many available technologies which could significantly reduce the risk of oilspills in the marine environment. Given the importance which fishermen, recreationists, and others attach to an unspoiled marine environment, I think it essential that we begin to invest in reducing the risk of oilspills. I feel that this bill is a major move in this direction and I strongly support it.

Mr. RUPPE. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 13311, a bill to amend the Ports and Waterways Safety Act of 1972, and commend the gentleman from New York (Mr. BIAGGI), the chairman of the subcommittee of the Committee on Merchant Marine and Fisheries, and the ranking minority member, the gentleman from Louisiana (Mr. TREEN) for their diligence in bringing this measure to the floor of the House.

H.R. 13311 is part of a concerted effort by the United States to join with other nations of the world in an effort to prevent pollution of the marine environment. This much-needed legislation will help provide for the safety of U.S. ports and waterways, the safety of tank vessels, and the protection of the marine environment.

In recognition of the fact that marine pollution resulting from oilspills is a global problem, section 9 of this bill encourages the President to enter into negotiations with neighboring states and within international bodies to establish appropriate international standards to prevent and control pollution.

In this regard, some concern was expressed by the executive branch about the implications of this legislation since some provisions contained in it exceed international standards agreed upon by the United Nations' Intergovernmental Maritime Consultative Organization (IMCO). I share these concerns as they relate to our efforts to gain international cooperation, but I feel that the overall positive effect of this legislation requires our support. Marine pollution knows no boundaries. To be effective, we must approach the problem in a global fashion. The legislation before us, H.R. 13311, provides the tools to coordinate U.S. efforts in the international arena.

As our distinguished chairman of the Committee on International Relations (Mr. ZABLOCKI) noted, on September 1, 1978, the representatives of Belgium, Denmark, Finland, Italy, Japan, the Netherlands, and the United Kingdom transmitted an aide memoir with regard to this legislation. While those nations welcomed the action of the Congress to join in support of the agreements reached at the IMCO meetings, they expressed their concern about the unilateral enactment of national standards at variance with those IMCO agreements.

It was in response to such international concerns that our Committee on International Relations added language to authorize the President not only to negotiate, but to conclude and execute international agreements with respect to vessel standards and vessel traffic services.

Accordingly, Mr. Speaker, I urge my colleagues to join with me in support of this important legislation.

Mr. RUPPE. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from California (Mr. LAGOMARSINO).

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of the bill H.R. 13311, the Port Safety and Tank Vessel Safety Act of 1978. This legislation is sorely needed to protect the Nation's waterways, harbors, fisheries resources, and coastal communities from tragic marine transportation accidents. From the *Torrey Canyon* to the *Amoco Cadiz* we have, I hope, learned valuable lessons about the critical need to improve safety standards among American flag vessels and foreign vessels entering American waters, improve traffic management systems, and conditions in the Nation's harbors to eliminate wherever possible the threat of potential disasters. As the size of the massive vessels used to transport the Nation's energy supplies continues to increase, the problem, and the potential magnitude of tanker accidents grows. We must act and I am pleased that today we have such a responsible bill before us.

I would like to commend the gentleman from New York (Mr. BIAGGI) and the subcommittee for their tireless efforts to deal constructively and effectively with the substantial and complex problems of tanker and harbor safety. The bill before us today is a good one and one which I urge my colleagues to support it.

At this time, I would like to take a few minutes and outline for the benefit of my colleagues the basis for my strong support and interest in H.R. 13311.

Mr. Speaker, my congressional district encompasses the Santa Barbara Channel and adjoining coastal areas which have the dubious distinction of experiencing the first major oilspill in the United States. In fact, many believe that the 1969 oilspill, which poured millions of gallons of crude oil into the channel, was the catalyst for the environmental movement. Following the massive spill of 1969, we are perhaps more sensitive to the dangers inherent to offshore energy activities—both OCS exploration and production, and marine transportation systems. Yet at the same time, we recognize this Nation's need for increased domestic energy supplies and have not sought unilaterally to put a halt to all energy activities which impact the channel. We do expect, however, that we make these kinds of activities as safe and as environmentally compatible as is reasonably possible. Concrete steps can, and must, be taken to lessen the potential hazards and environmental impacts which result from offshore energy activities without unduly restricting domestic energy production, transportation, or distribution. That is the purpose of the bill before us today and I believe the legislation meets this criteria.

It would be my hope that efforts to improve and enhance tanker safety and marine transportation systems would not stop with this bill. While this legislation makes a serious and important step to deal with tanker safety we must continue to identify, analyze, and deal constructively with potential problems which threaten public safety and environmental integrity. It is my hope that the Congress and the Coast Guard would identify hazardous and congested shipping traffic patterns and implement a higher level of traffic management—before accidents happen. The magnitude of a supertanker accident and the potential for environmental property and commercial damage clearly should prompt us to increase the level of safety to prevent accidents and not just to respond to them after they happen and the damage is done. One way to fulfill our responsibilities is to increase the level of traffic management systems in and around hazardous shipping lanes.

The Coast Guard has recently implemented a navigational system in Puget Sound in Washington which allows them to monitor and communicate with all traffic in the area. The system operates much the same way as the sophisticated traffic management capabilities of the Nation's commercial airways. Individual vessels can be monitored and alerted to potential danger in time to take evasive action. A vessel communication system is also now in use in San Francisco Bay. I believe we should seriously consider expanding these systems to other areas of the Nation's waterways to improve safety and help alleviate the danger of tanker accidents.

I was pleased to be able to participate in the development of this legislation, through hearings which the subcommittee, chaired by my colleague and friend from New York, Mr. BIAGGI, held in Santa Barbara this summer. At the hearings, testimony was offered indicating the desirability of establishing a vessel traffic monitoring system in the Santa Barbara Channel. Several companies carrying taps crude have volunteered to cooperate in such a study, in an effort to determine the feasibility, assets and liabilities of using different routes through this area. Such a test would aid immensely in deciding the safest and best way to handle this traffic. Specifically, I would like to establish: First, continuous radar monitoring of the Point Conception—Point Fermin and Gulf of Santa Catalina traffic separation schemes; second, establish a suitable radio network to permit communication with all vessels

using the traffic separation schemes; third, undertake field tests examining the various tanker routing options available off southern California and the merits of various electronic aids; and fourth, require a report of Congress on the results of these tests and related actions.

I would like to ask my colleague, the gentleman from New York (Mr. BIAGGI), whether the subcommittee will continue to work with me and my staff and the Coast Guard in order to resolve this issue to the satisfaction of all the interested parties?

Mr. BIAGGI. If the gentleman will yield, as the gentleman knows we did respond to his initial request by going to Santa Barbara and making firsthand observations and listening to the testimony of the witnesses.

Of course there is a problem which requires further attention, and I pledge to the gentleman that our committee and our staff will continue to work closely in attempting to find some suitable solution.

Mr. LAGOMARSINO. I thank the gentleman.

But that is in the future. Today, we have an opportunity to take concrete action now to help improve safety on the shipping lanes and in the harbors. I urge adoption of the bill H.R. 13311.

Mr. RUPPE. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts (Mr. STUDDS), who has worked probably harder than anyone else to see that we have before us an effective bill on the floor today.

Mr. STUDDS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of H.R. 13311, the proposed Port Safety and Tank Vessel Safety Act of 1978.

This legislation was promised to the American people in the aftermath of the *Argo Merchant* and other tanker accidents two winters ago. Its primary purpose is to reduce the amount of oil pollution resulting from tanker traffic in American ports and waterways in future years.

Accordingly, this legislation will establish a series of minimum construction and operating safety standards for tankers which must be met as a condition of entry into a U.S. port. These include:

The installation of segregated ballast tanks or a crude oil washing system on all new crude oil tankers over 20,000 deadweight tons, on all existing tankers which exceed 40,000 dwt., and on existing tankers between 20,000 to 40,000 dwt., which are more than 15 years old beginning in 1986;

All crude oil tankers over 20,000 tons, new and existing, will be required to install a gas inerting system, to prevent explosions during loading and unloading operations;

All tankers above 10,000 gross tons will be required to have on board a collision avoidance system, an electronic position fixing device, adequate communications equipment, a sonic depth finder, a gyrocompass, and up-to-date charts;

All crude oil tankers above 5,000 dwt. which are carrying oil from an offshore oil facility to shore will be required to have segregated ballast tanks; and

No tanker will be allowed in a U.S. port if it does not have at least one licensed deck officer on the navigation bridge who is capable of clearly understanding English, or if it comes from a country whose crew training standards have been found by the Secretary of Transportation to be inferior to those of the United States.

The major controversy surrounding this legislation has involved the extent to which it differs from the international tanker safety agreement negotiated earlier this year in Geneva. This agreement—called the IMCO agreement—represents a major step forward in international cooperation on marine pollution issues, and the Coast Guard deserves high praise for the success which has been achieved.

The primary failure at IMCO, however, was the decision of the negotiators to refrain from requiring new construction standards on existing oil tankers of less than 40,000 dwt. The Merchant Marine and Fisheries Committee, while giving due attention to the international agreement in most areas, wisely chose to extend segregated ballast requirements to those tankers which are between 20,000 to 40,000 dwt., and which are more than 15 years of age. Due to administration objections, this requirement will not go into effect until 1986.

The importance of the committee's decision should not be minimized, for without it, this tanker safety bill would be little more than a sham. If the Congress chose, as did the international negotiators, to ignore tankers below 40,000 dwt., particularly the older tankers in this category, we would be ignoring the primary reason for this legislation. The *Argo Merchant*, for example, was a 28,000 dwt. vessel of more than 15 years, which would probably not have been operating at all if the provisions of this bill had been in effect 2 years ago. The international agreement, however, would not have affected the *Argo Merchant*, or comparably sized rustbuckets flying the flag-of-convenience banners of Liberia, Panama, or Greece, at all.

The statistics speak for themselves:

About one-half of all tanker pollution incidents in our waters are caused by tankers over 15 years old;

Fifty-seven percent of Panama's crude oil tankers and 68 percent of their product carriers entering U.S. ports in 1976 were over 15 years old; similar percentages apply with respect to the Liberian and Greek fleets;

Thirty-nine percent of Panama's tankers and 66 percent of their product carriers entering U.S. ports are under 40,000 dwt; similar percentages apply with respect to the Greek and Liberian fleets;

Tankers from Liberia, Greece and Panama accounted for 59 percent of all entries into U.S. ports in 1976; and

Well over 50 percent of tanker pollution incidents in U.S. waters are from tankers below 40,000 dwt.

Any meaningful tanker safety legislation must deal with the tankers which are responsible for the bulk of the tanker accidents. I am grateful that H.R. 13311 meets this standard.

The oil transportation safety problem is an extremely important one for the coastal regions of the United States, and, indeed, for the entire country. Our continued dependence on foreign oil, the expansion of offshore oil drilling operations into new areas of the country, and the beginning of the Alaska pipeline trade, all contribute to the expanding tanker and barge traffic which threatens our coastlines.

The recent *Amoco Cadiz* spill off the coast of France has resulted in the virtual destruction of the economy of an area very similar in its beauty and value to the coast of Cape Cod. If the prevailing winds had been different, the entire cargo of the *Argo Merchant* might have washed up on the shores of Nantucket and Martha's Vineyard. Smaller spills, from barges operating in the Cape Cod Canal and Chesapeake Bay, have decimated shellfish populations, closing commercial operations for months and years at a time. The need for tanker safety legislation is urgent. H.R. 13311 is a significant improvement over existing law; it represents the best possible bill which can be approved by the House this session; it is long overdue, and it ought to become law before this Congress adjourns.

Mr. Speaker, there is something singularly nonpartisan about an oilspill, or about an explosion in a tanker, or about one's intense concern for the integrity and the sanctity of the marine environment.

I have enjoyed immensely my experience in the past 2 years in working with this committee and this subcommittee on the oilspill liability and the tanker safety legislation, both of which bills were aptly characterized by the chairman of the subcommittee as "landmark."

The island of Nantucket, 27 miles off whose shores the *Argo Merchant* grounded two winters ago, is in my district. The legislation we are about to pass today is in response to that incident, and in response to the tragic oilspill off the coast of Brittany in northwestern France earlier this year, and it is my fervent hope that the Port Safety and Tank Vessel Safety Act, along with the oilspill liability legislation, will be passed this fall and will become the law of the land.

Let me also say that we owe a deep debt of gratitude to the gentleman from New York (Mr. BIAGGI), the gentleman from Louisiana (Mr. TREEN), and other members of both majority and minority who have worked so long and so hard in bringing forth this effective legislation.

Mr. HUGHES. Mr. Speaker, will the gentleman yield?

Mr. STUDDS. I am happy to yield to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I rise in strong support of the Port Safety and Tank Vessel Safety Act of 1978.

I am proud to be a cosponsor of this

legislation. It is one of the major environmental measures being considered by the 95th Congress. It represents a landmark in our efforts to protect the Nation's shorelines and coastal waters from the devastation of a major oilspill.

The need for the legislation is readily apparent to anyone who has followe the news reports of the *Argo Merchant*, the *Amoco Cadiz*, and the other major oilspills in the last couple years. The *Amoco Cadiz* spill, for example, covered miles of the French coastline with oil slicks, not only creating a terrible mess on the beaches, but wiping out valuable shellfish beds and killing waterfowl as well. The daily traffic along our coasts of vessels carrying hundreds of thousands of gallons of oil makes it clear that a tanker safety bill is necessary.

The need for legislation is also borne out by a study by the National Academy of Sciences. According to the study, the marine transportation of oil and petroleum products is the greatest single source of oil pollution in the world's oceans. Tanker accidents, normal tanker operations—cleaning and deballasting, drydocking, bilges, and terminal operations are the major cause of oil entering ocean waters, accounting for approximately 35 percent of oil pollution in marine waters, the study reports.

Consequently, it is noteworthy that this legislation establishes a broad program to prevent the pollution of our waters by tankers and their operations. The bill sets in statute tough new standards for the design, construction, operation, and manning of all tankers, foreign and domestic, that use our ports and navigable waters. Under the bill, tankers must make use of the best available technology to prevent pollution, unless the economic impact of such technology clearly outweighs its benefits. In addition, the bill calls for an effective inspection and enforcement program for these tankers.

One of the major initiatives in the bill is its focus on the serious problems caused by tankers between 20,000 and 40,000 deadweight tons that are at least 15 years old. To be candid, many of these aging vessels are nothing more than rustbuckets. Moreover, in terms of oil spilled, these vessels are, by far, the greatest threat to our marine environment. It is thus significant that the legislation requires that, by January 1, 1986, these vessels must be refittted with either segregated ballast or crude oil washing systems. Otherwise, they must be taken out of service altogether.

In another major initiative, the legislation grants the Coast Guard the authority to prohibit foreign vessels with histories of unsafe operations from entering our ports and navigable waters. This is the first time the Coast Guard has been given this authority by statute. The authority also enables the Coast Guard to bar entry to foreign vessels that illegally discharge oil or hazardous materials, violate applicable vessel traffic service requirements, or fail to have a crew adequately trained and qualified in accordance with the Tank Vessel Act.

Another significant initiative in the bill has a special importance to south Jersey, the area I am privileged to represent in the Congress. About 60 miles off the shores of south Jersey, a number of oil companies are engaged in exploratory drilling for oil and gas. If successful, the exploratory drilling will lead to actual production in the next several years. Under the bill, any tanker over 20,000 deadweight tons transporting oil produced from a facility on the Outer Continental Shelf will be required to have segregated ballast tanks or be operated with dedicated clean ballast tanks. This requirement, I feel, will strongly encourage the oil companies to transport oil and gas ashore through pipelines, a method with much less risk to the environment.

The provisions I have just described, along with the many other initiatives in the bill, will provide needed protection to our oceans and coastal environment. The legislation is stringent but fair, and fully deserves the support of this House.

I urge my colleagues to vote for it.

● Mr. MURPHY of New York. Mr. Speaker, H.R. 13311 is a bill to improve the safety of our ports and waterways, to improve the operation of tankers transiting our waters and to improve the protection of the marine environment from the threat of pollution.

The United States is the greatest trading nation in the world, and billions of tons of cargo move into and out of our ports each year. Ever larger vessels ply our waters, carrying every imaginable type of raw material and finished product to meet the needs of our economy and send goods to our trading partners overseas.

As more and more traffic moves through our ports, it is obvious that the increased congestion creates problems brought on by the increased risk of accidents to the vessels involved, and it is a continuing battle to devise means to reduce the likelihood of those potential accidents, which not only threaten injury and loss of life, but also economic loss resulting from damage to vessels and cargo, and environmental damage ensuing from the release of polluting materials into the marine environment.

The list of laws involving the construction, operation, and manning of vessels is a long one, going all the way back to the founding of our Nation. In almost each case, the enacted law addressed new measures necessary to control specific problems involved in changed methods of operation or the adoption of new technologies, such as the change from sail to steam, or the later development of the gasoline engine.

The needs are continuing ones, and the latest involve the increased congestion in our waters, the ever increasing number of foreign vessels calling at our ports, the ever larger vessels being built, the increased reliance on sophisticated equipment, the numerical explosion in the types of exotic cargoes being transported, and the increased need to preserve the quality of our marine environment from massive deterioration through pollution.

One of the laws addressed to the most recently perceived needs was the Ports and Waterways Act of 1972 whose enactment, I am proud to say, was one with which I was involved. That act was an extremely significant one. For the first time, it created permanent authority in the Secretary of Transportation to address the problems of port safety. It authorized him to begin the creation of vessel traffic systems in our waterways designed to reduced vessel collisions and assist in maintaining an orderly flow of marine traffic to the benefit of the marine industry and the country. It also made more specific his authority over the construction, operation, and manning of the increasing number of vessels carrying cargoes in bulk which were either flammable or combustible, or otherwise hazardous, constituting a threat to the safety of their personnel and to the surrounding areas through which they passed.

The Ports and Waterways Act has served us well, but its implementation has demonstrated the need for some refinement and expansion. H.R. 13311 accomplishes that purpose.

The bill, in effect, amends and reenacts the Ports and Waterways Safety Act of 1972 and the Tank Vessel Act of 1936, already amended several times, most recently by the Ports and Waterways Act, itself. In so doing, H.R. 13311 incorporates provisions to remove ambiguities from present law and to mandate new requirements to improve the safety of vessels and to lessen their threat to the marine environment. While I would not describe the changes as massive, they are necessary and significant.

In relation to vessel traffic systems, the Secretary of the Department in which the Coast Guard is operating first, is given broadened authority to establish traffic services in certain areas outside the territorial limits, pursuant to international agreements—which the President is authorized and encouraged to negotiate; second, is authorized to require certain advance information for vessels destined for the United States; and third, is given more positive control to terminate the movement of vessels which he has reason to believe are in violation of law or regulation, until the matter is clarified. In addition, the Secretary is authorized to establish safe access routes for vessels proceeding to and from U.S. ports and to issue regulations governing the use of such routes.

In connection with the entry of vessels into U.S. waters, specific requirements are listed which are designed to insure that the vessel is not likely to constitute a danger to the United States, including the necessary furnishing of advance information which will be useful to the Secretary to make appropriate determinations, both as to likely condition of the vessel and of value in responding to any incident in which the vessel might become involved.

In developing necessary regulations, the Secretary is specifically directed to establish procedures, in addition to the rulemaking process, which should guarantee that such regulations are developed with full cognizance of the views of all

interested parties, including Federal agencies, State, and local officials, all segments of the marine transportation industry, environmental groups, and concerned individuals.

In amending the Tank Vessel Act, the bill establishes minimum standards that are mandatory for certain vessels, varying between vessels according to their size, the types of cargo being carried, and whether the vessel is a new or existing one. Some of the features involved are segregated ballast tank construction, protectively located, crude oil tank washing systems, cargo tank protection systems, dual radars, steering gear control systems with backup features, and specific navigational and communications equipment. In addition, there are specific requirements related to personnel licenses, qualifications, training, competence, physical fitness, and specific duties.

While the approach taken to personnel on foreign vessels is somewhat different from that taken to those on U.S. vessels, essentially the Secretary is given broadened authority to insure that any foreign vessel operating in U.S. waters, and any U.S. vessel operating anywhere, is manned with a sufficient crew, competent and adequately trained. Foreign vessels operating in U.S. waters are also required to meet the same construction, equipment, and operating standards as are applicable to U.S. vessels.

The bill also requires the Secretary to establish an expanded national inspection program designed to insure compliance with applicable laws and regulations and to issue certificates of inspection or compliance attesting to such compliance. He is also directed to establish a marine safety information system which will contain data, promptly retrievable, relating to any tank vessel operating in the navigable waters of the United States, including details of its ownership, a history of its accidents or repair problems, a record of its inspections or examinations, and details of its compliance with applicable financial responsibility requirements. Finally, the amendments provide regulatory authority in relation to offshore lightering operations and impose specific sanctions for violations of law involving dumping of tank washings at sea, in preparation for loading at a U.S. port.

The bill resulted from long and careful consideration of the issues. It received a large part of its impetus from the rash of tanker accidents in December 1976, starting with the grounding and breakup of the tanker *Argo Merchant*, off Nantucket Island, in the early morning hours of December 15, resulting in a massive pollution of the surrounding waters with fuel oil. With total loss of ship and cargo and an indeterminate damage to the fisheries resources of the area, it was followed shortly thereafter with several other accidents, including the explosion and fire on board the tanker *Sansinena* loading fuel in Long Beach, Calif., with attendant loss of life and extensive damage to port facilities. These accidents made it even more obvious that tightened requirements relating to tankers, particularly foreign flag tankers, should be carefully considered.

In early 1977, the Subcommittee on Coast Guard and Navigation felt what was even more crucial was the establishment of a comprehensive liability and compensation fund, created to protect damaged parties, legislation that had been considered in the 94th Congress but was not finally enacted as it was overtaken by time in the waning days of that Congress. Immediate attention was given to that aspect of the problem and on September 12, 1977, this House passed H.R. 6803, establishing such a fund. Hopefully, the other body will complete action on that bill shortly, and we can carry that legislation to final conclusion.

In the meantime, early in the present Congress, the other body addressed its first attention to the issues addressed by this bill and passed S. 682, which is now pending in this House. Upon completion of this bill, it is my intention to move to take that bill up for immediate consideration and amend it with the language contained in this bill.

Action on the various House bills and on S. 682 were postponed to await the outcome of international negotiations, held in London at the instigation of the United States to carry out the President's declared intention to solve the problems, if at all possible, through international action. The results of the February Conference on Tanker Safety and Pollution Prevention and those of the June–July Conference on Training and Certification of Seafarers reflect great credit on those governments participating, in reaching international solutions, and the U.S. delegation is to be commended for achieving many of its goals.

The bill before you today has incorporated those agreements as minimum standards which the Secretary must apply by regulation, without waiting for them to come into force. In addition, the bill includes requirements for tankers between 20,000 and 40,000 tons, 15 years old which, by 1986, must meet certain standards in order to call in U.S. waters. While this requirement does, technically, go somewhat beyond the requirements of the international agreement, it is consistent with the goals announced in one of the conference resolutions directed to dealing with all existing tankers of comparable size by 1986. Because the older, smaller tankers constitute such a large part of those transporting oil cargoes in our waters, the committee felt it imperative to address the problem, at least in some measure, now, without awaiting the final international solution. Should a reasonable alternative develop internationally, by 1986, we can, of course, act to bring our requirements into conformity.

When the original report on the bill was filed, included was an expression of minority views by one member, indicating an intention to propose certain amendments on the floor. Consideration of his views resulted in some changes, adopted by the committee, which meets his basic concerns. Those changes have been incorporated in the committee amendments to the bill, enabling us to bring that bill up under suspension of the rules, rather than adding further to the long list of bills awaiting hearings before the Committee on Rules.

In addition, the Committee on International Relations, to whom the bill was sequentially referred, has proposed some strengthening of the language relating to negotiations on international agreements. Those amendments are also included in the bill before us today, and I wholeheartedly support them.

The bill is a comprehensive bill, an effective bill, a well reasoned bill, and a badly needed one. I ask for your support in its passage.●

● Mr. LEGGETT. Mr. Speaker, as chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment—and as a member whose district borders on one of the greatest waterways and port areas of this great Nation—the San Francisco Bay—I join my colleagues on the Merchant Marine and Fisheries Committee in the House to support passage of H.R 13311.

I have been, and continue to be, gravely concerned over the safety of our ports and the protection of our marine environment. I need not remind you that not only have the Northeast and Southwest suffered tank vessel casualties and marine pollution incidents—as a result of marine disasters and ineffective enforcement and control—but so have many other ports along our massive coastline. The collision of the tankers *Arizona Standard* and *Oregon Standard* in San Francisco Bay on January 18, 1971 still remains fresh in the memories of many of my constituents and many other Americans concerned with protecting our environment and interested in marine safety.

Existing law has not been completely satisfactory for a number of reasons, and we hope that this bill will close the loopholes and provide for aggressive supervision and control of all tank vessels—foreign and domestic. We can only provide the administration with the tools to do the job, and we certainly hope that the enforcers, the Coast Guard, will now pursue a vigorous policy which assures the denial of port access to vessels which are substandard. These deteriorating and inadequately maintained vessels, and those that are inadequately or incompetently maintained, pose the greatest hazards to our marine environment and to other ships and crews.

Mr. Speaker, the legislation before the House is the result of 3 years of work by the Merchant Marine and Fisheries Committee. We have worked closely with the administration and have watched closely the proceedings of the International Conference on Tanker Safety and Pollution Prevention held in London in February 1978. Our bill is a reasonable effort to place the United States at the forefront of the international community in this area, a move I believe all Americans will support who have witnessed the effects of oilspills in the last several years.

Since 1972, there has been a massive increase in the importation of oil and oil products, particularly crude oil. The United States is now importing more than 8 million barrels of crude oil every day—or more than a quarter of the total oil moving in worldwide trade. Approximately 35 tank vessels enter U.S. ports every day. Even if the President's energy package is passed and the rate of in-

crease in imported oil slows down, the volume of tanker movements in U.S. ports will continue at a high level for many years to come.

If the United States is to protect itself against damaging oilspills and promote marine safety, a comprehensive national policy is needed. The framework for such a policy is contained in this legislation.

Mr. Speaker, the Port Safety and Tank Vessel Safety Act of 1978 contains in statutory language for the first time a prohibition against unsafe vessels and vessels with a past history of violations for carrying oil or other hazardous material in the navigable waters of the United States. In another strong section of the bill, this measure requires the Secretary of Transportation to adopt minimum construction and equipment standards for ships operating in American waters. Such a requirement goes beyond vague directions that the Secretary promulgate regulations creating such standards. The Merchant Marine and Fisheries Committee, after lengthy consideration, and consultation with all concerned parties, has placed these standards in the statute. I believe this vigorous policy will clearly signal our intentions to the international merchant marine community and insure that firm action is taken by the administration to implement his legislation.

I would also point out that the standards adopted by the committee in almost all instances mirror those agreed upon by the London conference. Should the basic convention agreed upon by the participating nations be adopted by 15 states with a total of 50 percent of the world's gross tonnage on the vessels covered, the convention's requirements would become applicable to all participants. The target date for entry into force of the Safety of Life at Sea Convention was established as June 1979, and the target date for entry into force of the Marine Pollution Convention was established as June 1981. By adopting this legislation today, the Congress will create the mechanism for U.S. participation in this convention and allow our Coast Guard to energetically enforce its requirements. Additionally, we will signal the international community that the United States takes tanker and port safety quite seriously and passage of this legislation will place the United States at the forefront of maritime nations in the area of established strict, yet sanely drafted, laws governing maritime safety and pollution requirements.

As chairman of the subcommittee which has primary jurisdiction over the 200-mile fishery conservation zone, it might appear that I do not have any sympathy or understanding for the international aspects of maritime and tank vessel safety. Quite to the contrary, I do recognize the problems of the international maritime community, and I believe we have accommodated their concerns. We have, in this bill, also indicated our concern over the need to move the international community along at a faster pace—and the need to consider broader and wider international standards. I believe this is a very responsible position.

Mr. Speaker, before I close, I would like to highlight one section of this bill, section 3, addressing the 200-mile fishery conservation zone, which I consider to be very important and which quite possibly may lead to further advances in our ability to control the ocean just off our coastline. Section 3 of the bill directs the Secretary of Transportation to initiate, in consultation with other Federal departments and agencies, a study looking toward a comprehensive shorestation system for monitoring vessels operating within 200 miles of our coasts. He is directed to report his findings to the Congress within 2 years after enactment of the act, describing certain features as to each possible approach, together with his recommendations for a single, comprehensive, cost-effective system. A thorough reasonable authorization for appropriations of $500,000 for each of the fiscal years 1979 and 1980 is provided.

Our efforts to monitor our 200-mile fishing zone with currently available ships and aircraft needs strengthening. Unless we are prepared to spend substantial more funds on the Coast Guard, the type of system this study is commissioned to develop is sorely needed. Even though I will have retired from the Congress when this study is complete, I want to assure my colleagues that it will receive my close attention upon completion and I trust that you also will weigh the results of this study seriously.

Three years ago, the Congress reviewed the progress of the Law of the Sea Conference and its deliberations on appropriate national fishing limits. We chose to get out front and mandate a 200-mile fishery conservation zone for the United States. Despite some warnings that we should wait for the international community to act first, the Congress wisely chose to enact H.R. 200. Other nations followed our lead shortly thereafter and I believe we will all agree that in retrospect our action in 1976 was neither hasty nor ill-conceived.

A similar opportunity faces the Congress this afternoon. Should we act favorably on this bill, we will demonstrate our commitment to more stringent port and tanker safety requirements to the world community and spur action to adopt and implement the London convention.

Mr. Speaker, I urge my colleagues to join with the members of the Merchant Marine Committee in making this commitment to safer ports and safer ships through enactment of H.R. 13311.●

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from New York (Mr. BIAGGI) that the House suspend the rules and pass the bill H.R. 13311, as amended.

The question was taken.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

## INDIAN PEAKS WILDERNESS AREA

Mr. RONCALIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12026) to create the Indian Peaks Wilderness Area and the Arapaho National Recreation Area and to authorize the Secretary of the Interior to study the feasibility of revising the boundaries of the Rocky Mountain National Park as amended.

The Clerk read as follows:

H.R. 12026

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Indian Peaks Wilderness Area, the Arapaho National Recreation Area and the Oregon Islands Wilderness Area Act".

FINDINGS AND PURPOSES

SEC. 2. The Congress finds that it is in the national interest—

(1) to include the land within the Arapaho and the Roosevelt National Forests known as the Indian Peaks Area in the National Wilderness Preservation System so as to protect the area's enduring scenic and historic wilderness character and its unique wildlife and to preserve the area's scientific, educational, recreational, and inspirational resources and challenges; and

(2) to create the Arapaho National Recreation Area within the Arapaho and the Roosevelt National Forests and the Colorado Big Thompson project so as to preserve and protect the natural, scenic, historic, pastoral, and wildlife resources of the area and to enhance the recreational opportunities provided.

INDIAN PEAKS WILDERNESS AREA

SEC. 3. (a) An area of land comprising approximately seventy thousand acres located in Boulder and Grand Counties, Colorado, within the Arapaho and the Roosevelt National Forests (as generally depicted as the "Indian Peaks Wilderness Area" on a map entitled "Indian Peaks Wilderness Area and Arapaho National Recreation Area", dated July 1978) is designated for purposes of the Wilderness Act (16 U.S.C. 1131–1136) as a wilderness area and shall be known as the Indian Peaks Wilderness Area.

(b) The Indian Peaks Wilderness Area shall be administered by the Secretary of Agriculture (hereafter in this Act referred to as the "Secretary") pursuant to those provisions of the Wilderness Act which govern areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

ARAPAHO NATIONAL RECREATION AREA

SEC. 4. (a) An area of land comprising approximately thirty-six thousand two hundred thirty-five acres located in Grand County, Colorado, within the Arapaho and the Roosevelt National Forests and the Colorado Big Thompson project (as generally depicted as the "Arapaho National Recreation Area" on a map entitled "Indian Peaks Wilderness Area and Arapaho National Recreation Area", dated July 1978) is established as the Arapaho National Recreation Area.

(b) The Secretary shall administer the Arapaho National Recreation Area, in accordance with the laws and regulations applicable to the national forests, in such a manner as will best provide for—

(1) public recreation and enjoyment;

(2) the conservation and development of the scenic, natural, historic, and pastoral values of the area;

(3) the management, utilization, and disposal of natural resources such as timber

grazing, and mineral resources so that their utilization will not substantially impair the purposes for which the recreation area is established; and

(4) The management of water quality in the recreation area consistent with the development of needed water supply and wastewater systems, including the control of aquatic vegetation in the streams, lakes, and reservoirs within the recreation area.

(c) The Secretary shall develop an overall management plan for the Arapaho National Recreation Area. This plan shall be developed in consultation with State and local political subdivisions and other interested persons.

RECREATION AREA

SEC. 5. (a) (1) The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, exchange, or bequest, any lands or lesser interests therein, including mineral interests and scenic easements, which the Secretary determines are needed to establish and manage the Arapaho National Recreation Area. In determining what private property is needed to establish and manage the Arapaho National Recreation Area the Secretary shall utilize the approved county zoning plan to identify those properties whose use or intended use is not in conformance with the overall intent of this Act.

(2) As used in this section, the term "scenic easement" means the right to control the use of land in order to carry out this Act, but shall not preclude the continuation of any use that is compatible with the overall management plan for the Arapaho National Recreation Area developed pursuant to subsection (c) of section 4.

(b) In exercising the authority conferred by this section to acquire lands, the Secretary shall give prompt and careful consideration to any offer made by an individual owning any land, or interest in land, within the Arapaho National Recreation Area. In considering any such offer, the Secretary shall take into consideration any hardship to the owner which might result from any undue delay in acquiring the property. Purchases made under this authority shall be made on a willing buyer, willing seller basis.

(c) In exercising the authority conferred by this section to acquire property by exchange, the Secretary may accept title to any non-Federal land, or interests therein, located within the Arapaho National Recreation Area and the Secretary may convey in exchange therefor any federally owned lands or interests in lands within the State of Colorado which are classified by the Secretary as suitable for exchange and which are under the Secretary's administrative jurisdiction. The values of any lands or interests in lands so exchanged shall be approximately equal, or if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or to the Secretary so long as payment does not exceed 25 per centum of the total value of the land or interest in land. In utilizing cash equalization in exchanges the Secretary shall try to reduce the amount of the payment of money to as small an amount as possible. In the exercise of his exchange authority, the Secretary may utilize authorities and procedures available to him in making exchanges of national forest lands.

(d) Any land or interest in land owned by the State of Colorado or any of its political subdivisions may be acquired only by donation or exchange.

(e) Notwithstanding any other provision of law, any Federal lands or interests in lands located within the Arapaho National Recreation Area shall be transferred without consideration to the administrative jurisdiction of the Secretary for use by the Secretary in carrying out this Act. Lands within the Arapaho National Recreation Area acquired by the Secretary or transferred to the Secretary's administrative jurisdiction shall become part of that recreation area and of the national forest within or adjacent to which they are located: *Provided, That* the operation and facilities of the Colorado Big Thompson project shall remain under the jurisdiction of the United States Bureau of Reclamation.

HUNTING AND FISHING IN THE ARAPAHO NATIONAL RECREATION AREA

SEC. 6. The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the boundaries of the Arapaho National Recreation Area in accordance with the laws of the United States and the State of Colorado, except that the Secretary may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, area general administration, or public use and enjoyment. Except in emergencies, any regulations made by the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department.

PERMITS FOR FACILITIES AND SERVICES IN THE ARAPAHO NATIONAL RECREATION AREA

SEC. 7. The Secretary shall cooperate with other Federal agencies, with State and local public agencies, and with private individuals and organizations in the issuance of permits for facilities and services in the Arapaho National Recreation Area and the development and operation of those facilities and services.

APPLICATION OF STATE WATER LAWS TO THE ARAPAHO NATIONAL RECREATION AREA

SEC. 8. The jurisdiction of the State of Colorado and the United States over waters of any stream included in the Arapaho National Recreation Area shall be determined by established principles of law. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

FILING OF MAPS

SEC. 9. As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the Indian Peaks Wilderness Area and the Arapaho National Recreation Area with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives and such description shall have the same force and effect as if included in this Act, except that correction of any clerical or typographical errors in such map and description may be made Such map and the map entitled "Indian Peaks Wilderness Area and Arapaho National Recreation Area", dated July 1978, shall be on file and made available for public inspection in the offices of the Chief of the Forest Service, Department of Agriculture.

STATE CIVIL AND CRIMINAL JURISDICTION

SEC. 10. Nothing in this Act shall diminish, enlarge, or modify any right of the State of Colorado, or any political subdivision thereof, to exercise civil and criminal jurisdiction within the Indian Peaks Wilderness Area or the Arapaho National Recreation Area or of rights to tax persons, franchises, or property, including mineral or other interests, in or on lands or waters within those areas.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. Effective October 1, 1979, there are authorized to be appropriated to carry out sections 1 through 10 of this Act $5,000,000 for the acquisition of lands and interests in lands and $5,000,000 for water quality and recreation development. Moneys appropriated from the Land and Water Conservation Fund shall be available for the acquisition of lands and interests therein within the Arapaho National Recreation Area.

OREGON ISLANDS WILDERNESS

SEC. 12. (a) In accordance with subsection 3(c) of the Wilderness Act (78 Stat. 892), certain lands in the Oregon Islands National Wildlife Refuge, Oregon, which comprise approximately four hundred fifty-nine acres, which are depicted on a map entitled "Oregon Islands Wilderness—Proposed", dated June 1972 (revised July 1972), is hereby designated as wilderness and shall become a part of the existing "Oregon Islands Wilderness".

(b) As soon as practicable after this Act takes effect, the Secretary of the Interior shall file a map and legal description of the Oregon Islands Wilderness with the Committee on Energy and Natural Resources of the Senate and the Interior and Insular Affairs Committee of the House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made. A map and legal description of the Oregon Islands Wilderness shall be on file and available for public inspection in the Office of the Director, Fish and Wildlife Service, Department of the Interior.

(c) The lands designated by this Act as the Oregon Islands Wilderness shall be administered in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act and, where appropriate, any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

ROCKY MOUNTAIN NATIONAL PARK STUDY

SEC. 13. Within one year of the date of enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior shall jointly develop and submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive report studying and evaluating the suitability of revising the boundaries of Rocky Mountain National Park to include all or part of the Indian Peaks Wilderness Area as established by this Act and examining the possible addition or deletion of other lands designated as "Park Study Area" on a map entitled "Indian Peaks Wilderness Area and Arapaho National Recreation Area" dated July 1978: *Provided,* That regardless of the ultimate administration of the areas to be studied under this section, the seventy thousand-acre Indian Peaks Wilderness Area established by this Act shall remain as a component of the National Wilderness Preservation System.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wyoming (Mr. RONCALIO) and the gentleman from California (Mr. LAGOMARSINO) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Wyoming (Mr. RONCALIO).

Mr. RONCALIO. Mr. Speaker, I yield myself such time as I may consume, not to exceed 10 minutes.

Mr. Speaker, it is with great pleasure that I rise in support of H.R. 12026, which will provide permanent legislative protection for the natural values of one of Colorado's most spectacular and accessi-

ble mountain regions. Protection for the Indian Peaks area has been proposed since the establishment of Rocky Mountain National Park in 1915, and has gained broad public support in recent years with the rapid growth of the Denver metropolitan area.

The 70,000-acre Indian Peaks wilderness proposed by H.R. 12026 lies contiguous to the southern boundary of Rocky Mountain National Park and like much of the land within the park, retains its primeval wilderness character of outstanding scenic values, glaciers, numerous pristine streams and lakes, and abundant wilderness-related wildlife species. Because both the park and the proposed Indian Peaks wilderness are within a short drive of the Denver metropolitan area, the Indian Peaks present one of the finest remaining opportunities in the Lower 48 States to preserve a nearby wilderness experience for several million Americans. This potential was legislatively recognized in 1972 when Congress directed the Secretary of Agriculture to formally study the Indian Peaks for inclusion in the National Wilderness Preservation System. That study has been completed, with the administration recommending the 70,000-acre wilderness boundary of H.R. 12026. In addition, the question of whether all or part of the proposed wilderness (plus some other areas contiguous to Rocky Mountain National Park) should be added to the park to complete a logical park ecosystem, needs to be addressed. To that end, H.R. 12026 directs the Secretaries of Interior and Agriculture to undertake a 1-year review of the park boundaries with a view toward establishing final boundaries which make the most sense from an environmental and administrative standpoint.

The desirability of the Indian Peaks wilderness is heightened by the fact that the proposed wilderness has virtually no conflicts with other resource uses. Whereas other wilderness proposals often require intense scrutiny and difficult decisions to reach a balance between wilderness protection versus resource development, the Indian Peaks wilderness values are clearly paramount, and wilderness will not jeopardize other uses. For example, timber resources in the proposed wilderness are insignificant, and the Forest Service has kept the bulk of the area off limits to off road vehicles for many years to protect its fragile terrain and outstanding solitude. Indeed, enactment of H.R. 12026 will involve the closure of less than 1 mile of a rapidly deteriorating primitive road on which off-road vehicle use is currently allowed. A recent joint study by the U.S. Geological Survey and the Bureau of Mines further reveals that the area "contains no known mineral deposits that can be mined profitably now or in the foreseeable future".

To minimize other possible resource conflicts, the committee amended H.R. 12026 to exclude some 2,500 acres in the vicinity of Devils Thumb for a potential future winter sports site, and 2,500 acres on Niwot Ridge for the creation of a Niwot Ridge international biosphere reserve. It is the understanding of all parties involved that the 2,500-acre Niwot Ridge exclusion will be managed by Forest Service to strictly protect its terrain and vegetation for scientific research and educational purposes, and I would point out that this may require the Forest Service to restrict or prohibit any recreational use of the 2,500-acre proposed biosphere reserve.

During our committee's deliberations on H.R. 12026, it was also brought to our attention that the proposed wilderness contains several small water impoundments which are used for water supply and downstream power generation. I note that such small impoundments are present in many existing wilderness areas, and that ample precedent exist for access to, and operation and maintenance of, these facilities. Congress has determined on numerous occasions that the operation and maintenance of small water impoundments (including the operation of hydroelectric facilities in the Desolation Wilderness as established by Public Law 91-82) is not inconsistent with wilderness values, and the committee's report on H.R. 12026 elaborates on the issue. In this regard, I would mention that the impoundment at Lake Isabelle, as well as any others which may not be specifically mentioned in the committee's report, are certainly intended to be covered by the language on page 10 of the report discussing Jasper and Skyscraper Reservoirs.

While the establishment of the Indian Peaks wilderness will serve the increasing demand for wilderness-oriented recreation, the need for developed recreation facilities on Federal lands near the Denver metropolitan area is also growing. The 36,235-acre Arapaho National Recreation Area proposed by H.R. 12026 fills this need perfectly. Composed of lower elevation forested lands, open spaces, and several large lakes which form the existing Shadow Mountain National Recreation Area, the area is already highly popular, and receives heavy use, especially during the summer months. Creation of the Arapaho National Recreation Area will expand the Shadow Mountain Recreation Area to promote developed recreation use, while at the same time preserving the area's magnificent scenic and natural values by the use of scenic easements or land acquisitions, where necessary. The bill also provides funding to facilitate the maintenance and improvement of the water quality in the heavily used lakes.

In summary, Mr. Speaker, it is my feeling that the proposed Indian Peaks wilderness, when combined with the contiguous Arapaho National Recreation Area, will provide a land management direction that will unquestionably constitute the highest and best use of over 100,000 acres of Federal lands that are vital to the aesthetic and recreational interests of both the citizens of Colorado's Front Range as well as the Nation. This is an extremely well-balanced piece of legislation, and one that is deserving of my colleague's unconditional support.

In addition to the Colorado lands, section 12 of H.R. 12026 would add 58 islands in the Oregon Islands Wildlife Refuge, comprising some 459 acres, to the existing Oregon Islands wilderness. These islands are a haven for hundreds of thousands of petrel, cormorants, murres, puffins, and other sea birds, as well as sea lions, sea otters, and harbor seals. Wilderness will insure that important nesting and breeding sites remain undisturbed and unaltered by man's activities, and I am informed that Senator HATFIELD has agreed to the inclusion of these islands in H.R. 12026.

Finally, I should note that the bill we are asking be approved contains two changes from the bill reported by the committee. The first change is a technical change requested by the Forest Service, and adds language to clarify the bill's intention that Land and Water Conservation moneys be available for the acquisition of lands within the Arapaho National Recreation Area. The second change deletes a sentence in section 8 which might possibly be read by some water law experts to inject ambiguity or confusion into the delicate area of State versus Federal water rights. This certainly was not the intention of the sentence, but water law experts on both the House and Senate committees, as well as Forest Service legal counsel have recommended that the language be stricken so as to avoid any controversy.

I urge swift passage of H.R. 12026.

Mr. Speaker, I yield such time as he may consume to the gentleman from Colorado (Mr. WIRTH).

Mr. WIRTH. Mr. Speaker, I thank the gentleman for yielding.

At this point I would like to again note for the record the splendid leadership which the gentleman from Wyoming (Mr. RONCALIO) has given to all of us in the Rocky Mountain region. Further, I would like to state again how much we are going to miss him here in the Congress, particularly as he is such a great spokesman for the interests of the Rocky Mountain area.

Mr. Speaker, I thank the gentleman from Wyoming (Mr. RONCALIO) very much.

I wanted to point out that the history of this legislation goes back to Teddy Roosevelt, who was the first individual who proposed the protection of the Indian Peaks area.

Since then, there have been controversies surrounding mineral, timber, and cattle interests in the area. Over the last decade, all of these have been resolved. The USGS has studied the area extensively. There are no known mineral reserves in the area. There is no commercially valuable timber, and the cattle grazing rights have been deeded back to the Federal Government. Therefore, there are no commercial interests or controversies in the area which might further delay the protection of the area.

After the commercial questions were solved, the next question became how large the Indian Peaks area should be and who should manage that area.

We put together in Colorado an Indian Peaks Advisory Committee representing just about every interest involved in and concerned about the Indian Peaks area. They came back with a recommendation which is essentially H.R. 12026, which is a combination, as the gentleman from Wyoming (Mr. RONCALIO), the chairman, pointed out, of approximately 70,000 wil-

derness acres on the eastern side of the Continental Divide and approximately 36,000 acres of national recreation area on the western side of the Continental Divide, the former in the district which I represent, and the latter in the district represented by the gentleman from Colorado (Mr. JOHNSON).

Both of those received the unanimous support of the Boulder County commissioners on the eastern side and the Grand County commissioners on the western side, Governor Lamm, and any number of other groups.

During the hearings that we held in July under the chairmanship of the gentleman from Colorado (Mr. RONCALIO) four questions came up, and I wonder if I might, Mr. Speaker, just highlight the five issues and how the committee took care of those.

The first related to water resources and Lake Isabell in questions that were raised in particular by the people of the city of Longmont and by the Longmont Chamber of Commerce.

The wilderness boundaries of H.R. 12026 as reported by the committee, encompass several existing reservoir sites. My question to the gentleman concerns Lake Isabell. Will this wilderness designation impair the access to, or operation and maintenance of this reservoir?

Mr. RONCALIO. Mr. Speaker, the answer is "No." As is pointed out in my statement, small water impoundments are located in many existing wilderness areas, and wilderness does not interfere with their operation and maintenance. While congressional and Forest Service policy would certainly encourage access and maintenance by nonmechanized methods where practical, the use of mechanized equipment for the operation and maintenance of small water impoundments is entirely permissible within wilderness areas where it is necessary.

Mr. WIRTH. Sometimes an area of land proposed for wilderness classification impacts persons or organizations who represent uses which might be in conflict with wilderness. How would this wilderness designation affect the motorized recreational vehicle interests?

Mr. RONCALIO. Hardly at all. The bulk of the proposed wilderness has been closed to off-road vehicle use for many years in order to protect the area's fragile terrain and solitude. In addition, some of the off-road vehicle users who testified at our hearings on H.R. 12026 pointed out that the lands we are proposing to set aside in wilderness are not those lands which are heavily used for snowmobiling or other off-road vehicle use. The lands which are heavily used by motorized recreationists lie within proposed Arapaho National Recreation Area, and national recreation area status should help promote off-road vehicle use and other developed recreation facilities. The committee also included language in its report on H.R. 12026 requesting the Secretary of Interior to examine the possibility of allowing snowmobile use on a presently closed trail on the east shore of Shadow Mountain Lake to facilitate the linking up of several popular snowmobile routes.

Mr. WIRTH. I will ask the gentleman from Wyoming, How did the committee reconcile the 2,200 acres in the Devil's Thumb area that might be used for a ski area?

Mr. RONCALIO. The committee deleted approximately 2,500 acres in the Devil's Thumb area to allow for a potential winter sports site.

Mr. WIRTH. The Forest Service recommended that the wilderness boundary be adjusted to exclude the research facilities on Niwot Ridge. Who, then, is to manage and protect this area and its terrain and vegetation?

Mr. RONCALIO. All parties have agreed that the Forest Service will strictly manage the area so as to preserve its terrain and vegetation unimpaired for scientific research and educational purposes. This is to be done even in the event a proposed international biosphere reserve is not created on the 2,500 acres of Niwot Ridge. However, I should add that it is our firm expectation that such a biosphere reserve will be established in the near future.

Mr. WIRTH. My last question, Mr. Chairman, concerns the park study provision. The Indian Peaks Advisory Committee has recommended that H.R. 12026 contain provisions for a park suitability study of the entire Indian Peaks and adjoining areas. Who will be conducting the study, and what criteria should the park study take into consideration?

Mr. RONCALIO. The Secretaries of Interior and Agriculture will jointly study the issue of park expansion. The criteria for the study are listed on page 9 of the committee's report on H.R. 12026 (H. Rept. No. 95–1460).

Mr. WIRTH. I thank the gentleman from Wyoming very much for his answers to those questions and the resolution of the five issues that came up during those hearings.

Mr. Speaker, I urge my colleagues to support H.R. 12026.

Mr WIRTH. Mr. Speaker, I would like to comment further on H.R. 12026, which would create a wilderness area in the Indian Peaks area of Colorado. As the principal author of this important piece of legislation, I would like to share with you some of the background and history of this bill.

The proposal to create a wilderness area at Indian Peaks represents an example of what involved citizens can do when we open up the Government and allow them to get involved. The combined effort and testimony from the Indian Peaks Advisory Committees, sportsmen, environmental, and other groups, and the fair, nonpartisan examination given by the subcommittee and full committee makes this piece of legislation a significant victory for a broad-based coalition of involved citizens.

I can say unequivocally that without the selfless work of a great many Coloradans—and others who have grown to love this beautiful area—we would not be able to vote on this bill today. There is a degree of controversy involved in the establishment of any wilderness area. But I have never seen a proposal which received the endorsement of so many diverse interests and groups. This point was underscored by the subcommittee chairman during the hearings in Colorado earlier this summer, when he said he had never witnessed before such a vast consensus of special interest groups toward a proposed protected area.

In the early 20th century, when then-President Theodore Roosevelt was visiting Colorado, the subject of protecting the Indian Peaks area was first discussed. Since that time, countless Coloradans and others have urged that the area receive the protection it so rightly deserves. But until today, the Congress has not had an opportunity to create an Indian Peaks Wilderness Area. We now have that opportunity. Following the introduction of the bill by me, with cosponsorship by my distinguished colleague from Colorado (Mr. JOHNSON), the subcommittee held extensive hearings in Boulder and Grandby. We had an opportunity to hear testimony and a variety of points of view from many Coloradans. This thorough groundwork has developed almost universal support for the bill. Support for this legislation was voiced by Governor Lamm, the Grand County commissioners, the Boulder city council, the Boulder County commissioners, numerous civic organizations, and hundreds of interested citizens of Colorado.

H.R. 12026 establishes the Indian Peaks Wilderness Area in the Arapaho and Roosevelt National Forests of Colorado, and directs the Secretary of Interior to study the feasibility of revising the boundaries of Rocky Mountain National Park. In addition, the bill establishes a national recreation area, to the West of Indian Peaks, on land which is more appropriate for recreational emphasis.

Finally, I would like to share with you my own personal experiences in the Indian Peaks area. Just this past month, I went camping with my wife and two children in the eastern section of the area. We started midday and hiked for several miles along a trail that slowly twisted its way up the mountain. At about 11,000 feet we called a halt to the day's activity. Our campsite featured a shallow pond, clumps of snow lingering from the previous winter, and a view that must be one of the most spectacular panoramas I have ever seen. By the time we finished dinner, washed the dishes and set up camp, the down jackets we packed became the most precious item on the trip. It was so cold that when we got up the next morning, I half expected to see a fresh layer of snow on the ground. We were spared the snow, but the pond had been topped by a layer of thin ice. Breakfast was brief, and the descent brought us some warmth. This wilderness experience renewed my commitment to seeing this legislation passed during the current session of Congress. My only regret is that I am unable to describe the natural beauty of this setting—but perhaps some of you might be able to visit Indian Peaks in the future, and share this experience with me.

Mr. WIRTH. Mr. Speaker, will the gentleman yield further?

Mr. RONCALIO. I yield to the gentleman from Colorado.

Mr. WIRTH. I thank the gentleman for yielding.

The gentleman from Wyoming noted the park study. At this point I also want to note for the record the great cooperation of the gentleman from California (Mr. PHILLIP BURTON) in helping to move this legislation through the Committee on Interior and Insular Affairs, and to resolve the issue of the park study.

Mr. RONCALIO. I thank the gentleman.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in the absence of the gentleman from Colorado (Mr. JOHNSON) who is the ranking member of the subcommittee that considered this legislation, I rise in support of H.R. 12026 which, as has been pointed out, designates a 70,000-acre wilderness in the Arapaho and Roosevelt National Forest in Colorado. It also establishes an adjoining national recreation area of about 36,000 acres.

By designating both the wilderness area and a recreation area, this bill recognizes the competing interests for which this land may be used. For the residents of Denver, the Indian Peaks wilderness will provide an opportunity for a primitive experience less than 2 hours from the heart of the city.

At the same time, the Arapaho Recreation Area will provide opportunities for other recreational uses and development which are incompatible with wilderness, but just as much in the public interest.

This bill has the strong support of both the gentleman from Colorado (Mr. JIM JOHNSON), ranking member of the Subcommittee on Public Lands, and the gentleman from Colorado (Mr. TIM WIRTH), the two Members whose districts would be affected. It has been the result of considerable study and input on both the national and local levels.

I would like to note that included in these studies were findings by the U.S. Geological Survey and Bureau of Mines that no substantial mineral, oil, or gas potential exists. In addition, the area is not suitable for commercial timber use.

There is some concern when we talk about wilderness area about private inholdings and, as the report points out, the Wilderness Act itself provides such rights as may be necessary to assure adequate access to State-owned and private-owned land, so the people in the area will continue to have access to them.

In addition, the Wilderness Act prohibits the Secretary from acquiring such publicly owned lands, unless the owner concurs in such acquisition.

Mr. Speaker, I believe that this bill represents a fair compromise of "people" use of the land and I urge my colleagues to join me in support.

Mr. RONCALIO. Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I just want to commend the chairman of this subcommittee, the gentleman from Wyoming (Mr. RONCALIO) and his colleagues on the subcommittee for bringing out this bill and for doing an outstanding job in this legislation.

A year ago last July when the Interior Subcommittee on Alaska Lands was holding hearings in Denver, I took the occasion on the day following the hearings, Sunday, to go up to the Indian Peaks area and get a sort of bird's eye view of the whole area. It is an exceptionally beautiful natural area, and particularly important, because of its nearness to Denver and the Denver metropolitan area.

I certainly think that it merits study for inclusion in the Rocky Mountain National Park. I would hope that that study will eventually produce that result. I commend the gentleman from Wyoming for providing also for that in this legislation, as well as the other members of the committee who participated in it.

Mr. LAGOMARSINO. Mr. Speaker, I reserve the balance of my time.

Mr. RONCALIO. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Speaker, this legislation extends tax jurisdiction into the new territory that is acquired. I would like to ask the gentleman from Wyoming what does this refer?

Mr. RONCALIO. I would not have the faintest idea, unless it means cranking in the payments in lieu of taxes each year, the fact that more land goes into the national interest category, and is lost from potential tax rolls.

Mr. VANIK. I was reading from the provision in the bill, in the statement in the report it says that in addition Colorado would retain the right to exercise civil, criminal, and tax jurisdiction within both the Indian Peaks Wilderness Area and the Arapaho National Recreation Area.

I would suppose that would probably apply to the imposition of State taxes to any business operations that were authorized in the area?

Mr. RONCALIO. I should think so.

Mr. VANIK. Making those operations subject to items like sales taxes?

Mr. RONCALIO. With the retention of the jurisdiction which they already have.

Mr. VANIK. Yes, and which is normally in the State's jurisdiction.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, my recollection from visiting the area is that there are some private inholdings, vacation homes, and that sort of thing.

When I read this, I assumed that that was the kind of property over which the jurisdiction that was being retained. Perhaps the gentleman from Colorado (Mr. WIRTH) has some information he could reveal to us.

Mr. WIRTH. Mr. Speaker, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Colorado.

Mr. WIRTH. Mr. Speaker, on page 9 of the report there is carefully detailed a description of the private inholdings and that was also outlined by the gentleman from California (Mr. LAGOMARSINO).

The purpose of this is to make sure that even though they have inholdings within the jurisdiction of the recreational area or the wilderness, they are still not exempt from taxes.

Mr. VANIK. Including State taxes?

Mr. WIRTH. That is right.

● Mrs. SCHROEDER. Mr. Speaker, I was delighted by the House passage of H.R. 12026, the Indian Peaks wilderness bill. House passage smooths the way for wilderness designation of 70,000 acres of national forest land adjacent to Rocky Mountain National Park. An additional 36,000 acres would be set aside as a recreation area. This land, some of the most spectacular in the Rockies, straddles the Continental Divide and offers abundant opportunities for camping, hiking, and other outdoor activities.

The bill reflects the best in Colorado politics and is the product of the careful work of Representatives TIM WIRTH and JIM JOHNSON. The sponsors represent very different parts of the State, but they worked together to insure that the areas will remain for the benefit of all Colorado residents, as well as visitors nationwide.

The bill provides for a 1-year study by the Interior and Agriculture Departments to determine whether the wilderness portion of Indian Peaks should be added to Rocky Mountain National Park. I hope the Departments opt for full wilderness protection. There are no resource conflicts within the wilderness itself, and the recreation area provides opportunities for development that can boost the local economy while providing visitors with additional options for enjoying the land.●

The SPEAKER pro tempore (Mr. SISK). The question is on the motion offered by the gentleman from Wyoming (Mr. RONCALIO) that the House suspend the rules and pass the bill H.R. 12026, as amended.

The question was taken.

Mr. VOLKMER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

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## MISCELLANEOUS REVENUE ACT OF 1978

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12578) to amend the Internal Revenue Code of 1954 to make certain technical changes, as amended.

The Clerk read as follows:

H.R. 12578

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Miscellaneous Revenue Act of 1978".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. DIVIDENDS PAID AFTER CLOSE OF TAXABLE YEAR BY CERTAIN PERSONAL HOLDING COMPANIES.

(a) IN GENERAL.—Subsection (b) of section 563 (relating to dividends paid after close of taxable year) is amended to read as follows:

"(b) PERSONAL HOLDING COMPANY TAX.—

"(1) IN GENERAL.—In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the date prescribed by law for filing the return of tax under this chapter for the taxable year (including extensions thereof) shall, to the extent the personal holding company elects in its return for the taxable year, be considered as paid during such taxable year. The preceding sentence shall apply with respect to any dividend only if the person receiving the dividend agrees, in a consent filed with the return of the personal holding company in accordance with regulations prescribed by the Secretary, to treat the dividend as received on the last day of the taxable year of the personal holding company.

"(2) LIMITATION.—The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed the undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 563 (relating to dividends considered as paid on last day of taxable year) is amended by striking out "and on or before the 15th day of the third month following the close of the taxable year"

(2) Clause (ii) of section 543 (a)(2)(B) (relating to rents) is amended by striking out "(as limited by the second sentence of section 563(b))".

(c) EFFECTIVE DATE. The amendments made by this section shall apply to taxable years ending on or after December 31, 1978.

SEC. 3. SUBCHAPTER S ELECTION NOT TERMINATED BY BANKRUPTCY OF SHAREHOLDER

(a) IN GENERAL.—Section 1371 (relating to definitions for purposes of subchapter S) is amended by adding at the end thereof the following new subsection:

"(g) BANKRUPTS' ESTATES.—For purposes of subsection (a), the estate of an individual in a proceeding under the Bankruptcy Act may be a shareholder."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1978.

SEC. 4. PAYMENT OF INTEREST WHERE LEVY HAS BEEN WRONGFULLY MADE AND MONEY RECEIVED BY UNITED STATES

(a) IN GENERAL.—Section 6343 (relating to release of levy and return of property) is amended by adding at the end thereof the following new subsection:

"(c) INTEREST.—Interest shall be allowed at an annual rate established under section 6621—

"(1) in a case described in subsection (b)(2), from the date the Secretary receives the money to the date of return, or

"(2) in a case described in subsection (b)(3), from the date of the sale of the property to the date of return."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to levies made after the date of the enactment of this Act.

SEC. 5. REPEAL OF REQUIREMENT THAT TRANSFERORS OF CERTAIN PROPERTY TO EXEMPT ORGANIZATIONS MUST FILE RETURNS.

(a) GENERAL RULE.—Section 6050 (relating to returns relating to certain transfers to exempt organizations) is hereby repealed.

(b) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking out the item relating to section 6050.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 6. SIMPLIFICATION OF PRIVATE FOUNDATION RETURN AND REPORTING REQUIREMENTS.

(a) AMENDMENT OF SECTION 6033.—Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) ADDITIONAL PROVISIONS RELATING TO PRIVATE FOUNDATIONS.—In the case of an organization which is a private foundation (within the meaning of section 509(a))—

(1) the Secretary shall by regulations provide that the private foundation shall include in its annual return under this section such information (not required to be furnished by subsection (b) or the forms or regulations prescribed thereunder) as would have been required to be furnished under section 6056 (relating to annual reports by private foundations) as such section 6056 was in effect before the enactment of this subsection,

"(2) a copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), together with proof of publication thereof, shall be filed by the foundation together with the annual return under this section, and

"(3) the foundation managers shall furnish copies of the annual return under this section to such State officials and other persons, at such times, and under such conditions, as the Secretary may by regulations prescribe.

Nothing in paragraph (1) shall require the inclusion of the name and address of any recipient (other than a disqualified person within the meaning of section 4946) of 1 or more charitable gifts or grants made by the foundation to such recipient as an indigent or needy person if the aggregate of such gifts or grants made by the foundation to such recipient during the year does not exceed $1,000.

"(d) SECTION TO APPLY TO NONEXEMPT CHARITABLE TRUSTS AND NONEXEMPT PRIVATE FOUNDATIONS.—The following organizations shall comply with the requirements of this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a).

"(1) NONEXEMPT CHARITABLE TRUSTS.—A trust described in section 4947(a)(1) (relating to nonexempt charitable trusts).

"(2) NONEXEMPT PRIVATE FOUNDATIONS.—A private foundation which is not exempt from tax under section 501(a)."

(b) PUBLIC INSPECTION OF PRIVATE FOUNDATIONS' ANNUAL RETURNS.—

(1) IN GENERAL.—The first sentence of subsection (d) of section 6104 (relating to public inspection of private foundations' annual reports) is amended to read as follows: "The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the publication of notice of its availability."

(2) CONFORMING AMENDMENTS.—Such subsection (d) is amended—

(A) by striking out "ANNUAL REPORTS" in the heading and inserting in lieu thereof "ANNUAL RETURNS"; and

(B) by striking out "annual report" each place it appears in the second and third sentences and inserting in lieu thereof "annual return".

(c) REPEAL OF PRIVATE FOUNDATION ANNUAL REPORTING REQUIREMENTS.—Subpart D of part III of subchapter A of chapter 61 (relating to information concerning private foundations) is hereby repealed.

(d) TECHNICAL AMENDMENTS.—

(1) Section 6034 (relating to returns by trust described in section 4947(a) or claiming charitable deductions under section 642(c)) is amended—

(A) by striking out "section 4947(a)" in subsection (a) and inserting in lieu thereof "section 4947(a)(2)";

(B) by adding at the end of subsection (b) the following new sentence: "This section shall not apply in the case of a trust described in section 4947(a)(1).";

(C) by striking out "EXCEPTION" in the heading of subsection (b) and inserting in lieu thereof "EXCEPTIONS";

(D) by striking out "SECTION 4947(a)" in the section heading and inserting in lieu thereof "SECTION 4947(a)(2)".

(2)(A) The first sentence of section 6652(d)(3) (relating to annual reports) is amended to read as follows: "In the case of a failure to comply with the requirements of section 6104(d) (relating to public inspection of private foundations' annual returns), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to meet such requirement, $10 for each day during which such failure continues, but the total amount imposed hereunder on all such persons for such failure with respect to any one annual return shall not exceed $5,000."

(B) The heading of paragraph (3) of section 6652(d) is amended by striking out "REPORTS" and inserting in lieu thereof "RETURNS".

(3) Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by striking out "6056,".

(4) Section 6685 (relating to assessable penalties with respect to private foundation annual reports) is amended to read as follows:

"SEC. 6685. ASSESSABLE PENALTIES WITH RESPECT TO PRIVATE FOUNDATION ANNUAL RETURNS.

"In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statement, or other documents), any person who is required to comply with the requirements of section 6104(d) (relating to private foundations' annual returns) and who fails to so comply with respect to any return, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return."

(5) Section 7207 (relating to fraudulent returns, statements, or other documents) is amended by striking out "sections 6047(b) or (c), 6506, or 6104(d)" and inserting in lieu thereof "subsection (b) or (c) of section 6047 or pursuant to subsection (d) of section 6104".

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking out "4947(a)" in the

item relating to section 6034 and inserting in lieu thereof "4947(a)(2)".

(2) The table of subparts for part III of subchapter A of chapter 61 is amended by striking out the item relating to subpart D.

(3) The table of sections for subchapter B of chapter 68 is amended by striking out "reports" in the item relating to section 6685 and inserting in lieu thereof "returns".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

SEC. 7. TREATMENT OF CERTAIN INTERESTS HELD BY DECEDENT'S FAMILY FOR PURPOSES OF THE EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX PROVIDED BY SECTION 6166.

(a) INTEREST HELD BY MEMBER OF DECEDENT'S FAMILY TREATED AS HELD BY DECEDENT.—Paragraph (2) of section 6166(b) (relating to definitions and special rules) is amended by adding at the end thereof the following new subparagraph:

"(D) CERTAIN INTERESTS HELD BY MEMBERS OF DECEDENT'S FAMILY.—All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of section 267(c)(4)) shall be treated as owned by the decedent."

(b) ELECTION FOR PURPOSES OF THE 20-PERCENT REQUIREMENTS WITH RESPECT TO PARTNERSHIP INTERESTS AND STOCK WHICH IS NOT READILY TRADABLE.—Subsection (b) of section 6166 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(7) PARTNERSHIP INTERESTS AND STOCK WHICH IS NOT READILY TRADABLE.—

"(A) IN GENERAL.—If the executor elects the benefits of this paragraph (at such time and in such manner as the Secretary shall by regulations prescribe), then—

"(i) for purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is appropriate) and for purposes of subsection (c), any capital interest in a partnership and any non-readily-tradable stock which (after the application of paragraph (2)) is treated as owned by the decedent shall be treated as included in determining the value of the decedent's gross estate,

"(ii) the executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a), and

"(iii) section 6601(j) (relating to 4-percent rate of interest) shall not apply.

"(B) NON-READILY-TRADABLE STOCK DEFINED.—For purposes of this paragraph, the term 'non-readily-tradable stock' means stock for which, at the time of the decedent's death, there was no market on a stock exchange or in an over-the-counter market."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. FRENZEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Oregon (Mr. ULLMAN) will be recognized for 20 minutes. and the gentleman from Minnesota (Mr. FRENZEL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 12578 contains miscellaneous technical amendments to the Federal tax laws These amendments have been developed from a list of legislative recommendations submitted by the Treasury Department, the American Bar Association, the American Institute of Certified Public Accountants, and various other groups including State and local bar and accounting associations.

Mr. Speaker, I yield the balance of my time to the distinguished chairman of the subcommittee, the gentleman from Louisiana (Mr. WAGGONNER), who will handle both the remainder of the time and the measure.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana (Mr. WAGGONNER).

Mr. WAGGONNER. Mr. Speaker, I yield myself such time as I may consume.

The bill contains provisions relating to: First, the treatment of dividends paid by a personal holding company after the close of a taxable year; second, the eligibility of an estate of an individual in bankruptcy as a shareholder in a subchapter S corporation; third, the payment of interest to a person whose property is wrongfully seized by the Internal Revenue Service; fourth, the elimination of the reporting requirement for certain transfers of property to an exempt organization; fifth. the simplification of private foundation return and reporting requirements; and sixth, the treatment of business interests held by members of a decedent's family as held by the decedent for purposes of qualifying for extensions of time for the payment of estate tax attributable to a closely held business.

All witnesses, including representatives of the Treasury Department, who testified at the hearings on this bill recommended its adoption.

It is estimated that the provisions of the bill will not have any significant revenue effect.

Mr. Speaker, this bill will improve a number of miscellaneous requirements of the tax laws. I urge that H.R. 12578 be adopted.

Mr. FRENZEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 12578.

Mr. Speaker, I concur in the description given by the distinguished chairman of the subcommittee, the gentleman from Louisiana (Mr. WAGGONNER).

The bill makes some miscellaneous and technical changes. The ideas did not spring full-blown from the forehead of the subcommittee. They were brought to us by professional organizations and by the Treasury. All of them are approved by the Treasury.

I would also call attention to the statement of the chairman of the subcommittee that the net budget effect of this bill is nil, and it is expected to be nil during the 5-year period for which the analysis was made. The Treasury concurs in this estimate.

Mr. Speaker, I hope the bill will be swiftly passed. I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill H.R. 12578, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds have voted in the affirmative.

Mr. VOLKMER. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. VOLKMER) demands the yeas and nays. All those in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Not a sufficient number have risen.

PARLIAMENTARY INQUIRY

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

Is the requirement one-fifth of the Members present?

The SPEAKER pro tempore. Yes. The Chair will state that the requirement is that one-fifth of the Members present be standing for the yeas and nays, and there is not one-fifth of the Members standing.

Mr. VOLKMER. Mr. Speaker, I count four Members standing.

The SPEAKER pro tempore. In the opinion of the Chair, an insufficient number have arisen.

The Chair will be glad to count, if the gentleman desires.

Mr. VOLKMER. Would the Chair count, please? I believe there are only 25 Members here.

The SPEAKER pro tempore. The Chair will count. Thirty Members are present.

Two-thirds having voted in the affirmative, the rules are suspended and the bill, as amended, is passed, and without objection, a motion to reconsider is laid on the table.

There was no objection.

## EXTEND DUTY SUSPENSION ON WASTE AND SCRAP METALS

Mr. VANIK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12165) to extend until the close of June 30, 1981, the existing suspension of duties on certain metal waste and scrap, unwrought metal, and other articles of metal, as amended.

The Clerk read as follows:

H.R. 12165

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by striking out the colon at the end of the superior heading to items 911.10, 911.11, and 911.12 and inserting in lieu thereof "or to be processed by shredding, shearing, compacting or similar processing which renders them fit only for the recovery of the metal content:"; and

(2) by striking out "6/30/78" in each of items 911.10, 911.11, and 911.12 and inserting in lieu thereof "6/30/81".

SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after June 30, 1978.

The SPEAKER pro tempore. Is a second demanded?

Mr. STEIGER. Mr. Speaker, I demand a second.

PARLIAMENTARY INQUIRY

Mr. SEIBERLING. Mr. Speaker, is it in order to appeal the ruling of the Chair on the last vote?

The SPEAKER pro tempore. (Mr. SISK). The Chair will state to the gentleman that no appeal lies on the count of the Chair.

Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. VANIK) will be recognized for 20 minutes, and the gentleman from Wisconsin (Mr. STEIGER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 12165 is to extend until June 30, 1981, the existing suspension of the rates of duty on certain metal waste and scrap, unwrought metal, and other articles of metal.

H.R. 12165 was introduced by our colleague, Mr. VANDER JAGT of Michigan.

The column 1 (MFN) and column 2 (applicable to Communist countries) tariffs applying to the articles of interest (for copper articles and scrap, only column 1) have been suspended, usually for 2-year periods, almost continuously since 1942. Such articles were initially transferred from the dutiable to the free list to assist steel producers in some sections of the country to obtain adequate supplies of one of their raw materials. The conditions which led to the suspension of the duties continue to exist.

A favorable report was received from the Department of Treasury, and reports with no objections were received from the Departments of State and Commerce.

The bill was amended to extend the suspension of the duty now provided on articles of metal—except certain enumerated articles—which are imported to be used in remanufacture by melting, to include articles of metal that are imported to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content.

The committee was unanimous in reporting H.R. 12165, as amended, and I urge its passage.

Mr. STEIGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleague in supporting passage of H.R. 12165, a bill to continue through June 30, 1981, the existing suspension of duty on the importation of certain metal waste and scrap.

The bill merely continues for another 3-year period the tariff status that has applied to metal waste and scrap, unwrought metal, and other articles of metal almost continuously since the duty on these items was first lifted in 1942. The duty suspension applies to both column 1 and column 2 rates, except in the case of copper where imports from Communist countries, or column 2 entries, will continue to have the duty levied.

Public hearings held in May of this year affirmed the fact that conditions which warranted suspension of the duties over these many years still exist. Domestic smelters continue to depend on imported metal scrap in the same way as domestic producers of primary metals depend on imported metal ores. Metal scrap is an important raw material for which there is a longstanding shortage in this country. If the duty suspension is not continued, steel producers will have to turn solely to higher priced ores which also have to be imported.

In addition, when H.R. 12165 was considered by the Trade Subcommittee, the duty suspension was expanded somewhat. Now included on the free list would be metal articles to be remanufactured by methods other than melting, to which the original suspension applied exclusively. Thus, the duty suspension would apply to metal waste and scrap imported for remanufacture by methods other than melting if entered in such a state that "renders them fit only for the recovery of the metal content."

Mr. Speaker, the Ways and Means Committee unanimously agreed that H.R. 12165 is justified at this time. The administration supports the legislation and no objection to it has been heard from any source. I urge my colleagues to approve the measure unanimously.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VANIK. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. VANIK) that the House suspend the rules and pass the bill H.R. 12165, as amended.

The question was taken; and on a division (demanded by Mr. VOLKMER) there were—yeas 13; nays 1.

Mr. VOLKMER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

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## TEMPORARY SUSPENSION OF DUTY ON FLUORSPAR

Mr. VANIK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5265) to provide for the temporary suspension of duty on the importation of fluorspar, as amended.

The Clerk read as follows:

H.R. 5265

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately after item 909.01 the following new item:

| | | | |
|---|---|---|---|
| " 909.05 | Fluorspar (provided for in items 522.21 and 522.24, part 1J, schedule 5) | Free | No change On or before 6/30/80 ". |

SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, on or after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. STEIGER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. STEIGER) will be recognized for 20 minutes.

Mr. STEIGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleague in supporting enactment of H.R. 5265, a bill to temporarily suspend the duty on the importation of fluorspar.

As previously described by the gentleman from Ohio, the bill suspends until June 30, 1980 the duty on column I entries of both acid grade and metallurgical grade fluorspar. Fluorspar is a mineral, composed of calcium fluoride, that is used in the production of both aluminum and steel.

Hearings held early last year on this bill revealed that domestic production of fluorspar meets less than 25 percent of domestic demand for its use. Consuming industries, therefore, must import a substantial portion of the fluorspar they need. Currently, Mexico is the primary supplier of imported fluorspar.

Although, in the case of aluminum production, a particular industrial byproduct acid can be used as a substitute for fluorspar, such a substitute does not begin to compensate for the huge amount of fluospar that now must be imported. Consequently, both aluminum and steel processors are placed at a competitive disadvantage to the extent that they must use imported fluorspar. Of course, it is the consumer who ultimately pays the bill.

One U.S. company that produces fluorspar for domestic use has objected to the duty suspension because they have access to a large deposit of undeveloped ore from which fluorspar can be extracted. However, market conditions make development of the ore impractical at the present time or in the near future. The temporary nature of the suspension will permit the Congress to review this situation, along with other factors, after a period of about 2 years.

In general, the domestic fluorspar industry does not oppose suspension of the duty in this instance if on a temporary basis. A protective tariff means little since they are unable at this time to increase their production by any significant degree. The administration has expressed support for the legislation.

Mr. Speaker, the Trade Subcommittee has reviewed this legislation twice over the past 2 years and believes it to be meritorious. I urge unanimous approval of H.R. 5265 at this time.

Mr. JEFFORDS. Mr. Speaker, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Speaker, it is my understanding this will allow the temporary suspension of duty on fluorspar and in the event it becomes feasible to produce the fluorspar the effort will be made to reimpose the duty. Is that it?

Mr. STEIGER. I will say to the gentleman from Vermont, and my colleague, the chairman of the Trade Subcommittee, might wish to enter into this—this is a temporary suspension of duty. It is fairly clear the Trade Subcommittee will look very carefully at what in fact has happened within the domestic industry. If there is an increase of production available from domestic sources and therefore an adequate supply to meet the needs of the aluminum and steel industries, I think it is fairly clear the Trade Subcommittee would not attempt to continue the suspension unless it were further justified. We are doing it on a temporary basis because of that concern that has been raised and because of the potential for further domestic fluorspar development.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I want to say I heartily concur in what my colleague, the distinguished gentleman from Wisconsin, said. That is absolutely correct. We must recall that this suspension is for a very short time for the specific purpose of letting us measure the status of domestic production and the effect it has on the domestic producer.

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. Let me say first—and then I will yield to my friend, the gentleman from Illinois, who circulated a "dear colleague" letter on this—Members will notice the date is June 30, 1980. That is different from the date we have had on all the other suspensions, just for this one reason, because we do want to take a look at it. The other suspensions, both last year and this year, I think all go to 1981. So we will look at it from that standpoint.

I yield now to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, I thank the gentleman for yielding.

If I could respond to my colleague further, there is in fact an ample domestic supply. The question is: Do we want to put out of business that 20 percent of the fluorspar industry that is in business now?

In response to my colleagues, the gentleman from Ohio and the gentleman from Wisconsin, it seems to me we should measure the impact before we take off the duty, rather than measure the impact after we take off the duty.



What we are doing with a very strategic mineral is moving somewhat precipitously without any kind of reciprocal action on the part of the other nations. Ordinarily on this kind of thing we would enter into GATT or some other form of negotiations. We ought to know the impact on the domestic industry before we move. And we should get movement by other countries.

Why would some of the fluorspar companies—and I stress it is some of them—be interested in having this duty removed? One of the reasons is that some of them are owned by the aluminum companies and the steel companies and some are in the international field, and they can make more money producing fluorspar in South Africa than they can in Vermont or Illinois.

Mr. STEIGER. May I comment to my friend, the gentleman from Illinois, there are about 11 domestic producers of fluorspar. Of that 11, 2 of them express concern about the bill. It is true that there are at least 2, maybe 3 multinational companies that are involved in here, which supply the bulk, 80 percent, if my figures are correct, of that 25 percent.

So you have an interesting kind of situation.

I must say I do not concur with the gentleman from Illinois (Mr. SIMON) when he says that this temporary suspension will put the domestic industry out of business. That is not the position taken by the domestic industry, the bulk of it, nor is it the position taken by the administration that urged the bill to be passed.

Mr. JEFFORDS. Mr. Speaker, if the gentleman will yield still further, I am somewhat reassured but not yet convinced.

Mr. STEIGER. Mr. Speaker, I reserve the balance of my time.

Mr. VANIK. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker and my colleagues in the House, I thank the Members for their attention to this relatively small item that affects one mineral that most people have not even heard of and that affects about 1,000 jobs around this Nation, but those 1,000 jobs are important and this mineral is extremely important.

The States that will be adversely impacted if this bill passes are Illinois, Kentucky, Colorado, Texas, Arizona, Nebraska, Utah, and Montana and potentially some others, particularly Tennessee and Alaska where there are sizable deposits of fluospar.

Fluorspar is an essential ingredient in the production of steel and aluminum and fissionable uranium and in fluorine chemicals.

We now import—and my good colleague, the gentleman from Wisconsin (Mr. STEIGER) uses the figure of 75 percent, but the figure I have is 81 percent. Precisely which is correct, I do not know—but somewhere between 75 and 81 percent right now is imported.

We ought to look at what our national security interests are here. Is it desirable to be virtually totally dependent on those foreign imports?

We have in this Nation what we call national stockpile objectives where we stockpile certain essential minerals. There are two types of fluorspar. One type we have is the metallurgical, and we have one-sixth of the national stockpile objective there, and the other is the acid grade, which is a little over one-half of the national stockpile objectives.

One of the questions we have to face as we move on this legislation is that fundamental question: Should we become solely dependent on foreign sources for our fluorspar? The second question is the matter of domestic employment. Do we simply go ahead and then measure the impact afterwards as has been suggested?

So we have about 1,000 people involved and if my good friend, the gentleman from Wisconsin (Mr. STEIGER) is correct, only the marginal fluorspar mines are going to be put out of business. The only problem is that almost all the fluorspar mines are marginal in the United States. Also the places where we put people out of jobs happen to be places where right now there already is high unemployment.

In my district fluorspar miners live in three counties, unemployment is high in all those three counties. Pope County has 14.1 percent unemployment. Hardin County has 9.2 percent unemployment. And Massac County has 10.6 percent unemployment.

Further, what benefit do the American taxpayers get out of all of this, and the American consumers?

We are talking about an import duty that on every $100 worth of aluminum, steel or uranium means two-thirds of 1 percent, or 2 cents on every $100 worth of steel and aluminum.

We have to balance that against the number of people we are going to put out of work and who are going to be on welfare or unemployment compensation. We have a lot of other things which we have to take a look at. The lost revenue will be somewhere between $3 million and $6 million a year. The lost revenue will be experienced through the passage of this bill, and we also adversely impact the balance of payments. I do not need to tell the Members that the balance of payments is already bad.

Mr. Speaker, who benefits? That is a very interesting question. The beneficiaries are, No. 1, South Africa. South Africa is increasingly the major source of outside fluorspar, and in South Africa we have three corporations, one British and two American, who will be the beneficiaries. They have thousands of tons of fluorspar stockpiled, just ready for this bill to pass, which will enable them to flood the market and make a good, healthy profit.

Who loses? Our security, I think, is impaired.

The SPEAKER pro tempore. The time of the gentleman from Illinois (Mr. SIMON) has expired.

Mr. VANIK. Mr. Speaker, I yield 2 additional minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, I thank the gentleman for yielding.

Our security is impaired. We are increasingly dependent on foreign fluorspar and on a source that might not be a reliable source for fluorspar in the future. We are going to have Americans put out of work, and we do it contrary to the usual pattern of negotiating. If we got some kind of reciprocal action by other countries, that would be one thing.

Interestingly enough—and my colleague, the gentleman from Nevada (Mr. SANTINI), pointed this out to me—we now have a 2-year study going on on what our policy ought to be on basic minerals. Here is a basic mineral, and we are not considering the strategic impact of it. We are moving ahead despite the fact that the beneficiaries are not going to be the people of the United States.

Mr. Speaker, I would hope that we will get one-third of the Members of the House who will vote against this bill and not move ahead in this area.

Mr. VANIK. Mr. Speaker, I yield myself such time as I may consume.

I just want to point out to my colleague, the gentleman from Illinois (Mr. SIMON), that given the present demand pressure which there is for fluorspar, there should be no problem with the domestic fluorspar industry. I think we should be able to use all that is produced in this country.

The duty suspension is only for a limited time, and we expect to very carefully monitor the level of imports, domestic supplies, and help the domestic industry.

I want to point out to my distinguished colleague, the gentleman from Illinois, that I share his concern with respect to the domestic industry and jobs in America. However, the request for this suspension did not come from foreign producers; it came from other domestic industries in this country who claim that they desperately need this fluorspar in order to carry on their normal production.

Again, we are going to very carefully monitor these imports. I want to assure my distinguished colleague, the gentleman from Illinois (Mr. SIMON), that if we find that the importation is indeed not necessary or injurious to the American sources of supply, I think we can take appropriate action at that particular time.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Speaker, I want to ask the gentleman this question: Does this bill merely lift a duty or a quota along with the duty?

Mr. VANIK. It just suspends a duty.

Mr. VOLKMER. It just suspends a duty?

Mr. VANIK. Temporarily.

Mr. VOLKMER. I understand that, but I understand that fluorspar is used primarily in this country in the steel and aluminum industries; is that correct?

Mr. VANIK. That is correct.

Mr. VOLKMER. For manufacturing?

Mr. VANIK. That is correct.

Mr. VOLKMER. With the duty on it, United States Steel, Bethlehem Steel or Kaiser Aluminum or anybody else is not prevented from acquiring all the fluorspar they want to acquire from any producer; is that correct?

Mr. VANIK. No, excepting that it is added to the cost of producing steel and reduces the competitiveness of the American industry.

One of our problems today is the extremely vigorous competition there is the world. We are endeavoring to keep our industry competitive by doing such things as we can to hold down the cost of production in America, to which a great many other jobs are related.

Mr. VOLKMER. And with the duty removed——

Mr. VANIK. Suspended.

Mr. VOLKMER [continuing]. Or suspended, or removed for the period of the suspension, the cost of imported fluorspar will be less than domestically produced fluorspar; is that not correct?

Mr. VANIK. Yes; it will come in at a lower price.

Mr. VOLKMER. And they can acquire all they need from foreign producers; is that correct?

Mr. VANIK. As I indicated in my colloquy with the distinguished gentleman from Illinois (Mr. SIMON), if we find that our steel industry is not consuming all of the supplies of domestic fluorspar we can take some action.

If we find that they are favoring the imported fluorspar over that which is produced in the United States, then I think I will be among the first Members of this body to do something about correcting the situation.

Mr. VOLKMER. Would it not have been better to provide in the bill for a quota that could be acquired from foreign nations to insure that our domestic producers are not out of business, because we have seen enough of our domestic producers of all kinds of commodities put out of business? I am sure that United States Steel, the steel industry and the aluminum industry, can more readily absorb the cost rather than the domestic producing fluorspar industry. What I am afraid of is we are putting a lot of people or at least a thousand people out of jobs in favor of someone else, and that bothers me to a great extent.

Mr. VANIK. I want to say to the gentleman that we import 86 percent of our consumption today.

Mr. VOLKMER. It has gone up to 86 percent. It was 75 percent. Then it was 81 percent.

Mr. VANIK. No, no.

Mr. VOLKMER. Over on this side it was 75 percent. On the minority side it was 75 percent. The gentleman from Illinois said 81 percent. Now the majority leader side says 86 percent. If we keep going once more on the Republican side, we might get 90 percent.

Mr. VANIK. The gentleman knows the figures depend on what one uses as a criterion, whether one uses value or whether one uses quantity. Let me say this, the percent of imports related to apparent consumption is as follows: In 1972, 83 percent; 1973, 83 percent; 1974, 87 percent; 1975, 90 percent; 1976, 83 percent; 1977, 86 percent.

Mr. VOLKMER. Is that value or total?

Mr. VANIK. That is quantity.

Mr. VOLKMER. That is quantity.

Mr. VANIK. In value, the value was 74 percent in 1972; 75 percent in 1973; 82 percent in 1974; 85 percent in 1975; 77 percent in 1976; and 79 percent in 1977. The source of these figures is from the official figures of the U.S. Department of the Interior. The imports and exports are compiled from the official records of the U.S. Department of Commerce.

Mr. SIMON. Mr. Speaker, will my colleague, the gentleman from Ohio, yield?

Mr. VANIK. I will be happy to yield to the gentleman from Illinois.

Mr. SIMON. I thank the gentleman for yielding. It is important to talk about that 86 percent of imports—and the gentleman says how healthy the industry is. I happen to know they are barely surviving. The gentleman said the demand for this is not coming from foreign countries or foreign companies; it is coming from domestic industries. Let us be candid. The domestic industry that is demanding this most is the domestic industry that was referred to by my good colleague, the gentleman from Missouri, United States Steel. Who is one of the three corporations in South Africa who is going to be the major beneficiary of this legislation? Why, lo and behold, it is that domestic corporation called United States Steel, which has fluorspar mines in South Africa.

Let us face it. We are not passing this for the consumers of this Nation; we are passing it for one substantial corporation and two other corporations are going to be major beneficiaries also.

Mr. VANIK. Let me just point this out, that most of the fluorspar we use comes from Mexico and Spain and Italy. Of the total consumption of $75 million worth in 1976, $7 million came from South Africa.

Mr. SIMON. Will my colleague yield?

Mr. VANIK. I yield to the gentleman from Illinois.

Mr. SIMON. What country has been going up strongly in sales and has now surpassed Mexico? Mexico was No. 1, is now No. 2 in the importation of fluorspar.

Mr. VANIK. I really cannot tell the gentleman.

Mr. SIMON. It is South Africa. South Africa has hundreds of thousands of pounds of fluorspar waiting until this bill passes, and if this bill passes, South Africa is going to come into the United States with a massive supply of fluorspar.

Then one final point, if my colleague will yield.

Mr. VANIK. I would be happy to yield.

Mr. SIMON. Mr. Speaker, the gentleman mentioned we are temporarily suspending the duties—and we temporarily suspend the jobs in the meantime while we temporarily suspend the duties—and then the gentleman says the Committee on Ways and Means is going to "carefully monitor" what happens in the fluorspar industry.

I do not mean any disrespect to my

colleague from Ohio. I am usually with the gentleman and, in fact, later tomorrow afternoon I will be with the gentleman in a fight; but the gentleman has his hands full with a thousand and one things to do and the gentleman simply is not going to have time to monitor what happens in the fluorspar industry.

Mr. VANIK. Mr. Speaker, I would like to respond to the gentleman on that score. We are now in a situation where we are monitoring almost all the imports to the United States. We have established through the Customs Service and the Department of Commerce a very, very accurate monitoring and early warning system. We are endeavoring to check the level of all imports to this country; so if anything rises at an extraordinary level it is going to trigger our attention and we are going to try to determine the reasons why.

We are very distressed about our imbalance in trade and the factors that contribute to that imbalance. I want to assure the gentleman that I think for the first time, at least in my recollection, we are establishing very firm and accurate accounting handles on the levels of imports and those things that contribute to a sudden urge.

Mr. SIMON. Mr. Speaker, will my colleague yield once again?

Mr. VANIK. I am happy to yield.

Mr. SIMON. Mr. Speaker, the gentleman mentioned his careful concern about the balance of trade. Is not this bill going to adversely affect the balance of trade?

Mr. VANIK. Well, every import affects the balance of trade and we have to deal with the whole spectrum, from fluorspar to steel, to automobiles, to television sets, to the whole spectrum of commercial goods and agricultural products.

Mr. SIMON. But this action is taken unilaterally by our Nation without any reciprocal action and it adversely affects our balance of trade.

Mr. VANIK. I would say by all analyses we anticipate no increase in the level of imports, and if there is an increase in imports injurious to the gentleman's community, I will be happy to have this matter reviewed, I will assure the gentleman of that.

Mr. SIMON. Mr. Speaker, I wish I were as sanguine as my colleague from Ohio.

Mr. CHARLES H. WILSON of California. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I am happy to yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I am inclined to support the bill; but I would like to ask the gentleman, What will happen in the event this bill will not pass? What is the serious effect?

Mr. VANIK. Well, the duty will be added. The same amount of imports will occur. It is a 13-percent duty and it is going to be added to the cost of everything that is produced in the steel and aluminum industry. The American consumer is going to be very heavily impacted by the added cost which will result from the imposition of the duty. Our effort to suspend the duty relates from our belief that the consumer in America generally will suffer less by this action than he will if the duty is not suspended.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I would be interested in knowing how the proponents feel about that.

Mr. STEIGER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, somebody around the floor said it must be the time of the full moon. In all the time we have had the chance to debate trade issues, I have rarely heard one so uniquely twisted by the kind of arguments used by those opposing this bill. I have profound respect for my able Lincoln scholar from Illinois; but the gentleman is absolutely wrong in the kind of approach the gentleman has used and the analyses the gentleman has given. The gentleman is not talking about 50 States or 1,000 jobs. The gentleman is talking about one producer of 6 percent of the production that is worried about what will happen.

The gentleman is not talking about cutting off the domestic industry and cutting off the supply from foreign sources. What the gentleman is talking about is whether or not we temporarily suspend the duty on fluorspar and allow the domestic steel and aluminum industry to have an adequate supply; thus, to reduce the price to the consumer and, thus, help our anti-inflation campaign.

Mr. Speaker, I will be darned if I will sit here idly by and watch that kind of debate go on. The bill is a good bill, and it is supported by the administration. It ought to be passed.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. STEIGER. Mr. Speaker, I yield back the balance of my time.

Mr. VOLKMER. Does the gentleman from Ohio (Mr. VANIK) have any time left?

● Mr. JEFFORDS. Mr. Speaker, while the discussion I have had with my colleague from Wisconsin (Mr. STEIGER) has clarified several points for me, I am still opposed to H.R. 5265 which is before us. This legislation, which would temporarily suspend the duty on imported fluorspar, would be seriously detrimental to our domestic fluorspar industry. The chief argument I hear from my colleagues on the Ways and Means Committee is that the current duty serves to increase the cost to consuming industries, primarily the steel and aluminum industries, with little compensating benefits to our domestic fluorspar industry. It is maintained that enactment of this measure would place U.S. steel producers, as well as other consumers of fluorspar, in a better competitive position vis-a-vis foreign producers.

This legislation was brought to my attention by Umont Mining, Inc., a small mining exploration company located in my State of Vermont. They have pointed out to me that the benefit to the U.S. steel industry would be on the order of only 15 cents per ton of steel produced. This is a very small savings when taking into account the fact that this legislation may result in the total elimination of domestic production of fluorspar, which is listed as a strategic and critical mineral. The following represents an analysis of the impacts of this legislation which was developed by Umont Mining, Inc. I hope my colleagues will seriously examine the potential impacts of this legislation and join me in opposing it. I urge defeat of this measure:

NOTES ON U.S. FLUORSPAR RESERVES AND ECONOMICS

The steel companies are urging the passage of H.R. 5265 which would remove the tariff on fluorspar (a non-metallic flux mineral essential to making steel). The removal of the duty would result in a reduction of only 15¢ in the manufacture of one ton of steel.

Here is background on what this action would mean:

1. At present, even with the present duty imposed, our few operating fluorspar producers have great difficulty in competing with foreign sources, mainly Mexico, Africa, and Thailand. Our present spar resources are limited and marginal. Exploration for this non-metalic mineral would come to a standstill.

2. Spar is essential to the making of steel, aluminum, refrigerants, fluorine.

3. Approximately 80% of our supply is foreign due to the relatively low price of imports (even when including the present duty).

4. In the making of steel and aluminum a very small percentage of spar is used as a flux (thus the low cost for spar (15¢) per ton of steel).

5. Fluorspar is on this U.S. list of 34 strategic minerals. It is also on the "critical" list.

6. To reduce the price of spar from $91 per ton to $71 per ton, for example, would virtually kill U.S. exploration and production of this vital mineral resource, all for a miniscule saving in the cost per ton of end product.

7. Umont Mining, a small exploration company, has worked on the development of a fluorspar discovery in the Bayhorse District of Idaho for seven years. Approximately $2,000,000 of private capital has been spent on this project. The end result so far is a proven four million ton fluorspar orebody of excellent grade, with the likelihood of its being increased in the future to much larger tonnage. As a result of this, in the opinion of a number of geologists, the Bayhorse District in Idaho may have the largest fluorspar reserves in the nation.

8. At present no mining company is willing to invest in a mine and mill at Bayhorse because of high freight rates. Removal of the tariff certainly would kill this project and very probably also the few remaining producers of fluorspar in the United States.

9. The end result of this short range thinking is more and more dependence on foreign nations for a not generally understood but critical natural resource.

10. Question: Are we willing to destroy an industry (fluorspar production) for a fifteen cent saving per ton in the cost of steel?

COST CALCULATION

Assume 15 lbs. national average $CaF_2$ (fluorspar) used per ton of steel.

$91.00 imported cost per ton fluorspar (July, 1978 price of 70% effective metallurgical grade flourspar).

At a price of $91.00 per ton $CaF_2$ would cost 68.25¢ per ton steel ($15 \times 4.55$¢)

At a price of $71.00 per ton (no tariff) $CaF_2$ would cost 53.25¢ ($15 \times 3.55$¢)

Difference: $68.25¢ - 53.25¢ = 15¢$ saving per ton of steel.●

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from Ohio (Mr. VANIK) that the House suspend the rules and pass the bill, H.R. 5265, as amended.

The question was taken; and on a division (demanded by Mr. VOLKMER) there were—yeas 8, nays 4.

Mr. SIMON. Mr. Speaker, I demand the yeas and nays.

The SPEAKER pro tempore. The Chair will state that there is a question as to the gentleman from Illinois (Mr. SIMON) having been timely on his feet.

Is the gentleman's demand for the yeas and nays?

Mr. SIMON. Yes, Mr. Speaker, the demand is for the yeas and nays.

The SPEAKER pro tempore. All those in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Evidently a sufficient number have arisen, and the yeas and nays are ordered.

Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

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## CONCURRING IN SENATE AMENDMENTS TO H.R. 1337, EXCISE TAXES ON CERTAIN TRUCKS, BUSES, TRACTORS, ET CETERA

Mr. CORMAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1342) providing that immediately upon the adoption of this resolution the bill (H.R. 1337) to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, together with the Senate amendments thereto, be taken from the Speaker's table to the end that; First, the Senate amendment to the title of the bill be agreed to; and second, the Senate amendment to the text of the bill be agreed to with amendments.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 1342

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 1337) to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, together with the Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end that (1) the Senate amendment to the title of the bill be, and the same is hereby, agreed to; and (2) the Senate amendment to the text of the bill be, and the same is hereby, agreed to with the following amendments:

Page 3, line 25, of the Senate engrossed amendments, insert a comma after "18 years of age".

Page 4 of the Senate engrossed amendments, strike out lines 1 through 3 and insert the following:

age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater."

Page 4, line 19, of the Senate engrossed amendments, strike out "illegally produced beer" and insert in lieu thereof "to illegally produced beer".

Page 8, line 7, of the Senate engrossed amendments, strike out "paragraph (4)" and insert in lieu thereof "paragraph (4))".

Page 8, beginning in line 12, of the Senate engrossed amendments, strike out "the first section of this Act" and insert in lieu thereof "this section".

Page 8 of the Senate engrossed amendments, strike out line 16 and all that follows down through line 9 on page 13, and insert:

SEC. 4. PARTIAL ROLLOVERS OF LUMP SUM DISTRIBUTIONS.

(a) PARTIAL ROLLOVER FROM EMPLOYEES' TRUSTS PERMITTED.—Paragraph (5) of section 402(a) of the Internal Revenue Code of 1954 (relating to rollover amounts) is amended to read as follows:

"(5) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If—

"(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,

"(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

"(iii) the amount so transferred consists of the property (other than money) distributed.

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any qualifying rollover distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions.

"(C) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFYING ROLLOVER DISTRIBUTION.—The term 'qualifying rollover distribution' means 1 or more distributions—

"(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan, or

"(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)).

"(ii) EMPLOYEE CONTRIBUTIONS.—The term 'employee contributions' means—

"(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over.

"(II) any amounts theretofore distributed to the employee which were not includible in gross income.

"(iii) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(iv) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' means—

"(I) an individual retirement account described in section 408(a),

"(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(III) a retirement bond described in section 409,

"(IV) a qualified trust, and

"(V) an annuity plan described in section 403(a).

"(E) SPECIAL RULES.—

"(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I), (II), or (III) of subparagraph (D)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

"(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan."

(b) PARTIAL ROLLOVER OF ANNUITY CONTRACTS PERMITTED.—Subsection (a) of section 403 of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by striking out paragraph (4) and (5) and inserting in lieu thereof the following new paragraph:

"(4) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If—

"(i) the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution,

"(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

"(iii) the amount so transferred consists of the property (other than money) distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (E) of section 402(a)(5) and of paragraph (6) of section 402(a) shall apply for purposes of subparagraph (A)."

(c) TAXATION OF PORTION NOT ROLLED OVER.—

(1) IN GENERAL.—Paragraph (6) of section 402(a) of such Code (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF PORTION NOT ROLLED OVER.—If any portion of a lump sum distribution is transferred in a transfer to which paragraph (5)(A) applies, paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e) shall not apply with respect to such lump sum distribution."

(2) CONFORMING AMENDMENTS.—Paragraph (6) of section 402(a) of such Code is amended—

(A) by striking out "For purposes of paragraph (5)(A)(i)",

(B) by striking out "A complete" in subparagraph (A) and inserting in lieu thereof "For purposes of paragraph (5)(D)(i), a complete", and

(C) by inserting "For purposes of paragraph (5)(D)(i)—" after "ASSETS.—" in subparagraph (B).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply with respect to taxable years beginning after December 31, 1974.

(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1954 for a taxable year beginning before the date of the enactment of this Act, and

(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.

Mr. CORMAN (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the House amendments to the Senate amendments be dispensed with, and that they be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is a second demanded on the resolution?

Mr. STEIGER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. CORMAN) will be recognized for 20 minutes, and the gentleman from Wisconsin (Mr. STEIGER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1337, as passed by the Senate, is a combination of three small bills which have been passed by the House plus several Senate amendments.

The first section of the bill provides that the use of the administratively developed "cost floor" rule is specifically prohibited as an alternative tax base for purposes of computing the excise tax on trucks, buses and other highway equipment sold by manufacturers at retail. Under a Senate amendment to the House bill, the September 30, 1977, effective date was changed so that this rule will apply prospectively beginning with the first calendar quarter which begins more than 30 days after enactment.

In this connection, I want to emphasize that the intent of the Committee on Ways and Means concerning the constructive sale price percentage for a type of taxable article is that the percentage is to be determined by reference to a comparison between the price at which these articles are sold at retail and the price at which these articles are predominately sold at other than retail, even though these latter sales may comprise a minority of the total sales of such articles.

The second section of the bill deals with excise taxes on beer and wine. It corrects problems in interpreting present law so that an adult may brew beer or make wine in limited quantities for personal and family use without incurring beer or wine excise taxes or being subject to certain penalties. Under a Senate amendment to the House-passed provisions, which were contained in H.R. 2028, the treatment of homebrewing is made parallel to the treatment of home winemaking so that homebrewers will be able to brew up to 200 gallons of beer each year without being subject to the 30-gallon-on-hand limitation and the registration requirement contained in the House bill. However, there are several clarifying amendments that are made to conform the language contained in the Senate amendment to that of the House bill.

The third section of the bill expands the farming exemption from fuel taxes to enable an aerial crop duster who uses fuel for farming purposes to claim the tax refund or credit. A Senate amendment to the House-passed provision, which was contained in H.R. 2852, requires that the farmer must waive his right to refund or credit in order for the crop duster to claim it. A technical amendment is made to correct the effective date as contained in the Senate amendment.

The fourth section of the bill is a Senate provision which would allow tax-free treatment for any portion of a lump-sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan. There is also a special makeup rule for individuals who previously attempted to make a rollover deposit but failed to transfer the required amount.

In addition to various technical amendments, an amendment is made which is necessary to this Senate amendment to extend the relief provided by the bill to plans funded by annuity contracts. A similar makeup rule would apply to individuals who previously attempted to roll over distributions from annuity plans, but failed to transfer the entire amount of the distribution.

The final section of the Senate-passed bill deals with supplemental security income and is identical to H.R. 13814, which was favorably reported by the Committee on Ways and Means on August 16. It addresses a problem which has recently arisen regarding the SSI program in California.

The Senate amendment contained in section 5 of H.R. 1337 amends section 8(d) of Public Law 93–233. It provides that, upon the request of the State of California, the Secretary of Health, Education, and welfare would make a monthly cash payment equal to the minimum food stamp allotment for an eligible one-person household ($10) to noninstitutionalized, SSI recipients who do not have an eligible spouse. This additional payment would be included in or with the individual's SSI check. Eligible SSI individuals would receive this $10 monthly cash payment in place of food stamps. These cash payments in lieu of food stamps could not be made before October 1, 1978 nor continue beyond September 30, 1979.

This amendment is identical to a bill, H.R. 13814, that has been approved by the Committee on Ways and Means and is scheduled to be considered by the House under a supsension of the Rules.

The purpose of the Senate amendment and the Committee approved bill is to provide eligible SSI individuals in California with a Federal payment equivalent to their food stamp entitlement in a manner that reduces administrative procedures and costs. Under both, noninstitutionalized SSI individuals in the State would receive a monthly $10 cash payment in lieu of food stamps. The amendment would allow California to resume the "cash-out" status for SSI recipients that has been in effect since the SSI program was implemented in January of 1974.

The Congressional Budget Office (CBO) estimates that, for fiscal 1979, the payments provided under this amendment will cost approximately $60 million; $57 million for benefits and $3 million for administration. CBO estimates that if this amendment is not enacted, and SSI recipients in California remain eligible for food stamps, annual Federal food stamp cost will increase by $50 million, $30 million of which would be for benefits and $20 million for the Federal share of administrative expenditures. Since States pay half the food stamp administrative costs, the CBO estimate indicates that California would pay an additional $20 million in yearly administrative costs if SSI recipients remain eligible for food stamps. In other words, it would cost approximately $40 million ($20 million Federal and $20 million State) to administer $30 million in food stamp benefits. Whereas, under this Senate amendment and the committee bill, it would cost only $3 million to administer $57 million in benefits. Almost twice as many needy aged, blind, and disabled individuals would receive the Federal benefits to which they are entitled at a fraction of the administrative cost, and at a comparable total cost to the Federal Government.

Mr. Speaker, I urge adoption of this resolution, which will allow the House to return H.R. 1337 to the Senate with the modifications we have just described.

Mr. STEIGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1337 as passed by the other body consolidates three House-passed bills (H.R. 1337, H.R. 2028, and H.R. 2852), one Ways and Means Committee passed bill (H.R. 13814) and a provision concerning pension rollovers.

The original House-passed bill dealt with the issue of the proper method of computation of the 10-percent excise tax on trucks and buses. The excise tax normally is applied on the manufacturer's wholesale price. In situations where the manufacturer is also its own retailer, the IRS deems the wholesale price to be the higher of the cost of manufacture or a certain percentage of the retail sales price. H R. 1337 prohibits the IRS from using the cost of manufacture as the basis for imposing the excise tax.

Mr. Speaker, H.R. 1337 contains provisions to make technical modifications in the way in which truck and trailer manufacturers compute excise tax on their sales to consumers. It is not intended to raise revenues or lose revenues, but merely to assure that a manufacturer's sale at retail will have about the same tax base as the sale of the same article at wholesale. It is intended to reflect the discount between retail sales to consumers and sales at other than retail to wholesale distributors or dealers. If the preponderance of nonretail sales in a particular industry is to wholesale distributors, the discount should be the difference between the highest retail price and the highest price to wholesale distributors in the ordinary course of

trade. If the preponderance of nonretail sales is to dealers, the IRS should set the discount at the difference between the retail price and the lowest price to retailers.

Since publication of revenue ruling 54–61, the retail discount has been 25 percent. Today that discount rate for trucks and trailers is somewhat between 10 and 20 percent, depending upon which industry is affected, trucks, truck bodies, tractors, trailers, or buses. While it is clear that IRS is authorized under this bill to alter the discount, it should not do so until it has thoroughly investigated each affected industry to determine what an average and reasonable rate should be to govern each industry and assure itself that the change will not have an inflationary impact.

H.R. 1337 contains an expanded version of House-passed H.R. 2028, dealing with the excise tax treatment of home producers of beer or wine. It permits households of two or more adults to produce up to 200 gallons per year of beer or wine without incurring any alcohol tax or penalties. The other body removed both the requirement that beer producers register with the Treasury Department and the 30-gallon limitation on beer in storage. Originally, the registration of beer producers was directed at monitoring possible moonshine whiskey operations, but the procedure has proven to be more of a nuisance than a useful enforcement tool.

The third House-passed bill contained in H.R. 1337 as passed by the other body is H.R. 2852. This provision permits agricultural aerial crop sprayers to claim the refund for the excise tax on gasoline used in agricultural operations. Under present law the farmer must apply for the refund. However, in situations where a farmer hires a crop duster to service his fields, he often fails to claim the refund. This provision would permit the crop duster to claim the refund if the farmer waives his right to claim it.

A new provision added by the other body concerns the issue of lump-sum pension distributions. Under present law, a person receiving a lump-sum distribution from a qualified retirement plan is required to deposit the entire sum in another qualified plan account in order to obtain tax-free rollover treatment. Situations have occurred where a person received the lump-sum pension distribution and reinvested all but a small amount in a qualified pension account. Nevertheless, the entire lump-sum amount was taxed. The amendment would permit partial rollovers, that is, the portion of a lump-sum distribution reinvested in a qualified plan would receive tax-free rollover treatment, while the amounts not so reinvested would be taxed. The effective date is January 1, 1975. The present operation of the law is a glaring anomaly and the other body's amendment will help bring equitable relief to the person who might otherwise be harmed.

Finally Mr. Speaker, one of the Senate amendments to H.R. 1337 has unique interest and application in the State of California. Its intent is to permit the continuation of payments of cash in lieu of food stamps to California SSI recipients, as has been the practice in that State since the inception of the SSI program. Without the adoption of this provision, SSI recipients there will become entitled to apply for food stamps because the State, as a result of decisions reached in the wake of proposition 13, is no longer complying with one of two statutory conditions of Public Law 94–379 under which it has been permitted since 1976, to maintain its "cash-out" status.

The Congressional Budget Office has estimated that the $10 bonus payments which the Federal Government would provide under this bill to noninstitutionalized SSI individuals not having an eligible spouse will cost approximately $60 million, $57 million of which will be for benefits. CBO has estimated that without the enactment of this measure, Federal food stamp benefit costs will increase by $30 million and Federal administrative costs by $20 million, despite a projected participation rate of less than 50 percent.

The Ways and Means Committee reported legislation identical to this measure on August 17 of this year. The provision's net cost over that of the otherwise unavoidable alternative—the increase in food stamp costs—is estimated at $10 million.

It should be emphasized that this legislation's life is limited to a single year. We must more carefully study the broader ramifications of the SSI food stamp cash-out, and closely monitor the special California situation, before reaching a more lasting judgment as to the procedure to be followed there and elsewhere.

Mr. Speaker, I support H.R. 1337, as amended by the other body. It consolidates several House bills together with correcting a glaring anomaly in the tax treatment of pension rollovers.

Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, last Thursday, September 7, when this bill came up in the form of a unanimous-consent request of the gentleman from California (Mr. CORMAN), I expressed concern about the procedure being used because of one of the five sections of the bill added in the other body. I do not have any less apprehension today about the procedure being used.

I think the House ought to have a chance to vote separately on whether we wish to agree to this particular amendment. It is the custom to hang ornaments on the tree, in some fashion or the other, when Ways and Means bills are sent over to the other body. And this bill has some rather attractive ornaments on it. The precedent embodied in section 5 is what I am worrying about. Because of the situation in California we are in fact stepping in and bailing out the State of California's current government which does not, obviously, wish to comply with the previous law the Congress passed giving special treatment to California under the food stamp program. Under that law which was passed, I believe, about 2 years ago, Congress set certain conditions in Federal law that California had to meet in order to qualify for the special treatment. And after proposition 13, the legislature refused to comply with that special law that Congress passed. So now we are faced with the question today of whether or not we will step in and bail them out by financing the action that they refused to take. It may well be that the administrative cost and the actual benefit cost only results in about a net added cost of about $10 million, but we are not kidding anybody. The California voters who voted on proposition 13 are going to pay Federal taxes in the same numbers as they would have before, and their money will be used to pay for this, as will all other U.S. taxpayers.

It seems to me that the State of California obligation is the one that ought to be taken care of by their own government and not by the Federal taxpayers at large. Worse than that, I can see the possibility that if other States follow in passing tax and spending limitation amendments, all of them will come to Congress and ask for this sort of assistance, and there should be none.

This is the first time this body has faced this issue, and if we are really concerned about saving taxpayers' money, then we ought to vote no on this resolution.

Mr. CORMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Maryland (Mr. BAUMAN) is as inaccurate as he is articulate in his analysis of this matter. He claims California has received special treatment. In fact, California has for several years received fewer Federal dollars per capital for SSI recipients than other States because, at the State's option, SSI recipients in the State have been ineligible for food stamps. In place of food stamps, at an additional cost to the State, California has included in its State SSI supplement an amount in cash generally equal to the food stamp benefit. This action by the State, which the gentleman from Maryland (Mr. BAUMAN) refers to as special treatment, has saved the Federal Government many millions of dollars in food stamp benefits over the past 4 years and has cost the State an equivalent amount. I do not think this is accurately characterized as special treatment.

SSI recipients in Maryland receive the Federal SSI benefit, just as do those in California, but in addition in Maryland they receive food stamps which are federally funded. Now, because California could not supplement the Federal SSI payment as much this year as they had the prior years, SSI recipients in the State—as the SSI recipients in Maryland—are entitled to the Federal SSI cash payment plus food stamps. It should be clear, however, that SSI recipients in California will not be eligible for as much in food stamps as those in Maryland because Maryland has been less generous in providing for its needy, aged, blind, and disabled.

The pertinent fact is that, as of Sep-

tember 1, certain Californians drawing SSI are also entitled to $10 worth of food stamps, and that will cost the Federal Government $10 for the benefit plus whatever it costs to administer the program. Food stamp administrative costs are divided equally between the Federal Government and the State. The gentleman may harangue all he wants about bailing out California. The fact of the matter is that it is going to cost the Federal Government $50 to $60 million for food stamps if we do nothing. This bill simply converts those food stamps to cash, and thereby saves substantial administrative costs for both the State and the Federal Government.

These are the pertinent facts of the matter, and I hope the House will adopt this motion.

Mr. Speaker, I reserve the balance of my time.

Mr. STEIGER. Mr. Speaker, I yield an additional 1 minute to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I regret that the gentleman from California disagrees with my characterization of the situation, but I do not agree with his implication that I am inaccurate in what I am saying. The fact of the matter is, in 1976 Congress did pass a Federal law that granted a special status for California, and according to the gentleman's own committee staff memorandum—which I am sure he has read at some point; it is a well-written memorandum—California received this special treatment, allowing the cash out, only so long as the legislature passed through to the SSI recipients any cost-of-living increases provided in Federal benefits.

Second, the law provided a yearly cost-of-living increase in the State's SSI payments. California did not live up to the second of those two Federal criteria, because of proposition 13. In an effort to cut welfare spending, the legislature decided not to grant that cost-of-living increase. Now, the State government comes to Congress and asks us to pass this law today to give them special treatment and $60 million. If that is inaccurate, the gentleman can correct me. We should not grant this request.

Mr. Speaker, for the further edification of the gentleman from California, I include as part of my remarks, a copy of the pertinent part of the staff memorandum regarding this matter:

5. Section 5 of the Senate amendments is virtually identical to H.R. 13814 as reported by the Ways and Means Committee on August 17, 1978. The section would permit the continued payment of cash in lieu of food stamps to California SSI recipients.

First as an SSI "hold harmless" State, but since 1976 under the specific authority of P.L. 94-379, California has been able to provide SSI recipients with an additional amount of cash generally equivalent to, and in place of, food stamps. Under P.L. 94-379, California was permitted to do this so long as it met two conditions: (1) it had to pass through to SSI recipients any cost-of-living increases provided in the Federal SSI benefits; and (2) it had to provide a yearly cost-of-living increase in the State supplementary payment. California has met these two conditions until now, but beginning September 1, will not be in compliance with No. 2. This stems from the State's decision with respect to holding the line on welfare costs in the wake of Proposition 13.

If Congress does not act at this time, food stamps will be made available to California SSI recipients. As of the first of the year, this will have to be done on a case-by-case basis, as categorical eligibility will no longer be utilized in the food stamp program. It is thought that most noninstitutionalized aged or disabled individuals (who do not have an eligible spouse) will qualify for the minimum food stamp allotment of $10 value per month, but SSI couples and most single, blind recipients will not qualify because of the level of their SSI payments. Institutionalized SSI recipients will not qualify because they do not constitute a household under the food stamp law.

CBO estimates that if food stamps become effective for these persons, Federal food stamp benefit costs will increase by $30 million, and administrative costs by $20 million. Participation rates can be projected to be quite low (perhaps below 50%). The cost of the proposed solution is $60 million, $57 million of which would be for benefits. The net Federal cost of the legislation over food stamps is $10 million, according to CBO. California's own estimates project an even lesss favorable food stamp benefit vs. administrative cost ratio.

Under the Senate amendment and H.R. 13814, the Federal Government would include an additional $10 in the SSI benefit checks of noninstitutionalized SSI individuals not having an eligible spouse. They would receive this $10 in lieu of food stamps. These payments could not continue beyond September 30, 1979; Congress would have the opportunity to monitor the California situation and examine the broader issues involved, before continuing this beyond the one-year time frame.

The basic question which someone might raise is why Congress should make yet another special accomodation for California, when that State, by virtue of its own decision in the wake of Proposition 13, has failed to comply with the conditions of the original special arrangement. But it should be borne in mind that Federal costs will increase without the adoption of this measure due to increases in food stamp costs. The net Federal cost of $10 million must be weighed against the State's having to depart from the practice it has followed, with respect to these SSI recipients, throughout the history of that program.

Mr. CORMAN. Mr. Speaker, I yield myself such time as I may consume.

The fact remains, under existing law approximately 500,000 SSI recipients in California became eligible for food stamps as of September 1, at Federal expense. It is cheaper to give them this Federally financed benefit in cash. I hope we will soon provide cash in place of food stamps for SSI recipients in all States. I hope that we pass this today.

Mr. STEIGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just simply say that I recognize the argument made by the gentleman from Maryland. My hope is, however, given the fact that we are doing the bill in the way that we are, the Members will understand that an aye vote is important notwithstanding this dispute about California. I hope the bill is passed, and I urge its adoption.

● Mr. PICKLE. Mr. Speaker, H.R. 2852 modifies the procedure for obtaining refunds of Federal excise taxes on aviation fuels used for agricultural spraying and crop dusting. Today this refund is available to the individual farmer. This bill merely puts the aerial aircraft operators in place of the farmers to obtain gasoline tax refund for use on farm land.

The Senate added an amendment to the bill that requires that the farmer must waive his right to the refund or credit in writing in order for the crop duster to claim it. I want to be sure that this is handled in some simple fashion so that it does not result in a lot of complicated bookkeeping. The amount that an individual farmer would have collected is not that large—for example, the refund per acre would be one-fourth cent or $1.40 for a 100-acre farm. This hardly justifies much paperwork. It would be silly to make an applicator go banging on doors looking for farmers to get a $2 refund.

It seems to me that the logical way to handle this is just to include on the bill "I hereby waive my right to collect the refund of the Federal excise taxes on aviation fuels used for this agricultural spraying and crop dusting." This could easily be added to the statement and would fulfill the requirement.

Today more and more of our farm operations are being handled by air. Planting as well as spraying are increasingly done by air. It saves fuel, is more efficient and faster and uses less manpower. This bill will help the aerial operator by giving him, the person who buys the gasoline, the gasoline exemption already available to the farmer.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. CORMAN) that the House suspend the rules and agree to the resolution (H. Res. 1342).

The question was taken.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

## U.S. CODE AMENDMENTS FOR FEDERAL DISTRICT COURTS

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13331) to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines, as amended.

The Clerk read as follows:

H.R. 13331

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal District Court Organization Act of 1978".

PLACES OF HOLDING COURT

SEC. 2. (a) The last sentence of section 97 (a) of title 28, United States Code, is amended to read as follows:

"Court for the Eastern District shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.".

(b) The last sentence of section 104(a)(1) of title 28, United States Code, is amended to read as follows:

"Court for the eastern division shall be at Aberdeen, Ackerman, Corinth.".

DIVISIONS WITHIN JUDICIAL DISTRICTS

SEC. 3. (a) Section 98(c) of title 28, United States Code, is amended to read as follows:

"Western District

"(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

"Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.".

(b) Section 114 of title 28, United States Code, is amended—

(1) in paragraph (2), by striking out "Sheridan, Steele, Stutsman, and Wells" and inserting in lieu thereof "Steele, and Stutsman";

(2) in paragraph (3), by striking out "Bottineau," "McHenry,", and "Pierce,"; and

(3) by amending paragraph (4) to read as follows:

"(4) The Northwestern Division comprises the counties of Bottineau, Burke, Divide, McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells, and Williams.".

JUDICIAL DISTRICT DIVIDING LINES

SEC. 4. (a) Section 89 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Madison," immediately after "Liberty,"; and

(2) in the first paragraph of subsection (b), by striking out "Madison,".

(b)(1) Section 93 of title 28, United States Code, is amended to read as follows:

"§ 93. Illinois

"Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern District of Illinois.

"Northern District

"(a) The Northern District comprises two divisions.

"(1) The Eastern Division comprises the counties of Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, McHenry, and Will. "Court for the Eastern Division shall be held at Chicago.

"(2) The Western Division comprises the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago.

"Court for the Western Division shall be held at Freeport and Rockford.

"Central District

"(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Knox, Livingston, Logan, McDonough, McLean, Macaupin, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Puntnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

"Court for the Central District shall be held at Danville, Peoria, Quincy, Rock Island, and Springfield.

"Southern District

"(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

"Court for the Southern District shall be held at Alton, Benton, Cairo, and East Saint Louis.".

(2) Section 133 of title 28, United States Code, is amended by striking out the item relating to Illinois and inserting in lieu thereof the following:

"Illinois:

| | |
|---|---|
| "Northern | 13 |
| "Central | 2 |
| "Southern | 2". |

(c) Section 112 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Columbia," immediately after "Clinton,", by inserting "Greene," immediately after Fulton,", and by inserting "Ulster," immediately after "Tompkins,"; and

(2) in the first paragraph of subsection (b), by striking out "Columbia,", "Greene,", and "Ulster,".

EFFECTIVE DATE

SEC. 5. (a) The amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. RAILSBACK. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. KASTENMEIER) and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill which the Judiciary Committee brings to the floor today is a noncontroversial, heavily supported measure which is designed to keep the Federal judicial system up-to-date with demographic and societal changes in several of its districts.

In brief, the legislation creates two new places of holding Federal district court. First, it authorizes Ashland as a place of holding court in the eastern district of Kentucky. Second, it authorizes Corinth as a place of holding court in the northern district of Mississippi.

The legislation also abolishes the judicial divisions in the western district of Louisiana and realines the four divisions in the judicial district of North Dakota.

Lastly, the legislation realines district dividing lines in three States. In Florida one county—Madison—is transferred from the middle district to the northern district. In Illinois the three judicial districts are realined to better respond to the needs of that State. In New York three counties—Columbia, Greene, and Ulster—are taken from the southern district and placed in the northern district. All of these changes result in closer access to the Federal courthouse doors for the lawyers and litigants involved.

H.R. 13331 is an omnibus package. It is the view of my subcommittee that the processing of district court legislation is more efficiently, fairly, and expeditiously dealt with in this manner. In this regard, I can attest to the Members present that H.R. 13331 is a noncontroversial proposal, with no opposition. It is enthusiastically supported by the Administrative Office of the U.S. Courts, the U.S. Department of Justice and the congressional delegations involved.

I note that on August 21, 1978, a virtually identical bill (S. 3375) unanimously passed the Senate by voice vote. I ask your support for this legislation and I strongly recommend its passage.

Now, I would like to defer to several of my colleagues who introduced various sections of H.R. 13331 and who can address themselves to situations in their home States.

Mr. RAILSBACK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to join with the chairman of the subcommittee in voicing my support for H.R. 13331. This bill, as it affects Illinois, corresponds to S. 2838 which was introduced earlier by Senator CHARLES H. PERCY and ADLAI E. STEVENSON III of Illinois.

Presently, Illinois is divided into three judicial districts: The northern, eastern, and southern districts. Because of changing demographic and economic patterns, the existing judicial structure has not kept pace with recent needs resulting in several defects.

H.R. 13331 would provide for the realinement of the existing eastern and southern districts into central and southern districts respectively, with a common boundary running east to west. As a result, the new central and southern districts would be geographically compact and cohesive, eliminating much of the unnecessary cost and inconvenience now confronted by the residents of Illinois.

The redistricting has the support of the active Federal judges in the southern and eastern districts of Illinois and the Judicial Council of the Seventh Circuit. It is important to note that there are no disadvantages or costs associated with the redistricting of the downstate Illinois Federal district courts. I urge my colleagues to support H.R. 13331.

Mr. KASTENMEIER. Mr. Speaker, before I yield, briefly I should also add that this is an ongoing exercise. There are a number of other proposals before the subcommittee affecting other courts in the country which may not have been quite as noncontroversial. Some issues may have been raised respecting these other districts. These are possibilities for future enactment. As a matter of fact even at this time the subcommittee is processing a piece of legislation involving several other situations which can be rectified.

I say this to inform the membership that if a particular proposal they as-

sumed was going forward is not included in this bill that it may be in these later bills.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I would like to join with my colleague from Illinois in supporting H.R. 13331 which provides for the redistricting of the downstate Illinois Federal district courts.

Various areas of the State have a commonality of interests. However, the present district lines split these local regions. This would be corrected by the new district lines and benefit all the citizens of downstate Illinois. The litigants, jurors, and lawyers would not have to travel as far to the courthouse. For example, most grand juries in the eastern district of Illinois are convened in East St. Louis. The grand jurors come from all over the district, including Danville and Kankakee which are over 200 miles away. This is a substantial burden to place on Illinois citizens. With the new district lines citizens will not have to travel as far to serve on the grand jury and, by the same token, the grand jurors will have a better sense of the community where the suspected crimes took place.

The elongated eastern district of Illinois also places a burden on the judges and reduces the time that they otherwise would spend deciding cases. For example, Judge Wise, who is stationed in Danville, has frequently had to travel to Benton, 200 miles away, to try cases.

The new district lines will cure these and other problems caused by the present boundary lines.

I urge my colleagues to support H.R. 13331, as it will help the citizens of Illinois and greatly aid the administration of justice.

Mr. KASTENMEIER. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. PATTISON). The gentleman from New York (Mr. PATTISON) was interested in his own district and in the State of New York and is to be congratulated on his contribution to the legislation.

Mr. PATTISON of New York. Mr. Speaker, I thank my colleague, the gentleman from Wisconsin (Mr. KASTENMEIER) for yielding me this time, and I thank and compliment my former colleagues on the Committee on the Judiciary for passing this legislation.

Section 4 of the legislation deals with two counties in my congressional district and one county in the congressional district of my colleague to the south, the gentleman from New York (Mr. FISH). It realines those three counties so that they will be part of the northern district of New York, the main courtroom for which is in Albany, N.Y. Those counties are culturally part of the Albany scene as opposed to the New York City scene so that it is almost impossible for litigants or lawyers from the two counties in my district and diffcult at least for lawyers and litigants from the one county in Congressmen FISH's district to take their cases to the southern district of New York which has its headquarters in New York City.

So the passage of this legislation will really open up the Federal courts for people from those three counties for the first time.

They are rural counties. There is not a great deal of Federal court business, but they surely should have the option of using those courts where appropriate.

I circulated this proposal 3 years ago before I introduced this legislation among the members of the bar of the two counties that I represent and the gentleman from New York (Mr. FISH) also circulated the proposal among the members of the bar of Ulster County. In the two counties that I represent, the response was 100 percent in favor of realinement of these three counties to the northern district of New York.

So I am delighted that this is finally being done and once again thank my colleagues for preparing this legislation and getting it to the point where it will become law this year.

Mr. RAILSBACK. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. FISH).

Mr. FISH. Mr. Speaker, I thank the gentleman for yielding time to me.

At the outset, Mr. Speaker, I would like to express my appreciation both to the chairman of the subcommittee, the gentleman from Wisconsin (Mr. KASTENMEIER) and the ranking member of the committee, the gentleman from Illinois (Mr. RAILSBACK) for their care and study in this matter and their consideration of the wishes of both the lawyers and the litigants in the realinement of these districts because at present, residents of Columbia, Greene, and Ulster Counties of New York on Federal court business must travel a considerable distance to downtown New York City. Yet all three counties are much closer to Albany, the principal place of holding court in the northern district. Ulster was added at my request responding to a resolution adopted by the Ulster County Bar Association favorable to the transfer.

The committee found that—

People from Columbia, Greene and Ulster Counties have centered their lifestyles around Albany and not New York City. Moreover, the three counties are part of the Third Judicial District of New York State and the attorneys from there often travel to Albany on judicial business.

According to the chief judge of the northern district, James T. Foley—

The new litigation that will be caused by this addition can be managed and disposed of efficiently and with reasonable dispatch if the judicial manpower here is increased.

A pending omnibus judgeship bill gives the northern district an additional judge, so it will have no difficulty in handling its increased caseload.

Both lawyers and litigants will be better served by Ulster County's transfer to the northern district.

Mr. Speaker, I again wish to express my deep appreciation to the chairman of the subcommittee, the gentleman from Wisconsin (Mr. KASTENMEIER) and the ranking minority member, the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, I am pleased to join with the gentleman from New York in urging that Ulster County, N.Y., be transferred from the southern judicial district of New York to the northern district of New York.

In the interests of geographic proximity and the efficient administration of justice, I urge the adoption of this Federal District Court Organization Act proposal—a proposal which will benefit and which is supported by both the bar and the public of Ulster County, the portion of which I represent.

Mr. RAILSBACK. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. O'BRIEN).

Mr. O'BRIEN. Mr. Speaker, I thank the gentleman for yielding.

I recognize the strain and effort which have gone into the business of putting together new Federal court districts. However, I rise to speak for lawyers, judges, and litigants in one county of my district, the county of Kankakee.

I do not know what consultation took place with regard to the preference of the attorneys and judges who work and serve the Kankakee area. I, for one, have spoken to a Kankakee attorney, who is the immediate past president of the Illinois State Bar Association; to the current president of the Kankakee County Bar Association; to five different lawyers of all political fidelities; and to a highly respected senior State judge from the county of Kankakee. We have made contact with approximately 100 people on the fringe and in the body of the legal profession. Not one of them favors the inclusion of this particular county in the northern division of Illinois.

Mr. Speaker, they have heretofore appeared in the Federal court sitting in Danville, Ill., which is a normal downstate habitat for them. And they have been quite content with this situation over the years. To change their way of life now and send them to Chicago is an adjustment more than just not to their liking; it is abhorrent to them.

Therefore, Mr. Speaker, with all due respect to the efforts that have gone into this complex bill, my district has been seriously detrimented by it, and I vigorously oppose it.

The SPEAKER pro tempore (Mr. SISK). The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill H.R. 13331, as amended.

The question was taken.

Mr. GEPHARDT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further

proceedings on this motion will be postponed.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order, all by yeas and nays:

H.R. 12860;
H.R. 13311;
H.R. 12026;
H.R. 5265;
H. Res. 1342; and
H.R. 13331.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

## RHODE ISLAND INDIAN LAND CLAIMS SETTLEMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 12860, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wyoming (Mr. RONCALIO) that the House suspend the rules and pass the bill H.R. 12860, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 249, nays 122, not voting 61, as follows:

[Roll No. 754]

YEAS—249

| | | |
|---|---|---|
| Abdnor | Clausen, | Gore |
| Akaka | Don H. | Gudger |
| Alexander | Clay | Hall |
| Ambro | Collins, Ill. | Hamilton |
| Anderson, | Conte | Hanley |
| Calif. | Corman | Hannaford |
| Andrews, N.C. | Cornell | Harkin |
| Andrews, | Cornwell | Harris |
| N. Dak. | Cotter | Hawkins |
| Annunzio | Danielson | Heckler |
| Applegate | Davis | Hefner |
| Aspin | Dellums | Hightower |
| AuCoin | Dent | Holland |
| Bafalis | Derrick | Horton |
| Baldus | Derwinski | Howard |
| Baucus | Dodd | Hughes |
| Beard, R.I. | Downey | Jacobs |
| Bedell | Drinan | Jeffords |
| Beilenson | Duncan, Oreg. | Jenkins |
| Benjamin | Early | Jenrette |
| Bevill | Eckhardt | Johnson, Calif. |
| Biaggi | Edgar | Jones, N.C. |
| Bingham | Edwards, Ala. | Jones, Tenn. |
| Blanchard | Edwards, Calif. | Jordan |
| Blouin | Eilberg | Kastenmeier |
| Boggs | Ertel | Kazen |
| Boland | Evans, Colo. | Keys |
| Bolling | Fascell | Kildee |
| Bonior | Fenwick | Kostmayer |
| Bowen | Fish | Krebs |
| Brademas | Fisher | LaFalce |
| Breckinridge | Flippo | Lagomarsino |
| Brinkley | Flood | Le Fante |
| Brodhead | Florio | Leach |
| Brooks | Ford, Tenn. | Lederer |
| Brown, Calif. | Fountain | Leggett |
| Buchanan | Fowler | Levitas |
| Burke, Mass. | Gaydos | Lloyd, Calif. |
| Burlison, Mo. | Gephardt | Lloyd, Tenn. |
| Burton, John | Giaimo | Long, La. |
| Burton, Phillip | Ginn | Lujan |
| Carney | Glickman | Luken |
| Carr | Goldwater | Lundine |
| Chappell | Gonzalez | McCloskey |
| McFall | Ottinger | Smith, Iowa |
| McHugh | Panetta | Solarz |
| McKay | Patten | Spellman |
| McKinney | Patterson | Staggers |
| Maguire | Pattison | Stark |
| Mahon | Pease | Steed |
| Mann | Pepper | Steers |
| Markey | Perkins | Stokes |
| Marks | Pickle | Studds |
| Marlenee | Pike | Thompson |
| Mattox | Pressler | Thornton |
| Meeds | Preyer | Traxler |
| Metcalfe | Price | Tucker |
| Meyner | Pursell | Udall |
| Mikva | Quillen | Ullman |
| Milford | Rahall | Van Deerlin |
| Mineta | Rangel | Vanik |
| Minish | Reuss | Vento |
| Moakley | Rinaldo | Volkmer |
| Moffett | Roe | Walgren |
| Mollohan | Rogers | Walsh |
| Montgomery | Roncalio | Watkins |
| Moore | Rooney | Waxman |
| Moorhead, Pa. | Rose | Weaver |
| Moss | Rosenthal | Weiss |
| Mottl | Rostenkowski | Whalen |
| Murphy, Ill. | Roybal | White |
| Murphy, Pa. | Russo | Whitley |
| Murtha | Ryan | Whitten |
| Myers, Michael | Santini | Wilson, Bob |
| Natcher | Sawyer | Wilson, C. H. |
| Neal | Schroeder | Wilson, Tex. |
| Nedzi | Sebelius | Winn |
| Nichols | Seiberling | Wirth |
| Nix | Sharp | Wright |
| Nolan | Shipley | Yates |
| Nowak | Sikes | Yatron |
| Oakar | Simon | Young, Mo. |
| Oberstar | Sisk | Young, Tex. |
| Obey | Slack | Zablocki |

NAYS—122

| | | |
|---|---|---|
| Anderson, Ill. | Flynt | Moorhead, |
| Archer | Foley | Calif. |
| Ashbrook | Forsythe | Myers, Gary |
| Badham | Frenzel | Myers, John |
| Bauman | Gammage | O'Brien |
| Beard, Tenn. | Gilman | Pettis |
| Bennett | Goodling | Poage |
| Bonker | Gradison | Pritchard |
| Broomfield | Grassley | Quayle |
| Brown, Mich. | Green | Railsback |
| Broyhill | Guyer | Regula |
| Burgener | Hagedorn | Rhodes |
| Burleson, Tex. | Hammer- | Roberts |
| Butler | schmidt | Robinson |
| Caputo | Harsha | Rousselot |
| Carter | Heftel | Runnels |
| Cederberg | Hillis | Satterfield |
| Cleveland | Hollenbeck | Schulze |
| Cohen | Holt | Shuster |
| Coleman | Hyde | Skelton |
| Collins, Tex. | Ichord | Smith, Nebr. |
| Conable | Jones, Okla. | Snyder |
| Corcoran | Kelly | Spence |
| Coughlin | Kemp | Stangeland |
| Crane | Kindness | Stanton |
| Cunningham | Latta | Steiger |
| Daniel, Dan | Lent | Stockman |
| Daniel, R. W. | Livingston | Symms |
| de la Garza | Lott | Taylor |
| Devine | McClory | Thone |
| Dicks | McCormack | Treen |
| Dingell | McDade | Trible |
| Dornan | McDonald | Waggonner |
| Duncan, Tenn. | McEwen | Walker |
| Edwards, Okla. | Madigan | Wampler |
| Emery | Marriott | Whitehurst |
| English | Martin | Wolff |
| Erlenborn | Mathis | Wydler |
| Evans, Del. | Mazzoli | Wylie |
| Evans, Ga. | Michel | Young, Fla. |
| Findley | Miller, Ohio | |
| Fithian | Mitchell, N.Y. | |

NOT VOTING—61

| | | |
|---|---|---|
| Addabbo | Dickinson | Johnson, Colo. |
| Ammerman | Diggs | Kasten |
| Armstrong | Evans, Ind. | Krueger |
| Ashley | Fary | Lehman |
| Barnard | Flowers | Long, Md. |
| Breaux | Ford, Mich. | Mikulski |
| Brown, Ohio | Fraser | Miller, Calif. |
| Burke, Calif. | Frey | Mitchell, Md. |
| Burke, Fla. | Fuqua | Murphy, N.Y. |
| Byron | Garcia | Quie |
| Cavanaugh | Gibbons | Richmond |
| Chisholm | Hansen | Risenhoover |
| Clawson, Del | Harrington | Rodino |
| Cochran | Holtzman | Rudd |
| Conyers | Hubbard | Ruppe |
| D'Amours | Huckaby | Sarasin |
| Delaney | Ireland | Scheuer |
| Skubitz | Teague | Young, Alaska |
| St Germain | Tsongas | Zeferetti |
| Stratton | Vander Jagt | |
| Stump | Wiggins | |

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Armstrong.
Mr. Mitchell of Maryland with Mr. Ruppe.
Mr. Richmond with Mr. Quie.
Mr. Delaney with Mr. Vander Jagt.
Mr. Zeferetti with Mr. Wiggins.
Mr. Teague with Mr. Frey.
Mr. St Germain with Mr. Barnard.
Mr. Ashley with Mr. Brown of Ohio.
Mr. Ammerman with Mr. Hansen.
Mr. Rodino with Mr. Hubbard.
Mr. Byron with Mr. Kasten.
Mr. Fary with Mr. Long of Maryland.
Mr. Krueger with Mr. Stump.
Ms. Mikulski with Mr. Skubitz.
Mr. Fuqua with Mr. Burke of Florida.
Mr. Garcia with Mr. Cochran of Mississippi.
Ms. Holtzman with Mr. Dickinson.
Mrs. Chisholm with Mr. Tsongas.
Mr. Murphy of New York with Mr. Sarasin.
Mr. Ford of Michigan with Mr. Rudd.
Mr. Breaux with Mr. Fraser.
Mrs. Burke of California with Mr. Del Clawson.
Mr. Conyers with Mr. Huckaby.
Mr. Diggs with Mr. Flowers.
Mr. Ireland with Mr. Young of Alaska.
Mr. Harrington with Mr. Scheuer.
Mr. Gibbons with Mr. D'Amours.
Mr. Miller of California with Mr. Cavanaugh.
Mr. Lehman with Mr. Risenhoover.
Mr. Stratton with Mr. Evans of Indiana.

Messrs. YOUNG of Florida, GREEN, McCLORY, CAPUTO, CORCORAN of Illinois, STEIGER, and KEMP changed their vote from "yea" to "nay."

Messrs. SLACK, CHARLES H. WILSON of California, MOTTL, GAYDOS, WHITTEN, CHAPPELL, MURTHA, LEACH, AMBRO, WATKINS, MILFORD, HALL, GLICKMAN, and MANN changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. RONCALIO. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 3153) to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes, a bill similar to the bill just passed.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

Mr. ASHBROOK. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b)(3) of rule XXVII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rules on which the Chair has postponed further proceedings.

## PORTS AND WATERWAYS SAFETY AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 13311, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. BIAGGI) that the House suspend the rules and pass the bill H.R. 13311, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 366, nays 6, not voting 60, as follows:

[Roll No. 755]

YEAS—366

| | | |
|---|---|---|
| Abdnor | Danielson | Hightower |
| Akaka | Davis | Hillis |
| Alexander | de la Garza | Holland |
| Ambro | Dellums | Hollenbeck |
| Anderson, Calif. | Dent | Holt |
| | Derrick | Horton |
| Anderson, Ill. | Derwinski | Howard |
| Andrews, N.C. | Devine | Hughes |
| Andrews, N. Dak. | Dicks | Hyde |
| | Dingell | Ichord |
| Annunzio | Dodd | Jacobs |
| Applegate | Dornan | Jeffords |
| Archer | Downey | Jenkins |
| Ashbrook | Drinan | Jenrette |
| Aspin | Duncan, Oreg. | Johnson, Calif. |
| AuCoin | Duncan, Tenn. | Jones, N.C. |
| Badham | Early | Jones, Okla. |
| Bafalis | Eckhardt | Jones, Tenn. |
| Baldus | Edgar | Jordan |
| Baucus | Edwards, Ala. | Kastenmeier |
| Bauman | Edwards, Calif. | Kazen |
| Beard, Tenn. | Edwards, Okla. | Kemp |
| Bedell | Eilberg | Keys |
| Beilenson | Emery | Kildee |
| Benjamin | English | Kindness |
| Bennett | Erlenborn | Kostmayer |
| Bevill | Ertel | Krebs |
| Biaggi | Evans, Colo. | LaFalce |
| Bingham | Evans, Del. | Lagomarsino |
| Blanchard | Evans, Ga. | Latta |
| Blouin | Evans, Ind. | Le Fante |
| Boggs | Fascell | Leach |
| Boland | Fenwick | Lederer |
| Bolling | Findley | Leggett |
| Bonior | Fish | Lent |
| Bonker | Fisher | Levitas |
| Bowen | Fithian | Livingston |
| Brademas | Flippo | Lloyd, Calif. |
| Breckinridge | Flood | Lloyd, Tenn. |
| Brinkley | Florio | Long, La. |
| Brodhead | Flynt | Lott |
| Broomfield | Foley | Lujan |
| Brown, Calif. | Ford, Mich. | Luken |
| Brown, Mich. | Ford, Tenn. | Lundine |
| Broyhill | Forsythe | McClory |
| Buchanan | Fountain | McCloskey |
| Burgener | Fowler | McCormack |
| Burke, Mass. | Frenzel | McDade |
| Burleson, Tex. | Gammage | McEwen |
| Burlison, Mo. | Gaydos | McFall |
| Burton, John | Gephardt | McHugh |
| Burton, Phillip | Giaimo | McKay |
| Butler | Gilman | McKinney |
| Caputo | Ginn | Madigan |
| Carney | Glickman | Maguire |
| Carr | Goldwater | Mahon |
| Carter | Gonzalez | Mann |
| Cavanaugh | Goodling | Markey |
| Cederberg | Gore | Marks |
| Chappell | Gradison | Marlenee |
| Clausen, Don H. | Grassley | Marriott |
| | Green | Martin |
| Clay | Gudger | Mathis |
| Cleveland | Guyer | Mattox |
| Cohen | Hagedorn | Mazzoli |
| Coleman | Hall | Meeds |
| Collins, Ill. | Hamilton | Metcalfe |
| Conable | Hammer-schmidt | Meyner |
| Conte | | Michel |
| Corcoran | Hanley | Mikva |
| Corman | Hannaford | Milford |
| Cornell | Harkin | Miller, Ohio |
| Cornwell | Harris | Mineta |
| Cotter | Harsha | Minish |
| Coughlin | Hawkins | Mitchell, N.Y. |
| Cunningham | Heckler | Moakley |
| Daniel, Dan | Hefner | Moffett |
| Daniel, R. W. | Heftel | Mollohan |
| Montgomery | Regula | Stockman |
| Moore | Reuss | Stokes |
| Moorhead, Calif. | Rhodes | Studds |
| | Rinaldo | Taylor |
| Moorhead, Pa. | Roberts | Thompson |
| Moss | Robinson | Thone |
| Mottl | Roe | Thornton |
| Murphy, Ill. | Rogers | Traxler |
| Murphy, Pa. | Roncalio | Treen |
| Murtha | Rooney | Trible |
| Myers, Gary | Rose | Tucker |
| Myers, John | Rosenthal | Udall |
| Myers, Michael | Rostenkowski | Ullman |
| Natcher | Rousselot | Van Deerlin |
| Neal | Roybal | Vanik |
| Nedzi | Runnels | Vento |
| Nichols | Russo | Volkmer |
| Nix | Ryan | Walgren |
| Nolan | Santini | Walker |
| Nowak | Satterfield | Walsh |
| O'Brien | Sawyer | Wampler |
| Oakar | Schroeder | Watkins |
| Oberstar | Schulze | Waxman |
| Obey | Sebelius | Weaver |
| Ottinger | Seiberling | Weiss |
| Panetta | Sharp | Whalen |
| Patten | Shipley | White |
| Patterson | Shuster | Whitehurst |
| Pattison | Sikes | Whitley |
| Pease | Simon | Whitten |
| Pepper | Sisk | Wilson, Bob |
| Perkins | Skelton | Wilson, C. H. |
| Pettis | Slack | Wilson, Tex. |
| Pickle | Smith, Iowa | Winn |
| Pike | Smith, Nebr. | Wirth |
| Poage | Snyder | Wolff |
| Pressler | Solarz | Wright |
| Preyer | Spellman | Wydler |
| Price | Spence | Wylie |
| Pritchard | Staggers | Yates |
| Purseil | Stangeland | Yatron |
| Quayle | Stanton | Young, Fla. |
| Quillen | Stark | Young, Mo. |
| Rahall | Steed | Young, Tex. |
| Railsback | Steers | Zablocki |
| Rangel | Steiger | |

NAYS—6

| | | |
|---|---|---|
| Collins, Tex. | Kelly | Symms |
| Crane | McDonald | Waggonner |

NOT VOTING—60

| | | |
|---|---|---|
| Addabbo | Fary | Mitchell, Md. |
| Ammerman | Flowers | Murphy, N.Y. |
| Armstrong | Fraser | Quie |
| Ashley | Frey | Richmond |
| Barnard | Fuqua | Risenhoover |
| Beard, R.I. | Garcia | Rodino |
| Breaux | Gibbons | Rudd |
| Brooks | Hansen | Ruppe |
| Brown, Ohio | Harrington | Sarasin |
| Burke, Calif. | Holtzman | Scheuer |
| Burke, Fla. | Hubbard | Skubitz |
| Byron | Huckaby | St Germain |
| Chisholm | Ireland | Stratton |
| Clawson, Del | Johnson, Colo. | Stump |
| Cochran | Kasten | Teague |
| Conyers | Krueger | Tsongas |
| D'Amours | Lehman | Vander Jagt |
| Delaney | Long, Md. | Wiggins |
| Dickinson | Mikulski | Young, Alaska |
| Diggs | Miller, Calif. | Zeferetti |

The Clerk announced the following pairs:

Mr. Mitchell of Maryland with Mr. Armstrong.

Mr. Addabbo with Mr. Hansen.

Mr. Ammerman with Mr. Quie.

Ms. Holtzman with Mr. Ruppe.

Mr. Zeferetti with Mr. Kasten.

Mr. Brooks with Mr. Del Clawson.

Mr. Breaux with Mr. Vander Jagt.

Mr. Risenhoover with Mr. Rudd.

Mr. Richmond with Mr. Johnson of Colorado.

Mr. Murphy of New York with Mr. Burke of Florida.

Mr. Fuqua with Mr. Cochran of Mississippi.

Mrs. Chisholm with Mr. Dickinson.

Mr. Byron with Mr. Hubbard.

Mr. Diggs with Mr. Frey.

Mr. Conyers with Mr. Fraser.

Mr. D'Amours with Mr. Sarasin.

Mr. Miller of California with Mr. Scheuer.

Mr. Krueger with Mr. Skubitz.

Mr. Teague with Mr. Stump.

Mr. Fary with Mr. Wiggins.

Mrs. Burke of California with Mr. Young of Alaska.

Mr. Tsongas with Mr. Gibbons.

Mr. Rodino with Mr. Barnard.

Mr. Ashley with Mr. Beard of Rhode Island.

Mr. Lehman with Mr. Brown of Ohio.

Mr. Garcia with Mr. Huckaby.

Mr. Ireland with Mr. Long of Maryland.

Mr. St Germain with Mr. Flowers.

Mr. Delaney with Ms. Mikulski.

Mr. Stratton with Mr. Harrington.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries and the Committee on International Relations be discharged from further consideration of the Senate bill (S. 682) to amend the Ports and Waterways Safety Act of 1972, and for other purposes, a bill similar to the bill just passed by the House, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate bill as follows:

S. 682

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Tanker and Vessel Safety Act of 1977".

SEC. 2. DECLARATION OF POLICY AND DEFINITIONS.

The Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.) is amended by inserting the following new sections immediately after the first section thereof and immediately before title I:

"SEC. 2. FINDINGS, PURPOSES, AND POLICY.

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) Navigation and vessel safety and protection of the marine environment are matters of major national importance. Increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property, and the marine environment.

"(2) International standards for navigation and vessel safety and protection of the marine environment are incomplete and fail to provide adequate protection of the marine environment. The Federal Government should seek to require more stringent standards for any vessel using (A) any port of the United States or (B) operating in the navigable waters of the United States.

"(3) Standards developed through regulations under this Act shall incorporate the best available technology. Such standards shall be required unless clearly shown to create undue economic hardship which is not outweighed by environmental benefits.

"(4) Increased inspection and enforcement efforts by the Federal Government are necessary to reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment.

"(b) PURPOSES.—It is therefore the purposes of Congress in this Act—

"(1) to authorize a comprehensive inspection and enforcement program for increased navigation and vessel safety and enhanced protection of the marine environment:

"(2) to direct the Federal Government to establish stringent standards for the design,

construction, equipment, maintenance, alteration, repair, operation, and manning of all vessels which (A) use any port of the United States or (B) operate in the navigable waters of the United States; and

"(3) to establish a program to prevent any substandard vessel from (A) using any port of the United States or (B) operating in the navigable waters of the United States.

"(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

"(1) to authorize no impediment to, or interference with, the right of innocent passage or any recognized legitimate use of the high seas; and

"(2) to support and encourage continued active United States efforts to obtain international agreements concerning navigation and vessel safety and protection of the marine environment.

"SEC. 3. DEFINITIONS.

"As used in this Act, unless the context otherwise requires:

"(1) The term 'discharge' includes, but is not limited to, any spilling, leaking, pumping, pouring, or emptying, however caused.

"(2) The term 'domestic trade' means trade between ports or places in the United States, its territories or possessions, either directly or via a foreign port, including trade on the navigable waters of the United States.

"(3) The term 'foreign trade' means any trade other than the domestic trade.

"(4) The term 'foreign vessel' or 'vessel of a foreign nation' means any vessel documented or numbered under the laws of any nation other than the United States.

"(5) The term 'hazardous material' means any material or substance which is—

"(A) flammable or combustible;

"(B) designated a hazardous polluting substance under section 311(b) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1321); or

"(C) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803).

"(6) The term 'high seas' means all waters beyond the territorial sea of the United States and beyond the territorial sea of any foreign nation, to the extent that such sea is recognized by the United States.

"(7) The term 'marine environment' means the coastal zone, defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil, natural resources, and waters of the territorial sea of the United States; the waters of the contiguous zone; the waters and fishery resources of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of the Outer Continental Shelf of the United States.

"(8) The term 'oil' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"(9) The term 'person' means any individual (whether or not a citizen or national of the United States), or any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

"(10) The term 'public vessel' means a vessel which—

"(A) is owned, or chartered by demise, and operated by the United States or any foreign government; and

"(B) is not engaged in commercial service.

"(11) The term 'Secretary' means the Secretary of Transportation.

"(12) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States, including the Trust Territory of the Pacific Islands.

"(13) The term 'United States', when used in the geographical context, means all the States thereof.

"(14) The term 'vessel' means every description of watercraft or other artifical contrivance used, or capable of being used, as a means of transportation through or on water.

"(15) The term 'vessel of the United States' means any vessel documented or numbered under the laws of the United States.".

SEC. 3. NAVIGATIONAL AND VESSEL SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT.

Title I of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221–1227) is amended to read as follows:

"TITLE I—NAVIGATION AND VESSEL SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT

"SEC. 101. VESSEL TRAFFIC SERVICES.

"(a) IN GENERAL.—The Secretary, in accordance with section 103, may, in the ports, harbors, navigable waters of the United States and in any area covered by any international agreement negotiated pursuant to section 303—

"(1) establish, operate, and maintain vessel traffic services;

"(2) require any vessel except self-propelled fishing or recreational vessels under 300 dead weight tons, which operates within waters subject to any vessel traffic service, to utilize or comply with any such service, including requiring the installation and use of any electronic or other device necessary for such utilization or compliance;

"(3) control vessel traffic by—

"(A) specifying times of entry, movement, or departure;

"(B) establishing vessel traffic routing schemes;

"(C) establishing vessel size and speed limitations and vessel operating conditions; and

"(D) restricting operation, in any hazardous area or under hazardous conditions, by any vessel which has particular operating characteristics or capabilities, in a manner deemed necessary for safe operation under the circumstances.

The Secretary shall publish and distribute any relevant information with regard to actions taken under this section to all interested persons, including citizens of any foreign country.

"(b) SPECIAL POWERS.—The Secretary may order any vessel to operate or anchor in a manner he directs if—

"(1) he has reasonable cause to believe such vessel does not comply with any regulation promulgated under this Act or any other applicable law or treaty;

"(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 106; or

"(3) by reason of weather, visibility, sea conditions, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

"(c) EXTENDED SERVICES.—The Secretary shall, in accordance with section 103, establish advisory vessel traffic services in appropriate areas of the high seas. The Secretary shall take appropriate action to have any routing measures associated with such services adopted by the relevant international organization.

"(d) EXCEPTION.—This title shall not apply to any vessel of any foreign nation (1) that is in transit through the navigable waters of the United States which form a part of any international strait, and (2) that is destined for any port outside the United States, except pursuant to international treaty, convention, or agreement.

"SEC. 102. WATERFRONT SAFETY.

"The Secretary, in cooperation with the Secretary of the Army, may take such action as is necessary (1) to prevent damage to, or the destruction or loss of, any dock, bridge, or other structure on or in the navigable waters of the United States, or any structure on land, or any shore area, immediately adjacent to any such waters; and (2) to protect the navigable waters and the resources therein from vessels operation damage, destruction or loss or from structure damage, destruction or loss. Such action may include, but need not be limited to—

"(A) establishing procedures, measures, and standards for the handling, loading, unloading, storage, stowage, and movement on any such structure (including the emergency removal, control, and disposition) of any oil or hazardous material;

"(B) prescribing minimum safety equipment requirements for any such structure to assure adequate protection from fire, explosion, natural disasters, and other serious accidents or casualties;

"(C) establishing water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity of vessels when necessary for the protection of any vessel, structure, waters, or shore area; and

"(D) establishing procedures for inspection to assure compliance with minimum safety requirements for such structures.

"SEC. 103. CONSIDERATIONS BY SECRETARY.

"The Secretary shall, in carrying out his duties and responsibilities under section 101, take into account all relevant factors concerning navigation and vessel safety and protection of the marine environment, including, but not limited to—

"(1) the scope and degree of the risk or hazard involved;

"(2) vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;

"(3) port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;

"(4) the proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;

"(5) environmental factors;

"(6) economic impact and effects;

"(7) existing vessel traffic services;

"(8) local practices and customs, including voluntary arrangements and agreements within the maritime community; and

"(9) the Secretary shall establish procedures for consulting with, and receiving and considering the views of, officials of State and local governments, and persons within the maritime community, who are knowledgeable about and experienced in dealing with local problems of vessel traffic.

"SEC. 104. PILOTAGE.

"The Secretary may require a pilot on (1) any self-propelled vessel of the United States engaged in the foreign trade, and (2) any foreign vessel, operating in the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by State law. Such pilot may be required until the State involved establishes a requirement for a pilot in any such area or under the circumstances involved.

"SEC. 105. INVESTIGATORY POWERS.

"(a) SECRETARY.—The Secretary may investigate any incident, accident, or act which—

"(1) results in any loss or destruction of, or damage to, any structure or area referred to in section 102, or any vessel; or

"(2) affects, or may affect, vessel safety or environmental quality in any port, harbor, or the navigable waters of the United States.

"(b) BOARD.—(1) The National Transportation Safety Board may investigate any transportation-related incident, accident, or act which—

"(A) results in any loss or destruction of, or damage to, any structure or area referred to in section 102, or any vessel; or

"(B) affects, or may affect, transportation or vessel safety in any port, harbor, or the navigable waters of the United States.

"(2) Investigations conducted by the Board under this section shall be for the purpose of determining the facts, circumstances, and the cause or probable cause, of any accident, incident, or act investigated under paragraph (1).

"(c) POWERS.—In any such investigation, the Secretary or the Board may issue subpenas to require the attendance of any witness and the production of any document or other evidence relating to any such incident, accident, or act. If any person refuses to obey any such subpena, the Secretary or the Board may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance with such a subpena. Any of the district courts of the United States may, in the case of such refusal to obey such a subpena, issue an order requiring compliance with such subpena, and any failure to obey such order may be punished by the court as a contempt thereof. Witnesses may be paid fees for travel and attendance at such rates not exceeding those allowed in a district court of the United States.

"SEC. 106. CONDITIONS FOR ENTRY TO PORTS OF THE UNITED STATES.

"(a) IN GENERAL.—No vessel which carries, or is designed to carry, oil or any hazardous material in bulk as cargo shall operate in the navigable waters of the United States, or transfer cargo in, any port or place under the jurisdiction of the United States if such vessel—

"(1) has a history of accident, pollution incidents, or serious repair problems which, as determined by the Secretary, creates reason to believe that such vessel may (A) be unsafe or (B) create a threat to the marine environment;

"(2) fails to comply with any applicable regulation issued under this Act or any other law or treaty;

"(3) discharges any oil in violation (A) of any treaty to which the United States is a party or (B) of any law of the United States; or

"(4) does not comply with any vessel traffic service established by the Secretary under section 101;

unless and until the owner of such vessel proves, to the satisfaction of the Secretary, that such vessel is (A) no longer unsafe or a threat to the marine environment, or (B) complies with the applicable regulation, law, or treaty, as appropriate.

"(b) EFFECTIVE DATE.—This section shall become effective on the date of enactment of the Tankers and Vessels Safety Act of 1977, except subsection (a)(3) shall not become effective until January 1, 1979, unless before such date, the Secretary, by regulation, provides that such subsection will become effective before January 1, 1979, in which case, such subsection (a)(3) shall become effective on the date provided by the Secretary.

"SEC. 107. MARINE SAFETY INFORMATION SYSTEM.

"(a) IN GENERAL.—The Secretary shall establish a marine safety information system. Such system shall contain information with regard to any vessel (which carries, or is designed to carry, oil or any hazardous material in bulk as cargo) which enters, or transfers cargo in, any port or place under the jurisdiction of the United States. Such information shall include, but need not be limited to—

"(1) the names of any person with an ownership interest in any such vessel, in accordance with regulations prescribed by the Secretary;

"(2) financial responsibility information, if required for any vessel under section 311 (p) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1321);

"(3) registration information, including all changes in the name of any such vessel;

"(4) the history of accidents or serious repair problems of any such vessel;

"(5) a record of all inspections or examinations of any such vessel conducted under section 202; and

"(6) any other data or information which the Secretary deems appropriate to carry out the purposes of this Act.

"(b) INTERAGENCY COOPERATION.—The head of each department, agency, or other instrumentality of the Federal Government shall, upon a written request from the Secretary, furnish any available data or information which the Secretary deems necessary to carry out the provisions of this Act.

"SEC. 108. LIGHTERING.

"(a) IN GENERAL.—After June 30, 1978, no vessel may unload any cargo of oil or hazardous material at any port of the United States if such cargo has been transferred from another vessel on the high seas or in the navigable waters of the United States, unless such transfer was conducted in accordance with regulations prescribed by the Secretary pursuant to subsection (b).

"(b) REGULATIONS.—The Secretary shall, by June 30, 1978, prescribe, and may amend or repeal, regulations for transferring, in whole or in part, any cargo of oil or hazardous material on the high seas or in the navigable waters of the United States. Regulations prescribed by the Secretary under this subsection shall include, but need not be limited to, standards for—

"(1) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similar factors;

"(2) prevention of oil spills;

"(3) equipment for responding to any oil spill;

"(4) prevention of any unreasonable interference with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law; and

"(5) other matters which the Secretary deems necessary to promote navigation and vessel safety and protect the marine environment.

"(c) PROHIBITION.—No transfer of cargo at sea may be authorized under this section if such transfer is engaged in for the purpose of aiding the avoidance of standards relating to the design, construction, equipment, maintenance, alteration, repair, operation or manning of vessels promulgated under this Act or section 4417a of the Revised Statutes of the United States.

"SEC. 109. APPLICATION OF TITLE.

"This title shall not apply to the Panama Canal. The authority granted the Secretary under this title may be delegated to the Saint Lawrence Seaway Development Corporation to the extent the Secretary determines such delegation is necessary for the proper operation of the Seaway.".

SEC. 4. VESSELS CARRYING CERTAIN CARGOES IN BULK.

Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a) is amended to read as follows:

"SEC. 4417a. (1) APPLICABILITY.—Except as provided in subsections (2) and (3), this section shall apply to any vessel—

"(A) regardless of tonnage, size, or manner of propulsion;

"(B) whether self-propelled or not;

"(C) whether carrying freight or passengers for hire or not;

"(D) which is documented or numbered under the laws of the United States, which operates in the navigable waters of the United States, or which transfers cargo in any port or place under the jurisdiction of the United States; and

"(E) which carries, or is designed to carry, oil or any hazardous material in bulk as cargo.

Any such vessel shall be deemed to be a steam vessel for the purposes of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof.

"(2) EXCEPTIONS.—This section shall not apply to—

"(A) any public vessel;

"(B) any vessel of not more than 500 gross tons documented in the service of oil exploitation which are not tank vessels and which would be subject to this section only because of the transfer of fuel from fuel supply tanks of such vessel to offshore drilling or production facilities; or

"(C) any vessel of any foreign nation (i) that is in transit in navigable waters of the United States which form a part of any international strait and (ii) that is destined for any port or place outside the United States.

"(3) FISHING VESSELS.—Notwithstanding the other provisions of this section, cannery tenders, fishing tenders, and fishing vessels of not more than 500 gross ton used in the salmon or crab fisheries of the State of Oregon, Washington, or Alaska, when engaged exclusively in the fishing industry, shall be allowed to have on board inflammable or combustible cargo in bulk to the extent and upon conditions as may be required by regulations promulgated by the Secretary.

"(4) STANDARD-SETTING AUTHORITY.—(A) The Secretary shall issue, and may from time to time amend or repeal, regulations, containing standards for the design, construction, alteration, repair, operation, manning, or maintenance of vessels to which this section applies, as may be necessary for increased navigation and vessel safety and enhanced protection of the marine environment. The standards issued by the Secretary under this subsection shall be in addition to any other standards, promulgated under other provisions of law, that may apply to such vessels. The standards issued by the Secretary under this subsection shall include, but need not be limited to, standards relating to—

"(i) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;

"(ii) the handling or stowage of cargo, the manner of such handling or stowage of cargo, and the machinery and appliances used in such handling or stowage;

"(iii) equipment and appliances for life saving, fire protection, and prevention and mitigation of damage to the marine environment;

"(iv) requirements for the manning of such vessels and the duties and qualifications of the officers and crew, in accordance with subsection (7);

"(v) improvements in vessel maneuvering and stopping ability and other features which reduce the possibility of collision, grounding, or other accidents;

"(vi) the reduction of cargo loss in the event of a collision, grounding, or other accident;

"(vii) the reduction or elimination of discharges during ballasting, deballasting, cargo handling, or other such activity; and

"(viii) the reduction or elimination of discharges aboard vessels during cargo handling, tank cleaning, ballasting, deballasting, and other such activity.

"(B) In establishing standards under paragraph (A), the Secretary shall give due consideration to the kinds and grades of cargo permitted to be on board any such vessel.

"(5) MINIMUM STANDARDS.—In addition to any standards prescribed by the Secretary pursuant to subsection (4), or pursuant to any other law, any self-propelled vessel in excess of 20,000 dead weight tons which carries, or is designed to carry, oil in bulk, as cargo shall—

"(A) not later than June 30, 1979, be equipped with—

"(i) a dual radar system, one with short-range and one with long-range capabilities and each with true-north features;

"(ii) a collison avoidance system;

"(iii) a long-range navigation aid;

"(iv) adequate communications equipment;

"(v) a fathometer;

"(vi) a gyrocompass;

"(vii) up-to-date charts; and

"(B) not later than June 30, 1983, be equipped with—

"(i) a segregated ballast system;

"(ii) a transponder, or such other appropriate position-fixing equipment as the Secretary determines to be appropriate;

"(iii) a gas inerting system; and

"(iv) for any vessel the construction of which is contracted for, or actually commenced, after January 1, 1980, a double bottom (fitted throughout the cargo length of such vessel).

The Secretary may prescribe standards to substitute for any standard listed above if such substitute standard provides, as appropriate, equivalent or improved navigation accuracy, vessel safety, or environment protection. Such equivalency or improvement shall be determined by the Secretary on the record after a hearting in accordance with section 553 of title 5, United States Code.

"(6) EVIDENCE OF COMPLIANCE.—(A) No vessel of the United States to which this section applies, shall have on board oil or hazardous materials in bulk as cargo until (i) it has been issued a certificate of inspection issued under the provisions of title 52 of the Revised Statutes of the United States, and (ii) such certificate has been endorsed to indicate that the vessel is in compliance with the rules and regulations established under this section. If any vessel is found not to be in compliance, the Secretary shall notify the owner of the vessel and indicate how the vessel may be brought into compliance.

"(B) No foreign vessel to which this section applies, shall operate in the navigable waters of the United States or transfer cargo in any port or place under the jurisdiction of the United States unless such vessel has been issued a certificate of compliance by the Secretary. The Secretary shall not issue such certificate until the vessel has been examined by the Secretary and found to be in compliance with the provisions of this section and the rules and regulations promulgated hereunder. If any such vessel is found not to be in compliance, the Secretary shall notify the owner of the vessel and indicate how the vessel may be brought into compliance. The Secretary may allow provisional entry for the purposes of conducting the examination.

"(C) The Secretary may accept, as evidence of compliance with this section (in whole or in part), a certificate, endorsement, or document issued by any foreign nation pursuant to any treaty, convention, or other international agreement to which the United States is a party.

"(D) No vessel may carry any kind or grade of cargo unless its certificate of compliance is endorsed to allow such carriage. No such endorsement may allow any vessel to carry any material prohibited by section 4472(3) of this title.

"(E) A certificate of compliance, or an endorsement, issued under this subsection shall be valid for a period not to exceed 1 year, as specified by the Secretary, and may be renewed. The Secretary may issue a temporary certificate of compliance, or a temporary endorsement, under this subsection in appropriate circumstances; except that such temporary certificate or endorsement shall be valid for not more than 30 days. Any certificate or endorsement shall be revoked or suspended if the Secretary finds that the vessel involved no longer complies with the conditions upon which such certificate or endorsement was issued.

"(7) RETROFIT OF CERTAIN MANDATORY REQUIREMENTS.—(A) On and after July 1, 1980, the Secretary shall not issue a certificate of compliance to any vessel to which subsection (5) applies, unless—

"(i) such vessel has a segregated ballast system (as required under subsection (5)(B)(i)) and a gas inerting system (as required under subsection (5)(B)(iii); or

"(ii) the Secretary determines that tanks in such vessel have been designated for, and are used only for carrying ballast water alone; and the owner of such vessel has paid a retrofit incentive fee levied on such vessel by the Secretary.

"(B) the Secretary shall determine the amount of the retrofit incentive fee applicable to any vessel (according to classes of vessels based on size, displacement, and configuration) by determining for vessels in each such class the estimated annualized cost of compliance with the requirements of subsections (5)(B)(i) and (5)(B)(iii). The Secretary shall estimate the annualized cost of compliance, based on a retrofit technique that he determines would enable typical vessels in each class to comply with such requirements, taking into account planning and design costs, equipment costs (including purchase, transportation, installation, and start-up or testing), operating and maintenance costs, cost of capital, inflation, taxes, and other relevant costs. The Secretary shall propose retrofit incentive fees for each class of vessels not later than July 1, 1979, and shall adopt fees, in accordance with section 553 of title 5, United States Code, not later than January 1, 1980. The Secretary may by regulation adjust the fee for a class of vessels if he determines that the fee varies significantly from the actual or probable annualized costs of compliance with such requirements, and he may provide for the automatic adjustment of a fee based on the performance of a suitable index or indices. The Secretary may, in his discretion, waive the fee if he determines that a good faith effort has been made to comply with the provisions of this paragraph.

"(C) Any interested person may seek judicial review of the action taken by the Secretary under paragraph (B) to establish retrofit incentive fees by filing a petition therefor in the Court of Appeals of the United States for the circuit in which such person resides. Such petition shall be filed within 90 days after the date of such action, or, if such petition is based solely on grounds which arose after such ninetieth day, any time thereafter. Action by the Secretary with respect to which review could have been obtained under this paragraph shall not be subject to judicial review in any civil or criminal proceeding relating to enforcement or collection of the fee established by such action. In any action brought under this paragraph, no court shall grant any stay, injunction or other similar relief before final judgment by such court in such action.

"(D) the Secretary shall prescribe, and may from time to time modify or repeal, such regulations as he deems necessary to carry out this subsection. Such regulations may include, but need not be limited to, requirements respecting—

"(i) submission of technical and cost information relating to compliance with the requirements of subsections (5)(B)(i) and (5)(B)(iii);

"(ii) marking areas designated as ballast areas for easy identification; and

"(iii) reporting of information relating to the designation of areas as ballast areas and the installation of segregated ballast and gas inerting systems.

"(E) Any retrofit incentive fee which is not paid in a timely basis shall be subject to a late payment penalty in an amount determined by the Secretary, but which shall not be more than 20 percent of the amount of such fee unpaid.

(F) If any person or vessel fails to comply with any provision of this subsection, in addition to denying certification (as provided in paragraph (A) of this subsection), assessing a late payment penalty (as provided in paragraph (E) of this subsection), and assessing a civil penalty (as provided in section 203(a) of the Ports and Waterways Safety Act of 1972), the Secretary may pursue any other appropriate remedy authorized by any other applicable provision of law.

"(8) MANNING AND TRAINING REQUIREMENTS.—The Secretary shall prescribe standards for the manning of any vessel subject to the provisions of this section and the duties, qualifications, and training of the officers and crew thereof, including, but not limited to, standards relating to—

"(A) instruction in vessel and cargo handling and vessel navigation under normal operating conditions in coastal and confined waters and on the high seas;

"(B) instruction in vessel and cargo handling and vessel navigation in emergency situations and under accident or potential accident conditions;

"(C) license qualifications by specific class and size of vessels;

"(D) measurement of qualifications for licenses by use of simulators developed for the training of marine-oriented skills;

"(E) health and physical fitness criteria for all personnel;

"(F) periodic retraining, and special training for upgrading positions, changing vessel class or size, or assuming new responsibilities;

"(G) determination of licenses, conditions of licensing, and period of licensing by reference to experience, amount of training completed, and regular performance testing; and

"(H) recordation of safety and pollution control violations on licenses.

"(9) MODIFICATIONS.—The Secretary may modify any regulation or standard prescribed under this section to conform to an international treaty, convention, agreement, or an amendment thereto, which is ratified by the United States.".

SEC. 5. IMPROVED PILOTAGE STANDARDS.

(a) Section 4442 of the Revised Statutes of the United States (46 U.S.C. 214) is amended to read as follows:

"SEC. 4442. (a) The Commandant of the United States Coast Guard shall, in accordance with subsection (b) of this section, establish eligibility requirements for the issuance of a license to pilot any steam vessel.

"(b) No person may be issued a license to pilot any steam vessel unless he—

"(1) is at least 21 years of age;

"(2) is of sound health and has no physical limitations which would hinder or prevent the performance of a pilot's duties;

"(3) agrees to have a thorough physical examination each year while holding a pilot's license;

"(4) demonstrates, to the Commandant's satisfaction, that he possesses the requisite general knowledge and skill to hold a pilot's license;

"(5) maintains adequate knowledge of the waters to be navigated as a pilot;

"(6) has sufficient experience, as determined by the Commandant, to evidence his ability to handle any vessel of the type and size which he may be endorsed to pilot; and

"(7) meets any other requirement which the Commandant considers reasonable and necessary.

"(c) No license to pilot any steam vessel shall be valid for a term longer than 5 years. Upon expiration of any such license, the holder may reapply for an additional term and may be reissued a license if he meets the requirements specified under subsection (b) of this section.

"(d) The Commandant may revoke or suspend any license to pilot any steam vessel, after notice and an opportunity for a hearing, upon satisfactory evidence of—

"(1) negligence;

"(2) unskillfulness;

"(3) failure to adhere to any requirements for a license;

"(4) willful violation of title 52 of the Revised Statutes; or

"(5) other just cause related to the performance of pilot duties, including conduct when acting solely under the authority of a State pilot license.

"(e) The Secretary shall develop and shall seek adoption by the States of uniform, minimum standards relating to the regulation of pilotage at least equal to those required of federally licensed pilots.".

(b) Section 304(a)(9)(B) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(a)(9)(B)) is hereby amended by replacing the final period with a semicolon, and adding: "or section 4442 of the Revised Statutes of the United States (46 U.S.C. 214).".

SEC. 6. INSPECTION AND ENFORCEMENT.

Title II of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.) is amended to read as follows:

"TITLE II—INSPECTION AND ENFORCEMENT

"SEC. 201. PROHIBITED ACTS.

"It is unlawful—

"(1) for any person—

"(A) to violate any provision of this Act or any regulation issued pursuant to this Act or section 4417a of the Revised Statutes of the United States;

"(B) to refuse to permit any officer authorized by the Secretary to enforce the provisions of this Act or section 4417a of the Revised Statutes of the United States to board any vessel, or enter any shore area, place, or premises, under such persons' control for purposes of inspection pursuant to this Act or section 4417a of the Revised Statutes of the United States; or

"(C) to refuse to obey any lawful directive issued pursuant to this Act or section 4417a of the Revised Statutes of the United States; and

"(2) for any vessel subject to the provisions of this Act or section 4417a of the Revised Statutes of the United States—

"(A) to operate in the navigable waters of the United States while not in compliance with any provision of this Act or any regulation issued pursuant to this Act or section 4417a of the Revised Statutes of the United States; or

"(B) to fail to comply with any lawful directive issued pursuant to this Act or section 4417a of the Revised Statutes of the United States.

"SEC. 202. INSPECTION.

"(a) NATIONAL PROGRAM.—(1) The Secretary shall establish a national program for inspection of any vessel subject to section 4417a of the Revised Statutes of the United States. Each such vessel shall be inspected or examined at least once each year. Any such vessel over 10 years in age shall undergo a special and detailed inspection of structural strength and hull integrity, as specified by the Secretary.

"(2) An inspection or examination may be conducted by any officer authorized by the Secretary. If any such officer is not reasonably available, the Secretary may contract for the conduct of inspections or examinations in the United States and in foreign countries. Under such contract, an inspector may be authorized to act on behalf of the Secretary; except that no such inspector may issue a certificate of inspection or compliance, but may issue a temporary such certificate.

"(3) The Secretary shall prescribe by regulation reasonable fees for any inspection or examination conducted pursuant to this section based on the cost incurred. The owner of any vessel inspected or examined by the Secretary or his designee shall be liable for such fee. Amounts received as fees under this paragraph shall be credited to the appropriations bearing the cost of such inspection or examination.

"(b) VESSEL DOCUMENTS.—Any vessel subject to the provisions of this section shall have on board such documents as the Secretary deems necessary for inspection or enforcement under this Act, including, but not limited to, documents indicating—

"(1) the kind, grade, and approximate quantities of any cargo on board such vessel;

"(2) the shipper and consignee of such cargo;

"(3) the points of origin and destination of such vessel; and

"(4) the name of an agent in the United States authorized to accept legal process.

"(c) RECIPROCITY.—The Secretary may accept, as evidence of compliance with the provisions of this Act, any certificate or document issued by any foreign nation pursuant to any treaty, convention, or other international agreement to which the United States is a party.

"SEC. 203. PENALTIES.

"(a) CIVIL PENALTY.—(1) Any person who is found by the Secretary, after notice and an opportunity for a hearing to have committed an act prohibited by this Act or by section 4417a of the Revised Statutes of the United States shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

"(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

"(3) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

"(b) CRIMINAL PENALTY.—(1) A person is guilty of an offense if—

"(A) in reckless disregard of the risk that his conduct would cause damage to property, he commits any act prohibited by subparagraphs 202(1)(A) or 202(2)(A); or

"(B) he willfully and knowingly commits any other act prohibited by section 202.

"(2) Any offense described in paragraph (1) is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than 10 years, or both.

"(3) As used in this subsection, a person's state of mind is 'reckless' with respect to:

"(A) an existing circumstance if he is aware of a risk that the circumstance exists but disregards the risk; and

"(B) a result of his conduct if he is aware of a risk that the result will occur but disregards the risk.

The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

"(c) FEDERAL JURISDICTION.—There is a Federal jurisdiction over any offense described in this section.

"(d) IN REM LIABILITY.—Any vessel subject to the provisions of this Act and found to be in violation of this Act shall be liable in rem and may be proceeded against in the United States district court for any district in which such vessel may be found.

"(e) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this Act or regulations issued hereunder, for cause shown.".

SEC. 7. MISCELLANEOUS PROVISIONS.

The Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.) is amended by adding the following new title at the end thereof:

"TITLE III—MISCELLANEOUS PROVISIONS

"SEC. 301. REGULATIONS.

"The Secretary is authorized to issue, amend, or repeal regulations to carry out the purposes and provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code. In preparing such regulations, the Secretary shall provide an opportunity for full consultation and cooperation with all other interested Federal agencies and departments (in particular the Environmental Protection Agency, the Department of Commerce, and the Department of State), and the States, and for consideration of views presented by any members of the general public, including representatives of the maritime community, environmental groups, consumer organizations, and persons concerned with navigation and vessel safety and protection of the marine environment.

"SEC. 302. REPORT.

"Within 6 months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of this Act during the preceding fiscal year; (2) a summary of inspection and enforcement activities during the preceding fiscal year; and (3) recommendations to the Congress for any additional legislative authority necessary to improve navigation and vessel safety and protection of the marine environment.

"SEC. 303. INTERNATIONAL AGREEMENTS.

"(a) TRANSMITTAL OF REGULATIONS.—The Secretary and the Secretary of State shall undertake international negotiations, utilizing the appropriate international bodies or forums, to achieve acceptance of regulations promulgated or required under this Act as international standards.

"(b) NEGOTIATIONS.—The Secretary of State may—

"(1) enter into negotiations, in cooperation with the Secretary, with Canada and Mexico, and any other neighboring nation, to establish compatible vessel standards and vessel traffic services in appropriate areas and circumstances;

"(2) enter into negotiations through appropriate international bodies—

"(A) to establish mandatory vessel traffic services in appropriate areas of the high seas, and

"(B) to prohibit any discharge of oil in appropriate areas of the high seas;

"(3) enter into negotiations, in cooperation with the Secretary, with Canada and Mexico, and any other neighboring nation to establish, operate, and maintain inter-

national vessel traffic services in appropriate areas; and

"(4) enter into such other negotiations as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

"(c) OPERATIONS.—The Secretary, pursuant to any agreement negotiated under subsection (b), may—

"(1) require vessels to utilize or to comply with the vessel traffic service, including the carrying or installation of electronic or other devices necessary for the use of the service; and

"(2) waive, by order or regulation, the application of any law or regulation concerning the design, construction, manning, and equipment standards of vessels operating in waters over which the United States exercises jurisdiction if such vessel is not en route to or from a United States Port, and if vessels en route to or from ports of the United States are accorded equivalent waivers of laws and regulations of the foreign nation.

"SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

"Beginning October 1, 1977, there are authorized to be appropriated to the Secretary, for the purpose of carrying out the provisions of this Act, such sums as may be necessary.".

SEC. 8. SAVINGS CLAUSE.

Regulations previously issued under statutory provisions repealed, modified, or amended by this Act shall continue in effect as though promulgated under the authority of section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a) or the Ports and Waterways Safety Act of 1972 as amended by this Act, as the case may be, until expressly abrogated, modified, or amended by the Secretary. Any proceeding under section 4417a of the Revised Statutes of the United States or the Ports and Waterways Safety Act of 1972 for a violation which occurred before the effective date of this Act may be initiated or continued to conclusion as though such section or Act had not been amended thereby.

SEC. 9. STUDY OF MONITORING SYSTEMS.

(a) CONTENT.—The Secretary of Transportation, in consultation with the Administrator, the Secretary of Commerce, and other appropriate agencies or instrumentalities of the Federal Government, shall evaluate various shore-station monitoring systems of vessels, including fishing vessels, within the fishery conservation zone as defined in section 3(8) of the Fishery Conservation and Management Act of 1976. Each system examined shall be capable of reporting vessel position, identification, course, and speed using either a land, sea, or space monitoring technique.

(b) REPORT.—Within 2 years after the date of the enactment of this Act, the Secretary shall report his findings to Congress. This report shall describe the capabilities, limitations, and cost effectiveness of each monitoring system examined from the standpoint of both the Federal Government and any vessel owners who would be affected by the imposition of each approach. The report shall also include the Secretary's recommendation for a single, comprehensive, cost effective shore station monitoring system within the fishery conservation zone.

SEC. 10. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for the purposes of section 9, not to exceed $500,000 for the fiscal year ending September 30, 1978, and not to exceed $500,000 for the fiscal year ending September 30, 1979.

MOTION OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BIAGGI moves to strike out all after the enacting clause of S. 682 and to insert in lieu thereof the provisions of H.R. 13311, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 13311) was laid on the table.

## GENERAL LEAVE

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed, H.R. 13311.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

## INDIAN PEAKS WILDERNESS AREA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 12026, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wyoming (Mr. RONCALIO) that the House suspend the rules and pass the bill H.R. 12026, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 360, nays 9, not voting 63, as follows:

[Roll No. 756]

YEAS—360

| | | |
|---|---|---|
| Abdnor | Burgener | Duncan, Tenn. |
| Akaka | Burke, Mass. | Early |
| Alexander | Burleson, Tex. | Eckhardt |
| Ambro | Burlison, Mo. | Edgar |
| Anderson, Calif. | Burton, John | Edwards, Ala. |
| Anderson, Ill. | Burton, Phillip | Edwards, Calif. |
| Andrews, N.C. | Butler | Edwards, Okla. |
| Andrews, N. Dak. | Caputo | Eilberg |
| Annunzio | Carney | Emery |
| Applegate | Carr | English |
| Archer | Carter | Erlenborn |
| Ashbrook | Cavanaugh | Ertel |
| Aspin | Cederberg | Evans, Colo. |
| AuCoin | Chappell | Evans, Del. |
| Badham | Clausen, Don H. | Evans, Ga. |
| Bafalis | Clay | Fascell |
| Baldus | Cleveland | Fenwick |
| Baucus | Cohen | Findley |
| Beard, Tenn. | Coleman | Fish |
| Bedell | Collins, Ill. | Fisher |
| Beilenson | Conable | Fithian |
| Benjamin | Conte | Flippo |
| Bennett | Corcoran | Flood |
| Bevill | Corman | Florio |
| Biaggi | Cornell | Flynt |
| Bingham | Cornwell | Foley |
| Blanchard | Cotter | Ford, Mich. |
| Blouin | Coughlin | Ford, Tenn. |
| Boggs | Cunningham | Forsythe |
| Boland | Daniel, Dan | Fountain |
| Bolling | Daniel, R. W. | Fowler |
| Bonior | Danielson | Frenzel |
| Bonker | Davis | Gammage |
| Bowen | de la Garza | Gaydos |
| Brademas | Dellums | Gephardt |
| Breckinridge | Dent | Giaimo |
| Brinkley | Derrick | Gilman |
| Brodhead | Derwinski | Ginn |
| Brooks | Devine | Glickman |
| Broomfield | Dicks | Goldwater |
| Brown, Calif. | Dingell | Gonzalez |
| Brown, Mich. | Dodd | Goodling |
| Broyhill | Dornan | Gore |
| Buchanan | Downey | Gradison |
| | Duncan, Oreg. | Grassley |
| | | Green |
| | | Gudger |
| | | Guyer |
| | | Hagedorn |
| | | Hamilton |
| | | Hammer-schmidt |
| | | Hanley |
| | | Hannaford |
| | | Harkin |
| | | Harris |
| | | Harsha |
| | | Hawkins |
| | | Heckler |
| | | Hefner |
| | | Heftel |
| | | Hightower |
| | | Hillis |
| | | Holland |
| | | Hollenbeck |
| | | Holt |
| | | Horton |
| | | Howard |
| | | Hughes |
| | | Hyde |
| | | Ichord |
| | | Jeffords |
| | | Jenkins |
| | | Jenrette |
| | | Johnson, Calif. |
| | | Jones, N.C. |
| | | Jones, Okla. |
| | | Jones, Tenn. |
| | | Jordan |
| | | Kastenmeier |
| | | Kazen |
| | | Kelly |
| | | Kemp |
| | | Kildee |
| | | Kindness |
| | | Kostmayer |
| | | Krebs |
| | | LaFalce |
| | | Lagomarsino |
| | | Latta |
| | | Le Fante |
| | | Leach |
| | | Lederer |
| | | Lent |
| | | Levitas |
| | | Livingston |
| | | Lloyd, Calif. |
| | | Lloyd, Tenn. |
| | | Long, La. |
| | | Lott |
| | | Lujan |
| | | Luken |
| | | Lundine |
| | | McClory |
| | | McCloskey |
| | | McCormack |
| | | McDade |
| | | McEwen |
| | | McFall |
| | | McHugh |
| | | McKay |
| | | McKinney |
| | | Madigan |
| | | Maguire |
| | | Mahon |
| | | Mann |
| | | Markey |
| | | Marks |
| | | Marlenee |
| | | Marriott |
| | | Martin |
| | | Mathis |
| | | Mattox |
| | | Mazzoli |
| | | Meeds |
| | | Metcalfe |
| | | Meyner |
| | | Michel |
| | | Mikva |
| | | Milford |
| | | Miller, Ohio |
| | | Mineta |
| | | Minish |
| | | Mitchell, N.Y. |
| | | Moakley |
| | | Moffett |
| | | Mollohan |
| | | Montgomery |
| | | Moore |
| | | Moorhead, Calif. |
| | | Moorhead, Pa. |
| | | Moss |
| | | Mottl |
| | | Murphy, Ill. |
| | | Murphy, Pa. |
| | | Murtha |
| | | Myers, Gary |
| | | Myers, John |
| | | Myers, Michael |
| | | Natcher |
| | | Neal |
| | | Nedzi |
| | | Nichols |
| | | Nix |
| | | Nolan |
| | | Nowak |
| | | O'Brien |
| | | Oakar |
| | | Oberstar |
| | | Obey |
| | | Ottinger |
| | | Panetta |
| | | Patten |
| | | Patterson |
| | | Pattison |
| | | Pease |
| | | Pepper |
| | | Perkins |
| | | Pettis |
| | | Pickle |
| | | Pike |
| | | Poage |
| | | Pressler |
| | | Preyer |
| | | Price |
| | | Pritchard |
| | | Pursell |
| | | Quayle |
| | | Quillen |
| | | Rahall |
| | | Railsback |
| | | Rangel |
| | | Regula |
| | | Reuss |
| | | Rhodes |
| | | Rinaldo |
| | | Roberts |
| | | Robinson |
| | | Roe |
| | | Rogers |
| | | Roncalio |
| | | Rooney |
| | | Rose |
| | | Rosenthal |
| | | Rostenkowski |
| | | Rousselot |
| | | Runnels |
| | | Ruppe |
| | | Russo |
| | | Ryan |
| | | Santini |
| | | Satterfield |
| | | Sawyer |
| | | Schroeder |
| | | Schulze |
| | | Sebelius |
| | | Seiberling |
| | | Sharp |
| | | Shipley |
| | | Shuster |
| | | Sikes |
| | | Simon |
| | | Sisk |
| | | Skelton |
| | | Slack |
| | | Smith, Iowa |
| | | Smith, Nebr. |
| | | Snyder |
| | | Solarz |
| | | Spellman |
| | | Spence |
| | | Staggers |
| | | Stangeland |
| | | Stanton |
| | | Stark |
| | | Steed |
| | | Steers |
| | | Steiger |
| | | Stokes |
| | | Studds |
| | | Taylor |
| | | Thompson |
| | | Thone |
| | | Thornton |
| | | Traxler |
| | | Treen |
| | | Trible |
| | | Tucker |
| | | Udall |
| | | Ullman |
| | | Van Deerlin |
| | | Vanik |
| | | Vento |
| | | Volkmer |
| | | Walgren |
| | | Walker |
| | | Walsh |
| | | Wampler |
| | | Watkins |
| | | Waxman |
| | | Weaver |
| | | Weiss |
| | | Whalen |
| | | White |
| | | Whitehurst |
| | | Whitley |
| | | Whitten |
| | | Wilson, Bob |
| | | Wilson, C. H. |
| | | Wilson, Tex. |
| | | Winn |
| | | Wirth |
| | | Wolff |
| | | Wright |
| | | Wydler |
| | | Wylie |
| | | Yates |
| | | Yatron |
| | | Young, Fla. |
| | | Young, Mo. |
| | | Young, Tex. |
| | | Zablocki |

NAYS—9

| | | |
|---|---|---|
| Bauman | Evans, Ind. | McDonald |
| Collins, Tex. | Hall | Symms |
| Crane | Jacobs | Waggonner |

NOT VOTING—63

| | | |
|---|---|---|
| Addabbo | Flowers | Mitchell, Md. |
| Ammerman | Fraser | Murphy, N.Y. |
| Armstrong | Frey | Quie |
| Ashley | Fuqua | Richmond |
| Barnard | Garcia | Risenhoover |
| Beard, R.I. | Gibbons | Rodino |
| Breaux | Hansen | Roybal |
| Brown, Ohio | Harrington | Rudd |
| Burke, Calif. | Holtzman | Sarasin |
| Burke, Fla. | Hubbard | Scheuer |
| Byron | Huckaby | Skubitz |
| Chisholm | Ireland | St Germain |
| Clawson, Del | Johnson, Colo. | Stockman |
| Cochran | Kasten | Stratton |
| Conyers | Keys | Stump |
| D'Amours | Krueger | Teague |
| Delaney | Leggett | Tsongas |
| Dickinson | Lehman | Vander Jagt |
| Diggs | Long, Md. | Wiggins |
| Drinan | Mikulski | Young, Alaska |
| Fary | Miller, Calif. | Zeferetti |

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Armstrong.
Mr. Mitchell of Maryland with Mr. Frey.
Mr. Rodino with Mr. Quie.
Mr. Zeferetti with Mr. Brown of Ohio.
Mr. Teague with Mr. Hansen.
Mrs. Chisholm with Mr. Rudd.
Mr. Fary with Mr. Burke of Florida.
Mr. Fuqua with Mr. Kasten.
Mr. Garcia with Mr. Sarasin.
Ms. Holtzman with Mr. Del Clawson.
Mr. Risenhoover with Mr. Long of Maryland.
Mr. Richmond with Mr. Skubitz.
Mr. Murphy of New York with Mr. Cochran of Mississippi.
Mr. St Germain with Mr. Hubbard.
Mr. Stratton with Mr. Stockman.
Mr. Miller of California with Mr. Leggett.
Mr. Diggs with Mr. Wiggins.
Mr. Conyers with Mr. Young of Alaska.
Mr. Delaney with Mr. Vander Jagt.
Mr. Breaux with Mr. Stump.
Mr. Ashley with Mr. Dickinson.
Mr. Ammerman with Mr. Beard of Rhode Island.
Mr. D'Amours with Mr. Drinan.
Mr. Byron with Mr. Gibbons.
Mr. Ireland with Mr. Flowers.
Ms. Keys with Mr. Krueger.
Mr. Harrington with Mr. Lehman.
Ms. Mikulski with Mr. Tsongas.
Mr. Roybal with Mr. Scheuer.
Mr. Barnard with Mrs. Burke of California.
Mr. Huckaby with Mr. Fraser.

So (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to create the Indian Peaks Wilderness Area and the Arapaho National Recreation Area, to authorize the Secretary of the Interior to study the feasibility of revising the boundaries of the Rocky Mountain National Park, and to add certain lands to the Oregon Islands Wilderness."

A motion to reconsider was laid on the table.

## TEMPORARY SUSPENSION OF DUTY ON FLUORSPAR

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 5265, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. VANIK) that the House suspend the rules and pass the bill H.R. 5265, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 205, nays 166, not voting 61, as follows:

[Roll No. 757]

YEAS—205

| | | |
|---|---|---|
| Abdnor | Bingham | Chappell |
| Alexander | Blanchard | Clausen, |
| Ambro | Boland | Don H. |
| Andrews, | Bolling | Coleman |
| N. Dak. | Bonker | Collins, Tex. |
| Annunzio | Bowen | Conable |
| Archer | Brinkley | Conte |
| AuCoin | Buchanan | Corman |
| Badham | Burgener | Cornell |
| Bafalis | Butler | Cotter |
| Bauman | Caputo | Crane |
| Beilenson | Carney | Cunningham |
| Benjamin | Cavanaugh | Daniel, Dan |
| Bennett | Cederberg | Daniel, R. W. |
| Danielson | Kemp | Robinson |
| de la Garza | Keys | Roncalio |
| Derrick | Kindness | Rooney |
| Derwinski | LaFalce | Rose |
| Devine | Lagomarsino | Rostenkowski |
| Dicks | Latta | Runnels |
| Dingell | Le Fante | Ruppe |
| Dornan | Leach | Satterfield |
| Duncan, Oreg. | Leggett | Sawyer |
| Duncan, Tenn. | Lent | Schulze |
| Early | Livingston | Seiberling |
| Eckhardt | Lott | Sharp |
| Edwards, Ala. | Lujan | Sikes |
| Edwards, Okla. | Lundine | Sisk |
| Eilberg | McCory | Skelton |
| Ertel | McCloskey | Smith, Iowa |
| Evans, Del. | McCormack | Snyder |
| Evans, Ga. | McDade | Solarz |
| Evans, Ind. | McDonald | Spellman |
| Fenwick | McFall | Spence |
| Findley | McHugh | Stangeland |
| Fish | McKinney | Stanton |
| Fisher | Madigan | Steed |
| Fithian | Marks | Steers |
| Flynt | Marlenee | Steiger |
| Foley | Marriott | Stockman |
| Ford, Mich. | Martin | Symms |
| Frenzel | Meeds | Taylor |
| Gammage | Meyner | Thornton |
| Gephardt | Miller, Ohio | Traxler |
| Gilman | Moakley | Treen |
| Ginn | Moore | Trible |
| Glickman | Moorhead, | Tucker |
| Goldwater | Calif. | Ullman |
| Gonzalez | Moorhead, Pa. | Van Deerlin |
| Gradison | Murphy, Pa. | Vanik |
| Grassley | Myers, Gary | Vento |
| Green | Myers, John | Waggonner |
| Guyer | Nedzi | Walgren |
| Hagedorn | Nix | Walsh |
| Hamilton | Nowak | Wampler |
| Hammer- | Obey | Weaver |
| schmidt | Pattison | Whitehurst |
| Hanley | Pepper | Whitley |
| Harris | Pettis | Wilson, Bob |
| Harsha | Pike | Wilson, C. H. |
| Heckler | Pressler | Wilson, Tex. |
| Hillis | Price | Winn |
| Hollenbeck | Pritchard | Wirth |
| Holt | Pursell | Wolff |
| Horton | Quayle | Wright |
| Hyde | Quillen | Wylie |
| Ichord | Regula | Yatron |
| Jenkins | Reuss | Young, Fla. |
| Kastenmeier | Rhodes | Zablocki |
| Kelly | Rinaldo | |

NAYS—166

| | | |
|---|---|---|
| Akaka | Edwards, Calif. | McEwen |
| Anderson, | Emery | McKay |
| Calif. | English | Maguire |
| Anderson, Ill. | Erlenborn | Mahon |
| Andrews, N.C. | Evans, Colo. | Mann |
| Applegate | Fascell | Markey |
| Ashbrook | Flippo | Mazzoli |
| Aspin | Flood | Metcalfe |
| Baldus | Florio | Michel |
| Baucus | Ford, Tenn. | Mikva |
| Beard, Tenn. | Forsythe | Milford |
| Bedell | Fountain | Mineta |
| Bevill | Fowler | Minish |
| Biaggi | Gaydos | Mitchell, N.Y. |
| Blouin | Gialmo | Moffett |
| Boggs | Goodling | Mollohan |
| Bonior | Gore | Montgomery |
| Brademas | Gudger | Moss |
| Breckinridge | Hall | Motti |
| Brodhead | Hannaford | Murphy, Ill. |
| Brooks | Harkin | Murtha |
| Broomfield | Hawkins | Myers, Michael |
| Brown, Calif. | Hefner | Natcher |
| Brown, Mich. | Heftel | Neal |
| Broyhill | Hightower | Nichols |
| Burke, Mass. | Holland | Nolan |
| Burleson, Tex. | Howard | Oakar |
| Burlison, Mo. | Hughes | Oberstar |
| Burton, John | Jacobs | Ottinger |
| Burton, Phillip | Jeffords | Panetta |
| Carr | Jenrette | Patten |
| Carter | Johnson, Calif. | Patterson |
| Clay | Jones, N.C. | Pease |
| Cleveland | Jones, Okla. | Perkins |
| Cohen | Jones, Tenn. | Pickle |
| Collins, Ill. | Jordan | Poage |
| Corcoran | Kazen | Preyer |
| Cornwell | Kildee | Rahall |
| Coughlin | Kostmayer | Railsback |
| Davis | Krebs | Rangel |
| Dellums | Lederer | Roberts |
| Dent | Levitas | Roe |
| Dodd | Lloyd, Calif. | Rogers |
| Downey | Lloyd, Tenn. | Rosenthal |
| Drinan | Long, La. | Rousselot |
| Edgar | Luken | Roybal |
| Russo | Staggers | Waxman |
| Ryan | Stark | Weiss |
| Santini | Stokes | Whalen |
| Schroeder | Studds | White |
| Sebelius | Thompson | Whitten |
| Shipley | Thone | Wydler |
| Shuster | Udall | Yates |
| Simon | Volkmer | Young, Mo. |
| Slack | Walker | Young, Tex. |
| Smith, Nebr. | Watkins | |

NOT VOTING—61

| | | |
|---|---|---|
| Addabbo | Fraser | Murphy, N.Y. |
| Ammerman | Frey | O'Brien |
| Armstrong | Fuqua | Quie |
| Ashley | Garcia | Richmond |
| Barnard | Gibbons | Risenhoover |
| Beard, R.I. | Hansen | Rodino |
| Breaux | Harrington | Rudd |
| Brown, Ohio | Holtzman | Sarasin |
| Burke, Calif. | Hubbard | Scheuer |
| Burke, Fla. | Huckaby | Skubitz |
| Byron | Ireland | St Germain |
| Chisholm | Johnson, Colo. | Stratton |
| Clawson, Del | Kasten | Stump |
| Cochran | Krueger | Teague |
| Conyers | Lehman | Tsongas |
| D'Amours | Long, Md. | Vander Jagt |
| Delaney | Mathis | Wiggins |
| Dickinson | Mattox | Young, Alaska |
| Diggs | Mikulski | Zeferetti |
| Fary | Miller, Calif. | |
| Flowers | Mitchell, Md. | |

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Hansen.
Mr. Mitchell of Maryland with Mr. Frey.
Mr. Richmond with Mr. O'Brien.
Mr. Zeferetti with Mr. Quie.
Ms. Holtzman with Mr. Rudd.
Mr. Fary with Mr. Kasten.
Mr. Breaux with Mr. Brown of Ohio.
Mr. Ashley with Mr. Burke of Florida.
Mr. Ammerman with Mr. Del Clawson.
Mr. Fuqua with Mr. Long of Maryland.
Mr. Garcia with Mr. Young of Alaska.
Mr. Ireland with Mr. Skubitz.
Mr. St Germain with Mr. Sarasin.
Mr. Stratton with Mr. Armstrong.
Mr. Rodino with Mr. Cochran of Mississippi.
Mr. Murphy of New York with Mr. Dickinson.
Mr. Risenhoover with Mr. Wiggins.
Mr. Teague with Mr. Vander Jagt.
Mr. Tsongas with Mr. Stump.
Mr. Mathis with Mr. Scheuer.
Mr. Miller of California with Mr. Fraser.
Mr. Delaney with Mr. Gibbons.
Ms. Mikulski with Mr. Hubbard.
Mrs. Burke of California with Mr. Beard of Rhode Island.
Mrs. Chisholm with Mr. Byron.
Mr. D'Amours with Mr. Conyers.
Mr. Flowers with Mr. Diggs.
Mr. Lehman with Mr. Mattox.
Mr. Krueger with Mr. Harrington.
Mr. Barnard with Mr. Huckaby.

Messrs. MURPHY of Illinois, DAVIS, and BRADEMAS changed their vote from "yea" to "nay."

Mr. WEAVER changed his vote from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

## CONCURRING IN SENATE AMENDMENTS TO H.R. 1337, EXCISE TAXES ON CERTAIN TRUCKS, BUSES, TRACTORS, ET CETERA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the resolution (H. Res. 1342).

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The

question is on the motion offered by the gentleman from California (Mr. CORMAN) that the House suspend the rules and agree to the resolution (H. Res. 1342) on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 304, nays 69, not voting 59, as follows:

[Roll No. 758]

YEAS—304

| | | |
|---|---|---|
| Abdnor | Evans, Del. | Mattox |
| Akaka | Evans, Ga. | Meeds |
| Alexander | Fascell | Metcalfe |
| Ambro | Fenwick | Meyner |
| Anderson, Calif. | Findley | Michel |
| Anderson, Ill. | Fish | Milford |
| Andrews, N. Dak. | Fisher | Mineta |
| Annunzio | Fithian | Minish |
| Applegate | Flippo | Mitchell, N.Y. |
| Aspin | Flood | Moakley |
| AuCoin | Florio | Moffett |
| Baldus | Foley | Mollohan |
| Baucus | Ford, Mich. | Montgomery |
| Bellenson | Ford, Tenn. | Moorhead, Calif. |
| Benjamin | Forsythe | Moorhead, Pa. |
| Bevill | Frenzel | Moss |
| Biaggi | Gaydos | Murphy, Ill. |
| Bingham | Gephardt | Murphy, Pa. |
| Blanchard | Giaimo | Murtha |
| Blouin | Gilman | Myers, John |
| Boggs | Glickman | Myers, Michael |
| Boland | Goldwater | Natcher |
| Bolling | Gonzalez | Nedzi |
| Bonior | Goodling | Nichols |
| Bonker | Gore | Nix |
| Bowen | Gradison | Nolan |
| Brademas | Green | Nowak |
| Breckinridge | Gudger | O'Brien |
| Brodhead | Guyer | Oakar |
| Brooks | Hagedorn | Oberstar |
| Broomfield | Hamilton | Obey |
| Brown, Calif. | Hanley | Ottinger |
| Brown, Mich. | Hannaford | Panetta |
| Broyhill | Harkin | Patten |
| Buchanan | Harris | Patterson |
| Burgener | Harsha | Pattison |
| Burke, Mass. | Hawkins | Pease |
| Burlison, Mo. | Heckler | Pepper |
| Burton, John | Heftel | Perkins |
| Burton, Phillip | Hightower | Pettis |
| Caputo | Hillis | Pickle |
| Carney | Holland | Pike |
| Carr | Hollenbeck | Pressler |
| Carter | Horton | Preyer |
| Cavanaugh | Howard | Price |
| Cederberg | Hughes | Pritchard |
| Chappell | Jacobs | Pursell |
| Clausen, Don H. | Jeffords | Quayle |
| Clay | Jenrette | Rahall |
| Cohen | Johnson, Calif. | Railsback |
| Coleman | Jones, N.C. | Rangel |
| Collins, Ill. | Jones, Okla. | Regula |
| Conable | Jones, Tenn. | Reuss |
| Conte | Jordan | Rinaldo |
| Corcoran | Kastenmeier | Roe |
| Corman | Kazen | Rogers |
| Cornell | Kildee | Roncalio |
| Cornwell | Kostmayer | Rooney |
| Cotter | Krebs | Rose |
| Coughlin | LaFalce | Rosenthal |
| Danielson | Lagomarsino | Rousselot |
| Davis | Le Fante | Roybal |
| de la Garza | Leach | Runnels |
| Dellums | Lederer | Ruppe |
| Dent | Leggett | Russo |
| Derrick | Lent | Ryan |
| Derwinski | Lloyd, Calif. | Santini |
| Dicks | Lloyd, Tenn. | Sawyer |
| Dingell | Long, La. | Schroeder |
| Dodd | Lujan | Sebelius |
| Dornan | Luken | Seiberling |
| Downey | Lundine | Sharp |
| Drinan | McCloskey | Shipley |
| Duncan, Oreg. | McCormack | Sikes |
| Duncan, Tenn. | McDade | Simon |
| Early | McFall | Sisk |
| Eckhardt | McHugh | Skelton |
| Edgar | McKay | Skubitz |
| Edwards, Calif. | McKinney | Slack |
| Eilberg | Madigan | Smith, Iowa |
| Emery | Mann | Smith, Nebr. |
| English | Markey | Solarz |
| Erlenborn | Marks | Spellman |
| Ertel | Marriott | Spence |
| Evans, Colo. | Martin | Staggers |
| | Mathis | Stangeland |
| | | Stanton |
| | | Stark |
| | | Steed |
| | | Steers |
| | | Steiger |
| | | Stockman |
| | | Stokes |
| | | Studds |
| | | Thompson |
| | | Thone |
| | | Thornton |
| | | Traxler |
| | | Tucker |
| | | Udall |
| | | Ullman |
| | | Van Deerlin |
| | | Vanik |
| | | Vento |
| | | Volkmer |
| | | Waggonner |
| | | Walgren |
| | | Walker |
| | | Walsh |
| | | Wampler |
| | | Watkins |
| | | Waxman |
| | | Weaver |
| | | Weiss |
| | | Whalen |
| | | White |
| | | Whitley |
| | | Whitten |
| | | Wilson, Bob |
| | | Wilson, C. H. |
| | | Wilson, Tex. |
| | | Winn |
| | | Wirth |
| | | Wolff |
| | | Wright |
| | | Wydler |
| | | Wylie |
| | | Yates |
| | | Yatron |
| | | Young, Mo. |
| | | Zablocki |

NAYS—69

| | | |
|---|---|---|
| Andrews, N.C. | Fowler | Mazzoli |
| Archer | Gammage | Mikva |
| Ashbrook | Ginn | Miller, Ohio |
| Badham | Grassley | Moore |
| Bafalis | Hall | Mottl |
| Bauman | Hammer-schmidt | Myers, Gary |
| Beard, Tenn. | Hefner | Neal |
| Bedell | Holt | Poage |
| Bennett | Hyde | Quillen |
| Brinkley | Ichord | Rhodes |
| Burleson, Tex. | Jenkins | Roberts |
| Butler | Kelly | Robinson |
| Cleveland | Kindness | Satterfield |
| Collins, Tex. | Latta | Shuster |
| Crane | Levitas | Snyder |
| Cunningham | Livingston | Symms |
| Daniel, Dan | Lott | Taylor |
| Daniel, R. W. | McClory | Treen |
| Devine | McDonald | Trible |
| Edwards, Ala. | McEwen | Whitehurst |
| Edwards, Okla. | Maguire | Young, Fla. |
| Evans, Ind. | Mahon | Young, Tex. |
| Flynt | Marlenee | |
| Fountain | | |

NOT VOTING—59

| | | |
|---|---|---|
| Addabbo | Flowers | Murphy, N.Y. |
| Ammerman | Fraser | Quie |
| Armstrong | Frey | Richmond |
| Ashley | Fuqua | Risenhoover |
| Barnard | Garcia | Rodino |
| Beard, R.I. | Gibbons | Rostenkowski |
| Breaux | Hansen | Rudd |
| Brown, Ohio | Harrington | Sarasin |
| Burke, Calif. | Holtzman | Scheuer |
| Burke, Fla. | Hubbard | Schulze |
| Byron | Huckaby | St Germain |
| Chisholm | Ireland | Stratton |
| Clawson, Del | Johnson, Colo. | Stump |
| Cochran | Kasten | Teague |
| Conyers | Krueger | Tsongas |
| D'Amours | Lehman | Vander Jagt |
| Delaney | Long, Md. | Wiggins |
| Dickinson | Mikulski | Young, Alaska |
| Diggs | Miller, Calif. | Zeferetti |
| Fary | Mitchell, Md. | |

The Clerk announced the following pairs:

Mr. Mitchell of Maryland with Mr. Frey.
Mr. Addabbo with Mr. Hansen.
Mr. Richmond with Mr. Quie.
Mr. Rostenkowski with Mr. Rudd.
Ms. Holtzman with Mr. Vander Jagt.
Mr. Breaux with Mr. Wiggins.
Mr. Teague with Mr. Hubbard.
Mr. Ashley with Mr. Armstrong.
Mr. Fuqua with Mr. Brown of Ohio.
Mr. Rodino with Mr. Kasten.
Mr. Murphy of New York with Mr. Long of Maryland.
Mr. St Germain with Mr. Schulze.
Mr. Delaney with Mr. Sarasin.
Mrs. Chisholm with Mr. Cochran of Mississippi.
Mr. Byron with Mr. Del Clawson.
Mr. Ammerman with Mr. Dickinson.
Mrs. Burke of California with Mr. Young of Alaska.
Mr. Conyers with Mr. Stump.
Mr. Fary with Mr. Scheuer.
Mr. Diggs with Mr. Burke of Florida.
Mr. Harrington with Mr. Fraser.
Mr. Tsongas with Mr. Lehman.
Mr. Stratton with Mr. D'Amours.
Mr. Krueger with Mr. Gibbons.
Mr. Garcia with Mr. Flowers.
Mr. Beard of Rhode Island with Mr. Barnard.
Mr. Ireland with Mr. Huckaby.
Ms. Mikulski with Mr. Miller of California.
Mr. Zeferetti with Mr. Risenhoover.

Messrs. FOUNTAIN, McCLORY, ARCHER, and NEAL changed their vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## UNITED STATES CODE AMENDMENTS FOR FEDERAL DISTRICT COURTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 13331, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device and there were—yeas 362, nays 9, not voting 61, as follows:

[Roll No. 759]

YEAS—362

| | | |
|---|---|---|
| Abdnor | Clausen, Don H. | Flynt |
| Akaka | Clay | Foley |
| Alexander | Cleveland | Ford, Mich. |
| Ambro | Cohen | Ford, Tenn. |
| Anderson, Calif. | Coleman | Forsythe |
| Anderson, Ill. | Collins, Ill. | Fountain |
| Andrews, N.C. | Collins, Tex. | Fowler |
| Andrews, N. Dak. | Conable | Frenzel |
| Annunzio | Conte | Gammage |
| Applegate | Corcoran | Gaydos |
| Archer | Corman | Gephardt |
| Ashbrook | Cornell | Giaimo |
| Aspin | Cornwell | Gilman |
| AuCoin | Cotter | Ginn |
| Badham | Coughlin | Glickman |
| Bafalis | Cunningham | Goldwater |
| Baldus | Daniel, Dan | Gonzalez |
| Baucus | Daniel, R. W. | Goodling |
| Bedell | Danielson | Gore |
| Bellenson | Davis | Gradison |
| Benjamin | de la Garza | Grassley |
| Bennett | Dellums | Green |
| Bevill | Dent | Gudger |
| Biaggi | Derrick | Guyer |
| Bingham | Derwinski | Hagedorn |
| Blanchard | Devine | Hall |
| Blouin | Dicks | Hamilton |
| Boggs | Dingell | Hammer-schmidt |
| Boland | Dodd | Hanley |
| Bolling | Dornan | Hannaford |
| Bonior | Downey | Harkin |
| Bonker | Drinan | Harris |
| Bowen | Duncan, Oreg. | Harsha |
| Brademas | Duncan, Tenn. | Hawkins |
| Breckinridge | Early | Heckler |
| Brinkley | Eckhardt | Hefner |
| Brodhead | Edgar | Heftel |
| Brooks | Edwards, Ala. | Hightower |
| Broomfield | Edwards, Calif. | Hillis |
| Brown, Calif. | Edwards, Okla. | Holland |
| Brown, Mich. | Eilberg | Hollenbeck |
| Broyhill | Emery | Horton |
| Buchanan | English | Howard |
| Burgener | Erlenborn | Hughes |
| Burke, Mass. | Ertel | Hyde |
| Burleson, Tex. | Evans, Colo. | Ichord |
| Burlison, Mo. | Evans, Del. | Jeffords |
| Burton, John | Evans, Ga. | Jenkins |
| Burton, Phillip | Evans, Ind. | Jenrette |
| Butler | Fascell | Johnson, Calif. |
| Caputo | Fenwick | Jones, N.C. |
| Carney | Findley | Jones, Okla. |
| Carr | Fish | Jones, Tenn. |
| Carter | Fisher | Jordan |
| Cavanaugh | Fithian | Kastenmeier |
| Cederberg | Flippo | Kazen |
| Chappell | Flood | Kelly |
| | Florio | Kemp |

| | | |
|---|---|---|
| Keys | Myers, Gary | Sisk |
| Kildee | Myers, John | Skelton |
| Kindness | Myers, Michael | Skubitz |
| Kostmayer | Natcher | Slack |
| Krebs | Neal | Smith, Iowa |
| LaFalce | Nedzi | Smith, Nebr. |
| Lagomarsino | Nichols | Snyder |
| Latta | Nix | Solarz |
| Le Fante | Nolan | Spellman |
| Leach | Nowak | Spence |
| Lederer | Oberstar | Staggers |
| Leggett | Obey | Stangeland |
| Lent | Ottinger | Stanton |
| Levitas | Panetta | Stark |
| Livingston | Patten | Steed |
| Lloyd, Calif. | Patterson | Steers |
| Lloyd, Tenn. | Pattison | Steiger |
| Long, La. | Pease | Stockman |
| Lott | Pepper | Stokes |
| Lujan | Perkins | Studds |
| Luken | Pettis | Taylor |
| Lundine | Pickle | Thompson |
| McClory | Pike | Thone |
| McCloskey | Poage | Thornton |
| McCormack | Pressler | Traxler |
| McDade | Preyer | Treen |
| McEwen | Price | Trible |
| McFall | Pritchard | Tucker |
| McHugh | Pursell | Udall |
| McKay | Quayle | Ullman |
| McKinney | Quillen | Van Deerlin |
| Madigan | Rahall | Vanik |
| Maguire | Railsback | Vento |
| Mahon | Rangel | Volkmer |
| Mann | Regula | Waggonner |
| Markey | Reuss | Walgren |
| Marks | Rhodes | Walker |
| Marlenee | Rinaldo | Walsh |
| Marriott | Roberts | Wampler |
| Martin | Robinson | Watkins |
| Mathis | Roe | Waxman |
| Mattox | Rogers | Weaver |
| Mazzoli | Roncalio | Weiss |
| Meeds | Rooney | Whalen |
| Me'calfe | Rose | White |
| Meyner | Rosenthal | Whitehurst |
| Michel | Rousselot | Whitley |
| Mikva | Roybal | Whitten |
| Milford | Runnels | Wilson, Bob |
| Miller, Ohio | Ruppe | Wilson, C. H. |
| Mineta | Russo | Wilson, Tex. |
| Minish | Ryan | Winn |
| Mitchell, N.Y. | Santini | Wirth |
| Moakley | Satterfield | Wolff |
| Mollohan | Sawyer | Wright |
| Montgomery | Schroeder | Wydler |
| Moore | Schulze | Wylie |
| Moorhead, Calif. | Sebelius | Yates |
| | Seiberling | Yatron |
| Moorhead, Pa. | Sharp | Young, Fla. |
| Moss | Shipley | Young, Mo. |
| Murphy, Ill. | Shuster | Young, Tex. |
| Murphy, Pa. | Sikes | |
| Murtha | Simon | |

NAYS—9

| | | |
|---|---|---|
| Bauman | Jacobs | O'Brien |
| Crane | McDonald | Oakar |
| Holt | Mottl | Symms |

NOT VOTING—61

| | | |
|---|---|---|
| Addabbo | Flowers | Murphy, N.Y. |
| Ammerman | Fraser | Quie |
| Armstrong | Frey | Richmond |
| Ashley | Fuqua | Risenhoover |
| Barnard | Garcia | Rodino |
| Beard, R.I. | Gibbons | Rostenkowski |
| Beard, Tenn. | Hansen | Rudd |
| Breaux | Harrington | Sarasin |
| Brown, Ohio | Holtzman | Scheuer |
| Burke, Calif. | Hubbard | St Germain |
| Burke, Fla. | Huckaby | Stratton |
| Byron | Ireland | Stump |
| Chisholm | Johnson, Colo. | Teague |
| Clawson, Del | Kasten | Tsongas |
| Cochran | Krueger | Vander Jagt |
| Conyers | Lehman | Wiggins |
| D'Amours | Long, Md. | Young, Alaska |
| Delaney | Mikulski | Zablocki |
| Dickinson | Miller, Calif. | Zeferetti |
| Diggs | Mitchell, Md. | |
| Fary | Moffett | |

The Clerk announced the following pairs:

Mr. Richmond with Mr. Hansen.
Mr. Addabbo with Mr. Quie.
Mr. Mitchell of Maryland with Mr. Wiggins.
Mr. Zeferetti with Mr. Dickinson.
Mr. Zablocki with Mr. Del Clawson.
Mr. Ashley with Mr. Stump.
Mr. Rodino with Mr. Sarasin.
Mr. Miller of California with Mr. Hubbard.
Ms. Mikulski with Mr. Rudd.
Mr. Delaney with Mr. Beard of Tennessee.
Mr. D'Amours with Mr. Brown of Ohio.
Mr. Fary with Mr. Cochran of Mississippi.
Mr. Byron with Mr. Long of Maryland.
Mrs. Chisholm with Mr. Vander Jagt.
Mr. Teague with Mr. Scheuer.
Mr. Stratton with Mr. Frey.
Mr. St Germain with Mr. Armstrong.
Ms. Holtzman with Mr. Conyers.
Mrs. Burke of California with Mr. Diggs.
Mr. Breaux with Mr. Burke of Florida.
Mr. Beard of Rhode Island with Mr. Gibbons.
Mr. Ammerman with Mr. Barnard.
Mr. Flowers with Mr. Fraser.
Mr. Fuqua with Mr. Huckaby.
Mr. Garcia with Mr. Kasten.
Mr. Krueger with Mr. Lehman.
Mr. Ireland with Mr. Young of Alaska.
Mr. Harrington with Mr. Moffett.
Mr. Tsongas with Mr. Risenhoover.
Mr. Rostenkowski with Mr. Murphy of New York.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 3375) to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3375

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal District Court Organization Act of 1978".

PLACES OF HOLDING COURT

SEC. 2. (a) The last sentence of section 97 (a) of title 28, United States Code, is amended to read as follows:

"Court for the Eastern District shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.".

(b) The last sentence of section 104(a)(1) of title 28, United States Code, is amended to read as follows:

"Court for the eastern division shall be held at Aberdeen, Ackerman, and Corinth.".

DIVISIONS WITHIN JUDICIAL DISTRICTS

SEC. 3. (a) Section 98(c) of title 28, United States Code, is amended to read as follows:

"Western District

"(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Clairborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Quachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

"Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.".

(b) Section 114 of title 28, United States Code, is amended—

(1) in paragraph (2), by striking out "Sheridan, Steele, Stutsman, and Wells" and inserting in lieu thereof "Steele, and Stutsman";

(2) in paragraph (3), by striking out "Bottineau," "McHenry," and "Pierce,"; and

(3) by amending paragraph (4) to read as follows:

"(4) The Northwestern Division comprises the counties of Bottineau, Burke, Divide, McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells, and Williams.".

JUDICIAL DISTRICT DIVIDING LINES

SEC. 4. (a) Section 89 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Madison," immediately after "Liberty,"; and

(2) in the first paragraph of subsection (b), by striking out "Madison,".

(b) (1) Section 93 of title 28, United States Code, is amended to read as follows:

"§ 93. Illinois.

"Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

"Northern District

"(a) The Northern District comprises two divisions.

"(1) The Eastern Division comprises the counties of Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, McHenry, and Will.

"Court for the Ehstern Division shall be held at Chicago.

"(2) The Western Division comprises the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago.

"Court for the Western Division shall be held at Freeport and Rockford.

"Central District

"(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Knox, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

"Court for the Central District shall be held at Danville, Peoria, Quincy, Rock Island, and Springfield.

"Southern District

"(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayete, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

"Court for the Southern District shall be held at Alton, Benton, Cairo, and East St. Louis.".

(2) Section 133 of title 28, United States Code, is amended by striking out the item relating to Illinois and inserting in lieu thereof the following:

| | |
|---|---|
| "Illinois: | |
| "Northern | 13 |
| "Central | 2 |
| "Southern | 2". |

(c) Section 112 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Columbia," immediately after "Clinton,", by inserting "Greene," immediately after "Fulton,", and by inserting "Ulster," immediately after "Tompkins,"; and

(2) in the first paragraph of subsection (b), by striking out "Columbia,", "Greene," and "Ulster,".

EFFECTIVE DATE

SEC. 5. (a) The amendments made by this Act shall take effect one hundred and eighty days after the date of enactment of this Act.

(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike all after the enacting clause of the Senate bill S. 3375 and to insert in lieu thereof the text of the bill H.R. 13331, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 13331) was laid on the table.

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## CONFERENCE REPORT ON S. 1678, FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

Mr. FOLEY submitted the following conference report and statement on the Senate bill (S. 1678) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended:

CONFERENCE REPORT (H. REPT. No. 95-1560)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1678) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

DEFINITIONS

SECTION 1. Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) adding at the end of subsection (c)(1) the following: "Any applicator who holds or applies registered pesticides, or use dilutions of registered pesticides consistent with section 2(ee) of this Act, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides under this Act.";

(2) in subsection (e)(3), striking out "a certified" and inserting in lieu thereof "an";

(3) in subsection (g)(1), striking out the period at the end of clause (G), inserting "; or" in lieu thereof, and adding a new clause (H) as follows:

"(H) in the case of a pesticide not registered in accordance with section 3 of this Act and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: 'Not Registered for Use in the United States of America'.";

(4) in subsection (w), inserting "or active ingredient used in producing a pesticide" immediately after "or device" wherever that phrase appears therein;

(5) adding at the end of subsection (w) the following: "The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of 'producer' for the purposes of this Act.";

(6) in subsection (dd), inserting "or active ingredient used in producing a pesticide" immediately after "or device"; and

(7) adding at the end thereof a new subsection (ee) as follows:

"(ee) TO USE ANY REGISTERED PESTICIDE IN A MANNER INCONSISTENT WITH ITS LABELING.—The term 'to use any registered pesticide in a manner inconsistent with its labeling' means to use any registered pesticide in a manner not permitted by the labeling: *Provided*, That the term shall not include (1) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling, (2) applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the Administrator has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment, (3) employing any method of application not prohibited by the labeling, or (4) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling: *Provided further*, That the term also shall not include any use of a pesticide in conformance with section 5, 18, or 24 of this Act, or any use of a pesticide in a manner that the Administrator determines to be consistent with the purposes of this Act: *And provided further*, That after March 31, 1979, the term shall not include the use of a pesticide for agricultural or forestry purposes at a dilution less than label dosage unless before or after that date the Administrator issues a regulation or advisory opinion consistent with the study provided for in section 27(b) of the Federal Pesticide Act of 1978, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.".

USE OF DATA TO SUPPORT REGISTRATION; ADDITIONAL DATA TO SUPPORT EXISTING REGISTRATION

SEC. 2. (a) Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) amending subsection (c)(1)(D) to read as follows:

"(D) except as otherwise provided in subsection (c)(2)(D) of this section, if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, or alternatively a citation to data that appear in the public literature or that previously had been submitted to the Administrator and that the Administrator may consider in accordance with the following provisions:

"(i) with respect to pesticides containing active ingredients that are initially registered under this Act after the date of enactment of the Federal Pesticide Act of 1978, data submitted to support the application for the original registration of the pesticide, or an application for an amendment adding any new use to the registration and that pertains solely to such new use, shall not, without the written permission of the original data submitter, be considered by the Administrator to support an application by another person during a period of ten years following the date the Administrator first registers the pesticide: *Provided*, That such permission shall not be required in the case of defensive data;

"(ii) Except as otherwise provided in subparagraph (D)(i) of this paragraph, with respect to data submitted after December 31, 1969, by an applicant or registrant to support an application for registration, experimental use permit, or amendment adding a new use to an existing registration, to support or maintain in effect an existing registration, or for reregistration, the Administrator may, without the permission of the original data submitter, consider any such item of data in support of an application by any other person (hereinafter in this subparagraph referred to as the 'applicant') within the fifteen-year period following the date the data were originally submitted only if the applicant has made an offer to compensate the original data submitter and submitted such offer to the Administrator accompanied by evidence of delivery to the original data submitter of the offer. The terms and amount of compensation may be fixed by agreement between the original data submitter and the applicant, or, failing such agreement, binding arbitration under this subparagraph. If, at the end of ninety days after the date of delivery to the original data submitter of the offer to compensate, the original data submitter and the applicant have neither agreed on the amount and terms of compensation nor on a procedure for reaching an agreement on the amount and terms of compensation, either person may initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of the Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings, and the findings and determination of the arbitrator shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except for fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or the arbitrator where there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, or other misconduct. The parties to the arbitrations shall share equally in the payment of the fee and expenses of the arbitrator. If the Administrator determines that an original data submitter has failed to participate in a procedure for reaching an agreement or in an arbitration proceeding as required by this subparagraph, or failed to comply with the terms of an agreement or arbitration decision concerning compensation under this subparagraph, the original data submitter shall forfeit the right to compensation for the use of the data in support of the application. Notwithstanding any other provision of this Act, if the Administrator determines that an applicant has failed to participate in a procedure for reaching an agreement or in an arbitration proceeding as required by this subparagraph, or failed to comply with the terms of an agreement or arbitration decision concerning compensation under this subparagraph, the Administrator shall deny the application or cancel the registration of the pesticide in support of which the data were used without further hearing. Before the Administrator takes action under either of the preceding two sentences, the Administrator shall furnish to the affected person, by certified mail, notice of intent to take action and allow fifteen days from the date of delivery of the notice for the affected person to respond. If a registration is denied or canceled under this subparagraph, the Administrator may make such order as the Administrator deems appropriate concerning the

continued sale and use of existing stocks of such pesticide. Registration action by the Administrator shall not be delayed pending the fixing of compensation;

"(iii) after expiration of any period of exclusive use and any period for which compensation is required for the use of an item of data under subparagraphs (D)(i) and (D)(ii) of this paragraph, the Administrator may consider such item of data in support of an application by any other applicant without the permission of the original data submitter and without an offer having been received to compensate the original data submitter for the use of such item of data;"; and

(2) amending subsection (c)(2) by—

(A) inserting "(A)" immediately after "(2)";

(B) inserting immediately after "kind of information" in the second sentence the following: "under subparagraph (B) of this paragraph,";

(C) striking out "subsection (c)(1)(D) of this section and" from the third sentence; and

(D) adding at the end thereof a new subparagraph (B) as follows:

"(B) ADDITIONAL DATA TO SUPPORT EXISTING REGISTRATION.—

"(i) If the Administrator determines that additional data are required to maintain in effect an existing registration of a pesticide, the Administrator shall notify all existing registrants of the pesticide to which the determination relates and provide a list of such registrants to any interested person.

"(ii) Each registrant of such pesticide shall provide evidence within ninety days after receipt of notification that it is taking appropriate steps to secure the additional data that are required. Two or more registrants may agree to develop jointly, or to share in the cost of developing, such data if they agree and advise the Administrator of their intent within ninety days after notification. Any registrant who agrees to share in the cost of producing the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.

"(iii) If, at the end of sixty days after advising the Administrator of their agreement to develop jointly, or share in the cost of developing, data, the registrants have not further agreed on the terms of the data development arrangement or on a procedure for reaching such agreement, any of such registrants may initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of the Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings, and the findings and determination of the arbitrator shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except for fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or the arbitrator where there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, or other misconduct. All parties to the arbitration shall share equally in the payment of the fee and expenses of the arbitrator.

"(iv) Notwithstanding any other provision of this Act, if the Administrator determines that a registrant, within the time required by the Administrator, has failed to take appropriate steps to secure the data required under this subparagraph, to participate in a procedure for reaching agreement concerning a joint data development arrangement under this subparagraph or in an arbitration proceeding as required by this subparagraph, or to comply with the terms of an agreement or arbitration decision concerning a joint data development arrangement under this subparagraph, the Administrator may issue a notice of intent to suspend such registrant's registration of the pesticide for which additional data is required. The Administrator may include in the notice of intent to suspend such provisions as the Administrator deems appropriate concerning the continued sale and use of existing stocks of such pesticide. Any suspension proposal under this subparagraph shall become final and effective at the end of thirty days from receipt by the registrant of the notice of intent to suspend, unless during that time a request for hearing is made by a person adversely affected by the notice or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend. If a hearing is requested, a hearing shall be conducted under section 6(d) of this Act: Provided, That the only matters for resolution at that hearing shall be whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend the registration of the pesticide for which additional data is required, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with this Act. If a hearing is held, a decision after completion of such hearing shall be final. Notwithstanding any other provision of this Act, a hearing shall be held and a determination made within seventy-five days after receipt of a request for such hearing. Any registration suspended under this subparagraph shall be reinstated by the Administrator if the Administrator determines that the registrant has complied fully with the requirements that served as a basis for the suspension of the registration.

"(v) Any data submitted under this subparagraph shall be subject to the provisions of subsection (c)(1)(D) of this section. Whenever such data are submitted jointly by two or more registrants, an agent shall be agreed on at the time of the joint submission to handle any subsequent data compensation matters for the joint submitters of such data.".

(b) The amendment to section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act made by this section shall apply with respect to all applications for registration approved after the date of enactment of this Act.

MINOR USE REGISTRATIONS

SEC. 3. Section 3(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, as redesignated by section 2 of this Act, is further amended by inserting immediately after the second sentence the following: "The Administrator, in establishing standards for data requirements for the registration of pesticides with respect to minor uses, shall make such standards commensurate with the anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide. In the development of these standards, the Administrator shall consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the requirements on the incentives for any potential registrant to undertake the development of the required data.".

SIMPLIFIED REGISTRATION PROCEDURES; EXEMPTION FROM REQUIREMENTS FOR SUBMISSION OF DATA

SEC. 4. Section 3(e)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act is further amended by adding at the end thereof new subparagraphs (C) and (D) as follows:

"(C) SIMPLIFIED PROCEDURES.—Within nine months after the date of enactment of this subparagraph, the Administrator shall, by regulation, prescribe simplified procedures for the registration of pesticides, which shall include the provisions of subparagraph (D) of this paragraph.

"(D) EXEMPTION.—No applicant for registration of a pesticide who proposes to purchase a registered pesticide from another producer in order to formulate such purchased pesticide into an end-use product shall be required to—

"(i) submit or cite data pertaining to the safety of such purchased product; or

"(ii) offer to pay reasonable compensation otherwise required by paragraph (1)(D) of this subsection for the use of any such data.".

WAIVER OF DATA REQUIREMENTS PERTAINING TO EFFICACY

SEC. 5. Section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof the following: "In considering an application for the registration of a pesticide, the Administrator may waive data requirements pertaining to efficacy, in which event the Administrator may register the pesticide without determining that the pesticide's composition is such as to warrant proposed claims of efficacy. If a pesticide is found to be efficacious by any State under section 24(c) of this Act, a presumption is established that the Administrator shall waive data requirements pertaining to efficacy for use of the pesticide in such State.".

REGISTRATION UNDER SPECIAL CIRCUMSTANCES; INTERIM ADMINISTRATIVE REVIEW

SEC. 6. Section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof new paragraphs (7) and (8) as follows:

"(7) REGISTRATION UNDER SPECIAL CIRCUMSTANCES.—Notwithstanding the provisions of subsection (c)(5) of this section—

"(A) The Administrator may conditionally register or amend the registration of a pesticide if the Administrator determines that (i) the pesticide and proposed use are identical or substantially similar to any currently registered pesticide and use thereof, or differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment, and (ii) approving the registration or amendment in the manner proposed by the applicant would not significantly increase the risk of any unreasonable adverse effect on the environment. An applicant seeking conditional registration or amended registration under this subparagraph shall submit such data as would be required to obtain registration of a similar pesticide under subsection (c)(5) of this section: *Provided*, That, if the applicant is unable to submit an item of data because it has not yet been generated, the Administrator may register or amend the registration of the pesticide under such conditions as will require the submission of such data not later than the time such data are required to be submitted with respect to similar pesticides already registered under this Act.

"(B) The Administrator may conditionally amend the registration of a pesticide to permit additional uses of such pesticide notwithstanding that data concerning the pesticide may be insufficient to support an unconditional amendment, if the Administrator determines that (i) the applicant has submitted satisfactory data pertaining to the proposed additional use, and (ii) amending the registration in the manner proposed by the applicant would not significantly increase the risk of any unreasonable adverse effect on the environment. Notwithstanding the foregoing provisions of this subparagraph, no registration of a pesticide may be amended to permit an additional use of such pesticide if the Administrator has issued a notice stating that such pesticide, or any ingredient thereof, meets or exceeds risk criteria associ-

ated in whole or in part with human dietary exposure enumerated in regulations issued under this Act, and during the pendency of any risk-benefit evaluation initiated by such notice, if (i) the additional use of such pesticide involves a major food or feed crop, or (ii) the additional use of such pesticide involves a minor food or feed crop and the Administrator determines, with the concurrence of the Secretary of Agriculture, there is available an effective alternative pesticide that does not meet or exceed such risk criteria. An applicant seeking amended registration under this subparagraph shall submit such data as would be required to obtain registration of a similar pesticide under subsection (c)(5) of this section: *Provided*, That, if the applicant is unable to submit an item of data (other than data pertaining to the proposed additional use) because it has not yet been generated, the Administrator may amend the registration under such conditions as will require the submission of such data not later than the time such data are required to be submitted with respect to similar pesticides already registered under this Act.

"(C) The Administrator may conditionally register a pesticide containing an active ingredient not contained in any currently registered pesticide for a period reasonably sufficient for the generation and submission of required data (which are lacking because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirement) on the condition that by the end of such period the Administrator receives such data and the data do not meet or exceed risk criteria enumerated in regulations issued under this Act, and on such other conditions as the Administrator may prescribe: *Provided*, That a conditional registration under this subparagraph shall be granted only if the Administrator determines that use of the pesticide during such period will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

"(8) INTERIM ADMINISTRATIVE REVIEW.—Notwithstanding any other provision of this Act, the Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses prior to initiating a formal action to cancel, suspend, or deny registration of such pesticide, required under this Act, unless such interim administrative process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment. Notice of the definition of the terms 'validated test' and 'other significant evidence' as used herein shall be published by the Administrator in the Federal Register.".

CLASSIFICATION PRIOR TO REREGISTRATION; CHANGE IN CLASSIFICATION FROM RESTRICTED USE TO GENERAL USE

SEC. 7. Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) inserting in paragraph (1)(A) immediately after the first sentence the following: "Pesticide uses may be classified by regulation on the initial classification, and registered pesticides may be classified prior to reregistration.";

(2) striking out "30 days" in paragraph (2) and inserting in lieu thereof "forty-five days"; and

(3) adding a new paragraph (3) at the end thereof as follows:

"(3) CHANGE IN CLASSIFICATION FROM RESTRICTED USE TO GENERAL USE.—The registrant of any pesticide with one or more uses classified for restricted use may petition the Administrator to change any such classification from restricted to general use. Such petition shall set out the basis for the registrant's position that restricted use classification is unnecessary because classification of the pesticide for general use would not cause unreasonable adverse effects on the environment. The Administrator, within sixty days after receiving such petition, shall notify the registrant whether the petition has been granted or denied. Any denial shall contain an explanation therefor and any such denial shall be subject to judicial review under section 16 of this Act.".

REREGISTRATION

SEC. 8. Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof of new subsection (g) as follows:

"(g) REREGISTRATION OF PESTICIDES.—The Administrator shall accomplish the reregistration of all pesticides in the most expeditious matter practicable: *Provided*, That, to the extent appropriate, any pesticide that results in a postharvest residue in or on food or feed crops shall be given priority in the reregistration process.".

AUTHORITY OF ADMINISTRATOR TO CERTIFY APPLICATORS

SEC. 9. Section 4(a) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by inserting in paragraph (1) immediately after "(1) FEDERAL CERTIFICATION.—" the following: "In any State for which a State plan for applicator certification has not been approved by the Administrator, the Administrator, in consultation with the Governor of such State, shall conduct a program for the certification of applicators of pesticides: *Provided*, That such program shall conform to the requirements imposed upon the States under the provisions of subsection (a)(2) of this section and shall not require private applications to take any examination to establish competency in the use of pesticides. Prior to the implementation of the program, the Administrator shall publish in the Federal Register for review and comment a summary of the Federal plan for applicator certification and shall make generally available within the State copies of the plan. The Administrator shall hold public hearings at one or more locations within the State if so requested by the Governor of such State during the thirty days following publication of the Federal Register notice inviting comment on the Federal plan. The hearings shall be held within thirty days following receipt of the request from the Governor. In any State in which the Administrator conducts a certification program, the Administrator may require any person engaging in the commercial application, sale, offering for sale, holding for sale, or distribution of any pesticide one or more uses of which have been classified for restricted use to maintain such records and submit such reports concerning the commercial application, sale, or distribution of such pesticides as the Administrator may by regulation prescribe.".

EXPERIMENTAL USE PERMITS

SEC. 10. Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) amending subsection (a) to read as follows:

"(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator shall review the application. After completion of the review, but not later than one hundred and twenty days after receipt of the application and all required supporting data, the Administrator shall either issue the permit or notify the applicant of the Administrator's determination not to issue the permit and the reasons therefor. The applicant may correct the application or request a waiver of the conditions for such permit within thirty days of receipt by the applicant of such notification. The Administrator determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3 of this Act. An application for an experimental use permit may be filed at any time."; and

(2) in subsection (f), striking out the word "may" the first time it appears in the first sentence and inserting in lieu thereof "shall".

ALTERNATIVE TO CANCELLATION

SEC. 11. Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by inserting in the last sentence immediately after "In taking any final action under this subsection, the Administrator" the following: "shall consider restricting a pesticide's use or uses as an alternative to cancellation and shall fully explain the reasons for these restrictions, and".

CANCELLATION OF CONDITIONAL REGISTRATION

SEC. 12. Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) a new subsection (e) as follows:

"(e) CONDITIONAL REGISTRATION.—

"(1) The Administrator shall issue a notice of intent to cancel a registration issued under section 3(c)(7) of this Act if (A) the Administrator, at any time during the period provided for satisfaction of any condition imposed, determines that the registrant has failed to initiate and pursue appropriate action toward fulfilling any condition imposed, or (B) at the end of the period provided for satisfaction of any condition imposed, that condition has not been met: *Provided*, That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose conditional registration has been canceled under this subsection to such extent, under such conditions, and for such uses as the Administrator may specify if the Administrator determines that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment.

"(2) A cancellation proposed under this subsection shall become final and effective at the end of thirty days from receipt by the registrant of the notice of intent to cancel unless during that time a request for hearing is made by a person adversely affected by the notice. If a hearing is requested a hearing shall be conducted under subsection (d) of this section: *Provided*, That the only matters for resolution at that hearing shall be whether the registrant has initiated and pursued appropriate action to comply with the condition or conditions within the time provided or whether the condition or conditions have been satisfied within the time provided, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with this Act. A decision after completion of such hearing shall be final. Notwithstanding any otehr provision of this section, a hearing shall be held and a determination made within seventy-five days after receipt of a request for such hearing.".

REGISTRATION OF ESTABLISHMENTS

SEC. 13. Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) in subsection (a), inserting "or active ingredient used in producing a pesticide subject to this Act" immediately after "any pesticide subject to this Act";

(2) in subsection (c)(1), inserting "and, if applicable, active ingredients used in producing pesticides" immediately after "pesticides"; and

(3) in subsection (d), inserting "other than the names of the pesticides or active ingredients used in producing pesticides produced, sold, or distributed at an establish-

ment" immediately after "pursuant to subsection (c)".

INSPECTION OF BOOKS AND RECORDS

SEC. 14. Section 8(b) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof the following: "Before undertaking an inspection under this subsection, the officer or employee must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness.".

TRADE SECRET AMENDMENTS

SEC. 15. Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) in subsection (b), inserting immediately after "Notwithstanding any other provision of this Act" the following: "and subject to the limitations in subsections (d) and (e) of this section"; and

(2) adding at the end thereof new subsections (d), (e), (f), and (g) as follows:

"(d) Limitations.—

"(1) All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public: *Provided*, That the use of such data for any registration purpose shall be governed by section 3 of this Act: *Provided further*, That this paragraph does not authorize the disclosure of any information that—

"(A) discloses manufacturing or quality control processes,

"(B) discloses the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, or

"(C) discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide, unless the Administrator has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.

"(2) Information concerning production, distribution, sale, or inventories of a pesticide that is otherwise entitled to confidential treatment under subsection (b) of this section may be publicly disclosed in connection with a public proceeding to determine whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment, if the Administrator determines that such disclosure is necessary in the public interest.

"(3) If the Administrator proposes to disclose information described in clause (A), (B), or (C) of paragraph (1) or in paragraph (2) of this subsection, the Administrator shall notify by certified mail the submitter of such information of the intent to release such information. The Administrator may not release such information, without the submitter's consent, until thirty days after the submitter has been furnished such notice: *Provided*, That where the Administrator finds that disclosure of information described in clause (A), (B), or (C) of paragraph (1) of this subsection is necessary to avoid or lessen an imminent and substantial risk of injury to the public health, the Administrator may set such shorter period of notice (but not less than ten days) and such method of notice as the Administrator finds appropriate. During such period the data submitter may institute an action in an appropriate district court to enjoin or limit the proposed disclosure. The court shall give expedited consideration to any such action. The court may enjoin disclosure, or limit the disclosure or the parties to whom disclosure shall be made, to the extent that—

"(A) in the case of information described in clause (A), (B), or (C) of paragraph (1) of this subsection, the proposed disclosure is not required to protect against an unreasonable risk of injury to health or the environment; or

"(B) in the case of information described in paragraph (2) of this subsection, the public interest in availability of the information in the public proceeding does not outweigh the interests in preserving the confidentiality of the information.

"(c) DISCLOSURE TO CONTRACTORS.—Information otherwise protected from disclosure to the public under subsection (b) of this section may be disclosed to contractors with the United States and employees of such contractors if, in the opinion of the Administrator, such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States for the performance of work in connection with this Act and under such conditions as the Administrator may specify. The Administrator shall require as a condition to the disclosure of information under this subsection that the person receiving it take such security precautions respecting the information as the Administrator shall by regulation prescribe.

"(f) PENALTY FOR DISCLOSURE BY FEDERAL EMPLOYEES.—(1) Any officer or employee of the United States or former officer or employee of the United States who, by virtue of such employment or official position, has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (b) of this section, and who, knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be fined not more than $10,000 or imprisoned for not more than one year, or both. Section 1905 of title 18 of the United States Code shall not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this Act. Nothing in this Act shall preempt any civil remedy under State or Federal law for wrongful disclosure of trade secrets.

"(2) For the purposes of this section, any contractor with the United States who is furnished information as authorized by subsection (c) of this section, or any employee of any such contractor, shall be considered to be an employee of the United States.

"(g) DISCLOSURE TO FOREIGN AND MULTINATIONAL PESTICIDE PRODUCERS.—(1) The Administrator shall not knowingly disclose information submitted by an applicant or registrant under this Act to any employee or agent of any business or other entity engaged in the production, sale or distribution of pesticides in countries other than the United States or in addition to United States or to any other person who intends to deliver such data to such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure. The Administrator shall require an affirmation from any person who intends to inspect data that such person does not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees. Notwithstanding any other provision of this subsection, the Administrator may disclose information to any person in connection with a public procceding under law or regulation, subject to restrictions on the availability of information contained elsewhere in this Act, which information is relevant to a determination by the Administrator with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.

"(2) The Administrator shall maintain records of the names of persons to whom data are disclosed under this subsection and the persons or organizations they represent and shall inform the applicant or registrant of the names and affiliations of such persons.

"(3) Section 1001 of title 18 of the United States Code shall apply to any affirmation made under paragraph (1) of this subsection.".

EXEMPTION FROM THE UNLAWFUL ACTS PROVISION

SEC. 16. Section 12(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by inserting immediately before the semicolon at the end of subparagraph (F) the following: ": *Provided*, That it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator".

CIVIL PENALTIES FOR CERTAIN APPLICATORS; PROCEDURE FOR DETERMINING THE AMOUNT OF CIVIL PENALTIES

SEC. 17. Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) inserting immediately before the period at the end of paragraph (2) the following: ": *Provided*, That any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $500 for the first offense nor more than $1,000 for each subsequent offense";

(2) striking out the last sentence in paragraph (3);

(3) redesignating paragraph (4) as paragraph (5); and

(4) inserting after paragraph (3) a new paragraph (4) as follows:

"(4) DETERMINATION OF PENALTY.—In determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Administrator finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Administrator may issue a warning in lieu of assessing a penalty.".

PESTICIDES AND DEVICES INTENDED FOR EXPORT

SEC. 18. (a) Section 17 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) amending subsection (a) to read as follows:

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—Notwithstanding any other provision of this Act, no pesticide or device or active ingredient used in producing a pesticide intended solely for export to any foreign country shall be deemed in violation of this Act—

"(1) when prepared or packed according to the specifications or directions of the for-

eign purchaser, except that producers of such pesticides and devices and active ingredients used in producing pesticides shall be subject to sections 2(p), 2(q)(1)(A), (C), (D), (E), (G), and (II), 2(q) (2) (A), (B), (C), (i) and (iii), and (D), 7, and 8 of this Act; and

"(2) in the case of any pesticide other than a pesticide registered under section 3 or sold under section 6(a)(1) of this Act, if, prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under this Act. A copy of that statement shall be transmitted to an appropriate official of the government of the importing country."; and

(2) adding at the end of subsection (b) the following: "Such notification shall, upon request, include all information related to the cancellation or suspension of the registration of the pesticide and information concerning other pesticides that are registered under section 3 of this Act and that could be used in lieu of such pesticide.".

(b) The amendment made by subsection (a)(1) of this section shall become effective one hundred and eighty days after the date of enactment of this Act.

DISPOSAL OF PESTICIDES

SEC. 19. Section 19 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof a new subsection (c) as follows:

"(c) PROVISIONS FOR UNUSED QUANTITIES.—Notifications of cancellation of any pesticide shall include specific provisions for the disposal of the unused quantities of such pesticides.".

RESEARCH AND MONITORING ACTIVITIES

SEC. 20. Section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) in the first sentence of subsection (a), striking out all after the phrase "and he shall" down through the end of the sentence and inserting in lieu thereof the following: "conduct research into integrated pest management in coordination with the Secretary of Agriculture"; and

(2) amending subsection (c) to read as follows:

"(c) MONITORING.—The Administrator shall undertake such monitoring activities, including, but not limited to, monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. The Administrator shall establish procedures for the monitoring of man and animals and their environment for incidental pesticide exposure, including, but not limited to, the quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and identification of the sources of contamination and their relationship to human and environmental effects. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.".

STATE COOPERATION, AID, AND TRAINING

SEC. 21. Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended to read as follows:

"SEC. 23. STATE COOPERATION, AID, AND TRAINING.

"(a) COOPERATIVE AGREEMENTS.—The Administrator may enter into cooperative agreements with States and Indian tribes—

"(1) to delegate to any State or Indian tribe the authority to cooperate in the enforcement of this Act through the use of its personnel or facilities, to train personnel of the State or Indian tribe to cooperate in the enforcement of this Act, and to assist States and Indian tribes in implementing cooperative enforcement programs through grants-in-aid; and

"(2) to assist States in developing and administering State programs, and Indian tribes that enter into cooperative agreements, to train and certify applicators consistent with the standards the Administrator prescribes.

Effective with the fiscal year beginning October 1, 1978, there are authorized to be appropriated annually such funds as may be necessary for the Administrator to provide through cooperative agreements an amount equal to 50 percent of the anticipated cost to each State or Indian tribe, as agreed to under such cooperative agreements, of conducting training and certification programs during such fiscal year. If funds sufficient to pay 50 percent of the costs for any year are not appropriated, the share of each State and Indian tribe shall be reduced in a like proportion in allocating available funds.

"(b) CONTRACTS FOR TRAINING.—In addition, the Administrator may enter into contracts with Federal, State, or Indian tribal agencies for the purpose of encouraging the training of certified applicators.

"(e) INFORMATION AND EDUCATION.—The Administrator shall, in cooperation with the Secretary of Agriculture, use the services of the cooperative State extension services to inform and educate pesticide users about accepted uses and other regulations made under this Act.".

PESTICIDES FORMULATED FOR DISTRIBUTION AND USE WITHIN A STATE

SEC. 22. Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended to read as follows:

"SEC. 24. AUTHORITY OF STATES.

"(a) A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.

"(b) Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this Act.

"(c)(1) A State may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or cancelled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State.

"(2) A registration issued by a State under this subsection shall not be effective for more than ninety days if disapproved by the Administrator within that period. Prior to disapproval, the Administrator shall, except as provided in paragraph (3) of this subsection, advise the State of the Administrator's intention to disapprove and the reasons therefor, and provide the State time to respond. The Administrator shall not prohibit or disapprove a registration issued by a State under this subsection (A) on the basis of lack of essentiality of a pesticide or (B) except as provided in paragraph (3) of this subsection, if its composition and use patterns are similar to those of a federally registered pesticide.

"(3) In no instance may a State issue a registration for a food or feed use unless there exists a tolerance or exemption under the Federal Food, Drug, and Costmetic Act that permits the residues of the pesticide on the food or feed. If the Administrator determines that a registration issued by a State is inconsistent with the Federal Food, Drug, and Cosmetic Act, or the use of a pesticide under a registration issued by a State constitutes an imminent hazard, the Administrator may immediately disapprove the registration.

"(4) If the Administrator finds, in accordance with standards set forth in regulations issued under section 25 of this Act, that a State is not capable of exercising adequate controls to assure that State registration under this section will be in accord with the purposes of this Act or has failed to exercise adequate controls, the Administrator may suspend the authority of the State to register pesticides until such time as the Administrator is satisfied that the State can and will exercise adequate controls. Prior to any such suspension, the Administrator shall advise the State of the Administrator's intention to suspend and the reasons therefor and provide the State time to respond.".

AUTHORITY OF ADMINISTRATOR—REGULATIONS; SCIENTIFIC ADVISORY PANEL

SEC. 23. Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) in subsection (a)(1), striking out the period at the end of the second sentence and adding the following: "and differences in environmental risk and the appropriate data for evaluating such risk between agricultural and nonagricultural pesticides.";

(2) adding at the end of subsection (a)(2)(B), the following: "In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the effect of the regulation on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and the Administrator shall publish in the Federal Register an analysis of such effect.";

(3) in subsection (d), striking out the third sentence and inserting in lieu thereof the following: "The Administrator shall also solicit from the advisory panel comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses made by personnel of the Environmental Protection Agency that lead to decisions by the Administrator in carrying out the provisions of this Act. The comments, evaluations, and recommendations of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The Chairman of the advisory panel, after consultation with the Administrator, may create temporary subpanels on specific projects to assist the full advisory panel in expediting and preparing its evaluations, comments, and recommendations."; and

(4) adding at the end of subsection (d) the following: "The advisory panel established under this subsection shall terminate September 30, 1981. In performing the functions assigned by this Act, the panel shall consult and coordinate its activities with the Science Advisory Board established under the Environmental Research, Development, and Demonstration Authorization Act of 1978.".

STATE ENFORCEMENT; IDENTIFICATION OF PESTS; COOPERATION WITH DEPARTMENT OF AGRICULTURE'S PROGRAM; ANNUAL REPORT

SEC. 24. The Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) redesignating sections 26 (severability) and 27 (authorization for appropriations) as sections 30 and 31, respectively; and

(2) inserting after section 25 new sections 26 through 29 as follows:

"SEC. 26. STATE PRIMARY ENFORCEMENT RESPONSIBILITY.

"(a) For the purposes of this Act a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State—

"(1) has adopted adequate pesiticide use laws and regulations: *Provided*, That the Administrator may not require a State to have pesticide use laws that are more stringent than this Act:

"(2) has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations: and

"(3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.

"(b) Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 23 of this Act for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 4 of this Act that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under section 4 of this Act in effect on the date of enactment of the Federal Pesticide Act of 1978 not later than six months after that date.

"(c) The Administrator shall have primary enforcement responsibility for those States that do not have primary enforcement responsibility under this Act. Notwithstanding the provisions of section 2(e)(1) of this Act, during any period when the Administrator has such enforcement responsibility, section 8(b) of this Act shall apply to the books and records of commercial applicators and to any applicator who holds or applies pesticides, or use dilutions of pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and section 9(a) of this Act shall apply to the establishment or other place where pesticides or devices are held for application by such persons with respect to pesticides or devices held for such application.

"SEC. 27. FAILURE BY THE STATE TO ASSURE ENFORCEMENT OF STATE PESTICIDE USE REGULATIONS.

"(a) Upon receipt of any complaint or other information alleging or indicating a significant violation of the pesticide use provisions of this Act, the Administrator shall refer the matter to the appropriate State officials for their investigation of the matter consistent with the requirements of this Act. If, within thirty days, the State has not commenced appropriate enforcement action, the Administrator may act upon the complaint or information to the extent authorized under this Act.

"(b) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility, the Administrator shall notify the State. Such notice shall specify those aspects of the administration of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Administrator determines that the State program remains inadequate, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

"(c) Neither section 26 of this Act nor this section shall limit the authority of the Administrator to enforce this Act, where the Administrator determines that emergency conditions exist that require immediate action on the part of the Administrator and the State authority is unwilling or unable adequately to respond to the emergency.

"SEC. 28 IDENTIFICATION OF PESTS: COOPERATION WITH DEPARTMENT OF AGRICULTURE'S PROGRAM.

"The Administrator, in coordination with the Secretary of Agriculture, shall identify those pests that must be brought under control. The Administrator shall also coordinate and cooperate with the Secretary of Agriculture's research and implementation programs to develop and improve the safe use and effectiveness of chemical, biological, and alternative methods to combat and control pests that reduce the quality and economical production and distribution of agricultural products to domestic and foreign consumers.

"SEC. 29. ANNUAL REPORT.

"The Administrator shall submit an annual report to Congress before February 16 of each year and the first report shall be due February 15, 1979. The report shall include the total number of applications for conditional registration under sections 3(c)(7)(B) and 3(c)(7)(C) of this Act that were filed during the immediately preceding fiscal year, and, with respect to those applications approved, the Administrator shall report the Administrator's findings in each case, the conditions imposed and any modification of such conditions in each case, and the quantities produced of such pesticides.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 25. Section 31 of the Federal Insecticide, Fungicide, and Rodenticide Act, as redesignated by section 24 of this Act, is amended by striking out "and for the period beginning October 1, 1976, and ending March 31, 1977, the sum of $23,600,000", and inserting in lieu thereof the following: "and for the period beginning October 1, 1976, and ending September 30, 1977, the sum of $46,636,000, and for the period beginning October 1, 1977, and ending September 30, 1978, the sum of $54,500,000, and for the period beginning October 1, 1978, and ending September 30, 1979, such sums as may be necessary, but not in excess of $700,000,000".

REVISION OF FIFRA TABLE OF CONTENTS

SEC. 26. Section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended to read as follows:

"(b) TABLE OF CONTENTS.—

"Section 1. Short title and table of contents.
"(a) Short title.
"(b) Table of contents.
"Sec. 2. Definitions.
"(a) Active ingredient.
"(b) Administrator.
"(c) Adulterated.
"(d) Animal.
"(e) Certified applicator, etc.
"(1) Certified applicator.
"(2) Private applicator.
"(3) Commercial applicator.
"(4) Under the direct supervision of a certified applicator.
"(f) Defoliant.
"(g) Desiccant.
"(h) Device.
"(i) District court.
"(j) Environment.
"(k) Fungus.
"(l) Imminent hazard.
"(m) Inert ingredient.
"(n) Ingredient statement.
"(o) Insect.
"(p) Label and labeling.
"(1) Label.
"(2) Labeling.
"(q) Misbranded.
"(r) Nematode.
"(s) Person.
"(t) Pest.
"(u) Pesticide.
"(v) Plant regulator.
"(w) Producer and produce.
"(x) Protect health and the environment.
"(y) Registrant.
"(z) Registration.
"(aa) State.
"(bb) Unreasonable adverse effects on the environment.
"(cc) Weed.
"(dd) Establishment.
"(ee) To use any registered pesticide in a manner inconsistent with its labeling.
"Sec. 3. Registration of pesticides.
"(a) Requirement.
"(b) Exemptions.
"(c) Procedure for registration.
"(1) Statement required.
"(2) Data in support of registration.
"(3) Time for acting with respect to application.
"(4) Notice of application.
"(5) Approval of registration.
"(6) Denial of registration.
"(7) Registration under special circumstances.
"(8) Interim administrative review.
"(d) Classification of pesticides.
"(1) Classification for general use, restricted use, or both.
"(2) Change in classification.
"(3) Change in classification from restricted use to general use.
"(e) Products with same formulation and claims.
"(f) Miscellaneous.
"(1) Effect of change of labeling or formulation.
"(2) Registration not a defense.
"(3) Authority to consult other Federal agencies.
"(a) Reregistration of pesticides.
"Sec. 4. Use of restricted use pesticides; certified applicators.
"(a) Certification procedure.
"(1) Federal certification.
"(2) State certification:
"(b) State plans.
"(c) Instruction in integrated pest management techniques.
"Sec. 5. Experimental use permits.
"(a) Issuance.
"(b) Temporary tolerance level.
"(c) Use under permit.
"(d) Studies.
"(e) Revocation.
"(f) State issuance of permits.
"(g) Exemption for agricultural research agencies.
"Sec. 6. Administrative review: suspension.
"(a) Cancellation after five years.
"(1) Procedure.
"(2) Information.
"(b) Cancellation and change in classification.
"(c) Suspension.
"(1) Order.
"(2) Expedite hearing.
"(3) Emergency order.
"(4) Judicial review.
"(d) Public hearings and scientific review.
"(e) Conditional registration.
"(f) Judicial review.
"Sec. 7. Registration of establishments.
"(a) Requirements.
"(b) Registration.
"(c) Information required.
"(d) Confidential records and information.
"Sec. 8. Books and records.
"(a) Requirement.
"(b) Inspection.
"Sec. 9. Inspection of establishments, etc.
"(a) In general.
"(b) Warrants.
"(c) Enforcement.
"(1) Certification of facts to Attorney General.
"(2) Notice not required.
"(3) Warning notices.
"Sec. 10. Protection of trade secrets and other information.
"(a) In general.
"(b) Disclosure.
"(c) Disputes.
"(d) Limitations.
"(e) Disclosure to contractors.
"(f) Penalty for disclosure by Federal employees.
"(g) Disclosure to foreign and multinational pesticide producers.
"Sec. 11. Standards applicable to pesticide applicators.
"(a) In general.
"(b) Separate standards.

"Sec. 12. Unlawful acts.
"(a) In general.
"(b) Exemptions.
"Sec. 13. Stop sale, use, removal, and seizure.
"(a) Stop sale, etc., orders.
"(b) Seizure.
"(c) Disposition after condemnation.
"(d) Court costs, etc.
"Sec. 14. Penalties.
"(a) Civil penalties.
"(1) In general.
"(2) Private applicator.
"(3) Hearing.
"(4) Determination of penalty.
"(5) References to Attorney General.
"(b) Criminal penalties.
"(1) In general.
"(2) Private applicator.
"(3) Disclosure of information.
"(4) Acts of officers, agents, etc.
"Sec. 15. Indemnities.
"(a) Requirement.
"(b) Amount of payment.
"(1) In general.
"(2) Special rule.
"Sec. 16. Administrative procedure; judicial review.
"(a) District court review.
"(b) Review by Court of Appeals.
"(c) Jurisdiction of district courts.
"(d) Notice of judgments.
"Sec. 17. Imports and exports.
"(a) Pesticides and devices intended for export.
"(b) Cancellation notices furnished to foreign governments.
"(c) Importation of pesticides and devices.
"(d) Cooperation in international efforts.
"(e) Regulations.
"Sec. 18. Exemption of Federal agencies.
"Sec. 19. Disposal and transportation.
"(a) Procedures.
"(b) Advice to Secretary of Transportation.
"(c) Provisions for unused quantities.
"Sec. 20. Research and monitoring.
"(a) Research.
"(b) National monitoring plan.
"(c) Monitoring.
"Sec. 21. Solicitation of comments; notice of public hearings.
"Sec. 22. Delegation and cooperation.
"(a) Delegation.
"(b) Cooperation.
"Sec. 23. State cooperation, aid, and training.
"(a) Cooperative agreements.
"(b) Contracts for training.
"(c) Information and education.
"Sec. 24. Authority of States.
"Sec. 25. Authority of Administrator.
"(a)(1) Regulations.
"(2) Procedure.
"(3) Congressional committees.
"(b) Exemption of pesticides.
"(c) Other authority.
"(d) Scientific advisory panel.
"Sec. 26. State primary enforcement responsibility.
"Sec. 27. Failure by the State to assure enforcement of State pesticide use regulations.
"Sec. 28. Identification of pests; cooperation with Department of Agriculture's program.
"Sec. 29. Annual report.
"Sec. 30. Severability.
"Sec. 31. Authorization for appropriations.".

STUDIES

SEC. 27. (a) The Administrator of the Environmental Protection Agency shall perform a study examining the feasibility of assessing and collecting fees from persons applying to register, or amend the registration of, pesticides to cover the costs incurred by the Environmental Protection Agency in processing such applications under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall complete this study and submit a report setting forth the findings of the study and recommendations for the implementation of these findings to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, not later than nine months after the date of enactment of this Act.

(b) The Administrator, in cooperation with the Secretary of Agriculture, and after consultation with appropriate State officials, shall review available scientific information dealing with issues involved in the methods of pesticide application, including, but not limited to, the advisability of ultra-low-volume methods of application, and shall recommend to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture such changes as the Administrator may deem necessary in existing law relative to provisions of the Act pertaining to the use of a registered pesticide in a manner inconsistent with its labeling. The report shall be submitted as soon as practicable, but not later than six months after the date of enactment of this Act.

(c) The Administrator shall submit an updated study examining the problems of minor uses of pesticides not specifically permitted by labeling. The Administrator shall complete this study and submit a report setting forth the findings of the study and recommendations for the implementation of these findings to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, not later than nine months after the date of enactment of this Act.

EFFECTIVE DATES

SEC. 28. Section 4 of the Federal Environmental Pesticide Control Act of 1972 is amended by—

(1) in subsection (b), striking out the colon immediately after the second "thereunder" and all that follows down through the end of the subsection and substituting in lieu thereof a period;

(2) in subsection (c), striking out paragraph (2), and redesignating paragraphs (3), (4), and (5) as (2), (3), and (4), respectively; and

(3) in subsection (c)(3)(B), as redesignated, striking out "Within four years after the enactment of this Act each" and inserting in lieu thereof "Each".

SHORT TITLE

SEC. 29. This Act may be cited as the "Federal Pesticide Act of 1978".

And the House agree to the same.

THOMAS S. FOLEY,
E DE LA GARZA,
GEORGE E. BROWN, JR.,
IKE SKELTON,
JOHN B. BRECKINRIDGE,
JACK HIGHTOWER,
GLENN ENGLISH,
FLOYD FITHIAN,
JOHN W. JENRETTE, JR.,
RAY THORNTON,
JOSEPH S. AMMERMAN,
BILL WAMPLER,
CHARLES THONE,
MARGARET M. HECKLER,
CHUCK GRASSLEY,
RON MARLENEE,
*Managers on the Part of the House.*

HERMAN E. TALMADGE,
JAMES O. EASTLAND,
GEORGE MCGOVERN,
DICK STONE,
PATRICK LEAHY,
BOB DOLE,
S. I. HAYAKAWA,
DICK LUGAR,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1678) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report. The differences between the Senate bill and the House amendment and the substitute agreed to in the conference are noted in the following outline, except for conforming, clarifying, and technical changes:

1. USE INCONSISTENT WITH LABELING

A. The *Senate* bill provides that the term "to use any registered pesticide in a manner inconsistent with its labeling" means to use any registered pesticide in a manner not permitted by labeling, with several listed exceptions.

The *House* amendment provides that the term means to use any registered pesticide in a manner not permitted by the labeling, *or not authorized by the Administrator of the Environmental Protection Agency, or not authorized by a State under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, with several listed exceptions. [Section 24(c) of FIFRA authorizes States to register pesticides formulated for distribution and use within that State to meet special local needs.]

The *conference* substitute adopts the *House* provision with a modification to make clear that the term "to use any registered pesticide in a manner inconsistent with its labeling" does not include any use of a pesticide in conformance with section 5, 18, or 24 of FIFRA, or any use in a manner that the Administrator determines consistent with the purposes of FIFRA. Such determination by the Administrator may be made by regulation or by authorization in any other manner the Administrator may deem appropriate.

B. The *Senate* bill provides that the term "to use any registered pesticide in a manner inconsistent with its labeling" does not include, among other things, application of a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling.

The *House* amendment provides that the term does not include application of a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling *unless the Administrator has required that the label specifically state that the pesticide may be used only for the pests specified on the label after a determination that use against other pests would cause an unreasonable adverse effect on the environment.*

The *conference* substitute adopts the *House* provision.

C. The *Senate* bill provides that the term "to use any registered pesticide in a manner inconsistent with its labeling" does not include, among other things, "mixing a pesticide with a fertilizer not prohibited by the labeling".

The *House* amendment provides, instead, that the term does not include "mixing a pesticide or *pesticides* with a fertilizer *when such mixture* is not prohibited by the labeling".

The *conference* substitute adopts the *House* provision.

2. USE AT A DILUTION LESS THAN LABEL DOSAGE

The *House* amendment provides that prior to March 31, 1978, the use of a pesticide for agricultural and forestry purposes at a dilution less than label dosage (i.e., a stronger concentration than that specified on the label) will not be deemed a use inconsistent with the label. After March 31, 1978, no such use will be deemed inconsistent with the label unless and until the Administrator has

issued a regulation in accordance with FIFRA that specifically requires the use of definite amounts of dilution.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification that provides that after March 31, 1979, the use of a pesticide for agricultural or forestry purposes at a dilution less than label dosage will not be deemed to be a use inconsistent with the labeling unless before or after such date the Administrator issues a regulation or advisory opinion consistent with the study of pesticide application methods provided in section 27(b) of the bill, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.

It is the intent of the *conferees* that articles designated as general use pesticides may be used at a lower dilution than that specified on the labeling unless such lower dilution is prohibited by the labeling or regulation or advisory opinion of the Administrator referred to above. While it would obviously be dangerous to permit more concentrated solutions of restricted use pesticides to be used, the *conferees* recognize the the need to apply the standard of use inconsistent with the labeling in a commonsense manner. Thus, for example, the use of pesticide solutions in lower amounts for aerial spraying, when determined to be safe, should be permitted.

3. STUDY OF PESTICIDE APPLICATION METHODS

The *House* amendment requires the Administrator, in cooperation with the Secretary of Agriculture and after consultation with appropriate State officials, to conduct a study of methods of pesticide application, including ultra-low-volume methods of application. It also directs the Administrator to make recommendations to the agriculture committees of Congress for changes in existing law that the Administrator may deem necessary relative to provisions in FIFRA pertaining to the use of a pesticide in a manner inconsistent with its labeling. The report must be submitted as soon as practicable, but not later than 6 months after the date of enactment of the bill.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

4. STATEMENT IN SUPPORT OF REGISTRATION

The *Senate* bill retains existing law, which requires applicants for registration of a pesticide to file with the Administrator a statement that includes, if requested by the Administrator, a full description of tests made and the results thereof on which claims for the pesticide are based.

The *House* amendment also retains this provision, but, in addition, provides that, as an alternative to describing tests made and results thereof, the applicant may cite data (1) that appear in the public literature or (2) that previously had been submitted to the Administrator by the original data submitter if the exclusive use and data compensation provisions are met.

The *conference* substitute adopts the *House* provision.

5. USE OF APPLICANT'S DATA

A. The *Senate* bill provides that restrictions on the use by an applicant for registration of a pesticide of another applicant's data will apply to data *generated, collected, or developed by, or at the expense of, and originally submitted in support of* an application by, the original applicant

The *House* amendment provides that the restrictions will apply to data *submitted* by the original data submitter.

The *conference* substitute adopts the *House* provision. The *conferees* intend that the exclusive use and data compensation provisions of FIFRA should apply only for those data submitters who are entitled to exclusive use or compensation, either because they generated the data, paid for its generation, or otherwise have legal ownership of the data.

B. The *Senate* bill provides that the restrictions on use will apply to data orginally submitted in support of an application for registration.

The *House* amendment contains the same provision, but also provides that the restrictions will apply to data submitted to support an application for an experimental use permit or to satisfy a request by the Administrator.

The *Senate* bill deletes the provision in existing law with respect to compensation for use of another applicant's data submitted to the Administrator on or after January 1, 1970, and provides instead, that no data may, without the written permission of the original data submitter, be considered by the Administrator in support of another person's application for registration within the 7-year period commencing on the date the data were first submitted to the Administrator, unless the applicant submits an offer to compensate the original data submitter for use of the data.

The *House* amendment also deletes provisions of existing law on data compensation and provides, instead, that data first submitted to the Administrator after January 1, 1970, may not, without the written permission of the original data submitter, be considered by the Administrator to support an application by another person with the following exceptions:

(1) In the case of data originally submitted to support an application for an experimental use permit or for registration of a new pesticide product, the Administrator may consider the data to support another person's application for registration after passage of a period of 5 years following the date the Administrator first issues a registration, to the extent the person has complied with the data compensation requirements.

(2) In the case of data submitted in support of an application for an amendment adding a new use or uses to an existing registration, and that pertains solely to such new use, the Administrator may consider such data in support of another person's application for registration after passage of a period of 5 years following the date the Administrator first registered the pesticide (and not 5 years after the date the Administrator registered the new use under this clause), to the extent the person has complied with the data compensation requirements.

(3) In the case of data requested by the Administrator and first submitted to support or maintain in effect an existing registration or to support reregistration, the Administrator may consider the data to support another person's application for registration after passage of a period of 5 years following the date of submission, to the extent the person has complied with the data compensation requirements.

The *House* amendment provides that—during the 5-year period commencing immediately upon the expiration of a period of exclusive use for an item of data—the Administrator may, without the permission of the original data submitter, consider such item of data in support of an application for registration only if the applicant has submitted to the Administrator an offer to compensate the original data submitter for the use of such data.

The *House* amendment specifically provides that after expiration of any period of exclusive use and any period for which compensation is required for the use of an item of data, the Administrator may consider such item of data in support of an application for registration by any other applicant without the permission of the original data submitter and without an offer having been received to compensate the original data submitter for the use of such data.

The *conference* substitute provides that—

(1) all test data submitted after December 31, 1969, will be compensable for a period of 15 years from the date the data are submitted;

(2) in the case of pesticides registered after the date of enactment of this provision, there will be a period of exclusive use for data submitted in support of the registration of a product containing a new active ingredient running for 10 years from the date the product is registered, except that there will be no exclusive use for defensive data; and

(3) there will be a period of exclusive use for data submitted in support of the new use registration of a product equal to the time of exclusivity remaining under any 10-year exclusive use period of the product.

The *conferees* intend that the term "defensive data" as used in the *conference* substitute means any data or information relating to a pesticide registered prior to the date of enactment of the *conference* substitute and submitted to the Administrator as required to support the continued registration of such a pesticide, or that concern an active ingredient in such a pesticide and are required by the Administrator when considering registration actions involving that ingredient. Therefore, data that concern an active ingredient that is contained in a pesticide registered prior to the date of enactment of the *conference* substitute are defensive data when they are submitted in connection with a new product or new use registration or in any other application or submission and, in each case, they relate only to that active ingredient.

Similarly, the *conferees* intend that the term "defensive data" also includes supplemental data (other than data submitted to satisfy the terms of a conditional registration and otherwise entitled to exclusive use) that support the continued registration of a pesticide first registered after the date of enactment of the *conference* substitute.

When data supporting the registration of a pesticide first registered after the date of enactment of the *conference* substitute that are given exclusive use protection under section 3(c)(1)(D)(i) of FIFRA are used within the 10-year period of exclusive use to support the registration of a different product, such data shall continue to have exclusive use protection for the balance of the 10-year period. If such data are used to support the registration of a different product after the expiration of the 10-year period of exclusive use, such data shall not be eligible for any additional period of exclusive use.

Data that concern the unique characteristics of several pesticide ingredients in combination would not be considered defensive data if submitted in support of the initial registration of the combination product. Such data or data supporting additional uses of the combination product would be eligible for exclusive use treatment to the extent otherwise provided by the *conference* substitute.

Whenever the Administrator imposes a new data requirement on any applicant that is also applicable to other pesticides, he shall do so by modifying the guidelines promulgated under section 3(c)(2) of FIFRA.

Data or information submitted to support a conditional registration under section 3(c)(7) of FIFRA are entitled to whatever exclusive use or compensation that would apply to data supporting a registration under section 3(c)(5).

Data submitted in support of a request for an experimental use permit for a pesticide containing a new active ingredient registered after the date of enactment of the bill or a new use for such pesticide will be considered as data to support the pending registration of such pesticide or new use.

Accordingly, such data will not be available to other applicants without the consent of the original data submitter for a period of 10 years from the date the product is initially registered.

ARBITRATION ON DATA COMPENSATION

A. The *Senate* bill provides that, in the event of arbitration to determine the terms and amount of compensation for use of another applicant's data, the findings and determination of the arbitrator shall be *binding and conclusive.*

The *House* amendment provides that the findings and determination of the arbitrator shall be *binding and not subject to further appeal.*

The *conference* substitute adopts the *House* provision with a modification to provide that the findings and determination of the arbitrator will be final and conclusive, and no official or court of the United States will have power or jurisdiction to review any such findings and determination, except for fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or the arbitrator where there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, or other misconduct.

B. The *Senate* bill provides that the Administrator must furnish notice of intent to take action in response to failure by a person to reach agreement on compensation or to arbitrate, and allow 15 days for the affected person to respond.

The *House* amendment contains the same provision but requires that such notice be *in writing and by certified mail* and allows 15 days *from the date of furnishing the notice* for the affected person to respond.

The *conference* substitute adopts the *House* provision with a modification to provide that the 15-day period for response to a notice of intent to take action will begin on the date of *delivery* of the written notice.

7. ADDITIONAL DATA TO SUPPORT EXISTING REGISTRATIONS—CANCELLATION

The *Senate* bill provides that if the Administrator determines that a registrant (1) has failed to take appropriate steps to secure additional data to support an existing registration as required by the Administrator, or (2) with respect to any joint data development arrangement among the registrants of a pesticide, has failed to participate in a procedure for reaching agreement on the terms of the arrangement or in an arbitration proceeding, or (3) has failed to comply with the terms of the arrangement or an arbitration decision on the terms of the arrangement, the Administrator must cancel the registrant's registration of the pesticide for which additional data is required. This cancellation is to be made without further hearing, except that the Administrator must first furnish the affected person notice of intent to cancel and allow 15 days for such person to respond.

The *House* amendment contains the same provision requiring cancellation of the registration, but prescribes a different procedure for cancellation. The cancellation is to be made in accordance with section 6(b) of FIFRA.

The *conference* substitute authorizes the Administrator to enforce a defensive data requirement, or compliance with the terms of an agreement or arbitration decision concerning a joint data development arrangement, by instituting a procedure to suspend the registrant's registration until such time as the data are received or compliance obtained.

Any suspension proposed under this provision will become final and effective at the end of 30 days from receipt by the registrant of a notice of intent to suspend, unless during that time a request for hearing is made by a person adversely affected by the notice or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend. If a hearing is requested, a hearing will be conducted pursuant to section 6(d) of FIFRA. The only matters for resolution at that hearing will be whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend concerning the pesticide for which additional data is required, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with FIFRA. If a hearing is held, a decision after completion of such hearing will be final. The hearing will be held and a determination made within 75 days after receipt of a request for such hearing. Any registration suspended under this provision will be reinstated upon the Administrator's determination that the registrant has complied fully with the requirements that served as a basis for the suspension of the registration.

The *Conferees* are concerned that in certain instances some registrants may fail to cooperate with other registrants in agreeing "to develop jointly, or share in the cost of developing", data to maintain in effect a registration. The *conferees* intend that certain registrants should not be permitted to "freeze-out" other registrants by refusing to agree to develop jointly or share in the cost of developing such data, and that no registrant should be permitted to obtain windfalls from delaying tactics employed in entering into such agreements. However, nothing in FIFRA prevents any single registrant from developing such data independently.

8. SIMPLIFIED REGISTRATION PROCEDURES

The *Senate* bill provides that the Administrator must by regulation prescribe simplified procedures for registration of pesticides.

The *House* amendment contains the same provision, but further requires that the regulations be issued within 9 months after the date of enactment of the bill.

The *conference* substitute adopts the *House* provision. The *conferees* do not intend that the simplified registration procedures (or the regulations issued under section 3(c)(2)(C) of FIFRA) negate rights otherwise enforceable under section 3(c)(1)(D) of FIFRA.

9. EXEMPTION FROM REQUIREMENTS FOR SUBMISSION OF DATA

The *Senate* bill provides that no applicant for registration who proposes to purchase a *registered pesticide* from another producer in order to formulate the purchased pesticide into an end-use product shall be required to (i) submit data pertaining to the safety of the purchased product or (ii) offer to pay reasonable compensation otherwise required for the use of such data.

The *House* amendment contains a similar provision. It provides that no applicant for registration of a pesticide who proposes to purchase a registered *basic pest control chemical* from another producer in order to formulate the purchased pesticide into an end-use product shall be required to (i) submit *or cite data* pertaining to the safety of the *basic pest control chemical as opposed to the safety of the formulated pesticide,* or (ii) offer to pay reasonable compensation otherwise required for the use of such data. The term "basic pest control chemical" is defined to mean a pesticide that is not intended to be applied for pest control purposes without further formulation, but is intended to be used in producing a formulated pesticide; and the term "formulated pesticide" is defined to mean a pesticide that is intended to be applied for pest control purposes without further mixing or formulation, or after mixing with water or other dilutant by the applicator.

The *conference* substitute adopts the *Senate* provision with a modification to permit citation of data as well as submission of data.

10. WAIVER OF DATA REQUIREMENTS PERTAINING TO EFFICACY

The *House* amendment provides that, if a pesticide is found to be efficacious by any State in connection with the registration by that State of a pesticide formulated to meet special local needs, a presumption is established that the Administrator shall waive data requirements pertaining to efficacy for use of the pesticide in such State.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification to clarify that if the Administrator waives data requirements pertaining to efficacy, the Administrator has the discretion to register the pesticide without determining that the pesticide's composition is such as to warrant proposed claims of efficacy.

In those instances in which the efficacy of a pesticide cannot be determined without submission of data, the *conferees* consider that this provision authorizes the Administrator to waive review of efficacy data on such pesticides provided that test protocols and data requirements are established or approved by the Administrator, data from a reliable testing facility that supports the application for registration are submitted, and the applicant provides a certified summary stating that the product passes the required tests for efficacy.

11. CONDITIONAL REGISTRATION

A. The *Senate* bill authorizes the Administrator to conditionally register or register products in certain situation, even though certain of the data that are required for complete registration or reregistration have not yet been generated, or, if on file with the Administrator, have not yet been reviewed for validity or sufficiency. Three kinds of conditional registrations would be authorized: conditional registration of pesticides identical or substantially similar to currently registered pesticides; conditional amendments to current registrations to add new uses; and conditional registration of pesticides containing active ingredients not contained in any currently registered pesticide.

The *House* amendment contains the same provisions, but, in addition, authorizes conditional registration, subject to specified conditions, if—with respect to pesticides identical or substantially similar to currently registered pesticides and proposal amendments to current registrations to add new uses—the applicant is unable to submit an item of data because it is an item of data to which the exclusive use or compensation requirements apply.

The *conference* substitute adopts the *Senate* provision.

B. The *Senate* bill prohibits the Administrator from granting conditional registration of a pesticide for additional uses, if—

(1) the Administrator has issued a notice that the pesticide, or any of its ingredients, meets or exceeds risk criteria related to human dietary exposure, and during the pendency of any risk-benefit evaluation initiated by the notice; and

(2) the additional use involves a minor food or feed crop and the Administrator determines that there is available an effective alternative pesticide that does not meet or exceed such risk criteria.

The *House* amendment contains the same provision, but also requires the concurrence of the Secretary of Agriculture that there is an effective alternative pesticide available.

The *conference* substitute adopts the *House* provision.

C. The *Senate* bill provides that the Administrator may conditionally register a pesticide containing an active ingredient not contained in any currently registered pesticide, subject to certain conditions: *Provided,* That the Administrator may grant such registration only if the Administrator determines that (1) use of the pesticide dur-

ing such period will not cause any unreasonable adverse effect on the environment, *and* (2) *use of the pesticide is required in the public interest.*

The *House* amendment contains the same provision, except that it does not require the Administrator's determination that the use of the pesticide is in the public interest.

The *conference* substitute adopts the *Senate* provision with a modification providing for the Administrator to determine as a condition to granting the registration that use of the pesticide is in the public interest and not, as in the *Senate* provision, *required* in the public interest.

The *conferees* have agreed to the inclusion of new sections 3(c)(7)(A), (B), and (C) in FIFRA to authorize the Administrator to register pesticides conditionally on a case-by-case basis. This authorization is intended to apply, with respect to conditional registrations of pesticides containing new ingredients, to situations, among others, where such a pesticide may be conditionally registered for a period sufficient to obtain the data required by the Administrator.

12. INTERIM ADMINISTRATIVE REVIEW

The *House* amendment provides that the Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses (a rebuttable presumption against registration (RPAR)) prior to initiating a formal action to cancel, suspend, or deny registration of such pesticide, required under FIFRA, unless such interim administrative process is based on a validated test raising prudent concerns of unreasonable adverse risk to man or to the environment.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification providing that the interim administrative review process must be based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment and that notice of the definitions of such test and significant evidence will be published by the Administrator in the Federal Register.

The Administrator shall insure that pesticides shall be subject to the RPAR process only on the basis of a validated test or other significant evidence (and not on the basis of unsubstantiated claims), that the term "validated test" be defined as a test conducted and evaluated in a manner consistent with accepted scientific procedures, and that the term "other significant evidence" be defined as evidence that relates to the use of a pesticide and their adverse risk to man or to the environment. It is the intent of the *conferees* that "other significant evidence" of adverse risk means factually significant information and is not to include evidence based only on misuse of the pesticide.

Under the *conference* substitute, the Administrator is directed to notify in writing the registrant of a pesticide product under special review of the exact scope and nature of any alleged unreasonable adverse effects to human health or the environment, prior to initiating an RPAR process. Such notification will be by private communication and afford the registrant a reasonable opportunity to correct or clarify through the submission of data any such risk associated with its pesticide product. This in turn could obviate the need for an RPAR to issue. This notification process will furnish a greater degree of protection for the property rights of pesticide registrants and ameliorate the indictment-like characteristics of the RPAR process.

Human exposure to pesticides through any medium or pathway is a central issue in evaluating the unreasonable adverse effects of pesticide products. Where this issue can be resolved without an RPAR being initialed, it shall be.

To avoid the time-consuming RPAR process, the Administrator is therefore directed to establish suitable scientific protocols for the development of human exposure data; to work cooperatively with the registrants in the assembling and collection of such data; and then to evaluate and weigh such data prior to initiating an RPAR process. If humans or their environment are not at risk or the potential for exposure is minimal, the Administrator is directed to forego the RPAR process and proceed with the reregistration of the pesticide product.

13. CLASSIFICATION PRIOR TO REREGISTRATION

The *House* amendment provides that, if the Administrator determines to change a pesticide from general to restricted use, the Administrator shall notify the registrant at least *60 days* before making the change.

The *Senate* bill continues existing law, under which a registrant in such circumstances must be given at least *30 days* notice.

The *conference* substitute requires that the registrant receive *45 days* notice of a proposed change in classification of a pesticide from general use to restricted use.

14. CHANGE IN CLASSIFICATION FROM RESTRICTED USE TO GENERAL USE

The *House* amendment provides that a registrant of a pesticide with one or more uses classified for restricted use may petition the Administrator to change any such classification from restricted use to general use with the requirement that the petition establish that reclassification would not cause unreasonable adverse effects on the environment. It also requires that the Administrator act upon the petition within 60 days and, in case the petition is denied, provide the registrant an explanation of the denial. It also provides that any denial of the petition is subject to judicial review under section 16 of FIFRA.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a technical amendment authorizing the Administrator to classify pesticide uses by regulation on the initial classification.

15. AUTHORITY OF THE ADMINISTRATOR TO CERTIFY APPLICATORS

A. The *Senate* bill requires the Administrator, in consultation with the Governor of the State, to conduct a program for the certification of applicators of pesticides in any State for which a State plan for applicator certification had not been approved by the Administrator by *October 20, 1977.*

The *House* amendment contains the same provision, but requires the Administrator to conduct the program *only if it is practicable* for the Administrator to do so, and if the State plan had not been approved by *February 20, 1978.*

The *conference* substitute adopts the *Senate* provision authorizing the Administrator to certify applicators in any State without an approved plan with a modification deleting the cutoff date.

B. The *Senate* bill provides that prior to implementation of any Federal certification program, the Administrator must publish in the Federal Register, for review and comment, a summary of the Federal plan, make copies of the plan generally available in the State, and hold public hearings within the State if requested by the Governor.

The *House* amendment contains no comparable provision.

The *conference* substitute adopts the *Senate* provision.

C. The *House* amendment provides that the Federal certification program must conform to requirements for State plans for applicator certification imposed under the provisions of section 4(a)(2) of FIFRA and must not require the private applicator to take any examination to establish competency in the use of pesticides.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

16. FEDERAL COST SHARING

The *House* amendment requires, effective with the fiscal year beginning October 1, 1978, that the Administrator share with each State on an equal basis the cost to that State of conducting an applicator certification program.

The *Senate* bill contains no comparable provision.

The *conference* substitute amends section 23 of FIFRA to assist States in developing and administering State programs, and Indian tribes entering into cooperative agreements, for the training and certification of applicators consistent with standards prescribed by the Administrator. The *conference* substitute provides that effective with the fiscal year beginning October 1, 1978, there are authorized to be appropriated annually such funds as may be necessary for the Administrator to provide through cooperative agreements an amount equal to 50 percent of the anticipated cost to each State and Indian tribe, as agreed to under such cooperative agreement, of conducting training and certification programs. If funds sufficient to pay 50 percent of the costs for any year are not appropriated, the share of each State and Indian tribe will be reduced in a like proportion in allocating available funds.

17. ALTERNATIVE TO CANCELLATION

The *Senate* bill amends existing law with respect to cancellation of registrations by providing that, in taking final action to cancel or change the classification of a pesticide, the Administrator *may* consider restricting a pesticide's use or uses as an alternative to cancellation.

The *House* amendment provides that the Administrator *shall* consider restricting a pesticide's use or uses as an alternative to cancellation and fully explain the reasons for such restrictions.

The *conference* substitute adopts the *House* provision.

18. TRADE SECRETS—INFORMATION AVAILABLE FOR DISCLOSURE

A. The *Senate* bill provides that, with certain exceptions, all information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of the pesticide in the environment, will be available for disclosure to the public.

The *House* amendment contains the same provision, but adds examples of data on the behavior of pesticides in the environment that will be disclosed, to include data on safety to fish and wildlife, humans and mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism.

The *conference* substitute adopts the *House* provision.

B. The *House* amendment specifically provides that such data as are authorized for release to the public, if used for any registration purpose, will be subject to the exclusive use and compensation provisions added to existing law by the bill.

The *Senate* bill does not add such specific provision to FIFRA. However, the provisions in FIFRA dealing with data compensation, as amended by the *Senate* bill, do not exclude information released to the public from the requirement for compensation.

The *conference* substitute adopts the *House* provision.

19. TRADE SECRETS—PROCEDURE FOR RELEASE OF CERTAIN INFORMATION

A. Both the *Senate* bill and the *House* amendment provide that the authority to make information concerning tests and experiments performed on or with pesticides, their ingredients, impurities, and degradation products, the effects of pesticides on organisms, and the behavior of pesticides in the environment available to the public does not authorize the disclosure of any information that—

(1) discloses manufacturing or quality control processes,

(2) discloses the details of any methods for analyzing the quantity of deliberately added inert ingredients of pesticides, or

(3) discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide.

The *House* amendment further provides that, if the Administrator proposes to disclose such information, the Administrator must notify, in writing and by certified mail, the submitter of information of the intent to release the information. The information may not be released, without the submitter's consent, until 30 days after notice is given. However, where the Administrator finds that the disclosure of such information is necessary to avoid or lessen an imminent and substantial risk of injury to the public health, he may set such shorter period of notice (but not less than 10 days) and use such method of notice as he finds appropriate.

The *Senate* bill contains no comparable provision requiring notification and waiting periods prior to release of such information.

The *conference* substitute adopts the *House* provision.

B. The *Senate* bill requires notification and a 30-day waiting period with respect to the disclosure at a public proceeding, if necessary in the public interest, of trade secret information concerning production, distribution, sale, or inventories of a pesticide.

The *House* amendment contains the same provision, but provides for a shorter waiting period, of not less than 10 days, if the Administrator finds that disclosure is necessary to avoid or lessen an imminent and substantial risk of injury to the public health.

The *conference* substitute adopts the *House* provision.

C. The *House* amendment further provides that during the waiting period for the release of (1) manufacturing and ingredient information and (2) information concerning production, distribution, sale, or inventories of a pesticide, any data submitter may institute an action in an appropriate Federal district court to enjoin or limit the proposed disclosure. The court is required to give expedited consideration to any such action and may enjoin disclosure or limit the disclosure or the parties to whom disclosure is made to the extent that—

(1) in the case of the manufacturing and ingredient information, the proposed disclosure is not required to protect against unreasonable risk of injury to health or the environment; or

(2) in the case of information concerning production, distribution, sale, or inventories of a pesticide otherwise entitled to confidential treatment, the public interest in availability of the information in the public proceeding does not outweigh the interests in preserving the information's confidentiality.

The *Senate* bill contains no comparable provision.

The *Conference* substitute adopts the *House* provision.

20. TRADE SECRETS—DISCLOSURE TO CONTRACTORS

A. The *Senate* bill authorizes the Administrator to disclose to contractors trade secret or commercial or financial information otherwise protected from disclosure under section 10(b) of FIFRA.

The *House* ammendment authorizes the Administrator to disclose to contractors information that is exempt from disclosure under the Freedom of Information Act as trade secrets or as commercial or financial information obtained from a person and that is privileged or confidential.

The *conference* substitute adopts the *Senate* provision.

B. The *Senate* bill provides that such disclosure may be made to contractors with the United States and employees of such contractors if, in the opinion of the Administrator, such disclosure is necessary for the satisfactory performance by the contractor of work under the contract in connection with FIFRA and under such conditions as the Administrator may specify.

The *House* amendment provides that such disclosure may be made to persons other than officers or employees of the Environmental Protection Agency if the Administrator determines that the person requires the information in connection with an activity (1) that is undertaken under contract with the Administrator, (2) that relates to the administration of FIFRA, and (3) with respect to which the Administrator (or an officer or employee of the agency) is not prohibited from using such information. The Administrator is required to ensure that persons receiving such information take such security precautions to protect the information as may be prescribed by regulation.

The *conference* substitute adopts the Senate provision with a modification to include the last sentence of the *House* provision requiring that persons receiving information take such security precautions to protect the information as prescribed by the Administrator in regulations.

21. TRADE SECRETS—PENALTY FOR DISCLOSURE BY FEDERAL EMPLOYEES

The *Senate* bill provides that the willful disclosure to unauthorized persons by present or former Government employees of information protected from disclosure by the trade secret provisions of FIFRA, as amended by the bill, with knowledge that the disclosure of the material is so prohibited, will be a misdemeanor, punishable by imprisonment for up to 1 year, or by a fine of not more than $5,000, or by both such imprisonment and fine.

The *House* amendment contains the same provision except that the maximum fine is set at $10,000.

The *conference* substitute adopts the *House* provision setting the maximum fine at $10,000 with a modification providing that nothing in FIFRA shall preempt any civil remedy under State or Federal law for wrongful disclosuse of trade secrets.

22. TRADE SECRETS—DISCLOSURE TO FOREIGN AND MULTINATIONAL PESTICIDE PRODUCERS

The *House* amendment provides that the Administrator may not knowingly disclose information submitted by an applicant or registrant under FIFRA to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States, or in addition to the United States, or to any other person who intends to deliver such data to such foreign or multinational business entity, unless consent is given for such disclosure. The Administrator must require written affirmation from persons inspecting data that they do not seek access thereto for the purpose of delivering it or offering it for sale to any such business or entity or its agents or employees, and that they will not purposefully deliver, or negligently cause such data to be delivered to such business or entity or its agents or employees. The provisions of 18 U.S.C. 1001—the false statement statute—apply to the affirmations signed by persons inspecting data. In addition, the Administrator must maintain records of persons to whom data are disclosed as well as their affiliations, and this information will be provided to the registrant.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification providing that the Administrator may disclose information to any person in connection with a public proceeding conducted under law or regulations, subject to restrictions on the availability of information that are provided elsewhere in FIFRA, which information is relevant to a determination by the Administrator with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.

23. ENFORCEMENT RESPONSIBILITY—PESTICIDE USE VIOLATIONS

A. The *Senate* bill requires the Administrator to delegate to the States the primary responsibility for the enforcement of the provisions of FIFRA relating to pesticide use violations.

The *House* amendment contains a similar requirement, but also provides that, in order to qualify for this enforcement responsibility, a State must—

(1) have a State plan for State certification of pesticide applicators that is approved by the Administrator; or

(2) have pesticide use laws and regulations no less stringent than those under FIFRA, adopt and implement adequate procedures for the enforcement of State pesticide use regulations, and keep required records and make required reports, as determined by the Administrator.

Also, the *House* amendment specifically provides that if a State does not have enforcement responsibility, because it neither has an approved State plan nor meets the other qualifications, the Administrator will have enforcement responsibility in the State.

The conference substitute adopts the *House* provision with modifications that would change the criteria in section 26(a)(1) of FIFRA, as added by the *House* amendment, concerning State laws and regulations that would qualify a State for primary enforcement responsibility. Rather than requiring the State laws and regulations to be as stringent as FIFRA, they would be required to be adequate for enforcement purposes. Under this provision, the Administrator could not require State laws and regulations to be more stringent than FIFRA. The *conference* substitute would also provide primary enforcement responsibility to those States that have entered into cooperative enforcement agreements with the Administrator under section 23 of FIFRA. In addition, with respect to other States, there would be a rapid evaluation, to be completed no later than 6 months after the date of enactment of the *conference* substitute, of State applicator certification and training plans approved by the Administrator under section 4 of FIFRA. Those States that are determined to have section 4 plans adequate for enforcement purposes would also have primary enforcement responsibility for pesticide use violations.

The Administrator may not use the cooperative agreements entered into under section 23 of FIFRA to obtain dual enforcement responsibility with the States.

B. The *House* amendment provides that effective with the 1979 fiscal year, the Administrator is to bear half the costs incurred by States in meeting their primary enforcement responsibilities for pesticide use violations.

The *Senate* bill contains no comparable provision.

The *conference* substitute deletes the *House* provision.

C. The *House* amendment requires the Administrator to refer complaints of pesticide

use violations to appropriate State officials in States exercising primary enforcement responsibility. If the State does not act on the complaint within 30 days, the Administrator will be authorized to commence action on the complaint.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification so that the Administrator could enforce FIFRA on the basis of any complaint or other information alleging or indicating a significant violation of the pesticide use provisions of FIFRA, in the absence of action by the State within 30 days after such matter has been referred to the State.

The *conference* substitute also clarifies provisions of the *Senate* bill and *House* amendment under which the Administrator shall notify the State that has primary enforcement responsibility if he determines that the State is not carrying out its responsibility, to include explicitly those cases where the State authority cannot carry out its responsibility due to lack of adequate legal authority. Under the *conference* substitute, if the State does not correct a deficiency in 90 days, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility.

D. The *Senate* bill provides that nothing in section 14 of the bill shall limit the Administrator's authority to enforce FIFRA in situations in which the Administrator determines that conditions exist that require action by the Administrator.

The *House* amendment contains a similar provision, but states that nothing in section 26 of FIFRA will limit the Administrator's overriding authority to enforce FIFRA and restricts such authority to *emergency* situations that require *immediate* action.

The *conference* substitute provides that neither new section 26 nor 27 of FIFRA will limit the authority of the Administrator to enforce FIFRA, when he determines that emergency conditions exist that require immediate action on the part of the Administrator and the State authority is unwilling or unable adequately to respond to the emergency.

24. USE OF COOPERATIVE STATE EXTENSION SERVICES

The *Senate* bill *authorizes*, but does not mandate, the Administrator to use the cooperative State extension services to inform and educate pesticide users about accepted uses for pesticides and other regulations under FIFRA.

The *House* amendment *requires* the Administrator to use the services of the cooperative State extension services for the conduct of this educational program.

The *conference* substitute adopts the *House* provision. Under this provision, the Administrator would not be prevented from using services of agencies other than the cooperative State extension services in conducting educational programs under FIFRA.

25. REGULATIONS UNDER FIFRA

A. The *House* amendment adds a new requirement that regulations prescribed by the Administrator to carry out FIFRA must take into account the differences in environmental risk and the appropriate data for evaluating such risk between agricultural and nonagricultural pesticides. (The Administrator is required, under existing law, to take into account "the difference in concept and usage between various classes of pesticides".)

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision. In order to accelerate the overall registration process, the Administrator should expedite efforts to establish appropriate safety, efficacy, and labeling guidelines, as well as appropriate hazard evaluation criteria to distinguish between agricultural and nonagricultural pesticides.

B. The *House* amendment requires the Administrator to take into account, in taking final action on regulations to carry out FIFRA, the effect of such final action on production and prices, of agricultural commodities, retail food prices, and otherwise on the agricultural economy. The Administrator is also required to publish simultaneously an analysis of this effect in the Federal Register.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

26. CONGRESSIONAL VETO OF REGULATIONS

The *House* amendment provides that no rule or regulation under FIFRA may become effective if (1) within 90 days of continuous session after the date of promulgation both Houses of Congress adopt a concurrent resolution of disapproval, or (2) within 60 calendar days of continuous session after the date of promulgation one House of Congress adopts such a concurrent resolution and such resolution is not disapproved within 30 calendar days of continuous session thereafter by the other House. If, within 60 calendar days of continuous session after the date of promulgation, no committee of either House has reported or been discharged from further consideration of a concurrent resolution of disapproval, the rule or regulation may go into effect immediately. The *House* amendment also provides that congressional inaction or rejection of a resolution of disapproval is not deemed an expression of approval.

The *Senate* bill contains no comparable provision.

The *conference* substitute deletes the *House* provision.

27. SCIENTIFIC ADVISORY PANEL

A. The *House* amendment requires the Administrator to solicit from the scientific advisory panel established under FIFRA comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses by Environmental Protection Agency personnel that lead to decisions by the Administrator. The comments, evaluations, and recommendations, and the Administrator's response, are to be published in the Federal Register.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

B. The *House* amendment authorizes the chairman of the scientific advisory panel to create temporary subpanels on specific projects to assist the full panel in expediting and preparing its evaluations, comments, and recommendations.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

C. The *Senate* bill extends the life of the scientific advisory panel to January 1, 1981.

The *House* amendment makes the panel permanent.

The *conference* substitute adopts the *Senate* provision with a modification extending the life of the scientific advisory panel to September 30, 1981.

D. The *House* amendment requires that the scientific advisory panel consult and coordinate its activities with the Science Advisory Board established under the Environmental Research, Development, and Demonstration Authorization Act of 1978.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

28. EFFECTIVE DATES

A. The *House* amendment extends from October 20, 1977, through April 20, 1978—

(1) the effective date for any requirements that may be imposed under FIFRA that a pesticide be registered for use only by a certified pesticide applicator; and

(2) the deadline for the completion of certification of pesticide applicators.

The *Senate* bill contains no comparable provision.

The *conference* substitute deletes the *House* provision.

B. The *House* amendment also eliminates the October 20, 1976, deadline for the submission to the Administrator of State plans for applicator certification programs.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

29. PROFESSIONAL OR COMMERCIAL APPLICATORS

A. The *Senate* bill amends FIFRA to establish "professional applicators" as a class of persons separate from "sellers" and 'distributors". (Professional applicators are now considered as sellers or distributors for the purposes of enforcing FIFRA.) Specifically, the *Senate* bill adds to section 2 of FIFRA a definition of "professional applicator" to mean an applicator who applies pesticides for hire: and amends other sections of FIFRA to make professional applicators subject to the unlawful acts provisions, the stop sale, use, or removal order provisions, and the criminal and civil penalties in FIFRA.

The *House* amendment contains no comparable provision, but adds to the definition of "certified applicator" in FIFRA a provision that any certified applicator who holds and applies pesticides only to provide pest control service without delivering unapplied pesticides to any person so served is not to be deemed a "seller" or "distributor". Commercial applicators would normally fit this exception. The *House* amendment also expands the definition of "commercial applicator" in FIFRA to include noncertified as well as certified applicators. This has the effect of expanding the coverage of the penalty provisions of FIFRA to all persons who apply restricted use pesticides commercially, not just applicators certified under FIFRA.

The *conference* substitute adopts the *House* provision with a modification in the sentence added to the definition of "certified applicator" in section 2(e)(1) of FIFRA to provide that any *applicator* who holds or applies *registered pesticides, or use dilutions of registered pesticides consistent with section 2(ee) of FIFRA*, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, is not a "seller" or "distributor" of pesticides under FIFRA.

This has the effect of providing that if there is a violation of FIFRA by an applicator who holds or applies an *unregistered pesticide*, or a use dilution of any such pesticide, solely to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, such person would be considered a distributor of pesticides and would be subject to the higher penalties set forth in sections 14(a)(1) and 14(b)(1) of FIFRA. Likewise, such persons who violate FIFRA while using pesticides registered for *restricted use* are considered commercial applicators and subject to the same higher penalties. Any such person who holds or applies a pesticide registered for *general use*, or a use dilution of a pesticide registered for general use, who violates FIFRA, would be subject to the lower penalties as set forth in sections 14(a)(2) and 14(b)(2) of FIFRA.

The *conference* substitute amends the civil penalties in section 14(b)(2). If there is a violation by a person who commercially applies a pesticide registered for general use, or use dilution of such pesticide, a civil penalty of up to $500 may be imposed for the first offense and up to $1,000 for each subsequent offense.

B. The *Senate* bill amends section 1(a) of FIFRA to authorize the Administrator, in any State where the Administrator conducts a certification program, to require professional applicators to maintain records and submit reports concerning professional applications of the pesticide as the Administrator may prescribe.

The *House* amendment, in States where the Administrator conducts a certification program, applies to commercial applicators the same recordkeeping and reporting requirements as the *Senate* bill imposes on professional applicators.

The *conference* substitute adopts the *House* provision.

C. The *Senate* bill amends sections 8(b) and 9(a) of FIFRA to permit the Administrator, in enforcing FIFRA, to inspect the books and records, and enter the premises, of professional applicators.

The *House* amendment in section 26(c) of FIFRA, as added by the bill provides that the Administrator does not have authority to inspect the books and records, and enter without a warrant the establishments, of commercial applicators under sections 8(b) and 9(a) of FIFRA, except when the Administrator, rather than the State, has primary enforcement authority with respect to the pesticide use provisions of FIFRA.

The *conference* substitute adopts the *House* provision with an amendment to section 26(c) of FIFRA to make clear that when the Administrator has primary enforcement authority, the Administrator may inspect the books and records and the establishments of applicators who apply pesticides or use dilutions of pesticides commercially, regardless of whether the pesticide is unregistered or registered for general use or restricted use. The *conference* substitute also makes clear that the pesticides held by such applicators that may be examined and sampled include pesticides mixed or developed by the applicator as well as unopened packages labeled by a registered producer. (This provision does not apply to private applicators.)

30. PESTICIDES AND DEVICES INTENDED FOR EXPORT

A. Both the *Senate* bill and the *House* amendment provide that pesticides, devices, and active ingredients used in producing pesticides, intended solely for export, will be subject to the provisions of section 2(q) of FIFRA, which, as amended by the bill, states that a pesticide is to be considered "misbranded" if any of the 12 misbranding situations described in section 2(q) occur.

The *Senate* bill applies all 12 of the misbranding situations in section 2(q) to these export items.

The *House* amendment, which is to become effective 180 days after date of enactment, applies only some of the misbranding situations to export items.

The misbranding situations covered by both the *Senate* bill and the *House* amendment are as follows:

(1) false representations on the label;

(2) the pesticide is an imitation of another pesticide;

(3) the label of the pesticide does not bear the registration number of the establishment in which it was produced;

(4) if the pesticide is not registered under FIFRA and intended for export, the label does not contain a conspicuous statement that the pesticide is not registered for use in the United States;

(5) the label does not contain an ingredient statement;

(6) the container does not bear a label providing the name and address of the producer, the name, brand, or trademark under which the pesticide is sold, the net weight or measure of the contents of the container, and the registration number assigned to the pesticide, except that the *House* amendment does not require inclusion on such label of the name, brand, or trademark, or the registration number; and

(7) if the pesticide is highly toxic, the label does not bear the skull and crossbones, and the word "poison" in red, and an antidote.

The *House* amendment does not include the following situations:

(8) the pesticide is not contained in a package conforming to the Administrator's standards (which are to be consistent with those established under the Poison Prevention Packaging Act);

(9) the statements on the pesticide's label required by FIFRA are not conspicuous and in terms as making them likely to be read and understood by the ordinary individual;

(10) the label does not contain directions for use;

(11) the label does not contain necessary warning or caution statements; and

(12) the label does not contain a statement of use classification ("general use" or "restricted use") under which the product is registered (except that in the case of a pesticide not registered under section 3 and intended for export both the *Senate* bill and *House* amendment provide as stated in item A (4) above).

The *conference* substitute adopts the *House* provision with a modification to include three of the "misbranding" situations included only in the *Senate* bill as follows:

(1) the statements on the pesticide's label required by FIFRA are not conspicuous and in terms as making them likely to be read and understood by the ordinary individual:

(2) the label does not contain necessary warning or caution statements; and

(3) the label does not contain a statement of use classification ("general use" or "restricted use") under which the pesticide is registered.

B. The *House* amendment adds a provision to FIFRA, effective 180 days after the date of enactment, requiring foreign purchasers of unregistered pesticides to sign, prior to export, a statement that they understand that the pesticide is not registered for use in the United States and cannot be sold in the United States under FIFRA. A copy of the statement must be transmitted to an appropriate official of the government of the importing country.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

C. The *House* amendment expands the notification required to be sent to governments of other countries of the cancellation or suspension of a pesticide registration to include, upon request (1) all information related to the cancellation or suspension, and (2) information on registered pesticides that might be used as a substitute for the canceled or suspended pesticide.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

31. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

The *Senate* bill authorizes appropriations to carry out FIFRA for fiscal year 1979. The appropriation is set at not to exceed $70 million.

The *House* amendment contains no comparable provision.

The *conference* substitute adopts the *Senate* provision.

32. STUDY OF MINOR USES OF PESTICIDES NOT SPECIFICALLY PERMITTED BY LABELING

The *House* amendment requires the Administrator to submit an updated study examining the problems of minor uses of pesticides not specifically permitted by labeling. Not later than 9 months after the date of enactment of the bill, the study is to be completed and submitted, with recommendations for the implementation of the findings, to the agriculture committees of Congress.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

33. REVISION OF THE TABLE OF CONTENTS

The *Senate* bill revises the table of contents of FIFRA.

The *House* amendment contains no comparable provision.

The *conference* substitute adopts the *Senate* provision with necessary conforming changes.

34. PROVISIONS RELATING TO "PESTS"

A. The *House* amendment adds a new section 28 to FIFRA requiring the Administrator, in coordination with the Secretary of Agriculture, to establish and maintain a list of pests in order of priority that need to be brought under control to assure improved agricultural production. The list is to be organized by agricultural product and geographic area. The Administrator is also required to coordinate and cooperate with the research and implementation programs of the Secretary of Agriculture to develop and improve the safe use and effectiveness of chemical, biological, and alternative methods of controlling pests that reduce the quality and economical production and distribution of agricultural products.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification to provide that the Administrator, in coordination with the Secretary of Agriculture, shall identify those pests that must be brought under control.

B. The *House* amendment amends the definition of "pest" to mean any form of plant or animal life, or virus, bacteria, or other microorganism that (1) is injurious to food or agricultural production, processing, storage, or transportation, or to health or the environment, and (2) the Administrator, after coordination with the Secretary of Agriculture, establishes as a pest under new section 28 (list of pests).

The *Senate* bill retains existing law under which the term "pest" means any such life form that is (1) injurious to health or the environment and (2) declared by the Administrator to be a pest.

The *conference* substitute deletes the *House* provision.

35. DEFINITION OF PRODUCER

The *House* amendment provides that the dilution by individuals of a formulated pesticide for their own use and according to the directions on registered labels will not of itself result in those individuals being included in the definition of "producer" of pesticides.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

36. EXPERIMENTAL USE PERMITS

A. The *House* amendment amends section 5 of FIFRA, which provides for the issuance of experimental use permits. Provisions are added to section 5 requiring the Administrator to review applications, and, not later than 90 days following receipt of an application and supporting data, either to issue the permit or notify the applicant that the application is being denied and supply the reasons for the denial. Also, provisions are added allowing an applicant to correct the application or request a waiver of conditions for the permit within 30 days of receipt of the Administrator's notification. Finally, the *House* amendment amends provisions of existing law that authorize issuance of an experimental use permit if the Administrator determines that the applicant needs the permit to obtain information necessary to register the pesticide, so as to make it clear that

an experimental use permit may be issued *only* if the Administrator makes such a determination.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification to extend from 90 days to 120 days the time for the Administrator to act on applications for experimental use permits.

B. The *House* amendment *requires* the Administrator, under such terms and conditions as the Administrator prescribes by regulation, to authorize States to issue experimental use permits for pesticides.

The *Senate* bill retains existing law under which this provision is permissive rather than mandatory.

The *conference* substitute adopts the *House* provision.

37. INSPECTION OF BOOKS AND RECORDS

The *House* amendment requires Environmental Protection Agency employees or officers, undertaking to inspect the books and records of establishments pursuant to section 8(b) FIFRA, to present to the owner, operator, or agent in charge of the establishment appropriate credentials and a written statement as to whether a violation of law is suspected. If no violation of law is suspected, an alternate and sufficient reason is to be given in writing for the inspection. Each inspection must be commenced and completed promptly.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

38. UNLAWFUL ACTS—SALE OF RESTRICTED USE PESTICIDES

The *House* amendment provides that the sale of a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator is not illegal.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision with a modification to provide that the sale of restricted use pesticides to uncertified persons may be made only "under regulations issued by the Administrator".

39. DISPOSAL OF PESTICIDES

The *House* amendment requires the Administrator to include specific provisions for the disposal of unused quantities of a pesticide in the notification of cancellation of any pesticide.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision. The *conferees* intend that costs for disposal of the canceled pesticides not be borne by the Federal Government.

40. PESTICIDE RESEARCH

The *House* amendment requires the Administrator to coordinate research necessary to carry out the purposes of FIFRA with the Secretary of Agriculture, who shall give priority to research to develop biologically integrated alternatives for pest control.

The *Senate* bill retains existing law requiring the Administrator to give priority to research to develop biologically integrated alternatives for pest control.

The *conference* substitute provides that the Administrator will be required to conduct research into integrated pest management in coordination with the Secretary of Agriculture. The *conferees* consider that integrated pest management is the balanced use of such measures, cultural, biological, and chemical, as are most appropriate to a particular situation in the light of careful study of all the factors involved.

41. MONITORING ACTIVITIES

The *House* amendment amends monitoring requirements in existing law to require the Administrator to establish procedures for monitoring man, animals, and their environment for incidental pesticide exposure, including procedures for quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and the identification of sources of contamination and their relationship to human and environmental effects.

The *Senate* bill contains no comparable provision.

The *conference* substitute deletes the *House* provision.

42. SOLICITATION OF COMMENTS

The *House* amendment requires the Administrator to solicit the views of the broad scientific community at an early stage of the Administrator's decisionmaking process in connection with any cancellation, suspension, or other action authorized under FIFRA.

The *Senate* bill contains no comparable provision.

The *conference* substitute deletes the *House* provision. Insofar as practicable and consistent with existing law, the *conferees* intend that the Administrator solicit the views of the scientific community at an early stage in the decisionmaking process. The *conferees* are of the opinion that the Environmental Protection Agency will be greatly aided by the wide range of scientific expertise that exists outside the Agency.

43. AUTHORITY OF STATES—PESTICIDES FORMULATED FOR DISTRIBUTION AND USE WITHIN A STATE

A. The *House* amendment modifies provisions of FIFRA that authorize the States to regulate the sale or use of pesticides and devices in the State, to restrict the authority to *federally registered* pesticides and devices.

The *Senate* bill contains no comparable provision.

The *conference* substitute adopts the *House* provision.

B. The *House* amendment changes the term "labeling" in section 24(b) of FIFRA to "label". The terms "labeling" and "label" are separately and differently defined in FIFRA.

The *Senate* bill contains no comparable provision.

The *conference* substitute deletes the *House* provision.

C. The *House* amendment repeals the condition in existing law that a State must be certified by the Administrator as capable of exercising adequate control over pesticides before the State can register pesticides formulated for distribution and use within the State to meet special local needs.

The *Senate* bill retains provisions of existing law.

The *conference* substitute provides in lieu of existing law that if the Administrator finds in accordance with standards set forth in regulations issued under section 25 of FIFRA that a State is not capable of exercising adequate controls to assure that such registration will be in accord with the purposes of FIFRA or has failed to exercise adequate controls, the Administrator may suspend the authority of the State to register pesticides until such time as the Administrator is satisfied that the State can and will exercise adequate controls. Prior to any such suspension, the Administrator will advise the State of the Administrator's intention to suspend and the reasons therefor and provide the State time to respond.

D. The *House* amendment provides that a State shall not be prohibited from registering ingredients or uses that are undergoing benefit-risk evaluation prior to a decision by the Administrator to cancel, suspend, or not to reregister. The *House* amendment also deletes provisions of existing law providing that distribution and use of a pesticide registered for special local needs within a State shall not be effective for more than 90 days if disapproved by the Administrator within that period.

The *Senate* bill contains no comparable provision.

The *conference* substitute provides that a registration issued by a State under section 24(c) of FIFRA will not be effective for more than 90 days if disapproved by the Administrator within that period. Prior to disapproval, the Administrator will advise the State of the Administrator's intention to disapprove and the reasons therefor, and provide the State time to respond.

The Administrator may not prohibit or disapprove a registration issued by a State on the basis of lack of essentiality of a pesticide, or if its composition and use patterns are similar to those of a federally registered pesticide. State registrations involving changed use patterns—changes from nonfood to food use, outdoor to indoor use, terrestrial to aquatic use, and nondomestic to domestic use—are considered by the *conferees* as not involving similar uses and thus subject to disapproval of the Administrator within a 90-day period. Other State registrations of federally registered pesticides will be considered as being similar in use and composition patterns to those of federally registered pesticides, except to the extent that the Administrator determines that they are not similar in accordance with standards that are set forth in regulations issued under section 25 of FIFRA after notice to the congressional agriculture committees, the United States Department of Agriculture, and the scientific advisory panel.

Notwithstanding the foregoing provisions, in no instance may a State issue a registration for a food or feed use unless there exists a tolerance or exemption under the Federal Food, Drug, and Cosmetic Act that permits the residues of the pesticide on the food or feed. If the Administrator determines that a registration issued by a State is inconsistent with the Federal Food, Drug, and Cosmetic Act, or the use of a pesticide under a registration issued by a State constitutes an imminent hazard, he may immediately disapprove the registration.

THOMAS S. FOLEY,
E DE LA GARZA,
GEORGE E. BROWN, Jr.,
IKE SKELTON,
JOHN B. BRECKINRIDGE,
JACK HIGHTOWER,
GLENN ENGLISH,
FLOYD FITHIAN,
JOHN W. JENRETTE, Jr.
RAY THORNTON,
JOSEPH S. AMMERMAN,
BILL WAMPLER,
CHARLES THONE,
MARGARET M. HECKLER,
CHUCK GRASSLEY,
RON MARLENEE,
*Managers on the Part of the House.*

HERMAN E. TALMADGE,
JAMES O. EASTLAND,
GEORGE McGOVERN,
DICK STONE,
PATRICK LEAHY,
BOB DOLE,
S. I. HAYAKAWA,
DICK LUGAR,
*Managers on the Part of the Senate.*

## PERMISSION FOR COMMITTEE ON THE JUDICIARY TO MEET TOMORROW AND THURSDAY DURING 5-MINUTE RULE

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may meet tomorrow and Thursday, September 13 and 14, 1978, notwithstanding the 5-minute rule.

The SPEAKER pro tempore. Is there

objection to the request of the gentleman from California?

Mr. ROUSSELOT. Mr. Speaker, I reserve the right to object.

Mr. Speaker, could the gentleman from California restate the necessity for meeting during the 5-minute rule when we have such important legislation before us on the floor tomorrow?

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from California.

Mr. DANIELSON. Mr. Speaker, we have a backup of several rather important bills in the Judiciary Committee and it is becoming impossible to meet the tight schedule.

Among them are the Federal Tort Claims Act amendments, the Olympic games bill, the Tris bill. That is three that occur to me as I stand here.

There seems to be no way that we are going to be able to consider these unless we are going to have a chance to meet during the 5-minute rule.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, why is that the Committee on the Judiciary has not been able to handle these bills prior to this time?

Mr. DANIELSON. Because we have not had the opportunity to meet and to go into these bills for a number of weeks.

My understanding is that I know that there has been other business considered by the committee, but these we have not been able to take up.

I will respond to any other questions. I thought I had answered the pending question.

Mr. BEARD of Tennessee. Mr. Speaker, further reserving the right to object, in other words we are talking about the possibility of three or so more bills that will be coming out of the Committee on the Judiciary, is that correct? I thought the Committee on Rules had closed up shop.

We have got CETA, we have got all these other bills. When on Earth are we going to get around to these?

Mr. DANIELSON. Will the gentleman yield?

Mr. BEARD of Tennessee. Yes, certainly.

Mr. DANIELSON. We have a few bills which seem to be of great importance to some of the Members, at least they have contacted me and have asked when we are going to move them out.

I know there was a little bit of noise on the floor when I mentioned the bills that had occurred to me that needed attention and perhaps the gentleman from Tennessee might not have heard them and might be interested in say the Tris bill involving the treatment of fabrics which has resulted in a number of textile mills being compelled to close down their production. Then there is the bill regarding the Olympic games. I am sure the gentleman knows that we are reorganizing the Olympic Games Committee. That is one of the bills, and there are others such as the Federal Tort Claims Act amendments, and there are others and, as I stand here, as I say, I do not remember all of them, but those are the three principal bills.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, and I am going to object, but I want to tell you in advance why I am going to object, Mr. Speaker, we were in session last night until 11:30 or later. We have a backlog, there are all sorts of discussions going on on the floor, there are Members here talking about adjournment on the 20th of October. I do not think any of these bills are of such character that they cannot wait until next year.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. Certainly I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I was wondering if the request were made that we sit until 12 o'clock noon in order that the committee might consider the Olympic games sports bill, so that would enable us perhaps to complete action on that bill.

I am convinced that we will never get through the whole list of bills on the agenda, but if the gentleman would make his request in that way, and if the gentleman from Ohio would not feel constrained to object, then I think we might be able to continue work of the Committee on the Judiciary until noon and yet be here for amendments on the civil service reform bill.

Mr. DANIELSON. Mr. Speaker, if the gentleman will yield further, I think I heard the request of the gentleman from Illinois (Mr. McCLORY), but I am not sure that I did. Was the request of the gentleman that I change my request that we be permitted to sit until 12 o'clock noon?

Mr. McCLORY. Yes.

Mr. DANIELSON. Then, Mr. Speaker, I would amend my request and ask unanimous consent that we be permitted to meet until 12 o'clock noon on tomorrow and Thursday.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, it is my understanding that the civil service reform bill will be up tomorrow morning. That was the order of the business as I understood it at about midnight last night when we left here on Monday. I have the greatest admiration for my hardworking friend and colleague, the gentleman from Illinois (Mr. McCLORY), but if that bill is going to come up tomorrow, I am constrained to object and I do object.

The SPEAKER pro tempore. The Chair will state that it takes 10 Members to object, and the objectors will have to remain standing until counted.

An insufficient number have arisen.

Therefore, the request is granted.

Mr. ASHBROOK. Mr. Speaker, I appeal the ruling of the Chair.

The SPEAKER pro tempore. The Chair will state that no appeal is in order in a matter of this kind.

## TRANSFER OF U.S. REAL PROPERTY TO DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3119) to transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency, and to consider this Senate bill in lieu of H.R. 13224, a similar bill, which is on the list of District of Columbia bills to be considered today, and I also ask unanimous consent that the Senate bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the requests of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in accordance with the provisions of this Act, the Mayor of the District of Columbia, consistent with the approval by the Council of the District of Columbia of the urban renewal plan requiring such action, is authorized and directed on behalf of the United States to transfer to the Redevelopment Land Agency all right, title, and interest of the United States in and to the following real property in the District of Columbia:

A tract of land known for the purposes of assessment and taxation as lot 803 in square 493 and described as follows:

Beginning for the same at a point in the west line of Fourth Street Southwest, 269.0 feet south of the south line of C Street Southwest, and running thence due south, with said west line of Fourth Street Southwest, 169.34 feet;

thence northwesterly 603.44 feet to the east line of Sixth Street Southwest;

thence, with said east line of Sixth Street Southwest due north 20.75 feet;

thence southeasterly 201.17 feet;

thence due east 374.0 feet to the point of beginning, containing 40,927.75 square feet, all as shown on a plat survey recorded in the Office of the Surveyor for the District of Columbia in survey book 18 at page 91.

SEC. 2. The Redevelopment Land Agency is hereby authorized in accordance with the District of Columbia Redevelopment Act of 1945 (D.C. Code, secs. 5–701 through 5–719), to lease or sell, as an entirety or parts thereof separately, to one or more redevelopment companies or other lessees or purchaser, such real property as may be transferred to such Agency under the authority of this Act.

SEC. 3. No transfer or donation of any interest in real property under the authority of this Act shall constitute a local grant-in-aid connection with any urban renewal project being undertaken with Federal assistance under title I of the Housing Act of 1949, as amended.

SEC. 4. As used in this Act, the terms "lessee", "purchaser", "real property", and "redevelopment company" shall have the respective meanings provided for such terms by section 3 of the District of Columbia Redevelopment Act of 1945 (D.C. Code, sec. 5–702).

## GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members

may be permitted to revise and extend their remarks on the Senate bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the bill authorizes the mayor to transfer title of a parcel of land adjacent to the Southwest Urban Renewal Project Area C to the D.C. Redevelopment Land Agency (RLA). The fee simple title is currently held by the United States.

The parcel, once an abandoned lot, was part of a larger parcel of land that was granted use by the United States to the surrounding railroads for work and storage areas in consideration for the exchange and transfer to the United States of certain lands then owned by the railroads. The railroads paid taxes to the District Government.

In view of the value of the land which the railroads transferred to the United States for the right to use the parcels in question, it was the opinion of the Government's appraisers that the value of the railroad's rights and interests in the parcels was equivalent to the value of the land had the legal title been held by the railroads.

The urban renewal plan for Southwest Project Area C requires that the RLA acquire these lands for commercial development. The RLA acquired the right and interests in the property from the railroads in 1970, but the United States still holds title. No development can occur until the United States transfers title to the District of Columbia.

The triangular-shaped property between 4th and 6th Streets SE., is surrounded by a public street on one side, a railroad on the second side, and an RLA parcel on the third side. The only appropriate use of the land is to develop it with the adjacent RLA parcel.

A development proposal for the parcel described and adjacent parcels includes an office building, parking facility, and motel for a cost of $40 to $50 million. Construction could commence this fall if the bill is passed.

In short, this is a pro forma transfer of title. The Federal Government has already received full value for its interests. The bill passed the House the last Congress by a unanimous vote.

Mr. Speaker, I yield to my distinguished colleague, the gentleman from Connecticut (Mr. McKINNEY), the ranking member of the committee.

Mr. McKINNEY. Mr. Speaker, I rise in support to S. 3119 and urge its adoption. S. 3119 involves transfer of bare legal title of a small triangular parcel of land in southwest Washington from the United States to the District of Columbia Redevelopment Land Agency. This land, and the land adjacent to it, was originally controlled by two railroad companies which subsequently sold the adjacent land and all rights and interest in the subject properties to the District of Columbia Redevelopment Land Agency.

The urban renewal plan for Southwest Project Area C calls for this land to be acquired by the RLA and sold or leased to private enterprise for development. However, without legal title to this particular piece of land this goal cannot be accomplished.

Because the land is of a triangular shape and is bordered by RLA property on one side, a sheer drop to the street on another side, and the railroad on the third side, the only appropriate way to use the land appears to be a use in conjunction with the other RLA property.

The District government testified that, given legal title, construction could begin almost immediately on this site. The planned development is to include motel facilities and office and parking space.

I would also assure my colleagues that transfer of title to the land would result in no costs to be incurred by either the District or Federal Governments. In fact, upon disposal, the city will receive from the private developer the full market value of the land, and the land will be put back on the city tax rolls.

● Mr. DIGGS. Mr. Speaker, the purpose of the bill (S. 3119)—which was requested by the mayor of the District of Columbia—is to direct the mayor to transfer title to certain real property in southwest Washington, between fourth and Sixth Streets, just north of the railway tracks, from the United States to the District of Columbia Redevelopment Land Agency (RLA). The RLA intends to sell or lease the land to a developer in accordance with the urban renewal plan for Southwest project area C.

Currently, a development proposal for the parcel described, and adjacent parcels, includes the building of a major office building, a parking facility, and a large motel, which is projected to cost between $40 and $50 million. A developer has been selected for this project, who advises that construction could commence on the project in the fall of 1978, depending upon the transfer of title to the parcel described in the bill.

The origin of this property goes back to the so-called "Union Station Acts" of Congress, approved on February 12, 1901 (31 Stat. 767) and on February 29, 1903 (32 Stat. 909), by which certain public streets in Southwest Washington were vacated and abandoned, and perpetual use of these areas was granted by the United States to the Philadelphia, Baltimore & Potomac Railroad Co., the Baltimore & Ohio Railroad Co., and the Terminal Co., in consideration for the exchange and transfer to the United States of certain lands in the District then owned by the railroads. When granting the uses referred to, the United States, however, retained title to the lands.

For many years, these lands were used by the railroads for such purposes as switch tracks, loading platforms, open air storage, truck-loading areas, and produce scales. During this time, the railroads paid taxes on these lands to the District of Columbia.

The RLA, under the urban renewal plan for Southwest Project Areas C, acquired the railroads' rights and interests in the subject property by negotiation in 1970 for $451,300. However, it is still necessary for the RLA to obtain the title to this property, now held by the United States.

When the RLA disposes of the land for private redevelopment, it will receive from the redeveloper the full fair market value of the land, thus compensating the government for the cost of acquiring the railroads' rights and interests. The property described in this bill is 41,000 square feet, and the property is adjacent to 145,000 square feet of property already held by the RLA.

Passage of S. 3119 by the Congress in order to enable transfer of title to the property in question is necessary, since it concerns property of the United States. While the Council of the District of Columbia has already approved an urban renewal plan which authorizes the RLA to dispose of the subject property (once title is acquired), the Council under section 602(c)(3) of the Home Rule Act is powerless to legislate as to property of the United States.

No expressions in opposition to the legislation have been received by the committee, at the hearings in the 94th and in the present Congress.

The departmental reports in support of the legislation are set forth in the committee report.

A similar bill (H.R. 9958) was passed by the House in the last Congress by a recorded vote of 341 to 0, but was not reached for action in the other body before adjournment.

The enactment of S. 3119 will involve no added costs to the Federal Government.●

Mr. DELLUMS. Mr. Speaker, I move the previous question on the Senate bill.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 354, nays 1, not voting 77, as follows:

[Roll No. 760]

YEAS—354

| | | |
|---|---|---|
| Abdnor | Badham | Boland |
| Akaka | Bafalis | Bolling |
| Alexander | Baldus | Bonior |
| Ambro | Baucus | Bonker |
| Anderson, Calif. | Bauman | Bowen |
| | Beard, Tenn. | Brademas |
| Anderson, Ill. | Bedell | Breckinridge |
| Andrews, N.C. | Beilenson | Brinkley |
| Andrews, N. Dak. | Benjamin | Brodhead |
| | Bennett | Brooks |
| Annunzio | Bevill | Broomfield |
| Applegate | Biaggi | Brown, Mich. |
| Archer | Bingham | Broyhill |
| Ashbrook | Blanchard | Buchanan |
| Aspin | Blouin | Burgener |
| AuCoin | Boggs | Burke, Mass. |

| | | |
|---|---|---|
| Burleson, Tex. | Heckler | Pattison |
| Burlison, Mo. | Hefner | Pease |
| Burton, John | Heftel | Pepper |
| Butler | Hightower | Perkins |
| Carney | Hillis | Pettis |
| Carr | Holland | Pickle |
| Carter | Hollenbeck | Pike |
| Cavanaugh | Holt | Poage |
| Cederberg | Horton | Pressler |
| Chappell | Howard | Preyer |
| Clausen, Don H. | Hughes | Price |
| Clay | Hyde | Pursell |
| Cleveland | Ichord | Quayle |
| Cohen | Jacobs | Quillen |
| Coleman | Jeffords | Rahall |
| Collins, Ill. | Jenkins | Railsback |
| Collins, Tex. | Jenrette | Rangel |
| Conable | Johnson, Calif. | Regula |
| Conte | Jones, N.C. | Reuss |
| Corcoran | Jones, Okla. | Rhodes |
| Corman | Jones, Tenn. | Rinaldo |
| Cornell | Jordan | Roberts |
| Cornwell | Kastenmeier | Robinson |
| Cotter | Kazen | Roe |
| Coughlin | Kemp | Rogers |
| Crane | Keys | Roncalio |
| Cunningham | Kildee | Rooney |
| Daniel, Dan | Kindness | Rose |
| Daniel, R. W. | Kostmayer | Rosenthal |
| Danielson | Krebs | Rousselot |
| Davis | Lagomarsino | Roybal |
| de la Garza | Latta | Runnels |
| Dellums | Le Fante | Russo |
| Dent | Leach | Ryan |
| Derrick | Lederer | Santini |
| Derwinski | Lent | Satterfield |
| Devine | Levitas | Sawyer |
| Dicks | Lloyd, Calif. | Schulze |
| Dingell | Lloyd, Tenn. | Sebelius |
| Dodd | Long, La. | Seiberling |
| Dornan | Lott | Sharp |
| Downey | Lujan | Shipley |
| Drinan | Luken | Shuster |
| Duncan, Oreg. | McClory | Sikes |
| Duncan, Tenn. | McCloskey | Simon |
| Early | McCormack | Sisk |
| Eckhardt | McDade | Skelton |
| Edgar | McDonald | Skubitz |
| Edwards, Ala. | McEwen | Slack |
| Edwards, Calif. | McFall | Smith, Iowa |
| Edwards, Okla. | McHugh | Smith, Nebr. |
| Eilberg | McKay | Snyder |
| Emery | McKinney | Solarz |
| English | Madigan | Spellman |
| Erlenborn | Maguire | Spence |
| Ertel | Mahon | Staggers |
| Evans, Colo. | Mann | Stangeland |
| Evans, Del. | Markey | Stanton |
| Evans, Ga. | Marks | Stark |
| Evans, Ind. | Marlenee | Steed |
| Fascell | Marriott | Steers |
| Fenwick | Martin | Steiger |
| Findley | Mathis | Stockman |
| Fisher | Mattox | Studds |
| Fithian | Mazzoli | Symms |
| Flippo | Metcalfe | Taylor |
| Flood | Meyner | Thompson |
| Florio | Michel | Thone |
| Flynt | Mikva | Traxler |
| Foley | Miller, Ohio | Treen |
| Ford, Mich. | Mineta | Trible |
| Ford, Tenn. | Minish | Tucker |
| Forsythe | Mitchell, N.Y. | Udall |
| Fountain | Moakley | Ullman |
| Fowler | Moffett | Van Deerlin |
| Frenzel | Mollohan | Vanik |
| Gammage | Montgomery | Vento |
| Gaydos | Moore | Volkmer |
| Gephardt | Moorhead, Calif. | Walgren |
| Giaimo | Moorhead, Pa. | Walker |
| Gilman | Moss | Walsh |
| Ginn | Mottl | Wampler |
| Glickman | Murphy, Ill. | Watkins |
| Goldwater | Murphy, Pa. | Waxman |
| Gonzalez | Murtha | Weaver |
| Goodling | Myers, Gary | Weiss |
| Gore | Myers, John | Whalen |
| Gradison | Myers, Michael | White |
| Grassley | Natcher | Whitehurst |
| Green | Neal | Whitley |
| Gudger | Nedzi | Wilson, Bob |
| Guyer | Nichols | Wilson, Tex. |
| Hagedorn | Nix | Winn |
| Hall | Nolan | Wirth |
| Hamilton | Nowak | Wolff |
| Hammer-schmidt | O'Brien | Wright |
| Hanley | Oakar | Wydler |
| Hannaford | Oberstar | Wylie |
| Harkin | Obey | Yates |
| Harris | Ottinger | Yatron |
| Harsha | Panetta | Young, Fla. |
| Hawkins | Patten | Young, Mo. |
| | Patterson | Zablocki |

NAYS—1

Kelly

NOT VOTING—77

| | | |
|---|---|---|
| Addabbo | Frey | Quie |
| Ammerman | Fuqua | Richmond |
| Armstrong | Garcia | Risenhoover |
| Ashley | Gibbons | Rodino |
| Barnard | Hansen | Rostenkowski |
| Beard, R.I. | Harrington | Rudd |
| Breaux | Holtzman | Ruppe |
| Brown, Calif. | Hubbard | Sarasin |
| Brown, Ohio | Huckaby | Scheuer |
| Burke, Calif. | Ireland | Schroeder |
| Burke, Fla. | Johnson, Colo. | St Germain |
| Burton, Phillip | Kasten | Stokes |
| Byron | Krueger | Stratton |
| Caputo | LaFalce | Stump |
| Chisholm | Leggett | Teague |
| Clawson, Del | Lehman | Thornton |
| Cochran | Livingston | Tsongas |
| Conyers | Long, Md. | Vander Jagt |
| D'Amours | Lundine | Waggonner |
| Delaney | Meeds | Whitten |
| Dickinson | Mikulski | Wiggins |
| Diggs | Milford | Wilson, C. H. |
| Fary | Miller, Calif. | Young, Alaska |
| Fish | Mitchell, Md. | Young, Tex. |
| Flowers | Murphy, N.Y. | Zeferetti |
| Fraser | Pritchard | |

The Clerk announced the following pairs:

Mr. Mitchell of Maryland with Mr. Wiggins.
Mr. Zeferetti with Mr. Stump.
Mr. Addabbo with Mr. Sarasin.
Mr. Richmond with Mr. Hansen.
Mr. Rostenkowski with Mr. Frey.
Mr. Stratton with Mr. Armstrong.
Mr. Waggonner with Mr. Brown of California.
Mr. Phillip Burton with Mr. Caputo.
Mrs. Chisholm with Mr. Del Clawson.
Mr. Breaux with Mr. Kasten.
Mr. Ammerman with Mr. Johnson of Colorado.
Mr. Ashley with Mr. Cochran of Mississippi.
Mr. Ireland with Mr. Dickinson.
Ms. Mikulski with Mr. Fish.
Mr. Murphy of New York with Mr. Leggett.
Mr. Tsongas with Mr. Livingston.
Mr. Teague with Mr. Long of Maryland.
Mr. St Germain with Mr. Thornton.
Mr. Rodino with Mr. Ruppe.
Mr. Risenhoover with Mr. Rudd.
Mr. Fuqua with Mr. Quie.
Ms. Holtzman with Mr. Vander Jagt.
Mr. Beard of Rhode Island with Mr. Young of Alaska.
Mr. Barnard with Mr. Whitten.
Mrs. Burke of California with Mr. Milford.
Mr. Byron with Mr. Fraser.
Mr. Delaney with Mr. Burke of Florida.
Mr. Fary with Mr. Brown of Ohio.
Mr. Conyers with Mr. Gibbons.
Mr. Diggs with Mr. Hubbard.
Mr. LaFalce with Mr. Meeds.
Mr. Garcia with Mr. Pritchard.
Mr. Charles H. Wilson of California with Mr. Scheuer.
Mr. D'Amours with Mr. Lehman.
Mr. Flowers with Mr. Huckaby.
Mr. Miller of California with Mr. Harrington.
Mrs. Schroeder with Mr. Krueger.
Mr. Stokes with Mr. Lundine.

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 13224) was laid on the table.

## HOME RULE CHARTER AMENDMENTS

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 12116) to amend the District of Columbia Self-Government and Governmental Reorganization Act to repeal the authority of the President to sustain vetoes by the Mayor of the District of Columbia of acts passed by the Council of the District of Columbia and repassed by two-thirds of the Council, to change the period during which acts of the Council of the District of Columbia are subject to congressional review, and for other purposes, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the District of Columbia Self-Government and Governmental Reorganization Act is amended as follows:

(1) Subsection (e) of section 404 is amended—

(A) in the fourth sentence, by striking out the period and inserting in lieu thereof "unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law."; and

(B) by striking out "be transmitted by the Chairman" in the fifth sentence and all that follows in such subsection and inserting in lieu thereof "become law subject to the provisions of section 602(e).".

(2) Section 602(c)(1) is amended—

(A) in the first sentence—

(i) by striking out "(and with respect to which the President has not sustained the Mayor's veto)";

(ii) by striking out "and every" and inserting in lieu thereof "each"; and

(iii) by striking out the period and inserting in lieu thereof ", and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the intiative or referendum."; and

(B) in the second sentence, by striking out "either House is not in session" and inserting in lieu thereof "neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days".

(3) Amendment No. 1 (relating to initiative and referendum) to title IV (the District Charter) is amended—

(A) by striking out sections 5 and 6 and inserting in lieu thereof the following:

"SEC. 5. If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia Board of Elections and Ethics, and such act shall become law subject to the provisions of section 602(c).."; and

(B) by redesignating sections 7 and 8 as sections 6 and 7, respectively.

(4) Section 412(a) is amended by inserting "(other than an act to which section 446 applies)" in the third sentence after "Each proposed act".

SEC. 2. (a) Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b)(1) The amendment made by subparagraph (A) of paragraph (1) of the first section of this Act shall apply with respect to acts of the Council of the District of Columbia presented to the Mayor of the District of Columbia after the date of the enactment of this Act.

(2) The amendment made by subparagraph (B) of paragraph (2) of the first section of this Act shall apply with respect to acts of the Council of the District of Columbia transmitted by the Chairman of the Council to the Speaker of the House of Representatives and the President of the Senate under section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act after the date of the enactment of this Act.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may be permitted to revise and extend their remarks on the bill before the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of the bill (H.R. 12116) is to amend the Home Rule Act in order: First, to grant the Mayor authority to exercise a pocket veto; second, to repeal Presidential review of Council acts vetoed by the Mayor and overridden by the Council; third, to shorten and make more predictable the congressional-review period for acts passed by the Council; fourth, to conform the newly enacted referendum and initiative process to the congressional review procedures; and fifth, to increase the Council's review period for budget acts.

After 3 years of home rule it has become apparent that certain sections of the charter work unreasonable hardships on the city or are unnecessary. Many of the problem areas were discussed during meetings of the President's Task Force on the District of Columbia. Vice President MONDALE, the Task Force Chairman, stated that the administration wanted to reduce or eliminate Federal intrusion in local decisions. Among the recommendations were eliminating the Presidential veto and shortening the congressional review period.

CONGRESSIONAL REVIEW PERIOD

At present, only those days when both Houses of Congress are in session are counted in the review period, making the effective layover time an average of 60 days. One Council act took 7 months to become law. The bill provides that days when either House is in recess for less than 3 days may be counted, thus making the process more predictable.

ELIMINATING PRESIDENTIAL VETO

The precedent for including the Presidential veto in the Home Rule Act, according to testimony presented by Council Chairperson Tucker, was that at one time the President did have the power to sustain a veto of territorial Governors who were Presidential appointees. However, the President no longer has this power over territories with an elected government. The committee agreed with the task force and city officials that this provision should be eliminated for the District of Columbia.

MAYOR'S POCKET VETO

Under the Home Rule Act, the Mayor has 10 days in which to approve or disapprove a Council bill. If the Council adjourns prior to the expiration of that review time, a Council bill automatically becomes an act. This is contrary to Federal law and laws in Maryland and Virginia, wherein no bill can become law without the President's or Governor's signature. The committee agreed with the Mayor's request for pocket veto power to reduce the large number of bills sent to him by the Council during the last days of a legislative session when insufficient review time remains for thorough review by him, and to respond to the Legislative Counsel's opinion on the status of bills that become acts without the Mayor's signature.

COUNCIL'S REVIEW OF BUDGET

Another problem of timing involves the Council's consideration of the Mayor's budget. Section 446 of the charter requires the Council to adopt the budget by act. The effect of this is to reduce the 50-day budget review period to approximately 36 days since an act must have two votes held 13 days apart. The committee agreed with Council testimony that this is insufficient time to review complex legislation. H.R. 12116 eliminates the requirement for a second reading, thereby giving the Council an additional 13 days review time.

INITIATIVE AND REFERENDUM

Charter amendment No. 1 (approved by the Congress on March 10, 1978) allows a majority of the voters of the District of Columbia to approve an act by referendum or adopt an act by initiative. Such acts are considered acts of the Council and are subject to the Congressional review process of section 602(c) of the Home Rule Act. H.R. 12116 conforms the charter amendment to the Home Rule Act.

Mr. McKINNEY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I would simply say to the gentleman from Maryland that actually the great length of time now sort of subverts the review period process of Congress, because the City Council has a right to pass 90-day emergency legislation, which is what they have been doing, which does not come to us for review.

Mr. Speaker, H.R. 12116 presents us with an opportunity to reflect on the experience of the District Government to date with the procedures set up by the Home Rule Act in 1973, and in taking account of that experience, make needed improvements in those procedures.

Many of the changes proposed in this legislation are a result of discussions at meetings of President Carter's Task Force on the District of Columbia. H.R. 12116 is totally in line with the will of that task force and the administration to "reduce, and eliminate, where possible, Federal intrusion in decisions that are of purely local concern * * *."

Two provisions of H.R. 12116 in particular were included in the task force's recommendations. The first shortens and streamlines the rather burdensome process of congressional review over acts passed by the City Council. Currently, an act of the Council becomes law if during a 30-day period not including Saturdays, Sundays, and holidays, and days during which either House is not in session, a resolution of disapproval is not passed in both Houses of Congress. Due to the many days where either House of Congress is not in session as a result of recesses, District work periods and the like, the congressional review period can stretch out for as long as 7 months. The long delays lend considerable confusion to the legislative processes of the District. H.R. 12116 amends this provision so the review period is 30 days not including Saturdays, Sundays, and holidays, days when both Houses are not in session for more than 3 days, and adjournment sine die.

Another recommendation of the task force implemented by H.R. 12116 is the elimination of the Presidential veto of acts which have been repassed by the Council over the Mayor's veto. Neither Presidents Ford nor Carter availed themselves of this power, and the Carter administration, as well as the Ford administration before it, support this measure.

In addition to these provisions, H.R. 12116 provides that when the Council has adjourned before the end of the 10-day period in which the Mayor must sign or veto a Council act, the bill would not become law unless the Mayor signed it. This "pocket veto" authority is similar to that provided the President and the Governors of the 50 States. This amendment was added at the request of the Mayor and with the consent of the City Council.

H.R. 12116 also amends the budget review procedures of the Council to provide additional time to consider budget legislation. Currently, section 446 of the Home Rule Act requires the Council to adopt the budget by act 50 days after its receipt from the Mayor. Because Council acts require two legislative readings separated by a 13-day period, the effective review time for the Council is reduced to 36 days, which has proved to be inadequate. H.R. 12116 would remedy this by eliminating the requirement for a second reading of the budget and, thus, would provide for an additional 13 days of review time.

Finally, H.R. 12116 conforms the recently passed charter amendments providing for recall, referendum and initiative to the provisions of the Home Rule Act.

Passage of H.R. 12116 would do much to streamline the governmental processes of the District of Columbia and provide the citizens of the District with more efficient and timely government. Therefore, I urge my colleague's support for this bill.

● Mr. FAUNTROY. Mr. Speaker, I rise in support of H.R. 12116, a bill which seeks to amend the District of Columbia Self-Government and Governmental Reorganization Act.

After more than 3 years of home rule, it has become apparent that certain sections of the Home Rule Act either work

an unreasonable hardship on the local government's legislative process or are unnecessary to the process. H.R. 12116 will correct these deficiencies and undue burdens by:

First. Shortening and making more predictable the congressional layover period for acts passed by the District of Columbia Council;

Second. Repealing the authority of the President to sustain a Mayor's veto which has been overridden by the District of Columbia Council;

Third. Allowing the District of Columbia Council more time to review the Mayor's budget submission;

Fourth. Granting the Mayor the authority to exercise a pocket veto; and

Fifth. Conforming the newly enacted referendum and initiative process to the congressional review procedures.

Two of the proposed amendments were recommended by the President's Task Force on the District of Columbia. "To reduce and eliminate, where possible, Federal intrusion into decisions that are of purely local concern," the President's task force urged the repeal of the authority which now permits the President to review and overturn District of Columbia Council overrides of mayoral vetoes. In changing the congressional layover period for review of District of Columbia Council acts from 30 "legislative" days in which both the House and Senate are in session to 30 "calendar" days, we also follow the task force recommendation that, "where substantial Federal interests may be involved, [it is best] to streamline and simplify review procedures where possible." Although the task force recommended a review period of 60 calendar days, the committee believes that 30 calendar days allows sufficient time for Congress to act on a resolution of disapproval should one be introduced. Weekends, holidays, recesses, or adjournments over 3 days will of course be excluded. It should be noted that 30 calendar days would have accommodated any disapproving resolutions previously introduced.

The amendment to permit pocket vetoes by the Mayor would make the Home Rule Act similar to the pocket veto provisions of the Constitution of the United States and of the States of Maryland and Virginia. The amendment would prevent a Council act from becoming law merely because the Council, by adjourning, prevents the Mayor from vetoing and returning the act to the Council. Under H.R. 12116, the Mayor may pocket veto any bill presented to him if the Council by a recess of 10 days or more prevents him from returning the act to the Council.

The amendment to give the District of Columbia Council additional time to review the Mayor's budget submission is necessary because section 446 of the Home Rule Act requires the Council to adopt the budget by act. The result is that rather than the 50-day budget review period, the Council actually has only 36 days since an act must have two identical readings (votes) held 13 days apart. H.R. 12116 eliminates the requirement for a second reading, thereby giving the Council an additional 13 days review time.

The final amendment would subject the initiative and referendum authority recently enacted by the District of Columbia Council and approved by Congress to the same congressional review process required for council acts generally.

Mr. Speaker, each of these amendments will help to insure that the local government runs effectively and efficiently. No added costs to the Federal Government are involved. I urge passage of H.R. 12116.●

● Mr. DIGGS. Mr. Speaker, H.R. 12116 would amend the charter of the Home Rule Act to: First, grant the Mayor authority to exercise a pocket veto; second, repeal Presidential review of Council acts vetoed by the Mayor and overridden by the Council; third, shorten and make more predictable the congressional review period for acts passed by the Council; fourth, conform the newly enacted referendum and initiative process to the congressional review procedures; and fifth, increase the Council's review period budget acts.

The amendment to permit "pocket vetoes" by the Mayor, of Council acts, would conform the Home Rule Act to the pocket veto provisions of the Constitution of the United States and of the States of Maryland and Virginia. The amendment would prevent a Council act from becoming law merely because the Council, by adjourning, prevents the Mayor from vetoing and returning the act to the Council. If H.R. 12116 becomes law, the Mayor may sign such an act, or give same a pocket veto if the Council by adjourning has prevented him from returning the act to the Council.

The repeal of the authority for the "President's review" of Council overrides of mayoral vetoes of Council acts is recommended by the President's Task Force on the District of Columbia "to reduce and eliminate, where possible, Federal intrusion in decisions that are of purely local concern."

Changing the "congressional layover period" for review of Council acts from 30 legislative days when both Houses are in session, to 30 calendar days, excluding weekends, holidays, recesses, or adjournments over 3 days, gives ample time and certainty for congressional review of Council acts.

The remaining two amendments would give the Council additional time (13 days) to review the Mayor's budget, and would subject the initiative and referendum authority (H. Con. Res. 464) recently enacted by the Council to the same congressional review process required for Council acts generally.

At the hearing on this legislation before the Subcommittee on Fiscal and Government Affairs, representatives of the District of Columbia government (Chairman of the Council, and the special assistant to the Mayor) testified in support of the proposed legislation. No opposition thereto was then expressed or has since been received by the committee.●

Mr. DELLUMS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

There was no objection.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

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## ENLARGING CONTRACTING AUTHORITY OF COMMISSION ON FINANCIAL OVERSIGHT

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the Senate bill (S. 3120) to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3120

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That sections 2(c) and 3(c) of the Act entitled "An Act to provide for an independent audit of the financial condition of the government of the District of Columbia", approved September 4, 1976 (Public Law 94-339, 90 Stat. 1205), are each amended by striking out "fixed price".

SEC. 2. Section 2 of such Act is amended by adding at the end thereof the following new subsections:

"(h) The Commission may select the government of the District of Columbia as a qualified person under subsection (a), and the chairman of the Commission may enter into contracts with the government of the District of Columbia under subsection (c).

"(i)(1) The Commission is entitled, through an authorized representative, to inspect the facilities and audit the books and records of any contractor performing a contract under this Act, and any subcontractor performing any subcontract under a contract made by the Commission under this Act.

"(2) Each contract entered into under this Act shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any pertinent books, documents, papers, or records of the contractor or any of his subcontractors engaged in the performance of and involving transactions relating to such contract or subcontract.

"(j) Payments made by the Commission to the government of the District of Columbia under contracts entered into pursuant to the authority of this Act shall be available for matching purposes under any federally funded grant program provided that the grant is for a purpose similar to any purpose specified in section 2(a) of this Act.".

SEC. 3. Sections 3 and 4 of such Act are amended by striking out "1979" each place it appears therein and inserting in lieu thereof "1982".

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may be permitted to revise and extend their remarks on the Senate bill S. 3120, now before the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, Members of the House, the purpose of S. 3120 is to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia. Those amendments to the Audit Commission were recommended by the General Accounting Office (GAO).

The legislation, already passed by the Senate, would allow the Commission to negotiate "cost plus" contracts if the Director felt it was preferable. Current law provides that the Commission can only enter into "fixed priced" contracts.

The Commission Director testified that the Commission was having difficulty attracting enough qualified firms to bid on fixed price. They either refuse to bid or insert numerous conditions in proposals that make comparions of proposals impossible. The Director would continue to use fixed fee when feasible.

The bill would also allow the Commission to enter into contracts with the District of Columbia. The District already has underway, with the assistance of Federal matching grants, several system improvement projects, including one to control welfare eligibility and payments. The Commission could save money if it were permitted to contract with the city and pay only half of the cost. Both the Commission and GAO would monitor all contractors' and subcontractors' work.

The final section of the bill would change to 1983 the date of the first audit conducted by the District of Columbia. The Commission is responsible for the first three audits, and the GAO believes the first audit will not be feasible until 1980.

Mr. McKINNEY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I rise in support of S. 3120, a bill to enhance the flexibility of the contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia.

To discharge its responsibility of designing and implementing new financial management and accounting systems for the District of Columbia, the Commission needs the added flexibility provided by this bill. The Commission is currently authorized to enter into negotiated fixed price contracts only for the design and implementation of the new systems. However, the Commission is meeting with some resistance from many potential bidders on the necessary contracts because of the difficulty that exists in estimating the costs associated with this type of work. The utilization of fixed price contracts in these circumstances could lead to fairly substantial overpayments or underpayments, as the case may be, which would not be in the best interests of either the Commission or the contractors.

One of the main provisions of this bill would remove the words "fixed price" from the enabling act, Public Law 94–399, which gave birth to the Commission. Consequently, the Commission would be empowered to award "cost-type" contracts wherever appropriate, although we have been assured by the Executive Director of the Commission that fixed price contracts would continue to be used for the majority of the projects currently contemplated.

S. 3120 also clarifies the authority of the Commission to finance that segment of any joint project between the District of Columbia and Federal Governments which was not financed by a Federal grant agency. Any such project that would be affected by this provision of the bill would have to have been undertaken by the Commission in any event under the requirements of the enabling act. To permit the Commission to combine its funds with Federal grant funds would thus provide the Commission with the added flexibility to stretch its funds and to meet the time constraints under which it is currently operating.

Finally, the bill authorizes the Commission to pay for audits of the District of Columbia's finances for fiscal years 1980, 1981, and 1982. The enabling act originally called for payment of audits of the District of Columbia's finances for fiscal years 1977, 1978, and 1979. However, due to unavoidable delays in the startup of the Commission's work, audits of the District's finances cannot take place prior to fiscal year 1980.

This legislation is noncontroversial and will provide the Commission with the flexibility it needs to carry out its task in an efficient and orderly manner. I therefore urge my colleagues to join me in supporting this measure.

● Mr. DIGGS. Mr. Speaker, the purpose of this Senate-passed bill (S. 3120) is to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia so as to facilitate restructuring of the District's financial management systems and accomplish an audit of the District's financial position on an annual basis.

Specifically, S. 3120, if enacted, would amend Public Law 94–399, approved September 4, 1976 (90 Stat. 1205) entitled "An act to provide for an independent audit of the financial condition of the government of the District of Columbia", to authorize the Temporary Commission on Financial Oversight of the District of Columbia (so-called Audit Commission): First, to award cost-type contracts; second, to contract with the District of Columbia government; third, to audit the books and records of its contractors and subcontractors; fourth, to provide funds to the District government to meet matching requirements for certain Federal grants; fifth, to contract for annual audits of the financial operations of the District government through fiscal year 1982; and sixth, would also authorize the Comptroller General of the United States to examine pertinent books, documents, papers, or records of the Commission's contractors and subcontractors.

In the last Congress the District of Columbia Committee reported and the Congress enacted Public Law 94–399 after studies by the General Accounting Office and Arthur Anderson & Co., conducted respectively for the House and Senate District Committees, demonstrated the need for substantial improvement in the financial management systems of the District of Columbia government. The act was designed to help the District become more self-sufficient under the Home Rule Charter and established the specific requirement for the District's financial position to be audited annually by a certified public accountant.

The Audit Commission, which was set up by Public Law 94–399, requested the pending legislation (supported by the GAO) in order to give the Commission added flexibility in its contractual authority in negotiating its contracts, and to provide better procurement; to use the D.C. government and its agencies by contracting directly with them; and to move closer to the date when a complete and thorough independent audit of the District's financial conditions can be had.

This legislation, the committee states, well implements the machinery which the Congress created to improve the financial planning, reporting, and control systems of the D.C. government, and to assure the Congress that the city's management systems and financial situation are sound.

The enactment of S. 3120 will involve no added costs to the Federal Government, nor to the District of Columbia government.●

● Mr. FAUNTROY. Mr. Speaker, I rise in support of S. 3120. The General Accounting Office, in a meeting with Commission and congressional staff, has recommended the changes incorporated in this bill. The legislation already passed by the Senate would enhance the flexibility of contractual authority of the Commission, by allowing it to negotiate other types of contracts than fixed-price contracts, if the Director felt that it was preferable.

According to Bruce Rohrbacher, Executive Director of the Commission, they are finding it difficult to get enough qualified firms to bid at a fixed price. Mr. Rohrbacher will continue to use a fixed fee when appropriate, but the Commission needs the flexibility of negotiating other types of contracts.

In addition, the legislation would allow the Commission to enter into contracts with the District of Columbia; with payments from such contracts allowed for matching Federal grant programs. The Commission and the General Accounting Office would monitor all contractors' and subcontractors' work.

Finally, the General Accounting Office advised the committee that the first audit will not be feasible until fiscal year 1980. The bill changes the date for the first audit to be conducted by the city to fiscal year 1983. I move favorable consideration of the measure.●

Mr. DELLUMS. Mr. Speaker, I move the previous question on the Senate bill.

The previous question was ordered.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## REVENUE BONDS FOR HOUSING FINANCE AGENCY

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill H.R. 13243 to amend the District of Columbia Self-Government and Governmental Reorganization Act to authorize the Council of the District of Columbia to delegate its authority to issue revenue bonds for undertakings in the area of housing to any housing finance agency established by it and to provide that payments of such bonds may be made without further approval, and ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 13243

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 490 of the District of Columbia Self-Government and Governmental Reorganization Act, relating to revenue bonds and other obligations, is amended by adding after subsection (f) the following new subsection:

"(g)(1) The authority of the Council under subsection (a) to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing of undertakings in the area of housing may be delegated by the Council to any housing finance agency established by it. Any such housing finance agency shall exercise by resolution any such authority delegated to it under the preceding sentence, and any such resolution shall not be considered to be an act of the Council.

"(2) The fourth sentence of section 446 shall not apply to (A) the expenditure of funds derived from the sale of any revenue bond, note, or other obligation issued by a housing finance agency established by the Council to which a delegation has been made under paragraph (1), or (B) the payment (as to either principal or interest or both) of any such bond, note, or other obligation.".

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may revise and extend their remarks on the bill H.R. 13243, which is before the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of H.R. 13243 is to amend the Home Rule Charter to authorize the Council of the District of Columbia to delegate its authority to issue revenue bonds to finance a housing finance agency established by the Council and to exempt principal and interest from the bonds from the congressional appropriations process. At present, the District is not eligible to receive certain Federal housing grants that are channeled only through State housing finance agencies.

This legislation is necessary for two reasons: First, the District of Columbia Corporation Counsel ruled that, under present law, the Council does not have authority to delegate power to issue revenue bonds to a housing finance agency, and second, a housing finance agency could not sucessfully market bonds if principal and interest were subject to a line item veto by Congress.

Standard & Poor's, in a letter to the subcommittee chairperson, stated:

> . . . We expect revenue bonds to be secured by a pledged revenue stream not requiring appropriations by any other government unit. . . ."

The District's bond counsels, Willkie Farr & Gallagher and Hudson & Leftwich, stated that legislation authorizing the D.C. government to establish an independent agency authorized to issue revenue bonds and exempting its assets and revenues from the appropriations process was a necessary prerequisite for the Council to establish a housing finance agency.

Although the Corporation Counsel questioned the council's authority to delegate the issuance of revenue bonds to an agency, it is the opinion of the committee that this authority is implicit in section 490 of the Home Rule Charter and in the legislative history. The bill before us merely reiterates the congressional intent that the Council's power to delegate authority to issue revenue bonds does exist.

The need for decent, safe, affordable housing in the District is great. A 1974 Washington Center for Metropolitan Studies survey found 27,000 low income families, including 9,000 elderly, living in substandard or overcrowded housing. The cost of single family homes in the District, according to the Federal Home Loan Bank Board, rose 63 percent in the last 5 years while median household income between 1974 and 1977 rose only 30 percent.

In addition, the District has experienced a loss of 13,000 units, primarily rental housing, since 1970; and the cost of available units has become increasingly expensive. As a result, the District has the highest proportion of rental-occupied units of the 20 largest cities—70 percent—and a very low vacancy rate.

The Council's Commission on Housing found that from 1977 to 1985 demand for residential units will exceed supply by nearly 20,000 units. To make up the shortage, net production will have to increase almost 4,000 units per year 1981 through 1985.

At present 41 States have established housing finance agencies to provide for low and moderate income housing. The lack of an agency in the District of Columbia has deprived the city of special HUD section 8 set-asides that are available only through housing finance agencies.

The Council has been considering a housing finance agency since May of 1977. Bills were introduced by Council Chairperson Sterling Tucker and Council Members Nadine Winter and John Wilson. After a series of roundtable discussions, bill sponsors agreed to a compromise bill that was passed by the Committee on Housing and Urban Development. The Council bill, 2–161, passed its first reading unanimously on July 25, 1978, and will have its second reading September 19 when the Council returns from its recess.

Under 2–161, the proposed housing finance agency will be empowered to participate in the construction or rehabilitation of singly-family and multifamily residential housing units for sale or lease, including apartments, townshouses and detached houses, condominiums, and cooperatives. The agency would issue revenue bonds and notes which are exempt from Federal and District of Columbia income taxes, but the agency would have the flexibility to issue taxable obligations.

Bonds and notes of the agency would not be debts or obligations of the District of Columbia, and the faith and credit of the District would not be pledged to pay the notes and bonds of the agency. It is important to note that the bonds would not be guaranteed by the Federal Government.

The city would have no legal liability for agency debts and all expenses of the agency would be payable solely from funds derived from assisted projects.

Mr. Speaker, if I have any time remaining, I would like to yield to my distinguished colleague, the ranking minority member, the gentleman from Connecticut (Mr. McKINNEY).

Mr. McKINNEY. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of H.R. 13243 and I would like to commend the gentlemen from Michigan and California for moving so expeditiously in reporting this measure to the floor. H.R. 13243 is a vital part of the effort to ease the severe housing problems in the District of Columbia.

This bill serves a dual purpose. First, it clarifies the ability of the Council of the District of Columbia to delegate its revenue bonding authority to an independent housing finance agency. This was requested by the District's Corporation Counsel and its Bond Counsel who felt that the Council did not have this authority under the Home Rule Act. While it was the committee's opinion that the Home Rule Act does not bar such a delegation, the bill was amended by the subcommittee to remove any doubt.

Second, H.R. 13243 amends the Home Rule Act to allow the expenditure of funds derived from the sale of revenue bonds by a housing finance agency and the payment of principal and interest on these bonds without further congressional action. This is similar to legislation passed by the Congress last year allowing the transfer of moneys derived from revenue bonds for the District's private colleges and universities.

It should be made clear at this point that these revenue bonds do not carry a

pledge of credit of either the District or Federal Governments. These bonds are secured only by the revenues derived from the projects they finance. This is the key to their marketability. If the payment of principal and interest of revenue bonds are in any way subject to the vagaries of the legislative process, their marketability declines drastically. Brentan Harries, President of Standard and Poor's credit rating agency wrote the committee that in determining the rating of a particular bond issue, "We expect revenue bonds to be secured by a pledged revenue stream not requiring appropriations by any other governmental unit * * *." And according to our former colleague Thomas Rees, "There is not a legislative body in the country that stands between the repayment of a revenue bond issue and the holders of the revenue bonds * * *."

This legislation is urgently needed to enable the District Council to create a housing finance agency. Many States and major cities have had excellent success with similar types of agencies. Further, because of the lack of a housing finance agency, the District has lost special HUD section 8 set-aside moneys which are available to such agencies.

The housing situation in the District is critical. While the District has suffered a large decline in available housing since 1970, the vacancy rate continues to be unusually low. Housing prices all over the Washington Metropolitan Area are alarming, but the situation is even worse in the District, where 53 percent of the region's poor reside and the median income is significantly lower than that of the surrounding areas. The problem is exacerbated by the dislocation of many of the city's lower income renters due to the recent trend toward restoration and renovation in the District.

Without a functioning housing finance agency, the District Government has few tools to combat its housing problems. A housing finance agency, with its ability to offer tax-free bonds, can generate a large pool of low cost loan money to be used to finance low and moderate income housing, thereby reducing some of the price pressure in the local housing market. Therefore, not only will this agency serve a useful social purpose, it will have an anti-inflationary impact as well.

None of this can happen, however, until Congress enacts H.R. 13243. I strongly urge that this body promptly pass this bill.

● Mr. FAUNTROY. Mr. Speaker, this is a clean bill which reflects the thinking of the Fiscal Affairs Subcommittee. It is rather narrowly drawn to assure that a D.C. Government Housing Finance Agency (HFA) has the ability to pay those obligations derived from the sale of revenue bonds and that the revenue bonds which may be issued by the HFA will be used only for housing. It is the subcommittee's position that the Congress must provide the delegation to the HFA to issue revenue bonds and that thinking is specifically reflected on page 2 at lines 1–9 of the bill.

I introduced H.R. 13243 to complement a measure which the D.C. Council has undertaken. H.R. 13243 does the following:

First. Amends section 490 of the District of Columbia Self-Government and Governmental Reorganization Act, relating to revenue bonds and other obligations.

Second. Exempts from the Congressional Appropriations process all proceeds derived from the sale of revenue bonds, notes or other obligations issued to finance the activities of any housing authority established by the D.C. City Council.

The District of Columbia Council's Committee on Housing and Urban Development has unanimously approved and favorably reported a bill creating a District of Columbia Housing Finance Agency.

With the passage of H.R. 13243 and the D.C. Council's Housing Finance Agency bill, the D.C. government will be authorized to:

Make direct payments of annual principal and interest to purchasers of revenue bonds.

Borrow money and issue low-interest tax-exempt revenue bonds and notes and pass on savings to stimulate the housing market for low and moderate income residents.

Make loans to sponsors for the financing, construction, reconstruction, or rehabilitation of residential housing for eligible persons.

Assign, encumber, sell or otherwise dispose of any real estate or personal property acquired by the agency.

To invest any funds not required for immediate disbursement, including funds held in reserve, in investments lawful for the District.

To consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortage loan, or contract agreement of any kind to which the agency is a party.

To sell, at public or private sales, with or without public bidding, any mortgage or other obligation held by the agency.

The bill anticipates the raising of funds through the sale of revenue bonds. It is important to note that the Council's General Counsel has observed that investors would certainly be cautious of any proposal that subjected annual principal and interest payment to the appropriation process.

H.R. 13243 would remove the element of uncertainty from the minds of bond purchasers and make more secure the financial institutions that would play a prime role in the granting of credit to be secured by the projects financed.

H.R. 13243 will enable the D.C. Housing Finance Agency to generate funds from private sources to increase the supply and lower the cost of funds available for residential mortgages and construction loans and help alleviate the critical shortage of adequate housing in D.C.●

● Mr. DIGGS. Mr. Speaker, the purpose of H.R. 13243 is to amend the D.C. Home Rule Act: First, to authorize the Council of the District of Columbia to delegate its authority to issue revenue bonds for undertakings in the area of housing to any housing finance agency established by it, and second, to provide that the expenditure of funds derived from the sale of such bonds and the payments of principal and interest on such bonds may be made without further approval of the Congress.

NEED FOR THIS LEGISLATION

The need for this legislation (H.R. 13243) is clearly stated by bond counsel for the District of Columbia, that such legislation is a prerequisite to the Council establishing an independent agency with authority to issue revenue bonds to finance the development of housing, and to provide that the expenditure of such revenues or assets shall be exempt from the appropriation process by the Congress.

BACKGROUND

During the last 15 years, 39 States and some cities have created housing finance agencies as mechanism to provide low- and moderate-income housing.

These agencies issue revenue bonds, the proceeds of which are utilized by the agency to finance the construction, rehabilitation, conversion, and purchase of multi- and single-family residential structures which are consonant with stated public purposes of the agency. Primary among these purposes is provision of low- and moderate-income housing.

The need for a housing finance agency in the District of Columbia has been officially recognized for a number of years, beginning with the report of the Commission on the Organization of the Government of the District of Columbia (the Nelson Commission) issued in 1972.

In summary, the District's ability to respond to its housing problems is substantially handicapped by the lack of housing financing agency, and the creation of such an agency has broad-based support from all segments of the community.

COST

The Congressional Budget Office estimates no additional costs to the Government as a result of the enactment of this bill.

The legislation was approved, by voice vote, by the Subcommittee on Fiscal and Governmental Affairs (after hearing), and by the Full Committee.●

Mr. DELLUMS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## DISTRICT OF COLUMBIA RECIPROCAL TAX COLLECTION ACT

Mr. MAZZOLI. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the Senate bill (S. 1103) to permit States the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due the State, and ask unanimous consent that the Senate bill be considered

in the House as in the Committee of the Whole.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1103

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. Any State, territory, or possession, by and through its lawfully authorized officials, shall have the right to sue in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it when the reciprocal right is accorded to the District by such State, territory, or possession, whether such right is granted by statutory authority or as a matter of comity.

SEC. 2. The certificate of the secretary of state or other authorized official of any State, territory, or possession, or subdivision thereof, to the effect that the official instituting the suit for collection of taxes in the Superior Court of the District of Columbia has the authority to institute such suit and collect such taxes shall be conclusive proof of that authority.

SEC. 3. For the purposes of this title, the term "taxes" shall include—

(1) any and all tax assessments lawfully made, whether they be based upon a return or other disclosure of the taxpayer, or upon the information and belief of the taxing authority, or otherwise;

(2) any and all penalties lawfully imposed pursuant to a taxing statute, ordinance, or regulation; and

(3) interest charges lawfully added to the tax liability which constitutes the subject of the suit.

SEC. 4. In any State, territory, or possession, or subdivision thereof, in which the District of Columbia is authorized under the laws of such State, territory, or possession, to bring suit for the purpose of recovering of such taxes, the Corporation Counsel or any of his assistants is authorized to bring such suit in the name of the District of Columbia in the courts of such State, territory, or possession, or subdivision. The Mayor of the District of Columbia is authorized, in connection with any such suit, to procure professional and other services, at such rates as may be usual and customary for such services in the jurisdiction concerned.

SEC. 5. This title may be cited as the "District of Columbia Reciprocal Tax Collection Act".

With the following committee amendments:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "District of Columbia Reciprocal Tax Collection Act".

SEC. 2. (a) Any State, acting through its lawfully authorized officials, shall have the right to sue in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it in any case in which such reciprocal right is accorded to the District of Columbia by such State, whether such right is granted by statutory authority or as a matter of comity.

(b) The certificate of the secretary of state, or of any other anuthorized official, of such State, or any subdivision thereof, to the effect that the official instituting a suit auhorized under subsection (a) for collection of taxes in the Superior Court of the District of Columbia has the authority to institute such suit and collect such taxes shall be conclusive proof of such authority.

SEC. 3. (a) In any State, or any subdivision thereof, in which the District of Columbia is authorized under the laws of such State to bring suit for the purpose of recovering taxes lawfully due and owing the District of Columbia, the Corporation Counsel is authorized to bring such suit in the name of the District of Columbia in the courts of such State, or any subdivision thereof.

(b) In connection with any such suit, the Mayor of the District of Columbia is authorized to secure professional and other services at such rates as may be usual and customary for such services in the jurisdiction involved.

SEC. 4. For the purposes of this Act:

(1) The term "taxes" means—

(A) any tax assessment lawfully made, whether based upon a return or any other disclosure of the taxpayer or upon the information and belief of the taxing authority involved;

(B) any penalty lawfully imposed pursuant to any law, ordinance, or regulation which imposes a tax; or

(C) any interest charge lawfully added to the tax liability which constitutes the subject of any suit brought under section 2 or 3.

(2) The term "State" means any of the several States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Mr. MAZZOLI. Mr. Speaker, I move to strike the last word.

Mr. Speaker, on July 17, 1978, the District of Columbia Committee by unanimous voice vote reported out S. 1103, a bill to permit States the reciprocal right to sue in Superior Court of the District of Columbia to recover taxes due the State.

The purpose of this bill is to authorize the several States of the United States to sue in the Superior Court of the District of Columbia to recover any taxes lawfully due that State, if a reciprocal right is accorded to the District of Columbia. At present, 44 States grant each other the reciprocal right to sue for taxes owing that State in courts of other States. There is no such law in the District of Columbia. The Congress has been requested to grant such a right on a reciprocal basis by the District of Columbia government. It is the District's belief that the passage of this legislation would aid the enforcement of the tax laws of the District of Columbia.

Therefore, Mr. Speaker, I urge all of my colleagues to vote for this bill.

Mr. Speaker, I yield the balance of my time to the gentleman from Connecticut (Mr. MCKINNEY).

Mr. MCKINNEY. Mr. Speaker, I rise in support of the bill S. 1103, which will permit an authorized official of any State, territory, or possession of the United States the right to sue in the Superior Court of the District of Columbia to recover taxes due the jurisdiction if such other jurisdiction permit the District to bring similar suits in their courts.

There are currently 44 States in the Union which have such reciprocity agreements. Ironically, the District of Columbia, with its uniquely tri-State geography and large amount of individual movement back and forth across its boundaries, does not have such an arrangement.

It is unfortunate that the District government cannot itself enact such legislation for the improvement of its own fiscal position and practices, for it has been a part of the Mayor's legislative program for enactment by both the 94th and 95th Congresses, with no result. Enactment of this bill is long overdue.

S. 1103 will significantly aid the enforcement of the District's tax laws, and improve the revenue-raising ability of the District. I urge that S. 1103 be adopted, as amended, so that the District can take advantage of the reciprocal provisions in other State laws as they apply to the collection of taxes.

The SPEAKER pro tempore (Mr. MCHUGH). The question is on the committee amendments.

The committee amendments were agreed to.

● Mr. FAUNTROY. Mr. Speaker, I support S. 1103, a bill which seeks to grant the District of Columbia the right to enter into reciprocity arrangements for the purpose of collecting taxes.

This proposed legislation would authorize the several States of the United States to sue in the Superior Court of the District of Columbia to recover any taxes, lawfully due that State, if a reciprocal right is accorded to the District of Columbia.

Specifically, the legislation:

First. Authorizes any State, territory, or possession to bring suit in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it, if a reciprocal right is accorded to the District by such State, territory, or possession.

Second. Provides for authorization by a certificate issued by the Secretary of State or other authorized official of a State, territory, or possession. Proof to the effect that the official bringing suit is so authorized by the State shall be conclusive proof of that authority.

Third. Defines taxes to include (a) tax assessments, (b) penalties lawfully imposed, and (c) interest charges lawfully added to the tax liability.

Presently, 44 States grant each other the reciprocal right to sue for taxes owing that State in the courts of the other States. There exists no such law in the District of Columbia. It is felt that passage of this legislation would aid in the enforcement of the tax law of the District of Columbia.

Enactment of the proposed legislation will incur no added costs to the D.C. government nor the Federal Government.

I urge passage of this bill—S. 1103.●

● Mr. DIGGS. Mr. Speaker, the purpose of this Senate-passed bill (S. 1103), which was introduced at the request of the Mayor of the District of Columbia, is to authorize any State to bring suit in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it, if a reciprocal right is accorded to the District by such State.

The bill also would authorize the Corporation Counsel of the District of Columbia to bring suit for the purposes of recovering D.C. taxes, in those States authorizing the District of Columbia to so litigate.

The bill defines taxes to include: first, tax assessments, second, penalties lawfully imposed, and third, interest charges lawfully added to the tax liability. It also defines the term "State" to include not only the several States but also the U.S. territories and possessions.

BACKGROUND

Individuals move out of the District of Columbia each year leaving unpaid District income taxes. In some instances, corporations, organizations, or individuals, located or operating outside the District, incur liability for District taxes. Some are able to evade compliance with District tax laws because they are not within the jurisdiction of the District for normal enforcement proceedings. It is the judgment of the committee that the passage of this legislation would aid significantly in the enforcement of the tax laws of the District of Columbia and the collection of revenue therefrom.

PRECEDENTS FOR THIS LEGISLATION

At the present time, 45 States—which are listed in the Committee Report (H. Rept. 95–1360)—grant each other full or partial reciprocity to sue for taxes owing that State in the courts of the other States. There is no such law in the District of Columbia. Only five States have no reciprocal statutes providing tax suits reciprocity, namely, Florida, Georgia, Montana, Nevada, and Utah.

The bill was favorably reported, by voice vote, by both the Subcommittee on the Judiciary—after hearing—and by the full committee. No expressions in opposition to the bill have been presented to the committee.

The enactment of S. 1103 will involve no added costs to the Federal or District of Columbia government.●

Mr. MAZZOLI. Mr. Speaker, I move the previous question on the Senate bill.

The previous question was ordered.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: An act to permit any State the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due such State.

A motion to reconsider was laid on the table.

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## DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY

Mr. MAZZOLI. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the Senate bill (S. 2556) to change the name of the District of Columbia Bail Agency, and ask unanimous consent that the Senate bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2556

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1301 of title 23, D.C. Code, is amended by deleting "District of Columbia Bail Agency" and inserting in lieu thereof "District of Columbia Pretrial Services Agency".

SEC. 2. Any law, rule, regulation, documents or record of the United States in which reference is made to the District of Columbia Bail Agency referred to in the first section of this Act shall be deemed to be a reference to the District of Columbia Pretrial Services Agency.

With the following committee amendments:

Strike out all after the enacting clause and insert the following:

That (a) the text of section 23–1301 of title 23, District of Columbia Code, is amended by striking out "District of Columbia Bail Agency" and inserting in lieu thereof "District of Columbia Pretrial Services Agency".

(b) The heading of such section is amended to read as follows:

"§ 23–1301. District of Columbia Pretrial Services Agency".

SEC. 2. (a) The heading of subchapter I of chapter 13 of title 23, District of Columbia, is amended to read as follows:

"SUBCHAPTER I.—DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY".

(b) The item relating to subchapter I in the table of sections at the beginning of such chapter is amended to read as follows:

"Subchapter I—District of Columbia Pretrial Services Agency".

(c) The item relating to section 23–1301 in such table is amended to read as follows:

"23–1301. District of Columbia Pretrial Services Agency.".

(d) The heading of such chapter is amended to read as follows:

"CHAPTER 13.—PRETRIAL SERVICES AGENCY AND PRETRIAL DETENTION".

(e) The item relating to chapter 13 in the table of chapters at the beginning of such title is amended to read as follows:

"13. Pretrial Services and Pretrial Detention ---------- 23–1301".

SEC. 3. Any reference in any law, rule, regulation, document, or record of the United States or the District of Columbia to the District of Columbia Bail Agency shall be deemed to be a reference to the District of Columbia Pretrial Services Agency.

Mr. MAZZOLI. Mr. Speaker, I move to strike the last word.

Mr. Speaker, on July 17, 1978, the District of Columbia Committee by unanimous voice vote reported out S. 2556, a bill which changes the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

The purpose of the bill is to give the agency a name that more appropriately reflects its function within the legal community. Even though the services provided by the agency have been expanded and refined to meet the needs of the Superior Court, the agency does not post monetary bonds for pretrial detainees. The present name of the agency has led to much confusion in that regard within the local community. The director of the bail agency, in requesting that Congress enact this legislation, deems the name change necessary to alleviate confusion as to the proper function of the agency.

Mr. Speaker, I urge all of my colleagues to vote for this bill.

Mr. Speaker, I yield to the gentleman from Connecticut (Mr. MCKINNEY).

Mr. MCKINNEY. Mr. Speaker, I rise in support of the bill S. 2556, which would change the name of the District of Columbia Bail Agency to the Pretrial Services Agency.

This action was requested by the Director of the District of Columbia Bail Agency in order to give that organization a title which more accurately reflects its present functions. In the years since its inception, the agency's services have evolved far beyond simple bond transactions to include pretrial detention, personal recognizance, and third-party custody as other viable pretrial alternatives. In addition, such a change would conform the agency's organizational title to that of other identical agencies created by Congress and modeled after the D.C. Bail Agency in 10 Federal districts.

It is unfortunate, however, that valuable congressional time should be spent on a local matter of this nature and points out the need for full home rule for the District of Columbia. Because of a prohibition contained in the District of Columbia Home Rule Charter, the City Council cannot amend title 23 of the D.C. Code, dealing with criminal procedure of which the designation of the name of the agency is a part. Consequently, congressional action is needed to legislate the name change.

I therefore urge my colleagues' support for this noncontroversial but necessary measure.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may be permitted to extend their remarks in explanation of the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The SPEAKER pro tempore. The question is on the committee amendments.

The committee amendments were agreed to.

● Mr. FAUNTROY. Mr. Speaker, I support S. 2556, a bill which provides for changing the title of the D.C. Bail Agency.

In 1971, the bail agency's statute was amended to increase the agency's services and its functions so as to keep in step with changing methods of dealing with criminal defendants. At the time of the amendment other concerns precluded attention to the subtle and seemingly insignificant matter of its name. S. 2556 will correct this deficiency by:

First, Changing the title of the D.C. Bail Agency to D.C. Pretrial Services Agency.

Second. D.C. Bail Agency in printed matter shall be interpreted to be a reference to D.C. Pretrial Services Agency.

The present Director of the D.C. Bail Agency has requested this legislation because it would offer a more accurate description of the functions of the organization.

In addition, the present name of the Agency has resulted in some confusion on the part of the public and some employees in the criminal justice system as to the services available.

Moreover, in title 18, section 3152, of the United States Code, Congress created ten (10) Federal districts modeled after the D.C. Bail Agency. Each of these organizations are named "Pretrial Services Agency." The present legislation would make the District of Columbia title consistent with those other, identical agencies, as well as provide a more accurate and less confusing title.

Mr. Speaker, this bill will help to insure that the local government runs effectively and efficiently. There is no opposition to the name change and it appears that no additional cost to the Government would be incurred as a result of the enactment of this bill. I urge passage of S. 2556.

The purpose of S. 2556 is to change the name of the District of Columbia Bail Agency to the Pretrial Services Agency. The present Director of the District of Columbia Bail Agency requests this legislation because it would effect a more accurate description of the function of the organization. The character of the Agency's services and its functions have expanded over the years to include other methods of dealing with criminal defendants prior to trial.

In addition, the present name of the Agency has resulted in some confusion on the part of the public and some employees in the criminal justice system as to the services available.

Moreover, in title 18, section 3152, et seq., of the United States Code, Congress created 10 Federal districts modeled after the District of Columbia Bail Agency. Each of these organizations is named "Pretrial Services Agency." The present legislation would make the District of Columbia organizational title consistent with those other, identical agencies, as well as provide a more accurate and less confusing title.

There is no opposition to the name change and it appears that no additional cost to the Government would be incurred as a result of the enactment of this bill.●

● Mr. DIGGS. Mr. Speaker, the purpose of this Senate-passed bill (S. 2556) is to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

The District of Columbia Bail Agency was created by the District of Columbia Bail Agency Act (Public Law 89–519, approved July 26, 1966) to implement the Federal Bail Reform Act of 1966 (Public Law 89–456; 80 Stat. 214).

The character of the Agency's services and its functions have evolved, over the years, to keep in step with the changing methods of dealing with criminal defendants prior to trial. Money bond, or bail, is no longer the only way of assuring the attendance of persons at their trials. Personal recognizance, third-party custody, and pretrial detention are only a few of the alternatives available to the court today. The research and information provided by the Agency have been expanded and refined to meet the needs of District of Columbia Superior Court judges.

In addition, the present name of the Agency has caused confusion on the part of the public and some employees in the criminal justice system as to the services it offers.

Finally, in title 18, section 3152, et seq., of the United States Code, Congress created 10 pilot agencies in 10 Federal districts modeled after the District of Columbia Bail Agency. Each of these organizations is to be named "Pretrial Services Agency." This bill would make the District of Columbia organization's title consistent with those other identical agencies, as well as provide a more accurate and less confusing appellation.

The relevant offices in the District of Columbia involved in proceedings of the Bail Agency, namely, that of the Mayor, the Corporation Counsel, the District of Columbia Court of Appeals and the Superior Court, the U.S. attorney, the Metropolitan Police Department, and the U.S. attorney's office, support the bill S. 2556. No opposition to this bill has been expressed to the committee.

The enactment of this proopsed legislation will involve no added costs to the Federal Government, nor to the District government.●

Mr. MAZZOLI. Mr. Speaker, I move the previous question on the Senate bill.

The previous question was ordered.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: An act to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

A motion to reconsider was laid on the table.

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## AMENDING THE DISTRICT OF COLUMBIA REDEVELOPMENT ACT OF 1945

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 10311) to amend the District of Columbia Redevelopment Act of 1945, and for other purposes, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 10311

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 12 of the District of Columbia Redevelopment Act of 1945 (D.C. Code sec. 5–711) is amended by deleting the first proviso thereof and substituting therefor the following: "*Provided,* That any such modification which affects the use or development of an area or part thereof which has been sold or leased, as governed by the area redevelopment plan as theretofore approved, shall not become effective as to such area or part without the consent in writing of the purchaser or lessee thereof:"

(b) The amendment made by this section shall be effective with respect to any approved project area redevelopment plan, regardless of the effective date or date of approval of such plan.

SEC. 2. In implementation of the authority reserved under section 21(a) of the District of Columbia Redevelopment Act of 1945 (D.C. Code sec. 5–718(a)), the Congress hereby amends the urban renewal plan for Southwest urban renewal area project "C" by adopting and approving the following modifications to the plan:

(1) Amendment numbered 22 (pertaining to parcel 76), as adopted by the National Capital Planning Commission on March 7, 1974, and approved by the Council of the District of Columbia on May 7, 1974; and

(2) Amendment numbered 23 (pertaining to parcel D–2–B), as adopted by the National Capital Planning Commission on May 30, 1974, and approved by the Council of the District of Columbia on August 30, 1974.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members be permitted to revise and extend their remarks in explanation of the bill before us.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of the bill is to clarify an ambiguity in the District of Columbia Redevelopment Act of 1945, and to approve certain amendments to the urban renewal plan for Southwest uprban renewal project area C in the District of Columbia. Presently, the provision regarding modification of an approved project in the redevelopment plan is unclear. The question is whether consent is required from all owners and lessees of property in the area who may deem themselves affected by the modification or whether consent is required only from the particular owner or lessee of the property whose planned use is being modified. The bill amends the District of Columbia Redevelopment Act to make clear that only the owner or lessee of the particular parcel of land whose use is being modified is required to give consent under the statute. In addition, the bill approves two urban renewal plan amendments in Southwest Washington.

In 1974, prior to home rule, the District of Columbia Redevelopment Land Agency (RLA), amended, in accordance with the RLA Act of 1945, the Southwest Washington urban renewal project area C to allow low- and moderate-income housing to be built on land previously planned for a church and allow the Channel Inn to expand from 100 to 150 rooms.

L'Enfant Plaza Properties, Inc., and a group of homeowners brought suit against RLA alleging that the law to modify an approved plan required the written consent of all landowners or lessees within the projected area.

The RLA argued that only the owners or lessees whose property is being modified are required to sign a consent. For others likely to be affected by the change, the law requires they be mailed a notice

of a public hearing by the D.C. Council. The RLA contends that since Congress specifically provided that neighboring landowners have an opportunity to testify at a public hearing, Congress did not intend that the owners be required to give consent.

The district court granted RLA's motion for summary judgment and dismissed the complaint. The homeowners and L'Enfant Plaza appealed and the suit was reversed and remanded back to the courts for trial. The judge ruled that the intent of Congress concerning plan modifications was not clear. No trial date has been set. H.R. 10311 responds to the court's suggestion for the need to clarify the ambiguity in D.C. Code, section 5–711.

The committee gave careful consideration to the problem because it affects the ongoing process of urban renewal not only in the Southwest Washington urban renewal project area C, but also in all other urban renewal areas in the District of Columbia. Urban renewal plans commonly control land use for long periods of time. The Southwest Washington project area plan, for example, extends for 40 years. It is unreasonable to expect that an urban renewal plan, once adopted, will remain unchanged throughout its duration. We heard testimony that the "freezing" of two urban renewal projects under the present ambiguous wording of D.C. Code section 5–711 seriously interferes with the primary goals of urban renewal in the District of Columbia; that is, the replacement of blighted residential and commercial neighborhoods with decent, affordable housing and an appropriate mix of commercial development.

Mr. Speaker, I would like now to yield to my distinguished colleague, the coauthor of the legislation, the gentleman from Wisconsin (Mr. REUSS).

Mr. REUSS. Mr. Speaker, I thank the gentleman for yielding and for the gentleman's leadership on this bill, which as I understand was unanimously reported out and enjoys bipartisan support.

Mr. Speaker, in a nutshell, one-fourth of the District of Columbia, Southwest Washington, was planned in the 1950's. There was just one thing wrong with the master plan of the thinkers who dreamed it up. There were hovels for the poor known as public housing. They were and are a disgrace. There were luxury apartments and townhouses for the affluent, which makes very nice living, indeed. I and a number of our colleagues are fortunate enough to live in them. My particular townhouse happens to be almost a mile from parcel 76 and about half a mile from Channel Inn, the motel which seeks to add on to its present number of rooms.

The SPEAKER. The time of the gentleman from California (Mr. DELLUMS) has expired.

(By unanimous consent, Mr. DELLUMS was allowed to proceed for an additional 5 minutes.)

Mr. DELLUMS. Mr. Speaker, I yield further to my colleague, the gentleman from Wisconsin (Mr. REUSS).

Mr. REUSS. Mr. Speaker, the community agencies of the Southwest, the community leaders, the Community Housing, the Southwest Assembly and others decided that some use ought to be found for parcel 76, which as you can see in the picture is a weed-infested, tin-can strewn, semilegal parking lot, and they conceived the idea that it would be nice to have some moderate-income, middle-income, nonprofit homeownership housing, so that middle-income people could leaven the rich and poor lump of the Southwest; so they proceeded and went to an agency set up by the Congress. It is a public semiprivate agency, the National Housing Partnership, which designed some excellent two- and three-story townhouses with prices which moderate-income people could afford.

All was well. The change was put through after the fullest due process by the District of Columbia Redevelopment Land Commission, by the District of Columbia Council, and then enter the Rochefellers. Well, the Rochefellers own L'Enfant Plaza and the gentleman who helps them on with their overcoats is our friend, Gen. Pete Quesada, and they decided they ought to fill it with all the tea in China; namely, a monopoly that might work in the District of Columbia and they got together with others in this lawsuit to stop the motel—not really competition, it was a mile away—from putting on 50 extra rooms and to stop the neighbors from putting moderate-income housing in parcel 76.

The circuit court of appeals not so long ago in the lawsuit I described said that the law Congress wrote in 1954 maybe had a little ambiguity in it and, if so, it would not be the first ambiguity which we have perpetrated; but there was a simple action which the Congress could take, namely, the bill before us, to say that only the owner of the property affected could say "Aye," "Yes," or "No," to a change in the redevelopment plan and that someone who lived a mile away or any of the other 8.000 assorted property owners in Southwest Washington cannot arbitrarily veto the thing.

So I hope this bill will overwhemingly pass and thus show that the Congress is interested in a community in which wealthier people and poor people and, above all. moderate middle-income people can live harmoniously. That is what it is all about and I congratulate Chairman DELLUMS and the committee for bringing the bill before us.

Mr. DELLUMS. Mr. Speaker, I thank my distinguished colleague. the gentleman from Wisconsin (Mr. REUSS), for his sensitive and eloquent remarks.

Mr. MCKINNEY. Mr. Speaker, will the gentleman yield?

Mr. DELLUMS. I yield to my distinguished colleague. the ranking minority member of the committee. the gentleman from Connecticut (Mr. MCKINNEY).

Mr. MCKINNEY. Mr. Speaker, I rise in support of H.R. 10311 and urge its adoption. There is probably no more pressing issue in the District than the lack of adequate and reasonably priced housing. H.R. 10311 would aid the District government's efforts to effectively address this issue.

H.R. 10311 does two things. First, it clarifies an ambiguity contained in the Redevelopment Act of 1945 concerning whose consent is necessary to make changes in a District of Columbia urban renewal plan. This ambiguity has led to litigation which has held up a much needed low- and moderate-income housing project in southwest for 4 years.

In essence the Redevelopment Act is unclear as to whether consent is required from all owners and lessees of property in the urban renewal plan area being modified or only from the specific owner of the property in the area being modified. According to the U.S. Court of Appeals for the District of Columbia in a decision remanding the pending lawsuit back to the U.S. district court for further hearing, the law can be read either way.

In order to clarify the congressional intent with regard to local procedures for modifying urban renewal plans, section 1 to H.R. 10311 utilizes Congress' reserved power under the act to directly modify District urban renewal plans to effect the changes in the southwest urban renewal plan so that construction on the low- and moderate-income housing in southwest can begin without further delay.

What we are saying is that Congress will directly effect this transfer now so that construction on this desperately needed housing can get underway, and at the same time will clarify the procedures for the local government to effect such changes in the future.

In view of the housing situation in the District, I believe that H.R. 10311 is important for the city, and I urge my colleagues to support this measure.

Mr. HARRIS. Mr. Speaker, will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Speaker, I rise in support of the legislation.

The subcommittee hearings indicated that it is indeed unfortunate that this legislation was delayed to the extent it has been. I think it is important to get the legislation enacted.

Mr. KINDNESS. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I would like to direct a question to any Member who would care to respond on behalf of the committee.

It is my understanding from the explanation which has been given that there would not be the necessity for the consent of any adjoining property owners to a change of use if this legislation is to become law; is that correct?

Mr. DELLUMS. Mr. Speaker, if the gentleman will yield, they would be allowed to participate in the hearings and to testify as to their feelings with respect to the modification, but their consent is not required nor are they capable of vetoing the modification.

Mr. KINDNESS. They would be entitled to notice of hearings?

Mr. DELLUMS. That is correct. That is mandated by the law.

Mr. KINDNESS. Mr. Speaker, I have one further question, if the gentleman will respond.

Is there any right at all that an adjoining property owner might be able to assert to keep a use from changing to

the detriment of that adjoining landowner?

Mr. DELLUMS. They could protest or reflect their views before the RLA or they could register their views with the Council, and if that did not work or if the Council decided to act in opposition to their concerns, they could go to court.

Mr. MATTOX. Mr. Speaker, will the gentleman yield?

Mr. KINDNESS. I yield to the gentleman from Texas.

Mr. MATTOX. Mr. Speaker, I think it is not accurate to say that they have any basis on which to go to court. They have no right at all to go to court, and they have no justification for a suit.

I am concerned that this legislation is before us, because basically what is happening in this legislation is that they are adopting a procedure that is different from any other zoning procedure in the entire country. Generally, when they engage in spot zoning—and that is in effect what this is—the property owners in the general area have a right to raise their objections. Property owners whose property is located perhaps 100 feet, 200 feet, or may be 300 feet away have a right to object to that spot zoning. If their objections are not heard or are not upheld and they are overruled by the governing body, then they have a right under ordinary circumstances to go to court.

But that would not be the fact in this particular circumstance. The agency can run roughshod right over the individual, and he or she has no rights to litigate. They can litigate, but they have no property rights to defend. In effect, this entire change in the law would modify the covenant agreement that exists between the Redevelopment Agency and those property owners around parcel 76 after they have developed their property.

Mr. KINDNESS. The gentleman is quite correct, and it concerns me that we may be treating this a little bit too quickly or lightly, in that the people who have developed or redeveloped properties in parcel C have done so in reliance on mutual covenants as to restricting the use of land to fit in with the redevelopment plan.

Obviously, that plan cannot remain constant forever, and I certainly do not mean to imply that there ought not be a procedure that could accommodate change, but I do feel that this bill may go too far in depriving adjoining property owners of the right to rely on the nature of the redevelopment of the property that adjoins them.

Mr. DELLUMS. Mr. Speaker, will the gentleman yield?

Mr. KINDNESS. I yield to the gentleman from California.

Mr. DELLUMS. I thank the gentleman for yielding.

Mr. Speaker, as I understand the consultation with our legal staff, that common law and property law would give standing in any court if, indeed, people felt that their property rights were being violated or that there was waste involved. After the administrative remedies have been exhausted, they then do have standing in the court, given common law and property law, on those two points, property rights and waste.

Mr. KINDNESS. Mr. Speaker, the gentleman is absolutely correct that, if there is a nuisance created on an adjoining property, there might be such a right, on that basis, in court, and if the adjoining property was to be further developed as to cut off light, some of the more ancient common law principles might be applied. But in a redevelopment area we are talking about reliance on adjoining properties being developed in accordance with a plan of redevelopment of a whole area, and I believe people have a right to rely on that to some degree. I believe we may be overreacting to a situation in which other property owners just may be getting in the way of what may be a very proper redevelopment in these parcels.

Mr. MATTOX. Mr. Speaker, I move to strike the requisite number of words, and I rise in opposition to this legislation.

Mr. Speaker, let me announce to the body at this time that I am, in effect, a property owner. My house is directly across the street from this redevelopment, so I speak with some interest about it. I think that the most important thing to point out is that this particular piece of legislation is a piece of legislation that changes basic zoning and covenant-type law in respect to parcel 76. I doubt if any Member of this House can cite me one single piece of zoning legislation or zoning ordinance in this entire country that allows only the individual who is selling the property to have the impact that is taking place in this legislation. I do not think anyone can cite it to me. The reason that that is the case, in effect, is that this redevelopment agency establishes a covenant with all of those people who developed the property around and in compliance with that particular plan. Then to summarily come in and change the plan, in effect, does not allow those property owners to carry out their property rights.

I think it is improper for that to take place. I suspect that this body and the committee here will probably pass this legislation, and I think that that would be improper, particularly when there is a lawsuit that is now pending and legal actions are still going on, to usurp the power of that court to formulate a decision. I think this is particularly true when those individuals out there are trying to carry out their property rights.

The part about the common law and what action you have in common law, you can sue anybody in common law, but if you pass this legislation, though, you are going to do away with your common law rights of the individuals, and I would hope that this body would reject this piece of legislation.

● Mr. FAUNTROY. Mr. Speaker, I rise in support of H.R. 10311, a bill amending the District of Columbia Redevelopment Act of 1945. I would also like to thank the chairmen of both the subcommittee and the full committee for their diligent work on this bill. This is a simple bill which seeks to do two things:

First. Clarify an ambiguity in the District of Columbia Code which presently may have as its effect the grant of a veto every owner or lessee in a designated urban renewal area over any plan amendment in the urban renewal area. This reading, which has been put upon the statute, creates an unworkable urban renewal process and is presently, with respect to the Southwest Urban Renewal Project Area C, preventing two projects, which have all of the other approvals necessary, from going forward and being implemented. If allowed to continue, this statutory ambiguity will have an adverse impact upon every other urban renewal district in this city. This bill aims to remove that ambiguity.

Second. Through the exercise of a right which is reserved exclusively and absolutely to the Congress itself, approve the two plan amendments which authorize the construction of housing on parcel 76 and an extension to a waterfront inn on parcel D–2–B. This is a right which the Congress may exercise with or without the consent being given by the other lessees or owners in such urban renewal areas. In this case, it will terminate the need for further litigation that has arisen over this ambiguity and permit the construction of housing which has been approved by all involved agencies and which was, in fact, a part of the original urban renewal plan. It will also permit a waterfront inn to construct an additional 50 rooms to which there is no expressed opposition from any of the parties in litigation as evidenced by the correspondence between them.

This leads me, Mr. Speaker, to my final point. We have, in this instance, an opportunity to assure that our goal of intermixing low-, moderate-, and upper-income housing can be fulfilled. Housing for persons of low and moderate income is an important component of successful urban renewal programs. The Southwest Urban Renewal Project is one of the oldest—both locally—and in the Nation. What this Congress does to implement the urban renewal project will largely determine whether or not other urban renewal undertakings purportedly aiding those with low and moderate incomes will have a chance to succeed.

This bill is important to me not only because it ends the ambiguity of the law, thus, permitting the completion of these important projects, but also because it reaffirms our decision that those with low and moderate incomes are an integral part of successful urban renewal projects in this Nation.●

● Mr. DIGGS. Mr. Speaker, the purposes of the bill (H.R. 10311) are first, to clarify an ambiguity in the District of Columbia Redevelopment Act of 1945, and second, to approve certain amendments to the urban renewal plan for Southwest Urban Renewal Project Area C in the District of Columbia.

Presently, there is an ambiguity concerning the scope of the class of persons whose written consent is required to effectuate a modification of an approved project area redevelopment plan. The ambiguity is whether consent is required from all owners and lessees of property in the area who deem themselves affected

by the modification, or whether consent is required only from the particular owner or lessee of the property whose planned use is being modified.

The bill would amend the District of Columbia Redevelopment Act to reaffirm the intent of the Congress that only the owner or lessee of the particular parcel of land whose use is being modified is required to give consent thereof under the statute. This was the intent when the Congress enacted the Redevelopment Act of 1945, and this is still the proper interpretation of the act, in the judgment of the Committee on the District of Columbia which authored the legislation in question.

Congress was the prime mover, starting in the District of Columbia, in slum clearance and redevelopment projects in our major cities. Hence, the enactment of the legislation authorizing the District of Columbia Redevelopment Land Agency to acquire and clear land in blighted and substandard areas, and sell it to private redevelopers for development in accordance with an areawide plan.

These land clearance and redevelopment projects of necessity involve long-range planning, and the RLA Act specifically details procedures therefor, adoption of an approved urban renewal plan, and provisions for modifications necessitated by desirable changes suggested or recommended by interested parties during prolonged hearings and consideration by the agencies delegated to study and approve the end project.

The committee report outlines some of the detailed efforts that have been a part of the "Parcel 76" proposed rehabilitation of the southwest District of Columbia area involved herein.

The committee, as stated in its report, finds it is unreasonable to expect an urban renewal plan, once adopted to remain unchanged throughout its duration.

So with proposed "modifications," parties in interest have a legitimate concern. But it is not responsible for them to assume that all property owners in an urban renewal area must consent to, and thus in effect, have the right to veto, all modifications for the duration of an urban renewal plan.

Hence, the clarifying change offered by the committee to enable the RLA to proceed toward its goals for the southwest area under what the committee feels is the proper interpretation of the 1945 act.

H.R. 10311, in addition, approves two urban renewal plan amendments in southwest Washington by authorizing first, a low- and moderate-income housing development, and second, a waterfront inn expansion project.

These proposals have already been the subject of lengthy hearings and study by the council, the National Capital Planning Commission, and the D.C. Redevelopment Land Agency.

The amendments will permit the District of Columbia to accomplish its objectives of providing much-needed housing on Parcel 76 in the southwest, and permitting long-delayed commercial expansion of the waterfront to proceed, thus contributing to the city's economic strength and vitality.

Adoption of H.R. 10311 will help measurable to start the pace of urban renewal in southwest Washington zoning again.●

Mr. DELLUMS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## CONFERENCE REPORT ON S. 3075, INTERNATIONAL SECURITY ASSISTANCE ACT OF 1978

Mr. ZABLOCKI. Mr. Speaker, I call up the conference report on the Senate bill (S. 3075) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see Proceedings of the House of September 7, 1978.)

Mr. ZABLOCKI (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. ZABLOCKI) will be recognized for 30 minutes, and the gentleman from Michigan (Mr. BROOMFIELD) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, I yield myself such time as I may consume.

The major purpose of the conference report on S. 3075 is to authorize the appropriation of funds to finance U.S. international security asssistance programs for fiscal year 1979.

First, concerning our international security assistance programs for fiscal year 1979, as agreed to by the conferees on August 15, the report authorizes an appropriation for international security assistance of $2,817,500,000. Including the economic support fund, amounts for which the House authorized in the International Development and Food Assistance Act of 1978 (H.R. 12222), the total authorization represents a reduction of $36,800,000 from the amounts authorized by the House on August 2, a decrease of $32.5 million in the Senate figure, and an increase of over $28.2 million the amount requested by the executive branch.

The specific authorizations contained in the bill are as follows: $133.5 million for grant military assistance; $31.8 million for international military education and training; $1,902 million for the economic support fund; $30.9 mililon for peacekeeping operations; $674.3 million for foreign military sales financing. This amount will finance the sale of $2,085,500,000 worth of defense articles and defense services during fiscal year 1979; $5 million for the contingency fund; $40 million for international narcotics control programs.

On other items of major interest, the conference report also:

Lifts the Turkish arms embargo. The conference report follows the House provision which provided that the embargo on the export of arms to Turkey embodied in section 620(x) of the Foreign Assistance Act would be of no further force and effect. That fact would be contingent upon a Presidential determination and certification to the Congress covering two points: First, that resumption of full military cooperation with Turkey is in the national interest of the United States and in the interest of NATO; and second, that the Government of Turkey is acting in good faith to achieve a just and peaceful settlement of the Cyprus problem.

Those in the House who had strong views on the Turkish arms embargo question and who worked diligently to uphold their position can be assured that the House conferees succeeded in protecting their interests. This issue was carefully resolved by preserving more of the House provision than the Senate approach which involved a flat repeal of section 620(x). Further, the conference report stresses that Congress will continue to assess and examine how it can best promote political and military stability in the eastern Mediterranean, reduce tensions between Greece and Turkey, and help promote progress toward a Cyprus settlement.

Concerning the authorization for a transfer of military equipment to Korea, the committee of conference authorized the President to transfer defense articles and services to Korea only in conjunction with the withdrawal of the 2d Infantry Division and support forces. Thus, the rate and proportion of defense articles transferred shall correspond to the rate and proportion of the troop withdrawals. Further, the authorization of this equipment transfer in no way diminishes the expression of serious concern about the troop withdrawal program. Finally, it stipulates the expectation of full consultation in advance of further troop withdrawals.

Concerning the Rhodesia embargo, the House conferees kept in mind the strong sentiments of the House as expressed in the Ichord amendment. We therefore did our utmost to stay as close as possible to the House position.

The conference report provides that the United States shall not enforce sanctions against Rhodesia after December 31, 1978, provided that the President determines first that the Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference held under international auspices on all relevant issues; and second, that a government has been in-

stalled chosen by free elections in which all political and population groups have been allowed to participate freely, with observation by impartial, internationally recognized observers.

This compromise provision thus embodies the following key features of the Ichord amendment, as opposed to the Case-Javits amendment:

The provision enables a permanent lifting of the embargo after a set date as in the Ichord amendment, rather than a temporary lifting during a limited period of time.

The Presidential determination regarding a peace conference and free elections is obligatory upon fulfillment of the conditions set forth in the law, as opposed to the Senate version which did not require a determination.

As is obvious, the language itself is predominantly taken from the language of the Ichord amendment and the overall structure, language and approach of the conference report is much closer to the straightforwardness of the Ichord amendment.

Mr. Speaker, the conference report on S. 3075 also contains important provisions aimed at improving the information available to the Congress concerning arms sales. For example:

A new reporting requirement was added for arms sales proposals which must be submitted to Congress by November 15 of each year. It will set forth the most authoritative estimate of major sales which the executive branch contemplates for possible submission to the Congress during the fiscal year.

A new quarterly report on security assistance surveys authorized during the preceding calendar quarter was added.

A new requirement for additional information relevant to major arms sales proposals submitted under 36(b) was added.

As mentioned earlier, the conference report authorizes $1,902 million for the Economic Support Fund. In the past, this program was designated "security supporting assistance." The conferees agreed that the term "economic support fund" more properly reflects its nature and purpose. It is economic assistance in areas of particular importance to the security and political interests of the United States.

Mr. Speaker, perhaps the most volatile region in the world today is the Middle East. Elusive as the prospects for a lasting peace seem, every effort must continue to be made toward a just settlement in that troubled area.

In an effort to help in this process toward peace, the conference committee recommends the use of $1,776 million from the economic support fund.

Of this amount, $785 million is earmarked for Israel, $750 million for Egypt, $93 million for Jordan.

In addition, it is the intent of the Committee of Conference that $90 million be provided for Syria, and $50 million for the Maqarin Dam project.

The total amount earmarked for Israel may be available as a cash transfer if the President insures that it does not have an adverse impact on U.S. nonmilitary exports to Israel.

Furthermore, to insure that the sentiments of Congress concerning the situation in the Middle East remain clear, the bill contains a policy statement that the United States should continue to promote negotiations and encourage other Arab states to enter into negotiations, and that the United States should be responsive to Israel's economic needs and defense requirements including the provision of additional advanced aircraft to maintain Israel's defense capability which is essential to peace.

With regard to the economic support fund assistance for southern Africa, the conference report authorized $60 million.

Finally, $15 million was earmarked in the conference report for refugee relief and reconstruction for Cyprus.

Mr. Speaker, this is a good conference report. It is the product of long hours of hard work and honest negotiation. House conferees were diligent and determined in upholding House interests and positions. In the judgment of the conferees, it combines the best features of both the House- and Senate-passed bills.

It fully merits support and I therefore urge my colleagues to approve the conference report.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report to S. 3075—the International Security Assistance Act of 1978. The conference report preserves principal provisions of the security assistance legislation initially passed by the House and warrants our support.

In particular, the report we have before us provides for the maintenance of our overall security interests—and as a result—acts as an important counter to the ever-growing Soviet military threat.

As my colleagues well know, the projection of Soviet power in the eastern Mediterranean poses numerous problems to our good friends and allies on the southern flank of NATO. In this regard, I believe that the conference report we have before us today will help to encourage an accommodation in the eastern Mediterranean which will be in the best interests of all parties to the Atlantic Alliance. In particular, the $35 million earmarked for grant military assistance to Greece, which was included in the House-passed legislation and agreed to by the Senate conferees, is intended to maintain a balance in total security assistance for the eastern Mediterranean. In this way, the structure of NATO will be further strengthened against the Soviet threat. Also, conferees agreed to earmark $15 million for sorely needed refugee relief and reconstruction on Cyprus.

As my colleagues are aware, the Soviets, with growing military strength, are intent upon outflanking our near Eastern friends and jeopardizing our oil supplies. In this regard, the conference helps to offset the Soviet Union's increasing encirclement of the Middle East by providing essential support to our friends in that region of the world. The Senate conferees, for example, adopted the House position on the authorization of foreign military sales credits, which provides for a $1 billion foreign military sales program for Israel alone. This assistance is fundamental to Israel's security needs and will provide Israel with confidence in negotiating with its Arab neighbors for peace in the Middle East.

The conference also agreed to include an economic support fund, which was in the Senate Security Assistance bill and transferred from the House Economic Assistance bill. This fund earmarks money for Israel, Egypt, and Jordan. In relation to the economic support fund, the House adopted a provision of the Senate bill which would provide at least $65 million authorized for Egypt to be used for the development and encouragement of private enterprise.

Although the conference report is important in countering the ominous Soviet military threat worldwide—it does little to offset the Communist threat to our internal security, namely the influx of Communists into the United States. I was particularly disturbed when the Senate conferees failed to successfully defend its nonimmigrant visa provision as introduced by Senator BAKER and adopted on the Senate floor. This provision, which repealed the MCGOVERN amendment, would have had the effect of keeping members of proscribed organizations out of the United States unless the State Department requests a waiver to admit them.

To be sure, our policy toward the Soviet Union should be predicated to some extent on the Soviets' willingness to maintain their commitments as signatories to international agreements. While the Soviet Union continues to flagrantly violate human rights and has been far from fully satisfying the movement of people as provided by the Helsinki accords, I believe that the Baker provision would have been the more effective response, not only in potentially keeping Communist agents out of the United States, but also members of the Palestinian Liberation Organization.

Overall, however, the Committee of Conference retains a number of provisions initially approved by the House while at the same time providing for the achievement of important national and international security objectives. For these reasons, I urge my colleagues to approve the conference report to S. 3075—the International Security Assistance Act of 1978.

Mr. BROOMFIELD. Mr. Speaker, at this time I yield 2 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I rise for a number of reasons in opposition to this conference report, but I also want to ask some questions of the chairman regarding at least two sections of the bill.

First, let me point out to the membership that section 22 of the conference report contains an entirely new

authorization for foreign travel by Members of Congress and their staffs. In effect, this new section allows a perpetual authorization for the Secretary of the Treasury to purchase foreign currencies to be used for congressional travel expenses, without any of this money having to be appropriated by the Congress. I personally opposed this permanent appropriation and regret that an annual authorization was not required.

This section does contain, however, certain amendments which I offered requiring that any such expenditure of foreign currency by Members or their staff be reported within 30 days of their return and that each calendar quarter these records be made available in the RECORD. They will also be public as soon as they are filed. Perhaps this may act as a needed restraint on any excesses which may occur.

Now, Mr. Speaker, I would like to address some questions to the distinguished gentleman from Wisconsin (Mr. ZABLOCKI).

As the gentleman well knows, on page 6 of the conference report, the southern African program, funding is provided in the amount of $60 million. The other body had provided amounts of money earmarked for humanitarian assistance and establishment of educational and other training programs in Rhodesia. My concern stems from the statement appearing on page 45 of the report, which says that this assistance will be available to refugees "from or in Rhodesia," and shall be channeled through international organizations. I am concerned that in some manner or means these moneys may in fact go to the guerrilla forces or in some way be used to assist those who are fighting against the current transitional Government of Rhodesia. I think that is the last thing that we would want American tax dollars to be doing.

Mr. ZABLOCKI. Mr. Speaker, if the gentleman will yield, I can assure the gentleman that there are no funds for the guerrilla forces.

I might add that the other body had earmarked funds, for Rhodesia. The conference report we bring back does not earmark those funds as the language on page 6 will confirm.

As to the gentleman's question on page 45, the assistance to refugees "from or in Rhodesia" would be to bona fide refugees, and those programs would be administered by appropriate international organizations. If the Rhodesian Government, for example, would have an adequate and legitimate refugee program, then the answer that I presume the gentleman seeks would be yes and these funds would be available to the Rhodesian Government, in my opinion, for Rhodesian refugees.

Mr. BAUMAN. So that not only is it the intention of the conferees to prevent this money from assisting the guerrilla activities, but, in fact, there is no prohibition against direct aid to the current Government of Rhodesia for refugee purposes.



Mr. ZABLOCKI. If they were for refugee purposes, and, hopefully the Government of Rhodesia also would agree that whatever is available through international organizations, that they would support such a program.

The SPEAKER. The time of the gentleman has expired.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 additional minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for yielding me this additional time.

The other question I wanted to ask the gentleman is in regard to the language lifting the embargo, on page 30 of the conference report. In my view there is no question that the President is obligated to make a determination upon the occurring of the two events, that is, the willingness to negotiate on the part of the government and the holding of free elections on the part of the current government.

This report seems to indicate that any number of people, the phrase used is "many people may express their opposition to the internal settlement by voluntarily refraining from voting," might lend itself to an excuse not to determine that, in fact, these events had occurred. I would hope that this would not be used as an excuse to refuse to lift the embargo.

Mr. ZABLOCKI. That is the intention of the conferees, and it is not intended that the language the gentleman refers to in the statement of managers on page 30 "that many people may express their opposition," that is an exception, but by many people we do not mean two or three, it would have to be thousands before the President would consider a negative Presidential determination.

Mr. BAUMAN. I also assume that none of the international groups that are mentioned here that may supervise or deal with the funds I just mentioned, would include groups that have, in fact, shown partiality to the guerrilla groups, like the World Council of Churches.

Mr. ZABLOCKI. We would expect the international organization that would administer the refugee fund to be sympathetic to the refugees.

Mr. BAUMAN. I thank the gentleman for his responses, although I would like to see the immediate lifting of the embargo particularly in view of the guerrilla attack on the Rhodesian airliner in the last few days. This atrocity is only the latest in a lengthy chain of murderous acts committed by the guerrillas against blacks and whites, young and old, so that thousands have died at their hands.

It is clear that the use by the guerrillas of heat-seeking missiles against a defenseless civilian airliner is still more evidence of the Soviet involvement in Rhodesia. Only today I have heard rumors of the massing of Cuban troops on the borders of Rhodesia. And all this activity is directed against the official interim government which is headed by three blacks and one white, all seeking a peaceful transition to majority rule.

To me it is the shame of this administration that they have sided with the murderers and Communists, against those who seek a peaceful solution. By lifting the embargo now we could at least assist those who share our goals for a peaceful Africa in which the rights of all races are protected.

Mr. ZABLOCKI. Mr. Speaker, I yield 5 minutes to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Speaker, I appreciate the gentleman's yielding.

I take this time for the purpose of further establishing a legislative record on the compromise Rhodesian amendment.

As the gentleman from Maryland (Mr. BAUMAN) and the chairman have stated, my amendment, which was adopted by the House, provided for lifting sanctions on December 31, 1978, unless the President found that certain things did not exist. The language of the compromise provides for a lifting of sanctions on December 31, 1978, provided the President finds that certain conditions do exist.

I do agree with the distinguished chairman of the committee. The compromise language is a distinct improvement over the original Case-Javits amendment, which was extremely ambiguous. However, I find that there is still some ambiguous language in my own mind; and I think that a clarification should be made for the record.

Therefore, Mr. Speaker, I would ask the distinguished chairman this question: It is the chairman's understanding, is it not, that prior to December 31, 1978, the President, under the conference committee language, under the compromise, is obliged to make a determination based upon the conditions set forth and that the basis of such a determination would be transmitted to both Houses of Congress for review?

Mr. ZABLOCKI. If the gentleman will yield, Mr. Speaker, I would say to the gentleman that the Rhodesian embargo would be lifted, and the United States would not enforce sanctions against Rhodesia after December 31, 1978, unless the conditions enumerated in the legislation are not met.

Mr. ICHORD. The compromise language provides that the sanctions shall be lifted on December 31, 1978, provided that the Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference held under international auspices.

Let us suppose that the U.N. or the international body referred to does not choose to oversee the conferences, and also that they did not provide observers for the free elections provided therein. Would that be considered as making the conditions null and void?

Mr. ZABLOCKI. If the gentleman will yield further. I would say no. In my judgment, the United States and the British, acting as observers, would satisfy the requirement for international observers as included in the language which is presented in the conference report at page 17.

Mr. ICHORD. Would the distinguished chairman define for me the phrase "will-

ingness to negotiate?" It says that the sanctions shall be lifted provided the President determines that the Government of Rhodesia has demonstrated its "willingness to negotiate."

What I am asking is, What must the Rhodesian Government do to satisfy this precondition?

Mr. ZABLOCKI. It is my judgment that a willingness to negotiate would be satisfied once the Rhodesian Government has shown a readiness to go to the conference table on this issue; in other words, to attend and participate in the conference in good faith. That would, in my opinion, satisfy the requirement to which the gentleman refers, the "willingness to negotiate."

Mr. ICHORD. I would quote to the gentleman from the Washington Post. This morning's Washington Post quotes Nkomo as saying that the British-American plan for an all-parties conference to end the Rhodesian war is now dead and buried.

The SPEAKER pro tempore. The time of the gentleman from Missouri (Mr. ICHORD) has expired.

Mr. ZABLOCKI. Mr. Speaker, I yield 5 additional minutes to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. To continue, Mr. Speaker, it says that he would meet Rhodesian Prime Minister Ian Smith only at a surrender conference.

How is this going to affect the compromise amendment? Apparently Nkomo is not willing to have an all-parties conference as proposed by the British-American plan.

Mr. ZABLOCKI. I, unfortunately, have not read the article. It is my understanding, I will say to the gentleman, that Ian Smith has expressed the desire to cooperate and negotiate, and although Nkomo has taken a hard line in this matter he is only one person. The situation is moving so rapidly in Rhodesia that one cannot foresee what will happen. In my judgment Nkomo's position as reported in the Washington Post is not necessarily the final word.

Mr. ICHORD. The chairman would agree that it would not bar—that action of Nkomo as read from the Washington Post—the fulfilling of that condition.

Mr. ZABLOCKI. I would, yes.

Mr. ICHORD. As a final point, I would like to ask the chairman to define the term "relevant issues." The condition says the Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference held under international auspices on all relevant issues. How would the chairman define the term "relevant issues"?

Mr. ZABLOCKI. Will the gentleman yield?

Mr. ICHORD. Yes, I yield to the gentleman.

Mr. ZABLOCKI. The report on page 30 clearly states under subsection (e)—

"All relevant issues" to be considered at an all-parties conference include, among other things, the terms of majority rule, the protection of minority rights, the Anglo-American plan, and the terms of the Salisbury Agreement.

The gentleman knows and is familiar with the explanation that I have just read from the statement on the part of the managers, in addition I would like to say to the gentleman that this is neither an all-inclusive or final list that I have read. It is illustrative of the issues which the conferees thought would be inherent in any discussion of a peaceful settlement of that conflict. In addition, I would say that it would also include other economic and political matters which would be of interest to the people of Rhodesia, including the white population, such as property and voting rights.

Mr. ICHORD. I appreciate the gentleman's clarifying the record on what I consider to be some of the ambiguous terms of the compromise. I realize that the position of the Senate conferees was very adamant, but I would still express the concern to the House that we put conditions upon the transitional government, but nowhere do we mention any conditions on the Patriotic Front, which is, of course, dedicated to achieving power at the point of a gun and a force responsible for the indiscriminate killing and raping and mutilating of innocent Rhodesians, both black and white. I particularly refer to Mugabe's forces, not so much to Nkomo's forces, because I think that Nkomo probably, or under certain conditions at least, would be willing, although he stated he would not, to sit down and negotiate. I can only hope that this language will help to bring about a government that truly represents the best aspirations of the Rhodesian people, both black and white.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ZABLOCKI. Mr. Speaker, I yield myself 1 additional minute just to comment on the gentleman's observations. We all abhor the atrocities that are occurring in that area of the world. The conferees intend to establish the conditions in which cooperation in the area can develop. We have included in our conference report almost verbatim the gentleman's amendment, and I am sure we are just as sincere as he is to see that the right thing is done in that area of the world.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Speaker, I urge my colleagues to support the conference report to S. 3075—the International Security Assistance Act of 1978. This report retains important provisions of security assistance legislation originally passed by the House.

Moreover, the conference report is fundamental to our national and international security interests—and will help to offset the current Soviet threat.

The Soviet Union continues to escalate its arms buildup and to project its naval power worldwide. In particular, the Soviets are now threatening to encircle our good friends and allies in the eastern Mediterranean.

In this regard, the conference report earmarks $35 million in grant military assistance to Greece. This amount of grant assistance to Greece was included in the House-passed legislation and was agreed to by the Senate conferees. To be sure, the grant military assistance to Greece will help to strengthen the structure of NATO and counter the Soviet threat.

The conference report to S. 3075 also provides necessary support to our Middle East friends. The conference, for example, provided for a $1 billion foreign military sales program for Israel and earmarked economic support fund moneys for Israel, Egypt, and Jordan.

Furthermore, the conference report to S. 3075 addresses U.S. security concerns in Asia. The conference authorized the transfer to Korea of U.S. defense equipment as the President withdraws U.S. forces from Korea. It also maintained the initially passed House position that the President shall submit a report to the Congress on the effect of any proposed withdrawal plan prior to further withdrawal. The committee of conference also adopted the position that proposed policy changes affecting the Mutual Defense Treaty with the Republic of China shall be a matter for prior consultation with the Congress—and not simply the Senate.

While this legislation is important in meeting the external Communist threat, it does not meet the problem of Communists and representatives of other proscribed organizations entering the United States under the guise of trade unionism. Unfortunately, the Senate conferees abandoned Senator BAKER'S nonimmigrant visa provision which was adopted by the full Senate.

To some extent, I was also disturbed over the fact that the conference did not provide the executive branch with more flexibility by increasing the amount of the contingency fund, consistent with my amendment.

I believe that overall, however, the committee of conference adequately provides for the meeting of important national and international security objectives. As a result, I urge a favorable vote on the conference report to S. 3075.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Speaker, I urge the defeat of the conference report on S. 3075, the International Security Assistance Act for fiscal year 1979. My objection centers on the provisions regarding Rhodesia.

I believe the House acted wisely when it approved the Ichord amendment on August 2. This important amendment would lift economic sanctions against Rhodesia once that nation holds free elections and a freely elected government is installed.

Unfortunately, the conferees have adopted language much closer to the Senate version. Sanctions would be lifted only if the President determines that a freely elected government is installed and that Rhodesia demonstrates its wil-

lingness to negotiate in good faith at an all-parties conference held under international auspices. What we are left with is language basically upholding President Carter's plan of imposing Patriotic Front rule in Rhodesia.

We have seen all too well the brutal activities of the Patriotic Front's black guerrillas. These pro-Communist terrorists use hit-and-run raids to slaughter innocent civilians.

A few weeks ago we saw photographs of the bloody massacre of a dozen British missionaries. We have seen pictures of women and their babies killed by these so-called liberation forces. And now this week they admittedly shot down a civilian Rhodesian airliner. After the crash, 10 of the 18 survivors were rounded up and executed by machine-gun fire and bayonet thrusts.

How long will we stand back and watch such activities continue? It is time to remove economic sanctions against Rhodesia and support the moderate internal settlement.

The conference report, however, backs the concept of an all-parties conference. Such a conference is dead. Let me quote what the radical guerrilla leader Joshua Nkomo said yesterday. As far as he is concerned, the British-American plan for an all-parties conference to end war is "dead now and buried." He will meet with Smith only at a "surrender" conference.

Why are we still insisting that Rhodesia show its good faith to participate in an all-parties conference while the leader of the black guerrillas has no intention of participating in any such conference? Our position is absurd.

Again, it is time to end our support for the terrorists and guerrillas. We should defeat the conference report and insist on language such as the Ichord amendment.

● Mr. YOUNG of Missouri. Mr. Speaker, because of a prior commitment I will be unable to cast my vote on the conference report on the International Security Assistance Act of 1978.

I supported the House version of this legislation, and I also support this conference report. Under the bill, the State of Israel would receive about $785 million in economic support funds as well as a substantial amount in military credit and sales. In addition, the report contains strong language in support of the continued U.S. military and economic assistance for Israel.

I believe it is essential for this Nation to continue it traditional commitment to Israel, and I believe that this conference report reflects that policy.●

● Mrs. LLOYD of Tennessee. Mr. Speaker today Members of the House of Representatives were asked to make a difficult decision about this country's ability to continue our international security assistance programs for fiscal year 1979. I opposed this funding because I do not feel that we can continue to ask taxpayers to sponsor deficit spending in this fashion. We no longer have the fiscal capability to meet both domestic and international needs solely from our limited national resources.

We cannot afford to give as freely and generously as we have in the past and the countries into which we have poured billions of dollars must face that fact now. We now find ourselves in the position of borrowing money to give it away, and it is unconscionable for the Government to expect American taxpayers to accept this type of fiscally irresponsible spending.

As long as there are serious domestic needs here in our country, I will not support the expenditure of our tax dollars on foreign needs. To begin moving toward a balanced budget we must make cuts in Government spending elsewhere. I would rather see decreases in our foreign assistance programs as opposed to cutting the budget in areas which will directly deprive American citizens of programs which are vitally important to them.

I deeply regret that by voting against this bill I am in the position of voting against assistance to Israel, a nation which has borne the brunt of its own defense. Israel is a nation determined to fight for its existence, a fight which, without the outside interference of the Soviet Union, it would easily win.

President Carter, Prime Minister Begin and President Sadat are at this time meeting in an effort to move ahead on the road to achieving peace in the Middle East. This type of personal interchange is extremely important in the resolution of this three-decade old Arab-Israeli conflict. I feel that it is critical that this summit meeting now indicates that the United States has moved to become a full partner in achieving this peace.

In light of these circumstances, I feel that continued U.S. assistance to Israel is fully justified and deserved, and I would support such a proposal if offered independently of this bill. Since this was not the case, I reluctantly voted against the International Security Assistance Act of 1978 conference report.●

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. ZABLOCKI. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the conference report.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

Mr. BROOMFIELD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 225, nays 126, not voting 81, as follows:

[Roll No. 761]

YEAS—225

| | | |
|---|---|---|
| Akaka | Benjamin | Brown, Mich. |
| Alexander | Biaggi | Buchanan |
| Ambro | Bingham | Burgener |
| Anderson, Ill. | Blanchard | Burlison, Mo. |
| Andrews, N. Dak. | Boggs | Burton, Phillip |
| Annunzio | Boland | Carney |
| Aspin | Bonker | Carr |
| AuCoin | Brademas | Cavanaugh |
| Baldus | Breckinridge | Cederberg |
| Baucus | Brodhead | Clay |
| Beard, Tenn. | Brooks | Cohen |
| Bellenson | Broomfield | Coleman |
| | Brown, Calif. | Collins, Ill. |
| Conable | Kostmayer | Quayle |
| Conte | LaFalce | Rahall |
| Corcoran | Lagomarsino | Railsback |
| Corman | Le Fante | Rangel |
| Cotter | Leach | Regula |
| Coughlin | Lederer | Reuss |
| Danielson | Lent | Rhodes |
| Dent | Levitas | Rinaldo |
| Derrick | Livingston | Roberts |
| Derwinski | Lloyd, Calif. | Roe |
| Dicks | Long, La. | Rogers |
| Dingell | Luken | Rooney |
| Dodd | Lundine | Rosenthal |
| Dornan | McClory | Ruppe |
| Downey | McCloskey | Ryan |
| Drinan | McCormack | Santini |
| Duncan, Oreg. | McDade | Sawyer |
| Early | McEwen | Schulze |
| Eckhardt | McFall | Seiberling |
| Edgar | McHugh | Sharp |
| Edwards, Calif. | McKay | Shipley |
| Eilberg | McKinney | Sikes |
| Erlenborn | Madigan | Simon |
| Evans, Colo. | Maguire | Sisk |
| Evans, Del. | Mahon | Skelton |
| Fascell | Mann | Skubitz |
| Fenwick | Markey | Smith, Iowa |
| Findley | Marks | Snyder |
| Fisher | Mazzoli | Solarz |
| Flood | Metcalfe | Spence |
| Foley | Meyner | Staggers |
| Ford, Mich. | Michel | Stanton |
| Ford, Tenn. | Mikva | Steers |
| Fowler | Milford | Steiger |
| Gaydos | Mineta | Stockman |
| Giaimo | Minish | Thompson |
| Gilman | Mitchell, N.Y. | Thornton |
| Glickman | Moakley | Traxler |
| Gonzalez | Mollohan | Treen |
| Gore | Moore | Tucker |
| Gradison | Moorhead, Pa. | Udall |
| Green | Murphy, Ill. | Ullman |
| Hagedorn | Murtha | Van Deerlin |
| Hamilton | Myers, Michael | Vanik |
| Hanley | Natcher | Vento |
| Hannaford | Nedzi | Walgren |
| Harris | Nix | Walsh |
| Heckler | Nowak | Waxman |
| Heftel | O'Brien | Whalen |
| Hightower | Oberstar | White |
| Hillis | Obey | Whitehurst |
| Holland | Ottinger | Wilson, Bob |
| Hollenbeck | Patten | Wilson, Tex. |
| Horton | Patterson | Winn |
| Howard | Pattison | Wirth |
| Hyde | Pease | Wolff |
| Jeffords | Pepper | Wright |
| Johnson, Calif. | Perkins | Wydler |
| Jordan | Pettis | Yates |
| Kazen | Pickle | Yatron |
| Kemp | Preyer | Zablocki |
| Keys | Price | |
| Kildee | Pritchard | |

NAYS—126

| | | |
|---|---|---|
| Abdnor | Emery | McDonald |
| Anderson, Calif. | English | Marlenee |
| Andrews, N.C. | Evans, Ga. | Marriott |
| Applegate | Evans, Ind. | Martin |
| Archer | Fithian | Mathis |
| Ashbrook | Flippo | Miller, Ohio |
| Badham | Flynt | Moffett |
| Bafalis | Forsythe | Montgomery |
| Bauman | Fountain | Moorhead, Calif. |
| Bedell | Gammage | Mottl |
| Bennett | Gephardt | Murphy, Pa. |
| Bevill | Ginn | Myers, Gary |
| Blouin | Goodling | Myers, John |
| Bonior | Grassley | Neal |
| Bowen | Gudger | Nichols |
| Brinkley | Guyer | Oakar |
| Broyhill | Hall | Panetta |
| Burke, Mass. | Hammer-schmidt | Pike |
| Burleson, Tex. | Harkin | Poage |
| Burton, John | Harsha | Pressler |
| Butler | Hefner | Pursell |
| Carter | Holt | Quillen |
| Chappell | Hughes | Robinson |
| Clausen, Don H. | Ichord | Rose |
| Cleveland | Jacobs | Rousselot |
| Collins, Tex. | Jenkins | Roybal |
| Cornell | Jenrette | Runnels |
| Crane | Jones, N.C. | Russo |
| Cunningham | Jones, Okla. | Satterfield |
| Daniel, Dan | Jones, Tenn. | Schroeder |
| Daniel, R. W. | Kastenmeier | Sebelius |
| Davis | Kelly | Shuster |
| de la Garza | Kindness | Slack |
| Dellums | Krebs | Smith, Nebr. |
| Devine | Latta | Stangeland |
| Duncan, Tenn. | Lloyd, Tenn. | Stark |
| Edwards, Ala. | Lott | Steed |
| | Lujan | Stokes |

| | | |
|---|---|---|
| Studds | Waggonner | Whitley |
| Taylor | Walker | Wylie |
| Thone | Wampler | Young, Fla. |
| Trible | Watkins | |
| Volkmer | Weaver | |

NOT VOTING—81

| | | |
|---|---|---|
| Addabbo | Flowers | Murphy, N.Y. |
| Ammerman | Fraser | Nolan |
| Armstrong | Frenzel | Quie |
| Ashley | Frey | Richmond |
| Barnard | Fuqua | Risenhoover |
| Beard, R.I. | Garcia | Rodino |
| Bolling | Gibbons | Roncalio |
| Breaux | Goldwater | Rostenkowski |
| Brown, Ohio | Hansen | Rudd |
| Burke, Calif. | Harrington | Sarasin |
| Burke, Fla. | Hawkins | Scheuer |
| Byron | Holtzman | Spellman |
| Caputo | Hubbard | St Germain |
| Chisholm | Huckaby | Stratton |
| Clawson, Del | Ireland | Stump |
| Cochran | Johnson, Colo. | Symms |
| Conyers | Kasten | Teague |
| Cornwell | Krueger | Tsongas |
| D'Amours | Leggett | Vander Jagt |
| Delaney | Lehman | Weiss |
| Dickinson | Long, Md. | Whitten |
| Diggs | Mattox | Wiggins |
| Edwards, Okla. | Meeds | Wilson, C. H. |
| Ertel | Mikulski | Young, Alaska |
| Fary | Miller, Calif. | Young, Mo. |
| Fish | Mitchell, Md. | Young, Tex. |
| Florio | Moss | Zeferetti |

The Clerk announced the following pairs:

On this vote:

Mr. Addabbo for, with Mr. Mitchell of Maryland against.

Mr. Richmond for, with Mr. Conyers against.

Mr. Fary for, with Mr. Teague against.

Mr. Krueger for, with Mr. Miller of California against.

Mr. Ashley for, with Mr. Risenhoover against.

Mrs. Chisholm for, with Mr. St Germain against.

Mr. Fuqua for, with Mr. Beard of Rhode Island against.

Mr. Garcia for, with Mr. Whitten against.

Mr. Hawkins for, with Mr. Breaux against.

Ms. Holtzman for, with Mr. Roncalio against.

Mr. Weiss for, with Mr. Stump against.

Mr. Zeferetti for, with Mr. Hansen against.

Mr. Young of Missouri for, with Mr. Byron against.

Until further notice:

Mr. Ammerman with Mr. Frenzel.

Mrs. Burke of California with Mr. Goldwater.

Mr. Cornwell with Mr. Kasten.

Mr. Fraser with Mr. Fish.

Mr. Florio with Mr. Sarasin.

Mr. Murphy of New York with Mr. Rudd.

Mr. Tsongas with Mr. Quie.

Mr. Stratton with Mr. Symms.

Mrs. Spellman with Mr. Wiggins.

Mr. Rodino with Mr. Edwards of Alabama.

Mr. Barnard with Mr. Dickinson.

Mr. D'Amours with Mr. Del Clawson.

Mr. Delaney with Mr. Caputo.

Mr. Diggs with Mr. Brown of Ohio.

Mr. Ertel with Mr. Armstrong.

Mr. Rostenkowski with Mr. Frey.

Mr. Nolan with Mr. Hubbard.

Mr. Harrington with Mr. Long of Maryland.

Ms. Mikulski with Mr. Vander Jagt.

Mr. Meeds with Mr. Cochran of Mississippi.

Mr. Flowers with Mr. Burke of Florida.

Mr. Gibbons with Mr. Huckaby.

Mr. Ireland with Mr. Leggett.

Mr. Lehman with Mr. Mattox.

Mr. Moss with Mr. Scheuer.

Mr. Charles H. Wilson of California with Mr. Young of Alaska.

Messrs. BONIOR, EMERY, MARRIOTT, and JENKINS changed their vote from "yea" to "nay."

Mr. DORAN and Mrs. COLLINS of Illinois changed their vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 11545, LIMITATIONS ON IMPORTATION OF MEAT PRODUCTS

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Report 95–1562) on the resolution (H. Res. 1343) providing for consideration of the bill (H.R. 11545) to modify the method of determining quantitative limitations on the importation of certain articles of meat and meat products, to apply quantitative limitations on the importation of certain additional articles of meat, meat products, and livestock, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## FUELS TRANSPORTATION SAFETY AMENDMENTS OF 1978

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1311 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1311

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11622) to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas, petroleum, petroleum products, and certain other materials, to provide standards with respect to the siting, construction, and operation of liquefied natural gas and liquid petroleum gas facilities, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment, and said substitute shall be read for amendment by titles instead of by sections. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 11622, the Committee on Interstate and Foreign Commerce shall be discharged from the further consideration of the bill S. 1895, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 11622 as passed by the House.

The SPEAKER pro tempore. (Mr. DUNCAN of Oregon). The gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Illinois (Mr. ANDERSON) pending which I yield myself such time as I may consume.

Mr. Speaker, the resolution (H. Res. 1311) makes in order the consideration of the bill (H.R. 11622) to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas, petroleum petroleum products, and certain other materials, to provide standards with respect to the siting, construction, and operation of liquefied natural gas and liquid petroleum gas facilities, and for other purposes.

It is a 1-hour open rule which contains several provisions customarily included in rules when a committee has reported an amendment in the nature of a substitute. These noncontroversial provisions are primarily designed to protect the rights of the minority and simply insure that Members will have all the rights available in the case of a clean bill.

The rule also provides that, after the passage of the bill (H.R. 11622) it will be in order to call up the companion bill referred from the other body (S. 1895) and insert the text of the House passed bill. This is a routine procedural motion, normally handled by unanimous consent, which enables the measure to go to conference.

This vital legislation would provide the fiscal year 1979 authorization for pipeline safety programs of the Department of Transportation, primarily the Office of Pipeline Safety Operations. The bill also makes several amendments to the laws applicable to pipeline operation designed to insure greater hazard protection to workers and to the general public.

Mr. Speaker, although there is some disagreement, the Committee on Rules believes that the rule provides a fair and orderly procedure for the consideration of this important legislation and I urge prompt and favorable House action.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 5 minutes to the gentleman from Louisiana (Mr. MOORE).

Mr. MOORE. Mr. Speaker, this rule should be entitled the "now you see it, now you don't" rule. This is the second rule that has been issued on this bill, the second version. Actually the first version, or the first rule should be the one before us instead of the one we have.

The Committee on Rules originally met on July 25, 1978 and passed a normal regular open rule. I have no objection to that rule. The first rule was, as I say, a simple rule. It was a fair rule. It was a rule that no one could object to. The rule we have before us today is a very unusual rule. The second part of the rule provides that after passage of the bill. H.R. 11622, it shall then be in order to substitute the text of H.R. 11622 for the text of the Senate bill S. 1895, which is a simple authorization bill passed by the other body on May 3, 1978. This essentially forces the Senate Commerce Committee into conference with the House Commerce Committee on a bill that the Senate has never considered.

The House bill that we are going to be considering, if this rule is in order, H.R. 11622, contains very profound legislation which the Senate never considered.

This rule circumvents the legislative process by denying adequate consideration by the other body of these profound changes in the law.

The Senate bill is nothing more than a simple authorization bill containing no substantive amendments to the Natural Gas Pipeline Safety Act. The House bill is a pervasive scheme of regulations over liqufied natural gas facilities and substantively amends the Pipeline Safety Act in numerous respects.

Mr. Speaker, the Senate Commerce Committee has held neither hearings on the provisions of this bill, nor any of the issues contained in the House bill. There is a promise that they will in the future, but those hearings have not yet been held; and they will not have an opportunity to do anything with this bill as it will go straight to conference.

As I said, the Committee on Rules originally refused to issue the rule which we are considering today on July 25, 1978. They gave a proper rule. Under that rule the chairman of the Subcommittee on Energy, of which I am a member, the gentleman from Michigan (Mr. DINGELL), returned to the House Committee on Interstate and Foreign Commerce and requested the markup of the Senate bill. On two occasions he was thwarted in the full Committee on Interstate and Foreign Commerce in taking up that bill. That caused him to go back before the Committee on Rules to ask them to reverse their action of July 25, 1978, and to issue the rule they had turned down. In fact, this took place on August 10, 1978. The first version of the rule was overturned, and we now have the second version of the rule which had been refused by the Committee on Rules in its first meeting.

Consequently, Mr. Speaker, this rule is really a travesty of the legislative process. We have a very simple authorization bill from the Senate, with the Senate having no hearings or no information on this bill. We have the very pervasive and new schemes of law and regulations with respect to natural gas distribution and liquefied petroleum gas now before us under this bill which the Senate will never get to see except in the committee of conference.

Mr. Speaker, that is no way to write law; that is no way to bring a bill to the House floor. This rule was changed because it is known that there are provisions of this bill which would not stand the light of day in the Senate committee or on the Senate floor. In order to circumvent the Senate's having that opportunity, a rule is forced upon us which circumvents one House of a two-House legislative process.

Mr. Speaker, I urge that this "Now you see it, now you don't" rule on this broad bill be defeated.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1311 is a 1-hour open rule making in order the consideration of H.R. 11622, the Fuel Transportation Safety Amendments Act of 1978. The rule provides for the consideration of the committee amendment in the nature of a substitute, now printed in the bill, as an original bill for the purpose of amendment, and the substitute shall be read by titles instead of by sections for amendment under the 5-minute rule.

The other distinct feature of this rule is that it provides for inserting the language of the House-passed bill under S. 1895 which would be discharged from the Committee on Interstate and Foreign Commerce immediately upon passage of the House bill. The purpose of this provision in the rule, of course, is to facilitate going to conference with the Senate.

I think it should be pointed out that while this is the kind of rule requested by the Interstate and Foreign Commerce Committee, when the Rules Committee originally met on this matter on July 25, 1978, it adopted a rule deleting the request to insert the House-passed language under the Senate bill. That rule was never filed, however, and the Rules Committee subsequently met on the matter again on August 10 at the request of the chairman of the Energy Subcommittee (Mr. DINGELL), and the chairman of the full Committee on Interstate and Foreign Commerce (Mr. STAGGERS). In a letter to the Rules Committee dated August 8, Chairman STAGGERS wrote, and I quote:

> Because of the recent propane gas pipeline explosion in southeastern Iowa last Friday morning and the propane tank car explosion in Collins, Illinois, on Sunday, it is more urgent than ever that the Congress move quickly on this proposed legislation. Accordingly, I request that the Committee on Rules after further hearing grant the rule originally requested for H.R. 11622.

The gentleman from Michigan (Mr. DINGELL) repeated this argument before the Rules Committee on August 10 and the committee subsequently adopted the requested rule by voice vote.

Appearing in opposition to the rule requested by the committee was the gentleman from Louisiana (Mr. MOORE) who argued that the procedure would force the Senate into conference before it had an opportunity to evaluate the provisions of the House bill. As Mr. Moore pointed out, the Senate bill, S. 1895, is a simple extension of the Natural Gas Pipeline Safety Act of 1968, only 13 lines in length. The House bill, on the other hand, H.R. 11622, "establishes a pervasive scheme of regulations over liquefied natural gas facilities and substantively amends the Pipeline Safety Act in numerous respects," according to Mr. MOORE's testimony Indeed, the House bill runs some 40 pages and 950 lines, compared to the 2-page, 13-line Senate bill. I do not think there is any question that the House bill is not germane to the Senate bill since it obviously goes far beyond the scope of the bill passed by the Senate. And yet we are in effect being asked to do to the other body that which we so often complain about it doing to us, and that is tacking nongermane amendments on to the originally passed bill.

Mr. Speaker, I think the complaint of the gentleman from Louisiana is well taken, especially at this late hour in the session when there is not adequate time to hold hearings and carefully examine new matter being sent over by another House. In this case we were treating the Senate unfairly. But in so doing, we were only inviting the same kind of treatment for ourselves in the future. For these reasons I opposed this rule in the Rules Committee, though I do not see any realistic prospect of turning this around on the floor. I nevertheless felt the Members should be apprised of the circumstances surrounding the adoption of this rule in the Rules Committee.

Mr. Speaker, I have no further requests for time, and reserve the remainder of my time.

Mr. MOAKLEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. DINGELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11622) to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas, petroleum, petroleum products, and certain other materials, to provide standards with respect to the siting, construction, and operation of liquefied natural gas and liquid petroleum gas facilities, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11622, with Mr. HUGHES in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Michigan (Mr. DINGELL) will be recognized for 30 minutes, and the gentleman from Lousiana (Mr. MOORE) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Chairman, I yield 5 minutes to my good friend and colleague, the gentleman from Massachusetts (Mr. MARKEY) to lead off debate, because of the outstanding job the gentleman did in working on this particular bill.

Mr. MARKEY. Mr. Chairman, it is with great pleasure that I rise in support of H.R. 11622, the Fuels Transportation Safety Amendments Act of 1978. At the outset, I want to express my thanks and commendations to my good friend and subcommittee chairman, JOHN DINGELL. It has been an honor and an education for me to work with him on this bill. I also want to thank our distinguished committee chairman HARLEY STAGGERS, and the committee staff: Michael Barrett, Michael Kitzmiller, Christopher Dunne, and Peter Hunt for their tireless and creative efforts.

The bill before us today is the product of many months of work by the Energy and Power Subcommittee and the Interstate and Foreign Commerce Committee. In May of last year, Chairman DINGELL and I introduced H.R. 6844, the Liquified Natural Gas Facility Safety Act. Subsequently, that bill was incorporated into H.R. 11622 which was the subject of over 40 hours of hearings.

In both subcommittee and full committee markups of this bill, a great many changes were made. H.R. 11622 is thus truly the result of careful consideration and compromise. I believe that it is a consensus bill with broad support.

This legislation is a very significant measure. First, the bill authorizes appropriations for the pipeline safety activities of the Department of Transportation and its Office of Pipeline Safety Operations (OPSO). Second, it seeks to coordinate the safety regulation activities of OPSO into a coherent package and to close existing gaps in these safety regulations. The importance of so doing can easily be seen from the following: in 1976 alone, 63 people were killed, 366 injured and millions of dollars of property damage occurred as a result of fires and explosions along the more than 1.4 million miles of natural gas, petroleum, and petroleum product pipelines in this Nation. H.R. 11622 establishes mechanisms which seek to prevent such accidents from occurring. I believe its passage will save lives.

In addition, this legislation mandates strict new national safety standards with respect to the location, design, construction, operation, and maintenance of liquefied natural gas facilities. LNG is a very useful source of energy, but its transportation and storage present extraordinary hazards to public safety.

In 1944, 130 persons were killed by a series of fires which followed the rupture of an LNG storage tank in Cleveland. Federal studies of that accident led to recommendations that future LNG facilities be located away from populated areas. Thirty-four years later, no such action has been taken. It is time for us to take that action.

LNG is created by supercooling natural gas to a temperature of minus 260° Farenheit. At that temperature, natural gas is compressed in volume over 600 times, thus making possible its storage as well as its marine and truck transportation.

If an LNG truck or storage tank were ruptured, however, a cloud of LNG vapor would be created. This vapor cloud would hug the ground, go down into sewers, subways, and basements through any available opening. Widespread explosions and fires could easily be ignited, since the vapor is so combustible that it could be set off even by the spark generated by an automobile horn.

Under the provisions of this legislation, the Department of Transportation will be required to establish standards regulating the siting and design of any new LNG facility or any construction at an existing facility. These standards would require remote siting to the maximum extent possible. In addition, all LNG facilities will be required to comply with strict new operating standards covering areas such as antiterrorist security and firefighting capabilities.

Mr. Chairman, the hazards associated with LNG, LPG (liquified petroleum gas) and natural gas pipeline transportation are clear. Recent LPG tragedies in Tennessee, Iowa, Spain, and Mexico have greatly heightened public awareness of the extraordinary hazards associated with these fuels. The public has a right to expect that Congress will require that the Federal Government develop a coordinated policy to assure the greatest possible safety in the transportation and storage of these fuels. The public has a right to expect that Congress will pass H.R. 11622, for its enactment will mean a significant enhancement of the public health and safety.

As the Christian Science Monitor has stated in an editorial:

> Congress ought not to wait for a disaster to drive them to enact these needed precautions.

Mr. Chairman, I urge passage of this vital legislation.

Mr. MOORE. Mr. Chairman. I yield myself such time as I may consume.

Mr. Chairman, the bill before us represents a vast and unnecessary intrusion of Federal bureaucracy over the pipeline transportation industry. This intrusion will cost American natural gas consumers millions of dollars without any assurances of increased safety. For this reason, I strongly oppose H.R. 11622 in its present form.

The most disturbing aspect of this bill is that it will require liquid petroleum gas and natural gas pipeline operators to gather and report to the Federal Government a massive amount of essentially useless information. No evidence exists that this information will contribute to pipeline safety.

As now drafted, section 102 of the bill would require the reporting of data on the location, type, age, manufacturer, and method of construction of each foot of pipeline; the nature, sequence, and pressure of materials transported; climatic and geological conditions of the area in which the facilities are located; the population density, and patterns of such areas, and such other information as the Secretary may consider appropriate.

Mr. Chairman, anyone who knows anything about the pipeline industry should know that on many older pipelines, records simply do not exist which would indicate the manufacturer of the pipe. In any event, witness after witness who testified on this bill before the Energy and Power Subcommittee indicated that much of the information required to be reported had little or no relevance to increased pipeline safety. In addition, the Secretary of DOT now has authority to gather much of this information if he thinks it is necessary.

The impact of these burdensome and useless information-gathering and reporting requirements will fall particularly hard on small municipally owned natural gas distribution systems. Letters I have received from several small municipal systems serving areas of my State indicate that their costs, and thus those of their consumers, will increase significantly as a result of these reporting requirements. One municipal system indicated that it could cost as much as 15 percent of their present gross sales to comply with the provisions of this bill. Another estimated it would have to double or triple its present staff to comply.

Because of my concern over the burdens imposed by these provisions on small municipal systems, I offered an amendment which was adopted by the committee, which would require the Secretary of the Department of Transportation to exempt any person or class of persons from any or all of the gathering and reporting requirements if he finds that the costs of being covered would significantly increase consumer rates or charges. In addition, the Secretary is required to provide an exemption if he finds that the financial or administrative burdens of being covered are not justified by the safety benefits.

Although these possible exemptions give the Secretary an opportunity to ease the reporting requirement on those unable to afford them, they are in the discretion of the Secretary and presume a rule of reasonableness. It has been my experience that this sort of discretion usually leads to burdensome and unreasonable regulations. Once again, we have a classic example of Congress creating yet another program to protect the American people from themselves. In the process, we have created another layer of Federal paperwork at great expense to the consumer. We are repeatedly told by our constituents that they oppose increased Government intervention in their lives and businesses. No proof exists that this additional layer of bureaucracy will improve pipeline safety; rather what is known is that it will increase consumers' utility bills. For these reasons, I urge defeat of this bill.

Mr. DINGELL. Mr. Chairman, I yield

5 minutes to the distinguished chairman of the Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I rise in support of H.R. 11622, the Fuels Transportation Safety Amendments Act. This is the first comprehensive revision and extension of the authorities vested in the Department of Transportation by the Natural Gas Pipeline Safety Act of 1968 since that legislation was enacted 10 years ago.

Under this authority the safety of more than 1.4 million miles of pipeline serving some 44 million U.S. consumers is regulated.

A very significant contribution of H.R. 11622 is to bring the safety regulation of facilities for liquefied petroleum gas, such as propane and butane and related products or mixtures or combinations thereof, under the civil procedures provided for natural gas facilities. Heretofore, the safety regulation of LPG has been carried out under the criminal procedures of title 18. As a practical matter, this has meant that there has been no regulation of these products which account for only 10 percent of the fuel accidents, but cause 66 percent of the deaths and 48 percent of the injuries. Only this month we had dramatic evidence of the urgent need for action on this provision. On July 11, a liquefied petroleum product exploded in Spain, burning 170 people to death and injuring 75 more. Just 5 days later, a similar explosion in Mexico burned 20 to death and seriously injured 150. There is no adequate regulatory mechanism for protecting U.S. citizens at this time, but H.R. 11622 would create one.

H.R. 11622 also sets criteria for citing of liquid natural gas storage facilities and directs the Secretary to study and assure the financial responsibility of the persons operating LNG facilities.

In light of the age and extent of our natural gas pipeline system and of the rapid increase in demand for LPG and LNG as alternative energy sources—and the even more dramatic increases projected for the near future—the Intertate Foreign Commerce Committee feels that the programs authorized in H.R. 11622 are particularly timely and appropriate.

Finally, H.R. 11622 authorizes the appropriation of $13.5 million for fiscal year 1979 for the Department of Transportation to assure effective safety regulation in the storage and transportation by pipeline of fuels and hazardous materials.

Mr. Chairman, this legislation is the culmination of more than 40 hours of hearings and 2 years of work by the Interstate and Foreign Commerce Committee. It is sound and reasonable legislation that will make an important contribution to assuring the safety and welfare of the American people. I urge its enactment.

Mr. MOORE. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Chairman, there are many sections of this bill about which I have great concerns, because my State is so dependent upon natural gas, and we are going to be more dependent on LNG as time goes on.

I have a few questions I would like to ask the gentleman from Michigan (Mr. DINGELL).

In exercising the authority given the Department of Transportation by section 6 of this legislation to approve a new LNG facility, is it intended that the Department will be required to prepare an environmental impact statement?

Mr. DINGELL. Mr. Chairman, will the gentleman from California yield?

Mr. MOORHEAD of California. I am happy to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, the Department of Energy already has comprehensive permitting jurisdiction over proposed LNG facilities and, as part of its consideration of applications to construct and operate such facilities, prepares environmental impact statements as required by NEPA. It would continue to act as the lead agency. We do not intend that the Department of Transportation duplicate the efforts of the Department of Energy, such as supply, demand and economics, will remain with that Department.

Mr. MOORHEAD of California. This legislation appears to authorize the Secretary of DOT to approve the site of any proposed LNG facility. As you are aware, the DOE is required to consider siting as part of the comprehensive proceedings it conducts in connection with proposed LNG facilities under the Natural Gas Act. Would this legislation require the Department of Transportation to duplicate the Department of Energy's review of proposed LNG sites?

Mr. DINGELL. No. The Department of Energy will continue to be the lead agency in the LNG application and approval process. Siting, as used in this legislation, refers only to the safety aspects of siting. The Department of Transportation will be required by this legislation to promulgate minimum safety standards for siting, construction, and operation of LNG facilities. The intent of H.R. 11622 is that DOT will review the initial design plans of a proposed facility to determine if the plans comply with the safety standards promulgated by DOT pursuant to this legislation.

Mr. MOORHEAD of California. I thank the gentleman.

Mr. DINGELL. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, thank you for the opportunity to explain the contents and purposes of H.R. 11622, the Fuels Transportation Safety Amendments Act of 1978.

Since 1968, the Department of Transportation has been overseeing the safety of natural gas pipelines throughout the United States. This program enlists the assistance of the several States in the conduct of safety inspections of over 1 million miles of natural gas pipelines and the implementation of a number of safety-related programs. This is done through a grant-in-aid program in which the Federal Government may match State expenditures for qualified programs. Every State but Alaska is now actively participating in this joint Federal-State program.

The purposes of H.R. 11622 include:

First. Authorizing appropriations for pipeline safety programs;

Second. Expanding and strengthening the authority of the Secretary of Transportation to gather information about the safety—or lack thereof—of pipeline operations and related facilities; and

Third. Extending the grant-in-aid program to cover pipelines carrying LPG—that is, propane and butane.

As we know from the terrible tragedies which occurred earlier this year in Waverly, Tenn., and in Spain and Mexico, LPG is extremely dangerous. However, the regulations covering these very hazardous LPG pipelines are worse than inadequate, because they give the appearance, but not the reality of safety. States cannot have a consistent LPG safety program supported by matching Federal funds without this bill.

The bill H.R. 11622 also represents the first major Federal effort at addressing the problems and hazards associated with liquefied natural gas—LNG. One LNG accident alone caused more than 130 deaths and over $100 million in property damage in Cleveland in 1944. This one catastrophe slowed the further use of this fuel nearly another 20 years. However, the General Accounting Office and administration officials now have provided the committee with data showing that LNG will become an increasingly important factor in our Nation's future energy needs—estimates range from 8 to 20 percent of our national gas consumption by 1985.

As the Cleveland incident demonstrated and as other evidence before our committee has shown, LNG is an extremely dangerous fuel requiring special care and handling. H.R. 11622 would permit the establishment of safety regulations before any more of these hazardous facilities are constructed. It also provides a mechanism for insuring that all LNG facilities will be operated and maintained safely. Incorporating this within the pipeline inspection program of DOT allows the widest range of inspection, either through the existing grant-in-aid program or through direct Federal inspection. But it will be done. We are also requiring that the DOT actually approve—in advance—the safe construction and operation of all new facilities.

The bill—H.R. 11622—represents the first major review and legislative revision of the pipeline safety program since it was enacted in 1968. It is based upon extensive hearings by the Subcommittee on Energy and Power in 1976, 1977, and 1978. During this 3-year period, subcommittee members and staff investigators spent many hours with the DOT officials responsible for administering the program. They have interviewed numerous pipeline construction and operating personnel. They have met with State officials associated with the program. Finally, the subcommittee held hearings in all of those years on the pipeline safety program, and during Feb-

ruary, March, and April of this year we conducted extensive hearings on this legislation. We received testimony from more than 70 witnesses. These included gas company officials, both from interstate pipeline companies and local distribution companies, and gas producers and various industry trade associations. We heard testimony from the National Fire Prevention Association, and State and local fire chiefs and the National Association of Regulatory Commissioners. Environmental groups, such as the Environmental Policy Center and the Friends of the Earth, participated as well as various State and local officials. The General Accounting Office and the Office of Technology Assessment also appeared as experts during those hearings.

The General Accounting Office recently completed a thorough review of the Department of Transportation's pipeline safety program and made a number or recommendations, including more complete and effective pipeline safety regulations, strengthened State pipeline safety programs, improved compliance efforts, more effective data analyses, and increased attention to staffing requirements. H.R. 11622 covers all these points. In addition, the GAO issued a report on liquefied energy gases safety. H.R. 11622 provides a regulatory mechanism within the Department of Transportation for implementing the recommendations of that report.

I would also like to add that in approving H.R. 11622 Congress intends its provisions to be binding upon the Secretary in regard to the handling of LNG and LPG rather than the more general provisions of H.R. 13311 which was approved earlier today.

The result is a good bill that will improve the operation of our Nation's natural gas and LPG pipelines and insure the safety of LNG facilities as more and more of them are constructed. The bill is timely. It is not unduly burdensome. Further delay could mean that additional LNG plants will be constructed before we have adequate legislation and regulations to protect the public safety.

Mr. Chairman, my distinguished colleague from New York (Mr. WEISS) who is compelled to be absent on busing was asked two very important questions about H.R. 11622, which I would like to present to my colleagues and answer the gentleman from New York notes that recently the United States has begun to import substantial amount of liquefied natural gas (LNG). The Department of Energy (DOE) predictions indicate that imports will increase to the point that three giant LNG tankers carrying as much as 150,000 cubic meters of LNG each will be entering U.S. waters every day by 1985. Unfortunately, it is not always possible to transport LNG from the import terminals by pipeline so that increasing amounts of LNG are being transported—still liquified—in trucks. Even more unfortunately, by virtue of the location of import terminals in or near busy ports and the urban demand for the product, these trucks are being driven though streets in densely populated urban areas. So far we have been lucky. There have been no accidents, but continuing to rely on luck is reckless—shooting craps with destiny that will eventually lead to a major disaster. The awesome explosive power of LNG was amply demonstrated when a small LNG storage facility in Cleveland, Ohio, failed in 1944 and the resultant explosions killed 128, injured 300, and devastated many blocks of Cleveland doing $100 million in damage as measured in 1944 dollars. That storage facility only contained 6,200 cubic meters of LNG. I know that LNG trucks regularly travel the elevated highways and streets of Boston. My colleague from New York has been informed that trucks are carrying LNG through the streets of Manhattan. As the representative of the West Side of Manhattan and the Riverdale section of the Bronx, among the most densely populated neighborhoods in the Nation, he wants to assure that his constitutents are not exposed to the hazards of an LNG explosion. He would like to ask how H.R. 11622 would come to grips with this problem.

The gentleman from New York raises an extremely serious issue and one to which the committee gave much thought and concern. Under H.R. 11622, the Secretary of Transportation would have the authority to promulgate safety regulations regarding the shipment of LNG by truck. It is the express intent of the committee that the regulations should forbid the transportation of LNG by truck through or near urban areas wherever possible. It is a source of deep regret to me that due to the delay in effecting safety regulations regarding LNG there are several situations where the only way to get some of the product to the market that needs it is by truck. Since the interruption of this supply could cause hardship and additional expense to consumers, it was the intent of the committee that in such a situation the Secretary should promulgate regulations to minimize to the utmost degree the danger of an LNG accident and should work to see that alternative means of transporting the fuel are developed as quickly as possible. Let me stress that it was the intent of the committee to see that LNG is not transported by truck through or near populated areas and the committee intends to exercise vigorous oversight to see that its purpose is carried out.

Finally, my distinguished colleague has asked whether New York City is an area where continued transportation of LNG is necessary?

I am pleased to be able to respond that to the best of our knowledge there is no reason or justification for transporting LNG through the streets of New York City and H.R. 11622 may not be construed in any fashion as authorizing such transportation.

Mr. Chairman, our good friend, Mr. MURPHY of New York, has expressed to me his very strong concerns about how this bill might impact upon a facility in his district. About 4 years ago an LNG import terminal was built on Staten Island without the approval of the Department of Transportation or of the Federal Power Commission. Mr. MURPHY has questioned whether section 6(h) of the bill dealing with Federal preemption on State laws on interstate LNG terminals would allow this terminal in Staten Island to become operational. In response, I would like to emphasize that it is the understanding of the committee that no authority granted under this act shall be used by the Secretary to authorize the construction or use of any LNG facilities on Staten Island or in the New York City area that are presently forbidden to be built or used under New York law and the Congress in enacting this law will do so with that clear understanding. In other words, there will be no retroactive approval of an existing facility that has not yet received the necessary State, local, or Federal approvals.

It is also clear that in approving H.R. 11622 Congress intends its provisions to be binding upon the Secretary in regard to the handling of LNG and LPG rather than the more general provisions of H.R. 13311 which was approved earlier today.

Mr. MOORE. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Chairman, many times in the course of this session I have felt that we were passing unneeded legislation, and I feel that tonight we are hitting a high point in what America needs least, and that is a pipeline safety bill.

We are interested in Americans' safety, and this evening when I had dinner down in the House restaurant I sat around, and everyone was talking about a reducing plan which has been very successful. It is known as the Scarsdale plan, and one after another had been losing 20 pounds or so. Maybe the gentleman from New York is familiar with this. It is gaining a national reputation. They have been losing 20 and 30 pounds by following that Scarsdale plan.

What is important about that? I do not know much about safety, but I do know something about the way to keep people living a long time, and that is to lose weight. What we have done in a practical way was to see Members of this body that have gone out and started reducing. We are talking here about 42 fatalities in the course of a year, most caused by human error.

This must be the safest industry in the country. I have never heard of an industry as safe as this one. Instead of worrying about 42, we should be worrying about things like heart trouble, because every year 1 million die from heart trouble—1 million. Most of them die because they are overweight. Overweight is a real problem. I have never seen us do anything on the floor about overweight, yet by getting the word going around about a reducing plan, they are going to do something about the million people who have a real problem.

In our committee, we spent considerable time recently worrying about blowouts on tires. We have found that in the past 6 years they located 34 automobiles where they had fatalities, and they had blowouts of tires, which very much con-

cerned the committee. The interesting thing is that during this same 5-year period, there have been 100,000 people killed in automobile accidents that involved DWI.

I am not worried about a blowout of tires because when we check these cases out we find over half the time the fellows were going over 80 miles an hour, but I am worried about the DWI because, although I do not drink, the chances are that in a DWI I will get killed while the DWI is getting himself killed.

Let me tell the Members about this national safety group that runs the studies all the time. They have been studying and studying and studying, but they have not been attempting a study of the DWI's, which is a major cause of automobile fatalities.

Going along as we overlook the problem of the heart trouble and the DWI's, we have found a place to concentrate on, and that is on pipeline safety. These pipelines we have go back and forth across the United States and cover miles and miles. It is easy to spot a leak. Where there is a leak in the gas line, all the grass above it is going to die. The lines are surrounded by dirt.

These continental gas lines are very simple to control. It has been proved really all the accidents were caused by human mistakes.

I would like to move into some of my general views, because it is plain that this plan which was started for safety has developed under H.R. 11622 into a bureaucratic complex. Of all the industry groups in America, the pipeline group probably has the best safety record of all. Last year, considering the millions and millions of pipelines that go from coast to coast, they had only 42 deaths. Most of these were due to human error. Just compare this to one recent accident in West Virginia where 51 people were killed on one construction site. When one construction site loses 51 people, why is Congress legislating a system on pipelines which are our safest industry? It will be most expensive and will lead to increased costs for all gas consumers because all these costs are going to be passed on the consumers.

Let me give an example of the regulations required under this bill. On page 5, it states that on pipeline location and characteristics, the Secretary is by regulation required to prepare and maintain a general description of the pipeline facility, including the location of the pipeline, the type, age, manufacturer, and method of construction of such pipeline.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. MOORE. Mr. Chairman, I yield the gentleman from Texas 5 additional minutes.

Mr. COLLINS of Texas. Mr. Chairman, it goes on to say they will include the climatic and geological conditions associated with the area and such other information as the Secretary may consider appropriate. These data will also be furnished to the State and local areas as well as to be available for public inspection. Just imagine the havoc that this section is going to wreak on small communities that have small staffs. This is confusing, costly, and unnecessary.

This bill has such requirements as the Secretary shall by regulation require a report of any pipeline leak of which such person knew or reasonably should have known. Now, if you are sitting there and have not yet reported on something you should have known, how do you know that you have not reported on what you should have known?

Basically, the pipeline leaks are not difficult to spot. Small leaks let gas seep out into the soil, and the gas kills the grass above the leaks and the grass turns yellow. We have planes flying overhead and checking the pipelines for these bad sections, and repair crews immediately check them out. On top of this, the gas pipeline pressure is constantly checked on the lines and if there is any drop in gasline pressure they immediately know that there must be a leak.

This bill calls for $6 million for the basic funding and then for special provisions adds $4.5 million more, and then adds $1 million for an electronic data processing program for identifying hazardous equipment. It has also added $2 million to sections 6 and 7 as an appropriation making a total of $13.5 million. What this total appropriation does not show is how much it is going to cost industry to furnish all these records. A few bureaucrats can issue one page edicts that will cause the pipeline facilities to dedicate entire divisions of people to prepare these statistics that are needed. These statistics do not operate the business and these statistics do not operate the pipelines. With the best safety record of any industry, why do we need all these statistics?

The enforcement standards are such that everyone in the pipeline business will have all of their best people keeping their records. It reminds us of the experience we have had in hospitals. The chief nurse keeps the records and the one that handles the pots and pans is doing most of the nurse duty today.

Supervisors are afraid of what happens to them if they do not have their records completely current.

We agree with the provision that states that any person who willfully destroys pipeline facilities shall be fined $15,000 or given 15 years in prison. But then it moves in strong on innocent people. It says here that there are three ways you can get an innocent person that is in the pipeline business in trouble. In the first place they have civil penalties that go up to $50,000, and that is in addition to the other penalties. They have criminal penalties for any person that can be $50,000, and they can get 5 years in prison to go with that. That is in addition to all these civil penalties. But they also have the Bananza Citizen Civil Action, whenever such action constitutes a case or controversy, it can be brought forward without regard to the amount in controversy. It is obviously essential that any pipeline company have all of the chief executives keeping the records, and the big question is: Who is going to run the pipeline?

There is no justification for this increased bureaucratic regimentation. In America today, most Americans think we have too much government, too much regulation, and too many bureaucrats. They also resent the fact that their taxes are going up, and this plan, what it will do, will guarantee higher taxes and higher utility rates. Statistics do nothing for safety.

For the people back home that have told you that they want to have less government, ask yourself: Is this plan necessary?

Let us vote to recommit it.

Mr. MOORE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in closing the debate, obviously, Mr. Chairman, we can say that this legislation is well-intentioned. If it were possible to legislate the end of all possible natural gas storage or transportation accidents certainly no one would object to such a bill. The question you have to ask yourselves is: Is a new, complex system of reporting going to do that?

We have seen no information in our committee that this is going to happen. We the simply in the process of increasing the cost to consumers of natural gas, and they are already complaining about the high cost of energy fuels. We are simply adding to that cost without being able to show that we can substantially or in any way reduce accidents.

The second item is the fact that to my knowledge this is the first time Congress has ever told an energy facility that it was in interstate commerce and where it can be located.

These LNG facilities that we have supplied provisions for in this bill are, in my opinion, interstate so that Congress has no constitutional authority to say where they might be located. We have always said that was the authority of the States. But if we say that then the Congress has the authority to say where a dynamite plant can be located, or to say where a chemical plant can be located, or any other dangerous facilities can exist in an industrial atmosphere all across this Nation, but we have left that up to the local police powers of the States, and it should be in this case.

So, Mr. Chairman, I commend the authors of the bill in trying to come up with something to prevent accidents. If they were successful, then we would support them. My conclusion is that they are not successful and that they are setting a dangerous constitutional precedent. They are increasing the cost to the consumers of natural gas, therefore, in my opinion, we must oppose the bill.

I yield back the balance of my time.

Mr. DINGELL. Mr. Chairman, I yield 4 minutes to my good friend and colleague, the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Chairman, I thank the gentleman from Michigan (Mr. DINGELL) for his excellent work on this legislation and for allowing me this time to speak.

I first became interested in pipeline safety legislation when a house in Hastings-on-Hudson in my district in New York blew up and killed all the residents.

It appeared that a leak had been reported, but nothing was ever done about it.

Consequently, Mr. Chairman, I became very actively involved in the formulation of the Natural Gas Pipeline Safety Act of 1968. At that time workers from the Oil, Chemical, and Atomic Workers Union came forward and testified at the hearings we had on that legislation. They brought with them sections of pipe which they had dug up in the course of their operations. The pipes were full of holes, and they pointed out that the pipeline systems, particularly in the older established communities of our country, in many cases were put in place 50 or more years ago and that they were generally unsafe. As a matter of fact, we have here some of the samples of actual pipe which was dug up. The Members can see that this pipe is just full of holes, making this a tremendous hazard to workers on a pipeline and to all people in the vicinity. Pipeline workers have a good number of their members killed or injured on jobs where such problems exist.

Mr. Chairman, at the time the 1968 legislation was passed, I filed separate views indicating that I thought there were inadequacies in that legislation in that it did not provide for the degree of safety to which I think the people of the United States are entitled. This bill fills in most of those inadequacies.

It provides, first of all, that the companies must file plans as to where their pipes are, and that is particularly important in the case of construction where a good percentage of the accidents occur. It also provides that they report leaks because we found, as in the case of the family I referred to in Hastings-on-Hudson, when a resident reports evidence of leaks to a company, frequently action is not taken to correct the leaking condition. The bill before us also provides for citizens suit enforcement, and it provides for liability coverage which will see to it that these kinds of problems are taken care of.

Mr. Chairman, I think the committee has done an excellent job in formulating this legislation. For the first time there are meaningful LNG and LPG siting and safety provisions. LNG and LPG create grave safety problems. In Staten Island in the New York metropolitan area there is a major LNG facility which has not yet been activated, but which, if proper safety regulations are not provided, could well blow up a substantial part of the area and do horrendous damage.

Unfortunately, Mr. Chairman, the gentleman who represents that area, the gentleman from New York (Mr. MURPHY), is involved in a primary this evening, and he cannot be here. He has been very active with respect to this legislation to assure that we have adequate safety provisions with respect to LNG facilities.

The Department of Transportation has just been deplorable with respect to enforcing the existing laws. This law provides that comprehensive safety standards have to be adopted, with a timetable for their adoption and criteria are set out for the standards; and it provides for the enforcement which I think will give us the safety we so badly need.

Mr. Chairman, in reply to the gentleman from Texas (Mr. COLLINS) and his observations with respect to the Scarsdale plan, I represent the community of Scarsdale in Congress. I assure the Members that the Scarsdale plan will do nobody any good if the people interested in it are in danger of being blown up in their homes. We want to make sure that the Scarsdale plan is effective and that people who want to do it will not be subjected to a safety hazard with respect to the pipeline which feeds their homes.

I strongly urge adoption of this legislation.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. LUKEN).

Mr. LUKEN. Mr. Chairman, I rise in support of H.R. 11622, the Fuels Transportation Safety Amendments Act. We cannot delay any longer in passing legislation which will help insure the safety of our citizens from the threat of holocaust from an explosion of liquefied natural gas or liquefied petroleum gas.

The National Gas Pipeline Safety Act of 1968 was designed to protect citizens from dangers associated with natural gas transport, but did not protect the public from the hazards of LEG pipelines. LPG accounts for almost 10 percent of the pipeline transportation accidents, and I believe that it is important that this legislation now recognizes this, and includes the liquefied gasses in its coverage.

We are all aware of the grave danger liquefied energy gas presents: The threat of holocaust from an explosion of LEG now looms over every person in this country. Every community through which liquefied natural gas or liquefied petroleum gas is transported, whether that be by pipelinne, rail, or truck, faces the possibility of a major disaster similar to that which killed 12 people in Waverly, Tenn., earlier this year, or that which killed over 200 people in Spain in July. We do not want to wait for a domestic disaster of the magnitude of the Spanish tragedy to enact laws in hindsight which would cover this potentially catastrophic substance.

GAO released an alarming report last month detailing the dangers of LPG. It said that if the liquid gas spreads through a city through sewers, subways, of other underground conduits, or if a massive burning cloud is blown along by a strong wind, a city may be faced with a very large number of ignitions and explosions across a wide area. It said that gas escaping from a storage tank or from the accidental crash of a railroad car or tank truck could result in an explosion or fire far beyond the capability of existing firefighting agencies.

The Energy and Power Subcommittee should be commended for studying this problem and taking action in the form of this legislation. In the area of LNG and LPG, the committee has taken action to amend for the inaction in DOT's Office of Pipeline Safety, which has failed to forcefully and effectively carry out the responsibility for setting standards for safe design, construction, operation, and maintenance of liquid and natural gas pipelines, and related facilities. With these amendments, there will be stricter requirements on all of these aspects of liquefied energy transport safety. And, enforcement will be easier, since transportation of LPG will be subject to the same sections in the civil code as natural gas. This will improve the current situation, in which the law allows highly volatile LPG to be regulated as other, much less dangerous, petroleum products.

Mr. Chairman, I urge that the House pass this vitally important legislation. The safety of our citizens from the senseless dangers of LPG depends on what action we take today.

● Mr. DON H. CLAUSEN. Mr. Chairman, I want to lend my support to H.R. 11622 known as the Fuels Transportation Safety Amendments Act of 1978.

As ranking minority member of the Interior Subcommittee on Special Investigations, I am familiar with the safety features on the trans-Alaska pipeline system.

In June of 1977, our subcommittee issued a report finding that the safety features of the trans-Alaska pipeline had been properly installed, tested and put into operation.

The subcommittee felt the end result of TAPS was a safe and well-constructed line capable of withstanding all natural disturbances that could reasonably be expected.

However, the subcommittee pointed out and I am now quoting from the report:

> Although an extensive security system with accompanying procedures is now in place, it should be understood that this pipeline was not intended in its present configuration to withstand acts of sabotage or terrorist attacks. Should such actions become likely, the subcommittee strongly recommends that additional precautions be taken to insure that the Alaskan environment is adequately protected.

Mr. Chairman. all of us are well aware of several sabotage attempts to the TAPS since the publishing of our subcommittee report. Due to the quick action of Alyeska personnel, Alaska State police, Department of the Treasury Agents and the FBI, the effect of the sabotage was minimal and those responsible were arrested expeditiously.

H.R. 11622 adds a little muscle to our law enforcement agencies for it makes any person who willfully damages or destroys—or attempts such acts—an interstate pipeline facility subject to criminal penalties of up to $15,000 and/or 15 years imprisonment.

Mr. Chairman, I urge my colleagues to vote in favor of H.R. 11622.●

● Mr. GARY A. MYERS. Mr. Chairman, almost precisely 2 months ago a tank truck loaded with liquefied propylene gas exploded in a campsite near Tarragona, Spain. The resultant fireball and subsequent series of bottled cooking gas explosions killed more than 170 human beings and terribly burned scores more.

We all hope that the debate here today will produce legislation lessening the

chances of similar catastrophes here in our Nation. As the Commerce Committee has noted in the Fuels Transportation Safety Amendments Act of 1978, an important tool in preventing these diseases is a thorough understanding of transportation processes and hard data on hazardous materials, the characteristics of which are only partially known in many cases.

One action we should be taking to build up our data base and increase our ability to foresee possible hazards is the study of overseas catastrophes like that in Tarragona, Spain, last July. I was encouraged to see that the National Transportation Safety Board, at the invitation of the Spanish Government, participated actively in the investigation of the Tarragona accident. We should encourage all Federal agencies with responsibility for regulating hazardous materials transportation to thoroughly study incidents in foreign nations which might teach us important lessons at a cost of man-hours instead of lives.●

Mr. DINGELL. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

The CHAIRMAN. The gentleman from Louisiana (Mr. MOORE) having yielded back the remainder of his time, pursuant to the rule, the Clerk will read by titles the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment.

The Clerk read as follows:

H.R. 11622

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Fuels Transportation Safety Amendments Act of 1978".

(b) The table of contents for this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. References to Natural Gas Pipeline Safety Act of 1968.
TITLE I—FUELS TRANSPORTATION GENERALLY
Sec. 101. Hazardous pipeline facilities.
Sec. 102. Information on pipeline location and characteristics.
Sec. 103. Reporting of pipeline leaks.
Sec. 104. Coverage of pipeline transportation of liquefied petroleum gas.
Sec. 105. Coverage of gas distributed in connection with rental or lease of real property.
Sec. 106. Coverage of certain nonpipeline facilities.
Sec. 107. Pipeline safety inspectors.
Sec. 108. Technical Pipeline Standards Committee.
Sec. 109. Appropriations authorization.
TITLE II—SITING AND SAFETY OF LNG FACILITIES
Sec. 201. Definitions.
Sec. 202. Siting and safety standards.
Sec. 203. Financial responsibility.
Sec. 204. Enforcement of standards and financial responsibility requirements.
Sec. 205. Appropriations authorization.
TITLE III—MISCELLANEOUS PROVISIONS
Sec. 301. Willful destruction of interstate pipeline transmission or LNG facilities.
Sec. 302. Citizens' civil action.
Sec. 303. Appointments of Director of Pipeline Safety Operations and Director of Materials Transportation Bureau.
Sec. 304. Technical, clerical, and conforming amendments.

REFERENCES TO NATURAL GAS PIPELINE SAFETY ACT OF 1968

SEC. 2. Except as otherwise expressly provided, whenever in this Act, any reference, amendment, or repeal is expressed in terms of a reference or amendment to, or repeal of, a section or other provision, it shall be considered to be made to a section or other provision of the Natural Gas Pipeline Safety Act of 1968.

TITLE I—FUELS TRANSPORTATION GENERALLY

HAZARDOUS PIPELINE FACILITIES

SEC. 101. (a) Section 8 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b)(1) If the Secretary finds, after reasonable notice and an opportunity for hearing, that any pipeline facility is hazardous to life or property, he shall, by order, require the person operating the facility to take necessary corrective action. Such corrective action may include physical inspection, testing, repair, replacement, or other action, as appropriate.

"(2) The Secretary may find a pipeline facility to be hazardous under paragraph (1)—

"(A) if under the facts and circumstances he determines the particular facility is hazardous to life or property, or

"(B) if the pipeline facility or a component thereof has been or is proposed to be constructed or operated with any equipment, material, or technique which he determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Secretary that under the particular facts and circumstances involved such equipment, material, or technique is not hazardous to life or property.

"(3) In making a determination under paragraph (2), the Secretary shall consider—

"(A) the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction, or assembly;

"(B) the nature of the materials transported by such facilities (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

"(C) the aspects of the areas in which the pipeline facilities are located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas; and

"(D) such other factors as the Secretary may consider appropriate.

"(4) The Secretary may waive any requirements for hearing and a period of reasonable notice and provide for expeditious issuance of an order under this subsection in any case in which he determines that the failure to do so would result in the likelihood of serious harm to life or property.".

(b) Section 3(b) is amended by striking out the fourth sentence.

(c) The first sentence of section 5(a) is amended by striking out "the fourth sentence of section 3(b)," and inserting in lieu thereof "section 10(b),".

INFORMATION ON PIPELINE LOCATION AND CHARACTERISTICS

SEC. 102. (a) Section 12 is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary shall, by regulation, require any person operating a pipeline facility to—

"(A) prepare and maintain a general description of the pipeline facility, including—

"(i) the location of the pipeline and the pipeline facilities;

"(ii) the type, age, manufacturer, and method of construction of such pipeline and facilities;

"(iii) the nature of the materials transported, the sequence in which they are transported, and the pressure at which they are transported;

"(iv) the climatic and geologic conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the population density and patterns of such areas; and

"(v) such other information as the Secretary may consider appropriate;

"(B) prepare, maintain, and submit to State and local entities authorized to approve demolition, excavation, tunneling, or construction activities in the areas in which the pipeline facilities are located a detailed description of the pipeline's location; and

"(C) submit to the Secretary a report containing the information prepared and maintained under subparagraph (A).

"(2) Information prepared and maintained under paragraph (1)(A)(i) of this subsection shall, on request and for good cause shown, be made available for public inspection.

"(3) The requirements of subparagraph (B) of paragraph (1) shall be deemed to be satisfied in the case of any pipeline facility operator participating in a public safety program established under State or local law or regulation—

"(A) under which—

"(i) notice is required to be provided to pipeline facility operators of proposed demolition, excavation, tunneling, or construction near or affecting such facility; and

"(ii) such operators are required to identify specific pipeline facilities which may be affected by the proposed demolition, excavation, tunneling, or construction, or to supervise such demolition, excavation, tunneling, or construction, for the purpose of preventing damage to such facilities; and

"(B) which the Secretary determines is being carried out in a manner adequate to assure protection against the hazards of demolition, excavation, tunneling, or construction near or affecting such facilities.

"(4) The Secretary shall—

"(A) not later than 180 days after the date of the enactment of this subsection, publish proposed regulations required to be prescribed under paragraph (1), and provide an opportunity (of not less than 60 days' duration) for oral and written public comment on such proposed regulations; and

"(B) as soon as possible after the public comment period under subparagraph (A) but not later than 270 days after the date of the enactment of this subsection, prescribe the final regulations.

"(5) The Secretary shall, by order or regulation, provide for an exemption for any person or category of persons from all or part of the requirements under this subsection if the Secretary finds—

"(A) that the financial and administrative burdens of being covered by such requirements are not justified by the benefits resulting from that coverage; or

"(B) the costs to such persons or persons by being covered by such requirements would significantly increase consumer rates or charges and such exemption would not endanger the public health or safety.

"(6) Information shall not be required to be prepared or reported under the regulations under this subsection before January 1, 1982.

"(7) Not later than 3 years after the date

of the enactment of this subsection, the Secretary shall establish and thereafter maintain a program, for use in an electronic data-processing system, which processes and maintains—

"(A) information obtained under this subsection;

"(B) information on pipeline leaks reported under subsection (e);

"(C) information on accidents and incidents reported under section 5; and

"(D) such other information as the Secretary determines appropriate;

for the purpose of identifying hazardous equipment, materials, and techniques involved in the construction or operation of pipeline facilities.".

(b)(1) Section 5(a) is amended—

(A) by inserting after "(3) is enforcing each such standard;" the following: "(4) has adopted and is administering a reporting and disclosure program substantially meeting the requirements of the reporting and disclosure program established by regulation under section 15(d)(1);";

(B) by redesignating paragraphs (4) and (5) thereof as paragraphs (5) and (6), respectively;

(C) by striking out "excavation" in paragraph (5), as redesignated, and inserting "demolition, excavation, tunneling, or construction" in lieu thereof;

(D) by striking out "and (iv)" and inserting in lieu thereof "(iv) information obtained by the State agency under a program described by paragraph (4) of this subsection; and (v)".

(2) Certification and information requirements established by regulation under the amendments made by paragraph (1) of this subsection shall not apply with respect to annual certifications under section 5 during the 3-year period which begins on the effective date of such regulation.

(c) Section 12(f), as redesignated by subsection (a) of this section, is amended by striking out "or (c)" and inserting in lieu thereof "(c), or (d)".

(d) Section 16 is amended by inserting "(a)" before "Each peron" and by adding at the end thereof the following new subsection:

"(b) In addition to the program under subsection (a) of this section, each person engaged in pipeline transportation shall establish a program for the education of the public of the hazards of demolition, excavation, tunneling, or construction activity conducted near pipeline facilities, and the methods by which information on the location of underground pipelines may be obtained by the public.".

REPORTING OF PIPELINE LEAKS

SEC. 103. (a) Section 12, as amended by section 102 of this Act, is further amended by inserting after new subsection (d) the following new subsection:

"(e)(1) The Secretary shall, by regulation, require that any person owning or operating pipeline facilities shall report, at such time and in such manner as the Secretary shall require, any pipeline leak of which such person knew or reasonably should have known. Any such report shall include—

"(A) the specific location of the pipeline leak;

"(B) a description of the pipeline facilities at which the pipeline leak occurred, including any information described in subsection (d)(1)(A) which the Secretary may require under such regulation;

"(C) a description of any personal injury or property damage resulting from such pipeline leak; and

"(D) a description of the steps taken to prevent the leak from continuing or recurring.

"(2) The Secretary shall, by order or regulation, provide for an exemption for any person or category of persons from all or part of the requirements under this subsection if the Secretary finds that the financial and administrative burdens of being covered by such requirements are not justified by the benefits resulting from that coverage.

"(3) For the purposes of this subsection, the term 'pipeline leak' means any condition resulting in the escape of material from pipeline facilities during pipeline transportation, or during treatment of such material during the course of pipeline transportation, which is not caused by operation, inspection, or adjustment procedures which were properly carried out. Such term does not include any condition which does not pose a threat to public health and safety, as determined in accordance with regulations prescribed by the Secretary.".

(b) Section 12(f) (as amended by section 102 of this Act) is amended by striking out ", or (d)" and inserting in lieu thereof "(d), or (e)".

(c) The amendments made by this section shall not apply with respect to any pipeline leak (within the meaning of section 12(e)(3), as amended by this section) occurring before the effective date of the regulation initially prescribed under such amendments.

COVERAGE OF PIPELINE TRANSPORTATION OF LIQUEFIED PETROLEUM GAS

SEC. 104. (a) Section 2(3) is amended—

(1) by striking out "Transportation of gas" and inserting in lieu thereof "Pipeline transportation"; and

(2) by inserting after "interstate or foreign commerce" the following: ", or the transmission or distribution (but excluding the gathering) of liquefied petroleum gas by pipeline, in interstate or foreign commerce".

"(b) Section 2 is amended by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) 'Liquefied petroleum gas' means propane, butane, any related product, or any mixture or combination thereof;".

(c) Section 2(2) is amended by inserting ", but such term does not include liquefied petroleum gas" after "toxic or corrosive".

(d) Section 2(4), as amended and redesignated, is further amended by inserting after "distribution of gas" the following: "(whether in a gaseous or nongaseous state)".

(e) Section (2) is amended by inserting "(a)" after "SEC. 2." and by adding at the end thereof the following new subsection:

'(b) Any storage facility, or category of storage facilities, physically connected to any pipeline facility, or facilities, used for the transmission or distribution of liquefied petroleum gas shall be included by the Secretary, by regulation, within the meaning of subsection (a)(5) if—

"(1) the Secretary finds that such inclusion would further the purposes of this Act; and

"(2) such facility has a storage capacity of 30,000 gallons or more, or is used in connection with one or more other storage facilities at the same site which have, in the aggregate, a storage capacity of 30,000 gallons or more.".

(f) Section 3 is amended by adding at the end thereof the following new subsection:

"(f)(1) Standards, or amendments to standards, required under this section by reason of the enactment of the Fuels Transportation Safety Amendments Act of 1978 shall be prescribed not later than 36 months after the date of the enactment of such Act.

"(2) As soon as practicable but not later than 3 months after the enactment of such Act, the Secretary shall, by order, adopt interim minimum Federal safety standards for pipeline facilities and pipeline transportation to the extent not covered by this Act immediately before the date of the enactment of the Fuels Transportation Safety Amendments Act of 1978. Such standards shall, to the extent the Secretary determines appropriate, be the State standards regulating pipeline facilities and pipeline transportation within such State on such date on enactment. In any State in which no such standards are in effect, the Secretary shall, by order, establish interim Federal safety standards for such pipeline facilities and pipeline transportation in such State which shall, to the extent the Secretary determines appropriate, be such standards as are common to a majority of States having safety standards for pipeline facilities and pipeline transportation on such date. Interim standards shall remain in effect until amended or revoked pursuant to this section. Any State agency may adopt such additional or more stringent standards for pipeline facilities and pipeline transportation not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, or the Interstate Commerce Act, as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the interim standards provided for above become effective any such standards applicable to interstate transmission facilities.".

(g)(1) The following provisions are amended by striking out "the transportation of gas" each place it appears and inserting in lieu thereof "pipeline transportation":

(A) section 2(a)(5) and (9), as redesignated by subsection (a);

(B) section 3(b) and (e);

(C) section 4(b);

(D) section 8(a);

(E) section 11;

(F) section 12(a);

(G) section 13(b); and

(H) section 14(a)(4).

(2) The following provisions are each amended by striking out "transportation of gas" each place it appears and inserting in lieu thereof "pipeline transportation";

(A) section 2(a)(10), as redesignated by subsection (a);

(B) section 5(b)(3); and

(C) section 10(a).

(3) The following provisions are each amended by striking out "gas pipeline" each place it appears and inserting in lieu thereof "pipeline";

(A) section 3(e);

(B) section 4(a); and

(C) section 14(b).

(4) Section 2(a)(4), as redesignated and amended, is further amended by striking out "or its storage" and inserting in lieu thereof ", or its storage in connection with such gathering, transmission, or distribution,".

(5) Section 5(c)(1) is amended—

(A) by striking out "gas safety programs" and inserting in lieu thereof "pipeline safety programs", and

(B) by striking out "date of enactment of this section." and inserting in lieu thereof the following: "date of enactment of the Fuels Transportation Safety Amendments Act of 1978.".

(6) The short title set forth in the first section is amended to read as follows: "Fuels Transportation Safety Act".

COVERAGE OF GAS DISTRIBUTED IN CONNECTION WITH RENTAL OR LEASE OF REAL PROPERTY

SEC. 105. Section 2, as amended by section 104(e), is further amended by adding at the end thereof the following new subsection:

"(c)(1) Unless paragraph (2) applies, there shall be included within the meaning of subsection (a)(4) any pipeline distribution of gas by any person in connection with the rental or lease of real property by that person to others, whether or not—

"(A) a separate charge is made for such gas;

"(B) the distribution to each rental or lease unit is separately metered; and

"(C) the person distributing such gas is otherwise treated as being engaged in local distribution of gas.

"(2) The Secretary shall, by regulation, provide that the provisions of paragraph (1) not apply in cases in which the public health and safety are adequately protected by reason of the existence and enforcement of appropriate building or housing codes or similar laws.".

COVERAGE OF CERTAIN NONPIPELINE FACILITIES

SEC. 106. (a) Section 2, as amended by this Act, is further amended by adding at the end thereof the following new subsection:

"(d)(1) If the Secretary finds that the purposes of this Act would be furthered, he may, by regulation, require that the provisions of this Act shall apply with respect to any specified type or class of facility or equipment used in the transportation on land of gas or liquefied petroleum gas, in interstate or foreign commerce, or storage in connection with such transportation, to the same extent and in the same manner as such provisions apply with respect to pipeline facilities.

"(2) This subsection (or any action hereunder) shall not be construed to relieve any person from having to meet standards or meeting other requirements under any other Federal law; except that, if any regulation under this subsection results in the imposition of a standard or other requirement relating to any matter that the Secretary finds is covered by any other standard or requirement pursuant to any provision of law under the jurisdiction of the Secretary, the Secretary shall so state in such regulation, and that standard or requirement shall supersede and preempt the standard or requirement pursuant to such other provision of law to the extent such matter is covered under the regulation under this subsection.".

(b) Section 5(a) is amended by inserting "section 2(c)," after "Except for".

PIPELINE SAFETY INSPECTORS

SEC. 107. (a)(1) Section 3(b) is amended by inserting after paragraph (4) the following new sentence: "Standards under this subsection which relate to inspection and other enforcement shall set forth minimum training and educational requirements for pipeline inspectors.".

(2) Section 5(c) is amended by adding at the end thereof the following new paragraph:

"(5) The Secretary may not make any payment under this subsection to a State agency for any calendar year beginning after December 31, 1981, unless such State agency has demonstrated that from the payments to such agency for such year funds will be applied for the training and education of pipeline safety inspectors of such State agency in order to enable them to better perform their responsibilities. The amounts to be applied for such purposes are to be adequate to assure that the pipeline safety inspectors maintained by such State agency comply with any standards established under section 3(a) for training and education of pipeline inspectors.".

(b) Section 5(f) is amended to read as follows:

"(f)(1) The Secretary shall determine, after reasonable notice and opportunity for hearing, the minimum number of pipeline safety inspectors which must be maintained by a State agency in order to assure adequate monitoring of compliance with applicable safety standards within such State.

"(2) No State agency shall be considered to meet the requirements for certification under subsection (a), nor may the Secretary enter into any agreement under subsection (b) or allow a State to act as his agent with respect to interstate transmission facilities, unless the State agency involved has demonstrated that such agency has and will continue to maintain no less than the minimum number of pipeline inspectors determined by the Secretary under paragraph (1) to be required for such State.".

TECHNICAL PIPELINE STANDARDS COMMITTEE

SEC. 108. Section 4(b) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "The Secretary shall submit to the Committee any proposed standard under this Act, or any proposed amendment to a standard under this Act, for their consideration. Within 90 days after receipt of any proposed standard or amendment, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicality of such standard or amendment. The Secretary may prescribe a final standard or final amendment to a standard at any time after the 90th day after its submission to the Committee, whether or not the Committee has prepared a report on such standard or amendment.";

(2) by inserting after "published by the Secretary and" the following ", if timely made,"; and

(3) by inserting before the last sentence thereof the following new sentence: "The Committee shall meet with the Secretary (or his designee) not less frequently than once every 6 months.".

APPROPRIATIONS AUTHORIZATION

SEC. 109. Section 15 is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

"SEC. 15. (a) There are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1979, for the purpose of carrying out the provisions of this Act, other than provisions for which funds are authorized to be appropriated under subsection (b).

"(b)(1) For the purpose of carrying out the provisions of section 5(c) and (f) of this Act, there are authorized to be appropriated, $4,500,000 for the fiscal year ending September 30, 1979.

"(2) For the purpose of carrying out the electronic data-processing program under section 15(d)(7) for identifying hazardous equipment, materials, and techniques, there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1979.".

## TITLE II—SITING AND SAFETY OF LNG FACILITIES

DEFINITIONS

SEC. 201. Section 2(a), as redesignated, is amended by striking out "and" at the end of paragraph (10) (as redesignated), by striking out the period at the end of paragraph (11) (as redesignated) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following new items:

"(12) 'LNG' means natural gas in a liquid, semisolid, or solid state;

"(13) 'LNG facility' means any storage tank, pipeline, or other structure or equipment used for the transportation, storage, or use of LNG, or for LNG conversion, in interstate or foreign commerce, but does not include any structure or equipment (or portion thereof) located in navigable waters (as defined in section 3(8) of the Federal Power Act (16 U.S.C. 796(8)));

"(14) 'LNG conversion' means conversion of natural gas into LNG (liquefaction or solidification) or the conversion of LNG into natural gas (vaporization);

"(15) 'Construction' means construction, reconstruction, or erection, and includes, with respect to any LNG facility, any act which the Secretary determines would result in the creation or substantial increase of capacity of such facility for transporting or storing LNG or for LNG conversion;

"(16) 'Existing LNG facility' means any LNG facility for which an application for the approval of the siting, construction, or operation of such facility was filed before March 1, 1978, with—

"(A) the Department of Energy or any predecessor organization of the Department, or

"(B) the appropriate State agency, in the case of any facility not subject to the jurisdiction of the Department of Energy under the Natural Gas Act,

except that such term does not include any facility the construction of which commences on or after the date of the enactment of this paragraph and such construction is not pursuant to such an approval;

"(17) 'New LNG facility' means any LNG facility other than an existing LNG facility;

"(18) 'LNG accident' means any release, burning, or explosion of LNG resulting from—

"(A) a rupture or other failure of a storage tank, pipeline, or other LNG facility;

"(B) natural hazards (including earthquakes, hurricanes, and high winds);

"(C) sabotage; or

"(D) any other cause; and

"(19) 'Interstate or foreign commerce' means any trade, traffic, transportation, exchange, or other commerce—

"(A) between any State and any place outside of such State, or

"(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).".

SITING AND SAFETY STANDARDS

SEC. 202. (a) The Act is amended by redesignating sections 6 through 17 as sections 8 through 19, respectively, and by inserting after section 5 the following new section:

"STANDARDS FOR LNG FACILITIES

"SEC. 6. (a)(1) After the date standards first take effect under this section, no new LNG facility may be constructed, unless the Secretary approves such construction, and then only to the extent that such construction is in accordance with the applicable standards prescribed under subsection (b) and such other terms and conditions as the Secretary determines are appropriate to assure that the facility will be constructed and operated in compliance with standards under subsection (b).

"(2) The Secretary shall not approve construction of any LNG facility under this subsection unless the person seeking such approval submits a contingency plan which sets forth those steps which are to be taken in the event of an LNG accident or supply interruption and which the Secretary determines to be adequate.

"(3) The standards under this subsection shall not apply in the case of siting or construction with respect to which an application for approval was filed before March 1, 1978, with—

"(A) the Department of Energy or any predecessor organization of the Department; or

"(B) the appropriate State agency, in the case of any facility not subject to the jurisdiction of the Department under the Natural Gas Act.

"(b) Not later than 180 days after the date of the enactment of this section, the Secretary shall establish—

"(1) minimum standards for determining the location of any new LNG facility which is to be stationary,

"(2) minimum standards for the construction of any new LNG facility, and

"(3) minimum standards for the operation of any new LNG facility.

Any standard under this section shall be in addition to, and not in lieu of, standards under section 3 which are not inconsistent with such standard.

"(c) Not later than 270 days after the date of the enactment of this title, the Secretary shall establish minimum stand-

ards to be maintained with respect to the operation of any existing LNG facility.

"(d) In prescribing standards under subsections (b) and (c), the Secretary shall take into consideration—

"(1) with respect to standards relating to the location of any stationary new LNG facility—

"(A) the nature of the use of the facility;

"(B) criteria to be used in determining the number and characteristics of other sites to be considered as alternative locations for such LNG facility;

"(C) the existing and projected population and demographic characteristics associated with each location considered;

"(D) the existing and proposed land uses near each such location;

"(E) the meteorological, geological, topographical, and other natural physical aspects of each such location;

"(F) the medical, law enforcement, and fire prevention capabilities existing near each such location to cope with risks created by such a facility;

"(G) the costs of constructing and operating such LNG facility at each such location, including the costs to the United States and to State and local governments which are associated with such construction and operation; and

"(H) the need to encourage remote siting;

"(2) with respect to standards applicable to the construction of any new LNG facility—

"(A) the thermal resistance and other characteristics of materials to be used in the construction of such facility as compared to alternative materials;

"(B) design factors (such as multiple diking, insulated concrete, and vapor containment barriers);

"(C) the characteristics of the LNG to be stored or converted at, or transported by, such facility (for example, whether it is to be in a liquid, semisolid, or solid state); and

"(D) the public safety factors of the design as compared to alternative designs (particularly the ability under such a design to prevent and contain an LNG spill); and

"(3) with respect to standards for the operation of any LNG facility—

"(A) the conditions, features, and type of equipment and structures which comprise, or which are used in connection with, such facility;

"(B) the fire prevention and containment equipment at such facility;

"(C) the security measures to be used with respect to the operation of such facility for the prevention of sabotage or other intentional acts which could cause an LNG accident;

"(D) maintenance procedures and equipment;

"(E) the training of personnel with respect to the equipment, structures, measures, and procedures described in subparagraphs (A), (B), (C), and (D); and

"(F) other factors and conditions relating to the safe handling of LNG.

"(e) At any time after the effective date of standards initially prescribed under subsections (b) and (c), the Secretary shall, on his own motion or on the motion of any person, amend such standards to the extent he considers necessary to reflect changes in technology or to otherwise carry out the purposes of this section.

"(f) Any standards prescribed under this section, and amendments thereto, shall become effective 30 days after the date of issuance of such standards unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance and such date is specified in the order establishing or amending such standard.

"(g) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to all orders establishing, amending, or revoking, any standard established under this section. The Secretary shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.

"(h) Any State agency may adopt additional or more stringent standards for intrastate LNG facilities if such standards are compatible with the Federal minimum standards. No State agency may adopt or continue in force any such standards applicable to interstate LNG facilities after the Federal minimum standards become effective.".

(b)(1) Section 2(a)(4), as redesignated, is amended by striking out "or affecting".

(2) Section 2(a)(10), as redesignated, is amended by inserting ", LNG facilities," after "pipeline facilities" the first place it appears therein.

(3) Section 3(d), as redesignated, is amended—

(A) by inserting "or LNG facilities" after "pipeline facilities"; and

(B) by inserting after "in the same manner" the following: "and to the same extent".

(4) Section 4(b) (relating to Pipeline Transportation Safety Committee) is amended by inserting ", LNG facilities," after "pipeline facilities".

(5) Section 9 (relating to cooperation), as redesignated, is amended—

(A) by inserting "or LNG facility" after "affected pipeline facility" and after "gas pipeline"; and

(B) by inserting "or LNG facilities" after "pipeline facilities".

(6) Section 10 (relating to compliance), as redesignated, is amended by inserting "LNG facilities" after "pipeline facilities".

(7) Section 13 (relating to injunction and jurisdiction), as redesignated, is amended by inserting after "pipeline facility" the following: "or LNG facility".

(8) Section 14 (relating to inspection and maintenance plans), as redesignated, is amended—

(A) by inserting after "facilities" the following: "or LNG facilities" each place it appears;

(B) by striking out "pipeline safety" each place it appears and inserting in lieu thereof "pipeline and LNG facility safety"; and

(C) by inserting in paragraph (2) after "pipeline transportation" the following: "or LNG facility".

(9) Section 15 (relating to records, etc.), as redesignated, is amended by inserting after "pipeline facilities" each place it appears the following: "and LNG facilities".

(10) Section 17(a)(2) (relating to annual report), as redesignated, is amended by inserting after "pipeline" the following: "or LNG facilities".

(11) Section 17(a)(4) (relating to annual report), as redesignated, is amended by striking out "and pipeline facilities" and inserting in lieu thereof ", pipeline facilities, and LNG facilities,".

FINANCIAL RESPONSIBILITY

SEC. 203. The Act, as amended by section 202 of this Act, is further amended by inserting after the new section 6 the following new section:

"FINANCIAL RESPONSIBILITY FOR CERTAIN LNG ACTIVITIES

"SEC. 7. (a) Not later than 9 months after the date of the enactment of this section, the Secretary shall—

"(1) conduct a study of the risks associated with the production, transmission, and storage of LNG and the methods of assuring adequate financial responsibility for those engaged in such activities; and

"(2) prepare and transmit to each House of the Congress a report on the results of such study, together with the recommendations of the Secretary for such legislative or administrative action as he considers appropriate.

"(b)(1) Whenever the Secreatry has reason to believe that any operator of an LNG facility is not maintaining adequate insurance or otherwise does not have adequate financial responsibility with respect to such facilities, he shall issue and serve upon such operator notice thereof, together with a statement of the amount of the financial responsibility that the Secretary would consider adequate.

"(2) Any person issued notice under paragraph (1) shall have a right to hearing on the record in accordance with section 554 of title 5, United States Code, to be held not later than 30 days after notice under paragraph (1), at which such person has the right to show cause as to why an order should not be issued by the Secretary requiring such person to demonstrate and maintain financial responsibility at or above the amount indicated in the notice under paragraph (1).

"(3) After an opportunity for hearing under paragraph (2), the Secretary may, if he determines it is justified in the public interest, order the person issued notice of such hearing to demonstrate and maintain financial responsibility at or above an amount determined appropriate by the Secretary, taking into account any information, data, and views presented in such hearing.

"(4)(A) Any person aggrieved by an order issued under paragraph (3) may seek judicial review of such order only by filing a petition for review in the appropriate court of appeals of the United States within 60 days after such order is issued.

"(B) Upon receipt of notice of the filing of such petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing, the court may affirm, modify, remand, or set aside the order of the Secretary, and may enforce the order to the extent that such order is affirmed and issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

"(C) The judgment and decree of the court shall be final, except that such judgment and decree shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

"(c) For purposes of subsection (b) of this section, financial responsibility may be maintained by any one of, or a combination of, the following methods acceptable to the Secretary:

"(1) evidence of insurance,

"(2) surety bonds,

"(3) qualification as a self-insurer, or

"(4) other evidence of financial responsibility.".

ENFORCEMENT OF STANDARDS AND FINANCIAL RESPONSIBILITY REQUIREMENTS

SEC. 204. (a) Section 11(a) (relating to civil penalty), as redesignated by section 202 of this Act, is amended by inserting "(1)" before "Any person" and by adding at the end thereof the following new paragraph:

"(2) Any person who violates the provisions of section 6 or any order under section 7(b) shall be subject to a civil penalty of not to exceed $50,000, which penalty shall be in addition to any other penalties to which such person may be subject under this subsection.".

(b) The Act is further amended by redesignating sections 12 through 19 (as redesignated) as sections 13 through 20, respectively, and by inserting after section 11 the following new section:

"CRIMINAL PENALTY

"SEC. 12. Any person who willfully and knowingly violates the provisions of section 6 or any order issued under section 7(b) shall, on conviction thereof, be punished by a fine of not more than $50,000, or by imprisonment for not more than five years, or both.".

APPROPRIATIONS AUTHORIZATION

SEC. 205. Section 18(b) (relating to appropriations authorization), as redesignated, is amended by adding at the end thereof the following new paragraph:

"(3) There are authorized to be appropriated to carry out sections 6 and 7 of this Act for the fiscal year ending September 30, 1979, not to exceed $2,000,000.".

TITLE III—MISCELLANEOUS PROVISIONS

WILLFUL DESTRUCTION OF INTERSTATE PIPELINE TRANSMISSION OR LNG FACILITIES

SEC. 301. Section 12 (as added by section 204 of this Act), is amended by inserting "(a)" after "SEC. 12." and by adding at the end thereof the following new subsection:

"(b) Any person who willfully injures or destroys, or attempts to injure or destroy—

"(1) any pipeline facility for the interstate transmission of gas, liquefied petroleum gas, or petroleum, including any facility or equipment covered under this Act under section 2(b) or (d) used in the interstate transmission of gas or liquefied petroleum gas, or

"(2) any liquefied gas facility to which section 6 applies,

shall be fined not more than $15,000 or imprisoned not more than fifteen years, or both.".

CITIZEN'S CIVIL ACTION

SEC. 302. Section 20 (relating to citizen civil suits), as redesignated, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"SEC. 20. (a) Except as provided in subsection (b), any aggrieved person may commence a civil action for equitable relief as a citizen whenever such action constitutes a case or controversy—

"(A) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the 11th amendment to Constitution) alleged to be in violation of any provision of this Act, any order or regulation issued under this Act, or any condition of approval pursuant to section 6 of this Act; or

"(B) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act, which is not discretionary with the Secretary.

"(2) Any action brought against the Secretary under paragraph (1)(B) shall be brought in the district court for the District of Columbia or for the judicial district in which the facility involved is located or proposed to be located.

"(3) In suits brought under this section, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any condition of approval pursuant to section 6 of this Act or to order the Secretary to perform such act or duty, as the case may be.

"(b) No civil action may be commenced under this section—

"(1) under subsection (a)(1)(A)—

"(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 5(a) and in which the violation is alleged to have occurred) and (ii) to any alleged violator; or

"(B) if the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General (or the chief law enforcement officer of such State) has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States but in any such action any person may intervene as a matter of right; or

"(2) under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Secretary (or such State agency).

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.".

APPOINTMENTS OF DIRECTOR OF PIPELINE SAFETY OPERATIONS AND DIRECTOR OF MATERIALS TRANSPORTATION BUREAU

SEC. 303. (a) Notwithstanding any other provision of law—

(1) no individual may serve for more than 180 days (in the aggregate) in an acting capacity in a position the principal duties of which were identified as of March 1, 1978, as assigned to the Director of the Office of Pipeline Safety Operations, Department of Transportation, or may serve as the Acting Director of the Materials Transportation Bureau, Department of Transportation, and

(2) if a person is not appointed to such position within 180 days agter a vacancy occurs in that position, the Secretary shall personally carry out the functions of such position until an appointment is made to that position and all delegations of authority under the Fuels Transportation Safety Act shall be suspended until such appointment is made.

(b) In the case of any vacancy in such positions on the date of the enactment of this Act, periods of service before the date of enactment shall not be taken into account for purposes of subsection (a).

TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS

SEC. 304. (a) Section 3, as amended by this Act, is further amended by striking out subsection (a) and by redesignating subsections (b) through (f) as subsections (a) through (e), respectively.

(b) Section 3(b), as redesignated by subsection (a), is amended by inserting after "period reasonably necessary for compliance" the following: "and such date is specified in the order establishing or amending such standard".

(c) Clause (ii) of section 5(a) is amended by inserting after "property damage exceeding $1,000" the following: "(whether or not sustained by a person subject to the safety jurisdiction of the State)".

(d) Section 5(a) is amended by striking out "; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed five years after the date of enactment of this Act".

(e) Section 11(a)(1) (relating to civil penalties), as redesignated, is amended by striking out ": Provided, That for a reasonable period of time, not to exceed one year after the date of the enactment of this Act, such civil penalties shall not be applicable to pipeline facilities existing on such date of enactment".

(f) Section 17(a)(3) (relating to annual reports), as redesignated by sections 202 and 204 of this Act, is amended by striking out "section 3(e)" and inserting in lieu thereof "section 3(d)".

(g) The following provisions are each amended by striking out "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission".

(1) section 2(a) (9) and (10), as redesignated;

(2) section 9 (relating to cooperation), as redesignated, including the section heating; and

(3) section 16(b) (relating to administration), as redesignated.

(h) Paragraphs (9) and (10) of section 2(a), as redesignated, are each amended by inserting "or the Interstate Commerce Act" after "the Natural Gas Act".

(i)(1) Section 5(a) is amended by striking out "section 12(b)", "section 12", "section 11", "sections 9 and 10" and inserting in lieu thereof "section 15 (b) and (e)", "section 15 (a), (b), (c), and (f)", "section 14", and "sections 11 (other than subsection (a)(2) thereof) and 13", respectively.

(2) Section 5(a) is further amended by inserting "section 20," before "and except as otherwise provided in this section".

(3) Section 5(b)(2) is amended by striking out "section 11" and inserting in lieu thereof "section 14".

(4) Section 5(c)(2) is amended by striking out "section 15(b)" and inserting in lieu thereof "section 18(b)(1)".

(5) Section 10 (relating to compliance), as redesignated, is amended by striking out "section 11" and "section 12" and inserting in lieu thereof "section 14" and "section 15", respectively.

(6) Section 13 (relating to injunction and jurisdiction), as redesignated, is amended by striking out "section 9" each place it appears and inserting in lieu thereof "section 11 or 12".

(7) Section 11(a)(1) (relating to civil penalty), as redesignated, is amended by striking out "section (8)(a)" and inserting "section 10" in lieu thereof.

(j) Section 17(a) (relating to annual report), as redesignated, is amended by striking out "March 17" and inserting in lieu thereof "June 1".

(k) Any reference in any other provision of law, rule, regulation, or order to the Natural Gas Pipeline Safety Act of 1968 shall be considered to refer to the Fuels Transportation Safety Act.

Mr. DINGELL (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offered an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: On page 56, after line 11, add the following new paragraph:

"(3) Nothing in this subsection shall be interpreted to provide the Secretary with authority over any specified type or class of facility or equipment used in the transportation on land of gas or liquefied petroleum gas, in interstate or foreign commerce, or storage in connection with such transportation, unless the Secretary has authority over such facilities, equipment, or storage under any other provision of law."

Mr. COLLINS of Texas. Mr. Chairman, my amendment is straightforward and technical in nature. Its purpose is to

clarify the intent of section 106 to assure that this provision is only meant to plug loopholes in existing and overlapping laws, and that it should not be interpreted as providing the Secretary with a separate grant of authority over any facility or equipment over which he does not now have authority.

As section 106 is now written, it arguably could allow the Secretary of Transportation to extend provisions of this act to require new standards for the design, installation, maintenance, operation of or reporting on, residential, farm, commercial, or industrial user LPG storage facilities of under 30,000 gallons capacity and not meeting the other requirements of section 104(b). This was not the committee's intention when it adopted this bill. In fact, the committee's intention was clearly stated to the contrary.

Language identical to that contained in my amendment was supposed to have been included in the committee report accompanying this bill. Unfortunately, due to an inadvertent drafting error, this language was misplaced in the committee report and now appears under the explanatory material accompanying master meters. For this reason my amendment is necessary to clarify the seemingly broad grant of authority contained in section 106. I urge all Members to support this amendment which brings the language of section 106 into conformity with the intentions of its supporters.

Mr. DINGELL. Mr. Chairman, would the gentleman from Texas yield?

Mr. COLLINS of Texas. I will be glad to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, we have had a copy of the amendment made available to us. I find no objection to the amendment.

Mr. MOORE. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Louisiana.

Mr. MOORE. Mr. Chairman, we on the minority side have looked at the amendment and find it very meritorious and have no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment was agreed to.

Mr. MOORE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this time to enter into a colloquy with the distinguished chairman of the subcommittee, the gentleman from Michigan.

Mr. Chairman, I ask the gentleman, will section 102 of H.R. 11622 require natural gas distribution and pipeline companies to dig up their pipeline systems if that is the only way they can obtain the information required to be reported under section 102?

Mr. DINGELL. Mr. Chairman, would my good friend, the gentleman from Louisiana yield?

Mr. MOORE. I yield to the distinguished chairman of the committee.

Mr. DINGELL. Mr. Chairman, I would like to comment that my friend from Louisiana is a most valuable Member of the subcommittee and we have worked together harmoniously on this matter, despite our differences.

In response to the basic question, the answer is no. Our intention is to allow the reporting requirements of section 102 to be satisfied by reporting such information as is available from the records of the person operating the pipeline or through the gathering of information obtainable through normal maintenance procedures. Unless the Secretary finds that there is a clear and present hazard threatening public safety, there is no intent to require pipeline and distribution companies to undertake extraordinary excavation activity to obtain section 102 information.

Mr. Chairman, I would also point out that there are other methods whereby a large part of the information can be gotten and it is anticipated that those methods will be used first before any resort is undertaken as regards digging.

Mr. MOORE. Mr. Chairman, I thank the distinguished chairman of the subcommittee for these comments. Those are my understandings and observations of this section as well.

I think we now have the record complete to the point we are not placing an onerous and unreasonable burden of digging up these pipelines if there is no other way to obtain the information.

Mr. DINGELL. Mr. Chairman, if the gentleman will yield further, that is correct.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, Shakespeare had the proper description of this: "Much Ado About Nothing."

Mr. Chairman, I am amazed to see that such legislation comes before the House and to my friend, the gentleman from Michigan (Mr. DINGELL), I offered to bet the gentleman a dollar that the gentleman did not know what propane and butane was, and I did not get a call.

Every house in the rural areas in my part of the country burns propane or butane. Probably in the 40 years they have been doing it, they had two homes explode because somebody forgot to shut the stove off; but butane and propane basically are produced accidentally in the refining process. They are the residual that drops down when you get through.

Twenty years ago we paid people to haul it off, burn it, do anything to get rid of it. It got up to 2 cents a gallon and poor people burned it at home.

Then when we got in an energy crunch, it got up to about 35 cents a gallon and now the poor folks that live out in the country, their fuel bill is far more than their grocery bill.

When we talk about all these safety provisions, now, very little of it is transported by pipeline. We ought to have pipeline safety and I commend the gentleman for trying to have pipeline safety; but what are we going to do about nitrate fertilizer? One bag of nitrate fertilizer has more explosive in it than 100 gallons of propane or butane. Are we going to stop them from fertilizing?

This is patently something we ought not to be fooling with. It is not going to do any good. It is going to cost a lot of money and instead of 30 cents a gallon, you are going to have poor folks on the farm that cannot get any other fuel paying 50 cents a gallon for their heating fuel.

It is safe if handled properly. We burn it in our automobiles. We burn it in our trucks.

We use it in our tractors, and I have heard of one of them blowing up. Of course, they can blow up. You can have explosions in anything, but the worst explosions we have had have been from nitrate fertilizers—for instance, the one in Texas City. I presume next we will have a bill that says a farmer cannot haul fertilizer out to his farm.

AMENDMENT OFFERED BY MR. EDGAR

Mr. EDGAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. EDGAR: Page 56, after line 11, delete "." and insert the following:

"(3) Not later than 1 year after the date of the enactment of this subsection, the Secretary shall conduct a study, and submit a report thereon to the Congress, on the effects which would result from including within the coverage of this Act various types and classes of facilities and equipment used in the transportation on land of gas or liquefied petroleum gas in interstate or foreign commerce, or storage in connection with such transportation.".

Mr. EDGAR. Mr. Chairman, I rise to offer an amendment to the Fuels Transportation Safety Act of 1978.

The purpose of my amendment is to remedy a dangerous situation which threatens the lives and property of thousands of our constituents who live near liquid petroleum gas storage and/or transportation facilities.

On January 28, 1978, 40 families in the borough of Marcus Hook, Pa., had to be evacuated when a fire swept through a residential area bordering an oil refinery. Five homes were severely damaged, and three others were made uninhabitable. Only luck and courageous action by local officials prevented what could have been a tragedy of major proportions.

Mr. Chairman, it took many hours before it could be determined that the fire resulted from a leak of butane vapor from a 250,000-barrel underground storage cavern owned and operated by the Sun Co.

I and my staff worked closely with local, State and Federal officials to cope with this disaster. After bickering and buck-passing among various State and Federal agencies, a task force was finally formed to advise the borough and aid the residents. Marcus Hook mayor, Wayne Curtis Weldon, has compiled a detailed account of this disaster. A review of this fascinating document leads one to at least this striking conclusion—there is virtually no regulation of these storage facilities at the State or Federal level. When a fire did occur, no State or Federal agency assumed responsibility for the area.

Incredibly, the borough of Marcus Hook, could not find Federal or State

aid in analyzing the leaking gas which was fueling the fire, and was forced to hire the services of an independent laboratory.

On April 13, Mayor Weldon testified before the House Subcommittee on Energy and Power on H.R. 11622. In his testimony, the mayor shared his experiences and frustrations in responding to a situation which threatened the safety of the 3,000 residents of the borough. During his testimony, Mayor Weldon offered specific recommendations which he felt were necessary to avoid a repetition of the January 28th disaster at any of the approximately 75 similar underground LPG storage facilities in this country.

I would like to share with my colleagues these recommendations:

RECOMMENDATIONS

(1) A thorough investigation should be implemented on the full geological conditions necessary for successful use of underground storage facilities. This study should include possible natural or man-made causes of breaking desirable natural conditions as well as what outcomes could be expected from materials stored within the cavern facility.

(2) The construction and operation of underground storage facilities used for petroleum products should be placed under the authority of the Office of Pipeline Safety Operations.

(3) All existing underground storage caverns should be thoroughly inspected with special emphasis upon the particular safety devices in operation on each. Standards for these devices should be developed and implemented.

(4) Underground storage caverns should not be used in any residential area. Minimally safe distances should be established in standards. Where such caverns must be located in the proximity of residential areas, extra safety precautions should be implemented for completely safe operation.

(5) A national energy hot-line number should be established for any incident involving such products as LPG, LNG and should be readily available to municipalities and their fire and safety officials.

(6) Proof of financial stability must be established by any company involved with LPG, LNG facilities for possible recourse in time of disaster.

Provisions of H.R. 11622 included by the Commerce Committee take the first step to assure the responsible regulation of LPG storage facilities. Section 104 of this legislation amends the Natural Gas Pipeline Safety Act of 1968 to permit the Secretary of Transportation to include liquid petroleum gas storage facilities among the facilities which can be regulated under the act.

There are two conditions under which such regulations can be promulgated. First, the Secretary must find that including LPG facilities would further the purposes of the act. Second, facilities which could be regulated must have a capacity of at least 30,000 gallons, or an aggregate of 30,000 gallons for more than one facility at the same site.

A second provision of this legislation, as reported, also relates to LPG facilities. Section 106 amends the 1968 act to provide that the Secretary may require that certain LPG storage facilities be regulated in the same manner as other facilities covered by the act, provided that he determines that the purposes of the act would be furthered.

I wish to compliment the committee and subcommittee for approving the above provisions. However, I fear that the language does not require affirmative action by the Secretary to look at the problem of LPG storage regulation. The Secretary may feel that this issue is not a priority, or that despite the need for regulation, there are inadequate staff and resources to take an initiative in this area.

My amendment would correct this possible flaw by requiring the Secretary to take a look at this problem. The amendment provides that the Secretary must study the effects of regulating LPG storage facilities. A report on the study would have to be submitted to the Congress not later than one year following the enactment of this bill.

Since the General Accounting Office has just completed (July 31, 1978) a massive study entitled "Liquid Energy Gases Safety," the Secretary's task should be a relatively simple one. If the study demonstrates the need for regulation, then the Secretary would be authorized by provisions already in this bill to issue regulations which would apply some or all of the provisions of the 1968 act to these facilities.

Regulation which could apply to LPG storage facilities would include setting standards for the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of them. Standards affecting design, installation, construction, initial inspection and initial testing would not apply to facilities in existence when standards are adopted.

Minimum training and education requirements for inspectors would be specified. Nothing would prohibit States from adopting more stringent standards than the Federal minimum standards, provided that the State standards were compatible with the Federal standards.

Standards could be waived on a case-by-case basis if the Secretary of Transportation determined, after notice and opportunity for public hearing, that the standard would not be inconsistent with safety.

Standards relating to financial responsibility for certain LNG activities could also be applied to LPG storage activities if the Secretary determined in his study that such standards would further the purposes of the act.

Mr. Chairman, I find it unfortunate that we often become concerned about dangerous circumstances only when there is a disaster. As long as there are headlines about explosions of liquid natural gas trucks, oil spills at sea, or even long lines at the gas pumps, we are able to focus our attention on responsible measures to minimize the probability of a replay. While there are no headlines today about accidents involving LPG storage facilities, it is certainly not because State and Federal regulations have been protecting our citizens. My amendment could prevent a reoccurrence of what is known as the "Green Street Disaster," and I urge my colleagues to approve this amendment.

Mr. DINGELL. Mr. Chairman, will my good friend and colleague, the gentleman from Pennsylvania, yield?

Mr. EDGAR. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I want to pay tribute to the distinguished gentleman from Pennsylvania (Mr. EDGAR) for his offering of the amendment and for the careful way in which he has approached this problem here in the House.

I would observe that we have had an opportunity to review the amendment, and I am thoroughly sympathetic with it. The gentleman is to be congratulated for offering it, and I find no objection to it on this side.

Mr. EDGAR. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. EDGAR).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore. (Mr. NATCHER) having assumed the chair, Mr. HUGHES, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11622) to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas, petroleum, petroleum products, and certain other materials, to provide standards with respect to the siting, construction, and operation of liquefied natural gas and liquid petroleum gas facilities, and for other purposes, pursuant to House Resolution 1311, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed.

The title was amended so as to read: "A bill to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting

natural gas and liquefied petroleum gas, to provide standards with respect to the siting, construction, and operation of liquefied natural gas facilities, and for other purposes.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DINGELL. Mr. Chairman, I ask unanimous consent that all members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 1311, the Committee on Interstate and Foreign Commerce is discharged from the further consideration of the Senate bill (S. 1895) to amend the Natural Gas Pipeline Safety Act of 1968 to authorize appropriations for fiscal year 1979.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. DINGELL moves to strike out all after the enacting clause of the Senate Bill (S. 1895) and to insert in lieu thereof the text of H.R. 11622, as passed by the House, as follows:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Fuels Transportation Safety Amendments Act of 1978".

(b) The table of contents for this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. References to Natural Gas Pipeline Safety Act of 1968.
TITLE I—FUELS TRANSPORTATION GENERALLY
Sec. 101. Hazardous pipeline facilities.
Sec. 102. Information on pipeline location and characteristics.
Sec. 103. Reporting of pipeline leaks.
Sec. 104. Coverage of pipeline transportation of liquefied petroleum gas.
Sec. 105. Coverage of gas distributed in connection with rental or lease of real property.
Sec. 106. Coverage of certain nonpipeline facilities.
Sec. 107. Pipeline safety inspectors.
Sec. 108. Technical Pipeline Standards Committee.
Sec. 109. Appropriations authorization.
TITLE II——SITING AND SAFETY OF LNG FACILITIES
Sec. 201. Definitions.
Sec. 202. Siting and safety standards.
Sec. 203. Financial responsibility.
Sec. 204. Enforcement of standards and financial responsibility requirements.
Sec. 205. Appropriations authorization.
TITLE III—MISCELLANEOUS PROVISIONS
Sec. 301. Willful destruction of interstate pipeline transmission or LNG facilities.
Sec. 302. Citizens' civil action.
Sec. 303. Appointments of Director of Pipeline Safety Operations and Director of Materials Transportation Bureau.
Sec. 304. Technical, clerical, and conforming amendments.

REFERENCES TO NATURAL GAS PIPELINE SAFETY ACT OF 1968

SEC. 2. Except as otherwise expressly provided, whenever in this Act, any reference, amendment, or repeal is expressed in terms of a reference or amendment to, or repeal of, a section or other provision, it shall be considered to be made to a section or other provision of the Natural Gas Pipeline Safety Act of 1968.

TITLE I—FUELS TRANSPORTATION GENERALLY

HAZARDOUS PIPELINE FACILITIES

SEC. 101. (a) Section 8 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b)(1) If the Secretary finds, after reasonable notice and an opportunity for hearing, that any pipeline facility is hazardous to life or property, he shall, by order, require the person operating the facility to take necessary corrective action. Such corrective action may include physical inspection, testing, repair, replacement, or other action, as appropriate.

"(2) The Secretary may find a pipeline facility to be hazardous under paragraph (1)—

"(A) if under the facts and circumstances he determines the particular facility is hazardous to life or property, or

"(B) if the pipeline facility or a component thereof has been or is proposed to be constructed or operated with any equipment, material, or technique which he determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Secretary that under the particular facts and circumstances involved such equipment, material, or technique is not hazardous to life or property.

"(3) In making a determination under paragraph (2), the Secretary shall consider—

"(A) the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction, or assembly;

"(B) the nature of the materials transported by such facilities (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

"(C) the aspects of the areas in which the pipeline facilities are located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas; and

"(D) such other factors as the Secretary may consider appropriate.

"(4) The Secretary may waive any requirements for hearing and a period of reasonable notice and provide for expeditious issuance of an order under this subsection in any case in which he determines that the failure to do so would result in the likelihood of serious harm to life or property.".

(b) Section 3(b) is amended by striking out the fourth sentence.

(c) The first sentence of section 5(a) is amended by striking out "the fourth sentence of section 3(b)," and inserting in lieu thereof "section 10(b),".

INFORMATION ON PIPELINE LOCATION AND CHARACTERISTICS

SEC. 102. (a) Section 12 is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary shall, by regulation, require any person operating a pipeline facility to—

"(A) prepare and maintain a general description of the pipeline facility, including—

"(i) the location of the pipeline and the pipeline facilities;

"(ii) the type, age, manufacturer, and method of construction of such pipeline and facilities;

"(iii) the nature of the materials transported, the sequence in which they are transported, and the pressure at which they are transported;

"(iv) the climatic and geologic conditions including soil characteristics) associated with the areas in which the pipeline facilities are located, and the population density and patterns of such areas; and

"(v) such other information as the Secretary may consider appropriate;

"(B) prepare, maintain, and submit to State and local entities authorized to approve demolition, excavation, tunneling, or construction activities in the areas in which the pipeline facilities are located a detailed description of the pipeline's location; and

"(C) submit to the Secretary a report containing the information prepared and maintained under subparagraph (A).

"(2) Information prepared and maintained under paragraph (1)(A)(i) of this subsection shall, on request and for good cause shown, be made available for public inspection.

"(3) The requirements of subparagraph (B) of paragraph (1) shall be deemed to be satisfied in the case of any pipeline facility operator participating in a public safety program established under State or local law or regulation—

"(A) under which—

"(i) notice is required to be provided to pipeline facility operators of proposed demolition, excavation, tunneling, or construction near or affecting such facility; and

"(ii) such operators are required to identify specific pipeline facilities which may be affected by the proposed demolition, excavation, tunneling, or construction, or to supervise such demolition, excavation, tunneling, or construction, for the purpose of preventing damage to such facilities; and

"(B) which the Secretary determines is being carried out in a manner adequate to assure protection against the hazards of demolition, excavation, tunneling, or construction near or affecting such facilities.

"(4) The Secretary shall—

"(A) not later than 180 days after the date of the enactment of this subsection, publish proposed regulations required to be prescribed under paragraph (1), and provide an opportunity (of not less than 60 days' duration) for oral and written public comment on such proposed regulations; and

"(B) as soon as possible after the public comment period under subparagraph (A) but not later than 270 days after the date of the enactment of this subsection, prescribe the final regulations.

(5) The Secretary shall, by order or regulation, provide for an exemption for any person or category of persons from all or part of the requirements under this subsection if the Secretary finds—

"(A) that the financial and administrative burdens of being covered by such requirements are not justified by the benefits resulting from that coverage; or

"(B) the costs to such person or persons by being covered by such requirements would significantly increase consumer rates or charges and such exemption would not endanger the public health or safety.

"(6) Information shall not be required to be prepared or reported under the regulations under this subsection before January 1, 1982.

"(7) Not later than 3 years after the date

of the enactment of this subsection, the Secretary shall establish and thereafter maintain a program, for use in an electronic data-processing system, which processes and maintains—

"(A) information obtained under this subsection;

"(B) information on pipeline leaks reported under subsection (e);

"(C) information on accidents and incidents reported under section 5; and

"(D) such other information as the Secretary determines appropriate;

for the purpose of identifying hazardous equipment, materials, and techniques involved in the construction or operation of pipeline facilities.".

(b)(1) Section 5(a) is amended—

(A) by inserting after "(3) is enforcing each such standard;" the following: "(4) has adopted and is administering a reporting and disclosure program substantially meeting the requirements of the reporting and disclosure program established by regulation under section 15(d)(1);";

(B) by redesignating paragraphs (4) and (5) thereof as paragraphs (5) and (6), respectively;

(C) by striking out "excavation" in paragraph (5), as redesignated, and inserting "demolition, excavation, tunneling, or construction" in lieu thereof;

(D) by striking out "and (iv)" and inserting in lieu thereof "(iv) information obtained by the State agency under a program described by paragraph (4) of this subsection; and (v)".

(2) Certification and information requirements established by regulation under the amendments made by paragraph (1) of this subsection shall not apply with respect to annual certifications under section 5 during the 3-year period which begins on the effective date of such regulation.

(c) Section 12(f), as redesignated by subsection (a) of this section, is amended by striking out "or (c)" and inserting in lieu thereof "(c), or (d)".

(d) Section 16 is amended by inserting "(a)" before "Each person" and by adding at the end thereof the following new subsection:

"(b) In addition to the program under subsection (a) of this section, each person engaged in pipeline transportation shall establish a program for the education of the public of the hazards of demolition, excavation, tunneling, or construction activity conducted near pipeline facilities, and the methods by which information on the location of underground pipelines may be obtained by the public.".

REPORTING OF PIPELINE LEAKS

SEC. 103. (a) Section 12, as amended by section 102 of this Act, is further amended by inserting after new subsection (d) the following new subsection:

"(e)(1) The Secretary shall, by regulation, require that any person owning or operating pipeline facilities shall report, at such time and in such manner as the Secretary shall require, any pipeline leak of which such person knew or reasonably should have known. Any such report shall include—

"(A) the specific location of the pipeline leak;

"(B) a description of the pipeline facilities at which the pipeline leak occurred, including any information described in subsection (d)(1)(A) which the Secretary may require under such regulation;

"(C) a description of any personal injury or property damage resulting from such pipeline leak; and

"(D) a description of the steps taken to prevent the leak from continuing or recurring.

"(2) The Secretary shall, by order or regulation, provide for an exemption for any person or category of persons from all or part of the requirements under this subsection if the Secretary finds that the financial and administrative burdens of being covered by such requirements are not justified by the benefits resulting from that coverage.

"(3) For the purposes of this subsection, the term 'pipeline leak' means any condition resulting in the escape of material from pipeline facilities during pipeline transportation, or during treatment of such material during the course of pipeline transportation, which is not caused by operation, inspection, or adjustment procedures which were properly carried out. Such term does not include any condition which does not pose a threat to public health and safety, as determined in accordance with regulations prescribed by the Secretary.".

(b) Section 12(f) (as amended by section 102 of this Act) is amended by striking out ", or (d)" and inserting in lieu thereof "(d), or (e)".

(c) The amendments made by this section shall not apply with respect to any pipeline leak (within the meaning of section 12(e)(3), as amended by this section) occurring before the effective date of the regulation initially prescribed under such amendments.

COVERAGE OF PIPELINE TRANSPORTATION OF LIQUEFIED PETROLEUM GAS

SEC. 104. (a) Section 2(3) is amended—

(1) by striking out "Transportation of gas" and inserting in lieu thereof "Pipeline transportation"; and

(2) by inserting after "interstate or foreign commerce" the following: ", or the transmission or distribution (but excluding the gathering) of liquefied petroleum gas by pipeline, in interstate or foreign commerce".

"(b) Section 2 is amended by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) 'Liquefied petroleum gas' means propane, butane, any related product, or any mixture or combination thereof;".

(c) Section 2(2) is amended by inserting ", but such term does not include liquefied petroleum gas" after "toxic or corrosive".

(d) Section 2(4), as amended and redesignated, is further amended by inserting after "distribution of gas" the following: "(whether in a gaseous or nongaseous state)".

(e) Section (2) is amended by inserting "(a)" after "SEC. 2." and by adding at the end thereof the following new subsection:

"(b) Any storage facility, or category of storage facilities, physically connected to any pipeline facility, or facilities, used for the transmission or distribution of liquefied petroleum gas shall be included by the Secretary, by regulation, within the meaning of subsection (a)(5) if—

"(1) the Secretary finds that such inclusion would further the purposes of this Act; and

"(2) such facility has a storage capacity of 30,000 gallons or more, or is used in connection with one or more other storage facilities at the same site which have, in the aggregate, a storage capacity of 30,000 gallons or more.".

(f) Section 3 is amended by adding at the end thereof the following new subsection:

"(f)(1) Standards, or amendments to standards, required under this section by reason of the enactment of the Fuels Transportation Safety Amendments Act of 1978 shall be prescribed not later than 36 months after the date of the enactment of such Act.

"(2) As soon as practicable but not later than 3 months after the enactment of such Act, the Secretary shall, by order, adopt interim minimum Federal safety standards for pipeline facilities and pipeline transportation to the extent not covered by this Act immediately before the date of the enactment of the Fuels Transportation Safety Amendments Act of 1978. Such standards shall, to the extent the Secretary determines appropriate, be the State standards regulating pipeline facilities and pipeline transportation within such State on such date on enactment. In any State in which no such standards are in effect, the Secretary shall, by order, establish interim Federal safety standards for such pipeline facilities and pipeline transportation in such State which shall, to the extent the Secretary determines appropriate, be such standards as are common to a majority of States having safety standards for pipeline facilities and pipeline transportation on such date. Interim standards shall remain in effect until amended or revoked pursuant to this section. Any State agency may adopt such additional or more stringent standards for pipeline facilities and pipeline transportation not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, or the Interstate Commerce Act, as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the interim standards provided for above become effective any such standards applicable to interstate transmission facilities.".

(g)(1) The following provisions are amended by striking out "the transportation of gas" each place it appears and inserting in lieu thereof "pipeline transportation":

(A) section 2(a) (5) and (9), as redesignated by subsection (a);

(B) section 3 (b) and (e);

(C) section 4(b);

(D) section 8(a);

(E) section 11;

(F) section 12(a);

(G) section 13(b); and

(H) section 14(a)(4).

(2) The following provisions are each amended by striking out "transportation of gas" each place it appears and inserting in lieu thereof "pipeline transportation";

(A) section 2(a)(10), as redesignated by subsection (a);

(B) section 5(b)(3); and

(C) section 10(a).

(3) The following provisions are each amended by striking out "gas pipeline" each place it appears and inserting in lieu thereof "pipeline";

(A) section 3(e);

(B) section 4(a); and

(C) section 14(b).

(4) Section 2(a)(4), as redesignated and amended, is further amended by striking out "or its storage" and inserting in lieu thereof ", or its storage in connection with such gathering, transmission, or distribution,".

(5) Section 5(c)(1) is amended—

(A) by striking out "gas safety programs" and inserting in lieu thereof "pipeline safety programs", and

(B) by striking out "date of enactment of this section." and inserting in lieu thereof the following: "date of enactment of the Fuels Transportation Safety Amendments Act of 1978.".

(6) The short title set forth in the first section is amended to read as follows: "Fuels Transportation Safety Act".

COVERAGE OF GAS DISTRIBUTED IN CONNECTION WITH RENTAL OR LEASE OF REAL PROPERTY

SEC. 105. Section 2, as amended by section 104(e), is further amended by adding at the end thereof the following new subsection:

"(c)(1) Unless paragraph (2) applies, there shall be included within the meaning of subsection (a)(4) any pipeline distribution of gas by any person in connection

with the rental or lease of real property by that person to others, whether or not—

"(A) a separate charge is made for such gas;

"(B) the distribution to each rental or lease unit is separately metered; and

"(C) the person distributing such gas is otherwise treated as being engaged in local distribution of gas.

"(2) The Secretary shall, by regulation, provide that the provisions of paragraph (1) not apply in cases in which the public health and safety are adequately protected by reason of the existence and enforcement of appropriate building or housing codes or similar laws.".

COVERAGE OF CERTAIN NONPIPELINE FACILITIES

SEC. 106. (a) Section 2, as amended by this Act, is further amended by adding at the end thereof the following new subsection:

"(d)(1) If the Secretary finds that the purposes of this Act would be furthered, he may, by regulation, require that the provisions of this Act shall apply with respect to any specified type or class of facility or equipment used in the transportation on land of gas or liquefied petroleum gas, in interstate or foreign commerce, or storage in connection with such transportation, to the same extent and in the same manner as such provisions apply with respect to pipeline facilities.

"(2) This subsection (or any action hereunder) shall not be construed to relieve any person from having to meet standards or meeting other requirements under any other Federal law; except that, if any regulation under this subsection results in the imposition of a standard or other requirement relating to any matter that the Secretary finds is covered by any other standard or requirement pursuant to any provision of law under the jurisdiction of the Secretary, the Secretary shall so state in such regulation, and that standard or requirement shall supersede and preempt the standard or requirement pursuant to such other provision of law to the extent such matter is covered under the regulation under this subsection.

"(3) Nothing in this subsection shall be interpreted to provide the Secretary with authority over any specified type or class of facility or equipment used in the transportation on land of gas or liquified petroleum gas, in interstate or foreign commerce, or storage in connection with such transportation, unless the Secretary has authority over such facilities, equipment, or storage under any other provision of law.

"(4) Not later than 1 year after the date of the enactment of this subsection, the Secretary shall conduct a study, and submit a report thereon to the Congress, on the effects which would result from including within the coverage of this Act various types and classes of facilities and equipment used in the transportation on land of gas or liquified petroleum gas in interstate or foreign commerce, or storage in connection with such transportation.".

(b) Section 5(a) is amended by inserting "section 2(c)," after "Except for".

PIPELINE SAFETY INSPECTORS

SEC. 107. (a)(1) Section 3(b) is amended by inserting after paragraph (4) the following new sentence: "Standards under this subsection which relate to inspection and other enforcement shall set forth minimum training and educational requirements for pipeline inspectors.".

(2) Section 5(c) is amended by adding at the end thereof the following new paragraph:

"(5) The Secretary may not make any payment under this subsection to a State agency for any calendar year beginning after December 31, 1981, unless such State agency has demonstrated that from the payments to such agency for such year funds will be applied for the training and education of pipeline safety inspectors of each State agency in order to enable them to better perform their responsibilities. The amounts to be applied for such purposes are to be adequate to assure that the pipeline safety inspectors maintained by such State agency comply with any standards established under section 3(a) for training and education of pipeline inspectors.".

(b) Section 5(f) is amended to read as follows:

"(f)(1) The Secretary shall determine, after reasonable notice and opportunity for hearing, the minimum number of pipeline safety inspectors which must be maintained by a State agency in order to assure adequate monitoring of compliance with applicable safety standards within such State.

"(2) No State agency shall be considered to meet the requirements for certification under subsection (a), nor may the Secretary enter into any agreement under subsection (b) or allow a State to act as his agent with respect to interstate transmission facilities, unless the State agency involved has demonstrated that such agency has and will continue to maintain no less than the minimum number of pipeline inspectors determined by the Secretary under paragraph (1) to be required for such State.".

TECHNICAL PIPELINE STANDARDS COMMITTEE

SEC. 108. Section 4(b) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "The Secretary shall submit to the Committee any proposed standard under this Act, or any proposed amendment to a standard under this Act, for their consideration. Within 90 days after receipt of any proposed standard or amendment, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of such standard or amendment. The Secretary may prescribe a final standard or final amendment to a standard at any time after the 90th day after its submission to the Committee, whether or not the Committee has prepared a report on such standard or amendment.";

(2) by inserting after "published by the Secretary and" the following ", if timely made,"; and

(3) by inserting before the last sentence thereof the following new sentence: "The Committee shall meet with the Secretary (or his designee) not less frequently than once every 6 months.".

APPROPRIATIONS AUTHORIZATION

SEC. 109. Section 15 is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

"SEC. 15. (a) There are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1979, for the purpose of carrying out the provisions of this Act, other than provisions for which funds are authorized to be appropriated under subsection (b).

"(b)(1) For the purpose of carrying out the provisions of section 5(c) and (f) of this Act, there are authorized to be appropriated, $4,500,000 for the fiscal year ending September 30, 1979.

"(2) For the purpose of carrying out the electronic data-processing program under section 15(d)(7) for identifying hazardous equipment, materials, and techniques, there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1979.".

## TITLE II—SITING AND SAFETY OF LNG FACILITIES

DEFINITIONS

SEC. 201. Section 2(a), as redesignated, is amended by striking out "and" at the end of paragraph (10) (as redesignated), by striking out the period at the end of paragraph (11) (as redesignated) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following new items:

"(12) 'LNG' means natural gas in a liquid, semisolid, or solid state;

"(13) 'LNG facility' means any storage tank, pipeline, or other structure or equipment used for the transportation, storage, or use of LNG, or for LNG conversion, in interstate or foreign commerce, but does not include any structure or equipment (or portion thereof) located in navigable waters (as defined in section 3(8) of the Federal Power Act (16 U.S.C. 796(8)));

"(14) 'LNG conversion' means conversion of natural gas into LNG (liquefaction or solidification) or the conversion of LNG into natural gas (vaporization);

"(15) 'Construction' means construction, reconstruction, or erection, and includes, with respect to any LNG facility, any act which the Secretary determines would result in the creation or substantial increase of capacity of such facility for transporting or storing LNG or for LNG conversion;

"(16) 'Existing LNG facility' means any LNG facility for which an application for the approval of the siting, construction, or operation of such facility was filed before March 1, 1978, with—

"(A) the Department of Energy or any predecessor organization of the Department, or

"(B) the appropriate State agency, in the case of any facility not subject to the jurisdiction of the Department of Energy under the Natural Gas Act,

except that such term does not include any facility the construction of which commences on or after the date of the enactment of this paragraph and such construction is not pursuant to such an approval;

"(17) 'New LNG facility' means any LNG facility other than an existing LNG facility;

"(18) 'LNG accident' means any release, burning, or explosion of LNG resulting from—

"(A) a rupture or other failure of a storage tank, pipeline, or other LNG facility;

"(B) natural hazards (including earthquakes, hurricanes, and high winds);

"(C) sabotage; or

"(D) any other cause; and

"(19) 'Interstate or foreign commerce' means any trade, traffic, transportation, exchange, or other commerce—

"(A) between any State and any place outside of such State, or

"(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).".

SITING AND SAFETY STANDARDS

SEC. 202. (a) The Act is amended by redesignating sections 6 through 17 as sections 8 through 19, respectively, and by inserting after section 5 the following new section:

"STANDARDS FOR LNG FACILITIES

"SEC. 6. (a)(1) After the date standards first take effect under this section, no new LNG facility may be constructed, unless the Secretary approves such construction, and then only to the extent that such construction is in accordance with the applicable standards prescribed under subsection (b) and such other terms and conditions as the Secretary determines are appropriate to assure that the facility will be constructed and operated in compliance with standards under subsection (b).

"(2) The Secretary shall not approve construction of any LNG facility under this subsection unless the person seeking such approval submits a contingency plan which sets forth those steps which are to be taken in the event of an LNG accident or supply interruption and which the Secretary determines to be adequate.

"(3) The standards under this subsection shall not apply in the case of siting or construction with respect to which an applica-

tion for approval was filed before March 1, 1978, with—

"(A) the Department of Energy or any predecessor organization of the Department; or

"(B) the appropriate State agency, in the case of any facility not subject to the jurisdiction of the Department under the Natural Gas Act.

"(b) Not later than 180 days after the date of the enactment of this section, the Secretary shall establish—

"(1) minimum standards for determining the location of any new LNG facility which is to be stationary,

"(2) minimum standards for the construction of any new LNG facility, and

"(3) minimum standards for the operation of any new LNG facility.

Any standard under this section shall be in addition to, and not in lieu of, standards under section 3 which are not inconsistent with such standard.

"(c) Not later than 270 days after the date of the enactment of this title, the Secretary shall establish minimum standards to be maintained with respect to the operation of any existing LNG facility.

"(d) In prescribing standards under subsections (b) and (c), the Secretary shall take into consideration—

"(1) with respect to standards relating to the location of any stationary new LNG facility—

"(A) the nature of the use of the facility;

"(B) criteria to be used in determining the number and characteristics of other sites to be considered as alternative locations for such LNG facility;

"(C) the existing and projected population and demographic characteristics associated with each location considered;

"(D) the existing and proposed land uses near each such location;

"(E) the meteorological, geological, topographical, and other natural physical aspects of each such locations;

"(F) the medical, law enforcement, and fire prevention capabilities existing near each such location to cope with risks created by such a facility;

"(G) the costs of constructing and operating such LNG facility at each such location, including the costs to the United States and to State and local governments which are associated with such construction and operation; and

"(H) the need to encourage remote siting;

"(2) with respect to standards applicable to the construction of any new LNG facility—

"(A) the thermal resistance and other characteristics of materials to be used in the construction of such facility as compared to alternative materials;

"(B) design factors (such as multiple diking, insulated concrete, and vapor containment barriers);

"(C) the characteristics of the LNG to be stored or converted at, or transported by, such facility (for example, whether it is to be in a liquid, semisolid, or solid state); and

"(D) the public safety factors of the design as compared to alternative designs (particularly the ability under such a design to prevent and contain an LNG spill); and

"(3) with respect to standards for the operation of any LNG facility—

"(A) the conditions, features, and type of equipment and structures which comprise, or which are used in connection with, such facility;

"(B) the fire prevention and containment equipment at such facility;

"(C) the security measures to be used with respect to the operation of such facility for the prevention of sabotage or other intentional acts which could cause an LNG accident;

"(D) maintenance procedures and equipment;

"(E) the training of personnel with respect to the equipment, structures, measures, and procedures described in subparagraphs (A), (B), (C), and (D); and

"(F) other factors and conditions relating to the safe handling of LNG.

"(e) At any time after the effective date of standards initially prescribed under subsections (b) and (c), the Secretary shall, on his own motion or on the motion of any person, amend such standards to the extent he considers necessary to reflect changes in technology or to otherwise carry out the purposes of this section.

"(f) Any standards prescribed under this section, and amendments thereto, shall become effective 30 days after the date of issuance of such standards unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance and such date is specified in the order establishing or amending such standard.

"(g) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to all orders establishing, amending, or revoking, any standard established under this section. The Secretary shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.

"(h) Any State agency may adopt additional or more stringent standards for intrastate LNG facilities if such standards are compatible with the Federal minimum standards. No State agency may adopt or continue in force any such standards applicable to interstate LNG facilities after the Federal minimum standards become effective.".

(b)(1) Section 2(a)(4), as redesignated, is amended by striking out "or affecting".

(2) Section 2(a)(10), as redesignated, is amended by inserting ", LNG facilities," after "pipeline facilities" the first place it appears therein.

(3) Section 3(d), as redesignated, is amended—

(A) by inserting "or LNG facilities" after "pipeline facilities"; and

(B) by inserting after "in the same manner" the following: "and to the same extent".

(4) Section 4(b) (relating to Pipeline Transportation Safety Committee) is amended by inserting ", LNG facilities," after "pipeline facilities".

(5) Section 9 (relating to cooperation), as redesignated, is amended—

(A) by inserting "or LNG facility" after "affected pipeline facility" and after "gas pipeline"; and

(B) by inserting "or LNG facilities" after "pipeline facilities".

(6) Section 10 (relating to compliance), as redesignated, is amended by inserting "LNG facilities" after "pipeline facilities".

(7) Section 13 (relating to injunction and jurisdiction), as redesignated, is amended by inserting after "pipeline facility" the following: "or LNG facility".

(8) Section 14 (relating to inspection and maintenance plans), as redesignated, is amended—

(A) by inserting after "facilities" the following: "or LNG facilities" each place it appears;

(B) by striking out "pipeline safety" each place it appears and inserting in lieu thereof "pipeline and LNG facility safety"; and

(C) by inserting in paragraph (2) after "pipeline transportation" the following: "or LNG facility".

(9) Section 15 (relating to records, etc.), as redesignated, is amended by inserting after "pipeline facilities" each place it appears the following: "and LNG facilities".

(10) Section 17(a)(2) (relating to annual report), as redesignated, is amended by inserting after "pipeline" the following: "or LNG facilities".

(11) Section 17(a)(4) (relating to annual report), as redesignated, is amended by striking out "and pipeline facilities" and inserting in lieu thereof ", pipeline facilities, and LNG facilities,"

FINANCIAL RESPONSIBILITY

SEC. 203. The Act, as amended by section 202 of this Act, is further amended by inserting after the new section 6 the following new section:

"FINANCIAL RESPONSIBILITY FOR CERTAIN LNG ACTIVITIES

"SEC. 7. (a) Not later than 9 months after the date of the enactment of this section, the Secretary shall—

"(1) conduct a study of the risks associated with the production, transmission, and storage of LNG and the methods of assuring adequate financial responsibility for those engaged in such activities; and

"(2) prepare and transmit to each House of the Congress a report on the results of such study, together with the recommendations of the Secretary for such legislative or administrative action as he considers appropriate.

"(b)(1) Whenever the Secretary has reason to believe that any operator of an LNG facility is not maintaining adequate insurance or otherwise does not have adequate financial responsibility with respect to such facilities, he shall issue and serve upon such operator notice thereof, together with a statement of the amount of the financial responsibility that the Secretary would consider adequate.

"(2) Any person issued notice under paragraph (1) shall have a right to hearing on the record in accordance with section 554 of title 5, United States Code, to be held not later than 30 days after notice under paragraph (1), at which such person has the right to show cause as to why an order should not be issued by the Secretary requiring such person to demonstrate and maintain financial responsibility at or above the amount indicated in the notice under paragraph (1).

"(3) After an opportunity for hearing under paragraph (2), the Secretary may, if he determines it is justified in the public interest, order the person issued notice of such hearing to demonstrate and maintain financial responsibility at or above an amount determined appropriate by the Secretary, taking into account any information, data, and views presented in such hearing.

"(4)(A) Any person aggrieved by an order issued under paragraph (3) may seek judicial review of such order only by filing a petition for review in the appropriate court of appeals of the United States within 60 days after such order is issued.

"(B) Upon receipt of notice of the filing of such petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing, the court may affirm, modify, remand, or set aside the order of the Secretary, and may enforce the order to the extent that such order is affirmed and issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

"(C) The judgment and decree of the court shall be final, except that such judgment and decree shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

"(c) For purposes of subsection (b) of this section, financial responsibility may be maintained by any one of, or a combination of, the following methods acceptable to the Secretary:

"(1) evidence of insurance,

"(2) surety bonds,

"(3) qualification as a self-insurer, or

"(4) other evidence of financial responsibility.".

ENFORCEMENT OF STANDARDS AND FINANCIAL RESPONSIBILITY REQUIREMENTS

SEC. 204. (a) Section 11(a) (relating to civil penalty), as redesignated by section 202 of this Act, is amended by inserting "(1)" before "Any person" and by adding at the end thereof the following new paragraph:

"(2) Any person who violates the provisions of section 6 or any order under section 7(b) shall be subject to a civil penalty of not to exceed $50,000, which penalty shall be in addition to any other penalties to which such person may be subject under this subsection.".

(b) The Act is further amended by redesignating sections 12 through 19 (as redesignated) as sections 13 through 20, respectively, and by inserting after section 11 the following new section:

"CRIMINAL PENALTY

"SEC. 12. Any person who willfully and knowingly violates the provisions of section 6 or any order issued under section 7(b) shall, on conviction thereof, be punished by a fine of not more than $50,000, or by imprisonment for not more than five years, or both.".

APPROPRIATIONS AUTHORIZATIONS

SEC. 205. Section 18(b) (relating to appropriations authorization), as redesignated, is amended by adding at the end thereof the following new paragraph:

"(3) There are authorized to be appropriated to carry out section 6 and 7 of this Act for the fiscal year ending September 30, 1979, not to exceed $2,000,000.".

TITLE III—MISCELLANEOUS PROVISIONS

WILLFUL DESTRUCTION OF INTERSTATE PIPELINE TRANSMISSION OR LNG FACILITIES

SEC. 301. Section 12 (as added by section 204 of this Act) is amended by inserting "(a)" after "SEC. 12." and by adding at the end thereof the following new subsection:

"(b) Any person who willfully injures or destroys, or attempts to injure or destroy—

"(1) any pipeline facility for the interstate transmission of gas, liquefied petroleum gas, or petroleum, including any facility or equipment covered under this Act under section 2 (b) or (d) used in the interstate transmission of gas or liquefied petroleum gas, or

"(2) any liquefied gas facility to which section 6 applies,

shall be fined not more than $15,000 or imprisoned not more than fifteen years, or both.".

CITIZENS' CIVIL ACTION

SEC. 302. Section 20 (relating to citizen civil suits), as redesignated, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"SEC. 20. (a)(1) Except as provided in subsection (b), any aggrieved person may commence a civil action for equitable relief as a citizen whenever such action constitutes a case or controversy—

"(A) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the 11th amendment to the Constitution) alleged to be in violation of any provision of this Act, any order or regulation issued under this Act, or any condition of approval pursuant to section 6 of this Act; or

"(B) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act, which is not discretionary with the Secretary.

"(2) Any action brought against the Secretary under paragraph (1)(B) shall be brought in the district court for the District of Columbia or for the judicial district in which the facility involved is located or proposed to be located.

"(3) In suits brought under this section, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any condition of approval pursuant to section 6 of this Act or to order the Secretary to perform such act or duty, as the case may be.

"(b) No civil action may be commenced under this section—

"(1) under subsection (a)(1)(A)—

"(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 5(a) and in which the violation is alleged to have occurred) and (ii) to any alleged violator; or

"(B) if the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General (or the chief law enforcement officer of such State) has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States but in any such action any person may intervene as a matter of right; or

"(2) under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Secretary (or such State agency).

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.".

APPOINTMENTS OF DIRECTOR OF PIPELINE SAFETY OPERATIONS AND DIRECTOR OF MATERIALS TRANSPORTATION BUREAU

SEC. 303. (a) Notwithstanding any other provision of law—

(1) no individual may serve for more than 180 days (in the aggregate) in an acting capacity in a position the principal duties of which were identified as of March 1, 1978, as assigned to the Director of the Office of Pipeline Safety Operations, Department of Transportation, or may serve as the Acting Director of the Materials Transportation Bureau, Department of Transportation, and

(2) if a person is not appointed to such position within 180 days after a vacancy occurs in that position, the Secretary shall personally carry out the functions of such position until an appointment is made to that position and all delegations of authority under the Fuels Transportation Safety Act shall be suspended until such appointment is made.

(b) In the case of any vacancy in such positions on the date of the enactment of this Act, periods of service before the date of enactment shall not be taken into account for purposes of subsection (a).

TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS

SEC. 304. (a) Section 3, as amended by this Act, is further amended by striking out subsection (a) and by redesignating subsections (b) through (f) as subsections (a) through (e), respectively.

(b) Section 3(b), as redesignated by subsection (a), is amended by inserting after "period reasonably necessary for compliance" the following: "and such date is specified in the order establishing or amending such standard".

(c) Clause (ii) of section 5(a) is amended by inserting after "property damage exceeding $1,000" the following: "(whether or not sustained by a person subject to the safety jurisdiction of the State)".

(d) Section 5(a) is amended by striking out "; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed five years after the date of enactment of this Act".

(e) Section 11(a)(1) (relating to civil penalties), as redesignated, is amended by striking out ": *Provided*, That for a reasonable period of time, not to exceed one year after the date of the enactment of this Act, such civil penalties shall not be applicable to pipeline facilities existing on such date of enactment."

(f) Section 17(a)(3) (relating to annual reports), as redesignated by sections 202 and 204 of this Act, is amended by striking out "section 3(e)" and inserting in lieu thereof "section 3(d)".

(g) The following provisions are each amended by striking out "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission":

(1) section 2(a) (9) and (10) as redesignated;

(2) section 9 (relating to cooperation), as redesignated, including the section heading; and

(3) section 16(b) (relating to administration), as redesignated.

(h) Paragraphs (9) and (10) of section 2(a), as redesignated, are each amended by inserting "or the Interstate Commerce Act" after "the Natural Gas Act".

(i)(1) Section 5(a) is amended by striking out "section 12(b)", "section 12", "section 11", "sections 9 and 10" and inserting in lieu thereof "section 15 (b) and (e)", "section 15 (a), (b), (c), and (f)", "section 14", and "sections 11 (other than subsection (a)(2) thereof) and 13", respectively.

(2) Section 5(a) is further amended by inserting "section 20," before "and except as otherwise provided in this section".

(3) Section 5(b)(2) is amended by striking out "section 11" and inserting in lieu thereof "section 14".

(4) Section 5(c)(2) is amended by striking out "section 15(b)" and inserting in lieu thereof "section 18(b)(1)".

(5) Section 10 (relating to compliance), as redesignated, is amended by striking out "section 11" and "section 12" and inserting in lieu thereof "section 14" and "section 15", respectively.

(6) Section 13 (relating to injunction and jurisdiction), as redesignated, is amended by striking out "section 9" each place it appears and inserting in lieu thereof "section 11 or 12".

(7) Section 11(a)(1) (relating to civil penalty), as redesignated, is amended by striking out "section (8)(a)" and inserting "section 10" in lieu thereof.

(j) Section 17(a) (relating to annual report), as redesignated, is amended by striking out "March 17" and inserting in lieu thereof "June 1"

(k) Any reference in any other provision of law, rule, regulation, or order to the Natural Gas Pipeline Safety Act of 1968 shall be considered to refer to the Fuels Transportation Safety Act.

Amend the title so as to read: "A bill to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas and liquefied petroleum gas, to provide standards with respect to the siting, construction, and operation of liquefied natural gas facilities, and for other purposes.".

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas and liquefied petroleum gas, to provide standards with respect to the siting, construction, and operation

of liquefied natural gas facilities, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 11622) was laid on the table.

## CORRECTION OF SECTION NUMBERS, PUNCTUATION, AND CROSS-REFERENCES IN ENGROSSMENT OF H.R. 11622

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill H.R. 11622, the Clerk be authorized to correct section numbers, punctuation, and cross-references to reflect the action of the House just taken in amending the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

## NATURAL GAS POLICY ACT

(Mr. ANDERSON of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ANDERSON of Illinois. Mr. Speaker, I have received a copy of a letter under date of September 8, 1978, addressed to the distinguished chairman of the Energy Committee, the gentleman from Ohio (Mr. ASHLEY), from the chairman of the Federal Energy Regulatory Commission, Mr. Charles B. Curtis. In the letter Mr. Curtis says that "the task of administration and enforcement of the statutory scheme" for regulation under the so-called natural gas bill "will be most difficult."

Continuing to quote from his letter, he says, "The legislation will necessitate an augmentation of Commission personnel and financial resources" at a time when regulatory reform is one of the crying needs of this Congress.

This administration is pushing a piece of legislation in the other body and, ultimately, perhaps, before this body, as well, which admittedly is going to require more regulation, more regulatory personnel, at the very time when they are claiming that it would bring about deregulation. What a strange inconsistency is involved in this particular act.

Mr. Speaker, the text of the letter of Mr. Curtis is as follows:

FEDERAL ENERGY REGULATORY COMMISSION,
*Washington, D.C., September 8, 1978.*

Hon. THOMAS L. ASHLEY,
*Chairman, Ad Hoc Committee on Energy, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In the last few weeks, a number of members have questioned whether the proposed Natural Gas Policy Act (NGPA) can be effectively administered and enforced by the Federal Energy Regulatory Commission. These concerns, in large measure, arise from an August 14, 1978 memorandum from the Director of the Commission's Office of Enforcement which concluded that the July 31 draft of the conference report would be impossible to enforce or administer in a conscientious and equitable manner.

The Congress, indeed each agency of government, has the responsibility to assure that the laws of the United States are workable and capable of effective administration. As you may know, I have received requests from several of your colleagues to state my views on this matter and to prepare an analysis of the final conference report (S. Rep. No. 95-1126). That task has been recently completed and I am pleased to provide you with a copy of the analysis. You may also be interested in reviewing a copy of a memorandum prepared by the Director of the Commission's Office of Enforcement concerning this subject, which is also enclosed.

The enclosed analysis is not intended, nor should it be viewed, as a comment on the policy considerations which are involved in the proposed resolution of the natural gas pricing controversy. Instead the attempt has been made to focus solely on administrative and enforcement considerations.

As the section-by-section analysis indicates, a detailed review of this character tends to focus on the problems encountered in statutory interpretation. For the most part, however, it should be acknowledged that the legislative draftsmen have done a truly outstanding job in giving statutory expression to the conference agreement.

From an administrative and enforcement standpoint, the final conference report is substantially improved when compared to the July 31 draft. Under the NGPA, the Commission is to be vested with an array of administrative and enforcement devices traditionally given to regulatory agenices. Principal among these are the enforcement mechanisms which will allow the Commission to compel compliance with the Act through injunctive actions in the courts and to impose civil and criminal penalties for violations of the requirements of the Act or regulations of the Commission. In a number of respects, these mechanisms are more substantial than those available to the Commission at present under the Natural Gas Act. Moreover, the Commission has been given certain administrative powers, which exceed those currently available to the Commission under existing laws. Most importantly, the authority to gather information and to conduct necessary on-site inspections is more flexible and significantly broader in scope. I would also call your attention to the opportunity to delegate certain functions to a State agency, with its concurrence, under Section 501(c); and provisions of Section 506(b) which limits a reviewing court's ability to stay or otherwise postpone the effectiveness of Commission rules and orders pending conclusion of the review proceedings.

As you will note, the conference report is set out in elaborate detail. If one accepts the policy conclusions of the conferees as given, the question still remains whether the Act can be effectively administered and enforced. It is my basic conclusion that it can be. I could not have made the same judgment with respect to the July 31 draft.

I must responsibly point out, however, that the task of administration and enforcement of the statutory scheme will be most difficult. The legislation will necessitate an augmentation of Commision personnel and financial resources, a sustained and dedicated effort by members of the Commission and its staff and a high degree of cooperation of the various State and Federal agencies who are assigned responsibilities under it.

The NGPA will undoubtedly engender a significant number of court actions before the full expression of the statutory requirements are defined and understood. One must recall that this is a highly litigius subject and many millions of dollars and substantial volumes of one of this Nation's most precious resources are at stake. Extensive court litigation is most likely to attend any legislative effort to resolve the natural gas pricing controversy, however detailed or carefully written it may be. For example, the Natural Gas Act has been a part of the laws of the United States for 40 years, yet it still accounts for a large part of the work of the Supreme Court and the United States Court of Appeals. You may be interested to know that as of September 1, 1978 the Commission is currently involved as a litigant in four cases before the Supreme Court involving Natural Gas Act issues; 84 cases in the Courts of Appeals; and nine cases before the District Courts.

As the section-by-section analysis indicates, the legislation is not problem free. But on balance, assuming that the Congress will appropriate adequate resources to the Commission and that I am correct in my interpretation of the breadth and flexibility of the administrative mechanisms which have been woven into the proposed legislation, it is my view that the Commission will be able to effectively administer the NPGA and give effect to the policy conclusions which it embodies.

Sincerely,

CHARLES B. CURTIS,
*Chairman.*

## LOOK WHO ANDY YOUNG SUPPORTS

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ASHBROOK. Mr. Speaker, under the leadership of Andrew Young, this country has gone beyond condoning terrorism. We are now rewarding it. The Carter administration will not accept the present Rhodesian Constitution, despite the fact that it provides for a transition to majority rule. The reason we will not accept it is because it leaves out the Communist terrorists. I have inserted Jeffrey Hart's national column for July 24, 1978, which describes one of the hundreds of murderous attacks which, according to Young and Carter, give these Communists the right to power in Rhodesia. When reading it, it is important to remember that Marxist terrorism did not begin in Rhodesia, and it will not end there.

The Cuban and Soviet regimes, which are training and equipping these so-called guerrillas to attack defenseless people, do not actually believe the U.S. Government to be any more legitimate than that of Rhodesia. The Cuban troops whom Mr. Young sees as "a stabilizing influence" in Africa will, once Rhodesia is out of the way, be available for training and arming terrorists in the United States and Western Europe.

These are not "Rhodesian revolutionaries" that Mr. Young and Mr. Carter are insisting on imposing on the people of Rhodesia. These are world revolutionaries, with ambitions for antigovernment terror worldwide. Commenting on our support of them, Mr. Hart says "Never has U.S. policy been so morally and politically bankrupt." I could not agree more.

The article follows:

LOOK WHO ANDY YOUNG SUPPORTS

(By Jeffrey Hart)

Guerrilla murderers under the leadership of the Marxist Robert Mugabe entered Rhodesia and perpetrated one of the most brutal

atrocities ever recorded. These guerrillas—so goes U.S. policy—must be brought into a Rhodesian government, even though they have scant support inside the country, and even though the government emerging under the "internal settlement" is probably the freest regime on the entire African continent.

We have been instructed several times by our man at the U.N., Ambassador Andrew Young, that these guerrilla groups are just fine. To coin a phrase, by their fruits you shall know them. Take a moment to meditate on these details, taken from the front page account of this massacre of the innocent. To coin another phrase, it shall live in infamy. The report comes from Vumba "Rhodesia" a few miles from the Mozambique border. Mozambique provides sanctuary for Mugabe and his murderers, who, of course, are backed by the Soviets and their Cuban chums.

"Twelve people, including teachers at a mission school here and their young children, were killed last night in a terrorist attack.

"The 12, all whites, were battered and bayonetted to death. . . .

"By late morning, as reporters arrived here from Salisbury, Rhodesia's capital, aboard flights arranged by the Rhodesian Air Force, the victims still lay on the ground, evidently in the same positions where they had been slain the night before. They were in three groups, about 150 yards apart in a glen near an acacia grove. The victims were three men, their wives, another woman and five children.

"One of the dead men had his hands tied behind his back with clothesline. A woman, dressed in a bathrobe with her hair in curlers, had an axe embedded in her neck. Four children—a boy 4 years of age, two sisters aged 4 and 8, and another girl of 5—lay huddled close together. All were dressed in pajamas, and like the other victims they had all been struck on the head with clubs. Some also had stab wounds. One of the girls had the imprint of a boot on the side of her face.

"Nearby lay the body of a woman, her arm encircling her dead 3-week-old daughter. Near them was a heavy wooden limb with blood on it. The woman's engagement ring was turned with the jewel to her palm, perhaps in an attempt to keep it from being taken by men she thought were looters."

According to first reports, the women apparently had been sexually assaulted.

Okay, Young, these are the people who are trying to shoot their way into power in Rhodesia. They have had your support and the political support of Carter administration foreign policy. They are armed and supplied by our delightful partners in detente, the masters of the Gulag archipelago. They lack the guts to attack tough Rhodesian farmers. They prefer to rape and murder women and children at a defenseless mission school.

Never has U.S. policy been so morally and politically bankrupt.

## MAKING DECISIONS ON HEALTH POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, over the past several weeks one matter which has occupied a great amount of my time is the planning and delivery of health services in Los Angeles County, where I reside. The health systems agency which was set up to serve the area which I represent here in Congress has been the focus of considerable attention because of its failure to comply with organizational guidelines established by HEW.

Several weeks ago I held a meeting in my Woodland Hills, Calif., office to discuss the complacency of officials in the county HSA. A GAO audit had pointed up many irregularities in the management of the agency, and many professionals from the medical community in my district had contacted me with complaints about HSA activities.

Over the past weekend, while visting constituents, I learned that the regional office of HEW had terminated the existence of the Los Angeles County Health Systems Agency, because of its inability to initiate the federally mandated reforms necessary to carry out its successful operation.

On the one hand, I am disappointed that the agency did not meet the standards called for. There was potential to address the regional concerns for health care in an effective way. On the other hand, I am satisfied that tax dollars will not be spent with such a lack of qualified management.

Still, it is of the highest priority that proper decisions be reached on the implementation of a responsible health care plan for Los Angeles County. At a time when the Congress is considering several proposals for a nationwide health care policy, I think it would be wise for those of us in a position to act on these proposals, to present to the American public a health care policy which will reverse the trend in rising health care costs, and provide the highest possible quality of services.

Health care in our country is much improved than it was, say, 20 or 30 years ago. Technological advancements have been the major reason for this situation, but the increased cost to consumers of health care has placed a heavy financial burden on them. Although 90 percent of Americans are covered by some type of health insurance, there are still 22 million people without any insurance coverage for health, and an equal number with only minimal participation in a health insurance plan. Taking advantage of health services, for them, would wipe them out financially, and put them in debt for a long time.

It is for this sizable slice of the population that national health insurance programs have been advocated. From my evaluation of the problem, I have some most serious reservations about taking this approach on such a broad scale. All indications are that health care costs would only increase. Medicare, when originally conceived, was to cost us $1.5 billion in its first year. It ended up costing $3.5 billion. This year we will top the $19 billion mark. I will urge this House to proceed with extreme caution in considering proposals which have come to us from Senator KENNEDY, Congressman CORMAN, Secretary Califano, and President Carter. There is little doubt in my mind that Government involvement on such a grand level will only take a bigger bite out of our gross national product.

Already, the purchase of all consumer goods and services indirectly takes into account the cost of providing health insurance to the working class. An estimate by Ford and General Motors projects that $120 and $160 respectively, in every vehicle purchase, goes to pay for the health benefits of its company employees.

The outlook for continued growth in the health care industry is almost frightening. There are alternatives to the liberal democratic solution to the health care issue. Keeping tighter controls over costs is one way. Encouraging competitiveness is another. Taking measures to prevent health risks is another. No one of these alternatives is the perfect answer, but neither is the costly approach of a comprehensive national health insurance plan.

With the Health Systems Agency in Los Angeles County about to close its shop, I think it would be a good idea to take this opportunity to organize the health care community there, to entertain their views on how we can best meet the needs of our health services consumers. It is my intention to convene a meeting of these individuals, and anyone else who may be able to make a worthwhile contribution in this effort, to see if we can formulate an effective, cost efficient method of keeping health care costs down, and making these services accessible to the many residents of the Los Angeles County area.●

## ANOTHER TRAGEDY IN SOUTH AFRICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. HOLLENBECK) is recognized for 5 minutes.

● Mr. HOLLENBECK. Mr. Speaker, it was 1 year ago today that South African civil rights activist Steve Biko died in his jail cell. There is no need for me to repeat to you and to my colleagues the mysterious circumstances that surround that death, or the hollow claims advanced by the Government of South Africa to disguise those circumstances.

Instead, I would like to point out to my colleagues that the death of Steve Biko is not an isolated event. Since then we have heard reports of other activists dying under similar mysterious circumstances. We have heard of others forced into house arrest or banning, and we have heard of newspapers being closed down for the "crime" of disagreeing with the government.

The Washington Post today carried an article outlining further cases of torture and abuse:

S. AFRICA PROSECUTES DETECTIVES IN DEATH, BEATING OF PRISONERS

BLOEMFONTEIN, SOUTH AFRICA.—Eight men, six of them police detectives, went on trial here yesterday in the death of one black prisoner and the alleged beating of five others last March.

Mistreatment of blacks held by South African authorities has drawn world attention since the death last year of black leader Steve

Biko, who was severely beaten while in detention. At least 26 blacks have died while in police custody in South Africa in the last two years.

Two white and four black detectives and two white civilians pleaded innocent to murder and assault charges here yesterday.

Prosecutor A. R. Erasmus said that those charged had suspended six naked black prisoners by chains from a ceiling and subjected them to beatings and electric shock treatment after arresting them on suspicion of burglary.

Eight days after the alleged beatings, one of the prisoners, Jankie Mahlomola Matobako, died in a hospital.

After the six had been arrested, Erasmus' statement said, "they were hanged naked by their wrists. As they hung, they were hit with a leather whip and hose pipe."

Erasmus said wires then were applied to their bodies for electric shocks.

A surgeon who examined Matobako in the hospital testified that "he was in a state of shock and pain. He had 18 long bruises on his back and eight on his chest.

"There was swelling on his arms, forearms and head, and bruises on his left shoulder and at the top of both legs. There was swelling and bruising of his whole face and one eye."

It is especially ironic that today, on the anniversary of Steve Biko's death, we are on the brink of another tragedy in this troubled land. The South African Government is preparing to destroy the squatters' town of Crossroads.

This crude and dirty collection of makeshift shelters, as dismal as it may seem to outsiders, is, nevertheless, the home of some 20,000 people. They have built this town because the South African Government's policies force men to leave their families in order to find employment. It is to avoid this separation that thousands of South Africans have moved to Crossroads. Here, in spite of the poverty, the hardships, and the squalor, they are affirming the basic need of people everywhere—the need to share in a family life. It is also a striking example of the ability of people to triumph over their environments. For in Crossroads, 73 percent of the men are formally employed, in addition to 25 percent of the women. Another 11 percent of the men and 20 percent of the women are employed informally. The residents have made plans for the introduction of sanitary facilities and other improvements to make their lives a bit less dismal.

In the face of this outpouring of human spirit and energy, the South African Government has decided to rid itself of Crossroads. They have arrested over 400 residents and continue attempts to force the residents out. The Government says there is nothing they can do about Crossroads—that the settlement is on land reserved for white settlers, and that the conditions in the town make it a danger to the public's health, safety, and welfare. Unfortunately, there may be nothing that can be done this time. But what about next time? Will the South African Government learn anything from this, or will they continue to bury their heads in the sand, ignoring the changing world until it is too late?

Mr. Speaker, I want to warn the South African Government that it is in danger. It is in danger not only from building tensions from within their country, but is in danger of losing what little respect it still has in the eyes of the world. No nation can survive alone. South Africa is no exception. Her people must realize that the patience of the world is not unlimited. We will not continue to countenance her repression, or to support it through commerce and foreign assistance unless she begins to make the changes that must be made. Avoiding another Crossroads would be a good place to start.

I urge my Republican colleagues to take heed of the situation and add their voices and support to those whose plight we discuss today.●

## THE NATURAL GAS COMPROMISE: A CLASSIC CASE OF ORWELLIAN DOUBLE-THINK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 15 minutes.

● Mr. KEMP. Mr. Speaker, in the English novelist, George Orwell's "1984" the Ministry of Truth devised three slogans under which all society functioned:

War is peace. Freedom is slavery. Ignorance is strength.

The process from which those slogans were devised was known as double-think. It was the art of saying one thing, meaning exactly the opposite, and getting the citizenry to believe it.

That is the context in which the so-called natural gas companies has been brought before the House and the Senate. Those who have devised it and support it would have the American people believe that:

Regulation is deregulation. Disincentive is incentive. Status quo is change. Intrastate is interstate. And much more.

The truth is, Mr. Speaker, that this so-called compromise: Will increase consumer prices without additional supplies. Is hopelessly complex and confusing, layering on massive additional regulation.

So unfairly penalizes industrial users in the Northeast and Midwest which are dependent on interstate supplies that a significant relocation of factories and jobs out of the regions could occur.

Does not provide for deregulation. May wipe out half the independent producers. Is anti-competitive, leading to further economic concentration in the industry. Is opposed by the AFL–CIO. Is opposed by most all of the consumer action groups.

In short, widens the energy wedge, that portion of total effort applied by energy producers which never reaches the consumers, being devoted instead to compliance with regulations and paying the cost of same. It is what the consumers do not get for what they do get.

Let me deal with these points.

INCREASE IN CONSUMER PRICES WITHOUT ADDITIONAL SUPPLIES

The only acceptable justification for higher prices to the consumers is that the retained earnings from higher prices will be applied to increasing production and supply. It is supply that the American people feel they need, especially to assure an uninterruption in jobs in areas heavily dependent on interstate supply during winter months, and they are willing to pay a higher price for such supply. The compromise gives them the worst of both worlds: Higher prices and no assurance of greater supply.

If our Nation s dependence on foreign energy is to be limited, the oil and gas industry will need to spend almost $230 billion between now and 1985 to drill a total of more than half a million new oil and gas wells. With capital outlays and drilling at those levels, more than 165 trillion cubic feet of additional natural gas could be produced.

But under the pricing provisions of the compromise, the capital available to the industry would amount to roughly $134 billion. That is 41-percent less than needed. The result of that would be 32-percent fewer wells drilled. That shortfall would mean 18 trillion cubic feet of natural gas lost to the American consumer. It also would mean having to continue reliance on insecure imports of high-priced oil and liquefied natural gas.

There is another facet to this area of higher consumer prices which must be brought out. The compromise provides for a mandatory incremental pricing scheme. That means that instead of spreading out the costs of higher priced gas among all the users, the increment, that is the price over the basic price, is paid by one type of user. Under the compromise, the industrial-commercial users will pay this higher price.

That means the residential users will pay less, right? Wrong. As the price of natural gas paid by these industrial-commercial users increases, they will be encouraged to convert from natural gas to another source. This compromise envisages a conversion to coal, a domestic resource. But that is not what is happening or will happen. The conversion will be to oil, another imported fuel.

This will have multiple effects.

First, as they leave the use of natural gas, fewer and fewer industrial-commercial users will remain using it. That means those remaining will pay higher and higher and higher prices, passing them along to consumers as higher prices for the goods they manufacture and the services they provide.

Second, as fewer industries and businesses remain with natural gas, the allocable charges for transmission costs for residential users will increase, then soar. Wellhead prices for natural gas are only about one-tenth the cost at the burner tip. The total cost is derived from wellhead cost, transmission cost—which is major, and so forth. Those total transmission cost are more or less fixed, so as the industrial-commercial users decline, the residential users are stuck with greater percentages of those transmission, pipeline-related costs.

Third, in that the shift is to oil, mostly imported, and not coal, we will continue with the foreign energy source dependence and balance of trade problems this bill was supposedly designed to help solve.

The only way to bring enough supply on line, with higher prices in the short range, but then driving back down those prices as supply reaches then surpasses an adequate level, is to deregulate.

Does the compromise do that? No.

NATURAL GAS WILL BE EVEN MORE REGULATED

Though widely publicized as a "deregulation" proposal, the compromise in fact would increase regulation. It would extend Federal regulation to the intrastate market—gas sold within the State where it is produced—for the first time. It would establish a complex web of controls on at least 17—and some think 23—different categories of gas that have been defined arbitrarily and on irrational criteria.

How would these new layers of regulation affect supply? Independent explorer-producers find nearly two-thirds of the natural gas reserves in the United States and drill over 85-percent of the producing gas wells. They account for 77 percent of the new gas fields found and 62 percent of the natural gas reserves discovered. These 10,000 independents are the dominant force in providing 42 million residential gas consumers and industrial users with adequate future supplies.

But this sector of the natural gas industry is in bad shape if this compromise passes.

These people do not have the resources to handle the vast legal complexities which will arise if the compromise becomes law. Many will leave the business, because they cannot afford to hire the lawyers, accountants, and lobbyists that the majors can. I have seen estimations that as many as 5,000—that is 50 percent—may leave this type of business and turn to other enterprises. Perhaps this is why Exxon, Mobil, Shell, Arco, and Chevron are for this compromise bill.

This is no way to assure additional supply. And it is certainly no way to assure greater competition in this industry.

The truth of the matter is that without a new bill, by 1985 some 45 percent of the gas would be regulated, whereas under the bill. 56 percent will be regulated. Since 60 percent of gas is regulated today, the bill really provides no deregulation.

Of the minimum of 17 different pricing categories that would be established, only 6 involving a very small volume of gas would ever be relieved of price controls, and those for only 6 months after 1985. Controls over virtually all gas are to remain in effect until at least January 1, 1985, and possibly until 1989. How? At any time between June 30, 1985, and July 1, 1987, either Congress or the President, subject to congressional veto, could reimpose controls for 18 months, thus potentially extending controls until January 1, 1989.

HOPELESSLY COMPLEX AND CONFUSING

The compromise puts forth a regulatory maze that is unprecedented in its complexity. It would impose on the Federal Energy Regulatory Commission—FERC, the State regulatory commissions, and the producers the responsibility of determining whether production from existing and future wells falls into production categories that are based on geographic distances, geologic depths, commencement dates of drilling, underground reservoir determinations, arbitrary selling prices, and contract provisions, costs, marginality of production, contract expiration provisions, leaving provisions, and so forth.

The compromise would, in fact, establish between 17 and 23 different tiers of gas prices. The number depends on how different people read the legislation. FERC would have to approve the price at each well.

Think about that. There are now 165,000 marker wells, with 11,000 added annually. If that does not panic you, consider this: FERC now has 20,000 cases backlogged in disputes over prices under the present regulatory scheme.

Will the proposed regulatory scheme resolve this matter? Make it easier? Not at all. In order to get the compromise, one insider has said, the bill's drafters had to purposefully be contradictory from one section to another, appealing thereby to all groups, but leaving it to the bureaucrats and to the courts to sort things out after it becomes law. Thus, we will see an even greater backlog, even more lawsuits, and that means more delay in bringing gas onto line.

Even FERC realizes how bad this compromise bill may be. I quote from an August 14, 1978, memo from Sheila Hollis, director of the Office of Enforcement:

> The office has concluded that the proposal is so complex, ambiguous and contradictory that it would be virtually impossible for this commission to enforce it in a conscientious and equitable manner.

This bill will be a bureaucratic nightmare, causing untold delay at a time when that is the last thing we want to happen in developing adequate energy supplies for our industries, offices, schools, and homes.

WHAT OUGHT TO BE DONE?

Mr. Speaker, if the content of the compromise is disturbing, take a look at how that content came about.

Here, we have a classic example of big business getting in bed with big government, the effect of which is to push the little guys out of the industry and frustrate the wishes of the people. The majors in the natural gas industry, acting separately and through their trade association, are giving aid and comfort to a broadening of the energy wedge to which I referred, supporting the most onerous and burensome set of regulations ever written for an industry by government.

And that aid and comfort is being justified, rationalized, by the most distorted—and clearly in error—reasoning I have seen in my service in this House. With the lure of a little more money for the gas they already have in reserves, plus the promise of distant deregulation a decade from now, the majors have decided that they can put up with the old and new regs by adding more lawyers, accountants, and lobbyists. The majors make a small adjustment here or there, ignoring or caring little that the independents are capsized by their wake. It smacks of mercantilism or worse, for the big companies will benefit at the expense of the little ones. Instead of working together to help everyone—and to meet the Nation's needs—they have chosen a policy that will be ultimately destructive to everyone.

The argument is heard that this is the best the industry and the majors' trade association can hope to get from this administration and this Congress. But there will be another Congress next year and another administration in 1981. If the so-called compromise passes this year, those of us who truly believe in deregulation—along with 74 percent of the people—will still be fighting for deregulation next year and in 1981, but much of the enthusiasm and pressure will have receded and nothing further will be done. We will all be stuck with this terrible legislation for a decade and probably beyond.

Once a bad law is put in place, and a segment of the industry is wiped out, the rest adjust and get it in their heads that because they lived through it they now deserve to be protected by it. They do not want things opened up, because it will mean new, more agressive competition. What they do not see is how the whole people is impoverished by destructive wedges—tax wedges, energy wedges—imposed by government. The people of Buffalo certainly know there is no way they can benefit by a law that wipes out half the independent producers, those who do more than half the exploration for new supplies.

I may not understand "conventional economics," the kind practiced in the Carter administration, but I do understand incentives. Do not the major producers understand incentives? Do not their trade association? How can they do this—throw in the towel with the opposition after such a long struggle? Do they, does it, have a secret hope that if it plays ball with the Government, with the Department of Energy, and the administration, that the regulators will be nice to them, to it? If they do, they are hopelessly naive.

I do not think this fight should be ended with the acceptance of this compromise. I think the compromise should be defeated, and I think we should proceed at once toward a new approach, a new bill. I think the producers, all of them, should come back into the political arena of the active fight and work to get a bill which will give the consumers the supplies they demand. It is not too late.●

## GEN. VON STEUBEN—REVOLUTIONARY WAR HERO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, the anniversary of the birth of General Friedrich Wilhelm von Steuben is on September 17, and on Saturday, September 16, the United German-American Societies of Greater Chicago will sponsor the General Von Steuben parade. The parade will step off at 12:30 p.m., and I look forward to joining with Chicago Americans of

German descent on the reviewing stand in celebrating the contributions of this outstanding man in winning America's War of Independence, as well as the contributions of German-Americans throughout the entire history of our country to our liberty, well-being, and greatness. A banquet will take place in the evening at Chicago's Palmer House Hotel. Karl C. Laschet is serving as the general chairman and grand marshal of the parade, and Hon. Michael A. Bilandic, mayor of Chicago, is serving as the honorary grand marshal.

In his early career, General von Steuben served in the Prussian Army with distinction, and in high tribute to his professional standing, King Frederick the Great appointed him to general staff duty at royal headquarters. At the age of 47, he arrived in America in late 1777, having volunteered for service in General Washington's Revolutionary Army, and reported for duty on February 23, 1778. Then at Valley Forge, Washington appointed von Steuben acting inspector general with responsibility for the professional training of the Army.

Von Steuben's personal popularity and dedication enabled him to make rapid and astounding progress in molding an effective American fighting force, and his success has been called "perhaps the most remarkable achievement in rapid military training in the history of the world." As a result, on April 30, 1778, General Washington appointed him Inspector General of the Army with the rank of major general.

Throughout the long war, the practicality and skill of von Steuben's reforms proved themselves over and over again. as the men of the Continental Army showed themselves equal in discipline and organization to the best British regular troops. During the winter of 1778–79, von Steuben wrote his "Regulations for the Order and Discipline of the Troops of the United States," an important manual on the basics of drill and field service regulations, which outlined the essentials of military procedure especially adapted for the American citizen-soldier. This "blue book," as it became known, served as the official Army manual until 1812. Also during this period, von Steuben developed a system of property accounting that went a long way toward stopping the waste of precious Army provisions and material.

In appreciation for his services, the State of New York awarded General von Steuben a 16,000 acre estate, and Congress granted him a pension of $2,500 for the rest of his life. Just before he retired from his leadership in the Army, General George Washington wrote to von Steuben congratulating him as follows:

TO BARON STEUBEN

ANNAPOLIS, 23 DECEMBER, 1783.

MY DEAR BARON,

Although I have taken frequent opportunities, both in public and private, of acknowledging your great zeal, attention, and abilities, in performing the duties of your office; yet I wish to make use of this last moment of my public life to signify, in the strongest terms, my entire approbation of your conduct, and to express my sense of the obligations the public is under to you, for your faithful and meritorious services.

I beg you will be convinced, my dear Sir, that I should rejoice if it could ever be in my power to serve you more essentially, than by expressions of regard and affection; but, in the meantime, I am persuaded you will not be displeased with this farewell token of my sincere friendship and esteem for you.

This is the last letter I shall write, while I continue in the service of my country. The hour of my resignation is fixed at twelve to day; after, which, I shall become a private citizen on the banks of the Potomac, where I shall be glad to embrace you, and testify the great esteem and consideration with which I am, my dear Baron, &c.

Mr. Speaker, the members and officers of the United German-American Societies of Greater Chicago are outstanding leaders and dedicated participants in the betterment of their individual communities, and I congratulate them for their resourceful service in our city of Chicago. I also congratulate Grand Marshal Karl C. Laschet, and all the members of the General von Steuben parade committee who are working so hard to make this grand event a success. Their names follow:

Joseph Gies, Honorary Gen. Chairman, Horst Seyferth, Karl Heumann, Co-Chairmen.

Committee: Felix Bachmeier, Melvin Brandt, Stefan Dama, Ludwig Erdbeer, Willi Follmer, Fred Marunde, Josef Matzer, Siegfried Reinke, Willi Scharpenberg, Nick Schneider, Alfred Schmitke, Frank Workman, Willi Kraemer.

Paula Zottmann, Treasurer; Helen Meiszner, Parade Treasurer.

Trustees: Joseph Zottman, Betty Center, Louise Jochem.

Paula Zottman, Cornflower Chairlady; Clara Winkler, Recording Secretary; Marianne Gies, Coresp. Secretary; Virginia Vazzano, Coordinator; Katie Piechota, Assistant Coordinator.

Directoren: Joseph Anetsberger, Betty Center, Peter Foehnrich, Josef Frieberger, Helmut Koch, Alfons Schneeman, Karl Kurz, Josef Zottmann, John Sebastian.

Finanzcommittee: Sarah Brantsch, Josef Matzer, Elisabeth Kraus, Gustav Pohl, Friedrich Zeeck.●

I extend my greetings and best wishes to German-Americans in the 11th District of Illinois, which I am honored to represent, in the city of Chicago and all over the Nation who are commemorating the birth of that Revolutionary War hero, General von Steuben, and the German contribution to American greatness.

## PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. FOUNTAIN) is recognized for 5 minutes.

● Mr. FOUNTAIN. Mr. Speaker, because of a death in the family, my brother, I was absent from the House for a portion of the session of Wednesday, August 16, after 6:30 p.m., and for the session of Thursday, August 17. Had I been present I would have voted as follows on the roll call votes which I missed:

WEDNESDAY, AUGUST 16

Rollcall No. 711. House Concurrent Resolution 683, second budget resolution, Levitas amendment to reduce budget authority and outlays by $753 million by eliminating funds for proposed countercyclical programs, "aye."

Rollcall No. 712. House Concurrent Resolution 683, Rousselot amendment to provide a balanced budget, "aye."

Rollcall No. 713. House Concurrent Resolution 683, final passage, "nay."

THURSDAY, AUGUST 17

Rollcall No. 715. H.R. 13467, second supplemental appropriations, conference report, "nay."

Rollcall No. 716. H.R. 13467, Mahon motion to concur in a Senate amendment regarding funds for the extension to the New Senate Office Building, "nay."

Rollcall No. 717. H.R. 12935, legislative branch appropriations, conference report, "yea."

Rollcall No. 718. H.R. 12927, military construction appropriations, conference report, "yea."

Rollcall No. 719. H.R. 13468, District of Columbia appropriations, conference report, "yea."

Rollcall No. 720. S. 9, Outer Continental Shelf, conference report, "yea."

Rollcall No. 721. H.R. 12240, intelligence authorization, conference report, "yea."

Rollcall No. 722. H. R. 1321, rule providing for the consideration of H.R. 10898, USRA authorization, "yea."

Rollcall No. 723. H.R. 10898, final passage, "yea."●

## FIRST ANNIVERSARY OF THE DEATH OF STEVE BIKO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. DIGGS) is recognized for 5 minutes.

● Mr. DIGGS. Mr. Speaker, it is with both sadness and hope that we commemorate the first anniversary of Steve Biko's death: Sadness, because South Africa, Africa, and the world lost one of its young leaders, a man of considerable courage, fortitude, and magnanimity; hope, because the goals for which he stood and fought are goals which his death alone will not destroy. His dreams for his nation's future live on in the hearts and minds of those people all over the world who stand for justice, human equality before the law, and man's quest for freedom.

Those who believe that by killing Steve Biko they could kill his dream are ignorant of the lessons of history. They forget Martin Luther King, Nat Turner, and John Brown. They forget Samori Toure, Patrice Lumumba, and Amilcar Cabral. Steve Biko joins the growing list of men and women who have fought colonialism and racism on the African Continent and whose voices have been stilled by the forces of oppression. But the strength of the message of men like Steve Biko is such that the message itself could not be destroyed.

We in the United States, both within and outside the Congress, who believe that Steve Biko's goals were worthy of every man, will not falter in our efforts to see his goals realized. For his goals are ours. As long as over 20 million blacks, coloureds. and Asians in South Africa are not free, we are not free. Until the last vestiges of white minority rule in Southern Africa are removed. we shall not rest. Within the Congress, we shall

continue our efforts to disassociate the American Government and the American people from the obnoxious practices of apartheid which are the very essence of the racist regime in Pretoria. And we shall continue our efforts to inform the American public of the true nature of that regime and to show our people the distortions of the propaganda being distributed in this country by the South African Government and its agencies.

Steve Biko's death only momentarily interrupted the momentum of those who fight for the liberation of South Africa. We paused a year ago as we pause today to pay him tribute. But to honor him in a fitting manner, we must not hesitate to pick up the cause of freedom where he was forced to lay down his burden. If anything, we must—and we shall—redouble our efforts to make Steve Biko's dream a reality. For if we do not, his dream, like that of so many other martyrs of African freedom, will be shattered by those who, ironically enough, fail to realize that his dream was a means to their own salvation.●

## PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. DRINAN) is recognized for 5 minutes.

● Mr. DRINAN. Mr. Speaker, during a series of recorded votes earlier today on legislation being considered under suspension of the rules, I inadvertently failed to cast my vote on rollcall No. 756, passage of H.R. 12026, the Indian Peaks Wilderness Area, the Arapaho National Recreation Area, and the Oregon Islands Wilderness Area Act. I had intended to vote "aye."●

## SUSPENSION SCHFDULE FOR MONDAY, SEPTEMBER 18, 1978

(Mr. WRIGHT asekd and was given permission to address the House for 1 minute and to include extraneous matter.)

Mr. WRIGHT. Mr. Speaker, I take this time simply that I might list here in the CONGRESSIONAL RECORD those bills which are scheduled for suspension of the rules on next Monday. It seems appropriate that Members should have this advance notice of the 25 bills which are scheduled to be brought up for motions to suspend the rules and pass on Monday next.

Under leave to extend my remarks, I list herewith those bills:

1. H.R. 7108—Tariff Amendments for Yankee Dryer Cylinder Rolls.
2. H.R. 8755—Tariffs for Ball or Roller Bearings, Flanges, Cartridges, etc.
3. H.R. 9628—Duty Suspensions on Certain Nitrocellulose.
4. H.R. 9911—Continue Duty Suspensions on Certain Forms of Zinc.
5. H.R. 10265—Suspend Duty on Natural Graphite.
6. H.R. 11409—Duty Free Importation of Dyeing and Training Materials.
7. H.R. 12739—Duty Suspension on Live Worms.
8. H.R. 13097—Medicare Amendments of 1978.
9. H.R. 13817—Health Programs Amendments (SSI).
10. H.R. 10792—Authorize Smithsonian to Acquire Museum of African Art.
11. H.R. 13675—Agriculture Act Amendments for Interest on Cotton Loans.
12. H.R. 9486—International Tin Buffer Stock Authorizations.
13. H.R. 11488—Health Planning and Resources Development Amendments.
14. H.R. 12460—Health Centers Amendments of 1978.
15. H.R. 13611—Child Health Assurance Act.
16. H.R. 12008—Psychotropic Substances Act of 1978.
17. H.R. 12348—Drug Abuse Prevention Authorizations.
18. H.R. 12326—Developmental Disabilities Act Authorizations, FY '78.
19. H.R. 12303—Nurse Training Amendments of 1978.
20. H.R. 11871—Hazardous Materials Transportation Authorizations.
21. H.R. 10965—Revise U.S. Code, Title 49, Transportation Laws.
22. H.R. 13349—Expatriation Provisions of Immigration and Nationality Act.
23. H.R. 11887—Increase Compensation for Needy Parents of Veterans.
24. H.R. 12258—Increase Veterans Burial Allowance.
25. S. 274—Prohibit Union Organizations in Armed Forces.

## ONE-YEAR ANNIVERSARY OF DEATH OF STEVEN BIKO

Mr. MAGUIRE. Mr. Speaker, I was not in the Chamber a moment ago when my special order called. I ask unanimous consent that I may be recognized for the purpose of that special order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. MAGUIRE. Mr. Speaker, I ask unanimous consent also that all Members may have 5 days in which to extend their remarks on the subject of my special order and to include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. MAGUIRE) is recognized for 45 minutes.

Mr. MAGUIRE. Mr. Speaker, 1 year ago today a black South African leader by the name of Steven Biko died. He died in prison at the hands of the security police. He was one of South Africa's greatest intellectual and political leaders. I have taken this special order tonight and my colleague, the gentleman from New York (Mr. DOWNEY) has also taken a special order tonight in order to provide Members of the House an opportunity to recall Mr. Biko's contributions and to express their own feelings about the circumstances under which Mr. Biko died and the implications of those facts and the current situation in South Africa not only for the people of South Africa, but also for Americans as well.

Before proceeding with my own remarks, Mr. Speaker, I would like at this time to yield to the distinguished gentleman from California (Mr. DELLUMS).

Mr. DELLUMS. Mr. Speaker, I thank my distinguished colleague, the gentleman from New Jersey (Mr. MAGUIRE) for yielding to me and I applaud the gentleman for taking this very important special order. I would like to indicate further, Mr. Speaker, and Members of the House, and to my distinguished colleague, the gentleman in the well, Mr. MAGUIRE, that while today, September 12, 1978, is the first anniversary of the tragic death of Steve Biko, and as this tragic event focused international attention on the oppressive activities of the South African Government, so today I bring before you yet another potential tragedy.

It has come to my attention that the existence of the squatters' community, Crossroads, located near Capetown, South Africa, is being threatened with imminent destruction.

Because of the South African Government's intolerable apartheid policies, certain areas of the country are reserved for white occupation exclusively. This forces African workers to leave their families and travel long distances in order to work. Crossroads was established in 1975 for squatters in the Capetown region in order that these men could reside with there families. Crossroads is unique in that unlike other such communities there has been a courageous effort by the members of the community to continually improve the conditions of their lives.

The tragedy of Crossroads is that the government will not allow it to survive. The 20,000 African residents of this community are continually being harassed by the police and government in their efforts to force the families of these men to return to the "Homelands." The South African Government is crushing Crossroads.

It is especially intolerable on a day commemorating the death of Steve Biko, a day to honor this man's contribution to the human movement of South Africa, that we must face yet another flagrant disregard of human dignity. The people of the United States, the Congress, the executive branch, and the world must unite in an effort to end this atrocious oppression.

Again, Mr. Speaker, I wish to thank my distinguished colleague, the gentleman from New Jersey (Mr. MAGUIRE) for taking this important and sensitive special order, and to thank the gentleman for yielding me this time.

Mr. MAGUIRE. I now yield to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, I too want to applaud the gentleman for having asked for this special order which I believe is most appropriate and to compliment him for recognizing the life and activities of a brave and courageous man who died for a cause which I think we all stand for, that is humanity and justice.

Mr. MAGUIRE. I thank the distinguished gentleman.

Mr. Speaker, I wish to state that the remarks of the distinguished gentleman from Illinois (Mr. ANDERSON) who is not able to be present with us tonight, will be included at the conclusion of my special order.

Mr. Speaker, I was glad that my friend the gentleman from California (Mr. DELLUMS) called the attention of this body to the situation at Crossroads, a town of some 20,000 black South Africans and what South Africans refer to as colored South Africans, a town which the Government of South Africa says exists illegally and, despite the fact that 90 percent of the people there have their families with them, in spite of the fact that the great majority of them have legal positions of employment in the Capetown area, despite the fact that this town of some 20,000 people has a spirit of progress and cooperation and has provided all sorts of facilities and services for the families in the community, despite all of that, the Government of South Africa has indicated in the next few weeks its intention of destroying that town.

Mr. Speaker, we will be holding a press conference tomorrow with the key participation of the gentleman from Indiana (Mr. BRADEMAS), the gentleman from Illinois (Mr. ANDERSON), and the gentleman from Maryland (Mr. MITCHELL), and the gentleman from New Jersey (Mr. RODINO) to talk at greater length about the Crossroads situation. The destruction of Crossroads is an example of oppression which Steve Biko would have worked to prevent, the kind of community which Steve Biko would have sought to preserve—the town and its people—and it is a time when, in commemorating his memory, we ought to look at what is happening in South Africa today, and we ought certainly to try to exert our influence in advance of another disaster occurring rather than simply wringing our hands in anguish afterward. That is the intention of the press conference tomorrow.

Mr. Speaker, Steve Biko, as I said earlier—and I think the whole world understands that this is the case—was killed by the security police while in detention, without charges, without trial, incommunicado, in South Africa. This notwithstanding the fact that an inquest was held and that a finding was made which did not assign responsibility for Mr. Biko's death to any individual person or persons.

Mr. DOWNEY. Mr. Speaker, will the gentleman yield?

Mr. MAGUIRE. I yield to the gentleman from New York.

Mr. DOWNEY. Mr. Speaker, I would like the gentleman to respond to a claim I often hear by South African authorities that the inquest into the death of Steven Biko was in the finest traditions of South African democracy, and that all issues were explored and developed in detail, and that the inquest stands as an example, if you will, of the South African Government's rule of law in particular on this matter, and that our claims on occasion, to the contrary notwithstanding, we should understand that there still is a society of laws there, and this inquest is a shining example of that society.

Could the gentleman respond to that particular claim?

Mr. MAGUIRE. Surely. In this connection, there are some very interesting reports and conclusions made by some outside observers of the inquest. I would cite first the opinion rendered by Sir David Napley, the past president of the Law Society in the United Kingdom, who observed the inquest. His conclusion was as follows:

> In short, I was left in no doubt that Mr. Biko died as a result of brain injury inflicted on him by one or more unidentified members of the Security Police at some time prior to and reasonably proximate to 0715 hours on the morning of 7 September 1977.

I should add that in addition to the findings by Sir David Napley of the circumstances he concluded surrounded Mr. Biko's death, that the Lawyers Committee for Civil Rights Under Law also had an observer at the inquest in South Africa, Louis H. Pollack, dean of the University of Pennsylvania School of Law. He went to South Africa representing the Lawyers Committee, as well as the Lawyers Association of New York and the American Bar Association. Mr. Pollack agreed with Mr. David Napley about the circumstances surrounding Mr. Biko's death.

Mr. MAGUIRE. Mr. Speaker, I would also point to a book called "Biko," written by Donald Woods, which indicts the South African Government and all supporters of apartheid for the death of Mr. Biko and for the other systematic violations of every principle of law which we are familiar with in the West.

Among the things which Mr. Woods says is the following:

> It is true that any South African citizen can still win a civil or criminal case, provided one has a great deal of money, one has the right judge or magistrate, and one is free to institute special proceedings.

He goes on to say the following:

> Today there are few independent judges or magistrates in South Africa where political cases are concerned. Police, magistrates, judges, prosecutors, few, indeed, are completely free to pursue objective standards of justice. Most judges in South Africa adhere to the belief that their function in regard to statute law is solely to interpret it and apply it, which means, in effect, in many cases, to implement apartheid regardless of the principles of justice.

Beyond that, I think it is correct to say that in a system in which a majority of 4 million people make the laws, administer those laws, and in which there is no bill of rights and on recourse to the courts with respect to any acts taken by the Parliament, and where there are 22 million nonwhite persons, we have not a rule of law, but a system of oppression.

In fact, I have found in my own visits to South Africa and in discussions with knowledgeable people both inside and outside South Africa that what we have in South Africa is a police state with respect to that majority of 22 million persons who are not permitted to participate in making the decisions in the society. Of course, there is a whole range of oppressive and repressive laws, as the gentleman so well knows, because he has studied these matters in great depth as well, which results in the government being able to deprive citizens of life, liberty, and the pursuit of happiness, to deprive them all of rights, of all recourse to lawyers, to the courts, to hold them without charges for incredible periods of time, up to 513 days in some instances without contact with their families, without anyone knowing where they are or what their circumstances are. Of course, under those circumstances, as the record so clearly shows, many political prisoners, more than 20 since 1976 and more than 45 or so since 1963, have in fact died under suspicious circumstances while in the hands of the security police.

It is my view that the government at the present time and for 30 years past has in fact followed a policy of intimidating, harassing, driving into exile, if necessary detaining, and sometimes killing at the hands of the security police, persons whom they regard as political threats.

Mr. DOWNEY. Mr. Speaker, will the gentleman yield?

Mr. MAGUIRE. I yield to the gentleman from New York.

Mr. DOWNEY. I thank the gentleman for yielding.

It has been my experience that since we formed the monitoring group to engage in thoughtful discussion a number of leaders from South Africa, that we were able to discuss the details of the racial policy with the South African Minister, Mr. Connie Mulder, who was, I think, next in line to Vorster in power in his own party and highly touted as the potential ruler for South Africa, and who today is their Minister for Race Relations. In my discussions with this minister, he told me that the oppressive accounts that I have read of or that I have read in books and articles about South Africa were incorrect and that it really would serve me to be educated by coming to South Africa to learn firsthand what the problems were, to determine that the people, black and colored and white alike, enjoy the regime. I found this almost amazing, that this system that deprives unilaterally blacks an opportunity to earn the same wages as whites, to live where they choose, was anything that the black people could accept.

It is my understanding that the gentleman from New Jersey has recently gone to South Africa and has spent 2 weeks there. Would the gentleman agree with Mr. Mulder that the blacks and coloreds enjoy their relationship with the majority government and that they have no particular reason to change?

Mr. MAGUIRE. I certainly would not. I might say that I also had the opportunity to meet with the Minister of Telecommunications, Mr. de Klerk, when I was there, along with a number of other Americans and Europeans who were participating in a conference on "Options for the Future of South Africa and Implications for the West," a conference sponsored in South Africa by the South African Institute of International Affairs and in this country by the World Peace Foundation. It was saddening to me that at the end of a long discussion with Mr. de Klerk, and under some pressure from the questions of those present, including our former Attorney Gen-

eral of the United States Nicholas Katzenbach, who were part of our delegation, Mr. de Klerk reverted to the device of appealing to our observation of black people walking around in the streets with smiling faces as his last resort in defending the apartheid system and making essentially the same point that the gentleman has pointed out that Minister Mulder also made. Of course, the facts are that we have a situation in which there is no formal process of consultation for all South Africans about the future of their country and about how their country is to be governed now.

As I indicated, a small minority of 4 million freezes out the 22 million others that live in the country—not only freezes them out of any participation, but oppresses them in every conceivable fashion.

In addition to that, one has to conclude after studying the record with respect to arrests and imprisonment that there is no rule of law as we understand it in the West. It is a police state with respect to nonwhites and the government systematically suppresses and oppresses and attempts to eliminate black leadership.

Beyond that, there is, of course, the fact we are not going to have needed political change in this situation. We are not going to have an end to apartheid until we get beyond the fraudulent formulations of separate development and so on, which are just new terms for apartheid and until all South Africans are included in the political process, constitutionally, legislatively, politically, socially, and economically.

I came back very, very depressed and very discouraged and very pessimistic about the future of South Africa and about the prospects for peaceful change there; so I would certainly want to say to the gentleman that my experience while I was there in talking to people whom I met and the South Africans I met outside the country is that South Africans are increasingly angry and upset and discouraged about the situation in which they find themselves. They are sick and tired of having a government tell them that they cannot participate.

We have since 1976, I think, a new mood where even students are taking leadership and saying they want full participation and they are not going to settle for the status quo.

May I emphasize that we also have in all racial groups—whites, coloreds, Asians, blacks—people of good will, of enormous desire for change and improvement; but they do not hold power. The power is held by the Nationalist Party. The power of the Nationalist Party is held by the caucus. A very small group of people making decisions there have all the powers that go with the state, the security police, the military power, and any effort to question government decisions is quickly suppressed.

We have had cases just recently of Nthato Motlana, the chief spokesman of the Committee of Ten in Soweto who was banned before he could make a speech at the University of the Witswatersrand. Even members of the family and associates of Steve Biko were detained on the eve of this first anniversary of Steve Biko's death.

The fact is that the government is unwilling to embark on a policy of accommodation or even of discussion and so, therefore, the descriptions that we have heard from Mr. Mulder and Mr. DeKlerk are in my judgment and the judgment of most observers absolutely dead wrong and are themselves illustrations of the problem.

Mr. BONKER. Mr. Chairman, will the gentleman yield?

Mr. MAGUIRE. I yield to the gentleman from Washington.

Mr. BONKER. Mr. Speaker, I would like to ask the gentleman, in light of the actions in South Africa in recent weeks to arrest approximately 500 men, women, and children, in Crossroads, which is outside Capetown, whether the gentleman had any experience on any occasion to visit the so-called Crossroads while the gentleman was in South Africa?

Mr. MAGUIRE. Yes. I thank the gentleman for his question. I did have an opportunity to spend some time in Crossroads on the last Sunday in July. At the same time, it was a time when a prayer meeting was being held which brought people of all races together for the afternoon and the leadership from every denomination of the church, Protestant, Catholic, and Jewish.

All were there—blacks and whites—to commit themselves to the survival of Crossroads and the lives and well-being of the 20,000 individuals and the many thousands of families who live in Crossroads.

I had an opportunity on that occasion to talk with many people of all races who are themselves involved in this effort, and I know the gentleman shares with me the hope that this community will be permitted to survive, and that the people there will not be sent back with one-way railroad tickets to places all over the country that they may not have seen for 20 years—places where they would have no possibility of earning a livelihood, where they have no homes, and where their families would be split up and their community destroyed.

Mr. BONKER. Mr. Speaker, will the gentleman yield?

Mr. MAGUIRE. I would be happy to yield to the gentleman from Washington.

Mr. BONKER. Mr. Speaker, just for the record, Crossroads is one example in South Africa where rural blacks come into the city to find employment, but the price of that is separation from their families.

In recent years the family members have attempted to come into these communities that are called squatter communities, because the families want to integrate and want to come together, and under the present situation in South Africa it is very difficult, if not impossible, for families to have that union.

I had understood that the South African Government had plans to bulldoze this community and others like it to try to break up this attempt to integrate the families. I think it is appalling that a 20th century country such as South Africa is incapable of developing an environment where families, whether they are white or black, can come together and enjoy a natural family existence.

So I would hope that on this special occasion we would focus special attention on the so-called squatter villages and call upon the South African Government to allow these people to live a life of dignity so that their families can come together and enjoy the one basic human right of all—and that is the right to be together.

Mr. MAGUIRE. Mr. Speaker, I thank the gentleman for his comments.

Mr. Mulder, who was referred to earlier, has stated that there is no possible way that Crossroads can survive, and other ministers and officials have indicated that it must be destroyed, because it is illegal and all squatters will have to be dealt with, et cetera.

I might point out to the gentleman that there are some 400,000 black men working in the urban areas in South Africa who do not have the ability to have their families with them. The gentleman may also know that more than 250,000 persons in the Capetown area alone are individuals who are in the category the gentleman has mentioned. They are people who have no legal residence there. Many of them have legal jobs, but they cannot live there.

This is one of the most inhumane and utterly unacceptable aspects of apartheid.

Mr. Speaker, I thank the gentleman from Washington (Mr. BONKER) for making his point.

Mr. HARKIN. Mr. Speaker, will the gentleman yield?

Mr. MAGUIRE. I yield to the gentleman from Iowa.

Mr. HARKIN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I wish to compliment the gentleman from New Jersey (Mr. MAGUIRE) for taking this special order to commemorate the anniversary of the death of Steve Biko.

It has been my observation in the past and also today that if there is one thing that the entrenched regime of South Africa would like to see happen, it is to have the rest of the world forget about what happened in South Africa, especially regarding the death of Steve Biko. But that is not surprising. That is the attitude that all regimes of that nature who are suppressing the legitimate human rights of their people have. They hope the rest of the world will watch silently, and that the incidents of terrorism against the people will be forgotten, and in that way they can go on about their own business.

I would like to take this occasion, the commemoration of the death of Steve Biko, to focus attention on a subject that is perhaps a little broader than just South Africa. It seems that many of us—and perhaps it is true of even the Members of this House of Representatives—get a certain picture many times when we talk about terrorism and terrorists. What that conjures up, I believe, in most Americans' minds is a picture of someone with a plastic bomb or with a submachine gun or with a hand grenade going into a place that is crowded with

women and children and shooting it up or blowing it up and killing innocent people. Or perhaps it conjures up the blowing up of an airplane and that kind of thing. Certainly that is terrorism, and those people who engage in those acts are terrorists.

But by focusing on that kind of terrorism, perhaps we too often gloss over and forget the other larger terrorism that is taking place in the world—and that is the terrorism that is inflicted on people by entrenched regimes, autocratic governments, both on the left and on the right, who see no duty to enforce human rights or uplift the human rights of their people. And one of the things, of course, is torture. I think too often we forget that torture is in fact a means of terrorizing people. Steve Biko was not tortured, because he had some secret information that the government wanted to extract. He was not put to death, because he did not divulge that secret information. There was only one reason he was tortured, and that was to inflict terror on the rest of the black people of South Africa, to terrorize them so that they would not speak out for their legitimate rights.

And we see the same thing happen in country after country after country in the world, the same kind of process—torture and death, death usually through some kind of disappearance—being used to terrorize people. That is every bit as much terrorism as the lone individual with the plastic bomb. In fact, in many cases it is worse, because that kind of terrorism is cloaked with the dignity, if you can use that word, of the law of the entrenched powers of the government which happens to be inflicting the torture upon the people, such as the South African regime.

So I think we in this country have to broaden our focus on terrorism, look at it for what it is, and look at torture for what it is. Torture is a means of terrorism—the kind of torture that was inflicted upon Steve Biko.

I have one further observation I would like to make, if the gentleman will yield to me for 1 minute.

Mr. MAGUIRE. The gentleman has all of the time the gentleman needs.

Mr. HARKIN. I thank the gentleman.

That observation has something to do with how we in this country view our relations with these governments, not only on a government-to-government basis, but on the basis of international commerce.

Mr. Speaker, I happened to catch a glimpse of the replay of "Roots" that played over the networks here in the last couple of weeks, and I was struck by one sequence where Kunta Kinte gets off of the boat in America. He is put on the block. There is an Englishman—I forget his name, but he was all dressed up in his finest garments and he had a nice white handkerchief, that sort of thing—and someone made a comment about the kind of trade he was involved in—the slave trade. And he sniffed haughtily and said it was the Crown's commerce. And he was excused for that. "It is the Crown's commerce, it is my business, and don't mess with my business."

I think many times in this country we tend to gloss over the business dealings that go on between commerce in this country, businesses in this country, and businesses that support the countries like the South African regime. By the very fact of engaging in that kind of commerce they not only add credibility to the regime and support it, but they give it the economic means by which it can maintain itself in power and inflict this kind of terrorism upon its people.

So I am hoping that we in this country will begin to look at our business dealings abroad, both on a government-to-government basis and on a business-to-business or a business-to-government basis, always keeping in mind that the end result of all of our dealings abroad, just as the end result of all of our dealings in this country, ought to have as a final goal the promotion and the enhancement of the basic human rights. And if businesses are not doing that, if they are not taking that into account, then we in the Congress, I believe, have an obligation under our powers to mandate that private businesses in this country that deal with these autocratic regimes, such as the Government of South Africa, have to take into account the human rights situation in that country in which they are doing business, so that, rather than upholding the government that is in power that is violating the human rights of its citizens, that business can join with our Government in trying to change its government to one that is more democratic and one that certainly respects the basic human rights of its people.

Mr. Speaker, again I compliment the gentleman in the well for taking this special order. I am always reminded and I am mindful of the cry of the Jewish race after the Second World War—"never again." And I believe that ought to be our watchword as we look upon the world scene today and we see government after government violating the basic human rights of its people, torturing and putting people to death, and we too ought to look at our own philosophical heritage in this country, our Bill of Rights, our Declaration of Independence, our Constitution, and say that never again are we in this country going to stand idly by while people like Steven Biko are put to death by their government.

Mr. Speaker, I thank the gentleman.

Mr. MAGUIRE. I thank the gentleman for his comments. He mentioned the analogy to the situation in Hitler's Germany. I am prompted at this point to quote briefly from Donald Woods' book "Biko" on that point. Mr. Woods says:

> Just as Hitler's "Final Solution to the Jewish problem" was the ultimate consequence of earlier Nazi policy, so deaths such as those of Steve Biko are inevitably the appropriate result of the apartheid policy since its inception. Having to wear a yellow armband and having to die in a gas chamber at Auschwitz were but two links in the same chain of racism. These two links might have been at opposite ends of the chain—but the chain was the same. Having to carry a "pass" and having to die of assault in detention are similarly two links of the same chain.
>
> If you feel impelled to enforce at all costs the wearing of armbands, you have to end up herding people into gas chambers. And if you feel impelled to enforce at all costs a separation of races, you have to end up killing people.

Mr. BUCHANAN. Mr. Speaker, will the gentleman yield?

Mr. McGUIRE. I yield to the gentleman from Alabama.

Mr. BUCHANAN. Mr. Speaker, I would like to thank the gentleman in the well for taking this special order. It is fitting and proper that the Congress of the United States should pause to remember Steve Biko, because there is a kinship stronger than blood ties between all those who have given their lives that others might be free.

This country has as its raison d'etre, its reason for being, the inalienable rights of man. Thomas Jefferson and his fellows spoke of the inalienable rights of man to life, liberty, and the pursuit of happiness, rights by which they were endowed by their Creator, and that governments were instituted among men to preserve and protect those rights.

In our own country it has taken us more than 200 years to fulfill our own great dream. It was only in this century, with the civil rights movement in the United States, that we began to fulfill our own high destiny in becoming what, as I believe we were always intended to be, a nation of equality, of justice, a nation where all men were free and equal. As we were emancipated in this century from the shackles of yesterday, and as we continue to strive for the fulfillment of our own dream of freedom, nothing to me is more important than that we shall pit our enormous strength on the side of individual rights, human rights, human freedom, self-determination among the peoples of other lands.

In Africa we have not only our own long-term political and economic best interests involved in alineing ourselves with those forces in Africa which shall say no forever to all the vestiges of racism, of apartheid, of colonialism, but we have, in my own judgment, what we most basically are as a nation on the line, and where we aline ourselves in Africa; because the United States must be a place in every generation that is so identified with the cause of human rights and human freedom that forever more. where on this Earth one human heart beats free, America shall live and never die.

Mr. Speaker, I thank the gentleman for yielding to me.

Mr. MAGUIRE. Mr. Speaker, I thank the gentleman from Alabama for his most eloquent statement, one which I am sure is concurred in by many, if not all, Members of the House.

The gentleman from Alabama has referred to the great ideals of human rights and democracy and freedom. The gentleman from Iowa referred to terrorism sanctioned by the power of the state.

In remembering Steve Biko, we should recall his 4½ days of testimony at a trial in May 1976 in which he was called as a witness. This was a trial of a number of defendants who had been active in the South African Students Organization (SASO) and the Black People's Convention, known as the BPC. Mr. Biko was the

founder of SASO and was the honorary president of the Black People's Convention. He was subpenaed to testify at this trial.

The testimony has been collected with a most moving and cogent introduction by Millard Arnold, in a book entitled "Steve Biko—Black Consciousness," which will soon be published by Random House. Mr. Arnold is the director of the Southern Africa project for the prestigious U.S. Lawyers' Committee for Civil Rights Under Law.

A reading of the testimony by Mr. Biko over that 4½-day period reveals a brilliant—a brilliant—performance under tough cross-examination and it lays out as in perhaps no other single place Mr. Biko's philosophy, and it demonstrates his greatness as a thinker and as a human being.

He talks about white violence in South Africa, the real terrorism which is asserted by the power of the state inside South Africa. He talks about the fear that whites have of blacks and of the fear felt by black people in the face of the system. He talks about the need for overcoming the psychological oppressions of those fears and of course at great length he explains what black conciousness is all about in the South African context, how it differs from black consciousness in America, what its implications are for the future of South Africa. He diagnoses the evil of the system and its effects on both whites and blacks and he talks compellingly about the hope that he has for bargaining and negotiations leading to a future for the country of South Africa and for all South Africans.

This amazing and eloquent testimony by Mr. Biko is juxtaposed in these trials to the prosecution's attempt to prove that writings and political activities, which are familiar and customary to all Americans and which are fully protected by our Bill of Rights are crimes in the State of South Africa punishable by death.

There is also in this account the surprisingly, if I may say, dense, ill-informed, at times childish questions and comments by the magistrate for the court in his attempt to justify apartheid and to justify his opposition to any alternatives to it.

When we talk about the trial of persons for writing and for the kind of community and political activity which is fully protected in this country, we have to look at the kind of law under which people are prosecuted, and I refer in particular at this point to the Terrorism Act of 1967, surely the worst of all.

It was under the Terrorism Act of 1967 that Mr. Biko was held, and many others have been held without justice, without trial, without any recourse to family, to any court of law. It is under section 6 of the Terrorism Act of 1967 that so many black leaders have died at the hands of the security police.

It is important that we remember when we talk about these laws that there is no bill of rights in South Africa. And in a famous court case, Sachs against Minister of Justice, 1934, the court found that Parliament "may make any encroachment it pleases upon the life, liberty, or property of any individual subject to its sway, and it is the function of courts of law to enforce its will."

In the South African Constitution we find the following sentence:

> No court of law shall be competent to inquire into or pronounce upon the validity of any act passed by Parliament.

So Parliament passed the Terrorism Act. It is not subject to any judicial review or judicial process and certainly not its implementation because it specifically provides that the only persons who shall have anything to say about who is or is not detained under the Terrorism Act, or under what conditions or circumstances that person will be held, or for how long, is the Prime Minister and the Minister of Justice. I am talking about Mr. Vorster and Mr. Kruger.

The Terrorism Act says not that the state shall prove that certain acts were committed, acts of terrorism, but rather the defendant is put in the position of proving that any act that he may be alleged to have committed, did not have any 1 of 12 possible effects, or results, including "embarrassing" the Government.

The SPEAKER pro tempore. The time of the gentleman has expired.

## FIRST ANNIVERSARY OF THE TRAGIC DEATH OF STEVE BIKO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. DOWNEY), is recognized for 40 minutes.

Mr. DOWNEY. Mr. Speaker, at this time I yield to the distinguished gentleman from New Jersey (Mr. MAGUIRE), for the purpose of continuing his remarks made during his special order.

Mr. MAGUIRE. Mr. Speaker, I thank the gentleman from New York (Mr. DOWNEY), for yielding to me.

Mr. Speaker, to continue with what I was saying, under the Terrorism Act you may be prosecuted, you may be convicted, you may be given the ultimate penalty of death for not being able to prove that some act that you are alleged to have committed did not, in fact, embarrass the administration of government or did not contribute in some way to racial hostility, or what have you.

This is a situation which any student of legal tradition in the West would find utterly appalling. And there is another example:

When I was in South Africa, I attended the opening of a trial very similar to the one that I referred to earlier where Mr. Biko testified in May of 1976. It was the opening of a trial of 11 young men and women, students from Soweto, active in the Student Representative Council of Soweto, who are now on trial for their lives for what the Government calls terrorism and for sedition, for having organized students to express their views, for peacefully demonstrating against the imposition in their schools of a system of instruction in which they would be required to learn their subjects in the Afrikaans language, for arguing that the Government should change its policies.

Of course, the state points out that some property was destroyed; and the state points out that the cost to the administrative unit in the Transvaal was such and such. The government fails to point out, of course, that some 600 or 700 young students were killed in the streets by the police, and that as a result there were problems in Soweto and across the country for a series of months.

These young men and women are now on trial for their lives in the Supreme Court of South Africa. I attended the opening of that trial in July in Randburg. The trial will continue later this month and will probably go on for 6 or 8 or 10 or 12 months.

Mr. Speaker, I find in looking at the indictment, of which I have a complete copy, that the students frequently are being charged not with acts which they may themselves necessarily have committed, but with consequences which are alleged to have resulted from those acts. Of course, the acts in most cases are either writing something about the situation in which they were involved relating to the languages in the schools, to the plight of black people, et cetera, to having meetings and electing officers to the Student Representative Council.

The language of the indictment says, "Reckless as to the said consequences thereof," et cetera. There is a lot about prohibited gatherings and so on.

However, this indictment is, as far as I am concerned, an indictment of the state and of the whole system of justice. I had a great deal of difficulty in understanding in that courtroom where there was a judge, where the prosecutor was sitting, where the defense attorney was, and where the dock was in which prisoners were being held; I had a great deal of difficulty in understanding that this was not, in fact, a court of law in the sense that we understand a court of law in this country, but that it was something very different. It was, in fact, an instrument of oppression being wielded by the power of the state against students who did the sort of thing which would have been protected in this country.

Mr. Speaker, I say to the South African Government, if you have an example of arson, if you have an example of somebody throwing a rock, if you have an example of somebody committing a violent act, then prosecute the person on that act and do not have this trumped-up set of charges about terrorism and sedition and overthrowing the government by force and so on, when you are talking about children who were ages 16 to 20 at the time the acts occurred, in 1976.

Mr. Speaker, I thank the gentleman from New York (Mr. DOWNEY) for the time.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. DOWNEY. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, I thank the gentleman for yielding.

I wanted to make a brief statement to reiterate the thoughts of the gentleman from Iowa, New York, and New Jersey. I compliment them on their summation of what is, in a sense, a moral question.

The ironical thing is that we do not even know upon which day we should be commemorating this tragedy because of the unfortunate circumstances which surrounded the death of Steven Biko at that time a year ago.

However, I think that the repression of human rights is a tragedy which is encountered worldwide, but massive denial of human rights based solely on race is a situation unique to South Africa. By taking actions against blacks, against civil libertarians, and against the press, the force of government has demonstrated its contempt for those who value human life. These oppressive policies are abhorrent to the instinct of every American. It is our duty as a nation, a nation whose purpose and resolve depend on freedom and equality, to voice our strong disapproval.

After the massive crackdown on what is being called Black Wednesday, the blacks and nonwhites in South Africa are now more separate and less equal than ever before. We see in the newspaper only last Wednesday that the South African Government placed a 1-month banning order on the generally recognized leader, popular leader of the sprawling black township of Soweto, and the banning order, which prohibits Motlana from attending any gathering and specifically any meeting at which principles of government are discussed or criticized, was handed to the 52-year-old physician Wednesday, hours before he was to address an audience at a university.

I hope that forceful actions will be taken by the United States to insure that we remain credible as a nation concerned with human rights.

I personally experienced outrage at the senseless, violent murder of Steve Biko, Steve Biko, who was considered by many as a moderate voice, a leader of his people and until his death a potential leader of his country. I noted the news of his arrest last August 8 with alarm, but I was totally shocked at the notice of his death and the circumstances by which he died. The information at the time that Biko was but one of 20 political detainees who had died while in police detention that year further heightened my desire to participate with the gentleman from New Jersey (Mr. MAGUIRE) and the gentleman from New York (Mr. DOWNEY) in some kind of demonstration of disgust with their government.

In the wake of a series of predawn dragnet raids, highly reminiscent of Gestapo tactics, the South African Government swept into its jails and publicly silenced its most dedicated and creative leadership. Clearly, the Vorster regime decided, and has continued to decide, that it can no longer afford freedom of political expression because it can no longer afford the truth to be told. But if we condone our country through our silence the inhuman wrongs of the Vorster Government, then the United States and this House merit no stature in the world community as champions of human rights and human dignity.

The continuing repressive measures by the South African Government will, in the short run, have its desired effect. A powerful but frightened authority has always found it easier to cope with opposition by silencing its leaders rather than listening to their grievances. But in the long run these grievances appear to be so fundamental that any solution short of a transformation of the entire political system will be no solution at all.

The inescapable restrictions of the apartheid system control every aspect of life for the nonwhite community in South Africa. It is the only country that determines where you will work, what you will do, and what you will be paid, solely on the basis of the color of your skin. This must change. There is a minimal standard of human rights which cuts across national boundaries. South Africa's conduct has so deteriorated that their actions defy an international set of values which transcend their own internal political system. On this, the first anniversary of Steve Bilko's death, the United States, as the moral leader of the free world, must not and cannot stand idly by while the rights of millions are systematically destroyed. I urge that we use Steve Biko's death and the escalation of repression in South Africa to demonstrate to the world at large that our dedication to the principle of human rights is sincere, total, and unequivocal.

I yield back the remainder of my time.

Mr. DOWNEY. I thank the gentleman.

It is a strange position, indeed, to be able to control the time the gentleman from New Jersey speaks—and delightful—and I yield to him at this time.

Mr. MAGUIRE. I thank the gentleman. I want to commend the gentleman from Massachusetts for a most eloquent statement.

I might say at this point that I think we should include in the RECORD the names of all of those who have died since 1963 while in the hands of the security police of the Government of South Africa. The list is reproduced below:

L. Ngudle died in Pretoria on September 5, 1963 (suicide by hanging).

B. Merhope died in Worcester on September 19, 1963 (causes undisclosed).

J. Tyitya died in Port Elizabeth on January 24, 1964 (suicide by hanging).

S. Saloojie died in Johannesburg on September 9, 1964 (fell seven floors during interrogation).

N. Gaga died in Transkei on May 7, 1965 (natural causes).

P. Hoye died in Transkei on May 8, 1965 (natural causes).

J. Hamakwayo died in Pretoria in 1966 (suicide by hanging).

H. Shonyeka died in Pretoria on October 9, 1966 (suicide).

L. Leong Pin died in Pretoria on November 19, 1966 (suicide by hanging).

A. Ah Yan died in Pretoria on January 5, 1967 (suicide by hanging).

A. Madiba died in an undisclosed prison on September 9, 1967 (suicide by hanging).

J. Tubakwe died in Pretoria on September 11, 1967 (suicide by hanging).

An unnamed person died on an unknown day in 1968 (death disclosed under questioning in Parliament on January 28, 1969).

N. Kgoathe died in Pretoria on February 4, 1969 (slipped in shower).

S Modipane died in prison on February 28, 1969 (slipped in shower).

J. Lenkoe died in Pretoria on March 10, 1969 (suicide by hanging).

C. Mayekiso died in Port Elizabeth on June 17, 1969 (suicide).

J. Monakgotla died in Pretoria on September 10, 1969 (thrombosis).

Imam A. Haron died in Cape Town on September 27, 1969 (fell down stairs).

M. Cuthsela died in undisclosed prison on January 21, 1971 (natural causes).

A. Timol died in Johannesburg on October 27, 1971 (leapt from tenth-floor window during interrogation).

J. Mdlull died in Durban on March 19, 1976 (fell against chair during scuffle).

M. Mohapi died in Kei Road on August 5, 1976 (suicide by hanging).

L. Mazwembe died in Cape Town on September 2, 1976 (suicide by hanging).

D. Mbatha died in undisclosed prison on September 25, 1976 (suicide by hanging).

E. Mzolo died in Johannesburg on October 1, 1976 (no details given).

W. Tshwane died on October 14, 1976 (no details given).

E. Mamasila died on November 18, 1976 (no details given).

T. Mosala died in Butterworth on November 26, 1976 (no details given).

W. Tshazibane died on December 11, 1976 (no details given).

G. Botha died in Port Elizabeth on December 14, 1976 (fell down stairwell).

Dr. N. Ntshuntsha died on January 9, 1977 (no details given).

L. Ndzaga died on January 9, 1977 (no details given).

E. Malel died on January 20, 1977 (no details given).

M. Mabelane died on February 15, 1977 (no details given).

T. Joyi died on February 15, 1977 (no details given).

S. Malinga died in Maritzburg on February 22, 1977 (natural causes).

R. Khoza died in Maritzburg on March 26, 1977 (suicide by hanging).

J. Mashabane died on June 5, 1977 (suicide).

P. Mabija died in Kimberley on July 7, 1977 (fell six floors during interrogation).

E. Loza died in Cape Town on August 1, 1977 (no details given).

Dr. H. Haffejee died in Durban on August 3, 1977 (no details given).

B. Emzizi died on August 5, 1977 (no details given).

F. Mogatusi died on August 28, 1977 (suffocation in epileptic fit).

S. Biko died in Pretoria on September 12, 1977 (injured in scuffle).

Mr. Biko is the last person on that list so far, but there are three names which must be added because three more have died since Mr. Biko died—all three people in the hands of the security police. Those names are: Sipho Bonaventura Malaza, November 1977, a student by the way; Mzukisi Nobhadula, December 20, 1977; and Lungile Tabalaza, July 10, 1978. Mr. Tabalaza "jumped" from the fifth floor of the security building in Port Elizabeth, which, by the way, is the same facility at which Mr. Biko sustained his fatal injuries.

Mr. MAGUIRE. Mr. Speaker, would the gentleman yield further and permit me to continue?

Mr. DOWNEY. Absolutely.

Mr. MAGUIRE. Mr. Speaker, a moving poem was written by Millard Arnold on the death of Steve Biko. The poem was read by Mr. Arnold at the annual meeting of the NAACP, at which it was decided that the humanitarian award, the Stevie Wonder Humanitarian Award would be given to Mr. Biko posthumously. I would also like to insert, togther with the poem, Mr. Wonder's statement on the granting of the award.

POEM

(Written and read by the Southern Africa Project Director, Millard W. Arnold, in acceptance of the Stevie Wonder Humanitarian of the Year Award on behalf of the Stephen Bantu Biko family, June 9, 1978.)

They tell me Steve Biko is dead—
To persuade me perhaps that his strong but sensitive voice can be stilled by hatred and fear.
They tell me Steve Biko is dead—
To show me perhaps that humanity and dignity can be bludgeoned into submission.
They tell me Steve Biko is dead—
To convince me perhaps that courage and compassion can be somehow compromised.
But what they are afraid to tell me is that Steve Biko lives.
That the spirit, the ideals, the dreams, the glory of Steve Biko lives.
That it lives in Soweto, that it lives in watts,
That it lives in Harlem, that it lives in the minds of all those oppressed.
Steve Biko lives because the aspirations of a people cannot be denied.
Steve Biko lives because violence and repression will not quench the thirst for freedom and decency.
Steve Biko lives because his special sense of humanity and integrity cannot be forgotten.
But they, they would have me, they would have you believe that Steve Biko is dead.
You and I—we—we know better.

STATEMENT OF STEVIE WONDER

For many years, now, I have been a silent observer of the plight of Black people and their political situation in South Africa. In giving the NAACP/Stevie Wonder Humanitarian of the Year Award to Steve Biko, I have given an award to a man who symbolizes the courageous struggle waged by Black people in South Africa. Steve Biko, however, was just one of the twenty million oppressed Blacks in South Africa. But, he is important, and I have chosen him as the Humanitarian of the Year because he more than any single individual has raised the consciousness of Black people both in South Africa and here in America. It is rare that a person receives an award solely because of who they are or for what they have accomplished.

In recognizing Steve Biko with the Humanitarian of the Year Award, I recognize all Black people in South Africa who have given their lives for freedom or who daily continue to fight against oppression. In recognizing Steve Biko, I have recognized more than a man, I have recognized a struggle. And despite the death of the man, the struggle will continue.

I would like to express my sincerest appreciation to Congressman Andrew Maguire for his efforts in delivering the award to the Biko family on my behalf, and for his recognition of the struggle of Black people in South Africa.

I had the honor of carrying with me to South Africa in July the NAACP award which I presented on behalf of the NAACP and I think, frankly, on behalf of all Americans, to the family and associates of Mr. Biko.

I met with Mrs. Nobandile Mvovo, the sister of Mr. Biko, who was detained last night without charges and without trial, and with Mr. Malusi Mpumlwana, one of Mr. Biko's associates in the black consciousness movement.

While the award was physically received by Mrs. Mvovo and Mr. Mpumlwana, the award was kept for presentation, on his release from detention, to Mr. Kenneth Rachidi, the most recent president until his banning on October 19 of last year, of the Black Peoples Convention, one of the organizations that Steve Biko inspired by his life and his work.

The Ad Hoc Committee on South Africa, which the gentleman and I have the honor to cochair is a group of more than 30 Congressmen who joined together in the wake of Steve Biko's death to form a group which would focus attention on and monitor developments in South Africa.

I think this would be an appropriate point to include the correspondence in the RECORD that we initiated with, first, the South African Ambassador to the United States, Ambassador, Sole, and subsequently with the Prime Minister himself.

I think many of us felt that if we had had such a group operating prior to Mr. Biko's confinement, his torture, the assault upon him bv the police, and his death, that he might, in fact, be alive today.

HOUSE OF REPRESENTATIVES,
*Washington, D.C., October 12, 1977.*

His Excellency DONALD B. SOLE,
*Ambassador, Embassy of South Africa, 3051 Massachusetts Ave., Washington, D.C.*

DEAR AMBASSADOR:

We, the undersigned Members of the House of Representatives, wish to thank you for meeting with a delegation of 11 of our colleagues on September 23 to express our concern over the death of Steve Biko. We greatly appreciate the opportunity to make our concerns known in a direct meeting between elected representatives of the American people and representatives of your government.

We share the delegation's disappointment that you did not agree with the suggestion that an independent international organization such as the International Red Cross, which has in the past been granted some access to your prisons, be allowed to conduct an autopsy on Mr. Biko's body to determine the cause of death. We were encouraged, however, by Counsellor Beukes statement that legal proceedings would establish beyond any doubt what happened in the Biko case.

We urge that the South African government reconsider its position against outside participation in an investigation of the circumstances of Mr. Biko's death. We also urge your government to seek a prompt and full judicial inquiry into all facts pertaining to the death of Mr. Biko, including fixing responsibility for his death.

We are equally concerned about the well-being of Mr. Peter Jones, the publicity secretary of the Black People's Convention, who was arrested with Mr. Biko in Grahamstown. There is no word as to the whereabouts of Mr. Jones—neither where he is being detained nor on what charges he is being held. In fact, one month after his arrest, Mr. Jones' mother is unable to obtain any information about the health or well-being of her son.

The press has reported that at least 20 other political detainees have died in detention in the past 18 months beginning with the death of Joseph Mdluli in March, 1976. We would appreciate a reply from your government detailing with regard to each of these previous cases: 1) The stated cause of death; 2) Whether an autopsy was conducted; 3) Whether an inquest was held; 4) Was the matter referred to a prompt judicial inquiry or verification by an impartial international body; 5) What information as to the cause of death, and responsibility for the death, was made public by your government; 6) Whether any administrative or criminal action was taken against any person who may have been responsible for or contributed to each death.

We share the Congressional delegation's concern that the Terrorism Act, and other laws, deny due process to thousands, indeed millions, of South Africans, white as well as black. The Biko case has clearly focused the world's attention on human rights in South Africa. We are concerned that in creating a separate class of political offenders, and by depriving them of due process of law, South Africa has created conditions which will lead to further deterioration inside South Africa and increasing isolation from other nations.

We therefore further urge the South African government to invite an appropriate public or private international body such as the Red Cross, the International Commission of Jurists, Amnesty International, or an appropriate body of the United Nations, to examine South Africa's laws and practices relating to detention and to make recommendations.

We, the undersigned, are firmly committed to our government's policy of furthering the cause of human rights internationally. We hope the South African government will display increased sensitivity to this issue.

We look forward to your early reply.

Thomas Downey, Edward Markey, Richard L. Ottinger, Morris Udall, Andrew Maguire, Helen Meyner, Bob Edgar, William Lehman.

Don Bonker, Carroll Hubbard, Les AuCoin, Bob Traxler, Don Fraser, Robert J. Cornell, Benjamin S. Rosenthal, Gladys Spellman, Berkley Bedell, Lester L. Wolff, Augustus F. Hawkins, Charles H. Wilson (California), Doug Walgren.

Lee H. Hamilton, Norman Dicks, Charles C. Diggs, Henry S. Reuss, Joseph Addabbo, John F. Seiberling, Dale E. Kildee, Bob Carr, Charles B. Rangel, Dan Glickman, Charles Wilson (Texas), Fred Richmond, Frank Thompson Jr.

Charles Rose, Christopher Dodd, James M. Jeffords, Joseph Ammerman, David L. Cornwell, Albert Gore, Jr., Robert Roe, John Conyers, Louis Stokes, Thomas A. Luken.

John Brademas, Jim Lloyd, Silvio Conte, Anthony C. Beilenson, Bruce Vento, Les Aspin, Mario Biaggi, Nick Rahall, Abner Mikva, Millicent Fenwick, Harold L. Volkmer.

Peter W. Rodino, Michael Harrington, Pete McCloskey, Richard A. Gephardt, Leon Panetta, Henry J. Nowak, Henry A. Waxman, William M. Brodhead, Henry C. Hollenbeck, Ted Weiss, Barbara A. Mikulski, Richard Nolan, Norman Mineta.

Yvonne Burke, Thomas Downey, John Burton, Peter H. Kostmayer, John Cavanaugh, Hamilton Fish, Jr., Ned Pattison, Stan Lundine, Ted Harkin, Floyd J. Fithian, John Krebs, Matthew F. McHugh, Joseph A. Le Fante.

David E. Bonier, Ralph H. Metcalfe, Ronald V. Dellums, James H. Scheuer, Harold Ford, William L. Clay, Elizabeth Holtzman, Jim Guy Tucker, Margaret Heckler, Baltasar Corrada, Andrew Jacobs, James Weaver.

Phillip Burton, Philip Sharp, Timothy E. Wirth, Pat Schroeder, Dante B. Fascell, Joseph Minish, Robert N. C. Nix, Marc L. Marks, Don Edwards, James Mattox, Donald J. Pease, Jonathan Bingham, Pete Stark.

Butler Derrick, Toby Moffett, Steve Solarz, Matthew J. Rinaldo, Stewart B. McKinney, Lawrence Coughlin, Gary A. Myers, William Stanton, William S. Cohen, Paul Tsongas, Parren J. Mitchell.

John B. Anderson, Herbert E. Harris Jr., Joseph L. Fisher, Melvin Price, Michael Blouin, Shirley Chisholm, Robert F. Drinan, Walter E. Fauntroy, Herman Badillo, George E. Brown Jr.

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EMBASSY OF SOUTH AFRICA,
*Washington, D.C., October 17, 1978.*

Hon. ANDREW MAGUIRE,
*Longworth House Office Building,*
*Washington, D.C.*

DEAR MR. MAGUIRE: I acknowledge receipt of your letter of October 12, signed by members of the House of Representatives, which you have addressed to me as a follow-up to our meeting on September 23. The contents of your letter have been brought to the attention of the appropriate authorities.

As regards your inquiry about Mr. Peter Jones, the only official information I have is that he has been detained in terms of the relevant provisions of South Africa's anti-terrorism legislation. However, while you state in your letter of October 12, ". . . one month after his arrest, Mr. Jones' mother is unable to obtain any information about the health or well-being of her son," it is noted in an earlier letter which you signed, dated October 7, that "Press reports indicate that Mr. Jones has been allowed to see his family recently."

With reference to your appeal to the South African Government ". . . to seek a prompt and full judicial inquiry into all facts pertaining to the death of Mr. Biko, including fixing responsibility for his death," the first step in terms of South African practice is the holding of the official inquest which will take place once the report of the team of pathologists who conducted the autopsy has been completed.

While anxious to be of assistance in responding to your enquiries, I do not believe that a constructive dialogue can take place as a follow-up to the meeting which I already had with you and several of your colleagues until the results of the autopsy are known and the Government's decisions thereanent have been announced—if the autopsy results indicate the need for additional action on the part of the Government.

Yours sincerely,

D. B. SOLE.

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HOUSE OF REPRESENTATIVES,
*Washington, D.C., October 25, 1977.*

Hon. JOHN VORSTER,
*Prime Minister,*
*Government of South Africa,*
*Pretoria, South Africa*

MR. PRIME MINISTER: Enclosed you will find copies of a letter to Ambassador D. B. Sole dated October 12 and signed by 128 Members of the United States Congress—including important committee chairmen of the Armed Services, Banking, Judiciary and International organization such as the International from both the Democratic and Republican parties—together with the Ambassador's reply of October 17.

You will note that the Ambassador's reply is not responsive to most of the content of our letter, which prompts us now to write to you directly.

Specifically, the Ambassador's letter does not respond to our request for information on the 20 or more political detainees who have died in detention in the past 18 months. It does not tell us where Mr. Peter Jones is being held now and on what charges if any. It does not comment on our renewed suggestion that an independent international orgaization such as the International Red Cross be permitted to participate in ascertaining the facts with respect to the cause and the circumstances of Mr. Steve Biko's death. It does not comment on our suggestion that your government invite an appropriate public or private international body to examine and make recommendations on South Africa's laws and practices relating to detention.

Since our October 12 letter was written, your government has closed down newspapers and religious, social and cultural organizations and arrested or banned scores of additional people, including editors, writers, religious, and community leaders. We cannot but agree with the statement of the South African Institute of Race Relations that:

"This is an act of ruthless tyranny, it is an act insensate in its stupidity, tragic in its dimensions, and incalculable in the harm it does the people of this country, and the republic's international relationships."

We believe that even by South African standards the actions your government has taken do not represent an incremental change, but rather a major turning point in South African history. The pretense is gone; all that remains is the mailed first of repression based on the racist principle that blacks shall forever be ruled by whites, through whatever forms of tyranny are necessary. It is our judgment, therefore, that this must also be a major turning point in our bilateral relations and in South Africa's relations with the rest of the international community.

Mr. Prime Minister, a group of 29 Congressmen have formed an ad hoc group to monitor, using all possible sources of information, the identity, whereabouts and condition of all those people whom your government has detained without charges, without access to family or legal counsel, without due process of law, without any semblance of the rule of law. Should you choose to assure us and the world as to their numbers and identity, their whereabouts, safety, and condition, your intentions with respect to them, and any charges which have since been entered against them, we would appreciate receiving a listing of same.

ANDREW MAGUIRE.
TOM DOWNEY.

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OCTOBER 27, 1977.

Hon. TOM DOWNEY, ANDREW MAGUIRE,
*Longworth House Office Building,*
*Washington, D.C.*

DEAR MR. DOWNEY AND MR. MAGUIRE: Please refer to your letter of October 25 to the South African Prime Minister, a copy of which you sent to me. I thank you for this courtesy and write to let you know that I am available for discussions at any mutually convenient time, should you so wish, under the understanding that, since you have now written directly to the Prime Minister, I cannot of course, prejudge how he will reply to your communication.

I would simply coment at this stage that your contention that it is South African government policy that "Blacks shall forever be ruled by whites, through whatever forms of tyranny are necessary" is completely contrary to my understanding of that policy.

Yours sincerely,

D. B. SOLE.

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LONGWORTH HOUSE OFFICE BUILDING,
*Washington, D.C., July 25, 1978.*

The Honorable, MINISTER OF JUSTICE,
*Union Buildings, Pretoria,*

DEAR SIR: On behalf of the ad hoc Congressional Monitoring Group on South Africa and of the Lawyers Committee for Civil Rights under Law, I request the following information from you relative to the persons listed below:

1. Daniel Sechaba Montsisi
2. Jan Tugwane
3. Nana Ethel Sibeko
4. Joseph Thloloe
5. Sibongela Khubheka
6. Deborah (Debs) Matshoba
7. Sipho Pityana

I would be pleased if you would let me have the following information with regard to each of the persons abovementioned.

(i) The date on which each person was arrested and the place thereof;

(ii) The section and law under which the person is presently being detained;

(iii) When it is anticipated that the person will be brought to court and the nature of the charges that will be proferred against him/her;

(iv) What is the state of health of the persons concerned;

(v) Where each person is presently being detained.

As I will be in the Republic of South Africa until the 1st August, 1978 and if this information requested can be given to me before I leave the Republic you may communicate with me care of the United States Embassy in Pretoria, telephone 48–4266.

As the organizations abovementioned are particularly concerned about the fate of the persons named your urgent responses to this matter and answers to each of the questions requested will be appreciated.

I look forward to your responses.

Yours faithfully,

ANDREW MAGUIRE.

At this point in the RECORD, Mr. Speaker, if the gentleman from New York (Mr. DOWNEY) will permit, I would also like to insert some additional items, including an article summarizing my findings upon my return from my South African trip, an article that appeared in the Record, a New Jersey newspaper.

I would also like to summarize at some greater length in the RECORD the material included in the final chapter called "Indictment" in Donald Woods' book, "Biko."

The article follows:

[From the RECORD, Aug. 4, 1978]

MAGUIRE: PRESSURE SOUTH AFRICANS MORE

(By Bob Cunningham)

WASHINGTON.—Returning from a two-week tour of South Africa, Rep. Andrew Maguire said yesterday that the United States and American corporations with interests there should increase their pressure on that country's white minority government.

The Bergen Democrat said the students, black leaders, lawyers, and religious leaders he met confirmed tales of torture, mass killings, and unjust imprisonment of black South Africans.

"I am accusing the government of South Africa of suppressing and attempting to eliminate black leaders," Maguire said. "Whether we succeed in influencing that government or not, we ought to dissociate ourselves from it.

"I would like to level off our investments and pull back our involvements in a phased way so the government can see the consequences," he said. "In the past, our economic and political relationships have given them the feeling that they could continue what they are doing."

A spokesman for General Motors, which with Ford Motor Co. ranks behind three European and Japanese auto manufacturers in South African trade, said he doubted that companies would pull out of the country voluntarily. One reason is that other foreign manufacturers would take up the slack.

Maguire acknowledged that some South African leaders would rather do without United States trade than change their apartheid policies. He said other governments could also impose trade sanctions. Britain, for example, has more money invested in black African countries than in South Africa, and Maguire said it must protect those investments.

Maguire relayed one story told by a young man who said he had been in Soweto two years ago when hundreds of students were killed by police when they demonstrated against laws requiring that they be taught in Africaans, the language of the minority government.

The man said he had been standing beside a young girl who was shot by police. He did not know what to do with her body, Maguire said, so he asked the police.

"He was immediately himself locked up and kept for days," Maguire said. "Each day when the police vehicles would bring in young bodies, he was taken out to the spot where they were unloaded and stood there to watch. A policeman told him, 'That is what White Power does to Black Power.'

"This government is not a democracy," Maguire said. "It is in fact a police state with respect to nonwhite people. I left South Africa enormously discouraged about the future of the country. It is on a suicidal course."

The congressman has been following South African problems since his days as a student at London University's School of Oriental and African Studies. He also worked on African affairs at the United States Mission to the United Nations.

He was invited on the African tour by the World Peace Foundation because he is the coordinator of Ad Hoc Committee on South Africa in Congress.

Maguire presented a humanitarian award on behalf of the NAACP in memory of Steven Biko, the black South African leader who died in police custody last fall.

Biko's family did not accept the award but asked that it be given to another black leader, Kenny Rachidi, now in prison. An associate of Rachidi accepted the award.

Maguire was refused permission to visit jails, including the one in which Biko died.

Mr. Speaker, the material to which I referred is as follows:

6: THE INDICTMENT

Since the State has not seen fit to indict anyone for the death of Steve Biko, it becomes necessary to indict the State. By the State is meant, in this instance, the minority regime that has ruled South Africa for thirty years, with ever-increasing contempt for democratic values and with evergrowing arrogance toward all who hold such values to be paramount. And since the Nationalist Party government has consistently identified itself with the State, has claimed that it represents the State, and has accused its most zealous critics of being enemies of the State, let it now therefore be regarded as the personification of the State for purposes of indictment.

This means that the Vorster government and all its supporters bear the responsibility for what happened to Steve Biko.

But precisely who struck the fatal blows is relatively unimportant. All these men mentioned so far are petty offenders in the scale of outrage. The real killer was the System—and all its representatives involved in this tragedy. Two members of the Nationalist cabinet are most responsible for the circumstances under which Steve Biko died—Police Minister J. T. Kruger and Premier B. J. Vorster.

More than anyone else, these two men created the conditions, the climate of opinion, the statutes and the state of mind of the Security Police which led to this particular killing.

Just as Hitler's "Final Solution to the Jewish problem" was the ultimate consequence of earlier Nazi policy, so deaths such as those of Steve Biko are inevitably the appropriate result of the apartheid policy since its inception.

Having to wear a yellow armband and having to die in a gas-chamber at Auschwitz were but two links in the same chain of racism. These two links might have been at opposite ends of the chain—but the chain was the same. Having to carry a "pass" and having to die of assault in detention are similarly two links of the same chain.

If you feel impelled to enforce at all costs the wearing of armbands, you have to end up herding people into gas chambers. And if you feel impelled to enforce at all costs a separation of races, you have to end up killing people.

The death of Steve Biko requires a reaction of outrage to be shouted to the four corners of the earth. It has finally and incontrovertibly been established that the policy of apartheid is the most outrageous affront to all humanity that has ever been devised by collective decision since the dawn of procedural government.

The obscene laws which constitute apartheid are not crazed edicts issued by a dictator, nor the whims of a megalomanic monster, nor the one-man decisions of a fanatical ideologue. They are the result of polite caucus discussions by hundreds of delegates in sober suits, after full debate in party congresses. They are passed after three solemn readings in a parliament which opens every day's proceedings with a prayer to Jesus Christ.

There is a special horror in that fact.

It is the most contentious moral crisis in the world today, and those who refuse to interest or involve themselves in it are giving tacit approval to it. No human being of conscience can remain neutral in a moral crisis of conscience. Apartheid exists in definance of this and this is why, today, it has now become a real threat to world peace.

Apartheid is a carefully calculated, meticulously planned network of racist laws whose viciousness is equalled only by the deliberation of the process which gave birth to each one of them. The Vorster government should not boast of South Africa's long tradition of parliamentary lawmaking. The fact of that trading does not mitigate apartheid; it condemns it all the more.

One of the final claims made in its favor by the Nationalist government is that South Africa has a fair system of administration and justice and an independent judiciary. This claim, also, is no longer true. The Nationalists have finally destroyed the entire basis of the system of law inherited in 1948 from the Roman-Dutch legal tradition. All that is left is a tiny vestige of that once-proud legal tradition.

It is true that any South African citizen can still win a civil or criminal case—provided one has a great deal of money; one has the right judge and magistrate; and one is free to institute such proceedings. Today there are few independent judges or magistrates in South Africa where political cases are concerned.

Police, magistrates, judges, prosecutors, few indeed are completely free to pursue objective standards of justice. Most judges in South Africa adhere to the belief that their function in regard to statute law is so'ely to interpret and apply it—which means in effect, in many cases, to implement apartheid regardless of the principles of justice.

Apartheid is not simply a regrettable localized aberration of importance only to South Africa. It is a universal moral crisis and no nation can in conscience stand back and adopt a neutral or passive attitude to it. Apartheid is an affront to every single member of the family of mankind.

Apartheid is therefore a challenge to every citizen of every country on earth. It is a challenge that should be met with all the ingenuity and idealism of which all people of principle are capable.

If I could speak to every person on this globe, I would speak of my friend Steve Biko, who died naked on the floor of a prison cell after suffering torture and torment at the hands of men who represent an especially horrible form of evil—the evil of racism, which inflicts hatred and rejection upon its victims for being born with a dark skin. I would tell of how the society that bred such a system then exonerated his killers, condoned the laughter with which their superiors greeted the news of his death, and voted the man chiefly responsible for it back into office with an increased majority.

I would tell of how Steve Biko's death, although especially tragic for me, was by no means the first of its kind in South Africa, nor the last, and that it was but the most publicized, most heightened dramatization of the ultimate effect of unbridled apartheid.

Steve Biko's death could be regarded as a symbolic representation of the sufferings of all black South Africans under the apartheid system. His death was physical. Most of the deaths caused by apartheid are spiritual. There are countless deaths of morale and hope and self-esteem.

For many of his fellow-citizens, Steve Biko ended such deaths of morale. He shattered many of the psychological bonds that used to shackle young blacks in South Africa. In terms of the spiritual self-esteem of young blacks in South Africa, particularly, he was a breaker of chains.

Perhaps that, far more than any other, was the reason why the System killed him.

Mr. Speaker, the gentleman from New York (Mr. DOWNEY) and I have shared a concern about U.S. policy toward South Africa in the light of these events and all we know about what is going on there, and we have shared a concern about the expression of U.S. interests.

Mr. Speaker, I do not know whether this is the time really to pursue a lengthy discussion of that matter, but I know the gentleman shares my concern that the U.S. Government has not done nearly enough to match its words with action.

Mr. DOWNEY. Mr. Speaker, I think the gentleman from New Jersey (Mr. MAGUIRE) is absolutely correct.

As was pointed out in a detailed study done by the Foreign Relations Committee of the other body on American involvement, there is, for instance, the loan exposure. The loan exposure of American banks and other interest amounts to more than $2.2 billion, and that has in fact since 1970 helped fuel the arms buildup in South Africa and has helped the South African Government to acquire numerous weapons from abroad.

I do not think there is any question, from conversations I have had with South African black leaders, as well as from conversations that the gentleman from New Jersey (Mr. MAGUIRE) has had, that they would like to see an end to this American involvement, and that they full well recognize that the 70,000 or more blacks who are employed and who receive better wages than the average black in South Africa will be the first to suffer in the event that the United States should remove its presence, both privately and publicly, in South Africa.

But they see that as one of the prices that they must pay to achieve the sort of regime in which they would be able to participate fully.

Mr. Speaker, I want to make one other point with the gentleman. We have often heard it stated on this floor that we single out South Africa while on that continent there is a host of other countries in which human rights are systematically trampled under foot, and that it is unfair and unreasonable to select South Africa as a whipping boy. People will cite the Central African Republic

and the preposterous regime of Mr. Amin in Uganda.

I would like to know how the gentleman from New Jersey (Mr. MAGUIRE) responds to these arguments. I simply respond by saying that this is a society in which there is a Dutch and English tradition, a tradition of freedom and a tradition of law, and when a society has those traditions, one expects a great deal from it. But they have not lived up to those traditions, and it is preposterous to hold one's self out as a 20th century democracy and yet continue a policy of apartheid.

I would be curious to know how the gentleman from New Jersey responds to people who ask: "Why single out South Africa when there are so many other countries on that continent that deprive individual citizens of their basic human rights?" Could the gentleman offer us his feelings on that subject?

Mr. MAGUIRE. Mr. Speaker, if the gentleman will yield further, I would certainly be glad to do that.

I think the answer is that South Africa is the only country on the face of the Earth in which institutionalized racism, enshrined in law and backed by force, is the determining factor in every aspect of the life of the country. South Africa is utterly unique in that respect.

I might again refer to Donald Woods and quote him as follows:

> The death of Steve Biko requires a reaction of outrage to be shouted to the four corners of the earth. It has finally and uncontrovertibly been established that the policy of apartheid is the most outrageous affront to all humanity that has ever been devised by collective decision since the dawn of procedural government.

Mr. DOWNEY. Mr. Speaker, I think that rather summarizes it well.

Is the gentleman from New Jersey (Mr. MAGUIRE) desirous of using more time?

Mr. MAGUIRE. Mr. Speaker, I would like to add just one or two more things, if the gentleman will permit.

Mr. DOWNEY. I yield to the gentleman from New Jersey.

I think it would be appropriate to include at this point in the RECORD a copy of a letter which was sent by the gentleman and myself, and a number of other Members of Congress, just a few days ago, to the President of the United States, Mr. Jimmy Carter, with respect to the proposed destruction of Crossroads. In addition to the signatures of the gentleman from New York (Mr. DOWNEY) and myself, the following letter contains the signatures of the gentleman from Iowa (Mr. HARKIN), the gentleman from Michigan (Mr. CONYERS), the gentleman from Massachusetts (Mr. TSONGAS), the gentleman from Michigan (Mr. BRODHEAD), the gentleman from Minnesota (Mr. FRASER), the gentlewoman from New Jersey (Mrs. MEYNER), the gentleman from New York (Mr. OTTINGER), the gentleman from California (Mr. EDWARDS), the gentleman from Pennsylvania (Mr. EILBERG), the gentleman from Ohio (Mr. STOKES), the gentleman from Iowa (Mr. BEDELL), the gentleman from New Jersey (Mr. HOLLENBECK), and the gentleman from Massachusetts (Mr. MARKEY):

AUGUST 21, 1978.

President JIMMY CARTER,
*The White House,*
*Washington, D.C.*

DEAR PRESIDENT CARTER: The South African government is once again about to demonstrate its lack of concern for basic human rights of the black residents of its country. We are informed that soon bulldozers will demolish the peaceful squatters' community of Crossroads, in Capetown.

Crossroads is the home of over 20,000 blacks who have developed the area into their own community, with their own schools and facilities. These families live quietly. Some people work in Capetown's industries, but because of government policy few jobs are available to blacks, and those that are are in unskilled menial positions.

The government plans to relocate these people either in homelands many miles away or to let them live in the surrounding sand flats. Their 3,000 "pondokkies" (shanties) will be obliterated by bulldozers.

One leader of the Congressional Ad Hoc Monitoring Group, Congressman Maguire, recently visited Crossroads and returned convinced of the importance of its existence. We believe that although it may be too late for the United States to intervene in the situation, it is important for the United States to respond to this atrocity through high level expressions of concern. Many times your administration has voiced its disapproval of the repressive policies of the South African government. But the United States must act on this disapproval. This is only one in a chain of oppressive events which we cannot allow to continue.

On Friday, August 18, you were sent a copy of a telegram Congress Maguire sent to Prime Minister Vorster expressing his concern for the Crossroads situation. We hope that you will also convey your concern for this most recent atrocity, and that you will keep it in mind as you continue to refine our policy towards South Africa.

Sincerely,

ANRDEW MAQUIRE.
THOMAS DOWNEY.

In addition, I sent a telegram to Prime Minister John Vorster, as follows:

Mr. Prime Minister: During my recent visit to South Africa I visited residents of the community called Crossroads in Capetown. They told me of the plans to destroy the community and send the people to live in Homelands. I now learn that you intend to go ahead with the plans to bulldoze the community next week. I am appalled at the idea of the destruction of this peaceful community where over 20,000 blacks have lived during the past 20 years. This action will destroy thousands of families and ruin thousands of lives. It should not be allowed to occur. The destruction of Crossroads is an outrage to humanity. I want to inform you that many members of Congress have joined me and Representative Thomas Downey and the ad hoc monitoring group on South Africa, which we co-chair, in alerting President Carter to this action. This is another in the series of repressive actions committed against blacks in South Africa. Be assured that we will continue to monitor the acts of your government closely, and that we will do all that w- can to inform the American people of the continuing deprivation of human rights which continues to occur. Congressman Andrew Maguire.

We are on the verge of yet another South African tragedy. We have written you previously about the squatters community of Crossroads, outside of Capetown. This village, which is the home of over 20,000 Africans, may soon be destroyed.

It is the policy of the South African Government that certain areas of the country be reserved for white occupation only. African workers are forced to migrate great distances and to leave their families for long periods of time, in order to work. They are paid substandard wages and are refused Government assistance in finding housing. Often, their only housing choice is a dormitory with up to 30 other men in one room. They are able to see their families only 3 weeks during the year.

Crossroads was established in 1975 for squatters who have lived, on the average, in the western cape region for over a decade. Some Crossroads residents have lived around Capetown for over 25 years. Most of the residents moved to the community after being evicted from squatters' camps in the area.

They moved to Crossroads to be able to live with their wives and children. In June 1976, Crossroads was recognized as an "emergency camp." Water lines leading to a communal tap were installed, a health clinic was set up, and basic refuse removal began. The settlement now has two schools, with classes, arts groups, sports clubs and cooperative self-help programs. Over 73 percent of the men at Crossroads and 25 percent of the women are formally employed. Informal employment adds another 11 percent of the men and 20 percent of the women. The residents of Crossroads are gainfully involved in the prosperity of the Capetown region.

Yet the residents are also under constant torment and harassment. Just last week, the South African police moved in and arrested over 400 residents. The government tries constantly to force them to leave their homes to return the women to the "Homelands." But the residents have vowed to remain until they are physically removed from their homes.

More often than not, a squatters' camp is a sordid and dismal place for a human being to be forced to live. In Crossroads, as in all other squatters' camps, the community exists to serve the basic human needs of a family—the basic need of sharing human life with those one loves. But Crossroads is also something different. The residents have made a courageous attempt to convert something of baseness into something of beauty. Plans for the introduction of sanitary facilities and for urban development were begun to make the intolerable slightly more adequate.

Crossroads' flourishing existence speaks with great clarity of the resolve of human dignity and the decency of these people. Its imminent destruction speaks with the same clarity of the stupidity and cruelty of human folly and of the fear of the government leaders.

The South African Government says that there is nothing that can be done to save Crossroads. Perhaps they are right. But we must meet this forthcoming action of the South African Government with an even stronger resolve toward an American policy calling for full political participation of all groups and an end to oppression and racial discrimination in South Africa.

So, on this, the anniversary of the death—while in detention—of Steve Biko, we honor the contribution he made to the black consciousness movement in South Africa, and add our voices to the

growing clamor against the apartheid policies of the South African Government.

Mr. Speaker, I thank the gentleman very much for his forebearance, and I appreciate the opportunity to participate in his special order.

Mr. DOWNEY. Mr. Speaker, let me just say to the gentleman that it is my privilege to be associated with him. He is a constant and vigilant reminder of what it is we have come here to serve in this House of Representatives, and I think that the 1 hour and 15 minutes that we pay homage to one of the great world leaders is very little time to spend indeed.

Mr. Speaker, I thank the gentleman for his thoughtful presentation. It is a fitting tribute.

I want to take a few moments and join my colleagues in some personal reflections about the death of Steve Biko who died 1 year ago at the hands of South African security police.

Steve Biko's death was both a personal and political tragedy for South Africa. As Ambassador Young stated at the time "no nation can afford to lose its most dedicated and creative leadership and yet prosper."

Steve Biko was a moderate South African leader whose crime in the eyes of the Nationalist Government was that he believed that blacks and whites are equal. For preaching those beliefs, he died.

Based on my limited experience with South Africa I believe that time is running out for a peaceful racial settlement in that country.

The Nationalists are reaping what they sow. A systematic attempt to wipe-out the emerging black leadership, regardless of political persuasion, will only guarantee guerrilla warfare in South Africa. For example: the 1963 Sharpsville massacre helped force the African National Congress, for 50 years a nonviolent expression of black rights, into taking up arms. The 1976 Soweto uprising saw thousands of young blacks flee the country for guerrilla training. The 1977 death of Steve Biko and the October 19 mass arrests sent more blacks across South Africa's borders into guerrilla camps.

As we reflect on the death of Steve Biko today, I think it is also important for us to reexamine the U.S. role in South Africa. Sadly, we are not a force for change. Within a few weeks a black squatter community of some 20,000 people outside of Cape Town will probably be razed. When it is, U.S.-made bulldozers guarded by Army jeeps manufactured by Ford Motor Co. will probably be in evidence. What inference is the black South African supposed to draw from this? U.S. economic and political ties only serve to prop-up the racism South African Government against 18 million blacks and 3 million nonwhites.

Steve Biko's death a year ago was certainly a watershed for South Africa. His tragic death signaled that the security police would stop at nothing to suppress black political leadership. I hope that Steve Biko's death represents a benchmark here in the United States too. I think that it is past time that we stop U.S. export-import loan guarantees to South Africa. It is past time that we started limiting U.S. investment in South Africa. The Carter administration must exert strong pressure on South Africa to save the Cape Town Crossroads community.

The lesson of Steve Biko's death is that the future foreign policy of the United States must learn from its past mistakes. Benevolent cries of protest will not stop South African police from killing future Steve Bikos. The United States must begin to exert real political and economic pressure on South Africa or Steve Biko will have died in vain.

● Mr. ANDERSON of Illinois. Mr. Speaker, I am pleased to join in this special order of the gentleman from New Jersey (Mr. MAGUIRE) to commemorate the first anniversary of the mysterious death of Steve Biko in a South African prison. We take this occasion not only to mark the anniversary of the death of the black, South African youth leader, but to help refocus American and world attention on the intolerable conditions in South Africa's apartheid society which surrounded the detention and death of Steve Biko.

Steve Biko and other youth leaders were rounded up and detained following the South African Government's brutal reaction to the peaceful demonstration by Soweto school students on June 16, 1976, against instruction conducted in Afrikaans. The Soweto massacre and immediate aftermath left 600 Africans and coloureds dead. The death of Steve Biko last year only accelerated popular protests against the South African Government's policies. On October 19, 1977, the Government took sweeping measures to repress all dissent by closing down newspapers, outlawing various peaceful, religious and social groups, and detaining and banning South African white and black citizens opposed to apartheid.

The reported arrest yesterday of Steve Biko's sister and her friends, and the imminent destruction of the squatters community of Crossroads, are but further evidence that the South African Government is stepping up its suppression of basic human rights in that country.

Mr. Speaker, I would remind my colleagues that last October 31 this body voted overwhelmingly, 347 to 54, for a resolution denouncing these repressive acts committed by the Republic of South Africa. That resolution went on to urge the President "to take effective measures against the Republic of South Africa in order to register the deep concern of the American people about the continued violation of human rights in that country."

Let us take the occasion of this first anniversary of Steve Biko's death to rededicate ourselves to the eradication of such human rights violations wherever they may occur, and especially to the cause of racial peace and justice within South Africa. Hopefully, our continued vigilance and voice will encourage the forces of reason and moderation within South Africa to reverse this trend of repression and being the march toward full equality for all that country's citizens.●

## GENERAL LEAVE

Mr. DOWNEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include therein extraneous matter, on the subject of the special order today of the gentleman from New Jersey (Mr. MAGUIRE).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

## THE NOISY AIRCRAFT BILL DECIBELS OF JOY TO THE AIRLINES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

Mr. VANIK. Mr. Speaker, when the rule on the Noisy Aircraft Revenue and Credit Act is considered tomorrow, it should be voted down so that an open rule could be adopted to provide for a full and proper analysis of the proposal. The modified closed rule "protects" the $3 to $4 billion trust fund giveway from any meaningful review.

First of all, the revenue loss from the trust fund estimated at $3 billion—will probably exceed $4 billion. Increased airline passenger use and higher revenues will boost the give-away to the airlines to well over $4 billion.

The FAA has estimated that the cost of compliance with noise regulations by 1984 will cost under a billion dollars—about 950 million. Why give the airlines 400 percent more than will be needed for noise retrofit?

The airlines will buy new planes for expansion of their fleets but not for compliance. The credit for new plane purchases is not contingent upon the retirement of noisy aircraft which will fly the friendly skies until 1985 or until they disintegrate with decibel shock.

According to the Air Traffic Association, $2½ billion Federal dollars will be spent to replace 414 DC–8's and 707's with new planes. The old planes have an average age of 18 years by 1985. For tax purposes these planes were written off 8 to 10 years ago. The CAB predicts that all of these planes will be retired by 1985 simply because they are no longer economic. These planes would have to be phased out by obsolescence—even if the noise regulations were dropped. The noisy aircraft revenue and credit bill simply pays the airlines to do what they must do in any circumstance.

Economic reasons mandate the purchase of new aircraft. Escalating costs of energy demand greater fuel efficiency. Without this $4 billion bonanza, America's airlines would move forward on their plane purchase orders.

The commercial airline industry in America has never been in better health. Planes are filled in all directions, profits are soaring: capital for investment is increasing. This is not a failing industry which requires an infusion of $4 billion Federal taxpayer dollars. This legislation constitutes an aid program to one of America's healthiest industries. If we do

this for the arilines—who will be next in line for Federal largess.

The case has not been made for a $4 billion gift to the commercial airline industry.●

## PERSONAL EXPLANATION

(Mr. MIKVA asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. MIKVA. Mr. Speaker, I was unable to be present on the House floor for rollcall votes 715 through 743, because of prior commitments in the 10th Congressional District. Had I been present I would have voted as follows.

On Thursday, August 17: "Yes," on rollcall 715, the conference report on H.R. 13467, the Supplemental Appropriations Act; "No," on rollcall 716, a motion to recede and concur in Senate amendments to the supplemental appropriations bill to provide funding for the new Senate office building; "Yes," on rollcall 717, conference report on H.R. 12935, Legislative Branch Appropriations; "Yes," on rollcall 718, conference report on H.R. 12927, DOD military construction appropriations; "Yes," on rollcall 719, the conference report on H.R. 13468, District of Columbia Government Appropriations; "Yes," on rollcall 720, the conference report on S. 9, Outer Continental Shelf Lands Act Amendments of 1978; "No," on rollcall 721, the conference report on H.R. 12240, Intelligence Authorization; "Yes," on rollcall 722, rule providing for consideration of the U.S. Railway Association appropriations; and "Yes," on rollcall 723, H.R. 10898, the U.S. Railway Association appropriations.

On Wednesday, September 6: "No," on rollcall 725, the Treen amendment to the Civil Rights Commission Authorization Act, prohibiting the Commission from investigating abortion issues; "Yes," on rollcall 726, the New York City aid appropriations, House Joint Resolution 1088; "No," on rollcall 727, McClory amendment to the Foreign Surveillance Act, allowing electronic surveillance of non-U.S. persons with the certification of the Attorney General; and "No," on rollcall 728, the Ertel amendment to the Foreign Surveillance Act, eliminating language providing for a special court to have jurisdiction over orders of surveillance.

On Thursday, September 7: "No," on rollcall 731, the motion to agree to the Senate amendment to the Treasury-Postal Service appropriations bill, prohibiting the imposition of oil import fees; "No," on rollcall 733, the Kemp amendment to the Foreign Surveillance Act that sought to require the President to inform both House and Senate Intelligence Committees when he has reason to believe that an individual with diplomatic immunity is engaging in electronic surveillance in the United States; "No," on rollcall 734, the amendment to the Foreign Surveillance Act in the nature of a substitute that sought to strike the requirement for obtaining a warrant for electronic surveillance; "No," on rollcall 735, on reconsideration of the amendment by Representative MCCLORY to the Foreign Surveillance Act. That was passed the previous day by a 178 to 176 margin (the amendment dealt with electronic surveillance of non-U.S. persons); "No," on rollcall 736, the motion to recommit H.R. 7308, the Foreign Surveillance Act, to the Select Committee on Intelligence; "Yes," on rollcall 737, final passage of H.R. 7308, the Foreign Surveillance Act; "Yes," on rollcall 738, to resolve into the Committee of the Whole for further consideration of Civil Service Reform Act, H.R. 11280; and "Yes," on rollcall 739, to table the motion to reconsider the previous vote, rollcall 738.

On Friday, September 8: "Yes," on rollcall 740, the rule under which the bill H.R. 11711, Adjustment Assistance Act; "No," on rollcall 741, the motion to recommit the Hawaiian Natives Claims Act; "Yes," on rollcall 742, the committee amendment providing for an alternative eligibilty requirement which permits workers to qualify on the basis of 40 weeks of employment in one or more trade-impacted firms in the preceding 2 years; and "Yes," on rollcall 743, final passage of H.R. 11711, Adjustment Assistance Act.

On Monday, September 11: "Yes," on rollcall 749, the Leach amendment to the civil service reform bill, that set a statutory ceiling on the total number of Federal employees in the executive branch; "No," on rollcall 750, the Collins amendment that sought to permit the FBI to place 140 positions in GS 16–18, without regard to the provisions placing limitations on executive level positions; "No," on rollcall 751, the Erlenborn amendment to the civil service reform bill, that sought to strike the labor-management and employee relations language from the bill: and "No," on rollcall 752, the motion that the Committee of the Whole House rise and report the bill H.R. 11280 back to the House, with the reconsideration that the enacting clause be stricken.●

## POLITICAL STATUS OF PUERTO RICO

Mr. CORRADA asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. CORRADA. Mr. Speaker, the Decolonization Committee of the United Nations is currently considering the case of the political status of Puerto Rico. At the insistence of Cuba this debate has become a yearly affair since 1972.

In an excellent and comprehensive testimony, the Governor of Puerto Rico, the Honorable Carlos Romero-Barceló, enunciates our position that the Decolonization Committee has absolutely no right or power to intervene in what is, in reality, an internal matter between the people of Puerto Rico and the United States. Governor Romero-Barceló has already announced that a plebiscite on the political status issue will be held after the 1980 general election. The true actors in this matter will be our people, Congress, and the President and not the United Nations.

Mr. Speaker, I include Governor Romero-Barceló's testimony before the Decolonization Committee of the United Nations in the RECORD and reprinted in full:

TESTIMONY BY THE HONORABLE CARLOS ROMERO-BARCELÓ, GOVERNOR OF PUERTO RICO

Mr. Chairman, members of the Committee: My name is Carlos Romero-Barceló. I am the Governor of Puerto Rico, elected to a four-year term by the people of Puerto Rico on November 2, 1976.

In 1946, during the United Nations' first full year in existence, the United States of America offered voluntarily to submit annual reports on the status of its non-self-governing territories, in keeping with the spirit of Article 73 of the United Nations Charter. Those territories then included Alaska, Guam, Hawaii, Puerto Rico, American Samoa, and the United States Virgin Islands. Annual reports on Alaska and Hawaii were discontinued upon their admission in 1959 as the forty-ninth and fiftieth of the United States of America.

A quarter of a century ago, the United Nations Committee on Information from Non-Self-Governing Territories—also known as the Fourth Committee—determined that the people of Puerto Rico enjoyed a full measure of self-government. In response to that determination, the United Nations General Assembly, at its Eighth Session, adopted on November 27, 1953 its Resolution 748, wherein it relieved the United States of America from any responsibility for filing annual reports concerning Puerto Rico's political status, and wherein the General Assembly declared that, and I quote, "in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity." End of quote.

That was twenty-five years ago.

Since then, the people of Puerto Rico have elected a total of five different men from among two different political parties to lead them as Governor. During that interval, the people of Puerto Rico have also held a plebiscite on their political status.

During that period of time, not one of the island's five governors has come before any instrumentality of the United Nations to register a complaint against the United States, nor to request any review or reconsideration of Resolution 748 of the Eighth General Assembly Session. Indeed, until today, no Governor of Puerto Rico had ever formally approached the United Nations on *any* matter related to our island's relationship with the United States.

Nevertheless, despite the absence of any initiative on the part of any duly elected Government of Puerto Rico, your Committee has since 1972 been discussing "the Puerto Rico question" on a regular basis.

These discussions have been held at the behest of an adversary of the United States, in support of a political faction in Puerto Rico whose electoral strength has remained at less than seven percent of the voting public for two decades.

During our twenty-five years as a community enjoying "a full measure of self-government," Puerto Rico's democratic institutions have received the enthusiastic support of the island's inhabitants. From three to six political parties have appeared on the ballot in each general election. An average of four-fifths of Puerto Rico's eligible voters have participated in each election. Both men and women possess the right to vote, and in 1970 the minimum voting age was lowered from twenty-one to eighteen years.

But perhaps the most eloquent demonstration of the strength and integrity of Puerto Rico's democratic system of government has been the fate of incumbent Administrations: in each of the last three quadrennial elections held in Puerto Rico, the political party in power has gone down to defeat; moreover, the last five elections in Puerto Rico have elevated no less than five different men to the governorship, even though the Puerto Rican Constitution permits an incumbent Governor to seek re-election to an indefinite number of terms. And I might add that each change of Administration was effected lawfully and peacefully.

As we survey the Puerto Rican people's aggressive and responsible exercise of their electoral prerogative over the past quarter-century, one highly significant fact stands out clearly: each and every time the Puerto Rican people have removed from office an incumbent Governor and/or political party, they have chosen a new Governor and/or political party which, like their predecessors, firmly espoused the principle of permanent union between Puerto Rico and the United States of America.

In each of these elections, candidates advocating Puerto Rico's independence participated freely, energetically, and without constraint. And in each election they were resoundingly defeated. In 1976, even the local Communist faction took its case to the electorate. Calling itself the Puerto Rico Socialist Party, it campaigned throughout the island, yet won only seven-tenths of one percent of the total vote, and elected no candidates. The non-Communist Puerto Rico Independence Party elected two Representatives and one Senator in 1972, but lost all three seats in 1976.

Just as is the case in Puerto Rico, I am confident that virtually all of the twenty-four nations here represented contain within their borders political factions which are firmly opposed to the policies of the government in power. As is not the case in Puerto Rico, however, opposition political factions in some of these twenty-four nations are severely inhibited—and in some instances officially prohibited—from working openly and freely to enlist broad public support for their causes, and from seeking peacefully to have the ruling party removed from power.

Should an opposition faction within any of the twenty-four nations here represented solicit the assistance of a foreign power in bringing its case before the United Nations, I strongly suspect that the government of the nation in question—regardless of its political system, regardless of its economic system, regardless of its alignment or non-alignment vis-a-vis the major world powers—would firmly oppose United Nations involvement, on the grounds that the matter at issue constituted a strictly internal affair, over which no international body whatsoever had any claim to jurisdiction.

Nevertheless, this Committee has repeatedly agreed to entertain discussion of the political status of Puerto Rico under precisely the above circumstances: the separatist political faction in Puerto Rico has solicited the assistance of a foreign power—in this case Cuba—to urge United Nations intervention in the internal affairs of the people of Puerto Rico.

All five elected Governors of Puerto Rico have until now abstained from involvement in these discussions. We have done so because we too recognize the issue to be strictly an internal matter, to be debated and resolved within Puerto Rico itself, in consultation with the Government of the United States, the nation of which we are all citizens.

Among the five elected Governors of Puerto Rico, there is no unanimity of opinion as to what our island's ultimate political destiny should be; we differ considerably among ourselves on both large and small aspects of the question. We are, however, fully in agreement regarding the capacity of the Puerto Rican people to reach a final decision independently. Moreover, we recognize that a decision of such magnitude not only can be reached independently, but must be reached in such a manner, if it is to be valid and permanently binding upon the people of our island.

If, as is true, we have not yet reached a final decision, then the responsibility for our inaction lies with us and with us alone. We have the means to change our political status. Whether and how we shall use those means is for us and us alone to decide. All three political status alternatives—statehood, independence, and commonwealth—appeared on the ballot in our 1967 plebiscite, and Puerto Rico's voters elected to retain commonwealth status. I have publicly stated on numerous occasions that I believe a new plebiscite should be held after the 1980 general election, to allow our people to express themselves once again. And if I am re-elected to the governorship, the holding of such a plebiscite will be a firm commitment of my Administration's second term.

So long as we continue to possess the means to determine our own destiny, however, we shall neither welcome nor tolerate outside interference in this ongoing process.

So it is that I come before you today not to request that you intervene, but rather to explain why I believe you should not even consider attempting to intervene.

I come before you in the knowledge that most of you are devoting your time and energy to the Puerto Rican question with the best of good intentions. I am sure you are all aware of the ulterior motives that have prompted one member of your Committee to bring this issue before you. Nevertheless, I have no doubt that most of you are acting in the best of faith in giving it your consideration. I thank you for that, despite my firm conviction that intervention by this Committee is neither necessary nor appropriate, and is totally unacceptable to the people of Puerto Rico.

In the past, this Committee has reaffirmed Puerto Rico's right to self-determination. No one in Puerto Rico—myself included—disputes that principle, so long as it is clearly understood that the concept of self-determination includes the right to move from commonwealth to statehood as well as the right to move from commonwealth to independence.

Were I to conclude that Puerto Rico were in any way being impeded from exercising its rights to self-determination, then I would not hesitate for a moment to seek the support of this Committee, or any other responsible international institution, in helping our people to re-establish beyond doubt our right to self-determination.

I have the highest admiration for the United Nations. It is a pioneer confronting enormous obstacles in a slow and painful quest toward a goal upon which hinges the survival of our species: peaceful cooperation and coexistence among the enormously diverse peoples and philosophies which exist in ever-increasing interdependence upon this planet. As must be expected in a pioneering venture, tangible progress has been achieved neither easily nor quickly. In its finest hours, the universal human emotions which fuel this noble institution are hope, purposefulness, and good will. All three are indispensable if it is to succeed in its mission. Both now and in the future, I shall always be available to contribute whatever I can to further the goals so eloquently set forth in the United Nations Charter.

Indeed, it is in part for that very reason that I appear before you now: in the hope that I may perhaps be of assistance to you in your important work.

Setting aside for a moment the hemispheric rivalries and/or international ideological struggles which, in reality, we all know are responsible for the presence of the Puerto Rico issue on the agenda of this Committee, allow me to examine with you now the seemingly legitimate concerns that might prompt those who are truly impartial members of this Committee to regard the Puerto Rico question as a matter worthy of study on its own merits.

Basically, I submit that these concerns are three.

Foremost among them, without doubt, must be the undeniably ambiguous nature of the island's present political status. Neither a sovereign nation nor a fully integrated unit of the United States of America, Puerto Rico occupies an ill-defined middle ground, which might understandably arouse the curiosity—if not the suspicion—of an impartial international observer.

Coupled with this is the apparent imbalance in political leverage between a medium-sized Caribbean island and a continental super-power. Here again, the disinterested outsider might understandably have occasion to wonder whether the smaller partner in this relationship could truly be at liberty to chart its own course toward a final political destiny.

And finally, there are obvious cultural and linguistic disparities, which might prompt the observer to wonder whether there can really be an authentic social, psychological, or spiritual basis for the existence of a harmonious political union between Puerto Rico and the fifty existing United States.

To the above points I should add a fourth consideration: that there is evident dissatisfaction with the status quo among the people of Puerto Rico themselves. At these hearings will appear Puerto Ricans of widely differing viewpoints: yet most, if not all, of them will agree that Puerto Rico's current political status does not in its present form adequately fulfill the legitimate aspirations of the Puerto Rican people.

Given the above facts, I can readily appreciate that a fair-minded member of this Committee could reasonably conclude that the case of Puerto Rico might well merit investigation.

Indeed, I myself am on record to the effect that Puerto Rico's relationship with the United States retains vestiges of colonialism.

Yet I do not come before you to solicit your intervention.

Why?

Because I believe such intervention can never be either appropriate, relevant, or in the least degree effective until and unless it can be demonstrated that Puerto Rico lacks the wherewithal to freely determine its own destiny.

For most of this decade, this Committee has annually given consideration to the political status of Puerto Rico. Yet at no time has this Committee undertaken to investigate firsthand the extent to which the Puerto Rican people have the capacity to exercise for themselves their inalienable right to self-determination.

I cordially invite this Committee to conduct just such an investigation. I cordially invite the delegates of each nation here represented to visit Puerto Rico. Come whenever you wish; stay as long as you like; talk to whomever you please; study our institutions for yourselves.

The Government of Puerto Rico does not fear the consequences of such an inspection. On the contrary, we would welcome it.

If you come, you will hear a variety of opinion, just as you will hear a variety of opinion during these hearings. That is because Puerto Rico is an open society, in which every citizen is entitled to express himself, and in which any citizen or group of citizens is entitled to work peacefully to effect change.

We have no illusions, however. We are all aware that Puerto Rico is an imperfect so-

ciety, as is every society of human beings in every community on earth. Nevertheless, we are a people who take great pride in the progress we have made—economically, politically, and socially—during the twentieth century.

It is no accident that Puerto Rico's per capita income and standard of living are markedly higher than those to be found anywhere else in the Caribbean, or in Central or South America. Despite our island's very high population density of more than nine hundred persons per square mile, despite our severe shortage of mineral resources, and despite the massive poverty which existed in Puerto Rico only a few decades ago, we have in recent years emerged as a people blessed not only with free institutions of government, but also with the extraordinary increase in prosperity that only hard work and a private enterprise economy can make possible.

Today, each child born in Puerto Rico has a statistical life expectancy that actually exceeds that of the average American citizen born elsewhere in the Nation. Moreover, the per capita enrollment of our young people in colleges and universities exceeds the United States national average.

Puerto Rico's spectacular advances in health care, in education, in economic opportunity, and in democratic self-government have been accomplished by the Puerto Rican people themselves, through our determination to leave to our children and grandchildren a better way of life than we ourselves knew as children and young adults.

Because of Puerto Rico's small size, dense population, and limited resources, much of our recent progress would have been extremely difficult, if not impossible, to achieve without the friendship and cooperation of fellow American citizens from other parts of the Nation, and without the comprehension and financial support of the United States Government.

The Puerto Rico of today is still not especially wealthy; we are not mighty; our people do not live in total internal harmony. Nevertheless, ladies and gentlemen, we do enjoy, individually and collectively, the basic human rights which define a free society. And believe me, the people of Puerto Rico appreciate with every fiber of their being how rare and how precious a blessing freedom is.

Moreover, we know why we are free.

We know that we are free precisely because we are natural-born citizens of the freest and most open and most culturally diverse nation in the history of mankind: the United States of America.

We are free, if we so desire, to continue enduring the vestiges of colonialism that characterize our so-called commonwealth relationship with the United States. We are free to declare ourselves an independent nation, and to have that decision respected by the United States. And we are free to incorporate our island fully into the Republic as the fifty-first of those United States.

Should the United States Government at some future date choose to do so, I recognize that it has the military might to act illegally and immorally to abrogate those freedoms. We have no illusions in that regard, either. Although the overwhelming majority of our people have demonstrated at every opportunity that we treasure our United States citizenship and our permanent political union with the United States, we all recognize that, like our own and like every other community on earth, the United States too is an imperfect society.

Should the day come when the people of Puerto Rico were to find themselves oppressed by the United States, it would not be necessary for a totalitarian adversary of the United States to bring the matter to the attention of this Committee: I can assure you that the freedom-loving people of Puerto Rico would virtually lay siege to this building in their clamor for redress of grievances. And I should emphatically add that I myself would not hesitate to stand at the forefront of such a movement.

Yet I remain fully confident that no such action will ever be necessary. Because, for all its occasional faults, the Government of the United States has by and large conducted itself with grace and with fairness in its relationship with the American citizens of Puerto Rico. And I have every reason to believe that it will continue to do so.

Individuals and groups of individuals within every state of the United States have, at one time or another, expressed indignation at, and intense opposition to, actions or inactions for which they perceived the Federal Government to be responsible. In nearly every instance, these conflicts have gradually been resolved through compromise and consensus, and a resumption of cordial relations between the parties involved has followed. And thus it has been also with Puerto Rico.

Although the people of Puerto Rico cherish our identity as a unique community within the American nation, we likewise cherish our right to participate in the process by which our nation as a whole arrives at decisions in the common interests of all.

It is no accident that I address you today in the Spanish language. For more than four centuries Spanish has been the first language of the people of Puerto Rico. It will continue to be our first language, regardless of the changes we may make in our political status. Our cultural heritage as a people has not been, and shall not be, an obstacle to the exercise of our rights as United States citizens. So long as we remain true to the principles of governance that bind our Nation together, we shall always remain free to exercise our inalienable human right to life, liberty, and the pursuit of happiness in accordance with the specific personal traits which define us as Puerto Ricans.

On December 31, 1976, when President Gerald Ford announced his support for the admission of Puerto Rico to the Union of States, he did not attack any cultural or linguistic provisos. His call was unconditional. He was prepared to accept us as Puerto Ricans.

On July 25, 1978, President Jimmy Carter issued a proclamation in observance of the 26th anniversary of the adoption of Puerto Rico's local Constitution. In that proclamation he said to the Puerto Rican people, and I quote, "Since 1898, and as American citizens since 1917, you have made a rich contribution to the life of the United States, while preserving your own unique culture and traditions within the broader community . . . My Administration will respect the wishes of the people of Puerto Rico and your right to self-determination. Whatever decision the people of Puerto Rico may wish to take—statehood, independence, commonwealth status or mutually-agreed modifications in that status—it will be yours, reached in accordance with your own traditions, democratically and peacefully. . . The people of the United States are proud of our cultural and political associations with Puerto Rico over the last eighty years. We know that we can best honor our friendship, and our own democratic principles, by respecting your free choice about your own future."

Not only did President Carter not attach cultural conditions, he underscored clearly the United States Government's acceptance of and commitment to the defense of the inherent right of the Puerto Rican people to retain and enhance our individual qualities as a people.

How can this be possible?

Simply because that is the tradition of the American nation. Tolerance of individual differences is a cornerstone of American freedom. Instances of individual intolerance exist everywhere on earth. So do instances of institutional intolerance—even in the United States.

But the overwhelming majority of all United States citizens understand fully that the acceptance of diversity—racial, cultural, religious, regional, ethnic, linguistic—is fundamental to the existence of liberty in a nation whose population is the product of immigration from every corner of the globe.

And because the people of Puerto Rico have the self-confidence and the determination to demand that our rights as United States citizens be recognized and respected we look to the future with optimism, certain of our ability to resolve our political destiny in an environment characterized by civil debate, unconditional self-determination, and respect for the rights of the individual.

Before I continue, I should like to invite your attention to one especially blatant example of the hypocrisy of the separatists' position.

In regard to the question of language and culture, they firmly oppose the teaching of English in Puerto Rico. They oppose having our people become fully bilingual. They say it would undermine our identity as a people.

What is ironic, however, is that these same separatists are without exception bilingual themselves. They know English, and yet their sense of identity as Puerto Ricans seems not to have been impaired in the slightest. Indeed, they regard themselves as the purest of Puerto Rican patriots. Can it be, therefore, that their true motivation is not the preservation of our identity as a people, but rather the preservation of their own elite status as self-appointed bilingual spokesmen for our people? Why else would they propose to deny to the rest of the Puerto Rican people an advantage they themselves enjoy? It is something to think about.

It is these individuals—the separatist elements within Puerto Rican society—who year after year have sought United Nations intervention in our internal affairs. This too reflects their hypocrisy.

Let me explain.

We must keep in mind not only that, within Puerto Rico itself, the separatist forces have been massively and repeatedly repudiated at the polls, but that these same elements have never at any time seriously challenged our elections as fraudulent. They know they have been defeated fair and square.

That they have responded to their internal rejection by seeking support for their cause outside of Puerto Rico demonstrates eloquently their own cynical disregard for the principle of self-determination for our people.

Instead of respecting the clearly and repeatedly expressed will and wisdom of the Puerto Rican electorate, they resort to maneuvers in the international arena, hoping to have their political status preference imposed upon Puerto Rico from outside. Why? Obviously it is because they realize that within Puerto Rico itself they have been making no headway whatsoever.

In 1952, the year our commonwealth constitution took effect, political parties favoring independence for Puerto Rico polled a total of 19 percent of the vote in the island-wide general election. Political parties favoring statehood polled only 12.9 percent of the vote that year.

In our most recent election—in November 1976—independence parties polled only 6.4 percent of the vote—just one-third of their electoral strength twenty-four years earlier. In dramatic contrast, the pro-statehood political party which I lead won that 1976 election with 48.3 percent of the vote, nearly four times the pro-statehood total of 1952.

It has been this indisputable trend within the Puerto Rican electorate which has

prompted the pro-independence forces to seek refuge in international forums, and to mount a calculated betrayal of the principle of self-determination by turning their backs on their own people as the sole legitimate judges of the course Puerto Rico should set for itself.

Where are Puerto Rico's political exiles?

There are none.

Separatist Puerto Ricans operate openly from within Puerto Rico itself. They travel the world preaching their gospel, carrying United States passports. They run for elective office in Puerto Rico, and their political parties—despite their lack of significant voter support—receive regular allotments of public funds, equal in amount to those received by non-separatist political parties. Separatists speak out virtually every day on television and radio news and panel discussion programs, and their pronouncements are given ample coverage in every daily newspaper. In addition, some of them publish their own newspapers.

Separatist Puerto Ricans take full advantage of Federal law, Federally-funded programs, and the protection of the Federal courts. Like many other American citizens in other parts of the Nation, Puerto Rican separatists have invoked the recently-enacted Federal Freedom of Information Law to search for evidence of abuses they allege have been perpetrated against them in the past by the Federal Bureau of Investigation.

Wherever they may have occurred, within Puerto Rico or elsewhere in the United States, such abuses are contemptible and I repudiate them unequivocally. But it must never be overlooked that the same government which may have been guilty of abuses also provides the mechanisms for bringing them to light, and for correcting them. And of course it is precisely this extraordinary capacity for self-criticism and self-improvement which makes the United States of America a source of wonder and inspiration for the many peoples residing in nations which are less free and less blessed with effective democratic institutions of government.

During four centuries of Spanish rule, dissident Puerto Ricans were often summarily jailed or exiled. Indeed, my own great-grandfather was jailed and exiled by Spain for advocating the abolition of slavery. The American citizens of Puerto Rico are not ignorant of the liberating changes that have occurred on our island during the eight decades since the United States flag was first raised over Puerto Rico's shores.

Where are Puerto Rico's politicial prisoners?

There are none. Those Puerto Ricans dubbed political prisoners by our separatist elements are individuals tried and convicted in open court for the commission of such violent crimes as murder, attempted murder, kidnapping, arson, or assault. No Puerto Rican has ever been defined as a "prisoner of conscience" by the Nobel Prize-winning human rights organization Amnesty International.

Ladies and gentlemen, not only do Puerto Ricans not flee the island because of alleged political persecution, but, on the contrary, the exact opposite occurs: tens of thousands of persons from foreign countries—including over thirty thousand from Cuba alone—have in recent years fled *to* Puerto Rico precisely to *escape* political persecution in their homelands.

This then is a small part of the panorama that is Puerto Rico's contemporary political reality. As I mentioned earlier, you are cordially invited to examine it for yourselves. Not on a carefully sanitized government tour, but as individual men and women, free to go where you wish and to talk to whomever you please: not just to politicians and ideologues, but to housewives, students, laborers, shopkeepers and farmers.

In the meantime, we the people of Puerto Rico shall continue to advance toward a final decision on our political destiny, free of outside pressure and secure in the knowledge that our decision will be respected by the Executive, Legislative, and Judicial branches of the Federal Government, as well as by our fellow American citizens in the fifty existing United States of America.

Thank you.●

## TRIBUTE TO THE LATE LUCILLE H. BLAKE

(Mr. PERKINS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. PERKINS. Mr. Speaker, it is with great sadness that I take this occasion to record the passing of Miss Lucille H. Blake, who served as my executive secretary here in Washington for nearly a quarter of a century.

Miss Blake died August 27 in her hometown of Fargo, N.D., to which she had returned just a few weeks ago. Although she had retired in 1973, she had continued to live in Washington until she was incapacitated by a stroke this past spring.

She was born in Green Isle, Minn., on April 7, 1916, but grew up in Fargo and attended schools there, including the Sacred Heart Academy and the Interstate Business College.

Lucille, as she was affectionately known by hundreds of people who visited my office and who knew her voice on the telephone, came to Washington during World War II and worked on the staff of the late Senator William Langer for 2 years. She also was on the staff of the late Congressman Charles Raymond Robertson of North Dakota.

After my own election in 1948, Miss Blake became the first employee in my office and was my faithful and tireless assistant for the next 24 years.

A jolly, outgoing, genuinely warm person, Lucille took a personal interest in the case work she handled—particularly the service and veterans' cases. And she was a model of efficiency as well.

I pay tribute to her today as typical of that hardworking, dedicated breed of congressional staff assistants without whom we could not function in our duties. They are unsung, but they are indispensable. And they are appreciated.

It was a great blow to me when failing health finally forced Lucille to retire 5 years ago, and even after that long period of time, we still miss her.

Services were held on August 29 in Fargo, with interment following in Holy Cross Cemetery there. May she rest in peace.●

## THE WORLD ACCORDING TO ANDREW YOUNG

(Mr. ASHBROOK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. ASHBROOK. Mr. Speaker, I would like to take this time to read into the RECORD an excellent article which appeared in the August 1978 Commentary. Written by Carl Gershman, it gives a fine overview of this foreign policy disaster named Andrew Young who continues as an embarrassment to President Carter and the United States.

The article follows:

THE WORLD ACCORDING TO ANDREW YOUNG

(By Carl Gershman)

Andrew Young is unquestionably a prominent figure in American politics today, and one of growing international importance as well. Before his remarkably rapid rise—owing largely to the role he played in Jimmy Carter's presidential campaign—Young served as Congressman from Atlanta's 5th District, and before that as Executive Director of Martin Luther King's Southern Christian Leadership Conference. In both these capacities he was known as a skilled negotiator—tough, but also conciliatory when necessary—and a racial moderate; he was the only black Congressman who voted to confirm Gerald Ford as Vice President, for example. It is only since his appointment as United States Ambassador to the United Nations that Young has seemingly gone out of his way to court political controversy and to adopt the provocative, outspoken manner that has become his trademark in office.

From the beginning, Young has seen that appointment as something more than just a diplomatic assignment. He has referred time and again to its symbolic significance, calling it a sign of America's racial progress and the harbinger of a new relationship between the U.S. and the countries of the Third World. He seems to see himself as a kind of diplomatic avenging angel, called upon to right the wrongs of past American foreign policy, to put the United States on the "right side of the moral issues in this world," and to "repair the damage" which was done during the years when America supported the "worst leadership groups" and became party to a "vast network of oppression" instead of siding with "oppressed people everywhere."

The torrent of controversy provoked by Young during his first months in office seemed designed to call attention to his new, stance which it presumably symbolized, crusading role and to the new American Conor Cruise O'Brien has observed that Young "knows how to be indiscreet and makes his indiscretions work in his favor," and this assessment is probably right. Though Young outraged many people by calling Cuban troops in Angola "a force for stability," or advising Americans not to be "paranoid" about "a few thousand" Communist soldiers in Africa, or by hurling indiscriminate charges of racism at U.S. allies, adversaries, past Presidents, and even the borough of Queens, he also strengthened his credibility at the UN by saying such things and enlarged his popularity among many American blacks. Not long after Young took office, the Nigerian foreign minister called him the "symbol of a new and constructive United States policy toward Africa," and three leaders of the NAACP, including Roy Wilkins, praised him for speaking the "brutal, unvarnished truth" about racism in America and urged President Carter not to let the "enemies of racial progress" sway him from supporting Young.

President Carter has needed no such urging. He has been almost reverential toward Young, calling him the "finest elected official" and the "best man" he has ever known, as well as a "national treasure" and "Third World hero." Repeatedly, the President has made a point of affirming his "complete faith" in the way Young has gone about

fulfilling his diplomatic responsibilities.* In token of all this, Young is the first U.S. Ambassador to have his own full-time staff on the seventh floor of the State Department—down the hall from Secretary of State Vance; he is the only U.S. diplomat permitted to engage in fund-raising activities on behalf of Democratic candidates; and his advice is solicited on many vital policy questions having nothing to do with Africa or the Third World. Carter's initial decision to stop development of the neutron bomb, for example, was reportedly influenced by Young, who feared that production of the bomb would make the U.S. position difficult to defend at the special UN session on disarmament.

Is it then the case that the views which Young has been articulating so freely during his tenure at the UN reflect the policies of the United States government? Young himself suggests as much. Whenever he creates a furor, he defends himself by claiming first that his remarks have been taken out of context and, second, that they represent a fairly accurate reflection of policy—a policy that is in process of changing to become "much more in tune with the thinking of the rest of the world."

Lately, of course, the President has been expressing views about the activities of the Russians and the Cubans in Africa that diverge sharply from those of Young. Nevertheless, it remains unclear whether or to what extent Young speaks for himself or on behalf of the administration. Whatever the answer to that question may turn out to be, Young's political attitudes, as represented by his public utterances during the year-and-a-half since he took office, do indeed, as he himself says, point toward a fundamental revision of American foreign policy—though a revision with very different moral implications from those he ascribes to it. Young's views may or may not be consonant with those of President Carter. But if they are, then the conception of human rights articulated by the Carter administration is a sham, put forward to disguise a rather cynical accommodation to a world in which Communist totalitarianism is the dominant reality.

To understand Young's thinking, one must understand that all his political judgments are made from the vantage point of the American civil-rights movement of the 1960's. When an interviewer commented on "how often you interpret world events through your own civil-rights experience," Young answered: "It's true. I mean, it's all I got. Everybody is determined by his own experience." That experience, in Young's view, is relevant not only to America but to all sorts of countries and situations no matter how far removed they may be from the specific conditions that existed in the American South under segregation. Whether he is speaking in Lagos to a World Conference on Action Against Apartheid, or in Maputo at a conference in support of black nationalist movements in Namibia (South West Africa) and Zimbabwe (Rhodesia), Young continually draws a parallel between the struggles fought in the 50's and 60's against Jim Crow in the South and the struggle currently being fought against white minority rule in Africa.

And it is not only Africa that elicits this parallel. Young is no less hesitant in drawing comparisons between the American civil-rights movement and the current dissident movement in the Soviet Union. He has said for example, that the Shcharansky and Ginzburg trials "remind me very much of my own days in the civil-rights movement." Repression in Mississippi, he has also said, "just made more people more determined," and "[t]he same things will happen in Russia." Furthermore, "as the Soviet Union becomes more prosperous, as more and more people are exposed to any kind of art and culture," especially through the medium of television, there will be a "human-rights explosion that will not be unlike our civil rights movement." Young's experience in the civil-rights movement even provides a model for his approach to the politics of the United Nations. Just as the black movement in the U.S. built a broad coalition for change, so too, he says, is it necessary at the world body "to build coalitions that cross racial and geographic and ideological lines."

So central is the civil-rights movement in Young's scheme of things that he credits it with having started a "political revolution" that brought about a "radical reformation of American foreign policy." In his speech to the Maputo conference in May 1977, Young explained to his African audience how the civil-rights movement evolved into the anti-war protest movement, which in turn created a "new approach to the problems we face everywhere in the world." Thanks to this "new approach," which grew "out of a concern for the end to racism, and an end to militarism and imperialism," American foreign policy is now profoundly different from what it was during "the tragedy of the past twenty years," when American tax dollars were used "not to develop, not to feed the hungry, but essentially as part of an apparatus of repression in many places on the face of the earth." At long last, the cold war is behind us, and what used to be "an adversary relationship between East and West . . . is giving way to much more cooperation. . . ."

Of course, Young is aware that the transformation is not yet total. The U.S. still spends "close to $100 billion a year [sic] on so-called military preparedness," and many Americans still persist in seeing a "so-called 'clear and present danger'" in Communism as a result of a "massive education campaign run by the government and private agencies." But the outlook is improving. Americans are gradually coming to acknowledge the past racism of our government, and to recognize the truth of W.E.B. Du Bois's dictum that "the problem of the 20th century is the problem of the color line." At a conference in Lagos against apartheid, Young noted approvingly that though much of the "imperialism, neocolonialism, capitalism, or what have you" of the United States is still present, the situation is in the process of being transformed by the Carter administration.

Given this general view of the world, it is not surprising to discover that Young sees no reason for the U.S. to oppose Communism militarily, or even to confront it ideologically. He simply does not believe that the Soviet Union and its allies pose a military or strategic threat to the United States. The whole question of the Horn of Africa, for example, is in Young's opinion vastly exaggerated, and he pronounces it "ridiculous" to find "this enormous strategic significance in a thousand miles of sand." Indeed, if there are strategic interests at stake at all in the Horn of Africa, the United States has only benefited from the Soviet action, for it will prove to be "the Soviet Union's Vietnam"—"the Russians have done more to hurt themselves than we could have ever done to hurt them."

Nor, according to Young, does the fact that Cuba is a Communist regime allied with the Soviet Union have any bearing on the situation. "Cubans are people," he said after Cuban advisers arrived in Ethiopia. "They might do good things. They might do bad things. Let's wait and see before we jump to conclusions." When asked on Meet the Press whether he was for, against, or neutral toward the Cuban presence in Africa, Young replied: "I think I would treat the Cuban presence just like I would treat the Israeli presence or the French presence or the American presence. I would ask the question: What are they doing?"

What, then, are the Cubans doing in Africa in Young's opinion? The answer has varied on different occasions, but always the motives imputed have been honorable ones. When the Cubans first arrived in Angola, Young thought that "they were essentially opposing racism, and driving the South Africans out"; later, when the civil war was over and the Neto regime installed in power, Young explained that the Cubans were "basically doing technical assistance," and in fact representing our own interests by protecting Gulf Oil's installations in Cabinda. Whatever their motives, crass political expediency was not among them: "I don't believe that Cuba is in Africa because it was ordered there by the Russians. I believe that Cuba is in Africa because it really has shared a sense of colonial oppression and domination."

It was only when the Cubans (for reasons not quite covered by Young's analysis) "used military means to try to resolve a conflict of Angolans themselves" that he was ready to condemn "that military role." But even while he expressed concern about "the continuation of death and destruction almost everywhere there is a Cuban military presence," he did not feel that any kind of U.S. military response was called for, and he continues to oppose any such response whether in Angola, in the Horn of Africa, in Zaire, or in Rhodesia. To reply with force would, in the first place, only compound the violence ("I don't think it's right for us to become a destructive force because they are a destructive force") and in the second place would never work "because the Soviets are willing to put so much more in weaponry into a situation in Africa," while "[t]he American people have sort of determined that our foreign policy for the near future, anyway, ought to avoid any military involvement in which the shores of the United States are not threatened." And this is all for the best, according to Young, since in any case the U.S. "fares better in the world through peaceful economic competition wherever possible." "The sooner the fighting stops and the trading starts," he has declared, "the quicker we win."

If Young sees no strategic grounds for opposing Communist advances, neither does he see any moral ones, for he does not feel qualified to pass judgment on the Communist system of government. Concerning Angola, for example, he has said that "There's nothing wrong with their deciding to live under a socialist [sic] system," though he did not quite explain what "deciding" meant in this connection. He himself, as he once explained it, would not want to live in a place like Mozambique, for example, yet in the course of a visit there he "found that in the midst of that liberation movement there was in addition to the Communist social structure a movement of humanism . . . I say they are Communist but they are also humanist."

The question of human rights, too, according to Young, is relative rather than absolute, in the sense that it is "understandable that people in different circumstances should have different perceptions of what

*Young has been equally lavish in his praise of Carter. According to Young, the President is "free of racism" and "has the capacity as President of the United States to do more to put an end to racism than anybody since Martin Luther King." This is remarkable praise from Young, all the more so since Carter admittedly took no part in the civil-rights movement and used racially questionable tactics in his 1970 gubernatorial race in Georgia. But Carter is an avowedly repentant sinner and this may account for what *Newsweek* has called the "almost mystical friendship" between the President and Young.

human rights are." In a speech delivered at the Riverside Church in New York on Human Rights Sunday, Young urged Americans to broaden their definition of human rights to take account of these "different perceptions," and to understand that for the poor people of the world, the most pressing concern is overcoming poverty, not political freedom. In effect, therefore, "For most of the world, civil and political rights . . . come as luxuries that are far away in the future." Applying this "different-perceptions" theory to the Soviet Union, Young explained rather ingeniously how under that particular style of government, human rights—redefined, of course—have been preserved. In part, this appears to have been due to differences in climate:

. . . we must recognize that they are growing up in circumstances different from ours. They have, therefore, developed a completely different concept of human rights. For them, human rights are essentially not civil and political, but economic. . . . One lives in a land where, in most of that land, the sun sets as early as three o'clock in the afternoon, and where the planting season is minimal. Under those circumstances the struggle for human rights inevitably becomes far more economic in its expression than it would in a country such as ours, where we almost take it for granted that anything can grow almost anywhere year 'round.

But even the acknowledged defects of Communism do not grant us the right to judge it, in Young's opinion, because our own record on human rights is far from clean. While it is true that there is no political liberty in the Soviet Union, "we unfortunately have been very reluctant to accept the concept of economic responsibility for all of our citizens." And while it is true that the Soviet Union represses its dissidents, "many of our own students were shot down on their own campuses" as a result of their political activities against the war in Vietnam. And even if we do not go in for literal torture, as some other countries do, the United States "still has subtle but very strong systems of intimidation at work that inhibit the possibilities of our poor, our discriminated against, and our dissidents, from speaking fully to address themselves." To illustrate this point, he has observed that a young black in America "is much more likely to go to jail and find himself abused there" than is a young white; and that the poor find it more difficult than the rich to gain adequate legal representation. No wonder, then, that at a meeting of the UN Commission on Human Rights, a body which includes some of the harshest despotisms on the planet, Young said, "I see my country as vulnerable as anybody else's around the table." He made a similar point during the Shcharansky trial when he said that there are "hundreds, perhaps even thousands of people whom I would call political prisoners" in the United States.

Young's willingness to give certain countries the benefit of the doubt extends even to Uganda. He acknowledges that there have been "massive violations of human rights and destruction of people" in that country, but is not sure how much violence is "done as a matter of government policy and how much is done as a result of an imminent kind of chaos." Then, too, Western nations have no right to be sanctimonious about Idi Amin, since they "contributed to overthrowing" the government of Milton Obote (a "left-leaning intellectual") and thereby paved the way for Amin's tyranny. Uganda, therefore, "is not just an African problem, [but] a Western one . . . as a result of the excesses of both colonialism and neocolonialism."

There is, of course, a limit to Young's moral relativism. It does not extend to South Korea, Iran, Chile, the Philippines, or any of the other countries belonging presumably to that "vast network of oppression" to which we became a party in past years. Nor does it extend to South Africa, which Young has singled out from among all the countries of the world for unique moral condemnation. Here, for once, the question of human rights is paramount and there is not a trace of that hesitation to pass judgment which Young so frequently displays toward other governments that deny their citizens democratic rights. Here, and only here, "the whole conscience of the world is . . . on trial."

Appearing on Face the Nation on May 21, 1978, only a few days after Communist-backed forces invaded Zaire's Shaba province and had reportedly launched a major offensive in Eritrea, Young assessed the African situation: "I think our policy is doing very well," he said, "and frankly, I think we are much better off in Africa now . . . than we have been for the last decade." Considered in light of the preceding week's events—and indeed, in light of events that have taken place over the entire period since Young and Carter took charge of our African policy—Young's reply was well-nigh staggering.

There are now Cuban military personnel and civilian "advisers" stationed in some fifteen African countries, most of them concentrated in southern Africa and the Horn, the two zones where military conflict on the continent is most intense. The 25,000-man Cuban force in Angola, which is financed by the Soviet Union at a rate of $2½ million a day, is greater by one-quarter than it was when Carter took office, and serves the double purpose of securing the Communist hold on Angola and aiding pro-Soviet insurgents in neighboring countries. The Cubans guard the Cabinda oilfields (the soruce of yearly revenues of close to $1 billion which keep the MPLA regime afloat); fight a continuing war in the countryside against the guerrilla forces of UNITA and FNLA (the two nationalist movements defeated in the civil war); and maintain order in the capital city of Luanda, where they put down an attempted coup in May of last year. From their Angolan base, the Cubans train SWAPO and ZAPU guerrillas in the use of Soviet weapons for an eventual takeover in Namibia and Zimbabwe. Here, too, they have trained and armed the Congolese National Liberation Front, the rebel group that invaded Shaba province this past May (the second such invasion in fourteen months) in an effort to topple the Mobutu government. In addition to the Angola operation, Moscow has also stepped up arms shipments to the Patriotic Front in Zambia and Mozambique, and flown groups of Malawian recruits to Cuba for military training. Reviewing these efforts in a joint communiqué issued on April 24, 1978, the Soviet Union and Cuba pledged to increase "assistance and support" to all the pro-Moscow insurgencies in the region.

In the Horn, 12,000 Cuban troops, 1,000 Soviet "advisers," and $1 billion of Soviet weapons enabled Ethiopia to drive Somali forces out of the Ogaden desert in March of this year. Not content with this victory, and despite implicit assurances to Washington that the Somali withdrawal would be followed by "substantial reductions" in Cuban and Soviet forces in Ethiopia, Moscow soon sought to establish its control over the entire Horn. On April 9, just three days after Ethiopian President Mengistu returned from a hasty visit to Moscow, there was an abortive coup against the government of Somali President Mohammed Siad Barre, which Somalia charged had been instigated by the Soviet Union and Cuba. Not long after, Ethiopian troops backed by an enlarged Cuban force of 17,000 (and, according to Mengistu, backed also by forces from the Soviet Union, East Germany, and South Yeman) stepped up their offensive against the Eritrean secessionist movement.

In short, during the first year and a half of the Carter Presidency, two areas of considerable strategic importance—southern Africa, with its vase mineral deposits, and the Horn of Africa, with its proximity both to the vital sea routes through the Red Sea and the Indian Ocean and to the world's largest oil reserves in Saudi Arabia—have fallen under increasing assault from the Soviet Union and its allied forces. While all this has been going on, Young has retained his equanimity and urged Americans not to overreact, in accordance with his well-earned reputation in the Carter administration as a "cool-it person." There have, however, been occasions when even Young has lost his equanimity. This happened, for example, when it was announced that an internal settlement had been reached in Rhodesia between the Smith government and three black leaders, Bishop Abel Muzorewa, the Reverend Ndabaningi Sithole, and Senator Jeremiah Chirau. Young was obviously taken by surprise and refused to believe it at first ("Our intelligence reports [said] that this would not happen, certainly not soon"). Then he went on to say that the settlement—which would guarantee the white 4 percent of the population 28 percent of the seats for ten years in a parliament elected by universal suffrage—would not work because it did not "address the issues that have some 40,000 people fighting" (the actual number is closed to 10,000). Comparing it to the "three or four internal settlements in Vietnam" which failed to stop the fighting there, Young predicted that the settlement would lead to a "black-on-black civil war," followed by a "massive commitment of Soviet weapons." He added that even if the U.S. and other Western countries recognized the new Salisbury government (which "would be very difficult"), such recognition would not mean much unless they were willing to send troops in to back it up, if necesary. "I don't think we are ready to do that," Young concluded, thereby announcing in advance that the United States would abstain from any action in the situation, and virtually inviting the Soviet Union and Cuba to intervene.

Young is against the internal settlement, which envisions independence before the end of the year, free and fair elections open to all parties (including the guerrillas who would be encouraged to return and to participate on an equal basis in the new order), on the ground that it is insufficiently representative (though in fact it would be one of the most democratic states in Africa). Instead, he supports the Anglo-American plan which requires all parties to agree to a settlement—the white majority, the Internally-based black groups, and the two wings of the Patriotic Front led by Joshua Nkomo and Robert Mugabe—after which a free election will take place to determine the composition of a new government. But this assumes, first of all, that both Nkomo and Mugabe really want a free election—in which, most observers feel, they would not do very well—and secondly, that a consensus could be reached by all the parties involved not only about the terms for a settlement, but about a future democratic state as well. Hard as it was to reach a compromise between the white minority and the moderate black internal leaders, it is impossible to imagine a compromise between Ian Smith and Mugabe (who has said that there should be no amnesty for "war criminals"). It is also exceedingly difficult to imagine that a consensus could ever be reached between Mugabe, who has opposed multiparty democracy as a "luxury" and has called for a "one-party state," and Muzorewa, the most popular of the internal leaders, who has called for a multiparty, multiracial, constitutional democracy with a bill of rights, an independent judiciary, and a "mixed type of economy."

Indeed, the irreconcilability of these two positions, held by two black leaders, is an ironic commentary on Young's belief, which he has expressed so often at the United Nations and which is such an integral part of

his total outlook, that the East-West conflict between totalitarianism and democracy has come to an end, and that race is the main dividing line in the world today. In fact, however, the decisive issue in Rhodesia is not the imperfections of the democracy envisioned by the internal settlement, or even the resistance to white minority rule, which the settlement would end. Rather, it is whether or not the future Zimbabwe will be democratic or totalitarian.

One need not accept Muzorewa's contention that Young has been "terribly brainwashed by the Patriotic Front and the so-called front-line states" to notice his clear bias in their favor. Indeed he has asserted, in a recent BBC interview, that "We are on the side of the front-line presidents in the Rhodesian situation." In consonance with this, he has spoken of the guerrillas with extreme deference. "People who are engaged in negotiated settlements," he told the Maputo conference in support of the Front, "hardly have the moral right to tell the people who are engaged in armed struggle how to run their paths and determine their freedom." And in further token of his admiration, Young publicly implored "my brother Robert Mugabe . . . not to think of us in the same context as our involvement in Vietnam now in 1977."

In adopting this ingratiating stance toward the Patriotic Front, and by opposing a course that would seek to strengthen its democratic opponents, Young is no doubt motivated in part by the wish to maintain his "credibility" with such Front supporters in Africa as Samora Machel of Mozambique, Agostinho Neto of Angola, and Julius Nyerere of Tanzania. At the same time, there is little to suggest, in light of his overall political point of view, that he would regard the installation of a Mugabe-type regime in Zimbabwe as cause for concern. Certainly it would be no more harmful to U.S. interests, from his point of view, than a Neto regime in Angola, and it might even be helpful. After all, Rhodesia under Mugabe would be "stable," the U.S. could trade with it (importing its chrome, for example, without political embarrassment), and, like Mozambique, it might even be "humanistic" as well as Communist.

In the end, it is Young's apparent lack of commitment to political freedom, and his ability to turn a blind eye to oppression if it is carried out by African and other Third World regimes in the name of a progressive ideology, that is the most troubling aspect of his thought and of his performance at the United Nations. More is at issue than a mere disagreement over policy when Young finds it possible to assert, for example, that the "success" of Mozambique "makes East and West alike look to this nation with new hope and with new courage." Leaving aside the FRELIMO regime's disastrous economic performance, it would be an understatement to say that it has not respected the principle of majority rule, given the fact that Machel has pledged to "liquidate abrasive forces in the service of imperialism" and is currently holding some 100,000 people in forced-labor camps on suspicion of opposing the regime's policies.

And Mozambique is only one example of Young's indifference to the issue of political freedom in Africa except insofar as it pertains to the question of white minority rule. He has also spoken of the "impressive leadership" of SWAPO, the Namibian "liberation" movement, and conferred upon it the "Freedom Now" slogan, without, however, mentioning the arrest and detention in Zambia and Tanzania (under conditions marked by what the New Republic has called "unspeakable cruelties") over 1,000 SWAPO dissidents, whose only crime was calling for a democratic party congress.

Young seems equally unconcerned about the fate of freedom elsewhere in the Third World, so long as the regime in question calls itself "progressive." On the very day that Young was welcoming Vietnam into the United Nations in the most lyrical terms, for example, the New York Times published an article by Henry Kamm containing extensively detailed accounts by refugees of the harsh political persecution which had led them to flee Vietnam by boat, at great risk to their lives. Young has expressed his admiration for "Vietnam's struggle for independence," and in a statement delivered by an aide in Bangkok this March, he observed, in an obvious reference to America's role in the Vietnam war, that "no part of the world has borne more tragic witness than Asia to the devastation of modern man's technology and intolerance of other socioeconomic systems." But nowhere in this speech about "basic human needs" did he mention the plight of refugees from Communist Indochina or, for that matter, the holocaust taking place across the border in Cambodia.

To understand how Young can have evolved into an advocate of U.S. acquiescence in a new system of tyranny, one must again turn to the formative political experience of his life, the civil-rights movement of the 50's and 60's. In a sense, that movement was innocent about international affairs. Though influenced by, and in turn influencing, the anti-colonialist movements of Africa, the civil-rights movement never really had much interest in international questions. Justifiably preoccupied with solving problems in this country, it did not feel called upon to develop a perspective on American foreign policy, which during this period was concerned above all with the containment of Communism. To the degree that the issue of Communism impinged on the civil-rights movement, it did so in one of two ways: the opponents of integration sought to discredit the movement by calling it Communist, and the American Communist party, posing as a dedicated opponent of racial injustice, sought to use the movement to further its own political objectives. Neither attempt was new, and neither was particularly successful.* But perhaps inevitably, a tendency developed to view "the enemy of my enemy as my friend," and some in the civil-rights movement began to identify anti-Communism with opposition to racial progress and to view Communism as a sincere ally of the black freedom struggle. Young in his civil-rights days may have been influenced by this misperception of the role of Communism. Only recently he referred to Paul Robeson—an inveterate apologist for Stalinism—as "the hero of my youth," and he continues to see no contradiction between Robeson's defense of black freedom and his support for Stalinist totalitarianism.

Apart from all this, Young's insistence that the civil-rights movement in America can serve as a paradigm for such differing phenomena as the racial conflict in South Africa and the dissident movement in the Soviet Union reveals a parochialism that accounts in some measure for his failure to understand the nature of totalitarianism. It also accounts for his nonchalant attitude toward political democracy, whose virtues are difficult to appreciate fully without understanding what their absence would entail. In his Reflections on Gandhi, George Orwell wrote: "It is difficult to see how Gandhi's methods could be applied in a country where the opponents of the regime disappear in the middle of the night and are never heard of again. Without a free press and the right of assembly, it is impossible not merely to appeal to outside opinion, but to bring a mass movement into being, or even to make your intentions known to your adversary." Ironically, by looking at the world strictly in terms of his own experience in the civil-rights movement, Young not only misperceives different political situations, but also fails to understand why his own movement was able to appeal so successfully to the conscience of America.

The same parochialism which explains Young's failure to distinguish sufficiently between democracy and totalitarianism also accounts for his inability to see any distinction between authoritarian and totalitarian societies. Referring recently to the restoration of democracy in Portugal, Spain, and Greece, Young said that "totalitarian states and oppressive regimes fall suddenly and without much warning." He did not seem to understand that the right-wing regimes in these countries could be replaced as quickly and as smoothly as they were precisely because they were not totalitarian in the sense of controlling every aspect of human existence. For this same reason, the prospects for a democratic political evolution in South Africa—despite its perilous racial situation and its despicable policy of apartheid—are more hopeful than they are in the Soviet Union or Vietnam. To condemn this society more strongly than any other, as Young has done, bespeaks something less than a consistent moral standard on human rights.

But to attribute Young's political views simply to a naiveté born of a parochial view of the world is insufficient. His objection to anti-Communism, his denunciation of U.S. "militarism" and "imperialism," his opposition to the use of American military power under any circumstances, his readiness to justify Soviet despotism as a product of Russian economic backwardness or to blame Amin's tyranny on Western colonialism, his benignly relativistic attitude toward Third World dictatorships of the Left, in contrast to his absolutistic assurance about rightwing dictatorships—all these bespeak a political perspective that has much more in common with the New Politics movement of the past decade than with the civil-rights movement of the decade before that. This more recent movement has had an impact on American political culture no less far-reaching (though infinitely less constructive) than the civil-rights movement had on the nation's racial attitudes; and it now finds itself well represented in the Carter administration's foreign-policy establishment, especially among the younger members. In virtually every one of his political attitudes Young reflects the conventional wisdom of the New Politics and its two key ideas: that the East-West conflict has now given way to the North-South "dialogue," and that Communism does not constitute a threat to the West.

Obviously this point of view, with its downgrading of political freedom, is well calculated to make Young popular in a forum dominated, as the UN is, by member states which are not democratic. Just as obviously it is indispensable to the role Young wishes to play of chief intermediary between black Africa and the United States. Yet in his eagerness to demonstrate his solidarity with the new Marxist-Leninist elite of black Africa, Young finds himself today for the most part on the side not of the oppressed but of the oppressors. In Angola, for example, thousands of young people from rebel villages in the northern and central part of the country are being rounded up and shipped to Cuba's Oriente province where they are forced to cut sugar cane and undergo political indoctrination. At the same time, and in a far more comfortable setting, the sons and daughters of Angola's new ruling

* A full account of the long history of the relationship between the American Communist party and the racial protest movement in this country appears in Wilson Record's execellent volume, "Race and Radicalism: The NAACP and the Communist Party in Conflict" (Cornell University Press, 1964).

class are receiving technical and political training in Cuba's Isle of Pines at schools named after President Agostinho Neto. Here, in the division between slaves and slave masters, between the victims of the new order and those who rule over it, we have a true paradigm of revolutionary Africa.

President Carter has said that Andrew Young "has a great sensitivity about the yearnings" of Third World peoples, as well as an understanding of the reasons for their "animosities and hatred" toward the United States. "I think," said the President, "he's made great strides in repairing [the] damage that [has] been done." While it is no doubt true that Young has established friendly relations with some leaders who are otherwise hostile to America, he has done so at the expense of a retreat from the principles of liberty and democracy. Worse still, this retreat has involved a solidarity with totalitarian rulers in the Third World whose victims might well pray to be delivered from such "sensitivity" to their "yearnings." For their sake, as well as for our own, one can only hope that President Carter's recent warnings about Soviet-Cuban adventurism in Africa mean that Young is not the "point man" of this administration, as he has claimed to be, but rather the rearguard legacy of a political movement spawned by Vietnam and now on its way to being left behind.●

## CONFERENCE REPORT ON H.R. 12934

Mr. SLACK submitted the following conference report and statement on the bill (H.R. 12934) making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95-1565)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12934) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendments numbered 32, 42, 43, 53, 55, 59, 61, 62, 63, 64, 65, 74, 75, 95, 98, 108, 112, 119, and 122.

That the House recede from its disagreement to the amendments of the Senate numbered 20, 21, 46, 47, 49, 57, 58, 69, 70, 71, 72, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 89, 93, 94, 97, 99, and 121, and agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$646,488,000"; and the Senate agree to the same.

Amendment numbered 44: That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$24,900,000"; and the Senate agree to the same.

Amendment numbered 45: That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$49,286,000"; and the Senate agree to the same.

Amendment numbered 48: That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$16,430,000"; and the Senate agree to the same.

Amendment numbered 50: That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment insert: "$507,525,000: *Provided*, That any unobligated balance remaining in the account entitled "Financial and Technical Assistance" as of September 30, 1978, shall be merged with this appropriation: *Provided further*, That total obligations for new loans and guarantees under the "Economic Development Revolving Fund" shall not exceed $75,000,000"; and the Senate agree to the same.

Amendment numbered 52: That the House recede from its disagreement to the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$29,300,000"; and the Senate agree to the same.

Amendment numbered 54: That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$71,775,000"; and the Senate agree to the same.

Amendment numbered 60: That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$660,650,000"; and the Senate agree to the same.

Amendment numbered 68: That the House recede from its disagreement to the amendment of the Senate numbered 68, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$11,500,000"; and the Senate agree to the same.

Amendment numbered 76: That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$9,690,000"; and the Senate agree to the same.

Amendment numbered 107: That the House recede from its disagreement to the amendment of the Senate numbered 107, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$270,000,000"; and the Senate agree to the same.

Amendment numbered 118: That the House recede from its disagreement to the amendment of the Senate numbered 118, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$520,500,000"; and the Senate agree to the same .

Amendment numbered 120: That the House recede from its disagreement to the amendment of the Senate numbered 120, and agree to the same with an amendment, as follows: In lieu of the sum named by said amendment insert "$1,575,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 40, 41, 51, 56, 66, 67, 73, 78, 88, 90, 91, 92, 96, 100, 101, 102, 103, 104, 105, 106, 109, 110, 111, 113, 114, 115, 116, 117, 123, and 124.

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TED STEVENS,
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*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12934) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

### TITLE I—DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

Amendment No. 1: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a heading.

Amendment No. 2: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

*Salaries and expenses*

For necessary expenses of the Department of State and the Foreign Service, not otherwise provided for, including allowances as authorized by 5 U.S.C. 5921-5925; expenses of binational arbitrations arising under international air transport agreements; expenses necessary to meet the responsibilities and obligations of the United States in Germany (including those arising under the supreme authority assumed by the United States on June 5, 1945, and under contractual arrangements with the Federal Republic of Germany); expenses of the National Commission on Educational, Scientific, and Cultural Cooperation, as authorized by sections 3, 5, and 6 of the Act of July 30, 1946 (22 U.S.C. 287o, 287q, 287r); hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; dues for library membership in organizations which issue publications to members only, or to members at a price lower than to others; expenses authorized by section 2 of the Act of August 1, 1956 (22 U.S.C. 2669), as amended; refund of fees erroneously charged and paid for passports; radio communications; payment in advance for subscriptions to commercial information, telephone and similar services abroad; expenses necessary to provide maximum physical security in Government-owned and leased properties abroad; and procurement by contract or otherwise, of services, supplies, and facilities, as follows: (1) translating, (2) analysis and tabulation of technical information, and (3) preparation of special maps, globes, and geographic aids; $660,945,000: *Provided*, That passenger motor vehicles in possession of the Foreign Service abroad may be replaced in accordance with section 7 of the Act of August 1, 1956 (22 U.S.C. 2674), and the cost, including exchange allowance, of each such replacement shall not exceed $6,500 in the case of the chief of mission automobile at each diplomatic mission (except that four such vehicles may be purchased at not to exceed $9,000 each)

and such amounts as may be otherwise provided by law for all other such vehicles, except that right-hand drive vehicles may be purchased without regard to any maximum price limitation otherwise established by law: *Provided further*, That in addition, this appropriation shall be available for the purchase (not to exceed thirty-three), replacement, rehabilitation, and modification of passenger motor vehicles for protective purposes without regard to any maximum price limitations otherwise established by law.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided in the amendment reflects a reduction of $55,000 from the amount proposed by the Senate. The reduction is to be applied to the Office of Human Rights including reduction of one position allocated to that office.

*Representation allowances*

Amendment No. 3: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $2,900,000.

*Acquisition, operation, and maintenance of buildings abroad*

Amendment No. 4: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $125,000,000 to remain available until expended and provides that not to exceed $2,544,000 may be used for administrative expenses during the current fiscal year.

*Acquisition, operation, and maintenance of buildings abroad (Special Foreign Currency Program)*

Amendment No. 5: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $6,025,000 to remain available until expended.

*Emergencies in the Diplomatic and Consular Service*

Amendment No. 6: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriated $2,350,000.

*Payment to the Foreign Service Retirement and Disability Fund*

Amendment No. 7: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $38,107,000.

*International organizations and conferences*

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a heading.

*Contributions to international organizations*

Amendment No. 9: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $355,392,000 instead of $327,676,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

*Contributions to international organizations*

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties, conventions, or specific Acts of Congress, $355,392,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The managers note that the assessment scale for the United States contribution to the Organization of American States reflects a decrease in 1979 from 66% to 62%. The managers are particularly concerned that this decrease in assessment continue in view of the rapid growth in the OAS budget over the years. Accordingly, the Department of State is expected, in consultation with the appropriate Committees of Congress, to seek to continue this reduction in the U.S. assessment annually, so that within the next few years the United States assessment will be no more than 50% of the budget of the OAS and other Latin American organizations.

*Contributions for international peacekeeping activities*

Amendment No. 10: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $27,000,000.

*Missions to international organizations*

Amendment No. 11: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $12,000,000. The $12,000,000 is to be allocated as follows:

| | |
|---|---|
| U.S. Missions to: | |
| United Nations | $4,037,000 |
| International Organizations, Geneva | 4,710,000 |
| International Organizations, Vienna | 1,036,000 |
| International Civil Aviation Organization | 290,000 |
| Organization of American States | 914,000 |
| United Nations Educational, Scientific and Cultural Organization | 420,000 |
| The Food and Agriculture Organization | 210,000 |
| United Nations Environment Program | 143,000 |
| U.S. Congressional groups to: | |
| Interparliamentary Union | 90,000 |
| North Atlantic Assembly | 50,000 |
| Canada-U.S. Interparliamentary Group | 50,000 |
| Mexico-U.S. Interparliamentary Group | 50,000 |
| Total | 12,000,000 |

*International conferences and contingencies*

Amendment No. 12: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $8,000,000, to remain available until expended, of which not to exceed $175,000 may be expended for representation allowances and official entertainment.

*International trade negotiations*

Amendment No. 13: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $4,717,000.

*International commissions*

Amendment No. 14: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a heading.

*International Boundary and Water Commission, United States and Mexico*

Amendments Nos. 15, 16, and 17: Reported in technical disagreement. The managers on the part of the House will offer motions to recede and concur in the amendments of the Senate which insert language regarding the use of funds provided to the Commission and appropriate $6,800,000 for "Salaries and Expenses" and $3,900,000 for "construction".

*American sections, international commissions*

Amendment No. 18: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriate $2,500,000 for expenses of the International Joint Commission and the International Boundary Commission.

*International fisheries commissions*

Amendment No. 19: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $6,600,000.

*General provisions—Department of State*

Amendment No. 20: Inserts section number.

Amendment No. 21: Changes section number.

TITLE II—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

*Salaries and Expenses*

Amendment No. 22: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $28,474,000 instead of $28,396,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

GENERAL ADMINISTRATION

*Salaries and Expenses*

For expenses necessary for the administration of the Department of Justice, including hire of passenger motor vehicles; and miscellaneous and emergency expenses authorized or approved by the Attorney General or the Assistant Attorney General for Administration; $28,474,000, of which $5,111,000 is for the United States Parole Commission and $1,700,000 is for the Federal justice research program, the latter amount to remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided in the amendment includes funds for nondiscretionary increases as well as funds for five additional positions in the Office of Management and Finance, twelve additional positions for the U.S. Parole Commission, funds for increased travel expenses connected with Judicial Nominating Committees, and funds for additional staff years in the Offices of Public Information and Improvements in the Administration of Justice.

*Legal activities*

Amendment No. 23: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a heading.

*Salaries and expenses, general legal activities*

Amendment No. 24: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $90,550,000 instead of $90,826,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

*Salaries and expenses, general legal activities (including transfer of funds)*

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including miscellaneous and emergency expenses authorized

or approved by the Attorney General or the Assistant Attorney General for Administration; not to exceed $20,000 for expenses of collecting of evidence, to be expended under the direction of the Attorney General and accounted for solely on his certificate; and advances of public moneys pursuant to law (31 U.S.C. 529); $90,550,000: *Provided*, That not to exceed $105,000 may be transferred to this appropriation from the "Alien Property Fund, World War II", for the general administrative expenses of alien property activities, including rent of private or Government-owned space in the District of Columbia.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided in the amendment includes the full amount of the budget request plus funds for 25 additional positions for the Land and Natural Resources Division.

The conferees have provided no funding for private counsel fees. In the event that any such funds are required, the conferees direct the Department to submit a reprogramming request before any funds may be obligated.

*Salaries and expenses, antitrust division*

Amendment No. 25: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $46,377,000 instead of $47,080,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

*Salaries and expenses, antitrust division*

For expenses necessary for the enforcement of antitrust, consumer protection and kindred laws, including $10,000,000 for antitrust enforcement grants to the States authorized by section 309 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, $46,377,000: *Provided*, That none of this appropriation shall be expended for the establishment and maintenance of permanent regional offices of the Antitrust Division.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

*Salaries and expenses, United States attorneys and marshals*

Amendment No. 26: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $196,700,000, authorizes the lease of not more than 800 passenger motor vehicles from the General Services Administration of which not more than 570 shall be for police-type use, and provides that GSA may purchase not more than 100 replacement vehicles without regard to the purchase price limitation for the current fiscal year.

*Support of United States prisoners*

Amendment No. 27: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $25,100,000.

*Fees and expenses of witnesses*

Amendment No. 28: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $20,000,000 and provides that funds shall not be used to pay any witness more than one attendance fee for any one calendar day.

*Salaries and expenses, Community Relations Service*

Amendment No. 29: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $5,353,000.

FEDERAL BUREAU OF INVESTIGATION

*Salaries and expenses*

Amendment No. 30: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

*Salaries and expenses*

For expenses necessary for the detection and prosecution of crimes against the United States; protection of the person of the President of the United States and the person of the Attorney General; acquisition, collection, classification and preservation of identification and other records and their exchange with, and for the official use of, the duly authorized officials of the Federal Government, of States, cities, and other institutions, such exchange to be subject to cancellation if dissemination is made outside the receiving departments or related agencies; and such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General; including purchase for police-type use without regard to the general purchase price limitation for the current fiscal year (not to exceed one thousand three hundred and seventy-four for replacement only) and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; firearms and ammunition; payment of rewards; benefits in accordance with those provided under 22 U.S.C. 1136(9)-(11) and 22 U.S.C. 1157, under regulations prescribed by the Secretary of State; and not to exceed $70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, and to be accounted for solely on his certificate; $561,341,000

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided in the amendment includes the full amount of the budget request plus the following additional amounts: (1) $1,000,000 for domestic security and terrorism investigations, (2) $1,000,000 for coordination of domestic security and terrorism investigations, and (3) $2,591,000 for bank robbery investigations.

It is the intention of the managers that the Federal Bureau of Investigation will not remove or further reduce the agent presence in those rural and heavily Indian populated areas that have been traditionally served and that those areas continue to receive the benefit of agents at the same levels of the past few years.

IMMIGRATION AND NATURALIZATION SERVICE

Amendment No. 31: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $299,350,000 instead of $299,800,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

IMMIGRATION AND NATURALIZATION SERVICE

*Salaries and expenses*

For expenses, not otherwise provided for, necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, including advance of cash to aliens for meals and lodging while en route; payment of allowances (at a rate not in excess of $1 per day) to aliens, while held in custody under the immigration laws, for work performed; payment of expenses and allowances incurred in tracking lost persons as required by public exigencies; payment of rewards; not to exceed $50,000 to meet unforseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on his certificate; purchase for police-type use without regard to the general purchase price limitation for the current fiscal year (not to exceed four hundred seven, of which two hundred ninety-eight shall be for replacement only) and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; firearms and ammunition, attendance at firearms matches; refunds of head tax, maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; operation, maintenance, remodeling, and repair of buildings and the purchase of equipment incident thereto; acquisition of land as sites for enforcement fence and construction incident to such fence; reimbursement to the General Services Administration for security guard services for protection of confidential files; benefits in accordance with those provided under 22 U.S.C. 1136(9)-(11) and 22 U.S.C. 1157 under regulations prescribed by the Secretary of State; research related to immigration enforcement; $299,350,000, of which not to exceed $400,000 shall remain available for such research until expended: *Provided*, That of the amount herein appropriated, not to exceed $50,000 may be used for the emergency replacement of aircraft upon certificate of the Attorney General.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided in the amendment reflects approval of all items proposed in the budget, but will provide funds for the 903 additional positions at a 50% lapse rate. In addition, funds are included for a reduction of lapse on existing positions, a new district office for the Carolinas, and fencing in the Yuma, Arizona sector ($1,500,000).

DRUG ENFORCEMENT ADMINISTRATION

*Salaries and expenses*

Amendment No. 32: Deletes proposal of the Senate which would prohibit establishment of a ceiling on full-time permanent positions for DEA at less than 4,075.

*Federal Prison System*

Amendment No. 33: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a heading.

*Salaries and expenses, Bureau of Prisons*

Amendment No. 34: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

*Salaries and expenses, Bureau of Prisons*

For expenses necessary for the administration, operation, and maintenance of Federal penal and correctional institutions, including supervision and support of United States prisoners in non-Federal institutions; purchase of (not to exceed thirty-two of which twenty-four are for replacement only) and hire of law enforcement and passenger motor vehicles; compilation of statistics relating to prisoners in Federal penal and correctional institutions; assistance to State and local governments to improve their correctional systems; firearms and ammunition; medals and other awards; payment of rewards; purchase and exchange of farm products and livestock; construction of buildings at prison camps; and acquisition of land as authorized by section 4010 of title 18, United States Code; $315,200,000: *Provided*, That there

may be transferred to the Health Services Administration such amounts as may be necessary, in the discretion of the Attorney General, for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

*National Institute of Corrections*

Amendment No. 35: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $9,920,000.

*Buildings and facilities*

Amendment No. 36: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $35,280,000.

*Federal Prison Industries, Incorporated*

Amendment No. 37: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which authorizes the Federal Prison Industries, Inc. to make such expenditures as may be necessary in carrying out the program set forth in the budget.

*Limitation on administrative and vocational training expenses, Federal Prison Industries, Incorporated*

Amendment No. 38: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which sets a limit of $2,041,000 on funds for administrative expenses and $3,040,000 on expenses of vocational training of prisoners.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

*Salaries and expenses*

Amendment No. 39: Appropriates $646,488,000 instead of $641,488,000 as proposed by the House and $656,488,000 as proposed by the Senate. The amount agreed to by the conferees includes $50,000,000 for planning grants, $7,000,000 for community anticrime programs, $25,000,000 (plus $15,000,000 from carryover funds) for law enforcement education (LEEP), and $100,000,000 for juvenile justice and delinquency prevention.

Funds requested for an urban crime prevention program are not included within the amount recommended by the conferees. The conferees feel this item needs further review and would suggest consideration of the request in conjunction with other programs in the President's urban proposal.

*General provisions—Department of Justice*

Amendment No. 40: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which sets a ceiling of $18,500 on funds available for official reception and representation expenses.

Amendment No. 41: Reported in technical dsagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which states that appropriations and authorizations made in this title which are available for attendance at meetings shall be expended in accordance with regulations prescribed by the Attorney General.

Amendment No. 42: Deletes proposal of the Senate to prohibit establishment of a ceiling on full-time permanent positions for the Department of Justice at less than 53,410.

Amendment No. 43: Deletes proposal of the Senate to prohibit us of funds to purchase, lease, or otherwise acquire message-switching equipment until approval is given by the Judiciary Committees of the House and Senate.

TITLE III—DEPARTMENT OF COMMERCE

GENERAL ADMINISTRATION

*Salaries and expenses*

Amendment No. 44: Appropriates $24,900,000 instead of $24,335,000 as proposed by the House and $25,025,000 as proposed by the Senate.

The amount provided includes $202,000 and 6 positions for an expanded congressional liaison staff. The amount also includes $370,000 and 10 positions which were not allowed by the House for the Office of Policy Development. The conferees are concerned about the number of staff for the Office. The conferees recommend that the Secretary review the functions and staff resources of the Office and transfer those positions which are not needed to other parts of the Department where they might be better utilized. The conferees expect the Secretary to report to the House and Senate Appropriations Committees on the progress of this effort.

BUREAU OF THE CENSUS

*Salaries and expenses*

Amendment No. 45: Appropriates $49,286,000 instead of $48,594,000 as proposed by the House and $49,835,000 as proposed by the Senate.

The amount provided includes $878,000 and 24 positions to develop a survey of income, assets and social program participation, and $125,000 to reimburse the Internal Revenue Service for collection of wage data in order to avoid duplicate requests for data on small firms.

*Periodic censuses and programs*

Amendment No. 46: Appropriates $196,800,000 as proposed by the Senate instead of $175,000,000 as proposed by the House.

Amendment No. 47: Inserts language proposed by the Senate which specifies that the exemption from the provisions of 29 U.S.C. 206 and 207 contained in the House bill for certain enumerators applies to the 1980 Decennial Census.

ECONOMIC AND STATISTICAL ANALYSIS

*Salaries and expenses*

Amendment No. 48: Appropriates $16,430,000 instead of $16,080,000 as proposed by the House and $16,875,000 as proposed by the Senate. The amount provided includes $350,000 and 10 positions for the Office of Federal Statistical Policy and Standards.

The conferees are agreed that the project to develop quarterly estimates of national defense purchases in constant dollars should continue to be financed on a reimbursable basis from the Department of Defense.

ECONOMIC DEVELOPMENT ADMINISTRATION

*Economic development assistance programs*

Amendment No. 49: Inserts language proposed by the Senate which makes the appropriation available for programs authorized by title II of the Public Werks and Economic Development Act of 1965, as amended.

Amendment No. 50: Appropriates $507,525,000 instead of $484,325,000 as proposed by the House and $547,775,000 as proposed by the Senate and inserts language providing for a limitation of $75,000,000 on obligations for new loans and guarantees under the Economic Development Revolving Fund instead of a limitation of $58,000,000 on total obligations from such fund as proposed by the House and a limitation of $75,000,000 on obligations for business loans and guarantees from such fund as proposed by the Senate.

The following table summarizes the conference agreement:

| Title and program: | *Amount* |
|---|---|
| Title I—Public Works Grants | $196,000,000 |
| Title II—Business Loans and Guarantees | 21,500,000 |
| Economic Development Revolving Fund | (75,000,000) |
| Title III—Planning, Technical Assistance, Research and Information | 81,425,000 |
| Title IV—District Programs and Indians | 30,000,000 |
| Title IX—Special Economic Adjustment Assistance | 88,500,000 |
| Total, Public Works and Economic Development Act | 417,425,000 |
| Title II—Trade Act of 1974 | 90,100,000 |
| Grand total | 507,525,000 |

The conferees are agreed that the Economic Development Administration should allocate program funds to each regional office in fiscal year 1979 in amounts that are not less than what that region could expect to receive based on the fiscal year 1975–77 percent share of funds obligated in those regions under all regular EDA programs, excluding Sec. 304 allocations, drought, Title X and Local Public Works programs.

*Local public works program*

Amendment No. 51: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

*Local public works program*

For administrative expenses, including expenses for program evaluation by the Secretary of Commerce, necessary to carry out title I of the Public Works Employment Act of 1976 (Public Law 94–369), $10,600,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

*Administration of economic development assistance programs*

Amendment No. 52: Appropriates $29,300,000 instead of $28,690,000 as proposed by the House and $29,950,000 as proposed by the Senate.

The amount provided includes funds for 25 staff years above the number requested in full-time permanent positions funded by rate to approximately 7%.

Amendment No. 53: Deletes language proposed by Senate that no ceiling shall be established at less than 878 on employment in full-time permanent positions funded by this appropriation.

INDUSTRY AND TRADE ADMINISTRATION

*Operations and administration*

Amendment No. 54: Appropriates $71,775,000 instead of $68,175,000 as proposed by the House and $71,900,000 as proposed by the Senate. The amount provided includes $1,200,000 and 52 positions to implement the 1977 amendments to the Export Administration Act and $2,400,000 for a computerized data system for matching textile imports against existing quotas and consultation levels.

The conferees have not agreed to the proposed reduction of $425,000 and 15 positions for field operations and expect this program to be maintained at the same level as provided for fiscal year 1978.

Amendment No. 55: Deletes language proposed by the Senate that no ceiling shall be established at less than 1,700 on employment in full-time permanent positions funded by this appropriation.

MINORITY BUSINESS ENTERPRISE

*Minority business development*

Amendment No. 56: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $57,965,000 and inserts language making the appropriation available for expenses of grants, contracts, or other agreements with public or private organizations.

Amendment No. 57: Provides for a limitation of $44,950,000 on funds which remain available until expended as proposed by the Senate instead of a limitation of $44,800,000 on such funds as proposed by the House.

Amendment No. 58: Provides for a limitation of $13,015,000 for program development and management as proposed by the Senate instead of $13,200,000 for this purpose as proposed by the House.

UNITED STATES TRAVEL SERVICE

*Salaries and expenses*

Amendment No. 59: Appropriates $13,500,000 as proposed by the House instead of $13,800,000 as proposed by the Senate.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*Operations, research, and facilities*

Amendment No. 60: Appropriates $660,650,000 instead of $651,770,000 as proposed by the House and $674,000,000 as proposed by the Senate.

The amount appropriated includes a total of $1,473,000 for expanded stock assessment surveys and analysis of data from menhaden fisheries surveys; $2,330,000 for construction of pollution abatement facilities at fish hatcheries on the Columbia River; $657,000 for operation of an enforcement information system and additional collection of data on marine recreational fisheries; $785,000 for expansion of the Puget Sound Marine Ecosystem Analysis Project; $510,000 for improving water quality sensors and diver effectiveness and safety; and $1,500,000 for purchasing a computer at the Geophysical Fluid Dynamics Laboratory. The amount provided also includes $200,000 for architectural and engineering design studies for a new fisheries laboratory at Manchester, Washington; $175,000 for additional recreational fisheries surveys: $600,000 for additional microconstituent research; $400,000 for an improved Geodetic Network program in South Carolina; $250,000 for initiating the Ocean Pulse project; $300,000 for additional support for aquaculture programs; and a total of $108,000 for restoration of the fiscal year 1978 levels for menhaden utilization research and the Northeast sea herring study.

The conferees are agreed that a total of $2,500,000 is to be allocated for support of the tuna fishing development programs of the Pacific Tuna Development Foundation from the permanent appropriation "Promote and develop fishery products and research pertaining to American fisheries."

Amendment No. 61: Provides that $5,000,000 shall be transferred to this appropriation from the fund entitled "Promote and develop fishery products and research pertaining to American fisheries" as proposed by the House.

Amendment No. 62: Deletes language proposed by the Senate which provides that no ceiling shall be established at less than 11,700 on employment in full-time permanent positions funded by this appropriation.

*Coastal zone management*

Amendment No. 63: Appropriates $57,200,000 as proposed by the House instead of $57,600,000 as proposed by the Senate.

Amendment No. 64: Deletes language proposed by the Senate which provides that no ceiling shall be established at less than 94 on employment in full-time permanent positions funded by this appropriation.

*Coastal energy impact fund*

Amendment No. 65: Deletes proposal of the Senate to appropriate $4,000,000, but provides language which establishes a limitation of $200,000,000 on obligations for payments pursuant to subsections 308 (c), (d), and (f) of the Coastal Zone Management Act of 1972, as amended, as proposed by the House instead of a limitation of $204,000,000 on such obligations as proposed by the Senate.

NATIONAL FIRE PREVENTION AND CONTROL ADMINISTRATION

*Operations, research, and administration*

Amendment No. 66: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $17,395,000 instead of $18,300,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

NATIONAL FIRE PREVENTION AND CONTROL ADMINISTRATION

*Operations, research, and administration*

For expenses necessary to carry out the provisions of the Federal Fire Prevention and Control Act of 1974, as amended, $17,395,000, to remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided includes $500,000 for development of a residential sprinkler standard and $415,000 for a demonstration project on an arson early warning system. The conferees strongly support the efforts of the National Fire Prevention and Control Administration to develop anti-arson programs and encourage the allocation of additional resources to this area to the extent possible.

*Science and technical research*

Scientific and Technical Research and Services

Amendment No. 67: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment of the Senate $87,700,000 instead of $88,150,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter inserted by said amendment, insert:

SCIENCE AND TECHNICAL RESEARCH

*Scientific and technical research and services*

For necessary expenses of the National Bureau of Standards, including the acquisition of buildings, grounds, and other facilities; and the National Technical Information Service; $87,700,000, to remain available until expended, of which not to exceed $3,300,000 may be transferred to the "Working Capital Fund", National Bureau of Standards, for additional capital.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided includes a total of $11,416,000 to begin full implementation of the Federal computer standards program.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

*Salaries and expenses*

Amendment No. 68: Appropriates $11,500,000 instead of $10,965,000 as proposed by the House and $12,000,000 as proposed by the Senate.

MARITIME ADMINISTRATION

Amendment No. 69: Inserts heading.

*Ship construction*

Amendment No. 70: Appropriates $157,000,000, for construction-differential subsidies as proposed by the Senate.

*Operating-differential subsidies*

(Liquidation of Contract Authority)

Amendment No. 71: Provides $250,000,000 for payment of obligations incurred for operating-differential subsidies as proposed by the Senate.

*Research and development*

Amendment No. 72: Appropriates $17,500,000 for expenses of the research and development program of the Maritime Administration as proposed by the Senate.

*Operations and training*

Amendment No. 73: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides $57,150,000 for administrative expenses of the Maritime Administration, maintenance of the national defense reserve fleet, the cost of training at the U.S. Merchant Marine Academy, and Federal financial support to the State marine schools.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

Amendment No. 74: Deletes Sec. 306 proposed by the Senate which provides that no ceiling on employment in full-time permanent positions funded by this title shall be established at less than 30,100.

TITLE IV—THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

*Salaries and expenses*

Amendment No. 75: Deletes proposal of the Senate to insert language authorizing the use of funds for the hire of automobiles for the Associate Justices.

Amendment No. 76: Appropriates $9,690,000 instead of $8,960,000 as proposed by the House and $9,718,000 as proposed by the Senate. This amount provides the full amount of the amended budget request, plus $260,000 to provide each justice with two additional stenographers.

*Care of the building and grounds*

Amendment No. 77: Appropriates $1,450,000 as proposed by the Senate instead of $999,600 as proposed by the House.

Amendment No. 78: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which amends the statutes by adding a subsection to permit funds to be used for expenses of heating and air-conditioning supplied by the Capitol Power Plant.

*Courts of Appeals, District Courts and Other Judicial Services*

Salaries of Supporting Personnel

Amendment No. 79: Appropriates $166,195,000 as proposed by the Senate instead of $164,300,000 as proposed by the House.

Amendment No. 80: Provides that the salary of secretaries to circuit and district judges shall not exceed the compensation for GS–11, as proposed by the Senate, instead of the compensation of GS–10, as proposed by the House.

Amendments No. 81 through 84: Increase limitations on the aggregate salaries which may be paid to secretaries and law clerks appointed by each judge, as proposed by the Senate.

*Travel and miscellaneous expenses*

Amendment No. 85: Appropriates $31,914,000 as proposed by the Senate instead of $31,700,000 as proposed by the House.

*Salaries and expenses of magistrates*

Amendment No. 86: Appropriates $19,411,000 as proposed by the Senate instead of $18,400,000 as proposed by the House.

*Space and facilities*

Amendment No. 87: Appropriates $98,400,000 as proposed by the Senate instead of $99,400,000 as proposed by the House.

*Pretrial services agencies*

Amendment No. 88: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $5,000,000, to remain available until expended.

TITLE V—RELATED AGENCIES

ARMS CONTROL AND DISARMAMENT AGENCY

*Arms control and disarmament activities*

Amendment No. 89: Appropriates $16,395,000, including not to exceed $15,000 for official reception and representation expenses, as proposed by the Senate.

BOARD FOR INTERNATIONAL BROADCASTING

*Grants and expenses*

Amendment No. 90: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which includes a limitation of $52,000 for official and representation expenses of a limitation of $65,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment insert:

BOARD FOR INTERNATIONAL BROADCASTING

*Grants and expenses*

For expenses of the Board for International Broadcasting, including grants to RFE/RL, Inc., $85,000,000, of which $2,000,000, to remain available until expended, shall be available only for fluctuations in foreign currency exchange rates in accordance with the provisions of section 8 of the Board for International Broadcasting Act of 1973, as amended: *Provided*, That not to exceed $52,000 shall be available for official reception and representation expenses.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

COMMISSION ON CIVIL RIGHTS

*Salaries and expenses*

Amendment No. 91: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $10,752,000.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

*Salaries and expenses*

Amendment No. 92: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $521,000 instead of $350,000 as proposed by the House.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

*Salaries and expenses*

Amendment No. 93: Inserts the word "enforcement", as proposed by the Senate, so that the language reads "payments to State and local enforcement agencies".

Amendment No. 94: Appropriates $107,000,000 as proposed by the Senate instead of $110,000,000 as proposed by the House.

FEDERAL COMMUNICATIONS COMMISSION

*Salaries and expenses*

Amendment No. 95: Provides for a limitation of $3,000 for official reception and representation expenses as proposed by the House instead of a limitation of $5,000 for such expenses as proposed by the Senate.

Amendment No. 96: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts language making not to exceed $35,000 available to provide commemorative stamp albums to delegates to the 1979 World Administrative Radio Conference.

Amendment No. 97: Appropriates $70,446,000 as proposed by the Senate instead of $68,535,000 as proposed by the House.

Amendment No. 98: Deletes language proposed by the Senate which provides that no ceiling shall be established at less than 2,283 on employment in full-time permanent positions funded by this appropriation.

FEDERAL MARITIME COMMISSION

*Salaries and expenses*

Amendment No. 99: Appropriates $10,550,000 as proposed by the Senate instead of $10,500,00 as proposed by the House.

FEDERAL TRADE COMMISSION

*Salaries and expenses*

Amendment No. 100: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $64,750,000 instead of $65,900,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment: insert:

FEDERAL TRADE COMMISSION

*Salaries and expenses*

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed $1,500 for official reception and representation expenses; $64.750,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided includes funds for 1,719 staff years. It is the intention of the managers that none of the funds appropriated by this Act may be used to promulgate a trade regulation rule concerning television advertising to children.

The Commission has stated that it does not intend to issue any rule on children's advertising in fiscal year 1979, and the conference report on H.R. 3816 provides that all trade regulation rules of the Commission must be submitted for review by Congress and possible legislative veto, thus assuring that the proper authorizing committees will review any rule on children's advertising prior to its effective date.

None of the foregoing is intended to restrict the authority of the Federal Trade Commission to proceed under section 5 of the Federal Trade Commission Act on a case-by-case basis.

The conferees reaffirm their recognition that potential constitutional problems are raised by this proceeding. The conferees wish to reemphasize to the Commission that such questions are of overriding importance, and both the House and Senate Committees will review the Commission's performance in this area over the coming year.

The conferees wish to emphasize that public participation funds authorized by 15 U.S.C. 57a should be used in a fair and balanced manner to develop fully an accurate and factual record on such matters.

The conferees direct that any F.T.C. study of the structure, conduct and performance of the auto industry should fully include foreign producers. The conferees note that less than one-third of all automotive vehicles produced in 1977 were produced in the United States and that the import penetration of foreign manufacturers in the United States automobile market is substantial. The conferees believe that a study of the industry which fails to take account of competitive factors in the world market for automotive products would lack balance and objectivity. It is the intention of the conferees that, if such a study is to be continued, it must include major foreign producers to the same extent as domestic producers and be conducted in a manner that minimizes the problems pointed out by the reports of the House and Senate Appropriations Committees. The conferees realize that the requests for information may vary among producers.

INTERNATIONAL COMMUNICATION AGENCY

Amendment No. 101: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a heading.

*Salaries and expenses*

Amendment No. 102: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $368,000,000 of which $7,941,000 shall remain available until expended and $410,000 may be used for representation abroad.

*Salaries and expenses (special foreign currency program)*

Amendment No. 103: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $9,824,000, to remain available until expended.

CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST

Amendment No. 104: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $13,500,000.

ACQUISITION AND CONSTRUCTION OF RADIO FACILITIES

Amendment No. 105: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $19,685,000 to remain available until expended.

INTERNATIONAL TRADE COMMISSION

*Salaries and expenses*

Amendment No. 106: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $12,950,000 instead of $13,100,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

LEGAL SERVICES CORPORATION

*Payment to the Legal Services Corporation*

Amendment No. 107: Appropriates $270,000,000 instead of $285,000,000 as proposed by the House and $255,000,000 as proposed by the Senate.

MARINE MAMMAL COMMISSION

*Salaries and expenses*

Amendment No. 108: Appropriates $702,000 as proposed by the House instead of $840,000 as proposed by the Senate.

COMMISSION ON GLOBAL HUNGER AND MALNUTRITION

*Salaries and expenses*

Amendment No. 109: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $1,300,000 instead of $1,500,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

COMMISSION ON GLOBAL HUNGER AND MALNUTRITION

*Salaries and expenses*

For necessary expenses of the Commission on Global Hunger and Malnutrition, includ-

ing services as authorized by 5 U.S.C. 3109, $1,300,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

RENEGOTIATION BOARD

*Salaries and expenses*

Amendment No. 110: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which authorizes the use of funds for termination and cessation of the activities of the Renegotiation Board.

Amendment No. 111: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $5,260,000 instead of $6,260,000 as proposed by the Senate, and $3,000,000 as proposed by the House.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amount provided in the amendment includes $2,260,000 for termination costs.

Amendment No. 112: Makes funds available until March 31, 1979, as proposed by the House instead of May 31, 1979 as proposed by the Senate.

Amendment No. 113: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: ": Provided, That all property (including records) of the Board shall be transferred to the Administrator, General Services Administration, upon cessation of the Board's activities, or on March 31, 1979, whichever first occurs.".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

SECURITIES AND EXCHANGE COMMISSION

*Salaries and expenses*

Amendment No. 114: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $64,650,000 for salaries and expenses of the Commission.

SMALL BUSINESS ADMINISTRATION

*Salaries and expenses*

Amendment No. 115; Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: "$187,000,000, and in addition $13,000,000 for disaster loanmaking activities shall be transferred to this appropriation from the "Disaster Loan Fund".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate. The conference agreement is in lieu of $180,000,000 as proposed by the House, and $193,000,000 as proposed by the Senate.

The amount recommended by the conferees will provide for the additional 321 positions for finance and investment as well as all other increases to the budget provided in the House bill. In addition, the increase over the budget estimate reflects the conferee's belief that SBA should place a greater emphasis on the advocacy, economic research procurement assistance, technical assistance, and management assistance programs. The conferees direct SBA to allocate greater portion of its resources and personnel to these non-lending activities.

Specifically, the conferees direct SBA to fund these programs at the following levels for Fiscal Year 1979:

| | |
|---|---|
| 1. Procurement Assistance | $16,700,000 |
| 2. Technology Assistance | 2,172,000 |
| 3. Management Assistance | 21,965,000 |
| 4. Small Business Development Centers | 8,650,000 |
| 5. 7(j) Management Assistance for Minority business | 12,000,000 |
| 6. Economic Research | 4,000,000 |
| 7. Advocacy | 2,064,000 |
| 8. Public Communications | 657,000 |
| 9. Data Management | 4,500,000 |

The amount recommended includes $1,000,000 to further develop the small business data base as well as 16 additional positions to carry out a pilot decentralized 8(a) program in Region IV.

Amendment No. 116: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed to be stricken and inserted by said amendment, insert: ": Provided, That no part of this appropriation shall be used to fund any small business development center or university business development center pilot program, or any combination thereof, in any state in excess of $300,000 per state until enactment into law of H.R. 11445, or similar legislation.".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

White House Conference on Small Business Amendment No. 117: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $4,000,000 instead of $4,500,000 as proposed by the Senate. The text of the amendment is as follows:

In lieu of the matter proposed by said amendment, insert:

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

For necessary expenses of the White House Conference on Small Business. $4,000,000, to remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

BUSINESS LOAN AND INVESTMENT FUND

Amendment No. 118: Appropriates $520,500,000 instead of $641,500,000 as proposed by the House and $368,780,000 as proposed by the Senate.

The amount agreed to by the conferees is to carry out loan programs under the Business Loan and Investment Fund at the following levels:

[Amounts in millions]

| | |
|---|---|
| 7(a) Business Loans: | |
| Direct & Imm. Part | $220,000 |
| Guaranteed | 3,300,000 |
| 7(h) Handicapped Loans: | |
| Direct & Imm. Part | 16,000 |
| Guaranteed | 6,000 |
| 7(i) Economic Opportunity Loans: | |
| Direct & Imm. Part | 64,000 |
| Guaranteed | 64,000 |
| Development Company Loans: | |
| Direct & Imm. Part | 45,000 |
| Guaranteed | 50,000 |
| Investment Company Assistance: | |
| Direct & Imm. Part | 22,000 |
| Guaranteed | 125,000 |
| 7(l) Energy Loans: | |
| Direct & Imm. Part | 5,000 |
| Guaranteed | 1,000 |

SURETY BOND GUARANTEES RESOLVING FUND

Amendment No. 119: Appropriates $35,000,000 as proposed by the House instead of $40,000,000 as proposed by the Senate.

UNITED STATES METRIC BOARD

*Salaries and expenses*

Amendment No. 120: Appropriates $1,575,000 for salaries and expenses of the Metric Board instead of $1,800,000 proposed by the Senate.

The amount provided includes funds for 25 staff positions for the Board.

TITLE VI—GENERAL PROVISIONS

Amendment No. 121: Deletes proposal of the House which would withhold from obligation or expenditure two percentum of the total budget authority in the Act on payments not required by law.

Amendment No. 122: Deletes proposal of the Senate which would prohibit the use of funds to purchase transportation on foreign flag carriers if similar service is available on United States carriers.

Amendment No. 123. Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 605. It is the sense of the Congress that—

(1) the Government of the United States should give special consideration to the plight of refugees from Democratic Kampuchea (Cambodia) in view of the magnitude and severity of the violations of human rights committed by the Government of Democratic Kampuchea (Cambodia); and

(2) the Attorney General should exercise his authority under section 212(d)(5) of the Immigration and Nationality Act to parole into the United States—

(A) for the fiscal year 1979, 7,500 aliens who are nationals or citizens of Democratic Kampuchea (Cambodia) and who are applying for admission to the United States; and

(B) for the fiscal year 1980, 7,500 such aliens.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 124: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which changes the section number from 607 to 606. The provision prohibits the availability of funds appropriated or otherwise made available by this Act for the Advisory Committee on the Bureau of the Census or any other advisory committee to the Department of Commerce with similar duties unless such committee has filed a charter before July 1, 1978, in accordance with section 9 of the Federal Advisory Committee Act.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

*Position ceilings*

The conferees have deleted the minimum position ceilings inserted by the Senate in 14 different instances in the bill. It is not the intention to indicate a lack of concern about the imposition of arbitrary ceilings, but instead return to the traditional policy that the number of personnel to be employed should be governed by the amount appropriated. Over the last several years the Office of Management and Budget has broken this long-standing policy by establishing personnel ceilings at levels lower than the number that could be funded by the appropriation. There is no problem when the ceilings are established on the basis of good, prudent, and efficient management. However, there is substantial evidence that the ceilings, for example in the case of the National Atmospheric and Oceanic Administration, have been employed in order to minimize Federal employment by contracting out functions at a higher cost to the government. The conferees expect the ceilings to be established in conformance with the amount appropriated and not in an arbitrary fashion.

*Format of budget estimates*

The conferees agree with the comments in the Senate report concerning the format of budget estimates.

The revised budget presentations of the Law Enforcement Assistance Administration and the Economic Development Administration for fiscal year 1979 were not satisfactory. Both of these agencies are of significant congressional and public interest. It was difficult to respond to this interest in the absence of the traditional budget structure that was based on the authorization acts of these agencies. The conferees are agreed that until the authorizations are revised to reflect the new operating structures, the budget estimates for these two agencies must conform to the current structure of the authorizing legislation.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1979 recommended by the Committee of Conference, with comparisons to the fiscal year 1978 amount, the 1979 budget estimates, and the House and Senate bills for 1979 follow:

| | |
|---|---|
| New budget (obligational) authority for the fiscal year 1978 | $10,681,876,400 |
| Budget estimates of new (obligational) authority fiscal year, 1979 | [1] 8,660,076,000 |
| House bill, fiscal year 1979 | 4,681,543,600 |
| Senate bill, fiscal year 1979 | 8,436,480,000 |
| Conference agreement | 8,543,070,000 |
| Conference agreement compared with: | |
| New budget (obligational) authority, fiscal year 1978 | −2,138,806,400 |
| Budget estimates of new (obligational) authority, fiscal year 1979 | −117,006,000 |
| House bill, fiscal year 1979 | +3,861,526,400 |
| Senate bill, fiscal year 1979 | +106,590,000 |

[1] Includes $21,562,400 of budget estimates not considered by the House.

JOHN M. SLACK,
NEAL SMITH,
JOHN J. FLYNT, Jr.,
BILL ALEXANDER,
YVONNE BURKE,
JOSEPH D. EARLY,
GEORGE MAHON,
ELFORD A. CEDERBERG,
MARK ANDREWS,
*Managers on the Part of the House.*

ERNEST F. HOLLINGS,
WARREN G. MAGNUSON,
THOMAS F. EAGLETON,
DANIEL K. INOUYE,
QUENTIN N. BURDICK,
PATRICK J. LEAHY,
DENNIS DECONCINI,
DALE BUMPERS,
LOWELL P. WEICKER, Jr.,
MARK O. HATFIELD,
TED STEVENS,
MILTON R. YOUNG,
*Managers on the Part of the Senate.*

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. RISENHOOVER (at the request of Mr. WRIGHT), for September 12, 13, 14, and 15, on account of official business.

Mr. MCKINNEY (at the request of Mr. RHODES), for today from 6:30 p.m., on account of illness.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GOODLING) to revise and extend their remarks and include extraneous material:)

Mr. BOB WILSON, for 5 minutes, today.
Mr. GOLDWATER, for 5 minutes, today.
Mr. HOLLENBECK, for 5 minutes, today.
Mr. KEMP, for 15 minutes, today.

(The following Members (at the request of Mr. SHARP) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO for 5 minutes today.
Mr. GONZALEZ for 5 minutes today.
Mr. PEPPER for 5 minutes today.
Mr. FOUNTAIN for 5 minutes today.
Mr. BINGHAM for 5 minutes today.
Mr. DIGGS for 5 minutes today.
Mr. DRINAN for 5 minutes today.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. CORRADA, and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,149.75.

Mr. ASHBROOK, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the CONGRESSIONAL RECORD and is estimated by the Public Printer to cost $1,150.

(The following Members (at the request of Mr. GOODLING) and to include extraneous matter:)

Mr. FORSYTHE.
Mr. ANDERSON of Illinois.
Mr. BOB WILSON in two instances.
Mr. MCCLORY.
Mr. MICHEL.
Mr. COUGHLIN in two instances.
Mr. WAMPLER.
Mr. LAGOMARSINO in two instances.
Mr. CORCORAN of Illinois.
Mr. COLLINS of Texas in three instances.
Mr. VANDER JAGT.
Mr. FRENZEL in two instances.
Mr. DERWINSKI in two instances.
Mr. JEFFORDS.
Mr. MARRIOTT.
Mr. MILLER of Ohio in three instances.
Mr. DORNAN.
Mr. MARKS.
Mr. KEMP.

(The following Members (at the request of Mr. SHARP) and to include extraneous matter:

Mr. BLANCHARD in two instances.
Mr. ROE.
Mr. SIMON.
Mr. GONZALEZ in three instances.
Mr. ANDERSON of California in three instances.
Mr. SANTINI.
Mr. DODD.
Mr. YOUNG of Missouri.
Mr. MCDONALD in five instances.
Mr. HAWKINS in two instances.
Mr. HUBBARD.
Mr. PATTISON of New York.
Mr. BRECKINRIDGE in four instances.
Mr. VENTO.
Mr. MINETA.
Mr. CAVANAUGH in two instances.
Mr. KASTENMEIER.
Mr. ROSE.
Mrs. LLOYD of Tennessee in two instances.
Mr. DOWNEY.

## ENROLLED BILLS SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 8112. An act to repeal chapter 27 of title 44, United States Code;

H.R. 9471. An act to amend title 5, United States Code, to provide that Japanese-Americans shall be allowed civil service retirement credit for time spent in World War II interment camps; and

H.R. 12915. An act to amend section 2301 of title 44, relating to the National Archives Trust Fund Board.

## BILLS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills of the House of the following title:

H.R. 8112. To repeal chapter 27 of title 44, United States Code;

H.R. 9471. To amend title 5, United States Code, to provide that Japanese-Americans shall be allowed civil service retirement credit for time spent in World War II interment camps; and

H.R. 12915. To amend section 2301 of title 44, relating to the National Archives Trust Fund Board.

## ADJOURNMENT

Mr. DOWNEY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 2 minutes p.m.) under its previous order, the House adjourned until Wednesday, September 13, 1978, at 10 o'clock a.m.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4965. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense articles and services to Canada (transmittal No. 78–97), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

4966. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense articles and services to Canada (transmittal No. 78–97), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JOHNSON of California: Committee on Public Works and Transportation. S. 1029. An act to authorize the Smithsonian Institution to construct museum support facilities; with amendment (Rept. No. 95–1559). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee of Conference. Conference report on S. 1678 (Rept. No. 95–1560). Ordered to be printed.

Mr. ULLMAN: Committee on Ways and Means. H.R. 12352. A bill to amend the Internal Revenue Code of 1954 to provide that income from certain railroad rolling stock shall be treated as income from sources within the United States; with amendment (Rept. No. 95–1561). Referred to the Committee of the Whole House on the State of the Union.

Mr. PEPPER: Committee on Rules. House Resolution 1343. Resolution providing for the consideration of H.R. 11545. A bill to modify the method of determination quantitative limitations on the importation of certain articles of meat and meat products, to apply quantitative limitations on the importation of certain additional articles of meat, meat products, and livestock, and for other purposes (Rept. No. 95–1562). Referred to the House Calendar.

Mr. FOLEY: Committee on Agriculture. H.R. 13835. A bill to authorize the establishment of an international emergency wheat reserves, and for other related purposes (Rept. No. 95–1564, Pt. I.) Ordered to be printed.

Mr. SLACK: Committee of conference. Conference report on H.R. 12934 (Rept. No. 95–1565). Ordered to be printed.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FOLEY: Committee on Agriculture. H.R. 12556. A bill for the relief of Batavia Turf Farms, Inc.; with amendment (Rept. No. 95–1563). Referred to the Committee of the Whole House.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BLANCHARD (for himself, Mr. ENGLISH, Mr. HILLIS, Mr. KOSTMAYER, Mr. BENJAMIN, Mr. BLOUIN, Mr. CORNELL, Mr. CORRADA, Mr. DAVIS, Mr. DOWNEY, Mr. DUNCAN of Tennessee, Mr. EDWARDS of California, Mr. ERTEL, Mr. EVANS of Georgia, Mr. EVANS of Indiana, Mr. FRENZEL, Mr. GRASSLEY, Mr. HANNAFORD, Mr. HARKIN, Mr. HEFTEL, Mr. ICHORD, Mr. JONES of Tennessee, Ms. KEYS, Mr. KINDNESS, and Mr. LAFALCE):

H.R. 14056. A bill to require authorization of new budget authority for Government programs at least every 10 years, and for other purposes; jointly, to the Committees on Rules, and Government Operations.

By Mr. LEACH (for himself, Mr. CORCORAN of Illinois, Mr. QUIE, Mr. LAGOMARSINO, Mr. PRICE, Mr. LLOYD of California, and Mr. SIMON):

H.R. 14057. A bill to provide for the striking and public sale of a series of gold medallions commemorating outstanding individuals in the American arts; to the Committee on Banking, Finance and Urban Affairs.

By Mr. MICHEL (for himself, Mr. MINETA, Mr. BALDUS, Mr. BIAGGI, Mr. COCHRAN of Mississippi, Mr. CORMAN, Mr. DIGGS, Mr. EDWARDS of California, Mr. GLICKMAN, Mr. GREEN, Mr. HEFTEL, Mr. OTTINGER, Mr. PATTISON of New York, Mr. PRICE, Mr. SPENCE, Mr. WHITEHURST, Mr. WHITTEN, and Mr. YOUNG of Missouri):

H.R. 14058. A bill to promote and coordinate amateur athletic activity in the United States, to recognize certain rights for U.S. amateur athletes, to provide for the resolution of disputes involving national governing bodies, and for other purposes; to the Committee on the Judiciary.

By Mr. MOTTL (for himself, Mr. AUCOIN, Mr. BOWEN, Mr. FARY, Mr. HYDE, Mr. LAGOMARSINO, Mrs. LLOYD of Tennessee, Mr. MARRIOTT, Mr. MURPHY of Pennsylvania, Mr. RAHALL, Mr. RINALDO, Mrs. SPELLMAN, and Mr. WHITEHURST):

H.R. 14059. A bill to authorize the appropriation of the funds necessary to enable the Inspector General, as the supervisory authority in the investigative operations of the Department of Health, Education, and Welfare, to perform his congressionally mandated functions in combating fraud and abuse in programs administered by that Department; to the Committee on Government Operations.

By Mr. MOTTL (for himself, Mr. ROGERS, and Mr. MURPHY of Illinois):

H.R. 14060. A bill to provide for the issuance of a commemorative postage stamp in honor of Gen. Casimir Pulaski and Americans of Polish descent; to the Committee on Post Office and Civil Service.

By Mr. MOTTL (for himself, Mr. AUCOIN, Mr. BOWEN, Mr. D'AMOURS, Mr. FARY, Mr. HYDE, Mr. LAGOMARSINO, Mrs. LLOYD of Tennessee, Mr. MARRIOTT, Mr. MURPHY of Pennsylvania, Mr. RAHALL, Mr. RINALDO, Mrs. SPELLMAN, and Mr. WHITEHURST):

H.R. 14061. A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to allow the disclosure of the mailing address of an individual for use in collecting certain unpaid student loans and for use in verifying information given by an applicant for such a student loan, and for other purposes; to the Committee on Ways and Means.

By Mr. MOTTL (for himself, Mr. AUCOIN, Mr. BOWEN, Mr. FARY, Mr. HYDE, Mr. LAGOMARSINO, Mrs. LLOYD of Tennessee, Mr. MARRIOTT, Mr. MURPHY of Pennsylvania, Mr. RAHALL, Mr. RINALDO, Mrs. SPELLMAN, and Mr. WHITEHURST):

H.R. 14062. A bill to amend part A of title IV of the Social Security Act to provide increased Federal matching of State expenditures for management information systems and fraud control units under the aid to families with dependent children program; to the Committee on Ways and Means.

H.R. 14063. A bill to amend the Social Security Act to broaden and regularize State and Federal matching of records for purposes of the various welfare programs and certain related programs; jointly, to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. MOTTL (for himself, Mr. AUCOIN, Mr. BOWEN, Mr. D'AMOURS, Mr. FARY, Mr. HYDE, Mr. LAGOMARSINO, Mrs. LLOYD of Tennessee, Mr. MARRIOTT, Mr. MURPHY of Pennsylvania, Mr. RAHALL, Mr. RINALDO, Mrs. SPELLMAN, and Mr. WHITEHURST):

H.R. 14064. A bill to direct the Secretary of Health, Education, and Welfare to more effectively obtain records of deaths for the purpose of preventing fraud and waste in payments under the Social Security Act; jointly, to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. ROSE:

H.J. Res. 1136. Joint resolution proposing an amendment to the Constitution of the United States to provide that the level of total expenditures of the United States for any fiscal year shall not exceed the level of total revenues of the United States for such fiscal year and for the disposition of subsequent deficits, and that the gross Federal debt be reduced by open-market operations; to the Committee on the Judiciary.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. PHILLIP BURTON:

H.R. 14065. A bill for the relief of Barry David Tombs; to the Committee on the Judiciary.

By Mr. DERWINSKI:

H.R. 14066. A bill for the relief of Richard B. Port; to the Committee on the Judiciary.

By Mr. EDWARDS of Oklahoma:

H. Res. 1344. Resolution refering the bill for the relief of Amis Construction Co., to the Court of Claims; to the Committee on the Judiciary.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. ERTEL:

(To the amendment offered by Mr. DANIELSON.)

—Page 8, immediately after line 2, insert the following:

(7) In the case of a Member, each instance in which the Member knowingly allows the use of a designation or insignia which appears, or purports to appear, to indicate that it is an official communication, document, or other material of the Congress; except that the Member is not required to list instances in which the Member uses such designation or insignia in fund-raising activities for his own campaign.

H.R. 1

By Mrs. SCHROEDER:

(Amendments to the amendment in the nature of a substitute.)

—Page 29, after line 10, insert the following:

(h) The Director of the Office of Government Ethics shall determine by regulation under what conditions income, property, liabilities, or other items attributable to any partnership, corporation, association, or trust (other than a blind trust) shall be required to be reported as if directly attributable to the reporting individual or his spouse or dependent child.

—Page 33, after line 23, insert the following: "Such remedy shall be in addition to any other remedy available under statutory or common law.".

—Page 34, strike out line 14 and all that follows down through line 23 and insert in lieu thereof the following:

REVIEW OF REPORTS

SEC. 206. (a) Each designated agency official or Secretary concerned shall make provisions to ensure that each report filed with him under this part shall be reviewed within 60 days after the date of such filing, except that the Director of the Office of Government Ethics only shall review those reports transmitted to him under this part within 60 days after the date of transmittal.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford him a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance.

(3) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, he shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in his opinion be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such regulations as the Director of the Office of Government Ethics or a Secretary concerned, as the case may be, may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position (other than in the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate future action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the uniformed services, the Secretary concerned shall take appropriate future action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee the matter shall be referred to the head of the appropriate agency for further appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the further action to be taken.

(7) For purposes of assisting employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, each Secretary concerned and designated agency official (including the President in the case of the individuals employed in the Executive Office of the President) shall maintain a list of those circumstances or situations which have or may result in noncompliance with such laws or regulations. Such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this part. The absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

(8) The preceding provisions of this subsection shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

—Page 35, line 6, after "part." insert "Section 205 (a), (b), and (d) shall not apply with respect to any such report.".

—Page 35, after line 18, insert the following:

AUTHORITY OF COMPTROLLER GENERAL

SEC. 208. The Comptroller General shall have access to financial disclosure reports filed under this part for the purposes of carrying out his statutory responsibilities.

Page 35, line 20, strike out "208." and insert in lieu thereof "209.".

Page 36, line 2, strike out "209." and insert in lieu thereof "210."

Page 66, line 10, strike out "209" and insert in lieu thereof "210".

—Strike out part B of title II (beginning on page 39, line 21, and ending on page 44, line 9) and insert in lieu thereof the following new part:

PART B—OFFICE OF GOVERNMENT ETHICS

OFFICE OF GOVERNMENT ETHICS

SEC. 221. (a) Chapter 11 of title 5, United States Code, is amended by adding at the end thereof the following:

"Subchapter II—Office of Government Ethics

"1111. Establishment of Office of Government Ethics

"(a) There is established in the Office of Personnel Management an office to be known as the Office of Government Ethics.

"(b) There shall be at the head of the Office of Government Ethics a director (hereinafter in this chapter referred to as the 'Director'), who shall be appointed by the President, by and with the advice and consent of the Senate.

"1112. Functions of Office

"(a) The Director shall provide overall direction of executive branch policies relating to preventing conflicts of interest on the part of employees within the executive branch.

"(b) The responsibilities of the Director shall include—

"(1) monitoring and investigating compliance with the provisions of part A of title II of the Ethics in Government Act of 1978 by individuals appointed or employed (other than in the uniformed services) in the executive branch;

"(2) auditing on a random basis financial reports submitted by such individuals under part A of title II of such Act for the purpose of determining whether such reports are complete and accurate;

"(3) establishing a program under which advisory opinions relating to conflicts of interests may be provided, on request, to any person by the Director or designated agency official;

"(4) supervising and defining the duties and responsibilities of ethics counselors;

"(5) evaluating the effectiveness of the provisions of laws and regulations relating to conflicts of interest and reporting to the Office of Personnel Management for transmittal to the Congress any recommendations for legislative or administrative action he considers appropriate;

"(6) establishing, after consultation with the Attorney General, an effective system for reporting allegations of violations of conflict-of-interest laws to the Attorney General, as required by section 535 of title 28; and

"(7) providing information on and promoting understanding of ethical standards in the executive branch.

"1113. Administrative provisions

"At the request of the Director, each agency in the executive branch is directed to—

"(1) make its services, personnel, and facilities available to the Director and ethics counselors to the greatest practicable extent for the performance of his functions; and

"(2) except when prohibited by law, furnish to the Director or any ethics counselors all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

"1114. Ethics counselors

"(a) Such ethics counselors as the Director may determine necessary (not to exceed 75 positions) shall be appointed by and subject to the control of the Director. Such counselors shall be assigned between and among the various agencies in the executive branch on a rotating basis. One such counselor may be assigned to two or more of such agencies in circumstances in which the Director determines it appropriate to do so. One ethics counselor assigned to an agency shall serve as that agency's designated agency official.

"(b) Ethics counselors shall—

"(1) be appointed without regard to section 3503(a) of this title, and

"(2) be subject to removal only under the procedures under section 7521 of this title, relating to administrative law judges.

"1115. Regulations relating to disclosure of financial interest and conflicts of interest

"(a)(1) Subject to paragraph (3) of this subsection—

"(A) any regulation under part A of title II of the Ethics in Government Act of 1978, and

"(B) any regulation relating to conflicts of interest applicable to employees or classes of employees within the executive branch,

shall, except as provided in paragraph (2), be prescribed only by the Director and shall be prescribed in accordance with section 553 of this title, notwithstanding any exception therein for matters relating to agency management or personnel.

"(2) Paragraph (1) of this subsection shall not apply with respect to—

"(A) any exercise of authority vested in and performed by the President; or

"(B) any exercise of authority vested in a Secretary concerned.

"(3)(A) Regulations to which paragraph (1) of this subsection applies shall not take effect unless approved by the Director of the Office of Personnel Management. Unless disapproved by the Director of the Office of Personnel Management within 30 days after transmittal of the proposed regulations to them, such regulations shall be deemed approved.

"(B) In addition to the approval required under subparagraph (A) of this paragraph, any regulation to which paragraph (1) of this subsection applies shall not take effect unless the Director transmits to the Congress a copy of such regulation, as approved under subparagraph (A) of this paragraph, and before the close of the 60-day period of continuous session beginning on the date of such transmittal neither House of the Congress has adopted a resolution the matter after the resolving clause of which states: 'That the hereby disapproves the regulation transmitted to the Congress by

the Director of the Office of Government Ethics on .', the blank spaces therein being filled in appropriately.

"(C) For the purpose of subparagraph (B) of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

"(b) Any interested person may seek judicial review under chapter 7 of this title of any regulation to which subsection (a)(1) of this section applies."

(b)(1) Chapter 11 of title 5, United States Code, is further amended by inserting after section 1101 the following:

"Subchapter II—Office of Personnel Management".

(2) The analysis for chapter 11 of title 5, United States Code, is amended—

(A) by inserting before the item relating to section 1101 the following:

"Subchapter I—Office of Personnel Management"; and

(b) The analysis for chapter 11 of title 5, United States Code, is amended by inserting at the end thereof the following:

"Subchapter II—Office of Government Ethics

"Sec.
"1111. Establishment of Office of Government Ethics.
"1112. Functions of Office.
"1113. Administrative provisions.
"1114. Ethics counselors.
"1115. Regulations relating to disclosure of financial interests and conflicts of interest.".

(2) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(144) Director of the Office of Government Ethics, Office of Personnel Management.".

(c) No individual employed by the Government on the date of the enactment of this Act shall be separated or reduced in grade, rank, or compensation by reason of the transfer of any duties resulting from the amendments made by this title.

(d)(1) There are authorized to be appropriated, for each of the fiscal years 1979, 1980, and 1981, such sums as are necessary for the compensation of ethics counselors appointed under section 1114 of title 5, United States Code (as added by this Act).

(2) There is authorized to be appropriated, for each of the fiscal years 1979, 1980, and 1981, the sum of $1,000,000 to carry out the purposes of the amendments made by this section and section 201 of this Act, other than purposes for which appropriations are authorized in paragraph (1) of this subsection.

(e) Not later than one year after the date of the enactment of this Act, the Director of the Office of Government Ethics shall—

(1) conduct a comprehensive review of existing laws and regulations relating to conflicts of interest; and

(2) submit to the Congress a report on such review, together with such recommendations for legislative or administrative action as the Director considers appropriate.

(f) Section 1308(a) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (3).

(2) by striking out the period at the end of paragraph (4) and inserting "; and" in lieu thereof; and

(3) by adding at the end thereof the following new paragraph:

"(5) a report to be prepared by the Director of the Office of Government Ethics which shall include—

"(A) a summary of the activities of the Director and ethics counselors appointed under section 1114 of this title in carrying out the functions of the Office of Government Ethics; and

"(B) any recommendations of the Director for legislative or administrative action considered to be appropriate by the Director.".

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H.R. 11280

By Mr. SNYDER:

(Amendment in the nature of a substitute to the Leach amendment.)

—Page 337, after line 2, insert the following:

"7124. Air traffic controllers

"An air traffic controller shall not—

"(1) willfully hinder or impede his own work performance, productivity, or discharge of duties or that of any other employee; or

"(2) engage in a strike, work stoppage, or slowdown."

H.R. 12005

By Mr. SEIBERLING:

—On page 14, immediately after line 18, insert the following new section:

SEC. . Using sums authorized to be appropriated by this Act, the Federal Bureau of Investigation shall in its Uniform Crime Reports classify arson as a Part 1 offense.

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H.R. 12161

By Mr. MOFFETT:

—On the first page, beginning on line 5, strike out "$2,300,000,000" and insert in lieu thereof "$1,800,000,000".

On the first page, line 9, strike out "$2,300,000,000" and insert in lieu thereof "$1,800,000,000".

Page 2, line 3, strike out "$3,300,000,000" and insert in lieu thereof "$2,800,000,000".

—Page 2, immediately after line 3, insert the following new section:

SEC. 2. (a) Section 305(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(a)) is amended by inserting immediately after the first sentence thereof the following new sentence: "In addition, any State in the region may submit a proposal for a supplemental transaction to the Secretary, and in any such case the Secretary shall, within 60 days after the date of such submission, forward such proposal, with a recommendation whether such proposal is consistent with the goals of the Final System Plan, to the Association."; and

(b)(1) The third sentence of section 305(a) of such Act is amended by striking out "(other than a proposal developed by the Association) shall be submitted in writing to the Association and";

(2) The last sentence of section 305(a) of such Act is amended by striking out "developed by the Secretary" and inserting in lieu thereof "submitted by the Secretary";

(3) Section 305(d) of such Act is amended—

(A) in the second sentence of paragraph (1), by striking out "made by the Secretary" and inserting in lieu thereof "developed by the Secretary"; and

(B) in the fourth sentence of paragraph (2), by striking out "developed by the Secretary" and inserting in lieu thereof "submitted by the Secretary".

—Page 2, immediately after line 3, insert the following new section:

SEC. 3. Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726 (b)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) After the date of enactment of this paragraph, the Association shall not make any additional purchases of debentures or series A preferred stock of the Corporation in any fiscal year unless the Corporation demonstrates to the Association that—

"(i) no officer, director, or employee of the Corporation who is compensated at a rate in excess of $40,000 per year received, during the preceding fiscal year, but not including amounts paid prior to April 1, 1978, any form of compensation as an incentive or bonus (including stock option programs, allowances for life insurance, membership in country clubs or other private clubs, or use of automobiles) in addition to such individual's regular salary; and

"(ii) no such officer, director, or employee received, during the preceding fiscal year, but not including increases granted prior to enactment of this section, an increase in salary greater in percentage than the overall percentage of the adjustment in the rates of pay for Federal employees under the General Schedule, as established for such fiscal year under chapter 53 of title 5, United States Code, unless such officer, director, or employee was promoted to a higher position within the corporation.

"(B) The provisions of this section shall cease to apply when the Corporation has, for two consecutive quarters, net positive funds.

—Page 2, immediately after line 3, insert the following new section:

SEC. 4. Section 307 of the Regional Rail Reorganization Act is amended by inserting after subsection (b) a new subsection (c) as follows:

"(c) Monitoring of the Corporation. (1) The Association shall also report to the Congress, in accordance with this subsection, the policies of the Corporation and the results of such policies with respect to operations, cost containment, and marketing.

"(2) Within 90 days after the date of enactment of this subsection, the Association shall (A) subdivide each such policy area into constitutent parts or groups of parts which are specific and significant, (B) identify the most appropriate indicia to reflect accurately such parts or groups of parts, and (C)(i) determine any and all deficiencies in data used to compute the values of such indicia including consistency and clarity of definitions, timeliness of data entry, editing and validation of input data, and processing, and (ii) outline the efforts of the Association and and Corporation to correct the deficiencies and the results of such efforts. On or before the end of such 90 day period, the Association shall submit to the Congress such methodological information and additional information which the Association deems necessary or appropriate to further the purposes of this title.

"(3) Using such indicia, the Association shall report on (A) the relationship of each constituent part or groups of parts to the Corporation's revenue and capital and operating expenses, (B) the extent to which such parts or groups of parts contributes to profits or losses, (C) the efforts of management to contain or reduce the contribution of such part or group of parts to losses, (D) the results of such efforts, and (E) such other information as the Association deems necessary or appropriate.

"(4) The Association shall (A) transmit to the Congress the first such monitoring report pursuant to paragraph (3) at the end of the first calendar quarter which begins after the end of the 90 day period for preparation and submission of the methodological information pursuant to paragraph (2), (B) report such monitoring information to the Congress at the end of the first quarter of each calendar year thereafter, (C) update methodological and monitoring information periodically as the Association deems necessary or appropriate, but in no case less frequently than once a year, and (D) where the results of such updating are statistically significant or relevant to Congressional policy-making, report them and the reasons for their significance at the end of the calendar quarter in which the updating occurred."

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H.R. 12611

By Mr. JOHN L. BURTON:

—Page 71, lines 21 and 22, strike out "Sec-

retary of Transportation" and insert in lieu thereof "Administrator".

Page 71, line 23, before the period insert the following: "and full evaluation of any report or recommendation submitted under section 107 of this Act".

—Page 78, line 2, insert "and of the Effects of Implementing the Air Service Improvement Act of 1978 on the Level of Air Safety" after "Transportation".

Page 78, line 5, strike out "section" and insert in lieu thereof "sections".

Page 79, line 2, strike out the quotation marks and the second period, and after such line insert the following new section:

"STUDY OF THE EFFECTS OF IMPLEMENTING THE AIR SERVICE IMPROVEMENT ACT OF 1978 ON THE LEVEL OF AIR SAFETY

"Report

"SEC. 107. (a) Not later than January 31, 1980, and by each January 31 thereafter, the Administrator shall prepare and submit to the Congress and the Board a comprehensive annual report on the extent to which the implementation of the Air Service Improvement Act of 1978 has, during the preceding calendar year, affected the level of air safety. Each such report shall, at a minimum, contain an analysis of each of the following:

"(1) All relevant data on accidents and incidents occurring during the calendar year covered by such report in air transportation and on violations of safety regulations issued by the Administrator occurring during such calendar year.

"(2) Current and anticipated personnel requirements of the Administrator with respect to enforcement of air safety regulations.

"(3) Effects on current levels of air safety of changes or proposals for changes in air carrier operating practices and procedures which occurred during the calendar year covered by such report.

"(4) The adequacy of air safety regulations taking into consideration changes in air carrier operating practices and procedures which occurred during the calendar year covered by such report.

"Recommendations

"(b) Not later than January 31, 1980, and by each January 31 thereafter, the Administrator shall submit to the Congress and the Board recommendations with respect to the level of surveillance necessary to enforce air safety regulations and the level of staffing necessary to carry out such surveillance. The Administrator's recommendations shall include proposals for any legislation needed to implement such recommendations."

Page 79, strike out the quotation marks and the period at the end of the matter below line 6, and after such matter insert the following:

"Sec. 107. Study of the effects of implementation of the Air Service Improvement Act of 1978 on the level of air safety.

"(a) Report.

"(b) Recommendations."

—Page 116, line 6, strike out "In promulgating such" and all that follows through the period at the end of line 9 and insert in lieu thereof the following: "Such safety standards shall become effective not later than the last day of the eighteenth month which begins after such date of enactment and shall impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers which provide service pursuant to certificates issued under section 401 of this title."

H.R. 13750

By Mr. JEFFORDS:

—At the end thereof, add the following:

TITLE V—TAX INCENTIVES FOR THE PRODUCTION AND CONSERVATION OF ENERGY AND FOR CONVERSION TO ALTERNATIVE ENERGY SOURCES

SEC. 501. RESIDENTIAL ENERGY CREDIT.

(a) GENERAL RULE.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44B the following new section:

"SEC. 44C. RESIDENTIAL ENERGY CREDIT.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the qualified energy conservation expenditures, plus

"(2) the qualified renewable energy source expenditures, plus

"(3) the qualified hydrogen energy expenditures.

"(b) QUALIFIED EXPENDITURES.—For purposes of subsection (a)—

"(1) ENERGY CONSERVATION.—In the case of any dwelling unit, the qualified energy conservation expenditures are 20 percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

"(2) RENEWABLE ENERGY SOURCES.—In the case of any dwelling unit, the qualified renewable energy source expenditures are the following percentages of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit:

"(A) 30 percent of so much of such expenditures as does not exceed $2,000, plus

"(B) 20 percent of so much of such expenditures as exceeds $2,000 but does not exceed $10,000.

"(3) HYDROGEN ENERGY.—In the case of any dwelling unit, the qualified hydrogen energy expenditures are 20 percent of so much of the hydrogen energy expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

"(4) PRIOR EXPENDITURES BY TAXPAYER ON SAME RESIDENCE TAKEN INTO ACCOUNT.—If for any prior taxable year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1), (2), or (3) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

"(5) MINIMUM DOLLAR AMOUNT.—No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowable with respect to such return is less than $10.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ENERGY CONSERVATION EXPENDITURE.—The term 'energy conservation expenditure' means an expenditure made on or after 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the original installation of such insulation or other component) installed in or on a dwelling unit—

"(A) which is located in the United States, the Virgin Islands, or Guam,

"(B) which is used by the taxpayer as his principal residence, and

"(C) the construction of which was substantially completed before April 20, 1977.

"(2) RENEWABLE ENERGY SOURCE EXPENDITURE.—

"(A) IN GENERAL.—The term 'renewable energy source expenditure' means an expenditure made on or after April 20, 1977, by the taxpayer for renewable energy source properly installed in connection with a dwelling unit—

"(i) which is located in the United States, the Virgin Islands, or Guam, and

"(ii) which is used by the taxpayer as his principal residence.

(B) ITEMS INCLUDED.—The term 'renewable energy source expenditure' includes only expenditures for—

"(i) renewable energy source property, or

"(ii) labor costs properly allocable to the onsite preparation, assembly, or installation of renewable energy source property.

"(C) SWIMMING POOL, ETC., USED AS STORAGE MEDIUM.—The term 'renewable energy source expenditure' does not include any expenditure properly allocable to a swimming pool used as an energy storage medium.

"(3) HYDROGEN ENERGY EXPENDITURES.—

"(A) IN GENERAL.—The term 'hydrogen expenditures' means an expenditure made on or after April 20, 1977, by the taxpayer for hydrogen energy property and installation installed in connection with a dwelling unit—

"(i) which is located in the United States, the Virgin Islands, or Guam, and

"(ii) which is used by the taxpayer as his principal residence.

"(B) ITEMS INCLUDED.—The term 'hydrogen energy expenditures' includes only expenditures for—

"(i) hydrogen energy property, and

"(ii) labor costs properly allocable to the onsite preparation, assembly, or installation of hydrogen energy property, or to the modification of conventional property for the use of hydrogen as a fuel.

"(4) INSULATION.—The term 'insulation' means any item—

"(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 3 years, and

"(D) which meets the performance and quality standards, if any, which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the item.

"(5) OTHER ENERGY-CONSERVING COMPONENT.—The term 'other energy-conserving component' means any item (other than insulation)—

"(A) which is—

"(i) a replacement furnace or boiler designed to provide more efficient energy utilization by improving heat generation or lowering heat losses,

"(ii) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(iii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

"(iv) an electrical or mechanical furnace ignition system which replaces a gas pilot light,

"(v) a storm or thermal window or door for the exterior of the dwelling,

"(vi) an automatic energy-saving setback thermostat,

"(vii) caulking or weather stripping of an exterior door or window,

"(viii) a heat pump which replaces an electric resistance heating system,

"(ix) meters which display the cost of energy usage,

"(x) a replacement fluorescent lighting system,

"(xi) an evaporative cooling device,

"(xii) an item (other than a fireplace) which is designed to use wood and peat as a fuel for space heating, the heating of water or cooking of food, or any combination thereof, including any controls, ducts, stovepipes, footing or other item (other than a chimney) necessary for the safe and efficient operation of any such item, or

"(xiii) an item of the kind which the Secretary specifies by regulations as increasing (by conversion or otherwise) the energy efficiency of the dwelling,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 3 years, and

"(D) which meets the performance and quality standards, if any, which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the item.

In establishing regulations under this paragraph, the Secretary shall prescribe (i) guidelines setting forth the criteria which are used in the determination of whether an item is an energy-conserving component, and (ii) a procedure under which a manufacturer of an item may request the Secretary to specify or certify that item as an energy-conserving component.

"(6) RENEWABLE ENERGY SOURCE PROPERTY.—The term 'renewable energy source property' means property—

"(A) which, when installed in connection with a dwelling—

"(i) uses solar energy, by means of an active solar system or a passive solar system, or a combination thereof, to heat or cool such dwelling or to provide hot water for use within such dwelling, or to provide electricity,

"(ii) uses wind energy for nonbusiness residential purposes,

"(iii) is necessary to distribute or use geothermal deposits (as defined in section 613(e)) which provide geothermal energy to heat or cool such building or provide hot water for use within such building, or

"(iv) uses any other form of renewable energy which the Secretary specifies by regulations,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 5 years, and

"(D) which meets the performance and quality standards, if any, which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the property.

"(7) HYDROGEN ENERGY PROPERTY.—The term 'hydrogen energy property' means property—

"(A) which, when installed in connection with a dwelling—

"(i) uses hydrogen as a fuel for the purposes of heating or cooling such dwelling or providing hot water for use within such dwelling, or

"(ii) is used in the electrolysis of water for the production of hydrogen,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 5 years, and

"(D) which meets the performance and quality standards, if any, which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the property.

"(8) CONSULTATION IN PRESCRIBING STANDARDS.—Performance and quality standards shall be prescribed by the Secretary under paragraphs (4), (5), (6), and (7) only after consultation with the Secretary of Energy, the Secretary of Housing, and Urban Development, and other appropriate Federal agencies.

"(9) WHEN EXPENDITURES MADE; AMOUNT OF EXPENDITURES.—

"(A) Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when original installation of the item is completed.

"(B) In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the taxpayer begins.

"(C) The amount of any expenditure shall be the cost thereof.

"(D) If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of the preceding sentence, use for a swimming pool shall be treated as use which is not for residential purposes.

"(10) PRINCIPAL RESIDENCE.—The determination of whether or not a dwelling unit is a taxpayer's principal residence shall be made under principles similar to those applicable to section 1034, except that—

"(A) no ownership requirement shall be imposed, and

"(B) the period for which a dwelling is treated as the principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his principal residence.

"(11) ENVIRONMENTAL RESTRICTIONS ON CERTAIN WOOD AND PEAT BURNING ITEMS.—No credit shall be allowed under subsection (a) for expenditures with respect to any item described in paragraph (5)(A)(xii) which are to be installed in any metropolitan or other area after the date on which—

"(A) the Administrator of the Environmental Protection Agency certifies to the Secretary that the emissions from such items would cause air quality in such area to be in violation of any Federal law, or

"(B) the Secretary of Agriculture certifies to the Secretary that additional consumption of wood in connection with such items would endanger forests in that area.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residence by 2 or more individuals—

"(A) the amount of the credit allowable under subsection (a) by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year; and

"(B) each of such individuals shall be allowed a credit under subsection (a) for the taxable year in which such calendar year ends (subject to the limitation of paragraph (5) of subsection (b)) in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

"(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

"(3) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph 1 of section 528(c) other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) CARRYOVER OF UNUSED CREDIT.—If the amount of the credit determined under this section for the taxable year exceeds the liability for the taxpayer for the tax under this chapter for the taxable year, the excess shall be carried over to each of the 2 taxable years succeeding that taxable year. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 2 taxable years to which it may be carried, and then to the succeeding taxable year to the extent that it may not be added for a prior taxable year to which it might be carried.

"(g) TERMINATION.—This section shall not apply to expenditures made after December 31, 1985.".

(b) INSPECTION.—To the extent not presently authorized and utilized by any agency of the United States in the assessment and collection of income taxes, no procedure or practice which utilizes onsite inspection of the residence of an individual shall be employed to determine if that individual is entitled to a credit under section 44C of the Internal Revenue Code of 1954, as added by subsection (a), unless such procedure or practice provides that such inspection shall take place only with the written consent of such individual.

(c) TECHNICAL AND CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 44B the following new item:

"Sec. 44C. Residential energy credit.".

(2) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out "credits allowable under—" and all that follows and inserting in lieu thereof "credits allowable under subpart A of part IV other than under sections 31, 39, 43, and 44C.".

(3) Subsection (a) of section 1016 of such Code (relating to adjustments to basis) is amended by inserting after paragraph (20) the following new paragraph:

"(21) to the extent provided in section 44C(e), in the case of property with respect to which a credit has been allowed under section 44C;".

(4) Subsection (b) of section 6096 of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after April 20, 1977.

# EXTENSIONS OF REMARKS

## BALANCE(S) OF POWER SERIES BOOK IV(E)—SOVIET APPROACH TO NEGOTIATIONS

**HON. JOHN B. BRECKINRIDGE**

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 11, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, today's article in Book IV of the Balance(s) of Power Series, which sets forth Soviet Intentions and Doctrine, is concerned with the Soviet approach to negotiation. Entitled, "The Technique for Dealing With Russia," and written in 1946 by one of America's foremost diplomats, George F. Kennan, this issue sets forth a set of rules for dealing with the Stalin regime. While Kennan argues that these principles can only partly apply in the post-Stalin era, he does insist that Russian historical experience has provided the Russian mind with no concept of permanent friendly relations between states, and that it is within this milieu that present negotiations must be viewed. Nothing in the post-Stalin experience significantly alters this historic view, as noted by the author in 1967.

The article follows:

THE SOVIET APPROACH TO NEGOTIATION—SELECTED WRITINGS

(Compiled by the Subcommittee on National Security and International Operations (Pursuant to S. Res. 24, 91st Cong.) of the Committee on Government Operations U.S. Senate)

[From *Memoirs 1925–1950*. Copyright 1967 by George F. Kennan. Little, Brown and Company in association with Atlantic Monthly Press. Reprinted by permission.]

THE TECHNIQUE FOR DEALING WITH RUSSIA (1946)

(By George F. Kennan, Member American Embassy Staff in Moscow, 1944–46; Later U.S. Ambassador to the USSR and to Yugoslavia; Now Member, Institute for Advanced Studies, Princeton)

It is axiomatic in the world of diplomacy that methodology and tactics assume an importance by no means inferior to concept and strategy. Over the eighteen months I had now spent on this assignment in Moscow, I had experienced unhappiness not only about the naïvéte of our underlying ideas as to what it was we were hoping to achieve in our relations with the Soviet government but also about the methods and devices with which we went about achieving it. The two aspects of our diplomacy were, of course, closely related. Methodology was itself in large measure a reflection of the image we had formed of the Soviet leadership and of the manner in which it could be expected to react to various stimuli. But methodology was nevertheless a subject that deserved attention in its own right. Perhaps it was the visit of Secretary Byrnes to Moscow that caused the pot of my patience to boil over with relation to this area of our diplomacy, as it had boiled over with respect to so many others. My reaction to this boiling over was, in any case, the usual one of reaching for my pen; and at some time in the winter of 1946 I produced the first three sections of what was intended as another *magnum opus*, directed this time to the specific problem of Soviet-American relations. It was never finished. Being unfinished, my recollection is that it was never used in any way. I include . . . an excerpt from it, on the subject of the technique of dealing with Russia, which represents a crude attempt, but one of the first of its kind (the first in my recollection, at any rate), to draw up a useful set of rules for dealing with the Stalin regime. . . . (I reiterate) the *Stalin* regime. (This was, after all, the only Russian regime with which I had then had personal experience.)

The student of Soviet-American relations who reads these rules today will have, no doubt, two questions in his mind as he completes the reading of them. One is whether they have been observed in the subsequent years and continue to be observed today. The other is whether they are still applicable now that Stalin is dead and the world situation has changed in important ways. My answer to both these questions would be: only partly. . . .

*The Soviet approach to negotiation*

[Excerpt from the United States and Russia (Winter 1946)]

Historically, the foreign affairs of Russia have developed along lines entirely different from those of the United States. Our most important foreign relations, historically speaking, have been along the lines of peaceable overseas trade. These have set the pattern of our thinking on foreign affairs. The Russians, throughout their history, have dealt principally with fierce hostile neighbors. Lacking natural geographical barriers, they have had to develop, in order to deal with these neighbors, a peculiar technique (now become traditional and almost automatic) of elastic advance and retreat, of defense in depth, of secretiveness, of wariness, of deceit. Their history has known many armistices between hostile forces; but it has never known an example of the permanent peaceful coexistence of two neighboring states with established borders accepted without question by both peoples. The Russians therefore have no conception of permanent friendly relations between states. For them, all foreigners are potential enemies. The technique of Russian diplomacy, like that of the Orient in general, is concentrated on impressing an adversary with the terrifying strength of Russian power, while keeping him uncertain and confused as to the exact channels and means of its application and thus inducing him to treat all Russian wishes and views with particular respect and consideration. It has nothing to do with the cultivation of friendly relations as we conceive them.

We would find it much easier to deal with Russia if we would recognize frankly in our own minds the fact that its leaders are, by their own choice, the enemies of all that part of the world they do not control, and that this is a recognized principle of thought and action for the entire Soviet machine. Let us also remember that in the Soviet Union decisions are rarely taken by individuals. They are taken by collective bodies. These collective bodies are required to proceed on the theory that the outside world is hostile to Russia and would be incapable of a generous or unselfish act toward the Russian state or people. It follows from this that no act of a foreign government could be officially recognized as an act of good will. Any Soviet official who would dispute this principle and try to demonstrate in a Soviet body that a foreign state had gone out of its way to be nice to the Soviet Union and deserved credit for it would risk—at the least—his job. Everyone in the Soviet government must assume that foreign governments act only in their own interests, and that gratitude and appreciation are unknown qualities in foreign affairs.

In this way, the machinery by which Soviet foreign affairs are conducted is capable of recognizing, and reacting to, only considerations of concrete Soviet interest. No one can argue any proposition in the councils of the Soviet government unless he can show concretely how the interests of the Soviet Union stand to gain if it is accepted or to suffer if it is rejected. This principle is applied with the most serene objectivity. In examining a position taken by a foreign state, the Russians make no effort to look at it from the standpoint of the foreign state in question or from any fancied community of aims on the part of themselves and the state involved. They assume it is dictated by purposes which are not theirs, and they examine it only from the standpoint of its effect on them. If the effect is favorable, they accept it without gratitude; if it is unfavorable, they reject it without resentment. We could make it much easier for them and for ourselves if we would face these facts.

In the light of the above, I would like to suggest the following rules to govern our dealings with the Russians:

A. Don't act chummy with them.

This only embarrasses them individually, and deepens their suspicions. Russian officials abhor the thought of appearing before their own people as one who has become buddies with a foreigner. This is not their idea of good relations.

B. Don't assume a community of aims with them which does not really exist.

There is no use trying to swing Russians into line by referring to common purposes to which we may both have done lip service at one time or another, such as the strengthening of world peace, or democracy, or what you will. They had their own purposes when they did lip service to these purposes. They think we had ours. For them it's all a game. And when we try to come at them with arguments based on such common professions, they become doubly wary.

C. Don't make fatuous gestures of good will.

Few of us have any idea how much perplexity and suspicion has been caused in the Soviet mind by gestures and concessions granted by well-meaning Americans with a view to convincing the Russians of their friendly sentiments. Such acts upset all their calculations and throw them way off balance. They immediately begin to expect that they have overestimated our strength, that they have been remiss in their obligations to the Soviet state, that they should have been demanding more from us all along. Frequently, this has exactly the opposite effect from that which we are seeking.

D. Make no requests of the Russians unless we are prepared to make them feel our displeasure in a practical way in case the request is not granted.

We should be prepared as a matter of principle to accompany every expression of our wishes by some action on our part proving that Russian interests suffer if our wishes are not observed. This requires imagination, firmness, and coordination of policy. If we cannot find these qualities in our foreign affairs, then we should begin to prepare for serious trouble.

Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a "bullet" symbol, i.e., ●

E. Take up matters on a normal level and insist that Russians take full responsibility for their actions on that level.

Requests should not, as a rule, be taken to higher levels just because we have failed to get satisfaction on a lower level. This merely encourages the Russian bureaucracy to be uncooperative and causes our relations with high-level Soviet authorities to be encumbered with matters of second-rate importance. Instead of this, we should take our retaliatory or corrective action promptly and unhesitatingly when we do not obtain satisfaction on the lower level. It is only in this way that we can teach the Russians to respect the whole range of our officials who must deal with them. By failing to back up our subordinate officials in their dealings with the Russians, we make it difficult for ourselves to accomplish anything in the intervals between high-level meetings. This works in the interests of the Russians and prejudices our interests. This is a very important point and goes to the heart of many of our failures of the last two or three years. The top level is physically incapable of encompassing the whole range of our dealings with the Soviet government and of assuring the collaboration which we are seeking. Agreements reached there can be—and frequently are—sabotaged successfully and with impunity on the lower levels. We must train the Russians to make their whole machine, not just Stalin, respond sensibly to our approaches.

F. Do not encourage high-level exchanges of views with the Russians unless the initiative comes at least 50 percent from their side.

Russians can be dealt with satisfactorily only when they themselves want something and feel themselves in a dependent position. It should be a matter of technique with us to see that they are not dealt with on a high level except when these conditions prevail.

G. Do not be afraid to use heavy weapons for what seem to us to be minor matters.

This is likewise a very important point, and one which many Americans will receive with skepticism. In general, it may be bad practice to take a sledgehammer to swat a fly. With the Russians it is sometimes necessary. Russians will pursue a flexible policy of piecemeal presumption and encroachment on other people's interests, hoping that no single action will appear important enough to produce a strong reaction on the part of their opponents, and that in this way they may gradually bring about a major improvement in their position before the other fellow knows what's up.

In this way, they have a stubborn tendency to push every question right up to what they believe to be the breaking point of the patience of those with whom they deal. If they know that their opponent means business, that the line of his patience is firmly established and that he will not hesitate to take serious measures if this line is violated even in small ways and at isolated points, they will be careful and considerate.

They do not like a showdown unless they have a great preponderance of strength. But they are quick to sense and take advantage of indecision or good-natured tolerance. Whoever deals with them must therefore be sure to maintain at all times an attitude of decisiveness and alertness in the defense of his own interests.

H. Do not be afraid of unpleasantness and public airing of differences.

The Russians don't mind scenes and scandals. If they discover that someone else does mind them and will go out of his way to avoid them, they will use this as a form of blackmail in the belief that they can profit from the other fellow's squeamishness. If we are to reestablish our prestige with the Soviet government and gain respect in Russia we must be prepared to undertake a "taming of the shrew" which is bound to involve a good deal of unpleasantness. On the other hand, we need not fear that occasional hard words will have permanent bad effect on our relations.

The Russian is never more agreeable than after his knuckles have been sharply rapped. He takes well to rough play and rarely holds grudges over it. Let us not forget Stalin's first reaction when he met Ribbentrop. It was to joke good-naturedly and cynically about the bitter propaganda war which had been waged for so many years between the two countries. The Russian governing class respects only the strong. To them, shyness in dispute is a form of weakness.

I. Coordinate, in accordance with our established policies, all activities of our government relating to Russia and all private American activities of this sort which the government can influence.

The Russians are quick to take advantage of conflicts, inconsistencies, and the seeking of private aims on the part of our nationals or agencies of our government. Their own system is designed to produce the maximum concentration of national energies. We cannot face them effectively unless we do all in our power to concentrate our own effort.

*J. Strengthen and support our representation in Russia.*

The American embassy in Moscow is the symbol of our country to the Russians. It is watched intently by many people. It must be not only the representation of our society but also a guiding brain center of our policy toward Russia. In the face of frequent neglect and discouragement, always the object of attacks by jealous self-seekers and discontented liberals, never enjoying the full backing or understanding of people in Washington, never properly staffed or properly housed, it has nevertheless managed to become a pioneering establishment in the American Foreign Service and the most respected diplomatic mission in Moscow.

It could do far more and play a far greater role in the Soviet Union if it received proper support. This means that failure of the Soviet government to grant quarters and other facilities for the performance of diplomatic work in Moscow must sooner or later be made an open issue between the governments and pressure must be brought to bear to improve these conditions. It means that the mission must be adequately staffed with American personnel.

Finally it means that the mission must at all times be led by someone capable of and prepared for hard and tedious work over a long period of time, someone who has in high degree the qualities of modesty and patience, who is animated solely by devotion to the interests of our country, and is generally fitted by personality and background to earn the respect of a nation unexcelled in the psychological analysis of the human individual. In the case of Ambassador Harriman, I can sincerely say that I consider these prerequisites fulfilled.

But I make this observation with an eye to the future. The post of ambassador to Moscow is not a sinecure which can be lightly disposed of; and the department must be prepared to use its influence to see that it is effectively filled. The Moscow mission works, and has always worked, under strain, in the face of multitudinous obstacles. A vain, fussy, and ignorant ambassador is capable of breaking its back, and of doing lasting (if not readily apparent) damage to the fabric of Russian-American relations.●

## TAX CUT BILL

### HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. LAGOMARSINO. Mr. Speaker, I would like to bring to the attention of my colleagues a well-expressed editorial which appeared in the Press-Courier on Wednesday, August 23, 1978, concerning the House-passed tax cut bill and President Carter's concerns about it.

The editorial follows:

[From the Press-Courier, Aug. 23, 1978]

HOUSE POINTS WAY

The $16.3 billion tax cut approved recently by the House clearly offers more for the taxpayer than the larger and conceptually defective package proposed by President Carter in January.

The President dislikes the House-passed bill for several reasons. He is unhappy that 72 percent of the benefits of the cut would go to those earning $20,000 a year or more. He also prefers a smaller capital gains tax reduction, and he favors inclusion of a laundry list of revenue-generating "reforms," including lowered deductions for the "three-martini" business lunches and smaller write-offs for real estate depreciation.

However, there is ample evidence that reductions in personal income taxes for upper-income earners—including the millionaires Carter finds such convenient targets—actually lead to increases in collected taxes plus a dampening of inflation. That is precisely the record of the 1964 and 1965 tax cuts. And because upper middle income earners will be hardest hit in January by higher Social Security taxes, an income tax cut this year is abundantly fair.

Reductions in capital gains tax rates will help pump needed investment dollars into an economy nearly everyone agrees faces an acute shortage of investment capital.

When the Senate considers the House's tax cut, it should think carefully about avoiding the risks of high inflation. Additional investment credits would be one way to fatten the tax cut without ballooning inflation.

Not everything is perfect about the House-approved bill. Lawmakers declined to adopt indexing for personal income tax rates, a true reform that would adjust income tax brackets to protect taxpayers from purely inflationary tax hikes.

Fortunately, however, the House did widen the tax brackets by 6 percent, thus decreasing the amount of income subject to higher taxes. That, and an indexing provision for capital gains taxes—including the $100,000 exemption for homeowners—ought certainly to remain in the bill.

The House has pointed the way to an acceptable tax cut package. All it needs is a little fine tuning in the Senate to make it even better.●

## ECONOMIC EFFECTS OF PLANNED NITRITE PHASEOUT

### HON. WILLIAM C. WAMPLER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. WAMPLER. Mr. Speaker, the proposed action by the Secretary of Agriculture and HEW (Food and Drug Administration) to phase out the use of nitrites as a food preservative in processed meats, poultry and fish needs to be examined long and hard by Congress.

Not only is the risk of cancer from nitrites greatly overstated by USDA and HEW, there is a much greater risk that humans will die from botulism or get seriously ill from food poisoning if ni-

trites are not used to preserve processed meats.

Apart from establishing the risk of using or not using nitrites, and deciding whether to ban or phase out nitrites, is the economic impact of either action on the agricultural sector. An immediate ban would bring rapid economic chaos to American meat and poultry farmers and processors. A phaseout would amount to a slicing-away—which I call salami tactics—stretching chaos over a longer period of time.

This slicing-away process may have already begun, as pointed out on August 21 by Ed Clark, staff editor in Feedstuffs.

Mr. Speaker, I request permission to include the Feedstuffs article in the RECORD at this point.

[From Feedstuffs, Aug. 21, 1978]

ATTACKS ON NITRITE MAY BE HURTING HOG EXPANSION, GARNER SAYS

(By Ed Clark)

The hog market responded to news reports Thursday of a gradual government ban on nitrites, with a limit up move in pork bellies. Although no ban has been proposed, traders normally use them and any other market rumor to drop the bottom out of the pork belly market.

It's not that traders like to make jokes about losing bacon or sausage, however. "We've been through this before," said Don Schwartz, an analyst with Cargill Investor Services, Inc., in Chicago. "It's just like hearing shouts of 'freeze, freeze' in the grain business. We hear reports of nitrite bans," he said.

Traders are watching with keen interest what the government does about the Massachusetts Institute of Technology study, however, which found a link between nitrites and cancer in rats. And justifiably so, since 60–65% of pork has nitrite in it.

Few have yet examined the entire study, but another MIT scientist was somewhat critical of the experiments, done by Dr. Paul Newberne. Dr. Steven Tannenbaum, professor of food chemistry at MIT, said the strain of rats used in the study have a very high incidence of lymphomas, tumors of the lymph glands.

"It's traditional in testing of this type not to use an animal that has a natural high rate of the tumors, because it is difficult to interpret what a small increase means," he said.

The 8.4 percent rate of tumors in the control group is "extremely high," Tannenbaum noted, and is "almost unheard of in a rat that is specifically susceptible to this sort of tumor. This tends to color the nature of the results. It's an experiment which bears repeating."

Tannenbaum said one reason so much attention was put on the study by the media was the way the FDA news release was worded in the first paragraph.

"If you would have read the article and read past the the headlines to the second and third paragraphs it came out reading quite a bit differently. The government statements show a clear bias against nitrite from the very start," he said.

A USDA scientist said he is annoyed that the MIT study was not published and kept "so close to the chest that scientists could not look at it." Although unable yet to examine the study, he is suspicious of it since 10 or more years of using nitrite in research has found no carcinogens in it.

Marvin Garner, executive vice president of the National Pork Producers Council, said there were no real surprises in the FDA statement. The basic results of the MIT study were public and known since early May, he said.

"When Assistant Secretary of Agriculture Carol Tucker Foreman advised us of the news release and its contents, it was apparent that government officials are now equally concerned with the threat to human health of totally withdrawing the use of nitrite before proven protection against botulism is assured," he said.

When 80 percent of the nitric intake comes from sources other than processed meat, "we wonder if the emphasis on use of nitrite in meat is not out of proportion," Garner said.

The talk of a proposed ban on nitrites is not very supportive of normal growth in the pork industry, Garner said. During the last three years, the industry has had a profit level which pointed toward more expansion, he said, but governmental regulation in part has caused that not to happen.

Banks are less likely to go out on a limb and give loans out on a 10-year basis to pork producers if they think nitrite will be banned, Garner said. Energy needs also would be much greater if all meat must be kept at 40°, he said, which will require increased refrigeration at all levels.

Curt Daniels, a Mingo, Iowa, hog farmer and lawyer, said he hardly would put the MIT study on nitrites on the same plane as the surgeon general's warning on cigarettes. The connection between smoking and cancer was studied years and years before the surgeon general's report, he said, compared with only a minimum amount of research on nitrites and cancer.●

## HOPES OF WHALING BAN SPIKED BY PANAMA

### HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. McDONALD. Mr. Speaker, one of the really endangered species in this world of ours has been the whale. Today, only two nations really conduct whaling on a large scale: The U.S.S.R. and Japan. Judging by the bumper stickers one sees on the streets, many persons are aware that Japan is a major whaler, but unaware of the heavy Soviet activity in this regard. Recently yet another attempt was made to effect a moratorium on whaling and it failed. The main reason for this failure, according to the London Daily Telegraph of June 27, 1978, was that Panama withdrew its support from the effort at the behest of Japan, over a threat to withdraw a lucrative sugar agreement. This should tell us about the present Government of Panama. The story follows:

HOPES OF WHALING BAN SPIKED BY PANAMA

(By Godfrey Brown)

A demand for a 10-year "ceasefire" to save the world's whales from the threat of extinction was withdrawn yesterday when the International Whaling Commission meeting opened in London.

It will probably be another year before the proposal can resurface.

The conservationists' hopes are now pinned on reductions in the catch quotas being agreed by the Commission during its meetings which continue until Friday.

The ten-year moratorium on commercial whaling was to have been tabled by Panama, but was withdrawn among allegations of commercial pressure by Japan, one of the big two whaling nations.

*Eco*, a newspaper run by Friends of the Earth, claimed that Japan had threatened to cancel a £5 million sugar deal with Panama if it tabled its proposal.

The withdrawal followed the apparent "sacking" of Panama's original commissioner to the meeting, Mr. Portom-Gouin, who had been instrumental in the proposal. He has been demoted to simply an adviser to his delegation, and replaced by Panama's ambassador, Mr. Roger Decerega.

Mr. Decerega strongly denied that Panama had responded to Japanese pressure. The proposal had been withdrawn "because we believe a moratorium would be counterproductive."

Last year eight countries outside the 17-nation commission killed more than 7,000 whales, compared with the Commission countries' tally of about 23,000.

After Panama's proposal was formally withdrawn, the Argentine delegation asked whether another country could adopt it. But Mr. Arthur Bollen, Commission chairman, from Australia, said that under Commission rules once an item had been removed from the agenda, it could not be replaced for 60 days.●

## CLAYTON FRITCHEY POINTS TO INFLATION FACTOR

### HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. SIMON. Mr. Speaker, Clayton Fritchey recently had an excellent column in the Washington Post about the relevance of the military budget to inflation.

He would be the first to suggest that simply to assign inflation totally to the military budget would be a distortion, just as others who assign it to a variety of things distort the reality.

But it is an important factor that generally is overlooked.

Clayton Fritchey is an experienced, seasoned newsman who combines years with wisdom, and I hope my colleagues who did not read the original column will take the time to read it now:

INFLATION'S ROOTS ARE IN THE MILITARY BUDGET

(By Clayton Fritchey)

Everybody agrees that inflation is now Public Enemy No. 1, but unfortunately there is little agreement on what causes it.

It's blamed on countless things. The White House has one list, Congress another, and the Federal Reserve Board still another. The business community also has a list of its own. Yet, in a negative way, they are all alike in that they uniformly shrink from putting the finger on the single most inflationary factor in our society: the huge, wasteful, non-productive, U.S. military colossus, along with the staggering deficits that have accompanied it.

It is a pipe dream to keep on talking about licking inflation and balancing the budget as long as military spending continues unbridled. Wage and price controls might help, but it's doubtful that even they could keep inflation effectively in check if defense expenditures go on as projected.

When Carter was campaigning for the presidency, he rightly said, "When you spend money for defense you don't spend it on education, on health, or other services or goods. And I think the shift away from weapons toward peaceful goods and services in the long run is favorable for world peace, and also you get more jobs per dollar spent."

He promised to cut the defense budget (then running around $100 billion a year) by 5 percent, but now it is 1978 and the budget calls for $126 billion. Carter has turned thumbs down on the B1 bomber and a new nuclear carrier, but he has added new weapons of his own. In the next fiscal year the Pentagon budget is expected to be in the $133 billion to $139 billion range. By 1983 it will probably be $173 billion or more. The authoritative Center for Defense Information (CDI) foresees a figure of $180 billion by then.

Instead of raising additional revenuess to pay for those soaring expenditures, Congress and the president have cut taxes, ensuring further deficits exceeding the peak ones of World War II. Nobody understood better than then-President Eisenhower the inflationary costs of such a policy. "The military establishment," he said, "not productive of itself, necessarily must feed on the energy, productivity and brain power of the country, and if it takes too much, our total strength declines."

The Center for Defense Information notes that, over the years, the United States has been spending a smaller portion of the military budget on the defense of America. About 70 percent of that budget, the CDI reports, "now goes to defend our allies and project our power overseas." Actually, there are currently 27,000 more U.S. servicemen and women abroad than a year ago.

One reason the inflation rate in Japan and West Germany is so well in hand is that they spend so much less on defense than the United States. In relation to gross national product, the Japanese military expenditure is about one-fifth of America's.

The ever-rising U.S. defense budget today reflects not so much congressional fear of Russia as fear of unemployment and the closing of costly but needless military installations in their states and districts. Most economists, however, see military spending as a poor job-creator, compared with equal expenditures on civilian needs.

The growth of U.S. inflation is easy to trace. It began with the Vietnam War. Prior to that, in the earlier Kennedy-Johnson years, the range of inflation was merely 1 to 3 percent. It started climbing when Lyndon Johnson, fearing public hostility to higher taxes to pay for his unpopular war, quietly turned to deficit financing on a large scale.

President Nixon did the same, only on a more grandiose scale. Even after U.S. withdrawal from Vietnam, the military budget kept rising, generating an unprecedented deficit of $175 billion in the last years of the Nixon-Ford era. Meanwhile, the inflation rate went steadily up, finally reaching double-digit proportions and a record rate of 12 percent. The ensuing recession reduced it some, but today it is still hovering near the dangerous double-digit level.

Can the fat in the military budget be cut without impairing the muscle? Only a few days ago the Brookings Institution found that the Pentagon could save over $900 million a year by eliminating overpayment of its blue-collar workers. A presidential commission recently called for an overhaul of the military pension system, saying $10 billion per year could be saved that way.

Pentagon officials themselves admit that Navy finances are in a shambles, with cost overruns on new ships totaling more than $6 billion. Another recent study by two former high Pentagon officials found that $40 billion could be saved over the next few years by selective reduction of forces and cancellation of certain new weapons systems.

The really significant savings, however, will not be realized until the "momentum of the arms race" has been arrested. That means, first, the restoration of détente, then new agreements with Russia that substantially cut back strategic arms and finally, serious attention to general disarmament, which some experienced statesmen believe is not as impractical as it may sound.●

## LIQUID NATURAL GAS STORAGE—A NEVADA PROBLEM

### HON. JIM SANTINI

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. SANTINI. Mr. Speaker, the Fuels Transportation Safety Act is of particular concern to 6,000 of my constituents who live in and around Dayton, Nev.

These people are descended from the generations of Nevadans who helped settle the State and as such, are not easily given to acting out of alarm over any situation. Nor are they reactionary to progress or new ideas. Dayton, in fact, exemplifies many other communities around this Nation that may soon face construction of multimillion gallon liquid natural gas storage facilities literally in their backyards.

These people are concerned citizens expressing their reservations over a system of storage of potentially dangerous gas. To them, the questions of safety have not been adequately answered. As a result, front page news stories are appearing in newspapers, such as the Mason Valley News, around the area. Even the Reno Evening Gazette, 50 miles away, has published an editorial expressing support for the residents of Dayton, and citing regional concerns about LNG storage. These amendments offer us the opportunity to increase safety precautions and calm the fears of our constituents.

I would, therefore, urge my colleagues to read the following newspaper excerpts and support the amendments mandating safer standards for storage of this volatile gas:

DAYTON RESIDENT PROTEST: LNG PLANT "A WORLD OF HURT" FOR DAYTON VALLEY

Approval of a proposed liquefied natural gas storage tank facility would mean "nothing but a world of hurt for Dayton Valley".

That seemed to be the popular consensus among the estimated 125-150 Dayton area residents who attended a public hearing with the Board of Lyon County Commissioners held at the Dayton Elementary School Wednesday evening.

Eight rows of 15 people each plus many more who wound around and even out the doorways voiced the opinion that Dayton just does not want a valley site for the LNG facility proposed by Southwest Gas Corp.

Moderated by Commissioner John Poli, the lengthy hearing began with a long, detailed presentation by Southwest Gas. Dr. Hal Wesson offered slides, photographs, and described fire restrictions. David Rayney and Vic Lafave of El Paso Gas demonstrated the properties of natural gas and LNG.

A very detailed talk given to show the safety involving LNG on ships brought humor to the audience and many whispered asides.

Ivan LaFave of Chicago Bridge and Iron, the company scheduled to construct the facility, explained the safety factors of the proposed tank.

After a 5 minute break, a host of speakers—all against placing the tank at the present suggested site—spoke up.

Bonnie Brown, chairman of the residents protest committee, spoke first and was followed by John Giomi, attorney for the Dayton Valley Residents Defense Committee. Cliff Frederick, Ken Yuhaulgh and Gary Peterson spoke next and were followed by June Trese who said. "We have the right to elect a president. Don't we have anything to say about a gas company?"

Bob Ray, whose remark that he was glad to hear how safe the ships were as they would go up the Carson River brought laughter from the audience, said, "We were here first. I think we have a priority. You are going to ruin us in Dayton, Mark Twain, and Stagecoach."

Mark Tuffo of Yerington questioned who had done the research on the safety aspects of the plant. The Japan and the United Kingdom—not the U.S. government—was the reply. It was brought out that Japan is putting such tanks underground.

Joan Williams of Moundhouse was given a figure of 2,000 Lyon County customers now using natural gas. That figure was disputed by residents in the vicinity of the proposed site, none of whom are getting this gas or have any prospect of getting the gas because of the large lot sizes and the resultant cost of piping.

Resistance continues to stiffen as Southwest Gas Corp. pushes harder for the completion of a liquid natural gas shortage facility near the town of Dayton.

There appear to be two major differences of opinion at this point in time where late-blossoming opposition has succeeded in getting a two-month continuance in the Public Service Commission's consideration of the project.

First item of contention is Southwest Gas' definition of Dayton as an "undeveloped" area. There are in fact some 6,000 people living in the area between Dayton and Silver Springs, 20 miles to the east. The Dayton townsite, itself, is one of several outlying communities programmed for "sudden city" status. Ten miles to the east of Carson City, Dayton is a likely candidate to catch most of the capital city's future population growth as aggressive controls continue to hold down expansion there. Some 7,000 units of residential construction have already been approved for the Dayton area. A new high school is proposed on a site three miles away from where the tank would be located.

The second arena of combat is the discussion over just how safe (or dangerous) the facility will be. Described as a gigantic thermos bottle, the $19.2 million facility will stand 116 feet high and will hold 12 million gallons of liquid natural gas (LNG). Southwest Gas has proposed installation about 10 miles east of Dayton along U.S. Highway 50. Daytonites, who are unanimously opposed to the project, wow one another with gruesome tales of creeping banks of escaped gas and fiery holocausts.

Southwest Gas spokesmen pooh-pooh the fears but the astonishing fact is: accepted fire controls and emergency procedures involving LNG are pretty much untried or simply beyond current technology.

U.S. Sen. Howard Cannon, D-Nev., has called for a five-year, $50 million study of the hazards involved in the storage and transportation of LNG. The study would be made by the Department of Energy and would get underway as early as Oct. 1. The testing would take place on Frenchman Flat, an area of the Nevada Test Site that has been unused since above-ground atomic bomb tests were halted back in the 1950s.

Although Cannon has declined to suggest that the Dayton LNG storage project should wait until tests are completed, he has noted that "there is much we don't know about

the hazards involved with handling LNG." He adds the observation that storage facilities such as the one planned for Dayton are numerous in densely populated eastern cities and he doesn't perceive the hazards to be "unacceptable" ones.

Once adequately assessed, it is likely that all the possible hazards and shortcomings can be anticipated and adequately accommodated. Hazards are relative. If you drop it from a point high enough, crash into it with enough mass and speed or pack enough dynamite underneath it, you can achieve a tank rupture no matter how massively it's constructed. But if catastrophe strikes, there should be adequate planning and equipment present in the area to cope with it. Southwest Gas people are disturbingly short on information in those areas.

Finally, it is not clear why they should necessarily pick the Dayton area for a project that literally begs for insolation. For reasons that escape logic, the desert foothills along Highway 50 are booming with growth and expansion at a rate second only to the Reno-Sparks-Carson City areas.

A simpler solution would be to pick an isolated area (Nevada still abounds in this commodity) to build. And those who would move in around the facility later would understandably be doing so at their own risk.

LNG storage facilities are a reasonable answer to the energy crisis. The fact may be they are relatively harmless and would be innocuous neighbors which would guarantee plentiful fuel supplies in the dead of winter. But as far as we can see, Southwest Gas does not have sufficient safety data to insist it be allowed to install the Dayton facility without further delay.

If the Frenchman Flat research project unearths any bad news, Daytonites would probably rather hear about it BEFORE their LNG tank is constructed—and not after.●

## PERSONAL EXPLANATION

### HON. TOM CORCORAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. CORCORAN of Illinois. Mr. Speaker, due to a previous commitment in my district, I was absent during part of yesterday's proceedings on H.R. 11280, the civil service reform bill. I would like to include in the RECORD at this time my voting record for those votes which I missed.

Rollcall No. 746: Bonior amendment which sought to extend veterans preference for Vietnam-era veterans for 15 years from the date of separation or until December 31, 1985, for Vietnam-era veterans who served in the Vietnam war (paired for).

Rollcall No. 747: Hanley amendment which retains existing veterans preference standards (paired against).

Rollcall No. 749: Leach amendment which sets a statutory ceiling on the total number of Federal employees in the executive branch, "yes."

Rollcall No. 750: Collins amendment which sought to permit the FBI to place 140 positions in GS 16–18 without regard to the provisions placing limitations on executive-level positions, "yes."

Rollcall No. 751: Erlenborn amendment which sought to strike title VII (labor-management and employee relations language) from the bill in its entirety, "yes."

Rollcall No. 752: Wilson of California motion that the Committee of the Whole rise and report the bill back to the House with the recommendation that the enacting clause be stricken, "no." ●

## NEED FOR A STRONG MERCHANT MARINE

### HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. BOB WILSON. Mr. Speaker, we have discussed at length in this chamber the need for a strong Navy in the face of the ever-increasing Soviet threat. But a part of that naval strength, and of our future strategy should an emergency arise, is a strong merchant marine. However, as our dependence on seaborne commerce from other countries rises, the number of U.S.-flag vessels has dwindled alarmingly.

In an article for the Naval Academy Alumni Association magazine Shipmate, Rear Adm. George H. Miller, USN (ret.), who has long been a student of naval warfare and is an expert in merchant marine affairs, details the importance of a strong merchant marine, and warns of the perilous seas we may be sailing without one.

The article follows:

NEEDED—A U.S. MARITIME STRATEGY

(Rear Admiral George H. Miller, U.S. Navy (Ret.)

In the history of the more successful—more lasting—civilizations of the past—Greece, Carthage, Rome, Spain, England, to cite a few examples, one notes a common threat. Their early years, the growth years, were characterized by the development of an expanding foreign trade, a trade carried to distant lands by merchant ships. Rival peoples built navies to protect—and disrupt—this trade. Thus the growth phase of these civilizations might be characterized as the maritime phase.

Eventually, as these civilizations stabilized, they began to send armies overseas to maintain stability and protect distant trading markets from intrusion. Getting mired down in overseas land wars bled nations of their wealth and manpower, and decline accelerated.

Navies take on the characteristics of the nations they serve. Growing nations, the traders, had what might be called maritime navies, whose primary concern was protection of shipping and control of the sea-lanes. Civilizations in the affluent, declining stage had what might be called land-war navies, whose primary occupation was to supply and support overseas land wars.

The rapid growth of Soviet foreign trade, along with their merchant marine and navy, is clear evidence that the Soviets understand how trade and maritime strength built many of the most successful and lasting civilizations of the past. The Soviets have carefully avoided committing Soviet forces to overseas land wars. Instead, they use foreign trade and their merchant marine to spearhead expansion, which is proceeding on a scale and at a rate unprecedented in history.

Meanwhile, the United States has thus far proved unable to cope with the maritime strategy of the Soviet Union. Instead, U.S. decision makers seem to occupy themselves with preparing for Soviet armies to storm the ramparts of NATO. But the land attack does not come. The Soviets are busy conquering the world without war. They find it cheaper and safer to conquer foreign trade with merchant ships than to conquer territory with troops.

The fact is that the United States, since World War II, has adopted a land-war strategy, very similar to that adopted by notable civilizations of the past in their declining years.

The U.S. Defense establishment, since passage of the National Security Act of 1947, has been structured primarily for land war. It is based principally on the theory that each of the Armed Services—Army, Air Force and Navy-Marine Corps—must have its share of the budget, its share of the action. So structured, the United States can employ its armed forces only when land war is involved. The United States at present has no maritime alternative to land war.

For those nations which think primarily in terms of land wars, it is easier for budget purposes to plan for short wars than for long ones. The usual procedure is to create a scenario for a land war, select an area where the war could logically occur, assume certain weaponry, together with quantities and capabilities on both sides, and run it through the war-gaming procedure, computerized or otherwise. One comfortable aspect of war-gaming a short land war, or sea war for that matter, is that our side usually wins. People who participate in these exercises usually don't address the uglier possibilities.

Short war planning also creates the rationale for buying missiles, tanks, aircraft and other land-war equipment and for avoiding the purchase of ships, which require longer construction lead-time and more money than land-war weaponry.

The campaigns of World Wars I and II were delayed again and again primarily because of a shortage of merchant ships. The United States embarked on massive emergency shipbuilding programs upon entry into both World War I and World War II. Many of those ships, however, were not completed before the wars ended. Fortunately, in those days, strong allies held off the opponents while we organized and prepared. Today, the rapid growth of the Soviet Navy and Merchant Marine is clear evidence that the Soviets give high priority to the construction of both navy and merchant ships. Their shipbuilding program also suggests that they are preparing for a long war and do not intend to accommodate to the short war thinking of U.S. planners.

The record of the short war planners is not very good. Something goes wrong; people miscalculate; the opponent does not realize that the war is supposed to be short and fails to surrender according to the wargame scenario. One common characteristic of short war planners is that they almost invariably make a case for more land war forces and weaponry; they rarely make a case for more ships of any kind. A common conclusion among U.S. short war planners has been that we always have enough ships.

The German short war planners were proved wrong in World War I. They were wrong again in World War II. U.S. short war planners were wrong in the Korean war. They were wrong again in the Vietnam war. Those who think in terms of future short wars are probably just as wrong now, unless the U.S. itself plans to surrender according to the scenario.

A protracted war turns primarily into a sea war of attrition, a struggle for world resources, human and material. A sea war turns on who has the ships, on who can load those ships and shepherd them to the strategically and geographically important areas of the world. A sea war means persuading the populations of the world and the

resources they control to join the struggle. It is the side with the ships, the side with the ability to keep those ships afloat and moving, the side with the persistence to carry on, that usually wins the protracted struggle, a principle which land war strategists historically have seemed unable to comprehend. The nuclear war, hypothesized by today's land war scenarists, looks suspiciously like a warmed-over version of the blitzkreigs of World Wars I and II.

The fact is that since the late 1940s, the U.S. has had a tendency to become involved in land wars, wars which have bled America of her treasure and her potential young leaders and competitors, wars which have undermined public confidence in our government's ability to provide for the common defense.

The U.S. Constitution and the U.S. Merchant Marine Act of 1936 do contain language which, if supported by the responsible government officials, provides the means to develop a U.S. maritime strategy alternative to land war.

The Constitution states that the Congress shall provide and maintain a Navy. It goes on to state that Congress shall raise and support armies but no appropriation for this purpose shall be for longer than two years. This raises a question concerning present Defense Department policy of giving higher priority to procurement of land war weaponry than to the procurement of ships.

The Merchnat Marine Act of 1936–1970 states that a U.S. Merchant Marine is necessary for national defense and development of U.S. foreign and domestic commerce. The Merchant Marine Act specifies that the United States shall have a Merchant Marine sufficient to carry its domestic water-borne commerce and a substantial portion (interpreted as at least 50 percent) of the foreign waterborne export and import commerce of the United States, and to provide shipping service essential for maintaining the flow of such domestic and foreign waterborne commerce at all times. The Merchant Marine Act goes on to state that the U.S. Merchant Marine shall be capable of serving as a naval and military auxiliary in time of war and national emergency; that it is the policy of the United States to foster development and encourage the maintenance of such a merchant marine.

Under the Merchant Marine Act the Secretary of Commerce is responsible for carrying out the foregoing national policy and for adopting a long-range program for replacements and additions to the American merchant marine. The Act further directs the Secretary of Commerce to cooperate closely with the Secretary of Defense and the Secretary of the Navy on a number of matters concerning the U.S. Merchant Marine.

On the other hand, the National Security Act makes no mention of the Merchant Marine, or of need for cooperation between the Navy and Merchant Marine. The National Security Act makes no provision for development of a national maritime strategy to serve the Nation's interests without resort to land war. But the National Security Act does make the Navy responsible for "prompt and sustained combat incident to operations at sea." The National Security Act also makes the Navy generally responsible for protection of shipping.

Today, the U.S. has only 470 Navy ships and 577 merchant ships, capable of carrying only 6 percent of U.S. export and import trade, only 3 percent of U.S. petroleum imports. By comparison, the Soviet Union has 1919 Navy ships and 2420 merchant ships capable of carrying over 50 percent of Soviet export and import trade. This gives the Soviet Union an overall total of 4339 Navy and merchant ships, as compared to the U.S. total of a little over a thousand, a Soviet superiority of 4 to 1. As an example of how desperately short we are of ships, over 1700 merchant ships served as part of the U.S. Navy in World War II, over 100 of them as auxiliary aircraft carriers.

In World War II, the United States served as the arsenal of democracy. Today, however, the United States must import unprecedented quantities of petroleum and other critical raw materials. Interruption of the inflow of U.S. critical materials in time of war could force our war industries to shut down and could prevent U.S. armed forces from operating overseas. The Soviet Union, on the other hand, is virtually self-sufficient in critical raw materials.

America's post-World War II policy of neglecting shipbuilding and favoring large nuclear retaliation and land war forces has raised the possibility of defeat of the United States. The Soviet nuclear buildup assures destruction of the U.S. in event of a nuclear exchange. At the same time, the Soviet Union avoids a direct attack on areas occupied by U.S. land forces. With U.S. armed forces thus stalemated, the Soviet Union has been free to use its foreign trade and merchant marine assets in an organized campaign to achieve world domination.

Meanwhile, the U.S. has a paralyzing shortage of shipping, with neither plans nor organization capable of rebuilding and marshalling its maritime and foreign trade assets in the national interest.

It is a fact that foreign trade is now and always has been a major factor in a nation's world influence, economic strength and national security. Why is it then that almost any foreign flag ship can participate in U.S. seaborne trade, while foreign air transports can participate in U.S. airborne trade only on a *quid pro quo* basis under agreements negotiated by the U.S. Government? The current practice of squandering America's enormous seaborne foreign trade assets, with scant consideration for the national interest, offers little organized competition to the Soviet campaign of world conquest.

U.S. international efforts over the past three decades have been characterized by rationalized accommodation and retreat. Shall we go on frightening ourselves with the raised-in-America specter of instant nuclear retaliation? Shall we continue to accommodate to Soviet-inspired "wars of national liberation," in Southeast Asia, in the Middle East and Africa, in Central America? Or shall we forge an integrated, no-nonsense political-economic-maritime strategy to compete with Soviet imperialism now?

Land war strategy is contributing to the decline of U.S. world influence, economic strength and public confidence. The most important national security issue confronting the U.S. Government today is how to organize, develop and put into motion a U.S. maritime strategy. If Americans still prefer liberty to bondage, there may yet be time to turn the tide.●

## NO COMPROMISE

### HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. McDONALD. Mr. Speaker, while the bankrupt African policy of President Carter and Andy Young grinds on, spreading chaos and blood everywhere, we are treated to the spectacle of the so-called Patriotic Front shooting down a Rhodesian airline plane, looting it, and butchering the survivors. These then are the people your friendly State Department feels ought to be the architects of yet another Marxist dictatorship of Africa. The Richmond Times-Dispatch ran an excellent editorial on September 6, relative to this incident and the decay of the West. I commend this to the attention of my colleagues. The editorial follows:

NO COMPROMISE

Joshua Nkomo, one of the leaders of the Patriotic Front guerrillas in Rhodesia, has admitted that his forces shot down an Air Rhodesian airliner with 56 persons aboard but he has denied that his men murdered 10 of the 18 survivors.

But someone gathered the survivors on the pretext of giving them water and medical aid and then gunned them down in cold blood. Someone bayoneted one of the women after first shooting her. Someone looted the airplane and the bodies.

The plane crashed in an area near Zambia that is thick with Mr. Nkomo's guerrillas. We recall that when several white missionaries were butchered near the Mozambique border recently, Robert Mugabe, Mr. Nkomo's partner in the Patriotic Front, denied that his men had committed that atrocity even though it occurred near their headquarters and there were eyewitnesses who identified the guerrillas.

Little doubt can reasonably be entertained that those who savagely killed the survivors of the plane crash were the same people who knocked the plane out of the sky in callous disregard of human life.

The Patriotic Front is the same outfit that the World Council of Churches has just given $85,000 on the clear-headed theory that aiding these black guerrillas in murdering whites, including church missionaries, will "combat racism." It is the same organization that President Carter and Ambassador Andrew Young have tilted toward, as opposed to the internal settlement among moderate blacks and whites in Rhodesia. This kind of Western pressure led Prime Minister Ian Smith, a party to the internal agreement, to meet secretly with Mr. Nkomo last month to explore any possibilities of compromise.

But in the aftermath of the massacre of plane crash survivors, Chief Jeremiah Chirau, one of the black leaders of Rhodesia's interim government, expressed the outlook most realistically and eloquently. Said Mr. Chirau:

"If the Western world continues to support such people, who can only be described as rabid animals, then I can only believe that Western democracy as we know it is a thing of the past."

The only kind of "compromise" the Patriotic Front has shown any interest in is one that would turn over Rhodesia to these Marxist-oriented murderers lock, stock and barrel. And once in power this outfit could be expected to be every bit as bloodthirsty as it has been in opposition.●

## POLITICAL PARTIES NEED STRENGTHENING

### HON. JOHN B. ANDERSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. ANDERSON of Illinois. Mr. Speaker, I have just read in this morning's Chicago Sun-Times a perceptive article by our colleague DAVE OBEY drawing the connection between weak political parties and legislative stalemate. The argument, to me, is a compelling one: A myriad of interest groups have stepped

into the vacuum left by the parties and pulled Congressmen in every which way but the political center. As a consequence, it becomes increasingly difficult to fashion programs that attract majority support, without just pasting together a tenuous coalition of narrow interest groups. In the process, it is all too easy to lose sight of broader considerations—such as what, in fact, is best for the country.

The parties need strengthening, to countervail the disproportionate influence of single-issue groups that may represent only the smallest fraction of the population. But this begs the question of how the parties are to be improved. The answer seems clear enough: They should be made to stand for things that have broad appeal, so that they will again be listened to, and so that they will again make themselves heard.

Mr. Speaker, I place the Obey article at this point in the RECORD.

[From the Chicago Sun-Times, Sept. 11, 1978]

WHY GOVERNMENT GETS SO LITTLE DONE NOWADAYS

(By DAVID R. OBEY)

Why is government getting so little done today? Why has it become so difficult for any President to effectively lead the country? One reason is that our political system has changed over the last two decades.

When I entered politics 15 years ago, it was fairly easy on almost any issue to find a consensus around which the majority could rally. Even if that weren't possible, public opinion generally coalesced around a few major approaches to our most difficult problems. But today there is almost no way of addressing any issue that generates majority support.

This fragmentation stems in part from two developments: the growing influence of one-issue groups and the declining strength of the major political parties. Both have serious consequences.

In the last 10 years, there has been a geometric explosion in the number of interest groups organized around a single issue with a single goal: groups to kill the B–1 bomber and others to save it; groups to stop nuclear power development and others to promote it; groups that decide if they like government solely on the basis of what it does about tuition tax credits, labor law reform, abortion, endangered species or capital gains taxes. Politicians have little protection against the unbending demands of these groups because what used to be their first line of defense—their party—is no longer capable of protecting the political center.

One of the most critical functions parties used to perform was to pull together floating coalitions of interest groups. They took into account competing proposals, separate good from bad and, most important, fashioned majorities—majorities that determined what the key issues were and what was to be done about them.

Today the centers of both parties have narrowed to the point of ineffectiveness. With no real center of gravity left in the system, each group pulls its own way. The result: Many of our social and political institutions—including the government itself—are frozen in the ice of internal division.

When they have been strong enough, parties have been able to overcome that kind of inertia and get things moving again. If the public didn't like the direction in which it was moving, it could bring in the other party and try a new one.

But today government has nearly been brought to a standstill because both parties have been so weakened that neither is functioning as an effective instrument of power. Therein lies one key to the current disaffection with government; it's not that government is doing things people don't like, but that it is perceived as being weak, ineffectual and incapable of dealing with problems people face.

It has been fashionable over the last decade to say the parties have become "unresponsive."" The fact is they have become too responsive to the single-minded demands of narrow interest groups.

Strong parties used to be able to strike compromises on major political issues by balancing the demands of constituent groups with the needs of the country and party. Today, with the gravitational pull of the center weakened, each group is able to demand a higher price for its support. There is less pressure on each to compromise for "the good of the order" or to get on the bandwagon before it leaves without them.

Because the parties are so weak, many politicians have begun going outside them. In building-block fashion they add up lists of 2-per-cent-of-the-population interest groups to whom they will not say no, until they have put together their own personal majorities.

Because each politician has a different constituent base, members of the same party are locked in on both sides of almost every issue. That means there is very little "give" in the system of the sort the major parties once provided—the kind of give or flexibility necessary to build majority support for solutions to our problems. The result—whether on energy, tax policy or the conduct of foreign affairs—is chaos.●

## PERSONAL EXPLANATION

### HON. EDWIN B. FORSYTHE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. FORSYTHE. Mr. Speaker, due to illness, I missed several votes on September 6 and September 7. I would like to take this opportunity to advise my colleagues and friends how I would have voted if I had been present:

Rollcall No. 724: Quorum, September 6, 1978.

Rollcall No. 725: H.R. 12432, Civil Rights Commission, September 6, 1978. Treen amendment to prohibit the Commission on Civil Rights from appraising or studying and collecting information about laws and policies of the Federal Government, or any other governmental authority, with respect to the issue of abortion. I would have voted "no."

Rollcall No. 726: House Joint Resolution 1088, New York City loan guarantees, September 6, 1978. Adoption of joint resolution to permit the secretary of the Treasury to guarantee up to $1.65 billion in New York City bonds, as authorized under the New York City Loan Guarantee Act of 1978 and to appropriate funds necessary to pay guaranteed loans if the city defaulted on them. I would have voted "yea."

Rollcall No. 727: H.R. 7308, foreign intelligence surveillance, September 6, 1978. McClory amendment to allow wiretapping of non-U.S. persons without a warrant, provided that a certificate was issued by the Attorney General and a designated executive branch official in the area of national security who had been confirmed by the Senate. I would have voted "yea."

Rollcall No. 728: H.R. 7308, foreign intelligence surveillance, September 6, 1978. Ertel amendment to eliminate a provision in the bill to establish a special court to hear Government applications for warrants to conduct electronic surveillance in the foreign intelligence area. I would have voted "no."

Rollcall No. 729: Quorum, September 7, 1978.

Rollcall No. 732: Quorum, September 7, 1978.

Rollcall No. 738: Motion to resolve into the Committee of the Whole House September 7, 1978. I would have voted "yea."

Rollcall No. 739: Quorum, September 7, 1978.●

## EIGHT RECOMMENDATIONS SUBMITTED TO AID HANDICAPPED

### HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. COUGHLIN. Mr. Speaker, I am pleased to submit for the RECORD a summary of eight recommendations for Government action to assist handicapped American citizens.

The summary is in the form of a letter published in the spring 1978 Harvard Law School Bulletin and written by Rudolph V. Lutter, Jr., a constituent who has been active for years on behalf of handicapped individuals.

Mr. Lutter, Harvard Law School class of 1960, is a native of Philadelphia who earned his bachelor of arts degree in sociology, with a minor in government, from Pennsylvania State University. He has worked in Washington since 1962.

An attorney adviser to the Federal Communications Commission, Mr. Lutter served as an official observer for me at the 1977 White House Conference on Handicapped Individuals. He is visually handicapped, suffering from an ailment that reduces his central vision but does not affect his peripheral vision.

Mr. Lutter has been working to assist the handicapped for the past 13 years. He is president of the Volunteers for the Visually Handicapped, and serves as board member for the National Capital Area, Coalition of Citizens with Disabilities, D.C., and the Overbrook School for the Blind and its alumni association, Philadelphia.

I believe Mr. Lutter succinctly yet forcefully states the case for his eight recommendations to aid the handicapped.

Mr. Lutter's letter:

PROPOSALS FOR THE HANDICAPPED

In December of 1977, a three-volume report was issued by the staff of the first White House Conference on Handicapped Individuals. It contained 797 pages, 287 issues and 3,522 proposed solutions to those issues. In view of this and the fact that the Conference dealt with matters affecting 36 million Americans, I am submitting the following eight recommendations for necessary government action with respect to the handicapped which I made to several members of

Congress whom I represented at the Conference as an official observer. They are based on material gathered at the White House Conference, and my personal experience as a handicapped individual and with government.

(1) Research in preventive and rehabilitative medicine must be amply funded.

(2) A national medical insurance program must be established to cover the costs of physical and mental illness for all citizens. Mental illness is specifically mentioned in this recommendation because of the emotional strains that come to handicapped citizens as a result of their economic and social exclusion from our society.

(3) The state rehabilitation offices, who receive a major part of their funding from the U.S. Department of HEW, must be forced to revise their personnel practices so as to employ rehabilitation officers and other staff who will be more able to wisely guide and assist handicapped citizens at a crucial time in their lives.

(4) The Education for All Handicapped Children Act of 1975 should be amended in order to guarantee parents the option of sending their children to schools designed solely for the education of the handicapped. The law presently looks toward educating handicapped children along with unhandicapped children in public schools (mainstreaming). While such a method may be comparable in academic and vocational training to the traditional education of handicapped students in specialized schools and may have some advantages, it is suggested that the vital learning of self-confidence, available in a specialized school through full participation in all extra-curricular, social and athletic activities of the school, irrespective of a handicap, is most important. Too, the alumni associations of specialized schools can provide an additional and desirable source of lifelong friends with similar experiences.*

(5) The exercising of the right to vote must be facilitated for handicapped citizens. Pending Senate Bill 1345 and House Bills 4119 and 6295 look toward the making of polling places physically accessible and the simplifying of the method of casting an absentee ballot.

(6) The Civil Rights Act of 1964 should be amended to include the handicapped as a protected minority. Pending Senate Bill 3504 proposes such an amendment.

(7) Since unemployment is the key to economic independence and since economic strength provides a path to social integration, it is recommended that Section 501 of the Rehabilitation Act of 1973, which requires the federal government to take affirmative action with respect to the employment and promotion of handicapped citizens, be amended to provide for (a) the provision of a private, civil cause of action for its enforcement in the federal courts; (b) the payment of attorney's fees in cases where a violation of the Act is found; (c) back pay and retroactive promotion where a violation of the Act is found; and (d) the establishment of a mechanism of censoring government officials who are held to have violated the Act. The development of a model program of employment of handicapped citizens in the federal government will advance the implementation of Section 503 of the Act which mandates affirmative action in employment of the handicapped by private enterprise receiving federal contracts.

(8) Since existing law or new law is useless unless enforced, it is recommended that a legal ombudsman be established as a part of the federal government, to encourage the forthright enforcement of federal laws concerning the handicapped by the appropriate federal agencies.

Rudolph V. Lutter, Jr. '60
Washington, D.C.●

*I do not believe my judgment to be tainted in this recommendation; however, in evaluating it, it should be known that I am on the boards of the Overbrook School for the Blind and its Alumni Association.

## THE EXIMBANK AND SOUTH AFRICA

### HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. BLANCHARD. Mr. Speaker, it has become apparent that the continent of Africa will be the focus of close scrutiny and important policy decisions for our country in the immediate future. Indeed, we have debated several bills this year which concern our policies toward the nations of Africa.

One bill which I was involved with as a member of the Committee on Banking, Finance and Urban Affairs was the Export-Import Bank bill. The question of whether the United States should impose economic sanctions through the Eximbank on South Africa because of their apartheid policies was raised when the bill was considered both in committee and on the floor of the House.

Mr. Mitchel Kehetian, who is the managing editor of the Macomb Daily newspaper in my district, spent 3 weeks in South Africa earlier this summer. He wrote a five-part series on the situation there, encompassing interviews that he had with people in various walks of life in South Africa, as well as some of his own reactions. I found the series very informative and interesting. Mr. Kehetian's point of view is different from so much of what is written these days about South Africa.

Therefore, in view of the very difficult questions that are involved in our policy decisions regarding South Africa, I want to give all of my colleagues an opportunity to read Mr. Kehetian's series of articles. Because of space limitations, I am inserting only the first article in his series. However, I would be happy to provide copies of the remaining articles in the series to any interested party.

The article follows:

[From the Macomb Daily, May 22, 1978]

COMMUNISM, NOT APARTHEID IS GREATEST FEAR

(By Mike Kehetian)

PRETORIA.—While white South Africans grope in search of a compromising solution to rid their land of cancerous racial policies, they stand determined to protect "the fatherland" from the growing Red Tide sweeping through the Dark Continent.

The white South African pleads for "more time" to resolve the country's apartheid dilemma, for his greatest fear is being engulfed by communism.

He points to Moscow's proxy army—more than 40,000 armed Cuban troops; and the Marxist takeovers in Angola, Mozambique and threatened intrusion into the internal affairs of Zaire and South West Africa.

As the South African glances across the border into Rhodesia, a once white-ruled nation soon to transfer the power base to black majority rule, he predicts the outcome: "A Marxist takeover with the blessing of President Jimmy Carter and Ambassador Andrew Young."

But he expresses a faint glimmer of hope that neighboring Rhodesia may still escape a Marxist takeover, a hope rekindled by Gerald Ford when the former president assailed the Carter Administration for supporting the "wrong side" in Rhodesia.

Carter contends the transfer of power by Ian Smith's white minority government to a multi-racial government must include representation from the Patriotic Front—a devout Marxist backed terrorist group fueled and supplied with Cuban and Soviet weaponry.

How real is the communist threat?

Maj. Gen. Douglas Ralston, the No. 2 man in South Africa's defense ministry, says it is real.

The huge wall chart of Africa in his tight-security ministry office in Pretoria is dotted with "red pins," with a question mark tacked to the future safety of the Cape of Good Hope oil route—which he labels as the "lifeline" for the "naive western powers."

When pressed if South African troops are offering aid to anti-Marxist guerillas in southern Angola, the military leader insists "we're not in Angola."

Yet, two days after granting an interview, South African ground and air force units struck with lightning precision at a Swapo terrorist base in southern Angola. The raid inflicted heavy losses on the Swapo camp, appropriately given the code name "Moscow."

Defense Minister P. W. Botha said the limited military strike was directed against Swampo terrorists, and to put an end to Swapo's extensive campaign of terror in South West Africa.

The country of South West Africa (Namibia), a former German colony, was awarded to South Africa as a protectorate after World War I by the then League of Nations. Its independence is expected later this year, through a western power—South African compromise.

Swapo insists it should decide the eventual fate of the emerging African state.

As to the defense of the Cape Sea oil route, Ralston insists South Africa no longer will assume the role of defending the "Panama Canal of the Indian and Atlantic Oceans."

"Henceforth, we will take a neutral stand on defending the Cape Sea route for western Europe and America. We will think of our own safety, first and foremost." he repeated.

Each day, no less than 60 oceanplying ships slip past the Cape. At least 17 are oil tankers heading for Europe and America.

When the Suez Canal was blocked during the 1967 Israeli-Egyptian war, the flow of oil tankers using the Cape, route tripled in number.

South African aerial photos taken of ships plowing the Cape waters also spotlight Soviet vessels, mostly in attack training exercises.

"If that day ever comes, the Soviets will be experts at hitting any oil tanker bound for the west—and without oil, western Europe collapses," Ralston warns, grimly.

On the subject of his nation's ability to wage combat against Cuban troops, Ralston firmly states: "We took care of Cuba in Angola, even with a small force of 2,000 against their 19,000. But we had to withdraw when your Henry Kissinger and the CIA broke their promise of help if we went in to stop the Marxist takeover of Angola in 1976."

Then there is Douglas H. McClure, an expert on Soviet strategy at South Africa's Institute of International Affairs, who boasts of his academic days at the University of Michigan and that his mother is an American.

"You (America) are the ultimate target. If all of Africa succumbs to Moscow, then

the western world will be at the mercy of Soviet expansion. You need our resources, and you will need the Cape Sea oil route," McClure stresses.

To lend credence to his concern, McClure unfolded exhibits and stats to confirm that more than 2,000 Cuban troops were air-lifted to Mozambique during the Marxist takeover of that former Portuguese colony.

When quizzed about South Africa's capability to ward off a full-scale communist attack, without western support and weaponry, McClure smiled: "We launched the development of nuclear war-heads in 1970, and by now we should have that ability. And we've got the French Mirage to deliver it—if necessary to survive."

As to the country's search for sophisticated weaponry to counter the Soviet build-up in southern Africa, McClure said: "We trade heavily with Israel. Israel also fears that America will let her down to satisfy selfish interests. I guess the one common trait we have with the Israeli is the will to survive against large numerical odds."

During Israel's 30th anniversary of statehood, South African Jews held rallies in this country's large cities—and with the blessing and participation of government officials and conservative newspapers.

With the demise of the Ford-Kissinger administration, McClure said "most South Africans placed great faith when Mr. Carter pledged to stand fast against communist expansion. Instead he and Andy Young refer to the presence of Soviet-backed Cuban troops in Angola as a stabilizing force. How can you call oppression a stabilizing force."

In the opinion of Harvey Tyson, editor of the influential Johannesburg Star, a frequent critic of government policies, the "communist threat is real," though he places equal concern over the country's apartheid policies.

The communist threat is one shared by a majority of white and black South Africans interviewed—from Pretoria to the southern tip of the country at Cape Town.

Solomon Ngobese, the mayor of Umlazi in the KhaZulu Homeland, while citing the black South African struggle for economic independence and self-government, adamantly states: "We don't need any help from Russia."

"I've seen what the communists have done to Angola, Mozambique and how they now threaten Ethiopia, Zaire and Rhodesia. As long as the communists are kept out of South Africa, we will achieve our ultimate goal. If the communists win, we all perish—whites and blacks."

The leader of South Africa's nearly one million Hindu and Muslim Indian community in the Natal Province was more to the point. "South Africa needs the west, and don't be misled that by sacrificing this country you will stop the communists. It will not work."

Equally rough on American policies in Africa was Lennox Sebe, the chief minister of the Ciskie Homeland. "Get rid of your Vietnam fear. Be bold against communism. Help our emerging black homelands to be strong economically and you defeat the seeds of communism."

Meanwhile, the man on the street continues to scoff at Carter's warnings to Cuba and the Soviets. "The Cuban and the Russian knows you still bleed from the Vietnam era, and they will not stop until they capture the minds of all Africans," is their story to visiting Americans.

Is the communist threat a real threat?

Ask any South African, be he white, black, Asian or colored and he'll respond with a concerned note.

As Ralston said: "If communism wins—then all our people face certain destruction."

But he counters, confidently: "We won't run away. We've been here for 300 years. We will fight to the end. This is our homeland."

(In tomorrow's report, Kehetian writes about South Africa's racial dilemma as seen by the ruling white political structure, urban blacks holding quasi-government posts and those who weathered the 1976 riots that swept through Soweto.) ●

## "REASONABLE CAUSE" RULING AGAINST OSHA

### HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. HANSEN. Mr. Speaker, in May I informed you of the Supreme Court decision regarding the case of Bill Barlow, a small contractor from Pocatello, Idaho, and his victory over the Occupational Safety and Health Administration's warrantless inspection regulations. At the time there was a great deal of pessimism among the members of the press that the Court did not provide a strong "reasonable cause" ruling. This, however, is not the case as I have continually maintained. My hopes and contentions have been significantly reinforced and the Barlow decision has been strengthened substantially in a recent Federal court decision in the U.S. District Court for the Eastern District of Wisconsin. OSHA once again was dealt a devastating blow.

The hapless safety agency had forced an inspection of a Weyerhaeuser facility with only an administrative warrant which came under legal challenge. The case was the first to be considered in the wake of the Barlow decision that a businessman does not have to settle for anything less than a warrant based on probable or reasonable cause.

Thus the Barlow decision continues to assume an increasing importance in American history, because it sets a constructive precedent for necessary protective guidelines for citizen rights in the face of Government activities. Heretofore, the businessman and farmer have been the victims of a recent trend in reverse justice where the citizen is assumed guilty until he can prove his innocence.

The Barlow court ruling places the burden of proof back on the Government where it belongs. OSHA can now come to inspect as before but the businessman can demand that they have a search warrant properly obtained from a magistrate, and the warrant itself can be challenged by the citizen if he wishes to question the grounds upon which the warrant was issued and the scope of the proposed search—thus resting the burden of proof on the Government where it should have been all along.

The Weyerhaeuser decision has upheld my hopes and contentions and significantly reinforced the Barlow ruling. I would like to call my colleague's attention to my remarks in the CONGRESSIONAL RECORD of July 25, 1978.

Additionally, Senate and House conferees are now considering H.R. 11445, amendments to the Small Business Act. One of the amendments to this bill offered by Senator DEWEY BARTLETT of Oklahoma will exempt most small businesses, those with 10 or fewer employees, from coverage under the controversial Occupational Safety and Health Act. Certain small businesses considered hazardous, because of high injury-illness rates, would remain subject to the provisions of the act.

Over the past few years Congress and more recently the administration have become increasingly aware of the burdensome impact that OSHA has had on small businesses. As a result, some effort has been made to reduce the harsh effects that OSHA has had on them. Most notably were recent announcements by the Labor Department of its intentions to delete 1,100 admittedly nitpicking regulations and later to eliminate unnecessary paperwork and reporting requirements affecting some 40,000 nonhazardous small businesses. The Department originally announced its intentions to delete the 1,100 regulations last December. Unfortunately, however, after many months no action has been taken to implement even the earliest decision to eliminate unnecessary regulations. Additionally, by legislative action we are already exempting farms with 10 or fewer employees from OSHA coverage and eliminating penalties in inspections of small businesses with 10 or fewer employees.

The benefit to the Nation's small businesses from the Bartlett amendment could be tremendous. Primarily affected are those small businesses already exempted from fines when there are 10 or fewer nonserious citations, such as the wholesale and retail trade, finance, insurance. real estate. and service industries. The injury-illness rate for this group is less than 3 per 100 fulltime workers. A statistic far better than that used by OSHA as indicating high-risk industries.

Mr. Speaker, I strongly urge House conferees and all House Members to accept the Senate amendment and "do something for the little guy who is finding the overlapping and burdensome requirements of Government from a multitude of agencies almost more than he can bear."

I include at this point in the RECORD material involving OSHA's lack of followthrough on announced intentions to relieve small businesses of excessive and unnecessary regulations and requirements. The articles follow:

[From the National Journal Aug. 12, 1978]

THE "FACTS" ABOUT OSHA'S 1,100 REVOKED REGULATIONS

Erroneous "facts" sometimes take on a life of their own in Washington. Once sanctified by official pronouncement and dignified in print, they have a way of becoming ingrained in the official lore of the town. The government's assertion last year that there was an impending swine flu crisis comes to mind.

So it is now with the case of the vanishing safety and health regulations.

Somehow it's believed, by President Carter and Newsweek, among others, that the Labor Department's Occupational Safety and Health Administration (OSHA) excised with a single blow some 1,100 regulations—unnecessary, nit-picking rules that irritated industry and did not protect the health and safety of workers.

No such luck. Not a single OSHA regulation has been repealed.

The fictional excision got a push on its way to becoming a "fact" when President Carter, speaking in Beaumont, Texas, on June 24, launched into the cut-down-on-government-regulation part of his standard inflation-fighting spiel. "We have got too much government regulation," he said. "It has got to be cut down." The White House transcript records that the crowd applauded.

"We are beginning to eliminate the worst nit-picking regulations in agencies like . . . OSHA," Carter continued. "In one day last year, 1,100 different regulations were wiped off the books. And the ones that we do have are being written in clear English so a peanut farmer can understand them." More applause.

Arguably, the OSHA excisions took on the character of a half-truth when Carter thus cited them. And if that's so, then the other half was added, and the excisions became a Washington "fact," when Newsweek reported in June that OSHA, "perhaps the most reviled of all watchdogs, has repealed 1,100 of its more than 10,000 rules."

But the fact about the "fact" is that it is not a fact.

What OSHA now calls its "standards deletion project" was launched with much fanfare on Dec. 5, 1977. Labor Secretary Ray Marshall held a press conference to announce the plan to cancel 1,100 regulations, citing such well-known absurdities as OSHA's standard requiring open-front toilet seats and another specifying how many inches above the floor fire extinguishers had to be hung.

"This project has taught me an important and sobering lesson," Marshall said then. "In working with [OSHA administrator] Eula Bingham and her staff on removing these 1,100 nit-picking provisions, I discovered that the system makes it much easier for the government to promulgate new regulations than to get rid of outmoded or ineffective ones." Little knowing how true that last statement was, Marshall continued: "Things are not impossible, however. Our efforts today indicate that with enough determination and creativity it is possible to beat the system."

But to date, the score is: The System, 1,100: Marshall, 0.

OSHA spokesmen explain that the process used to delete a rule is the same as that used to promulgate a rule. Proposals must be published in the Federal Register, and time allowed for public comment. Then, if a hearing is demanded, it usually must be held.

The rules OSHA targeted for delegation were in five categories: those that were obsolete, were meant only to promote comfort and convenience (as with the toilet seats), were designed to protect personal property, agency, or duplicated existing industry standards.

OSHA was surprised to find that many of the regulations had public constituencies. "A lot of people seem to have a stake in them," said a spokesman. "The unions want to make sure their members won't have to give up something they like."

So comments have been flowing in, and some requests for hearings have been filed, though OSHA is resisting holding any.

Christopher B. Graybill, an OSHA spokesman, said that the people working on the standards deletion project "aren't giving a target date" on when the first standard might bite the dust or when the whole project might be completed. "We couldn't even give you a guess for the record; it wouldn't be accurate enough," he said. "But our new director of safety standards has the project near the top of his priority list."

So the Washington "fact" is not a fact at all, and the 1,100 standards remain on the books.

There is one last fact, heartening to businesses, to end the story. OSHA says it has directed its inspectors not to vigorously enforce most of the standards targeted for excision. Verbal warnings will be delivered, but no written notices and no penalties will follow. Perhaps that returns the Washington "fact" to the status of a half-truth.—Timothy B. Clark.

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[From the Washington Post, Aug. 12, 1978]

OSHA Backpedals on Its Plan To Banish "Nitpicking" Rules

(By Loretta Tofani)

The Occupational Safety and Health Administration has found it's easier to ignore regulations than get rid of them, and even President Carter is confused.

Last December, OSHA announced an ambitious plan to take 1,100 "nitpicking and obsolete" regulations off the books, such as one specifying how high off the floor fire extinguishers had to be hung.

During a political swing in Texas in June, Carter, attacking excessive federal regulation, pointed to the OSHA action with pride. "In one day last year, 1,100 different regulations were wiped off the books," he told a crowd in Beaumont.

But National Journal, the weekly on politics and government, reports in its latest issue that the regulations are still on the books.

"Some unions told us these regulations were important protections," a safety spokesman said. "They felt their situations in factories might be worse without them."

A safety spokesman said the organization still intends to get rid of the regulations, but probably not all 1,100 originally intended for excision. He would not say when the regulations would be deleted, only that the project is a "top priority."

He said officials must examine comments from labor unions and industry before deciding which regulations can go. In the meantime, inspectors will not enforce most of the 1,100 regulations. "The employer won't be cited," the spokesman said. "He won't be fined or get a written notice. It'll just be pointed out to him that he violated the standard."

The rules that were to be banished were obsolete, designed to protect personal property, duplicated the regulations of other federal agencies, or were meant only to promote comfort and convenience.

Labor Secretary Ray Marshall announced the agency's intention to take the regulations off the books at a December press conference.

"In working with [OSHA administrator] Eula Bingham and her staff on removing these 1,100 nitpicking provisions," Marshall had said, "I discovered that the system makes it much easier for the government to promulgate new regulations than to get rid of outmoded or ineffective ones. Things are not impossible, however. Our efforts today indicate that with enough determination and creativity it is possible to beat the system."

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## SCHOOL MEMORIAL DEDICATED TO THE LATE ADM. HOWARD YEAGER

### HON. ROBERT McCLORY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. McCLORY. Mr. Speaker, this Sunday, September 17, I shall participate in a memorial service to a man I called a friend, the late Rear Adm. Howard A. "Red" Yeager. Admiral Yeager was commandant of the 9th Naval District at Great Lakes, Ill., in my 13th Congressional District.

He was much honored. His courage, his intelligence, his diplomatic skills, his decency brought him recognition from not only his own country, but from others. He loved the Navy. He was incredibly proud of serving his country as a part of the U.S. Navy.

But "Red" Yeager was not a one-dimensional man. He cared about the world in which he lived and part of that caring was his outreach to others. During his service at Great Lakes, he was actively involved in youth work in North Chicago, the community of which Great Lakes is a part.

So valued were his contributions and so well remembered his enthusiasms that after his tragic death in 1967 in a fire at the commandant's home at Great Lakes, North Chicago named a school for him.

Mr. Speaker, this Sunday there will be a memorial dedicated to Admiral Yeager at the North Chicago Yeager School. Adm. Thomas W. McNamara, present commandant of the 9th Naval District, will present the ship's bell from the U.S.S. *Cannon*, once under Admiral Yeager's command.

The Sea Cadets Honor Guard, sponsored by the Navy League of the United States, will present a Navy flag, and I am privileged to present an American flag that has flown over the U.S. Capitol.

Mr. Speaker, many public servants will be on hand Sunday, including my good friend, North Chicago Mayor Leo Kukla. But, perhaps even more important will be those other guests—many of the nearly 300 students at the Howard Yeager School and their parents.

I think I knew "Red" Yeager well enough to say that these are the ones he would care most about.

I have said little of Admiral Yeager's Navy career. Records speak eloquently of them. He was a great naval hero. A man of courage and dedication to the Navy and to our Nation. What I have tried to portray here is the spirit of a man who cared enough to give of himself.

And the two major speakers Sunday may tell us more about that. His son, Navy Comdr. Howard B. Yeager, and Navy Capt. Donald R. Yeager, his brother, will be the honored guests.

Mr. Speaker, to all those who helped arrange Sunday's ceremony—among them Michael Penich, Jr., Yeager School principal; Mrs. Patricia Stewart, Parent Teacher Organization president; Dr. Charles Thomas, school superintendent; and Mrs. Marjorie Hart, school board president—my thanks and the thanks of all of us who called Howard Yeager friend.●

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## SMALL BUSINESS AND SCIENTIFIC AND TECHNOLOGICAL INNOVATION

### HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, today's material concludes a series of memorandum and reports on the im-

portance of small business to the scientific and technological process, and the frustration of its efforts by governmental agencies. Included are recommendations and executive summary of the OMB Rabinow report:

SUMMARY OF REPORT OF WILLIAM K. SCHEIRER

IMPORTANCE OF SMALL R. & D. FIRMS

Many analysts believe that small firms have a better record for innovation than large firms. Richard Morse recently wrote that "a disproportionate number of innovative ideas emanate from our smaller technically based companies."* The reasons for this phenomenon are varied. Some believe that managers of small R&D firms have a greater incentive to innovate while conversely, in some cases, the marketing plans of large firms dictate that technical improvements to their products be held to a minimum. There also is a possibility that researchers in large firms tend to overspecialize to a greater extent than researchers in small firms. Mr. Rabinow has observed that, "when one narrows his specialization, he probably comes up with fewer ideas. If one loads the dice in favor of a certain art, one cuts off analogous arts, which I think are important. The more an inventor can pull out of related and unrelated arts, the more original his ideas are likely to be."

Empirical evidence indicates that in a comparison of firms with less than 1,000 employees and those with over 1,000 employees:

Firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations during 1953–73.

The ratio of innovations to sales is about one-third greater in firms with less than 1,000 employees.

Firms of less than 1,000 employees have a ratio of innovations to R&D employment which is approximately four times greater.

The cost per R&D scientist or engineer is almost twice as great in firms of over 1,000 employees.

FEDERAL GOVERNMENT UTILIZATION OF SMALL FIRM CAPABILITIES

A striking disparity appears to exist between the capabilities of small technology based firms and their utilization by Federal agencies. Data collected by the National Science Foundation and supplemented by the Office of Federal Procurement Policy shows that only eight percent of Federal R&D contract awards to industry and only about three and one-half percent of obligations to all R&D performers ** were made to small firms in FY 1975; that Government R&D obligations to industrial firms vary from less than one-half of one percent for the Department of Agriculture to 62 percent for the Department of Defense; and that reliance on industry for Federal R&D has declined from 59.6% in 1966 to 50.7% in 1976 in current dollars.

The overwhelming percentage of the dollars in Federal R&D goes to development as opposed to research (basic and applied). Although the industry share of development is substantial, most of this goes to large businesses capable of performing very large development contracts. On the other hand, in the research area where its capability is high, small firms lose awards to colleges and universities, federally funded research and development centers (FFRDCs), as well as to large firms.

Summary conclusions reached are that (i) Federal agencies tend to use sources other than industrial firms for basic and applied research; (ii) a significant portion (64%) of Government R&D is for development normally involving large industrial firms; and (iii) the percentages of both total expenditures for R&D and R&D contract awards to small firms are very low.

SMALL FIRM IMPEDIMENTS

As indicated above, large firms are favored in the award of development contracts on the basis that they are essential for the production phase of the program. However, this is not the only restriction to a greater use of small firms. Mr. Scheirer found that policies and procedures followed by Federal buying activities also restrict the use of small technology based firms. Following are some of the more significant impediments encountered by small companies:

It is difficult to identify and respond to Government R&D requirements. On a competitive basis, large firms have a greater capability to determine what the Government is interested in researching and to unravel the complexities of "Requests for Proposals" for R&D work.

Preparation of proposals is expensive and time-consuming to a point frequently exceeding the capabilities of small firms.

A bias in favor of large firms can exist when awarding R&D contracts. The tendency is to consider awards to large well-established firms "safer" than to small firms.

Funding for Federal R&D work frequently lacks stability. This condition strains the financial capabilities of small firms.

Submittal of unsolicited proposals is frequently discouraged.

Burdensome administrative requirements for contract solicitation, evaluation, award, and performance impair the ability and desire of small firms to compete for R&D contracts.

CONCLUSIONS

Though the responsibility for retention of a high technology capability in the United States is shared by both the private and public sectors, the large annual Federal expenditures for R&D places a unique responsibility on Federal agencies. New techniques must be devised to encourage innovation by all sources, with particular emphasis on small R&D firms. In the placement of R&D work, Government managers should carefully consider the ultimate beneficial effect of using small firms and not give undue consideration the immediate security that may appear to exist by awarding R&D contracts to large firms.

RECOMMENDATIONS OF AD HOC INTERAGENCY PANEL

The interagency panel chaired by Mr. Rabinow developed the following recommendations based on its analysis of this problem:

1. Federal agencies should develop formal programs which encourage the increase of Federal R&D awards to small technology based firms.

2. Large research and technology programs should be divided where feasible into discrete parts to permit solicitation of proposals and award of contracts to small technology based firms in lieu of making a limited number of awards with consolidated requirements that only large firms can accomplish.

3. Subcontracting to small firms should be encouraged in contract solicitations, source selection criteria, and negotiations for R&D work. A prime contractor's record in subcontracting to small technology based firms should be a factor in fee awarded in award fee and incentive type contracts.

4. Intensive efforts should be made by Federal agencies to reduce or compensate for impediments experienced by small technology based firms. These efforts may include but not be limited to the following:

(a) Early identification and publication of agency R&D requirements.

(b) Coordination of R&D requirements with Small Business representatives early in the acquisition process.

(c) Use of the *Commerce Business Daily* to provide advance information on anticipated contractual requirements for R&D.

(d) Providing methods for small technology based firms to obtain an understanding of requirements which may not be possible through the written solicitation. For example, some buying activities currently provide research and technology libraries, catalogs for technical requirements, and special briefings to explain their research and technology needs.

(e) Providing sufficient time for firms to prepare and submit proposals.

(f) Reducing to the extent feasible the time and supplemental data required between receipt of proposals and award of contracts.

(g) Providing agency R&D points of contact for small firms.

5. Agency policies and procedures should encourage unsolicitated proposals. Contracts should be awarded for research and technology efforts based upon the merit of such proposals without converting the requirements to competitive solicitations.

6. The agencies, including the Small Business Administration, should use more technically trained personnel to serve as advocates for and advisors to small technology based firms. Special emphasis should be given by such persons to the advance procurement planning process for R&D requirements.

7. Profit-making firms should not be excluded from making proposals or receiving awards on R&D work that is not assigned to in-house laboratories.

8. Agencies should consider allowing greater amounts of independent research and development and bid and proposal costs than currently authorized when negotiating contracts with small technology based firms.

9. Methods should be developed for collecting and reporting data on small business share of R&D contract awards.

10. Establish small business set-asides similar to those for supplies.

EXECUTIVE SUMMARY

*Findings*

1. Small firms have compiled a striking record of innovation in the private sector:

Firms with less than 1,000 employees accounted for almost ½ of major U.S. innovations during 1953–73.

The ratio of innovations to sales is about ½ greater in firms with less than 1,000 employees than in firms of over 1,000 employees.

Firms of less than 1,000 employees have a ratio of innovations to R&D employment which is approximately four times greater compared to firms with more than 1,000 employees.

The cost per R&D scientist or engineer is almost twice as great in firms of over 1,000 employees than in firms with less than 1,000 employees.

2. Small firms receive 8% of Federal R&D awards to industry and about 3½% of obligations to all performers, including in-house performers of R&D. The share of companies with less than 1,000 employees in total company R&D funds, including subcontracts, is ⅓ greater than their share of Federal R&D funds.

3. Small firms face impediments in the Federal R&D procurement process, not found in the private sector, in the following areas:

Stability and efficiency of R&D funding.

Administrative requirements.

Nature and timing of RFPs.

Treatment of proposals.

Contact with technical personnel.●

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* Op Cit.

** Industry, in-house laboratories, educational institutions, and federally financed R&D centers.

## A NEW ROUND OF BARGAINING

### HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. MICHEL. Mr. Speaker, the Washington Post, September 10, 1978, carried an article which reminds us that we are entering a crucial period in the fight against inflation. Only 3 months are left before next year's major new round of union contract bargaining begins. The lines are clearly drawn: If this new round of bargaining produces a major rise in the rate of inflation, we may well not be able to save the American economy. It is as simple—and as dangerous—as that. Accompanying the article is a chart showing the dates of the major contracts to be negotiated. That chart should be labeled "storm warnings."

As the article points out, there is a growing sentiment for imposed wage and price controls. If the polls are reflecting public sentiment accurately it should come as no surprise. When presented with the simple question: "Do you favor wage and price controls to stop inflation?" many people will answer in the affirmative. But the question, asked that way, is only half the story. Wage and price controls lead inevitably to shortages, to "exceptions" to the controls, to loss of incentive, and to a drop in productivity. Is this the price we must pay to stop inflation? I hope not. But surely we are headed in that direction if the administration does not do something quickly.

I had hoped that the administration would take the lead by cutting Government spending, the prime cause of inflation. But the administration has failed. I now hope that responsible union leaders will modify their wage demands in line with the Government's efforts. But they say that they do not want to make sacrifices unless everyone else does. So we are back where we started.

Someone, somewhere, has to start the fight against inflation. I do not believe it is possible for that fight to truly begin unless the President announces a plan to cut Government spending dramatically over the next 2 years. He must do so before, not after, the new round of bargaining starts.

Union members should remember that the wage increases gained in 1 year will be eaten up in the next by inflation. Union members must also remember that of it comes to wage and price controls there will be drastic shortages of necessities and, eventually, damage to the productivity of the American economy.

Is this what union members want? I do not think so. But they have a right to expect the Government to show its seriousness over inflation. I can well understand that no worker wants to ask for less than he believes will be necessary to fight off inflation. But this becomes a vicious cycle in which each preventive wage-hike becomes a cause not a solution of continuing inflation.

What we need is leadership. We need it in the White House, in the board rooms, in the union halls. And we are not getting it. That is the tragedy of our time.

At this point I wish to insert in the RECORD, "Deadline Near for Voluntary Anti-Inflation Plan," including the accompanying chart of major contract expirations, from the September 10, 1978, Washington Post. It is my hope that the chart will be used by every Member as a kind of tracking device for the inflationary trends that will inevitably come unless restraint and patriotism combine to stop this seemingly unending inflation:

DEADLINE NEAR FOR VOLUNTARY ANTI-INFLATION PLAN

(By Frank Swoboda)

Time is running out on the Carter administration's efforts for voluntary control of inflation.

After nearly two years of false starts with a variety of voluntary anti-inflation programs, the White House has only three months left to come up with an effective plan for holding down wage and price increases before the start of next year's major new round of union contract bargaining.

The Carter administration has now reached the same point in the three-year cycle of contract bargaining that the Nixon administration waited for in 1971 before imposing wage and price controls. The current lull between the end of the bargaining round that began in 1976 and the start of next year's new negotiating cycle is the only opportunity the White House has of intervening in contract negotiations during the President's first term without creating explosive wage inequities among the major unions.

The biggest concern of both the White House and most major union leaders is next year's negotiations between the Teamsters and the trucking industry over a new national trucking agreement. The outcome of these negotiations will basically set the wage pattern for the next three years.

"We've already told the administration that our members care a whole lot more about what the Teamsters do (at the bargaining table) than they do about what the government has to say about controlling inflation," says one key union leader involved in next year's bargaining round.

In addition to the 528,000 Teamsters whose contracts expire in the trucking industry March 31, major contracts expire next year in the petroleum, construction, rubber, clothing, electrical manufacturing, meatpacking and auto industries.

The wage "patterns" set in next year's contract negotiations will then serve as the target for all other industries—including basic metals—during the next two years. And this is what clearly worries administration economists.

From almost the first day of the Carter administration two years ago, the major anti-inflation target has been the Teamsters. In his earliest public interviews, Charles L. Schultze, chairman of the President's Council of Economic Advisers, has talked of the need to break the "wage momentum" in the next round of contract bargaining.

Since then, however, the administration has been unable to have any meaningful discussions with organized labor about an effective anti-inflation policy. "We could never even agree on the basic causes of inflation," says an administration official.

In the meantime, the administration has basically sat back and watched while the United Mine Workers, after a long strike, reached agreement on a new contract calling for wage increases of nearly 40 percent over the life of the contract and settlements totaling 35 percent for the major railroad unions.

The AFL–CIO has steadfastly insisted that the administration would first have to demonstrate its willingness to deal with rising prices before it would consider cooperating with the government on a wage control policy. Noting the fast rise in prices earlier this year, the labor federation warned in its policy statement on the economy last Spring that: "Price increases . . . are the principal economic fact of life which govern the wage levels unions must seek."

The policy resolution went on to note that "we candidly told the President and his economic advisers that the administration's success in encouraging American business and the banking community to hold the line on prices and interest rates will be naturally reflected in collective bargaining settlements."

The Teamsters, the nation's largest independent union, has also warned that it will be watching the administration's efforts to control prices as a measure of its demands at the bargaining table. But the Teamsters present the administration with another major problem that is bound to have a spill-over effect on the upcoming negotiations.

For the past two years, the Labor Department has been trying to clean up the union's scandal-ridden pension funds. The clean up effort has resulted in a variety of legal actions and could eventually produce indictments against some union leaders involved in the pension fund. That investigation has resulted in an almost total breakdown in the relationship between the government and the Teamsters.

As a result of the government's pension investigations, the union has had little to do with Labor Secretary Ray Marshall and the White House has publicly shunned Teamster President Frank E. Fitzsimmons. The consequence has been an almost total absence of any coherent labor relations policy toward the upcoming trucking negotiations, according to administration officials.

"How the hell are you going to get a settlement with the Teamsters when Fitz wants an invitation to the White House and Marshall wants to send him to jail," says a veteran government labor relations expert.

Adding to the White House problems are the deteriorating relationship between the administration and organized labor in general over the President's failure, in the eyes of many union leaders, to deliver on his campaign promises for social legislative changes as well as labor's own special interest goals.

That deterioration has already forced the administration to abandon earlier hopes of creating an anti-inflation program patterned after the Korean War controls experience. Under such a program, the White House hoped to set up a series of tri-partite committees in major industries that would be used to help labor and management work out their problems with the government in exchange for wage and price moderation.

The White House was also counting on the help of the United Auto Workers union and its president, Douglas Fraser, in the push for wage moderation. But Fraser has since become disenchanted with the administration for its failure to push for the social programs outlined in the Democratic Party platform and is in no mood to help.

With the industry committee avenue now closed, the administration is talking about a program of wage and price guidelines patterned after the program used by the Kennedy and Johnson administrations in the 1960s. For wages the administration is considering a guideline tied to the rise in the cost of living.

So far, however, labor is having no part of the guidelines. After a briefing by administration economists this week, union leaders

remained privately adamant in their opposition to any attempt at setting a national wage standard.

And a negotiator for a major corporation coming up for contract renewal next year warned: "The administration is crazy if it thinks any company will even consider offering increases less than the cost of living plus something for productivity."

Without commenting on this week's meeting at the White House, a top union economist repeated the warning that the administration would have to do something about recently rising prices before it could expect any help from labor. "Most of the price increases this year have little relationship to wages," he said, citing the sharp rise in interest rates and the cost of food and energy.

Another key union official called the latest anti-inflation proposals the act of "desperate men." He said his union has already told the White House it would be willing to make wage sacrifices only if there was evidence that other areas of the economy were also being forced to make sacrifices.

The administration has scheduled a series of meetings with key labor leaders in the next few weeks in an effort to convince the union officials of the need for cooperation to curb inflation. So far, however, the outlook for cooperation is bleak.

That bleakness was reflected by the administration in its meetings last week with labor. After making a plea for cooperation on a voluntary basis, one top White House adviser warned labor that unless the unions cooperated the administration might have to seek a "political solution." He then, according to others at the meeting, noted that recent public opinion polls showed a growing support for wage and price controls as a way to deal with inflation.

SUMMARY OF MAJOR CONTRACT EXPIRATIONS, CALENDAR YEAR 1979

| Industry | Companies | Unions | Workers covered | Expiration date |
|---|---|---|---|---|
| Petroleum refining. | Texaco, Standard Oil Co. (Amoco), Atlantic Richfield, Shell, Mobil, Exxon, and others. | Oil, Chemical and Atomic Workers (OCAW), and others. | 43,200 | Jan. 7. |
| Construction | General Contractors American (light and heavy construction) (multistate) (106 agreements). | Various construction unions. | 208,250 | Feb.–Dec. |
| Trucking | Over-the-Road and Local Cartage. | Teamsters | 528,150 | Mar. 31. |
| Rubber | Goodyear, Firestone, Uniroyal, Goodrich. | Rubber Workers | 82,650 | Apr. 19. |
| Clothing | Affiliated Dress Manufacturers, Greater Blouse, Skirt & Undergarment Association, National Skirt and Sportswear, and others. | Garment Workers. | 182,700 | May 30–31. |
| Electrical products. | General Electric, Westinghouse. | Electrical Workers (IUE, UE). | 153,300 | June 30–July 15. |
| Meatpacking | Armour, Swift, Wilson, Rath, Oscar Mayer, John Morrell, Dubuque. | Meatcutters | 31,750 | Aug. 31. |
| Automobile | General Motors, Ford, Chrysler. | Auto Workers | 661,400 | Sept. 14. |
| Farm implements. | International Harvester, Deere, Caterpillar, Allis Chalmers. | Auto Workers | 94,400 | Sept. 30. |

## AMERICANS STILL WORRY ABOUT JOBS

### HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. HAWKINS. Mr. Speaker, the Labor Department recently released the results of an important survey of the public's attitude toward unemployment and related issues—unemployment, Government, and the American people. As we move toward final House consideration of legislation to reform the CETA system, H.R. 12452, I appreciate the opportunity to share with the Members some of the findings of this survey. This study was conducted for the Department of Labor by the Roper organization and the data was analyzed by Public Research Inc.

The American public expresses serious concern with the Nation's economic situation, particularly inflation and taxes, and diminished confidence about the economic future. The public has a strong and continuing concern about the problem of unemployment and is aware of the serious adverse social and economic consequences of the continued high level of joblessness. Simultaneously, there is significant support for an active role by the Federal Government to provide jobs and thus reduce the welfare burden and provide needed community services, as the CETA program does.

Despite recent statistics that claim improvement in the official unemployment rate, in general, the public feels that Government unemployment statistics understate the actual level of unemployment and that the situation actually has worsened. Among the reasons selected for causing unemployment, was the lack of job skills.

Overall, the public supports the concept of the Federal Government taking the lead in providing jobs and training to the unemployed. The American public firmly holds the belief that people should be able to work if they want to and a clear plurality of 47 percent feels that it is the responsibility of Government to provide a job for everyone who wants to work. This result is significant when one considers that four other alternatives were presented: Creating jobs through business expansion; encouraging job creation through a personal income tax cut; providing tax breaks for corporations who hire the hard-to-employ; or letting things take their course. Of the five alternatives nearly half of those surveyed support a strong Federal role.

When asked about their concerns about the Nation's economic situation, those polled mentioned inflation most often but reducing unemployment is seen as a more important need than peace, lower taxes, and reducing crime. Importantly, concern with reducing unemployment is shared by one-third to one-half of all Americans and not just those who are currently seeking work.

Some specifics:

Sixty-four percent of those surveyed agree that it is the government's responsibility to help the unemployed by providing jobs that pay people enough to "make ends meet".

Fifty-four percent say the government should provide job training for the unemployed.

Only 20 percent of the public feels that the government should *not* provide jobs for the unemployed.

Sixty-six percent of the public feels that public service jobs are doing something useful.

I recommend further reading of the study to Members desiring further information.●

## PLACING THE COMPROMISE NATURAL GAS BILL IN PERSPECTIVE

### HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. VENTO. Mr. Speaker, I am submitting for the RECORD an article which appeared in the September 1, 1978, St. Paul (Minn.) Dispatch titled "The Natural Gas 'Ripoff'." I think it illustrates the problem the President's energy program and the compromise natural gas bill face today. More importantly, it points out the best alternative from the public's perspective. I commend this article to my colleagues' attention.

THE NATURAL GAS "RIPOFF"

About all that is left of President Carter's energy program is the compromise natural gas bill devised by a conference committee. That, too, may fall by the wayside, but if it does the nation won't lose a thing. The only damage would be to Mr. Carter's ego.

The nation already has a natural gas policy that provides better protection for the consumer while stimulating the production of natural gas. It is working so well, in fact, that more gas was added to the nations reserves last year than in any year in the last decade.

Sen. James Abourezk, D-S.D., says, "The Administration has turned to massive misrepresentation and heavy political coercion to portray a simple, public ripoff as a necessary 'energy policy.'" He points out that judicious enforcement of the existing Natural Gas Act by the Federal Energy Regulatory

Commission can accomplish more than the bill being pushed by the White House.

The current policy is to allow cost-based drilling. This has resulted in a gradual increase in prices, but the current regulated price of $1.45 is far below what is envisioned under the bill now before Congress. What's more, producers have stated a willingness to sell at that price, unless, of course, Congress provides them with a windfall by passing the bill.

Current law also provides that all newly discovered offshore gas must go to interstate users at regulated prices. Most future gas discoveries are expected to be offshore. And if higher prices are needed to spur production, the commission has the authority to raise them to the point where new gas supplies can be marketed profitably.

This puts a lot of pressure on the commission, but the bill in Congress would put a lot of pressure on the consumer. So far, the FERC has been functioning quite successfully and it can be expected to continue to do so unless Congress buries it.

The natural gas bill has little to recommend it. It would do nothing to reduce the nation's energy consumption; it merely would raise gas prices to the point where users would be encouraged to switch to imported oil, thus further exacerbating our balance of payments problem.

We have said before that the President's proposed energy program has been reduced to such shambles by Congress that it would be better to pass nothing at all this year and start over in 1979. There is nothing in the natural gas compromise to cause us to change that opinion.●

## TRIBUTE TO VOLUNTEER FIREFIGHTERS

### HON. MARC L. MARKS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. MARKS. Mr. Speaker, there have been historic happenings in the firefighting field in the 24th District of Pennsylvania that have recently been brought to my attention. I should like to share the information with my colleagues.

First, it has been well established that the Meadville fire police organization is perhaps the original and pioneer group of its type in the United States. Because of its early inception and continuing success, it has become a model for others to follow. Records show that it was in 1842 that the first appointment was made to the fire police, and it has been in continuous service to the community ever since.

Just recently, one of its members, Trace Braymer, who is 98 years young was honored as not only the oldest active fire policeman, but also as the oldest active fireman in the State of Pennsylvania. Trace is first on the list of volunteers and most recently, I met him in his uniform, handling his usual traffic-directing chores at a Crawford County event.

It has also been noted in a recent editorial in the Titusville Herald, that it was in the Crawford County community of Pleasantville that the first crew of forest firefighters in Pennsylvania was organized.

I point out these facts, because I think it important that persons like Trace Braymer and the many, many others who are volunteers in the fire police and in firefighting in general receive the recognition that is due them. They perform a vital function in their desire to help others, and I congratulate them.●

## THE VOTE TO SUSTAIN PRESIDENT CARTER'S DEFENSE AUTHORIZATION VETO

### HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. HUBBARD. Mr. Speaker, one of the most important votes of the current session of Congress occurred last Thursday, September 7, when the House of Representatives voted by a margin of 191 to 296 to sustain President Carter's veto of the 1979 defense authorization bill, which included a $2 billion nuclear carrier. This was a most difficult and complicated issue. I would like to share with my colleagues an editorial printed in the September 7 issue of the Courier-Journal of Louisville, which was perhaps a decisive influence in my decision to vote to sustain the President's veto. The editor and publisher of this highly respected Kentucky newspaper is Mr. Barry Bingham, Jr., and its opinion page editor is Robert T. Barnard. The editorial, written by Associate Editor John Hart, is as follows:

[From the Courier-Journal, Sept. 7, 1978]

CARTER VETO SHOULD BE SUSTAINED; ANOTHER CARRIER ISN'T NEEDED

(By John Hart)

Congressional critics, who have been divebombing President Carter for his veto of a defense spending bill that included $2 billion for a nuclear-powered carrier, have scored several hits. Still, it appears that the veto will be sustained when the House takes up the issue today.

The veto should be sustained. Mr. Carter admittedly has made himself vulnerable by exaggerating the adverse short-term impact of the nuclear carrier on other defense programs and by proposing that a conventionally powered carrier be built instead. But the case for another big-deck carrier, whatever its power plant, is much less compelling than the need for improved U.S. ground and air forces in Europe, for a larger number of less expensive ships for the Navy, and for accelerated weapons research and development.

Each of these needs would be slighted, to some extent, to pay for another big carrier, plus its planes and escort vessels. But just how much other programs would be affected by the carrier is still being debated.

Critics argue that the $37 billion procurement bill Mr. Carter vetoed doesn't differ substantially from spending the administration proposed. They observe, for instance, that half the money to be spent on the carrier would be made available by delaying purchase of a Trident missile-launching submarine, a delay the administration accepted because the Trident program already is far behind schedule.

But this misses an important point. The nation needs missile-launching submarines and will continue to buy them, whatever the current troubles with the Trident. The nation doesn't, in an age of precise and relatively inexpensive anti-ship missiles, need another carrier that can be disabled or destroyed by a salvo of such weapons.

This point is far more important than the charge by Mr. Carter's critics that he vetoed the procurement bill merely to appear tough and decisive. Perhaps the President's action was intended partly to improve his tarnished political image. What counts, however, is that the veto, if sustained, will free $2 billion that can be better spent on other defense needs.

Whether, in fact, the money will be spent more wisely remains to be seen. Even if the veto is sustained, Congress and Mr. Carter seem likely to continue butting heads over defense priorities. It's interesting, for instance, that one of Mr. Carter's allies on the carrier question is Barry Goldwater, perhaps the Senate's staunchest hawk. He agrees that another nuclear carrier isn't needed. But he'd prefer to see the money spent on the B-1 bomber, a project Mr. Carter halted last year.

Disagreements between Capitol Hill and the White House are inevitable, partly because Congress has gained considerable expertise on defense and some lawmakers are convinced their judgment is superior to that of the administration—of any administration. Then there always are the pork-barrel pressures that can be brought to bear by key lawmakers whose states or districts would benefit economically from Pentagon contracts.

These conflicts and pressures are part of the policy-making game any president has to play. Compromises sometimes are necessary, even when they distort the defense budget and are downright wasteful. But there comes a time when the stakes are simply too high and confrontation unavoidable.

This is such a time. Congress has committed the nation to a course that is appallingly expensive (the proposed carrier, including its planes and electronic protective gear, would cost more than $5 billion) but would contribute little to national security. Mr. Carter had no choice but to veto it.

Though there are sure to be hard feelings all round, Congress should sustain the veto. And next year, when the carrier issue again steams into view, Mr. Carter should avoid the mistake of offering to build an oil-burning carrier as a compromise.●

## TRIBUTE TO MR. AND MRS. WILLIAM KAHN

### HON. ROBERT A. YOUNG

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. YOUNG of Missouri. Mr. Speaker, tomorrow, September 13, has been proclaimed "William Kahn Day" by the city and county of St. Louis. William and Shirlee Kahn will be leaving the St. Louis area after 20 years of service. I would like to take this opportunity to recognize the great contributions they have made to the St. Louis community.

As executive vice president of the Jewish Community Centers Association, Mr. Kahn has played a leading role in the construction of major cultural and recreational facilities. His activities for the center have included creating day care facilities, providing housing for

senior adults, and establishing family life education programs. The physical plant and programing of the center has been used as a model by other communities throughout the country and around the world.

Mr. Kahn's wife Shirlee has worked as a psychiatric social worker for the county mental health facility. In this capacity, she too has made a significant contribution to the general welfare of the community.

The Kahns have shown that they are devoted to the enrichment of the quality of life, without discrimination toward any person for any reason. I commend them for their contributions to the St. Louis area, and I wish them the best of luck and continued success in their new home.●

## BASIC RESEARCH—AN ESSENTIAL FOR THE LONG TERM

### HON. EDWARD W. PATTISON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. PATTISON of New York. Mr. Speaker, we are frequently reminded by a variety of sources that basic research can often be difficult to explain to our constituents. It is difficult because many research projects seem, at first glance, to be ridiculous. Often there appears to be no connection between a specific subject of inquiry and any useful result.

The fact is that most scientific and technological advances begin with some inquiry in an obscure area of knowledge. Frequently, the scientist doing the research hasn't the vaguest idea at the outset what the ultimate ramifications of his research will be.

George Low, the former director of the NASA Space program, is now the President of Rensselaer Polytechnic Institute in Troy, N.Y., one of the foremost technological universities in the world. He has provided me with a copy of a paper written by him which explores the function of basic research and especially its relationship to productivity.

Mr. Low indicates that a decrease in our research and development (R. & D.) spending is followed, in about 5 years, by a decline in the domestic productivity growth rate. For example, an 11.3 percent increase in annual R. & D. spending from 1953 to 1961 was followed by a 3 percent productivity growth rate from 1958 to 1966, while a 3.7 percent increase in R. & D. spending from 1962 to 1970 was reflected in a 1967 to 1975 productivity growth rate of only 1.3 percent.

The paper is brief and well written. I commend its reading to my colleagues.

The article follows:

THE IMPERATIVE OF BASIC RESEARCH

(by George M. Low)

The United States is in a period of economic and industrial decline, both in an absolute sense, and relative to other industrial nations. Although it is difficult to pinpoint and to obtain complete agreement on all of the causes for this decline, it is a generally accepted fact that the slowdown in U.S. innovation and the resultant slowdown in the rate of productivity increase is a major factor—perhaps even the most important factor.

For nearly a century, from 1873 to 1971, we were a net exporting nation. Now, in the 1970's, we are incurring huge trade deficits. We are inclined to blame these on oil imports, and of course we are in dire need of an energy policy to do something about those. But we are also losing ground in our traditional area of strength—in our exports (and in concurrent foreign imports) of high technology manufactured goods—this in spite of a substantial devaluation of the dollar since 1971. Is this not proof enough of the effects of the lag in innovation?

When I speak of innovation, I mean the entire spectrum of a process which begins with scientific discovery, includes experimental or exploratory applications, and ends with commercialization to meet the needs of the marketplace. Each step in this process depends on research and development.

A few years ago, while I was with the National Aeronautics and Space Administration (NASA), I studied the realtionship between the rate of spending on research and development, and the rate of growth in productivity. The results showed a direct correlation between the two, with the decline in productivity lagging the decrease in R&D spending rate by about five years. There is no doubt that there exists a direct tie between innovation and productivity, and, hence, a direct relationship between innovation and economic growth.

The process of innovation is complex, and perhaps the last step—that of commercialization—is the most complex of all because it depends on so many factors, including economic incentives, government rules and regulations, societal pressures, and the combination of all of these as it affects the willingness to take risks and the probability of profit.

In this paper, however, I will address the first step in the innovative process, commonly called basic research, because it is this step which is most influenced by what happens in the university. Today 55 percent of basic research is carried out in universities; the remainder in industry and in national laboratories. Although U.S. basic research expenditures in current dollars have increased since 1960, in constant dollars these expenditures have declined in total since 1968, and just barely held their own in the university sector. Specifically, in constant dollars, university expenditures increased on the average 15.5 percent compounded annually from 1960 to 1968, but have been constant since 1968. The largest portion of the funds for these expenditures comes from the federal government.

Unfortunately, we are in a business where staying constant is not nearly good enough. It takes real growth to promote innovation; it takes an increase in the rate of R&D spending to promote an increase in the rate of productivity.

There are many reasons for this. Basic research is becoming more complex, requiring larger research teams, increasing sophistication in equipment and instrumentation, and special facilities. On top of these fundamental factors there is a plethora of new rules and regulations having to do with environmental standards, occupational health and safety, protection of animal and human test subjects, access for the handicapped, the hiring of minorities and females, privacy programs—mostly highly desirable programs which we support, but which do bring about much added paper work (which we do not support) and significant added costs.

A most serious concern is that there has been a cutback in the funds available for graduate fellowship programs. NASA had a farsighted program along these lines in the 1960's, at the height of its activities, but had to discontinue it at the end of the apollo program. To my knowledge, none of the newer agencies, those now working on the forefront of current problems, has followed suit. Yet if we are to stop the decline in innovation, as I think we must, the most important factor will be an increasing supply of trained scientists and engineers. Instead, we are now taking steps toward creating a shortage.

The education of engineers and scientists is expensive, and tuition charges alone cannot begin to cover all of the costs. We strive to educate young men and women to solve problems and find practical solutions, to make decisions, to be the innovators of the future. This requires a great deal of laboratory instruction. Modern teaching laboratories require up-to-date instrumentation and equipment, highly complex equipment which generally becomes obsolete in five to seven years. A recent study by thirteen independent (private) engineering colleges has shown that the cost of keeping our laboratories up-to-date is $1,350 per bachelor's degree granted. In addition to that expense, RPI is now in the process of installing a new, large computing system—a machine which we believe is essential in our educational process. The cost of this machine, amortized over its seven-year life, is an additional $1,000 per degree granted.

Sponsored research has become an essential ingredient of the educational process at technological universities. It helps attract faculty members, allows them to do scholarly work in the mainstream of current activity, provides research experience and essential financial support for graduate students, and adds an additional degree of realism to the undergraduate curriculum. In short, it is the lifeblood of modern scientific and engineering training.

The level of research funding is therefore doubly important. It directly affects the output of research in terms of scientific discoveries and their practical application. But of far greater importance, it also affects the output of people—scientists and engineers—people we must count on for the innovations of the future. The net result is that the pace at which some of our most pressing problems are addressed—problems having to do with energy and materials, health care and food, housing and transportation, communications and information handling—is much slower than it should be.

As I mentioned before, basic research is only the first step in the process of technological innovation—but a most important step in the process of economic growth, international competition, and in meeting the domestic needs of our society.●

## HUBERT H. HUMPHREY HIGHWAY

### HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. FRENZEL. Mr. Speaker, I am warmed and delighted that the Jewish National Fund, with the extensive help of the Minnesota Council, has chosen to honor our beloved former Senator Hubert H. Humphrey by naming a major highway of the American Bicentennial Park in Israel after him as a joint Israeli-American endeavor.

The fact that this highway will serve as a vital link between important areas in Israel will constantly remind its users what an important role Senator Humphrey played in bringing together many different elements and conflicting inter-

ests of our own country. I know that Hubert would be proud to know that this largest tribute to his memory was launched by all of his friends in Israel and in the Jewish National Fund here in the United States. We all know what a strong supporter he was of the people of Israel. And, we know how hard he worked to insure the survival and the prosperity of the State of Israel.

Hubert loved the Hubert H. Humphrey Forest in Israel, dedicated to the Humphreys in 1961, and visited it often. How wonderful it would have been if he could have traveled the Hubert H. Humphrey Parkway as well.

I am grateful to the Jewish National Fund for this remembrance, which will have international significance. I have been honored to have been a part of the national committee involved with establishing the parkway. I know the dedication ceremony in Jerusalem on January 5, 1979 will be a great success and a tribute to a man whose shoes cannot be filled.●

## MYTHS ABOUT OLDER WORKERS SHOULD BE RETIRED; NOT THE OLDER WORKERS


### HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES


*Tuesday, September 12, 1978*

● Mr. HAWKINS. Mr. Speaker, earlier this year the Congress passed and the President signed into law a bill which raises the mandatory retirement age from 65 to 70 years of age as of January 1, 1979. While there has been some concern expressed in the business community about the potential impact of this legislation, a number of companies have had long-established policies allowing employees to select their own retirement ages. Bankers Life and Casualty is one such company which has had a non-mandatory retirement policy for over 30 years. The company recently released a study entitled, "Bankers' Experience With Over-65 Workers" which recaps their long experience with employing workers who are in their 60's, 70's and 80's. Mr. Speaker, I would like to share this study with my colleagues:

BANKERS' EXPERIENCE WITH OVER-65 WORKERS

WHEN IT'S UP TO EMPLOYEES, HOW MANY STAY ON THE JOB?

Bankers Life and Casualty Company has had a non-mandatory retirement policy for over 30 years.

In that time we might have seen a take-over of the company by older employees. We might be burdened with more employees 65 and over doing less work. We might have younger employees leaving because there is no way for them to advance.

None of that has happened!

Instead, 1976 was the first year the percentage of employees 65 and over rose above 3%. In fact, it was 3.6%. By March, 1978, the percentage of employees age 65 and over was slightly less at 3.5%. At 65 more Bankers employees choose continuing to work over retiring. But our company doesn't become top-heavy because we have employees retiring at other ages.

Table I shows what Bankers people do when they reach 65.

In each of the past five years more than 70% of employees reaching 65 chose to stay on the job. In 1975, 95% stayed.

However, some of our employees do choose to retire. But, they also know they can return to work if they want and, of course, if they're qualified. Since Bankers didn't force their retirement, both company and employee have the option to change their minds—and some of our retirees have done just that. They've returned to work for us after a period of retirement.

TABLE I.—NUMBER OF BANKERS LIFE & CASUALTY CO. WORK FORCE REACHING 65 WHO CHOOSE TO RETIRE/WORK

| Year | Total number employed reaching age 65 | Number choosing to— | |
|---|---|---|---|
| | | Retire | Remain at BLC |
| 1977 | 38 | 8 | 30 |
| 1976 | 36 | 6 | 30 |
| 1975 | 43 | 2 | 41 |
| 1974 | 32 | 4 | 28 |
| 1973 | 30 | 8 | 22 |
| 1972 | 23 | 3 | 20 |

WHEN DO BANKERS' EMPLOYEES RETIRE?

Table II shows at what age Bankers employees *voluntarily* left the company.

TABLE II.—BANKERS EMPLOYEES AGE 65 AND OVER

[By age at retirement]

| Year | 64 and under | 65 | 66–70 | 71–75 | 76–80 | 81 and over | Total retired |
|---|---|---|---|---|---|---|---|
| 1977 | 17 | 8 | 18 | 2 | 1 | 1 | 47 |
| 1976 | 22 | 6 | 11 | 0 | 1 | 0 | 40 |
| 1975 | 18 | 2 | 9 | 4 | 2 | 2 | 37 |
| 1974 | 17 | 4 | 16 | 4 | 3 | 0 | 44 |
| 1973 | 20 | 8 | 17 | 2 | 3 | 1 | 51 |
| 1972 | 14 | 3 | 12 | 5 | 0 | 1 | 35 |

Some employees retire before 65 and they tend to balance out those who decide to stay. This table also shows that most people retire by age 75. It supports the opinion of Dr. K. Warner Schair, a gerontologist at the University of Southern California. He says that "if a chronologically meaningful retirement age were to be selected today, it would have to be made at least a decade later than would have made sense 20 years ago." [1]

BANKERS' OVER-65 EMPLOYEES, AGENTS: A MATTER OF CORPORATE RESPONSIBILITY

At the end of March, 1977, 137 employees over 65 were working at Bankers. This represents 3.5% of the company's home office work force of 3,909. And 6.8% of the 3,940 agents active in the field were 65 or older.

The majority of these people have been with us a long time, but Bankers policy also extends to hiring qualified people over 65.

Frances Stapleton, 71, is one of them. She was forcibly retired from another insurance company where she had been secretary to the president for 20 years. In the five years she has been with us, Mrs. Stapleton has received three promotions and is currently secretary to one of our divisional directors.

Arnold Rosenberg, 72, has worked for Bankers 4 years. He applied for a job in the mailroom after seeing an ad in the paper and was both pleased and surprised to be told to report for work.

Dr. Pedro Salazar was a Cuban refugee who had been in the United States 1½ years when he came to Bankers. That was in 1966 and, today, at the age of 77, Dr. Salazar is still with us.

"Bankers was the first place I applied," says Dr. Salazar. "If they had said, 'You're too old,' I don't know what I'd have done."

Many positions lend themselves to the interests, experience and abilities of older people. We believe every business has a responsibility to employ the best workers they can attract, and to match their employees with the jobs that their interests, experience and abilities best suit them for. When color, sex, or age influence this important management task, the result is costly inefficiency that consumers have to pay for.

ABSENTEEISM AND BANKERS' OVER-65 EMPLOYEES

Opponents of non-mandatory retirement often point to absenteeism rates as an important efficiency factor. They suggest that absenteeism among older workers is greater than it is among younger employees.

Time magazine reported that studies done by the National Council on Aging discovered it was not. Edmund W. Fitzpatrick, the council's director of pre-retirement planning, said: ". . . workers over 65 have less absenteeism and suffer fewer accidents than those, say, in the 30-to-40 age group." [2]

"My experience in working with these people," says Jim Gawne, Personnel Director at Bankers, "is that people who continue working are in good health and are absent only when it's absolutely necessary."

TABLE III.—NUMBER OF DAYS ABSENT [1] FOR FIRST 6 MONTHS OF 1977

| Number of days | Number of occurrences | |
|---|---|---|
| | Under 65 | Over 65 |
| 0.5 | 41 | 18 |
| 1.0 | 157 | 185 |
| 1.5 | 7 | 7 |
| 2.0 | 55 | 128 |
| 2.5 | 2 | 3 |
| 3.0 | 6 | 19 |
| 3.5 | 4 | 0 |
| 4.0 | 6 | 7 |
| 4.5 | 1 | 0 |
| 5.0 | 3 | 11 |
| 10.0 | 4 | 3 |
| 15.0 | 4 | 3 |
| 20.0 | 3 | 2 |
| 25.0 | 1 | 0 |
| 30.0 | 0 | 2 |
| 40.0 | 0 | 1 |
| 50.0 | 1 | 2 |
| 60.0 | 0 | 0 |
| 70.0 | 1 | 0 |

[1] Days absent include time off work due to illness, personal business, and leave of absence.

To compare absenteeism rates. Bankers did a study using 128 employees 65 or over and a group of 128 employees under 65.

In some instances, the figures seem to show that the older group is prone to higher absenteeism. However, several interesting facts appeared in our study.

Only 13 people in the under-65 group had perfect attendance, and there were more than twice as many half-day absences in this group as there were in the over-65 group. Thirty-four of the 128 employees 65 and over had perfect attendance. This represents ¼ of that group. Most people were absent two or less days regardless of age. And long term absences over 10 days occurred with the same frequency for both groups.

Bankers hopes these statistics will relieve some of the fears of rampant absenteeism among older employees. If all the occurrences of absenteeism are added together and divided by the number of employees in the sample, the arithmetic mean for the under-65 group is 5.3 days absent per employee as compared to 7.5 days for the over-65 group.

"To some degree," notes Jim Gawne, "the higher overall rate is due to a small number of people 65 and over who are absent longer or more often than most employees. Take those few people out of the sample and I believe the averages would be comparable."

Do agents and employees in the over-65 group believe their absenteeism is high enough to justify an "across-the-board" mandatory retirement age?

Footnotes at end of article.

Douglas Wyka, 69, has been an agent with Bankers for 25 years. "As long as a person has good health I don't see why he can't work," says Wyka. "As far as absenteeism goes, I think older people are more reliable because their work is their life. They don't want to loaf; they want something to do."

"I'm not ill more than two or three days a year," asserts Fran Stapleton, "and time off for personal business is nil."

HEALTH AND THE OVER-65 WORKER

As a group, the health of people in their sixties and seventies is better than most people assume. Declining health is the reason given by most men who leave their jobs prior to 65. But, the majority of men who stop work at 65 claim compulsory retirement as the main reason for leaving the work force. Most say they are free of any health problems affecting ability to work, and only two in five say they would have chosen retirement.[3]

Eighty-six per cent of people 65 and over have one or more chronic ailments. Heading the list are high blood pressure, arthritis, diabetes, heart disease and arteriosclerosis.[4]

On the other hand, many of these illnesses are controllable. Four out of every five people over 65 get along without physical assistance. And when you consider the fact that 72 per cent of those age 45–64 are afflicted with one or more of the chronic ailments listed above, it becomes evident that people don't suddenly deteriorate physically at 65.[5]

MEASURING PRODUCTIVITY AND MATCHING ABILITIES WITH JOBS

Who is to say if a 65-year-old employee is less productive than his younger counterpart? While a younger person may possess physical vitality, what about the expertise and patience an older worker has acquired through experience?

Bankers' policy is to hire full-time employees who meet job specifications. When employment is on that basis, then there are guidelines for determining a person's productivity. Age doesn't enter into it.

But age can be a consideration in matching a person to a job. For example, we wouldn't hire an 80-year-old accountant to lift heavy cartons on a loading dock. And we wouldn't make a recent high school graduate a vice president, either.

Much of the work done at Bankers is of an administrative nature. Tests have shown that physical abilities do decline with age, but mental abilities are not necessarily affected.

OVER-65: THE PRODUCTIVE YEARS?

An interesting phenomenon has been observed among those who remain healthy and able to work in their fields. Their important contributions are often made at ages that many of us are too ready to characterize as the "twilight" or "declining" years of life.

Goethe was over 80 when he completed Faust. Schweitzer received the Nobel Peace Prize at 68. Clara Barton founded the American Red Cross when she was 60 and served as its president for the next 23 years.

At Bankers we have older people making significant contributions. They may not be as dramatic as the contributions of Goethe, Schweitzer and Barton, but they're important contributions to Bankers Life and Casualty Company.

Ed Getting, 66, came to work for us 19 years ago. Today he is Vice-President in Charge of Accounting and Purchasing.

"I'm opposed to mandatory retirement," Getting told us. "I don't think that just because a person reaches a certain age he loses the ability to do something for the company for which he works. It depends entirely on the individual and not on a certain age.

"I continue working because I find my work interesting. Every day there are new challenges and I like that," he says.

Molly Greenberg, 71, echoes that sentiment: "For me it's wonderful to work. I get up in the morning and feel great that I'm important to something. I come here and some days they say to me 'I'm going to teach you something new today.' Imagine! At this stage of my life I'm being taught something new. It's a challenge."

"Mandatory retirement isn't good," asserts Ben Rubenzik, 82. I worked 51 years at a bank and was forced to retire. I couldn't get a position any place until Bankers put me on the payroll. I've been here 10 years and still have no plans to retire."

THE OLDER WORKER: PERFORMANCE AND EVALUATION

The older employee is very conscious of performance. He or she wants to measure up and our workers express their feelings about what they'll do when they can't.

"When the day comes that people expect less of me, I'll say 'God-bye' and walk out the door," commented Len Chrosniak, 65.

"It's hard to tell an older person when they're not doing their job," agreed Fran Stapleton. "But then it's hard to tell anyone that. As for me, I'll know when it's time."

At Bankers the decision of when to retire is not made solely on an employee's perceptions. Every six months, each employee—regardless of age—receives an employee performance evaluation with his or her supervisor. If performance has slipped, there may be person-to-person counseling with the supervisor or with someone in the personnel department.

No employee is ever reduced from full-time to part-time status. But efforts are made to transfer an employee to a department more suitable to his or her abilities.

Such situations require astute management skills. Advocates of mandatory retirement say it saves embarrassment because personnel managers don't have to tell older workers their performance has slipped.

We believe a compassionate and competent personnel team can handle this problem. It is done regularly with younger employees; why should it be a bigger problem with older ones?

HEALTH/PENSION PLANS AND THE OLDER WORKER

What does a non-mandatory retirement policy do to a company's health and pension plans?

Fraink Angerame, Insurance and Retirement Consultant at Bankers, explains: "Once a person reaches 65 he or she is eligible for Medicare whether working or not. This definitely reduces our plan's liability, although our 65 and over employees are kept in the health benefits program as a supplement to Medicare benefits. But, as a matter of fact, we find it more costly when a younger employee gets ill."

Angerame also commented on the pension plan picture. "If these people weren't working for us, Bankers would be paying both pension benefits and the salary of the replacement employee. Added to that are the costs involved in training the new employee. It just has to be more economical to have a non-mandatory retirement policy."

IT'S NOT AGE THAT COUNTS

As our population shifts, more and more people will be over 65. We believe we're ahead of the game by treating this age group like any other. If they want to work, we say "Work for us. Add your knowledge and experience to ours, and we all benefit. It's not your age that counts. It's you!"

FOOTNOTES

[1] "Retirement: Later Rather Than Sooner?", *Morgan Guaranty Survey*, (Jan. 1977), p. 11.

[2] "Now, the Revolt of the Old," *Time* (October 10, 1977), p. 26.

[3] United States Department of Health, Education and Welfare, *Reaching Retirement Age*, Research Report No. 47 (Washington, D.C.: U.S. Government Printing Office, 1976), p. 51.

[4] Robert N. Butler, *Why Survive? Being Old in America* (New York: Harper and Row, 1975), p. 174.

[5] *Ibid.*●

## PERSONAL EXPLANATION

## HON. MARILYN LLOYD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mrs. LLOYD of Tennessee. I was absent from House proceedings from August 8 through August 17, during which time I was given an official leave of absence due to illness. Because of my absence on those days, I did not vote on rollcall votes No. 656–668, No. 670–676, No. 678–681, No. 683–700, No. 702–705, No. 707–713, No. 715–723. If I had been present, I would have voted as follows:

Rollcall No. 656—no.
Rollcall No. 657—yes.
Rollcall No. 658—no.
Rollcall No. 659—yes.
Rollcall No. 660—no.
Rollcall No. 661—no.
Rollcall No. 662—no.
Rollcall No. 663—yes.
Rollcall No. 664—yes.
Rollcall No. 665—yes.
Rollcall No. 666—no.
Rollcall No. 667—no.
Rollcall No. 668—yes.
Rollcall No. 670—yes.
Rollcall No. 671—yes.
Rollcall No. 672—yes.
Rollcall No. 673—yes.
Rollcall No. 674—no.
Rollcall No. 675—yes.
Rollcall No. 676—no.
Rollcall No. 678—yes.
Rollcall No. 679—yes.
Rollcall No. 680—yes.
Rollcall No. 681—no.
Rollcall No. 683—no.
Rollcall No. 684—yes.
Rollcall No. 685—yes.
Rollcall No. 686—yes.
Rollcall No. 687—yes.
Rollcall No. 688—yes.
Rollcall No. 689—yes.
Rollcall No. 690—yes.
Rollcall No. 691—yes.
Rollcall No. 692—yes.
Rollcall No. 693—yes.
Rollcall No. 694—yes.
Rollcall No. 695—yes.
Rollcall No. 696—yes.
Rollcall No. 697—yes.
Rollcall No. 698—yes.
Rollcall No. 699—yes.
Rollcall No. 700—no.
Rollcall No. 702—no.
Rollcall No. 703—no.
Rollcall No. 704—yes.
Rollcall No. 705—no.
Rollcall No. 707—yes.
Rollcall No. 708—yes.
Rollcall No. 709—yes.
Rollcall No. 710—yes.
Rollcall No. 711—yes.
Rollcall No. 712—yes.
Rollcall No. 713—no.
Rollcall No. 715—yes.

Rollcall No. 716—no.
Rollcall No. 717—yes.
Rollcall No. 718—yes.
Rollcall No. 719—yes.
Rollcall No. 720—yes.
Rollcall No. 721—yes.
Rollcall No. 722—yes.
Rollcall No. 723—yes.●

## SUPPORT FOR RETAINING LIMITATION ON OUTSIDE EARNED INCOME FOR MEMBERS OF CONGRESS

### HON. ROBERT W. KASTENMEIER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. KASTENMEIER. Mr. Speaker, on March 2, 1977, the House approved a new Code of Ethics. By a vote of 344 to 79, the House retained a key provision of the new Code which limits, beginning January 1, 1979, the outside earned income of Members of Congress of 15 percent of their annual salary. This is an essential ingredient to making that Code work to eliminate potential and real conflicts of interest in the Congress.

When the House considers H.R. 1, the Ethics in Government Act, an effort will be made to repeal the outside earned income limitation before it has even gone into effect. The new Code of Ethics was designed to overcome public mistrust of the Congress. Repealing the limit on outside earned income would further undermine the public's confidence in the Congress.

Mr. Speaker, I urge my colleagues to support the limitation on outside earned income. I further recommend to my colleagues that they read a number of editorials from around the country which call upon the House to hold firm in the action it took when we voted to limit the amount of outside earned income.

[From the Chicago Daily News, Dec. 20, 1977]

LEAVE ETHICS CODES ALONE, CONGRESSMEN

We knew that a torrent of opposition flowed beneath the overwhelming majorities wrung out of the House (402 to 22) and Senate (86 to 9) last spring in favor of congressional ethics codes. But we thought that having taken the plunge, congressmen would grin and bear the new standards they had imposed on themselves. It appears we were just dreaming.

Common Cause, the national citizens lobby that has been in the forefront of government reform, reports moves are afoot to delete the limit on outside earnings, which Congress swallowed to help the public digest the $12,900-a-year raise it had given itself. The limit is 15 percent of the congressional salary, or $8,625.

A House committee has recommended exempting from disclosure any gifts of travel, entertainment and the like that representatives receive in foreign countries. A Senate committee wants to exempt all travel and related entertainment expenses from the $100 limit on gifts from lobbyists. The Senate's ban on slush funds, which had provided a detour around campaign contributions laws, also is under attack.

Congress voted for these and other reforms largely because it had taken a nosedive in public opinion. But those would seem like days of wine and roses compared to the days of public outrage Congress would trigger if it dilutes its ethics codes. We hope the grumblers will reconsider.

[From the Raleigh (N.C.) News and Observer, Jan. 5, 1978]

DON'T BACKSLIDE ON CONDUCT CODES

When members of Congress accepted a $12,900 annual pay hike last spring, they also accepted another recommendation from a presidential commission and adopted new, stronger rules of conduct. The catch is that what lawmakers put together back then now appears in danger of coming unraveled.

Common Cause, the citizens' lobby group, reports that in various committees some lawmakers have been hacking away at the new rules, hoping to weaken them when Congress reconvenes later this month.

For example, certain members of the House Rules Committee are trying to eradicate the limit on outside, earned income of representatives (who, like senators, now draw annual legislative salaries of $57,500). Meanwhile, the Senate Ethics Committee has been considering a major weakening of that chamber's 1977 ban on large gifts from special interests. The change would make room once again for such extracurricular treats as foreign travel financed by lobbyists.

Maybe the demolition workers marching against the new codes of conduct believe that American citizens have short memories. Perhaps so—but not quite that short. With Mr. Tongsun Park still in the headlines, it is impossible to forget that a principal pressure behind the move for the codes was the unseemly lapping up of Korean favors by lawmakers. Nor has the public so swiftly forgotten those legislative hunting trips financed by big defense contractors, those fat honoraria paid to lawmaker-speechmakers by industry lobbying groups and similar items that led to enactment of the conduct rules.

When the codes were voted on last year, they passed by overwhelming margins: 402–22 in the House, 86–9 in the Senate. Some backsliding is to be expected. But surely from those big majorities there remains enough backbone to resist the undoing in 1978 of what was accomplished in 1977.

[From the New York Times, May 18, 1978]

POOR CONGRESSMEN

What does "poor" now mean in America? Washington's officially defined poverty level was raised recently; for an urban family of four it is now $6,200. Meanwhile, some members of the House of Representatives would have us believe that for them, the poverty level is $66,125 and, they are entitled to more. Can they be serious?

Members of Congress voted to increase their own pay last year, to $57,500. Correctly anticipating heated reaction and responding to widely held cynicism about Capitol Hill ethics, both Houses also voted a kind of advance penance. For the first time, they imposed a limit on how much outside income members would earn—15 percent of the new pay, or $8,625, bringing maximum allowable income to $66,125.

In creating the outside-income limit, Congress seemed to recognize that permitting unlimited earnings from, for example, law firms or speech sponsors, was to invite suspicion of sly contributions from special interests. Now, however, some members of the House Rules Committee—who have earned as much as $120,000 in outside income—seem intent on trying to rescind the limit.

It is not fair, the argument goes, to limit earned income when wealthy members can continue to receive unlimited unearned income from investments. There seems to us to be a clear distinction between the potential influence of regular returns from coupon-clipping and of receiving a fat check today from a group interested in a vote tomorrow. That does not wholly meet the point; there is something to the argument in terms of even-handedness. But even-handedness is not the issue. If the members believe their present salaries are inadequate, the answer is to raise them, not, in effect, to seek subsidies from this client or that audience. In any case, we thought Congress had settled the point last year. What has changed in 13 months? Do the Congressmen involved here think the public has lost interest in Congressional salaries or Congressional ethics? We doubt it. The only poverty in the House we're able to take seriously is that of shame.

[From the Christian Science Monitor] Dec. 22, 1977]

CONGRESS'S ETHICS OPPORTUNITY

That valuable watchdog, Common Cause, is barking again, and we hope it wakes everybody up. This time the citizens organization warns that some people in Congress are already trying to whittle down the codes of ethics accepted so resoundingly last spring when the legislators were justifying their $12,000 pay raise.

Here is a prime opportunity for representatives and senators to prove that their display of concern for ethics was more than a spring fashion. They can do so by resisting efforts to repeal the House code's requirement to disclose munificence from foreign countries, for example, and the Senate code's ceiling on travel and entertainment gifts from lobbyists.

The extent of the challenge may be indicated by Common Cause's information that only two members of the six-man Senate Ethics Committee now defend the Senate's code. Seven out of 16 members of the House Rules Committee were already against the House code's limit on outside earnings back in March. Such opponents may seek elimination of the earnings limit as the price of sending to the floor a bill that would give the House code's financial disclosure requirements the force of law.

Granted that most members of Congress do not or should not need organizational codes of ethics to keep them straight. There is no substitute for a personal code so firmly ingrained that evasion is no temptation.

What the passage of Congress's code did was to help legislators resist the kind of private and foreign influences that some succumbed to in the past and to assure the public that there were agreed standards on which Congress was ready to police itself. There could be wisdom in revising ethics codes, just as much as any other congressional product, but it would be hard to convince the public that weakening these still new codes would be a step forward. Our expectation, is that Congress, with a little help from its leaders—and from Common Cause—will see the right thing to do.

[From the Washington Star, Apr. 26, 1978]

BACKSLIDING ON ETHICS

Members of Congress took a $12,900 pay raise last year with the distinct understanding that a strict code of ethics and a limit on outside earnings would be imposed on themselves. There seems to be some doubt now about how well the understanding will be honored.

Pending legislation would write into law the House rules on disclosure of financial interests that were approved overwhelmingly in March 1977. In addition to covering members of Congress, the legislation would extend the disclosure provisions to the executive and judicial branches. Federal judges and employees of all three branches compensated at a GS–16 salary level and above would be covered.

The bill, which had been scheduled for debate this week but was pulled from the House calendar Monday, would require annual reports on amounts and sources of in-

come, gifts totaling $100 or more a year, free entertainment valued at $250 or more a year from a single source, real estate worth more than $1,000, personal property worth more than $1,000 that is held for investment or income production, debts that exceed $2,500 and transactions in securities or commodities futures that exceed $1,000.

Although the House last year passed its rules of financial conduct, which include a limit on outside earnings to take effect in 1979, by a vote of 402 to 22, there appears to be considerable backsliding. Their pay raise in hand and the volume of publicity from scandals (except for the Korean influence buying probe) abated, the enthusiasm for ethics reforms seems to have dropped off. The House last fall defeated a proposal to overhaul internal administrative procedures that would have tightened up accounting practices.

Although the House rules approved 13 months ago would remain in effect if the bill is defeated, the rules lack the civil and criminal penalties embodied in the bill making them a part of the federal law. In addition, the coverage would not be extended to the executive and judicial branches.

It appears that the bill was pulled off the House floor by Speaker O'Neill because so many amendments were threatened that the outcome was uncertain. Supporters hope that the four committees involved in handling various sections of the legislation can reach a better understanding before it is brought back for floor action.

Complicating the situation was a Rules Committee decision to allow debate on a "non-germane" proposal to strike the House rule that limits members' outside earned income to 15 percent of their annual congressional salary—or $8,625 based on their current salary of $57,500. The limit was designed to reduce conflicts of interest and to keep members from spending so much time away from their congressional duties. The earnings limit is not part of the disclosure bill but is part of the ethics package that the House voted last year to impose on itself (a similar restriction was voted in the Senate).

Opponents of the 15 percent limit argue that it is unfair to restrict members from "earning" outside income but not to restrict earnings from investments. Proponents contend investment income is less likely to involve members in conflict of interest situations and less likely to keep them off the job. After thorough debate in March 1977, the earnings limitation was approved by the House 344 to 79.

The danger in reopening the earnings issue during debate on the disclosure bill is that it might create such antagonism and confusion on the floor that it could affect the vote on the disclosure bill. One might wonder what the motive of the Rules Committee was in allowing the earnings issue to be taken up with the disclosure bill.

Ethics Committee Chairman Richardson Preyer, D–N.C., fears that if the House doesn't pass the disclosure bill "we will appear to be backing down on our commitment to pass a tough ethics bill after we accepted a pay raise . . . We'll look like we're taking the sugar without the pill."

Actually that pill had two parts—financial disclosure and the earnings limit. They were parts of the bargain struck more than a year ago when Congress wanted to get a fat pay raise and try to clean up its image at the same time.

The disclosure bill ought to be passed and the earnings limitation ought to remain in the House—and Senate—rules. A bargain is a bargain.

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[From the La Grange (Ga.) News, May 10, 1978]

PERKS

About a year ago, members of the U.S. House of Representatives, in accepting an increase in their pay to $57,500, agreed to limit the outside income members of Congress can earn to 15 percent of their salaries, or $8,625.

It's now possible that the agreement may be voided before it becomes effective Jan. 1, 1979.

The House Rules Committee recently supported an amendment to the financial disclosure bill, H.R. 1, to repeal or weaken the earnings limit. That decision clears the way for a House vote on the amendment and indicates at least some representatives are ready to junk the restriction.

Common Cause President David Cohen has said such action by members of the House would be "a clear betrayal" of the pledge they took last year when they accepted their pay raise.

Common Cause lobbied hard for the restriction, contending it diminshes conflicts of interest and potential influence-buying.

Those arguments are still good. Members of Congress are adequately paid, with healthy expense allowances in addition. We see no reason congressmen should collect extensive outside income. That's just cashing in on their positions of influence.●

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## CONGRESSIONAL SALUTE TO NEW JERSEY'S FAMILY DAY '78 COMMITTEE AND THE LEBRON FAMILY OF CLIFTON, FAMILY OF THE YEAR, EIGHTH CONGRESSIONAL DISTRICT, STATE OF NEW JERSEY

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### HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. ROE. Mr. Speaker, on Sunday, September 17, residents of my congressional district and State of New Jersey will celebrate Family Day 1978 at Rutgers Stadium, Piscataway, N.J., where a gala program sponsored by the New Jersey Family Life Directors, Rutgers the State University, and the Family Life Board of Governors in Paterson has been planned to demonstrate faith in the family as the very basic foundation of our society in preserving our human values, nurturing our children, developing respect and understanding for others, caring for our elderly and perpetuating our cultural and spiritual heritage.

Mr. Speaker, at the outset may I commend to you and our colleagues the outstanding work being carried on in my congressional district in the Family Life Movement by the Reverend Finbarr M. Corr, Ed. D., director of the Diocese of Paterson, Family Life Bureau, Paterson, N.J., who is the coordinator of Family Day 1978 in New Jersey and the distinguished members of the New Jersey Family Day 1978 Committee, as follows:

The Honorable:

Chairman—William E. Simon.

Vice-Chairpersons: Rev. Carl J. Arico, Lavinia Bryan, John M. Cooney, Sue Corroon, Robert L. Marcalus, Betty Ann O'Brien, Raymond O'Brien, Claire Papp, Jack Papp, and David "Sonny" Werblin.

Members: Mr. and Mrs. John Cohley, Rev. Joseph V. DiMauro, Mr. and Mrs. Sam Fornaro, Mary Hammonds, Mr. and Mrs. Gus Hoffman, William Huber, Monsignor Leo A. Kelty, William T. Kenny, Rev. John M. Morley, John O'Hara, Owen M. O'Sullivan, Rabbi David Panitz, Mr. and Mrs. John Reid, Sister Catherine Reilly, Mr. and Mrs. John Schrift, and Rev. Paul Stagg.

Consultants: Sam Levenson and Bishop Frank J. Rodimer.

Coordinator: Rev. Finbarr M. Corr.

Mr. Speaker, we are especially proud and applaud my congressional district's "Family of the Year,"—the parents, Mary and Lee Lebron, and their three children, George Pierce, Mariana, and Gregory—who were selected to represent our district by distinguished citizens and community leaders of New Jersey whom I also wholeheartedly commend to you, as follows:

The Honorable: Leo Fichtelberg, Director of Paterson Public Library; Rabbi Dr. Eugene Markowitz, Director of Clifton Jewish Center; Karen Hutchcraft, Assistant to Director of Metropolitan Campus Life; Robert Corrado, Boro Attorney for Totowa; John Fiorello, Attorney—Wayne; Ansel Payne, Secretary of Board of Education Passaic County Vocational and Technical High School; and Robert Lauten, Principal of North Jersey Training School.

Mr. Speaker, it is the consensus that a Nation is only as strong as its family life. America has gained its strength and fiber through the tradition of a strong family life which has truly enriched the educational, cultural, social, and economic well being of our communities, State, and Nation. The Lebron family is representative of the family groups of our United States of America whose varied expressions of familial solidarity have contributed to the richness of the quality of our American way of life.

Mr. Speaker, with your permission I would like to insert at this point in our historical journal of Congress a news article that appeared in one of New Jersey's most prestigious newspapers, the News, headquartered in the city of Paterson, which most eloquently depicts the unique gifts of family tradition and family caring and sharing that the Lebron family extend naturally and lovingly in their day-by-day pursuits which have truly enriched our community, State and Nation. This byline authored by a highly talented and gifted News correspondent, Rosalie Longo, reads, as follows:

AN IDEAL CLIFTON FAMILY PROSPERS HELPING OTHERS

(By Rosalie Longo)

CLIFTON.—The self-centeredness that psychiatrist Robert Coles—winner of the 1973 Pulitzer Prize for volumes two and three of his book "Children in Crisis"—speaks of could apply to many Americans who overindulge themselves today. But not to Mary and Lee Lebron of Cilton.

Because of their unselfish giving to others, the devout Catholic parents and community workers have been chosen to represent the 8th Congressional District as Family of the Year. In September the couple will compete for state honors at a Family Day 1978 celebration to be sponsored by the New Jersey Family Life Directors and Family Life Board of Governors, in cooperation with Rutgers University, at Rutgers Stadium in Piscataway.

According to the Rev. Finbarr Corr of Paterson, coordinator of the event, Family Day is being planned to reaffirm the concept of social, cultural and spiritual family life, especially at a time when scientists predict that family life is about to die.

Says Father Corr: "We have chosen to demonstrate our faith in the family as the basic cell of democracy and a permanent divine institution. A nation is only as strong as its family life."

In the eyes of the Family Day selection committee members, Mary and Lee Lebron were chosen for their "naturalness" and unselfishness in reaching out to help others in the community while faced with obligations of their own at home.

"Lee and Mary," says Father Corr, "have found mutual growth in their commitment to others."

Despite what scientists predict, the Lebrons feel family life will definitely survive and continue to grow in the future.

"To be without (the) family, would be contrary to nature," says Mary Lebron. "It would be like a man without a country.

"But in family life today," she says, "there is too much emphasis on the acquisition of material things.

"When I was growing up, you were given things with limitation. Not everyone had a television set. It was considered a luxury.

"There also wasn't that much emphasis on what to do or where to go.

"Today it's much different. Many kids seem more interested in acquiring things for pleasure than personal accomplishment."

The mass media, she says, is partly responsible for putting pressure on people by telling them what's important in life. Most times, Mary Lebron says, the accent, isn't on things that should be meaningful.

"I don't think parents are intentionally permissive today; they're unknowingly permissive. Often they act without guidance. I'm not against giving a child the right to make a decision, but I am against giving it carte blanche."

Lee Lebron feels the biggest problem of being a parent today is not having enough time to prepare a child for adulthood at age 18. "Years ago," he says, "a parent was able to sit back comfortably knowing what his or her child was being exposed to. Now, he has to sit down and do a lot more research to learn."

What worries Lebron most about his future years as a parent is whether or not he'll be able to maintain a communication pattern with his children. In his opinion, a communication pattern has to be set early enough if it is to work.

Mary Lebron says she doubts very much if she will change her ideas on morals when her children, now 6, nearly 7 and almost 8, are teenagers.

"I may worry about adjusting to the times, but I'll still be staunch in my feelings about not wanting my children to drink at 18," she says. "I don't feel 18-year-olds should drink. They're not able to cope with the responsibility that goes with it. And full responsibility has to be accepted.

"Getting a driver's license," she notes, "doesn't entitle a person to go out and drive recklessly. Some may be able to handle drinking at 18, but by in far, many are making a big game of it."

Responsibility, she says, is also a necessary ingredient in marriage. Therefore, she sees no point in young people living together without being married.

"I can't see what can be gained from this type of arrangement," she says. "It may allow two people to get to know each other, but other than that, nothing is accomplished. At least in marriage, you continue to grow."

According to Father Corr, Mary and Lee Lebron have attained growth not only in their own marriage but in their commitment to people outside their home.

Even before their marriage, both were involved in helping others. When they met, both were Catholic Alumni Club volunteers helping tutor inner city children in New York. Mary was working as a teacher and Lee was serving with the Air Force at the time.

The greatest challenge of their own marriage was in surviving when Lee returned to school full time to get his master's degree in social work. It would be an advanced degree to help him serve others more effectively in his job as a paraprofessional at the Mount Carmel Guild in Newark.

"Those days were rough," says Mary, "because we used all of our savings. We also had three children to support and, because they were small, I couldn't go out and get a job. On top of that, Lee had to travel to school (Rutgers in Newark) 80 miles a day."

Now a psychiatric social worker with the Passaic Mental Health Clinic, Lee works in the Paterson Diocese's deaconate program for Spanish deacons and serves at the mental health clinic at St. Mary's Hospital. He also volunteers his time to help others in the Family Life Bureau's drug program and serves on the Social Action Committee of the Paterson Diocese.

"My role is to be supportive," says Mary. "Being a deacon's wife means that I must realize that my husband will not be available to paint the extra room. His time that possibly could have been used to make our life more comfortable by a second job goes to our commitment to other people."

Now that all of their children are in school Mary has gone back to work, teaching chemistry to 11th graders in Elmwood Park. Even though her duties at home and on the job keep her busy round the clock, she still finds time to serve as a class leader and Home-School Association member at St. Paul's School as well as assist in Little League affairs.

"I'm shocked that we were chosen Family of the Year," she says. "We never thought about doing things for honors or citations. This is simply the kind of life we have chosen to lead."

"We're just little drones doing our job day to day," says Lee. "When you help your neighbor, you help yourself. I think my feelings are the result of the legacy given me by my father some 20 years ago. It's somewhat dog-eared and faded now, but I still carry it with me in my wallet every day.

"It says:

*'Help me Lord to use my little skill as best as I can to do your Holy will.*

*'Give me patience, charity and most of all humility.*

*'Let me find the peace of mind that comes to those who serve mankind."*

The Lebrons seem to know that peace.

Mr. Speaker, Better Homes and Gardens conducted a random sampling of 10,000 respondents among their magazines subscribers with a questionnaire entitled "What's Happening to the American Family?". The questionnaire appeared in the September and October 1977 issues of Better Homes and Gardens, and a sample of 5,000 respondents was taken from each. I believe their summary and highlights of this survey afford considerable thought-provoking conclusions on family life which may be of interest to all of us, as follows:

SUMMARY AND HIGHLIGHTS

Looking at their own families, respondents to the questionnaire find them reassuringly sound. Their families are structured in a traditional, closely knit relationship in which parental discipline is firm, belief in a Higher Being is important, education is valued, and the work ethic is stressed. Thrift and avoidance of debt—although considered outmoded by some segments of society—are strongly endorsed by the respondents. They also believe in:

A life in which physical well-being, raising children, and intellectual and spiritual growth are far more important than recognition by others, influence over others, or social status.

A lifetime marriage commitment to one spouse with love the main reason for staying married.

A husband-wife relationship in which the partners are in agreement about their marriage goals, are having their expectations of happiness fulfilled, and are sharing their personal problems.

But despite the positive feeling respondents have about their own families, they see much in today's society that gives them concern:

A majority of respondents say American family life is in trouble, and they place much of the blame on inattentive parents and the absence of a religious and spiritual foundation.

The high rate of marriage failure disturbs respondents, who attribute the increase to the marriage partners' immaturity, selfishness, and lack of mutual interests and goals.

The elderly are generally forgotten by their families, say many respondents, and young children are growing up today without enough contact with older people.

Television programming and movies are sources of concern because of poor quality and overemphasis on sex and violence. Also, respondents feel there is to much emphasis on sex and youth in all aspects of society.

Although respondents view with alarm a number of problems in today's society, their attitudes and opinions in several areas clearly reflect the changes that have taken place in this country during the past five years, such as:

A rejection of the stereotyped roles of the husband as breadwinner and the wife as homemaker. In respondents' families, there is greater freedom for each spouse to participate as an equal partner within the marriage relationship.

Awareness of women's rights. Many respondents say that this awareness has significantly altered the husband-wife relationship.

Smaller families. The ideal number of children for the typical respondent family has decreased.

The Better Homes and Gardens family that emerges from this study represents a combination of tradition and change. In their responses to the questionnaire, readers indicate they are holding on to those values they feel to be important to their way of life and altering those they feel are no longer appropriate. Thus, the family is an ongoing, evolving units with a demonstrated ability to adjust to society's changes while still maintaining the strengths of the past.

Mr. Speaker, as we celebrate Family Day 1978 in New Jersey to help reaffirm our belief in family life and demonstrate our support for the concepts of family life, I would like to direct your attention to my resolution House Joint Resolution 1062 which I introduced to proclaim our strongest support of the Family Life Movement in New Jersey and throughout our Nation through the designation of Sunday, September 17, 1978, as "National Family Day," which reads as follows:

H.J. RES. 1062

Whereas America has gained its strength and fiber through the tradition of a strong family life which has truly enriched the educational, cultural, social, and economic well-being of our communities, States, and Nation; and

Whereas the very basic foundation of our society in preserving our human values, nuturing our children, developing respect and understanding for others, caring for our elderly and perpetuating our cultural and spiritual heritage stems from family life;

Whereas our United States of America is comprised of family groups from all over the world, bringing varied expressions of familial solidarity which have been adopted by our people, adding to the quality of our American way of life; and

Whereas the family life movement in many

areas throughout our Nation is celebrating Sunday, September 17, 1978, as "Family Day" to celebrate and honor the family, which has contributed in large measure to America's evolution as a nation that has achieved global preeminence as a shining example of a united and compassionate family which continues to extend a helping hand to families in need throughout the world; and

Whereas it is indeed appropriate to honor the contributions and special place in America of families and those who labor to create the wealth and destiny of our country: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Sunday, September 17, 1978, be designated as "National Family Day" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day to reflect upon and reaffirm our belief in family life, demonstrate our support for the concepts of family life, and provide a forum for the sharing of the cherished values of our heritage and the unique gifts of family tradition amongst all of our people.

Mr. Speaker, I appreciate the opportunity to call your attention to New Jersey's observance and celebration of Family Day 1978 and know that you and our colleagues will want to join with me in saluting New Jersey's Family Day 1978 Committee with special plaudits to my congressional district's "Family of the Year," the Lebron family of Clifton, N.J. We are indeed proud of America's families and the opportunity to honor and celebrate the richness of their outstanding contribution to the wealth and destiny of our country.●

## TWO CHINAS?

### HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. LAGOMARSINO. Mr. Speaker, I would like to bring to the attention of my colleagues the well-expressed article written by Ray S. Cline of the Georgetown Center for Strategic Studies. This editorial appeared in the Washington Post on Tuesday, September 12, 1978.

The article follows:

THE DILEMMA OF TWO CHINAS: WHY NOT BOTH?

(By Ray S. Cline)

Premier Hua Kuo-feng of the Communist People's Republic of China has been tripping through Central Europe and Iran, trying to whip up antagonism to the Soviet Union. Audiences in those areas clearly enjoy hearing somebody lambaste Soviet imperialism in terms seldom used by more discreet American and European officials. Hua's anti-superpower rhetoric certainly irritates the Russians. It is hard to tell, however, whether Hua is the celebrated "China card" being played by the Carter administration or whether he is playing his own "American card." Peking clearly hopes to build up its prestige, get access to European and American technology with financial credit, and to lock the United States in deeper confrontation with the Soviet Union.

President Carter and his national security adviser, Zbigniew Brzezinski, act as if they ought to pay off the People's Republic for doing what is very much in its own interest. They also seem to regard its feeble economy and the poorly equipped Chinese armies as assets that somehow can help the United States strategically against the infinitely more powerful U.S.S.R. The fact is that increased Soviet hostility can hurt us—and the People's Republic—more than Peking can help us. A Soviet-oriented military incident on the Chinese border, for example would quickly sober both Hua and Carter about the risks they are taking.

The real trouble with the Carter administration's China policy, nevertheless, is that we are already paying a high strategic cost in damage to our relations with valuable allies in East Asia. This damage will not be offset by envisaged benefits of the "China card" that at best will be limited and at worst may needlessly exacerbate American dealings with the Soviet Union across the board. It is one thing to flatter the leaders of the People's Republic to encourage them in their anti-Soviet stance. It is quite another to destabilize our western Pacific alliance system in the process.

The heart of the mistake the Carter administration is making is its inclination to commit itself to diplomatic recognition of the People's Republic as the rightful rulers of all China, including the populous and prosperous island of Taiwan, which Peking considers simply one of its provinces that must be "liberated" some day, by military force, if necessary. Limited conciliatory moves toward the People's Republic make some strategic sense for Washington; breaking off U.S. ties with the strong, tough Republic of China on the island of Taiwan makes no sense whatever for American interests in the western Pacific and Northeast Asia.

The administration party line is being voiced by Sen. Edward M. Kennedy, who unwisely is carrying the burden for Carter and the State Department in selling an unpopular China policy. He asserts that the United States can guarantee "the security of the people in Taiwan and the peaceful resolution of the relationship between the island and the mainland" after dropping the formal treaty ties, relying on the forbearance of Peking and some sort of pronouncement by the White House or Congress about maintaining trade and selling arms to Taiwan. Nobody in Asia would believe tacit assurances from Peking or flimsy "sense of the Senate" statements from Washington to be anything but temporary and unreliable expedients, if not downright deception. The State Department has been unable to come up with any formula providing the substance of a security guarantee that would be at all credible in the aftermath of breaking a formal defense treaty.

Only wishful thinkers doubt that this act of appeasement to Peking contemplated by the Carter administration will result in economic weakening and diplomatic isolation of Taiwan. After a "decent interval," political and economic instability is likely to lead to capture by Peking in one way or another. In this event, the Chinese society of 17 million people on Taiwan, which embodies the best mixture of Asian and American political philosophies and technologies achieved anywhere, will be submerged in the inert mass of one billion Chinese struggling to modernize under the totalitarian dictatorship on the mainland.

This prospect is already causing puzzlement and dismay, not only in the Republic of China, but also in Japan and the Republic of (South) Korea. Each of those nations is fearful of domination by either the People's Republic or the Soviet Union; and as a mutually reinforcing triangle in the northwestern Pacific, they constitute a major regional element of the American alliance system. Together they are much more powerful than all of mainland China in economic strength and modern military forces—in fact, in every respect except extent of territory and size of population.

The credibility of the United States as guarantor of the defense of its worldwide allies is the critical element in American foreign policy today. It is bound to be damaged badly if the Carter administration pulls the rug out from under Taiwan, the southern strong point in the chain of Northeast Asian allies built up with so much investment of American efforts, lives and money over the past 30 years.

The irony is that there is no assurance that Peking's smiles toward the outside world will not vanish abruptly as they have in the past when domestic political issues supervene. It does not even now pay the slightest lip service to human rights or, for that matter, endorse permanent friendship with the United States. The new Chinese Communist Party constitution makes it clear that both the Soviet Union and the United States must eventually be destroyed, with the United States enjoying a reprieve because it is less feared and may be used as a temporary ally against the more powerful enemy.

Carter has a track record of espousing unrealistic, self-destructive defense and foreign-policy positions and then postponing or backing off when the costs belatedly come home to him. In this case, the line of retreat is an easy and honorable one. The United States should adopt a policy of willingness to extend de facto recognition to both existing Chinese governments until history resolves their rival claims. Peking's demands concerning breaking diplomatic and security ties with Taiwan should be coolly rejected. If Peking refuses closer ties with the United States on these terms, it will be the loser, not Washington. We can live quite comfortably with the status quo in Asia. There is no reason we have to choose between the two Chinas. Why not both?●

## BRUCE CATTON—HIS LARGEST LEGACY IS THE MEMORY OF HIS GENEROSITY AS A MAN AND SCHOLAR, WHICH TOUCHED ALL WHO KNEW HIM OR HIS WORK

### HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. VANDER JAGT. Mr. Speaker, late last month, on August 28, our Nation lost one of its famous writers and historians, Bruce Catton, a long-time resident of Benzonia, a beautiful little town in our Ninth Congressional District in Michigan. I was honored to know that Mr. Catton was a constituent and to serve him in Congress.

A winner of the Pulitzer Prize and the National Book Award for his powerful book of the Civil War, "A Stillness at Appomattox," perhaps his highest award that he treasured was the Medal of Freedom Award, the Nation's highest civilian award, presented to him on January 10, 1977, by fellow Michigander, President Gerald Ford.

Much has been written on Mr. Catton since his passing. I think that Bill McCulloch, staff writer for the Record-Eagle, Traverse City, Mich., presented a marvelous story on this outstanding man. It was entitled "Night Train Comes For Historian Catton." The story is included along with a truly fine editorial

from the September 1, 1978, edition of the Washington Post.

Bruce Catton has left this world. But, his great works will live on and will serve millions of future citizens of the world.

The articles follow:

[From the Traverse City Record-Eagle, Sept. 6, 1978]

NIGHT TRAIN COMES FOR HISTORIAN CATTON

(By Bill McCulloch)

BENZONIA.—In terms of the national recognition he received during his lifetime, Bruce Catton was probably the most illustrious of Benzie County's native sons. He was a writer and historian of the first rank, a two-time Pulitzer-Prize winner, a National Book Award recipient.

As a historian, Catton possessed a rare ability to breathe life into the characters and events he chronicled. He did this naturally, convincingly, without resort to literary contrivance. In his later years, he suggested that this ability might have been a function of his upbringing. He said he always felt as though he had grown up in the era about which he did most of his writing.

His biographies say he was born in Petoskey in 1899. But that was only because his mother's family lived in Petoskey at the time. She traveled there in the fall of 1899 for the express purpose of giving birth to her second child.

The Catton home in those years was located in Benzie County. And Bruce Catton did most of his growing up in the small village of Benzonia, where his father served as acting president of struggling Benzonia College during the final two years of its existence. Catton's recollections of his days in Benzie County later served as the basis for a book, his next-to-last, "Waiting for the Morning Train," published in 1972 by Doubleday.

The Benzonia that he knew in his youth, Catton wrote, was an anomaly. Founded as a college town in 1858 by men of strong Christian belief, the town became an outpost of temperence and piety in the middle of northern Michigan's prodigal lumber boom. Catton likened his boyhood to "growing up with the Twelve Apostles for next-door neighbors."

"In a way this was uncomfortable," he conceded. "To meet the nagging problems of this world while you are thinking about the requirements of the next one does not always come easily. . . ."

But the world problems and general social upheaval of the early 1900s were not well understood in Benzonia. Years later, Catton would look back and see his home town as a place where time, for a little while at least, had stood still. "We were out of date without knowing it," he wrote. "The country was moving out from under us before we realized that anything in particular had changed. Just when a wholly materialistic culture was becoming dominant we were shaping our lives according to the requirements of the culture it was displacing."

In this sense, Catton said, he could almost claim that he had grown up in the days that preceded the Civil War. And this was probably one of the reasons that tumultuous period in American history always seemed so real to him, he said.

Catton's fascination with the Civil War was fueled by his contacts with men like Elihu Linkletter, Lyman Judson, John Van Deman, Cassius Judson and John Morrow—veterans who'd actually fought on the legendary battlefields at Gettysburg, Atlanta, the Wilderness, Shiloh. Most of these men were well into their 70s when young Catton got to know them; to a small boy, they seemed positively heroic.

From time to time, Catton and his young playmates used to re-enact the Civil War on the West Campus, a 12-acre expanse of green near the center of Benzonia. "We were invariably the Union army," he wrote, "and we never lost. Johnny Reb died by the platoon and the battalion before our unerring musketry."

In sum, Benzonia was a good place for a young boy to be in the early years of the 20th Century. "Life was unhurried and unworried . . ." Catton recalled. "There was nothing to do but grow up, and we could take our time about it."

Unlike many other pioneer college towns in Michigan, though, Benzonia never amounted to much. The village had drawn much of its early vitality from the lumber boom. And that prosperity came to an abrupt end when the trees were gone. As a result, Caton wrote: Benzonia seemed to pass from adolescence to senility in one uneasy step.

After Benzonia College folded in 1900, Caton's father began selling insurance for a living. And when Catton was 6 years old, his family moved to Boyne City, where his father worked briefly as the manager of a new insurance company office.

Boyne City at that time was one of the last strongholds of the logging industry. It was a boom town, not much like Benzonia at all, with several sawmills, a blast furnace, a major shipping harbor, a railroad and 13 saloons. Day after day, Catton watched trains hauling pine logs to the mills where huge gang saws were kept busy ripping out millions of board feet of lumber. Living near the Boyne River, he also witnessed the spring log drives—tens of thousands of logs drifting downstream from the winter logging camps to the sorting grounds at the river's mouth.

When he grew older, Catton came to understand that what he had seen in Boyne City was a reflection of modern man's unwillingness to restrain his dominance of the environment. The timber resource was once thought to be inexhaustible. But technology soon provided the machines that made it possible to strip the land bare. And once it became possible to do so, Catton said, there was no turning back, no way to stop short of the ultimate objective. In less than the span of a single lifetime, a priceless resource was consumed. And the big lumber companies went elsewhere in search of trees.

Catton's stay in Boyne City was short. In 1906, his family moved back to Benzonia, and his father became principal of Benzonia Academy, a prep school that had replaced the failed Benzonia College. Catton attended a regular village school through the seventh grade, then skipped the eighth grade and entered the academy as a freshman in the fall of 1912, just before his 13th birthday.

That year also saw Catton begin to form some definite notions about his life. It all started with his father reading news accounts of the 1912 Republican National Convention and observing that newspapermen certainly must lead interesting lives.

A year or two later, a local resident asked Catton what he planned to be when he grew up. "As far as I can remember I had not consciously made any choice," Catton wrote, "but now that the question was asked I replied unhesitatingly: "I am going to be a journalist."

Except for one brief period during which he aspired to become a concert violinist, it appears that Catton never wandered too far from his early resolve to go into newspaper work. The lesson to be learned from that, Catton later observed, is that fathers should always be careful what they say to their impressionable children.

Catton graduated from Benzonia Academy in the spring of 1916, just two years before it went under, and that fall joined the freshman class as Oberlin College. When the United States entered World War I, though, Catton interrupted his education and joined the Navy. He returned to Oberlin after the war, but left again after his junior year to take up the career he'd been thinking about since he was 12 years old.

From 1920 to 1926, Catton worked as a reporter, first for the Cleveland News, then the Boston American and the Cleveland Plain Dealer. In 1926 he became a Washington correspondent for the Newspaper Enterprise Association, a job he held until 1941.

While he was working for the association, Catton found time to turn out a couple of novels, both of which he later dismissed as totally worthless. Apparently, neither work was ever published.

In 1942 Catton became director of information for the War Production Board, then held similar posts after the war with the Department of Commerce and the Interior Department. His wartime experiences led to his first published book, "The War Lords of Washington."

After that, Catton turned his attention to the subject that had fascinated him ever since his boyhood: the Civil War. With only one exception—the largely autobiographical "Waiting for the Morning Train"—his writing over the next 25 years focused on the war between the states.

His first book on the Civil War, published in 1951, was "Mr. Lincoln's Army," followed in 1952 by "Glory Road." Neither book attracted much attention at first. But in 1953, Catton published "A Stillness at Appomattox," completing his now-famous trilogy on the Union Army of the Potomac. That book won the 1954 Pulitzer Prize for history and also earned Catton the National Book Award.

In 1960 he won his second Pulitzer for the narrative that accompanied "The American Heritage Picture History of the Civil War."

In all, Catton produced more than 15 volumes on the Civil War, including one for youngsters: "Banners at Shenandoah."

Starting in the 1930s, Catton spent most of his vacations in the county where he had grown up. And it was here in Benzie County that he died of an undisclosed respiratory illness on Aug. 28. He was 78.

Catton had been 73 when he finished his autobiography. In it, he observed that early youth is just like old age in one respect—"it is a time of waiting before a big trip to an unknown desfination. The chief difference is that youth waits for the morning limited and age waits for the night train."

Benzonia, he reflected, had been a good place to wait for the morning train.

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[From the Washington Post, Sept. 1, 1978]

BRUCE CATTON

If Lee did not surrender to Grant the way Bruce Catton described it in "This Hallowed Ground," he should have. Like two other great historians of the Civil War, Douglas Freeman and Allen Nevins, Mr. Catton was first a journalist; and he lived by the journalist's imperative—which is the fiction writer's, too—to make the reader see. Because Mr. Catton made more people see "his" war than ever before, he was tainted with the name of "popularizer," which merely meant that he saw history as art as well as facts. Yet, as other first-rate historians such as David Donald of Harvard attest, Mr. Catton was a first-rate historian—the first to use regimental histories as a source. And he was a workhorse. Less than half a life of writing books (he began at age 49) produced 17 major works, the last being a state history of Michigan, where he was born in a small town that, temperamentally, he never left.

His small-town background must have helped shape his approach toward his subject. Mr. Catton grew up hearing the tales of Union vets, and he understood the war more as a clash of people than as a clash of forces and ideas. Once, in reply to a question from his friend and researcher, E. B. Long, he said: "I don't know; maybe I was there"—accounting for his descriptive sense. But there

was also the perpetual presence of the war in his mind. He belived, too, in the perpetual presence of the war in *our* minds, that "whatever the American people might hereafter do would in one way or another take form and color from this experience."

Part of Mr. Catton's legacy is the idea—which many historians have since adopted—that one can best grasp the momentous actions of men by learning the significant details of their lives—what they wore, how they sounded. Part, too, is the publication "American Heritage," to which Mr. Catton contributed so much, and with which he placed the study of history in the public domain. His largest legacy is the memory of his generosity as a man and scholar which touched all who knew him or his work.●

## APPLYING THE BRAKES TO THE 121 SAFETY STANDARD

### HON. DAN MARRIOTT

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. MARRIOTT. Mr. Speaker, years ago Charlie Chaplin made a movie called "Modern Times" that highlighted the perils and pleasures of mechanized society. Often in the recent past we have seen that modern technology can as often be a boondoggle as a boon. We have seen drugs like thalidomide which deformed newborn children, fire retardants which are found to cause cancer, and pollution control devices which produce more toxic poisons than the older model's exhaust. We have become more sophisticated in viewing all changes as progress. The bottom line results are what we must look to.

The people of the United States have been subjected to a constant danger on the highways for the last 3 years. This is a silent threat which lashes out arbitrarily and suddenly to take life, limb, and property. While this danger has persisted, the agency that brought us mandatory locking seat belts and air bags has thumbed its nose at the public interest. This agency which has made a habit of being a law unto itself is the National Highway Traffic Safety Administration.

It took an act of Congress to stop the seat belt interlock system. It took an act of Congress to stop mandatory air bags. And it will take an act of Congress to undo the mischief of the 121 regulation. Every other Government agency which has taken a look at the 121 brakes has raised fundamental problems with the regulation requiring these costly and unsafe brakes.

What then is the bottom line for the 121 air brakes?

In the case of the 121 air brakes, it is clear that these highly touted brakes have never lived up to the expectation of their advocates. Indeed, they have created many opponents who fear for their own lives and those of the public. The national PTA has come out firmly against use of the brakes on school buses as well as on any other vehicle.

John B. Schnell, manager of research for the American Public Transit Association, said on July 19, 1978:

The real problem is NHTSA's unwillingness to properly consider the test data supplied by APTA, bus and component manufacturers (prior to mandating the 121 system), which data conclusively proved that the 121 system was not ready for use.

That is not a reassuring evaluation of this agency's performance.

The Ninth Circuit U.S. Court of Appeals, after taking 2 years to evaluate the information submitted by the parties in Paccar against NHTSA, found:

In view of substantial evidence received by NHTSA that the "in use" performance of vehicles equipped with antilock was not consistent with the performance required by the Standard, and in some circumstances may have been more hazardous than the performance of pre-Standard vehicles, the agency's failure to conduct more intensive testing of trucks and tractor-trailers certified under the Standard was not only unreasonable, but also a legal abuse of discretion * * * the comprehensive data before us indicates that there is a strong probability that the performance of a substantial number of vehicles whose braking systems have been altered to include overpowered front axles and antilock devices has created a potentially more hazardous highway situation than existed before the standard became operative.

My very capable colleague, Representative SHUSTER of Pennsylvania, has referred to the history of 121 brakes as criminal behavior by NHTSA. Such irresponsibility is inexcusable. The arrogance of NHTSA on this issue seems to be boundless. All criticisms are banished by NHTSA with shallow characterizations like "rhetorical" and "anecdotal." Mr. Speaker, that will not wash. Such high-handedness with the public good can no longer be tolerated. The editor of a trucking magazine referred to NHTSA as having "arrogance not to be believed, an arrogance the likes of which have not been seen in the western world since kings stopped ruling by divine right."

I am pleased that the Public Works and Transportation Committee voted without objection to impose a 2-year moratorium on the enforcement of this irresponsible regulation. It is a credit to the House that it will fulfill its constitutional duty to supervise the executive branch's performance. In this area that performance has been greatly lacking. I am glad that H.R. 11733 will begin to do something about it.

I would like to submit for the RECORD the following letter and article:

APPLYING THE BRAKES TO THE 121 SAFETY STANDARD

(By S. Scott Rohrer)

The furor over brake standards for trucks and buses shows the frustrating paradox facing government officials who try to put out regulations in the "public interest.")

Federal Motor Vehicle Safety Standard 121. Relatively obscure, yet extremely controversial, this standard has placed the National Highway Traffic Safety Administration (NHTSA) in a lot of hot water.

While public furor over the standard has been dwarfed by the agency's ongoing bureaucratic battle over air bag systems, the controversy exemplifies a frustrating paradox facing government officials who try to put out regulations that are seemingly in the "public interest."

In addition, the case provides another example of Congress trying to work its will on the executive branch by putting restrictions on the use of federal funds.

In this case, the agency and participants in the debate agree on the need for a tougher standard for bus and truck braking capability. But they disagree sharply on how that should be achieved.

In response to the brewing controversy, bills have been introduced in the House and Senate that would suspend the standard for a year; legislation is pending that would prohibit the Transportation Department from enforcing the standard; and the independent National Transportation Safety Board is preparing to investigate the traffic safety addministration as legislation that would compel the probe moves through Congress.

Of even greater concern to agency officials is a ruling on the standard last April by the U.S. Court of Appeals for the 9th Circuit that they believe sets a dangerous precedent. In its decision, the court overturned the braking standard on technical, rather than procedural grounds—a judgment, agency officials feel, it is not qualified to make.

The agency is appealing the decision to the Supreme Court but until the Court decides whether to hear the case, the standard will remain in effect.

Regardless of the Court's decision, however, agency officials and opponents of the standard agree that the 121 affair has damaged the agency's effectiveness and hurt its credibility.

THE STANDARD

When the 121 standard became effective in early 1975, it required that all new buses and trucks be able to stop within 217 feet when traveling at 60 miles per hour; the previous standard required only that these vehicles be able to stop within 400 feet at that speed. By comparison, most cars can stop within 200 feet.

Since it was issued, the standard has been amended several times to its current level of 293 feet.

The standard also requires that new vehicles be able to stay within a 12-foot-wide lane while braking without the wheels locking.

Most buses have been able to meet the requirement without additional equipment. But trucks have required a computer-controlled, anti-skid braking system in order to comply with the standard. The system—which costs about $100 per axle—supplements conventional brakes and operates when sudden stops are necessary. A minicomputer attached to each axle senses when the wheels are beginning to lock and momentarily releases the brakes to gain traction. The total cost of additional brake equipment comes to about $1,500 per truck.

NHTSA officials think the computer system is the answer for improving brake standards and, at the same time, preventing vehicles from jackknifing. But opponents of the system believe that it is unreliable, difficult to maintain—and extremely dangerous. They contend that the brake system is responsible for 18 deaths since the new standard went into effect.

PROBLEMS

Most of the major trucking firms say they have had nothing but problems with the new system. They point out that computers, which are very delicate and sophisticated, are subject to a tremendous beating on the nation's roads.

MHTSA "is asking a system to do something in an environment that it can't live in," George D. Green, vice president of Breeze Corps. Inc., manufacturer of a cable that prevents jackknifing, said in an interview.

"Of great concern also are the deficiencies that were found in the anti-lock electronic components of the 121-equipped vehicles," E. E. Kynaston, assistant chief of the Cali-

fornia Highway Patrol, told the Senate Governmental Affairs Subcommittee on Governmental Efficiency and the District of Columbia last Dec. 7.

The newness and complexity of computer brakes have led to another problem—a shortage of trained mechanics to repair the systems. Indeed, this maintenance problem was one factor in convincing NHTSA to exempt school buses from the standard since it was first issued.

Donald K. Strout, vice president of maintenance for Wilson Freight Co., wrote in a statement to the Senate subcommittee: "The quantity of brake failures and complaints are too numerous to tabulate. Parts to repair and replace the computerized modulating systems are extremely difficult to obtain. Service on the road and even at major cities is virtually non-existent."

Kynaston added that the malfunctioning of the computer brakes adversely affects conventional brakes. Instead of improving braking distances, the standard, he said, "has resulted in more vehicles having their brakes out of adjustment, which will lead to longer stopping distances and control instability."

Critics of the new brake system also say it is dangerous because when it does fail, it takes two to ten seconds before the conventional brake system starts functioning again. Within that time, a truck could go as far as 810 feet if traveling at 55 mph.

NHTSA has investigated almost every major accident that critics say has been caused by the new brake system. "We have never found [the system] to be the cause of a serious accident," Howard J. Dugoff, deputy administrator of NHSTA, said in an interview. "We've tried to track it down but it's turned out to be nothing but smoke."

Joan T. Claybrook, administrator of the agency, told the Senate subcommittee that the agency's investigations have been a "frustrating experience because it's very easy to make an allegation and very hard to conduct these investigations."

It has been difficult to pinpoint whether the system is at fault in accidents because of its nature or the reactions of individual drivers.

Rep. Dan Marriott, R-Utah, sponsor of a bill (HR 10562) that would impose a one-year moratorium on enforcement of the standard, said: "That's the trouble with 121. The system is so inconsistent—it works, then it doesn't work." That's why, he added, it is hard to pin the blame for the accidents. Marriott became involved in the controversy when the brake system was blamed for a truck-car crash in his district that left four persons dead. Sen. Orrin G. Hatch, R–Utah, is sponsoring a similar bill (S 2850) in the Senate.

NHTSA admits there were problems with the new system when it went on the market, but it contends that the bugs have been worked out and the system is becoming more reliable.

As evidence, it cites a preliminary study completed by the University of Michigan's Highway Safety Research Institute that found that trucks with the system had 20 per cent fewer accidents than trucks without it.

But Strout of Wilson Freight remains unconvinced. Since they began using the system, he said, the firm's drivers have had twice as many accidents and four times as many jackknife accidents. In addition, four drivers were killed.

"There may be some area of doubt whether all four can be laid to the [standard] and maybe there was only two or three, but we had not even had the average of one driver per year getting killed until we accepted 121 vehicles. Now we have four drivers in one year, "Strout testified at the December hearings.

Because of the increase in accidents, Wilson Freight disconnected its computerized brake systems late last fall. Strout said in an interview that "absolutely," without question, accidents have decreased considerably since then. A number of other firms have also disconnected the brakes and the Transportation Department's Bureau of Motor Carrier Safety, a part of the Federal Highway Administration, has stopped checking trucks to see if the brakes are in compliance.

Critics of the standard are exasperated at NHTSA's refusal to rescind the regulation in light of what they consider to be overwhelming evidence on their side.

Rep. Bud Shuster, R-Pa., ranking minority member of the House Public Works and Transportation Subcommittee on Surface Transportation, said: "When an agency promulgates a regulation that possibly causes 18 deaths and when an agency promulgates with reckless disregard, then there is a question of criminal negligence."

The full committee has approved a Shuster amendment to the Surface Transportation Assistance Act (H.R. 11733) that would bar the Motor Carrier Safety Bureau from spending funds for enforcing the standard. The House Ways and Means Committee approved the financial aspects of the bill on Aug. 1 and sent it to the House floor.

Said Marriott of NHTSA: "Nobody over there, including Joan Claybrook, has the best interest of the public in mind. They're all just trying to save their hides. They don't have the courage to admit they're wrong."

NHTSA's Dugoff said such charges "are just not true." And Claybrook told the Senate subcommittee: "We do not want to remove a system which, from the best evidence that we have at this moment, seems to be improving. The warranty data show that it is getting more and more reliable. Yet if we were to remove the standard, there would be no incentive for the supplier industry to improve the capability of their systems."

Dugoff said agency officials are frustrated with the trucking industry's opposition. But he concedes the agency is partly to blame for the resistance because the first version of the standard turned out to be too strict.

The agency is not alone in its frustration—the manufacturers of the brakes feel their product is getting a bum rap.

"We feel we have a good product," said Roy Nagel, an engineer for the environmental activities staff of General Motors Corp.

Opponents dismiss that belief. "If this is a better brake," said Geoff Myers, a lawyer representing the Truck Equipment and Body Distributors Association, which is fighting the standard, "you wouldn't need a federal mandate" to force acceptance of it.

Surveying the whole controversy, Dugoff commented, "The nature of the debate has become very politicized. The facts are not really being debated anymore."

COURT DECISION

Even more is at stake for NHTSA because of the Court of Appeals ruling in April.

"The decision really shook us up," said Dugoff, "because its precedential implications are immense."

The court ruled that although the standard is necesary and the new system may be reliable one day, the standard should be rescinded until there is evidence that it can be met safely.

The decision also shook up NHTSA's sister agency, the Bureau of Motor Carrier Safety. "It's a bad precedent," said Kenneth L. Pierson, deputy director of the bureau, because the courts "will be substituting their own regulation for the agency's." Pierson and Dugoff said the courts lack the technical background to make such decisions.

If the Supreme Court does not overturn the decision, Dugoff said, "it will be a real blemish on the agency's reputation."

Some say that has happened already. "The real tragedy [of the 121 controversy]," said Shuster, "is that it just discredits the whole highway safety effort. Who will believe them when they come out with their next regulation?"

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SEPTEMBER 12, 1978.

HON. DAN MARRIOTT,
*Longworth House Office Building,*
*Washington, D.C.*

DEAR MR. MARRIOTT: Since December of 1977 the National PTA has studied the serious problems caused by inadequate field testing of computer-operated brakes on school buses, commercial buses and highway trucks.

The PTA continues to believe that the Bureau of Motor Carrier Safety, as regulated by the Federal Aid to Highway Act, should declare a complete moratorium on all computer-operated air brakes until adequate field testing and subsequent product adjustment has declared such antilock braking regulation safe.

We join the Utah PTA and other concerned citizen groups in urging members of Congress to vote for the complete ban on computer-operated air brakes, the 121 antilock regulation, as specified in H.R. 11733, the Surface Transportation Bill.

Very truly yours,

GRACE BAISINGER,
*President.*●

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## TV NEWS POLICIES

## HON. CHARLES ROSE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. ROSE. Mr. Speaker, a valuable analysis of the role of television news in situations involving terrorism has been published in the August 26 to September 1 issue of TV Guide, America's television magazine.

In his article, "When Hostages' Lives Are at Stake," John Weisman, TV Guide's Washington bureau chief, examined the complex question of when TV reporters should rush in to pursue news or desist to protect the lives of hostages.

As chairman of the Evaluations Subcommittee of the House Committee on Intelligence, I have participated in hearings on the threat of terrorist activities in this country. Accordingly, I am concerned about the problems inherent in television news policies.

Mr. Weisman and TV Guide have rendered a timely public service by examining an aspect of the awesome challenge confronting television.

The article may assist the television industry and the public in the evolution of ethical values in the context of unprecedented news events in which terrorists seek to manipulate and exploit the media.

TV Guide's article follows:

WHEN HOSTAGES' LIVES ARE AT STAKE

(By John Weisman)

Hostages. That word makes law-enforcement officials very nervous these days. But there is another word, too. One that makes cops, FBI men and security people equally jittery. And that word is television. "Combine the two in the wrong way," says a U.S. Department of Justice official, "and you could have real trouble on your hands."

In the past three years, the United States has experienced scores of hostage-taking incidents. Most, fortunately, have been resolved without loss of life. But during the tense hours of waiting and negotiating, the greatest disagreement, antagonism and conflict

often have not been between hostage-takers and the police, but between the cops and the news media—especially TV.

So far as anyone can tell, no hostage has yet been killed because of something a broadcaster put on the air. Some TV newsmen call that skill. "But it is just damn luck," says a former Los Angeles police chief, Edward M. Davis. Others in law enforcement agree with him. So do dozens of former hostages, many of whom feel that broadcast coverage of their own situations had actually put their lives in jeopardy.

What some in law enforcement call a textbook example of the kinds of mistakes broadcasters can make took place in Washington, D.C., in March 1977. There, 12 Hanafi Muslims occupied three buildings for 39 hours. More than 140 hostages were captured in the siege. Eight in the District Building, two blocks from the White House, 11 in the city's Islamic Center, right in the heart of Embassy Row, and 123 at the national headquarters of B'nai B'rith.

It was, one reporter said at the time, a story made for television. But in the scramble for news, and the competition for scoops, the broadcast media made mistakes. Enough of them, in fact, to cause 70 percent of the listeners in a subsequent radio poll to say that media coverage might have threatened the lives of the hostages. Broadcast coverage was given an even more dismal rating by the Hanafis' hostages themselves. Virtually all thought that the media had had no regard for their lives at one time or another.

What mistakes were made by broadcast journalists during the Hanafi siege?

During an on-the-air interview, Hamaas Abdul Khaalis, leader of the Hanafis, was asked by one broadcast journalist whether or not he felt that he could trust the police negotiators.

A radio reporter mistakenly referred to the Hanafis as "Black Muslims." Word came back to the station that unless an on-air apology was made, several hostages would be decapitated. (The apology was made.)

Another broadcaster, during an interview with Khaalis, asked whether or not the Hanafi leader had "set any deadlines yet." Fortunately, Khaalis overlooked the question.

A minicam unit started setting up in a building just across from the eighth floor area Khaalis occupied. One of the terrorists spotted it. According to Hank Siegel, a hostage at the B'nai B'rith site, the Hanafi said, "Oh, great—television. We'll hang a couple of old men out the window by their ankles. Let 'em take pictures of that!"

Hostage Alan Grip recalls a broadcast reporting that a fire ladder was being erected outside the District Building and police were going up the ladder. "The reporter implied—although he didn't say it directly—that they were about to rush the room where we were being kept. One of the gunmen just went crazy. He screamed, 'You tell those police to take the ladder away or we're gonna start blowing people away.' "

Dr. Frank Ochberg, a psychiatrist at the National Institute of Mental Health, currently serves as a consultant to the FBI on terrorism and hostage taking. "The problem," he says, "is that you're pitting newsmen's First Amendment rights against the managing of life-and-death situations. What you've got is an almost impossible situation. And the hostages are caught right in the middle of it all."

Despite a history of mutual mistrust, there are some places in which the police and the news media have come to an understanding. New York City is one of them. NYPD formed a hostage-negotiating unit shortly after the 1972 Munich Olympics. It was headed by Dr. Harvey Schlossberg, a career police officer who until his recent retirement ran the NYPD's Department of Psychological Services; and Capt. Frank Bolz, a 22-year veteran working out of police headquarters. Both Schlossberg and Bolz characterize their relations with the media as good; a sentiment echoed by a number of New York's TV reporters. But they learned to deal with the media through mistakes.

"I remember our first hostage-negotiating job," says Schlossberg. "The John & Al Sporting Goods store in Brooklyn. Four terrorists holding 14 hostages. Our first mistake was we wanted a news blackout. So we told the press, 'You can't have nothing.' That made 'em good and mad.

"Then we shut off the electric power in the area, so cameramen couldn't use their lights. So the TV stations sent portable generators down to the site, and the next thing you know the criminals were in the dark and the cops were all lit up nice and bright."

Schlossberg's negotiating team managed to rescue the hostages and persuade the terrorists to surrender without a shot being fired. But during the after-siege critique that is part of the NYPD negotiating team's routine, most of the police officers' questions revolved around the media. "We had spent so much time arguing with the media," says Schlossberg. "We knew that neither party was malicious. I decided that it was just a question of misunderstanding."

The NYPD decided to remedy the situation. Bolz and Schlossberg started to include reporters in the same training sessions used by NYPD hostage negotiators (more than 75 reporters have gone through the program so far). "We try to take away the mystique," says Bolz. "If they understand what we do, we think they'll honor our requests."

Why are on-air interviews with hostage-takers such a sore point with law-enforcement officers? One reason, says Bolz, is that "reporters don't know if the question they're asking will set the terrorist off.

"Sometimes," adds Bolz, "reporters are just stupid. A Canadian reporter once called in to a hostage-taker. The perpetrator told him he wanted to trade the hostages for narcotics. So the reporter says, 'Don't be stupid—if you give up all your hostages, you won't have anything to deal with'."

Another reason law-enforcement people dislike detailed coverage is that it tends to harden the position on both sides. Dr. Robert Shellow, who was the principal social scientist for the National Advisory Commission on Social Disorders, puts it this way: "The more the situation becomes public, the more it loses fluidity. It's like labor negotiations or politics. The President and the Congress can argue in private and make progress—each side giving, each taking. But once the press reports where each stands, the positions are set in stone. The same dynamic holds for hostage situations."

"The telephone is a two-edged sword," says Bill Small, senior vice president of CBS News. "Sometimes, I think, it's therapeutic for the terrorist to talk, to tell his story. On the other hand, it's very possible for a reporter to infuriate the terrorist by asking the wrong question."

CBS, the first network to issue written guidelines to its news staff regarding hostage situations, does not rule out making phone calls to terrorists. But, the guidelines continue, "CBS News representatives should endeavor to contact experts dealing with the hostage situation to determine whether they have any guidance on such questions as phraseology to be avoided [or] what kind of questions or reports might tend to exacerbate the situation."

One hostage, who asked to go unidentified, suggests that the networks are not so much at fault in their reports as local TV stations, which tend to send less experienced reporters out to cover hostage situations. The point is echoed by Murray Schwartz, president of Merv Griffin Productions, who was a hostage of Palestinian terrorists at Entebbe. Schwartz adds: "There may also be too much concern on the press's part about the holders, and not enough about the hostages."

NBC has written guidelines for its staff, according to NBC News president Lester Crystal. ABC does not have any, however. Neither do most local stations—the first, usually, to send reporters onto the scene. Indeed, many local stations do not *want* guidelines. James Snyder, news director of WDIV–TV, Detroit, who directed coverage of the Hanafis when he worked in Washington, says, "I'll be happy to sit down and write a whole set on what to do the next time somebody named Khaalis takes over three buildings within two miles of the White House. But I'm not so sure that I can write them to cover every terrorist act that comes up."

Harvey Schlossberg disagrees. Sure, he says, there are several different forms of hostage-taking. "But all of these situations can be reduced to some pretty basic psychological dynamics," says Schlossberg. "What we're doing is talking about people who consider themselves losers. But instead of lying on the floor and kicking their feet or holding their breath, they do something powerful—they take hostages. It's a way for them to manipulate the world. You might say that hostage-taking is a problem-solving device for one with an inadequate personality.

"Now I'm *not* talking about censorship in any way," Schlossberg insists. "But reporters have got to know that they're part of the dynamics too. These hostage-takers go from obscurity to world power in two minutes just by holding a gun to somebody's head. So you've got to be careful about how much media coverage you give them. Not enough and they're liable to do something outrageous. Too much and they become insatiable."

It would make many law-enforcement officials happy to see the press formulate guidelines that would rule out such elements of hostage coverage as telephone calls to the criminals, broadcasts describing police tactics, live reports and interviews with the hostage-taker's family.

Many reporters, however, feel that the public's right to know is absolute. "No one is out to jeopardize a hostage's life if the police say that putting this or that on the air will do that," says WDVM–TV (Washington) reporter Susan King. "But we must let the community know what is going on. What I report may turn out for good, or it may turn out for evil. Either way, I have no choice: I have to report, and let the editors make the choice about whether to use it or not."

While most former hostages disagree with King, one who does not is Charles Fenyvesi. Fenyvesi, the editor of the National Jewish Monthly, was captured by Hamaas Khaalis at the B'nai B'rith building. And despite his harrowing experience, Fenyvesi insists that, as a reporter, he would feel obligated to call up a terrorist in the course of covering a hostage situation.

"Sure, there are dangers in calling in. But it's also a way to allow the hostage-taker to let off steam. I remember Khaalis coming in and telling us, 'The whole world is watching me; the whole world is calling me!' It was his moment of glory. Instead of killing us, that became his high point."

Is there any answer to the problem of covering hostage-takers? The most frequently heard one is training. But former hostage Fenyvesi adds some cautionary words: "Face it—as reporters, we all thrive on crisis. But somewhere along the line, reporters have got to be told that their primary assignment is to protect life. The media have got to take life over scoop.

"I can tell you, as a former hostage, that no one has really redefined the assignment of covering hostage situations in that way, yet. I just hope that they—that we do it, and soon."●

## TAXFLATION AND THE WORKING PEOPLE: WHY TAXES FOR BLUE COLLAR WORKERS ARE GOING UP

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### HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES


*Tuesday, September 12, 1978*

● Mr. KEMP. Mr. Speaker, during the August 10 debate on the Revenue Act of 1978, the tax bill, and my attempt, through a motion to recommit with instructions to report back that bill to the House immediately with an amendment including individual income tax rate reductions of about 30 percent over the next 3 years, I stressed the critical importance of that motion and those lower rates to the working people of this country.

My pleas, and those of others equally committed to restoring income growth, went unheeded as the House rejected the motion and then passed the Revenue Act. But that Revenue Act will mean those working people will pay more taxes next year, not less. Under the guise of a tax reduction, that bill allows a major tax increase to go forward.

For example, the average family of four with an adjusted gross income of $12,900 next year will be $7 more, not less, in taxes. Maybe that is not much, but it is when you consider the Kemp amendment would have provided a $73 tax reduction for an $80 difference between the bill and the amendment. If that family makes $18.275 next year, the difference is even more dramatic. The bill provides an $18 reduction, but the Kemp amendment would have provided a $146 one, for $164 difference.

But it is when you stretch out the effects of the bill and the Kemp amendment to 3 years down the road that you see the biggest differences. That family making $12,900 next year will be paying $234 more in taxes in 1981, in contrast with $87 less in taxes if the Kemp amendment had been adopted. The $18,-275 family next year will be paying $208 more in taxes in 1981, instead of the $330 less if the Kemp amendment were law. I put tables, showing the difference between the bill and the Kemp amendment for all lower and middle income categories for 1979, 1980, and 1981 in the RECORD of August 17, pages 26816–26818.

During the August district work period an article appeared in the Boston Herald American, written by Warren T. Brookes, a specialist in economic affairs, making this point: The impact the Kemp-Roth legislation, the Kemp amendment, would have in offsetting the higher inflation-pushed and higher social security taxes over the next 3 years.

Mr. Brookes has taken the average American factory worker and the average American middle-income professional worker and has shown the impact of taxflation—the inflation-pushed higher taxes—and higher social security, as well as higher State and local taxes, on those workers.

This very important piece follows:

THE CASE FOR THE KEMP-ROTH TAX CUT—TAXFLATION AND THE WORKING MAN

(By Warren T. Brookes)

George J. is a factory worker in Brockton. On January 1, 1976, he was earning $200 a week—about the national average of $5 an hour. (See Table I)

After taking out for Federal, state and local taxes (including the property tax on his house) and for Social Security, he was taking home $161.69, to spend.

Thirty months later, in June of 1978, George's weekly gross pay had risen, through his union contract and cost of living increases, to $246—again, about the national average of $6.15 per hour.

It was a husky increase of 23 percent in gross pay in 2½ years—or about 9 percent a year—slightly above the national average of income growth.

Unfortunately, since January 1976, George's total tax bill (federal, state and local) has risen 43.2, nearly twice as fast as his income has grown.

As a result his net after-tax income increased only 18 percent—not 23 percent. During this same 30-month period, the nation's consumer price index (CPI) rose 17.2 percent.

This means that, in constant dollars, George's after tax income in June 1978, came to only $163.07, or a net real gain in that entire period of only $1.38 a week! (See Table I)

To put it another way, taxes and inflation ate up 97 percent of George's entire increase in a 2½-year period—which means that his marginal "taxflation" rate is 97 percent.

George, like all other middle American working people, is on a terrible treadmill—the more he earns, it seems, the less he seems to get. The harder he works, the further behind he falls. No wonder productivity in the U.S. is at lowest growth in history.

This is why George, and millions like him are suddenly climbing on the bandwagon for a massive federal tax cut, similar to the one now being proposed by Kemp-Roth bill. (Unfortunately, the House under Speaker O'Neill's urging, narrowly defeated the Kemp-Roth proposal last week.)

Workers understand Congressman Jack Kemp when he talks to them about "the loss of incentive," and the loss of the ability for people like George to save, and to put away for their future.

As Kemp points out, the whole process of inflation is driving folks like George into higher and higher tax brackets, even while inflation is taking away the real value of their praises.

Thus, as George's income rose 23 percent, his federal income tax on that income rose by 80 percent, and his Social Security tax, rose by 27 percent.

The Kemp-Roth tax cut act would cut George's total Federal income tax liability by 41 percent, or about $380 a year (See Table IV)—and would mean that George would have obtained a net increase after taxes and inflation of $8.68 per week, instead of the $1.38 he actually got.

While this doesn't seem like much comfort, its 529 percent more than he is now getting—and George is ready for any favors he can get.

Take the case of William R. who is a $15,-000 a year accounting clerk in a Boston insurance company. This year he is receiving a 10 percent increase in pay because of a promotion.

Of that $1,500 increase, 38 percent will go to Federal, state and local taxes, for an additional tax bill of $570 over what he is now paying.

And, another $1,050 of that will go down the drain as a result of the inflation rate of 7 percent, which affects his entire income base.

The result is that, after his $1,500 raise, William will be $120 worse off than he was before he got the raise.

This means his "marginal taxflation" rate is 108 percent! That's the kind of rates that Sweden charges its wealthiest class.

This same process is now at work up and down the income spectrum, with the greatest impact on the group from $15,000 to $30,000 in income, and particularly on white collar workers whose gross incomes have not even kept pace with inflation.

We know a man (Lawrence, K.) who is in his middle age, and holds down a middle management professional job paying about $27,700 a year, up 50 percent from the income he drew in a professional job in middle management back in 1967 (See Table II)

Unfortunately, in that 10-year period his total tax bill has risen from $4136 a year to $9554, a rise of 130 percent—or nearly 2½ times as much as his income!

Worse still, he has watched the CPI (inflation) rise by 95.3 percent. The result is that his after tax income has dropped, in real terms by nearly $5000—or—35 percent, even though his gross income has risen by 50 percent.

Unfortunately, there are many middle income Americans like Lawrence K., whose incomes have grown nowhere near as fast as taxes and inflation—and their living standard has steadily declined.

They are paying marginal "taxflation" rates of from 85 to 120 percent on their every raise—and in the process are falling steadily behind the nation. This is why so many of their spouses are being forced into the labor forces, just to keep up their family standard-of-living—and this is one of the main causes on our 6 percent unemployment rate, at a time when we are employing the highest share of our adult work force in history (58 percent).

Small wonder, when Jack Kemp debated his proposal on the Public Education program "The Advocates" recently, 3500 of its largely upper-middle-income liberal audience wrote in their ballots, 87.5 percent in favor of the Kemp-Roth cut—a vote of 7 to 1 in favor.

This, in spite of very strong charges that the Kemp-Roth proposal was "snake-oil" economics, with disastrous consequences in huge deficits and added inflation.

While we have some reservations about the Kemp-Roth advocates' claims that their 30 percent across the board tax cut will quickly "pay for itself," in increased economic growth, and real savings, we have no doubt either of the fairness, or the necessity of a major across the board tax cut approach, such as they suggest.

What few Americans realize is that, without a major tax cut proposal like Kemp-Roth, they face a total increase of $286 billion, in additional taxes between now and 1983—or the next five years. (See Table III). This is a 107 percent growth in individual and payroll taxes in five years!

Of this, some 114 billion will be in Social Security hikes, alone, while another $172 billion is just from "taxflation" effect on the Federal income tax. This means that without Kemp-Roth the Federal tax burden on individuals will grow 65 percent faster than our personal incomes over the next five years.

Unless something like the Kemp-Roth bill is enacted, this nation is faced with 10–20 years of stagflation—caused by declining productivity growth (now the lowest in the free world) weak capital formation—and a nation of working middle income folks dissillusioned by their inability to rise above the mounting tide of government taxflation.

TABLE I.—"TAXFLATION" AND THE AMERICAN FACTORY WORKER

| | January 1976 | June 1978 | Change (percent) |
|---|---|---|---|
| Gross weekly pay | $200.00 | $246.00 | 23 |
| Federal income tax | 10.42 | 18.85 | 80 |
| Social security tax | 11.69 | 14.88 | 27 |
| State and local taxes | 16.20 | 12.15 | 31 |
| Net after taxes | 161.69 | 191.12 | 18 |
| CPI (inflation) index | 166.7 | 195.3 | 17.2 |
| After inflation (1976 dollars) | 161.69 | 163.07 | .8 |

Note: Net change in income out of $46 gross pay increase = $1.38. Marginal "taxflation" rate; 97 percent.

TABLE II.—ACTUAL MIDDLE INCOME PROFESSIONAL WORKER (LAWRENCE K.)

| | 1967 | 1978 | Percent change |
|---|---|---|---|
| Gross annual income | $18,414 | 27,694 | 50 |
| Federal income tax | 2,835 | 4,865 | 72 |
| Social security tax | 277 | 1,071 | 286 |
| Property tax | 560 | 1,850 | 230 |
| Sales and excise taxes | 46 | 760* | 1,552 |
| State income tax | 418 | 1,008 | 141 |
| Net | 14,278 | 18,140 | 27 |
| Inflation index | 100 | 195.3 | 95.3 |
| Net constant income | 14,278 | 9,288 | −35.09 |
| Net loss | | (−4,990) | |

TABLE III.—TAX INCREASES PLANNED FOR 1979–83

[In billions of dollars]

| | 1979 | 1980 | 1981 | 1982 | 1983 | Total |
|---|---|---|---|---|---|---|
| Social security | 9.5 | 12.7 | 24.2 | 32.6 | 35.3 | 114.3 |
| "Taxflation" in income tax | 13.4 | 22.4 | 32.8 | 44.9 | 58.7 | 172.2 |
| Total | 22.9 | 35.1 | 57.0 | 77.5 | 94.0 | 286.5 |

Source: Congressiona Budget Office.

TABLE IV.—IMPACT OF KEMP-ROTH ON FAMILY OF 4

| Income | Present tax | Proposed tax | Tax cut | Percent cut |
|---|---|---|---|---|
| $ 8,000 | $120 | $12 | $108 | 90 |
| $10,000 | 446 | 218 | 228 | 51 |
| $12,500 | 917 | 539 | 378 | 41 |
| $15,000 | 1,330 | 811 | 519 | 39 |
| $17,500 | 1,745 | 1,092 | 653 | 37 |
| $20,000 | 2,180 | 1,388 | 792 | 36 |
| $25,000 | 3,150 | 2,047 | 1,103 | 35 |
| $30,000 | 4,232 | 2,781 | 1,451 | 34 |
| $35,000 | 5,464 | 3,589 | 1,875 | 33 |
| $40,000 | 6,848 | 4,512 | 2,336 | 33 |

Mr. Speaker, the opponents of Kemp-Roth, the Kemp amendment, upon reading and studying these figures, have said that we should not be concerned about 1980 and 1981, for Congress still has time to enact individual income tax rate reductions in future years.

I have several comments.

First, the importances of individual income tax rate reductions to the economy is not only the dollar impact but also the signal it sends.

Does it send the signal that it wants to lower taxes—a signal that will restore taxpayer confidence in their own economic futures, which cumulatively add to a restoration of confidence in the entire economy? Or does Congress want to raise or keep in place unnecessarily high rates—a signal that makes the future look bleak? Congress' signal on August 10 was that it was for higher taxes. It sent the second, and that is the wrong one.

Second, the likelihood of Congress passing another tax bill in 1979 is slight. There are a number of reasons for this.

Historically, Congress does not pass tax bills back-to-back, because it feels it needs more time to see the economic effects. Congress usually begins the consideration of tax measures in odd-numbered years—the offering of administration and alternative proposals, public hearings, and so forth—but usually does not consider them in final form until the following, even-numbered years, which happen to be election years too. Thus, we are talking about 1980.

Further, as reflected in this year's bill, when Congress does act in an even-numbered year—the next is 1980—the tax changes become effective the succeeding year—which would be 1981. Now, take a look at the tax increases we are going to have between now and 1981 and tell me this is what the Congress wants to saddle the taxpayers with. I cannot believe it, but this is what looks like will happen unless the Senate now incorporates the Kemp-Roth provisions, making them applicable in 1979.●

## OCCUPATIONAL CANCER STUDY

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. ANDERSON of California. Mr. Speaker, most of our colleagues know of my long concern for the problems created by occupational exposure to asbestos. I hope each Member of this body reads the article in this morning's Washington Post on the subject of work-related cancer.

According to a study recently conducted by the National Cancer Institute and the National Institute of Environmental Health Sciences, at least 20 percent of all cancer cases in the United States will come from exposure to carcinogens on the job.

The article cites the study as indicating that occupational exposure to asbestos alone may result in 2 million premature cancer deaths in the next 30 years. This would account for 17 percent of all cancer deaths in the Nation. The total figure also surpasses that of every man, woman, and child in any four of the districts which we represent.

About 67,000 people a year will get cancer caused by asbestos. Yet the study says, "There is no sound reason to assume that the future consequences of present-day exposure to carcinogens in the workplace will be less than those of exposure in the recent past." Clearly, we must not allow the present-day exposure level to continue.

On October 9, 1975, new Government standards on asbestos were proposed, reducing the standard on allowable levels of asbestos in the workplace from 2 fibers per cubic centimeter, to 0.5 fibers per the same measure. More recently, the National Institute for Occupational Safety and Health has recommended an asbestos standard based on 0.1 fibers per cubic centimeter. However, neither of these proposed standards have been adopted. Given everything we know, the present 2.0 standard is clearly unacceptable, and I have urged that the appropriate Federal agency propose a standard that will assure the health and safety of American workers and the families. With a stronger standard, the figure of 2 million people who will die from asbestos—and they are people, not just statistics—can be greatly reduced.

A particularly tragic aspect of this problem is the fact that a large number of these workers who will die are Federal employees. And a great many of these are defense employees working in our country's shipyards. I have contacted each member of the House Armed Services Committee, urging that the vetoed defense authorization bill be amended to include a requirement for a study evaluating present standards of permissible levels of asbestos in the shipyards and the need for asbestos in new ships, the feasibility and cost-effectiveness of removing asbestos in presently commissioned ships, and promulgating a possible timetable for implementing this removal.

Mr. Speaker, it is an important first step for this Nation to finally recognize the menacing proportions of occupational exposure to asbestos. It is a frightening problem that will not go away by itself. And the time to act is now.●

## BALANCE(S) OF POWER SERIES BOOKS II (H) (ii)—POLITICAL CULTURE

### HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. BRECKINRIDGE. Mr. Speaker, in the past issue of the CONGRESSIONAL RECORD I inserted the first part of an article entitled "Generations and Politics in the U.S.S.R.," by Prof. Walter D. Connor, appearing in the September-October 1975 Problems of Communism. The conclusion of Professor Connor's article follows:

Many of the Soviet dissidents have a full participant orientation, but they are a miniscule part of the population. Their demands meet resistance and incomprehension from the persisting "subject" culture, shared by rulers and ruled alike. And the "authoritarion interlude," I would argue, extends over the whole of Soviet history.

What is most interesting—and potentially relevant—here is the connection of Soviet elites, including the "successors," to the mass political culture. As children, young adults, and persons commencing their careers, they imbibed that mass culture with its reflections of official dogma—*i.e.*, the "demonology" of the encircling capitalist world and the roseate picture of a remote Communist future—and with its clear indications of penalties awaiting those who might aspire to political participation on any but its own terms.

Their entrance into the "elite" political culture involves further socialization—into the uses and pleasures, the problems and risks, of power. The power they now possess makes them anything *but* impotent. Yet, their intermediate, pre-elite socialization—as wielders of derivative power on the lower levels of party and state bureaucracies—can scarcely have done other than impress upon them the endurance, the "immutability" of the Soviet polity and its game rules. From such material, one does not anticipate the emergence of personalities who will transform the political system in any fundamental way.

*Expectancy.*—This term admittedly lacks precision; if anything, it is distinguished mainly by its crudity. Yet it connotes an important fact, namely, that Soviet citizens, despite their apoliticality and convictions of impotence, are strongly oriented toward their polity's "outputs." Subjects and *not* parochials, they expect things of the state. And herein lies one of the main sources of the stability of the system—but also a source of potential danger, for the edge of expectancy can cut both ways.

Delivery of expected output, or delivery of the unexpected but welcome good or service, has been as critical a part of the Soviet mass experience of governmental performance as the deprivations the regime has imposed. The high evaluations placed by Soviet citizens on the provision of socialized medical care and universal basic education, as well as on the career and upward mobility opportunities afforded by the expansion of higher education, were major stimuli of social support for the

regime even in the Stalin years, as mass interviewing of the refugees of that era demonstrated.[16] Largesse is scarcely the rationale for governmental provision of such services and opportunities: an industrializing regime needs to provide them in order to develop, mobilize, and maintain a more "modern" population and labor force. But the Soviet population, with a historically low level of expectancy (or output-orientation), may experience them as "goods" freely allocated, to be balanced against the rigors and deprivations of a totalitarian regime. Chalidze spoke recently to this point, blaming "ideologues" for not informing the population that "the payment of pensions or the allocation of new apartments is not something for which the government should be thanked, but rather something that should be viewed as an obligation of the government under the Soviet economic system."[17] His criticism is no doubt well-warranted, but the critical point here is that the ideologues may and probably have suceeded quite well in convincing the population that the government is to be thanked for such benefits.

(The relative modernation of Soviet mass expectations despite lifelong exposure to utopian rhetoric also contributes to stability. Modest but steady improvements in housing, the availability of consumer durables, in the provision of food, have apparently been sufficient to keep the rank and file from Minsk and Omsk satisfied with their lot until that day when "communism achieved" will banish scarcity.[18] Although, by Western standards, Soviet life is still mean and shabby, one of the greatest accomplishments of the regime, as "manager" of its subjects' expectations, has been to insure that Western standards do not become a critical reference point.)

This, however, is only one side of the coin: expectancy may also prove a source of weakness. To the degree that I am correct in arguing here that public expectations are a stable and important part of Soviet mass political culture, they can be potentially dangerous in the event that they are abruptly violated.

Recent Soviet history provides us with examples of these dangers. The violent civil disturbances in Novocherkassk in 1962, evoked by sudden rises in the cost of foodstuffs the population *expected* to continue receiving at relatively stable prices, is a well-known one—and I doubt that any serious student would believe this to have been the *only* such disturbance that has occurred for such reasons. Andrei Amalrik underscored precisely these considerations in his "1984" essay.

He argued that working-class irritations and discontent, though real, were neutralized to a considerable degree by material progress, but speculated that a break in that progress, "an abrupt slowdown in the growth of prosperity, a halt or a move backwards, would evoke such strong outburst of dissatisfaction, combined with violence, as would previously have been impossible.[19]

Other evidence, of a different sort, points to the powerful effect of the socialization processes in developing a certain level of "expectancy" among Soviet citizens. Some Soviet émigré arrivals in Israel, it seems, find the adjustment to a life and economy with less structured and formalized allocative mechanisms difficult. Even professionals alienated from the Soviet system—artists, doctors, scientists, etc.—seem in retrospect to have been "well-adjusted" in the sense that their expectations with regard to a guaranteed market for their canvases and services, guaranteed facilities for their work, etc., had been met in the USSR, so that they found the absence of these advantages in Israel a source of difficulty.

Today, as Western nations face severe economic problems and domestic turmoil, the Soviet Union, as usual, seems quite stable—no doubt owing, in part, to an acceptable performance in meeting the mass expectations of the Soviet people. Yet, the USSR has no guarantee that it can manage to do so indefinitely. If circumstances should reduce its output capacity, the expectancies built into the political culture, which now *support* the regime, could well turn against it.

The risks inherent in building stability on capacity to "deliver" reflect the fact that virtually *all* the socialist regimes in the Soviet orbit—albeit in varying degrees—have moved "from utopia to pragmatism" as a central legitimating principle. Their claim on mass loyalties is rooted, now more than ever before, in their ability to "deliver the goods" within a demand structure that they can seek to moderate but cannot transform substantially or suppress.[20]

The Soviet political culture has been fashioned by history—by the history of the system (the blueprint of which is still so much the product of Stalin), by the life histories of Soviet citizens, and indeed by the history of pre-Soviet Tsarist Russia, as well. There is thus the force of *inertia* behind it, a tremendous inertia which must be taken into account in any attempt to anticipate political change in the USSR, and which should make us wary of speculations that rely too heavily on an inexorable "logic" of development of the Soviet system or on the "necessity" of change due to the difficulty of carrying out coordinating and integrative tasks in an increasingly complex USSR.

The impact of history, as we see it in the political culture it has formed, should not be slighted in answering the questions raised at the start about "generation gaps." Some of the answers that relate to the short-term prospects for change are implied in this section. Explicit answers may be deferred until after we have examined some forces which may militate for long-term change—in particular, the various currents of dissent that have emerged in the last ten years and seem to point toward a differentiation of the political culture.

### DISSENT: ALTERNATIVE SUBCULTURES

When the history of the Soviet Union of the 1960's and 1970's is written, dissent will figure as a major phenomenon. On the other hand, the system's phenomenal stability, its failure to crack or to change in character under the assaults of the politically alienated, will provide an equal amount of grist for the historian's mill.

Despite the stability of the system, dissent has nonetheless demonstrated the rise of differentiated political "subcultures" in the USSR, or at least shown that the seeds of such subcultures do exist. If the concrete manifestations of dissent might have been unpredictable, the emergence of the underlying attitudes could have been foreseen.

The manifold problems arising from a policy of coordinating the relations between the polity and the specialized functional sectors of an increasingly complex system—i.e., between apparat and "functional elites"—in accordance with predominantly command rather than exchange criteria[21] have worked to alienate some of those elites and even to cause them to deny the legitimacy of the system.

However, a complementary phenomenon, pinpointed by Rudolf Tökés in a recent essay,[22] complicates any projections one might make on the basis of this alienation: while the regime since the mid-1960's has lost legitimacy in the eyes of many members of functional elites, its legitimacy has probably grown for the masses as a whole. As suggested above, the main reason for this is very likely that the regime has "delivered the goods" in material terms, thereby responding to the "secularized" criteria of legitimacy by which the masses measure governmental performance.

Dissent, then, has been generally—though not totally—an enterprise of the elite. Occupational status, education, and the remnants of a critical tradition among the intelligentsia have made the elites—scientific, technical, and creative—the logical carriers of "pure" political dissent, that is, of dissent which challenges the system as a whole. This kind of dissent requires the ability to construct and manipulate abstract ideas, to conceptualize political alternatives, to ask basic questions about the goals of the policy as well as its methods, whether in a "moral absolutist" or an "instrumental-pragmatic" framework.[23]

The dissenters' prescriptions for change are diverse—ranging from Sakharov's advocacy of liberal democracy, through Solzhenitsyn's appeal for a benevolent and depoliticized authoritarianism (the furtherests he deems the current leadership capable of going), to Medvedev's return to "true" Leninism—but all represent alternative systems, not simply "adjustment" in the polity of today. This may even be the case with some of the neonationalist, "Russite" dissent, which supports new forms of authoritarian politics as desirable in themselves.

Two points are worth making with regard to the potential of this variety of dissent. First, it involves only a small minority of those who belong to functional elites. The majority are presumably willing to accept the micro-level "exchange" relationship which exists between themselves and their political superiors and which assures them of relative affluence and security in return for competent service and political quiescence, though it denies them a role in setting goals.

Second, the issues raised by the minority of dissenters seem to have little root in, and little resonance with, the concerns of the masses. Indeed, the absence of a link between the elite and the masses is one of the weaknesses of the "democratic movement" that have enabled the regime to contain it and to be flexible in coping with it.

The specter of dissident members of the elite helping to generate, and then articulating, active resentments among the masses is one which must at times haunt Soviet leaders, but at present the latter have little reason to worry about so improbable a development.[24]

Very different from "programmatic" political dissent, with its alternatives to the current system, are the national-ethnic and religious forms of dissent. The issues that these kinds of dissent raise do concern members of the Soviet masses. At the mass level, "rights" such as the right to worship, to speak a given language, to keep one's identification with a given group, to live in one's own "home" within Soviet borders, mean more than the right to choose between electoral candidates; they are more than "abstractions" that concern the intelligentsia alone.

Here, there is a commonality of concern that links dissident elites and the masses in a common enterprise—the protection and advancement of national and religious identity. But such demands differ from those of the primarily "political" dissenters in that they could for the most part be accommodated without major change in Soviet political structures, although they would imply changes in the substance of politics. In the ethnic and religious spheres, what the dissenters are demanding, essentially, are immunities, not from Soviet law as it is written, but from the systematic violation of legal guarantees that has been an operative principle of the system in action.

It is an interesting irony that the rise of dissident political subcultures around issues of ethnicity and religion is, to a significant degree, the product of Soviet mobilization successes over the past fifty years. Soviet modernization, as manifested particularly in economic development, in the extension of universal basic education and literacy, even in the development of the state administrative network itself, has moved the non-Russian nationalities far from their predominantly "parochial" political culture of

Footnotes at end of article.

Tsarist times. Among the ethnic masses, there has developed a subject culture in which they are concerned with government "outputs," and at the same time at least the germs of a participant culture have been planted among the ethnic elites. Could peasant illiterates "mobilize" in the way the Crimean Tatars have done? Similarly, could traditional agrarian populations, Russian or non-Russian, organize the networks of communication and action in defense of religious identity that groups ranging from the Evangelical-Baptists to the Lithuanian Catholics have? The answer is clearly negative. But the process of modernization has distributed to national and religious groups, elite and mass alike, a modicum of resources for initiating unconventional political action. These resources, diffused and limited as they are, can hardly be compared to the centralized coercive resources at the disposal of the regime, but they are more than nothing. They have enabled mixed populations of elite and masses to develop a shared political language and consciousness around certain issues of joint interest; to break, at leat partially, with the apoliticality and feeling of impotence of the dominant political culture; and to assert expectations not officially "legitimized." They, like the dissidents whose focus is on the broader issues of political structure, have contributed to the restoration of "politics" in the USSR.

PRESENT AND FUTURE

The past decade has witnessed change in the internal landscape of Soviet political life, change that has emerged, not because of, but despite the regime's preferences. Manifested in ways ranging from nonviolent demonstrations on Pushkin Square to the creation of the now rich literature of dissent, it amounts to an open assumption by a small but committed stratum of people of a "participant" orientation toward politics. In no sense, however, has this change been legitimized and incorporated into the system. The boundaries of the system have remained stable despite the change in the landscape dissent has been contained, though not rooted out.[25]

Various analyses during the same decade have offered differing diagnoses of the Soviet system's health. These have ranged from prescriptions that the system must change its ways or die[26] to conclusions that, afflicted though it undoubtedly is by various maladies to which any complex system may be subject, it still "works" effectively enough to rule out any diagnosis of terminal illness.[27] Certainly, there have been grounds for both kinds of diagnoses, but more, it seems for the latter.

On balance, the Soviet Union has weathered the past decade rather well. Economic reform has been very modest by East European standards, and economic problems persist; but the economy has survived, even with a much smaller influx of Western technology and investment than the regime has eagerly sought. The relationship between the polity and the specialized functional sectors of society has changed little, if at all, but no evidence of consequent instability has yet emerged. In the international arena, the USSR has been the beneficiary of a certain amount of luck, but it has also drawn on its own resources to maximize its advantages. Almost a decade has now passed since some Western analysts saw the alternatives the system faced as transformation or degeneration. It has faced them and has done neither—and it has survived.

Thus, it would appear that those who expect striking changes from the inevitable succession process will be disappointed. Yet it is often hard to temper rhetoric and expectations with recognition of current realities: one analyst suggests that changes to come in the Politburo will be "sweeping and important," but several lines later, in discussing differences in the "formative political experiences" of the current leaders and their presumptive successors, he finds "no strong grounds for believing that they are of major significance." [28] In my own view, any likely newcomers to the Politburo in the next few years have already been sufficiently exposed to the mass and elite variants of the political culture to guarantee that they will resemble their seniors. It is, after all, the only political culture they know, and given their ages, they began learning it in the Stalin era, have witnessed its durability in the Khrushchev years, and seen it support the regime since 1964.

The extreme centralization of power in the Soviet system—a fact inexplicably overlooked by many whose reading of "popular" moods leads them to expect change—provides an additional guarantee of continuity. Even if we had strong evidence of "generational" fissures in the mass political culture, there is no reason to assume that Politburo (and Central Committee) recruitment policies must reflect them. The regime does not engage in random sampling to seek its successors. Those successors are the survivors of a process spanning their prior party-state career, during which those noted by their seniors for incompetence, failures, or manifestations of heterodox ideas and "instability" have gradually been sifted out. The survivors are consequently all the more likely to lack such "negative" characteristics and to be more like their superiors than not. Moreover, until those superiors themsives move on, they can still demote and remove their presumptive successors. They retain the power to do so, and they will use that power.

There is still a further reason for being chary of placing undue importance on generational differences in the context of the political succession. "Leaders" are by definition atypical, unrepresentative of the age groups from which they are drawn. This is so in the Soviet Union as well as elsewhere, and there is no reason to assume that it will change. (Many Western scholars have by now spent substantial periods in the USSR, especially in universities.

Possibly one can read the Soviet future there, but it is not written on the faces of the "typical" students with whom one may have a good deal of contact, but rather on those of the Komsomol activists, with whom one has rather less contact overall.

On balance, then, the Politburo of 1980 or thereabouts should resemble in its dynamics—both in the "united" face it presents to the world and in the bureaucratic log-rolling, interest brokerage, and in-fighting it hides—the Politburo of 1975. This is not to say that a "1980-model" Politburo will not introduce important changes in various policies, but only to suggest that it will "operate" in much the same manner as its predecessor has, combining incrementalism and sudden changes in unequal proportions "Liberalization" or "tightening" in domestic life are alternative possibilities, as are movements "backward" or "forward" on a number of economic issues; yet, whatever turn decisions on policy issues may take, there seems little warrant to expect that they will be reached more openly, or be based on broader "consultative" practices, than has been the case in the last few years.

A new Politburo will inherit the advantage of a mass political culture which has found regime demands tolerable, and output satisfactory, in the post-1953 period. Whoever the main "personalities" may be (a matter of speculation, which I leave to others), they will likely maintain a firm grip on the monopoly of power in the face of potential domestic challengers. If events on the global scale do not disturb military security and economic performance, the successors should manage to continue "delivering" in accord with mass expectancies as in the recent past, and their legitimacy, secularized as it may be, will remain secure. If, on the other hand, a military conflict with China should develop and be prolonged to the point of excessive strain on economic and human resources (despite the popular support such a "defensive" war would initially engender), or if a change in the Middle East situation should lead to a large-scale involvement of troops and materiel abroad, "history" is likely to reassert itself, posing critical questions about the viability of the system under stress.

Then, aspects of the political culture which have been sources of stability could work instead to weaken the system. A regime which rests on the apolitically of the masses in "good" times cannot be sure of the continuing support of apolitical masses in bad times. A regime secure by virtue of convictions of political impotence on the part of the masses cannot be confident of security if its coercive resources, which in the final analysis insure that impotence, are overstretched to deal with foreign enemies. And a regime which has, for all its ideological rhetoric, gained support largely through a thoroughly "secular" satisfaction of the everyday expectations of most of its subjects, can lose such support should the expectations grow to the point where they could no longer be met.

FOOTNOTES

[16] See Alex Inkeles and Raymond A. Bauer, *The Soviet Citizen*, Cambridge, Mass., Harvard University Press, 1961.

[17] *Op. cit.*, p. 19.

[18] Paul Hollander deals perceptively with the moderation of mass expectations in *Soviet and American Society:* A Comparison, New York, Oxford University Press, 1973, pp. 338 ff.

[19] Amalrik, *loc. cit.*, p. 61.

[20] For a discussion of such "secularization" in a related context, see this author's "From 'Utopia' to the 'Pragmatic' Society: Social Consequences of Economic Reform in Eastern Europe," *Revue d'Etudes Comparatives Est-ouest* (Paris), March 1975, pp. 107–41 (paper originally presented at the International Slavic Conference in Baniff, Canada, September 1974).

[21] An earlier piece by the author in this journal dealt with the relevance of different modes of integration to the potential for political dissent. See "Disssent in a Complex Society: The Soviet Case," *Problems of Communism*, March–April, 1973, pp. 40–52.

[22] See Rudolf L. Tökés, "Dissent: The Politics for Change in the USSR," in Henry W. Morton and Rudolf L. Tökés, Eds., *Soviet Politics and Society in the 1970's*, New York, Free Press, 1974, p. 8.

[23] These are Tökés's terms, *op. cit.*

[24] Barghoorn (*Politics . . .*, pp. 60–61) sees such potential dissident elite-mass linkage as a matter of concern, albeit remote, for the regime. And indeed, such "unorthodox" tactics as stuffing Moscow mailboxes with *samizdat* appeals to "workers" to consider their distinctly underprivileged economic situation may be conducive to Politburo nightmares. But, as Chalidze (*op. cit.*, p. 170) indicates, people have learned their lesson well and are as likely as not to turn over such unauthorized material to the KGB.

[25] Despite the "tightening of the screws" on dissidents over the past two years, the outflow of *samidzat* has apparently not abated, nor has the earlier suppression of the "Chronicle of Current Events" proved permanent. See Albert Boiter, "Samizdat Review: Summer 1974," Radio Liberty, *Dispatch* (Munich), 342/74, Oct. 25, 1974; and "Samizdat Review for Autumn 1974," Radio Liberty, *Research* (Munich), 49/75, Jan. 30, 1975.

[26] This was the general thrust of many of the pieces on the Soviet future published in this journal from 1966 through 1968 and collected in Zbigniew Brzezinski, Ed., *Dilemmas of Change in Soviet Politics*, New York, Columbia University Press, 1969.

[27] The writings of Jerry Hough, especially, point up the adaptiveness and stability of the system. See "The Soviet System: Petrification

or Pluralism?" *Problems of Communism* March-April, 1972, pp. 25–45; and *The Soviet Prefects: The Local Party Organs in Industrial Decision-Making*, Cambridge, Mass., Harvard University Press, 1969.

[28] See Terry McNeill, "Some Reflections on the Soviet Political Leadership," Radio Liberty, *Dispatch*, 299/74, Sept. 20, 1974, p. 17.●

## DISCREPANCIES IN NAVY STATEMENTS CONCERNING THE GENERAL DYNAMICS SETTLEMENT


## HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES


*Tuesday, September 12, 1978*

● Mr. DOWNEY. Mr. Speaker, I have obtained a copy of an internal Navy document which critically analyzes the Navy's official memorandum of decision issued in the General Dynamics shipbuilding dispute.

The memorandum of decision, transmitted to Congress on June 19, 1978, purported to set out the factual background of the General Dynamics settlement as well as the terms of that agreement. However, this document, dated July 19, 1978, discloses some serious inaccuracies and misrepresentations in the official memorandum. Among the discrepancies outlined are:

(1) While the Memorandum terms the $2.688 million estimate to complete the General Dynamics' contracts "realistic"—NAVSEA considers this projection to be "optimistic" and estimates that the cost of completing the contracts could be as much as $100 million more than the figure cited in the settlement agreement.

(2) Although the Memorandum stated that the first 23 SSN 688 submarines "were governed by contracts which provided inadequate flexibility to cope with abnormal inflation"—it was commented in the internal document that "Claims evaluation on all SSN 688 contracts has substantiated that delay and manhour overruns not 'double digit' inflation, are the overwhelming cause of escalation/inflation cost growth".

(3) While the Navy claimed that "shipbuilding uniqueness and complexity connected with the new SSN 688 attack submarine were intensified by the severely restrictive contractual structure"—a critique of this statement expressed that "The SSN 688 was (particularly from a shipbuilder standpoint) evolutionary and similar to the SSN 637 Class. Differences, where they existed, were obvious from study of the bid package . . ."

(4) Although the Memorandum stated "Choice of an alternative design source resulted in significant costs to EB despite efforts by the Navy to make this an effective process"—the internal document noted that "There are no indications that the alternate i.e. Newport News design source inherently caused increased costs to EB".

(5) In reaction to a Memorandum statement that "The initial issue of detailed design drawings was completed in March 1976"—the document commented "This is misleading if not inaccurate. By the end of 1973 more than 90 percent of the total first flight SSN 688 Class drawings had been issued".

I find these inaccuracies and misrepresentations to be deeply disturbing. This internal Navy commentary raises several factual issues regarding the responsibilities to be shared for the massive overruns experienced in the General Dynamics 688 contracts. In order to let others judge for themselves, I would like to include the whole Navy document in the RECORD at this time:

MEMORANDUM

Subject: *Memorandum of Decision*, Department of the Navy—General Dynamics Corporation of 19 June 1978.

Enclose: (1) Inaccurate Statements on Subject Paper; (2) Misrepresentations on Subject Paper.

1. PMS 393 was verbally tasked to identify any inaccuracies associated with subject paper.

2. Enclosure (1) contains two inaccurate statements associated with the 19 June 1978 decision. Enclosure (2) contains statements considered to be misrepresentations of the actual situation portrayed in the decision paper. Since, in many cases, there is human judgment involved, the label of misrepresentation vice inaccuracy has been attached.

Very respectfully,

C. E. MASALIN.

INACCURATE STATEMENTS ON SUBJECT PAPER

Statements and comments are "keyed" to the Memorandum of Decision by page and paragraph. Pages with an "A" designation refer to the attachment number 1.

STATEMENTS

"The Navy elected to develop an alternate design capability for submarines after exclusive use of EB design talent for almost 20 years." Page 1, paragraph 7.

"EB had been the submarine Design Agent for all nuclear submarines from the early 1950s until the SSN 688 program came along in 1970." Page 7A, paragraph 2.

"*Second*, Newport News was designated Design Agent for the SSN 688, whereas EB had served in this capacity for all previous nuclear submarines." Page 2A, paragraph 7.

"This changed with the SSN 688 because EB suddenly was just a builder rather than a designer/builder. It is true that the Navy instituted controls in an attempt to make the Newport News/EB interface work. However, there can be no question that there were serious problems associated with this new arrangement."

COMMENT

The Navy has not used EB exclusively for the design of nuclear submarines nor was the role of follow shipbuilder new to EB. Mare Island Naval Shipyard has performed as a nuclear submarine designer as has Portsmouth Naval Shipyard, which designed the SSN 593 Class in which specific case EB was a follow shipbuilder.

Regarding the Newport News Design Agent interface communications with EB, it is a matter of record that open and direct communications were established at the outset of the SSN 688 program. These communications which included NAVSEA, EB and Newport News (designer and builder) included bidder's questions, mock-up visits, Liaison Action Requests (LAR), Design Agent Shipbuilder Conferences and complete availability to EB of all Design Agent prepared data. In addition EB had their own on-site representatives at the Design Agent's plant on a full-time basis.

Further, EB as a submarine Design Agent and follow builder on SSN 593 Class, was completely familiar with design yard/follow yard relationship and how to work under it.

STATEMENT

"EB delivered SSN 637 ships an average of 2.4 months ahead of schedule while the other shipbuilders delivered on an average of 5.3 months late." Page 7A, paragraph 4.

COMMENT

EB delivered its SSN 637 Class ships an average of 5.7 months late from original contract delivery. It did deliver the last 8 of 14 ships of this Class on or ahead of schedule. Newport News, follow builder of the SSN 637 Class, delivered ships an average of 4½ months late to schedule. Further, Newport News delivered its first SSN 637 Class ships, USS *Queenfish* (SSN 651), prior to EB delivering the first ship of the Class, USS *Sturgeon* (SSN 637).

MISREPRESENTATIONS ON SUBJECT PAPER

(Comments on Memorandum of Decision Department of the Navy, General Dynamics Corporation dated 19 June 1978).

Statements and comments are "keyed" to the Memorandum of Decision by page and paragraph. Pages with an "A" designation refer to the attachment number 1. The statements have been arranged in five basic subject groups which are considered most significant and which are repeated throughout the memorandum. The comments are not necessarily meant to "go forward" but are intended to: (1) alert ourselves and management to possible factual disagreement and (2) create possible questions (and answers) that the Command may face in upcoming hearings.

FINANCIAL STATEMENTS

"Independent financial verification confirms magnitude of the anticipated unreimbursed costs." Page 1, paragraph 3."

"Coopers and Lybrand, a firm of independent public accountants retained by the Navy, has concluded, based on their comprehensive review, that General Dynamics employed reasonable procedures in arriving at this amount." Page 2, paragraph 6.

"The financial analysis confirmed that General Dynamics faced a loss of $843 million on the two SSN 688 contracts. This loss projection assumes what both parties believe to be realistic, an average labor inflation of 7 percent per annum and a material inflation of 6 percent per annum over the remaining six years necessary to complete the two contracts."

At the Navy's request, the independent accounting firm evaluated the impact of the probable loss, verified that the financial data provided by General Dynamics was accurate and reached the conclusion that it would remain a viable corporate entity if it absorbed a fixed loss in the order of magnitude ultimately agreed to—$359 million." Page 1A, paragraph 4.

"In February 1978 EB reported that the projected program loss for both SSN 688 contracts could be as high as $981 million. At the same time EB issued a revised delivery schedule which contained substantial slippages. Also included were schedule slippages on TRIDENT. In its April 1978 public financial statements for its fiscal year 1977, GD revised the projected loss to $843 million on the basis of a lower and what both parties believe to be a more realistic estimate of labor and material inflation." Page 5A, paragraph 3.

"The $2,668 million estimate to complete is considered realistic and has been reviewed by the previously mentioned accounting firm, Coopers and Lybrand, as well as by the independent auditors of General Dynamics (Arthur Andersen & Company). This included the estimate of the manhours required to finalize construction of the SSN 688 submarines." Page 12A, paragraph 2.

COMMENT

The above statements deal primarily with cost estimates at completion ($2,668 million) and the resulting loss ($843 million). Ship cost estimating (distinct from financial verification) is clearly outside the technical scope of any accounting/financial firm.

Another concept tied into these statements is that the revised projected loss of $843 million is on the basis of lower and more realistic estimates of labor and material inflation, which "both parties agree to." The Navy agreeing to lower rates may be in conflict with present NAVY/OSD projections of inflation.

Based on analysis of cost at completion, NAVSEA considers estimate at completion of $2,668 million optimistic. NAVSEA currently considers the cost at completion could be as much as $100 million more.

INFLATION/ESCALATION

STATEMENTS

"Given the above factors the protection against inflation afforded by the first two SSN 688 contracts proved inadequate under conditions of schedule slippages and during the double digit era of 1974–1975." Page 3, paragraph 6.

"Fifth, the first SSN 688 contract contained an escalation clause that had proved adequate for economic protection during the stable 1960s but would prove to be woefully inadequate during a period of double digit inflation and under conditions where schedules were radically altered through Navy and contractor related causes, as well as factors beyond the control of either party." Page 3A, paragraph 3.

"Contractually the SSN 688 was a transition phase in defense procurement policies. The first 23 ships (18 under 2 EB contracts and 5 under 2 Newport News contracts) were governed by contracts which provided inadequate flexibility to cope with abnormal inflation." Page 6A, paragraph 4.

"The risks of inflation, inadequately covered in the two SSN 688 contracts, are fully anticipated by the terms of the contract, reformation the settlement provides for (Attachment 2, para. 7)."

COMMENT

The "inadequacies" (if any) of the escalation provisions of the two SSN 688 Class EB contracts is apparent only in the event there is ship construction/delivery delay. Compensation is based on the Bureau of Labor Statistics (BLS) indices which also reflect "double digit" inflation. Claims evaluation on all SSN 688 contracts has substantiated that delay and manhour overruns not "double digit" inflation, on the overwhelming causes of escalation/inflation cost growth.

SSN 688 CLASS VICE SSN 637 CLASS

STATEMENTS

"The Navy entered the 1970s with an urgent demand for a new class of nuclear attack submarines that would embody significant advances in submarine technology." Page 1, paragraph 5.

"The SSN 637 Class nuclear attack submarine, dating back to the early 1960s, had been an extremely successful program due in large measure to excellent performance by Electric Boat, the designer and major producer of this Class. Page 1, paragraph 6.

On the basis of assumptions that history would later portray as overoptimistic, the SSN 688 program was considered to be merely an evolution from the SSN 637. In retrospect, significant misjudgments were made by both the Navy and industry."

"The following extract from the Navy preaward survey regarding construction of the first flight of SSN 688s reveals a basic fallacy: Page 2A, paragraph 3–5.

"The requirements are generally *sufficiently similar to previous SSN 637 Class* and 671 construction requirements to merit the conclusion that EBDIV, with proper management preplanning, etc., can meet the production requirements." (Emphasis added)

COMPETITIVE ENVIRONMENT FOR SSN 688 FIRST FLIGHT (1971)

Hindsight underscores five key aspects of the competition for the first SSN 688 construction contract:

"First, was the stated optimism which viewed the SSN 688 as an evolutionary development, just as the SSN 637 Class was an evolution from the USS PERMIT (SSN 594) Class."

STATEMENTS

"Shipbuilding uniqueness and complexity connected with the new SSN 688 attack submarine were intensified by the severely restrictive contractual structure, the inadequate productivity of a rapidly multiplying work force, and the extraneous forces of unforeseen inflation." Page 3, paragraph 7.

"It gradually became apparent that the SSN 688 was considerably more than just a larger SSN 637." Page 6A, paragraph 3.

COMMENT

These statements dispute and contradict the Navy's technical judgements regarding comparisons of SSN 688 Class with the previous SSN 637 Class submarines. The SSN 688 was (particularly from a shipbuilder standpoint) evolutionary and similar to the SSN 637 Class. Differences, where they existed, were obvious from study of the bid package data—drawings, specifications and lists of Government Furnished Equipments and full scale mock-ups, all of which were available to EB prior to building SSN 688 Class submarines.

EB was in a particularly good position to assess the "evolutionary" aspect of the differences between SSN 637 and SSN 688 designs. EB was directly involved in similar past evolutions in submarine design such as that from Nautilus to Skate and Skate to Skipjack.

With regard to statement from the preaward survey, NAVSEA notes the purpose of this survey was to determine if EB had the capacity and capability to build SSN 688 ships. This EB has done. NAVSEA questions conclusion that reference to similarity to SSN 637 Class reveals a "basic fallacy."

SECOND FLIGHT PRICING/NEGOTIATIONS

STATEMENTS

"Second flight negotiations were significantly influenced by SSN 637 experience and early first flight experience, primarily estimates rather than actuals." Page 2, paragraph 4.

"Government and contractor optimism still ran high. EB cost reports and the first flight manhour estimates were the primary basis for second flight pricing. First flight manhour estimates to complete showed little change from those proposed and accepted in January 1971 when that flight was awarded." Page 3A, paragraph 6.

"In effect, the Navy was in a sole source position with Electric Boat." Page 4A, paragraph 2.

"The second flight (11 ships) bidding posture by EB is a key to an understanding of the critical situation which later developed. A basic premise for the bid was the very favorable SSN 637 experience, together with more reliance on the then meager first flight experience than was warranted." Page 6A, paragraph 1.

COMMENT

The second flight negotiations were not influenced by SSN 637 experience. Although the shipbuilder utilized SSN 637 Class data in his proposal preparation, the negotiations were based exclusively on SSN 688 requirements with particular emphasis placed on the EBDIV direct manhour estimates (as contained in EB cost reports) to construct the first flight ships. SSN 637 experience performance was not discussed.

DESIGN AGENT

STATEMENT

"Choice of an alternative design source resulted in significant costs to EB despite efforts by the Navy to make this an effective process." Page 3, para. 4.

COMMENT

There are no indications that the alternate i.e. Newport News design source inherently caused increased costs to EB.

STATEMENT

"The initial issue of detailed design drawings was completed in March 1976." Page 12A, para. 4.

COMMENT

This is misleading if not inaccurate. By the end of 1973 more than 90 percent of the total first flight SSN 688 Class drawings had been issued. Those not issued were essentially minor drawings such as stowage lockers or were associated with HMR's which were authorized later in the construction period.

MISCELLANEOUS

STATEMENT

"By implementing the foregoing basic elements of the Agreement between the Navy and General Dynamics, the Navy will, by strict analysis, pay a competitive price for the 18 SSNs constructed by General Dynamics." Page 4, paragraph 7.

COMMENT

It is not clear what is meant by "strict analysis" or "competitive price." The only competitor is Newport News where a final price has not been established. However, based on current Navy estimates, it appears that EB ships (including the proposed settlement) are significantly more costly than those at Newport News.

STATEMENT

"Fourth, the primary award criteria were based on ceiling price. The result of this radical technique was inordinately to lower the spread between target and ceiling in a fixed-price-incentive contract and reduce virtually to the point of disappearance the flexibility for absorbing cost increases within the terms and conditions of the contract. This technique was used by the Naval Sea Systems Command only on the SSN 688 first flight contract and, as a matter of Naval policy, has not and will not be used again." Page 3A, paragraph 2.

COMMENT

Award of the SSN 688 Class follow ship contracts was based on the objective of obtaining the lowest total cost to the Navy. Contractually, ceiling price is the maximum Government cost exposure. Therefore, ceiling price was determined by the Navy to be the best method for evaluating the first SSN 688 Class bids. All three bidders were clearly on notice of this bid evaluation method prior to submitting their bids. The spread between target and ceiling was set by the shipbuilders in their proposals.

STATEMENT

"Newport News" turned out to be essentially noncompetitive in the second flight bidding. Proposed prices were high and many exceptions were taken to the terms and conditions of the request for proposal. This was a period of deteriorating relations between the Navy and Newport News." Page 4A. paragraph 2.

COMMENT

Agreement was reached with Newport News on terms and conditions. The award was based solely on price. It had nothing to do with deteriorating relations between the Navy and Newport News.

STATEMENT

"The delay and disruption caused by late GFI furnished by the Navy Design Agent warrant recognition beyond that obtained through strict claims analysis. The inherent difficulties of documenting and analyzing disruption are well understood in Government and in the shipbuilding industry. The lateness of GFI early in the program, particularly as it impacted EB as the follow-on shipbuilder, undoubtedly created a disruption problem that is real despite an inability to quantify this with desired precision." Page 10A, paragraph 5.

COMMENT

The Navy by claims and analysis and quantification paid for a major percentage of the claimed delay and disruption caused by late GFI.●

## MIA LIVE SIGHTINGS II

### HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. DORNAN. Mr. Speaker, in yesterday's CONGRESSIONAL RECORD (p. 28838), I asked the Members of this House to oppose any premature declarations of death for Americans listed as missing in action in Southeast Asia. When I consider the possibility, the awful possibility of living, imprisoned Americans I am reminded of the mental anguish of the dethroned King of France in Dumas' great fictional work, "The Man in the Iron Mask". In the depths of despair the forlorn prisoner cries: Does anyone know I am here? I imagine the horror. I am appalled by the realization that the fate of some of our missing men could be the same. It compels me to ask Members of this House, again and again, to favor the pursuit of every avenue, to unravel every shred of evidence, to bring this issue to a satisfactory conclusion.

I hope that some men are alive. I know that many honorable Members of this House, in all sincerity, do not hold out the possibility for that hope. I know that, with the deepest convictions, they believe that every American lost and unaccounted for in Southeast Asia is dead—and that we should put the issue to rest and close the final chapter of our anguished involvement in Vietnam. But that is just the point: It is a matter of belief. And, in any case, belief—no matter how strongly held—one way or the other, is simply not enough; belief does not substitute for sound, empirical evidence. It does not substitute for hard investigation, diplomatic pressure, or the most extensive analysis of testimony and the cross-examination of refugees who claim to have seen Americans living in Southeast Asia in the aftermath of the Vietnamese War.

Mr. Speaker, once again, I beg the indulgence of this House. I ask Members to be aware that the possibility exists that Americans may, indeed, be alive in Southeast Asia. I cannot vouch for the truth of the information given to me. As I mentioned in my remarks yesterday, we cannot accept mere claims as hard evidence, any more that we can simply accept Vietnamese Communist denials to the contrary. Each should be thoroughly investigated.

I have received and sent the relevant information and untranslated letters to the Defense Intelligence Agency for analysis. Yesterday. I inserted letters "one" and "two." Today, I am inserting letters "three," "four," and "five." They are again properly sanitized of names for the protection of Vietnamese family members from official Communist retaliation.

I ask my colleagues, once again, to give these documents their closest attention.

The letters follow:

LETTER NO. 3

(Transcript of a letter by (female), Japan, Mar. 25, 1978)

DEAR MRS. LE THI ANH: My name is (deleted). I'm presently in a refugee camp in Japan. I escaped from Vietnam and arrived in Japan on October 17, 1977. I'm waiting for my turn to be admitted to the U.S.A.

Today, I was surprised to read in the Trang Den magazine your ad re: information about the MIAs. The ad gave the address to contact as your name and address. So, I decided I should write to you immediately to let you know about the Americans who are still in Vietnam. Mrs. Anh, I believe there is quite a number of them in Vietnam and not just a few.

I know it because I have seen them on a TV show, which the Communists showed to an audience of cadremen, officials and government employees. The Communists accused the Americans of crimes and they denounced the men's crimes on the show. Mrs. Anh, the poor men, I felt so sorry for them, their faces were pale, thin and haggard, their eyes were hollow like the bottom of ricebowls. And while they showed the film, the commentator said "those imperialists must be severely punished, we shall do so until their government pays for the war damage and rebuilds in full for Vietnam, especially the areas they have bombed and destroyed."

Mrs. Anh, I also know more thanks to a friend of ours, a Vietnamese doctor who have been released from a prison camp in North-Vietnam. Because this doctor was interned in the same camp as my cousin who was an artillery officer captured during the year 1971. My cousin was still in the camp so he sent words to us through the doctor who came to see us right away after his return.

The Dr. said today there are still many American prisoners of war who are still being interned in North-Vietnam, as well as Vietnamese POWs. I asked him if they gave the same ration to the Vietnamese POWs and the Americans POWs and he said that the Vietnamese received less foods than the Americans, because they wanted to feed the Americans properly to keep them in good health in order to claim for reparation payments from their government.

Mrs. Anh, I was among those who were shown on the TV program because at the time I was a government employee in charge of controlling merchandises. After three months, I came under investigation because they found out that I belonged to a "family which collaborated with the imperialists," they fired me so I managed to escape. Now I arrived here, I'm all by myself, without any friends or relatives. I have to stop here because I have to go and teach a course for refugees. I swear that all what I write to you today is the truth.

Signed, (deleted).

LETTER NO. 4 MAY 6, 1978.

DEAR MRS. ANH: My name is (deleted), I was an officer of the former Republic of Vietnam. I did not report to the new authorities and my family and I left our home on (deleted) and went into hiding until we finally succeeded to escape from Vietnam on July 7, after several unsuccessful attempts.

I lived under Communist rule for over 15 months and have seen or hear about the following MIA cases:

(1) I have seen an American on Ky-Dong St. in Saigon about June 75, he was in dirty clothes, Japanese rubber sandals, thin emaciated and he look fearful. It was nightfall when I saw him.

(2) A nephew of my wife who came to see us on about Feb. or March 1977 and he told us that there was an American hiding in his wife's family home in the area of Truong Minh Giang St. and that the Communists didn't know about him yet.

(3) My wife's brother who came from North Vietnam and he came to visit us. He told us that his son was a doctor serving with the Hanoi government. The doctor has served a number of years in the highlands in the North, and he has seen a village in which most inhabitants were Americans, some of those have married Vietnamese women.

I'm sorry that I did not hear or do not remember the name of the place where those unfortunate men were being held.

Signed, (deleted).

LETTER NO. 5, MELBORNE, *December 23, 1977.*

DEAR UNCLE AND AUNT: I received your letter yesterday at about 2 p.m., but had to go to class so I can answer your letter only today.

Following, I shall recount the circumstances of my sighting of the two Americans about 2 years ago; that was I believe, 4 or 5 days after the Communists took Saigon. It was about 8 a.m. on 02–05–1975, I and a friend of mine by the name of (deleted) we were sitting in a cafe in the Xeo Ro marketplace (village of Dong Yen, district of Kien An, Rach-Gia, now Kien-Giang, province).

While my friend and I were sitting there sipping coffee and talking we suddenly saw people running in the direction of the (river) dockside. We were surprised and so we followed the crowd to see what was the matter. We found that people ran up to see two Americans. Both Americans were sitting in the middle of a motorized sampan, both had their hands tied behind their backs with a Vietnamese cotton striped scarf. There were 7 people on the sampan, including the two Americans; two Communist cadremen sat on the front of the sampan and three sat on the rear and the Americans sat in between. At that very moment, two communists ran up to the city hall of Dong Yen for something I do not know what.

One of the two Americans was a white man of about 30 years old, quite thin. The other was a Black man of about the same age, but not too black and the latter was a little bit fatter and more solidly built.

Because I stood not too near so I could not guess their height, by my estimates are that they were about 7 or 8 centimeters taller than you, uncle. I didn't pay any attention to the color of their eyes.

The two men apparently cried, and cried a lot, because traces of tears were still on their faces, their eyes were red, and their faces showed fear, sorrow and worry.

The Communists said something, but I'm sorry I do not remember. Most people in Xeo Ro felt sorry for the unlucky men. Most of the local people were families of the former Saigon Army and Administration personnel so they were rather sympathetic to the prisoners.

Afterward, the Communists took the two men on in the direction of Kien An which meant they were heading deeper into the U-Minh forest. The sampan stopped for about 20 minutes at the Xeo Ro dock.

I believe those two men were military men because of their military garbs.

Signed, (deleted).●

## PRESIDENT'S VETO OF DEFENSE AUTHORIZATION BILL REFLECTS GOOD BUDGETARY AND MILITARY JUDGMENT

### HON. CHRISTOPHER J. DODD

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. DODD. Mr. Speaker, last Thursday, I joined the 206 members of the House of Representatives who voted to sustain the President's veto of the defense authorization bill.

The President was right on target in insisting that $2.1 billion for a nuclear-powered aircraft carrier be deleted from the bill. The inclusion of the nuclear carrier, I believe, actually weakened our national defense because other more im-

portant programs were cut to pay for the carrier.

Funding for a fifth nuclear aircraft carrier would also continue what I believe to be a shortsighted and unwise policy of spending huge amounts of money to build just a few very expensive ships. I am concerned that for too long, our Navy has been evolving into a smaller and smaller force of larger, more expensive vessels. It makes more sense to build larger numbers of smaller ships which would be less vulnerable in the event of war. Modern surveillance techniques and new, more sophisticated missiles are rapidly making aircraft carriers—already high value targets—extremely vulnerable to successful enemy attack. Instead of investing the taxpayers' money in a few, large vulnerable ships, it would be preferable to make our fleet less vulnerable to attack by building a greater number of less expensive ships.

I might point out that the United States could build and operate three conventionally-powered aircraft carriers for the price of two nuclear-powered carriers. If we decide that our Navy does need more aircraft carriers, then smaller conventional carriers, which can operate with existing aircraft, should be built. In the not too distant future, I am certain that the versatile vertically launched, (V/STOL), planes will become the mainstay of our carrier aircraft. As these planes need very little deck space to take off and land, it seems foolish to spend exorbitant sums of money on a large carrier, the main advantage of which is its enormous deck area. The United States is already going to have four large nuclear carriers; we do not need yet another one.

I recognize that some people are worried that another oil embargo might hamper the operation of conventional, oil-powered carriers. However, I should point out that our armed services have the highest priority on fuel and could easily operate on the large quantities of domestic oil or on the vast amounts of oil already reserved for the Navy.

I should add that increasingly the mission of our Navy is sea control, or the ability to keep our vital lines of communication and supply open to Europe and the Pacific. This ability to control the seas depends on our success in insuring that our adversaries' naval forces, and especially their submarines, cannot interdict our maritime supply and communication lines. Nuclear-powered aircraft carriers add little to the sea control mission. Their primary mission is power projection. But in an era of intercontinental ballistic missiles and missile-firing submarines, it is highly doubtful that we would consider using our carriers to carry out nuclear strikes against another nation. And as we move away from an era of intervention in Third World countries, the need for yet another nuclear carrier for the power projection mission also diminishes.

In conclusion, Mr. Speaker, I believe that the President's veto of the defense authorization bill, because of its addition of a fifth nuclear aircraft carrier, reflects not only good budgetary sense, but a sound recognition of the changing requirements of the U.S. fleet as well. It was for these reasons that I supported the President's veto.●

## TRAGIC SITUATION IN LEBANON

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. DERWINSKI. Mr. Speaker, I wish to direct the attention of the Members to a report I received from Our Lady of Lebanon Roman Catholic Maronite Rite Church in Hillside, Ill. This report represents the deep concern of Lebanese-Americans over the tragic situation that exists in Lebanon.

Under my amendment to the foreign assistance appropriations bill, Syria will be denied $90 million in assistance. A similar bill in the Senate has gained much support.

The massacre and forced migration of Christians in Lebanon is approaching genocide and calls for condemnation and action by the United States and the world community.

The report follows:

DO YOU REALLY CARE ABOUT YOUR FELLOW CHRISTIAN?

Has it ever occured to you my friend that, in the twentieth Century, you could be massacred just because you are a Christian?

The Lebanese Christian Community is facing this threat today Their residential areas of Beirut are being pounded indiscriminately with bombs and rockets. Hundreds of thousands of Christians are without food, water and electricity, tucked in shelters awaiting for the christian world to help them. Do you care my friend?

In the years 745 A.C. the Christians of Lebanon have been massacred at the hands of the Khalif Marwan. . .

In the years 1860 A.C., once again hatred and fanaticism swept their death sword across the Lebanese Christian Community. . .

And since 1975 until this very minute, the Christians of Lebanon are enduring the most savage systematic annihilation plot since World War II. . . The Only Christian Community in the Middle-East, and the Oldest one in the world is facing the danger of extermination. Will you help?

Lebanon needs your help my friend, Lebanon needs more than ever your Prayers, your Moral Support, and a little share in the Human Rights you have been advocating proudly. and God Bless You.

"The righteous will grow like the cedars of Lebanon"—Psalm 92/13.

I. INTRODUCTION

(a) Lebanese society is: a free society, pluralistic society, and democratic society.

(b) Lebanon has always served as a land of refuge for the oppressed people in the Middle East.

(c) 7,000 years of history back the above.

II. FACTS

(a) Plot against the Christians:

1. Arab states are not willing to absorb the palestinians within their society. They had to impose them on the most open one.

2. The Syrians who took part in the 2-year war in Lebanon, are now "peace-keepers" (?) which is a highly abnormal situation.

3. The Syrians, who came in as peace-keepers according to the "Riyadh agreement", and, who supposedly are under the explicit command of the President of Lebanon, became the aggressors.

4. The Syrians were supposed to disarm the terrorists, as a first stage; the Christians agreed to surrender their arms to the Lebanese Army, as a second stage; return of power to the Central Government with the withdrawal of the Syrians, as a third stage. They failed in their first stage. In addition, they started their harrassment campaign against the Christians. They never took their orders from the President of Lebanon. All cease-fire requests had to go to the President of Syria. They fomented differences between Christian parties by subversive activities such as massacres, killings and plain genocidal actions (Bekaa recently).

5. There are enough indications that the Syrians are acting on a plan, entirely different from the one they agreed upon, openly.

(b) Present situation:

1. The Syrians are no longer operating legally in Lebanon.

2. The President of Lebanon is a mere puppet caught in his own net by the Syrians. The Christians are the lamb of sacrifice of the whole game.

3. The Syrians are shelling indiscriminately the Christian residential areas of Beirut (including all hospitals), for the sole purpose of forcing the Christian citizens to contained neighboring areas, and the plan calls for complete dismantling of the Christians' self-defense. The Christians are definitely fighting for their survival and the survival of the only democratic Christian community in the Orient, and more specifically, in the Arab world. The hate of the Syrians to the Christian minority, is only equal to their hate to the Jewish community, the only two minorities in the Middle East.

III. CONCLUSION

1. Request from President Carter to use all his influence and means to stop immediately those violations of human rights in Lebanon and put an end to the genocidal scheme perpetrated by the Syrians and Palestinians, and their immediate withdrawal from Lebanon.

2. Request that the Palestinian population problem not be resolved by sacrificing the only free country in the Middle East.

3. The Arab states must absorb the majority of the Palestinian burden, until a final settlement with Israel is reached.

4. The state of Lebanon has been created for the sole purpose of preserving the few Christian and other minorities in the Middle East, and must remain so.

5. Whatever decisions are taken by President Carter, bearing in mind the human rights and the virtues on which our Nation stands, will be irrevocably accepted by the Lebanese people.

6. The American-Lebanese community cannot accept that Lebanon be used for appeasing temporarily the emotional thirst of the Arabs, because Lebanon has always been the bar-in-the-wheel for any Russian influence in the Middle East. By dumping Lebanon, killing its resistance and forcing its people to migrate, the U.S. will be in the long-run playing the exact game the Russians want them to play. In such a short time, the security of Israel and the rest of the Arab states, as far as communism is concerned, will be in jeopardy.

7. The Lebanese community, in its way of life, is ideologically anti-communist. Thru the years, it has proven that communism could not find roots in Lebanon. And, this particular characteristic, is not available in other Arab states. Lebanon is considered as a key-stone factor for any communist expansion in the Middle East.●

## NEED FOR SCRUTINY OF D.C. CONSTITUTIONAL AMENDMENT

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. DERWINSKI. Mr. Speaker, while I appreciate the fact that the House and

Senate have worked their will on the issue of congressional representation for the District of Columbia, the amendment now must be objectively studied by the legislatures of the 50 States.

The distinguished columnist, George F. Will directs special attention to the responsibility of the States in ratifying this proposed constitutional amendment in an article in today's Chicago Sun-Times. The article follows:

[From the Chicago Sun-Times, Sept. 12, 1978]

D.C. AMENDMENT BADLY FLAWED

(By George F. Will)

WASHINGTON.—The nation owes a full measure of gratitude to the legislatures of California and Delaware for their dignified abstinence from haste. They have refused to ratify without scrutiny the recently proposed constitutional amendment to give congressional representation to the District of Columbia "as if it were a state."

The Constitution has been changed four times in the last 18 years, and today two more amendments are before the states. If this is not itself evidence of a too casual approach to the Republic's fundamental law, the tactics used by some who favor the amendments are such evidence.

When the Equal Rights Amendment was sent to the states, Hawaii rushed to ratify it the first day. Nebraska, scrambling to be second ratified it improperly and had to do it again six days later. Twenty states ratified it within three months, most wtihout hearings or other evidence of thought.

ERA supporters tried to generate a moral tidal wave by insisting that ERA is a "simple" matter of being "for women," a matter about which intelligent people could not honorably disagree. Today people trying to create a stampede toward ratification of the District of Columbia representation amendment argue that it is (in the words of a California stampeder) a "black issue."

Such assertions were sufficient to propel the amendment through California's Assembly, which evidently is not a deliberative body. California's Senate refused to rubberstamp the amendment, so Californians will have an opportunity to note that the issue is constitutional, not racial.

As he frequently does, Rep. M. Caldwell Butler (R-Va.) has defined a position to which moderate people of good will can rally. He notes that the Constitution provides for three kinds of entities: states, territories and the District of Columbia. Today the District has three electoral votes in presidential elections and a nonvoting delegate in the House of Representatives.

The proposed amendment would give the District voting representation in the House based on population; give Senate representation "as though it were a state"; grant participation in the electoral college substantially as a state, and grant participation in the process whereby the Constitution is amended. Of these four, says Butler, only the first is proper.

As regards the amending process, note that under the law granting the District "home rule," the city council remains an agent of Congress subject to Congress' veto. That is, the law is consistent with the Constitution's provision that Congress shall "exercise exclusive legislation, in all cases whatsoever" over the District. But what this means is that were the city council to function as the equivalent of a state legislature in the amendment process, Congress would submit amendments for the approval of its own agent.

As regards participation in the electoral college, the weight of the District vote should be registered by electors equal in number to the members of the House allocated according to population (perhaps two after the 1980 census). But the District should not have two additional electoral votes as states do, because the District should not have senators.

As Butler says, the Founders made a distinction that should not be blurred—a distinction between the House, in which people are represented, and the Senate, in which states are represented. States are the fundamental entities of this federal system. Senators represent geographical regions containing diverse interests.

But the District is only a city of moderate size, and because of restrictions on its growth, it will steadily descend the list of largest cities as other cities grow.

Were the District to elect senators, they would be the only two representing no rural interests whatever. So state legislatures with strong rural representation will be reluctant to ratify the proposed amendment, which would dilute their Senate power even more seriously than it would dilute the power of other states. That is not the most elevated reason for doing the right thing, but rejecting this proposed amendment's approach to District representation is the right thing to do.

Because the Constitution stipulates that Congress must have final responsibility for the District, residents of the District have a special interest in congressional representation. But that fact about final responsibility is one reason why it would violate the essence of American federalism to grant to the District representation in the Senate, a body that expresses the principle of a union of sovereign states.●

## CIVIL SERVICE REFORM

### HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 12, 1978*

● Mr. BOB WILSON, Mr. Speaker, I was very sorry to miss the vote yesterday on the Hanley amendment to the Civil Service reform bill. This bill had been rescheduled repeatedly and, unfortunately, several long-standing commitments in my district yesterday made it impossible for me to return to Washington in time. I would have voted for the amendment offered by Mr. HANLEY and am deeply gratified by the outcome.

Those who were peddling major revisions in veterans' preference told us that the principal beneficiaries would be Vietnam-era veterans. A quick review of the facts, however, showed this argument to be specious.

The committee bill provided that nondisabled veterans would have a one-time, five point veterans' preference usable only within the first 15 years after their date of discharge—and I want to emphasize those words: "date of discharge"—not the date of the enactment of this legislation. Thus, in 1980, a half million young men and women who served during the Vietnam era and were discharged in 1965 would lose their veterans' preference. That figure escalates rapidly over the next few years, so that by 1987 the cumulative total of Vietnam-era veterans who would have lost their employment preference status would be more than 6 million. Yet, this was a bill which purported to help the Vietnam-era veteran.

You also heard the argument that those who oppose changes in veterans' preference are only so-called "old-line" veterans' organizations which do not represent the Vietnam generation. Again, the facts belie this situation.

The Veterans of Foreign Wars, for example, are strongly opposed to revising veterans' preference; 30 percent of their membership served in Vietnam or contiguous waters. Another opponent is the Non-Commissioned Officers' Association, 190,000 strong; Vietnam-era participants compromise 90 percent of their membership. Other veterans' groups reflect a similar make-up and a similar stance in opposition.

With the passage of time, it is too easy to forget the incredible experience of Vietnam. For many of the veterans of that conflict, however, the memory is still all too vivid. When Johnny came home from Saigon, Da Nang, and the Mekong Delta, he was not greeted with cheers, confetti, and ticker-tape parades. He, more probably, was met with suspicion, mistrust, even hatred, by a public which tended to link the debacle of the war itself with the intrinsic worth of the young men who served there. While in recent years we have made some progress in healing the Nation's wounds and reassimilating these young veterans into the mainstream of American life, we are not yet home free. This is particularly the case for minority veterans who have experienced staggeringly high rates of unemployment. It is interesting to note that minority veterans comprise only 8.5 percent of the U.S. veterans population, but make up 19 percent of the veterans employed by the Federal Government.

Aside from the basic question of getting a job, there is also the problem of retaining it during periods of belt tightening. The changes proposed by this legislation would have put the Vietnam veteran at a disadvantage in this arena, too.

The committee bill eliminated all preference for retention purposes after 8 years from the date of initial appointment to a Federal position. This meant that, when a "RIF" came a decade after employment, the young man or woman who gave 2 or more years to the service of his or her country would now be at a susbtantial disadvantage in comparison to a contemporary who managed to avoid military service and went directly to work for the Federal Government. The ultimate irony on this situation is that the nonveteran may well have actively dodged the draft!

I certainly do not impugn the intentions of those who wish to restructure the veterans' preference system nor their goal of opening up greater employment opportunities within the Federal Government for women. I must take strong issue with their methodology. In years of peace, it is all too easy to forget the debt of gratitude which we owe to those who put aside their private pursuits and went into the service of their country. Veterans' preference is one small compensation for that service, which I feel strongly that we should retain.

I want to commend my House colleagues for their overwhelming vote yesterday in support of the Hanley amendment.●